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Attorney for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STEPHEN GESELL,

Plaintiff,

) Case:

) VERIFIED COMPLAINT

v.

CITY OF COTTONWOOD, a municipal
corporation, TIM ELINSKI, an individual,
JESUS RODRIGUEZ, an individual,
SCOTTY DOUGLASS, an individual,
JENNIFER WINKLER, an individual,
AMANDA WILBER, an individual, and
HELAINÉ KUROT, an individual,

Defendants.

Plaintiff Stephen Gesell, by and through undersigned counsel, for his Complaint
alleges as follows:

1. Plaintiff currently resides in Arizona, and at all times relevant to this matter
was a resident of Arizona, Yavapai County.

2. Defendant City of Cottonwood (“Cottonwood”) is a municipal corporation
with its residence in Yavapai County, Arizona. Cities "are political subdivisions of the

1 state." *City of Tucson v. Fleischman*, 152 Ariz. 269, 731 P.2d 634, 637
2 (Ariz.Ct.App.1986).¹

3 3. Defendant Tim Elinski is an individual and was at all relevant times, the
4 Mayor of Cottonwood. He acted under color of law at relevant times herein.

6 4. Defendant Jesus Rodriguez, Deputy City Manager is an individual and was
7 at all relevant times, portraying himself as the Interim City Manager of Cottonwood with
8 the assistance of Defendant Elinski. He acted under color of law at relevant times herein.

10 5. Defendant Scotty Douglass is an individual and was at all relevant times,
11 the City Manager of Cottonwood. He acted under color of law at relevant times herein.

13 6. Defendant Jennifer Winkler, an individual and was at all relevant times was
14 the City Attorney for the City of Cottonwood who acted under the color of law as at
15 relevant times herein.

17 7. Defendant Amanda Wilber, an individual and was at all relevant times was
18 the Human Resources Manager for the City of Cottonwood who acted under the color of
19 law as at relevant times herein.

21 8. Defendant Helaine Kurot is an individual and a council member who acted
22 under color of law at relevant times herein.

23 9. Venue is proper in this Court. Jurisdiction in appropriate in this Court
24 pursuant to A.R.S. §12-122 et seq..

26
27 ¹ Arizona Rule of Civil Procedure Rule 17(d) states that "actions brought by or against a
28 county or incorporated city or town shall be in its corporate name." The City Council is a
department of the City of Cottonwood. *See DeGroot v. City of Mesa*, No. CV 07-1969-
PHX-MHM (D. Ariz. Feb. 25, 2009).

1 10. This case is a Tier 3 case and not subject to arbitration. A jury trial is
2 demanded.

3 11. Beginning in May of 2023, City of Cottonwood Mayor Tim Elinski and
4 then purported Interim City Manager Jesus “Rudy” Rodriguez attempted to leverage an
5 Arizona Civil Rights Division discrimination report (“ACRD Report”), in order to
6 disparage and harm the Cottonwood Police Department and its then Chief of Police,
7 Plaintiff Stephen Gesell, (“Chief Gesell”) in part by manipulating the City Council,
8

9
10 12. The ARCD Report was put on the May 9, 2023 agenda without Chief
11 Gesell’s knowledge or input and despite the fact that Steve Horton, the former City
12 Attorney, had sought direction from Chief Gesell and they had agreed to enter
13 conciliation ten days prior. Exhibit A, City's Response to ACRD Report showing defenses.
14

15 13. Chief Gesell was unaware at that time that Defendant Elinski had instructed
16 Defendant Rodriguez to exclude him from the May 9, 2023 meeting.
17

18 14. Chief Gesell contacted two Councilmembers who were perplexed that he
19 was not included, considering they had been given no context to the report.
20

21 15. Defendant Rodriguez sent an email to the Human Resources Director
22 Defendant Amanda Wilber one hour prior to the meeting and instructed her to attend and
23 to tell Chief Gesell he was not permitted in the meeting. She did so.
24

25 16. Defendant Elinski asked Chief Gesell if he would be available to answer
26 questions at the executive session just prior to its start and he agreed. Despite that action,
27 Defendant Elinski misled Chief Gesell and the Council by acting as if he wanted Chief
28 Gesell to be included in the executive session prior to the session.

1 17. Even though there were protests of multiple Councilmembers, Chief Gesell
2 was not allowed to join and after the meeting, Chief Gesell contacted Defendant
3 Rodriguez to inquire about the reason he was excluded.

