

BOSMAN LAW L.L.C.

3000 McConnellsville Road
Blossvale, New York 13308

A.J. Bosman, Esq.
Robert Strum, Esq.
T. Padric Moore, Esq., of Counsel

Telephone: (315) 820-4417
Facsimile: (315) 820-4449(*)
(* Service by facsimile or email not accepted.)

March 6, 2023

VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Ms. Laura Lewis
Mayor
City of Ithaca
108 E. Green Street
Ithaca, New York 14850

Re: John Joly v. City of Ithaca, et al.
(Notice of Claim)

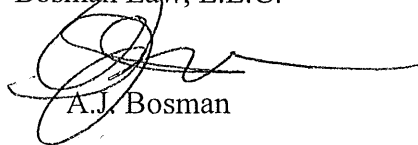
Dear Ms. Lewis:

Enclosed, for service, please find a Notice of Claim on behalf of this firm's client, John Joly.

Thank you for your attention to this matter.

Sincerely,

Bosman Law, L.L.C.


A.J. Bosman

Enclosure

STATE OF NEW YORK
COUNTY OF TOMPKINS

JOHN JOLY,

Claimant,

NOTICE OF CLAIM

-against-

CITY OF ITHACA, NEW YORK; MAYOR
LAURA LEWIS; ALDERPERSON CYNTHIA
BROCK; ALDERPERSON JEFFREY BARKEN;
ALDERPERSON JORGE DEFENDINI;
ALDERPERSON DUCSON NGUYEN;
ALDERPERSON GEORGE McGONIGAL;
DIRECTOR OF HUMAN RESOURCES
SCHELLEY MICHELL-NUNN; JOHN DOE(S)
and JANE DOE(S),

Respondents.

Claimant JOHN JOLY, by and through his undersigned counsel, as and for a Notice of Claim against Respondents CITY OF ITHACA, NEW YORK; MAYOR LAURA LEWIS; ALDERPERSON CYNTHIA BROCK; ALDERPERSON JEFFREY BARKEN; ALDERPERSON JORGE DEFENDINI; ALDERPERSON DUCSON NGUYEN; ALDERPERSON McGONIGAL; DIRECTOR OF HUMAN RESOURCES SCHELLEY MICHELL-NUNN; and JOHN DOE(S) and JANE DOE(S), states as follows:

The names and addresses of Claimant and his attorney are:

JOHN JOLY, [REDACTED]
A.J. BOSMAN, ESQ., Bosman Law, L.L.C., 3000 McConnellsville Road, Blossvale,
New York 13308

The nature of the claim is one which seeks to recover money damages as a result of the intentional, reckless, negligent, and/or grossly neglect conduct of Respondents herein. Claimant has been subjected to ongoing violations of his rights under the Constitution and laws of the

State of New York. A non-exhaustive list of proposed causes of action for which Claimant may bring suit include:

N.Y. Const., Art. I, Sec. 6 relating to due process;

N.Y. Const., Art. I, Sec. 8 relating to freedom of speech;

N.Y. Const., Art. I, Sec. 11 relating to equal protection;

N.Y. Civil Rights Law § 40-c relating to discrimination on the basis of race;

N.Y. Civil Rights Law § 79-n relating to discrimination on the basis of race;

N.Y. Exec. Law § 296 relating to discrimination on the basis of race and retaliation;

Negligence;

Gross Negligence;

Defamation;

Interference with existing and prospective contractual relations;

Intentional and/or Reckless and/or Negligent and/or Grossly Negligent Infliction of Severe Emotional Distress;

Prima Facie Tort;

Breach of Contract; and

Equitable and/or Promissory Estoppel.

The time when, the place where, and the manner in which the claim arose:

1. Claimant JOHN JOLY is a citizen of the United States and resident of the County of Tompkins and State of New York. He is White and was at all times relevant herein employed as a Police Officer of the City of Ithaca since on or about 2005. At all times relevant hereto, Claimant has satisfactorily performed his job duties.

2. Respondent CITY OF ITHACA, NEW YORK is a municipal corporation organized

and existing under the laws of the State of New York and at all relevant times had its principal place of business at 108 East Green Street, Ithaca, New York 14850. At all times relevant hereto, this Respondent employed Claimant and the hereinbefore named individual Respondents. The City of Ithaca is by law responsible for the wrongdoing of officers and employees of the City of Ithaca and by law responsible for the direct participation and endorsement of the unconstitutional and unlawful customs, policies, and practices of the other Respondents. This Respondent is also aware, through its officers, legislators, and agents, of the long-standing unlawful customs, policies and practices of the other named Respondents, and deliberately and/or negligently failed to take action to correct the unlawful customs, policies and practices of the other Respondents.

