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UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

-----X  
DEBRA BEARSS, :  
 : Index No.  
 :  
 Plaintiff, : **COMPLAINT**  
 :  
 - Against - : **JURY TRIAL DEMANDED**  
 :  
 WENDY WILTON, individually and in :  
 her capacity as City Treasurer :  
 of the City of Rutland, :  
 CHRISTOPHER LOURAS, individually :  
 and in his capacity as Mayor of :  
 the City of Rutland, :  
 and :  
 CITY OF RUTLAND, Vermont :  
 :  
 Defendants. :  
-----X

NOW COMES the Plaintiff, Debra Bearss (“Bearss”), by and through her attorneys, Kulig & Sullivan, P.C., for her complaint as against Wendy Wilton (“Wilton”), Christopher Louras (“Louras”), and City of Rutland (“City”) (collectively “defendants”), respectively alleges as follows upon information and belief (except as to allegations concerning Bearss, which are made upon personal knowledge) except as otherwise indicated:

**PRELIMINARY STATEMENT**

1. The defendants Wilton, Louras and the City have destroyed the reputation and earning potential of Bearss by widely disseminating by public and private comment that misrepresents that Bearss was “terminated for cause . . . because of incompetence” and insinuated she engaged

election, and the defendants therefore decided to punish and humiliate Bearss so that she would be destroyed. It would also have the secondary benefit to the defendants of warning others that they would suffer the same fate if they opposed the defendants. When Bearss stood up for herself, the defendants retaliated against her and further abused, embarrassed and degraded her to "get rid of her." Again, this was not only to silence Bearss, but also to chill others from ever challenging them.

2. Bearss was not fired for cause, nor had she ever engaged in any "wrongful and/or illegal conduct." The defendants knew that the public release of certain information, as well as the defendants' other public and private statements, would severely damage Bearss' reputation and send a message to others.

3. The defendants' actions sought to, and did chill free speech rights of others, all for the defendants' political gain.

4. When the defendants smeared Bearss, she was only 50 years old. She was in her ultimate career position earning what was likely her highest potential earning ability and was in a position that would utilize her experience and knowledge in both HR and IT that she had acquired over three decades.

5. Between January of 2007 and May 2008 the defendants issued public and private statements, and made further statements to the media. This is believed to be for a number of reasons. First, it was for political reasons. The statements would discredit their opponents and the previous administration to obfuscate the fact that claims made, implicitly or explicitly, by one or more of the defendants during the campaign were erroneous. Second, the statements would chill others from speaking out against them. There was no basis for such claims of illegality, gross mismanagement, cover up, etc. Third, the defendants were aware that Bearss was knowledgeable about the operations of the Treasurer's office and that she knew disinformation spread during and after the campaign was false and misleading.

6. In the process of executing their scheme, one or more of the defendants elicited substantial information from Bearss so that they could understand background information about the operations of the City. Once the Defendants achieved that goal, Bearss was expendable, presented a problem with her telling of the truth, and therefore was fired due to pretext of incompetence.

7. Defendants did achieve their goal of devastating Bearss' reputation and have caused repercussions for Bearss. Bearss not only lost her job but also has suffered substantial damages as a result of defendants' outrageous treatment of her making it nearly impossible to find another suitable position. Notwithstanding Bearss' excellent experience, Bearss' extensive efforts to find a new job have been severely hampered as a result of the damages caused by defendants' conduct. Bearss cannot find another suitable HR or IT job.

8. Before the defendants' defamatory statements, Bearss was at the pinnacle of her career, and had two decades of a promising career ahead of her. Now, she cannot find any roughly equivalent employment.

9. Having no alternative, Bearss is forced to sue her former employer and its officials for violating her constitutional rights, defaming her, conspiring to destroy her reputation, tortiously interfering with future employment opportunities, and violating her privacy causing severe damages which affect her ability to work.

### **NATURE OF ACTION**

10. This is a civil action to redress the violation of numerous provisions in the law, including, without limitation, the First and Fourteenth Amendments to the Constitution of the United States, 42 U.S.C. §1983, the Vermont Constitution, the Vermont Fair Employment Practices Act, 21 V.S.A. §495 et. seq., and common law defamation.

### **JURISDICTION**

11. The Jurisdiction of the Court is invoked under 28 U.S.C. §§1331 and 1343(3). Declaratory relief is authorized pursuant to 28 U.S.C. §§2201 and 2202.

12. Venue is proper under 28 U.S.C. §1391(b). All defendants reside in this district, and the events giving rise to the claims asserted herein occurred within this district.

### **PARTIES**

13. Plaintiff Debra Bearss is a citizen of the United States and a resident of the City of Rutland, Vermont and was an employee of the City of Rutland.

14. Defendant Wendy Wilton is sued in her individual and official capacities. At all times relevant hereto she was the elected Treasurer of the City of Rutland, Vermont. With respect to the allegations set forth hereinafter, she acted under color of law.

15. Defendant Christopher Louras is sued in his individual and official capacities. At all times relevant hereto he was the elected Mayor of the City of Rutland. With respect to the allegations set forth hereinafter, he acted under color of law.

