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**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WASHINGTON**

FRANK STRAUB,

NO.

Plaintiff,

COMPLAINT FOR DAMAGES

v.

• **42 U.S.C. § 1983, et seq.**

**The CITY OF SPOKANE, a
municipal corporation, City of
Spokane Mayor DAVID CONDON,
City of Spokane City Attorney
NANCY ISSERLIS, and City of
Spokane City Administrator
THERESA SANDERS, in their
individual and official capacities,
Defendants.**

Action for deprivation of civil
rights.
• **Tort Claims**
• **Contract Claim**
• **Jury Demand**

Plaintiff **Frank Straub**, through his attorney **Mary Schultz** of **Mary Schultz Law, P.S.**, alleges as follows:

I. INTRODUCTION.

1.1. This is an action for the violation of Plaintiff **Frank Straub's** federal civil due process rights under 42 USC § 1983 by the City of Spokane,

1 Spokane Mayor David Condon, Spokane City Attorney Nancy Isserlis, and
2
3 Spokane City Administrator Theresa Sanders.

4 1.2. All actions taken by the City Defendants were official policy,
5 carried out by the City of Spokane though the individual Defendants named.
6

7 1.3. The Defendants' individual and collective actions at issue are
8 their collective decision(s) to publically disseminate, on September 22, 2015,
9 in precipitous fashion, and without any need or public request for such
10 information, a series of contrived and uninvestigated accusations made
11 against then acting City Police Chief Frank Straub, which included
12 stigmatizing and inaccurate accusations of "untruthfulness," unfitness, and
13 implied immorality, by collectively issuing a press release and posting such
14 accusations on the Defendant City's public website.
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17 1.4. By publishing such accusations as the basis for Chief Straub's
18 termination as Police Chief, the Defendants further collectively and
19 individually publically manifested their belief in the accuracy of uninvestigated
20 accusations as their basis for Straub's removal, and adopted the stigmatizing
21 claims as the Defendants' own statements.¹
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25 ¹ *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 573, 92 S.Ct. 2701, 33
26 L.Ed.2d 548 (1972)(where a government makes charges of dishonesty, or attaches stigma
27 to an employment decision, it must afford due process).
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1 1.5. The accuracy of the Defendants' charges was, and is, contested;
2 public disclosure was made of the charges, and the disclosure was made in
3 connection with the termination of Chief Straub's employment as the Police
4 Chief and/or the alteration of his status as Police Chief as recognized by state
5 law.²
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8 1.6. Because of the precipitous dissemination of these stigmatizing
9 charges in the media, no opportunity existed for any meaningful post-
10 termination name clearing hearing.³
11

12 1.7. By such action, the Defendants collectively and individually
13 violated Chief Straub's federal liberty interest under the Fourteenth
14 Amendment of the United States Constitution.
15

16 1.8. By such actions, the Defendants, collectively and individually,
17 intentionally and maliciously deprived Chief Straub of the federal due
18 process protections to which he was entitled.
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20 1.9. Even after the initial dissemination, and for weeks thereafter in
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23 ² *King v. Garfield*, 17 F. Supp. 3d 1060, 1076 (2014), rev'd on other grounds, 2015
24 WL 9459747 (Dec. 2015), citing *Llamas v. Butte Cmty. Coll. Dist.*, 238 F.3d 1123, 1129
(9th Cir. 2001).

25 ³ *King v. Garfield*, 17 F. Supp. 3d at 1081-83, citing *Cox v. Roskelley*, 359 F.3d
26 1105, 1110 (9th Cir. 2004).

1 public appearances and in the press, the Defendant City and its Mayor
2 continued to speak of uninvestigated inaccurate charges as if they were true.
3

