

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOSE SUAREZ,

Plaintiff,

vs.

CITY OF WARREN; LIEUTENANT
JAMES SELAKOWSKI, in his official
and individual capacity; FIRE
COMMISSIONER SKIP MCADAMS,
in his official and individual capacity;
and FIREFIGHTER MICHAEL
OWCZAREK, in his official and
individual capacity,

Case No. _____

Hon. _____

Defendants.

RASOR LAW FIRM, PLLC

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COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff JOSE SUAREZ, by and through his attorneys,
RASOR LAW FIRM, PLLC, and for his Complaint against the above-named
Defendants, states as follows:

PARTIES

1. At all times relevant to this lawsuit, Plaintiff Jose Suarez (herein “Plaintiff”) was a resident of the City of Oak Park, County of Oakland, State of Michigan.

2. Defendant City of Warren is a public employer.

3. Defendant Warren is a municipal corporation, duly organized and carrying on governmental functions in the City of Warren, County of Macomb, State of Michigan.

4. Defendants are “persons” within the meaning of 42 U.S.C. § 2000e(a) and “employers” within the meaning of 42 U.S.C. § 2000e(a).

5. Defendant Warren is a municipality located within Macomb County that administers and operates a Fire Department.

6. At all times material and relevant hereto, Defendant Lieutenant James Selakowski was an employee of Defendant Warren and was acting under the color of state law and in the course and scope of his employment.

7. At all times material and relevant hereto, Defendant Fire Commissioner Skip McAdams was an employee of Defendant Warren and was acting under the color of state law and in the course and scope of his employment.

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8. At all times material and relevant hereto, Defendant Firefighter Michael Owczarek was an employee of Defendant Warren and was acting under the color of state law and in the course and scope of his employment.

9. At all times material and relevant hereto, Defendant Warren was Plaintiff's employer.

10. At all times material and relevant hereto, Plaintiff was employed by Warren as a Firefighter/Paramedic (herein "firefighter").

11. Plaintiff timely filed a charge of discrimination with the Equal Employment Opportunity Commission (herein "EEOC") alleging Warren discriminated against him based upon national origin, age, and retaliation.

12. The EEOC investigated Plaintiff's allegations of discrimination and Plaintiff received a Dismissal and Notice of Rights letter on May 19, 2017.

13. All conditions precedent to the filing of this Complaint have been performed or have occurred.

JURISDICTION AND VENUE

14. This cause of action arose in the City of Warren, County of Macomb, State of Michigan.

15. This Honorable Court has jurisdiction over this action under 42 U.S.C. § 2000e-5(f), § 2000e-6, and 28 U.S.C. §§ 1331, 1343(a), and 1345.

16. This Honorable Court has personal jurisdiction over Defendants because Defendants conduct and operate prison facilities in the State of Michigan.

17. Venue is proper in this judicial district under 42 U.S.C. § 2000e-5(f)(3), § 2000e-6(b), and 28 U.S.C. § 1391(b) because it is where a substantial part of the events or omissions giving rise to the cause of action occurred.

COMMON FACTUAL ALLEGATIONS

18. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 17, as if fully set forth herein.

19. Plaintiff is a forty-five year old male of Cuban descent, and as such, a member of a protected class.

20. Plaintiff began his employment with the Warren Fire Department in 2013, when Plaintiff was assigned Unit 1 at Fire Station 3.

21. While employed by Defendant City of Warren, Plaintiff worked as a Firefighter/Paramedic, which required that he be trained as both a firefighter and paramedic.

22. Plaintiff did not have a history of disciplinary issues throughout his career at Defendant Warren.

23. On or about June 20, 2013, Plaintiff was transferred from Unit 1 Station 3 to Unit 1 Station 4.

24. While in Unit 1 Station 4, Plaintiff was supervised by Captain Steve Sitek.

25. Within approximately four months of being transferred to Unit 1 Station 4, Plaintiff began working with Firefighter Joel Ricketts.

26. During Plaintiff's time at Unit 1 Station 4, Captain Sitek referred to Plaintiff as a "pussy" and "faggot," and Firefighter Ricketts acted openly hostile towards Plaintiff.

