

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SAMUEL A. FARINA,
Plaintiff,

v.

THE CITY OF ROCHESTER,
MAYOR THOMAS S. RICHARDS,
POLICE CHIEF JAMES M. SHEPPARD,
DEPUTY CHIEF MICHAEL WOOD,
IN THEIR INDIVIDUAL CAPACITIES,
Defendants,

COMPLAINT

Civ. No.

JURY TRIAL DEMAND

PRELIMINARY STATEMENT

1. This is an action pursuant to 42 U.S.C. §1983 which seeks compensatory and punitive damages, costs and attorney fees for the deprivation of the Plaintiff SAMUEL A. FARINA'S ("Plaintiff") constitutional rights through the gross negligence of the above named Defendants.

JURISDICTION

2. Plaintiff brings this action to recover damages for the violation of his civil rights under the Fourteenth Amendment to the United States Constitution, codified at 42 U.S.C. §1983, and the United States Constitution, Amendments Four and Fourteen.
3. Jurisdiction is invoked pursuant to 28 U.S.C. §§1331 and 1332 (federal question) and §1343 (civil rights).

4. Declaratory, injunctive and equitable relief is sought pursuant to 28 U.S.C. §§2201 and 2202.
5. Compensatory and punitive damages are sought pursuant to 42 U.S.C. §1983.
6. Costs and attorney's fees may be awarded pursuant to 42 U.S.C. §1988 and Fed. R. Civ. P. 54.
7. As mandated by the Supremacy Clause in relation to actions brought pursuant to 42 U.S.C. §1983, Plaintiff does not have to comply with Municipal Law Section 50-e with regard to filing a Notice of Claim with regard to federal causes of action.
8. Notwithstanding, a Notice of Claim with regard to the New York state claims for Plaintiff were duly and timely served within ninety (90) days of the acts complained of, and a properly convened §50-h hearing was conducted by the municipality, and testimony taken of the Plaintiff.

VENUE

9. This action properly lies in the Western District of New York, pursuant to 28 U.S.C. §1343(3) because the claims arose in this judicial district and the Defendants reside and or do business in Monroe County.

PARTIES

10. At all times herein mentioned, Plaintiff is an individual male, and a resident of Monroe County, State of New York.
11. Defendant City of Rochester is a municipality that is a political subdivision of the State of New York, and for all relevant times herein, was the employer of the individually named Defendants, and is and was at all times relevant to this Complaint responsible for the policies, practices, and customs of the City of Rochester Police Department.
12. Defendant MAYOR THOMAS S. RICHARDS is the duly elected Mayor for the City of Rochester and is and was at all times relevant to this Complaint responsible for the policies, practices, and customs of the City of Rochester, and its Police Department.

13. Defendant POLICE CHIEF JAMES M. SHEPPARD ("Chief Sheppard") has been, and is the duly appointed Chief of Police for the City of Rochester, acting under the color of law and in his individual and official capacities pursuant to the laws of the State of New York; Defendant DEPUTY POLICE CHIEF MICHAEL WOOD ("Deputy Chief Wood") has been, and is the duly appointed Chief of Police for the City of Rochester, acting under the color of law and in his individual and official capacities pursuant to the laws of the State of New York.

14. The Chief of Police is and was at all times relevant to this Complaint the final policymaker of the City of Rochester Police Department with respect to the issue of the training and supervision of its personnel, and the submission of his subordinates to internal investigations.

15. The acts of all individual defendants as alleged herein were made in their official capacities while acting under color of state law, their actions constituted City of Rochester policy and were intended to be and were binding on the City of Rochester.

16. The acts of all individual defendants as alleged herein were made intentionally or in reckless disregard of Plaintiff's rights, were made in bad faith, and constitute a pattern of discrimination and retaliation against the Plaintiff.

FACTS

17. Plaintiff was formerly employed at the Monroe County Sheriff's Office as a "Bureau Chief" for Staff Services as a Police Commander.
18. In March of 2008, Plaintiff was approached by then Chief of Police David Moore to transfer to the City of Rochester Police Department ("RPD") to assume the position of "Special Operations Division Commander."
19. Plaintiff commenced his employment with the Rochester Police Department on October 31, 2008.
20. In June of 2010, Plaintiff was promoted to the rank of "Deputy Chief of Operations" by Chief Moore as a result of his high performance ratings, and the trust gained through his experience with the RPD.