4 18. Defendant Rodriguez admitted he and Defendant Elinski were attempting
5 to influence the balance of the City's elected body. Defendant Elinski also admitted this
6 plan in an email authored later that week stating he did not want Chief Gesell to "insert
7 himself" into the discussion, despite the fact that the session involved the ACRD Report.
8 Exhibit B, Emails from Defendants Rodriguez and Elinski.
9

10 19. Two days later, Chief Gesell was placed on administrative leave by
11 Defendant Rodriguez at the request of Defendant Elinski and it was later learned that
12 Defendant Elinski told Defendant Rodriguez to fire Chief Gesell. No reason was listed
13 for the administrative leave at the time. Exhibit C, Administrative Leave Notice; Exhibit
14 D, Notice of Investigation.
15

16 20. Defendant Rodriguez portrayed himself as an interim City Manager and the
17 new City Manager, Defendant Scotty Douglas was a few days away from beginning his
18 position. Defendants Rodriguez and/or Elinski alluded to the investigator that Chief
19 Gesell had behaved in a threatening way on May 9 which was later used as the basis for
20 the investigation into Chief Gesell. Defendant Rodriguez also alluded to "actions" Chief
21 Gesell took against Defendant Elinski and Defendant Wilber as justification for placing
22 Chief Gesell on administrative leave. These "actions" were never identified. Furthermore,
23 Defendant Rodriguez would later privately admit Defendant Elinski demanded that he
24 fire Chief Gesell and told him to place him on administrative leave "at a minimum."
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1 21. Chief Gesell has come to learn that Defendant Rodriguez may not have had
2 the authority to place Chief Gesell on administrative leave as he was not properly
3 appointed to the interim position by the Council per City Ordinance.

4 22. Defendant Rodriguez and Chief Gesell had a long history of not agreeing
5 on issues impacting the City and it appears to have been a parting shot for past
6 professional conflicts involving Chief Gesell. Moreover, Defendant Elinski was aware
7 Chief Gesell tentatively planned on retiring from policing in September and was
8 considering running for Yavapai County Supervisor. Defendant Elinski had told the
9 outgoing former City Manager Ron Corbin that his friend who had been defeated in the
10 last election could not beat Chief Gesell if he decided to seek re-election.

11 23. ACRD civil rights complaints involving Defendant Elinski and/or
12 Defendant Douglass have been recently filed, including one from Cottonwood City
13 Councilmember Lisa Duvernay and another by a police manager.

14 24. When the new City Manager Defendant Douglass and new City Attorney,
15 Defendant Jennifer Winkler, began working, they supported the Mayor's direction.

16 25. During the Executive Session, the City's contracted legal counsel Steve
17 Coleman, told the Council that he agreed the ACRD report findings were "bullshit" with
18 the exception of one ADA "technical violation".

19 26. Mr. Coleman failed to inform the Council that neither his firm nor the
20 former City Attorney had ever properly advised Chief Gesell relating to the technical
21 violation despite their awareness since June of 2022 when told by Chief Gesell of his
22 intentions.

1 27. To the contrary, the Chief’s intended and ultimate direction resulting in the
2 claimed ADA violation was known and supported by both the City’s attorneys and the
3 former City Manager. Defendant Wilber had also been aware since June of 2022 and had
4 concurred with the decision yet also failed to inform Council.
5

6 28. In that “Executive Session,” despite the statute not being followed, several
7 Cottonwood Police Department sworn managers were discussed and maligned without
8 cautionary restraint by the two Pierce-Coleman attorneys. Commander Braxton-Johnson
9 was among those maligned and later harmed as a result. The discussion ended with the
10 assertion that the agency had cultural and behavioral issues that necessitated corrective
11 action.
12

13 29. That Executive Session would later be used against Chief Gesell as the
14 leader of the department. The preclusion of Chief Gesell from this session eliminated the
15 ability for Chief Gesell to challenge the false claims and correct the information
16 discussed during the meeting.
17

18 30. The Executive Session resulted in numerous statutory violations due to the
19 content of that session. The recording of the session was recklessly released by Defendant
20 Winkler and instead of admitting to releasing the recording, she began to bully Chief
21 Gesell and his family about the disclosure and attempted to conceal, minimize, and
22 deflect her actions.
23

24 31. Defendant Winkler recklessly sent Chief Gesell the audio of the May 9th
25 Executive Session as an amendment to the Notice of Investigation. In that recording,
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1 attorney Steve Coleman and his associate Christina Estes-Werther led or allowed
2 digression from the narrow scope of determination.

