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Attorney for Plaintiff Thelma Barone

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION

**THELMA BARONE**, an individual  
Plaintiff

v.

**CITY OF SPRINGFIELD**, a municipal corporation; **TIM DONEY**, individually, and as Chief of Police of the Springfield Police Department; **TOM RAPPÉ**, individually, and as a Lieutenant of the Springfield Police Department; **GINO GRIMALDI**, individually, and as City Manager of the City of Springfield; and **GRETA UTECHT**, individually, as Director of Human Resources for the City of Springfield,

Defendants.

Case No.: 6:15-cv-1552

**COMPLAINT**  
(42 U.S.C. § 1983 – FIRST AMENDMENT)

DEMAND FOR JURY TRIAL

**INTRODUCTION**

1.

This action is brought on behalf of Plaintiff Thelma Barone for retaliation for exercising her rights under the First Amendment of the United States Constitution, for requiring her to relinquish her First Amendment rights to keep her job, and for firing her when she refused that demand. For more than 12 years, Plaintiff was employed by Defendants as a Multicultural

Liaison and Community Service Officer. On February 5, 2015, Plaintiff was a guest speaker at the City Club of Springfield. When a member of the audience asked her if she had heard any complaints from community members about racial profiling, she answered that she had heard such complaints. Defendants swiftly retaliated against Plaintiff by placing her on administrative leave; threatening to fire her; suspending her without pay for one month and demoting her. Defendants agreed to continue to employ Plaintiff in her demoted position only if she gave up her First Amendment right to say anything “disparaging or negative” about Defendants. When she refused to do so, Defendants fired her.

### **JURISDICTION AND VENUE**

2.

This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

3.

Venue is proper in this District Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to this complaint occurred in Lane County, Oregon.

4.

Costs and attorney fees may be awarded pursuant to 42 U.S.C. § 1988 and Fed. R. Civ. P. 54(d).

### **PARTIES**

5.

Plaintiff Thelma Barone is a citizen of Oregon and a resident of Lane County. Plaintiff was employed by Defendant City of Springfield as a Multicultural Liaison and Community

Service Officer from March 2003 until Defendants demoted her in July 2015 by removing her from the position of Multicultural Liaison. Defendants discharged Plaintiff on August 12, 2015.

6.

Defendant City of Springfield (hereinafter “Defendants” or “City”) is a city in Lane County, Oregon incorporated under the laws of Oregon. The Springfield Police Department (“hereinafter Department”) is a department of Defendant City. At all times relevant herein, City delegated its final policy-making authority to the Defendants for all purposes connected with the management of employment relations matters within the Department. City adopted and ratified each of their decisions as alleged herein as its own policies, customs, practices or decisions, as if the same had been promulgated directly by City.

7.

Defendant Tim Doney (hereinafter “Defendants” or “Chief Doney”) was at all times relevant the Chief of Police for the Department. Doney is sued individually and in his capacity as the Chief of Police for the Department. In doing the things alleged herein, Doney acted under color of state law, within the course and scope of his employment, and as an official policy-maker for the City. As a Department head, Doney is vested with policy-making authority over actions at issue in this complaint.

8.

Defendant Tom Rappé (hereinafter “Defendants” or “Rappé”) was at all times relevant a Sergeant and Lieutenant for the Department. Rappé is sued individually and in his capacity as a Sergeant and Lieutenant for the Department. In doing the things alleged herein, Rappé acted under color of state law, within the course and scope of his employment, and as an official

policy-maker for the City. As a high-ranking supervisor, Rappé was vested with policy-making authority over actions at issue in this complaint.

9.

Defendant Gino Grimaldi (hereinafter “Defendants” or “Grimaldi”) was at all times relevant City Manager for the City of Springfield. Grimaldi is sued individually and in his capacity as City Manager for the City of Springfield. In making the retaliatory employment decisions for the City alleged herein, Grimaldi acted under color of state law, within the course and scope of his employment, and as an official policy-maker for the City.

10.

Defendant Greta Utecht (hereinafter “Defendants” or “Utecht”) was at all times relevant Director of Human Resources for the City of Springfield. Utecht is sued individually and in her capacity as Director of Human Resources for the City of Springfield. In making the retaliatory employment decisions for the City alleged herein, Utecht acted under color of state law, within the course and scope of her employment, and as an official policy-maker for the City.

### **FACTUAL ALLEGATIONS**

11.

Defendants hired Plaintiff in March 2003 to work as a Multicultural Liaison and Community Service Officer. Plaintiff’s position was funded by grant programs to provide outreach and services to the Latino Community in Springfield.

12.

