

CIV-171103-CIV-DS1721778-CASEEN-154302



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Complaint and Party information entered



NEW FILE

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
NOV 03 2017

BY Jessica Garcez
JESSICA GARCEZ, DEPUTY

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SAN BERNARDINO**

14 ANTHONY YOAKUM,

15 Plaintiff,

16 vs.

17 CITY OF UPLAND, a Public Entity; UPLAND
18 POLICE DEPARTMENT, a Public Entity;
19 CHIEF BRIAN JOHNSON, individually and in
20 his capacity as Chief of the Upland Police
21 Department; and DOES 1-10, inclusive.

22 Defendants.

Case No.

CIVDS1721778

23 **COMPLAINT FOR DAMAGES AND**
24 **INJUNCTIVE RELIEF**

- 25 1. **Invasion of Privacy**
- 26 2. **Violation of California**
27 **Constitution – Right to Privacy**

28 Plaintiff ANTHONY YOAKUM on behalf of herself, alleges on information and belief and investigation of his counsel as follows:

PARTIES, VENUE AND JURISDICTION

This is a complaint for damages brought by Plaintiff Anthony Yoakum ("PLAINTIFF") against The City of Upland, the Upland Police Department, Chief Brian Johnson and Does 1-10 (collectively referred to as "DEFENDANTS") for Constitutional and common law invasions of privacy. Plaintiff's claims arise from his confidential police officer personnel information being disclosed to third parties outside of the department.

1 1. PLAINTIFF was, at all times relevant, a resident of San Bernardino County.
2 PLAINTIFF was at all relevant times a member of the Upland Police Department, serving as a
3 Captain.

4 2. PLAINTIFF's home address is confidential pursuant to Penal Code §§146e and
5 832.7, and Vehicle Code §1808.4(a)(11).

6 3. DEFENDANT CITY OF UPLAND ("City") is a duly constituted municipal
7 corporation operating under the laws of the State of California. DEFENDANT UPLAND
8 POLICE DEPARTMENT ("Police Department") is a subdivision and agency of the City of
9 Upland. The Police Department is an operating department of the City and charged with the
10 responsibility of providing public safety for the City of Upland.

11 4. DEFENDANT, Brian Johnson (Johnson), was at all times relevant the Police
12 Chief for the Upland Police Department. In doing the things alleged herein, Johnson acted under
13 the color of state law, within the course and scope of his employment, and as an official policy-
14 maker for the City. As a department head, Johnson is vested with policy-making authority over
15 actions such as the ones at issue in this complaint.

16 5. DEFENDANT DOES 1 through 10, ("DOES") inclusive, are not known or
17 identified at this time. On information and belief, PLAINTIFFS allege that each DOE is in some
18 manner responsible for the wrongs alleged herein, and that each such defendant advised,
19 encouraged, participated in, ratified, directed or conspired to do, the wrongful acts alleged
20 herein. When the true names and capacities of said defendants become known, plaintiffs will
21 seek relief to amend this Complaint to show their true identities in place of their fictitious names
22 as DOES 1 through 10.

23 6. Each and all of the acts of the DEFENDANTS as alleged herein were done by
24 DEFENDANTS, their agents, servants, and employees, and each of them as individuals and
25 under the color and pretense of the statutes, ordinances, regulations, customs and usages of the
26 State of California, and under the authority of their employment with full knowledge and
27 approval of their superiors as agents. DEFENDANTS are jointly and severally liable for the
28 injuries and damages sustained by PLAINTIFF.

1 7. All claims asserted herein arose in San Bernardino County, California and
2 therefor this court has jurisdiction over all DEFENDANTS and causes of action.

3 8. Venue is proper in this court insofar as DEFENDANTS regularly conduct
4 business in the County of San Bernardino. Venue is further proper in this court insofar as the
5 wrongful acts injury and transactions occurred predominantly in the County of San Bernardino,
6 State of California.

7 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

8 9. All necessary prerequisites to suit have been met. On April 20, 2017, PLAINTIFF
9 filed a claim for damages with the City. On or about May 4, 2017, the City notified Plaintiff that
10 that it had rejected his claim.

