

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAMON WINTERS,

Plaintiff,

v.

CITY OF LYNDEN, a municipal corporation;
and ROBERT SPINNER, individually and his
marital community,

Defendants.

NO.

COMPLAINT FOR DAMAGES AND
FURTHER RELIEF

*** * * JURY DEMAND * * ***

Plaintiff Damon Winters, by and through his undersigned attorneys, for his complaint against Defendants City of Lynden and Robert Spinner, alleges as follows:

I. PARTIES

1.1. Plaintiff Damon Winters (“Winters” or “Plaintiff”) is and was at all relevant times a resident of Whatcom County, Washington. He was born in Egypt, is a citizen of Egypt and Canada, and was a lawfully admitted permanent resident of the United States from December 29, 2010 until March 1, 2016, the day he became a United States citizen. He is not white or Caucasian. His ancestry, ethnicity, and race is Arab Egyptian.

1.2. Defendant City of Lynden (the “City”) is a municipal corporation duly authorized and organized under the laws of the state of Washington. The City established the

1 City of Lynden Fire Department and a Civil Service Commission. At all relevant times, the
2 City was Plaintiff's employer in the state of Washington.

3 1.3. Defendant Robert Spinner ("Spinner") is a resident of Whatcom County,
4 Washington. He is, and was at all relevant times, the Assistant Fire Chief for the City of Lynden
5 Fire Department. The acts alleged herein by Spinner were done in the scope of his employment,
6 which employment was for the benefit and on behalf of his marital community. At all relevant
7 times, he was part of Plaintiff's supervisory chain of command, and was Plaintiff's "supervisor"
8 and "manager" under federal and state anti-discrimination law. He perpetrated, participated in,
9 aided, abetted, encouraged, or incited discriminatory conduct against Plaintiff in violation of
10 federal and state anti-discrimination law, and he is personally liable for such violations of law.
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12 **II. JURISDICTION & VENUE**

13 2.1. Plaintiff alleges federal claims against each defendant under the Civil Rights Act
14 of 1866, *as amended*, 42 U.S.C. § 1981; the Civil Rights Act of 1871, *as amended*, 42 U.S.C.
15 § 1983; and the Civil Rights Act of 1991, *as amended*.
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17 2.2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, which
18 grants district court jurisdiction over all civil actions arising under the Constitution, laws, or
19 treaties of the United States.
20

21 2.3. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. §
22 1343(a)(4), which grants district court jurisdiction over any civil action to recover damages or
23 to secure equitable relief under any Act of Congress providing for the protection of civil rights.

24 2.4. Plaintiff alleges state claims against each defendant under Washington Law
25 Against Discrimination, chapter 49.60 RCW. Plaintiff presented his mandatory notice of tort
26

1 claim with the City more than sixty (60) days prior to filing this action and has exhausted the
2 claim filing requirements of chapter 4.96 RCW.

3 2.5. This Court has supplemental jurisdiction over the state law claims under 28
4 U.S.C. § 1367(a) because those claims arise out of the same case or controversy as the federal
5 claims.

6 2.6. Venue is proper in this Court under 28 U.S.C. § 1391(b) because each defendant
7 is a resident of the Western District of Washington and the events giving rise to Plaintiff's
8 claims took place in the Western District of Washington.

9
10 **III. STATEMENT OF FACTS**

11 3.1. Damon Winters is an experienced firefighter. He attended the Washington State
12 Fire Training Academy in 2011, where he successfully completed comprehensive fire training
13 and earned all certification necessary to qualify him for firefighter positions in Washington
14 State. He then served as a volunteer firefighter with North Whatcom Fire and Rescue from
15 June 2011 until September 2015. And, since June 2012, he has served as a volunteer firefighter
16 with Whatcom County Fire District No. 8. He earned accolades and good performance reviews
17 in these jobs, and started as a volunteer firefighter with the Lynden Fire Department in August
18 2013.

19 3.2. Defendant Spinner is the Lynden Fire Department's Assistant Fire Chief, and he
20 has held that position since October 2010. As Assistant Fire Chief, Spinner has the authority
21 and power to influence the terms and conditions of Winters' employment, including hiring,
22 firing, supervision, scheduling, and discipline.

23 3.3. The City of Lynden and Spinner knew of Winters' race, color, national origin,
24 and citizenship status from the beginning of his engagement with the Lynden Fire Department.
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1 3.4. Soon after Winters started as a volunteer firefighter with the Lynden Fire
2 Department in 2013, Spinner sarcastically and with animus asked Winters if he could “even
3 work for the City” because he was “not a U.S. citizen.” Winters responded that neither his job
4 application nor the job description stated any citizenship requirement. To this, Spinner replied,
5 “Yeah, well, I should look into that and change it.”
6

7 3.5. Since that time, and on several occasions in 2013, 2014 and 2015, Winters told
8 Spinner and other Lynden firefighters that he was applying to become a full-fledged U.S. citizen
9 as soon as he was eligible, in late 2015.

