

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

SCOTT HEGWOOD
and NASTY HABIT, INC.

Plaintiffs,

v.

Case No. 08-CV-634

CITY OF EAU CLAIRE, CHIEF
JERRY MATYSIK, DEPUTY CHIEF
BRADLEY VENAAS, RETIRED DEPUTY
CHIEF GARY FOSTER, SGT. CRAIG WEST,
OFFICER GARRETT THOMAS AND ONE OR
MORE JOHN DOES,

Defendants.

COMPLAINT

I. NATURE OF ACTION

101. Scott Hegwood and Nasty Habit, Inc., bring this civil action under the Fourteenth Amendment to the U.S. Constitution and Title 42 U.S.C. § 1983 against the City of Eau Claire, Chief Jerry Matysik, Deputy Chief Bradley Venaas, Retired Deputy Chief Gary Foster, Sgt. Craig West, Officer Garrett Thomas, and one or more John Does in order to obtain compensation for injuries arising out of the retaliation and discrimination inflicted on them.

II. JURISDICTION AND VENUE

A. Jurisdiction

201. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 (federal question jurisdiction) and 28 U.S.C. § 1343(a)(3) (42 U.S.C. § 1983 jurisdiction).

202. The Western District of Wisconsin is the proper venue for this action because the Plaintiff's claims arise within the geographical boundaries of the Western District of Wisconsin within the meaning of 28 U.S.C. § 1391(b).

III. PARTIES

A. Plaintiff

301. Plaintiff Scott Hegwood is an adult resident of the State of Wisconsin, residing at 7681 S. Crestview Dr., Eau Claire, Wisconsin. At all times pertinent Mr. Hegwood was the designated agent of Nasty Habit, Inc., doing business at 341 Water St., Eau Claire, Wisconsin.

302. Plaintiff Nasty Habit, Inc., is a Minnesota corporation which has the capacity to sue and be sued in this Court.

B. Defendants

302. Defendant City of Eau Claire is a municipal corporation with its principal place of business located at 203 South Farwell, Eau Claire, Wisconsin and with the capacity to sue and be sued in this state.

303. Defendant Chief Jerry Matysik is an adult resident of the State of Wisconsin, residence unknown. At all times pertinent, Defendant Matysik was employed by the Eau Claire Police Department.

304. Defendant Deputy Chief Bradley Venaas is an adult resident of the State of Wisconsin, residence unknown. At all times pertinent, Defendant Venaas was employed by the Eau Claire Police Department.

305. Retired Deputy Chief Gary Foster is an adult resident of the State of Wisconsin, residence unknown. At all times pertinent, Defendant Foster was employed by the Eau Claire Police Department.

306. Sgt. Craig West is an adult resident of the State of Wisconsin, residence unknown. At all times pertinent, Defendant Foster was employed by the Eau Claire Police Department.

307. Defendant Officer Garrett Thomas is an adult resident of the State of Wisconsin, residence unknown. At all times pertinent, Defendant Thomas was employed by the Eau Claire Police Department.

308. Defendants one or more John Does are present or former agents of the City of Eau Claire who participated in the wrongful acts alleged herein whose identities are not yet known to the Plaintiffs.

IV. ALLEGATIONS OF FACT AS TO ALL CAUSES OF ACTION

A. Allegations Regarding Mr. Hegwood's Prior Employment with the Eau Claire Police Department and the History of Chief Matysik's Animosity Toward Mr. Hegwood.

401. From 1983 to 1990, Mr. Hegwood served as a police officer for the Eau Claire Police Department.

402. Early in Mr. Hegwood's career, Mr. Hegwood witnessed a fellow police officer, Dick Fredricks, having sexual relations with a woman other than Officer Fredricks's wife in his squad car.

403. Mr. Fredricks and Mr. Hegwood made eye contact, but because Mr. Hegwood was a rookie, he moved on without confronting Mr. Fredricks.

404. About one month later, Mr. Hegwood saw Jerry Matysik, who at this point was not yet Chief of Police but only a parole officer, cheating on his wife in his squad car.

405. About one month after that, Mr. Hegwood saw Mr. Fredricks speeding in his squad car down Birch Street at 80 mph; Mr. Fredricks was being chased by a civilian car.

406. Mr. Hegwood recognized the driver of the civilian car as the woman with whom Mr. Fredricks was previously having inappropriate sexual relations.

407. Mr. Hegwood radioed Mr. Fredricks to see if Mr. Fredricks needed assistance, and Mr. Fredricks indicated that he did not need assistance.

408. A few days later, Mr. Hegwood was called into Lt. McNally's office and Lt. McNally asked Mr. Hegwood what he knew of the relationship between Mr. Fredricks and the civilian woman.

409. Mr. Hegwood told Lt. McNally the truth - that he had witnessed Mr. Fredricks carrying on with the civilian woman in a squad car and had witnessed a high speed chase between the two.

410. An investigation ensued, and about six months later, Mr. Fredricks was fired.

411. Thereafter, Mr. Fredricks's good friend, Mr. Matysik, became Chief of Police.

412. Upon information and belief, Chief Matysik held animosity toward Mr. Hegwood for being a source of evidence of Mr. Fredricks's squad car mischief which led to his termination.

413. Upon information and belief, Chief Matysik held additional animosity toward Mr. Hegwood because Chief Matysik knew that Mr. Hegwood had seen him cheating on his wife in a squad car.

414. Upon information and belief, Chief Matysik held additional animosity toward Mr. Hegwood for Mr. Hegwood's general disapproval of police officers using their squad cars to cheat on their wives.

