**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| **MATTHEW AUGUST LEFANDE,**<br><br>**Plaintiff,**<br>**v.**<br><br>**DISTRICT OF COLUMBIA,**<br><br>**Defendant.** | **Civil Action No. 09-217 (BJR)**<br><br>**ORDER** |

Before the Court is a Motion for Summary Judgment by Defendant District of Columbia ("District"). *See* Defendant's Motion for Summary Judgment (hereinafter "Def's Mot.") (Dkt. #37). Plaintiff Matthew LeFande alleges that the District violated his First Amendment rights when it terminated him from his position as a Police Reserve Officer ("PRO") with the Metropolitan Police Department ("MPD"). Having reviewed the parties' briefs together with all relevant materials, the Court denies the District's motion, for the reasons given below.

## I. BACKGROUND

LeFande began serving as a police reserve officer in 1993. Compl. ¶ 12. PROs are unpaid volunteers who assist MPD personnel in both day-to-day and emergency law enforcement services. *See* D.C. Code § 5-129.51; *Griffith v. Lanier*, 521 F.3d 398, 399 (D.C. Cir. 2008) (describing the role of PROs).

In March 2006, the MPD issued a General Order that limited the collective bargaining rights of PROs and provided that PROs could be dismissed at will. MPD Gen. Order No. 101.3 (Mar. 28, 2006). Several PROs filed a lawsuit challenging the MPD's authority to issue the General Order, and LeFande, who is also a lawyer, represented the class of PROs (including himself) in that action. *See Griffith v. Lanier*, 2007 WL 950087 (D.D.C. Mar. 28, 2007). The

Honorable Henry H. Kennedy, Jr. dismissed the *Griffith* plaintiffs' case for failure to state a claim upon which relief could be granted. *Id.* On February 15, 2008, LeFande presented oral argument before the DC Circuit, which ultimately affirmed the district court's decision. *See* 521 F.3d 398, 399 (D.C. Cir. 2008).

The MPD terminated LeFande from his PRO position in early 2008. Though the parties agree that the MPD terminated LeFande, they dispute when LeFande was notified and when he received a termination letter. The MPD prepared a termination letter, signed by Chief of Police Cathy Lanier, with an effective date of February 8, 2008. Def's Mot., Exh. 1. The letter gives no reason for the termination, only stating that "[i]n accordance with District Personnel Manual, Chapter 40, §4000.13, the decision to discontinue the utilization of your voluntary services as a member of the Police Reserve Corps is not considered an adverse action and does not give rise to any right or process of appeal." *Id.* At the bottom of the letter, one officer signed to attest that he had served the letter on LeFande, and another signed as a witness. *Id.* Both signatures are dated February 1, 2008, "1630 hrs." *Id.* The space reserved for LeFande's signature, under text that reads "I acknowledge receipt of this notification," is blank. *Id.*

LeFande alleges that he was terminated on January 8, 2008, one week before he was scheduled to present oral argument to the DC Circuit in *Griffith v. Lanier*. Compl. ¶ 23; Pl's Opp. at 7. LeFande also alleges that he was never served with the letter. Pl's Response to Defendant's Allegations of Material Facts Not in Dispute ¶ 10.

This action followed in February 2009. In his complaint, LeFande contends that MPD terminated him "in retaliation for filing and prosecuting a civil complaint against the District of Columbia." Compl. ¶ 26. LeFande alleges that the MPD took the challenged action to

intimidate him and other PROs, and to "interfere with [his] appearance before the D.C. Circuit," in violation of his First Amendment rights. *Id.* ¶ 27-28.[1]

In June 2009, Judge Kennedy determined that LeFande had failed to state a First Amendment retaliation claim because his role in the *Griffith* lawsuit "did not relate to a matter of public concern." *LeFande v. District of Columbia*, Civ. No. 09-217, slip op. at 6 (D.D.C. June 25, 2009) (Dkt. #9). Having found that LeFande's speech did not relate to a matter of public concern, Judge Kennedy did not address whether LeFande could satisfy any other elements of a First Amendment retaliation claim. On appeal, the D.C. Circuit determined that LeFande's speech did relate to a matter of public concern, reversing and remanding the case for further proceedings. *See LeFande v. District of Columbia*, 613 F.3d 1155 (D.C. Cir. 2010). The Circuit rejected the proposition that a personnel matter *per se* cannot be a matter of public concern. *Id.* at 1161. In LeFande's case, "allegations of procedural irregularities that unquestionably affect an integral component of police service are relevant to the public's evaluation of the MPD and its Chief." *Id.* The PROs' allegations in the *Griffith* case "exceed[ed] 'individual personnel disputes and grievances' and involve[d] 'issues about which information is needed or appropriate to enable the members of society to make informed decisions about the operation of their government.'" *Id.* (quoting *Hall v. Ford*, 856 F.2d 255, 259 (D.C. Cir. 1988).

