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November 2, 2023

City of Cottonwood
City Council
Mayor Tim Elinski
Jennifer Winkler, City Attorney
Jesus Rodriguez, Deputy City Manager
Scott Douglass, City Manager
Councilmember Helaine Kurot
827 N. Main St.
Cottonwood, Arizona 86326

Steve Coleman
Pierce Coleman PLLC
7730 E. Greenway Road, Suite 105
Scottsdale, AZ 85260

Geoffrey M.T. Sturr
Osborn Maledon, P.A.
2929 N Central Avenue
Phoenix, AZ 85012

Re: Stephen Gesell v. City of Cottonwood et al
DEMAND FOR PRESERVATION OF RECORDS
NOTICE OF CLAIM PURSUANT TO A.R.S. §12-821.01

Dear Persons and Entities listed above:

On behalf of Stephen Gesell, former Chief of Police for the City of Cottonwood, I am serving this Notice of Claim pursuant to A.R.S. §12-821.01. Per the statutory requirement, this claim can be settled for \$625,000.00. As you are aware, if we do not obtain a resolution prior to 60 days from

the date of service through payment of the demand or if we receive your denial prior to that time, we will be pursuing a lawsuit.

This matter involves wrongful termination and related issues set forth herein. We are making a demand for preservation of all records including but not limited to official and personal communications related to this matter.

Notably at the outset, the letter from the City of Cottonwood stating that Mr. Gesell has no appeal rights under A.R.S. §33-1107 is incredibly unlawful and whoever your legal advisor is should be seriously reviewed. It is only the judicial review that is not applicable to a chief. Mr. Gesell followed A.R.S. §33-1106.

We are also aware of violations as to several other law enforcement officers at the hands of the City Council and their legal advisors. These matters will likely be a basis for the punitive damages that Mr. Gesell will also be seeking. The Council has used the executive session excuse to violate the open meeting law and to violate individuals' rights, an action that cuts to the heart of the intentional harm caused to Mr. Gesell and others.

Background Information Supporting Claim

Beginning in May of 2023, City of Cottonwood Mayor Tim Elinski and then Interim City Manager Jesus "Rudy" Rodriguez attempted to leverage a ACRD findings report to disparage the Cottonwood Police Department and its Chief of Police by manipulating the City Council. The Findings report was placed on the agenda in a City Council Executive Session without my client's knowledge and despite Chief Gesell providing solicited direction to Steve Horton, the former City Attorney, to enter conciliation ten days prior. He was unaware at that time that Mayor Elinski had instructed Mr. Rodriguez to exclude him from the May 9, 2023 meeting. Suspecting malicious intent, he contacted two Councilmembers who were perplexed that he was not included, considering they had been given no context to the inflammatory report.

Mr. Rodriguez sent an email to the H.R. Director one hour prior to the meeting and instructed her to attend and to tell Chief Gesell he was not permitted in the meeting. The mayor asked Chief Gesell if he would be available to answer questions at the executive session just prior to its start and he agreed. Despite that action, Mayor Elinski misled Chief Gesell and the Council by acting as if he wanted Chief Gesell to be included in the executive session. Despite the protests of multiple Councilmembers, he was not allowed to join. After the meeting, Chief Gesell contacted Mr. Rodriguez to find out why he was excluded. Mr. Rodriguez admitted he and the Mayor were attempting to influence the balance of the City's elected body. Mayor Elinski also admitted this plan in an email authored later that week stating he did not want Chief Gesell to insert himself into the discussion, despite the fact that the session involved the ACRD complaint.

