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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

KIRK RUSH,

Plaintiff,

vs.

CITY OF BOISE, a municipality and/or
political subdivision of the State of Idaho, and
RYAN LEE, an individual,

Defendants.

CIVIL COMPLAINT AND DEMAND

FOR JURY TRIAL

Case No. CV01-23-16384

Plaintiff Kirk Rush, by and through his attorneys, hereby complains against the Defendants,
the City of Boise and Ryan Lee, as follows:

NATURE OF THE CLAIMS

This suit and the claims identified herein are brought by Plaintiff Kirk Rush because of
injuries caused to Plaintiff by Mr. Lee, former Chief of the Boise Police Department, the City of

Boise's negligent hiring, supervision, and retention of Mr. Lee, and the deprivation of Plaintiff's Fourteenth Amendment rights by Mr. Lee and the City.

PARTIES

1. Mr. Rush, (hereinafter, "Sgt. Rush") is a long-time employee of the Boise Police Department. Sgt. Rush is a resident of the City of Boise, County of Ada, State of Idaho.

2. Defendant, the City of Boise, is a municipality and/or political subdivision established in the County of Ada, State of Idaho, and is also responsible and liable for the wrongful actions of the Chief of Police of the Boise Police Department, as well as the wrongful actions of its officers, agents, employees, and other individuals acting under its authority or apparent authority, including those members of the City of Boise Police Department or other agents acting under the color of law.

3. Defendant Ryan Lee is the former Chief of the Boise Police Department. Mr. Lee is believed to be a resident of the City of Boise, County of Ada, State of Idaho.

JURISDICTION AND VENUE

4. This Court has subject matter and personal jurisdiction over Defendants.

5. Venue is proper in the Fourth Judicial District, the County of Ada, State of Idaho, pursuant to Idaho Code §5-404 where the acts and violations of law occurred.

6. The amount in controversy in this suit exceeds \$10,000.00, the minimum jurisdictional requirement of this court.

GENERAL ALLEGATIONS

7. Sgt. Rush has been employed by the Boise Police Department ("BPD") since 2004.

8. Sgt. Rush is a decorated law enforcement officer, with his awards and commendations including a Life Saving Award, the American Red Cross Law Enforcement Award, the Leadership Commendation Medal, and other department and citizen commendations.

9. Mr. Lee served as Chief of BPD from July 2020 until October 2022, when he resigned at the request of Boise Mayor Lauren McLean. Mr. Lee came to BPD from the Portland Police Bureau (PPB), in Portland, Oregon, where he had most recently served as Assistant Chief.

10. Sgt. Rush's current assignment is to the BPD K9 unit and the BPD Patrol Division. Sgt. Rush has been part of the BPD K9 unit for seventeen years. Sgt. Rush has overseen the K9 unit for more than seven years.

11. BPD K9s are trained as a "bite and hold" unit, with the dogs trained to bite when ordered by the K9 handler. The BPD K9 unit has always been a bite and hold unit and is a very successful unit. The BPD K9 unit has a suspect surrender rate of approximately ninety-five percent (95%).

12. After Mr. Lee was hired as BPD Chief, he indicated that he was a proponent of "bark and hold" K9 programs. Mr. Lee and Sgt. Rush discussed changing the BPD K9 program to be a bark and hold unit on multiple occasions. Sgt. Rush expressed concerns (both on his own account and on behalf of his subordinate officers in the unit) about the expense and practical difficulties of implementing such a change.

13. Sgt. Rush advocated strongly for keeping the BPD K9 program a bite and hold unit but was prepared to change to a bark and hold unit if ordered by his chain of command. Thus, in a conversation not long before October 12, 2021, Sgt. Rush told Mr. Lee directly that all Mr. Lee needed to do was say the word, and Sgt. Rush would begin the work to change the K9 unit to a bark and hold unit. Chief Lee's response, as he walked away from the conversation was "Yeah, but what do I know, I am only the Chief." Chief Lee never gave Sgt. Rush an order to change the K9 unit to become a bark and hold unit.

14. Members of the BPD K9 unit began asking Sgt. Rush questions about the direction the K9 program would be going, which Sgt. Rush could not answer because he was unsure himself. For this reason, Sgt. Rush scheduled a meeting with Mr. Lee to again discuss the issue and get clear direction about the future of the program. That meeting was set for some time at the end of October 2021.

