

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

DEREK O. CID,

Plaintiff,

v.

Case No. 5:18-cv-04012

**BOARD OF COUNTY COMMISSIONERS
OF RILEY COUNTY, KANSAS, RILEY
COUNTY POLICE DEPARTMENT,
RILEY COUNTY LAW BOARD, BRIAN W.
LONDON, STEVE C. BOYDA, JOSH D. KYLE
And BRADLEY J. SCHOEN,
Defendants.**

AMENDED COMPLAINT

The Plaintiff, Derek O. Cid, by and through counsel, Theodore J. Lickteig, states as his Amended Complaint in this action as follows:

PARTIES, JURISDICTION, AND VENUE

1. The Plaintiff, Derek O. Cid, is and was at all times material hereto a resident of the state of Kansas. He was employed as a law enforcement officer by the Riley County Law Enforcement Agency through the Riley County Police Department.

2. The Defendant Board of County Commissioners of Riley County, Kansas is a municipality organized under the laws of the state of Kansas and may be served with process through its County Clerk, Rich Vargo, at 110 Courthouse Plaza, 1st Floor, Room B 118, Manhattan, Kansas 66502.

3. The Defendant Riley County Police Department is a municipality

organized under the laws of the state of Kansas at K.S.A. 19-4424, et seq. and may be served with process through its Director, Bradley Schoen, at 1001 South Seth Child Road, Manhattan, Kansas 66502.

4. The Defendant Riley County Law Board is a municipality organized under the laws of the state of Kansas at K.S.A. 19-4424, et seq. and may be served with process through its Secretary, Barry Wilkerson, at 1101 Poyntz Avenue, Manhattan, Kansas 66502.

5. The Defendant Sgt. Brian W. London is a law enforcement officer employed by the Riley County Law Enforcement Agency through the Riley County Police Department, and is sued in his personal capacity and may be served with process at 801 Laramie Street, Manhattan, Kansas 66502.

6. The Defendant Lt. Steve C. Boyda is a law enforcement officer employed by the Riley County Law Enforcement Agency through the Riley County Police Department, and is sued in his personal capacity and may be served with process at 5300 Jaime Circle, Wamego, Kansas 66547.

7. The Defendant Cpt. Josh D. Kyle is a law enforcement officer employed by the Riley County Law Enforcement Agency through the Riley County Police Department, and is sued in his personal capacity and may be served with process at 3001 Tonga Street, Manhattan, Kansas 66502.

8. The Defendant Bradley J. Schoen, Director of the Riley County Police Department, is sued in his official capacity and personal capacity and may be served with process at 2235 Alta Drive, Manhattan, Kansas 66502.

9. This action presents claims arising under the Constitution and laws of the

United States; this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331. The Plaintiff requests the Court to take pendent or supplemental jurisdiction over the state-based claims raised in this case pursuant to 28 U.S.C. § 1367(a).

10. The matter in controversy exceeds \$75,000, exclusive of interest and costs.

11. A substantial part of the events or omissions giving rise to the claims in this action occurred in this judicial district; venue is properly placed in this District pursuant to 28 U.S.C. § 1391(b)(2).

12. On March 27, 2017, the Plaintiff filed a notice of claim and asserted claims against various entities pursuant to K.S.A. 12-105b.

13. On July 25, 2017, the Plaintiff's notice of claim was deemed denied by operation of K.S.A. 12-105b(d) in that 120 days had passed after the filing of the claim and in that the claim was not approved.

14. This action is commenced within the time provided for in the Kansas Code of Civil Procedure and within the applicable time period for claims arising under 42 U.S.C. § 1983.

ALLEGATIONS OF FACT COMMON TO ALL COUNTS

15. Officer Cid is a decorated Army combat veteran who began his law enforcement career at the Miami-Dade Police Department upon discharge from the military in 2009, graduating at the top of his academy class and earning the highest academic achievement award.

16. Officer Cid joined the Riley County Police Department (RCPD) in January, 2012 after family commitments brought him to the Kansas City area, coming highly recommended by his previous supervisors at the Miami-Dade Police Department.

