

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas
Honorable William Jeffrey Young, Presiding Judge

Case No. 2010-CP-26-05964

Appellate Case No. 2013-000195

William H. Bailey, Jr. *Appellant,*

v.

City of North Myrtle Beach,
a South Carolina Municipal Corporation *Respondent.*

SUPPLEMENTAL RECORD ON APPEAL

Kenneth R. Moss, Esq., SC Bar # 15520
**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**
628A Sea Mountain Highway
North Myrtle Beach, SC 29582
Tel: (843) 281-9901
Email: kennethmoss@wwpemplaw.com
Attorneys for Appellant

Derwood L. Aydlette, III, Esq., SC Bar # 13011
Christopher W. Johnson, Esq., SC Bar # 68524
GIGNILLIAT, SAVITZ & BETTIS, LLP
900 Elmwood Avenue, Suite 100
Columbia, SC 29201
Tel: (803) 799-9311
Attorneys for Respondent

RECEIVED
DEC 17 2013

SC COURT OF APPEALS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Honorable William Jeffrey Young, Presiding Judge

Case No. 2010-CP-26-05964

Appellate Case No. 2013-000195

William H. Bailey, Jr. *Appellant,*

v.

City of North Myrtle Beach,
a South Carolina Municipal Corporation *Respondent.*

SUPPLEMENTAL RECORD ON APPEAL

Kenneth R. Moss, Esq., SC Bar # 15520
**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**
628A Sea Mountain Highway
North Myrtle Beach, SC 29582
Tel: (843) 281-9901
Email: kennethmoss@wwpemplaw.com
Attorneys for Appellant

Derwood L. Aydlette, III, Esq., SC Bar # 13011
Christopher W. Johnson, Esq., SC Bar # 68524
GIGNILLIAT, SAVITZ & BETTIS, LLP
900 Elmwood Avenue, Suite 100
Columbia, SC 29201
Tel: (803) 799-9311
Attorneys for Respondent

INDEX

	<u>Page</u>
Complaint and Verification for Civil Action No. 2010-CP-26-05145, dated June 10, 2010 and filed June 11, 2010	S-2
CERTIFICATE OF COUNSEL	S-35

6. City is managed under the council-manager form of government as described in South Carolina Code § 5-13-10 *et seq.* (Supp. 2009).
7. City Manager's powers and duties are set forth in the Code of Ordinances of the City of North Myrtle Beach ("Code of Ordinances") at Chapter 2, Article III, § 2-56 *et al.*
8. City has adopted a Personnel Manual, the provisions of which are incorporated by reference into the Code of Ordinances pursuant to Article 1, § 17-2 ("Personnel Manual").
9. Pursuant to the Personnel Manual, a Grievance Committee has been established for the hearing of employee grievances and other purposes, as set out therein (the "Grievance Committee"). A copy of the sections of the current Personnel Manual describing the scope and operation of the Grievance Committee is attached hereto as Exhibit 1 and incorporated herein by reference.
10. City Manager is bound by the Code of Ordinances to follow employee grievance procedures set forth in the Personnel Manual and has no authority to vary or disregard the procedures set forth therein.
11. Christopher Noury ("City Attorney") is an attorney licensed in South Carolina, and appointed by the City Council pursuant to Chapter 2, Article IV, § 2-70 of the Code of Ordinances, with duties set forth in § 2-71. City Attorney does not report to City Manager.
12. City Attorney's duties do not include the drafting of all City press releases, or providing counsel to the Grievance Committee except at the prior request of the Grievance Committee.
13. Upon information and belief, City Attorney has retained Gignilliat Savitz & Bettis, LLP ("Law Firm") as counsel to the City. Law Firm's scope of representation does not include providing counsel to the Grievance Committee except at the request of the Grievance Committee, nor any scope of work exceeding that of City Attorney.
14. The Plaintiff was employed as Public Safety Director for the City until January 2010, reporting to City Manager.
15. Assistant Manager and PIO are not authorized to terminate the employment of Plaintiff with the City.

10

16. On or about December 21, 2009, Plaintiff's private vehicle, a Chevrolet Truck, while parked at Plaintiff's house in the unincorporated area of Horry County, was unlawfully entered and a pistol issued to him as City's equipment (the "Weapon") was stolen by a person or persons unknown.
17. At the same time, Plaintiff's other vehicle, a Honda Accord, while parked inside Plaintiff's enclosed and attached garage was also broken into.
18. Promptly upon discovering the break-ins, Plaintiff contacted the Horry County Police to report the break-ins and the theft and to file an incident report known as a Horry County Police Crime Report, a copy of which is attached hereto as Exhibit 2 and incorporated herein by reference.
19. After meeting with a Horry County Police officer concerning the break-ins and the theft, Plaintiff went to the City's offices to confirm that he would be taking a vacation day as previously arranged. During a brief and informal conversation, lasting at most one minute, Plaintiff did explain to City Manager that his vehicles had been broken into, that the Weapon had been taken and that the Horry County Police were investigating the break-ins and the thefts.
20. While passing by City Attorney's office, Plaintiff paused for a very brief period to speak with City Attorney wherein Plaintiff mentioned the break-ins, the theft of the Weapon, the fact that Plaintiff's truck was unlocked, the fact that two of Plaintiff's vehicles had been entered unlawfully, and what Plaintiff knew about numerous break-ins throughout Plaintiff's neighborhood on that same night.
21. After December 21, 2009 and through December 28, 2009, Plaintiff was on vacation, and did not have any personal meeting with City Manager.
22. After December 21, 2009 and until December 28, 2009, Plaintiff did not take part in any telephone call with City Manager via cellular phone or via landline.
23. Upon information and belief, Law Firm did not participate in December 2009 in the drafting of any press release related to the theft of the Plaintiff's Weapon.
24. Upon information and belief, on or about December 28, 2009, PIO, City Manager, Assistant Manager and /or City Attorney communicated with each other about inquiries that PIO received from a local press agency.

25. Upon information and belief, City Attorney participated with PIO in the drafting of the proposed press release in response to the inquiries.
26. Upon information and belief, on or about December 28, 2009, PIO forwarded to Plaintiff, City Attorney, and Assistant Manager by email the inquiries she had received from the local press.
27. Prior to realizing that that he had received the email from PIO, Plaintiff met with PIO in her office, during which meeting PIO solicited information concerning a draft press release from Plaintiff. During that meeting, Plaintiff became uncomfortable with the responses that PIO was proposing. Plaintiff rejected numerous assertions made to him by PIO, and left the meeting prior to any draft being completed.
28. On the night of December 28, 2009, at or about 9:00 p.m., Plaintiff responded to the PIO's earlier email by drafting Plaintiff's own proposed press release and forwarding it to PIO by email in the form attached hereto as Exhibit 3, in which Plaintiff used the word "secured" rather than "locked" (the "Bailey Email").
29. Upon information and belief, the PIO never relayed or forwarded the incoming Bailey Email to City Manager, Assistant Manager or City Attorney.
30. On the morning of December 29, 2009, Plaintiff spoke with PIO by telephone wherein he confirmed that she had received his email, which confirmation was initially denied but confirmed after PIO found Plaintiff's email in her junk mail box. Plaintiff and PIO thereafter in that telephone conversation debated whether to use PIO's draft Press Release or Plaintiff's draft.
31. PIO rejected Plaintiff's draft and summoned Plaintiff to her office in order that she could amend her draft to resolve Plaintiff's objections that her draft included therein numerous erroneous statements including but not limited to use of the work word "locked" as describing the condition of the glove-box in Plaintiff's vehicle from which the Weapon was stolen.
32. Plaintiff complied with PIO's summons and immediately went to her office to meet with her, during which meeting Plaintiff objected to numerous errors in her draft release. In response, PIO amended many of the errors in her draft, however, PIO did not want to amend the draft to use the word "secured" rather than "locked" as Plaintiff insisted.