21. However, in November 2010, Chief Moore was replaced by Chief of Police Sheppard at the direction of then Rochester Mayor Robert Duffy.
22. In February 2011, Chief Sheppard advised Plaintiff that he was being replaced by Deputy Chief Michael Wood.
23. Plaintiff was also advised that he was being demoted to "Commander," and assigned to the Patrol Division West.
24. In fact, an e-mail was sent by Chief Sheppard advising the entire RPD that Plaintiff's demotion was "not performance-related;" rather, it was simply Sheppard's "personal preference."
25. Although Plaintiff asked to be returned to his original assignment of Special Operations Division Commander, he was denied that opportunity without explanation and assigned to the West Division as Commander.
26. Sometime between February and April of 2010, Chief Sheppard advised RPD Sgt. Naser Zenelovic, Sgt. LaRon Singletary, Sgt. Mark Simmons, and Sgt. Henry Favor that the reason for Plaintiff's demotion was due to

Plaintiff being an "outsider" and that "only those from the RPD who rose through the ranks should manage the RPD."

27. On July 9, 2011, an ex-girlfriend of Plaintiff, with whom he was having an several-month long real property dispute, contacted RPD Commander Michael Ciminelli to lodge a complaint against Plaintiff relative to the ongoing property dispute.
28. Commander Ciminelli contacted Deputy Chief Wood who interviewed the ex-girlfriend regarding the complaint.
29. Subsequently, Commander Ciminelli advised Plaintiff that this was an "entirely civil matter" and that the ex-girlfriend had no issue which warranted police involvement.
30. However, despite this comment, on July 12, 2011 an *ex-parte* Order of Protection from Family Court was issued specific to the incident on July 9, 2011.

31. Upon information and belief, the RPD aggressively compelled the ex-girlfriend to file for an Order of Protection against the Plaintiff to impugn his reputation for the purpose of compelling the Plaintiff to resign from the RPD.
32. Upon further information and belief, Chief Deputy Wood used his official position to further the processing of the Order of Protection.
33. Thereafter, to his shock and surprise, on July 12, 2011, Plaintiff was personally served with the Order of Protection by Chief Sheppard and Deputy Chief Wood in *Chief Sheppard's office*.
34. On July 15, 2011, in a personal discussion with Chief Sheppard, Sheppard confirmed to Plaintiff that he did not want Plaintiff as a member of his management staff, and that Plaintiff was indeed considered an "outsider."
35. Plaintiff offered at that time to resign, and to actively seek employment outside the RPD, but asked for Chief Sheppard's positive reference to be provided to all prospective employers in order to obtain employment

outside of the RPD.

36. Chief Sheppard agreed to provide Plaintiff with a positive reference, and promised not to interfere with Plaintiff's attempt to obtain prospective employment outside of the RPD.
37. On July 15, 2011, Plaintiff applied for the position of "Deputy Director" of the 911 Call Center.
38. Plaintiff was one of 57 applicants for the nationally advertised position.
39. On August 12, 2011, Plaintiff was advised by the Director of the 911 call center John Merklinger that he was officially being offered the position of "Deputy Director."
40. Plaintiff was informed by Director Merklinger that he was receiving the position because he was the "most qualified," and was "ranked number one" by the interview panel for the position.

41. In reliance of that offer, on July 20, 2011, Plaintiff tendered his "resignation for retirement" from the RPD to Chief Sheppard, asking for his final work day to be August 5, 2011.
42. In the interim, the Order of Protection issued to Plaintiff by Chief Sheppard was dismissed in August of 2011 as and against the Plaintiff.
43. On August 3, 2011, Chief Sheppard accepted Plaintiff's resignation from the RPD effective September 9, 2011.
44. On August 19, 2011, to Plaintiff's shock and dismay, he was contacted by telephone by Director Merklinger, who, inexplicably, *advised Plaintiff that the job offer to serve in the position of Deputy Director of the 911 Call Center had been revoked.*
45. Director Merklinger advised Plaintiff that he was *directed by Mayor Thomas S. Richards to "withdraw the offer of employment"* made to him to become the "Deputy Director" of the 911 Call Center.