3 32. This disclosure resulted in Defendant Winkler exposing the City to liability
4 and likely violated A.R.S. §38-510 (a), a class 1 misdemeanor, yet upon information and
5 belief, she faced no repercussions from the City Council. Instead, Chief Gesell was
6 placed on Administrative Leave and provided a Notice of Investigation that set forth no
7 terminable events.
8

9
10 33. Chief Gesell filed a retaliatory complaint against Defendant Winkler with
11 the Human Resources Director, Defendant Wilber, and Defendant Douglass, supported
12 by emails and notations attached as evidence. Exhibit E.
13

14 34. Unbeknownst to Chief Gesell and contrary to City policy, Attorney Steve
15 Coleman assumed responsibility for that investigation, however, Chief Gesell has never
16 seen a report nor any resolution despite assurance from Defendant Wilber who by City
17 policy is charged with addressing such complaints.
18

19 35. Defendant City of Cottonwood contracted with the law firm Osborn
20 Maledon to conduct an investigation into Chief Gesell. The investigation was done by
21 Gregory Sturr and Chief Gesell provided his input which was ignored. Exhibit F, Chief
22 Gesell's Statement submitted to Osborn Maledon Attorney Geoffrey Sturr on July 12,
23 2023 which includes a summary of the chronology of events up to the July 7th interview
24 with Mr. Sturr and a list of suggested questions relevant to an objective investigation.
25 Most or all were left unaddressed.
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1 36. Despite Chief Gesell’s repeated objections to conclusions in Geoffrey
2 Sturr’s report, the full investigative report was withheld until the Chief Gesell insisted on
3 seeing a copy prior to agreeing to any proffered settlement terms.
4

5 37. During a recorded conversation with Mr. Coleman in which Mr. Coleman
6 was offering Chief Gesell a severance package, Chief Gesell asked to see the report into
7 him. Mr. Coleman stated “there is no report” though it has been determined that the
8 investigation was completed weeks earlier.
9

10 38. The report that was eventually released is disputed and when it was
11 received it was not based on facts, clearly framing a false narrative.
12

13 39. The investigative report did not contain any just cause to terminate Chief
14 Gesell who had an impeccable record of public service.
15

16 40. Defendant Douglass claims he consulted Defendant Winkler, who was the
17 subject of the Chief’s retaliatory complaint, in his July 25th email to Council. The email
18 implies Defendant Winkler advised Defendant Douglass to send The Chief’s complaint to
19 Mr. Coleman rather than to the HR Director as was standard practice codified in the
20 City’s Employee manual.
21

22 41. It was around this same time that Chief Gesell discovered that Defendant
23 Douglass had altered Chief Gesell’s complaint against Defendant Winkler by removing
24 the ten-page email attachment and his notations from a singular PDF document,
25 rescanning the document, and then sending the altered Complaint to the Council as if it
26 were in the original form. Defendant Wilber was either aware of this alteration or was
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1 made aware and did nothing to alert Council. This was an alteration of a public record.
2 Exhibits E and G, original and altered documents.

3 42. As established prior to the unlawful termination proceeding, Mr. Coleman
4 had repeatedly indicated Chief Gesell's role in the ACRD Report was based entirely on
5 an obscure ADA technicality necessitating Officer Dever's return to her former
6 assignment as a Detective. Exhibit A, Letter from Steve Coleman to ACRD.

7
8 43. Chief Gesell had approved the action after seeking advice of former City
9 Attorney Steve Horton and the Pierce Coleman law firm. Those attorneys failed to advise
10 Chief Gesell to return Officer Dever to her assignment. Moreover, the action was
11 approved by the former City Manager and Defendant Wilber given their failure to raise
12 any issues when advised of the intended action.
13
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15 44. Mr. Coleman aided the City's efforts in terminating Chief Gesell by
16 completely reversing his prior position and advice on the ACRD Report.
17

18 45. As early as June 9, 2022, the attorneys had been fully aware of Chief
19 Gesell's intent to transfer Officer Dever to Patrol months prior to the ACRD findings.
20

21 46. Neither Mr. Horton nor Mr. Coleman ever disclosed these failures to the
22 City Council and the Council may be unaware that Chief's Gesell's intentions were also
23 shared with (then) City Manager Ron Corbin and Defendant Wilber.

