

DISTRICT COURT, COUNTY OF PUEBLO, COLORADO 501 N. Elizabeth St., Pueblo, CO 81003 Phone: (719) 404-8700	DATE FILED: July 27, 2022 5:11 PM FILING ID: 219B48D6A15F6 CASE NUMBER: 2022CV30382
BELINDA KIMBALL, <p style="text-align: center;">Plaintiff,</p> vs. CITY OF PUEBLO, <p style="text-align: center;">Defendant.</p>	<hr/> Case Number: Division:
Julie D. Yeagle, #52247 CORNISH & DELL'OLIO, P.C. 431 N. Cascade Ave., Suite #1 Colorado Springs, CO 80903 Phone: (719) 475-1204 Fax: (719) 475-1264	
COMPLAINT	

COMES NOW Plaintiff, Belinda Kimball, and for her Complaint against the Defendant, the City of Pueblo, states as follows:

INTRODUCTION

1. This is a civil action under the Colorado Anti-Discrimination Act (“CADA”), C.R.S. § 24-34-401, *et seq.*, and the Family and Medical Leave Act (“FMLA”), 29 U.S.C. § 2615(a)(2), to correct unlawful employment practices and to provide appropriate relief to Plaintiff Belinda Kimball, who was adversely affected by such practices. Plaintiff alleges that Defendant City of Pueblo passed her over for promotion, refused to allow her to self-demote to a vacant position, and subjected her to a constructive discharge because of her race, age, in retaliation for engaging in activities protected under CADA, and/or in retaliation for exercising her rights under the FMLA.

2. Upon receipt of a Right to Sue letter from the Equal Employment Opportunity Commission, Plaintiff intends to amend this Complaint to include federal law claims for discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967.

JURISDICTION

3. Jurisdiction is conferred by the Colorado Constitution Article VI, Section 9 and 29 U.S.C. § 2617(a)(2).

VENUE

4. The unlawful actions alleged herein were committed in Pueblo County in the state of Colorado.

5. Venue is proper in the District Court of Pueblo County under C.R.S. § 24-34-306(11).

PARTIES

6. Plaintiff Belinda Kimball is a natural person who resides in Bell County, Texas.

7. Plaintiff is a Hispanic woman.

8. Plaintiff was born on September 10, 1979.

9. At all times relevant hereto, Plaintiff was an “employee” within the meaning of C.R.S. § 24-34-401(2) of CADA.

10. At all times relevant hereto, Plaintiff was an “eligible employee” within the meaning of 29 U.S.C. § 2611(2) of the FMLA.

11. Defendant City of Pueblo (“City” or “Pueblo”) is a municipal corporation located in Pueblo County, Colorado.

12. At all times relevant hereto, Pueblo was an “employer” within the meaning of C.R.S. § 24-34-401(3) of CADA.

13. At all times relevant hereto, Pueblo was an “employer” within the meaning of 29 U.S.C. § 2611(4) of the FMLA.

FACTS UPON WHICH CLAIMS ARE BASED

A. Plaintiff's Distinguished Career with Pueblo

14. In 2007, Plaintiff began her career with the City as an Emergency Services Dispatcher.

15. Over the course of the next 14 years, Plaintiff received multiple promotions and served in a variety of different roles within the City government.

16. In or around May 2011, Plaintiff was selected for the position of Public Works Administrative Technician.

17. In or around September 2016, Plaintiff was promoted to the position of Human Resources Analyst.

18. In January 2018, Plaintiff was named the City’s Employee of the Month.

19. On or about October 1, 2019, Plaintiff was promoted to the position of Deputy City Clerk.

20. In or around December 2019, Pueblo Mayor Nicholas Gradisar (“Mayor Gradisar”) appointed Plaintiff to the position of Interim Civil Service Administrator.

21. Between December 2019 and March 31, 2020, Plaintiff worked in the position of Interim Civil Service Administrator concurrently with her Deputy City Clerk role.

22. For each Employee Performance Report that Plaintiff received between July 2011 to July 2021, Plaintiff was rated “Strong” or “Outstanding.”

B. Plaintiff Engages in Protected Opposition to Discrimination

23. At all times relevant hereto, Employee A¹, a Caucasian male, was the Municipal Records and Technical Coordinator in the City Clerk’s Office.