Conceding that LeFande's speech related to a matter of public concern, the District nevertheless moves for summary judgment on the First Amendment claim. The District makes four arguments in its motion for summary judgment: (1) LeFande presented no evidence that the *Griffith* litigation was a substantial or motivating factor in the termination decision; (2) the MPD would have terminated LeFande anyway; (3) LeFande has not made the necessary showing for

[1] LeFande also included breach of contract and defamation claims in his complaint, which this Court dismissed in 2012 (Dkt. # 21).

damages under Section 1983 because the MPD's termination decision was not part of an unconstitutional policy or practice; and (4) LeFande's status as a volunteer, rather than an employee, precludes him from recovering any compensatory damages.

## II. LEGAL STANDARD

The Court grants summary judgment when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is "genuine" if a reasonable jury, given the evidence presented, could return a verdict for the nonmoving party. *Musick v. Salazar*, 839 F. Supp. 2d 86, 93 (D.D.C. 2012) (citing *Scott v. Harris*, 550 U.S. 372, 380 (2007)). "A fact is material if a dispute over it might affect the outcome of a suit under the governing law." *Id.* (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

"'To survive a motion for summary judgment, the party bearing the burden of proof at trial must provide evidence showing that there is a triable issue as to an element essential to that party's claim.'" *Etheridge v. FedChoice Federal Credit Union*, 789 F. Supp. 2d 27, 32 (D.D.C. 2011) (quoting *Arrington v. United States*, 473 F.3d 329, 335 (D.C. Cir. 2006)). In considering a summary judgment motion, a court is to draw all justifiable inferences from the evidence in favor of the nonmovant. *Talavera v. Shah*, 638 F.3d 303, 308 (D.C. Cir. 2011).

## III. ANALYSIS

LeFande brings his claim under Section 1983, which provides a cause of action for violation of constitutional rights. *See* 42 U.S. §1983. A public employer "may not discharge an employee on a basis that infringes that employee's constitutionally protected interest in freedom

of speech." *Rankin v. McPherson*, 483 U.S. 378, 383 (1987). This Circuit uses a four-part test to determine if a public employee's termination violated his First Amendment rights:

> First, the public employee must have spoken as a citizen on a matter of public concern. Second, the court must consider whether the governmental interest in promoting the efficiency of the public services it performs through its employees outweighs the employee's interest, as a citizen, in commenting upon matters of public concern. Third, the employee must show that her speech was a substantial or motivating factor in prompting the retaliatory or punitive act. Finally, the employee must refute the government employer's showing, if made, that it would have reached the same decision in the absence of the protected speech.

*Wilburn v. Robinson*, 480 F.3d 1140, 1149 (D.C. Cir. 2007) (internal quotations, citations and alterations omitted); *LeFande v. D.C.*, 613 F.3d 1155, 1158-59 (D.C. Cir. 2010). "The first two factors…are questions of law for the court to resolve, while the latter are questions of fact ordinarily for the jury." *Tao v. Freeh*, 27 F.3d 635, 639 (D.C. Cir. 1994); *Hall*, 856 F.2d at 258. As noted above, the Circuit already determined that LeFande was speaking on a matter of public concern. *See Lefande*, 613 F.3d at 1161.[2]

**A. Causal Connection**

The District argues that there is no evidence to support LeFande's allegation that he was terminated for his participation in the *Griffith* litigation. This is exaggeration. While the evidence is admittedly slim, a reasonable juror could still conclude that the MPD terminated LeFande to interfere with his ongoing representation of PROs in the *Griffith* litigation.

