



### **PARTIES**

2. Plaintiff Lt. Leonard Mazzola is a resident of Independence, Ohio in Cuyahoga County.
3. Defendant Gregory O'Brien is the Law Director for the City of Independence. He is sued in his individual capacities. At all relevant times, he was acting in his capacity as a state actor.

### **JURISDICTION AND VENUE**

4. Jurisdiction over federal claims under 42 U.S.C. § 1983 and under 42 U.S.C. § 1988, which provides for attorneys' and expert fees for vindication of civil rights, is asserted under 28 U.S.C. §§ 1331, 1343(3) and (4).
5. The Court has jurisdiction over the parties under 28 U.S.C. § 1391 and venue is proper here because the events at issue took place in this jurisdiction.

### **FACTUAL BACKGROUND**

#### **Lt. Mazzola was an effective and well-respected police officer.**

6. Leonard Mazzola dedicated his life to serving his community. He joined the Independence police force at age 25 and served proudly for almost 24 years, rising to the rank of lieutenant.
7. Lt. Mazzola loved his work and was a model officer. He organized community events and engaged with Independence residents. He helped organize annual firework displays and carnival events, and police security for such events. He provided police K-9 demonstrations in schools, V.F.W. halls, and community centers. He organized a food-and-clothing drive for a local non-profit that focuses on drug rehabilitation.
8. Lt. Mazzola did all this because he knows the great impact positive interactions with police can have on a community. He worked every day to make Independence a safer and more cohesive community.

9. Lt. Mazzola received a number of commendations, awards, and positive comments from members of the community he served. His personnel file reflects no significant disciplinary issues.

10. At the time of the relevant events preceding his forced retirement, Lt. Mazzola was the patrol commander for the police department. His ordinary job responsibilities involved supervising the patrol officers. His ordinary job responsibilities did not involve communicating with the media about Independence policies or practices.

11. Lt. Mazzola's promising career changed drastically when the City decided to use traffic tickets to increase the community's revenue.

**The City institutes a quota for traffic tickets.**

12. After reviewing a report regarding the mayor's court revenues, then-Mayor Togliatti believed that fewer traffic tickets were issued in the first half of 2018 than in previous years, resulting in lower revenues. In approximately July 2018, he contacted Chief Kilbane about this perceived deficiency in the numbers.

13. On July 20, 2018 Chief Kilbane emailed Lt. Mazzola stating that then-Mayor Togliatti had asked why "traffic citation productivity has declined. For the first six months of 2017 we had 1696 tickets but for the same period in 2018 we only have 1504. In June of 17 we wrote 283 but in June of this year we only had 173 (75 of those were detail tickets)." Chief Kilbane instructed Lt. Mazzola to "get this turned around" as soon as possible. Togliatti was apparently demanding that the police department impose a quota on the number of traffic citations issued. The goal of this quota was to increase revenue.

14. In early August, Chief Kilbane implemented the City's new quota (which Kilbane insisted on referring to euphemistically as a "performance standard").

15. In a memo to Lt. Mazzola dated August 6, 2018, Chief Kilbane explained that “officer activity and productivity has declined significantly.” Chief Kilbane instructed Lt. Mazzola to perform a review of all “underperforming” officers, and develop a plan to make sure all officers are issuing traffic-tickets at acceptable “levels of productivity.”

16. Lt. Mazzola followed the directive to impose the quota and communicated the marching orders to his sergeants (Kurtz, Anders, Cross, and Tinnirello) via memo dated August 8, 2018. The new directive confused and angered officers because they had not previously been required to fulfill a traffic-ticket quota.

17. Throughout the month of August, production increased by 27%. Nevertheless, Chief Kilbane ordered Lt. Mazzola to appear for a pre-disciplinary hearing for not getting the numbers up more. During that hearing, Chief Kilbane continued to stress the importance of increasing revenue through traffic tickets.

18. On September 18, 2018, Chief Kilbane again raised the issue of “declining volume in Mayor’s Court” and the “performance standards” in terms of traffic tickets, stating “[y]our responsibility is to institute and monitor accountability measures on an individual and aggregate level to ensure that this proficiency standard is met (and hopefully exceeded). Productivity should be monitored on an ongoing basis and appropriate adjustments made to ensure individual and aggregate goals are met.” Chief Kilbane continued to insist that he wasn’t implementing a quota, saying: “To reiterate, this is not a quota, it is a performance standard fundamental to effective policing.” Chief Kilbane also required Lt. Mazzola to attend a course in “Performance Directed Management” with Dr. D.J. Van Meter, ostensibly to further the goal of implementing the quota.

19. On September 25, 2018, at Chief Kilbane's direction, Lt. Mazzola emailed all patrol officers and dispatchers further detailing the new quota or "performance standard." Chief Kilbane had decided that 3,000 traffic tickets was the minimum amount officers were collectively responsible for annually. This translated into 10 tickets per month per officer. Lt. Mazzola alerted his patrol that this new quota would be in place for the final quarter of 2018, with each officer expected to write 30 traffic tickets from October through December.

**Chief Kilbane directs Lt. Mazzola to discipline Officer Dalton for failing to meet the City's traffic-ticket quota.**

20. On January 7, 2019, Chief Kilbane instructed Lt. Mazzola to issue a written reprimand to Officer Dalton for failure to meet the traffic-ticket quota.

21. Lt. Mazzola followed Chief Kilbane's instruction and issued a written reprimand to Officer Dalton that same day for failure to issue at least 30 traffic tickets in the last quarter of 2018.

22. The written reprimand infuriated Officer Dalton. He wrote that he was "SIGNING THIS UNDER DURESS!" when Lt. Mazzola delivered the write up as Chief Kilbane instructed. On January 11, 2019, Officer Dalton filed a grievance over the reprimand.

**The story of the City's traffic-ticket quota appears on the local news.**

23. On January 14, 2019, the local Fox 8 news broadcast featured a story by reporter Ed Gallek about the mayor's traffic-ticket quota.<sup>1</sup> This negative publicity caused uproar throughout Independence and surrounding communities (including the many people in Northeast Ohio who travel through Independence during their daily commute to work on Interstate 77).