15. On October 12, 2021, Sgt. Rush was the Acting Watch Commander for the Patrol Division. As Acting Watch Commander, it was Sgt. Rush's responsibility to conduct the morning watch patrol briefing. The BPD watch patrol team was present at the briefing, along with several trainees and civilians.

16. Mr. Lee and Deputy Chief Tammany Brooks, who had recently been hired by the City, were also in attendance, ostensibly so Mr. Lee could introduce Deputy Chief Brooks to the watch patrol team.

17. Once Sgt. Rush completed the briefing, he turned the meeting over to Mr. Lee. Mr. Lee began by discussing an ongoing Office of Internal Affairs ("OIA") investigation.

18. Mr. Lee, against BPD policy, identified the subject officer and some of the facts of the ongoing OIA investigation.

19. According to Mr. Lee, the officer who was the subject of the OIA investigation had used a Lateral Vascular Neck Restraint (LVNR) to subdue a suspect when responding to a call about a domestic dispute. Mr. Lee stated that national best practices had moved away from using the LVNR in the aftermath of George Floyd's killing, and it was only an approved restraint under BPD policy in situations where deadly force is authorized.

20. During this discussion about LVNRs, Mr. Lee boasted to the group that in his previous position with PPB, a supervisor once told him that Lee used force more often than any other supervisor at PPB.

21. Mr. Lee then moved on from the discussion of the LVNR and introduced Deputy Chief Brooks.

22. Thereafter, Mr. Lee said: "Hey Rush, get up here."

23. Sgt. Rush did not volunteer to come to the front of the patrol briefing. Instead, Sgt. Rush felt that Mr. Lee ordered him to the front of the patrol briefing.

24. Once Sgt. Rush reached the front of the patrol briefing, Mr. Lee suddenly grabbed the back of Sgt. Rush's neck and forced his head forward and downward. The sudden use of force by Mr. Lee caused Sgt. Rush to bend at the middle and forced him to resist falling to the ground.

25. Just one day earlier, in a discussion about the LVNR, Mr. Lee made a comment to a pair of BPD officers that any maneuver involving the head or neck is dangerous without knowing a person's medical history. Mr. Lee had not discussed Sgt. Rush's medical history with him before grabbing him by the neck.

26. Mr. Lee led Sgt. Rush around the front of the room by the neck, continuing to force his head downward, while explaining to the group that the maneuver he was demonstrating could be used as an alternative to LVNR to control suspects.

27. Sgt. Rush did not consent to participating in a demonstration of this maneuver or have any warning that Mr. Lee would physically accost him in this manner.

28. A watch briefing is not an appropriate setting for training on, or demonstration of, defensive tactics. BPD conducts defensive tactic trainings in controlled environments with floor mats, advance notice to participants about the maneuvers that will be trained or demonstrated, and

an opportunity to warm up beforehand to prevent injury. Furthermore, officers must be unarmed for safety. None of these precautions were in place before Mr. Lee accosted Sgt. Rush.

29. As Mr. Lee paraded Sgt. Rush around the briefing room by his neck, Sgt. Rush's face turned red, and he struggled to maintain balance. Sgt. Rush felt humiliated to be treated this way but felt that he could not object or ask to be let go because Mr. Lee was the Chief of Police. Eventually, Sgt. Rush reached up, grabbed one of Mr. Lee's arms, and held on because he had been bent over for so long.

30. Mr. Lee then asked Sgt. Rush to try to stand up. Sgt. Rush responded that he could not. Mr. Lee then let go of Sgt. Rush's neck and allowed him to stand.

31. Once Sgt. Rush stood up, Mr. Lee ordered Sgt. Rush to face away from him. While standing slightly behind Sgt. Rush, Mr. Lee violently grabbed Sgt. Rush's forehead and yanked his head backward.

32. As Mr. Lee executed this maneuver, Sgt. Rush's neck hyperextended, and made a snap or pop sound loud enough to be heard by others. Sgt. Rush immediately knew that Mr. Lee had injured his neck.

33. The suddenness of Lee's maneuver surprised several attendees of the briefing. Some attendees audibly gasped.

34. One officer commented that if he had been accosted by Mr. Lee in the manner Sgt. Rush had, it would have sent him to the hospital.

