

18CV52331

STATE OF NORTH CAROLINA

PITT

County

FILED

In The General Court Of Justice
☐ District ☒ Superior Court Division

Name And Address Of Plaintiff 1

Brock R. FLANNERY, Joshua G. SMITH, Travis J. BRINKLEY
C/O 150 Fayetteville Street, Suite 1130
Raleigh, NC 27601

2018 AUG 20 A 9:52

GENERAL

CIVIL ACTION COVER SHEET

☐ INITIAL FILING ☐ SUBSEQUENT FILING

PITT CO., C.S.

BY

Rule 5(b), General Rules of Practice For Superior and District Courts
Name And Address Of Attorney Or Party, If Not Represented (complete for initial
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22690

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Name Of Defendant 1

KANDIE DIANE SMITH

VERSUS

Summons Submitted

☒ Yes ☐ No☒ Initial Appearance in Case☐ Change of Address

Name Of Defendant 2

Name Of Firm

Law Office of Michael C. Byrne

FAX No.

Summons Submitted

☒ Yes ☐ No

Counsel for

☒ All Plaintiffs ☐ All Defendants ☐ Only (list party(ies) represented)☐ Jury Demanded In Pleading☐ Complex Litigation☐ Amount in controversy does not exceed \$15,000☐ Stipulate to arbitration

TYPE OF PLEADING

(check all that apply)

- ☐ Amend (AMND)
☐ Amended Answer/Reply (AMND-Response)
☐ Amended Complaint (AMND)
☐ Assess Costs (COST)
☐ Answer/Reply (ANSW-Response) (see Note)
☐ Change Venue (CHVN)
☒ Complaint (COMP)
☐ Confession Of Judgment (CNJF)
☐ Consent Order (CONS)
☐ Consolidate (CNSL)
☐ Contempt (CNTP)
☐ Continue (CNTN)
☐ Compel (CMPL)
☐ Counterclaim (CTCL) Assess Court Costs
☐ Crossclaim (list on back) (CRSS) Assess Court Costs
☐ Dismiss (DISM) Assess Court Costs
☐ Exempt/Waive Mediation (EXMD)
☐ Extend Statute Of Limitations, Rule 9 (ESOL)
☐ Extend Time For Complaint (EXCO)
☐ Failure To Join Necessary Party (FJNP)

(check all that apply)

- ☐ Failure To State A Claim (FASC)
☐ Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)
☐ Improper Venue/Division (IMVN)
☐ Including Attorney's Fees (ATTY)
☐ Intervene (INTR)
☐ Interplead (OTHR)
☐ Lack Of Jurisdiction (Person) (LJPN)
☐ Lack Of Jurisdiction (Subject Matter) (LJSM)
☐ Modification Of Child Support In IV-D Actions (MSUP)
☐ Notice Of Dismissal With Or Without Prejudice (VOLD)
☐ Petition To Sue As Indigent (OTHR)
☐ Rule 12 Motion In Lieu Of Answer (MDLA)
☐ Sanctions (SANC)
☐ Set Aside (OTHR)
☐ Show Cause (SHOW)
☐ Transfer (TRFR)
☐ Third Party Complaint (list Third Party Defendants on back) (TPCL)
☐ Vacate/Modify Judgment (VCMD)
☐ Withdraw As Counsel (WDCN)
☐ Other (specify and list each separately)

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in a format prescribed by the Adminis
Office of the Courts, and the Clerk of Superior Court shall require a party to refile a filing which does not include the required cover sheet. For subsequent filings in
actions, the filing party must either include a General Civil (AOC-CV-751), Motion (AOC-CV-752), or Court Action (AOC-CV-753) cover sheet.

BROCK RUEL FLANNERY,
JOSHUA GENE SMITH, TRAVIS
DANIEL BRINKLEY,

Plaintiffs,

v.

KANDIE DIANE SMITH, individually and
in her official capacity as a member of the
City Council of the City of Greenville,
NC,

BY

PITT CO., C.S.C.

2018 AUG 20 A 9 52

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COMPLAINT

Comes now the Plaintiffs through counsel seeking relief against the Defendant as set forth below:

PARTIES

1. Plaintiffs are citizens and residents of Pitt County, North Carolina and are all current or former employees of the City of Greenville, North Carolina's Greenville Police Department.
2. Plaintiff Joshua Gene Smith ("Smith") is a certified law enforcement officer whom, at the time of the events complained of, had served with the Greenville Police Department ("GPD") for approximately eight (8) years. He was assigned to GPD's gang unit as a detective.
3. Plaintiff Travis Daniel Brinkley ("Brinkley") is a certified law enforcement officer who, at the time of the events complained of, had served with GPD for five (5) years and four (4) months. He was assigned to GPD's gang unit as a detective.
4. Plaintiff Brock Ruel Flannery ("Flannery") is a certified law enforcement officer who, at the time of the events complained of, had served with GPD for four (4) years. He was assigned to GPD's gang unit as a detective.

