

U.S. District Court
District of Rhode Island (Providence)
CIVIL DOCKET FOR CASE #: 1:14-cv-00370-S-PAS

Patalano v. Fung et al
Assigned to: Chief Judge William E. Smith
Referred to: Magistrate Judge Patricia A. Sullivan
Cause: 42:1983 Civil Rights Act

Date Filed: 08/19/2014
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff**Todd Patalano**

represented by **Joseph F. Penza , Jr.**
Olenn & Penza
530 Greenwich Avenue
Warwick, RI 02886
737-3700
Fax: 737-5499
Email: jfp@olenn-penza.com
ATTORNEY TO BE NOTICED

V.

Defendant**Allan Fung**

*individually and in his capacity as
Public Safety Director and Mayor of the
City of Cranston*

Defendant**Marco Palombo****Defendant****John Schaffran****Defendant****Sean Carmody****Defendant****City of Cranston**

*by and through its Treasurer, Robert F.
Strom*

Date Filed	#	Docket Text
08/19/2014	<u>1</u>	COMPLAINT (filing fee paid \$ 400.00, receipt number 0103-774837), filed by Todd Patalano. (Attachments: # <u>1</u> Civil Cover Sheet)(Penza, Joseph) (Entered: 08/19/2014)

08/19/2014	CORRECTIVE DOCKET ENTRY Regarding: <u>1</u> Complaint. This case has been electronically filed and processed, however, after a quality control review the following deficiencies were found: Party Information was incorrect and/or incomplete. Party text added and John Doe Defendants 1-5 removed. Correction made by Clerk's Office. No further action is required. Please refer to the <i>Attorney Case Opening Instructions</i> for guidance. (Farrell Pletcher, Paula) (Entered: 08/19/2014)
08/19/2014	Case assigned to Chief Judge William E. Smith and Magistrate Judge Patricia A. Sullivan. (Farrell Pletcher, Paula) (Entered: 08/19/2014)

PACER Service Center			
Transaction Receipt			
08/19/2014 15:33:52			
PACER Login:	ru0114	Client Code:	
Description:	Docket Report	Search Criteria:	1:14-cv-00370-S-PAS
Billable Pages:	1	Cost:	0.10

JS-44 (Rev. 6/13 RI) **CIVIL COVER SHEET**

I. (a) PLAINTIFFS
TODD PATALANO

(b) County of Residence of First Listed Plaintiff Providence
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Joseph F. Penza, Jr., Esq.
Olenh & Penza, LLP
530 Greenwich Avenue
Warwick, RI 02886
(401) 737-3700

DEFENDANTS ALLAN FUNG, individ. and in his capacity as Public Safety Director and Mayor of the City of Cranston, ET AL

County of Residence of First Listed Defendant Providence
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

U.S. Government Plaintiff Federal Question (U.S. Government Not a Party)

