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June 6, 2013

BY CERTIFIED MAIL

Steven Mitchell, Chairman
Board of Selectmen
Town of Ashland
101 Main Street
Ashland, MA 01721

Anthony Schiavi
Ashland Town Manager
101 Main Street
Ashland, MA 01721

Stephen Doherty, Police Chief
Ashland Police Department
137 Main Street
Ashland, MA 01721

Ashland Police Association
137 Main Street
Ashland, MA 01721

Ashland Police Officers:

Sgt. Gregory Fawkes
Michael Dionne
Sgt. John Driscoll
Christopher Alberini
Louanne Tomaso
Jonathan Tessier

Allena Downey
Lt. Richard Briggs
Former Sgt. Robert McQuarrie
David Muri
Former Sgt. Greg Wildman

RE: Notice of intent to file suit for violations of civil rights, intentional infliction of emotional distress, negligent infliction of emotional distress, defamation of character, harassment, libel, slander, allowing a pervasively hostile workplace and all other actions to be determined at a later time.

To whom it may concern:

Please be advised this firm has been retained by Edward Pomponio ("Mr. Pomponio") and Paula Pomponio ("Mrs. Pomponio") to represent their legal interests and I am writing to give notice of intent to file a civil action against all of the departments and individuals listed above, the town departments members involved, and all supervisors for violations of Mr. Pomponio's and Mrs. Pomponio's civil rights, along with intentional infliction of emotional distress, negligent infliction of emotional distress, defamation of character, harassment, libel, slander, loss of consortium and other applicable causes of action. The time period in which these violations occurred all range from 2008 to the present, and are still ongoing.

BACKGROUND INFORMATION

As you are aware, in June 2012, Jody Newman, Esq. of the law firm Collora, LLP investigated the allegations of sexual harassment by certain officers within the Ashland Police Department. These allegations were formally brought forward by Mr. Pomponio and presented to Chief Scott Rohmer after obtaining statements from the complaining female officer¹ after he saw her in the dayroom, crying, shaking and apparently sick, holding her head and stomach. It was reported by this female to Mr. Pomponio that Officer Dionne was blackmailing her, holding things against her and making her do bad things. This female stated that she was in fear of her safety if she reported the harassment to her supervisors and that these actions by the male officers had been occurring over a period of time. She felt threatened and feared for her safety because Officer Dionne told her that 5 families would be hurt if she said anything, and then referencing that the male officers had much more on her. This female officer also stated in the past that she was struck in the face with hotdogs by Sgt. MacQuarrie while referencing the hotdog as a penis as the officers attended a New England Narcotic Enforcement Officers Association Banquet in Barnstable. In addition, Sgt. MacQuarrie sent photographs of a penis and she was told by Sgt. MacQuarrie that the photograph was his own penis, and she also reported that one day while in the day room having lunch Sgt. Fawkes began a discussion of who had larger penises between the Italians and Irish. She stated that Fawkes then grabbed her hand and pulled her hand towards his penis. Mr. Pomponio reported these heinous acts by these officers in the Ashland Police Department as required by the department rules and regulations. Chief Scott Rohmer in turn reported it to his superior, the Ashland Town Manager at the time, as required by the mandated chain of command. At no time did Mr. Pomponio induce this female officer to come forward. Her statements, though intended to be in confidence, were clear indicators of sexual harassment and improper conduct by his subordinates mandating Mr. Pomponio to take appropriate action not only as her immediate supervisor but as a supervisor within the Ashland Police Department. This female officer did not want to have this brought forward because of her affair with Westborough resident Steven Finn, and ostensibly feared that bringing this forward would impact her marriage. This was obviously troubling to this female officer but the actions of Mr. Pomponio were appropriate as he was acting not only in her best interests, but also the town's best interests.

Attorney Newman found through the interviews of those involved that the incidents the female officer privately told Mr. Pomponio about were downplayed as joking around which did

¹ named purposely left off to protect her identity

not offend her. The female officer was visibly upset by her treatment by the officers within the department stating to Ms. Newman that the reason she was upset was because "my peers were ganging up on me." She further stated, "Kavanaugh (who initially reported her leaving town with the cruiser) and his little group wanted to reprimand me." She identified the "group" as Officers Muri, Dionne, Alberini and Sgts. Fawkes and Wildman. This clearly supports our position that a hostile work atmosphere was in existence within the Ashland Police Department and nothing was being done to control this.

