



The Foster Group

Putting the Pieces Together

902 W McDowell Rd
Phoenix, AZ 85007
www.thefosterlaw.com

Troy P. Foster
tfoster@thefosterlaw.com
Office 602-571-1120

VIA EMAIL

August 15, 2024

City of Sedona

102 Roadrunner Dr.
Sedona, AZ 86336

Kurt Christianson

City Attorney

Email: kchristianson@sedonaaz.gov

RE: Ryan Kwitkin; Employment

Dear Kurt:

This Firm represents former Deputy Chief Ryan Kwitkin (“Mr. Kwitkin”) with respect to his potential claims against Sedona Police Department (“SPD” or the “Department”) for violations of the Arizona Employment Protection Act (“AEPA”), as among other state laws when he was fired immediately after raising concerns about his boss – the Chief of Police. Moreover, Mr. Kwitkin has claims against the City for false light and defamation in selectively releasing portions of its investigation while withholding others.

Finally, Mr. Kwitkin has claims against the City and certain individuals for violations of his First and Fourteenth Amendment Rights, as protected by the U.S. Constitution and 42 U.S.C. § 1983.

This Notice of Claim is being provided to you pursuant to A.R.S. § 12-821.01. Though Mr. Kwitkin would prefer to resolve this matter informally before both sides invest significant money and resources in the administrative and judicial processes, he has authorized us to pursue with litigation if not resolved within the statutory period.

We sincerely hope that we can achieve that, and let the City utilize its funds for the people it serves rather than protracted litigation.

FACTUAL BASIS FOR CLAIMS

The Summary in “Chief”: A Law Enforcement Drama

The facts underlying Mr. Kwitkin’s claims involve corruption, nepotism, incompetence, fear, and retaliation. And it was all facilitated by the Chief of Police in the Police Department. The storylines involve soap opera-like cliques that are only interested in self-preservation. Self-preservation from the Chief’s ire and well-earned reputation of getting even when concerns are raised. Where avoidance and ignoring problems is a pivotal coping skill to maintain good relations with the Chief. Where “rocking the boat” – even when that means protecting public safety and taxpayer funds – was to be avoided at all costs if an employee was to survive.

This drama would be entertaining if it were not real life. It might be whimsical if it was not happening within the Police Department – where the City’s citizens expect to be protected and accountability should be demanded. But it gets worse.

The inevitable plot twist occurs when three direct reports of the Chief – one being Mr. Kwitkin – are brave enough to stand up for what is right. They do this even knowing what the Chief was capable of. Because of it. Because everyone should be held accountable – especially those that flatly reject it. And because they trusted the City to protect them in exercising their rights and raising matters of public concern.

Unfortunately, that trust was misguided.

In response to their complaints, an “investigation” was conducted. Where anyone with concerns were expected to talk about them while the Chief was on patrol. Not on a

paid leave or a temporary reassignment, but literally on patrol, on duty, and on the lookout for those that would dare stand up against her.

The City summarily dismissed all complaints against the Chief. But then, took it a step further. Within hours, the City presented Mr. Kwitkin with a Notice of Investigation for alleged misconduct (some of which included “swearing”), and placed him on leave. Not only did the City place him on leave, but they had him escorted off of City property by a neighboring law enforcement department. All while the Chief – “cleared” hours earlier – sat back and watched with her arms folded.

The “investigation” that followed was anything but an investigation. Having not been provided with any complaints or allegations – many of which it is clear that the Chief perpetuated – the City demanded an interview. Without Due Process. The writing was on the wall, and Mr. Kwitkin saw it for what it was.¹

As they say, the cover-up is always worse than the crime. That is the case here. The City’s own orchestrated and concerted efforts to cover up concerns raised about the Chief for violations of Arizona law were extensive and sloppy. The retaliation against those that stood up for what is right and lawful – transparent and palpable.²

Mr. Kwitkin will, as he always has, stand up for what is right. Even, and maybe especially, when it is not popular. His entire career has been focused on improving law enforcement, and his approach to this has been no different. However, the price he has paid here is something that the City will have to end up footing the bill for.

