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JAN 13 2015
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[Signature]

MONTANA FIRST JUDICIAL DISTRICT COURT,
LEWIS & CLARK COUNTY

<p>PAIGE PAVALONE,</p> <p>Plaintiff,</p> <p>vs.</p> <p>MISSOULA COUNTY SHERIFF'S OFFICE, TERRY J. MCDERMOTT, in his individual and official capacity, KIRSTEN PABST, in her individual and official capacity, PATTY BAUMGART, in her individual and official capacity, and DOES 1-5,</p> <p>Defendants.</p>	<p>CAUSE NO. <u>ADV 2015-336</u></p> <p>DEPT. NO. _____</p> <p>COMPLAINT AND DEMAND FOR JURY TRIAL</p> <p>INDEXED</p> <p>MIKE MENAHAN PRESIDING JUDGE</p> <p><i>pdf</i> <i>(4)</i></p>
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INTRODUCTION

Since taking over the office on January 1, 2015, following his election on November 7, 2014, Missoula County Sheriff, Terry J. (TJ) McDermott, with his hand-picked subordinates, has engaged in an ongoing practice of rewarding his

political supporters and punishing his political opponents. He has accomplished this by providing jobs and other perks to his supporters, and has punished his opponents by demoting and ostracizing them, reassigning them to undesirable assignments and/or peripheral assignments, and otherwise made their work environments unbearable.

The complainant in this case, Paige Pavalone, is the only woman in the group and has fared far worse than even Sheriff McDermott's other political opponents. Ms. Pavalone, previously a deputy sheriff, in addition to being removed from a desirable assignment and being ostracized and singled out for unfair criticism, has been unjustly accused by the Sheriff and his underlings of three separate crimes, suspended from her job, and most recently fired and with the publication broad dissemination of a false and harmful letter about her. The reasons given for all of the formal actions taken against her are specious; no reasons have been given for the informal abuses.

The only conclusion that can be drawn from the facts is that Paige Pavalone has been the victim of:

- Wrongful termination of a Sheriff's Deputy by Sheriff McDermott, in violation of MCA 7-32-2107.
- Wrongful Discharge, in violation of MCA 39-2-904(b)

- Discrimination by Sheriff McDermott and his immediate subordinates because of her protected political beliefs and activity in violation of MCA 49-2-308(c).
- Discrimination on the basis of sex because the discrimination has been harsher and crueler than that which befell other, male, political opponents in violation of MCA 49-2-303(a).
- Tortious interference with Employment because of publication of the letter.
- Libel as defined at MCA 27-1-801, *et. seq.*
- Negligent or intentional infliction of emotional distress

JURISDICTION AND VENUE

The District Court has jurisdiction over this action pursuant to MCA §§ 3-5-302 and 7-32-2109(a). Venue is appropriate in this Court pursuant to MCA § 25-2-126.

THE PARTIES

1. Paige Pavalone ("Pavalone") is a 32 year old resident of Missoula County. She was employed with Missoula County Sheriff's Office as a Deputy Sheriff until she was terminated on April 13, 2015.
2. Missoula County ("Sheriff's Office") is a duly constituted subdivision of Montana State government operating under the laws of Montana. The Missoula

County Sheriff's Office is part of Missoula County government, duly constituted and operating under the laws of Montana.

3. Terry J. McDermott ("McDermott") is the duly elected Sheriff of Missoula County, having won the Democratic primary on June 3, 2014 and the general election on November 7, 2014. He was sworn into office in a ceremony at the Missoula County Courthouse on December 30, 2014. He took office just after midnight on January 1, 2015.

4. Kirsten Pabst ("Pabst") is the duly elected County Attorney of Missoula County, having won the Democratic primary on June 3, 2014 and the general election on November 7, 2014. She was sworn into office in a ceremony at the Missoula County Courthouse on December 30, 2014. She took office just after midnight on January 1, 2015.

5. Patty Baumgart ("Baumgart") is the Human Resource Director for Missoula County.

FACTS

The Sheriff's Office

6. The Missoula County Sheriff's Office has approximately 50 sworn deputy positions. As of January 1, 2015 only 2 of those 50 deputies were women. With the firing of Ms. Pavalone, the Sheriff's Office has one female deputy.

7. Among his first acts upon taking office, was Sheriff McDermott's decision to promote several of his political supporters to higher rank, in all instances skipping the normal progression through the ranks. The promotions provided the recipients greater pay, responsibility and prestige. Deputy Jason Johnson ("Johnson") was promoted from Senior Deputy to Undersheriff, the office's second in command, bypassing Sergeant, Lieutenant, and Captain. With the promotion now-Undersheriff Johnson receives an increase in base pay from approximately \$25.00 per hour to approximately \$30.00 per hour. During the campaign, Deputy Johnson was one of Sergeant McDermott's most active supporters.

8. Anthony Rio ("Rio"), previously one of four patrol sergeants, was promoted to Captain of Professional Standards, bypassing the rank of Lieutenant. With the promotion now-Captain Rio received an increase in base pay from approximately \$26.55 per hour to approximately \$29.68 per hour. During the campaign Sergeant Rio was an active and vocal supporter of McDermott.

9. William Burt ("Burt"), previously one of four patrol sergeants, was promoted to Captain of Patrol, bypassing the rank of Lieutenant. With the promotion now-Captain Burt received an increase in base pay from approximately \$26.55 per hour, to approximately \$29.68 per year. During the campaign Burt was an active and vocal supporter of McDermott.

10. Jonathon Gunter ("Gunter"), previously a deputy in the detective division, was more recently promoted to Detective Lieutenant, bypassing the rank of Sergeant. With the promotion now-Lieutenant Gunter received an increase in base pay from approximately \$25.62 per hour to approximately \$27.18 per hour. During the campaign Gunter was an active and vocal support of McDermott.

