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December 11, 2009

Office of the City Clerk
P.O. Box 500
Boise, ID 83701

Re: **NOTICE OF TORT CLAIM TO THE CITY OF BOISE PURSUANT TO I.C. § 6-901 ET SEQ. and I.C. § 50-219**

Dear City Clerk:

We represent Sergeant George Stevens, who received a Discipline Order/Letter of Reprimand regarding the performance of his duties as a Boise City Police Department Patrol Sergeant on June 17, 2009, which was later revised and reissued on July 22, 2009. After Sergeant Stevens received the written reprimand, he filed a grievance with the BPD within the required time. Sergeant Stevens has not yet exhausted the BPD grievance process provided for by the CLA, in effect April 1, 2006 through March 31, 2010. Sergeant Stevens has suffered unjust discipline and other adverse actions that were taken against him by members of the Boise Police Administration.

Under Idaho Code § 6-901 et seq. and I.C. § 50-219, Sergeant Stevens submits this letter as a formal Notice of Tort Claim to the City of Boise and Boise Police Department for the actions of Chief Masterson, Captain Mulcahy, Captain William Bones, and Ombudsman Pierce Murphy. Therefore, this Notice of Tort Claim is presented for filing with the Boise City Clerk for a claim against the City of Boise, Boise Police Department, and against Chief Masterson, Captain Mulcahy, Captain Bones, and Ombudsman Murphy for their wrongful actions as employees of the City of Boise and the Boise Police Department. The names of the people that are known to be involved in this claim are Sergeant Stevens, Gerald Amidon, Officer Bammert, Officer Harr, Officer McKean, Officer Abercrombie, Captain Mulcahy, Captain Bones, Chief Masterson, Deputy Chief Kerns, Captain Smith, Lieutenant Cavener, Regina Fredericks, Sergeant Swanson (ISP), and Pierce Murphy. Sergeant Stevens currently resides in [REDACTED]

Sergeant Stevens' damages began with a series of adverse personnel actions based on his investigation into the use of force in the arrest of Gerald Amidon on February 14, 2009. The arrest of Mr. Amidon involved several of Patrol Sergeant Stevens' subordinate officers. Sergeant Stevens arrived at the scene after Mr. Amidon was handcuffed and secured, and accordingly initiated a use of force investigation that evening, although Mr. Amidon had not complained about any of the officers involved at that point. Sergeant Stevens followed each step required for a supervisor to investigate the use of force and TASER deployments utilized in the course of Mr. Amidon's arrest based on Sergeant Stevens' knowledge of the incident at that time. Following Mr. Amidon's arrest, the suspect filed a complaint of excessive force against the involved officers with the Boise Community Ombudsman, Pierce Murphy. An investigation into Mr. Amidon's complaint was pursued by the Idaho State Police, who then contacted Sergeant Stevens to interview him about this incident. Prior to this interview Captain Mulcahy ordered Sergeant Stevens to not review any information related to this incident. Captain Mulcahy then brought Sergeant Swanson to Sergeant Stevens' office and advised Sergeant Stevens that Sergeant Swanson needed to talk to him. This violated Sergeant Stevens' *Weingarten* rights. Further, there was a disparity in the treatment of Sergeant Stevens and the other officers involved in the incident.

On March 4, 2009, the BPD initiated an internal investigation into the performance of Sergeant Stevens' duties in regard to Mr. Amidon's arrest. The OIA and Ombudsman undertook an investigation regarding Sergeant Stevens' conduct in the use of force investigation, during which, Sergeant Stevens was forced to endure the stress and indignation of three separate internal investigation interrogations. As stated above, before the interrogations, Captain Mulcahy had ordered Sergeant Stevens not to review any materials which included reports or recordings. Consequently, Sergeant Stevens was not properly prepared to respond to a number of questions during the interrogation interviews. In bad faith, the parties conducting the interrogations attempted to limit Sergeant Stevens' ability to address potential disciplinary matters. The improper manner in which these interrogations were conducted was a violation of Sergeant Stevens' *Weingarten* rights and his right to due process.

Sergeant Stevens received a report of the findings of the OIA by a Memorandum from Chief Masterson on June 1, 2009. Subsequently, adverse personnel actions were taken against Sergeant Stevens that culminated in a Discipline Order/Letter of Reprimand, which became part of his personnel file as a Boise Police Officer. In particular, the Discipline Order generally alleges that Sergeant Stevens violated the Boise Police Department Manual Section 11.03.02. That Section, entitled "Performance of Duty," requires an employee to perform his duties in a manner that maintains the highest standards of efficiency and demonstrates competence and a satisfactory performance.

The Discipline Order alleges that Sergeant Stevens did not conduct an administrative interview and did not gather and preserve evidence related to the events surrounding Gerald Amidon's seizure and arrest. The Order further alleges that Sergeant Stevens deleted an audio recording of an interview with Mr. Amidon, which may be evidence in a criminal case, and that Sergeant Stevens made inaccurate statements about that audio recording.

Sergeant Stevens is a classified employee, protected by the Boise Police Department Civil Service Rules, as well as the CLA and the BPD PM. Because of his protected property interest in continued advancement with the Boise Police Department and to pursue employment in his chosen profession, the wrongfully issued Discipline Order based on an inadequate investigation of the allegations against Sergeant Stevens, and the violation of his due process rights, the facts support a 42 U.S.C. § 1983 action. Such violations of Sergeant Stevens' constitutional rights also extend to the motivating factors behind the disciplinary actions, which occurred in retaliation for his protected Union association. Unjust discipline and a permanent mark on Sergeant Stevens' personnel file were pursued against him because of BPD Administration's displeasure with his position as a past Union president and current executive board member of the Union. Such conduct also violates the CLA, which prohibits discrimination against an officer because of his activity on behalf of or as a member of the Union.