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<sup>1</sup> Ed Gallek, *i-Team: Counting traffic tickets in busy northeast Ohio suburb*, Jan. 14, 2019, [https://fox8.com/2019/01/14/i-team-counting-traffic-tickets-in-busy-northeast-ohio-suburb/?utm\\_source=related\\_1](https://fox8.com/2019/01/14/i-team-counting-traffic-tickets-in-busy-northeast-ohio-suburb/?utm_source=related_1)

24. Mr. Gallek reported accurately that Independence police were required to issue at least 10 traffic tickets per month per officer. The report also revealed that at least one officer was disciplined for not reaching that quota.

25. During the broadcast, images of certain documents were displayed. One of the images displayed was Lt. Mazzola's memorandum—issued at Chief Kilbane's request—announcing the quota to the patrol officers.

26. The records displayed during the Fox 8 broadcast on January 14, 2019 were public records not subject to any exemption from disclosure under Ohio law.

27. It was not improper or prohibited for Mr. Gallek to possess the public records displayed during the Fox 8 broadcast on January 14, 2019.

28. In the news report, Chief Kilbane was interviewed. He looked silly adamantly insisting that officers do not face quotas despite the fact that his own internal emails and orders show that they do. His resulting embarrassment fueled his anger about the release of this public information.

29. Mr. Gallek's exposé embarrassed not only Chief Kilbane but also other Independence officials, who were angry about having their scheme to impose quotas revealed.

**There is community outrage about the quotas.**

30. Residents and commuters in Independence were furious as the community discussed the Fox 8 story about the quotas. There were legitimate community concerns over this policy.

31. One resident who was particularly incensed about the quota was Mary Jane Horton, a resident of Chestnut Road. Shortly after the Fox 8 news story aired, Ms. Horton sent an email to various Independence residents sharing the link to the story. Under the subject heading "Follow Up Email. RESIDENTS BEWARE!! Mayor wants more traffic ticket revenue so our Indy polic[e] are now given traffic ticket quotas," Ms. Horton warned residents about the mayor's

traffic-ticket quota (“Independence Police officers are being directed by the Mayor to increase the number of traffic tickets written in the City”) and shared the link to the news story.

Ms. Horton complained that her 68-year-old husband and her neighbor’s friend had been ticketed near their home on Chestnut Road. She called the quota the “most egregious kind of selective enforcement,” “a disgusting practice,” and “grossly unfair.” She continued: “As a resident, I believe that it is totally unacceptable to give an excellent police officer a written disciplinary warning because he does not meet his quota for tickets.” She went on to add: “**This must stop now!!!** Please send a quick email at [togliattia@independenceohio.org](mailto:togliattia@independenceohio.org) or call the Mayor at (216) 524-4131 or Cell (216) 406-1879 to tell him so. We need to send the Mayor a message that we strongly object to raising revenue via our residents and we strongly object to putting our police officers in this unfair employment position where they would have to fear a performance warning if they do not write enough tickets.” Ms. Horton concluded her email: “Please share this information with your friends and family members. Thank you so much for joining your fellow residents in sending a loud message to the Mayor that we say ‘NO’ to police quotas and related ticketing of residents.”

32. Ms. Horton forwarded her email to the members of the Independence City Council saying: “this new policy of police performance standards is designed specifically to generate more revenue for the City at the expense of residents” and asked the City councilmembers to “intervene[] directly with the Mayor/Administration to get him to stop this harmful procedure.”

33. In addition to the email traffic in the wake of the Fox 8 story in January 2019, social media was abuzz in the early part of 2019 with criticism of the quota as well. The decision to impose the quota was wildly unpopular.

**Despite Lt. Mazzola's concerns about the quota, he followed the chief's instructions to impose it and police his patrol officers' use of the term "quota."**

34. As community outrage over the quotas grew, so did Chief Kilbane's frustration. Chief Kilbane instructed Lt. Mazzola to speak to patrol officer Shane Bates regarding his use of the term "quota" and his recent citations to residents on Chestnut Road. Lt. Mazzola complied with the chief's order and spoke to Ptl. Bates on January 14, 2019.

35. That same day, Ptl. Bates emailed Lt. Mazzola to confirm a conversation they had just completed. The email provides as follows:

Lieutenant Mazzola,

Upon arrival at 1800 on 01/14/19 you spoke to me on behalf of the Chief of Police in regard to my use of the term "quota" describing the "performance standard" whereby a certain number of traffic citations are required in a prescribed period of time or disciplinary procedures will result. I will change my terminology from the word "quota" to "performance standard" in all future conversations.

Secondly, you indicated to me that the Chief of Police wished to convey a message that I was to exercise more discretion when deciding whether to cite a resident of the City of Independence. You indicated that Chief Kilbane was clear, if I didn't comply with this order my "limited involvement" in (The Cuyahoga County Regional Human Trafficking Taskforce) "would become none". This message has been received. I will increase my standards for what I consider a "citable" violation for residents of the City of Independence. Also, I will try to avoid areas when possible where I know residents may be committing violations at a more frequent rate than other nonresidents.

Lastly, I was acting in good faith with my previous residential citations, I was attempting to meet the "performance standard" while at the same time enforcing traffic violations on Chestnut Rd. within the City Of Independence for any speed in excess of forty miles per hour in a posted twenty five mile per hour zone without regard to residential status. This location was picked by your office and was predicated on residential complaints. Please note, I requested that you place this conversation in writing for my



records, and you advised that the Chief of Police instructed you “to keep it verbal.”

Sincerely,

Patrolman Shane Bates 53

36. Chief Kilbane was displeased with Ptl. Bates’s message in response to his conversation with Lt. Mazzola. Chief Kilbane responded by email to Ptl. Bates saying: “This patrol proficiency should be demonstrated by every officer on an ongoing basis and Lieutenant Mazzola, with my full support, has the right to expect reasonable performance outcomes that show officers are continually demonstrating this proficiency.” The chief confirmed that whether a “driver lives/works in our city” was among the “factors that need to be considered when making this discretionary decision” about whether to issue a traffic ticket. Chief Kilbane also stated—in no uncertain terms—his displeasure with Ptl. Bates’s openness about the new requirements with the public: “Informing a driver that they are being cited because the officer is under a ‘quota’ or performance standard or any similar type language is unnecessary, unprofessional and serves no legitimate law enforcement purpose and these types of statements will cease immediately.”

37. Chief Kilbane’s written directive to Ptl. Bates reveals the chief’s intention to prevent the public from receiving information about the new department policy. It also constitutes an unconstitutional prior restraint under the First Amendment.