11. Running against McDermott was the sitting Missoula County Undersheriff, Josh Clark ("Clark"). Since McDermott took office, Clark and those within the Sheriff's Office who supported Clark's campaign for Sheriff have been punished by McDermott and his minions. Clark himself was demoted from Undersheriff all the way to patrol deputy, bypassing Captain, Lieutenant and Sergeant on the way down. As a patrol deputy he was placed on the worst shift assignment and has since left the Sheriff's Office.

12. Captain Brad Giffin ("Captain Giffin"), was a strong supporter of Clark for Sheriff and anticipating political retaliation, opted to retire from the Sheriff's Office rather than work for McDermott. Captain Giffin was previously Captain of Professional Standards.

13. Mike Dominick ("Captain Dominick") was the Captain of Detectives prior to McDermott's taking office. On McDermott's first day on the job he reassigned Captain Dominick to manage the evidence storage facility, a job that previously did not exist, and which requires no supervisory responsibilities. The

responsibilities of the job were previously handled by the Captain of Detectives as part of his regular duties. Nevertheless, Captain Dominick has retained both his rank and salary. Captain Dominick was a strong supporter of Clark for Sheriff during the campaign. The job of Captain of Detectives remains unfilled.

14. Captain Rob Taylor ("Captain Taylor") was Captain of Patrol prior to McDermott taking office. Captain Taylor was moved to a newly created position, Administrative Captain, a job which previously did not exist. He now supervises the support staff, a job which was previously handled by a civilian employee. Captain Taylor remained neutral during the campaign.

15. Paige Pavalone ("Pavalone") was also a supporter of Clark's during the campaign. Pavalone campaigned for him, donated to his cause, and publicly encouraged others to support his candidacy.

16. Prior to the elevation of Sergeant McDermott to Sheriff, Ms. Pavalone was a deputy sheriff without rank, serving as the Office's Public Information Officer (PIO). Deputy Pavalone joined the Sheriff's Office in 2008 as a detention officer, and became a deputy in 2010. She was assigned the PIO duties in 2013, replacing Deputy Johnson.

17. The replacement of Deputy Johnson with Deputy Pavalone in the PIO position came with considerable controversy. Johnson believed his removal from the PIO position was politically motivated and filed a complaint with the

Montana Human Rights Bureau (HRB) making that allegation. Central to his proof of improper motivation in the reassignment was that he was more qualified than Deputy Pavalone to have the position because he had greater longevity in law enforcement. He had been a deputy for approximately 13 years, while Pavalone had been a deputy for only three years.

18. Deputy Pavalone, however, in addition to her years in law enforcement, has two relevant bachelor's degrees, one in Communications and one in Political Science.

19. Johnson ultimately prevailed in his argument before the HRB. The HRB released a finding that concluded Johnson had been the victim of illegal discrimination, and Missoula County accepted that conclusion and settled with Johnson for \$60,000. Pavalone, however, formally remained the PIO until January 2, 2015.

20. On that day, Pavalone, having heard nothing of her fate except what she read in the newspaper, inquired about whether or not she should keep performing the PIO. Undersheriff Johnson responded that she should not. He told her that she would no longer be the PIO, but instead would be returned to patrol.

21. This was not a surprise to her for two reasons: Pavalone had clashed several times with Sergeant McDermott in the months and weeks prior to his elevation to Sheriff, and because weeks earlier Sergeant McDermott had

announced to the Missoulian newspaper in a November 8, 2014 article – in apparent abandonment of the claim that experience as a deputy mattered for the PIO position – that he would be either eliminating the PIO position altogether, or converting it to a civilian position, and that Deputy Pavalone would be returning to patrol. Deputy Pavalone learned of her fate when she was unexpectedly contacted by the newspaper reporter for a comment.

22. Sergeant McDermott was quoted even then, as knowing that Deputy Pavalone had supported Clark for Sheriff, but insisting that the change was not politically motivated. Rather, he said that he was making the change because there was need for more deputies to be working patrol. Sheriff McDermott's decision to create two new captain positions for his political supporters, while moving two sitting captains to newly created administrative positions, however, ultimately increases the number of administrators, while reducing the number of deputies available for patrol, and at considerable financial cost.

23. In addition, Sergeant McDermott and Deputy Johnson had created other problems for Deputy Pavalone prior to assuming the duties and powers of Sheriff and Undersheriff. In late November, 2014, Deputy Pavalone was the victim of domestic violence at the hands of her husband, but was so afraid of the poisonous atmosphere in the Sheriff's Office, opted not to call 911.

24. Instead she called Sheriff Ibsen, who was still the Sheriff though Sergeant McDermott was by then Sheriff-elect. Sheriff Ibsen responded to the hospital where Ms. Pavalone was with her baby, being treated for a bad, twisting break of her hand. Sheriff Ibsen took Deputy Pavalone's statement, compiled a report, and provided it to Deputy Pavalone so she could decide whether or not she wanted to pursue charges.

25. A couple of weeks later Deputy Pavalone pursued an Order of Protection against her husband in Justice Court. Sheriff-elect McDermott and his designated Undersheriff-to-be Jason Johnson appeared at the hearing to watch. Deputy Pavalone preferred not to have either of them there and asked them to leave. Instead of respecting her wishes either as their friend and future employee, or as the victim of crime, they refused to leave and sat through the entire hearing.

26. At the hearing, both Ms. Pavalone and her husband presented emotional testimony about the incident. In the end, Ms. Pavalone was granted the Order of Protection she sought, and for a longer period of time than what she was seeking.

27. Neither Sheriff-elect McDermott nor Deputy Johnson left the issue alone, though, nor did they comply with their duty to ensure that Ms. Pavalone was receiving the services that all crime victims are entitled to. Rather, on his first day in office Sheriff McDermott, despite having heard all the evidence in the case,

reported the case to the Montana Department of Criminal Investigation in the Attorney General's Office.

28. Ms. Pavalone was interviewed as a suspect in that case and cooperated fully. The investigator informed Ms. Pavalone that his instructions were to investigate whether or not Ms. Pavalone had committed domestic violence.

