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DEPT. No. 4
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MONTANA FOURTH JUDICIAL DISTRICT COURT
MISSOULA COUNTY, MONTANA

CHRIS SHERMER, Plaintiff, vs. MISSOULA CITY POLICE DEPARTMENT, SANDY KOSENA (individually), MARK MUIR (individually), and CHRIS ODLIN (individually), Defendants.	Dept. No. 4 Cause No. DV-13-285 **PLAINTIFF'S COMPLAINT AND JURY DEMAND**

Plaintiff alleges as follows:

1. Plaintiff Chris Shermer is a resident of Missoula County Montana.

2. To the best of Plaintiff's knowledge, the Missoula City Police

Department is a political subdivision of the City of Missoula, an incorporated town existing under the laws and statutes under the State of Montana.

3. To the best of Plaintiff's knowledge, Defendant Sandy Kosena is a resident of Missoula County, Montana.

4. To the best of Plaintiffs' knowledge, Defendant Mark Muir is a resident of Missoula County, Montana.

5. To the best of Plaintiff' knowledge, Defendant Chris Odlin is a resident of Missoula County, Montana.

6. Plaintiff Chris Shermer is a Detective with the Missoula City Police Department.

7. Defendant Sandy Kosena is a Lieutenant with the Missoula City Police Department.

8. Defendant Mark Muir is the Chief of Police for the Missoula City Police Department.

9. Defendant Chris Odlin is a Captain with the Missoula City Police Department.

10. The allegations giving rise to this Complaint involve an incident which took place in Missoula County, Montana. Therefore this Court has jurisdiction over Plaintiff's Complaint.

11. The Montana Fourth Judicial Court is the appropriate venue in which to litigate this case.

General Allegations

12. Plaintiff re-alleges Paragraphs 1-11 above.

13. At all times relevant to this Complaint, Plaintiff Chris Shermer was a Detective with the Missoula City Police Department, and Defendant Sandy Kosena was a Lieutenant.

14. Lt. Sandy Kosena was Chris Shermer's superior officer.

15. On April 30, 2012 Chris Shermer was near a secretary's desk in an open area at the City Police Department. There were other employees in the area working. While Chris Shermer was standing near the desk, Lt. Sandy Kosena came up behind him and grabbed him on the left buttock with her left hand, placed her pinkie finger in between Chris Shermer's buttocks, leaned in very close to his back and then whispered a sexual innuendo in his ear.

16. The conduct alleged in Paragraph 15 above took place in front of a civilian employee.

17. Chris Shermer was shocked and perplexed at his superior officer's behavior. He was humiliated, embarrassed, and he became angry and frustrated as a result of this conduct.

18. Lt. Sandy Kosena's actions actually constitute a criminal sexual assault as well as a civil assault.

19. Chris Shermer reported the assault to the City Police Department.

20. On March 15, 2012, the Missoula City Police Department adopted a policy specific to responding to sexual assaults.

21. Section I of this policy states "The purpose of this policy is to provide officers and investigators with guidelines for responding to reports of sexual assault, assisting victims, collaborating with local health and service agencies, and conducting interviews with victims, witness, and suspects."

22. Section II of this policy states " it is especially important that these cases be handled from a nonjudgmental perspective so as not to communicate in any way to a victim that the victim is to blame for the crime."

23. Section II of this policy also states "Every sex crime investigation is to be initiated with the belief it is true until evidence demonstrates otherwise."

24. Section IV of the policy outlined the procedures for responding to an allegation of sexual assault. This provision includes procedures for arresting or detaining the perpetrator when there is sufficient victim cooperation and evidence of probable cause. This provision also contains an outline for interviewing assault victims.

25. It is Chris Shermer's understanding that after he advised the City Policy Department of the assault on his person, the City Policy Department treated the matter as an employee-related matter, rather than a criminal matter. As a result, the Police Department's own internal policy, adopted only a month before this incident, was not followed. This is evidence of negligence.

26. It is Chris Shermer's understanding that an internal (Police Department) investigation ensued, and that Captain Scott Hoffman was assigned to investigate this case.

27. It is further Chris Shermer's understanding that Lt. Sandy Kosena admitted the conducted alleged in Paragraph 15 above.

28. Despite the fact that Lt. Sandy Kosena admitted to violating the City Police Department's policies against sexual harassment, she was only as given a light disciplinary action, and the matter was closed.