17. Officer Cid was assigned to work Watch 3 with the RCPD, whose shift ran from 2:00 p.m. to 10:00 p.m.

18. One of Officer Cid's supervisors on Watch 3 was Sgt. Ryan Flerlage, who quickly recognized him as an asset to the department and noted that Officer Cid was "widely respected among his shift mates and the department" due to his "willingness to help fellow officers, and to go above and beyond to fulfill the mission of the department."

19. Lt. Lucas Breault and Defendant Cpt. Josh Kyle were members of the command staff at RCPD.

20. Officer Cid's performance reviews through May 2015 attest that he had earned a reputation throughout the department for diligence, initiative, and teamwork with his supervisors noting that his actions were "consistently honorable and done ... with the highest moral and ethical character," that he "set the standard in areas of initiative and professionalism" and that he was someone who "other officers should look to as an example."

21. In May 2015, Sgt. Flerlage recommended Officer Cid for outstanding professionalism and initiative, having noted in his last annual review that Officer Cid was a role model who had earned "a position where he will have opportunities and be seriously considered for leadership positions within the department."

22. Sgt. Flerlage also recommended Officer Cid for "PTO" school due to his "outstanding performance, hard work and improvement." PTO is a training program.

23. In the Spring of 2015 three of Officer Cid's shift supervisors submitted recommendations that he be considered for the next open detective position, which was approved by Cpt. Kyle, Lt. Breault, and the rest of the command staff.

24. After submitting to an intensive selection process that was thoroughly reviewed by two investigations lieutenants, Officer Cid was told by Lt. Jay Mills and by Lt. Mark French that he had conducted one of the highest presentations to date, and was placed on the list for the next open detective position.

25. Officer Cid then requested additional training in financial crimes, letting command staff know that his career goal was to work in the Detective/Investigations Division, which was approved.

26. While awaiting an opening in Investigations, Officer Cid continued to work Watch 3 receiving commendation from supervisors for his professionalism, work ethic, communications skills, "spot on judgment", and "really good police work."

27. Officer Cid's quarterly evaluation, received on August 12, 2015, was exemplary with the exception of two incidents on August 1, 2015 where video review showed Officer Cid had turned off his siren just short of arriving at the scene of a disturbance, which is against regulations.

28. On August 12, 2015, Officer Cid received shift level counseling and reprimand for just one of the incidents, which was reflected on his quarterly evaluation in the Police Vehicle Operations section, with Sgt. Flerlage noting that Officer Cid "didn't remember turning off his siren" but that "Officer Cid understood his mistakes."

29. In anticipation of Officer Cid's upcoming promotion Sgt. Flerlage recommended that he request to transfer to the midnight shift, Watch 1, with both

agreeing that he would benefit from exposure to its unique issues, including alcohol and drug-related stops.

30. After receiving a certificate of appreciation from all four of his Watch 3 supervisors, Officer Cid was assigned to the midnight shift on September 28, 2015.

31. Officer Cid's new supervisors on Watch 1 were Defendant Sgt. Brian London and Defendant Sgt. Daniel Bortnick.

32. On October 6, 2015, Officer Cid received a shift-wide email from Sgt. Bortnick with each officer's arrest statistics warning the officers that although self-initiated stops and activity had gone up, they missed their DUI "goal" of 105 for two quarters in a row, and that officers would have to "buckle down" in order to meet the annual DUI arrest goal.

33. A few weeks later Officer Cid had an unusual meeting with Sgts. London and Bortnick where they explained his DUI "goal" to him and that he was subject to a mandatory "Quota/Non-Quota" system in which he had to make at least two DUI arrests and issue fifteen parking tickets each month or he would receive an unsatisfactory rating.

34. Though he said nothing at the time, this concerned Officer Cid because it meant if he could not fulfill his quotas, he would be faced with making improper stops or false arrests or with facing disciplinary action.

35. In early November 2015, Officer Cid expressed his concern to Sgt. Bortnick that mandatory compliance with the quota system would likely force officers to make unsupported stops resulting in departmental violations and Fourth Amendment issues.

36. Sgt. Bortnick disregarded Officer Cid's concerns and warned him to "just concentrate on meeting the numbers."

37. Officer Cid assured Sgt. Bortnick that he would work diligently to stop and investigate all potential violators, but that he would do so while staying within departmental policies and the law.

