

Eric Sanders

From: EEOC <no-reply@service.eeoc.gov>
Sent: Wednesday, July 17, 2024 07:32
To: Ms. Andrea M. Kess; Eric Sanders Esq.
Subject: Your Attorney-Submitted Charge of Discrimination Is Signed / El cargo de discriminación presentado por su abogado está firmado



**U.S. Equal Employment Opportunity Commission
New York District Office**

33 Whitehall St 5th Floor New York, NY 10004

(929) 506-5270

Website: www.eeoc.gov

07/17/2024

Ms. Andrea M. Kess
[REDACTED]

Re: Ms. Andrea M. Kess v. The Town of East Hampton
EEOC Charge Number: 520-2024-06652

Dear Ms. Andrea M. Kess,

This is to acknowledge receipt of your EEOC charge of discrimination, which has been filed under the following statute(s):

Title VII of the Civil Rights Act of 1964 (Title VII).

We will contact your attorney when we need more information. A notice of the charge will be sent to the organization you filed the charge against within 10 days of today as required by our procedures. Many states, counties, cities, and towns have their own laws prohibiting discrimination and responsible for enforcing those laws. These agencies are referred to as Fair Employment Practices Agencies (FEPAs). Usually, the laws enforced by these agencies are similar to those enforced by the EEOC. If the charge is initially filed with the EEOC and the charge is also covered by state or local law, the EEOC dual files the charge with the state or local FEPA (meaning the FEPA will receive a copy of the charge), but the EEOC typically retains the charge for processing.

Please use the EEOC charge number listed at the top of this email whenever you or your attorney contact us about this charge. Please notify the EEOC's New York District Office of any change to your or your attorney's contact information or if you either of you will ever be unavailable for a long time. Failure to cooperate may lead to dismissal of the charge.

The quickest and most convenient way for your or your attorney to obtain the status of your charge and to submit documents is to use the [EEOC Public Portal](#).

Sincerely,

The Equal Opportunity Employment Commission (EEOC)

Asunto: Ms. Andrea M. Kess v. The Town of East Hampton
Número de cargo de la EEOC: 520-2024-06652

<h2 style="text-align: center; margin: 0;">CHARGE OF DISCRIMINATION</h2> <p style="font-size: small; margin: 5px 0;">This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</p>	<p>Charge Presented To: Agency(ies) Charge No(s):</p> <div style="display: flex; justify-content: space-between;"> <div style="margin-right: 20px;"> <input checked="" type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC </div> </div>
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New York State Division of Human Rights and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.) Ms. Andrea M. Kess	Home Phone (Incl. Area Code) <div style="background-color: black; width: 100px; height: 20px;"></div>	Date of Birth Click here to enter text.
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Street Address City, State and ZIP Code

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name The Town of East Hampton	No. Employees, Members More than 500	Phone No. (Include Area Code) 631-324-8787
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Street Address City, State and ZIP Code

Click here to enter text.

Name	No. Employees, Members	Phone No. (Include Area Code)
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Street Address City, State and ZIP Code

<p style="font-size: small; margin: 0;">DISCRIMINATION BASED ON (Check appropriate box(es).)</p> <div style="display: flex; flex-wrap: wrap; gap: 10px;"> <div><input type="checkbox"/> RACE</div> <div><input type="checkbox"/> COLOR</div> <div><input type="checkbox"/> SEX</div> <div><input type="checkbox"/> RELIGION</div> <div><input type="checkbox"/> NATIONAL ORIGIN</div> <div><input checked="" type="checkbox"/> RETALIATION</div> <div><input type="checkbox"/> AGE</div> <div><input type="checkbox"/> DISABILITY</div> <div><input type="checkbox"/> GENETIC INFORMATION</div> <div><input type="checkbox"/> OTHER (Specify) HOSTILE WORK ENVIRONMENT</div> </div>	<p style="font-size: small; margin: 0;">DATE(S) DISCRIMINATION TOOK PLACE</p> <table style="width:100%; font-size: x-small;"> <tr> <td style="width:50%;">Earliest</td> <td style="width:50%;">Latest</td> </tr> <tr> <td style="text-align: center;">09/22/2023</td> <td style="text-align: center;">present</td> </tr> </table> <p style="text-align: center; font-size: x-small; margin: 5px 0;">CONTINUING ACTION</p>	Earliest	Latest	09/22/2023	present
Earliest	Latest				
09/22/2023	present				

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

Exhibit 1 Letter to Respondent The Town of East Hampton and Chief Michael D. Sarlo alleging retaliation prepared by Charging Party Andrea M. Kess

Exhibit 2 The allegations of retaliation with embedded supporting data prepared by Charging Party Andrea M. Kess

Exhibit 3 EEOC Charge No.: 520-2023-8598, the first charge filed against Respondent The Town of East Hampton by Charging Party Andrea M. Kess alleging sexual harassment, hostile work environment, and retaliation in the workplace

<p style="font-size: small; margin: 0;">I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.</p> <p style="font-size: small; margin: 5px 0;">I declare under penalty of perjury that the above is true and correct.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 20%;"> <p style="font-size: 2em; margin: 0;">7/17/24</p> <p style="font-size: small; margin: 5px 0;">Date</p> </div> <div style="width: 30%; text-align: center;"> <p style="font-size: small; margin: 5px 0;">Charging Party Signature</p> </div> </div>	<p style="font-size: small; margin: 0;">NOTARY (When necessary for State and Local Agency Requirements)</p> <div style="text-align: center; margin: 5px 0;"> </div> <p style="font-size: small; margin: 5px 0;">I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.</p> <p style="font-size: small; margin: 5px 0;">SIGNATURE OF COMPLAINANT</p> <p style="font-size: 1.5em; margin: 5px 0; text-align: center;">COURT OF WEST. 025A0013820</p> <p style="font-size: small; margin: 5px 0;">SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)</p> <p style="font-size: 1.5em; margin: 5px 0; text-align: center;">EXPIRES 09.26.2027</p>
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CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

FEPA
 EEOC

New York State Division of Human Rights

and EEOC

State or local Agency, if any

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

Exhibit 4 EEOC Charge No.: 520-2023-8598, the second [amended] charge filed against Respondent The Town of East Hampton by Charging Party Andrea M. Kess alleging sexual harassment, hostile work environment, and retaliation in the workplace

Exhibit 5 EEOC Charge No.: 520-2023-8598, the Position Statement filed with the Agency by Respondent The Town of East Hampton in response to Charging Party Andrea M. Kess's allegations of sexual harassment, hostile work environment, and retaliation in the workplace.

Exhibit 6 EEOC Guidance – Retaliation [Sections 9 and 10]

Exhibit 7 Kent-Friedman v. N.Y. State Ins. Fund 2023 WL 6292693 [S.D.N.Y. Sep. 27, 2023], summary judgment denied, 'inconsistencies' in the Position Statement cited by the Court as a factor

Exhibit 8 EEOC Charge No.: 520-2024-01857, the charge filed against Respondent The Town of East Hampton by Charging Party Peter Powers alleging retaliation as he "participated" in the protected activity of intimate partner Police Officer Andrea M. Kess. After Police Officer Andrea M. Kess disclosed the Position Statement filed with the EEOC, Powers "opposed" its 'falsity' by confronting the Respondents through Chief Michael D. Sarlo regarding the representations made to the EEOC attributed to him, Police Officer Andrea M. Kess and others designed to undermine her legal claims and dissuade others from participating as 'favorable' witnesses.

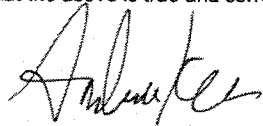
Exhibit 9 Zip Folder with supporting electronic data [for all allegations] prepared by Charging Party Andrea M. Kess

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

7/17/24

Date



Charging Party Signature

NOTARY – When necessary for State and Local Agency Requirements



I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

CONROY OF WEST. 025A0013820

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

EXPIRES 09.26.2027

Estimado(a) Ms. Andrea M. Kess,

Este documento sirve para confirmar que hemos recibido su cargo de discriminación de la EEOC, que ha sido presentado bajo la(s) siguiente(s) ley(es):

Title VII of the Civil Rights Act of 1964 (Title VII).

Nos pondremos en contacto con su abogado cuando necesitemos más información. Se enviará una notificación del cargo a la organización contra la que presentó el mismo en un plazo de 10 días a partir de hoy, tal como exigen nuestros procedimientos. Muchos estados, condados, ciudades y pueblos tienen sus propias leyes que prohíben la discriminación y son responsables de hacerlas cumplir. Estas agencias se denominan Agencias de Prácticas de Empleo Justas (FEPA, por sus siglas en inglés). Normalmente, las leyes que hacen cumplir estas agencias son similares a las que hace cumplir la EEOC. Si el cargo se presenta inicialmente ante la EEOC y también está cubierto por la legislación estatal o local, la EEOC presenta el cargo ante la FEPA estatal o local (lo que significa que la FEPA recibirá una copia del cargo), pero la EEOC suele conservar el original del cargo para procesarlo.

Utilice el número de cargo de la EEOC que aparece en la parte superior de este correo electrónico siempre que usted o su abogado se pongan en contacto con nosotros en relación con este cargo. Por favor, notifique la New York District Office de la EEOC de cualquier cambio en su información de contacto o en la de su abogado, o si alguno de los dos no va a estar disponible en algún momento durante mucho tiempo. La falta de cooperación puede dar lugar a la desestimación del cargo.


La forma más rápida y cómoda para que usted o su abogado obtengan el estado de su cargo y presenten documentos es utilizar el [Portal público de la EEOC](#).

Sincerely,

The Equal Opportunity Employment Commission (EEOC)

Cc:

Eric Sanders Esq.
The Sanders Firm, P.C.
30 wall street
8th Fl
New York, NY 10005


212-652-2782

July 16, 2024

P.O. Andrea Kess #232
East Hampton Town Police Department
131 Wainscott NW Road
Wainscott, NY, 11975
(631) 537-7575

Human Resources Department
Town of East Hampton
159 Pantigo Rd
East Hampton, NY 11937

Attn: Kathleen Rood
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

COMPLAINT OF RETALIATION

“The U.S. Equal Employment Opportunity Commission Enforcement Guidance on Retaliation and Related Issues, states that it is unlawful for an employer to retaliate against (punish) an employee for filing an EEO complaint, serving as a witness, or participating in any other way in an EEO matter. It is equally unlawful for an employer to retaliate against (punish) an employee for communicating opposition to a perceived EEO violation.” —EEOC Enforcement Guidance on Retaliation and Related Issues

I am submitting this Formal Complaint of Retaliation against East Hampton Town Police Department Chief, Michael D. Sarlo, and the Town of East Hampton for knowingly submitting a false and deceptive Position Statement to the U.S. Equal Employment Opportunity Commission on October 26, 2023, in response to the EEOC Charge of Discrimination, No. 520-2023-0475.

The false and defamatory claims made within the Position Statement of the Respondent, namely Chief Sarlo, and the submission of this false report to the U.S. Equal Employment Opportunity Commission, represent a materially adverse action taken by Chief Sarlo to sabotage, intimidate, and punish me for filing an EEO complaint. This Complaint of Retaliation includes the harmful conduct and actions I have been subjected to by the East Hampton Town Police Department, namely Chief Sarlo in addition to the retaliatory statements and allegations Chief Sarlo has made within his Statement of Response.

Respectfully submitted,



Andrea M. Kess

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

“The U.S. Equal Employment Opportunity Commission Enforcement Guidance on Retaliation and Related Issues cites making false reports to government authorities or in the media as one possible example of a ‘materially adverse’ action.”—EEOC Enforcement Guidance on Retaliation and Related Issues

The deceitful claims made in the October 26, 2023, Position Statement of the Respondent, namely Chief Sarlo, were intended to discredit my EEOC complaint and mislead the U.S. Equal Employment Opportunity Commission. These claims are categorically false. The “accompanying exhibits” the Respondent deceptively presents as “evidence,” are irrelevant to my charge of discrimination, anecdotal in nature, and lack substance. Chief Sarlo has submitted a false report to the EEOC, a government authority, and intentionally suppressed evidence to mislead the U.S. Equal Employment Opportunity Commission.

“Retaliation carries with it the notion of ‘getting even.’ It is used to instill fear in others who might consider making a complaint in the future. Retaliation, and the fear of retaliation, becomes a potent weapon used to maintain the power structure within the institution.” —Ivan E. Bodensteiner, The Risk of Complaining—Retaliation, 38 J.C. & U.L. 1, 1 (2011).

Rather than issuing a response to each of the claims within my EEOC Charge of Discrimination as mandated by the EEOC, Chief Sarlo has simply weaponized his position statement for the purpose of retaliation. Chief Sarlo knows that the allegations and claims made within his response statement are false, contradict department records, and cannot be substantiated. Instead of responding to my individual claims, Chief Sarlo has engaged in character assassination. Chief Sarlo has used his position statement to attack my individual and professional integrity and to sabotage my EEOC claims. He has taken this deliberate action against me as punishment for making a complaint to the EEOC. By engaging in retaliation, Chief Sarlo has sent a clear message to other witnesses that speaking out about unlawful conduct is dangerous and comes with severe consequences. **(See Evidence; Retaliation Complaint; Exhibit-1 EEOC Enforcement Guidance on Retaliation and Related Issues).*

“According to the U.S. Equal Employment Opportunity Commission, it is unlawful to retaliate against employees for filing or being a witness in an EEO charge, complaint, investigation, or lawsuit; communicating with a supervisor or manager about employment discrimination, including harassment; answering questions during an employer investigation of alleged harassment; refusing to follow orders that would result in discrimination.” — EEOC Enforcement Guidance on Retaliation and Related Issues

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

Retaliation is nothing new to the East Hampton Town Police Department. Many who have been interviewed by Arthur Riegel have asked if their interview will be available to Chief Sarlo or if their name will be attached to any statements they may make regarding unlawful activity within the Department, due to their fear of retaliation. During a phone conversation with retired Sgt. Barry Johnson on December 8th, 2023, he stated the following regarding his interview with Arthur Riegel:

December 8th, 2023 4:09 PM
Audio Recording — Sgt. Barry Johnson
+1-631-433-****
(44:01)

00:02:52 Johnson:

Right off the bat I asked him straight up, I was like, you know, “who hired you?” and he explained his credentials and whatnot and, um, and as far as him being an investigator and attorney.

00:03:11 Johnson:

He said that the town hired him, um, but, and right then I asked him, well then who are you? He said, he said the town hired him but, he's, you know, what is it, um. He's an objective observer.

00:03:26 Johnson:

So, I'm like so, who do you report to? He says, *'I don't report, you know, to anybody. You know, so this isn't, I'm not going to run, I'm not running back to Sarlo or anything like that with this.'* And he said, you know, *'You're retired. So there definitely are no repercussions on your end. So just tell me what you think.'*

**(See Evidence; Retaliation Complaint; Exhibit-2 Audio Recording, Sgt. Barry Johnson; Exhibit-2a, Transcript of Audio Recording, Sgt. Barry Johnson).*

Additionally, many female officers have been fearful of speaking out regarding the discriminatory harassment they have endured by other members of the Department due to a fear of reprisal by EHTPD. On April 5th, 2023, I received several text messages from Lt. Tierney who stated that during a discussion with Lt. Toia, he became hostile toward her and berated her with derogatory language and insults regarding her gender. She also revealed her hesitation to report the incident fearing retaliation. The conduct displayed by Lt. Toia toward Lt. Tierney is indicative of the type of conduct which I have formally reported to this agency, regarding Lt. Toia's interactions with me.

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

April 5th, 2023 5:17 PM — 6:18 PM

5:17 PM **Chelsea Tierney**: “Well this just gets better. Right after muster had a huge blow up with Dan in front of fink. He told me to shut up bc I don’t make any sense. Put his hand in my face telling me to be quiet. Told me I’m a ‘*little liberal girl*.’”

6:18 PM **Chelsea Tierney**: “It feels so pointless. I feel like if I go to CA I will just get in more trouble. And I feel like if I go to sarlo he will tell me he doesn’t have time and that I need to work it out with Dan myself.”

6:18 PM **Chelsea Tierney**: “It’s so miserable. I know you’re right. And I have fink as my witness. As well as Tim and Devin who heard him from the hallway.”

**(See Evidence; Retaliation Complaint; Exhibit-3, Text Messages Tierney; 1-3).*

There have been additional incidents of retaliation directed toward me by East Hampton Town Police Department in the months following my EEOC claims. These incidents are in addition to the retaliatory allegations Chief Sarlo made in his Statement of Response regarding my claims.

On November 14, 2023, I received an official Department letter from Chief Michael D. Sarlo advising me that I was “expected to cooperate” in the Town’s so-called independent “investigation” into, “*certain complaints of sex discrimination and retaliation you have made against members of the Department.*” In this letter, Chief Sarlo acknowledged that I had declined to participate in the Town’s so-called “investigation,” as per my attorney, on October 28, 2023. Despite this, Chief Sarlo ordered me to participate in a meeting with Investigator Arthur Riegel on December 8th, 2023 at 10:30 AM, and in doing so, violated my rights. **(See Evidence; Retaliation Complaint; Exhibit-4 Letter Independent Investigation).*

On November 15, 2023 I replied to Chief Sarlo, stating that I again decline to participate in this so-called “investigation” consistent with my protected rights. In this same memo, I made another complaint regarding retaliation and hostile work environment directed at me by the East Hampton Town Police Department and also stated that I viewed the false allegations Chief Sarlo had made in his response statement to be retaliation. Below is a partial excerpt from my response Memo. **(See Evidence; Retaliation Complaint; Exhibit-4a Memo Independent Investigation).*

November 15, 2023
Re: 12/8/23 Interview

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

To: Chief Sarlo
Cc: Lt. Tierney

I am requesting clarification as I have already filed such allegations with the United States Equal Employment Opportunity Commission and view any further directives regarding my allegations or any directives involving unlawful employment practices regarding claims of gender discrimination as retaliation.

Since the filing of my allegations, the Department including Chief Sarlo and other individuals who were named in the allegations, have done nothing more than make the workplace even more hostile with those named individuals having direct supervisory contact with me, etc., in retaliation for filing the complaint. Moreover, in response to my Charge of Discrimination, the EEOC Position Statement of the East Hampton Town Police Department and more pointedly Chief Sarlo, is filled with blatant misrepresentations regarding my personal and professional conduct allegedly supported with complaints from you and other supervisors. I await your response.

Respectfully submitted,
P.O. Andrea Kess #232

On November 17th, 2023 I received an email reply from Lt. Tierney advising me that my “concerns” were brought to the attention of Arthur Riegel. It is the responsibility of the East Hampton Town Police Department and Town of East Hampton to conduct timely investigations into complaints, especially those involving violations of protected rights, not forward them to Arthur Riegel. Both the Town and EHTPD have put procedures in place regarding employer investigations into personnel complaints, especially those involving discrimination. They involve supervisors, Internal Affairs, and the Human Resources Department. As with all my complaints, I was not afforded due process by EHTPD. My complaints were outright dismissed by Chief Sarlo and they were never addressed by the Department— even though I have made multiple complaints of further harassment by Lt. Toia and retaliation, and have stated that I felt both unsafe and uncomfortable in his presence.

Below is the Department’s response to my memo:

P. O. Kess,

We are in receipt of your memo dated 11/15/23 and understand that you do not agree to meet with Arthur Riegel as part of his independent investigation into your claims of continuing

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

discrimination. We will forward your memo to Mr. Riegel to ensure that he is aware of your position and your ongoing concerns.

If you have any questions, please do not hesitate to reach out.

Sincerely,
Lieutenant Chelsea Tierney #903

**(See Evidence; Retaliation Complaint; Exhibit-5, 12/08/23 Interview Letter; Exhibit-5a Kess Memo Response, Exhibit -5b Department Response).*

On November 20, 2023, I was approached by Lt. Tierney and Sgt. Lloyd who requested a meeting with me about “workplace expectations” in response to my November 15, 2023 memo and complaint of retaliation. During this meeting, Lt. Tierney asked me if I felt safe and/or comfortable while at work and I made it very clear that I did not. I stated that both my internal complaint and EEOC claims have been mishandled and dismissed by Chief Sarlo and the Town of East Hampton. I stated that my complaints were never taken seriously, never investigated, and were not documented by the East Hampton Town Police Department. I also stated that the Town’s response to my complaints of discriminatory and sexually harassing conduct by members of the Department was untimely and inadequate and that the so-called Independent Investigation, namely Arthur Riegel, had no interest in investigating my allegations. Rather his investigation was designed to build a case against me, depose witnesses, and intimidate those who may speak out against the Department. **(See Evidence; Retaliation Complaint; Exhibit-5c EHTPD 1045 Memobook).*

I cited recent instances of retaliation by the Department including being purposely subjected to my abusers by keeping me on Squad 5 under the direct supervision of Sgt. Gregory Martin and Lt. Gregory Schaefer. I told Lt. Tierney that the Department has made every effort to punish me for my claims including subjecting me to over supervision, encouraging Lt. Toia to follow me during my tour and interact with me on calls and in precincts, and allowing him to voluntarily supervise my squad by signing up for overtime shifts. All of this has been authorized by the Department in an effort to build a case against me and to falsely portray Lt. Toia and I as having a friendly relationship. Lt. Toia continued his attempts to contact me by sending friendly text messages as well as a friend request on social media. I stated to Lt. Tierney and Sgt. Lloyd that I do not feel safe or comfortable while at work due to the retaliation and harassment which I continue to endure. **(See Evidence; Retaliation Complaint; Exhibit-6 Lt. Toia Text; Exhibit-6a Lt. Toia Instagram, Exhibit-6b Overtime Squad 5).*

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

Grace Peterson and I had a phone conversation about Lt. Toia's ongoing aggressive conduct toward women, including his wife, Devin Toia. Grace Peterson stated that she had also been followed by Lt. Toia while on patrol and that he had a history of aggression prior to being hired with EHTPD. She also stated that he was highly aggressive on patrol which she witnessed when she was his partner in Montauk. I expressed my concerns over his behavior and fear regarding his increasingly aggressive conduct.

May 11, 2024 2:02 PM
Audio Recording — Grace Peterson
+1 (631)807-****
(30:01)

(25:51 - 26:28)

Kess: And this guy, you know, happens to work at a – in a position where he carries his weapon around. So, you know, I was very nervous because this volatility of Dan's – obviously, in his aggressive – his aggressive approach with me constantly, his aggressive approach with you, Chelsea, you know, there's – and I kind of was like, you know, is he – and then with Devin, and I – you know, and now all of us work at the police department.

(26:28 - 26:48)

Kess: And what's to stop him? When I heard that, that he had – I'm going, you know, what's to stop this guy? He's losing it. You know? And I'm going to end up shot. I really –

Peterson: He's crazy.

Kess: I was really like, nervous – he was following me around when I was on patrol.

(26:49 - 27:01)

Peterson: Oh, me too.

Kess: Did he really? Holy cow. What is going on? Like, that's – Like, Grace, that's – that's really scary.

(27:02 - 27:10)

Peterson: Yeah, no, he followed me.

Kess: Oh, my God.

Peterson: He was collared like three times in college for fighting.

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

(27:11 - 27:37)

Kess: Was he really?

Peterson: Uh-huh. In Cortland.

Kess: For just fighting?

Peterson: Yep.

Kess: You know, Kim Notel told me once, she said – she said she worked with him in Montauk, and he – she said it was – it was to a point where he couldn't – he would roll around with literally every single person that had to be arrested, no matter what.

(27:37 - 28:03)

Peterson: Oh yeah, that's all he wanted to do. It's like that's what he was looking for. When Vargas was our sergeant, he was fighting so much on every call, rolling around I said, I'm not backing him up anymore because he's going to get me in trouble.

(28:51 - 28:56)

Peterson: And Vargas was like, oh, you have to back him up. I go, no, he's rolling around with UPMs. Like, he only got made because he got like a bunch of BS UPMs. I remember him finding a little baggie and picking up shake on the floor of a car and filling it and saying it's a UPM. And I was like, really? You really need a violation that bad? Like, it's a joke. And I was like, you're wrong. Like, what you're doing is wrong, you know. It's a UPM. Like, you can get one any day of the week.

Kess: So, you actually said that to the sergeant.

(29:21 - 29:28)

Peterson: Yep.

Kess: Did he ever say anything to him? Did he get counseled?

Peterson: No, he was like, you have to back him up. I'm like, listen, he's out of control. Like, I don't want to be, you know, like every single thing is a big deal, you know.

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

**(See Evidence; Retaliation Complaint; Exhibit-7 Audio Recording Peterson, Exhibit-7a Transcript of Audio Recording, Peterson).*

There have been additional instances of retaliation which occurred immediately following my participation in EEOC activity. In one instance, Captain Anderson and Chief Sarlo attended patrol muster with my squad, immediately following the publication of news articles about my EEOC charges. It is significant to note that, to the best of my knowledge, both Chief Sarlo and Captain Anderson have never, aside from Chief Sarlo speaking about the 12 hour schedule change, attended muster in the 8 years I have been on patrol. Their presence, coupled with comments made during muster by Sgt. Martin in correlation to my EEOC activity, was intended to intimidate and discourage me and other potential witnesses from speaking out. This was done to send a clear message to all of patrol— that the Department stands firmly with the accused individuals.

Sgt. Mata who was present during this muster, sent a text message to me afterward, commenting on Captain Anderson's attendance:

June 19, 2023 at 4:41 PM

Sgt. Mata: "Well that was a fun muster."

P.O. Kess: "Why did the captain come in?"

Sgt. Mata: "To put eyes on you try to act like it's no big deal I'm not phased."

**(See Evidence; Retaliation Complaint; Exhibit-8 Mata Text 1)*

On 11/22/23 Lt. Tierney sent an email informing me that she had brought my concerns and complaints of retaliation to the attention of Chief Sarlo.

Chelsea Tierney <ctierney@ehtpd.org>

Wed 11/22/2023 11:29 AM

To: Andrea M. Kess <akess@ehtpd.org> Cc: Nicholas Lloyd <nlloyd@ehtpd.org>

Good morning PO Kess,

I am following up on our discussion from 11/20/23. I met with the Chief later that morning and shared with him the concerns you brought forward to myself and Sgt Lloyd. I also delivered upon him your memo request to view your p file. The Chief is off the rest of this holiday week and states he will approve your viewing of your p file upon his return next week.

Respectfully,

Lieutenant Chelsea Tierney #903

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

**(See Evidence; Retaliation Complaint; Exhibit-9 Tierney Email Follow Up).*

“According to the U.S. Department of Justice Civil Rights Division — Employment Litigation Section, a respondent is liable for its own conduct when it fails to take adequate steps to address discriminatory harassment in that the respondent fails to take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent its recurrence, and address its effects, as appropriate.”
— U.S. Department of Justice Civil Rights Division

After having been informed by Lt. Tierney regarding the concerns and complaints I had made during our 11/20/23 discussion, Chief Sarlo chose to ignore them as he has done for all complaints made by female officers— including the formal complaint of retaliation I had made in my November 15, 2023 memo to Chief Sarlo regarding my participation in the Town’s “investigation.” The constant dismissal of complaints of discrimination made by female officers by the East Hampton Town Police Department and the outright failure to investigate and discipline those males involved is indicative of the discriminatory culture of the EHTPD.

I followed up with Lt. Tierney via phone regarding her email update. It was evident during this conversation that not only was I being retaliated against by Chief Sarlo, so was Lt. Tierney. I was informed by Lt. Tierney during this conversation that she was following orders issued by Chief Sarlo and that despite her opposition to being put in this position, she was forced to follow these orders of risk being brought up on charges and potentially terminated. I informed Lt. Tierney that she was being retaliated against and that she was in fact engaging in retaliatory conduct and disparate treatment of me as compared to other members under her command, due to her orders. During our conversation Lt. Tierney revealed that she believed she was being set up to fail and that she was being used by the Department to build a case against me.

Below is a partial transcript of our conversation.

November 20, 2023 1:00 PM

Audio Recording — Lt. Chelsea Tierney #903

Department Issued Cell Phone

(23:16)

(0:01 - 0:19)

Kess: I got your e-mail, but I'm just curious. I mean, it doesn't say what his response was or how we're moving forward or anything like that.

(0:20 - 0:32)

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Tierney: Yeah, Andrea, I don't have a response right now from him.

Kess: Oh, he wouldn't give one?

Tierney: No, I don't have one. All I have is what I put in the letter. That's all I've got, and he's not here.

(0:33 - 0:52)

Kess: Oh, no, I understand that, but, you know, I have to work the next five days, and I brought forward concerns. Like, you know, you asked me if I was fearful or if I was comfortable, and I said no. And, you know, I understand he's off, but these are things that should have been addressed a long time ago, and they weren't. And, you know, now I have a – I was formally asked by a lieutenant, and you went to the chief of police, and I still don't have an answer.

Tierney: I know. I can't make him answer me.

(1:24 - 1:35)

Kess: I appreciate your position. I get it, but, you know, it's – I don't understand that. I don't understand how he just did not give an answer. I don't.

(1:35 - 1:42)

Tierney: But – I have nothing. I have nothing other than what – than that. He told me that he was going to be out of the office for the rest of the week.

(1:58 - 2:02)

Tierney: I have nothing more. He didn't say anything about changing rotations. He didn't say anything. I have nothing. And it's out of my control. I can't make adjustments.

(2:08 - 2:18)

Kess: I know. I know. I wish – I mean, I'm calling you because you wrote the e-mail and have been the point of contact, but, you know, I just – I don't get it. What about, you know, everything that was written in that position statement? You know, did he say any – I mean, honestly, have you said anything like, hey, this is false?

Tierney: I don't even want to talk about anything anymore. I'm in such a position. I'm so stressed out, and I just – I feel like I'm just – I'm stuck in the middle right now is sort of how I feel.

(4:28 - 4:38)

Tierney: But I just can't keep having these discussions. I don't know when I'm being recorded. I don't – like, I just don't know anymore because things just keep cropping up, and I keep getting asked.

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(4:39 - 4:53)

Tierney: And honestly, for everything, they're going to keep asking me. There's probably going to be a chance that they're going to have me come and sit down and talk to you again. And it's just going to keep happening, and I feel like a ping-pong between two sides right now. And I'm just – I'm so uncomfortable. I'm so uncomfortable in the position that I'm in right now.

Kess: Do you understand my position? I have only one person here that is designated to talk to me, and that person is said by the Chief of Police to have said all these things about me, which are blatant lies.

(5:11 - 5:30)

Tierney: It doesn't say that I've said anything about you.

Kess: It says my supervisors, Chelsea. It said my supervisors continuously went and brought up concerns, major concerns about my arrests, my leadership ability, my overall insubordination.

(5:31 - 5:59)

Tierney: And the thing is that they have not submitted proof of this, Andrea, because there was no proof from me.

Kess: I understand that, Chelsea, and that's my point. If those aren't true, if you never said anything and neither did any supervisor, now I'm uncomfortable because now you're the point of contact, and I don't know anymore if you actually said that stuff or not, and now you're saying "I don't feel comfortable discussing it."

(6:00 - 6:50)

Kess: And so now you're telling me you don't feel comfortable in the position you're in. Well, it's not my problem. Somebody at work has to deal with this problem, and I get it. It shouldn't be you. It should be the chief of police. But at the same time, I deserve to be spoken to. I deserve to have an easy working environment that I've always had when it comes to actually doing my job (active patrol, making arrests, etc.). And when I tell people that I'm being harassed, retaliated...

Tierney: Andrea, I'm speaking to you, but I don't have to, like, always answer questions that are, like, specific to my interactions with stuff. Like, I'm not asking you specific questions, and I just you – everything's been filed, responses have been given, and stuff. I have a job to do here, and...

Kess: Chelsea, it's your job and your duty to...

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Tierney: I'm trying to do it respectfully, and just respectfully I just don't want to keep speaking about stuff that is, like, legal.

(6:55 - 7:11)

Kess: But it's your duty... If there is – if the chief of police submitted a document that is false, that is your duty to say this is not true. You don't get to take the sidelines. You don't.

(7:11 - 7:21)

Kess: You're a supervisor. You were my supervisor...

Tierney: Andrea, I'm working on handling everything, okay? I'm not going to be backed into a corner right now.

(7:21 - 7:39)

Kess: I'm not backing you into a corner, Chelsea. I'm telling you the truth. You're obligated. You took an oath of office. It's your supervisory, you know, responsibilities.

(8:37 - 8:42)

Tierney: I haven't had a chance to sit down. I brought his concerns forward to you. There hasn't been anybody here. Nobody's been here right now.

Tierney: I've tried speaking to attorneys who have told me that I need to follow a chain of command and do as I'm told or I could, you know, lose my job basically if I don't do as I'm told because I'm not being told to do anything criminal.

(11:25 - 11:46)

Tierney: And in terms of what he's going to do or not do, I don't know.

Tierney: He's not going to tell me because the trust is not there here, you know, for me. Because I was named as a witness, they think that I, you know, I'm a traitor, and so there's no trust there.

Tierney: And I'm just saying that any time we talk, I'm going to be asked to document everything that is spoken about.

(15:16 - 15:25)

Tierney: I'm just like I don't know what to do, really. Like I don't know what to do. And I feel like I'm being put in a position to fail, really.

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(15:26 - 15:29)

Kess: You are. And to be quite honest, you are. And you know that. In general, you being in a position to fail, and you knowing that they think you're a traitor, and on and on and on, that's unacceptable too. That's called retaliation, Chelsea.

(15:54 - 16:03)

Kess: Clear and simple.

Tierney: Yeah, I know. So, well, I just feel like they're going to try to use me to build a case.

(21:10 - 21:21)

Kess: I'm sure they are. You know, and Chelsea, if you're uncomfortable, please say, I'm uncomfortable, Chief. Find somebody else.

(21:21 - 21:23)

Tierney: I already have. I've already had the discussions. I already have. Okay. I had my discussions.

(See Evidence; Retaliation Complaint; Exhibit-10 Audio Recording Tierney).

On July 10, 2023 at 8:44 PM, in a text conversation I had with retired Officer Grace Peterson, she, too, spoke about her fear of being retaliated against by Chief Sarlo and the Department if she reported the instances of discriminatory and sexual harassment she had experienced to her supervisors or senior staff.

Text messages — Peterson
July 10, 2023 at 8:44 PM

Peterson: “I’ll back you all the way. It’s been so long coming. I know what I want to address and you help me. I’m ready.”

Peterson: “I’d love to chat.”

Peterson: “I’ve been waiting to avoid retaliation.”

(See Evidence; Retaliation Complaint; Exhibit-10a Peterson Text)

In another conversation I had with Grace Peterson while at the Clubhouse on July 12th at approximately 3:00 PM she recalled many instances of discrimination and threats of retaliation by

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the Department. In one incident she described going to Sgt. Tierney to discuss making a formal complaint to senior staff regarding the lack of separate female changing areas in Station 1 and 2 due to her many verbal complaints being dismissed. PO Peterson reported being walked in on by male officers while she was changing due to the inability to lock the door from the inside. PO Peterson reports that on several occasions the male officers who walked in on her made sexually charged comments and stared at her. PO Peterson recalled Sgt. Tierney asking her several times, “Are you sure you want to make this complaint?” and warned her that in doing so, PO Peterson would have a permanent X on her back and that Captain Anderson would respond to her complaint by prohibiting female officers from turning out of Station 1 or Station 2. Captain Anderson would make it clear that they have PO Peterson and her complaint to thank for that. PO Peterson said that she ultimately decided not to go through with her complaint out of fear due the Department’s long history of responding to employee complaints with retaliation.

During the May 11, 2024 phone conversation I had with Grace Peterson, she told me about her experience with independent investigator Arthur Riegel. She reported that during the course of the interview he asked questions unrelated to my allegations like, “are you and PO Kess friends, do you hang out?” Peterson reports that he asked very general questions and tried to change the subject or cut her off when she divulged unlawful conduct by the Department. She specifically mentions that Arthur Riegel stopped the interview while she was recounting the above story about being walked in on while she was in her underwear and told the stenographer to strike that information from the record. She also stated that several other females spoke out about the Department’s discrimination against women, including disparate treatment, sexual harassment, and hostile work environment during their interview with Arthur Riegel.

May 11, 2024 2:02 PM
Audio Recording — Grace Peterson
+1 (631)807-****
(30:01)

(5:01 - 5:11)

Peterson: Every single female that I know who went in and talked to that old guy was like, “**No, it's fucked up here**”, you know? I mean, Nicole Fierro told me she said that. Devin Toia told me she said that.

(5:16 - 5:21)

Peterson: I fucking went off so bad that he goes, *that's off the record*. I go, that's on the record.

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(5:31 - 5:39)

Peterson: The stenographer— she was looking at me— she was like, WHAT? And I was like, why is that off the record? You asked me a question.

Peterson: I told you I had a coworker comment on the color of my underwear because I have been forced to change with them. And he goes, OFF THE RECORD. I go, ON THE RECORD.

**(See Exhibit-7)*

Regarding the EHT Independent Investigation into my claims, many members of the Department have reported that they were not asked anything regarding discrimination or anything specific to my complaints and EEOC claims. They have reported that at no time were they asked about Lt. Toia or his conduct. Those individuals who were named as witnesses to the incident on 8/23/22 were not asked anything about that incident, including P.O. Fierro.

During a text conversation with retired Sgt. Barry Johnson, I asked him if Authur Riegel questioned him about Lt. Toia or his conduct toward me or other women in the Department. Sgt. Johnson answered — “No questions about Toia.” **(See Evidence; Retaliation Complaint; Exhibit-11 Text Johnson 5-22-24).*

Much like Grace Peterson, many members reported that Arthur Riegel asked leading questions during their interview and commented on any negative incidents that they had recalled with “facts” about the East Hampton Town Police Department in an effort to counter what was being reported. All reported that many of the questions were about me, my conduct, my disciplinary history, and any ulterior motives I may have. Some members reported being asked about the “so-called” incidents of misconduct which Chief Sarlo had fabricated in his position statement.

However, the most concerning revelation regarding Arthur Riegel is that many have reported that they were under the impression that they were being deposed by Riegel. The majority had stated that Arthur Riegel had misrepresented himself claiming he was an attorney.

Retired Sgt. Barry Johnson was one of the members who spoke about his interview and some of the questions Arthur Riegel had asked. Johnson spoke about his very negative review of the EHTPD Detective Division and the overall treatment of women by EHTPD. He said that Arthur Riegel countered some statements with general facts about the Department in order to make the Department look better. Johnson also stated that there were times that Arthur Riegel made

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comments after he had answered a question and that those comments were inconsistent with his answer.

December 8th, 2023 4:09 PM
Audio Recording — Sgt. Barry Johnson
+1-631-433-****
(44:01)

00:02:52

Johnson: Right off the bat I asked him straight up, I was like, you know, “who hired you?” and he explained his credentials and whatnot and, um, and as far as him being an investigator and attorney.

Johnson: So, it kind of started off like that, but then, went to what was going on with you. He did ask me some questions about as far as what do you need, what's the basic thing you would need to be a detective you know. You know, it's because you had been passed up.

Johnson: So, like, I guess somehow with that I got worked up and he asked me “well, what do you need?” I said, well, I said, *you know, there's a few things, you know, that that make it up. It's not just one so, it's, you know, just, your work ethic, you know your work skill, you know. Basically.*”

00:04:27

Johnson: And so started telling him, *and that stuff*, I said, and.... Then I said, **“and you could have, still have all that, and still... If you're a good fit back there, you know, that's honestly”**

Johnson: I just tell him **“So, if you're good fit back there then they'll take you”** I said. I had, I said that a couple of times.

Johnson: He said, *it's not you know, an automatic thing.*

00:04:58

Johnson: And then he asked me you know basic, like, “have I ever noticed any, you know as far as them (EHTPD Detectives/ Detective Division), treating women any differently than men?”

00:05:06

Johnson:

I said, **“Well, there's none on yet. You know, there's none on there, none on Dive Team. You know? They're pretty much stuck to, stuck to patrol.”**

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00:05:19

Johnson: Um, and then he went on, I guess he went on to say, *“Would you be surprised that East Hampton Town since you left actually has grown in the number of women that's been, that work there?”*

Johnson: I said, no, I actually didn't know that. So, I don't know where he was trying to go with that.

00:05:56

Johnson: And then I kind of, um, went with you know, there's not too many African Americans or, you know Hispanics, you know in the position.

Johnson: And then the same thing, *“Would you believe that, you know, and not, pertaining to us as far as East Hampton Town, but New York City PD has actually grown in their minority population and workforce.”*

00:08:21

Johnson: When I brought up the case, he's like, *“is that the case that the DA wanted you to drop?”* And, I was like, “Well...”

Johnson: He told me that that the D.A., the deputy, wanted to just drop it. And then, um, and I was like, well, I don't know anything about that. He said, *“Nobody said anything to you?”*

**(See Exhibit-2).*

PBA President Joseph Izzo informed me that during his interview with Arthur Riegel, he asked if the final report would be publicly available, and Mr. Riegel said No. Joe Izzo then asked if it would be possible for the PBA to get a copy of the report or at least read it. Joe Izzo reports that Arthur Riegel's response was NO— and explained, that as an attorney for the Town, the report would not be available to anyone due to attorney-client privilege. He confirmed this information during a phone conversation we had on July 2, 2024 at 11:28 AM. **(See Evidence; Retaliation Complaint; Exhibit-12 Audio Recording J Izzo 7-2-24).*

Additionally, many members of the Department have reported that Arthur Riegel has met with Chief Sarlo prior to and between interviews. He has interviewed male members of the senior staff and supervisory staff multiple times but has not interviewed all members of the Department as or at least all female members of the department. Additionally, the female members who were

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

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interviewed have only been interviewed once as opposed to the multiple interviews Arthur Riegel has conducted with male members of the Department. The Independent Investigation by the Town is nothing more than an act of retaliation by the Department in response to my EEOC claims. This is not an independent investigation, it's a calculated defense strategy. This "investigation" is an informal way for the Respondent to engage in the discovery process without the legal formality.

May 11, 2024 2:02 PM
Audio Recording — Grace Peterson
+1 (631)807-****
(30:01)

(7:38 – 7:50)

Kess: They're trying to say that each time that Toia tore into me, it was over a legitimate thing. I was lying. I was A, B, C, and D.

Peterson: Okay, but they don't tear into the cops that show up drunk.

(7:54 - 7:59)

Peterson: So, they're trying to make you a discreditable cop?

Kess: Yes.

(8:00 - 8:01)

Peterson: But he (Sarlo) can—his wife can— throw her wine in someone's face at the Crow's Nest? And then he goes to Tierney's house and tells him what to write on the report, and cover that up? And uses her maiden name and not Sarlo? ** (Re: EHT-EV-13150-11)

(11:12 - 11:21)

Peterson: This Department— and this is my third department— **is the most corrupt department I've ever been in in my life.** You would think, oh, NYPD. Yeah. No.

(11:21 - 11:29)

Peterson: This place is the most, I've said it over and over, and to anybody who will listen, this is the most fucked up place ever. Wow. Oh, it gets me so angry.

Peterson: No one's asking where the chief and CA are all day.

(22:09 - 22:37)

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Peterson: But people have done worse and not fired. Like, again, they just pick and choose whoever they want to pick.

(23:00 - 23:58)

Peterson: Because it's different strokes for different folks— always there. Nothing. Nothing done with the Chief's IA, you know – but whatever. They didn't do the one when Dan broke Devin's phone. They didn't do it. And Suffolk took a D.I.R.

(24:00 – 24:26)

Peterson: And nothing— they swept it under the rug. **She called Suffolk!**

Kess: Was that the same time he threatened her? Like, he was going to shoot her?

Peterson: Yes. And they didn't rubber gun him. Now, can you imagine if something happened?

(24:46 - 24:49)

Peterson: That's what I mean. They want to point fingers, but –

Kess: That's so upsetting to hear. Jesus Christ.

**(See Exhibit-7).*

The above conversations represent just a few instances where past practice and retaliation deterred female officers from filing complaints. Many more incidents have occurred where Chief Sarlo and Captain Anderson, as well as other members of the East Hampton Town Police Department have engaged in conduct designed to deter female members from reporting unlawful discriminatory harassment. Hopefully those women find the courage to come forward.

COMPLAINT OF RETALIATION

False Report — Respondent Statement of Position

“According to the EEOC Enforcement Guidance on Retaliation and Related Issues, a sudden negative performance evaluation or negative change in an employee’s record in comparison to past favorable records, including any documented history of commendations, awards, or promotions, can be indicative of retaliatory behavior.” —EEOC Enforcement Guidance on Retaliation and Related Issues

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The false claims made within the October 26th, 2023, Statement of Position by the Respondent, namely Chief Michael Sarlo, have only been made within this Position Statement and *do not appear in any other East Hampton Town Police Department records, files, or documents*. All disparaging allegations and libelous claims made by Chief Sarlo regarding my work and conduct as a Police Officer, are highly disproportionate to the 8 years of commendations and awards personally presented to me by Chief Sarlo, as well as the 8 years of notable performance evaluations from my supervisors. **(See Evidence; Retaliation Complaint; Exhibit-13 Kess Performance Evaluations, Exhibit-13a Recognition).*

“U.S. Equal Employment Opportunity Commission states that evidence of sudden disparities between employee performance evaluations such as past positive evaluations with sudden negative feedback, can strengthen an argument that the adverse actions were a result of retaliation.”

In fact, prior to filing an EEOC charge against East Hampton Town Police Department, I received many commendations from Chief Sarlo including multiple *Chief’s Recognition* and *Excellent Police Service* awards. With each award Chief Sarlo praised what he has called my ***“exemplary service, consistent enforcement efforts, excellent police work, excellent investigative work, excellent patrol instincts, commitment to the profession, professional actions, outstanding work ethic, dedication, and commitment to enforcing the law.”***

All yearly performance evaluations by my supervisors have been equally positive. In my most recent performance evaluation for the period of 1/1/22 – 12/31/22, Sgt. Martin rated me as ***“exceeding standards”*** and made the following comments regarding my performance:

P.O. Kess — Performance Evaluation 2022
Sgt. Gregory Martin

“Officer Kess turns out of headquarters and has no primary sector assignment. She has consistently demonstrated an effective approach in all phases of her everyday police duties. When on duty she showcases a motivated work ethic with her productivity regarding enforcement comparable with that of the top producing officers within the department, while also generating comprehensive reports that are consistently submitted in a timely fashion. Officer Kess has continued to translate her high percentage of traffic stops and subsequent civilian interactions into practical information which has enabled her to generate numerous field interviews and become involved with multiple specific investigative details. Officer Kess did have the highest number of driving while intoxicated arrests in the department at 13 for the year. She has shown to be very efficient with arrest processing and consistently submits completed arrest reports requiring

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minimal to no corrections. Officer Kess has taken on a leadership role within the squad and willingly aids junior officers in all aspects of police work. On numerous occasions she has been tasked with the responsibility of a Field Training Officer when no certified officers were available.” —*Sgt. Gregory Martin*

**(See Exhibit-14 Performance Evaluation 2022).*

“According to the U.S. Equal Employment Opportunity Commission, suspiciously close timing between the EEO activity and the materially adverse action can be considered as evidence and used to support a claim of retaliation.” —EEOC Enforcement Guidance on Retaliation and Related Issues

All of the defamatory statements made by Chief Sarlo within his October 26, 2023 Position Statement, regarding my so-called “problematic” policing, alleged misconduct, and “incompetence,” were made **after** I had filed my EEOC Charge of Discrimination against Chief Sarlo. These false allegations made their first and only appearance on October 26th, 2023, in the Respondent’s Statement of Position regarding my EEOC Charge of Discrimination. Chief Sarlo’s response statement and all allegations made within are a product of my filed claims and, therefore, are neither representative of, nor considered to be, an official record of employment, performance, or discipline held by the East Hampton Town Police Department.

To date, there have been no allegations of that nature made against me by the East Hampton Town Police Department, nor have I been subject to misconduct charges, investigations, or disciplinary hearings while employed as an East Hampton Town Police Officer. **To this day**, I have not been informed of any allegations against me by the East Hampton Twon Police Department or Chief Sarlo. The **first and only time** I was made aware of Chief Sarlo’s allegations is when I read his October 26, 2023 Position Statement regarding my EEO claim. **In fact, Chief Sarlo’s position statement is the only document that contains such allegations.** It was an EEOC investigation into my claims that compelled the Respondent to write this position statement and make such allegations. Had there been no EEOC Charge of Discrimination made by me against Chief Sarlo, his position statement and all allegations contained within **would not exist.** **(See Evidence; Retaliation Complaint, Exhibit-15 Kess Personnel File, Exhibit-15a Disciplinary File).*

As I have stated previously, all the allegations that have been made by Chief Sarlo have been fabricated out of retaliation and intentionally designed to injure my reputation, destroy my credibility, and tarnish my professional integrity. Every single allegation, claim, statement, and account regarding my conduct and professionalism as a sworn member of the East Hampton Town Police Department which Chief Sarlo has creatively detailed in his position statement, were kept

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hidden away for quite some time by Chief Sarlo for reasons and purposes only known Chief Sarlo. Any knowledge of my aggressive tactics, misconduct, and unprofessionalism were kept top secret, even from me. This continued until one day, seemingly out of the blue, they all surfaced. This grand debut of allegations just happened to coincide with another special day, the day I filed a charge of discrimination with the EEOC against Chief Sarlo and EHTPD.

According to Chief Sarlo, it is only now, after filing my EEOC complaint, that his accusations regarding my professional integrity, alleged misconduct, and overall ability to make simple arrests, have become issues which he feels are necessary to finally disclose, to both me and the public. Prior to my filing this EEOC charge, Chief Sarlo felt it unnecessary to address, document, or take action regarding any of his previously stated concerns, nor did he feel a sense of duty or responsibility to disclose these issues to anyone, including myself. In truth, Chief Sarlo took a contradictory approach, and both supported and encouraged my arrest activity by giving me awards and commendations for my “consistent enforcement efforts, excellent police work, continued dedication to protect and serve the people of East Hampton, and exemplary service and dedication to the Department.” In fact, he was so enthusiastic about my arrest activity and exemplary service that he presented me with awards for each year of service since 2016.