46. Director Merklinger further advised Plaintiff that he was directed to revoke the position of "Deputy Director" at the command of Mayor Richards himself.
47. Director Merklinger advised Plaintiff that Mayor Richards was apparently influenced by Plaintiff's alleged involvement in the "Emily Good affair," even though Mayor Richards would later admit to Plaintiff that he understood that Plaintiff played no role in any of those events.
48. As a side bar, the "Emily Good affair" refers to Emily Good, a Rochester New York woman who made international headlines after she was arrested by the RPD in May of 2011 after she videotaped a racially profiled traffic stop of an African-American motorist by RPD officers.
49. Following Good's arrest, there was an event on June 23rd, 2011 at Corn Hill where some of Good's supporters were unduly targeted by the RPD for traffic tickets.
50. As acknowledged by Mayor Richards himself, Plaintiff played no role in either event; instead, Plaintiff, in his official role with the RPD, was tasked to

investigate the events and report his findings to Chief Sheppard.

51. Regarding the "Emily Good affair," Plaintiff's findings of both events *i.e.*, Good's arrest and review of the videotape, and the resultant issuance of parking tickets at Corn Hill, did not yield the need for discipline against the RPD officers.

52. However, to Plaintiff's complete surprise, Chief Sheppard falsely reported - at a public press conference on September 2, 2011 - that Plaintiff, the former Commander of the West Division, **was replaced as a result of the internal investigation.**

53. However, that statement is entirely false since there was "no internal investigation," as memorialized by Lieutenant Michael Callari, Commanding Officer of the Professional Standards Section in a letter which clearly states:

. . . While he has been employed by the Rochester Police Department he has not been the focus of any disciplinary action.

54. Moreover, the statement is also false because Plaintiff has already given notice directly to Chief Sheppard on July 20, 2011 that he was resigning, well before any purported "investigation" had ever occurred.
55. Notwithstanding that fact, as a result of Chief Sheppard public comments, Plaintiff was "blackballed" by the City of Rochester, as evidenced by Mayor Richard's own admissions to Plaintiff during an informal meeting on October 19, 2011.
56. On October 19, 2011, Plaintiff met with Mayor Richards.
57. During that meeting, Mayor Richards admitted to Plaintiff that he personally "reached out" to 911 Call Center Director Merklinger and urged him to withdraw the offer of employment made to Plaintiff by Director Merklinger to become the Center's new "Deputy Director."
58. Mayor Richards admitted he interfered with Plaintiff's prospective employment at the 911 Call Center despite the fact that the *Mayor himself admitted that Plaintiff had nothing to do with the ticketing event in Corn Hill*

following the Emily Good arrest, and, more importantly, that Plaintiff was merely the "victim of politics" and had done no wrong.

59. According to Mayor Richards, he could "not afford to have the Emily Good supporters believe that [Plaintiff] was being 'taken care of' by receiving the 911 position" in exchange for his resignation from the City.

60. However, as set forth above, Plaintiff did not resign his position from the City as a result of the Emily Good matter.

61. The rumors that resulted from the withdrawal of the job offer, particularly given the timing of the Emily Good affair, perpetuated rumors in the local Rochester community of Plaintiff being suspected of domestic violence, being arrested, being subjected to discipline at RPD pursuant to an "investigation," and being terminated at RPD, *inter alia*.

62. Such information provided for extreme embarrassment, emotional distress and damage to a public reputation that Plaintiff had worked so hard to build himself, and was indeed, impeccable for 23 years, and severely impeded Plaintiff's ability to obtain prospective employment, since the above stated allegations impute that Plaintiff is either dishonest, immoral, or both.
63. As a result of those scathing rumors that impugned Plaintiff's reputation, Plaintiff applied for nearly 200 job positions in the Rochester and Western New York area with not one positive response, and with evidence that the Defendants were interfering with Plaintiff's ability to obtain prospective employment.
64. For example, on October 7, 2011 after being part of the selection process for "Deputy Director of Security" at the University of Rochester and identified as one of four finalists, Senior Vice President Paproki advised Plaintiff that he was not hired for the position.
65. During Plaintiff's final interview with the University of Rochester Security Director Walter Maulden, Plaintiff was specifically asked about the circumstances as to his departure from the RPD.