10 3.6. Pursuant to Washington State law and chapter 2.12 of the Lynden Municipal
11 Code, Lynden’s Civil Service Commission (the “Commission”) is the final policymaker with
12 respect to the terms of employment of civil service employees with the Lynden Fire
13 Department. The rules and regulations established by the Commission apply to and govern a
14 host of personnel matters, including examinations for hiring, appointments, continued
15 employment, promotions, transfers, reinstatements, demotions, suspensions, and discharges.
16

17 3.7. The City has an official policy, established by the Commission pursuant to
18 authority granted to it by state and local law, and set forth in the Civil Service Rules and
19 Regulations for the Fire Department (the “Civil Service Rules”), that each person applying for
20 a position in the classified service “must be a citizen of the United States.” This requirement
21 applies to “full-paid” positions with the Fire Department, whether or not they are full or part-
22 time, and to “provisional” and “temporary” appointments. It does not, however, apply to
23 “volunteer” firefighter positions.
24

25 3.8. There are two general types of firefighter positions at the Lynden Fire
26 Department: (1) volunteer firefighter positions, which are not classified service positions and

1 are not governed by the Civil Service Rules and (2) non-volunteer firefighter positions, which
2 are classified service positions and are governed by the Civil Service Rules. Both types of
3 firefighters perform identical or near-identical job functions. There are currently sixteen (16)
4 volunteer firefighters and eleven (11) non-volunteer firefighters working at the Lynden Fire
5 Department.

6
7 3.9. In April 2014, the Lynden Fire Department announced openings for four (4)
8 non-volunteer, full-paid firefighter positions: two (2) full-time positions and two (2) part-time
9 positions. None of these positions were “temporary” positions under the Civil Service Rules
10 or job announcements.

11 3.10. Winters applied for both a full-time and a part-time position and informed
12 Spinner that he wanted to be hired into a full-time position and was applying for a part-time
13 position only as a back-up or second choice.

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15 3.11. Spinner created, conducted and scored the examination, in violation of the Civil
16 Service Rules. He knew which exam belonged to each examinee, and marked exams as each
17 examinee finished, in violation of the Civil Service Rules.

18 3.12. Spinner has a history and pattern of ignoring, manipulating, bending and
19 breaking civil service and other rules to achieve his own ends, including selection of firefighters
20 he personally wants to hire.

21
22 3.13. Winters was not selected by Spinner for either of the two full-time positions.
23 Instead, Spinner selected two white firefighters for those positions and gave Winters a part-time
24 position in June 2014.

25 3.14. The position Spinner gave to Winters was not a “temporary” position or
26 appointment under the Civil Service Rules, which define a “temporary appointment” as “the

1 appointment of eligible candidates from a list with regard to willingness to accept for a limited
2 time but not to exceed three months.” Even if Winters’ appointment was originally “temporary”
3 (which it was not), it did not continue to be temporary after Winters worked in the position for
4 more than three months.

5 3.15. The Civil Service Rules dictate that “[n]o temporary appointment shall be
6 continued and no person shall be employed on a temporary basis for more than three (3) months
7 in any one (1) year” and that, before a temporary appointment is made, “[t]he Secretary and
8 Chief Examiner shall notify the person or persons appearing on the appropriate eligible list, or
9 lists, indicating the nature of the position and its duration, to learn who may be willing to accept
10 temporary appointment.” Neither Spinner nor anybody else notified Winters that the part-time
11 appointment he was seeking was a temporary appointment. After receiving the appointment,
12 Winters worked in the position for longer than three months. Indeed, Winters went on to
13 successfully complete a twelve (12) month probationary period and at that time became a
14 “permanent employee” under the Civil Service Rules.

15 3.16. The Civil Service Rules also provide that “[a]ll vacancies in the classified
16 service shall be filled either by original appointment, temporary appointment, re-employment,
17 promotion, transfer or demotion. The Commission will advise appointing authorities [Mayors
18 of the City of Lynden] as to which of these methods should be employed in each instance, but
19 the final decision will be left to the appointing authorities.” This Rule was not followed in
20 respect to Winters’ appointment to a part-time position in June 2014.

21 3.17. Further, the Civil Service Rules state that “[i]n making such an [temporary]
22 appointment, the appointing authority shall make requisition to the Secretary and Chief
23 Examiner in the manner provided for regular appointments, but shall indicate the time in which
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1 it is estimated to terminate.” This Rule was not followed in respect to Winters’ appointment to
2 a part-time position in June 2014.

3 3.18. A non-volunteer, full-time firefighter position then became available at the end
4 of August 2015. Winters was originally selected and received an email announcing his
5 selection. However, a few days later, on September 10, 2015, Spinner told Winters that he
6 could not have the job, stating that the Civil Service Rules prohibited non-U.S. citizens from
7 firefighter positions at the City.
8

9 3.19. Spinner also told Winters that his citizenship status precluded him from his part-
10 time position, too. He told Winters that he would “make an exception” for the part-time
11 position, but not for the full-time position. “We’ll keep you in that [part-time] position,”
12 Spinner said, “I’ll make that exception and you can keep that job for now.” Winters responded
13 by asking Spinner to call Fire Chief Gary Baar to see if he could make a decision concerning
14 the full-time position. Spinner immediately said, “No. No. I’m acting chief and my decision
15 is final.” He then gave the job to a white firefighter, who was less qualified and had less
16 experience than Winters.
17

18 3.20. Winters applied for a non-volunteer, full-time firefighter position again, in
19 September 2015. Without authority and in violation of the Civil Service Rules, Spinner rejected
20 Winters’ application and refused to allow him to sit for the examination. According to Spinner,
21 this was because Winters’ application packet did not include an Emergency Vehicle Incident
22 Prevention (“EVIP”) certificate.
23

