

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

JASON POMALES

Plaintiff,

Civil Action No. **5:14-CV-326**

v.

CHRIS BLAIR, in his official capacity as
SHERIFF OF THE MARION COUNTY
SHERIFF'S OFFICE; LISA AZURE,
THOMAS NEWBANKS, JARRETT LEEDY,
and "JOHN DOE," in their individual
capacities.

Defendants.

_____ /

COMPLAINT

PLAINTIFF JASON POMALES ("Pomales" or "Plaintiff") sues Chris Blair ("Blair" or "Defendant(s)"); Lisa Azure ("Azure" and/or "Defendant(s)"); Thomas Newbanks ("Newbanks" and/or "Defendant(s)"); and Jarrett Leedy ("Leedy" and/or "Defendant(s)"), and states the following in support of this complaint:

NATURE OF THE ACTION

1. This is a 42 U.S. Code § 1983 federal civil rights case under the First, Fourth, Fifth, and Eighth Amendments of the United States Constitution as applied to the States under the United States Constitution's Fourteenth Amendment for the Defendants' individual and

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collective personal, malicious, willful, and unlawful violations under color of state law of Plaintiff's constitutional rights to free speech, protection against unreasonable search and seizure of Plaintiff's liberty and personal property, procedural due process, and cruel and unusual punishment, and Florida state law tort claims for malicious prosecution and intentional infliction of emotional distress.

2. Defendants committed these unlawful violations of Plaintiff's constitutional and state rights under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

JURISDICTION AND VENUE

3. Plaintiff brings this action pursuant 42 U.S.C. § 1983 for violations of civil rights under the First, Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution as well as for the state law tort claims of malicious prosecution, intentional infliction of emotional distress, and defamation per se.

4. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1343(a)(3) (civil rights); 28 U.S.C. § 1367 provides supplemental jurisdiction over the state law tort claims which arose from the same common nuclei of facts.

5. Venue is proper in this judicial district and division pursuant to 28 U.S.C. § 1391(b) and M.D. Fla. Loc. R. 1.02 (c). Defendants' primary employment is in this district and division, and Defendants' independent and collective malicious and unlawful violations under color of state law of Plaintiff's constitutional rights giving rise to the claims herein accrued within this district and division.

6. At all material times, Defendants committed these unlawful violations under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

PARTIES

7. Plaintiff Jason Pomales is a Florida resident residing within this Court's jurisdiction.

8. Defendant Chris Blair is now and has been at all material times Sheriff of Marion County, Florida, and the constitutional officer of Marion County Sheriff's Office. Blair is ultimately responsible for supervision, direction, control, and training of all Marion County deputies and the Marion County Sheriff's Office.

9. Defendant Lisa Azure is now and has been at all material times a Marion County deputy sheriff. Azure at all times relevant hereto was acting in and continues to act under color of state law.

10. Defendant Thomas Newbanks is now and has been at all material times a Marion County deputy sheriff. Newbanks at all times relevant hereto was acting in and continues to act under color of state law.

11. Defendant Jarrett Leedy is now and has been at all material times a Marion County deputy sheriff. Leedy at all times relevant hereto was acting in and continues to act under color of state law.

12. Defendant John Doe, whose true name is currently unknown, is now and has been at all material times a Marion County deputy sheriff. Doe at all times relevant hereto was acting in and continues to act under color of state law.

FACTUAL ALLEGATIONS

13. On or around April 5, 2014, Azure, Newbanks, and Leedy went to the 15600 block of Southwest 15th Avenue in Ocala, Florida, within Marion County, FL. Azure, Newbanks, and Leedy were driving marked Marion County Sheriff's Office patrol vehicles and wearing Marion County Sheriff's Office uniforms and equipment, including weapons and restraint devices. Defendants identified themselves as Marion County deputies and acted under Blair's constitutional authority. The purported reason for Defendants' visit to this location was a large party. See Plaintiff's Exhibit A.

14. Plaintiff was a guest at this party, but Plaintiff did not own the land or house where the party was located. Plaintiff had no control over the party or other citizens at the party.

15. Azure, Newbanks, and Leedy, upon arrival, unlawfully stopped vehicles and shouted at the partygoers; profanely daring partygoers to come out to the road so Azure, Newbanks, and Leedy could arrest those partygoers.