5. Defendant Kandie Diane Smith ("Defendant") is on information and belief a citizen and resident of Pitt County, North Carolina, and additionally is a public official as an elected and serving member of the city council of the City of Greenville, NC ("Greenville"). She is sued both individually and in her capacity as public official.

JURISDICTION AND LACK OF ADMINISTRATIVE REMEDIES

6. The Superior Court of Pitt County has jurisdiction to hear this action for tortious interference with contract and obstruction of justice against Defendant in her individual capacity.
7. The Superior Court of Pitt County has jurisdiction to hear this action pursuant to N.C.G.S. § 1-253, the North Carolina Uniform Declaratory Judgment Act and/or as a direct constitutional claim against Defendant. As citizens and residents of the State of North Carolina, Plaintiffs are entitled to petition this Court pursuant to N.C.G.S. § 1-253 for a declaration as to violations of their rights under Article I, Section 1 of the Constitution of North Carolina by the Defendant acting in her official capacity as an elected and serving city council member. Article I, Section 1 and Article I, Section 19 of the Constitution of North Carolina confers a direct, self-executing right on the part of the Plaintiffs not to have the fruits of their labor taken or impeded due to arbitrary and capricious action by public officials, including the Defendant herein, and also not to have their duties as police officers and the cause of public justice to be unlawfully obstructed and for their contracts of employment to be unlawfully impaired. This Court has jurisdiction over such claims.
8. Plaintiffs have no administrative remedies that may be exercised against the Defendant in this case. To be considered adequate in redressing a constitutional wrong, a plaintiff must have at least the opportunity to enter the courthouse doors and present his claim. The employment policies and/or ordinances of Greenville do not provide Plaintiffs a remedy for the actions of Defendant complained of herein. Even to any extent that the employment policies of Greenville and/or GPD would permit Plaintiffs to address the actions of Defendant in any internal grievance process, those policies do not give the Plaintiffs the opportunity to enter the courthouse doors and present their claims against the Defendant for tortious interference and obstruction of justice, or to bring direct constitutional claims against Defendant in her official capacity. Accordingly,

Plaintiffs allege that any administrative remedies that may exist in this case are non-existent, inadequate, or futile to address their claims against the Defendant.

VENUE

9. Venue is proper in the Superior Court of Pitt County, North Carolina pursuant to N.C.G.S. § 1-82, as Pitt County, North Carolina is the county of residence for all of the Plaintiffs in this action.

STATEMENT OF IMMUNITIES

10. Defendant does not have immunity from the claims asserted in this Complaint. Defendant is either an "outsider" to the contracts of employment between Greenville and the Plaintiffs, or is a "non-outsider" who committed an intentional tort against Plaintiffs with legal malice and/or corrupt intent to interfere with the employment contracts of the Plaintiffs with Greenville. Further, sovereign immunity is not a proper defense in suits arising from contract law. Peverall v. County of Alamance, 154 N.C. App. 426, 430, 573 S.E.2d 517, 520 (2002). Defendant for the same reason has no immunity as an individual for the intentional tort of obstruction of justice. Defendant likewise has no immunity from the claims asserted against her in her official capacity under Article I, Section 1 and Article I, Section 19 of the Constitution of North Carolina. Id.
11. The doctrine of public official immunity is a "derivative form" of governmental immunity. Public official immunity precludes suits against public officials in their individual capacities and protects them from liability "[a]s long as a public officer lawfully exercises the judgment and discretion with which he is invested by virtue of his office, keeps within the scope of his official authority, and acts without malice or corruption[.]" Smith v. State, 289 N.C. 303, 331, 222 S.E.2d 412, 430 (1976). "Actions that are malicious, corrupt or outside of the scope of official duties will pierce the cloak of official immunity[.]" Moore v. Evans, 124 N.C. App. 35, 42, 476 S.E.2d 415, 421 (1996). Plaintiffs specifically allege that the actions of the Defendant complained of herein were outside the scope of Defendant's official duties as a member of the city council of Greenville, and additionally were done with legal and actual malice toward the Plaintiffs.

STATEMENT OF THE FACTS

12. Come now the Plaintiffs, who allege and say on information and belief, the following matters.

13. Plaintiffs were, as noted, police detectives assigned to one of the two gang units in the GPD. A primary method of making arrests and seizing contraband on that unit is to make traffic stops. Further, Plaintiffs were under a general duty to enforce the law and keep the peace, which included enforcement of laws against speeding and other traffic offenses.