27. To avoid the hostile environment at Unit 1 Station 4, Plaintiff volunteered to be transferred to and was transferred to Unit 1 Station 5, where he experienced no incidents of discrimination or hostility for approximately eight months.

28. On or about August 10, 2014, Plaintiff was transferred to Unit 1 Station 1, where he again worked alongside Firefighter Joel Ricketts.

29. During Plaintiff's tenure at Unit 1 Station 1, his supervisor, Captain John Dalton, was promoted to Battalion Chief and was replaced by Captain Paul Lesnau.

30. Once Captain Lesnau replaced Captain Dalton as the supervisor of Unit 1 Station 1, Firefighter Ricketts resumed his openly hostile attitude towards Plaintiff and made it known that his goal was to antagonize Plaintiff until he snapped.

31. Plaintiff complained of Firefighter Ricketts' hostility to his supervisor, Captain Lesnau, who did nothing in response to Plaintiff's complaints.

32. Eventually, Firefighter Ricketts was transferred to Station 5.

33. On or about April of 2015, Plaintiff was transferred to Unit 1 Station 4, and was again supervised by Captain Sitek, and also worked under Defendant Lieutenant James Selakowski.

34. While at Station 4 from 2015 until January of 2017, Plaintiff was called "the all-around nigger" by Defendant Lieutenant Selakowski on a regular basis.

35. Plaintiff complained to Lieutenant Jeff Slone about the offensive and discriminatory language used by Lieutenant Selakowski.

36. On or about November of 2015, Captain Sitek was promoted to Battalion Chief of Unit 1 and Captain Ron Laszczak replaced him as supervisor of Station 4.

37. During the time that Captain Laszczak supervised Station 4, Defendant Lieutenant Selakowski continued to call Plaintiff "the all-around nigger" and other members of Station 4, including FEO Rob Loring, joined in the racial and ethnic discrimination and promotion of a hostile work environment.

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38. In addition to calling Plaintiff “the all-around nigger” from 2015-2017, upon information and belief, Defendant Selakowski threatened Plaintiff with physical violence in retaliation for reporting the racial discrimination on at least two occasions.

39. After experiencing racially discriminatory comments and racially motivated workplace hostility for two years at Station 4, Plaintiff complained in writing to Defendant Warren’s administrative offices on December 27, 2016.

40. On or about January 3, 2017, Plaintiff was transferred to Unit 3 Station 1.

41. After being transferred to Unit 3 Station 1, Plaintiff faced unreasonable scrutiny by his supervisors and co-workers.

42. Upon information and belief, Defendant Fire Commissioner Skip McAdams instructed members of the Fire Department to record any instances of Plaintiff’s conduct that could be used to paint Plaintiff in a negative light in any subsequent proceeding, and suggested that the department may send Plaintiff to a psych evaluation.

43. Upon information and belief, when Plaintiff inquired into the status of his written complaint, Plaintiff’s union representative, Chris Andary, told Plaintiff “you should have kept your fucking mouth shut, you shouldn’t have written a fucking letter.”

44. On or about May of 2017, Defendant Firefighter Mike Owczarek assaulted Plaintiff by striking him with a stretcher Defendant Owczarek was pushing in a hospital hallway. Upon information and belief, Defendant Owczarek's assault was in retaliation for Plaintiff's submission of the written complaint of discrimination on December 27, 2016.

45. Upon information and belief, Plaintiff was threatened with disciplinary action by Lieutenant Steve Zanin if Plaintiff did not drop his discrimination complaint.

46. On or about July 5, 2017, Plaintiff resigned from the Fire Department due to on-going harassment following his written complaint and concerns for his personal safety and well-being.

COUNT I – DISPARATE TREATMENT
TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 – 42 U.S.C. § 2000e-2
AS TO DEFENDANT CITY OF WARREN

47. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 46, as if fully set forth herein.

48. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* prohibits discrimination against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race.

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49. At all times material and relevant, Plaintiff was an employee of Defendant employer City of Warren, covered by and within the meaning of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.