415. Such incidents in the Eau Claire Police Department have not ceased; for example, in 2003, an Eau Claire police officer received a 90 day suspension for having sex with a girlfriend while on duty.

416. In 1990, Mr. Hegwood seriously injured his knee during active duty which caused his inability to perform the job of a police officer and forced him to retire from the Eau Claire Police Department.

B. Allegations Regarding Mr. Hegwood's Relationship with the Nasty Habit Tavern.

417. In 1995, two of Mr. Hegwood's family members, his aunt and his brother, bought the tavern that would become the Nasty Habit on Water Street in Eau Claire, Wisconsin.

418. Later that same year, Mr. Hegwood's wife purchased Mr. Hegwood's aunt's share of the Nasty Habit.

419. On February 23, 1996, the Plaintiff corporation, Nasty Habit, Inc., was formed to own and operate the Nasty Habit tavern, and it held the liquor license for the tavern throughout its period of operation.

420. In the winter of 1996, the Nasty Habit opened and remained in operation without a break for 11 years.

421. Mr. Hegwood operated the Nasty Habit for his family members who owned it, somewhat as a hobby to fill his time; to make a connection with, and be an active member of, the community; and to re-instill a sense of purpose

in his life after he could no longer, due to his injury, work in his chosen profession of law enforcement.

422. Mr. Hegwood also knew all the applicable laws and procedures from being a police officer for many years, so he knew he could successfully operate this tavern for his family members.

423. Once the Nasty Habit started becoming one of the most successful bars on Water Street, several Eau Claire police officers began harassing and discriminating against the Nasty Habit, initially motivated by Chief Matysik's long held animosity toward Mr. Hegwood.

C. Allegations Prior to the City of Eau Claire's Complaint against Mr. Hegwood and the History of the Retaliation Inflicted on Mr. Hegwood to Punish and Deter him from Making Complaints of Public Concern.

424. Around 1998 or 1999, the Eau Claire Police Department started failing to respond to the Nasty Habit's calls for help.

425. For instance, there was a Police Department Softball Tournament in Eau Claire which brought officers from different police departments around the country to Eau Claire. Mr. Leonard, an off-duty Nasty Habit employee, was drinking at the Pioneer across the street from the Nasty Habit one night during the tournament. Mr. Leonard looked through the window into the Nasty Habit and saw an off-duty New York police officer, in town for the softball

tournament, stealing a neon sign from the Nasty Habit. Mr. Leonard came out of the bar across the street to confront the situation. The New York officer ran down the street, threw the neon sign, and broke it on the pavement.

426. An employee from the Nasty Habit called the police for help, but the police officers who responded to his call did not want to make a report or conduct any investigation.

427. After that, Mr. Hegwood made a complaint to the Eau Claire Police Department about its failure to respond appropriately to his call for help regarding the theft of his neon sign.

428. After that, the person in charge of the New York officer's team ended up doing the right thing; he telephoned the Nasty Habit and later paid Mr. Hegwood for the sign.

429. After Mr. Hegwood made his complaint, the Eau Claire police officers increased their retaliation against Mr. Hegwood to punish him for complaining and to deter him from making further complaints.

430. In 1998, Officer Al Lowrey told Mr. Hegwood's brother that Mr. Hegwood was going to have a hard time maintaining the Nasty Habit's success, implying that the Eau Claire police officers were working against the Nasty Habit.

431. Later in 1998, Mr. Hegwood called the Eau Claire Police Department to tell them he caught an underage girl in the bar. Mr. Hegwood asked if he should detain her until they arrived to give her a ticket, to which the

dispatcher responded, "Yes." A heated officer showed up and said, "Where is the fight?" Mr. Hegwood said there was no fight. The officer punched Mr. Hegwood and yelled, "Don't you ever call in a fight when there is not a fight!" Mr. Hegwood tried to explain that he did not call in a fight, and the officer responded by pushing Mr. Hegwood.

432. Mr. Hegwood made another complaint to the Eau Claire Police Department about the officer's inappropriate and assaultive behavior. The officer involved has behaved so inappropriately that he was required to participate in an anger management program.

433. After Mr. Hegwood made this complaint, the Eau Claire police officers again increased the harassment of and discrimination against the Nasty Habit to retaliate against Mr. Hegwood for exercising his free speech rights and to deter him from exercising those rights in the future.

434. For example, one night, Sgt. Craig West ticketed Mr. Hegwood for having patrons in the bar two minutes after closing. Mr. Hegwood had let them remain in the bar only long enough to wait for their cabs because it was 30 degrees below zero that night. The court found Mr. Hegwood innocent of any violations.

435. Upon information and belief, the Eau Claire Police Department did not ticket other taverns in the area for such petty reasons, and only ticketed the Nasty Habit for such a petty reason to intimidate Mr. Hegwood and prevent him from further complaining about inappropriate police behavior.

436. From October of 2003 to September of 2004, the City of Eau Claire pressed charges against Mr. Hegwood in eight different cases.

437. In five of these cases, the charges were not proven, were dismissed, and should have had no subsequent legal effect.

438. Around 2005, Mr. Hegwood began receiving information from a number of sources that the City of Eau Claire intended to shut the Nasty Habit down.

439. Around this time Mr. Hegwood was on one occasion in O'Leary's Pub with Officer Dave Kramer who told Mr. Hegwood that Assistant Chief Gary Foster was out to get Mr. Hegwood and that there was nothing Mr. Hegwood could do about it.

440. Mr. Kramer also told Mr. Hegwood that he had seen a letter sent out by Mr. Foster which told the other officers to "get the Nasty Habit at all costs."