33. Either because he was invited by PIO or by chance, Assistant Manager entered PIO's office during the debate, joined in the debate and also insisted on using the word "locked."
34. After debating the accuracy and the appropriateness of which word to use, Plaintiff acquiesced to the choice of word selected by PIO and Assistant Manager.
35. Plaintiff left PIO's office and PIO either individually or under instruction of Assistant Manager released City's response to the press (the "December Press Release").
36. On or about December 30, 2009 in response to the December Press Release, PIO received emails and telephone calls from a local newspaper, pointing out that the type of vehicle owned by Plaintiff from which the Weapon had been stolen did not have a lockable glove-box.
37. On or about December 31, 2009, City Manager alleged to members of the press and public that Plaintiff had lied to him personally about the "locked" glove-box, that Plaintiff had apologized to City Manager for the alleged "lie", and City Manager announced to the press that Plaintiff was being placed on administrative leave.
38. Plaintiff at no time admitted to City Manager that Plaintiff had "lied" about the possibility of locking his truck's glove-box, and at no time offered any "apology" to City Manager concerning the veracity of any earlier statements by Plaintiff concerning the theft of the Weapon.
39. Upon information and belief, the untruthful statements by City Manager about Plaintiff were malicious and designed to cause damage to the reputation of Plaintiff, and formed part of a devious and undisclosed plan by City Manager to ruin the reputation of Plaintiff, falsely provide a basis on which City Manager could seek to justify the wrongful or constructive termination of Plaintiff's employment by City, and cause Plaintiff continuing damage to his prospects of future employment with any law enforcement or public safety department in South Carolina and elsewhere.
40. Between December 28, 2009 and April 19, 2010, numerous press and media reports were published asserting that Plaintiff was under suspicion of improper conduct in an investigation into an allegation of criminal sexual conduct while Plaintiff was Public Safety Director of City.

41. Upon information and belief, with actual knowledge of the facts concerning such allegations, PIO, acting at the instructions of City Manager and/or Assistant Manager, failed to correct such press reports or offer rebuttal on behalf of City, thereby causing damage to the reputation of City and Plaintiff by negligence or design.
42. Plaintiff at no time was authorized to issue press releases or to speak on behalf of City except with the prior knowledge and consent of City Manager, and after receiving clearance and agreement from City Manager and PIO as to the content of any press release or public statement to be made by Plaintiff.
43. On or about on or about February 6th, 2010, when receiving his wage Deposit Slip for salary from the City, Plaintiff discovered for the first time that he had been reduced in pay and demoted to Lieutenant in rank. Plaintiff had not received written notice of this reduction in pay and rank from City Manager prior to that date.
44. On February 25th, 2010, Plaintiff filed an appeal to City's Grievance Committee in the form attached hereto as Exhibit 4, the contents and attachments to which are incorporated herein by reference.
45. Upon information and belief, the City Grievance Policy is adopted by reference to S.C. Code Ann. § 8-17-110 *et seq.* (Supp. 2009) (the "**County and Municipal Employees Grievance Procedure Act**"), and is governed by the provisions of that Act.
46. On or about March 9th, 2010 Plaintiff's attorney received a letter from City Attorney on behalf of City and City Manager, to which was attached a supposed "Memorandum" from City Manager to Plaintiff outlining a demotion and suspension, plus other disciplinary action against Plaintiff. A copy of City Attorney's letter of March 9th, 2010 and its attachments is attached hereto as Exhibit 5 and incorporated herein by reference.
47. Plaintiff denies the allegations contained in the "Memorandum" and further denies the alleged substance of City Manager's recounting of any conversation between Plaintiff and City Manager in the week of February 3rd, 2010.
48. On or about March 15th, 2010 Plaintiff renewed his request for a Grievance Committee hearing by letter, a copy of which is attached hereto as Exhibit 6, and incorporated herein.
49. On or about March 15th, 2010 Plaintiff wrote to the Mayor of the City, complaining of harassment of the Plaintiff by City Manager. A copy of Plaintiff's letter is attached as Exhibit 7.

50. The Mayor of the City failed and refused to intervene or conduct any investigation into the allegations, as is required by the City's personnel policy. Upon information and belief, one or more of City Manager or City Attorney advised the Mayor on Plaintiff's request contained in Exhibit 7. Such advice was a conflict of interest for either or both of City Manager and/or City Attorney.
51. On March 18th, 2010 Plaintiff filed a Freedom of Information Act ("FOIA") request on City for documents and materials necessary for him to prepare for a Grievance Committee hearing on his appeal against disciplinary action against him. A copy of Plaintiff's letter is attached hereto as Exhibit 8 and incorporated herein by reference.
52. On April 7th, 2010 an attorney for Plaintiff wrote to the Chairman of the Grievance Committee outlining *inter alia* concern that City Attorney would have a conflict of interest if he advised the Grievance Committee on matters related to the grievance of the Plaintiff. A copy of that letter is attached hereto as Exhibit 9.
53. By letter from Leo Bellamy, Chairman of the City Grievance Committee, dated April 9th, 2010, Plaintiff was informed that the Committee would be convened to meet on April 19th, 2010. A copy of Mr. Bellamy's letter is attached hereto as Exhibit 10 and incorporated herein by reference.
54. Upon information and belief, the letter signed by Mr. Bellamy attached hereto as Exhibit 10 was prepared with help from either or both of City Attorney and/or Law Firm, and was not his sole creation.
55. The actions of City Attorney and/or Law Firm in drafting a response to Plaintiff's concerns expressed in Exhibit 9 were in conflict with the provisions of the Personnel Manual, the City Code of Ordinances and the County and Municipal Employees Grievance Procedure Act.
56. On April 12th, 2010, Plaintiff received responses to his FOIA request, but those responses willfully and maliciously omitted salient documents and emails, including but not limited to the Bailey Email, and further violated the text and spirit of FOIA by declining to provide documents known and admitted by City, City Manager, Assistant Manager, PIO and Attorney to exist, be relevant and probative, and not protected by any exception to or exemption from FOIA or attorney-client privilege. A copy of the response received by

- Plaintiff, signed by PIO is attached hereto as Exhibit 11 and incorporated herein by reference.
57. On April 19, 2010, the City Grievance Committee convened and allowed City Manager to present testimony concerning the conduct and verbal report of the Plaintiff about the theft of the Weapon in the week of December 21, 2009.
 58. The Grievance Committee hearing constitutes an adversary proceeding, in which the Plaintiff had given notice to City that he contested the disciplinary action by city Manager, and Plaintiff was to be afforded an opportunity to contest that action by City Manager.
 59. Upon information and belief, the procedures allowed by the Grievance Committee on April 19, 2010 were not those set forth in the Personnel Manual at ¶J as governing such proceedings, and accordingly violated the Code of Ordinances of the City and the County and Municipal Employees Grievance Procedure Act.
 60. Law Firm was present at the Grievance Hearing and offered comment on behalf of the City Manager, which intervention was improper as the Grievance Committee had not asked for Law Firm to act on its behalf. Such action by Law Firm was in violation of the Personnel Manual's Grievance Committee procedures, including but not limited to ¶F, the Code of Ordinances of the City, and the County and Municipal Employees Grievance Procedure Act.
 61. In addition to City Manager's testimony, City Manager called for witness testimony from PIO, Assistant Manager, and City Attorney as to alleged facts and alleged statements of Plaintiff in the week of December 21, 2009 concerning the theft of his Weapon.
 62. Such calling of witnesses by City Manager was in violation of the Personnel Manual's Grievance Committee procedures, including but not limited to ¶J, the Code of Ordinances of the City, and the County and Municipal Employees Grievance Procedure Act.
 63. PIO testified before the Grievance Committee that she had consulted with City Attorney and that City Attorney was involved in drafting all press releases issued by the City concerning the theft of the Weapon and the Plaintiff as and from December 2009.
 64. PIO admitted that she had received the Bailey Email from the Plaintiff on December 28, 2009, and had spoken about it with the Plaintiff on December 29, 2009.