“The U.S. Equal Employment Opportunity Commission states that a position statement must be fact-based, clear, concise, complete, and responsive. The Respondent shall include specific, factual responses to every allegation of the charge and provide evidence including copies of documents, personnel records, performance evaluations, internal investigations, disciplinary action, supporting their position and/or version of the events.” —EEOC, Effective Position Statements

There are no East Hampton Town Police Department or Town of East Hampton employment records, documents, or evidence indicating that I was ever **accused of and/or engaged in misconduct** or that there were job performance issues or deficiencies, despite what Chief Sarlo has claimed. If Chief Sarlo's claims about my alleged misconduct and inferior performance had been substantiated by the East Hampton Town Police Department, there would be records and documentation of each incident in my personnel and disciplinary file. Moreover, the Respondent would have undoubtedly submitted those records to the EEOC, as evidence, to support their response statement. However, and rather suspiciously, Chief Sarlo **did not** provide my personnel or disciplinary file to the EEOC as evidence. He intentionally suppressed it, as it would have contradicted all claims and arguments he has made within his position statement. **(See Exhibit-15 Kess Personnel File).*

*“For a Position Statement to be effective, the U.S. Equal Employment Opportunity Commission requests the Respondent to submit **all** documentary evidence they believe is responsive*

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*to the allegations of the charge or supports any asserted defenses. A Respondent who submits only an advocacy statement, unsupported by documentary evidence, could result in the EEOC concluding that the Respondent **has no evidence** to support its defense to the allegations of the charge.” —EEOC, Effective Position Statements*

Chief Sarlo intentionally withheld these files from the EEOC because they contradict his claims and reveal the deception of his position statement. The documents Chief Sarlo has provided as “evidence” are documents with no context or significance. They are irrelevant to my claims and insufficient as a response to those claims. These documents range from random text messages to individual emails. They lack details and specificity and do not correspond to any EHTPD records of alleged misconduct, or to any records at all. Most importantly, these documents are not considered to be “evidence” of **anything** according to the East Hampton Town Police Department. If there were any truth to what Chief Sarlo’s accusations and these documents were “evidentiary” of alleged misconduct, corruption, and incompetence relating to my employment, they would be attached as such to a corresponding EHTPD Internal Affairs Investigation into those allegations and preserved as part of an official record.

Chief Sarlo has intentionally withheld my personnel and disciplinary file from the EEOC and suppressed employment records, including commendations, awards, letters of good conduct, training records, performance evaluations, disciplinary matters, and supervisor recommendations. He has done this to maintain his deceitful allegations and fraudulent position statement and to damage my character, career, my EEOC claims. **(See Evidence; Retaliation Complaint, Exhibit-16 EEOC Effective Position Statements).*

It is worth noting that Chief Sarlo did not include two instances of minor command discipline I had received as part of his response statement. This is because I received command discipline for speaking out regarding the discriminatory and harassing conduct directed toward me by supervisors at the direction of Lt. Toia. As with all other complaints I have made of Lt. Toia’s conduct toward me, these were not documented and dismissed without an investigation. I have made it very clear that I have felt discriminated against and harassed by D/Sgt Toia since 2017 and that I have made multiple verbal complaints to anyone who would listen including lieutenant’s, supervisors, and other members of patrol. I have made additional complaints that I have been retaliated against and subjected to a hostile work environment by Chief Sarlo, Lt. Toia and other members of the Department for speaking out. **(See Exhibit-15a Disciplinary File).*

“According to the U.S. Equal Employment Opportunity Commission, open hostility, such as negative comments, by an employer toward an employee’s protected EEO activity, is unlawful

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and constitutes retaliation.” —EEOC Enforcement Guidance on Retaliation and Related Issues, Examples of Retaliation

Upon making another complaint directly to Chief Sarlo of retaliatory conduct directed at me by the Department, including his 10/26/23 False Statement of Position, Chief Sarlo again violated my protected rights by outright dismissing my complaint. Chief Sarlo memorialized his unlawful retaliatory action in a Department Memo which he sent to me on June 15, 2024. Below is a partial excerpt from the memo in reference to my retaliation complaint.

To: Police Officer Andrea Kess
From: Chief Michael D. Sarlo
Date: June 15, 2024
Re: Return to Transitional Duty

“Finally, with respect to your assertion of any retaliation by me or the Department, you have asserted such claims in litigation. We believe those allegations are baseless and will be resolved in the appropriate forum.”

Chief Michael D. Sarlo

**(See Evidence; Retaliation Complaint, Exhibit-17 Return to Transitional Duty Memo).*

“According to the U.S. Equal Employment Opportunity Commission, employers must not retaliate against an individual for “opposing” a perceived unlawful EEO practice. This means that an employer must not prevent or punish an employee for communicating opposition to a perceived EEO violation. Failing to ensure that coworkers understood and respected an employee’s right to file a complaint is unlawful and constitutes retaliation.” —EEOC Enforcement Guidance on Retaliation and Related Issues, Examples of Retaliation

Chief Sarlo and the East Hampton Town Police Department have failed to ensure that members of the Department *understood and respected an employee’s right to file a complaint* by continuously preventing me from communicating opposition to an EEOC violation. On several occasions supervisors and command staff, including Chief Sarlo, have advised me that it is inappropriate to discuss my EEOC claims or other perceived unlawful conduct by the Department and that these matters are to be discussed in an “appropriate legal forum.” By preventing me from communicating the falsity of Chief Sarlo’s very public allegations against me regarding misconduct to other members of the Department is retaliatory and heightens and already hostile work environment. It is unlawful for the Department, namely Chief Sarlo, to prevent myself or Lt. Powers from speaking to other members of the Department regarding my EEOC claims, the falsity

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of Chief Sarlo's position statement, or other unlawful activity. Moreover, it is unlawful to impose possible disciplinary action for attempting to obtain evidence regarding our EEOC claims or other such unlawful activity, including questioning members of the Department. These retaliatory actions by the Department have been substantiated throughout this document and within the evidence attached to this Complaint of Retaliation. **(See Evidence; Retaliation Complaint, Exhibit-18 Powers Response Statement Memo, Exhibit-18a Department Business).*

Chief Sarlo and East Hampton Town Police Department have consistently engaged in unlawful IA investigative and reporting practices at the benefit of male members of the Department. Conversely, this practice has negatively impacted female officers due to the disparate treatment of complaints, discipline, and documentation of incidents requiring IA involvement. The Department's discriminatory pattern and practice of ignoring the very serious conduct of male officers, mishandling those investigations, and improperly documenting or not documenting these incidents at all— have had detrimental effects on female officers both individually and professionally.

It is a pattern of practice for the EHTPD to conduct IA investigations and issue command discipline in an unfair and disproportionate manner. It is standard operating procedure for incidents involving male members of the Department to be outright dismissed, improperly investigated, mishandled, filed away somewhere in a desk drawer, or go undocumented. This has been especially the case for the Department's treatment of Lt. Toia's course of conduct toward women. The following conversations with other Department members reveal very concerning incidents regarding Lt. Toia's volatile and aggressive conduct toward women and the Department's complete dismissal of those incidents. These incidents demonstrate Lt. Toia's increasingly hostile and abusive course of conduct toward women and is indicative of the type of behavior which I have detailed in the many complaints I have made to my employer and in my EEOC claims regarding Lt. Toia.

Text messages — Tierney
May 2, 2023 2:25 PM

Kess: I would love to know if Dan was written up for speaking to you like that. Or if he was written as a result of my complaint against him.

Tierney: I would imagine not seeing as how he had commented to me that as Lts we don't get written up we do the writing up. Me getting written up yet again is as predictable as the sun rising and setting each day.

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Text messages — Tierney
May 3, 2023 9:01 AM

Tierney: Dan was not written up for his incident with you. As per Schaefer.

Kess: Wow.

Tierney: You have the right to know the disposition of your complaint.

Tierney: I want to know why something that serious does not get memorialized in his damn p file.

Tierney: His course of conduct against women.

Kess: Yes.

Tierney: Jessie Stavola complained about him. His wife has called the police on him multiple times. Your complaint. And yet his p file remains immaculate.

On May 15th, 2023 a local paper, **27east**, published an article entitled *East Hampton Town, Village Police Disciplinary Records Since 2020 Include Only Minor Incidents*. The article mentioned only (4) disciplinary incidents— (2) were female officers, (1) was a male Hispanic officer. There were only (2) complaint incidents listed as being investigated by the EHTPD, (1) involved a female officer. The complaint I had made against Lt. Toia or investigations regarding his domestic disputes or disciplinary action were missing from the article. However, my disciplinary history was released despite it being extremely minor and involving incidents which should have been removed from my file.

Text messages — Tierney
May 15, 2023 9:01 AM

Tierney: Tho none of them are me, it does seem to be a lot of female discipline.

Kess: 27east — *“An officer lost accrued leave time after, in September 2020, “becoming argumentative, agitated and being disrespectful toward her immediate supervisor.” Three days after that incident, the officer was late for her shift; for that, she was issued a written reprimand. And the following month, the officer was the subject of command discipline again, this time for contacting a senior staff supervisor without approval from a sergeant, and upon reaching the*

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senior staff member, was "insubordinate and disrespectful." She was penalized with the loss of leave time."

Kess: Thanks EHTPD for literally proving my point.

Tierney: You had great tribute in the article. I wonder if the public reads between the lines on the last one. Or even the first part.

Tierney: In that you are a female and the person labeling you as argumentative is a man.

Kess: They may as well have said she was written up for "being a bitch."

: Absolutely no mention of an investigation into a male officer using gender based derogatory comments toward a female officer. Or any command discipline involving that male. This is so unbelievable to me.

Tierney: Because he wasn't command disciplined or investigated. It's still sitting in Greg's desk.

**(See Evidence; Retaliation Complaint, Exhibit-19 Tierney Texts May 2-15)*

The disparity involving investigations and disciplinary action by the Department, especially concerning Lt. Toia, is evident to many members of the Department.

Text messages — Mata
May 15, 2023 2:12 PM

Mata: Yay we made the paper.

Kess: Nothing about the investigation into Dan's gender based derogatory statements! Zero. What happened to that? Shredded?

Mata: Definitely shredded. Nothing about his domestic with Devin no investigation there.

**(See Evidence; Retaliation Complaint, Exhibit-20 Mata Text 2).*

Another member of the Department had this to say:

Text messages — Anonymous Officer
December 12, 2023 9:21 AM

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Anonymous: How does Dan Toia have such a pass in that place? What is his connection?

Anonymous: He seems to be like another captain. There was a light at the end of the tunnel for many of us when we heard the captain was retiring soon. But then Toia is made LT and now he is a tyrant to all. Everyone who has been beaten down talks about how they hope that Powers can get into the captains spot. That would be the only saving Grace.

Anonymous: If they put Toia there, Fuck it, I quit.

Anonymous: Last year the captain told people he was leaving this month. Why did he decide to stay? To fuck with people? I don't get it. You can just leave and live your life. You're a millionaire, go enjoy it. Why stay? To clog it up and fuck with people? Do you like the "power" it holds over others?

Anonymous: Why is there so much corruption? Jesus

"According to the United States Department of Justice Civil Rights Division, acting with deliberate indifference to known discriminatory harassment, hostile work environment, failing to take immediate actions to respond to harassment, and failing to prevent or correct conduct constituting discriminatory harassment or hostile work environment, is considered unlawful and indicative of discrimination."

There have been multiple incidents of domestic disturbances between Lt. Daniel Toia and his wife, P.O. Devin Toia, which have been completely ignored, covered up, mishandled, downplayed, an outright dismissed as "baseless," despite the increasing volatility of these incidents— all of which have involved criminal conduct and very serious threats of violence by Lt. Toia. The incidents, which have occurred off duty and involved police contact with SCPD 7th Precinct, have been ignored by East Hampton Town Police Department. This is very concerning for many reasons, especially due to Lt. Toia's threats of violence toward his wife, who is also a member of the Department, which involved statements of violence involving a firearm. This particular domestic incident between Lt. Toia and P.O. Toia involved Lt. Toia threatening P.O. Toia by stating, in sum and substance, "I should have shot you when I had the chance." SCPD 7th responded, completed a D.I.R., and notified East Hampton Town Police Department and Chief Sarlo of the domestic incident and threats of violence.

Chief Sarlo did not feel it was necessary to place Lt. Toia on administrative leave, take his service weapon, or conduct a proper IA investigation into the matter utilizing an outside agency.

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Chief Sarlo did not mandate Lt. Toia undergo a psychological evaluation, nor did he ensure that the psychological evaluation mandated by Suffolk County concerning Lt. Toia was immediately completed prior to his return to work. Chief Sarlo did not feel it was necessary to ensure the safety of other members of the Department, especially P.O. Toia and the women who have made complaints against Lt. Toia, including myself.

June 27, 2024 9:05 PM
Audio Recording — Patrick Harden, Devin Toia
+1 (631) 377-****
(89:33)

(39:28 - 39:44)

Kess: I was very concerned when I heard about the domestic where he (Dan) said something about shooting you.

Devin Toia: Yeah.

Kess: Like, Devin, I, like to this day, my stomach gets sick and my heart sinks.

(39:44 - 39:49)

Devin Toia: Yeah. You know what happened? Nothing.

Kess: I know.

(39:50 - 40:06)

Devin Toia: I filed a police report and they did nothing. They took my guns out of his house. And that's it.

(40:07 - 40:16)

Kess: My concern... He's showing— like, to me, he's showing increasing aggressive behavior.

(40:16 - 40:30)

Kess: I don't know Dan from anybody outside of work. I just know him at work and I know how he's treated me. I know how he's treated Grace. I know he's treated Chelsea. You know, there's a lot of like...

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Devin Toia: Can you see how he treated me!? It's not changing!

(40:52 - 40:58)

Devin Toia: I know you see that because I try and keep everything at bay. I want peace.

(43:38 - 44:09)

Kess: But, but my, but where I'm going with this is that it's just the disrespect that, that this department shows women.

Devin Toia: Oh, absolutely.

Kess: To not like, and I'm not even talking about the things that are said or that have been said to me, but like to have you, coming in —with a police department contacting our department saying— Hey, listen, these “things” were said, and they work together. And it's, you know...

(44:09 - 44:18)

Devin Toia: They did nothing.

Kess: Right. But, but that's such a shitty move on the part of our department.

(44:18 - 44:21)

Devin Toia: And the County...? Yeah, Danny was supposed to go in for a psych eval.

(44:22 - 44:36)

Harden: The County did more to get my fucking pistol than they did for Danny's psych eval.

Kess: Wait. So, they made him go for a psych eval? Or no?

Harden: No, no. He still hasn't done it.

Devin Toia: Nope. No. He hasn't done it yet.

(44:36 - 44:52)

Kess: Oh, I gotcha.

Harden: Andrea, the county knocked on our front door to get my pistol after I got arrested for a misdemeanor.

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Harden: But, no, they don't make Danny go for his psych eval —AFTER HE THREATENS HIS WIFE'S LIFE.

(44:52 - 45:01)

Kess: Oh my God.

Devin Toia: It's fucked up.

(45:01 - 45:07)

Devin Toia: Everything...Honestly, everything in this place is fucked up.

(45:12 - 45:26)

Kess: And didn't he— I don't know if it's true—but then I heard he broke your phone and prevents you from calling 911. So same thing that happened...

Harden: No, he threw her phone about 300 feet into the woods.

(45:27 - 45:38)

Kess: Okay.

Harden: So, yes.

Kess: So, a felony... like Katelyn.

Devin Toia: Yeah

Harden: It's a felony, yeah.

(45:38 - 45:46)

Kess: Yeah. I was just... I don't get it.

Devin Toia: I don't get it either.

(45:47 - 46:02)

Harden: Like everything, you have to be a part of the Boy's Club.

Kess: But this is like, with the liability, and the people that you're putting at risk, I mean, that's crazy. That's insane. Come on.

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(46:04 - 46:22)

Kess: WE WALK AROUND WITH GUNS.

Devin Toia: No shit. I'm like—I can't with this. It's definitely...

Kess: I don't know how you go to work. I'm like—I would be like, when is he going to go off?

Harden: She can't take it— with that, and Katlyn being reinstated, me still being fucking terminated...

(46:22 - 46:40)

Devin Toia: I was freaking the fuck out... I, I woke up and I saw everything, and I was having a complete anxiety attack. I cannot do this.

(46:43 - 46:54)

Devin Toia: No, I can't do it. I cannot do this anymore.

Instead of conducting proper investigations into these incidents and taking appropriate measures to protect those females who were victimized by Lt. Toia's abusive, threatening, and discriminatory conduct, Chief Sarlo has simply minimized and dismissed these incidents and all complaints regarding Lt. Toia's abusive conduct toward women. By doing so, Chief Sarlo is both allowing and encouraging Lt. Toia's discriminatory and abusive conduct toward women to continue. He is revictimizing all the women who have made complaints against Lt. Toia and subjecting them to a hostile and threatening work environment. By continuously ignoring these incidents, Chief Sarlo is advocating for and protecting the abusers while at the same time engaging in retaliation and further discrimination of the women under his command. Chief Sarlo has failed to protect those who have been subjected to this unlawful conduct and allowed a culture of intimidation and discrimination to flourish within the East Hampton Town Police Department.

May 11, 2024 2:02 PM

Audio Recording — Grace Peterson

+1 (631)807-****

(30:01)

(23:50 - 23:57)

Peterson: We couldn't – the chief's IA, you know – but whatever. They didn't do the one when Dan broke Devin's phone. They didn't do it.

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(23:58 - 24:07)

Kess: Oh, he broke Devin's phone? In a domestic?

Peterson: Yeah. And Suffolk took a D.I.R.

Kess: Oh, God.

(24:07 - 24:17)

Kess: Was this the same time—

Peterson: And nothing— they swept it under the rug.

Kess: Do you know if his domestics even got filed?

Peterson: I don't think— I don't – I don't know.

Kess: Because I had heard— someone was saying —

Peterson: *SHE* called Suffolk.

Kess: Jesus Christ. Was that the same time he threatened her? Like, he was going to shoot her?

Peterson: Yes. And they didn't rubber gun him.

Kess: Oh, my God.

Peterson: Yes.

(24:39 - 24:46)

Peterson: Now, can you imagine if something happened?

Kess: That's what I'm saying. That's what I'm saying—

Peterson: Yeah.

(24:46 - 24:49)

Kess: And this is, like – Yeah. It's so scary.

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Peterson: That's what I mean. They want to point fingers, but –

Kess: That's so upsetting to hear. Jesus Christ.

Peterson: Yeah.

(25:00 - 25:06)

Kess: So, he broke her phone to prevent her from calling 911.

Peterson: You got it.

Kess: Oh, my God.

(25:10 - 25:17)

Peterson: We collar for that, you know?

Kess: Oh, of course. That's a –that's, like, you don't – there's no doubt about it. Click, click.

(25:17 - 25:24)

Peterson: That's Academy 101 right there. 101.

Kess: Right. Like – And then the threats? That's a TERPO. Just automatically.

(25:26 - 25:35)

Peterson: And even if that was pre-TERPO, right? Because I think – I think it was right on the border. Even if that's pre-TERPO, that's called CYA —you're taking that.

(25:35 - 25:40)

Kess: Oh, of course.

Peterson: Any domestic with that, we're taking it. We ask that —That's on the DIR. That's a checkbox. And if that person says – and we're supposed to ask, do you have a weapon?

Kess: Exactly.

Peterson: And we're supposed to take them.

Kess: Exactly.

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(25:51 - 26:28)

Kess: And this guy, you know, happens to work at a – in a position where he carries his weapon around. So, you know, I was very nervous because this volatility of Dan's – obviously, in his aggressive – his aggressive approach with me constantly, his aggressive approach with you, Chelsea, you know, there's – and I kind of was like, you know, is he – and then with Devin, and I – you know, and now all of us work at the police department.

(26:28 - 26:48)

Kess: And what's to stop him? When I heard that, that he had – I'm going, you know, what's to stop this guy? He's losing it. You know? And I'm going to end up shot. I really –

Peterson: He's crazy.

Kess: I was really like, nervous – he was following me around when I was on patrol.

(26:49 - 27:01)

Peterson: Oh, me too.

Kess: Did he really? Holy cow. What is going on? Like, that's – Like, Grace, that's – that's really scary.

(27:02 - 27:10)

Peterson: Yeah, no, he followed me.

Kess: Oh, my God.

Peterson: He was collared like three times in college for fighting.

(27:11 - 27:37)

Kess: Was he really?

Peterson: Uh-huh. In Cortland.

Kess: For just fighting?

Peterson: Yep.

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Kess: You know, Kim Notel told me once, she said – she said she worked with him in Montauk, and he – she said it was – it was to a point where he couldn't – he would roll around with literally every single person that had to be arrested, no matter what.

(27:37 - 28:03)

Peterson: Oh yeah, that's all he wanted to do. It's like that's what he was looking for.

*(See Exhibit-7)

“The U.S. Equal Employment Opportunity Commission considers it unlawful for an employer to place information regarding the protected EEO activity of an employee in their personnel file.”—EEOC Examples of Retaliation

I was given access to my personnel file on 12/07/23 at the authority of Chief Sarlo, and with that, an opportunity to review all documentation contained within. There were multiple folders contained within my personnel file which were labeled and categorized for organizational purposes. One folder labeled “Misc” contained a copy of my EEOC Charge of Discrimination, No. 520-2023-04757, a copy of the amended charge, and copies of documents and notes related to the so-called “investigation” into my August 28, 2022, formal complaint against Lt. Toia. Despite it being unlawful and a violation of my legally protected rights, Chief Sarlo intentionally placed records of my protected EEO activity into my personnel file to sabotage any future employment or promotional opportunities I may have.

The East Hampton Town Police Department maintains **personnel records** for each employee which include any all-associated files relating to that employee. However, a member's **personnel file** only contains documents and records relevant to job performance. Personnel files are requested during promotional interviews and by prospective employers, they are subject to discovery proceedings, as well as other employee matters relevant to performance. My individual EEO claim, and subsequent EEO activity has zero bearing on my job performance, skills, training, or capabilities as a Police Officer. It is highly inappropriate for these documents to have been placed in my personnel file. It is equally as inappropriate for information regarding the internal “investigation” of my 8/23/22 complaint against Lt. Toia involving discriminatory and sexual harassment to have been placed in my personnel file, as this “investigation” has no relevance to performance. Chief Sarlo only placed these documents in my personnel file to hinder any future promotional process or employment opportunities that I may have. *(See Exhibit-15).

Making a False Report to a Government Authority

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

Chief Sarlo has falsely accused me of misconduct and knowingly provided false information to the EEOC by submitting a fraudulent response statement regarding my performance, competency or conduct as a Police Officer. Despite knowing that his allegations against me were categorically false, Chief Sarlo submitted his deceitful Position Statement to the EEOC, anyway, to damage my reputation, my career, and my EEOC claims. This has been done maliciously, as retaliation for filing my EEO claim.

Chief Sarlo has completely dismissed my complaints of discriminatory and sexual harassment against Lt. Toia and has refused to acknowledge the numerous complaints of retaliation I have reported to him, Lt. Tierney, and Sgt. Lloyd. Chief Sarlo has perpetuated an already hostile work environment by falsely accusing me of misconduct, corruption, and incompetence. The fallout of these allegations will rain down on me for the entirety of my career. The very serious and concerning allegations Chief Sarlo has made against me within the pages of his position statement have far reaching consequences and have already had detrimental effects on my work environment and career.

“When an employer engages in discriminatory intimidation, ridicule, insults, repeated abusive discriminatory comments or treatment toward an employee or group of employees, and where an employer falsely accuses an employee of dishonesty or serious misconduct, and, knowingly and maliciously, communicates “facts” about the employee’s performance, competency or conduct which can be proven false, they are engaging in unlawful conduct and committing acts of retaliation, indicative discriminatory intent.”

Chief Sarlo falsely states that I “claimed to smell marijuana or alcohol on suspects when other officers did not,” and that I “inaccurately recorded pre-screen breath test results” however, he does not provide any proof such as the dates and times of these so-called incidents, associated arrest record or uniformed traffic ticket number, or the names of the “other officers” and associated documentation of an investigation into these occurrences. This information should be relatively easy to obtain since I rarely had back up on my calls, car stops, and arrests. A simple review of dash cam video associated with the 422 arrests that I have made including 85 arrests for DWI. Chief Sarlo’s reference to the pre-screen breath recording is a shining example of the vindictive nature of Chief Sarlo and his position statement. My disciplinary file (which Chief Sarlo rather suspiciously did not include as part of his evidence) will show that Lt. Toia initiated an investigation regarding a DWI arrest I had made and falsely accused me of intentionally omitting a PBT reading. This investigation was closed with no wrongdoing, or violations having occurred.

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Based on all the facts and circumstances surrounding this inquiry, it is the undersigned officers findings that PO Kess did not intentionally omit anything from her report that she could not articulate if questioned on same, therefore no violations of the Rules and Procedures are present resulting in this inquiry being closed.

CONCUR WITH LT. SCHAEFER'S FINDINGS. CCA

Cc:
*(See Evidence; Retaliation Complaint; Exhibit-45 PBT Investigation Findings)

Another baseless accusation made by Chief Sarlo is his claim that “*the EHTPD received complaints of harassment from citizens regarding Complainant’s aggressive tactics.*” Chief Sarlo uses an email **written by me** dated August 22, 2019, which I sent to then D/Sgt Toia, in reference to a career criminal and addict who allegedly, according to D/Sgt Toia, had made a comment that both the Department and I had been “harassing” him. I wrote an email to D/Sgt Toia after receiving several voicemails from this subject asking me to call him because he wanted to “give info.” I only wrote that email because D/Sgt Toia made an informal comment to me saying in sum and substance, “Hey do me a favor and try to avoid Antonio Cabr**a. He’s saying that the Department and you are harassing him. It’s total bullshit but just try and avoid him anyway if you can.” That was all. No complaint made, no report of harassment was taken, no case report was pulled, no supervisor complaint form was filled out, no IA investigation was conducted— because this was simply a comment made by a career criminal and addict with zero credibility who has been arrested by this Department nearly a dozen or so times and who I had arrested months prior for possession of a controlled substance.

I was not informed that I was under investigation or that I was facing potential criminal charges for harassment in this case or at any time in my career because EHTPD never received complaints of harassment involving me. Chief Sarlo is simply lying. If there had been complaints of harassment made, then Chief Sarlo would have included official documentation or complaint records as evidence. Simply saying “so-and-so is harassing me” without articulating what so-and-so did, the context of so-and-so’s conduct, and the reasons why you feel so-and-so’s conduct was harassing, doesn’t automatically mean that so-and-so harassed you. This is why we conduct investigations

Due to harassment being a crime, reports of harassment require a criminal investigation. All complaints of harassment involving members of the Department are required to be taken by a supervisor, documented on a Supervisors Complaint Form, criminally investigated and assigned a case report number. The supervisor taking the report of harassment would have obtained a statement from the complainant with all pertinent details of the complaint. The supervisor would have immediately advised the next ranking officer including Captain Anderson via a written

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Memo. Due to the potential for criminal charges, the Suffolk County District Attorney’s Office would have been advised as well. EHTPD Policy 1010.5 which states, “Supervisors shall ensure that all formal and informal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible. All complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint.” **(See Evidence; Retaliation Complaint; Exhibit-46 EHTPD Policy 1010.5).*



Discipline Case No.	Date	Respondent	Complaint	Reporting Supervisor	Final Disposition

RESET FORM

EAST HAMPTON TOWN POLICE DEPARTMENT
 ACCREDITED LAW ENFORCEMENT AGENCY
 SUPERVISOR'S COMPLAINT REPORT
 FD-505-3

DISCIPLINE DATE: _____

INSTRUCTIONS: Commanding Officers must investigate allegations and report disposition under section entitled FOLLOW-UP.

NEVER/NIK-BELIEVED/COMM			
LOCATION VIOLATION OCCURRED	DATE	TIME	DAY OF WEEK
COMPLAINANT (IF ANY)	HOME ADDRESS	HOME PHONE NO.	
EMPLOYER	EMPLOYER'S ADDRESS	BUSINESS PHONE NO.	
DETAILS OF VIOLATION			
IMMEDIATE ACTION	TIME OFF/CD: WAS = WAS NOT = UNCHARGED/NO ACTION/NO CD/NO = WAS NOT = IF SELECTED BY PROSECUTOR (PROSECUTOR'S CHARGE NUMBER)		
	# NOT SUPPLIES		
SIGNATURE OF SUPERVISOR PREPARING REPORT		COMMAND	DATE
FOLLOW-UP			
<input type="checkbox"/> UNSUBSTANTIATED <input type="checkbox"/> CHARGES AND SPECIFICATIONS INSPECTION CASE NO. _____		<input type="checkbox"/> COMMAND DISCIPLINE ACCEPTED <input type="checkbox"/> COMMAND DISCIPLINE REVIEW PANEL	
FINAL DISPOSITION			
	SIGNATURE OF COMMANDING OFFICER		DATE

RESET FORM

Through his malicious and careless allegations regarding my conduct, Chief Sarlo has sabotaged all the cases and arrests I have been involved in, he has sabotaged my training opportunities, promotional prospects, opportunity for advancement, special details and assignments and has even sabotaged my assignment to Patrol. Because of the nature of what he has alleged, I will be over supervised, scrutinized, and my work will be unduly questioned. In fact, after what Chief Sarlo has alleged, it would be extremely hypocritical, irresponsible and unethical for him to allow me to continue as a patrol officer, or an officer at all. It would be dangerous and a liability for Chief Sarlo to allow me to operate a police vehicle, carry a duty weapon, respond to calls of service, conduct investigations, interact with civilians, arrest individuals, or complete paperwork and handle evidence due to my so-called incompetence, problematic policing, and misconduct.

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The very public nature of these allegations against me and the statements to the media by Chief Sarlo calling these allegations truthful has not gone unnoticed. The East Hampton community, my coworkers, the District Attorney's Office, defense attorneys, other law enforcement agencies, judges, and any other person or entity that I may encounter during the course of my duties have been undoubtedly influenced by the claims Chief Sarlo has made. Of course, this has all been by design and part of a strategy to sabotage my career and my claims. This is a clear act of vengeance by Chief Sarlo in response to my EEOC Charge of Discrimination.

“According to the EEOC Enforcement Guidance on Retaliation and Related Issues Comparing past positive evaluations with sudden negative feedback can strengthen the argument that the adverse actions were a result of retaliation.”

There are numerous EHTPD records, documents, and evidence indicating that for the entirety of my career I have performed my duties in a professional manner and adhered to Department standards. I have no disciplinary history, except for (2) minor disciplinary charges, one for “being 6 minutes late” for my tour and one for “insubordination.” to be expunged from my record after 18 months, which Chief Sarlo has yet to do. nor have I been compelled to participate in any employment hearings or IA proceedings. No performance issues or concerns have ever been raised or documented by my supervisors. My performance evaluations for each year of service indicate that throughout my career, I have consistently met or exceeded performance standards. The written assessments of my job performance have always been positive with my supervisors highlighting my overall professionalism, leadership among the squad, consistent productivity, and a demonstrated competence in all aspects of police work. **(See Exhibit-13, 13a).*

Throughout my 8 years as an East Hampton Town Police Officer and prior to my filing an EEO Charge of Discrimination, I had received many awards and commendations from Chief Sarlo in recognition of what he called, my “exemplary police service” and “excellent police work.” These acclamations and accolades by Chief Sarlo provide a completely different account of my police work and professional conduct as compared to the disparaging and defaming version given by Chief Sarlo strictly within the pages of his response statement, directly following my EEO Charge of Discrimination.

As of today's date, I have not been informed in any capacity, be it officially, unofficially, or otherwise, of any allegations against me. In my eight years as an Officer with the East Hampton Town Police Department, no member of the Department, including Chief Sarlo, nor any Town of East Hampton employee or elected official has ever once spoken to me regarding alleged “misconduct” or other so-called “concerning behavior” which Chief Sarlo has falsely accused me of. Additionally, I have **never** once been counseled for, or faced disciplinary action over any

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alleged “misconduct” or for any of the so-called violations of EHTPD policy and law, which Chief Michael Sarlo has deceptively asserted in his position statement.

At no time during my career did anyone from the District Attorney’s Office inform me, either directly or indirectly through my command, that there were issues, concerns, or blatant misconduct on my part, regarding my arrests. At no time was I informed by either the District Attorney’s Office or my command that *“the basis of my arrests were so suspect, the D.A. was unable to move forward with prosecution.”* At no time were there any allegations of misconduct, corruption, or incompetence made against me by the D.A. or my command, nor was I informed that there were any issues or concerns regarding my arrests or cases. I was never informed that my investigations, including evidence gathering, documentation, and lines of questioning of suspects were problematic.

After reading Chief Sarlo’s response statement, specifically his comments regarding the Suffolk County D.A.’s Office allegedly voicing serious concerns over the facts and circumstances surrounding my arrests, I contacted the Suffolk County D.A. East End Bureau and spoke to Bureau Chief Patrick O’Connell regarding Chief Sarlo’s claims. During my conversation with Pat O’Connell, I discussed these claims and Chief Sarlo’s comments regarding the D.A. having so-called “knowledge” of my alleged “unlawful” conduct and “problematic” arrests, which Chief Sarlo claimed resulted in the D.A. being unable to move forward with prosecution. This conversation was preserved via audio recording and has been attached as evidence. SCDA Bureau Chief O’Connell complimented me on my case work and arrests and stated that there were no records, reports, documents, accusations, or indications, as far as the DA was concerned, that I was, or ever had been, engaging in misconduct.

The following is a partial transcript of our conversation:

December 4, 2023 at 3:04 PM
Audio Recording — Patrick O’Connell, SCDA East End Bureau Chief
+1 631-852-8800, SCDA
(43m 46s)

O’Connell: (1:24) Hi, Pat O’Connell here.

Kess: (1:27) Hey, Pat. It’s Andrea Kess with East Hampton Town Police Department.

O’Connell: (1:31) Yes, I’m sorry to hear about your, say, challenges out there.

Kess: (1:38) Oh, yeah. It’s been, to say the least, it’s been brutal. It’s unfortunate.

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O'Connell: (1:47) Listen, I think we talked about that. I have four younger sisters, and I know the challenges of sometimes females having to break the proverbial glass ceiling.

O'Connell: "From my observation and talking to the ADAs like Pat Waters, you worked very hard. You had great paperwork. You were very dedicated and serious about being professional."

O'Connell: "I certainly was impressed with your work product and how you conducted yourself."

Kess: (4:08) You know, it's interesting because the Department has taken a stance on that... Claiming that they have heard from the DA's office that I was engaging in misconduct and doing all kinds of (unlawful) things. I know that that's not true, just a game but it's heartbreaking.

O'Connell: (4:38) "Listen, if we thought or certainly if I thought that you were screwing up, I would take you aside and tell you face to face."

O'Connell: "We had enough encounters, you know, when you were prepping here that, you know, I don't think we, you know. And we had some very honest discussions about the prep of the trial and what was going on."

O'Connell: "And if I thought there was something wrong, I wouldn't have no compunction about raising that issue."

O'Connell: "I certainly did not get that impression."

Kess: (5:34) Obviously it doesn't make sense because I was never, ever spoken to or disciplined, or counseled by my department.

O'Connell: (11:05) "I think you've demonstrated discipline and you have the native intelligence and you have a great work ethic."

Kess: (28:12) It's important to, you know, to do things a certain way, be kind, you know, still do your job. You can actually positively impact somebody's life. That was my goal in the Police Department.

O'Connell: (36:52) And it seems like you got that. So, I'm very happy that you gave me a call.

O'Connell: "You've got a lot of talent. You've got a good work ethic. And you, you know, you've demonstrated that you can handle very stressful, challenging situations in a personal and a professional way."

O'Connell: "I think you've got all the ingredients to do very well."

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**(See Evidence; Retaliation Complaint, Exhibit-21 Audio Recording SCDA)*

The adverse employment actions taken against me by East Hampton Town Police Chief Michael Sarlo and the Town of East Hampton have been designed to sabotage my claims and damage my individual and professional character. They were also intended to destroy my career and eliminate all possibilities of professional advancement and promotions. Chief Sarlo deliberately engaged in this harmful conduct to make an example of me so that potential witnesses will feel intimidated and remain silent regarding unlawful conduct and discrimination at work. He has allowed his command staff to intimidate subordinates by way of verbal harassment, aggressive behavior, abusive language, excessive micromanagement, disparate discipline, disproportionate punishment, unlawful orders, and discriminatory actions— especially toward potential witnesses and those, such as myself and Lt. Powers, who have spoken out against the Department.

In fact, Chief Sarlo and other members of his administrative staff are known for being vindictive toward those members of the Department who have spoken out against the Department's persistent violations of the legally protected rights of their members. Those members who have made a complaint of discrimination, sexual harassment, hostile work environment who have reasonably opposed an unlawful order, reasonably questioned a policy or procedure, spoken out against unlawful conduct, discriminatory promotional practices, conflicts of interest, or who have made complaints regarding unlawful violations of legally protected rights.

Both in the past and currently, Chief Sarlo has allowed male members of his command staff to retaliate and discriminate female subordinates. Chief Sarlo has supported their unlawful conduct by ignoring their conduct, dismissing the complaint all together, blaming the female complainant, refusing to handle the complaint, failing to properly investigate and document complaints, and withholding any record or document of a complaint from the disciplinary record and personnel file of the male member whom the complaint was directed. Even more egregiously, the East Hampton Town Police Department, Town of East Hampton, and Chief Sarlo have consistently promoted male officers and put them in positions of authority despite their personal and professional history of misconduct.

Promotion: Gregory Martin, Lieutenant —active discrimination case and pending litigation

Promotion: Daniel Toia, Lieutenant —history of discriminatory conduct, domestic abuse, aggressive behavior, disciplinary history, active discrimination case, pending litigation

Promotion: John Claflin — unpaid (30) day suspension, false report, lying, dereliction of duty (EHT-EV-14781-09)

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In the following pages of this complaint, I will address each allegation made by Chief Sarlo within his position statement and show comparative evidence showing the falsity of those claims.

COMPLAINT OF RETALIATION
Position Statement — “Background”

The following pages and attached evidence represent a clear and factual defense against the blatant misrepresentations made by East Hampton Town Police Chief Michael Sarlo and his counsel, against me and other members of the East Hampton Town Police Department. This document was submitted to the EEOC by the respondent Chief Michael Sarlo, EAST HAMPTON TOWN POLICE DEPARTMENT/ TOWN OF EAST HAMPTON, on October 26, 2023, under EEOC Charge No. 520-2023-04757.

“The East Hampton Town Police Department (“EHTPD” or the “Department”) is a New York State Department of Criminal Justice Services Accredited municipal law enforcement agency. It possesses 65 sworn police officers, 11 of whom are female, a ratio consistent with other police departments located on the East End of Long Island. In fact, since 1985, the department has employed eighteen (18) female full time police officers, a direct result only of the limited pool of officers available to the EHTPD. Despite this, of the EHTPD’s four (4) Lieutenants, one (1) is female. Additionally, the EHTPD has had a female detective who served the department for twenty-two (22) years, a female DARE1 officer and a police officer assigned to the prestigious East End Drug Task Force.”

According to the East Hampton Town Police Department’s October 2023 Assignment Grid, there are 65 sworn police officers, however only (10) are female, not (11) as claimed by the respondent. Out of (10) female officers (and in the history of the department) only (1) has been promoted. Apart from Lt. Tierney (who was the departments first and only female sergeant), there are (8) females assigned to patrol and (1) female DARE Officer. Additionally, there are no female sergeants, no female detectives, no females assigned to the East End Drug Task Force, no female instructors, no female ESU members, and no female members of the Dive Team. **(See Evidence; Retaliation Complaint; Exhibit-22 EHTPD October 2023 Assignment Grid).*

According to EHTPD Personnel Records, the department has employed (17) females, not (18) as claimed by the respondent. The respondent is correct, there has only ever been (1) female

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Lieutenant and she was also the department's only female sergeant. The department's one and only female detective retired in 2014. Her office was located outside of the Detective Division—in the JAB Room located in a hallway near the NW entrance of the building. The respondent also points out that there was (1) female assigned to the East End Drug Task Force. Ironically, that female was relieved of that special assignment prior to (18) months working with the East End Drug Task Force. This is significant because an assignment with the East End Drug Task Force which exceeds (18) months would require the department to automatically appoint the assigned officer to the rank of Detective. As for the male officers who have been assigned to the East End Drug Task Force, all assignments exceeded (18) months and those officers were appointed to Detective, with the exception of one male who was promoted to sergeant. **(See Evidence; Retaliation Complaint; Exhibit-23 EHTPD Personnel – All, Exhibit-23a Drohan)*

Specialized Units, FTO, SRO, Training

In the history of the department, there has never been a female member of the EHTPD Dive Team. Females who have requested to be put on the team were told by male members of the team that females were not allowed due to a lack of privacy when undressing. Additionally, there has yet to be a female member of the EHTPD Emergency Services Unit, despite the many qualified females available for selection. Out of the department's 65 sworn members, there are currently no female instructors assigned to the department's in-service training unit and none in the past. Additionally, female School Resource Officers have only been assigned to the elementary school DARE Program. Male SROs are assigned to high schools. **(See Exhibit-22)*.

This lack of female representation is also seen with the EHTPD's Field Training Officer (FTO) selection. Under Chief Sarlo, only (1) female has been chosen for FTO, despite many female officers requesting this training year after year, including myself. During my nearly 8 years as a police officer with this agency, I have requested FTO every year. I have been approached by both my supervisors and training coordinators, Sgt. Barry Johnson (ret.) and Sgt. Kenneth Alversa, who have asked if I would like to attend an upcoming class. I've always said yes. In 2020, I was asked by Lt. Claflin and Sgt. Kenneth Alversa who both said there wasn't much interest from any other officers however the department needed more FTO's due to promotions and they would get me and a few other male officers in the next available class which would be starting in a couple of weeks. I was the only officer who did not attend. In 2021, the same exact scenario played out with FTO training. I was once again asked if I wanted to attend an upcoming class to which I said yes. Several male officers who had significantly less time on the job as I had, were sent to training. I was not sent. Another instance occurred later that year when a male officer was informed by Lt. Toia that he was being mandated to go to FTO training because "everyone he wanted declined." Of course, I had not been asked.

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Text messages — P.O. Strong
December 12, 2023 9:21 AM

Strong: Oh, and Toia called me and told me that he needed to send someone to FTO and everyone he wanted declined it so it was now mandatory for me. Glad to know I was not even on the list and someone he could push into it. **(See Evidence; Retaliation Complaint; Exhibit-24 Strong Text - FTO).*

All decisions regarding assignments, training, appointments, and promotions within the East Hampton Town Police Department are finalized by Chief Michael Sarlo. According to the **2023 Lexipol East Hampton Town Police Department Policy Manual, Section 10: Personnel, subsection 1002: Special Assignments and Promotion:**

“The East Hampton Town Police Department determines assignments and promotions in a non-discriminatory manner based upon job-related factors and candidate skills and qualifications. Final recommendation of any candidate to the Town Board rests with the Chief of Police.”

Section 1002.3.3 Selection Process details the process and concludes with *“assignment by the Chief of Police.”*

The clear lack of female representation throughout all facets of the East Hampton Town Police Department is not due to the *“limited pool of officers available to EHTPD”* as claimed by the Respondent. The inequity of female representation within the East Hampton Town Police Department as opposed to males, is a direct result of Chief Sarlo’s long standing bias against female officers. After all, final recommendation and assignment rests with the Chief of Police.” **(See Evidence; Retaliation Complaint; Exhibit-25, 2023 Lexipol; EHTPD Policy Manual, Section 10: Personnel, subsection 1002: Special Assignments and Promotion).*

Pregnancy & Maternity

According to several supervisors including Sgt. Barry Johnson (ret.), one of Chief Sarlo’s biggest concerns with hiring female officers, promoting females, or giving them assignments outside of patrol was having to “deal” with a female officer becoming pregnant. Chief Sarlo has said that pregnancies only create budgeting and scheduling nightmares which he then has to “deal” with. According to several female officers, Chief Sarlo has made negative and offensive comments to those females who have become pregnant. Female officers have experienced Chief Sarlo’s negative commentary with statements such as, “Now we have to deal with this problem,” “Is this

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going around or something, who's going to be next," "You had to go and get pregnant now. You couldn't wait until the summer was over." Supervisors have also said that when they reported that a member of their squad was pregnant, Chief Sarlo would just shake his head and bury his face in his hands. I have been asked several times by male members of the department about when I was going to have kids. During one of those times, I was told that I better do it soon because I was "getting up there" in age and "you don't want to be one of those older women who have babies in their forties." I have witnessed supervisors describe pregnant female officers as "just about to calf," which is a phrase used by farmers to describe their livestock.

Retired Sgt. Barry Johnson spoke about Chief Sarlo's concern regarding pregnancy among the female members of the Department during a phone conversation I had with him on December 8, 2023 at 4:09 PM. Sgt. Johnson spoke about his experience with Chief Sarlo regarding pregnancy and stated he has firsthand knowledge of the discrimination Chief Sarlo has displayed toward women regarding family planning.

December 8th, 2023 4:09 PM
Audio Recording — Sgt. Barry Johnson
+1-631-433-****
(44:01)

00:19:06 **Johnson:** And then uh— in a kind of weird, um...
It, it didn't end naturally. It seemed like it ended abruptly.

00:19:13 **Kess:** Hmm.

00:19:16 **Johnson:** And I think we were probably talking maybe about an hour and some change, um, and the way it just ended was kind, kind of weird I thought. I didn't have a good feeling about it. You know, I, um, I kind of laid it out...

00:19:35 **Johnson:** Women in the department, I said— and if you, if you're looking to get hired or... You know, a consideration of the department is— and I know, I've heard it spoken, too, spoken about by the Chief— that, uh... whether or not they're of reproductive age, you know, and that they, you know, are they planning on having a family or anything so.

00:19:59 **Johnson:** So, I just wanted to communicate that, and that, that's it.

*(See Exhibit-2).

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Text messages — Peterson
July 10, 2023 at 8:44 PM

Peterson: “I’ll back you all the way. It’s been so long coming. I know what I want to address and you help me. I’m ready.”

Peterson: When I got pregnant (planned married at 29 years old) I was told let’s go deal with this mess, you had to have a baby in the summer?! Umm sorry.....

*(See Exhibit-10a)

Due to the lack of pregnancy/ maternity leave, women who become pregnant try to stay on the road for as long as they can. They also must use their own sick time for any checkups or leave taken as a result of pregnancy. As they begin to show, their uniforms, ballistic vest, and gun belt cannot be worn safely. This issue has been raised several times to Chief Sarlo, with those females requesting maternity uniforms. All requests have been denied by Chief Sarlo. Additionally, there are no dedicated lactation spaces and if such a need arises, the department has said it would utilize a complaint room for that purpose.

“Discrimination can result from neutral employment policies and practices which are applied evenhandedly to all employees and applicants, but which have disproportionate effects on members of a protected group vs members of a non-protected group.” —EEOC Guidance; Compliance Manual, Theories of Discrimination

As part of the EHTPD Patrol Performance Evaluation rating system, **Reliability** is determined based upon how many sick days a member uses during that calendar year. It is also the Departments policy that women who become pregnant use sick time for any pregnancy or maternity related leave. With that said, female members of the Department who become pregnant are more likely to receive a low reliability rating, due to using an above average amount of sick time. This results in a below standard reliability rating, which in turn, lowers the overall performance rating of that female. This inherently biased policy puts women at a disadvantage when it comes to things like promotional advancement, other employment opportunities or any other career movement which uses performance evaluations as part of their assessment of that employee. This is also true for anyone who may have a chronic health condition or medical issue.

Due to these policies, women often hesitate to start a family. They are afraid that if they do become pregnant that it will automatically disqualify them from a promotional or training

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

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opportunity, they will be deemed unreliable, and viewed by management to have burdened the department.

Locker/ Changing Areas

The East Hampton Town Police Department has yet to provide female officers a separate changing area or bathroom facility in both departments satellite precincts located in East Hampton and Montauk. Females who turn out of those precincts must change with male officers assigned to those precincts. One female officer reported that on two occasions a male officer had entered the locker area while she was topless. That female officer raised the issue with her supervisor who advised her that if she wished to continue with her complaint, she would have a permanent X on her back for the rest of her career. That supervisor also warned that Captain Anderson would respond to her complaint by eliminating all precinct assignments for women and replacing them with permanent assignments to HQ. I was also walked in on while changing by two separate male officers during the period when I was assigned to the Montauk Precinct. I, too, brought up the issue of the precincts lacking separate changing areas and was told to utilize the Montauk Precinct Commander's office which at the time was occupied by Lt. John Claflin (ret.) and was not available to be utilized as a changing area.

Grace Peterson did bring this incident up to Arthur Riegel during her interview at which time he struck her account off the record without explanation as to why.

May 11, 2024 2:02 PM
Audio Recording — Grace Peterson
+1 (631)807-****
(30:01)

Peterson: I told you I had a coworker comment on the color of my underwear because I have been forced to change with them. And he goes, OFF THE RECORD. I go, ON THE RECORD.

