

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MICHAEL MARCHAND,)
Plaintiff,)
v.)
TOWN OF HAMILTON, By and)
Through RICHARD LOW, WILLIAM)
BOWLER and DAVID CAREY,)
Individually and as they comprise)
the TOWN OF HAMILTON BOARD)
OF SELECTMEN, WALTER)
CULLEN, Individually and in His)
Capacity as Chief of Police of the)
Town of Hamilton,)
DONNA MCKENNA a/k/a)
DONNA BREWER, Individually and)
in Her Capacity as Town Counsel for)
the Town Hamilton, DONALD)
DUPRAY, Individually and in His)
Capacity as a police officer in the)
Town of Hamilton, BRIAN SHAW,)
KAREN WALLACE, Individually)
and in her Capacity as a Hamilton)
Police Officer, ARTHUR HATFIELD,)
Individually and in his Capacity as a)
Hamilton Police Officer and the)
HAMILTON POLICE BENEVOLENT)
ASSOCIATION, INC.)
Defendants.)

CIVIL ACTION NO. 1:09-cv-10433

COMPLAINT AND JURY DEMAND

INTRODUCTION

1. This suit in law and equity seeks redress for civil rights violation of the First and Fourteenth Amendments of the United States Constitution, conspiracy, retaliation, deprivation of civil rights pursuant to 42 U.S.C. §§ 1983 and 1985, violation of M.G.L. c. 149, § 85 the so-

called “Whistleblower Statute,” defamation, violation of M.G.L. c. 41, § 100, M.G.L. c. 12, § 11I, the so-called Massachusetts Civil Rights Act, intentional infliction of emotional distress, intentional interference of a contractual relationship, interference with an advantageous business relationship and M.G.L. c. 214, § 1B, a violation of the right to privacy to which Plaintiff Michael Marchand (“Marchand”), a police officer in the Town of Hamilton, has been subjected at the hands of his co-workers, supervisor and Town of Hamilton officials and employees.

Marchand was a dedicated police officer for the Town of Hamilton Police Department who was assigned to the prestigious position of Police Prosecutor, answering only to Hamilton Police Chief Walter Cullen. Because of his close working relationship with the Chief, Marchand became the target of a conspiracy by other Hamilton Police Officers and employees to undermine the Chief and hopefully bring about the Chief’s termination, resignation and retirement. Marchand uncovered this conspiracy and brought it directly to the Chief, who did nothing to stop the conspiratorial activity nor took any action to protect Marchand or his reputation which was being systematically destroyed by the false allegations being levied against him. In addition to the lack of action by the Chief and the Town of Hamilton, Marchand was threatened with loss of job if he involved an attorney to protect his interests, and after six months of promises that those who damaged him would face disciplinary action and his reputation would be restored, he was told by the Chief that nothing would be done and he simply needed to go back to work. As a direct result of the actions of the Chief, Hamilton Police Officers, Town of Hamilton employees and the Town of Hamilton Board of Selectmen, Marchand’s civil rights were violated and he has been psychologically rendered incapable of performing his duties as a police officer, resulting in loss of wages, loss of earning capacity and psychological and physical damages, which are ongoing to this day.

JURISDICTION

2. This action arises under 42 U.S.C. § 1983 and 42 U.S.C. § 1985, M.G.L. c. 149, § 85, M.G.L. c. 41, § 100, M.G.L. c. 214, § 1B, M.G.L. c. 41, § 100, M.G.L. c. 12, § 11I and the common law of the Commonwealth of Massachusetts, as hereinafter more fully appears. All conditions precedent to jurisdiction have been met.

PARTIES

3. Plaintiff, Marchand, is a Town of Hamilton Police Officer who resides at 14 Abbott Lane, Ipswich, Essex County, Massachusetts.

4. Defendant the Town of Hamilton is a Massachusetts incorporated municipality operating under the laws of Massachusetts and ordinances established by the Town of Hamilton. Its principal offices are located at Hamilton Town Hall, 577 Bay Road, Hamilton, Essex County, Massachusetts.

5. Defendant Richard Low resides in the Town of Hamilton, Essex County, Massachusetts and is an elected member of the Hamilton Board of Selectmen, serving as its Chair and is being sued individually and in his official capacity.

6. Defendant William Bowler resides in the Town of Hamilton, Essex County, Massachusetts and is an elected member of the Board of Selectmen and is being sued in his official capacity.

7. Defendant David Carey resides in the Town of Hamilton, Essex County, Massachusetts and is an elected member of the Board of Selectmen and is being sued individually and in his official capacity.

8. Defendant Walter Cullen resides in the Town of Hamilton, Essex County, Massachusetts and is the former Chief of Police in the Town of Hamilton who resigned in

disgrace on December 31, 2008 following allegations that he falsified training records and falsified invoices relating to a state grant, and is being sued individually and in his official capacity acting under color of state law.

9. Defendant Donna McKenna, a/k/a Donna Brewer resides in the Town of Hamilton, Essex County, and is Town Counsel in the Town of Hamilton and is being sued individually and in her official capacity acting under color of state law.

10. Defendant Donald Dupray resides in the Town of Rowley, Essex County, Massachusetts and is a former Police Officer in the Hamilton Police Department who held the rank of Sergeant when he resigned in disgrace during the course of a disciplinary hearing amid allegations that he, along with Chief Cullen, falsified invoices relating to a state grant, and is being sued individually and in his official capacity acting under color of state law.

11. Defendant Brian Shaw resides in the Town of Hamilton, Essex County, Massachusetts and is a Police Officer in the Hamilton Police Department, and is being sued individually.

12. Defendant Karen Wallace resides in the Town of Hamilton, Essex County, Massachusetts and is a Police Officer in the Hamilton Police Department, and is being sued individually and in her official capacity acting under color of state law.

13. Defendant Arthur Hatfield resides in the Town of Hamilton, Essex County, Massachusetts and is a Police Officer in the Hamilton Police Department, and is being sued individually and in his official capacity acting under color of state law.

14. The Hamilton Police Benevolent Association, Inc. is an employee organization pursuant to M.G.L. c. 150E with its principal place of business being in Hamilton, Essex County, Massachusetts.

FACTS

15. Marchand commenced employment with the Town of Hamilton as a compensated reserve police officer in or around 1991 and was permanently appointed to the Hamilton Police Department in or around 1997. In or around 2003, Marchand was assigned to the highly respected and sought after position of Police Prosecutor.

16. In October, 2006, Marchand was assigned to assist the City of Salem Police Department for crowd control during the Halloween festivities. Marchand was assigned to this duty by Town of Hamilton Police Chief Walter Cullen (“Chief Cullen”) who told Marchand that he needed his “very best man” for this difficult and stressful assignment. Upon completion of this assignment, Marchand was thereafter given a letter of commendation by the Salem Police Chief for the manner in which he conducted himself.

17. In or around 2006 the new Hamilton Police Station was being constructed, the design for which included a cupola. Due to funding issues related to the construction of the Police Station, the cupola was to be excluded from the final project.

18. In or around December, 2006, Chief Cullen and his wife, Ann Marie Cullen, who is the Chief Dispatcher for the Town of Hamilton, developed the idea of having a fundraiser (“Fundraiser”) to raise the money necessary to build the cupola. Marchand volunteered to help with the fundraising activities, which essentially involved selling tickets to a comedy night with the proceeds of which being used to pay for the cupola. The cost of a ticket to the Fundraiser was \$50 and the cost to purchase a table was \$500 (10 seats at the table).

19. Marchand was specifically instructed by Chief Cullen to seek contributions from local merchants and businesses, area police departments, the various courts in Salem and the Newburyport District Court where Marchand worked as a prosecutor. Marchand solicited

contributions while in uniform and while on duty with the full knowledge, endorsement and at the direction of Chief Cullen. At no time did Chief Cullen instruct Marchand not to wear his HPD uniform or take a private vehicle while conducting the fundraising activities.

20. Most of the officers in the Hamilton Police Department (“HPD”) were unhappy with Marchand for assisting in the fundraiser, as it was viewed as helping Chief Cullen, who was not well liked by the rank and file officers in the HPD. As a result, Marchand was the only HPD officer to make any significant effort in the fundraising activities.

21. As instructed by Chief Cullen, Marchand solicited the sale of tickets to the Fundraiser as well as contributions from those who wished to contribute but could not attend the fundraising event. Marchand kept a written log of ticket sales and contributions, and would provide the funds, documentation of the identity of those who contributed and the amount of the contributions to Chief Cullen on a regular basis.

22. Upon information and belief, Chief Cullen did not retain any of the records provided to him by Marchand and kept no formal accounting of the contributions and ticket sales.

23. Upon information and belief, in or around December, 2006 HPD Sergeant Donald Dupray (“Sgt. Dupray”) and HPD police officers Karen Wallace (“Officer Wallace”), Arthur Hatfield (“Officer Hatfield”) and Brian Shaw (“Officer Shaw”) met to discuss and devise a plot in which Marchand’s fundraising activities could be used to undermine Chief Cullen in the hope of bringing about his resignation, termination and/or retirement. It was universally accepted in the HPD that Sgt. Dupray was “next in line” to become Chief of the HPD and Officer Wallace had her sights on the position of Police Prosecutor held at that time by Marchand. It was also well known that Officer Hatfield and Chief Cullen harbored extreme animosity towards each

other. Sgt. Dupray, Officer Wallace, Officer Hatfield and Officer Shaw comprised the Executive Board of the Hamilton Police Benevolent Association, Inc. (“Union”).