66. Notably, as a result of the September 2, 2011 stigmatizing public press conference conducted by Chief Sheppard, who proclaimed that a "police commander was removed from duty," Maulden asked pointed questions as to the situation.

67. Maulden, in confidence, advised that both Chief Sheppard and Wood provided unfavorable information about the Plaintiff.

68. In November 2011, Plaintiff was offered a position as a "Project Manager – Police Training Technician" with the Division of Criminal Justice Services by Deputy Commissioner Mary Kavaney.

69. The position was contingent upon a background investigation that was to be performed by the State Police.

70. Plaintiff was advised by Commissioner Kavaney that the job offer was being withdrawn due to the existence of the ex-parte Order of Protection.

71. Commissioner Kavaney advised that she received the information of the Order of Protection from the Chief's Office at the RPD.
72. As stated above, however, the order of protection was dismissed in August 2011, however the Chiefs Office still divulged its existence in November of that year.
73. On December 22, 2011, Plaintiff was advised by Security Director McCarthy after being a finalist in the selection process for "Deputy Director of Campus Security" at St. John Fisher College that he did not get selected for the position.
74. During the interview, Director McCarthy specifically inquired about Plaintiff's departure from the Rochester Police Department and asked additional questions about the September 2, 2011 public press conference held by Chief Sheppard where stigmatizing statements were made about the Plaintiff.
75. During the course of the selection process, Director McCarthy advised Plaintiff that he spoke directly with his listed personal references, as well as members of the Chiefs Office at RPD.

76. When asked about his findings during the reference checks at RPD, Director McCarthy would not elaborate on his findings.
77. In January 2012, Plaintiff was advised by Human Resources at Monroe Community College after being a finalist in the selection process for "Campus Safety Deputy Director" that Plaintiff would not be selected for the position.
78. During the interview process, former RPD Investigator Chris Pero was designated as interview committee chair for the 11-person panel.
79. A member of the interview committee advised Plaintiff in confidence that during committee caucus Investigator Pero indicated that Plaintiff was not qualified for the position "due to his actions as a Commander at RPD," and that this information came from Chief Sheppard and Deputy Chief Wood.
80. In January 2012, Plaintiff was a finalist to provide consulting and training services for the New York State Sheriff's Association.

81. During the interview process, the panel of three Sheriffs, a member of the Division of Criminal Justice Services and the Director of NYSSA, advised Plaintiff that reference checks would be performed as part of the selection process.
82. This consisted of contacting the Rochester Police Department Chiefs, *inter alia*.
83. During early 2012, Plaintiff was appointed chairman of a state-wide committee empanelled to create training standards to be part of this committee.
84. One of the members was Sgt. Geoff Waiter of the RPD.
85. There came a point in time in February 2012 that Deputy Chief Mike Wood telephoned representative Mark Fettinger in Albany and demanded the removal of Sgt. Waiter from the committee; Fettinger advised that Wood did not want a RPD representative on a committee "that Plaintiff was a part of."
86. Fettinger advised that Deputy Chief Mike Wood spoke of Plaintiff in a demeaning and defaming manner.

87. In July 2012, Deputy Chief Mike Wood accessed Plaintiff's "LinkedIn" career website and reviewed Plaintiff's history and web page.
88. As a result of the Defendants' actions, Plaintiff is currently without steady employment, forced to work hundreds of miles from his home and family in Rochester, New York, and has been denied medical insurance as a benefit of his employment with the RPD.
89. Plaintiff's reputation of being a respected law enforcement professional/manager after 23 years of building an impeccable career has been tarnished due to the publicly stigmatizing comments of the Defendants to former and prospective employers alike.
90. Mayor Richards; Chief Sheppard; and Deputy Chief Wood all had final policymaking authority to interfere with Plaintiff's employment with the RPD and with Plaintiff's prospective employment.
91. The harmful actions taken by the individually named Defendants, and each of them, in their capacity as Mayor, Chief of Police, and Deputy Chief of Police were part of a municipal policy.