16. When Plaintiff verbally and peacefully protested Defendants' activities that Plaintiff believed to be unprofessional and unconstitutional, Defendants individually and collectively threatened to arrest Plaintiff if Plaintiff continued to exercise Plaintiff's First Amendment rights to free speech. Plaintiff was standing on private property and approximately 20 feet away from Defendants.

17. Plaintiff presented no threat to Defendants and did nothing to interfere with Defendants' duties other than to protest those actions peacefully while Defendant stood on privately owned land. Plaintiff did not step off private property or approach the Defendants' position on public land.

18. Plaintiff stated to Defendants that Defendants could not come on to private property. In response, Azure stated to Plaintiff, "I'll do what I want when I want to do it!" Defendants then told Plaintiff that if Plaintiff said one more word, Defendants would arrest Plaintiff.

19. When Plaintiff continued to exercise Plaintiff's free speech rights to protest government activity peacefully, Azure, Newbanks, and Leedy then arrested Plaintiff for yelling at Defendants.

20. When Plaintiff asked why Defendants were arresting Plaintiff, Azure stated twice, "For [holding an] open house party, sir." Interestingly, Defendants neither made any other arrests for an open house party nor searched the residence where this alleged "open house party" occurred. Azure later changed Plaintiff's charge to Resisting without Violence, § 843.02 Fla. Stat. (2012).

21. Defendants never bothered to investigate who had care, custody, and control over the alleged "open house party" or property where this party was located.

22. Plaintiff's verbal First Amendment free speech activity in no way interfered with Defendants' ability to conduct an investigation.

23. Defendants curtailed Plaintiff's free speech and stifled it even though Plaintiff was not inciting imminent lawlessness or doing anything but voicing Plaintiff's opposition to Defendants' actions. Plaintiff disturbed no one but Defendants with Plaintiff's peaceful protest of Defendants' actions. Defendants never alleged in the criminal case that Plaintiff's words caused an unlawful disturbance or incited imminent lawlessness.

24. Video evidence of Plaintiff's arrest shows Defendants were the only ones inciting the crowd gathered to watch Defendants arrest Plaintiff. Azure, in particular, shouted several

times to the crowd that was demanding a rationale for Defendants' arrest of Plaintiff, "Who's next? Who's next? Who's next? Who's next? Those cameras don't scare us! Who's next to go to jail?"

25. Despite Defendants' individual and collective aggressive behavior, the crowd never turned violent, and was in many ways, highly respectful to Defendants.

26. After Defendants arrested Plaintiff, Defendants then arrested Plaintiff's spouse for inquiring about Azure's badge number and video-recording Defendants. **That matter is the subject of a separate 42 U.S. Code § 1983 federal civil rights case.**

27. When Azure delivered Plaintiff to the Marion County Jail, Doe took Plaintiff into a room where Doe said, "There aren't any cameras in here, and I'll break your fucking arm." Doe then twisted and contorted Plaintiff's arm until it caused Plaintiff severe pain.

28. Azure, who had a Facebook social media account at the time Defendants arrested Plaintiff, and for some time thereafter, changed her Facebook profile picture to Plaintiff's and Plaintiff's spouse's "mug shots," and the accompanying picture referred to Plaintiff and Plaintiff's spouse as "monsters." See Plaintiff's Exhibit B.

29. Defendant's seized Plaintiff's cellular phone as "evidence" despite lacking any nexus to a crime or probable cause to believe Plaintiff's cellular phone contained the fruits of a crime. In fact, Plaintiff's cellular phone contained only exculpatory evidence that is highly unfavorable to Defendants. Defendants refused to return Plaintiff's cellular phone until Plaintiff allowed the Marion County Sheriff's Office to review the video contained within its memory.

30. On May 28th, 2014, The State Attorney's Office for the Fifth Judicial Circuit of Florida formally entered a nolle prosequi for Plaintiff's criminal charge. See Plaintiff's Exhibit C.