65. The PIO's proffered contemporaneous "time-line" omitted mention of the Bailey Email and omitted any reference to the debate between Plaintiff, PIO and Assistant Manger about use of the word "secured" as opposed to the work "locked".
66. PIO admitted that the press release proposed by Plaintiff through the Bailey Email had not been adopted by the City when making its press releases on December 29, 2009 and afterwards.
67. Plaintiff was not allowed to question any witness, but provided to the Grievance Committee written copies of suggested questions he would have sought to ask each of City Manager, PIO, Assistant Manager and City Attorney.
68. Notwithstanding the provisions of the City Personnel Manual allowing the Grievance Committee to ask questions of witnesses, the Grievance Committee did not ask questions of any witnesses appearing, and did not seek to hear from any witness other than the Plaintiff and the City Manager, PIO, Assistant Manager and City Attorney, or call for additional materials or testimony from any person.
69. City Manager produced documents at the Grievance Committee hearing, and provided copies thereof to members of the Committee, without providing a copy to Plaintiff or swearing that all documents so produced and provided were identical to any and all documents provided to the Plaintiff prior to the hearing.
70. During the Grievance Committee hearing Plaintiff testified that City Manager had asked him to intervene in one or more law enforcement matters involving members of City Manager's family.
71. City Manager, both during the Grievance Committee hearing and afterwards, denied ever having directed or requested of Plaintiff that Plaintiff intervene in any law enforcement of other matter involving members of City Manager's family.
72. Upon information and belief, the actions of City Manager in terminating Plaintiff's employment by City were in part intended to suppress access by Plaintiff to information concerning interference by or direction of City Manager and others in the law enforcement activities of City while Plaintiff was Director of Public Safety, and further intended to scare, intimidate and threaten others in the possession of the same information.

73. Plaintiff provided documents to the Grievance Committee at the hearing on April 19, 2010, a complete copy of which is attached hereto as Exhibit 12 and incorporated herein by reference. In his presentation to the Grievance Committee, the Plaintiff was exercising his right to freedom of speech protected under the First Amendment to the United States Constitution and the Constitution of the State of South Carolina.
74. Upon information and belief, City Attorney and/or Law Firm assisted with the preparation of the presentation of City Manager to the Grievance Committee on April 19, 2010, and also offered legal advice and counsel to the Chairman and members of the Grievance Committee before and after the hearing on April 19, 2010.
75. Upon information and belief, Law Firm acted to offer legal advice and counsel to the Grievance Committee in violation of the Personnel Manual, the City Code of Ordinances, the County and Municipal Employees Grievance Procedure Act and fundamental notions of due process.
76. Pursuant to the Personnel Manual, the members of the Grievance Committee should be allowed to deliberate for up to twenty (20) days after any hearing before rendering their decision.
77. Upon information and belief, after the Grievance Committee hearing on April 19, 2010, the Grievance Committee Chairman was scheduled for compassionate leave to attend and offer comfort at a family funeral. Notwithstanding such scheduled leave and the time allowed for deliberations of the Grievance Committee pursuant to the Personnel Manual, City Manager immediately summoned the Chairman of the Grievance Committee to City's offices, and directly or indirectly instructed him and the other members of the Committee to sign a pre-prepared letter endorsing the actions of City Manager concerning Plaintiff.
78. Upon information and belief, during the deliberations of the Grievance Committee, Law Firm improperly acted on behalf of City Manager to pressure members of the Grievance Committee to alter their conclusions, and upon further information and belief, City Manager rejected the initial conclusions of the Grievance Committee and pressured the members of the Grievance Committee through Law Firm to sign a pre-prepared letter adopting the decision of the City Manager.

79. Upon information and belief, the members of the Grievance Committee reluctantly signed the pre-prepared letter provided to them by Law Firm under the belief that holding to their own conclusions would result in retaliation upon them by City Manager and /or Assistant Manager, and were directly and proximately intimidated by Law Firm acting on behalf of City Manager.
80. On or about April 28, 2010, City Manager summoned Plaintiff to a meeting and verbally pressured him to resign from employment as a voluntary act of Plaintiff, or to be terminated and separated from employment by City Manager no later than 3:00 p.m. on April 29, 2010.
81. Upon information and belief, City Manager has admitted to Plaintiff that City Manager has discussed personnel matters involving Plaintiff with a person or persons not employed by City, and in the course of so doing disclosed personal and confidential information concerning Plaintiff contained in Plaintiff's confidential personnel file maintained at City expense and on City property.
82. At the same meeting on April 28, 2010, City Manager presented Plaintiff with a longevity award, being a check dated April 29, 2010 awarded to Plaintiff for having completed for twenty years of service to City. A copy of that check is attached hereto as Exhibit 13 and incorporated herein by reference.
83. On April 29, 2010, counsel for Plaintiff wrote to City Attorney requesting explanation of the City's and City Manager's intent as to various matters affecting the employment, benefits and retirement account of Plaintiff. A copy of that letter is attached hereto as Exhibit 14 and incorporated herein by reference.
84. No written response was received from City Attorney. Law Firm discussed various matters arising from Exhibit 14 with counsel for Plaintiff until approximately 8:00 p.m. on Friday April 30, 2010, but no written response on any matter was provided, nor was any extension to the deadline set by City Manager on April 28, 2010 provided or agreed.
85. In order to mitigate his actual and potential damages, on Friday April 30, 2010, Plaintiff invested \$161,092.75 (One Hundred Sixty-One Thousand Ninety-Two and 75/100 Dollars) in securing his South Carolina State Retirement System benefits.
86. On Saturday May 01, 2010, PIO announced to the press and local news media that Plaintiff was no longer employed by City. Plaintiff was not informed of this

Kra

- announcement in advance, and as of the date hereof has received no direct written notice of separation from employment.
87. Upon information and belief, City Manager has unlawfully, maliciously and wantonly refused to follow the provisions of the Personnel Manual concerning notice of separation from employment to the Plaintiff, with the objective of causing prejudice and damage to the right of the Plaintiff to seek a second Grievance Committee hearing on such separation from employment.
 88. On May 02, 2010 Plaintiff made, through his attorney, a FOIA request for documents from the City and requested copies of documents forming part of his own personnel file with City. A copy of that written request is attached hereto as Exhibit 15.
 89. Upon information and belief, City Manager and/or Assistant Manager have unlawfully, maliciously and wantonly withheld information concerning the employment status of Plaintiff from the South Carolina Employment Security Commission, prejudicing the right of the Plaintiff to unemployment benefits.
 90. On Monday May 3rd, 2010 City held a regularly scheduled City Council Meeting, for which an agenda was published in advance. Contained in that Agenda (a copy of which is attached hereto as Exhibit 16) was a provision for an Executive Session of Council. The said agenda item did not include any legal briefing on any personnel matter.
 91. However, when moving the Council to go into Executive Session, the Mayor of the City added two items to the business to be discussed in Executive Session, one such item being "Legal briefing on a personnel matter."
 92. Upon information and belief, that added item was intended to allow private discussion of matters concerning the Plaintiff and his employment and grievance matters with City.
 93. On Monday May 17, 2010 City held a regularly scheduled City Council Meeting, for which an agenda was published in advance. Contained in that Agenda (a copy of which is attached hereto as Exhibit 17) was a provision for an Executive Session of Council. The said agenda item did not include any legal briefing on any personnel matter.
 94. However, when moving the Council to go into Executive Session, the Mayor of the City added two or three items to the business to be discussed in Executive Session, one such item being "Legal briefing on a personnel matter."

