

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 17-CV-22529-COOKE/GOODMAN

GARY EUGENE,

Plaintiff,

vs.

CITY OF NORTH MIAMI,  
LARRY M. SPRING, JR., and  
SCOTT W. GALVIN,

Defendants.

\_\_\_\_\_ /

**AMENDED COMPLAINT**

Plaintiff, Gary Eugene, brings this action to address the conduct by Defendants, City of North Miami, Larry M. Spring, Jr., and Scott W. Galvin, as follows:

***Parties, Jurisdiction, and Venue***

1. **Plaintiff, Gary Eugene (“Chief Eugene”)**, was and is a resident of Broward County, at all times material, and he is *sui juris*.

2. **Defendant, City of North Miami (“City”)**, is a municipality within Miami-Dade County, Florida, and it is *sui juris*.

3. **Defendant, Larry M. Spring, Jr. (“City Manager Spring”)**, was at all times material over 18 years old, *sui juris*, and the City Manager for the City of North Miami.

4. **Defendant, Scott W. Galvin (“Galvin”)**, was at all times material over 18 years old, *sui juris*, and a resident of Miami-Dade County, Florida.

5. This Court has original jurisdiction over Chief Eugene’s claims that arise under federal law and supplemental / pendent jurisdiction over his related state law claim(s).

6. Venue is proper pursuant to 28 U.S.C. §1391(b)(ii) because the Defendant City is located within this District, because the Defendant City employed Chief Eugene in

this District, because Defendant Spring made adverse employment decisions in this District, because Defendant Galvin made disparaging statements in this District, and because most of the actions complained of occurred within this District.

***Background Facts***

7. Chief Eugene was born in Haiti and became a police officer with the City of Miami in 1985.

8. Chief Eugene embarked on a distinguished career over the next thirty years working as a public servant for the City of Miami Police Department.

9. While amassing an unblemished employment record with the City of Miami Police Department, Chief Eugene ascended through its ranks.

10. Chief Eugene became the first Haitian-born Lieutenant within the City of Miami in 1996, and served the Little Haiti community.

11. The City of Miami Police Department later promoted Chief Eugene to the rank of Captain in, and he then served the Liberty City community.

12. In 2003, the City of Miami Police Department appointed Chief Eugene to the rank of Commander, overseeing the Little Haiti Community and subsequently the emergency operations of the Communications Section.

13. Chief Eugene then joined the City of North Miami Police Department in 2013 and was appointed to the position of Assistant Chief on December 28, 2015.

14. Chief Eugene never ceased in his formal education during his career. Chief Eugene earned a Master's Degree in Criminal Justice from Florida International University, a Bachelor's Degree in Liberal Studies from Barry University, and an Associate's Degree in Criminal Justice from Miami-Dade College.

15. Chief Eugene also is a graduate of the prestigious Southern Police Institute (S.P.I.) in Louisville, Kentucky, and the Senior Management Institute for Police Executives (S.M.I.P.) at the University of Boston (taught by professors from Harvard's Kennedy School.)

16. The Defendant City appointed Chief Eugene to serve as its Chief of Police on an interim basis in 2016 and then formally appointed him as its Chief of Police, which appointment became official effective on July 12, 2016.

17. The Defendant City appointed Chief Eugene to this position, such that he served as the only Haitian-American Chief of Police in South Florida.

18. All conditions precedent occurred, were satisfied, and/or were waived.

19. Chief Eugene hired the undersigned counsel and agreed to pay a reasonable fee for all services rendered herein.

**COUNT I – 42 U.S.C. §1983 LIBERTY INTEREST VIOLATION  
AGAINST THE CITY OF NORTH MIAMI**

Plaintiff reincorporates and re-alleges paragraphs 1-19 as though set forth fully herein and further alleges as follows:

20. The Fourteenth Amendment prohibits the Defendant City from depriving a person like Chief Eugene of the fundamental rights of liberty or property without due process of law.

21. The concept of liberty recognizes two particular interests of a public employee: (a) the protection of his good name, reputation, honor and integrity, and (b) his freedom to take advantage of other employment opportunities.

22. Chief Eugene returned from a medical leave of absence on June 15, 2017 and reported to City Manager Spring's office.

23. City Manager Spring told Chief Eugene at that meeting that he had "decided to part ways, had a lot of respect for you, you have been very professional, and very competent, but we are moving in a new direction."

24. City Manager Spring further told Chief Eugene that he is being placed on paid administrative leave and that he had 21 days to resign and accept \$12,000 as a severance, and that if he did not accept the Separation Agreement and General Release appended hereto as Exhibit "A" and given to him on June 15, 2017, then his employment would be terminated on July 7, 2017.

