

DeAnne Casperson, Esq. (ISB No. 6698)  
[dcasperson@holdenlegal.com](mailto:dcasperson@holdenlegal.com)  
Amanda E. Ulrich, Esq. (ISB No. 7986)  
[aulrich@holdenlegal.com](mailto:aulrich@holdenlegal.com)  
HOLDEN KIDWELL HAHN & CRAPO, P.L.L.C.  
P.O. Box 50130  
1000 Riverwalk Drive, Suite 200  
Idaho Falls, ID 83405  
Telephone: (208) 523-0620  
Facsimile: (208) 523-9518

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

JOHN WALKER,

Plaintiff,

v.

CITY OF POCA TELLO, a political subdivision  
of the State of Idaho, and SCOTT  
MARCHAND, in his individual and official  
capacity,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

Filing Fee: \$400.00

Plaintiff, John Walker, by and through his counsel of record, Holden, Kidwell, Hahn & Crapo, P.L.L.C., and as a cause of action against Defendants City of Pocatello, a political subdivision of the State of Idaho, and Scott Marchand, in his individual and official capacity, alleges and complains as follows:

**JURISDICTION AND VENUE**

1. This action is brought under the laws of the United States, specifically 42 U.S.C. § 1983, and alleges violations of rights protected by the United States Constitution.
2. The Court has jurisdiction over this matter pursuant to either 28 U.S.C. § 1343(a) (3) or 28 U.S.C. § 1331.

3. That at all material times hereto, Defendants acted under color of the statutes, customs, ordinances and policies of the State of Idaho, and the City of Pocatello Police Department.
4. All Defendants reside in the District of Idaho. The events giving rise to Plaintiff's claim occurred in Bannock County, Idaho.
5. Venue is proper in the Eastern Division of the District of Idaho under 28 U.S.C. § 1391(b) and Local Civil Rule 3.1.

### **PARTIES**

6. Plaintiff, John Walker ("Plaintiff"), is a citizen of the United States of America who was, at all times relevant hereto, a resident of Bannock County, Idaho, living within the City of Pocatello.
7. Defendant City of Pocatello is a political subdivision of the State of Idaho with its principal place of operation located in Pocatello, Idaho.
8. Defendant Scott Marchand ("Marchand") is the Chief of Police for the City of Pocatello, and has and had, at all times relevant to this Complaint, supervisory authority over the City of Pocatello Policy Department and Plaintiff.

### **GENERAL ALLEGATIONS**

9. Plaintiff realleges paragraphs 1 through 8 as though fully incorporated herein.
10. In September 1996, Plaintiff began working for City of Pocatello Police Department ("PPD") as a police officer.
11. Pursuant to Idaho Code § 50-1601 *et seq.* and Pocatello City Code 2.14, PPD is governed by Civil Service Commission rules and requirements.
12. Pursuant to such Civil Service Commission rules, Plaintiff, after his probationary period, could only be "removed, dismissed, suspended without pay, demoted, reduced in rank, or

deprived of vacation benefits or other special privileges subject to the determination of the facts in each case by the Commission” for cause. (Rules VI and XIII of the PPD Civil Service Commission Rules).

13. The Civil Service Commission Rules control if there is a conflict with other City of Pocatello policies.
14. In 2007, Plaintiff was promoted to sergeant as a result of his performance and scoring very well on his civil service testing.
15. Shortly after being promoted, Marchand, who was not Chief of Police at the time, accused Plaintiff of cheating on the test. An internal investigation was conducted, which exonerated Plaintiff from the false allegations of cheating.
16. Along with the promotion to sergeant, Plaintiff was moved to the detective division. As a result of this change, Marchand was assigned to patrol.
17. In mid-2007, Plaintiff was tasked with assisting in an internal investigation involving inappropriate access and sharing of pornography and other sexually inappropriate materials using the City of Pocatello’s computer systems, including involvement by Marchand.
18. As a result of this investigation, Plaintiff was unfairly targeted for criticism by his co-workers who had participated in the inappropriate behavior, including Marchand. Such targeting of Plaintiff was acknowledged by Plaintiff’s supervisors at the time.
19. In July 2010, Plaintiff was promoted to lieutenant. He also was assigned to work in the Office of Homeland Security and Emergency Response by the current Chief of Police, J.R. Miller.
20. In October 2011, Chief Miller resigned due to members of the department pushing him out of the department.

