

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
LUIS DELGADO

Plaintiff,

Amended Complaint

-against-

09 cv 2544 (DGT)(VVP)

Judge David G. Trager

THE CITY OF NEW YORK; RAFAEL PINEIRO, as Bureau Chief, Personnel Bureau; ROBERT J. GIANNELLI, as Bureau Chief, Patrol Services Bureau; and CHARLES V. CAMPISI, as Bureau Chief, Internal Affairs Bureau, each being sued individually and in their official capacity as an employees of THE CITY OF NEW YORK.

Defendant  
-----X

The Plaintiff LUIS DELGADO by his attorneys, Jeffrey L. Goldberg, P.C., as and for his complaint against Defendants' CITY; RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI, respectfully set forth and allege that:

**INTRODUCTION**

1. This is an action for equitable relief and money damages on behalf of the Plaintiff LUIS DELGADO (hereinafter referred to as "Plaintiff") who was, and who is prospectively being deprived of his statutory rights as an employee as a result of the Defendants' CITY; RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI'S race discrimination.

**JURISDICTION AND VENUE**

2. The jurisdiction of this Court is invoked pursuant to 18 U.S.C. § 1965, 28 U.S.C. §§ 1331, 1343 and 2202 to secure protection of and to redress deprivation of rights secured by:

- a. the Civil Rights Act of 1866, 42 U.S.C. § 1981, providing for the protection of all person's right to make and enforce contracts under the color of state

law; and

- b. the Civil Rights Act of 1871, 42 U.S.C. § 1983, providing for the protection of all persons in his civil rights and the redress of deprivation of rights under color of law.

3. The unlawful employment practices, violations of Plaintiff's civil rights and tortuous acts complained of herein were committed within the Eastern and Southern Districts of New York.

4. The pendent jurisdiction of the federal district court is invoked with respect to the Plaintiff's claims under New York State Executive Law § 296; and New York City Administrative Code § 8-502, pursuant to 28 U.S.C. 1367, because the entire action before the court comprises one constitutional and civil rights case, and the claims arise out of the same common nucleus of facts and are such that the Plaintiff would ordinarily be expected to try them in one judicial proceeding.

#### **PLAINTIFF**

5. Plaintiff is a male citizen of the United States of America and is over twenty-one (21) years of age, a resident of Orange County and is an employee of Defendant THE CITY OF NEW YORK (hereinafter referred to as the "CITY") more specifically the Police Department City of New York (hereinafter referred to as the "NYPD"). For the purposes of this litigation, Defendant CITY may be identified interchangeably using CITY or NYPD to identify the employer which is the CITY.

#### **DEFENDANTS'**

6. Defendant CITY was and is a municipal corporation organized and existing under and by virtue of the law of the State of New York, and at all relevant times was Plaintiff's

employer, with its central offices in the county of New York, and diverse other offices and facilities throughout the world.

7. Defendants' RAFAEL PINEIRO, as Bureau Chief, Personnel Bureau; ROBERT J. GIANNELLI, as Bureau Chief, Patrol Services Bureau; and CHARLES V. CAMPISI, as Bureau Chief, Internal Affairs Bureau.

#### **PROCEDURAL REQUIREMENTS**

8. Plaintiff has filed suit with this Court within the applicable statute of limitations period.

9. Plaintiff is not required to exhaust any administrative procedures prior to suit under the Civil Rights Act of 1866 or the Civil Rights Act of 1871.

#### **BACKGROUND**

10. Plaintiff is a Puerto Rican male employee of the Police Department City of New York ("NYPD").

11. Plaintiff was appointed to the NYPD on or about January 14, 1992, as a police officer.

12. Plaintiff alleges that Defendant CITY and its agents have a long history of discriminating against minority officers.

13. Plaintiff alleges that Defendant CITY and its agents have a long history of performing flawed and unfair criminal investigations of its minority officers.

14. Plaintiff alleges that Defendant CITY and its agents have a long history of performing flawed and unfair internal investigations of its minority officers.

15. Plaintiff alleges that on or about June 11, 2004, he was arrested by Sergeant John Serrantino, Internal Affairs Bureau Group No.: 9, for Penal Law 130.45 subd. 1, Criminal

Sexual Act in the Second Degree and Penal Law 260.10 subd. 1, Endangering the Welfare of a Child, for allegedly having anal sex with a minor without a condom.