The female officer denies that any actual touching with Sgt. Fawkes occurred when Sgt. Fawkes grabbed her hand during a discussion during lunch in the day room as to "who had bigger penises, Italians or Irish". She states that she pulled her hand away prior to her hand actually touching Sgt. Fawkes's penis. The mere fact that he actually spoke of penises, grabbed her hand while doing so, and attempted to move her hand towards his penis area *while in uniform and on duty* is highly troublesome. Consequently, Mr. Pomponio took the appropriate action by informing his superiors after learning of potential blackmailing by Mr. Dionne. Not only is this conduct spelled out in the rules and regulations as constituting conduct unbecoming of any Ashland Police officer, regardless of on or off duty at the time of its occurrence, but that the conduct is criminal in nature and was ultimately ignored by the Town Managers and Board of Selectmen. Based upon statements made by the female officer it was reasonable for Mr. Pomponio to believe that Officer Dionne attempted to blackmail the female officer in an effort to control her disclosure of the harassment by telling the female officer that he had negative information about her and by referencing the thickness of the file he had on her.²

Attorney Newman found that no sexual harassment took place since the female officer was not offended by the acts of Ashland Police Sgt. Fawkes and Sgt. MacQuarrie. However, these findings are hard to believe that these acts were perceived in jest since the female officer admitted in her interview with Ms. Newman that she pulled away before her hand could reach Sgt. Fawkes's penis area. The fact that she pulled away is an indicator that she did not want to participate in the touching and that she pulled away was indicative that she was not consenting to the touching and is therefore an indecent assault and battery. The fact that this topic is being discussed during official Ashland Police business time by officers in uniform raised concerns that Mr. Pomponio brought to his supervisors attention who in turn brought it to the attention of the Town Managers and the board of selectmen who chose that no action should be taken.

In addition to the reporting of the grabbing of the hand incident, this female officer also described an incident at the New England Narcotics Enforcement Officers Association banquet in Barnstable where Sgt. MacQuarrie repeatedly struck her in the face with a hot dog while making reference to the "hot dog resembling a penis." Attorney Newman describes the incidents with Sgt. MacQuarrie as "isolated and benign" even though she felt degraded and humiliated. In this context, the incidents would in fact rise to the level of a violation of policy and/or law as they were unwelcome and/or severe or pervasive." This was an official event for Ashland officers to receive training. Sgt. MacQuarrie and the female officer were both attending this event in their capacity representing the Ashland Police Department. If the events occurred as Mr. Pomponio reported them, then the acts were clearly sexual harassment in nature. If they occurred as investigated by Attorney Newman, then both officers including the female officer are guilty of conduct unbecoming and deserving of reprimand. Mr. Pomponio did what he was

² Information included but was not limited to information that centered on her affair with Steven Finn.

mandated to do, report all misconduct. The conduct of these officers is without a doubt sexual harassment even though the female officer states that she perceived it to be done in jest. Even if the female officer desired that it not be reported, Mr. Pomponio was not in a position that he could ignore such behavior of any officer. In fact, this conduct violated the Town's sexual harassment policy along with Rule 11.11 of the Ashland Police Departments policy on Immorality stating "Officers shall not engage in grossly immoral conduct or public lewdness."

The Town Of Ashland Policies on Sexual Harassment dated October 4, 2006 state, "It is important to note that while this policy sets forth our goals of promoting a workplace that is free of sexual harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of sexual harassment." Conduct outlined in this policy references verbal abuse of a sexual nature; use of sexually degrading words; jokes or language of a sexual nature³; conversation or gossip with sexual overtones⁴; obscene or suggestive gestures or sounds; sexually-oriented teasing⁵; verbal comments of a sexual nature about an individual's appearance or sexual terms used to describe an individual; inquiries into one's sexual experiences; discussion of one's sexual activities⁶; comments, jokes or threats directed at a person because of his/her sexual preference; unwelcome and repeated invitations (for lunch, dinner, drinks, dates, sexual relations); demand for sexual favors accompanied by an implied or overt threat concerning an individual's employment status or promises of preferential treatment; physical contact such as touching, hugging, kissing, stroking, fondling, patting, pinching or repeated brushing up against one's body⁷; deliberate bumping, cornering, mauling, grabbing; assaults, molestations or coerced sexual acts; posting or distributing sexually suggestive objects, pictures, cartoons or other materials; sexually-oriented letters or notes; sending offensive or discriminatory messages or materials through the use of electronic communications (e.g. electronic mail, including the Internet, voice mail and facsimile) which contain overt sexual language⁸, sexual implications or innuendo, or comments that offensively address someone's sexual orientation; staring at parts of a person's body; sexually suggestive gestures, leering, stalking; and condoning sexual harassment.

The officer's conduct was undoubtedly conduct unbecoming of any police officer that the Board of Selectmen and the Town Managers refused to act upon. As a result of the town's refusal to act, Mr. Pomponio has been the victim of continuous harassment and hostile work place from the officers within the police department. This continuous and relentless harassment has resulted in health issues upon Sgt. Pomponio that will be proven at trial.

Mr. Pomponio has been forced to endure numerous events of harassment, out casting, hostile work atmosphere as a result of not only reporting sexual harassment but also events that hinged on criminal activity, violations of civil rights and conduct that was undoubtedly unbecoming of any Ashland Police Officer. Sgt. Pomponio, as required by the rules and

³ Though the female stated that the actions were in jest, the officers' actions were clearly in violation of the policy.