24. In December, 2006 Officer Wallace contacted Town of Hamilton Town Counsel Donna McKenna, a/k/a Donna Brewer (“Town Counsel McKenna”) by anonymous letter alleging improprieties by Chief Cullen and Marchand. The allegations by Officer Wallace against Marchand were inaccurate, exaggerated and/or fabricated, and upon information and belief, Town Counsel McKenna made no good faith effort to independently verify the allegations set forth in Wallace’s letter or to contact the HPD’s Internal Affairs Officer, Lt. Robert Nyland (“Lt. Nyland”), who would by protocol and assignment be charged with investigating any allegations of wrongdoing by a police officer, including Chief Cullen.

25. Upon information and belief, Town Counsel McKenna brought Officer Wallace’s allegations to the attention of then Hamilton Board of Selectmen Chair William Bowler (“Selectmen Bowler”).

26. On or about January 11, 2007, Sgt. Dupray brought to Chief Cullen’s attention allegations of Marchand’s rumored “strong-arm” tactics in his fundraising efforts specifically directed towards a local merchant, Steve Bean (“Bean”) at Crosby’s Market in Hamilton, and. Chief Cullen ordered Sgt. Dupray to investigate these allegations. On January 12, 2007, Sgt. Dupray orally reported to Chief Cullen that he spoke with Bean who said that Marchand had neither intimidated nor pressured him into making a donation. Upon information and belief, Sgt. Dupray never spoke to Bean about the allegations of strong-arm tactics or any other fundraising issues pertaining to Marchand. No written report was produced at that time regarding Sgt. Dupray’s conversation with Bean, although HPD protocol and procedures requires that a written report should have been created contemporaneously with the interview.

27. On or about January 14, 2007, Officer Hatfield interviewed Bean after allegedly overhearing a conversation between other HPD officers regarding alleged “strong-arm” tactics used by Marchand in his fundraising activities. Officer Hatfield had not been assigned by Chief Cullen to interview Bean, nor does Officer Hatfield have any independent authority as a patrol officer to investigate allegations of wrongdoing involving another police officer. Officer Hatfield alleged that Bean told him he felt intimidated by Marchand, even though two days earlier Bean allegedly told Sgt. Dupray he was not intimidated. Officer Hatfield allegedly told Bean he would inform Chief Cullen and/or the State Ethics Commission regarding Marchand’s activities. Upon information and belief, Officer Hatfield did not bring this matter to Chief Cullen’s attention and did not properly document his unauthorized conversation with Bean. Upon information and belief, Bean never told Hatfield that he felt intimidated by Marchand or suggested in any way that Marchand had acted inappropriately.

28. On January 22, 2007, the Union sent a letter to Chief Cullen expressing an alleged level of discomfort in the community regarding the manner in which monies were being raised for the Fundraiser. This letter was signed by Sgt. Dupray and Officers Shaw, Hatfield and Wallace in their capacity as the Executive Board of the Union. Sgt. Dupray signed the letter even after allegedly speaking with Bean on January 11, 2007, at which time Bean made no allegations of any wrongdoing by Marchand. Upon information and belief, neither Sgt. Dupray nor Officers Shaw, Hatfield or Wallace had any credible information to support a reasonable belief that there was “discomfort” in the community regarding Marchand’s fundraising activities. Chief Cullen did not advise Marchand of receipt of the letter and did not take any action in response to receiving the letter.

29. Upon information and belief, the January 22, 2007 letter was the product of a conspiracy between Sgt. Dupray nor Officers Shaw, Hatfield or Wallace to target Marchand and attempt to taint his fundraising activities in an effort to embarrass Chief Cullen and force Chief Cullen to resign as Chief of the HPD.

30. On February 10, 2007, the Fundraiser was held and was deemed to be a success by Chief Cullen.

31. On February 12, 2007, Chief Cullen informed Marchand that due to the success of Marchand's fundraising activities, more money was raised than was necessary to fund the purchase and installation of the cupola. Chief Cullen asked Marchand if he would like a new desk for his office, advising that the desk could be purchased with the excess funds from the Fundraiser. Recognizing the impropriety of Chief Cullen's request, Marchand quickly declined the offer.

32. Following the comedy night, Marchand began to hear from other HPD officers that more questions were being raised by some HPD officers regarding his fundraising activities. Marchand spoke with Chief Cullen about the issue and Chief Cullen acknowledged that he was well aware of the allegations and told Marchand "not to worry about it."

33. On or about February 23, 2007, Chief Cullen informed Marchand that the Union was accusing him of felonious acts, to wit using intimidation tactics to coerce contributions to the Fundraiser. For the first time, Chief Cullen informed Marchand of the January 22, 2007 and February 21, 2007 letters. Chief Cullen told Marchand that Marchand had done nothing wrong, but he needed to keep Chief Cullen's and his wife's name out of the cupola fundraising events, otherwise Chief Cullen would be unable to clear Marchand's name and save his reputation.

Marchand asked if he needed a lawyer and Chief Cullen warned Marchand not to hire a lawyer and threatened him if he did, “his career would be over.” Marchand also requested a copy of his personnel file at this time and any letters of complaint by both the Union and the public. Chief Cullen unlawfully denied this request. M.G.L. c. 149, § 52C requires an employer to provide a copy of an employee’s personnel file to him within five (5) business days of the request.

34. Following this meeting with Chief Cullen in which Marchand was made aware of the false allegations against him and ordered by Chief Cullen to take no action to defend himself or his reputation, Marchand experienced interruptions in sleeping patterns and anxiety.

35. On or about February 24, 2007, Chief Cullen called Marchand into his office and informed him that Lt. Nyland, the Internal Affairs officer, would not be handling the investigation of Marchand’s alleged wrongdoing, but that Sgt. Dupray, who has falsely accused Marchand of the wrongdoing in the January 22, 2007 and February 21, 2007 letters, would be conducting the investigation. Marchand questioned why Lt. Nyland would not be conducting the investigation he was trained to do, and Chief Cullen informed him that Lt. Nyland could not be trusted to “cover it up.” Marchand replied that there was nothing to “cover up” and he had done nothing wrong. Chief Cullen told Marchand in a very threatening manner that he would conduct the investigation his way, and Board of Selectmen Chair Bowler supported using Sgt. Dupray rather than Lt. Nyland to investigate the allegations.

36. Upon information and belief, Chief Cullen did not ask Lt. Nyland to conduct the investigation due to Chief Cullen’s involvement in the fundraising activities and Chief Cullen’s inability to properly account for the funds raised and expended.

37. On or about February 25, 2007, Chief Cullen informs Marchand that Officer Hatfield had conducted at least one unauthorized investigation against Marchand. Chief Cullen

took no action against Officer Hatfield for this unauthorized investigation and breach of HPD policies and procedures. Marchand complained about this breach of protocol and Chief Cullen told Marchand if he did not “trust me to save your reputation and keep your mouth shut” Marchand could be disciplined, lose his reputation “for good,” lose his job or be “put in jail.”

38. On or about February 25, 2007, subsequent to his meeting with Chief Cullen, Marchand spoke with Lt. Nyland, who was the Internal Affairs officer who would normally investigate any charges against a police officer. Lt. Nyland said he knew nothing about the January 22, 2007 and February 21, 2007 letters but that he had heard rumors of Marchand’s alleged strong-arm tactics in his fundraising activities. Lt. Nyland told Marchand that he was upset that Chief Cullen was running an internal investigation and had not notified him of what was going on. Lt. Nyland told Marchand that this was “seriously wrong” because both the investigation and the HPD were being “mismanaged.”

39. On or about February 26, 2007, Chief Cullen advised Marchand that Sgt. Dupray had written a report which clears Marchand of any wrongdoing. Marchand requested a copy of the report and again requested his personnel file from Chief Cullen. Chief Cullen denied these requests and stated that “no one” will see the report. Marchand also requested that Chief Cullen brief the HPD regarding the results of the investigation and that he order that the unauthorized investigations against him stop. Chief Cullen denied this request and told Marchand that he and Selectman Bowler will “handle it” because Selectman Bowler was also pleased by the report and felt this was the best course of action. Marchand was again ordered to “keep your mouth shut.”

40. On or about February 26, 2007, Marchand had a conversation with Officer Hatfield regarding the inappropriate nature of his investigation. Officer Hatfield told Marchand

he went to his immediate supervisor, Sgt. Dupray, with the information obtained from the Bean interview and that information was passed along to Chief Cullen.

41. On or about February 28, 2007, Marchand met with Sgt. Dupray regarding the allegations and Sgt. Dupray's investigation. Sgt. Dupray told Marchand that Marchand can "destroy" Chief Cullen and if Marchand took some heat and damage to his reputation for a while and participated in doing so, Marchand will be "rewarded" once Sgt. Dupray was made Chief. Sgt. Dupray told Marchand that he could either cooperate or file a lawsuit and Marchand's "whole career would be destroyed." Marchand told Sgt. Dupray that what Sgt. Dupray was doing was wrong and that Marchand did not "hunt other cops unless they are dirty" and he would inform Chief Cullen of Sgt. Dupray's plan. Sgt. Dupray stated in a threatening manner "No, you will not, Michael" and the meeting ended.