50. Plaintiff is of Cuban descent, in the minority at the Warren Fire Department, and is a member of a protected class under Title VII of the Civil Rights Act of 1964.

51. As an employer within the meaning of the Title VII of the Civil Rights Act of 1964, Defendant City of Warren owed Plaintiff a duty not to discriminate against him with respect to employment, promotional opportunities, compensation or other conditions or privileges of employment on the basis of Plaintiff's race and ethnicity.

52. Because of his race and ethnicity, Plaintiff was subjected to treatment during his career with Defendant City of Warren that was disparate from that accorded to non-Cuban co-workers of Defendant City of Warren and at the fire stations to which Plaintiff was assigned, who have been treated more favorably than Plaintiff.

53. The disparate and less favorable treatment to which Plaintiff was subjected during the time that he was employed by Defendant City of Warren included adverse employment actions on the basis of Plaintiff's race and ethnicity, and Plaintiff has otherwise been discriminated against with respect to

employment, promotional opportunities, compensation or other conditions or privileges of employment on the basis of his race and ethnicity.

54. The disparate and less favorable treatment to which Plaintiff was subjected during the time that he was been employed by Defendant City of Warren has come both from management and supervisory personnel, and from Plaintiff's non-Cuban/minority co-workers.

55. Defendant City of Warren and the fire stations to which Plaintiff was assigned by Defendant City of Warren has a policy or pattern of practice that encourages management or supervisory personnel to directly discriminate against minority employees, or that tolerates the disparate and less favorable treatment of minority employees by said management and supervisory personnel.

56. Defendant City of Warren and the fire stations to which Plaintiff was assigned by Defendant City of Warren has a policy or pattern of practice that encourages management or supervisory personnel to look the other-way or actively encourage disparate and less favorable treatment of minority employees, including Plaintiff, by non-minority employees and/or supervisory personnel.

57. Plaintiff's supervisor(s) and other employees and supervisors of Defendant City of Warren have either directly discriminated against Plaintiff, or have tolerated and looked the other-way to disparate and less favorable

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treatment of Plaintiff by his non-minority co-workers and/or supervisory personnel.

58. The disparate treatment to which Plaintiff was subjected while working at Defendant City of Warren was so substantially disparate and less favorable than the treatment of non-minority employees that it raises an inference of disparate treatment discrimination.

59. The disparate treatment to which Plaintiff was subjected during his career at Defendant City of Warren was so substantially disparate and less favorable than the treatment received by his non-minority co-workers that it unreasonably interfered with Plaintiff's work performance.

60. There is no legitimate business reason justifying the disparate treatment to which Plaintiff was subjected during his career at Defendant City of Warren's Fire Department by Defendant City of Warren.

61. In violation of Title VII, 42 U.S.C. § 2000e-2(a), the City of Warren has discriminated on the basis of Plaintiff's race and ethnicity by, among other ways:

- a. Permitting non-minority employees to direct racially derogatory comments at Plaintiff; and
- b. Failing to discipline employees who Plaintiff reported as using racially discriminatory language in violation of the department's policies and procedures.

62. The acts and practices of Defendant and Defendant's employees described in the above paragraphs constitute a pattern or practice of discrimination on the basis of race and ethnicity in violation of Title VII because Defendant and its employees have pursued, and continue to pursue, policies and practices with respect to terms, conditions, or privileges of employment that discriminate against minorities and that deprive or tend to deprive minority firefighters, including Plaintiff, of employment opportunities because of their race and ethnicity.

63. As a direct and proximate result of the City of Warren's unlawful actions against Plaintiff as described herein, Plaintiff has suffered injuries and damages, including, but not limited to, lost wages, potential loss of earnings and earning capacity, loss of career opportunities, loss of reputation and esteem in the community, mental and emotional distress, and loss of the ordinary pleasures of life.

64. Pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, Defendant City of Warren is liable to Plaintiff for all damages allowed under federal law. To the extent that the damages allowable and/or recoverable are deemed insufficient to fully compensate Plaintiff and/or to punish or deter the Defendant City of Warren, this Court must order additional damages to be allowed so as to satisfy any and all such inadequacies.

