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**IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE DEPARTMENT**  
**IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

<p><b>ROBIN HEIDEN, MELODY GRAY and TIFFANY COMMAGERE,</b></p> <p>Plaintiffs,</p> <p>v.</p> <p><b>RICHARD FINDLAY, CHRISTOPHER BURBANK, SALT LAKE CITY POLICE DEPARTMENT, AND SALT LAKE CITY CORPORATION and DOES 1-10,</b></p> <p>Defendants.</p>	<p><b>COMPLAINT</b></p> <p><b>Case No.</b> _____</p> <p><b>Judge</b> _____</p> <p><b>Jury demanded</b></p>
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The plaintiffs, by their attorneys, complain of the defendants and for cause of action alleges as follows:

**INTRODUCTION**

1. Plaintiffs Heiden and Gray are residents of Salt Lake County, Utah. Plaintiff Commagere is a resident of Davis County, Utah. The causes of action arose in Salt Lake County, Utah. Defendant Richard Findlay is believed to be a resident of Davis County, Utah and at all times alleged herein was a Deputy Chief in the Salt Lake City Police Department. Defendant Christopher Burbank was the Chief of Police of Salt Lake City, Utah at all times alleged herein. Defendant Salt Lake City Police Department is a subdivision of Salt Lake City Corporation. Defendant Salt

Lake City Corporation is in Salt Lake County, Utah, and is the employer of Findlay, Burbank, and Does 1 through 10, at the times alleged herein. Does 1 through 10 are individuals or entities residing in or doing business in Salt Lake County, State of Utah.. Plaintiffs will amend their complaint when the identities of these persons and/or entities become known to them through discovery.

2. At all times alleged herein, Ms. Heiden and Ms. Commagere were and are police officers employed by Salt Lake City Corporation. At all times alleged herein, Ms. Gray was a police officer employed by Salt Lake City Corporation.
3. Notice of the claims herein have been given to the governmental entities and employees pursuant to the Governmental Immunity Act.
4. Both Salt Lake City Corporation's Human Resources Department and the Civilian Review Board of the Salt Lake City Police Department have determined that each plaintiff has been sexually harassed.

### **FIRST CAUSE OF ACTION**

#### **Robin Heiden**

5. During or about April, 2011, Deputy Chief Findlay, a superior officer to Ms. Heiden, obtained a telephone without permission that contained a photograph or photographs of Ms. Heiden of a personal nature. He then stole the photographs of Ms. Heiden without her knowledge or consent.
6. During the years of 2011, 2012, and 2013, Findlay showed photographs of Ms.

Heiden to coworkers both in and outside of the police department. He did so without the knowledge of Ms. Heiden.

7. During the same time as Findlay was showing photographs of Ms. Heiden to coworkers, he falsely claimed to police officers, without Ms. Heiden's knowledge, that he was involved in a personal relationship with her. In fact, as her superior officer, he had made personal advances toward her that had been rebuffed.
8. While engaging in this harassment of Ms. Heiden, Findlay sat on boards for the police department in which he acted in ways to deny her promotion from sergeant to lieutenant. He failed to disclose his conflict of interest to Ms. Heiden or the other members of the board. His behavior toward her resulted in a substantial loss of income.
9. An anonymous complaint was made to Chief Burbank and/or Salt Lake City Corporation in February, 2013, notifying him of the behavior of Findlay. No action was ever taken on this complaint. A formal complaint was made by Ms. Gray in April, 2013, as set forth below.
10. In approximately September, 2013, an internal affairs investigation was opened into Findlay's behavior toward Ms. Heiden. The investigation was completed and given to the Chief in November, 2013. Rather than act on the complaint and the results of the investigation, the Chief permitted Findlay to continue to work in the Department in a position that is superior to Ms. Heiden until he retired.
11. No other disciplinary complaints in the tenure of Chief Burbank were handled in this fashion. Burbank has testified under oath in another proceeding that he regards theft, even petty theft, to go to the core of an officer's integrity and is

grounds for termination in every case. Nevertheless, he took no action against Findlay who had stolen property from all of the plaintiffs. The failure to take action includes failure to notify Police Officers Standards and Training of Findlay's conduct, thus allowing him to continue to be certified as a police officer without any discipline from that agency.