3. Respondent LAURA LEWIS is the duly elected Mayor of the City of Ithaca, New York. Before this time, Respondent Lewis was the duly appointed Acting Mayor, appointed by then Mayor Svante L. Myrick. At all times relevant hereto, Respondent Lewis was either the Acting Mayor or Mayor of the City of Ithaca, New York.

4. At all times relevant hereto, Respondent CYNTHIA BROCK was a duly elected Alderperson of the City of Ithaca Common Council.

5. At all times relevant hereto, Respondent JEFFREY BARKEN was a duly elected Alderperson of the City of Ithaca Common Council.

6. At all times relevant hereto, Respondent JORGE DEFENDINI was a duly elected Alderperson of the City of Ithaca Common Council.

7. At all times relevant hereto, Respondent DUCSON NGUYEN was a duly elected Alderperson of the City of Ithaca Common Council.

8. At all times relevant hereto, Respondent GEORGE McGONIGAL was a duly elected

Aldersperson of the City of Ithaca Common Council.

9. At all times relevant hereto, Respondent SCHELLEY MICHELL-NUNN was the duly appointed Director of Human Resources of the City of Ithaca.

10. Claimant has been the duly appointed acting Chief of the Ithaca Police Department since on or about April 1, 2021. Claimant further states that he has also served as a Police Officer beginning on or about 2005, Sergeant from 2014 to 2017, and Lieutenant from 2017 to 2020, and Deputy Chief since 2020. He further states that he has always performed his duties in a manner that was lawful and supportive of the people of the City of Ithaca and officers under his command.

11. On or about July 2022, Claimant duly applied for the position of Chief of Police as posted and advertised by Respondents. On information and belief, Mayor Lewis selected Respondent Shelly Michell-Nunn to chair the Search Committee for Chief of Police. Michelle-Nunn is Black.

12. On information and belief, Respondent Michell-Nunn intentionally and routinely disadvantages non-Black applicants by, among other things, manipulating the selection and nomination process for Chief of Police to disadvantage Claimant because he is a Caucasian male. Respondent Michell-Nunn is permitted to unduly influence meetings, interviews, committees, and personnel hiring and promotion decisions for the sole purpose of discriminating in favor of Black applicants and against non-Black candidates. Such conduct is unlawful, exceeds the authority of the Human Resources Department which she heads, and constitutes discrimination on the basis of race. Respondent Michell-Nunn has purposely orchestrated and fomented discriminatory animus against Claimant by giving preferential treatment to Black candidates, including Scott Garin, and stated such comments as "Garin is rising to the top." Respondent

Michell-Nunn openly seeks to give preference to Black candidates, including managing the "Workforce Diversity Committee" to require review of any non-minority candidate selection.

13. On or about October 17, 2022, Claimant submitted a letter to Respondent Lewis alerting her to Michelle-Nunn's meddling and over-involvement in the process of Chief selection. He alerted the Respondents of the lack of neutral bias-free oversight and unbiased process. Later that day, Claimant participated in three interviews, including a public forum. Upon information and belief, Respondent Michell-Nunn sought to undermine Claimant's reputation in the community by orchestrating a confrontational process with question and answer focused on race. Claimant was subjected to discriminatory animus.

14. Thereafter, on December 2, 2022, the Mayor announced that the Claimant had in fact, been selected as the Chief, yet the other Respondents persuaded the Mayor and the Mayor agreed to "rescind" or renege on the appointment and the offer was withdrawn on December 4, 2022. Such conduct displayed intentional and/or reckless disregard for the Claimant's reputation and good name, interfered with future appointments and opportunities and subjected the Claimant and his family to humiliation and shame. Claimant was asked to continue as Acting Chief of Police without the attendant increase in pay such position was to provide, to the detriment of Claimant and his family.

15. The statements of the Respondent Alderpersons evince a discriminatory state of mind and include assertions that Claimant is not qualified to communicate with the minority population of the City of Ithaca. The Alderpersons support and perpetuate an atmosphere and policy and practice of race discrimination by endorsing and encouraging the selection of personnel based upon their status as a minority and specifically exhibit bias as against Caucasian personnel. This discriminatory bias is repeatedly exercised and justified by a false narrative that

they are seeking to “diversify” city personnel. This use of the term “diversity” is intended to provide advantages to hiring and promotion of Black applicants and is to the detriment of Caucasian and non-Black applicants. For example, the Respondents maintain a “Workforce Diversity Committee,” which for Claimant, has the exclusive purpose of interfering with his authority and requiring him to justify only those personnel hiring and promotional selections when they are not Black.

16. On or about December 5, 2022 and thereafter, the Alderperson Respondents published false and defamatory comments about Claimant to the Ithaca Voice, an online news outlet, in opposing Claimant’s selection for Chief of Police by the Mayor of Ithaca. These comments include, but are not limited to, falsely stating that the Claimant is “racist” and in words and substance unwilling to address “systemic and implicit racial bias in policing.” These statements are based on Claimant's race and participation in past Human Rights Law and /or Title VII proceedings. Such conduct has the effect of undermining Claimant’s authority and credibility in the community he serves and amongst the ranks of officers he leads.

