

Brian Charles Vaeth
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

BRIAN CHARLES VAETH
8225 Poplar Mill Road
Baltimore, Maryland 21236

v.

MAYOR & CITY COUNCIL OF BALTIMORE
City Hall
100 Holliday Street
Baltimore, Maryland 21202

**BOARD OF TRUSTEES, FIRE & POLICE EMPLOYEES
RETIREMENT SYSTEM OF BALTIMORE CITY**
7 East Redwood Street, 18th Floor
Baltimore, Maryland 21202

**COMPLAINT FOR DECLARATORY JUDGMENT AND FOR THE
ISSUANCE OF A TEMPORARY RESTRAINING ORDER AND PERMANENT
INJUNCTIVE RELIEF**
(Hearing Requested)

PARTIES

1. Plaintiff, Brian Charles Vaeth, is a resident of Baltimore City, located at 8225 Poplar Mill Road, Baltimore, Maryland 21236.
2. Defendant, the Mayor and City Council of Baltimore City, a municipal corporation, is located at 100 N. Holliday Street, Baltimore, Maryland 21202. Catherine Pugh is the Mayor of Baltimore City and is being sued in her official capacity.

JURISDICTION & VENUE

3. This is an action for injunctive relief and damages pursuant to 42 U.S.C. § 1983 based upon the continuing violations of Plaintiffs' rights under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution. Jurisdiction exists pursuant to 28 U.S.C. § 1331 and 1343 based on 42 U.S.C. §1983 and questions of federal constitutional law. Jurisdiction also exists under the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a).
4. Venue is proper in that the events and conduct complained of herein all occurred in the District of Maryland.

INTRODUCTION

5. Plaintiff, appearing pro se, respectfully requests of this Court to use the inherent power it naturally possesses, in a society constructed on the very foundation of fair, equal, and equitable justice, to correct a grave miscarriage of justice that has occurred in Plaintiff's case that has caused him further injury, in that because the outstanding medical bills associated with Plaintiff's Line of Duty injury remain unpaid, he has been refused access to and is unable to seek proper healthcare services, as a result. If not paid, Plaintiff stands to suffer irreparable harm, as the City of Baltimore's actions severely limit his options in this regard. It cannot be argued that the highest attainable standard of health is a fundamental right of every human being and access to it should not be restricted due to an employer's failure to uphold the law and pay all medical bills associated with a work-related injury. Plaintiff seeks to have this Court find that Defendants have committed fraud upon this court, so that Plaintiff may begin the process of clearing his name and correcting the record in this matter.
6. Timely and responsibly meeting the medical and basic living expenses of firefighters who are determined to be disabled after being injured in the Line of Duty, is not just a legal obligation but a moral one. An injury such as the one that Plaintiff suffered should not result in medical conditions worsened by delay and denial of necessary benefits, nor should it leave the firefighter, or their family, financially destitute and emotionally battered. Those entrusted with maintaining

the medical files related to injuries suffered in the performance of a firefighter's duties have a clear responsibility to do so, as provided for in the Baltimore City Code. In no way should the failure of officials within the City of Baltimore to properly maintain and submit the complete medical files of injured members to investigatory authorities create obstacles bound to worsen the physical and financial conditions of members of the department who have suffered debilitating injuries. Instead of carrying out these duties consistent with their legal and moral obligations, the Office of the Baltimore City Solicitor, legal counsel for the Mayor and City Council of Baltimore, routinely and improperly chooses to forward legally inconsistent arguments, withhold relevant evidence that they have in their possession, and fabricate evidence that they don't have, to unlawfully obtain a ruling from the courts that is favorable to them, so the wrongful denial of what is ultimately the City of Baltimore's obligation to the members of the Fire & Police Employees Retirement System can continue. The lack of responsible oversight allows the Baltimore City Solicitor's long-standing pattern and practice of disability discrimination to continue at their will.

7. The details surrounding this complaint are a result of previous claims filed in the Circuit Court for Baltimore City, case numbers 24C00005120, 24C03007014, and 24C07009752, which were an appeal of an administrative agency's unlawful determination of the denial for retirement benefits from the Fire & Police Employees' Retirement System of Baltimore City and the manner in which the proceedings were conducted. Affiant also filed claims in the United States District Court for the District of Maryland, case numbers RDB-08-708, US Court of Appeals case number 09-2056 and WDQ-10-0182, Court of Appeals case number 11-2122. The United States District Court claims were brought pursuant to the Americans with Disabilities Act of 1990, as amended 42 U.S.C. sec. 12101 et seq., the Rehabilitation Act of 1973, as amended, 29 U.S.C. sec. 701 et seq. (Rehabilitation Act), and the 14th Amendment to the Constitution for allegations of the denial of due process and equal protection under federal, as well as, Maryland State laws.

8. This action follows over a decade of extraordinary efforts by Plaintiff to hold accountable for their corrupt practices Baltimore City officials and presents allegations of fraud perpetrated by those officials with the intent of preventing the judicial process from functioning in its usual manner that involves violations of laws, so fundamental to the administration of fair justice that it undermines the workings of the adversary process itself. More importantly, newly discovered evidence that the Plaintiff did not, and could not otherwise have access to prior to the present time, will show that it is about far more than an injury to a single litigant. It is about a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated being inconsistent with the good order of society. The assessment of this request should include the conduct addressed in it that is focused on governmental actors, who are required to operate under a higher standard of care in light of the power they hold in our society. When they fail to do so, it puts everyone at risk. Here, the Baltimore City Solicitor's Office has abandoned this fundamental objective and also any effort to observe the constitutional rights of the citizens of Baltimore. Instead, they go all in to win at any cost to the detriment of the very system of fair and equal justice these appointed attorneys for the City of Baltimore swear an oath to uphold. The actions of those accused threatens not only the judicial process but also all citizens who are exposed to litigating matters before the court.

BRIEF STATEMENT OF CLAIM

9. Plaintiff was a Baltimore City Firefighter eminently qualified for the position by virtue of the many times he was cited for meritorious conduct during his career until he suffered a disabling Line of Duty injury, which led to him being deemed medically disqualified from the performance of his duties by the City of Baltimore.
10. On August 2, 1996, while in the performance of his duties, as a Baltimore City firefighter, Plaintiff was seriously injured in the Line of Duty fighting a building fire and had surgery for that injury. The details of this surgery are contained in the medical files found in the Record Before the Panel of Hearing Examiners for the Fire and Police Employees Retirement System of

Baltimore City. (**EXHIBIT 1**) Plaintiff returned to the full performance of his duties in November of 1996 and he filed a Workers Compensation Claim associated with the injury, as per Baltimore City Fire Department policy.

11. Despite several occurrences of pain experienced after suffering the original injury on August 2, 1996, and the subsequent surgery required to repair the damage that was suffered, Plaintiff sought medical care out of an abundance of caution with respect to the injury on May 10, 1997, but continued with the full performance of his duties. The record reflects that these reports were nothing rising to more than occurrences of mild muscle strains but given the history of the injury and the extreme physical demands required of firefighters, the protocol for treating these muscle strains was observed.
12. Plaintiff was placed off duty for 4 days, and returned to the full performance of his duties. On March 23, 1999, Plaintiff experienced severe back pain while in the performance of his duties again. (See **EXHIBIT.1, PAGE 31**) Plaintiff sought the treatment of his surgeon and after following the abovementioned protocol of assessing his pain to see if it improved after a period of time, which it did not, and without further explanation for the cause of this pain, it was determined that an exploratory surgery would be required. It was immediately observed that due to the scar tissue that had accumulated resulting from the original surgery, it was severely impinging the nerve roots and was advancing into his spinal cord. Common X-Rays or Magnetic Resonance Imaging (MRI) scanning does not detect the accumulation of post-surgical scar tissue. It can only be detected by performing an exploratory surgery. This surgery was quite intrusive and Plaintiff's recovery was further hampered when it was discovered that he had contracted a post-surgical infection. Despite not allowing him the proper time to recover from the surgery, and subsequent post-surgical infection, the City determined that Plaintiff was medically disqualified from the performance of his duties. Plaintiff was ordered to file an application for disability retirement benefits from the Fire and Police Employees Retirement System of Baltimore City by the Chief of the Fire Department.