35. Mr. Lee's maneuver forced Sgt. Rush into an off-balance position. He struggled to not fall to the ground in front of his peers and subordinates, thinking that if he went "to the ground in front of 18 guys, he would never hear the end of it." As Sgt. Rush regained balance, Mr. Lee

explained to the group that the maneuver he had performed was a second alternative to the LVNR to subdue a suspect.

36. Mr. Lee's treatment of Sgt. Rush made both officer and civilian attendees of the briefing feel uncomfortable.

37. Some felt that the demonstration was needlessly aggressive, and inappropriate outside the controlled setting of defensive tactics training. Furthermore, there was no legitimate purpose for the demonstration because neither maneuver demonstrated by Mr. Lee appeared to be an officially approved defensive tactic, and neither could be used consistently with BPD policy.

38. One officer felt that Mr. Lee, who is relatively small in stature, was trying to show off by demonstrating he could physically dominate Sgt. Rush, a larger man.

39. Another officer felt that Mr. Lee's conduct was a purposeful attempt to "emasculate" Sgt. Rush.

40. Once Mr. Lee released Sgt. Rush from the second hold, Sgt. Rush returned to his seat in the patrol briefing. Sgt. Rush knew that Mr. Lee had injured him, though he was not yet sure how badly.

41. A few minutes after Mr. Lee injured Sgt. Rush, Mr. Lee looked at Sgt. Rush and, in a condescending or mocking manner said: "What are you going to do now, fill out an SD1?" An SD1 is a workers' compensation form BPD requires officers to complete when injured on the job.

42. Mr. Lee's comments appeared designed to further humiliate Sgt. Rush and/or to unlawfully deter Sgt. Rush from submitting the form related to the injury Mr. Lee caused.

43. The October 12, 2021, briefing was not the first time that Mr. Lee engaged in violent behavior against an officer, nor the first time he taunted an officer about filling out an SD1.

44. On several occasions, Mr. Lee, who holds a black belt in Judo, participated in grappling and defensive tactics training alongside other BPD officers. Mr. Lee developed a reputation among BPD officers for being unnecessarily intense and aggressive during these trainings.

45. On at least two occasions after being unnecessarily rough in these trainings, Mr. Lee asked the BPD officers who had been on the receiving end of his physical aggression whether they intended to complete an SD1 form.

46. As with his comment to Sgt. Rush, these comments seemed intended to belittle the potentially injured BPD officer and/or to discourage the filing of the SD1 injury form.

47. In fact, Sgt. Rush did not fill out an SD1 immediately after the briefing—despite knowing that he was injured. Sgt. Rush wished to avoid Mr. Lee after the incident and feared that if he filed an SD1, Mr. Lee would learn of it and confront him. Sgt. Rush waited to submit the form until the end of his shift on Friday, October 15, 2021, to minimize this risk.

48. Sgt. Rush believed that Mr. Lee accosted him at the briefing because he had disagreed with Mr. Lee about the direction of the K9 unit. Yet, Sgt. Rush also declined to file an HR or OIA complaint against Mr. Lee because he feared additional retaliation if he complained about the incident.

49. On October 16, 2021, Lieutenant Josiah Ransom, Sgt. Rush's direct supervisor, learned about the incident from Sgt. Rush. Lt. Ransom had not been at the briefing because he was on vacation at the time. Upon learning of the incident, Lt. Ransom told Sgt. Rush he would have to report it to City HR. Lt. Ransom filed a complaint with HR on Monday, October 18, 2021.

50. The same day that Lt. Ransom filed the complaint, an HR investigation was opened into the incident, and Ms. Sarah Martin was assigned to investigate.

51. Ms. Martin requested an interview with Sgt. Rush about the incident. Sgt. Rush told Ms. Martin that “if I come meet with you, I am absolutely f#*%d”—referring to the possibility of retaliation from Mr. Lee—but nevertheless agreed to a meeting. Sgt. Rush could not meet that day, however, because he had a medical appointment to address the injuries caused by Mr. Lee.

52. Sgt. Rush’s initial clinical exam and x-ray revealed cervical neck sprain, with secondary myofascial tightness, limited range of motion and occipital headaches. Sgt. Rush’s treating physician could not exclude a cervical disc injury, with proximal scapular radiculopathy. Additionally, the treating physician noted a possible C5 anterior process avulsion fracture and ordered additional imaging. An MRI several days later revealed multiple bulging discs in Sgt. Rush’s neck.