The District characterizes certain deposition testimony as an admission by LeFande that he has no evidence of any causal connection. Def's Mot. at 6. During the deposition, District counsel asked repeatedly about evidence that the *Griffith* lawsuit was a substantial motivating factor in the termination decision. *See* Def's Mot. Exh. 4 ("LeFande Dep.") at 10:8; 11:9; 13:18;

[2] The District makes no argument with respect to the second part of the test (the balancing of government and employee interests), and skips directly to the third and fourth parts. *See* Def's Mot. at 6. Accordingly, the Court will presume LeFande's interest in commenting on matters of public concern outweighs whatever efficiency interests the MPD might have in preventing lawsuits like the *Griffith* suit.

14:20; 21:22; 22:13; 23:7; 24:19. LeFande initially responded that the District of Columbia and this Court had deprived him of the opportunity to gather any evidence of a causal connection.[3] *See id.* at 10:11; 11:15. However, he also stated that "[t]he evidence we have is the temporal relationship between the lawsuit and the termination and the complete absence of any other explanation offered at the time of the termination." *Id.* at 13:21. When asked again, he emphasized "a lengthy history of retaliation against me by the police department for my speaking out against the inefficiency and corrupt behavior of the officials who administer the Reserve Corps." *Id.* at 22:16; *see also id.* at 23:11 (referring, in response to the same question, to "the multitude of other improper employment actions that have been taken against me for my protected speech previously by the police department").[4] Several times LeFande insisted that he had already answered the question. *Id.* at 11:12; 15:1; 22:3. Finally, when asked for the eighth time, LeFande responded "We don't have that evidence." *Id.* at 25:4. These answers are far from an unequivocal admission.

The District also contends that the temporal proximity of the protected speech and the termination cannot provide circumstantial evidence of causation because the MPD terminated LeFande nineteen months after the *Griffith* action was filed. Def's Mot. at 6. The District argues that this period of time exceeds durations that other courts found insufficient to demonstrate a

[3] The Court has already settled the matter of LeFande's entitlement to additional discovery. This Court originally ordered that fact discovery would close on April 19, 2013. *See* December 20. 2012 Scheduling Order (Dkt. #30). The Court extended this deadline to May 20, 2013 upon a consent motion filed by the District. *See* February 22, 2013 Minute Order. LeFande filed a motion to compel on March 21, 2013, which the Court struck for failure to comply with the Court's standing order. *See* March 21, 2013 Minute Order. At a telephone conference on May 17, 2013, the Court confirmed that fact discovery would close on May 20, 2013, as previously ordered, but permitted the parties to schedule a deposition of LeFande to occur within two weeks of the conference. *See* May 17, 2013 Minute Order. LeFande filed a second motion to compel on May 20, 2013, which this Court also struck on the ground that fact discovery was closed except for the taking of LeFande's deposition. *See* May 22, 2013 Minute Order.

[4] In his complaint, and in opposition to the District's Motion for Summary Judgment, LeFande catalogues a variety of retaliatory or otherwise negative actions he alleges the MPD took against him prior to the termination at issue. *See* Compl. ¶¶ 13-21; Pl's Opp. at 2-5. Because the Court concludes that a reasonable juror could return a verdict for LeFande, with or without these allegations, the Court takes no position on their relevance or weight.

causal connection. *Id.* at 6-7 (citing *Clark County Sch. Dist. V. Breeden*, 532 U.S. 268, 273-74 (2001) (collecting cases)). The District also notes that Judge Kennedy had already dismissed the *Griffith* case before LeFande was terminated. *Id.* at 7.

These arguments cannot prevail. While it is true that over a year passed between the filing of the *Griffith* suit and LeFande's termination, the action was still pending on appeal when the MPD terminated LeFande. Furthermore, LeFande claims that the MPD terminated him "in retaliation for filing *and prosecuting* a civil action against the District of Columbia." Compl. ¶ 26 (emphasis added). The case was still active in early 2008, and LeFande was the attorney representing PROs in the appeal before the DC Circuit. This case is unlike those in which an isolated instance of protected speech occurs many months before the adverse action. Here, the protected speech was ongoing, in the form of LeFande's participation as counsel in the *Griffith* suit. Moreover, LeFande alleges that he was terminated a week before the scheduled oral argument. Compl. ¶ 25; LeFande Dep. at 8:21. That the case had been filed over a year earlier and had already been dismissed at the district court level matters little in light of LeFande's continuing participation on appeal.

Drawing all justifiable inferences in LeFande's favor, as the Court is required to do, a reasonable juror could view the timing of the termination as circumstantial evidence that the District retaliated against LeFande.