Two days later, Chief Gesell was placed on administrative leave by Mr. Rodriguez at the request of Mayor Elinski. No reason was listed. Mr. Rodriguez was only an interim City Manager and the

new City Manager Scotty Douglas was a few days away from beginning his position. It was well known that Mr. Rodriguez and Chief Gesell had a long history of not agreeing on issues impacting the City and it appears to have been a parting shot for past professional conflicts involving Chief Gesell, Mr. Rodriguez and his staff. In addition, Mayor Elinski has a history of acting outside the legal process required for a municipality and placing his personal objectives over his professional duties. He is subject to a recall effort and we are aware of four active ACRD civil rights complaints involving Mayor Elinski, including one from Cottonwood City Councilmember Lisa Duvernay.

When the new City Manager Scotty Douglass and new City Attorney Jennifer Winkler began working, the evidence will show that they both chose to support the mayor's malicious direction amplifying the retaliatory efforts. Ms. Winkler recklessly sent Chief Gesell the audio of the May 9th Executive Session as an amendment to the Notice of Investigation. In that recording Steve Coleman and his associate Christina Estes-Werther led or allowed digression from the narrow scope of determination only.

In that "executive session," despite the statute not being followed, several Cottonwood Police Department sworn managers were discussed and maligned without cautionary restraint by the two Pierce-Coleman attorneys. The discussion ended with the assertion that the agency had cultural and behavioral issues that necessitated corrective action. This false narrative would later be weaponized against my client. The preclusion of the Chief from this session eliminated the ability to challenge the false claims and correct misperceptions cast during the meeting. The executive session resulted in numerous statutory violations that most likely will end up with numerous lawsuits due to the unlawful content of that session. The recording was released by Ms. Winkler and instead of simply owning up to what she had done, she tried to bully Chief Gesell and his family about the disclosure and attempted to conceal, minimize, and deflect her mistake which resulted in Chief Gesell filing a retaliatory complaint with the HR department, supported by emails and notations attached as evidence.

Mr. Steve Coleman assumed responsibility for that investigation, however, Chief Gesell has never seen a report or any resolution. Ms. Winkler exposed the City to liability and likely violated A.R.S. §38-510 (a), a class 1 misdemeanor, yet we are unaware of any repercussions she faced from the City Council. Instead, Chief Gesell was placed on Administrative Leave and provided a Notice of Investigation that set forth no terminable events. Despite my client's repeated objections to conclusions in Mr. Geoffrey Sturr's report, the full investigative report was withheld until the Chief insisted on seeing a copy prior to agreeing to settlement terms. During a recorded conversation with Mr. Coleman, he falsely stated "there is no report" though it has been determined that the investigation was completed weeks earlier. There were multiple offers to settle without releasing this report that were rejected based on the belief that the report was misleading if not flat out false. When it was received, it was clear that Mr. Sturr's report was tailored to meet his client's narrative. Further, even if the listed allegations and findings were legitimate, which is denied, they are not cause for terminating any employee, much less a chief of police with a sterling record of public service.

Mr. Douglass claims he consulted with Ms. Winkler, who was the subject of the Chief's retaliatory complaint, in his July 25th email to Council. The email implies Ms. Winkler advised him to send it to Mr. Coleman rather than leave that task to the HR Director as is standard practice. It was around this same time that Chief Gesell discovered Mr. Douglass had altered his Winkler complaint by removing the ten page email attachment and his notations from a singular PDF document, rescanning the document, and then sending the altered Complaint to the Council as if it were in the original form, thus altering a public record.

Councilmember Kurot defamed Mr. Gesell when she told Councilmember Duvernay that Mr. Gesell "threatened" Mr. Rodriguez and the Mayor he had "crossed the line." Additional notices of claim may be served if it is determine that others made defamatory remarks about Mr. Gesell.

