

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

MARK E. DECARLO,

Plaintiff,

CASE NO.: 2013-CA-2982

vs.

CITY OF TALLAHASSEE,

Defendant.

_____ /

**NOTICE OF FILING NOTICE OF REMOVAL TO THE
UNITED STATES DISTRICT COURT**

Defendant, **CITY OF TALLAHASSEE**, hereby gives notice of the filing of its Notice of Removal of this action to the United States District Court, Northern District of Florida, Tallahassee Division. A true copy of the Notice of Removal, together with the attachments, is attached hereto.

Dated this 21st day of July 2014.

Respectfully submitted,

/s/ Hetal H. Desai

HETAL H. DESAI

Florida Bar Number: 005038

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MICHAEL P. SPELLMAN

Florida Bar Number: 0937975

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SNIFFEN & SPELLMAN, P.A.

123 NORTH MONROE STREET

Tallahassee, Florida 32301

Telephone: (850) 205-1996

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Attorneys for Defendant

City of Tallahassee

EXHIBIT A

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic (marie@mattoxlaw.com) and U.S. Mail upon the Attorney for Plaintiff, at 310 East Bradford Rd., Tallahassee, Florida 32303 this 21st day of July 2014.

/s/ Hetal H. Desai _____
HETAL H. DESAI

Elect. Jally Filed 10/24/2013 08:06:46 PM ET

FORM 1.997. CIVIL COVER SHEET

The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form shall be filed by the plaintiff or petitioner for the use of the Clerk of the Court for the purpose of reporting judicial workload data pursuant to Florida Statutes section 25.075.

I. CASE STYLE

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

Case No.: 13CA2982
Judge: _____

MARK E DeCARLO

Plaintiff

vs.

CITY OF TALLAHASSEE

Defendant

II. TYPE OF CASE

- Condominium
- Contracts and indebtedness
- Eminent domain
- Auto negligence
- Negligence – other
 - Business governance
 - Business torts
 - Environmental/Toxic tort
 - Third party indemnification
 - Construction defect
 - Mass tort
 - Negligent security
 - Nursing home negligence
 - Premises liability – commercial
 - Premises liability – residential
- Products liability
- Real Property/Mortgage foreclosure
 - Commercial foreclosure \$0 - \$50,000
 - Commercial foreclosure \$50,001 - \$249,999
 - Commercial foreclosure \$250,000 or more
 - Homestead residential foreclosure \$0 – 50,000
 - Homestead residential foreclosure \$50,001 - \$249,999
 - Homestead residential foreclosure \$250,000 or more
 - Non-homestead residential foreclosure \$0 - \$50,000
 - Non-homestead residential foreclosure \$50,001 - \$249,999
 - Non-homestead residential foreclosure \$250,000 or more
 - Other real property actions \$0 - \$50,000

- Other real property actions \$50,001 - \$249,999
- Other real property actions \$250,000 or more
- Professional malpractice
 - Malpractice – business
 - Malpractice – medical
 - Malpractice – other professional
- Other
 - Antitrust/Trade Regulation
 - Business Transaction
 - Circuit Civil - Not Applicable
 - Constitutional challenge-statute or ordinance
 - Constitutional challenge-proposed amendment
 - Corporate Trusts
 - Discrimination-employment or other
 - Insurance claims
 - Intellectual property
 - Libel/Slander
 - Shareholder derivative action
 - Securities litigation
 - Trade secrets
 - Trust litigation

A Certified Copy
Attest:

Bob Inzer

Clerk & Comptroller
Leon County, Florida

By [Signature]
Deputy Clerk



III. **REMEDIES SOUGHT** (check all that apply):

- Monetary;
- Non-monetary
- Non-monetary declaratory or injunctive relief;
- Punitive

IV. **NUMBER OF CAUSES OF ACTION:** ()
(Specify)

1

V. **IS THIS CASE A CLASS ACTION LAWSUIT?**

- Yes
- No

VI. **HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?**

- No
- Yes – If “yes” list all related cases by name, case number and court:

VII. **IS JURY TRIAL DEMANDED IN COMPLAINT?**

- Yes
- No

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

Signature s/ Marie A Mattox
Attorney or party

FL Bar No.: 739685
(Bar number, if attorney)

Marie A Mattox
(Type or print name)

10/24/2013
Date

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

CASE NO. 13-CA 002982
FLA BAR NO. 0739685

MARK E. DeCARLO,

Plaintiff,

vs.

CITY OF TALLAHASSEE,

Defendant.

COMPLAINT

Plaintiff, MARK E. DeCARLO, hereby sues Defendant, CITY OF TALLAHASSEE and
alleges:

JURISDICTION

1. This is an action brought under §112.3187, Florida Statutes, for claims which
are, individually, valued in excess of Fifteen Thousand Dollars (\$15,000.00), exclusive of costs,
interest and attorney's fees.

2 This is an action for damages, injunctive relief, attorney's fees and costs.

CONDITIONS PRECEDENT

3. Plaintiff has satisfied all conditions precedent to filing this action, if any.

THE PARTIES

4. At all times pertinent hereto, Plaintiff, MARK E. DeCARLO has been a resident
of Tallahassee, Leon County, Florida. He was employed with Defendant at all times pertinent
hereto and is *sui juris*.

A Certified Copy
Attest:

Bob Inzer

Clerk & Comptroller
Leon County, Florida

By  Deputy Clerk

7-21-14



5. At all times pertinent hereto, Defendant, CITY OF TALLAHASSEE ("COT") has been organized and existing under the laws of the State of Florida, and has been an "employer" as that term is used under the applicable laws set forth above.

FACTS

6. The Plaintiff began his employment with Defendant as a Firefighter/E.M.T. on or about March 31, 1997.

7. In or around October, 2006, while the Plaintiff was on duty at Fire Station-1, he informed the Fire Station Shift Captain, that many of Air Truck-1's 48 spare, Self Contained Breathing Apparatus (S.C.B.A.) air bottles, were 100s to 1000s of Pounds per Square Inch (P.S.I.) below regulation standards. Additionally, he informed the Captain most of Engine-1's S.C.B.A. air bottles were below regulation standards and its medical supplies were in unsatisfactory condition. A Lieutenant and a Firefighter orchestrated a faked refill of low bottles, claiming the S.C.B.A. bottles were leaking and that was why bottle air pressures were low. The Captain ended the conversation between the Lieutenant and the Plaintiff when the Lieutenant called the Plaintiff a f---ing liar. The Lieutenant then broke the chain of command attempting to have the Plaintiff punished for insubordination, in an effort to harass and intimidate Plaintiff. This was only the beginning.

8. As background information, in or around April, 2008, the Plaintiff passed the Fire Engineer, promotional exam, placing third from the top of the promotion list in or around May, 2008. In or around early 2009, the Plaintiff was passed over for promotion to Fire Engineer. The Plaintiff was removed from the eligibility list in or around April, 2010. He was required to retake the entire exam in September, 2010, and was eventually promoted to Fire Engineer on or

around November 6, 2010. The failure of the Defendant to promote the Plaintiff by seniority on the 2008, Fire Engineer promotion seniority list resulted in his loss of income and seniority.

9. Between in or around June, 2010 to in or around April, 2013 the Plaintiff submitted approximately 126 repair requests involving about 238 items. Some items were so severely damaged that they were dangerous and in no condition for use.

10. On or around January 16, 2011, the Plaintiff, on duty at Fire Station-3, submitted a repair request and reported to the Battalion-3 Chief, and Station Captain that Truck-3's aerial ladder had substantial cable damage. On or about January 20, 2011, the Plaintiff was assigned to Station-3 again. The Captain told him the Department was not having Truck-3 inspected because there was nothing wrong with the cable. Plaintiff, concerned about employee and civilian safety, and further equipment damage, sent an e-mail to Fire Chief Cindy Dick, Deputy Chief Wes Roberts, Deputy Chief John Gatlin, Battalion Chiefs and Training Chief explaining the damage and risks. The Department still refused to have the damage inspected. Only after the Plaintiff stated he would contact the State Fire Marshall's Office was Truck-3 inspected by Fleet. The aerial ladder was taken out of service until repairs could be made.

11. Later that day in an effort to harass and intimidate the Plaintiff, the Captain told the Plaintiff if he didn't watch it the Fire Department was going to come after him. On or about January 16, 2011, the Plaintiff reported in an e-mail to Battalion-2 Chief, Sharon Lippman, multiple Fire Apparatus at Stations with fuel pumps were not being fueled as required and may not be able to provide extended or multiple emergency responses. The Chief, in an e-mail responded, "I agree and it drives me nuts," "they will call you names, but you are right."

12. Additionally, on or around June 14, 2011 the Plaintiff reported in writing that Truck-4's, 36 foot extension fire ladder's halyard was deteriorated to such an extent as to make the ladder dangerous to use. The halyard was later replaced with substandard natural fiber rope.

13. On or around August 17, 2011, the Plaintiff addressed Department wide Fire Apparatus equipment and leadership issues in a Department wide e-mail. On or around August 18, 2011, Chief Dick sent a Department wide e-mail with an attachment, inviting personnel to "give it some thought." The attachment stated, "attitude was more important than facts, success, failure, skill, and education. The Plaintiff responded with a Department wide e-mail referring to the Titanic disaster when over 1,500 lives were lost at sea because the Captain, having been warned of multiple ice bergs ahead, thought It was more important to set a speed record for crossing the Atlantic Ocean. The Defendant was given a coaching and counseling statement for expressing an opinion in a Department wide e-mail, which is what Chief Dick had also done.

14. In or around early November, 2011, the Plaintiff, working at Station-1 was harassed by the Station's shift Captain, telling him not to expect any help from personnel, that cleaning and maintenance of Fire Apparatus for several hours was the Plaintiff's standard, not the Fire Department standard.