24 47. Despite Mr. Corbin, Mr. Horton and Defendant Wilber not receiving any
25 disciplinary action, Defendant City of Cottonwood terminated Chief Gesell with the
26 assistance of the other Defendants.
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1 48. Chief Gesell was unlawfully terminated and publicly cast as a rogue
2 administrator who discriminates against female employees with disabilities.

3 49. This false narrative has destroyed Chief Gesell's reputation and character
4 such that his future career path is forever damaged.

5
6 50. Jim Ledbetter represented Officer Dever related to the Craig-Tiger Act in
7 2023. Mr. Ledbetter told Mr. Horton that the ACRD would take issue with not returning
8 Officer Dever to her assignment and Mr. Horton disagreed with him yet never disclosed
9 the conversation to Chief Gesell.

10
11 51. The officer's claims had been discussed via phone and email for months
12 preceding the ACRD Report with no concerns mentioned by Pierce Coleman attorneys,
13 the former City Attorney Steve Horton, Defendants Rodriguez and Wilber, or the former
14 City Manager Ron Corbin. Defendant Douglass would or should have known this fact
15 before he terminated Chief Gesell.

16
17 52. Despite this information, the Defendants have used the ADA technicality as
18 a manufactured cause to support Chief Gesell's termination, a position that is supported
19 by the fact that the ACRD Report issue was never included in the Defendant City's
20 contracted investigation or any other document preceding Defendant Douglass' letter of
21 intent to terminate Chief Gesell. Exhibit H.

22
23 53. Additionally, long after the conclusion of Mr. Sturr's investigation, Mr.
24 Coleman again asserted his opinion that the ADA violation was an "unintentional and
25 technical error" during mandated training sessions with multiple City employees.
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1 54. During mandated training sessions, Mr. Coleman told Commander Braxton,
2 Sergeant Sinn and Sergeant Scott that the one ADA finding was an obscure technicality
3 that he would have advised against if he had been consulted.
4

5 55. However, Mr. Coleman, and/or his subordinate attorney, Steve Horton, Ron
6 Corbin and Defendants Elinski, Rodriguez and Wilber all knew the Chief planned on
7 assigning Officer Dever to Patrol for justifiable reasons, yet never advised him against it.
8

9 56. In fact, Steve Coleman quoted the Chief's rationale from a June 2022 email
10 when responding on July 21, 2022 to the Attorney General's office. What was then used
11 as a defense of the City's position as being rational and appropriate would later be used
12 as grounds for the Chief's termination.
13

14 57. No other disciplinary actions related to the ACRD Report were taken
15 against any other employee except for Chief Gesell who was terminated using an ADA
16 technical violation as cause. Exhibit J, Notice of Termination.
17

18 58. The ACRD Report with the Letter of Intent to Terminate dated September
19 7th is a violation of A.R.S. §38-1104 which requires that before any interview in a
20 termination investigation that "the employer shall provide the law enforcement officer
21 with a written notice informing the officer of the alleged facts that are the basis of the
22 investigation, the specific nature of the investigation, the officer's status in the
23 investigation, all known allegations of misconduct that are the reason for the interview
24 and the officer's right to have a representative present at the interview."
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27 59. The ACRD report was never provided in the Notice of Investigation as a
28 basis for the disciplinary investigation nor was it included in Mr. Sturr's findings.

1 60. Blame was placed on Chief Gesell as part of a personal vendetta by
2 Defendants Elinski, Rodriguez and Kurot, facilitated by Defendants Douglass and
3 Winkler and Mr. Coleman, resulting in his termination.

4 61. The September 7th letter of intent to terminate referred to the May 9
5 incident and then referenced that Chief Gesell “discriminated” against a “female
6 detective” for the first time during the entire span of the four month period.
7

8 62. At no time before or during the four months Chief Gesell was on
9 administrative leave was the ACRD Report referenced as a concern. In fact, the evidence
10 shows the opposite was true. Chief Gesell was not given an opportunity to respond or
11 refute this false allegation prior to the Notice of Intent to Terminate.
12

13 63. Mr. Coleman repeatedly only referenced the Chief’s tone of voice when
14 speaking to Defendant Rodriguez as the justification for termination during several
15 recorded phone calls.
16