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WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in his favor and against Defendant City of Warren in an amount that is fair and reasonable and compensates Plaintiff for his injuries, plus costs, interest, and attorney fees so wrongfully incurred.

COUNT II – RETALIATION
TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 – 42 U.S.C. § 2000e-3
AS TO DEFENDANT CITY OF WARREN

65. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 64, as if fully set forth herein.

66. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* prohibits discrimination against any individual with respect to compensation, terms, conditions, or privileges of employment, because the individual has opposed any practice made an unlawful employment practice by Section 2000e-3, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Section 2000e-3.

67. At all times material and relevant, Plaintiff was an employee of Defendant employer City of Warren, covered by and within the meaning of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.

68. Plaintiff is of Cuban descent, in the minority at the City of Warren Fire Department, and is a member of a protected class under Title VII of the Civil Rights Act of 1964.

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69. As an employer within the meaning of the Title VII of the Civil Rights Act of 1964, Defendant City of Warren owed Plaintiff a duty not to discriminate against him with respect to employment, promotional opportunities, compensation or other conditions or privileges of employment on the basis of he participated in a statutorily protected activity..

70. Complaining about, reporting, and/or opposing racially and ethnically discriminatory policies or patterns of practice is a statutorily protected activity.

71. Plaintiff engaged in conduct protected under Title VII of the Civil Rights Act of 1964, including, but not limited to, complaining of, reporting, and/or opposing the discriminatory conduct of the agents, servants, and/or employees of Defendant City of Warren.

72. Defendant City of Warren had knowledge of Plaintiff's protected activities as set forth in the preceding paragraphs.

73. Defendant City of Warren, by and through its agents, servants, and/or employees, subsequently took adverse, retaliatory action against Plaintiff including, but not limited to, encouraging employees to report Plaintiff's conduct for the purpose of bringing disciplinary actions, denying Plaintiff conditions, terms, opportunities, and privileges provided to non-Cuban employees of Defendant City of Warren, physically assaulting Plaintiff, and

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verbally threatening Plaintiff with unwarranted disciplinary action if Plaintiff did not drop his race and ethnicity discrimination complaint.

74. Plaintiff was subjected to harassment and other retaliatory acts by Defendant City of Warren and its agents, servants and/or employees in retaliation for his opposition to civil rights violations and having complained about the discriminatory acts described herein, in violation of Title VII of the Civil Rights Act of 1964.

75. Defendant City of Warren and its agents, servants and/or employees' actions were intentional, with reckless indifference to Plaintiff's rights and sensibilities.

76. As a direct and proximate result of Defendants City of Warren's unlawful actions and retaliations against Plaintiff as described herein, Plaintiff has suffered injuries and damages, including, but not limited to, potential loss of earnings and earning capacity, loss of career opportunities, loss of reputation and esteem in the community, mental and emotional distress, and loss of the ordinary pleasures of life.

77. Pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, Defendants are liable to Plaintiff for all damages allowed under federal law. To the extent that the damages allowable and/or recoverable are deemed insufficient to fully compensate Plaintiff and/or to punish or deter the

Defendants, this Court must order additional damages to be allowed so as to satisfy any and all such inadequacies.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in his favor and against Defendants, jointly and severally in an amount that is fair and reasonable and compensates Plaintiff for his injuries, plus costs, interest, and attorney fees so wrongfully incurred.

COUNT III – HOSTILE WORK ENVIRONMENT
TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 – 42 U.S.C. § 2000e-2
AS TO DEFENDANT CITY OF WARREN

78. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 77, as if fully set forth herein.

79. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* prohibits discrimination against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race and ethnicity.

80. At all times material and relevant, Plaintiff was an employee of Defendant employer City of Warren, covered by and within the meaning of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.

81. Plaintiff is of Cuban descent, in the minority at the City of Warren Fire Department, and is a member of a protected class under Title VII of the Civil Rights Act of 1964.