**(See Exhibit-7).*

COMPLAINT OF RETALIATION
Position Statement — Alleged “Facts”

“Complainant was first hired by the EHTPD in 2014 as a part-time police officer. Upon obtaining residency within the Town, she was hired as a full-time police officer in or about April

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

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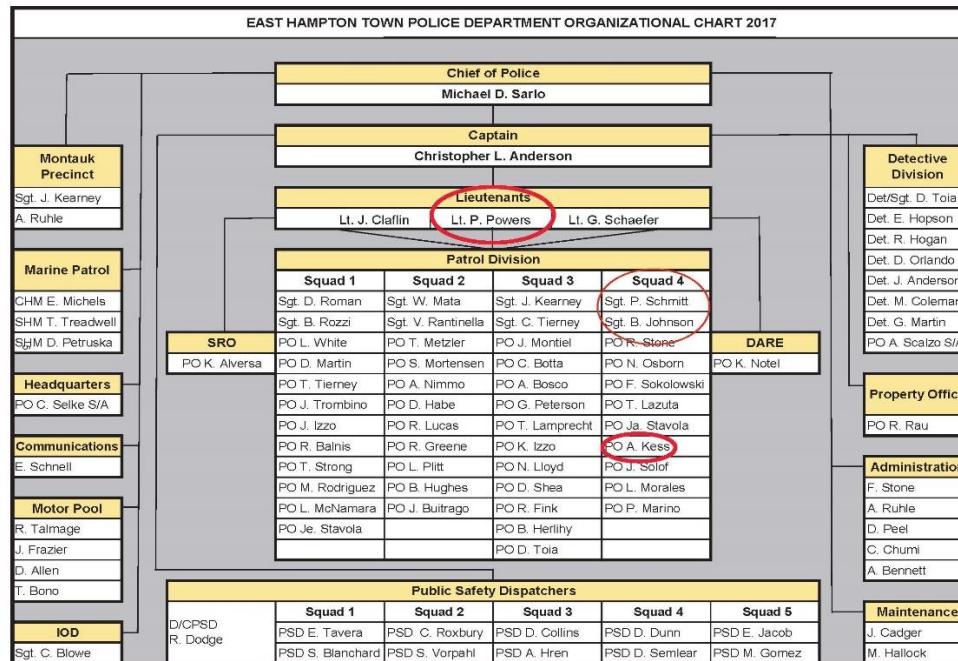
2016. Complainant completed her probationary period in October 2017. At the time, her squad sergeant and direct report was Sgt. Peter Powers, who was responsible for completing all of Complainant's evaluations. It is worth noting that within one (1) month of the completion of Complainant's probationary period, Sgt. Powers was promoted to Lieutenant. Upon receiving this promotion, Powers disclosed to the Chief of Police that he was not only dating the complainant, but that the two would be moving in together." - Statement of Position of Respondent, 10/26/23

The respondent is correct, I was hired in 2014 as a part-time police officer. Upon completion of the Suffolk County Police Academy in June of 2015 I continued in a part-time capacity with East Hampton Town Police Department until being hired full-time on April 3rd, 2016, with a probationary period of 18 months. I was initially assigned to Squad 5 with Sgt. Peter Powers as my direct supervisor.

The respondent, namely Chief Sarlo, falsely claims that Sgt. Peter Powers was my direct supervisor during the entirety of my probationary period which ended in October of 2017. However, on January 1st, 2017, a 12-hour patrol chart was implemented by Chief Sarlo resulting in squad reassignments. On 1/1/2017, while still on probation, I was reassigned to Squad 4 with Sgt. Barry Johnson and Sgt. Peter Schmitt as my direct supervisors. The departments 2017 Organizational Chart which is publicly available on the Town of East Hampton website, in the 2017 Police Department Annual Report, written by Chief Sarlo. **(See Evidence; Retaliation Complaint, Exhibit- 26 2017 EHTPD Organizational Chart).*

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At no time was Sgt. Peter Powers my direct supervisor in 2017. At no time was Sgt. Peter Powers responsible for completing any evaluations relating to my probationary period, in 2017.

With the January 1st, 2017, squad assignment change, Sgt. Barry Johnson and Sgt. Peter Schmitt became my direct supervisors and therefore completed all remaining probationary evaluations as well as yearly performance evaluations while I was under their command. Lt. Claflin was notified that my probationary period had ended by Sgt. Johnson, and it was his recommendation that I be taken off probation at this time.

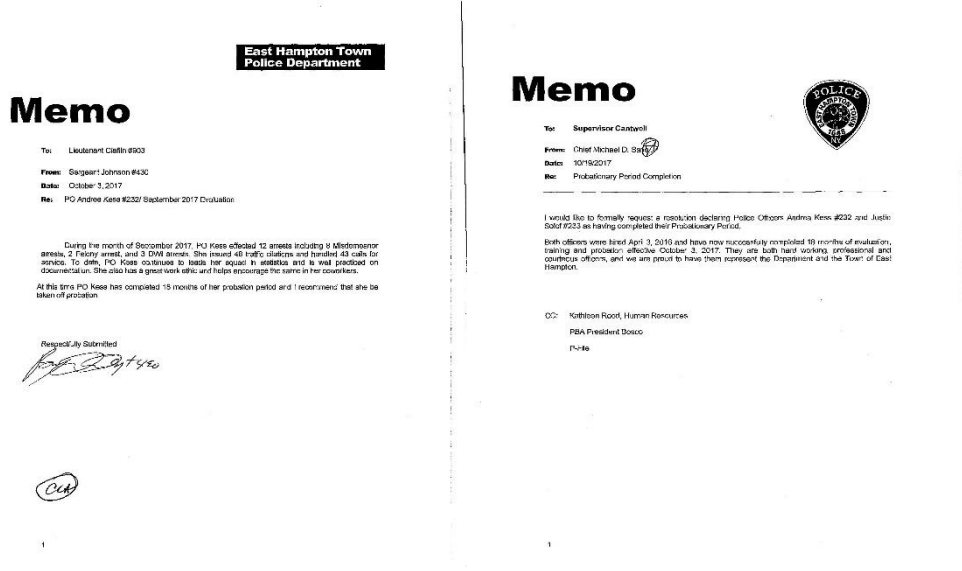
Considering that Chief Sarlo reviews officer evaluations and the accompanying supervisor recommendations regarding an officer's progress while on probation, it would be accurate to say that Chief Sarlo was well informed as to my squad assignment, the identity of my supervisors, and the actual dates and correct timeline surrounding my probationary period. Despite having both

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knowledge and access to this information, Chief Sarlo has given an entirely different account of the facts and circumstances surrounding my probationary period. **(See Evidence; Retaliation Complaint, Exhibit-27 Johnson Probation Memo).*



Chief Sarlo then claims that within (1) month of the completion of my probationary period, Sgt. Powers was promoted to Lieutenant. Again, this is categorically false. On April 7th, 2017, Chief Michael Sarlo issued (2) departmental memorandums announcing the promotion of Sgt. Peter Powers to the rank of Lieutenant, effective **April 30th, 2017**, pending Town Board resolutions.

Chief Sarlo personally commends Lt. Peter Powers in his memorandum stating, *“We are proud of the hard work, professionalism, and dedication to the Department you have shown in your career that have earned you this promotion. —Chief Michael D. Sarlo*

During an East Hampton Town Board meeting held on 4/20/17, resolution 2017-473 was unanimously adopted by the members of the Town Board appointing Peter Powers to the rank of Lieutenant. **(See Exhibit-28 Town of East Hampton Resolution 2017-473).*

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Chief Sarlo then states, “Upon receiving this promotion, Powers disclosed to the Chief of Police that he was not only dating the complainant, but that the two would be moving in together.” Chief Sarlo does not state the correlation or relevance of this information to his response statement or to any of the allegations I have made within my EEOC Charge of Discrimination. Chief Sarlo has only made this statement as an insinuation of misconduct on the part of Lt. Peter Powers and me. Chief Sarlo falsely claims that Lt. Powers and I were in a so-called “relationship” and allegedly living together while Lt. Powers was my immediate supervisor. This categorically false statement was made to discredit the professional integrity of Lt. Powers and myself and to insinuate the existence of a conflict of interest.

Moreover, Chief Sarlo uses this statement to set up his wildly fabricated claim that “there were many instances of misconduct that were not documented” due to the now cold-blooded and ruthless Lt. Powers who, prior to October 26, 2023, was honored with commendations and promotions by Chief Sarlo and held in great esteem by his colleagues, intimidation and threats of merciless punishment to those supervisors who dared report my alleged misconduct. Chief Sarlo claims that this reign of terror by Lt. Powers was so severe that supervisors physically “recoiled out of fear” of merciless retribution at the hands of Lt. Powers. Chief Sarlo states this to somehow excuse the fact that there are zero EHTPD records to back up any of what he has claimed within his position statement.

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Chief Sarlo falsely states that Lt. Powers was my supervisor during my probationary period and that due to this alleged “relationship,” Lt. Powers issued positive performance evaluations to intentionally deceive Chief Sarlo as to my competence and policing abilities. Chief Sarlo claims that I should have failed my probationary period due to my problematic policing and that my alleged personal relationship with Lt. Powers, unduly influenced the Department’s decision to retain me as a full-time Police Officer. **(See Evidence; Retaliation Complaint; Exhibit-29 Johnson Recommendation; Exhibit-29a Probationary Evaluations).*

These statements are as factually incorrect as they are deceptive. The seemingly innocuous remarks made by Chief Sarlo about my personal relationship with Lt. Powers are merely a diversionary tactic to discredit both Lt. Powers and me in both an individual and professional capacity. Chief Sarlo uses alleged “information” which he presents casually as a side note, as part of his broader goal of character assassination. These statements are nothing more than an attempt to divert attention from the very serious EEOC Charge of Discrimination which I have made, to irrelevant information which Chief Sarlo insinuates is tangentially relevant. However, the reality is that it has absolutely no bearing on my claims of discrimination.

In fact, Chief Sarlo has not properly addressed or responded to any of the claims or allegations made within my EEOC Charge of Discrimination against him. Rather, Chief Sarlo has used his response statement to attack my individual and professional integrity, discredit my claims, in retaliation for filing a complaint with the EEOC.

Furthermore, if Chief Sarlo had knowledge that misconduct did occur while I was assigned to Squad 5 and evidence that my evaluations were unduly influenced by an alleged inappropriate “relationship” between a supervisor and myself, it would have been his duty as Chief of Police to intervene. At no time was I questioned, counseled, or disciplined for any of what Chief Sarlo insinuates in his position statement, because his insinuations and claims are categorically false. Rather suspiciously, Chief Sarlo has only made these accusations within this October 26th, 2023, response statement after my complaint was made to the EEOC. Chief Sarlo fails to provide evidence of any kind to support his allegations because that evidence simply does not exist.

Inappropriate Relationships, Conflicts of Interest

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Chief Sarlo has pointed out my personal relationship with Lt. Powers, falsely claiming that Lt. Powers and I engaged in corruption and misconduct throughout my career. Chief Sarlo claims that I was given special treatment by Lt. Powers which resulted in “many incidents” of my alleged “misconduct” and “poor performance” going undocumented by my supervisors. According to Sarlo, this was due to Lt. Powers’ alleged intimidation of my supervisors who were forced to engage in corruption out of fear retribution.

Of course, Chief Sarlo has no documentation to show that this occurred. In fact, Chief Sarlo has not verified this information with my previous sergeants, Lt. Gurney, Sgt. Johnson, Sgt. Schmitt, Sgt. Kearney, and Sgt. Roman. Both Lt. Powers and I have asked each sergeant if they had ever felt intimidated. The collective response was a laugh, due to Lt. Powers’ reputation for being levelheaded, professional, and the least intimidating person in this Department.

It is important to note that as part of the Town’s so-called “Independent Investigation” into my allegations, all current supervisors (none of which have ever supervised me) were interviewed twice as were several defendants named in my EEO claim, some multiple times. Arthur Riegel did not interview the individuals I named as witnesses and those that were interviewed were never asked about the incidents which they witnessed. Instead of utilizing his time and interviewing every current employee and member of Department as part of a proper investigation into my claims, Arthur Riegel, under the direction of the Town, has been wasting taxpayer money by launching an investigation into me, not my allegations.

I made an initial complaint in September of 2022 which the Town should have been aware of as I complained to a supervisor who reported it up the chain. The Town failed in their obligation to investigate such matters involving discrimination and sexual harassment, regardless of the so-called wishes of the complainant. I filed EEO charges in May of 2023, and again, the Town failed to investigate believing that they were under no obligation to do so, in direct violation of EEOC employer investigative responsibilities. The Town finally decided to investigate in September of 2023, however bypassed their internal investigative procedures and instead hired a so-called “independent investigator” who has done nothing to investigate my allegations. By all accounts, he has been hired to help build a case against my credibility.

My last (2) Patrol Performance Evaluations were completed by Lt. Martin and Lt. Tierney. Both Lt. Martin and Lt. Tierney stated that I was meeting or exceeding standards— there was no mention of any performance issues, concerns, misconduct, etc. Lt. Tierney maintains that she was not made aware of Chief Sarlo’s response statement and was unaware of the assertions that Chief Sarlo had made regarding my supervisors. Lt. Tierney stated that she did not have any concerns regarding my job performance and did not state to the Chief that she felt I was incompetent,

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engaging in misconduct, etc. Lt. Tierney states that she recommended me for PO of the Year as well as for Detective. Sgt. Martin never spoke to me regarding concerns of misconduct or incompetence. In fact, Sgt. Martin had me fill in as FTO when none were available, work special details like DWI Task Force Check Point and SLA enforcement, assist other officers with arrest paperwork, recommended me for the Open Property Bureau position, and spoke to me about career advancement opportunities. For all intents and purposes, both Lt. Martin and Lt. Tierney trusted my police work, were satisfied with my performance, did not feel that I was incompetent as they utilized me for various police related activities, respected my contributions to the squad and Department, and regarded me as a leader.

There were no indications that these positive performance evaluations were due to Lt. Powers intimidation of Lt. Martin and Lt. Tierney. If that is the case, then all members of the current command staff engaged in misconduct and corruption and should be immediately terminated.

November 20, 2023 1:00 PM
Audio Recording — Lt. Chelsea Tierney #903
Department Issued Cell Phone
(23:16)

Kess: It says my supervisors, Chelsea. It said my supervisors continuously went and brought up concerns, major concerns about my arrests, my leadership ability, my overall insubordination.

(5:31 - 5:59)

Tierney: And the thing is that they have not submitted proof of this, Andrea. There was no proof from me. I was in full support of you getting Detective. I would have never put my name on a piece of paper recommending you.

**(See Exhibit-10).*

In fact, the collective feeling among members of the Department is that Lt. Toia is abusive toward officers, especially females, aggressive, hostile, and a bully. Most Department members will categorize Chief Sarlo and Captain Anderson in the same manner and feel that these three individuals are responsible for the Department's hostile work environment.

Text Messages — P.O. Van Asco (Mortenson)
Various dates

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P.O. Van Asco: This place really needs a shake up and new supervisors. It's sad how this place has just collapsed and guys just hate this job so Much. It's a great job and we make good money. We need new leadership in the worst way.

P.O. Van Asco: When we talked and u told me everything Lt. Dan said to u. Very disturbing.

P.O. Van Asco: I've heard him (Lt. Toia) in muster. He has lost control. He's like bi polar or something.

P.O. Van Asco: But Pete has his head on straight and he's an adult. I have a lot more respect for him because he knows how to address people.

P.O. Van Asco: This place blows I cannot imagine doing another 10 years in this atmosphere.

P.O. Van Asco: When we did the DWI checkpoint the Sheriffs Chief of police was there and shook hands with me and Vinny and the other guys. That's the way it should be.

P.O. Van Asco: Instead we have a Chief who knows nothing about any of us and walks as fast as he can down the hallway saying a very quick hi and bye. Never once in 19 years has he ever stopped on the road when he saw me or another cop and said hi. It's sad, I just don't get it and never will.

P.O. Van Asco: I've never been so angry. This department is in such a bad way. It's very sad to watch. If you could get out you should.

P.O. Van Asco: I liked the part where he said his door is always open. He's never once walked into Muster at change of shift. I've been there almost 18. He's walked into muster 2 times and it was after he had a fit.

P.O. Van Asco: You're the Chief of police and you can't entertain questions to the cops. You have to meet them in the kitchen? What r we 5?

P.O. Van Asco: he wants traffic stops? How about staffing? Supervision?

P.O. Van Asco: it's all just crazy to me. I'm going to do my time and move on. I do love this job but I'm burnt out. A lot of guys are.

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P.O. Van Asco: What pissed me off is every one of us knows he doesn't give a shit about us or our families.

P.O. Van Asco: no one works this schedule anymore. No one is happy and guys r transferring and retiring early. Isn't that a sign something isn't right? I just don't get it. I really don't.

P.O. Van Asco: They can't turn their heads with this. You don't just have one isolated incident and you have guys that are willing to be witnesses so that's huge.

P.O. Van Asco: I'm sure its not easy. You're a strong woman and it takes a lot to do what you're doing. And it seems like you're following through and going full throttle ahead. No one deserves to be treated the way you have been.

P.O. Van Asco: And I'm sure there will be some changes in the near future.

P.O. Van Asco: We need a fresh new group of supervisors. Take care of yourself, seriously, getting sick over this place just isn't worth it.

P.O. Van Asco: I know its not easy what you're doing but u r doing it for u and the other cops.

P.O. Van Asco: We really need a change in that dept

**(See Evidence; Retaliation Complaint; Exhibit-30 Text Messages Van Asco).*

Text messages — Peterson
July 8, 2023 7:20 PM

Peterson: I'm proud of you. I was waiting til I retire so I wasn't shit on more.

Peterson: You are my hero.

Peterson: I'm right behind you. If you can ever chat with me I'd like advice. I'll back you all the way. It's been so long coming. I know what I want to address and you help me. I'm ready.

Kess: You have a whole careers worth of shit to expose.

Peterson: Oh, I sure do. I contacted a lawyer a few years back and then didn't want a bigger target on my back.

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

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Peterson: That place is such bs!!! Always has been. It's like a cult of Anderson's and his relatives.

Peterson: Ok, I'd love to chat.

Peterson: I'm so damn proud of you. Inspiring.

**(See Evidence; Retaliation Complaint; Exhibit-31 Text Messages Peterson).*

Text Messages — Sgt. Mata
June 11, 2023 7:35 AM

Mata: Yeah, shady assholes.

Mata: I bet they wish they could put you in station 1

Mata: They think they can just do whatever they want and treat people like shit

Text Messages — Sgt. Mata
July 20, 2023 8:51 AM

Kess: Muster was brutal

Mata: Really? Was Dan in there?

Kess: Yes.

Mata: Fucking weird wtf is wrong with this place

Mata: He's a fucking idiot

Kess: Greg made an announcement about the case

Mata: Your complaint in muster?? Wtf

Kess: It was veiled but he said "ongoing issues that certain personnel have with the department"

Mata: Wow man that's some fucked up shit anyone in muster say anything to you after— Like wtf was that

Text Messages — Sgt. Mata

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

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August 1, 2023 5:05 PM

Mata: I'm not sitting for the Lt interview.

Kess: You should sit for it.

Mata: Fuck that. I'm not white so there's no point.

Mata: Too Mexican for that.

**(See Evidence; Retaliation Complaint; Exhibit-32 Text Messages Mata).*

Text Messages — Anonymous

Anonymous: Ever since this has come down, they all just sit and pow wow with each other and don't actually manage the department anymore. I feel they can pow wow with each other all they want. The damage is done.

Anonymous: Toia has since become a nicer guy to talk to since this all came out because he wants people to talk nice about him to the interviewer. People don't forget. I'll never forget the way those people have treated me.

Anonymous: If Toia doesn't lose his job because of this, he is going to become so bad. It's going to get really really hard to be here.

Anonymous: I have just sucked it up and ate the crap and when I read the article about the lawsuit it made me so happy. I am so glad that you had the courage to do this. It needed to be done for years and I know a lot of use suffer from it.

Anonymous: I hope this works out. And I know I'm not the only one really counting on it. You are the voice for so many of us. The assholes can't win!

May 2, 2024 9:55 PM
Audio Recording — P.O. J. Izzo
+1(516) 429-****
(21:34)

(0:40 - 1:08)

July 16, 2024

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Kess: Yeah. Although I know you don't want to retire.

J Izzo: I would do it.

J Izzo: I would stay forever, but again, just like you, you know, why would I stay in a place that's not going to do the right thing by us? And I know Barry would have stayed too if they didn't give him a hard time.

Kess: Oh, Barry.

J Izzo: I know.

Kess: Barry's like this really sad story of East Hampton Town Police Department. Honestly.

(1:08 - 1:28)

J Izzo: Yeah, but that says it all.

Kess: I know. It's really awful. And I really don't know what the hell is going on and why, but none of it makes any sense.

(1:29 - 1:51)

J Izzo: No. Well, Sarlo's eviscerated this apartment and that's the way he wants to run it. Which is really unfortunate. Sad.

Kess: I mean, I would have never thought. I don't know why. I just never, I would have never thought, Joe, that a chief would be like that, you know?

**(See Evidence; Retaliation Complaint; Exhibit-33 Audio Recording J Izzo 5-2-24)*

Not surprisingly, my past sergeants, including Lt. Cheslea Tierney and Lt. Greg Martin, as well as all current sergeants, have stated that they were not interviewed by Volz & Vigliotta prior to the submission of Chief Sarlo's response statement to ensure its accuracy. And all have stated that Chief Sarlo never informed them of the position statement and the allegations made within. Lastly, Chief Sarlo has not offered an explanation as to why he failed to take immediate disciplinary action upon learning about the alleged "intimidation" and "corruption" by Lt. Powers.

Chief Sarlo has simply weaponized my personal relationship with Lt. Powers and used it to discredit our professional integrity. The allegations by Chief Sarlo came after I had filed my

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EEOC complaint and do not appear in any document or record outside of his position statement. In fact, this the first and only time Chief Sarlo has ever commented on or spoken about my personal relationship with Lt. Powers. As with all other claims Chief Sarlo has made, he fails to provide documentation or evidence to support these statements. Furthermore, I have spoken to many of my supervisors regarding his claims of my alleged misconduct, Lt. Powers' alleged intimidation, and their alleged corruption, and all have stated that Chief Sarlo's claims are baseless and false.

My personal relationship is irrelevant to my EEO claims and has absolutely no bearing on the allegations which I have made against Chief Sarlo. My relationship with Peter Powers has never violated any Department policy, there have been no conflicts of interest because of our relationship, it was properly disclosed, and has not interfered with either of our professional duties and responsibilities as sworn Officers of the East Hampton Town Police Department. Lt. Powers has had no direct authority or dealings in any professional matters involving me, including but not limited to, supervision, performance evaluations, disciplinary matters, training, and promotional interviews.

Furthermore, if any of the claims and insinuations were factual, if it were true that Lt. Powers truly struck such nightmarish fear into all members of the Department, including Chief Sarlo, and was able to influence my career, I would not be writing this complaint letter. I would have been promoted, not the target of nearly 8 years of pervasive discrimination, harassment, and now retaliation by Chief Sarlo and the EHTPD.

Inappropriate Relationships & Conflicts of Interest

*“I guess I f—d the wrong brother.” —P.O. ****

Chief Sarlo is aware of the multitude of truly inappropriate relationships, both past and present, within the Department between subordinates and supervisors. The Department has seen relationships between Officers on the same squad, a multitude of affairs, and inappropriate contact during work hours. This conduct has occurred in every division and has involved, at one time or another, every rank in the Department.

Chief Sarlo should be familiar with at least two of these inappropriate relationships involving high ranking officers and female members of patrol. The above is a direct quote from a

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former female P.O. who claims to have had a sexual relationship with Chief Sarlo's brother, who at the time held the rank of Captain. The female officer involved has not been bashful about the details of her encounter, which reportedly took place in the back of a department owned vehicle issued to the Detective Division. This incident is well known throughout the department and was openly spoken about by the female officer involved.

The female officer involved also stated that while in the backseat of the detective vehicle with Chief Sarlo's brother, she lost her earring. She states that on her next tour of duty, the earring was returned to her by Captain K. Sarlo, at which time he told her that he would make her career a living hell if anyone found out about their sexual encounter. Another retired female member of the Department has also claimed that she had a sexual relationship with Chief Sarlo while she was assigned to patrol. This relationship has also been openly discussed within the Department by the female involved. Chief Sarlo has never commented on these relationships, addressed the obvious conflicts of interest they have caused, nor has he ever accused himself or those involved of misconduct.

Text Messages — Anonymous
July 1, 2024 8:36 PM

Kess: I wanted to ask you if ****'s affair with M. Sarlo happened while she was married to ****.

Anonymous: No.

Anonymous: Not many know about that. Make sure to never say that I said— I mean it was Balnis retirement party (rich) so people knew— but yeah she was single.

Kess: **** told me she slept with him.

Anonymous: Yeah, she drinks and tells. It was that party.

“Complainant is regarded as an aggressive police officer and, for several years, issued the most arrests, DWI stops and traffic tickets in the Department. For her productivity she received numerous commendations, including three (3) DWI awards, four (4) Excellent Police Service Awards, two (2) Lifesaving Awards, and three (3) Chief's Recognition Awards.”

Throughout my career I have been regarded as an active police officer, not “an aggressive police officer” as stated by the respondent. The word “aggressive” does not appear in any of my yearly supervisor evaluations, nor is it used in any of the many commendation letters, emails, and

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P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

handwritten notes of praise that I have received from Chief Sarlo over the course of my (8) year career.

As part of his position statement, Chief Sarlo claims that due to being “an aggressive police officer,” I had for several years “issued the most arrests, DWI stops and traffic tickets in the Department.” Chief Sarlo then states, “For her productivity she received numerous commendations, including three (3) DWI awards, four (4) Excellent Police Service Awards, two (2) Lifesaving Awards, and three (3) Chief’s Recognition Awards.” This statement made by Chief Sarlo is not only flawed in its depiction of me as “aggressive,” it is factually incorrect.

I have received a total of (6) DWI awards all of which have been formally issued to me by Chief Sarlo. These awards have included (4) Departmental DWI commendations, (1) Mothers Against Drunk Driving Award, and (1) Suffolk DWI Enforcement Top Cop Award. Chief Sarlo has issued numerous other commendations in recognition of my “exemplary service” including (4) Excellent Police Service Awards, (3) Chief’s Recognition Awards, and (2) Lifesaving Awards. Since 2016, I have received awards from Chief Sarlo for every year of service.

Out of the many commendation letters, emails, and handwritten notes of praise that I have received from Chief Sarlo, he has never once described my police work as “aggressive.” Out of the numerous awards I have received from Chief Sarlo, “productivity” has never been referenced as the basis of any of the awards.

The awards and commendations issued to me from Chief Sarlo, have been for what he, in his own words, describes as; ***“consistent enforcement efforts, excellent police work, excellent investigative work, commitment to the profession, professional testimony, swift and professional actions, outstanding work ethic, commitment and dedication to the Department, continued focus on DWI enforcement, commitment to keeping the roadways safe, dedicated service and continued dedication to protect and serve the people of East Hampton, calm demeanor and professional response throughout the pursuit and apprehension of the armed robbery suspect, excellent first aid and lifesaving efforts, outstanding work ethic and commitment to enforcing the law, exemplary service, excellent patrol instincts, knowledge of your sector businesses, recognizing potential criminal and suspicious activity, interview and communication skills, assisting another agency with obtaining vital information for a major investigation, excellent police work that brings great pride to the department and is truly appreciated by the community.”***

All the above statements are direct quotes from commendation letters written to me by Chief Sarlo. Chief Sarlo fails to provide these letters of commendation due to his praise of my police work, my involvement in cases, my arrests, and my response to calls of service. Chief

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Sarlo's sudden change of heart regarding my conduct as a Police Officer has everything to do with the EEOC Charge of Discrimination I have filed against him, and nothing to do with my actual work performance. **(See Evidence; Retaliation Complaint; Exhibit-35 Commendations).*

Chief Sarlo has purposefully diminished the basis of my awards and commendations as being solely due to my statistical data regarding numbers of arrests, tickets, and DWI stops. Chief Sarlo has continued to lie in his response statement out of spite, for the purpose of sabotaging my career and discrediting my claims.

TRAINING

The respondent, namely Chief Michael Sarlo, continues to misrepresent the facts in his position statement by stating the following:

"In addition to these awards, the EHTPD provided Complainant with extensive training in an effort to expand her skill set. Such trainings including assigning her to Police Bicycle Patrol School which has resulted in her being one of only six (6) officers in the entire department certified to serve in such capacity, assigning her to Advanced Roadside Impaired Drive Enforcement (ARIDE) school, and providing her with Interview and Interrogation and Statement Taking training."

Chief Sarlo states he has provided me with "extensive training in an effort to expand my skill set" however the Chief fails to provide any evidence of this so-called "extensive training." The reality is that I have not been offered nor have I received "extensive training" by this department or Chief Sarlo. I have received the following training (along with other officers) during my 8 years with the East Hampton Town Police Department; Effectively Responding to Emotional Crisis (2017), ARIDE (2017), DCJS Law Enforcement Bicycle Patrol Training (2019), (CIT) Crisis Intervention Training (2022), Basic Crash Management/ Intermediate Crash Management (2023), and Commercial Motor Vehicle (CMV) Awareness Training. I have had a total of (7) training opportunities over (8) years on Patrol. **(See Evidence; Retaliation Complaint; Exhibit-36 Training Records).*

As for the training I have repeatedly requested, like BCI School, Interview & Interrogation, FTO, School Resource Officer, REID Technique, Crisis Negotiation, Forensic Interview Training, etc., I have been denied any opportunity to attend. This has not been due to a limited availability of training, schedule conflicts, lack of seniority, or other administrative factors. This is due to Chief Sarlo's refusal to provide fair and equitable training and advancement opportunities to female officers within the East Hampton Town Police Department. I have consistently witnessed male

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officers receive a multitude of advantageous training opportunities, while female officers are bypassed again and again. I have watched male officers who have had multiple other training opportunities, be selected for additional training such as FTO, BCI, REID Technique, etc. These are not one day training courses on basic topics. This kind of training is focused on a specific skillset or certification and allows an officer to be assigned to specialized positions and units within a police department. Receiving this type of training certification is not only functional and advantageous to the officer, but also highly beneficial to the department.

Within the past year and half several training opportunities have been available to patrol and in each instance, a male officer was selected over a female officer. In one instance, a male officer on my squad with just three years on the job was selected to attend Field Training Officer School despite my 7 years' worth of requests for this training. Just weeks after completing FTO School, that same officer was selected to attend BCI School. It is noteworthy to mention that historically the department has only allowed members of the detective division to attend this training. Only one other male officer was sent to this training prior to the most recent.

Due to the lack of department training opportunities for female officers, I have resorted to obtaining training outside of the agency. To date, I have taken nearly 100 hours of training on my own time. I have funded this training out-of-pocket, investing nearly \$1000 of personal money "in an effort to expand my skill set" and advance my career. In terms of promotional viability, officers who show an interest in training advancement and who have received multiple DCJS certifications, stand out when compared to other officers who have not received training. The training that I most frequently requested was training which would provide advancement in investigative skills, interview and interrogation methods, and criminal investigation procedures. Successfully completing just one of these training courses would, without doubt, enhance an officer's chances of placement within the detective division.

As a pattern and practice, Chief Sarlo has prevented female officers from receiving training on topics which would expand their investigative skills therefore making them essentially "unqualified" for the position of detective. This discriminatory pattern becomes even more apparent with considering the department's history of having assigned only (1) female to the position of detective. Chief Sarlo has also engaged in similar discrimination by only assigning male officers to leadership-type training opportunities such as Field Training Officer and Instructor Development. There has never been a female instructor in the history of the East Hampton Town Police Department, or a female assigned to special teams. In addition to that, the EHTPD has only seen (1) female detective and (1) female FTO. With these abysmal statistics, Chief Sarlo and the East Hampton Town Police Department is in effect, saying, there are no female officers who possess the skills or qualifications to be assigned anywhere else but patrol.

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It has been a pattern and practice of the East Hampton Police Department, under the direct command of Chief Michael Sarlo, to exclude females from receiving this type of training. Training which enhances leadership skills, results in a certification, or certificate showing competence in leadership type roles, are all advantageous to an officer seeking a detective position, a promotion to supervisor, and other such special assignments. By Chief Sarlo intentionally keeping female officers from participating in these valuable training opportunities, he is in effect, preventing female officers from advancement within the department.

Police Bicycle Patrol School

Chief Sarlo fails to mention certain facts regarding my alleged “assignment” to Police Bicycle Patrol School. I was not assigned by the department to Police Bicycle Patrol School based on any meritorious criteria that I met or because “the department wanted to expand my skill set.” I was simply asked by the sergeant in charge of overseeing the EHTPD Bike Patrol Unit if I would be interested in going while in the parking lot of HQ. That sergeant said that he had asked several people prior to asking me and they all had said no, clearly indicating that Police Bicycle Patrol School (PBPS) was not something that the department assigned to anyone. It was simply a matter of “can you ride a bike?”, “are you healthy enough to pass the medical and physical test given prior to acceptance into the program?”

It is important to point out another blatant lie which Chief Sarlo states in his position statement regarding Lt. Toia, who was D/Sgt Toia during this time. Chief Sarlo has resorted to ridiculous claims in an effort to portray Lt. Toia in a positive light—one being, that then D/Sgt Toia was directly involved in the training of patrol personnel. Chief Sarlo has gone as far to say (in the final paragraphs of his position statement) that, then D/Sgt Toia personally gave me Police Bicycle Patrol School training, as well as other opportunities. At no time was D/Sgt Toia involved in the training division or in charge of assigning members of patrol to training. This is easily established by looking at the training section of Chief Sarlo’s Annual Reports, which are prepared by the training coordinator for the Department, not Lt. Toia. When looking at EHTPD Training Records, specifically personnel training memos, it becomes equally evident that D/Sgt Toia did not give me *any training whatsoever*. **(See Evidence; Retaliation Complaint; Exhibit-37 Training Memos, Exhibit-37a Department Annual Reports).*

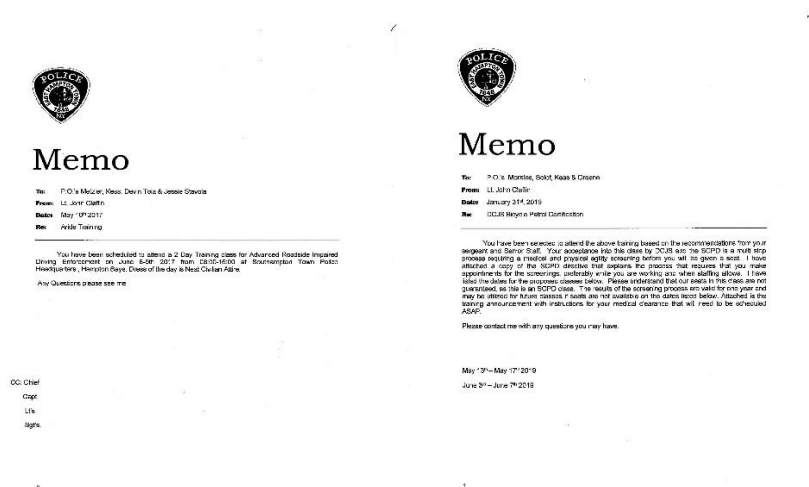
The EHTPD Bike Patrol Unit is not prestigious, nor is it advantageous to the officers who are assigned. The only “skill set” expanded upon with this training is one’s ability to ride a bike. An enhanced bike riding ability does not expand upon the skills necessary to policing such as investigations, court testimony, interviews, interrogations, domestic incidents, search and seizure,

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defensive tactics, criminal, patterns, de-escalation, firearms, leadership, and supervision, etc. Bike riding ability is not mentioned anywhere as being a criterion for promotion or a requirement for assignment to the detective division.



The training discrepancies between male and female officers with male officers receiving the bulk of training opportunities can be seen throughout the department. In one such instance, Lt. Toia personally selected two male officers to join the Emergency Services Unit and receive extensive ESU training, despite both officers consistently having the lowest activity/ stats in the department. In another instance regarding FTO training, which I had consistently requested every year, Lt. Toia assigned a male officer to FTO school, despite that male expressing no interest in being an FTO. Lt Toia ordered that officer to attend training due to those who Lt. Toia wanted to go, declining. Again, I had requested FTO every year since 2016. Considering Chief Michael Sarlo makes all final decisions regarding training, special assignments, promotions, etc., he is equally responsible for the inequity of those opportunities for female officers as compared to our male counterparts.

Statement Taking Training

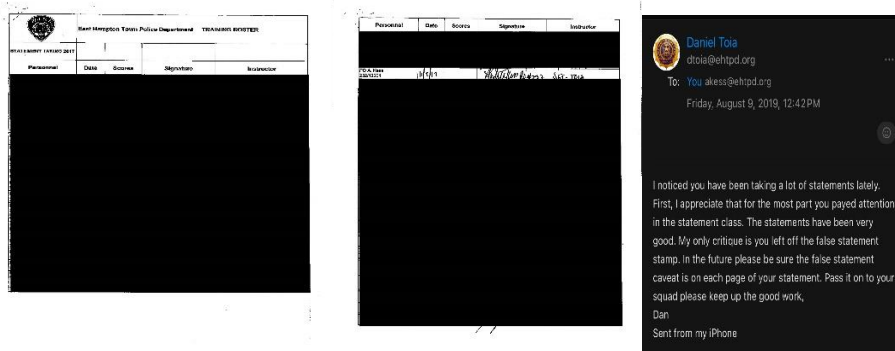
Chief Sarlo continues to blatantly misrepresent and outright lie about the “extensive training” provided to me by the department. Regarding “Statement Taking Training,” Chief Sarlo claims that this training was provided exclusively to me “in an effort to expand my skill set.” Chief Sarlo purposely misrepresents this training as exclusive to me when in fact he knows or should

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have known that this training was department wide, taking place in November 2017 as part of the department's in-service training blocks (all of which are mandatory). Training topics and dates of training are reflected in the attendance rosters for all departmental training blocks. The attendance roster for training topic "Statement Taking 2017" shows that Squad 4, the squad I was assigned to at that time, completed this training on 11/7/17. This is information that can be easily accessed by Chief Sarlo. Additionally, D/Sgt Toia refers to the 2017 Statement Taking refresher in an email to me dated 8/9/19. **(See Evidence; Retaliation Complaint; Exhibit-38 Toia Email Statements 8-9-19, Exhibit-38a Training Roster Statements 11-17-17).*



Interview and Interrogation Training

There is nothing in my personal training record with the department or DCJS, which indicates that I was offered, sent to, or that I completed "Interview & Interrogation Training." This is simply another false statement made by Chief Sarlo and one which can be easily dismissed by looking at department records **(See Exhibit-37).*

Drug Recognition Expert (DRE) Training

"Additionally, Complainant was recommended to receive Drug Recognition Expert (DRE) training. Notably, Complainant was denied admission to this program by the State because she was unable to pass the entrance screening due to her lack of proficiency in administering the Standard Field Sobriety Test, a particularly concerning outcome as Complainant led the department in DWI arrests at this time."

This statement by the respondent, namely Chief Sarlo, is again false. The claim that I was "recommended to receive Drug Recognition Expert (DRE) training" and "denied admission to this program by the State because she was unable to pass the entrance screening due to her lack of proficiency in administering the Standard Field Sobriety Test" was made by Chief Sarlo purely out

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

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of malice and represents yet another attempt to tarnish my professional reputation as a police officer and to discredit my claims against the Department. In actuality, the East Hampton Town Police Department did not “recommend” me or any other female officers to receive DRE Training. This can be easily verified by the following departmental email which was sent exclusively to male officers.

From: Kenneth Alversa <alversa@ehtpd.org>
Sent: Wednesday, February 16, 2022 1:57 PM

To: Kenneth Alversa <alversa@ehtpd.org>;
Jake L. Bramwell <jbramwell@ehtpd.org>;
Andrew Nimmo <animmo@ehtpd.org>;
Luke C. McNamara <McNamara@ehtpd.org>;
Bradley Hughes <bhughes@ehtpd.org>;
James R. Patterson <jpatterson@ehtpd.org>;
James Gesa <jgesa@ehtpd.org>;
Patrick Royal <proyal@ehtpd.org>;
Nicholas Lloyd <lloyd@ehtpd.org>;
Tyler Gilbride <tgilbride@ehtpd.org>;
Phillip R. Marino <pmarino@ehtpd.org>
Cc: ehtpd sgts <ehtpdsgts@ehtpd.org>
Subject: DRE Training

If any of you are interested in possibly being sent to DRE School upon completion of your ARIDE Training please submit a memo of interest ASAP. Applications are due in March and follow up interview would be required in order to be accepted into the program. Any questions please let me know.

Kenneth Alversa
Sergeant

Both my name and email address fail to appear on this document, as do the names and email addresses of any female members of service. In fact, I only became aware of the upcoming DRE School when I overheard Sgt. Gregory Martin discussing the DRE application requirements with one of the officers who received the email. Sgt. Martin forwarded the email to me after I expressed interest in applying.

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

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The STATE OF NEW YORK GOVERNOR'S TRAFFIC SAFETY COMMITTEE DEPARTMENT OF MOTOR VEHICLES determines whether an officer is suitable to attend DRE Training. The officer must first meet the following criteria listed on the DRE Application; all applicants must be off probation with their agency, have successfully completed the classroom version of ARIDE training within the past (5) years, have a minimum of two years of law enforcement service, have at least (1) year of experience after successfully completing SFST Training, have a reasonable background and level of experience in making DWI arrests. If the requirements are met, that officer can fill out an application, however this does not guarantee that an oral interview and SFST proficiency test will be granted to that officer. The officer will only move onto the Interview portion if their application is accepted.

I had my interview and proficiency exam on 4/12/22. At the end of the interview the State Coordinator said that I had been rated as proficient on all SFST tests. I was told my oral interview had gone well but there were concerns over my ARIDE certification date of 6/9/17, as my certification would be more than (5) years old at the start of DRE School. NY DRE Regional Coordinator, Sgt. Donald Schneider, spoke to me after and told me that he is teaching several ARIDE classes in the coming weeks that I am welcome to attend. He told me that I would be eligible to attend DRE School in June upon getting recertified in one of his upcoming ARIDE classes, however if the June DRE School becomes full, I would be considered for another DRE School scheduled for October. On 4/18/22 I received an email from Sgt. Donald Schneider (see below) with the dates and locations of his ARIDE classes.

From: SCHNEIDER, DONALD <DONALD.SCHNEIDER@nypd.org>
Sent: Thursday, April 14, 2022 3:45:39 PM
To: Andrea M. Kess <akess@ehtpd.org>
Subject: ARIDE

Hi Andrea,

If you are interested in attending an ARIDE to clean up some stuff Tim Kessler and I are teaching two separate classes next week for the NYSP at their Troop L Headquarters 7140 Republic Airport in East Farmingdale. 0800x1600 as follows:

Day 1 & 2 4/18 & 19

Day 1 & 2 4/20 & 21

You are more than welcome to attend.

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

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Side note: I also pay a lot of money each year and attend training on my own time, and it has definitely paid dividends in my career. In fact, I just went out to Kentucky last week on my own time for a class, and I got my DRE Instructor certification on my own time as well.

Best,
Sergeant Donald M. Schneider
Breath-Alcohol Testing Program Manager Drug Recognition Expert
Instructor NYPD Highway Patrol
Intoxicated Driver Testing Unit 198-15 Grand Central Parkway
Queens, New York 11423 | T: (718) 217-3796

I was advised that the department would not permit me to attend. On 4/22/22 I received notice that I was not accepted to DRE School. The disparaging remarks made by Chief Sarlo that I was “denied admission to this program by the State because she was unable to pass the entrance screening due to her lack of proficiency in administering the Standard Field Sobriety Test” and his remarks stating that he felt that my alleged “lack of proficiency in administering Standardized Field Sobriety Tests” was “particularly concerning outcome as Complainant led the department in DWI arrests at this time,” are more examples of Chief Sarlo’s inability to speak truthfully.

Chief Sarlo has commended my efforts and dedication to DWI enforcement with the many awards he has given me over my career. Chief Sarlo has prioritized DWI enforcement assuring the community of his dedication to making the roads of East Hampton safe. Chief Sarlo knows that there have been many years where the success of these goals relied solely upon the DWI enforcement efforts of myself and one other member of patrol. **(See Evidence; Retaliation Complaint; Exhibit-39 Sarlo Email Schedule Analysis Items 10-22-18).*

With most of patrol failing to achieve a department standard of (6) DWI arrests per year, some having zero, the DWI arrests that 2 officers made each year often became the difference between the failure or success of Chief Sarlo’s “prioritization of DWI enforcement.” The only thing that Michael Sarlo should be “particularly concerned” about is his officer’s complete unwillingness to perform their duties as sworn members of the East Hampton Town Police Department. **(See Evidence; Retaliation Complaint; Exhibit-40 Department Activity Reports).*

Neither Chief Sarlo nor his designees have ever spoken to me about my alleged “lack of proficiency in administering Standardized Field Sobriety Tests,” ordered me to attend remedial training, counseled me, suspended any certificates that I held pertaining to Driving While Intoxicated offenses, or placed any restrictions on my VTL and DWI enforcement.

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What the East Hampton Town Police Department and Chief Sarlo did do, was issue multiple awards and commendations to me regarding my DWI arrests. The Department continuously assigned me to the NYS Governor's Traffic Safety Committee Stop-DWI Program where I worked countless overnight hours focused on DWI enforcement. I was often assigned to VTL enforcement during my regularly scheduled tour of duty and continuously asked by supervisors to assist other officers with their DWI arrests and paperwork. EHTPD Training records concerning the Department's SFST Refresher Training indicate that I passed all written examinations and all SFST proficiency tests. **(See Evidence; Retaliation Complaint; Exhibit-41 Stop DWI Records, Exhibit-41a SFST Refresher Records, Exhibit-35).*

Chief Sarlo has not provided any proof to support these claims such as records of counseling, dash camera recordings of SFST instruction during my 85 career DWI arrests, remedial training provided to me, supervisor review of dash camera recordings of my DWI arrests, or command discipline action relating to this alleged "concerning" incompetence which I have allegedly displayed throughout my career.

It is worth noting that Chief Sarlo did not express the same "concerns" regarding P.O. Royal, a male officer, who was also denied acceptance into DRE School. In fact, Chief Sarlo provided this officer with the most extensive training out of all of patrol despite this officer "being denied admission to the DRE program by the State." He has been assigned to (2) specialized units within the department, sent to FTO School, Instructor Development, Firearms Instructor School, Crisis Intervention Training, to name a few. He is a member of the EHTPD Dive Team and the Unmanned Aerial Surveillance Unit. Chief Sarlo has not attacked the abilities of this officer, who is male, nor voiced "concerns" with this officer being "unable to pass the entrance screening due to his lack of proficiency in administering the Standard Field Sobriety Test" as he has done with me, a female.

"Complainant's aggressive policing and gaudy arrest numbers came with concerns of her search and seizure methods, such as claiming to consistently smell marijuana or alcohol on suspects to justify an entire search of a vehicle when other officers did not, inaccurately recording prescreening breath test results, and engaging in inappropriate lines of questioning of suspects during arrests, all of which were in violation of EHTPD Policy 320. (See EHTPD Policy 320, annexed hereto as Exhibit "B"). Specifically, the EHTPD received complaints of harassment from citizens regarding Complainant's aggressive tactics. (See Kess email, dated August 22, 2019, re: AC, annexed hereto as Exhibit "C"). Additionally, there were occasions when the basis for arrests made by Complainant were questionable and resulted in the District Attorney's Office being unable to move forward with prosecution of the underlying offense. (See Misdemeanor Information, dated August 18, 2018, annexed hereto as Exhibit "D")."

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Chief Sarlo and the respondent have engaged in a very calculated and deliberate assault of my character with the hope that it will discredit the charges of discrimination and harassment which I have filed with the EEOC, against the respondent. The above allegations are nothing but a continuation of this assault. The respondent has used baseless allegations, false statements, and malicious lies to create a fictional account of my conduct as a patrol officer. Within the confines of his Statement of Position, Chief Sarlo has been very vocal about his overall negative opinion of me as a police officer. However, outside of his position statement, Chief Sarlo has praised my work, my police service, and my dedication to the Department and community with multiple awards and commendations.

Despite being very outspoken regarding my alleged misconduct, one of the most obvious questions, “Why wasn’t Officer Kess fired?”, seems to have Chief Sarlo lost for words. However, his silence speaks volumes as to the validity of his claims. His lack of explanation as to why I was not disciplined, charged, or terminated and his inability to provide any evidence to substantiate his allegations, serves to expose the deception and impotence of his response statement. If these allegations were true, Chief Sarlo has admitted to his own misconduct by failing to take the appropriate and disciplinary measures to address every offense which he has accused me of committing. Moreover, if these allegations were true, my so-called “aggressive misconduct” was allowed to continue, with neither penalty nor punishment, as per Chief Michael Sarlo himself. **(See Evidence; Retaliation Complaint; Exhibit-42 EHTPD Policy and Procedure Manual).*

Chief Sarlo describes my policing style as “aggressive” and calls my above average arrest numbers “gaudy.” This of course is another way of saying that my arrest numbers were garish, flamboyant, and cheap. It is extremely disappointing and deeply unsettling to hear Chief Sarlo describe my years of service and dedication to protecting and serving the people of East Hampton in such a negative and spiteful manner. However, in doing so, he has once again demonstrated the disparate treatment and discriminatory conduct EHTPD engages in when it comes to their female officers. Chief Sarlo has often publicly applauded the high activity levels of officers. Leading the department in overall arrests, felony arrests, and call volume for a particular year is something which Chief Sarlo often recognizes with an award or commendation.

If you are a male officer who is among one of the top officers in the department in overall arrests, felony arrests, narcotics arrests, etc. you will become Officer of the Year. However, if you are a female officer who is leading the department in overall arrests, felony arrests, narcotics arrests, etc., AND you have exercised your protected rights by opposing unlawful discriminatory conduct within your Department, your efforts are no longer commendable—they become cheap.