17 64. Defendant Kurot told Councilmember Duvernay outside the normal process
18 for Council meetings, that Chief Gesell “threatened” Defendant Rodriguez and Defendant
19 Elinski and he had “crossed the line.”
20

21 65. As Chief of Police and a sworn law enforcement officer, Chief Gesell has
22 statutory rights under A.R.S. §38-1101 et seq.
23

24 66. Defendants told Chief Gesell the reasons for the termination was the
25 “discriminatory treatment of a female detective” and the events of May 9 where Chief
26 Gesell allegedly made a threatening statement to Defendant Rodriguez and was allegedly
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1 “disrespectful” of Defendant Elinski by using an improper tone which was completely
2 refuted by a witness not interviewed.

3 67. Defendants failed to follow the requirement of A.R.S. §38-1104, which
4 requires that before any interview in a termination investigation that “the employer shall
5 provide the law enforcement officer with a written notice informing the officer of the
6 alleged facts that are the basis of the investigation, the specific nature of the investigation,
7 the officer's status in the investigation, all known allegations of misconduct that are the
8 reason for the interview and the officer's right to have a representative present at the
9 interview.”
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12 68. The ACRD report was also not included in notice of investigation nor
13 mentioned as a concern in Mr. Sturr’s investigation or findings.
14

15 69. Chief Gesell was notified of his termination on September 14, 2023.
16 Pursuant to A.R.S. §38-1106, he timely appealed the decision. Exhibit K.
17

18 70. Defendant Douglass stated that Chief Gesell was not entitled to an appeal
19 because he was the Chief of Police. A plain reading of the statutes shows that only an at-
20 will officer employed by a state agency is excluded.
21

22 71. As Human Resources Director, Defendant Wilber was fully aware Chief
23 Gesell was being terminated for false cause she herself concurred with the action that
24 resulted in the ACRD ADA technical violation along with the City Manager and
25 attorneys. She was also aware of the egregious procedural errors violating Chief Gesell’s
26 statutory rights.
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1 72. Rather than fulfill her role in protecting employee rights, Defendant Wilber
2 aided the other Defendants by helping to facilitate the Chief's wrongful termination.

3 73. Had the Defendants fairly evaluated the appeal, serious statutory and
4 constitutional violations would have been publicly exposed.

5
6 74. Chief Gesell discovered manipulation of other council members by
7 Defendant Elinski and Defendant Rodriguez after Chief Gesell complained about
8 suspected retaliation by Defendant Rodriguez.

9
10 75. Chief Gesell reported violations of critical City policies and criminal acts
11 under A.R.S. §38-510(A) and A.R.S. §13-2407(A)(2) by Defendants Winkler and
12 Douglass. These Complaints were dated July 21, 2023 and August 29, 2023. Exhibit E,
13 Exhibit I.

14
15 76. Chief Gesell received the Notice of Intent to Terminate on September 7,
16 one week after filing a complaint revealing Defendant Douglass' unlawful act of altering
17 a government document that contained the complaint against Defendant Winkler.

18
19 77. Defendant Douglass removed key email threads that illuminated the Chief's
20 unsuccessful attempts to receive a copy of an email sent by the former City Attorney as
21 well as an accessible version of an audio recording of what was believed to be the public
22 meeting preceding the May 9th executive session. Defendants Douglass, Rodriguez,
23 Elinski, Winkler, Wilber and Steve Coleman knew Chief Gesell had provided (solicited)
24 direction to City Attorney Steve Horton to enter conciliation administratively, without
25 Council action approximately 10 days earlier.
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1 78. This information was withheld from Council to further defame and cast
2 aspersions toward Chief Gesell.

3 79. As a result of Defendants' actions, Plaintiff has been damaged. His ability
4 to run for public office, obtain employment in his field, or secure contracting work via his
5 consulting business following his highly successful 34-year law enforcement career has
6 now been irreparably harmed due to the actions of the Defendants.
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9 COUNT ONE
10 WRONGFUL TERMINATION
11 Violations of A.R.S. §38-1101 et seq. violations
 (Defendants City of Cottonwood)

12 80. Plaintiff re-alleges and incorporates herein all allegations contained in the
13 above paragraphs.

