

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
Civil Action No. 3:18-cv-00612-RJC-DSC

WILL SUMMERS, JR. a/k/a WILLIE  
SUMMERS,

Plaintiff,

v.

CITY OF CHARLOTTE,

Defendant.

SYLVIA SMITH-PHIFER and LANCE  
PATTERSON,

Plaintiffs,

v.

CITY OF CHARLOTTE,

Defendant.

AARON PHIFER,

Plaintiff,

v.

CITY OF CHARLOTTE,

Defendant.

MARTY PUCKETT,

Plaintiff,

v.

CITY OF CHARLOTTE,

Defendant.

**MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' MOTION FOR LEAVE  
FOR ADDITIONAL DISCOVERY DUE  
TO RECENT CONDUCT BY  
DEFENDANT  
AND AN ORDER PREVENTING  
DEFENDANT FROM  
INTERROGATING PLAINTIFFS  
OUTSIDE OF THE DISCOVERY  
PROCESS**

Pursuant to Rules 16, 26, 33, and 34 of the Federal Rules of Civil Procedure, Plaintiffs Willie Summers (“Summers”), Sylvia Smith-Phifer (“Smith-Phifer”), Lance Patterson (“Patterson”), Aaron Phifer (“Phifer”), and Marty Puckett (“Puckett”) (collectively, “Plaintiffs”) respectfully submit this Memorandum in Support of Motion for Leave for Additional Discovery Due to Recent Conduct by Defendant and an Order Preventing Defendant from Interrogating Plaintiffs Outside of the Discovery Process (“Motion”).

The City and its counsel are continuing their ongoing pattern of conduct that requires further discovery, and unfortunately, further action by this Court. Most recently, the City has engaged in 1) making false claims of witness intimidation, and 2) used unethical and inappropriate investigation tactics after the close of discovery. The City and its counsel have dramatically increased fees and expenses and caused undue delays in the prosecution and trial of these consolidated cases, negatively impacting Plaintiffs’ rights and inflicting emotional distress in the process. Plaintiffs need the assistance of the Court in compelling additional discovery necessary to shine light on the City’s most recent attempts to sandbag Plaintiffs and flout the rules of the Court.

## **FACTUAL BACKGROUND**

### **I. False Claims of Threats and Witness Tampering by Clients and Witnesses**

On November 12, 2021, the City’s counsel of record, Kathi Lucchesi, emailed the undersigned counsel, Meg Maloney, claiming Plaintiff Sylvia Smith-Phifer and several witnesses in this case, including Linda Lockhart, who is a plaintiff in another case, and Mike Clumpner, the first witness to be deposed by Plaintiffs in this case, threatened Charlotte Fire Department (“CFD”) HR Manager Kim Sanders an attempt to influence her testimony. (Doc. 147-1)

Plaintiffs' counsel responded the same day, stating that Smith-Phifer, Linda Lockhart, and Mike Clumpner had not threatened CFD's HR Manager, that she did not believe the HR Manager made such accusations, and that the Plaintiffs' counsel thought this was an attempt to isolate the HR Manager, who upon information and belief, has her own issues. Counsel also asked Defense counsel to verify the facts and get back to her promptly, and cautioned against making false or reckless allegations. Plaintiffs' counsel underscored the importance of the matter by making herself available all weekend for follow up. A copy of Plaintiffs' counsel's email requesting a response is attached to the Motion as Exhibit B (Doc. 147-2). The City has never responded.