25. The Defendant City then held a public meeting later that day on June 21, 2017 as part of its City Manager's Community Council.

26. The Notice for the City Manager's Council Forum indicated that, "The objective for the City Manager's Community Form is to provide input as the City initiates measures to further enhance police community relations."

27. At the public meeting, City Manager Spring authored a Memorandum that was disseminated to the public to purportedly update the community on the changes made since the July 18, 2016 shooting of Charles Kinsey.<sup>1</sup>

28. City Manager Spring discussed the changes that Defendant City made as a result of July 18, 2016 incident in which Mr. Kinsey was shot, which included various trainings for members of the police department in interacting with members of the community who have autism or other mental/capacity issues, use of body cameras, PERF, use of less-lethal weapon, Community Engagement training, and other improvements to the City of North Miami Police Department.

29. Although most, if not all, of the changes that the City Manager identified were performed or taking place were initiated and/or performed by or through Chief Eugene, the City Manager gave no credit or mention to Chief Eugene for his accomplishments.

30. Rather, the June 21, 2017 Memorandum was an official publication on City of North Miami letter head and distributed on behalf of the City Manager that for the first time identified four contrived reasons why the City Manager decided to give Chief Eugene the ultimatum to either accept a severance package by 5:00 p.m. on July 6, 2017 or be fired on July 7, 2017.

31. The June 21, 2017 Memorandum was an expression of a policy implemented by the Defendant City.

32. In connection with the termination of Chief Eugene's employment, the Defendant City made and disseminated several false statements of fact to the general public on June 21, 2017, including:

- a) That Chief Eugene made inconsistent statements under oath to the Florida Department of Law Enforcement investigator and to the Internal Affairs Investigator;
- b) That Chief Eugene lost managerial control over the police department;

---

<sup>1</sup> On July 18, 2016, Officer Jonathan Aledda shot Charles Kinsey, an unarmed therapist who was lying on the ground next to his patient, Arnoldo Rios-Soto, an autistic adult who was holding a toy train in his hand.

- c) That Chief Eugene may have colluded with a police officer to circumvent the internal affairs investigation; and
- d) That Chief Eugene admitted to making hiring decisions based on outside influencers.

33. The aforementioned statements are completely false and bear no relation to reality, but were disseminated with malice to preclude Chief Eugene from gaining subsequent employment in as a Chief of Police or similar position in any South Florida police department or similar agency.

34. City Manager Spring appointed Chief Eugene with the approval of the City Council for the City of North Miami, but City Manager Spring did not receive prior approval of the City Council for the City of North Miami before asking for Chief Eugene's resignation or prior to terminating Chief Eugene's employment.

35. City Manager Spring established the official policies for the Defendant City, and those policies included the deliberate indifference to the rights of those employed by the Defendant City in the capacity of Non-Classified Service (pursuant to Section 21 of the Charter for the Defendant City).

36. The Defendant City, however, failed to include or implement any specific policy that would entitle employees in the Non-Classified Service, such as and including Chief Eugene, to any right to a name clearing hearing prior to (or after) termination. Consequently, its policy and custom remains to deprive Non-Classified Service employees like and including Chief Eugene of a name clearing hearing.

37. At no time prior to June 21, 2017 did the Defendant City or City Manager Spring advise Chief Eugene of anything he was accused to have done, to permit Chief Eugene to present evidence or offer any response, nor to participate in any process regarding the termination of his employment, let alone to provide him with a name clearing hearing.

38. Chief Eugene, through counsel, sent a letter dated June 23, 2017 which was hand delivered on June 23, 2017 at 4:30 p.m. and also sent by Certified Mail to the Defendant City (which was received prior to the filing of this lawsuit on June 28, 2017) wherein he requested, *inter alia*, a name clearing hearing.

39. The Defendant City failed to respond to this letter; it failed to timely provide

the requested documents within a reasonable time and it did not respond to or grant Chief Eugene's request for a name clearing hearing.

40. The Defendant City provided Chief Eugene no meaningful opportunity for a name clearing hearing, as it instead tarnished his good name and reputation and intentionally disseminated false statements to preclude him from obtaining employment, thereby violating his fundamental rights of liberty and property.

41. The Defendant City identified no reason(s) why it could or did not conduct a pre-determination hearing before taking any adverse employment actions against Chief Eugene nor any reasons why it did not grant him the name clearing hearing he requested.

42. The false statements of fact identified in paragraph 32 have cast a disparaging cloud over Chief Eugene's reputation for honesty and competency.

43. The Defendant City impugned Chief Eugene's good name, honor, and/or reputation that imposed a stigma that has since foreclosed other employment opportunities for him.