17. Respondents Lewis and Michell-Nunn failed to oppose the discriminatory statements and conduct by City of Ithaca Alderpersons, Cynthia Brock, Jeffrey Barken, Jorje DeFendini, Ducson Nguyen, and George McGonigal in their discriminatory and retaliatory treatment of the Claimant.

18. The Respondents have no known affirmative action or articulated plan to “diversify” City personnel. The City Police Department under the leadership of the Claimant sought and achieved strides in racial equity and hiring.

19. On or about December 8, 2022, the Respondents expressed support for the selection of Scott Garin, who identifies as Black, for the Chief's position. This support was in whole or

part, unlawfully based on race. According to McGonigal, even though Claimant had superior qualifications, the Chief Selection Committee felt that Garin would be better able to relate and/or communicate with the Black community. Such comments reflect bias and unlawful discrimination based upon race. Further, Alderperson McGonigal reported and stated the Council would not support Claimant's appointment because he had testified as a subpoenaed witness in a discrimination/retaliation lawsuit brought by Christopher Miller. Such conduct is unlawful as discriminating and/or retaliating against Claimant. Respondents have retaliated against Claimant for acting as a witness and/or participating in the administrative process of Human Rights Law and/or Title VII proceedings.

20. On or about December 7, 2022 Claimant attended the City Council meeting and presented, *inter alia*, a statement objecting to the conduct of the Respondents and setting forth, in part, the basis for those objections.

21. On or about December 14, 2022, Respondents Brock and Nuygen falsely alleged that Claimant was stealing funds and falsifying time cards. Thereafter, on or about January 11, 2023, Claimant was notified that a complaint had been filed falsely alleging that Claimant was stealing funds and falsifying time cards. Respondents' allegations are false and defamatory and constitute further discrimination and retaliation against Claimant.

22. In or about January 2023, the Respondents announced that the Civil Service Chief's exam scheduled for March, 2023 was postponed to allow for the Respondents to avoid obligations under Civil Service Law and contract with an "outside firm" to assist in a nationwide search for a new Chief of Police.

23. Respondents and others have created and/or continued a hostile work environment and subjected Claimant to discriminatory and disparate treatment and retaliation. These actions

caused Claimant to be subjected to racial scrutiny, subjecting him to hostile and disparate treatment so pervasive as to interfere with his work, and retaliation for daring to oppose and complain about that treatment.

24. At all times mentioned in this Notice of Claim, Respondents acted both individually and/or jointly and in concert with each other. Each Respondent had the duty and the opportunity to protect Claimant from the unlawful actions of the other Respondents but each Respondent failed and/or refused to perform such duty, thereby proximately contributing to and causing Claimant's injuries.

25. Claimant is a civil service employee and protected by Civil Service Law and other laws of the State of New York. Such laws provide for the fair and equal treatment in matters of pay and terms of employment without regard to gender, race, age, or other classification. Respondents' actions herein constitute a breach of those laws and deprived Claimant of equal protection of those laws.

26. Respondents foster an atmosphere of discrimination, retaliation, hostility, and harassment based on racial factors. Such treatment was and has been known to occur for years and Respondents have deliberately, recklessly, and/or negligently participated in such acts and/or failed to cease or discourage such practices. Despite knowledge of such practices and treatment, Respondents have deliberately and/or recklessly failed to correct or cease such practices nor seek elimination or solutions to said practices.

27. Instead, Respondents have encouraged, approved, continued and expanded, concealed and participated in such perpetuation of said hostility and illegal and unconstitutional practices to the detriment and injury of Claimant.

28. These actions are in violation of the New York State Human Rights Law, laws

preventing discrimination and violation of civil rights, and Civil Service Law.

29. By acting as described above, Respondents acted with malice or with reckless disregard for Claimant's rights, causing Claimant to suffer embarrassment, humiliation, degradation, anxiety, stress, loss of pay, loss of benefits, harm to reputation and good name, insomnia, anger, family discord, headaches, stomach upset, nervousness, anxiety, loss of appetite, and pain. Such acts by Respondents have injured Claimant and subjected him to extreme emotional harm and injury and he is entitled to compensation therefor.

Dated: March 5, 2023

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

A.J. Bosman, Attorney at Law

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF ONEIDA)


JOHN JOLY, being duly sworn, deposes and says:

I am the Claimant in this action. I have read the foregoing complaint and know the contents of facts and allegations thereof; the same are true to my knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.



JOHN JOLY

Sworn to before me
this 5th day of
March, 2023



Notary Public

A. J. Bosman, Esq.
Notary Public, State of N.Y.
Reg. No. 02B0505008
Commission Expires Oct. 2, 2025