



DATE: September 9, 2019

TO: Colorado Springs City Council

FROM: Office of the City Attorney

SUBJECT: *Delbert Sgaggio v. Bret Poole et al.*, Case No. 19-cv-01975-PAB-KMT, United States District Court, District of Colorado

This memorandum is to apprise you of the facts alleged in the above-referenced case as you consider the claims made against the involved current and former City employees.

NATURE OF THE CASE

Plaintiff's complaint arises out of a variety of contacts with City employees from 2011 to the present, as follows:

1. Investigative Search of A Cut Above in 2010. Plaintiff complains that Former CSPD Lieutenant Bret Poole conducted "an unlawful investigative search without a legitimate warrant on confidential medical patient/s records and list of members associated at A Cut Above," a business he owned.
2. Utilities' Alleged Policy of Sharing Customer Usage Information with Law Enforcement on October 19, 2011. Plaintiff complains that Former Utilities Director Jerry Forte is responsible for Utilities personnel sharing his "private and secure Utility usage information" with law enforcement "without consent or legitimate warrant."
3. Searches of Plaintiff's Properties on November 22, 2011. Plaintiff complains that CSPD Lieutenant Bret Poole, Lieutenant John Godsey, Sgt. Ronald Shepard, Officer Jeffrey True, and Officer Carlos Sandoval conducted unconstitutional searches and seizures of his property on November 22, 2011.
4. Traffic Stop on September 21, 2016. Plaintiff complains of a traffic stop by CSPD Officer Kirk Montgomery. He claims he "was stopped for no reason ... under an unconstitutional careless driving law," and that Officer Montgomery was "unable to

provide Mr. Sgaggio with the miles per hour” and “was also unable to provide me with the decibels of Mr. Sgaggio exhaust that he said was illegal.”

5. Occupancy check at Greenfaith Ministry on July 10, 2017. Plaintiff is the owner of Greenfaith Ministry, a “Sacramental Herb Church” according to its website. He claims that Fire Marshal Brett Lacey, Fire Code Inspector Danielle McClarin, Former Fire Code Inspector Angie Nieves and Sergeant Roger Vargason “unconstitutionally burdened me by entering and taking my property” on July 10, 2017. (This occupancy check is the subject of a separate lawsuit filed by Plaintiff’s wife, Candace Aguilera, against the same Defendants. Recently, Magistrate Judge Tafoya granted the Defendants’ motion to dismiss all of her claims arising out of that occupancy check.)

6. At-Risk Individual Search at Greenfaith Ministry on January 21, 2019. Plaintiff complains of CSPD Officer Marcus Allen’s search of Greenfaith Ministry on January 21, 2019. He claims that Officer Allen entered his property “without a legitimate warrant.”

7. Traffic Accident blocking Greenfaith Ministry entrance on April 20, 2019. Plaintiff complains that CSPD Officers Tyler Bresson and Nicholas Hamaker moved vehicles damaged in a traffic accident that occurred on Academy Boulevard onto his private property, blocking his “leaser’s establishments.” Plaintiff allegedly complained to CSPD Sgt. Eric Anderson, who rebuffed Plaintiff’s complaint.

8. Removal of Facebook Post in April 2019. Plaintiff complains that Paul Kavanaugh censored his speech by hiding Plaintiff’s post from the CSPD Facebook page in April 2019.

Accordingly, in addition to suing the City, Plaintiff sues the following current and former City employees in relation to the above incidents:

CSPD	CSFD	CSU
Former Police Chief Pete Carey	Fire Marshal Brett Lacey	Former Utilities Director
Former Police Lt. John Godsey	Danielle McClarin, Fire Code	Jerry Forte
Former Police Lt. Bret Poole	Inspector I	
Sgt. Eric Anderson	Former Fire Code Inspector I	
Sgt. Carlos Sandoval	Angela Nieves	
Sgt. Ronald Sheppard		
Sgt. Roger Vargason		
Officer Marcus Allen		
Officer Tyler Bresson		
Officer Nicholas Hamaker		
Officer Sam Hausman		
Officer Kirk Montgomery		

CSPD

Officer Jeffrey True
Paul Kavanaugh, Administrative
Support Personnel

CSFD

CSU

Plaintiff also sues El Paso County and a number of County employees in relation to additional contacts he had with County employees over the years.

Plaintiff asserts that Defendants' actions violated his rights under the First, Fourth, and Fifth Amendments to the United States Constitution.

Plaintiff demands \$23 million in damages.

RECOMMENDATION

The Civil Action Investigation Committee met on August 23, 2019, and has recommended that the City represent the Officers as required by the Colorado Governmental Immunity Act and the Peace Officer's Liability Act. The Officers were acting in the course and scope of their employment and not in a willful and wanton manner. As usual, it is recommended that the City reserve the right not to pay any award of punitive damages.