44. Federal law has long recognized that damage to the reputation of a public employee sustained in connection with the termination of employment is actionable. *See e.g., Cotton v. Jackson*, 216 F.3d 1328, 1330 (11th Cir. 2000).

45. Chief Eugene had no adequate remedy at law to address the aforesaid conduct by the Defendant City, as the Defendant City gave him a mere 21 days notice and since fired him on July 7, 2017.

46. The City of North Miami was not satisfied and so it then placed one or more documents containing additional stigmatizing information impugning Chief Eugene's honesty, integrity, and work ethic into Chief Eugene's personnel file in connection with the termination of his employment, including a termination letter dated July 7, 2017 and provided to Chief Eugene on a later date in which it identified five (5) supposed reasons for his termination, including supposedly having:

- a) Made conflicting statements;
- b) Inappropriate contact with Commander Hollant during the IA process and reassuring Commander Hollant that there would be no investigation into his conduct;

- c) Poor communication and decision making by appointing a second and third Assistant Chief and not communicating the decision(s) to City Manager Spring;
- d) Incompetence and Insubordination by making promotions to curry political favor with outside influences; and
- e) Complete loss of management control.

47. The Defendant City knew that each of the foregoing statements was false, but it nonetheless included such information in Chief Eugene's personnel file in the form of a termination letter so as to permanently damage his reputation for honesty, integrity, and competency and thereby preclude him from obtaining similar employment, even though it at all times knew that the foregoing malicious statements were false.

48. As a direct and proximate result of the Defendant City's actions as aforesaid, Chief Eugene suffered damages in the form of the loss of his job, benefits, his identity, his reputation, suffered emotional distress, a blow to his reputation, the inability to obtain employment in a similar capacity, and other damages.

WHEREFORE Plaintiff, Gary Eugene, demands the entry of a judgment in his favor and against Defendant, City of North Miami, after trial by jury, by determining and declaring that the Defendant City violated Chief Eugene's due process rights, awarding damages, including to his reputation, lost past and future wages and employment-related benefits, emotional distress damages, to have all offending information removed from his personnel and internal affairs files, a hearing to have his file cleared, attorneys' fees, costs, and all interest allowed by law.

**COUNT II – 42 U.S.C. §1983 LIBERTY INTEREST VIOLATION  
AGAINST CITY MANAGER LARRY SPRING**

Plaintiff, Gary Eugene, reincorporates and re-alleges paragraphs 1–19 as though set forth fully herein and further allege as follows:

49. The Fourteenth Amendment prohibits City Manager Spring from depriving a person like Chief Eugene of the fundamental rights of liberty or property without due process of law.

50. The concept of liberty recognizes two particular interests of a public



employee: (a) the protection of his good name, reputation, honor and integrity, and (b) his freedom to take advantage of other employment opportunities.

51. City Manager Spring at all times material acted under color of state law in his official capacity as the City Manager for the City of North Miami.

52. Chief Eugene returned from a medical leave of absence on June 15, 2017 and reported to City Manager Spring's office for a meeting.

53. City Manager Spring told Chief Eugene at the June 15, 2017 meeting that he had "decided to part ways, had a lot of respect for you, you have been very professional, and very competent, but we are moving in a new direction."

54. City Manager Spring further told Chief Eugene that he is being placed on paid administrative leave and that he had 21 days to resign and accept \$12,000 as a severance, and that if he did not accept the Separation Agreement and General Release appended hereto as Exhibit "A" and given to him on June 15, 2017, then his employment would be terminated on July 7, 2017.

55. The Defendant City then held a public meeting later that day on June 21, 2017 as part of its City Manager's Community Council.

56. The Notice for the City Manager's Council Forum indicated that, "The objective for the City Manager's Community Form is to provide input as the City initiates measures to further enhance police community relations."

57. City Manager Spring authored a Memorandum that he had disseminated to the public at the Community Form to purportedly update the community on the changes made since the July 18, 2016 shooting of Charles Kinsey.

58. City Manager Spring discussed the changes that Defendant City made as a result of July 18, 2016 incident in which Mr. Kinsey was shot, which included various trainings for members of the police department in interacting with members of the community who have autism or other mental/capacity issues, use of body cameras, PERF, use of less-lethal weapon, Community Engagement training, and other improvements to the City of North Miami Police Department.

59. Although most, if not all, of the changes that the City Manager identified were performed or taking place were initiated and/or performed by or through Chief



Eugene, the City Manager gave no credit or mention to Chief Eugene for his accomplishments.

60. Rather, the June 21, 2017 Memorandum distributed on behalf of City Manager Spring for the first time identified four contrived reasons why the City Manager decided to give Chief Eugene the ultimatum to either accept a severance package by 5:00 p.m. on July 6, 2017 or be fired on July 7, 2017.