21. Plaintiff supported Chief Miller and voiced that actions being taken by members of the department, including Marchand, to push Chief Miller out were wrong. Marchand claimed Plaintiff was in some type of conspiracy with Chief Miller.
22. After Plaintiff indicated his support for the Chief Miller, he was told by another co-worker that “they were going to see to it that he was no longer employed” at the PPD.
23. Plaintiff reported the threat to his supervisor who wanted to pursue an investigation. However, Plaintiff was concerned that doing so would just bring further retaliation against him.
24. In June 2012, Marchand was selected by Mayor Brian Blad (“Blad”) as the Chief of Police.
25. In June through October 2012, Plaintiff had several conversations with Blad in which Blad told Plaintiff he wanted him to be a new captain. Blad promised Plaintiff would be promoted to captain as long as he passed the promotion test.
26. In September 2012, Plaintiff’s direct supervisor, Captain Capell, discussed whether Plaintiff would apply for captain. When Plaintiff expressed concern that Marchand would never allow him to be captain, his supervisor assured him that he would support whoever was first on the testing.
27. Based on both Blad and Capell’s assertions, Plaintiff applied for captain and placed first in the testing. However, Plaintiff was not selected for captain. Based on information and belief, Marchand refused to support Plaintiff’s selection for captain.
28. Plaintiff discussed the situation with Blad and he suggested that Plaintiff may need to hire an attorney.
29. In September 2012, Marchand assigned Plaintiff back to patrol, taking away his car, office, and regular workday shift.

30. In March 2013, Plaintiff was working as shift commander over patrol. A hostage situation arose in which a perpetrator was forcibly taking a hostage by gun point from a retail location. The perpetrator was shot and killed and no innocent victims or law enforcement personnel were harmed.
31. At a debriefing over the shooting incident, Marchand attempted to criticize Plaintiff's actions and decisions made at the scene. Officers involved strongly defended Plaintiff. Other officers involved reported to Plaintiff that Marchand "had it in" for Plaintiff.
32. An independent investigation team investigated the officers involved and found no misconduct. Plaintiff learned of the outcome of the investigation not from Marchand or his department, but from the news media.
33. In June 2013, Plaintiff was working patrol. He was driving a new patrol car that had videotaping capability.
34. During a break and while off duty, Plaintiff drove to the home of a recently retired police officer because he had been unable to attend his retirement party. Plaintiff engaged in a personal and private conversation with both him and another retired officer.
35. Plaintiff's speech involved matters of a public concern, as they related to actions of the Chief of Police and administration, including but not limited to the following:
  - a. Discussion regarding the existence of a "bud club" within the Police Department, meaning that Marchand protected his "buddies" within the PPD and the impact that has on the PPD operations.
  - b. Conversation about the Police Department using internal investigations for inappropriate reasons.

36. On October 3, 2013, Plaintiff received notice of a due process hearing and that termination of his employment was being considered.
37. Plaintiff was given an opportunity to meet with Marchand to discuss his response to the allegations, but given no opportunity to cross examine any witness or present his testimony to anyone other than Marchand.
38. Plaintiff learned that the Department violated its own policies when it directed employees to review Plaintiff's cruiser videos in order to find a reason to discipline him.
39. On October 29, 2013, Plaintiff was given a written warning in response to the due process hearing. Plaintiff was given no opportunity to appeal the decision because the disciplinary action was only a written reprimand.
40. Marchand is the final policy maker for disciplinary actions within PPD unless such actions are allowed to be reviewed by the Commission.
41. Just a few days later, however, on or about November 7, 2013, Plaintiff was given a performance evaluation. Although Plaintiff had already been disciplined for his actions related to the private conversation that had been videotaped, his supervisor gave him an "unacceptable" rating in one category on his performance evaluation for the very same reasons he was given the written reprimand.
42. Performance evaluations are signed by the direct supervisor, Division Commander, and the Chief of Police, Marchand. Consequently, Marchand was well aware that the consequences of the performance evaluation would be far greater than the written reprimand issued in response to the due process hearing.
43. Marchand serves as the final decisionmaker for adverse employment actions taken by way of a performance evaluation, signing off on all performance evaluations.