13. Pursuant to the Baltimore City Code, Article 22, a hearing was conducted before the Panel of Hearing Examiners for the Fire and Police Employees Retirement System of Baltimore City to determine Plaintiff's eligibility for Special Line of Duty disability retirement benefits. The medical file was submitted by the City of Baltimore to the Fire and Police Employees Retirement System of Baltimore City and presented, as the record before the Panel of Hearing Examiners for that administrative hearing. The Fire and Police Employees Retirement System of Baltimore City was represented by the Baltimore City Solicitor. Plaintiff was represented by private counsel.
14. At the conclusion of that administrative hearing, the hearing examiner ruled that Plaintiff was disabled from the further performance of his duties, however, the hearing examiner failed to rule on the evidence presented in the record and made a critical error that did not support his findings of fact. Plaintiff was awarded an Ordinary Disability pension, which is reflective of this injury not occurring in the Line of Duty and is significantly less than the Special Line of Duty Retirement Benefit, despite his being qualified for the full Special Line of Duty Disability Retirement Benefit. **(EXHIBIT 2)**
15. Plaintiff appealed this arbitrary and capricious determination to this Court, however, before the appeal could be heard by the Circuit Court, the City of Baltimore reinstated Plaintiff to the full performance of his duties in January of 2001. **(EXHIBIT 3)**
16. Plaintiff continued with the full performance of his duties until he experienced another episode of back pain that caused him to seek medical treatment again in June of 2002. It was found that the narrowing of the vertebral disc space that was evident in the occurrence of the original surgery had progressed to the point that surgical intervention would be required. It was again determined by the City of Baltimore that Plaintiff would be retired due to the injury. Despite settled Maryland Law on the issue of the causation of work-related injuries, the City of Baltimore incorrectly classified this as a Non-Line of Duty injury. Plaintiff grieved this erroneous determination with his Union representative. Plaintiff was informed that the grievance was rejected due to his status reflecting that he was being medically disqualified from the further performance of his duties.

17. Plaintiff was again ordered to apply for Special Disability Retirement Benefits from the Fire and Police Employees Retirement System of Baltimore City. Plaintiff was determined to be “not disabled from the further performance of the duties of a firefighter” and he was denied again.

(EXHIBIT 4)

18. An appeal to the Court was timely filed in this matter. **(EXHIBIT 5)** The appeal was dismissed due to a lack of prosecution. Upon being notified of the dismissal, Plaintiff requested of the Court to reopen the appeal, however, that request was denied. Rather than appeal that decision, Plaintiff filed an action in the United States District Court for the District of Maryland, for discrimination against the City of Baltimore. The fraud that is alleged is detailed as follows.

FACTS GERMANE TO THIS ACTION, FRAUD HAS BEEN COMMITTED

19. In the context of the broad tapestry of misconduct presented by this action, there is perhaps nothing as primary and significant, as the manner in which the Baltimore City Solicitor’s office perpetrated their fraud, as they provided false and misleading testimony on the most fundamental aspects of this matter. In the following, Plaintiff intends to set forth those violations sufficiently to demonstrate that a long-standing pattern and practice of fraud is being committed by the Baltimore City Solicitor’s Office in the awarding of Line of Duty Retirement Disability Benefits from the Fire & Police Employees Retirement System of Baltimore City and justify the granting of the request for this request, as well as any and all further relief as the Court may order.

20. The fraud worked upon the court was comprised of numerous acts of misconduct. Although recklessness is all that need be shown to establish a fraud on the Court under the controlling authorities, the majority of the misconduct here is clear, intentional, and willful. Together, the acts amounted to a pervasive fraud driven by the goal of prevailing at whatever the cost. The following selected examples discuss only some of the more egregious acts of fraud.

RULES OF DISCOVERY FOR THE ADMINISTRATIVE HEARING

21. Article 22 of the Baltimore City Code was enacted for the purpose of providing retirement allowances and death benefits under the provisions of that subtitle for such officers and

employees of the Department of Aviation, of the Police Department and of the Fire Department of Baltimore City. The City Solicitor of the City of Baltimore is the legal advisor of the Board of Trustees of the Fire and Police Employees Retirement System of Baltimore City. Firefighters who are disqualified from the further performance of their duties by the City of Baltimore are ordered to file an application with the Board of Trustees of the Fire and Police Employees Retirement System of Baltimore City. The Board of Trustees is responsible for conducting hearings on all matters involving non-line-of-duty disability claims, line-of-duty disability claims, 100% line-of-duty disability claims, line-of-duty death benefit claims, and any related matters arising out of these claims. One hearing examiner from the Panel of Hearing Examiners, provided for by the Board of Trustees of the Fire and Police Employees Retirement System of Baltimore City hears claims for benefits and conducts the hearings in an informal manner, with sufficient latitude to provide a fair and impartial hearing to all of the parties without requiring strict compliance with the rules of evidence. Testimony at the hearing is under oath and recorded. The hearing examiner has the power to subpoena and require the attendance of witnesses and the production of papers and documents to secure information pertinent to the hearing, and to examine them.¹

22. While the Baltimore City Code does not require a strict compliance with the rules of evidence, for matters before the Panel of Hearing Examiners, it does not effectively throw them out to allow the Baltimore City Solicitor to have complete control over the process or to disobey state law on the issue. Under the Administrative Procedures Act of the State of Maryland Subtitle 10-213 (b), it provides that the presiding officer may admit probative evidence that reasonable and prudent individuals commonly accept in the conduct of their affairs and give probative effect to that evidence. Probative evidence is that which has the effect of proof, tending to prove, or actually proves the elements of a case. It is obvious that the City Solicitor has taken full advantage of this

¹ Baltimore City Code Article 22, Retirement System § 33 (1) (8) -(12) Panel of Hearing Examiners

rule and has used it to admit evidence that is totally irrelevant. (**SEE EXHIBIT 1**) It also does not allow the Baltimore City Solicitor to withhold probative evidence.

WILLFULL WITHHOLDING OF PROBATIVE EVIDENCE

23. The record presented in **EXHIBIT 1** shows that not only was irrelevant material introduced into the record, which can only be viewed as an attempt to convolute the record and cause confusion, relevant and probative medical evidence was willfully withheld from inclusion. This includes virtually the entire incident that led to him to be medically disqualified a second time. This information was vital to Plaintiff being able to prevail at the hearing before the F&PERS. This information was excluded because it was favorable to Plaintiff's case and it was withheld purposely to ultimately deny him of his retirement benefits.

NO EMPLOYEE INCIDENT REPORT WAS FILED BY THE CITY OF BALTIMORE IN ASSOCIATION WITH THIS INJURY DESPITE MARYLAND LAW REQUIRING IT

24. The incident that has given rise to this action was the result of the performance of Plaintiff's duties, as a firefighter. Plaintiff was assigned to Truck Company 1, Oldtown Station, which covers the lower eastside business district in downtown Baltimore City. Truck Company 1 is consistently ranked among the busiest Truck Companies in Baltimore, responding to over 3,000 calls for service every year. No evidence submitted, other than what has been pled throughout the litigation that has occurred in this matter, offers any details into how the original injury was suffered.

25. On August 2, 1996, at approximately 5 P.M., a fire was reported in an office building in the 600 Block of N. Davis Street and a box assignment was "struck out" by the Communications Division of the Baltimore City Fire Department. A box assignment consists of 4 engine companies, 2 truck companies, a battalion chief, and an air-flex and medic unit. Engine companies bring water and hose, truck companies are equipped with the ladders and tools. Truck Company 1 arrived on the scene first and reported smoke showing from all floors of a 5-story building in the rear location. Plaintiff, along with other members of Truck Company 1, put ground ladders in place and entered

the building to search for any trapped occupants, to ventilate the structure, and to provide access to the seat of the fire for incoming engine companies. Upon entering the building, Plaintiff encountered extremely dense smoke and intense heat. He made his way to the 5th floor stairwell, after performing a primary search of the rest of the building, and was about to enter that floor when he heard an engine company advancing their hose-line from the floor below to his location. This is typical of aggressive interior firefighting operations that are necessary to limit the fire from extending to adjoining structures. Plaintiff utilized a ceiling hook, a tool for firefighting operations, to penetrate the ceiling and exposed the seat of the fire in that space. Due to a delay in getting the charged hose-line in place, the fire progressed very rapidly, due to it being exposed to more air and the area “flashed over”. A flashover occurs when the internal temperatures are sufficient enough to ignite the flammable gases that occur, as a result of the thermal layering of those gases in enclosed spaces. The force of the simultaneous combusting of those gases was enough to send Plaintiff over a railing and down the stairwell to the first floor. Plaintiff hit the ground with enough force that it caused the separation of components of his helmet to occur. The incident escalated to 5 alarms, which should sufficiently show the severity of the fire and the severity of the mechanism of the injury suffered, rather than what is represented in the record before the Panel of Hearing Examiners for the Fire and Police Employees Retirement System of Baltimore City. The only details that were provided were narratives by medical professionals but none submitted by the City of Baltimore that is reflective of the full details of the incident. Plaintiff more than tripped over a hose-line, as is demonstrated in the application. Plaintiff did not write that on the form and no Employee Incident Report is introduced into the record, despite Maryland Law requiring one to be completed. **(EXHIBIT 1)** If probative evidence is required to be introduced, the injury report would be essential. Why this was withheld has never been addressed. Despite the severity of Plaintiff’s injury, his post-surgical recovery went remarkably well and he was able to return to the full performance of his duties within 3 months.