31. When the Florida Legislature passed § 843.02 Fla. Stat. (2012), the Legislature gave law enforcement officers unfettered discretion to decide when citizens violate this statute by not narrowing the definition of what constitutes “resisting without violence” or “obstructing without violence.” Nothing in the statute defines or addresses verbal protests of law enforcement activities when officers are in public.

32. Defendants applied § 843.02 Fla. Stat. (2012) with unbridled discretion in the instant case, allowing Defendants to arrest Plaintiff without probable cause and merely for Plaintiff’s lawful exercise of Plaintiff’s First Amendment rights to free speech protest State action peacefully.

33. Defendants have willfully and maliciously under color of state law, unconstitutionally caused Plaintiff to suffer physical and emotional harm, permanent injury, social embarrassment, reputational damages, and loss of liberty and property as well as subjected Plaintiff to cruel and unusual punishment by torturing Plaintiff while Plaintiff was in Defendants’ custody and control as a prisoner of the Marion County Jail.

**COUNT I: § 1983 CLAIM OF SUPPRESSION OF FIRST AMENDMENT PROTECTED
FREE SPEECH AGAINST DEFENDANT AZURE**

34. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

35. Defendant personally, maliciously, and under color of state law deprived Plaintiff of Plaintiff's rights under the First Amendment to the United States Constitution, which are secured through the Fourteenth Amendment, by maliciously prosecuting Plaintiff for Plaintiff's exercise of the constitutional right of free speech to protest government activity of great public interest of which Plaintiff disapproved and protested peacefully without interfering with the State's investigation.

36. Defendant failed to conduct herself as would a reasonably prudent law enforcement officer and obey firmly established law.

37. In depriving Plaintiff of these rights, Defendant committed these unlawful violations under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

38. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983.

**COUNT II: § 1983 CLAIM OF SUPPRESSION OF FIRST AMENDMENT
PROTECTED FREE SPEECH AGAINST DEFENDANT NEWBANKS**

39. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

40. Defendant personally, maliciously, and under color of state law deprived Plaintiff of Plaintiff's rights under the First Amendment to the United States Constitution, which are secured through the Fourteenth Amendment, by maliciously prosecuting Plaintiff for Plaintiff's exercise of the constitutional right of free speech to protest government activity of great public interest of which Plaintiff disapproved and protested peacefully without interfering with the State's investigation.

41. Defendant failed to conduct himself as would a reasonably prudent law enforcement officer and obey firmly established law.

42. Defendant failed to conduct himself as would a reasonably prudent law enforcement officer and obey firmly established law.

43. In depriving Plaintiff of these rights, Defendant committed these unlawful violations under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

44. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983.

COUNT III: § 1983 CLAIM OF SUPPRESSION OF FIRST AMENDMENT

PROTECTED SPEECH AGAINST DEFENDANT LEEDY

45. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

46. Defendant personally, maliciously, and under color of state law deprived Plaintiff of Plaintiff's rights under the First Amendment to the United States Constitution, which are secured through the Fourteenth Amendment, by maliciously prosecuting Plaintiff for Plaintiff's exercise of the constitutional right of free speech to protest government activity of great public

interest of which Plaintiff disapproved and protested peacefully without interfering with the State's investigation.

47. Defendant failed to conduct himself as would a reasonably prudent law enforcement officer and obey firmly established law.

48. In depriving Plaintiff of these rights, Defendant committed these unlawful violations under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

49. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983.

**COUNT IV: § 1983 CLAIM OF FOURTH AMENDMENT ILLEGAL SEIZURE OF
PLAINTIFF'S LIBERTY AND PROPERTY AGAINST DEFENDANT AZURE**

50. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

51. Defendant personally, recklessly, maliciously, and under color of state law deprived Plaintiff of Plaintiff's liberty rights under the Fourth Amendment to the United States Constitution, which are secured through the Fourteenth Amendment, by assisting and directing Defendants to maliciously and unconstitutionally detain, handcuff, arrest, and incarcerate Plaintiff without a warrant or any probable cause to believe Plaintiff committed any crime.

52. Defendant failed to conduct herself as would a reasonably prudent law enforcement officer and obey firmly established law.