⁴ The gossip included this female going to the Kentucky Derby with someone other than her husband and name calling of "the mistress" by Sgt. Wildman.

⁵ The use of the hotdog striking in her face as if a penis.

⁶ Mr. Pomponio was told by this female that her trip to the Kentucky Derby with her boyfriend and not her husband was used to blackmail her by Officer Dionne.

⁷ Sgt. Fawkes's grabbing of the females hand and moving toward his penis.

⁸ Texting of photographs of a penis by Sgt. MacQuarrie.

regulations of the Ashland Police, reported the events through the chain of command landing ultimately on the desk of the Town Manager and the Board of Selectmen. In fact, Rule 13.5 of the Ashland Police Rules and Regulations states: Officers shall, upon observing or otherwise becoming aware of a violation by another officer or employee of the department's Rules and Regulations or Policies and Procedures, as set forth in this Manual or by other departmental directives or as governed by law, report said violations to their superior officer who will be responsible for appropriate action, report submission and follow-up. The Town Managers (Petrin, Purple, Purcell, and now Mr. Schiavi) failed to take the appropriate action and as a result Mr. Pomponio has endured years of intentional and negligent infliction of emotional distress causing documented health issues.

Mr. Pomponio reported that Sgt. Wildman in 2012 was using GPS tracking devices on an individual's vehicle and tracking their locations without obtaining a lawful search warrant and that person's knowledge. This activity was clearly in violation of this person's civil rights even though a Middlesex District Attorney deemed Wildman's activities as an unsanctioned training exercise. At no time did Chief Rohmer sanction this training exercise, nor did Mr. Pomponio have any knowledge of this civil rights violation prior to it taking place. Massachusetts's highest reigning court has ruled on the legality of the use of GPS tracking devices. GPS devices without a valid search warrant, constitutes an illegal search and seizure under the Fourth Amendment of the US Constitution and Article 14 of the Massachusetts Declaration of Rights. Police officers are required to obtain a court ordered warrant and follow proper protocol before using the tracking system. In this case, Mr. Pomponio recognizing that an individual's constitutional rights were being violated took the appropriate actions of informing his superiors who in turn reported the violations to the Town Manager and the Board of Selectmen who again failed to take any action. Mr. Pomponio was further subjected to ridicule, harassment, and hostile work atmosphere as a result of the Town Manager's failure and outright refusal to act appropriately.

On 1/17/11, Mr. Pomponio brought it to the attention of the Chief Rohmer that he was being harassed by Lt. Briggs and Sgt. Fawkes as the two officers were trying to elicit officers to write statements about Sgt. Pomponio. Mr. Pomponio reported that the aggressive, unreasonable behavior of falsely accusing Mr. Pomponio of wrong doing and that the actions of his direct supervisor was creating undue stress upon him. Again, Chief Rohmer took the appropriate steps of reporting to his superiors, the Town Manager and the Board of Selectmen, who again refused to act on this harassment complaint. This was not the only case of these officers taking direct steps to alienate Mr. Pomponio from the other officers. On October 19, 2011, Mr. Pomponio was appointed to sergeant. Officer Alberini actively pursued other officers to boycott Mr. Pomponio's swearing in ceremony. In fact, Mr. Alberini's grandfather was a Board of Selectmen at the time and told Chief Rohmer that things would go his way if he simply got rid of Mr. Pomponio. This unethical attempt to coerce Chief Rohmer to terminating Mr. Pomponio further perpetuated the hostile work atmosphere. In fact, Officers through postings on blogs on the Metrowest Daily News knew of Sgt. Fawkes reinstatement prior to the announcing and also posted facts of a criminal investigation on Mr. Pomponio though it was in direct violation of orders of Chief Stephen Doherty. Neither Chief Doherty, Town Manager Schiavi or the Board of Selectmen have initiated any form of investigation into this dissemination of department information in violation of the orders, information that was defamatory in nature continuing the harassment on Mr. Pomponio and Mrs. Pomponio.

Not only was Mr. Pomponio forced to endure years of harassment for work-related issues, he also reported humiliating comments by Sgt. MacQuarrie and Fawkes regarding Sgt. Pomponio's religious affiliations causing great discomfort. Mr. Pomponio reported to the Town Managers and Board of Selectmen that in January 2011, the officers had been making negative and humiliating comments regarding Mr. Pomponio's religious beliefs. He reported that these humiliating comments were upsetting to him. Chief Rohmer reported to the Board of Selectmen and the Town Managers that Mr. Pomponio's protected civil rights concern his religious affiliation were being offended by Sgt. MacQuarrie and Fawkes yet no investigation was ever conducted. This activity has created undue stress upon Sgt. Pomponio.