**THE WITHHOLDING OF EVIDENCE LED TO THE ERROR IN THE FIRST HEARING
FOR SPECIAL LINE OF DUTY RETIREMENT BENEFITS**

26. On May 8, 1997, approximately 7 months after returning to his duties from this injury, Plaintiff experienced another episode of back pain. Out of an abundance of caution, with respect to the injury that occurred just prior to this, Plaintiff sought the care of his doctor, who placed him off duty for 4 days due to what was diagnosed as a mild muscle strain. Plaintiff continued with the full performance of his duties for 2 years after that until he was deemed to be medically disqualified from the performance of his duties by the City of Baltimore in 1999, as a direct and proximate cause of the Line of Duty injury that had occurred on August 2, 1996. **(EXHIBIT 1)**
27. The Fire and Police Employees Retirement System of Baltimore City had the responsibility of assembling the medical record on behalf of the City of Baltimore and submitting it to the Panel of Hearing Examiners. In the occurrence of the first hearing for retirement benefits, the hearing examiner erroneously used, as a rational basis to deny Plaintiff of Special Line of Duty Retirement Benefits, an injury occurring on May 8, 1999, as the cause for Plaintiff's medically being disqualified from his duties. **(EXHIBIT 1, PAGE 10. ALSO SEE DECISION 1, EXH. 3)**
- It was impossible for Plaintiff to be working out with weights on May 8, 1999, when the record clearly shows that Plaintiff was already placed off duty on March 23, 1999 for an injury associated with the Line of Duty that occurred on August 2, 1996, which would ultimately require surgery. **(EXHIBIT 1)** There is no evidence in the record of an incident occurring on May 8, 1999. As previously mentioned, this decision was appealed, due to the hearing examiner's error, and Plaintiff was reinstated to his duties. The City of Baltimore contends that Plaintiff wasn't happy with the hearing examiner's decision and he chose to return to his duties. This is simply not true and is a total misrepresentation of the facts knowingly for the direct purpose of confusing a finder of facts of those facts. The Baltimore City Solicitor knew of the decision of the Chief of Fire Department to reinstate Plaintiff due to the error that was made and the appeal pending in the Court to address it due to the possible legal liability it posed to the City of Baltimore. The

Hearing Examiner was obviously biased and was motivated to deny Plaintiff out of his rightful benefit, or from returning to the performance of his duties, and abused his discretion.

THE WITHHOLDING OF EVIDENCE LED TO THE ERROR IN THE SECOND HEARING FOR SPECIAL LINE OF DUTY RETIREMENT BENEFITS

28. After having problems someone typically has after suffering from an injury like this, and suffering further injury to the spinal column resulting from having such an invasive surgery, Plaintiff again experienced pain, on several occasions both in the Line of Duty and Non-Line of Duty in the location of the previous injury in 2002, which led to his being deemed medically disqualified from the performance of his duties by the City of Baltimore a second time. Plaintiff was ordered to apply for Special Disability Retirement Benefits from the Fire and Police Employees Retirement System of Baltimore City. A second hearing was conducted, in the same procedure as that aforementioned in the occurrence of the first proceeding, before the same hearing examiner that made the erroneous determination in the first hearing. The City of Baltimore was represented by the Baltimore City Solicitor. Plaintiff was not represented by counsel. Plaintiff was determined to be “not disabled from the further performance of the duties of a firefighter” and he was again denied Special Line of Duty Disability Retirement Benefits.

(EXHIBIT 5)

29. In the supplemental letter of counsel for the City of Baltimore, the Assistant Baltimore City Solicitor, offers a “closing statement” that set forth the City of Baltimore’s position in the matter.

(EXHIBIT 6) Counsel for the City obfuscated from the truth at virtually every turn and did not base his opinion on evidence that was a part of the record. He inaccurately reasoned “that the Claimant was ineligible for any retirement benefit at all.” His opinion is as follows:

“Claimant’s Cut-Off Ticket indicates “Retired” rather than “Dismissed” for medical reasons. Claimant’s physician, Dr. John Rybock, as recently as 9/20/02, reported that Claimant recovered from his 8/23/02 operation sufficiently to ‘be anxious to return to work... Claimant is not eligible for, nor entitled to receive, an Ordinary Disability Retirement Benefit pursuant to Section 34 (c) of Article 22 of the Baltimore City Code. (2000 Revised Edition)² The medical brief indicates that Claimant was and is

² Amendments to Section 34 (c) of Article 22 by Ord. 03-576 do not cover this claim.

capable of performance of duties, as a firefighter but chose not to continue with his career.”

30. This assertion is absolutely false and the misrepresentation of this fact is done knowingly and willingly by the City Solicitor. Plaintiff was determined to be medically disqualified using the physical standards for firefighters, as prescribed in NFPA 1582 Section 9.9.8.1 Spine Structural Abnormality, Fracture, or Dislocation. These policies and standards were accepted by the Baltimore City Fire Department and utilized by the City of Baltimore to deny Plaintiff from continuing the further performance of his duties. If the entire medical record would have been introduced, and the probative evidence given the weight required by law, it would demonstrate that Plaintiff was ready to return to duty, as he had felt as though he recovered sufficiently to return to his duties in the abbreviated time allowed due to the incorrect classification of this injury being a Non-Line of Duty occurrence by the City of Baltimore. Plaintiff reported this to his doctor who noted that “Brian is anxious to return to work, so I think it is appropriate to do so.” Plaintiff then reported to the medical clinic for the City of Baltimore and informed Dr. Lyons that Dr. Rybock was preparing to release him to duty. Dr. Lyons then consulted with the medical director for the City, Dr. James Levy, who determined that Plaintiff was to be medically disqualified from returning to the further performance of his duties as a firefighter. Plaintiff reported this to his doctor who noted in his next report the fact that he was being retired.
31. The hearing examiner, upon the occurrence of the hearing, asked if a Functional Capacity Examination, or an FCE, was performed in association with the determination of the City to medically disqualify him for the further performance of his duties. An FCE was not submitted because the City of Baltimore never scheduled Plaintiff to be examined prior to his Cut Off date of December 28, 2002. An FCE was conducted in March of 2003, as part of the Vocational Rehabilitation process. Plaintiff offered that an FCE was conducted but well after his Cut Off date and was inappropriate to utilize at the hearing, as evidence shows that Plaintiff was awaiting to

have a further surgery for the injury at the time the FCE was conducted and the City failed to submit any evidence related to it to the hearing examiner.

32. The City Solicitor goes on to say that:

“The FCE reports that the Claimant self-limited his exertion during the evaluation: Extremity strength was self-limited with cog-wheeling behaviors for all muscle groups supporting lack of consistent effort.”

33. As Plaintiff was awaiting the extensive spinal reconstructive surgery which took place in October of 2003, it is inconceivable that anyone could demonstrate anything other than self-limiting behavior, in an examination to test his capacity to perform work, just prior to surgery. As is reflected in the letter, “the FCE occurred 3/11/03,” well after Plaintiff’s “Cut-Off” date of 12/28/02. As this FCE was conducted for the purpose of the Vocational Rehabilitation plan, to assess Plaintiff’s physical ability to do work, the representatives who performed this examination were not aware of the fact that Plaintiff was awaiting to have surgery at the time of that examination.