The Firing Allegations Generally

29. On April 13, 2015, Sheriff McDermott terminated Ms. Pavalone by letter. For the most part the reasons for firing listed in the termination letter are vague and disjointed, offering few if any specifics. In general terms, the letter alleges that Ms. Pavalone was substantially dishonest about her role in the arrest of a friend for DUI, and even obstructed justice during that arrest (though notably absent are specifics about how exactly she obstructed justice), and that for related reasons listed in a separate letter from the Missoula County Attorney, Kirsten Pabst, Ms. Pabst had determined that Ms. Pavalone could no longer be trusted as a Deputy Sheriff. The allegations against Ms. Pavalone in both the termination letter from the Sheriff and the "Brady letter" from the County Attorney are demonstrably false.

30. The letter from Ms. Pabst cites the rule from *Brady v. Maryland*, 373 U.S. 83 (1963), and some of its progeny that evidence of a witness's misconduct, including past dishonesty, must be revealed to the defendant prior to a

trial in which that witness is going to testify. Ms. Pabst cites a number of instances which she alleges show Ms. Pavalone's dishonesty.

31. A review of each alleged instance of dishonesty, however, shows that almost of all of the allegations are irrelevant and immaterial, and Ms. Pavalone was in fact directly honest, or that there was an honest difference in the way events were remembered. None of the allegations could form the basis for a required *Brady* revelation or a basis for Ms. Pavalone's termination.

32. The termination letter provides two very broad categories of reasons for Ms. Pavalone's firing:

- a. "Findings from the internal investigation into [Ms. Pavalone's] conduct with regard to the arrest of a county detention officer on February 20, 2015," and
- b. "notice from the Missoula County Attorney that [Ms. Pavalone's] name has been placed on a 'Brady/Giglio' list because [her] reputation for honesty and credibility has been irreparably harmed."

It concludes that based on those alleged failings, Ms. Pavalone's "ability to perform [her] job as a deputy sheriff has been seriously compromised, constituting gross inefficiency in the performance of [her] official duties."

33. Within those broad categories, the allegation of misconduct during the internal investigation is divided into three separate general allegations:

- a. That Ms. Pavalone was “deceitful and dishonest in [her] answers to Captain Rio during the investigation and by coaching [her] co-worker on how to delete evidence of [her] actions and counsel from her cell phone,”
- b. That Ms. Pavalone took actions to “obstruct justice and to obstruct a peace officer by actively advising [her] co-worker on ways to be deceitful in dealing with law enforcement officers, before and during her arrest,” and
- c. That Ms. Pavalone “violated the spirit and letter of the Law Enforcement Code of Ethics which [she] swore to uphold when [she] took the oath of office.”

34. The *Brady* list letter from County Attorney Pabst is addressed to Sheriff McDermott and informs the Sheriff that she has “requested, received and reviewed the internal investigation of Deputy Paige Pavalone...regarding Pavalone’s off-duty involvement in the arrest of another Missoula County Sheriff’s Office employee....” The letter, dated April 1, 2015, does not describe how or why County Attorney Pabst requested the investigation, or even how she knew about it.

35. The letter then informs the Sheriff that “based on findings in the internal investigation, Pavalone must be placed on a *Giglio/Brady* list, which will negatively impact her ability to perform her duties as a law enforcement officer and witness.” The letter concludes that, “the findings of dishonesty render Deputy Pavalone ineffective as a witness because of required *Brady* disclosures.” In between the letter claims that “a review of the Pavalone investigation reveals a pattern of untruthfulness and lack of candor which would require disclosure by the

prosecution every time she is called as a witness,” and provides a detailed list of specifics purporting to support the letter’s conclusion.

36. The Pabst letter does not say whether it was she or the investigator who reached the conclusions of untruthfulness. Ms. Pavalone has requested a copy of the investigation, but has not received it or even seen it. She has not been given an opportunity to respond the allegations Ms. Pabst makes against her. If she had had the opportunity, she would have vigorously protested the conclusions as false and trumped-up.

37. The Pabst letter effectively ruins Ms. Pavalone’s career as a law enforcement officer.

38. Neither the Pabst letter, nor the internal investigation is at all accurate in the accusations they present.

The Allegations Specifically, Violation of Oaths

39. With respect to the third allegation of the termination letter regarding the various oaths, the allegations are ambiguous and indeterminate. For instance, without citing specific acts on the part of Ms. Pavalone, the letter of termination summarily concludes that Ms. Pavalone has nevertheless,

- a. Violated her oath to uphold the Constitutions of the United States and Montana,
- b. Violated the provision of the “law enforcement code of ethics” which requires that its signers (Ms. Pavalone was one) agree to “behave in a manner that does not bring discredit to me or my

agency,” and to “enforce the law courteously and appropriately without fear or favor,” and “with no compromise for crime and with relentless prosecution of criminals,” and

- c. has violated Missoula County Policies by failing to “be governed by the ordinary and reasonable rules of good conduct and behavior,” and committing some unspecified act which “tend[ed] to bring reproach or discredit upon the Department or County of Missoula,”

among other similarly vague allegations.

40. The termination letter even alleges, without any specifics whatsoever, that Ms. Pavalone has failed to “obey the laws of the United States and State of Montana, ordinances of the County of Missoula, and departmental orders and lawful orders of the court.”

- 41. This vague claim cannot stand as grounds for termination.

The Allegations Specifically, Obstruction

42. With respect to the second of the three allegations of misconduct supporting the reasons for termination, the letter does not specify show Ms. Pavalone obstructed justice or obstructed a peace officer during her colleague’s arrest, but the we do know the following facts:

43. On February 20, 2015, Ms. Pavalone and the co-worker, an employee at the detention facility, met for dinner at the Lolo Peak Brewery. They were joined by a friend of Ms. Pavalone’s who was visiting from out of town, and they stayed for approximately 3 hours. Both Ms. Pavalone and the co-worker drank

beer, but the brewery adheres to the legal limit of three beers per customer, and none of the friends had more than three beers over that period.