During Sgt. Zanella's retirement party, Sgt. Fawkes served as the master of ceremonies. In public, and in front of women, children and town officials, Sgt. Fawkes used obscene language such as the F--k and C--t words, and told inappropriate stories about Sgt. Zanella that were unsuitable for the public, particularly children and family members of Sgt. Zanella. This conduct was most undoubtedly conduct unbecoming of any police officer. See Rule 4.02⁹ covering both on and off duty conduct. Mr. Pomponio reported this conduct through the chain of command which was directed to the town manager and the Board of Selectmen. No action was taken by the town manager against Sgt. Fawkes and Mr. Pomponio was further subjected to harassment, humiliation, and alienation from the officers.

In March of 2012, Mr. Pomponio reported through the chain of command of being physically assaulted by Sgt. Fawkes at a union meeting. At this meeting the complaint against Sgt. Fawkes was passed around to the officers at this meeting. As Mr. Pomponio was leaving the meeting and reading the complaint, Sgt. Fawkes physically grabbed the papers from his hand. This was an assault and battery as defined under G.L. c. 265 section 13, that Mr. Pomponio again reported to the chain of command which was again reported to the Town Manager and the Board of Selectmen who again refused to take action. Mr. Pomponio was subject to continuous harassment, humiliation and alienation as a result of reporting this behavior by Sgt. Fawkes.

On August 6, 2012, Sgt. Wildman reported to the town that there must be some updating of the evidence policy and also clarification on the drug destruction policy. This is a clear indicator that the handling and destruction of drug seizures was unclear. Sgt. Pomponio, as evidence officer, drafted an evidence practice and presented it to the officers for future handling of evidence. Mr. Pomponio is now the target of a criminal investigation for the destruction of several small bags of marijuana. The manner in which he destroyed these small pieces of marijuana was the past practice of the department and was the manner in which Mr. Pomponio was trained. The one piece of evidence that he has been accused by Officer Driscoll of destroying were pieces that were accidentally destroyed and self-reported by Mr. Pomponio to the district attorney's office. The other items destroyed had no evidentiary value as no case was existent for the small pieces of marijuana. All items destroyed were properly recorded by Mr. Pomponio into the IMC computer data base in good faith and the items were destroyed in good

⁹ Rule 4.02: Officers shall not commit any specific act or acts of improper, unlawful, disorderly or intemperate conduct, whether on or off duty, which reflect(s) discredit or reflect(s) unfavorably upon the officer, upon other officers or upon the police department. Officers shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the department and its members.

faith. No cases were assigned to these items that were destroyed and it is clearly apparent that these items were not destroyed maliciously. None of these pieces had any evidentiary value as no case existed. Sgt. Driscoll knew of this evidence destruction many months ago and did not take action when he actually knew that the pieces were destroyed. No action was taken and no criminal investigation took place until pressed upon by Sgt. Driscoll approximately 2 years later.

In October 2009, Mr. Pomponio and Officer Charles Garbarino (now retired) reported to Chief Rohmer that Sgt. Fawkes was observed and pictures were circulating showing him smoking a cigar while attending the New England Narcotics Enforcement Officers Association banquet in Barnstable. Mass. General Laws does not permit discretion of the appointing authority in the handling of this type of violation. Under Mass. General Laws c. 41, section 101A states that any officer appointed after January 1, 1988 shall not smoke or use tobacco products of any kind whether on or off duty.¹⁰ Whoever violates said statute is subject to dismissal. This photograph was obtained by now Framingham Detective Matt Gutwill formerly an Ashland Police Officer. Witnesses that were present have also come forward stating that Sgt. Fawkes was smoking on that date. Sgt. Fawkes in turn threatened Matt Gutwill and both the smoking and threatening activity of Sgt. Fawkes was reported through the chain of command ultimately landing on the Town Manager's desk and the Board of Selectmen. Contained within that complaint was an opinion drafted by Attorney Patrick Rogers stating that smoking mandates termination. Again, no action was taken by the Town Managers and the Board of Selectmen that were all aware of this complaint and again Mr. Pomponio was subjected to harassment, ridicule and hostile work atmosphere for this reporting.

In December of 2012, Mr. Pomponio reported to the Chief Rohmer that Sgt. John Driscoll was removing department documents from the station and disseminating without obtaining authorization. This was in direct violation of Department rules 7.5, 7.11, and 11.4. Again, this activity by Sgt. Driscoll went uninvestigated by the Town Managers and the Board of Selectmen and again Mr. Pomponio was forced to endure a hostile work atmosphere by many of the police officers.

Mr. Pomponio is currently a provisional sergeant though he has topped the last two sergeant's exams. In fact, he was the only officer to pass the sergeants exams yet the town fails to or refuses to promote him while other provisional sergeants are appointed. Though the town manager has the authority to pass on a short list, this town has set a past precedence in appointing from the short lists. Why has the town bypassed the permanent appointing of Mr. Pomponio though 5 sergeant's positions were available? This is a police officer that has received stellar evaluations in the past years; in fact, the most recent evaluation was conducted by Lt. Richard Briggs. Sgt. Fawkes was Sgt. Pomponio's background investigator, and who recommended him for the job up to the final hour.