Accusing an individual plaintiff and two witnesses of threatening the CFD's HR Manager to get that individual to alter their testimony in this consolidated case is a serious matter which provides good cause for additional discovery, including depositions. *See Vagish LLC v. Seneca Specialty Ins. Co.*, No.: 3:13-3161-TLW, 2016 WL 7638133, at \*2 (D.S.C. Feb. 5, 2016) (granting motion to reopen discovery to permit taking an additional deposition based on information learned the day before the end of the discovery period); *Johnson v. City of Fayetteville*, No. 5:12-CV-456-F, 2015 WL 2353648, at \*2-3 (E.D.N.C. May 15, 2015) (granting motion to reopen discovery to obtain records identified after the close of discovery); *St. Augustine High Sch. v. Underwriters at Lloyd's of London*, No. WMN-08-CV-2518, 2010 WL 311427, at \*3-4 (D. Md. Jan. 20, 2010) (granting motion to reopen discovery to permit additional discovery on information that was not produced until after the discovery deadline). We do not believe HR Manager Kim Sanders told anyone that Plaintiff Smith-Phifer or witnesses Linda Lockhart and Mike Clumpner tried to coerce her in any way, and given the history of this lawsuit, and the extreme nature of the threats, we ask to be able to verify the underlying facts and to find out who was involved in making these allegations. In addition, Plaintiffs ask the court to require Defendant to identify the unnamed

additional managers who it claims were also harassed or intimidated by Plaintiffs to influence their testimony in this case so Plaintiffs can depose them as well. The accusation itself is discrimination and retaliation in the overall context of the case and will be an issue at trial. When Plaintiffs' counsel requested to depose HR Manager Kim Sanders and due to these allegations, the City did not consent, citing the close of discovery. Plaintiffs are also requesting related communications and documentation about such allegations and any investigation into such allegations by Defendant, including documentation showing the involvement of management and counsel. Plaintiffs do not believe there is a factual basis for the allegations and need to discover the truth so that Defendant and its counsel can be required to account.

## **II. Third Party Investigator Conducting Video Taped "Interviews" of Clients and Witnesses Without Notice and Involvement of Plaintiffs' Counsel**

The formal pinning ceremony for promotions occurring during Covid was delayed until November 4, 2021. Prior to the ceremony, Plaintiff Smith-Phifer, who preferred to be pinned by a female, asked to be pinned by her mother, and after that request was denied, by the first Black/African American female firefighter in Charlotte. The Fire Chief and Deputy Chief denied her request without discussing the matter with her. On November 4, 2021, prior to the ceremony Smith-Phifer sent an email through her chain of command requesting that they reconsider their decision and advising that she would file a complaint with the City Manager if they did not do so. The email states in pertinent part:

According to past practices, others have been allowed to choose a person to pin them, who has inspired them or was instrumental to their success, whether it was past fire service personnel or a family member. This being the case, it is discriminatory to not allow me to take advantage of the same opportunities that others have been given. I have worked extremely hard throughout my 29 years to attain the rank of chief officer, and to be denied the same opportunities that others have received is disheartening. Therefore, I am asking Chief Johnson and Chief Jones to reconsider their decision or I have no other choice but to file a formal

complaint to the city manager's office concerning this discriminatory decision by Chief Johnson and his command staff.

(Smith-Phifer Aff.)

Rather than allowing her to be pinned by a female as she requested, the Fire Chief and his command staff refused to respond to this email prior to the promotional ceremony (*Id.*).

There is a longstanding tradition in the fire service of having a mentor or family member pin firefighters during promotional ceremonies (Patterson Aff. ¶5; Smith-Phifer Aff. ¶16). This makes particular sense for females who may prefer to have another female pin them. Other white and male officers have been allowed to have family members and mentors pin their badges in past pinning ceremonies even under the current Fire Chief. There was no reason not to honor her request to have her mother or the first Black/African American female fire fighter pin her, other than retaliation and causing her emotional distress.

After the ceremony, in retaliation for her complaints of discrimination and her email prior to the ceremony notifying the Fire Chief through her chain of command that she would be making a complaint of discrimination to the City Manager about the pinning ceremony, the Fire Chief and his Command Staff retaliated on November 16, 2021 by formally accusing Plaintiff Smith-Phifer of "conduct unbecoming" during the promotional ceremony. (Doc. 147-5) "Conduct unbecoming" is a Class A violation that risks termination and forfeiture of retirement benefits. The document notifying Smith-Phifer that she was being accused of and would be investigated for "conduct unbecoming" is CFD form 208A. CFD policy and the form itself requires the conduct at issue to be described on the form. The CFD has failed and refused to advise Smith-Phifer of the specific conduct that risks her termination and forfeiture of her retirement, despite multiple emails by her requesting that information.

