

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA**

**DAVID M. KING,
Plaintiff,**

vs.

**FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION
and HENRY BARNET, individually
and in his capacity as an employee of the
State of Florida, Department of Environmental
Protection and GREGORY GIBSON, individually
and in his capacity as an employee of the
State of Florida, Department of Environmental
Protection and, PINKY G. HALL, individually
and in her capacity as an employee of the
State of Florida, Department of Environmental
Protection and ROY C. DICKEY, individually
and in his capacity as an employee of the
State of Florida, Department of Environmental
Protection and, AMY M. SCHMIDT, individually
and in her capacity as an employee of the
State of Florida, Department of Environmental
Protection,**

CASE NO: _____

Defendants.

COMPLAINT

Plaintiff, DAVID M. KING, hereby sues the FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, HENRY BARNET, individually, GREGORY GIBSON, individually, PINKY G. HALL, individually, ROY C. DICKEY, individually, and AMY M. SCHMIDT, individually, and alleges:

JURISDICTION AND VENUE

1. This is an action brought forth under Florida Statutes § 112.3187 and § 768.28, as well as under 42 U.S.C. § 1983 for claims which are, individually, valued in excess of Seventy-five thousand dollars (\$75,000.00), exclusive of costs, interest and attorneys fees.

2. Plaintiff's claims for relief are predicated, in part upon 42 U.S.C. §1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges, and immunities secured to the Plaintiff by the Constitution and laws of the United States, and by 42 U.S.C. § 1988 which authorizes the award of attorney's fees and costs to prevailing plaintiffs in actions brought pursuant to 42 U.S.C. §1983.

3. The State Law Claims are brought under § 112.3187(8)(a), Fla. Stat., § 768.28, Fla. Stat., as well as Florida Common Law.

4. A written notice of Plaintiff's state law claims asserted herein, was submitted to Defendant and to the Florida Department of Financial Services, via certified mail, on or about January 29, 2008, pursuant to § 768.28(6), Florida Statutes. No response was received by Plaintiffs, therefore they are deemed denied by operation of law. A copy of the certified letter returns is attached as *Exhibit A*.

5. Plaintiff has met all conditions precedent to filing this action. Plaintiff has filed a charge of discrimination and retaliation with the Florida Commission on Human Relations (FCHR) in late 2007, and had obtained a right to sue letter from the Equal Employment Opportunity Commission on October 4, 2008, a copy of which is attached as *Exhibit A*.

PARTIES

6. Plaintiff, DAVID M. KING, is a resident of Bay County, Florida. The incidents described herein occurred in Leon County, Florida.

7. At all times pertinent hereto, Defendant, FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION, (hereinafter "FDEP") has been organized and existing under the laws of the State of Florida. At all times pertinent to this action, Defendant has been an "employer" as that term is used under the applicable laws identified above.

8. Defendant, HENRY BARNET (hereinafter "Barnet") at all times pertinent to this action resided in or near Leon County, Florida. He was the Director for FDEP's Division of Law Enforcement at the Leon County, Florida Headquarters at all times pertinent to this action.

9. Defendant, GREGORY GIBSON (hereinafter "Gibson") at all times pertinent to this action resided in or near Leon County, Florida. He was the Assistant Bureau Chief above Plaintiff or the Assistant Director for FDEP's Division of Law Enforcement at the Leon County, Florida Headquarters at all times pertinent to this action.

10. Defendant, PINKY HALL (hereinafter "Hall") at all times pertinent to this action resided in or near Leon County, Florida. She was the Inspector General for the FDEP at the Leon County, Florida headquarters at all times pertinent to this action.

11. Defendant, ROY DICKEY (hereinafter “Dickey”) at all times pertinent to this action resided in or near Leon County, Florida. He was the Investigator directly under Defendant Hall at FDEP’s Office of the Inspector General at the Leon County, Florida headquarters at all times pertinent to this action.

12. Defendant, AMY SCHMIDT (hereinafter “Schmidt”) at all times pertinent to this action resided in or near Leon County, Florida. She was the Investigator directly under Defendant Dickey at FDEP’s Office of the Inspector General at the Leon County, Florida headquarters at all times pertinent to this action.

I. PLAINTIFF’S COMPLAINTS

13. Plaintiff was originally employed with Defendant on March 1, 1982. In 2007, Plaintiff was a Captain in the Division of Law Enforcement at FDEP. He was the victim of adverse actions after he reported and/or objected to actual and/or suspected violations of laws, gross malfeasance, misfeasance and/or gross misconduct by employees and/or agents of Defendant.

14. In 2006, Plaintiff objected to certain practices by his Bureau Chief, Elwood Stephens, and Assistant Bureau Chief, Gregory Gibson (now Assistant Director). In 2006, Plaintiff objected directly to Stephens placing of a phone call to the Tallahassee Regional Communications Center (TRCC) to report a false crime in order to test and see if one of Plaintiff’s subordinate employees, Lieutenant Perry Joyner, had his radio on. *See Exhibit B.* In 2006, Plaintiff also objected to the hiring of William Stokley as a reserve office because of an unfavorable background investigation. *See Exhibit C.*

15. Plaintiff would have been required to report both of these actions, according to FDEP's directive 290, section 5 (b) and (d), of which have been relied on for the termination and dismissal of other employees, including whistle-blower complaints and violations of chain-of command.

16. Plaintiff's subordinate employee, then Corporal Mike Shoaf, was instructed to conduct a background investigation of Stokley. The result showed that Stokley had been denied employment with the Florida Highway Patrol (FHP) due to a failed polygraph, and that the Florida Department of Transportation (FDOT), and the Florida Fish and Wildlife Commission (FWC) had chosen not to hire him because of the failed polygraph and/or other reasons relating to his background. *See Exhibit D, Florida Department of Corrections investigation into the envelopes, Investigative Report re: Stokley; Exhibit E, Transcription of Taped Interview of Corporal Mike Shoaf.*

17. Corporal Mike Shoaf was told to sign the investigation and send it up to headquarters, thus concluding the investigation. *See Exhibit F, PERC Transcripts, Volume I, Testimony of William Walls (pg. 18) and, Volume II, Testimony of Michael Shoaf (pg. 172).*

18. Then Assistant Bureau Chief, Gregory Gibson, was friends with Stokley and wanted him to be hired. Once he learned of Plaintiff's objections, he placed a phone call to Lieutenant Perry Joyner (Plaintiff's subordinate) and told him to re-interview Stokley and added that he knew Lt. Joyner would "do the right thing". *See Exhibit F, PERC Transcripts, Volume II, Testimony of Perry Joyner (pg. 181).*

19. Joyner testified at the Plaintiff's PERC hearing that he was intimidated by this call because the chain-of-command was bypassed due to Plaintiff's objections. In addition he had a previous lawsuit involving Gregory Gibson, and felt threatened. *See Exhibit F, PERC Transcripts, Volume II, Testimony of Perry Joyner (pg. 181). See Exhibit G, Memorandum to Plaintiff from Perry Joyner dated January 16, 2007.*

20. Many people had reservations about the hiring of Stokley, including Captain Billy Walls, Captain David King, Lieutenant Perry Joyner, and Corporal Mike Shoaf, and this was known to the Defendants'. *See Exhibit F, PERC Transcripts, Volume I, Testimony of William Walls (pg. 18); Volume II, Testimony of Michael A. Shoaf (pg. 172), Testimony of Perry Joyner (pg. 181), Testimony of David King (pg. 247).*

21. Plaintiff was ordered to give Joyner a reprimand for not having his radio on during the false report of a crime alleged in paragraph 15. Plaintiff repeatedly objected to this. However, as Plaintiff was giving Joyner this reprimand, he received a phone call from Stephens who told him to pull the reprimand back and come to Tallahassee to "clear the air". Plaintiff had complained to so many people both inside the agency and outside about the actions taken by Stephens in placing that phone call that Stephens became aware of Plaintiff's complaint.

22. Plaintiff had complained about this outside of his employ with Defendant, including calling David Tripp with the Florida Highway Patrol to complain about the phone call made by Stephens to the TRCC to check on Joyner. Plaintiff also consulted with then Investigator Percy Griffin with the FDEP Inspector General's office about filing an anonymous complaint, for fear of being fired if it was known it was him. Plaintiff was

attempting to make public his belief that a bureau chief at FDEP had broken the law to punish an employee, Joyner. *See Exhibit F, PERC Transcripts, Volume II, Transcripts of Percy Griffin (pg. 243); Testimony of David King (pg. 247).*

II. THE NOVEMBER 3, 2006 MEETING

23. Plaintiff then met with Stephens, Gibson, and Senior Attorney for the Department, Tracy Hartman on November 1, 2006.

24. At that meeting Plaintiff was questioned about his reluctance to Stokley's hire, his objections to giving Joyner a reprimand, and whether or not he had been telling employees and others that he had an "in" with Governor Crist's campaign and was promising others jobs should he be promoted. Plaintiff would have no investigation into this allegation until after he was terminated and had his termination reversed by the Public Employees Relations Commission. *See Exhibit F, PERC Transcripts, Volume I, Testimony of Elwood Stephens (pg. 62); Volume II, Testimony of Gregory L. Gibson (pg. 134), Testimony of David King, (pg. 247). See Exhibit H, Gregory Gibson's notes from the November 1st, 2006 meeting, and Affidavits to the Florida Commission on Human Relations from Gregory Gibson, Tracey Hartman, and Elwood Stephens.*

25. Plaintiff was specifically questioned about his dislike of Stokley's background investigation in front of Gibson, who knew that Plaintiff was aware that he was friends with Stokley and wanted him hired.

26. Plaintiff was told to correct his behavior and not complain about Stephens call to the Tallahassee Regional Communications Center to report a false crime, or

Gibson's intimidation of subordinate employees and violation of the chain-of-command to secure his high school friend, Stokley's, hire.

