

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

2014 TERM

CASE NO. 2013-0885

CITY OF KEENE

v.

JAMES CLEAVELAND, GARRETT EAN, KATE AGER,  
IAN BERNARD A/K/A IAN FREEMAN,  
GRAHAM COLSON, AND PETE EYRE

ON APPEAL FROM FINAL ORDER OF THE  
CHESHIRE COUNTY SUPERIOR COURT

APPENDIX TO BRIEF ON BEHALF OF APPELLANT

Counsel for Appellant:

Charles P. Bauer, Esq. (#208)  
Robert J. Diemel, Esq. (#19540)  
GALLAGHER, CALLAHAN & GARTRELL,  
Professional Corporation  
P.O. Box 1415  
Concord, NH 03302-1415  
(603) 228-1181

**APPENDIX TABLE OF CONTENTS**

<b><u>DOCUMENT</u></b>	<b><u>PAGE(S)</u></b>
City's Verified Petition for Preliminary and Permanent Injunctive Relief.....	Appendix 1-32
City's Motion to Clarify/Amend Petition (pages 33-38) and City's Clarified/Amended Verified Petition for Preliminary and Permanent Injunctive Relief (pages 39-51).....	Appendix 33-51
City's Complaint.....	Appendix 52-59

1. The City of Keene ("City") contractually employs three (3) Parking Enforcement Officers (collectively PEOs), who are also members of the Keene City Employees Union, AFT-NH Local #6288, and who are tasked with enforcing motor vehicle parking laws and regulations by patrolling City streets. The PEOs have no arrest powers. They are primarily responsible for checking parking meters and writing parking tickets in and

**INTRODUCTION**

In support of this Petition, Petitioner states as follows:  
Keene, New Hampshire; and Pete Eyre, of 29 North Lincoln Street, Keene, New Hampshire.  
Freeman, of 73 Leverett Street, Keene, New Hampshire; Graham Colson, of 34 Walnut Street,  
New Hampshire; Kate Ager, of 6 Mystic Place, Keene, New Hampshire; Ian Bernard a/k/a Ian  
Washington Street, Apt. 9, Keene, New Hampshire; Garrett Ean of 73 Leverett Street, Keene,  
Preliminary and Permanent Injunctive Relief against Respondents James Cleaveland, of 173  
Hampshire, by its attorney, Thomas P. Mullins, Esq., and respectfully petitions the Court for  
NOW COMES Petitioner, the City of Keene, of 3 Washington Street, Keene, New

**VERIFIED PETITION FOR PRELIMINARY  
AND PERMANENT INJUNCTIVE RELIEF**

JAMES CLEAVELAND  
GARRETT EAN  
KATE AGER  
IAN BERNARD A/K/A IAN FREEMAN  
GRAHAM COLSON  
PETE EYRE

vs.

CITY OF KEENE

SUPERIOR COURT

CHESHIRE, SS.

STATE OF NEW HAMPSHIRE

around the downtown area. The PEOs are identified as Linda A. Desruisseaux ("Desruisseaux"), Alan E. Givetz ("Givetz") and Jane E. McDermott ("McDermott").

2. Beginning in or around December 2012, and continuing through the date of the filing of this Petition, Respondents have regularly, repeatedly, and intentionally taunted, interfered with, harassed, and intimidated the PEOs in the performance of their employment duties by following, surrounding, touching or nearly touching, and otherwise taunting and harassing the PEOs in groups of one, two, or more; communicating with the PEOs in taunting and intimidating manners; and video recording the PEOs at very close proximity as they perform their duties. This activity is injurious to the PEOs and the PEOs' continued employment relationships with the City.

3. Through this Petition, Petitioner seeks preliminary and permanent injunctive relief from the Court ordering Respondents to not interfere, harass, or intimidate the PEOs, and to remain at a distance of not less than fifty (50) feet (a "safety zone") from the PEOs, during the performance of their employment duties for the City.

4. Importantly, Petitioner does not seek an Order to prevent Respondents from exercising their constitutional rights to video record the PEOs from a comfortable remove or otherwise to express their opinion; rather, Petitioner seeks only to prevent Respondents from taunting, interfering with, harassing, and intimidating the PEOs by establishing a safety zone between the PEOs and Respondents while the PEOs are performing their duties.

PARTIES

5. Petitioner, City of Keene, is a New Hampshire municipal corporation with a principal place of business located at 3 Washington Street, Keene, New Hampshire.

14. In furtherance of the above-described parking regulatory scheme, the City has adopted ordinances regulating public parking and employs three (3) PEOs to enforce the enforcement ordinances under RSA 231:132-a.

13. The City has been granted extensive authority by the State of New Hampshire to regulate and enforce public parking in the City under RSA 47:17, XVIII, including but not limited to the installation of parking meters under RSA 231:130, and the adoption of parking

**FACTS**

498:1. Venue is appropriate because Petitioner is located in Cheshire County.

12. This Court has jurisdiction over this matter pursuant to RSA 491:7 and RSA

**JURISDICTION**

Keene, New Hampshire.

11. Respondent, Pete Eyre, is an individual who resides at 29 North Lincoln Street,

Keene, New Hampshire.

10. Respondent, Graham Colson, is an individual who resides at 34 Walnut Street,

Keene, New Hampshire.

9. Respondent, Ian Bernard, is an individual who resides at 73 Leverett Street,

New Hampshire.

8. Respondent, Kate Ager, is an individual who resides at 6 Mystic Place, Keene,

Keene, New Hampshire

7. Respondent, Garrett Ean, is an individual who resides at 73 Leverett Street,

Washington Street, Apt. 9, Keene, New Hampshire.

6. Respondent, James Cleaveland, is an individual who resides at 173

City's parking laws and regulations, among other duties. See Parking Enforcement Officer

Job Description attached hereto as Attachment A.

15. Since December 2012, and continuing through the date of the filing of this Petition, Respondents have intentionally taunted, interfered with, harassed, and intimidated the PEOs by closely following them on foot and in automobiles in groups of one, two or more<sup>1</sup>, often with video camera equipment and coordinating their activities using radio communication. To relay each separate instance of interference would be prohibitively time consuming; rather, Petitioner provides the following examples of Respondents' activity:

A. PEO Givetz has been crowded, bumped into, and taunted by the Respondents, including profanities and derogatory statements relative to his military service. In addition, PEO Givetz has also been followed and harassed on his day off and through the Internet, all in an effort to intimidate and interfere with his employment relationship with the City. See Affidavit of PEO Givetz attached hereto as Attachment B, and incorporated herein by reference.

B. PEO McDermott has been pursued and crowded by groups of seven or eight, bumped into, grabbed by Respondent Colson, and repeatedly taunted and encouraged to find alternative employment. In addition, as a result of the Respondents' harassing behavior, PEO McDermott has had to alter her work duties, to the detriment of the City. See Affidavit

---

<sup>1</sup> Frequently, as the video examples will illustrate, a single PEO will be surrounded by four or more Respondents while that PEO performs his/her job duties for Petitioner.

of PEO McDermott attached hereto as Attachment C, and incorporated herein by reference.

C. PEO Desruisseaux has been harassed, intimidated, and video recorded on a regular basis since December 2012. In addition, Respondents frequently run up behind PEO Desruisseaux very quickly, startling her and making it difficult for her to concentrate on her job and her personal safety. See Affidavit of PEO Desruisseaux attached hereto as Attachment D, and incorporated herein by reference.

16. As the above examples illustrate, Respondents frequently and constantly follow, taunt, interfere with, harass, and intimidate the PEOs' during the performance of their duties.

17. In addition, Respondents repeatedly tell the PEOs to terminate their employment relationship with the City, going as far as offering to assist the PEOs in finding alternative employment. See Affidavits of PEOs Givet, McDermott, and Desruisseaux.

18. PEO Givet has considered resigning from his position citing the adverse working conditions created by Respondents' incessant actions during the performance of his job duties, and which have resulted in adverse physical effects due to the stress and anxiety caused by Respondents. See Affidavit of PEO Givet.

19. In addition, PEO McDermott fears for her job security, as the Respondents have stated an intention to shut down the City's parking department. See Kyle Jarvis, *City Investigating 'Harassing Behavior' Toward Parking Officers*, *The Keene Sentinel*, April 11, 2013, attached hereto as Attachment E.

20. At various times, PEOs Givez, McDermott, and Desruisseaux have felt intimidated and harassed and have been unable to perform their job duties. See Affidavits of PEOs Givez, McDermott, and Desruisseaux.

21. Respondent Colson has stated that both he and other participants are being paid to conduct the complained of activity, with the purpose and intention of preventing the PEOs from doing their jobs. See Affidavits of PEOs Givez, McDermott, and Desruisseaux.

22. Respondents, in conducting the above-described activity, place the PEOs and the public in danger, both by their distracting behavior and also as a result of their disregard for rules of the road. See Affidavits of PEO Givez, McDermott, and Desruisseaux.

23. Further, the within described activity agitates the public, often creating hostile exchanges between members of the public and Respondents that place the PEOs, the public, and the Respondents in danger. Specifically, on one occasion PEO McDermott was witness to a physical altercation between Respondent Cleaveland and a member of the public. See Affidavit of PEO McDermott.

24. Upon hearing, the City will provide the Court with further video evidence depicting multiple instances of the above-described conduct.

**TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS**

Petitioner incorporates by reference the allegations of Paragraphs 1 through 24, above.

25. Intentional interference with contractual relations may be shown, where: "(1) the plaintiff had an economic relationship with a third party; (2) the defendant knew of this relationship; (3) the defendant intentionally and improperly interfered with this relationship; and (4) the plaintiff was damaged by such interference." *Hughes v. New Hampshire Div. of*



*Aeronautics*, 152 N.H. 30, 39 – 41 (2005) quoting *Demetracopoulos v. Wilson*, 138 N.H. 371, 373 – 74 (1994).

26. Petitioner maintains an economic employment relationship with PEOs Givetz, McDermott, and Desruisseaux, providing salary and benefits in exchange for the PEOs' satisfactory performance of their employment duties.