441. A short while later, Officer John Rush, a friend of Mr. Hegwood's, came into the Nasty Habit and apologized to Mr. Hegwood, telling him the Eau Claire Police Department was going after the Nasty Habit. He said that there was no more going on at the Nasty Habit than was going on elsewhere, and there was probably less. He told Mr. Hegwood that he had met his wife in the Nasty Habit.

442. Around the same time, Officer Kampke, a friend of Mr. Hegwood, came into the Nasty Habit with the same message that Officer Rush had

delivered, but Officer Kampke added that Sgt. Craig West had it out for Mr. Hegwood as well.

443. Around the same period of time, the daughter of the University of Wisconsin's Chief of Police came into the Nasty Habit as she often did, and told Mr. Leonard, a Nasty Habit employee, that her father said the City of Eau Claire was going to shut down the Nasty Habit.

444. On August 24, 2005, the City of Eau Claire refused to reissue the Nasty Habit bartender, Mr. Stebbins, his bartending license because of his misdemeanor disorderly conduct charge earlier in the year.

445. However, on the very same day, a woman with two felonies was granted a bartending license by the City of Eau Claire.

446. The City of Eau Claire was discriminating against the Nasty Habit when it issued a decision to not renew Mr. Stebbins's license.

447. On September 19, 2005, Mr. Hegwood attended a meeting at the police station with Deputy Chief Bradley Venaas, Lt. Eric Larson, Sgt. Randy Fahrenkrog, and City Attorney Stephen Nick.

448. At this meeting, the City of Eau Claire informed Mr. Hegwood that it was concerned about the Nasty Habit and suggested that Mr. Hegwood alter his policies and require uniforms, offer his employees training on when to call the police, disallow drinking by employees, get rid of the dance box in the Nasty Habit, require that no patron be over-served, require that no bartender serve last call shots, and require that the bouncers use clickers to count patrons.

449. Mr. Hegwood wrote a letter to the City of Eau Claire outlining the changes he agreed to implement at his bar to make it a safer place in the eyes of the City; the Eau Claire Police Department released this letter to the press.

450. This letter was meant to be a private communication and was released to the press in an attempt to injure the reputation of the Nasty Habit and Mr. Hegwood.

451. Mr. Hegwood was nonetheless cooperative and complied with the City of Eau Claire's directives because he wanted to avoid the expense and risk of proceedings aimed at revoking his licenses, and because he wanted to achieve some clarity regarding what was expected of him and his staff by the City, not because he believed his employees were troublemakers or that his tavern was unsafe.

452. Further, most of these terms did not require Mr. Hegwood to make any adjustments because Mr. Hegwood already required uniforms, offered extensive training to his employees, required that no patron be over-served, and required that bouncers use clickers to count patrons on busy nights.

453. Regardless, Mr. Hegwood called Deputy Chief Venaas six times to send some officers down to show the Nasty Habit employees specifically how the Police Department wanted the Nasty Habit operated.

454. The Eau Claire police officers offered this service to other bars, such as the Pioneer and SheNannigans, but they never honored Mr. Hegwood's request to provide this service to the Nasty Habit.

455. The Eau Claire police officers were discriminating against the Nasty Habit when they failed to help train the Nasty Habit employees.

456. The City of Eau Claire was discriminating against Nasty Habit and Mr. Hegwood by requesting that he disallow drinking by employees, because it was common practice for Eau Claire tavern employees to have a couple drinks while working, especially when purchased by a customer as a tip for the employee. No other tavern was required to curtail this practice.

457. The City of Eau Claire was discriminating against Nasty Habit and Mr. Hegwood by requesting that he not serve certain drinks at last call, because it was common practice for Eau Claire tavern employees to announce last call and serve a last drink of the customer's choosing at last call. No other tavern was required to curtail this practice.

458. The City of Eau Claire was singling out Nasty Habit and Mr. Hegwood without a rational reason by requesting that he remove his dance box, because there was no record that the dance box caused any problems whatsoever. No other tavern was required to curtail this practice.

459. In fact, in police reports from mid 2004 to mid 2006, there were no sexual assaults documented at the Nasty Habit, but there were sexual assaults documented at both SheNannigans and the Brat Kabin, two taverns near the Nasty Habit.

460. On February 2, 2006, around 1:53 a.m., the Nasty Habit called the Eau Claire police for help, but the police did not respond.

461. On March 4, 2006, the Nasty Habit called the Eau Claire police for help, and the police drove by, but did not get out of their squad car.

462. On March 15, 2006, some Eau Claire police officers were standing near the Nasty Habit and could see that a Nasty Habit employee needed help with a customer, but the police officers did not walk over and provide help.

463. On information and belief, the Eau Claire police officers usually responded to calls for help or otherwise offered help where needed, but were discriminating against the Nasty Habit by ignoring its calls for help.

**D. Allegations Regarding City of Eau Claire's
Complaint against Mr. Hegwood.**

464. On March 1, 2006, the City of Eau Claire issued a Summons and Complaint seeking revocation or suspension of the Nasty Habit, Inc.,'s Combination Class B Intoxicating Liquor & Fermented Malt Beverage license filed by Chief Matysik and City Attorney Nick alleging that Mr. Hegwood's employees kept a "disorderly house" pursuant to Wis. Stat. § 125.12(2)(ag)(2) which created a threat to the health, safety, and welfare of the public under Wis. Stat. § 62.11(5).