15. In or around late November, 2011, the Plaintiff sent Chief Bob Obernier, Chief Dennis Roberts, and Acting Chief Richard Barineau, an e-mail expressing his intention to file a complaint against the Department for hostile work environment, unreasonable rules of conduct and uniform policy, and other issues. During a separate interview with Captain Barineau, and Chief Roberts, the Plaintiff addressed racial slurs being used by personnel, Air Trucks being extremely short of S.C.B.A. air bottles, Fire Apparatus equipment shortages and surpluses, outdated inventory sheets, Fire Apparatus inadequately fueled, Fire Apparatus not being

inspected and repair requests submitted, failure of officers to oversee their personnel, a pattern of harassment by individuals such as the two Station-1 Officers, and other issues.

16. On or around March 5, 2012, the Plaintiff e-mailed a letter of complaint, addressing a frivolous complaint made by a Lieutenant and another employee or firefighter of the Defendant, to the Plaintiff's direct supervisor. The Lieutenant alleged that the Plaintiff was leaving gear in the sleeping quarters and using the shower after shift change. Further, after the Plaintiff spent multiple shifts cleaning the Station's truck bay, organizing equipment and painting with the concurrence of his supervisor, he was repeatedly harassed by the Lieutenant for moving his guitar practicing table. The Lieutenant was not reprimanded for this complaint or his harassment of the Plaintiff. The verbal harassment continued from in or around early January, 2012, to in or around mid-March, 2012. The shift Chief, threatened the Plaintiff, saying that if the Plaintiff forwarded a complaint to City Hall, he would be bounced from Fire Station to Fire Station the rest of his career.

17. From in or around late November, 2012, until on or about May 8, 2013, the Plaintiff, through his immediate supervisor, Lieutenant David Dowdy, attempted to have a damaged, critical, 5 inch water supply hose on Tanker-11 replaced. The Plaintiff was the Engineer/Driver of Tanker-11 on that shift. Plaintiff was present during numerous phone calls Lt. Dowdy placed to supply. Supply personnel presented different stories including: Station-11's crew should go to the training field, pick up scrap 5 inch hose, cut it down, and change the couplings off Tanker-11's damaged hose; that there were limited funds; and ordering the hose was a Fleet responsibility. Eventually supply said they would order a new hose.

18. Additionally, Lt. Dowdy informed Chief Byron Whitaker by phone multiple times, that he needed assistance in expediting the replacement of the hose. On numerous

occasions, while Chief Whitaker visited Station-11, Dowdy and the Plaintiff showed Chief Whitaker the damaged hose and asked for his assistance in expediting the replacement. The damaged fire hose was finally replaced in or around mid-May, 2013, within two days of a local T.V. Station broadcasting pictures of the damaged hose. The broadcast aired after the Plaintiff was suspended on or about May 8, 2013.

19. On or around March 26, 2013, a supply employee sent a Department wide e-mail saying a second badge was being purchased for employees, starting with Chiefs, to allow employees to keep one badge and turn one in when leaving, retiring, or being promoted. The Plaintiff, having been informed that a delay in replacing the severely damaged, 5 inch fire hose on Tanker-11 was due to a funding shortage, replied by e-mail to the clerk that purchasing a second badge was a waste of money. Chief Whitaker ordered Lieutenant Dowdy to coach and counsel the Plaintiff, in writing, for an inappropriate e-mail. In the employee comment section the Plaintiff wrote: Chief Dick e-mailed, attitude was more important than facts,.... success,.... failure, education,.... training,.... skill,... etc., and Chief Wes Roberts used a City computer and printer to post, derogatory comments about the President of the United States, and the Democratic Party. Chief Whitaker, in an angry and abusive manner, ordered the Plaintiff to rewrite his comments. When Plaintiff declined, Chief Whitaker said he would tear up the document. The Plaintiff informed the Chief he would report the document destruction. Chief Whitaker, in an effort to provoke a fight, stepped to within one foot of the Plaintiff, continually pointed a finger toward and near his face, saying the Plaintiff had been a f---up since he joined the Department, had f---up everything he had done in the Department, had been a f---up his whole life, had been a f---up in the military, and been kicked out of the military. Lieutenant David Dowdy witnessed this event and upon leaving Station-11, Chief Whitaker told Dowdy the

Fire Department was going to cut the Plaintiff's nuts off. The Plaintiff was repeatedly harassed, intimidated and verbally abused during the conversation.

20. That same morning after the incident with Chief Whitaker, the Plaintiff submitted an e-mail complaint alleging harassment, negligence, fraud, waste, abuse, anti-political party, and anti-President posting. Within about 20 minutes of sending the complaint, the Defendant harassed and retaliated against the Plaintiff when Chief Whitaker called Lieutenant Dowdy, saying the Plaintiff was suspended as of the end of the shift because the Department didn't know he was taking morphine. 40 minutes after the Plaintiff sent the complaint, Department Human Resources employee, Mona Pearson, sent the Plaintiff an e-mail with attached form, stating the department did not have any record of the Plaintiff taking morphine. She instructed the Plaintiff to have a Physician fill in the form, clearing the Plaintiff to return to work.

21. Within several days, the Fire Department Physician, Dr. John MacKay, cleared Plaintiff to return to work without restrictions. The Plaintiff's 2011 and 2012 annual Fire Department Physical, conducted by Dr. MacKay, both stated the Plaintiff had informed the Doctor he was taking Veterans Administration provided morphine. Previous to this suspension, the Plaintiff had informed his new supervisor, Lt. Dowdy, in or around March, 2012, that the Plaintiff was issued morphine for an injury he sustained while deployed to Afghanistan with an Army Infantry Battalion. Lieutenant Dowdy in turn, informed Chief Whitaker, who responded by saying it wasn't a problem.

22. In or around summer, 2012, Chief Whitaker called Station-11 and informed Lieutenant Dowdy that the Department was taking a survey and compiling a list of employees taking prescription medications. Lt. Dowdy reminded Chief Whitaker that the Plaintiff was

taking morphine issued by the Veterans Administration. Chief Whitaker again stated it wasn't an issue.

23. On or around April 29, 2013 the Plaintiff submitted written allegations to the Defendant's Auditor, Bert Fletcher, alleging, as stated in the resulting Defendant Audit, released on or around August 16, 2013, "This inquiry was conducted after allegations were received from a Fire employee that the Fire apparatus inventory, inspection, and repair process, and hose testing and inventory records were not adequate." The Plaintiff was interviewed by the Defendant's Auditor prior to the Audit being conducted.

24. The resulting Audit confirmed the Plaintiff's allegations stating "we noted....a lack of adequate evidence to clearly demonstrate apparatus inventories and inspections were always performed and documented,.... equipment and supplies....were not located on the assigned vehicles,....where equipment and supplieswere not on the inventory records....for those vehicles,....where equipment and supplies were stored in locations....that were different from thelocation indicated on therecords. We noted significant deficiencies in accounting for and tracking fire hose. Those Deficiencies adversely impacted the Fire's hose testing process. Accordingly, we cannot provide assurance that all hoses used in Fire vehicles have been properly tested, are in satisfactory working condition, and are properly accounted for in the Fire's inventory records."

25. On or around May 2, 2013, the Plaintiff submitted to the Defendant, a written request for investigation into the conduct of the Fire Department at the Plantations at Pine Lakes Apartment Fire, in or around late November, 2012, which the Plaintiff stated resulted in \$1,000,00 in damage. Chief Whitaker submitted a false written statement alleging the fire damage was about \$500,000. The Plaintiff, after submitting a written request for documents

related to the fire, was informed in writing that the Defendant did not maintain the requested documents. Subsequently, after the Plaintiff indicated that withholding the documents was a violation of Florida Laws, the Defendant released the documents which stated the fire damage was \$960,000.

26. On or around May 2, 2013, the Plaintiff requested in writing to the Defendant, an external investigation request concerning Chief Whitaker's fitness for rank and duty position in the Fire Department. Chief Whitaker had verbally abused, intimidated, used threatening gestures, attempted to provoke a fight, threatened destruction of a government document, and demanded the Plaintiff rewrite his statement in the employee comments section of a Coaching and Counseling he had received on or around April 29, 2013.

27. On or around May 7, 2013, the Plaintiff submitted a Fire Department Complaint Form to Investigator, Deputy Fire Chief John Gatlin. On or around June 3, 2013 Investigator Gatlin released report 2013IA-002 related to the Plaintiff's allegations. The report contained no written statements from witnesses. Investigator Gatlin entered Chief Whitaker's typed, unnamed, undated, and unsigned statement into the report. The statement contained multiple false, unsubstantiated allegations against the Plaintiff completely unrelated to the investigation. Investigator Gatlin also entered multiple other documents into the report that were completely unrelated to the investigation. Investigator Gatlin omitted and distorted witness statements, and falsified his findings. When the Plaintiff submitted a request to the Defendant's Records Office for Investigator Gatlin's notes, the Plaintiff was given an e-mail from Defendant, Assistant Attorney, Cassandra Jackson, addressed to the Record Office stating "In regard to the response to this public records request, please respond that no minutes have been made and therefore none are available."

28. On or around May 2, 2013, the Plaintiff requested in writing to the Defendant an External investigation of demolition and construction at multiple Defendant Fire Stations, which had been done without Growth Management plans review, fees paid, or permits being issued. The Plaintiff also addressed damage to a Fire Apparatus which had resulted from a building code violation.

29. After the Plaintiff's investigation requests were received, on or around May 8, 2013, Chief Dick's secretary Ashante Petties, called the Plaintiff at Station-11 advising him that Chief Dick wanted the Plaintiff to meet with her on May 9, 2013, to discuss his investigation requests concerning the Fire Department. The Plaintiff informed Ms. Petties that he had been advised by legal counsel not to meet with Chief Dick without legal counsel present or to discuss his investigation requests against the Department. Chief Dick called the Plaintiff thereafter, stating that she was sending Chief Whitaker to Station-11 to pick up the Plaintiff and bring him to meet with her. The Plaintiff advised Chief Dick that Chief Whitaker was unstable, and unsafe to ride with.

30. At this time the Plaintiff had an active investigation request for verbal abuse, threatening gestures, attempting to provoke a fight and other improper actions by Chief Whitaker against the Plaintiff from the previous week. Chief Dick began to harass the Plaintiff and after she repeatedly insisted that he ride with Chief Whitaker the Plaintiff ended he call. Chief Dick immediately called the Plaintiff again and continued to harass and intimidate the Plaintiff, repeatedly stating that she was sending Chief Whitaker and that if the Plaintiff did not ride with Chief Whitaker that the Plaintiff would be suspended. The Plaintiff ended the conversation due to the repeated harassment and threats.