53. Sgt. Rush’s doctor prescribed an oral steroid to alleviate pain. He also prescribed Ambien because Sgt. Rush could not sleep. Not only was Sgt. Rush in physical pain that interfered with his sleep, he also suffered severe anxiety related to the incident and participation in the subsequent complaint.

54. Ultimately, conservative treatment and two epidural steroid injections failed to alleviate Sgt. Rush’s ongoing pain and neck issues. On January 27, 2022, Sgt. Rush had surgery to repair the injuries caused by Chief Lee. This included harvesting bone from Sgt. Rush’s sternum for use in a graft to repair his cervical spine after an anterior discectomy at C5-C6. Further, the surgeon implanted an anterior plate and screw system at C5-C6 to stabilize Sgt. Rush’s neck.

55. In late October 2021, someone within BPD command staff requested that the Idaho State Police (“ISP”) investigate the incident as a felony battery. ISP accepted the request, and the investigation was assigned to ISP Captain Fritz Zweigart on November 1, 2021. Although it is

standard practice for BPD to place an officer who is the subject of a pending criminal investigation on administrative leave, the City did not place Mr. Lee on leave during the ISP investigation.

56. ISP Captain Zweigart and ISP Lieutenant Clint Skinner investigated Mr. Lee's actions in injuring Sgt. Rush. As part of their investigation, Capt. Zweigart and Lt. Skinner interviewed BPD officers who were present at the October 12, 2021, morning watch patrol briefing where Mr. Lee injured Sgt. Rush. At least one BPD officer declined to be interviewed because of fear of retaliation.

57. The City declined to conduct its own inquiry into the incident.

58. As stated above, City HR scheduled an interview of Sgt. Rush shortly after Lt. Ransom reported the October 12th incident to HR. However, the City cancelled the interview without explanation one day before it was supposed to occur.

59. The status of the City HR investigation remained unclear for the next two months. On November 10, 2021, Douglas Tyler in the City Attorney's Office claimed there was no pending HR investigation. Through counsel, Sgt. Rush sought clarification from Mr. Tyler, since an HR inquiry had been opened several weeks prior, and Mr. Tyler provided no information about why it would have been closed. However, Mr. Tyler did not pick up the call scheduled with Sgt. Rush's counsel on November 12, 2021, and he failed to follow up other than to acknowledge he missed the call.

60. On January 4, 2022, when Sgt. Rush sought information regarding the HR investigation, Kim Smith in the City Attorney's Office claimed no inquiry was ever begun because Sgt. Rush "declined repeated requests" for an interview. This was false. Sgt. Rush received a single request for an interview, which he accepted, only to have the interview cancelled by the City.

61. Later that day, Ms. Smith stated in an email to Sgt. Rush's counsel that "To this date, Sgt. Rush has not submitted anything to HR beyond the SD1 form. If you and Sgt. Rush wish to file a complaint with HR for something else, then you are welcome to do so."

62. In late-January and early-February, Sgt. Rush formally requested that the City pursue an HR inquiry regarding the incident at the watch briefing, as well as subsequent conduct by Mr. Lee affecting Sgt. Rush's working conditions and including Mr. Lee's making of false statements to the press and others regarding the incident.

63. Despite having earlier invited Sgt. Rush to file a complaint with HR, the City refused to conduct an HR inquiry or investigation.

64. On February 25, 2022, in response to a query from Sgt. Rush's counsel whether the City would be taking any action to address Sgt. Rush's complaints, Mr. Tyler asserted that BPD's Office of Internal Affairs, not HR, was "the proper investigating authority within the City for the complaint at issue." He further indicated that an OIA investigation had been opened but was suspended pending the conclusion of the ISP criminal investigation.

65. Later that same day, counsel for Sgt. Rush emailed Mr. Tyler to ask when the OIA matter had been opened and when it had been stayed. Counsel also asked Mr. Tyler whether the City Attorney's Office had made a "determination that OIA does not have a conflict investigating the allegations, although the allegations relate to actions of Chief Lee, who is the top of the chain of command for BPD OIA."