4 1.10. The Spokane Mayor, City Attorney, and City Administrator are
5 not entitled to qualified immunity. Each is charged with the knowledge that the
6 public dissemination of stigmatizing information that might seriously damage
7 then acting Police Chief Frank Straub's professional standing and associations
8 in the community, and impose on him a stigma that would foreclose future
9 opportunities, in conjunction with his termination and/or alteration of his status
10 as Police Chief, and without any meaningful opportunity given him at a
11 meaningful time to clear his name, i.e. before such publication occurred, would
12 violate the Police Chief's Fourteenth Amendment rights. ⁴
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16 1.11. The Defendants' actions were grossly negligent, intended to
17 inflict emotional distress on Chief Straub (or grossly negligent in inflicting
18 such damage), and defamatory.
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20 1.12. The Defendants' actions breached Chief Straub's contract with the
21 City of Spokane and Mayor Condon by violation of the City's implied duty of
22 good faith and fair dealing inherent in its contract with Frank Straub.
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25 ⁴ *King v. Garfield*, 2015 WL 9459747 at *2, citing *Kaley v. United States*, 134
26 S.Ct. 1090, 1114 (2014); and see *Cox v. Roskelley*, 359 F.3d at 1112; *Summers v. City of
27 McCall*, 841 Supp.3d 1126, 1149 (2015).

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II. JURISDICTION.

2.1. This Court has jurisdiction of these federal claims under 42 U.S.C. § 1983 and 42 U.S.C. § 1988. *28 U.S.C. § 1331* (federal claim jurisdiction).

2.2. This Court has supplemental jurisdiction over the included state tort and contract claims. *28 U.S.C. § 1367*.

2.3. Venue is proper in the Eastern District of Washington. *28 U.S.C. § 1391(b)*.

III. PARTIES.

At all material times:

3.1. Plaintiff Frank Straub was a resident of the State of Washington, residing in Spokane County, Washington.

3.2. Frank Straub was an employee of the Defendant City of Spokane working as the City of Spokane Police Chief.

3.3. Defendant City of Spokane is a municipal corporation within the County of Spokane, and thereby within the Eastern District of Washington.

3.4. Defendant David Condon is a resident of the State of Washington who resided, and resides, in Spokane County, Washington, and was and is

1 employed by the City of Spokane as City Mayor.

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3 3.5. Defendant Nancy Isserlis is a resident of the State of Washington,
4 who resided, and resides, in Spokane County, Washington, and was and is
5 employed by the City of Spokane as City Attorney.

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7 3.6. Defendant Theresa Sanders is a resident of the State of
8 Washington, who resided, and resides, in Spokane County, Washington, and
9 was and is employed by the City of Spokane as City Administrator.

10
11 3.7. All named defendants were acting under color of state law at the
12 time of the actions detailed herein as defined under 42 U.S.C. § 1983.

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14 3.8. All employment, facts, events, and transactions giving rise to this
15 lawsuit occurred within Spokane County, Washington, and thereby within the
16 Eastern District of Washington.

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18 **IV. FACTS.**

19 4.1 In early 2012, Frank Straub, a resident of Indianapolis, Indiana,
20 was approached by, and recruited for, the position of the City of Spokane
21 Police Chief by Mayor David Condon and City administration personnel.

22
23 4.2 Mr. Straub was recruited specifically because of his successes in
24 Indianapolis, Indiana in overseeing a number of City departments, and because
25 of his experience in addressing entrenched police conduct in the City of
26

1 Indianapolis.

2 4.3 Reform within police departments necessarily involves friction,
3 and such dynamics are well known to the police community and to city
4 administrations involved in such reform efforts.
5

6 4.4 Various members of the Indianapolis hierarchy flew to Spokane to
7 testify to the Spokane City Council about Mr. Straub's abilities as a reformer.
8

9 4.5 Mr. Straub ultimately accepted the position of the City of Spokane
10 Police Chief, and relocated from Indianapolis to the City of Spokane.
11

12 4.6 Mr. Straub commenced employment with the City of Spokane as
13 its police chief effective October 1, 2012.
14

15 4.7 Chief Straub's mandate from Defendant Mayor Condon was to
16 reform entrenchment and dysfunction that had evolved within the City of
17 Spokane Police Department.
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19 4.8 Chief Straub was warned of, and quickly experienced, the City
20 Police Department's internal conflict.
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22 4.9 The Spokane Police Department's relationships with the
23 community were also scarred.
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25 4.10 Numerous use-of-force incidents against citizens had been
26 occurring, the prior Spokane police chief had departed under difficult
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1 circumstances, and the police department had just gone through a federal trial
2 on United States Department of Justice claims that a Spokane City police
3 officer had violated the federal civil rights of a citizen in the police-caused
4 death of that citizen.
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7 4.11 That City police officer was convicted on Nov. 2, 2011 of civil
8 rights violations and obstruction of justice charges.

