

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

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FILE NO.
23CV54394

MICHAEL CLUMPNER,

MECKLENBURG CO., C.S.C

BY)

Plaintiff,)

v.)

COMPLAINT

CITY OF CHARLOTTE, NORTH)
CAROLINA; and REGINALD)
JOHNSON, in his official capacity,)
as Chief of the Charlotte Fire)
Department, and in his individual)
capacity;)

Defendants.)

Plaintiff, complaining of Defendants, alleges and states the following:

STATEMENT OF THE CASE

1. Plaintiff (Chief Clumpner), a Battalion Chief for the Charlotte Fire Department ("CFD"), institutes this action to address retaliation against him, through repeated failures to promote him to positions for which he is well qualified, and in these failures to promote, Defendants violated their own policies related to promotion. Instead of following its policies, Defendants acted in retaliation against Chief Clumpner for his objections to pervasive mismanagement and unlawful practices within the department, objections that Chief Clumpner expressed repeatedly and specifically as a citizen of Charlotte. Because of Defendants' unlawful and retaliatory responses to Chief Clumpner's actions, which constitute protected activity under North Carolina law, Chief Clumpner has suffered damage to his reputation and has lost significant earning potential. Defendants' actions are in violation of North Carolina law.
2. This is an action seeking declaratory and injunctive relief for the violation of Chief Clumpner's constitutionally protected rights to freedom of speech, due process, equal protection, and the fruits of his labor. Through their management teams, the CFD and the City have repeatedly failed to follow their own policies regarding promotional processes, duly enacted by the City

Council, and have marginalized Chief Clumpner in his current position, in retaliation for his advocacy for the public and the CFD. Chief Clumpner seeks promotion to Division Chief, as would have occurred if Defendants had followed their policies and had not acted in retaliation against him, in violation of the North Carolina Constitution and the common law of North Carolina. In addition, Chief Clumpner seeks the full array of compensatory damages, back pay, and seniority benefits commensurate with his losses. He also seeks injunctive relief to ensure that the City and the CFD conduct promotional processes in accordance with City policies and cease retaliating against persons who assert their constitutional right to free speech.

PARTIES

3. Plaintiff is a resident of York County, South Carolina.

4. Defendant, the City of Charlotte, North Carolina, (the "City"), is a city established and existing pursuant to Chapter 160A of the North Carolina General Statutes, as defined and described in N.C.G.S. § 160A-11. In exercise of its statutory powers Defendant has established and operates the CFD as a department of the City. At all times relevant to this action, Defendant acted through its managers and policymakers including the City Manager, Fire Department Chief, Human Resources Officials, and City Attorneys. Accordingly, the acts, edicts, and practices of these persons represent the official policies of the City. At all times relevant to this action, the City was Plaintiff's employer as defined under North Carolina law.

5. The Defendant, Reginald Johnson is, upon information and belief, a resident of Mecklenburg County, North Carolina. At times relevant to this action, Johnson was Chief of the Charlotte Fire Department, and Plaintiff's supervisor. Hereafter, unless otherwise specified, the Defendants shall be referred to collectively as "Defendant."

FACTS: BACKGROUND

6. Chief Clumpner has served as a firefighter for the City of Charlotte since on or about January 6, 2003.

7. Over the course of his tenure with the City, Chief Clumpner's service to the CFD has been, and remains, extraordinary. Consequently, he has achieved periodic promotions and raises and currently serves as a Battalion Chief.

8. Chief Clumpner has more than 30 years' experience in fire service. Prior to his service with the CFD, Chief Clumpner served as a full-time firefighter with the Durham Fire Department, during which time he received multiple awards, including being named the 2000 Durham Firefighter of the Year, and the 2001 City of Durham Hometown Hero.

9. Chief Clumpner has served in numerous prestigious roles at the CFD, including Special Operations firefighter and captain, Co-Chair of the Charlotte Active Shooter Taskforce, Co-Chair of the Charlotte Regional Counter-Terrorism Taskforce, Chief of the Joint Medical Operations Center for the 2012 Democratic National Convention, member of Urban Search and Rescue Task Force 3 (USAR TF-3) for 18 years, USAR TF-3 Medical Task Force Leader (three deployments), USAR TF-3 Task Force Leader during the 2018 Hurricane Florence 17-day deployment, member of the Managing Partners Disciplinary Committee Workgroup, co-founder of the Police Assist Company (PAC) program, CFD Tactical Chief during the 2020 civil unrest, CFD Tactical Chief during the 2020 Republican National Convention, fire department liaison with Charlotte-Mecklenburg Police Department Special Operations units, among many others.