As discussed in more detail below, I have enclosed some of the relevant documents for your review of this Notice of Claim:

- A. Administrative Leave Notice- Served by Rodriguez on May 11th with no details;
- B. Notice of Investigation- Received undated via Fedex five weeks after being placed on leave and signed by Mr. Douglass;
- C. Chief Gesell's Statement submitted to Osborn Maledon Attorney Geoffrey Sturr on July 12, 2023 which includes a summary of the chronology of events up to the July 7th interview with Mr. Sturr;
- D. Retaliatory Complaint against Jennifer Winkler (Original form);
- E. False statements and emails by Rodriguez and Mayor Elinski regarding Chief Gesell's alleged conduct;
- F. Retaliatory Complaint/Commission of a Crime Complaint regarding Mr. Douglass;
- G. Settlement Offer Response to Steve Coleman;
- H. Notice of Intent to Terminate; and
- I. Notice of Termination.

Arizona Attorney General Civil Rights Division Matter (“ACRD”)

As I am sure you are aware, a complaint was made to the ACRD by Cottonwood police officer Keidi Dever, and Chief Gesell was interviewed as part of that matter, represented by a Pierce Coleman attorney. As information is further uncovered and we are made aware of additional violations, there may be a claim against the State of Arizona. The City of Cottonwood contracted with the law firm Osborn Maledon in what should have been a legitimate investigation. However, it appears to have been manipulated to be some basis for Mr. Gesell’s termination. As established prior to the unlawful termination proceeding, Mr. Coleman had repeatedly indicated Mr. Gesell’s role in the ACRD findings report was based entirely on an obscure ADA technicality necessitating Officer Dever’s return to her former assignment as a Detective. Mr. Gesell had approved the action based on the advice of former City Attorney Steve Horton and the Pierce Coleman law firm. Those attorneys failed to advise Chief Gesell against choosing not to immediately return Officer Dever to her assignment. This is particularly disturbing considering Mr. Coleman aggressively aided the City’s efforts in terminating Chief Gesell and likely contributed to the content in both the Letter of Intent and Termination notice in addition to other terse correspondence signed by Mr. Douglass.

As early as June 9th, 2022, the attorneys had been fully aware of Mr. Gesell’s intent to transfer Officer Dever to Patrol months prior to the ACRD report. Neither Mr. Horton nor Mr. Coleman ever disclosed these failures to the City Council and the Council may be unaware that Chief’s Gesell’s intentions were also shared with (then) City Manager Ron Corbin and Human Resources Director Amanda Wilber. Mr. Corbin and Ms. Wilber did not receive any disciplinary action to our knowledge and instead Ms. Wilber aided in the unlawful termination. Chief Gesell was unlawfully terminated and publicly cast as a rogue administrator who discriminates against female employees with disabilities. This false narrative has destroyed Chief Gesell’s reputation and character such that his future career path is forever damaged.

Jim Ledbetter represented Officer Dever related to the Craig-Tiger Act last year. Previously unknown to Chief Gesell, Mr. Ledbetter told Mr. Horton that the ACRD would take issue with not returning Officer Dever to her assignment and Mr. Horton flippantly disagreed with him. The officer’s claims had been discussed via phone and email for months preceding the ACRD findings report with no concerns mentioned by Pierce Coleman attorneys, the former City Attorney Steve Horton, Mr. Rodriguez, HR Director Amanda Wilber, or the former City Manager Ron Corbin.

Despite this information, the City has used Mr. Gesell as a scapegoat, either unknowingly or intentionally, to be determined once discovery is complete. This assessment is supported by the fact that the ACRD ADA issue was never included in the City’s contracted investigation or any other document preceding Mr. Douglass’s letter of intent to terminate my client. Additionally, long after the conclusion of Mr. Sturr’s investigation, Mr. Coleman again asserted his opinion that the ADA violation was an “unintentional and technical error” during mandated training sessions with multiple City employees. During the mandated training sessions, Mr. Coleman told

Commander Braxton, Sergeant Sinn and Sergeant Scott that the one ADA finding was an obscure technicality that he would have advised against if he had been consulted. However, Mr. Coleman, and/or his subordinate attorney, Steve Horton, Ron Corbin and Amanda Wilber knew the Chief planned on assigning Officer Dever to Patrol for justifiable reasons yet never advised him against it. Once again, there were no other disciplinary actions connected with the ACRD findings report taken against any other employee and yet my client was terminated.