42. Marchand met with Chief Cullen shortly after the meeting with Sgt. Dupray and informed Chief Cullen of his conversation with Sgt. Dupray. Chief Cullen told Marchand not to involve a lawyer or Chief Cullen would not help Marchand clear his ruined reputation "all over town" and in the courts. Contemporaneous with his conversations with Sgt. Dupray and Chief Cullen, Marchand recognized that he was experiencing stress and anxiety and contacted his primary care physician, Harlow Labarge, M.D. ("Dr. Labarge") for counseling and treatment.

43. On or about March 1, 2007, Marchand had conversations with HPD Sergeant Paul Grant ("Sgt. Grant") and Officer Shaw. Officer Shaw informed Marchand and Sgt. Grant that he was aware of the plot by Sgt. Dupray and Officers Hatfield and Wallace to have Chief Cullen removed as Chief by harming Marchand, with the goal to have Sgt. Dupray inserted as Chief.

44. During this period, Marchand repeatedly met with Chief Cullen and asked that he be publicly cleared of any wrongdoing and that his reputation be restored. Marchand told Chief

Cullen that he was under terrible stress and that this stress was affecting his home life, and that he was having trouble eating and sleeping. Chief Cullen advised that he understood what was going on and promised Marchand he would restore his reputation. Notwithstanding Chief Cullen's promises, he took no affirmative steps to meet with the HPD to inform them that Marchand had been cleared of any wrongdoing.

45. On or about March 11, 2007, a meeting was held with Chief Cullen which included Marchand, Sgt. Dupray and Officers Hatfield, Wallace and Shaw. Fellow HPD officers Ken Nagy, Scott Janes and Steve Trepanier were present as observers. Chief Cullen admonished the unauthorized investigations against Marchand and denied any personal involvement with the Fundraiser. When pressed on the issue, Chief Cullen admitted his involvement and endorsement of Marchand's fundraising activities both while in uniform and on Town time, in and out of Hamilton. Marchand stated during the meeting that he could "let go" what had occurred if his reputation was restored as promised by Chief Cullen and if the harassment stopped. Chief Cullen told Marchand that he and the Board of Selectmen would hold those individuals accountable for harming him and his reputation. Despite these assurances, neither Chief Cullen nor the Board of Selectmen took any action against any HPD officers for the unauthorized investigations and the damage to Marchand's reputation. After the meeting, Sgt. Dupray advised Marchand that Sgt. Dupray was "playing both sides" so that he could "keep check" on the entire situation.

46. During this same time period, Town Counsel McKenna was working in clandestine fashion with Officer Wallace to build a case against Marchand, despite the fact that Marchand had not violated any HPD policies or committed any acts which could even be remotely interpreted as a grounds for discipline and/or termination. Town Counsel McKenna

accepted as fact allegations made by Officer Wallace which had no basis in fact. Upon information and belief, Town Counsel McKenna was working at the direction of Board Selectmen Chair Bowler.

47. In early April, 2007, Town Counsel McKenna met with Board of Selectmen Chair Bowler and Town Administrator Candace Wheeler (“Town Administrator”) regarding allegations being brought to Town Counsel McKenna’s attention by Officer Wallace. At this time, there had not been one single written complaint alleging any wrongdoing by Marchand filed with Chief Cullen, the Board of Selectmen or the Town Administrator by any Town of Hamilton resident or any Newburyport District Court personnel or attorneys who practiced there.

48. On April 17, 2007, the false allegations made by Officer Wallace were brought to the attention of the entire Town of Hamilton Board of Selectmen by Town Counsel McKenna. These false allegations included alleged inappropriate conduct by Marchand at the Newburyport District Courthouse in July, 2006, March 11, 2007 and April 12, 2007, respectively; arrests Marchand effected and/or participated in on March 22, 2007 and March 28, 2007, respectively; Marchand’s cupola fundraising activities, in which Marchand had already been cleared of any wrongdoing on at least two separate occasions; and false allegations involving an off-duty vacation Marchand took to Mexico in August, 2006.

49. A few days following this meeting, the Board of Selectmen met with Chief Cullen to discuss the issues raised by Town Counsel McKenna. The Board of Selectmen ordered Chief Cullen to commence another investigation into Marchand’s activities, even though Chief Cullen, upon information and belief, provided first hand knowledge to refute many of the allegations advanced by Officer Wallace and Town Counsel McKenna.

50. On or about April 22, 2007, Marchand was requested to appear on his day off at Chief Cullen's office. Chief Cullen, in the presence of Sgt. Grant, told Marchand that he was being accused of committing felonious acts related to his vacation trip to Mexico, his activities associated with the Fundraiser and his activities as prosecutor at the Newburyport District Court. Marchand was told by Chief Cullen that if the allegations were proven to be true, he could "go to jail" and he should trust Chief Cullen and the Board of Selectmen to "help" him. Marchand begged Chief Cullen to go outside the department so that any investigation would be conducted by an impartial and unbiased third party.

51. On or about April 25, 2007, Chief Cullen advised Marchand and Sgt. Grant that the investigation will be conducted by Gerald Mohan ("Investigator Mohan"), a retired FBI agent.

52. On April 26, 2007 Investigator Mohan issued a memorandum to Chief Cullen regarding the findings of his investigation regarding Marchand. Investigator Mohan conducted an investigation of all allegations against Marchand and not only found no wrongdoing by Marchand, but that the allegations against him were totally unfounded and had no basis in fact.

53. On or about April 29, 2007 the Board of Selectmen received a letter from Beverly Police Lieutenant William F. Terry, III ("Lt. Terry") who was asked to review the March 22, 2007 incident involving Marchand's actions during an arrest when he drew his service weapon. Lt. Terry concluded that Marchand was justified in drawing his service weapon and that Marchand's actions "were restrained in that he kept his weapon low and out of view of the subject and the public."

54. On May 9, 2007 Town Counsel McKenna and Wallace communicated via e-mail in which Town Counsel McKenna stated “I don’t think we have enough to get [Marchand] fired but something will be done.”

55. On or about May 10, 2007, Chief Cullen informed Marchand in the presence of Sgt. Grant that Investigator Mohan had cleared him of any wrongdoing but that the Board of Selectmen would not accept the report. Marchand was ordered by Chief Cullen to take vacation away from the HPD or he would be suspended. When asked why he would be suspended if he did nothing wrong, Chief Cullen told Marchand that there was too much stress at the HPD for him and he could resume his duties as prosecutor, but to stay out of the HPD station. Marchand was also ordered by Chief Cullen to attend counseling through the Town of Hamilton’s Employee Assistance Program (“EAP”). Chief Cullen told Marchand not to “make a big deal” of the stress he was under or EAP would make a decision to relieve him of duty, put him out on stress and that would be the end of Marchand’s police career. Chief Cullen also told Marchand to make clear to EAP that he was able to still work and that he could handle the stress. Chief Cullen further told Marchand to “trust him” and that this “was the way to handle EAP” or words to that effect. Chief Cullen promised Marchand that after attending the EAP he would be cleared and that Chief Cullen would personally clear his name and restore his reputation.

56. On May 11, 2007, Investigator Mohan issued a second memorandum to Chief Cullen, which concluded that Marchand had not committed any crime or acted inappropriately.

57. On May 11, 2007, Officer Wallace sent an e-mail to Town Counsel McKenna inquiring when “is ... [Marchand] going to the therapy program for anger management? and how do we get the back ground (sic) information on [Marchand] to the therapist.” Officer Wallace

went on to say that she can “put an outline together on behavior issues I have seen and a history on this past year if that would be helpful?”

58. On or about May 15, 2007 Marchand was told by Chief Cullen that the Board of Selectmen had finally accepted Investigator Mohan’s reports and Marchand had been cleared of any wrongdoing. Marchand was further instructed to continue with the EAP counselor. Marchand renewed his request for Chief Cullen to clear his name and reputation with the HPD and Newburyport District Court personnel as a result of having endured four (4) months of false and unfounded accusations which severely damaged his reputation.

59. Despite Marchand being cleared of any and all wrongdoing, Chief Cullen neither informed the HPD officers or the Ipswich and Newburyport District Court personnel who were interviewed during the investigation, including Ipswich First Justice Allen Swan, that Marchand has been cleared. The uncertainty of the outcome of the investigation and the amount of time which had passed cast a cloud over Marchand, whose psychological difficulties were becoming more problematic to his functioning as a police officer. Marchand was defamed by the false accusations of Wallace, Hatfield and Town Counsel McKenna, and his reputation as an outstanding police officer had been irreparably impugned. Marchand continued to experience headaches, nightmares, weight loss and anxiety due to the psychological damage of the unfounded attacks and lack of any corrective action taken by Chief Cullen or the Board of Selectmen against the offending officers and Town employees, respectively, who conspired against him.