16. Defendant City of Rutland is a chartered municipal corporation duly existing by and pursuant to the laws of the State of Vermont.

### **CO-CONSPIRATORS**

17. Upon information and belief, the named defendants engaged in the actions alleged not only in their individual and official capacities, but from time to time while acting in concert with certain known and unknown persons not presently named as defendants herein participating in concert or in connivance with the named defendants in the violations of Bearss' rights as set forth below.

### **THE FACTS**

#### **(a) Background**

18. From January 2006 until on or about March 4, 2008, Bearss was the HR administrator and IT coordinator employed by the City and in that capacity had permanent, competitive employment.

19. Upon employment with the City, Bearss was secured by the protection afforded her against partisan political interference in the performance of her job duties by reason of, *inter alia*, employment status with the City, the Constitution of the State of Vermont and the Constitution of the United States. Political affiliation is irrelevant to the proper performance of the duties of the HR administrator and IT coordinator.

20. By reason of Bearss' employment status as an employee of City she possessed a property interest in her position of employment, with respect to which she could not suffer any deprivation without first being accorded a proper due process hearing.

**(b) Campaign and election**

21. Sometime between the end of 2006 and the beginning of 2007, Wilton, a Republican, declared herself to be a candidate for the office of Treasurer of the City of Rutland and commenced an election campaign intended, *inter alia*, to defeat the incumbent treasurer, Al Wilkinson, a Democrat, who was then running for re-election for the office of Treasurer.

22. Bearss decided to support Al Wilkinson's election campaign efforts, and thereafter became active in his campaign by, *inter alia*, (a) placing and displaying a campaign sign endorsing the campaign of Al Wilkinson on the front lawn of her premises, (b) verbally advocating the election of Al Wilkinson.

23. Sometime at the end of 2006 and beginning of 2007, Louras, a Republican, an alderman at the time, declared himself to be a candidate for the office of Mayor of the City of Rutland, and, along with certain other persons comprising of a slate of candidates, commenced an election campaign for Mayor. The incumbent Mayor, John Cassarino, was not running.

24. Bearss, although not actively campaigning against Louras or for any other mayoral candidate, made it known that she did not favor Louras for the office of Mayor, and, in fact, on numerous occasions questioned his motives for his criticisms, as an alderman of the then current administration, specifically the Treasurer.

25. The campaign for the election for both Mayor and Treasurer was acrimonious and hard fought. The elections were held on March 6, 2007.
26. Louras received approximately 33% of the vote, which was the highest percentage among six candidates, and was elected Mayor. Wilton was elected Treasurer. There were six individuals elected for the Board of Aldermen, five incumbents and one first time member.
27. On March 2, 2007, the Friday prior to the election, Bearss was shopping in Price Chopper Supermarket in downtown Rutland. Mr. Chuck Wilton, husband of Wilton, stated to both Bearss and David Trapeni, a mayoral candidate, "wait until you hear what's going on in the Treasurer's office, wait until this gets out" suggesting there was wrongdoing in the Treasurer's office.
28. Working for the Treasurer's office, Bearss immediately defended the office stating that there was nothing inappropriate going on in the Treasurer's office.
29. Mr. Chuck Wilton became extremely annoyed and angry by Bearss' statement and heated words were exchanged between Mr. Chuck Wilton and Bearss.
30. After the election, but prior to officially taking office, Wilton met with outgoing Treasurer, Al Wilkinson to review various items. Upon leaving the meeting, when asked whether she knew her statements about the issues brought up about the Treasurer's office and the City were not true, Wilton acknowledged that she had, shockingly stating, "Yes, I know, it was only politics."
31. Before and after the election, and both prior to and after officially taking office, Wilton and Louras were provided with rumor and innuendo from employees of the City pertaining to certain City officials receiving payment for accumulated benefits, about the financial condition of the City and the purging of information on computers and in files. This information was used to insinuate that some wrongdoing was conducted by the previous administration prior to leaving office.
32. Wilton and Louras disseminated said information to the public knowing its falsity and misleading insinuations.

33. Bearss publicly defended the past administration and officials, stating that the Documented at JDSUPRA™  
http://www.jdsupra.com/post/documentViewer.aspx?fid=5ba5eb7d-d73e-4cb0-8030-0c3ea1a13af2 of wrongdoing, illegal activity or “cover up” were false and misleading.

**(c) Actions after taking office**

34. When Wilton first took office on March 14, 2007, she met with Bearss individually, briefly indicating that she was going to assess what everybody does in the Treasurer’s office.

35. On or about March 15, 2007, one day after officially taking over as Treasurer, Wilton fired the assistant treasurer, who had 20 years’ of accounting experience. Wilton stated publicly that the assistant treasurer lacked the necessary qualifications for the position. Wilton claimed that she was a “quick study” of a person’s competency.

36. The terminated assistant treasurer had been hired to that position by Al Wilkinson and was a supporter of the former Treasurer, Al Wilkinson, during the campaign.