92. The Defendants, and each of them, had no legitimate reason for the actions it took against Plaintiff, a dedicated long term employee of the Defendant City of Rochester.
93. Any reason proffered by the Defendants as an ostensible "legitimate business reason" for the actions taken against Plaintiff are a mere pretext for unlawful deprivation of Plaintiff's constitutional rights; all actions taken herein against Plaintiff are both discriminatory and retaliatory in accord with the above stated paragraphs.
94. Further, the law was clearly established under the United States Constitution at the time of the Defendants' acts, actions, and/or omissions, that caused or were known or should have been known by Defendants would likely have caused the deprivation.
95. Defendants for all times related to the claims acted intentionally, recklessly, maliciously, with gross negligence, in reckless disregard of and/or deliberate indifference to the Plaintiff's rights.

96. The Defendants, and each of them, knew or were on notice that their conduct would result or likely result in a deprivation of the Plaintiff's rights, and that their conduct would subject them to liability under Section 1983.

97. The conduct, acts, action or omission to act, as detailed above, was done under a policy, practice, or custom of the City of Rochester to deprive the civil rights of its employees by failing to properly supervise and/or train its employees, and greatly harmed the Plaintiff as set forth in great detail above.

FIRST CAUSE OF ACTION

**VIOLATION OF CIVIL RIGHTS:
U.S. CONSTITUTION, 1ST AMENDMENT**

98. Plaintiff restates and realleges the above paragraphs as if fully set forth herein.
99. Defendants violated among other provisions, the United States Constitution, Amendment I, in that they deprived Plaintiff the rights, privileges and/or immunities as provided by guarantees to Freedom of Speech and Freedom of Association contained within the United States Constitution and its laws; by participating in the violations of Plaintiffs' civil rights, as guaranteed under the Constitution, statutes, common law, and case law of the United States and of New York State, which were willfully violated by all of the above acts of the defendants.
100. As a result of said unlawful actions, in deprivation of Plaintiffs' constitutional rights, Defendants caused Plaintiffs economic damages in the form of adverse employment actions described above against Plaintiff, as well as severe pain and emotional distress, trauma, nervousness, anxiety, embarrassment, humiliation, and loss of reputation.

101. That by the reason of the aforementioned, Plaintiff is entitled to and hereby makes claim for recovery of reasonable attorneys' fees incurred as a result thereof pursuant to 42 U.S.C. Section 1988.

**SECOND CAUSE OF ACTION
VIOLATION OF CIVIL RIGHTS: U.S. CONSTITUTION, 5TH AND 14TH
AMENDMENTS**

102. Plaintiff repeats and re-allege each and every allegation contained in the above stated paragraphs.

103. By arbitrarily and capriciously accusing Plaintiff of wholly false allegations of wrongdoing, Defendants violated the provisions of the United States Constitution, the Due Process Clause of Amendment V, applied to the States by and through the Due Process Clause of Amendment XIV, in that they deprived Plaintiff of his property interest in his employment as an RPD employee by compelling him to resign, and further interfered prospectively with Plaintiff's ability to be hired as a law enforcement officer with any other institution within Western New York, without due process of law guaranteed by the Fifth, and Fourteenth Amendments to the United States Constitution and its laws; by participating in the violations of Plaintiffs' civil rights, as guaranteed under the Constitution,

statutes, common law, and case law of the United States and of New York State, which were willfully violated by all of the above acts of the defendants.

104. As a result of said unlawful actions, in deprivation of Plaintiff's constitutional rights, Plaintiff was caused to suffer economic damages in the form of adverse employment actions described above as well as severe pain and emotional distress, trauma, nervousness, anxiety, embarrassment, humiliation, and loss of reputation.

105. That by the reason of the aforementioned, Plaintiff is entitled to and hereby makes claim for recovery of reasonable attorneys' fees incurred as a result thereof pursuant to 42 U.S.C. Section 1988.