44. During the course of the evening Ms. Pavalone noticed that Captain Burt was also in the Brewery with his wife, and that he was acting strangely. He was moving furtively around the establishment, leaving his wife at times and moving to another table, and repeatedly talking on his telephone. In light of the treatment she had been receiving at the Sheriff's Office, Ms. Pavalone was suspicious of Captain Burt's behavior and was concerned that she was somehow being set up.

45. Near the end of their time at the Brewery, Ms. Pavalone and her friends prepared to return to Ms. Pavalone's home which is close to the Brewery. Ms. Pavalone's out-of-town friend was already staying with her, and in keeping with their usual arrangements, Ms. Pavalone had invited her detention center colleague to stay the night as well. The co-worker left first, going to a nearby convenience store to get beer and other refreshments.

46. Ms. Pavalone left next and as she drove out she noticed Captain Burt walking down the hill toward the convenience store, which both confused her and heightened her suspicions. She called her co-worker and relayed the news that Captain Burt was walking down the hill. At that time a Sheriff's Office patrol car also came driving through and Ms. Pavalone relayed that information to her co-

worker as well. She then left the area and headed home, stopping first at a different convenience store for various sundries, including – possibly – a movie.

47. Upon reaching home and waiting a little while, Ms. Pavalone realized her co-worker had not joined them, so she called her repeatedly. There was no answer because the co-worker was being arrested for suspicion of DUI and for driving in violation of the restrictions on her driver's license.

48. The co-worker had been convicted of DUI – a first for her -- several months earlier and because of that her license to drive was restricted to "essential driving" only. It turns out Ms. Pavalone was correct in her suspicions of Captain Burt.

49. Captain Burt had called the Sheriff's Office to make sure the patrol car was in the area when the co-worker left the restaurant and to direct it towards the co-worker's location. Earlier in the evening he had closely observed Ms. Pavalone and her co-worker and friend as they ate, drank and socialized.

50. At least at one point during the evening he approached the waitresses serving Ms. Pavalone and her friends, identified himself as a Captain with the Sheriff's Office, and asked what Ms. Pavalone and her friends were drinking. He explained that he was surveilling Ms. Pavalone and her group, and that they were in trouble. When the waitresses asked if they should stop serving alcohol to Ms. Pavalone or her co-worker, Captain Burt directed them to keep serving alcohol.

51. Later, it was Captain Burt who directed the deputy in the patrol car to stop the co-worker. Additionally, according to notes in the Justice Court file on the co-worker's DUI, earlier that same day Captain Burt and Sheriff McDermott had requested a copy of the file "due to possible violation of conditions."

52. The co-worker had pleaded guilty to the previous DUI, admitting her error rather than taking the case to trial. As part of the guilty plea the Justice Court judge filled out a standard sentencing form that created a carbon copy for the defendant/co-worker. The completed form which recorded the plea, the fine, and other consequences of the sentence, has several blank lines at the bottom for the judge to write anything additional. In this case, the carbon copy of the form the co-worker received from the Judge says at the bottom "prob DL ok," indicating that a probationary driver's license would be okay. Nothing else was written in this space.

53. Sometime after the co-worker received her copy, the Court's version of the form had been changed. In addition to "prob DL ok," the form in the Court's official file now says, also written on those lines at the bottom, "no alcohol, Bars, Casinos per plea." The form that is currently in the Court's official file was changed sometime after the co-worker received her copy. She was never provided a copy of the changed form. The co-worker is adamant that she was never told that she had to stay out of bars or could not consume alcohol.

54. After the co-worker was stopped by the Sheriff's deputy for DUI at the behest of Captain Burt, the Montana Highway Patrol was called to process the suspected DUI. The officer administered a preliminary breath test using a device that is generally inaccurate and whose result is not admissible in court, commonly called the PBT. That device showed that the co-worker was just over the legal limit.

55. At some point during the arrest, Ms. Pavalone and her co-worker were able to send a few texts back and forth to one another. In the texts the co-worker was able to explain that she was under arrest for DUI, where she was stopped and the deputy who stopped had done so because he was told to do so.

56. The Highway Patrol officer then administered roadside field sobriety tests. Two of three tests he administered indicated that the co-worker was not actually under the influence of alcohol. He then arrested her for DUI and allowed her to make a phone call to arrange for someone to come get her car and personal belongings. The co-worker called Ms. Pavalone, who agreed to find someone to get the car. The co-worker then left her personal belongings, including her purse and phone, in the car. The Highway Patrol Officer never tried to take the purse or the phone, nor did he ever suggest there was any evidence of any kind in the purse or on the phone.

57. The Highway Patrol officer transported the co-worker to the hospital for a blood draw to get a more accurate reading of her blood alcohol level, and then to the jail to be booked in.

58. After being processed at the jail, the co-worker was released and picked up by a bondsman, who delivered the co-worker to Ms. Pavalone's house where her car and personal belongings were. She stayed the night at Ms. Pavalone's.

59. Weeks later, after Ms. Pavalone was terminated, the blood test result came back showing that the co-worker's blood alcohol was under the legal limit. Shortly thereafter the County Attorney's Office dismissed the DUI. The co-worker was completely cooperative with the entire process.

60. Following the arrest, an investigation was initiated by Captain Rio into the behavior of Ms. Pavalone's co-worker's apparent DUI. As part of that investigation the co-worker was questioned by Captain Rio and leadership from the detention facility. Instead of focusing on the behavior of the co-worker, however, Captain Rio focused a substantial part of his questions on Ms. Pavalone, so much so that it caught the attention of the union representative who accompanied the co-worker to the interview.

61. Some days later the co-worker was questioned about the incident again, but this time the focus was overtly on Ms. Pavalone and the interrogation

was conducted by Captain Rio and Lt. Gunter. The co-worker related that the story above, despite being pressed by the interrogators to change her story or to conform it to their pre-conceived beliefs that Ms. Pavalone had violated some unspecified rules or laws.