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82. As an employer within the meaning of the Title VII of the Civil Rights Act of 1964, Defendant City of Warren owed Plaintiff a duty not to discriminate against him with respect to his employment, promotional opportunities, compensation or other conditions or privileges of employment on the basis of race and ethnicity.

83. Defendant City of Warren, by its agents, representatives, and/or employees, was predisposed to discriminate on the basis of race and ethnicity, and acted in accordance with that predisposition.

84. While employed by Defendant City of Warren, Plaintiff was constantly and repeatedly subjected to race and ethnicity discrimination by Defendant, by and through its agents, servants and/or employees, said acts being made unlawful by Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*

85. Defendant City of Warren, by and through its agents, servants and/or employees intentionally violated Title VII by the following acts:

- a. Discriminating against Plaintiff with respect to employment, compensation, or a term, condition or privilege of employment, because of race and ethnicity;
- b. Limiting, segregating, or classifying Plaintiff in a way which deprived or tended to deprive Plaintiff of an employment opportunity or otherwise adversely affecting the status of Plaintiff because of race and ethnicity;

- c. Segregating, classifying or otherwise discriminating against Plaintiff on the basis of race and ethnicity with respect to a term, condition or privilege of employment;
- d. Creating a hostile work environment on the basis of Plaintiff's race and ethnicity; and/or
- e. Failing to provide a work environment free from race and ethnicity discrimination.

86. The disparate and less favorable treatment to which Plaintiff was subjected during his career at Defendant City of Warren's Fire Department came from both management and supervisory personnel, and from Plaintiff's non-Cuban/minority co-workers.

87. Defendant City of Warren subjected Plaintiff to disparate treatment in whole or in part because of his race and ethnicity, and such treatment was sufficiently severe and pervasive such that Plaintiff was subjected to a hostile work environment on the basis of his race and ethnicity.

88. Defendant City of Warren and its Fire Department in which Plaintiff worked has a policy or pattern of practice that encourages management or supervisory personnel to directly discriminate against Cuban/minority employees, or that tolerates the disparate and less favorable treatment of Cuban/minority employees by said management and supervisory personnel.

89. Defendant City of Warren and its Fire Department in which Plaintiff worked has a policy or pattern of practice that encourages

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management or supervisory personnel to look the other-way or actively encourage disparate and less favorable treatment of Cuban/minority employees by non-Cuban/minority employees and/or supervisory personnel.

90. The individual defendants have either directly discriminated against Plaintiff, or have tolerated and looked the other-way to disparate and less favorable treatment of Plaintiff by his non-Cuban/minority co-workers and/or supervisory personnel.

91. Defendant City of Warren had no legitimate business reason for its actions, in violation of Title VII, which specifically prohibits discrimination against any person regarding employment and/or the terms of employment on the basis of race and ethnicity.

92. Defendant City of Warren and its agents, servants and/or employees' actions were intentional, with reckless indifference to Plaintiff's rights and sensibilities.

93. As a direct and proximate result of Defendants City of Warren's unlawful actions and retaliations against Plaintiff as described herein, which constitute a hostile work environment, Plaintiff was constructively discharged.

94. As a direct and proximate result of Defendants City of Warren's unlawful actions and retaliations against Plaintiff as described herein, which constitute a hostile work environment, Plaintiff has suffered injuries and damages, including, but not limited to, lost wages, potential loss of earnings

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and earning capacity, loss of career opportunities, loss of reputation and esteem in the community, mental and emotional distress, and loss of the ordinary pleasures of life.

95. Pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, Defendants are liable to Plaintiff for all damages allowed under federal law. To the extent that the damages allowable and/or recoverable are deemed insufficient to fully compensate Plaintiff and/or to punish or deter the Defendants, this Court must order additional damages to be allowed so as to satisfy any and all such inadequacies.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in his favor and against Defendants, jointly and severally in an amount that is fair and reasonable and compensates Plaintiff for his injuries, plus costs, interest, and attorney fees so wrongfully incurred.