The eleventh hour inclusion of the ACRD report with the letter of Intent to Terminate dated September 7th is a blatant violation of A.R.S. §38-1104 which requires that before any interview in a termination investigation that “the employer shall provide the law enforcement officer with a written notice informing the officer of the alleged facts that are the basis of the investigation, the specific nature of the investigation, the officer's status in the investigation, all known allegations of misconduct that are the reason for the interview and the officer's right to have a representative present at the interview.” Here, the ACRD report was never provided as a basis for the disciplinary investigation nor was it included in Mr. Sturr’s findings.

Instead of acknowledging that Chief Gesell was given improper legal advice about the Officer Dever matter and his intentions were made clear to the Human Resources Director and the City Manager, there was unsupported blame placed on him in what was a personal vendetta by the Mayor, Mr. Rodriguez and Councilmember Kurot, facilitated by Mr. Douglass, Ms. Winkler and Mr. Coleman. The reasons given in the termination letter also referred to the May 9 incident and then referenced that he “discriminated” against a “female detective.” The termination letter also blatantly violated Arizona law by making false legal conclusions about Chief Gesell’s rights under Arizona law.

Wrongful Termination

There is a strong legal basis for Mr. Gesell’s wrongful termination case as well as other related counts. The following is not intended as a complete list of factual or legal claims but is provided as required under A.R.S. §12-821.01 to provide you with the facts sufficient to make a decision on the claim.

Appeal of the Termination

Chief Gesell was notified of his termination on September 14, 2023. Pursuant to A.R.S. §38-1106, he timely appealed the decision. Instead of following the proper procedures for such an appeal as set forth in Arizona law, the City Manager falsely replied that Chief Gesell was not entitled to an appeal because he was the Chief of Police. However, a plain reading of the statutes states that only an officer employed by a state agency is excluded.

Had the City followed the law and evaluated his appeal, serious statutory and constitutional violations would have been publicly exposed, hence we believe it is for that reason that the appeal was denied by the City Manager. We are extremely confident the appeal would have

shown the following violations by the City and that the other people subject to this Notice of Claim. Mr. Sturr's "investigation" will be shown to have been intentionally biased to conform to the City's false narrative. One particular concern is that although the Attorney General's ACRD report was completely excluded in both the Notice of Investigation (received on June 16th) and completely absent in Mr. Sturr's September 5 improper report, it was included in the basis for Mr. Gesell's termination. The Notice of Investigation related solely to the alleged conduct on May 9, 2023. The Notice of Intent to Terminate referred to the May 9 incident and the alleged discrimination. At no time over the four months my client was on administrative leave was the ACRD report referenced as a concern. In fact, Mr. Coleman repeatedly only referenced the Chief's tone of voice when speaking to Mr. Rodriguez as the justification for termination during several recorded phone calls.

Lack of any Lawful Justification as Required by A.R.S. §38-1103

As the City and its legal advisors should be aware, the statute states that "a law enforcement officer is not subject to disciplinary action except for just cause." None of the exceptions apply here as Chief Gesell was not employed by the State of Arizona or an agency of the State but by a municipality. Here, there is clearly no just cause for the termination. We believe it originated with some personal or professional bias against Chief Gesell and culminated in retaliation for the reporting unlawful behavior by some of the people named herein.

The reasons given by the City of Cottonwood for the termination, are specifically responded to as follows:

1. Events of May 9 and
2. The discriminatory treatment of a female detective.

Given these two articulated reasons, there was no just cause for the termination. Further, the tone and language in the Notice of Termination by Scotty Douglass is not only completely unprofessional, but the Notice also shows clear bias and an attempt to justify what is a decision based on information which Mr. Douglass knew very well to be false. It did not end there- Mr. Douglass doubled down to try and justify his outrageous behavior by sending another letter on September 21, 2023, defaming my client and calling him "dishonest" and trying to somehow retroactively supplement the denial of Chief Gesell's right to appeal and desperately add additional evidence in an unavailing attempt to support termination.