62. Before questioning of the co-worker had even begun, Captain Rio characterized the interrogation as one in which the co-worker is a "witness to another employee's misconduct," indicating his foregone conclusion and projecting the answers he expected.

63. At approximately 16:45 into the interrogation, with the co-worker having spent less than one minute speaking thus far, the co-worker spoke up to say "I honestly do not remember being told that [that she was not allowed to drink or be in bars] by a judge." Captain Rio immediately interrupted her, prompting the co-worker to say in frustration, "can you let me finish a [expletive deleted] sentence," referring to the number of times she had not been allowed to speak or had been interrupted.

64. At 17:56 of the interrogation, in response to a lengthy story from Captain Rio the co-worker reiterated that she did not recall being told by the judge about alcohol restrictions. Captain Rio demonstrated his disbelief that in the co-worker's claim by reminding her that she remembered what she had to eat that night at the brewery – a turkey avocado sandwich, something he reiterated every

time he disbelieved the co-worker's statements. Captain Rio did not explain how remembering a meal one day is evidence of lying, or not remembering, or not hearing something else on another day.

65. At 26:07 into the interrogation, Captain Rio asserted again that Ms. Pavalone had telephoned the co-worker when she was in the Town Pump to warn her, an assertion the co-worker had already repeatedly denied. When she denied it yet again, Captain Rio responded by saying "that's not true."

66. At 27:48 into the interrogation, the co-worker protested to the interrogators about their repeated insinuations she was lying, saying, "I'm not lying I have no reason to lie. You guys are twisting everything around." Lt. Gunter immediately denied he was twisting words around, and immediately insinuated again that the co-worker was lying.

67. Despite the interrogator's efforts the co-worker continued to insist that Ms. Pavalone had not warned her, that she did not know she was not supposed to drink or be in bars, and that Ms. Pavalone had not told her to do anything that would thwart any investigation.

68. Some weeks later Ms. Pavalone was ordered to present herself for a similar interrogation. Had Ms. Pavlaone not appeared for the interrogation she would have been fired. Similarly, she was not able to refuse to answer questions without risking her job. In that atmosphere, the interrogators, Captian Rio and

Undersheriff Johnson, pursued entirely inappropriate and obviously politically motivated questions. For instance, they pressed Ms. Pavalone on the contents of her private conversations with others, including the co-worker. At one point, the interrogators asked Ms. Pavalone if she had been in contact with former Undersheriff Josh Clark and the basis for that contact. When she affirmed that she had been in contact, they pursued questioning her about how often she had been in contact with him and for what purpose.

69. Without knowing at that time what the co-worker had said, Ms. Pavalone related substantially the same story. She answered the questions fully, as best she could, not remembering all that the interrogators questioned her about, but giving truthful answers whether she was offering information, or saying she did not remember or did not know. She was not bullied or badgered to the degree that the co-worker had been in part because she had her lawyer with her.

70. The termination letter fails to state what exactly Ms. Pavalone did that was obstruction of any kind, or what amounted to advice to be deceitful. So Ms. Pavalone is left only to guess from the investigating officers' insinuations.

71. Ms. Pavalone did not advise her co-worker "to be deceitful with law enforcement officers" as the Sheriff alleged in his termination letter, and is evidenced by the acknowledged fact that her co-worker was not deceitful. Nor does the co-worker say or even suggest that she was told to be deceitful.

72. The co-worker does recall that Ms. Pavalone told her not to say anything, though Ms. Pavalone does not recall saying that and does not believe she did.

73. In any event, reminding a citizen of her constitutional right to remain silent – something law enforcement officers are required to do under law – can hardly be said to be advising someone to be deceitful or to be obstructing justice.

74. The investigating officers insinuated to the co-worker that perhaps the co-worker had illegal substances in her purse and that is why Ms. Pavalone told her to leave her purse and phone in the car, since purses are subject to inventory search at the jail. The co-worker denied having illegal substances and remains indignant about the question. Ms. Pavalone denies that she told the co-worker to leave her purse or phone in the car as the co-worker, being a jail employee, well knew a purse would be subject to inventory search.

75. In any event, an inventory search is an exception to the Constitution's usual warrant requirement that allows law enforcement officers to conduct the kind of rummaging search otherwise prohibited by the Constitution when an item is taken into inventory for purposes of officer safety. It can hardly be said to be obstructing justice or being deceitful to not bring the purse into inventory in the first place, and thereby enjoy the same Constitutional protections that all citizens enjoy, and which these officers also swore to protect and uphold.

76. The investigating officers focused heavily during their interrogations of both the co-worker and Ms. Pavalone on the fact that the co-worker had erased her text messages and her call log from her phone the day after her arrest. The co-worker claimed that Ms. Pavalone told her the next day to do that, though she averred that she did not know why and that she did not "take it to be getting rid of evidence." Ms. Pavalone denied telling the co-worker to erase anything, and supports her denial by noting that she knows that text messages and call logs can be retrieved from the phone company, so it would be pointless.

77. In any event, agents of the government have no right to any citizen's private conversations without a good reason to get them. Here Lt. Gunter admitted to the co-worker that, "There's nothing on your phone that is going to add to that [DUI] case." He was right, but he continued to assert to the co-worker that it was destroying evidence, and neither he nor any other official ever said what it was evidence of.

78. Lt. Gunter did admit to the co-worker during her interview that "there are a bunch of politics going on around Paige," and that "there are some issues in the Sheriff's Department with Paige that have nothing to do with this right here." It is a reasonable inference in light of Lt. Gunter's admissions about politics and the lack of DUI evidence on the cell phone that his and Captain Rio's interest in the

conversations on the phone are related to impermissible political retaliation rather than to any legitimate investigative purpose.

79. This claim cannot stand as grounds for termination.

The Allegations Specifically, Dishonesty and Deletion of Evidence

80. The termination letter does not specify what Ms. Pavalone was dishonest about, or how. In fact, Ms. Pavalone answered every question Captain Rio put to her honestly, and completely, to the best of her ability. Sheriff McDermott terminated her employment for dishonesty despite not being able to specify a single instance of dishonesty.