27. PEOs wear distinctive uniforms to inform the public of their status as City employees and parking enforcement personnel. Respondents are aware of the PEOs' economic employment relationship with the City of Keene and of the employment duties the PEOs are required to perform.

28. Respondents intentionally and improperly interfere with this economic employment relationship and with the PEOs' ability to perform their employment duties by following, communicating with, taunting, intimidating, harassing, and video recording PEOs at close proximity. Respondents frequently follow and surround individual PEOs in groups of one, two, or more, an inherently intimidating act. See Affidavits of PEOs Givetz, McDermott, and Desruisseaux.

29. PEOs have expressed anxiety and distress caused by Respondents' behavior. PEOs have expressly requested, on multiple occasions, that Respondents stop their interference and intimidation. See Affidavits of PEOs Givetz, McDermott, and Desruisseaux.

30. Petitioner has suffered and will continue to suffer harm due to the PEOs' inability to perform their job duties effectively because of the interference of Respondents. See Restatement (Second) of Torts, § 766 (1977); see also *Donovan v. Digital Equip. Corp.*, 883 F. Supp. 775 (1994); *Montrone v. Maxfield*, 122 N.H. 724, 726 (1982).

33. The granting of an injunction is within the sound discretion of the Court exercised upon a consideration of all the circumstances of each case and controlled by established principles of equity. *Unifirst Corp. v. City of Nashua*, 130 N.H. 11, 14 (1987) (citation omitted). An injunction will issue where the petitioner establishes: (1) that it has no adequate remedy at law; (2) that it will suffer immediate irreparable harm if the injunction is denied; (3) that, in the absence of injunctive relief, the hardship to the petitioner will be greater than that suffered by the respondent should an injunction be issued; (4) that there is a likelihood of success on the merits and, (5) that the public interest will not be adversely affected should an injunction be issued. See *Unifirst Corp.*, 130 N.H. at 13-14 (citations omitted); see also *Thompson v. N.H. Bd. of Med.*, 143 N.H. 107, 108 (1998); 4 R. WIEBUSCH, NEW HAMPSHIRE PRACTICE, CIVIL PRACTICE AND PROCEDURE §§ 19.05, 19.15(a) (1997).

PRELIMINARY AND PERMANENT INJUNCTION

31. Without injunctive relief, the PEOs will continue to suffer anxiety and distress and may suffer further damage by way of voluntary resignations by one or more PEOs for damages by way of the inability of the PEOs to properly perform their assigned job duties, caused by Respondents' behavior. Without injunctive relief, Petitioner will continue to suffer intolerable working conditions caused by Respondents' intentional harassing behavior.

32. Based on knowledge and belief, Respondents do not intend to suspend their activities. Respondents are publicly advertising the opportunity for others to participate in this harassing activity to occur the weekend of November 1<sup>st</sup> - 3<sup>rd</sup>, 2013. See Keenevention advertisement dated April 23, 2013, attached hereto as Attachment F.

37. Petitioner has no adequate alternate remedy at law to prevent the ongoing interference, harassment, taunting, and intimidation of the PEOs. A preliminary and permanent injunction will prevent further interference with and intimidation of the PEOs, preserve the parties' economic relationship, and preserve Petitioner's statutory authority to regulate public parking.

36. The loss of the PEOs would cause considerable damage to the City of Keene, forcing it to hire and train new PEOs – a time-consuming and money-intensive prospect. Such damage is irreparable and cannot be adequately compensated by money damages. In addition, it is possible, and likely probable, that the City may not be able to replace the PEOs if Respondents' actions are allowed to continue, and the City would not be able to fulfill its statutory authority with respect to public parking. This is precisely the damage that the Respondents seek to cause.

35. There is an immediate and ongoing danger of irreparable harm. Respondents have repeatedly video recorded, interfered with, taunted, and intimidated PEOs during the performance of their employment duties. All of the PEOs have expressed distress and anxiety caused by Respondents' actions, altered their approach to their duties, and at least one PEO has threatened to voluntarily terminate employment with the City of Keene. Should Respondents' actions be allowed to continue, the Petitioner is damaged by the inability of the PEOs to properly perform their duties, and is in danger of losing its PEOs.

34. Petitioner is likely to succeed on the merits. Respondents have no legal authority to taunt, interfere with, harass, and intimidate the PEOs in the performance of their employment duties, or legal authority to intentionally interfere with the employment relationship among Petitioner and the PEOs.

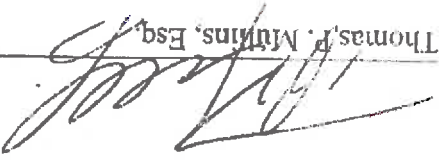
38. The sole purpose of the preliminary and permanent injunctive relief is to

preserve the City's ability to maintain its economic relationship with its PEO workforce, maintain its authority to regulate public parking, and continue collecting parking revenue necessary to provide adequate public parking. Petitioner does not seek to limit Respondents' right to express their opinion or otherwise restrict the exercise of Respondents' constitutional rights.

39. Preliminary injunctive relief is required because Respondents would likely accelerate their efforts to interfere with, taunt, and intimidate the PEOs prior to this Court hearing the merits of the matter, greatly increasing the immediate risk of the loss of employment of one or more of the PEOs.

WHEREFORE, Petitioner respectfully requests that this Court:

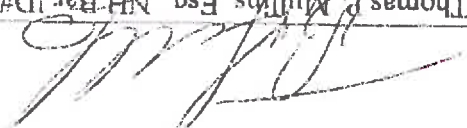
- A. Issue appropriate Orders of Notice for service upon the Respondents;
- B. Schedule a hearing on the within Petition and request for preliminary and permanent injunction;
- C. After hearing, issue a preliminary injunction restraining Respondents, or anyone under their direction, supervision, employment, or control, from coming within a safety zone of fifty (50) feet of any PEO while that PEO is on duty performing his or her employment duties as required by the City of Keene;
- D. Issue a preliminary injunction restraining Respondents, or anyone under their direction, supervision, employment, or control, from video recording, within a safety zone of fifty (50) feet, any PEO while that PEO is on duty performing his or her employment duties as required by the City of Keene;

Thomas P. Mullins, Esq.  


I, Thomas P. Mullins, Esquire, counsel for the City of Keene, state that the foregoing Petition, based upon the Affidavits attached hereto, is true and correct to the best of my knowledge.

- I. Grant such other and further relief as is just and equitable.
  
- H. Enter a permanent Order restraining Respondents, or anyone under their direction, supervision, employment or control, from communicating with any PEO in a manner which seeks to taunt, harass, or intimidate while that PEO is on duty performing his or her job duties as required by the City of Keene;
  
- G. Enter a permanent Order restraining Respondents, or anyone under their direction, supervision, employment or control, from video recording, within a safety zone of fifty (50) feet, any PEO while that PEO is on duty performing his or her employment duties as required by the City of Keene;
  
- F. Enter a permanent Order restraining Respondents, or anyone under their direction, supervision, employment or control, from coming within a safety zone of fifty (50) feet of any PEO while that PEO is on duty performing his or her employment duties as required by the City of Keene;
  
- E. Issue a preliminary injunction temporarily restraining Respondents, or anyone under their direction, supervision, employment or control, from communicating with any PEO in a manner which seeks to taunt, harass, or intimidate the PEO while that PEO is on duty performing his or her employment duties as required by the City of Keene;

Thomas P. Mullins, Esq., NH Bar ID# 7919  
3 Washington Street  
Keene, NH 03431  
(603) 357-9806




Respectfully submitted,  
CITY OF KEENE  
By Its Attorney

Dated: 5/1/13

ATTACHMENT A  
PARKING ENFORCEMENT OFFICER  
JOB DESCRIPTION

**SUMMARY**  
This position requires a person of varied skills, an ability to lift heavy objects, walk distances, relate with the general public and other City departments, as well as operate specialized equipment. Officers shall patrol the metered and timed parking districts enforcing the City ordinances and noting and reporting unusual incidents and persons who may be involved in criminal acts. A Parking Enforcement Officer may be required to perform any or all of the below listed tasks or any combination of tasks assigned.

- Patrol the parking district, on foot or by vehicle in an irregular pattern, issuing tickets for all violations of the City Parking Ordinance;
- Note habitual violators, problem areas, and needs for revised procedures and to report same to supervisors;
- Submit reports as required;
- Prepare notices or summonses for unpaid parking violations;
- Appear in court to testify if required;
- Collect tickets from payment boxes, verifying proper payment, and remit fines to the Finance Department, Revenue Collection Office;
- Operate the SPOTS terminal, City and Departmental computer, and typewriters as required;
- Converse with the public when necessary to effectively resolve questions concerning violation notices;
- Collect coins from meters when required;
- Chalk tires to determine if violations of timed section exist;
- Maintain physical dexterity and strength to walk long distances in all types of weather;
- Coordinate efforts with other members of the Department so that teamwork may ensure continuity of purpose and maximum achievement of police objectives;
- Assist citizens requesting assistance or information;
- Courteously explain any instance where jurisdiction does not lie with the Police Department and suggest other procedures to be followed;
- Constantly direct his or her best efforts to accomplishing tasks assigned to him or her which end intelligently and efficiently;
- Hold him- or herself in readiness at all times to answer the calls assigned and obey the orders of his or her supervisor;
- Not loiter in or about the police station while on duty;
- Not leave his or her zone during the tour of duty except with the permission of his or her supervisor;
- Upon urgent police business requiring his or her immediate attention, or when directed to do so by the Dispatcher when the need arises to assist;

Job Title: Parking Enforcement Officer  
 Department: Police  
 Reports To: Parking Operations Manager  
 Salary Grade: S-7  
 Union Status: NHFT/KCE bargaining unit  
 PISA Status: Non-exempt  
 Revision Date: April 30, 2013  
 Approval Date: 4/30/13  
 Approved By: 



ADDITIONAL DUTIES AND RESPONSIBILITIES

None.

CUSTOMERS

City of Keene employees, the public.

CROSS TRAINING

None required.

SUPERVISORY RESPONSIBILITIES

None.