53. Defendant personally, recklessly, maliciously, and under color of state law deprived Plaintiff of Plaintiff's property rights under the Fourth Amendment to the United

States Constitution, which are secured through the Fourteenth Amendment, by assisting and directing Defendants to maliciously and unconstitutionally deprive Plaintiff of Plaintiff's personal property without a warrant or any probable cause to believe Plaintiff committed any crime or that Plaintiff's property, a cellular phone, had any nexus to or contained the fruits of a crime.

54. In depriving the Plaintiff of these rights, Defendant committed these unlawful violations under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

55. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983.

COUNT V: § 1983 CLAIM OF FOURTH AMENDMENT ILLEGAL SEIZURE OF PLAINTIFF'S LIBERTY AND PROPERTY AGAINST DEFENDANT NEWBANKS

56. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

57. Defendant personally, recklessly, maliciously, and under color of state law deprived Plaintiff of Plaintiff's liberty rights under the Fourth Amendment to the United States Constitution, which are secured through the Fourteenth Amendment, by assisting and directing Defendants to maliciously and unconstitutionally detain, handcuff, arrest, and incarcerate Plaintiff without a warrant or any probable cause to believe Plaintiff committed any crime.

58. Defendant personally, recklessly, maliciously, and under color of state law deprived Plaintiff of Plaintiff's property rights under the Fourth Amendment to the United

States Constitution, which are secured through the Fourteenth Amendment, by assisting and directing Defendants to maliciously and unconstitutionally deprive Plaintiff of Plaintiff's personal property without a warrant or any probable cause to believe Plaintiff committed any crime or that Plaintiff's property, a cellular phone, had any nexus to or contained the fruits of a crime.

59. Defendant failed to conduct himself as would a reasonably prudent law enforcement officer and obey firmly established law.

60. In depriving the Plaintiff of these rights, Defendant committed these unlawful violations under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

61. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983.

**COUNT VI: § 1983 CLAIM OF FOURTH AMENDMENT ILLEGAL SEIZURE OF
PLAINTIFF'S LIBERTY AND PROPERTY AGAINST DEFENDANT LEEDY**

62. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

63. Defendant personally, recklessly, maliciously, and under color of state law deprived Plaintiff of Plaintiff's liberty rights under the Fourth Amendment to the United States Constitution, which are secured through the Fourteenth Amendment, by assisting and directing Defendants to maliciously and unconstitutionally detain, handcuff, arrest, and incarcerate Plaintiff without a warrant or any probable cause to believe Plaintiff committed any crime.

64. Defendant personally, recklessly, maliciously, and under color of state law deprived Plaintiff of Plaintiff's property rights under the Fourth Amendment to the United States Constitution, which are secured through the Fourteenth Amendment, by assisting and directing Defendants to maliciously and unconstitutionally deprive Plaintiff of Plaintiff's personal property without a warrant or any probable cause to believe Plaintiff committed any crime or that Plaintiff's property, a cellular phone, had any nexus to or contained the fruits of a crime.

65. Defendant failed to conduct himself as would a reasonably prudent law enforcement officer and obey firmly established law.

66. In depriving the Plaintiff of these rights, Defendant committed these unlawful violations under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

67. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983.

COUNT VII: § 1983 CLAIM OF FIFTH AMENDMENT DENIAL OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS AGAINST DEFENDANT AZURE

68. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

69. Defendant personally, maliciously, and under color of state law deprived Plaintiff of Plaintiff's rights to due process under the Fifth Amendment to the United States Constitution, which are secured through the Fourteenth Amendment, by personally,

recklessly, maliciously, and unconstitutionally seizing and retaining the Plaintiff's personal property without any probable cause, warrant, or judicial review.

70. Defendant gave Plaintiff no means of contesting the unconstitutional seizure of Plaintiff's cellular phone, and even when Defendant should have known these actions were illegal and unconstitutional.

71. Defendant failed to act as a reasonably prudent law enforcement officer would and obey firmly established law.

72. In depriving Plaintiff of these due process rights, Defendant committed these unlawful violations under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

73. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983.

**COUNT VIII: § 1983 CLAIM OF FIFTH AMENDMENT DENIAL OF
PROCEDURAL AND SUBSTANTIVE DUE PROCESS AGAINST DEFENDANT
NEWBANKS**

74. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

75. Defendant personally, maliciously, and under color of state law deprived Plaintiff of Plaintiff's rights to due process under the Fifth Amendment to the United States Constitution, which are secured through the Fourteenth Amendment, by personally, recklessly, maliciously, and unconstitutionally seizing and retaining the Plaintiff's personal property without any probable cause, warrant, or judicial review.