60. On or about May 27, 2007, Marchand was provided with copies of e-mail communications obtained from HPD computers between Officer Wallace and Town Counsel McKenna which clearly and unequivocally documented a concerted effort to have Marchand

fired. Marchand delivered copies of the e-mail communications to Chief Cullen, who took no action against Officer Wallace despite her unauthorized activities and her blatant attempt to fabricate charges to have Marchand fired. Upon information and belief, Chief Cullen did not inform the Board of Selectmen of these inappropriate actions an illicit attempt to have Marchand fired. Upon information and belief, the Board of Selectmen was aware of Town Counsel's activities since she was acting at the direction of Board of Selectmen Chair Bowler.

61. At this point in time, Marchand's psychological condition was continuing to deteriorate due to the stress of being repeatedly investigated based on trumped up and false charges, and Chief Cullen taking no action to clear his name and restore his reputation, and Chief Cullen's failure to mete out appropriate discipline to those officers who have caused harm to Marchand. Marchand provided to Chief Cullen clear and unequivocal evidence of Officer Wallace's and Town Counsel McKenna's attempt to have him fired and Chief Cullen took no disciplinary action whatsoever against Officer Wallace and/or took no action in reporting Town Counsel McKenna's activities to the Board of Selectmen, perhaps because the Board of Selectmen were complicit in authorizing the reckless Marchand investigation.

62. On or about May 30, 2007, Marchand commences counseling with Sarah Braucher, LICSW ("Counselor Braucher"), as part of the EAP program.

63. On or about June 12, 2007, Marchand was advised by Assistant District Attorney Maura Bailey ("ADA Bailey") and Clerk Magistrate Katherine Early that Officer Wallace had appeared at the Newburyport District Court on a "fishing trip" seeking negative information about Marchand. ADA Bailey told Officer Wallace that Marchand was an excellent prosecutor and had committed no wrongdoing of which she was aware, nor had she observed any inappropriate behavior by Marchand in or out of the courthouse. ADA Bailey told Marchand to

inform Chief Cullen that HPD officers were not welcome at the Newburyport District Court unless they were appearing on official business. Marchand relayed the message to Chief Cullen, and still Chief Cullen took no action to stop the unauthorized investigations of Marchand and took no disciplinary action against Officer Wallace for this egregious breach of protocol.

64. Contemporaneously, Marchand was feeling totally abandoned by Chief Cullen, who after promising for 5 months to clear him of any wrongdoing, and promising to hold those accountable who have fabricated charges against him, had taken no affirmative steps to restore Marchand's reputation or to take disciplinary action against the offending officers.

65. On or about July 6, 2007, Marchand received a call while on duty regarding a breaking and entering complaint which was poorly investigated the prior evening by Officer Wallace. Marchand looked up the report on the computer and saw that the investigative report was lacking in sufficient detail. Marchand advised Chief Cullen and Sgt. Grant of his findings, and Marchand was told by Chief Cullen to write a supplement report and to give it to HPD Detective Nagy for follow-up. As a professional courtesy, Detective Nagy advised Officer Wallace of his intention to follow-up on the investigation, and Officer Wallace became enraged. Officer Wallace said that she would take care of it and said "if the Chief has a problem, he can talk to me about it" or words to that effect.

66. On or about July 8, 2007, Chief Cullen conducted a meeting in his office with Marchand, Detective Nagy, Sgt. Grant and Officer Wallace. Chief Cullen informed Officer Wallace that she did a "terrible" job in investigating the breaking and entering that occurred on or about July 5, 2007. Officer Wallace became enraged and defied orders from Chief Cullen and Sgt Grant to sit down and calm down. Still enraged, Officer Wallace exited the meeting despite being given a direct order to return, and while she stormed out of the office, lifted her hand and

stuck out her middle finger and made an obscene gesture to the group which remained present in Chief Cullen's office. All HPD officers present were ordered to write a report regarding this incident.

67. Based on this blatant act of insubordination, Marchand believed that disciplinary action would finally be taken against Officer Wallace. No disciplinary action was taken by Chief Cullen against Officer Wallace regarding this incident. It was now abundantly clear to Marchand that no disciplinary action whatsoever would be taken against Officer Wallace, either for her role in fabricating and/or repeating false accusations against Marchand, or for her blatant insubordination directed at Chief Cullen and Sgt. Grant.

68. On July 11, 2007, Chief Cullen was preparing to depart for a prescheduled two week vacation and told Marchand that Marchand needed to forget about what had transpired the previous six months and he needed to just "deal with it" and get back to work. Chief Cullen told Marchand that "he was the Chief" and that Marchand "will" work with Officer Wallace. Chief Cullen told Marchand in a threatening and intimidating tone that if he could not deal with the situation "he could go work elsewhere because this is over" or words to that effect. At this point, Marchand came to the realization that Chief Cullen never had any intention of publicly clearing him and restoring his reputation which had been systematically destroyed by unauthorized and improper investigations by fellow officers which were based on false and fabricated charges. Incredibly, after enduring 6 months of daily stress and harassment, and repeated promises by Chief Cullen to trust him to restore his reputation, Marchand was told to forget about what happened and just "get back to work."

69. Having been abandoned by Chief Cullen with no hope of having his reputation restored or those who were responsible for destroying it being held accountable for their actions,

Marchand's level of stress and anxiety continued to escalate, but he somehow continued to perform his duties as a police officer.

70. On or about July 17, 2007, Marchand was told by Lt. Nyland, the Internal Affairs officer for the HPD, that when he inquired of Chief Cullen regarding the details of Marchand's case he (Nyland) was emphatically told by Chief Cullen "to mind his own fucking business." Lt. Nyland told Marchand that he needed to hire a lawyer to protect his interests.

71. On or about July 20, 2007, while working as Police Prosecutor in Court, Marchand had a panic attack and sought medical attention with his primary care physician, Dr. Labarge. Dr. Labarge told Marchand that the stress he had endured for more than 6 months had reached a critical point, and he would draft a letter to the Town indicating that Marchand could not continue to report for duty due to work-related stress.

72. On July 22, 2007, Marchand contacted Lt. Nyland, who was the acting Chief during Chief Cullen's vacation, and advised him to "put him out on work-related stress" by order of Dr. Labarge.

73. On or about July 23, 2007, Sgt. Grant advised Marchand that he had a recent conversation with the Town Administrator regarding Marchand's case and the manner in which Chief Cullen handled it. Wheeler told Sgt. Grant that no action would be taken against Officer Wallace because she is a female and the Town of Hamilton "cannot afford another lawsuit by a female employee," or words to that effect. Sgt. Grant relayed this information to Marchand, which reinforced Marchand's realization that neither Officer Wallace nor any of the other HPD officers nor Town Counsel McKenna would face any disciplinary action for destroying his reputation and causing him psychological harm.

74. On July 26, 2007, Marchand contacted Wheeler through counsel and requested that he be placed on injured on duty status pursuant to M.G.L. c. 41, § 111F as a result of his being psychologically incapacitated by the injuries he sustained while in the performance of his duties.

75. Despite being acutely aware of what had transpired in the preceding 6 months and the deleterious effects it had on Marchand's psychological well being, the Town took no action on his claim for injured on duty status despite Marchand being entitled to such a benefit. Marchand was forced to utilize his accrued sick leave in order to be compensated during his time of work-related incapacity.

76. Marchand continued to treat with Counselor Braucher as he had regularly since May, 2007. In or around July, 2007, Counselor Braucher concluded that Marchand's psychological condition had deteriorated and she concluded that Marchand suffered from post traumatic stress disorder ("PTSD"). Counselor Braucher suggested that he continue to treat with her privately which Marchand agreed to do, at his own expense.

77. On August 1, 2007, an e-mail exchange between Officer Wallace and Town Counsel McKenna occurred in which Officer Wallace inquired whether a letter allegedly sent by Marchand to the Town is "threatening in any way or does it show any emotional instability. If so, his gun permit should be pulled and the Selectmen should speak with Lt. Nyland. We do pull permits for psyl (sic) reasons." Town Counsel McKenna replied that she had not seen the letter but if Officer Wallace heard "anything more please let me know." Officer Wallace replied that she would "ask Lt [Nyland] and get his opinion on [Marchand's] state of mind" and asked Town Counsel McKenna if she "[c]ould ... ask Bill [Bowler] if he received a letter?"

78. On or about August 2, 2007, Marchand was contacted by the Town and advised that an independent medical examination would be scheduled to evaluate his psychological ability to perform the duties of a police officer.

79. On August 8, 2007, Marchand contacted the Town through counsel and set forth a chronological litany of work-related events which caused him to be psychologically incapacitated from his duties as a police officer. Marchand also requested a copy of his personnel file, a request which had been repeatedly and unlawfully denied by Chief Cullen in the preceding 6 months.

80. On August 8, 2007, the Town sent a letter to Marchand indicating that his use of sick leave would be treated as a leave of absence authorized by the Family Medical Leave Act.

81. On August 15, 2007, Marchand contacted the Town through counsel and demanded a copy of his personnel file to be produced in its entirety by August 20, 2007 or the matter will be referred to the Attorney General

82. On or about August 20, 2007, in an effort to create a personnel file which did not previously exist, Chief Cullen ordered Sgt. Grant to go into Marchand's desk and retrieve documents which could be reasonably construed to be personnel documents. Upon information and belief, these documents were presented to the Board of Selectmen by Chief Cullen later that evening purportedly as Marchand's personnel file and ultimately produced to Marchand.

