

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No.

TERRI EDDY, REBECCA ESQUIBEL, DENITA HARTZOG, GIOVANNA KEMP, LISA MAES, PEGGY MAJOR, COURTNEY MICKELSON, SADIE MONTANO, PAULA PURDY, AND STACI WRIGHT

Plaintiffs,

v.

CITY AND COUNTY OF DENVER, DENVER SHERIFF DEPARTMENT,

Defendant.

COMPLAINT

Plaintiffs Terri Eddy, Rebecca Esquibel, Denita Hartzog, Giovanna Kemp, Lisa Maes, Peggy Major, Courtney Mickelson, Sadie Montano, Paula Purdy, and Staci Wright (collectively, “Plaintiffs”), by their undersigned attorneys, state as follows for their Complaint against the City and County of Denver, Denver Sheriff Department (“Defendant”):

I. INTRODUCTION

1. This action is brought under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* (“Title VII”), for damages and injunctive and other equitable relief. Plaintiffs are ten women who either currently are or previously were employed by Defendant as correctional officers with the rank of deputy. Plaintiffs regularly supervise inmates as part of their job duties, and regularly are subjected to severe and unwelcome sexual harassment by male inmates during the course of those duties. This harassment includes, but is

not limited to, male inmates demeaning Plaintiffs with sex-based degrading language and purposefully exposing themselves to and masturbating in front of Plaintiffs. This sexual harassment is fostered by the failure of Defendant to take reasonable steps to prevent and stop it. In addition, Defendant has a pattern and practice of discriminating against Plaintiffs and other female deputies with respect to job assignments and other terms and conditions of employment.

II. JURISDICTION, VENUE, AND PARTIES

2. This action arises under Title VII and the jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331 and 1337.

3. Venue is proper in this Court, because Defendant is a municipal corporation within the State of Colorado and exists by virtue of the laws, constitution, and statutes of Colorado, all actions complained of were carried out within the State of Colorado, and Plaintiffs were employed by Defendant within the State of Colorado.

4. At all times relevant to the allegations in this Complaint, Defendant is and was a person as defined by 42 U.S.C. § 2000e(a) and an employer as defined by 42 U.S.C. § 2000e(b),

5. Defendant controls and operates the Denver Sheriff Department (“Department”).

6. Plaintiffs are ten women who are or until recently were employed by Defendant as Deputies in the Department. They include the Department’s longest-tenured deputy (Deputy Hartzog) and several others who have over twenty years’ tenure with the Department (Deputies Eddy, Esquibel, Kemp and Montano). Most worked at the County Jail during the relevant time period, although two worked at the DDC throughout (Deputies Major and Mickelson), and two were transferred from the County Jail to the DDC during the relevant time period (Deputies Eddy and Purdy). All have personally experienced the hostile work environment described in this Complaint. Deputies Major, Mickelson, Eddy and Purdy have been constructively discharged as

a result of the hostile work environment; the other six Plaintiffs remain employed in the Department and continue to experience the hostile work environment.

7. Each Plaintiff filed one or more timely Charges of Discrimination with the United States Equal Employment Opportunity Commission (“E.E.O.C.”) and within the past ninety days has received a Notice of Right to Sue from the E.E.O.C. with respect to each such Charge.

III. GENERAL ALLEGATIONS

A. Overview of Defendant’s Correctional Facilities.

8. The Department operates two correctional facilities within the City and County of Denver. They are referred to informally as the “County Jail” and the “DDC” (for Downtown Detention Center).

9. All inmates are housed in sex-segregated “pods.” Some pods consist of open barracks (“open pods”), whereas in others the inmates spend significant period of time confined in separate cells (“closed pods”).

10. Most of Denver’s female inmates are incarcerated at the County Jail in “Building 21.” Building 21 houses only female inmates, all of whom are housed in large open pods.

11. Most of Denver’s male inmates are housed at the DDC, in a combination of open and closed pods. The rest are at the County Jail, again in a combination of open and closed pods.