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10 4.12 Certain police behavior at that trial became a well-publicized
11 incendiary topic, as did claims of City police perjury and City police
12 obstruction of justice.

13
14 4.13 At a post-conviction hearing of this officer, a certain City police
15 contingent saluting the convicted officer, further inciting the public and
16 members within the department itself.

17
18 4.14 A myriad of serious issues were thus in play and well publicized
19 by October 1, 2012 regarding the credibility and professionalism of officers in
20 the City of Spokane Police Department.

21
22 4.15 It was within this environment, and because of it, that Chief
23 Straub was directed by the Defendant City and its administration to implement
24 reform in this department.

25
26 4.16 Throughout Chief Straub's tenure from October 2012 to March
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1 2015, Chief Straub served the City of Spokane without hearing of any formal
2 complaint being lodged against him in spite of the pre-existing police
3 department environment of internal conflict, politics and friction, and in spite
4 of his role as a reformer.
5

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7 4.17 Throughout Chief Straub's tenure, the Defendant Mayor and the
8 City Administration Defendants Sanders and Isserlis consistently failed to
9 support Chief Straub's managerial decisions to remove and/or transfer certain
10 individuals, whom the Chief believed and told the Defendants were
11 "cancerous" to a healthy police department's functioning.
12

13
14 4.18 The Defendants approved of only one transfer of a disruptive
15 employee.
16

17 4.19 The overt lack of administrative support from the Defendants
18 undercut Chief Straub's authority, and prevented Chief Straub from effectively
19 addressing entrenched cliques within the Department.
20

21 4.20 Commencing in and around late 2013 and early 2014, certain
22 "cancerous" factions in the department were lodging claims of dishonesty
23 against police department employee, Monique Cotton.
24

25 4.21 Chief Straub requested an investigation into those claims, the City
26 tasked its Human Resources department to investigate due to the nature of
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28

1 Cotton's employment, and the City took no disciplinary action.

2
3 4.22 Employee Cotton was also making accusations of bullying,
4 harassment and hostile work environment against upper level police officers
5 Walker and Torok.

6
7 4.23 By late 2014, Chief Straub went to the Defendant Mayor and City
8 Administrator Sanders to request that employee Cotton be transferred out of his
9 department, as she was causing difficulty within his department.

10
11 4.24 The Defendant administration transferred employee Cotton to the
12 Defendants' own City Hall, but after less than a month, the Defendants did not
13 find the move palatable for them either, and employee Cotton was returned to
14 the police department.

15
16 4.25 On March 31, 2015, Chief Straub conducted a meeting which
17 included certain personnel, including returned employee Cotton and Police
18 Lieutenant Mark Griffiths, with whom employee Cotton was now romantically
19 involved.

20
21 4.26 The meeting was called by Chief Straub to address that group's
22 misrepresentations and material omissions of fact in a situation involving
23 Lieutenant Griffiths.

24
25 4.27 Following this meeting, Chief Straub was advised by Defendant
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1 City Attorney Nancy Isserlis that employee Cotton had now made unspecified
2 harassment claims against Chief Straub.

3
4 4.28 Chief Straub was not allowed to see the specific complaints being
5 made by employee Cotton, nor any letters and/or work product, investigative
6 notes or other related to Cotton's claims.

7
8 4.29 Chief Straub requested an investigation into Cotton's claims.

9
10 4.30 Chief Straub told the Mayor that, regardless of the perceived lack
11 of merit, any and all claims of such nature are *required* to be investigated for
12 the protection of *all* involved, and in this case including Chief Straub.

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14 4.31 The Defendants collectively refused to investigate.

15
16 4.32 The Defendants then transferred employee Cotton again from the
17 police department.

18
19 4.33 In the late summer of 2015, Defendant David Condon advised
20 Chief Straub that employee Cotton was now causing *him*, i.e. Defendant
21 Condon, difficulty.

22
23 4.34 On September 21, 2015, a Monday morning, before 7 a.m.,
24 Defendant City Administrator Theresa Sanders texted Chief Straub, requiring
25 him to report to Mayor Condon for a 7:00 a.m. meeting of unannounced
26 content.