66. Three days later, on February 28, 2022, Mr. Tyler responded without answering the questions in the February 25th email from Sgt. Rush's counsel, stating merely that "I anticipate that OIA will proceed pursuant to City and BPD policies and procedures and that Sgt. Rush will be provided with information as provided in those policies and procedures."

67. After counsel inquired whether the City intended to answer the questions specific Sgt. Rush asked, the City cut off communications. According to Ms. Smith, the City Attorney's Office would "not be responding again to questions we have repeatedly answered."

68. The ISP investigation concluded in January 2022, and Capt. Zweigart forwarded his report to the Ada County Prosecutors Office. Ultimately, Clearwater County Prosecuting attorney E. Clayne Taylor was asked by the Ada County Prosecutors Office to make a charging recommendation regarding the incident.

69. In August 2022, Mr. Taylor concluded that probable cause existed for charging the Mr. Lee with felony battery, but ultimately recommended against charging Mr. Lee, while acknowledging it was "truly a close call."

70. Even after the report from Mr. Taylor stating there was probable cause to believe Mr. Lee committed felony battery against Sgt. Rush, the City declined to take corrective action regarding Mr. Lee.

71. It was not until additional issues with Mr. Lee's leadership became public that the City took any meaningful action. On September 22, 2022, a news report publicly exposed that Chief Lee had been the subject of numerous complaints by BPD officers and command staff about unprofessional conduct and bullying behavior. According to the news report, the Office of Police Accountability ("OPA") investigated the complaints and recommended to Mayor McLean in April 2022 that the City place Chief Lee on administrative leave and hire a third-party firm to investigate further. The City rejected OPA's recommendation. However, one day after the foregoing facts became public, Mayor McLean asked Mr. Lee to resign.

72. Mr. Lee resigned as Boise Police Chief on October 14, 2022.

73. The City paid Mr. Lee severance of approximately \$150,000.00 as part of his resignation.

74. On October 3, 2023, almost two years after Mr. Lee injured Sgt. Rush, the Department informed Sgt. Rush that the City of Boise “determined there is sufficient evidence to conclude that an officer or Department employee violated law or policy.” The letter did not specify which officer or employee was found to have violated law or policy, but it did reference a conversation between Sgt. Rush and Acting Captain D. Hunsaker on October 19, 2021 which was a conversation about Mr. Lee’s battery of Sgt. Rush.

75. Sgt. Rush is still employed by BPD.

76. It is expected that Sgt. Rush will have issues associated with the neck injury caused by Mr. Lee for the rest of his life. Sgt. Rush may also require future surgery if/when the repair destabilizes with age.

CLAIMS AGAINST DEFENDANT LEE

FIRST CAUSE OF ACTION (Battery against Defendant Lee)

77. Plaintiff realleges and incorporates by reference all paragraphs set forth above.

78. Mr. Lee intentionally touched Sgt. Rush during the October 12, 2021, briefing when he (1) grabbed Sgt. Rush’s neck, forced his head downward, and led him around the patrol briefing room in a hunched-over position, and (2) violently grabbed Sgt. Rush’s forehead, yanked his head backward.

79. The intentional touching of Sgt. Rush by Mr. Lee was harmful and offensive.

80. Sgt. Rush did not consent to being touched by Mr. Lee during or before the briefing.

81. Mr. Lee's conduct was a willful and unprovoked act of physical aggression, which was specifically intended to harm Sgt. Rush or engaged in with knowledge that injury was substantially likely to occur.

82. Mr. Lee acted with malice and/or criminal intent.

83. As a result of Mr. Lee's conduct, Sgt. Rush suffered and continues to suffer damages including, but not limited to, medical expenses, lost wages, damage to his career advancement, lost retirement benefits, lost enjoyment of life, and emotional harm.

SECOND CAUSE OF ACTION
(Intentional Infliction of Emotional Distress against Defendant Lee)

84. Plaintiff realleges and incorporates by reference all paragraphs set forth above.

85. Upon information and belief, Mr. Lee attended eight to ten patrol briefings to introduce Deputy Chief Brooks, and he discussed the issues pertaining to the LVNR in some or all these briefings.

86. Although Mr. Lee spoke about the LVNR issue in multiple briefings, he only sought to demonstrate alternative maneuvers in one—the briefing where he injured Sgt. Rush.