465. However, the Nasty Habit was neither a disorderly house nor a threat to the public.

466. In fact, the Nasty Habit was highly regarded in the community and was widely appreciated for its donations which included playground equipment to schools, four computers to an elementary school, Christmas presents for low-income families for seven years straight, many Schwinn bikes for under-privileged children, Schwinn bikes yearly for the Doll and Pet Parade, scooters for Bolton Refuge House, a John Deere lawn tractor for the Little League, and the use of the Nasty Habit building for temporary use by student organizations, as well as donations to the Shriner's Children's Hospital, St. Jude's Hospital for Children and Eau Claire Cavaliers Baseball team.

467. Also, on January 7, 2001, Mr. Hegwood and his employees were the first on the scene of a fire in the historic Randall Park Neighborhood and helped saved the lives of those in the building.

468. The Nasty Habit had one of the best security video camera systems of all the taverns in the Water Street, Eau Claire area.

469. In May of 2006, over 700 patrons of the Nasty Habit signed a statement affirming that they felt safe when they were at the Nasty Habit.

470. The Nasty Habit was a safe and orderly tavern in comparison to the other taverns in the Water Street, Eau Claire area, and was being singled out and discriminated against by the City and its police department without a rational basis when it was labeled a disorderly house, a term which no city official could ever clearly define, and a threat to the public.

471. The Complaint against the Nasty Habit listed incidents in support of the allegation that the Nasty Habit was a threat to the public, including an incident regarding underage patrons being found in the bar.

472. However, on January 10, 1999 the Eau Claire Police Department sent a letter to tavern owners describing the "Fake I.D. Project." This letter noted a UWEC study on drinking which identified the bars that minors frequented most often. This letter stated that underage patrons frequented the Nasty Habit (12%) approximately as much as all other Eau Claire bars not specifically listed (11%); however the three bars frequented by the most under age patrons were Brothers (34%), SheNannigans (26%), and the Pioneer (23%).

473. The City of Eau Claire never made a complaint to revoke the license of Brothers, SheNannigans, or the Pioneer even though the Eau Claire Police Department knew those taverns had a larger volume of underage patrons than the Nasty Habit.

474. The Complaint listed incidents in support of the allegation that the Nasty Habit was a threat to the public, including an incident regarding a patron being taken to detox by the police.

475. However, from January 1, 2003 to January 23, 2006, two people from the Nasty Habit were brought to detox, two from Brothers, two from Erberts & Gerberts, six from the Brat Kabin, and six from SheNannigans, among others.

476. The licenses of Brothers, the Brat Kabin, and SheNannigans were not suspended or revoked as the Nasty Habit's license was.

477. The Complaint listed incidents in support of the allegation that the Nasty Habit was a threat to the public, including incidents regarding drunken patrons engaging in brawls.

478. However, on May 14th, 2006, a man waiting for a ride home was beat into a coma outside the Brat Kabin by a group of people.

479. The Brat Kabin's license was never suspended or revoked for this incident. Furthermore, two days later the victim's father went to the Eau Claire Police Department to ask about the investigation only to discover that there was not even a file on the incident.

480. In December of 1994, Marc Dubahl, at that time a junior at the University of Wisconsin-Eau Claire, drank mixed drinks and shots at Camaraderie to the point where he died from acute alcohol intoxication with a blood alcohol level of .33 percent; but, Camaraderie's license was never suspended or revoked for this incident.

481. Also stemming from this incident, the Camaraderie was ticketed and fined for furnishing alcohol to minors and allowing minors on the premises; however, Camaraderie's license was never suspended or revoked for this incident.

482. In April of 2006, a highly intoxicated man outside The Grand Illusion bar was ticketed for almost \$200 for carrying his drink out of the bar.

The man ripped up his ticket, littered it on the ground, and screamed at the Eau Claire police officers.

483. The Grand Illusion's license was never suspended or revoked for this incident, nor were its employees ticketed or reprimanded for letting the man walk out with his drink.

484. Lt. Eric Larsen was interviewed by reporter Karline Koehler for an article, "Watching Water St." and stated that from January 2004 to April 2005, the Randall Park neighborhood, which includes the Water Street area, saw 101 battery cases including a stabbing, a rifle threat, shots fired in the air, battery to officers, and a woman raped on the hood of a car in a well-lit parking lot.

485. Yet, the Nasty Habit was the only bar that was brought before the City of Eau Claire to defend its liquor license for being a disorderly house and a threat to the public.

486. No other bar in Eau Claire had ever had its license revoked without a record of previous suspensions.

487. The Nasty Habit had never had its liquor license suspended and had never been convicted of a violation of Chapter 125 of the Wisconsin Statutes.

488. Eau Claire's complaint against Mr. Hegwood's license alleged that eight incidents rose to the level of creating disorderly house and creating a threat to the public, namely incidents occurring on 11/20/03, 10/29/04, 5/9/05, 5/27/05, 7/20/05, 11/1/05, 1/23/06, and 2/11/06.

489. However, these eight incidents did not rise to the level of creating a disorderly house or a threat to the public.

490. These types of incidents, mostly stemming from problems with intoxicated patrons, are commonplace at most taverns, including the college bars on Water Street in Eau Claire.

E. The 11/20/03 Incident

491. The 11/20/03 incident resulted in a charge against Mr. Hegwood for having underage patrons, but he was found innocent because the underage patrons had presented convincing but fake identification to gain access to the tavern.

492. On this date, a Nasty Habit employee, Mr. Wagner, let the three underage girls, at their request, into the basement as the police were doing an underage check.

493. Mr. Wagner did not know at the time that these three girls were underage because they presented fake identification to gain access to the tavern.

494. When an officer asked Mr. Wagner if there was anyone in the basement, Mr. Wagner cooperated fully, told the officer there were people in the basement, and gave the officer a key to the basement.