Events of May 9:

As Chief Gesell repeatedly tried to convey, the false information in the Termination Letter should have been addressed on an appeal, however, he was denied that right. Had due process been followed, he would have been able to present his case on appeal and dispute these false claims. Despite the unsupported legal conclusions in the Notice of Termination and the September 21 letter from Mr. Douglass, Chief Gesell was entitled to due process and equal

protection under the law based on A.R.S. §38-1101 et seq. despite Chief Gesell being an “at will employee” as you claim. Due process requires "notice and an opportunity to be heard in a meaningful manner and at a meaningful time," including about the sanction imposed. *Wassef v. Ariz. State Bd. of Dental Exam'rs*, 242 Ariz. 90, 93 ¶ 12, 393 P.3d 151, 154 (App. 2017) When an employee has a property right in continued employment, that right cannot be deprived without due process. *Carlson v. Ariz. State Pers. Bd.*, 214 Ariz. 426, ¶ 14, 153 P.3d 1055, 1059 (App. 2007); see Ariz. Const. art II, § 4. See *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 535 (1985) ("a public employee who can be discharged only for cause" has a right to due process).

ACRD Complaint:

The decision that Chief Gesell discriminated against a female detective is highly disputed. Astoundingly, your City Manager, Human Resources Director and your own attorneys were aware of what Chief Gesell's plan was and either agreed or failed to advise him that he would commit a technical ADA violation. In fact, these same attorneys later held employee training sessions in which they acknowledged that the alleged violation was based on some obscure ruling and that it was a technicality. These actions by the attorneys with knowledge that Chief Gesell's actions were not discriminatory were apparently either ignored by Mr. Douglass and the two aforementioned Council members or not disclosed by the attorneys. The investigation by the AG failed to interview the subordinate PD managers involved and was grossly inaccurate. Discovery will determine what transpired with the State as well as why the City of Cottonwood was not interested in the truth but instead, intended to malign the high-performing police department my client led for over seven years.

Failure to Conduct the Appeal

As stated above, the refusal to follow the appeal process is in and of itself a basis for wrongful termination under A.R.S. §23-1501 which states that “(b) The employer has terminated the employment relationship of an employee in violation of a statute of this state.” As the statute authorized an appeal as part of the process that was not permitted, there is an additional basis for the wrongful termination. This claim is in addition to the failure to establish the statutorily required just cause provision in A.R.S. §38-1103 as well as terminating Chief Gesell after violating the Open Meeting laws, falsifying official records, retaliation, and altering the outcome of investigations. As A.R.S. §38-1101 et seq. does not provide a remedy to law enforcement officer for the violation of the statute for not allowing an appeal, Mr. Gesell has the right to bring a tort claim for wrongful termination.

Under A.R.S. §38-1106, a law enforcement officer that prevails in an appeal where a termination has been reversed shall be awarded retroactive compensation from the date of the officer's separation to the date of reinstatement. The only time a Chief is excluded from the process is the right to judicial review of the appeal and as such, the wrongful termination is the appropriate method and there is no other administrative remedy to pursue. We strongly believe, however,

that had an appeal been allowed as was his right under the law, Mr. Gesell would have been reinstated with back pay. Whoever provided the legal advice that Chief Gesell was not entitled to an appeal does not understand the basic statutory rights. The only reference to exclusion of a Chief is under A.R.S. §38-1107 as to judicial review of the appeal.