31. Thereafter, Chief Dick called the Plaintiff's supervisor Lieutenant Dowdy, at Station-11 stating she was suspending the Plaintiff with pay pending investigation for insubordination. The Plaintiff was relieved by another Fire Engineer and left the Station with good demeanor and attitude. That same day, Defendant Assistant City Manager, Tom Coe, instructed Deputy Fire Chief John Gatlin, to contact the Tallahassee Police Department and mobilize its resources in an effort by the Defendant to harass, intimidate and slander the Plaintiff.

32. Additionally, one employee of the Defendant sent an e-mail stating "Spoke with a Shift Lieutenant with TFD,....a firefighter,....is not taking it well. They are locking down." The Defendant continued the lock down from on or around May 8, 2013 to on or around May 10, 2013, thus slandering the Plaintiff, and creating a Fire Department wide, hostile work environment.

33. Later the same day, Ashante Petties submitted a written statement alleging she had been in Chief Dick's office at about 9:00 A.M. that same day listening to Chief Dick's speaker phone conversations between Chief Dick and the Plaintiff, then Lieutenant Dowdy, and finally, Mr. Coe.

34. On or around May 9, 2013 Chief Whitaker submitted a written statement alleging he had been in Chief Dick's office the previous day at about 9:00 A.M., also listening in on conversations between Chief Dick and the Plaintiff, then Lieutenant Dowdy, and finally, Mr. Coe. After a comparison spread sheet was generated, it was determined the two statements were not factual and independent statements as claimed. Additionally, Chief Dick's office phone records indicate no calls were made to Fire Station-11 on the morning in question. Chief Whitaker's work cell phone records indicate he engaged in several phone calls including

receiving a call from Ms. Petties at the time both claimed they were together in Chief Dick's office.

35. Chief Dick also engaged in several calls other than Station-11 during the time in question. Chief Dick utilized Ashante Petties's and Chief Whitaker's falsified and duplicate statements as justification for ordering the Plaintiff to have a Fitness For Duty Evaluation.

36. That same day, on or around May 8, 2013, employee Mona Pearson sent the Plaintiff a letter stating Chief Dick had ordered a fitness for duty evaluation against him. On or around May 14, 2013, the Plaintiff, at the evaluation in Tallahassee, was advised by Dr. Patrick Cook, that there was a conflict of interest and the evaluation could not proceed. On or around the next day, Ms. Pearson sent the Plaintiff a letter advising he was required to attend a fitness for duty evaluation by Dr. Clifford Levin, in Gainesville, Florida on or around May 23, 2013, even though there were qualified psychologists in Tallahassee.

37. On or around June 10, 2013 the Plaintiff met with Chief Dick who ordered the Plaintiff's regular pay stopped on or around June 19, 2013, and required him to utilize his sick leave, then his vacation time when his sick leave expired, ordered him to have 16 weeks of outpatient psychotherapy at his own expense, and then be re-evaluated for fitness for duty by Dr. Levin at the end of the 16 weeks.

38. The Plaintiff faced immediate termination if he failed to find a therapist in 7 days and set up an appointment, refused to pay for therapy, didn't attend all 16 weekly therapy sessions, did not attend re-evaluation conducted by Dr. Levin at the end of the 16 weeks, or did not authorize Ms. Pearson, Chief Roberts, and Chief Gatlin to communicate with the therapist conducting the 16 weekly sessions with the Plaintiff.

39. At the same meeting with Chief Dick, on or around June 10, 2013 she presented the Plaintiff with a Disciplinary Action Report suspending the Plaintiff, without pay beginning June 6, 2013, and ending June 19, 2013, for his refusal to meet with her on May 8, 2013. No additional documentation or witness statements were included as evidence in the report. During the Plaintiff's suspension grievance meeting with Defendant, Assistant City Manager, Tom Coe, on or around July 8, 2013, the Plaintiff presented Mr. Coe with Mr. Petties's and Chief Whitaker's submitted witness statements of Chief Dick's conversations with the Plaintiff occurring on or around May 8, 2013. Mr. Coe read a statement comparison spread sheet provided by the Plaintiff which proved the statements were duplicates.

40. To date, Plaintiff still faces possible termination and is still on leave without pay for contrived allegations trumped up against him by the Defendant. The Defendant, from in or around October, 2006, to in or around October, 2013, has repeatedly harassed, slandered, intimidated, threatened, and retaliated against the Plaintiff who was in the performance of his duties as a Public Safety Employee in accordance with Firefighting, Emergency Medical , and Defendant memorandums, standard operating procedures, guidelines, and instructions.

COUNT I
VIOLATION OF PUBLIC WHISTLE BLOWER ACT

41. Paragraphs 1-40 are incorporated herein by reference.

42. This is an action against Defendant under §112.3187 et seq.

43. Plaintiff was a public employee protected under the provisions of Chapter 112, Florida Statutes.

44. As stated more specifically, in part, above, Plaintiff reported and disclosed violations of state rules, regulations and laws to a person who had 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.

45. After providing information as well as reporting these matters as related more fully above, Plaintiff was the victim of retaliatory actions as set forth more fully above.

46. Plaintiff's position and responsibilities within Defendant were adversely affected as a result of reporting violations of rules, regulations and laws specified in part above. These actions were taken against him after he objected to and/or reported matters that he reasonably suspected were and/or actually were incidents of gross misconduct, malfeasance, and/or misfeasance within Defendant. These reports were conveyed in writing and/or were made to supervisors and/or other persons within the Defendant who could remedy the violations. After reporting these matters within Defendant, adverse actions were taken against him.

47. Under §112.3187(4), Defendant is prohibited from taking adverse personnel action against persons like Plaintiff who disclose 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."

48. After making the disclosures identified in part above, Plaintiff suffered adverse employment action, which adverse actions are reported in part above.

49. Plaintiff maintains that the actions of all employees within Defendant who affected his employment adversely did so in retaliation against him for his "whistle blowing" activities.

50. 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 pecuniary damages. These damages have occurred in the past, are occurring at present and will occur in the future. Plaintiff has also retained the undersigned to represent his interests in this cause and is obligated to pay her a reasonable fee and costs for her services. Defendant should be made to pay said fee and all costs associated with this action under the laws applicable to this case.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- (a) that process issue and this Court take jurisdiction over this case;
- (b) that this Court grant equitable relief against Defendant under the applicable counts set forth above, mandating Defendant's obedience to the laws enumerated herein and providing other equitable relief to Plaintiff;
- (c) enter judgment against Defendant and for Plaintiff awarding damages to Plaintiff from Defendant for Defendant's violations of law enumerated herein;

- (d) enter judgment against Defendant and for Plaintiff permanently enjoining Defendant from future violations of law enumerated herein;
- (e) enter judgment against Defendant and for Plaintiff awarding Plaintiff attorney's fees and costs;
- (f) award Plaintiff interest and equitable relief; and
- (g) grant such other further relief as being just and proper under the circumstances.

DEMAND FOR TRIAL BY JURY

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

Dated this 24th day of October, 2013.

Respectfully submitted,

/s/ Marie A. Mattox
Marie A. Mattox [FBN 0739685]
MARIE A. MATTOX, P. A.
310 East Bradford Road
Tallahassee, FL 32303
Telephone: (850) 383-4800
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michelle2@mattoxlaw.com
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ATTORNEYS FOR PLAINTIFF

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

MARK E. DeCARLO,

Plaintiff,

Case No.: 2013-CA-2982

vs.

CITY OF TALLAHASSEE,

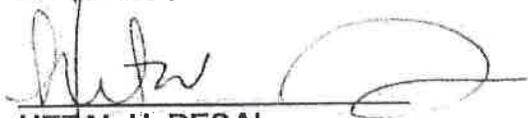
Defendant.

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that the undersigned hereby enters their appearance as counsel for Defendant, **CITY OF TALLAHASSEE**. All correspondence, pleadings, notices, and other materials filed or issued in this cause should be directed to the undersigned as counsel of record at the address listed below.

Dated this 10th day of December, 2013.

Respectfully submitted,



HETAL H. DESAI

Florida Bar Number: 050938

E-mail: hdesai@sniffenlaw.com

MICHAEL P. SPELLMAN

Florida Bar Number: 0937975

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Telephone: (850) 205-1996

Facsimile: (850) 205-3004

*Attorneys for Defendant
City of Tallahassee*

A Certified Copy
Attest:

Bob Inzer

Clerk & Comptroller
Leon County, Florida

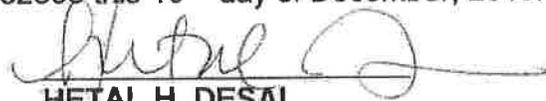
By  Deputy Clerk

7-21-14



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail upon, Marie Mattox, Esq., Attorney for Plaintiff, at 310 E. Bradford Street, Tallahassee, Florida 32303 this 10th day of December, 2013.


HETAL H. DESAI

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

MARK E. DeCARLO,

Plaintiff,
vs.

Case No.: 2013-CA-2982

CITY OF TALLAHASSEE,

Defendant.

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT

Defendant, CITY OF TALLAHASSEE ("Defendant" or "the City"), by and through its undersigned counsel, responds and answers the Complaint filed by MARK E. DECARLO's ("Plaintiff" or "DeCarlo") in correspondingly numbered paragraphs as follows:

JURISDICTION

1. Defendant admits the allegations contained in paragraph 1 of the Complaint for jurisdictional purposes only, but denies that Plaintiff's claims under §112.3187, Florida Statutes, have any merit or that those claims exceed \$15,000.00, and demands strict proof of such damages.

2. Defendant admits the allegations contained in paragraph 2 for jurisdictional purposes only, but denies Plaintiff is entitled to any relief.