24. Among other duties, Employee A was responsible for assisting City employees and the public with records requests.

25. On multiple occasions between November 20, 2019 and February 6, 2021, Plaintiff witnessed or became aware of Employee A mistreating non-Caucasian City employees and customers who requested assistance with records requests.

26. Plaintiff reasonably believed that Employee A’s mistreatment of non-Caucasian City employees and customers constituted unlawful discrimination on the basis of race, color, and/or national origin.

27. On multiple occasions between November 20, 2019 and February 6, 2021, Plaintiff reported and opposed Employee A’s discriminatory treatment of non-Caucasian City employees and customers.

¹ In order to protect the privacy of the individual at issue, who is not a party to this Complaint, Plaintiff refers to the individual throughout as “Employee A.”

28. For example, on or about November 20, 2019, Plaintiff became aware that Employee A spoke to City employee Pradeep Diska (“Mr. Diska”) in a rude and demeaning manner when Mr. Diska requested Employee A’s assistance.

29. On information and belief, Mr. Diska was born in India and speaks English with an Indian accent.

30. Employee A did not have a legitimate, non-discriminatory reason to speak to Mr. Diska in a rude or demeaning manner.

31. Plaintiff reasonably believed that Employee A mistreated Mr. Diska because of Mr. Diska’s race, color, and/or national origin.

32. Plaintiff had a good faith belief that Employee A’s mistreatment of Mr. Diska constituted unlawful discrimination on the basis of race, color, and/or national origin.

33. On or about November 20, 2019, Plaintiff reported Employee A’s discriminatory treatment of Mr. Diska to her supervisor, then-City Clerk Brenda Armijo (“City Clerk Armijo”).

34. When Plaintiff reported Employee A’s discriminatory treatment of Mr. Diska to City Clerk Armijo, Plaintiff advised City Clerk Armijo that the incident was consistent with the way that Employee A interacted with other non-Caucasian City employees and customers.

35. On August 3, 2020, Employee A refused to assist customer Che Sun Smith (“Ms. Smith”), a non-Caucasian woman of Asian descent.

36. Employee A did not have a legitimate, non-discriminatory reason to refuse to assist Ms. Smith.

37. Following Employee A's refusal to assist Ms. Smith, City Clerk Armijo contacted Plaintiff on her lunch break and instructed Plaintiff to return to the City Clerk's office to assist Ms. Smith.

38. Plaintiff reasonably believed that Employee A's refusal to assist Ms. Smith was because of Ms. Smith's race, color, and/or national origin.

39. Plaintiff had a good faith belief that Employee A's refusal to assist Ms. Smith constituted unlawful discrimination on the basis of race, color, and/or national origin.

40. On August 4, 2020, Rajan Vekaria, a non-Caucasian man of South-Asian descent, visited the City Clerk's office for assistance with paperwork.

41. When Mr. Vekaria approached the service counter of the City Clerk's office, Employee A put up his hand and said "I'm not dealing with this," and refused to provide service to Mr. Vekaria.

42. Employee A did not have a legitimate, non-discriminatory reason to refuse to assist Mr. Vekaria.

43. After refusing to provide service to Mr. Vekaria, Employee A demanded that Plaintiff assist Mr. Vekaria.

44. Plaintiff reasonably believed that Employee A's refusal to assist Mr. Vekaria was because of Mr. Vekaria's race, color, and/or national origin.

45. Plaintiff had a good faith belief that Employee A's refusal to assist Mr. Vekaria constituted unlawful discrimination on the basis of race, color, and/or national origin.

46. On August 5, 2020, Plaintiff contacted Pueblo's Chief of Staff Laura Solano ("Chief of Staff Solano") by telephone to report and oppose Employee A's discriminatory treatment of City employees and customers who are not Caucasian.

47. On August 6, 2020, Plaintiff also sent Chief of Staff Solano an email detailing the basis for Plaintiff's concern that Employee A's behavior was discriminatory.

48. In her August 6, 2020 email to Chief of Staff Solano, Plaintiff wrote, in relevant part:

[Employee A] is very selective as to whom he assists . . . If it is anyone with an accent, he will cut them off and get someone else to help. He refuses to help right in front of the person. I am concerned this is discriminatory and if not, it is terrible customer service and tarnishes the reputation of the City.

