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**MONTANA DEPARTMENT OF LABOR & INDUSTRY
EMPLOYMENT RELATIONS DIVISION
HUMAN RIGHTS BUREAU**

CAPTAIN MIKE DOMINICK, Charging Party, vs. MISSOULA COUNTY SHERIFF TERRY J. MCDERMOTT, and the COUNTY OF MISSOULA, MONTANA, Respondent.	HRB Case _____ <i>HUMAN RIGHTS COMPLAINT</i>
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Pursuant to MONT. CODE ANN. § 49-2-501, Captain Mike Dominick, through his attorneys, complains to the Human Rights Bureau, Employment Relations Division, Montana Department of Labor and Industry, as follows:

I.

CHARGING PARTY

1. Captain Mike Domnick (Capt. Dominick), c/o **RHOADES & SIEFERT, P.L.L.C.**, 430 N. Ryman, 2nd Floor, Missoula, Montana 59802; 406-721-9700.

II.

RESPONDENTS

2. Terry J. McDermott (McDermott), Missoula County Sheriff, 200 W. Broadway, Missoula, MT 59802; 406-258-4810.

3. Missoula County, a subdivision of the State of Montana, c/o Board of County Commissioners, Missoula County Courthouse, 200 West Broadway Street, Missoula, MT 59802; (406) 258-4877.

III.

FACTS

A.

Captain Dominick's Exemplary Career

4. Prior to attending the Montana Law Enforcement Academy, Capt. Dominick served thirteen years in the United States Air Force. When he left the service he was a Major.

5. In 1993, Capt. Dominick graduated from the Montana Law

Enforcement Academy and was hired by Lake County Sheriff's Office. He was a patrol deputy and Special Response Team (SRT) leader. He left Lake County in 1996 to move to Missoula.

6. In 1996, Capt. Dominick was hired as a patrol deputy with Missoula County. He also served as an SRT team member, and search and rescue assistant coordinator. In 2000, he was promoted to Detective where he served 10 months in property crimes section. He was Vice President, then President, of the Missoula County Deputy Sheriff's Association during this time frame. He served as a Member of Missoula County Critical Incident Management Team and still does to present day. In 2000, he was promoted to Senior Deputy II. In 2001, he was promoted to Sergeant and SRT Assistant team leader.

7. In 2002, Capt. Dominick was promoted to Undersheriff under Sheriff Mike McMeekin. In this position he was responsible for budget and personnel issues, which included Internal Affairs investigations department wide. He was responsible for the investigation and termination of four deputy sheriffs and about ten detention officers for misconduct. He also served as the SRT team commander.

8. In 2007, Capt. Dominick resigned as Undersheriff and returned to his tenure as a patrol sergeant.

9. In 2010, he was promoted to Undersheriff for Sheriff Carl Ibsen. He conducted internal affairs investigations until 2011 when the Sheriff's department created a Professional Standards division. He oversaw investigations resulting in the termination of one deputy sheriff and the termination or discipline of four detention officers for misconduct.

10. In 2012, Capt. Dominick requested a transfer to the Captain of Detectives position. This was his dream job. He prepared his whole career for this position. There he led a ten person detective division where he personally conducted numerous investigations both in Missoula County and others including sensitive internal or conflict of interest cases for the Missoula Police Department/ Polson Police Department and Lake County

Sheriffs Office. He led the investigation into an Attempted Homicide, Robbery resulting in a guilty plea. He also led the investigation into a homicide resulting in the arrest of both suspects and prison sentences.

11. During this time he also served as Chief Deputy Coroner. He managed 225 cases per year and was responsible for oversight of 12 deputy coroners.

12. Capt. Dominick is known in the Sheriff's Office as an expert with interrogation and interviewing suspects and has hundreds of hours of training in these areas. During the last group of major crimes Capt. Dominick got 5/6 confessions, which was a confession from every subject that was willing to speak to police. Capt. Dominick has a 90% confession rate. As his colleagues in the Sheriff's Office are fully aware, Capt. Dominick has no attributes, training or interest in evidence collection.