27. Plaintiff was so concerned from the tone of that meeting that he emailed Dickey with the Inspector General's office a few days later and asked for whistleblower protection. *See Exhibit I.*

III. THE ENVELOPE INVESTIGATION

28. Later Plaintiff received word that envelopes containing the partial background investigation of Stokley had been mailed to the Florida Department of Law Enforcement (FDLE) and to the Florida Department of Corrections (FDOC), where Stokely then worked, along with another partially incomplete background investigation done also by Mike Shoaf on Alicia Cowan.

29. Plaintiff notified his superior officer, Stephens, and FDOC launched an investigation. *See Exhibit J.*

30. FDOC interviewed Shoaf regarding the investigation into who mailed the envelopes. *See Exhibit E, Transcription of Taped Interview of Corporal Mike Shoaf.* However, FDOC later downgraded and closed the investigation with no findings. *See Exhibit K.*

31. Shortly thereafter, Plaintiff later was placed under investigation for the mailing of the envelopes. Part of the basis for the suspicion, not known until later when the investigation was sustained was that Plaintiff lived in Bay County, Florida where the envelopes were postmarked, and that he had a history of complaining outside of the agency about issues involving law enforcement violations. Plaintiff had a history of

complaining outside of the agency with a desire to inspire the public and government to change the way law enforcement operated. On January 19, 2007, he was interrogated, placed on administrative leave with pay, and his state property was taken from him. *See Exhibit L (a), letter and notice given to Plaintiff on January 19, 2007, and Exhibit L (b) Investigation by Tallahassee Police Department, including copies of the two envelopes (last two pages), and the two incomplete background investigations mailed anonymously on Stokley and Cowan).*

32. The Office of Inspector General (OIG) at FDEP started an investigation into Plaintiff. Dickey led the investigation and was assisted by Schmidt. Both were present at Plaintiff's interrogation on January 19, 2007.

33. Plaintiff filed Internal Affairs Investigations for all of the violations that he had complained of previously in emails or in person. Major Roy Dickey investigated them. *See Exhibit M.*

34. One investigation filed by Plaintiff dealt with the fact that Gibson was involved in the hiring process of his high-school friend, Stokely. Dickey led the investigation.

35. During the investigation, Dickey only interviewed Gibson and took statements from him indicating that Gibson had no desire to become involved in Stokley's hiring process, and wanted to remain distant to avoid the appearance of "impropriety".

36. Plaintiff alleged that Gibson bypassed the chain of command and was deliberately involved in Stokley's hiring process by contacting Joyner and Shoaf.

37. Dickey only interviewed Gibson. At the PERC hearing; however, it became clear that Joyner and Shoaf were essential witnesses to be interviewed regarding the allegations.

38. Plaintiff wanted Dickey questioned at the PERC hearing about the investigation into his complaints, although they had no bearing on the issue before PERC, namely whether Plaintiff mailed the envelopes with Stokley's background information to FDLE and FDOC. His desire to have this questioning and the investigations come in was to place it all on public record to show how the investigations were being conducted by the OIG at FDEP.

39. Although Gibson maintained he staying away from the Stokley hiring process, it is clear that he was very much involved. *See Exhibit F, PERC Transcripts, Volume I, Testimony of William Walls (pg. 18); Testimony of Roy C. Dickey (pg. 89); Volume II, Testimony of Michael A. Shoaf (pg. 172); Testimony of Perry Joyner (pg. 181); Testimony of David King (pg. 247).*

40. Plaintiff was confident that Gibson became aware of Plaintiff's objections to Stokley's hire prior to and most obvious during the November 1, 2006 meeting, and that is why he took the actions he did to ensure Stokley's hire.

41. Plaintiff filed numerous complaints with the Florida Commission on Human Relations after this time, including one alleging retaliation and / or whistleblower violations for complaining about Stephens phone call to the TRCC.

42. At Plaintiff's interrogation on January 19, 2007, he was represented by counsel. Later, Counsel for Plaintiff asked that Major Roy Dickey have the envelopes tested for DNA and / or fingerprints.

43. Plaintiff was told that the envelopes had been taken to the Tallahassee Police Department, where Dickey, Schmidt, and Gibson had all previously worked.

44. Ron McNeil, known to Dickey, was asked to look at the envelopes and provided with few samples of Plaintiff's handwriting. No other employees handwriting was submitted to Mr. McNeil for analysis. Mr. McNeil is not a certified document examiner. *See Exhibit F, PERC Transcripts, Volume I, Testimony of Roy Dickey (pg. 89); Volume II, Testimony of Ronald McNeil (pg. 147).*

45. Co-Counsel for Plaintiff at the time, Mr. Don Pumphrey, asked Plaintiff to take a polygraph examination with Mr. Ray Fredericks. Plaintiff agreed and was administered a polygraph examination which he passed. *See Exhibit N.* The Agency was notified about the polygraph examination, and was told again at Plaintiff's predetermination conference.

46. Prior to Plaintiff's termination, another DEP employee, David VanBlairicom was approached and told to apply for Plaintiff's position because Plaintiff would not be coming back. *See Exhibit O.* Plaintiff was terminated on May 31, 2007.

47. After his termination, Gibson, who had continued to retaliate and harass Plaintiff ever since his objections to the hiring of Stokley, prepared a termination letter and emailed it out to the entire FDEP Division of Law Enforcement. He sent the email to Barnett for approval first and the only change Barnett made was to remove the attached

termination letter addressed to Plaintiff that Gibson had attached to the email. *See Exhibit P.*

IV. PUBLIC EMPLOYEES RELATIONS COMMISSION

48. Plaintiff appealed to PERC and won his appeal. *See Exhibit Q.*

49. Plaintiff was completely disillusioned by the hostile working environment that he found himself in; the fact that FDEP had failed to investigate his allegations of a criminal offense on the part of Stephens, as well as Stokley's hire which was against the Criminal Justice and Training Commission Standards, and filed his appeal to PERC in order to make public record out of the fact that FDEP was engaged in wrongdoing and attempting to silence his complaints.

50. Prior to PERC and continuing after he won his appeal, Plaintiff had contacted the local media, the Governor, and his representatives in order to bring to light the matters he testified to at PERC. *See Exhibit R, Email between Counsel for Plaintiff and Bill Cotterell of the Tallahassee Democrat after Plaintiff contacted Mr. Cotterell, to which counsel responded on behalf of Plaintiff, showing Mr. Cotterell's knowledge of who all Plaintiff had complained to.* As discussed by Mr. Cotterell, Plaintiff had previously filed a grievance against Michael Horvath, an employee at DEP for sending pornographic emails over state computers. Mr. Horvath only received a reprimand at that time. However, in a case similar to the one at bar, upon facing a Motion to Dismiss in the *Thomas White v. DEP, et. al* case, Counsel for Mr. White discussed this in his response and attached the pornographic email. After that hearing, Mr. Horvath was either terminated or resigned although he had only received a reprimand for this action over a

year prior. The Judge did not dismiss the Counts. *See Exhibit S, Response to Motion for Attorney's Fees in the case of Thomas White v. DEP. See Exhibit T, one of the Emails from Michael Horvath resulting in the reprimand. See Exhibit U, Additional Emails from Plaintiff to others outside the agency, such as the Governor of Florida, and Emails from Plaintiff's Counsel, at Plaintiff's request to members of other agency's to bring to light problems within FDEP.*

51. At PERC, Plaintiff testified about how Stokley and Cowan's hiring was done against the policy of not only the agency but law Enforcement standards; how his superior officer violated the law by calling in a false crime to the TRCC, and about a political meeting he allegedly had with Tom Wheeler who had told both he and Joyner that should Governor Christ become elected they would receive high positions at FDEP. This was a source of some concern by FDEP, and Joyner, prior to Plaintiff's dismissal was placed under investigation for this, among other things. *See Exhibit H, Gregory Gibson's notes from the November 1st, 2006 meeting, and Affidavits to the Florida Commission on Human Relations from Gregory Gibson, Tracey Hartman, and Elwood Stephens.*

52. At PERC, the issue to be resolved was whether or not Plaintiff mailed the envelopes; however, he insisted on testifying about these other matters because he knew it would become public record. In fact, he insisted on taking the PERC transcripts to the Governor's IG's office and both he and undersigned counsel met with Dawn Case and turned them over to her and James Knight who was assisting her in the investigation. *See Exhibit V, Email to James Knight dated September 14, 2007 indicating he had possession*

of the PERC transcripts prior to that date (although Mr. Knight mentions the Final Order, the Final Order was not issued until September 13, 2007 after the meeting).