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You will be accused of misconduct, you will be labeled as aggressive, and your contributions to the Department and community will be called “gaudy,” flamboyant, and dismissed as meaningless.

Prior to filing an EEOC charge against East Hampton Town Police Department, I received many commendations from Chief Sarlo including multiple Chief’s Recognition and Excellent Police Service awards which stated that my activity level was “exemplary.”

Date: 1/10/18
To: PO Andrea Kess #232
From: Chief Michael D. Sarlo
RE: Chief’s Recognition, Lifesaving and DWI Award Bars

“At the recommendation of the awards committee and on behalf of the senior staff, it is a pleasure to present the **DWI Award** bar for your outstanding police work during the 2017 calendar year in making the second most DWI arrests in the entire department with 27. Additionally, you are awarded the **Chief’s Recognition Award** bar for your overall productivity in making the most arrests in the department for the year with 100. You are also awarded a **Lifesaving Award** bar for helping save an overdose victim by administering intranasal naloxone (EV# 17722-17). Your outstanding work ethic and commitment to enforcing the law during 2017 was exemplary. The committee cannot recall an officer reaching the 100 arrest mark for any one calendar year.

—Chief Micheal Sarlo

With each commendation and award Chief Sarlo praised what he called my, “*consistent enforcement efforts, excellent police work, excellent investigative work, commitment to the profession, professional actions, outstanding work ethic, commitment and dedication to the Department, continued focus on DWI enforcement, commitment to keeping the roadways safe, dedicated service and continued dedication to protect and serve the people of East Hampton, calm demeanor, professional response, commitment to enforcing the law, exemplary service, and excellent patrol instincts.*”

Moreover, in an email to senior staff, Chief Sarlo specifically mentions my activity level and credits both me and one other officer as “*carrying the department*” in all metrics. *(See below).

Schedule Analysis items

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Michael D. Sarlo <msarlo@ehtpd.org>

Mon 10/ 22/ 2018 9:25 AM

To: John B. Claflin <jclaflin@ehtpd.org >; Peter Powers <ppowers@ehtpd.org >; Gregory S. Schaefer <gschaefer@ehtpd.org >

Cc: Christopher L. Anderson <canderson@ehtpd.org >

Just looking over some notes from the past two years. Management issues and communication regarding department efficiency.

A reminder of department analysis of certain things like overtime and several statistical issues from 2017:

Overtime: \$521 to \$400k (\$121k savings)

- Areas specifically impacted by schedule, staffing levels, supervision, tour changes, etc. Arrests, Court, CPEP, Short Shift, Tour Extensions, Mandatory Supervision = **\$58,000**
- Grant Funded O.T., DA's DWI task force 19k, EEDTF 17K, Stop DWI 4k, PTS, Det. Investigations \$8k, ESU Call outs 8k, Etc. = **\$56,000** (no impact from schedule at all, Drug investigations, wire, DA's DWI Task force initiative, less Stop DWI shifts and PTS shifts, etc.)
- Special Events: Up \$4,000 (Parade down about \$2,000)
- Films/Concerts down \$6,000 (strictly less shifts posted for permits)
- Supplemental O.T. weekends in summer down \$10,000 (shifts unfilled)

3 officers have not issued a parking ticket since 2015.

More than half the patrol division *stopped less than 2 cars per tour. Less than 2 traffic stops per 12 hour shift.*

At least 12 patrol officers did not issue a single Town Code summons (3 of the same who did not issue a parking ticket) (taxis, taxi parking on street in Montauk, commercial trucks overnight on residential streets, litter, uncovered loads, etc.)

DWI arrests are up 26 over last year, however **two officers account for nearly 1/3 of the entire Department's DWI's.**

There were 7 officers of the 15 assigned for the full year to Nights who did not even meet the

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
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Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

old standard of 6 for DWI arrests - which was based on an officer working a 3 tour rotation.

We pulled over 1,400 events for "speed enforcement" and wrote 1,500 UTT's more than last year, ***those same two officers account for 599 of those*** ... and yet our overall accident numbers are up.

We made 100+ more arrests than last year, however we made only 10 more narcotics arrests than last year - most of the increase in arrests were for VTL 511.

Again, those *same two* officers accounted for our entire increase in arrests.

On average, officers handled *fewer calls for service and made less arrests*. Where then, did we increase our efficiency?

Response time to priority 2 calls INCREASED.

Excerpts from my notes to Department at Department meeting ...

It's not about stats ... it's about motivation, department efficiency, professionalism, time management, patrol supervision, patrol effectiveness. It's about the service we provide the community, the long term growth and sustainability of professionalism for our police department.

Stats are merely a necessary evil in evaluating the activity of our officers during their tours, the effectiveness of enforcing the law in increasing safety for the citizens. Looking at what you are doing with your time to police the community during your shift.

As I said, ultimately, I feel 12 hour tours can be a very positive improvement for this police department. However, leaving officers on their selected tour of duty long term does not appear to serve the overall mission of this department - which is my sworn duty as police chief to ensure.

pro•fes•sion•al•ism

prafeSHanli;zam/

noun

noun: **professionalism**

1. **the competence or skill expected of a professional.**

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"the key to quality and efficiency is professionalism"

>the practicing of an activity, especially a sport, by professional rather than amateur players.

Michael D. Sarlo
Chief of Police
East Hampton Town Police Department

(No subject)

Michael D. Sarlo <msarlo@ehtpd.org>
Wed 1/3/2018 9:40 AM

To: John B. Claflin <jclaflin@ehtpd.org >
Powers <ppowers@ehtpd.org>
Gregory S. Schaefer <gschaefer@ehtpd.org >
Christopher L. Anderson <canderson@ehtpd.org>

Stat Snapshot/Fixed Shift Issues
Monday, October 23, 2017 8:24AM

2017 vs. 2016

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Arrests:	948	+124	824
<i>Greene & Kess</i>	188	+133	55
Events:	19,997	+108	19,889
<i>VTL Enforcement</i>	1,425	+1,333	92
DWI:	212	+27	185
<i>Greene & Kess</i>	72	+61	11
VTL Summons:	7,287	+1,563	5,724
<i>Greene & Kess</i>	867	+599	268
Accidents	954	+5	949

Average Patrol Officer made less arrests, made less DWI arrests and handled less calls for service.

Average patrol officer wrote 25 more UTT's than previous year, thanks to an average of 38 "speed/vtl enforcement" events pulled per officer.

During the 1425 "speed/vtl" enforcement events, we wrote an average of 1.2 VTL summons, giving us an overall increase of about 4.2 UTT's per day.

Of the 1,563 UTT's increased, 289 were 509 (1,350 total) 323 were 1180 sections (975 total), and we were down 51 UTT's for 1225 sections (from 266 to 215).

Remove Greene & Kess and we are down in arrests and DWI's as a Department, and only up 964 UTT's

12 officers handled 85+ fewer calls for service, with 6 handling at least 150 less. Accidents were virtually the same

- >We had trouble filling Stop DWI shifts, supplemental patrol shifts and special events
- >We spread out the number of calls per officer, allowed more officers to respond to calls together, created more free time during the shift, with longer breaks between tours, paperwork sat longer, court paperwork was a problem, and cases sat incomplete longer
- >Sgt.'s did not monitor the locations of the speed enforcement or use data from speed devices to direct locations
- >Call volume by officer was not evaluated by shift supervisors, ensuring the workload was spread out and officers were given fair distribution of calls
- >Type and location of UTT's issued was ignored

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- >7 of the 15 officers assigned to Nights for the full calendar year failed to meet standards for DWI from the old three tour rotation expectations
- >How do we spend countless hours out on Speed/VTL enforcement events and only write 215 cell phone tickets, and 375 more 509 than 1180?
- >Patrol Officers barely wrote any parking summons, and TO summons were way down
- >Sgt.'s barely took any opportunities to put out plain clothes or bike patrol details
- >We had two, (2) sergeants 2 bosses assigned to squads and working together most weekends.

Where is the increase in supervision, training, planning and quality of paperwork?

>All of the issues we had with barricades, cones, crosswalk signs, illegally parked cars, landscape trailers, etc.

Other than a decrease in overtime, and an insignificant increase in VTL enforcement, where did Department efficiency and effectiveness improve?
How did we improve our service to the community?
How did this schedule improve the safety of the Town of East Hampton?
By these evaluations, sick time and overtime are down, and we wrote a few more UTT's.

Greene and Kess carried the department.

Sgt.'s did not embrace planning and monitoring their personnel during the 12 hour shifts. This is the "honeymoon" period ...
This does not even address the problem that fixed shifts have now become more of a motivating factor than promotion or special assignment. More officers prefer to choose their desired tour than seek advancement within the agency ... ultimately destroying motivation, professionalism and department culture.
Habits formed and limit of exposure to all phases of police work from fixed shifts ...
Special pay for DARE/SRO/Property and shift differential or on call pay for Lieutenants must be addressed.

But hey, the guys are happy

Michael D. Sarlo
Chief of Police
East Hampton Town Police Department

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In addition to commendations, awards, handwritten notes, and personal emails from Chief Sarlo in recognition of my service, Chief Sarlo has recognized my activity as being significant to the overall mission of the Department and representative of effective policing and time management, competence of duty, and dedication to service. At no time did Chief Sarlo speak negatively about my activity level or address any of the concerns he had with my arrests. Chief Sarlo did not use the word “gaudy” to describe my arrest numbers, nor did he refer to my activity level as flamboyant or cheap. Chief Sarlo’s vindictive commentary and accusations only began after I filed my EEOC complaint against the East Hampton Town Police Department.

This disparity between how the police work of male officers is viewed by Chief Sarlo as compared to the police work of females can be seen with each Officer of the Year award selection. Chief Sarlo not only recognizes the exemplary police work of each male recipient, he also publicly praises their high activity levels with statements such as; ***“He led the department in total arrests, felony arrests, and citations written”*** and ***“he had an outstanding year, leading the department in felony arrests and narcotics arrests.”*** Chief Sarlo is quoted as saying the following about his choice for the 2019 Officer of the Year; ***“He has consistently demonstrated outstanding work ethic and police instincts. He was also near the top of the entire department last year in the number of arrests made, 32, summonses issued, 250, calls handled, 662, and drunken-driving arrests, 10. He also assisted with 46 arrests. He is one of the busiest officers. His consistent excellence, dedicated activity in enforcing the law, assisting the public and his fellow officers make him an excellent choice for this year’s award.”***

In another public statement, Chief Sarlo stated that the 2021 Officer of the Year had not only ***“assisted with a major narcotics and weapons investigation”*** he also ***“led patrol in both overall and felony arrests and handled the second-most calls for service.”*** Simply put, Chief Sarlo regards the activity levels of female officers to be substandard and inferior when compared to their male counterparts. **(See Evidence; Retaliation Complaint; Exhibit-43 Officer of the Year Recipients).*

Chief Sarlo continues his assault on my character by saying that I consistently claimed to ***“smell marijuana or alcohol on suspects to justify an entire search of a vehicle when other officers did not, inaccurately recording prescreening breath test results, and engaging in inappropriate lines of questioning of suspects during arrests, all of which were in violation of EHTPD Policy 320.”***

The East Hampton Town Police Department Rules and Procedures dictate the various responsibilities of each member of the department and provides detailed policies and procedures

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for reporting, investigating, documenting, record retention of members accused of misconduct. Chief Sarlo holds the primary responsibility for the investigation of all civilian complaints and internal investigations. This includes certifying the accuracy of each report, ensuring that all procedural guidelines are adhered to, reviewing all investigatory reports and findings, informing necessary parties of the findings, and making recommendations for remedial or disciplinary action for inefficient, incompetent, or unsuitable conduct and/or behavior of members.

Chief Sarlo is also responsible for the storage and maintenance of such records as well as forwarding investigations of illegal or criminal conduct by members of the department to the appropriate agencies such as the D.A.'s Office or SCPD Internal Affairs Bureau. Chief Sarlo has violated many of his department's policies and procedures including, but certainly not limited to, EHTPD Procedure Manual, Section 200: Duties of Department Members and EHTPD Policy Manual, Section 320: Standards of Conduct. **(See Evidence; Retaliation Complaint; Exhibit-44 EHTPD Procedure Manual, Section 200, Exhibit-44a).*

Chief Sarlo states that I "claimed to smell marijuana or alcohol on suspects when other officers did not," and that I "inaccurately recorded pre-screen breath test results" however, he does not provide any proof such as the dates and times of these so-called incidents, associated arrest record or uniformed traffic ticket number, or the names of the "other officers" and associated documentation of an investigation into these occurrences. This information should be relatively easy to obtain since I rarely had back up on my calls, car stops, and arrests. Chief Sarlo has access to dash cam video associated with the 422 arrests that I have made including 85 arrests for DWI and yet he still cannot provide evidence of this ongoing so-called "misconduct" of mine.

Chief Sarlo's reference to the pre-screen breath recording is a shining example of the vindictive nature of Chief Sarlo and of his position statement. My disciplinary file (which Chief Sarlo rather suspiciously did not include as part of his evidence) will show that Lt. Toia initiated an investigation regarding a DWI arrest I had made and falsely accused me of intentionally omitting a PBT reading. This investigation was closed with no wrongdoing, or violations having occurred. Chief Sarlo has had to resort to using an unsubstantiated investigation where no wrongdoing was found as his "evidence" of misconduct due to there being no evidence of me ever engaging in misconduct.

Based on all the facts and circumstances surrounding this inquiry, it is the undersigned officers findings that PO Kess did not intentionally omit anything from her report that she could not articulate if questioned on same, therefore no violations of the Rules and Procedures are present resulting in this inquiry being closed.

CONCUR WITH LT. SCHAEFER'S FINDINGS. (CIA)

Cc:

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**(See Evidence; Retaliation Complaint; Exhibit-45 PBT Investigation Findings)*

Another baseless and inaccurate comment made by Chief Sarlo is his claim that “*the EHTPD received complaints of harassment from citizens regarding Complainant’s aggressive tactics.*” Chief Sarlo references an email written by me dated August 22, 2019, as evidence of this alleged harassment. Chief Sarlo fails to provide any actual evidence of “complaints of harassment” from citizens directed at me, such as the actual case report associated with the complaint of harassment seeing as harassment is a crime and as such, a criminal investigation into each allegation would be required. Additionally, a supervisor complaint form detailing the complaint, the investigation, and all findings would be required. EHTPD Policy 1010.5 which states, “Supervisors shall ensure that all formal and informal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible. All complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint.”

**(See Evidence; Retaliation Complaint; Exhibit-46 EHTPD Policy 1010.5).*

All these alleged “incidents” should easily be found with an in-house search of case reports through our records management system and documented in my personnel and disciplinary file. Additionally, the EHTPD IA Officer would have documentation of each alleged incident. The reality is there are no such documents or records to be found because no such complaints were ever made. Chief Sarlo is outright lying to damage my integrity and discredit my claims. Resorting to blatant lies is a clear indication of malice and desperation— Chief Sarlo knows that he has no valid explanation for his discriminatory conduct toward female officers, so he has had to fabricate a story based on false allegations, to discredit my EEOC claims.

Speaking of complaints of harassment from citizens and police misconduct, on 9/2/2011 at approximately 10:43 PM, East Hampton Town Police responded to the Crows Nest located a 4 Old West Lake Drive in Montauk for a report of a disturbance between restaurant staff and patrons. East Hampton Town Police Department incident report lists the Crows Nest as the caller, and only two people as being involved, Thomas P. Sepp Jr. and Christopher Orrell. The narrative, however, states that the caller was a Katie Esposito, and that the incident involved then Captain Michael Sarlo and his wife, Paula Sarlo who were said to have caused the disturbance. The narrative states that Paula Sarlo threw wine on female employee and an altercation ensued resulting in Captain Michael Sarlo attempting to physically separate the two. Captain Michael Sarlo was then physically escorted out of the restaurant by Christopher Orrell and two other staff members.

Many of the officers who responded to this incident stated that this was not a disturbance, it was harassment. According to officers who were present, Captain Michael Sarlo intimidated and

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harassed the waitstaff by showing his badge, stating his rank, and making comments that he would have them all arrested. Captain Michael Sarlo also intimidated the officers on-scene by having them ignore anyone wishing to press charges. In another act of intimidation, Captain Michael Sarlo went to responding Officer Tim Tierney’s home after the incident, handed him a piece of paper, and ordered P.O. Tierney to document the incident as written on the paper, In effect, Captain Michael Sarlo ordered P.O. Tierney to falsify his report by omitting Captain Michael Sarlo’s name and involvement from the report, keeping the identity of the waitress involved and others from being listed, and to use his wife’s maiden name instead of Sarlo. **In effect— Captain Michael Sarlo circumvented proper police reporting and police procedure by falsifying a police record.**

At some point after P.O. Tierney turned the paper over to the Chief at the time. By all accounts, an I.A. investigation into the incident was conducted. However, the incident itself was documented in such a way as to hide it from any FOIA Requests. By not adding Michael Sarlo as an involved person, the incident is not associated to Chief Sarlo and there would be no way of knowing of its existence. The administration report associated to the event shows that it took approximately two weeks for the narrative to be written. The final narrative does make mention of the Sarlo’s involvement, however, still protects the incident from any association to Chief Sarlo.

It goes without saying that Chief Sarlo, a male, was not prevented from promotion or deemed unsuitable, due to this incident involving misconduct and intimidation. He went on to be promoted to Chief of Police just under two years later.

EHT-EV-13150-11

CALLER KATIE ESPOSITO STATING DISTURBANCE INVOLVING CUSTOMERS AND STAFF.

20070 9/14/2011 18:21:09

PO TIERNEY AND ROZZI RESPONDED TO A DISTURBANCE AT 4 OLD WEST LAKE DR. UPON ARRIVAL OBSERVED A GROUP OF SUBJECTS HAVING A VERBAL DISPUTE IN PARKING AREA. PO TIERNEY CONTACTED A PAULA SARLO, WHO HAD GOTTEN UPSET OVER SERVICE RESULTING IN PAULA THROWING WATER OR WINE ON A FEMALE EMPLOYEE. HUSBAND MICHAEL SARLO ATTEMPTED TO SEPARATE THE TWO BUT WAS ESCORTED OUT BY EMPLOYEE CHRISTOPHER ORRELL, DOB 1/7/82 ALONG WITH TWO UNKNOWN STAFF. ALL PARTIES CALM UPON COMPLETION AND PARTY ADVISED NOT TO RETURN TO RESTAURANT.

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Chief Sarlo continues his character assassination with the following statement, *“Additionally, there were occasions when the basis for arrests made by Complainant were questionable and resulted in the District Attorney’s Office being unable to move forward with prosecution of the underlying offense. (See Misdemeanor Information, dated August 18, 2018, annexed hereto as Exhibit “D”).”*

As I have stated previously, all the allegations that have been made by Chief Sarlo have been fabricated out of retaliation and intentionally designed to injure my reputation, destroy my credibility, and tarnish my professional integrity. Every single allegation, claim, statement, and account regarding my conduct and professionalism as a sworn member of the East Hampton Town Police Department which Chief Sarlo has creatively detailed in his position statement, were kept hidden away for quite some time by Chief Sarlo for reasons and purposes only known Chief Sarlo. Any knowledge of my aggressive tactics, misconduct, and unprofessionalism were kept top secret, even from me. This continued until one day, seemingly out of the blue, they all surfaced. This grand debut of allegations just happened to coincide with another special day, the day I filed a charge of discrimination with the EEOC against Chief Sarlo and EHTPD.

I must point out that I have made over 400 arrests in my career. All 400+ were reviewed and approved by a Sergeant or Lieutenant, as required by EHTPD. Lt. Toia himself has signed my court paperwork and approved my arrests when necessary. No supervisor has ever refused to sign my paperwork, and no one has ever said that my arrests were “suspect.” Yet Chief Sarlo adamantly states that all my arrests were bad and uses *ONE* court information to base his blatantly false allegation on. Of course, Chief Sarlo knows that these statements are false but makes them anyway to disparage my credibility and damage my claims.

I was never made aware that the District Attorney’s Office questioned the basis for arrests made by me which resulted in the D.A. being unable to move forward with the prosecution of the underlying offense, not by Chief Sarlo, my department, or the District Attorney’s Office. This would seem like an issue that would warrant immediate action by all parties, however, according to Chief Sarlo, this is not the case when it involves Officer Kess. By Chief Sarlo’s account, this was a very vague issue with no reference to a specific arrest or charge, no mention of what was “questionable” or why it was considered so, and no details about the issue or issues preventing the prosecution from moving forward.

As for the misdemeanor information Chief Sarlo gives as proof of the District Attorney’s “concerns,” it is not at all evidentiary of anything— especially the so called “arrest issues” which Chief Sarlo claims were raised by the D.A.’s Office. Upon examination of this exhibit as presented by the respondent, you will see handwritten comments in red ink and areas which are highlighted,

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by D/Sgt Daniel Toia, not the District Attorney's Office. You will also see that this misdemeanor information had been reviewed, approved, and lawfully sworn to by Sgt. Barry Johnson, who was present with me during the lawful arrest of this subject on August 18th, 2018.

Perhaps what is most striking about this exhibit and Chief Sarlo's claim is the complete absence of documentation or commentary from the District Attorney's Office which would support his assertions. As stated in the phone conversation I had with SCDA East End Bureau Chief Patrick O'Connell, there were no issues or concerns, accusations or allegations, of misconduct or wrongdoing regarding my arrests.

According to retired Sgt. Barry Johnson, the issue regarding this particular arrest was that it involved a local and friend of several members of the Department—the issue was me, not my arrest, and had absolutely nothing to do with the District Attorney's Office.

December 8th, 2023 4:09 PM
Audio Recording — Sgt. Barry Johnson
+1-631-433-****
(44:01)

00:07:59 Johnson

Oh, so basically I had that. He kind of hovered there for a little bit and then he kind of opened the door, and forgot how he had, he opened the door for me to talk about that, that K***y arrest, you know.

00:08:13 Johnson

And that, you know, I think it had something to do with as far as, um, you know, as far as investigations and stuff like that and for something about the Captain.

00:08:21 Johnson

Because. Because when I when I brought up the case, he's like, "is that the case that the DA wanted you to drop?" And, I was like, "Well..."

00:08:30 Kess

And you know what? On that note, I just read my P file and in it, Dan (Lt. Daniel Toia) writes that he sealed the case himself. Which I didn't know he could do.

00:08:41 Johnson

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Oh OK. Oh, well, all right. He told me that that the D.A., the deputy, wanted to just drop it. And then, um, and I was like, well, I don't know anything about that. He said, "Nobody said anything to you?"

00:09:01 **Johnson**

I said, I mentioned somebody talking to a District Attorney about it. I didn't get a yay or a nay feeling for me either way. I just got the impression that the department wanted to just drop it and they were just gonna do what they wanted to do. So.

00:09:17 **Johnson**

And then, umm...

00:09:21 **Kess**

You know, I don't understand why they. That's, how many arrests (422) and cases have I handled and how many, um, there's going to be... So even if it was a complete mistake or whatever, that's going to happen. So, I don't understand why though, this has been the crux of my career? I don't get it. I don't get it Barry.

00:09:46 **Kess**

And, the only thing is, like, is because I said, hey, you know, you don't know what you're talking about, you know, your information is wrong on what...

00:09:59 **Kess**

You know, that's the only thing, because it riled up, it riled up a lot there.

00:10:02 **Johnson**

I mean, yeah, it riled them up. But you know what, to be honest with you, I think, unfortunately, things were heading in that direction anyway.

00:10:13 **Johnson**

I think that, you know, **they had made a decision about you** and, um, this was just the thing that kind of just snapped everybody's head around. So, but I think... Because this involved a local, you know, and that's, and that's you know... These guys with their locals are ridiculous.

00:10:21 **Kess**

Yeah.

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00:10:32 **Johnson**

Because I forgot, I meant to look it up on Facebook, when this whole thing started with the case. But, Pete Schmitt and this guy are Facebook friends.

00:10:41 **Kess**

Yeah, they're friends. I told you he went in that morning, he went right into Dan's office as soon as Dan got in.

00:10:42 **Johnson**

Oh, I didn't... oh yeah, I do vaguely remember something about this. Pete pulled...

00:10:50 **Kess**

Yeah. So, he went in there and was in there for a while and then came out.

00:11:00 **Kess**

And, you know, Dan, you know how Dan doesn't...He slips up and says things that he probably shouldn't say.

00:11:08 **Johnson**

Yeah, because he can't stop running his mouth.

00:11:09 **Kess**

So that was one of the things, was that Pete, something like "yeah and Schmitt came in and told me, you know, you're just out for stats, it's ridiculous. And, you know, you're now hawking around in parking lots..." And yeah I mean, I know. I knew it was his friend. And also he went in to talk to him in the cell.

00:11:30 **Johnson**

No, I didn't know he went in to talk to him in the cell. I remember you, I do remember you saying something about Pete coming in to talk about him. Vaguely.

00:11:37 **Kess**

Yeah. And that he was adopted like him. But, he says this to me.

00:11:44 **Johnson**

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Oh, I didn't know that.

00:11:46 **Kess**

And I was like, oh, ok. Yeah, and I just thought it was weird. And I remember when you took me aside and you said... I think I said hi to him or something, like in the morning. I was like, "Oh hey, good morning" or something like that. And you took me aside and you're like, "do not say anything to that guy. He is not your friend." I was like, Oh. Thanks Barry.

00:12:14 **Johnson**

I remember that. But...

00:12:20 **Johnson**

Well, it, uh, yeah. I think there was something more to it with him too. And I just can't remember it. But I think it was just basically that Pete (Schmitt) knew him then, you know, Sarlo and Anderson knew him too, so, its... And I mentioned something you know about, you know, you know, people know people in the town. Everybody kind of has a friend that has a friend, you know. And people, most of us in in the department, had gone to high school together.

00:12:52 **Johnson**

I said, people get upset when, you know, when people's, uh, friends get arrested.

00:13:04 **Johnson**

So it's, you know, it depends on how you handle them. You know, you can't be, I didn't say I just can't be asshole about it, but it's like some people can take it and some people just, you know, "oh, well, too bad. I'll do what I can for you." Other people are like on a on a war hunt.

00:13:17 **Kess**

Yeah, yeah.

00:13:22 **Johnson**

And that's the thing about Pete (Schmitt) with you. And thank God he got off the squad.

00:13:28 **Johnson**

But you know, if somebody, if it were somebody that Pete (Schmitt) knows and Pete (Schmitt) already has an issue with you, he's coming after you. You know what I mean, so...

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00:13:34 **Kess**
Yeah.

00:13:36 **Kess**
It's weird because he never came after me, directly, you know.

00:13:45 **Johnson**

No, because everybody knew that he wanted you fired.

00:13:49 **Kess:** That's ridiculous. I didn't know the extent of that, I didn't know he was that upset with me. Because he wrote— I read my evals, and he wrote solid evals for me.

00:14:00 **Johnson**
Yeah.

00:14:03 **Kess**
He never wrote anything that he thought then. I mean, if he had any concerns, he could have wrote it there. But I do know that he told he pretty much told the squad not to back me up. And he called people off my when I actually — *because I was on the fence with, you know, calling directly* — called out for backup. You know, because I felt like this is ridiculous that I have to call out when I know nobody is, there's nothing going on and, and, I know we have Rovers and you know we're stacked up and — *where is everybody?* Not one person piped up on the radio, Schmitt never came...

00:14:48 **Kess**
I don't, I don't think I had back up for like 90% of my arrests, maybe more.

00:14:50 **Johnson**
Yeah, I think I think when I had... You're talking about the K***y case, right?

00:14:55 **Kess**
Yeah.

00:14:57 **Johnson**
Yeah. So, I think it was, I think it was almost like 40 minutes before I got to you.

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

00:15:07 **Kess**

I *never*, I *never* had, *no one would come*. And so, there were, there were certain times, though—like, I had a pursuit, um, the guy was driving with no headlights or something like that, and I light him up and he just guns it. And he goes down like, I think Woodbine.

00:15:26 **Kess**

And you know, I called it out, you know. “*Subject’s failing to stop*,” you know, lights and sirens, where I’m going.

00:15:38 **Kess**

He turns down Woodbine and then like, into like the second driveway, but it had a fence, it had like a gate. And he's trying to get out and put in the gate code so he can, you know, get to his house, run into his house.

00:15:52 **Kess**

So, I caught him at the gate, but I had called out, you know, and then finally, like nobody, nobody came. So, I called directly, I said “*96, can you come down?*” And that was Frank Trotta.

00:16:07 **Kess**

And Schmitt goes on the radio and says, “*96 is tied up right now.*”
And I'm like, what?

00:16:12 **Kess**

I remember my heart SINKING.

Like these guys are so—I don't even know the word. *That they would jeopardize my safety.*
Over what? You know, for what reason? What did I do?

00:16:29 **Kess**

You know, it was very—*like it shook me*, you know.

00:16:33 **Kess**

And then to come to find out he's on Main Street! Him, Schmitt, Stone.
There were like 5 people on Amagansett Main St., you know, because they wanted—they would talk openly about, we want to look at the girls, you know, or whatever.

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00:16:46 **Johnson**
Yeah, yup—yup, I bet.

It is worth noting that Lt. Claflin, who was largely involved in the “disapproval” and subsequent aftermath of this particular DWI arrest of mine, had covered up a DWI (*reference EHT-EV-14781-09*), involving a local and was suspended without pay after being found guilty of misconduct. Lt. Claflin stated to me on numerous occasions that he was justified due to the subject being an employee of the Town and that he would lie and engage in misconduct again and again to help a local out. Both the Department and Town Board promoted him to sergeant and eventually lieutenant despite his history of lying and of misconduct. Yet, Chief Sarlo maintains that it is *my alleged “history of misconduct”* which has prevented me from being promoted, despite there being no records showing that I had ever engaged in such conduct. However, a male officer who was found guilty of misconduct and suspended for (30) days without pay gets promoted, not only *once*, but *twice*. This is another example of the pervasive discriminatory employment practices, biased promotional processes, and overall corruption of the East Hampton Town Police Department.

**(See Exhibit-47 Town Board Claflin Suspension).*

F. ADDITIONAL RESOLUTIONS

RESOLUTION: 2010-193
CATEGORY: Personnel Misc.
SPONSORED BY: Supervisor William Wilkinson
DEPARTMENT: Town Attorney
Prefer Disciplinary Charges

WHEREAS, John B. Claflin is employed by the Town of East Hampton in the Police Department as a Police Officer; and

WHEREAS, disciplinary charges were preferred against Police Officer Claflin on or about February 12, 2010 by Chief of Police Todd Sarris; now, therefore, be it

RESOLVED, that in accordance with applicable provisions of law and collective bargaining agreement, Police Officer Claflin is suspended without pay pending resolution for disciplinary charges, and be it further

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“Moreover, Complainant has circumvented proper reporting and police procedure in making traffic stops by failing to report her location to dispatch when effectuating a traffic stop. (See Sarlo email, dated March 7, 2018 re: Kess Traffic Stops, annexed hereto as Exhibit “E”). Complainant was also noted as having failed to timely complete paperwork prior to the end of her shift, a violation of EHTPD Standard of Conduct, Section 320.5.7, et seq. (See Exhibit “B”; Toia email, dated January 17, 2019, re EHT-CR-47-19, annexed hereto as Exhibit “F”). While the aforementioned exhibits contain memorialized incidents of misconduct, incompetence and problematic policing by Complainant, upon information and belief, many other similar instances were not documented as a result of her relationship with her then-supervisor and eventual live-in boyfriend, Lt. Powers.”

Again, Chief Sarlo states that my so-called “incompetence and misconduct” (which he has yet to substantiate) are the reasons for my ineligibility for promotion for detective, yet the Officer who was selected (a male) engaged in misconduct in 2015 by paying an informant, setting up a drug deal, making a false report, and failing to disclose this information. Chief Sarlo found nothing wrong with this in 2015 or in 2022. In fact, Chief Sarlo awarded this officer P.O. of the Year, citing this drug arrest as one of two reasons for his selection, despite having knowledge of his misconduct. However, according to Chief Sarlo, I, as a female Officer, have not been and will never be promoted due to his baseless, unsubstantiated allegations of my so-called “incompetence and misconduct.” This employment decision regarding my suitability for promotion is a decision which Chief Sarlo states is perfectly fair and in line with the professionalism and ethos of his Department.

None of what Chief Sarlo alleges or claims in his position statement has anything to do with my EEOC charges. Whether or not I failed to give my location when making a car stop or if there was a delay in my paperwork has absolutely no bearing on my claims of pervasive systemic discrimination of women by the East Hampton Town Police Department, namely Chief Sarlo. Chief Sarlo does not address any of these claims within his position statement— in fact, the entire document Chief Sarlo has submitted states neither a position nor a response. It is merely a defamatory attack and an act of retaliation disguised as a “response statement.”

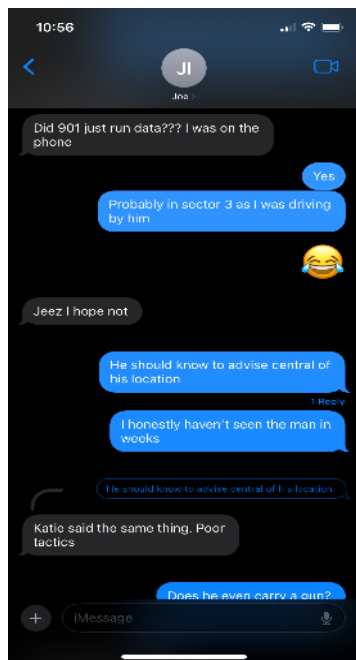
“Moreover, Complainant has circumvented proper reporting and police procedure in making traffic stops by failing to report her location to dispatch.”

On July 1, 2023 at approximately 1:07 PM Chief Sarlo (901) circumvented proper reporting and police procedure in making traffic stops by failing to report his location to dispatch after stopping a vehicle, which can be verified by dispatch audio recordings. P.O. J Izzo and I were working that shift and acknowledged his failure to notify dispatch of his location via text.

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On July 7th at 9:36 AM Lt. Toia circumvented proper reporting and police procedure in making traffic stops by failing to report his location to dispatch, however there were no charges brought against him and Chief Sarlo did not come over the radio to correct this blatant misconduct. On July 8th at 8:30 AM probationary P.O. Kania circumvented proper reporting and police procedure in making traffic stops by failing to report his location to dispatch after stopping a vehicle. Again, this issue was not immediately corrected by Chief Sarlo or is sergeant and no attempt was made to investigate the reasons why an Officer who had just started riding solo would intentionally violate EHTPD Policy & Procedure by hiding his location from dispatch. Chief Sarlo, Lt. Toia, and P.O. Kania, all male officers, were not counseled or disciplined for these blatant violations nor have these incidents been considered to be acts of misconduct. However, for me as a female Officer, the Chief has used (3) car stops I made in 2018 where I allegedly did not call out my location, as evidence of my alleged “misconduct and problematic policing.”



EHTPD-1045

Patrol Officer: [Signature] Date: 7/16/24 Time: 11:00

Radio Ser. No.: [Blank] Start Mile: [Blank]

Weather: [Blank] Road Cond.: [Blank] Full Fire: [Blank] Full Ext.: [Blank]

Speed: [Blank] Sticker: [Blank] Flares: [Blank] Full Fire: [Blank] Full Ext.: [Blank]

Supervisor: D/C J. 1220

0600 LPTA / HP

0730 ASSIGNMENT WITH THE

0730 906 TO DISPATCH / RADIO

COMMUNICATION - NO

LOCATION DATA EN

VEHICLE ONLY

10-18

1200 ON TPD HQ / BACK FROM

NO-18

1400 END OF TOUR

Andrea M. Kess

EHTPD-1045

Patrol Officer: [Signature] Date: 7/16/24 Time: 11:00

Radio Ser. No.: [Blank] Start Mile: [Blank]

Weather: [Blank] Road Cond.: [Blank] Full Fire: [Blank] Full Ext.: [Blank]

Speed: [Blank] Sticker: [Blank] Flares: [Blank] Full Fire: [Blank] Full Ext.: [Blank]

Supervisor: D/C J. 1220

0600 ON DUTY STOPPED WITH

0703 PERSONAL TELEPHONE

FOR RELEASE

0830 PD FROM I HAD DATA

NO LOCATION DATA

0945 CROSS STREETS

1900 END OF TOUR

Andrea M. Kess

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COMPLAINT OF RETALIATION
ELIGIBILITY FOR PROMOTIONS

“It is the policy of the EHTPD to determine assignments and promotions in a nondiscriminatory manner based upon job-related factors and candidate skills and qualifications. The criteria for being eligible for a promotion include demonstrated leadership ability, setting a good example, working well with all members of the Department, and a demonstrated ability to make appropriate decisions in stress and non-stress situations.” —Statement of Position of Respondent, 10/26/23

The respondent challenges my suitability for detective promotion citing ***EHTPD Policy & Procedure Manual Section 1, Article IX; Promotion Selection Criteria, subsection 9.3 (A) – (C)***, annexed by the respondent as Exhibit “H,” despite Chief Sarlo having significant evidence that contradicts his allegations. Supporting documents regarding my suitability for a detective position include a written recommendation from my supervisor, then Sgt. Tierney, and positive evaluations from every sergeant who has supervised me throughout my career. My performance evaluations have included positive comments regarding leadership ability, setting a good example, working well with all members of the department, and exceeding standards in various areas pertaining to job performance. Many supervisors, including Chief Sarlo himself, have formally commended my ability to make appropriate decisions in stress and non-stress situations, with references to specific cases, arrests, and calls of service which I have been involved in. **(See Evidence; Eligibility of Promotions, Exhibit-1; EHTPD Policy & Procedure Manual Section 1, Article IX; Promotion Selection Criteria).*

Additionally, the many letters of recognition which I have received from Chief Sarlo, for what he has called my ***“exemplary police work,”*** have highlighted my enforcement efforts,

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applauded my activity levels, and commended my excellent police work stating, ***“It is this type of work that brings great pride to the department and is truly appreciated by the community.”*** The many years of praise and recognition by Chief Sarlo, regarding what he called my ***“outstanding police work,”*** occurred ***prior to*** filing an EEOC complaint against Chief Sarlo. Immediately after my claim was filed with the EEOC, Chief Sarlo began to replace all the past praise and recognition he had given to me with denigrating comments regarding my job performance and allegations of misconduct. In doing so, Chief Sarlo has contradicted nearly 8 years of his own words with new comments that denounce my achievements, mock my activity levels, insult my skills and capabilities, and defames my 8 years of dedicated service as a Police Officer with the East Hampton Town Police Department. **(See Evidence; Eligibility of Promotions, Exhibit-2; Commendation Letters and Awards, Letters of Recognition).*

Additionally, I was approved for consideration for the open detective position ***by Chief Sarlo***, which further contradicts his October 26th, 2022, argument that I was simply unfit for the position. ***ALL*** negative statements made by Chief Sarlo regarding my eligibility for promotion, etc. have ***ONLY*** been made within the pages of his response statement. Chief Sarlo has made these allegations regarding my police performance as an act of malice and sabotage. Chief Sarlo has deliberately withheld various EHTPD records and evidence which, if shown, would refute all allegations he has made within this document. He has done this purposefully to deceive the EEOC. **(See Evidence; Eligibility of Promotions, Exhibit-3; Hogan “Detective Interviews,” 3/30/22).*

Another significant issue for Chief Sarlo is that his very serious allegations against me have only recently been disclosed—approximately 7 months ago, despite Chief Sarlo’s claims that my alleged misconduct started in 2016, the year I was hired. This is essentially an admission by Chief Sarlo, that he has consistently violated his oath of office by knowingly allowing an officer, under his command, to terrorize the community she swore to protect—***through her “continuous misconduct,” “aggressive policing,” and “reckless disregard” for the profession***—for nearly ***8*** years! Chief Sarlo is, for all intents and purposes, admitting that his leadership as the Commanding Officer of the East Hampton Town Police Department has been nothing but impotent and ineffective.

If Chief Sarlo’s allegations could be substantiated, I would have been denied an interview and removed from consideration. The fact that I was granted an interview *by Chief Sarlo* conflicts with his disparaging remarks on my competency for promotion. Furthermore, during my interview with Chief Sarlo and the selection committee, there was no discussion of my alleged ***misconduct, lack of leadership ability, incompetence, or unsuitability for the position***, by any member of the selection committee, including Chief Sarlo.

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Even more contradictory to Chief Sarlo's argument that did not meet the requirements for promotion due to my alleged history of performance issues and problematic policing, is that Chief Sarlo personally notified me (as well as other candidates) as to the selection of Officer McNamara stating that it was a very difficult decision due to the quality of candidates and that seniority was a big factor in the decision. During this notification, Chief Sarlo did not comment as to other possible reasons I was not selected, and at no time did he state that it was my alleged problematic policing, inability to perform my job, complaints of harassment from citizens, and overall misconduct and incompetence that formed the basis of my not being promoted to detective.

Chief Sarlo had an additional opportunity to inform me as to the reasons behind his denying me promotional advancement when I requested a counseling session (commonly referred to as an "exit interview" by our department members) with him regarding the reasons for which I was denied promotion. This would have been an excellent opportunity for Chief Sarlo to formally address my so-called deficiencies, alleged misconduct, and serious performance issues which he adamantly claims I have demonstrated throughout my career. Chief Sarlo, of course, denied the request, and in doing so, violated our PBA contract. It is important to note that the first and only time I was informed of reasons for my promotional denial, other than seniority, was when I read the October 26, 2023, Statement of Position by Chief Sarlo, regarding my EEOC Charge of Discrimination.

SECTION 38: PROMOTIONAL RIGHTS

A. Subject to the approval of the Civil Service Department, employees who shall be eligible to take an examination for promotion and shall be given a full eight hours off between the end of his/her tour and the commencement of the examination.

B. Any change in educational requirements for promotion shall not be applied retroactively to incumbent police officers employed on the effective date of this Agreement.

C. When a promotional vacancy develops, the Chief of Police shall promptly notify the Town Board which shall promptly determine whether or not to fill the vacancy and if the Board determines that the vacancy be filled, it will be filled within forty-five days.

D. An employee bypassed for a promotion shall receive a counseling session wherein the employee shall be advised the reasons that the employee was bypassed and said reasons shall be specific and shall not be conclusory and shall provide definitive reasons for the pass-over and shall not include statements such as "for the good of the Department" or "we picked the better person". The reasons given shall be in writing but shall not be subject to the grievance procedure or lawsuit.

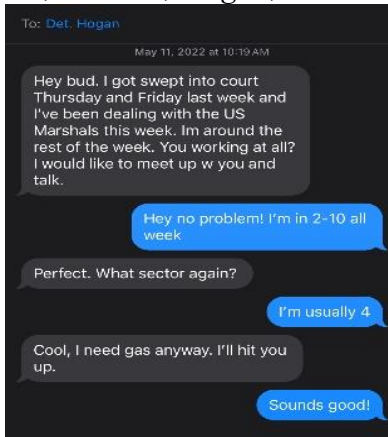
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On May 11th, 2022, during my supposed “exit interview”, I was informed by D/Sgt. Hogan that “*seniority*” was the sole reason for Officer McNamara’s selection. D/Sgt. Hogan went on to say that he had very little to do with the decision and had no input because he had never worked with Officer McNamara before. Contrary to the statements of Chief Sarlo and D/Sgt. Hogan regarding the promotional selection of Officer McNamara, Lt. Tierney stated that during a brief conversation about the detective interviews back in 2022 she had with Lt. Toia, she recalled Lt. Toia saying that I had done well but didn’t necessarily interview as well as the others. *(See Evidence; Eligibility for Promotions, Exhibit-4; Hogan; text messages 1-3).



1.



2.



3.

Partial transcript of phone conversation with Lt. Tierney, 11/22/23

Recording 11/22/23 1:00 PM
Audio File (23:16)

Lt. Chelsea Tierney
+ 1 ***-***-***18
East Hampton Town Police Department

Lt. Tierney (10:06 - 10:36) “Well, I remember speaking – actually, I remember speaking to Dan specifically afterwards, and he remembers this conversation too, was how did the detective interview go? Can you tell me who got it? He told me it was McNamara, and I said, oh, okay, congratulations to him. And he said, you know, Andrea did well, didn't interview as well

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necessarily as the other people, but hopefully I can talk to her or whatever and she'll do better the next time. And that was like the extent of the conversation.”

Under the command of Chief Sarlo, the promotional selection of a candidate is a subjective process in which objective and measurable criteria such as “productivity” and “performance evaluations” are ignored. As part of his retaliatory and deceptive argument that I did not demonstrate the necessary criteria for promotional consideration, Chief Sarlo lists only (3) of (10) promotion selection criteria despite EHTPD Policy & Procedure Manual, Section 1, Article IX which states, ***“It is the policy of the Department to have set criteria for Promotion Selection Committees to evaluate when making Department promotions.”***

Virtually every allegation made by Chief Sarlo can be easily dismissed as false using the contents of my yearly Uniformed Patrol Performance Evaluations. When compared to the set criteria for promotional selection detailed in ***EHTPD Policy & Procedure Manual Section 1, Article IX***, it is obvious that Chief Sarlo has ***outright lied*** about my skills, qualifications, and performance history in order fabricate a legitimate, “non-discriminatory” reason for being passed for promotion on three occasions.

Chief Sarlo states, *“The criteria for being eligible for a promotion include demonstrated leadership ability, setting a good example, working well with all members of the Department, and a demonstrated ability to make appropriate decisions in stress and non-stress situations.”*

Chief Sarlo has given many commendations to me throughout my career which cite those same qualities as the reason for the commendation. Additionally, my supervisors have cited those qualities in my yearly evaluations as strengths, as have outside agencies in letters of recognition regarding my work.

Chief Sarlo’s incomplete list of criteria violates EHTPD Policy & Procedure Manual Section 1, Article IX; Promotion Selection Criteria; which clearly states, ***“It is the policy of the Department to have set criteria for Promotion Selection Committees to evaluate when making Department promotions”*** and EHTPD Policy & Procedure Manual, Section 1; Article III; Performance Evaluations; which states, ***“the performance evaluation system provides a standard format, which is used by a supervisor to assess the conduct and work performance of an employee,”*** Performance Evaluation Objectives; subsection (6); ***“to provide information used as a factor in determining promotions and assignments.”***

Secondly, this incomplete list of criteria given by Chief Sarlo is contradictory to Captain Anderson’s March 4th, 2022, official announcement titled “Detective Vacancy” which was sent to all personnel. As part of his announcement, Captain Anderson lists the necessary requirements an officer must meet to be considered for the open position. **(See Evidence; Eligibility for*

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

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Promotions, Exhibit-5; Captain Anderson; Announcement; RE: "Detective Vacancy," March 4, 2022).

To: ALL PERSONNEL
From: Capt. Anderson
Date: March 04, 2022
Re: VACANT DETECTIVE POSITION

Interviews for the vacant Detective position will be conducted in the near future. Any interested police officer with at least three years of full-time service shall complete the following steps to be considered for an interview.

- Interested officers shall seek out and obtain a written recommendation for interview from any Sergeant(s) who will take multiple factors into consideration before issuing written, including but not limited to people skills, overall proficiency in their current position, and overall suitability for the position.
- Interested officers shall submit a written resume to the Sergeant(s) to accompany said written recommendation request.
- Interested officers shall be prepared to present a specific example(s) of previous work demonstrating suitability for an investigative position. This can be accomplished in a variety of different ways. Discuss your interest and what you feel makes you suitable for the position of detective.

All submissions shall be completed on or before Friday, March 11, 2022.

****END**

In addition to contradicting the requirements detailed in Captain Anderson's formal announcement of the vacancy, Chief Sarlo contradicts another EHTPD directive sent by Captain Anderson on March 4th, 2022, titled "Detective Position" which was sent to all sergeants describing

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proper procedure to be utilized and the required criteria to be used when vetting potential candidates. **(See Evidence; Eligibility for Promotions, Exhibit-6; Captain Anderson; EHTPD Memo; RE: "Detective Position")*.

MEMO

To: ALL SERGEANTS
From: Capt. Anderson
Date: March 04, 2022
Re: Vacant Detective Position

Regarding the vacant Detective position, Sergeant's will be responsible for vetting any requests for a written recommendation to be considered for a detective interview. You shall consider the following before granting or denying any recommendation made by an officer. Be prepared to provide specific examples regarding your observations as they relate to an officers;

- Self-motivation, initiative, and O/A productivity / Proactive vs. reactive tendencies.
- Does the officer exhibit decision making abilities with a minimum of direct supervision and input?
- Does the officer readily accept and conform to established lines of authority and engage in democratic decision making with his/her supervisors and peer officers?
- Reliability and propensity to seek special assignment details (Stop DWI, short shift call outs etc.)
- Does the officer regularly conduct case follow ups / interviews?
- Overall communication skills with members of the public, fellow officers, supervisors, and defendants. Consider high stress interactions and adversarial interviews/interrogations.

If an officer from **another** squad makes a request, you are **required** to act on the request unless specifically relieved of that responsibility by the Captain. There will be no exceptions.

All submissions will be completed and forwarded to the Captain on or before March 18, 2022

Captain Anderson's list of criteria does not include *"demonstrated leadership ability, setting a good example, working well with all members of the Department, and a demonstrated ability to make appropriate decisions in stress and non-stress situations"* nor does it list PBA Vice

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President as a requirement. By leaving out impartial comparatives, choosing certain criteria over others, eliminating criteria altogether, and failing to adhere to EHTPD Promotion Selection procedure, Chief Sarlo has established nothing more than a promotional “popularity contest” where past disciplinary action is forgiven, activity level is overlooked, and performance evaluations are irrelevant. If you’re male and fit in with the guys—you will be promoted.