38. Shortly after documenting his conversation with Lt. Mazzola and being admonished by the chief, Ptl. Bates was moved to a different shift.

39. During the controversy that followed Mr. Gallek’s January report, the Independence police department continued to perform its duties effectively despite the negative publicity. The

media coverage of the quota did not impair police officers from carrying out their responsibilities.

**Independence officials discuss residents' concerns about the traffic-ticket quota.**

40. The uproar and backlash reached the mayor's office, and then-Mayor Togliatti met with Chief Kilbane, Lt. Mazzola, and the city prosecutor, Chuck Cichocki, in January 2019. These officials discussed the traffic-ticket quota, related residential discord, and how to proceed.

41. At the meeting, Lt. Mazzola explained that over 15 years ago, he developed and implemented a point-based system for productivity assessment (the "Point System"). The Point System allows traffic tickets to be one factor among many that determine whether an officer has met productivity standards. He recommended that the Point System be used instead of the quota or "performance standard" that required each officer to write a certain number of tickets or face discipline.

42. Following their meeting, Lt. Mazzola understood that the group agreed to use the Point System and to stop using a traffic-ticket quota.

**Lt. Mazzola attends law-enforcement management training, which includes instruction that traffic-ticket quotas are illegal and unethical.**

43. On February 15, 2019, Lt. Mazzola attended the training in law-enforcement management by Dr. Van Meter.

44. At that training, Dr. Van Meter advised that traffic-ticket quotas are unethical and that many states have statutes making them outright illegal. Dr. Van Meter explained that quotas undermine public policy by creating public distrust; quotas also create perverse incentives for police officers. Even in states without an anti-quota statute, Dr. Van Meter strongly advocated against their use for ethical reasons.

45. Lt. Mazzola did not want the City of Independence to be doing something illegal or unethical. He wanted his department to be successful and respected by the community.

46. On February 21, 2019, Lt. Mazzola emailed the human-resources manager, Leticia Linker, expressing concerns. Lt. Mazzola explained that the course included instruction that requiring a certain number of traffic citations was an illegal quota, and said that it was “unethical & illegal” to target nonresidents versus residents. He explained that Chief Kilbane had used inaccurate data to assess the traffic-ticket issue. Lt. Mazzola discussed the Point System and asked what HR was going to do about Chief Kilbane’s false statements during the pre-disciplinary hearing.

**The police chief doubles down on the quota and Lt. Mazzola raises concern about the quota’s legality.**

47. On February 27, 2019, Chief Kilbane emailed Lt. Mazzola at 1:53 p.m. informing him that the Point System must include a traffic-ticket quota separate from other measurements of productivity. In other words, Chief Kilbane was directing Lt. Mazzola to maintain the traffic-ticket quota despite their previous discussion about the Point System.

48. Lt. Mazzola was concerned about the chief’s change of position, particularly in light of what Lt. Mazzola had been instructed at the management training about quotas being illegal and unethical.

49. Lt. Mazzola drafted an email on February 27, 2019 at 2:03 p.m. expressing that the chief’s insistence on the quota was not what he understood coming out of the previous meeting, and requesting another meeting to clarify expectations. Citing the management training that he had just attended, he also expressed in the draft internal email his concern that the quota was “unethical and illegal” as well as creating “a political problem when enforcement was on

residents vs nonresidents.” Despite his reservations, he expressed in the draft that he would “implement whatever is agreed upon.”

50. Lt. Mazzola printed this draft email and shared it with then-Mayor Togliatti during an in-person meeting the next day, February 28, 2019, at 3:00 p.m. Lt. Mazzola asked Togliatti if he (Lt. Mazzola) should send the email. After reading the draft email, Togliatti told Lt. Mazzola to “hold off” on sending it.

51. During the February 28, 2019 meeting with then-Mayor Togliatti, Lt. Mazzola also shared with Togliatti a printed copy of the email Lt. Mazzola sent to the HR manager, Ms. Linker, on February 21, 2019 expressing concerns about the traffic-ticket quotas.

52. During the February 28, 2019 meeting with Togliatti, Lt. Mazzola discussed the traffic-ticket quota with the then-mayor and expressed his concerns about the illegality of quotas consistent with the language of his email to Ms. Linker and the draft email Lt. Mazzola took to the meeting.

53. At no time during the meeting on February 28, 2019 did then-Mayor Togliatti mention to Lt. Mazzola that two days earlier, he (Togliatti) had (as detailed below) signed an engagement agreement hiring an outside vendor to conduct an investigation into how the media learned of the quota.

54. During that meeting, Togliatti never gave Lt. Mazzola any indication that he (Togliatti) suspected that Lt. Mazzola or anyone else in the police department had engaged in any kind of criminal or otherwise forbidden conduct in sharing information or public records about the quota issue with the media.

55. Lt. Mazzola engaged in protected conduct by raising concerns about the unpopular quota policy that, based on training he had attended at the City's direction, he reasonably believed to be unethical and potentially illegal.

**Unbeknownst to Lt. Mazzola, the City had already launched an investigation to determine who "leaked" the traffic-ticket quota to the new media.**

56. As Lt. Mazzola was preparing to address his concerns about the quotas with the mayor, City officials were initiating an internal-affairs investigation into who shared the quota information with media.

57. On February 27, 2019, exactly 17 minutes after Lt. Mazzola printed the email to share with the mayor expressing his concern about the legality and ethics of the quota, Chief Kilbane sent an email attaching the engagement agreement to retain an outside vendor, William D. Evans, II, Co., L.P.A., to "perform an Internal Affairs and/or workplace investigation involving a matter of unauthorized disclose of departmental information."

58. This investigation was devoted exclusively to trying to ascertain who "leaked" the information about the traffic-ticket quota. Targeting an employee for sharing information about a government policy with the media is illegal and any reasonable public official—including any reasonable lawyer—would have known that.

59. Then-Mayor Togliatti and Defendant Law Director Gregory O'Brien signed the engagement agreement agreeing to pay up to \$7,500 in city funds to an outside investigator to determine who had alerted media to the unethical quota. The mayor signed the document on February 26, 2019.