53. Regarding the envelopes, Plaintiff retained a certified document examiner who opined that the handwriting was not that of Plaintiff. *See Exhibit F, PERC Transcripts, Volume II, Testimony of Richard Orsini (pg. 194). See Exhibit W, Curriculum Vitae and Biography of Richard Orsini.* The PERC Hearing Officer wrote in his recommended order that the writing appeared as if someone had done it to make it look like Plaintiffs, stating, “Instead, it is more likely that someone added the curlicues to make the letters look like King’s handwriting”. *See Exhibit Q, Hearing Officer’s Recommended Order, ¶ 19, pg. 12, last paragraph).* This handwriting examiner, unlike Ron McNeil who did the first analysis for Defendants and was not a certified handwriting examiner, had samples of other writing to compare Plaintiff’s writing to. *See Exhibit F, PERC Transcripts, Volume II, Testimony of Richard Orsini (pg. 194).*

54. FDEP was ordered to reinstate Plaintiff. Plaintiff contacted FDEP numerous times about when he could be reinstated but received no response. *See Exhibit X.*

V. FIRST INVESTIGATION AND THE “NEW” POST-PERC INVESTIGATION

55. Plaintiff learned after the PERC Hearing Officers Recommended Order was issued, that Barnett and Gibson had held a meeting with the Northwest District officers and told them that “David King was coming back to the district”. *See Exhibit Y.* This was only days from the PERC hearing officer’s recommended order. *See Exhibit Q.*

56. Immediately, Captain Amy Schmidt with the Office of the Inspector General at FDEP started to gather evidence against Plaintiff. *See Exhibit Z.* One such contact was an email to former employee David VanBlairicom through Captain Percy Griffin with the Inspector General's Office for him to contact her. The email was dated August 20, 2007, less than two weeks after the PERC Recommended Order. *See Exhibit Q.* VanBlairicom was asked to write an affidavit stating that he had seen Plaintiff working in Wal-Mart in Panama City while he was on administrative leave with pay from FDEP during his investigation. VanBlairicom was told by Captain Amy Schmidt that Plaintiff was being investigated for Grand Theft for working two jobs and not reporting it. *See Exhibit AA, Emails and Affidavit.*

57. Both of these events took place after Plaintiff testified and received the favorable recommended order from the Hearing Officer at PERC.

58. FDEP decided they would only reinstate Plaintiff under the terms of placing him under a new investigation for charges that should have been investigated prior to his termination. Undersigned Counsel received word of this from a former employee and emailed FDEP inquiring about an investigation. *See Exhibit BB.* Two days later, Captain Percy Griffin came to undersigned counsel's office with two letters for Plaintiff, one advising of his reinstatement based on the PERC decision, and one placing him under investigation. *See Exhibit CC.*

59. The new investigation contained many allegations including, sexual and racial harassment, among other things. *See Exhibit DD.* However, the sexual and racial harassment charges were elicited from Gibson by Schmidt based on allegations that

Plaintiff made such comments as “well girl” and “chocolate chip” referring to a FDEP employee, Officer Michelle Dupree. This was alleged to have occurred in 2006. This was noted in a memo from Schmidt to the case file on September 20, 2007 after the PERC ruling and FDEP’s threat of a grand theft charge regarding Plaintiff. *See EE*. One year prior, Gibson had a meeting with Plaintiff regarding the employee that Plaintiff allegedly sexually and racially harassed, Officer Dupree. Gibson discussed with Plaintiff that Officer Dupree had a history of filing false complaints and engaging in “rumor mongering”. Gibson instructed Plaintiff to have Joyner counsel Officer Dupree about the “unacceptability of her rumor mongering” and “such conduct serves no constructive purpose as is a violation of DEP Directives”. Gibson told Plaintiff to have Joyner document the conversation with Officer Dupree so he could confirm the dates and content. Gibson on September 7, 2006 documented this in a memorandum to the file. *See Exhibit FF*. This was alleged to have occurred before the envelope investigation on January 19, 2007, as Schmidt states in her memo on September 20, 2007. Schmidt wrote that Gibson overheard these comments during a training course in October 2006. However, Gibson, a supervisory law enforcement officer, did not report that to Schmidt, according to this memo, and no action was taken until September 2007, after the Plaintiff’s envelope investigation and success at PERC. Additionally, in between the year the two memos were written Plaintiff had objected to and filed a complaint against Gibson for involving himself in the hiring of his high school friend, Stokley, as alleged in paragraphs 25 and 26, and was accused of mailing Stokley’s background investigation to FDLE and FDOC. Plaintiff was questioned about numerous issues by Gibson in a

meeting on November 1, 2006, and although the incident with Officer Dupree was alleged to have been overheard by Gibson in October of 2006, one month prior, there is no record that it was discussed or mentioned at the meeting or reported by Gibson to the Inspector General's Office. *See Exhibit H, Gregory Gibson's notes from the November 1st, 2006 meeting, and Affidavits to the Florida Commission on Human Relations from Gregory Gibson, Tracey Hartman, and Elwood Stephens.*

60. Additionally, Plaintiff was accused of promising people jobs during an election campaign during 2006. This was an issue that was brought up in the November 1, 2006 meeting referenced above and was before he was placed under investigation for the envelopes and put on leave on January 19, 2007. Plaintiff was not investigated of any of these charges that allegedly occurred prior to the first investigation. *See Exhibit F, PERC Transcripts, Volume I, Testimony of Elwood Stephens (pg. 62); Volume II, Testimony of Gregory L. Gibson (pg. 134), Testimony of David King, (pg. 247).* *See Exhibit H, Gregory Gibson's notes from the November 1st, 2006 meeting, and Affidavits to the Florida Commission on Human Relations from Gregory Gibson, Tracey Hartman, and Elwood Stephens.* However, one day prior to his effective termination date for the envelope violation in May of 2007, Plaintiff and undersigned counsel were contacted about a new violation that Plaintiff had committed on his time sheets because he wrote on them that he was under administrative leave for a fraudulent investigation referring to the envelopes. FDEP wanted Plaintiff interrogated about this claiming it was an investigation. However, Plaintiff was in the hospital with blood clots and was not

available for questioning. The issue was not revisited and Plaintiff was later terminated for mailing envelopes on May 31, 2007.

61. At the time of the attempted reinstatement in September of 2007, Plaintiff was being threatened with a criminal investigation for working part time at Wal-Mart while on administrative leave with pay during his first investigation, and not asking for permission from the agency. He was told the agency was looking into civil theft charges, and decided because of their retaliatory actions they would send him to jail before they would accept his reinstatement to his position. Therefore, he decided to give up his privilege to employment that he had won from PERC under the threat of a criminal sanction, and because of the hostile working environment, decided things would be so bad for him under the guise of these threats that he could not accept reinstatement. Undersigned Counsel inquired of FDEP why “grand theft” was being listed as one of his charges that was sustained. *See Exhibit GG*. This was in regards to the new investigation after the PERC ruling.

62. While Plaintiff was under investigation for mailing the envelopes in the beginning of 2007 and prior to his PERC appeal, Plaintiff’s subordinate employee, Lieutenant Perry Joyner, was placed under investigation in March of 2007. During the interviews of witnesses and complainants, each was asked numerous times, “Did Captain King or Lieutenant Joyner....” even though the investigation was supposed to be regarding Lieutenant Joyner. *See Exhibit HH, Internal Investigation of Lieutenant Perry Joyner, Transcripts of Testimony of Marty McClellan pg. 9 (lines 14-25), Transcripts of*

Testimony of Mitchell Golloher, pg. 14 (lines 2-4); Testimony of James Hughes, pg. 5 (lines 4-5). 1

63. During one interview, Officer Heath Nichols stated that Lieutenant Paul Arkin had approached him regarding why Plaintiff was under investigation, in violation of Florida Statute § 112.533 because this discussion was occurring while the investigation was still ongoing and they were not privy to information about the envelopes, were not witnesses, or counsel for the Plaintiff. Officer Nichols declined to talk about this. *See Exhibit HH, Internal Investigation of Lieutenant Perry Joyner, Transcripts of Testimony of Heath Nichols, pg. 50 Lines 2-11)(when referring to "Paul" Nichols is referring to Paul Arkin, and when referring to "captain" he is referring to Plaintiff, Captain David King).*

64. Counsel for Plaintiff emailed Inspector General Pinky Hall asking for an investigation into why a lower-level employee would have that information because this compromised the investigation. *See Exhibit II, Email to Inspector General Hall.* In addition, counsel for Plaintiff sent a public records request to the agency for information into the meeting that took place after the PERC ruling wherein the district was told Plaintiff would be coming back, and a request for information into why Arkin was talking about Plaintiff's investigation prior to its closure. The Agency attorney, Tracey Hartman, emailed Arkin, Gibson and Barnet and stated "...I would remind you that the request only extends to *existing records*." (emphasis added). *See Exhibit JJ.* One of the people on

1 The transcripts of the witnesses in the Investigation into Perry Joyner are over 554 pages in length. Therefore, Plaintiff is filing as an exhibit a sample of some of the questions that was asked repeatedly of the witnesses involving both Plaintiff and Joyner in the body of the question.

that email was Arkin, who was the employee discussing Plaintiff's investigation with employees prior to it being closed in violation of § 112.532, and the one that took Plaintiff's position as Captain. Counsel for Plaintiff was unable to obtain any documents other than the series of emails attached as *Exhibit Y*. However, it is standard operating procedure that minutes are taken and kept at such meetings. Plaintiff has received no such minutes, although witnesses have stated that the fact that Plaintiff would be coming back to the district after his success at PERC was discussed, followed by a "new" investigation into past accusations against Plaintiff.

65. No investigation was done to Plaintiff's knowledge. Coincidentally, Captain Paul Arkin who had the information about Plaintiff's investigation and was discussing it in violation of Florida Statutes, was promoted to Plaintiff's job upon Plaintiff leaving and was the most vocal about Plaintiff on the interview tapes during Joyner's investigation. Captain Arkin would talk negatively about Plaintiff during Joyner's investigation, which would later become an investigation into Plaintiff once he was successful at PERC. Plaintiff's job position was advertised only days before his PERC hearing and over a month after he filed his PERC appeal. *See Exhibit KK*.

66. Joyner testified for Plaintiff at his PERC hearing and his own investigation was sustained two days later. *See Exhibit LL*.

67. Plaintiff's presenting of testimony at PERC and emails to different officials, attempted to show the misconduct of the Defendant with a desire to make public all of the violations he suffered and FDEP's decision to reinstate him only to place him back under investigate him again.

68. The initial investigation into Plaintiff regarding the envelopes was fraught with problems including but not limited to the fact that the investigation was compromised by information provided to other employees in violation of Fla. Stat. § 112.533.