**B. The MPD's Justification for Terminating LeFande**

In support of its assertion that it would have terminated LeFande notwithstanding the protected speech, the District submitted a January 2008 document purporting to be a request for LeFande's removal, sent by the Director of the Metropolitan Police Academy to the Chief of Police. *See* Def's Mot., Exh. 3 at 1. The handwritten signatures (or initials) of Chief Lanier and

the head of the Police Academy appear on the document, though no sender is actually identified. *Id.* at 1. As grounds for removal, the document refers to LeFande's "negative comments and conduct of harsh language in emails…distributed throughout the Reserve Corps email network." *Id.* Included in the document are excerpts of emails from LeFande sent on January 18, 19, and 25, 2008, questioning the leadership of the reserve corps and criticizing their conduct. *Id.* at 3-5. In response to a request from a supervising officer for information about PROs who were also "Conservators of the Peace" in the State of Virginia, LeFande wrote:

> Please explain why you want this information and what you intend to do with it. Absent some special authority that MPD will confer to these people by virtue of the office they hold in Virginia, or this information being used to advocate for same, I can't understand why it is any of your business. It doesn't appear you have done anything with this information since the last time you asked. Why should we continue to provide it to you?

When LeFande's supervisor, Charles Brown, responded that the requested information "from time to time, has helped me stop or minimize disciplinary actions against Reserve Officers," LeFande wrote back:

> Your track record demonstrates to the contrary.
>
> You are, more often than not, the most immediate cause of arbitrary and unwarranted disciplinary actions against Reserve Officers. You certainly are responsible for the recent arbitrary promotions process in which you promoted a cadre of persons to your personal liking regardless of their lack of qualifications. You failed to utilize the promotion exams and merit selection process required under law so that you could capriciously exclude those critical of your perpetual incompetence. Similarly, you are personally responsible for the arming of certain Reserve Officers, including yourself, who are wholly unfit to carry firearms or who are in fact, legally disqualified from doing so.
>
> It appears to me that you are now on the hunt for more reasons to discredit and prejudice those more capable than you.
>
> You do not need a list of conservators. Instead, the police department needs a written policy in place that reflects these conservators' status as duly appointed law enforcement officers for Virginia and identifies them as exempt from firearms regulations both under District of Columbia and Federal law. If there is any

> question as to a conservator's status, their state issued identification credentials will give cursory confirmation of their status, which can be further confirmed by queries to the appropriate agencies.
>
> Absent any other cause for having this information, I believe it is inappropriate for you to maintain any such list.

*Id.* at 3-4. A week later, on January 25, 2008, Brown asked PROs to submit questions in advance of a meeting with Assistant Chief Joshua Ederheimer, so that Ederheimer could "be properly briefed." *Id.* at 4. LeFande responded:

> Briefed by who? You?
>
> Why even bother? You must be pretty nervous about this meeting for you to do something as contrived and clumsy as try to filter out the questions ahead of time. The whole point of this process is to spring on him all the dumb stuff you have been doing to the Corps all these years and make him squirm. Hopefully he will be embarrassed enough to finally force you to resign.
>
> Come to think of it, let's forward this little email to him [email address]? Oh yeah, you suspended me without cause for doing that nine months ago and haven't reinstatement me since. Let's add that to the email too.

*Id.* at 5.

The Request for Removal document also incorporates a report from an earlier investigation, conducted in 2007, which allegedly charged LeFande with conduct unbecoming an officer and conduct "prejudicial to the reputation and good order of the police." *Id.* at 2. The basis for those 2007 charges was another set of three emails, dated March 26, 2007, all relating to the response of the Reserve Corps leadership to a civic disturbance in the Georgetown neighborhood of Washington, DC. *Id*. In one email LeFande wrote that it would be more effective to roll a particular Sergeant on his side at a crowd than to ask him to lead the unit. *Id.* In another, LeFande accused superior officers of "suffering from delusions of adequacy." *Id.* In the third email, LeFande suggested that the officers in charge of coordinating the response to the disturbance were planning

to stand around until the crowd thinned out and then write up a report and "give [themselves] some medals." *Id.*

The Request for Removal document stated that LeFande had ignored a request to "put an end to his taunts of the Reserve Corps Commander," and had "continued to taunt and threaten others." *Id.* In particular, "[LeFande had] on a few occasions threatened the Commander with possible lawsuits for his decisions involving the Reserve Corps Division." *Id.*