16. Plaintiff alleges that his clothes were also seized as evidence.

17. Plaintiff alleges that this arrest was authorized by Bronx District Attorney Bureau Chief Elisa Koenderman, Assistant District Attorney Scott Anderson and Defendant CHARLES V. CAMPISI.

18. Plaintiff alleges that his arrest was published in all of the major print media as well as the television media.

19. Plaintiff alleges that the aforementioned arrest was filed in a public instrument Docket No.: 2004BX033299, in the Criminal Court of the City of New York, County of the Bronx.

20. Plaintiff alleges that said instrument contained alleged factual information that was developed pre-arrest that Sergeant John Serrantino already knew was false and unreliable.

21. Plaintiff alleges that Sergeant John Serrantino already knew that during the physical examination of the alleged complainant victim at North Central Bronx Hospital, Emergency Room Pediatrician Ruby Harmon was unable to determine if the alleged victim had any internal bleeding or signs of anal penetration.

22. Plaintiff alleges that Sergeant John Serrantino already knew that the alleged complainant victim and his brother described the alleged perpetrator as "fat, stubble on his face and no mustache."

23. Plaintiff alleges that Sergeant John Serrantino already knew that the alleged victim told the original investigators that the alleged perpetrator ONLY exposed himself and DID NOT have sexual intercourse with him.

24. Plaintiff alleges that Sergeant John Serrantino already knew that he did not fit the description of the alleged perpetrator.

25. Plaintiff alleges that Sergeant John Serrantino already knew that he had an iron clad alibi that if fairly evaluated excluded him from any possibility of alleged criminal conduct.

26. Plaintiff alleges that he was immediately suspended for thirty (30) days because of the aforementioned arrest.

27. Plaintiff alleges that on or about June 14, 2004, Defendant CITY through its Department Advocate's Office filed Charges and Specifications against him for similar allegations raised in the instrument filed against him in Docket No.: 2004BX033299.

28. Plaintiff alleges that Defendant CITY through its Department Advocate's Office has a history of preferring and sustaining Charges and Specifications against minority police officers.

29. Plaintiff alleges that Defendant CITY through its Department Advocate's Office knew that they had no legal basis to prefer any such charges and was proceeding in "Bad Faith."

30. Plaintiff alleges that upon information and belief, Defendant CITY through its Department Advocate's Office have a history of preferring and sustaining bad faith charges against minority police officers at a significantly higher rate than non-minority police officers under the same or similar circumstances.

31. Plaintiff alleges that on or about June 14, 2004, Sergeant Peter Meehan, Internal Affairs Bureau Group No.: 22 knew that the alleged complainant victim's mother DID NOT believe that her son was the victim of a sexual assault or any of the facts presented to her by Sergeant John Serrantino or Assistant District Attorney Scott Anderson.

32. Plaintiff alleges that on or about June 14, 2004, Sergeant Peter Meehan, classified the misconduct against him as "A1" meaning that a criminal prosecution is "high" and deemed the alleged witness against him as "credible."

33. Plaintiff alleges that on June 15, 2004, Sergeant Peter Meehan, during the PG 206-13, hearing of Detective John Frasier of the 52<sup>nd</sup> Precinct, Detective Frasier told the investigator that the alleged complainant victim told him that the plaintiff "pulled his pants down."

34. Plaintiff further alleges that Detective Frasier told the investigator that the alleged complainant victim told him that "I never pulled my pants down and that my mother is going to kill me and she is going to yell and scream."

35. Plaintiff alleges that the aforementioned statements were in direct contradiction to his original statements to the police and if they were fairly evaluated were indicative of his innocence.

36. Plaintiff alleges that on or about July 12, 2004, he was transferred from the 41<sup>st</sup> Precinct to the Quartermaster Section on "Modified Duty" where he continues to be assigned to this day.

37. Plaintiff alleges that while assigned to the Quartermaster Section, he is performing heavy manual labor, cleaning and other menial tasks.

38. Plaintiff alleges that while on "Modified Duty" his career opportunities are severely limited.

39. Plaintiff alleges that on or about August 2, 2004, Defendant CITY published his restoration back to duty in Personnel Order No.: 195.