81. As detailed above, Ms. Pavalone denies “coaching” her co-worker to delete anything from her phone, much less evidence of her actions or counsel. Indeed, there is no reason to believe there was ever evidence of her counsel or actions on the phone. Both Ms. Pavalone and her co-worker related what the missing text messages said, and they did not contain any information that could have been called “evidence.”

82. This claim cannot stand as grounds for termination.

The Pabst letter

83. No law or policy requires that a prosecutor, in the absence of a pending criminal case in which a law enforcement officer is going to be a witness, seek out impeachment material on that law enforcement officer. Moreover, no law

or policy gives a prosecutor authority to determine unilaterally whether law enforcement has made material misrepresentations sufficient to be considered impeachment material. In a letter to Sheriff McDermott, County Attorney Pabst did just that.

84. The specific allegations in the letter, rather than forming a legitimate basis for terminating a person's employment, are blatantly false, irrelevant, and often just a mistake or misunderstanding.

85. In a series of bullet-pointed allegations of dishonesty, Ms. Pabst alleges first that Ms. "Pavalone was not honest when she told Captain Rio that she was unaware that [the co-worker's] driving privileges were suspended as a result of [the co-worker's] recent DUI." As proof Ms. Pabst offers that the co-worker will say that Ms. Pavalone knew about the suspension and that Ms. Pavalone drove her around because of it. She also lists Ms. Pavalone's experience as a deputy making DUI arrests to show that Ms. Pavalone must have known the finer points of DUI sentencing.

86. In fact, the co-worker will testify that she does not recall whom she told or did not tell about her license suspension, but that in general she did not tell people because she was embarrassed. Ms. Pabst did not speak with the co-worker before publishing her allegation to the Sheriff. Ms. Pavalone confirmed during her interview that she did not know about the suspension, and that she has attended

only 1 or 2 DUI sentencings in her career and does not know what usually happens with a driver's license.

87. The next allegation from Ms. Pabst is that Ms. "Pavalone was not candid with Captain Rio when she told him she had invited [the co-worker] to dinner at the Lolo Peak Brewery, omitting that she had invited [the co-worker] to 'dinner and drinkies.'"

88. In fact, Captain Rio asked, "did you say, hey, let's go get dinner, let's go get dinner and drinks...what...do you remember the context of that?" Ms. Pavalone responded, "I don't remember." Ms. Pavalone then added, "it was dinner," with her voice lilting upward, indicating that she remembered it was at least dinner. To suggest Ms. Pavalone was not candid by saying just dinner when she plainly had just said she did not remember in a letter designed to denigrate her is reckless.

89. Additionally, the question is not relevant or material since the interrogation was focused at that point on the DUI, not the exact words spoken that led the parties to the Brewery. Had Ms. Pavalone known the question was relevant and not merely a predicate to the important questions about the DUI, she would have been more precise in her responses.

90. Ms. Pabst's next allegation, also contained within the second bullet point, is that Ms. Pavalone "knew or should have known" that the co-worker was

“similarly prohibited from drinking and being in bars” because a “no alcohol” restriction is typical of DUI sentence.”

91. “[s]hould have known” cannot form the basis of a proof that a person did in fact know something and lied about it. Such an allegation is reckless

92. In fact, not only did Ms. Pavalone not know that the co-worker was not informed she could not drink or be in bars, the co-worker herself was never told that, and did not know that, and repeatedly told the investigators that she was never told. Ms. Pabst recklessly ignored the co-worker’s assertions, and the fact that the altered Justice Court record confirms the co-worker’s version of facts.

93. Ms. Pabst’s next bullet-pointed allegation is that Ms. “Pavalone was not honest when she told Captain Rio that she did not warn Smith that other officers were after her.” Ms. Pabst goes on to detail to what she believes was a warning, that Ms. Pavalone called the co-worker, told her of Captain Burt’s presence, of the patrol car in the area, words to the effect of “something is brewing,” and “proceed with caution.”

94. In fact, when Captain Rio asked at her interrogation if Ms. Pavalone had said something like, “Bill was up to something and he was after you or both of you guys,” Ms. Pavalone responded, “I may have.” She repeatedly said she was not sure of exactly how the brief conversation with the co-worker went, but she acknowledged generally what was said.

95. Nevertheless, neither Ms. Pavalone nor the co-worker agreed with the investigator and Ms. Pabst's assertion that the words amounted to a warning, despite Captain Rio's repeated badgering of the co-worker:

Captain Rio – "So why would Paige be worried if there was black and white, if Bill was talking on the phone, and that there was a black and white speeding through town. What does that have to do with you? Why would she call ya?"

Co-worker – "I don't know. Cause...to warn me? I don't know."

Captain Rio – "All right, but what is she warning you about?"

Co-worker – "That something was brewing? I mean she didn't really say. She's like, hey. She asked if I saw Bill walking. No. And she was traveling in a different direction."

Captain Rio – "She didn't say, hey Angie you know you're not supposed to be driving or you're suspended, or you've been drinking or anything like that. Is that the gist that you took, though, of the warning ... in your conversation?"

Co-worker – "No."

Both Ms. Pavalone and the co-worker's description of the exchange as not a warning is confirmed by the facts on the ground: the co-worker did not take any steps to protect herself; instead she got into her car, drove, was stopped, and cooperated fully in the investigation that showed – as both she and Ms. Pavalone knew – that she was not under the influence of alcohol.

96. Ms. Pabst's assertion that Ms. Pavalone lied is false and reckless.

97. Ms. Pabst's next accusation is that Ms. "Pavalone was not honest when she told Captain Rio that after leaving the Lolo Peak Brewery behind [the co-worker] that Pavalone went 'home with Frank and the baby.' When confronted about traveling in a direction away from her home, Pavalone then said she'd gone the other way to rent a Redbox movie, which was also untrue. According to Redbox records, Pavalone had not rented a Redbox movie for the past several months."