24 3.21. Spinner’s explanation is a pretext for discrimination for a variety of reasons,
25 including that (1) other firefighters have been allowed to work at the City without this specific
26 certificate; (2) Spinner knows this certificate is issued to firefighters who attended Whatcom

1 County Recruit Academy, and not to those who attended Washington State Fire Training
2 Academy, like Winters, who receive near identical training and licensure but are not issued a
3 separate “EVIP” certificate; and (3) Spinner knows, and has acknowledged, that Winters has
4 received all required training, and has been issued a certificate equivalent to an EVIP certificate,
5 and that Winters is fully qualified for a full-time firefighter position with the City. Spinner’s
6 decision to not allow Winters to take this exam had nothing to do with an EVIP certificate, and
7 everything to do with Winters’ race, color, national origin, and citizenship status.
8

9 3.22. Spinner wrote, proctored, and scored the exam himself, in violation of the Civil
10 Service Rules. He scored the exams with his wife and while examinees were still in the room.
11 Later, he told Winters, “I know you have taken the EVIP, but don’t have the certificate. If you
12 did have it, I would have let you go through with the testing.” When Winters asked what else
13 he could have done to be considered for the position, Spinner said he should have contacted the
14 entity that provided the training. Winters began telling him that he had done that, but Spinner
15 interrupted him, saying, “Believe me; I know. I heard all about it. Everyone hears everything
16 in the fire service.” Spinner also indicated that Winters’ citizenship status was not a big deal,
17 saying, “we would have worked something out.”
18

19 3.23. At the beginning of December 2015, Spinner removed Winters from the January
20 2016 work schedule completely and informed him to expect a formal letter from Human
21 Resources terminating his employment as a non-volunteer, part-time firefighter.
22

23 3.24. On December 2, 2015, Spinner told Winters that his position “was supposed to
24 be a temporary part-time position not to exceed five to six months” and his employment must
25 now end because he has been in the position for over a year. However, Spinner stated in the
26 same conversation that he does not know “what is legal and what’s not legal” for part-time

1 employees. And Spinner's claim that Winters' position was "temporary" is inconsistent with
2 (1) the original job announcement, (2) the job description, (3) the Civil Service Rules, (4) the
3 length of time Winters held the position, and (5) the fact he satisfactorily served a 12-month
4 probationary period.

5 3.25. Pursuant to chapter 4.96 RCW, Winters presented the City with a letter and tort
6 claim form on December 3, 2015, setting forth in summary fashion the factual and legal bases
7 for his discrimination claims against Spinner and the City.
8

9 3.26. A few days later, Lynden's City Council cancelled its December 7, 2015 public
10 meeting and instead held an executive session with Spinner that day, notifying him of Winters'
11 discrimination claims. That evening, Spinner's wife, Tammy Spinner, sent a Snapchat message
12 to Winters' girlfriend out-of-the-blue, which read, "GREEDY ASSHOLES."
13

14 3.27. Spinner is perceived by co-workers as a deeply racist man, who has made highly
15 inappropriate and offensive comments about several different ethnic groups (including, for
16 example, calling Blacks "stupid," saying Michelle Obama "looks like a monkey," and calling
17 Mexicans "spics" and "dirty"), women, and members of the LGBT community.

18 3.28. In the workplace, Spinner has repeatedly made belittling, sarcastic, caustic,
19 snide, and derogatory remarks about Winters' race, ethnicity, color and national origin. These
20 comments include, but are not limited to, calling Winters "the Egyptian," "the terrorist," "the
21 resident terrorist," "Habib, the terrorist," and "Dirka Dirka," a derogatory term referring to
22 things Muslim, Arabic, or Middle Eastern, or to things related to terrorists or terrorism. Spinner
23 often complains that Winters "stinks up" the kitchen with his "ethnic food" and "Indian crap,"
24 despite Winters cooking the same or similar food as other firefighters. Commenting about an
25 old salad with fruit flies in the refrigerator, Spinner said, "It's some shit your people would eat,
26

1 right Damon? Extra protein, right Damon?” He has made other comments, including “your
2 greasy Egyptian hair,” “oh, he’s Egyptian, what does he know,” “just wear a turban, greasy
3 Egyptian hair,” “turban heads are dirty and they all stink like curry,” “curly-headed Egyptian
4 fucker,” and “fucking Canadians are idiots.” Spinner made these kinds of comments routinely,
5 during nearly every shift Winters worked, and over a long period of time.
6

7 3.29. Spinner’s sarcastic, demeaning, derogatory and racist commentary continued
8 even on the day Winters presented his tort claim to the City, December 3, 2015. On that day,
9 Winters and fellow firefighters were sitting together at a kitchen table. Referring to the mass
10 killing by two Muslim gunmen in San Bernardino, California, Spinner yelled out to the
11 firefighters from his office words to the effect of, “I’d be careful! You see where this is going?
12 Be careful about him (referring to Winters). He can come back pissed off and it’s workplace
13 violence.”
14

15 3.30. After receiving notice of Winters’ report and claim of discrimination, Spinner
16 retaliated and immediately began holding meetings with fire department personnel in an effort
17 to turn them against Winters and taint their future testimony. On December 11, 2015, for
18 example, Spinner approached Lieutenant Michael Whitley and Firefighter Tim Chartier and
19 demanded to speak with them about Winters’ claims. In a conversation that lasted at least thirty
20 minutes, Spinner told Whitley and Chartier about the tort claim Winters had presented and
21 discussed many facts in detail. He admitted calling Winters a “curly-haired fuck” and making
22 “derogatory comments” in Winters’ presence. And, he sought to disparage Winters by, among
23 other things, claiming that Winters is lying and simply “looking for a payday.” Referring to
24 Winters, Spinner also told Whitley and Chartier that he felt like “strangling that fucker,” and
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1 that Winters' "life would be really miserable around here" if he did get a full-time position with
2 the City.