COUNT IV – EQUAL PROTECTION
VIOLATION OF CONSTITUTIONAL RIGHTS UNDER THE FOURTH
AND FOURTEENTH AMENDMENTS OF THE UNITED STATES
CONSTITUTION PURSUANT TO 42 U.S.C. § 1983 AS TO THE
INDIVIDUAL DEFENDANTS IN THEIR OFFICIAL CAPACITIES

96. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 95, as if fully set forth herein.

97. This action is brought pursuant to 42 U.S.C. § 1983 against the individual Defendants in their official capacities for purposeful discrimination,

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under color of law, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

98. Plaintiff has a constitutional right to liberty, including the right to freedom from discrimination on the basis of his race and ethnicity.

99. As a Cuban-American, Plaintiff is a member of a protected class, and as a citizen of the United States, is entitled to equal protection under the law pursuant to the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

100. Defendants were at all times relevant to this action acting under color of law and within scope of their employment.

101. At all relevant times, individual Defendants were acting pursuant to their authority as supervisor and were using the power of their office to justify their actions.

102. Despite the fact that Defendants were on notice that Plaintiff was being treated differently than other employees or otherwise being discriminated against on the basis of his race and ethnicity, Defendants failed to protect him or otherwise prevent such discrimination in violation of Plaintiff's constitutional rights.

103. In fact, adverse action was taken against Plaintiff on the basis of the above-referenced characteristics that were not taken against similarly

situated employees who did not share Plaintiff's racial and ethnic characteristics.

104. The right to be free from discrimination in the form of disparate treatment, retaliation, and being treated differently than other employees on the basis of race and ethnicity in violation of one's constitutional rights is and at all times relevant to this cause of action was a clearly established right of which a reasonable person and corrections officer in the Defendants' position under the circumstances of this case knew or should have known.

105. Defendants' actions as set forth herein, taken because of or on the basis of Plaintiff's race and ethnicity abridge Plaintiff's right to equal protection of the laws in violation of the Fourteenth Amendment of the United States Constitution.

106. Defendants are not entitled to governmental or qualified immunity.

107. Defendants' callous and repeated disregard of Plaintiff's constitutional rights rises to the level of deliberate indifference.

108. As a direct and proximate result of Defendants' unlawful actions and retaliations against Plaintiff as described herein, which constitute a violation of Plaintiff's constitutional rights, Plaintiff has suffered injuries and damages, including, but not limited to, lost wages, potential loss of earnings and earning capacity, loss of career opportunities, loss of reputation and esteem

in the community, mental and emotional distress, and loss of the ordinary pleasures of life.

109. Pursuant to 42 U.S.C. § 1983, Defendants are liable to Plaintiff for all damages allowed under federal law. To the extent that the damages allowable and/or recoverable are deemed insufficient to fully compensate Plaintiff and/or to punish or deter the Defendants, this Court must order additional damages to be allowed so as to satisfy any and all such inadequacies.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in his favor and against Defendants, jointly and severally in an amount that is fair and reasonable and compensates Plaintiff for his injuries, plus costs, interest, and attorney fees so wrongfully incurred.

COUNT V – SUBSTANTIVE DUE PROCESS
VIOLATION OF CONSTITUTIONAL RIGHTS UNDER THE FOURTH
AND FOURTEENTH AMENDMENTS OF THE UNITED STATES
CONSTITUTION PURSUANT TO 42 U.S.C. § 1983 AS TO THE
INDIVIDUAL DEFENDANTS IN THEIR OFFICIAL CAPACITIES

110. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 109, as if fully set forth herein.

111. This action is brought pursuant to 42 U.S.C. § 1983 against Defendants in their individual capacities for depriving Plaintiff of his constitutionally protected property interest in continued employment, under color of law, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

112. The Fourteenth Amendment of the United States Constitution prohibits Defendants, not including MDOC, from depriving Plaintiff of a property right, liberty interest, bodily integrity, and/or reputation and “good name” without due process of law.

113. The policies and procedures enacted by Defendants and their arbitrary and capricious acts toward Plaintiff rendered him more vulnerable to racial and ethnic discrimination and adverse employment actions.