If an appeal had proceeded as Mr. Gesell was entitled to, he would have obtained the audio recordings of interviews conducted throughout the alleged investigation. A red flag is clear in that the City Manager has informed Mr. Gesell that his interview was the only interview recorded. An appeal would also have allowed questioning of others interviewed to overcome this egregious error or intentional decision by Mr. Sturr not to record each interview if in fact that is what occurred. Mr. Gesell requested as part of this appeal that the complete investigation including all recordings as was his right under A.R.S. §38-1106(a) and the Notice of Claim hereby includes a demand for presentation of those records which unfortunately is necessary given that public records have already been altered.

Retaliation Claims

Mr. Gesell discovered manipulation of other council members by Mayor Elinski and interim City Manager Rodriguez after Mr. Gesell complained about suspected retaliation by then Interim City Manager Jesus “Rudy” Rodriguez. Mr. Gesell reported violation of critical City policies and criminal acts under A.R.S. §38-510(A) and A.R.S. §13-2407(A)(2) by City Manager Douglass. These Complaints were dated July 21, 2023 and August 29, 2023. They were “mishandled” by Human Resources and never addressed or investigated. Mr. Gesell received the Notice of Intent to Terminate on September 7, one week after filing a complaint revealing Mr. Douglass’ unlawful act of altering a government document that contained the complaint against Ms. Winkler. Beyond attempting to minimize Ms. Winkler’s conduct, Mr. Douglass removed key email threads that illuminated the Chief’s unsuccessful attempts to receive a copy of an email sent by the former City Attorney that would show Douglass, Rodriguez and Steve Coleman knew Chief Gesell had provided direction to enter conciliation administratively without Council action. This information had been withheld from Council to further defame and cast aspersions toward Chief Gesell.

A.R.S. §23-1501 provides for a wrongful termination claim if the “employer has terminated the employment relationship of an employee in retaliation for any of the following:

(ii) The disclosure by the employee in a reasonable manner that the employee has information or a reasonable belief that the employer, or an employee of the employer, has violated, is violating or will violate the Constitution of Arizona or the statutes of this state to either the employer or a representative of the employer who the employee reasonably believes is in a managerial or supervisory position and has the authority to investigate the information provided by the employee and to take action to prevent further violations of the Constitution of Arizona or statutes of this state or an employee of a public body or political subdivision of this state or any agency of a public body or political subdivision.

Defamation

While some of the investigative matters are protected and may be the subject of absolute or qualified immunity, any publication of those matters that contain false claims about Mr. Gesell constitute defamation. Further, if only qualified immunity exists, we will be able to show malice or bad faith. *See S.H. Kress & Co. v. Self*, 22 Ariz.App. 230, 232, 526 P.2d 754, 756 (1974). We will be closely exploring the context of any and all of these statements as they diminish my client's character and professional reputation. These false documents have been shared via print and TV media outlets both in Arizona and in the Chief's hometown in California. Acts of malice, even if contained within internal documents originally, are still defamatory. The latest evidence of this libelous assault can be found in Mr. Douglass' September 21, 2023 correspondence on City of Cottonwood letterhead. In this document Mr. Douglass challenged my client's record as a highly respected ethical and principled leader by falsely claiming he had been untruthful in a desperate attempt to retroactively cast the perception that the termination was justified.

Furthermore, Council Member Kurot's false claim that Chief Gesell "crossed the line" and "threatened" the Mayor and Mr. Rodriguez is also defamatory. Though Mr. Sturr chose not to explore this when he interviewed Ms. Kurot, the investigation revealed zero proof of the damaging rumor she had spread. Councilmember Kurot herself provided no evidence to support her reckless claim. As we further investigate, we anticipate other examples of defamation may arise.

Tampering With Public Records

City Manager Scotty Douglass was provided a Complaint by Mr. Gesell about Ms. Winkler's release of the May 9 executive session and her attempt to place blame on Chief Gesell. Mr. Douglass was required by law to keep documents submitted to the City in the original form or disclose any alterations. However, Mr. Douglass printed the singular PDF then destroyed 10 pages before rescanning the remaining four pages. He then sent the surreptitiously altered retaliatory complaint to the entire council without any of the supportive attachments that he received, passing it off as a complete and official record that had been submitted by Mr. Gesell. A.R.S. §13-2407 is a criminal statute that makes it a felony to tamper with a public record.