40. Plaintiff alleges that on or about August 2, 2004, Sergeant Peter Meehan

inappropriately notified the New York State Child Abuse and Maltreatment Registry although he already knew there was NO CREDIBLE EVIDENCE of any criminal activity or serious misconduct against the alleged complainant victim.

41. Plaintiff alleges that on August 10, 2004, Sergeant Peter Meehan received the results of the forensic examination of the Plaintiff's clothing that was removed from him on June 11, 2004.

42. Plaintiff alleges that Defendant CITY'S Medical Examiners Office determined that his clothing contained NO EVIDENCE of semen, Amylase (saliva, vaginal secretions and bacteria), and Polydimethylsiloxane (PDMS), which is a chemical commonly used in many brands of domestic condom lubricant preparations.

43. Plaintiff alleges that the aforementioned physical evidence recovered by the police if it was fairly evaluated was indicative of his innocence.

44. Plaintiff alleges that on or about August 17, 2004, Sergeant Peter Meehan notified Assistant District Attorney Scott Anderson that additional examination of his clothing contained NO EVIDENCE of the alleged complainant victim's DNA.

45. Plaintiff alleges that the aforementioned physical evidence if it was fairly evaluated was indicative of his innocence.

46. Plaintiff alleges that over the course of the years since this investigation began on June 10, 2004, Defendant CITY through its Deputy Commissioner Legal Matters issued a number of Administrative Subpoenas, pursuant to New York City Administrative Code § 14-137, to illegally seize records relative to his telephone call and internet activities.

47. Plaintiff alleges that on or about October 5, 2004, Sergeant Peter Meehan was notified by Assistant District Attorney Scott Anderson that the alleged victim DID NOT select

the Plaintiff out of a "Photo Array" and that the District Attorney's Office would not prosecute unless there was a positive identification by the alleged complainant victim or the alleged eyewitness.

48. Plaintiff alleges that on December 15, 2004, Docket No.: 2004BX033299 was dismissed against him.

49. Plaintiff alleges that on or about January 10, 2005, Sergeant Peter Meehan was able to establish that the Plaintiff WAS NOT connected to an open case in Rye, New York, where the police were searching for alleged male and female perpetrators that allegedly attempted to lure children into their vehicles.

50. Plaintiff alleges that on or about February 11, 2005, Sergeant Peter Meehan was able to establish that the Plaintiff DID NOT have any contact with the alleged complainant victim using his personal cellular telephone from May 1, 2004, to October 31, 2004.

51. Plaintiff alleges that the aforementioned evidence if it was fairly evaluated was indicative of his innocence.

52. Plaintiff alleges that on or about April 4, 2005, Sergeant Peter Meehan, during his PG 206-13, hearing, Plaintiff specifically told the investigator that he did not remove his penis from his pants while he was in the park that day.

53. Plaintiff alleges that his statement was truthful and supported by the physical evidence recovered by the police and if it was fairly evaluated, was indicative of his innocence.

54. Plaintiff alleges that on or about April 4, 2005, Sergeant Peter Meehan, during his PG 206-13, hearing, Plaintiff specifically told the investigator that he did not have anal sexual contact with a young male in the park.

55. Plaintiff alleges that his statement was truthful and supported by the physical



evidence recovered by the police and if it was fairly evaluated, was indicative of his innocence.

56. Plaintiff alleges that despite Defendant CITY'S lack of evidence against him, he was STILL forced to defend himself and his career in the NYPD Department Trial Room.

57. Plaintiff alleges that on or January 18, 2006, the Department Trial against him commenced.

58. Plaintiff alleges that on or about June 30, 2006, he was notified by the Employee Management Division that he was NOT SELECTED to be certified and promoted to the position of Sergeant, Police Department City of New York, Examination No.: 3506, List No.: 987.

59. Plaintiff alleges that the aforementioned list has since expired.

60. Plaintiff alleges that on or August 2, 2006, the Department Trial against him concluded.

61. Plaintiff alleges that on or about August 24, 2006, Former Assistant Deputy Commissioner Trials Michael D. Sarnier recommended that he be found "Not Guilty" of the serious associated criminal charges and be found "Guilty" of failing to carry his Department Identification Card.

62. Plaintiff alleges that based on the aforementioned recommendation, his PRIOR service record of NO DISCIPLINARY action and a performance rating of 4.0 "Highly Competent," it was recommended that Police Commissioner Raymond W. Kelly impose a penalty of five (5) vacation days lost.