Mr. Kwitkin’s Performance and Stellar Career Speaks Volumes.

At the outset, it is important to address an important issue that exacerbates the mistreatment Mr. Kwitkin has suffered. Prior to joining the Sedona Police Department,

¹ Notably even the partially released portions of the investigation undermine its own credibility. Recordings of witness interviews belie the conclusions reached. For example, the City alleges that Mr. Kwitkin made an employee feel uncomfortable in a room. However, Mr. Kwitkin was talking to the employee as she had just lost her father; in the interview, she reports that she was emotional and overreacting. That was not released nor part of the interview that noted that. Because that wasn’t the purpose. The only purpose was to terminate Mr. Kwitkin.

² The City’s willingness to mold findings to its advantage rather letting the facts dictate the outcome is troubling for any employer, but especially for a police department. We believe that our pending public records request will reveal emails and other correspondence that will be illuminating.

Mr. Kwitkin spent 23 years with the Boca Raton Police Department, advancing from police officer to Lieutenant in his time there. Mr. Kwitkin worked from the ground up, was promoted routinely, and earned the respect of his peers and leadership.

He has always worked hard, faced challenges, and tackled them head on. Anyone that has worked with or for Mr. Kwitkin would vouch that he has exceptional personal, communication, and organizational skills, and a tireless work ethic.³ Mr. Kwitkin is passionate about his service and has a proven track record with the community and his team. And most would attest to his strong desire to constantly improve law enforcement.⁴

Mr. Kwitkin left Boca Raton Police Department, and a very promising career, in hopes of relocating his family to the west coast for a better life and more opportunity for his professional advancement. Sadly, he would have, undoubtedly, continued on that trajectory if he had not been enticed to work for the City.

Mr. Kwitkin is a firm believer in the chain of command and resolving issues internally. He tried that. But not only was he not listened to, it put a target on his back. Unfortunately, it has left him in the unenviable position of asserting his rights outside of the PD.

The Chief Revealed: Shots Fired

Soon after he started, Mr. Kwitkin learned that the Chief had expectations. Not just expectations that any new boss would have, but expectations that required complete loyalty. To raise your hand or express a different opinion was not only unwelcome but met with retaliation. Mr. Kwitkin saw this firsthand.

And he noted the environment that this created. One where employees were afraid to raise concerns – even legitimate ones – for fear of retaliation. That silence, Mr. Kwitkin believed, created dangerous situations for the employees, law enforcement, and the City's people. The void of dialogue and the Chief's singular direction facilitated that danger on many occasions, but two of note.

³ This is the case as evidenced in the Department's own pre-employment psychological evaluation of him.

⁴ If given the opportunity, several officers would speak to this collectively, yet they were denied the opportunity before Mr. Kwitkin was terminated.

Concern: Unarmed Citizen Volunteers Driving Prisoners Around Town

Mr. Kwitkin went to the Chief with concerns about what the City's police volunteers were allowed to do. One of his greatest concerns with the program was the fact that police volunteers were utilized to transport prisoners. The volunteers were allowed to transport what the PD called "non-violent" prisoners to county jail, after an officer made the arrest. These 'transports' were carried out by unarmed, untrained, police volunteers in a marked police car. The prisoners were handcuffed, and two volunteers would then transport the prisoner to county jail. Once at county jail, the volunteers would take the prisoner out of the back seat of the police car and walk them into the jail. At times, the police volunteers would then have to uncuff the prisoner, as some county jail deputies would not uncuff the prisoner.

Mr. Kwitkin discussed with the Chief that he had never met a prisoner that said, "hey, don't worry I am not going to be violent," or "I am going to fight you once these handcuffs come off." Chief Foley would respond that "we are a small agency, and we cannot always have the staffing to transport our prisoners." Mr. Kwitkin further attempted to address his concerns with having volunteers driving marked cars that say "police" on them.

Chief Foley's response was dismissive and angry.