495. The Nasty Habit terminated Mr. Wagner after this incident, and he was not given further employment by the Nasty Habit until the fall of 2005 when

Mr. Wagner had proved his maturity by significantly increasing his grade point average.

496. Mr. Wagner pled no contest to misdemeanor disorderly conduct for this incident.

F. The 10/29/04 Incident

497. The 10/29/04 incident did not result in any charges against Mr. Hegwood or any Nasty Habit employees.

498. This incident consisted of a brawl outside of the tavern at closing time.

499. Several patrons were involved, and the Nasty Habit employees tried to disperse the patrons out of the tavern to avoid a fight, but the fight ended up occurring nonetheless.

500. A patron, Mr. Truby, hit a Nasty Habit employee, Mr. Stebbins, and Mr. Stebbins struck back in self defense.

501. Mr. Hegwood fully cooperated with the City of Eau Claire by willingly handing over his video tape of this incident to the Eau Claire Police Department.

G. The 5/9/05 Incident

502. The 5/9/05 incident did not result in any charges against Mr. Hegwood.

503. In this incident, a patron and federal police officer, Mr. Kumerman, was being attacked and repeatedly kicked by another patron, Mr. Hershman.

504. The Nasty Habit bartender, Mr. Stebbins, came around the bar and restrained Mr. Hershman on the floor in attempt to defuse the situation.

505. Police officers came upon Mr. Stebbins as he was restraining Mr. Hershman and they tazed Mr. Stebbins with an electronic control device without warning him that the police had arrived or identifying themselves.

506. Mr. Hershman was being very violent with the police, yet the police declined to take a statement from a prospective witness, Mr. Kumferman.

507. Mr. Stebbins pled guilty to a misdemeanor disorderly conduct on July 11, 2005, because he could not afford to hire an attorney to mount a defense to the charge.

508. Mr. Hegwood fully cooperated with the police by willingly handing over his surveillance tape of this incident to the Eau Claire Police Department.

H. The 5/27/05 Incident

509. The 5/27/05 incident resulted in no charges against Mr. Hegwood.

510. The 5/27/05 incident did not result in the conviction of any Nasty Habit employees.

511. This incident resulted in charges against two employees, however, one employee was acquitted of his charge and the other employee's charge was dismissed on the prosecutor's motion.

512. On this date, an intoxicated patron with a lengthy criminal record, Joseph Durand, refused to leave the Nasty Habit at closing time.

513. Mr. Durand insisted on wanting to use the bathroom, despite being told by a Nasty Habit employee, Mr. Stebbins, that the bathrooms were already closed for the night.

514. Mr. Stebbins was merely trying to abide by the law and have all patrons removed by the legal time.

515. Nasty Habit employee, Zachary Konkol, approached the situation, and Mr. Durand attacked Mr. Konkol.

516. Another employee, Kelly Lynch, approached the situation and put Mr. Durand in a choke hold to subdue him.

517. Mr. Durand passed out and Mr. Lynch placed him on the sidewalk outside of the bar.

518. The Eau Claire police witnessed Mr. Lynch placing Mr. Durand on the sidewalk, but did not address the situation at the time.

519. Approximately 30 minutes later, Mr. Durand, called the police from a bar down the street to file a complaint.

520. At that point, the police conducted an investigation and found Mr. Lynch to have registered a .135 on the preliminary breath test, indicating that he

had been drinking, but he had been drinking before the incident, though he had been imbibing after it.

521. Mr. Lynch was charged with substantial felony battery, but acquitted.

522. Mr. Konkol was charged with misdemeanor battery, but this charged was dismissed on the prosecutor's motion.

523. Mr. Durand also made a civil damages claim against the Nasty Habit, and the Nasty Habit's insurance company, Germantown Insurance, decided not to pay the claim after their thorough investigation of the incident.

524. Mr. Durand dismissed his civil suit after Mr. Lynch was found not guilty in his criminal case.

I. The 7/20/05 Incident

525. The 7/20/05 incident resulted in no charges against Mr. Hegwood or Nasty Habit employees.

526. Rather, a patron who started a fight in the Nasty Habit was charged with battery as the initial instigator.

527. This patron, Mr. Duffy hit another patron, Mr. Donaldson, without apparent reason.

528. Mr. Donaldson then confused a Nasty Habit employee, Mr. Stebbins, for the attacker, Mr. Duffy.

529. Hence, believing Mr. Stebbins to have struck him, Mr. Donaldson approached Mr. Stebbins and punched him.

530. Mr. Stebbins struck back in self defense.

531. Mr. Stebbins was seriously injured by Mr. Donaldson and required 13 stitches after this altercation.

J. The 11/1/05 Incident

532. The 11/1/05 incident resulted in no charges against Mr. Hegwood.

533. On this date, a passerby, Mr. Bergert, began taunting a Nasty Habit employee, James Rolbiecki, for being African American.

534. Another employee, Mr. Stebbins, approached Mr. Rolbiecki to see if he needed assistance.

535. At this point, Mr. Bergert spit in Mr. Stebbins face.

536. Mr. Stebbins then insisted Mr. Bergert leave.

537. As he left, Mr. Bergert threw a bottle against the Nasty Habit's window.

538. Mr. Stebbins followed Mr. Bergert across the street and yelled at him for throwing the bottle at the window.

539. Either Mr. Bergert or one of his associates struck Mr. Stebbins two or three times in the street.

540. Mr. Stebbins struck back in self defense.

541. Mr. Rolbiecki ran across the street and attempted to pull Mr. Stebbins away from the fight so that Mr. Stebbins could avoid further blows to his head.