95. Upon information and belief, that added item was intended to allow private discussion of matters concerning the Plaintiff and his employment and grievance matters with City.
96. On Friday May 21, 2010, having received confirmation of the length of his employment service with the City (before the alleged separation from employment with the City) in writing from the South Carolina State Retirement System (copy attached hereto as Exhibit 18), Plaintiff went to City's administrative offices and sought to confirm his entitlement to continued health insurance benefits.
97. Upon information and belief, staff of the City, acting on the direction of City Manager, denied Plaintiff's entitlement at that time, causing him distress and wrongfully refusing him the benefit of a provision of the Personnel Manual entitling employees retiring after twenty (20) years or more service to continued health insurance payments from the City.
98. On May 22, 2010 Plaintiff received from City a letter asserting that his employment with City had been involuntarily terminated on April 13, 2010 (before the Grievance Committee hearing referenced above) and demanding that he exercise rights to claim continuing insurance benefits and coverage in the South Carolina Local Government Assurance Group Health Plan no later than April 30, 2010. A copy of that letter is attached hereto as Exhibit 19 and incorporated herein by reference.
99. Upon information and belief, the letter attached hereto as Exhibit 19 was prepared at the instruction of City Manager and deliberately and maliciously delayed in mailing until after the deadline set forth therein in order to harass, distress and humiliate Plaintiff in regard to continuing health insurance coverage for himself and his family, and is probative evidence of the malice that City Manager has borne towards Plaintiff.
100. The letter attached hereto as Exhibit 19 is also probative evidence that City Manager did not intend to respect the findings of the Grievance Committee, and had covertly decided as of April 13, 2010 to terminate the employment of Plaintiff irrespective of the Grievance Committee's findings or any finding of just cause, while protesting and claiming to members of City's council that he had no such intention.
101. On May 28, 2010 Plaintiff made a written appeal to the City Grievance Committee (copy attached hereto as Exhibit 20 and incorporated herein by reference) alleging that City Manager caused Plaintiff to be constructively dismissed from employment by City, had evidenced malice towards Plaintiff irrespective of the findings of the Grievance

Handwritten signature

- Committee hearing on April 19, 2010 referred to above. Plaintiff sought a Grievance Committee hearing in order to seek reinstatement as an employee of City.
102. June 02, 2010, City responded to the FOIA request dated May 02, 2010 (Exhibit 15) by advising Plaintiff's attorney by email that the request was being "processed" and that the "status of the response" would be updated on June 09, 2010. A copy of that email is attached hereto as Exhibit 21.
 103. In response to the refusal of City to comply with the law pertaining to the production of documents pursuant to FOIA, Plaintiff's attorney responded in writing on June 03, 2010 protesting against the City's violation of the law. A copy of Plaintiff's attorney's letter is attached hereto as Exhibit 22.
 104. On June 02, 2010, Plaintiff's attorney wrote to the Chairman of the City Grievance Committee on various matters, including but not limited to past actual and potential future conflicts of interest arising between City Attorney's and Law Firm's relationship with City and City Manager, vis-à-vis their appearances and communications with the City Grievance Committee. A copy of that letter is attached hereto as Exhibit 23.
 105. On June 03, 2010, Plaintiff, acting through his attorney, filed a FOIA request on City for copies of City's FOIA policy and a copy of all FOIA requests made on City since June 01, 2010. A copy of that FOIA request is attached hereto as Exhibit 24.
 106. On June 08, 2010 City responded to the appeal for a Grievance Committee hearing contained in Exhibit 20 by agreeing to grant Plaintiff a Grievance Committee hearing. A copy of City's response is attached hereto as Exhibit 25, but asserting that Law Firm, who previously appeared for City Manager on April 19, 2010 at the prior Grievance Hearing, and who conducted correspondence with Plaintiff's counsel on behalf of City and City Manager, would provide counsel to the Grievance Committee.
 107. The contents of the letter attached hereto as Exhibit 25 evidence that City Manager and Law Firm have no intention of allowing fair and impartial deliberations by the Grievance Committee, and that City Manager through Law Firm intends to "instruct" the members of the Committee as to their deliberations and decisions; such over-reaching and malicious intentions by City Manager and Law Firm acting on behalf of City Manager being in violation of Plaintiff's rights set forth in the Personnel Manual, City's Ordinances, and the laws of South Carolina and the United States.

108. Upon information and belief, the decision to grant Plaintiff a Grievance Committee hearing on this matter was taken by City Manager with the advice of City Attorney and/or Law Firm.
109. The intentions of Law Firm to "instruct" the Grievance Committee, and to present themselves as counsel to the Grievance Committee violate the provisions of the Personnel Manual and constitute a conflict of interest with independent representation of the Grievance Committee and its members.
110. Upon information and belief, at least three members of the Grievance Committee have tendered their resignations from the Grievance Committee since April 19, 2010, but City Manager has refused the same and instructed such employees of City, under direct or implied threat of retaliation, to continue as members of the said Grievance Committee, and to endorse without question or fair and independent debate, any action of City Manager.

FOR A FIRST CAUSE OF ACTION – ALL DEFENDANTS – 14TH AMENDMENT

111. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
112. The actions of City, City Manager, Assistant Manager, and PIO have violated the constitutional rights, privileges and immunities of the Plaintiff to equal protection under the law, in violation of the Fourteenth Amendment to the United States Constitution and Article 1, § 3 of the Constitution of the State of South Carolina.
113. City has caused or allowed those constitutional violations cited above by not providing for a procedure for just and impartial review of actions by City Manager that have deprived Plaintiff of his liberty and property interests in wages, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina.
114. City Manager has directly and personally, with malice aforethought, sought to deprive Plaintiff of his liberty and property interests in wages, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina, by presenting false testimony to the Grievance Committee by:

- a. Inventing and exaggerating verbal reports to him by the Plaintiff concerning the theft of the City-issued Weapon from the possession of the Plaintiff on or about December 21, 2009 and subsequently in the weeks until December 31, 2009; and
 - b. Denying that City Manager had on several occasions requested Plaintiff to act within and without Plaintiff's authority to assist City Manager or members of the family of City Manager in relation to disputes and legal issues; and
 - c. Testifying falsely to the Grievance Committee concerning the time and date of his alleged "Memorandum" to the Plaintiff following their meeting on February 03, 2010; and
 - d. Conspiring with Assistant Manager and PIO to defame, libel and slander the Plaintiff before the Grievance Committee; and
 - e. Making the Grievance Committee hearing on April 19, 2010 a mockery and sham proceeding by having previously instructed staff to terminate the employment of Plaintiff by City as from April 13, 2010.
115. Assistant Manager has directly and personally, with malice aforethought, sought to deprive Plaintiff of his liberty and property interests in wages, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina, by presenting false testimony to the Grievance Committee by:
- a. Inventing and exaggerating verbal reports to him by the Plaintiff concerning the theft of the City-issued Weapon from the possession of the Plaintiff on or about December 21, 2009 and subsequently in the weeks until December 31, 2009; and
 - b. Testifying falsely to the Grievance Committee concerning the conversations and alleged admissions of culpability by the Plaintiff to him concerning whether the glove-box in Plaintiff's truck was capable of being locked, and conspiring with the City Manager and PIO to defame, libel and slander the Plaintiff before the Grievance Committee.
116. PIO directly and personally, with malice aforethought, sought to deprive Plaintiff of his liberty and property interests in wages, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina, by presenting false testimony to the Grievance Committee by:

V.

- a. Inventing and exaggerating verbal reports to her by the Plaintiff concerning the theft of the City-issued Weapon from the possession of the Plaintiff on or about December 21, 2009 and subsequently in the weeks until December 31, 2009; and
 - b. Composing and tendering to the Grievance Committee a false and admittedly inaccurate and incomplete "time-line" of alleged events and facts concerning the theft of the City-issued Weapon from the possession of the Plaintiff, and conspiring with the City Manager and Assistant Manager to defame, libel and slander the Plaintiff before the Grievance Committee.
117. Upon information and belief, acting at the insistence and direction of City Manager, City Attorney gave incomplete and thereby misleading testimony to the Grievance Committee by:
- a. Reporting in an incomplete manner those verbal reports to him by the Plaintiff concerning the theft of the City-issued Weapon from the possession of the Plaintiff on or about December 21, 2009 and subsequently in the weeks until December 31, 2009; and
 - b. Despite having before him on December 21, 2010 the full text and copy of the Horry County Police Report attached hereto as Exhibit C, testifying falsely to the Grievance Committee concerning the conversations and alleged admissions of culpability by the Plaintiff to him concerning whether the glove-box in Plaintiff's truck was capable of being locked.