63. Plaintiff alleges that such penalty was consistent with the maximum penalty that may be imposed for Schedule "A" Command Discipline, which is a minor infraction normally handled at the command level in an informal hearing.

64. Plaintiff alleges that on or about September 13, 2006, the aforementioned recommendation reviewed and supported by Deputy Commissioner Trials Martin G. Karopkin.

65. Plaintiff alleges that on or about November 6, 2006, Police Commissioner Raymond W. Kelly, approved the proposed penalty against him, but, with credit for the thirty (30) days previously served while on suspension.

66. Plaintiff alleges that the disciplinary actions of Police Commissioner Kelly caused him to lose thirty-five (35) pensionable days.

67. Plaintiff alleges that such disciplinary action by Police Commissioner Kelly is indicative of Defendant CITY'S animus towards him as a minority police officer.

68. Plaintiff alleges that the penalty was excessive, unduly severe and disproportionate to the alleged misconduct.

69. Plaintiff alleges that such an excessive penalty was imposed because Defendant CITY through its Department Advocate's Office could not prove the more serious charges of against him.

70. Plaintiff alleges that some time in 2007, he was notified by Inspector Donna Jones, Performance Analysis Section that he was being placed on Level III Special Monitoring.

71. Plaintiff alleges that he was told by Inspector Jones that based upon the recommendation of the Special Monitoring System Board, which consisted of Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI, he was placed on Level III Special Monitoring.

72. Plaintiff alleges that Defendant' CHARLES V. CAMPISI should have recused himself due to a conflict of interest.

73. Plaintiff alleges that there were no safeguards in place to protect him from such

improper referral due to conflicts of interests of the Special Monitoring System Board.

74. Plaintiff alleges that there are no safeguards in place to protect other similarly situated minority officers from improper referrals due to conflicts of interests of the Special Monitoring System Board.

75. Plaintiff alleges that Defendant CHARLES V. CAMPISI had a conflict of interest because he originally ordered Plaintiff arrested although he knew that there was NO PROBABLE CAUSE.

76. Plaintiff alleges that Defendant CHARLES V. CAMPISI had further conflicts because he was responsible for the flawed and unfair criminal investigation performed by the Internal Affairs Bureau.

77. Plaintiff alleges that Defendant CHARLES V. CAMPISI had further conflicts because he was responsible for the flawed and unfair internal investigation performed by the Internal Affairs Bureau.

78. Plaintiff alleges that his placement into Level III Special Monitoring Program is violative of NYPD'S own Performance Monitoring Criteria.

79. Plaintiff alleges that being placed into the Level III Special Monitoring Program subjects him to Monthly Performance Evaluations by his Commanding Officer.

80. Plaintiff alleges that Defendant CITY through its Personnel Records Section entered notations on his Central Personnel Index to indicate that he was placed into the Level III Special Monitoring Program.

81. Plaintiff alleges that such placement into the Level III Special Monitoring Program seriously erodes his civil service rights where he could be terminated with a statutory hearing.

82. Plaintiff alleges that such placement into the Level III Special Monitoring Program seriously erodes his civil service rights to be restored back to "Full Duty."

83. Plaintiff alleges that such placement into the Level III Special Monitoring Program seriously erodes his civil service rights to be promoted.

84. Plaintiff alleges that he was purposely placed into the Level III Monitoring Program so that it would be easier to terminate him since Defendant CITY'S original arrest and internal prosecution both failed to accomplish that goal.

85. Plaintiff alleges that such action taken by the Special Monitoring System Board is indicative of Defendants' CITY; RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI'S animus towards him as a minority police officer.

86. Plaintiff alleges that the Performance Monitoring Program in toto is used by Defendant CITY as a tool to illegally track and terminate minority police officers.

87. Plaintiff alleges that Performance Monitoring Program is not used by Defendant CITY as an illegal tracking tool to terminate Caucasian police officers.

88. Plaintiff alleges that since being re-assigned to the Quartermaster Section from July 12, 2004 to this day, he is not allowed to work outside of the facility and is constantly supervised.

89. Plaintiff alleges that other similarly situated Caucasian police officers assigned to the Quartermaster Section are not subjected to such strict scrutiny.