34. Plaintiff was still subjected to the administrative hearing process, despite being under the care of his doctor, as he was recovering from extensive spinal surgery that included the fusing of the vertebral discs that were affected. This evidence was not only withheld from the administrative hearing examiner, but other professionals involved his case, despite the fact that the City of Baltimore was paying the costs of the Vocational Rehabilitation program. This permits the Baltimore City Solicitor to fabricate the record as they need to in order to obtain a ruling that is favorable to them. This information was withheld from the hearing examiner for that exact purpose.

35. The City Solicitor continues:

“In his most recent report dated 7/8/03, Dr. Halikman notes that he is “disturbed by the FCE and prior documentation showed that the Claimant was “capable of a high level of physical activity” and was recovering well post-surgery of July, 2002. He concludes that he has questions regarding whether Claimant is disabled.”

36. Dr. Halikman is a doctor employed by the City of Baltimore to offer opinions on cases that involve an employee's disability who are undergoing the retirement process, such as Plaintiff underwent. It is obvious that evidence of Plaintiff's medical file, which held relevant and important information relating to this injury, was withheld from even Dr. Halikman. As for Dr. Halkiman's uncertainty as to whether Plaintiff was disabled, obviously, he is unaware that the medical director for the City of Baltimore made this determination under the standards found in NFPA 1582, relating to firefighters who are seriously injured in the Line of Duty and wish to return to duty. Plaintiff, nor his treating physician, ever asserted that Plaintiff was disabled.

In the next paragraph of the letter, the Baltimore City Solicitor opined that:

“Documentation in the medical brief and the Claimant's testimony at the hearing reflecting his subjective complaints of physical inability resulting from pain must be discounted on account of his impeachment of his credibility from false statements he made in his 10/28/02 Application for Disability (Form 27EE) and during the 6/9/03 hearing held before you. On his Application, Claimant answers question 13(a) (“Date of injury occurred”) by listing his line of duty, within 5 years 3/23/99 accident as the cause of his herniated disc disability. When he first applied for line of duty disability retirement on 5/5/00, the Claimant listed his 8/2/96 injury as the cause of his herniated disc disability (which was within 5 years of that application) but not the 3/23/99 incident. Moreover, the Claimant answered “No” to question 13(f) (prior injuries) even though he has already applied for disability benefit for this injury and the medical brief is replete with documentation regarding multiple injuries to his back occurring on 8/2/96, 5/10/97, 3/23/99, 6/4/99, 2/3/00, 3/17/00, 9/15/01, and 6/7/02.

37. Plaintiff originally injured his back on 8/2/96. Plaintiff was subject to retirement in 2000 because of the injury and was denied benefits, as the hearing examiner determined that Plaintiff had sufficiently recovered from that injury enough to return to work and perform his duties for a considerable time after that. There was evidence that a herniated disc, that was evident in the original occurrence had progressed but could not be the cause of Plaintiff's pain. It was found to be the scar tissue that had accumulated over the time since the first surgery and had to be considered a new injury rather than just a recurrence. If not, the Plaintiff could not have recovered sufficiently, as evidence shows he had the

scar tissue accumulating the entire time, which all evidence to the contrary would then show that Plaintiff had not recovered from that surgery.

38. In question 13(f) (prior injuries), Plaintiff was simply reflecting that he suffered no other injury than the one he suffered in the Line of Duty before he entered the Baltimore City Fire Department.

39. In both of these instances there is no attempt of Plaintiff to be considered non-credible in his testimony before the hearing examiner. This is just another misrepresentation by the City Solicitor to stack the deck in the City of Baltimore's favor.

40. There's more:

“At his 6/9/03 hearing, Claimant was less than forthcoming in answering questions regarding whether he had, in fact, undergone an FCE. In response to counsel's questioning, the Claimant stated that he had no yet taken the test, yet when pressed towards the end of the proceedings when he would be scheduling an FCE, the Claimant produced the FCE report from his briefcase.

Indeed, you noted in your 9/17/00 decision awarding the Claimant an Ordinary Disability benefit but denying him a line of duty disability benefit that the Claimant's testimony was not credible and was not consistent with the evidence in the medical record.”

41. As Plaintiff testified before the hearing examiner, the FCE required for the purpose of the hearing for retirement disability benefits should have been scheduled by the medical director for the City of Baltimore before the “Cut-Off” date of his employment with the City of Baltimore on 12/28/02, as mentioned by the City Solicitor, but it wasn't. Plaintiff had no obligation to do this or provide it. The question of it not being submitted to the hearing examiner was a question for the City of Baltimore, who was not required to be present at the hearing.

42. The hearing examiner could not have determined the credibility of Plaintiff's testimony, based on the medical records, as introduced by the City of Baltimore that have been proven to be incomplete and were withheld willfully by the Baltimore City Solicitor. The misrepresentations by the City Solicitor continues unabated despite Plaintiff's objections, even when there is absolutely no evidence to support any of their testimony:

“Perhaps more than any verbal or written statement that the Claimant made, his actions provide the greatest indictment of his trustworthiness. After asserting in his 5/5/00 line of duty disability application and at the hearing for such benefit that he was no longer able to work as a firefighter, the Claimant “miraculously” went back to work after being denied the more lucrative line of duty benefit. Now he decides that he no longer wants to work as a firefighter so he applies once more for a line of duty benefit. F&P need not accommodate the Claimant with a side income to subsidize his newly chosen career.”

43. Again, the City Solicitor takes the evidence and the entire hearing off the rails and into a realm of make believe. As aforementioned, Plaintiff did not “miraculously” return to work because he was not awarded the more lucrative line of duty benefit. Plaintiff was reinstated to his duties, as a result of an appeal that was filed challenging the decision of the hearing examiner. At no point did Plaintiff ever decide anything, as far as his ability to perform his duties. Plaintiff’s retirement was decided by the medical director for the City of Baltimore.
44. The entire letter that was submitted as part of the record by the Baltimore City Solicitor is a total fabrication of the facts and should not have been allowed to be introduced.

THE FRAUD COMMITTED BY THE CITY SOLICITOR WAS PERPETRATED ON THE UNITED STATES DISTRICT COURT AND THE FOURTH CIRCUIT COURT OF APPEALS FOR THE UNITED STATES IN THE LITIGATION BEFORE THE COURT

45. Despite the fact that this injury was suffered in the Line of Duty, and the policies that governed how injuries were assessed under the NFPA’s physical standards adopted by the Baltimore City Fire Department, the hearing examiner ruled that Plaintiff was not disabled from the performance of his duties. Upon his release from his doctor’s care for the surgery, as is reflected in *Biscoe v. Baltimore Police Department* (citation omitted) Plaintiff requested to be reinstated to his position as a firefighter in the City of Baltimore, of which the City denied. Plaintiff then began the process of disputing the determination of the City to deny him the ability to return to his duties due to employment discrimination with the EEOC. After waiting a period of time for a “Right to Sue” letter from the EEOC but not receiving it, Plaintiff made a request to them to issue it. This request was granted and Plaintiff then filed a lawsuit in the United States District Court for Maryland.

46. Upon the filing of the complaint, and the subsequent Motion to Dismiss that was filed by the City of Baltimore, Plaintiff attempted to comply with the Federal Rules of Civil Procedure in the attempt to obtain evidence that was contained in his employment file that was withheld by the City Solicitor in the proceeding before the administrative hearing examiner. The Baltimore City Solicitor denied this request and informed Plaintiff that he would need to file a Freedom of Information Act request in order to get it.

47. The City of Baltimore submitted an affidavit with the Motion to Dismiss which was completed by the Division Chief of Administration and Support for the Baltimore City Fire Department that demonstrated that he was “competent to swear oaths and give testimony in a court of law”, and that he had “personal knowledge of the matter” and was “competent to testify” to those matters. The Division Chief of Administration and Support, who should be well versed in matters of employment policies of the members under their command, asserted that “Pursuant to Civil Service Rule 57 (Exhibit 6), an employee who has reason to believe that his removal is without just cause...shall file with the Commission within 5 days after the receipt of an order of removal, a removal, a request in writing that the Commission investigate his or her removal and shall contain a statement that he believes that the removal was without just cause as required in the Civil Service Commission Rules... After a diligent search, BCFD can locate no notice of a request to investigate a removal without just cause on behalf of Brian Charles Vaeth to the Baltimore City Civil Service Commission.” The affidavit concluded by stating that:

“I SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY AND UPON PERSONAL KNOWLEDGE THAT THE CONTENTS OF THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.”