98. The question itself is entirely irrelevant and immaterial, and Ms. Pabst's description is false. In fact, Ms. Pavalone was asked by Captain Rio, "when you were parked at the stop light...did you just go straight home." Ms. Pavalone responded, "I stopped to get a movie at Netflix, at the other Town Pump....Or not Netflix, I'm sorry, The Redbox."

99. Ms. Pavalone was never "confronted" about traveling in another direction, nor was she asked or did she say whether or not she actually rented a movie. If she had known the question was relevant or a set-up she would have been more precise in her answer.

100. Ms. Pabst's failure to be precise or even correct in her accusation, knowing it was designed to take away Ms. Pavalone's career, was reckless.

101. Ms. Pabst's next accusation was that Ms. "Pavalone was not honest when she told Captain Rio about when she talked to [the co-worker] during the co-worker's stop for the second DUI. Pavalone claimed [the co-worker] was about to perform the SFSTs but phone records show that the only call between the two of them was after [the co-worker] was already under arrest."

102. Like the others, this alleged lie is not relevant or material. Moreover, it is undisputed that Ms. Pavalone was not at the scene. If she was mistaken about what was happening at the scene, it was because she was mistaken, not lying. It is false and reckless to claim this as dishonesty or that there would be a necessity to provide this incident to defense counsel in a criminal trial.

103. Pabst's next allegation is that Ms. "Pavalone was not honest when she told Captain Rio that she confronted [the co-worker] during that phone conversation, told [her] to stay distant...." As evidence that Ms. Pavalone did not stay distant, Ms. Pabst offered the fact that Ms. Pavalone arranged to take care of the [co-worker's] car and belongings including her purse and phone, saying that Ms. Pavalone, "gave [the co-worker] specific advice and assistance regarding the stop and what [the co-worker] should do."

104. In fact, both the co-worker and Ms. Pavalone agree that Ms. Pavalone did say they would have to be distant on this issue, and that in fact over the next several weeks they did not have contact with each other. Ms. Pabst is reckless to

characterize as “dishonest” in a letter she knows is going to ruin Ms. Pavalone’s career her interpretation of what is to confront a friend and to stay “distant.” One can help a friend with her personal belongings during a tough time and still remain “distant.”

105. In Ms. Pabst’s final bullet-pointed example of dishonesty she claims Ms. “Pavalone was not honest when she denied telling the [co-worker] to erase her text messages and phone logs.” As proof that Ms. Pavalone lied, Ms. Pabst offers only that [the co-worker] recalled that Ms. Pavalone said she should erase that material.

106. Ms. Pavalone denies that she told her co-worker to erase that information and even the co-worker cannot explain why Ms. Pavalone might have told her to do that since, “nothing negative was said.” Moreover, questions about personal conversations or text messages, off-duty, that have even by Lt. Gunter’s admission have no evidentiary value, are irrelevant and immaterial.

107. Just a week after her firing, on April 20, 2015, the Sheriff’s Office provided a press release to local media that informed them of Ms. Pavalone’s firing, and asserting that it was because Ms. Pavalone had been dishonest and placed on the County Attorney’s “Brady list.” The press release stated, “Based on violations of her oath to office, the law enforcement code of ethics and the likelihood she would be impeached as a witness upon disclosure by the prosecutor

that her name appears on a 'Brady list,' the sheriff has determined that Pavalone can no longer effectively serve in the capacity of deputy sheriff."

108. Missoula County Human Resource Director, Patty Baumgart was interviewed by the local newspaper and said, "Certain information she provided to Capt. (Tony) Rio proved not to be accurate and proved to be false." She was also quoted by the newspaper as saying that Ms. Pavalone was "untruthful."

109. The press release was also disseminated to and covered by all the local television and news radio stations. There was never any attempt by anyone in County government to disavow their quotes or the allegations they had released.

COUNT I: WRONGFUL TERMINATION OF SHERIFF'S DEPUTY

110. Plaintiff re-alleges and restates all of the allegations contained in the preceding paragraphs.

111. Sheriff McDermott , the Missoula County Sheriff's Office and Patty Baumgart, terminated plaintiff Paige Pavalone by letter on April 13, 2015, alleging that the performance of her official duties was grossly inefficient, language from MCA 7-32-2107, Tenure for deputy sheriffs -- grounds for termination of employment.

112. The reasons cited by the letter, however, do not satisfy the statute. The reasons cited are wrong and insufficient to warrant termination.

113. By terminating Ms. Pavalone without sufficient reason or without supported reasons, they have violated Ms. Pavalone's rights under MCA 7-32-2107.

COUNT II: WRONGFUL DISCHARGE

114. Plaintiff re-alleges and restates all of the allegations contained in the preceding paragraphs.

115. Sheriff McDermott , the Missoula County Sheriff's Office and Patty Baumgart, terminated plaintiff Paige Pavalone by letter on April 13, 2015, alleging a number of causes which were false or unreasonable.

116. By terminating Ms. Pavalone's employment without good cause they have violated Ms. Pavalones' statutory right to be discharged only for good cause. MCA 39-2-904(b).

COUNT III: ILLEGAL DISCRIMINATION BECAUSE OF POLITICAL BELIEFS

117. Plaintiff re-alleges and restates all of the allegations contained in the preceding paragraphs.

118. Sheriff McDermott , the Missoula County Sheriff's Office and Patty Baumgart, terminated plaintiff Paige Pavalone by letter on April 13, 2015. The reasons given are in the letter are not supported by fact. Additionally, Sheriff McDermott and other members of the Sheriff's Office treated Ms. Pavalone badly,

questioning her, ostracizing her, and otherwise making her work environment hostile and unbearable

119. The real reason for terminating Ms. Pavalone's employment, and for treating her badly was because she had been a supporter of Josh Clark for Sheriff, the unsuccessful candidate for Sheriff against the eventual winner, Sheriff McDermott. The termination and abuse were political retaliation for her political beliefs in violation of MCA 49-2-308(c).