Concern: Prisoners Freely Leaving Cells Because Keys Left in Key Holes

In early January 2024, after reviewing a PD booking video, Mr. Kwitkin learned that an officer left the jail door key in the cell door and a prisoner was about to reach through the door food slot and unlock the cell door when the officer stepped out of the booking area. The prisoner was freely walking around the booking area and had total access to their property. When the officer came back into the booking area, he was surprised and escorted the prisoner back to her cell.

Mr. Kwitkin went to Chief Foley to discuss this with her and mentioned an alternative practice to protect the officers and the public. Chief Foley dismissed the idea and said, "we just leave it [the key] in the top drawer."

And there is Much More . . .

This is just the tip of the iceberg of the complaints raised by Mr. Kwitkin to the Chief. Some – like an officer breaking into the evidence room because the key was not there – are on bodycam footage. Others are documented by email. And still others by conversation.

Given this culture, employees kept their mouths shut. Some would say it was because they were close to retirement. Others because they wanted a promotion. And still others because they just needed the job. Even Mr. Kwitkin remained silent sometimes because he experienced the Chief’s wrath (e.g. extending his probationary period while noting that a friend of hers in the Verde Valley might be looking to relocate).⁵ None wanted to be in the eye of the storm that was Chief Foley.

And for good reason – as Mr. Kwitkin learned directly.

Mr. Kwitkin Reports Chief Foley: The Beginning of the End.

Despite the known risk, Mr. Kwitkin decided to register a complaint against Chief Foley. He believed that he had an obligation to the City, and it was his duty.

On March 14, 2024, Mr. Kwitkin met with Russ Martin, the City HR manager, to file a formal complaint against Chief Foley. While sitting in Mr. Martin’s office, Sergeant Leon entered, and decided she, too, was ready to file a complaint as well. Sergeant Leon, stated that “she would follow through and stand up against this mistreatment.”

While both individuals were sitting there, Sherri O’ Conner, the Chief’s Executive Assistant, walked in and said since they were both filing a complaint, she wanted to as well. All three individuals discussed their concerns regarding Chief Foley, and Mr. Martin listened. At the time, Mr. Martin expressed great concern, and the trio explained that there were several other people within the PD that had mentioned coming forward.

Mr. Martin expressed that he had heard enough to initiate a complaint and said to “tell anyone else that they do not need to come to HR to express their concerns,” also stating that “there will be an investigator assigned to speak with anyone else who wants to be heard.”

⁵ That friend, not so coincidentally it would appear, has recently been hired to replace Mr. Kwitkin.

It was evident during the meeting that Ms. O’Conner was terrified of the potential repercussions. After speaking for about 30 minutes, Ms. O’Conner panicked and abruptly stated that “she had to get back to her office before the Chief saw her,” and told Mr. Martin that she would call him later. After Ms. O’Conner left the office, Mr. Martin mentioned how “people’s body language speaks louder than their words” and considering Ms. O’Conner’s fear of being seen in his office coupled with her visibly shaking, “her concerns must be warranted.”

Sergeant Leon left the office after about two hours, and Mr. Kwitkin stayed for another hour talking with Mr. Martin. During that last hour that Mr. Kwitkin, Mr. Martin detailed how the City had just completed an investigation into another department head where three employees had come forward with similar allegations, and how when they did, that manager was immediately placed on administrative duty. Mr. Kwitkin and Mr. Martin discussed the possibility of placing Chief Foley on some sort of leave, as two out of the three people who were filing complaints against Chief Foley, reported directly to her. As their meeting concluded, Mr. Martin told Mr. Kwitkin that he was going to call the City Manager and update her.

Later that evening, Mr. Kwitkin contacted Mr. Martin to follow up, and inquire about what processes the Department was going to implement to protect the individuals who filed their complaints from future harassment or retaliation. Mr. Martin told Mr. Kwitkin that he recommended to the City Manager that she put Chief Foley on paid administrative leave, and the City Manager refused. Mr. Kwitkin referenced the previous incident, where the manager was put on leave for harassment during investigation, and implied that treating another manager differently by not putting her on leave did not look good, to which Mr. Martin said, “I did not think of that.” The conversation ended with Mr. Martin saying he was going to talk with the HR company and see what they suggested. Ultimately, the decision was left up to the former City Manager Karen Osburn, and Chief Foley was left in her position to continue to directly supervise two of the individuals who filed complaints against her.