48. The Division Chief’s signature then appears immediately thereafter. (**EXHIBIT 7**)

49. This affidavit was fraudulent and, more importantly, was accommodated by the willingness of Baltimore City Solicitor to allow that fraud to thoroughly invade the litigation and support their effort to prevail against the Plaintiff despite the injury to the reputation of the judicial system that

has resulted. The case was dismissed due to the sworn statements contained in that affidavit and was fraudulent for the following reasons:

THE MEDICAL DIRECTOR FOR THE CITY HAS FINAL DISCRETION OVER THE DUTY STATUS OF ALL MEMBERS OF THE BALTIMORE CITY FIRE DEPARTMENT.

50. As stated in the foregoing, the City of Baltimore adopted the standards of the National Fire Protection Agency for the Baltimore City Fire Department. These standards also included the physical standards adopted regarding injuries suffered by members which would affect their job performance. The decision to not allow Plaintiff to return to his duties was made by the Medical Director for the Baltimore City Fire Department by using the standards adopted from the NFPA, which disqualified Plaintiff from the further performance of his duties, as a firefighter due to the number of surgeries he has had related to this injury. When the Medical Director basis his findings on a medically related issue, as the medical expert for the City of Baltimore, he has the final discretion over the duty status of the members and not even the Mayor can override that determination. The Civil Service Rules then become inapplicable to members of the Baltimore City Fire Department. To assert that Plaintiff did not follow the prescribed rules, to file a complaint that no action would be taken on, was just another successful attempt to obfuscate from the truth and prevail no matter what by the Baltimore City Solicitor. The true facts in this matter did not even matter to the Baltimore City Solicitor, as they have shown that they are willing to make it all up as they go along and misrepresent the facts to suit their needs.
51. Much of the United States District Court's opinion focused on findings that the underlying reason Plaintiff could not proceed was that the court lacked jurisdiction to grant the relief requested because he could not prove that he exhausted his administrative remedies by filing a dispute with the City over the adverse employment action in a timely manner.³ Plaintiff absolutely complied with the procedures associated with filing a dispute over this adverse employment practice.

³ Rule 55-57 of the Civil Service Commission.

Plaintiff contacted his Union representative and requested to grieve the incorrect determination of it being a Non-Line of Duty injury. This information, which is part of his employment and medical file that is in the control of the City of Baltimore, was also withheld from the hearing examiner. This would sufficiently demonstrate that a dispute with the adverse employment decision was filed, however, due to the determination being made that he was being medically disqualified under the NFPA standards, the decision would not be overturned. The process prescribes that once that determination is made by the City of Baltimore, more specifically, by the medical expert for the City the Medical Director of PSI, the member must file an application for retirement benefits from the Fire & Police Employees Retirement System of Baltimore City. If the member is aggrieved by the determination of a hearing examiner, the only avenue of relief is to file an appeal for review of the administrative decision to the Circuit Court for Baltimore City. Plaintiff filed the appeal in a timely manner and immediately thereafter, had surgery to fuse the spine together. As he was recovering from the extensive spinal surgery, Plaintiff could not effectively prosecute the appeal in a timely manner and it was dismissed. While the Court contends that notice was sent, Plaintiff never received it. Plaintiff was made aware of the dismissal and once that information became known, he immediately petitioned the Court to reopen the appeal. Support for this request was demonstrated by the fact that Plaintiff was under a medical disability, as anyone would who just had surgery on their spine, and could not have possibly pursued the litigation, as he was representing himself pro se in the matter. The Circuit Court denied that request.

THE FRAUD IS SUPPORTED IN THE REALM OF THE FEDERAL COURT

52. The requisite fraud on the court occurs where “it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system’s ability impartially to adjudicate a matter by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party’s claim or defense.” *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir.1989).

53. Plaintiff reported the allegations of the Baltimore City Solicitor's misconduct at a hearing before the United States District Court on Plaintiff's Motion to Compel Discovery, due to the Baltimore City Solicitor's refusal to provide it, and that the affidavit was fraudulent. In the transcript from that hearing, the City Solicitor makes several misrepresentations that only furthered their fraud, or at the very least, sufficiently support the allegations made herein. Beginning on page 8, the Solicitor contended that Plaintiff did not file timely complaints to various agencies in an effort to exhaust the administrative remedies available prior to filing the action in the court. As aforementioned, Civil Service Rule 57 that requires that if a dispute with an adverse employment action exists, an employee must file it with the Civil Service Commission within 5 days of the date of that action. This is not applicable in cases where firefighters are disqualified from the performance of their duties due to suffering a disability. The fact that the medical director for the City of Baltimore has the final discretion over the duty status of members returning from duty after suffering Line of Duty injuries renders that process moot, as the medical expert for the Civil Service Commission, a Baltimore City agency, is also the medical director for the City of Baltimore.

54. In the transcript, beginning on page 9, the City Solicitor states:

MS. WILLIS: "Well, let me dispose of the MD Declaration of Rights claim under Article 24. That's the easiest one to get rid of because in the State of Maryland when these claims arose, there was no private right of action. So, first of all, he did not register his complaint with any fair employment practice agency, whether state or federal or local and even had he done so, he would not have the authority to proceed on his own under that statute. There does now exist that right. But there didn't at the time when these occurrences took place."

55. This allegation is false and demonstrates the intent of the Baltimore City Solicitor to restrict Plaintiff from being able to properly present his case. Plaintiff absolutely did file complaints with many agencies of the City of Baltimore.

56. Plaintiff was deemed to be medically disqualified from his duties due to an injury that was suffered in the Line of Duty. As the above process that is prescribed by Civil Service Commission Rule 57 is not applicable in this case, as sufficiently supported in the

aforementioned, a member can only file an application for retirement benefits. If the member is aggrieved with the determination of the hearing examiner, an appeal to the Circuit Court is the only appropriate avenue of relief that a firefighter can pursue. As stated, Plaintiff had undergone surgery to fuse his spine and could not properly pursue the appeal because he was actively recovering from the surgery and he was representing himself in the appeal. The adverse employment action cannot occur until the appeal is decided by the court.

57. The City Solicitor continues to assert that: (line 17, page 9)

MS. WILLIS: “With reference to the procedural due process and equal protection claim, again just as with the ADA claims, Rehabilitation Act claim, the Fair Employment Practices claim, the contract violation, there is an obligation under the Fourteenth Amendment that there is at least an effort by the aggrieved party to try to gain relief, not just go to federal court. There were many opportunities for Mr. Vaeth both through his employment with the City and through his relationships with the police and fire pension retirement system. He chose not to exercise any of those rights and then sat on those rights for depending on how you look at it, from five to sixteen years. And his initial complaint is that he was injured in the line of duty 1996. If we go back that far, we would never be allowed to argue that somebody had not exhausted their administrative remedies or they had not been sitting on their rights.”

THE COURT: “Also, with respect to - - there’s still an exhaustion requirement even as to wrongful termination under Maryland Law?”

MS. WILLIS: “Not so much under Maryland Law. He’s classified as a breach of contract violation. And I interpreted that to mean that what he meant was that there was a violation of the contract that his Union has with the City of Baltimore. It wasn’t a wrongful termination claim. I am just making an analogy that way. Under the contract he had with the City of Baltimore, that his Union had with the City of Baltimore, he was obligated within 5 days of the time that he knew he was being terminated to make a claim with his union and they were supposed to carry that forward. He never made that claim. Again, I’ve done an exhaustive search and was not able to encounter any evidence that he made that claim.”

THE COURT: “Was there ever an appeal of any of these administrative decisions to the Circuit Court for Baltimore City?”

MS. WILLIS: “There was an appeal made for the first request for disability retirement where disability retirement was granted but not for the special line of duty disability. It was granted for non-line of duty disability and Mr. Vaeth for whatever reason while he filed an appeal, he never pursued it and it was withdrawn. The second time around he also made an effort to file an appeal. This would have

been the 2003 decision and he never acted on it and it was withdrawn by the court for non-process.”

THE COURT: “And with respect to the Maryland Fair Employment Practices Act claim, you have specifically noted that it must be filed within 6 months of the occurrence alleged.”

MS. WILLIS: “Yes.”