The retaliatory nature of the accusation is clear. The conduct constituting “conduct unbecoming” is not defined because there was no such conduct. CFD’s disciplinary policy, General Order 208.01, states that:

Conduct unbecoming of an employee of the Charlotte Fire Department shall include but is not limited to that which tends to bring the Charlotte Fire Department into disrepute, reflect unfavorably upon an employee or member of the Department or tends to impair the operation or efficiency of the Department or any of its personnel.

Nothing that Smith-Phifer did at the pinning ceremony can be argued to even remotely fall under any of the three categories described above. She acted like one would in church to request the wafer in the hand rather than the mouth. She politely held out her hands for the Fire Chief to place her pin there. The writeup is purely retaliatory for Smith-Phifer’s many protected actions detailed throughout this case (Docs. 25 and 134), as well as her decision to stand up to the Fire Chief and file a complaint about his refusal to allow a female to pin her (Doc. 147-6).

In response to Chief Smith-Phifer’s receipt of the “conduct unbecoming” notice, on December 7, 2021, the undersigned counsel sent an email to Kathi Lucchesi, counsel for the City an email requesting intervention by legal to resolve this matter. A copy of the email is attached as **Exhibit D** to the Motion (Doc. 147-4). The email explains that Chief Smith-Phifer did not want the Fire Chief to pin her for many reasons, including his practice of pressing his full hand against the chest of the individuals he pinned after he pinned them.

Beginning as early as Saturday, December 4, 2021, and through December 8, 2021, a third-party investigator who said he was hired by the City’s HR department, “interviewed” Plaintiffs Smith-Phifer and Patterson under false pretenses without notice and without an opportunity for the undersigned counsel to participate (See Affidavits of Lance Patterson, Sylvia Smith-Phifer, and Linda Lockhart).

Patterson, Smith-Phifer, and Lockhart were summoned to an offsite location and were told that they were required to submit to an interview. Both Plaintiffs Patterson and Smith-Phifer asked to call their attorney at the beginning of the interview, but the investigators changed the subject and assured them that they did not need to talk with an attorney because they were not under investigation.

First, they were required to sign a form, a copy of which is attached as Exhibit B to the Affidavit of Lance Patterson. They were told that if they did not sign the form and participate in the interview, they would be sent to City HR, from which they understood that their job could be at stake or disciplinary actions would be taken against them (Smith-Phifer Affidavit at ¶¶ 7-8, 10; Patterson Affidavit at ¶¶ 8 and 15). Then they were forced to submit to a videotaped “interview” which was more akin to a deposition in terms of content and scope. Indeed, the “interview” with Smith-Phifer lasted for four hours (Smith-Phifer Affidavit at ¶ 23) and Patterson’s lasted an hour and a half.

The content of the interviews included questions about race and gender discrimination at the City, and about harassment and retaliation, the recruitment process, the promotional processes at issue in this matter, past complaints about Smith-Phifer, the leadership styles of Chief Hannan and Chief Johnson, correspondence from the undersigned counsel to counsel for the City, conversations between Smith-Phifer and her attorney, City and CFD policies on how to file a complaint, Smith-Phifer’s hair, whether gender issues in the workplace have improved in the past 29 years, and discrimination experienced during the last three years, including what they have witnessed and experienced, which are at issue in this consolidated lawsuit (Smith-Phifer Affidavit at ¶ 22-23; Patterson Affidavit at ¶ 10-14).

Chief Smith-Phifer’s “interview” was unnecessarily aggressive and improper given that she is represented by counsel and the external investigators were asking questions unrelated to the pinning ceremony and more focused on the lawsuit (Affidavit of Smith-Phifer ¶¶ 7-8, 22-25). The investigators, Ron Mann and Adam Trantum, both have security or police backgrounds *and* recent arrests—their demeanor and line of questioning was not appropriate or fitting for their stated objectives or investigation (*Id.*; *see also* Affidavit of Lance Patterson). Rather than investigating Chief Smith-Phifer’s complaint of discrimination, the investigators were investigating her and interrogating her as if she was a criminal suspect.