Chief Foley retaliated against those employees, and the City facilitated it.

The “Investigation” into Chief Foley

It was Mr. Kwitkin’s hope that the investigation would be full and fair and take into consideration the information he and others were providing, the information gained during the investigation, and the past reports and allegations with Chief Foley long before his arrival. However, this was not the case.

During interviews with the hired HR investigator, Barbara Basel, Mr. Kwitkin provided the names of at least 12 people, most current and some former employees, who would corroborate and detail stories of the mistreatment and culture of a fear and hostility at the Sedona Police Department. As the investigation progressed, several individuals approached Mr. Kwitkin and asked how they could contact the investigator. Instead of sharing her information, Mr. Kwitkin would then reach out to her and ask for direction on how people who wanted to speak with her could contact her. Ms. Basel continuously pushed Mr. Kwitkin off and would instead refer him to Mr. Martin. In short, Mr. Kwitkin never felt heard by Ms. Basel.

Upon conclusion of the investigation, numerous people who had pertinent information about the issues within the Department were never even contacted.

Only Prompt Investigation was Pretextual One Against Mr. Kwitkin

Within days of wrapping up the investigation of his (and the others’) allegations regarding Chief Foley, Mr. Kwitkin was served with a Notice of Investigation and Notice of Administrative leave. The reaction was denial, deflection, and then discipline – Chief Foley’s bread and butter.

It was evident from inception, that this was an investigation in which the City was going to mold the findings to its advantage rather than letting the facts dictate the outcome.

Other Background Evidence of Disparate Treatment

Without belaboring the point, the above only touches on the history and depths of animus that Mr. Kwitkin was subjected to. The following provides other one-off instances of the hostile working environment and retaliation that Mr. Kwitkin experienced firsthand:

- Immediately upon starting with the City, Chief Foley started making passive aggressive and snide comments about Mr. Kwitkin's computer monitors facing the door of the office. Comments along the lines of "why do you face your monitors away from the door, you don't want people to see what you're doing." "What are you hiding on your screen?" Mr. Kwitkin offered to show Chief Foley and explained that he likes to face the monitors toward the door of the office so when he works, he can see when someone comes in. Chief Foley said she didn't like that because she felt she had to acknowledge him every time she passed his office. For the next several weeks, Chief Foley made passive aggressive comments about the computer setup until Mr. Kwitkin was forced to get a new desk and setup. The Chief, in the presence of her Executive Assistant, Sherri O'Connor, told Mr. Kwitkin he had to select a new desk setup because the Chief was unhappy with the positioning of his office.
- When Mr. Kwitkin was hired, Chief Foley had him contact the City finance office to see what available vehicles Enterprise had available for his unmarked police unit. Around May of 2023, Mr. Kwitkin had a meeting in Chief Foley's office and showed her a list of approximately 10 vehicles which were all approved for purchase from the City. Chief Foley asked Mr. Kwitkin which vehicle he wanted, and he told her he would like the Jeep Grand Cherokee. Chief Foley replied, "why that one, it's the most expensive." Mr. Kwitkin explained that he used the Grand Cherokee with his past department, and it was a good, unmarked vehicle and in addition, he had owned one in the past as a personal vehicle and it was very reliable. She said "no." Mr. Kwitkin picked another vehicle off the list, a Toyota Grand Highlander. She again said "no." The two discussed every vehicle on the list, and she sent Mr. Kwitkin back to the procurement manager to ask for different vehicles, although the list provided was what Chief Foley had already asked Mr. Kwitkin to obtain. Ultimately the chief told me she wanted me to have a mid-size SUV in a color of either black, white or gray/silver. Mr. Kwitkin did as Chief Foley asked, and returned to her with a vehicle that was ready to be delivered. A silver Ford Explorer. Chief Foley explained that she wanted the vehicle to be a civilian model and not a Police Interceptor model and the vehicle in question was. Chief Foley signed the purchase agreement and the following day, she returned to Mr. Kwitkin's office and

asked him if he had reviewed the sticker, to which he replied “I glanced over it” as it met all the requirements Chief Foley had previously mentioned. Chief Foley was upset that the vehicle had a third row, and scolded Mr. Kwitkin about how he needed to pay more attention to detail and follow directions.