60. Defendant O'Brien, Togliatti, and Kilbane arranged for Lt. Mazzola's aggressive interrogation on baseless charges.

61. In Ohio, public records are the people's records, and those who have custody of records hold them as trustees for the people.<sup>2</sup> Sharing public information or public records with the public or the news media is protected both under Ohio law and by the First Amendment to the United States Constitution.<sup>3</sup> A public employee cannot be disciplined for sharing a public record with the public.<sup>4</sup> A public employee cannot be disciplined for revealing a public policy (like a traffic-ticket quota) to the public.<sup>5</sup> Whoever tipped the press about the traffic-ticket quota was engaging in constitutionally protected conduct.<sup>6</sup> Nevertheless, City officials aggressively pursued an investigation into who had engaged in protected conduct by alerting the media to the new traffic-ticket quota.

62. The "investigation" that Togliatti, O'Brien, and Kilbane initiated was an utter waste of time and resources, as the "culprit" hadn't actually done anything wrong.

63. An official investigation into constitutionally protected conduct would chill or dissuade a person of ordinary firmness into engaging in the protected conduct in the future.

64. Independence officials had no compelling governmental interest in hiding from the public their efforts to increase revenue through traffic tickets.

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<sup>2</sup> *State ex rel. Kesterson v. Kent St. Univ.*, 156 Ohio St. 3d 22, 2018-Ohio-5110, 123 N.E.3d 895, ¶ 9.

<sup>3</sup> *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 491–97 (1975) ("Public records by their very nature are of interest to those concerned with the administration of government, and a public benefit is performed by the reporting of the true contents of the records by the media. The freedom of the press to publish that information appears to us to be of critical importance to our type of government in which the citizenry is the final judge of the proper conduct of public business.").

<sup>4</sup> *See Matulin v. Village of Lodi*, 862 F.2d 609, 613 (6th Cir. 1988) (holding public employee's statements to reporter about public records were protected by First Amendment).

<sup>5</sup> *See Whitney v. City of Milan*, 677 F.3d 292, 297–98 (6th Cir. 2012) (revealing mayor's evasion of nepotism policy); *Spencer v. City of Catlettsburg*, 506 F. App'x 392, 395–96 (6th Cir. 2012) (revealing that public records were missing).

<sup>6</sup> *See Spencer*, 506 F. App'x at 395–96 (affirming that city clerk's statements to reporters about missing public records were constitutionally protected); *Hughes v. Region VII Area Agency on Aging*, 542 F.3d 169, 182 (6th Cir. 2008) (public employee's conversations with reporter regarding public official's improprieties were protected by First Amendment).

**The investigation targets Lt. Mazzola even though he had not actually alerted the media to the ticketing policy and had instead dutifully implemented it at the chief's behest.**

65. On March 7, 2019, Chief Kilbane ordered Lt. Mazzola to appear for an interview regarding whether he had shared public information and public records with the media.

66. Lt. Mazzola complied with Chief Kilbane's order, appearing for an interview with attorney William D. Evans, II on March 13, 2019. During the questioning, Lt. Mazzola was repeatedly asked whether he had provided that information to the media or knew who had. He answered all questions fully and truthfully, denying any involvement.

67. Lt. Mazzola was not the person who shared the public records about the traffic-ticket quotas with the news media. Lt. Mazzola does not know who shared the public records about the traffic-ticket quotas with the news media.

68. Defendant O'Brien and other City officials apparently remained convinced that Lt. Mazzola was the officer who "leaked" the public records, exposing official misconduct and public corruption.

69. Chief Kilbane ordered Lt. Mazzola to take a polygraph test on March 20, 2019.

70. Under written Independence policy, polygraph examinations may not be administered to police unless they are part of a criminal investigation. Sharing information about public policies or non-exempt public records with the public or the media is not a crime. City policy therefore prohibited asking anyone to take a polygraph test under the circumstances.

71. Had Lt. Mazzola shared public information or public records about the traffic-ticket quota with the media, it would have been his constitutional right to do so.

72. Whoever shared the details about the traffic-ticket quota with the media, it was that person's constitutional right to do so.

73. Lt. Mazzola attended the second interview with attorney William D. Evans, II as ordered, and submitted to the mandatory polygraph examination with a polygraph examiner from William D. Evans, II, Co., L.P.A. Lt. Mazzola understood that refusal to take the exam would result in immediate termination.

74. Before the polygraph, Lt. Mazzola advised the examiner about having limited sleep the previous evening. The examiner nevertheless proceeded with the examination.

75. During the polygraph, the examiner denied Lt. Mazzola the right to have his attorney present. His union representative was also excluded.

76. During the polygraph, the examiner asked Lt. Mazzola over and over again whether he had provided information to the media about the traffic-ticket quotas.

77. Lt. Mazzola again answered the questions fully and truthfully.

78. The polygraph examiner told Lt. Mazzola that he had failed the polygraph. But that could not have been true, because he had told the truth and was not responsible for sharing any information with Mr. Gallek. On information and belief, the polygraph examiner falsely claimed that Lt. Mazzola had failed to try to get him to admit to he was the source. The polygraph examiner never prepared a written report regarding the exam until nearly two months after Lt. Mazzola filed this lawsuit. Yet City officials continued to insist that Lt. Mazzola was to blame (for this totally legal conduct).

79. If Lt. Mazzola failed the polygraph, it was as a result of its administration under conditions not conducive to accurate results.

80. Lt. Mazzola left the polygraph examination devastated and desperate to dispel any notion that he was responsible. He feared discipline if City officials continued to mistakenly believe he was the one who had shared information about the traffic-ticket quota with the media.



81. In the evening after the interview, Lt. Mazzola reached out to Mr. Gallek, the reporter on the story that prompted City officials to initiate the illegal investigation. Lt. Mazzola asked Mr. Gallek to confirm that Lt. Mazzola was not the source of the information in the article. Mr. Gallek declined at the time, citing company policy. (As detailed below, Mr. Gallek later acknowledged during the Fox 8 story of May 3, that Lt. Mazzola had not shared the information.)

82. City officials remained convinced Lt. Mazzola had shared the information about the traffic-ticket quota. And they were determined to force him out of the department for it.

**Defendant O'Brien and other City officials retaliate against Lt. Mazzola for his perceived betrayal.**

83. Following the sham investigation, Defendant O'Brien and other City officials next retaliated against Lt. Mazzola for his perceived exercise of First Amendment rights by threatening to demote him from lieutenant to patrolman (with the corresponding decrease in compensation) and threatening to put him on the *Brady/Giglio* list, which would have destroyed his credibility as a witness.<sup>7</sup> Defendant O'Brien delivered this ultimatum.