### **RELEVANT DISCOVERY BACKGROUND**

Discovery in this matter closed on October 16, 2021 (September 7, 2021 Text-Only Order). However, Defendant City has created new issues for discovery as detailed above. Trial has been rescheduled from the term beginning January 3, 2022 to the term beginning March 7, 2022 after Defendant’s Motion for Extension of Time (Doc. 144). The Discovery sought pursuant to the Motion is relevant to the pending Second Motion for Sanctions (Doc. 118), the Memorandum and Recommendation (Doc. 143), for the pending Summary Judgment motion, and trial preparation.

#### **I. Discovery Needed**

##### **A. General Discovery on the Serious Allegations against Plaintiff Smith-Phifer and City’s Inappropriate Investigation Tactics**

Plaintiffs seeks discovery of all documents and communications about the allegations against Smith-Phifer and Plaintiffs’ witnesses, as well as documents related to the City’s investigation of Smith-Phifer’s complaint of retaliation and the City’s investigation into the 208A writeup issued to her. Plaintiffs seek the related telephone records, text records, emails, witness statements, interview notes, interview outlines and questionnaires, investigation reports, photos, videos, interview videos, other related documentation, interview questions and outlines for the



investigations, drafts, and documents and communications regarding the investigators and their companies and their experience and qualifications, pursuant to the continuing duty to produce documents pursuant to the following discovery requests:

**Interrogatory 42:** Identify each disciplinary action, commendation, or performance review about Smith-Phifer during her employment with the City, and for each disciplinary action, identify the decisionmaker(s).

**Request 34:** All documents and communications about Plaintiffs, their case, the defenses, counterclaims, Plaintiffs' protected activities, and Plaintiffs' allegations of discrimination, hostile work environment, and constitutional violations.

**Request 38:** All documents, communications, and electronically-stored information that refer, relate, or are relevant to this Litigation including the claims, defenses, or damages in this matter.

**Request No. 79.** The complete investigative file(s), including notes, interview notes or recordings, documents related to the scope of the investigation, and related correspondence as maintained by HR, the Fire Department, City Council, or other City department, director, or manager, or any vendor or third party contracted by the City to conduct an investigation regarding complaints of discrimination or retaliation by ... Chief Reginald Johnson.

**Request 94:** All documents, notes, investigation files, communications, or electronically-stored information regarding any disciplinary actions considered for or taken against Smith-Phifer, Patterson, Puckett, and Summers from 2015 to present....

(Doc. 118-2)

#### **B. Depositions Related to the Allegations of Witness Tampering**

Plaintiffs ask the Court for leave to conduct discovery, including permission to take the deposition of CFD HR Manager Kim Sanders about the allegations in Defendant's November 12, 2021 email (Doc. 147-1) that Ms. Sanders has complained about harassment and witness intimidation of Ms. Sanders and unidentified "managers," and discovery on all related communications on this topic, and about retaliation against Ms. Sanders by Defendant after her deposition where she gave testimony favorable to Plaintiffs. Plaintiffs have the right to discover

whether Ms. Sanders has in fact made the allegations claimed by Defense counsel, and if so, what specifically she alleged, to whom, and whether the allegations were investigated. In addition, Defendant should be required to identify the specific individual managers referenced in defense counsel's November 12, 2021 email (*Id.*) as persons whose testimony Plaintiffs and their witnesses are attempting to improperly influence and so Plaintiffs can depose each such identified manager. *Edwards v. Edwards*, No. DKC 12–3761, 2014 WL 1573504, at \*3 (D. Md. Apr. 18, 2014) (finding good cause and granting plaintiff's motion to reopen discovery, based on documents produced on the last day of discovery, to take the deposition of witness that had not previously been identified and to retake the deposition of the defendants).

### **C. Depositions and Subpoenas Related to Investigation by Ron Mann and Adam Trantum**

Plaintiffs seek to depose the “investigators” Ron Mann and Adam Trantum and whoever hired and directed them, and for documentation of who was involved in providing them information and documents and who was provided with the results of their interviews and investigation. Plaintiffs further seek to produce in advance of depositions all information, documents, and files provided to the investigators or reviewed by the investigators.