61. In connection with the termination of Chief Eugene's employment, City Manager Spring made and disseminated several false statements of fact to the general public on June 21, 2017, including:

- a) That Chief Eugene made inconsistent statements under oath to the Florida Department of Law Enforcement investigator and to the Internal Affairs Investigator;
- b) That Chief Eugene lost managerial control over the police department;
- c) That Chief Eugene may have colluded with a police officer to circumvent the internal affairs investigation; and
- d) That Chief Eugene admitted to making hiring decisions based on outside influencers.

62. The aforementioned statements are completely false and bear no relation to reality, but were disseminated with malice to preclude Chief Eugene from gaining subsequent employment in as a Chief of Police or similar position in any South Florida police department or similar agency.

63. City Manager Spring appointed Chief Eugene with the approval of the City Council for the City of North Miami, but City Manager Spring did not receive prior approval of the City Council for the City of North Miami before asking for Chief Eugene's resignation or prior to terminating Chief Eugene's employment.

64. At no time prior to June 21, 2017 did the City of North Miami or City Manager Spring advise Chief Eugene of anything he is accused to have done, to permit Chief Eugene to present evidence or offer any response, nor to participate in any process regarding the termination of his employment.

65. Chief Eugene then, through counsel, sent a letter dated June 23, 2017 which

was hand delivered on June 23, 2017 at 4:30 p.m. and sent by Certified Mail to the Defendant City (which was received prior to the filing of this lawsuit on June 28, 2017) wherein he requested, *inter alia*, a name clearing hearing.

66. City Manager Spring failed to respond to this letter and did not respond to or grant Chief Eugene's request for a name clearing hearing.

67. The City Manager Spring provided Chief Eugene no meaningful opportunity for a name clearing hearing or to respond; instead, City Manager Spring unreasonably tarnished Chief Eugene's good name and reputation and intentionally disseminated false statements so as to preclude Chief Eugene from obtaining employment, thereby violating Chief Eugene's fundamental rights of liberty and property.

68. City Manager Spring identified no reason(s) why he could or did not conduct a pre-determination hearing or permit Chief Eugene to respond before taking any adverse employment actions against Chief Eugene.

69. The false statements of fact identified above have cast a disparaging cloud over Chief Eugene's reputation for honesty and competency.

70. City Manager Spring impugned Chief Eugene's good name, honor, and/or reputation that imposed a stigma that has since foreclosed other employment opportunities for him.

71. Federal law has long recognized that damage to the reputation of a public employee sustained in connection with the termination of employment is actionable, whether when proclaimed in connection with the termination or when contained in the terminated employees' personnel file.

72. City Manager Spring also placed one or more documents containing stigmatizing information impugning Chief Eugene's honesty, integrity, and work ethic into Chief Eugene's personnel file in connection with the termination of his employment, including a termination letter that he authored, which was dated July 7, 2017, and which was provided to Chief Eugene on a later date, identifying five (5) supposed reasons for the terminating Chief Eugene's employment, including supposedly having:

- a) Made conflicting statements;
- b) Inappropriate contact with Commander Hollant during the IA

process and reassuring Commander Hollant that there would be no investigation into his conduct;

- c) Poor communication and decision making by appointing a second and third Assistant Chief and not communicating the decision(s) to City Manager Spring;
- d) Incompetence and Insubordination by making promotions to curry political favor with outside influences; and
- e) Complete loss of management control.

73. City Manager Spring knew that each of the foregoing statements was false, and was not permitted in a public personnel file, but he nonetheless maliciously included such information in Chief Eugene's personnel file in the form of a termination letter so as to permanently damage his reputation for honesty, integrity, and competency and thereby preclude him from obtaining similar employment, even though City Manager Spring at all times knew that the foregoing malicious statements were false.

74. Chief Eugene had no adequate remedy at law to address the aforesaid conduct by the Defendant City, as City Manager Spring gave him a mere 21 days notice and then fired him on July 7, 2017.

75. As a direct and proximate result of City Manager Spring's actions as aforesaid, Chief Eugene suffered damages in the form of the loss of his job, benefits, his identity, his reputation, suffered emotional distress, a blow to his reputation, the inability to obtain employment in a similar capacity, and other damages.

WHEREFORE Plaintiff, Gary Eugene, demands the entry of a judgment in his favor and against the Defendant, Larry Spring, after trial by jury, by determining and declaring that the Defendant City Manager Spring violated Chief Eugene's due process rights, reinstating him, awarding him damages, including for damages to his reputation, lost past and future wages and employment-related benefits, emotional distress damages, to have all offending information removed from his personnel and internal affairs files, a hearing to have his file cleared, attorneys' fees, costs, and all interest allowed by law.