**(d) Plan and/or common scheme against Bearss**

37. Upon information and belief, motivated exclusively or substantially by personal animus toward Bearss because of her active participation on the election campaign and support of the incumbent Treasurer, Al Wilkinson, and Bearss’ support and defense of the previous administration and departing officials, Wilton and Louras, in or about March 2007, entered into a plan and/or common scheme to take punitive action against Bearss after the conclusion of the election and in the event that the defendants controlled the legislative and administrative bodies of the City.

38. Upon information and belief, motivated exclusively or substantially by personal animus toward Bearss because of her active participation in the campaign and Bearss’ support and defense of the previous administration and departing officials, Wilton and Louras, joined in the subject plan and/or common scheme, knowing and/or believing that the object of the plan/scheme was to punish Bearss for her having engaged in activities protected by the First Amendment to the United States Constitution and/or to chill her and/or others in the prospective exercise of rights protected by the said Amendment.

39. In connection with the plan/scheme it was mutually agreed by defendants: (a) that they would utilize their official offices with a view toward coercing Bearss' resignation, interfering with her job performance, terminating her employment as the HR administrator and IT coordinator, and/or forcing her to undergo disciplinary action intended in and of itself to be punitive; (b) that Wilton attempted to re-organize Bearss' position thereby effectively terminating her employment while Louras stood idly by allowing Wilton to proceed unfettered; (c) that Wilton would challenge the qualifications and competence of Bearss in order to provide a pre-textual factual predicate for the referral of disciplinary charges to the BCA while Louras stood idly by allowing Wilton to proceed unfettered; (d) that Wilton, after the second failed attempt to terminate Bearss, would retaliate against Bearss by subjecting Bearss numerous times throughout the day to harassment, abuse, ridicule, shame and otherwise degrade her, both publicly and in private, through office changes, reassignment of duties and responsibilities, challenging her competency, unreasonably adding to her already burdensome work load with additional duties and responsibilities, radio appearances degrading Bearss while Louras stood idly by allowing Wilton to proceed unfettered; and (e) that said defendants would terminate Bearss' employment.

40. Defendants determined to take punitive action against Bearss with respect to her placing and erecting of election campaign signs endorsing Al Wilkinson's campaign and supporting and defending the previous administration and departing officials, with a view toward (a) punishing this First Amendment protected activity, and/or (b) chilling Bearss and/or others prospectively from engaging in similar activities.

41. In the attempt to eliminate Bearss' position and the eventual termination of Bearss, Wilton and Louras were motivated by reason of personal and political concerns irrelevant to any legitimate employment concerns.

42. Wilton then began to accuse Bearss numerous times throughout each day of incompetence and making errors regarding various issues and decisions that had been made prior to Wilton ever taking office and were made by persons other than Bearss.

43. From March 19, 2007 to April 11, 2007, Wilton would appear in Bearss' office a few minutes before 5 p.m. every day, in addition to numerous times throughout the day, questioning various issues that had occurred before Wilton took office in an accusatory and derogatory manner continually claiming that Bearss was incompetent and insinuated that Bearss had participated in wrongdoing.

44. Bearss was out of the office for medical reasons not associated with work from April 11, 2007 to Wednesday, April 25, 2007.

**(e) First and second attempts at termination**

45. Bearss returned Wednesday April 25, 2007, and continued with her normal work assignments.

46. However, on Thursday April 26, 2007, Bearss was assigned to investigate and report by the end of the day on whether the standard payments for accumulated benefits to recently departed employees were proper. A meeting was scheduled at 5:15 p.m. that evening, at which Wilton and Louras hoped to publicly discredit the integrity of those individuals receiving the benefits, and also to impugn the integrity of Bearss.

47. On Thursday April 26, 2007, both Bearss and Andrew Costello, the City Attorney, concluded that the standard payments for accumulated benefits to the recently departed employees (the former, Mayor, City Attorney, and Assistant City Attorney) were not only proper, but also legally required.

48. On Thursday evening April 26, 2007, another issue for the committee involved the improper disclosure of the standard payments for accumulated benefits to the recently departed employees by an employee in the treasurer's office that was done to (a) publicly discredit those individuals and cast aspersions about their integrity and that of Bearss; and (b) boost the public image of Louras and Wilton.

49. The standard payments for accumulated benefits was improperly disclosed, both publicly and privately, by defendants in such a way that it insinuated wrongdoing on the part of the

for allowing the standard payments to occur.

50. In these public disclosures, the defendants were motivated by personal and political concerns irrelevant to any legitimate employment concerns.

51. Bearss knew that Penelope Stein was the employee who had improperly disclosed the confidential information to Louras and his father, Gus Louras, the latter not being a city official.

52. Ms. Stein, among others in the treasurer's office, was a staunch active supporter of Louras and Wilton and other candidates running for the Board of Alderman.

53. Bearss indicated to Costello that, if she was required to attend the meeting, she would be required to disclose that it was Penelope Stein who improperly disclosed the confidential information to Louras and his family member. It was agreed that she would not attend the meeting.

54. Bearss asked Costello if he wanted to know which employee disclosed the confidential information. Costello stated that he did not want any involvement or knowledge regarding the improper disclosure of the standard payments of accumulated benefits.

55. Wilton and Louras were aware that Bearss knew Penelope Stein had improperly disclosed the standard payments of accumulated benefits. They never requested the information, nor did they take any action regarding such improper disclosure. Instead, they actually used the information not only to discredit the individuals receiving the proper payments but to question the integrity of Bearss.