38. On November 9, 2015, Officer Cid received his quarterly evaluation for August through October 2015 which included a second "below expectations" rating for Police Vehicle Operations, which had been assigned by Sgt. London.

39. This was in violation of departmental policy because Sgt. London had only supervised Officer Cid for five weeks of the quarter and did not write a single supporting statement, with all the supervisory comments and written assessments having been provided by Officer Cid's previous supervisors.

40. Sgt. London based the "below expectations" rating on the August 1, 2015 incident, which was improper as Officer Cid had already been disciplined by Sgt. Flerlage and it had already been accounted for in his May through July 2015 quarterly review, as well as another minor incident Sgt. Flerlage had reviewed and determined did not warrant discipline.

41. RCPD Policy 35.1.1 provides that a "below expectations" rating should only be given if "performance of the majority of the various aspects of the elements of the job have been unsatisfactory for the major portion of the rating period" and RCPD Order SO 2008-179(1)(B) requires "raters to make written comments that substantiate any unsatisfactory rating" which include the evaluator's reasons and methodology.

42. In his review Sgt. London failed to offer a single comment relating to any of the eight job elements of Police Vehicle Operations, nor did his evaluation contain any of the written comments required to substantiate an unsatisfactory rating.

43. Sgts. Bortnick and London continued to harass Officer Cid about his arrest numbers and “quotas.”

44. Officer Cid again explained that he was engaging in proactive policing but that he could not blindly adhere to mandatory quotas, that he believed it made officers abandon their discretion and required them to engage in unjustified stops, false arrests, and unsupported summonses, and hurt the department’s relationship with the community.

45. The only response Officer Cid received was to “concentrate on your stats.”

46. In Officer Cid’s next quarterly evaluation for November 2015 through January 2016, Sgt. London rated him “below expectations” in Leadership, an area Officer Cid had always received stellar reviews in, and in his previous annual review his supervisors had rated him as exceeding expectations on three separate Leadership standards.

47. This evaluation by Sgt. London also violated RCPD policies in that it contained no substantive advice or guidance, was poorly written and not well-planned, did not include any of Officer Cid’s positive contributions, with no attempt at balance or fairness and no assessment of Officer Cid’s “total performance,” as required by policy.

48. The only three comments Sgt. London used in support of Officer Cid’s Leadership rating were unsubstantiated, ambiguous, subjective, and inaccurate, with the fourth and final comment being “It’s time to make good on your DUI goal.”

49. When Officer Cid met with him on February 8, 2016 to discuss his latest evaluation, Sgt. London explained that he had rated Officer Cid “below expectations” in Leadership mainly because of his failure to reach his DUI quota.

50. Officer Cid reminded Sgt. London that his statistics were comparable to others on his shift and showed he was making appropriate traffic stops and was being proactive despite not always meeting the DUI quota.

51. Despite this information, as well as the evaluation itself being deficient and in violation of multiple department policies, Sgt. London sustained Officer Cid’s “below expectations” rating, once again violating RCPD policies.

52. Throughout the next seven months, Sgts. London and Bortnick consistently berated Officer Cid by falsely and publicly insinuating that he was lazy, avoided taking reports, didn’t know how to complete reports or complete a proper investigation, didn’t know RCPD policies; they mischaracterized events to justify discipline and criticized him for things other officers were not criticized for.

53. When Officer Cid received his annual evaluation for 2015-2016 in May 2016, Sgt. London had rated him “below expectations” in both Leadership and Police Vehicle Operations, giving him an overall annual rating of “below expectations.”

54. Officer Cid was passed over for his annual merit raise as a result of this rating.

55. Sgt. London told Officer Cid that he had failed his annual review because he did not meet his DUI quotas, and because of the Police Vehicle Operations violations that had been addressed the previous August by Sgt. Flerlage.

56. In reviewing his evaluation, Officer Cid found a multitude of errors.

57. The only justification provided by Sgt. London for giving Officer Cid an unsatisfactory rating in Leadership was his allegedly substandard alcohol enforcement, even though DUI arrests are not mentioned in any of the six job elements of Leadership, and in fact Sgt. London's own comments supported that Officer Cid met and exceeded each of the six elements of Leadership.