1 4.35 At that meeting, Mayor Condon and City Administrator Sanders
2 told Chief Straub that he was being discharged *that* day, and was to
3 immediately submit a “resignation” to characterize the discharge as an agreed
4 resignation.
5

6 4.36 Chief Straub was told of the existence of two letters dated
7 September 18, 2015 accusing him of misconduct.
8

9 4.37 Defendants refused to show Chief Straub the letters.
10

11 4.38 Chief Straub denied allegations of improper conduct and
12 requested an investigation into whatever concerns were being raised by the
13 letters.
14

15 4.39 Defendants again denied Chief Straub any investigation.
16

17 4.40 Chief Straub was allowed to see the twin letters the following
18 morning, September 22, 2015, but only in the context of the Mayor offering
19 Chief Straub an alleged “opportunity” to participate in the shaping of the
20 Mayor’s press release that day announcing Chief Straub’s resignation.
21

22 4.41 The letters included stigmatizing claims, the accuracy of which
23 were contested.
24

25 4.42 Chief Straub received a copy of the City’s proposed press release
26 from the City, which included stigmatizing language, and which referenced the
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1 twin letters of September 18th.

2
3 4.43 No legitimate reason existed for the immediate public release of
4 such letters in the termination/resignation process.

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6 4.44 Chief Straub was unable to obtain any retraction of the
7 stigmatizing information prior to media release. The City offered no pre
8 publication hearing.

9
10 4.45 Defendants collectively refused to allow any delay in the
11 immediate publication of the twin letters, and on Sept. 22, 2015, at 3:51 p.m.,
12 through a City Spokesman, and told Chief Straub, "We're going to distribute in
13 five minutes."

14
15 4.46 The Defendant Mayor then "waived (attorney client) privilege"
16 to formally release his letters to the public.

17
18 4.47 At 4:47 p.m. on Tuesday, September 22nd, the City issued a press
19 release attaching its two stigmatizing letters for the public and the media's
20 consumption.

21
22 4.48 The precipitous release of these letters violated Frank Straub's due
23 process rights.

24
25 4.49 The letters' form, content, and writing evidence collusion between
26 the Defendants and others.

1 4.50 The letters include false claims by the alleged authors deeming
2 their written complaints necessary because of “a duty to protect our employees
3 and the citizens of Spokane.”

4
5 4.51 The letters falsely accused Chief Straub of untruthfulness, and
6 include claims that would seriously damage Chief Straub’s reputation,
7 standing, and associations in the community, and foreclose his ability to take
8 advantage of other opportunities in his field.

9
10 4.52 Following the City’s release of these two damaging letters, the
11 Defendant Mayor then announced to the media that employee Monique Cotton
12 had also filed claims of sexual harassment against Chief Straub.

13
14 4.53 The Defendant Mayor disseminated *this* information without ever
15 having investigated Cotton’s charges.

16
17 4.54 The charges were also inaccurate and stigmatizing.

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19 4.55 The Defendant Mayor publically presented Cotton as a “victim”
20 of Straub’s allegedly improper conduct.

21 4.56 While doing so, the Mayor knew of his own earlier refusal to
22 investigate employee Cotton’s accusations against Straub (or anyone else), he
23 knew of the departmental issues with Cotton, he knew of his own issues with
24 Cotton, and he had reason to doubt the veracity of her claims.
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1 4.57 All uninvestigated charges against Chief Straub were publicized
2 without need and without cause as the basis for Chief Straub's termination.
3

4 **V. ACTING PARTIES FOR LIABILITY**

5 5.1. The City of Spokane acted through its employees, Mayor David
6 Condon, City Attorney Nancy Isserlis, and City Administrator Theresa Sanders
7 to violate Frank Straub's civil rights.
8

9 5.2. All Defendants collaborated on the decision to precipitously
10 release stigmatizing information, and each agreed to that precipitous release.
11

12 5.3. The City of Spokane is liable for the acts of its employees and
13 agents referenced herein, as such actions stemmed from a custom, policy, and
14 practice of that entity, and were committed under color of law by the Mayor,
15 City Administrator, and City Attorney.⁵
16

17 5.4. The final policy-maker, for the purpose of imposing liability, is
18 the Mayor of the City of Spokane, Defendant David Condon.
19

20 5.5. This suit is against the Mayor in his official capacity and against
21 the City of Spokane, and punitive damages are sought against the City.⁶
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23 _____
24 ⁵ See, e.g., *Monell v. New York City Dept. of Social Servs.*, 436 U.S. 658, 690-92
(1978).