THIRD CAUSE OF ACTION

DUE PROCESS VIOLATIONS

106. Plaintiff reiterates and incorporates the factual allegations contained in the above stated paragraphs.

107. By demoting Plaintiff, and then by compelling his to resign because he was an "outsider," and then by interfering with his prospective job opportunities,

denigrating his personal and professional abilities, both publicly and to prospective employers, among other things, Defendants, through their own biased, abusive and arbitrary actions, have treated Plaintiff differently than similarly situated individuals, and have done so without justification. This abuse of power shocks the conscience.

108. Defendants acting under color of state law, have engaged in conduct so egregious as to exceed the boundaries of wrongful injuries under tort law and have therefore deprived Plaintiff of his clearly established due process rights guaranteed by the Fourteenth Amendment to the United State Constitution. Defendants' conduct was willful, in bad faith, fraudulent, and with actual malice.
109. Defendants improperly interfered with Plaintiff's ability to obtain prospective employment for purely personal reasons, bias and bad faith.
110. Defendants damaged Plaintiff's standing and associations in the community by stating during a public press conference that he was removed because of an internal investigation, imputing that he was dishonest and immoral, and disclosing to

prospective employers that he was subject to an Order of Protection that had already been dismissed as and against the Plaintiff. Defendants further stigmatized Plaintiff's abilities to take advantage of other employment opportunities by publicizing these false accusations to prospective Western New York employers for jobs for which Plaintiff was qualified.

111. Defendants manufactured charges of incompetence, immorality, and dishonesty against Plaintiff and defamed Plaintiff, to prevent him from remaining gainfully employed, and ultimately to execute Plaintiff via their public termination.

112. Plaintiff had a liberty interest in his employment.

113. As a result of Defendants' due process violations, Plaintiff sustained damages.

114. Plaintiff demands judgment in his favor and against Defendants for compensatory damages, punitive damages if applicable, plus interests, costs of suit, attorney's fees and such other and further relief as the Court deems just and proper.

115. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiff is entitled to an award of monetary damages in an amount to be determined by the evidence and this Court and the reasonable costs of this lawsuit, including his reasonable attorneys' fees.

FOURTH CAUSE OF ACTION

NEGLIGENT FAILURE OF HIRING, TRAINING, SUPERVISION AND/OR RETENTION

116. Plaintiff repeats and realleges each and every allegation contained in the above stated paragraphs as if fully set forth herein.

117. Upon information and belief, Defendant City of Rochester failed to adequately train and supervise its police officers in the proper handling of personnel, personnel investigations through PSS, complaints regarding wrongdoing, corruption, and or illegal activities of other members of the RPD personnel.

118. Plaintiff asserts that the employers of the individual Defendants of the RPD knew, or should have known, of their inability to police its own personnel when handling complaints of wrongdoing, corruption or illegal activities; and failed to adequately supervise them during their employment

and negligently placed them in such a sensitive position of employment, without adequate or proper training, supervision or control, to harm other members of the RPD.

119. The City of Rochester and the RPD have tolerated and permitted a pattern of illegal and unconstitutional actions against its personnel who, like Plaintiff, are deemed to not be a part of the RPD, or are used as a scapegoat to cover for the illicit actions of other culpable officers, and have failed to maintain a proper system for reviewing such conduct by City of Rochester personnel, with the result that City of Rochester personnel were encouraged to believe that they could violate the rights of any person, such as Plaintiff, with impunity, without regard to the impact that their actions have upon the reputation and livelihood of those they target.

120. The aforementioned acts of the members of the City of Rochester's Police Department were the direct and proximate result of the City of Rochester and the RPD's failure to properly train, hire and supervise its personnel, especially its high ranking supervisors such as Chief Sheppard and Deputy Chief Wood.

121. Such failure to adequately hire, train and supervise and retain its personnel was the cause of the members of the RPD, in particular Chief Sheppard and Deputy Chief Wood wrongfully stigmatizing Plaintiff in conjunction with the Emily Good matter, and in conjunction with his compelled resignation, thereby causing Plaintiffs' injuries and damages.