3 3.31. Chartier felt extremely uncomfortable with Spinner's conduct and comments.
4 He believed Spinner was trying to coerce, intimidate, and improperly influence him, knowing
5 an internal investigation and litigation would likely ensue. Chartier felt so intimidated and
6 threatened by Spinner's comments that he reported him to Human Resources on or about
7 December 13, 2015.
8

9 3.32. Instead of disciplining Spinner, by letter dated December 29, 2015, Vanessa
10 Roebuck of Human Resources informed Winters that his "Temporary Part-Time Firefighter
11 position with the Lynden Fire Department is being eliminated, effective January 1, 2016." The
12 letter invited Winters to "continue on with the Lynden Fire Department as a volunteer
13 firefighter" at a reduced rate of pay by signing up for open shifts on the schedule made by
14 Spinner.
15

16 3.33. Winters did sign up for open shifts as a volunteer, working by compulsion fewer
17 hours at a reduced rate of pay and with no benefits.

18 3.34. Despite knowing about Spinner's improper and illegal commentary and conduct,
19 and his efforts to block Winters from any full-time or permanent position, the City has endorsed
20 and furthered Spinner's agenda by wrongfully eliminating Winters' part-time position, and by
21 taking no meaningful action to promptly correct and remedy the hostile work environment
22 Spinner created for Winters and others at the Lynden Fire Department.
23

24 3.35. Throughout his time with the Lynden Fire Department, Winters has performed
25 well, has maintained all necessary certification, and has been very well regarded for his
26 capabilities, work ethic, and positive attitude. His dedication and service has been so

1 outstanding, he earned the Chief's Company Award from Fire Chief Gary Baar in 2014. He
2 was and is now qualified for all positions to which he applied at the City.

3 **IV. FIRST CAUSE OF ACTION AGAINST BOTH DEFENDANTS**
4 **VIOLATION OF 42 U.S.C. § 1981 OF THE CIVIL RIGHTS ACT OF 1866**
5 **DISPARATE TREATMENT BASED ON ALIENAGE**

6 4.1. Plaintiff realleges above paragraphs 1.1 through 3.35.

7 4.2. Defendants discriminated against Plaintiff in the terms and conditions of
8 employment based on his citizenship status in violation of the Civil Rights Act of 1866, *as*
9 *amended*, 42 U.S.C. § 1981.

10 4.3. In addition to Defendant Spinner, Defendant City is liable because its official
11 policy, adopted by its policy-maker the Civil Service Commission pursuant to City ordinance,
12 that each person applying for a position in the classified service "must be a citizen of the United
13 States," resulted in a violation of Plaintiff's civil rights under the Civil Rights Act of 1866, *as*
14 *amended*, 42 U.S.C. § 1981.

15 4.4. As a result and proximate cause of the violations of the Civil Rights Act of 1866,
16 *as amended*, 42 U.S.C. § 1981, Plaintiff has been injured and damaged in an amount to be
17 proven at trial, for which he is entitled to recover all his actual and compensatory, economic
18 and non-economic, special and general damages.

19 4.5. Plaintiff is further entitled to an award for his costs, litigation expenses, and
20 reasonable attorneys' fees against Defendants pursuant to the Civil Rights Attorney's Fee
21 Awards Act of 1976, 42 U.S.C. § 1988, and other authority.

22 4.6. The conduct, acts, and/or omissions of Defendant Spinner constitute willful,
23 deliberate, reckless, or callous indifference to and/or reckless disregard for the civil rights of
24 Plaintiff, and/or arose from ill will, malice, evil motive or intent, giving rise to an award of
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1 punitive damages against Defendant Spinner pursuant to the Civil Rights Act of 1866, *as*
2 *amended*, 42 U.S.C. § 1981, 42 U.S.C. §1981a, and other authority.

3 **V. SECOND CAUSE OF ACTION AGAINST DEFENDANT SPINNER**
4 **VIOLATION OF 42 U.S.C. § 1981 OF THE CIVIL RIGHTS ACT OF 1866**
5 **DISPARATE TREATMENT BASED ON RACE**

6 5.1. Plaintiff realleges above paragraphs 1.1 through 3.35.

7 5.2. Defendant Spinner discriminated against Plaintiff in the terms and conditions of
8 employment based on his race in violation of the Civil Rights Act of 1866, *as amended*, 42
9 U.S.C. § 1981.

10 5.3. As a result and proximate cause of the violations of the Civil Rights Act of 1866,
11 *as amended*, 42 U.S.C. § 1981, Plaintiff has been injured and damaged in an amount to be
12 proven at trial, for which he is entitled to recover all his actual and compensatory, economic
13 and non-economic, special and general damages.

14 5.4. Plaintiff is further entitled to an award for his costs, litigation expenses, and
15 reasonable attorneys' fees pursuant to the Civil Rights Attorney's Fee Awards Act of 1976, 42
16 U.S.C. § 1988, and other authority.

