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14 Attorneys for Plaintiff  
15 Paul Cervantes

16 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO**  
17 **CENTRAL DIVISION**

18 PAUL CERVANTES, an individual, )  
19 )  
20 Plaintiff, )  
21 )  
22 v. )  
23 )  
24 CITY OF FRESNO, a public municipality; )  
25 )  
26 TIMOTHY TIETJEN, an individual; )  
27 )  
28 BRADLEY ALCORN, an individual; )  
CARY PHELPS, an individual; and Does 1 )  
through 50, inclusive, )  
Defendants. )

Case Number **16 CE CG 008 68**

- COMPLAINT FOR DAMAGES:**
- (1) **DISCRIMINATION, RETALIATION - GOVERNMENT CODE §12900. ET SEQ.;**
  - (2) **EMPLOYMENT DISCRIMINATION/NATIONAL ORIGIN IN VIOLATION OF CGC §12940;**
  - (3) **EMPLOYMENT DISCRIMINATION/RETALIATION IN VIOLATION OF CGC §12940;**
  - (4) **EMPLOYMENT DISCRIMINATION/WRONGFUL DEMOTION IN VIOLATION OF CGC §12940;**
  - (5) **DISABILITY DISCRIMINATION - GOVERNMENT CODE §12900 ET SEQ.;**
  - (6) **DEFAMATION PER SE AND MALICIOUS PROSECUTION;**

**FILED**

**MAR 21 2016**

FRESNO SUPERIOR COURT  
By \_\_\_\_\_ DEPUTY

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#00010427

WILD, CARTER & TIPTON  
246 West Shaw Avenue  
Fresno, California 93704

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Civil Complaint filed  
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COMES NOW Plaintiff, Paul Cervantes, and alleges as follows:

PARTIES

1. Plaintiff is and was at all times herein mentioned a resident of the County of Fresno, employed with Defendant City as a peace officer with the Fresno Police Department and has been so employed as a police officer for fourteen years, with nearly four years as a sergeant. Plaintiff is a Hispanic male, over the age of forty, as of April 24, 2016.

2. Defendant City of Fresno is a municipal agency, organized and operating as a general law city, and organized under the Constitution and laws of the State of California.

3. Defendant Timothy Tietjen is, and was at all times herein mentioned, a resident of the County of Fresno and employed with Defendant City of Fresno as a Sergeant on its police force, that as a sergeant, Defendant Tietjen is vested with the power and authority to make, approve, implement and enforce policies relating to the Fresno Police Department and its operations, including but not limited to, initiation of internal investigations. Defendant Tietjen is sued herein in his personal and official capacities.

4. Defendant Bradley Alcorn is, and was at all times herein mentioned, a resident of the County of Fresno and employed with Defendant City of Fresno as a Detective on its police force, vested with the power and authority to initiate internal investigations and imposition of disciplinary actions. Defendant Alcorn is sued herein in his personal and official capacities.

5. Defendant Cary Phelps is, and was at all times herein mentioned, a resident of the County of Fresno and employed with Defendant City of Fresno as a Detective on its police force, vested with the power and authority to initiate internal investigations and imposition of disciplinary actions. Defendant Phelps is sued herein in his personal and official capacities.

6. The Fresno Police Department (hereafter "Department") is a municipal law enforcement agency providing law enforcement services to residents and businesses located in the City of Fresno. The Department is an employing public safety department as that term is used in Government Code section 3300, et. seq.



1 defamatory to Internal Affairs, all with the intention of causing harm to Plaintiff and other  
2 Hispanic minorities employed by the Department as officers in an attempt to cause disciplinary  
3 action to be instituted, force their demotion, and departure from the Department. On several  
4 occasions over the past five years, Plaintiff has complained to his superiors and the human  
5 relations division of the Department of the targeted and racially motivated conduct. However,  
6 Plaintiff's superiors in the Department have failed to take any action to protect Plaintiff and  
7 Plaintiff's rights to a workplace free from racial discrimination.