10. During his tenure with the CFD, Chief Clumpner has also consistently supplemented his education to enhance his excellent service to the City. Specifically, in addition to three undergraduate degrees, he has achieved a Master's degree in business administration, and a Doctor of Philosophy in homeland security leadership. Upon information and belief, Chief Clumpner is the only CFD employee with a doctorate, and one of few City employees with this degree. He is also certified as a human resources manager (SHRM-CP), a certification held by very few City employees, in the human resources (HR) department, or any other City department.

11. Chief Clumpner has displayed extraordinary leadership skills throughout his tenure. For example, he has lectured at more than 400 major conferences on four continents, has directly trained more than 150,000 employees in a variety of disciplines, has designed training programs for leadership of various organizations, has served as a paramedic instructor, is a sworn law enforcement officer and has been designated by both the City and the CFD as an expert on a variety of matters.

12. Over his tenure with the CFD, Chief Clumpner's performance evaluations reflect his exemplary service. Specifically, from 2004 through 2022, Chief Clumpner has been rated as "Exceptional" or "Exceeds" on every annual review. Those ratings are the two highest on a five-score rating system. On his Battalion Chief evaluations, completed by his assigned Division Chief

and signed by Deputy Chief of Operations Samuel Jones, Chief Clumpner has been described as “achieving education, experience, and training far beyond other chief officers,” an “aggressive advocate for the wellbeing of those he supervises,” having “exceptional personnel management skills,” possessing “strategies and tactics at emergency operations that are exceptional,” an “exceptionally sound fireground commander,” a “highly respected chief officer in the CFD”, and a “model Battalion Chief.”

13. As noted in detail above, and by any measure, throughout his service, Chief Clumpner has excelled in the performance of his duties and has remained totally committed to the department and the City. He is trusted, reliable and knowledgeable. Consequently, throughout his tenure, he has never been the subject of any disciplinary actions, and his excellent performance has never been questioned.

14. Nevertheless, as described in more detail below, the City, through CFD management, has continuously and transparently refused to promote Chief Clumpner from Battalion Chief to Division Chief, despite his undeniable qualifications and service, and in flagrant violation of Defendant’s policies for promotion. That failure to promote additionally constitutes retaliation for protected activity on the part of Chief Clumpner.

CHIEF CLUMPNER’S HISTORY OF ADVOCACY

15. Throughout his tenure with the CFD, Chief Clumpner has been an outspoken advocate for his colleagues, the citizens of Charlotte, and the CFD as a whole. Unfortunately, for his career, that advocacy has resulted in continuous retaliation from Command Staff, and ultimately in the stall of his progression up the ranks of the CFD.

16. Between his hire in 2003, and the present, Chief Clumpner earned the following promotions:

- a. In July, 2006, he was promoted to Firefighter II;
- b. In May, 2009, he was promoted to Relief Captain;
- c. In December, 2011, he was promoted to Captain;
- d. In June, 2018, he was promoted to Battalion Chief.

17. The ceiling of Battalion Chief, forced upon his career by Chief Johnson, was both retaliation for raising issues of significant public concern on numerous occasions, and in violation of City policies and procedures. The consistent pattern of advocacy leading directly to

retaliation—even aside from the abrupt stall to his career—is self-evident, and Chief Clumpner’s objections to mismanagement and unlawful practices has invariably resulted in resistance of and objections to his good-faith concerns.

18. Indeed, mismanagement and retaliation within the CFD in general, and within promotional process in particular, predate Defendant Johnson assuming control.

19. In or about August, 2017, then-Captain Clumpner filed suit against the City of Charlotte for violations of promotional processes within the CFD. That complaint resulted in a settlement, agreed to in 2018, in which Chief Clumpner earned the promotion that he had been wrongfully denied. Apparently, the timing of the settlement reflected the decision—posted the same day—of the North Carolina Supreme Court in *Kevin Tully v. City of Wilmington*.

20. That promotion, which was ultimately approved by the City’s Civil Service Board, was the last time that Chief Clumpner was promoted.

21. Following the settlement of Chief Clumpner’s suit against the City, he was awarded the promotion that he had earned to Battalion Chief. During the confirmation meeting with the Civil Service Board, one of CFD’s management team lodged false allegations against Chief Clumpner and his co-Plaintiff. Concerned of retaliation, Chief Clumpner requested a meeting with the City’s HR Director, which was denied.

22. Shortly thereafter, Defendant Johnson assumed leadership of the CFD, and assured Chief Clumpner that the mismanagement of the CFD would cease. Unfortunately, as outlined below, the problems only escalated.

23. In July, 2020, Chief Clumpner raised issues to CFD upper management regarding flagrant violations of Governor Roy Cooper’s Executive Orders in regards to the COVID-19 pandemic. In response, Command Staff rebuked Chief Clumpner for bringing the violations to its attention and continued the prohibited conduct, endangering the very citizens the CFD serves.