58. The City Solicitor’s assertion that there was a mysterious process that firefighters have to follow when they are determined to be medically disqualified from the performance of their duties by the City’s medical director is absurd, since not even the firefighter’s personal doctor can override that determination. Plaintiff did file a grievance with his union representative in a timely manner over the issue of it being deemed a Non-Line of Duty injury, but despite the exhaustive searches conducted two individuals with demonstrated knowledge of employment practices, the City Solicitor, who as a lawyer for the Mayor would be fundamental to the duties of that office and the Division Chief of Administration and Support for the Baltimore City Department, who would have to demonstrate knowledge of employment matters related to firefighters, evidence of this could not be found. It appears that those exhaustive searches never included contacting his union to ascertain this fact. Plaintiff tried to obtain all of the evidence required to overcome this but was refused by the City Solicitor.

59. The City Solicitor then refers to this as if it was a “wrongful termination” claim and goes on to assert that a dispute had to exist, when no dispute could exist until a determination was made by the hearing examiner. The only individual that can overturn the determination of the medical director for the City of Baltimore is the hearing examiner and if necessary, this Court. To characterize this process as something that was required can only be seen as a way for the City of Baltimore to create obstacles for firefighters who are disabled from the performance of their duties and is absurd. When Plaintiff filed his grievance to dispute the incorrect classification of this as a Non-Line of Duty injury, his union representative explained that the action was being taken due to the NFPA standards disqualifying him from his duties for the number of surgeries

performed. It was further explained that the next injury that could occur would be catastrophic, as Plaintiff's physical health relating to his back had been compromised by not only the surgeries but the infection, as well. As the action was being taken legally, with regard for the future health of Plaintiff, there was no dispute until the abuse of discretion demonstrated by the hearing examiner that denied Plaintiff of his benefits. A "termination" of Plaintiff would indicate that a violation of the rules regarding his employment had occurred that was his fault. There is no evidence of this occurring, so it must be, as the City Solicitor points out, a breach of the Mayor and City Council's obligations under Article 22 of the Baltimore City Code, which is the provision that establishes a member's contractual property right to their appointed position. This property cannot be taken away except by due process of law. If it was a "termination" matter, Plaintiff was never afforded the pre-termination and termination hearings, as mandated by law. This only further demonstrates that due process rights are not upheld by the City of Baltimore.

60. Plaintiff was ruled to be not disabled from his duties, as a firefighter for the City of Baltimore by the hearing examiner. While this decision is contradictory to the NFPA standards the medical director utilized to disqualify Plaintiff from the further performance of his duties, he demanded that he be returned to his position, as a firefighter for the City of Baltimore with all of his seniority in-tact. He made this request to the representative of the Vocational Rehabilitation contractor that was assessing his ability to be employed outside of the fire department. As the hearing examiner's determination was that Plaintiff was not disabled from the performance of his duties, and it has not been disturbed upon any appeal to this date, there is nothing that denies Plaintiff from his contractual right to his position, as is reflected in Article 22 of the Baltimore City Code. For the City to characterize the appeal in the first occurrence to not be pursued and withdrawn, as if no action by the City was taken on it, is a fabrication of the truth that is well known by the City Solicitor. Plaintiff was reinstated to his duties by the Acting Chief of the Fire Department in response to the appeal filed challenging the hearing examiner's decision. When

Plaintiff was reinstated, as he did not want to be retired in the first place and never asked for it, the appeal was settled and there was no need to pursue it.

61. In the second occurrence of the question of an appeal being filed, rather than be factual and relate to the court that Plaintiff was undergoing extensive spinal reconstruction surgery at the time, the City Solicitor just says that he made an effort but it was withdrawn for non-process. The Office of the City Solicitor was responsible for paying all bills for not only the doctors but the Vocational Rehabilitation professionals that were assessing Plaintiff's ability to be re-employed at the time. They seem bewildered, as to why the appeal was dismissed but knew the Plaintiff was under a medical disability at the time. When questioned by the Court about the occurrence of the second appeal, the City Solicitor again misrepresents the cause for its withdrawal. The following exchange occurs before the US District Court: (page 21, line 16) **(EXHIBIT 8)**

THE COURT: "Well, in terms of the due process and equal protections claims under the Fourteenth Amendment and the Maryland Declaration of Rights claims, again the law indicates that you are to, you must exhaust administrative remedies first. And apparently, you've never filed suit in the Circuit Court for Baltimore City to appeal the administrative decision within thirty days. Is that right?"

MR. VAETH: "I'm sorry?"

THE COURT: "Did you ever timely file an appeal of benefits - - I know that your benefits were denied in 2000 and 2003 after a hearing. And you took an appeal to the panel of hearing examiners. But you never filed the procedure of going to the Circuit Court for Baltimore City directly, did you?"

MR. VAETH: "Yes, sir."

THE COURT: "I don't think that you did, did you?"

MR. VAETH: "Yes, sir. I did. I filed an appeal for the first opinion - - excuse me your Honor."

THE COURT: "Take your time."

MR. VAETH: "On the first opinion, I file[d] an appeal on October 16th of 2000. And then on the last claim, the second time I filed it on September the 29th of 2003."

THE COURT: "But did you ever appeal an administrative decision to the Circuit Court for Baltimore City?"

MR. VAETH: “Yes, sir. That last one. October the 29th – I mean September the 29th decision, your Honor.”

THE COURT: “And you sought judicial review at that time?”

MR. VAETH: “Yes, sir. I have that right here. Your Honor, I’m very sorry.”

THE COURT: “That’s alright. Take your time. See, the issue clearly is, Mr. Vaeth, to timely, first of all, timely file and exhaust your administrative remedies and then timely file a review of denial in the Circuit Court for Baltimore City. Before what judge did you appear in the Circuit Court for Baltimore City?”

MR. VAETH: “I didn’t get to the judge, Your Honor. It was dismissed.”

THE COURT: “It was dismissed because of lack of timeliness. Is that right, Ms. Willis? Is that the basis of it?”

MS. WILLIS: “Yes, sir. It is my understanding.”

THE COURT: “All right, I think that is what I understand it to be. My point is that a state judge on these claims earlier determined that you hadn’t timely filed with that court?”

MR. VAETH: “No, your Honor. He said it was for lack of prosecution. That after the appeal was filed that I hadn’t prosecute[d] it. But I was under a legal disability I thought because I am representing myself in these matters. I never was able to get counsel. So while waiting for that appeal to be heard, I will still subject to have - - as a matter of fact when that appeal was scheduled to be heard, I had to enter a refusal, file a refusal because of my back on October 15th. The appeal was filed on September 29th. And I went through the treatment process with that. So I wouldn’t have been able to pursue a claim even then. As a matter of fact during that time, I thought it was stayed while I was undergoing surgery and the treatment --.”

62. The appeal was not dismissed due to it being untimely, as the City Solicitor asserts and goes on the record to provide testimony that it was dismissed for that reason. If the complete medical record and probative evidence was properly introduced by the City Solicitor, that evidence would show that while the appeal was pending, Plaintiff underwent extensive spinal reconstruction surgery to fuse his vertebrae. This is a willful misrepresentation of the facts by the City Solicitor again.

63. On the next page, the transcript continues. (line 6)

THE COURT: “Well, you mention that your union representative, I mean, that’s part of what you’re to get out of your union membership, isn’t it? I mean, you have

a shop steward or someone who essentially assists you in representing these claims because that's done in most unions, is it not?"

MR. VAETH: "I would have to bring in the person that testified about the grievance that would even be able to say that I brought the grievance to them to have it looked at."

THE COURT: "I am not disputing that. I am assuming for sake of argument in terms of how I analyze this under Rule 12(b)(6), I am assuming that what you're saying is absolutely true. That I am accepting that you contacted your union representative, but for whatever reason it doesn't appear that the union carried your flag, so to speak. That's essentially what happened, isn't it?"

MR. VAETH: "Right, well they said they approached the City and the City denied it."

THE COURT: "But the union didn't do any more about it?"

MR. VAETH: "Didn't do anything else."

THE COURT: "Apparently, the union on your behalf did not follow the administrative procedures - -."

MR. VAETH: "No, they didn't."

64. When Plaintiff filed his grievance to dispute the incorrect classification of this as a Non-Line of Duty injury, his union representative explained that the action was being taken due to the NFPA standards disqualifying him from his duties for the number of surgeries performed. It was further explained that the next injury that could occur would be catastrophic, as Plaintiff's physical health relating to his back had been compromised by not only the surgeries but the infection, as well. As the action was being taken legally, with regard for the future health of Plaintiff, there was no dispute until the abuse of discretion demonstrated by the hearing examiner that denied Plaintiff of his benefits.