12. Generally speaking, male inmates who are viewed as more dangerous or whom have been convicted of more serious offenses are kept in closed pods, whereas no such separation occurs with respect to the female inmates in Building 21. In Building 21 all inmates are housed together in open pods (except when being temporarily punished with administrative segregation), at times without sufficient regard for seriousness of offense, propensity towards violence, or other criteria based on which inmates typically are classified.

B. Hostile Work Environment.

13. Plaintiffs frequently supervised male inmates as part of their job duties during the time period relevant to this action. A few Plaintiffs have or had standing assignments to pods that house male inmates. Others frequently are required to provide coverage in such pods, when a pod is short staffed or for other reasons.

14. As one example, throughout the relevant time period, Deputy Major's standing assignment was to the intake unit at the DDC. However, more than one day a week, on average, Deputy Major was reassigned to an inmate pod housing male inmates, often as the only deputy on duty in that pod.

15. When supervising male inmates at the DDC and County Jail, female deputies are subjected to sexual harassment on a daily basis.

16. This harassment often includes extreme acts such as male inmates deliberately masturbating while watching Plaintiffs and/or in view of Plaintiffs. Sometimes, this is timed to be in progress when Plaintiffs or other female staff are scheduled to be present, such as during regular rounds; other times, it is done opportunistically when an inmate realizes a female deputy or staff member is present.

17. Other examples of frequently repeated nonverbal sexual harassment of Plaintiffs and other female deputies include male inmates: exposing their genitalia to female deputies; simulating masturbation while watching female deputies; and simulating other sexual acts while watching female deputies. Plaintiff Mickelson was groped by an inmate.

18. In addition to nonverbal harassment, Plaintiffs and other female deputies are subjected to a steady barrage of verbal sexual harassment when supervising male inmates at the

DDC and County Jail. Specific examples of sexually harassing comments witnessed by one or more Plaintiffs between January 1, 2013 and the present include, but are by no means limited to:

a. Male inmates telling female deputies things such as “I’m going to ass rape you with no lube,” “I will suck your clit,” “fuck this” (spoken by undressed male inmate simulating masturbation), “die, woman,” “shake that ass,” “your Dad raped you when you were young, that’s why you are such a bitch,” “suck my dick,” “I’d like to see you naked,” “I’d like to fuck you,” and “why don’t you fuck yourself with my finger?”

b. Male inmates asking or saying to other male inmates, in the presence of and usually about a Plaintiff, such things as “do you need some pussy?”, “I used to fuck that pussy,” “how would you like to kiss that in the morning?”, “want to stick your dick in her ass,” “would you like to lick something,” and “I think she needs some dick.”

c. Inmates frequently calling Plaintiffs by a variety of sexually derogatory terms, such as “cunt” and “bitch.”

19. When a female deputy supervises male inmates for any period of time, it is the norm for her to experience one or more of the foregoing forms of sexual harassment.

C. Defendant’s Responsibility for Hostile Work Environment.

20. At all times relevant, Defendant has had actual notice of the hostile work environment to which its female deputies are subjected, at both the County Jail and the DDC.

21. Between them, Plaintiffs have reported scores of incidents of sexual harassment to Defendant through various reporting mechanisms, including, but not limited to, log entries, the Offense in Custody (hereinafter “OIC”) reporting system, emails to supervisors, staff briefings, and verbal reports.

22. In addition, some Plaintiffs have more generally raised with sergeants and higher ranking officers the problem of pervasive harassment of female deputies. For example, Deputy Major raised the problem of pervasive sexual harassment by male inmates with Captain Swift and Sergeants Denovellis, Gable, and Gioso.

23. Even absent such express reports, Defendant, with the exercise of due diligence, should have known of the hostile work environment, because it is so open and pervasive.

24. Despite Defendant's actual and constructive knowledge of the pervasive hostile work environment experienced by its female deputies, it has failed utterly to take any reasonable steps to mitigate that environment.

25. Defendant's indifference to the hostile work environment experienced by its female deputies manifests both in its response to individual reports of harassment and in its more general policies and practices.

26. Even reports of the most serious infractions, such as inmates masturbating in front of female deputies, generally have been met with a complete lack of effective action by Defendant. At best, token penalties are imposed on the offending inmate, and often there are no penalties at all. This has resulted in a jail culture in which male inmates know they can harass female deputies with relative impunity.