84. On Friday, March 22, 2019, Defendant O'Brien was summoned to then-Mayor Togliatti's office, where City officials, including Togliatti and Kilbane, told him what the investigation of Lt. Mazzola entailed. In this meeting, Defendant O'Brien agreed to speak to the attorney for Lt. Mazzola's union, Robert Phillips.

85. Defendant O'Brien spoke to Robert Phillips on Monday, March 25, 2019. O'Brien sent an email summarizing the call that day to Kilbane and Togliatti, along with Human Resources

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<sup>7</sup> The *Brady/Giglio* list includes officers who have lied or have other serious marks on their records and can, in and of itself, be career ending. Being on this list means that prosecutors have to disclose the officer's damaged credibility to any defendant against whom the officer may be called as a witness in court. On information and belief, not one single officer in Independence was on the *Brady/Giglio* list at the time Defendant O'Brien threatened to have Mazzola subjected to disqualification as a witness.

Director Letitia Linker. In that call, Defendant O'Brien told Robert Phillips about "the areas that a pre-disciplinary hearing would cover: (1) circumventing the chain of command, (2) overt disregard for directives of a superior officer; and (3) lying/dishonesty." Defendant O'Brien informed Phillips that the City would not be seeking Lt. Mazzola's termination but would instead demote him to patrol officer.

86. In the March 25, 2019 call, Defendant O'Brien also told Phillips that the City intended to pursue an arbitration that included "dishonesty disqualifiers," which is another way of referring to the *Brady/Giglio* list (in whatever form) that effectively disqualifies an officer from testifying based on dishonesty.

87. Defendant O'Brien also "informed Bob that the City would be left with whether [Lt. Mazzola] could serve as a police officer if he was disqualified as a witness because of dishonesty." He "told Bob if, after an arbitration, it was found that [Lt. Mazzola] could not serve as a witness[,], then at that point the City may take the position he cannot serve an essential function of his position[,], which could affect [Lt. Mazzola]'s employment."

88. Defendant O'Brien offered one "viable alternative" to the discipline the City planned: Lt. Mazzola could retire now at his "current grade," and Evans would never prepare the report of his investigation.

89. Defendant O'Brien used his independent discretion as Law Director to decide what information to tell Phillips the City's disciplinary considerations.

90. Defendant O'Brien knew that most police departments refuse to hire new officers who have been disciplined for dishonesty and that Lt. Mazzola's chance of finding work in another department with a tarnished file and at his age were slim to nil.

91. By raising the scepter of career-ruining discipline, Defendant O'Brien intended to induce Lt. Mazzola to resign or retire early.

92. Defendant O'Brien closed his March 25, 2019 summary email to Kilbane, Togliatti, and Human Resources Director Linker by eliciting assistance for preparing a bullet-point email that Phillips requested summarizing the City's plans to discipline Mazzola. Defendant O'Brien received multiple emails from City officials to help him prepare this email to Phillips.

93. On March 27, 2019, at 12:25 p.m. UTC, Human Resources Director Letitia Linker emailed a draft notice of predisciplinary hearing to Defendant O'Brien and Kilbane. The draft notice stated: "As the result of Lt. Mazzola's performance and actions, a predisciplinary conference is scheduled for \_\_\_\_\_." (Blank in the original.) The notice listed the specific charges the hearing would address: "The meeting will address charges under: GENERAL ORDER: 502 Uniform Standards of Conduct[;] 11. Dishonesty or Untruthfulness[;] 12. Displaying Competent Performance and Achieving Competent Performance Results[;] 16. Insubordination[;] 17. Knowing, Observing, and Obeying All Directives, Rules, Policies, Procedures, Practices and Traditions[;] GENERAL ORDER: 601: Records Security and Privacy[; and] GENERAL ORDER: 108: Media Relations[.]'" The email explained the factual bases for these proposed charges as "Lt. Mazzola's repeated failure to follow departmental regulations as well as orders and direction of the Chief" including "creating and implementing performance standards inconsistent with the Chief's directive and without his knowledge or approval"; "communicating police operational matters not known to the Chief with City officials and department staff"; "violating order regarding communication of police matters"; "dishonesty while participating in an investigation conducted by a third party as evidenced by failure of a polygraph"; and "failure to follow operational directives."

94. Chief Kilbane also communicated ideas to Defendant O'Brien about what to include in the email to Phillips, and O'Brien relied primarily upon information from Kilbane in crafting the email.

95. On March 27, 2019, Phillips informed Lt. Mazzola that the City intended to demote him to patrol officer and add him to the *Brady/Giglio* list unless Lt. Mazzola retired.

96. On March 28, 2019, Phillips called Defendant O'Brien and advised that he had taken "good notes" on their discussion from March 25, 2019 and had informed Mazzola him of what Defendant O'Brien told him. Phillips told Defendant O'Brien that Lt. Mazzola had decided to retire based on that conversation. He also told Defendant O'Brien that he still needed the bullet-pointed email explaining the City's planned discipline to Phillips because he wanted "to share the information with Lt. Mazzola to support their discussion and his decision to retire."

97. As of March 28, 2019, Lt. Mazzola had not made a final decision regarding whether to retire and expected that he would have additional time and that he would be able to choose his retirement date, as all other retirees did.

98. After that call, also on March 28, 2019, Defendant O'Brien emailed Chief Kilbane, copying Togliatti and Human Resources Director Linker, informing them about his conversation with Phillips and advising that he still needed to send the bulleted-point email.

99. Defendant O'Brien recommended in the same email to Kilbane, Togliatti, and Linker that the City communicate "that Lt. Mazzola is retiring and that we wish him well." He wrote that he believed it was important for the City Council and Mayor to provide a "retirement presentation" like they had done "for other retiring police officers" because that "will allow him to leave the City with his 'head held high' [.]"

100. Defendant O'Brien ultimately based the bullet-pointed email Phillips requested primarily upon information from Chief Kilbane.

101. When Defendant O'Brien wrote the bullet-pointed email sent March 28, 2019, he knew the email's reference to "[l]ying to the Mayor regarding performance measurement standards allegedly approved by the Chief" referred to Mazzola talking to Mayor Togliatti about the quota.

102. When Defendant O'Brien wrote the bullet-point email sent March 28, 2019, he knew the email's reference to Mazzola's alleged "insubordination" by way of "usurping his superiors to directly communicate with City officials and employees" involved "incidents where Mazzola was going around Chief Kilbane and speaking specifically to Letitia Linker and/or the Mayor." He knew this included discussions with the Mayor about the quota.

