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C O P Y

Attorneys for Claimants

DAN DIXON and HEIDI DIXON,
husband and wife,

Claimants,

V.

CITY OF COEUR D'ALENE, et. al.

Defendant

NOTICE OF TORT CLAIM

SUBMITTED this 24th day of November, 2009, for and on behalf of Dan Dixon, by and through his attorney, Larry Beck, of Beck Law Offices, Hayden, Idaho.

NOTICE OF TORT CLAIM

TO: CITY OF COEUR D'ALENE:

DAN DIXON and HEIDI DIXON, husband and wife, (hereafter referred to as "Claimants"), of Coeur d'Alene, County of Kootenai, State of Idaho, by and through their attorney, Larry Beck, of Beck Law Offices, Hayden, Idaho, hereby make, present and give notice of their claim for money damages against the CITY OF COEUR D'ALENE, STATE OF IDAHO, (hereafter referred to as "Defendant Coeur d'Alene"), under and in accordance with the Idaho Tort Claims Act, Idaho Code Section 6-901-909, et. seq. The Claimants allege as follows:

1. That Claimants were, at all times material hereto, and presently are, husband and wife , and residents of the City of Coeur d'Alene, County of Kootenai, State of Idaho. Claimant Dan Dixon (hereafter referred to as "Claimant") was at all times material hereto employed by Defendant Coeur d'Alene as a Lieutenant in the Coeur d'Alene Police Department (hereafter referred to as "police department").

2. That Defendant City of Coeur d'Alene, Idaho, is a municipal corporation, a political subdivision and a body politic of the State of Idaho. Among its powers is the power to sue and to be sued.

3. That Defendant Daniel O'Dell (hereafter referred to as "Defendant O'Dell") was at all times material hereto, and presently is, a sergeant with the police department. Defendant O'Dell is named in both his official and individual capacities.

4. That Defendant Ron Clark (hereafter referred to as "Defendant Clark") was at all times material hereto, and presently is, a captain with the police department. Defendant Clark is named in both his official and individual capacities.

5. That Defendant Steve Childers (hereafter referred to as "Defendant Childers") was at all times material hereto, and presently is, a captain with the police department. Defendant Childers is named in both his official and individual capacities.

6. That in or about 1992, Claimant became employed with Defendant Coeur d'Alene as a police officer in the police department. Over the last 17 years, Claimant performed his job duties in either a satisfactory or exemplary manner. Claimant received numerous promotions, pay raises, awards and commendations. Claimant was eventually promoted by Defendant Coeur d'Alene to the rank of Lieutenant.

7. That at all times material hereto, Defendant Coeur d'Alene employed Claimant pursuant to its personnel policies and procedures which provided, among other things, that Claimant could only be terminated from his position of employment for just cause. Said policies and procedures constituted an employment contract and property interest that is protected by federal and state law.

8. That in or about August 2007, Claimant had planned to take some vacation leave and Defendant O'Dell, one of Claimant's subordinate officers, had agreed to fill in as a supervisor for Claimant. However, Claimant's vacation plans were cancelled and it was no longer necessary for Defendant O'Dell to fill in for Claimant. Defendant O'Dell was upset that he would not be able to collect overtime pay during Claimant's vacation, so he submitted an Internal Personnel Complaint against Claimant. In said complaint, Defendant O'Dell alleged that because Claimant changed his vacation plans, Defendant O'Dell was being cheated out of overtime pay that he had planned to earn while filling in for Claimant.¹ This complaint was reviewed by the police department, which determined it to be completely unfounded. The police department dismissed the complaint.

9. That also in or about August 2007, Defendant O'Dell submitted a second complaint against Claimant.² Said complaint alleged that Claimant changed Defendant O'Dell's work schedule *for one day* from swing shift to day shift. Defendant O'Dell was upset because he preferred to work swing shift as opposed to day shift. Claimant denied making the change and even offered to change places with Defendant O'Dell for that single day to appease the unhappy subordinate. Defendant O'Dell accepted Claimant's suggestion, but still filed the complaint

¹ Again, claimant was actually O'Dell's immediate supervisor, and O'Dell was a subordinate employee.

² See footnote #1.

anyway. This complaint was reviewed by the police department, which determined it to be completely unfounded. The police department dismissed the complaint.