B.

McDermott's Human Rights Complaints

13. On August 9, 2013, McDermott filed a human rights complaint against the Missoula County Sheriff's Office, Sheriff Carl Ibsen, and Captain Mike Dominick, alleging discrimination and retaliation on the basis of political belief.

14. Capt. Dominick filed an HRB response and supplemental response adverse to McDermott's complaint, denying a number of material facts cited in the complaint and describing McDermott's qualifications and the many valid management reasons why McDermott was not and should not have been promoted ahead of others with better qualifications, more reliable temperament and better professional judgment.

C.

2014 Sheriff's Election

15. The 2014 Sheriff's election in Missoula County was extremely bitter and divisive. Candidate T.J. McDermott spent a great deal of time between 2012, when he apparently decided to run for the office, and the November 2014 election engineering complaints against the department and suing the sheriff and staff.

16. In Spring 2011, McDermott became angry with both Sheriff Ibsen and Capt. Dominick after he finished third-out-of-four applicants in a competitive application for Detective Lieutenant in 2011. McDermott was promoted to Sergeant in 2011. Another Detective Lieutenant position came open in 2013, McDermott ranked third-out of-four once again and largely blamed Capt. Dominick, blaming him for not getting the promotions and calling Capt. Dominick a "liar" to Capt. Dominick's face. The promotion boards consisted of three of four Captains and the Undersheriff, with the Sheriff making the final decision. No one person other than the Sheriff can control the result. In all three promotions the Sheriff took the board's recommendation. This was the basis for McDermott's HRB complaint against Capt. Dominick.

17. Capt. Dominick had several specific reasons he did not believe that McDermott would be a good sheriff. Therefore, during the election he consulted with Missoula County Human Resources and advised them that he was going to be active in any campaign against him, but that he would be careful to stay within county policy and he did so throughout the election. Capt. Dominick did so, specifically, to make sure that he understood the County policy on his ability to participate in the election, and he wanted to make sure he was in compliance with the County's policies at all times.

18. Capt. Dominick had five major reasons that he did not believe McDermott has the character to be Sheriff. All five reasons are objective, and none are personality driven.

- a. In early 2004-2005 McDermott's patrol sergeant was accused of physically abusing a citizen during a traffic stop. McDermott was present when the incident occurred. McDermott claimed to have been looking in a different direction and saw nothing. His Patrol Capt. (Ibsen) believed he was not being truthful. McDermott's practice, as a deputy, of the Code of Silence to protect deputies from the consequences of their conduct reflects a dishonorable character, and undermines his authority as Sheriff.
- b. In late 2004, Josh Clark reported to the Patrol Capt. (Ibsen) that TJ McDermott had advised him that another deputy told McDermott that he had sex with a female he picked up on the street and brought into the office. Capt. Ibsen interviewed McDermott; McDermott told the Capt. that he did not know anything about it. Again, the Code of Silence prevailed. Capt. Ibsen believed that McDermott was lying; the reporting deputy, Clark, had no reason to make up the conversation. The offending deputy was terminated for misconduct for this incident and others.
- c. In 2012, a deputy was investigated for having a coerced sexual relationship with a 16-17 year old high school student. The deputy was charged with and plead guilty to official misconduct and unlawful transactions with minors, and was terminated for cause. A charge of prostitution was dropped for the plea bargain. Inexplicably, McDermott advocated the outrageous idea the deputy should be given a second chance, be suspended for a period, given counseling and returned to duty.
- d. In 2014, Capt. Dominick was advised by a Public Defender Investigator that while at the Missoula Police Dept. McDermott had been found to have lied in an investigation of one of his clients. The prosecutor was shown the evidence and prosecution was dropped.