27. Defendant has failed to provide an effective system for female deputies to report sexual harassment by inmates. The OIC reporting system, which is the primary means of reporting inmate offenses, is not adequate to the task. The OIC system requires data entry into a computer terminal, which is often not feasible when a deputy is monitoring inmates. Moreover, the OIC is used for reporting so many different types of incidents and issues, that no adequate attention is given to incidents of sexual misconduct and harassment. More importantly, the

Department's supervisors have made it clear that reports of sexual harassment by male inmates against female deputies are not welcomed.

28. Indeed, the Department repeatedly has discouraged Plaintiffs and others from reporting sexual harassment of female deputies by male inmates. For example, a sergeant repeatedly told Plaintiff Eddy not to report violations, but just give the offending inmate a work assignment. This is completely ineffective, because many inmates prefer to receive work assignments in order to relieve boredom. Other time, supervisors have allowed reports, but required them to first be altered to reduce the severity of the alleged offense.

29. The most common response by sergeants or higher ranking officers when presented with either a specific report of sexual harassment or concerns about the hostile work environment more generally, has been to respond with words to the effect that it is "part of the job" and/or that the complaining female deputy "should be used to it."

30. As examples, each of Captain Swift and Sergeants Denovellis, Gable, and Gioso responded to Deputy Major in this fashion. Sergeant Denovellis instructed Deputy Eddy not to officially report such incidents and to give an inmate a working assignment instead. As another example, Deputy Purdy reported incidents to Sergeant Johnson on several occasions, but his typical response was dismissive, and on one occasion he even laughed at her.

31. Taken as a whole, Defendant's response to reports of sexual harassment by male inmates has the effect of deterring female deputies from making such reports.

32. In addition to ignoring or failing to respond adequately to those reports that are made of sexual harassment by inmates, Defendant has failed to take reasonable measures to mitigate the problem. As examples, it: does not train deputies in how to respond to sexual harassment by inmates; has not trained deputies and command staff how to curtail sexual

harassment from inmates; has not trained deputies or their superiors that sexual harassment by inmates can implicate federal employment laws, such as Title VII; has not meaningfully implemented a zero tolerance policy; has not adopted an effective reporting system; has not adopted an internal inmate offense code that reflects the severity of many forms of harassment or imposes commensurate punishments; does not regularly refer offenders for criminal prosecution; has not encouraged the police and prosecution to pursue prosecution; and has not effectively utilized those resources that are already available.

33. All of these remedial measures, and others, are well known among corrections professionals and could be implemented by Defendant. Notwithstanding notice of the problem and the availability of reasonable corrective measures, Defendant has failed to respond with reasonable preventative measures.

D. Discrimination in Job Assignments.

34. Within the Department, there are many different assignments available to deputies. The largest number of involve direct inmate supervision within a pod. However, there also are a number of regular assignments that involve significantly less inmate supervision, such as staffing a gate or other location outside of any pod.

35. In addition to these regular assignments, there are “special assignments” that must be separately applied for. These vary widely, from firearms instructor to the receiving department. Typically, they involve little or no inmate supervision and less overtime and weekend work than regular assignments.

36. These assignments available to deputies vary widely with respect to the degree of danger, difficulty, and stress they entail. Training other deputies in the use of firearms, for

example, is a job fundamentally different in almost every respect than supervising inmates in an open pod.

37. In general, the more direct exposure to inmates associated with an assignment, the more dangerous, demanding, and stressful the assignment will be. The most sought after assignments are those with the least direct inmate contact.

38. Generally speaking, the assignments available to deputies within the Department can be divided into the following three categories, ranked from most dangerous and difficult to most sought after: direct supervision of inmates in pods; regular assignments that do not consist primarily of direct inmate supervision; and special assignments.

39. Moreover, within each category there is significant variation. For example, working in open pods is more demanding than working in closed pods, and working in larger pods is more demanding than working in smaller pods.