In addition, Plaintiffs seek to subpoena their interview questions and outlines, drafts, communications about such questions and outlines; documents and communications regarding the investigators and their companies and their experience and qualifications.

## **ARGUMENT**

### **I. Legal Standard**

The relevant rules here include Rules 16, 26, 33, and 34 of the Federal Rules of Civil Procedure. Rule 26(b) of the Federal Rules of Civil Procedure provides that “[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense.”

Fed. R. Civ. P. 26(b). Rule 16(b) states that a scheduling order “may be modified only for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4).

## **II. Discovery of Recent False Allegations of Attempts by Plaintiffs and their Witnesses to Alter Testimony**

As stated above, the allegations by Defendant’s counsel that Plaintiffs and their witnesses are approaching Defendant’s HR Manager and other unnamed “managers” to intimidate them, and influence deposition or trial testimony, are false. As such, the allegations are evidence of continued discriminatory harassment and retaliation, particularly against Plaintiff Smith-Phifer, the only female chief officer in the ranks of the Charlotte Fire Department, and the first Black/African American female captain and now chief officer in the history of the CFD. Plaintiff Smith-Phifer was not promoted until after the promotional process was changed to remove discriminatory obstacles as a result of the lawsuits. Once internal assessors were removed from the process, she was promoted in the very next process in which she participated.

Defense counsel identified CFD HR Manager Kim Sanders and other unnamed “managers” who Defendant falsely claims have been approached by Plaintiffs or their witnesses to “improperly influence” their testimony or “intimidate” them to “alter” their testimony. Defendant has failed and refused to identify the unnamed managers in response to Plaintiffs’ request following Defense counsel’s communication of these false allegations (Doc. 147-1).

Plaintiffs’ counsel also asked Defendant’s counsel to verify directly with Kim Sanders whether she was indeed making these extreme allegations about Plaintiffs and their witnesses and get back to Plaintiff right away with the results of the inquiry. Defendant refused to respond. Accordingly, Plaintiffs’ counsel followed up to request the deposition of Kim Sanders since these events and allegations occurred after the close of discovery. Defendant has not consented to the deposition, which led to this Motion. Upon information and belief, Ms. Sanders has been moved

to a less desirable office, her job duties have been reduced, and she has been excluded from information and decisions after her deposition in which she revealed discriminatory and dishonest behavior by current command staff; Defendant, not Plaintiffs, is harassing and intimidating her.

The fact that Defendant made these allegations after the close of discovery does not bar discovery into the allegations. *See Gore v. 3M Co.*, No. 5:16-CV-716-BR, 2017 WL 5076021, at \*2 (E.D.N.C. Nov. 3, 2017) (“[The moving party’s] reasonable diligence before the fact discovery deadline would not have resulted in the production of these pathological materials, and accordingly ‘good cause’ exists.”); *Bellew v. Ethicon, Inc.*, No. 2:13-cv-22473, 2014 WL 5589343, at \*3 (S.D.W. Va. Nov. 3, 2014) (“In the case of Dr. Villa, the undersigned finds good cause to extend the discovery deadline for his deposition. [The moving party] first received Dr. Villa’s records after the close of discovery and promptly requested his deposition.”). A scheduling order may be modified after the discovery deadline by a showing of good cause. *Gore*, 2017 WL 5076021, at\*1. The focus of the good cause inquiring is the diligence of the moving party. *Id.* Good cause exists where a party acts diligently upon learning of relevant information by promptly moving to modify the scheduling order to permit the taking of a deposition. *Bellew*, 2014 WL 5589343, at \*3 (finding good cause to permit deposition after the close of discovery where party only learned the witness had relevant information after the discovery deadline).