In fact, the only female member of the senior staff, Lt. Chelsea Tierney, was not permitted to participate in the 2022 Detective position interviews or candidate selection, despite it being part of the administrative duties of a lieutenant. Irrespective of Lt. Tierney’s complete isolation from the detective promotional process, Chief Sarlo maintains that Lt. Tierney expressed her belief that I was unsuitable for promotion due to my alleged lack of leadership skills and judgement necessary for advancement during discussions involving candidate selection.

*“It was the sum of the above instances and concerns of Complainant’s performance which formed the basis of her not being promoted to the detective and sergeant positions to which she claims entitlement. Complainant simply did not demonstrate the leadership skills or judgment necessary for advancement. **The record evidence will show that this was a view widely held within the Department, including Lt. Chelsea Tierney, a female Lieutenant who also supervised Complainant as a Sergeant.**”*

Lt. Tierney was not involved in the detective promotional process, she was not part of the interview panel, and she did not participate in candidate selection. She did not provide, nor was she requested to give, her input as to the skill set of each candidate. In fact, it was Lt. Tierney who wrote my letter of recommendation and based upon that recommendation, I was granted an interview by Captain Anderson.

Captain Anderson’s Memo titled “Vacant Detective Position,” states, *“Interested officers shall seek out and obtain a written recommendation for interview from any Sergeant(s) who will take multiple factors into consideration before issuing written recommendation, including but not limited to people skills, overall proficiency in their current position, and overall suitability for the position.”*

Captain Anderson’s Memo intentionally bypasses the set list of criteria set forth in EHTPD Policy & Procedure Manual Section 1, Article IX and either modifies or eliminates criteria set forth in the policy as a way to create “loopholes” so to speak, in the promotional process, in the same way that Captain Anderson does with I.A. investigations and discipline. For example, say a candidate was selected for the detective position despite having a previous record involving falsifying reports, paying informants, and unlawfully arranging a drug deal. Additionally, that

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candidate appeared unmotivated with several years of stats that fell way below department standards, minimal case activity, and performance evaluations which reflected same. That candidate would have a chance to bypass their supervisor (who would have knowledge of their poor police performance) and obtain a recommendation elsewhere. Even if their supervisor did recommend them for the position, there would be very little in the way of recent activity, to base that on.

However, none of this would even matter because the criteria for promotion are arbitrary and subject to the whim of the Captain and Chief. The most biased and unfair part of EHTPD's Promotional Process is that the Chief has the final discretion to pick whoever he feels like picking without taking any of the aforementioned criteria into account. Of course, Chief Sarlo left this out of his position statement and adamantly states, *"It is the policy of the EHTPD to determine assignments and promotions in a nondiscriminatory manner based upon job-related factors and candidate skills and qualifications."* — However, HAVING a policy is not the same as FOLLOWING, they are not mutually exclusive, one cannot be said to cause the other. Simply having a policy does not automatically mean that the policy is followed, despite Chief Sarlo's claims.

Allowing candidates to obtain a written recommendation from a supervisor other than their direct supervisor, contradicts *EHTPD Policy & Procedure Manual Section 1, Article IX; Promotion Selection Criteria; Section (G); Recommendation.*

G. Recommendation

- 1. The candidate's supervisor will be contacted to gather his or her impression of the candidate's ability to perform the duties of the position he/she seeks.**
- 2. Candidate's personnel file will be reviewed.**
3. If a selection committee is being utilized, the members shall present their finding and recommendation to the Chief of Police. The final determination as to which candidate is recommended to the Town Board rests with the Chief of Police.

This subsection titled *"Recommendation"* does not allow an officer to make a request for recommendation on their own. It also does not state that a recommendation from ANY sergeant would be sufficient. Rather, subsection "G" states that a recommendation includes the promotion committee contacting a candidate's immediate supervisor to gather their impression of the candidate's ability to perform the duties of the position as well as a review of the candidate's personnel file.

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Recommendations as to the proficiency, suitability, people skills, and demonstrated leadership of an officer by a sergeant *other than* their direct supervisor allows a candidate with a poor performance history to get a recommendation in situations where they either *have been* or *would be* denied by their immediate sergeant. Only a direct supervisor could have the experience and knowledge required to accurately describe an officer's overall job performance and capabilities. Only a direct supervisor could substantiate their recommendation using documentation such as performance evaluations and subsequently deny a recommendation using the same documents. Outside sergeants would not have access to a candidate's recent performance documents and therefore would be an inappropriate and unacceptable source of any information relating to their suitability for a promotional position.

Conversely, the **ONLY** reason a direct supervisor would be unwilling to recommend one of their own officers for a position is that the supervisor has deemed the officer to be unsuitable. Despite this fact, many of the candidates sought recommendations from sergeants other than their immediate supervisors due to their poor performance evaluations and ratings which fell below standards. With poor performance evaluations and without the recommendation of an immediate supervisor, these candidates remained as viable options for the position and participated in interviews, at the express approval of Chief Sarlo and the all-male promotional selection committee.

Captain Anderson made it explicitly clear that **“Interested officers shall seek out and obtain a written recommendation for interview from any Sergeant(s) who will take multiple factors into consideration before issuing written, including but not limited to people skills, overall proficiency in their current position, and overall suitability for the position,”** as well as advising Sergeants on what criteria are to be taken into account when providing a recommendation for an officer. If Chief Sarlo's claims are true, that Lt. Tierney believed that I *“simply did not demonstrate the leadership skills or judgment necessary for advancement”* and that this was a belief widely held within the Department and one which Chief Sarlo has allegedly substantiated with evidence— why did she write my recommendation letter? If Chief Sarlo's claims are true, that the Department believed that I *“simply did not demonstrate the leadership skills or judgment necessary for advancement,”* including Captain Anderson and Chief Sarlo, then why would Captain Anderson Chief Sarlo grant an interview and why would they approve my participation in the detective promotion interview process... ***and personally interview me for the position?***

Chief Sarlo's claims regarding Lt. Tierney's supposed “belief” that I was unskilled and not suitable for advancement, are in direct conflict with Lt. Tierney's letter to Captain Anderson recommending me for the position of detective. This statement also contradicts Lt. Tierney's

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

previous recommendations including Officer of the Year, as well as her past positive evaluations of my performance while under her command.

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 Chief Michael D. Sarlo, East Hampton Town Police Department
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Town of East Hampton
POLICE DEPARTMENT
UNIFORMED PATROL OFFICER
YEARLY EVALUATION

OFFICER: PO Kess Shield #: 232 Serial # 12261

Evaluation period from : 01/01/2021 to 12/31/2021

A. BASIC POLICE SKILLS			<i>Exceeding Standards</i> 3
			<i>Meeting Standards</i> 2
			<i>Needs Improvement</i> 1
1.	Patrol Tactics	<u>3</u>	
2.	Report Writing	<u>3</u>	
3.	Public Relations	<u>3</u>	
4.	Investigative Skills	<u>3</u>	
5.	Officer Safety	<u>2</u>	
B. PROFESSIONALISM			
1.	Reliability	<u>1</u>	(36.5 sick)
2.	Knowledge	<u>2</u>	
3.	Communication	<u>2</u>	
4.	Appearance	<u>2</u>	
5.	Motivation	<u>2</u>	
C. PRODUCTIVITY			
1.	Total Arrests	<u>2</u>	(19)
2.	Penal Law Arrests	<u>2</u>	(6)
3.	DWI Arrests	<u>2</u>	(9)
4.	Other Arrests	<u>1</u>	(4)
5.	UTT's	<u>2</u>	(116)

EVALUATION TOTAL 34 *Exceeding Standards* 37 +
Meeting Standards 22 - 36
Needs Improvement 15 - 21

Officer Signature: Andrea M. Kess PO #232 Date: 1/2/22

Supervisor Signature: [Signature] Date: 1/2/22

Employee signature indicates acknowledgement of this review, not agreement.

Employee requests evaluation of this review with the next highest rank and understands that said review is final
 Yes No

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E. Comments: Regarding overall performance, changes in responsibility and/or performance since last evaluation, career development interests, improvements needed for advancement.

PO Kess spent time in each sector this year but was primarily in Montauk for the first half of the year and was later re-assigned to sector 4. PO Kess handled and/or assisted with 510 calls for service including 46 cases and submitted 25 field interviews.

PO Kess stays abreast of incidents that require her attention by communicating with fellow officers, checking her email daily, reviewing diary entries and field interviews, and past calls for service each day. Additionally, she is familiar with crime patterns in surrounding jurisdictions and stays alert to how those crimes may be perpetrated in our jurisdiction. PO Kess has a good working knowledge of department and legal procedures, including the Penal Law and VTL as well as the Town Code. She is interested and motivated to expand her knowledge, and this past year took nearly 100 hours of online training through Police One and DCJS.

PO Kess has good investigative skills. She identified a previously unidentified accomplice in a federal human sex trafficking ring and developed a rapport with a victim in the trafficking case, which was instrumental in the subject's decision to cooperate with the FBI. PO Kess was also instrumental in bringing a close to the years of Montauk community reporting of "explosions" in the area of West Lake Drive. She took her time taking statements and photographs, she recovered evidence of spent mortars to link back to the company from which they were purchased, and she made connections with the ATF. Her efforts ultimately led to the application for and issuance of a search warrant which was executed by our detective division in conjunction with the ESU team. An arrest was made and a large quantity of fireworks were seized.

The area in which PO Kess can improve the most is reliability. Arriving on time for the start of each tour is crucial not only for maintaining coverage on the road, but it's also vital for the sharing of information between squads. Additionally, PO Kess's sick time was high this year with 36.5 days used.

PO Kess expresses interest in BCI training and ultimately aspires to promote to Detective and serve in the East End Drug Task Force. She also expresses interest in SRO, Interview and Interrogation training and any and all training related to narcotics, sex trafficking and gangs.

F. Employee Signature: Andrea M. Kess PO #232 Date 1/2/22

Supervisor Signature: [Signature] Date 1/2/22

EMPLOYEE SIGNATURE INDICATES ACKNOWLEDGEMENT OF THIS REVIEW, NOT AGREEMENT.

G. Employee requests evaluation review with the next highest rank and understands that said review is final. Yes No

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Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

Memo



To: Chief Sarlo
From: Sgt. Tierney #429
Date: 11/27/21 
Re: POY Recommendation

Two members of squad 5 deserve notable mention and consideration for Police Officer of the Year.

In early April, PO Gesa developed an informant who provided him with information on large quantity drug sales occurring in this jurisdiction. PO Gesa arranged two meetings with multiple informants and the detective division where more confidential information was exchanged. Towards the end of June, PO Gesa assisted the detective division with surveillance at the Gansett Meadow Apartments where he aided in identifying and stopping vehicles leaving the location. On July 7th he again assisted with surveillance where the detectives were ultimately able to observe a hand-to-hand deal at a location in Montauk. PO Gesa then pulled over the buyer's vehicle and was able to effect an arrest for Criminal Possession of Cocaine 5th (D Felony). A debrief of the buyer provided additional supporting information which led to the arrest of the target suspect at Gansett Meadows where large quantities of Psilocybin, MDMA, and a stolen 9 mm handgun was recovered. PO Gesa is a consistently active member on patrol with close connection to the local community and a knack for developing reliable informants.

PO Kess provided pivotal testimony in federal human sex trafficking trial after a prisoner debrief she conducted led to information that supported an FBI investigation into a human sex trafficking ring operating in Suffolk County. PO Kess identified a previously unidentified accomplice in the case and developed a rapport with a victim in the trafficking case, which was instrumental in the subject's decision to cooperate with the FBI. Detective James Johnson of the Suffolk County Police Department Human Trafficking Investigations Unit stated that she provided an "outstanding performance as a testifying witness at the trial of U.S. v. Carl Andrews" and that "her words and demeanor resonated with the court and there's no doubt she aided in our guilty verdict handed down by the jury". Carl Andrews will spend life in prison for his crimes. PO Kess was also instrumental in bringing a close to the years of Montauk community reporting of "explosions" in the area of West Lake Drive. She took her time taking statements and photographs, she recovered evidence of spent mortars to link back to the company from which they were purchased, and she made connections with the ATF. Her efforts ultimately led to the application for and issuance of a search warrant which was executed by our detective division in conjunction with the ESU team. An arrest was made and a large quantity of fireworks were seized.

I would like to recommend these officers for consideration for Police Officer of the Year.

Respectfully Submitted,

Sgt. Chelsea Tierney #429

Cc:

Reset Form

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

I spoke with Lt. Tierney and asked her if she was made aware of Chief Sarlo's position statement and the statements he made regarding her "belief" that I was unsuitable for advancement, prior to him submitting it to the EEOC. Lt. Tierney stated that she was not made aware of any position statement and therefore had no knowledge of any claims that were made regarding her "beliefs." In fact, Chief Sarlo did not share this position statement with any current or past supervisors of mine, or any member of patrol. I did provide Lt. Tierney with a copy of Chief Sarlo's response statement which she read and retained for her records.

November 20, 2023 1:00 PM
Audio Recording — Lt. Chelsea Tierney #903
Department Issued Cell Phone
(23:16)

Kess: It said my supervisors continuously went and brought up concerns, major concerns about my arrests, my leadership ability, my overall insubordination.

(5:31 - 5:59)

Tierney: And the thing is that they have not submitted proof of this, Andrea. There was no proof from me. I was in full support of you getting Detective. I would have never put my name on a piece of paper recommending you.

(8:22 - 8:37)

Tierney: So, if this is what they are alleging, they have no, nothing from me – there was nothing that was put in supporting documentation. But I'm not going to sit here and challenge him—

(9:08 - 9:15)

Tierney: So, they don't provide me as saying *anything*. **I never said anything. I never said anything about why you shouldn't get detective.**

(9:16 - 9:24)

Tierney: **I was in full support of you getting detective.** I would have never put my name on a piece of paper recommending you if I was then going to lambast you behind your back.

(9:24 - 9:29)

Tierney: **So that never happened.** So, I – and when I read it, that's not what it said.

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(9:29 - 9:42)

Tierney: It did not say after detective interview, Chelsea Tierney highly recommended her not to get – that's not what it said. I read what it said. It said that there was concerns from her supervisors and for whatever reason— **probably to strengthen their case— they said including me.**

(9:42 - 9:55)

Tierney: I feel like **that was just cute wording, but it wasn't me.**

(9:55 - 10:06)

Tierney: **It had nothing to do with me on the detective thing. I was in no part in on that, none at all.**

Kess: Okay.

(10:06 - 10:36)

Well, I remember speaking – actually, I remember speaking to Dan specifically afterwards, and he remembers this conversation too, was how did the detective interview go? Can you tell me who got it? He told me it was McNamara, and I said, oh, okay, congratulations to him. And he said, you know, Andrea did well, didn't interview as well necessarily as the other people, but hopefully I can talk to her or whatever and she'll do better the next time. And that was like the extent of the conversation.

(10:37 - 10:53)

Tierney: I never said anything badly about you. I would never recommend you and then talk badly because that would – first of all, it's not me, but it would make me look really stupid if that was something I did.

(10:54 - 11:13)

Tierney: It's just a super vague response, and I would agree that it's not even a well-put-together response.

(11:13 - 11:24)

Tierney: But I can't, like, comment. I have nothing to say really. And in terms of what he's going to do or not do, I don't know.

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(11:25 - 11:46)

Tierney: The trust is not there, here, you know, for me. Because I was named as a witness, they think that I, you know, I'm a traitor, and so there's no trust there. And I'm just saying that any time we talk, I'm going to be asked to document everything that is spoken about.

(21:00 - 21:10)

Tierney: I just feel like they're going to try to use me to build a case.

Chief Sarlo has intentionally withheld from his response statement the stipulated requirements and directives regarding the 2022 detective position, the contents of my personnel folder including performance evaluations, letters on commendation, and discipline, as well as the comparatives used for the other candidates. Chief Sarlo has deceptively argued that my alleged “continuous violations of department policies” was one of several reasons for my not being promoted, while at the same time, engaging in conduct which is in direct violation of those very same department policies. Chief Sarlo mentions several violations and claims that there are many more which went “undocumented” — however, not one of Chief Sarlo’s alleged violations appear anywhere in my disciplinary file or personnel folder.

There are zero complaints of harassment from citizens. Not one. There are no records or documents referencing the DWI misdemeanor information which Chief Sarlo claims is indicative of 8 years’ worth of misconduct. There is not one single document indicating that there were “concerns” and/or “suspicions” regarding my arrests from either East Hampton Town Police Department, Chief Sarlo, any Lieutenant, Sergeant, or P.O., OR the District Attorney’s Office. There are no records that I was reprimanded for failing to notify dispatch of my location when effectuating a traffic stop, bypassing the chain of command, sending inappropriate emails, or abuse of sick time. There are no performance evaluations stating that I lacked leadership ability, did not hand in my paperwork in a timely manner, bypassed the chain of command, or lacked the skills necessary for advancement. There is not one record or document stating that I am incompetent, aggressive, gaudy, or that I ever engaged in misconduct.

Chief Sarlo has intentionally and knowingly submitted a false report to a government agency and that every single allegation he has made can be disproven and substantiated as such. Chief Sarlo did this with malice to defame me, damage my individual and professional integrity, discredit my claims, and as retaliation or punishment— to get even, to make an example of me— for having the audacity to stand up and speak out about the unbelievable abusive and discriminatory conduct of both him and members of his administration.

I have only revealed the conversations I have had with a few individuals who have been subjected to and witnessed the discriminatory conduct and vindictiveness of Chief Sarlo— the

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truth is that, sadly there are a lot more who have not yet come forward. My hope is that by stepping forward, I will offer a bit of encouragement to those individuals. I hope that every single person who has been mistreated, intimidated, and discriminated against files a complaint with the EEOC, including civilians who have encountered similar incidents, so that we may put an end to this unfortunate chapter of the East Hampton Town Police Department’.

Chief Sarlo has knowingly disregarded all EHTPD policies and procedures which function to ensure a fair and nondiscriminatory promotion selection process. For example, EHTPD Policy & Procedure Manual, Section 1; Article III; Performance Evaluations states; “*The performance evaluation system provides a standard format, which is used by a supervisor to assess the conduct and work performance of an employee*” and that one of its critical functions is “*to provide information used as a factor in determining promotions and assignments.*” As a calculated act of sabotage, Chief Sarlo has not only minimized promotion requirements, but also deliberately withheld performance evaluations and supervisor assessments to conceal the fact that I consistently outperformed each candidate across all metrics, and both met and exceeded department standards over my 8 years of service.

Even more deceptively, Chief Sarlo has failed to mention all the awards, professional acclaim, and commendations *he has given to me* in recognition of what he himself has described as my “*exemplary service*” and “*excellent police work.*” He has further withheld the recognition I have received from outside agencies and the public as part of his response statement and continued effort to discredit my claims.

****Prior** to my filing a claim of discrimination with the EEOC, Chief Sarlo described my police service as commendable. The following letters of recognition include commendation letters written by Chief Sarlo, as well as letters from outside agencies in recognition of my police work:

Date: 1/19/23
To: PO Andrea Kess #232
From: Chief Michael D. Sarlo
RE: DWI Award & Top Cop Award

“At the recommendation of the awards committee and on behalf of the senior staff, it is a pleasure to present the **DWI Award** for leading the entire department with 13 DWI arrests for the calendar year 2022. Your consistent enforcement efforts and focus on taking impaired drivers off our roadways shows great commitment to the profession and helps keep our community safe. You will be recognized at the **Suffolk County Stop DWI Top Cop Awards** this spring at a date yet

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

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Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

to be announced. Congratulations on this excellent police work, and thank you for your continued dedication and commitment to the Department.”

—Chief Michael Sarlo

Date: 01/25/22
To: PO A. Kess #232
From: Chief Michael D. Sarlo
RE: Excellent Police Service & Chief's Recognition Awards

“At the recommendation of the awards committee and on behalf of the senior staff, it is a pleasure to present the **Excellent Police Service Award** for your investigative work in handling a missing persons case which ultimately led to multiple counts of Rape and Endangering. Additionally, you will receive a **Chief's Recognition Award** for your professional testimony in the Andrews federal sex trafficking case, as well as your work on the ongoing Montauk fireworks investigation. Congratulations on this excellent police work, and thank you for your continued dedication and commitment to the Department.”

—Chief Micheal Sarlo

COUNTY OF SUFFOLK NEW YORK
POLICE DEPARTMENT
GERALDINE HART.
POLICE COMMISSIONER

July 20, 2020

Suffolk County Police Department
Human Trafficking Investigations Unit
30 Yaphank Avenue
Yaphank, New York 11980
(631) 854-7512

Chief Michael Sarlo

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

East Hampton Town Police Department
131 Wainscott NW Road
Wainscott, New York 11975

Dear Sir:

My name is James Johnson and I am a Suffolk County Police Department detective and task force officer assigned to the Federal Bureau of Investigation's Long Island Resident Agency Child Exploitation and Human Trafficking Task Force. In the Winter of 2018, I was involved in a joint SCPO FBI investigation reference central complaint number xxxxxx in which multiple targets were being investigated for various violations of federal sex trafficking statutes.

During our investigation we had the pleasure of working with East Hampton Town Police Officer Andrea Kess, whose proactive policing led her to encounter one of our targets, as well as one of our victims. Police Officer Kess not only took it upon herself to respond to suspicious activity stemming from these individuals but garnered detailed and viable intelligence that helped progress our investigation closer to prosecution. Moreover, she developed a solid rapport with the victim in question that directly aided our ability to establish trust with said victim; trust that led to her becoming a cooperating witness in this federal probe. As if this wasn't enough, Police Officer Kess also performed flawlessly during her testimony at trial in the Southern District of New York and earned the respect of our federal prosecutors as well as the presiding judge.

In the chaotic times we find ourselves in, it is refreshing to find a dedicated, composed, professional like Andrea Kess, Lucky are those law enforcement officers who have the pleasure to work with Police Officer Kess in the future. Please extend our sincere thanks and appreciation for her hard work.

Respectfully,

James Johnson, Detective #1609/3202
Suffolk County Police Department
Federal Bureau of Investigation CEHTTF
James.johnson@suffolkcountyny.gov
631-854-7512

Date: 1/15/21

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

July 16, 2024

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Chief Michael D. Sarlo, East Hampton Town Police Department
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To: PO A. Kess #232
From: Chief Michael D. Sarlo
RE: Excellent Police Service Award

“At the recommendation of the awards committee and on behalf of the senior staff, it is a pleasure to present the **Excellent Police Service Award** for your swift and professional actions along with Officers Izzo, Gomez, Hughes and Rodriguez in helping disarm a suicidal subject wielding a knife on July 5, 2020. Congratulations on this excellent police work, and thank you for your continued dedication and commitment to the Department.”

—*Chief Micheal Sarlo*

From: Michael D. Sarlo
Sent: Monday, July 6, 2020 2:12 PM
To: Andrea M. Kess; Bradley Hughes
Subject:

Reports are you two did an outstanding job with the barricaded suicidal subject yesterday. Thank you.

Michael D. Sarlo
Chief of Police
East Hampton Town Police Department

From: Michael D. Sarlo
Sent: Tuesday, July 7, 2020 12:24 PM

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

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Volz & Vigliotta, PLLC

To: Andrea M. Kess

Subject: Re:

Additionally, the covid numbers you pulled on 7/5, with the way you observed, asked the questions and the documentation with follow up referral was excellent. Exactly what we are looking for. Thank you for your efforts.

Mike

Michael D. Sarlo
Chief of Police
East Hampton Town Police Department

Date: 01/23/20
To: PO Andrea Kess
From: Chief Michael D. Sarlo
RE: Chief's Recognition Award and DWI Award

At the recommendation of the awards committee and on behalf of the senior staff, it is a pleasure to present the **Chief's Recognition Award** and **DWI Award** for the outstanding work you performed during 2019. Your outstanding efforts in making 29 total arrests, including a department best 14 DWI arrests, while issuing 291 summons and handling 565 calls for service demonstrated excellent work ethic and commitment and were truly appreciated. It is this type of work that brings great pride to the department and is truly appreciated by the community. Thank you for your dedicated service and continued dedication to protect and serve the people of East Hampton.

—*Chief Micheal Sarlo*

Date: 1/15/19
To: PO Andrea Kess #232

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

From: Chief Michael D. Sarlo
RE: DWI Award

“At the recommendation of the awards committee and on behalf of the senior staff, it is a pleasure to present the **DWI Award** bar for your outstanding police work in effecting 14 DWI arrests during 2018. DWI enforcement is an important aspect of policing our community in an effort to keep the roadways safe for all motorists, and your continued focus on this area of law enforcement is greatly appreciated by the Department as well as the community. Congratulations on this excellent police work, and thank you for your continued dedication and commitment to the Department.”

—*Chief Micheal Sarlo*

Date: 01/15/19
To: PO Andrea Kess #232
From: Chief Michael D. Sarlo
RE: Lifesaving Award

“At the recommendation of the awards committee and on behalf of the senior staff, it is a pleasure to present the **Lifesaving Award** bar for your outstanding police work during MA-1294-18 on 7/24/18. Your efforts, along with PO Solof, in administering intranasal naloxone multiple times during an overdose, and subsequent first aid efforts may have saved the life of a 27 year old. Congratulations on this excellent police work, and thank you for your continued dedication and commitment to the Department.”

—*Chief Micheal Sarlo*

Date: 1/10/18
To: PO Andrea Kess #232
From: Chief Michael D. Sarlo

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

RE: Chief's Recognition, Lifesaving and DWI Award Bars

"At the recommendation of the awards committee and on behalf of the senior staff, it is a pleasure to present the **DWI Award** bar for your outstanding police work during the 2017 calendar year in making the second most DWI arrests in the entire department with 27. Additionally, you are awarded the **Chief's Recognition Award** bar for your overall productivity in making the most arrests in the department for the year with 100. You are also awarded a **Lifesaving Award** bar for helping save an overdose victim by administering intranasal naloxone (EV# 17722-17). Your outstanding work ethic and commitment to enforcing the law during 2017 was exemplary. The committee cannot recall an officer reaching the 100 arrest mark for any one calendar year.

—Chief Micheal Sarlo

To: PO Andrea Kess #232
From: Chief Michael D. Sarlo
RE: Recognition (AR#***)
Date: 04/27/18

"On behalf of the senior staff, I would like to recognize the outstanding police work you performed during the investigation of AR#***. You showed excellent patrol instincts and knowledge of your sector businesses, while also recognizing potential criminal and suspicious activity. Not only did you make a solid arrest for CPCS 7th, False Personation, and an active Bench Warrant, but your interview and communication skills led you to develop a rapport with the defendant, and ultimately assisted SCPD's Human Trafficking Investigations Unit with vital information for a major investigation in getting the defendant to cooperate with SCPD. Detective Lieutenant Frank Messana took time to personally reach out to Captain Anderson to recognize your work. (see letter attached) It is this type of work that brings great pride to the department and is truly appreciated by the community. Thank you for your dedicated service and continued dedication to protect and serve the people of East Hampton.

—Chief Micheal Sarlo

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

From: Messana, Frank <Frank.Messana@suffolkcountyny.gov>
Sent: Friday, April 13, 2018 10:11 AM
To: Christopher L. Anderson
Subject: PO Andrea Kess

Good morning Captain,

I oversee the SCPD's Human Trafficking Investigations Unit and I wanted to pass along a great job done by one of your officers.

Recently Police Officer Andrea Kess arrested one of our targets in an ongoing case of ours on unrelated charges. She did a fantastic job investigating the subject, identifying her accomplice, and gathering information that became vital to our investigation. In addition, and probably most importantly, she developed a rapport with the subject which was instrumental in the subject's decision to cooperate with us.

I know it would have been much easier for PO Kess to process her arrest and move on with her tour. Instead, she proactively took the time and effort to fully investigate the circumstances. She also showed compassion for the subject, which in these investigations is so very important.

Please let her know our appreciation for a job well done.

Sincerely,
Frank L Messana
Detective Lieutenant
Commanding Officer, Kidnap Team
Suffolk County Police Department
p; (631) 852-6093

To: PO Andrea Kess #232

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

July 16, 2024

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COMPLAINT OF RETALIATION

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Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

From: Chief Michael D. Sarlo
RE: Recognition (CR#1334-16)
Date: 09/26/16

“On behalf of the senior staff, I would like to recognize the outstanding efforts you made on August 28, 2016 during the course of your patrol duties. Your calm demeanor and professional response throughout the pursuit and apprehension of the armed robbery suspect was exemplary police work. You handled yourself with the safety of the public, as well as officer safety, as your priorities, and ultimately the teamwork of your squad resulted in the safe arrest of a dangerous felon, the recovery of a weapon and the proceeds of the robbery.

It is this type of work that brings great pride to the department and is truly appreciated by the community. Thank you for your continued dedicated service and continued commitment to protect and serve the people of East Hampton.

—Chief Micheal Sarlo

To: PO Andrea Kess #232
From: Chief Michael D. Sarlo
RE: Excellent Police Service Award
Date: 02/03/17

At the recommendation of the awards committee and on behalf of the senior staff, it is a pleasure to present Excellent Police Service Award bar for your outstanding police work during the the handling of CR#1334-16. Your calm demeanor and professional response throughout the pursuit and apprehension of the armed robbery suspect was exemplary police work. You handled yourself with the safety of the public, as well as officer safety, as your priorities, and ultimately the teamwork of your squad resulted in the safe arrest of a dangerous felon, the recovery of a weapon and the proceeds of the robbery. Congratulations on this excellent police work, and thank you for your continued dedication and commitment to the Department.

—Chief Micheal Sarlo

Chief Sarlo has cherry-picked certain criteria and discounted others as a deliberate attempt to conceal one simple fact — ***that I consistently outperformed the male candidates in all statistical categories, with more extensive case/ investigative experience, commendations and awards, consistently positive performance evaluations, and no disciplinary history or***

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performance counseling, as compared to the male candidates. I have attached department activity and stats from 2016-2022 for reference.

My performance evaluations, as well as the performance evaluations of the officer who was selected for detective, have been withheld from this response statement. This was done intentionally to hide the fact that the officer Chief Sarlo promoted to detective had failed to meet standards in many critical areas, for several years in a row. In comparison, I outperformed that officer as well as the other candidates, throughout all performance related metrics. **(See Kess Uniformed Patrol Performance Evaluations, Departmental Activity 1/1/2016 – 1/1/2022).*

Chief Sarlo states, *“It was the complainant’s misconduct and incompetence that lead to her not being promoted to detective, not her gender, just like it was Officer McNamara’s ability to demonstrate skills which would translate well into a detective role and not his gender, which resulted in his promotion instead.”*

Chief Sarlo has yet to show one instance of the alleged misconduct and incompetence he claims formed the basis of my ineligibility for promotion in 2018, 2019, 2021 and 2022. As I have established several times in this complaint of retaliation, there are no East Hampton Town Police Department disciplinary records or documents indicating that I was investigated for and charged with any violations consistent with misconduct and/or incompetence. There is simply no evidence to support any of Chief Sarlo’s claims. However, there are numerous East Hampton Town Police records and documents to refute them.

As I have stated previously, the 10/26/23 Statement of Position by Chief Sarlo is THE ONLY document which contains allegations of misconduct and incompetence against me. Given the seriousness of these accusations, the timeline of occurrence, and the consistency with which they have been made, it is very suspect that Chief Sarlo has yet to provide a single EHTPD record to support such alarming allegations.

According to Executive (EXC) CHAPTER 18, ARTICLE 5, §75 Law enforcement misconduct investigative office subsection (5); “Responsibilities of covered agencies, officers and employees. (a)Every officer or employee in a covered agency shall report promptly to the law enforcement misconduct investigative office any information concerning corruption, fraud, use of excessive force, criminal activity, conflicts of interest or abuse by another officer or employee relating to his or her office or employment, or by a person having business dealings with a covered agency relating to those dealings. The knowing failure of any officer or employee to so report shall be cause for removal from office or employment or other appropriate penalty.”

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Additionally, subsection (c) states, “The head of any covered agency shall advise the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, the minority leader of the assembly and the division of criminal justice services within ninety days of the issuance of a report by the law enforcement misconduct investigative office as to the remedial action that the agency has taken in response to any recommendation for such action contained in such report.”

Again, Chief Sarlo has falsely accused me of misconduct and incompetence and in doing so has incriminated himself of the same thing. Failing to document these alleged incidents of misconduct and failing to report them to LEMIO is unlawful and constitutes **misconduct**. Furthermore, Chief Sarlo has also committed misconduct by violating Civil Service (CVS) CHAPTER 7, ARTICLE 5, TITLE B § 75 Removal and other disciplinary action procedure. An employee who is the potential subject of disciplinary action has a right to representation. An employee against whom disciplinary action is proposed shall have written notice thereof and of the reasons therefor, shall be furnished a copy of the charges preferred against him. Therefore, if I had been accused of misconduct or incompetence and disciplined for it (a reprimand constitutes a disciplinary action) then there should be documentation that I was sent a written notice containing a copy of my charges.

However the most notable provision in Civil Service (CVS) CHAPTER 7, ARTICLE 5, TITLE B § 75 is subsection (4) which states; Notwithstanding any other provision of law, no removal or disciplinary proceeding shall be commenced more than eighteen months after the occurrence of the alleged incompetency or misconduct complained of and described in the charges or, in the case of a state employee who is designated managerial or confidential under article fourteen of this chapter, more than one year after the occurrence of the alleged incompetency or misconduct complained of and described in the charges — unless there is a potential for criminal charges. So even if these allegations were true (which they are not) they would be irrelevant unless Chief Sarlo can provide dates and times of said incidents, the specific allegations, and the charges.

(d) "Personnel action" shall mean an action affecting compensation, appointment, promotion, transfer, assignment, reassignment, reinstatement or evaluation of performance.

“Unlike the complainant, Officer McNamara worked collaboratively with the detectives sharing information, developing informants, gathering information, taking statements and producing arrests that lead to prosecutions. In addition to these skills, none of which Complainant had exhibited, Officer McNamara was a Board Member with the PBA and possessed three more years of experience than the complainant.”

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EAST HAMPTON TOWN POLICE

Departmental Activity Report
 Activity From 1/1/2015 Thru 1/1/2022

Serial No.	Name	ARRESTS								CASES					CITATIONS			ALM	FLD INTV	TRAF ACC	AID CASE	VEH IMPD	EVT
		Fel	Misd	Other	511	512	DWI	Totl	Asst	Fel	Misd	Other	Totl	Asst	Park	Traf	Summ						
20126	MCGUIRE, AUSTIN	0	0	0	0	0	0	0	2	0	0	0	0	3	0	0	0	1	8	0	54	0	73
	MCMAHON, KEITH	0	0	0	0	0	0	0	2	0	0	0	0	0	0	3	34	1	0	0	4	0	110
40236	MCNAMARA, LUKE	24	123	15	55	5	29	162	241	15	60	24	99	131	0	1079	8	491	57	178	591	17	4362
20127	KEARNEY, JOSEPH	1	0	1	0	0	0	2	20	1	0	2	3	13	0	4	4	11	47	3	1505	0	631
	KELLY, MICHAEL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	97
12261	KESS, ANDREA	50	349	9	95	14	78	408	686	42	279	67	388	507	0	1369	82	247	107	106	366	44	3286

Chief Sarlo claims that P.O. McNamara works collaboratively with the detectives, gathering information, developing informants, and taking statements, and producing arrests that lead to prosecutions however, Chief Sarlo provides nothing to corroborate this. In fact, he gives no comparatives whatsoever.

Using activity levels for the time period of 1/1/2015 – 1/1/2022 I have significantly more activity than P.O. McNamara, which translates to experience. The activity of an officer reflects on-the-job **experience** with cases, arrests, information gathering, etc. The activity level of a candidate represents an unbiased metric by which to compare candidates in relation to the promotional criteria listed in EHTPD Policy & Procedure Manual Section 1, Article IX; Promotion Selection Criteria.

During the time period of 1/1/2015 – 1/1/2022, I worked a total of (388) cases as compared to P.O. McNamara’s (99); (42) of my cases contained felony charges as compared to (15) for P.O. McNamara. I assisted with (507) cases as compared to (131) case assist by P.O. McNamara. During that same time period, I submitted (107) Field Intelligence Interviews compared to the (57) which were submitted by P.O. McNamara. I had a total of (408) arrests, (50) of which were felony level. P.O. McNamara had (162) arrests, (24) of which were felony level. Lastly, I had (78) DWI arrests, P.O. McNamara had (29).

Using real comparatives such as activity level and making determinations on the suitability of a candidate based on those comparatives is both procedurally correct and the most equitable way to select a candidate for a position. It’s embarrassing that Chief Sarlo, who’s entire reputation rests on the activity and production of his police force, would mock and diminish the hard work of his officers by reducing an officer’s productivity to petty stats. I would encourage

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Chief Sarlo to refresh his memory regarding the yearly goals and achievements of the East Hampton Town Police Department which he proudly presents to the public every year.

It is worth pointing out that the time period concerning the aforementioned activity is from 2015 through 2021. My activity reflects 5 years due to being hired in 2016. This brings me to another blatant lie by Chief Sarlo — that P.O. McNamara possessed 3 more years of experience than me. He was hired in 2014 and I was hired in 2016.

As far as working collaboratively with the detectives, I have been involved in several plain clothes assignments, provided narcotics information, and developed cases which then were taken over by the Detective Division. My leadership, statement taking, and arrests have already been spoken for by Chief Sarlo's commendations, supervisor performance evaluations, recognition, and my conversations with the SCDA.

Prior to the 2022 Detective selection, Lt. Toia reportedly asked the detective squad ***"who they would want to work with"*** and ***"who they couldn't stand and would hate to work with"*** and used the personal opinions of the all-male detective squad as part of the promotional selection process. Making a promotional selection, discretionary appointment, or special assignment based on the popularity of a candidate is something which Lt. Toia has reportedly done on more than one occasion. In respect to a vacancy on the EHTPD ESU Team, which is under Lt. Toia's command, Lt. Toia allegedly asked the team ***who the guys wanted*** and ***who they felt would be cool to hang out with and drink beers***. This was according to P.O. Devin Toia, Lt. Toia's wife.

It is not surprising that Lt. Toia has been consistent in his use of discriminatory comments specifically targeting my gender, to describe my alleged "likeability" among "the guys." These discriminatory attacks are centered around the so-called opinions of Lt. Toia himself, and other males across all divisions of the department including detectives, members of patrol, and members of the senior staff such as Chief Sarlo. These verbal attacks by Lt. Toia have included the following statements, ***"You're a fucking bitch."*** ***"Everyone thinks you're a bitch."*** ***"No one likes you."*** ***"The Chief hates you."*** ***"The Captain can't stand you."*** ***"Hogan thinks you're annoying, he literally can't stand you."*** ***"Every time you go in the back the guys get pissed and say you're annoying to listen to."*** ***"The guys on your squad and other squads think you act like a bitch."*** and last but not least, ***"Maybe if you had beers with the guys you'd be more likeable."*** (See Kess Evidence, Incident 8-23-22, Handwritten Notes; Toia Reprimand). Similar conduct has been reported by many females in the department, all of which have been discounted, downplayed, and ignored, in the same manner in which my complaints have been.

It is the policy of EHTPD to use a set list of objective and measurable criteria by which to compare candidates and rate their suitability for the position in a fair, impartial, and non-discriminatory promotional process. On the contrary, any process that factors in the popularity of a candidate or the personal opinions of a candidate's "likeability" based on their gender when

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making a promotional selection, discretionary appointment, or special assignment is undoubtedly DISCRIMINATORY.

Chief Sarlo falsely argues that all decisions made in relation to my promotional eligibility were solely *based on legitimate non-discriminatory factors* such as my alleged history of “documented” misconduct and incompetence for which he has no proof. I have provided evidence in the form of departmental documents and records to validate all the instances of discriminatory conduct against females by the EHTPD and Chief Sarlo which I have claimed. Chief Sarlo will now have to fabricate additional stories to either explain, excuse, or discredit the overwhelming information those individuals I have mentioned in this complaint of retaliation have provided to me, in their own words, in support of my filed claims.

Retired Sgt. Barry Johnson spoke about the discriminatory practices of the East Hampton Town Police Department and Chief Sarlo during his interview with the so-called “independent investigator” Arthur Riegel. Sgt. Johnson spoke to me about his interview and specifically what he said regarding the detective promotional process and female officers in general.

December 8th, 2023 4:09 PM
Audio Recording — Sgt. Barry Johnson
+1-631-433-****
(44:01)

00:03:26 Johnson

He did ask me some questions about as far as what do you need, what's the basic thing you would need to be a detective you know. You know, it's because you had been passed up.

So like, I guess somehow with that I got worked up and he asked me “well, what do you need?” I said, well, I said, *you know, there's a few things, you know, that that make it up. It's not just one so, it's, you know, just, your work ethic, you know your work skill, you know. Basically.*”

00:04:27 Johnson

And so started telling him, *and that stuff*, I said, and.... Then I said, **“and you could have, still have all that, and still...”**

“If you're a good fit back there, you know, that's honestly,” I just tell him **“so, if you're good fit back there then they'll take you”** I said.

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I had, I said that a couple of times. He said, *it's not you know, an automatic thing.*

00:04:58 Johnson

And then he asked me you know basic, like, “have I ever noticed any, you know as far as them (EHTPD Detectives/ Detective Division), treating women any differently than men? “

00:05:06 Johnson

I said, *Well, there's none on yet. You know, there's none there, none on Dive Team. You know?*

They're pretty much stuck to— stuck to patrol.

00:05:19 Johnson

Um, and then he went on, I guess he went on to say, “*you, would you be surprised that East Hampton Town since you left actually has grown in the number of women that's been, that work there?*”

I said, “*No. I actually didn't know that.*” So, I don't know where he was trying to go with that.

00:05:35 Kess

What the hell does that that mean?

00:05:38 Johnson

Yeah, I'm not sure.

00:05:44 Kess

You still have them as secretaries and you know, doing admin work. They can hire all they... That's ridiculous.

00:05:47 Johnson

No clue where he was going with that one, because then he, he said something else—

00:05:49 Kess

Yes.

00:05:56 Johnson

And then I kind of, um, went with you know,

There's not too many African Americans

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or Hispanics in the position.

And then he also, same thing, “would you believe that, you know, and not, pertaining to us as far as East Hampton Town, but New York City PD has actually grown in their minority population now, workforce.”

00:06:01 Kess

Yeah? Well good. That’s what, what’s supposed to be happening.

00:06:37 Johnson

We talked about the credentials you would need to be a detective and that, you know, and

That I would have recommended you in a heartbeat.

00:06:48 Johnson

You know, and then, you know, he wanted me to describe what your strengths were, um, and what your weaknesses are.

00:07:00 Johnson

So, I said, well one strength was ***the investigating aspect of, the investigation portion that, you know you're so, that you're great at.*** You know that it's not all, like for the younger guys it's all V&T and not really giving a crap about following up on your cases or anything like that, they just want to kind of fill out the incident report and just hand it in, and then forget it.

00:07:24 Johnson

“Andrea’s not like that. I was like so, so she handles her cases, you know, she’ll accept felony cases no problem. She’ll do more investigating than just writing down on an incident report.

00:07:37 Johnson

So, and that's, that's you know, that's *who I'm going to recommend* is somebody who wants to do more investigation, not just somebody who just wants a steady schedule.

00:18:15 Johnson

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Yeah, I told him about the...that night that uh, that nobody was, you know, answering the calls to show up there, to go there. I said—and she had a couple of times in, you know, throughout her career when I was working with her. I said that there would just be, you know, sectors that just would not respond or to any of her calls or any of her backup.

00:18:43 Johnson

I said, I was there for most, um, of the backups. But mostly backups when I can get out of the office. But, um, nobody usually would come unless it was like something you know, insane, or she called somebody specifically down there. So, he took that in.

00:19:06 Johnson

And then uh— in a kind of weird, um... It, it didn't end naturally. It seemed like it ended abruptly. And I think we were probably talking maybe about an hour and some change, um, and the way it just ended was kind, kind of weird I thought. I didn't have a good feeling about it.

You know, so I, I kind of laid it out there...

*Women in the department, if you're looking to get hired or advance...
and I know, I've heard it spoken, too, spoken about by the Chief—*

***A consideration of the department is whether or not they're of
reproductive age—are they planning on having a family or anything.***

00:19:59 Johnson

So, I just wanted to communicate that, and that, that's it.

Chief Sarlo continues to make misleading and disparaging statements for the purpose of undermining my claims. Chief Sarlo falsely claims, ***“in the instances when Complainant has been eligible for promotion to the positions of Detective or Sergeant, in addition to the various performance issues and concerns detailed above, many of her supervisors have cited her difficulty accepting supervision, her lack of attention to the chain of command, and her inability to work collaboratively with other officers as areas that must be improved upon before she can be placed in a supervisory role”*** despite knowing that there is an overwhelming amount of

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evidence to disprove such allegations. This statement contradicts all Uniformed Patrol Yearly Evaluations of my policing and performance I have received throughout my career— including the positive remarks I received from each supervisor including Lt. Martin and Lt. Tierney.

For the period of 1/1/22 – 12/31/22 Sgt. Martin rated me as “**exceeding standards**” and made the following comments regarding my performance:

“Officer Kess turns out of headquarters and has no primary sector assignment. She has consistently demonstrated an effective approach in all phases of her everyday police duties. When on duty she showcases a motivated work ethic with her productivity regarding enforcement comparable with that of the top producing officers within the department, while also generating comprehensive reports that are consistently submitted in a timely fashion. Officer Kess has continued to translate her high percentage of traffic stops and subsequent civilian interactions into practical information which has enabled her to generate numerous field interviews and become involved with multiple specific investigative details. Officer Kess did have the highest number of driving while intoxicated arrests in the department at 13 for the year. She has shown to be very efficient with arrest processing and consistently submits completed arrest reports requiring minimal to no corrections. Officer Kess has taken on a leadership role within the squad and willingly aids junior officers in all aspects of police work. On numerous occasions she has been tasked with the responsibility of a Field Training Officer when no certified officers were available.

Officer Kess did use a significant amount of sick leave for the year, which as noted in her self-evaluation memo was partially due to a medical issue she was managing. Although the substantial amount of sick time is a reflection on her reliability, she did also make herself available for multiple supplemental shifts during the summer season as well as short shift call outs and Stop DWI enforcement details throughout the year. This sergeant did speak with Officer Kess on two specific occasions during the first half of the year regarding her response time to priority two calls for service. Officer Kess acknowledged the matter and immediately took corrective action resulting in no further issues.”

For the period of 1/1/21 – 12/31/22 Sgt. Tierney rated me as “meeting standards” and made the following comments regarding my performance:

“PO Kess stays abreast of incidents that require her attention by communicating with fellow officers, checking her email daily, reviewing diary entries and field interviews, and past calls for service each day. Additionally, she is familiar with crime patterns in surrounding jurisdictions and stays alert to how those crimes may be perpetrated in our jurisdiction. PO Kess has a good working knowledge of department and legal procedures, including the Penal Law

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and VTL as well as the Town Code. She is interested and motivated to expand her knowledge, and this past year took nearly 1 00 hours of online training through Police One and DCJS. PO Kess has good investigative skills. She identified a previously unidentified accomplice in a federal human sex trafficking ring and developed a rapport with a victim in the trafficking case, which was instrumental in the subject's decision to cooperate with the FBI. PO Kess was also instrumental in bringing a close to the years of Montauk community reporting of "explosions" in the area of West Lake Drive. She took her time taking statements and photographs, she recovered evidence of spent mortars to link back to the company from which they were purchased, and she made connections with the ATF. Her efforts ultimately led to the application for and issuance of a search warrant which was executed by our detective division in conjunction with the ESU team. An arrest was made, and a large quantity of fireworks were seized.

The area in which PO Kess can improve the most is reliability. Arriving on time for the start of each tour is crucial not only for maintaining coverage on the road, but it's also vital for the sharing of information between squads. Additionally, PO Kess' s sick time was high this year with 36.5 days used."

Additionally, Sgt. Tierney wrote a letter recommending me for a detective position in 2022 and wrote a letter to Chief Sarlo recommending myself and another officer for consideration for Police Officer of the Year in 2021.

"PO Kess provided pivotal testimony in federal human sex trafficking trial after a prisoner debrief she conducted led to information that supported an FBI investigation into a human sex trafficking ring operating in Suffolk County. PO Kess identified a previously unidentified accomplice in the case and developed a rapport with a victim in the trafficking case, which was instrumental in the subject's decision to cooperate with the FBI. Detective James Johnson of the Suffolk County Police Department Human Trafficking Investigations Unit stated that she provided an "outstanding performance as a testifying witness at the trial of U.S. v. Carl Andrews" and that "her words and demeanor resonated with the court and there's no doubt she aided in our guilty verdict handed down by the jury". Carl Andrews will spend life in prison for his crimes. PO Kess was also instrumental in bringing a close to the years of Montauk community reporting of "explosions" in the area of West Lake Drive. She took her time taking statements and photographs, she recovered evidence of spent mortars to link back to the company from which they were purchased, and she made connections with the ATF. Her efforts ultimately led to the application for and issuance of a search warrant which was executed by our detective division in conjunction with the ESU team. An arrest was made, and a large quantity of fireworks were seized."

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Comments from past evaluations include:

“P.O. Kess is a self-motivated and active police officer. She has good knowledge of the VTL and Penal Law. She has excellent report writing, performs thorough case investigations and is meticulous in her documentation and note writing. As she continues to learn, develop, and move forward in her career she can improve in her overall knowledge in the areas of Criminal Procedure Law and Search and Seizure. She can continue to be a proactive officer and I would like to see her continue to improve her skills in all aspects of police work.”

