

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No.

STEPHANIE SALAZAR,

Plaintiff,

v.

**CITY OF COMMERCE CITY; GERALD M. FLANNERY, in his individual capacity;
PAUL NATALE, in his individual capacity; HEATHER OLSON, in her individual
capacity; AND TOM ACRE, in his individual capacity**

Defendants.

COMPLAINT AND JURY DEMAND

INTRODUCTION

1. This action is brought against Defendants City of Commerce City, Gerald M. Flannery, Paul Natale, Heather Olson and Tom Acre (hereinafter collectively referred to as "Defendants"):

- a. to remedy violations of Plaintiff Stephanie Salazar's statutory right to be free from employment discrimination on the basis of her sex/female, age (48 years old at the time of termination) and in retaliation for opposing discriminatory employment practices pursuant to the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* ("Title VII"); the Age Discrimination in Employment Act, Section 7(b), 29 U.S.C. § 626(b), as amended, 29 U.S.C. § 621 *et seq.* ("ADEA"); and the Colorado Anti-Discrimination Act ("CADA"), C.R.S. §§24-34-401, as amended, *et seq.*

- b. to remedy violations of Plaintiff Stephanie Salazar's constitutional right to equal protection as guaranteed under the Fourteenth Amendment of the United States Constitution as enforced through the Civil Rights Act of 1871, 42 U.S.C. § 1983.
- c. to remedy violations of Plaintiff Stephanie Salazar's constitutional right to liberty interests as guaranteed under the Fourteenth Amendment of the United States Constitution as enforced through the Civil Rights Act of 1871, 42 U.S.C. § 1983.

FACTS RELEVANT TO JURISDICTION AND VENUE

2. This action is filed pursuant to federal and state laws. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331. This Court has pendent jurisdiction over the state claims.

3. Venue is proper in the District of Colorado pursuant to 28 U.S.C. § 1391(b) because the unlawful practices were committed within the State of Colorado.

PARTIES

4. Plaintiff Stephanie Salazar (hereinafter "Plaintiff Salazar") was an employee of Defendant City of Commerce City, working in the position of Director of Economic Development. Plaintiff Salazar is a citizen of the State of Colorado. At all times relevant, Plaintiff Salazar was a citizen of the City of Commerce City.

5. Defendant City of Commerce City (hereinafter "Defendant Commerce City"), is an "employer" as that term is defined under Title VII, ADEA, and CADA. Defendant Commerce City is a "person" as that term is defined under 42 U.S.C. § 1983. Defendant Commerce City was acting under the color of law when it took action against Plaintiff Salazar's employment. Defendant Commerce City has a responsibility to properly train and supervise its employees regarding equal employment opportunity principles and regarding the constitutional rights of its

employees. At all times relevant to this civil action, Defendant Commerce City was the employer of Plaintiff Salazar. Defendant Commerce City is located at 7887 East 60th Avenue, Commerce City, Colorado.

6. Defendant Gerald M. Flannery (hereinafter "Defendant Flannery"), at all times relevant to this Complaint, was the City Manager of Defendant Commerce City. Defendant Flannery is a "person" as that term is defined under 42 U.S.C. § 1983. Defendant Flannery was acting under the color of law when he took action against Plaintiff Salazar's employment. Defendant Flannery, as City Manager, is familiar with Defendant City's municipal ordinances and employment handbook governing equal employment opportunity principles. Defendant Flannery made employment decisions and/or took actions regarding Plaintiff Salazar's employment that was contrary to Defendant Commerce City's ordinances, policies and procedures. As the City Manager, Defendant Flannery has final authority to establish policies, regulations or decisions regarding personnel issues. Defendant Flannery is located at 7887 East 60th Avenue, Commerce City, Colorado.

7. Defendant Paul Natale (hereinafter "Defendant Natale"), at all times relevant to this Complaint, was the Mayor of Defendant Commerce City. Defendant Natale is a "person" as that term is defined under 42 U.S.C. § 1983. Defendant Natale was acting under the color of law when he participated in the decisions and/or took actions that led to Plaintiff Salazar's termination from employment. Defendant Natale, as Mayor, is familiar with Defendant City's municipal ordinances and employment handbook governing equal employment opportunity principles. Defendant Natale took part in decisions and engaged in behavior that was contrary to

Defendant Commerce City's ordinances, policies and procedures. Defendant Natale is located at 7887 East 60th Avenue, Commerce City, Colorado.

