

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

File No. 07 CVS 016033

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AUDREY MICHELLE PEELE )

PLAINTIFF )

v. )

CITY OF RALEIGH, NORTH CAROLINA, a )  
municipal corporation; JANE PERLOV; in her official )  
capacity and individually; RUSSELL ALLEN in his official )  
capacity and individually JANE DOE; and JOHN DOE, )  
persons who were employees of the City of Raleigh who are )  
not now known by name. )

DEFENDANTS )

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**FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**

Now comes the Plaintiff, upon information and belief, and alleges as follows:

***INTRODUCTION AND PRELIMINARY STATEMENT***

1. This action challenges the wrongful employment termination of Raleigh Police Officer Michelle Peele, related adverse actions against Officer Peele, and the constitutionality of a Raleigh Policy enforced against Officer Peele thereby depriving her of constitutional, statutory and common law rights of self defense, defense of others as well as legal protection of her life, liberty and bodily integrity.

2. Officer Peele was employed by the City of Raleigh as a sworn law enforcement officer from 1998 until her termination of employment in 2006. On August 28, 2005, while working extra-duty as a sworn Raleigh Police Officer acting within the course and scope of her employment, Officer Peele invoked her constitutional, statutory and common law rights to self defense, defense of others and protection of her life, liberty and bodily integrity.

3. Nyles Arrington, a violent felon, stole Officer Peele's vehicle and employed it as a deadly

weapon by driving the vehicle towards Officer Peele and a bystander thereby putting Officer Peele and others at risk of imminent death or serious bodily injury. Officer Peele and the bystander were about to be run over and killed or seriously injured by Arrington thereby necessitating law enforcement action.

4. Officer Peele was in the travel path and spin path of the rapidly accelerating stolen vehicle and was confronted with imminent deadly force by the assailant. Arrington had alternative safe routes to leave with the stolen vehicle but rather consciously chose a vehicular path directly at Officer Peele and the bystander. Arrington had an extensive and dangerous criminal history including but not limited to endangering police officers.

5. When Arrington drove the vehicle towards and within a few feet of Officer Peele and the bystander and subjected them to imminent use of deadly physical force, Officer Peele exercised her constitutional, statutory (N.C.G.S. 15A-401(d)(2)) and common law rights to self defense, defense of others and legal protection for her life, liberty and bodily integrity.

6. An objective law enforcement officer could have reasonably believed that Officer Peele was entitled to use deadly force to protect herself and others, thus Officer Peele was fully justified in her actions which were protected by North Carolina constitutional, statutory and common law.

7. Officer Peele was confronted with apparent danger of death or serious bodily injury by the course of actions by Arrington.

8. Officer Peele performed the duties of her office under chapters fourteen and fifteen of the North Carolina General Statutes, N.C.G.S. 160A-285, her oath of office and other law, and necessarily utilized deadly force to stop Arrington from killing or seriously injuring herself, a bystander and others.

9. Defendants have terminated and retaliated against Officer Peele because she exercised her state constitutional, statutory and common law rights as described herein.

10. Officer Peele was terminated from employment allegedly for violating a City policy, Departmental Operating Instruction 1108-1, as amended. Office Peele did not violate this alleged

policy, however, the policy is unenforceable in any event. Defendants' enforcement of this policy against Officer Peele violated her constitutional, statutory and common law rights to self defense, defense of others and Officer Peele's liberty interests in her life, liberty and bodily integrity.

11. Defendants' police use of force policy, DOI 1108-1 as amended, is both unenforceable and unconstitutional as applied to Officer Peele. Defendant Perlov erroneously and irrationally believed that she was entitled to promulgate municipal policy that could supersede both state and federal law. Defendants' termination of Officer Peele was a deliberate violation of state law including N.C.G.S. 15A-401(d)(2), Article 1, Sections 1, 14, 19, 35 and 36 of the North Carolina Constitution and the common law rights of self defense and defense of others.

12. Defendant Jane Perlov, the Raleigh Chief of Police at the time of Officer Peele's termination, proclaimed that the City of Raleigh could "restrict" "state and federal law" in the context of prohibiting officers from defending their own lives with self defense.

13. Following Officer Peele's termination of employment by the Raleigh Police Department, Officer Peele invoked her rights to administrative due process and grievance procedures through the City's personnel policy and system, but was denied her rights through obstruction of justice and other violations of law and policy identified herein. The Defendant City willfully failed to comply with its own policies and representations, and denied Officer Peele employment benefits that had been represented to Officer Peele by the City.

14. This is an action arising exclusively under North Carolina law challenging a series of state constitutional violations and torts committed by Defendants including but not limited to adverse employment actions including termination of employment, retaliation because of Officer Peele's protected activities, selective enforcement of municipal policies and guidelines, misrepresentation, denial of employment benefits, disparate treatment, common law wrongful termination of employment in violation of public policy, arbitrary and capricious actions, tortious interference of and obstruction of Officer Peele's right to a lawful civil service hearing, denials of due process, the enforcement of an unconstitutional policy purporting to eliminate Officer Peele's

rights under state law including the denial of Officer Peele's rights to self defense, defense of others and life, liberty and bodily integrity, and other violations.

15. Defendants deprived Officer Peele of her rights protected by Article 1, sections 1, 14, 18, 19, 35 and 36 of the North Carolina Constitution, under N.C.G.S. 15A-401(d)(2), under the North Carolina common law public policy wrongful discharge doctrine, and other torts as described herein.

### ***PARTIES AND AGENCY***

16. Plaintiff Michelle Peele is a citizen of the United States and is a resident of Wake County, North Carolina.

17. The violations of law demonstrated herein occurred in Wake County, North Carolina.

18. At times material hereto, Plaintiff was employed by Defendant City as a public employee.

19. At times material hereto, Plaintiff was a qualified and duly sworn law enforcement officer certified by the State of North Carolina and entitled to all legal protections, privileges and immunities provided by law including but not limited to N.C.G.S. 15A-401(d)(2), and North Carolina constitutional and common law.

20. Defendant City of Raleigh (hereafter City) is a local government agency and operates under and pursuant to color of authority vested in it by the State of North Carolina. The City authorized its agents and officials to initiate the actions against Officer Peele as described herein.

21. At all times material hereto, Defendant City was a duly chartered and existing municipal corporation existing as such under the laws of the State of North Carolina, and located in Wake County, North Carolina.