83. On or about August 24, 2007, the Town was provided with a letter from Dr. Labarge indicating that Marchand was suffering from work-related stress and was presently unable to perform the duties of a police officer. Dr. Labarge indicated that Marchand's condition will continue for an indefinite period of time.

84. On or about August 25, 2007, what purported to be Marchand's personnel file was produced by the Town. Documents included in this production included documents which neither Chief Cullen nor the Town had access to, as said documents were personal training records that Marchand kept segregated in his personal files since he was the Training Officer for the HPD.

85. On October 1, 2007, almost two months after being notified of the Town's intent to schedule an independent medical examination, Marchand was examined by Julia Reade, M.D., a board certified psychiatrist. After an exhaustive four hour examination, Dr. Reade concluded in a report dated November 13, 2007 that Marchand suffered from an anxiety disorder which renders him unable to perform the duties of a police officer. Dr. Reade also concluded that Marchand's psychological symptoms "arose from the stress related to the many investigations he underwent in 2007," as well as "his view that he has been insufficiently supported by his chief, the interpersonal conflicts within the police department, and his disappointment and subsequent anger at the chief in July, 2007." Nothing in Dr. Reade's report suggested that Marchand was a harm to himself or others, or was unfit to carry a licensed firearm.

86. On November 8, 2007, Dr. Labarge provided another letter to the Town indicating that Marchand continues to be treated for anxiety and depression, and that he was unable to resume his duties as a police officer.

87. On or about November 14, 2007, Marchand commenced treatment with John Greene, Ph.D. ("Dr. Greene"), who is a licensed psychologist. Dr. Greene is the Senior Psychologist, National Center for the Study of Post Traumatic Stress Disorder, Boston VA Medical Center, Chief Psychologist for the Boston Fire Department and an Associate Professor, Boston University School of Medicine, Department of Psychiatry.

88. On November 26, 2007, Marchand appeared before the Board of Selectmen in relation to his claim for injured on duty status. During this meeting, Marchand was highly critical of Chief Cullen's handling of the improper investigations conducted and the injurious actions taken by HPD officers in an attempt to have Marchand fired. Marchand also alleged certain improprieties regarding the operation of the HPD, specifically the lack of certification of emergency medical technicians directly under Chief Cullen's command, to which Chief Cullen bristled. As Marchand's direct supervisor, Chief Cullen was well aware of the lack of certification issue, as he himself had falsified training records claiming to have attended certification classes which were either never held or which he did not attend. At the conclusion of this meeting, the Board of Selectmen took no action on Marchand's request for injured on duty benefits but instead agreed to continue to compensate him until December 12, 2007. During this meeting, no additional medical evidence was provided to the Board of Selectmen beyond the August 24, 2007 and November 8, 2007 letters from Dr. Labarge and Dr. Reade's November 8, 2007 report.

89. On November 27, 2007, in direct retaliation to Marchand's critical comments of Chief Cullen, Chief Cullen contacted Gavin J. Keenan, Chief of the Ipswich Police Department ("Chief Keenan"), and upon information and belief, requested that Chief Keenan revoke Marchand's license to carry ("LTC") a firearm. Rather than revoke the LTC as requested by Chief Cullen, Chief Keenan suspended Marchand's LTC on November 27, 2007 "due to recent medical concerns for competency and capacity issues provided by the Hamilton Police Department on 11/27/07." Upon information and belief, Chief Cullen did not provide any medical documentation to substantiate his "concerns" regarding Marchand's competency and/or capacity to carry a firearm. Upon information and belief, Chief Keenan acted in good faith based

on the representations made by Chief Cullen, even though as of that date, no medical evidence had been provided by any medical professional that questioned Marchand's competency or capacity to possess and carry a firearm. This unwarranted and retaliatory act by Chief Cullen caused Marchand further anxiety, stress and embarrassment.

90. On December 10, 2007, the Town was presented with a December 7, 2007 letter from Dr. Greene, Marchand's treating psychologist, indicating that Marchand suffered from PTSD with depressive features as a result of the defamation of being unlawfully investigated by the HPD. Dr. Greene also opined that Marchand is not a danger to himself or others, and there was no medical basis to suspend his LTC.

91. On December 12, 2007, Marchand met with the Board of Selectmen regarding his claim for injured on duty benefits pursuant to M.G.L. c. 41, § 111F. The Board of Selectmen deferred action on the Section 111F claim but voted to continue Marchand on a paid leave of absence status for up to 6 months from December 10, 2007 to June 10, 2008. The Board of Selectmen also agreed to investigate the claims by Marchand regarding the actions of certain HPD officers, Chief Cullen and Town employees which Marchand claimed form the basis of his psychological incapacity. Board of Selectmen Member Bowler stated that "Marchand will also be investigated" or words to that effect, even though Marchand had been cleared of any wrong doing by four (4) separate investigations

92. On January 25, 2008, Selectmen Bowler sends an e-mail to Gerald Hayes ("Investigator Hayes") regarding "the initial scope of the investigation relative to Officer Michael Marchand" which did not include the specific allegations made by Marchand. Selectmen Bowler did not ask Investigator Hayes to review the allegation of improper

certification of the emergency medical technicians who operated the ambulance for the Town of Hamilton.

93. During the months of January, February and March, 2008, Investigator Hayes conducted his investigation. Unbeknownst to Marchand, rather than investigate many of the specific claims raised by Marchand which included potentially illegal activity by HPD officers, Chief Cullen and the Town, Inspector Hayes was asked to investigate and answer five specific questions: (1) Was the Board of Selectmen's decision to authorize an investigation an appropriate one? (2) What was the quality of the investigation insofar as the manner in which it was undertaken by the Chief? (3) Were the results of the investigation properly handled? (4) Were actions taken by individual police officers in reporting possible wrongdoing in relation to the Marchand matter appropriate, and was the manner in which these were reported and investigated appropriate? (5) Were the actions taken by Town Counsel Donna McKenna relative to investigations of Officer Marchand appropriate?

94. In or around March, 2008, Chief Keenan lifted the suspension on Marchand's LTC finding no proper purpose to continue with the suspension. During the period of suspension, Chief Cullen did not provide any documentation, medical or otherwise, to support his request to revoke Marchand's LTC; conversely, Marchand provided Chief Keenan with letters from Drs. Labarge and Greene, both of whom attested to Marchand's ability to safely possess a firearm. Subsequently, Marchand's LTC was restored by Chief Keenan, without restriction.

95. In a report dated May 1, 2008, Investigator Hayes concluded ("Hayes Report") that investigations conducted by Officer Wallace and Officer Hatfield "were operating to support their own agendas, and not in the best interests of the Town, the department or Marchand."

Hayes also concluded that information provided by Officer Wallace to Town Counsel McKenna was inaccurate or “not real” and that Town Counsel McKenna accepted Wallace’s reckless accusations against Marchand “without critical evaluation.” Investigator Hayes also concluded that during the entire period Marchand was investigated, there was not one single written complaint filed against him by any citizen of Hamilton or the court personnel who worked closely with Marchand.

96. On June 16, 2008, the Board of Selectmen reconvened to discuss, among other things, Marchand’s claim for injured on duty benefits in light of Hayes’ report. Following discussion and deliberation, the Board of Selectmen voted unanimously to deny Marchand’s claim for injured on duty benefits, and extended his paid administrative leave until December 31, 2008. In rendering this decision, the Board of Selectmen stated the basis of its denial was that as a matter of law, psychological injuries sustained in the performance of one’s duties are not compensable pursuant to M.G.L. c. 41, § 111F.

97. On July 3, 2008, Marchand instituted a declaratory judgment action in Essex Superior Court pursuant to M.G.L. c. 231A seeking a determination of his rights with respect to his claim for injured on duty benefits pursuant to M.G.L. c. 41, § 111F.

98. In July, 2008, the Town retained Robert J. Pomeroy, Esquire, Pomeroy Resources, Inc. (“Investigator Pomeroy”) to investigate issues raised by Marchand and discussed in the Hayes Report.

99. Realizing that neither the Board of Selectmen nor Chief Cullen were going to take any action related to the fact that the Town was operating an ambulance with improperly certified emergency medical technicians (“EMT”), and fearing that a citizen of Hamilton could be injured as a result of the lack of proper training of the EMTs, Marchand contacted the Office

of Emergency Management Services (“OEMS”) for the Commonwealth of Massachusetts on July 24, 2008 to inform them that several EMTs employed by the Town, including Chief Cullen, had falsified training and certification records during the 2006 recertification period.

100. As a result of Marchand’s disclosure, OEMS launched an investigation which ultimately substantiated Marchand’s claims and resulted in the suspension of the Town’s license to operate its ambulance, and the suspension of several HPD officers’ certification as EMTs, including Chief Cullen and Officers Hatfield and Wallace.