542. At the same time, a police officer grabbed Mr. Stebbins arm.

543. Mr. Stebbins broke free from both of them, and the fight, and ran to hide in the basement.

544. Mr. Rolbiecki knew that Mr. Stebbins was in the basement but said nothing to the police, who were looking for Mr. Stebbins.

545. Nonetheless, the police found Mr. Stebbins in the basement.

546. Mr. Hegwood willingly turned over his surveillance tapes to the police to assist them in their investigation, subject to an agreement between himself and Mr. Vennas that the tape would not be used against the Nasty Habi.

547. This agreement that was subsequently violated by the City when it released the tape to the media.

548. Mr. Rolbiecki received a ticket for obstructing an officer and pled no contest.

549. Mr. Stebbins pled guilty to misdemeanor battery.

550. Mr. Hegwood fired Mr. Stebbins immediately for hiding from the police.

551. Mr. Hegwood fired Mr. Rolbiecki in February, when he was informed by Deputy Chief Venaas that the Nasty Habit's surveillance camera showed that Mr. Rolbiecki saw Mr. Stebbins go into the basement.

552. The Eau Claire Police Department released Mr. Hegwood's security tape of the 11/1/05 incident to the press in an effort to damage the reputation of the Nasty Habit.

K. The 1/23/06 Incident

553. The 1/23/06 incident resulted in no charges against Mr. Hegwood or any Nasty Habit employees.

554. This incident simply consisted of a patron, Ryan Anderson, being too intoxicated.

555. Mr. Anderson was only served one drink at the Nasty Habit, which was taken away from him when it became obvious he was intoxicated.

556. Mr. Anderson fell off his bar stool, at which point employees offered to call him a cab.

557. Mr. Anderson replied, "fuck you."

558. The Nasty Habit bouncer assisted Mr. Anderson outside, where Officers Thomas and Barton, while on their regular beat, approached Mr. Anderson and sent him to detox.

559. Ten days after the 1/23/06 incident, without attempting to question any Nasty Habit employees, Officer Thomas interviewed a bouncer from SheNannigans, Nicholas Pope.

560. Officer Thomas told him that they were worried that the intoxicated Mr. Anderson may sue the City of Eau Claire, and elicited a less than entirely accurate statement from Mr. Pope.

561. The police did not tell the SheNannigans bouncer that they were actually intending to use his statement against the Nasty Habit.

562. Once Mr. Pope found out that the statement was not being used to protect the City of Eau Claire, but was being used against the Nasty Habit, Mr. Pope wrote out a new, true and accurate statement.

L. The 2/11/06 Incident

563. The 2/11/06 incident resulted in no charges against Mr. Hegwood.

564. In this incident, a patron, Mr. Feraco, punched the Nasty Habit door person, Mr. Wagner, through the entryway and into the street.

565. Another employee, Cory Shay went outside to see if he could assist in stopping the fight.

566. Mr. Feraco's two friends then attacked Mr. Shay in the street.

567. Mr. Feraco punched Mr. Wagner five times in the back of the head.

568. The Nasty Habit manager, Mr. Leonard, came out to help stop the fight, fell on top of Mr. Feraco, and could not get up because Mr. Feraco had his arms wrapped around Mr. Leonard.

569. Mr. Wagner tried to lift Mr. Leonard up off of Mr. Feraco, bracing his foot on Mr. Feraco's shoulder.

570. The police witnessed this whole incident from a distance of about 80 feet but did nothing to help for over two minutes.

571. Finally, after two minutes, the police came over to charge people and break up the fight.

572. Two Nasty Habit employees, Mr. Wagner and Mr. Shay, pled guilty to misdemeanor disorderly conduct.

573. The patron, Mr. Feraco, was originally charged with three felony counts but later found guilty of one count of battery, with three other counts of battery and one count of disorderly conduct read in.

574. Mr. Feraco's friend, Mr. Binick, was found guilty of misdemeanor disorderly conduct with a count of battery read in.

M. Summary of the Complaint against Mr. Hegwood

575. Hence, of the eight incidents in the complaint to revoke Mr. Hegwood's license, three did not result in any charges against Mr. Hegwood or any Nasty Habit employees.

576. Of the eight incidents in the complaint to revoke Mr. Hegwood's license, only one resulted in Mr. Hegwood being charged, and none of those eight incidents resulted in Mr. Hegwood being found guilty.

577. Of the eight incidents in the complaint, only five resulted in any Nasty Habit employees being charged.

578. Of the eight incidents in the complaint, only four resulted in any Nasty Habit employee being found guilty, and several of those were merely guilty pleas submitted because it was cheaper to pay the fine than to pay an attorney to fight the charge.

579. The City of Eau Claire and its police officers were discriminating against the Nasty Habit by making efforts to remove its liquor license when there was no rational reason to do so.

580. Upon information and belief, the City of Eau Claire does not issue charges to tavern bouncers when they are caught in a fight with patrons if it is obvious that the patron started the occurrence and is at fault.

581. However, the City of Eau Claire continually charged Nasty Habit bouncers with disorderly conduct for doing what a tavern bouncer's job routinely calls for, which is using physical force against one or a few unruly patrons in order to maintain the safety of all of the orderly patrons, the employees, and the establishment.

**N. Allegations Regarding Continued Post-Complaint
Discrimination.**

582. On January 14, 2006, an officer walked into the Nasty Habit after bar closing and insisted everyone open their shirts and coats so that he could see their employee t-shirt underneath as proof that they were employees and not patrons.

583. Upon information and belief, the police did not demand a shirt disclosure as proof of employment of employees of other bars.