58. Even if DUI arrest statistics were actually a valid measure of leadership, Officer Cid still would have earned a satisfactory rating because RCPD statistics show that Officer Cid was among the most proactive officers in warnings and officer-initiated stops, was above-average in DUI and arrest rates, and was average in citations.

59. Sgt. London rated Officer Cid "below expectations" in Police Vehicle Operations solely based on the two occasions the previous fall that had been handled by Sgt. Flerlage; neither could support a "below expectations" rating.

60. Even if they could have, Sgt. London's rating was still improper because RCPD Policy 35.1.1 requires that to receive a "below expectations" rating an officer must not only perform below expectations for the majority of the rating period. In fact, Officer Cid had no issues for eight months. An officer must also perform the majority of the various aspects of Police Vehicle Operations in an unsatisfactory manner. But, Sgt. London considered the only one of the eight aspects that related to responding to calls, and contrary to his rating commented that "Officer Cid generally operates vehicle without error."

61. Officer Cid was able to prove through review of the audit trails and arrest statistics in the RCPD database that his DUI arrest statistics reported in his annual evaluation by Sgt. London were wrong and artificially low.

62. Officer Cid was also able to provide Sgt. London with several examples of complex cases and other time-consuming activities and services he had provided to the department and community that were required to be taken into account when rating an officer's productivity, but that were not mentioned in his evaluation.

63. When Officer Cid asked Sgt. London why he recorded wrong numbers and omitted important information about his use of time in his performance review, Sgt. London was vague and said he did not know about those events and did not remember them.

64. At the end of the meeting Sgt. London warned Officer Cid that he would be placing him on a Performance Improvement Plan (PIP).

65. Officer Cid requested and was granted an opportunity to meet with Defendant Lt. Steve Boyda to discuss his annual review.

66. A few days later Officer Cid met with Lt. Boyda and Sgt. Pat Tiede.

67. Lt. Boyda agreed that Officer Cid's evaluation lacked substance.

68. Officer Cid confided that he felt he was being retaliated against for bringing his concerns about the mandatory quota system to Sgts. London and Bortnick.

69. Lt. Boyda and Sgt. Tiede told Officer Cid that he needed to "lower his threshold" for probable cause stopping drivers to increase his probability of getting DUI arrests, and that DUI arrests were the only type that mattered because DUI statistics had to be presented to the Law Board and low statistics made the department look bad.

70. Officer Cid repeated his concerns saying he couldn't just arrest a driver who was not going to test for a DUI violation and their response to him was "yes you can

just un-arrest them.” It was a common practice in the Department to “un-arrest” individuals.

71. Officer Cid told Lt. Boyda he intended to appeal his annual evaluation rating and PIP.

72. Lt. Boyda promised to update Officer Cid’s evaluation to include positive comments and suggested he wait so he could evaluate the updated copy before submitting his appeal, but no positive comments were ever added to Officer Cid’s evaluation.

73. During this same meeting Officer Cid expressed concern that Sgt. London’s negative evaluation and the PIP would ruin his chances for a detective position that had been posted the day before, and that the waiting list he was on was set to expire before the position became available and he would have to go through the interview process again.

74. Lt. Boyda assured Officer Cid it would not negatively impact his chances and instructed Officer Cid to submit an interview request directly to him to take care of, which Officer Cid did that same day.

75. When Officer Cid returned from a three-week vacation on June 14, 2016 he received notice that Sgt. London denied his request for an interview citing “a below expectations annual evaluation and [that Cid was] under conditions of a PIP.”

76. Officer Cid had not been under condition of a PIP when his interview request was submitted to Lt. Boyda; it was drafted five days later and not approved by the chain of command until June 13, 2016.

77. Sgt. London’s misrepresentations prevented Officer Cid from interviewing for the Investigations position.

78. The PIP Sgt. London presented to Officer Cid centered around needing improvement in areas that he had been originally been praised for in his annual evaluation, as well as turning in daily activity tracking sheets and other busy work intended to shame and humiliate him.

79. Sgt. London's stated that he was "primarily concerned with [Cid's] proactivity..." which he defined as DUIs, traffic tickets, citations, warnings and reports, and assigned Officer Cid new monthly quotas in these areas.