22. Defendant Russell Allen is a citizen and resident of Wake County. At all times material hereto, Defendant Allen was the duly appointed and authorized City Manager of the City of Raleigh, North Carolina. Defendant Allen condoned, acquiesced in and ratified the conduct of Defendant Perlov and other Raleigh officials as explained herein.

23. Defendant Jane Perlov is a citizen and resident of North Carolina. At times material hereto, Defendant Perlov was the duly appointed and authorized Chief of Police of the City of Raleigh, North Carolina.

24. Defendant City delegated authority to its authorized agents and officials, to Jane Perlov as the Chief of Police and to Russell Allen as the City Manager, to make police personnel decisions including those complained of herein.

25. At times material hereto, former Police Chief Jane Perlov and City Manager Russell Allen were acting pursuant to their official capacities as authorized City officials in the course and scope of their employment and under color of authority of their offices. However, Perlov and Russell abused and exceeded their authority.

26. Upon information and belief, there are other persons, the Jane Doe and John Doe Defendants, who acted in concert with Defendants who injured Plaintiff as described herein. At the present time, these Jane and John Doe Defendants are unknown by name. Upon information and belief, the Jane and John Doe Defendants are believed to be agents and officials of the City of Raleigh and acted pursuant to the color of authority associated with their offices.

27. The Civil Service Commission (hereafter Commission) of the City of Raleigh is a local governmental agency and Commission created by the City to hear employee grievances, appeals and post-termination procedural due process for the City of Raleigh.

***WAIVER OF POSSIBLE IMMUNITIES***

28. Upon information and belief, Defendants waived any possible state law immunity and exceeded the course and scope of their lawful governmental authority by deliberately abusing their authority, exceeding their authority, by acting in knowing disregard of law and maliciously.

29. Upon information and belief, Defendants have purchased applicable liability insurance, which constitutes a waiver of any immunity, in whole or in part, to which Defendants may have enjoyed under some claims asserted in this action. Defendants otherwise waived any immunity to

which they might have enjoyed due to the abuse of authority, disregard of law and conduct as described herein.

30. Upon information and belief, the conduct in this action did not involve a legitimate governmental function. Upon information and belief, Defendants have engaged in a course of actions including but not limited to inconsistent, selective, arbitrary or capricious practice of settling some claims but not others based on discretion so that any immunity must be deemed waived.

31. Upon information and belief, Defendant City has made risk management and insurance related decisions with an illegitimate objective of avoiding and defeating valid tort claims based on intentional discretionary decisions. Defendant City has therefore waived sovereign immunity.

### ***STATEMENT OF FACTS***

#### **The Employment Relationship**

32. Based upon a package of employment related benefits offered by the City, Officer Peele accepted an offer of employment from the Defendant City in 1998.

33. The City represented to Plaintiff a number of rights, benefits and privileges including but not limited to the rights to protection under the City's Civil Service Act, and other policies, rules, instructions and other provisions and also including but not limited to the right to administrative due process of law. Plaintiff relied to her detriment on Defendant City's representations and accepted a position with the Defendant City as a Raleigh Police Officer.

34. Officer Peele began her employment with Defendant City on or about December 14, 1998. Officer Peele was acting in her official capacity as a sworn and certified Raleigh Police Officer on August 28, 2005 when she dealt with Arrington.

35. Officer Peele was qualified to serve as a Raleigh Police Officer throughout her tenure of service. At the time of her termination, Office Peele had earned and held the rank of Master Police Officer, and was a non-probationary permanent employee.

36. Officer Peele was a qualified law enforcement officer who had earned an exemplary record of service with the Raleigh Police Department including numerous ratings for "outstanding"

service and conduct.

37. Officer Peele was a duly certified North Carolina justice officer properly certified by the N.C. Criminal Justice Education Training & Standards Commission with an intermediate level police certification.

38. Plaintiff's employment was purportedly terminated on or about January 27, 2006, by Deputy Police Chief Marc Kielty, acting in the course and scope of his employment. Defendants Perlov and Allen agreed with Kielty's termination of Officer Peele and affirmed it.

39. Officer Peele's employment was terminated for invoking her rights to self defense, defense of others and protection of her life, liberty and bodily integrity in connection with an encounter with Nyles Arrington that occurred on August 28, 2005.

#### **Incident Invoking Officer Peele's Rights**

40. On August 28, 2005, Officer Peele was confronted by a violent criminal offender, Nyles Arrington. Arrington committed felony offenses in Officer Peele's presence by breaking and entering into her vehicle, stealing her vehicle and then attempted to murder Officer Peele and a bystander by driving her vehicle at her, while also endangering other citizens.

41. While working extra-duty as a Raleigh Police Officer, Plaintiff Peele invoked her constitutional, statutory and common law rights to self defense, defense of others and protection of her life, liberty and bodily integrity when Officer Peele and a bystander were about to be run over by Arrington.

42. Officer Peele was in the travel path and spin path of the rapidly accelerating stolen vehicle. Arrington had alternative safe routes to escape with the stolen vehicle but rather consciously chose a path directly at Officer Peele and a bystander. Officer Peele was under a legal duty to fulfill her law enforcement duties to apprehend the suspect committing felonies in progress and to protect herself and citizens from harm by the felon. Arrington forced Officer Peele into a life threatening dangerous split second decisionmaking environment.

43. An objective police officer could have reasonably believed that deadly force was

appropriate under the facts and circumstances confronting Officer Peele.

44. Arrington had an extensive criminal history including but not limited to endangering other police officers in high speed chases. When Arrington's charging vehicle was within a few feet of Officer Peele and a bystander, she exercised her constitutional, statutory (N.C.G.S. 15A-401(d)(2)) and common law rights to self defense, defense of others and protection of her life, liberty and bodily integrity.

45. Officer Peele performed the duties of her office under chapters fourteen and fifteen of the North Carolina General Statutes, under N.C.G.S. 160A-285, her oath of office and other law, and necessarily utilized deadly force to stop Arrington from killing or seriously injuring herself, a bystander and others.

46. Officer Peele was fully justified in her law enforcement actions involving Arrington.

47. Officer Peele did not violate any laws, policies, rules, regulations, directives or other provisions of the City of Raleigh in her course of actions in defending her life against Nyles Arrington.

#### **The Negligent Internal Affairs Investigation And Publicized Dissemination**

48. Following the incident with Arrington, Officer Peele became the subject of a personnel and internal affairs investigation by the Raleigh Police Department.