“She is a highly motivated officer and brings forth a consistent effort every shift. This is reflected across all statistical categories. She was at the top of the department this year in Uniform traffic tickets, DWI arrests and 4th in overall arrests. Officer Kess beyond statistics concentrates on garnering all the information she can about narcotic and criminal activity and is well versed in the local criminal element as well as the vehicles they operate. As such she consistently forwards all information on to the detective division. In the upcoming year I would like to see her continue to hone her skills and increase her cultivation of confidential informants.”

“P.O. Kess was comfortable with working night tours and was very active in regards to DWI and Drug arrests. Upon switching to day tours she continued her excellent activity, and also was exposed to a different workload in handling cases during the daytime. She has been primarily assigned to HQ/Sector 95 and has improved on her report writing, case investigations and generally dealing with the public on another level. Statistically in 2018 she was the top performer in Total Arrests and second in UTT's. P.O. Kess has very astute police instincts and retains information very well resulting in the ability to learn quickly and retain information. She is highly motivated and has the desire to learn and improve. As a young officer she needs to be exposed to more cases and situations. As she moves forward in her career I feel she can improve on her overall knowledge of Policing, Penal Law and CPL Law, and improve on investigating cases and interviewing suspects and witnesses.”

“PO Kess is self-motivated and has developed a proficiency in Drug and DWI enforcement. PO Kess is ARIDE Certified and assists her fellow officers in conducting ARIDE tests on impaired drivers. PO Kess has a good working knowledge of the Town Codes, Vehicle and Traffic Law, Penal Law and Criminal Procedure Law in her daily calls for service. PO Kess communicates well with her fellow officers, checks her email/messages daily, reviews Diary entries, Field Interviews, and past calls for service each day. During this evaluation period, PO Kess issued 369 Traffic Summonses, effected 100 arrests, including 43 Penal Law, 27 DWI, handled 487 Calls for service and has submitted 17 Field Interviews. PO Kess used 5 excused/communicated sick days. PO Kess' short term goals are training oriented. She would

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like to improve as a patrol officer and attend Interview and Interrogation Training. She would also like to be a Drug Recognition Expert, Field Training Officer, and Bike Patrol Officer. PO Kess also aspires to being on the East End Drug Task Force and trained in Emergency Management. PO Kess' long-term goals are to be promoted to detective squad and eventually move up in rank. Undersigned would like Recommend PO Kess be sworn into the East End Drug Task Force for 20 I 8 and eventually promoted to Detective.”

“To date, PO Kess leads her squad in statistics. She actively seeks out violators of the law on every shift and keeps up to date with cases showing very good follow up. She has become geographically familiar with every sector/assignment she works. She knows where to look for quality of life violations and knows the recidivists in her sector. She keeps up to date with the rules and procedures and follows the chain of command. Reference AR-658-17: PO Kess was involved in an altercation where the defendant attempted to destroy evidence by swallowing it. Along with muscling the defendant in an attempt to get him on the ground and secure him, she tased him twice and when that failed she began defensive tactics techniques that eventually ended the defendant's actions and him subsequently releasing the evidence. Her determination and technique were admirable.”

“During this period she has demonstrated excellent enforcement activity and always appears professional. She is early for work each shift and reviews the department diary and arrest activity prior to her shift in order to patrol necessary areas. PO Kess is also very diligent when trying to complete her written reports. She continues to develop into a well-rounded police officer.”

“PO Kess manages her time on patrol very well. She hands in her reports in a timely fashion, enforces V&T, patrols areas where extra patrols are requested in the diary and follows up with open cases. PO Kess has shown she is a "Go To" person for certain arrest procedures and is always eager to help her fellow squad mates.” Officer Kess continues to show that she is an asset to this department.”

“Officer Kess has a great rapport with most of her arrest subjects and continues to gather information and conditions them to speak with detectives. She consistently proves herself to be a valuable asset as a member of this department.”

“She works very well with her squad mates, makes sure to back them up and cover during calls for service. She has a great working relationship with her peers and supervisors and always following the chain of command. Her attendance and punctuality are great. She is always early, eager to get out and work and is very professional.”

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P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

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“Her activity is great even during this slow part of the year. She does an excellent job following up on her cases. She conducts thorough neighborhood canvasses with positive feedback from the public. Officer Kess follows directions very well and shows courtesy and respect towards her supervisors, peers and the public.”

“Officer Kess is an active police officer during all shifts. She diligently patrols her sector and balances her time well, following up on cases, backing up other officers and conducting vehicle and traffic enforcement. She reviews field interviews along with arrest and case reports to keep up to date of the activity in her sector and the town in general. Officer Kess has taken an interest in the local drug activity in the town so for the upcoming year the U/O would like PO Kess to work on developing confidential informants to help her gain information of local drug activity.”

“PO Kess continues to be a very active police officer. She actively patrols her sector during all tours of service. She continues to show her knowledge of her sector by addressing problem areas with directed patrols. She follows up on necessary calls and makes proper notifications to her supervisors. Officer Kess is always early for her shift, eager to do her job and stays up to date with department diary entries, field interviews and case reports. She continues to improve upon her arrest and case paperwork. Her reports are submitted in a timely fashion with little need for correction. PO Kess is not shy about asking questions when needed. She will routinely ask her squad members or undersigned for advice when she deems it necessary. PO Kess continues to act and present in a professional manner. Her uniforms are clean and pressed and she maintains all department issued gear. She also handles herself in a professional manner when interacting with the public and her superiors.”

“During this evaluation period PO Kess was involved in a high-speed pursuit of a robbery suspect. At all times during the pursuit, PO Kess remained calm, skillfully operated her vehicle, made clear precise radio transmissions of her location and due to these actions, the suspects were apprehended and arrested on multiple felony charges. During the relatively short period of time that PO Kess has worked for this agency, the undersigned officer believes she has proven herself to be a valuable asset to the department.”

“PO Kess manages her time well and continues to perform V&T enforcement and address quality of life issues. She is always professional in appearance and maintains a positive attitude. PO Kess handles the public very well always showing courtesy and respect.”

“PO Kess communicates well with undersigned and her squad members, asks questions when needed and receives constructive criticism well.”

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Supervisor Comments — Performance Evaluations 2016-2022

**Officer Kess continues to show that she is an asset to this department.
She consistently proves herself to be a valuable asset as a member of this department.
The undersigned officer believes she has proven herself to be a valuable asset to the department.**

**PO Kess communicates well with her fellow officers
She is always professional in appearance and maintains a positive attitude.
PO Kess handles the public very well always showing courtesy and respect.**

**Officer Kess follows directions very well and shows courtesy and respect towards her supervisors,
peers and the public.**

**Officer Kess handles herself in a professional manner
when interacting with the public and her superiors.**

**She has a great working relationship with her peers and supervisors
and always following the chain of command.**

**Officer Kess follows directions very well and shows courtesy and respect
towards her supervisors, peers and the public.**

**Officer Kess has taken on a leadership role within the squad and
willingly aids junior officers in all aspects of police work.**

**PO Kess has shown she is a "Go To" person for certain arrest
procedures and is always eager to help her fellow squad mates.**

**PO Kess communicates well with undersigned and her squad members,
asks questions when needed and receives constructive criticism well.**

She follows up on necessary calls and makes proper notifications to her supervisors.

She keeps up to date with the rules and procedures and follows the chain of command.

**She works very well with her squad mates, makes sure
to back them up and cover during calls for service.**

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PO Kess communicates well with her fellow officers

**PO Kess stays abreast of incidents that require
attention by communicating with fellow officers**

PO Kess is not shy about asking questions when needed.

**On numerous occasions she has been tasked with the responsibility
of a Field Training Officer when no certified officers were available.**

**Officer Kess is an active police officer during all shifts.
Her activity is great even during this slow part of the year.
She does an excellent job following up on her cases.
PO Kess manages her time on patrol very well.**

**She diligently patrols her sector and balances her time well, following up
on cases, backing up other officers and conducting vehicle and traffic enforcement**

**Her attendance and punctuality are great.
She is always early, eager to get out and work and is very professional.
PO Kess continues to act and present in a professional manner.
She conducts thorough neighborhood canvasses with positive feedback from the public.
She has consistently demonstrated an effective approach in all phases of her everyday police duties.**

**She hands in her reports in a timely fashion, enforces V&T, patrols areas
where extra patrols are requested in the diary and follows up with open cases.**

**She is highly motivated and has the desire to learn and improve.
She is interested and motivated to expand her knowledge.
P.O. Kess is a self-motivated and active police officer.
She has good knowledge of the VTL and Penal Law.
She hands in her reports in a timely fashion**

**PO Kess has a good working knowledge of the Town Codes,
Vehicle and Traffic Law, Penal Law and Criminal Procedure Law**

**PO Kess has a good working knowledge of department and legal procedures,
including the Penal Law and VTL as well as the Town Code.**

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**She has excellent report writing, performs thorough case investigations
and is meticulous in her documentation and note writing.**

**When on duty she showcases a motivated work ethic with her productivity regarding enforcement
comparable with that of the top producing officers within the department, while also generating
comprehensive reports that are consistently submitted in a timely fashion.**

**She has shown to be very efficient with arrest processing and
consistently submits completed arrest reports requiring minimal to no corrections.**

**Her reports are submitted in a timely fashion with little need for correction.
P.O. Kess has very astute police instincts and retains information very well**

**She is a highly motivated officer and brings forth a consistent effort every shift. This is reflected
across all statistical categories. She was at the top of the department
this year in Uniform traffic tickets, DWI arrests and 4th in overall arrests.**

**P.O. Kess was comfortable with working night tours and was very active in regards to
DWI and Drug arrests. Upon switching to day tours she continued her excellent activity.
She continues to develop into a well-rounded police officer.**

**PO Kess leads her squad in statistics.
PO Kess continues to be a very active police officer.**

**PO Kess is also very diligent when trying to complete her written reports.
She has demonstrated excellent enforcement activity and always appears professional.**

“Initially, in May of 2018, when Complainant alleges she was first overlooked for a promotion to detective, she had been a full-time police officer for approximately two (2) years and it would be unheard of for an officer with that little experience to be promoted to detective and contrary to EHTPD Policy which requires a minimum of three (3) years of experience for a special assignment. (Exhibit “G”).”

Chief Sarlo has consistently used both EHTPD Policy and Procedure Manual prior to 2023, and the revised Lexipol EHTPD Policies Manual which began to roll out in 2023. He has incorrectly referenced policies which did not exist during both incidents in which I claim that I was overlooked for Detective. Chief Sarlo states, “In May of 2018...” and then cites a policy which was first released in 2023, in order to replace the actual policy which was in effect at the time I

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was first overlooked. The policy which was in effect in May of 2018 and also in April of 2022 was EHTPD Policy & Procedure Manual; *Section 1, Article IX; Promotion Selection Criteria*.

Chief Sarlo inaccurately claims that I was ineligible for the Detective Position in 2018 because “*it would be unheard of for an officer with that little experience to be promoted to detective and contrary to EHTPD Policy which requires a minimum of three (3) years of experience for a special assignment*”— which he claims is stated in the Lexipol 2023 revised EHTPD Policy Manual, Policy 1002; Special Assignments and Promotions. There are two issues here, one is that Chief Sarlo cites a policy which did not exist in 2018. Secondly, even if the policy were in effect, I would have been a viable candidate—I would not have been automatically eliminated from the Detective Position as Chief Sarlo has claimed.

This is because Chief Sarlo intentionally misquotes the policy stating that “EHTPD Policy 1002 Special Assignments and Promotions **REQUIRES a minimum of three years of experience** for a special assignment.” This is not true. What the policy actually says is that the “following requirements **should be considered** when selecting a candidate for a special assignment,” one being **three years of relevant experience**. By changing the wording of the policy, Chief Sarlo has (again) demonstrated the type of corruption which I base my retaliation complaint on. He continues to manipulate the promotional process to justify his selection for the position and to fabricate “legitimate” reasons behind why a candidate was overlooked.

There is a significant difference between stating that something is a **REQUIREMENT** versus stating that something *should be* **CONSIDERED**. A ‘requirement’ is something which is mandatory, non-elective, and forced. It is not subjective and there is no discretion— it must be abided by. ‘Considered’ on the other hand, allows for reasoned thought, contemplation, and is something which is deliberated upon in respect to something else. It is also of importance to point out that “*three years of experience*” is much different than “*three years of relevant experience*.” Of course, what delineates “experience” from “relevant experience” is not stated in the policy and therefore up for interpretation based on the whim of the Department. One could say “*experience*” means “**on-the-job**” experience as a part time or full-time employee, and “*relevant experience*” means “**experience relevant to the position**” as in you were, perhaps, a detective or investigator prior to being hired as a P.O. with the East Hampton Town Police Department.

If we go by Policy 1002 which states that **three years of relevant experience should be considered** when making a selection for special assignment— then a candidate who had (1.5) years of experience as a part-time officer with EHTPD (meaning they attended Suffolk County Police Academy, received the exact same training as those who were paid to attend the police academy, and upon graduating performed all the duties of a P.O.) and who had (2) years of full-time


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experience, that candidate would meet Chief Sarlo’s made-up “REQUIREMENT.” That candidate was me. The Department considers time in the academy for a full-time academy attendee to count as “experience” but will not count a part-time officer’s time in the academy as well as their time working in a part-time capacity toward their experience. Experience is experience. However, this is all irrelevant because the policy which Chief Sarlo deceitfully uses was not in effect in 2018. It was introduced as a replacement to *EHTPD Policy & Procedure; Section 1, Article IX; Promotion Selection Criteria* in January of 2023. It did not exist prior to that date.

The policy which did exist in 2018, *EHTPD Policy & Procedure; Section 1, Article IX; Promotion Selection Criteria*, had no restrictions or requirements as to the length of experience a candidate **should** possess. In fact, the policy lists a set of *criteria* not *requirements* to be used during promotional selection. Because I met the criteria, I was recommended for the position by my Sergeant **and listed as a candidate by Chief Sarlo himself**. On Tuesday May 5th, 2018, at 9:10 AM, Chief Sarlo sent an email to senior staff entitled Detective and SRO Recommendations. I was one of (6) candidates Chief Sarlo listed as a candidate for the detective position.



**Town of East Hampton
Long Island, NY**

Adopted
Dec 4, 2014 6:30 PM

**Resolution
RES-2014-1452**

**Appoint Part Time Police Officer Andrea Kess
East Hampton Police Department**

Information

Department:	Human Resources	Sponsors:	Supervisor Larry Cantwell
Category:	Appointments	Functions:	Personnel

Attachments

Printout

Body

Whereas the East Hampton Town Police Department has sponsored Andrea Kess to attend the Suffolk County Police Academy and Ms. Kess Has successfully completed all tests required to attend the academy now therefore be it;

RESOLVED that Andrea Kess be and she is hereby appointed to the position of part time Police Officer with The Town of East Hampton Police Department and approved to attend the part- time Suffolk County Police Academy effective retroactive to December 1, 2014 at no salary pending the successful completion of the academy and be it further

RESOLVED that a copy of this resolution be forwarded by the Town Clerk to the appropriate personnel.

Meeting History

Date	Meeting Type	Location
Dec 4, 2014 6:30 PM	Video	East Hampton Town Board

RESULT: ADOPTED [UNANIMOUS]
NOVER: Larry Cantwell, Supervisor

Detective and SRO Recommendations

Michael D. Sarlo <msarlo@ehtpd.org>
Tue 5/8/2018 9:10 AM
To: John B. Clafin <jclafin@ehtpd.org>; Peter Powers <ppowers@ehtpd.org>; Gregory S. Schaefer <gschaefer@ehtpd.org>; Christopher L. Anderson <canderson@ehtpd.org>

Breakdown as follows:

Detective:
Alversa (5)
Soko (4)
Metzler
Nimmo
Kess
Fink

SRO:
Soko (3)
De Toia
Peterson

I have a folder with the recommendation letters to pass around, review and pass on to the next senior staff member

**Michael D. Sarlo
Chief of Police
East Hampton Town Police Department**
PO Box 909
131 Wainscott NW Road,
Wainscott, NY 11975

631-537-6850 office
631-537-6833 fax

In addition to Chief Sarlo’s statements that I did not possess the required amount of experience to be considered for the 2018 detective position he also alleges the following: *“Moreover, Complainant had already demonstrated concerning conduct that indicated a promotion would have been inappropriate, such as circumventing proper reporting and police*

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procedure in making traffic stops by often times failing to report her location to dispatch when effectuating a traffic stop. (Exhibit "E")."

Despite Chief Sarlo's assertions that I was completely unqualified for the detective position as well as any promotional consideration, he still listed my name as a potential candidate for detective in an email entitled Detective and SRO Recommendations, which he personally typed and then sent to senior staff. Chief Sarlo's **October 26th, 2023, statement** that *"it would have been 'unheard of' for an officer to be promoted to detective who only had two years of full-time experience **and** was also engaging in troubling conduct that indicated a promotion would have been inappropriate,"* completely **contradicts his 2018 actions**. Why, then, was I included in the list of candidates for the 2018 detective position when, according to Chief Sarlo, I only had two years on as a full-time officer **and** was engaging in so-called alarming conduct by "circumventing proper reporting and police procedure in making traffic stops" by not advising dispatch of my location. According to Chief Sarlo, I never met the alleged requirements for the position in 2018 (which should have automatically disqualified me from consideration) plus I had also displayed so-called *"concerning conduct"* which he firmly declares, *"would have made a promotion both improper and inappropriate."*

The EEOC often recognizes close temporal proximity between the employees EEO allegation and the employer's action as evidence of a retaliatory motive. The very suspicious timing of Chief Sarlo's claims— which were made, suddenly, just **5 months after my EEOC claims were filed** and nearly **5 years** from the date which I was overlooked for the 2018 Detective vacancy— is indicative of the retaliatory intent of Chief Sarlo's response statement. Of course, this is just one of many pieces of evidence which show that the East Hampton Town Police Department, namely Chief Sarlo, have participated in, encouraged, and allowed a hostile and discriminatory culture to exist in this Department.

"Even absent suspicious timing, other relevant facts may include verbal or written statements; comparative evidence that a similarly situated employee was treated differently; falsity of the employer's proffered reason for the adverse action; or any other evidence from which an inference of retaliatory intent might be drawn." —EEOC Guidance; Retaliation, Making It Personal

Another relevant fact which the EEOC recognizes to be evidence of retaliation is the falsity of the employer's proffered reason for the adverse action. I was included as a candidate for detective in 2018 because **I was a candidate in 2018**. Had I not met the requirements, I would not have been recommended by my Sergeant or personally listed as a candidate by Chief Sarlo.

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If I had engaged in misconduct by “circumventing proper reporting and police procedure in making traffic stops,” I would have been investigated and charged as per ***EHTPD Policy & Procedure Section 3, Article IX: Internal Affairs, 9.1(A)*** which states, “*Complaints whereby an Officer may face disciplinary action must be forwarded but other complaints on Officers such as attitude or disputed orders given by them, should be handled by the highest ranking uniformed Officer by having a conference with the Officer and having it settled at this level. ALL SUCH CONTACTS DESCRIBED HEREIN MUST BE REPORTED TO THE EXECUTIVE OFFICER VIA INTEROFFICE MEMO AND OR COUNSELING FORM. EHTPD Internal Affairs Section 9.1 (D)* states that *the Internal Affairs Officer will keep a log of all personnel complaints whether referred to him or not.*



Memo

To:
From:
Date:
Re:

COUNSELING MEMO

You are hereby advised of personal deficiencies in the area of:

Should there be future incidents of this matter, you may be subject to further disciplinary action.

Officer's Signature



Discipline Case No.	Date	Respondent	Complaint	Reporting Supervisor	Final Disposition

RESET FORM

EHTPD POLICY & PROCEDURE MANUAL

SECTION 3, ARTICLE IX: INTERNAL AFFAIRS

PURPOSE: To establish formal guidelines for the investigation of all complaints against Town of East Hampton Police Department personnel.

POLICY: It is the policy of the East Hampton Town Police Department to investigate all

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complaints of misconduct or criminal activity against members of the department. This is necessary in order to maintain the department's integrity and public trust. All those found guilty will be disciplined in accordance with established department procedures.

SECTION 3, ARTICLE IX: INTERNAL AFFAIRS (continued)

9.0 Definitions

A. Complaint - An allegation of improper or unlawful act or omission which relates to the business of the department or to the conduct of any sworn or civilian member of it.

B. Improper act or omission

1. Abuse of authority
2. Discourteous or abusive behavior
3. Substantial deviation from acceptable conduct or performance

C. Unlawful act or omission

1. Conduct which would be criminal on its face
2. Unnecessary or excessive use of force
3. Conduct, although not criminal, which is a deviation from acceptable behavior.

D. Internal Affairs Officer that person designated by the Chief of Police to handle internal affair investigation

9.1 Screening Complaints

A. Complaints whereby an Officer may face disciplinary action must be forwarded but other complaints on Officers such as attitude or disputed orders given by them, should be handled by the highest ranking uniformed Officer by having a conference with the Officer and having it settled at this level. ALL SUCH CONTACTS DESCRIBED HEREIN MUST BE REPORTED TO THE EXECUTIVE OFFICER VIA INTEROFFICE MEMO AND OR COUNSELING FORM.

B. Complaints from supervisory personnel on a subordinate's attitude, tardiness, level of performance or other disciplinary matter will be handled on the existing interoffice memo or counseling form.

C. If the complainant refuses to give the complaint to the highest ranking uniformed Officer, then it will be referred to the Internal Affairs Officer as outlined below.

D. The Internal Affairs Officer will keep a log of all personnel complaints whether

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referred to him or not.

SECTION 3, ARTICLE IX: INTERNAL AFFAIRS (continued)

9.2 Receipt of Complaints

A. During normal working hours, those complaints that merit such, will be referred to the Internal Affairs Officer.

B. During non-business hours, the highest-ranking uniformed Officer or designee will accept the complaint. The complainant's allegation will be put in writing on the department's Personnel Complaint Form. It will be signed by the complainant and witnessed by the highest-ranking uniformed officer. The complainant should be assisted by the highest-ranking uniformed officer or his designee in filling out this form if needed.

C. After the form is completed, it will be forwarded to the Internal Affairs Officer in a sealed envelope, who in turn will evaluate same.

9.3 Investigation

A. All complaints, investigations and interviews are to be strictly confidential throughout the entire process.

B. All complaints against Police Officers will be investigated regardless of the manner received (i.e.: letter, telephone, anonymously). The depth of the investigation will depend upon **factual information** received.

C. The internal Affairs Officer will maintain close liaison with the District Attorney's Office in investigations, alleging criminal conduct. Where liability is an issue, the Internal Affairs Officer handling the case shall maintain contact with the Town Attorney.

D. The complaint will be handled either by the Internal Affairs Officer or such other supervising officer as may be assigned for investigation and disposition.

E. After the investigation is completed, the investigating Officer will submit all documents to the Internal Affairs Officer.

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F. At the conclusion of the investigation, the Internal Affairs Officer will submit a completed Internal Affairs Investigation Report with all supporting documents, statements, and evidence to the Chief for approval who will then forward it to the Town Board for final determination.

SECTION 3, ARTICLE IX: INTERNAL AFFAIRS (continued)

G. If an investigation requires a long period of time to complete, the Internal Affairs Officer will periodically keep the complainant informed that the matter is still under investigation. No information concerning the progress, guilt, or innocence of the officer will be communicated to the complainant. At the completion of the investigation, the Chief will notify the complainant of the results of the investigation.

9.4 Disposition

A. The Internal Affairs Officer should recommend one of four acceptable dispositions of the case: unfounded, exonerated, not-sustained, or sustained. The personnel under Investigation will be notified of said disposition

B. In cases where the complainant is satisfied with the disposition, it shall be noted in the Internal Investigation Report.

C. In cases of non-satisfaction with the disposition by the complainant, this indication should also be reduced to writing and forwarded to the Chief for further action.

D. In any case all Internal Affairs cases will be forwarded to the Chief of Police for his review and actions.

E. At the conclusion of an investigation, the Internal Affairs Officer will determine if needed for reinforced of further training is warranted. If such is indicated, the Internal Affairs Officer will apprise the training Officer. If circumstances deem it necessary, he will be advised of the Internal Affairs case.

9.7 Additional Reports

A. All closed cases will be maintained in the Internal Affairs file.

B. All files are to be kept in a locked file cabinet. No member of the department, REGARDLESS OF RANK OR ASSIGNMENT, is permitted to review any file maintained by the Internal Affairs Unit without approval from the Chief.

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C. Internal Affairs records will be kept in accordance with legal requirements (NYS Education Guidelines).

“According to the EEOC, in order to rebut the inference of discrimination, the employer must articulate, through admissible evidence, a legitimate, non-discriminatory reason for its actions. The employer's burden is one of production, not persuasion.” —EEOC Disparate Treatment

Chief Sarlo has again submitted nothing to corroborate his allegations. The so-called evidence he has submitted is misleading, without context, anecdotal, and has no bearing on my case. Chief Sarlo has intentionally withheld his 2018 email regarding detective recommendations; he has knowingly replaced the policy which was in effect at the time of the 2018 Detective promotion with a policy which was written in 2023; he changed the wording of that 2023 policy to dupe the EEOC and falsely portray me as “unqualified” and “corrupt;” he cannot provide any disciplinary records to substantiate his allegations regarding my alleged misconduct in circumventing proper reporting and police procedure; and, he has not explained why it has taken him **5 years** after the 2018 Detective promotion to come forward with these allegations, and why these very sudden allegations made their first and only appearance in his response to my EEOC claims.

Chief Sarlo has access to every EHTPD record that ever existed as well as the entire Department at his disposal **yet** the only “evidence” of alleged “misconduct” Chief Sarlo has managed to come up with are random emails, copies of policies which weren’t in effect, random text messages, and (1) misdemeanor information. It is obvious that Chief Sarlo’s claims lack any merit whatsoever, are without evidence, and cannot be substantiated.

“According to the EEOC, in a hiring or promotion charge, all qualified applicants for a particular job are similarly situated to each other. All applicants who are not qualified are similarly situated. See Commission Decision No. 79-16 (1978), ¶ 6746.”—EEOC Guidance; Compliance Manual, Theories of Discrimination

The EEOC states that whenever similarly situated individuals of a different race, sex, religion, or national origin group are accorded disparate treatment in the context of a similar employment situation, it is reasonable to infer, absent other evidence, that discrimination has occurred. Chief Sarlo wishes to undermine my claims by undermining my use of comparative evidence in support of my charge of discrimination. Chief Sarlo is trying to establish that there was a legitimate nondiscriminatory motive for why I was overlooked in 2018 as well as all other

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promotions by falsely claiming that I was unqualified—I was passed over because I did not meet the requirements. Therefore, I was not similarly situated to the other qualified candidates and any use of comparatives would be irrelevant (a recurring theme throughout his response statement).

However, Chief Sarlo deceptively uses a promotional policy which did not exist for any of the promotions in which I was overlooked to “substantiate” his claims. To fortify this argument and further discredit me in both my professional and individual capacity, Chief Sarlo maliciously accuses me of misconduct, corruption, harassment, and unlawful activity throughout his position statement stating that it was the sum of this conduct and my overall unsuitability which led to my being deemed unfit for promotion, not my gender.

This is the perfect opportunity to speak about the misconduct of similarly situated male officers **who were promoted despite their misconduct**. Chief Sarlo has vilified minor infractions such as “*failing to report her location to dispatch when effectuating a traffic stop,*” (something which Chief Sarlo mentions repeatedly throughout his response statement as evidence of my alleged “misconduct”) while completely ignoring the extremely alarming misconduct of male members of the Department. Unlike Chief Sarlo’s undocumented and unsubstantiated accusations of misconduct which he has made against me, the alarming conduct which I am referring to has been memorialized and/or corroborated using various records and documents.

According to Chief Sarlo, Lt. Toia—who has had numerous complaints made against him from numerous women involving his abusive conduct, use of gender-based derogatory language as insults, and his continuous discriminatory harassing behavior—is perfectly fit to be a member of his command staff.

According to Chief Sarlo, it is perfectly acceptable for Lt. Toia to threaten to shoot his wife during a reported domestic incident and destroy his wife’s phone by throwing it 300ft into the woods to prevent her from calling 911 during another reported domestic incident.

Chief Sarlo believes that it is neither improper nor inappropriate for him to allow Lt. Toia to continue in his duties and carry his service weapon, despite making threats of violence toward his wife, who is also a P.O., and his increasing course of conduct toward women.

Chief Sarlo finds nothing wrong with Lt. Toia ignoring his mandated psychological evaluation for nearly a year and a half, and felt it was perfectly appropriate keep Lt. Toia in his current position without having completed this mandatory psychological evaluation.

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According to Chief Sarlo, it is of no concern that the internal “investigations” into of Lt. Toia’s behavior and domestic incidents were conducted by his personal friend and colleague, Captain Anderson, who also found Lt. Toia’s behavior to be of no concern. Lt. Toia’s conduct has not interfered with his promotional viability as a possible candidate for Captain or a possible reassignment as Detective Lieutenant, if the need arises.

It is worth noting that any Department decision which would allow Lt. Toia, who has repeatedly displayed aggressive, discriminatory, volatile, and abusive conduct toward female members of the Department, to be promoted or reassigned would be completely irresponsible, unacceptable, and undoubtedly a perpetuation of an already hostile and discriminatory work environment. Furthermore, a reassignment back to the Detective Division will diminish all hope of diversification within the detective division, including the addition of female detectives.

There were other promotions and reassignments which were approved by Chief Sarlo despite the misconduct of those promoted. Concerning the promotion of Sgt. Martin to Lieutenant, Chief Sarlo found his conduct to be of no concern despite Sgt. Martin’s malicious actions on 8/23/22 which included ordering me to change into an old uniform which was moldy, dirty, and as well as someone’s old boots all of which were several sizes too big— all allegedly at the authority of Lt. Toia. Chief Sarlo found the intentional humiliation and excessive punishment of a subordinate to be perfectly acceptable. Chief Sarlo felt that the conduct of Sgt. Martin was inconsequential and found him suitable for a promotion to Lieutenant despite that fact that at the time he was a defendant in an EEOC Investigation regarding discrimination and retaliation, and a defendant in a pending lawsuit regarding the same charges. Chief Sarlo felt that out of the two other candidates, both of which had not displayed discriminatory conduct, humiliated a subordinate, and who were not defendants in an EEOC investigation or discrimination lawsuit— Gregory Martin was the best suited for the open Lieutenant position and promoted him. The difference between my alleged misconduct and subsequent **non-promotion** and their misconduct and subsequent **promotion**, is gender.

The reality is that Chief Sarlo has falsely claimed that I was overlooked in 2018 as well as all other promotions, for a “legitimate, non-discriminatory employment reason” — all of which stated that it was my alleged misconduct which has kept me from a promotion. If that is the case, then why, in 2022, did Chief Sarlo promote an officer to the detective position who engaged in misconduct by paying an informant to stage a drug deal and “circumventing proper police reporting and procedure” by failing to disclose this information in his arrest report and falsifying official records despite his misconduct? I did not/ do not have a disciplinary history of misconduct and I met the promotion criteria set forth in the EHTPD Policy & Procedure Manual, Section 1, Article IX; Promotion Selection Criteria.

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COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
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EHTPD POLICY & PROCEDURE MANUAL — PRIOR TO 2023
SECTION 1, ARTICLE IX; PROMOTION SELECTION CRITERIA

PURPOSE: To establish Department criteria to be evaluated when officers are considered for promotion.

POLICY: It is the policy of the Department to have set criteria for Promotion Selection Committees to evaluate when making Department promotions.

CRITERIA

A. Loyalty

1. Places the needs of the department before his or her own personal interests.
2. Represents all members of the department, public safety, dispatchers, and the Chief of Police in a positive light while on or off duty.
3. The candidate, and his/her immediate family members understand that decisions concerning the administration of the department fall solely within the purview of the Chief of Police and his staff. The said candidate will not have circumvented, for any reason, this authority.

B. Leadership Ability

1. Motivation
 - a. Sets a good example.
 - b. Work well with all members of the department.

C. Decision making stress and non-stress situations

1. Has the candidate demonstrated his/her ability to make appropriate decisions in stress and non-stress situations.

D. What positions has the candidate held within the department and abilities shown while in these positions.

E. Productivity

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1. Demonstrates that he or she is a self-starter.
2. Performs all tasks as assigned.
3. Has achieved, or those under his or her command have achieved, statistical goals of the department.
4. Shows a willingness to complete investigative steps and follow through on case leads, when possible, to their conclusion.

F. Dependability

1. Sick time records reviewed
2. Candidate can be relied on to assist the department in any manner requested.

G. Recommendation

1. The candidate's supervisor will be contacted to gather his or her impression of the candidate's ability to perform the duties of the position he/she seeks.
2. Candidate's personnel file will be reviewed.
3. If a selection committee is being utilized, the members shall present their finding and recommendation to the Chief of Police. The final determination as to which candidate is recommended to the Town Board rests with the Chief of Police.

H. Educational Background

1. The candidate's educational background will be reviewed. The review will include all in-service training the candidate has successfully attended.

I. Civil Service Standing

1. The candidate must meet the requirements set forth by Civil Service if the position he or she seeks is a Civil Service Position.
2. If the position or assignment is one that is Civil Service non-competitive and the selection committee is in place, Article II will be in effect. The Chief of Police has the option to form a selection committee under these circumstances.

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J. Compliance

1. The Chief of Police and/or selection committee will determine if the candidate meets the intent of Article II.

Article II, General Rules:

PURPOSE: To establish the General Rules of behavior and conduct of members of the Department.

POLICY: It is the policy of the East Hampton Town Police Department to conform to general rules of conduct to ensure the professional and accountable behavior of its members.

- (2.0) All members of the Police Department shall be subject to the Rules and Regulations.
 - (2.8) Work must be up to par and show a sufficient amount of productivity.
2. No candidate will in any manner contact members of the Town Board, members of the community, other police officers or any other person or group in an attempt to foster his/her promotion or reassignment.
 3. No candidate will permit or encourage a family member or friend to contact Town Board members, members of the community, other police officers or any other persons or groups in an attempt to foster the candidate's promotion or reassignment.
 4. The candidates are permitted to have individuals' forward letters of reference in his/her support to the Chief of Police.

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COMPLAINT OF RETALIATION

Position Statement — Alleged “Abuse of Sick Time”

Chief Sarlo continues with more false allegations and misrepresentations regarding the facts and circumstances regarding the incident I had with Lt. Toia on 8/23/22.

“For example, on August 19, 2022, Complainant called out sick for her assigned shift. After doing so, Complainant was invited by another member of the Department to attend a meeting with a confidential information. Without disclosing that she was taking a sick day, and without requesting permission from her supervisor, Complainant decided to attend the meeting. Complainant was observed on the premises and subsequently reported by another officer, who happens to be female, who understood that Complainant was taking sick leave. This was problematic for two reasons: first, if Complainant was able to report to the meeting, she improperly utilized sick leave resulting in the Department having to change other officers shifts to accommodate her absence and pay overtime to cover her shift; and second, Complainant failed to notify her supervisor where she was and what she was doing while acting under color of law, a direct violation of policy and protocol and for which she received a verbal reprimand. (Exhibit “B”, Sc. 320.5.1; Memo dated September 12, 2022, re: Officer Kess, annexed hereto as Exhibit “I”).”

Chief Sarlo has reconstructed the events of August 19th, 2022, in an effort to portray me as a **problem employee**. Chief Sarlo fails to provide any credible evidence to support his version of events on August 19th, 2022. My account, however, can be substantiated with departmental records, documents, and text messages sent between myself, Detective Scalzo and D/Sgt Hogan. Not only does the evidence provided disprove any claims made by Chief Sarlo, but it is also a clear indication of the level of corruption within the East Hampton Town Police Department and the lack of ethics of its Chief.

“For example, on August 19, 2022, Complainant called out sick for her assigned shift. After doing so, Complainant was invited by another member of the Department to attend a

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meeting with a confidential information. Without disclosing that she was taking a sick day, and without requesting permission from her supervisor, Complainant decided to attend the meeting."

East Hampton Town Police Department records from August 19th, 2022, indicate that my sick leave was **DISCLOSED** and **RECORDED** by multiple supervisors, including Sgt. Martin. On August 19, 2022, my Squad (5) was scheduled for the afternoon tour (1400-2200) with Squad (3). I did call out sick for my afternoon tour following EHTPD Sick Leave Procedure which requires that an officer to notify the dispatch center as soon as possible via telephone utilizing an administrative line phone number stating the reason for their absence. *(See EHTPD Policy & Procedure Manual; 1002 Sick Leave Procedure).

A Public Safety Dispatcher recorded my absence in the EHTPD Sick Logbook at 1248 hrs. and notified the on-duty supervisor, Sgt. Rozzi, of my absence. Lt. Schaefer signed off on the sick leave entry made by Sgt. Rozzi. My sick leave was recorded on the daily EHTPD Roll-Call Sheet, A-Tour dated August 19, 2022 by my supervisor, Sgt. Martin, with my name lined out and the word **SICK** written beside it. *(See EHTPD Roll Call Sheet A-Tour dated August 19, 2022, EHTPD Sick Leave Notification Log).

Town of East Hampton Police Department
 Accredited Law Enforcement Agency

ROLL CALL

Date: 8/19/22 Tour: () 0600-1400 (X) 1400-2200 (X) 2200-0600

Roll Sergeant/DOC: G. Martin ***Forward Copy to Dispatch***

Sector	Officer	PD Unit	Radio	Taser	Depth	Comments
80	G. Martin	890	90			
83	1220, J.	883	92	15	83	
82	2011	882	92	2	82	
94	Patterson	444	86	15	94	
91	2021	891	91	1	91	
95	2122A	886	88	16	96	
85	D. Martin	883	94	3		Squad 5
80	MARTIN					
80	PRICE	988	88	19	88	UBT out
96	Hess	887	78	5		Truck East
81	Forsyth					1900-0500 MTK
82	K. Kess					2000-0400 MTK
	Bystrago	995	98	8	45	
	Hutchinson					
	Kess					SL
	Kennedy					MC
	REARDEN					
	PETERSON					
	4049					

Four Comments: [Handwritten notes]

Supervisor/DOC Signature: [Signature]

EAST HAMPTON TOWN POLICE DEPARTMENT
 ACCREDITED LAW ENFORCEMENT AGENCY
 SICK LEAVE NOTIFICATION LOG

DATE	TIME	OFFICERS NAME/SHIELD	CALLERS NAME	SL/FSL	SHIFT SUPERVISOR/TIME VERIFIED	LT. FILING LEAVE REQUEST
8/17/22	0423	Tolia, Dan	Tolia, Dan	SL	POWERS LT	
8/17/22	1630	Nimmo, Andrew	Nimmo, Andrew	SL		
8/18/22	0431	Tolia, Dan	Same	SL		
8/18/22	1210	HREN, A	Same	SL	Sgt Rozzi	GO OFFSD 8107
8/18/22	1936	Tolia, David	Same	SL		GS LT 905
8/19/22	1248	Kess, A	Same	SL	Sgt Rozzi	GS LT 905 11/10
8/19/22	1800	DINES VAUGHN	Same	SL	Sgt Martin	min
8/20/22	1224	Kess, A	Same	SL	Sgt Rozzi	GS LT 905 11/10
8/21/22	0112	Wachs, Robert	Same	SL		SB DCPD #4
8/21/22	1612	Tierney, Ch	FSC	FSC	Mart	SUBSTITUTION TO X-DAY
8/22/22	0023	POWERS, G. B.	Same	SL		TEC 0023 DCPD 8107
8/23/22	1148	Martin, Fred	Same	FSL	Sgt Rozzi	GS LT 905
8/24/22	1615	Martin, Dan	Same	SL	C. Tolia	

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A supervisor entered my sick leave into the department’s scheduling software program, Indeavor.
 *(See Indeavor 8/19/22/ Personnel, Aft).

Name	Group	Title	Fri 8/19
Nale, Wayne		Sergeant	A PO
Peterson, Grace		Police Officer	D PO
Lambrecht, Timothy		Police Officer	
Devaney, Jesse		Police Officer	
Kess, Andrea		Police Officer	
Topping, Minnie		Police Officer	
Sarlo, Michael	Admin	Chief	VAC
Anderson, Christopher	Admin	Captain	B-1
Powers, Peter	Admin	Lieutenant	VAC
Scharfer, Gregory	Admin	Lieutenant	VAC
Turney, Chelsea	Admin	Lieutenant	
Toia, Daniel	Admin	Lieutenant	D PO
Hughes, Bradley	1		D PO
Rossi, Bradley	1	Sergeant	D PO
Bone, Robert	1	Police Officer	D PO
Rodriguez, Michael	1	Police Officer	D PO

I was not **“invited”** to, nor did I attend, a meeting during my scheduled afternoon tour of duty, **after I had called out sick** as the respondent has claimed. This meeting came about due to my efforts alone. The narcotics information given to me by my informant and my informant’s desire to provide further narcotics information to the East End Drug Task Force is what led to this meeting. I informed D/Sgt. Hogan and subsequently, Detective Scalzo, about the informant’s willingness to participate. This meeting was pre-planned and arranged by me and Detective Scalzo at the express authorization of D/ Sgt. Hogan.

These statements by Chief Sarlo showcase the type of discrimination that female officers face in the EHTPD. Saying that I was “invited” to the narcotics debrief instead of acknowledging that I made a significant contribution to a narcotics case is typical of the pervasive bias against women within the EHTPD. Instead of supporting female officers, Lt. Toia and Chief Sarlo have consistently diminished their contributions to the department.

There is always a comment or excuse made whenever a female officer outperforms a male officer or breaks the stereotype that female officers are not as good at investigations as male officers. Just in the context of Chief Sarlo’s position statement I have not been given credit for any of the police work I have done— I only passed probation due to Lt. Powers’ (a male) covering up my alleged misconduct. I was not given training opportunities as part of the Departments overall responsibility to continuously train their personnel — It was Lt. Toia (a male) who showered me

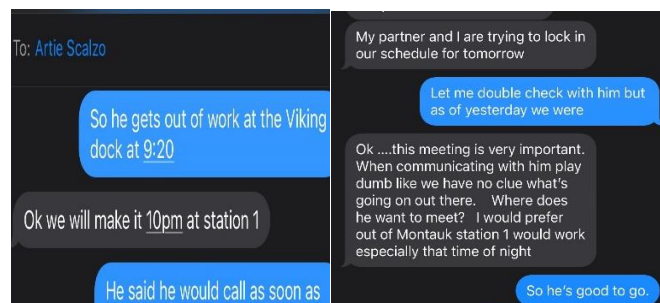
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(7) training opportunities throughout my career. According to Chief Sarlo, I did not obtain valuable narcotics information on my own nor did I arrange a meeting between the informant and members of the East End Drug Task Force. Rather, I was **invited** to attend this meeting by an unnamed male officer.

Prior to August 19th, 2022, Sgt. Martin was made aware of my narcotics information, ordered me to report directly to D/Sgt. Hogan, and authorized me to directly communicate with D/Sgt. Hogan moving forward. This meeting was labeled strictly confidential by D/ Sgt. Hogan. And was scheduled for approximately 2200 on August 19th, 2022, **after my tour**. I arrived after 2200. *(See below; Text Messages Scalzo).



Without providing evidence or details, the respondent falsely claims that I had attended this meeting sometime during the afternoon tour while allegedly on sick leave. However, text messages from Det. Scalzo indicate that this meeting took place **after** 2200 on August 19th, 2022. *(See text messages RE: Scalzo). At no time did I attend a meeting during the hours of 1400-2200 while on sick leave as the respondent falsely claims. I remained at my residence for the duration of my regularly scheduled tour of duty as per EHTPD Sick Leave policy.

I attended this pre-planned, departmentally authorized meeting **after** my tour, on my own time, with no requests made for compensation. The accusation that I was abusing sick time or somehow violating EHTPD Policy **by doing previously authorized police work** and assisting with securing crucial narcotics information for a major investigation, is false and completely unwarranted. Given the nature of what I was doing, the fact that I was not in violation of any EHTPD policy, and the intentions behind my actions, Lt. Toia's initiation of a bogus disciplinary "investigation" was intentional, excessive, and unnecessary, and speaks to the constant disparate and harassing conduct of Lt. Toia toward me based on my gender.

No male officer has ever been investigated or disciplined for their involvement in securing narcotics information while on or off duty. In fact, no male officer has ever been accused of or disciplined for abuse of sick time, even when that male officer was observed to be at a bar and

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intoxicated in the hours before their scheduled tour of duty or seen golfing during their supposed "sick leave." A male officer with the nickname "bangs" has not been accused of abuse of sick time, even though he would consistently call out sick during his midnight tours of duty,

East Hampton Town Police Department Procedures Manual
1002 Sick Leave Procedure

1002.1 NOTIFICATION OF SICKNESS

When a member determines they are unable to appear for their scheduled tour of duty due to sickness or injury the procedure is as follows:

- (a) Members should notify the dispatch center as soon as possible via telephone utilizing an administrative line phone number stating the reason for their absence.
- (b) The Public Safety Dispatcher will notify the shift supervisor, immediately or as soon as practicable of the sick call.
- (c) The PSD will document the following information in the sick logbook located in the communications room:

- 1. Date and time of call
- 2. Officer's name/shield
- 3. Caller's name
- 4. Sick Leave or Family Sick Leave
- 5. Shift supervisor time verified

(d) If the sick officer's squad strength falls below minimum staffing requirements, upon direction from the shift supervisor, call off-duty officers for overtime. If the shift is unsupervised, the PSD should start by calling Lieutenant's followed by the Sergeant's to fill the vacancy. If all supervisor's decline, proceed by calling off duty members in accordance with the Dispatch Short Shift Guide. Upon returning to work, the member shall submit a sick leave request to his/her immediate supervisor without delay.

1002.2 PATROL SERGEANT/SHIFT SUPERVISOR RESPONSIBILITIES

When the shift supervisor receives notice that a member has called in sick or injured, he/she shall:

- (a) Call the member back to verify they did in fact call in sick or injured.
- (b) Assign the member to "sick leave" or "family sick leave", as appropriate, in the online scheduling system.

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(c) Determine if the member's absence will cause a staffing shortage for the assigned tour. If the oncoming squad strength will fall below minimum staffing requirements, overtime is authorized.
(d) Upon the officer's return to work, ensure a sick leave request is submitted without delay. Lieutenants are responsible for filing the sick leave request and signing off on the sick leave logbook in the communications room.

SECTION 5: SICK LEAVE (2021-2024) EHT PBA Collective Bargaining Agreement;

D. An officer on sick leave or injured leave (in accordance with the Workers' Compensation Law or Section 207-c of the General Municipal Law), **shall remain at their residence or place of confinement for the duration of the tour that they were regularly scheduled to work.** Commencing with the sixteenth (16th) tour of duty, the officer shall be moved to the regular day tour (which is currently 6:00 a.m. to 2:00 p.m.) and assigned Monday through Friday for the duration of the illness or injury and **shall remain at their residence or place of confinement during those tours of duty.**

“Complainant was observed on the premises and subsequently reported by another officer, who happens to be female, who understood that Complainant was taking sick leave. This was problematic for two reasons: first, if Complainant was able to report to the meeting, she improperly utilized sick leave resulting in the Department having to change other officers shifts to accommodate her absence and pay overtime to cover her shift; and second, Complainant failed to notify her supervisor where she was and what she was doing while acting under color of law, a direct violation of policy and protocol and for which she received a verbal reprimand.”

According to **EHTPD Policy & Procedure Manual Section 1, Article IV; Rules of Conduct** states that all members of the department are required to notify a Superior Officer that a member of the department is violating a rule of order of the department. **Article II, Section VI; Duties of Sergeants, sub 6.7** states that sergeants are to “Report promptly matters of police importance to his immediate superior.” **Section 3, Article IX; Internal Affairs, sub. 9.1 (B)** states: “Complaints from supervisory personnel on a subordinate’s attitude, tardiness, level of performance or other disciplinary matter will be handled on the existing interoffice memo or counseling form.” Abuse of sick leave is a violation of EHTPD policy and constitutes misconduct and as such, is a disciplinary matter. At no time was I informed that I was facing possible disciplinary action for so-called “abuse of sick leave.” A supervisor would have had to either receive a complaint or initiate an investigation into the matter and document the incident according to EHTPD Internal Affairs Policy. There would be, at the very least, documentation of this in the form of a Supervisors Complaint and a memo to a Lieutenant or the IA Officer detailing the

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incident and charge(s). There would have been an entry made in the Command Discipline Log associated to this investigation. However, none of these documents exist

Department attendance records for 8/19/22 list Sgt. Mata and Sgt. Martin as shift supervisors for the afternoon tour. Records indicate that Lt. Toia worked the day shift 0600-1400 on 8/19/2022 and there were no lieutenants in on the afternoon tour. Neither Sgt. Mata nor Sgt. Martin have indicated that they had received a report regarding violations committed by me from another officer on 8/19/2022.

In fact, the respondents EXHIBIT I, a MEMO written by Sgt. Martin dated 9/12/22, states, ***“On August 23rd, 2022, this sergeant was advised by Lt. Toia of an incident occurring August 19th, 2022, involving Officer Kess,”*** indicating that Sgt. Martin had no knowledge of the supposed violation prior to August 23rd, 2022. Patrol attendance records for August 19th, 2022, afternoon shift shows that there were no females working the A-tour of duty 1400-2200 hours. Additionally, records indicate that two MALE officers turned out of Station 1 for that tour of duty, P.O. David Martin and P.O. Joseph Izzo.

The attendance records for the midnight tour 2200-0600 hours on August 19th, 2022, indicate that P.O. Katie Izzo was on duty at 2200 hours and present at Station 1 at that time. The only female officer at Station 1 on August 19th, 2022, was P.O. Katie Izzo, who could have only observed me during her tour of duty, 2200-0600 hours. At no time was I observed at Station 1 during my assigned afternoon tour for which I took sick leave, as the respondent has stated.