103. On March 29, 2019, Defendant O'Brien informed Phillips that, to make the deal to avoid discipline, Mazzola would need to submit his notice of retirement via email to Then-Mayor Togliatti by 5:00 p.m. that day. Defendant O'Brien emailed Phillips at 3:01 p.m. that day to memorialize the quid pro quo, stating: "Provided Lt. Mazzola retires as set forth below, please be advised:

- Lt. Mazzola will send a correspondence today to the Mayor...informing of his retirement effective April 1, 2019. He will be retiring at the rank of Lieutenant.  
...
- Lt. Mazzola's personnel file will remain as it currently exists. There have been no written reports created as a result of the most recent investigation.  
...

Please have Lt. Mazzola submit his letter of retirement immediately to Mayor Togliatti."

104. Defendant O'Brien gave Lt. Mazzola only one option to avoid these adverse actions: retire immediately. They gave him less than two hours to finalize his decision.

105. By forcing Lt. Mazzola to decide whether to take the deal he offered, Defendant O'Brien exerted pressure on Lt. Mazzola with the intent of making his work conditions unbearably stressful and forcing him to leave the department.

106. Lt. Mazzola had no desire to retire or to lose the substantial benefits of the Ohio Police & Fire Pension Fund's Deferred Retirement Option (DROP) benefit. But the adverse actions that Defendant O'Brien threatened were too severe to endure. After working his way up the ranks for two decades, a demotion to patrolman would have been humiliating and financially harmful. An officer's credibility is crucial to his ability to perform his duties as a police officer, so inclusion on the *Brady/Giglio* list carries devastating stigma, resulting in damage to an officer's reputation along with limitations on assignments, advancement, and other job prospects. The community would have assumed that Lt. Mazzola had done something wrong to be subjected to such a penalty, even though he had done nothing wrong.

107. Defendant O'Brien's ultimatum—to retire now or be ruined—really was not a choice at all. Lt. Mazzola acquiesced to the City officials' demand to retire to avoid their threatened consequences over their mistaken belief that he shared the information that led to the embarrassing media coverage over the traffic-ticket quota (even though he was not the one who engaged in constitutionally protected speech by sharing it). Defendant O'Brien would not even allow Lt. Mazzola to retire as of April 16 (so he could retire with 24 years of service completed). Defendant O'Brien and the other City officials successfully intimidated Lt. Mazzola into accepting retirement long before he was ready to go. His retirement was effective April 1, 2019.

108. The evening of March 29, 2019, after Lt. Mazzola submitted his formal notice of retirement in an email to then-Mayor Togliatti, Defendant O'Brien contacted Phillips again.

Upon Chief Kilbane's request, Defendant O'Brien asked Phillips to tell Lt. Mazzola to "go[] quietly into the night" and avoid contacting officers and "caus[ing] a ruckus" after his retirement.

109. Defendant O'Brien wanted to silence Mazzola—even after the City no longer employed him.

**The retaliation against Lt. Mazzola continued after his constructive discharge.**

110. Neither Chief Kilbane nor any other City official or employee provided Lt. Mazzola with a retirement presentation or party on his last day.

111. The City of Independence customarily issues retirement ID cards to its retired police officers. The ID cards are generated by the tech-services department and delivered directly to retirees without delay or interference from the police chief or any other City official.

112. On or about April 4, 2019, Lt. Mazzola learned that Chief Kilbane had intervened to forbid the tech-services director from issuing Lt. Mazzola's retirement ID card.

113. Then-Mayor Togliatti was aware the Chief Kilbane was preventing or delaying the issuance of the retirement ID card for Lt. Mazzola. On or about April 4, 2019, Lt. Mazzola sent Togliatti an e-mail advising him of the problem and asking him to look into it.

114. Defendant O'Brien was also aware that Chief Kilbane was preventing or delaying the issuance of the retirement ID card for Lt. Mazzola. On or about April 5, 2019, union attorney Bob Phillips alerted Defendant O'Brien to this latest act of retaliation, telling him that "[t]his isn't the way to handle this matter. Len is entitled to all retiree benefits. I think the chief needs to be reigned [*sic*] in."

115. On information and belief, Chief Kilbane has never previously intervened to restrict or delay the tech-services department from delivering a retiree's retirement ID card until he did so with Lt. Mazzola's.

116. At the City Council meeting on April 9, 2019, with then-Mayor Togliatti in attendance, Councilmember Tom Narduzzi acknowledged on the record that the timing of Lt. Mazzola's retirement was not voluntary, expressly admitting that Lt. Mazzola had retired "earlier than he had planned." During that same meeting, Chief Kilbane refused to answer a question from resident Chris Zamborsky about whether Lt. Mazzola had been administered a polygraph test. Chief Kilbane also misled Mr. Zamborsky when he asked if Lt. Mazzola's retirement had anything to "with polygraph testing and media contact," as Chief Kilbane falsely claimed that it was a "voluntary choice." It was clear to City leaders at that time that Lt. Mazzola had not retired voluntarily or on his own terms. And the failure to answer direct questions about why Lt. Mazzola had retired reflects consciousness of guilt over this unlawful retaliation for perceived First Amendment activity. During that same meeting, Council approved Resolution No. 2019-1, which authorized Lt. Mazzola to keep his police badge and firearm.

117. Councilman Narduzzi's acknowledgement that the timing of Lt. Mazzola's retirement was not voluntary was printed in the May 2019 issue of The Independence Post, which is a monthly publication of the City of Independence.

118. In a broadcast and article on May 3, 2019, Mr. Gallek confirmed that Lt. Mazzola had not provided that information to Fox 8.<sup>8</sup> And despite this, Defendant O'Brien and City officials did nothing to undo what they had done to Lt. Mazzola.

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<sup>8</sup> Ed Gallek, *i-Team: Lie detector test given to local police officer over traffic tickets*, May 3, 2019, <https://fox8.com/2019/05/03/i-team-lie-detector-test-given-to-local-police-officer-over-traffic-tickets/> (last visited Jan. 7, 2020).



**Within weeks, Lt. Mazzola alerted City officials that he would be pursuing claims for constructive discharge based on First Amendment retaliation.**

119. On June 5, 2019, Lt. Mazzola, through counsel, notified the City that he planned to pursue claims for constructive discharge based on First Amendment retaliation, and asked the City to implement a litigation hold for relevant records. The litigation-hold letter specified the precise types of records Lt. Mazzola would seek in discovery during his lawsuit and asked that the City confirm that preservation had taken place.