49. The Raleigh Police Department, under the command and supervision of Defendant Perlov, failed to conduct a proper and complete internal affairs investigation.

50. The City was grossly negligent in the purported investigation of the events of August 28, 2005, and in the process leading up to and including the termination of Officer Peele's employment.

51. On or about September 2, 2005, while the internal affairs investigation was ongoing, Defendant Allen willfully and unlawfully disseminated a public release of confidential personnel information by publicly releasing to the media an "Inter-Office Memorandum" about Officer Peele which stigmatized and harmed Officer Peele. There was no legitimate governmental purpose or proper authorization for the publicized release of Officer Peele's confidential personnel information.

Upon information and belief, Defendants did not obtain authorization under N.C.G.S. 160A-168 or other law to publicly disseminate Officer Peele's confidential personnel information.

52. The internal affairs investigation ended on January 20, 2006, and Sergeant D.K. Murphy issued the completed internal affairs report on that date.

53. Deputy Chief Marc Kielty concluded and executed the final internal affairs report as concluded on January 26, 2006.

54. After the internal affairs investigation concluded, the City proceeded to consider possible adverse employment action against Officer Peele.

#### **Pre-Termination And Post-Termination Procedures, Rights And Process**

55. On January 26, 2006, Officer Peele was requested to meet with Deputy Chief Marc Kielty on January 27, 2006 for a pre-termination hearing. A meeting was held.

56. Upon information and belief, at the time that the purported pre-termination hearing began, Kielty had already determined that Officer Peele's employment should be terminated.

57. Deputy Chief Marc Kielty issued a memorandum terminating Officer Peele's employment on January 27, 2006, while purporting to act on behalf of the City.

58. Kielty was without authority to terminate Officer Peele's employment, thus Kielty's purported action was null and void. Kielty's action terminating Officer Peele's employment was, however, ratified by Defendant Perlov, Defendant Allen and the City.

59. On or about February 1, 2006, Officer Peele timely submitted a grievance and appeal challenging the termination of her employment.

60. Officer Peele processed her grievance pursuant to policy.

61. Raleigh City Policy required that the Raleigh Chief of Police address Officer Peele's grievance and meet with her within ten days. Defendant Perlov, in direct violation of City policy, willfully failed and refused to comply with her duties of office in this regard and willfully violated Officer Peele's rights.

62. Defendants denied Officer Peele the right to have her grievance and termination reviewed

by the Chief of Police and a meeting with her within ten days as is required by City policy.

63. Following Perlov's willful failure to act and address Officer Peele's grievance, Officer Peele was forced to proceed up the chain of command pursuing her grievance without the benefit of Perlov's involvement and a meeting with Perlov as provided by policy.

64. Defendant Perlov refused and failed to act to comply with her duties under City policy to act on Plaintiff's appeal to her.

65. Following service of Kielty's memorandum of termination, Officer Peele timely appealed to City Manager Russell Allen.

66. Defendant Allen ratified Perlov's failure to properly or timely act and Perlov's violation of policy.

67. Defendant Allen, by action and omission, ratified the conduct of the Raleigh Police Department in improperly adjudicating Officer Peele's grievance and terminating her employment..

68. Defendant Allen agreed with the decision by Deputy Chief Kielty to terminate Officer Peele's employment and Kielty's letter of termination.

69. Defendant Allen failed to properly consider and apply the appropriate standards for adjudicating Officer Peele's grievance. Defendant Allen failed to properly consider all of the relevant applicable facts, circumstances and factors thus leading to an arbitrary decision.

70. Defendant Allen failed to conduct, or have conducted, an adequate investigation and analysis of Officer Peele's termination and the underlying invocation of Officer Peele's constitutional, statutory and common law rights to self defense, defense of others, and for the protection of the life, liberty and bodily integrity of Officer Peele.

71. Defendant Allen enforced an unconstitutional policy by terminating Officer Peele for defending her own life and that of a bystander. Defendant Allen's actions punished and terminated Officer Peele because she exercised her constitutional statutory and common law rights of self defense, defense of others and the protection of her life, liberty and bodily integrity.

72. On March 6, 2006, on behalf of the City, Defendant Allen upheld Officer Peele's

termination of employment as made by Deputy Chief Kielty.

73. Officer Peele timely appealed her termination to the Raleigh Civil Service Commission.

### **Defendants' Personnel System**

74. At all times material hereto, the City of Raleigh is a public employer, with hundreds of employees. The Police Department of the City of Raleigh has over six hundred employees.

75. The City of Raleigh has developed, adopted and enacted a personnel system which includes, but is not limited to, a system of policies, rules, orders, instructions, guidelines, benefits and rights, which combined together, operate to govern and bind personnel administration of City employees including police officers and Officer Peele. The combination of these rules, provisions and understandings gave rise to a system of de facto tenure for Officer Peele.

76. Through its actions, representations and practices, Defendant City conferred employment benefits upon Officer Peele. However, the City breached its representations to Officer Peele by denying the benefits conferred. These benefits include but are not limited to Petitioner's rights under the City's Civil Service and personnel system, the right to be treated fairly, the right to not be discharged without just cause, the right to have the City and City officials comply with all City policies and other governing provisions, the right to have a fair civil service hearing without interference and obstruction by City agents, and other rights identified herein. Officer Peele reasonable relied upon the City's representations regarding her employment rights and benefits.

77. As a part of its personnel system, the City created and adopted a Civil Service Commission (hereafter Commission) which has limited jurisdiction to hear certain types of employee grievances and appeals.

78. The City uses the Commission to provide post-termination procedural due process for city employees seeking to enforce their rights under City policy.

79. The City failed to provide Officer Peele sufficient due process.

80. The Commission was delegated authority by the Defendant City to "provide the safeguards of administrative due process of law to the consideration of disputes subject to the jurisdiction of the Raleigh Civil Service Commission." The Commission failed to comply with this mandate in the adjudication of Officer Peele's grievance.

81. Under the Civil Service Act, Chapter 1154 of the 1971 session laws, the City delegated authority to the Commission to safeguard the rights of employees seeking relief under the Civil Service Act. The Commission promulgated and published a set of rules designed to govern the civil service adjudication process.

82. The Raleigh Civil Service Act was amended by chapter 241 of the 1981 Session laws, thereby preserving Officer Peele's entitlement to appellate and hearing rights including the right to be treated fairly and not be discharged without just cause.