U.S. Government Defendant Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<p>Admiralty</p> <input type="checkbox"/> 120 Marine (Other) <input type="checkbox"/> 140 Marine (Injury to Seaman) <p>Admin/Agency Appeals Other</p> <input type="checkbox"/> 890 Other Statutory Actions (APA Appeals, IDEA Appeals, Other) <p>Bankruptcy</p> <input type="checkbox"/> 422 Appeal 28 U.S.C. § 158 <input type="checkbox"/> 423 Withdrawal 28 U.S.C. § 157 <p>Banks and Banking</p> <input type="checkbox"/> 140 Negotiable Instruments <input type="checkbox"/> 430 Banks and Banking	<p>Constitutional Law</p> <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 440 Other Civil Rights (Constitutionality of Federal Statutes) <p>Elections and Voting</p> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 441 Voting <p>Other - Civil Rights</p> <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 446 Americans with Disabilities <input type="checkbox"/> 448 Civil Rights-Education	<p>Environmental Law</p> <input type="checkbox"/> 893 Environmental Matters <p>Immigration</p> <input type="checkbox"/> 462 Naturalization App. <input type="checkbox"/> 465 Other Immigration Actions <p>Indian Law</p> <input type="checkbox"/> 890 Other Statutory Actions <p>Insurance</p> <input type="checkbox"/> 110 Insurance Contract <p>Labor and Occupational Safety</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Labor: Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation	<p>Miscellaneous Civil Cases Continued</p> <input type="checkbox"/> 690 Other (Forfeiture/Penalty) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party (26 U.S.C. § 7609) <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Other Statutes: Arbitration <input type="checkbox"/> 899 Other Statutes: Admin. Procedures Act/Review/ Appeal of Agency Decision <p>Patents (Intellectual Property)</p> <input type="checkbox"/> 830 Patents <p>Prisoner Petitions</p> <p>HABEAS CORPUS</p> <input type="checkbox"/> 463 Alien Detainee(Habeas) <input type="checkbox"/> 510 Motions to Vacate Sentence (Habeas) <input type="checkbox"/> 530 General (Habeas) <input type="checkbox"/> 535 Death Penalty (Habeas) <p>OTHER</p> <input type="checkbox"/> 540 Mandamus and Other <input type="checkbox"/> 550 Civil Rights (1983) <input type="checkbox"/> 555 Prison Conditions(1983) <input type="checkbox"/> 560 Civil Detainee-Cond. of Confinement	<p>Mass Torts</p> <input type="checkbox"/> 360 Other Personal Injury <p>Products Liability</p> <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 385 Property Damage Product Liability <p>Professional Malpractice</p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <p>Motor Vehicle Accidents/Slip and Fall</p> <input type="checkbox"/> 350 Motor Vehicles <input type="checkbox"/> 350 Other Personal Injury <p>Other Torts and Personal Injury Incl: Asbestos cases</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 320 Assault, Libel and Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 360 Other Personal Injury (Fed. Tort Claims Act) <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 367 Personal Injury: HealthCare/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury
<p>Anti-trust</p> <input type="checkbox"/> 810 Anti-Trust <p>Construction Contracts</p> <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 190 Other Contracts <p>Securities Law & Stockholder Suits</p> <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 350 Securities/Commodities/Exchange <p>Other - Business/Comm.</p> <input type="checkbox"/> 196 Franchise <input type="checkbox"/> 490 Cable/Satellite TV <p>Consumer Credit</p> <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 480 Consumer Credit	<p>Copyright & Trademark (Intellectual Property)</p> <input type="checkbox"/> 820 Copyright <input type="checkbox"/> 840 Trademark <p>Employment Discrimination</p> <input type="checkbox"/> 442 Employment <input type="checkbox"/> 445 Americans with Disabilities-Employment <input type="checkbox"/> 440 Other - Civil Rights <p>ERISA</p> <input type="checkbox"/> 791 Employment Ret. Inc. Security Act <p>Other Employment Benefits</p> <input type="checkbox"/> 190 Other - Contract <input type="checkbox"/> 442 Other - Employment	<p>Miscellaneous Civil Cases</p> <input type="checkbox"/> 150 Recovery of Overpayment and Enforcement of Judgment (Collections) <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excluding Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 375 Other Statutes: False Claims Act <input type="checkbox"/> 440 Other Civil Rights (Immigration/Deportation) <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 625 Drug related seizure of property	<p>Real and Personal Property</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease and Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 290 All other Real Property <input type="checkbox"/> 380 Other Personal Property Damage <p>RICO</p> <input type="checkbox"/> 470 RICO <p>Social Security</p> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	

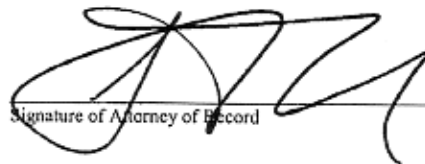
CONTINUED ON REVERSE SIDE

V. ORIGIN (Place an "X" In One Box Only)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (Specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge From Magistrate Judgment
VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 USC Section 1983					
	Brief description of cause: Violation of plaintiff's substantive due process rights by defendants acting under color of law.					
VII. REQUESTED IN COMPLAINT	<input type="checkbox"/> Check if this is a Class Action Under F.R.C.P. 23		DEMAND \$	JURY DEMAND <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <small>(Check YES only if demanded in complaint)</small>		
VIII. RELATED CASE(S) IF ANY	JUDGE _____		DOCKET NUMBER _____			