44. As a result of the “unacceptable” rating on the performance evaluation related to the videotaped incidence, Plaintiff was excluded from any consideration of promotions without any ability to contest the action or have it investigated and decided by the Commission.
45. Plaintiff would have applied for captain again, but was excluded from consideration by his performance evaluation.
46. Also in the fall of 2013, Plaintiff was accused of not wearing duty gear. Although video evidence clearly showed Plaintiff was wearing his duty gear, Plaintiff was put through an internal investigation. Again, Plaintiff was cleared of any wrongdoing.
47. In March 2014, Plaintiff was falsely accused of secretly recording other employees. Although Plaintiff discussed and explained the issue and thought he it had been resolved, a disciplinary letter was placed in his personnel file.
48. In April 2014, Plaintiff took three weeks off from work as a result of the stress caused by his working environment and the constant efforts to find a reason to terminate his employment.
49. In March 2014, Plaintiff submitted notice of the below claims to Defendants pursuant to Idaho Code § 6-901, *et seq.*, and the Idaho Code § 50-219.

**COUNT ONE**  
**VIOLATION OF 42 U.S.C. § 1983**  
**VIOLATION OF PROCEDURAL DUE PROCESS**

50. Plaintiff realleges paragraphs 1 through 49 as if fully incorporated herein.
51. Plaintiff has a property interest in his employment with PPD.
52. Defendants are persons within the meaning of 42 U.S.C. § 1983.
53. Defendants acted under color of law when they failed to provide Plaintiff procedural due process.

54. By using Plaintiff's performance evaluation to further discipline him for the allegations related to the videotaping incident, Plaintiff had no opportunity to defend himself or raise the adverse employment action of suspending his rights to apply or obtain a promotion for for investigation to the Civil Service Commission.
55. Plaintiff had a right under the Fourteenth Amendment of the United States Constitution to procedural due process related to the adverse action taken because it limited his employment opportunities and earning capacity.
56. Pocatello violated Plaintiff's procedural due process rights by failing to provide an avenue for Plaintiff to contest the adverse employment action of suspension of his promotion rights imposed by the performance evaluation.
57. As a result of the actions and inactions of Defendants, Plaintiff has incurred damages in the form of past and future pay, emotional distress, reduction of his retirement benefits, out of pocket costs, attorney fees, loss of reputation, loss of career track damages, all in amounts to be proven at trial, as well as any equitable remedies available to him.

**COUNT TWO**  
**VIOLATION OF 42 U.S.C. § 1983**  
**VIOLATION OF FREE SPEECH**

58. Plaintiff realleges paragraphs 1 through 57 as if fully incorporated herein.
59. On or about July 13, 2013, Plaintiff engaged in protected speech as a citizen and not as part of his official duties with other members within the jurisdiction of the City of Pocatello.
60. Plaintiff's speech involved matters of a public concern.
61. In response to Plaintiff's speech, Plaintiff was reprimanded with a written warning and given a negative performance evaluation that precluded Plaintiff from any promotions or advancement.

62. Plaintiff's speech was a motivating factor for the adverse employment actions.
63. As a result of the actions and inactions of Defendants, Plaintiff has incurred damages in the form of future pay, emotional distress, reduction of his retirement benefits, out of pocket costs, attorney fees, loss of reputation, loss of career track damages, all in amounts to be proven at trial, as well as any equitable remedies available to Plaintiff.

**ATTORNEY'S FEES**

As a further direct and proximate result of Pocatello's actions or omissions, Plaintiff has been compelled to retain the services of counsel, and has thereby incurred, and will continue to incur, costs and fees, including attorney's fees, which Defendant should be required to pay under Idaho Code §§ 12-117, 12-121, and 42 U.S.C. § 1988(b).

**DEMAND FOR JURY TRIAL**

Plaintiff demands trial by jury as to all issues in this action triable to a jury.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff seeks judgment against Defendants as follows:

1. For compensatory and general damages in an amount as shall be proven at trial, including any equitable remedies available to Plaintiff;
2. For punitive damages where available;
3. For attorney's fees pursuant to statute and for the costs of this lawsuit;
4. For prejudgment interest on all amounts claimed; and
5. For such other and further relief as this Court deems just and proper.

Dated this 21st day of October, 2015.

/s/

\_\_\_\_\_  
DeAnne Casperson  
Holden, Kidwell, Hahn & Crapo, P.L.L.C.