49. In her August 6, 2020 email to Chief of Staff Solano, Plaintiff also recounted her attempt to report Employee A's August 4, 2020 refusal to assist Mr. Vekaria to City Clerk Armijo. Plaintiff wrote, in relevant part:

[T]he Owner of Loco Liquors came in to follow up on paperwork he submitted. The gentleman is of Asian descent. Before the owner could finish his sentence, [Employee A] put his hand up to the customer and came to my office door and said "You need to handle this". However, when Heather Graham from Graham's Grill and Ruby's comes in, [Employee A] doesn't allow me to work with the liquor customer. I brought this to [City Clerk Armijo's] attention that I feel this is not right and could be considered discriminatory and [City Clerk Armijo's] laughed and said "[O]h you know [Employee A], he likes to work with the cute girls." Why is this allowed and ok? Since when as City employees do we get to pick and choose who we will serve.

50. On October 30, 2020, Plaintiff sent an email to City Clerk Armijo entitled "Concerns."

51. In her October 30, 2020 email, Plaintiff noted that the female employees in the City Clerk's office were held to a higher standard than Employee A, their male counterpart

52. In her October 30, 2020 email, Plaintiff complained that it was "wrong that different people are held to different standards."

53. Plaintiff had a good faith belief that holding female employees to a higher standard than their male counterpart constituted unlawful discrimination on the basis of sex.

54. On February 6, 2021, Plaintiff continued to report and oppose unlawful discrimination by sending an email to Mayor Gradisar entitled "Please Help."

55. In her February 6, 2021 message, Plaintiff set forth her attempts to solicit the help of management in curtailing Employee A's discriminatory behavior and to ensure that all employees in the City Clerk's office are treated equally.

56. In the February 6, 2021 message, Plaintiff also advised Mayor Gradisar that she believed she was "being punished and retaliated against for bringing forward discriminatory ad [sic] unfair concerns."

57. On or about February 13, 2021, Mayor Gradisar contacted Plaintiff via telephone.

58. During their February 13, 2021 telephone call, Mayor Gradisar notified Plaintiff that he did not believe that the conduct complained of in Plaintiff's February 6, 2021 email was inappropriate.

59. Mayor Gradisar took no action to address or curtail the discriminatory and unfair treatment that Plaintiff detailed in her February 6, 2021 email.

C. Defendant Passes Plaintiff Over for Promotion to City Clerk Despite Plaintiff's Superior Qualifications for the Position

60. On or about March 14, 2021, City Clerk Armijo resigned.

61. On or about March 16, 2021, Mayor Gradisar appointed Plaintiff to the position of Acting City Clerk.

62. On or about March 23, 2021, Mayor Gradisar appointed Marisa Stoller ("Ms. Stoller") to the position of City Clerk.

63. Ms. Stoller is a Caucasian female.

64. At the time of her appointment to City Clerk, Ms. Stoller was 33 years old.

65. Prior to appointing Ms. Stoller to the position of City Clerk, Pueblo did not advertise the City Clerk vacancy.

66. By failing to advertise the City Clerk vacancy, Pueblo violated Part 2 of Colorado's Equal Pay for Equal Work Act, C.R.S. § 8-5-201 *et seq.*, which requires transparency in opportunities for promotion and advancement.

67. Pursuant to Section 4-4 of Pueblo's City Code, all appointments of City employees "shall be based upon merit and fitness alone."

68. Prior to March 2021, Pueblo used a competitive process to hire for the position of City Clerk.

69. In March 2021, Pueblo did not utilize a competitive process to hire for the position of City Clerk.

70. As a result of Pueblo's refusal to advertise the City Clerk vacancy, Plaintiff was not permitted to apply for the position of City Clerk.

71. As a result of Pueblo's refusal to utilize a competitive process to fill the City Clerk position, Plaintiff was not permitted to compete for the position of City Clerk.

72. If the City had advertised the City Clerk vacancy in March 2021, Plaintiff would have applied for the position.

73. If the City had allowed Plaintiff to compete for the City Clerk position in March 2021, Plaintiff would have elected to do so.

74. Plaintiff was significantly more qualified for the City Clerk position than Ms. Stoller.

75. In March 2021, Plaintiff had more than 14 years of experience working for the City.

76. Prior to being appointed to the City Clerk position, Ms. Stoller had never been employed by the City.

77. According to the City Clerk Job Description, the City Clerk:

[P]erforms a variety of administrative and technical duties involving planning and administration of municipal records management, liquor, beer and marijuana licensing, municipal elections and overall Clerk of the City Council.