CONDITIONS PRECEDENT

3. Defendant is without knowledge of and therefore denies the allegations in paragraph 3 of the Complaint.

A Certified Copy
Attest:

Bob Inzer

Clerk & Comptroller
Leon County, Florida

By  Deputy Clerk



7-21-14

THE PARTIES

4. Defendant admits that Plaintiff has been a resident of Tallahassee, Leon County, Florida, and was employed by Defendant.

5. Defendant admits the City has been organized and exists under the laws of the State of Florida. There is no definition of "employer" in §112.3187 and, the remaining allegations in paragraph 5 of the Complaint are conclusions of law, and are denied.

GENERAL ALLEGATIONS

6. Defendant admits the allegations contained in paragraph 6 of the Complaint.

7. Defendant denies all the allegations contained in paragraph 7 of the Complaint.

8. Defendant denies all the allegations contained in paragraph 8 of the Complaint.

9. Defendant denies all the allegations contained in paragraph 9 of the Complaint.

10. Defendant denies all the allegations contained in paragraph 10 of the Complaint.

11. Defendant denies all the allegations contained in paragraph 11 of the Complaint.

12. Defendant denies all the allegations contained in paragraph 12 of the Complaint.

13. Defendant admits Tallahassee Fire Chief Cindy Dick sent an email on or around August 17, 2011, but denies all the remaining allegations contained in paragraph 13 of the Complaint.

14. Defendant denies all allegations contained in paragraph 14 of the Complaint.

15. Defendant denies all allegations contained in paragraph 15 of the Complaint.

16. Defendant denies all allegations contained in paragraph 16 of the Complaint.

17. Defendant denies all allegations contained in paragraph 17 of the Complaint.

18. Defendant denies all allegations contained in paragraph 18 of the Complaint.

19. Defendant admits a Tallahassee Fire Department employee sent an email on or around August 17, 2011, but denies all other allegations contained in paragraph 19 of the Complaint.

20. Defendant denies all allegations contained in paragraph 20 of the Complaint.

21. Defendant admits Plaintiff was cleared to return to work, but denies all other allegations contained in paragraph 21 of the Complaint.

22. Defendant denies all allegations contained in paragraph 22 of the Complaint.

23. Defendant admits Plaintiff was interviewed by the City Auditor's office, but denies all other allegations contained in paragraph 23 of the Complaint.

24. Defendant denies all allegations contained in paragraph 24 of the Complaint.

25. Defendant denies all allegations contained in paragraph 25 of the Complaint.

26. Defendant admits Plaintiff submitted a request for an investigation, but denies all other allegations contained in paragraph 26 of the Complaint.

27. Defendant admits Plaintiff made a complaint to the Tallahassee Fire Department and that there was a resulting report, but denies all other allegations contained in paragraph 27 of the Complaint.

28. Defendant denies all allegations contained in paragraph 28 of the Complaint.

29. Defendant denies all allegations contained in paragraph 29 of the Complaint.

30. Defendant denies all allegations contained in paragraph 30 of the Complaint.

31. Defendant admits the Tallahassee Fire Department suspended Plaintiff for insubordination, but denies all other allegations contained in paragraph 31 of the Complaint.

32. Defendant denies all allegations contained in paragraph 32 of the Complaint.

33. Defendant admits Ashante Petties submitted a written statement regarding phone conversations among the Tallahassee Fire Chief, Plaintiff, Lieutenant David Dowdy and Assistant City Manager Tom Coe, but denies all other allegations contained in paragraph 33 of the Complaint.

34. Defendant admits Deputy Chief Byron Whitaker submitted a written statement, but denies all other allegations contained in paragraph 34 of the Complaint.

35. Defendant admits Tallahassee Fire Chief Cindy Dick engaged in several calls, but denies all other allegations contained in paragraph 35 of the Complaint.

36. Defendant admits Plaintiff was sent for a "fitness for duty evaluation," but denies all other allegations contained in paragraph 36 of the Complaint.

37. Defendant admits Plaintiff was to be re-evaluated for fitness for duty at the end of 16 weeks of therapy, but denies all other allegations contained in paragraph 37 of the Complaint.

38. Defendant denies all allegations contained in paragraph 38 of the Complaint.

39. Defendant admits Assistant City Manager Tom Coe met with Plaintiff regarding his suspension grievance, but denies all other allegations contained in paragraph 39 of the Complaint.

40. Defendant denies all allegations contained in paragraph 40 of the Complaint.

COUNT I- VIOLATION OF PUBLIC WHISTLE BLOWER ACT

41. Defendant reasserts all answers to paragraphs 1 through 40 of the Complaint.

42. Defendant admits this is an action under §112.3187 et. seq., but denies that Plaintiff is entitled to any relief under this statute, and denies the remaining allegations in the Complaint.

43. Defendant admits Plaintiff was a public employee, but denies all other allegations contained in paragraph 43 of the Complaint.

44. Defendant denies all allegations contained in paragraph 44 of the Complaint.

45. Defendant denies all allegations contained in paragraph 45 of the Complaint.

46. Defendant denies all allegations contained in paragraph 46 of the Complaint.

47. Defendant admits the language of the statute, but the allegations call for legal conclusions and therefore, Defendant denies all other allegations contained in paragraph 47 of the Complaint.

48. Defendant denies all allegations contained in paragraph 48 of the Complaint.

49. Defendant denies all allegations contained in paragraph 49 of the Complaint.

50. Defendant denies all allegations contained in paragraph 50 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

1. Complaint fails to state a cause of action under the FPWA or otherwise.

SECOND AFFIRMATIVE DEFENSE

2. All employment actions taken by the City with respect to Plaintiff were based on legitimate non-retaliatory reasons.

THIRD AFFIRMATIVE DEFENSE

3. Plaintiff's claim is barred by Plaintiff's participation in conduct about which he complains; he has come before this Court with unclean hands.

FOURTH AFFIRMATIVE DEFENSE

4. Assuming, arguendo, Plaintiff is entitled to an award of damages for the actions complained of in the Complaint, which Defendant denies, the City is entitled to a reduction of the monies demanded by the Plaintiff by any and all monies received by Plaintiff from other sources arising from or out of the same claims and injuries asserted in the Complaint.

FIFTH AFFIRMATIVE DEFENSE

5. Some or all of Plaintiff's claims are barred by the applicable statutes of limitation and/or are otherwise time-barred and Plaintiff is not entitled to recover with respect to such claims.

SIXTH AFFIRMATIVE DEFENSE

6. Assuming, arguendo, Plaintiff disclosed certain information, which Defendant expressly denies, some or all disclosures were not the type of information protected by the FPWA and/or was not disclosed in accordance with the requirements of the FPWA.

SEVENTH AFFIRMATIVE DEFENSE

7. If any employee of Defendant retaliated against Plaintiff, the occurrence of which is denied, such conduct was outside the employee's actual or apparent scope of authority and/or employment with the City.

EIGHTH AFFIRMATIVE DEFENSE

8. At all times in its treatment of Plaintiff, the City acted in good faith in accordance with all statutes, rules and regulations, whether Federal or State, and with its own internal policies, rules and procedures governing the workplace.

NINTH AFFIRMATIVE DEFENSE

9. To the extent that Plaintiff is able to establish that unlawful motivation played any part in any employment decision challenged by Plaintiff, which Defendant expressly denies, the City would have taken the same action in the absence of such impermissible motivating factor.

TENTH AFFIRMATIVE DEFENSE

10. Plaintiff is barred from recovery against Defendant based upon the manner in which he pursued his internal complaint and/or based upon his failure to cooperate with the City during its investigation of his allegations.

ELEVENTH AFFIRMATIVE DEFENSE

11. To the extent decisions were made regarding the Plaintiff's employment based upon erroneous or mistaken beliefs as to certain facts or circumstances, such decisions were nonetheless made in good faith and were not motivated by any allegedly protected conduct in which Plaintiff alleges to have engaged.

TWELTFTH AFFIRMATIVE DEFENSE

12. Plaintiff has failed to adequately allege that equitable and/or injunctive relief is appropriate or required.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Plaintiff's claims for interest and other relief are limited by the provisions of the FPWA.

FOURTEENTH AFFIRMATIVE DEFENSE

14. Assuming, arguendo, Plaintiff disclosed certain protected information, which Defendant expressly denies, any such disclosure was made in bad faith, for wrongful purpose, and/or not disclosed in accordance with the requirements of the FPWA.

PRAYER FOR RELIEF

Defendant denies it is liable to Plaintiff in any sum or manner. Defendant further denies that Plaintiff is entitled to any of the relief sought in his Complaint.

DEMAND FOR JURY TRIAL

Defendant demands a trial by jury on all issues which are so triable.

DEMAND FOR ATTORNEY'S FEES AND COSTS

In accordance with Section 112.3187(9)(d), Florida Statutes, Defendant demands an award of its attorney's fees and costs of suit.

WHEREFORE, the City respectfully requests that this Court dismiss the Complaint, deny Plaintiff all requested relief and award Defendant its costs, reasonable

attorney's fees and such other and further relief as the Court deems necessary or appropriate.

Dated this 10th day of December, 2013.

Respectfully submitted,



HETAL H. DESAI

Florida Bar Number: 005038

E-mail: hdesai@sniffenlaw.com

MICHAEL P. SPELLMAN

Florida Bar Number: 0937975

Email: mspellman@sniffenlaw.com

SNIFFEN & SPELLMAN, P.A.

123 NORTH MONROE STREET

Tallahassee, Florida 32301

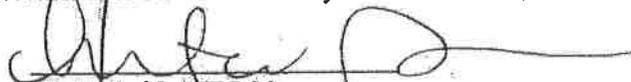
Telephone: (850) 205-1996

Facsimile: (850) 205-3004

*Attorneys for Defendant
City of Tallahassee*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic and U.S. mail upon, Marie Mattox, Esq., Attorney for Plaintiff, at 310 E. Bradford Street, Tallahassee, Florida 32303 this 10th day of December, 2013.



HETAL H. DESAI

Filing # 9258827 Electronically Filed 01/16/2014 04:33:13 PM

RETURN OF SERVICE

State of FL

County of Leon

Circuit Court/Second Judicial Circuit Court

Case Number: 13-CA-2982

Plaintiff:

Mark E. DeCarlo

vs.