584. On March 15, 2006, the police refused service to the Nasty Habit when the Nasty Habit needed help.

585. Upon information and belief, the police never refuse service to Eau Claire taverns other than the Nasty Habit when the police are aware that those taverns are in need of assistance.

586. On January 7, 2006, a current or former employee of the Nasty Habit, James Rolbiecki was punched by a patron. Mr. Rolbiecki asked a nearby police officer if he could make a police report, but the officer told Mr. Rolbiecki that he had no credibility.

587. The manager, Larry Leonard asked to make a written report at that time and the officer would only hand out one report and told them Mr. Leonard he would have to make copies on his own if he wanted more. The officer also told Mr. Leonard that Mr. Leonard lacked credibility.

588. The police were discriminating against the employees of the Nasty Habit by telling them they had no credibility and refusing to facilitate their reporting of a crime

589. The police do not tell employees of the other taverns in the area that they have no credibility, nor do they refuse help employees of other taverns report crimes.

O. Allegations Regarding the City's Revocation of Mr. Hegwood's License.

590. On May 11th and 24th of 2006, the City of Eau Claire's Administrative Review Board heard testimony with respect to the City's complaint.

591. Bonnie Harper, the President of the Tavern League, of which Mr. Hegwood was a member, told Mr. Hegwood on the phone and through email that she would only answer questions pertaining to her expertise as a president of the Tavern League, and that she would not take sides.

592. The Tavern League's mission statement provides that it is a "non-profit trade association dedicated to serving the needs of the retail alcohol beverage segment of the hospitality industry in the State of Wisconsin. The League exists to provide services to members that are not available to them as individuals and to use the collective strength of its membership to accomplish as a group, goals that cannot be accomplished alone. The League provides members services, legislative and governmental relations, legal information, educational services and promotes the industry on behalf of its membership."

593. However, Ms. Harper did testify against Mr. Hegwood, contrary to her role as the president of the Tavern League of which Mr. Hegwood was a member.

594. Right after Ms. Harper testified against Mr. Hegwood, she was granted two large special event licenses from the City of Eau Claire, through which Ms. Harper made a large sum of money.

595. On June 19, 2006, the Administrative Review Board voted 3 to 2 to revoke the Nasty Habit's liquor license.

596. On June 27, 2006, the City Council for the City of Eau Claire determined to uphold the Administrative Review Board's determination.

597. The City Council did not review the transcript of the hearing before upholding the Administrative Review Board's determination.

598. On June 27, 2006, the City Council's advising attorney was Ms. Julie Anderl, the same attorney who acted as legal counsel for the Administrative Review Board for the same matter, despite the conflict of interest that may have existed.

599. On June 27, 2006, the City Council consisted of two members who had already sat on the Administrative Review Board yet were allowed to participate in the City Council's determination despite the conflict of interest the two may have had in affirming their own findings of fact and conclusions of law.

600. On June 27, 2006, Council Member Dave Duax made a motion to overrule Mr. Hegwood's objection before even hearing it, but Attorney Anderl advised Council members that they could not overrule an objection without first hearing it.

601. Upon information and belief, the Nasty Habit is the only Eau Claire tavern to have its license revoked in recent history.

602. Upon information and belief, the City of Eau Claire has never revoked a liquor license without a prior formal warning or suspension.

603. Yet, the City of Eau Claire revoked Mr. Hegwood's license without any warnings, suspensions, or citizen complaints.

604. Nasty Habit, Inc., filed a statutory appeal from the revocation of its liquor license.

605. In June of 2006, the City of Eau Claire's 82 allotted liquor licenses were all in use, so that anyone seeking a new license had to pay \$10,600 for a reserve license, which was \$10,000 more than the regular license fee.

606. Upon information and belief, City Attorney Steve Nick, who was also the President of the Eau Claire Children's Museum, wanted Mr. Hegwood's license to go to a politically favored potential licensee.

607. El Patio Mexican Restaurant & Bar III did in fact receive a regular liquor license after Mr. Hegwood's was revoked.

608. Because the City of Eau Claire gave El Patio Mexican Restaurant that license, the Nasty Habit, Inc., had to pay over \$10,000 to the City to get a reserve license in order to sell the Nasty Habit.

609. On July 24, 2006, the parties stipulated that Nasty Habit's appeal of the City Council's decision to revoke its license and not reissue it for one year

would be dismissed, contingent on the grant of a license to Mr. Hart, who was planning on buying the Nasty Habit.

610. On June 27, 2006, Greg Hegwood, Scott Hegwood's brother, and Lori Hegwood, Scott Hegwood's wife, who were the principals in Nasty Habit, Inc., entered into a contract to sell the Nasty Habit to Jed Hart because Scott Hegwood could no longer operate the tavern after its license was revoked.

611. On July 25, 2006, the City of Eau Claire granted Mr. Hart both liquor and cabaret licenses with a vote of 10-1, despite the fact that he had no experience running a tavern, he was busy with other business commitments, and he kept the same employees that Mr. Hegwood had trained.

612. Mr. Hart changed the Nasty Habit's name to the Pickle, and otherwise kept the establishment largely the same.

613. The City of Eau Claire's complaint against Mr. Hegwood alleged mainly that the Nasty Habit's license should be revoked because of a pattern of bad behavior by employees, yet Mr. Hart's license has not been suspended or revoked, despite the fact that he has many of the same employees working for him.

614. There have been many problems at the Pickle, such as problems with drunken patrons, unruly patrons, etc., but the police never charge the employees or the tavern owner like they did when Mr. Hegwood operated the tavern.

615. On July 27, 2006, the City of Eau Claire billed Mr. Hegwood for \$4,984.47 for police overtime while the Nasty Habit was open.