8. Defendant Heather Olson (hereinafter "Defendant Olson"), at all times relevant to this Complaint, was the Human Resources Director of Defendant Commerce City. Defendant Olson is a "person" as that term is defined under 42 U.S.C. § 1983. Defendant Olson was acting under the color of law when she participated in the decisions and/or took actions that led to Plaintiff Salazar's termination from employment. Defendant Olson, as Director of Human Resources, is familiar with Defendant City's municipal ordinances and employment handbook governing equal employment opportunity principles. Defendant Olson took part in decisions regarding Plaintiff Salazar's employment that were contrary to Defendant Commerce City's policies and procedures. Defendant Olson is located at 7887 East 60th Avenue, Commerce City, Colorado.

9. Defendant Tom Acre (hereinafter "Defendant Acre"), at all times relevant to this Complaint, was the Deputy City Manager of Defendant Commerce City. Defendant Acre is a "person" as that term is defined under 42 U.S.C. § 1983. Defendant Acre was acting under the color of law when he participated in the decisions and/or took actions that led to Plaintiff Salazar's termination from employment. Defendant Acre, as Deputy City Manager, is familiar with Defendant City's municipal ordinances and employment handbook governing equal employment opportunity principles. Defendant Acre took part in decisions regarding Plaintiff Salazar's employment that were contrary to Defendant Commerce City's policies and procedures. Defendant Acre is located at 7887 East 60th Avenue, Commerce City, Colorado.

EXHAUSTION OF FEDERAL AND STATE ADMINISTRATIVE REMEDIES

10. On September 3, 2008, Plaintiff Salazar timely filed a charge of discrimination with the EEOC, which was jointly filed with the Colorado Civil Rights Division. On September 18, 2008, Plaintiff Salazar supplemented the charge of discrimination.

11. On March 11, 2010, the U.S. Department of Justice provided Plaintiff Salazar a Notice of Right to Sue ("Notice"). Plaintiff Salazar was advised that she had 90 days from the receipt of the Notice to file a suit in an appropriate Court. The Notice of Right to Sue is attached as "Exhibit A" and is incorporated by reference. Plaintiff Salazar received the Notice on March 15, 2010.

FACTS

12. At all times relevant, Plaintiff Salazar was a 48-year-old female. Based on her sex and age, she is a member of a protected group.

13. Plaintiff Salazar worked for Defendant Commerce City as the Director of Economic Development. During her tenure, she performed her job satisfactorily.

14. On November 9, 2007, Plaintiff Salazar had a meeting with Defendant Flannery. During this meeting, a discussion occurred wherein Defendant Flannery expressed surprise that Plaintiff Salazar had employed Lisa Wayne. Lisa Wayne is a Navajo female.

15. Defendant Flannery asked Plaintiff Salazar if she was familiar with Navajos. Plaintiff Salazar indicated that she was not. Defendant Flannery explained that when he was a Deputy County Manager for Coconino County, Arizona, he worked with several Navajos. Defendant Flannery indicated that Navajos are lazy and that keeping up "clean" appearances was not a priority for Navajo people. He expressed surprise that Ms. Wayne took the initiative to apply for the position.

16. Defendant Commerce City has a municipal ordinance and employee handbook that prohibits the City Manager or any employee from discriminating against another employee because of, among other things, race, sex, age or in retaliation for complaints of employment discrimination. Defendant Flannery, as City Manager, is aware of the municipal ordinance and personnel manual.

17. Based on Defendant Flannery's discriminatory comments and expressed prejudices, Plaintiff Salazar followed the guidelines of the employee handbook and filed a complaint of discrimination with the City Council for the City of Commerce City on January 7, 2008. Defendant Natale also was provided a copy of the complaint of discrimination. In addition, Plaintiff Salazar spoke with members of City Council and Defendant Natale regarding her complaints of discrimination.

18. In her January 7, 2008 discrimination complaint, Plaintiff Salazar identified other instances of discriminatory conduct she observed by Commerce City officials. Plaintiff Salazar mentioned additional employees who had been subjected to discriminatory employment practices, one of whom was Leonard Lucero. Mr. Lucero filed a charge of discrimination with the EEOC alleging, among other things, age discrimination and retaliation.

19. As another example of Defendants' custom and practice of discriminatory and retaliatory behavior, another employee, Patricia Greer, filed a charge of discrimination alleging sex/female discrimination and retaliation. Ms. Greer made reference to discriminatory and derogatory comments made by Defendant Natale against female employees. Ms. Greer alleged that Defendant Flannery tacitly approved of Defendant Natale's discriminatory conduct and derogatory comments by failing to correct his behavior toward female employees.

20. Settlement documents obtained from the Defendant Commerce City support that it settled Mr. Lucero's discrimination complaint on November 1, 2007, in the amount of \$77,500.00. Defendant Commerce City also settled Ms. Greer's discrimination complaint on May 7, 2008, in the amount of \$125,000.00. The discrimination complaints filed by Mr. Lucero and Ms. Greer demonstrate that there exists a widespread practice by city officials, particularly those with final policy making authority, to discriminate and retaliate against minorities and women.