24. The incident was the first in which Defendant Johnson demonstrated that the Command Staff under his regime would not be questioned for any reason.

25. On November 9, 2020, Chief Clumpner approached Defendant Johnson and reported that a veteran employee of the CFD was suicidal in response to bullying in a meeting by a Deputy Chief, in which Chief Clumpner had intervened. The employee confided to Chief Clumpner that he had intended to commit suicide a few days following the meeting.

26. In response, Defendant Johnson was dismissive, and stated that the employee must be taking the job “too personal” and was not a man, but a “highschooler.” Defendant Johnson defended the Deputy Chief’s actions, and attributed the issue to problems with communication. Defendant Johnson then deliberately began to shun Chief Clumpner.

27. That retaliation, which manifested in numerous ways, marginalized Chief Clumpner in his position. He began being excluded from critical meetings and communications, was consistently undermined by Command Staff, his requests and concerns were generally ignored and dismissed, and, as set forth below, he was wrongfully denied promotions for which he was the most qualified.

28. The retaliation also began what would become a pervasive pattern within the CFD – that the appearance of advocating for anyone against Defendant Johnson’s Command Staff would not be tolerated and would subject one to swift retaliation.

29. On or about December 7, 2020, Chief Clumpner responded to a subpoena and provided truthful deposition testimony in *Summers, et. al. v. City of Charlotte*, a case involving a number of claims of African Americans against the City and the CFD. Three of the claims involved the failure to promote qualified African Americans to ranking chief officer positions, and other claims involved retaliation by Command Staff against an African American firefighter.

30. Given Defendant Johnson’s history of retaliation, and his pending Division Chief candidacy, Chief Clumpner had informed the Assistant City Attorney (ACA) that he feared retaliation for providing truthful testimony, and requested a meeting prior to testifying. The ACA refused the request, and directed Chief Clumpner to report retaliation through City processes if it occurred.

31. Chief Clumpner indeed testified, and apparently his truthful testimony, which largely supported the plaintiffs in that action, enraged CFD management, which indicated its displeasure with Chief Clumpner’s candor in multiple ways.

32. In fact, two days later, on December 9, 2020, Chief Clumpner was passed over for two Division Chief openings, in favor of two candidates who were less qualified than he, but who had not testified against the City.

33. Five days later, on December 12, 2020, the Deputy Chief of Operations went to Chief Clumpner’s fire station (Station 42), and told a fire captain that the Deputy Chief would never again go into another fire station when Chief Clumpner was present. Chief Clumpner

reported the incident to City HR, City Legal, and Defendant Johnson, but never received a response.

34. The Deputy Chief indeed, over the span of two years, only visited a station when Chief Clumpner was present on one occasion, for a mandatory event.

35. Additionally, Defendant Johnson transparently avoided Chief Clumpner's station when he scheduled lunches and ride-alongs, and has generally only visited Station 42 when Chief Clumpner has been on vacation. That practice stands in stark contrast to his practices and protocols of riding with and visiting with each Battalion Chief throughout the CFD.

THE 2020 PROMOTIONAL PROCESS

36. The retaliation against Chief Clumpner was transparent during the 2020 Division Chief Promotional Process, and the City violated its own policies in doing so.

37. On October 6, 1969, the City Council of the City of Charlotte adopted the Rule IX Personnel Rules and Regulations, which govern personnel activities and transactions within the purview of the Civil Service Board.

38. The rules apply to all positions and employees in the uniformed services of the Police and Fire Departments, except for Police Chief and Fire Chief, and includes the role of Division Chief, for which Chief Clumpner has applied on three occasions.

39. On February 5, 1973, the rules were amended to read in part: "Section 6. Eligible Roster...(3) Duration of Eligible Lists – Eligible lists and the names of persons appearing thereon shall remain in effect for six months. Expiring eligible lists may be extended for an additional six months by the Civil Service Board upon the recommendation of the Personnel Director."

40. Rule IX also required the City to utilize oversight of the Civil Service Board to "develop and administer a plan for promotions which gives appropriate considerations to an applicants' qualifications, record of performance and abilities in relation to the work to be performed.

41. Rule IX and the City Charter both mandate an impartial, merit-based process in regards to promotional processes.

42. On March 1, 2020, the CFD Deputy Chief issued an informational bulletin advising that a promotional process would take place for interested persons who wished to be considered

for Division Chief. Defendant stated on multiple occasions, both before and after the announcement, that the City would follow Rule IX, which it was mandated to do.