80. Sgt. London warned Officer Cid that his ability to meet his quotas would be used as a "measuring stick of success" and that he must meet these quotas every month to meet expectations, that is, two arrests for driving under the influence, five traffic-related notices to appear, fifteen parking citations, one-and-a-half warnings each work shift and nine reports filed each month, or either his PIP would be extended, or he would be terminated.

81. Sgt. London told Officer Cid the same quotas were expected from all the officers on Watch 1, however between October 2015 and June 2016 the majority of the officers had failed to meet any of their quotas.

82. Sgt. London expressed concern about how Officer Cid was spending his time throughout his shift, which had never been at issue before.

83. On June 30, 2016 Officer Cid met with Cpt. Josh Kyle regarding his annual evaluation, the PIP, his concerns about the quotas and unlawful stops and arrests. He expressed to Cpt. Kyle that he felt he was being targeted for expressing these concerns.

84. Officer Cid asked Cpt. Kyle to investigate and to assign him to a different supervisor during the investigation, as he believed that working under Sgt. London would put him at risk of retribution and retaliation.

85. Cpt. Kyle responded that he would consider investigating but refused to assign Officer Cid to a different supervisor, stating twice in no uncertain terms that he must continue to work under Sgt. London's supervision.

86. Immediately after meeting with Cpt. Kyle, Officer Cid submitted an appeal of his annual evaluation and PIP.

87. On July 7, 2016 Cpt. Kyle referred Officer Cid's appeal to Defendant Director Bradley Schoen with a memo of his own concluding that Officer Cid's evaluation was proper and that he had been treated fairly, failing to mention Officer Cid's complaints about the quotas or his request for an investigation.

88. On July 18, 2016 despite the pending appeal, Sgt. London met with Officer Cid to conduct his first monthly evaluation, and commented "What will it take to light a fire under your ass?!" when referencing DUI arrests.

89. In this evaluation Sgt. London rated Officer Cid "below expectations" in Leadership, based solely on his arrest statistics.

90. Sgt. London also rated Officer Cid "below expectations" in Use of Force based on a June 19, 2016 brawl Officer Cid responded to with Sgt. Bortnick where Sgt. Bortnick falsely claimed he witnessed Officer Cid backing away from the fight on two different occasions, and that Officer Cid had violated policy in not activating his body-work camera (BWC) quickly enough, even though at the time of the incident RCPD had no policy in place for when to turn on or off BWCs. When Officer Cid asked for a copy

of the policy, he was told there had been an “email sent to supervisors;” when he asked for that email, he never received it nor was it ever emailed to other officers.

91. The next day Officer Cid received notice that he was the subject of an internal investigation for allegedly failing to take appropriate action during the June 19 brawl, to which Sgt. Bortnick was the only law enforcement witness.

92. Officer Cid was first told that the investigation was initiated by Director Schoen, but Sgt. Bortnick admitted when he interviewed Officer Cid that it was Cpt. Kyle who had initiated the investigation.

93. Officer Cid knew the actions being taken against him were the initial steps toward termination, and understood that termination would cause further damage to his reputation and law enforcement career.

94. To mitigate this damage, on July 28, 2016 Officer Cid submitted his letter of resignation, mentioning his inability to comply with the quota system and subsequent treatment as a factor.

95. The RCPD accepted Officer Cid’s resignation, with Lt. Boyda denying that the actions taken against Officer Cid were in any way related to his complaints about the quota system.

96. Even though he is a resident of Pottawatomie County, Kansas, Cid continues to drive in Riley County on public streets and roads as his personal decisions may direct him.

COUNT I
42 U.S.C. § 1983 – RETALIATION FOR EXERCISE OF
FIRST AMENDMENT SPEECH RIGHTS
(INDIVIDUAL DEFENDANTS, INCLUDING DEFENDANT SCHOEN
IN BOTH CAPACITIES, AND ENTITY DEFENDANTS)

97. The Plaintiff incorporates by reference Paragraphs 1 through 96 above as though fully set forth herein.

98. The First and Fourteenth Amendments to the U.S. Constitution provide for the right of an individual to have freedom of speech.

99. The contours of that right were clearly established at the time the retaliatory events and constructive discharge occurred.

100. A reasonable person would have known or should have known about that right.

101. The individuals involved with the retaliation and constructive discharge caused the Plaintiff to be deprived of his First and Fourteenth Amendment rights.