11 **FACTS COMMON TO ALL COUNTS**

12 10. DEFENDANT Chief Johnson proposed placing PLAINTIFF, Upland Police
13 Captain Anthony Yoakum, on a compulsory 90-day performance improvement contract based on
14 false and pretextual allegations of poor work performance and misconduct on or about March 13,
15 2017. On or about March 23, 2017, PLAINTIFF had a meeting to discuss this proposed
16 performance improvement contract at which time it was determined that it would be held in
17 abeyance.

18 11. The Performance Improvement Contract, conceived by DEFENDANT Johnson,
19 required PLAINTIFF, among other things, to observe police Captains from surrounding
20 agencies. On or about March 23, 2017, during a meeting attended by Chief Johnson, Human
21 resources and PLAINTIFF's representative, PLAINTIFF became informed that Chief Johnson
22 discussed information regarding his contract and other confidential peace officer personnel
23 information with at least three Chiefs of Police from other police departments, including the
24 Ontario Police Department, Chino Police Department and Pomona Police Department.

25 12. PLAINTIFF is further informed and believes and thereon alleges that in addition
26 to disclosing confidential and private information to these individuals, DEFENDANT Johnson
27 also made false negative statements regarding PLAINTIFF's ability to perform the duties of a
28 Police Captain. PLAINTIFF is informed and believes that the Chiefs of Police to whom Johnson

1 revealed his private and confidential personnel information, and to whom he made false and
2 damaging statements, are not agents or employees of the Upland Police Department, nor
3 authorized for any other reason to access his peace officer personnel information.

4 13. PLAINTIFF, a peace officer, was not asked if he would consent to the release of
5 his confidential information, nor did he affirmatively provide such consent. PLAINTIFF is
6 informed and believes and thereon alleges that none of the recipients who were provided his
7 confidential peace officer personnel information obtained that information by following the
8 procedures set forth in Evidence Code Sections 1040, 1043 and 1045. Further, PLAINTIFF is
9 informed and believes that no such request for confidential peace officer personnel records was
10 made.

11 14. Based on information and belief, DEFENDANT Johnson provided PLAINTIFF'S
12 confidential personnel records to persons unconnected to the Department in violation of Penal
13 Code Section 832.7 and Plaintiff 's right to privacy as the same is protected by both the
14 California and Federal Constitutions, in addition to statute and common law. PLAINTIFF is
15 informed and believes that there was no lawful or reasonable justification for the release of his
16 confidential personnel information to persons employed outside the Department. And
17 PLAINTIFF reasonably expected that no such disclosure would be made.

18 15. PLAINTIFF further is informed and believes and thereon alleges that Johnson
19 maliciously provided negative statements regarding PLAINTIFF'S work performance and
20 allegations of misconduct to the Chiefs from surrounding departments.

21 16. PLAINTIFF believes and is informed that the actions of DEFENDANTS as
22 described herein were malicious, fraudulent, and/or oppressive and done with a willful and
23 conscious design to injure PLAINTIFF and with a blatant disregard for PLAINTIFF's rights.
24 DEFENDANTS, and each of them and/or their agents/employees, supervised, authorized,
25 condoned and ratified the unlawful conduct of each other.

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1 **FIRST CAUSE OF ACTION**

2 ***Invasion of Privacy- (Against All Defendants)***

3 17. PLAINTIFF restates and incorporates by this reference each and every
4 allegation contained in the preceding paragraphs of this Complaint as though set forth
5 herein.

6 18. At all times herein relevant, PLAINTIFF had a right to be free from
7 intrusion into his private affairs, which includes his confidential peace officer personnel
8 information. DEFENDANTS intruded into that right by disclosing false information from
9 PLAINTIFF'S personnel file that injured PLAINTIFF'S reputation. DEFENDANTS had
10 no lawful or reasonable justification or authority to disclose PLAINTIFF'S confidential
11 personnel information to persons outside the Department, and the City.

12 19. As a direct and proximate result of defendants' unlawful conduct,
13 PLAINTIFF has suffered and will continue to suffer severe physical and mental distress,
14 humiliation, embarrassment, anxiety, loss of earnings, loss of other employment benefits,
15 medical expenses, lack of professional opportunities and advancement, and other general
16 and special damages in an amount to be proven at trial.