78. In March 2021, Plaintiff had approximately one year of experience planning and administering liquor, beer, and marijuana licenses for the City.

79. Prior to being appointed to the City Clerk position, Ms. Stoller had no experience planning and administering liquor, beer, and marijuana licenses for the City.

80. In March 2021, Plaintiff had approximately one year of experience planning and administering municipal elections for the City.

81. Prior to being appointed to the City Clerk position, Ms. Stoller had no experience planning and administering municipal elections for the City.

82. According to the City Clerk Job Description, the essential functions of the City Clerk position are as follows:

- Attends all City Council meetings, records, transcribes minutes of meetings.
- Administers oaths and affixes the City seal to official documents.
- Develops and implements goals, objectives, policies and priorities for the department in accordance with the City mission.
- Directs, supervises, and coordinates office operations and workload for the City Clerk's office.
- Prepares and administers departmental budget and monitor expenditures appropriately.
- Performs management oversight and adherence to procedural mandates for the Clerk's office functions and responsibilities as defined in pertinent rules, regulations, laws the City Charter or other recognized authorities.
- Supervises the administration of liquor license programs and processes, working collaboratively with the State Liquor Enforcement Division, Police Department personnel, City Attorney's office, applicants, licensees, and Council appointed liquor-licensing authority.

- Supervises the administration of marijuana license programs and processes.
- Maintains all official City records including minutes of Council meetings, ordinances, resolutions, official and legal documents, has responsibility for the safe keeping of all official City records and documents and the necessary recording of such documents with the County Clerk.
- Maintains and coordinates the codification efforts for the Municipal Code book.
- Coordinates and monitors the preparation and publication of all city ordinances in accordance with the required public notification requirements in the City Charter and State Statutes.
- Performs oversight and coordination of assigned special projects.
- Responds to complaints or issues resolution responsibilities as initial point of contact for internal and external customers, provides information about Council meeting agendas, election and initiated petition processes, and researches and retrieves public records.
- Writes ordinances, resolutions, public notices, letters and memorandums.
- Provides staff supervision, training and development on internal procedures and administrative processes.
- Coordinates and monitors preparation of City Council agenda documents and other related material, including drafting preliminary and final agendas and providing follow-up legal notifications and publications.

- Performs complex and varied administrative duties relating to special and regular municipal elections.

83. By March 2021, Plaintiff had approximately one year of experience attending City Council meetings and recording and transcribing minutes of City Council meetings.

84. On information and belief, prior to being appointed to the City Clerk position, Ms. Stoller had no experience attending City Council meetings and no experience recording and transcribing minutes of City Council meetings.

85. By March 2021, Plaintiff had approximately 11 years of experience administering oaths and 1.5 years of experience affixing the City seal to documents.

86. On information and belief, prior to being appointed to the City Clerk position, Ms. Stoller had no experience administering oaths and no experience affixing the City seal to official documents.

87. By March 2021, Plaintiff had approximately one year of experience developing and implementing goals, objectives, policies and priorities for the City Clerk's Office in accordance with the City mission.

88. On information and belief, prior to being appointed to the City Clerk position, Ms. Stoller had no experience developing and implementing goals, objectives, policies and priorities for the City Clerk's Office in accordance with the City mission.

89. By March 2021, Plaintiff had approximately one year of experience directing, supervising, and coordinating office operations and workload for the City Clerk's office.

90. Prior to being appointed to the City Clerk position, Ms. Stoller had no experience directing, supervising, and coordinating office operations and workload for the City Clerk's office.

91. By March 2021, Plaintiff had approximately ten years of experience preparing and administering departmental budget and monitoring expenditures for the City.

92. Prior to being appointed to the City Clerk position, Ms. Stoller had no experience preparing and administering departmental budget and monitoring expenditures for the City.

93. By March 2021, Plaintiff had approximately one year of experience performing management oversight and adherence to procedural mandates for the City Clerk's office functions and responsibilities as defined in pertinent rules, regulations, laws the City Charter or other recognized authorities.

94. On information and belief, prior to being appointed to the City Clerk position, Ms. Stoller had no experience performing management oversight and adherence to procedural mandates for the City Clerk's office functions and responsibilities as defined in pertinent rules, regulations, laws the City Charter or other recognized authorities

95. By March 2021, Plaintiff had approximately one year of experience supervising the administration of liquor license programs and processes, working collaboratively with the State Liquor Enforcement Division, Police Department personnel, City Attorney's office, applicants, licensees, and Council appointed liquor-licensing authority.