56. There was much publicity about the standard payments of accumulated benefits to the departing employees and the newly elected Mayor, Louras and Treasurer, Wilton were attempting to influence the Board of Aldermen to stop payment of the standard payments of accumulated benefits even after being informed by Bearss and Costello that the payments were not only proper, but also legally required.

57. The next day, after the Board's committee meeting on April 27<sup>th</sup>, Wilton called Bears into her office to tell her that she was reclassifying Bears' position, and that Bears no longer had a job.
58. Wilton handed Bears a memo stating her intentions and a job description for the new position she had created.
59. Wilton during the April 27, 2007 meeting regarding reclassifying Bears' position stated that she would be awarding the new position to Dawn Curtis, a political supporter and was using Ms. Curtis' husband working for a private vendor, to handle all the IT coordinating for the City.
60. When Bears explained to Wilton that she could not do what she was attempting to do, Wilton responded "I can do anything I want."
61. Bears then went to the Mayor's Office. Present were Louras, Wilton and Costello.
62. After some discussion, Louras and Costello stated to Bears that she should return to work on Monday April 30, 2007.
63. Upon Bears' return to work on Monday, Wilton and Costello met with Bears and handed her a letter terminating Bears, indicating that Bears' last day would be May 11, 2007 and informing her of her rights to an appeal under the City's personnel handbook.
64. On May 1, 2007, Wilton informed all City employees by email that she would be handling all IT and HR matters not Bears.
65. Wilton then began to more aggressively, both publicly and privately, subject Bears to embarrassment, humiliation, ridicule, harassment, intimidation and otherwise degrade her continuously throughout the day, verbally attacking Bears and blaming her for all the decisions made by the last administration that Wilton did not agree with, including insinuation of wrongdoing and incompetence completing the day with a meeting ordering Bears to explain what she had done for the day.

66. Given the daily harassment, abuse, ridicule, shame and otherwise degradation that Bearss was being subjected to by Wilton, she was only able to continue to work until Thursday, May 3, 2007 and then asked to use her vacation and sick time.
67. On May 1, 2007, Bearss requested a hearing of the BCA regarding her termination.
68. On May 3, 2007, before leaving, Bearss requested by letter to Mayor Louras to help with her situation.
69. The BCA appeal hearing was delayed until July 11 as a result of actions of Mayor Louras.
70. Prior to the BCA hearing, Wilton appeared several times on the Tim Philbin Show, a local radio talk show. While referring to Bearss, Wilton, among other statements publicly stated, “Once she’s gone, the last of the political insiders is gone.”
71. Wilton also publicly stated on Philbin’s show that if Bearss had come to Wilton, in confidence, Bearss would have been protected by the federal whistleblowers act, implying that there was some type of illegal activity being conducted by the previous administration that Bearss was privy to.
72. During the time the appeal was being conducted, Wilton again appeared on Philbin’s show publicly stating that Bearss was not qualified for the position and was incompetent.
73. The BCA disciplinary proceedings were held on July 11 and 12, 2007.
74. During the BCA disciplinary proceedings, although the defendants claimed that Bearss was fired for incompetency, the “evidence” presented by defendants included incidences of errors on projects that Bearss had not even been involved, and one claim of error occurring when Bearss was not even employed by the City.
75. Defendants fired Bearss because Bearss had publicly supported Al Wilkinson, was considered to be a “political insider” of the previous administration, and did not support and actually opposed Louras’ candidacy for Mayor and Wilton’s candidacy for Treasurer.

76. In a decision of July 16, 2007, the BCA did not uphold the firing.

**(f) Retaliation after reinstatement**

77. On July 19, 2007, three days after the BCA decision, a meeting was held between Louras, Costello and Wilton, Bearss' attorney, and Bearss to discuss Bearss' return to work for the City. Wilton did not appear at the scheduled time and, only after Louras finally reached Wilton, did Wilton eventually appear.

78. When Bearss returned to City Hall on July 25, 2007, she was informed by Wilton, that she would no longer have use of her previous office, and Wilton began to question Bearss' qualifications for the position she was hired for and had held for over a year.

79. At the initial meeting between Wilton and Bearss, Wilton handed Bearss a document entitled "Housekeeping notes for Debi, first day back" and another document entitled "Employee Performance Objectives".

80. The performance objectives totaled 200% and when Bearss questioned Wilton, about the 200%, she stated, "it was two jobs" and "you'll have to work whatever hours necessary to get the work done."

81. Wilton also informed Bearss at the initial meeting that along with the performance objectives, Bearss would also be responsible for her day-to-day responsibilities; questioned the hours Bearss worked; moved Bearss' office to a new location that was not private; provided a desk for Bearss that had been previously placed out of use because the drawers didn't work; and provided a computer to Bearss that was the oldest computer in the Treasurer's office, was incapable of processing the type of work Bearss conducted as the IT coordinator and HR administrator, and was also a community computer to be shared with student interns, and part-time employees.