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

August 19, 2014

Date



Signature of Attorney of Record

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the Cover Sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. NATURE OF SUIT: Place an X in the appropriate box. Make sure to select the Nature of Suit from the category which best describes the primary cause of action found in your complaint. You must select only one nature of suit.
- VIII. RELATED CASES, IF ANY: This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

FOR OFFICE USE ONLY				
Receipt # _____	Amount _____	Applying IFP _____	Judge _____	Mag. Judge _____

JFP:pac 7303/7 \\73037\Pleadings\73037 : Complaint - FINAL 8-19-14.docx

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

TODD PATALANO	:	
	:	
VS.	:	C.A. NO.
	:	Jury Demanded.
ALLAN FUNG, individually and in his	:	
capacity as Public Safety Director and Mayor	:	
of the City of Cranston; MARCO PALOMBO;	:	
JOHN SCHAFFRAN; SEAN CARMODY;	:	
the CITY OF CRANSTON, by and through	:	
its Treasurer, Robert F. Strom; and JOHN	:	
DOE DEFENDANTS 1-5, unnamed current	:	
or former Cranston Police Officers	:	

COMPLAINT

I. INTRODUCTORY STATEMENT

This action is brought by the plaintiff seeking relief for the shocking misconduct of the defendants with respect to actions taken by them under color of law. Plaintiff seeks compensatory and punitive damages for the defendants' actions in violation of the plaintiff's rights under the Fourteenth Amendment of the United States Constitution which are actionable under 42 USC § 1983.

II. THE PARTIES

1. Plaintiff, Todd Patalano ("Patalano"), is a resident of the City of Cranston, County of Providence and State of Rhode Island.

2. Defendant, Allan Fung ("Fung"), is a resident of the State of Rhode Island. He is sued individually and in his capacity as the Director of Public Safety and Mayor of the City of Cranston.

3. Defendant, Marco Palombo (“Palombo”), is a resident of the State of Rhode Island. At all times material hereto, he was the chief of the Cranston Police Department (“CPD”).

4. Defendant, John Schaffran (“Schaffran”), is a resident of the State of Rhode Island. At all times material hereto, he was either the acting chief of the CPD or a major with the CPD.

5. Defendant, Sean Carmody (“Carmody”), is a resident of the State of Rhode Island. At all times material hereto, he was either a lieutenant or a captain with the CPD.

6. Defendant, City of Cranston (“City”), is a duly authorized and organized municipality pursuant to the laws of the State of Rhode Island and is sued by and through its Treasurer, Robert F. Strom, the official designated by state law (R.I.G.L. § 45-15-5) to be named in a suit against the City.

7. Defendants, John Does 1-5, are unnamed current or former employees of the CPD whose names and identities are presently unknown to the plaintiff.

III. JURISDICTION

8. This court has jurisdiction pursuant to 28 USC §§ 1331, 1343, 1367 and 2201.

III. VENUE

9. Venue is proper in this court since, on information and belief, all of the defendants are residents of the State of Rhode Island and all of the events giving rise to the claims set forth herein occurred in the State of Rhode Island in compliance with the requirements set forth in 28 USC § 1391(b)(1) and (2).

IV. FACTS

A. Background Information Re: Patalano

10. Patalano was sworn in as a member of the CPD on November 16, 1995.

11. In 2001, Patalano finished first in the competitive promotional process for sergeant and was promoted to that rank where he first worked in the Patrol Bureau and then the Detective Division.

12. In 2003, Patalano finished first in the competitive promotional process for lieutenant and was promoted to that rank where he was assigned to the Office of Professional Standards (“OPS”), commonly referred to as the Internal Affairs Bureau (“IA”).

13. In 2005, Patalano finished first in the competitive promotional process for captain. Because there were no captain vacancies at the time, he was placed in the number one position on the eligibility list.

14. During 2005, Patalano left his position as a lieutenant in IA to serve as acting captain in Planning and Research and then acting captain in the Patrol Division when there were temporary vacancies in those positions caused by officers being out injured-on-duty (IOD).

15. Later in 2005 when the other officers recovered from their injuries and returned to their jobs, Patalano returned to his position as a lieutenant in IA.

16. In October 2006, Patalano was promoted to captain and remained in IA.

17. Until the defendants’ actions, as set forth in this complaint, Patalano had an exemplary and distinguished career with the CPD.