Defendant:

City of Tallahassee

For:

Marie Mattox

Marie A. Mattox, P.A.

310 East Bradford Rd.

Tallahassee, FL 32303

Received by Process & Recovery Services, Inc. on the 8th day of November, 2013 at 3:30 pm to be served on **City of Tallahassee c/o Mayor John Marks City Hall, 4th Floor, 300 S. Adams St., Tallahassee, FL 32301**

I, William Jake Lord, do hereby affirm that on the **13th day of November, 2013 at 11:10 am, I:**

served a **PUBLIC AGENCY** by delivering a true copy of the **Summons and Complaint** with the date and hour of service endorsed thereon by me, to: **Nita Kirkpatrick as Legal Administrator for City of Tallahassee c/o Mayor John Marks City Hall, 4th Floor** at the address of: **300 S. Adams St., Tallahassee, FL 32301** and informing said person of the contents therein.

Service Fee Items:

Leon County Fee	\$25.00
Total	\$25.00

I certify that I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served. Under penalties of perjury, I declare that I have read the foregoing document and the facts stated in it are true. No Notary required pursuant to F.S.92.525(2)

A Certified Copy
Attest:

Bob Inzer

Clerk & Comptroller
Leon County, Florida

By  Deputy Clerk

7-21-14




William Jake Lord
Process Server #067

Process & Recovery Services, Inc.
3603 Monmouth Ct.
Tallahassee, FL 32308
(850) 508-5261

Our Job Serial Number: PRC-2013002381



Electronically Filed 10/24/2013 08:06:46 PM ET

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

MARK E. DeCARLO,

Plaintiff,

Case No. 13-CA 002982

vs.

CITY OF TALLAHASSEE,

Defendant.

Summons

LEGAL ADMINISTRATOR

NITA KIRKPATRICK

CERTIFIED PROCESS SERVER # 067

SECOND JUDICIAL CIRCUIT COURT OF FLORIDA

DATE SERVED 11-13-13 TIME 11:10A

THE STATE OF FLORIDA:

To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and a copy of the complaint or petition
in this action on Defendant:

CITY OF TALLAHASSEE
c/o Mayor John Marks
City Hall, 4th Floor
300 South Adams Street
Tallahassee, FL 32301

Each defendant is required to serve written defenses to the complaint or petition on **Marie A. Mattox, P. A.**, Plaintiff's attorney, whose address is **310 East Bradford Road, Tallahassee, FL 32303**, within 20 days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court, either before serve on plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

DATED on October 29, 2013.

BOB INZER
CLERK OF THE CIRCUIT COURT

By: [Signature]
Deputy Clerk



Filing # 9586673 Electronically Filed 01/27/2014 03:58:45 PM

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

MARK E. DeCARLO,

Plaintiff,

Case No.: 2013-CA-2982

vs.

CITY OF TALLAHASSEE,

Defendant.

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that the undersigned hereby enters his appearance as counsel for Defendant, **CITY OF TALLAHASSEE**. All correspondence, pleadings, notices, and other materials filed or issued in this cause should be directed to the undersigned as counsel of record at the address listed below.

Dated this 27th day of January, 2014.

Respectfully submitted,

/s/ Michael P. Spellman

MICHAEL P. SPELLMAN

Florida Bar Number: 0937975

Email: mspellman@sniffenlaw.com

HETAL H. DESAI

Florida Bar Number: 050938

E-mail: hdesai@sniffenlaw.com

SNIFFEN & SPELLMAN, P.A.

123 NORTH MONROE STREET

Tallahassee, Florida 32301

Telephone: (850) 205-1996

Facsimile: (850) 205-3004

*Attorneys for Defendant
City of Tallahassee*

A Certified Copy
Attest:

Bob Inzer

Clerk & Comptroller
Leon County, Florida

By *[Signature]*
Deputy Clerk

7-21-14



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic mail upon, Marie Mattox, Esq., Attorney for Plaintiff, at 310 E. Bradford Street, Tallahassee, Florida 32303 this 27th day of January, 2014.

/s/ Michael P. Spellman
MICHAEL P. SPELLMAN

Filing # 14661165 Electronically Filed 06/10/2014 11:51:10 PM

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

MARK E. DeCARLO,

CASE NO. 13-CA- 2982

FLA BAR NO. 0739685

Plaintiff,

vs.

CITY OF TALLAHASSEE,

Defendant.

AMENDED COMPLAINT

Plaintiff, MARK E. DeCARLO, hereby sues Defendant, CITY OF TALLAHASSEE and alleges:

JURISDICTION

1. This is an action brought under §112.3187, Florida Statutes, Chapter 760, Florida Statutes, 42 U.S.C. §§12102 et seq., and 42 U.S.C. 1981a for claims which are, individually, valued in excess of Fifteen Thousand Dollars (\$15,000.00), exclusive of costs, interest and attorney's fees.

2 This is an action for damages, injunctive relief, attorney's fees and costs.

CONDITIONS PRECEDENT

3. Plaintiff has satisfied all conditions precedent to filing this action, if any.

THE PARTIES

4. At all times pertinent hereto, Plaintiff, MARK E. DeCARLO has been a resident of Tallahassee, Leon County, Florida. He was employed with Defendant at all times pertinent hereto and is *sui juris*.

A Certified Copy
Attest:

Bob Inzer
Clerk & Comptroller
Leon County, Florida

By  Deputy Clerk



5. At all times pertinent hereto, Defendant, CITY OF TALLAHASSEE ("COT") has been organized and existing under the laws of the State of Florida, and has been an "employer" as that term is used under the applicable laws set forth above.

FACTS

6. The Plaintiff began his employment with Defendant as a Firefighter/E.M.T. on or about March 31, 1997.

7. In or around October, 2006, while the Plaintiff was on duty at Fire Station-1, he informed the Fire Station Shift Captain that many of Air Truck-1's 48 spare, Self Contained Breathing Apparatus (S.C.B.A.) air bottles, were 100s to 1000s of Pounds per Square Inch (P.S.I.) below regulation standards. Additionally, he informed the Captain most of Engine-1's S.C.B.A. air bottles were below regulation standards and its medical supplies were in unsatisfactory condition. A Lieutenant and a Firefighter orchestrated a faked refill of low bottles, claiming the S.C.B.A. bottles were leaking and that was why bottle air pressures were low. The Captain ended the conversation between the Lieutenant and the Plaintiff when the Lieutenant called the Plaintiff a f---ing liar. The Lieutenant then broke the chain of command attempting to have the Plaintiff punished for insubordination, in an effort to harass and intimidate Plaintiff.

8. As background, in or around April, 2008, the Plaintiff passed the Fire Engineer, promotional exam, placing third from the top of the promotion list in or around May, 2008. In or around early 2009, the Plaintiff was passed over for promotion to Fire Engineer. The Plaintiff was removed from the eligibility list in or around April, 2010. He was required to retake the entire exam in September, 2010, and was eventually promoted to Fire Engineer on or around

November 6, 2010. The failure of the Defendant to promote the Plaintiff by seniority on the 2008, Fire Engineer promotion seniority list resulted in his loss of income and seniority.

9. Between in or around June, 2010 to in or around April, 2013 the Plaintiff submitted approximately 126 repair requests involving about 238 items. Some items were so severely damaged that they were dangerous and in no condition for use.

10. On or around January 16, 2011, the Plaintiff, on duty at Fire Station-3, submitted a repair request and reported to the Battalion-3 Chief, and Station Captain that Truck-3's aerial ladder had substantial cable damage. On or about January 20, 2011, the Plaintiff was assigned to Station-3 again. The Captain told him the Department was not having Truck-3 inspected because there was nothing wrong with the cable. Plaintiff, concerned about employee and civilian safety, and further equipment damage, sent an e-mail to then Fire Chief Cindy Dick, Deputy Chief Wes Roberts, Deputy Chief John Gatlin, Battalion Chiefs and the Training Chief explaining the damage and risks. The Department still refused to have the damage inspected. Only after the Plaintiff stated he would contact the State Fire Marshall's Office was Truck-3 inspected. An aerial ladder was taken out of service thereafter until repairs could be made.

11. Later that day in an effort to harass and intimidate the Plaintiff, the Captain told the Plaintiff if he didn't watch it the Fire Department was going to come after him. On or about January 16, 2011, the Plaintiff reported in an e-mail to Battalion-2 Chief, Sharon Lippman, that multiple Fire Apparatus at Stations with fuel pumps were not being fueled as required and may not be able to provide extended or multiple emergency responses. The Chief, in an e-mail responded, "I agree and it drives me nuts," "they will call you names, but you are right."

12. Additionally, on or around June 14, 2011 the Plaintiff reported in writing that Truck-4's, 36 foot extension fire ladder's halyard was deteriorated to such an extent as to make the ladder dangerous to use. The halyard was later replaced with substandard natural fiber rope.

13. On or around August 17, 2011, the Plaintiff addressed Department wide Fire Apparatus equipment and leadership issues in a Department wide e-mail. On or around August 18, 2011, Chief Dick sent a Department wide e-mail with an attachment, inviting personnel to "give it some thought." The attachment stated, "attitude was more important than facts, success, failure, skill, and education. The Plaintiff responded with a Department wide e-mail referring to the Titanic disaster when over 1,500 lives were lost at sea because the Captain, having been warned of multiple ice bergs ahead, thought it was more important to set a speed record for crossing the Atlantic Ocean. Plaintiff was given a coaching and counseling statement for expressing an opinion in a Department wide e-mail, which is what Chief Dick had also done.

14. In or around early November, 2011, Plaintiff, while working at Station-1, was harassed by the Station's shift Captain, telling him not to expect any help from personnel, that cleaning and maintenance of Fire Apparatus for several hours was the Plaintiff's standard, not the Fire Department standard.