8           13. As a result of the racial targeting by said individual Defendants employed  
9 within the Department, Plaintiff has been subjected to a criminal prosecution and an Internal  
10 Affairs administrative proceeding. Said individual Defendants knowingly caused false  
11 information to be provided to investigators in connection with both the criminal prosecution and  
12 the Internal Affairs investigation ("IA"). The criminal prosecution based upon intentionally  
13 flawed and misleading information resulted in Plaintiff's acquittal after jury trial. Said individual  
14 Defendants caused a 15 count complaint to be administratively filed against Plaintiff by the  
15 Internal Affairs division within the Department. Prior to said IA hearings, said individual  
16 Defendants systematically spread rumors through the MAGEC Unit to the effect that Plaintiff  
17 and other Hispanics on his team were "dirty", corrupt and dishonest; all with the intention of  
18 influencing the IA hearing outcome against Plaintiff, and in violation of Department policy that  
19 pending IA cases not be discussed with anyone other than IA personnel. Thirteen of the 15  
20 charges, upon administrative review and hearing, were found not supported and dismissed. Two  
21 lesser charges are the subject of an administrative appeal within the Department which is  
22 presently pending.

23           14. In connection with the foregoing, said individual Defendants, through  
24 unlawful police tactics, threatened Fresno Police Department confidential informant #1, and  
25 Fresno Police Department confidential informant #2, with criminal prosecution unless said  
26 informants would provide false and misleading information to the Department in aid of the  
27 criminal prosecution and the administrative disciplinary actions instituted against Plaintiff, which  
28 were precipitated by the actions of individual Defendants described above. In connection with

1 the foregoing, Defendant Tietjen offered a third confidential informant a cash bribe of \$50,000  
2 and a free automobile if said confidential informant would provide the Department with false and  
3 misleading information meant to cause the criminal prosecution and conviction of Plaintiff herein  
4 on false and misleading charges.

5 15. Based upon the foregoing conduct of said Defendants, Plaintiff has been  
6 deprived of his constitutional rights, and his right to employment free of hostile and racially  
7 motivated discrimination. Plaintiff has complained of this treatment and the above facts on  
8 numerous and multiple occasions to his superiors within the Department, who have done literally  
9 nothing to protect the rights of Plaintiff and other similarly situated Hispanics within the  
10 Department. As a result of Defendant's intentional misconduct and failures as set forth above,  
11 Plaintiff has suffered harm and damage in a variety of ways, including, but not limited to, loss of  
12 pay, severe emotional distress, demotion from the MAGEC Unit to the patrol division,  
13 defamation, personal injuries, financial damages, and attorneys fees, all in an amount to be  
14 proven at trial. Plaintiff has further suffered damages in the form of attorneys fees based upon  
15 the criminal action (the "Malicious Prosecution"), precipitated by the filing of known false and  
16 unsubstantiated charges against Plaintiff by the individual Defendants herein.

17 **Other Contributing Events/Whistle-Blower Liability**

18 16. Plaintiff was taken off the MAGEC Unit after he expressed opinions to the  
19 effect that the Department was permitting violations of civil rights and was not taking  
20 appropriate steps to prevent or deter such violations.

21 17. Starting in 2008, and continuing to the present, Plaintiff has voiced his  
22 concerns and disapproval of policy changes which were discriminating as applied to Plaintiff, to  
23 his superiors within the Department.

24 18. Starting in 2008, and continuing to the present, Plaintiff reported to his  
25 superiors within the Department that officers had prepared untruthful reports. Plaintiff advised  
26 the chain of command and Internal Affairs, long before the criminal trial, of the false reports.  
27 Defendant's false accusations, resulted in Plaintiff being subject to criminal prosecution;  
28 however, the charges were not sustained and Plaintiff was acquitted.

1 **Administrative Prerequisite**

2 19. On December 17, 2015, Plaintiff filed a complaint with the California  
3 Department of Fair Employment and Housing alleging he had been subjected to discrimination  
4 and retaliation by Defendant City because of his age, disability (or perception thereof), race, color  
5 or ethnicity, religion and because of his protesting or participation in investigations, and that said  
6 retaliation was continuing. The facts and circumstances of Defendant's discriminatory conduct as  
7 applied to Plaintiff are further described in part therein, and attached hereto as Exhibit "A"  
8 (herein, and as alleged above, the "Discriminatory Acts"). On December 17, 2015, the  
9 Department of Fair Employment and Housing authorized Plaintiff to seek private enforcement of  
10 his claims through a lawsuit.