43. In order to be eligible, candidates were obligated to meet a list of requirements as of April 1, 2020. Chief Clumpner met all requirements and, on April 16, 2020, participated in the Division Chief promotional assessment.

44. The promotional process consisted of three components: the submission of an applicant packet, a performance-based assessment, and a professional history portfolio. Chief Clumpner completed the promotional process and submitted all three components, and was included on the eligible list for the 2020 Division Chief Promotional Process.

45. On or about May 5, 2020, prior to final test scores being released, Defendant Johnson announced the promotion of one candidate to Division Chief. Upon information and belief, the promotion was determined prior to final scores of the candidates being ascertained, and prior to the finalization of the eligible list, which violated Rule IX and other City policies.

46. On or about May 12, 2020, the promotional examination assessment vendor released final test scores directly to the applicants, including Chief Clumpner.

47. Pursuant to the Personnel Rules and Regulations the eligible list for the position of Division Chief expired on or before November 5, 2020 – six months after the process was completed. That fact was confirmed by City management, who acknowledged on multiple occasions, including on July 7, 2020, to the Civil Service Board, that the City intended to comply with its obligations under Rule IX throughout the process.

48. Although policies permitted the extension of the eligible list, upon information and belief, the list was never extended. Indeed, Command Staff alleged to Chief Clumpner via email on or about December 4, 2020, that they were not obligated to extend the list, and Defendants Johnson and the City HR Director each acknowledged that they had not done so.

49. On or about November 13, 2020, it was announced that a second Battalion Chief was being promoted to Division Chief on January 2, 2021. That promotion, upon information and belief, occurred following the expiration of the eligible list.

50. On or about December 9, 2020, Defendant Johnson announced two additional promotions of candidates to Division Chief positions, which would likewise go into effect in January, 2021. Like the one prior, both promotions followed the expiration of eligible list of the

2020 Division Chief Promotional Process and constituted violations of Rule IX of the Personnel Rules and Regulations.

51. Additionally, those candidates were not selected using an impartial, merit-based process, and favoritism was a significant factor.

52. Indeed, it was determined that Defendant Johnson called a select group of candidates—approximately one-third of those who applied—to congratulate them on a “successful” process, potentially prior to final results being determined. Upon information and belief, Defendant Johnson called on those he intended to promote, irrespective of the test scores. Upon information and belief, Defendant Johnson utilized a “personal criteria” for promotions that he discussed with those in his inner circle.

53. That process, like the subsequent Division Chief promotional processes, followed a pattern in which Defendant Johnson unilaterally controlled all aspects of the process, without transparency or oversight, in violation of City policy.

54. Upon information and belief, the City and the CFD violated other provisions in Rule IX and other City policies during promotional processes within the relevant time period.

55. Had the City followed its promotional policies, and absent retaliation, Chief Clumpner would have been promoted to the position of Division Chief in or about January, 2021.

CONTINUED RETALIATION AGAINST CHIEF CLUMPNER

56. On or about January 5, 2021, following the denial of his promotional candidacy, as described in more detail above, Chief Clumpner filed a formal grievance with the City Manager and the Civil Service Board. Specifically, Chief Clumpner noted irregularities and policy violations regarding the promotional process in 2020, including the promotion of multiple candidates from an expired eligibility list. The issues were strikingly similar to those that led Chief Clumpner to file suit against the City in 2017.

57. Nevertheless, the retaliation persisted. It was independently acknowledged by Chief Clumpner’s Division Chief, who filed a complaint with City HR in January, 2021, regarding bullying and retaliation by Defendant Johnson and his Command Staff towards numerous individuals, including Chief Clumpner. Upon information and belief, the City took no action in regards to the allegations involving Chief Clumpner.

58. On or about March 2, 2021, a female firefighter approached Chief Clumpner to report harassment and retaliation by her colleagues and a chief officer related to a medical disability she sustained from a serious motor vehicle accident. In response, Chief Clumpner's Division Chief instructed him to investigate the complaint. Chief Clumpner interviewed the complainant, and reported to his Division Chief that the claims warranted immediate investigation. The next day, the Deputy Chief of Personnel Administration directed Chief Clumpner to cease contact and to immediately stop assisting the complainant.

59. Despite the female firefighter eventually filing suit, the chief officer whose troubling actions were at the center of the complaint was promoted one year later to Division Chief over Chief Clumpner. He was clearly less qualified than Chief Clumpner, but was close to and loyal to Defendant Johnson, and was promoted on that basis rather than merit.

60. On or about March 12, 2021, at the outset of the 2021-2022 Division Chief process, Chief Clumpner again informed Defendant's HR department that he was concerned about ongoing retaliation coloring the promotional process, and that the process would not be a selection based on merit, fitness, or an applicant's qualifications, but on favoritism and loyalty to Defendant Johnson and his Command Staff.