14. Plaintiff's unit was one of the more successful units in the GPD. Plaintiffs Flannery and Brinkley were #1 and #2 for illegal drug seizures in the period of January 2017 through May 2018. Plaintiff Smith was #13 on that list. Plaintiffs' unit was also at or near the top of the GPD in weapons seized, arrests, and money seized during the same period.

15. On May 13, 2018, Plaintiffs were working their regularly scheduled shift in Greenville. At the relevant time, Plaintiffs were on Memorial Drive, which is one of the busiest traffic streets in Greenville. The lanes of travel at this part of Memorial Drive are multiple one-way lanes separated by a median.

16. Plaintiffs conducted a lawful traffic stop (speeding) of a black Chrysler 300 with dark tinted windows. Due to darkness and the tinted windows, Plaintiffs were unable to ascertain any details about the occupants of the vehicle prior to stopping the vehicle.

17. Rather than pulling over to the right hand side of Memorial Drive, the vehicle pulled left into a turn lane, leaving traffic on the right hand side of the vehicle and a narrow concrete median on the left hand side of the vehicle.

18. As Plaintiffs approached the vehicle, the occupants rolled down all the tinted windows. At that point Plaintiff observed that the vehicle contained four males.

19. In the right hand passenger side of was a man later identified as Leondus Farrow. Farrow, on information and belief, is an assistant superintendent for Nash-Rocky Mount Public Schools.

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20. Plaintiff Flannery began speaking to Farrow about the dangers associated with failing to pull to the right hand side of the road when responding to blue lights. Plaintiff Smith made contact with the driver. Shortly after they approached the car, Plaintiffs heard one of the car occupants yelling, in these or similar words, "Why are there three cops around the car?" Plaintiff Brinkley walked to the other side of the car and asked Farrow what the problem was. Farrow, agitated, pointed to Plaintiff Flannery and said, in these or similar words, "His attitude is the problem." Plaintiff Flannery backed away toward the back of the car, and which point Farrow yelled loudly to the Plaintiffs, "Get the fuck out of here!"
21. Plaintiffs, on hearing this and observing that Farrow appeared to be both intoxicated and disruptive per their assessment, first asked Farrow for his license or identification. Farrow twice refused to provide this information, saying in these or similar words, "You don't need to see my identification." Plaintiffs then asked Farrow to step from the vehicle.
22. Farrow at least twice refused orders from the Plaintiffs to exit the vehicle. When he finally complied, Plaintiffs observed in plain view an open container (bottle) of Corona Light beer that had been poured out onto the floorboards of the vehicle, with some beer remaining inside the bottle. This, an open container of alcohol in the passenger area of a vehicle, is a violation of the North Carolina criminal law. Plaintiffs allege that Farrow's partial motive in refusing to exit the vehicle, in addition to resisting the Plaintiffs' request, was to conceal the fact that he had an open container of alcohol in the car. The beer had been poured out on the carpet of the vehicle very shortly before Farrow exited the vehicle, as there was a strong odor of alcohol in the area.
23. Due to the open container of alcohol and his yelling, cursing at, and resisting the Plaintiffs, Plaintiffs removed Farrow from the situation by placing him in handcuffs and detaining him at the rear of the vehicle. Plaintiffs assisted Farrow with multiple handcuffs due to Farrow's size, attempting to make him as comfortable as possible. Plaintiffs had determined that Farrow was intoxicated.
24. Farrow, despite being detained, continued to dispute the facts of the situation with Plaintiffs. Farrow repeatedly claimed there was no beer in the open container of beer despite the liquid being clearly visible in the bottle. In the course of these comments, Farrow stated that he "had had some drinks" before he entered the car that evening.