17 5.5. The conduct, acts, and/or omissions of Defendant Spinner constitute willful,
18 deliberate, reckless, or callous indifference to and/or reckless disregard for the civil rights of
19 Plaintiff, and/or arose from ill will, malice, evil motive or intent, giving rise to an award of
20 punitive damages against Defendant Spinner pursuant to the Civil Rights Act of 1866, *as*
21 *amended*, 42 U.S.C. § 1981, 42 U.S.C. §1981a, and other authority.
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1 **VI. THIRD CAUSE OF ACTION AGAINST DEFENDANT SPINNER**
2 **VIOLATION OF 42 U.S.C. § 1981 OF THE CIVIL RIGHTS ACT OF 1866**
3 **HOSTILE WORK ENVIRONMENT BASED ON ALIENAGE**

4 6.1. Plaintiff realleges above paragraphs 1.1 through 3.35.

5 6.2. Defendant Spinner created, allowed, and/or maintained a hostile work
6 environment on the basis of Plaintiff's citizenship status in violation of the Civil Rights Act of
7 1866, *as amended*, 42 U.S.C. § 1981.

8 6.3. As a result and proximate cause of the violations of the Civil Rights Act of 1866,
9 *as amended*, 42 U.S.C. § 1981, Plaintiff has been injured and damaged in an amount to be
10 proven at trial, for which he is entitled to recover all his actual and compensatory, economic
11 and non-economic, special and general damages.

12 6.4. Plaintiff is further entitled to an award for his costs, litigation expenses, and
13 reasonable attorneys' fees pursuant to the Civil Rights Attorney's Fee Awards Act of 1976, 42
14 U.S.C. § 1988, and other authority.

15 6.5. The conduct, acts, and/or omissions of Defendant Spinner constitute willful,
16 deliberate, reckless, or callous indifference to and/or reckless disregard for the civil rights of
17 Plaintiff, and/or arose from ill will, malice, evil motive or intent, giving rise to an award of
18 punitive damages against Defendant Spinner pursuant to the Civil Rights Act of 1866, *as*
19 *amended*, 42 U.S.C. § 1981, 42 U.S.C. §1981a, and other authority.
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VII. FOURTH CAUSE OF ACTION AGAINST DEFENDANT SPINNER
VIOLATION OF 42 U.S.C. § 1981 OF THE CIVIL RIGHTS ACT OF 1866
HOSTILE WORK ENVIRONMENT BASED ON RACE

7.1. Plaintiff realleges above paragraphs 1.1 through 3.35.

7.2. Defendant Spinner created, allowed, and/or maintained a hostile work environment on the basis of Plaintiff's race in violation of the Civil Rights Act of 1866, *as amended*, 42 U.S.C. § 1981.

7.3. As a result and proximate cause of the violations of the Civil Rights Act of 1866, *as amended*, 42 U.S.C. § 1981, Plaintiff has been injured and damaged in an amount to be proven at trial, for which he is entitled to recover all his actual and compensatory, economic and non-economic, special and general damages.

7.4. Plaintiff is further entitled to an award for his costs, litigation expenses, and reasonable attorneys' fees pursuant to the Civil Rights Attorney's Fee Awards Act of 1976, 42 U.S.C. § 1988, and other authority.

7.5. The conduct, acts, and/or omissions of Defendant Spinner constitute willful, deliberate, reckless, or callous indifference to and/or reckless disregard for the civil rights of Plaintiff, and/or arose from ill will, malice, evil motive or intent, giving rise to an award of punitive damages against Defendant Spinner pursuant to the Civil Rights Act of 1866, *as amended*, 42 U.S.C. § 1981, 42 U.S.C. §1981a, and other authority.

VIII. FIFTH CAUSE OF ACTION AGAINST BOTH DEFENDANTS
VIOLATION OF 42 U.S.C. § 1983 OF THE CIVIL RIGHTS ACT OF 1871
DISPARATE TREATMENT BASED ON ALIENAGE

8.1. Plaintiff realleges above paragraphs 1.1 through 3.35.

8.2. Defendants discriminated against Plaintiff in the terms and conditions of employment based on his citizenship status in violation of the Civil Rights Act of 1871, *as amended*, 42 U.S.C. § 1983.

8.3. Defendants' conduct, acts, and/or admissions deprived Plaintiff of rights secured by the Constitution and laws of the United States, specifically the Civil Rights Act of 1866, *as amended*, 42 U.S.C. § 1981 and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, including a constitutionally protected liberty interest in a workplace environment free from discrimination on the basis of alienage.

8.4. In addition to Defendant Spinner, Defendant City is liable because its official policy, adopted by its policy-maker the Civil Service Commission pursuant to City ordinance, that each person applying for a position in the classified service "must be a citizen of the United States," resulted in a violation of Plaintiff's civil rights under the United States Constitution and federal law.

8.5. As a result and proximate cause of the violations of the Civil Rights Act of 1871, *as amended*, 42 U.S.C. § 1983, Plaintiff has been injured and damaged in an amount to be proven at trial, for which he is entitled to recover all his actual and compensatory, economic and non-economic, special and general damages.

8.6. Plaintiff is further entitled to an award for his costs, litigation expenses, and reasonable attorneys' fees pursuant to the Civil Rights Attorney's Fee Awards Act of 1976, 42 U.S.C. § 1988, and other authority.