96. On information and belief, prior to being appointed to the City Clerk position, Ms. Stoller had no experience supervising the administration of liquor license programs and processes, working collaboratively with the State Liquor Enforcement Division, Police Department personnel, City Attorney's office, applicants, licensees, and Council appointed liquor-licensing authority.

97. By March 2021, Plaintiff had approximately seven years of experience maintaining official City records including minutes of Council meetings, ordinances, resolutions, official and legal documents.

98. On information and belief, prior to being appointed to the City Clerk position, Ms. Stoller had no experience maintaining official City records including minutes of Council meetings, ordinances, resolutions, official and legal documents.

99. By March 2021, Plaintiff had approximately one year of experience coordinating and monitoring the preparation and publication of all city ordinances in accordance with the required public notification requirements in the City Charter and State Statutes.

100. On information and belief, prior to being appointed to the City Clerk position, Ms. Stoller had no experience coordinating and monitoring the preparation and publication of all City ordinances in accordance with the required public notification requirements in the City Charter and State Statutes.

101. By March 2021, Plaintiff had approximately ten years of experience responding to complaints and issuing resolution responsibilities as the City's initial point of contact for internal and external customers.

102. On information and belief, prior to being appointed to the City Clerk position, Ms. Stoller had no experience responding to complaints or issuing resolution responsibilities as the City's initial point of contact for internal and external customers.

103. By March 2021, Plaintiff had approximately ten years of experience writing ordinances, resolutions, public notices, letters, and memorandums for the City.

104. On information and belief, prior to being appointed to the City Clerk position, Ms. Stoller had no experience writing ordinances, resolutions, public notices, letters, and memorandums for the City.

105. By March 2021, Plaintiff had approximately ten years of experience providing staff supervision, training, and development on internal City procedures and administrative processes.

106. On information and belief, prior to being appointed to the City Clerk position, Ms. Stoller had no experience providing staff supervision, training, and development on internal City procedures and administrative processes.

107. By March 2021, Plaintiff had approximately one year of experience coordinating and monitoring preparation of City Council agenda documents and other related material.

108. On information and belief, prior to being appointed to the City Clerk position, Ms. Stoller had no experience coordinating and monitoring preparation of City Council agenda documents and other related material.

109. By March 2021, Plaintiff had approximately one year of experience performing complex and varied administrative duties relating to special and regular municipal elections.

110. On information and belief, prior to being appointed to the City Clerk position, Ms. Stoller had no experience performing complex and varied administrative duties relating to special and regular municipal elections.

111. According to the City Clerk Job Description, the City Clerk position requires the skill and ability to:

- Work successfully with and provide good customer service to officials, other City employees, and representatives of outside agencies and organizations, and members of the Pueblo community.
- Provide administrative support to Mayor and City Council.
- Interpret the Colorado Revised Statutes, Secretary of State Rules and Regulations, City Charter and Municipal Code of Ordinances.

112. By March 2021, Plaintiff had approximately 14 years of experience providing customer service to officials, City employees, representatives of outside agencies and organizations, and members of the Pueblo community.

113. On information and belief, prior to being appointed to the City Clerk position, Ms. Stoller had no experience providing customer service to officials, City employees, representatives of outside agencies and organizations, and members of the Pueblo community.

114. By March 2021, Plaintiff had approximately one year of experience providing administrative support to the Pueblo Mayor and the Pueblo City Council.

115. On information and belief, prior to being appointed to the City Clerk position, Ms. Stoller had no experience providing administrative support to the Pueblo Mayor and the Pueblo City Council.

116. By March 2021, Plaintiff had approximately 14 years of experience interpreting the City Charter and Municipal Code of Ordinances.

117. On information and belief, prior to being appointed to the City Clerk position, Ms. Stoller had no experience interpreting the City Charter and Municipal Code of Ordinances.

118. At the time that she was appointed to the City Clerk position, Ms. Stoller possessed a Bachelor's degree and a Masters of Business Administration.

119. In March 2021, Plaintiff possessed a Bachelor's degree, a Masters of Business Administration, and was months away from receiving her Doctorate in Business Administration.

120. Pueblo did not offer a legitimate, non-discriminatory reason for passing Plaintiff over for promotion to City Clerk.

