

NOTICE OF INJURY and CLAIM

TO: City of Milwaukee
Jim Owczarski, City Clerk
200 E. Wells Street, Room 205
Milwaukee, WI 53202

Board of Fire and Police Commissioners of the City of Milwaukee
Griselda Aldrete, Executive Director and Secretary
200 E. Wells Street, Room 705
Milwaukee, WI 53202

This document is a combined notice of injury and notice of claim pursuant to Wis. Stat. §§893.80(1d)(a) and (b). A claim for damages is made at this time.

CIRCUMSTANCES OF THE CLAIM

1. Claimant Alfonso Morales is an adult resident of the City of Milwaukee, residing at 9600 West Greenwood Terrace, Milwaukee WI 53224.
2. The City of Milwaukee is a city government organized and existing under Wis. Stats. Chapter 62 and the laws of the State of Wisconsin, with principal offices located at 200 East Wells Street, Milwaukee, Wisconsin 53202.
3. The Board of Fire and Police Commissioners of the City of Milwaukee (the Board) is a body politic organized and existing under Wis. Stats. Chapter 62 and the laws of the State of Wisconsin, with principal offices located at 200 East Wells Street, Milwaukee, Wisconsin 53202.
4. In February 2018, Morales became Interim Chief of Police of the City of Milwaukee upon the mid-term retirement of former Chief Edward Flynn.
5. In April 2018, the Board appointed Morales to serve as Chief of Police of the City of Milwaukee Police Department until January 8, 2020, the end of Flynn's term.

6. On December 16, 2019, former Board chairman Steven DeVougas announced the Board would not vote on the reappointment of Morales, despite Morales' term ending in less than thirty days. DeVougas cited "unanswered questions" as the reason for the delay.

7. Thereafter, two commissioners called for a vote on Morales' reappointment. Following a hearing on December 18, 2020, the Board reappointed Morales to serve a four-year term, successive to his completion of Flynn's term. The vote was 4-2, with one Board member abstaining.

8. The four-year term for the Chief of Police is established by City of Milwaukee Ordinance 312-01, in accord with Wis. Stat. §62.50(6).

9. On January 8, 2020, Morales and the Board entered into a written employment contract setting forth a four-year term of employment beginning on January 8, 2020. Although the document states that the term expired on January 8, 2023, consistent with the mandatory ordinance language stating a four-year term and the contract's reference to a four-year term, the contract actually expires on January 8, 2024.

10. In June and July 2020, the Police Department's handling of civil unrest arising from protests in the City following the death of George Floyd were brought into question by some citizens and the media.

11. On July 2, 2020, Mel Johnson, an attorney hired to investigate ethics complaints about DeVougas, issued a report in which Morales is cited as having said that DeVougas had told Morales he would vote to reappoint Morales, if Morales fired a City

of Milwaukee Police officer involved in the arrest of Milwaukee Bucks player Sterling Brown.

12. On July 7, 2020 and July 13, 2020, a supervisory officer of the Milwaukee Police Department informed other executive officers of the Department that he had been advised by a current member of the Board and its Executive Director that the Board had decided to remove Morales as Chief of Police and that the officer who made the disclosure or another senior officer would be candidates to replace Morales.

13. On July 16, 2020, the Board met in executive session with Morales. During that meeting, the Board established an agenda for a meeting on July 20, 2020. The only agenda item was: "a resolution to vote and issue directives for Police Chief Alfonso Morales."

14. On July 20, 2020, the Board issued an executive order setting forth multiple directives to Morales. The order required compliance with the directives by specified dates within seven to 30 days of the issuance of the directives. The executive order warned that "failure to comply fully and promptly with these directives shall result in disciplinary action by the board, including discharge, suspension, or reduction in rank."

15. On July 21, 2020, Morales, through his attorney, submitted two letters related to the directives issued by the Board. The first letter requested the immediate return of the exact directives (the executive order) issued the previous day. At that time, the Board had not provided a copy of the written directives to Morales or his attorney. The second letter, issued after production of the written executive order, requested additional time to provide some of the information demanded by the Board. Board

Executive Director Griselda Aldrete advised Morales on August 1, 2020, that the Board would extend the deadline for one directive, but the deadlines for the remaining directives would be unchanged.

16. On July 28, 2020, City Attorney Tearman Spencer wrote to City of Milwaukee Mayor Tom Barrett, advising that one of the directives -- that Morales disclose information related to the Department's compliance with a settlement agreement resolving a federal civil rights case -- would jeopardize that settlement agreement. City Attorney Spencer encouraged Mayor Barrett to overrule that directive. The Mayor took no action.

17. On August 4, 2020, Morales and then-Assistant Chief of Police Michael Brunson, Sr., appeared in a Police Department video, which was released via a media release with a link on You Tube, defending officers' use of tear gas and pepper spray during the civil unrest that grew out of the protests. This video was in compliance with the Board's directive that Morales publicly explain the Department's use of non-lethal chemical irritants.