61. The City's HR Director informed Chief Clumpner that the promotional process was voluntary, and if he wished to participate, he would need to "follow the instructions like everyone else."

62. Four days later, Defendant Johnson publicly posted on his personal LinkedIn that when employees of organizations complain, the employee most likely has a "mental illness." Even though Defendant Johnson and Chief Clumpner had been connected on the site for three years, immediately after his "mental illness" comment, Defendant Johnson abruptly disconnected from Chief Clumpner on LinkedIn.

63. In the meantime, Chief Clumpner's concerns of ongoing retaliation in regards to his promotional candidacy proved true. Between January, 2021, and May, 2021, Chief Clumpner made repeated requests to act as Division Chief in the absence of a permanent Division Chief (known as riding "Car 10"), which was customary for candidates for promotion. Riding Car 10 was a critical step in earning a promotion to Division Chief, as preparation for a transition into the permanent role.

64. On May 17, 2021, Chief Clumpner and his new Division Chief met with Deputy Chief Jones, who approved Chief Clumpner for Car 10 duty. Notably, at the time, Chief Clumpner was the most senior Battalion Chief on his shift, and was the only chief on his shift on the Division Chief promotional eligibility list.

65. Nevertheless, despite his unimpeachable qualifications, Chief Clumpner rode Car 10 on only one shift during 2021—on or about June 10, 2021. Conversely, a colleague on his shift—one who was not on the Division Chief promotional eligibility list and had less seniority and rank than Chief Clumpner—rode Car 10 on approximately fifteen shifts, and on numerous shifts there was no acting Car 10, which was contrary to CFD protocol.

66. The reluctance of CFD management to approve Chief Clumpner to ride Car 10 and refusal to designate him to act as Car 10 constituted transparent retaliation for his advocacy for colleagues and adherence to City policies and procedures, and underscored that he would never be considered for a promotion, in violation of City policies.

67. On September 7, 2021, Chief Clumpner filed a complaint regarding CFD promotional processes with the City Manager. Shortly thereafter, upon information and belief, Deputy Chief Jones quietly but formally removed Chief Clumpner from the Car 10 list.

68. After several months passed without being designated to ride Car 10, Chief Clumpner questioned his Division Chief about the matter. His Division Chief stated that Chief Clumpner was clearly qualified and eligible, but Deputy Chief Jones had made the decision to remove him from the list. Neither Deputy Chief Jones nor Defendant Johnson would respond to questions regarding the matter.

69. On or about February, 26, 2022, Chief Clumpner was interviewed by an investigator hired by City HR in regards to a harassment complaint lodged by the CFD's only African American female in a chief position. Following his truthful testimony, largely supporting the allegations of the complainant, he experienced an escalation of retaliation and hostility from Command Staff.

70. Additionally, between September, 2021 and November, 2022, Chief Clumpner raised the issue of lengthy 911 hold times in numerous emails and verbally at CFD management meetings. Hold times for citizens of up to 30 minutes were reported, often exacerbating dangerous circumstances for Charlotte citizens who were facing potentially life-threatening emergencies. Chief Clumpner's well-founded complaints were invariably met with resistance, denied, and

dismissed. Nevertheless, on November 21, 2022, Charlotte-Mecklenburg Police Department openly acknowledged to Charlotte media entities that long hold times were occurring, and that the department was not meeting industry standards for answering 911 calls.

71. Due to his protected activity, much of which is recounted above, Chief Clumpner was likewise passed over during the 2021-2022 promotional processes for Division Chief. On January 15, 2022, two candidates were promoted to the role, and on June 18, 2022, an additional candidate was selected for the role.

72. Chief Clumpner was more qualified than any of the three candidates promoted to Division Chief during the 2021-2022 promotional process. The failure of CFD Command Staff to promote Chief Clumpner to any of the three open positions was transparent retaliation for his protected activity as outlined above.

73. Additionally, upon information and belief, the City violated multiple policies during the 2021-2022 promotional process for Division Chief, again denying Chief Clumpner the position that he had earned.

74. On April 16, 2022, Chief Clumpner met with his new Division Chief, and again inquired about serving as acting Division Chief. Chief Clumpner had earned the highest score of any candidate in the 2022-2023 Division Chief promotional process, but Deputy Chief Jones continued to refuse approval for Chief Clumpner to ride Car 10 without explanation.

75. On April 28, 2022, Defendant Johnson instructed Chief Clumpner to attend a meeting with Command Staff and CFD HR regarding Chief Clumpner's decade-long involvement as co-chair of the Charlotte Active Shooter Taskforce and his role coordinating Police Assist Companies (PAC) at the CFD. Chief Clumpner and another Chief had founded the PAC and rescue task force (RTF) programs at the CFD in 2013.