121. Pueblo's decision not to select Plaintiff for the City Clerk position was motivated by Plaintiff's race and/or age, and/or was taken to retaliate against Plaintiff for opposing discrimination.

***D. Plaintiff Engages in Additional Protected Activity and
is Retaliated Against Further by Defendant***

122. On April 29, 2021, Plaintiff filed a charge of discrimination with the Colorado Civil Rights Division (“CCRD”) against Pueblo.

123. In her charge of discrimination, Plaintiff alleged she was passed over for promotion to the City Clerk position because of her age, race, and/or in retaliation for opposing discrimination.

124. Between April and May 2021, the City required Plaintiff to train Ms. Stoller for the City Clerk position.

125. Plaintiff was qualified to train Ms. Stoller for the City Clerk position because she was intimately familiar with the job and proficient at performing the job’s tasks.

126. The City’s decision to require Plaintiff to train Ms. Stoller for the City Clerk position after the City denied Plaintiff the opportunity to apply or compete for the City Clerk position was incredibly offensive to Plaintiff and caused her significant stress and anxiety.

127. On or about May 13, 2021, Plaintiff requested leave under the FMLA to treat her stress and anxiety.

128. Pueblo approved Plaintiff’s request for job-protected leave under the FMLA.

129. On or about May 14, 2021, Chief of Staff Solano contacted Pueblo’s Human Resources department and requested confidential information about the serious medical condition underlying Plaintiff’s request for FMLA leave.

130. Chief of Staff Solano’s request for confidential information about the serious medical condition underlying Plaintiff’s request for FMLA leave was inconsistent with the FMLA’s confidentiality requirements.

131. On information and belief, Chief of Staff Solano did not inquire about the serious medical condition underlying other employees' requests for FMLA leave.

132. On or about May 14, 2021, Pueblo's Human Resources department contacted Plaintiff and advised her of Chief of Staff Solano's attempt to obtain confidential information about the serious medical condition underlying Plaintiff's request for FMLA leave.

133. Chief of Staff Solano's attempt to invade Plaintiff's privacy and to ascertain confidential information about Plaintiff's medical condition further contributed to Plaintiff's anxiety and stress.

134. Given the increasing anxiety and stress associated with working in the City Clerk's Office, Plaintiff attempted to transfer to a different department within City government.

135. On July 20, 2021, Plaintiff applied for a demotion to a vacant position as a Human Resources Compliance Specialist with Pueblo.

136. Section 6-8-6 of the Pueblo City Code allows Pueblo to fill vacancies by voluntary demotion for the convenience of the City or the employee.

137. From 2016 to 2019, Plaintiff occupied the position of Human Resources Analyst, which was substantially similar to the position of Human Resources Compliance Specialist.

138. Plaintiff met all of the job qualifications for the Human Resources Compliance Specialist position.

139. After Plaintiff applied for a demotion, coworkers advised Plaintiff that Mayor Gradisar was angry that Plaintiff filed a Charge of Discrimination with the CCRD and that Mayor Gradisar would likely deny Plaintiff's demotion request for this reason.

140. On July 27, 2021, Pueblo denied Plaintiff's request to self-demote to the position of Human Resources Compliance Specialist.

141. Pueblo denied Plaintiff's request to self-demote to the position of Human Resources Compliance Specialist to retaliate against Plaintiff for opposing discrimination and/or for filing a Charge of Discrimination with the CCRD, and/or to retaliate against Plaintiff for exercising her rights under the FMLA.

142. On July 29, 2021, Plaintiff resigned her employment with Pueblo because the work environment had become intolerable due to the continued discrimination and retaliation against Plaintiff.

E. Plaintiff Exhausts her Administrative Remedies under CADA

143. On April 29, 2021, Plaintiff timely filed a Charge of Discrimination with the CCRD.

144. Plaintiff's Charge of Discrimination was dually filed with the United States Equal Employment Opportunity Commission ("EEOC").

145. On August 31, 2021, Plaintiff amended her Charge of Discrimination.

146. In response to Plaintiff's Charge of Discrimination, the City submitted a Position Statement.

147. In its Position Statement, the City claimed that Ms. Stoller was selected to be City Clerk because of "her qualifications."

148. In its Position Statement, the City did not identify any of Ms. Stoller's alleged qualifications.

149. In its Position Statement, the City merely claimed, without explanation, that Ms. Stoller possessed "good leadership skills" and that Mayor Gradisar was "impressed with her."