**COUNT III – 42 U.S.C. §1983 LIBERTY INTEREST VIOLATION  
AGAINST SCOTT W. GALVIN**

Plaintiff reincorporates and re-alleges paragraphs 1-19 as though set forth fully herein and further alleges as follows:

76. The Fourteenth Amendment prohibits Defendant Galvin from depriving a person like Chief Eugene of liberty or property without due process of law.

77. The concept of liberty recognizes two particular interests of a public employee: (a) the protection of his good name, reputation, honor and integrity, and (b) his freedom to take advantage of other employment opportunities.

78. Chief Eugene worked hard personally and professional to earn a stellar reputation in law enforcement in general during his career in public service, which began in 1985.

79. In connection with the termination of Chief Eugene's employment, the Defendant Galvin made and disseminated false statements of fact, to wit: that Chief Eugene made inconsistent statements under oath to the Florida Department of Law Enforcement investigator and to the Internal Affairs Investigator – *i.e.*, that Chief Eugene "lied". (<http://miami.cbslocal.com/2017/06/15/north-miami-police-chief-fired-charles-kinsey-shooting/>: "When you're a chief and you're giving contradictory information under oath both times, to two separate entities, it calls into question what's really happening".)

80. Scott Galvin at all times material acted under color of state law in his official capacity as a Councilman for the City of North Miami.

81. The Defendant Galvin made this statement to the CBS 4, in his official capacity, with malice, knowing that such statement would cause harm to Chief Eugene's personal and professional reputation with the intent of harming Chief Eugene's reputation and his ability to obtain future employment.

82. The aforementioned statement is completely false and bears no relation to reality, and Defendant Galvin knew or should have known that making such a statement violated the law and is considered so egregious that it clearly violates Chief Eugene's constitutional rights to liberty and/or property.

83. Chief Eugene then, through counsel, sent a letter dated June 23, 2017 which

was hand delivered on June 23, 2017 at 4:30 p.m. and also by Certified Mail to the Defendant City (which was received prior to the filing of this lawsuit on June 28, 2017) wherein he requested, *inter alia*, a name clearing hearing.

84. Federal law has long recognized that damage to the reputation of a public employee sustained in connection with the termination of employment is actionable. *See e.g., Cotton v. Jackson*, 216 F.3d 1328, 1330 (11th Cir. 2000).

85. Defendant Galvin's statement to the public about Chief Eugene was knowingly false and/or made with reckless disregard for its truth/falsity, made with the malicious intent to harm Chief Eugene's reputation and his ability to obtain future employment, and Defendant Galvin should have known that disseminating this type of false information is defamatory and would be injurious to Chief Eugene.

86. Defendant Galvin's statement was made with the intent of injuring Chief Eugene and it did, in fact, injure Chief Eugene's reputation and has and will injure his ability to obtain future employment.

87. As a direct and proximate result of the Defendant Galvin's actions as aforesaid, Chief Eugene suffered damages to his reputation for integrity, honesty, professionalism, competency, the inability to obtain employment in a similar capacity, and other damages.

WHEREFORE Plaintiff, Gary Eugene, demands the entry of a judgment in his favor and against Defendant, Scott Galvin, after trial by jury, by determining and declaring that Defendant Galvin violated Chief Eugene's liberty interest rights, and awarding damages, including for damages to his reputation, attorneys' fees, costs, and all interest allowed by law.

**COUNT IV – DEFAMATION  
AGAINST SCOTT W. GALVIN**

Plaintiff reincorporates and re-alleges paragraphs 1-18 as though set forth fully herein and further alleges as follows:

88. Chief Eugene worked hard personally and professional to earn a stellar reputation in law enforcement during his career in public service, which began in 1985.

89. City Manager Spring told Chief Eugene during their encounter on June 15,

2017 that, upon inquiry, the public would be advised that Chief Eugene was “on vacation”, and so did not want any members of the public to know that he had given Chief Eugene an ultimatum to either resign and accept a \$12,000 severance or be fired by the end of the day on July 6, 2017.

90. In connection with the termination of Chief Eugene’s employment, Defendant Galvin made and disseminated false statements of fact, to wit: that Chief Eugene made inconsistent statements under oath to the Florida Department of Law Enforcement investigator and to the Internal Affairs Investigator - *i.e.*, that he “lied” (<http://miami.cbslocal.com/2017/06/15/north-miami-police-chief-fired-charles-kinsey-shooting/>: “When you’re a chief and you’re giving contradictory information under oath both times, to two separate entities, it calls into question what’s really happening”).

91. The aforementioned statement is completely false and bears no relation to reality.

92. The Defendant Galvin made this statement to the CBS 4, in his personal capacity, knowing that such statement would cause harm to Chief Eugene’s personal and professional reputation with the intent of harming Chief Eugene’s reputation and his ability to obtain future employment, and is defamatory *per se*.