Mr. Pomponio was not permitted to read the complaint that was filed by eleven officers until it appeared in the Metrowest Daily News. Named as having committed potential criminal

¹⁰ Gen. Laws. C. 41Section 101A: Subsequent to January first, nineteen hundred and eighty-eight, no person who smokes any tobacco product shall be eligible for appointment as a police officer or firefighter in a city or town and no person so appointed after said date shall continue in such office or position if such person thereafter smokes any tobacco products. The personnel administrator shall promulgate regulations for the implementation of this section.

and ethical violations were Mr. Pomponio and Mrs. Pomponio. This complaint was subsequently investigated by an independent investigator and Attorney Doocey who subsequently determined that of the 144 allegations made against Chief Rohmer, Stephanie Rohmer, Mr. Pomponio, Mrs. Pomponio and Lt. David Beaudoin, that 138 were complete fabrication. It was clear by Attorney Doocey and confirmed by Sgt. Fawkes, who had full editorial powers, and Officer Dionne that the intentions of writing the letter of accusations that were deemed false was to embarrass the named persons in an effort to embarrass them and force them to resign. Sgt. Fawkes, the creator of the complaint, admitted to Attorney Doocey, that he solicited information from the officers in the department to be used against not only Scott Rohmer but Lt. Beaudoin, Mr. Pomponio, Mrs. Pomponio and Stephanie Rohmer. It was admitted by Sgt. Fawkes that the intention was to present the information to embarrass and force those named to resign their positions, and to obtain whistleblower protections. It was subsequently learned that Town Manager John Petrin directed these officers to draft the allegations in an effort to obtain whistleblower protection.

Sgt. Fawkes, in the position of Ashland Police Association president, exercised sole editorial discretion of the facts. He simply drafted the complaint without taking any due diligence to determine the legitimacy of the information provided to him. Most of the facts outlined in the complaint were facts fabricated by Fawkes even though every police officers had a duty to be truthful. Many of the officers interviewed denied being the source of the information though these 11 officers knowingly and willingly signed that complaint as being truthful and accurate. It was determined that Fawkes invented situations in the complaint that had no basis of fact. This was elicited by Attorney Doocey while speaking with Sgt. Fawkes and Officer Michael Dionne. Mr. Pomponio demanded an investigation and action by the town as a result of these malicious lies yet no action was taken by the town in particular the board of selectmen and the town managers while Mr. Pomponio has been forced to endure ridicule, harassment not only from the 11 officers that signed those lies, but he has been forced to endure outright harassment from the Metrowest Daily News from information obviously received from inside sources within the police department. In fact, it is known that Town Manager Purcell sent Mr. Fawkes a letter informing him that based upon the Doocey report that he was going to be subject to termination for untruthfulness and lying should the arbitrator order Mr. Fawkes back to work. Mr. Schiavi rescinded that letter, reinstated Mr. Fawkes without waiting for arbitrators decision, and has ordered Mr. Fawkes back pay be paid to him.

Rule 13.0 of the Ashland Police Department rules and regulations states, "Officers are required to promptly and accurately complete all required reports and forms. Failure to complete a required report or falsification of a police report or record, by submitting false written or oral information, may result in disciplinary action against the officer. Police reports and records include such things as affidavits, incident reports, time sheets, condition of the officer's health, doctor's slips, IAD investigation reports, and citations based on lawful authority.

Report filing requirements are an essential duty of a police officer. Additionally, credibility is an essential characteristic of every officer, due to the nature of police work where public interaction and testimony at judicial proceedings are required.

RULE 13.1 - FILING REPORTS

Officers shall promptly, truthfully and accurately complete all reports and forms as required by this Manual, by law, and by department regulations or policies and procedures.

RULE 13.2 - FALSIFYING RECORDS

Officers shall not knowingly enter or cause to be entered upon a police report or police record any inaccurate, false or improper information.

The investigation by Attorney Doocey is clear and convincing that not only did Sgt. Fawkes knowingly file a false report, the 11 officers who signed this complaint knowingly violated the department's policies without fear of disciplinary action because Town Manager John Petrin assured no action would be taken against them. In fact, these officers were promised Whistleblower Protection by the Mr. Petrin even though the complaint was filled with lies and embellishment. In addition these 11 officers have purposely and maliciously fabricated facts and unsubstantiated claims against Mrs. Pomponio creating undue stress upon Mr. Pomponio and Mrs. Pomponio. This has impacted their love and affection towards each other and it is our intention to also file a loss of consortium claim and a defamation of character claim on behalf of Mrs. Pomponio.

Mr. Pomponio also became aware that \$40.00 was not reported into evidence after it had been turned into the evidence room. Ms. Dollaway entered the station to retrieve the money but no record could be located further demonstrating that there problems with the evidence retention policies. This money was ultimately located by Sgt. Fawkes in an unknown location. A clear indicator that there was a troubling issue with the entry of evidence into the evidence logs. Mr. Pomponio again took the appropriate steps of reporting this wrong and again he was subjected to harassment, ridicule, alienation and hostile work atmosphere.