11 **FIRST CAUSE OF ACTION**

12 Discrimination, Retaliation - Government Code § 12900 et seq.

13 20. Plaintiff re-alleges and incorporates by reference as if fully set forth herein  
14 Paragraphs 1 through 19.

15 21. Throughout the last five (5) of years of Plaintiffs employment with  
16 Defendant City, he has been subjected to the Discriminatory Acts and has been told by  
17 Defendants that Plaintiff, as a Hispanic, did not project a positive image for the Department.  
18 Plaintiff complained to his superiors within the Department and other management staff that  
19 these Discriminatory Acts were racial in origin, hostile and offensive to him as a long time  
20 employee.

21 22. A pattern and practice developed within the Department, wherein the  
22 Discriminatory Acts were proliferated and condoned by Defendants Tietjan, Alcorn and Phelps,  
23 under the Department's administration, whereby preferential treatment was extended to  
24 Caucasian officers and disciplinary actions were chiefly directed against Hispanic officers  
25 including Plaintiff. There were open references to preference for Caucasian officers such that it  
26 appeared all minorities were regarded as outcasts. Plaintiff complained of this treatment to his  
27 superiors, who took no steps to prevent it.

28

1           23.     That the provision of preferential treatment to Caucasian officers or  
2 officers was adverse to Plaintiff, who is Hispanic.

3           24.     The Department's initiation and prosecution of Defendant, as well as its  
4 failure to reinstate Plaintiff thereafter, to the MAGEC Unit were motivated in substantial part by  
5 a desire to eliminate Plaintiff as a Hispanic employee; that Defendants were responsible for such  
6 acts and decisions and ratified all of the acts necessary to achieve the same, and, that Defendant  
7 City ratified all such acts in its refusal to reinstate Plaintiff to his position as a sergeant with the  
8 MAGEC Unit.

9           25.     Defendants, and each of them, used and/or allowed official policies,  
10 procedures and/or practices to discriminate against Plaintiff on the basis of his color and/or race  
11 (Hispanic) in violation of Government Code section 12900, et. seq.

12           26.     Defendants, and each of them, did not exercise reasonable care to prevent  
13 and promptly correct any harassing or discriminatory behavior involving the Department and  
14 specifically with regard to the above incidents and, in fact, have taken no appropriate action in  
15 regard to said events.

16           27.     The aforesaid acts and omissions of Defendant City and its employees,  
17 agents and representatives, and each of them, constitute unlawful employment practices in  
18 violation of Government Code section 12940 et seq.

19           28.     As a direct result of the aforesaid acts and omissions of the Defendant  
20 City, by and through its employees, agents, and representatives, Plaintiff has suffered economic  
21 injury in connection with loss of overtime earnings and benefits during the time he was  
22 suspended pending the outcome of the criminal prosecution appeal and thereafter.

23           29.     As a direct, foreseeable and proximate result of the aforesaid  
24 discriminatory acts and omissions, Plaintiff suffered and continues to suffer humiliation,  
25 embarrassment, mental and emotional distress and discomfort, all to his damage in an amount  
26 according to proof.

27     ///

28     ///

**SECOND CAUSE OF ACTION**

Employment Discrimination/National Origin in Violation of CGC §12940

(Against all Defendants)

30. Plaintiff re-alleges and incorporates by reference as if fully set forth herein Paragraphs 1 through 29.

31. Plaintiff is informed and believes and thereon alleges that a substantial factor in Defendants', and each of their, harassing Plaintiff and causing his prosecution and demotion from MAGEC was his national origin (Hispanic). In so acting, Defendants, and each of them, have violated Government Code §12940.

32. By reason of the conduct of Defendants, and each of them, as alleged herein, Plaintiff has necessarily retained attorneys to prosecute the within cause of action. Plaintiff is therefore entitled to reasonable attorneys' fees and litigation expenses incurred in bringing the within cause of action, in addition to other damages as provided by law and as alleged herein.

**THIRD CAUSE OF ACTION**

Employment Discrimination/Retaliation in Violation of CGC §12940

(Against all Defendants)

33. Plaintiff re-alleges and incorporates by reference as if fully set forth herein Paragraphs 1 through 32.

34. Plaintiff is informed and believes, and thereon alleges that a substantial factor in the decision to mistreat Plaintiff while employed by the Department, was due to his reporting incidents of discrimination as alleged hereinabove to his superiors. In so acting, Defendants, and each of them, have violated Government Code §12940.