1 8.7. The conduct, acts, and/or omissions of Defendant Spinner constitute willful,
 2 deliberate, reckless, or callous indifference to and/or reckless disregard for the civil rights of
 3 Plaintiff, and/or arose from ill will, malice, evil motive or intent, giving rise to an award of
 4 punitive damages against Defendant Spinner pursuant to the Civil Rights Act of 1871, *as*
 5 *amended*, 42 U.S.C. § 1983, 42 U.S.C. §1981a, and other authority.
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7 **IX. SIXTH CAUSE OF ACTION AGAINST DEFENDANT SPINNER**
 8 **VIOLATION OF 42 U.S.C. § 1983 OF THE CIVIL RIGHTS ACT OF 1871**
 9 **DISPARATE TREATMENT BASED ON RACE**

10 9.1. Plaintiff realleges above paragraphs 1.1 through 3.35.

11 9.2. Defendant Spinner discriminated against Plaintiff in the terms and conditions of
 12 employment based on his race in violation of the Civil Rights Act of 1871, *as amended*, 42
 13 U.S.C. § 1983.

14 9.3. Defendant Spinner's conduct, acts, and/or admissions had the effect of depriving
 15 Plaintiff of rights secured by the Constitution and laws of the United States, specifically the
 16 Civil Rights Act of 1866, *as amended*, 42 U.S.C. § 1981, and the Equal Protection Clause of
 17 the Fourteenth Amendment to the United States Constitution, including a constitutionally
 18 protected liberty interest in a work-place environment free from discrimination on the basis of
 19 race.

20 9.4. As a result and proximate cause of the violations of the Civil Rights Act of 1871,
 21 *as amended*, 42 U.S.C. § 1983, Plaintiff has been injured and damaged in an amount to be
 22 proven at trial, for which he is entitled to recover all his actual and compensatory, economic
 23 and non-economic, special and general damages.
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1 9.5. Plaintiff is further entitled to an award for his costs, litigation expenses, and
2 reasonable attorneys' fees pursuant to the Civil Rights Attorney's Fee Awards Act of 1976, 42
3 U.S.C. § 1988, and other authority.

4 9.6. The conduct, acts, and/or omissions of Defendant Spinner constitute willful,
5 deliberate, reckless, or callous indifference to and/or reckless disregard for the civil rights of
6 Plaintiff, and/or arose from ill will, malice, evil motive or intent, giving rise to an award of
7 punitive damages against Defendant Spinner pursuant to the Civil Rights Act of 1866, *as*
8 *amended*, 42 U.S.C. § 1981, 42 U.S.C. §1981a, and other authority.

10 **X. SEVENTH CAUSE OF ACTION AGAINST DEFENDANT SPINNER**
11 **VIOLATION OF 42 U.S.C. § 1983 OF THE CIVIL RIGHTS ACT OF 1871**
12 **HOSTILE WORK ENVIRONMENT BASED ON ALIENAGE**

13 10.1. Plaintiff realleges above paragraphs 1.1 through 3.35.

14 10.2. Defendant Spinner created, allowed, and/or maintained a hostile work
15 environment on the basis of Plaintiff's citizenship status in violation of the Civil Rights Act of
16 1871, *as amended*, 42 U.S.C. § 1983.

17 10.3. Defendant Spinner's conduct, acts, and/or admissions had the effect of depriving
18 Plaintiff of rights secured by the Constitution and laws of the United States, specifically the
19 Civil Rights Act of 1866, *as amended*, 42 U.S.C. § 1981, and the Equal Protection Clause of
20 the Fourteenth Amendment to the United States Constitution, including a constitutionally
21 protected liberty interest in a work-place environment free from discrimination on the basis of
22 alienage.

23 10.4. As a result and proximate cause of the violations of the Civil Rights Act of 1871,
24 *as amended*, 42 U.S.C. § 1983, Plaintiff has been injured and damaged in an amount to be
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1 proven at trial, for which he is entitled to recover all his actual and compensatory, economic
2 and non-economic, special and general damages.

3 10.5. Plaintiff is further entitled to an award for his costs, litigation expenses, and
4 reasonable attorneys' fees pursuant to the Civil Rights Attorney's Fee Awards Act of 1976, 42
5 U.S.C. § 1988, and other authority.

6 10.6. The conduct, acts, and/or omissions of Defendant Spinner constitute willful,
7 deliberate, reckless, or callous indifference to and/or reckless disregard for the civil rights of
8 Plaintiff, and/or arose from ill will, malice, evil motive or intent, giving rise to an award of
9 punitive damages against Defendant Spinner pursuant to the Civil Rights Act of 1866, *as*
10 *amended*, 42 U.S.C. § 1981, 42 U.S.C. §1981a, and other authority.

11
12 **XI. EIGHTH CAUSE OF ACTION AGAINST DEFENDANT SPINNER**
13 **VIOLATION OF 42 U.S.C. § 1983 OF THE CIVIL RIGHTS ACT OF 1871**
14 **HOSTILE WORK ENVIRONMENT BASED ON RACE**

15 11.1. Plaintiff realleges above paragraphs 1.1 through 3.35.

16 11.2. Defendant Spinner created, allowed, and/or maintained a hostile work
17 environment on the basis of Plaintiff's race in violation of the Civil Rights Act of 1871, *as*
18 *amended*, 42 U.S.C. § 1983.

