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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

Portland Division

DAVID BROOKS, an individual,

Plaintiff,

vs.

DAVID CLYNE, in his individual and
official capacity, ANNA LEE, in her
individual and official capacity,
TRUMAN STONE, in his individual and
official capacity, JOE HANNAN, in his
individual and official capacity,
TAMARA JONES, in her individual
capacity, CITY OF NEWBERG, a
municipal corporation, CITYCOUNTY
INSURANCE COMPANY, an Oregon
corporation.

Defendants.

Case No.

COMPLAINT

(Civil Rights 1st Amendment/14th
Amendment; Whistleblower retaliation;
defamation; IIED)

42 U.S.C. § 1983
ORS 659A.200(1)(b)(A) and (B)

Damages at least \$1,000,000 or an amount to
be proven at trial

JURY TRIAL DEMANDED

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INTRODUCTORY STATEMENT

1. This action is filed by Plaintiff under 42 U.S.C § 1983 and ORS Chapter 659A for events from December 2017 to the present, alleging violations of the First and Fourteenth Amendments of the United States Constitution, retaliation for participation in protected activities, violations of the state whistleblower protections under ORS Chapter 659A, and defamation.
2. This Court has jurisdiction over Plaintiff’s claims of violations of Federal Constitutional Rights under 28 U.S.C. §§ 1331 and 1343.
3. Venue is proper under 28 U.S.C. § 1391(b), in that one or more of the defendants reside in the District of Oregon and Plaintiff’s claims for relief arose in this district.

PARTIES

4. At all material times, DAVID BROOKS (“Plaintiff”) is a citizen of the United States and a resident of Yamhill County, Oregon. At all times material, Plaintiff worked for Defendant City of Newberg in Yamhill County, Oregon.
5. At all material times, DAVID CLYNE (“Defendant Clyne”) was the interim City Manager, after Joe Hannan, for City of Newberg, Oregon. Defendant Clyne replaced Defendant Hannan on or about July 22, 2019. Defendant Clyne was working under color of law on behalf of the City of Newberg (the “City. Defendant Clyne is the final policy maker for the City. Defendant Clyne is sued in his individual and official capacity.
6. At all material times, ANNA LEE (“Defendant Lee”) was the Director of Human Resources for City of Newberg, Oregon. Defendant Lee was working under color of law on behalf of the City of Newberg (the “City”). Defendant Lee is sued in her individual and official capacity.

7. At all material times, TRUMAN STONE (“Defendant Stone”) was the City Attorney for City of Newberg, Oregon. Defendant Stone was working under color of law on behalf of the City of Newberg (the “City”). Defendant Stone is sued in his individual and official capacity.
8. At all material times, JOE HANNAN (“Defendant Hannan”) was the City Manager, prior to David Clyne, for City of Newberg, Oregon. Defendant Hannan was replaced by Defendant Clyne on or about July 22, 2019. Defendant Hannan was working under color of law on behalf of the City of Newberg (the “City”). Defendant Hannan was the final policy maker for the City. Defendant Hannan is sued in his individual and official capacity.
9. At all material times, Defendant CITY OF NEWBERG (“Defendant City”) was a municipality organized under the laws of the State of Oregon. Defendant City is a suable person under 42 U.S.C. § 1983. At all times relevant to this Complaint, the City employed Defendants Clyne, Lee, Stone and Hannan. At all times relevant to this Complaint, Defendants Clyne, Lee, Stone, and Hannan were acting pursuant to Defendant City’s laws, customs, and/or policies. As the employer of Defendants Clyne, Lee, Stone and Hannan, the City is vicariously liable for all the tortious and unconstitutional acts and omissions of the defendants committed within the course and scope of their employment, pursuant to ORS 30.265. Defendant City was and is a “Public Employer” under 659A.200(6).
10. At all material times Defendant TAMARA JONES (“Defendant Jones”) was an employee and agent for Citycounty Insurance Services (“CIS”). At all times relevant to this Complaint, Defendant Jones was acting pursuant to Defendant CIS’s laws, customs, and/or policies. As the employer of Defendant Jones, CIS is vicariously liable for all the tortious and

unconstitutional acts and omissions of the Defendants committed within the course and scope of his employment, pursuant to ORS 30.265.

11. At all material times Defendant Citycounty Insurance Services (“Defendant CIS”) is a corporation providing legal insurance services to municipal entities in Oregon. At all times relevant to this Complaint, Defendant CIS was acting on behalf of and at the direction of Defendant City and the individual Defendants from the City. Defendant CIS is a suable person under 42 U.S.C. § 1983. At all times relevant to this Complaint, the City employed Defendant CIS. At all times relevant to this Complaint, Defendant CIS was acting as the agent for Defendant City. Defendant City is vicariously liable for all the tortious and unconstitutional acts and omissions of CIS and its agents and employees committed within the course and scope of their acts as agent. As the employer of Defendant Jones, CIS is vicariously liable for all the tortious and unconstitutional acts and omissions of the defendants committed within the course and scope of their employment, pursuant to ORS 30.265.
12. At all times relevant to this Complaint, Plaintiff was a “Public Employee” pursuant to ORS 659A.200(2).
13. All Defendants acted under the color of law at all times relevant to this Complaint.
14. Plaintiff is entitled to an award of attorneys’ fees and costs, pursuant to 42 U.S.C. § 1988.

FACTUAL ALLEGATIONS

15. Plaintiff is the Director of Information Technology for the City of Newberg from September 2002 to the present. Plaintiff also serves as a Reserve Officer for the Newberg/Dundee Police Department and has served since 2003.

16. As Director of IT, Plaintiff is responsible for all information systems, technology and data for the City. Plaintiff possesses several certificates in information systems including a Certified Information System Security Professional certificate, Computer Hacking Forensic Investigator, Encase Certified Examiner, and is a certified electronic evidence collection specialist. He has also been asked to serve as a computer forensic examiner for law enforcement.
17. Defendant Anna Lee is the Director of Human Resources for the City from June 27, 2016 to the present. Prior to her position for the City she worked in the Human Resources department for the City of Sherwood.
18. Defendant David Clyne is presently the interim City Manager for the City and has served since July 22, 2019. Prior to Defendant Clyne's tenure, Defendant Joe Hannan served as the City Manager for the City from June 6, 2016 to July 22, 2019.
19. Defendant Truman Stone is the City Attorney for the City from October 7th, 2013 to the present.
20. Defendant Tamara Jones is an employee of CIS and due in part to events describe herein was retained by the City to provide legal services for the City in the place of Truman Stone. Defendant Jones in her position as agent for the City retained the services of Beery, Elsner & Hammond, LLP to conduct an investigation into some of the allegations described herein. Upon information and belief Lee is close friends with one or more persons at CIS.
21. In 2015, City Manager Jacque Betz raised allegations against the Chief of Police, none of which were found to have any basis in fact. Betz was placed on administrative leave and Terry

Mahr was appointed City Manager Pro Tem. Plaintiff was asked to find documents related to the allegations that Stone said he did not have in his possession. Plaintiff discovered and revealed Defendant Stone had a trove of documents which were being concealed from the City Council. Defendant Stone was angered by Plaintiff revealing he had been untruthful to the City Council and demanded Mahr investigate Plaintiff. Mahr told Defendant Stone to back off and subsequently told Plaintiff he should “watch his back” and that Defendant Stone was out to get him.