18. More specifically, his file contained 17 department citations and numerous letters of appreciation from citizens. He had never been disciplined.

B. Investigating Complaints in the CPD

19. In April of 2005, Stephen McGrath (“McGrath”) became the chief/colonel of the CPD.

20. In 2006, McGrath initiated a new procedure for the investigation and reporting of civilian complaints filed with the CPD. In brief, while all complaints continued to be investigated, the new procedure established two different methods of conducting investigations—i.e. a formal investigation procedure and a so-called file report procedure.

21. A formal investigation would be conducted whenever the initial investigation revealed that the allegations in the complaint had some credibility and there was probable cause to proceed with the lengthy formal process involved. In such a case, accused officers would be afforded their rights under Rhode Island’s Law Enforcement Officers’ Bill of Rights (“LEOBOR”), read their so-called *Garrity* warnings and go through a recorded interview (conducted by IA). The interview would then be transcribed and the officer would review the transcript to correct any possible mistakes therein. But for reading witnesses their rights under LEOBOR or *Garrity*, the same process was followed with respect to other police and lay witnesses. The process was both time consuming and expensive.

22. A file report would be created when the initial investigation revealed that the allegations in the complaint had no merit whatsoever or that the matter complained of did not involve an actual allegation of misconduct by the officer. For example, the complaint may be that an officer should not have given a civilian a ticket because he/she was not speeding. This allegation could only be resolved in traffic court and not by IA. The file report would set forth the investigation that had taken place, why a formal investigation was not warranted and finally, that the matter was being closed by the recording and filing of the file report.

23. The file report system was formalized by McGrath in an effort to curb the waste of manpower hours and expenses associated with a formal investigation when it was clear that the conduct involved could never lead to departmental charges or discipline being brought against an officer.

24. McGrath also required that each report be numbered sequentially so that every complaint was accounted for based on the information and belief that when Palombo and Schaffran had been assigned to IA, reports had been removed.

25. Whether the complaint had been received by the CPD warranted a formal investigation or whether a file report-type investigation was sufficient was a determination made by either McGrath or Commander Kevin Lynch (“Lynch”) who, at all times material hereto up to the time of his retirement in 2009, was the second-in-command of the CPD.

26. Once the new procedure had been established, Patalano followed the directive of either McGrath or Lynch in investigating complaints filed with the CPD—i.e. either a formal investigation or an investigation that led to a file report.

C. Events Leading Up to the Departmental Charges Against Patalano

27. McGrath retired in May of 2009. Lynch also retired in May of 2009.

28. At that point in time, while a search for the appointment of a permanent chief was ongoing, Schaffran (who at that time was a captain with the CPD) was appointed acting chief by Fung.

29. Upon his appointment as acting chief, Patalano met with Schaffran and explained the procedure that had been implemented by McGrath with respect to investigating complaints.

30. Patalano was advised by Schaffran to continue to investigate complaints under the procedure established by McGrath and which he had been doing for years.

31. During Schaffran’s tenure as acting chief, Patalano, at Schaffran’s direction, conducted a number of investigations under the so-called file report system and delivered copies of those file reports to Schaffran.

32. Palombo was appointed by Fung as the permanent chief of the CPD in July of 2009. In September of 2009, Schaffran was promoted to the rank of major.

33. As he had done with Schaffran, Patalano met with Palombo upon his appointment. He explained to Palombo the investigation system that McGrath had initiated.

34. Patalano was advised by Palombo to continue to investigate complaints under the procedure established by McGrath and which he had continued to do under acting chief Schaffran.

35. Between the dates of Palombo's appointment as chief of the CPD in July of 2009 through January 4, 2010, Patalano continued to conduct investigations assigned to him by either Palombo or Schaffran using the procedure that had been instituted by McGrath. This included advising Palombo and Schaffran of the results of those investigations both verbally and in writing.

36. On January 4, 2010, Patalano met with Palombo, Schaffran and Carmody. At that meeting, Palombo and Schaffran feigned ignorance of the distinction between a formal investigation and a file report notwithstanding the fact that both of them had been advised by Patalano of the difference when they were elevated to the position of chief; that both of them had advised Patalano to continue the procedure that had been established by McGrath; and finally, that both of them had been provided with file reports going back to May 2009.