90. Plaintiff alleges that from July 12, 2004, to this day, Defendant CITY through its First Deputy Commissioner's Office never restored him back to "Full Duty" although he was only convicted of not carrying his police identification a minor infraction.

91. Plaintiff alleges that aforementioned and continuing actions of Defendants'

CITY; RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI, and their agents is indicative of their animus towards him as a minority police officer.

**VIOLATIONS AND CLAIMS ALLEGED**

**COUNT I  
RACE DISCRIMINATION  
IN VIOLATION OF  
THE CIVIL RIGHTS ACT OF 1866, 42 U.S.C. § 1981**

92. Plaintiff re-alleges Paragraphs 1 through 91 and incorporates them by reference as Paragraphs 1 through 91 of Count I of this Amended Complaint.

93. That by the aforesaid discriminatory acts and omissions of Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents interfered with Plaintiff's right to enforce contracts under the color of State Law.

94. That the purpose of Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents in so acting was to prevent Plaintiff, through economic and psychological intimidation, from seeking the equal protection of the laws, and from enjoying the equal privileges and immunities of citizens under the Constitution and laws of the United States and the State of New York.

95. Pursuant to their conduct, Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents acted to deprive the Plaintiff of his civil rights, by repeated and insidious acts of bad faith in violation of 42 U.S.C. § 1981.

96. As a result of the aforesaid acts, depriving Plaintiff of his civil rights, Plaintiff suffered mental anguish, emotional distress, loss of employment opportunities, and other monetary damages.

**COUNT II  
RETALIATION  
IN VIOLATION OF  
THE CIVIL RIGHTS ACT OF 1866, 42 U.S.C. § 1981**

97. Plaintiff re-alleges Paragraphs 1 through 96 and incorporates them by reference as Paragraphs 1 through 96 of Count II of this Amended Complaint.

98. Plaintiff alleges that Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents engaged in various severe and hostile actions against him acting individually and acting in their capacities as public officials of Defendant CITY as a result of his opposition to race discrimination.

99. That the purpose of Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents in so acting was to prevent Plaintiff, through economic and psychological intimidation, from seeking the equal protection of the laws, and from enjoying the equal privileges and immunities of citizens under the Constitution and laws of the United States and the State of New York.

100. Pursuant to their conduct, Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents acted to deprive the Plaintiff of his civil rights, by repeated and insidious acts of harassment, intimidation, bad faith and threat, all in violation of 42 U.S.C. § 1981.

101. As a result of the aforesaid acts, depriving Plaintiff of his civil rights, he suffered mental anguish, emotional distress, loss of employment opportunities, and other monetary damages.

**COUNT III  
HOSTILE WORK ENVIRONMENT  
IN VIOLATION OF  
THE CIVIL RIGHTS ACT OF 1866, 42 U.S.C. § 1981**

102. Plaintiff re-alleges Paragraphs 1 through 101 and incorporates them by reference as Paragraphs 1 through 101 of Count III of this Amended Complaint.

103. Plaintiff alleges that Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents engaged in various severe and hostile actions against him acting individually and acting in their capacities as public officials of Defendant CITY as a result of his opposition to race discrimination.

104. That the purpose of Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents in so acting was to prevent Plaintiff, through economic and psychological intimidation, from seeking the equal protection of the laws, and from enjoying the equal privileges and immunities of citizens under the Constitution and laws of the United States and the State of New York.

105. Pursuant to their conduct, Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents acted to deprive the Plaintiff of his civil rights, by repeated and insidious acts of harassment, intimidation, bad faith and threat, all in violation of 42 U.S.C. § 1981.

106. As a result of the aforesaid acts, depriving Plaintiff of his civil rights, he suffered mental anguish, emotional distress, loss of employment opportunities, and other monetary damages.

**COUNT IV  
FAILURE TO PROMOTE  
IN VIOLATION OF  
THE CIVIL RIGHTS ACT OF 1866, 42 U.S.C. § 1981**

107. Plaintiff re-alleges Paragraphs 1 through 106 and incorporates them by reference as Paragraphs 1 through 106 of Count IV of this Amended Complaint.

108. Plaintiff alleges that Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents engaged in various severe and hostile actions against him causing him to be denied a rightly earned promotion as a result of his opposition to race discrimination.