22. On or about December 6, 2016 the City began recruitment to hire an assistant for the HR Department. Among other recruitment methods the City posted a job opening and description to their website. In January the City conducted interviews for the HR Assistant position including interviews of Greg Patton and Jennifer Ortiz. Greg Patton is an African American man who was a college friend of another City employee, Brian Casey, the Newberg Dundee Chief of Police.
23. On or about February 21, 2017 the City hired Ortiz for the HR Assistant position.
24. On or about March 23, 2017, Patton, through his attorney Sean Riddell, sent a public records request to the City requesting “THE EMPLOYMENT APPLICATIONS AND/OR RESUMES FOR APPLICANTS DURING THE 2017 ASSISTANT TO THE HUMAN RESOURCES DIRECTOR POSITION [sic]”, this request was forwarded to Lee for a response. Lee forwarded this email to Stone asking for advice on her duty to comply. On information and belief Stone counseled Lee prior to her alteration of any HR documents as alleged below. On information and belief Lee’s subsequent modification of HR documents as alleged below was

- done with Stone's knowledge and at least tacit approval.
25. On or about March 24, 2017 at approximately 9:48 am an Excel document entitled "Applicant Tracking – HR Assistant" was modified by Lee's user account.
 26. On or about March 24, 2017 at approximately 11:02 am Brian Casey forwarded to Patton an email Lee sent on February 21, 2017 to all Newberg City employees as well as all City Council members announcing Jennifer Ortiz had been hired as the new HR Assistant.
 27. On or about March 24, 2017 at approximately 5:52 pm, the City recorder, Sue Ryan, talked to Stone about the City's response to the public records request. Stone directed Ryan to set up a meeting with himself and Lee to discuss the public record request. Ryan emailed Lee to set up the meeting to discuss the City's response, stating only that Stone had said he needed to meet with Lee.
 28. On or about March 24, 2017 at approximately 5:57 pm Ryan emailed Riddell asking for clarification to his request asserting "the City did not hold a recruitment for an Assistant to the HR Director as specified in your request."
 29. On or about March 26, 2017 Riddell sent a clarification to the public records request specifically requesting information about Ortiz's application and hiring. Riddell copied Lee's email announcing Ortiz's hiring into his response.
 30. On or about March 29, 2017 Lee emailed an IT Employee requesting information on who in the city has access to the confidential HR drive. IT responded the only users with access to the HR Department folder were "[Lee], Nancy McDonald, and Jenifer Ortiz." Lee replied, asserting "[w]e just have received documents from applicants that are not posted on our job

site, the only other way they could have the document was that it was sent from the HR drive by an employee.”

31. On or about April 10, 2017 the “Applicant Tracking – HR Assistant” document was modified a second time by Lee’s user account.
32. On or about April 26, 2017 the City received a tort claim notice and a preservation notice from Riddell on behalf of Patton, alleging discrimination based on race in the hiring of the HR Assistant position. Stone forwarded the notices to Hannan, Lee, Brooks and Stone’s assistant Robin Steele stating, “Attached is a letter requesting preservation of evidence which may be relevant to this claim. Please read the content of this letter and take whatever steps are necessary to preserve any relevant material identified in this letter. If you have any questions please let me know.”
33. The preservation notice sent to the City contained explicit instructions regarding preservation of electronically stored information (“ESI”) including specifying the City must “act immediately to preserve potentially relevant ESI including, without limitation, information with the earlier of a Created or Last Modified date.” The notice required to City to “intervene to prevent loss due to routine operations” and to “immediately identify and modify or suspend features of [the City’s] information systems” which could result in the loss of data such as “[o]verwriting, erasing, destroying or discarding back up media.” The notice also specified that retention of only paper copies of ESI were not sufficient to comply with the duty to preserve evidence.

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34. On or about April 26, 2017 Stone emailed Plaintiff, Lee, Steele and Hannan and instructed them to “take whatever steps are necessary to preserve any relevant material identified in [the preservation notice].”
35. On or about April 26, 2017 Lee sent an email to herself, flagged “Follow up”, apparently to document the hiring process for the HR Assistant. In her email Lee alleges Casey “had [Patton’s] application before providing it to HR.” Lee further alleged “[w]ith all of the other run ins that I have had with Brian Casey it is apparent to me that he is behind this supporting Greg Patton with his claim of discrimination. There is information that Sean Riddell has that could only be provided by someone internally at the City.” Lee further alleged Casey had a history of “bringing up false accusations that discredit the individual to distract from his lack of following City processes and laws.”
36. On or about April 27, 2017 Plaintiff began searching for responsive documents to preserve as directed by Stone. The City used a server application, Varonis, to keep logs of specific file events such as: creation, copy (when a file is duplicated to a new location), access (when a file is opened, but not altered), modification (when a file is opened altered and saved), and deletion (when a file is placed in the recycle bin or deleted). Varonis allows the administrator to look at audit trails for specific files and records which user account is used to perform a file task and the time and date stamp of those events. The City’s Varonis logs were maintained for approximately one year.
37. When Plaintiff used Varonis to search for documents, he noticed that one specific file had been modified by Lee’s user account on two occasions. These were the modifications made using

Lee's account to the Applicant Tracking spreadsheet on March 24 and April 10. On April 27, 2017 at approximately 11:59 am Plaintiff emailed a screen grab of these two modifications to Stone. Plaintiff notified Stone he had not accessed the data in the file, just audited the metadata through Varonis. Plaintiff later met with Stone and Hannan. Plaintiff requested permission to freeze Lee's account so no further modifications could be made. Stone and Hannan denied Plaintiff's request to prevent further modification from Lee's account.

38. Plaintiff requested and received approval from Hannan to order an additional set of back-up tapes to ensure preservation of all files prior to any modification. Stone ordered Plaintiff not to view the unaltered HR document and further ordered him not to pull the pre-modification back-up tapes from the rotation schedule. Hannan directed Plaintiff to follow Stone's orders. Stone gave this order with knowledge it would result in the destruction of evidence.
39. On or about April 27, 2017 at approximately 11:02 am Lee's user account was used to open the Applicant Tracking spreadsheet. The file was open for approximately 12 minutes, modified and then saved at approximately 11:14 am. This third modification was not contained in the screen grab taken earlier that day which Plaintiff emailed to Stone. After modifying the spreadsheet this third time, Lee emailed the document to Stone along with other responsive documents to Riddell's records request. Stone knowingly produced the altered document to Riddell in response to his public record request.
40. On or about April 27, 2017 Lee sent an email to Stone alleging Casey was behind the Patton lawsuit and was doing so to retaliate against Lee.