14 81. Arizona considers all employment to be contractual under A.R.S. §23-
15 1501 and wrongful termination occurs when a person is terminated from his or her
16 employment for unlawful reasons. The employer here terminated the employment
17 relationship of Chief Gesell in violation of a statute of this state.
18

19 82. Chief Gesell was terminated wrongfully when the Defendant violated Chief
20 Gesell's right under A.R.S. §38-1101 et seq. by not providing the basis of the
21 investigation that later was claimed to include the ACRD Report and/or not permitting
22 his to challenge the termination under A.R.S. §38-1106.
23

24 83. Defendant Scotty Douglass was the City Manager who terminated Chief
25 Gesell and stated it was his decision because Chief Gesell served at the pleasure of the
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1 City Manager. This claim is false as A.R.S. §38-1103 and 38-1106 clearly state there
2 must be “just cause” and “at the pleasure” does not equate to termination for “just cause.”

3 84. Plaintiff suffered damages from these actions.
4

5 COUNT TWO
6 WRONGFUL TERMINATION (RETALIATION)
7 Violations of A.R.S. §38-1101 et seq. violations
8 (Defendant City of Cottonwood)

9 85. Plaintiffs re-allege and incorporate herein all allegations contained in the
10 above paragraphs.

11 86. Plaintiff was wrongfully terminated in retaliation for the reporting of
12 unlawful acts.

13 87. Plaintiff filed a retaliatory complaint against Defendant Winkler on July 21,
14 2023.
15

16 88. The complaint was provided to Defendant Wilber and Defendant
17 Douglass.
18

19 89. A second complaint against Defendant Douglass was filed on August 29,
20 2023 about the failure to address the complaint regarding Defendant Winkler and the
21 discovery of Defendant Douglass’ subsequent surreptitious alteration of the complaint.
22 On September 7, 2023, a Notice of Intent to Terminate was sent to Chief Gesell listing
23 the alleged conduct from May 9, and for the first time, a discussion of the ACRD Report
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26 90. The Complaints alleged violations of Arizona law including A.R.S. § 38-
27 431.03 and including A.R.S. § 38-1101 et seq. and A.R.S. §13-2407.
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1 91. The retaliation for the reporting of the statutory violation was wrongful
2 termination under A.R.S. §23-1501.

3 92. The termination of Chief Gesell was done as a coordinated effort among the
4 Defendants after violations of his rights under A.R.S. § 38-1101 et seq..

5 93. Plaintiff has been damaged by the wrongful termination.
6

7 COUNT THREE
8 TAMPERING WITH PUBLIC RECORDS
9 (Defendant Douglass, Wilber and Winkler)

10 94. Plaintiff re-alleges and incorporates herein all allegations contained in
11 above paragraphs.

12 95. Tampering with a public record; A.R.S. §13-2407 states that a person
13 commits tampering with a public record if, with the intent to defraud or deceive, such
14 person knowingly: 1. Makes or completes a written instrument, knowing that it has been
15 falsely made, which purports to be a public record or true copy thereof or alters or makes
16 a false entry in a written instrument which is a public record or a true copy of a public
17 record. . . “Public record” is defined as a record that is a "public record" that is required
18 by law to be kept, or necessary to be kept in the discharge of a duty imposed by law or
19 directed by law to serve as a memorial and evidence of something written, said or done.
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23 *Mathews v. Pyle*, 251 P.2d 893, 75 Ariz. 76 (1952).

24 96. Here, the City was required to maintain the Complaint filed by Chief Gesell
25 against Defendant Winkler but instead, Defendant Douglass altered that document before
26 presenting it to Council as if it was in its original form. Defendants Wilber and Winkler
27 were aware of the alteration and failed to notify the Council;
28

1 97. The violation of the public records law resulted in a false narrative
2 presented to the Council as it deleted supporting information for the complaint against
3 Defendant Winkler which also illuminated Douglass' knowledge of the email exchange.

4
5 98. Plaintiff was damages by the actions of Defendants.

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7 COUNT FOUR
8 VIOLATION OF OPEN MEETING LAWS
9 (EXECUTIVE SESSION)
10 (All Defendants)

11 99. Plaintiff re-alleges and incorporates herein all allegations contained in
12 above paragraphs.

13 100. On May 9, Defendants violated the laws on Executive Sessions by going
14 beyond what was listed in the agenda for all employees after failing to provide adequate
15 notice.