As a supervisor, Mr. Pomponio was responsible for reporting conduct that would be perceived as unbecoming of any Ashland Police officer regardless of whether the conduct occurred on or off duty. One particular incident involved Officer Alberini dressing up in an Ashland High School cheerleader's outfit that was laughed off as a Halloween stunt. However, the Ashland High School cheerleading uniform was actually property that was kept at the station for safe keeping and was to be returned to the former cheerleading coach. In review of the photographs that were passed around to many outside the police department, the photographs were taken at the Ashland Police Station at the door between the day room and the men's locker room in the background. The mere fact that a photograph of an Ashland police officer taken in the Ashland police station while in women's clothing is indicative of conduct unbecoming of any police officer and said activity was perceived by the Board of Selectmen and the Town Managers as being acceptable. This has resulted in a continuing hostile work atmosphere of Mr. Pomponio whose only interest was in the best interests of the town and the police department.

In March 2012, Sgt. Fawkes falsely accused Mr. Pomponio of leaking information to the Metrowest Daily News of dispatcher Finnerty's arrest for OUI. Mr. Pomponio was the investigating officer of an accident involving Ashland Police Dispatcher Finnerty. In addition, Sgt. Fawkes accused Lt. Beaudoin of monitoring department computers as this being an unethical and corrupt behavior. Mr. Pomponio was the investigating officer of the accident and had no involvement of contacting the Metrowest Daily News. Lt. Beaudoin confirmed through the reporter refuting Sgt. Fawkes claim. This false accusation by Sgt. Fawkes created undue stress upon Sgt. Pomponio, and Sgt. Fawkes behavior of making false accusations has further created a hostile atmosphere that the town managers and the Board of Selectmen knew or should

have known would cause such a hostile work atmosphere and again they refused to act upon. The inactions of the town managers and Board of Selectmen of refusing to investigate the allegations brought forward by Mr. Pomponio and refusing to discipline over the years has further perpetuated the hostile work atmosphere making it impossible for Mr. Pomponio to work at the Ashland Police Department creating health issues that will be proven at trial.

To establish a claim under the Massachusetts Civil Rights Act (MCRA), a plaintiff must prove (1) his exercise or enjoyment of her rights secured by the Constitution or the laws of either the United States or the Commonwealth; (2) has been subjected to interference, or attempted interference; and (3) that the interference or attempted interference was by “threats, intimidation or coercion.”¹¹ Mr. Pomponio was subjected to years of harassment, intimidation, threats by members of the Ashland Police Association, in particular Sgt. Fawkes, and the town’s failure and outright refusal to investigate and take appropriate action clearly violated his civil rights.

In January 2013, Mr. Pomponio again brought to the attention of the town’s administrators that he was being maliciously attacked by members of the police department that was affecting his ability to perform his duties. In particular, Mr. Pomponio, reported that Lt. Briggs had personal knowledge of the attacks on Mr. Pomponio but purposely turned his back and permitted this activity to openly occur, and Lt. Briggs also participate in. This behavior of failing to act when a hostile work atmosphere was present perpetuated the stress on Mr. Pomponio to the breaking point.

To prevail on a claim for defamation, the plaintiff must show that: (1) the defendant made a statement concerning the plaintiff to a third party, (2) the statement could damage the plaintiff’s reputation in the community, (3) the defendant was at least negligent in making the statement, and (4) the statement caused the plaintiff economic harm or is actionable without proof of economic loss¹². When the speech at issue is a matter of public concern, the plaintiff “must prove not only that the statements were defamatory but also that they were false.”¹³ I draw your attention to the Doocey report which contained 144 allegations against not only Mr. Pomponio but also Mrs. Pomponio, Scott Rohmer, Stephanie Rohmer, and David Beaudoin. 138 of these alleged complaints that was drafted by Sgt. Fawkes and supported by 10 other officers was deemed to be outright fabrications. The town and its managers had a duty to take appropriate actions knowing that a false allegation was made yet the town and the managers refused to take the appropriate actions.

To prevail on a claim for intentional infliction of emotional distress, the plaintiff must show “(1) that the defendants intended to inflict emotional distress, or knew or should have known that emotional distress v/as the likely result of [the] conduct, ... (2) that the defendant's conduct was extreme and outrageous, beyond all possible bounds of decency and utterly intolerable in a civilized community, (3) the actions of the defendant were the cause of the plaintiff's distress, and (4) the emotional distress suffered by the plaintiff was severe and of such a nature that no reasonable person could be expected to endure it.”¹⁴.

¹¹ *Bally v. Northeastern Univ.*, 403 Mass. 713, 717, 532 N.E.2d 49 (1989)

¹² *Ravnikar v. Bogojavlensky*, 438 Mass. 627, 629-630 (2003).