10. That in or about November 2008, Defendant O'Dell submitted a third complaint against Claimant.³ Said complaint alleged that Claimant was not asking a fellow officer to receive certain training that *Defendant O'Dell thought* the other officer should receive. This complaint was reviewed by the police department, which determined it to be completely unfounded. The police department dismissed the complaint.

11. That the very next month, in December 2008, Defendant O'Dell filed his fourth complaint against Claimant.⁴ Said complaint alleged that Claimant changed his (Defendant O'Dell's) work schedule in the police department's computerized scheduling system in a manner that Defendant O'Dell thought was less advantageous to him. Claimant denied that he made the alleged changes and told Defendant O'Dell that he could change the schedule any way that he wanted to *so long as there was proper supervision on each shift*. Defendant O'Dell accepted this suggestion but still filed the complaint against Claimant. Defendant O'Dell, without permission or lawful authority, snooped through Defendant Childers' mail and removed Claimant's time card. Defendant O'Dell then, without permission or lawful authority, spied on Claimant's time card! Defendant O'Dell decided that Claimant may have been claiming pay for time that he did not actually work.⁵

12. That Claimant informed Defendant Childers at the time he learned of the fourth complaint being filed against him by Defendant O'Dell that he felt that he was being repeatedly harassed by an unhappy subordinate who was continuously filing false and reckless allegations against him.

³ See footnote #1.

⁴ See footnote #1.

⁵ See footnote #1. Defendant O'Dell was also a subordinate employee by two ranks to Captain Childers!

13. That on December 18, 2008, Claimant wrote a memorandum to Defendant Childers informing him that Defendant O'Dell was submitting frivolous, reckless and baseless allegations against Claimant. Claimant stated that he could not manage Defendant O'Dell if every time Defendant O'Dell disliked his schedule, he could file frivolous complaints against Claimant. Claimant complained to Defendant Childers that he was being targeted and repeatedly harassed by Defendant O'Dell, and in turn by the police department, as they allowed this process to continue *over and over and over again*, without taking any disciplinary action against Defendant O'Dell to bring it to an end. Claimant stated to Defendant Childers that *"I am serious when I say this is harassment and that I want it stopped...This is causing me undue stress because I take it personally!"* Neither Defendant Childers nor anyone at the police department did anything to stop the harassment.

14. That Claimant requested a meeting with Chief Wayne Longo to ask him to stop the continuous and frivolous complaints by Defendant O'Dell against Claimant. While waiting to speak with the chief, Claimant suggested to Defendant Childers that it was perhaps now time for the police department to conduct an internal investigation on Defendant O'Dell for filing all of the frivolous complaints against Claimant. Defendant Childers became irate at Claimant and yelled at him *"If you want an internal (investigation), I'll give you an internal!"* Defendant Childers then stormed out of the room. Claimant waited and met with Chief Longo. The chief told Claimant that "everybody needs to just cool down. After Christmas we will all sit down and sort through the issues."

15. That when Claimant returned after the Christmas holiday he was informed by Defendant Childers and Chief Longo that the police department was now going to conduct a full internal investigation on Claimant based upon Defendant O'Dell's fourth complaint. At this time,

Defendant Childers informed Claimant that additional allegations by Mike Calderwood were included in the investigation. Calderwood is a lieutenant in the police department. Calderwood's allegations included that he had reviewed Defendant O'Dell's complaint and agreed with Defendant O'Dell that Claimant *may* have incorrectly recorded some of his work time, and that Claimant *may* have been paid for some time that he allegedly did not work.

16. That once Claimant found out that Chief Longo was going to assign Defendant Clark to conduct the internal investigation, he met with the chief to ask the chief to give him a fair investigation and to assign the matter to someone other than Defendant Clark, as he had felt Defendant Clark would not be fair in the investigation. Claimant suggested that someone from the Idaho State Police or some other agency could do the investigation, as was commonly done in conflict situations. Chief Longo informed Claimant that he would make sure that Defendant Clark would conduct a fair investigation. Claimant asked the chief if he would at least not mention his concerns to Defendant Clark so that the investigation would be as free from bias as possible. Chief Longo assured Claimant that he would not share Claimant's concerns with Defendant Clark. However, when Claimant reported to his first interview, Defendant Clark began the meeting by confronting Claimant about the confidential statement Claimant had made to the chief regarding his concerns that Defendant Clark would be biased and unfair, and should not be conducting the internal investigation. Claimant realized at that time that any hopes for a fair and unbiased investigation had been completely destroyed.