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41. Between April 27 and May 2, 2017 Plaintiff met with Stone, and IT employee Falbey regarding the file modifications discovered by Brooks. Falbey and Brooks reminded Stone they needed a decision from Stone on what to do with the backup tape containing the version of the file before it was modified. Stone again told Brooks and Falbey not to do anything until he talked to CIS. During one of these meetings Stone made statements to Plaintiff to the effect he was “looking into” Casey despite the fact that Lee’s account was the one used to make the file modifications.
42. On or about May 2, 2017 Stone emailed Hannan, Falbey and Plaintiff and stated they should “search for and retain any information which appears relevant to Mr. Patton’s claim of discrimination in hiring, following prior instructions related to the public records request and [Stone’s] request for a search of relevant documents.” In this same email Stone expressly ordered the back up and archiving procedure should not be altered.
43. On or about May 3, 2017 Falbey responded to the group email asking for clarification, asking if they were to resume over-writing backup tapes. The IT Department had previously stopped certain tapes to preserve the evidence contained due to the preservation letter. Falbey asked if Stone was ordering them to overwrite those tapes which “**will result in the loss of the historical backup data that is stored on those tapes.**” (emphasis added) Stone did not reply, and on or about May 8, 2017 Plaintiff asked Stone, via the email thread, if Falbey’s interpretation of Stone’s orders were correct. Stone replied the same day, simply “Yes.”
44. In or around May of 2017 Plaintiff was frustrated at the behavior of Hannan and Stone related to the destruction of potential evidence and met with City Councilor Denise Bacon. Plaintiff

informed Bacon he felt the City was forcing the destruction of a document related to a potential lawsuit and felt the City had potentially committed a crime. Plaintiff told Bacon the City Manager, Hannan was complicit. Plaintiff also discussed with Bacon the fact Stone appeared to want an investigation into Casey instead of Lee. The sole impetus to investigate Casey was Lee's unfounded allegation he was somehow "behind" the Patton lawsuit.

45. In June of 2017 Lee made an official complaint to Hannan alleging workplace harassment by Casey. Lee alleged Casey harassed her by: (1) once in 2016 Casey told her she needed to move her car to avoid a ticket; (2) the failure of the Police staff to attend several of Lee's HR trainings; (3) not including Lee fully in the recruitment process for new police officers; (4) directing her to consult with Casey prior to inviting any police employees to participate in labor contract negotiations; (5) allegedly telling a City Councilor Lee was talking bad about him; (6) supporting Patton's lawsuit against the City by providing Patton with confidential City documents; (7) reports to City Councilors regarding Lee's behavior while volunteering at a Sherwood City event; and (8) by making false accusations against Lee and not following City processes and laws.
46. On or about July 11, 2017 Lee reported a broken lock on one of the HR file cabinets to Public Works who repaired the lock. The lock had been pried out of the filing cabinet in a manner which looked as if someone had attempted to break into the cabinet. Lee documented this in an email to herself which stated "I came into the office the [sic] Tuesday, July 11, 2017 at approx. 7:55 am, my office door was locked as I left it. But the HR file cabinet [for last names] N-SI lock was broken and looked like it had been tampered with the actual lock was out of its

socket and the file cabinet doors were still locked. I had [Public Works] fix the lock, and told Robin Steele and Matt Zook about the incident.” On July 31, 2017 Lee then forwarded that email to her personal account and flagged the email “Follow up.” In addition to Steele and Zook, Lee also told Public Works director Jay Harris and Stone about the broken lock. Lee never reported the broken lock to the police.

47. On October 5, 2017 Patton filed a complaint in Yamhill County Circuit Court alleging City of Newberg had violated Oregon public employment laws prohibiting discrimination on the basis of race. The Complaint was served on the City on October 11, 2017.
48. On or about October 23, 2017 Plaintiff was on a phone conference with Stone and outside counsel representing the City in the Patton suit. Plaintiff informed the City’s outside counsel about the multiple file modifications and that counsel directed Plaintiff to investigate further. However, at this point the backup tapes with the unmodified copies of that file had been overwritten due to their inclusion in the six-week rotation schedule. This loss of evidence was the direct and anticipated result of Stone’s order in May not to modify the backup rotation schedule. The loss was made final and irretrievable sometime in May 2017. Plaintiff compared the contents of the modified document to other recruitments and discovered the other recruitments had a score column for the applications and this determined who was given an interview.
49. After Patton filed suit against the City, Plaintiff approached two other City Councilors, Patrick Johnson and Stephen McKinney. Plaintiff conveyed the same or substantially similar information to Johnson and McKinney which he had reported to Hannan, Stone, and then

Councilor Bacon. Plaintiff thought it was wrong and potentially criminal to allow evidence to be destroyed and was frustrated no one in the City government was doing anything about it.

50. Plaintiff met with Councilor Johnson the evening of Thursday, December 7th 2017. Plaintiff informed Councilor Johnson of the modified document, Defendant Stone and Defendant Hannan's actions causing plaintiff to not preserve evidence. Hannan called Plaintiff the next day, and demanded a meeting right away. Plaintiff reminded Hannan he was not working that day and Hannan refused to wait until Plaintiff was scheduled to work. Plaintiff met with Hannan on Friday, December 8th. Hannan accused Plaintiff of "violating the chain of command" and ordered Plaintiff to bring matters to Hannan prior to taking matters to the City Council. Plaintiff was concerned about this order due to his perception that Hannan was complicit in the destruction of evidence. Hannan claimed he was not aware of the destruction of any evidence. Plaintiff showed Hannan the emails from May in which Stone ordered IT to continue a backup and archiving program which would necessarily result in the destruction of evidence. Confronted with the emails Hannan grew very quiet and then threatened Plaintiff with discipline if he took information to the Council in the future.
51. On or about November 9, 2017 Harris emailed Plaintiff and mentioned the "break-in of the HR office file cabinet a couple months ago." Brooks, a Reserve Police officer alerted Casey and Captain Jeff Kosmicki from the Newberg Police. The same day Casey emailed Lee to confirm if there had been a break-in and Lee replied "Yes, it appears so." Casey responded asking if there was anything missing, and Lee responded "undetermined."
52. On or about November 9, 2017 Plaintiff met with Stone regarding the alleged burglary.