- Report to the Dispatcher all dead animals found upon public property and on public ways;
- Take whatever life-saving measures are necessary to prolong the life of any victim of an accident, injury, or assault and to continue such efforts until proper medical assistance is available;
- Maintain security of the office and building by ensuring all doors, windows, and safes are closed and secured; all electrically-operated office machines that require power shut downs are shut off at the end of the day; and all applicable alarms are engaged;
- Take corrective measures in hazardous or unsafe conditions, and report such incidents that are outside his or her control to the appropriate authority;
- Minimize the liability of the City to this end: shall correct or report any hazards or deficiencies in City buildings, equipment, or rights-of-way;
- Maintain office, equipment, vehicle, and uniform in neat and orderly condition;
- Aid individuals who are in danger of physical harm and provide other services on an emergency basis;
- Perform any other public safety duties assigned;
- Perform meter maintenance functions under the supervision of the Parking Enforcement Technician:
  - a) Repair any meter found to be defective;
  - b) Collect coins biweekly and transmit to bank;
  - c) Install or remove meters;
  - d) Drill out bad locks;
  - e) Report posts in need of repair;
  - f) Clean, paint, or repair meter housings.
- Interpret and comprehend legal and non-legal documents, including preparation and processing of documents and reports, including sketches, using appropriate grammar, symbols, and mathematical computations to include filing, alphabetizing, and labeling;
- Communicate effectively, practically, and coherently with other individuals using existing communications systems;
- Perform prisoner searches on arrestees of the same sex, when required, which may involve feeling and detecting objects;
- Conduct visual and audio surveillance operations for extended periods of time;
- Effectively communicate with dissimilar segments of the public, including juveniles, furnishing appropriate information and directions and exhibiting efficacious and professional communication skills in other formal settings;
- Endure verbal and mental abuse when confronted with the hostile views and opinions of the public and other individuals often encountered in an antagonistic environment;
- Have the physical and mental capabilities to read and decipher complex written, oral, and graphic data in a short period of time in an effort to effect a course of action that will lead to the resolution of a number of varied situations.

## QUALIFICATIONS

### EDUCATION AND/OR EXPERIENCE

High school diploma or general education degree (GED).

### LANGUAGE SKILLS

Ability to read and comprehend simple instructions, short correspondence, and memos. Ability to write simple correspondence. Ability to present information effectively in one-on-one and small group situations to customers, clients, and other employees of the organization.

### COMPUTER SKILLS

Basic familiarity.

### MATHEMATICAL SKILLS

Ability to add and subtract two digit numbers and to multiply and divide with 10's and 100's. Ability to perform these operations using units of American money and weight measurement, volume, and distance.

### REASONING ABILITY

Ability to apply common sense understanding to carry out detailed but uninvolved written or oral instructions. Ability to deal with problems involving a few concrete variables in standardized situations.

### CERTIFICATES, LICENSES, REGISTRATIONS

Valid driver's license.

### PHYSICAL DEMANDS

The employee is regularly required to walk; use hands to finger, handle, or feel; and reach with hands and arms. The employee is occasionally required to stand; stoop, kneel, crouch, or crawl; and talk or hear. The employee will frequently lift and/or move up to 60 pounds. Specific vision abilities include distance vision.

### WORK ENVIRONMENT

The noise level is moderate to loud. This position frequently involves work in outdoor weather conditions and near to moving road traffic. There is frequent exposure to fumes or airborne particles, vehicle exhaust in particular. Outdoor weather conditions vary depending on the season.

ATTACHMENT B  
AFFIDAVIT  
ALAN E. GIVETZ

APPENDIX 18

I, Alan E. Givetz, being duly sworn, depose and say:

1. I am employed as a Parking Enforcement Officer ("PEO") for the City of Keene, New Hampshire ("City"), a position I have held since September 9, 2012.

2. I am a part-time employee of the City, working about thirty-four (34) hours a week. My schedule is Monday through Thursday, 9:00 A.M. to 5:30 P.M.

3. When I first started as a PEO, I would make laps of my designated zone, which is the area that I was told to patrol on a given day, identifying and writing tickets for expired meters and other parking violations.

4. Beginning on or around December 2012, a number of individuals began following, harassing, and video recording me, while also placing coins in expired meters, in an attempt to interfere with my ability to identify parking violations and write tickets.

5. These individuals are:

- a. Graham Colson
- b. James Cleveland
- c. Garrett Ean
- d. Kate Ager
- e. Peter Eyrz
- f. Ian Bernard a/k/a Ian Freeman
- g. Others not known to me

6. While sometimes alone, the above-named individuals often work together, with as many as six (6) at a time pursuing and crowding around me.

7. On a number of occasions they have crowded so close to me that they actually bump into me.

8. Besides following me, crowding around me, bumping into me, making video recordings of my activities, and placing coins in expired meters to prevent me from writing tickets, these individuals repeatedly taunt and harass me, asking why I am stealing peoples' money and telling me to get another job.

9. In addition, while I try to interact with members of the public, these individuals will often interject and argue with me and/or the public, to the point that I cannot communicate clearly with the public.

10. Further, Graham Colson in particular has directed numerous personal attacks at me, calling me a "bitch," "coward," "racist and murderer of brown babies" (as a result of my prior military service), and "boy." He has also accused me of following and harassing his girlfriend, and when I refused this, he stated that I am a "liar." He has also stated that if I try to take him to court, he has audio tapes of me, in an apparent attempt to threaten or intimidate me.

11. While I initially tried to engage these individuals positively to address their point of view, as the harassing activity continued I have begun to have more negative interactions with them.

12. As a result, on numerous occasions I have requested that these individuals leave me alone, not speak to me, and give me space to do my job. These requests have been repeatedly ignored.
13. In addition, in response to my requests that they stop their activities, Graham Colson has indicated that he is just doing his job, also stating that he is being paid to prevent me from doing my job.
14. Based on the use of radios to coordinate their activities, the use of multiple vehicles and/or bicycles, and indications that at least one of these individuals is being paid to follow me around, harass me, and interfere with my job, it is obvious to me that this is an organized activity.
15. As a result of these individuals and their actions, I no longer simply make laps of my designated zone, I instead actively avoid certain areas where they commonly hang out, and when I am spotted by them, I try to avoid them as best as possible. I have also started to spend more time patrolling side streets, where it is less likely that I will have to interact with these individuals.
16. Since December 2012, when this activity started, it has been noted that I have written less tickets than in the preceding time period.
17. In addition, as a result of my attempts to avoid these individuals, I routinely witness these individuals running across the street while disregarding traffic signals and motor vehicle traffic in the busy downtown area as they try to intercept me.
18. As a result of their constant harassment, I often feel very stressed and anxious, and have considered quitting my job as a PEO. I have communicated this stress and anxiety, as well as my thoughts about quitting, to my supervisors at the City. I do not want to quit my job as a PEO, but the above-named individuals using their harassing tactics against me are causing me to seriously consider quitting. It is my understanding that that outcome is exactly what they want to have happen.
19. In addition, I have begun to suffer physical effects due to the stress, including coming home from work with a red face, feeling heart palpitations, and having dreams related to this activity.
20. Recently, while on my day off and running errands in downtown Keene, I was followed and engaged by Graham Colson. This escalated into a heated exchange, which was witnessed by a friend and another City employee.
21. Since the above-described incident involving Graham Colson, I no longer feel comfortable bringing my family to downtown Keene out of fear that I will once again be harassed on my personal time and in front of my family and friends.
22. This activity has further invaded into my personal life with Graham Colson tagging me in a derogatory comment on Facebook.
23. I have read the above and it is true and accurate to the best of my knowledge and belief.

STATE OF NEW HAMPSHIRE  
CHESHIRE, SS.

Before me, appeared the above-named Alan E. Giveiz on this the 17th day of April, 2013, and swore that the information provided is true and accurate to his knowledge and belief.

Leon J. Boudin - III  
Notary Public/Justice of the Peace

Date 4/17/13

Alan E. Giveiz  
Alan E. Giveiz

JANE E. MCDERMOTT  
AFFIDAVIT

ATTACHMENT C

1. I am employed as a Parking Enforcement Officer ("PEO") for the City of Keene, New Hampshire ("City"), a position I have held since September 10, 2012. My schedule is Wednesday through Saturday, 9:00 A.M. to 5:30 P.M.
2. I am a part-time employee of the City, working about thirty-four (34) hours a week. When I first started as a PEO, I would patrol different parking areas within the City, identifying and writing tickets for expired meters and other parking violations.
3. Beginning on or around December 2012, a number of individuals began following, harassing, and video recording me, while also placing coins in expired meters, in an attempt to interfere with my ability to identify parking violations and write tickets. These individuals are:
  - a. Graham Colson
  - b. James Cleaveland
  - c. Garrett Ean
  - d. Kate Ager
  - e. Ian Bernard a/k/a Ian Freeman
  - f. Others not known to me
4. While sometimes alone, the above-named individuals often work together, with as many as seven (7) or eight (8) at a time on Saturdays, pursuing, harassing, and crowding around me.
5. On a number of occasions they have crowded so close to me that they actually bump into me. In addition, on one occasion, Graham Colson grabbed me by the arm in an attempt to stop me from removing their propaganda from a car windshield. I filed a report with the Keene Police Department and also notified my supervisor.
6. Besides following me, crowding around me, making video recordings of my activities, and placing coins in expired meters to prevent me from writing tickets, these individuals repeatedly taunt and harass me, asking why I am stealing peoples' money and telling me to get another job.
7. In particular, these individuals call me a "thief," say that I hold vehicles "for ransom," and repeatedly ask me, "How do you sleep at night?"
8. As a result, on numerous occasions I have requested that these individuals leave me alone, not speak to me, and give me space to do my job. These requests have been repeatedly ignored, with the exception of Garrett Ean, who usually gives me additional space when I ask. Unfortunately, as this activity has continued, I have become more frustrated, and on one occasion I actually yelled at these individuals in an attempt to get them to leave me alone.