83. The Civil Service Act and the 1981 Amendment were designed to supersede and in fact superseded preexisting Raleigh employment policies. Officer Peele was covered and protected throughout her tenure of employment by the Civil Service Act as amended in 1981.

84. The Civil Service Act was duly promulgated and enacted by the City of Raleigh in order to provide to Plaintiff and other employees "an efficient and fair appeals process..."

85. The City has represented to applicants for employment and employees that the City has adopted a civil service system available through its Civil Service Commission.

86. Under the Civil Service Act, qualified Raleigh employees including Officer Peele are afforded and entitled to rights, benefits and privileges including:

- a) protection from discharge without just cause; and
- b) that all hearings shall be conducted in an impartial manner; and
- c) that employees shall be afforded "due process"; and
- d) that a person who has served as an investigator, prosecutor or advocate in a proceeding under the Act may not assist or advise any Commission member in the same administrative proceeding; and

- e) the right to have subpoenas issued to secure the presence and testimony of witnesses; and
- f) to have a proposal for decision prepared by the Chairman; and
- g) to have a right to judicial review under the Administrative Procedure Act; and
- h) other rights.

87. Officer Peele was denied her rights under the Civil Service Act, policy and other provisions.

88. Through the Civil Service Act and through other actions, practices and customs, the City has adopted a personnel system by policy, practice, custom and state law which includes a right of employees to be able to fairly litigate grievances regarding various workplace issues and to enjoy rights to be fairly heard and not terminated without just cause in connection with their grievances. This personnel system including the applicable policies, practices and customs are applicable to and were in effect during the course of actions against Officer Peele.

89. The City has promulgated a set of employment policies, rules, instructions and provisions which are enforceable and binding guidelines for conduct of its employees and the City.

90. The City enacted an employment policy, 300-14, effective on November 1, 2001, and in effect at all times material hereto, which requires, *inter alia*, that Officer Peele not be terminated without just cause and that she be afforded "fair and equitable" treatment.

91. Policy 300-14 is not only the official policy of the City, it is also the City practice and custom which the City claims has been consistently applied.

92. As a public employer, the City promulgated and enacted a number of personnel policies including but not limited to official policy 300-14, which was designed to in part govern the employment relationship between the City and its employees.

93. The City published its personnel policies, including Policy 300-14, which were in effect at all times material hereto.

94. The City promulgated and published a personnel policy relating to grievances in Policy 1104-9. Section 7.0 of Policy 1104-9 provides in pertinent part that "[a]n employee wishing to

appeal a suspension, dismissal or demotion may appeal directly to the Chief of Police.... Officer Peele timely appealed to the Chief of Police.

95. Section 7.1.1. within City Policy 1104-9 provides in pertinent part that "[t]he chief has 10 working days to hold meetings with the employee..." Defendant Perlov willfully failed to meet with Officer Peele as mandated by policy.

96. The City requires its employees to comply with its personnel policies, rules, guidelines, orders and instructions, and the City requires its officials and agents to also comply.

97. The City claims to consistently comply with its own published personnel policies.

98. Under City policy, practice and custom, non-compliance with City personnel policy constitutes grounds for possible discipline.

99. There were mutual understandings between the City and Officer Peele that she would not be terminated without just cause and that she would be afforded fair and equitable treatment including all benefits from the City's various published employment policies, rules, instructions and other provisions.

100. The City's employment policies and provisions including but not limited to Policy 300-14 make representations and promises to employees including Officer Peele.

101. Officer Peele reasonably relied to her detriment on the City's promissory representations of just cause, fairness, equitable treatment and other employment benefits.

102. In addition to its policy which prohibits terminations without just cause, the City has adopted an employment practice and custom of not terminating officers without just cause.

103. The City has a practice and custom of affording employees an opportunity to be heard consistent with procedural due process of law.

104. By policy, practice and custom, the City claims to consistently act fairly towards its employees and claims to not act arbitrarily or capriciously.

105. The City claims to act honestly and fairly with its employees.

106. Among other personnel policies, the City promulgated a grievance policy and ordinance

for its employees, including the City of Raleigh's Grievance Policy, which appears in Section 5.0 of Policy 300-14. This policy is attached hereto and incorporated by reference the same as if fully set forth herein.

107. When requested by a qualified employee, the City consistently provides a hearing to employees to allow the employee to contest terminations in a hearing designed to afford due process of law.

108. Officer Peele was entitled to lawful and complete post-deprivation procedural due process in a civil service hearing; the City agreed and did not object.

109. The process afforded to Officer Peele to challenge her termination was insufficient and inadequate.

110. The City adopted and implemented a personnel system which afforded a number of rights and benefits to its employees including Officer Peele.

111. One of the rights that the City represented to Officer Peele was the right to receive fair and impartial treatment by the City as an employer.

112. Officer Peele reasonably and detrimentally relied upon the representations made to her by the City in its personnel policies, rules, directives, instructions and procedures.

113. Officer Peele invested financial and personal resources in her law enforcement career, which had become Officer Peele's only skilled and certified occupation.

114. The City failed to comply with its own promulgated policies and representations including 300-14, regarding Officer Peele.

115. The Commission has not properly decided any issues of law or fact relevant to this civil action. The Commission was without jurisdiction to adjudicate any issues of law. The Commission was without jurisdiction to decide issues of fact relating to the civil claims for relief asserted herein. Rather, the Commission only purported to adjudicate issues with regard to the City's policy, 300-14, and refused to address legal issues and defenses that would have enabled Officer Peele to prevail.

The final Commission decision was defective and unlawful due to Defendants' conduct as summarized herein. The final Commission decision is therefore null and void.

### **Raleigh Use of Force Policy Is Unconstitutional**

116. Through actions and omissions by Defendants Perlov and Allen, the City promulgated police policies which are guidelines for the conduct of Raleigh police officers.

117. The City's use of force policy is denominated as DOI 1108-1, effective date of February 9, 2005, which is incorporated by reference herein the same as if fully set forth.

118. On May 29, 2003, Special Memorandum 03-008 was promulgated by former Raleigh Chief of Police Perlov, which is incorporated by reference herein.

119. On August 25, 2004, Special Memorandum 04-006 was promulgated by former Raleigh Chief of Police Perlov, which is incorporated by reference herein.

120. Through its use of force policy, the City intended to restrict state law legal rights of police officers including the rights to self defense and defense of others.

121. Through the totality of the City's use of force policies, the City has attempted to supersede, subvert and deny Plaintiff's constitutional, statutory and common law rights to engage in self defense, defense of others and to protect one's life, liberty and bodily integrity.