### **III. Improper Interrogation of Plaintiffs About the Allegations in the Lawsuit Without Legal Counsel Present**

The City hired two third-party investigators, either individually or through their company(ies), to conduct an investigation into Ms. Smith-Phifer’s complaint to the City (Exhibit B to the Affidavit of Smith-Phifer). It is clear from the questions they asked in their interviews that they lack HR, diversity and inclusion, and sensitivity training and are not experienced in HR investigations. Command staff should know the factual basis of the allegations they are

investigating. Several of the questions they asked were themselves discriminatory based on race or gender. Either someone within the City knew them personally and decided to hire them in order to retaliate against Smith-Phifer, or did zero research before hiring them. A quick Google search shows that one was arrested in 2018 for brandishing a weapon and the other was arrested in October 2021 for felony larceny against an employer. The presence of recent arrests raises serious questions of whether anyone vetted them before hiring them to conduct an HR investigation for the City of Charlotte which is willing to expend significant personnel and monetary resources to investigate litigants.

Instead of addressing Chief Smith-Phifer's legitimate concerns in her complaint of discriminatory treatment related to the pinning ceremony and her counsel's allegations of retaliation after she was accused of a violation subject to termination and forfeiture of her retirement (Exhibits A and B to the Affidavit of Smith-Phifer), the City has doubled down to continue harassing and retaliating against her through a crude investigation by investigators with questionable qualifications, experience, and motivations. In the interrogations, Plaintiffs Smith-Phifer and Patterson advised the investigators they had lawyers and a pending lawsuit, which the investigators already knew (*See* Patterson and Smith-Phifer Affidavits). Plaintiffs were not given the opportunity to have their attorney present at the meeting or allowed to call them prior to answering the investigators' questions (*Id.*). During their interviews, the investigators made false representations, required the witnesses to sign gag orders, and as demonstrated in the attached affidavits which are filed contemporaneously with this Motion and Memorandum under seal, asked questions that were way out of bounds and even harassing and discriminatory (*See* Affidavits of Patterson, Lockhart, and Smith-Phifer). They very much were investigating Smith-Phifer rather than Smith-Phifer's complaint of discrimination and retaliation and were also "selling" Chief

Johnson and defending him. The behavior of the investigators, especially occurring after the close of discovery, is highly inappropriate and the type of conduct that merits the Court's attention and reopening of discovery. *See Mullins v. City of New York*, 626 F.3d 47, 56 (2d Cir. 2010) (affirming district court granting preliminary injunction prohibiting defendant employer from investigating and disciplining plaintiff employees after the close of discovery for giving testimony and participating in the lawsuit). It is also critical for Plaintiffs to be able to determine the knowledge and involvement of CFD leadership and the City's lawyers in this process. The role of internal and external legal counsel for the City in recommending, vetting, hiring, directing, influencing, and providing information to and obtaining information from these investigators must be uncovered to determine the extent of the violations of the rights of the Plaintiffs and the extent to which the discovery and litigation process has once again been flaunted by the City's lawyers.

A summary of what happened in those interrogations is included in the Affidavits of Sylvia Smith-Phifer, Lance Patterson, and Linda Lockhart. Plaintiffs do not believe that this information should be sealed from the public, but do not want to risk termination of the Plaintiffs should they go against the investigator's demands for silence, which they claim was at the direction of the City.

### **CONCLUSION**

WHEREFORE, as a result of the City's ongoing pattern of inappropriate conduct that amounts to sandbagging, including 1) making false claims of witness intimidation, and 2) using unethical and inappropriate investigation tactics after the close of discovery, Plaintiffs respectfully request that the Court issue an Order compelling the following:

- 1) The deposition of CFD Manager Kim Sanders about her treatment since her deposition in this matter and retaliation, job duties and responsibilities, and any complaints or allegations of intimidation or witness tampering;
- 2) The deposition of each as yet unnamed "manager" whose Defendant claims Plaintiffs or their witness attempted to intimidate or whose "testimony" they

attempted to “improperly influence” about their interactions with Plaintiffs and their witnesses, and with management about the allegations of intimidation and witness tampering;