There is a conflict of information regarding Chief Sarlo’s account of the officer who reported me being at Station 1 during my afternoon tour 1400-2200 on 8/19/22. Chief Sarlo says it was a female officer however Lt. Schaefer’s interview notes dated 9/28/22 indicate that Lt. Toia stated it was D/Sgt. Hogan who reported me as abusing sick time. Lt. Toia did tell me it was D/Sgt Hogan who reported me. Lt. Toia also said that due to my so-called “abuse of sick time” I ruined D/Sgt Hogan’s narcotics case. **(See Evidence, Retaliation Complaint, Exhibit Schaefer Notes Toia)*

Told her that isn't true, recently addressed Strong & a few others. Told her it was Sgt Hogan who advised him. Told her again that it's not about

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Chief Sarlo's false and misleading recollection of the events of August 19th, 2022, continue with another blatant lie; *"if Complainant was able to report to the meeting, she improperly utilized sick leave resulting in the Department having to change other officers shifts to accommodate her absence and pay overtime to cover her shift."*

As I have established in the previous paragraphs, my tour of duty for August 19th, 2022, was the A-Tour, 1400-2200 hrs. I took sick leave for my scheduled tour of duty following all department procedures and remained in my residence for the duration of my scheduled tour (1400-2200) in accordance with our 2021-2024 EHT PBA Collective Bargaining Agreement; Section 5: Sick Leave. (See 2021-2024 EHT PBA Collective Bargaining Agreement: Section 5; Sick Leave). The East Hampton Town Police Department did **NOT** *"change officers shifts to accommodate my absence"* **NOR** did they *"pay overtime to cover (my) shift"* as Chief Sarlo has stated. The 2023 Dispatch Overtime Callout Logbook will show that there were no overtime call outs made during the A-tour on 8/19/22.

According to **EHTPD Policy & Procedures Manual, Section 5: Article L; Staffing Requirements, subsection 50.6**, *from Memorial Day weekend through Labor Day weekend, minimum staffing shall be 5 total officers with mandatory supervision requirements of 1 supervisor on each shift starting at 1400 Friday to 0600 Monday*. The EHTPD Roll Call Sheet for 8/19/22, A-Tour indicates that all staffing requirements were met according to EHTPD Policy. The EHTPD Roll Call Sheet for the A-Tour on August 19th, 2022, lists (8) full time officers and (2) sergeants from Squads 1 & 5 as present and working. These officers were on duty as per their regular work schedule and Squad assignment with no officer receiving monetary compensation beyond their salaried wage. Both the EHTPD Roll Call Sheet and Indevor Schedule show that all officers listed as on duty for the A-shift were not on overtime. There were NO officers on overtime from the hours of 1400-2200 due to a staffing shortage for the A-Tour. In addition to the (8) officers working their regularly scheduled shift, (2) part-time officers were assigned to Montauk and (1) full time officer was scheduled as working a supplemental overtime shift (which was both previously assigned and non-mandatory) on August 19th, 2022. *(See EHTPD Roll Call Sheet, A-Tour, 8/19/22).

I was neither charged nor reprimanded for "abuse of sick time" on 8/19/22. There is no Supervisors Complaint Report PDCS-2213 indicating my charges, an investigation, and final disposition of this alleged "violation" in my personnel file or disciplinary records— which is why Chief Sarlo has withheld both files from the EEOC and his position statement. All complaints are to be documented in the Command Discipline Log and assigned a case number. Both Lt. Toia and Sgt. Martin should know that all complaints of violations and misconduct ARE TO BE DOCUMENTED in the appropriate manner as dictated by EHTPD Policy 1010; Personnel

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Complaints, as well as in accordance with local, state, and municipal laws. The East Hampton Town Police Department has failed to investigate the multiple alleged violations and misconduct which they have falsely accused me of. There is no documentation indicating that I was formally accused of a violation (PDCS-2213 with charges indicating specific EHTPD Policy associated to alleged violation). Moreover, I did not receive or sign any disciplinary documentation and there is nothing in my disciplinary folder to substantiate any of what Chief Sarlo has alleged.

Policy 1010

East Hampton Town Police Department
East Hampton Town Police Department Policy Manual

Personnel Complaints

1010.1 PURPOSE AND SCOPE
This policy provides guidelines for the reporting, investigation and disposition of complaints regarding the conduct of members of the East Hampton Town Police Department. This policy shall not apply to any questioning, counseling, instruction, informal verbal admonishment or other routine or unplanned contact of a member in the normal course of duty, by a supervisor or any other member, nor shall this policy apply to a criminal investigation.

1010.2 POLICY
The East Hampton Town Police Department takes seriously all complaints regarding the service provided by the Department and the conduct of its members. The rights of the employee as well as those of the public must be preserved, and any investigation or hearing arising from a complaint must be conducted in an open and fair manner with the truth as its primary objective.
The Department will accept and address all complaints of misconduct in accordance with this policy and applicable federal, state, and local laws; and municipal and county rules, and the requirements of any collective bargaining agreements.
It is also the policy of this department to ensure that the community can report misconduct without concern for reprisal or retaliation.

1010.3 PERSONNEL COMPLAINTS
Personnel complaints include any allegation of misconduct or improper job performance that, if true, would constitute a violation of department policy or federal, state or local law, policy or rule. Personnel complaints may be generated internally or by the public.
Inquiries about conduct or performance that, if true, would not violate department policy or federal, state or local law, policy or rule may be handled informally by a supervisor and shall not be considered a personnel complaint. Such inquiries generally include clarification regarding policy, procedures or the response to specific incidents by the Department.

1010.3.1 COMPLAINT CLASSIFICATIONS
Personnel complaints shall be classified in one of the following categories:
Informal - A matter in which the Shift Supervisor or CIO is satisfied that appropriate action has been taken by a supervisor of rank greater than the accused member.
Formal - A matter in which a supervisor determines that further action is warranted. Such complaints may be investigated by a supervisor of rank greater than the accused member or referred to the Internal Affairs Bureau, depending on the seriousness and complexity of the investigation.
Incomplete - A matter in which the complaining party either refuses to cooperate or becomes unavailable after diligent follow-up investigation. At the discretion of the assigned supervisor or the

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Internal Affairs Bureau, such matters may be further investigated depending on the seriousness of the complaint and the availability of sufficient information.

1010.3.2 SOURCES OF COMPLAINTS
The following applies to the source of complaints:

- (a) Individuals from the public may make complaints in any form, including in writing, by email, in person or by telephone.
- (b) Any department member becoming aware of alleged misconduct shall immediately notify a supervisor.
- (c) Supervisors shall initiate a complaint based upon observed misconduct or receipt from any source alleging misconduct that, if true, could result in disciplinary action.
- (d) Anonymous and third-party complaints should be accepted and investigated to the extent that sufficient information is provided.
- (e) Tort claims and lawsuits may generate a personnel complaint.

1010.4 AVAILABILITY AND ACCEPTANCE OF COMPLAINTS

1010.4.1 COMPLAINT FORMS
Personnel complaint forms will be maintained in a clearly visible location in the public area of the police facility and be accessible through the department and Town website.
Personnel complaint forms in languages other than English may also be provided, as determined necessary or practicable.

1010.4.2 ACCEPTANCE
All complaints will be courteously accepted by any department member and promptly given to the appropriate supervisor. Although written complaints are preferred, a complaint may also be filed orally, either in person or by telephone. Such complaints will be directed to a supervisor. If a supervisor is not immediately available to take an oral complaint, the receiving member shall obtain contact information sufficient for the supervisor to contact the complainant. The supervisor, upon contact with the complainant, shall complete and submit a complaint form as appropriate.
Although not required, complainants should be encouraged to file complaints in person so that proper identification, signatures, photographs or physical evidence may be obtained as necessary and a supporting deposition can be signed.

1010.5 DOCUMENTATION
Supervisors shall ensure that all formal and informal complaints are documented on a complaint form. The supervisor shall ensure that the nature of the complaint is defined as clearly as possible. All complaints and inquiries should also be documented in a log that records and tracks complaints. The log shall include the nature of the complaint and the actions taken to address the complaint. On an annual basis, the Chief of Police or the authorized designee should audit the log.

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Personnel Complaints - 2

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

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1010.6 ADMINISTRATIVE INVESTIGATIONS

The Captain or the Internal Affairs Bureau supervisor shall have direct access to the Chief of Police or the authorized designee.

Allegations of misconduct will be administratively investigated as follows.

1010.6.1 SUPERVISOR RESPONSIBILITIES

In general, the primary responsibility for the investigation of a personnel complaint shall rest with the member's immediate supervisor, unless the supervisor is the complainant, or the supervisor is the ultimate decision-maker regarding disciplinary action or has any personal involvement regarding the alleged misconduct. The Chief of Police or the authorized designee may direct that another supervisor investigate any complaint.

A supervisor who becomes aware of alleged misconduct shall take reasonable steps to prevent aggravation of the situation.

The responsibilities of supervisors included but are not limited to:

- (a) Ensuring that upon receiving or initiating any formal complaint, a complaint form is completed.
 1. The original complaint form will be directed to the Lieutenant of the accused member, via the chain of command, who will take appropriate action and/or determine who will have responsibility for the investigation.
 2. In circumstances where the integrity of the investigation could be jeopardized by reducing the complaint to writing or where the confidentiality of a complainant is at issue, a supervisor shall orally report the matter to the member's Lieutenant, the Captain or the Chief of Police, who will initiate appropriate action.
- (b) Responding to all complainants in a courteous and professional manner.
- (c) Resolving those personnel complaints that can be resolved immediately.
 1. Follow-up contact with the complainant should be made within 24 hours of the Department receiving the complaint.
 2. If the matter is resolved and no further action is required, the supervisor will note the resolution on a complaint form and forward the form to the Lieutenant.
- (d) Ensuring that upon receipt of a complaint involving allegations of a potentially serious nature, the Lieutenant, Shift Supervisor or OIC and the Chief of Police are notified via the chain of command as soon as practicable.
- (e) Promptly contacting the Department of Human Resources and the Lieutenant for direction regarding the supervisor's role in addressing a complaint that relates to sexual, racial, ethnic, or other forms of prohibited harassment or discrimination.
- (f) Forwarding unresolved personnel complaints to the Lieutenant, who will determine whether to contact the complainant or assign the complaint for investigation.
- (g) Notifying the complainant that the matter is being handled administratively.

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2. No information or evidence administratively coerced from an employee may be provided to anyone involved in conducting the criminal investigation or to any prosecutor.

- (h) The interviewer should record all interviews of employees and witnesses. The employee may also record the interview. If the employee has been previously interviewed, a copy of that recorded interview should be provided to the employee prior to any subsequent interview.
- (i) All employees subjected to interviews that could result in discipline have the right to have an uninvolved representative present during the interview. However, to maintain the integrity of each individual's statement, involved employees shall not consult or meet with a representative or attorney collectively or in groups prior to being interviewed.
- (j) All employees shall provide complete and truthful responses to questions posed during interviews. Failure to do so shall subject the member to departmental charges that may result in dismissal.
- (k) No employee may be compelled to submit to a psychological stress evaluator examination, nor shall any refusal to submit to such examination be mentioned in any investigation (Labor Law § 735).

1010.6.3 NOTICE OF CHARGES

Any charges brought against an employee shall be in writing and within the time frame prescribed by law (Town Law § 155).

1010.6.4 ADMINISTRATIVE INVESTIGATION FORMAT

Formal investigations of personnel complaints shall be thorough, complete and essentially follow this format:

Introduction - Include the identity of the members, the identity of the assigned investigators, the initial date and source of the complaint.

Synopsis - Provide a brief summary of the facts giving rise to the investigation.

Summary - List the allegations separately, including applicable policy sections, with a brief summary of the evidence relevant to each allegation. A separate recommended finding should be provided for each allegation.

Evidence - Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of member and witness statements. Other evidence related to each allegation should also be detailed in this section.

Conclusion - A recommendation regarding further action or disposition should be provided.

Exhibits - A separate list of exhibits (e.g., recordings, photos, documents) should be attached to the report.

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(h) Informing the complainant of the investigator's name and the complaint number within three days after assignment.

- (i) Investigating a complaint as follows:
 1. Making reasonable efforts to obtain names, addresses, and telephone numbers of witnesses.
 2. When appropriate, ensuring immediate medical attention is provided and photographs of alleged injuries and accessible uninjured areas are taken.
- (j) Ensuring that the procedural rights of the accused member are followed.
- (k) Ensuring interviews of the complainant are generally conducted during reasonable hours.

1010.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

The Internal Affairs Officer will maintain close liaison with the District Attorney's Office in investigations alleging criminal conduct. Where liability is an issue, the Internal Affairs Officer handling the case shall maintain contact with the Town Attorney.

Whether conducted by a supervisor or a member of the Internal Affairs Bureau, the following applies to employees:

- (a) Interviews of an accused employee shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off-duty, he/she shall be compensated.
- (b) Unless waived by the employee, interviews of an accused employee shall be at the East Hampton Town Police Department or other reasonable and appropriate place.
- (c) No more than two interviewers should ask questions of an accused employee.
- (d) Prior to any interview, an employee should be informed of the nature of the investigation.
- (e) All interviews should be for a reasonable period and the employee's personal needs should be accommodated.
- (f) No employee should be subjected to offensive or threatening language, nor shall any promises, rewards, or other inducements be used to obtain answers.
- (g) Any employee refusing to answer questions directly related to the investigation may be ordered to answer questions administratively and may be subject to discipline for failing to do so.
 1. An employee should be given an order to answer questions in an administrative investigation that might incriminate the employee in a criminal matter only after the employee has been given a Garrity advisement. Administrative investigators should consider the impact that compelling a statement from the employee may have on any related criminal investigation and should take reasonable steps to avoid creating any foreseeable conflicts between the two related investigations. This may include conferring with the person in charge of the criminal investigation (e.g., discussion of processes, timing, implications).

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1010.6.5 DISPOSITIONS

Each personnel complaint shall be classified with one of the following dispositions:

Unfounded - When the investigation discloses that the alleged acts did not occur or did not involve department members. Complaints that are determined to be frivolous will fall within the classification of unfounded.

Exonerated - When the investigation discloses that the alleged act occurred but that the act was justified, lawful and/or proper.

Not sustained - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the member.

Sustained - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

If an investigation discloses misconduct or improper job performance that was not alleged in the original complaint, the investigator shall take appropriate action with regard to any additional allegations.

1010.6.6 COMPLETION OF INVESTIGATIONS

Every investigator or supervisor assigned to investigate a personnel complaint or other alleged misconduct shall proceed with due diligence in an effort to complete the investigation within one year from the date of discovery by an individual authorized to initiate an investigation.

1010.6.7 NOTICE TO COMPLAINANT OF INVESTIGATION STATUS

The member conducting the investigation should provide the complainant with periodic updates on the status of the investigation, as appropriate. No information concerning the progress, guilt, or innocence of the officer will be communicated to the complainant. At the completion of the investigation, the Chief of Police will notify the complainant of the results of the investigation.

1010.7 ADMINISTRATIVE SEARCHES

Assigned lockers, storage spaces and other areas, including desks, offices and vehicles, may be searched as part of an administrative investigation upon a reasonable suspicion of misconduct.

Such areas may also be searched any time by a supervisor for non-investigative purposes, such as obtaining a needed report, radio or other document or equipment.

1010.8 ADMINISTRATIVE LEAVE

When a complaint of misconduct is of a serious nature, or when circumstances indicate that allowing the accused to continue to work would adversely affect the mission of the Department, the Chief of Police or the authorized designee may temporarily assign an accused employee to administrative leave. Any employee placed on administrative leave:

- (a) May be required to relinquish any department badge, identification, assigned weapons and any other department equipment.

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these allegations of misconduct but failing to show any records indicating that these very serious charges of misconduct were lawfully handled and documented in accordance with NYS standards and regulations, EHTPD has failed to comply with NYS Accreditation Critical Standards including Critical Standard 9.1 — Reporting Requirements.

Another significant issue for Chief Sarlo and the Department is that all allegations of misconduct made against me by Chief Sarlo have now compromised any trial, hearing, or legal proceeding I was or have ever been involved in. The Brady doctrine obligates the prosecutor of every case to gather and disclose all information about any individual upon whose testimony they will rely. I have no record of misconduct on file with my Department, the Suffolk County District Attorney's Office, or anywhere else—however my Chief says otherwise. I have never engaged in, been accused of, or charged with misconduct despite what Chief Sarlo has said. I have been involved in a Federal Trial as well as local trials as recent as June of 2023. There were no issues with my credibility as a witness. If Chief Sarlo wishes to maintain that I engaged in misconduct throughout my career, then he would be guilty of withholding Brady material from all legal proceedings which I have been involved in and is therefore guilty of misconduct. If that is not the case, then Chief Sarlo has submitted an intentionally false position statement to the EEOC and is lying.

Section 9 – Reporting Requirements
New York State Law Enforcement Accreditation Program

9.1 Reporting Requirements - CRITICAL STANDARD

ADMINISTRATION
STANDARD 9.1 The agency has a written directive requiring: <ul style="list-style-type: none">A. Reporting Officer Misconduct to:<ul style="list-style-type: none">i. NYS Attorney General Law Enforcement Misconduct Investigative Office information as required per paragraphs (a), (b), and (c) of subdivision 5 of section 78 of the Executive Law; orii. NYS Inspector General as required per subdivisions (1) and (2) of section 86 of the Executive Law; oriii. Metropolitan Transportation Authority Inspector General per paragraph (c) of subdivision 4 of section 1276 of the Public Authorities Law; oriv. Port of New York Authority Inspector General per paragraph 8 of article IV of Chapter 194 of the laws of 1921; orv. Applicable oversight agency, as required by lawB. Submission of requisite forms and/or information pertaining to the Central State Registry of Police Officers and Peace Officers pursuant to §9056.4 subdivisions (a), (b), (c) and (d) and §9056.5

Commentary: The purpose of this standard is to ensure compliance with reporting requirements as set forth in the referenced Reporting Act of 2021. Agencies must maintain compliance in order to receive and maintain certification as mandated in Executive Law §916-11 (2)

Compliance Verification Strategies

Assessors may seek to verify compliance with this standard by using one or more of the strategies listed below. There may be other strategies identified by the agency which could also be acceptable.

1. A copy of the written directive is available for review.
2. Interview(s) with agency personnel to verify their knowledge and understanding of the requirements of this legislation.
3. Examples of reports and forms available for review.

If Chief Sarlo wishes to maintain that what he has alleged about me is true, then he is obligated to disclose this to the Suffolk County District Attorney who in turn, must contact every defense attorney involved in my cases to make them aware of that my agency failed to disclose information regarding my disciplinary history, alleged misconduct, incompetence, and other such

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

July 16, 2024

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credibility issues. This required disclosure will undoubtedly lead to many issues due to Chief Sarlo's failure to properly report the alleged "misconduct" of his officers.

I spoke with SCDA East End Bureau Chief Patrick O'Connell about this issue. At the time of our conversation, I disclosed Chief Sarlo's allegations that I have engaged in misconduct and that the D.A. believed my arrests were suspicious, and that I felt this would cause problems during trial and potentially have lasting negative effects on current and future cases. SCDA Chief O'Connell agreed that this was the type of information that a defense attorney would jump on during a trial or hearing.

April 6, 2024 11:42 AM
Audio Recording — SCDA Patrick O'Connell
(36:52)

(1:18 - 1:43)

Pat O'Connell: So, I miss seeing your name on the East Hampton Town paperwork with new arrests, you know?

Kess: Believe me, it's hard.

Pat O'Connell: So, may I ask, what's going on?

(11:46 - 12:10)

Kess: So, with my civil case that I have, the department had to issue – you know, through the EEOC process, they had to issue a response statement.

Pat O'Connell: Okay.

Kess: And the chief, you know, primarily wrote it or gave the information to the lawyers to draft this.

(12:10 - 12:35)

Kess: And it is – you know, there's no other way to put it. It's just lies, and it's vicious. But what he does is he claims that I was this problematic, aggressive officer, that there were – I had gaudy arrest numbers, and there were concerns of my search and seizure methods.

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(12:37 - 12:59)

Kess: I inaccurately recorded PBT results. I engaged in inappropriate lines of questioning of suspects during arrest. There were apparently several – he writes complaints of harassment from citizens on my aggressive tactics.

(12:59 - 13:28)

Kess: And then this is the kicker, because this is where it ties into the DA. He says there were occasions when the basis for arrests were so suspect that the district attorney's office was unable to move forward with the prosecution. And he says it over and over again, and he keeps saying the DA's office had, you know, recognized this behavior and wouldn't prosecute my cases.

(13:28 - 13:49)

Kess: Now, with that being said, there would most certainly have been some sort of communication with me or a counseling note or a – something. Something written, you know, maybe a document. I would have probably gone to remedial training if not been terminated.

(13:49 - 14:25)

Kess: So, then he goes on to say that there were memorialized incidents of misconduct and incompetence, problematic policing, and that all these other instances that happened were not documented because Pete Powers was going around intimidating the sergeants to not document any of these things. Obviously, I – you know, by my paperwork and stuff, I'm very thorough. So I've never been disciplined for anything.

(14:25 - 14:43)

Kess: I've never received any counseling. I asked for – I got a copy of my personnel file, and it's all of my evaluations. Obviously, I've seen them, were very, very good. You know, they were meeting standards and exceeding expectations with no mention of anything from my sergeants. That – oh, he goes on to say my paperwork was terrible. I needed extra guidance.

(14:58 - 15:23)

Kess: So, I'm just worried. You know, I don't like the – obviously, you know, it's all lies, but how he's – I mean, he's really going after and accusing me of crimes and saying that the DA knew about this. And now the issue is that it's going to come out publicly because there's two – I'll have a lawsuit and Peter Powers filed a lawsuit.

(15:32 - 16:02)

Pat O'Connell: So, when they say that someone was going around above you intimidating everyone not to document your incompetency, was this Powers supposedly?

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Kess: Yeah. He goes on to say that Powers was my direct supervisor at certain times when – it's just so blatantly false. He knew Pete was a lieutenant, and he had promoted Pete seven, eight months prior.

(16:02 - 16:14)

Kess: He says that the only reason I was allowed – like that I passed probation. I shouldn't have even passed probation. That's how horrible of an officer I was.

(16:15 - 16:33)

Kess: That the only reason I was passed on probation was because Lieutenant Powers – at the time, he says he's a sergeant, but he's a lieutenant for eight months. And it was the only reason I passed was because of Powers. Now, he knows this is all false because he promoted Pete seven months prior.

(16:33 - 17:10)

Kess: He knows he has my P-file with all the probationary evaluations from my former sergeants, which were Barry Johnson and Pete Schmitt. And they recommended me – I mean, it's just – it's very odd that he would have taken this – it's very concerning to me that he's taken this line. It's very concerning that the lawyers never validated any of this information, and the Town never validated this information, and that he submitted this information, which is absolutely false.

(17:10 - 17:27)

Kess: Every – my hand to God, every sentence is a lie. And he submits this to the Federal Government. And now it's going to be a mess because it's coming out publicly, and I have active cases.

(17:27 - 18:10)

Kess: And now what does that do to my active cases? What does that do to the integrity of me and the department? I know it's false in any – but it's just – the minute that comes out in the public's eyes, this is the Chief saying it's just about one of his officers and the DA. So, I don't – I can't make heads or tails of it, and I'm just concerned with what that means with my cases.

Pat O'Connell: Well, I – well, potentially that would be good material if I was a defense attorney on one of your cases, right? I'm saying, you know, let's say you make some minor error.

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(18:10 - 18:48)

Pat O'Connell: You know, you testified to A, and your paperwork doesn't – omits A, or you said A plus, you know, instead of just A. Then I can say, oh, you're – I'm going to try and portray – I don't know how successful – that, you know, you're a fibber, a liar, a cheat, and that you do shitty investigations. And look, don't believe me, look what her boss, the chief, said. So that's a potential issue going down the line, you know.

(18:50 - 19:09)

Pat O'Connell: So – but those things can be handled. Do you know if the – they have turned that over to the DA's office, that EEOC document?

Kess: I – no, I can send it to you because it's my case with the EEOC.

(20:09 - 20:28)

Pat O'Connell: You know, I've dealt with you I wouldn't expect anything less. Yeah, I've dealt with you as a supervisor of ADA handling cases. And in the few times that we've met, you've been on point.

(20:29 - 20:54)

Pat O'Connell: As far as I know, it seems everything was there and that you, you know, you put together a good case. The assistant DA felt that you were a good, you know, good paperwork and a good testifier. But, you know, that's only – I only have a minor sample.

(20:54 - 21:06)

Pat O'Connell: You know, because I only got here. So I don't know if what they say is true, that all the other cases you just shit the bed, you know? I don't know that. But I just have a limited thing.

(21:06 - 21:28)

Pat O'Connell: And, you know, I – you know, we just hit it off, you know, because I liked the way that you were willing to come in and prep, you know, and you're willing to take direction.

Kess: Well, let me ask you something just so I understand. And I know you've heard this before.

(21:28 - 22:12)

Kess: If there was any issue with anything (arrests, cases, credibility) or hearing that the DA, you know, from what the Chief is saying, you know, he doesn't make, like, obviously he doesn't make, or name names or – he had to give documents to support this (position statement), and he gave no documents to support any of it. Like, **you think there would have been some sort of**

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communication to him saying, hey, one of your officers, all her cases are suspect, and we are having difficulty prosecuting— you know, *something*.

Pat O’Connell: Listen, as far as I know, okay, from – I started in September of 22— when I was here, I haven't seen anything. I can't speak to anything prior to that.

Pat O’Connell: *You would think that if there was a problem with any Officer’s arrests—* let's say, someone— or just I called up the Chief and said, hey, Chief, you have this officer, she's making a lot of arrests, seems like a nice person, but there's some issues here.

(22:41 - 23:34)

Pat O’Connell: And maybe you guys could look at it and try and address it because we might have problems, the same problems are occurring again and again—or I'm sure one of the AGs or supervisors may have said to that officer, the way you're doing this presents a problem, that case, you know, that it's going to open a good argument for suppression.

(24:16 - 24:31)

Pat O’Connell: I'm just curious of whether or not the Chief had ever sent this to our office.

Kess: I told ADA Matt Lauby, I haven't heard back from him. He just said he was going to get a subpoena.

(24:32 - 24:52)

Kess: And so I made him aware of this, and he was concerned. You know, he said, yes, this could be problematic, just like you said, this could be problematic. And this is information that should have been shared, you know? And, you know, and I did make him aware that it was going the route of being public.

(25:42 - 25:51)

Kess: And, you know, someone like G*** W***** is local. And his lawyer is local. This is not going to go unnoticed.

(25:52 - 26:08)

Kess: You know, and I know it can be easily dismissed and explained. However, again, it's just you're planting some seeds of doubt. To me, it's unnecessary, it's unfortunate, and I'll get through it.

(26:08 - 26:16)

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Kess: I'll be okay. But I really felt like this is something you guys should be aware of. And I understand it's a civil case.

(26:16 - 26:33)

Kess: And, you know, like you said, it's like an inter-family thing. But because it extends into that realm, he's really accusing me of committing crimes, you know, and things that I should have been terminated for. Very serious things.

(26:33 - 26:46)

Kess: You know, he's not saying I was mean to somebody on the side of the road or I was unprofessional. He's saying I was engaging in harassment. And none of this is true.

(26:47 - 27:02)

Kess: I don't have – I have one civilian complaint of me and another officer, unfounded. You know, the guy's a local – I don't even know what to call him.

(27:03 - 27:08)

Kess: He didn't like the way the call turned out. And that's one in my nine years.

(27:09 - 27:19)

Kess: And also we have – the chief has given me awards every year. This was the only year he didn't give me an award. He gave awards – we had a couple of gun scenarios.

(27:20 - 27:34)

Kess: You know, one was like a – he gave awards to the two males that were involved and never – he didn't mention me or my award. And I understand, you know, with the lawsuit. But it's also like I got a stolen gun off the street.

(27:35 - 27:49)

Kess: But you don't want to say that, you know. You know what I mean? Like it's – so it's laughable to me and it's unfortunate.

(27:49 - 27:57)

Kess: And I understand, you know, maybe – it's been said to me, you know, don't be that upset. You know, he's back into a corner. He's going to try to be – he's desperate. But this is like to me it's sickening and it should not have been said.

(27:57 - 28:05)

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Kess: You know, you can figure out another argument, but you're going after my work. You know.

Pat O'Connell: Yeah.

(28:05 - 28:17)

Kess: This is not just a job for me. I'm, you know, this is – I was – you know, I believe in what the police do. And I take my oath very seriously.

(28:17 - 28:36)

Kess: And I honestly every day try to walk into all these scenarios that I'm called to, you know, putting my best foot forward and being – doing my job— but also being a human being.

Pat O'Connell: Yeah.

(28:36 - 28:58)

Kess: And I've been awarded for it by him.

Kess: He's going to say he – you know, he's going to have a tough road to explain why there were commendations every year if this was going on.

(30:40 - 31:07)

Kess: But I've just been berated – you know, I don't sit there and – I'm not disrespectful. But if we're talking about a law and saying that an arrest is bad, then I'd like to know why.

COMPLAINT OF RETALIATION

Failure to Investigate

July 16, 2024

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This incident was yet another example of Lt. Toia's constant abusive harassment and discriminatory treatment of me. When Lt. Toia confronted me regarding the debrief, I informed him that I had participated in the debrief on my personal time and that my participation was necessary due to the informant requesting my presence for the duration of the meeting with our detective. I asked if I was being disciplined or counseled regarding this and if that was the case, I wanted PBA representation as I did not violate any policy and felt that any discipline or counseling would be aggressive and unnecessary, as I was contributing to an active narcotics case.

Lt. Toia became angry, said I was being insubordinate by not admitting to everything he was alleging, and gave me a direct order to write him a memo explaining to him the reasons why I believed I could do whatever I wanted to while at work. He would not comment on whether or not I was facing discipline. However, when an officer is ordered to write a memo in reference to a perceived violation of policy, it is reasonable to expect disciplinary consequences therefore any request for PBA representation is warranted and must be granted.

Due to Lt. Toia has acting in a similar manner toward me in the past, has an extensive history of singling me out, ordering me to write him memos without first discussing the matter with my supervisor, I called our PBA president P.O. Joe Izzo to discuss my options. P.O. Izzo informed me that I did not violate our collective bargaining agreement by my actions and was, in fact, following internal rules and procedures regarding information relating to criminal activity. His suggestion was that I write the memo to Lt. Toia and include this information and if Lt. Toia continued to pursue any disciplinary or counseling actions, he would get the PBA lawyers involved. I wrote a memo to Lt. Toia explaining my actions, mentioning the collective bargaining agreement and departmental R&P's, however I did not admit to any wrongdoing as I was not in violation of any policies. I handed my memo to Lt. Toia at the end of my shift.

On August 23rd, 2022, I reported for duty for my scheduled tour. Prior to the start of shift, I was informed by my direct supervisor, Sgt. Gregory Martin #434, that I was to report to work in civilian clothes for a surveillance detail. I followed this instruction and came to work in civilian clothes, leaving my uniform at home. During shift muster, with Squad 1 and Squad 5 present, I was told by Sgt. Martin that I needed to change into my uniform and that I would be assigned a sector. I was confused as to why I had been taken off of my original assignment and ordered to change into my uniform. Sgt. Martin then informed me that he had spoken to Lt. Toia who "filled him in" regarding the narcotics debrief and my interaction with Lt. Toia the day before. Sgt. Martin stated that Lt. Toia had rejected my memo due to its "tone" and did not include an admission of wrongdoing or acknowledgement that I had violated departmental rules and procedures. I felt humiliated and the target of unnecessary and aggressive discipline by Lt. Toia. I obeyed Sgt. Martin's order and stated that I needed to get my uniform from my home, which is 5 minutes away. I was immediately told "Nope, that's not happening" and ordered to "find someone's old uniform in the locker room and wear that."

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I felt so disrespected, degraded, and absolutely humiliated with this order. I have never, in my career, seen or heard of this kind of degrading punitive action taken against any other officer. Male officers are often given the benefit of the doubt, never disrespected, and certainly never subjected to any kind of degrading retaliatory actions. In response to this I asked Sgt. Martin if I was being disciplined by my sudden reassignment and direct order to wear someone else's uniform and boots. Sgt. Martin stated that the level of discipline is "to be determined." I went into the female locker room and prayed that I had left an extra uniform somewhere. When I couldn't find anything, I went back to Sgt. Martin. Upon hearing that I could not find anything to wear, Sgt. Martin said, "I'll find something" and then grabbed the keys to the storage room and directed me to a pile of musty/ moldy uniforms which were covered in thick dust and directed me to "find something." He then said to find someone else's boots to wear despite having no socks. I followed the order to avoid being labeled as insubordinate and subjected to any additional disciplinary actions by Lt. Toia. I was then told to report to the Sergeant's Office to discuss my memo.

During this discussion, Sgt. Martin informed me that I was to write a memo stating the exact time I left my house and responded to the narcotics debrief, that I was to explain why I did not notify Detective Scalzo about taking sick leave, and why I feel that I can just do whatever I want. I asked if I was being disciplined for a violation and if so, what are my charges. Again I was told that would be determined. I was told that I was to write this memo and if I refused, I would be disciplined for insubordination.

I became extremely upset and reported to Sgt. Martin that there have been several incidents involving Lt. Toia conducting himself in a harassing/ discriminatory manner toward me whereby I am singled out and spoken to, yelled at, publicly chastised, counseled and disciplined over perceived infractions that turn out to be false. This is another instance of that, and I consider all of this to be harassment and that this needed to be addressed. Sgt. Martin began yelling and told me that my issues are irrelevant to this discussion and to just shut my mouth and listen and that any mention of these perceived issues will not be tolerated.

At that point I felt so disrespected, degraded, and humiliated that I began to tear up. I told Sgt. Martin that these issues ARE relevant and to please let me speak. I continued to tell him of an incident which occurred on 9/8/21 where Lt. Toia publicly berated me saying, "EVERYONE KNOWS HOW YOU GET YOUR INFORMATION. IT'S ONLY BECAUSE PEOPLE WANT TO SLEEP WITH YOU. THEY GIVE YOU INFORMATION BECAUSE THEY THINK THEY CAN GET IN YOUR PANTS. YOU SUCK D*** FOR INFO. I KNOW ABOUT ALL OF YOUR RELATIONSHIPS. YOUR INFORMATION IS GARBAGE." I told Sgt. Martin that the behavior of Lt. Toia toward me constitutes discriminatory and sexual harassment. I described it as targeted, abusive, hostile, and aggressive and stated that he constantly singles me out and accuses me of misconduct. Then he silences me by calling me insubordinate, argumentative, and a "bitch" if I do speak out. I said that I have reported his behavior to other supervisors in the past to no avail.

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However, at this point, **I've had enough**, Lt. Toia's behavior is unlawful and completely unacceptable. It must be addressed. I told him that I am now reporting this behavior to him as my direct supervisor, and that it is his obligation to report it up the chain. I made it clear that this hostile, abusive conduct by Lt. Toia is never directed toward male officers. The Department as a whole, treats male officers differently than female officers in that they are never subjected to constant accusations of misconduct, then ambushed by Lt. Toia and immediately threatened with disciplinary action over a minor infraction or an unintentional act. Male officers are spoken to professionally and given the benefit of doubt.

I said that I am hard working, professional, I do my job to the best of my ability every day, I do everything that I am asked to do, and awarded multiple commendations every year. Sgt. Martin said, "none of this has to do with your work ethic, everyone recognizes that you are one of the most competent and hardworking officers in this department." I said that I know that this is not about my work—the harassment I have been subjected to by Lt. Toia is never about my work. Its personal, gender-based, targeted, derogatory, and abusive. His conduct involves constant insults regarding my gender, degrading and sexually offensive comments, and physically aggressive gestures and body language such as putting his finger in my face and screaming "You're a fucking bitch!" or degrading me by saying my information is garbage because "everyone knows that you suck d*ck for info." consider it to be and I am no longer comfortable with Lt. Toia speaking to me directly without having others present. I stated that his conduct is unlawful and violates my protected rights as an employee. The fallout of this harassment by Lt. Toia is that I am labeled as insubordinate and a problem employee, both of which are patently false.

Sgt. Martin said that I was to write the memo regardless of my belief that I did not violate departmental procedure and that I was to hand the memo directly to him at the end of the shift and that he would give it to Lt. Toia. Sgt. Martin advised me that he, not Lt. Toia, would address the outcome of my memo with me and address any subsequent disciplinary action after he and Lt. Toia discussed the incident.

At approximately 9:30 pm I was directed by Sgt. Martin to report to headquarters to turn in my memo. When I arrived at HQ, Sgt. Martin was not there. Lt. Toia was waiting in the hallway next to muster. Several individuals from both the oncoming squad and off-going squads were present. Sgt. Wayne Mata was in the Sergeants Office. I remained in the hallway with the memo in plain view in my hand. Lt. Toia then asked if that was the memo and when I said that it was, he directed me to hand it to him. Lt. Toia then took it into the Sergeants Office and immediately appeared in the hallway, pointed at me, and stated, "You. Get in here."

As I walked into the doorway of the Sergeants Office, with Sgt. Mata present at his desk, I stated very clearly, "Lt. Toia, with all due respect, I do not feel comfortable speaking to you without union representation or at least my sergeant present, or ANYONE ELSE for that matter." Lt. Toia

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responded, “Yeah. That’s not happening” and directed Sgt. Mata to leave the room and shut the door.

As Sgt Mata exited the room, Lt. Toia pointed his finger in my face and screamed, “YOU’RE A FUCKING BITCH. EVERYONE THINKS YOU’RE A BITCH. NO ONE LIKES YOU. THE CHIEF HATES YOU. THE CAPTAIN CAN’T STAND YOU. D/SGT HOGAN THINKS YOUR ANNOYING, HE DOESN’T TRUST YOU. HE LITERALLY CAN’T STAND YOU. LT. TIERNEY WOULD COMPLAIN ABOUT YOU EVERY DAY WHEN YOU WERE ON HER SQUAD. SHE SAID YOU TAKE TOO LONG ON CALLS TO AVOID OTHER CALLS, SHE SAID NO ONE LIKED YOU INCLUDING HER. SHE COULDN’T STAND YOU AT ALL AND STILL CAN’T STAND YOU. YOU’RE ANNOYING. EVERY TIME YOU GO IN THE BACK THE GUYS ARE PISSED AND TALK ABOUT HOW ANNOYING IT IS TO LISTEN TO YOU. THEY DON’T TRUST YOU AT ALL AND DON’T WANT YOU BACK THERE. THE GUYS ON YOUR SQUAD AND OTHER SQUADS THINK YOU ACT LIKE A BITCH. MAYBE IF YOU HAD BEERS WITH THE GUYS YOU WOULD BE MORE LIKEABLE. YOU SEEM LIKE A SMART GIRL, BUT YOU JUST DON’T FUCKING GET IT DO YOU. I READ YOUR MEMO. YOU SOUND LIKE A TOTAL BITCH AND MAKE YOURSELF OUT TO BE THE GREATEST COP EVER. YOU’RE CONSTANTLY TALKING ABOUT ALL OF THE SUPPOSED GREAT THINGS YOU’VE DONE AND HOW EVERYONE SHOULD JUST BE LIKE YOU. YOU DON’T KNOW WHEN TO SHUT YOUR MOUTH AND DO WHAT YOUR TOLD. YOU THINK YOU CAN GET AWAY WITH EVERYTHING. I KNOW EXACTLY WHAT YOU DID. YOU JUST WANTED TO HEAR THE INFORMATION SO YOU COULD RUN OUT TO MONTAUK, FUCK WITH THIS INVESTIGATION, MAKE A DRUG COLLAR FOR A STAT, AND MAKE YOURSELF LOOK LIKE YOU’RE THIS AMAZING COP. HOGAN IS FURIOUS. HE’S SO PISSED AT YOU. SAID WHAT YOU DID RUINED THE ENTIRE INVESTIGATION.”

During this verbal assault I made several comments to Lt. Toia that his conduct was both inappropriate, unprofessional, and abusive and that his gender-based remarks were discriminatory. I asked what any of what he was saying had to do with attending the narcotics debrief I had arranged. I asked if he would say these things to a male officer—if he would call them a bitch and tell them they would be more likable if they had beers with the guys.

Sgt. Martin walked into the office during this exchange and immediately told me to watch my tone when addressing a lieutenant, despite me stating that Lt. had just finished berating me with his finger in my face, calling me a fucking bitch among other things. Sgt. Martin stated that we are not discussing my personal issues with Lt. Toia and shifted the conversation to my memo. After a brief discussion, Lt. Toia stated that he would allow this incident and discussion to be labeled as a reprimand with no further disciplinary action. He then instructed Sgt Martin to write him a memo detailing my misconduct, the reprimand, and that no further disciplinary action was

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necessary. After this incident, I immediately reported what happened to PBA president P.O. J Izzo and several other members of the department, some of which stated that they heard parts of the exchange due to Lt. Toia yelling so loudly. I was completely humiliated.

On 9/4/2022, along with East Hampton Town Police Department P.B.A. president P.O. Joseph Izzo, I informed Sgt. Martin that I wished to file a formal complaint against Lt. Daniel Toia regarding the incident on 8/23/22. Upon Sgt. Martin taking the complaint, I gave explicit details regarding the 8/23/22 incident as well as other incidents of Lt. Toia's ongoing discriminatory harassment, course of conduct, derogatory/ discriminatory comments, sexually harassing comments, and his comments regarding the senior staff's personal feelings toward me. I told Sgt. Martin that this ongoing course of conduct has severely damaged my trust in the East Hampton Town Police Department, Lt. Toia, and the entire senior staff and that the dismissal of my prior complaints have resulted in a hostile and abusive work environment. I stated that this ongoing discriminatory behavior has had detrimental effects on my wellbeing due to being so disrespected, degraded, targeted, and silenced.

I also stated to Sgt. Martin that I believe this ongoing discriminatory harassment has only taken place because I am female officer who consistently outperforms nearly every male in this department. Additionally, this kind of pervasive harassment by Lt Toia has never been directed at the males in this department. Males are spoken to without being subjected to profane derogatory personal attacks, without being singled out and humiliated, without being subjected to punitive and retaliatory actions in the form of memos and command discipline, and certainly without being publicly degraded and made to wear a dirty musty uniform and someone else's old boots while on duty. I have simply come to work, perform my duties both ethically and professionally, which I have sworn, under oath, to do. I have done this, and will continue to do so, despite being constantly harassed, discriminated against, discredited, and slandered by Lt. Toia.

I informed Sgt. Martin of the East Hampton Town's Anti-Harassment & Sexual Harassment Policy and Complaint Procedure and provided a copy. I stated that I wished to utilize this procedure for reporting, investigating, and resolving my formal complaint directed at Lt. Daniel Toia. Sgt. Martin interviewed me with P.O. Izzo present and took several pages of notes on a white legal pad. He then left the office to advise Lt. Gregory Schaefer of my formal complaint and to hand over his notes. Sgt. Martin returned and stated that Lt. Schaefer would be handling the complaint from this point forward. **(See Evidence; Retaliation Complaint, Exhibit-48 Sgt. Martin Notes).*

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9/4/22
8/23/22 PO KESS & S. 1220. INTO SGT'S OFFICE
WAS DISMISSED AT CONCLUSION
ON 8/23/22 INTERVIEW w/ LT. TOIA IN SGT. OFFICE
REGARDING 8/18/22 NARCIS DISPUTE, NO OTHERS
PRESENT (w/o TRACY @ CONCLUSION INTERVIEW)
DURING CONV. ADVISED NOT TO SIGN STATE w/o OTHER BODY
- NOT A TEAM PLAYER (ALL THINK)
- ONLY OUT FOR YOURSELF, JUST TRYING
TO GET INFO & ACT ON IT (NARCIS)
- INFORMATION IS AMBIGUOUS
- ONLY REASON PEOPLE GIVE YOU INFO IS
BECAUSE THEY WANT TO SCREW UP YOU.
- OTHERS CAN'T STAND YOU (TRACY, TRACY C)
FEELS, CONTINUED REPEATED ATTACKS, DEROGATORY
CHARACTERIZING COMMENTS.
(PRIOR ALLEGATION) -> OUTSIDE GET DOWN - (9/8/21)
KESS REQUESTED - EVIDENCE ANALYSIS
EQUAL REGULATION - INFO ANALYSIS (INVESTIGATION)
NA (GOT BY - TRACY) - STAY OUT OF EVERYTHING YOU DON'T GET IT.
RECALLED INFO TO STICK TO STILL HANG UP.
HOLD ON (CASE DET)
(CL - YOU-21)
- FEELS INTENTION & INTENTIONS NOT APPROPRIATE
MISCONDUCT, REQUESTED FORMAL COMPLAINT TO SUPERVISOR UP
TO SUPERVISOR

“Such complaint was first brought to the attention of Sgt. Greg Martin on September 4, 2022. Complainant indicated that she did not like the way Lt. Toia spoke to her and was initially interested in filing a complaint under the Town’s Anti-Harassment policy. (See Lt. Schaefer Memo, dated December 12, 2022, re: PO Kess Misconduct/Harassment Complaint, annexed hereto as Exhibit “M”). In response, Sgt. Martin provided Complainant with the necessary information to file such a complaint. (Exhibit “M”). Subsequently, Complainant indicated that she would prefer to discuss the matter with Lt. Toia and Sgt. Martin instead of filing a formal complaint. Id.”

The above statement is a continuation of the dishonest and deceptive statements Chief Sarlo has made throughout his position statement. I made Sgt. Martin aware of the derogatory, abusive, discriminatory, and sexually degrading remarks and conduct of Lt. Toia on 8/23/22. The complaints that I made to Sgt. Martin on 8/23/22 and on 9/4/22 regarding Lt. Toia were all extremely detailed, explicit, and involved many instances of Lt. Toia’s hostile behavior, discriminatory and sexually offensive conduct, harassment, and unprofessionalism toward me over the course of my career. Chief Sarlo minimizes my complaints by saying “she did not like the way Lt. Toia spoke to her.” He leaves out the details and turns Lt. Toia’s abusive conduct into something which I just personally “didn’t like.”

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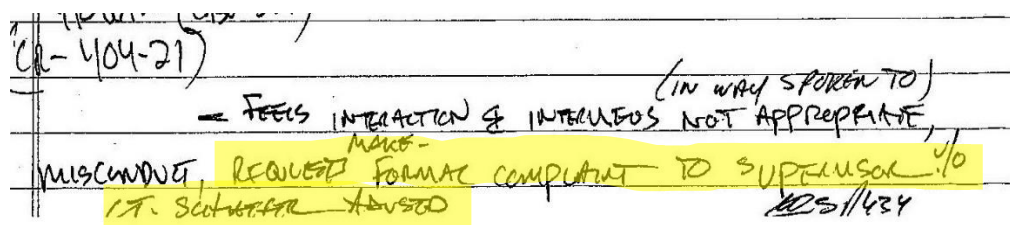
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By virtue of making Sgt. Martin aware of incidents involving discriminatory and sexual harassment by Lt. Toia both Sgt. Martin, Chief Sarlo, EHTPD, and the Town are obligated to investigate. This is regardless of the words I used, the format by which I complained, the person who brought it to his attention, whether I asked for an investigation or not, or if I ever uttered the words “harassment” or otherwise. Simply put, I made a complaint. My employer failed to act.

“According to the EEOC, when an employee complains to management about alleged harassment, the employer is obligated to investigate the allegation regardless of whether it conforms to a particular format or is made in writing. Communication regarding perceived EEO violations may be implicit or explicit, informal, and need not include the words “harassment,” “discrimination,” or any other legal terminology, as long as circumstances show that the individual is conveying opposition or resistance to a perceived potential EEO violation. Individuals may make broad or ambiguous complaints of unfair treatment, in some instances because they may not know the specific requirements of the anti-discrimination laws.” —EEOC Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors

I was not afforded the opportunity to look at Sgt. Martin’s notes for accuracy (violating but both PBA President J Izzo and I recall that I stated that I was making a formal complaint on multiple occasions, I was explicit and detailed with my complaint, it took over an hour to go over the details of my complaint, and that Sgt. Martin took 3 or more pages of notes on a legal pad and walked them down the hall to Lt. Schaefer who was in his office.

Both P.O. J Izzo and I observed Sgt. Martin take at least 3 (or more) pages of notes regarding my complaint against Lt. Toia. However, only (1) page worth of notes were associated with my complaint “investigation.” Sgt. Martin’s notes clearly indicate that I was making a complaint regarding discriminatory and sexual harassment by Lt. Toia and that my complaint was “formal.”



Handwritten notes on a legal pad. The text includes: "CR-1104-21", "FEELS INTERACTION & INTERVIEWS NOT APPROPRIATE (IN WAY SPOKEN TO)", "MISCONDUCT REQUEST ^{more} FORMAL COMPLAINT TO SUPERVISOR 4/0", and "LT. Schaefer advised" with a signature "MS/434". A yellow highlight covers the words "MISCONDUCT REQUEST FORMAL COMPLAINT TO SUPERVISOR".

According to the U.S. Equal Employment Opportunity Commission, an employer’s duty to exercise due care includes instructing all of its supervisors and managers to address or report to appropriate officials complaints of harassment regardless of whether they are officially designated to take complaints and regardless of whether a complaint was framed in a way that conforms to

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the organization's particular complaint procedures. For example, if an employee files an EEOC charge alleging unlawful harassment, the employer should launch an internal investigation even if the employee did not complain to management through its internal complaint process. Furthermore, due care requires management to correct harassment regardless of whether an employee files an internal complaint, if the conduct is clearly unwelcome.