Furthermore, the Discipline Order was unjust, unfair, inaccurate, false, misleading, defamatory, arbitrary and capricious, and was a violation of Sergeant Stevens' rights and privileges under the CSR, the CLA, and the BPD Policy and Procedures Manual. Sergeant Stevens complied with all requirements of his "Performance of Duty" under the BPD PM and exceeded the responsibilities of supervisors required under Sections 11.01.07 and 11.02.03(E) of the Manual in his investigation. Sergeant Stevens conducted an interview of Mr. Amidon at the jail, and properly preserved evidence.

Sergeant Stevens has been impermissibly singled out by members of BPD Administration for disparate treatment for temporarily deleting an unnecessary audio recording because of the negative publicity generated by Mr. Amidon's arrest and tasing. Audio recordings are regularly deleted by the majority of officers and supervisors. Officers and supervisors routinely experience open microphone recordings due to the poorly designed recorders utilized and the limitations of their operating capacities. Other officers and supervisors have not been disciplined for deleting their audio recordings without following the formal editing procedures.

Sergeant Stevens' professional reputation has been damaged by the defamatory statements that the Ombudsman and Chief made to the public through the publication of the Ombudsman's Report and the Chief's public response to that report. Ombudsman Murphy improperly gave *Garrity* warnings to Sergeant Stevens, when he had no authority to give such warnings because he is not authorized to investigate internal disciplinary matters of the police department. Sergeant Stevens will continue to suffer damage to his reputation as an individual and law enforcement officer because the Discipline Order is now part of Sergeant Stevens' permanent personnel file. As a part of his permanent personnel file, the Discipline Order will be reviewed by anyone evaluating Sergeant Stevens for a promotion, special assignment, training, or further discipline. The Discipline Order has likely precluded Sergeant Stevens from further advancement in the BPD. Moreover, the Discipline Order will limit Sergeant Stevens' ability to pursue any other law enforcement positions whether with the BPD or anywhere else, which affects his liberty to pursue his chosen profession.

As a part of the Discipline Order, Sergeant Stevens was ordered to perform formal training for Sergeants, beyond the training he is required to prepare for the officers assigned to his team, on the responsibility to care for evidence. Preparing such training as the result of a formal reprimand was unnecessarily punitive and was meant to humiliate Sergeant Stevens. It subjected Sergeant Stevens to a form of impermissible discipline and constituted a breach of the CLA. Requiring Sergeant Stevens to prepare such formal training is both beyond the scope of authorized discipline under the CSR and beyond the description of his duties. It also constitutes a violation of privacy, because disciplinary matters are to be kept confidential.

Sergeant Stevens filed his Grievance per the CLA on September 14, 2009. On September 17, 2009 Chief Masterson sent an email to numerous supervisors in the department. In this email he claimed to take an exact quote out of a recent grievance. It was taken out of Sergeant Stevens' grievance, and was a violation of Sergeant Stevens' privacy, because discipline is a private matter. Chief Masterson threatened to open investigations against anyone who came forward admitting they too had deleted tapes outside of the editing policy. Chief Masterson did not initiate an investigation into the claims made by Sergeant Stevens, but did threaten anyone who might come forward with similar claims. Sergeant Stevens is not aware of even one officer or supervisor who has come forward to the chief and admitted that the editing policy is not being followed, though several supervisors and officers have told Sergeant Stevens that this is in fact the case.

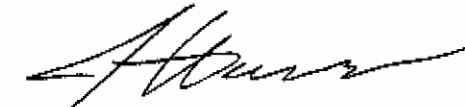
The cumulative effect of all of the tortious and wrongful actions by members of the Boise Police Administration and Ombudsman Murphy inflicted a great hardship and severe emotional stress on Sergeant Stevens. Having devoted years of his life to the important ideals of law enforcement and developing his professional reputation, Sergeant Stevens has suffered the loss of his continuing advancement with BPD, his status as an officer and the pay and benefits connected to that advancement, and irreparable harm to his personal and professional reputation. Since the adverse personnel matters began against Sergeant Stevens, he has suffered from severe emotional distress that has manifested itself in many different physical and psychological forms.

The actions of the employees of the City of Boise and the BPD have tortiously interfered with Sergeant Stevens' prospective business advantage in future advancement within the BPD and the burden of a wrongfully issued Discipline Order if he seeks other employment in law enforcement in the future. Sergeant Stevens has also incurred the cost of legal counsel. In summary, Sergeant Stevens has been damaged by tortious and wrongful actions, and should be compensated for such damages. Therefore, the amount of damages claimed totals \$2,000,000.00, to compensate Sergeant Stevens for his losses.

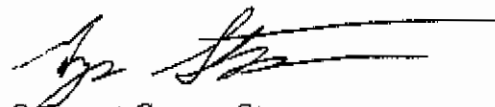
In summary, Sergeant Stevens submits this Notice for damages in the amount of \$2,000,000.00 for the following causes of action:

1. Negligent Infliction of Emotional Distress;
2. Intentional Infliction of Emotional Distress;
3. Defamation
4. Violation of Privacy
5. Breach of Contract
6. Violation of Due Process in regard to protected liberty and property interests
7. Violation of constitutional right to freedom of association
8. Tortious interference with prospective business advantage

Very Truly Yours,



Jeffrey S.B. Harr
Attorney for Claimant Stevens



Sergeant George Stevens
Claimant