69. FDEP's OIG failed to follow their own directives (435 and 290) which were required to be established by Fla. Stat. § 112.533. For example, in FDEP Directive 435 under reasons for dismissal it states under section 8 (2), "Negligence. Employees shall exercise due care and reasonable diligence in the performance of job duties." See *Exhibit MM*.

70. In addition, when being placed on leave Plaintiff was entitled to a letter from the Director which complied with the following DEP directive 435:

7. Procedures:

- a. If the employee is under formal investigation for a violation for which dismissal may be a penalty, the Director may authorize that the employee be placed on administrative leave in accordance with Chapter 60L-34.0071(f), Florida Administrative Code. The employee placed on administrative leave must be given written notice. Such notice *must state the commencement and ending date of the administrative leave, a brief statement of the reason for the leave, a statement that the employee will be promptly notified of the results of the investigation, and instructions of when to report and where to report for duty following the end of the period of administrative leave. A copy of such notice must be sent to the Bureau of Personnel Services and to the Department of Management Services' Office of General Counsel.* (emphasis added).

71. The letter provided to Plaintiff on January 19, 2007, did not inform Petitioner of the ending date of his administrative leave, it did not give a brief statement

of the reason for the leave, it did not provide a statement that the employee will be promptly notified of the results of the investigation, nor did it provide for where to report for duty following the end of the period of administrative leave. *See Exhibit NN.*

72. After Plaintiff was placed on administrative leave on January 19, 2007, he filed 8 complaints with the OIG at FDEP and asked for whistleblower protection. Dickey was assigned to them. As mentioned in paragraphs preceding this one, Dickey failed to interview the proper witnesses and conduct thorough investigations on Plaintiff's complaints. Plaintiff's complaints were "written off" because he was the subject of an investigation at the time he filed them.

73. In the Investigative Report responding to complaints filed by Plaintiff, the Defendant writes on page 24 under the second paragraph of the "SUMMARY", "The dates of reporting are significant because of their relevance to Captain King's position. He is a command level staff member who is not only aware how to communicate with his chain of command, but more importantly he is or should be aware of his duty to report alleged violations as soon as he becomes aware of them. Further, he should be expected to report observed or suspected violations or initiate corrective action to resolve them if they involve subordinates." *See Exhibit OO.* However, as alleged in paragraph 59, Gibson waited one year to report an alleged racial and sexual derogatory remark by Plaintiff.

74. Defendant even includes a chart showing the date of alleged violation and the date that Plaintiff reported them, and belittles Plaintiff by stating, "He is aware of these incidents and failed to bring them forward until a point when he was being

questioned about his own behavior.” See *Exhibit OO*, pg. 25.

75. Dickey wrote in a memorandum on November 2, 2007, regarding the new investigation into Plaintiff after the PERC order, “Upon receipt of that Order the Division requested that the OIG formalize investigations into inactive complaints against King for allegations that had arisen during his paid administrative leave...” for his first investigation. See *Exhibit PP*.

76. Dickey then writes, “Those cases were initiated *with a plan* to place King back on administrative leave for the purpose of conducting the investigation into allegations that were actually more severe than the ones which had been sustained”. (emphasis added). See *Exhibit PP*.

77. In the new investigative report, the Defendant writes, “To avoid having multiple ongoing investigations against King occurring simultaneously, this case was reopened for formal investigation on September 20, 2007; *which was the date the other investigation was resolved*”. This is seven days after the PERC Final Order was issued vacating agency action. See *Exhibit QQ*, and *Exhibit Q*. However, during that first investigation, Plaintiff was placed under another investigation for writing “fraudulent investigation” on his time sheets and was asked to be interrogated the day before his termination date in May of 2007.

78. This practice of separating investigations is completely inconsistent with other agency investigations, including that of Joyner, Plaintiff’s subordinate employee, who was charged administratively with violating different rules in different instances not resulting from the same occurrence, including insubordination for failure to sign a

reprimand for not having his radio on when Stephens made a false report of a crime to the TRCC and a charge that he was promising people positions should Governor Christ get elected. *See Exhibit RR.* 2. Like that of Plaintiff, in Joyner's situation, FDEP did not follow procedure under Florida Statute § 112.532 and FDEP Directive 435 when he was placed on leave in April of 2007. A Writ of Mandamus was filed with the Leon County Circuit Court to which an Order to Show Cause was issued against FDEP by the Circuit Judge. *See Exhibit SS.*

79. The agency admittedly took Plaintiff's complaints lightly after he was placed on leave during the first investigation claiming that he had a duty to report those incidents earlier and the proximity in time between those incidents and the date Plaintiff reported them was significant to the agency. However, as noted above, during the November 1, 2006 meeting between Stephens, Gibson, and Senior Attorney Tracey Hartman, Plaintiff was questioned about promising people jobs should Governor Christ get elected, yet he was not investigated nor was a formal complaint filed until nearly a year later. Also, Gibson alleged in September of 2007 that he witnessed Plaintiff make a racially and sexually derogatory remark to Officer Dupree in October of 2006, prior to Plaintiff's first investigation.

80. As soon as the PERC Order was issued, Defendant began compiling and contriving evidence against Plaintiff. In fact, Schmidt and Dickey were aware of the allegation that Plaintiff had been working at Wal-Mart during the initial investigation;

² It is important to note that undersigned counsel is the daughter of former Lieutenant Perry Joyner, and the Agency was aware of this fact from January 2007 when Plaintiff was placed under investigation and was aware of the fact that undersigned counsel was representing Plaintiff. In fact, Joyner was asked by the

however, Schmidt did not ask for an affidavit regarding such from David VanBlairicom (another employee) until after Plaintiff's PERC hearing. *See Exhibit AA, Emails and Affidavit.*

81. The language in all of the paragraphs described above shows that the agency knew of the reasons for a new investigation into Plaintiff at least from the November 1, 2006 meeting and some prior to his termination. However, unlike other employees, such as Joyner, Plaintiff did not have those incidents investigated at the same time as his original investigation. Those did not come to light until after the PERC hearing. He did; however, have a new investigation started prior to his termination to which he was asked to be interrogated the day before his predetermination conference. Thus, the Office of Inspector General at FDEP did show a willingness during the first investigation to launch additional investigations against Plaintiff, but not until after PERC did they claim that they did not want to have multiple investigations ongoing at once, and that was the reason they waited so long for the second investigation. The agency has a duty under Florida Statute § 112.532 to investigate these accusations within 180 days, and what triggers that 180 day period has been questioned. Because of that other statutes that are read "in para materia" with 112.532 must be read.

agency attorney, Tracey Hartman, at Plaintiff's PERC hearing his relation to undersigned counsel.

82. Florida Statute § 112.533(1)(a), the subject of many Attorney General Opinions regarding the beginning of the 180 days in which an agency must complete its investigation of a law enforcement officer.³

83. Because the 180 day rule starts from the date the person “authorized by the agency to initiate the investigation” and that the “policy of the law enforcement agency would specify the individual or individuals” who have this authority, DEP’s own Directives and General Orders provide guidance.

84. DEP General Order titled “Discipline and Internal Investigations”, 2-4.2(A) defines an Allegation or Complaint as “Any accusation against a department employee, or contractor, either verbally or in writing, made by a citizen, supervisor, employee or anonymous source”. *See Exhibit TT.*

³ Governor Crist, then Attorney General Crist, answered the question in the following manner citing the statute: Every law enforcement agency and correctional agency is required by statute to establish and put into operation a system for receiving, investigating and making determinations of complaints received by the agency from any person. The statute, however, does not specify who within the agency must receive the complaint; in requiring that the system provide for the receipt of complaints, the law enforcement agency or correctional agency would necessarily have to make such a designation. *See also* Florida Statute § 112.533(1) (2008). “Thus, it would appear that the policy of the law enforcement agency would specify the individual or individuals who are authorized by the agency to initiate the investigation”. *See* AGO 2006-25, June 29, 2006. *See Florida Statute 112.533 and AGO 2006-25, June 29, 2006.*

85. Under DEP General Order 2-4.3 titled "PROCEDURE" it states:

1. Complaints received in field offices will be reviewed by the district supervisor to determine proper investigative level, e.g., formal investigation, informal investigation, or supervisor inquiry. (Complaints naming the district supervisor or a higher level of management, as the subject will be forwarded to headquarters.) If the complaint is categorized as an informal investigation or supervisory inquiry, the district supervisor will ensure that the complaint is investigated and forwarded to the senior attorney. If the complaint is categorized as a formal investigation, the complaint will be forwarded to the senior attorney. The senior attorney will apprise the assistant director of such complaint.

DEP Directive 290 is titled "Internal Investigations". Under Section (3) titled "Policy" the second paragraph reads:

It shall be the policy of the department to have all formal or more serious and in-depth investigations conducted by the Internal Investigations Unit of the Office of Inspector General. This is not to preclude directors from initiating informal investigations or injuries into the less serious issues that arise during the normal course of operations. Managers are encouraged to pursue the quickest and most efficient course to address minor violations at the lowest management level with the authority to take the necessary steps to correct the problem. See Exhibit UU.

86. In Section (4) of DEP Directive 290 titled "Definitions", it defines in subsection (h) what a "Director" is by stating "This term as used in this directive refers to a Division Director, a Regulatory District Director or any other member of senior management". See Exhibit UU.

87. Stephens questioned Plaintiff about promising people jobs at the November 1, 2006 meeting. A Bureau Chief is a member of senior management within DEP Directive 290's definition of Director. Thus according to the Policy portion of that Directive he was not "*precluded from initiating an informal investigation*". The definition of Director and that paragraph show that a Bureau Chief has the authority to initiate an investigation. *See Exhibit UU*. Gibson was the Assistant Bureau Chief, now the Assistant Director, and also was present at that meeting and questioned Plaintiff. Additionally, Gibson claimed to have overheard Plaintiff make sexually and racially derogatory remarks to Officer Dupree in October of 2006.