FOR A SECOND CAUSE OF ACTION – ALL DEFENDANTS – 42 U.S.C. § 1983

118. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
119. The denial of information required for Plaintiff to prepare properly for a Grievance Committee appeal hearing is an act or acts of all Defendants that was or were in violation of the equal protection afforded to the Plaintiff by the Fourteenth Amendment to the Constitution of the United States, and Article I, Section 3 of the Constitution of the State of South Carolina, and are actionable under 42 U.S.C. § 1983.
120. The willful and malicious suppression of information required for Plaintiff to prepare properly for a Grievance Committee appeal hearing is an act or acts of all Defendants, and were in violation of the equal protection afforded to the Plaintiff by the Fourteenth

[Handwritten signature]

- Amendment to the Constitution of the United States, and Article I, Section 3 of the Constitution of the State of South Carolina, and are actionable under 42 U.S.C. § 1983.
121. The knowing and willful failure of City Manager, with the knowledge and consent of City Attorney and Law Firm, to abide by the prescribed procedures of the City Grievance Committee, was an overt and deliberate act designed and having the effect of depriving the Plaintiff of a fair and impartial Grievance Committee hearing.
 122. The false and misleading testimony, proffered under oath to the Grievance Committee by City Manager, Assistant Manager, and PIO concerning the verbal reports, casual conversations and acts of the Plaintiff about the theft of his City-issued Weapon and subsequently, were acts in concert and by common design of City Manager, Assistant Manager, and PIO aimed and intended by such Defendants to deny the Plaintiff his constitutional and statutory rights of equal protection.
 123. The deliberate and knowing overreaching and intimidation of the members of the Grievance Committee by City Manager, acting through City Attorney and/or Law Firm as his agent, was intended and had the actual effect of depriving the Plaintiff of a fair and impartial Grievance Committee hearing, with the consequential loss of status, standing and monetary reward for service to the City.
 124. City Manager's undisclosed intention to terminate the employment of Plaintiff by City effective April 13, 2010 was malicious, intentional and designed to deprive Plaintiff from any redress through the Grievance Committee of City under the City Personnel Manual.

FOR A THIRD CAUSE OF ACTION – ALL DEFENDANTS – 42 U.S.C. § 1985(3)

125. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
126. By denying Plaintiff access to information to which he is entitled as a matter of law under FOIA, and seeking to shield and suppress information under the guise of attorney-client privilege, the Defendants have conspired together to violate the constitutional and statutory rights of the Plaintiffs to equal protection of the laws, and equal privilege there under, guaranteed by the Fourteenth Amendment to the Constitution of the United States, and Article I, Section 3 of the Constitution of the State of South Carolina, such conspiracy being actionable under 42 U.S.C. § 1985(3).

127. The false and/or misleading testimony, proffered under oath to the Grievance Committee by City Manager, Assistant Manager, and PIO, concerning the verbal reports, casual conversations and acts of the Plaintiff about the theft of his City-issued Weapon and subsequently, were acts in concert and by common design aimed and intended by such Defendants to deny the Plaintiff his constitutional and statutory rights of equal protection.

FOR A FOURTH CAUSE OF ACTION:
VIOLATION OF S.C. CODE ANN. § 30-4-10 et seq.

128. All prior allegations and arguments are repeated here as if set forth verbatim.
129. Upon information and belief, City did not respond lawfully to the FOIA requests made by Plaintiff's letter, and failed to produce correspondence consisting of electronic mail ("email") communications concerning the facts of this case, telephone logs and other material showing correspondence and communications between two or more of the Defendants.
130. Upon information and belief, the actions of City were knowing, willful and intended to thwart Plaintiff's adequate preparation of his presentation to the Grievance Committee, and were undertaken against the advice and counsel of City Attorney with actual knowledge of the requirements of the South Carolina Freedom of Information Act.
131. When moving into Executive Sessions on May 03, May 17, and June 07, 2010 City knowingly violated the South Carolina Freedom of Information Act, S.C. Code § 30-4-80 *et al.* (Supp. 2009) by adding items to the agenda for its Executive Sessions to allow private discussion of matters concerning the Plaintiff without giving the notice required under the law of South Carolina to amend a published agenda for a municipal council meeting.

FOR A FIFTH CAUSE OF ACTION – CIVIL CONSPIRACY

132. All prior allegations and arguments are repeated here as if set forth verbatim.
133. Upon information and belief, Assistant Manager and PIO acted outside the scope of their employment in conspiring together on and after December 21, 2009, and also with one or more persons currently unknown to cause Plaintiff to lose his contract of employment with City, by distorting reports made by Plaintiff concerning the loss of the Weapon and drafting, authorizing and issuing knowingly false and misleading statements to the press and public concerning Plaintiff and the circumstances of the loss of the Weapon.

134. By the acts as aforesaid, Assistant Manager and PIO acted in concert and by common design in a civil conspiracy to deprive Plaintiff of his salary, health insurance, retirement and other benefits of employment by a political subdivision of the State of South Carolina.
135. Upon information and belief, City Manager, Assistant Manager and PIO have acted in concert and by common design outside the scope of their employment by City to deny Plaintiff a fair and impartial appeal hearing before the Grievance Committee in accordance with the applicable rules, the City Code of Ordinances, the County and Municipal Employees Grievance Procedure Act, and common law standards of fairness and equal treatment under the Constitution and laws of the State of South Carolina.
136. By failing to comply with the provisions of the South Carolina Code concerning access to public information, and acting in violation of 42 U.S.C. §1983 and 42 U.S.C. § 1985(3), two or more of the Defendants City Manager, Assistant Manager and PIO unlawfully conspired against Plaintiff, joining together to cause injury to the Plaintiff, and causing him special damage unrelated to the merits of his job performance.
137. By their actions in conspiring to deprive Plaintiff of a fair and impartial hearing before the City Grievance Committee, the Defendants City Manager, Assistant Manager and PIO have breached an implied covenant of good faith and fair dealing in the contract of employment entered into between Plaintiff and City.
138. By pressuring members of the Grievance Committee to adopt a decision contrary to their own consensus and judgment, City Manager, acting through Law Firm as his agent and as an agent for City, violated a stated public policy of the State of South Carolina, namely that grievance procedures should be implemented and conducted so as to contribute to more harmonious relations between public employers and public employees and result in an improvement in public service.

FOR A SIXTH CAUSE OF ACTION – DEFAMATION (SLANDER AND LIBEL)

139. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
140. Each of City Manager, Assistant Manager and PIO have made and issued written and verbal statements to the press and in public concerning Plaintiff in relation to the matters set forth above with actual knowledge of their falsity and likelihood that such statements

K. R. M.

would be likely to lower the opinion of the Plaintiff in the minds of the general public, cause him to lose respect, and also cause him actual and special monetary damage by loss of income and benefits from employment and upon his separation from employment in public service.

