

COMMONWEALTH OF MASSACHUSETTS

Hampden, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.

REBECCA BOUTIN,
Plaintiff

v.

CITY OF WESTFIELD and ALBERT J.
MASCIADRELLI, PATRICK OLEARCEK,
CARLO BONAVIDA, C. LEE BENNETT
AND JEFFREY SIEGEL, as they constitute the
Westfield Fire Commission, Past and Present
Defendants

**PLAINTIFF’S MOTION FOR A SHORT ORDER OF NOTICE
FOR HEARING ON REQUEST FOR A PRELIMINARY INJUNCTION**

Pursuant to M.R.C.P. 65(b), Plaintiff Rebecca Boutin (“Plaintiff”) moves for a short order of notice for the hearing of a request for a preliminary injunction to compel the Defendant, City of Westfield, to cease from withholding benefits which are due to her under M.G.L. ch.41§111F.

As reason therefore, the Plaintiff who was employed as a Captain with the Westfield Fire Department states that while she was out of work on involuntary injured duty status, she was terminated from her employment by the Westfield Fire Commissioners. The City of Westfield ceased payment of her benefits in violation of M.G.L. ch.41§111F and M.G.L. ch.149 §185.

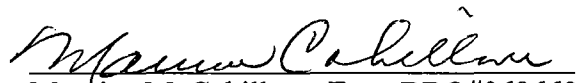
The Plaintiff further states that under M.G.L. ch.149 §185, preliminary injunctive relief is specifically authorized by the statute, that she also has a substantial likelihood of success on the

merits and that she will suffer irreparable harm if her payments under M.G.L. ch.41§111F are denied.

In further support of this motion, the Plaintiff submits the Verified Complaint and Affidavit of Rebecca Boutin.

WHEREFORE, the Plaintiff respectfully requests that this Court: (1) issue a short order of notice for a hearing on February 24, 2020 on Plaintiff's Motion for Preliminary Injunction; and (2) grant Plaintiff's Motion for Preliminary Injunction restraining the defendants from violating M.G.L. ch.41§111F and M.G.L. ch.149 §185 by withholding payments under M.G.L. ch.41§111F.

THE PLAINTIFF, Rebecca Boutin
By her attorney:


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February 17, 2020

COMMONWEALTH OF MASSACHUSETTS

Hampden, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.

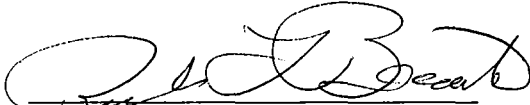
_____)
 REBECCA BOUTIN,)
 Plaintiffs)
 v.)
 CITY OF WESTFIELD and ALBERT J.)
 MASCIADRELLI, PATRICK OLEARCEK,)
 CARLO BONAVIDA, C. LEE BENNETT)
 AND JEFFREY SIEGEL, as they constitute the)
 Westfield Fire Commission, Past and Present)
 Defendants)
 _____)

AFFIDAVIT OF REBECCA BOUTIN

I, Rebecca Boutin, state under the pains and penalties of perjury as follows:

1. As a result of the termination of my employment as a Captain with the Westfield Fire Department, and my termination from M.G.L. c. 41, §111F benefits, as described in the verified complaint, the monetary loss has placed a significant and dangerous financial burden on my family and will continue to do so.
2. In addition to my employment with the Fire Department, I was also employed at the Massachusetts Fire Academy as an instructor where I have worked for fifteen (15) years. The Academy requires that an instructor be affiliated with a full-time fire department in order to train other firefighters. Therefore, I have also lost this job through no fault of my own.
3. The monetary loss of my jobs is over \$101,000 a year. My earnings contribute to over 50% of my family costs. I have been denied unemployment benefits. Because of the nature of my termination, and because the defendant's psychiatrist has declared me disabled, it is extremely difficult to obtain other employment as a fire fighter. Under the circumstances I will be unable to meet these financial obligations.
4. My husband is also a Captain with a fire department in a different city. We have a teenage son who is preparing for college. Our home has a mortgage that is dependent on both of our salaries.

Signed Under the Pains and Penalties of Perjury this 10 day of February, 2020.



 Rebecca Boutin

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO.

REBECCA BOUTIN,
Plaintiff

v.

CITY OF WESTFIELD and ALBERT J.
MASCIADRELLI, PATRICK OLEARCEK,
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AND JEFFREY SIEGEL, as they constitute the
Westfield Fire Commission, Past and Present
Defendants.

PLAINTIFF'S VERIFIED COMPLAINT AND DEMAND FOR TRIAL BY JURY

PARTIES

1. The Plaintiff, Rebecca Boutin ("Plaintiff"), is a natural person residing at 79 Hemlock Ridge, Feeding Hills, Hampden County, Massachusetts.
2. The Defendants, Albert Masciadrelli, Patrick Olearcek, Carlo Bonavita, C. Lee Bennett and Jeffrey Siegel, constitute the Fire Commission of the City of Westfield ("Commission"), past and present, and are the appointing authority for the Westfield Fire Department. They are named in their official capacity and are located at 34 Broad Street, Westfield, Hampden County, Massachusetts.
3. The Defendant, City of Westfield, ("City") is a municipality located at 59 Court Street, Westfield, Hampden County, Massachusetts.