88. Therefore, the 180 day clock would start from the time that Stephens and / or Gibson were contacted about the complaints or witnessed the violations and investigated them. Clearly, an investigation was ongoing. Because a rank below the Bureau Chief had the authority to classify the investigation as informal, formal, etc. according to DEP's own General Order, this is conclusive proof that an investigation is ongoing at that point the Bureau Chief and his assistant were aware and would start the 180 day clock. As Defendant noted in Plaintiff's IA packet that he filed complaints on, the Bureau Chief and Assistant Bureau Chief would have a duty to report this incident.

VI. PROTECTED ACTIVITY / RETALIATION

89. Plaintiff's truthful testimony at PERC, included testimony about malfeasance, misfeasance and other matters protected under § 112.3187(5), Florida Statutes. Under § 112.3187(4), Defendant is prohibited from taking adverse personnel action against persons like Plaintiff who discloses the types of information disclosed by

Plaintiff. Specifically, Defendant is prohibited from dismissing, disciplining or otherwise taking any other adverse personnel action against an employee for disclosing information pursuant to the provisions of § 112.3187(4), Florida Statutes. Under § 112.3187(3)(c), “adverse personnel action” is defined as “the discharge, suspension, transfer or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits, or any other adverse action taken against an employee within the terms and conditions of employment by an agency or independent contractor.” Upon realizing that he could not return to work via the reinstatement ordered by PERC because he was being threatened with a criminal investigation and after undersigned counsel was presented with the reinstatement letter and new investigation letter dated September 20, 2007, Plaintiff emailed FDEP and claimed that he was “retiring under duress”. See *Exhibit VV*. Gibson responded to Plaintiff’s email stating that “it is the understanding of the agency that you have chosen to *resign your position*.” Plaintiff had already filed for retirement after he was terminated in May of 2007, and prior to PERC. Undersigned counsel emailed Gibson and confirmed that Plaintiff did “resign his position (that he had yet to be reinstated to). . .” and also wrote “In fact, he did not need to resign as he was not reinstated.” See *Exhibit WW*. Although Plaintiff stated he was “retiring” and Gibson stated he resigned, the fact was that Plaintiff did not accept reinstatement because at the same time his attorney was served with the reinstatement letter she was served with a letter stating that Plaintiff was under administrative leave immediately for a new investigation. Because Plaintiff had knowledge, as did his counsel, that the agency was seeking a criminal sanction against him for working at Wal-Mart, Plaintiff was of the

opinion that they were refusing to hire him back to his position, and if that was not the case they were forcing him to stay in retirement through a forced resignation under threat of criminal sanction.

90. After making the disclosures identified in part above, Plaintiffs suffered adverse employment action, which adverse action is reported in part above. Plaintiff has serious health issues, including phlebitis, blood clots, etc. and he has been unable to work as a law enforcement officer because of the actions taken by Defendant.

91. Since that time Plaintiff has worked as a long-range truck driver, the only job he could find, which has caused him tremendous stress in his private life and compromises his health. Even in applying for the long-range truck driver, when the company called FDEP for a recommendation, the company was informed that Plaintiff had been terminated even though PERC had ordered he be reinstated. To date, Plaintiff is still having difficulties with employer calls to FDEP for recommendations.

COUNT I - VIOLATION OF FIRST AMENDMENT
42 U.S.C. § 1983
(FIRST AMENDMENT RETALIATION- AGAINST BARNET, GIBSON, HALL,
DICKEY AND SCHMIDT)

92. Plaintiff re-alleges paragraphs 1 through 91 above.

93. This is an action against the Defendants Barnet, Gibson, Hall, Dickey, and Schmidt for the violation of Plaintiff's rights under the First Amendment to the United States Constitution brought through 42 U.S.C. § 1983 due to this Defendant's retaliation against the Plaintiff for exercising his right to petition for redress of his grievances and right of access to courts. The retaliation resulted from the Plaintiff's prior filing of EEOC

and Florida Commission on Human Relations charges of discrimination and / or retaliation and his appeal to the Public Employees Relations Commission for his termination..

94. The foregoing allegations establish a cause of action for violation of Plaintiff's right to petition, and right of access to courts under the First and Fourteenth Amendments to the United States Constitution by Defendant FDEP.

95. The actions and inactions of the Defendant's as set forth above were taken from the multiple actions against the Plaintiff that preceded his dismissal in 2007 and the false charges resulting in a new investigation after he was successful at PERC in challenging his dismissal. The Defendant's actions against the Plaintiff which first began in retaliation when he complained about Stephens false report of a crime in 2006, and complained about Gibson intimidating Plaintiff's subordinate employees to hire Stokley regardless of a bad background investigation. These retaliatory actions continued thereafter after Plaintiff filed additional charges of discrimination and / or retaliation with the FCHR and the EEOC and filed a PERC appeal challenging his dismissal. All of these challenges were protected activities, most notably the PERC appeal brought under Florida Statute § 110.227 (5) to challenge his dismissal to PERC.

96. After Plaintiff received a favorable ruling from PERC, Defendant was ordered to reinstate Plaintiff. However, in retaliation for challenging their decisions and behaviors through FCHR, EEOC, and PERC, Barnet, Gibson, Hall, Dickey and Schmidt started an investigation into Plaintiff of alleged agency violations, some of which took place before his initial first investigation that led to his termination and should have been

investigated at the time of the first investigation. Although FDEP claims they wanted to avoid multiple ongoing investigations, it is completely contradictory that they did investigate Plaintiff during his first investigation for another violation of writing “fraudulent investigation” on his time sheets while on administrative leave. He was asked to submit to an interrogation one day before termination date in May of 2007. Plaintiff was forced not to accept reinstatement after PERC because Defendant was threatening him with a criminal investigation thus abridging his privilege of employment. The working environment would have been and was so hostile that Plaintiff had no other recourse but to refuse reinstatement and stay in retirement or risk possible arrest. The Defendant’s have engaged in this pattern or practice since 2006 in an attempt to get Plaintiff decertified as a law enforcement officer, to deprive him of employment opportunities with their own agency and even hinder his secondary employment upon dismissal from FDEP and to cause him mental suffering and strife during a multitude of frivolous investigations. These actions have resulted in Plaintiff’s continued inability to work in his field as a law enforcement officer which has been his entire career, his continued inability to return to work since September of 2007, and the OIG investigation(s) against and involving Plaintiff.

97. All of these events have occurred since Plaintiff reported publicly matters of public concern namely, without limitation, the fact that Stephens had reported a false crime in order to test an officer’s radio to the TRCC, which Plaintiff believed was a criminal offense, and wrongdoing including actions committed by sworn officers of the FDEP Division of Law Enforcement including Gibson’s attempt to threaten Plaintiff’s

subordinate employee into giving Stokley, his high school best friend, a favorable recommendation. These issues of public concern, also addressed the inadequacy and corruption going on within the OIG office at FDEP. The issues thus raised were not focused on matters affecting only a private grievance, to wit: the Plaintiff, but raised broader societal concerns about the discipline received by officers of the FDEP for alleged violations of law and policy, the fact that officers were acting outside of the law, and attempted to expose the injustices people were facing at the hands of the OIG within FDEP.

98. Specifically, and in addition to the allegations set forth above, upon information and belief, Barnett, Gibson, Dickey, and Schmidt approved and/or directed the preparation of documents necessary to effect Plaintiff's termination on contrived charges in January 2007, and putting together the contrived charges after his ordered reinstatement from PERC some of which predated the first investigation in January 2007, and allowing others to believe there was a criminal investigation ongoing. They approved and/or directed the preparation of documents resulting in an OIG investigation of Plaintiff resulting in a numerous charges against Plaintiff contrived to effect his termination from the FDEP and/or his decertification as a law enforcement officer in late 2007 or early 2008, approved and/or directed Plaintiff not to return to work since January 2007 due to the false accusations against him, and/or directed the results of two OIG investigations involving Plaintiff, approved and/or directed the investigation of Plaintiff on January 19, 2007 which was biased at best and calculated to "find" evidence to implicate Plaintiff in wrongdoing at worst, and approved and/or directed the preparation of documents

intended to portray Plaintiff as a “liar” and in a false light regarding an incident involving a reserve officers hire, including but not limited to, the termination email that was written by Gibson which had Plaintiff’s termination letter attached, although removed by Barnett was still sent out Division-wide with information to show Plaintiff in a false light, and Gibson’s allegation in September of 2007 that he had witnessed Plaintiff make sexually and racially derogatory remarks in October of 2006 but did not report such until days after Plaintiff was successful at PERC and the Order was issued. The false charges that Barnett, Gibson, Dickey or Schmidt contrived or assisted in contriving against Plaintiff include without limitation mailing confidential material, civil theft, and sexual harassment.

99. The actions and inactions of the individually named Defendants were taken under color of law with the intent to harm Plaintiff. These actions and inactions were malicious and willful, and were taken in violation of Plaintiff’s clearly established right under the First and Fourteenth Amendment to the United States Constitution to be free from retaliation for the exercise of Plaintiff’s rights to petition for redress of grievances and access to courts. Plaintiff exercised his rights to petition for redress of grievances and access to courts by the actions he took described herein. The law which forms the basis for this claim identified herein was clearly established in 2006, 2007, and 2008 the time when the aforementioned actions took place and continue to take place.

100. As a direct and proximate cause of Defendant FDEP’s actions described in part above, Plaintiff has suffered career injury, emotional pain, anguish, humiliation, insult, indignity, loss of self-esteem, inconvenience, embarrassment, lost wages and other

tangible and intangible damages and hurt because of the Defendant's actions. These injuries are continuing.