25 ⁶ See *Owen v. City of Independence*, 446 U.S. 662, 657 (1980).
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1 Constitution and laws, and each defendant is liable to him. *42 U.S.C. § 1983.*

2 6.2. The Fourteenth Amendment required that Frank Straub be
3 provided due process when his interest in liberty was threatened. ¹⁰

4 6.3. Frank Straub had a due process liberty right to hearing prior to the
5 Defendants' intentionally precipitous public dissemination of untested,
6 uninvestigated, and false stigmatizing claims. ¹¹

7 6.4. Frank Straub was denied any pre-dissemination hearing or
8 investigation to clear his name.

9 6.5. The Defendants' collective actions unnecessarily impugned Chief
10 Straub's liberty interest in his reputation, honor, and integrity. ¹²

11 6.6. The rapid publication of this stigmatizing information, while
12 refusing any name-clearing hearing, violated due process. ¹³

13 6.7. The City's actions were made in connection with the termination
14 of Frank Straub's employment as police chief, and/or the permanent alteration
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22 ¹⁰ *Morrison v. Brewer*, 408 U.S. 471, 481 (1982).

23 ¹¹ *Board of Regents v. Roth*, 408 U.S. at 569-71.

24 ¹² *Wisconsin v. Constantineau*, 400 U.S. 433 (1971).

25 ¹³ *Cox v. Roskelley*, 359 F.3d at 1106 .

1 of his status as a police chief.¹⁴

2
3 6.8. All Defendants knew that the established law at that time of their
4 dissemination prohibited each of them from disseminating stigmatizing
5 information about Chief Straub via the Internet, the City website, public press
6 conferences, TV interviews, and press releases, absent a prior name-clearing
7 hearing, and each intentionally violated this law.

8
9 6.9. Reasonable officials in the position of the Mayor, the City
10 Attorney, and the City Administrator would have known that each of their
11 respective conducts was unlawful, and each should be denied qualified
12 immunity.

13
14 6.10. The Defendants' actions were reckless, deliberately indifferent to
15 the rights of Frank Straub in his name and reputation, intentionally damaging,
16 and constituted a conspiracy to violate rights, and conspiracy to defame and
17 intentionally inflict emotional distress.

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19 6.11. The damage caused by the Defendants, individually and
20 collectively, was, and is, irreparable.

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22 **Tort Claim.**

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25 ¹⁴ *Llamas v. Butte Community College Dist.*, 238 F.3d at 1129.

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6.12. The Defendants' public accusations of dishonesty, abusiveness, hostile work environment, and sexual harassment are false and defamatory.

6.13. The Defendants' conduct in publicizing such accusations without cause intentionally inflicted emotional distress on Frank Straub.

Contract Claim.

6.14. The Defendants' actions breached the implied duty of good faith and fair dealing inherent in the Defendants' contract with Frank Straub, and caused damage.

Damages.

6.15. Frank Straub has suffered permanent and irreparable damage in the form of loss of reputation, status, standing and association, gainful employment, income, and the opportunity for future gainful employment in his field and at his level of expertise, as well as pain and suffering and emotional distress.

VII. REQUEST FOR RELIEF.

WHEREFORE, Straub claims relief as follows:

7.1. That judgment be entered against the Defendants, individually and collectively, for the damage caused by their violation of Frank Straub's civil rights, and for the damage caused by all tort and contract claims pled;

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7.2. That judgment be entered for all compensatory, liquidated, and punitive damages as allowed by law.

7.3. That judgment be entered for pre- and post-judgment interest on all economic damages awarded.

7.4. That a judgment for punitive damages be entered against the City of Spokane;

7.5. That judgment be entered for all attorney fees and costs incurred by Frank Straub under 42 U.S.C. § 1983, and 42 U.S.C. § 1988.

VIII. JURY DEMAND.

8.1. Plaintiff Frank Straub demands a jury of ten in the above entitled matter.

DATED this 2nd day of February, 2016.

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/s/Mary Schultz
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