- The next day while switching into the new vehicle, Chief Foley was looking through the back of the vehicle and questioned Mr. Kwitkin if he had a ticket book. Mr. Kwitkin told her that he did not. Chief Foley questioned “what would you do if you stopped a car and needed a ticket?” Mr. Kwitkin said he would call for an officer and ask them for one. Chief Foley went on a tirade admonishing Mr. Kwitkin about how they are a small agency and how he needed to show the officers that he as the Deputy Chief of Police carried tickets and wrote them. Mr. Kwitkin disagreed with her, and Chief Foley asked, “what would happen in Boca Raton if the Deputy Chief stopped a car for a traffic infraction?” Mr. Kwitkin explained that if a Chief or Deputy Chief stopped a car for traffic, every available unit would respond as back up and if the Chief or Deputy Chief was going to write a ticket, the officer would never let them, the officer would complete the ticket. If the Chief or Deputy Chief wanted to write a ticket, the officer would give them one. Chief Foley didn’t like that response, and once again admonished Mr. Kwitkin and said, “well this is not Boca, and you need to get a ticket book.”
- Around the time Mr. Kwitkin received his vehicle, the City had recently switched to a new upfitting company for police lighting and equipment. When the estimate was received from the company, Chief Foley was unhappy ‘it was more expensive than the previous company.’ Chief Foley had Ms. O’Connor call down to the upfitting company and ask for a better price. The company worked hard to lower the price and get it to what Chief Foley wanted. When Mr. Kwitkin went back to Chief Foley to show her the company lowered their price to what she wanted, she said “no, it’s too expensive.” Being frustrated with the constant mind games, Mr. Kwitkin said “ok.” Later that day Mr. Kwitkin and Chief Foley went for a walk and Chief Foley asked Mr. Kwitkin what was wrong. Mr. Kwitkin told Chief Foley that he was frustrated, and most recently about the upfitting and Chief Foley said, “ok, just talk to me and tell me what you want.” Mr. Kwitkin told her that he wanted to proceed with the estimate that the company provided, especially considering they lowered their price and got it to what she wanted for them, and to now say no was not very ‘business like.’ Chief Foley agreed that they

could proceed with getting the vehicle upfitted. The very next day when they discussed getting Mr. Kwitkin's vehicle down to the shop for upfitting, Chief Foley said she was not happy with the pricing and did not want to proceed. Chief Foley made Mr. Kwitkin call the company back *again* and ask for a different quote.

- Since being hired in March of 2023, anytime Chief Foley saw Mr. Kwitkin's personal vehicle, she would make comments about how dark his tint was and the fact that it was "illegal." Mr. Kwitkin explained to her numerous times that his eyes were extremely sensitive to the sun, and she persisted in pushing the issue with him regularly. Mr. Kwitkin eventually went to an eye doctor to address a condition he has had his entire life, and the eye doctor explained there was no serious medical issue, 'some people just are more sensitive to the sun.' Mr. Kwitkin was unable to qualify for the tint level exception in Arizona. After months of tint comments, Mr. Kwitkin asked Chief Foley if she wanted him to remove it, and she lectured him about 'what kind of example he is setting for his officers if he doesn't follow the law.'
- Since beginning in March of 2023, Chief Foley would make comments in staff meetings, meetings with other city officials, salespeople to the effect of, "only some of us live in the city." These constant snide remarks were made in regard to the fact that Mr. Kwitkin was only one of two members of the command staff that owned a house in the city. Once Chief Foley fired Lt. Scott Martin, Mr. Kwitkin was the only member of command staff that lived in the city of Sedona and the comments continued.
- Around April of 2023, Chief Foley mentioned that she takes Mr. Kwitkin to meetings 'to observe and did not like when he talked.' If Mr. Kwitkin participated in the meeting, Chief Foley would make a face at him like he was doing something wrong. It got to the point where Mr. Kwitkin sat in meetings, and refused to talk out of concern he would be scolded for not doing what he was told.
- Chief Foley would always make comments about Mr. Kwitkin "already having a pension from Boca Raton."
- Around November 2023, while in Chief Foley's office with Lt. Karl Waak, Lt. Waak mentioned Mr. Kwitkin having a new truck, and brought up the fact that Mr. Kwitkin had traded in his truck and got a new one. Chief Foley could not get over the fact, and the comments about Mr. Kwitkin having a new truck when he 'had a perfectly good one' continued for days.