53. Given this report of a potential burglary at City Hall, Casey requested Detective Todd Baltzell to investigate. Baltzell interviewed Lee on or about November 14, 2017. In Lee's interview Baltzell told Lee "locks don't just pop themselves open so [Baltzell] needed to move forward believing a burglary occurred." Baltzell asked Lee if she knew of anyone with a potential motive to commit a burglary and she told him if there was litigation going on someone "could just have their buddy who works for the City check for the files." During the interview Lee repeatedly stated she "did not want this information spread all over the city and was hoping to keep the investigation 'hush, hush'."
54. Lee hesitancy and assertions that a City employee may have committed a burglary to assist a friend with litigation against the City was suspicious. It was known in the City that Patton had filed a lawsuit and that Patton was friends with Casey. It appeared Lee was suggesting that Casey had broken the lock in an attempt to discover evidence for Patton to use in his lawsuit.
55. Plaintiff received a call from City Councilor Bacon who informed Plaintiff Stone had told the Council he did not call the police upon learning of the potential burglary because Stone and Lee believed Chief Brian Casey was the architect of the broken lock. Stone and Lee's allegations Newberg police were involved in a potential crime at City Hall caused Baltzell to meet with Yamhill District Attorney Brad Berry. The meeting occurred on or about November 15, 2017 and Baltzell requested an investigation to be conducted by an outside agency to remove Newberg PD from the picture.
56. On or about November 15, 2017 Casey met with Hannan to get authorization for an outside investigation, Hannan agreed. Casey then emailed Berry to request that Oregon State Police

- (“OSP”) contact Capt. Kosmicki. OSP did contact Capt. Kosmicki and advised him to first contact DOJ’s Criminal Division and if DOJ did not want to take the case, OSP would.
57. Sometime in late November 2017 Brooks and Kosmicki met with employees of the Oregon Department of Justice - Criminal Justice Division to request an investigation into public misconduct related to Lee’s modification of the HR Tracking file. In response to a request from DOJ Brooks emailed over a timeline of events surrounding the file modification. DOJ declined to take up the investigation but did not provide Plaintiff with a reason. Capt. Kosmicki then contacted OSP who officially began an investigation.
58. In or about December of 2017 or January of 2018, Truman Stone’s legal assistant, Robin Steele contacted Lee and informed her that Plaintiff had reported the alleged burglary to the police. Steele’s improper disclosure exposed Plaintiff to retaliatory harassment by Lee. Upon information and belief Steele was at all times acting on the instructions of and on behalf of Stone.
59. On or about January 8, 2018 OSP Detective Ted Moisan opened an investigation into Lee based on a request for a public official investigation from the Newberg Police Department.
60. On or about January 9, 2018 Det. Moisan met Kosmicki who provided a written allegation stating “I believe there is sufficient information that would warrant at a minimum an investigation for the following: Initiating a false police report. Altering a public document/records and the attempted framing of a public official (Chief Casey). I also believe there is sufficient information to investigate whether or not the city attorney and the HR director worked in concert to commit these crimes.”

61. On or about January 9, 2018 Det. Moisan spoke with Plaintiff. Plaintiff conveyed how he had been instructed to search for responsive documents to the public records request and had discovered the modifications to the HR Applicant Tracking spreadsheet. Plaintiff further informed Det. Moisan about his meeting with Stone and Hannan and his request for authority to prevent further modifications from Lee's account.
62. On or about January 10, 2018 Det. Moisan interviewed Det. Baltzell regarding his investigation. Baltzell stated Lee had been speaking "a hundred miles an hour" and seemed to be "minimizing" the alleged break-in. Baltzell learned the filing cabinet contained HR files including personal information on employees. Baltzell informed Lee she owed it to her co-workers to tell them about the broken lock to help prevent any potential identity theft. Lee's response was that none of the potentially affected employees had said anything to her, and since so much time had passed it was possible nothing was stolen. Baltzell relayed Lee's comments about "someone who works for the city" being responsible for the broken lock. Baltzell stated he believed Lee was implying Chief Casey broke into her office.
63. On or about January 11, 2018 Casey sent a Newberg City councilor an email containing allegations against Lee and Stone. The City hired an outside investigator to investigate the complaints Lee had registered with Hannan previously and which had not been adequately addressed by Hannan as well as these new cross allegations made by Casey against Lee and against Stone. On or about January 29, 2018 Gail Fischer was hired to serve as the investigator and prepare a report on her findings.

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64. On or about January 16, 2018 OSP Det. Moisan interviewed Newberg Councilor Denise Bacon. Det. Moisan had been told by Kosmicki on January 9 about a conversation between Stone and Bacon regarding the alleged break-in to the HR office. Bacon informed Det. Moisan while she did not believe in the merits of the Patton lawsuit, she did believe some people within the City government had made some “really stupid decisions, such as going into a file and making a change.” Bacon further opined the City would have won the Patton case on the merits, but the City didn’t “have the original documents to back up [their defense] because of a decision made by [Stone].” Bacon told Moisan she learned about the document modifications from Plaintiff who approached her because “[h]e was afraid for his own safety and job security, that if someone didn’t know what was happening, that he could trust, that he might become a victim.”
65. Councilor Bacon also provided statements related to the alleged burglary of the HR office. Bacon stated she learned about the alleged burglary in November of 2017 from Plaintiff. Bacon stated Plaintiff approached her because “he [was] very concerned that the HR office has been broken into several months prior, and nobody has been told. There’s been no police report filed, there’s been no employee notifications.” Bacon stated she had spoken with Stone and asked him why the police or employees were not notified. Bacon stated, “[Stone] looks me in the face and says, ‘because we thought that Chief Casey did it.’ ”
66. In or about February or March of 2018 Lee approached an employee in Plaintiff’s department and repeatedly questioned him regarding any potential “issues” in Plaintiff’s department. The employee approached Plaintiff, informed him of Lee’s questioning, and suggested he was

extremely uncomfortable with her repeated questioning. Lee went to Hannan and informed him she was conducting an HR investigation of Plaintiff based on problems in his department. Hannan took over the investigation and discovered that Lee's account of "problems in the IT Department" did not match the statements made by the IT employee. Plaintiff complained to Hannan that Lee was harassing and retaliating against Plaintiff. Hannan informed Plaintiff the investigation was closed and admitted Lee was retaliating against Plaintiff.

67. In March of 2018 Plaintiff met Hannan with Casey present to discuss forensic work needed by the Newberg/Dundee Police Department. Plaintiff had previously served as a computer forensic examiner for the Police Department from 2003 until 2012. Subsequently the Police Department staffed two dedicated forensic examiners. In March of 2018 one of the two unexpectedly resigned and Casey had requested Plaintiff serve in that role on a part time basis. Hannan agreed to add this role to Plaintiff's duties and agreed to an additional compensation package. Plaintiff did not receive the agreed upon compensation and despite numerous requests to Hannan, Plaintiff never received a response from Hannan prior to Hannan's resignation.
68. On or about April 3, 2018 Hannan provided Lee with a summary of the investigation findings. Hannan provided this summary to Lee despite the fact that Fischer had not yet submitted her final report. Hannan did not provide Casey with an advance copy of the summary of the findings.
69. On or about April 4, 2018 Fischer completed her investigation and submitted a report to the City. In part Fischer found sufficient evidence to sustain allegations that: Stone told a Newberg City Councilor Lee believed Casey committed burglary of the HR office; Lee accused Casey

of altering HR documents (Fischer found that Lee made this accusation, not that Casey actually altered any docs); Brooks alleged Lee altered documents relating to the Patton suit.