120. On June 11, 2019, Defendant O'Brien responded acknowledging receipt of the litigation-hold letter. Defendant O'Brien copied Togliatti, Kilbane, and Linker on that correspondence.

121. On July 12, Lt. Mazzola, through counsel, sent a public-records request to the City asking for public records regarding the City's traffic-ticket quota (including records that had been displayed during the Fox 8 broadcast in January), discipline of Officer Dalton regarding his failure to meet that quota in the fourth quarter of 2018, and related records regarding Lt. Mazzola's constructive discharge.

122. On July 25, Defendant O'Brien responded acknowledging receipt of the public-records request and indicating that responses were being gathered and would be provided by July 31. He copied Togliatti, Kilbane, and Linker on this correspondence as well.

123. On July 31, Defendant O'Brien provided records relevant to Lt. Mazzola's First Amendment-retaliation claims, including records about the traffic-ticket quotas that had been displayed during the Fox 8 broadcast. This correspondence also copied Togliatti, Kilbane, and Linker.

124. The City, through counsel, provided a supplemental response to the July 12 public-records request on September 4. The response copied Defendant O'Brien, Togliatti, Kilbane, and Linker.

125. The City, through counsel, provided another supplemental response to the July 12 public-records request on September 13. The response copied Defendant O'Brien, Togliatti, Kilbane, and Linker.

126. On September 24, Lt. Mazzola, through counsel, provided the City with a draft complaint detailing his claims.

127. On October 8, 2019 the Independence City Council held its regularly scheduled meeting. The agenda for the meeting indicated that Council would go into executive session to discuss imminent or threatened litigation. The meeting minutes reflect that Council voted to go into executive session, which began at 5:03 p.m. and continued until 5:50 p.m. On information and belief, during the executive session, the participants discussed Lt. Mazzola's soon-to-be-filed lawsuit for First Amendment retaliation and constructive discharge

128. After that City Council meeting where Lt. Mazzola's forthcoming First Amendment-retaliation lawsuit was discussed in executive session, the City's counsel responded on October 10 to Lt. Mazzola's counsel's September 24 letter, copying Defendant O'Brien, Togliatti, and Kilbane.

129. Before Lt. Mazzola filed his lawsuit, Defendant O'Brien had been aware that he was preparing to do so and that his suit would allege constructive discharge in violation of the First Amendment.

**Defendant O'Brien continued the campaign of retaliation against Lt. Mazzola after he filed a lawsuit to seek redress for the First Amendment violations he endured.**

130. Lt. Mazzola filed a separate lawsuit on October 28, 2019 alleging First Amendment retaliation and constructive discharge (as he had, back on June 5, alerted the City he was going to do).

131. Defendant O'Brien immediately retaliated against Lt. Mazzola by issuing a public statement criticizing him. Defendant O'Brien intended that the public—including Lt. Mazzola's friends, neighbors, and former colleagues in Independence—receive the critical statement disparaging Lt. Mazzola and his effort to hold those responsible to account for forcing him into retirement.

132. In his public statement about the lawsuit, Defendant O'Brien insisted that Lt. Mazzola's lawsuit was "frivolous" and a "sham" and even accused Lt. Mazzola's attorneys of violating the ethics rules. This additional act of retaliatory criticism was also designed to disparage Lt. Mazzola and diminish his reputation in the community because he had exercised his right to pursue his First Amendment claims and hold the City and its officials responsible for their efforts to punish whomever had shared the facts about the traffic-ticket quota with the media.

133. After Lt. Mazzola filed the separate lawsuit, Defendant O'Brien or his subordinate instructed investigator Bill Evans to prepare a polygraph report and then instructed Chief Kilbane to place the polygraph report in Lt. Mazzola's personnel file, violating the conditions of Lt. Mazzola's agreement to retire.

134. Defendant O'Brien's directed Chief Kilbane to place the polygraph report in Lt. Mazzola's personnel file as a further act of retaliation because Defendant O'Brien knew that Lt.

Mazzola intended to apply for other police jobs and knew that most police departments immediately disqualify applicants deemed to have failed polygraphs.

135. The retaliation efforts post-filing are likely to interfere with Lt. Mazzola's mitigation efforts.

136. The ripple effects of Defendant O'Brien's and Togliatti's scapegoating of Lt. Mazzola for the public having learned of the traffic-ticket quotas and their criticism of Lt. Mazzola after he filed this lawsuit cannot be overstated: Independence employees are now less willing to share truthful information about department operations and policies lest they meet his same fate. The City of Independence has successfully chilled employee speech through its railroading of Lt. Mazzola.

**CLAIM 1**  
**FIRST AMENDMENT RETALIATION UNDER 42 U.S.C. §1983**  
**(AGAINST DEFENDANT O'BRIEN INDIVIDUALLY)**

137. Plaintiff incorporates all previous allegations.

138. Lt. Mazzola was a public employee, whom City officials purportedly believe engaged in protected activity by speaking out about a matter of public concern, i.e., the mayor's unethical traffic-ticket quota. It has been clearly established law for decades that public employees have the right to communicate about matters of public concern and that public officials may not retaliate against people, including public employees, for protected speech.<sup>9</sup> All public officials have been charged with knowing that public employees may not be disciplined for engaging in protected speech on matters of public concern. Despite department policies regarding

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<sup>9</sup> See *v. City of Elyria*, 502 F.3d 484, 495 (6th Cir. 2007) ("a public employee's right to speak on matters of public concern without facing improper government retaliation is settled") (cleaned up); *Chappel v. Montgomery Cty. Fire Protection Dist. No. 1*, 131 F.3d 564, 580 (6th Cir. 1997) "All public officials have been charged with knowing that public employees may not be disciplined for engaging in speech on matters of public concern ...").

“confidentiality” or “loyalty,” this prohibition specifically includes public officials’ inability to lawfully discipline or target employees who speak out, as such department policies cannot supersede employees’ constitutional rights.