29. Chief Mark Muir did not communicate with Chris Shermer about this incident, he did reassure Chris Shermer that it would not happen again, and that his complaint was being taken seriously, he did not ensure Chris Shermer that he would be able to work in a safe work environment, he did not ensure that Chris Shermer would be able to work in a non-hostile work environment, he did not advocate for Chris Shermer, and he did not look at Lt. Sandy Kosena's as a

criminal matter, despite the fact that Chief Muir has a sworn duty to protect and defend the citizens of Missoula.

30. Captain Chris Odlin has openly ridiculed Chris Shermer for making this complaint to his peers. This conduct has been proven and established, and Captain Chris Odlin was admonished by his supervisors not to engage in such behavior again. Captain Odlin's conduct has been defamatory and slanderous.

31. Lt. Sandy Kosena's action took place while she was in the scope of her employment with the Missoula City Police Department. Therefore not only is she individually liable for her conduct, but the Missoula City Police Department is also liable for her conduct and for their conduct in perpetuating the damages suffered by Chris Shermer by sweeping the matter under the rug, failing to conduct a proper investigation, failing to institute appropriate disciplinary proceedings, and creating a hostile work environment.

32. Had the roles been reversed (i.e., had Chris Shermer been the perpetrator instead of the victim) he likely would have received a much harsher punishment, and been required to make restitution. He probably would have been fired from his employment and charged with a crime.

33. Defendants' acceptance of Lt. Kosena's behavior, at the expense of Chris Shermer, violates the City Policy Department's own policy, and is negligence.

COUNT I
Assault

34. Plaintiff re-alleges Paragraphs 1-33 above.

35. Defendant Sandy Kosena's actions created an apprehension that she was going to cause bodily harm, unwanted or offensive contact, to the person of Chris Shermer.

36. Defendant Sandy Kosena's actions created an intentional threat of harmful or offensive contact upon the person of Chris Shermer, under such circumstances as to create a well-founded fear of such contact, and she had the apparent ability to carry out this threat.

37. Defendant Sandy Kosena did in fact cause bodily harm, unwanted or offensive contact to the person of Chris Shermer.

38. Plaintiff Chris Shermer has suffered damages as a result of Defendant's conduct.

39. In addition to Plaintiff's claims to intentional and negligent infliction of emotional distress, as outlined below, Plaintiff has suffered parasitic emotional distress and is entitled to damages resulting from this emotional distress.

40. Defendant Sandy Kosena's conduct occurred while she was in the scope of her employment. Therefore not only is Sandy Kosena individually liable for her conduct, but her employer, the Missoula City Police Department is also liable.

41. Defendant Sandy Kosena's conduct was intentional and malicious, and therefore Plaintiff Chris Shermer is entitled to punitive damages under Montana Code Annotated § 27-1-221.

COUNT II
Battery

42. Plaintiff re-alleges Paragraphs 1-41 above.

43. Defendant Sandy Kosena intentionally contacted the person of Chris Shermer in a manner which was harmful and offensive.

44. Plaintiff Chris Shermer has suffered damages as a result of Defendant's conduct.

45. In addition to Plaintiff's claims for intentional and negligent infliction of emotional distress, as outlined below, Plaintiff has suffered parasitic emotional distress and is entitled to damages resulting from this emotional distress.

46. Defendant Sandy Kosena's conduct occurred while she was in the scope of her employment. Therefore not only is Sandy Kosena individually liable for her conduct, but her employer, the Missoula City Police Department, is also liable.

47. Defendant Sandy Kosena's conduct was intentional and malicious, and therefore Plaintiff Chris Shermer is entitled to punitive damages under Montana Code Annotated § 27-1-221.

COUNT III
Intentional Infliction of Emotional Distress

48. Plaintiff re-alleges Paragraphs 1-47 above.

49. Defendant Sandy Kosena caused bodily harm and/or unwanted and offensive contact upon the person of Chris Shermer.

50. As the direct and approximate result of Sandy Kosena's conduct, Plaintiff Chris Shermer has suffered severe emotional distress as defined by Montana Law.

51. Plaintiff Chris Shermer is entitled to damages for the emotional distress inflicted upon him intentionally by Defendant Sandy Kosena.

52. Defendant Sandy Kosena's conduct occurred while she was in the scope of her employment. Therefore not only is Sandy Kosena individually liable for her conduct, but her employer, the Missoula City Police Department, is also liable. Defendants Mark Muir and Chris Odlin have contributed to this emotional distress by their conduct.