17. That on January 26, 2009, Claimant wrote a memorandum to Defendant Clark that refuted both Defendant O'Dell's and Lieutenant Calderwood's allegations, and explained the alleged discrepancies between his hours worked and hours paid.

18. That the internal investigation *went on for over six months!* During the six month investigation, Claimant was not allowed to come to the police department or participate in his law enforcement career in any manner. Many of Claimant's friends and fellow officers understood from their captains that they should avoid any contact with Claimant, either on or off duty. Many of these officers have stated to Claimant that they understand this directive is still in effect.

19. That without any competent evidence to support the allegations lodged against Claimant in subordinate Defendant O'Dell's fourth complaint, Defendant Clark determined that the charges against Claimant should be sustained.

20. That on June 10, 2009, Claimant was presented with a memorandum from Chief Longo that simply incorporated all of Defendant Clark's findings. The memo further informed Claimant that Chief Longo was recommending that Claimant be terminated. The memo also informed Claimant that he was entitled to a pre-termination hearing as required by Defendant Coeur d'Alene's personnel rules, before the final decision would be made.

21. That on June 24, 2009, Claimant, accompanied by his counsel, attended the pre-termination hearing. At said hearing, Claimant vehemently denied that he had ever harassed Defendant O'Dell or had stolen any time from Defendant Coeur d'Alene. Claimant presented evidence showing that his alleged conduct was not in violation of any of Defendant Coeur d'Alene's policies and procedures, or any of its rules and regulations. In fact, Defendant Coeur d'Alene was unable to produce any witnesses or documentary evidence to establish that Claimant had ever intentionally manipulated Defendant O'Dell's work schedule in an effort to intimidate or harass Defendant O'Dell, or that Claimant had ever stolen time from Defendant Coeur d'Alene. At the end of the hearing, Deputy City Manager John Ingalls appeared to be

exasperated by the police department's lack of procedures and evidence, as well as a lack of policies and procedures for employee timekeeping, and asked Claimant and his counsel "Are you telling me that the City has just wasted six months and hundreds of hours of time on this investigation", to which Claimant replied "Yes, that's what I am telling you". Also at said hearing, neither Defendant Clark nor Defendant Childers attempted to rebut any of Claimant's arguments.

22. That Mr. Ingalls then conducted an additional investigation of the matter outside of the hearing and outside of the presence of Claimant and his counsel. A few days later, Mr. Ingalls wrote a decision that upheld the allegations against Claimant. None of the materials Mr. Ingalls reviewed, or the identities of any of the individuals he met with, let alone the substance of those discussions, were disclosed to Claimant or his counsel, and they did not have a chance to rebut the same. Apparently after discussing the matter with the chief outside of the hearing, Mr. Ingalls determined that Claimant could come back to the police department if he would accept *a demotion all the way down to patrol officer, be stripped of all of his management authority and accept a pay cut that was essentially half of Claimant's current rate of pay!*

23. That Claimant refused to accept Mr. Ingalls' ridiculous and insincere offer of reinstatement. Subsequently, Claimant was informed by the chief that the chief was recommending termination due to the fact that Claimant had refused to accept the demotion. A second pre-termination hearing was then conducted. At the hearing, Claimant informed Mr. Ingalls that the prior solution to demote him down to entry level patrol officer, strip him of any management authority, and to cut his pay in half, was never intended as a reasonable solution, but was instead a constructive discharge of Claimant's employment. Claimant reiterated that he had an exemplary record of employment with Defendant Coeur d'Alene for over 17 years, had

never harassed Defendant O'Dell or anybody else, and had never lied or stolen anything from Defendant Coeur d'Alene. *To the contrary, Claimant reviewed the many, many hours that he had actually volunteered to Defendant Coeur d'Alene outside of his normal work hours.*

24. That following the second pre-termination hearing, Mr. Ingalls issued a written decision terminating Claimant's employment with Defendant Coeur d'Alene due to Claimant's decision to not accept the demotion.