87. Mr. Lee singled out and physically accosted Sgt. Rush—with whom he had a disagreement about the direction of the K9 unit—under the guise of demonstrating these alternative maneuvers to humiliate, emasculate, and show physical dominance over Sgt. Rush in front of Sgt. Rush's peers and subordinates.

88. Mr. Lee's conduct was intended to cause emotional distress and/or recklessly disregarded the likelihood that such distress would result.

89. Mr. Lee's conduct was extreme and outrageous.

90. Sgt. Rush has suffered, and continues to suffer, severe emotional distress as a direct and proximate result of Mr. Lee's conduct.

THIRD CAUSE OF ACTION
(Negligent Infliction of Emotional Distress against Defendant Lee)

91. Plaintiff realleges and incorporates every paragraph above.

92. Mr. Lee owed duties to Sgt. Rush to (1) take exercise reasonable care to prevent foreseeable emotional distress (2) not commit a battery upon him.

93. Mr. Lee breached his duties when he purported to demonstrate alternative maneuvers to the LVNR on Sgt. Rush in front of Sgt. Rush's peers and subordinates, without consent, warning, or a legitimate purpose for the demonstration.

94. It was reasonably foreseeable that Sgt. Rush would suffer emotional distress by being subjected to this conduct.

95. As a direct and proximate result of Mr. Lee's conduct, Sgt. Rush suffered and continues to suffer emotional distress.

96. Sgt. Rush physically manifested his emotional distress in one or more of the following manners: insomnia and trouble sleeping, loss of appetite, irritability, and/or headaches.

FOURTH CAUSE OF ACTION
(Violation of 42 U.S.C. § 1983 against Defendant Lee for deprivation of Sgt. Rush's Fourteenth Amendment right to personal security)

97. Plaintiff realleges and incorporates every paragraph above.

98. Sgt. Rush had a liberty interest protected by the Fourteenth Amendment to be free from unjustified intrusion on his personal security.

99. Mr. Lee violated Sgt. Rush's right to personal security by physically accosting and injuring Sgt. Rush in the October 12, 2021, briefing without consent, warning, or a legitimate purpose.

100. Mr. Lee acted under color of law.

101. Mr. Lee intentionally violated Sgt. Rush's Fourteenth Amendment rights.

102. As a result of Mr. Lee's actions, Sgt. Rush suffered and continues to suffer damages, including, but not limited to, medical expenses, lost wages, damage to his career advancement, lost retirement benefits, lost enjoyment of life, and emotional harm.

103. Sgt. Rush is entitled to recover compensatory damages for all harm suffered, as well as attorney fees and costs.

104. Mr. Lee conduct that harmed Sgt. Rush was malicious, oppressive and/or in reckless disregard for Sgt. Rush's civil rights.

CLAIMS AGAINST DEFENDANT CITY OF BOISE

FIFTH CAUSE OF ACTION

(Negligent Hiring, Supervision, and/or Retention of Chief Lee)

105. Plaintiff realleges and incorporates every paragraph above.

106. Upon information and belief, Mr. Lee displayed a pattern of aggressive behavior in his prior employment at PPB, which included disproportionate involvement in hands-on, use-of-force incidents as a supervisor, and an incident of physical violence against a co-worker resulting in discipline.

107. Before injuring Sgt. Rush, Mr. Lee continued to demonstrate aggressive behavior and tendencies while employed by the City of Boise, including:

- a. using unnecessary intensity and levels of force in defensive tactics trainings;
- b. repeatedly mocking individuals whom he injured or may have injured in such trainings by asking whether they intended to file workers' compensation claims;
- c. other verbally abusive and bullying behavior;
- d. and boasting about his use of force.

108. After Mr. Lee injured Sgt. Rush, the City failed to appropriately discipline Mr. Lee, failed conduct an independent investigation into the incident, declined to place Mr. Lee on

administrative leave during a pending criminal investigation as it would any other officer, and indicated that the only recourse available to Sgt. Rush was an OIA investigation, over which Mr. Lee had ultimate authority.

109. Defendant City of Boise owed a duty to Sgt. Rush to exercise reasonable care in its employment practices, including in the hiring, supervision, and retention of Mr. Lee.