AFFIDAVIT

I, Jane E. McDermott, being duly sworn, depose and say:



11. This activity clearly bothers members of the public, as I have witnessed numerous altercations between these individuals and members of the public, one of which resulted in James Cleaveland being punched in the face outside of the Keene Public Library.

12. In response to my requests that they stop their activities, Graham Colson has indicated that he is just doing his job, also stating that he and another are being paid Five Dollars per hour (\$5.00/hour) to prevent me from doing my job.

13. Based on the use of radios to coordinate their activities, the use of multiple vehicles and/or bicycles, and indications that at least one of these individuals is being paid to follow me around, harass me, and interfere with my job, it is obvious to me that this is an organized activity.

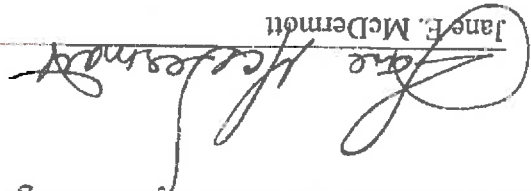
14. As a result of these individuals and their actions, I no longer freely patrol within the City's parking areas and instead actively avoid certain areas where they commonly hang out. When I am spotted by them, I try to avoid them as best as possible. I have also stopped patrolling commercial parking lots for handicap parking violations due to fear for my personal safety in these less crowded parking lots.

15. In addition, I routinely delay lunch and bathroom breaks in order to avoid harassment from these individuals. In particular, I no longer take my lunch break downtown, where I used to eat in my patrol vehicle, instead traveling out of the way to the Keene Police Department on Marlboro Street. In reference to bathroom breaks, when I do take one, I often find these individuals waiting outside the door. All of this is intimidating and makes it more difficult to do my job.

16. Since December 2012, when this activity started, I have also noticed that I have written far fewer tickets than in the preceding time period.

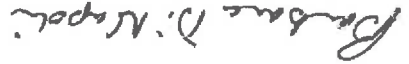
17. I have read the above and it is true and accurate to the best of my knowledge and belief.

Date 4/29/13

  
Jane E. McDermott

STATE OF NEW HAMPSHIRE  
CHESHIRE, SS.

Before me, appeared the above-named Jane E. McDermott on this the 29<sup>th</sup> day of April, 2013, and swore that the information provided is true and accurate to his knowledge and belief.

  
Barbara D. Napoli

Notary Public/Justice of the Peace  
BARBARA DINAPOLI, Notary Public  
My Commission Expires July 28, 2015

LINDA A. DESROUSSEAUX

ATTACHMENT D

I, Linda A. Desruisseaux, being duly sworn, depose and say:

**AFFIDAVIT**

1. I am employed as a Parking Enforcement Officer ("PEO") for the City of Keene, New Hampshire ("City"), a position I have held since January 18, 2000.

2. I am a full-time employee of the City, working about forty (40) hours a week. My schedule is Monday through Friday, 7:30 A.M. to 3:30 P.M.

3. For several years, a number of individuals have engaged in an activity that consists of following, harassing, and video recording me, while also placing coins in expired meters, in an attempt to interfere with my ability to identify parking violations and write tickets. While this activity used to be sporadic, approximately an hour or two every few weeks, beginning in December of 2012, this activity became an everyday occurrence.

4. These individuals are:

- a. Graham Colson
- b. James Cleveland
- c. Garrett Fan
- d. Kate Ager
- e. Ian Bernard a/k/a Ian Freeman
- f. Others not known to me

5. Because of my schedule, the above-named individuals often work alone or in a small group, pursuing, harassing, and crowding around me. The individual that I have the most contact with is Graham Colson.

6. Besides following me, crowding around me, making video recordings of my activities, and placing coins in expired meters to prevent me from writing tickets, these individuals repeatedly taunt and harass me, asking why I am stealing peoples' money and telling me to get another job.

7. On several occasions, these individuals have stated that they found Jane [Jane McDermott is another PEO employed by the City] a job, and that they will find me one too.

8. In particular, Graham Colson likes to taunt me by saying, "Linda, guess what you're not going to do today - write tickets."

9. The taunting and harassment tends to get worse when there is a group, as they try to one-up each other at my expense.

10. Because they often try to beat me to an expired meter, they will run up behind me very quickly, which is startling and makes me nervous.

11. As a result, on numerous occasions I have requested that these individuals leave me alone, not speak to me, and give me space to do my job. These requests have been repeatedly ignored.

12. In addition, in response to my requests that they stop their activities, Graham Colson has indicated that he is just doing his job, also stating that he is being paid to prevent me from doing my job.

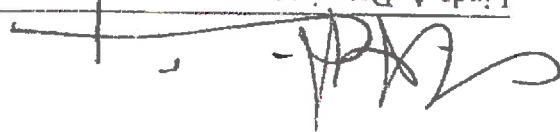
13. As a result of these individuals and their actions, I actively avoid patrolling in the direction of these individuals, and when I am spotted by them, I try to avoid them as best as possible. When they do engage me, I do not respond to their questions or statements.

14. Also, due to the fact that these individuals often park next to me and video record while I am on lunch break, I no longer eat lunch in my work vehicle, instead traveling out of my patrol area to eat at the police department.

15. I find it particularly odd that these individuals often follow me onto the Well Street Parking Deck and other parking areas where there are no meters, and therefore no way for them to prevent me from writing tickets. As a result, I think this particular activity is solely for the purpose of intimidation.

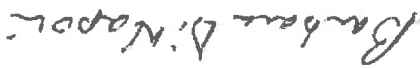
16. I have read the above and it is true and accurate to the best of my knowledge and belief.

Date 4/26/13

  
Linda A. Desruisseaux

STATE OF NEW HAMPSHIRE  
CHESHIRE, SS.

Before me, appeared the above-named Linda A. Desruisseaux on this the 26<sup>th</sup> day of April, 2013, and swore that the information provided is true and accurate to her knowledge and belief.

  
Barbara D. Napoli

Notary Public/Justice of the Peace  
BARBARA DINAPOLI, Notary Public  
My Commission Expires July 28, 2015

THE KEENE SENTINEL  
ARTICLE BY KYLE JARVIS  
DATED APRIL 11, 2013

ATTACHMENT E

# City investigating 'harassing behavior' toward parking officers

By Kyle Jarvis Sentinel Staff

Posted: Thursday, April 11, 2013 12:00 pm

Keene has its own version of parking wars.

City officials say members of a local pro-liberty group have gone too far in tailing city parking enforcement officers. And the city hired a former police officer to videotape evidence of what's been happening.

For weeks, people associated with the group Free Keene have patrolled city streets, keeping an eye out for enforcement officers and getting ahead of them to plug expiring parking meters with change. In most cases, the so-called "Robin Hooders" leave a business card on the vehicle's windshield, with a picture of a cartoon Robin Hood on one side, and a message on the other that reads, "Your meter expired! However, we saved you from the king's tariff!"

They have also followed officers during their routes. And some city officials say the group's behavior toward the officers just is too much.

"It's harassing behavior," said City Manager John A. MacLean. "By that I mean following someone with a camera, circling them, following them every day, up and down the street, and that's been taking place."

To determine whether harassing behavior was occurring, city officials hired Peter S. "Sturdy" Thomas, a former Keene police captain, to follow and videotape the Robin Hooders in the act, MacLean said.

"The fact that the (Robin Hooder) is circling, impeding, and standing on top of another person and talking at them and following them step by step, the concern the city has is that it's a public safety issue," MacLean said. "If several people are doing that, internally (the parking officer is) going to feel a little upset; you might walk a little faster, put your head down, and maybe you don't see a car coming.

"You also have people engaged in harassing behavior, absorbed in what they're up to, and that could be dangerous for them as well. And last, the public in general is concerned about this and doesn't like it, and could get engaged, could lose their focus, possibly stepping out in front of a car, or getting involved in an altercation."

Keene Human Resources Director William A. Prokop said Thomas spent 46.5 hours over roughly a 3½-week period beginning in mid-March videotaping the Robin Hooders, and was paid a total of \$1,339.67 for his work. That money came out of the city's safety and security budget. The city has used Thomas before to do background investigations of prospective city employees, he said.



Prokop said it's the behavior alone that has city officials concerned, and not the fact that the Robin Hooders are preventing motorists from getting parking tickets.

"That part does not bother us or concern us at all," he said. "If people want to put money in the meters, that's fine, good for them. But when our employees can't take a bathroom break without having someone waiting for them to start up again, that's a concern."

Prokop said that he's received several emails from citizens asking what city officials would do about this, and that city employees other than parking officers have also expressed concerns.

"They considered this harassment and questioned whether it could spill over into their jobs, in addition to employees themselves who were feeling they were being harassed," he said.

But Ian B. Freeman, a Free Keene blogger who hosts the local radio show "Free Talk Live," called allegations of harassing behavior "ridiculous."

"I know the people on the streets, and everybody's very friendly to the parking enforcers," he said. "Some days the parking enforcers are chatty, and some days they're grumpy. But I've only seen the Robin Hooders act in a friendly manner towards these people."

Freeman said 1,500 cards were given out in March alone, and that while some Robin Hooders are Free State Project members or Free Keene bloggers, many are not.

And while the Robin Hooders do usually carry video cameras, Freeman said it's for accountability purposes only, to make sure their actions are documented to prevent parking enforcers or anyone else from making false claims against them.

Robin Hooders do sometimes wait for parking enforcers to return from breaks, Freeman said, because their objective is to get ahead of them to prevent parking tickets from being issued.

"If they don't like it, they should shut down the parking enforcement department," he said. "That would solve the problem, and I think that would make people very happy."

Freeman believes the parking enforcement operation is unnecessary, which is similar to how he feels about most government operations.

"They have to maintain the illusion of legitimacy, because essentially government is a coercive monopoly; if you don't do what they say, they're going to possibly put you in a cage (jail)."

Free Keene has ruffled feathers in the community several times, most notably in protesting drug laws by holding daily "4:20" marijuana smoking sessions in Keene's Central Square, approaching Keene Middle School students in protest of public education and even hosting a "Keene City Council drinking game" to protest open container laws.