25. Following this exchange, a mobile telephone in the stopped vehicle, which was on speaker, was answered by one of the occupants. Farrow apparently overheard this, and began yelling the names and badge numbers of the Plaintiffs toward the car. Faced with this continued disruptive behavior, and under the totality of the circumstances having concluded that Farrow was publicly intoxicated and disruptive, including his directive for the Plaintiffs to "get the fuck out of here" and other comments, decided to arrest him for intoxicated and disruptive behavior. Farrow was removed to the Plaintiffs' vehicle.
26. Following this, Plaintiff Smith explained in detail to the driver the circumstances of the stop, upon which the driver repeatedly inquired how he could have been speeding if he was not getting a speeding ticket. At least one of the occupants of the vehicle claimed they had been stopped because of their race; Plaintiff Smith explained that their identity was not ascertainable until the stop was made and it was immaterial to Plaintiffs what race the persons were. The driver was issued a speeding ticket for driving 15 miles over the speed limit.
27. Plaintiffs conducted the traffic stop lawfully and made a lawful arrest of Farrow.
28. Defendant, however, on her own behest and that of Farrow, submitted a complaint to the Chief of the GPD. While GPD officials claimed to Plaintiffs that the complaint was submitted by Farrow, the complaint form itself, attached and incorporated as Exhibit A, lists the "reporting party" as "Councilwoman Kandie Smith." Plaintiffs note that Defendant was not present for any of the events of the traffic stop described herein.
29. Plaintiffs allege that Defendant has a regular practice of submitting complaints of this kind regarding GPD officers, including regarding incidents in which she had no personal involvement. Plaintiff are further informed and believe, and therefore allege, that Defendant has as regular practice of initiating confrontations and interactions with GPD officers to file complaints against them.
30. The very day after Defendant's complaint, the chief of the GPD, Mark Holtzman, and another supervisor met with Plaintiffs. Plaintiffs were informed that they could no longer use their (very effective) black truck enforcement vehicle and were required to wear formal uniforms on patrol.
31. GPD initiated an internal affairs investigation led by a Sergeant G.J. Howard. This internal affairs investigation, Plaintiffs allege, was biased, inept, unfair, and incompetent, and v

conducted less for the purposes of determining what occurred than to find "reasons" to discipline the Plaintiffs due to pressure from Defendant and GPD management's desire to appease Defendant at the expense of its own officers.

32. Following this internal affairs "investigation," Plaintiff's Brinkley and Flannery were terminated from employment and Plaintiff Smith was suspended and received additional disciplinary action. This termination was a direct and proximate result of Defendant interfering with the employment contract between Plaintiffs and the City of Greenville and/or GPD.
33. Under N.C.G.S 160A-285, "Powers and duties of policemen," as a peace officer, a policeman shall have within the corporate limits of the city all of the powers invested in law-enforcement officers by statute or common law. This includes the power of the Plaintiffs, as policemen and peace officers, to enforce state laws against driving in excess of the posted speed limit and state laws against intoxicated and disruptive behavior.
34. Plaintiffs allege that Defendant had a personal animus against GPD officers stemming from her own arrest in 2010. At the time of her arrest, on information and belief, Smith was personally seeking confrontations with GPD officers in an attempt to substantiate purported practices of the GPD which she described at various times as "police brutality and harassment,"¹ treating some residents as "second-class citizens,"² and, most recently, raised "questions of police misconduct" in dealing with Greenville residents, according to local news reports.³
35. Further, at the time of the events complained of, Defendant was (and is) advocating for the creation of a "civilian review board" to exercise oversight of the GPD. On June 11, according to local news media, Defendant gave an "impassioned" speech at a city council meeting, directed at the chief of the GPD, regarding policing matters in Greenville and the civilian review board concept.⁴ Plaintiffs allege that a motivation for Defendant's complaints against them was to garner public (and GPD management) support for the civilian review board concept.

¹ <http://www.witn.com/home/headlines/101362119.html>
² <http://www.reflector.com/News/2017/10/16/Kandie-Smith-talks-police-relations-future-campaign.html>
³ <http://www.reflector.com/News/2018/06/12/Greenville-Police-hold-discussion-over-community-perceptions-and-alleged-wrongdoing.html>
⁴ <http://www.reflector.com/News/2018/06/26/Civilian-Police-Review-Board-continues-to-fuel-public-debate.html>

36. Further, Defendant at the time of the events complained of was (and is) a candidate for the District 8 House seat in the North Carolina General Assembly. In fact, Defendant had won the primary for that seat just a few days before the date of the traffic stop at issue.⁵ Plaintiffs allege that a motive for Defendant's complaints against Plaintiffs were to benefit her own private political interests connected with the District 8 House seat race.
37. Plaintiffs allege that Farrow is not a resident of the district Smith serves as a member of the city council. Accordingly, her actions against Plaintiffs were not motivated by concern over her constituents, but by personal animus toward the Plaintiffs for undertaking lawful law enforcement action against Farrow, to bolster her own political interests both locally and as a candidate for the General Assembly, and to garner support for the purported civilian review board Defendant was seeking to establish.
38. Plaintiffs allege that GPD Chief Holtzman and/or other GPD management are thoroughly cowed by Defendant's activism against the police, out of concern over potential racial incidents or political pushback, and thus, in this case and in others, caved in to Defendant's unwarranted complaints against Plaintiffs and placed placating Defendant over the interests and rights of the Plaintiffs. Holtzman himself stated to Smith that he was taking disciplinary action against Smith in this case for political reasons.
39. Plaintiffs allege that Defendant wrongfully and without justification abused her authority as a city council member to pressure the GPD into taking disciplinary action against Plaintiffs, two of whom were fired as a result. GPD, for its part, caved in to Defendant's political pressure to the damage and detriment of its own officers. But for Defendant's actions there would have been no disciplinary action against them as their activities involving the traffic stop and arrest were lawful. But for Defendant's deliberate, intentional, and willful interference with the Plaintiffs' contract of employment with the City of Greenville and/or GPD, the Plaintiffs would not have been terminated or otherwise disciplined.
40. Especially given that Farrow was not a constituent of Defendant, Plaintiffs allege that Defendant abused her authority as an elected member of the city council to get them disciplined or fired, and that in doing so Defendant acted with legal and actual malice and went far beyond the scope