21. Plaintiff Salazar was led to believe that Defendant Commerce City would begin an investigation into her complaints of discrimination. It was not until April 18, 2008, that Defendant Natale acknowledged receiving Plaintiff Salazar's complaint of discrimination.

22. It is noteworthy that in a Colorado Open Records Act request submitted to Defendant Commerce City, a copy of any and all investigative reports related to Plaintiff Salazar's complaints of discrimination was requested from Defendant City. In response, Defendant Commerce City indicated that no such investigative report exists.

23. However, Plaintiff Salazar was advised by Bob Bowman, attorney hired by Defendant Commerce City to investigate Plaintiff Salazar's discrimination complaint that such an investigative report did exist, but it focused mainly on Plaintiff Salazar's job performance.

24. Indeed, after Plaintiff Salazar filed her January 7, 2008 complaint of discrimination, Defendants engaged in a campaign of retaliatory conduct. Prior to the January 7, 2008 complaint of discrimination, Plaintiff Salazar had never been disciplined or received a corrective action. Nonetheless, this campaign of retaliation included, but was not limited to, the following:

- a. On January 18, 2007, Defendant Olson's attempt to pressure Plaintiff Salazar to meet with attorneys/investigators to review Plaintiff Salazar's performance evaluation.
- b. On February 6, 2008, Plaintiff Salazar met with Mr. Bowman regarding her January 7, 2008 complaint of discrimination. However, during the interview, Mr. Bowman, who was hired by Defendant City, focused mainly on Plaintiff Salazar's job performance.
- c. On February 28, 2008, Defendant Olson threatened to terminate Plaintiff Salazar's employment if Plaintiff Salazar discussed matters involving the investigation into her performance evaluation with others.
- d. On April 4, 2008, Defendants Flannery and Acre issued a Written Reprimand to Plaintiff Salazar.
- e. On April 5, 2008, Plaintiff Salazar made a presentation at a publicly attended planning retreat. Her presentation was made to City Council, and other Individual Defendants. After her presentation, Plaintiff Salazar was advised to leave the retreat. Thereafter, and in front of members of the public, Defendant Natale commented about how ridiculous Plaintiff Salazar's presentation was and remarked that "this is why we don't have any economic development." Another member of City Council commented that Plaintiff Salazar's presentation was nothing more than "eye candy." Defendant Natale accused Plaintiff Salazar of plagiarizing. Plaintiff Salazar was not present to defend herself from Defendant Natale's publicly degrading comments and accusations. No other male or

younger employee was subjected to the same or similar publicly degrading comments, accusations or behavior.

25. On May 21, 2008, Plaintiff Salazar submitted a memo to Defendant Natale alleging retaliation. In particular, Plaintiff Salazar alleged that Defendants Flannery and Acre attempted to force her termination by making unsubstantiated allegations of poor performance, and she described an aborted attempt to fire her on April 18, 2008.

26. On July 2, 2008, Plaintiff Salazar was advised that she was being terminated from employment if she did not resign and accept an Offer Letter.

27. Plaintiff was terminated from employment on July 17, 2008.

28. After her termination from employment, Plaintiff Salazar was replaced by a 28-year-old female, Brittany Morris.

29. The actions, conduct and statements of Defendants demonstrate that they discriminated and retaliated against Plaintiff Salazar and violated her constitutional rights to equal protection.

**FIRST CAUSE OF ACTION
(Title VII and CADA Violation – Defendant Commerce City)**

30. Plaintiff Salazar repeats and realleges each and every allegation in paragraphs 1 through 28 of this Complaint with the same force and effect as if fully set forth herein.

31. Plaintiff Salazar is a member of a protected class by virtue of her sex/female.

32. Plaintiff Salazar's personnel file supports that she has performed her job satisfactorily.

33. Despite her satisfactory job performance, Defendant Commerce City terminated Plaintiff Salazar's employment.

34. No other person outside of Plaintiff Salazar's protected group has been subjected to the same or similar unfair employment practices as she experienced.

**SECOND CAUSE OF ACTION
(ADEA and CADA Violation – Defendant Commerce City)**

35. Plaintiff Salazar repeats and realleges each and every allegation in paragraphs 1 through 33 of this Complaint with the same force and effect as if fully set forth herein.

36. Plaintiff Salazar is a member of a protected class by virtue of her age, 48-years-old at the time of her termination from employment.

37. Plaintiff Salazar's personnel file supports that she has performed her job satisfactorily.

38. Despite her satisfactory job performance, Defendant Commerce City terminated Plaintiff Salazar's employment and replaced her with a 28-year-old.