70. On or about April 15, 2018 Hannan provided Casey with a summary of the investigation findings. Hannan stated in his letter to Casey “[t]he City will take no disciplinary action or termination regarding anyone named in [the] complaints, or against [Casey] or Ms. Lee.”
71. On or about September 11, 2018 OSP Det. Moisan attempted to interview Lee as a part of the official misconduct investigation. Det. Moisan went to Newberg City Hall and asked a male staff member at the front desk if Lee was available. This staff member was later identified as Stone. Stone left to check on Lee’s availability. Another staff member answered a phone call and informed Det. Moisan Lee was unavailable due to a meeting scheduled out of the building.
72. On or about September 19, 2018 Det. Moisan attempted to interview Lee at her residence. Det. Moisan arrived at approximately 5:45 pm. There was no answer at the door. Det. Moisan waited in his car for several minutes until a vehicle approached the house and pulled into the driveway, opened the garage and drive into the garage and then closed the door behind it. Det. Moisan rang the doorbell and could hear someone inside talking, but there was no answer to the doorbell. Det. Moisan rang the bell several more times and could hear someone in the garage. Det. Moisan knocked on the garage door, again there was no response. After several more times ringing the doorbell to no result, Det. Moisan left with no response.
73. Unable to interview Lee, Det. Moisan completed his report and forwarded it to the Yamhill County District Attorney for consideration. After reviewing the materials in the report, Bradley Berry, the District Attorney for Yamhill County declined to bring charges.

74. On or about March 25, 2019 Berry wrote a memo to Det. Moisan which read in part “[y]our investigation into the conduct of Ms. Lee, was very thorough. My frustration with the case is what appears to be a willingness on the administration at the City of Newberg to hide behind ‘privileges’, ultimately hiding information which would corroborate apparent potential wrongdoing.”
75. During depositions in Patton’s lawsuit it had been discovered that Plaintiff had exchanged some text messages with Councilor Bacon in which they discussed the litigation. Plaintiff was using his personal phone to exchange messages. Bacon sent messages to Plaintiff to the effect of whether Plaintiff had been interviewed by Patton’s attorney yet. Plaintiff replied to the effect “no the City doesn’t want them knowing what I know” regarding the modification of the HR file. Plaintiff was no longer in possession of these messages at the time of this discovery.
76. On learning of these text messages Stone went to Hannan and insisted Plaintiff be suspended and investigated because these texts were not disclosed pursuant to Patton’s preservation and records request and were not preserved in violation of City policy. In April of 2019 Hannan repeatedly questioned Plaintiff regarding these text messages. Hannan told Plaintiff that Lee and Stone “would not let the issue go” and ultimately questioned Plaintiff on three different occasions. Plaintiff eventually complained that the repeated interrogations were becoming harassing.
77. Hannan was reluctant to investigate Plaintiff because the outside council representing the City on the Patton case recommended against any action on Plaintiff regarding the text messages. the City had never implemented a policy on document retention on personal devices despite

the City Recorder urging Hannan over many years to develop a “bring your own device” policy including document and record retention. Stone had repeatedly instructed City employees that personal text messages could not be produced in response to records requests because the City did not own the device. On this occasion however, Stone insisted that Hannan discipline Plaintiff over the text messages. Stone told Hannan if he didn’t place Plaintiff on leave and investigate him Stone would do it himself as “an officer of the Court.” Stone knew the City Attorney did not have authority to perform these types of investigations or to apply discipline to City employees. Stone was not representing the City on the Patton case. Under pressure from Stone, Hannan informed Plaintiff he was under investigation for the text messages and attempted to force Plaintiff to sign a workplace conduct agreement that included an admission that Plaintiff had behavioral problems. Plaintiff refused to sign it. The investigation remained open and Plaintiff remained under pressure to sign the agreement until he served his tort claim notice on the City, at that point the investigation was dropped. Plaintiff was never asked to sign the workplace conduct agreement after he served the tort claim notice on the City. Plaintiff believes this is evidence the investigation and agreement was retaliatory.

78. On or about May 23, 2019 Lee submitted a written complaint to Hannan. On or about May 24, 2019 Lee updated her complaint. The complaints alleged Plaintiff, Kosmicki and Casey conspired to harass Lee by, among other things: filing “a false police report, stating the HR office at City hall was ‘broken into’”; falsely accusing Lee of blaming the alleged burglary on Casey; accessing the confidential HR drive, taking confidential documents, falsely accusing Lee of modifying the documents, and sharing the confidential documents with City Councilors

and with Patton; and filing public record requests designed to intimidate Lee.

79. This complaint initiated an investigation by multiple outside attorneys which lasted for over five months subjecting Plaintiff and others to numerous interrogations. Plaintiff and others were sent multiple official letters and notices which threatened him with discipline including termination and caused severe distress. This investigation caused Plaintiff to expend resources on attorneys and diverted him from doing his job for the people of Newberg, instead forcing him to devote time and resources to protect himself, his reputation and his career.
80. On or about June 5, 2019 Plaintiff received a letter titled “Respondent Notification” from Robin Steele on behalf of Stone. The letter stated the “City is conducting an internal personnel investigation into alleged policy violations regarding harassment ... [t]he allegations list you as a responsible party.” The letter further stated “[r]efusal to comply with the investigation is a violation of City policy and may constitute a basis for discipline up to and including termination.” The letter further stated, “any threats or retaliation, or contact perceived as threatening or intimidated by any City employee involved in this investigation will constitute a basis for discipline up to and including termination.” The letter concluded with the statement “[i]f these allegations are sustained, they will likely lead to disciplinary action up to and including termination.” Plaintiff was not informed who had filed a complaint, or what specific allegations of harassment were made, or specific City policies he may have violated. The letter further stated the City had hired “outside investigators” who would be “neutral fact-finders and conduct an impartial investigation. The investigators were identified as Heather Martin and Ashley Driscoll, attorneys at Beery, Elsner & Hammond, LLP.

81. Plaintiff, through his attorney attempted to clarify what the predicate for the investigation was, and the precise nature of the investigators, Martin and Driscoll. Martin in an email to Plaintiff's attorney asserted the notice had in fact provided a list of specific policies that might have been violated. Martin concluded by stating she, and her firm, had been retained by the City of Newberg and were "acting at the direction of the attorney who is overseeing the investigation, Tamara Jones at CIS. Communication between this firm and the City are attorney-client privileged." Martin provided no basis for the assertion of privilege.
82. On or about June 17, 2019 Jones contacted Plaintiff's attorney to clarify Jones was acting as outside counsel for the City and was directed by Stone to oversee Martin and Driscoll and serve as their "point of contact at the City." Notwithstanding their assertions of acting as "outside investigators" and "neutral fact-finders", Jones stated both Martin and Driscoll had been retained by the City to "act as the City's legal counsel."
83. On or about June 20, 2019 Jones provided a "Respondent Notification – Updated Notice" again drafted by Steele on behalf of Stone. Unlike the prior notice, this letter did provide details of the allegations against Plaintiff and a list of potentially violated City policies. This notice again contained assertions Martin and Driscoll would be "neutral fact-finders." This notice again threatened potential discipline including termination no less than three times.
84. On or about September 26, 2019 the jury returned a verdict in favor of Patton finding that race was a substantial factor in the City's decision not to hire him. The jury further found the City's discrimination was intentional and awarded Patton nearly three hundred thousand dollars in damages. Plaintiff believes a significant factor in the jury's decision was the intentional

destruction of the HR file ordered by Stone.