616. City Attorney Nick told Mr. Hegwood that because the Nasty Habit was such a dangerous place, Mr. Hegwood had to hire an overtime officer to be there every minute he was open for business.

617. On July 27, 2006 the Stipulation and Order of Dismissal of the liquor license appeal was filed.

618. Nasty Habit, Inc., had paid for a license renewal, but due to revocation proceedings it was never issued and never went before the licensing board.

619. Despite complaints by Mr. Hegwood and his attorney, the City of Eau Claire kept Nasty Habit, Inc.'s fee for the license and refused to issue Nasty Habit, Inc., a license.

620. Mr. Hegwood continues to suffer from the discrimination and harassment he experienced.

621. Mr. Hegwood has gained 55 pounds due to the stress he experienced through his mistreatment by the Defendants, which aggravates his serious knee injury obtained during his service in the Eau Claire Police Department.

622. Mr. Hegwood has, and will continue to have, difficulty ever obtaining another licensed tavern in the City of Eau Claire because every license

application asks if the person applying for the license has ever had a license revoked, and Mr. Hegwood now must answer “yes.”

V. VIOLATIONS OF LAW

A. The First Amendment: Retaliation for complaint of public concern: City of Eau Claire

701. The Defendant City, acting under color of law, violated Mr. Hegwood’s First Amendment rights when it retaliated against Mr. Hegwood for making complaints to the Eau Claire Police Department about police officers’ failure to respond to calls for help or inappropriately responding to calls for help. Punishing and deterring Mr. Hegwood from making these and similar public interest complaints was a substantial motivating factor behind the City’s conduct of harassing, discriminating against, and revoking the license of the Nasty Habit in violation of rights secured to Mr. Hegwood by the First and Fourteenth Amendments to the United States Constitution.

B. The First Amendment: Retaliation for complaint of public concern: Individual Defendants

702. The individual Defendants, acting under color of law, violated Mr. Hegwood’s First Amendment rights when they retaliated against Mr. Hegwood for making complaints to the Eau Claire Police Department about police officers’ failure to respond to calls for help or inappropriately responding to calls for help. Punishing and deterring Mr. Hegwood from making these and similar public

interest complaints was a substantial motivating factor behind the Defendants' conduct of harassing, discriminating against, and revoking the license of the Nasty Habit in violation of rights secured to Mr. Hegwood by the First and Fourteenth Amendments to the United States Constitution.

C. The Equal Protection Clause of the Fourteenth Amendment: Class of One Discriminatory Policing and Enforcement: City of Eau Claire.

702. The Defendant City, acting under color of law, violated Nasty Habit, Inc.'s constitutional rights under the Equal Protection Clause of the Fourteenth Amendment by intentionally, vindictively, and without a rational basis, treating it differently from the other, similar tavern owners in the area, in violation of rights secured to it by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

D. The Equal Protection Clause of the Fourteenth Amendment: Class of One Discriminatory Policing and Enforcement: Individual Defendants.

703. The individual Defendants, acting under color of law, violated Nasty Habit, Inc.'s constitutional rights under the Equal Protection Clause of the Fourteenth Amendment by discriminating against it out of sheer vindictiveness and without a rational basis, in violation of rights secured to it by the Equal

Protection Clause of the Fourteenth Amendment to the United States Constitution.

E. Wis. Stat. § 125.12(2)(ag)(2) Unconstitutionally Vague.

704. All of the Defendants enforced an unconstitutionally vague statute, § 125.12(2)(ag)(2) against Nasty Habit, Inc., in violation of rights secured to it by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

F. City of Eau Claire Liability.

705. The unlawful actions of the Defendant City were undertaken pursuant to its customs and policies within the meaning of *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 164 (1993) and *Monell v. Department of Social Services*, 436 U.S. 658 (1978).

706. Alternatively, even if the wrongful acts alleged herein were not carried out pursuant to a custom or policy of the Defendant City, the Defendant City is liable for the unlawful acts of the individual Defendants because they were acting within the scope of their employment pursuant to Sec. 895.46, Wis. Stats.

VI. DAMAGES

A. Compensatory Damages

801. By virtue of unlawful actions alleged above, Mr. Hegwood and Nasty Habit, Inc., sustained economic losses and expenditures, loss of income, professional humiliation, harm to their business and reputation, depression and weight gain leading to aggravated knee injury, and other damages for which they should be compensated in an amount deemed just by the Court.

B. Punitive Damages

802. Because the acts of the individual defendants herein alleged were carried out maliciously or with reckless disregard for the Plaintiffs' fundamental rights, the Plaintiffs seek awards of punitive damages against the individual Defendants to deter them and others similarly situated from similar wrongful acts in the future.

VII. CONDITIONS PRECEDENT

901. All conditions precedent to this action, within the meaning of Rule 9(c), Fed. R. Civ. Pro., have been performed or have otherwise occurred.

VIII. DEMAND FOR JURY TRIAL

1001. The Plaintiffs hereby demand a trial by jury of all issues triable of right to a jury.

IX. PRAYER FOR RELIEF

WHEREFORE, Mr. Hegwood and Nasty Habit, Inc., prays that the Court grant judgment against the Defendants, awarding them:

1100. Monetary damages in amounts that will fairly compensate the plaintiffs for their injuries;

1101. Punitive damages in amounts that will justly punish the defendants for their actions;

1102. Their costs, attorneys' fees and litigation expenses as well as any further relief this Court deems just.

Dated this Tuesday, October 28, 2008.

Respectfully submitted,

Scott Hegwood and Nasty Habit, Inc., Plaintiffs

By

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