150. As part of the CCRD's investigation, Mayor Gradisar was interviewed.

151. During his CCRD interview, Mayor Gradisar stated that he appointed Ms. Stoller to City Clerk because he needed to "bring someone from the outside in order to address the dysfunction in the [City Clerk's] office."

152. In discussing this point, Mayor Gradisar made specific reference to Plaintiff's protected activity of reporting and opposing discrimination within the City Clerk's office.

153. On April 28, 2022, the CCRD concluded that Defendant "failed to offer a legitimate, non-discriminatory, and non-retaliatory business reason to decline to promote [Ms. Kimball]" to the position of City Clerk.

154. On April 28, 2022, the CCRD concluded that Ms. Kimball submitted sufficient evidence to support a claim of a discriminatory failure to promote against Pueblo.

155. On June 27, 2022, Plaintiff received a Right to Sue letter from the CCRD.

156. This Complaint is timely because it has been filed within ninety days of the date upon which the jurisdiction of the Colorado Civil Rights Commission ceased.

FIRST CAUSE OF ACTION
(Race Discrimination—Violation of the Colorado Anti-Discrimination Act)

157. Plaintiff realleges and incorporates all paragraphs of this Complaint as though fully set forth herein.

158. Plaintiff has exhausted her administrative remedies under CADA.

159. Colo. Rev. Stat. § 24-34-402(1)(a) makes it unlawful for an employer to refuse to promote any individual otherwise qualified because of the individual's race.

160. Plaintiff is Hispanic.

161. Ms. Stoller is Caucasian.

162. Plaintiff was qualified for the City Clerk position.

163. Plaintiff was significantly more qualified for the City Clerk position than Ms. Stoller.

164. Despite Plaintiff's qualifications, Defendant did not allow Plaintiff to apply or compete for the position of City Clerk.

165. If Plaintiff had been permitted to apply and compete for the position of City Clerk, she would have done so.

166. Defendant refused to promote Plaintiff to the position of City Clerk because of Plaintiff's race.

167. Plaintiff's race was a motivating factor in the City's decision not to promote Plaintiff to the position of City Clerk.

168. Defendant's proffered reasons for choosing Ms. Stoller for the City Clerk instead of Plaintiff were not legitimate and/or were pretext for illegal race discrimination.

169. As a result of Defendant's discriminatory conduct, Plaintiff has suffered damages, including lost wages and compensatory damages, and has incurred attorneys' fees and costs.

SECOND CAUSE OF ACTION
(Age Discrimination - Violation of the Colorado Anti-Discrimination Act)

170. Plaintiff realleges and incorporates all paragraphs of this Complaint as though fully set forth herein.

171. Plaintiff has exhausted her administrative remedies under CADA.

172. Colo. Rev. Stat. § 24-34-402(1)(a) makes it unlawful for an employer to refuse to promote any individual otherwise qualified because of the individual's age.

173. Colo. Rev. Stat. § 24-34-301(1) defines age as "a chronological age of at least forty years."

174. On March 23, 2021, Plaintiff was 41 years of age.

175. On March 23, 2021, Ms. Stoller was 33 years of age.

176. Plaintiff was qualified for the City Clerk position.

177. Plaintiff was significantly more qualified for the City Clerk position than Ms. Stoller.

178. Despite Plaintiff's qualifications, Defendant did not allow Plaintiff to apply or compete for the position of City Clerk.

179. If Plaintiff had been permitted to apply and compete for the position of City Clerk, Plaintiff would have done so.

180. Defendant refused to promote Plaintiff to the position of City Clerk because of Plaintiff's age.

181. Defendant's proffered reasons for choosing Ms. Stoller for the City Clerk instead of Plaintiff were not legitimate and/or were pretext for illegal age discrimination.

182. As a result of Defendant's discriminatory conduct, Plaintiff has suffered damages, including lost wages and compensatory damages, and has incurred attorneys' fees and costs.

THIRD CAUSE OF ACTION
(Retaliation for Opposing Discrimination - Violation of the Colorado Anti-Discrimination Act)

183. Plaintiff realleges and incorporates all paragraphs of this Complaint as though fully set forth herein.

184. Colo. Rev. Stat. § 24-34-402(1)(e) prohibits employers from discriminating against any employee because the employee has opposed any practice made a discriminatory or an unfair employment practice by CADA.

185. Plaintiff engaged in protected activity under CADA when she opposed Employee A's discriminatory and unfair treatment of non-Caucasian City employees and customers.