37. On or about January 4, 2010, Palombo ordered Schaffran to conduct an "audit" of IA in an attempt to ascertain how many of the complaints that had been filed by civilians since 2007 had been concluded by a file report as opposed to a formal investigation.

38. Schaffran completed that audit by the end of February 2010.

39. Schaffran recommended to Palombo that the file report procedure that had been started by McGrath be discontinued.

40. Palombo adopted Schaffran's recommendation.

41. On February 22, 2010, Patalano was injured at work when he fell down a flight of stairs while carrying a large box of evidence. He was placed on IOD. During that same time frame, Patalano was involved in two LEOBOR hearings and despite the fact that he was being carried IOD, he attended both hearings and assisted the prosecution of the officers involved until the hearings were completed.

42. On or about May 24, 2010 (while Patalano was still IOD), Palombo advised Patalano that he was putting out for bid the detective captain position. Because Patalano was the senior captain, he was to be offered the position first.

43. Patalano advised Palombo that he was not interested in the position and would remain in IA. During that conversation, Palombo continued to press Patalano to take the position that he was about to put up for bid. Patalano continued to refuse.

44. On May 25, 2010, the day following Patalano's refusal to bid into the Detective Bureau, he received a call from Schaffran indicating that the CPD intended to retrieve the unmarked police vehicle that had been assigned to Patalano. This action was contrary to the department policy that had been followed in connection with other officers who had been out of work for an extended period of time.

45. At or about the same time, Patalano filed a grievance wherein he alleged that he had been denied the opportunity to seek a promotion to a major's position in the CPD.

46. For the balance of 2010, Palombo, Schaffran and other members of the administrative staff embarked upon a campaign to harass Patalano.

D. Bringing of the Charges Against Patalano

47. On September 22, 2010, Schaffran advised Patalano that according to Palombo, Patalano was to be interviewed by someone from the administrative staff (as it turned out, Schaffran)

in connection with Schaffran's findings of the audit that Schaffran had completed back in February of 2010.

48. On October 6, 2010 and December 9, 2010, Patalano was interviewed by Schaffran as part of the LEOBOR process.

49. Departmental charges were brought against Patalano and were set forth in a Disciplinary Complaint dated February 18, 2011 (the "Complaint").

50. As part of the LEOBOR process, Patalano was advised that Palombo was recommending a suspension of 90 working days without pay for the alleged violations set forth in the Complaint. Because Patalano worked a 5 and 2 schedule, the recommended penalty was essentially a 4 ½ month suspension without pay.

51. While there were 11 separate purported violations of the department's rules and regulations set forth in the Complaint, for the most part the specifications for each of the violations related to Patalano's alleged failure to do full investigations with respect to each and every complaint assigned to him by both McGrath and Palombo.

52. In addition, some of the charges in the Complaint alleged that Patalano had lied to Schaffran during his two LEOBOR interviews.

53. Fortunately, having been apprised by fellow officers that he was a "target" of the new administration (i.e. Palombo and Schaffran), Patalano had recorded conversations he had with Palombo, Schaffran and Carmody.

54. The electronic recordings made by Patalano were done without the knowledge of Palombo, Schaffran and/or Carmody.

55. Those electronic recordings and other department documents established that it was Patalano who was truthful and that it was Palombo, Schaffran and Carmody who were lying.

56. Despite being advised of the new investigation procedure implemented by McGrath and Lynch during their administration, neither Palombo, Schaffran nor anyone else responsible for investigating the charges set forth in the Complaint ever interviewed or ordered a subordinate to interview either McGrath or Lynch. Had they done so, they would have learned that Patalano was following the procedure that McGrath had instituted with respect to investigating complaints.

57. While Schaffran did interview other members of the IA Bureau who confirmed the procedure implemented by McGrath, he chose to disregard such information.

58. One of the specifications in the Complaint was that Patalano had provided inaccurate information to McGrath (while he was chief) who, in turn, used that information to submit inaccurate reports to the so-called Select Commission—a statutorily-created commission established after the shooting of Sergeant Cornel Young, Jr. of the Providence Police Department by two of his fellow officers. Neither Palombo, Schaffran nor anyone else responsible for investigating the charges set forth in the Complaint ever interviewed or ordered a subordinate to interview anyone from the Select Commission until months after the Complaint had been served on Patalano. Had such an interview taken place, Schaffran would have learned that the procedure established by McGrath was acceptable to the Select Commission.