Freeman said most of the response from the public to the "Robin Hood" effort has been positive.

"Thank you Robin Hood, very clever, and with a welcome sense of humor," one poster said on the group's Facebook page.

"Thanks for filling my meter --- awesome!" said another.

The video evidence Thomas recorded was recently turned over to the city's legal department, which is reviewing the material to determine whether harassing behavior occurred, Prokop said.

A meeting later this week or early next week between MacLean, city attorneys and Prokop will help determine city officials' next step, Prokop said.



ATTACHMENT F  
KENNEBENTON ADVERTISEMENT  
APRIL 23, 2013

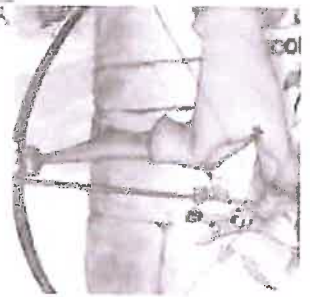
- [Sharing](#)
- [Society](#)

# Have you wanted to go "Robin Hooding"? Do it during the Keenevention!

April 23, 2013 by Jan

Filed under: [Announcement](#), [Keenevention](#), [Outreach](#), [Robin Hood](#), [TolDo](#).

Update Like 7 people like this.



[You've seen the video](#). Now you can join up with [Robin Hood](#) and the Merry Men and Women and help rescue the motorists of Keene from the King's men and their ransom!

Friday and Saturday shirts will be available all day for you to plug in to the most successful form of activism and outreach in Keene to date. Hit the streets with a roll of coins and cards and do some good for the community! As a bonus, you get to have fun as you deny the local government gang the hard-earned dollars of the good people of Keene by preventing parking tickets from being issued! You'll also experience the value of being able to do liberty activism in groups – the reason why the [Free State Project](#) is the key to liberty in our lifetime.

This is just one of the activities that will be happening outside the hotel – stay tuned here to the [Keenevention](#) blog, the [facebook](#) page, or the [facebook](#) event for continued announcements and news. You can get your tickets to [Keenevention](#) now for the earlybird price of just \$55 for the whole weekend on Nov 1st-3rd.

## ALSO ON FREE KEENE

[Live Free or Die – Unless You Want Uplighting for Your ...](#) 1 comment

[NHPR Focuses on Keene in Feature on the FSP – My Response](#) 7 comments

[The Monadnock Porcupines Yahoo Group](#) 3 comments

[Now Accepting Litecoin!](#) 5 comments

## AROUND THE WEB

What's this?

[How to Train Like an MMA Fighter](#) Stack

[Pippa Middleton Without Makeup Looks Surprisingly Different](#) [CafeMom](#)

[Miss Alabama Katherine Webb Attends Diving Practice ...](#) [Zemio](#)

[Amanda Seyfried As You've Never Seen Her Before](#) [Style Bolic](#)

3 comments



CHARLES P. BAUER  
214 N. Main Street  
P.O. Box 1415  
Concord, NH 03302-1415  
Ph: (603) 228-1181  
Direct: (603) 845-3651  
Fax: (603) 224-7588  
bauer@gcglaw.com

July 11, 2013

James I. Peale, Clerk  
Cheshire County Superior Court  
12 Court Street  
Keene, NH 03431


Re: City of Keene v. James Cleaveland, et al.  
Docket No.: 213-2013-CV-00098

Dear Clerk Peale:

Enclosed for filing is Petitioner's Motion to Clarify/Amend Petition, along with a Clarified/Amended Verified Petition for Preliminary and Permanent Injunctive Relief regarding the above-captioned case.

Thank you for your attention to this matter.

Very truly yours,

  
Charles P. Bauer

CPB:ibl  
Enclosure

cc: Jon Meyer, Esquire  
Peter Eyre, *Pro Se*  
Thomas Mullins, Esquire

Although the Petition refers to Respondents collectively as "Respondents," the Petition did not specifically state Petitioner's claim that the individuals were and are acting both in their individual capacities and in a collective capacity to interfere with the City's Parking Enforcement Officers ("PEO"). The Respondents sometimes refer to themselves as "Robin Hooders." This issue was raised with the Court at a prior hearing and this pleading is filed Answers.

1. On May 1, 2013, Petitioner filed a Verified Petition for Preliminary and Permanent Injunctive Relief ("Petition") which named six individuals as Respondents: James Cleveland, Garret Ean, Kate Ager, Ian Bernard a/k/a Ian Freeman, Graham Colson, and Pete Eyre ("Respondents"), all of whom were timely served on May 1, 2013 and all of whom have

Callahan and Gartell, P.C., and submits this Motion to Clarify/Amend Petition, and says as follows:

**PETITIONER'S MOTION TO CLARIFY/AMEND PETITION**

Docket No. 213-2013-CV-00098

JAMES CLEVELAND  
 GARRET EAN  
 KATE AGER  
 IAN BERNARD A/K/A IAN FREEMAN  
 GRAHAM COLSON  
 PETE EYRE

vs.

CITY OF KEENE

SUPERIOR COURT

CHESHIRE, SS.

STATE OF NEW HAMPSHIRE

to clarify/amend the pleadings. The clarification/amendment does not substantially change

the initial Petition; it clarifies the issue of concerted effort.

3. Petitioner seeks to clarify/amend the Petition to specifically allege that the Respondents were and are acting both in their individual capacities and in concert with each other so as to be jointly and severally liable with respect to the Petitioner's underlying legal claim of tortious interference with contractual employment relationships of the City's PEOs.

4. Superior Court Rule 135, provides that: "[a]mendments may be made to the bill, answer or pleadings, in proper cases, upon the order of the court, at any time on such terms as may be imposed." Amendment of pleadings is liberally permitted, and the decision to grant or deny a motion to amend rests in the sound discretion of the trial court." Kallil v. Town of Dummer Zoning Bd. of Adjustment, 159 N.H. 725, 729 (2010)(citation omitted). Amendment may be denied by the Court where the amended pleading seeks to create an entirely new cause of action. See Coan v. New Hampshire Dept. of Environmental Services, 161 N.H. 1 (2010). Petitioner does not seek to amend the Petition to state an entirely new cause of action, but seeks only to clarify that the Petition was intended to include the Respondents in their individual capacity and also as joint actors within a civil conspiracy. "A civil conspiracy is a combination of two or more persons by concerted action to accomplish an unlawful purpose, or to accomplish some purpose not in itself unlawful by unlawful means. Its essential elements are: (1) two or more persons (including corporations); (2) an object to be accomplished (i.e. an unlawful object to be achieved by lawful or unlawful means or a lawful object to be achieved by unlawful means); (3) an agreement on the object or course of action; (4) one or more unlawful overt acts; and (5) damages as the proximate result

thereof." Jay Edwards, Inc. v. Baker, 130 N.H. 41, 47 (1987)(interior quotations and citation omitted).

5. Petitioner moves to clarify/amend the Petition to specifically allege the

elements of civil conspiracy. The evidence will show that the Respondents act individually and together in a concerted effort regarding their actions and conduct directed at the City's PEOs. One of the collective and individual objectives of the Respondents is to tortuously interfere with the employment relationship between Petitioner and its Parking Enforcement Officers by causing the PEOs to quit or stop their jobs for the City by causing them undue stress, anxiety, and emotional and physical distress while trying to perform their employment duties. Respondents are attempting to cause PEOs so much stress, anxiety, and distress so to cause the unlawful interference with their employment. See also Exhibits E and F attached to the Petition.

6. Respondents are participating as individuals and as a concerted effort through an expressed or implied agreement to accomplish the unlawful purpose through specific conduct directed at the PEOs.

7. If Respondents are permitted by this Court to continue their actions against the PEOs, Petitioner will be damaged through the loss or inability of the PEOs to perform as Parking Enforcement Officers. The PEOs are experiencing stress, anxiety, and distress, which can lead to claims of worker's compensation, emotion distress, disability, or resignation.

8. Accordingly, Petitioner submits with this Motion and attached Clarified/Amended Petition inserting immediately after Paragraph 32, of the Petition the allegation that Respondents are acting not only in their individual capacities but as part of a

civil conspiracy to commit the unlawful act of tortious interference with contractual employment relationships. With the exception of the amendment to include the allegation of civil conspiracy, and with the exception of the renumbering of Paragraphs 33 through 39, of the Petition, the attached Clarified/Amended Petition restates and incorporates all factual allegations and legal claims previously filed with the Court and served on Respondents.

WHEREFORE, Petitioner respectfully requests that this Court:

- A. Grant this Motion to Clarify/Amend Petition by inclusion of the claim that Respondents are acting concertedly in a civil conspiracy; and
- B. Substitute the Amended Verified Petition for Preliminary and Permanent Injunctive Relief for the Petition previously filed and served on Respondents in connection with this matter.
- C. Grant such other and further relief as is just and equitable.

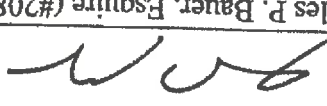
Respectfully submitted,

CITY OF KEENE

By its Attorneys,


GALLAGHER, CALLAHAN & GARTRELL, P.C.  
214 N. Main St., P.O. Box 1415  
Concord, NH 03302-1415  
(603) 228-1181

Dated: July 11, 2013

By:   
Charles P. Bauer, Esquire (#208)  
Erik G. Moskowitz, Esq. (#18961)

I hereby certify that I have this date forwarded a copy of the foregoing to Jon Meyer, Esquire, Counsel for Thomas Mullins, Esquire, Ian Bernard f/k/a Ian Freeman, Garrett Ean, James Cleaveland, Kate Ager, Graham Colson, and Peter Eyre, and Peter Eyre, *Pro Se*.


Dated: July 11, 2013

By:  Charles P. Bauer, Esquire (#208)

**CERTIFICATE OF SERVICE**

I, Charles P. Bauer, hereby certify that I made a good faith attempt to gain assent from Jon Meyer, Esquire and Peter Eyre, *Pro Se*, all to no avail.