85. On or about November 4, 2019 the Newberg City Council formally accepted and adopted the findings of the Final Investigation Report, as prepared by Heather Martin of Beery, Elsner & Hammond, LLC. The report did not address Lee's role in illegally modifying the HR file. The report did not address Stone's role in illegally ordering the destruction of evidence. The report was clearly written in a manner to protect the City, Lee, and Stone from any negative findings.
86. The City Council resolved to publish the report with limited but significant redactions. Of note Stone's direct order to destroy evidence was redacted. Also the references Stone made to Hannan and Plaintiff about wanting to look into Brian Casey instead of Anna Lee were redacted. The City, by accepting and publishing the report, adopted it as a policy position of the City thereby ratifying the harassment, and retaliation complained of herein. Publication of the report was also retaliatory in response to Plaintiff's protected speech.
87. On or about November 8, 2019 Plaintiff was reminded of the unresolved issue of his additional compensation for his work as a forensic examiner and sent an email to Clyne detailing the March 2018 agreement. Plaintiff documented his multiple attempts to secure this compensation from Hannan prior to his resignation. Clyne replied and included Lee and Casey in the email. On November 18th, 2019 Clyne stated, "I have reviewed this request and am denying it." This denial was retaliatory for Plaintiff's protected speech and whistleblowing.
88. Between 2015 and 2019 Plaintiff was the supervisor for a City employee who reported sexual harassment to Plaintiff and to others in the City government. Plaintiff, upon learning of the complaint, himself reported the allegations of harassment to others in the City including

Hannan. Defendants retaliatory actions as alleged against Plaintiff were in part due to these reports on behalf of another employee.

89. In or about July of 2019 the employees of the Engineering and IT departments began the process of joining the existing Public Works AFSCME union. Management side meetings to discuss the unionizing process were convened by Lee as HR Director. The heads of the affected departments were all involved in the meetings as the unionizing process directly impacts how the departments are organized and run. Shortly after the process began, Lee began excluding Plaintiff from the meetings in retaliation for the events described herein. No other affected department head was excluded. Under pressure Lee eventually allowed Plaintiff to attend these meetings beginning in or around November 2019.
90. On or about April 21, 2019 Plaintiff caused a tort claim notice, pursuant to ORS 30.25, to be served on the City of Newberg, the City Manager (Hannan), and the City Attorney.
91. On or about May 2, 2019 Plaintiff caused a tort claim notice, pursuant to ORS 30.25, to be served on CityCounty Insurance Services. Upon information and belief CIS, through Jones and others, conspired with Lee, Stone and the City of Newberg to caused Casey, Kosmicki and Brooks to be terminated.
92. On or about October 3, 2019 Plaintiff caused an updated tort claim notice, pursuant to ORS 30.25, to be served on the City of Newberg, David Clyne, Truman Stone, Ana Lee, CIS, and Tamara Jones.

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FIRST CLAIM FOR RELIEF:

Violation of Federal Constitutional Rights 42 U.S.C. § 1983

Violation of Right to Free Speech – Public Employee

(Hannan, Stone, Lee, Clyne, Jones, CIS)

93. Plaintiff re-alleges all paragraphs previously alleged.
94. Plaintiff engaged in protected speech consisting of: his report of Lee’s modifications to the HR file to Stone and Hannan in April 2017; his report of the spoliation of evidence and his belief that Hannan and Stone were complicit to Councilor Bacon in May 2017; his report to the City’s outside counsel in the Patton case regarding the file modification in October 2017; his reports to Councilors Johnson and McKinney regarding the spoliation of evidence in late 2017; his reports to the Newberg Police of the alleged burglary in the HR office; his reports to City Council members related to the alleged burglary of the HR office; his report to Oregon DOJ requesting an investigation; his statements to Det. Moisan regarding the spoliation of evidence and the alleged burglary in the HR office; and his reports to Defendants regarding the allegations of sexual harassment of another City employee. These examples are protected acts under the 1st and 14th Amendments.
95. Plaintiff spoke on matters of public concern including, but not limited to: misconduct by Lee; the Defendants’ conspiracy to cover-up Lee’s misconduct; Stone’s order to spoil evidence; reports of sexual harassment of another employee; attempts by Defendants to shift blame for some of Lee’s misconduct onto Chief Casey. Plaintiff spoke as a private citizen.

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96. Plaintiff's acts described herein were a substantial or motivating factor for one or more of the following retaliatory actions: Hannan's threats of discipline for taking his concerns to members of the City Council; Lee's assertions to Hannan and Stone alleging Plaintiff improperly accessed the HR shared drive and shared or assisted in sharing confidential files with Patton; the 2018 Fischer investigation imitated by Lee and Hannan; the 2019 investigation also initiated by Hannan and Lee; the multiple threats of termination related to the 2019 investigation; Plaintiff's exclusion from union bargaining meetings; the investigation into his text messages to Bacon; Stone's threats to suspend and investigation Plaintiff; and Clyne's denial of the promised compensation for the forensic examiner position.
97. The City has no adequate justification for the retaliatory actions.
98. As a result of the above-described actions, Plaintiff has suffered damages totaling at least \$1 million, or an amount to be proven at trial, including lost wages and benefits, lost economic potential, harm to reputation, emotional distress, and incurrence of attorney fees and other costs, and prejudgment interest.
99. Plaintiff has incurred attorney's fees and costs in pursuing this claim. Plaintiff is due his reasonable attorney fees and costs pursuant to 42 U.S.C § 1983.

Count Two: Denial of Rights Freedom of Speech
Local Governing Body Based Upon Official Policy, Practice, or Custom
(City of Newberg)

100. Plaintiff re-alleges all paragraphs previously alleged.
101. Defendants' previously outlined retaliatory acts and policies constituted an unwarranted denial of Plaintiff's free speech constitutional rights.

102. Defendant Hannan, as the City Manager for Newberg, acted under color of law and in his official capacity at all times relevant to this complaint.
103. Defendant Clyne, as the interim City Manager for Newberg, acted under color of law and in his official capacity at all times relevant to this complaint.
104. At all times relevant, Defendants Hannan and Clyne were final policy makers for the City. As the City's policymakers Hannan and Clyne commissioned an investigation into Plaintiff in retaliation for his protected activities.
105. The City Council ratified Hannan and Clyne's policy decisions by adopting the investigation report and making it public on November 4, 2019 by Resolution 2019-3621. The adoption and ratification of this report incorporated it into City policy and adopted the conclusions of the report as statements of City policy.
106. As a result of the above-described actions, Plaintiff has suffered damages totaling at least \$1 million, or an amount to be proven at trial, including lost wages and benefits, lost economic potential, harm to reputation, emotional distress, and incurrence of attorney fees and other costs, and prejudgment interest.
107. Plaintiff has incurred attorney's fees and costs in pursuing this claim. Plaintiff is due his reasonable attorney fees and costs pursuant to 42 U.S.C § 1983.