E. The LEOBOR Hearing and Follow-Up Harassment

59. The LEOBOR hearing commenced on April 25, 2011. Thirteen separate hearing dates were held between that initial hearing date and November 7, 2011.

60. Despite the passage of time and the number of hearing dates, only Schaffran and Carmody ever testified at the LEOBOR hearing.

61. At the LEOBOR hearing, Schaffran and Carmody gave perjurious testimony that contradicted their previously taped statements recorded by Patalano.

62. On information and belief, Palombo, Schaffran and Carmody conspired to present false evidence against Patalano at the LEOBOR hearing in an effort to have him found “guilty” on some or all of the charges set forth in the Complaint.

63. When it became obvious that Patalano was not willing to accept any punishment whatsoever with respect to the charges set forth in the Complaint and was prepared to see the LEOBOR hearing to the end, Schaffran and Major Robert Ryan (“Ryan”), at the direction of Palombo, then embarked on a series of additional bogus IA investigations against Patalano.

64. On one occasion, Palombo ordered a patrolman to change an official police report in an attempt to fabricate evidence against Patalano.

65. In addition, on information and belief, Palombo went to the Rhode Island Attorney General’s office insisting that Patalano be charged with theft of property belonging to the CPD. However, Palombo could not identify the property that Patalano had allegedly taken—and indeed, there was no such property.

66. Palombo’s insistence that Patalano be charged with a crime eventually led the Rhode Island State Police (“RISP”) to conduct an unwarranted investigation of Patalano on or about April 17, 2012. That investigation was concluded within two hours after meeting with Patalano and his counsel and resulted in no further action being taken.

67. On or about February 13, 2012, Palombo directed Patalano to turn over property that he claimed belonged to the CPD. On information and belief, Palombo was seeking the taped conversations that had been made of him, Schaffran and Carmody and claimed, without any reasonable basis, that those tape recordings belonged to the CPD. When Palombo was advised that Patalano did not have any property belonging to the CPD, Palombo directed Schaffran to relieve Patalano of his badge, police identification, service revolver and read him his constitutional rights. While Schaffran never followed through with Palombo’s order, the incident caused Patalano to seek medical attention and he was thereafter carried IOD for a period of time.

68. Beginning in April of 2012, Patalano was placed on administrative leave by Palombo under the pretense that he was being investigated for a criminal offense. Even after it was brought to Palombo's attention that the RISP had exonerated Patalano, he was advised that the criminal investigation was still ongoing and Patalano remained on administrative leave by order of Palombo.

69. Patalano remained out on administrative leave by order of Palombo until January 8, 2014—two days before the RISP assumed control of the CPD.

70. While Patalano was out on administrative leave, he lost the ability to work overtime, earn compensatory time and work private details costing him a substantial sum of money.

F. The City's Knowledge and Acquiescence

71. Because of the ramped-up harassment on Patalano, a meeting was held on May 30, 2012 with City representatives including Fung. At that meeting, evidence was presented establishing that the charges set forth in the Complaint were based on false statements/evidence created by Palombo, Schaffran and Carmody and that those three individuals had conspired to present false testimony and evidence against Patalano at the LEOBOR hearing.

72. Fung and other City officials at that meeting were provided with some of the tape recordings that had been made by Patalano and were allowed to compare same with the sworn testimony of Schaffran and Carmody at the LEOBOR hearing. They were also provided documentation showing that Palombo, Schaffran and Robin Schutt (Fung's Director of Administration) were well aware of the file report system and nevertheless allegations had been made in the Complaint that Patalano was in violation of certain rules and regulations of the CPD.

73. On information and belief, Fung was aware of Palombo's misconduct in connection with the Patalano matter as well as misconduct of Palombo in other matters involving members of the CPD. Nevertheless, Fung failed to take any action against Palombo exhibiting a deliberate indifference to Palombo violating the substantive due process rights of Patalano and other officers.