**COUNT II - VIOLATION OF FIRST AMENDMENT
BROUGHT PURSUANT TO 42 U.S.C. § 1983
(FIRST AMENDMENT RETALIATION- AGAINST BARNET, GIBSON,
HALL, DICKEY, AND SCHMIDT)**

101. Plaintiff re-alleges paragraphs 1 through 100 above.

102. This is an action against Defendants Barnet, Gibson, Hall, Dickey, and Schmidt, for a violation of Plaintiff's rights under the First Amendment to the United States Constitution brought pursuant to 42 U.S.C. § 1983 due to these Defendants' retaliation against the Plaintiff for exercising his right to free speech. The retaliation resulted from the Plaintiff's public complaints regarding Stephens calling in a false report of a crime to the TRCC, Gibson's bypass of the chain-of-command in order to coerce a subordinate employee to recommend Stokley's hire, among other complaints involving the violations committed by the OIG with FDEP to which he testified to in PERC knowing that it would be a public record.

103. Plaintiff engaged in a protected activity under Florida Statute § 110.227 (5) by appealing his dismissal to the Public Employees Relations Commission (PERC). The adverse action, caused by Defendant's Barnet, Gibson, Schmidt, and Dickey, would deter a person of ordinary firmness from exercising this First Amendment right in that, an appeal to PERC that is successful with an order to reinstate the employee that is disregarded and interfered with by said Defendants would cause a person or ordinary firmness from recognizing the benefits of appealing their own suspension or dismissal to

PERC which is their right as a state employee. Should a PERC hearing reverse the agency decision and order an employee to be reinstated, only for the agency to retaliate as to what the Plaintiff or employee testified to in PERC knowing it would be public record, a person of ordinary firmness would be apt not to testify to any matters at PERC that would affect the possibility of their actually being reinstated whether or not PERC ordered it.

104. The actions and inactions of the Defendant's as set forth above were taken from the multiple actions against the Plaintiff that preceded his dismissal in 2007 and the false charges resulting in a new investigation after he was successful at PERC after his dismissal in 2007. All of these events have occurred since Plaintiff reported publicly matters of public concern namely, without limitation, the fact that Stephens had reported a false crime in order to test an officer's radio to the TRCC, which Plaintiff believed was a criminal offense, and wrongdoing including actions committed by sworn officers of the FDEP Division of Law Enforcement, including a focus on mistreatment of the Plaintiff and other officers after they reported wrongdoing within the FDEP. The issues thus raised were not focused on matters affecting only a private grievance, to wit: the Plaintiff, but raised broader societal concerns about the discipline received by officers of the FDEP for alleged violations of law and policy, the fact that officers were acting outside of the law, and attempted to expose the injustices people were facing at the hands of the OIG within FDEP. The Defendant's actions against the Plaintiff which first began in retaliation when he complained about Stephens false report of a crime to the Florida Highway Patrol in 2006, followed by complaints to the media, governor's office, and

state representative offices regarding misuse of state computers through pornographic emails, and complaints to other outside agencies including his PERC appeal of his dismissal.

105. After Plaintiff received a favorable ruling from PERC, Defendant was ordered to reinstate Plaintiff and started an investigation into him of actions, some of which took place before his initial first investigation that led to his termination and should have been investigated at the time of the first investigation. Plaintiff was forced not to accept reinstatement because Defendant was threatening him with a criminal investigation thus abridging his privilege of employment. The working environment would have been and was so hostile that Plaintiff had no other recourse but to refuse reinstatement and stay in retirement. The Defendant's have engaged in this pattern or practice since 2006 in an attempt to get Plaintiff decertified as a law enforcement officer, to deprive him of employment opportunities secondary to his primary employment with the FDEP and to cause him mental suffering and strife during a multitude of frivolous investigations.

106. Defendants actions have adversely affected Plaintiff as alleged herein which include without limitation Plaintiff's termination, the multitude of false charges brought against him, his continued inability to work in his field as a law enforcement officer which has been his entire career, his continued inability to return to work since October or November, 2007, and the OIG investigation(s) against and involving Plaintiff.

107. The retaliatory conduct includes but is not limited to, in addition to the allegations set forth above, Barnet, Gibson, Hall, Dickey, and Schmidt approved and/or

directed the preparation of documents necessary to effect Plaintiff's termination on contrived charges in 2007, and putting together the contrived charges after his ordered reinstatement from PERC, in order to avoid the PERC ruling, some of which predated the first investigation in January 2007, and allowing others to believe there was a criminal investigation ongoing. Plaintiff had filed complaints with FCHR and the EEOC prior to his termination and had been contacting the media and public officials regarding the Defendant's behavior. The Defendants approved and/or directed the preparation of documents resulting in an OIG investigation of Plaintiff resulting in a numerous charges against Plaintiff contrived to effect his termination from the FDEP and/or his decertification as a law enforcement officer in late 2007 or early 2008, approved and/or directed Plaintiff not to return to work since January 2007 due to the false accusations against him, and/or directed the results of two OIG investigations involving Plaintiff, approved and/or directed the investigation of Plaintiff on January 19, 2007 which was biased at best and calculated to "find" evidence to implicate Plaintiff in wrongdoing at worst, and approved and/or directed the preparation of documents intended to portray Plaintiff as a "liar" and in a false light regarding an incident involving a reserve officers hire, including but not limited to, the termination email that was written by Gibson which had Plaintiff's termination letter attached, although removed by Barnett was still sent out Division-wide with information to show Plaintiff in a false light. The false charges that Barnett, Gibson, Dickey or Schmidt contrived or assisted in contriving against Plaintiff include without limitation mailing confidential material, civil theft, and sexual harassment.

108. The actions of Barnett, Gibson, Dickey, and Schmidt were taken in violation of Plaintiff's clearly established right under the First and Fourteenth Amendment to the United States Constitution to be free from retaliation for the exercise of Plaintiff's rights to free speech. Plaintiff exercised his rights to free speech and access to courts by the actions he took described herein.

109. The law which forms the basis for this claim identified herein was clearly established in 2006, 2007, and 2008 the time when the aforementioned actions took place and continue to take place.

110. The actions and inactions of the individually named Defendants were taken under color of law with the intent to harm Plaintiff. These actions and inactions were malicious and willful.

111. As a direct and proximate cause of the individual Defendant's actions described in part above, Plaintiff has suffered career injury, emotional pain, anguish, humiliation, insult, indignity, loss of self-esteem, inconvenience, embarrassment, lost wages and other tangible and intangible damages and hurt because of the Defendant's actions. These injuries are continuing.

**COUNT III
WHISTLE-BLOWER RETALIATION
VIOLATION OF FLORIDA STATUTE § 112.3187**

112. Plaintiff re-alleges paragraphs 1-111, which are incorporated herein by reference, and further alleges:

113. This is an action against Defendant under § 112.3187 et seq. At all times pertinent hereto, Plaintiff was a public employee protected under the provisions of Chapter 112, Florida Statutes.

114. As stated more specifically, in part, above, Plaintiff reported and disclosed violations of state rules, regulations and laws to persons inside and outside of his normal chain of command and others having the authority to investigate, police, manage and otherwise remedy the violations of rules, regulations and laws reported by Plaintiff. Plaintiff reported malfeasance, misfeasance, and other acts specifically outlined in § 112.3187 (5), et seq., Florida Statutes.

115. After reporting these matters as related in part above, Plaintiff was the victim of retaliatory actions set forth in part above. Plaintiff's position and responsibilities and privilege of employment within Defendant were adversely affected as a result of his reporting violations of rules, regulations and laws specified in part above and he has been terminated and constructively refused reemployment under order of PERC as a result of Defendant's actions of initiating a new investigation and threatening Plaintiff with criminal charges. Plaintiff maintains that the actions of all employees within Defendant who affected his employment adversely did so at least in part in retaliation against him for his "whistle blowing" activities.

116. As a direct and proximate result of the actions taken against him by Defendant, Plaintiff has suffered injury, including but not limited to past and future wage losses, loss of benefits, and other tangible and intangible damages. These damages have occurred in the past, are occurring at present and will occur in the future.

**COUNT IV: NEGLIGENCE
FLORIDA STATUTE § 768.28**

117. Plaintiff re-alleges paragraphs 1-116 above, incorporates those allegations in this Count, and further alleges as follows:

118. Defendant FDEP owed a duty of care to Plaintiff as a career service public employee under Florida Statute § 110.227, and Chapter 112. The State imposes duties upon its agencies to protect employees through termination only for cause, and prohibits adverse employment action for protected activities.

119. In addition, Defendant establishes its own duty further in its directives. For example, in FDEP Directive 435 under reasons for dismissal it states under section 8 (2), “Negligence. Employees shall exercise due care and reasonable diligence in the performance of job duties”.

120. Defendant breached its duty to Plaintiff, as alleged more fully above, by conducting an investigation that was in violation of Florida Statute § 112.532, violating its own directives, retaliating against Plaintiff for engaging in protected activity, and violating his rights to employment as directed by PERC. In addition, FDEP sent a cautionary email in response to Plaintiff’s public records request about his own employment matters, reminding those at FDEP that it was for “existing records” only.

121. The OIG within Defendant's agency failed to exercise due care and reasonable diligence for reasons set forth more fully above, including but not limited to, failing to interview witnesses in investigations filed by Plaintiff and against Plaintiff, failing to conduct a thorough investigation into whether Plaintiff had mailed the envelopes, by creating and causing to be created a new investigation designed at avoiding the ruling by PERC, placing Plaintiff in a false light to encourage belief that the new allegations were true, and failing to protect the confidentiality of the investigation into Plaintiff.

122. As a direct and proximate result of the above unlawful acts and omissions, Plaintiff sustained emotional pain, anguish, humiliation, insult, indignity, loss of self-esteem, inconvenience and hurt.