15. In or around late November, 2011, the Plaintiff sent Chief Bob Obernier, Chief Dennis Roberts, and Acting Chief Richard Barineau, an e-mail expressing his intention to file a complaint against the Department for hostile work environment, unreasonable rules of conduct and uniform policy, and other issues. During a separate interview with Captain Barineau, and Chief Roberts, the Plaintiff addressed racial slurs being used by personnel, Air Trucks being extremely short of S.C.B.A. air bottles, Fire Apparatus equipment shortages and surpluses, outdated inventory sheets, Fire Apparatus inadequately fueled, Fire Apparatus not being

inspected and repair requests submitted, failure of officers to oversee their personnel, a pattern of harassment by individuals such as the two Station-1 Officers, and other issues.

16. On or around March 5, 2012, the Plaintiff e-mailed a letter of complaint, addressing a frivolous complaint made by a Lieutenant and another employee or firefighter, to the Plaintiff's direct supervisor. The Lieutenant alleged that the Plaintiff was leaving gear in the sleeping quarters and using the shower after shift change. Further, after the Plaintiff spent multiple shifts cleaning the Station's truck bay, organizing equipment and painting with the concurrence of his supervisor, he was repeatedly harassed by the Lieutenant for moving his guitar practicing table. The Lieutenant was not reprimanded for this complaint or his harassment of the Plaintiff. The verbal harassment continued from in or around early January, 2012, to in or around mid-March, 2012. The shift Chief threatened the Plaintiff, saying that if the Plaintiff forwarded a complaint to City Hall, he would be bounced from Fire Station to Fire Station the rest of his career.

17. From in or around late November, 2012, until on or about May 8, 2013, the Plaintiff, through his immediate supervisor, Lieutenant David Dowdy, attempted to have a damaged, critical, 5 inch water supply hose on Tanker-11 replaced. The Plaintiff was the Engineer/Driver of Tanker-11 on that shift. Plaintiff was present during numerous phone calls Lt. Dowdy placed to supply personnel. Supply personnel presented different responses including: Station-11's crew should go to the training field, pick up scrap 5 inch hose, cut it down, and change the couplings off Tanker-11's damaged hose; that there were limited funds; and ordering the hose was a Fleet responsibility. Eventually supply said they would order a new hose.

18. Additionally, Lt. Dowdy informed Chief Byron Whitaker by phone multiple times that he needed assistance in expediting the replacement of the hose. On numerous occasions, while Chief Whitaker visited Station-11, Dowdy and the Plaintiff showed Chief Whitaker the damaged hose and asked for his assistance in expediting the replacement. The damaged fire hose was finally replaced in or around mid-May, 2013, within two days of a local T.V. Station broadcasting pictures of the damaged hose. The broadcast aired after the Plaintiff was suspended on or about May 8, 2013.

19. On or around March 26, 2013, a supply employee sent a Department wide e-mail saying a second badge was being purchased for employees, starting with Chiefs, to allow employees to keep one badge and turn one in when leaving, retiring, or being promoted. The Plaintiff, having been informed that a delay in replacing the severely damaged, 5 inch fire hose on Tanker-11 was due to a funding shortage, replied by e-mail to the clerk that purchasing a second badge was a waste of money. Chief Whitaker ordered Lieutenant Dowdy to coach and counsel the Plaintiff, in writing, for the inappropriate e-mail. In the employee comment section the Plaintiff wrote: Chief Dick e-mailed, attitude was more important than facts,.... success,.... failure, education,.... training,.... skill,... etc., and Chief Wes Roberts used a City computer and printer to post, derogatory comments about the President of the United States, and the Democratic Party. Chief Whitaker, in an angry and abusive manner, ordered the Plaintiff to rewrite his comments. When Plaintiff declined, Chief Whitaker said he would tear up the document. The Plaintiff informed the Chief he would report the document destruction. Chief Whitaker, in an effort to provoke a fight, stepped to within one foot of the Plaintiff, continually pointed a finger toward and near his face, saying the Plaintiff had been a f----up since he joined the Department, had f----up everything he had done in the Department, had been a f----up his

whole life, had been a f---up in the military, and been kicked out of the military. Lieutenant David Dowdy witnessed this event and upon leaving Station-11, Chief Whitaker told Dowdy the Fire Department was going to cut the Plaintiff's nuts off. The Plaintiff was repeatedly harassed, intimidated and verbally abused during the conversation.

20. That same morning after the incident with Chief Whitaker, the Plaintiff submitted an e-mail complaint alleging harassment, negligence, fraud, waste, abuse, anti-political party, and anti-President posting. Within about 20 minutes of sending the complaint, the Defendant harassed and retaliated against the Plaintiff when Chief Whitaker called Lieutenant Dowdy, saying the Plaintiff was suspended as of the end of the shift because the Department didn't know he was taking morphine. Forty (40) minutes after the Plaintiff sent the complaint, Department Human Resources employee, Mona Pearson, sent the Plaintiff an e-mail with attached form, stating the department did not have any record of the Plaintiff taking morphine. She instructed the Plaintiff to have a physician fill in the form, clearing the Plaintiff to return to work.

21. Within several days, the Fire Department Physician, Dr. John MacKay, cleared Plaintiff to return to work without restrictions. The Plaintiff's 2011 and 2012 annual Fire Department Physical, conducted by Dr. MacKay, both stated the Plaintiff had informed the Doctor he was taking Veterans Administration provided morphine. Previous to this suspension, the Plaintiff had informed his new supervisor, Lt. Dowdy, in or around March, 2012, that he was issued morphine for an injury he sustained while deployed to Afghanistan with an Army Infantry Battalion. Lieutenant Dowdy in turn, informed Chief Whitaker, who responded by saying it wasn't a problem.

22. In or around summer, 2012, Chief Whitaker called Station-11 and informed Lieutenant Dowdy that the Department was taking a survey and compiling a list of employees

taking prescription medications. Lt. Dowdy reminded Chief Whitaker that the Plaintiff was taking morphine issued by the Veterans Administration. Chief Whitaker again stated it wasn't an issue.

23. On or around April 29, 2013 the Plaintiff submitted written allegations to the Defendant's Auditor, Bert Fletcher, alleging, as stated in the resulting Defendant Audit, released on or around August 16, 2013, "This inquiry was conducted after allegations were received from a Fire employee that the Fire apparatus inventory, inspection, and repair process, and hose testing and inventory records were not adequate." The Plaintiff was interviewed by the Defendant's Auditor prior to the Audit being conducted/concluded.

24. The resulting Audit confirmed the Plaintiff's allegations stating "we noted....a lack of adequate evidence to clearly demonstrate apparatus inventories and inspections were always performed and documented,.... equipment and supplies....were not located on the assigned vehicles,....where equipment and supplieswere not on the inventory records....for those vehicles,....where equipment and supplies were stored in locations....that were different from thelocation indicated on therecords. We noted significant deficiencies in accounting for and tracking fire hose. Those Deficiencies adversely impacted the Fire's hose testing process. Accordingly, we cannot provide assurance that all hoses used in Fire vehicles have been properly tested, are in satisfactory working condition, and are properly accounted for in the Fire's inventory records."

25. On or around May 2, 2013, the Plaintiff submitted to the Defendant, a written request for investigation into the conduct of the Fire Department at the Plantations at Pine Lakes Apartment Fire, in or around late November, 2012, which the Plaintiff stated resulted in \$1,000,00 in damage. Chief Whitaker submitted a false written statement alleging the fire

damage was about \$500,000. The Plaintiff, after submitting a written request for documents related to the fire, was informed in writing that the Defendant did not maintain the requested documents. Subsequently, after the Plaintiff indicated that withholding the documents was a violation of Florida Laws, the Defendant released the documents which stated the fire damage was \$960,000.

26. On or around May 2, 2013, the Plaintiff requested in writing to the Defendant, an external investigation request concerning Chief Whitaker's fitness for rank and duty position in the Fire Department. Chief Whitaker had verbally abused, intimidated, used threatening gestures, attempted to provoke a fight, threatened destruction of a government document, and demanded the Plaintiff rewrite his statement in the employee comments section of a Coaching and Counseling he had received on or around April 29, 2013.

27. On or around May 7, 2013, the Plaintiff submitted a Fire Department Complaint Form to Investigator, Deputy Fire Chief John Gatlin. On or around June 3, 2013 Investigator Gatlin released report 2013IA-002 related to the Plaintiff's allegations. The report contained no written statements from witnesses. Investigator Gatlin entered Chief Whitaker's typed, unnamed, undated, and unsigned statement into the report. The statement contained multiple false, unsubstantiated allegations against the Plaintiff completely unrelated to the investigation. Investigator Gatlin also entered multiple other documents into the report that were completely unrelated to the investigation. Investigator Gatlin omitted and distorted witness statements, and falsified his findings. When the Plaintiff submitted a request to the Defendant's Records Office for Investigator Gatlin's notes, the Plaintiff was given an e-mail from Defendant, Assistant Attorney, Cassandra Jackson, addressed to the Record Office stating "In regard to the response to

this public records request, please respond that no minutes have been made and therefore none are available.”

28. On or around May 2, 2013, the Plaintiff requested in writing to the Defendant an external investigation of demolition and construction at multiple Defendant Fire Stations, which had been done without Growth Management plans review, fees paid, or permits being issued. The Plaintiff also addressed damage to a Fire Apparatus which had resulted from a building code violation.

29. After the Plaintiff's investigation requests were received, on or around May 8, 2013, Chief Dick's secretary Ashante Petties, called the Plaintiff at Station-11 advising him that Chief Dick wanted the Plaintiff to meet with her on May 9, 2013, to discuss his investigation requests concerning the Fire Department. The Plaintiff informed Ms. Petties that he had been advised by legal counsel not to meet with Chief Dick without legal counsel present or to discuss his investigation requests against the Department. Chief Dick called the Plaintiff thereafter, stating that she was sending Chief Whitaker to Station-11 to pick up the Plaintiff and bring him to meet with her. The Plaintiff advised Chief Dick that Chief Whitaker was unstable, and unsafe to ride with.