COUNT IV: ILLEGAL DISCRIMINATION BECAUSE OF SEX

120. Plaintiff re-alleges and restates all of the allegations contained in the preceding paragraphs.

121. Sheriff McDermott, the Missoula County Sheriff's Office and Patty Baumgart, terminated plaintiff Paige Pavalone by letter on April 13, 2015. The reasons given in the letter are not supported by fact. Additionally, Sheriff McDermott and other members of the Sheriff's Office treated Ms. Pavalone badly, questioning her, ostracizing her, and otherwise making her work environment hostile and unbearable.

122. Other political opponents also were punished by Sheriff McDermott for their political beliefs. However, only Ms. Pavalone, the only woman, was actually terminated. The greater abuse she suffered was because she is a woman, in violation of MCA 49-2-303(a).

COUNT V: TORTIOUS INTERFERENCE WITH EMPLOYMENT

123. Plaintiff re-alleges and restates all of the allegations contained in the preceding paragraphs.

124. Following Ms. Pavalone's termination the Missoula County Sheriff's Office, Sheriff McDermott, Patty Baumgart and Kirsten Pabst publicly called Ms. Pavalone a liar and alleged that she was therefore no longer fit to work as a deputy sheriff or for Missoula County, allegations that are not supported in fact.

125. By making that claim about Ms. Pavalone they effectively destroyed any chance that Ms. Pavalone has to ever again be employed in law enforcement, or because no employer in any field will hire a known liar, have effectively destroyed any chance she has to be employed at all. Making those allegations against Ms. Pavalone was willful and reckless, and designed to cause her harm.

COUNT VI: LIBEL

126. Plaintiff re-alleges and restates all of the allegations contained in the preceding paragraphs.

127. Following Ms. Pavalone's termination the Missoula County Sheriff's Office, Sheriff McDermott, Patty Baumgart and Kirsten Pabst published by letter and press release, disseminated publicly, documents which called Ms. Pavalone a liar and alleged that she was therefore no longer fit to work as a deputy sheriff or for Missoula County, allegations that are not supported in fact.

128. The allegations were false and unprivileged.

129. By making that claim about Ms. Pavalone they effectively destroyed any chance that Ms. Pavalone has to ever again be employed in law enforcement, or because no employer in any field will hire a known liar, have effectively destroyed any chance she has to be employed at all. Making those allegations against Ms. Pavalone was willful and reckless, and designed to cause her harm.

130. Their actions violated MCA 27-1-802.

COUNT VII: SLANDER

131. Plaintiff re-alleges and restates all of the allegations contained in the preceding paragraphs.

132. Following Ms. Pavalone's termination the Missoula County Sheriff's Office, Sheriff McDermott, Patty Baumgart and Kirsten Pabst published by letter and press release, disseminated publicly, documents which called Ms. Pavalone a liar and alleged that she was therefore no longer fit to work as a deputy sheriff or for Missoula County, and alleged she had committed crimes, allegations that are not supported in fact.

133. The allegations were false and unprivileged.

134. By making that claim about Ms. Pavalone they effectively destroyed any chance that Ms. Pavalone has to ever again be employed in law enforcement, or because no employer in any field will hire a known liar, have effectively destroyed

any chance she has to be employed at all. Making those allegations against Ms. Pavalone was willful and reckless, and designed to cause her harm.

135. Their actions violated MCA 27-1-803.

COUNT VIII: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

136. Plaintiff re-alleges and restates all of the allegations contained in the preceding paragraphs.

137. Following Ms. Pavalone's termination the Missoula County Sheriff's Office, Sheriff McDermott, Patty Baumgart and Kirsten Pabst published by letter and press release, disseminated publicly, documents which called Ms. Pavalone a liar and alleged that she was therefore no longer fit to work as a deputy sheriff or for Missoula County, and alleged she had committed crimes, allegations that are not supported in fact.

138. The allegations were false and unprivileged, and committed intentionally and wantonly, designed to cause Ms. Pavalone emotional distress.

139. By making and disseminating those claims about Ms. Pavalone, the defendants have in fact caused Ms. Pavalone substantial and severe emotional distress which continues.

COUNT IX: NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

140. Plaintiff re-alleges and restates all of the allegations contained in the preceding paragraphs.

141. Following Ms. Pavalone's termination the Missoula County Sheriff's Office, Sheriff McDermott, Patty Baumgart and Kirsten Pabst published by letter and press release, disseminated publicly, documents which called Ms. Pavalone a liar and alleged that she was therefore no longer fit to work as a deputy sheriff or for Missoula County, and alleged she had committed crimes, allegations that are not supported in fact.

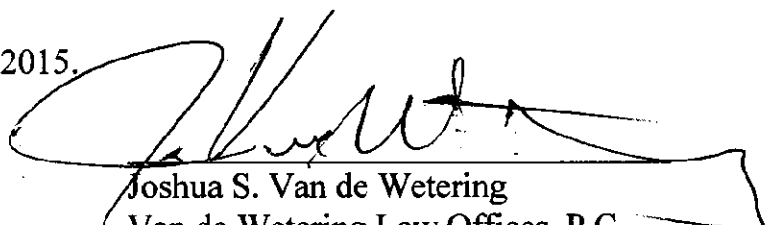
142. The allegations were made negligently, in violation of the duty of care the defendants owed to Ms. Pavalone to avoid causing her substantial and severe emotional distress.

143. By making and disseminating those claims about Ms. Pavalone, the defendants have in fact caused Ms. Pavalone substantial and severe emotional distress which continues.

WHEREFORE Plaintiff prays for relief as follows:

1. Damages in an amount to be proven at trial;
2. Reasonable attorney's fees and costs;
3. Costs of the suit; and
4. Such other relief that this Court may deem just.

DATED this 13th day of May, 2015.




Joshua S. Van de Wetering
Van de Wetering Law Offices, P.C.

DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff and demands a jury trial on all issues of fact in
the above case.

DATED this 13th day of May, 2015.


Joshua S. Van de Wetering
Van de Wetering Law Offices, P.C.