COUNT V- INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

123. Plaintiff re-alleges paragraphs 1-122 above and incorporates those allegations in this Count, and further alleges that this Count is pled in the alternative. For the purposes of this Count alone, Defendant's Barnet, Gibson, Dickey, and Schmidt were acting outside the course and scope of their duties within the Defendant's employ.

124. This is an action against Defendant's Barnet, Gibson, Dickey, and Schmidt for the intentional infliction of emotional distress, including the victimization of Plaintiff. After Plaintiff reported and objected to the treatment and false accusations alleged against him, hired counsel, and filed an appeal to PERC., Defendants Barnet, Gibson, Dickey, and Schmidt began a series of malicious attacks on Plaintiff.

125. These malicious attacks include without limitation contacting or instructing a subordinate employee to write an affidavit alleging that Plaintiff had been working full-time while on administrative leave with pay during his investigation, and threatening him with criminal charges based on this affidavit. This was done after Plaintiff was successful at PERC. Thus, Plaintiff feared arrest for exercising his right to redress his dismissal, and returning to work. The first investigation and PERC appeal took over half a year and subjected Plaintiff to enormous stress. The thought of a new investigation and possible arrest created an enormous amount of additional stress on Plaintiff.

126. The conduct involving these individuals constitutes outrageous conduct that would shock the conscience of a reasonable person, and constitutes the actionable tort of intentional infliction of emotional distress. Defendant's actions were reckless and intentional and they knew or should have known that as a result of their actions, emotional distress would likely result.

127. There was no reasonable cause to believe that Plaintiff had committed any crime. In fact, Defendant has routinely allowed other employees to escape investigation or punishment for the same actions. Defendant knowingly and without good faith filed an investigation into this, and allowed Plaintiff to believe he would be arrested.

128. As a direct and proximate result of the above unlawful acts and omissions, Plaintiff have sustained damages, including emotional pain, anguish, humiliation, insult, indignity, loss of self-esteem, inconvenience and hurt, because of Defendant's actions, and they are therefore entitled to compensatory damages.

COUNT VI
TORTIOUS INTERFERENCE WITH CONTRACTUAL AND EMPLOYMENT
(BUSINESS RELATIONS)

129. Plaintiff re-alleges paragraphs 1-128, incorporates them herein by reference, and further alleges:

130. This is an action brought against Defendants Hall, Dickey and Schmidt. Defendants' duties as employees of Defendant FDEP did not include the hiring or firing of FDEP employees such as Plaintiff.

131. Defendants, as part of their duties as Defendant FDEP's employees, conducted investigations into complaints filed against officers within the Division of Law Enforcement at FDEP.

132. Defendants, as FDEP employees, owed Plaintiff a duty to investigate the complaints made against him in a prompt, professional and impartial manner before reporting the results of their investigations to Defendant FDEP employees who had the authority to hire and fire FDEP employees, including Plaintiff.

133. Each of the Defendants breached their duty to Plaintiff in the following manner:

A. Defendant Dickey was placed with the responsibility of investigating whether or not Plaintiff sent the envelopes to FDLE and DOC describing Stokley and Cowan's backgrounds. Defendant Schmidt also assisted in the investigation and interrogated Plaintiff. Both Dickey and Schmidt worked on the findings that would ultimately end up with Defendant Hall.

B. Defendant Dickey was aware that other employees had access to the background investigations as referenced in paragraph 20. *See Exhibit F, PERC*

Transcripts, Volume I, Testimony of Roy C. Dickey (pg. 89). However, Dickey took the envelopes with the suspect handwriting to the Tallahassee Police Department (TPD) and gave them to Ron McNeil to analyze. Dickey was a former colleague and employee at TPD. Ron McNeil was not a certified document examiner, and Dickey was aware of this. Dickey took a few samples of Plaintiff's handwriting to McNeil, and no other samples of other individuals with access to the background reports were taken to McNeil as referenced in paragraphs 44 and 53. At PERC, Plaintiff's certified handwriting expert opined that the other individuals who had access also had similarities to the suspect envelopes, and that whoever addressed the envelopes did so to implicate Plaintiff purposefully. *See Exhibit Q*.

C. Defendant Dickey, nor Defendant Schmidt, although asked by Plaintiff's counsel, failed to do any testing on the envelopes other than take them to McNeil. They failed to conduct DNA or fingerprint testing, and took only the Plaintiff's handwriting samples to Ron McNeil in an effort to skew the result against Plaintiff, as if to say "hey say it is this guy" when McNeil had nothing else to compare the envelopes to. In addition, they chose to ignore the fact that Plaintiff had had a polygraph test administered by Polygraph Expert Ray Fredericks, in order to reach the conclusion that they desired.

D. At the same time, Plaintiff who was maintaining his innocence was also charged by the FDEP for perjury for not admitting that he had sent the envelopes in his interrogation, which was later overturned by PERC. When Dickey and Schmidt undertook said actions they knew, or should have known, that it was management's intention to improperly place full blame on Plaintiff for envelopes that others admittedly

had access to, and accuse Plaintiff of lying under oath because he would not admit to something he had not done.

E. During the investigation into Plaintiff, Defendants Dickey and Schmidt were aware of Plaintiff's other complaints as they were assigned to investigate them. They failed to do so properly in order to avoid casting a bad light against Stephens who was one of the complainant against Plaintiff. Plaintiff had complained after the November 1, 2006 meeting about Stephens's false phone call to the TRCC, and then Stephens went to his superiors and had a complaint filed. No action was taken against Stephens for the false phone call or against Defendant Gibson for his involvement in Stokley's hiring including the intimidating manner he used to force other employees to interview Stokley while bypassing Plaintiff's chain of command, the latter charge being one that Joyner faced that Gibson clearly committed.

F. Defendant Hall supervised Defendants Dickey and Schmidt in their investigations into Plaintiff's complaints and investigations into the envelope case against Plaintiff. Defendant Hall knew, or should have known, that Defendants Dickey and Schmidt were engaged in a process designed to improperly implicate Plaintiff, by using a friend at TPD where they both had worked previously, that was not a certified document examiner to implicate Plaintiff based on samples of only Plaintiff's handwriting although they knew other employees had access to the background investigations that were mailed. Defendant Hall nevertheless knowingly allowed Defendants Dickey and Schmidt to carry out their improper efforts to implicate Plaintiff. Defendant Hall then allowed Defendants Schmidt and Dickey to withhold information that Plaintiff should have been charged for

earlier to determine the outcome of PERC. For example, Plaintiff was questioned about promising people positions after the Crist campaign in November of 2006, and was placed under investigation for the envelopes only in January of 2007. Plaintiff was also alleged to have made sexually and racially derogatory remarks to Officer Dupree, overheard by then Assistant Bureau Chief Gibson, who did not report it until approximately a year later after Plaintiff was successful at PERC, knowing that the 180 days under Florida Statute § 112.532 would have run. In fact, not until September of 2007 when PERC had cleared Plaintiff did the Defendants attempt to investigate the promised positions charge. Defendant Hall also failed to investigate why lower level employees unrelated to the investigation had knowledge of the allegations against Plaintiff prior to its closing in violation of Florida law. That employee was later promoted to Plaintiff's position.

134. Defendants engaged in the above-alleged acts intentionally, recklessly and through a pattern of willful misconduct, used their positions as FDEP employees to improperly manipulate their investigations into the envelope investigation, the ultimate purpose of said actions being to interfere with the employment relationship then existing between Plaintiff and the State of Florida.

135. Defendants' conduct towards Plaintiff was outrageous and intolerable and was undertaken in bad faith with malicious purpose against the Plaintiff.

136. As a direct and proximate result of Defendants' actions, Plaintiff was denied his rights under § 110.227, Florida Statutes, inasmuch as Defendant FDEP terminated him for what

the FDEP maintained was cause required by statute for termination, even though cause did not exist for any disciplinary action against Plaintiff.

137. As a direct and proximate result of Defendants' actions the Plaintiff was further injured through loss of his job and the income generated by said job, loss of his ability to secure new employment, loss of future earning potential, loss of his standing in his profession and community, mental anguish and other losses directly attributable to Defendants' actions.

138. The Plaintiff has retained the services of undersigned counsel and is obligated to pay counsel a reasonable attorney's fee and costs should he prevail in this action.

WHEREFORE, Plaintiff seeks damages in excess of \$15,000 against Defendants Hall, Dickey and Schmidt, jointly and severally, in such amounts as will fully and fairly compensate him for the injuries identified above and for such and further relief as the Court deems appropriate.

**COUNT VII
TORTIOUS INTERFERENCE WITH CONTRACTUAL AND EMPLOYMENT
(BUSINESS RELATIONS)**

139. Plaintiff re-alleges paragraphs 1-138, incorporates them by reference, and further alleges as follows:

140. This is an action against Defendants Gibson, Hall, Dickey and Schmidt. Defendants' duties as employees of Defendant FDEP did not include the hiring or firing of FDEP employees such as Plaintiff.

141. Defendants Hall, Dickey and Schmidt, as part of their duties as Defendant FDEP's employees, conducted investigations into complaints filed against officers within the Division of

Law Enforcement at FDEP, and Defendant Gibson received reports and recommended action based on those investigations.

142. Defendants, as FDEP employees, owed Plaintiff a duty to investigate the complaints made against him in a prompt, professional and impartial manner before reporting the results of their investigations to Defendant FDEP employees who had the authority to hire and fire FDEP employees, including Plaintiff.

143. Defendant Gibson, owed Plaintiff a duty to thoroughly read the report and determine the best recommendation based on the allegations made and proven, and the evidence that was used to sustain those allegations. Defendant Gibson had a duty to make sure that the allegations sustained were properly punished; however, dismissal for Plaintiff was an extreme measure when compared to the disciplinary actions of other employees for more egregious matters, and demonstrated his dislike of Plaintiff and determination to have him terminated.