¹³ *Dulgarian v. Stone*, 420 Mass. 843, 847 (1995), quoting *Friedman v. Boston Broadcasters, Inc.*, 402 Mass. 376, 381 (1988).

¹⁴ *Tetrault v. Mahoney, Hawkes & Goldings*, 425 Mass. 456, 466 (1997)

The mere fact that these individuals knowingly and intentionally filed a complaint filled with 138 false allegations with the intent of embarrassing and compelling my client to resign from his position is reasonable to believe that no reasonable person could be expected to endure this type of wrongful action by a police officer and the supervisors that he works with, along with the fact that the outcome of the Doocey investigation was blatantly ignored after it was clear and without a doubt that the facts contained in that report were knowingly false and in direct violation of department policy 7.7 on truthfulness.¹⁵

Like all violent crime, workplace violence including intentional infliction of emotional distress creates ripples that go beyond what is done to a particular victim. It damages trust, community, and the sense of security every police officer has a right to feel while on the job. My client lost the trust for his supervisors, town managers and selectmen, when those supervisors refused to take appropriate action knowing that the allegations being made against Mr. Pomponio were false. Every employee has a stake in efforts to stopping workplace violence including harassment from happening yet each and every person named in this letter refused to act appropriately, including the town managers and board of selectmen.

Employers such as the Ashland Town Managers, Chief Doherty and the Board of Selectmen had a legal and ethical obligation to promote a work environment free from threats, harassment and violence. One necessary step the town's administrators such as Chief Doherty, Town Managers, and Board¹⁶ of Selectmen failed to do was adopting and practicing fair and consistent disciplinary procedures. All of which is clear and convincing that the handling of discipline within the Ashland Police was non-existent or even consistent. The Town Managers and Board of Selectmen had a duty to provide regular training and adopting preventive measures when signs of harassment and intimidation were taking place. Mr. Pomponio made repeated efforts to bring conduct and criminal complaints forward and said information was forwarded up the chain of command to the Board of Selectmen and the Town Managers who purposely chose to take no appropriate action. This failure to act not only perpetuated the harassment for many years but caused the harassment by officers inside the department to escalate. Supporting, not punishing, victims of workplace violence or fostering a climate of trust and respect among the officers in the department did not exist. In fact, since harassment and alienation was allowed to take place without fear of discipline, Mr. Pomponio was forced to endure many years of abuse. Mr. Pomponio had the right to expect a work environment that was free from violence, threats, and harassment.

In forming an effective handling of a job filled with violence, threats, harassment and alienation there must be support from the top. The top consists of the Board of Selectmen and

¹⁵ Officers shall speak the truth at all times when on duty or when discussing a matter arising out of or related to the officers duties or the operation, organization or business of the department. In cases in which an officer is not allowed by the regulations of the department to divulge facts within his or her knowledge, the officer will decline to speak on the subject. Officers shall not fabricate, withhold, or destroy any evidence of any kind.

¹⁶ Critical Incident Response Group, National Center for the Analysis of Violent Crime, FBI Academy, Quantico, Virginia. This is a group that Chief Stephen Doherty participated in.

the Town Managers. The Town had a duty upon hearing of the toxic environment of bullying, intimidation, threats, lack of trust, lying and the inconsistent discipline to take remedial action. Due to the failure of the town, selectmen and town managers, to act, my client has been forced to endure years of behavior that would never had been tolerated in any other police department. The town, Board of Selectmen, and Town Managers willfully turned their back to the police department misconduct along with the town's no threats and violence policy and all other policies associated with bullying, threats, harassment. There were no consistent handling of threats and threatening behavior.

Webster's Dictionary defines a threat as "a statement or expression of intention to hurt, destroy, punish, etc., as in retaliation or intimidation." It is very clear that the actions of the officers within the department have not only harassed, but also threatened Mr. Pomponio. With regard to workplace harassment, threats, or even violence, the Board of Selectmen, the Town Managers had a duty to make clear that zero tolerance in the original sense of the phrase applies—that is, no threatening or violent behavior is acceptable and no violent incident will be ignored. However, Mr. Pomponio reported incidents of violence, sexual harassment, sexual misconduct, violations of rules and regulations as required by the department policies. In doing so, he was subjected to many instances of abuse that the town had a duty to take action on all reports of violence, threats, and harassment, without exception.

"[A] complaint alleging that a police supervisor has notice of past culpable conduct of his subordinates and has failed to prevent a recurrence of such misconduct states a § 1983 claim." *Sims v. Adams*, 537 F.2d 829, 832 (5th Cir.1976). The town managers and selectmen are the supervisors of the police department. They knew or should have known of Sgt. Fawkes and other police officers of making false allegations against not only town residents but also other officers within the department and failed to take the appropriate actions. As a result, Mr. Pomponio's civil rights were violated. It would be expected that you will claim that this case falls within an exemption from such liability for "any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a public employer or public employee, acting within the scope of his office or employment, whether or not the discretion involved is abused." G.L. c. 258, § 10(b) (1986 ed.). In the context of the well-established principle whether, construing the evidence and all reasonable inferences flowing therefrom in a light most favorable to the plaintiff, it is our position that a jury would be warranted in finding that the Board of Selectmen, the town managers, Sgt. Fawkes, Lt. Briggs, the 9 other officers formally signing the complaint and the other town's agents were negligent in their performance of nondiscretionary duties.