FACTS

4. The Plaintiff had been employed by the Westfield Fire Department since 1999 and was promoted to Captain in 2011.

5. Beginning in 2014, Plaintiff became the subject of demeaning and harassing behavior and disparate treatment from superior officers on the basis of sex. During 2014, she complained to the Chief of the Fire Department that she was being sexually harassed by a Deputy Chief Patrick Egloff.
6. At other times, the Plaintiff was harassed by another Deputy Chief, Bishop.
7. In late November 2017, the Plaintiff was subjected to verbal harassment by Deputy Chief Egloff. Plaintiff complained to then Chief Mary Regan, and following that, was retaliated against in the scheduling of her work.
8. In early 2018, the Plaintiff learned that two women who had frequent contact with the Westfield Fire Department had told other firefighters that they had been sexually assaulted by Deputy Chief Egloff. In early February 2018, Plaintiff was contacted by Massachusetts State Troopers who were investigating these claims. Plaintiff met with the Troopers and cooperated with the investigation.
9. Following this, members of the media began contacting city officials about the allegations against the Deputy Chief. Other employees of the Department warned Plaintiff that members of City Government were “out to get her” and two fellow employees who had cooperated with the State Police investigation.
10. In February 2018, Deputy Chief Bishop (who was the Plaintiff’s Deputy Chief at that time) told other firefighters not to contact the Plaintiff and that there would be problems for them if they did. Plaintiff then became ostracized within the Department.
11. Subsequently, Plaintiff began receiving various forms of “non-disciplinary” documentation and “consultation” for supposed job deficiencies that were false charges. Deputy Bishop referred to these as “pre-discipline” and stated “there is some agenda”.
12. Other members of the Department informed the Plaintiff that false rumors were being spread about her that were sexual in nature. Other rumors were told to her that other firefighters would not help her in an emergency.
13. On April 25, 2018, Plaintiff’s attorney sent a letter to the Fire Chief complaining about the above cited events of harassment and retaliation. One day later, Deputy Chief Bishop told firefighters that he was in an awkward position because the Chief had ordered him to find things to write Plaintiff up for and to monitor her work.
14. On May 18, 2018, Plaintiff was again cited about issues deemed “pre disciplinary” for no valid reason.
15. On June 13, 2018, Plaintiff was given a written warning again for false reasons. Stress from these actions caused the Plaintiff to take sick leave.

16. In early 2018, the Defendants hired, as their agent, a local attorney to conduct an investigation regarding claims made in an anonymous letter concerning the behavior of Deputy Chief Egloff. The investigation was in fact directed against the Plaintiff and the other firefighters who had cooperated with the state police. Plaintiff and other employees were told by the investigator that the interviews were not going to result in discipline. Even though the report disclosed that Deputy Chief Egloff had admitted to the sexual assault of at least one of the alleged victims, the investigator still falsely accused the Plaintiff of making false accusations, writing the anonymous letter, “disrupting operations”, “eviscerating morale” and of being incompetent as a fire captain. The report contained false and unsubstantiated rumors about the Plaintiff that were defamatory. The report attacked the Plaintiff regarding almost every aspect of her work and did so on the basis of unsubstantiated rumors. The report mocked the Plaintiff’s claims of sex discrimination, and also attacked one of the alleged victims.
17. Despite a promise to the contrary, the investigator recommended termination of the Plaintiff. After the City Personnel Department received the report, they drew up charges against the Plaintiff and brought them to the Fire Commission. The Commission (then composed of Albert Masciadrelli, Patrick Olearcek and Carlo Bonavita) met in executive session and authorized Deputy Chief Hart to send notices of proposed terminations to the Plaintiff and two other firefighters. The Commissioners did so without having read the investigator’s report.
18. On August 29, 2018, the actions of the Commission were voided by the Superior Court because they violated the Open Meeting Law, M.G.L.c. 30A, §21.
19. On March 25, 2019, the Superior Court also found the violation to be intentional.
20. When Captain Boutin went to her work station one day, the Acting Captain, upon seeing her there, went to the other firefighters in the station and told them to watch out there was a rat in the building. On or about January 16, 2019 a prominently displayed photo of the Plaintiff and another firefighter was altered to remove their heads.
21. While these events were ongoing, Captain Boutin sought, on several occasions, coverage by the Respondent for therapy for her work-related stress. The Respondent sent her to an IME of their choosing to evaluate her claim. The IME determined that Captain Boutin should not be working because of the stress she was under and, therefore, the Respondent placed her off duty under M.G.L.c. 41 §111F. Even after this, however, the Respondent refused for several months to pay for the therapy sessions even though they had been recommended by the IME. Respondent finally agreed to do so, but in the meantime, Captain Boutin had to remain out of work without the necessary therapy that could have allowed an earlier return. This determination prevented Plaintiff from performing her other job as a trainer at the Massachusetts Fire Academy.
22. Defendants were at all times aware that the Plaintiff had cooperated with the Massachusetts State Police on the matters at issue with respect to Deputy Chief Egloff.