76. In that meeting, Defendant Johnson informed Chief Clumpner that he was removing him from his coordinator roles in the programs, allegedly for a lack of communication regarding PAC activities. The allegations were untrue, but Chief Clumpner was stripped of those positions and duties, despite his undeniable position as the CFD's leading expert in fire department RTF and PAC operations, and the fact that he had co-founded the programs.

77. In fact, the actions taken were further retaliation for Chief Clumpner's protected activities as outlined above.

78. In July 2022, Chief Clumpner earned an “Exceptional” rating on his annual review, the highest rating possible. In that evaluation, his Division Chief noted that Chief Clumpner was an excellent Battalion Chief, and always put the good of the department over his own wellbeing, amongst other accolades.

79. On November 14, 2022, Chief Clumpner appeared in federal court under subpoena to testify on behalf of an African American female Battalion Chief. When the City’s attempts to block Chief Clumpner’s testimony failed, the City elected to settle the suit rather than permit Chief Clumpner to testify.

80. On December 17, 2022, one month after appearing in federal court, Chief Clumpner’s Division Chief informed him that Deputy Chief Jones had directed the Division Chief to downgrade Chief Clumpner’s annual review from Exceptional to Exceeds. Chief Clumpner’s Division Chief stated repeatedly that he did not agree with the directive, as he considered Chief Clumpner to be one of the best Battalion Chiefs in the City, but he was obliged to follow orders.

81. On January 5, 2023, Chief Clumpner met again with his Division Chief, and shared his concern that the downgrade in his performance review was direct retaliation for his intentions to testify the month before. The Division Chief again stated that he did not agree with the change, but that he had been instructed to change it.

82. Five days later, Chief Clumpner’s annual review disappeared from the digital performance review system without explanation.

83. The downgrading of Chief Clumpner’s annual review, and its deletion from the system, is clearly retaliatory and injurious to his opportunities for promotion to Division Chief. It is also a violation of City policy.

84. As noted above, by way of example, over the course of the past several years, Chief Clumpner has been a ceaseless and vocal advocate for Charlotte citizens and City employees, and has insisted upon CFD adherence to applicable policies, and to state and federal laws. That advocacy, which has been consistently met with resistance and hostility, has led to retaliation and the marginalization of Chief Clumpner in his position, and has directly led to his being passed over for multiple promotions during that period.

85. Throughout the administration of Defendant Johnson, a pattern of escalating retaliation against Chief Clumpner has become undeniable. Chief Clumpner has become marginalized in his role with the CFD, and has been denied promotional opportunities that he has

earned time and again. Indeed, since Defendant Johnson assumed leadership, Chief Clumpner has been passed over for the Division Chief role at least eight times, in favor of candidates that are less qualified.

86. The City and CFD, through their actions, repeatedly violated their own policies regarding promotional processes and against retaliation, in favor of the selection of candidates based on favoritism and perceived loyalty, rather than merit.

87. The untenable result of those practices, enacted by Defendant Johnson and his Command Staff and ratified by the City, is a weakened and fractured CFD. The practices indisputably produce a chilling effect so that qualified candidates, such as Chief Clumpner, are disincentivized from seeking promotion. The result is injurious to the public the CFD is mandated to serve, and serves only Defendant Johnson and those loyal to him.

88. As a result of Defendant's actions, Chief Clumpner has suffered extraordinary damages, and the effective end to the progression of his firefighting career.

WAIVER OF IMMUNITY

89. Upon information and belief, Defendants have waived sovereign or governmental immunity through the purchase of one or more policies of liability insurance pursuant to N.C. Gen. Stat. § 160A-485, and/or by participating in a local government risk pool pursuant to N.C. Gen. Stat. § 58-23-5.

EXHAUSTION OF POTENTIAL REMEDIES

90. As noted above, on multiple occasion, including on or about January 5, 2021, Chief Clumpner initiated a grievance under City procedures to address the ongoing retaliation of Command Staff, its violation of City policies, and the repeated denials of his promotional candidacy.

91. On or about June 11, 2021, the Assistant City Attorney (ACA) issued a memorandum regarding Chief Clumpner's January, 2021 grievance, in which the ACA wholly exonerated the City of any wrongdoing.

92. In or about July, 2021, and September, 2021, Chief Clumpner filed a complaint with City Legal and HR, and the City Council, respectively, noting concerns of significant inaccuracies, mischaracterizations, and investigational failures contained in the memorandum.

Upon information and belief, the City took no action in regards to his complaints, and indeed refused to consider them, as it did regarding several other inquiries of Chief Clumpner.