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SECOND CLAIM FOR RELIEF

42 USC § 1983 – Fourteenth Amendment

Count One: Violation of Plaintiff's Right to Due Process

(All Defendants)

108. Plaintiff re-alleges all paragraphs previously alleged.
109. Defendants subjected Plaintiff to an investigation which was alleged to have been conducted by neutral fact finders and independent third parties.
110. Defendants' investigation was in fact conducted by attorney's working under the umbrella of Jones in her role as outside counsel for the City.
111. Defendants used the status of the investigators to shield documents and communications improperly alleging attorney client privilege for the same individuals holding themselves out as neutral third parties.
112. The investigation was fundamentally unfair in that it was conducted with a preconceived outcome in mind and sought to find evidence to fit the City and individual Defendants' theories regarding the Plaintiff and other subjects.
113. By claiming to conduct a fair and independent investigation, while intentionally failing to do so, the City, CIS and the individual Defendants violated Plaintiff's right to due process under the Fourteenth Amendment.
114. Defendants' conduct involved a reckless disregard or callous indifference to Plaintiff's constitutional rights. Defendants' malicious, wanton, or oppressive acts are within the standards for assessing punitive damages.

115. As a further direct and proximate result of the acts and omissions complained of herein, Plaintiff has suffered, and continues to suffer mental pain and suffering, humiliation, worry, anxiety, fear, lost wages, loss of earning capacity, and loss of personal and professional reputation, entitling him to an award of compensatory, non-economic damages, and prejudgment interest in an amount to be determined at trial.
116. Plaintiff has incurred attorney's fees and costs in pursuing this claim. Plaintiff is entitled to attorney fees, expert witness costs and litigation costs 42 U.S.C § 1983.

Count Two: Violation of Plaintiff's Right to Equal Protection

(All Defendants)

117. Plaintiff re-alleges all paragraphs previously alleged.
118. Individual Defendants acted under color of law in their individual and official capacities at all times material to this Complaint.
119. Plaintiff was subjected to treatment for his participation in protected activities which was substantially different than other similarly situated employees.
120. On information and belief, the City and Defendants targeted Plaintiff based on his past participation in constitutionally and statutorily protected activities, reporting of potential criminal misconduct and whistleblowing.
121. The Plaintiff had reported harassment by Lee, Stone, and others to the Defendants and his reports had not resulted in any investigations of harassing behavior. Lee's unfounded and retaliatory reports of harassment by Plaintiff resulted in multiple lengthy investigations, threats of termination, stress, anxiety, humiliation, embarrassment, and harms to Plaintiff's ability to

secure employment in the future. Hannan acknowledged to Plaintiff that certain of Lee's conduct was in fact retaliation but took no action against Lee.

122. The Defendants' actions violated the Equal Protection Clause of the Fourteenth Amendment.
123. Defendants' conduct involved a reckless disregard or callous indifference to Plaintiff's constitutional rights. Defendants' malicious, wanton, or oppressive acts are within the standards for assessing punitive damages.
124. As a further direct and proximate result of the acts and omissions complained of herein, Plaintiff has suffered, and continues to suffer mental pain and suffering, humiliation, worry, anxiety, fear, lost wages, loss of earning capacity, and loss of personal and professional reputation, entitling him to an award of compensatory, non-economic damages, and prejudgment interest in an amount to be determined at trial.
125. Plaintiff has incurred attorney's fees and costs in pursuing this claim. Plaintiff is entitled to attorney fees, expert witness costs and litigation costs 42 U.S.C § 1983.

THIRD CLAIM FOR RELIEF

Unlawful Employment Practice/Whistleblower Retaliation

ORS 659A.199

(All Defendants)

126. Plaintiff re-alleges all previously alleged paragraphs.
127. Plaintiff has incurred attorneys' fees and costs in pursuing this claim.
128. Plaintiff has satisfied the notice requirements of the Oregon Tort Claims Act.
129. In violation of the Oregon Unlawful Employment Practices and Whistleblowing Statute, ORS

659A.199, Defendant Hannan threatened Plaintiff with discipline for Plaintiff's disclosures of alleged misconduct in violation of City and State law to the City Council. This is a violation of ORS 659A.199(1).

130. As a result of the Constitutional violations and Tortious acts listed in the above claims for relief, Plaintiff suffered mental and emotional distress, economic damages and loss of future income. The extent of Plaintiff's damages will be more fully proven at trial.
131. Plaintiff is entitled to a declaration that defendants' conduct violated ORS 659A.203.

FOURTH CLAIM FOR RELIEF

Unlawful Employment Practice/Public Employee Whistleblower

ORS 659A.203(1)(a)

(All Defendants)

132. Plaintiff re-alleges all previously alleged paragraphs.
133. Plaintiff has incurred attorneys' fees and costs in pursuing this claim.
134. Plaintiff has satisfied the notice requirements of the Oregon Tort Claims Act.
135. In violation of the Oregon Unlawful Employment Practices and Whistleblowing Statute, ORS 659A.203(1)(a), Defendant Hannan prohibited Plaintiff from speaking out to elected City Council members regarding allegations of misconduct by Lee, Stone, Hannan and other individual defendants, their agents and employees.
136. Defendant Hannan threatened Plaintiff with discipline for Plaintiff's disclosures to the City Council. This is a violation of ORS 659A.203(2).
137. As a result of the Constitutional violations and Tortious acts listed in the above claims for

relief, Plaintiff suffered mental and emotional distress, economic damages and loss of future income. The extent of Plaintiff's damages will be more fully proven at trial.

138. Plaintiff is entitled to a declaration that defendants' conduct violated ORS 659A.203.

FOURTH CLAIM FOR RELIEF

Unlawful Employment Practice/Public Employee Whistleblower

ORS 659A.203(1)(b)(A)

(All Defendants)

139. Plaintiff re-alleges all previously alleged paragraphs.

140. Plaintiff has incurred attorneys' fees and costs in pursuing this claim.

141. Plaintiff has satisfied the notice requirements of the Oregon Tort Claims Act.

142. In violation of the Oregon Unlawful Employment Practices and Whistleblowing Statute, ORS 659A.199, Defendant Hannan threatened Plaintiff with discipline for Plaintiff's disclosures to the City Council. This is a violation of ORS 659A.203(2).

143. As a result of the Constitutional violations and Tortious acts listed in the above claims for relief, Plaintiff suffered mental and emotional distress, economic damages and loss of future income. The extent of Plaintiff's damages will be more fully proven at trial.