FOR A SEVENTH CAUSE OF ACTION – WRONGFUL DISCHARGE

141. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
142. Plaintiff was entitled to a Grievance Hearing conducted impartially and in accordance with the provisions of the Personnel Manual, the City Code of Ordinances and the County and Municipal Employees Grievance Procedure Act.
143. The failure by City to provide a meaningful grievance procedure was a breach by City of an implied covenant of good faith and fair dealing in the employment contract between the City and Plaintiff.
144. The failure by City to conduct its Grievance Committee hearing in accordance with the Personnel Manual, the City Code of Ordinances and the County and Municipal Employees Grievance Procedure Act was a breach of a term implied into the employment contract between City and Plaintiff.
145. The failure of City to conduct a Grievance Hearing in accordance with one or more of the provisions of the Personnel Manual, the City Code of Ordinances and the County and Municipal Employees Grievance Procedure Act, and to allow City Manager to terminate Plaintiff's employment irrespective of the findings of the Grievance Committee, amounted to the tort of wrongful discharge.
146. The failure of City to require City Manager to comply with the policies of City set forth in the Personnel Manual including but not limited to the hearing of grievances from Plaintiff allowed City Manager to wrongfully and tortiously scheme and plot the termination of Plaintiff from employment by City for ulterior motives, including but not limited to the suppression of information concerning interference in law enforcement matters.
147. The failure of City to require City Manager to await and respect the decisions of the Grievance Committee and to comply with the City personnel policies adopted by

K.A.M.

Ordinance of the City allowed City Manager to engineer and force a wrongful constructive discharge of Plaintiff from employment by City.

148. The actions of City Manager, Assistant Manager and PIO as set forth above were an unjustified interference with the employment contract of Plaintiff with City.
149. The acts of City Manager, Assistant Manager and PIO are imputable to City under the doctrine of *respondeat superior*.

FOR AN EIGHTH CAUSE OF ACTION – RETALIATORY DISCHARGE

150. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
151. The acts of City Manager in terminating the employment of Plaintiff were in retaliation for Plaintiff seeking a Grievance Hearing and defending himself at that hearing.
152. The acts of City Manager are imputable to City under the doctrine of *respondeat superior*.
153. The discharge of Plaintiff by City Manager amounted to the tort of retaliatory discharge, in violation of Plaintiff's constitutional, statutory and common law rights.

**FOR A NINTH CAUSE OF ACTION
– INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (OUTRAGE)**

154. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
155. City Manager intentionally and/or recklessly inflicted severe emotional distress upon Plaintiff by making unfounded statements to the press, to members of City Council, and to fellow-employees of Plaintiff concerning the probity of Plaintiff, alleging *inter alia* that Plaintiff had lied repeatedly to City Manager, thereby causing Plaintiff severe emotional distress beyond the level that a reasonable person could be expected to endure.
156. City Manager's conduct was extreme, atrocious, outrageous and beyond the bounds of decency in a civilized community, and calculated to cause Plaintiff such distress that Plaintiff would not be able to exercise judgment properly concerning his continued employment with City, and thereby intending that Plaintiff would voluntarily resign from employment, with consequent and permanent financial and emotional harm to Plaintiff through loss of income, retirement benefits, pension rights, and loss of reputation in the community.

157. The acts of City Manager were his own acts, and also acts imputable to City under the doctrine of *respondeat superior*, and constituted the tort of intentional infliction of emotional distress.

FOR A TENTH CAUSE OF ACTION
- TORTIOUS INTERFERENCE WITH CONTRACT

158. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
159. Upon information and belief, the acts of Assistant Manager and PIO in authoring, amending and distributing incomplete and incorrect press releases concerning the theft of Plaintiff's Weapon, were deliberate attempts by Assistant Manager and PIO to undermine Plaintiff's standing in the City, and intended to cause and did interfere with Plaintiff's continued employment by City as its Public Safety Director.
160. In the alternative, the aforesaid acts by Assistant Manager and PIO were reckless or grossly negligent acts that interfered unlawfully with Plaintiff's continued employment by City as its Public Safety Director.
161. The willful, reckless or grossly negligent aforesaid acts of Assistant Manager and PIO were outside the scope of their employment with City and breached a duty of care they owed to Plaintiff to issue only truthful press and public statements concerning Plaintiff and the events of December 2009, and constituted tortious interference with the contract of employment of Plaintiff by City.
162. City Manager tortiously interfered with Plaintiff's contract of employment with City by intentionally failing to abide by the rules of procedure set forth in the City Personnel Manual for the conduct of Grievance Committee hearings, and in doing so acted outside the scope of his employment by City.
163. Upon information and belief, City Manager further tortiously interfered with Plaintiff's contract of employment with City by overreaching and instructing Law Firm to abuse the deliberative processes set forth in the Personnel Manual for the rendering of a decision by the Grievance Committee, and instructing Law Firm to place pressure on the members of the Grievance Committee to adopt a biased and untruthful finding pre-prepared by Law Firm at the instruction of City Manager.

164. Upon information and belief, City Manager also tortiously interfered with Plaintiff's contract of employment with City by instructing City's staff to deny Plaintiff the continued health insurance benefits to which Plaintiff is entitled under the policy set forth in the Personnel Manual.
165. The acts of City Manager were his own acts and constituted tortious interference with the contract of employment of Plaintiff by City.

FOR AN ELEVENTH CAUSE OF ACTION - NEGLIGENCE

166. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
167. Upon information and belief, based on the public statements of City Manager at the Grievance Committee Hearing on April 19, 2010, City Manager was not aware of the Bailey Email until shortly before that Hearing.
168. Assistant Manager, PIO and City Attorney all admitted knowledge of the Bailey Email in December 2009.
169. Assistant Manager and PIO owed a duty of care to their employer to ensure that any and all press releases were complete, accurate and truthful.
170. Assistant Manager and PIO owed a duty of care to Plaintiff to ensure full and accurate information was given to City Manager before City Manager made any decision concerning Plaintiff's employment with City.
171. By negligently withholding material facts supportive of Plaintiff's effort to correct the December Press Release, and by failing to do so, have caused Plaintiff actual, proximate and continuing monetary damage in loss of wages, retirement benefits, increased healthcare costs, and loss of reputation in the community.

**FOR A TWELFTH ELEVENTH CAUSE OF ACTION -
VIOLATION OF FIRST AMENDMENT RIGHTS**

172. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
173. The retaliatory discharge of Plaintiff by City Manager, for speaking in his own defense at the Grievance Committee, was a violation of Plaintiff's First Amendment right of freedom of speech.

Kran

174. City has endorsed the actions of City Manager, and is responsible for those actions under the doctrine of *respondeat superior*.
175. Plaintiff has suffered actual, proximate and continuing monetary damage in loss of wages, retirement benefits, increased healthcare costs, and loss of reputation in the community, as a result of the violations of his exercise of free speech as protected by the First Amendment to the United States Constitution and the Constitution of the State of South Carolina.

FOR A THIRTEENTH CAUSE OF ACTION – DECLARATORY JUDGMENT

176. All prior allegations, denials and admissions (qualified or not as set forth above) are repeated here as if set forth here verbatim.
177. City Attorney and Law Firm are retained by City and City Manager to offer advice and counsel to those parties.
178. This Honorable Court has jurisdiction to determine pursuant to S.C. Code Ann. § 15-53-10 *et seq.* (Supp. 2009) (Uniform Declaratory Judgments Act) whether City Attorney and/or Law Firm can fairly provide independent advice and counsel to the Grievance Committee of City as required under the policy set forth in the Personnel Manual.
179. Upon information and belief, this represents a judiciable controversy affecting not only Plaintiff but all other employees of City who have the right to seek to have grievance hearings pursuant to the Personnel Manual., and to declare pursuant to S.C. Code Ann. § 15-53-20 that the rights and privileges of employees of City have been and would continue to be prejudiced by allowing City Attorney and/or Law Firm to intercede with the Grievance Committee on behalf of their clients.

FOR A FOURTEENTH CAUSE OF ACTION – INJUNCTIVE RELIEF

180. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
181. The participation of City Attorney and Law Firm in any Grievance Committee hearing as advisors to the Grievance Committee is an unconscionable, conflict of interest and violative of the due process rights of the Plaintiff to a fair and impartial hearing, since City Attorney is a material witness to the matters giving rise to a demand by the Plaintiff for a grievance hearing, and Law Firm has no standing under the Personnel Manual to

kan

appear for City Manager and then offer advice and counsel to the members of the Grievance Committee as if advising that Committee.