25. That Claimant was terminated completely without just cause, and his substantive due process right to be free from arbitrary and capricious government action affecting his employment status was violated by Defendant Coeur d'Alene.

26. That the rights granted to Claimant by Defendant Coeur d'Alene as contained in Defendant Coeur d'Alene's employee policies and procedures, along with the rights granted to such public employees by Federal and State law, provided Claimant with a property interest in his employment with Defendant Coeur d'Alene. Said property interest is protected by the Fourteenth Amendment to the United States Constitution. As a result of the above described actions and inactions of the Defendants, and each of them, Claimant's rights to substantive and procedural due process were violated. Additionally, the actions and omissions of the Defendants, and each of them, violated Claimant's rights pursuant to Title 42 of the United States Code, particularly Section 1983.

27. That Defendants, and each of them, were negligent in conducting the investigation into subordinate employee Defendant O'Dell's allegations against Claimant.

28. That Defendants, and each of them, were negligent in failing to prevent subordinate employee Defendant O'Dell from filing frivolous and harassing complaints against Claimant.

29. That Defendants, and each of them, deprived Claimant of his property interest in his employment without just cause.

30. That Defendants, and each of them, wrongfully terminated Claimant's employment without just cause.

31. That Defendants, and each of them, wrongfully breached Claimant's employment contract without just cause.

32. That Defendants, and each of them, defamed Claimant and invaded his privacy by casting him in a false light.

33. That Defendant O'Dell wrongfully interfered with Claimant's employment contract and prospective business advantage.

34. That Defendants, and each of them, intentionally or negligently inflicted emotional distress upon Claimant and his family.

35. That as a further proximate result of the above referenced actions and/or omissions of Defendants, and each of them, Claimant has suffered damages due to Defendants' denial of his due process rights and wrongful termination of his employment contract, including a loss of back pay, front pay, and the value of his employee benefit package that he would have continued to receive but for the actions and/or omissions of said Defendants.

36. That as a further proximate result of the above referenced actions and/or omissions of Defendants, and each of them, Claimant has incurred past and future loss of his career track and has been damaged in amounts that have not yet been fully ascertained, but will be proven at trial.

37. That as a further proximate result of the above referenced actions and/or omissions of Defendants, and each of them, Claimant has incurred a past and future loss of

earning capacity and has been damaged in amounts that have not yet been fully ascertained, but will be proven at trial.

38. That as a further proximate result of the above referenced actions and/or omissions of Defendants, and each of them, Claimant has had to incur past and future medical and mental health expenses in amounts that have not yet been fully ascertained, but will be proven at trial.

39. That as a further proximate result of the above referenced actions and/or omissions of Defendants, and each of them, Claimant has incurred out-of-pocket-expenses in amounts that have not yet been fully ascertained, but will be proven at trial.

40. That as a further proximate result of the actions and/or omissions of Defendants, and each of them, Claimant Heidi Dixon has incurred a past and future loss of consortium, society and companionship with Claimant and has been damaged in amounts that have not yet been fully ascertained, but will be proven at trial.

41. That the actions and/or omissions by the individually named Defendants, and each of them, as referenced above, were performed with reckless or callous indifference to the Claimant's constitutional rights. As a result, Claimant is entitled to an award of punitive damages against said individual Defendants under 42 USC Section 1983.

42. That as a further proximate result of the above-referenced actions of the Defendants, and each of them, Claimants have had to hire an attorney to assist them with this matter and have incurred reasonable attorney's fees and costs in their prosecution of this matter, and as such seek reimbursement for all attorney's fees and costs reasonably incurred herein.

WHEREFORE, DAN DIXON AND HEIDI DIXON hereby submit their tort claims in the amount of Three Million Dollars (\$3,000,000.00) as to this matter against Defendant CITY OF COEUR D'ALENE, STATE OF IDAHO based on the above facts and law.

DATED this 24th day of November, 2009.

X Dan Dixon
DAN DIXON
CLAIMANT

X Heidi Dixon
HEIDI DIXON
CLAIMANT

X Lawrence R. Beck
LAWRENCE R. BECK,
ATTORNEY FOR CLAIMANTS