122. Applied together and as amended, the City's use of force policies deprived Officer Peele of fundamental constitutional, statutory and common law rights of self defense, defense of others and the rights to protect one's life, liberty and bodily integrity.

123. Applied together and as amended, the City's use of force policies are unconstitutionally vague and overbroad; they violate North Carolina constitutional standards in Article 1, Sections 1, 14, 19, 35 and 36 of the North Carolina Constitution.

124. Officer Peele did not violate any law, rule, policy or other governing provision on August 28, 2005 in her actions defending herself and others from Nyles Arrington.

125. Defendant Perlov has proclaimed that the City may restrict state and federal law rights of police officers in the context of the rights of self defense and defense of others.

126. The City applied and enforced its use of force policies, 1108-1 as amended by the two special memoranda, and relied upon an alleged violation of this use of force policy to terminate Officer Peele.

127. Officer Peele seeks a declaratory judgment that the Raleigh use of force policy as amended is unconstitutional on its face and as applied to Officer Peele herein.

128. N.C.G.S. 15A-401(d)(2) provides in pertinent part:

a law enforcement officer is justified in using deadly physical force upon another person ... when it is or appears to be reasonably necessary thereby: a. to defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; b. to effect an arrest or to prevent the escape from custody of a person who he reasonably believes is attempting to escape by means of a deadly weapon, or who by his conduct or any other means indicates that he presents an imminent threat of death or serious physical injury to others unless apprehended without delay...

### **Prehearing Obstruction And Interference**

129. Prior to the Civil Service Commission hearing, the City, acting through authorized officials and agents, acted in concert to deprive Plaintiff of a fair and lawful hearing by interfering with, harassing and intimidating witnesses who had been subpoenaed to testify on behalf of Plaintiff. This obstruction and interference caused witnesses to be frightened and in fear of losing their jobs and victimized by retaliation. Officer Peele consequently had to change her position by not calling some witnesses, which further deprived Officer Peele of her rights to a fair hearing and due process of law.

130. Once the City learned who Officer Peele subpoenaed to testify in her behalf, a process of orders and coercion of witnesses was utilized to obstruct Officer Peele's rights to a fair hearing free from employer coerced intimidation.

131. Through officials associated with the Office of the Chief of Police, the City began issuing unlawful orders for employees to appear at City offices for purposes of involuntarily interrogating the employees to ascertain and invade Officer Peele's protected work product.

132. At least two witnesses believed that such coercive interrogation techniques were improper and consequently attempted to resist the City's abusive tactics. However, an agent and official of the City persisted and coerced statements from witnesses.

133. For example, on September 20, 2006, the day before the first day of the hearing, witness Lindsey Banning, an employee of the City but not of the Police Department, was ordered and coerced to appear within City offices. Ms. Banning had already provided complete statements during the internal affairs investigation, which had long since concluded.

134. The City was without valid legal authority to order, under threat of discipline, witnesses under subpoena by Officer Peele to appear before City officials for purposes of intimidating interrogations on the eve of the scheduled hearing, whereby the City was attempting to coerce information regarding Officer Peele's work product. Ms. Banning appeared and lodged an objection to the City's tactics. City agents and officials then communicated with the Office of the Chief of Police and Ms. Banning's supervisors and conspired to coerce Ms. Banning to waive her rights and undergo an involuntary interrogation by City agents and officials.

135. Ms. Banning was threatened with an unconscionable deceptive ultimatum to undergo interrogation or else she would be subject to "disciplinary action for insubordination, which could result in your dismissal from the Department." The order directed to Ms. Banning included false representations including that she "will be asked questions which directly relate to the performance of your official duties and/or conduct prejudicial to the good order and reputation of the department." The questioning did not relate to any open or ongoing administrative investigation, but rather was used to gain an improper tactical advantage over Officer Peele.

136. The orders given to Ms. Banning by the City had the effect of coercing, harassing and intimidating Ms. Banning in her capacity as a witness. Persons within or affiliated with the office of the Raleigh Chief of Police acted in concert to facilitate the coercive unlawful orders subjected to Ms. Banning.

137. Based on the direct threat by City agents and officials and in order to save her job, Ms. Banning involuntarily submitted to an interrogation by a City agent and officials, which was used against Officer Peele.

138. This coerced interrogation precluded Ms. Banning from being free to leave from the City's offices without being disciplined. The City's coerced order required her to remain in a City office facility against her free will and undergo questioning against her free will.

139. When Ms. Banning's actual testimony began before the Commission the following day, the City's examination of her referred to the September 20, 2006 conference thereby reminding and impliedly threatening Ms. Banning of the powers of her employer. Information from the coerced interview was then used against Officer Peele.

140. At least one other subpoenaed witness was similarly ordered to appear at City offices for involuntary interrogation. That witness objected. However, the City persisted with involuntary interrogation of the witness and sought to invade the work product privilege of Officer Peele by using coercion and intimidation to force the witness to work with and for City agents in identifying and disclosing protected work product of Officer Peele.

141. These abusive interrogation tactics interfered with and obstructed Officer Peele's rights to protect her occupational liberty and her job, and to enjoy the benefits of a fair civil service hearing consistent with City policy and state law.

### **The Civil Service Hearing Process**

142. The Commission began its hearing on September 21, 2006. The hearing continued on October 9, 2006, and finally concluded on November 16, 2006.

143. During the civil service hearing, the City was represented by the Office of the City Attorney. The Police Attorney for the City of Raleigh did not appear as counsel in the matter but rather was used as a witness against Office Peele.

144. Shortly after the inception of the public hearing, an objection was lodged by the News

& Observer alleging a violation of the North Carolina Open Meetings statute. A recess was subsequently taken. Upon information and belief, the Office of the City Attorney was consulted regarding the alleged violation of the Open Meetings Act. Upon information and belief, legal advice was provided to the Commission. Thereafter, a change of procedure was implemented whereby the Commission allowed journalists to have cameras in the hearing room.

145. Through the course of the purported hearing, Plaintiff's rights were repeatedly violated thereby resulting in a violation of the standard promulgated by the City to ensure an "efficient and fair appeals process" to employees including Plaintiff.

146. Upon consideration of various violations of Plaintiff's rights, Plaintiff sought to be heard by the Commission to protest but the Commission denied Plaintiff's request to be heard.