40. The Department discriminates against female deputies and in favor of male deputies in three different respects. The cumulative effect of these three different forms of discrimination is to concentrate female deputies disproportionately into the most dangerous and demanding assignments (i.e., those involving direct supervision of inmates in open pods), while the more desirable assignments are staffed disproportionately by male deputies, especially special assignments.

41. First, for most of the time period relevant to this action the Department has had a practice and expressed policy of only assigning female deputies to supervise female inmates, to the greatest extent possible. Because the great majority of female inmates are housed in open pods, this alone means that a disproportionately large number of female deputies will be assigned to direct inmate supervision in open pods. Indeed, most Plaintiffs either have, or during much of

the relevant time period had, as her regular assignment the direct supervision of female inmates in Building 21, which consists almost entirely of large, barrack-style pods.

42. The primary purpose for this policy and practice is not to protect female deputies from harassment, but rather to protect male deputies from allegations of misconduct by female inmates.

43. Even among the direct supervision assignments, Building 21 stands out as among the most difficult. It consists of open pods far larger than most administered by the Department, is typically overcrowded, and typically was staffed inadequately, leading to a far higher than average inmate to deputy ration. This is compounded by that fact that in Building 21, inmates with behavioral issues, violence issues, and mental health problems are housed with the general population. In addition, because Building 21 functions essentially as a “jail within a jail,” but without separate staff to perform many of the duties ancillary to direct inmate supervision, all of those duties must be performed by the deputies assigned to inmate supervision, adding further to deputy workload.

44. Second, although each deputy has a regular, standing assignment, on each shift the duty sergeant has unfettered authority to reassign deputies. For example, when a deputy normally assigned to an inmate pod is unable to fill that assignment for some reason, the duty sergeant most frequently will reassign to that pod a deputy whose normal assignment is not located within one of the pods. The duty sergeant has complete discretion over whom to reassign, without regard for seniority or other considerations.

45. The department has a pattern and practice of discriminating in favor of male deputies and against female deputies in making these reassignments. The result is that senior female deputies who are able to bid onto assignments that involve less inmate supervision, still

spend far more of their time reassigned to direct inmate supervision than their similarly-situated male colleagues.

46. For example, throughout the relevant time period, Plaintiff Hartzog, as the most senior deputy in the Department, has been able to bid into regular assignments in corridor and main gate posts at the County Jail, which involve relatively little direct inmate supervision. However, during approximately half of her shifts, she is reassigned to a position involving direct inmate supervision. Throughout most of the relevant time period these reassignments were almost exclusively to Building 21. On several occasions the sergeant explained the reassignment with words to the effect of, “we need females there.”

47. Finally, the Department has long discriminated based on sex, in favor of men and against women, in awarding special assignments. This practice has been so widespread and so longstanding as to justifiably give female deputies the sense that it would be futile to apply for any special assignment.

48. When a female deputy nonetheless does apply, the discrimination continues. For example, Deputy Montano has applied for several special assignments, only to see them go to less experienced and less qualified male deputies. This last occurred in September 2015, with a receiving officer position. Likewise, Deputy Mickelson applied for a special assignment as a firearms instructor, but the position was given instead to a similarly-situated but less qualified male deputy.

49. As a result of Defendant’s discriminatory practices and policies, special assignments are filled disproportionately by men, while the average female deputy spends significantly more of her time, over the course of her career, directly supervising inmates than does the average male deputy, with most female deputies further concentrated into Building 21.

50. Inmate supervision entails multiple hazards, stressors, and hardships including, but not limited to, physically subduing violent prisoners, exposure to infectious diseases, exposure to prisoners' emotional and angry outbursts, and exposure to life-threatening violence. As a result of Defendant's discriminatory policies and practices, the average female deputy will spend a greater portion of her career exposed to these hazards than will the average male deputy.

51. The effect of Defendant's sex-based discrimination with respect to job assignments is compounded by its sex-based discrimination in the expectations of its employees within those assignments.

52. For example, when a female deputy is assigned to a male pod, she is expected to carry out all duties on an equal footing with her male colleagues. However, when a male deputy is assigned to a female pod (which has happened more frequently in the past several months, after the filing of a related lawsuit), he is not required to perform many of the duties typically performed in that assignment. For example, male deputies have not in fact been required to do rounds in female pods, which greatly increases the burden on their female colleagues.