114. Because Defendants’ policies and procedures and arbitrary and capricious actions rendered Plaintiff more vulnerable to racial and ethnic discrimination their actions implicated fundamental rights expressly guaranteed by the Constitution of the United States, or arising by implication of law.

115. In addition, the arbitrary and capricious nature of Defendants’ actions and their deliberate disregard of Plaintiff’s constitutional rights, by creating a hostile work environment for Plaintiff, violated Plaintiff’s Constitutional rights.

116. As Plaintiff’s employer and co-workers, Defendants had the duty to protect Plaintiff’s fundamental rights expressly guaranteed by the Constitution of the United States, or arising by implication of law.

117. Defendants had ample time in which to contemplate the consequences, and ramifications of its policies and procedures, and of its arbitrary and capricious actions toward Plaintiff, and it either understood, or

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should have understood, that Plaintiff's fundamental rights to property, liberty interests, bodily integrity, and/or reputation and "good name" was endangered by its actions.

118. Notwithstanding that Defendants knew or should have known of the danger to Plaintiff's fundamental rights, Defendants deliberately, callously, arbitrarily, and capriciously chose not to correct the situation it had created and perpetuated.

119. The right to property, liberty interests, bodily integrity, and/or reputation and "good name" is and at all times relevant to this cause of action was a clearly established right of which a reasonable person and corrections officer in the Defendants' position under the circumstances of this case knew or should have known.

120. As a result of Defendants' conduct complained of herein, Plaintiff suffered deprivation of clearly established rights protected and secured by the Fourteenth Amendment to the United States Constitution.

121. Defendants are not entitled to governmental or qualified immunity.

122. Defendants' callous and repeated disregard of Plaintiff's constitutional rights rises to the level of deliberate indifference.

123. As a direct and proximate result of Defendants' unlawful actions and retaliations against Plaintiff as described herein, which constitute a violation of Plaintiff's constitutional rights, Plaintiff has suffered injuries and

damages, including, but not limited to, potential loss of earnings and earning capacity, loss of career opportunities, loss of reputation and esteem in the community, mental and emotional distress, and loss of ordinary life pleasures.

124. Pursuant to 42 U.S.C. § 1983, Defendants are liable to Plaintiff for all damages allowed under federal law. To the extent that the damages allowable and/or recoverable are deemed insufficient to fully compensate Plaintiff and/or to punish or deter the Defendants, this Court must order additional damages to be allowed so as to satisfy any and all such inadequacies.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in his favor and against Defendants, jointly and severally in an amount that is fair and reasonable and compensates Plaintiff for his injuries, plus costs, interest, and attorney fees so wrongfully incurred.

COUNT VI – ENTITY LIABILITY
INADEQUATE POLICIES/PROCEDURES/CUSTOMS,
FAILURE TO TRAIN, RATIFICATION/ACQUIESENCE
AS TO DEFENDANTS CITY OF WARREN &
DEFENDANT FIRE COMMISSIONER SKIP MCADAMS

125. Plaintiff reasserts and re-alleges each and every allegation contained in paragraphs 1 through 124, as if fully set forth herein.

126. Pursuant to 42 U.S.C § 1983, as well as the Fourth and Fourteenth Amendments to the United States Constitution, Defendant City of Warren owed Plaintiff certain duties to properly hire, supervise, monitor, and train the above-named individual Defendants as well as its other employers so as not

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subject Plaintiff to treatment during his career with Defendant City of Warren that has been disparate from that accorded to non-Cuban/minority co-workers, to not retaliate against Plaintiff for engaging in constitutionally and statutorily protected activities, and to otherwise not violate Plaintiff's constitutional rights.

127. Defendant City of Warren is liable pursuant to 42 U.S.C § 1983, in that its policies, procedures, regulations, and customs, or that it failed to enact policies, procedures, regulations, and customs, such that such policies, procedures, regulations, and customs, or lack thereof, caused and was the driving force behind the violation of Plaintiff's constitutional rights.

128. At all times relevant to this cause of action, Defendant Fire Commissioner Skip McAdams had the final decision-making authority and to enact policies, procedures, regulations, or customs regarding, but not limited to, training of employees, and had the final decision-making authority on hiring, retaining, investigating, and disciplining employees of Defendant City of Warren's Fire Department.