101. On or about October 7, 2008, on the eve of depositions and in acknowledgement of the Town’s culpability and liability for the devastating psychological injuries suffered by Marchand at the hands of his fellow officers and due to the complete lack of oversight by Chief Cullen, the Board of Selectmen voted to grant Marchand’s request for injured on duty pay pursuant to M.G.L. c. 41, § 111F (“111F benefits”), retroactive to July 22, 2007 when he was forced to stop working due to his work-related psychological disability. While relieved by this admission, Marchand was perplexed as to how the Board of Selectmen could conclude on June 16, 2008 that he was not entitled to 111F benefits as a matter of law, and now conclude that he was entitled to said benefits.

102. The provisions of M.G.L. c. 41, § 100B require the Town to indemnify Marchand for his reasonable hospital, medical and related expenses and reasonable charges incurred as the natural and proximate result of an accident occurring or of undergoing a hazard peculiar to his employment, while acting in the performance and within the scope of his duty without fault of his own.

103. On November 6, 2008, Marchand provided receipts for medical treatment related to the condition for which he had been awarded 111F benefits and requested to be indemnified

for these expenses, which totaled \$7,085.48 through October 14, 2008. In further retaliation to Marchand and in violation of M.G.L. c. 41, § 100B, the Town has refused to indemnify him for his medical expenses.

104. On December 9, 2008, following a thorough investigation, Investigator Pomeroy submitted his report (“Pomeroy Report”) to the Board of Selectmen which documented, inter alia, that Chief Cullen and Sgt. Dupray forged documentation regarding the misuse of federal and state grant funds, and which largely substantiated Marchand’s March, 2007 claim to Chief Cullen that Town Counsel McKenna, Sgt. Dupray and Officers Wallace and Hatfield were engaged in a concerted effort “to have Marchand and/or Chief Cullen prosecuted criminally and to remove them from their employment.”

105. Shortly after the release of the Pomeroy Report, Chief Cullen resigned in disgrace effective December 31, 2008, two months prior to his previously stated retirement date of February 28, 2009. On or about December 12, 2008, Sgt. Dupray was placed on paid administrative leave pending disciplinary hearings with respect to his role in forging grant documentation and possibly misusing grant funds.

106. On January 2, 2009, Marchand submitted a letter of presentment to the Town through its litigation counsel seeking compensation for damages incurred as a result of the violation of his civil rights, violation of various Massachusetts statutes and violation of common law.

107. In or around January, 2009, Marchand became aware that members of the HPD had knowledge of the medications he was taking for his psychological condition. This information was only made available to the Town of Hamilton in the context of receipts

forwarded to the Town for reimbursement of medical expenses, and this information was orally disseminated to members of the HPD without Marchand's authorization or consent.

108. On January 21, 2009, Marchand submitted a second request for reimbursement for medical expenses incurred from October 15, 2008 through January 12, 2009. Marchand's out of pocket medical expenses through January 12, 2009 now totaled \$9,525.48. Despite providing documentation of all medical expenses incurred from July 22, 2007 to January 12, 2009, the Town, in further retaliation to Marchand, has not reimbursed Marchand for the medical expenses incurred related to his job-related injuries.

109. On or about February 18, 2009, during the course of a disciplinary proceeding, Sgt. Dupray resigned in disgrace.

COUNT I – VIOLATION OF FIRST AMENDMENT RIGHTS
(Against Walter Cullen and the Town of Hamilton)

110. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

111. The Town of Hamilton, by and through Chief Cullen acting under color of state law, violated Marchand's First Amendment civil rights pursuant to 42 U.S.C. § 1983 when Marchand was ordered under threat of job loss not to speak with anyone or to confer with legal counsel regarding the false allegations being leveled against him.

112. As a result of Chief Cullen's actions, and in violation of his First Amendment rights, Marchand has suffered a loss of wages, benefits, reputation and earning capacity as well as suffering emotional and physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

COUNT II – VIOLATION OF FIRST AMENDMENT RIGHTS - RETALIATION
(Against Walter Cullen and the Town of Hamilton)

113. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

114. The Town of Hamilton, by and through Chief Cullen acting under color of state law, violated Marchand's First Amendment rights when Chief Cullen retaliated against Marchand for exposing the public health hazard of the lack of certification of the EMTs and otherwise criticizing Chief Cullen's lack of supervisory and management skills by requesting that Ipswich Police Chief Gavin Keenan revoke Marchand's license to carry a firearm.

115. As a result of Chief Cullen's actions, and in violation of his First Amendment rights, Marchand has suffered a loss of reputation and earning capacity as well as suffering emotional and physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

COUNT III – VIOLATION OF CHAPTER 149, § 185
(Against Chief Cullen and the Town of Hamilton)

116. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

117. In direct retaliation for Marchand's November 26, 2007 disclosure to the Board of Selectmen in the presence of Chief Cullen that the public risk of health and safety of having uncertified EMTs providing medical assistance to the citizens of Hamilton and the public at large by and through the Town operated ambulance, the Town of Hamilton by and through Chief Cullen requested that Marchand's license to carry a firearm be revoked without proper purpose for doing so.

118. As a result of Chief Cullen's actions and his violation of M.G.L. c. 149, § 185, Marchand must now disclose on any employment application which requires the individual to possess and carry a firearm that his license to carry had been suspended, thereby impairing his ability to obtain future employment in the only field in which he possesses the requisite skill and training, i.e. law enforcement or armed security. Marchand has also suffered a loss of reputation and earning capacity as well as suffering emotional and physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

COUNT IV – RETALIATION
(Against Walter Cullen and the Town of Hamilton)

119. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

120. In direct retaliation for Marchand's November 26, 2007 disclosure to the Board of Selectmen in the presence of Chief Cullen that the public risk of health and safety of having uncertified EMTs providing medical assistance to the citizens of Hamilton and the public at large by and through the Town operated ambulance, the Town of Hamilton by and through Chief Cullen requested that Marchand's license to carry a firearm be revoked without proper purpose for doing so.

121. As a result of Chief Cullen's actions and in violation of the common law prohibiting retaliation, Marchand must now disclose on any employment application which requires the individual to possess and carry a firearm that his license to carry had been suspended, thereby impairing his ability to obtain future employment in the only field in which he possesses the requisite skill and training, i.e. law enforcement or armed security. Marchand has also suffered a loss of reputation and earning capacity as well as suffering emotional and

physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

COUNT V – VIOLATION OF FOURTEENTH AMENDMENT - DUE PROCESS
(Against Walter Cullen, Karen Wallace, Arthur Hatfield, Donald Dupray, Donna McKenna a/k/a Donna Brewer and the Town of Hamilton)

122. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

123. Between January, 2007 and July, 2007, Marchand was improperly investigated by Officer Wallace, Sgt. Dupray, Officer Hatfield and Town Counsel McKenna based on false accusations in which there was no good faith belief of any wrongdoing by Marchand. In most cases, the allegations which prompted the investigation of Marchand were based on unsubstantiated rumors which were demonstrably false, and a reasonable review of all allegations in the context of due process and a fair procedure would have cleared Marchand before the process even began.

124. Chief Cullen repeatedly violated Marchand's due process rights by threatening him with loss of job if he spoke to anyone or sought legal counsel to protect his rights. Chief Cullen also violated HPD rules and regulations by not referring any allegations of wrongdoing leveled against Marchand to only HPD officer qualified and trained to investigate another officer, Internal Affairs Officer Lt. Nyland.

125. Chief Cullen further denied Marchand due process by assigning the initial investigation to Sgt. Dupray, who was one of the individuals who accused Marchand of wrongdoing in relation to the Fundraiser.

126. The Town of Hamilton violated Marchand's due process rights by authorizing Town Counsel McKenna to conduct an improper investigation of Marchand with the assistance

of Officer Wallace, both of whom lack the requisite skills and training to conduct such an investigation.

127. The Town of Hamilton further violated Marchand's due process rights by accepting the reckless and unsubstantiated allegations of Officer Wallace as fact when a fair procedure would have demonstrated these allegations were demonstrably false.

128. Sgt. Dupray violated Marchand's right to due process by claiming he interviewed an alleged complainant regarding Marchand's so-called strong-arm tactics, when upon information and belief, Sgt. Dupray knew that no such complaint was made and in fact, never interviewed the alleged complainant, Steve Bean.

129. Officer Hatfield violated Marchand's right to due process when he interviewed Bean without authorization and misrepresented statements made by Bean in an effort to wrongfully implicate Marchand in an alleged abuse of his police powers.

130. As a result of these and other actions by Chief Cullen, Officer Wallace, Sgt. Dupray, Officer Hatfield, Town Counsel McKenna and the Town of Hamilton, Marchand's Fourteenth Amendment Due Process rights were violated and he has suffered a loss of wages, benefits, reputation and earning capacity as well as suffering emotional and physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

COUNT VI – VIOLATION OF FOURTEENTH AMENDMENT - DUE PROCESS
(Against Walter Cullen, Karen Wallace, Arthur Hatfield, Donald Dupray, Donna McKenna a/k/a Donna Brewer and the Town of Hamilton)

131. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

132. The Town of Hamilton, by and through Chief Cullen, Officers Wallace and Hatfield, Sgt. Dupray and Town Counsel McKenna acting under color of state law violated

Marchand's Fourteenth Amendment Due Process rights were violated in relation to his property right to continued employment as the actions of the Town of Hamilton have rendered Marchand psychologically impaired such that he cannot perform the duties of a police officer or seek comparable employment.