110. The City breached its duty by failing to exercise reasonable care in its employment of Lee. This includes, but is not limited to:

- a. Hiring Mr. Lee despite knowing, or failing to discover through reasonable care, that he had history of aggressive behavior in prior employment,
- b. Inadequately supervising and retaining Mr. Lee despite knowing, or failing to discover through reasonable care, that he continued to demonstrate aggressive behavior while employed by the City of Boise, including by:
 - i. Bragging to co-workers about his history of using violence;
 - ii. Using unnecessary intensity and levels of force in defensive tactics trainings;
 - iii. Repeatedly mocking individuals whom he injured, or may have injured, in such trainings by asking whether they intended to file workers' compensation claims.
- c. Failing to discipline, place on leave, or otherwise address Mr. Lee's conduct, injuring Sgt. Rush, which caused Sgt. Rush further distress.

111. The City's breach of its duties actually and proximately caused injury to Sgt. Rush.

112. Sgt. Rush is entitled to recover damages as a result of the City's conduct, including damages for medical expenses, lost wages, damage to his career advancement, lost retirement benefits, lost enjoyment of life, and emotional harm.

SIXTH CAUSE OF ACTION
(Violation of 42 U.S.C. § 1983 against the City of Boise for deprivation of Sgt. Rush's
Fourteenth Amendment right to personal security)

113. Plaintiff realleges and incorporates every paragraph above.

114. Mr. Lee acted under color of law when he injured Sgt. Rush at a Police Department briefing.

115. Mr. Lee's actions violated Sgt. Rush's right to personal security under the Fourteenth Amendment of the United States Constitution. That is, Mr. Lee's actions were so closely related to the deprivation of Sgt. Rush's rights as to be the moving force that caused the ultimate injury.

116. As a result of these deprivations, Sgt. Rush suffered and continues to suffer damages including, but not limited to, medical expenses, lost wages, lost enjoyment of life, and emotional harm and damage.

117. The City is liable for Mr. Lee's deprivation of Sgt. Rush's constitutional rights and the injuries caused by that deprivation on the following grounds:

- a. Mr. Lee had final policymaking authority from the City with regard to managing the affairs of the police department and was acting as a final policy maker when he engaged in the acts that injured Sgt. Rush; and/or
- b. The City/the Mayor delegated discretionary authority to Mr. Lee, and he used that authority and exercised discretion in violating Sgt. Rush's constitutional rights and inflicting injury upon him; and/or

- c. Even if Mr. Lee did not have final policymaking authority, was not delegated discretionary authority, or was not acting as a final policy maker, the City made a deliberate choice to approve Mr. Lee's actions and the basis for it. This deliberate choice is demonstrated by:
 - i. the City's refusal to investigate the incident;
 - ii. its refusal to place Mr. Lee on administrative leave; and,
 - iii. its refusal to discipline Mr. Lee for his action; and/or
- d. The policies of the City were not adequate to prevent violations of law by its police chief to handle known or usual and reoccurring situations with which the chief must deal, and the City was deliberately indifferent to the substantial risk that its policies were inadequate to prevent violations of law by its chief. This deliberate indifference is demonstrated by:
 - i. the City's failure to adequately vet Mr. Lee's employment background before hiring him as a Chief;
 - ii. its failure to adequately supervise and/or train Mr. Lee to prevent him from perpetrating continuing violations of his subordinates' rights to personal security; and,
 - iii. its failure to adequately discipline and train Mr. Lee when it became aware or reasonably should have been aware of Mr. Lee's violations of his subordinates' rights to personal security;

118. Sgt. Rush is entitled to recover damages against the City for all harm suffered, as well as attorney fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in his favor and against Mr. Lee and the City of Boise, and award the following relief:

- a. Compensatory damages, including medical expenses, lost wages, damage to Sgt. Rush's career advancement, lost retirement benefits, lost enjoyment of life, and emotional harm;
- b. Punitive damages under 42 U.S.C. § 1983;
- c. Pre-judgement and post-judgment interest at the highest lawful rate;
- d. Attorney fees and costs of this action, including expert witness fees, as appropriate;
and
- e. Any such further relief as justice allows.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

Dated this 9th day of October 2023.

**STRINDBERG SCHOLNICK BIRCH
HALLAM HARSTAD THORNE**

/s/ Guy Hallam
T. Guy Hallam
Erika Birch
Michael Bowers

Attorneys for Plaintiff