93. The City of North Miami Charter does not vest members of the City Council such as Defendant Galvin with the right to comment on any personnel matters, thereby precluding Defendant Galvin from making any public statements with regard to the appointment or removal of employees/personnel.

94. Defendant Galvin’s duties do not include making official statements on behalf of the City of North Miami; consequently, his defamatory statement(s) to CBS4 about Chief Eugene were made in his capacity as a private citizen and not on behalf of the City of North Miami

95. Defendant Galvin’s statement to the public about Chief Eugene was knowingly false and/or made with reckless disregard for its truth/falsity, made with the intent to harm Chief Eugene’s reputation and his ability to obtain future employment.

96. Defendant Galvin’s statement was made with the intent of injuring Chief Eugene and it did, in fact, injure Chief Eugene’s reputation and has and will injure his

ability to obtain future employment.

97. As a direct and proximate result of the Defendant Councilman Galvin's actions as aforesaid, Chief Eugene suffered damages to his reputation for integrity, honesty, professionalism, and competency, has since encountered difficulty in gaining comparable employment.

WHEREFORE Plaintiff, Gary Eugene, demands the entry of a judgment in his favor and against Defendant, Scott Galvin, after trial by jury, by determining and declaring that Defendant Galvin violated Chief Eugene's liberty interest rights, and awarding damages, including for damages to his reputation, special damages, actual damages, humiliation, mental anguish, lost of earnings, attorneys' fees, costs, and all interest allowed by law.

**COUNT V – FIRST AMENDMENT RETALIATION  
AGAINST CITY OF NORTH MIAMI**

Plaintiff reincorporates and re-alleges paragraphs 1-19 as though set forth fully herein and further alleges as follows:

98. The use or misuse of public funding by a municipality and its agencies constitutes a matter of public concern.

99. Police governance also is a matter of public concern.

100. Even though it did not implicate his position with the Police Department, Chief Eugene spoke truthfully about a matters of public concern when he brought up the issue of how the retention of a paid consultant by the City would result in gross financial waste by the City of North Miami.

101. The Defendant City responded when it took adverse employment actions against Chief Eugene starting on June 15, 2017, when he was placed on administrative leave, when it labeled him as a liar who had no operational control over the police department, and when it claimed that he made decisions based on improper influences.

102. The Defendant City took these adverse employment actions against Chief Eugene as a direct and proximate result of his complaints about gross financial mismanagement / waste of public funds and about the Defendant City failing to follow the applicable laws, rules, and regulations governing the internal affairs investigation of Commander Hollant.



103. The Defendant City's retaliatory actions against Chief Eugene were different than actions it could take and/or did take against other members of the public at large.

104. As a direct and proximate result of the Defendant City's taking adverse employment actions described herein, Chief Eugene lost his job, past and future wages, benefits, and suffered emotional distress, negative commentary in his employment file and in the press, damage to his reputation, and other damages.

WHEREFORE Plaintiff, Gary Eugene, demands the entry of a judgment in his favor and against Defendant, City of North Miami, after trial by jury, by determining and declaring that the Defendant City violated Chief Eugene's First Amendment rights, reinstating his employment, awarding him damages, including lost past and future wages and employment-related benefits, emotional distress damages, to have all offending information removed from his personnel and internal affairs files, a hearing to have his file cleared, costs, and all interest allowed by law.

**COUNT VI – PUBLIC WHISTLEBLOWER ACT CLAIM  
AGAINST CITY OF NORTH MIAMI**

Plaintiff reincorporates and re-alleges paragraphs 1-19 as though set forth fully herein and further alleges as follows:

105. The Defendant City is an "employer" as the term "employer" is defined by Fla. Stat. §112.3187.

106. Chief Eugene was at all times material hereto an "employee" of the Defendant City as the term "employee" is defined in Fla. Stat. §112.3187.

107. Section 112.3187(7), Florida Statutes, provides protections to public employees who make signed written complaints as well as those like Chief Eugene who make verbal complaints as follows:

This section protects employees and persons who disclose information on their own initiative in a written and signed complaint; who are requested to participate in an investigation, hearing, or other inquiry conducted by any agency or federal government entity; who refuse to participate in any adverse action prohibited by this section; or who initiate a complaint through the whistle-blower's hotline or the hotline of the Medicaid Fraud Control Unit of the Department of Legal Affairs; or employees who file any written complaint to their supervisory officials or employees who submit a complaint to the Chief Inspector General in the Executive Office of the Governor, to the employee designated as agency inspector general under s.

112.3189(1), or to the Florida Commission on Human Relations.