of her lawful and legal duties and authority as an elected official to interfere with Plaintiffs' employment contracts. Further, Plaintiffs allege that Defendant took these actions to further her own personal and political interests, including but not limited to her candidacy for the North Carolina General Assembly as well as her efforts to create a civilian review board to oversee the GPD, and that additionally she had personal animosity against the Plaintiffs for arresting Farrow.

FOR A FIRST CAUSE OF ACTION
(Tortious Interference with Contract)

41. The foregoing paragraphs are hereby re-alleged and incorporated by reference as if fully set forth.
42. A valid contract of employment existed between each of the Plaintiffs and the City of Greenville, Greenville Police Department.
43. Defendant knew of this contract of employment when she took the actions alleged herein.
44. Defendant, motivated by and acting under legal and actual malice against Plaintiffs, and to serve her own outside interests, intentionally induced Greenville/ the GPD not to perform and to terminate the contracts between them and the Plaintiffs, and committed tortious interference with the contracts between Plaintiffs and Greenville/ the GPD.
45. Defendant, having acted with personal animus and actual and legal malice toward Plaintiffs in her actions, and in bad faith and willful desire to impair the contract of employment between Plaintiffs and Greenville/GPD, had no legal justification or authority for her actions.
46. Plaintiffs, each of them, suffered damage as a result of Defendant's actions in an amount in excess of Fifty Thousand Dollars (\$50,000).
47. Defendant was an outsider to the contract between Plaintiffs and Greenville/GPD and had no legitimate business interests in the subject matter thereof. In the alternative, Defendant is a "non-outsider" who acted with legal malice and/or corrupt intent to interfere with the employment

contracts of the Plaintiffs with Greenville by disparaging Plaintiffs to the GPD after they conducted a lawful traffic stop and made a lawful arrest of Farrow.

48. Accordingly, Defendant is her individual capacity liable to the Plaintiffs, each of them, for money damages in an amount in excess of Fifty Thousand Dollars (\$50,000).

FOR A SECOND CAUSE OF ACTION
(Obstruction of Justice)

49. The foregoing paragraphs are incorporated by reference as if fully set forth,

50. "Obstruction of justice is any act which prevents, obstructs, impedes or hinders public or legal justice." State v. Wright, 206 N.C. App. 239, 241, 696 S.E.2d 832, 834-35 (2010).

51. Plaintiffs, as law enforcement officers acting in the course of their duties, were and are entitled to the presumption that their actions were lawful and in good faith. Under N.C.G.S 160A-285, "Powers and duties of policemen," as a peace officer, a policeman shall have within the corporate limits of the city all of the powers invested in law-enforcement officers by statute or common law. This includes the power to enforce state laws against excessive speeding and state laws against intoxicated and disruptive behavior.

52. The actions of the Defendant pleaded in this Complaint, in seeking dismissal of criminal charges brought by Plaintiffs, filing complaints about Plaintiffs and others GPD officers as "Councilwoman Kandie Smith" regarding arrests in which Defendant was not involved, attempting to have GPD officers disciplined and/or terminated because they made lawful arrests, and initiating confrontations between herself and/or citizens with officers of the GPD, are acts which unlawfully obstruct, impede or hinder public or legal justice and amount to the common law tort of obstructing public justice. Plaintiffs allege that as a direct and proximate result of Defendant's actions in creating confrontations with GPD officers, GPD officers are "standing down" rather than acting to enforce the law out of concern that Defendant will seek to have them disciplined or terminated, with the result that the law of North Carolina is under such circumstances obstructed, impeded, and not enforced to a lesser extent than would have been the case but for the Defendant's actions.