Starting in the spring of 2013, Plaintiff regularly received telephone calls from members of the Latino community complaining about racial profiling by the Department. When Plaintiff brought those complaints to the Department leadership, they denied that any problems existed and suggested that Plaintiff was exaggerating or encouraging the complaints. They acted

hostilely when she brought complaints of racial profiling to their attention, and dismissed the complaints as meritless. Defendants' hostility toward complaints of racial profiling continued throughout 2013 and 2014.

13.

On February 5, 2015, Plaintiff gave a presentation about multicultural outreach at the City Club of Springfield. During the question-and-answer period following Plaintiff's presentation, a member of the audience asked her if she heard complaints about racial profiling from the Latino community. Plaintiff answered that she had heard complaints about racial profiling.

14.

On February 12, 2015, Sergeant Rappé told Plaintiff to come to his office. When Plaintiff entered Rappé's office, there was a police officer there. Rappé told Plaintiff that the Department was placing her on administrative leave to investigate her for "dishonest conduct." The police officer escorted Plaintiff out of the building.

15.

The Department alleged that Plaintiff had been dishonest about whether she had received permission to allow high school students to take photos during a tour of the Department Plaintiff had facilitated in July 2014. Defendant's explanation was pretextual; Defendants were really retaliating against Plaintiff for her protected conduct.

16.

On March 4, 2015, the Department told Plaintiff that Rappé completed his investigation and had sustained the Department's charges. Chief Doney informed Plaintiff that the

Department would terminate Plaintiff for dishonesty. A *Loudermill* hearing took place on April 2, 2015.

17.

At the *Loudermill* hearing, the Department asked Plaintiff's union for extra time to render its decision. Between April 2, 2015 and July 2015, the City asked for six extensions of time to render its final decision. Plaintiff remained on administrative leave during that entire period.

18.

On July 16, 2015, the City told Plaintiff that it had finally rendered its decision. Although the Department agreed to bring Plaintiff back to work, it suspended her for a period of four weeks without pay. Further, it prohibited Plaintiff from engaging in any Multicultural Liaison activities, demoting her to the position of only Community Service Officer. It prohibited her from performing any translation services. The Department also informed Plaintiff that she would have to sign a "Last Chance" Agreement to continue her employment.

19.

Plaintiff returned to work on August 3, 2015. The Department put her in a bullet-proof vest, and assigned her to patrol.

20.

Chief Doney gave Plaintiff the Last Chance Agreement to sign, and clarified that Defendants would fire her if she did not sign it. By signing that Agreement, Plaintiff would be prohibited from "speak[ing] or writ[ing] anything of a disparaging or negative manner related to the Department/Organization/City of Springfield or its Employees." If Plaintiff said anything negative about the City of Springfield, the City of Springfield Police Department, or any of its employees, the City would immediately fire her without recourse.

21.

On August 9, 2015, Plaintiff sent a letter to the Department explaining why she would not sign the Last Chance Agreement. Plaintiff explained that the Department's discipline was unjustified. Moreover, she explained that, by agreeing not to say anything negative about the City, she would forego her ability to speak up if she heard complaints about racial profiling. Defendants had given her the choice of waiving her right to speak freely about matters of public concern or face termination.

22.

The Department fired Plaintiff on August 12, 2015. Defendants explained that they were firing Plaintiff for her refusal to sign the Last Chance Agreement.

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### **FIRST CLAIM FOR RELIEF**

**(42 U.S.C. § 1983 – FIRST AMENDMENT RETALIATION; AGAINST ALL  
DEFENDANTS)**

23.

Plaintiff incorporates and re-alleges the facts set forth in paragraphs 1-22 above.

24.

The presentation that Plaintiff gave at the Springfield Community club was outside of Plaintiff's normal job duties. When Plaintiff said that she had heard complaints from the Latino Community about racial profiling, she was speaking as a citizen on a matter of public concern. Consequently, Plaintiff's speech on February 5, 2015 and her earlier reports about racial profiling were speech protected by the First Amendment of the United States Constitution.

25.

Defendants, while acting under color of state law, violated Plaintiff's right to freedom of speech, as guaranteed by the First Amendment to the United States Constitution, by retaliating against Plaintiff for her exercise of free speech. Defendants' unconstitutional retaliation included placing her on administrative leave from February 12, 2015 to August 3, 2015; threatening her with termination; suspending her for one month without pay; demoting her from the position of Multicultural liaison to Community Service Officer; prohibiting her from engaging in any translation services; and firing her on August 12, 2015.

26.

As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has suffered significant economic damages and is entitled to an award of her lost wages and benefits from the date of termination until trial in an amount to be determined at trial, reinstatement or front pay and prejudgment interest.

27.

As a result of Defendants' actions described herein, Plaintiff has been subjected to pain, suffering and impairment to her reputation and is entitled to an award of compensatory damages in an amount to be determined at trial.

28.