133. As a result, Marchand has suffered a loss of wages, benefits, reputation and earning capacity as well as suffering emotional and physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

COUNT VII – DEPRIVATION OF CIVIL RIGHTS – FAILURE TO SUPERVISE
(42 U.S.C. § 1983)
(Against Walter Cullen and Town of Hamilton)

134. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

135. The Town of Hamilton, by and through Chief Cullen acting under color of state law, failure to properly supervise Sgt. Dupray, Officer Wallace and Officer Hatfield in their respective rogue investigations of Marchand, in that Chief Cullen authorized, approved, encouraged or knowingly acquiesced in their conduct.

136. The Town of Hamilton, by and through Chief Cullen acting under color of state law, failed to properly intervene and stop the unauthorized investigations of Marchand being conducted by Officer Wallace and Officer Hatfield.

137. A direct link exists between Chief Cullen's failure to supervise and/or intervene in the actions Sgt. Dupray, Officer Wallace and Officer Hatfield, and as a result Marchand has suffered a loss of wages, benefits, reputation and earning capacity as well as suffering emotional and physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

COUNT VIII – DEPRAVATION OF CIVIL RIGHTS – FAILURE TO SUPERVISE
(42 U.S.C. § 1983)
(Against Town of Hamilton)

138. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

139. The Town of Hamilton failed to properly supervise Town Counsel McKenna in her reckless investigation of Marchand and authorized, approved, encouraged or knowingly acquiesced in her conduct, which included using a police officer who lacked the requisite training and possessed actual malice towards Marchand, to wit Officer Wallace.

140. A direct link exists between the Town of Hamilton’s failure to supervise and/or intervene in the actions of Town Counsel McKenna, and as a result of the deprivation of his civil rights Marchand has suffered a loss of wages, benefits, reputation and earning capacity as well as suffering emotional and physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

COUNT IX – VIOLATION OF FOURTEENTH AMENDMENT -DEFAMATION
(Against Karen Wallace, Donna McKenna a/k/a Donna Brewer, Town of Hamilton)

141. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

142. The Town of Hamilton, by and through Officer Wallace, and Town Counsel McKenna acting under color of state law, caused Marchand to be defamed and his reputation irreparably damaged by its meritless investigation based on fabricated facts.

143. The Town of Hamilton took no steps and made no inquiry of the validity and accuracy of the allegations levied by Officer Wallace and Town Counsel McKenna, as their investigation of Marchand was rendered in bad faith and with malice.

144. As a result of the conduct of the Town of Hamilton, Officer Wallace and Town Counsel McKenna, Marchand's Fourteenth Amendment rights have been violated and his reputation has been severely damaged and a stigma has now been imposed that will interfere with his ability to take advantage of future employment opportunities, and Marchand has suffered a loss of wages, benefits, reputation and earning capacity as well as suffering emotional and physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

COUNT X – VIOLATION OF FOURTEENTH AMENDMENT -RIGHT TO PRIVACY
(Against Karen Wallace, Donna McKenna a/k/a Donna Brewer, Town of Hamilton)

145. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

146. The Town of Hamilton, by and through Town Counsel McKenna acting under color of state law, provided Officer Wallace with confidential medical information pertaining to Marchand in violation of his right to privacy.

147. As a result of the conduct of the Town of Hamilton, Officer Wallace and Town Counsel McKenna, Marchand's Fourteenth Amendment right to privacy has been violated and he has suffered a loss of wages, benefits, reputation and earning capacity as well as suffering emotional and physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

COUNT XI – VIOLATION OF PRIVACY
(M.G.L. c. 214, § 1B)

(Against Karen Wallace, Donna McKenna a/k/a Donna Brewer, Town of Hamilton)

148. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

149. The Town of Hamilton, by and through Town Counsel McKenna acting under color of state law, provided Officer Wallace with confidential medical information pertaining to Marchand in violation of his right to privacy.

150. As a result of the conduct of the Town of Hamilton, Officer Wallace and Town Counsel McKenna, Marchand's right to privacy pursuant to M.G.L. c. 214, §1B has suffered a loss of wages, benefits, reputation and earning capacity as well as suffering emotional and physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

COUNT XII – FAILURE TO PAY MEDICAL EXPENSES

(M.G.L. c. 41, § 100)

(Town of Hamilton)

151. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

152. On or about October 7, 2008, the Town of Hamilton Board of Selectmen voted to award Marchand injured on duty benefits pursuant to M.G.L. c. 32, § 111F in acknowledgement that Marchand suffered disabling injuries while in the performance of his duties.

153. M.G.L. c. 41, § 100 requires the Town of Hamilton to indemnify Marchand for reasonable medical and related expenses incurred as the natural and proximate result of the injuries he sustained in the performance of his duties for which he was awarded benefits pursuant to M.G.L. c. 41, § 111F.

154. To date, despite repeated written and oral requests for indemnification of his medical expenses, the Town of Hamilton has orally refused to indemnify Marchand claiming it allegedly lacks funds to do so.

155. In addition to the Town of Hamilton's statutory obligation to indemnify Marchand for his medical expenses incurred for which he has been awarded injured on duty benefits, upon information and belief the Town has sufficient funds to indemnify Marchand.

156. As a result of the Town's violation of M.G.L. c. 41, § 100 by its failure to indemnify Marchand for his reasonable medical expenses incurred as the natural and proximate result of the injuries he sustained in the performance of his duties for which he was awarded benefits pursuant to M.G.L. c. 41, § 111F, Marchand has suffered financial loss as well as suffering emotional and physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

COUNT XIII – VIOLATION OF CIVIL RIGHTS -CONSPIRACY
(42 U.S.C. § 1985)

(Against Donald Dupray, Karen Wallace, Arthur Hatfield, Brian Shaw, Hamilton Police Benevolent Association, Inc, Donna McKenna a/k/a/ Donna Brewer and William Bowler)

157. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

158. In or around December, 2006 and thereafter, Sgt. Dupray, Officer Wallace, Officer Hatfield and Officer Shaw, individually and as they comprise the Executive Board of the Hamilton Police Benevolent Association, Inc., acted in concert to inflict a wrong on Marchand and deprive him of his constitutional property right of continued employment by concocting a scheme by which fabricated charges of wrongdoing by Marchand would be used as leverage to force Chief Cullen to resign, thereby clearing the path for Sgt. Dupray to become Chief of the HPD and for Officer Wallace to become the Police Prosecutor, a job held by Marchand at the time.

159. Upon information and belief, once this plan was put into place Officer Wallace contacted Town Counsel McKenna, first anonymously through a letter and then by revealing her identity, and began providing false and misleading information to Town Counsel McKenna suggesting Marchand had conducted himself in a manner which would bring about his termination. Town Counsel McKenna brought this information to Selectmen Bowler who authorized this investigation without any substantial evidence of any wrongdoing by Marchand, and in circumvention of proper procedure to have Lt. Nyland investigate any wrongdoing by a HPD officer. Thus, Town Counsel McKenna acted in concert with Sgt. Dupray, Officer Wallace, Officer Hatfield, Officer Shaw and Selectmen Bowler in furtherance of the conspiracy.

160. As a result of the conduct of Town Counsel McKenna acting in concert with Sgt. Dupray, Officer Wallace, Officer Hatfield, Officer Shaw and Selectmen Bowler, Marchand's civil rights pursuant to 42 U.S.C. § 1985 have been violated and he has suffered a loss of wages, benefits, reputation and earning capacity as well as suffering emotional and physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

COUNT XIV – CONSPIRACY

(Against Donald Dupray, Karen Wallace, Arthur Hatfield, Brian Shaw, Hamilton Police Benevolent Association, Inc, Donna McKenna a/k/a/ Donna Brewer and William Bowler)

161. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

162. In or around December, 2006 and thereafter, Sgt. Dupray, Officer Wallace, Officer Hatfield and Officer Shaw, individually and as they comprise the Executive Board of the Hamilton Police Benevolent Association, Inc., acted in concert to inflict a wrong on Marchand and deprive him of his constitutional property right of continued employment by concocted a scheme by which fabricated charges of wrongdoing by Marchand would be used as leverage to

force Chief Cullen to resign, thereby clearing the path for Sgt. Dupray to become Chief of the HPD and for Officer Wallace to become the Police Prosecutor, a job held by Marchand at the time.

163. Upon information and belief, once this plan was put into place Officer Wallace contacted Town Counsel McKenna, first anonymously through a letter and then by revealing her identity, and began providing false and misleading information to Town Counsel McKenna suggesting Marchand had conducted himself in a manner which would bring about his termination. Town Counsel McKenna brought this information to Selectmen Bowler who authorized this investigation without any substantial evidence of any wrongdoing by Marchand, and in circumvention of proper procedure to have Lt. Nyland investigate any wrongdoing by a HPD officer. Thus, Town Counsel McKenna acted in concert with Sgt. Dupray, Officer Wallace, Officer Hatfield, Officer Shaw and Selectmen Bowler in furtherance of the conspiracy.