53. The actions herein by Defendant were in bad faith, willful, made with malice, and were calculated to intimidate Plaintiffs and other GPD officers from enforcing the laws of the State of North Carolina, which is the legal duty of the Plaintiffs and the other GPD officers concerned.

54. In taking these actions, while citing her status as a member of the city council in doing so, Defendant acted far outside the authority of her status as a member of the city council to willfully, arbitrarily, and capriciously obstruct the enforcement of the laws of North Carolina and thus willfully, arbitrarily, and capriciously obstructed justice.

55. Defendant has no immunity from suit against the claims in this second cause of action, as her actions were willful, arbitrary, capricious, and deliberately calculated to intimidate GPD officers into failing to enforce the laws of the State of North Carolina.

56. As a result of Defendant's obstruction of justice, the Plaintiffs have been damaged, and Defendant is in her individual capacity liable to the Plaintiffs, each of them, for money damages in an amount in excess of Fifty Thousand Dollars (\$50,000).

FOR A THIRD CAUSE OF ACTION
(Separately Pleaded Punitive Damages)

57. Punitive damages are awarded to punish a defendant for egregiously wrongful acts and to deter the defendant and others from committing similar wrongful acts. N.C. Gen. Stat. § 1D-1 (2015).

58. Plaintiffs allege that clear and convincing evidence exists that the Defendant is liable to Plaintiffs for compensatory damages, and that one or more of the following aggravating factors: (1) fraud, (2) malice, or (3) willful or wanton conduct. N.C. Gen. Stat. § 1D-15 (2015).

59. Plaintiffs alleges that Defendant's conduct toward the Plaintiffs herein exceeded gross negligence in that it was willful and deliberate.

60. Defendant's conduct toward the Plaintiffs alleged herein was malicious, in that she knew or on the exercise of reasonable intelligence should have known at the time she engaged in such conduct that it was contrary to her duty and was undertaken with the intention of causing injury or damage to the Plaintiffs. Repeatedly initiating complaints against GPD officers doing their

legal duty in situations in which the Defendant was not personally involved, attempting to generate confrontations with GPD officers engaged in their legal duties, interfering with GPD officers engaged in their legal duties, and attempting to have GPD officers disciplined or terminated for engaging in their legal duties is willful, wanton, deliberate, and malicious conduct well beyond the reasonable scope of Defendant's duties as a member of the city council.

61. Defendant's conduct alleged herein was willful and wanton, in that it showed conscious and intentional disregard of and indifference to the rights of the Plaintiffs and other officers of the GPD, and which the Defendant knew or should have known would cause damage to the Plaintiffs.
62. Accordingly, Plaintiffs are entitled each of them to recover from Defendant individually punitive damages in the amount provided for by law and as found by this Court.

FOR A FOURTH CAUSE OF ACTION – ALTERNATIVE COUNT
(Article I, Section 1 – Constitution of North Carolina)

63. The foregoing paragraphs are incorporated by reference as if fully set forth.
64. In an alternative to the First and Second Causes of Action, Plaintiffs have no adequate remedy under State law for the actions of the Defendant, for which she is sued in her official capacity as a public official. A tortious interference claim, in and of itself, is not an adequate remedy to address Defendant's pattern and practice of, under her authority as a member of the city council, arbitrarily and capriciously using that authority to jeopardize, damage, and otherwise impair the rights of the Plaintiffs and other officers of the GPD to their fruits of their labors under Article I, Section 1 of the Constitution of North Carolina.
65. Article I, Section 1 confers on Plaintiffs a direct, self-executing right to the fruits of their labor free of arbitrary, capricious, and abusive governmental interference.
66. As our Supreme Court held in its Corum case, "The Declaration of Rights was passed by the Constitutional Convention on 17 December 1776, the day before the Constitution itself was adopted, manifesting the primacy of the Declaration in the minds of the framers. The fundamental purpose for its adoption was to provide citizens with protection from the State's

encroachment upon these rights. . . . The very purpose of the Declaration of Rights is to ensure that the violation of these rights is never permitted by anyone who might be invested under the Constitution with the powers of the State. 330 N.C. 761, 782-83, 413 S.E.2d 276, 289-90 (citing State v. Manuel, 20 N.C. 3 & 20 N.C. 144, 4 Dev. & Bat. 144 (1838)), cert. denied, 506 U.S. 985, 113 S. Ct. 493, 121 L. Ed. 2d 431 (1992).