76. Defendant gave Plaintiff no means of contesting the unconstitutional seizure of Plaintiff's cellular phone, and even when Defendant should have known these actions were illegal and unconstitutional.

77. Defendant failed to act as a reasonably prudent law enforcement officer would and obey firmly established law.

78. In depriving Plaintiff of these due process rights, Defendant committed these unlawful violations under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

79. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983.

**COUNT IX: § 1983 CLAIM OF FIFTH AMENDMENT DENIAL OF PROCEDURAL
AND SUBSTANTIVE DUE PROCESS AGAINST DEFENDANT LEEDY**

80. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

81. Defendant personally, maliciously, and under color of state law deprived Plaintiff of Plaintiff's rights to due process under the Fifth Amendment to the United States Constitution, which are secured through the Fourteenth Amendment, by personally, recklessly, maliciously, and unconstitutionally seizing and retaining the Plaintiff's personal property without any probable cause, warrant, or judicial review.

82. Defendant gave Plaintiff no means of contesting the unconstitutional seizure of Plaintiff's cellular phone, and even when Defendant should have known these actions were illegal and unconstitutional.

83. Defendant failed to act as a reasonably prudent law enforcement officer would and obey firmly established law.

84. In depriving Plaintiff of these due process rights, Defendant committed these unlawful violations under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

85. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983.

**COUNT X § 1983 CLAIM OF EIGHTH AMENDMENT OF CRUEL AND UNUSUAL
PUNISHMENT AGAINST DEFENDANT DOE**

86. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

87. Defendant personally, maliciously, and under color of state law deprived Plaintiff of Plaintiff's rights under the Eighth Amendment to the United States Constitution, which are secured through the Fourteenth Amendment, by personally, recklessly, maliciously, and unconstitutionally by threatening to "break [Plaintiff's] fucking arm" and by twisting and contorting Plaintiff's arm in order to torture Plaintiff when Plaintiff protested Defendants' unconstitutional seizure of Plaintiff's liberty.

88. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983 and 28 U.S.C. §1367.

**COUNT XI: STATE TORT OF MALICIOUS PROSECUTION AGAINST
DEFENDANT AZURE**

89. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

90. Defendant, under color of state law, personally, recklessly, maliciously, and unconstitutionally and without the barest scintilla of probable cause, maliciously prosecuted Plaintiff, commencing and continuing a criminal judicial proceeding against Plaintiff.

91. The State of Florida made a bona fide termination of that judicial proceeding. See attached hereto Plaintiff's Exhibit C.

92. Defendant lacked probable cause to arrest Plaintiff.

93. Defendant acted with malice and under color of law.

94. Plaintiff suffered general and special damages conforming to the law.

95. Defendant committed the tort of malicious prosecution under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

96. Defendant failed to act as a reasonably prudent law enforcement officer would and obey firmly established law.

97. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983 and 28 U.S.C. §1367.

**COUNT XII: STATE TORT OF MALICIOUS PROSECUTION AGAINST
DEFENDANT NEWBANKS**

98. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

99. Defendant, under color of state law, personally, recklessly, maliciously, and unconstitutionally and without the barest scintilla of probable cause, maliciously prosecuted Plaintiff, commencing and continuing a criminal judicial proceeding against Plaintiff.

100. The State of Florida made a bona fide termination of that judicial proceeding. See attached hereto Plaintiff's Exhibit C.

101. Defendant lacked probable cause to arrest Plaintiff.

102. Defendant acted with malice and under color of law.

103. Plaintiff suffered general and special damages conforming to the law.

104. Defendant committed the tort of malicious prosecution under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

105. Defendant failed to act as a reasonably prudent law enforcement officer would and obey firmly established law.

106. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983 and 28 U.S.C. §1367.