164. As a result of the conduct of Town Counsel McKenna acting in concert with Sgt. Dupray, Officer Wallace, Officer Hatfield, Officer Shaw and Selectmen Bowler, Marchand's common law rights have been violated and he has suffered a loss of wages, benefits, reputation and earning capacity as well as suffering emotional and physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

COUNT XV – VIOLATION OF MASSACHUSETTS CIVIL RIGHTS ACT
(M.G.L. c. 12, § 11I)

(Against Donald Dupray, Karen Wallace, Arthur Hatfield, Brian Shaw, Hamilton Police Benevolent Association, Inc, and Donna McKenna a/k/a/ Donna Brewer)

165. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

166. In or around December, 2006 and thereafter, Sgt. Dupray, Officer Wallace, Officer Hatfield and Officer Shaw, individually and as they comprise the Executive Board of the

Hamilton Police Benevolent Association, Inc., acted in concert to inflict a wrong on Marchand and deprive him of his constitutional property right of continued employment by concocted a scheme by which fabricated charges of wrongdoing by Marchand would be used as leverage to force Chief Cullen to resign, thereby clearing the path for Sgt. Dupray to become Chief of the HPD and for Officer Wallace to become the Police Prosecutor, a job held by Marchand at the time.

167. Upon information and belief, once this plan was put into place Officer Wallace contacted Town Counsel McKenna, first anonymously through a letter and then by revealing her identity, and began providing false and misleading information to Town Counsel McKenna suggesting Marchand had conducted himself in a manner which would bring about his termination. Thus, Town Counsel McKenna acted in concert with Sgt. Dupray, Officer Wallace, Officer Hatfield and Officer Shaw in furtherance of the conspiracy.

168. As a result of the conduct of Town Counsel McKenna acting in concert with Sgt. Dupray, Officer Wallace, Officer Hatfield, Officer Shaw and the Hamilton Police Benevolent Association, Inc., Marchand's civil rights have been violated pursuant to M.G.L. c. 12, § 11I and he has suffered a loss of wages, benefits, reputation and earning capacity as well as suffering emotional and physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

COUNT XVI – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Against Donald Dupray, Karen Wallace, Arthur Hatfield, Brian Shaw, Hamilton Police Benevolent Association, Inc, and Donna McKenna a/k/a/ Donna Brewer)

169. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

170. Sgt. Dupray, Officer Wallace, Officer Hatfield, Officer Shaw, individually and as they comprise the Executive Board of the Hamilton Police Benevolent Association, Inc., and Town Counsel McKenna knew, or should have known, that their concerted actions in attempting to have Marchand fired and undermine Chief Cullen would likely result in Marchand's emotional distress.

171. The conduct of Sgt. Dupray, Officer Wallace, Officer Hatfield, Officer Shaw, the Hamilton Police Benevolent Association, Inc. and Town Counsel McKenna was extreme and outrageous and beyond all reasonable bounds of decency.

172. As a result of the conduct of Sgt. Dupray, Officer Wallace, Officer Hatfield, Officer Shaw, the Hamilton Police Benevolent Association, Inc., and Town Counsel McKenna, Marchand's common law rights have been violated and he has suffered severe emotional distress, resulting in a loss of wages, benefits, reputation and earning capacity as well as suffering physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

COUNT XVII – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Walter Cullen)

173. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

174 Chief Cullen knew, or should have known, that by promising Marchand that he would take action against Sgt. Dupray, Officer Wallace, Officer Hatfield, Officer Shaw, and by threatening Marchand with job loss if he spoke to anyone about the unauthorized and authorized investigations based on fabricated charges against him, such action would result in Marchand's emotional distress, particularly in light of the fact, upon information and belief, Chief Cullen

never had any intention of taking disciplinary action against Sgt. Dupray, Officer Wallace, Officer Hatfield and/or Officer Shaw.

175. Chief Cullen's conduct was extreme and outrageous and beyond all reasonable bounds of decency.

176. As a result of Chief Cullen's conduct, Marchand's common law rights have been violated and he has suffered severe emotional distress, resulting in a loss of wages, benefits, reputation and earning capacity as well as suffering physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

COUNT XVIII – INTENTIONAL INTERFERENCE
WITH CONTRACTUAL RELATIONSHIP

(Against Donald Dupray, Karen Wallace, Arthur Hatfield, Brian Shaw, Hamilton Police Benevolent Association, Inc, and Donna McKenna a/k/a/ Donna Brewer)

177. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

178. Marchand has a contract with a third party, i.e. the Town of Hamilton, as part of a collective bargaining unit, the Hamilton Police Benevolent Association, Inc.

179. Sgt. Dupray, Officer Wallace, Officer Hatfield, Officer Shaw individually and as they comprise the Executive Board of the Hamilton Police Benevolent Association, Inc., and Town Counsel McKenna knowingly attempted to break the contract that exists between the Town of Hamilton and Marchand by their collectively egregious conduct in attempting to have Marchand fired and undermine Chief Cullen.

180. The manner in which Sgt. Dupray, Officer Wallace, Officer Hatfield, Officer Shaw individually and as they comprise the Executive Board of the Hamilton Police Benevolent Association, Inc., and Town Counsel McKenna conducted themselves was improper in means and motive.

181. Marchand was harmed by the interference of Sgt. Dupray, Officer Wallace, Officer Hatfield, and Officer Shaw individually and as they comprise the Executive Board of the Hamilton Police Benevolent Association, Inc., and Town Counsel McKenna such that he can no longer enjoy his continued employment with the Town of Hamilton.

182. As a result of the interference of Marchand's contractual relationship with the Town of Hamilton by the actions of Sgt. Dupray, Officer Wallace, Officer Hatfield, Officer Shaw individually and as they comprise the Executive Board of the Hamilton Police Benevolent Association, Inc., and Town Counsel McKenna, Marchand's common law rights have been violated and he has suffered a loss of wages, benefits, reputation and earning capacity as well as suffering emotional and physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

COUNT XIX – INTERFERENCE
WITH ADVANTAGEOUS BUSINESS RELATIONS
(Against Donald Dupray, Karen Wallace, Arthur Hatfield, Brian Shaw, Hamilton Police Benevolent Association, Inc, and Donna McKenna a/k/a/ Donna Brewer)

183. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

184. Marchand has a business relationship for economic benefit with a third party, i.e. the Town of Hamilton, as part of a collective bargaining unit, the Hamilton Police Benevolent Association, Inc.

185. Sgt. Dupray, Officer Wallace, Officer Hatfield, Officer Shaw, individually and as they comprise the Executive Board of the Hamilton Police Benevolent Association, Inc., and Town Counsel McKenna knew of that relationship.

186. Sgt. Dupray, Officer Wallace, Officer Hatfield, Officer Shaw, individually and as they comprise the Executive Board of the Hamilton Police Benevolent Association, Inc., and

Town Counsel McKenna interfered with that relationship through improper means and motive, to wit knowingly attempted to break the contract that exists between the Town of Hamilton and Marchand by their collectively egregious conduct in attempting to have Marchand fired and undermine Chief Cullen.

187. Marchand has lost the advantage of his business relationship directly as a result of the conduct of Sgt. Dupray, Officer Wallace, Officer Hatfield, Officer Shaw, individually and as they comprise the Executive Board of the Hamilton Police Benevolent Association, Inc., and Town Counsel McKenna such that he can no longer enjoy his continued employment with the Town of Hamilton.

188. As a result of the interference of Marchand's advantageous relationship by Sgt. Dupray, Officer Wallace, Officer Hatfield, Officer Shaw, Shaw individually and as they comprise the Executive Board of the Hamilton Police Benevolent Association, Inc., and Town Counsel McKenna, Marchand's common law rights have been violated and he has suffered a loss of wages, benefits, reputation and earning capacity as well as suffering emotional and physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

COUNT XX - DEFAMATION
(Karen Wallace)

189. Marchand repeats and incorporates by reference the allegations contained in the previous paragraphs.

190. Officer Wallace has made and published false statements about Marchand, thereby exposing him to ridicule and contempt in the community, in violation of the common law of Massachusetts.

191. As a result of Officer Wallace's actions, Marchand's common law rights have been violated and he has suffered a loss of wages, benefits, reputation and earning capacity as well as suffering emotional and physical pain and distress, and has incurred legal and medical costs. All such damages continue to this date.

PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff requests that this Court do the following:

- a. Enter judgment for the Plaintiff and against the Defendants on all counts of this complaint;
- b. Award the Plaintiff an amount of money which will compensate him for any loss of wages and/or benefits incurred as a result of the unlawful acts;
- c. Award the Plaintiff an amount of money which will fairly compensate him for his emotional and physical pain and suffering, humiliation and damage to his reputation and earning capacity;
- d. Order that the Defendants pay the Plaintiff's cost and attorney's fees resulting from this action;
- e. Order that the Defendants, where permissible by law, be ordered to pay punitive damages;
- f. Award such other and further relief as the Court deems just and proper to make the Plaintiff whole.

THE PLAINTIFF HEREBY DEMANDS A TRIAL BY JURY ON ALL CLAIMS

SO TRIABLE.

Respectfully submitted,

MICHAEL MARCHAND

By his attorney,

Michael Sacco, BBO #562006
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413.527.9473

Date: March 20, 2009