67. Defendant, as an elected and serving member of the Greenville city council, is a person invested under the Constitution with the powers of the State.
68. Defendant has no immunity from suit in a direct constitutional action against her in her official capacity as a public official.
69. Under N.C.G.S 160A-285, "Powers and duties of policemen," as a peace officer, a policeman shall have within the corporate limits of the city all of the powers invested in law-enforcement officers by statute or common law. This includes the power to enforce state laws against excessive speeding and state laws against intoxicated and disruptive behavior.
70. Defendant initiated multiple attempts, acting on her status as a member of the city council, to obtain disciplinary action against Plaintiffs and other members of the GPD, and did so in a manner which was arbitrary, capricious, and primarily intended to serve and elevate her own political and public interests at the expense and to the detriment of the GPD officers, including Plaintiffs, involved. Defendant as noted undertook these actions under color of and on information and belief citing her authority as a member of the city council of Greenville in support of her actions and claims.
1. Defendant has engaged in multiple arbitrary and capricious attempts, which were successful in the case of the Plaintiffs herein, to interfere with the livelihoods of the Plaintiffs and other members of the GPD, and did so in manner that was arbitrary, capricious, and wholly outside of the scope of actions by a reasonable public official. Defendant initiates complaints against members of the GPD under her authority as "Councilwoman Kandie Smith," regarding events in which she herself was not personally involved and/or regarding events where she attempted to interfere with officers of the GPD while they were in the course of performing their duties, were acting lawfully, and were acting to promote the public's safety and to keep the peace.

72. Further, Plaintiffs allege that Defendant has staged or initiated confrontations between herself and/or other members of the public and officers of the GPD, confrontations which would, Plaintiffs allege, not have occurred but for her actions, and for which she then attempted to have the officers involved subjected to disciplinary action. Moreover and additionally, Defendant arbitrarily and capriciously seeks to damages the ability of officers, including Plaintiffs, to exercise their rights under Article I, Section 1 to work and earn a living free of arbitrary and capricious governmental interference and abuse of the authority in which Defendant is vested as a public official.

73. Defendant's arbitrary, capricious, and abusive actions toward Plaintiff and other officers of the GPD violated the rights of Plaintiffs incurred under Article I, Section 1 of the Constitution of North Carolina.

74. Plaintiffs do not have an adequate remedy at law for the violations cited herein, which caused and continue to cause irreparable harm to the Plaintiffs. Accordingly, Plaintiffs are entitled to an injunction against the Plaintiff to cease and desist from her arbitrary, capricious, and abusive actions under color of State law and under color of her authority as a member of the city council of Greenville to unreasonably, arbitrarily, and capriciously interfere with the rights of the Plaintiffs under Article I, Section 1 of the Constitution of North Carolina.

FOR A FIFTH CAUSE OF ACTION – ALTERNATIVE COUNT

(Article I, Section 19 – Constitution of North Carolina, Impairment of Contract)

75. The foregoing paragraphs are incorporated by reference as if fully set forth.

76. The Plaintiffs at all relevant times had valid contracts of employment with Greenville/GPD.

77. Defendant has no immunity from suit in a direct constitutional action against her in her official capacity as a public official.

78. Plaintiffs have no adequate remedy under State law for the constitutional violation addressed in this Count.

79. As a public official and elected and serving member of the City Council of Greenville, Defendant acts under color and authority of State law and the ordinances of Greenville when acting in her official capacity.
80. Persons acting under color of state law are "state actors" for the purposes of constitutional analysis.
81. Under N.C.G.S 160A-285, "Powers and duties of policemen," as a peace officer, a policeman shall have within the corporate limits of the city all of the powers invested in law-enforcement officers by statute or common law. This includes the power to enforce state laws against excessive speeding and state laws against intoxicated and disruptive behavior.
82. Defendant may not constitutionally act under color of state law in such a manner that impairs existing contracts to which Plaintiffs, as citizens of North Carolina subject to the protection of our State Constitution's Declaration of Rights, are a party. Bateman v. Sterrett, 201 N.C. 59, 63; 159 S.E. 14 (1931); citing Ashley v. Brown, 198 N.C. 369, 151 S.E. 725 (1930); Stanback v. Bank, 197 N.C. 292, 148 S.E. 313 (1929).
83. As with equal protection under the same section of the Constitution of this State, the Defendant may not exercise her authority as a public official arbitrarily, capriciously, and in such a manner as to impair Plaintiffs' contracts of employment with Greenville/GPD. Plaintiffs specifically allege that there was no rational basis for Defendants' use of her authority to impair their contracts of employment, nor were her actions in pursuant of or related to some reasonable or important government objective. Rather, Plaintiffs, allege, Defendant abused her power as an elected member of the city council in a successful attempt to have the Plaintiffs suffer adverse employment action in the form of termination or other discipline out of animus toward the Plaintiffs for exercising their duties as law enforcement officers under N.C.G.S. 168-285 and the laws of North Carolina generally
84. Defendant's actions as pleaded in this Complaint violated the rights of the Plaintiffs under Article I, Section 19 of the Constitution of North Carolina.
85. Plaintiffs do not have an adequate remedy at law for the violations cited herein, which caused and continue to cause irreparable harm to the Plaintiffs. Accordingly, Plaintiffs are entitled to an injunction against the Plaintiff to cease and desist from her arbitrary, capricious, and abusive

actions under color of State law and under color of her authority as a member of the city council of Greenville to impair the Plaintiffs' contracts of employment with Greenville/GPD.