182. Plaintiff is informed and believes that he is entitled to a temporary and permanent injunction against City Attorney or Law Firm acting in any manner as counsel before the Grievance Committee in any matter related to Plaintiff, and for such other sanctions against City Attorney and Law Firm for their conduct so far.
183. Plaintiff is further informed and believes that the interests of justice, preservation of his rights and reliance by him upon the terms of the Personnel Manual require that this Honorable Court issue a temporary Order prohibiting the City or City Manager from convening a Grievance Committee except after assuring this Honorable Court that the conduct of proceedings will comport with the principles of fair play and common justice, and that City Manager, Assistant Manager and all other employees and agents of City be warned that interference with the deliberations or conclusions of the Grievance Committee members, including but not limited to putting the members of the Grievance Committee in fear of retaliation unless they endorse any prior decision of City Manager without qualification, would be considered by this Honorable Court as contempt of court and punished appropriately.

FIFTEENTH CAUSE OF ACTION – NEGLIGENT SUPERVISION

184. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
185. City hired City Manager to manage the affairs of the City in accordance with the laws of South Carolina and the Ordinances of City.
186. City owed Plaintiff a duty of care to require City Manager to manage the affairs of the City in accordance with the laws of South Carolina and the Ordinances of City
187. City knew or should have known that City Manager was ignoring and flouting the laws of the State of South Carolina and the Ordinances of City in regard to the operation of the personnel policies of City as set forth in the Personnel Manual, compliance with the South Carolina Freedom of Information Act, engaging in civil conspiracies with Assistant Manager and PIO, and disregarding the common law duties of an employer in South Carolina to provide a working environment free from harassment and oppressive conduct.

188. City's failure to supervise and when necessary discipline City Manager constitutes the tortious act of negligent supervision, for which City is liable in damages to Plaintiff.

FOR A SIXTEENTH CAUSE OF ACTION – INJURIOUS FALSEHOOD

189. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
190. By falsely alleging that Plaintiff admitted lying to City Manager and thereafter apologized to City Manager for lying, all such alleged but false acts of Plaintiff asserted by City Manager to have occurred (but which Plaintiff denies to have occurred) in the period between December 21, 2009 and December 31, 2009, City Manager committed the tort of injurious falsehood against Plaintiff, intending to cause proximate and consequent economic damage to Plaintiff in Plaintiff's future employment with a municipal or other governmental Public Safety or law enforcement department.
191. The tortious acts of City Manager are his own acts, and also imputable to City under the doctrine of *respondeat superior*.

PRAAYER FOR RELIEF

- A. Plaintiff has been denied the opportunity to seek any meaningful and impartial administrative relief through his employment contract and rights.
- B. The Plaintiff seeks relief from this Honorable Court by way of a Jury Trial and an Order finding (subject only to the limitation on awards of damages against City pursuant to the South Carolina Tort Claims Act):

[1] As to the First Cause of Action alleged (Violation of Civil Rights) that the constitutional rights of Plaintiff to equal protection and equal privilege under the Fourteenth Amendment to the United States Constitution and Article 1, § 3 of the Constitution of South Carolina have been violated by City and City Manager, causing him proximate and consequential damage by loss of his liberty and property interests in wages, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina; and

[2] As to the Second Cause of Action alleged (42 U.S.C. § 1983) that such violations of the Plaintiff's constitutional rights are actionable under § 1983 of Title 42 of the United States Code of Laws, and the laws of the State of South Carolina, and that consequently that the Defendants are jointly and severally liable in damages to the Plaintiff in an

Kan

amount to be proven at trial, but not less than \$1,000,000.00 for the violation of the Plaintiff's right to equal protection and privilege under the law; and

[3] As to the Third Cause of Action alleged (42 U.S.C. § 1985(3)) that such actions of one or more of the Defendants to deprive the Plaintiff of his constitutional and statutory right to a fair and impartial Grievance Committee hearing were part of a conspiracy actionable under § 1985(3) of Title 42 of the United States Code of Laws and the laws of the State of South Carolina, and that consequently that the Defendants are jointly and severally liable in damages to the Plaintiff in an amount to be proven at trial, but not less than \$1,000,000.00 for their conspiracy to violate the Plaintiff's right to equal protection and privilege under the law; and

[4] As to the Fourth Cause of Action alleged (S.C. Code Ann. § 30-4-10 *et seq.*) that the Defendants jointly and severally acted and conspired to violate the letter and spirit of the South Carolina Freedom of Information Act, and are subject to the penalties set forth in that Act at § 30-4-100 and § 30-4-110, including but not limited to an award to the Plaintiff of his costs and attorney's fees, and a Declaratory Judgment and Injunctive Relief as this Honorable Court may find appropriate; and

[5] As to the Fifth Cause of Action alleged (Civil Conspiracy) that each of the City Manager, Assistant Manager, and PIO are jointly, severally and individually liable for the special damage they have caused the Plaintiff in his profession as a law enforcement officer with twenty years experience by way of his loss of wages, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina, in an amount to be decided by the trier of fact at trial for the damage and injury done to the Plaintiff, but not less than \$1,000,000.00; and

[6] As to the Sixth Cause of Action alleged (Defamation, Slander and Libel) that each of City Manager, Assistant Manager, and PIO have knowingly and maliciously made false and harmful statements in public about the Plaintiff, thereby committing the torts of defamation, slander and libel against the Plaintiff, for which the Plaintiff is entitled to money damages against each of City Manager, Assistant Manager and PIO in an amount to be decided by the trier of fact at trial for the damage and injury done to the Plaintiff, but not less than \$1,000,000.00; and

[7] As to the Seventh Cause of Action (Wrongful Discharge) that the failure of City to enforce its Ordinances and the County and Municipal Employees Grievance Procedure Act, and the deliberate and flagrant acts of City Manager in regard thereto, was a breach of an implied covenant of good faith and fair dealing in Plaintiff's employment contract with City, for which City and City Manager are jointly and severally liable in damages in an amount to be decided by the trier of fact at trial for the damage and injury done to the Plaintiff, but not less than \$1,000,000.00, being a capitalization of the loss to the Plaintiff of reasonably predictable wages, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina; and

[8] As to the Eighth Cause of Action alleged (Retaliatory Discharge) that City is liable for the tortious acts of City Manager in retaliating against the Plaintiff for contesting the unjustified disciplinary action against the Plaintiff by seeking and presenting a case through the Grievance Committee adversary hearing, in an amount to be proven at trial, but not less than \$1,000,000.00, being a capitalization of the loss to the Plaintiff of reasonably predictable wages, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina; and

[9] As to the Ninth Cause of Action alleged (Intentional Infliction of Emotional Distress) that City Manager and City are liable for the actions of City Manager in causing outrage to the Plaintiff, in an amount of damages to be decided by the trier of fact at trial, but not less than \$1,000,000.00; and

[10] As to the Tenth Cause of Action alleged (Tortious Interference with Contract) that City Manager, by deliberate and improper tortious acts, has interfered with the contract of employment of the Plaintiff with the City, and caused damage to Plaintiff in an amount to be proven at trial, but not less than \$1,000,000.00, being a capitalization of the loss to the Plaintiff of reasonably predictable wages, health insurance premiums for some fifteen (15) years, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina; and that Assistant Manager and PIO are also jointly and severally liable to Plaintiff for their willful, reckless or grossly negligent interference with the employment contract of Plaintiff by City, and caused damage to Plaintiff in an amount to be proven at trial, but not less than \$1,000,000.00, being a capitalization of the loss to the Plaintiff of reasonably predictable wages, health insurance

premiums for some fifteen (15) years, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina; and