Open Meeting Law Violations

On May 10, 2023, during what was labeled as "executive session" to discuss the report from the ACRD, the City Council and the actors named herein openly violated Arizona law regarding executive sessions. We know this as Jennifer Winkler, the City Attorney, released the recordings and thus made the information public. During a conference call with the Chief on May 10th with Mr. Douglass, Ms. Wilber and Mr. Coleman, Mr. Coleman indicated they did not want Chief Gesell included in the e-session even though the ACRD complaint was as to the

Cottonwood Police Department, claiming they didn't want an open meetings law violation and the meeting was strictly for legal advice. Ms. Wilber's presence was not discussed in advance nor would there be a reason to include a human resources representative in an executive session for the purported reason given.

The purported reason for this executive session fell under A.R.S. §38-431.03(1)(3) "Discussion or consultation for legal advice with the attorney or attorneys of the public body." However, the City Council clearly proceeded under A.R.S. §38-431.03(a)(1) which required that it provide the officer, appointee, or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether the discussion or consideration should occur at a public meeting. Prior to conducting the executive session, not only did the Council not advise Chief Gesell or others they would be discussing personnel matters, but they also specifically precluded Chief Gesell from appearing. Had he been advised, he would have demanded as was his right under the statute, that the discussion or consideration occur at a public meeting.

What we know from that session is that any subsequent attempt to include Mr. Gesell's role in the ACRD complaint and findings was unwarranted. Specifically, the information contained (for the first time) in both the letter of intent and notice of termination that failure to return Officer Dever to her position as a basis for the termination runs contrary to the known facts. This assertion was rejected by those in the City Council and their lawyers as evidenced during the executive session discussion as well as in preceding and subsequent communications. Additionally, it ignores that Mr. Gesell relied on the advice of the City's attorneys.

In this case, Chief Gesell sought to appear before the City Council considering the Council had been given no context to the ACRD report and there would be obvious questions. Following the Mayor's deceptive statements, Chief Gesell was excluded from the meeting with the justification being stated as the Council was "just getting legal advice." Legal Direction only was emphasized multiple times as rationale for excluding the Chief. However, HR Manager Amanda Wilber was included in the "executive session" as well as attorneys from Pierce Coleman PLLC. The executive session turned into a violation of the Open Meetings law. Mr. Coleman began early on to tell the Council about an extramarital affair involving several PD employees. The discussion then centered around the "Kuhlt case" and who (in management) might still be at PD that was involved in the "Kuhlt case." Commander Braxton is mentioned however, it is not conveyed he was a peer detective at the time with Kuhlt who actually submitted testimony to the AG on her behalf. We believe Mr. Coleman knew these facts as he was involved in defending the City.

The discussion appears to center around casting the perception that there was rampant discrimination in the police department instead of the issue in the Kuhlt being the ability to meet fitness standards.

The Mayor refers to the PD at the time of Kuhlt's case as heartless and how Cottonwood Police (led by Chief Gesell) have a bad reputation. This expressed sentiment ran counter to Mr.

Coleman's assessment of the ACRD report he explained at length earlier in the meeting. Specifically, Mr. Coleman disagreed with all findings sans the ADA technicality and agreed with a Councilmember's comment that the report was "bullshit." The conversation was allowed to continue well outside the legal parameters with further discussion delving into personnel matters unrelated to the claimed executive session. Mr. Coleman suggested that the police department needs training and he can assist. There were numerous clear open meeting law violations in this session that have caused harm to both my client and multiple Cottonwood PD employees who may still be unaware of what occurred as the City has failed to notice them before or months after the May 9th meeting.