144. Each of the Defendants breached their duty to Plaintiff in the following manner:

A. Defendant Gibson had known since the November 1, 2006 meeting that Plaintiff was being accused of promising people positions. He also alleges that he knew that Plaintiff had made racially and sexually derogatory remarks to Officer Dupree in October of 2006 but did not report such until after Plaintiff's success at PERC in September of 2007. As such a high level supervisor, he had a duty under his own directives to report such to the OIG at FDEP and failed to do so. However, FDEP OIG was aware and chose to take no action at that time. Defendant Gibson, after Plaintiff was successful at PERC, held a meeting with the Northwest District and told them that Plaintiff was "coming back" to the district. After this point, Defendant

Gibson worked with the OIG, and Defendants Hall, Dickey, and Schmidt to concoct allegations to ensure that would not happen. Defendant Gibson was clearly upset at Plaintiff's dislike of his choice for reserve officer, Stokley who was his high school friend, and wanted to retaliate against him. Over and over again, Gibson maintained that he was being partial to Stokley's hiring, whereas witness testimony and his own statements demonstrated that was far from the truth. Defendant Gibson deliberately and purposefully attempted to get even with Plaintiff, including writing an email to the Division of Law Enforcement stating that Plaintiff had been terminated and the reasons therefore. Defendant Barnet, the Director, found the email so harsh that he removed the attached dismissal letter before the emails went out. *See Exhibit P.* Defendant Dickey was placed with the responsibility of investigating whether or not Plaintiff sent the envelopes to FDLE and DOC describing Stokley and Cowan's backgrounds. Defendant Schmidt also assisted in the investigation and interrogated Plaintiff. Both Dickey and Schmidt worked on the findings that would ultimately end up with Defendant Hall.

B. Defendant Dickey and Schmidt were aware that Plaintiff had already been questioned about promising people positions during Crist's election; however, they chose to withhold the investigation until after PERC claiming they did not want multiple investigations going on although there was an additional one started during the first investigation regarding Plaintiff writing "fraudulent investigation" on his timesheets. Other employees, such as Perry Joyner, were investigated on other charges having nothing to do with each other at the same time. Plaintiff was not

given this same treatment. However, according to § 112.532 and FDEP Directive 290, the clock on the 180 day limit for investigation began as soon as Defendant Gibson learned of it and had a duty to report such in the same manner they used against Plaintiff discussed above. Nonetheless, short of one year later and after Plaintiff was successful at PERC, Defendants Gibson, Hall, Dickey and Schmidt chose to investigate Plaintiff for this occurrence in addition to others. The other allegations such as sexual harassment were solicited by the Defendants, and not brought to the OIG's attention prior to this point. Defendants Hall, Dickey, and Schmidt knowingly made things look as if people had come forward especially employees who had themselves been in trouble, against Plaintiff. Defendant Gibson sanctioned and asked for this to occur.

C. Defendants Dickey and Schmidt, while being directly supervised by Hall began immediately after the PERC hearing, but before the ruling, to investigate witnesses and obtain affidavits against Plaintiff. Affidavits obtained implicated that Plaintiff had committed grand theft by working at Wal-Mart part time while on administrative leave with pay. One of the witnesses forced to write such an affidavit ultimately left FDEP so upset with the blatant manner in which the Defendants were acting towards Plaintiff. Plaintiff ultimately was threatened with a criminal investigation after the PERC ruling, while he was asking for reinstatement, which PERC had ordered, due to this job position. Plaintiff had no choice but to refuse reinstatement. Even after his retirement the investigation went on and came back sustained. Either Defendant Hall or Defendant Dickey at all times signed the

investigations into Plaintiff or those filed by Plaintiff.

D. Plaintiff had exercised his right to appeal his dismissal to an independent commission and in return FDEP knowingly and maliciously sought to punish Plaintiff and create such a threatening and hostile environment that he could not return.

E. Defendants Gibson, Hall, Dickey and Schmidt undertook said actions and knew or should have known, that management would improperly place full blame on Plaintiff for the new allegations based on their misrepresentations.

145. Defendants engaged in the above-alleged acts intentionally, recklessly and through a pattern of willful misconduct, used their positions as FDEP employees to improperly manipulate their investigations into Plaintiff, create fear in him so he could not return to work as PERC had ordered, the ultimate purpose of said actions being to interfere with the employment relationship then existing between Plaintiff and the State of Florida.

146. Defendants' conduct towards Plaintiff was outrageous and intolerable and was undertaken in bad faith with malicious purpose against the Plaintiff. Their desire was to find measures to deliberately thwart a state agency ruling, that of PERC, to which Plaintiff retained counsel and spoke on public record of great wrongs at FDEP. Defendants' conduct was egregious at best.

147. As a direct and proximate result of Defendants' actions, Plaintiff was denied his rights under § 110.227, Florida Statutes, inasmuch as Defendant FDEP terminated him for what the FDEP maintained was cause required by statute for termination, even though cause did not exist for any disciplinary action against Plaintiff, and refused to honor an agency

decision ordering reinstatement without placing Plaintiff under investigation and threatening him with a criminal one.

148. As a direct and proximate result of Defendants' actions the Plaintiff was further injured through loss of his job and the income generated by said job, loss of his ability to secure new employment, loss of future earning potential, loss of his standing in his profession and community, mental anguish and other losses directly attributable to Defendants' actions.

149. The Plaintiff has retained the services of undersigned counsel and is obligated to pay counsel a reasonable attorney's fee and costs should he prevail in this action.

WHEREFORE, Plaintiff seeks damages in excess of \$15,000 against Defendants Gibson, Hall, Dickey and Schmidt, jointly and severally, in such amounts as will fully and fairly compensate him for the injuries identified above and for such and further relief as the Court deems appropriate.

COUNT VIII CIVIL CONSPIRACY

150. Paragraphs 1-149 are hereby re-alleged and incorporated by reference.

Plaintiff further alleges as follows:

151. It was the desire of the Defendants to terminate Plaintiff from the beginning of his first investigation.

152. Defendant failed to conduct a proper investigation, and after Plaintiff's dismissal and success at PERC, Defendant's conspired to avoid the PERC ruling by launching another investigation and agreeing to reinstate Plaintiff only if he was placed back

on administrative leave for a new investigation. The time line is indicative of their intentions. This was done between agreement of Defendant through its employees and / or agents to conspire against Plaintiff for his complaints and to further deprive him of his constitutional rights and inflict emotional harm.

153. There was no reasonable cause to believe that Plaintiff had committed any crime. In fact, Defendant has routinely allowed other employees to escape investigation or punishment for the same actions. Defendant knowingly and without good faith filed an investigation into this, and allowed Plaintiff to believe he would be arrested. In addition, Plaintiff had never been investigated for anything of this nature before and there was no reasonable basis to believe that Plaintiff was guilty of theft. In addition, when Plaintiff had his counsel submit a public records request to show that his first investigation had become compromised by Arkin talking to a subordinate employee about it, and to show that a meeting was held after the first PERC recommended order wherein witnesses stated that Barnett and Gibson claimed King was coming back to the district, the agency attorney, Tracey Hartman, emailed Gibson, Barnett, and Arkin (who compromised Plaintiff's investigation and ultimately took his job position) and told them the request applied to "existing records" only.

154. Defendant's complaints of behavior on the part of Plaintiff and placing him in a false light, along with their conniving maneuvers around his public records requests to prove his case, created a situation within Defendant FDEP that, if not controlled, would have presented serious problems to the reputations of Defendant's themselves.

155. Defendant's Barnett, Gibson, Hall, Dickey, and Schmidt knew that in order to protect their own jobs within FDEP it would be necessary to pursue the allegations against

Plaintiff, and prevent him from coming back to work. The PERC ruling cast doubt on their investigation and thus they had to back it up with a new investigation in order to protect themselves and their own credibility.

156. All Defendants herein was without the power or authority to accomplish the basis for the allegations alleged and the subsequent investigation of Plaintiff unless each Defendant acted in concert and with the active participation of the other Defendants. If any had questioned the alleged violations on the part of Plaintiff, those who started the investigation could face liability for filing false reports.

157. The actions of the Defendants, as herein described, were undertaken for the unlawful purposes of (1) creating false accusations to be raised against Plaintiff in order to avoid a ruling by PERC, (2) altering the public record so that it would improperly reflect negatively upon the actions of Plaintiff in his employment (3) threatening criminal charges to avoid Plaintiff's reinstatement, (4) manipulating the public records response to Plaintiff's request to harm his ability to prove his case.

158. Defendants engaged in the above-alleged acts intentionally, recklessly and through a pattern of willful misconduct towards Plaintiff. Their conduct towards Plaintiff was outrageous and intolerable and was undertaken in bad faith with malicious purpose.

159. As a direct and proximate result of the above unlawful acts and omissions, Plaintiff has sustained damages, including emotional pain, anguish, humiliation, insult, indignity, loss of self-esteem, inconvenience and hurt.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

- A. That process issue and this Court take jurisdiction over this case;
- B. Judgment against the Defendants and for the Plaintiff awarding compensatory damages against Defendants and damages against Defendants in their individual capacities for the Defendants' violations of law enumerated herein;
- C. Prejudgment interest on monetary recovery obtained pursuant to law;
- D. Judgment against the Defendants and for the Plaintiff awarding the Plaintiff reasonable attorneys' fees and costs, specifically under Florida Statute § 502.2105; and;
- E. Such further relief as is equitable and just.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury on all issues set forth herein which are so triable.

DATED this 20th day of October, 2008.

Respectfully submitted,

Danielle Joyner Kelley

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