FOR A SIXTH CAUSE OF ACTION – ALTERNATIVE COUNT
(Article I, Section 19 – Constitution of North Carolina, Equal Protection of the Law)

86. The foregoing paragraphs are incorporated by reference as if fully set forth.
87. The Plaintiffs at all relevant times had a vested right to equal protection under the laws of North Carolina.
88. Defendant has no immunity from suit in a direct constitutional action against her in her official capacity as a public official.
89. Plaintiffs have no adequate remedy under State law for the constitutional violation addressed in this Count.
90. As a public official and elected and serving member of the City Council of Greenville, Defendant acts under color and authority of State law and the ordinances of Greenville when acting in her official capacity.
91. Persons acting under color of state law are "state actors" for the purposes of constitutional analysis.
92. Defendant, as a powerful public official, singled out Plaintiffs and other member of the GPD as part of an orchestrated campaign of official harassment directed against them out of sheer malice and in retaliation for exercising their duties as police officers. Defendant treated Plaintiffs and similarly situated members of GPD significantly differently from similarly situated city employees; Defendant is not, for example, filing complaint against or seeking disciplinary action or dismissal of firefighters or EMTs.
93. Defendant's treatment of the Plaintiffs was because of discrimination and malice against them as police officers and for exercising their duties as police officers.

94. Defendant singled out Plaintiffs and other GPD officers as a "class of one" for equal protection purposes, and did so maliciously and without any rational basis in scheme of interfering with their performance of their duties in enforcing the laws of the State of North Carolina.
95. The impact of Defendant's actions in using the powers of her office to harass, interfere with, and obtain the termination of Plaintiffs and other GPD officers has been to discourage officers from exercising the duties of police officers under law out of fear that they will become targets of Defendant's harassment. The further impact has been a negative impact on full and complete enforcement of the laws of the State of North Carolina and the protection of the citizens and property of the City of Greenville.
96. The historical background of Defendant's actions since her arrest in 2010 shows a series of actions against Plaintiffs and other GPD officers for unlawful purposes; to wit, to discourage them from enforcing the laws of the State of North Carolina.
97. The sequence of events leading up to the adverse employment action taken against Plaintiffs demonstrates that Defendant's actions are set forth upon and intended to discourage GPD officers from enforcing their duties as police officers.
98. Defendant's actions show a significant departure from normal procedure on the part of a public official. Defendant's actions are not confined to the legislative process, but include personally initiating complaints against Plaintiffs and other GPD officers regarding events in which she had no involvement and in which her constituents had no involvement, and causing and arranging the cause of deliberate confrontations with GPD officers for the purpose of initiating complaints against them and for her own personal and political benefit.
99. Defendant's contemporaneous statements regarding GPD demonstrate both malice and personal dislike of GPD officers taking active enforcement measures for the protection of the citizens and property of the City of Greenville.
100. Defendant's actions as pleaded in this Complaint have violated Plaintiffs' vested right under the Constitution of North Carolina to equal protection of the laws under Article I, Section 19 of the Constitution of North Carolina.

Respectfully submitted,

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VERIFICATION

COMES NOW the Plaintiff, Brock Ruel Flannery, who alleges and says that he is a Plaintiff in this action, that he has read the factual claims in this action, and avers that they are true to the best of his knowledge and information at the time they were made.

By:

Brock Ruel Flannery

Sworn and subscribed before me this 20th day of August, 2018.

By:

Christi A. Hannon
Notary Public

my commission expires: 6/15/2022



VERIFICATION

COMES NOW the Plaintiff, Travis Daniel Brinkley, who alleges and says that he is a Plaintiff in this action, that he has read the factual claims in this action, and avers that they are true to the best of his knowledge and information at the time they were made.

By: *Travis Brinkley*
Travis Daniel Brinkley

Sworn and subscribed before me this 20th day of August, 2018.

By: *Celeste Sherrin*
Notary Public

my commission expires: 3/15/2022