12. In January, 2014, the City determined that Findlay had harassed Ms. Heiden, Ms. Gray, and Ms. Commagere. However, no action was taken by the City to rectify the conduct of Findlay. In March and April, 2014, the plaintiffs advised the City that Burbank would never take disciplinary action against Findlay. Findlay was in fact permitted to retire without discipline being imposed.

13. During or about Memorial Day, 2015, the plaintiffs learned that the mayor of Salt Lake City had written a letter in June of 2014 to the then Chief expressing disappointment in his handling of Findlay's behavior. This letter had not previously been made public and was only made public in 2015 after the plaintiffs' complaints had been published by the media.

14. Salt Lake City was well aware of the fact that the Chief had no intention to discipline Findlay as evidenced by the correspondence from the mayor and the plaintiffs' warnings to the City in 2014. Nevertheless, the City took no action against the Chief until the complaints were made public a year later. This caused the plaintiffs to continue to endure the damage to their reputations and physical and emotional health because it appeared that the City condoned Burbank's failure to discipline Findlay in any way. This form of harassment continued up until the present date. Burbank continues to make disparaging

remarks about the plaintiffs and the City has done nothing to correct or respond to his statements.

15. The sexually discriminatory and harassing conduct by Findlay, unpunished and uncorrected, was sufficiently severe and pervasive so as to interfere with Ms. Heiden's physical and emotional health, her reputation, her work performance, and created an intimidating, hostile, offensive work environment. Given his behavior and the lack of corrective action by the Chief, Ms. Heiden was the subject of multiple false rumors of having a relationship with Findlay that did not exist.
16. Such behaviors, uncorrected by the Chief, combined with the rumors, have severely damaged her reputation in the eyes of her coworkers and supervisors.
17. The Chief and Findlay acted as agents for both Salt Lake City Police Department and Salt Lake City Corporation. Their behaviors are attributable to Salt Lake City Corporation. Salt Lake City Corporation was aware of their behaviors and failed to correct them or adequately supervise them, all contributing to Ms. Heiden's damages.

## **SECOND CAUSE OF ACTION**

### **Melody Gray**

18. The plaintiffs incorporate paragraphs 1-17 of the first cause of action as though set forth here.
19. Ms. Gray was a lieutenant in the Salt Lake City Police Department in 2011. In that year, Findlay obtained photographs of her and displayed them in the same fashion as is alleged by Ms. Heiden. The Chief failed to discipline Findlay in the

same fashion as alleged by Ms. Heiden.

20. In January 2012, while in the capacity of her superior officer, Findlay attempted to kiss and otherwise assault Ms. Gray. These actions were rebuffed.

21. During the year of 2012, while Findlay was actively harassing Ms. Gray without her knowledge by showing the photograph(s) he had stolen from her, Findlay sat on an investigation of Ms. Gray for an unrelated matter and recommended termination based on false or misleading information. He did not disclose his conflict of interests based on his harassment of her to Ms. Gray. Ms. Gray then resigned, having never been subject to prior discipline for any reason. Ms. Gray has been employed by a different law enforcement agency at a greatly reduced level of pay.

22. In April, 2013, having learned of the conduct of Findlay, Ms. Gray met with the Chief and told him of Findlay's behavior with the photographs and that she and Ms. Heiden were concerned about retaliation. The Chief promised to "look into it". Again, nothing was done.

23. As with Ms. Heiden, the Chief and the City condoned the harassment of Ms. Gray by failing to see that Findlay was in any way disciplined for his harassment.

24. As with Ms. Heiden, the sexually discriminatory and harassing conduct by Findlay, caused her to suffer damage to her reputation with her present and past coworkers and supervisors. The absence of discipline creates the false impression that Findlay did nothing wrong. His behavior created an intimidating, offensive, and hostile work environment.