186. Plaintiff engaged in protected activity under CADA when she opposed the City's practice of holding female employees in the City Clerk's office to a higher standard than their male counterpart.

187. Defendant retaliated against Plaintiff for engaging in protected activity under CADA by passing Plaintiff over for promotion to the position of City Clerk.

188. Defendant retaliated against Plaintiff for engaging in protected activity under CADA by refusing to allow her to self-demote to a vacant position for which she was qualified.

189. Defendant retaliated against Plaintiff for engaging in protected activity under CADA by creating such intolerable working conditions that Plaintiff was forced to resign her employment with Defendant.

190. Plaintiff's protected opposition to discrimination was a motivating factor in the City's decisions to pass Plaintiff over for promotion to City Clerk, to deny Plaintiff's request to self-demote, and to subject Plaintiff to a constructive discharge.

191. As a result of Defendant's retaliatory conduct, Plaintiff has suffered damages, including lost wages and compensatory damages, and has incurred attorneys' fees and costs.

FOURTH CAUSE OF ACTION
(Retaliation for Filing a Charge of Discrimination - Violation of the Colorado Anti-Discrimination Act)

192. Plaintiff realleges and incorporates all paragraphs of this Complaint as though fully set forth herein.

193. Colo. Rev. Stat. § 24-34-402(1)(e) prohibits employers from discriminating against any employee because the employee has filed a charge of discrimination with the Colorado Civil Rights Division.

194. On April 29, 2021, Plaintiff engaged in protected activity under CADA by filing a charge of discrimination with the Colorado Civil Rights Division against Pueblo.

195. Defendant retaliated against Plaintiff for engaging in protected activity by refusing to allow her to self-demote to a vacant position for which she was qualified.

196. Defendant retaliated against Plaintiff for engaging in protected activity by creating such intolerable working conditions that Plaintiff was forced to resign her employment with Defendant.

197. Plaintiff's CCRD charge of discrimination was a motivating factor in the City's decisions to deny Plaintiff's request to self-demote and to subject Plaintiff to a constructive discharge.

198. As a result of Defendant's retaliatory conduct, Plaintiff has suffered damages, including lost wages and compensatory damages, and has incurred attorneys' fees and costs.

FIFTH CAUSE OF ACTION
(Retaliation - Violation of the Family and Medical Leave Act)

199. Plaintiff realleges and incorporates all paragraphs of this Complaint as though fully set forth herein.

200. The Family and Medical Leave Act, 29 USCS § 2615, prohibits retaliation against an employee who has taken family or medical leave authorized by the Act.

201. From May 14, 2021 to July 28, 2021, Plaintiff exercised her FMLA rights by taking job-protected leave for her serious health condition.

202. Defendant retaliated against Plaintiff for taking FMLA leave by denying Plaintiff's request to self-demote to a vacant position.

203. Defendant retaliated against Plaintiff for taking FMLA leave by creating such intolerable working conditions that Plaintiff was forced to resign her employment with Defendant.

204. Defendant's decisions to deny Plaintiff's request to self-demote and to subject Plaintiff to a constructive discharge constitute unlawful retaliation against Plaintiff in violation of Plaintiff's rights under the FMLA.

205. As a result of Defendant's retaliatory conduct, Plaintiff has suffered damages, including lost wages and compensatory damages, and has incurred attorneys' fees and costs.

Prayer for Relief

WHEREFORE, Plaintiff prays for the following relief:

- a) An order requiring Defendant to promote Plaintiff retroactively to the position of City Clerk or to an equivalent position;
- b) Nonpecuniary and compensatory damages, including damages for humiliation, emotional distress and consequential damages;
- c) Reinstatement or front pay in lieu thereof;
- d) Liquidated damages;
- e) Back pay in an amount equal to lost compensation and benefits;
- f) Injunctive relief;
- g) Nominal damages;
- h) A declaration that Defendant's conduct violated Plaintiff's rights under CADA and under the FMLA;

- i) Pre- and post-judgment interest at the highest rate allowed by law;
- j) Costs and reasonable attorneys' fees; and
- k) All other legal or equitable relief to which Plaintiff is entitled.

Jury Demand

Plaintiff requests this matter be tried by a jury.

Respectfully submitted this 27th day of July, 2022.

CORNISH & DELL'OLIO, P.C.

s/Julie D. Yeagle

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