82. Wilton refused to give Bearss a key to the building, the "mailroom" (which Bearss had to go through to get to her so-called new office), or the room containing the personnel files Bearss needed to do her job.

83. Wilton informed Bearss that she was to get the work done no matter how much time it took, stating that Bearss was a salaried employee, even though she questioned the hours she worked, and considered Bearss to be at the level of a department head, and, therefore, Bearss would have to take whatever time it took to get the work done no matter how long it would take.

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84. Upon Bearss' return, she was effectively no longer the City computer system administrator and no longer had access necessary to install or repair computers even though she was still required to do this work.

85. One of the largest duties Bearss had as IT Coordinator was being the system administrator.

86. During this period of time, Wilton stated that the only access to the City's computer system Bearss would have would be to the payroll module because Wilton was assigning the payroll clerk duties to Bearss even though the payroll clerk was recently hired specifically for payroll.

87. Wilton ordered Bearss not to speak with department heads directly. All information between Bearss and the department heads had to go through Wilton for her approval.

88. At the direction of Wilton, Bearss could no longer meet with employees alone about Human Resource issues without first informing Wilton about the meeting and the issue to be discussed.

89. Wilton informed Bearss that she was not allowed to speak to outside vendors on any issues without going through Wilton even after Bearss informed Wilton of the need to communicate with outside vendors on a regular basis to do her work assignments.

90. Wilton instructed Bearss to meet with Costello that afternoon at approximately 2:00 pm to discuss the signing of the performance objectives.

91. When Bearss attempted to meet with Costello that afternoon as instructed by Wilton, she tried to explain that Wilton was subjecting Bearss numerous times throughout the day to harassment, abuse, ridicule, shame and was otherwise degrading

92. Wilton ordered Bearss not to contact the union under any circumstances.

93. Throughout the day when questioning Bearss about what she accomplished and assigning addition work, Wilton would accuse Bearss of errors relating to matters that Bearss had not handled in the past. When Bearss informed Wilton that she had not handled the matter to which she was referring, Wilton would continue to harass, abuse, ridicule, shame and was otherwise degrade Bearss stating that it was in Bearss' job description and therefore, Bearss was responsible.

94. On July 26, 2007 the interns that shared her so-called office were assigned to her desk, Wilton told Bearss that an intern, hired by Wilton and Louras, would be assigned to her desk that day again leaving Bearss without a workstation to complete her work.

95. On July 30 and 31, 2007, Bearss sent Louras an email requesting a meeting to discuss the harassment, abuse, ridicule, shame and degradation she was enduring at the hands of Wilton.

96. On or about July 31, 2007 during a volatile discussion regarding insurance buy-outs, Wilton ordered Bearss to stop taking notes about what happens each day even after Bearss informed her that the notes were to remember what had been completed each day for the daily meetings Wilton was subjecting Bearss to attend, stating that "she's not paying her to take notes."

97. Later on July 31, 2007, Bearss was forced to work on the floor of her so-called office because the Assistant Treasurer was in the mailroom for most of the day, an intern had been assigned to her desk to use the computer, Mary Ellen Shaw was working at another desk in Bearss' so-called office, and Dawn Curtis was working in the Data Processing room (Bearss'

work.

98. On August 1, 2007, when Bearss went to see Costello in the afternoon around 3:30 pm to discuss an insurance matter she bumped into the Mayor, he apologized for not getting back to Bearss sooner, asked to meet right then and Bearss informed him of the harassment, abuse, ridicule, shame and degradation she was enduring from Wilton.

99. Louras indicated that if this were an EEO matter, Costello would be the person to handle the matter although he stated that he would look into it.

100. Louras also informed Bearss that the night Bearss was reinstated by the BCA that he and Costello “had to talk her (Wilton) off the ledge” because she was so angry and upset that Bearss would be returning to her position, also stating that he knew she (Wilton) was going to be a problem.

101. Bearss told Louras that she was sick of crying every morning on the way to work and every evening on the way home and she wanted Wilton to stop.

102. Throughout this time period, July 25, 2007 to August 13, 2007, Wilton would come to Bearss’ office at the end of the day to discuss what Bearss had accomplished for the day even though they had already met several times throughout the day to discuss what Bearss was doing.

103. Bearss informed Wilton on numerous occasions that, without access to computer programs, employees and vendors, it was impossible for Bearss to do her job.

104. On Monday August 6, 2007, Wilton assigned Bearss to begin training to take over the complete responsibility for payroll.

105. On August 6, 2007, Wilton sat in on Bearss’ first payroll training session with Dawn Curtis, presented Bearss with another list of job responsibilities, instructed her to write up a procedure manual for processing payroll while training, and told Dawn Curtis to turn everything over to Bearss before finishing training, informing Bearss that she would be taking over all

information should be given to Bearss.

106. On August 6, 2007 at the payroll training, even after Bearss asked Wilton if the transfer of payroll responsibilities could wait until the training was complete so Bearss would have a better understanding of the mechanics, Wilton refused and made the change immediately.

107. On August 7, 2007, Wilton informed all department heads and the Mayor by email that Bearss was taking over payroll immediately and any changes or other payroll issues should be addressed to her.