74. The failure to act on behalf of Fung was tantamount to a policy of the City to allow Palombo and other members of the CPD administration to violate the constitutional rights of police officers without any concern for possible discipline or retribution.

G. The RISP Investigation Exonerating Patalano

75. In January of 2014, the RISP assumed the position of running the day-to-day operation of the CPD. More specifically, Captain Kevin Barry of the RISP was appointed acting chief of the CPD.

76. When the RISP assumed administrative duties over the CPD, Palombo was placed on administrative leave.

77. Palombo resigned from the CPD on March 17, 2014.

78. Included in the many duties of the RISP when they assumed a leadership role in the CPD was to review disciplinary matters that had been brought against members of the CPD by the Palombo administration. This included, but was not limited to, Patalano's pending LEOBOR hearing and the numerous other investigations (some of which Patalano was not even aware of) that had been commenced by Palombo and Schaffran and may have also involved Ryan.

79. After the RISP did its due diligence, Captain Barry dismissed with prejudice the complaint that was pending against Patalano. In addition, the six pending IA investigations that had been commenced by Palombo and/or Schaffran and/or Ryan were determined to be "unfounded". Also, a two-day suspension that had been levied by Palombo against Patalano was reversed and Patalano was paid for those two days.

80. Because of the defendants' actions, as set forth above, Patalano incurred substantial legal expenses and suffered emotional distress.

V. CLAIMS

COUNT I

Violation of Civil Rights — 42 USC § 1983 — Fourteenth Amendment Substantive Due Process

81. Patalano incorporates by reference paragraphs 1-80 as though set forth herein.

82. Defendants, acting on the color of state law, by their individual and/or concerted acts and/or omissions, including but not limited to those described herein, have violated Patalano's due process rights causing Patalano to suffer harm as aforesaid and have thereby deprived Patalano of his rights secured by the Fourteenth Amendment of the United States Constitution, actionable pursuant to 42 USC § 1983.

83. At all relevant times, defendants acted intentionally, willfully, maliciously, recklessly and egregiously with deliberate indifference to Patalano's clearly established constitutionally protected rights.

COUNT II

Municipal Liability

84. Patalano incorporates by reference paragraphs 1-83 as though set forth herein.

85. On information and belief, Patalano's situation as described herein is not the only time that Palombo acted in such a way so as to violate the substantive due process rights of other members of the CPD.

86. Although aware of Palombo's actions not only in Patalano's case but in other cases, Fung acquiesced to Palombo violating the constitutional rights of officers of the CPD. He failed to

properly select, train, instruct, supervise and/or discipline Palombo relative to violating the constitutionally protected rights of Patalano and others.

87. On information and belief, during all relevant time periods, a custom or policy existed in the CPD wherein Fung, in his capacity as Public Safety Director and Mayor, and the City acquiesced to, permitted, condoned and/or encouraged the deprivation of the constitutionally protected rights of members of the CPD.

88. The defendants knew or should have known that their actions against Patalano as aforesaid were unlawful and in violation of Patalano's constitutional rights.

89. Despite such knowledge, the defendants, by and through their policy-making officials and agents, approved, acquiesced to, condoned, intentionally ignored, or were deliberately indifferent to such practice and failed to change or eliminate such unlawful custom or policy.

COUNT III

Intentional Infliction of Emotional Distress

90. Patalano incorporates by reference paragraphs 1-89 as though set forth herein.

91. As a direct and proximate result of the defendants' acts and/or omissions, including but not limited to those described herein, Patalano has suffered mental anguish, pain and suffering.

Wherefore, Patalano demands judgment against the defendants for compensatory damages, punitive damages, attorney's fees pursuant to the provisions of 42 USC § 1988, costs and expenses of this litigation and such other and further relief as this court deems appropriate.

V. DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all counts so triable.

VI. DESIGNATION OF TRIAL COUNSEL

Joseph F. Penza, Jr. is designated as trial counsel.

PLAINTIFF, Todd Patalano
By his Attorney,

/s/ Joseph F. Penza, Jr.
Joseph F. Penza, Jr., Esq. #0607
OLENN & PENZA, LLP
530 Greenwich Avenue
Warwick, RI 02886
PHONE: (401) 737-3700
FAX: (401) 737-5499

Dated: August 19, 2014