[11] As to the Eleventh Cause of Action (Negligence) that Assistant Manager and PIO, by negligently performing their duties to assist and advise City Manager, have caused damage to Plaintiff in an amount to be proven at trial, but not less than \$1,000,000.00, being a capitalization of the loss to the Plaintiff of reasonably predictable wages, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina; and

[12] As to the Twelfth Cause of Action (Violation of First Amendment Rights) that City and City Manager are jointly and severally liable to the Plaintiff for the damage caused by their failure to respect and honor his right to freedom of speech, and have caused damage to Plaintiff in an amount to be proven at trial, but not less than \$1,000,000.00, being a capitalization of the loss to the Plaintiff of reasonably predictable wages, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina; and

[13] As to the Thirteenth Cause of Action (Declaratory Judgment) that City is in violation of its Grievance Committee procedures by allowing or instructing City Attorney and /or Law Firm to advise any Grievance Committee organized by City or City Manager under the policies set forth in the Personnel Manual; and

[14] As to the Fourteenth Cause of Action (Injunctive Relief) that (a) City, City Manager and/or Assistant Manager be temporarily and permanently restrained from convening a Grievance Committee hearing except if conducted in strict accord with the Personnel Manual, and (b) City and City Manager be enjoined temporarily and permanently from employing or using City Attorney and/or Law Firm (i) as participants in any Grievance Committee hearing and/or influencing or (ii) as conduits or agents of City Manager to convey threats of retaliation against the members of the Grievance Committee if such members do not endorse without qualification any decision of City Manager; and

[15] As to the Fifteenth Cause of Action (Negligent Supervision) that City be found liable in damages to the fullest extent allowed by applicable law to Plaintiff for the damage caused to him by the negligent supervision by City of the conduct of City Manager; and

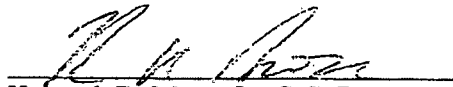
Kan

[16] As to the Sixteenth Cause of Action (Injurious Falsehood) that City Manager and City be jointly and severally liable in damages to the fullest extent allowed by applicable law to Plaintiff for the damage caused to him in an amount to be proven at trial, but not less than \$1,000,000.00, being a capitalization of the loss to the Plaintiff of reasonably predictable wages, health insurance premiums for some fifteen (15) years, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina; and

[17] That the Plaintiff is entitled to such further and ancillary relief as this Honorable Court may find proper, including but not limited to an award of his attorney's fees and expenses.

Respectfully submitted.

The McGougan Law Firm, LLC.
Attorneys for the Plaintiff



Kenneth R. Moss, Jr., S.C. Bar No. 15520
1180 Highway 17 North, Suite 2
P.O. Box 250, Little River, South Carolina 29566
Tel: (843) 281-9901 Facsimile: (843) 281-9903
krmoss@mcgouganlawfirm.com

Little River, South Carolina
June 10, 2010

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 William H. BAILEY,)
)
 Plaintiff,)
)
 -vs.-)
)
 CITY OF NORTH MYRTLE BEACH,)
 a South Carolina municipal corporation,)
 John SMITHSON, Steven THOMAS,)
 and Nicole AIELLO,)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION No. 2010-CP-26- 5145

VERIFICATION OF COMPLAINT

FILED
 HORRY COUNTY
 2010 JUN 11 AM 8:06
 MELANIE HUGHES-WARD
 CLERK OF COURT

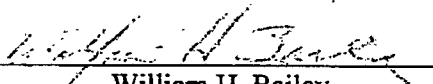
PERSONALLY APPEARED BEFORE ME the Plaintiff in this above-captioned matter, who having identified himself to me by the production of a South Carolina driving license numbered SCDL#08094996, and being duly sworn, states:

1. That I am the Plaintiff in this matter, and have read the Complaint consisting of 32 pages plus attachments referenced therein, a listing of which is as follows:

Exhibit	Index to Exhibits
1	Personnel Manual - Grievance Committee Procedures
2	Horry County Police Report
3	"Bailey Email"
4	February 25, 2010 Grievance Committee Appeal
5	City Attorney's Letter of March 09, 2010 plus attachments
6	March 15, 2010 Grievance Committee Appeal
7	March 15, 2010 Letter to City Mayor
8	March 18, 2010 FOIA Request
9	April 09, 2010 Letter from Chairman of Grievance Committee
10	April 13, 2010 Correspondence with Chairman of Grievance Committee
11	April 12, 2010 Response to FOIA Request
12	April 19, 2010 Submission to Grievance Committee
13	Check dated April 29, 2010 "Longevity Check"
14	April 29, 2010 Letter to City Attorney
15	May 02, 2010 FOIA Request
16	May 03, 2010 City Council Agenda
17	May 17, 2010 City Council Agenda
18	May 20, 2010 Letter from South Carolina State Retirement System
19	Letter mailed May 20, 2010 from City [dated April 13, 2010]
20	May 28, 2010 Letter to City Personnel Department re Grievance
21	June 02, 2010 email from City re FOIA Request of May 02, 2010
22	June 03, 2010 response to City email [Exhibit 21]

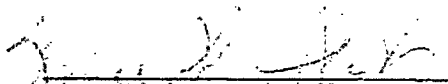
23	June 02, 2010 letter to Grievance Committee Chairman
24	June 02, 2010 FOIA Request
25	June 28, 2010 Letter from Law Firm re Grievance Committee hearing

2. That the pleadings attached were prepared by my attorney based on information and documents personally supplied by me to my attorney.
3. That the allegations contained in the Complaint are true and correct, and are based on my personal knowledge of facts and events, except those allegations based on information and belief, which allegations I believe to be true, complete and accurate.
4. That I have authorized my attorney to file and serve this Complaint, to present the same to the Court, to secure any Temporary and Permanent Orders based on the pleadings therein, and to secure service upon the adverse parties of the Complaint and any necessary process based thereon.



William H. Bailey

June 16, 2010



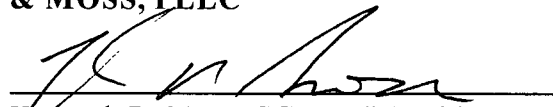
Notary Public for the State of South Carolina
My Commission expires: 2017

S-00035

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**



Kenneth R. Moss, SC Bar # 15520

628A Sea Mountain Highway

North Myrtle Beach, SC 29582

Tel: (843) 281-9901

Email: kennethmoss@wwpemplaw.com

Attorneys for Appellant

North Myrtle Beach, South Carolina

December 16, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Honorable William Jeffrey Young, Presiding Judge

Case No. 2010-CP-26- 05964

Appellate Case No. 2013-000195

William H. Bailey, Jr. *Appellant,*

v.

City of North Myrtle Beach,
a South Carolina Municipal Corporation *Respondent.*

PROOF OF SERVICE

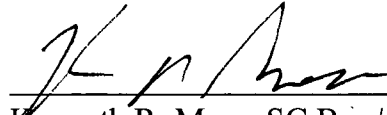
I certify that I have served a copy of the **Supplemental Record on Appeal** in the above-captioned appeal on the following individuals by United States Mail, with sufficient first-class postage affixed, addressed as follows:

Derwood L. Aydlette, III, Esq., SC Bar #13011
Christopher W. Johnson, Esq., SC Bar # 68524
Gignilliat, Savitz & Bettis, LLP
900 Elmwood Avenue, Suite 100
Columbia, SC 29201
Attorneys for Respondent

*** signature page follows ***

Respectfully submitted,

**WRIGHT, WORLEY, POPE, EKSTER
& MOSS, PLLC**



Kenneth R. Moss, SC Bar # 15520

628A Sea Mountain Highway

North Myrtle Beach, SC 29582

Tel: (843) 281-9901

Email: kennethmoss@wwpemplaw.com

Attorneys for Appellant

North Myrtle Beach, South Carolina

December 16, 2013