According to The New York State Department of Labor, in consultation with the New York State Division of Human Rights, a complaint is to be taken whether or not it's verbally given, written, or otherwise stated. According to the EEOC, A complaint procedure should not be rigid, since that could defeat the goal of preventing and correcting harassment. When an employee complains to management about alleged harassment, the employer is obligated to investigate the allegation regardless of whether it conforms to a particular format or is made in writing. Therefore, all of the statements by Chief Sarlo that I did not make a formal complaint or that my complaint was to made to so-and-so if I wanted it investigated is unlawful. I made several complaints, and all should have been investigated promptly. The Town's investigative response is just as unlawful. They waited a year from the date of my complaint and 4 months after my EEOC charge to begin an "investigation" — which is still not complete.

I spoke with P.O. J Izzo regarding the initial complaint and the subsequent "meeting" we attended regarding this complaint to clarify a few points.

November 22, 2023 8:12 PM
Audio Recording — P.O. J Izzo
+1(516) 429-****
(32:53)

(0:00 - 4:47)
J Izzo: Hey Andrea.

Kess: Sorry about that. So basically, I have to put together like a response to this, their response statement, and just as far as like the areas where you're mentioned as Jizzo with a G, just in terms of like that meet that this the three I think it was the three meetings when I made the complaint.
Kess: I just want to make sure that there was no lapse of memory on my part. When I walked in with you like at first, at first we talked about it privately, I told you what was going on.

J Izzo: Right.

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Kess: Yeah. And then we walked in right, and Greg Martin is there, and we gave a I spoke I said, hey I'm - you know - here's what's happening. **I want to make a formal complaint.**

J Izzo: **Right.**

Kess: **I said those words, right?**

J Izzo: **Yes.**

Kess: Okay. Because it says I never said that.

J Izzo: I remember it, like at the very end of the interview too, Greg asked you again. So, it was like, "You know I'll talk to Schaefer and we'll see where it's gonna go, but how do you want to proceed?" And you said it again, you said it twice – "I want a formal complaint" and he said **OKAY.** And it appeared to me that he actually wrote that down.

Kess: Right.

Izzo: Yeah.

Kess: **And he took notes during the whole thing.**

Izzo: **Yeah.**

Kess: I mean - I'm guessing - I'm trying to think back to how many pages but it seemed like at least four on a legal pad.

Izzo: **Yeah, it was detailed. I don't know exactly how many pages...**

Kess: I don't, you know, I'm just saying it was - it was detailed - and it was on a legal pad, and I remember him flipping pages so. And I said to him - **I gave him like EXPLICIT details like what was said.**

J Izzo: **Mm-hmm.**

Kess: **The terms used, BITCH — you know—just in that one encounter. And I ALSO talked about the past encounters.**

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J Izzo: Right.

Kess: Right, and I said the thing about the year before with, he was basically accusing me of performing sexual acts for— in exchange for information.

J Izzo: Right.

Kess: Right, and then did I— I did mention also the sexual harassment I think, **or that I viewed that as sexual harassment** and then also “Are you are you fucking Tyler?”

J Izzo: Yeah. I don't really know like the specifics because I didn't take notes myself but yeah.

Kess: Okay. But my point is **I was detailed.**

J. Izzo: Yeah.

Kess: You know because in it, I'm just like — Joe it just doesn't sit well with me that — I don't, I don't know why Sergeant Martin and Lieutenant Schaefer would say that things happened, **knowing you were there.** Or actually forget that you were there, you know, because that's what it seems like. They don't put you in the picture until that powwow we had —whatever they want to call it.

J. Izzo: Right.

Kess: So I just— **I don't get it** — you know, I'm very like, I'm on the fence as to whether— did, does Greg Martin know that that's how he's being portrayed? Did he write that? I mean, I don't know. But, you know, I want to make sure that— it's unfortunate—but I want to make sure that like, hey you know there was another person in the room...

J Izzo: Yeah.

Kess: That you're forgetting was there and who knows. Now, of course you didn't, you know, you didn't take notes on it, but you were there and you remember enough details that you know.

J Izzo: Yeah.

Kess: Did he at any time— did Greg Martin hand me the complaint form.

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J Izzo: No.

Kess: And say here's the procedure. No, right?

J Izzo: No. Nope.

Kess: And you saw me hand it to him?

J Izzo: Right.

(4:48 - 5:33)

Kess: Yeah. And he was like, "I've never seen this before"— he said something like that.

J Izzo: Yeah.

Kess: Well, he never saw it before. But it's you know, I don't even remember his exact words.

J Izzo: Right.

Kess: But I know he was like "this is new to me" — something like that.

J Izzo: Right.

Kess: And then—yeah— and at the end he said, you know, "I'll take this to Schaefer" and "what..."

J Izzo: Yeah.

Kess: "What do you want to see happen?" And I said it again. You know it's just — this is just ridiculous Joe.

J Izzo: Yeah, I know.

Kess: It's like— now it's like—really? Like, you know? And it must be annoying for you, and I really do apologize but...

J Izzo: No, don't apologize.

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(5:34 - 32:48)

Kess: We're like getting to that point where, you know, this is like— this is just straight-up lying and— it's actually—they committed several crimes in doing that.

J Izzo: I'm sure.

Kess: You know? So yeah—so it's not good.

J Izzo: Of course.

Kess: And I'm going, lying like this— **absolutely blatantly lying**— like that is just one of the most awful things. Where are your morals and ethics? What happens to people that they just— they stray so far from being a human being and having you know, a code of ethics — following the code of ethics that we have in our job? I mean, it's just mind-blowing.

Kess: Also, when we went to that sit-down between all of us, I know that I spoke to Greg Martin because I was obviously going through him to go to Schaefer— following the chain of command. **And I had said sure, I'll sit down —I don't mind sitting down and talking about it—but this is in no way, shape, or form taking away the fact that, you know, this is still a formal complaint. This still needs to be addressed and investigated.**

J Izzo: Yes.

Kess: And I mean what were — I know it's a long time ago but during that that meeting—did I ever say, hey it's all squashed and we're good...

J Izzo: Not to my knowledge. No.

Kess: Joe, I don't understand. I don't think— I mean I was very —VERY— straightforward in everything I said, and I — it couldn't even have been misinterpreted.

J Izzo: Right.

Kess: You know what I mean? Like— and you were there.

J Izzo: Right.

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Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

Kess: The audacity, Joe, that they would say, that they would put you in it— they would actually mention your name in that, in the second one, and say that and think— I don't know what they're thinking—like, oh you know, Joe will go along with this, or... You know what I mean? Like, what?

J. Izzo: Yeah.

Kess: Did they, I don't know if I asked you this—**but did they EVER tell you about— or show you this document** and tell you— or have the, I'm sorry— have that firm that wrote it sit down with you and say, “hey I just want to make sure that this is truthful.”

J Izzo: **No. No one's talked to me about at all.**

Kess: That's crazy.

J Izzo: Yeah.

Kess: I've heard that from a number of people. Like, that's insane to me.

J Izzo: I know.

Kess: I don't get it. Joe, I don't get it.

J Izzo: I don't either.

Kess: **Oh. Another thing they say specifically is that during that meeting, Schaefer or Greg Martin— one of them I don't remember who specifically. But basically, that it was said to me—it was it was repeated to me— that here's the form and if you would want to continue with a formal complaint, you—you're to go to Human Resources to file it.**

J Izzo: Hmm.

Kess: **So, they gave me the form again and then instructions on how to how to go about it.**

J Izzo: **Right, I don't remember that happening...**

Kess: **Because they didn't have the form.**

J Izzo: **Yeah. I don't—I definitely don't— remember that happening.**

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

Kess: And the form actually says that I, that I don't. I don't need to do that. Like, what I did was what I needed to do.

J Izzo: Right.

Kess: Oh my God, Joe.

J Izzo: Ugh.

Kess: When it comes to, like, one thing I read —so they provided like this— it's weird. They don't provide our R & Ps. They only provide like sections and it's only the Lexipol sections.

J Izzo: Right

Kess: Which weren't actually— the Lexipol version wasn't available then. But they actually put the Town Employee— they don't even call it— I don't know. There's no title on it. But it seems to be a partial employee handbook.

J Izzo: Mm-hmm.

Kess: But, in it— it specifically says like, well, if you have a collect— you know if you're part of a collective bargaining unit, or —like the PBA— CSEA or PBA, then you are to refer to your own rules and procedures. They trump the ones in here.

J Izzo: Right.

Kess: And that's true right? There's, as far as the PBA— I know you're the PBA guy— that there's no way that we drop back to the town policies.

J Izzo: I didn't think so. Yeah, it's exactly like how you said—we abide by our contract.

On 9/23/2022, approximately 3 weeks after making the formal complaint against Lt. Toia, Lt. Schaefer finally interviewed me regarding the incident, without anyone else present and without recording the interview. I was not given an opportunity to review his notes for accuracy or given a copy of his notes after the interview. The interview was not pre-planned, and I wasn't given any advance notice as to a date and time, limiting my ability to have PBA representation during the interview and violating EHTPD policy and procedure and the CBA.

July 16, 2024

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Volz & Vigliotta, PLLC

The interview took place on my personal time. Prior to the interview, I asked Lt. Schaefer why it had taken this long to speak with me regarding the incident. Lt. Schaefer said that he tried to call my cell phone one time, but that it went straight to voicemail, and that he didn't think to leave a message. He stated that he did not feel that the complaint was "that serious," and he was not going to come in on his off time to interview me.

I reminded him that the complaint procedure outlined by the Town of East Hampton states that the investigator handling the complaint has 15 days to investigate the incident, interview all parties, and document all steps in writing. The investigator must provide a written document of all findings, disposition of the complaint, and what steps were/ will be taken to resolve the complaint. All parties are by rights and also as a requirement to review notes of their interview, review the findings, and sign the document. If the person filing the complaint does not agree with the findings or if a resolution cannot be reached, then the complaint will be forwarded to a hearing officer appointed by the Town, who will then conduct a separate investigation of the incident.

Lt. Schaefer, Sgt. Martin, Captain Anderson, and Chief Sarlo were clearly not familiar with the EHT Anti-Discrimination/Harassment Policy, EEOC protected rights of employees, employer responsibilities, and not surprisingly, what conduct constituted sexual harassment, discrimination, and hostile work environment. They were also not familiar with the Department or Town policies regarding such complaints. I provided Lt. Schaefer and Sgt. Martin with a copy of the policy in the presence of P.O. J Izzo— not the other way around as claimed by Chief Sarlo.

Every employee must receive sexual harassment prevention training annually. During this annual training, **employers must also provide employees a notice** that contains the employer's sexual harassment policy and a copy of the information presented at the sexual harassment prevention training. It is painfully obvious that Chief Sarlo, Captain Anderson, the East Hampton Town Police Department, and the Town of East Hampton have little to no training regarding sexual harassment, discrimination, hostile workplace, workplace violence, and retaliation or legally protected rights of members of the Department —and are therefore ill equipped to handle such complaints. Past training records and rosters indicate that both Chief Sarlo and Captain Anderson have skipped out on this mandatory workplace training, *for years*. The sexual harassment/ hostile workplace training involves watching a generic video. There is no additional training regarding EHTPD policies and procedures, how to take a complaint of this nature, mandatory reporting policies, responsibilities of supervisors, investigation procedures, timelines, and the protected rights of employees.

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
 Chief Michael D. Sarlo, East Hampton Town Police Department
 Volz & Vigliotta, PLLC

Block 1

East Hampton Town Police Department TRAINING ROSTER				
Discrimination/Bias/Harassment in the work place 2018	Personnel	Date	Scores	Instructor
	PO K. Alvera 21520228	1/15/18	R. Latta	Johnson / PoPo
	PO A. Botta 18520216	1/17/12	J. Johnson	Sgt. Johnson / PoPo
	PO C. Botta 20020200	1/16/18	John Johnson	Johnson
	PO J. Butrago 23412342	1/15/18	John Johnson	Sgt. Johnson
	PO R. Batinis 18520216	1/17/20	J. Johnson	Alvera
	PO M. Gomez 24112452	1/16/20	R. Latta	Alvera / Petruska
	PO D. Hesse 22340244	1/11/20	R. Latta	Alvera / Petruska
	PO B. Herthly 22540240	1/11/18	J. Johnson	Sgt. Johnson
	PO R. Fink 22440235	1/17/20	John Johnson	Alvera / Petruska
	PO J. Gosa 24012438	1/14/20	John Johnson	Alvera / Petruska
	PO M. Gomez 24112452	1/16/20	R. Latta	Alvera / Petruska
	PO R. Greenea 23412313	1/16/20	R. Latta	Alvera / Petruska
	PO C. Guadi 17820192	IOD		
	PO B. Herthly 22540240	1/11/20	J. Johnson	Sgt. Johnson
	PO D. Hesse 22340244	1/11/20	R. Latta	Alvera / Petruska
	PO R. Hogan 91820187	1/16/20	John Johnson	Alvera / Petruska
	PO B. Hughes 23712343	1/16/20	John Johnson	Alvera / Petruska
	PO J. Izzo 21820219	1/14/20	John Johnson	Alvera / Petruska
	PO A. Kess 21220224	1/14/20	John Johnson	Alvera / Petruska
	PO T. Lamprecht 21220219	1/14/20	John Johnson	Alvera / Petruska

Name	Date	Scores	Signature	Instructor
Sgt. V. Rannella 43520190	1/16/18		John Johnson	Johnson
PO R. Fink 22440235	1/16/18		John Johnson	Johnson
PO M. Rodriguez 15840230	1/16/18		John Johnson	Johnson
Sgt. D. Roman 42720143	1/16/18		John Johnson	Johnson
Sgt. B. Rossi 43102466	1/17/18		John Johnson	Johnson
Chief M. Sarlo 30120045	1/17/18		John Johnson	Johnson
PO A. Scalzo 20720207	1/17/18		John Johnson	Johnson
LT G. Schaefer 98520055	1/16/18		John Johnson	Johnson / PoPo
Sgt. P. Schmitt 42120236	1-16-18		John Johnson	Johnson / PoPo
PO D. Shea 13820198	1/19/18		John Johnson	Johnson / PoPo
PO F. Sokolowski 22020220				
PO J. Soto 23340238	1/16/18		John Johnson	Johnson
PO J. Stavola 22740241	1/16/18		John Johnson	Johnson
PO J. Swate 22840243	1/17/18		John Johnson	Johnson
PO T. Strong 22140227	1/17/18		John Johnson	Johnson
PO R. Spos 21402138	1/16/18		John Johnson	Johnson
Sgt. C. Tierney 42820212	1/16/18		John Johnson	Johnson
PO T. Tierney 15320158	1/17/18		John Johnson	Johnson / PoPo
Det/Sgt. D. Tola 91020208				
PO M. Tomlin 23112283	1/17/18		John Johnson	Johnson / PoPo
PO L. Werz 18220182	1/17/18		John Johnson	Johnson / PoPo

ENTERED

East Hampton Town Police Department TRAINING ROSTER				
CPR/Blood Borne, First Aid, Haz Mat, Sex Harass, Blue on Blue	Name	Date	Signature	Instructor
	Sgt. K. Alvera 43520225	1/17/20	R. Latta	Alvera
	Det J. Anderson 92202183	1/17/20	J. Johnson	Alvera
	PO R. Batinis 18520216	1/17/20	J. Johnson	Alvera
	PO C. Botta 19020194	1/14/20	John Johnson	Alvera / Petruska
	PO J. Butrago 23412342	1/15/20	John Johnson	Alvera
	LL J. Clafin 90320145	1/13/20	John Johnson	Alvera / Petruska
	Det M. Coleman 92320201	1/17/20	John Johnson	Alvera / Petruska
	PO R. Fink 22440235	1/17/20	John Johnson	Alvera / Petruska
	PO J. Gosa 24012438	1/14/20	John Johnson	Alvera / Petruska
	PO M. Gomez 24112452	1/16/20	R. Latta	Alvera / Petruska
	PO R. Greenea 23412313	1/16/20	R. Latta	Alvera / Petruska
	PO C. Guadi 17820192	IOD		
	PO B. Herthly 22540240	1/11/20	J. Johnson	Alvera / Petruska
	PO D. Hesse 22340244	1/11/20	R. Latta	Alvera / Petruska
	Det R. Hogan 91820187	1/16/20	John Johnson	Alvera / Petruska
	PO B. Hughes 23712343	1/16/20	John Johnson	Alvera / Petruska
	PO J. Izzo 21820219	1/14/20	John Johnson	Alvera / Petruska
	PO A. Kess 21220224	1/14/20	John Johnson	Alvera / Petruska
	PO T. Lamprecht 21220219	1/14/20	John Johnson	Alvera / Petruska

PO T. Lacuta 22940229				
PO N. Loyd 21920219	1-17-20		Alvera	
PO R. Lucas 23012354	1-15-20		Alvera	
PO P. Marino 23012354	1-17-20		Alvera	
PO D. Martin 18320188				
Sgt. G. Martin 43420199	1/17/20		Alvera	
Sgt. W. Masi 45020179	1/14/20		Alvera	
PO L. Monamara 22340239	1/15/20		Alvera	
PO T. Metzler 18720185				
PO M. Miller 301				
PO J. Montel 15420186	1-17-20		Alvera	
PO L. Morales 23812344	1/14/20		Alvera / Petruska	
PO S. Mortenson 19120182	1/15/20		Alvera / Petruska	
PO A. Nanno 22840242	1/15/20		Alvera	
PO K. Nanni 15320158	1/14/20		Alvera / Petruska	
Det D. Orlando 92220203				
PO T. Osborn 21520215				
PO J. Patterson 24012443	1/16/20		Alvera / Petruska	
PO G. Peterson 20020202	1/14/20		Alvera	
PO L. Pike 23112312	1/15/20		Alvera / Petruska	
LT P. Powers 80420180	1/17/20		Alvera / Petruska	
Sgt. V. Rannella 43520190	1/15/20		Alvera / Petruska	
PO R. Fink 22440235	1/16/20		Alvera / Petruska	
PO M. Rodriguez 15840230	1/16/20		Alvera / Petruska	
Sgt. D. Roman 42720143	1/14/20		Alvera / Petruska	
PO P. Royall 11940245	1/15/20		Alvera / Petruska	
Sgt. B. Rossi 43102466	1/15/20		Alvera / Petruska	
Chief M. Sarlo 30120045				
PO A. Scalzo 20720207				
LT G. Schaefer 98520055	1/16/20		Alvera / Petruska	
Sgt. P. Schmitt 42120236	1/16/20		Alvera / Petruska	

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
 Chief Michael D. Sarlo, East Hampton Town Police Department
 Volz & Vigliotta, PLLC

East Hampton Town Police Department TRAINING ROSTER				
Name	Date	Signature	Instructor	Pass/Fail
Sgt. K. Alversa 45520225	2/5/2021	[Signature]	[Signature]	
Det. C. Anderson 80220000				
Det. J. Anderson 92220193	2/9/21	[Signature]	Alversa	
PO R. Basile 19520218	2/17/21	[Signature]	Alversa	
PO A. Bosco 30020200				
PO C. Botta 19820194	3/9/21	[Signature]	DOUG VISH	
PPO J. Bramwell 54320000	2-9-21	[Signature]	Alversa	
PO J. Buttigieg 23812342	2/17/21	[Signature]	Alversa	
Lt. J. Caffin 90320145	2/5/21	[Signature]	Alversa	
Det. M. Coleman 90320201				
PO R. Fink 22440235	2/9/21	[Signature]	Alversa	
PO J. Gass 24012435	2/9/21	[Signature]	Alversa	
PO T. Gilbride 243	2/17/21	[Signature]	Alversa	
PO M. Gomez 24112452	2/17/21	[Signature]	Alversa	
PO R. Greene 23412313	2/9/21	[Signature]	Alversa	
PO C. Gualt 17820192				
PO D. Hubo 22040244	2/10/21	[Signature]	Alversa	
PO B. Hurley 22540240	2/10/21	[Signature]	Alversa	
Det. R. Hagan 91820167				
Det. E. Hopson 91720144				
PO B. Hughes 23712343	2/13/21	[Signature]	Alversa	
PO J. Izzo 21020224	02/09/21	[Signature]	Alversa	

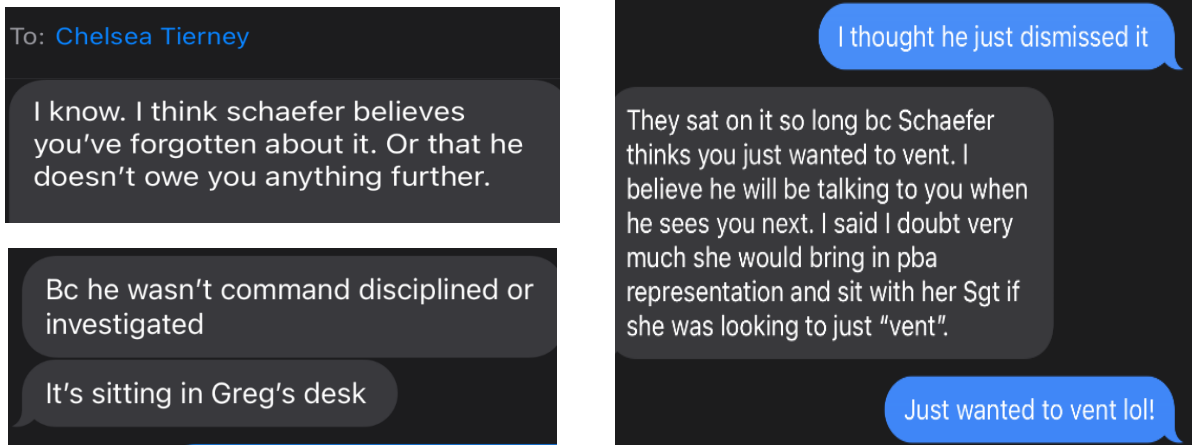
PO K. Izzo 21020224	2/10/21	[Signature]	DOUG VISH	
PO A. Kess 23272291	2/10/21	[Signature]	Sgt. Alversa	
PO J. Longenecker 21220212				
PO T. Lunda 22340229				
PO N. Lloyd 21920199	2/9/21	[Signature]	Sgt. Alversa	
PO R. Lucas 23072294	2/17/21	[Signature]	Sgt. Alversa	
PO R. Marino 23572401	3/6/21	[Signature]	DOUG VISH	
PO E. Martin 18300168	2/9/21	[Signature]	Sgt. Alversa	
Sgt. O. Martin 45402199	2/9/21	[Signature]	DOUG VISH	
Sgt. W. Mata 45220179	2/15/21	[Signature]	Sgt. Alversa	
PO L. Muzumara 22340229	2/17/21	[Signature]	Alversa	
PO M. Nasser 144	02/09/21	[Signature]	DOUG VISH	
PO T. Mezler 18102160				
PO J. Moniel 19420180	2-9-21	[Signature]	DOUG VISH	
PO L. Morales 23812344	2/15/21	[Signature]	Sgt. Alversa	
PO S. Morsman 19120182	02/17/21	[Signature]	Alversa	
PO A. Nemeo 22840230	02/17/21	[Signature]	Alversa	
Det. D. Orlando 80220200	2/09/21	[Signature]	Sgt. Alversa	
PO J. Patterson 24072450	2/9/21	[Signature]	DOUG VISH	
PO S. Peterson 20220202	02/05/21	[Signature]	Sgt. Alversa	
PO L. Pina 23572401	2/19/21	[Signature]	Sgt. Alversa	
Lt. P. Powers 90402180	2/10/21	[Signature]	Sgt. Alversa	
Sgt. W. Rantavilla 43320180	2/10/21	[Signature]	Sgt. Alversa	
PO R. Rau 19920185	2/15/21	[Signature]	Sgt. Alversa	
PO M. Rodriguez 19640230	2/10/21	[Signature]	Sgt. Alversa	
Sgt. O. Roman 44220140	2-9-21	[Signature]	Sgt. Alversa	
PO P. Royce 11682046	2/9/21	[Signature]	VISH/DOUG	
Sgt. B. Roze 43101196	2/10/21	[Signature]	Alversa	
PO M. Sarno 60100046				
DET A. Scorsone 80620229				

I did spoke to HR Director Kathleen Rood to try to clarify the discrepancies between all of the existing policies regarding personnel complaint procedures. I specifically asked her to clarify what the difference was between a formal complaint and an informal complaint. which policy procedure he EHTPD Anti-Harassment/ Discrimination policy, EHT Anti-Harassment/ Discrimination Policy, Chief Sarlo’s position statement, the legally protected rights of an employee, and the obligations of an employer regarding complaints. I did not get any clarification whatsoever. Kathleen Rood told me that she would need to look at the policies “to make sure she gets the verbiage right” and that she would get back to me.

It is not surprising that the investigation into my complaint against Lt. Toia was done so poorly and without due care. During my interview with Lt. Schaefer, I outlined my concerns and stated that I believed that both he and the department were not taking this matter seriously, diminishing my complaint, and trivializing my concerns. Lt. Schaefer responded, “What is it you’re looking to have done here. Where do you want this to go. What is your end game?” to insinuate that my complaint was motivated by a factor other than me asserting my legally protected rights and opposing unlawful discriminatory conduct. I stated that I wanted this to be properly investigated and thoroughly documented— and that Lt. Toia is disciplined in accordance with EHTPD policies and procedures. The truth is that Lt. Schaefer did not investigate my complaint whatsoever.

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC



“According to the EEOC, harassment includes not only unwelcome sexual advances and harassment of a “sexual nature” but also “offensive remarks about a person’s sex.” By way of example, the Commission announces that making “offensive comments about women in general” would constitute illegal harassment.”

Lt. Schaefer then stated, “Well it’s your word against his at this point. Dan said he didn’t say that. Maybe you misheard him?” Lt. Schaefer also said, “You know as cops, we have to be able to handle being called names, you have to toughen up —don’t be so sensitive”, “Maybe you took ‘you’re a bitch’ out of context?”, “Are you only doing this to Dan because you’re upset about being reprimanded?”, “Maybe Dan was just trying to talk to you, you know, like cop-to-cop, off the record.”

“The EEOC has ruled that where employer interviewed only alleged harasser and victim, not other employees who could have told of harassment, and where investigation ended only with a warning for the harasser to cease alleged conduct that included actions characterized as verbal abuse, discrimination, sexual harassment, intimidation, and misconduct, the employer is liable for harassment.” —EEOC Vicarious Liability for Unlawful Harassment by Supervisors

Although Lt. Shaefer’s notes indicate that he had interviewed Lt. Toia *after* interviewing me, my notes reflect that Lt. Shaefer stated he had spoken to “Dan” already who had flat out denied my account of the incident. I also reviewed my personnel folder prior to receiving a copy at which time I observed Lt. Schaefer’s notes indicating that he interviewed Lt. Toia prior to interviewing me.

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

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Lt. Schaefer stated it was my word against his at this point. I asked why he would interview the harasser, Lt. Toia, before interviewing the victim, me? He did not give me an opportunity to speak about the facts and circumstances surrounding my formal complaint to Sgt. Martin. How would he even know what to interview Lt. Toia about? I stated that it is standard procedure to interview the complainant and gather the information prior to interviewing the person whom the complaint is about?" I asked how he could have already concluded that this is just "my word" against Lt. Toia's when he had not yet interviewed me. I asked how he could have formed that conclusion when he never interviewed the named witnesses who were present at the time of the incident? I asked if he had any intention of interviewing any witnesses named in my complaint— Lt. Schaefer said, no, and that he was not aware of any witnesses. Again, this is a complete fabrication. I spoke of witnesses— one being Wayne Mata (who Lt. Schaefer does notate) the others being any member of patrol who was in the hallway or muster during the incident.

In Captain Anderson's memo to the Chief regarding the so-called "investigation" into my complaint, Captain Anderson states that "several officers with knowledge/involvement in the incident" were interviewed. However, Lt. Schaefer's notes indicate that only me, Lt. Toia, Sgt. Martin, and Lt. Tierney were interviewed. I named several witnesses including PBA President J Izzo, Sgt Mata, and P.O. Fierro none of which were interviewed. Lt. Tierney was not involved in the incident.

Memo

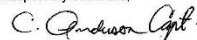
To: Chief Sarlo
From: Captain Anderson
Date: January 02, 2023
Re: PO KESS #232

I am in receipt of Lt. Schaefer's internal memo regarding PO Kess #232 inquiring about possibly filing a complaint with Human Resources after an interaction between herself and Lt. Toia regarding improper/Abuse of sick leave.

After interviewing several officers with knowledge/involvement of the interaction, including KESS and TOIA, Lt. Schaefer reports that the matter has been disposed of after KESS requested a meeting with TOIA that was also attended by SCHAEFER and PBA President Joseph Izzo at her request. Said meeting concluded in KESS conveying to SCHAEFER that she was satisfied with the outcome and did not wish to take any further action with Human Resources regarding the matter.

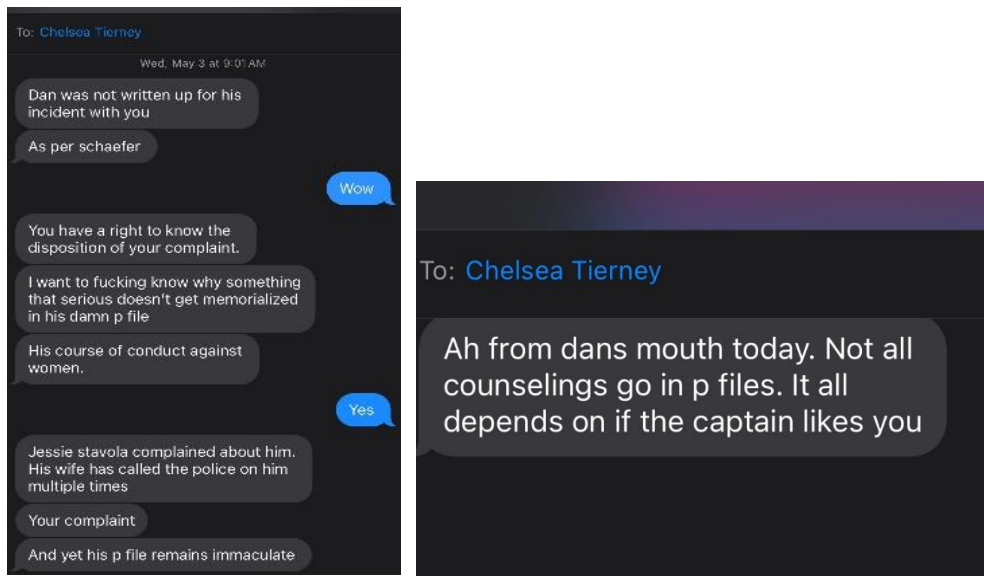
Attached are SCHAEFER'S memo and interview notes for your review.

Respectfully Submitted,


Christopher L. Anderson Captain

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
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I expressed my concern over the fact that he is a lieutenant who is investigating another lieutenant. I said that there appears to be a blatant conflict of interest due to the lateral investigation as well as the fact that he is close personal friends with Lt. Toia.

I asked why Lt. Schaefer did not follow the town's procedure regarding complaints of harassment and discrimination? Lt. Schaefer responded that he "did not believe the complaint serious and thought I just wanted to vent." He continued, "You know that as cops we have to be able to handle being called names. You have to toughen up, don't be so sensitive." He then stated that he was never informed by Sgt. Martin that this was a "formal complaint" and did not believe that it was serious enough to be handled formally. He stated, "You need to take a look at yourself and your behavior and realize that this could be the reason that Lt. Toia called you a bitch."

I told Lt. Schaefer that this is a very serious matter and that I did make a formal complaint of Lt. Toia's behavior on 8/23/22 as well as multiple complaints of his harassment toward me and personal attacks, over the years. I also said that any member of the department who discloses to any other member of the department, whether formally or informally or in writing or verbally, that they believe that they are the victim of discrimination, harassment, or sexual harassment, must be taken seriously. These serious complaints must be immediately and thoroughly investigated by Internal Affairs personnel and immediately reported to the Chief of Police and the Town Supervisor. Any findings, including the allegations, detailed notes of the complaint, details of the investigation, all persons interviewed, any notes taken, as well as the disposition of the investigation, any disciplinary actions taken, or reconciliation of the complaint, must be presented to the victim, in writing, and all parties must sign the document.

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

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Volz & Vigliotta, PLLC

Lt. Schaefer's notes from his interview with Lt. Tierney make another notation that I did make a formal complaint.

UNCONFIRMED
- She advised that she made a formal complaint with Sgt Martin reference to LT Toia's unprofessional conduct who then brought it to LT Schaefer's attention.

I told Lt. Schaefer that I am extremely concerned that my complaint had been dismissed as "not that serious" and "her word against his" by Lt. Schaefer before being investigated. I said that this is not the first time Lt. Toia has behaved in this completely disrespectful and unprofessional manner. There have been multiple similar incidents throughout the years. I asked why I am constantly held to a different standard when male officers are never spoken to in this manner or disciplined for such things as speaking to a lieutenant without going through the chain of command. This occurs with patrol personnel and lieutenants all the time. I have never seen anyone, especially male officers, get berated or told "shut your mouth", "know your place", or called a "fucking bitch" for speaking directly to a lieutenant.

I stated that, throughout my career, I have seen officers speak to him in the hallway and call him "Schaefer," not Lt. Schaefer. I said this occurs even when the discussion is about things such as questions or clarifications relating to work. These I also said that both Lt. Claflin and Lt. Schaefer have sent out emails saying, "respond to me directly." When I approach a lieutenant, it is either because there is no supervisor on duty and a work-related situation comes up which requires clarification, or it's regarding posted overtime which explicitly states, "see lieutenant." There have been times that I have approached Lt. Toia directly ONLY because he had directed me to do so regarding certain cases or intelligence which he wished to discuss directly with me. I have never once just walked into a lieutenant's office unannounced and without being asked to do so. I have never walked into any senior staff members office just to B.S., argue, berate, or conduct myself in an unprofessional manner. I also expressed that I feel that if this is something which constitutes command discipline, it should be strictly adhered to by all members of the department and if violated, punished in the same manner as it has been for me.

"Of course, this was not the first time Complainant has demonstrated a lack of respect for the chain of command and an inability to work well with her fellow officers. Specifically, in response to an email from Lieutenant Claflin announcing potential overtime opportunities for officers, Complainant responded directly to the Lieutenant, circumventing her direct supervisor,

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

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Volz & Vigliotta, PLLC

alleging her name was improperly removed from the overtime sign-up sheet and disparaging her fellow officers' work ethic. (See Kess email, dated April, 28, 2020, annexed hereto as Exhibit "L").

Chief Sarlo falsely portrays me as someone who lacks respect for the chain of command and references (1) email written by Lt. Claflin to argue that point. However, he does not include his private response to me during that exchange with Lt. Claflin which was mentoring and encouraging—it is my understanding that Chief Sarlo had recognized some of the issues that were occurring on my squad at the time and had expressed that he had similar issues when he was a P.O. due to his brother being a higher ranking officer. Additionally, Chief Sarlo sent to senior staff members acknowledging the behavior of other members of the Department which I had pointed out, calling it childish and unprofessional.



Memo

To: Patrol
From: Lt. John Claflin
Date: 4/17/20
Re: OT Available Social Distancing

Posted At Headquarters for sign up.

Social Distancing

10:00-18:00
***** 2 SPOTS AVAILABLE Each Date *****

April 16th

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April 24th

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(No subject)

Michael D. Sarlo <msarlo@ehtpd.org>
Wed 4/29/2020 7:40 AM
To: Andrea M. Kess <ehmpd232@ehtpd.org>
Cc: Lt. John Claflin <ehmpdclaf@ehtpd.org>

1 attachment (64 KB)
OT Sheet.pdf

Sergeants,

I expect more professionalism out of our uniformed officers than the petty childish nonsense going on with these OT sign up sheets.

Sign up in the spaces provided. Let the Lieutenant make the assignments.

Crossing out other officers names and writing in comments is about 6th grade level stuff.

Overtime is assigned mostly based on seniority, with equitable distribution and scheduling also considered. OT for short shifts is strictly based on seniority.

We are opening up plenty of overtime, and playing games with the sign up sheets is ridiculous and unprofessional behavior. I expect each of you as a first line patrol supervisor to address this with your personnel, and police the sign up lists in HQ and the precincts.

A lot of officers signing up for Social Distancing OT should also consider signing up for STOP DWI on weekend nights in the summer as well.

It's difficult enough to manage distribution of the overtime without scratch outs all over the sheet.

Also, if an officer signs up but then no longer wants to overtime, they should notify the sergeant and not cross their own name out.

I don't expect to see this again.

Stay safe,
Mike

Michael D. Sarlo
Chief of Police
East Hampton Town Police Department
PO Box 909
131 Wainscott NW Road,
Wainscott, NY 11975

631-537-6850 office
631-537-6833 fax

Kathleen Rood, Human Resources, Town of East Hampton
Cc: Chief Michael D. Sarlo, East Hampton Town Police Department

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
COMPLAINT OF RETALIATION

Re: Statement of Position, EEOC Charge No. 520-2023-04757
Chief Michael D. Sarlo, East Hampton Town Police Department
Volz & Vigliotta, PLLC

From: Michael D. Sarlo <msarlo@ehtpd.org>
Sent: Tuesday, April 28, 2020 11:10:26 AM
To: Andrea M. Kess <akess@ehtpd.org>
Subject: Re: Weekend May 2 & 3 OT

Andrea,

Economy of words. Accepting constructive criticism. Accepting a superior officer's directions.

Recognizing departmental norms, why chain of command is important, the difference between informal communication and formal, recognizing why the lieutenant should not be handling the issue of your name being scratched off, developing a sense of peer leadership and handling some of your own concerns with quiet confidence in your abilities; and developing a sense of not needing to explain every tiny detail and minutia are very important aspects of successfully fitting into a paramilitary organization.

You are on the sergeant's list and seek to advance in the agency. You need to look at how you would handle being in a similar position as a supervisor, and why it's important for subordinates to develop the characteristics and sense of appropriate response to supervision.

Try to view this as if it were a sports team, and every single time the coach corrected a mistake, the entire practice or game stopped to allow for the player to explain in great detail every single thing they were thinking and why they made the mistake, or why the player doesn't think it is actually a mistake; the team would never move forward and get any better. How would the other players and coach on that team eventually view the player, and how would that impact the player's relationship with the coach? Even if the player is one of the best players on the team.

Please try to take this email as a mentoring, and positive support in your development as an officer. You are an extremely hard worker, with a lot of ability.

Regards,
Mike

I would expect a response to this to include no more than one sentence.

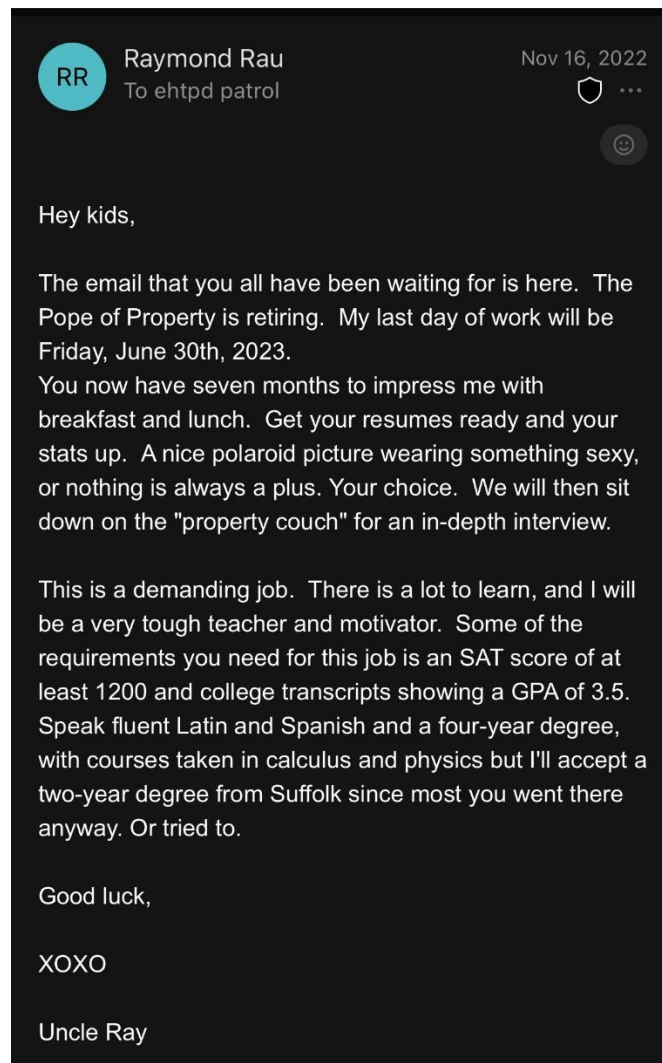
Michael D. Sarlo
Chief of Police
East Hampton Town Police Department

July 16, 2024

P.O. Andrea M. Kess, #232, East Hampton Town Police Department
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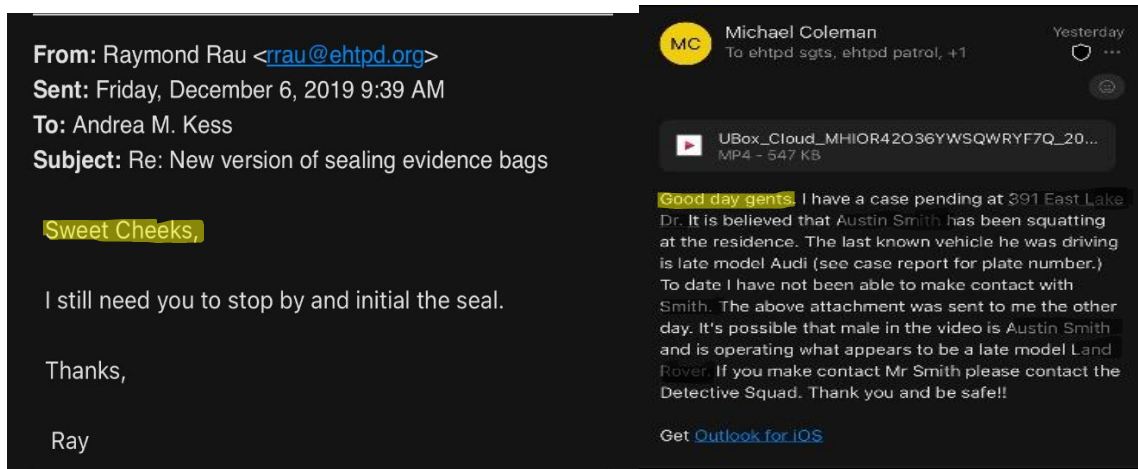
Chief Sarlo uses my email to Lt. Claflin regarding my name being removed from an overtime sign-up sheet as so-called evidence of my alleged misconduct, incompetence, insubordination, and inability to get along with my fellow officers. The use of this email to portray me in a negative manner is indicative of the double standard that exists between female officers and male officers within the Department. Chief Sarlo has stated that this particular email as well as the memos I have written have been “highly inappropriate” and show my lack of respect for the chain of command —while at the same time, allowing sexually harassing and discriminatory emails to be sent by male officers using Department email. Chief Sarlo has never commented on the “appropriateness” of these emails, or the lack of respect shown by the males who sent them.



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While being interviewed by Lt. Schaefer, I spoke about my concern that due to Lt. Toia's defamation of my character and continuously telling me that the entire senior staff hates me, can't stand me, etc., I can never trust that I will receive a fair and impartial promotional interview. The people that he consistently names are the very people who make up the interview panel. Lt. Schaefer responded, "Oh come on, that's not a real concern. You're fine. You're totally overreacting. Look, Dan is Dan. He can be a hothead. I'm sure he didn't say it like that."

On 10/4/22, I received a departmental email from Lt. Schaefer stating, "Following our discussion reference to your interaction with Lt. Toia during a verbal reprimand and your desire to file a complaint under the Town's Anti-Harassment Policy, the next step for you, if you wish to pursue a formal complaint would be to contact Kathleen Rood at HR. Her number is 631-324-4138. I can provide a copy of the complaint form for HR if you need it. Feel free to contact me with any further questions." I then discussed Lt. Schaefer's email to me and the Town's complaint procedure with Ed Michels, East Hampton Town Safety Officer who informed me that Lt. Schaefer did provide incorrect information regarding East Hampton Town's Anti-Harassment Procedure and that any employee has the right to file a formal or informal complaint, verbal or in writing, regarding incidents of harassment, to any department head, regardless of which department the employee is assigned to. Ed Michels also advised that the complaint, regardless of it being formal or informal, written or verbal, and regardless of who the complaint was made to, must be handled in the manner outlined by East Hampton Town, which is in accordance with State and Federal Law regarding employee rights.

Additionally, Ed Michels stated that all senior staff members are aware of this policy or should be, and it is not my responsibility to provide a copy of the procedure to any staff member

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tasked with investigating an employee complaint. Additional concerns were made regarding the way my complaint was being handled, specifically, the fact that a Lieutenant was investigating another Lieutenant, which is in violation of EHTPD R&Ps, the East Hampton Town complaint procedure and EHTPD policy on harassment and the filing of complaints. Lateral investigations are prohibited.

On 10/13/22, after not receiving any updates regarding my complaint and fearing that Lt. Schaefer was mishandling the investigation, I reached out to Sgt. Martin to inquire. Sgt. Martin then spoke to Lt. Schaefer who, on 10/14/23 met with me at EHTPD Station 1, a satellite precinct, to discuss my inquiry. During this meeting I informed Lt. Schaefer that I wish for this complaint to be investigated and documented by our Department, without the involvement of HR. Chief Sarlo's assertion that because I wished for the formal complaint to be handled by our Department, that it meant I didn't wish to pursue my complaint at all, is nonsense. It's also completely unlawful, according to the EEOC.

Furthermore, any assertion that my agreeing to speak with Lt. Toia, with Lt. Schaefer, Sgt. Martin, and P.O. Joe Izzo present, meant that I was dropping my complaint against Lt. Toia is completely fabricated. P.O. J Izzo has corroborated this in the previously mentioned phone conversation I had with him. Prior to this meeting, I had reached out to Sgt. Martin to reiterate that on 8/23/22 I made a formal complaint, following my chain of command and departmental procedures, with my direct supervisor against Lt. Toia, which I expect to be handled as outlined in the town's procedure regarding complaints. I stated that my desire to keep the matter internal, without the involvement of East Hampton Town Human Resources Department, is in no way, shape, or form, saying that I no longer wish to make a formal complaint against Lt. Toia, or that I am voluntarily withdrawing my complaint, regardless of my request to meet with Lt. Toia to discuss the matter. I also reiterated that the department is obligated to investigate Lt. Toia's conduct due to my complaint involving discrimination, harassment, sexually harassing comments, and hostile workplace. I was told that this would be relayed to Lt. Schaefer to avoid any confusion.

On 10/21/22 I did meet with Lt. Toia, Lt. Schaefer, Sgt. Martin, and P.O. Izzo regarding the original incident. Lt. Toia stated that he had denied me union representation on 8/23/22 because "it was only a discussion, not a disciplinary matter." This statement, which can be corroborated by P.O. J Izzo, contradicts every claim Chief Sarlo has made within his position statement regarding me being reprimanded for "abuse of sick leave."

Lt. Toia went on to deny that he called me a bitch. He said that I had possibly misheard him. He stated that maybe I was over stressed which was making me overly sensitive and dramatic at work (more discriminatory statements). Lt. Schaefer stated that I needed to consider that I am the problem and that my tone is the cause of other people's offensive behavior toward me, that I am the cause of the behavior and therefore responsible. Lt. Schaefer stated that I would not be

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compensated for his interview of me, while on my personal time, because I had “caused the interview” and the only reason for him conducting an interview in the first place was because of me, because I made a complaint.

Lt. Schaefer again stated to me that “as cops, we must be able to handle being spoken to like that. We must be able to handle being called names without our feelings getting hurt.” Lt. Toia said that everyone recognizes my excellent police work and that he would not have recently given the instruction to have a new officer ride with me if he did not feel that way. Both Lt. Toia and Lt. Schaefer stated multiple times that no one was questioning my performance as a Police Officer and that they everyone recognizes my excellent work ethic, my thorough reports, my ability to handle all different types of calls, my leadership role among my peers, my activity and productivity, which is light years above my coworkers, and my potential for promotion.

Lt. Toia and Lt. Schaefer stated that I am only in this situation because of me. It’s my behavior, my conduct, and my inability to understand this or even recognize that, is the cause of these “perceived attacks” by Lt. Toia. Lt. Schaefer stated that this is nothing more than a “minor clash of personalities.” Lt. Schaefer said, “Everyone knows Dan’s a hot head.” Lt. Toia said that I remind him of himself when he was on patrol, which is the only reason that he is so hard on me. He said “everyone thinks I hate you. I’m only trying to make you a better cop, I’m the only one in your corner.” I said very little during this meeting knowing that anything I did say would be dismissed, misconstrued, or flat out denied.

At no point during this meeting did anyone discuss a resolution to this matter. There was no discussion regarding this matter being reconciled and I was not presented with any written documentation of interviews, the complaint, the investigation, the findings, or the manner in which this would be resolved. The version of the complaint incident which Chief Sarlo has presented is false. He has used his position statement as a form of retaliation by defaming my character. He has continued to dismiss my complaints of retaliation, calling them baseless, and refused to take any steps to address the concerns which I have brought up in my complaints.

It is not surprising that Chief Sarlo has chosen to continue making false statements despite his knowledge that such statements would be easily dismissed by his own departmental records. **There is one motivation for the blatant lies and disparaging statements made by Chief Sarlo within his position statement and that is *retaliation*.** The only truth to be found within Chief Sarlo’s response is that it was built on a foundation of lies. Chief Sarlo has no interest in presenting facts and evidence to support his position. He has one focus and intention and that is to disparage and destroy my integrity for the purpose of discrediting my claims. The actuality is that Chief Sarlo has only managed to destroy his own credibility, showcase his own incompetence, admit to his own misconduct, and reveal his ineptitude as Chief of the East Hampton Town Police Department.