30. At this time the Plaintiff had an active investigation request for verbal abuse, threatening gestures, attempting to provoke a fight and other improper actions by Chief Whitaker against the Plaintiff from the previous week. Chief Dick insisted that he ride with Chief Whitaker. Chief Dick immediately called the Plaintiff again and continued to harass and intimidate the Plaintiff, repeatedly stating that she was sending Chief Whitaker and that if the Plaintiff did not ride with Chief Whitaker that the Plaintiff would be suspended. The Plaintiff ended the conversation due to the repeated harassment and threats.

31. Thereafter, Chief Dick called the Plaintiff's supervisor Lieutenant Dowdy, at Station-11 stating she was suspending the Plaintiff with pay pending investigation for insubordination. The Plaintiff was relieved by another Fire Engineer and left the Station with good demeanor and attitude. That same day, Defendant Assistant City Manager, Tom Coe, instructed Deputy Fire Chief John Gatlin, to contact the Tallahassee Police Department and mobilize its resources in an effort by the Defendant to harass, intimidate and slander the Plaintiff.

32. Additionally, one employee of the Defendant sent an e-mail stating "Spoke with a Shift Lieutenant with TFD,....a firefighter,....is not taking it well. They are locking down." The Defendant continued the lock down from on or around May 8, 2013 to on or around May 10, 2013, thus slandering the Plaintiff, and creating a Fire Department wide, hostile work environment.

33. Later the same day, Ashante Petties submitted a written statement alleging she had been in Chief Dick's office at about 9:00 A.M. that same day listening to Chief Dick's speaker phone conversations between Chief Dick and the Plaintiff, then Lieutenant Dowdy, and finally, Mr. Coe.

34. On or around May 9, 2013 Chief Whitaker submitted a written statement alleging he had been in Chief Dick's office the previous day at about 9:00 A.M., also listening in on conversations between Chief Dick and the Plaintiff, then Lieutenant Dowdy, and finally, Mr. Coe. After a comparison spread sheet was generated, it was determined the two statements were not factual and independent statements as claimed. Additionally, Chief Dick's office phone records indicate no calls were made to Fire Station-11 on the morning in question. Chief Whitaker's work cell phone records indicate he engaged in several phone calls including

receiving a call from Ms. Petties at the time both claimed they were together in Chief Dick's office.

35. Chief Dick also engaged in several calls other than Station-11 during the time in question. Chief Dick utilized Ashante Petties's and Chief Whitaker's falsified and duplicate statements as justification for ordering the Plaintiff to have a Fitness For Duty Evaluation.

36. That same day, on or around May 8, 2013, employee Mona Pearson sent the Plaintiff a letter stating Chief Dick had ordered a fitness for duty evaluation against him. On or around May 14, 2013, the Plaintiff, at the evaluation in Tallahassee, was advised by Dr. Patrick Cook, that there was a conflict of interest and the evaluation could not proceed. On or around the next day, Ms. Pearson sent the Plaintiff a letter advising he was required to attend a fitness for duty evaluation by Dr. Clifford Levin, in Gainesville, Florida on or around May 23, 2013, even though there were qualified psychologists in Tallahassee.

37. On or around June 10, 2013 the Plaintiff met with Chief Dick who ordered the Plaintiff's regular pay stopped on or around June 19, 2013, and required him to utilize his sick leave, then his vacation time when his sick leave expired, ordered him to have 16 weeks of outpatient psychotherapy at his own expense, and then be re-evaluated for fitness for duty by Dr. Levin at the end of the 16 weeks.

38. The Plaintiff faced immediate termination if he failed to find a therapist in 7 days and set up an appointment, refused to pay for therapy, didn't attend all 16 weekly therapy sessions, did not attend re-evaluation conducted by Dr. Levin at the end of the 16 weeks, or did not authorize Ms. Pearson, Chief Roberts, and Chief Gatlin to communicate with the therapist conducting the 16 weekly sessions with the Plaintiff.

39. At the same meeting with Chief Dick, on or around June 10, 2013 she presented the Plaintiff with a Disciplinary Action Report suspending the Plaintiff, without pay beginning June 6, 2013, and ending June 19, 2013, for his refusal to meet with her on May 8, 2013. No additional documentation or witness statements were included as evidence in the report. During the Plaintiff's suspension grievance meeting with Defendant, Assistant City Manager, Tom Coe, on or around July 8, 2013, the Plaintiff presented Mr. Coe with Mr. Petties's and Chief Whitaker's submitted witness statements of Chief Dick's conversations with the Plaintiff occurring on or around May 8, 2013. Mr. Coe read a statement comparison spread sheet provided by the Plaintiff which proved the statements were duplicates.

40. Plaintiff was subsequently fired for trumped up allegations against him by the Defendant and in retaliation for his reports of discrimination made through a charge of discrimination filed in August, 2013, retaliation for repeated whistle blower complaints including this lawsuit and due to his disability and/or the Defendant's perception of Plaintiff as disabled. The Defendant, from in or around October, 2006 until his termination, has repeatedly harassed, slandered, intimidated, threatened, and retaliated against the Plaintiff who was in the performance of his duties as a Public Safety Employee in accordance with Firefighting, Emergency Medical , and Defendant memorandums, standard operating procedures, guidelines, and instructions.

COUNT I
VIOLATION OF PUBLIC WHISTLE BLOWER ACT

41. Paragraphs 1-40 are incorporated herein by reference.
42. This is an action against Defendant under §112.3187 et seq.

43. Plaintiff was a public employee protected under the provisions of Chapter 112, Florida Statutes.

44. As stated more specifically, in part, above, Plaintiff reported and disclosed violations of state rules, regulations and laws to a person who had 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.

45. After providing information as well as reporting these matters as related in part above, Plaintiff was the victim of retaliatory actions as set forth more fully above.

46. Plaintiff's position and responsibilities within Defendant were adversely affected as a result of reporting violations of rules, regulations and laws specified in part above. These actions were taken against him after he objected to and/or reported matters that he reasonably suspected were and/or actually were incidents of gross misconduct, malfeasance, and/or misfeasance within Defendant. These reports were conveyed in writing and/or were made to supervisors and/or other persons within the Defendant who could remedy the violations. After reporting these matters within Defendant, adverse actions were taken against him.

47. Under §112.3187(4), Defendant is prohibited from taking adverse personnel action against persons like Plaintiff who disclose 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.”

48. After making the disclosures identified in part above, Plaintiff suffered adverse employment action, which adverse actions are reported in part above.

49. Plaintiff maintains that the actions of all employees within Defendant who affected his employment adversely did so in retaliation against him for his "whistle blowing" activities.

50. 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 pecuniary damages. These damages have occurred in the past, are occurring at present and will occur in the future. Plaintiff has also retained the undersigned to represent his interests in this cause and is obligated to pay her a reasonable fee and costs for her services. Defendant should be made to pay said fee and all costs associated with this action under the laws applicable to this case.

COUNT II
DISABILITY DISCRIMINATION

51. Paragraphs 1-40 are re-alleged and incorporated herein by reference.

52. This is an action against Defendant for disability discrimination brought under Chapter 760, Florida Statutes, and 42 U.S.C. §§12101 et seq.

53. Plaintiff has been the victim of discrimination on the basis of his disability or perceived disability. During the course of Plaintiff's employment with Defendant, he was

treated differently than similarly situated non-disabled/perceived-as-disabled employees in that on April 29, 2013, Plaintiff was required to submit medical documents supporting his medical use of doctor prescribed medication. Plaintiff produced this documentation to Defendant within the required two days that he was scheduled off.

54. On May 8, 2013, Plaintiff was placed on a paid suspension while Defendant conducted an internal investigation about contrived allegations of insubordination. This paid suspension was then converted to an unpaid two week suspension beginning on June 10th, 2013. At this same time, Plaintiff was required to submit to a psychological evaluation, including 16 weeks of therapy that is to be reported to Defendant's administrators. Plaintiff was required to use and exhaust his sick leave while he going through the 16 weeks of therapy. He was then fired based on his disability and/or the Defendant's perception of Plaintiff as being disabled. The discriminatory actions against Plaintiff continued during his suspension and even after his termination.

55. Defendant is liable for the differential treatment and its refusal to accommodate the Plaintiff which adversely affected the terms and conditions of Plaintiff's employment with Defendant. Defendant controlled the actions and inactions of the persons making decisions affecting Plaintiff or it knew or should have known of these actions and inactions and failed to take prompt and adequate remedial action or took no action at all to prevent the abuses to Plaintiff.

56. In essence, the actions of agents of Defendant, which were each condoned and ratified by Defendant, were disability/perceived-disability based and in violation of the laws set forth herein.

57. The discrimination complained of herein affected a term, condition, or privilege of Plaintiff's continued employment with Defendant. The events set forth herein lead, at least in part, to Plaintiff's termination and other adverse actions against him.

58. Defendant's conduct and omissions constitutes intentional discrimination and unlawful employment practices based upon disability or perceived disability, under the laws cited herein.

59. As a direct and proximate result of Defendant's conduct described above, Plaintiff has suffered emotional distress, mental pain and suffering, past and future pecuniary losses, inconvenience, bodily injury, mental anguish, loss of enjoyment of life and other non-pecuniary losses, along with lost back and front pay, interest on pay, bonuses, and other benefits. These damages have occurred in the past, are permanent and continuing. Plaintiff is entitled to injunctive/equitable relief.

60. Plaintiff has also retained the undersigned to represent his interests in this cause and is obligated to pay her a reasonable fee and costs for her services. Defendant should be made to pay said fee and all costs associated with this action under the laws applicable to this case.

COUNT III
RETALIATION

61. Paragraphs 1-40 are hereby realleged and reincorporated as if set forth in full herein.

62. Defendant is an employer as that term is used under the applicable statutes referenced above.

63. The foregoing allegations establish a cause of action for unlawful retaliation after Plaintiff reported unlawful employment practices adversely affecting him under 42 U.S.C § 12101e *et seq.*, Title I of the Civil Rights Act of 1991 and Chapter 760, Florida Statutes.

64. The foregoing unlawful actions by Defendant were purposeful.

65. Plaintiff voiced opposition to unlawful employment practices and/or participated in a protected proceeding during his employment with Defendant and he was the victim of retaliation thereafter, as related in part above. The events set forth herein lead, at least in part, to Plaintiff's termination.