147. The Commission violated its own bylaws by allowing the City more than four hours to present evidence. This allowed unfair tactical advantage for the City.

148. The Commission allowed inadmissible, irrelevant and other improper alleged evidence to be admitted.

149. The Commission allowed improper testimony including but not limited to testimony from an attorney employed by the City who was under a legal duty to protect her client, the City of Raleigh, who was a party to the proceeding. The attorney was forced by the City into a testimonial environment with conflicting interests.

150. The City deviated from its custom and practice of adjudicating civil service hearings involving police officers by using the Office of the City Attorney to represent the City rather than the Police Department Attorney.

151. The Commission allowed testimony of Geoffrey Alpert over objection following a vote by the Commission whereby the Chairman voted twice.

152. The combined and cumulative effect of these violations resulted in a purported hearing which failed to comply with fundamental due process principles, Commission rules and deprived Officer Peele of a fair hearing.

153. At the conclusion of the November 16, 2006 purported hearing, the Commission voted to deny Officer Peele's grievance. Mr. Frank Golden, a member of the Commission, dissented and voted to the contrary. However, the final Commission decision omitted Mr. Golden's dissent.

154. The Commission Chairman allowed the counsel for the City to prepare for the Chairman a proposal for decision.

155. The City engaged in a process of deliberate unconscionable delay in issuing a proposal for decision. The City took approximately six months to issue the proposal for decision for the Chairman of the Commission.

156. Plaintiff responded to the proposal for decision with objections, exceptions and proposed decisions. Plaintiff requested oral argument under the Commission's rules. The City did not file or make a request for oral argument. The Commission rules require a requesting party to submit a request for oral argument before the Commission.

157. Finally, the Commission scheduled final oral argument on September 20, 2007, some 364 days after the hearing began. Officer Peele presented her oral argument through counsel as provided by the Commission rules. Despite the fact that the City had not requested oral argument, over objection and without notice, the Commission permitted the City to present oral argument and also allowed the submission of an unauthorized document supporting the City's position, in violation of the rules. The Commission's violations of the rules continued to the very end.

158. The City's proposal for decision was 29 pages in length and consisted of 129 paragraphs of findings of fact and 17 conclusions of law. The Commission adopted the proposal for decision prepared by the Office of the City Attorney without substantive modification. The Commission implicitly denied Officer Peele's requests and overruled her objections.

159. The decision issued by the Commission was erroneous in numerous ways and was prejudicial to Officer Peele. For example, the decision failed to credit Officer Peele with undisputed evidence in her favor. The Commission decision failed to make necessary and material findings.

160. The Commission decision failed to acknowledge and credit Officer Peele with testimony from a purported expert witness retained and called as a witness by the City.

161. The Commission decision was inconsistent with the deliberations of the Commission following conclusion of the hearing on November 16, 2006.

162. The proposal for decision prepared by the City Attorney created and constructed findings in the City's favor that were not reflected in the Commission's deliberations or the evidence.

163. The process used by the City against Officer Peele was not in compliance with the City's own policies, practices and customs.

164. The overall process provided by the City and the Commission did not comply with constitutional requirements for the provision of administrative due process and other constitutional rights.

165. The overall process provided by the City and the Commission did not comply with constitutional requirements that Officer Peele was entitled to a fair and proper civil service hearing without tortious interference with witnesses under subpoena.

166. The process employed to terminate Officer Peele was both procedurally and substantively erroneous, unlawful, arbitrary, capricious, unfair and irrational.

167. Defendants' course of actions against Plaintiff were arbitrary, capricious, oppressive, retaliatory, and were premised upon trivial, irrational, and improper reasons due to the facts set forth herein.

168. There was no legitimate governmental purpose or rational basis for Defendants' treatment of Plaintiff.

169. Defendants have not rationally or lawfully applied their personnel policies and procedures.

170. Upon information and belief, the City has not used similar witness harassment and obstruction in other terminations disputes.

171. Defendants selectively enforced and discriminatorily applied their employment policies due to arbitrary and improper classifications and unjustifiable standards, and without a rational basis.

172. Defendants' conduct towards Officer Peele was intentional, willful, negligent, malicious and oppressive. Defendants' conduct was premised upon reckless indifference to Plaintiff's rights.

173. Defendants implemented a gross abuse of government power and unfair procedures against Officer Peele.

### ***INJURIES AND DAMAGES***

174. Defendants issued and disseminated an F-5(b) form to the North Carolina Criminal Justice Education and Training Standards Commission which was defective, incomplete and misleading, thereby causing injury to Officer Peele. This F-5(b) form has caused permanent injury to Officer Peele and stigmatized her and damaged her occupational liberty.

175. The unlawful conduct of Defendants proximately caused Plaintiff to suffer personal and other injuries and deprivations including a chilling effect upon Plaintiff's rights.

176. Defendants' conduct caused Plaintiff to suffer irreparable harm which will continue unless enjoined by this Court. Plaintiff has no adequate remedy at law to redress the deprivation of her rights, therefore injunctive relief is necessary.

177. Defendants' conduct has caused Plaintiff to be unlawfully deprived of the benefits of her employment relationship and her protected legal interests.

178. Defendants' conduct further caused Plaintiff to suffer personal injuries including but not limited to emotional distress, humiliation, embarrassment, loss of future employment prospects, and has permanently and adversely affected Plaintiff's life and career.

179. The attached exhibits are incorporated by reference herein.

180. This action arises exclusively under North Carolina law.

### ***CLAIMS FOR RELIEF***

#### ***FIRST CLAIM FOR RELIEF: UNCONSTITUTIONALITY OF RALEIGH POLICY***

181. Plaintiff incorporates by reference and realleges all allegations herein.

182. The City of Raleigh was without legal authority to supersede or negate the effect of state constitutional, statutory or common law affording legal protections and rights for Officer Peele to protect her life and liberty.

183. The City of Raleigh, through its use of force policy, 1108-1 as amended, intended to restrict the legal rights, including self defense and defense of others, of Raleigh Police Officers including Officer Peele.

184. The City of Raleigh was without legal authority to negate or limit the constitutional, statutory and common law rights of its sworn police officers, including Officer Peele, from exercising their legal rights to self defense, defense of others and for the protection of their lives, liberty and bodily integrity.