35. As a result of the retaliation, Plaintiff suffered economic and emotional damages as alleged above, all in an amount subject to proof at trial.

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Fresno, California 93704



**FOURTH CAUSE OF ACTION**

Employment Discrimination/Wrongful Demotion in Violation of CGC §12940

(Against All Defendants)

36. Plaintiff re-alleges and incorporates by reference as if fully set forth herein Paragraphs 1 through 35.

37. Plaintiff is informed and believes that he was demoted from MAGEC because of his national origin (Hispanic) and in retaliation for his charges of racism in the unit.

38. As a legal result of his wrongful demotion, Plaintiff has suffered economic loss, emotional distress, and loss of stature, all in an amount to be proven at trial.

**FIFTH CAUSE OF ACTION**

Disability Discrimination - Government Code § 12900 et seq.

(Against All Defendants)

39. Plaintiff re-alleges and incorporates by reference as if fully set forth herein Paragraphs 1 through 38.

40. That Defendants, and each of them, demoted Plaintiff from the MAGEC Unit based on Plaintiff's race and/or disability.

41. That Plaintiff is informed and believes that Caucasian, but not Hispanic, officers similarly situated have been returned to MAGEC duty and employed with the Department, with or without accommodation.

42. That Defendants, and each of them, have failed to engage in an interactive process relative to any perceived disability and limitations which the Defendants purport are applicable to Plaintiff.

43. That Plaintiff can and is willing to perform the essential functions of his employment as a sergeant on the MAGEC Unit.

44. As a direct result of the aforesaid acts and omissions of the Defendant City, by and through its employees, agents, and representatives, Plaintiff has suffered economic injury in connection with loss of earnings and benefits during the time he was suspended pending the outcome of the criminal prosecution and administrative disciplinary leave and thereafter.

WILD, CARTER & TIPTON  
246 West Shaw Avenue  
Fresno, California 93704



1 misleading information provided by individual Defendants herein to the Fresno County District  
2 Attorney, Plaintiff was subjected to a criminal jury trial.

3 49. At the conclusion of trial, the evidence came out that Plaintiff herein in  
4 fact knew nothing of such stolen automobile and Plaintiff was acquitted. Plaintiff was subject to  
5 damages, defamation, and exposure to attorneys fees in connection with the Malicious  
6 Prosecution instituted by said individual Defendants.

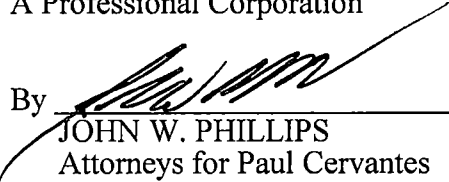
7 50. Plaintiff herein alleges that the underlying criminal prosecution case was  
8 instituted without probable cause, based upon information known to be false, and resulted in  
9 Plaintiff's acquittal. Therefore, Plaintiff seeks damages from Defendants for Malicious  
10 Prosecution, all in an amount accordingly to proof at trial.

11 WHEREFORE, Plaintiff prays judgment against Defendants for damages, as follows:

- 12 1. Compensatory damages, economic and non-economic in excess of the  
13 minimal jurisdiction of this Court, in an amount according to proof;
- 14 2. Attorney's fees in an amount according to proof pursuant to Government  
15 Code §12965(b);
- 16 3. For costs of suit herein incurred;
- 17 4. For prejudgment interest pursuant to Civil Code § 3287(a); and,
- 18 5. For such other and further relief as the Court may deem proper.

19  
20 Dated: March 17, 2016

**WILD, CARTER & TIPTON**  
A Professional Corporation

21  
22 By   
23 JOHN W. PHILLIPS  
24 Attorneys for Paul Cervantes  
25  
26  
27  
28



**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

DIRECTOR KEVIN KISH

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
800-884-1684 | TDD 800-700-2320  
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

December 17, 2015

Paul Cervantes  
1510 Avenue F  
Kingsburg, California 93631

**RE: Notice of Case Closure and Right to Sue**  
DFEH Matter Number: 726152-200149  
Right to Sue: Cervantes / The City Of Fresno - Fresno Police Department

Dear Paul Cervantes,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective December 17, 2015 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

**EXHIBIT A**

COMPLAINT OF EMPLOYMENT DISCRIMINATION  
BEFORE THE STATE OF CALIFORNIA

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING  
Under the California Fair Employment and Housing Act  
(Gov. Code, § 12900 et seq.)