16 101. A.R.S. §38-431.03(a)(1) required that Defendants provide the officer,
17 appointee, or employee with written notice of the executive session as is appropriate but
18 not less than twenty-four hours for the officer, appointee or employee to determine
19 whether the discussion or consideration should occur at a public meeting.
20

21 102. Prior to conducting the May 9 Executive Session, not only did the
22 Defendant Council not advise Chief Gesell or others they would be discussing personnel
23 matters, but they also specifically precluded Chief Gesell from appearing. Had he been
24 advised, he would have demanded that the discussion or consideration occur at a public
25 meeting.
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2 108. Plaintiff re-alleges and incorporates herein all allegations contained in
3 above paragraphs.

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5 109. To recover for defamation, a plaintiff must prove (1) that the defendant
6 made a false statement, (2) that the statement was defamatory, and (3) that the defendant
7 published the statement to a third party, (4) with the requisite level of fault, (5) causing
8 damages. *See Dombey v. Phx. Newspapers, Inc.*, 150 Ariz. 476, 480-81 (1986); *Peagler*
9 *v. Phx. Newspapers, Inc.*, 114 Ariz. 309, 315-16 (1977).

10
11 110. Plaintiff as a private figure needs only prove the defendant negligently
12 published the statement. *Dombey*, 150 Ariz. at 480-81, 487. Damages may be presumed
13 for statements that are defamatory per se, or facially defamatory. *See Boswell v. Phx.*
14 *Newspapers, Inc.*, 152 Ariz. 1, 6 n.4 (App. 1985) (supplement by 152 Ariz. 9 (1986)).

15
16 111. Here, Defendant published false statements to individuals and upon
17 information and belief, to at least one media outlet. An utterance is slander per se when
18 its publication "tends to injure a person in his profession, trade or business." *Modla v.*
19 *Parker*, 495 P.2d 494, n.1 (Ariz. Ct. App. 1972).

20
21 112. Defendant told Councilmember Duvernay that Chief Gesell "threatened"
22 Defendant Rodriguez and Defendant Elinski and had "crossed the line." Under A.R.S.
23 §13-1202, threatening and intimidating is a crime thus the false claim that Plaintiff
24 committed a crime is defamation per se.
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27 113. Plaintiff has been damaged by the defamatory conduct.
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COUNT SIX
42 U.S.C. § 1983 Civil Rights violation
including under *Monell*
(All Defendants except Defendant Kurot)

114. Plaintiff re-alleges and incorporates herein all allegations contained in the above paragraphs.

115. Defendants were acting under color of law at all relevant times herein and are not entitled to qualified immunity based on their actions. *See Pearson v. Callahan*, 555 U.S. 223, 230-32, 235-36 (2009). Defendants violated Plaintiff's constitutional rights under the United States' Constitution, Fourteenth Amendments and Ariz. Const. art. II, § 4 as to procedural due process and substantive due process as well as violated his rights under Arizona statutes as set forth herein. The conduct shocks the conscience depriving Plaintiff of a property interest, employment, as well as violated procedural and statutory rights.

116. Qualified immunity only protects government officials "for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law." *Hunter v. Bryant*, 502 U.S. 224, 227 (1991). Here, there was no mistake made by the Defendants but instead, they engaged in a coordinated effort to terminate and falsely disparage Chief Gesell without following the statutes required by Arizona law and thus his rights to procedural and substantive due process.

117. 42 U.S.C. § 1983 is a constitutional tort which "provides that every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States ... to the

1 deprivation of any rights, privileges, or immunities secured by the Constitution and laws,
2 shall be liable to the party injured in an action at law, suit in equity, or other proper
3 proceeding for redress. Section 1983 is derived from the Act of April 20, 1871." C.
4 Antieau, Federal Civil Rights Acts: Civil Practice at 48-49 (1971).

6 118. As such the cause of action must demonstrate in its prima facie case (1) that
7 the Defendants were acting under color of law; (2) that the deprivation complained of
8 was a right or interest secured by the federal constitution or laws; (3) that the deprivation
9 complained of was intentional or the reasonably foreseeable result of a voluntary act or
10 omission and (4) that the injury alleged was proximately caused by the defendant(s). J.
11 Cook and J. Sobieski, Jr., Civil Rights Actions (1984). See *Monroe v. Pape*, 365 U.S.
12 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961).