#### **(g) Bearss on leave**

108. Bearss' actual last day of working for the City was August 13, 2007.

109. Bearss was on various forms of leave from August 13, 2007 until February 17, 2008 including BOA authorized extended medical leave, and FMLA leave.

110. On September 7, 2007, while the Louras was on the Philbin's show, Shawn Pemrick, an unsuccessful candidate for alderman and a member of Wilton's transition team, called into the show asking if it was true that a recently fired employee of the City had filed a worker's compensation claim for an illness she had suffered with while working for someone else.

111. Bearss requested to be able to return to work under a different supervisory arrangement because of the mistreatment she was being subjected to by Wilton which request was unreasonably denied.

#### **(h) Third attempt at discharge**

112. Wilton discharged Bearss for a second time on or about March 4, 2008.

113. Bearss appealed the discharge pursuant to the Personnel Manual for the City to the BCA.

114. On or about April 30, 2008, the final disciplinary proceeding was held by the BCA.

115. During the hearing, Bearss was precluded from presenting all the factual information evidencing the retaliatory conduct of Wilton that had caused the absences of Bearss.

116. Bearss was deprived of a substantial right under color of state law when Bearss was unjustly and wrongfully terminated from her employment with the City. Document hosted at JDSUPRA™  
<http://www.jdsupra.com/post/documentViewer.aspx?fid=5ba5eb7d-d73e-4cb0-8030-0c3ea1a13af2>

117. On or about May 8, 2008, the BCA approved the dismissal of Bearss by written decision and in the process disclosed confidential personal medical information in the written decision.

118. As a proximate cause of defendants' conduct, which conduct rendered intolerable Bearss' work environment when she was an employee of City, Bearss has suffered embarrassment, anxiety, humiliation, shame, mental anguish, severe emotional distress, public ridicule and degradation and otherwise has suffered tremendous pain and suffering.

### **FIRST CAUSE OF ACTION**

#### **(First Amendment violation – free speech)**

119. Bearss repeats and re-alleges, as if fully set forth, the allegations of the previous paragraphs of this Complaint.

120. Defendants' conduct violated Bearss' right to engage in constitutionally protected speech as guaranteed by the First Amendment to the United States Constitution.

### **SECOND CAUSE OF ACTION**

#### **(First Amendment violation – chilling speech)**

121. Bearss repeats and re-alleges, as if fully set forth, the allegations of the previous paragraphs of this Complaint. Defendants' conduct was intended to and, in fact, did chill Bearss in the exercise of her rights as guaranteed by the First Amendment to the United States Constitution.

### **THIRD CAUSE OF ACTION**

#### **(Fourteenth Amendment Violation – depriving property interest)**

122. Bearss repeats and re-alleges, as if fully set forth, the allegations of the previous paragraphs of this Complaint.

123. Defendants constructively and/or wrongfully discharged Bearss, unlawfully deprived hosted at JDSUPRA™  
<http://www.jdsupra.com/post/documentViewer.aspx?fid=5ba5eb7d-d73e-4cb0-8030-0c3ea1a13af2> Bearss of her property interest in her position of employment with the City and violated Bearss' rights as guaranteed to her by the Fourteenth Amendment to the United States Constitution.

#### **FOURTH CAUSE OF ACTION**

##### **(Defamation)**

124. Bearss repeats and re-alleges, as if fully set forth, the allegations of the previous paragraphs of this Complaint. Defendants intentionally and/or negligently defamed Bearss by publicly stating confidential personnel information to individuals not entitled to said confidential information and broadcasting confidential information to the public.

#### **FIFTH CAUSE OF ACTION**

##### **(First and Fourteenth Amendment violation – political affiliation)**

125. Bearss repeats and re-alleges, as if fully set forth, the allegations of the previous paragraphs of this Complaint

126. Defendant's conduct against Bearss by reason of Bearss' political affiliation violates Bearss' rights as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

#### **SIXTH CAUSE OF ACTION**

##### **(First and Fourteenth Amendments violation – retaliation)**

127. Bearss repeats and re-alleges, as if fully set forth, the allegations of the previous paragraphs of this Complaint.

128. Defendants' conduct against Bearss by reason of her exercise of the associational rights with the former Treasurer violates Bearss' rights as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

#### **SEVENTH CAUSE OF ACTION**

129. Bearss repeats and re-alleges, as if fully set forth, the allegations of the previous paragraphs of this Complaint.

130. Defendants' conduct against Bearss by reason of her advocacy of the former Treasurer's reelection during the election campaign violates Bearss' rights as guaranteed by the First and Fourteenth Amendments to the United States Constitution.

**EIGHTH CAUSE OF ACTION**

**(First and Fourteenth violation – free speech)**

131. Bearss repeats and re-alleges, as if fully set forth, the allegations of the previous paragraphs of this Complaint.

132. Defendants' conduct against Bearss by reason of her expressing her opinion on matters of public concern violated Bearss' rights as guaranteed by the First and Fourteenth amendments.