**COUNT XIII: STATE TORT OF MALICIOUS PROSECUTION AGAINST
DEFENDANT LEEDY**

107. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

108. Defendant, under color of state law, personally, recklessly, maliciously, and unconstitutionally and without the barest scintilla of probable cause, maliciously prosecuted Plaintiff, commencing and continuing a criminal judicial proceeding against Plaintiff.

109. The State of Florida made a bona fide termination of that judicial proceeding.

See attached hereto Plaintiff's Exhibit C.

110. Defendant lacked probable cause to arrest Plaintiff.

111. Defendant acted with malice and under color of law.

112. Plaintiff suffered general and special damages conforming to the law.

113. Defendant committed the tort of malicious prosecution under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

114. Defendant failed to act as a reasonably prudent law enforcement officer would and obey firmly established law.

115. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983 and 28 U.S.C. §1367.

**COUNT XIV: STATE TORT OF INTENTIONAL INFLICTION OF EMOTIONAL
DISTRESS AGAINST DEFENDANT AZURE**

116. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

117. Defendant committed the tort of intentional infliction of emotional distress under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

118. The Plaintiff's emotional distress was and is severe in nature.

119. Plaintiff suffered severe social and personal embarrassment, pain, suffering, and emotional distress at the time of Plaintiff's unlawful arrest and afterward.

120. Defendant failed to act as a reasonably prudent law enforcement officer would and obey firmly established law.

121. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983 and 28 U.S.C. §1367.

**COUNT XV: STATE TORT OF INTENTIONAL INFLICTION OF EMOTIONAL
DISTRESS AGAINST DEFENDANT NEWBANKS**

122. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

123. Defendant committed the tort of intentional infliction of emotional distress under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

124. The Plaintiff's emotional distress was and is severe in nature.

125. Plaintiff suffered severe social and personal embarrassment, pain, suffering, and emotional distress at the time of Plaintiff's unlawful arrest and afterward.

126. Defendant failed to act as a reasonably prudent law enforcement officer would and obey firmly established law.

127. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983 and 28 U.S.C. §1367.

**COUNT XVI: STATE TORT OF INTENTIONAL INFLICTION OF EMOTIONAL
DISTRESS AGAINST DEFENDANT LEEDY**

128. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

129. Defendant committed the tort of intentional infliction of emotional distress under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

130. The Plaintiff's emotional distress was and is severe in nature.

131. Plaintiff suffered severe social and personal embarrassment, pain, suffering, and emotional distress at the time of Plaintiff's unlawful arrest and afterward.

132. Defendant failed to act as a reasonably prudent law enforcement officer would and obey firmly established law.

133. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983 and 28 U.S.C. §1367.

COUNT XVII: STATE TORT OF DEFAMATION PER SE AGAINST DEFENDANT

AZURE

134. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

135. Defendant committed the state tort of defamation per se under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human rights, safety, and property.

136. Defendant accused Plaintiff of committing a misdemeanor when absolutely no probable cause existed that Plaintiff did anything other than exercise Plaintiff's First Amendment rights to free speech under the United States Constitution.

137. Defendant published this defamation to numerous third parties.

138. Defendant described Plaintiff and Plaintiff's spouse as "monsters" on Defendant's Facebook Page and coupled this defamatory statement with Plaintiff's booking photograph.

139. Plaintiff need not prove damages to recover under the state claim of defamation per se. Damages are assumed under Florida common law.

140. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983 and 28 U.S.C. §1367.

**COUNT XVIII: STATE TORT OF DEFAMATION PER SE AGAINST DEFENDANT
NEWBANKS**

141. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

142. Defendant committed the state tort of defamation per se under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human rights, safety, and property rights.

143. Defendant accused Plaintiff of committing a misdemeanor when absolutely no probable cause existed that Plaintiff did anything other than exercise Plaintiff's First Amendment rights to free speech under the United States Constitution.

144. Defendant published this defamation to numerous third parties.

145. Plaintiff need not prove damages to recover under the state claim of defamation per se. Damages are assumed under Florida common law.

146. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983 and 28 U.S.C. §1367.

COUNT XIX: STATE TORT OF DEFAMATION PER SE AGAINST DEFENDANT

LEEDY

147. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

148. Defendant committed the state tort of defamation per se under color of state law in bad faith and with malicious purpose in reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

149. Defendant accused Plaintiff of committing a misdemeanor when absolutely no probable cause existed that Plaintiff did anything other than exercise Plaintiff's First Amendment rights to free speech under the United States Constitution.