Dated: July 11, 2013

By:  Charles P. Bauer, Esquire (#208)

**RULE 57-A CERTIFICATE**



1. The City of Keene ("City") contractually employs three (3) Parking Enforcement Officers (collectively PEOs), who are also members of the Keene City Employees Union, AFT-NH Local #6288, and who are tasked with enforcing motor vehicle parking laws and regulations by patrolling City streets. The PEOs have no arrest powers.

**INTRODUCTION**

In support of this Petition, Petitioner states as follows:

NOW COMES Petitioner, the City of Keene, of 3 Washington Street, Keene, New Hampshire, by its attorney, Thomas P. Mullins, Esq., and respectfully petitions the Court for Preliminary and Permanent Injunctive Relief against Respondents James Cleaveland, of 173 Washington Street, Apt. 9, Keene, New Hampshire; Garrett Ean of 75 Leverett Street, Keene, New Hampshire; Kate Ager, of 6 Mystic Place, Keene, New Hampshire; Ian Bernard a/k/a Ian Freeman, of 73 Leverett Street, Keene, New Hampshire; Graham Colson, of 34 Walnut Street, Keene, New Hampshire; and Pete Eyre, of 29 North Lincoln Street, Keene, New Hampshire.

**CLARIFIED/AMENDED VERIFIED PETITION FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF**

Docket No. 213-2013-CV-00098

JAMES CLEAVELAND  
GARRETT EAN  
KATE AGER  
IAN BERNARD A/K/A IAN FREEMAN  
GRAHAM COLSON  
PETE EYRE

vs.

CITY OF KEENE

SUPERIOR COURT

CHESHIRE, SS.

STATE OF NEW HAMPSHIRE

They are primarily responsible for checking parking meters and writing parking tickets in and

around the downtown area. The PEOs are identified as Linda A. Desruisseaux  
("Desruisseaux"), Alan E. Givetz ("Givetz"), and Jane E. McDermott ("McDermott").

2. Beginning in or around December 2012, and continuing through the date of the  
filing of this Petition, Respondents have regularly, repeatedly, and intentionally taunted,  
interfered with, harassed, and intimidated the PEOs in the performance of their employment  
duties by following, surrounding, touching or nearly touching, and otherwise taunting and  
harassing the PEOs in groups of one, two, or more; communicating with the PEOs in taunting  
and intimidating manners; and video recording the PEOs at very close proximity as they  
perform their duties. This activity is injurious to the PEOs and the PEOs' continued  
employment relationships with the City.

3. Through this Petition, Petitioner seeks preliminary and permanent injunctive  
relief from the Court ordering Respondents to not interfere, harass, or intimidate the PEOs,  
and to remain at a distance of not less than fifty (50) feet (a "safety zone") from the PEOs,  
during the performance of their employment duties for the City.

4. Importantly, Petitioner does not seek an Order to prevent Respondents from  
exercising their constitutional rights to video record the PEOs from a comfortable remove or  
otherwise to express their opinion; rather, Petitioner seeks only to prevent Respondents from  
taunting, interfering with, harassing, and intimidating the PEOs by establishing a safety zone  
between the PEOs and Respondents while the PEOs are performing their duties.

### PARTIES

5. Petitioner, City of Keene, is a New Hampshire municipal corporation with a  
principal place of business located at 3 Washington Street, Keene, New Hampshire.

6. Respondent, James Cleaveland, is an individual who resides at 173 Washington Street, Apt. 9, Keene, New Hampshire.

7. Respondent, Garrett Fan, is an individual who resides at 75 Leverett Street, Keene, New Hampshire

8. Respondent, Kate Ager, is an individual who resides at 6 Mystic Place, Keene, New Hampshire.

9. Respondent, Ian Bernard, is an individual who resides at 73 Leverett Street, Keene, New Hampshire.

10. Respondent, Graham Colson, is an individual who resides at 34 Walnut Street, Keene, New Hampshire.

11. Respondent, Pete Eyre, is an individual who resides at 29 North Lincoln Street, Keene, New Hampshire.

12. This Court has jurisdiction over this matter pursuant to RSA 491:7 and RSA 498:1. Venue is appropriate because Petitioner is located in Cheshire County.

**FACTS**

13. The City has been granted extensive authority by the State of New Hampshire to regulate and enforce public parking in the City under RSA 47:17, XVIII, including but not limited to the installation of parking meters under RSA 231:130, and the adoption of parking enforcement ordinances under RSA 231:132-a.

14. In furtherance of the above-described parking regulatory scheme, the City has adopted ordinances regulating public parking and employs three (3) PEOs to enforce the

City's parking laws and regulations, among other duties. See Parking Enforcement Officer

Job Description attached hereto as Attachment A.

15. Since December 2012, and continuing through the date of the filing of this Petition, Respondents have intentionally taunted, interfered with, harassed, and intimidated the PEOs by closely following them on foot and in automobiles in groups of one, two or more, often with video camera equipment and coordinating their activities using radio communication. To relay each separate instance of interference would be prohibitively time consuming; rather, Petitioner provides the following examples of Respondents' activity:

A. PEO Givetz has been crowded, bumped into, and taunted by the Respondents, including profanities and derogatory statements relative to his military service. In addition, PEO Givetz has also been followed and harassed on his day off and through the Internet, all in an effort to intimidate and interfere with his employment relationship with the City. See Affidavit of PEO Givetz attached hereto as Attachment B, and incorporated herein by reference.

B. PEO McDermott has been pursued and crowded by groups of seven or eight, bumped into, grabbed by Respondent Colson, and repeatedly taunted and encouraged to find alternative employment. In addition, as a result of the Respondents' harassing behavior, PEO McDermott has had to alter her work duties, to the detriment of the City. See Affidavit

---

<sup>4</sup> Frequently, as the video examples will illustrate, a single PEO will be surrounded by four or more Respondents while that PEO performs his/her job duties for Petitioner.

of PEO McDermott attached hereto as Attachment C, and incorporated

herein by reference.

C. PEO Desruisseaux has been harassed, intimidated, and video recorded on a regular basis since December 2012. In addition, Respondents frequently run up behind PEO Desruisseaux very quickly, startling her and making it difficult for her to concentrate on her job and her personal safety. See Affidavit of PEO Desruisseaux attached hereto as Attachment D, and incorporated herein by reference.

16. As the above examples illustrate, Respondents frequently and constantly follow, taunt, interfere with, harass, and intimidate the PEOs' during the performance of their duties.

17. In addition, Respondents repeatedly tell the PEOs to terminate their employment relationship with the City, going as far as offering to assist the PEOs in finding alternative employment. See Affidavits of PEOs Givetx, McDermott, and Desruisseaux.

18. PEO Givetx has considered resigning from his position citing the adverse working conditions created by Respondents' incessant actions during the performance of his job duties, and which have resulted in adverse physical effects due to the stress and anxiety caused by Respondents. See Affidavit of PEO Givetx.

19. In addition, PEO McDermott fears for her job security, as the Respondents have stated an intention to shut down the City's parking department. See Kyle Jarvis, *City Investigating 'Harassing Behavior' Toward Parking Officers, The Keene Sentinel*, April 11, 2013, attached hereto as Attachment E.

25. Intentional interference with contractual relations may be shown, where: "(1) the plaintiff had an economic relationship with a third party; (2) the defendant knew of this relationship; (3) the defendant *intentionally* and *improperly* interfered with this relationship; and (4) the plaintiff was damaged by such interference." *Hughes v. New Hampshire Div. of*

Petitioner incorporates by reference the allegations of Paragraphs 1 through 24, above.

**TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS**

depicting multiple instances of the above-described conduct.

24. Upon hearing, the City will provide the Court with further video evidence

Affidavit of PEO McDermott.

23. Further, the within described activity agitates the public, often creating hostile exchanges between members of the public and Respondents that place the PEOs, the public, and the Respondents in danger. Specifically, on one occasion PEO McDermott was witness to a physical altercation between Respondent Cleveland and a member of the public. See

22. Respondents, in conducting the above-described activity, place the PEOs and the public in danger, both by their distracting behavior and also as a result of their disregard for rules of the road. See Affidavits of PEO Givez, McDermott, and Desruisseaux.

21. Respondent Colson has stated that both he and other participants are being paid to conduct the complained of activity, with the purpose and intention of preventing the PEOs from doing their jobs. See Affidavits of PEOs Givez, McDermott, and Desruisseaux.

20. At various times, PEOs Givez, McDermott, and Desruisseaux have felt intimidated and harassed and have been unable to perform their job duties. See Affidavits of PEOs Givez, McDermott, and Desruisseaux.

*Aeronautics*, 152 N.H. 30, 39 – 41 (2005) quoting *Demetracopoulos v. Wilson*, 138 N.H. 371,

373 – 74 (1994).

26. Petitioner maintains an economic employment relationship with PEOs Givetz, McDermott, and Desruisseaux, providing salary and benefits in exchange for the PEOs' satisfactory performance of their employment duties.

27. PEOs wear distinctive uniforms to inform the public of their status as City employees and parking enforcement personnel. Respondents are aware of the PEOs' economic employment relationship with the City of Keene and of the employment duties the PEOs are required to perform.

28. Respondents intentionally and improperly interfere with this economic employment relationship and with the PEOs' ability to perform their employment duties by following, communicating with, taunting, intimidating, harassing, and video recording PEOs at close proximity. Respondents frequently follow and surround individual PEOs in groups of one, two, or more, an inherently intimidating act. See Affidavits of PEOs Givetz, McDermott, and Desruisseaux.

29. PEOs have expressed anxiety and distress caused by Respondents' behavior. PEOs have expressly requested, on multiple occasions, that Respondents stop their interference and intimidation. See Affidavits of PEOs Givetz, McDermott, and Desruisseaux.

30. Petitioner has suffered and will continue to suffer harm due to the PEOs inability to perform their job duties effectively because of the interference of Respondents. See Restatement (Second) of Torts, § 766 (1977); see also *Donovan v. Digital Equip. Corp.*, 883 F. Supp. 775 (1994); *Montrone v. Maxfield*, 122 N.H. 724, 726 (1982).