122. As a result of such negligent failure to supervise, Plaintiff has suffered economic damages including loss of pay, extreme financial strain, loss of opportunity for advancement, and attorneys fees as well as emotional distress, family stress, depression, embarrassment, humiliation, and loss of reputation.

FIFTH CAUSE OF ACTION

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

123. Plaintiff reiterates and incorporates the factual allegations contained in the above stated paragraphs.

124. Defendants had a fiduciary duty toward Plaintiff. Defendants owed a duty of care to Plaintiff. Defendants breached this duty of care through their

repeated false accusations and interference with Plaintiff's current and prospective employment, set forth in the foregoing paragraphs of this Complaint.

125. Defendants' breach proximately caused Plaintiff's injuries, which are set forth in the foregoing paragraphs of this Complaint, including but not limited to, ongoing severe stress, anxiety, mental, physical and emotional harm due to his loss of reputation and inability to be hired in the very community that he served.

126. Plaintiff has suffered actual loss or damage as a result of Defendants conduct.

127. It was reasonably foreseeable that Defendants actions would cause actual loss or damage to Plaintiff.

128. As a result of Defendants negligent infliction of emotional distress, Plaintiff demands judgment in his favor and against Defendants for compensatory damages, punitive damages if applicable, plus interests, costs of suit, attorney's fees and such other and further relief as the Court deems just and proper.

SIXTH CAUSE OF ACTION

CIVIL CONSPIRACY

129. Plaintiff reiterates and incorporates the factual allegations contained in the above stated paragraphs.

130. Defendants publicly stated at a press conference that as a Commander, Plaintiff was removed from his position due to an "internal investigation," thereby tortuously interfering with a contractual relationship and prospective contractual relationship(s).

131. A combination of two or more Defendants, each with a common purpose, performed unlawful acts and lawful acts by unlawful means in demoting and eventually compelling Plaintiff to resign, all under the auspice of an alleged "internal investigation."

132. Defendants acted outside of the scope of their duties as high ranking employees of the City of Rochester. Defendants' actions did not arise from or reasonably relate to their office or performance of their duties. Defendants' actions were conducted with personal animosity bearing no relationship to

their responsibilities as high ranking employees of the City of Rochester.

133. Defendants acted with malice and without legal justification, and the desire to hurt the Plaintiff.

134. Plaintiff demands judgment in her favor and against Defendants for compensatory damages, punitive damages if applicable, plus interests, costs of suit, attorney's fees and such other and further relief as the Court deems just and proper.

SEVENTH CAUSE OF ACTION

VIOLATION OF 42 U.S.C. SECTION 1983

135. Plaintiffs restate and reallege the above stated paragraphs as if fully set forth herein.

136. Defendants violated the provisions of 42 U.S.C. Section 1983 in that, acting under color of law, they deprived Plaintiff of their rights, privileges and/or immunities as set forth in all of the above-stated Causes of Action: First Amendment guarantees to Freedom of Speech and Freedom of Association; Fifth and Fourteenth Amendments guarantees to Due Process; Negligent Failure Of Hiring, Training, Supervision And/Or Retention;

Negligent Infliction of Emotional Distress, all of which are contained within the United States Constitution and its laws, by participating in the violations of Plaintiffs' civil rights, as guaranteed under the Constitution, statutes, common law, and case law of the United States and of New York State, were willfully violated by all of the above acts of the Defendants, and each of them.

137. As a result of said unlawful actions, in deprivation of Plaintiffs' constitutional rights, Defendants caused Plaintiffs economic damages in the form of adverse employment actions described above against Plaintiff as well as severe pain and emotional distress, trauma, nervousness, anxiety, embarrassment, humiliation, and loss of reputation.

138. That by the reason of the aforementioned, Plaintiffs are entitled to and hereby makes claim for recovery of reasonable attorneys' fees incurred as a result thereof pursuant to 42 U.S.C. Section 1988.

WHEREFORE, Plaintiffs demand judgment against Defendants, and each of them, in accord with the above stated causes of action, as determined by a jury.

Dated: July 6, 2013
Rochester, New York

By:

CHRISTINA A. AGOLA, PLLC

/s/ Christina A. Agola

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