93. Plaintiff has no other effective remedy to address the City's persistent violation of its own policies and procedures in summarily and arbitrarily violating its promotional policies.

First Claim for Relief
Free Speech Violations: N.C. Constitution
Article I, Sections 1 and 14
against the City of Charlotte

94. Plaintiff hereby incorporates by reference the above paragraphs as if fully set forth herein.

95. As set forth above, Plaintiff engaged in protected activity in that he exercised his state Constitutional right to free speech, as guaranteed by Article I, §§ 1 and 14 of the North Carolina Constitution, through the following actions:

- a. In filing suit against Defendant in 2017, regarding the City's ongoing refusal to follow its own policies and procedures;
- b. In insisting that CFD Command Staff follow and enforce Executive Orders issued by the Governor during the COVID-19 pandemic;
- c. In advocating for the wellbeing of members and their mental health concerns amidst bullying by superior officers;
- d. In providing truthful testimony regarding race discrimination and retaliation ratified and condoned by CFD Command staff;
- e. In raising serious issues regarding lengthy 911 hold times for Charlotte citizens;
- f. In repeatedly raising issues of mismanagement, favoritism, and the refusal to follow City policy by CFD Command Staff, which is injurious to the public.

96. Plaintiff's state Constitutional rights, as alleged in ¶ 95 were clearly established at the time of Defendant's violations, and a reasonable manager would have known that retaliation would violate Plaintiff's rights.

97. In taking the above actions, as described in ¶ 95, Plaintiff exercised his right to free speech on matters of immense public concern.

98. In taking the above actions, as described in ¶ 95, Plaintiff spoke as a citizen of the community of Charlotte.

99. Through its retaliatory acts against Plaintiff, Defendant, acting under color of state and local law, denied to Plaintiff his state Constitutional right to free speech, guaranteed by §§ 1 and 14 of Article I of the North Carolina Constitution.

100. Plaintiff has no alternative adequate remedy under state law for Defendant's violation of his right to free speech, as alleged herein.

101. As a proximate result of said violations, Plaintiff has suffered and incurred substantial damages, and is entitled to punitive damages and equitable relief, as more fully described below.

Second Claim for Relief
N.C. Constitution Violation: Article I, Section 1
Deprivation of the Fruits of Labor
against the City of Charlotte

102. Plaintiff hereby incorporates by reference the above paragraphs as if fully set forth herein.

103. Rule IX, which governs promotional processes in the CFD, and was adopted by City Council resolution in 1973, establishes that:

“Under the general supervision of the Civil Service Board, the City Personnel Director Shall:...develop and administer a plan for promotions which gives appropriate considerations to an applicants qualifications, record of performance and abilities in relation to the work to be performed.”

Rule IX, Section 3.5(e).

104. Rule IX further provides that:

“Selection techniques used in the examination process shall be impartial and related to those subjects which fairly measure the relative capacities of the persons examined to execute satisfactorily the duties and responsibilities of the positions open for appointment.”

Rule IX, Section 5(1).

105. Finally, Rule IX provides that “[e]ligible lists and the names of persons appearing thereon shall remain in effect for six months,” at which time the list may be extended or candidates must be re-evaluated. Rule IX, Section 6.

106. Additionally, the City Charter provides that “[e]mployment shall be based on merit without regard to race, creed, color, sex, political affiliation, age, or physical defect or impairment

of the applicant...” City Charter, 4.05(1). “Appointments and promotions shall be made *solely on the basis of merit and fitness*, demonstrated by examination or other evidence of competence.” City Charter, 4.05(1)(4).

107. The City is bound by its clear, established policies under Rule IX and the City Charter when conducting promotional processes.

108. Those clearly established policies regarded Plaintiff’s employment interests, and furthered legitimate government interests.

109. The City and the CFD, through their management teams, violated City policies as follows:

- a. In failing to give “appropriate considerations to an applicants’ qualifications, record of performance and abilities in relation to the work to be performed;”
- b. In failing to ensure that promotional processes were “impartial and related to those subjects which fairly measure the relative capacities of the persons examined to execute satisfactorily the duties and responsibilities of the positions open for appointment;”
- c. In failing to extend the 2020 Division Chief eligible list or re-evaluate candidates for open positions;
- d. In promoting candidates from an expired eligible list;
- e. In permitting and condoning retaliation, in violation of multiple City policies, including HR-5, HR-26, and Chapter 12, Article IV of the City Charter;
- f. In continuously refusing to investigate Plaintiff’s well-founded complaints;
- g. In denying Plaintiff the benefit of City grievance procedures;
- h. In failing to provide oversight to Defendant Johnson in promotional processes;
- i. In reducing and then eliminating Plaintiff’s performance evaluation in 2022, outside its own policies and procedures;
- j. In failing to promote Plaintiff to Division Chief on numerous occasions, despite his position as the most-qualified candidate.