Relying on this Request for Removal document, the District maintains that LeFande's "specific misconduct" and "blatantly insubordinate behavior" prompted the termination, rather than his involvement in the *Griffith* lawsuit. Def's Mot. at 7. LeFande disputes the authenticity of Request for Removal document, though he admits sending the January 25, 2008 email and does not contest his authorship of the other emails. *See* Pl's Response to Def's Allegations of Material Facts Not in Dispute ¶ 7. In any case, LeFande argues that the District's asserted grounds for the termination are also illegitimate because they punish protected speech – *i.e.* LeFande's email complaints about the leadership and direction of the Reserve Corps. Pl's Opp. at 17-18.

The question of what a government employer would have done in the absence of protected speech is normally one for the jury, *Tao*, 27 F.3d at 639. To be sure, a jury could ultimately find that the MPD terminated LeFande for his tendency to air complaints to the entire listserve, or for the tone of the emails. However the record also contains enough evidence for a reasonable juror to conclude that the MPD's asserted justifications – "specific misconduct" and "blatantly insubordinate behavior" – are pretextual.

The MPD gave no justification for the termination at the time. *See* Def's Mot., Exh. 1. The Court agrees with LeFande that most of the statements in the March 26, 2007 and January 2008 emails likely constitute protected speech. Despite their confrontational tone, they relate directly to the efficiency and leadership of the Reserve Corps, and (like the allegations in the *Griffith* lawsuit) they address "an integral component of police service" that is "relevant to the public's evaluation of the MPD." *LeFande*, 613 F.3d at 1161. Out of context, a mere allegation of incompetence or unfairness might not rise to the level of protected speech, but in the context of an email interchange concerning Reserve Corps preparations for a civic disturbance, LeFande's criticisms go beyond mere "individual personnel disputes and grievances." *Id.* (quoting *Hall*, 856 F.2d at 259). LeFande's emails allege incompetence, lack of preparation, avoidance of duties, and efforts to cover up poor performance. Such accusations have "relevance to the public's evaluation of the performance of governmental agencies" and would assist the public to "make informed decisions about the operation of their government." *Id.*

LeFande need not prove that his emails were protected, or that termination on the basis of those emails would violate his First Amendment rights, in order to defeat the District's motion for summary judgment. He need only raise a disputed issue of fact as to whether the MPD "would have reached the same decision in the absence of the protected speech." *Wilburn*, 480 F.3d at 1149. A reasonable juror might see the Request for Removal document as supporting LeFande's retaliation claim, rather than refuting it. Most of the communications cited by the District are direct criticisms of Reserve Corps leaders and operations. A decision by the District to investigate and terminate LeFande for raising criticisms on a matter of public concern might appear more consistent with a retaliatory motive than with the District's accusations of "misconduct" and "blatant insubordination."

Furthermore, the Request for Removal document also references "threats" by LeFande to sue the MPD, which the District represents as part of the pattern of "misconduct" justifying termination. Def's Mot., Exh. 3 at 2 ("[LeFande] has on a few occasions threatened the Commander with possible lawsuits for his decisions involving the Reserve Corps Division"). A lawsuit challenging the MPD over "decisions involving the Reserve Corps Division" is precisely the type of activity protected under the First Amendment, according to the Circuit's earlier decision in this case. *See LeFande*, 613 F.3d at 1161. A reasonable juror might view the raised specter of these threatened lawsuits as simply another instance of the MPD recasting protected speech as misconduct. Taken together, LeFande has offered enough evidence to survive the District's motion for summary judgment.

**C. Unconstitutional Policy or Practice**

Local governments can be held liable under Section 1983 only if a government employee acts pursuant to an unconstitutional policy or practice. *Monell v. Dept. of Social Servs. of City of New York*, 436 U.S. 683, 689 (1978). The acts of a single official with final policymaking authority can be sufficient to establish municipal liability under Section 1983. *See City of St. Louis v. Praprotnik*, 485 U.S. 112, 123 (1988); *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480 (1986); *Triplett v. District of Columbia*, 108 F.3d 1450, 1453-54 (D.C. Cir. 1997); *McKnight v. District of Columbia*, 412 F. Supp. 2d 127, 135-36 (D.D.C. 2006). Whether a particular person has "final policymaking authority" is a question of District of Columbia law. *Jett v. Dallas Independent School District*, 491 U.S. 701, 737 (1989).