108. The Defendant City required Chief Eugene to participate in the IA as its ultimate finder of fact, but Chief Eugene objected to the Defendant City and to City Manager Spring hiring a consultant to assist with the IA investigation. City Manager Spring, on behalf of the Defendant City, advised that the consultant's job was to review the existing policies of the department and to make recommendations, if necessary, and required Chief Eugene to serve as the ultimate finder of fact with the use of the consultant anyway.

109. Chief Eugene also brought to the attention of the City Manager that PERF was scheduled to review the existing policies of the department and that the hiring of the consultant and PERF together amounted to gross financial waste and that spending money on both PERF and the consultant was unnecessarily duplicative and a gross waste of public funds.

110. When Chief Eugene realized that the consultant was actually involved in the questioning of the witnesses of the police shooting in connection with the IA investigation involving Commander Hollant, Chief Eugene once again brought his concerns and objection to the Deputy City Attorney, Jenifer Warren.

111. Chief Eugene's objection was (a) against changing the IA investigation process in the midst of the ongoing IA investigation involving Commander Hollant and (b) to the Defendant City engaging in gross financial waste – for an investigation in which he would serve as the ultimate finder of fact. The Defendant City did not heed Chief Eugene's concerns and ignored his objections.

112. Section 112.3187(5), Florida Statutes, identifies the type of information disclosed that would subject someone like Chief Eugene to fall within the protections of the Florida Whistleblower Statute to include the following:

(a) Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public's health, safety, or welfare.

(b) Any act or suspected act of gross mismanagement, malfeasance, misfeasance,

gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.

113. Chief Eugene's complaint(s) about the changing of the processes for an IA in the midst of an ongoing IA (involving Commander Emile Hollant) qualifies as a type of violation of envisioned by Fla. Stat. §112.3187 and that the statute was designed to encourage people like Chief Eugene to report.

114. Chief Eugene's complaint(s) about the gross financial waste committed by engaging and paying a consultant to perform the same tasks as performed by PERF qualifies as the type of "gross waste of public funds" envisioned by Fla. Stat. §112.3187 and that the statute was designed to encourage people like Chief Eugene to report.

115. In order to fall within the protections of the statute, Fla. Stat. §112.3187 further requires that a disclosure involving a municipality, such as the Defendant City be made to the City Manger – who is the functional equivalent of the chief executive officer – based on the following statutory language:

However, for disclosures concerning a local governmental entity, including any regional, county, or municipal entity, special district, community college district, or school district or any political subdivision of any of the foregoing, the information must be disclosed to a chief executive officer as defined in s. 447.203(9) or other appropriate local official.

116. Chief Eugene satisfied the statutory requirement by disclosing his concerns to City Manager Spring about the Defendant City engaging in gross financial waste of public funds and about violating the rights of Commander Hollant as guaranteed by Fla. Stat. §112.532 and other laws, rules, regulations.

117. The Defendant City took the type of adverse employment actions prohibited by Fla. Stat. §112.3187 against Chief Eugene starting on June 15, 2017, when it placed him on administrative leave, when it labeled him as a liar who had no operational control over the police department, and when it claimed that he made decisions based on improper influences.

118. The Defendant City took these adverse employment actions against Chief Eugene as a direct and proximate response to his complaints about gross financial

mismanagement / waste of public funds and about the Defendant City failing to follow the applicable laws, rules, and regulations governing the internal affairs investigation of Commander Hollant.

119. As a direct and proximate result of the Defendant City's taking adverse employment actions described herein, Chief Eugene lost his job, past and future wages, benefits, and suffered emotional distress, negative commentary in his employment file and in the press, damage to his reputation, and other damages.

WHEREFORE Plaintiff, Gary Eugene, demands the entry of a judgment in his favor and against Defendant, City of North Miami, after trial by jury, by determining and declaring that the Defendant City violated Chief Eugene's rights, reinstating his employment, awarding him damages, including lost past and future wages and employment-related benefits, emotional distress damages, to have all offending information removed from his personnel and internal affairs files, a hearing to have his file cleared, attorneys' fees, costs, and all interest allowed by law.

**COUNT VII – FMLA RETALIATION  
AGAINST CITY OF NORTH MIAMI**

Plaintiff reincorporates and re-alleges paragraphs 1-19 as though set forth fully herein and further alleges as follows:

120. Chief Eugene scheduled a medical procedure, and so he made preparations for his absence.

121. Chief Eugene completed all necessary paperwork for his medical leave of absence pursuant to the Family and Medical Leave Act, 29 U.S.C. §2601, *et seq.* ("FMLA").