Mr. Pomponio was subjected to a one day suspension for not being candid with another officer within the police department. This one day suspension for failing to be forthcoming to Sgt. MacQaurrie who demanded to know what was stated during a private conversation with another officer. This conversation was not under oath, not a result of courtroom testimony, and not a formal investigation. This was simply a private conversation between two officers within the department. However, Mr. Pomponio admitted to this as he recognized that officers must be candid with each other. This one day suspension, issued by the Town Manager, is indicative of inconsistent discipline being issued by the Town Managers and Board of Selectmen. In fact, Mr. Petrin's intentions when disciplining Mr. Pomponio was to have him removed from the police

department for not being forthcoming with another officer. 11 officers presented a complaint of 144 allegations against Sgt. Pomponio, Mrs. Pomponio Scott Rohmer, Stephanie Rohmer and Lt. David Beaudoin. An outside investigator confirmed that those 138 allegations were fabrications by the 11 officers, 5 were deemed to be unsubstantiated statements, and 1 was shown to be valid against Scott Rohmer yet none of those 11 officers were disciplined for being untruthful when filing an official complaint to the police department. Mass. General Laws c. 269, Section 13A states that whoever intentionally and knowingly makes or causes to be made a false report of a crime to police officers shall be punished by a fine of not less than one hundred nor more than five hundred dollars or by imprisonment in a jail or house of correction for not more than one year, or both. Town managers and the board of selectmen refused to take action knowing that a criminal violation took place. This complaint submitted by the 11 officers whose malicious intentions were to embarrass Mr. Pomponio to the point of resignation have gone unpunished knowing that the false allegations were troubling to Mr. Pomponio causing undue stress and having impact on his personal relationships.

Sgt. Fawkes, Lt Briggs, Officer Dionne and others have purposely gone out of their way to harass, intimidate, and humiliate our client and to create a hostile work atmosphere since 2008. Mr. Pomponio was purposely harassed by officers around the station when the officers posted photographs and statements around the station that were designed to harass our client creating undue stress. Sgt. Driscoll, Sgt. Fawkes, Officer Tessier and others took it upon their own powers in violation of the department policies Rule 7.11¹⁷ to report Mr. Pomponio to the Ethics commission, the Attorney General's Office and the Middlesex County District Attorney's Office without direct permission from Chief Rohmer. In addition, officers in direct violation of Department Regulations 7.5 regarding dissemination of information to outside source, have released information to the media such as Metrowest Daily News and WCVB Channel 5.¹⁸ Mr. Pomponio and Mrs. Pomponio have been subject to public ridicule, harassment, and hostile situations as a result of this violation and the town's failure to investigate and take remedial action.

There have been many instances that criminal activity has been brought to the attention of the Board of Selectmen and the Town Managers that has been ignored. In 2008, Lt. Briggs was accused of breaking into his wife's business and damaging property as the two went through a divorce. The matter was reported to the Framingham Police and referred to the Ashland Police and Town of Selectmen. No criminal charges were filed and no disciplinary action was taken for this criminal conduct. Again, this town turned their backs on criminal activity within the Ashland Police Department.

At this time we have introduced only a small presentation of our case but more than sufficient to demonstrate the appalling workplace atmosphere endured by Mr. Pomponio over the years. Our case includes many more instances of gross misconduct, harassment, intentional

¹⁷ Rule 7.11: Officers shall not confer with or forward communications to governmental officials on police matters without first notifying the Chief of Police, except as otherwise provided by statute.

¹⁸ Rule 7.5 No information shall be released, given or issued to the news media or to any members of the press concerning department operations, or the evidentiary aspects of any criminal investigations, without the prior approval of the Chief of Police.

infliction of emotional distress, failure to act, and more and we will be prepared to introduce at trial.

At this time I am forwarding a copy of this letter to the Attorney General's Office requesting an investigation into this matter. The evidence is clear, that the Board of Selectmen, the named officers, named town managers did in fact commit the allegations named in this letter. If settlement negotiations are not underway you may expect these claims to be filed in the United States District Court of Massachusetts or an appropriate Superior Court depending upon the claims we elect to pursue in the lawsuit.

We have purposely left Selectmen Joseph Magnani off all intentions of filing suit since he has consciously recused himself of all involvement within the police department as his election to the board of selectmen would have been a direct conflict of interest.

Please feel free to contact me if you have any questions.

Very truly yours,


Joseph F. Hennessey, Esq.

JFH/ms

cc: Vikas S. Dhar, Esq.