109. That the purpose of Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents was to prevent Plaintiff, through economic and psychological intimidation, from seeking the equal protection of the laws, and from enjoying the equal privileges and immunities of citizens under the Constitution and laws of the United States and the State of New York.

110. Pursuant to its conduct, Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents acted to deprive the Plaintiff of his civil rights, by repeated and insidious acts of harassment, intimidation, bad faith and threat, all in violation of 42 U.S.C. § 1981.

111. As a result of the aforesaid acts, depriving Plaintiff of his civil rights, Plaintiff suffered mental anguish, emotional distress, loss of employment opportunities, and other monetary damages.

**COUNT V  
RACE DISCRIMINATION  
IN VIOLATION OF  
THE CIVIL RIGHTS ACT OF 1871, 42 U.S.C. § 1983**

112. Plaintiff re-alleges Paragraphs 1 through 111 and incorporates them by reference as Paragraphs 1 through 111 of Count V of this Amended Complaint.

113. Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents under color of law, personally interfered with and deprived Plaintiff of his pension and constitutional rights, including the rights: to enjoy freedom of speech, to



petition his government for redress of his grievances, to be secure in his person, to enjoy privacy, to be free from deprivation of life, liberty, and property without due process of law.

114. Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents acting individually and in their official capacities as public officials of Defendant CITY under color of law, and having been fully advised that Plaintiff was being deprived of his pension and constitutional rights, either acted in a concerted, malicious intentional pattern to further discriminate against Plaintiff, or knowing such race discrimination was taking place, knowingly omitted to act to protect Plaintiff from continuing deprivations of his rights to petition his government for redress of his grievances, to be free from deprivation of life, liberty, and property without due process of law, all in violation of 42 U.S.C. § 1983.

115. Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents in acting to deprive Plaintiff of his civil rights, failed to thoroughly investigate his allegations of discriminatory conduct in the workplace.

116. Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents in acting to deprive Plaintiff's rights, acted intentionally, knowingly, willfully, and with gross disregard of Plaintiff's rights.

117. Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents acted in an outrageous and systematic pattern of race discrimination, oppression, bad faith and cover-up, directed at Plaintiff and continuing from in or about June 11, 2004, to this day.

118. As a result of the acts of Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents under color of law, Plaintiff suffered emotional distress, monetary damage, loss of pension rights, and incurred medical and

legal expenses, and out of pocket expenses for telephone, postage, and other costs of pursuing the claims herein.

**COUNT VI  
RETALIATION  
IN VIOLATION OF  
THE CIVIL RIGHTS ACT OF 1871, 42 U.S.C. § 1983**

119. Plaintiff re-alleges Paragraphs 1 through 118 and incorporates them by reference as Paragraphs 1 through 118 of Count VI of this Amended Complaint.

120. Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents under color of law, personally interfered with and deprived Plaintiff of his pension and constitutional rights, including the rights to petition his government for redress of his grievances, to be free from deprivation of life, liberty, and property without due process of law.

121. Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents acting individually and in their official capacities as public officials of Defendant CITY under color of law, and having been fully advised that Plaintiff was being deprived of his pension and constitutional rights, either acted in a concerted, malicious intentional pattern to further discriminate against Plaintiff, or knowing such race discrimination was taking place, knowingly omitted to act to protect Plaintiff from continuing deprivations of his rights to petition his government for redress of his grievances, to be free from deprivation of life, liberty, and property without due process of law, all in violation of 42 U.S.C. § 1983.

122. Defendants' Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents in acting to deprive Plaintiff of his civil rights, failed to thoroughly investigate his allegations of discriminatory conduct in the workplace.

123. Defendants' Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and

CHARLES V. CAMPISI and their agents in acting to deprive Plaintiff's rights, acted intentionally, knowingly, willfully, and with gross disregard of Plaintiff's rights.

124. Defendants' acted in an outrageous and systematic pattern of race discrimination, oppression, bad faith and cover-up, directed at Plaintiff and continuing from on or about June 11, 2004, to this day.

125. As a result of the acts of the Defendants' Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents under color of law, Plaintiff suffered emotional distress, monetary damage, loss of pension rights, and incurred medical and legal expenses, and out of pocket expenses for telephone, postage, and other costs of pursuing the claims herein.