17 20. The conduct of defendant Johnson and Does 1 through 10, and each of
18 them and/or their agents/employees, as described herein was malicious, fraudulent, and/or
19 oppressive and done with a willful and conscious disregard for PLAINTIFF'S rights
20 and for the deleterious consequences of DEFENDANTS' actions. DEFENDANTS, and
21 each of them and/or their agents/employees, supervised, authorized, condoned and
22 ratified the unlawful conduct of each other. Consequently, PLAINTIFF is entitled to
23 punitive damages against each of said DEFENDANTS. Unless and until defendants'
24 unlawful policies and practices as alleged herein are enjoined and restrained by order of
25 this court, defendants will continue to cause great and irreparable injury to PLAINTIFF.
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1 **SECOND CAUSE OF ACTION**

2 ***Violation of the California Constitution- Right to Privacy (Article I)- (Against all Defendants)***

3 21. PLAINTIFF restates and incorporates by this reference each and every allegation
4 contained in the preceding paragraphs of this Complaint as though set forth herein.

5 22. PLAINTIFF maintained at all times relevant to this action, a specific, legally
6 protected privacy interest. That interest is to be free from unwarranted intrusion into
7 PLAINTIFF'S life. PLAINTIFF has a reasonable expectation that his confidential peace officer
8 personnel information would not be disclosed to surrounding police agencies absent any
9 reasonable or lawful justification, and without following any required procedures. PLAINTIFF
10 has a right to avoid disclosure of confidential personal information, and to be free from invasions
11 of said right. PLAINTIFF'S rights were violated when DEFENDANTS released false and
12 confidential information from his personnel file to persons not associated with the Department.

13 23. Release of confidential, privileged and false information regarding Plaintiff's
14 employment and his professional capabilities constitutes significant and serious intrusion into
15 one's private life.

16 24. PLAINTIFF has at all times relevant to this action conducted himself in a manner
17 consistent with an actual expectation of said interests.

18 25. The DEFENDANTS conduct, in doing everything they had been alleged to have
19 done, constitutes an egregious breach of social norms underlying the said interests and is a
20 serious invasion.

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, PLAINTIFF prays for relief as follows:

- 23 1. For general, compensatory, and special damages in amounts according to proof;
- 24 2. For punitive damages in amounts according to proof against JOHNSON only;
- 25 3. Injunctive relief ordering DEFENDANTS:
 - 26 a. To expunge any false negative personnel documents provided by
 - 27 DEFENDANTS relating to the adverse actions that are the subject of this
 - 28 action; and

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1 b. To take any and all necessary and reasonable steps to remove the stigma and
2 negative perception of YOAKAM;

3 4. For attorneys' fees as provided by law;

4 5. For prejudgment, post-judgment and other interest as provided by law;

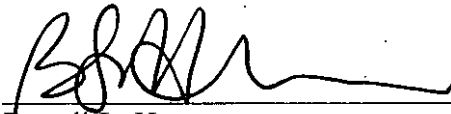
5 6. For cost of suit incurred herein; and

6 7. For such other and further relief as the Court deems fair and just.

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11 Dated: November 3, 2017

Respectfully submitted,

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13 CASTILLO HARPER, APC

14 

15 Brandi L. Harper

16 Joseph N. Bolander

17 *Attorneys for Plaintiff*

18 ANTHONY YOAKUM

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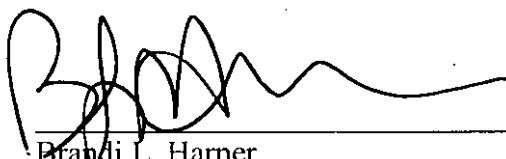
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DEMAND FOR TRIAL BY JURY

PLAINTIFF hereby demands a trial by jury.

Dated: *November 3 2017* Respectfully submitted,

CASTILLO HARPER, APC



Brandi L. Harper
Joseph N. Bolander
Attorneys for PLAINTIFF
ANTHONY YOAKUM