110. Plaintiff has a liberty and property interest in being judged by his performance and merit as provided by policy, and in City officials following promotional policies.

111. Defendant acted in an arbitrary and capricious manner towards Plaintiff by failing to abide by policies that the City itself put in place.

112. Defendant's violations of clearly established policies denied Plaintiff the constitutionally protected fruits of his labor, in violation of Article I, Sections 1, 19, 35, and 36 of the North Carolina Constitution.

113. There is no other state law remedy under these facts and circumstances.

114. As a direct and proximate result of Defendant's actions, as set forth above, Plaintiff has suffered substantial damages, including but not limited to loss of income and benefits, loss of professional reputation, loss of quality and enjoyment of life, and other damages to be proven at trial.

115. Plaintiff is entitled to declaratory and injunctive relief for the above violations, including compensatory damages, a promotion to Division Chief as of the date that vacancies became available, back pay, seniority, and benefits bridging to the date on which he should have been promoted. Additionally, the Court should grant permanent injunctive relief to require the City and its management to follow and comply with its selection and promotional policies.

Third Claim for Relief
Interference with Contract and Business Relationships
against the City of Charlotte and Defendant Johnson, in his individual capacity

116. Plaintiff hereby incorporates by reference the above paragraphs as if fully set forth herein.

117. As described above, Defendants engaged in conduct designed and calculated to interfere with the success of Plaintiff's career, including the following:

- a. In refusing to promote him, in violation of their own policies;
- b. In persistent and direct retaliation against him for the above actions;
- c. In ostracizing and marginalizing Plaintiff for raising matters of public concern;
- d. In permitting and directing other CFD leadership to isolate Plaintiff in his position;
- e. In refusing to permit him to act as Division Chief in violation of its custom and practice;
- f. In stripping oversight from Plaintiff in organizations Plaintiff founded;
- g. In manipulating and eliminating Plaintiff's performance reviews;

h. In failing to promote Plaintiff to Division Chief on numerous occasions, despite his position as the most-qualified candidate.

118. Additionally, through the above actions, Defendants have maliciously, and without justification, interfered with Plaintiff's ability to earn a promotion within his profession.

119. In all of the above acts, Defendants acted with malice and without justification.

120. As alleged above, Defendant City is liable for the individual Defendant's acts against Plaintiff in that he committed such conduct in the course of his employment; and the City acquiesced in, condoned, and ratified said conduct, and failed to take reasonable action to protect Plaintiff.

121. As a direct and proximate result of the malicious interference with contract by the above Defendants, as set forth above, Plaintiff has suffered substantial damages, including but not limited to loss of income and benefits, loss of professional reputation, loss of quality and enjoyment of life, and other damages to be proven at trial.

122. The Defendants' acts, as described above, were deceptive, willful, wanton and malicious, and evinced an intentional or reckless indifference to and disregard for the rights of Plaintiff. Aggravating factors that support an award of punitive damages are alleged above in ¶¶ 6-88. Accordingly, Plaintiff is entitled to punitive damages in an amount to be determined by the jury in accordance with Chapter 1D of the North Carolina General Statutes.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

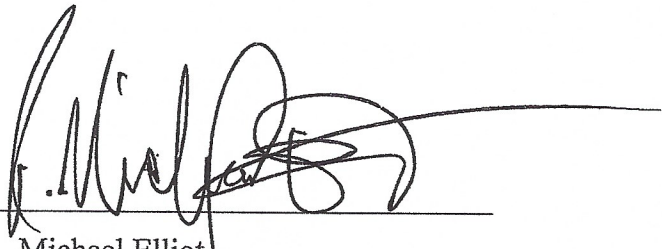
1. That Plaintiff be promoted to Division Chief, with back pay and all benefits and seniority rights, and such other injunctive relief necessary to restore Plaintiff to the position he would have held absent Defendant's acts, and necessary to ensure the City complies with City policies in regards to employment;
2. That he recover compensatory damages against the Defendant in an amount in excess of \$25,000;
3. That he recover punitive damages in an amount to be determined by jury;
4. That he be awarded pre-trial and post-judgment interest on all amounts awarded herein;

5. That he be awarded the costs of this action, including reasonable attorneys' fees;
and
6. That he be granted further relief as the Court deems just and proper.

PLAINTIFF'S DEMAND FOR A JURY TRIAL

Pursuant to Rule 38(b) of the North Carolina Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all issues presented herein.

This the 9th day of March, 2023



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