In prior cases concerning "final policymaking authority," courts have focused on what specific authority the District of Columbia regulations give to particular officials. *See, e.g.*, *Triplett*, 108 F.3d at 1453 (Director of the Department of Corrections had final policymaking

authority with respect to the use of force) (citing D.C. Code § 24–442 (1981)); *Banks v. D.C.*, 377 F. Supp. 2d 85, 91 (D.D.C. 2005) (Director of D.C.'s mental health department had final policymaking authority (citing D.C. Code § 7–1131.05 (2001)); *Byrd v. D.C.*, 807 F. Supp. 2d 37, 75 (D.D.C. 2011) (Director of Parks and Recreation did not have final policymaking authority due to the absence of "specific provisions" in the D.C. Code); *Coleman v. D.C.*, 828 F. Supp. 2d 87, 92 (D.D.C. 2011) (D.C. Code gave "no specific grant of authority to the Fire Chief to set final policy").

The District does not dispute that the Chief of Police is the final policymaker with respect to LeFande's termination. In fact, the District concedes that "[i]n the District, the Chief of Police is considered a policymaker and her policymaking authority is found in District of Columbia Municipal Regulations." Def's Mot. at 11. However, the District argues that LeFande failed to allege that Chief Lanier "ordered or allowed to exist an unconstitutional policy of terminating MPD Reserve Corps members in violation of their First Amendment rights." *Id.* This argument misses the point. A policymaker in Chief Lanier's position need not establish a blanket policy in order to incur liability. Even a single decision can serve as a policy or practice when made by an official with final policymaking authority. *See Pembaur,* 475 U.S. at 480.

The D.C. Code supports LeFande's argument. Section 5-129.51, concerning PROs, gives the Chief of Police responsibility to determine the duties and responsibilities of the Reserve Corps members. D.C. Code § 5-129.51(b). The Chief of Police also establishes the selection criteria for PROs, and decides what training they should receive. *Id.* § 5-129.51(c). The legislature directed the Mayor to issue implementing rules, *see id.* § 5-129.51(d), but the Mayor subsequently delegated that authority to the Chief of Police. *See* "Delegation of Mayor's Rulemaking Authority Pursuant to the Metropolitan Police Department Reserve Corps

Establishment Act of 2004 and the Volunteer Services Act of 1977 to the Chief, Metropolitan Police Department," 53 DCR 5313 (June 30, 2006).

Chief Lanier sent the termination letter, and appears to have approved the Request for Removal as well. *See* Def's Mot. Exhs. 1, 3. There was no opportunity for appeal. *Id.* Exh. 1. These facts, taken together with the D.C. Code, establish that Chief Lanier was the final policymaker with respect to LeFande's termination, and that Chief Lanier's decision therefor subjected the District to liability under Section 1983.

**D. LeFande's Claim for Damages as a Volunteer**

The District's argument with respect to damages merits little discussion. The DC Circuit already assumed in this case that "the First Amendment protects [LeFande's] speech even though he is an unpaid volunteer." *LeFande,* 613 F.3d at 1161 n.5. The MPD does not challenge LeFande's right to bring a First Amendment claim as a former volunteer, but rather argues that no reasonable jury could award LeFande compensatory damages because he was an unpaid volunteer. While it is true that as a volunteer LeFande cannot produce evidence of lost wages, this does not mean that he can prove no compensatory damages whatsoever. For instance, LeFande alleges that during his volunteer service as a PRO he routinely received pay for court appearances and was subject to mandatory paid recall in emergencies. Pl's Opp. at 24 n.4. He also alleges that he received workers compensation and disability benefits. *Id.* At this stage LeFande has not presented any evidence with respect to frequency of such payments, or the likelihood that they would have recurred had he remained in the Reserve Corps, but the question of precisely how much (if any) compensatory damages to award rests with the jury. That LeFande earned no hourly wage for his work is not enough to justify granting summary judgment on his claim.

For the reasons set forth above, the Court hereby **DENIES** the MPD's motion for summary judgment.

**SO ORDERED**.

February 11, 2014

Barbara J. Rothstein

BARBARA J. ROTHSTEIN
UNITED STATES DISTRICT JUDGE