15 119. Here, Defendants violated Chief Gesell's rights under A.R.S. §38-1101 et
16 seq. by not providing him the required notice of the investigation, the proper notice and
17 ability to appear at the "Executive Session," the appeal remedy as authorized by statute,
18 and/or due process under state and/or federal law. They further violated his rights when
19 they failed to comply with A.R.S. §38-431.03 by going beyond the stated purpose and
20 notice.
21

23 120. "To state a claim under § 1983, a plaintiff must allege the violation of a
24 right secured by the Constitution and laws of the United States, and must show that the
25 alleged deprivation was committed by a person acting under color of state law." *West v.*
26 *Atkins*, 487 U.S. 42, 48 (1988). A "person" includes local government entities. *Monell v.*
27 *Dep't of Soc. Servs. of the City of New York*, 436 U.S. 658, 690 (1978).
28

1 21. A local government may be sued under § 1983 for an injury inflicted solely
2 by its employees or agents when execution of a government's policy or custom, whether
3 made by its lawmakers or by those whose edicts or acts may fairly be said to represent
4 official policy, inflicts the injury that the government as an entity is responsible under §
5 1983." *Monell v. Dep't of Soc. Servs. of the City of New York*, 436 U.S. 658, 694 (1978).
6

7 22. Here, the City was well aware of what the employees and agents were
8 doing when they placed Chief Gesell on leave and terminated him claiming the policies
9 for discipline were being followed when in fact, they were not. Further, as the Mayor,
10 City Manager, City Attorney and City Council were involved in the process and decision,
11 the actions represented official policy.
12

13 23. The Defendant City of Cottonwood is not entitled to qualified immunity.
14 *See Owen v. City of Independence*, 445 U.S. 622, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980)
15 which involved the vote of the City council terminating the police chief.
16

17 24. It is a violation of 42 U.S.C. § 1983 Civil Rights, *see Bd. of Cnty. Comm'rs*
18 *of Bryan Cnty*, 520 U.S. at 405, where the municipal action is the moving force behind
19 the plaintiff's injury if "the action taken or directed by the municipality or its authorized
20 decision maker itself violates federal law"); municipalities' tort liability for proprietary
21 actions is the same as private parties, *Owen*, 445 U.S. at 639-40. Here the decision
22 makers were the City Manager and/or Mayor thus the Defendant City is liable.
23

24 25. Plaintiff has been damaged by the actions of the Defendants.
25

26 **Punitive Damages (42 U.S.C. 1983 claim)**
27

1 126. The actions of the Defendants shock the conscience and were guided by an
2 evil mind as they intended to injure Plaintiff's livelihood and/or although not intending to
3 cause injury, consciously pursued a course of conduct knowing that it created a
4 substantial risk of significant harm to others. Their actions in coordinating a termination
5 are shocking and intended to harm Plaintiff.
6

7 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 8 a. For reasonable special and compensatory damages in amounts to be proven
9 at trial;
10 b. For required compliance with the Open Meeting laws and the prevention of
11 violations of the open meeting laws by the public body as a whole or to determine the
12 applicability of this article to matters or legal actions of the public body:
13 c. For punitive damages as to Defendants for the 42 U.S.C. 1983 violations;
14 d. For reasonable costs incurred;
15 e. For such other relief as the court deems proper; and
16 f. For attorneys' fees.
17
18
19

20 Respectfully submitted this 28th day of March, 2024.
21

22 LAW OFFICES OF KIMBERLY ECKERT

23 By: /s/ Kimberly A. Eckert
24 Kimberly A. Eckert
25 Law Offices of Kimberly A. Eckert
26 Attorney for Plaintiff Stephen Gesell

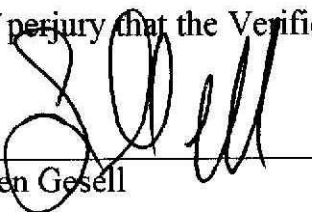
27 Original efiled this 3rd day of April, 2024.
28

Verification

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I, Stephen Gesell, hereby state under penalty of perjury that the Verified Complaint is true and accurate to the best of my knowledge.

Dated: 3-28-24

By: 
Stephen Gesell

STATE OF ARIZONA)
)
COUNTY OF YAVAPAI)

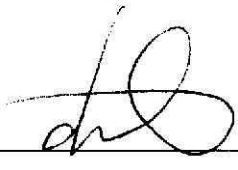
Subscribed and sworn to or affirmed before me this: March 28th 2024

By: Stephen Gesell

(notary seal)



AMBER MARTIN
Notary Public - Arizona
Yavapai Co. / #604019
Expires 07/06/2025



Deputy Clerk or Notary Public