Plaintiff is entitled to an award of reasonable attorney fees and costs for prosecuting this action, pursuant to 42 U.S.C. § 1988.

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## **SECOND CLAIM FOR RELIEF**

**(42 U.S.C. § 1983 – FIRST AMENDMENT; AGAINST ALL DEFENDANTS)**

29.



Plaintiff incorporates and re-alleges the facts set forth in paragraphs 1-22 above.

30.

Defendants, while acting under color of state law, violated Plaintiff's right to freedom of speech, as guaranteed by the First Amendment to the United States Constitution, by requiring her to relinquish her First Amendment right of free speech to keep her job. Defendants while acting under color of state law, then further violated Plaintiff's right to freedom of speech by terminating Plaintiff on August 12, 2015 for refusing give up her First Amendment rights.

31.

As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has suffered significant economic damages and is entitled to an award of her lost wages and benefits from the date of termination until trial in an amount to be determined at trial, reinstatement or front pay and prejudgment interest.

32.

As a result of Defendants' actions described herein, Plaintiff has been subjected to pain, suffering and impairment to her reputation and is entitled to an award of compensatory damages in an amount to be determined at trial.

33.

Plaintiff is entitled to an award of reasonable attorney fees and costs for prosecuting this action, pursuant to 42 U.S.C. § 1988.

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**DEMAND FOR PUNITIVE DAMAGES**

34.

The actions of Defendants as described in this Complaint, were malicious, deliberate, intentional, and embarked upon with the knowledge of, or in conscious disregard of, the harm that would be inflicted upon Plaintiff and in reckless or callous indifference to Plaintiff's federally protected rights. As a result of said intentional, callous or reckless conduct, Plaintiff is entitled to punitive damages against Defendants Doney, Rappé, Grimaldi and Utecht in their individual capacities, in an amount sufficient to punish them and to deter others from engaging in like conduct.

### **DEMAND FOR TRIAL BY JURY**

35.

Plaintiff hereby demands trial by jury.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Barone requests that the Court grants her the following relief:

1. A judgment against all Defendants, jointly and severally on Plaintiffs' First and Second Causes of Action detailed herein, awarding Compensatory Damages to in an amount to be determined by a Jury and/or the Court on both an individual basis.
2. A judgment against all Defendants, jointly and severally on Plaintiffs' First and Second Causes of Action detailed herein, awarding of her lost wages and benefits from the date of termination until trial in an amount to be determined at trial, plus prejudgment interest.
3. Reinstatement in her position as Multicultural Liaison with all rights, duties and responsibilities that she had prior to her demotion or front pay in lieu of reinstatement in an amount to be determined at trial;
4. Punitive damages against Defendants Doney, Rappé, Grimaldi and Utecht.

5. A monetary award for attorney's fees and the costs of this action, pursuant to 42 U.S.C. § 1988.

DATED this 17th of August, 2015

/s/ Andrew Lewinter

Andrew Lewinter OSB # 080031

I have read the Last Chance Agreement you provided on August 3, 2015 for me to sign in order to continue my employment. I very much want to keep my job for several reasons but especially because for almost thirteen years, being the Multicultural Liaison for the City of Springfield Police Department has been extremely rewarding to me.

By signing this agreement I would be accepting the police department's demotion of me and I do not agree with this demotion. The department wants to take away from a large segment of our community their vital connection to public safety services. I am now performing duties that do not require any of my specialized qualifications and years of training. Paragraph 2 says that I would have to get approval from the Chief to perform any of the duties that were central to my job.

Also, paragraph 5(g) says that I will not "speak or write anything of a disparaging or negative manner related to the Department/Organization/City of Springfield or its Employees" I am not exactly sure what makes you think I have ever done so but I am afraid that by signing this agreement I will agree not to speak up if people bring complaints to us regarding police profiling, discrimination, etc. Building bridges of trust between police and community -the job I was hired to do- cannot be done by staying silent about complaints. According to this paragraph I could be fired because speaking up would be "disparaging or negative" to the Department/Organization/City of Springfield or its Employees.

In addition, I feel that suspending me without pay is extremely unfair and unjustified because I did not do anything wrong. Paragraph 5(a) says that I agree to improve my performance by being truthful in the future. Of course I will be truthful in the future -but that would not be a change; I have always been truthful. By signing this agreement I would be saying that I have not been truthful... and that would not be true.

I love my job. I want to go back to working as the Multicultural liaison for the City of Springfield Police Department because I see evidence of a desperate need for my services every single day and because I have performed my duties with skill and integrity. The results in the community speak for themselves. I have done nothing whatsoever to deserve this injustice. This Last Chance Agreement is unacceptable to me and I cannot sign it.

Respectfully,

Thelma Barone  
Multicultural Liaison  
Springfield Police Department