- 3) All documents and communications about such allegations of improperly approaching managers, attempting to intimidate managers, or attempting to influence the testimony of managers, including emails, telephone records, text messages, witness statements, reports, and other related documentation.
- 4) Depositions of Ron Mann and Adam Trantum about their qualifications, experience, their contract with the City, their recent investigation for the City and CFD, and all related communications;
- 5) All information, documents, and files provided to or reviewed by investigators Ron Mann, Adam Trantum, or their companies for their recent investigation for the City and the CFD, and all related communications;
- 6) All information, documents, files, and research created or generated by the investigators Ron Mann, Adam Trantum, or their companies for their recent investigation for the City and CFD (including any reports, draft reports, summaries, conclusions, or findings), and all related communications;
- 7) All interview questions, interview outlines, interview notes, and interview recordings or documentation, reviewed, created, generated, or considered by the investigators Ron Mann, Adam Trantum, or their companies, for their recent investigation for the City and CFD (including recorded interviews of Plaintiffs and anyone else interviewed), and all related communications;
- 8) All documents and communications between the City and Ron Mann, Adam Trantum, or their companies, regarding their qualifications or experience, their interest in work for the City, the terms of any purchase orders or contracts with any of them and the City, and payment for work any of them performed for the City, not limited to the recent investigation for the City and the CFD;
- 9) All communications within the City about the qualifications, experience or scope of work for a third party to conduct any investigation of Plaintiff Smith-Phifer, her complaint about the pinning ceremony (Doc. 147-6) or her counsel’s concerns about retaliatory accusations of “conduct unbecoming” (Doc. 147-4), including all potential investigators considered, recommended, or hired, including the investigators Ron Mann, Adam Trantum, Adam Trantum’s father Adam Trantum, and any of their respective companies;
- 10) All reference checks, background checks, vetting, or communications about the qualifications and experience of Ron Mann, Adam Trantum, Adam Trantum’s father Adam Trantum, and any of their respective companies, and all documentation as to why they were hired over any other potential investigators considered;



- 11) All directives or instructions to investigators Ron Mann, Adam Trantum, and their companies, as to the nature and scope of their investigation or assignment, any guidance or limitations on who they were allowed to interrogate and what they were allowed to ask them;
- 12) All documentation of the knowledge and involvement of the Fire Chief, the Command Staff, and legal counsel for the City in the allegations of witness intimidation and tampering;
- 13) All documentation of the knowledge and involvement of the Fire Chief, the Command Staff, and legal counsel for the City, in the investigation conducted by Ron Mann, Adam Trantum, and their companies for the City and the CFD, including who provided what and when, and who received what and when about the investigation.

In addition, Plaintiff requests that the Court approve the following subpoenas to be issued:

- 14) A subpoena to Ron Mann and his company for all communications with the City about this investigation, all communications with Adam Trantum about doing work together on this investigation, all communications with Adam Trantum and/or the City about Plaintiffs Smith-Phifer and Patterson; all payments received by Mann or his company for work for the City, including but not limited to this investigation; all payments made by him or any of his companies to Trantum or any of his companies; all notes, recordings, photos, videos, outlines, questionnaires, memos, and recommendations related to his investigation for the City.
- 15) A Subpoena to Adam Trantum regarding: monies received from the City, Mann, or Mann's companies; all notes, recordings, photos, videos, outlines, questionnaires, memos, and recommendations related to his investigation for the City.

Lastly, Plaintiff seeks:

- 16) An order that Defendant is not allowed to interrogate Plaintiffs about the allegations in their Complaints, as amended, in this consolidated action outside of the discovery process and the bounds of the Federal Rules of Civil Procedure;
- 17) For such other and further relief as the Court deems just and proper.

//



This the 18<sup>th</sup> day of December, 2021.

**MALONEY LAW & ASSOCIATES, PLLC**

/s/Margaret Behringer Maloney

Margaret Behringer Maloney, N.C. Bar No. 13253

Jennifer D. Spyker, N.C. Bar. No. 46048

1824 East 7<sup>th</sup> Street

Charlotte, NC 28204

[jspyker@maloneylegal.com](mailto:jspyker@maloneylegal.com)

[mmaloney@maloneylegal.com](mailto:mmaloney@maloneylegal.com)

Telephone: 704-632-1622

Facsimile: 704-632-1623

*Attorneys for Plaintiffs*