139. A person does not actually have to engage in the protected activity to be protected from retaliation. A mistaken belief that an individual exercised his First Amendment rights brings that individual within the constitutional protection.<sup>10</sup>

140. Lt. Mazzola’s ordinary official duties did not involve communicating with the media. Had he shared information with the media about the unethical traffic-ticket quota, it would have been in his capacity as a private citizen and not as part of his ordinary job responsibilities.<sup>11</sup>

141. The publicized information about which City officials appeared angry—that City leaders were demanding that police write a certain number of tickets to increase mayor’s court revenue—was on a matter of public concern and was of legitimate news interest in the community—as shown by the coverage the quota drew once revealed.

142. Lt. Mazzola’s ordinary official duties did not involve voicing concerns about the legality or ethics of Chief Kilbane’s orders to then-Mayor Togliatti nor Human Resources Director Linker.

143. When Lt. Mazzola spoke to Togliatti and Linker about his objections to the quota, he spoke outside his chain of command.

144. Defendant O’Brien knew that the City planned to discipline Mazzola, in part, for speaking privately to Togliatti and Linker about his concerns regarding the quota.

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<sup>10</sup> *Heffernan v. City of Paterson, N.J.*, 136 S. Ct. 1412 (2016).

<sup>11</sup> *Buddenberg v. Weisdack*, 939 F.3d 732, 740 (6th Cir. 2019).

145. Attorneys may be held liable for First Amendment retaliation, especially where they actively participate in retaliation.<sup>12</sup>

146. Defendant O'Brien engaged in the following acts of retaliation that would chill a person of ordinary firmness, including but not limited to the following:

- a. Participating in subjecting Mazzola to an investigation regarding whether he had shared information about the new department policy of imposing traffic-ticket quotas on police officers;
- b. Authorizing other City officials' decision to order Mazzola to take a polygraph examination administered in violation of department policy;
- c. Forcing Mazzola to resign or face immediate demotion;
- d. Threatening to put Mazzola on the *Brady/Giglio* list or otherwise subject him to *Brady* disqualification proceedings for purported dishonesty if he did not submit to the demand to retire;
- e. Deciding what information about the City's disciplinary considerations to convey to Mazzola instead of simply delivering a message;
- f. Singling Mazzola out for interference with the usual course of a police officer's retirement, including:
  - i. refusing to allow him to choose his retirement's effective date,
  - ii. requiring him to make a final decision on whether to retire within two hours, and
  - iii. interfering with the customary delivery of his retirement ID card by the City's tech-services department;
- g. Telling Mazzola, through Robert Phillips, to go "quietly into the night" *after* his retirement and not tell Independence police officers about how they had forced his retirement;
- h. Failing to pay him the retroactive wage increase for his service between January 1, 2019 and April 1, 2019 once that retroactive wage increase was agreed to between the City and the union in negotiating the most-recent collective-bargaining agreement (despite having agreed to pay any retroactive wage increase as part of the negotiations regarding his retirement);

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<sup>12</sup> See *Buddenberg v. Weisdack*, 939 F.3d 732, 740–42 (6th Cir. 2019) (denying qualified immunity to attorney based on allegations that he actively participated in First Amendment retaliation).

- i. Unfairly criticizing him, casting him in a false light, and attempting to damage his credibility by questioning his motives and essentially calling him a liar for filing what they described as a “frivolous” and “sham complaint” when he initiated a lawsuit to vindicate his rights;
- j. Directing Bill Evans to prepare a polygraph report and then directing Chief Kilbane to place the polygraph report in Lt. Mazzola’s personnel file and breaking his agreement with Lt. Mazzola, knowing that virtually no police departments would hire Lt. Mazzola if he disclosed the existence of this report or if they requested his file.

147. The adverse actions described above were sufficient to deter a person of ordinary firmness from continuing to engage in the alleged protected conduct.

148. Lt. Mazzola was constructively discharged when Defendant O’Brien threatened that the City would demote him and put him on the *Brady/Giglio* list, if he did not retire immediately.

149. Defendant O’Brien and other City officials retaliated against Lt. Mazzola for, in their belief, causing negative publicity by sharing information with the media and thus exposing the unethical traffic-ticket quota. Their belief that he was responsible for this information being shared with the press was a substantial or motivating factor in their decision to begin the “investigation” and to eventually force him into retirement.

150. The retaliation was temporally proximate to the protected conduct that prompted it, including Lt. Mazzola raising concern about the legality of the quotas.

151. Defendant O’Brien, as Law Director for the City of Independence, should have known that Lt. Mazzola’s speech to then-Mayor Togliatti and Human Resources Director Linker was protected by the First Amendment. Defendant O’Brien, as Law Director for the City of Independence, should have known that Lt. Mazzola’s speech to then-Mayor Togliatti and Human Resources Director Linker was protected by the First Amendment.

152. Defendant O'Brien, as Law Director for the City of Independence, should have known that if Lt. Mazzola gave documents to and spoke to reporter Ed Gallek, that expressive conduct and other speech was protected by the First Amendment.

153. As a direct and proximate result of Defendant O'Brien's retaliation, Lt. Mazzola has suffered and will continue to suffer economic and non-economic damages for which Defendant O'Brien is liable, including, but not limited to, pain and suffering, emotional distress, inconvenience, the loss of salary, wages and benefits, and other terms, privileges, and conditions of employment.

154. Defendant O'Brien's acts were wanton, willful, egregious, and malicious, and are worthy of substantial sanction to punish and deter him and others from engaging in this type of unlawful conduct.

#### **PRAYER FOR RELIEF**

For the reasons stated above, Plaintiff respectfully requests the following relief from the Court:

- A. Declare that Defendant's acts and conduct constitute violations of federal and state law and the United States Constitution;
- B. Enter judgment in Plaintiff's favor on all claims for relief;
- C. Award Plaintiff full compensatory damages, economic and non-economic, including, but not limited to, damages for back pay, front pay, pain and suffering, mental anguish, emotional distress, humiliation, and inconvenience that he has suffered and is reasonably certain to suffer in the future;
- D. Award Plaintiff punitive damages as appropriate for all intentional and malicious violations of federal law and constitutional rights;
- E. Award pre-judgment and post-judgment interest at the highest lawful rate;
- F. Award Plaintiff his reasonable attorneys' fees (including expert fees) and all other costs of this suit;
- G. Award all other relief in law or equity to which Plaintiff is entitled and that the Court deems equitable, just, or proper.



**JURY DEMAND**

Plaintiff demands a trial by jury on all issues within this complaint.

Respectfully submitted,

THE CHANDRA LAW FIRM LLC

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