- Around July of 2023, Chief Foley started making comments about the way Mr. Kwitkin sat in his office chair. Chief Foley said that Mr. Kwitkin slouched, and it was not a good appearance for a Deputy Chief. Mr. Kwitkin told her that he did not feel as though he slouched, and if he did, he would not sit like that if someone was in his office. Chief Foley disagreed and told Mr. Kwitkin that he does slouch with people in his office. Mr. Kwitkin said “ok, I will pay more attention to this.”
- During a Halloween event, Mr. Kwitkin was walking around and saw the mayor and his wife. The mayor introduced his wife to Mr. Kwitkin and told her that he was the new Deputy Chief. They talked about family, and how Mr. Kwitkin’s kids liked the school. When Mr. Kwitkin saw the Chief a little later Chief Foley remarked, “I see you are making friends with the mayor.” She continued and said, “you need to watch out for him. He’s always poking around for info about the PD.” Mr. Kwitkin told her what they talked about, and Chief Foley continued this behavior after any interactions Mr. Kwitkin would have with city council members. This same situation happened *again* at the city sponsored event Pancakes with Santa in December; this time Chief Foley also told Mr. Kwitkin’s wife that he should not engage with members of the city council.
- On November 17, 2023, Mr. Kwitkin accidentally ran a red light. He was pulled over by a Flagstaff motorcycle officer. Mr. Kwitkin presented his driver’s license and requested information, and the officer went back to his motorcycle. When he returned, he gave Mr. Kwitkin a verbal warning. Mr. Kwitkin asked him if he was free to go, and he said “yes.” Mr. Kwitkin then said thank you and the officer asked him where he was a police officer. Mr. Kwitkin told him that he was the Deputy Chief of Sedona Police, and the two discussed police patches. After leaving the stop, Mr. Kwitkin called the Chief and advised her of the incident, as the policy requires, and explained that he was pulled over for a minor traffic infraction. Chief Foley began to interrogate Mr. Kwitkin, asking how the officer knew he was a police officer, insinuating that Mr. Kwitkin was using his position to get out of a ticket. Mr. Kwitkin explained to Chief Foley that when he opened his wallet to remove his driver’s license, the officer likely saw his badge. Chief Foley began to question Mr. Kwitkin on how this could be possible, and Mr. Kwitkin found himself explaining the layout of his wallet. Monday morning when Mr. Kwitkin went to work, while in Chief Foley’s office, she wanted to discuss

the traffic stop again. The conversation went on for approximately 30 minutes, and Mr. Kwitkin offered to show her his wallet. She declined to see it.

- December 8, 2023, Mr. Kwitkin went out to dinner in Cottonwood with his wife and another couple to Nic's. When they walked in, Mr. Kwitkin noticed that Chief Foley was there having dinner with a group of people. Mr. Kwitkin, his wife and their friends walked over and began casual conversation with the table Chief Foley was at. Chief Foley once again found a way to bring up the traffic stop and again posed doubtful questions about Mr. Kwitkin's integrity during the stop. Chief Foley insinuated that Mr. Kwitkin told the officer that he was a police officer, and that was how he did not get a citation. At this point, being so tired and over the accusations, Mr. Kwitkin pulled out his wallet and showed Chief Foley, and her table of guests, what happened. Chief Foley stated, "that's not the wallet the PD gives for off duty badges." Mr. Kwitkin was forced to explain that it was the same trifold wallet he had carried since 2000, because it conceals his badge and ID when he opens it.
- December 17, 2023- Mr. Kwitkin was at the location of the PD holiday party with his wife, daughter, Chief Foley and her wife. They were all there very early setting up the venue. While setting up, Chief Foley asked Mr. Kwitkin if he brought the podium and the cases of water from the PD to the location. Mr. Kwitkin responded by saying, "I asked an officer who was at the PD to bring those items out to us, as I was tasked with so many things and did not see an issue with asking for help." Chief Foley immediately made a face of displeasure. About 10 minutes later, Chief Foley asked to speak to Mr. Kwitkin outside and began to "dress him down" and admonish him about how "she asked him to bring those items and did not want him to have someone else get them."