**NINTH CAUSE OF ACTION**

**(Retaliation in violation of Contract, Law and Vermont Constitution)**

133. Bearss repeats and re-alleges, as if fully set forth, the allegations of the previous paragraphs of this Complaint. Defendants' retaliatory conduct has proximately resulted in a continuing violation by defendants of the rights and obligations of the HR administrator and IT coordinator as guaranteed to Bearss by the City Charter, Personnel Handbook, and Constitution of the State of Vermont.

**TENTH CAUSE OF ACTION**

**(Breach of Contract – personnel manual)**

134. Bearss repeats and re-alleges, as if fully set forth, the allegations of the previous paragraphs of this Complaint. Pursuant to the City personnel manual, Bearss' employment could be terminated only for reasonable cause. In fact, there was not reasonable cause to terminate Bearss.

135. As a result of the defendants' act, Bearss suffered great mental distress, pain and suffering and was deprived of earnings and other employment benefits. Document hosted at JDSUPRA™  
<http://www.jdsupra.com/post/documentViewer.aspx?fid=5ba5eb7d-d73e-4cb0-8030-0c3ea1a13af2>

### **ELEVENTH CAUSE OF ACTION**

#### **(Fourteenth Amendment violation – selective prosecution)**

136. Bearss repeats and re-alleges, as if fully set forth, the allegations of the previous paragraphs of this Complaint.

137. The referral and prosecution of disciplinary charges against Bearss constituted an unlawful selective prosecution violative of the Fourteenth Amendment to the United States Constitution.

### **TWELFTH CAUSE OF ACTION**

#### **(Vermont Fair Employment Practices Act violation)**

138. Bearss repeats and re-alleges, as if fully set forth, the allegations of the previous paragraphs of this Complaint.

139. One of the factors motivating defendants in deciding to terminate Bearss was her good faith complaint of retaliation, discriminatory and unequal treatment.

140. City took no action to investigate Bearss' complaints knowing of the complaints, and knowing that it had not been properly investigated, City still terminated Bearss.

141. Defendants' actions were in violation of the Vermont Fair Employment Practices Act (VFPEA). 21 V.S.A. §495 et. seq.

142. The acts in violation of VFPEA caused the damages.

143. The aforesaid discriminatory assignment of work, embarrassment, humiliation, ridicule, harassment, intimidation and otherwise degradation of Bearss continuously throughout the day, verbally attacking and wrongful discharge in retaliation against Bearss for her claiming discrimination and unfair treatment is contrary to and undermines the public policy of the State of Vermont as set forth in The Vermont Fair Employment Practices Act, Vermont Statutes Annotated, Title 21, Chapter 5, Subchapter 6, §§495 et. seq.

## THIRTEENTH CAUSE OF ACTION

### (Conspiracy/illegal patronage)

144. Bearss repeats and re-alleges, as if fully set forth, the allegations of the previous paragraphs of this Complaint.

145. Around March 2007, the Wilton and Louras conspired unlawfully to defame Bearss and to perpetrate other tortious behavior in order to terminate Bearss and otherwise benefit themselves for political reasons.

146. The Defendants publicly disseminated false information that was widely disseminated throughout the local community, and which falsely characterized Bearss' departure from the City as termination for cause, alleging "incompetence."

147. Defendant Wilton reinforced these false statements through an article published in the *Rutland Herald* and on the *Tim Philbin Show*.

148. Wilton and Louras subsequently encouraged wide dissemination of the statements throughout the community designed to engender intense and false speculation about what Bearss had done.

149. The false, defamatory, and politically motivated statements published by the Defendants injured Bearss' reputation, which caused Bearss severe emotional distress and humiliation and continues to injure Bearss in her good name, reputation and business, and caused special damages in the form of lost income.

## FOURTEENTH CAUSE OF ACTION

### (Tortious Interference with Prospective Employment or Advantage)

150. Bearss repeats and re-alleges, as if fully set forth, the allegations of the previous paragraphs of this Complaint.

151. Defendants sought to interfere with Bearss' prospective employment in order to protect themselves from public scrutiny.

152. As detailed previously, there were knowingly false statements widely disseminated throughout the local community pertaining to “incompetence” and “termination for cause.”

153. The Defendants subsequently encouraged wide dissemination of the statements throughout the local community designed to engender intense and false speculation about what Bearss had done.

154. The false, defamatory statements published by the Defendants injured Bearss’ reputation, caused severe emotional distress and humiliation, continue to injure Bearss in her good name and reputation, and have caused special damages in the form of lost income.

### **FIFTEENTH CAUSE OF ACTION**

#### **(Defamation and Defamation *Per Se*)**

155. Bearss repeats and re-alleges, as if fully set forth, the allegations of the previous paragraphs of this Complaint.

156. The numerous misrepresentations as detailed previously clearly identified Bearss.

157. These statements were false, misrepresented the events in question, and were unsupported by the facts.

158. The various statements made by Defendants were defamatory as they greatly exaggerated the conduct of Bearss and were designed to engender intense and false speculation.

159. Defendants made these statements either intentionally or with reckless disregard for the truth.

160. These statements severely damaged Bearss by causing great harm to her reputation, both publicly and privately.

### **SIXTEENTH CAUSE OF ACTION**

#### **(Injurious Falsehood)**

161. Bearss repeats and re-alleges, as if fully set forth, the allegations of the previous paragraphs of this Complaint

162. Defendants published injurious falsehoods to disparage Bearss' integrity and damage her career.

163. Defendants published the defamatory statements to the public, which was widely disseminated throughout the local community and which falsely characterized Bearss' departure from the City.