39. Plaintiff Salazar's discharge occurred under circumstances giving rise to an inference of discrimination.

**THIRD CAUSE OF ACTION
(Title VII and CADA Retaliation – Defendant Commerce City)**

40. Plaintiff Salazar repeats and realleges each and every allegation in paragraphs 1 through 38 of this complaint with the same force and effect as if fully set forth herein.

41. On January 7, 2008, Plaintiff Salazar complained about Defendant Flannery's racial animus toward a Navajo employee. Plaintiff Salazar also complained about additional discriminatory employment practices she observed Mr. Lucero experience.

42. Defendants were aware of Plaintiff Salazar's discrimination complaints;

43. After Plaintiff Salazar issued her complaints, she suffered numerous adverse employment actions, including, but not limited to, an investigation into her job performance, a written reprimand, threats to terminate her employment, public criticism about her job performance, and termination from employment;

44. There exists a causal connection between her objections to discriminatory employment practice and the adverse employment actions.

FOURTH CAUSE OF ACTION
(Violation of Plaintiff Salazar's Federal Constitutional Right to Equal Protection Based on Sex - Defendant Commerce City and Individual Defendants)

45. Plaintiff repeats and realleges each and every allegation in paragraphs 1 through 43 of this complaint with the same force and effect as if fully set forth herein.

46. According to Defendant Commerce City's municipal ordinance and employee handbook, Plaintiff Salazar had an equal protection interest to not be discriminated against because of her sex/female.

47. Defendants were aware of these ordinances and policies when they were acting under the color of law to deprive Plaintiff Salazar her constitutional right to equal protection.

48. Defendant Commerce City failed to train and/or supervise its employees regarding the prohibition to discriminate against employees on the basis of sex.

49. Plaintiff Salazar based on her sex/female is a member of a protected group.

50. Plaintiff Salazar was performing her job satisfactorily.

51. Despite her satisfactory job performance, Plaintiff Salazar was subjected to disciplinary measures and other adverse employment actions, including termination, to which no other male employees were subjected.

52. Defendants' discriminatory actions are representative of an official policy or custom of the municipality, or were taken by officials with final policy making authority.

FIFTH CAUSE OF ACTION
(Violation of Plaintiff Salazar's Federal Constitutional Right to Liberty Interests (Stigma-Plus) - Defendant Commerce City and Individual Defendants)

53. Plaintiff Salazar repeats and realleges each and every allegation in paragraphs 1 through 49 of this complaint with the same force and effect as if fully set forth herein.

54. Defendants' defamatory statements, while acting under the color of law, made during the April 5, 2008 publicly attended planning retreat, including, but not limited to Defendant Natale's statement that Plaintiff Salazar engaged in plagiarism, was injurious to her reputation.

55. These statements are capable of being proved false and Plaintiff Salazar claims these statements to be false.

56. These injurious statements made by the Mayor of Commerce City and members of City Council, with the City Manager present, resulted in her termination from employment on July 17, 2008.

As a result of the aforesaid conduct of Defendants, Plaintiff Salazar has been injured.

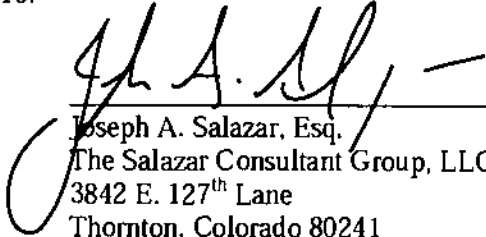
WHEREFORE, Plaintiff Salazar respectfully prays this Court to grant the following relief:

- a) Award Plaintiff Salazar actual damages, including, but not limited to back pay, reinstatement of position, benefits, and seniority pursuant to applicable statutes, including, without limitation, Title VII, ADEA and CADA.
- b) Award Plaintiff Salazar compensatory and punitive damages against Defendants pursuant to applicable statutes, including, without limitation, Title VII, the Civil Rights Act of 1991, and damages available under 42 U.S.C. § 1983.
- c) Award Plaintiff Rael liquidated damages against Defendants pursuant to applicable statutes, including, without limitation, the ADEA.

- d) Award attorney fees and costs pursuant to applicable statutes, including, without limitation, Title VII, the ADEA, the Civil Rights Act of 1991, 42 U.S.C. §§ 1983, 1988 and to the fullest extent permitted by law.
- e) An award for pre-judgment and post-judgment interest to the fullest extent permitted by law.
- f) Grant Plaintiff Salazar such other and further relief as to this Court appears necessary and proper.

Respectfully submitted this 9th day of June, 2010.

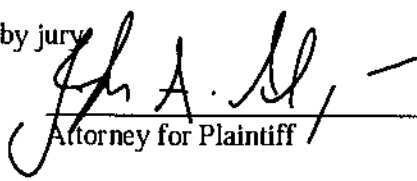
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JURY DEMAND

Plaintiff requests a jury trial on all issues triable by jury



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