102. The individuals involved with the retaliation and constructive discharge acted under color of state law.

103. The conduct of the individuals involved with the retaliation and constructive discharge resulted in damages to the Plaintiff.

104. The speech uttered by the Plaintiff was not ordinarily within his official duties.

105. The Plaintiff's speech related to a matter of public concern.

106. The interests of the governmental employer do not outweigh the interests of the Plaintiff.

107. The Plaintiff's protected speech was a motivating factor in the retaliation and constructive discharge.

108. The Defendants would not have retaliated and forced the

constructive discharge in the absence of the protected speech of the Plaintiff.

109. The Defendant governmental entities had a policy, informal policy or practice of requiring its law enforcement officers to meet arrest quotas regardless of whether probable cause existed to support such arrests.

110. The Plaintiff has sustained damages.

WHEREFORE, the Plaintiff requests the Court to enter a judgment in favor of him against the Defendants in excess of \$75,000, for his taxable costs, for non-taxable costs, for his expert witness fees, for his litigation expenses, and for a reasonable attorney fee all pursuant to 42 U.S.C. § 1988 and for such other and further relief as the Court may deem just and equitable.

COUNT II
RETALIATORY DISCHARGE IN VIOLATION OF PUBLIC POLICY –
REFUSAL TO VIOLATE LAW
(ENTITY DEFENDANTS AND DEFENDANT SCHOEN IN HIS
OFFICIAL CAPACITY ONLY)

111. The Plaintiff incorporates by reference Paragraphs 1 through 96 above as though fully set forth herein.

112. The Fourth Amendment to the United States Constitution and Kansas state law, K.S.A. 22-2401, require that probable cause exist that a crime has been or is being committed before an individual may be arrested.

113. The Defendants made it a term and condition of employment that the Plaintiff and others effect arrests without probable cause to meet quotas set by the Defendants.

114. The Plaintiff refused to violate the law by making arrests without

probable cause, which led the Defendants to retaliate and to force the Plaintiff's constructive discharge.

115. The Plaintiff has sustained damages.

WHEREFORE, the Plaintiff requests the Court to enter judgment in his favor against the Defendants in excess of \$75,000, for his costs and for such other and further relief as the Court may deem just and equitable.

COUNT III
42 U.S.C. § 1983 – MAINTENANCE OF POLICY
OR PRACTICE ON ARRESTS IN VIOLATION OF FOURTH AMENDMENT
(DEFENDANT SCHOEN IN OFFICIAL CAPACITY
AND ENTITY DEFENDANTS)

116. The Plaintiff incorporates by reference Paragraphs 1 through 96 as though fully set forth herein.

117. The Fourth and Fourteenth Amendments require the presence of probable cause to support an arrest or seizure of an individual.

118. The Defendants maintained a policy or practice during the Plaintiff's employment with them of requiring officers to make arrests of individuals without the presence of probable cause. The Defendants continue to maintain that policy or practice.

119. As a motorist in Riley County, Kansas, the Plaintiff was subject to, is subject to, and will be subject to the Defendants' policy or practice.

WHEREFORE, the Plaintiff requests the Court to enter a judgment against the Defendants that includes declaratory and injunctive relief, for his taxable costs, for non-taxable costs, for his expert witness fees, for his litigation expenses, for a reasonable

attorney fee all pursuant to 42 U.S.C. § 1988 and for such other and further relief as the Court may deem just and equitable.

Respectfully submitted,

/s/ Theodore J. Lickteig
Theodore J. Lickteig #12977
Law Offices of Theodore J. Lickteig
12760 W. 87th Street, Suite 112
Lenexa, Kansas 66215
913-894-1090
tjllawoffice@planetkc.com
Attorney for Plaintiff

JURY DEMAND

The Plaintiff, Derek O. Cid, by and through counsel, hereby demands a jury on all issues so triable.

Respectfully submitted,

/s/ Theodore J. Lickteig
Theodore J. Lickteig
Kan. Bar No. 12977
Law Offices of Theodore J. Lickteig
12760 West 87th Street, Suite 112
Lenexa, Kansas 66215-2878
913-894-1090
tjllawoffice@planetkc.com
Attorney for Plaintiff