**COUNT VII  
HOSTILE WORK ENVIRONMENT  
IN VIOLATION OF  
THE CIVIL RIGHTS ACT OF 1871, 42 U.S.C. § 1983**

126. Plaintiff re-alleges Paragraphs 1 through 125 and incorporates them by reference as Paragraphs 1 through 125 of Count VII of this Amended Complaint.

127. Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents under color of law, personally interfered with and deprived Plaintiff of his pension and constitutional rights, including the rights to petition his government for redress of his grievances, to be free from deprivation of life, liberty, and property without due process of law.

128. Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents acting individually and in their official capacities as public officials of Defendant CITY under color of law, and having been fully advised that Plaintiff was being deprived of his pension and constitutional rights, either acted in a concerted, malicious

intentional pattern to further discriminate against Plaintiff, or knowing such race discrimination was taking place, knowingly omitted to act to protect Plaintiff from continuing deprivations of his rights to petition his government for redress of his grievances, to be free from deprivation of life, liberty, and property without due process of law, all in violation of 42 U.S.C. § 1983.

129. Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents in acting to deprive Plaintiff of his civil rights, failed to thoroughly investigate his allegations of discriminatory conduct in the workplace.

130. Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents in acting to deprive Plaintiff's rights, acted intentionally, knowingly, willfully, and with gross disregard of Plaintiff's rights.

131. Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents acted in an outrageous and systematic pattern of race discrimination, oppression, bad faith and cover-up, directed at Plaintiff and continuing from on or about June 11, 2004, to this day.

132. As a result of the acts of the Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents under color of law, Plaintiff suffered emotional distress, monetary damage, loss of pension rights, and incurred medical and legal expenses, and out of pocket expenses for telephone, postage, and other costs of pursuing the claims herein.

**COUNT VIII  
FAILURE TO PROMOTE  
IN VIOLATION OF  
THE CIVIL RIGHTS ACT OF 1871, 42 U.S.C. § 1983**

133. Plaintiff re-alleges Paragraphs 1 through 132 and incorporates them by reference as Paragraphs 1 through 132 of Count VIII of this Amended Complaint.

134. Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents under color of law, personally interfered with and deprived Plaintiff of his constitutional rights, and statutory rights to be promoted to Sergeant because of his opposition to race discrimination.

135. Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents acting individually and in their official capacities as public officials of Defendant CITY under color of law, and having been fully advised that Plaintiff was being deprived of his pension and constitutional rights, either acted in a concerted, malicious intentional pattern to further discriminate against Plaintiff, or knowing such discrimination was taking place, knowingly omitted to act to protect Plaintiff from continuing deprivations of his rights to petition his government for redress of his grievances, in violation of 42 U.S.C. § 1983.

136. Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents in acting to deprive Plaintiff of his civil rights, failed to thoroughly investigate his allegations of discriminatory conduct in the workplace.

137. Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents in acting to deprive Plaintiff's rights, acted intentionally, knowingly, willfully, and with gross disregard of his rights.

138. Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents acted in an outrageous and systematic pattern of discrimination, oppression, bad faith and cover-up, directed at Plaintiff and continuing from on or around June 11, 2004, to this day.

139. As a result of the acts of Defendants' RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI and their agents under color of law, Plaintiff

suffered emotional distress, monetary damage, loss of pension rights, and incurred medical and legal expenses, and out of pocket expenses for telephone, postage, and other costs of pursuing the claims herein.

**COUNT IX  
RACE DISCRIMINATION  
IN VIOLATION OF  
NEW YORK STATE EXECUTIVE LAW § 296**

140. Plaintiff re-alleges Paragraphs 1 through 139 and incorporates them by reference as Paragraphs 1 through 139 of Count IX of this Amended Complaint.

141. New York State Executive Law § 296 et seq., makes it unlawful to discriminate against any individual in the terms, conditions, or privileges of employment on the basis of race.

**COUNT X  
RETALIATION  
IN VIOLATION OF  
NEW YORK STATE EXECUTIVE LAW § 296**

142. Plaintiff re-alleges Paragraphs 1 through 141 and incorporates them by reference as Paragraphs 1 through 141 of Count X of this Complaint.

143. New York State Executive Law § 296 et seq., makes it unlawful to discriminate against any individual in the terms, conditions, or privileges of employment on the basis of race. The law also makes it unlawful to create an atmosphere where retaliation is encouraged and/or tolerated.