53. Most disturbingly, even when a female deputy is confronted with a disturbance involving female inmates, male deputies are not required to intervene and assist. Again, the purpose of this policy is to protect male deputies against allegations of misconduct by female inmates, even at the cost of greater risk to the physical safety of female deputies.

54. In addition to the greater physical demands and risks placed on female deputies by Defendant's discriminatory practices, those practices harm the prospects for advancement of Plaintiffs and other female deputies. Breadth of experience within the department is helpful to deputies when they seek promotions. Because female deputies have fewer opportunities to gain

those broad experiences, especially through special assignments, they have fewer opportunities for promotion to sergeant and further career advancement.

IV. CLAIMS FOR RELIEF

First Claim for Relief (Hostile Work Environment)

55. Plaintiffs incorporate herein all of the foregoing allegations in this Complaint.

56. Each of Plaintiffs Eddy, Esquibel, Hartzog, Kemp, Maes, Major, Mickelson, Montano, Purdy, and Wright is a woman who is or has been employed by Defendant as a deputy in the Department.

57. Because of her sex, each Plaintiff has been subjected to a hostile work environment during the course of her employment with Defendants.

58. The hostile work environment to which Plaintiffs have been subjected because of their sex is sufficiently severe and pervasive to alter the terms and conditions of their employment by Defendant.

59. Throughout the time period relevant to this Complaint, Defendant has had both actual and constructive notice of the hostile work environment to which Plaintiffs have been subjected, and yet failed to take any reasonable steps to mitigate that environment.

60. The first Plaintiffs filed Charges of Discrimination with the EEOC based in part on this hostile work environment on August 1, 2014. However, that environment, and Defendant's tolerance of it, constitutes a single, continuing violation which began far more than 300 days before that filing. Under the continuing violation doctrine, Plaintiffs seek to recover damages for the entirety of this continuing violation.

61. Each Plaintiff has suffered emotional distress a result of the hostile work environment she has suffered in Defendant's employment.

62. Plaintiffs Major, Mickelson, and Purdy have been constructively discharged by Defendant as a result of this hostile work environment, and suffered economic damages as a result.

63. In the absence of injunctive relief, Plaintiffs, Esquibel, Hartzog, Kemp, Maes, Montano, and Wright will continue to be damaged by Defendants' illegal conduct.

Second Claim for Relief

(Disparate Treatment in the Terms and Conditions of Employment)

64. Plaintiffs incorporate herein all of the foregoing allegations in this Complaint.

65. Defendant has a pattern and practice of discriminating against female deputies employed by the Department with respect to job assignments, work environment, work expectations, and support.

66. As a result of this pattern and practice of discrimination, each Plaintiff, because she is a woman, has received less favorable work assignments, faced increased risk of physical harm, been required to work harder under more demanding circumstances, and suffered decreased opportunities for career advancement, causing each Plaintiff both emotional and economic damages.

67. In the absence of injunctive relief, Plaintiffs Esquibel, Hartzog, Kemp, Maes, Montano, and Wright will continue to be damaged by Defendants' illegal conduct.

V. PRAYER FOR RELIEF AND JURY DEMAND

WHEREFORE, Plaintiffs respectfully request that the Court grant them the following relief:

1. Back pay and actual damages in an amount to be shown at trial to compensate them for lost wages, benefits, and employment opportunities;
2. Front pay in an amount to be shown at trial, and/or reinstatement;

3. Compensatory damages;
4. Reasonable attorneys' fees and costs of this litigation as provided under Title VII of the Civil Rights Act of 1964, as amended;
5. Pre-judgment and post-judgment interest and costs of this action together with reasonable expert witness fees as provided by law;
6. Permanent injunctions restraining these violations of Title VII of the Civil Rights Act of 1964; and
7. Such other and further relief as this Court deems necessary and proper.

Plaintiffs request a jury trial on all questions of fact raised by this Complaint.

Respectfully submitted this 29th day of June, 2016.

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