Resulting Damage

In short, and because of this misconduct, Mr. Kwitkin has suffered, and will continue to suffer. By way of example:

- The ongoing stress of the persistent environment caused Mr. Kwitkin to endure significant health issues, needing medical attention. This is directly the result of the

harassment, retaliation, and the City's failure to take action. This is the first time he has suffered such illness *because of work* in his nearly 25 years of employment in law enforcement.

- Mr. Kwitkin, a dedicated civil servant, had planned on working through retirement. That is now likely impossible.

Mr. Kwitkin should be compensated for damages caused by the City and responsible individual City employees. Moreover, if not resolved, Mr. Kwitkin will seek punitive damages against the individuals for their outrageous conduct. The City could have prevented this unlawful conduct altogether and at many junctures. But instead, it has been swept under the rug.

LEGAL BASIS FOR CLAIMS

As noted above, Mr. Kwitkin claims that the City, and the individuals acting in their official capacities, are liable for this misconduct. These claims include, but are not limited to:

- Constitutional Violations - § 1983 (First and Fourteenth Amendments)⁶

The First Amendment prohibits discrimination or retaliation against an employee that raises matters of public concern. In addition to his personnel grievances, Mr. Kwitkin has raised matters of public concern with respect to the safety and efficacy of the taxpayer-funded system. In addition, he raised concerns that the Chief was implementing policies and procedures that violated State law.⁷

The Fourteenth Amendment provides certain Due Process rights to public employees. Here, the Chief and other City Management proactively worked to diminish and deprive Mr. Kwitkin of his Constitutional rights. Effectively stripping him of process that he was due.

⁶ Though cognizant of the fact that he does not have to include federal claims in this Notice, Mr. Kwitkin provides that courtesy with the hope of a global resolution.

⁷ As discussed above, the Chief's "warning shot" policy and allowing unarmed volunteers to transport prisoners are but two such examples. Mr. Kwitkin complained to a plethora of people – because he was concerned about public safety and taxpayer funds. He even had conversations with the City Mayor about these issues. The only thing any of the complaints achieved was the Chief's unlawful Constitutional violations.

The City, and individuals with authority, have violated Mr. Kwitkin's clearly established First Amendment rights by taking action against him and depriving him of Due Process. He will be entitled to damages against the City and its decision-makers.⁸

- Arizona Employment Protection Act

Mr. Kwitkin has raised concerns about the City's systematic violations of State laws. He brought those concerns to those in positions to remedy this. Instead, he was terminated. AEPA prohibits this.

- Intentional and/or Negligent Infliction of Emotional Distress

In targeting an investigation against Mr. Kwitkin in response to his complaints and the way in which it happened was outrageous. The conduct was intended to, and did, cause severe emotional distress.

- False Light/Defamation

In removing Mr. Kwitkin from the property with law enforcement and releasing selective portions of the "investigatory" report, the City put Mr. Kwitkin in a false light that has damaged his reputation.

⁸ Specifically, the Chief of Police, the former and current City Managers, and the HR Manager were active participants in these deprivations and will be named individually if we proceed to litigation.

Conclusion

Mr. Kwitkin desired to finish out his illustrious career by continuing to serve admirably as he had done for decades. The City made that impossible. Prior to filing suit, he has authorized us to engage the City for resolution. At this stage, Mr. Kwitkin is willing to forgo litigation in exchange for a total sum of \$360,000.00.

Very truly yours,

THE FOSTER GROUP

A handwritten signature in blue ink, appearing to read 'Troy P. Foster', is written over the printed name.

Troy P. Foster