150. Defendant published this defamation to numerous third parties.

151. Plaintiff need not prove damages to recover under the state claim of defamation per se. Damages are assumed under Florida common law.

152. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. §1983 and 28 U.S.C. §1367.

**COUNT XX: 42 U.S.C. § 1983 MONELL CLAIM AGAINST DEFENDANT BLAIR AS
THE CONSTITUTIONAL OFFICER OF MARION COUNTY SHERIFF'S OFFICE**

153. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint.

154. Blair's written and unwritten policies and customs of Marion County Sheriff's Office encouraged, caused, and/or enabled Defendants to violate Plaintiff's constitutional and state rights.

155. Blair is responsible for Defendants' supervision, training, and discipline as well as Defendants' actions through Blair's policy-making powers and personnel decisions, and there is an obvious need Blair to have trained and train all Defendants on First Amendment rights and clearly established law to protest law enforcement actions peacefully.

156. Blair has failed to train Defendants adequately on First Amendment rights and ensure citizens can protest law enforcement actions peacefully without fear of arrest.

157. Blair has failed to train Defendants on Fourth Amendment rights and enact safeguards against unconstitutional searches and seizures despite clearly established law.

158. Blair has failed to train Defendants on Fifth Amendment rights and enact safeguards against denial of procedural and substantive Due Process despite clearly established law.

159. Blair has failed to train Defendants on Eighth Amendment rights and enact safeguards against cruel and unusual punishment despite clearly established law.

160. Blair has and continues to demonstrate reckless, callous, and bad faith indifference to Plaintiff's constitutional and state rights.

161. Only irrational, imprudent, irresponsible, and unreasonable executive agencies of municipalities and political subdivisions would fail to train its law enforcement officers on the constitutional law issues concerning and arising out of § 843.02 Fla. Stat. (2012).

162. Blair had and has an affirmative duty to ensure all Defendants, including Blair, know and obey firmly established laws. Proper supervision, training, and discipline are paramount to protecting Plaintiff's and all other citizens' constitutional and state rights.

163. Blair failed and continues to fail to safeguard citizens' constitutional rights, freedoms, and liberties interests by not properly training, supervising, and disciplining Defendants as well as all other Marion County Sheriff's Office deputies.

164. Blair's callous, reckless, wanton, and malicious actions under color of state law before, during, and after this loss, has caused Plaintiff to suffer and continue to suffer the damages Plaintiff has described.

165. Blair unlawfully deprived Plaintiff of Plaintiff's constitutional and state rights, and did so under color of state law in bad faith, with malicious purpose, and in callous, reckless, wanton, and willful disregard of Plaintiff's human, safety, and property rights.

166. Blair, through the Marion County Sheriff's Office, has explicitly adopted, endorsed, and defended Defendants' individual and collective unconstitutional actions against Plaintiff.

167. The Marion County Sheriff's Office has a well-documented history of engaging in civil rights abuses that have culminated in successful lawsuits.

168. These deprivations under color of state law are actionable under and may be redressed by 42 U.S.C. §1983 and 28 U.S.C. §1367.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests the following relief:

- A. Plaintiff re-alleges and incorporates by reference all of the preceding paragraphs in this complaint,
- B. Trial by jury on all issues so triable;
- C. General and special compensatory damages;
- D. Punitive damages;
- E. Award to Plaintiff of reasonable attorneys' fees and costs incurred in connection with this action from the Defendants pursuant to 42 U.S.C. §1988;
- F. Pretrial interest on compensable attorney's fees;
- G. Injunctive relief declaring § 843.02 Fla. Stat. (2012) to be facially and as applied unconstitutional because it grants Florida law enforcement officers unfettered discretion; and,
- H. Such further and different relief as is just and proper or that is necessary to make the Plaintiff whole.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed today, on June 10, 2014 the foregoing with the Federal Clerk of the Court for the Middle District of Florida using the CM/ECF system, which will send notification of such filing to all persons registered for this case, including the Defendants' counsel(s).

s/Christopher R. Dillingham II, Esq.

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