Punitive Damages

"In appropriate circumstances, punitive damages may be recovered in an action for wrongful discharge in violation of public policy. . . ." *Thompson v. Better-Bilt Aluminum Prods. Co., Inc.*, 171 Ariz. 550, 555-56 (1992). To obtain punitive damages, a plaintiff must prove that Defendants' "evil hand was guided by an evil mind." *Rawlings v. Apodaca*, 151 Ariz. 149, 162 (1986). An evil mind can be found where (1) "defendant intended to injure the plaintiff[.]" or (2) "although not intending to cause injury, defendant consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to others." *Id.* "While the necessary 'evil mind' may be inferred, it is still this 'evil mind' in addition to outwardly aggravated, outrageous, malicious, or fraudulent conduct which is required for punitive damages." *Thompson*, 171 Ariz. at 556 (citation omitted). Here, there is more than sufficient evidence for Mr. Gesell to pursue a punitive damage claim in any lawsuit. There is ample evidence the City built a case they knew was fictitious and maliciously harmed my client. More evidence will be uncovered during discovery.

Legal Claims

While this list is in no way required or exhaustive, I am summarizing the likely legal claims that will be made if this matter does not settle.

- Wrongful Termination pursuant to A.R.S. §23-1501 based on the violation of A.R.S. §38-1101 et seq. violations;
- Wrongful Termination based on Retaliation, reporting of wrongful disclosure, Tampering with Public Records, of A.R.S. §23-1501;
- Violation of Executive Session- failure to provide adequate notice etc., failure to include Chief Gesell, falsifying the basis for going into executive session or exceeding the bounds of a lawful executive session; I further direct you to A.R.S. §38-431.07 which states that under the POBR rules, had Chief Gesell been permitted to appeal, he would have sought the disclosure of the executive session;

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• Tampering with a public record; A.R.S. §13-2407 states that a person commits tampering with a public record if, with the intent to defraud or deceive, such person knowingly: 1. Makes or completes a written instrument, knowing that it has been falsely made, which purports to be a public record or true copy thereof or alters or makes a false entry in a written instrument which is a public record or a true copy of a public record. . . "Public record" is defined as a record is a "public record" which is required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law or directed by law to serve as a memorial and evidence of something written, said or done. *Mathews v. Pyle*, 251 P.2d 893, 75 Ariz. 76 (1952). Here, the City was required to maintain the Complaint filed by Mr. Gesell against Ms. Winkler but instead, Mr. Douglass surreptitiously altered that document before presenting it to Council;

• 42 U.S.C. § 1983 Civil Rights violation, constitutional violations for failing to follow state statutory rights;

• Defamation, this claim requires that a plaintiff show the defendant published a false and defamatory communication and that the defendant "(a) knows that the statement is false and it defames the other, (b) acts in reckless disregard of these matters, or (c) acts negligently in failing to ascertain them." *Rowland v. Union Hills Country Club*, 757 P.2d 105, 110 (Ariz. Ct. App. 1988) (citation omitted). To be published, a communication must be made to a third party. *Dube v. Likins*, 167 P.3d 93, 104 (Ariz. Ct. App. 2007).

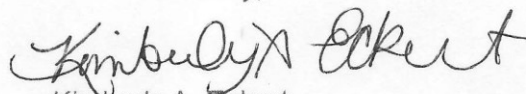
Damages

My client has suffered significant damages due to the destruction of his reputation and the loss of income AS SET FORTH ABOVE. Punitive damages will also be likely to the City and individuals for violating the statutes referenced above. His ability to find other employment or contract work following his highly successful 34 year law enforcement career has now been destroyed due to the actions of the people listed herein.

Conclusion

My client seeks justice, and to be made whole from the damage he suffered. Chief Gesell will resolve this matter for the amount of \$625,000.00 which is approximately three years of his anticipated salary and all benefits. Please feel free to contact me regarding your position on this matter.

Sincerely,



Kimberly A. Eckert

Attorney for Chief Steve Gesell