In the Matter of the Complaint of  
Paul Cervantes, Complainant.  
1510 Avenue F  
Kingsburg, California 93631

DFEH No. 726152-200149

vs.

The City Of Fresno - Fresno Police Department,  
Respondent.  
2323 Mariposa Mall  
Fresno, California 93727

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Complainant alleges:

1. Respondent **The City Of Fresno - Fresno Police Department** is a **State/Local Govt** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.). Complainant believes respondent is subject to the FEHA.
2. On or around **December 17, 2015**, complainant alleges that respondent took the following adverse actions against complainant: **Discrimination, Harassment, Retaliation Demoted, Denied a work environment free of discrimination and/or retaliation, Denied or forced to transfer, Denied promotion, Denied reasonable accommodation, Denied reinstatement, .** Complainant believes respondent committed these actions because of their: **Ancestry, Color, Disability, Engagement in Protected Activity, Race .**
3. Complainant **Paul Cervantes** resides in the City of **Kingsburg**, State of **California**. If complaint includes co-respondents please see below.

1  
2 **Additional Complaint Details:**

3 During my tenure with the Fresno Police Department I have been discriminated against  
4 based on my ethnic background. The crux of my complaint is germane to a workplace  
5 incident that occurred in January of 2008. As a result of an investigation that led to my  
6 arrest I was targeted by a group of individuals who are employed by my same agency.  
7 The conduct has been pervasive and ended in adverse action against myself. I was  
8 tried and acquitted in a court of law by a jury of my peers. Since this incident the  
9 workplace environment has become hostile and the department has allowed a collective  
10 group of the same individuals to investigate me yet another time. Despite the fact that I  
11 notified my chain of command, specifically, my lieutenant, my deputy chief and the Chief  
12 of Police, an investigation unfolded over the last year and a half. I raised the issue with  
13 my chain of command that the investigation (administrative and criminal) could not be  
14 fair, impartial or objective based on the previous case from 2009. Even though I raised  
15 these issues the investigation went forward. The allegations against me were extreme  
16 and very detrimental to my career and overall well being. Once the investigation was  
17 completed by this entity that works for the Fresno Police Department, an internal affairs  
18 investigation (IA) was completed. The IA demonstrated that these investigators  
19 fabricated statements and outright lied in the investigation. Despite the fact that the  
20 departments IA unit came to this conclusion, those individuals have yet to be  
21 interviewed and held accountable for their actions that have led to a tremendous  
22 amount of stress in my life. As a result of this IA a sustained finding led to an 80 hours  
suspension from work. In addition to the suspension, I was "de-selected" as employee  
of the quarter in 2015. I was moved from a special assignment. I was denied the right  
to go to another special assignment even though I was selected by the bureau  
commander. In addition to these adverse actions, I have also endured a tremendous  
amount of mental distress. The result is a physiological connection. I now suffer from  
unspecified clinical depression, anxiety and panic attacks. Likewise my primary care  
physician has prescribed me medication such as Xanax, Lexipro and Ambien. In  
addition, I now suffer from gastritis that has a direct connection to stress endured from  
this investigation. I now see a GI specialist who has me taking Omeprazole for  
problems related to these medical issues. In addition to the adverse action mentioned  
above the department has moved me back to patrol which directly leads to a reduction  
in pay. My reputation and career have been tarnished by members of the Fresno Police  
Department who have spread false information to not only other members of the police  
department but to outside agencies including the United States Attorneys Office, the  
District Attorneys Office and the Fresno County Sheriffs Department. As a result of these  
claims I have obtained an attorney to represent me in a court proceeding in this matter.  
Should you have any questions about this claim please feel free to email me at  
paulcervantes@sbcglobal.net or call me directly at (559) 515-1226. Thank you.

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VERIFICATION

I, **Paul Cervantes**, am the Complainant in the above-entitled complaint. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

On December 17, 2015, I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Fresno, CA  
Paul Cervantes