164. The statements intentionally implied that Bearss engaged in wrongful and/or illegal conduct, a charge that was false, misleading, defamatory, libelous, unprivileged, and without legal excuse.

165. The false, defamatory statements published by the Defendants injured Bearss' reputation, caused severe emotional distress and embarrassment, continue to injure Bearss, her good name, reputation and business, and have caused special damages in the form of lost income.

#### **SEVENTEENTH CAUSE OF ACTION**

##### **(False Light Invasion of Privacy)**

166. Bearss repeats and re-alleges, as if fully set forth, the allegations of the previous paragraphs of this Complaint.

167. In making and disseminating remarks about Bearss' competence, insinuating wrongful conduct, etc., Defendants' gave publicity to a matter concerning the placed the Bearss before the public in a false light.

168. Defendants' purposefully inaccurate portrayal of Bearss as a professional who conducts herself in an extremely inappropriate manner is offensive. Defendants knew that they would be portraying Bearss in a false light when making these statements.

169. As a result of the Defendants' actions, Bearss has suffered irreparable damage to her professional and personal reputation.

#### **EIGHTEENTH CAUSE OF ACTION**

##### **(Public Disclosure of Private Facts)**

170. Bearss repeats and re-alleges, as if fully set forth, the allegations of the previous paragraphs of this Complaint.

171. Defendants publicly disclosed matters regarding Bearss' termination, medical and personal life that would be offensive to the reasonable person.

172. These matters were not of public concern.

173. Bearss has suffered injury as a result of the Defendants' disclosure.

### **NINETEENTH CAUSE OF ACTION**

#### **(Violation of Vermont Covenant of Good Faith and Fair Dealing)**

174. Bearss repeats and re-alleges, as if fully set forth, the allegations of the previous paragraphs of this Complaint.

175. In the relationship between Bearss and Defendants, the Law of the State of Vermont implied a covenant of good faith and fair dealing, which required, *inter alia*, the following:

- a. Each party in the relationship must act with good faith toward the other concerning all matters relating to the employment;
- b. Each party in the relationship must act with fairness toward the other concerning all matters relating to the employment;
- c. Neither party would take any action to unfairly prevent the other from obtaining the benefits of the employment relationship;
- d. Defendants would similarly treat employees who are similarly situated;
- e. Defendants would comply with its own representation, rules, policies and procedures in dealing with Bearss;
- f. Defendants would not terminate Bearss without fair and honest cause, regulated by good faith on said Defendants' part;
- g. Defendants would not terminate Bearss in an unfair manner; and
- h. Defendants would give Bearss' interest as much consideration as they gave their own interests.

**WHEREFORE**, the Plaintiff Bearss prays for the following relief:

1. Compensatory damages , including, but not limited to, injury to reputation resulting in loss of current and prospective income; lost wages and loss of fringe benefits, losses arising from severe mental and emotional distress, out-of pocket expenses, pain and suffering, embarrassment and humiliation, loss of reputation, loss of enjoyment of life, and other special and general damages including, but not limited to, statutory damages as a jury may determine against defendants as may be proven at trial with respect to all claims, for which the Defendants are jointly and severally liable;
2. Special damages in the amount of no less than \$840,000, plus interest, for lost income as a result of the Defendants' conduct with her potential future employment, for which the Defendants are jointly and severally liable;
3. As against Wilton and Louras punitive damages for the wanton, malicious, and intentional nature of Defendants' conduct, punitive damages to deter the Defendants from further misconduct, violation of other individuals constitutional rights of free speech and due process;
4. An Order from this Court that the defendants retract all defamatory statements, issue a release affirmatively stating that the Bearss was not terminated for cause and that earlier statements were false and misleading, and refrain from making any further misleading or defamatory statements or doing anything else which would interfere with Bearss' present or future employment;
5. An Order from this Court that permanently enjoins the defendants, their agents, and/or employees from prospectively interfering (either by means of retaliation and/or chilling) with Bearss' exercise of her rights as guaranteed by the First and Fourteenth Amendments;

6. An Order from this Court that forbids the defendants, their agents, and/or employees from prospectively retaliating against Bearss in connection with job inquiries by reason of her First and Fourteenth Amendments protected activities both past and future;
7. An Order from this Court that requires the Defendants to expunge from Bearss' personnel records all evidence of the discipline and disciplinary proceedings at issue in this action;
8. An Award of costs, disbursements, and, in accordance with 42 U.S.C. §1988, reasonable attorneys' fees;
9. An award of compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages and other benefits, reinstatement, costs, reasonable attorney's fees and other appropriate relief in accordance with 21 V.S.A. §495(b); and
10. Such other and further relief as to the Court seems just and proper.

**PLAINTIFF DEMANDS A TRIAL BY JURY.**

Dated at Rutland, Vermont, this 14<sup>th</sup> day of November, 2008.

KULIG & SULLIVAN, P.C.

By \_\_\_\_\_  
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