34. "A civil conspiracy is a combination of two or more persons by concerted action to accomplish an unlawful purpose, or to accomplish some purpose not in itself unlawful by unlawful means. Its essential elements are: (1) two or more persons (including corporations); (2) an object to be accomplished (i.e. an unlawful object to be achieved by lawful or unlawful means or a lawful object to be achieved by unlawful means); (3) an agreement on the object or course of action; (4) one or more unlawful overt acts; and (5) damages as the proximate result thereof." *Id.*, at 17 (interior quotation and citations omitted). For a civil conspiracy to exist, there must be an underlying tort which the alleged

41, 47 (1987).

33. The actions of Respondents, acting individually and jointly, and concertedly, constitute a civil conspiracy to accomplish the unlawful act of tortious interference with the Petitioner's contractual relationship with its PEOs. See *Jay Edwards, Inc. v. Baker*, 130 N.H.

Petitioner incorporates by reference the allegations of Paragraphs 1 through 32, above.

**CIVIL CONSPIRACY**

32. Based on knowledge and belief, Respondents do not intend to suspend their activities. Respondents are publicly advertising the opportunity for others to participate in this harassing activity to occur the weekend of November 1<sup>st</sup> - 3<sup>rd</sup>, 2013. See *Keenevention* advertisement dated April 23, 2013, attached hereto as Attachment F.

31. Without injunctive relief, the PEOs will continue to suffer anxiety and distress caused by Respondents' behavior. Without injunctive relief, Petitioner will continue to suffer damages by way of the inability of the PEOs to properly perform their assigned job duties, and may suffer further damage by way of voluntary resignations by one or more PEOs for intolerable working conditions caused by Respondents' intentional harassing behavior.



Petitioner incorporates by reference the allegations of Paragraphs 1 through 36, above.

37. The granting of an injunction is within the sound discretion of the Court exercised upon a consideration of all the circumstances of each case and controlled by established principles of equity. *Unifirst Corp. v. City of Nashua*, 130 N.H. 11, 14 (1987) (citation omitted). An injunction will issue where the petitioner establishes: (1) that it has no adequate remedy at law; (2) that it will suffer immediate irreparable harm if the injunction is

**PRELIMINARY AND PERMANENT INJUNCTION**

Inspections, sec. 14:1

36. Accordingly, where the Respondent is acting in concert pursuant to a civil conspiracy, each is jointly and severally liable for the potential tortious damage to the Petitioner, rather than on their own individual actions or for the actions of a concerted effort even if a Respondent's own actions did not cause the damage. See N.H. Civil Jury

from employment

35. Respondents, acting in concert with one another and sometimes referring to themselves as "Robin Hood" and/or "Robin Hooders," jointly seek through their actions as specifically described in the factual statements contained in the attached Affidavits, and as further stated in Exhibit E, and under and implied or express agreement among them and others to accomplish the unlawful purpose of the tortious interference with the contract employment relationship among the Petitioner and its PEO's, causing damage to the Petitioner by causing stress, anxiety, and physical and emotional distress to the PEOs, which can lead to claims of workers' compensation, emotional distress, disability, or resignation

21735496 (2003)D.N.H.]

conspirators agreed to commit. *Sheeler v. Select Energy and NEChoice, LLC*, 2003 WL

denied; (3) that, in the absence of injunctive relief, the hardship to the petitioner will be greater than that suffered by the respondent should an injunction be issued; (4) that there is a likelihood of success on the merits and, (5) that the public interest will not be adversely affected should an injunction be issued. See *UniFirst Corp.*, 130 N.H. at 13-14 (citations omitted); see also *Thompson v. N.H. Bd. of Med.*, 143 N.H. 107, 108 (1998); 4 R. WIEBUSCH, NEW HAMPSHIRE PRACTICE, CIVIL PRACTICE AND PROCEDURE §§ 19.05, 19.15(a) (1997).

38. Petitioner is likely to succeed on the merits. Respondents have no legal authority to taunt, interfere with, harass, and intimidate the PEOs in the performance of their employment duties, or legal authority to intentionally interfere with the employment relationship among Petitioner and the PEOs.

39. There is an immediate and ongoing danger of irreparable harm. Respondents have repeatedly video recorded, interfered with, taunted, and intimidated PEOs during the performance of their employment duties. All of the PEOs have expressed distress and anxiety caused by Respondents' actions, altered their approach to their duties, and at least one PEO has threatened to voluntarily terminate employment with the City of Keene. Should Respondents' actions be allowed to continue, the Petitioner is damaged by the inability of the PEOs to properly perform their duties, and is in danger of losing its PEOs.

40. The loss of the PEOs would cause considerable damage to the City of Keene, forcing it to hire and train new PEOs – a time-consuming and money-intensive prospect. Such damage is irreparable and cannot be adequately compensated by money damages. In addition, it is possible, and likely probable, that the City may not be able to replace the PEOs if Respondents' actions are allowed to continue, and the City would not be able to fulfill its

statutory authority with respect to public parking. This is precisely the damage that the Respondents seek to cause.

41. Petitioner has no adequate alternate remedy at law to prevent the ongoing interference, harassment, taunting, and intimidation of the PEOs. A preliminary and permanent injunction will prevent further interference with and intimidation of the PEOs, preserve the parties' economic relationship, and preserve Petitioner's statutory authority to regulate public parking.

42. The sole purpose of the preliminary and permanent injunctive relief is to preserve the City's ability to maintain its economic relationship with its PEO workforce, maintain its authority to regulate public parking, and continue collecting parking revenue necessary to provide adequate public parking. Petitioner does not seek to limit Respondents' right to express their opinion or otherwise restrict the exercise of Respondents' constitutional rights.

43. Preliminary injunctive relief is required because Respondents would likely accelerate their efforts to interfere with, taunt, and intimidate the PEOs prior to this Court hearing the merits of the matter, greatly increasing the immediate risk of the loss of employment of one or more of the PEOs.

WHEREFORE, Petitioner respectfully requests that this Court:

- A. Issue appropriate Orders of Notice for service upon the Respondents;
- B. Schedule a hearing on the within Amended Petition and request for preliminary and permanent injunction;
- C. After hearing, issue a preliminary injunction restraining Respondents, or anyone under their direction, supervision, employment, or control, from

coming within a safety zone of fifty (50) feet of any PEO while that PEO is on duty performing his or her employment duties as required by the City of Keene;

D. Issue a preliminary injunction restraining Respondents, or anyone under their direction, supervision, employment or control, from video recording, within a safety zone of fifty (50) feet, any PEO while that PEO is on duty performing his or her employment duties as required by the City of Keene;

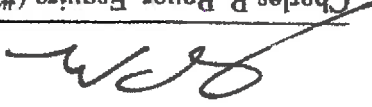
E. Issue a preliminary injunction temporarily restraining Respondents, or anyone under their direction, supervision, employment or control, from communicating with any PEO in a manner which seeks to taunt, harass, or intimidate the PEO while that PEO is on duty performing his or her employment duties as required by the City of Keene;

F. Enter a permanent Order restraining Respondents, or anyone under their direction, supervision, employment or control, from coming within a safety zone of fifty (50) feet of any PEO while that PEO is on duty performing his or her employment duties as required by the City of Keene;

G. Enter a permanent Order restraining Respondents, or anyone under their direction, supervision, employment or control, from video recording, within a safety zone of fifty (50) feet, any PEO while that PEO is on duty performing his or her employment duties as required by the City of Keene;

H. Enter a permanent Order restraining Respondents, or anyone under their direction, supervision, employment or control, from communicating with any

Charles P. Bauer, Esquire (#208)  
GALLAGHER, CALLAHAN & GARTRELL, P.C.  
214 N. Main St., P.O. Box 1415  
Concord, NH 03302-1415  
(603) 228-1181



Thomas P. Mullins, Esquire (#7919)  
3 Washington Street  
Keene, NH 03431  
(603) 357-9806

By Its Attorneys,

**CITY OF KEENE**

Respectfully submitted,

1. PEO in a manner which seeks to taunt, harass, or intimidate while that PEO is on duty performing his or her job duties as required by the City of Keene; Grant such other and further relief as is just and equitable.

Dated: July 11, 2013

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
SUPERIOR COURT**

*Com*

Telephone: (603) 352-6902  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

**ORDER OF NOTICE ON COMPLAINT  
PAD Rule 1**

Case Name: City of Keene v James Cleaveland, et al  
Case Number: 213-2013-CV-00241

A lawsuit has been filed against Kate Ager, Ian Bernard aka Freeman, James Cleaveland, Graham Colson, Garrett Ean, Peter Eyre in this Court. A copy of the complaint is attached. If you have been previously served with a document entitled "Writ of Summons", disregard any deadline contained therewith. These are the relevant deadlines in your case:

**The Court ORDERS that ON OR BEFORE:**

November 07, 2013

City of Keene shall have this Order of Notice and the attached Complaint served upon Kate Ager, Ian Bernard aka Freeman, James Cleaveland, Graham Colson, Garrett Ean, Peter Eyre by in hand or by leaving a copy at his/her abode, or by such other service as is allowed by law.

November 14, 2013

City of Keene shall file the returns of service with this Court. Failure to do so may result in this action being discontinued without further notice.

30 days after Defendant

Kate Ager, Ian Bernard aka Freeman, James Cleaveland, Graham Colson, Garrett Ean, Peter Eyre must file a written appearance form and written answer or other responsive pleading form with this Court. A copy of the answer and/or responsive pleading must be sent to the party listed below and any other party who has filed an appearance in this matter.

**Notice to Kate Ager, Ian Bernard aka Freeman, James Cleaveland, Graham Colson, Garrett Ean, Peter Eyre:** If you do not comply with these requirements you will be considered in default and the Court may issue orders that affect you without your input.