18. On August 5, 2020, the Milwaukee Police Department issued a report stating that the Board's list of directives was filled with factual errors and unclear requirements and some of them possibly could be illegal. The Department also stated that some of the information requested related to incidents that were part of an internal investigations, pending cases or civil litigation and, therefore, releasing information could compromise those matters.

19. On August 6, 2020, Morales and the Milwaukee Police Department provided the information required in the executive order and its directives to the Board. Based on the voluminous nature of the materials tendered, it is highly unlikely that this response was read and/or considered by all Board members prior to unanimously voting remove Morales as Chief later that day.

20. On August 6, 2020, just hours before the scheduled meeting on Morales' status as Chief, DeVougas released a lengthy statement to the press and public and conducted a press conference, during which he divulged discussions he had with Morales and Mayor Barrett about a police officer-involved shooting and also disclosed his previously undisclosed "concerns" that led him to slow down the reappointment process in December 2019.

21. Morales and his attorney appeared before the Board via Zoom conferencing on August 6, 2020. When the Board reached Morales on the agenda, a Board member moved to demote Morales to the rank of Captain. After Board members made statements, they voted unanimously to demote Morales to the rank of Captain and appointed Brunson as Acting Chief, both effective immediately.

22. The Board did not question Morales at the August 6, 2020 meeting, did not allow him to explain his response to the Board's directives, and did not allow him to be heard in response to either the motion to demote him or the statements Board members made about him during that meeting. Neither Morales nor his counsel were allowed to address the Board in any way.

23. The Board is authorized to issue directives to a chief under Wis. Stat.

§62.50(23), which states:

The board may issue written directives to a chief based on a review of the chief's department. The chief receiving a directive shall implement the directive unless the directive is overruled in writing by the mayor.

Section 62.50(23) does not, however, authorize the Board to impose discipline against a Chief for failure to follow a Board directive.

24. Fire and Police Commission Rule II, §3(a) states:

The Board shall, on an ongoing basis, review all aspects of the operations of the Fire and Police Departments, including, but not limited to, a consideration of discipline, promotion, work rules, standard operating procedures, and other procedures relating to the conduct of employees of the Fire and Police Departments. The Commission, and Commission members or staff when authorized by the Commission, shall have full access to observe and review all department activities.

Neither that rule nor any other rule sets forth the process and procedure to be followed by the Board to ensure fairness and due process when reviewing a chief's response to directives issued under section 62.50(23).

25. To date, and despite repeated requests, the Board has not provided Morales or his counsel with written findings and an order reflecting the Board's decision to demote him or for a transcript of the proceedings on August 6, 2020. Morales has no knowledge as to whether a written document reflecting the Board's decision to demote him was prepared and filed but not provided to him, or if no such document exists.

26. The Board breached Morales' contract employing him as Chief of Police for a four-year term, commensurate with the term set in Milwaukee City Ordinance 312-01, by demoting him to Captain and replacing him as Chief.

27. The Board took disciplinary action against Morales adversely affecting his property and reputational interests without specific notice of the charges giving rise to disciplinary action taken against him, without just cause, and without due process of law.

28. Morales was denied due process of law in that he was denied adequate notice, a fair hearing and an opportunity to be heard.

29. Board members exhibited bias against Morales prior to the August 6 meeting, including former Board President Steven DeVougas in both his written statement and press conference before the meeting on August 6. Thus, Morales was denied a fair hearing before a neutral and unbiased tribunal and denied due process of law.

30. Morales has decided to retire from the Department, which will provide benefits commensurate with his rank as Chief. Nonetheless, as a result of the demotion and unlawful termination of his four-year contract, Morales has suffered a decrease in pay and benefits equal to the difference between his salary as Chief and his salary as Captain, which equals approximately \$30,000 per year from August 6, 2020 through January 8, 2024. In addition, Morales will suffer the financial loss of any increases in compensation and benefits at a rate of 2.5% per year, that he reasonably could have expected to receive over the balance of his contract term.

31. The Board's actions described above also caused Morales to be subjected to public approbation and reputational harm, which will have substantial and serious

consequences, including adversely impacting his ability to secure a similar position in law enforcement and, perhaps other executive or managerial employment.

ITEMIZATION OF DAMAGES

- Breach of contract damages: difference between his salary as Chief and salary at the rank of Captain as of 8/7/2020 through 1/8/2024, plus diminished retirement pay \$125,000
- Damages arising from denial of due process, including attorney fees \$250,000
- Damages arising from loss of reputation in the community and future career opportunities \$250,000

Dated in Milwaukee, Wisconsin this 20th day of August, 2020.

By: 

ALFONSO MORALES

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By: 

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