19 11.3. Defendant Spinner's conduct, acts, and/or admissions had the effect of depriving
20 Plaintiff of rights secured by the Constitution and laws of the United States, specifically the
21 Civil Rights Act of 1866, *as amended*, 42 U.S.C. § 1981 and the Equal Protection Clause of the
22 Fourteenth Amendment to the United States Constitution, including a constitutionally protected
23 liberty interest in a work-place environment free from discrimination on the basis of race.

24 11.4. As a result and proximate cause of the violations of the Civil Rights Act of 1871,
25 *as amended*, 42 U.S.C. § 1983, Plaintiff has been injured and damaged in an amount to be
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1 proven at trial, for which he is entitled to recover all his actual and compensatory, economic
2 and non-economic, special and general damages.

3 11.5. Plaintiff is further entitled to an award for his costs, litigation expenses, and
4 reasonable attorneys' fees pursuant to the Civil Rights Attorney's Fee Awards Act of 1976, 42
5 U.S.C. § 1988, and other authority.

6 11.6. The conduct, acts, and/or omissions of Defendant Spinner constitute willful,
7 deliberate, reckless, or callous indifference to and/or reckless disregard for the civil rights of
8 Plaintiff, and/or arose from ill will, malice, evil motive or intent, giving rise to an award of
9 punitive damages against Defendant Spinner pursuant to the Civil Rights Act of 1866, *as*
10 *amended*, 42 U.S.C. § 1981, 42 U.S.C. §1981a, and other authority.

11
12 **XII. NINTH CAUSE OF ACTION AGAINST DEFENDANT SPINNER**
13 **VIOLATION OF 42 U.S.C. § 1983 OF THE CIVIL RIGHTS ACT OF 1871**
14 **DISPARATE TREATMENT BASED ON NATIONAL ORIGIN**

15 12.1. Plaintiff realleges above paragraphs 1.1 through 3.35.

16 12.2. Defendant Spinner discriminated against Plaintiff in the terms and conditions of
17 employment based on his national origin in violation of the Civil Rights Act of 1871, *as*
18 *amended*, 42 U.S.C. § 1983.

19 12.3. Defendant Spinner's conduct, acts, and/or admissions had the effect of depriving
20 Plaintiff of rights secured by the Constitution and laws of the United States, specifically the
21 Equal Protection Clause of the Fourteenth Amendment to the United States Constitution,
22 including a constitutionally protected liberty interest in a work-place environment free from
23 discrimination on the basis of national origin.

24 12.4. As a result and proximate cause of the violations of the Civil Rights Act of 1871,
25 *as amended*, 42 U.S.C. § 1983, Plaintiff has been injured and damaged in an amount to be
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1 proven at trial, for which he is entitled to recover all his actual and compensatory, economic
2 and non-economic, special and general damages.

3 12.5. Plaintiff is further entitled to an award for his costs, litigation expenses, and
4 reasonable attorneys' fees pursuant to the Civil Rights Attorney's Fee Awards Act of 1976, 42
5 U.S.C. § 1988, and other authority.

6 12.6. The conduct, acts, and/or omissions of Defendant Spinner constitute willful,
7 deliberate, reckless, or callous indifference to and/or reckless disregard for the civil rights of
8 Plaintiff, and/or arose from ill will, malice, evil motive or intent, giving rise to an award of
9 punitive damages against Defendant Spinner pursuant to the Civil Rights Act of 1866, *as*
10 *amended*, 42 U.S.C. § 1981, 42 U.S.C. §1981a, and other authority.

11
12 **XIII. TENTH CAUSE OF ACTION AGAINST DEFENDANT SPINNER**
13 **VIOLATION OF 42 U.S.C. § 1983 OF THE CIVIL RIGHTS ACT OF 1871**
14 **HOSTILE WORK ENVIRONMENT BASED ON NATIONAL ORIGIN**

15 13.1. Plaintiff realleges above paragraphs 1.1 through 3.35.

16 13.2. Defendant Spinner created, allowed, and/or maintained a hostile work
17 environment on the basis of Plaintiff's national origin in violation of the Civil Rights Act of
18 1871, *as amended*, 42 U.S.C. § 1983.

19 13.3. Defendant Spinner's conduct, acts, and/or admissions had the effect of depriving
20 Plaintiff of rights secured by the Constitution and laws of the United States, specifically the
21 Civil Rights Act of 1866, *as amended*, 42 U.S.C. § 1981 and the Equal Protection Clause of the
22 Fourteenth Amendment to the United States Constitution, including a constitutionally protected
23 liberty interest in a work-place environment free from discrimination on the basis of national
24 origin.
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1 13.4. As a result and proximate cause of the violations of the Civil Rights Act of 1871,
2 *as amended*, 42 U.S.C. § 1983, Plaintiff has been injured and damaged in an amount to be
3 proven at trial, for which he is entitled to recover all his actual and compensatory, economic
4 and non-economic, special and general damages.

5 13.5. Plaintiff is further entitled to an award for his costs, litigation expenses, and
6 reasonable attorneys' fees pursuant to the Civil Rights Attorney's Fee Awards Act of 1976, 42
7 U.S.C. § 1988, and other authority.