65. The Court demonstrates a bias towards the Baltimore City Solicitor, as shown when the misconduct was alleged by Plaintiff in open court. (page 40, line 18):

THE COURT: "No, I really don't need to. But I would urge that it certainly seems to me that the and I hold your office in very high regard. Mr. Nilson is now the City Solicitor, correct?"

MS. WILLIS: "Yes, sir."

THE COURT: “George Nilson. I’ve known Mr. Nilson for years and he is a high-quality individual and I know that his conduct is consistent with the high standards of the City Solicitor’s Office for many years. It’s a very highly respected office and it would seem that to me that even in the wake of a legal victory in federal court which you’ll obviously be getting in the next few days as a result of my written opinion, that somebody ought to follow up with this in terms of fairness and equities, I can only suggest that someone needs to follow up and try to see if they can address Mr. Vaeth’s concerns in another context. You know, the fact that the City prevails in terms of this federal cause of action. I would just urge someone to – in the City government I know can be responsive to these kinds of things and it’s frustrating when you see a citizen whose involved in public service, be it the police, the fire department, or whatever, feeling like they haven’t been treated fairly and I think it’s a bit frustrating, even though you’re certainly right as a matter of law on these matters, Ms. Willis, and it’s very clear in the terms of the limitations period. That’s not to suggest that you haven’t been fair. Again, I’m not judging on the merits. It would seem to me that I believe it’s Chief Goodwin. Is he still Chief of police for Baltimore City?”

MS. WILLIS: “No, and that’s another problem with this case, sir, is Frederick McGrath (the hearing examiner for the Fire and Police Employees Retirement System of Baltimore City) we no longer have contact with him.”

THE COURT: “Yeah...”

MS. WILLIS: “And there have been meetings with the City Solicitor, with the Office of the Mayor, with the President of the City Council, with the new police chief. So, I would just like to say and this is completely off the record that there have been --.”

THE COURT: “All right.”

MS. WILLIS: “—extensive, extensive efforts to accommodate Mr. Vaeth.”

THE COURT: “Okay. Well I hope that somehow this matter can be worked out. But the simple fact is that there’s not a federal cause of action here on these claims and the points and the points the City Solicitor has raised in terms of the lack of timeliness are valid issues and under the law., for the reasons I am going to state in more detail, Mr. Vaeth, in a written opinion, I’ll treat this as a motion to dismiss for failure to state a claim upon which relief can be granted. But with that, I would have made sure that we had almost an hour hearing to give you an opportunity to express your frustration. So, with that this court stands in recess and I’ll be issuing an opinion in the next few days. Certainly, by the middle of next week at the latest and this court stands in recess until 3:30.”

66. With that exchange with the court, the Baltimore City Solicitor asserted that, “And there have been meetings with the City Solicitor, with the Office of the Mayor, with the President of the City Council, with the new police chief. So, I would just like to say and this is completely off the

record that there have been extensive, extensive efforts to accommodate Mr. Vaeth.” All evidence is to the contrary. At no time was an accommodation even attempted. However, the Baltimore City Solicitor was permitted to utter this misrepresentation and it was accepted by the court without even as much as any evidence to support that assertion whatsoever.

67. Plaintiff would like to take this opportunity to demonstrate the “extensive, extensive efforts to accommodate Mr. Vaeth”, as the City Solicitor believes those efforts to be, paying particular attention to the accommodation that was made and is shown in, wherein the Chief was instructed to fire Plaintiff upon the occurrence of his reinstatement in 2001. (**EXHIBIT 9**) When this evidence was brought forth, the City Solicitor explained that former Chief Goodwin was fired and his credibility was in question. When Chief Goodwin announced his retirement from the department, he disclosed that it was due to the illness of a family member.
68. Evidence that is in the City of Baltimore’s control, in the form of his employment file, would show that Plaintiff requested that if he was to be disqualified from the further performance of his duties by the medical director under the standards adopted by the City of Baltimore, that he be assigned to a non-suppression function in the Air Mask Repair Division, as an open spot was pending due to another member’s retirement. All attempts to accommodate this request were being considered by the City of Baltimore until the decision of the hearing examiner. At that point, all requests for accommodation were denied.
69. Plaintiff requested that an investigation into the matter be conducted by the Mayor’s Office for Constituent Services of the City of Baltimore. (**EXHIBIT 10**) That request was denied by the Baltimore City Solicitor, despite the finding that he was improperly terminated by the Mayor’s Office.
70. Despite this, many firefighters who have suffered the same fate as Plaintiff were accommodated and were afforded the ability to maintain their service for retirement purposes by being placed in light duty positions. This would allow them to remain in the employment of the City, maintain their membership in the retirement system, and work until they reach the service requirement to

be eligible for a pension. They have obviously confused themselves with a case involving another member of the fire department and not that of Plaintiff. The assignment of firefighters to these light duty positions are done based upon favoritism and not reflective of the requirements of the Americans With Disabilities Act.

71. Plaintiff was so diligently being accommodated that an email Plaintiff received from the Chief of the Baltimore City Fire Department, Mr. William Goodwin, was very telling, as to the true level of cooperation demonstrated by the Baltimore City Solicitor's Office. Upon his reinstatement after the disputed findings of the first retirement hearing, the Chief shows that he was told to fire Plaintiff. Plaintiff was subject to retraining at the Baltimore City Fire Academy and had passed all aspects of that training required to be reassigned to his original duty status. Chief Goodwin demonstrated that he would not violate the law and he reassigned Plaintiff to his original duty assignment despite this.
72. When Plaintiff was ruled by the hearing examiner to not be disabled from his duties, he should have been restored to his duties, under the law, but he was not. Since he was not disabled, as the hearing examiner ruled and that determination is presumptively correct if not disturbed upon appeal, which it has not been, the City of Baltimore would not have any other justification for restricting Plaintiff's right to continue with the performance of his duties.
73. Plaintiff has attempted to file criminal charges due to the fraud that was perpetrated on the Court, as there is no civil relief available under the law.

NEWLY DISCOVERED EVIDENCE

74. As a result of the in-custody death of an arrestee while being detained by Baltimore City Police Officers, the US Department of Justice performed an investigation into the unconstitutional pattern and practices of the Baltimore Police Department. The report depicted the Baltimore Police Department's unconstitutional pattern and practices, as a more of culture that did not uphold standards of investigatory best practices which led to excessive abuse complaints against officers being disregarded. These complaints involved the constitutional violations found in the

US DOJ investigations and yet the City of Baltimore was successful in prevailing in lawsuits filed against them. The Baltimore City Solicitor's Office represents the Mayor and the City Council, as well as Baltimore Police Officers in these lawsuits. At the same time, an Associated Press review of hundreds of court records nationwide revealed patterns of similar misconduct and unethical behavior involving municipal attorneys in New York, Denver, as well as Baltimore. They found that these lawyers deliberately hid important facts, delayed their disclosure or otherwise sought to subvert evidence in civil cases. In August of 2016, right after the findings were released by the USDOJ, Mr. George Nilson, the Chief Baltimore City Solicitor was fired without explanation.

75. In a case, currently before the Baltimore City Circuit Court, this illegal pattern and practice by the City Solicitor's Office continues. **(EXHIBIT 11)** A firefighter who was injured in the Line of Duty and disqualified from the performance of his duties by the City of Baltimore, had a hearing for benefits before the Panel of Hearing Examiners for the Fire and Police Employees Retirement System of Baltimore City, the City Solicitor provided the testimony that follows:

HEARING EXAMINER: "I don't like gotcha games. I think everybody should be able to put on their case, and they should be able to put forth the best case. But I don't like you sitting here and saying you had a document you've had since Sept. 2, 2015 and you won't even give it at the beginning of the hearing. I have a problem with that."

CITY SOLICITOR: "There's no discovery rules"

HEARING EXAMINER: "I have a problem with that."

CITY SOLICITOR: "It's perfectly permissible within the discretion of the Fire and Police Employees Retirement."

HEARING EXAMINER: "And if Mr. Gordon was sitting here doing that right now you'd be standing on your head telling me that I absolutely cannot take a document that he held out and that he kept it away from the other side."

CITY SOLICITOR: "Again, this is within the standard practice of what the F&P does in cases where we're investigating an issue of credibility. This is not exceptional. We've done this in prior cases, you know. This is not anywhere against the regulations or rules, and it's completely permissible."