53. Defendant Sandy Kosena's conduct was intentional and malicious, and therefore Plaintiff Chris Shermer is entitled to punitive damages under Montana Code Annotated § 27-1-221.

COUNT IV
Negligent Infliction of Emotional Distress

54. Plaintiff re-alleges Paragraphs 1-53 above.

55. Defendant Lt. Sandy Kosena caused bodily harm and/or unwanted and offensive contact upon the person of Detective Chris Shermer.

56. As the direct and approximate result of Sandy Kosena's conduct Plaintiff Chris Shermer has suffered severe emotional distress as defined by Montana Law.

57. Plaintiff Chris Shermer is entitled to damages for the emotional distress inflicted upon him negligently by Defendant Sandy Kosena.

58. Defendant Sandy Kosena's conduct occurred while she was in the scope of her employment. Therefore not only is Sandy Kosena individually liable for her conduct, but her employer, the Missoula City Police Department, is also liable.

59. Defendant Sandy Kosena's conduct was negligent and malicious, and therefore Plaintiff Chris Shermer is entitled to punitive damages under Montana Code Annotated § 27-1-221.

COUNT V
Negligence-Defendant Sandy Kosena

60. Plaintiff re-alleges Paragraphs 1-59 above.

61. Defendant Sandy Kosena owed Plaintiff a duty of ordinary care. Specifically she owed Plaintiff a duty to avoid causing harm to his person or property.

62. Defendant Sandy Kosena breached her duty of ordinary care by causing harm to the person of Chris Shermer.

63. Defendant Sandy Kosena's conduct caused Plaintiff Chris Shermer to suffer damages.

64. Plaintiff Chris Shermer has suffered damages in amounts to be proven at trial.

65. Defendant Sandy Kosena's conduct was intentional and malicious and therefore Plaintiff is entitled to punitive damages under Montana Code Annotated § 27-1-221.

COUNT VI
Negligence-Missoula City Police Department

66. Plaintiff re-alleges Paragraphs 1-65 above.

67. Defendant Missoula City Police Department owed Plaintiff a duty to protect his person and to provide him with a safe working environment.

68. Defendant Missoula City Policy Department owed Plaintiff a duty to follow their own policy as such policy relates to the investigation of sexual assaults.

69. Defendant Missoula City Police Department has breached their duty by failing to maintain a safe work environment for Chris Shermer, by creating a hostile work environment for Chris Shermer, by failing to subject Defendant Sandy Kosena to the same punishment that a male perpetrator would have received as

opposed to a female perpetrator, and by failing to treat this situation as a sexual assault pursuant to their own policy.

70. The Missoula City Police Department's breach of its duties has caused Plaintiff Chris Shermer to suffer damages.

71. Plaintiff Chris Shermer has suffered damages in amounts to be proven at trial.

COUNT VII
Slander/Defamation

72. Plaintiff re-alleges Paragraphs 1-71 above.

73. To the best of Plaintiffs' knowledge, Defendant Chris Odlin has published information that tends to directly injure Plaintiff Chris Shermer in respect to his office, his profession, trade, or business.

74. Defendant Chris Odlin's conduct is in violation of the Missoula City Police Department's policy with regard to the investigation of sexual assaults.

75. Defendant Chris Odlin's conduct, by natural consequence, has caused Plaintiff Chris Shermer to suffer damages.

76. Plaintiff Chris Shermer is entitled to damages in amounts to be proven at trial.

77. Defendant Chris Odlin's conduct has been malicious as defined by Mont. Code Ann. § 27-1-221. Therefore Plaintiff Chris Shermer is entitled to punitive damages.

78. Defendant Chris Odlin's conduct occurred while he was in the scope of his employment. Therefore not only is Chris Odlin individually liable for his conduct, but his employer, the Missoula City Police Department, is also liable.

WHEREFORE, Plaintiff requests the following relief:

1. Actual damages;

2. Incidental, consequential, and/or perceived damages;

3. Punitive damages;

3. Any available attorney's fees and costs;

4. Any available interest; and

5. Any other relief this Court deems just and necessary.

DATED this 5th day of March, 2013

GANGLE LAW FIRM, PC.
Attorneys for Plaintiff

By: _____
Cory R. Gangle, Esq.

JURY DEMAND

Plaintiff demands a trial by jury on all matters raised in this Complaint.

DATED this 5th day of March, 2013,

By: _____
Cory R. Gangle, Esq.