185. The General Assembly afforded a legal right and privilege to sworn law enforcement officers to use deadly force as provided in the statute. Officer Peele was authorized by N.C.G.S. 15A-401(d)(2), Article 1, Sections 1, 19, 35 and 36 of the North Carolina Constitution and the North Carolina common law rights to self defense and defense of others to utilize deadly force to protect herself, a bystander and others from the threat of imminent death or serious bodily injury by Nyles Arrington on August 28, 2005.

186. Raleigh Policy 1108-1, as amended and enforced by Defendants, violated Plaintiff's constitutional, common law and statutory rights to self defense, the defense of others, the law enforcement use of force privilege within N.C.G.S. 15A-401(d)(2), and Plaintiff's rights to life, liberty, bodily integrity, due process and equal protection.

187. Raleigh policy 1108-1 as amended is further unconstitutional because it is vague and overbroad as applied to Officer Peele. The City's policy purports to preclude constitutionally protected activities including those necessary for the protection of Officer Peele's life and liberty.

188. Raleigh policy 1101-1 as amended is further unconstitutional as violative of Article 1,

Section 1 of the North Carolina Constitution because, *inter alia*, as applied, it deprives Officer Peele of her occupational liberty.

189. Raleigh Policy 1108-1 as amended is unconstitutional on its face and as applied to Plaintiff herein. Because the policy is unconstitutional, it is void and unenforceable and Defendant's adverse actions against Office Peele based on the alleged policy violation are null and void and must be set aside.

190. Defendant's enforcement of Policy 1108-1 as amended has proximately caused injuries to Officer Peele.

191. Wherefore, this Court should declare Policy 1108-1 as amended unconstitutional and unenforceable against Officer Peele as violative of Article 1, Sections 19, 35 and 36 of the North Carolina Constitution and enjoin Defendants from any use of the unconstitutional policy.

***SECOND CLAIM FOR RELIEF: NORTH CAROLINA  
COMMON LAW WRONGFUL DISCHARGE***

192. Plaintiff incorporates by reference and realleges all allegations herein.

193. Defendants' conduct in terminating Officer Peele contravened established public policies in violation of the North Carolina common law public policy wrongful discharge doctrine thereby causing Plaintiff to be injured.

194. Public policies protect Plaintiff from termination of employment because she invoked her constitutional, statutory and common law rights to self defense, defense of others, the law enforcement privilege to use deadly force, and her constitutional rights to life, liberty and bodily integrity.

195. Public policies protect Officer Peele for law enforcement actions taken by her in her capacity as a sworn law enforcement officer including but not limited to N.C.G.S. 15A-401(d)(2).

196. Public policies protect Plaintiff from retaliation, arbitrariness and disparate treatment.

197. Defendants termination of Officer Peele violated the North Carolina common law wrongful discharge doctrine thereby causing injuries to Officer Peele.

***THIRD CLAIM FOR RELIEF: LAW OF LAND CLAUSE AND ARTICLE ONE SECTION FOURTEEN OF THE NORTH CAROLINA CONSTITUTION***

198. Plaintiff incorporates by reference and realleges all allegations herein.

199. Plaintiff asserts separate claims under the Law of the Land Clause of the North Carolina Constitution and under Article 1, Section 14, premised upon but not limited to each of the following theories. Defendants have engaged in:

- A) intentional and arbitrary treatment without a rational basis,
- B) bad faith misconduct,
- C) a gross abuse of government power,
- D) retaliation for protected activities in protecting Officer Peele's rights to life, liberty and bodily integrity,
- E) fundamentally unfair procedures,
- F) selective enforcement of employment policies,
- G) wholly arbitrary acts including the use of unjustifiable standards and arbitrary classifications, and
- H) retaliation from engaging in protected activity.

200. There is no other sufficient state law remedy that applies to provide Plaintiff an adequate remedy in the context of the applicable coverage of this claim for relief.

201. Defendants have therefore deprived Plaintiff of her rights guaranteed by the Law of the Land Clause and Article 1, sections 1, 14, 19, 35 and 36 of the North Carolina Constitution, thereby causing injuries to Officer Peele.

202. Plaintiff is therefore entitled to constitutional remedies including but not limited to compensatory damages, injunctive and declaratory relief, and a new hearing and review process.

***FOURTH CLAIM FOR RELIEF: DEPRIVATION OF PROCEDURAL DUE PROCESS***

203. Plaintiff incorporates by reference and realleges all allegations herein.

204. Defendants willfully failed to afford Officer Peele any sufficient pre-termination

procedural due process to protect her property and liberty interests.

205. Defendants willfully failed to afford Officer Peele sufficient post-termination procedural due process to protect her property and liberty interests.

206. Defendants willfully impaired Plaintiff's property and liberty interests including her state constitutional rights to procedural due process.

207. There is no other sufficient state law remedy that applies to provide Plaintiff an adequate remedy in the context of the applicable coverage of this claim for relief.

208. Defendants deprived Plaintiff of her rights guaranteed by Article 1, sections 1, 14, 19, 35 and 36 of the North Carolina Constitution, thereby causing injuries to Officer Peele.

209. Plaintiff is therefore entitled to constitutional remedies including but not limited to compensatory damages, injunctive and declaratory relief, and a new hearing and review process.

***FIFTH CLAIM FOR RELIEF: DEPRIVATION OF  
SUBSTANTIVE DUE PROCESS***

210. Plaintiff incorporates by reference and realleges all allegations herein.

211. Defendants' course of conduct including but not limited to Officer Peele's termination was egregious, arbitrary, capricious, retaliatory, and offensive to a sense of justice, thereby depriving Officer Peele of substantive due process.

212. Defendants deprived Plaintiff of her rights guaranteed by Article 1, sections 1, 14, 19, 35 and 36 of the North Carolina Constitution, thereby causing injuries to Officer Peele.

213. There is no other sufficient state law remedy that applies to provide Plaintiff an adequate remedy in the context of the applicable coverage of this claim for relief.

214. Plaintiff is therefore entitled to constitutional remedies including but not limited to compensatory damages, injunctive and declaratory relief, and a new hearing and review process.

***SIXTH CLAIM FOR RELIEF: COMMON LAW OBSTRUCTION OF JUSTICE***

215. Plaintiff incorporates by reference and realleges all allegations herein.

216. Defendants' actions in denying Plaintiff rights under the Raleigh City policies and under

the Civil Service Act obstructed Plaintiff's rights to avail herself of rights, interests and remedies that could have afforded her substantial justice, thereby causing injuries to Officer Peele.