122. The Defendant City granted Chief Eugene his requested FMLA leave of absence after he submitted all necessary paperwork to the satisfaction of the Defendant City pursuant to 29 U.S.C. §2601, *et seq.*

123. Chief Eugene began his approved FMLA leave on Saturday, May 6, 2017.

124. Chief Eugene went to the North Miami Police station on July 13, 2017, to turn in a doctor's note clearing him to return to work in full duty on Thursday, June 15, 2017.

125. Chief Eugene then spoke to Personnel Director Joe Roglieri, Jr., to advise

that he would be returning to work on June 15, 2017.

126. Personnel Director Roglieri called City Manager Spring to advise that Chief Eugene was returning to work the next day.

127. The next day, on Wednesday, June 14<sup>th</sup>, Mr. Roglieri contacted Chief Eugene to reconfirm that he was still returning to work on the 15<sup>th</sup>. He then advised that City Manager Spring wanted to see Chief Eugene in his office upon his return to work.

128. Chief Eugene returned to work from his approved FMLA leave of absence on June 15, 2017 and reported to City Manager Spring's office.

129. Promptly upon returning to work for his approved Family Medical Leave Act leave of absence, as in the morning of Chief Eugene's return to work at the Defendant City, City Manager Spring terminated Chief Eugene's employment with and on behalf of the Defendant City.

130. City Manager Spring told Chief Eugene that he had "decided to part ways, had a lot of respect for you, you have been very professional, and very competent, but we are moving in a new direction."

131. City Manager Spring further told Chief Eugene that he is being placed on paid administrative leave and that he had 21 days to resign and accept \$12,000 as a severance, and that if he did not accept the Separation Agreement and General Release appended hereto as Exhibit "A" and given to him on June 15, 2017, then his employment would be terminated on July 7, 2017.

132. At no time on or before July 15, 2017, did the Defendant City tell Chief Eugene any legitimate, non-retaliatory reason for the adverse employment action(s) taken against him.

133. Because Chief Eugene exercised his rights under the Family Medical Leave Act, the Defendant City took adverse employment actions against him on the morning of June 15, 2017, the day he returned from FMLA leave.

134. This close temporal proximity (nearly simultaneous) of Chief Eugene's return and his being given an ultimatum on June 15, 2017 leaves no doubt about the motive for retaliating against him being the taking of Family Medical Leave for the adverse employment action(s) taken against Chief Eugene.

135. The Defendant City has no legitimate, non-retaliatory reason for taking any adverse employment action against Chief Eugene, let alone doing so on the same day that he returned from an approved Family Medical Leave Act leave of absence.

136. The FMLA precludes employers like the Defendant City from retaliating against employees like Chief Eugene who exercise the right to medical leave.

137. As a direct and proximate result of the Defendant City retaliating against Chief Eugene for taking a medical leave by taking adverse employment actions against him through the termination of his employment, Chief Eugene suffered damages in the form of lost wages and benefits, past and future.

138. Chief Eugene is entitled to recover liquidated damages in an amount equal to the lost wages and benefits recovered from the Defendant City because its action were not taken in good faith and because it had no objectively reasonable grounds for taking such adverse actions against Chief Eugene.

WHEREFORE Plaintiff, Gary Eugene, demands the entry of a judgment in his favor and against Defendant, City of North Miami, after trial by jury, by determining and declaring that the Defendant City violated Chief Eugene's rights, reinstating his employment, awarding him damages, including lost past and future wages and employment-related benefits, liquidated damages in an amount equal to all damages awarded by the jury, emotional distress, to have all offending information removed from his personnel and internal affairs files, a hearing to have his file cleared, attorneys' fees, costs, and all interest allowed by law.

**DEMAND FOR JURY TRIAL**

Plaintiff, Gary Eugene, demands a trial by jury of all issues so triable.

**CERTIFICATE OF SERVICE**

WE HEREBY CERTIFY that a true and correct copy of the this document was served through filing in the U.S. District Court's CM/EDF System on this 24th day of August, 2017, which will serve copies on Brett J. Schneider, Esq. and Michael S. Kantor, Esq., WEISS SEROTA HELFMAN COLE & BIERMAN, P.L., as *Counsel for Defendants*, [bschneider@wsh-law.com](mailto:bschneider@wsh-law.com) [mkantor@wsh-law.com](mailto:mkantor@wsh-law.com), 200 East Broward Blvd. Suite 1900, Fort Lauderdale, FL 33301, and on all others who appeared in this action.

Respectfully Submitted,

FAIRLAW FIRM  
7300 N. Kendall Drive  
Suite 450  
Miami, FL 33156  
Tel: 305.230.4884  
Fax: 305.230.4844

s/Brian H. Pollock, Esq.  
Brian H. Pollock, Esq.  
Fla. Bar No. 174742  
[brian@fairlawattorney.com](mailto:brian@fairlawattorney.com)