23. Subsequent to the voiding of the notice of termination, the Defendants refused, despite demand, to withdraw the charges against the Plaintiff while taking no action, thereby maintaining them as a threat to the Plaintiff's employment.
24. On February 13, 2019, the Defendants IME found the Plaintiff to be permanently disabled as a fire captain. The primary cause of the Plaintiff's incapacity are the events described above, the annoying harassment, and ostracism. Plaintiff remained on benefits under M.G.L.c. 41 §111F until her termination.
25. These actions of the Defendants caused the Plaintiff damages in the form of lost wages and benefits, emotional distress, loss of reputation and other consequential damages.
26. On or about December 4, 2019, the Fire Commission reinstated the same charges from August 2018 against the Plaintiff.
27. On December 10, 2019, a hearing was held by Fire Commissioners Albert Masciadrelli, C. Lee Bennett and Jeffrey Siegel.
28. On December 18, 2019, the Fire Commission terminated the Plaintiff.
29. On December 27, 2019, the employer terminated Plaintiff's IOD benefits under M.G.L.c. 41 §111F without cause.

COUNT I
(M.G.L.c. 151B Retaliation)

30. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1-29.
31. By their actions, the Defendants retaliated against the Plaintiff because of her report of actions of sexual assault and sexual harassment of a member of the public by an employee of the Fire Department in violation of M.G.L.c. 151B sec.4.

WHEREFORE, the Plaintiff prays:

- a. That judgment be entered in her favor;
- b. That she be awarded all actual damages;
- c. That she be awarded punitive damages; and,
- d. That she be awarded interest, costs and attorney's fees.

COUNT II
(M.G.L.c. 151B Discrimination)

32. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1-31.

33. By their actions, the Defendants discriminated against the Plaintiff because of her report of actions of sexual assault and sexual harassment of a member of the public by an employee of the Fire Department in violation of M.G.L.c. 151B §4.

WHEREFORE, the Plaintiff prays:

- a. That judgment be entered in her favor;
- b. That she be awarded all actual damages;
- c. That she be awarded punitive damages; and,
- d. That she be awarded interest, costs and attorney's fees.

**COUNT III
(M.G.L.c. 12 §11H)**

34. Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1-33.
35. Plaintiff had a right under M.G.L.c. 268 §13B to be free of threats, attempts to cause emotional injury or economic injury, intimidation or harassment, for having been a witness in a criminal investigation.
36. Plaintiff had a right under the Constitution of the United States and the Constitution of the Commonwealth to provide information to the state police regarding their investigation of a possible crime, and to convey to other employees, information about the behavior of supervisory employees.
37. By their actions, the Defendants, acting under color of law, did and did attempt to threaten, intimidate and coerce the Plaintiff in the exercise of those rights.

WHEREFORE, the Plaintiff prays:

- a. That judgment be entered in her favor;
- b. That she be awarded all actual damages;
- c. That she be awarded punitive damages; and,
- d. That she be awarded interest, costs and attorney's fees.

**COUNT IV
(M.G.L.c. 149 §185)**

38. The Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1-37.
39. The Plaintiff made a report of illegal activity by her supervisor in response to the inquiry of a law enforcement office and in doing so, was protected under M.G.L.c. 149 §185.
40. By their actions, the Defendants violated M.G.L.c. 149 §185 in retaliating against the Plaintiff and terminating her employment.

WHEREFORE, the Plaintiff prays:

- a. That judgment be entered in her favor;
- b. That the Court grant her a preliminary and permanent injunction restoring her to her status as an employee on leave under M.G.L.c. 41 §111F.
- c. That she be awarded all her actual damages;
- d. That she be awarded all back wages and benefits
- e. That she be awarded triple damages in accordance with M.G.L.c. 149 §185;
- f. That she be granted attorney's fees, interest and costs; and,
- g. That she be awarded such other relief as the Court deems just.

**COUNT V
(Termination In Violation of Public Policy)**

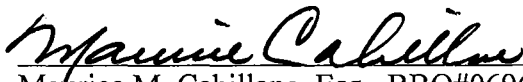
41. The Plaintiff hereby repeats and realleges each and every allegation in paragraphs 1-40.
42. The actions of the plaintiff were protected under M.G.L.c. 268 §13B.
43. By their actions, the Defendants termination of the Plaintiff was in retaliation for her speaking to state police investigators and thereby in violation of public policy.

WHEREFORE, the Plaintiff prays:

- a. That judgment be entered in her favor;
- b. That she be awarded all actual damages;
- c. That she be awarded attorney's fees, costs and interest; and
- d. That the Court grant her such other relief as it deems just.

THE PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL COUNTS

Respectfully submitted by:


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February 14, 2020

PLAINTIFF'S VERIFICATION OF COMPLAINT

I hereby verify, under the pains and penalties of perjury, that I have read the above Complaint and attest that the statements are true and accurate to the best of my knowledge and belief.

Date: 2.7.2020


Rebecca Boutin

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