217. Defendants have acted in a manner that obstructed, impeded and hindered public and legal justice.

218. Defendants have engaged in obstruction of legal or public justice in violation of the North Carolina common law doctrine of obstruction of justice, thereby causing injuries to Officer Peele.

***SEVENTH CLAIM FOR RELIEF: COMMON LAW MISREPRESENTATION***

219. Plaintiff incorporates by reference and realleges all allegations herein.

220. Defendants published and represented certain benefits to Officer Peele in Defendants' personnel policies. Officer Peele was induced to rely upon those representations to her detriment, which caused damage to Officer Peele.

221. Defendants willfully misrepresented employment benefits to Officer Peele. Alternatively, Defendants negligently misrepresented employment benefits to Officer Peele, thereby violating Officer Peele's common law rights, and causing injuries to Officer Peele.

***EIGHTH CLAIM FOR RELIEF: BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING***

222. Plaintiff incorporates by reference and realleges all previous allegations.

223. Defendants published and represented certain benefits to Officer Peele in City personnel policies. Officer Peele was induced to rely upon those representations to her detriment, which caused damages to Officer Peele.

224. Defendant failed to act in good faith in its dealings with Officer Peele, and acted in bad faith towards her through its course of conduct directed towards her as described herein, in violation of Officer Peele's rights, and causing injuries to Officer Peele.

***NINTH CLAIM FOR RELIEF: CIVIL CONSPIRACY***

225. Plaintiff realleges and incorporates by reference all allegations herein.

226. Upon information and belief, the Jane Doe and John Doe Defendants acted in concert

with others, with an orchestrated effort to wrongfully interfere with and obstruct Plaintiff's rights to enjoy a fair hearing, to enjoy witnesses free of governmental obstruction and interference, and to harm Officer Peele, in violation of the North Carolina common law prohibiting civil conspiracy, thereby causing injury to Officer Peele.

***TENTH CLAIM FOR RELIEF: UNCONSTITUTIONAL INTERFERENCE WITH PLAINTIFF'S RIGHTS TO ACCESS LEGAL RELIEF***

227. Plaintiff incorporates by reference and realleges all allegations herein.

228. Through its course of actions described herein, the City unlawfully interfered with and obstructed Officer Peele's constitutional rights to fairly access municipal administrative agencies with authority to impose relief and to access North Carolina courts with complete evidence. Among other things, by threatening witnesses with discipline and using intimidating economic based duress and coercion on witnesses, Defendants adversely affected Plaintiff's rights to obtain relief thereby causing injuries to Officer Peele.

229. The Open Courts Clause within the North Carolina Constitution, Article 1, Sections 18 and Sections 1, 14, 19, 35 and 36 of the North Carolina Constitution guarantee Plaintiff's rights to access North Carolina Courts to relief without interference and obstruction by Defendants. Defendants' conduct proximately caused injury to Officer Peele.

***ELEVENTH CLAIM FOR RELIEF: NORTH CAROLINA COMMON LAW GROSS NEGLIGENCE***

230. Plaintiff realleges and incorporates by reference all allegations herein.

231. Defendants' course of conduct was grossly negligent, willful and wanton in violation of the applicable standard of care. Defendants owed Plaintiff a duty of care and a duty of compliance with Defendants' own policies, provisions and procedures. Defendants breached the duty of care owed to Officer Peele and proximately caused her to suffer damages.

232. The conduct complained of deprived Officer Peele of her interests protected by the

North Carolina doctrine of gross negligence, thereby causing injuries to Officer Peele.

**TWELFTH CLAIM FOR RELIEF:  
BREACH OF ENTITLEMENT TO EMPLOYMENT BENEFITS**

233. Plaintiff incorporates by reference and realleges all allegations herein.

234. The City's promissory governmental representations to Officer Peele constitute particular procedural and substantive protections for Officer Peele. The City's long term employment practices provide substantive and procedural protections for Officer Peele including her right to fairly grieve and appeal discipline.

235. The City breached its obligations to afford employment benefits represented to Officer Peele, thereby causing her damages.

***PRAYER FOR RELIEF***

WHEREFORE, Plaintiff prays for the following relief:

- 1) Grant Plaintiff actual or compensatory damages in a substantial sum exceeding \$10,000.00 for violations of law as stated herein; and
- 2) To reinstate Plaintiff to her position, or alternatively to award front pay; and
- 3) For an award of back pay and all lost benefits; and
- 4) For an injunction prohibiting Defendants from maintaining or communicating Plaintiff's Report of Separation, F-5(b) form, and to issue a correct F-5(b) form; and
- 5) For an injunction prohibiting Defendants from adversely treating Plaintiff or from otherwise retaliating against Plaintiff; and
- 6) For an injunction requiring the prohibition of enforcement of City Policy 1108-1 as amended; and
- 7) Retain jurisdiction to assure full compliance with the law; and
- 8) Grant Plaintiff a declaratory judgment adjudging that Defendants' conduct constituted violations of law as stated herein; and that City Policy 1108-1 as amended be declared unconstitutional as violative of Plaintiff's rights under N.C.G.S. 15A-401(d)(2), and her rights to self

defense and defense of others, and her rights to protect her bodily integrity; and

9) Award such other and further relief as may be just and proper; and

10) Plaintiff requests a trial by jury on all issues.

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*J. Michael McGuinness*  
*The McGuinness Law Firm*  
P.O. Box 952  
2034 Highway 701 North  
Elizabethtown, N.C. 28337  
Telephone: (910) 862-7087  
Facsimile (910) 867-8865  
N.C. Bar # 12196  
Counsel for the Plaintiff  
jmichael@mcguinnesslaw.com

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April MacBride  
The Law Office of April V. MacBride  
315 N. Academy Street, Suite 200  
Cary, North Carolina 27513  
P.O. Box 3055  
Cary N.C. 27519  
919-466-9911 Telephone  
919-460-9847 Facsimile  
Co-Counsel for the Plaintiff  
attorneymacbride@aol.com

NORTH CAROLINA

WAKE COUNTY

***VERIFICATION***

Upon being duly sworn, Audrey Michelle Peele, deposes and says: That I am the Plaintiff in the foregoing action; that I have read the allegations contained herein, and that they are true to the best of my knowledge or that they are true based upon information or belief.

\_\_\_\_\_  
Audrey Michelle Peele

Sworn to and subscribed before me this  
\_\_\_\_\_ day of October, 2007.

Notary Public: \_\_\_\_\_

My commission expires: \_\_\_\_\_