Send copies to:

Charles P. Bauer, ESQ

Gallagher Callahan & Gartrell PC  
PO Box 1415  
214 North Main Street  
Concord NH 03302-1415

BY ORDER OF THE COURT

James I. Peale  
Clerk of Court

September 23, 2013

(555)



3.
  - a. Defendant, James Cleaveland, is a New Hampshire resident with a mailing address of 173 Washington Street, Apt. 9, Keene, New Hampshire.
  - b. Defendant, Garrett Ean, is a New Hampshire resident with a mailing address of 75 Leverett Street, Keene, New Hampshire.
  - c. Defendant, Kate Ager, is a New Hampshire resident with a mailing address of 6 Mystic Place, Keene, New Hampshire.
  - d. Defendant, Ian Freeman, is a New Hampshire resident with a mailing address of 73 Leverett Street, Keene, New Hampshire.
  - e. Defendant, Graham Colson, is a New Hampshire resident with a mailing address of 34 Walnut Street, Keene, New Hampshire.
2. Plaintiff, the City, is a duly organized New Hampshire municipal corporation with an address of 3 Washington Street, Keene, NH 03431.

**Parties**

1. This civil action, which requests a civil jury trial for an award of money damages, is brought against each of the named Defendants for their individual and collective actions and conduct of harassing, intimidating and interfering with the City of Keene and the City of Keene Parking Enforcement Officers ("PEOs") and damaging the employment contractual relationships between the City and its PEOs.

**Introduction**

NOW COMES the City of Keene ("City"), by its counsel, Gallagher, Callahan and Gartell, P.C., and complains of James Cleaveland, Garret Ean, Kate Ager, Ian Freeman, Graham Colson, and Pete Eyre ("Defendants"), and says as follows:

**COMPLAINT DECLARATION**

Docket No. \_\_\_\_\_

JAMES CLEAVELAND; GARRET EAN; KATE AGER; IAN FREEMAN;  
GRAHAM COLSON; and PETE EYRE

v.

CITY OF KEENE

SUPERIOR COURT

CHESHIRE, SS.

STATE OF NEW HAMPSHIRE

f. Defendant, Pete Eyre, is a New Hampshire resident with a mailing address of 29 North Lincoln Street, Keene, New Hampshire.

#### Jurisdiction and Venue

4. This Court has subject matter jurisdiction pursuant to RSA 491:7.
5. Venue is appropriate because the City is located in Cheshire County and the acts and actions complained of occurred in Cheshire County.

#### Factual Allegations

6. The City solicits, interviews, hires, trains, supervises, pays, provides benefits to, attempts to retain, and contractually employs Parking Enforcement Officers ("PEOs").
7. PEOs are employed by the City to enforce motor vehicle parking laws and regulations in Keene, New Hampshire by patrolling the City streets.
8. The City provides its PEOs with wages and benefits in exchange for satisfactory job performance.
9. The City has economic employment relationships with its PEOs.
10. The City has protected legal property interests in the employment relationships with its PEOs.
11. PEOs have no arrest powers, but wear distinctive uniforms to inform the public of their status as City employees and parking enforcement personnel.
12. PEOs are responsible to the City and the community for checking and regulating parking in the City.
13. As of January 2013, the City employed three PEO employees.
14. Beginning in or around December 2012, and continuing to the present, Defendants, acting individually and in concert together, have intentionally and/or negligently engaged in persistent and ongoing efforts to interfere and prevent the City and its PEOs from carrying out their employment parking enforcement responsibilities.
15. Defendants have intentionally and/or negligently engaged in persistent and ongoing efforts to interfere with the City's employment contractual relationship with its PEOs by creating hostile and unsafe work environments for the PEOs.
16. Defendants, acting individually and in concert together and by implied and express agreement among themselves, have intentionally and/or negligently taunted, interfered



with, harassed, and intimidated the PEOs in the performance of their employment duties by, among other actions and conduct:

- a. Following, surrounding, touching or nearly touching, and otherwise taunting and harassing the PEOs in groups of one, two, or more;
  - b. Running up behind the PEOs very quickly, startling them, and making it difficult for them to concentrate on job performance and personal safety;
  - c. Encouraging the PEOs to their terminate employment relationships with the City;
  - d. Crowding, bumping into, and taunting the PEOs, including subjecting them to profanities and derogatory statements;
  - e. Following and harassing the PEOs on days on, days off, and through the Internet;
  - f. Communicating with the PEOs in taunting and intimidating ways;
  - g. Video recording the PEOs at very close proximity as the PEOs attempt to perform their employment duties; and
  - h. Engaging in other actions and conduct directed against the City and its PEOs to interfere and prevent the City and its PEOs from carrying out their employment duties.
17. The City and the PEOs have requested that Defendants cease their harassment, interference, and intimidation.
18. Given the employment contractual relationship between the City and its PEOs, the City has a legal right to protect its employment interests with the PEOs.
19. Given the employment contractual relationships between the City and its PEOs, the City has legitimate and legal interests to prevent and avoid workers' compensation claims, disability claims, unnecessary sick day claims, and other adverse employment consequences that arise from hostile and unsafe work environments, and prevent the loss or alterations of employment status of its PEOs created by Defendants.
20. Given the employment contractual relationships between the City and its PEOs, the City has legal obligations to:
- a. Protect all of its employees, including the PEOs, from hostile work environments created by Defendants; and
  - b. Protect all of its employees, including the PEOs, from unsafe work environments created by Defendants.
21. Defendants' actions and conduct, acting individually and in concert together and by implied and express agreement among themselves, have proximately caused one PEO to

resign from employment with the City and another PEO to significantly change job duties with the City.

22. Defendants' actions and conduct have proximately caused the City to incur financial and administrative costs associated with:

- a. the loss of employment of a PEO;
- b. undertaking other employment arrangements for other PEOs; and
- c. providing the PEOs with professional counseling and advice to deal with the stress and anxiety due to the hostile and unsafe work environments.

23. Defendants' actions and conduct have proximately caused the PEOs to experience anxiety and emotional distress, on and off the job, which have adversely affected their work environment and job performance for the City.

24. Defendants' actions and conduct present safety concerns and risks to the PEOs and the general public. Defendants often take up sidewalk space as the PEOs attempt to perform their job functions with Defendants following them closely. Private citizens using City sidewalks have become ensnared in Defendants' activities.

25. The motoring public is also at risk as Defendants run across streets to intercept the PEOs. Defendants follow the PEOs' City vehicles on foot and by bicycles and cars. This forces the PEOs to be hyper-vigilant of Defendants' close proximity to their vehicles while maintaining a safe distance from the general motoring public.

26. The PEOs often find themselves at the center of confrontations between Defendants and the general public. Private citizens have shouted from cars and confronted Defendants on the sidewalks within close proximity to the PEOs.

27. Such confrontations interfere with the PEOs' job functions and are dangerously distracting for the PEOs, Defendants, and the general public when they occur on active streets and sidewalks.

28. The City has a right and duty to protect its interests and the well-being of its employees.

29. The City's protected property interests in the employment relationships with its PEOs have been damaged by the Defendants' actions and conduct.

**COUNT I**  
**INTENTIONAL INTERFERENCE WITH EMPLOYMENT CONTRACTUAL**  
**RELATIONS BY DEFENDANTS**

30. The City incorporates herein all factual and legal allegations set forth in paragraphs 1-29 above.

31. The City has economic employment relationships with its PEOs.

32. The City has protected property interests in the employment contractual relationships with its PEOs.

33. Defendants are aware of the City's economic employment relationships with the PEOs and with the employment duties of the PEOs.

34. Defendants, acting individually and in concert together and by implied and express agreement among themselves, have intentionally and improperly interfered with the City's economic employment relationships with its PEOs.

35. The City has been damaged by the Defendants' actions and conduct.

36. The City has suffered and will continue to suffer harm due to the PEOs' inability to perform their job duties effectively because of Defendants' actions and intentional interference conduct.

37. The City has suffered damages, all within the jurisdictional limits of the Court, for the following:

- a. Loss of an employee;
- b. A modified schedule for another employee because of the Defendants' behavior;
- c. Hiring costs to replace the lost employee;
- d. Monetary and administrative expenses with regard to counseling and other Human Resource issues; and
- e. The PEOs' inability to properly perform their employment duties.

38. The City may suffer further damage by way of resignations or employment accommodations for one or more PEOs for the working conditions caused by Defendants' intentionally harassing behavior.

- a. Judgment against each Defendant, jointly and individually, for all damages, costs, attorneys' fees, and interest, within the jurisdictional limits of the Court; and
- b. Grant such other relief as may be proper and just.

WHEREFORE, the City requests the following affirmative relief:

46. The City requests a trial by jury.

**REQUEST FOR A JURY TRIAL**

45. Based on New Hampshire law, the City is entitled to recover its attorneys' fees and costs associated with this civil action, and the equity injunctive petition, against Defendants based on Defendants' actions and conduct.

44. The City incorporates herein all factual and legal allegations set forth in paragraphs 1-43 above.

**COUNT III**  
**ATTORNEYS' FEES AND COSTS AGAINST DEFENDANTS**

43. The City has suffered and incurred damages as a result of the Defendants' actions and conduct, all within the jurisdictional limits of the Court.

42. Defendants' actions and conduct have proximately caused damages to the City.

41. Defendants, acting individually and in concert together and by implied and express agreement among themselves, breached their duties by engaging in actions and conduct that created hostile and unsafe working and employment conditions for the PEOs.

40. Defendants had legal duties to the City and its PEO employees not to engage in actions and conduct that would create hostile and unsafe working and employment conditions for the PEOs.

39. The City incorporates herein all factual and legal allegations set forth in paragraphs 1-38 above.

**COUNT II**  
**NEGLIGENCE BY DEFENDANTS**

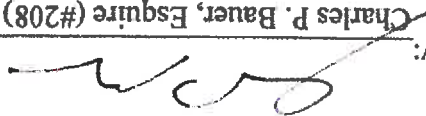
Dated: September 23, 2013

Respectfully submitted,

CITY OF KEENE

By its Attorneys,

GALLAGHER, CALLAHAN & GARTRELL, P.C.

By:   
 Charles P. Bauer, Esquire (#208)  
 Caroline K. Lyons, Esquire (#20796)  
 214 N. Main St.  
 P.O. Box 1415  
 Concord, NH 03302-1415  
 (603) 228-1181  
 bauser@gcgslaw.com