66. Plaintiff is a member of a protected class because he reported unlawful employment practices and was the victim of retaliation thereafter. There is thus a causal connection between the reporting of the unlawful employment practices and the adverse employment action taken thereafter.

67. As a direct and proximate result of the foregoing unlawful acts and omissions, Plaintiff has suffered mental anguish, emotional distress, expense, loss of benefits, embarrassment, humiliation, damage to reputation, illness, lost wages, loss of capacity for the enjoyment of life, and other tangible and intangible damages. These damages are continuing and are permanent. He is entitled to equitable/injunctive relief.

68. Plaintiff has also retained the undersigned to represent his interests in this cause and is obligated to pay her a reasonable fee and costs for her services. Defendant should be made to pay said fee and all costs associated with this action under the laws applicable to this case.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- (a) that process issue and this Court take jurisdiction over this case;
- (b) that this Court grant equitable relief against Defendant under the applicable counts set forth above, mandating Defendant's obedience to the laws enumerated herein and providing other equitable relief to Plaintiff;
- (c) enter judgment against Defendant and for Plaintiff awarding damages to Plaintiff from Defendant for Defendant's violations of law enumerated herein;
- (d) enter judgment against Defendant and for Plaintiff permanently enjoining Defendant from future violations of law enumerated herein;
- (e) enter judgment against Defendant and for Plaintiff awarding Plaintiff attorney's fees and costs;
- (f) award Plaintiff interest and equitable relief; and
- (g) grant such other further relief as being just and proper under the circumstances.

DEMAND FOR TRIAL BY JURY

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

Respectfully submitted,

s/ Marie A. Mattox
Marie A. Mattox [FBN 0739685]
MARIE A. MATTOX, P.A.
310 East Bradford Road
Tallahassee, FL 32303
(850) 383-4800 (telephone)
(850) 383-4801 (facsimile)

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via Florida

E-filing Portal this 10th day of June, 2014 to:

Hetal H. Desai
SNIFFEN & SPELLMAN, P.A.
123 N Monroe Street
Tallahassee, FL 32301
E-mail: hdesai@sniffenlaw.com

/s Marie A. Mattox
Marie A. Mattox

Filing # 14661165 Electronically Filed 06/10/2014 11:51:10 PM

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

MARK E. DeCARLO,

CASE NO. 13-CA- 2982

FLA BAR NO. 0739685

Plaintiff,

vs.

CITY OF TALLAHASSEE,

Defendant.

AMENDED COMPLAINT

Plaintiff, MARK E. DeCARLO, hereby sues Defendant, CITY OF TALLAHASSEE and alleges:

JURISDICTION

1. This is an action brought under §112.3187, Florida Statutes, Chapter 760, Florida Statutes, 42 U.S.C. §§12102 et seq., and 42 U.S.C. 1981a for claims which are, individually, valued in excess of Fifteen Thousand Dollars (\$15,000.00), exclusive of costs, interest and attorney's fees.

2 This is an action for damages, injunctive relief, attorney's fees and costs.

CONDITIONS PRECEDENT

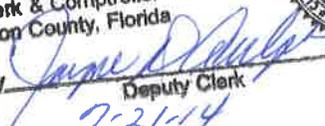
3. Plaintiff has satisfied all conditions precedent to filing this action, if any.

THE PARTIES

4. At all times pertinent hereto, Plaintiff, MARK E. DeCARLO has been a resident of Tallahassee, Leon County, Florida. He was employed with Defendant at all times pertinent hereto and is *sui juris*.

A Certified Copy
Attest:

Bob Inzer
Clerk & Comptroller
Leon County, Florida

By 
Deputy Clerk



7-21-14

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

MARK E. DeCARLO,

Plaintiff,

vs.

CITY OF TALLAHASSEE,

Defendant.

CASE NO. 13-CA- 2982

FLA BAR NO. 0739685

PLAINTIFF'S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

Plaintiff, MARK DECARLO, through his counsel pursuant to Rule 1.190, Fla.R.Civ.P., and filed this her Motion for Leave to File Amended Complaint and states the following in support thereof:

1. Since the filing of Plaintiff's complaint in this cause, Plaintiff has received his notice of right to sue from the EEOC and he seeks to file an Amended Complaint, filed herewith, to allege claims that are now ripe.
2. No prejudice can be shown to the Defendant as a result of filing the Amended Complaint and little to no discovery has been conducted to date and no trial date has been assigned.
3. This Motion is not filed for the purpose of delay but is filed in good faith based on the representations made above.

WHEREFORE, Plaintiff respectfully requests that she be permitted to file his Amended Complaint all for the reasons set forth more fully above.

Respectfully submitted,

s/ Marie A. Mattox
Marie A. Mattox [FBN 0739685]
MARIE A. MATTOX, P.A.
310 East Bradford Road
Tallahassee, FL 32303
(850) 383-4800 (telephone)
(850) 383-4801 (facsimile)

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via Florida

E-filing Portal this 10th day of June, 2014 to:

Hetal H. Desai
SNIFFEN & SPELLMAN, P.A.
123 N Monroe Street
Tallahassee, FL 32301
E-mail: hdesai@sniffenlaw.com

/s Marie A. Mattox
Marie A, Mattox

Filing # 14910820 Electronica ., Filed 06/17/2014 03:13:00 PM

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

MARK E. DeCARLO,

Plaintiff,
vs.

Case No.: 2013-CA-2982

CITY OF TALLAHASSEE,

Defendant.

**DEFENDANT'S CONSENT TO PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE
COMPLAINT**

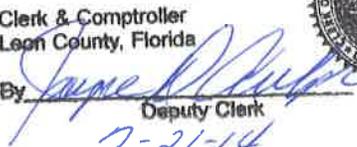
Defendant, **CITY OF TALLAHASSEE**, (the "City" or "Defendant"), through its undersigned counsel, files this response to Plaintiff's Motion for Leave to File Amended Complaint, and states the following:

1. Plaintiff filed his original Complaint on October 24, 2013, alleging a claim for violation of §112.3187, Florida Statutes, Florida's Public Whistleblower Act.
2. On June 10, 2014, Plaintiff filed a Motion for Leave to Amend his Complaint, with an Amended Complaint. The Amended Complaint added two counts of disability discrimination and retaliation, pursuant to 42 U.S.C. §§12102 *et. seq.*, (the Americans with Disabilities Act (ADA)) and Chapter 760, Florida Statutes, (Florida Civil Rights Act (FCRA)).
3. Opposing counsel did not confer with the undersigned prior to filing the Motion for Leave. Had she done so, Defendant would have consented to the filing of the Amended Complaint. See Fla. R. Civ. P. 1.190 (allowing a party to amend a pleading by leave of court or written consent of adverse party).

A Certified Copy
Attest:

Bob Inzer

Clerk & Comptroller
Leon County, Florida

By  Deputy Clerk
7-21-14

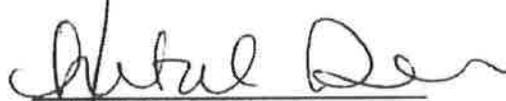


4. Defendant consents to the Amended Complaint, but requests thirty (30) days to respond to properly investigate and the Amended Complaint from the date this Court renders an Order Granting Plaintiff Leave to Amend the Complaint.

WHEREFORE, Defendant, **THE CITY OF TALLAHASSEE**, consents to the filing of the Amended Complaint and respectfully requests thirty (30) days to respond to the Amended Complaint.

Dated this 17th day of June 2014.

Respectfully submitted,



HETAL H. DESAI

Florida Bar Number: 005038

E-mail: hdesai@sniffenlaw.com

MICHAEL P. SPELLMAN

Florida Bar Number: 0937975

Email: mspellman@sniffenlaw.com

SNIFFEN & SPELLMAN, P.A.

123 NORTH MONROE STREET

Tallahassee, Florida 32301

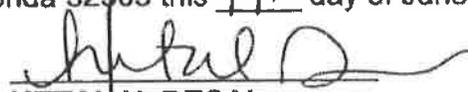
Telephone: (850) 205-1996

Facsimile: (850) 205-3004

*Attorneys for Defendant
City of Tallahassee*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via electronic and U.S. mail upon, Marie Mattox, Esq., Attorney for Plaintiff, at 310 E. Bradford Street, Tallahassee, Florida 32303 this 17th day of June, 2014.



HETAL H. DESAI

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

MARK E. DeCARLO,

Plaintiff,

Case No.: 2013-CA-2982

vs.

CITY OF TALLAHASSEE,

Defendant.

2014 JUN 20 PM 4: 57
C-04
BOB INZER
CLERK & COMPTROLLER
LEON COUNTY, FLORIDA

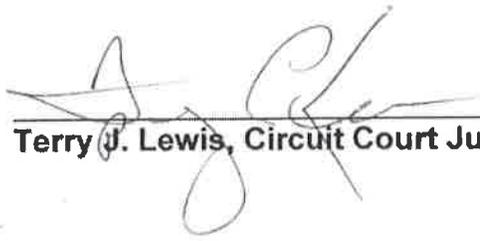
FILED

ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO AMEND THE
COMPLAINT

THIS CAUSE came before the Court on Plaintiff's Motion for Leave to Amend the Complaint, and Defendant's Consent to said motion. Having reviewed and considered the Motion and Consent, and having otherwise been fully advised in the premises, this Court does hereby **ORDER** and **ADJUDGE** the following:

1. Plaintiff's Motion for Leave to Amend the Complaint is **GRANTED**.
2. Defendant shall have thirty (30) days from the date of this Order to respond to the Amended Complaint.

DONE and **ORDERED** in Chambers in Leon County, Florida this 20 day of June, 2014.

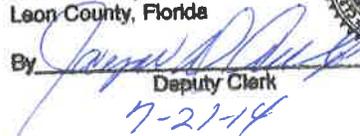

Terry J. Lewis, Circuit Court Judge

Copies furnished to:

Marie A. Mattox, Esq.
Hetal H. Desai, Esq.

A Certified Copy
Attest:

Bob Inzer
Clerk & Comptroller
Leon County, Florida

By 
Deputy Clerk
7-21-14