**COUNT XI  
HOSTILE WORK ENVIRONMENT  
IN VIOLATION OF  
NEW YORK STATE EXECUTIVE LAW § 296**

144. Plaintiff re-alleges Paragraphs 1 through 143 and incorporates them by reference as Paragraphs 1 through 143 of Count XI of this Complaint.

145. New York State Executive Law § 296 et seq., makes it unlawful to discriminate against any individual in the terms, conditions, or privileges of employment on the basis of race. The law also makes it unlawful to create a severe and hostile environment where retaliation and race discrimination are encouraged and/or tolerated.

**COUNT XII  
FAILURE TO PROMOTE  
IN VIOLATION OF  
NEW YORK STATE EXECUTIVE LAW § 296**

146. Plaintiff re-alleges Paragraphs 1 through 145 and incorporates them by reference as Paragraphs 1 through 145 of Count XII of this Amended Complaint.

147. New York State Executive Law § 296 et seq., makes it unlawful to discriminate against any individual in the terms, conditions, or privileges of employment on the basis of race.

**COUNT XIII  
RACE DISCRIMINATION  
IN VIOLATION OF  
NEW YORK CITY ADMINISTRATIVE CODE § 8-502**

148. Plaintiff re-alleges Paragraphs 1 through 147 and incorporates them by reference as Paragraphs 1 through 147 of Count XIII of this Amended Complaint.

149. New York City Administrative Code § 8-502, makes it unlawful to discriminate against any individual in the terms, conditions, or privileges of employment on the basis of race.

**COUNT XIV  
RETALIATION  
IN VIOLATION OF  
NEW YORK CITY ADMINISTRATIVE CODE § 8-502**

150. Plaintiff re-alleges Paragraphs 1 through 149 and incorporates them by reference as Paragraphs 1 through 149 of Count XIV of this Amended Complaint.

151. The New York City Administrative Code § 8-502, makes it unlawful to discriminate against any individual in the terms, conditions, or privileges of employment on the basis of race. The law also makes it unlawful to create an atmosphere where retaliation is encouraged and/or tolerated.

**COUNT XV  
HOSTILE WORK ENVIRONMENT  
IN VIOLATION OF  
NEW YORK CITY ADMINISTRATIVE CODE § 8-502**

152. Plaintiff re-alleges Paragraphs 1 through 151 and incorporates them by reference as Paragraphs 1 through 151 of Count XV of this Amended Complaint.

153. New York City Administrative Code § 8-502, makes it unlawful to discriminate against any individual in the terms, conditions, or privileges of employment on the basis of race. The law also makes it unlawful to create a severe and hostile environment where retaliation, race discrimination are encouraged and/or tolerated.

**COUNT XVI  
FAILURE TO PROMOTE  
IN VIOLATION OF  
NEW YORK CITY ADMINSTRATIVE CODE § 8-502**

154. Plaintiff re-alleges Paragraphs 1 through 153 and incorporates them by reference as Paragraphs 1 through 153 of Count XVI of this Amended Complaint.

155. New York City Administrative Code § 8-502, makes it unlawful to discriminate against any individual in the terms, conditions, or privileges of employment on the basis of race.

**JURY TRIAL**

156. Plaintiff demands a trial by jury of all issues in this action that are so triable.



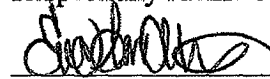
**PRAYER FOR RELIEF**

**Wherefore**, Plaintiff demands compensatory and punitive damages from Defendants' CITY; RAFAEL PINEIRO; ROBERT J. GIANNELLI and CHARLES V. CAMPISI jointly and severally, in an amount to be determined at trial, plus any and all available statutory remedies, both legal and equitable, and interests and costs.

Dated: September 26, 2009  
Lake Success, NY

Respectfully submitted,

By:



Eric Sanders (ES0224)

Jeffrey L. Goldberg, P.C.  
Attorneys for Plaintiff  
2001 Marcus Avenue, Suite S160  
Lake Success, NY 11042  
516-775-9400 (Business Phone)  
516-775-4477 (Facsimile)  
Email: [esanders@jlgoldbergpc.com](mailto:esanders@jlgoldbergpc.com)  
<http://www.jlgoldbergpc.com>