25. As with Ms. Heiden, the Police Department and City were aware of these

behaviors or should have been aware of them and did nothing to correct them or adequately supervise either Findlay or Burbank.

26. As has been set forth above, the harassment continues to the present time.

### **THIRD CAUSE OF ACTION**

#### **Tiffany Commagere**

27. The plaintiffs re-allege paragraphs 1-26 of the first two causes of action as though set forth here.

28. During or about June, 2011, Findlay claimed to have a nude photograph of Ms. Commagere that he was displaying to other police officers who were coworkers of Ms. Commagere.

29. Ms. Commagere has not seen this photograph and does not know how Findlay would have obtained a photograph of hers. If he had such a photograph, he had it without her permission and knowledge.

30. Ms. Commagere was made aware of the possible existence of such a photograph in 2013, when called into an internal affairs investigation into what she believed was an unrelated matter.

31. As with Ms. Heiden and Ms. Gray, no action was taken by the Department or the Chief of Police to discipline Findlay for displaying such a photograph or for claiming that such a photograph exists.

32. As with Ms. Heiden and Ms. Gray, Ms. Commagere has suffered damage to her reputation with past and present coworkers from Findlay's sexually discriminating and harassing conduct. His behavior created a hostile, intimidating, and offensive work environment and damaged her ability to advance in the department.

33. Defendant's Salt Lake City Corporation and Salt Lake City Police Department knew or should have known of the behavior of Findlay and Burbank, did nothing to correct them and failed to adequately supervise them.

34. As has been set forth above, the harassment continues to the present time.

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

##### **Civil Rights Violation**

##### **42 USC §1983**

35. The plaintiffs re-allege paragraphs 1-34 of their first three causes of action as though set forth here.

36. The actions of the defendants, and each of them, acting under color of local and state law, deprived the plaintiffs and each of them of their rights under the United States Constitution, including, but not limited to, freedom of speech, freedom of association, the right to privacy, the right to contract, and the right to due process of law.

37. The actions of the defendants, and each of them, were intentional and with clear disregard for the plaintiffs' known statutory and constitutional rights.

38. As a direct and proximate result of the defendants' denial of the plaintiffs' constitutional rights, the plaintiffs, and each of them, have suffered lost salary, lost opportunities for advancement, lost employee benefits, diminished earning capacity, lost career and business opportunities, loss of reputation, humiliation, embarrassment, mental and emotional distress, attorney's fees, court costs and other damages in an amount to be determined at trial.



WHEREFORE, the plaintiffs pray for judgment against the defendants and each of them as follows:

#### FIRST CAUSE OF ACTION

Robin Heiden

1. For damages for emotional pain and suffering and damage to her reputation in an amount to be proven at trial.
2. For special damages for lost income to be proven at trial.
3. For interest on the damages and judgment according to law.
4. For court costs.
5. For trial by jury.
6. For attorney's fees.
7. For such other relief as the Court deems appropriate.

#### SECOND CAUSE OF ACTION

Melody Gray

8. For damages for emotional pain and suffering and damage to her reputation in an amount to be proven at trial.
9. For special damages for lost income to be proven at trial.
10. For attorney's fees.
11. For interest on the damages and judgment according to law.
12. For costs of court.
13. For trial by jury.
14. For such other relief as the Court deems appropriate.

THIRD CAUSE OF ACTION

Tiffany Commagere

15. For damages for emotional pain and suffering and damage to her reputation in an amount to be proven at trial.
16. For special damages for lost income to be proven at trial.
17. For attorney's fees.
18. For costs of court.
19. For trial by jury
20. For such other relief as the Court deems appropriate.

FOURTH CAUSE OF ACTION

21. For appropriate compensatory and special damages to be proven at trial.
22. For an award of reasonable attorney's fees and court costs as provided by 42 USC §1988.
23. For a trial by jury.
24. For such other relief as the Court deems appropriate.

Dated this 4<sup>th</sup> day of September, 2015.

/s/ Edward K. Brass  
EDWARD K. BRASS  
BRASS & CORDOVA