76. This demonstrates that the withholding of evidence is a common practice for the Baltimore City Solicitors Office in matters before the Panel of Hearing Examiners for the Fire and Police Employees Retirement System of Baltimore City.

THE OFFICE OF THE BALTIMORE CITY SOLICITOR CONSPIRES WITH THE FIRE AND POLICE EMPLOYEES RETIREMENT SYSTEM TO OBSTRUCT JUSTICE

77. Soon after he took office, former Mayor Martin O'Malley's Chief of Staff, Michael Enright, made a surprise visit to the office that handled workers' compensation claims for city and school employees. He reported that, "Most of the workers were missing or at lunch," Michael R. Enright was told, although the hour was 2 p.m. There was paper everywhere, Enright said, piled on desks and crammed into shelves, defying any organized filing system. And near the entrance hung a picture of the Mayor, former Mayor Kurt L. Schmoke, that is." Essential documents relating to active injuries were in the custody of that office, because the claim was still open and the remainder of the closed file was in the custody of Comp Management for management of employee injury related incidents. This lack of supervisory control of the chain of custody of these records caused this information to be withheld from the hearing examiner and subsequently caused the fraud to be perpetrated on the court, as the fraudulent affidavit detailed in the aforementioned, was introduced as evidence by the City Solicitor's Office, in concert with the F&PERS, to conceal this information rather than comply with the law regarding the submission of evidence. Had the City Solicitor complied with the law, as an officer of the court is required to, this unlawful concealment would not have occurred. Actions such as these have caused many members of the F&PERS to suffer the same fate as Plaintiff. The information required for the hearing examiner to make the proper determination in Plaintiff's case was in this office but was knowingly withheld by the City Solicitor. The Baltimore City Solicitor knows where these files are located, as they determine the compensability of work related injuries involving City employees. This is evidenced by the markings found on the Employee Incident Reports. If it is related, the law department marks it as being compensable. If it is not, it is marked non-

compensable. This determines who pays the bills. All work-related injuries are the responsibility of the City of Baltimore, who is self-insured, and the marking of it being compensable directs the City to pay those bills. If it is marked non-compensable, those bills are the responsibility of the member and are submitted to the individual member's insurance company. Why the March 23, 1999 Employee Incident Report that was submitted as part of the record before the Panel of Hearing Examiners did not include any of these markings on those documents has also never been addressed.

78. Additional reports were published in the Baltimore Sun that demonstrates the true motive and the intent of then Mayor of Baltimore City Martin O'Malley to "crackdown" on the abuse of injury leave time, or "A" time, by City employees. The Mayor began what was called the "Return to Work" initiative and it resulted in a 30 to 60% decline in "A" time abuses. City employees' injuries were being investigated and for the first time, in 2000, they began keeping detailed statistics on "A" time in each City department. Those numbers were then fed into Citi-Stat, the City's new computerized statistics tracking system that was guiding Mayor O'Malley's efforts to make City government more efficient. These injuries became a statistic that was to be eliminated.
79. On August 15, 2002, the Baltimore Sun reported that in a continuing push to privatize City services, the Baltimore City Board of Estimates hired a hospital and a management company yesterday (8-14-2002) to examine City Workers' Compensation Claims. The contracts were awarded to Mercy Medical Center to operate the Public Safety Infirmary for \$2 million dollars, and to Comp Management for \$4 million dollars. These two companies had already been operating these services on behalf of the City long before 2002. The idea for privatizing the clinic stemmed from a May 2001 study by the Greater Baltimore Committee that highlighted the money paid to injured workers. A comment in the article from a Union official that represents City and State employees stated that, "It doesn't take a genius to know that private companies will make medical decisions based on the bottom line." City officials said that the deals would save the City money in large part because the contractors will do a better job of detecting fraud

and getting injured employees back to work. These companies had an interest in reducing the numbers of suspected “A” time abusers, as they had to demonstrate that they could be successful at the objective of the Mayors “Return to Work” initiative before the City would award those companies contracts to perform those services in 2002.

80. Another report by the Baltimore Sun on December 17, 2002, that Comp Management made a mistake that created pay delays for City employees who were receiving Workers’ Compensation benefits. An AFSCME (American Federation of State and County Municipal Employees) said that his office received hundreds of complaints about missing checks, workers being forced back to work before they are treated and other problems since Comp Management and PSI were hired to save money. Mercy Hospital received \$2 million dollars and Comp Management received \$4 million dollars for those contracts as part of a plan to cut 42 City employees and close a City run health clinic for employees. The deal has been a nightmare, according to a City official. Mayor Martin O’Malley stated that, “These sort of growing pains and operational glitches are inevitable whenever you make a change. We will resolve the issues.” The City of Baltimore has not resolved a thing.

**THE FRAUD IS FURTHER PERPETRATED ON BALTIMORE CITY FIREFIGHTERS
PRIVATE HEALTH INSURANCE PROVIDER**

81. The actions taken as a whole constitutes an egregious fraud that is being committed by the City of Baltimore, accommodated by the Baltimore City Solicitor, that permits them to continue to perpetrate their fraud while making it seem like a mere harmless error because they, in effect, have control over the entire process. In the areas they don’t control, their fraud is easily perpetrated because of the extraordinary trust the courts have placed in these attorneys. The Baltimore City Solicitor operates in such a manner as to deny responsibility for paying on injuries and having the bills then sent to the member’s private health insurance company for payment. In some instances, those bills are incorrectly paid by the private insurance company of the firefighter. This has occurred several times in Plaintiff’s case and is supported by the documents

contained in cases of firefighters being ordered to report to the medical clinic for the City of Baltimore for following up on injuries, or for sick call, the private health insurance provider for the firefighter is billed. These actions constitute a fraud committed by the Baltimore City Solicitor's Office on the private healthcare insurance industry. The failure of the City of Baltimore to pay those bills has resulted in Plaintiff being restricted from receiving healthcare services.

CONCLUSION

82. It is inconceivable that an employer can get away with such misconduct but to permit those actions to encroach upon the liberties of a person exercising the human right to access appropriate healthcare is beyond the understanding of the Plaintiff. The City of Baltimore has consistently acted in bad faith by ignoring that the methods they used to investigate claims and conduct hearings to decide compensability did not accurately reflect the ethical standards for doing so by producing false evidence and counsel's opinion, offered as testimony on the record before the Panel of Hearing Examiners and eventually the court. **(EXHIBIT 6)** As officers of the court, attorneys are afforded a bit more trust in matters before the courts because the attorneys are the ones responsible for seeking justice and finding the truth is the fundamental purpose of justice itself. Without truth, there can be absolutely no justice. When there is no truth, fair and equal no longer becomes part of that equation either. When rulings are issued on cases wherein the Baltimore City Solicitor has possession of all of the evidence and they disclose just what they want to and not what is relevant, and are willing to fabricate what evidence they don't have just to obtain a ruling that is favorable to them, what is left is a version of justice that rewards unethical behavior and only empowers them to carry on the continuing pattern and practice of prejudicial and discriminatory violations of the law that are apparent in this case, and the cases of many other members of the Baltimore City Police and Fire Departments similarly situated.
83. The specific relief Plaintiff seeks in this action, after being permitted the opportunity to present sufficient existing and newly discovered evidence to the Court to prove that the City of Baltimore

has committed fraud upon the court, to obtain an injunction against the Mayor and City Council of Baltimore City that orders them to pay all medical bills associated with Plaintiff's Line of Duty injury, and any and all further relief that the Court may deem necessary.

Respectfully,

Brian Charles Vaeth
8225 Poplar Mill Road
Baltimore, Maryland 21236
(410) 931-4423

Dated: October 1, 2017

AFFIDAVIT

I, Brian Charles Vaeth, solemnly affirm under the penalties of perjury that the contents of the foregoing complaint is true to the best of knowledge, information, belief this 1st day of October 2017.

Respectfully,

Brian Charles Vaeth
8225 Poplar Mill Road
Baltimore, Maryland 21236
(410) 931-4423

CERTIFICATE OF SERVICE

I, Brian Charles Vaeth, hereby certify that a copy of the foregoing complaint has been mailed to counsel for the City of Baltimore via USPS first class, postage prepaid, this 1st day of October 2017.

Respectfully,

Brian Charles Vaeth
8225 Poplar Mill Road
Baltimore, Maryland 212360
(410) 931-4423