129. Defendant City of Warren, through its policies, procedures, regulations, or customs, or lack thereof, breached its duties, which amounted to reckless indifference toward the general public, and toward Plaintiff specifically, in the following ways including, but not limited to:

- a. Creation of an atmosphere wherein Defendant City of Warren Fire Department employees believed that it was acceptable to

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discriminate against Cuban/minority employees in general, and in particular against Plaintiff, on the basis of his race and ethnicity;

- b. Creation of an atmosphere wherein Defendant City of Warren Fire Department's employees believed that they must either look the other way as to racial and ethnic discrimination, or accept such racial and ethnic discrimination;
- c. Creation of an atmosphere in which Defendant City of Warren Fire Department's employees believed that they could act arbitrarily and capriciously, and in deliberate disregard of Plaintiff's fundamental Constitutional rights, in callously creating a work environment for Plaintiff that was deliberately hostile and threatened his fundamental constitutional rights;
- d. Ignoring racial and ethnic discrimination complaints;
- e. Ignoring complaints as to the creation of an environment that was deliberately hostile and threatened Plaintiff's fundamental constitutional rights;
- f. Retaliating against employees who reported unlawful actions, including retaliating against Plaintiff for reporting an illegal training incident in which Warren Firefighters engaged in an unlawful and unsanctioned burn that is deemed arson;
- g. Retaliating against employees who reported discrimination, and/or violation of fundamental and basic rights guaranteed in the United States Constitution or arising by operation or law;
- h. Refusing to afford procedural and substantive due process to employees complaining of violations of their fundamental and basic rights guaranteed in the United States Constitution or arising by operation or law;
- i. Refusing to afford procedural and substantive due process to employees complaining of retaliation for violations of their fundamental and basic rights guaranteed in the United States Constitution or arising by operation or law;

- j. Creation of a hostile work environment for non-Cuban/minority employees in general, and for Plaintiff in particular; and
- k. Other acts and omissions which may be learned through the course of discovery.

130. Defendants' callous and repeated disregard of Plaintiff's constitutional rights rises to the level of deliberate indifference.

131. As a direct and proximate result of Defendants' unlawful actions and retaliations against Plaintiff as described herein, which constitute a violation of Plaintiff's constitutional rights, Plaintiff has suffered injuries and damages, including, but not limited to, potential loss of earnings and earning capacity, loss of career opportunities, loss of reputation and esteem in the community, mental and emotional distress, and loss of ordinary life pleasures.

132. Pursuant to 42 U.S.C. § 1983, Defendants are liable to Plaintiff for all damages allowed under federal law. To the extent that the damages allowable and/or recoverable are deemed insufficient to fully compensate Plaintiff and/or to punish or deter the Defendants, this Court must order additional damages to be allowed so as to satisfy any and all such inadequacies.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in his favor and against Defendants, jointly and severally in an

amount that is fair and reasonable and compensates Plaintiff for his injuries, plus costs, interest, and attorney fees so wrongfully incurred.

RESPECTFULLY SUBMITTED:

/s/ James B. Rasor

James B. Rasor (P43476)

Andrew J. Laurila (P78880)

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Dated: August 10, 2017

RASOR LAW FIRM, PLLC

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOSE SUAREZ,

Plaintiff,

vs.

CITY OF WARREN, LIEUTENANT
JAMES SELAKOWSKI, in his official
and individual capacity, FIRE
COMMISSIONER SKIP MCADAMS,
in his official and individual capacity;
and FIREFIGHTER MICHAEL
OWCZAREK, in his official and
individual capacity,

Case No. _____

Hon. _____

Defendants.

RASOR LAW FIRM, PLLC

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DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, JOSE SUAREZ, by and through his attorneys,
RASOR LAW FIRM, PLLC, and hereby demands a trial by jury in the above-

captioned cause of action.

RESPECTFULLY SUBMITTED:

/s/ James B. Rasor

James B. Rasor (P43476)

Andrew J. Laurila (P78880)

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