8 13.6. The conduct, acts, and/or omissions of Defendant Spinner constitute willful,
9 deliberate, reckless, or callous indifference to and/or reckless disregard for the civil rights of
10 Plaintiff, and/or arose from ill will, malice, evil motive or intent, giving rise to an award of
11 punitive damages against Defendant Spinner pursuant to the Civil Rights Act of 1866, *as*
12 *amended*, 42 U.S.C. § 1981, 42 U.S.C. §1981a, and other authority.
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15 **XIV. ELEVENTH CAUSE OF ACTION AGAINST BOTH DEFENDANTS**
16 **VIOLATION OF WASHINGTON LAW AGAINST DISCRIMINATION**
17 **DISPARATE TREATMENT BASED ON NATIONAL ORIGIN**

18 14.1. Plaintiff realleges above paragraphs 1.1 through 3.35.

19 14.2. Defendants discriminated against Plaintiff in the terms and conditions of
20 employment based on his national origin in violation of chapter 49.60 RCW, Washington Law
21 Against Discrimination.

22 14.3. As a result and proximate cause of the violations of chapter 49.60 RCW, Plaintiff
23 has been injured and damaged in an amount to be proven at trial, for which he is entitled to
24 recover all his actual and compensatory, economic and non-economic, special and general
25 damages.
26

1 14.4. Plaintiff is further entitled to recover his costs, litigation expenses, and
2 reasonable attorneys' fees against Defendants, pursuant to RCW 49.60.

3 **XV. TWELFTH CAUSE OF ACTION AGAINST BOTH DEFENDANTS**
4 **VIOLATION OF WASHINGTON LAW AGAINST DISCRIMINATION**
5 **DISPARATE TREATMENT BASED ON RACE & COLOR**

6 15.1. Plaintiff realleges above paragraphs 1.1 through 3.35.

7 15.2. Defendants discriminated against Plaintiff in the terms and conditions of
8 employment based on his race and/or color in violation of chapter 49.60 RCW, Washington
9 Law Against Discrimination.

10 15.3. As a result and proximate cause of the violations of chapter 49.60 RCW, Plaintiff
11 has been injured and damaged in an amount to be proven at trial, for which he is entitled to
12 recover all his actual and compensatory, economic and non-economic, special and general
13 damages.

14 15.4. Plaintiff is further entitled to recover his costs, litigation expenses, and
15 reasonable attorneys' fees against Defendants, pursuant to RCW 49.60.

16 **XVI. THIRTEENTH CAUSE OF ACTION AGAINST BOTH DEFENDANTS**
17 **VIOLATION OF WASHINGTON LAW AGAINST DISCRIMINATION**
18 **HOSTILE WORK ENVIRONMENT BASED ON NATIONAL ORIGIN**

19 16.1. Plaintiff realleges above paragraphs 1.1 through 3.35.

20 16.2. Defendants created, allowed, and/or maintained a hostile work environment on
21 the basis of Plaintiff's national origin in violation of chapter 49.60 RCW, Washington Law
22 Against Discrimination.

23 16.3. As a result and proximate cause of the violations of chapter 49.60 RCW, Plaintiff
24 has been injured and damaged in an amount to be proven at trial, for which he is entitled to
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26

1 recover all his actual and compensatory, economic and non-economic, special and general
2 damages.

3 16.4. Plaintiff is further entitled to recover his costs, litigation expenses, and
4 reasonable attorneys' fees against Defendants, pursuant to RCW 49.60.

5 **XVII. FOURTEENTH CAUSE OF ACTION AGAINST BOTH DEFENDANTS**
6 **VIOLATION OF WASHINGTON LAW AGAINST DISCRIMINATION**
7 **HOSTILE WORK ENVIRONMENT BASED ON RACE & COLOR**

8 17.1. Plaintiff realleges above paragraphs 1.1 through 3.35.

9 17.2. Defendants created, allowed, and/or maintained a hostile work environment on
10 the basis of Plaintiff's race and/or color in violation of chapter 49.60 RCW, Washington Law
11 Against Discrimination.

12 17.3. As a result and proximate cause of the violations of chapter 49.60 RCW, Plaintiff
13 has been injured and damaged in an amount to be proven at trial, for which he is entitled to
14 recover all his actual and compensatory, economic and non-economic, special and general
15 damages.

16 17.4. Plaintiff is further entitled to recover his costs, litigation expenses, and
17 reasonable attorneys' fees against Defendants, pursuant to RCW 49.60.

18 **XVIII. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for relief as follows:

20 A. For award and entry of judgment against Defendants for all actual damages,
21 including past and future compensatory, economic, non-economic, special, and general
22 damages, and for pre-judgment interest on liquidated amounts as allowed by state and federal
23 law;
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1 B. For a post-verdict award for an enhanced amount to offset additional tax
2 consequences;

3 C. For award and entry of judgment against Defendant Spinner for punitive
4 damages as allowed by federal law;

5 D. For entry of injunctive relief against Defendant City of Lynden to ensure
6 compliance with federal and state anti-discrimination laws, including training, monitoring,
7 oversight by an appropriate agency or individual, or as otherwise deemed necessary by the
8 Court;
9

10 E. For award and entry of judgment against Defendants for all costs, litigation
11 expenses, and reasonable attorneys' fees as allowed by federal and state law; and
12

13 F. For such further relief this Court deems just and equitable.

14 DATED this 5th day of April, 2016.
15

16 By: s/ Benjamin P. Compton

By: s/ Victoria L. Vreeland

17 Benjamin P. Compton, WSBA No. 44567

18 Victoria L. Vreeland, WSBA No. 08046

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