144. Plaintiff is entitled to a declaration that defendants' conduct violated ORS 659A.203.

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FIFTH CLAIM FOR RELIEF

Unlawful Employment Practice/Whistleblower Disclosure

ORS 659A.218

(Truman Stone)

145. Plaintiff re-alleges all previously alleged paragraphs.
146. Steele at all times was acting as Stone's agent and on orders and for his benefit.
147. Steele disclosed Plaintiff's identity to Lee by notifying Lee that Plaintiff was the person who reported Lee's unreported alleged burglary and her modification of the HR files to law enforcement.
148. This disclosure was a violation of ORS 659A.218(1)(a) and (b).
149. As a result of the Constitutional violations and Tortious acts listed in the above claims for relief, Plaintiff suffered mental and emotional distress, economic damages and loss of future income. The extent of Plaintiff's damages will be more fully proven at trial.
150. Plaintiff is entitled to a declaration that defendants' conduct violated ORS 659A.218.

SIXTH CLAIM FOR RELIEF

Intentional Infliction of Emotional Distress

(All Defendants)

151. Plaintiff re-alleges all previously alleged paragraphs.
152. Defendants conduct, individually and in concert, consisted of extraordinary transgressions of the bounds of socially tolerable conduct and exceeded any reasonable limit of social toleration. The conduct of defendant's included without limitation: ordering Plaintiff, by inaction, to

allow evidence to be destroyed, falsely implicating Plaintiff is the wrongful disclosure of confidential information, repeatedly threatening Plaintiff with investigations for protected activities, repeatedly threatening Plaintiff with termination in retaliation for protected activities, subjecting Plaintiff to a baseless and malicious investigation, falsely asserting privilege to hide information and conspiracy from Plaintiff, publicly releasing a report containing false and defamatory information.

153. These acts and others alleged in this complaint were intended to cause Plaintiff severe mental and emotional distress; or in the alternative such distress was certain or substantially certain to result in Plaintiff suffering mental and emotional distress.
154. Plaintiff in fact suffered severe mental and emotional distress as a result of Defendants' actions.
155. Plaintiff is entitled to economic and non-economic damages in an amount to be more fully proven at trial.

SEVENTH CLAIM FOR RELIEF

Defamation

Count One: Defamation per se

(Anna Lee)

156. Plaintiff re-alleges all previously alleged paragraphs.
157. Lee filed a written complaint with Hannan on May 23, 2019 in which she stated the following, in part: “[Plaintiff] ... filed a false police report stating that the HR office at City hall [sic] was ‘broken into’.” Lee further stated, “[t]his false report was also shared by [Plaintiff] ... with Greg Patton, plaintiff against the City.” Lee further stated, “[Plaintiff], IT Director ... accessed

the confidential HR Drive and took recruitment spreadsheets from the drive ... and made accusations that [Lee] had ‘altered’ the documents. [Plaintiff] then provided this information to [Patton] as evidence against the City.” Lee further alleged “[t]his was a targeted attempt at questioning [Lee’s] character ... [Plaintiff] did this on [his] own accord, without going through the City Manager or the proper process.”

158. Each of these statements was false and defamatory. The statements were intended to cause harm to Plaintiff by embarrassing him, subjecting him to possible economic sanction from the City, and to harm his reputation.
159. These statements constitute defamation per se in that they are statements tending to injure Plaintiff in his profession, they are accusations alleging moral turpitude, and they falsely impugn Plaintiff’s fitness to perform his official job or function. False reporting to law enforcement is a crime and Lee’s defamatory statements are therefore falsely accusing Plaintiff of committing a crime.
160. These statements were published to Hannan on May 23, 2019 and were further amplified and published by the City through the public release of the Investigation Report in November of 2019.
161. As a result of Lee’s defamation Plaintiff suffered mental and emotional distress, economic damages and loss of future income. The extent of Plaintiff’s damages will be more fully proven at trial.

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Count Two: Defamation per se

(David Clyne)

162. Plaintiff re-alleges all previously alleged paragraphs.
163. On or about November 5, 2019 the City issued a Press Release to accompany the investigative report into Plaintiff and others. Despite the fact the Report did not find any of Lee’s allegations against Plaintiff were sustained the Press Release did not contain any information clearing Plaintiff of wrongdoing.
164. Clyne is quoted in the Press Release as stating, “[t]he findings in this report are concerning.” He is further quoted, “[t]here are personnel issues that need addressing.” These statements were made in the context of a multiple month-long investigation into Plaintiff’s conduct. These statements were false or misleading and constitute defamation per se.
165. Each of these statements was false and defamatory. The statements were intended to cause harm to Plaintiff by embarrassing him, subjecting him to possible inability to secure future employment, and to harm to his reputation in the community.
166. These statements were published to the public in a Press Release of November 5, 2019.
167. As a result of Clyne’s defamation Plaintiff suffered mental and emotional distress, economic damages and loss of future income. The extent of Plaintiff’s damages will be more fully proven at trial.

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EIGHTH CLAIM FOR RELIEF

Negligent Hiring

(City of Newberg)

168. Plaintiff re-alleges all previously alleged paragraphs.
169. As an employee of the defendant City, Plaintiff was owed a duty to ensure that the City did not hire employees who would foreseeably expose Plaintiff to risk of harm.
170. Prior to her hiring by the City of Newberg, Lee was employed in a similar HR management capacity for the City of Sherwood.
171. Upon information and belief Lee repeatedly and intentionally made unfounded allegations of harassment while employed by Sherwood in a similar fashion to her unfounded complaints against Plaintiff in this present suit.
172. The City of Newberg had a duty to exercise reasonable care in hiring, including conducted a regular background investigation on new hires and communicating with their previous employers.
173. Upon information and belief, the City of Newberg failed to conduct such a background investigation, or to interview Lee's former employers including City of Sherwood. Alternatively, any investigation the City conducted would have revealed Lee's history of false allegations. Either the City failed to conduct any reasonable investigation, or they ignored the findings of a reasonable investigation prior to hiring Lee.
174. This negligence caused a foreseeable risk to Plaintiff by exposing him to Lee's false and damaging allegations. The City's conduct was unreasonable in light of this risk. The City's

conduct caused Plaintiff to be injured by causing him mental and emotional distress, economic damages and loss of future income. The extent of Plaintiff's damages will be more fully proven at trial.

WHEREFORE Plaintiff pray as follows:

1. Finding that Defendants violated Plaintiff's constitutional right to Free Speech as alleged;
2. Finding that Defendants violated Plaintiff's constitutional right to due process as alleged;
3. Finding that Defendants violated Plaintiff's constitutional right to equal protection as alleged;
4. Finding that Defendants violated the Oregon Whistleblower Protection Statues as alleged;
5. Finding that Defendants intentionally inflicted extreme emotional distress on Plaintiff as alleged;
6. Finding that Defendants defamed Plaintiff as alleged;
7. Finding that Defendant City of Newberg was negligent in its hiring of Lee as alleged;
8. Judgment against Defendant for economic losses which will fully compensate Plaintiff for Plaintiff's economic damages in an amount to be determined by a jury;
9. Judgment against Defendants for non-economic losses to Plaintiff for the constitutional and statutory violations herein in the amount of at least \$1,000,000.00, or an amount to be proven at trial;
10. Judgment against Defendants for deterrence damages in a fair and reasonable amount to be proven at trial;

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