- e. McDermott was routinely late in paying Missoula County property taxes, in the thousands of dollars. This conduct is unbecoming someone who wishes to represent the County as its chief law enforcement officer, it undermines his authority and public respect for not only the Sheriff's Office, but also all the sworn deputies and civilian staff who serve there.

19. For these reasons, Dominick campaigned for candidate Josh Clark, including being in television commercials and writing a letter to the editor at the *Missoulian* newspaper. The primary election ended in June with Sgt McDermott defeating Clark and Parcell and moving on to the general election in November 2014.

D.

The Transition Period

20. In the July 2014, both McDermott and his announced Undersheriff, Jason Johnson, began requesting transition meetings and advice from current staff. In late July, Capt. Dominick asked Johnson if he would like to discuss the transition and offered Johnson advice on how to approach the move to undersheriff based on Capt. Dominick's experience in the position for two different sheriffs. They sat in Capt. Dominick's office and spoke for about two hours; it was an amicable, professional meeting. They discussed schools Johnson should attend, the coroner program, budgeting, and personnel. They spoke about the Internal Affairs function, and Johnson told Capt. Dominick that the new Sheriff planned to do away with the Professional Standards Office. Johnson would now be doing it himself.

21. Capt. Dominick gave Johnson examples of policies that could use improvement. Capt. Dominick offered advice how to investigate or monitor allegations of misconduct that were reported anonymously by those fearful of making an official complaint or were late in reporting. Capt. Dominick explained a particular instance of information that the Sheriff's

office had recently received from an informant that one of the informant's associates claimed to have sold cocaine to a Sheriff's office patrol sergeant. The associate was not willing to come forward. Capt. Dominick told Johnson that the Sheriff's office had never heard anything like that about this particular patrol sergeant, but it was something to remember in case the dealer came forward or similar information was reported in the future from other sources. Capt. Dominick also told Johnson he did not credit the report, and that he had no reason to believe the allegation to be true, but, from an internal affairs perspective, it was something that needed to be monitored.

22. Capt. Dominick also told Johnson, from, again, a confidential internal affairs perspective, that the Sheriff's office would one day most likely face issues with another deputy, since that deputy had told lies and distortions during two Human Rights cases that were beneficial to McDermott's campaign, and that the deputy would therefore believe McDermott owed him a debt. Capt. Dominick told Johnson that the deputy in question wanted anyone that knew about his past and current conduct fired from the Sheriff's Office. Capt. Dominick then explained to Johnson the particular deputy's background.

23. The activity of the deputy centered around complaints of improprieties with females causing this deputy's termination from two different departments, accusations of a sexual relationship with a young cadet, reports of sexual activity going on in the deputy's car outside two different local businesses, unwanted sexual advances to a county employee, and the last and most recent: having teammates hold a woman at a traffic stop because he recognized her from Facebook and wanted to meet her. Although the complaints were late coming in, and were unsigned, the accumulation demonstrates a very disturbing pattern of behavior and Capt. Dominick wanted to inform Undersheriff Johnson that they needed to be monitored.

24. Capt. Dominick told Johnson that even though the Sheriff's Office did not have any signed complaints against the deputy at this time, eventually someone would sign a complaint or go public, and then a

cascade of complaints would likely follow regarding the deputy. Capt. Dominick opined that eventually the deputy's conduct would become a public relations nightmare for the Sheriff's Office. Capt. Dominick warned Johnson that he feared the deputy's activities would eventually result in liability for Missoula County. Capt. Dominick offered the advice that Johnson's new internal affairs role would require that he monitor this issue with the deputy, and that the situation constituted a substantial risk to morale in the Sheriff's Office, as well as the confidence and safety of the public.

25. Capt. Dominick learned within days that after the transitional meeting that McDermott was extremely angry with Capt. Dominick for breaking the Code of Silence. McDermott told staff that Capt. Dominick should not inform his future Undersheriff anything Capt. Dominick had learned about the deputy since it was confidential personnel information. Staff in the Sheriff's office were flabbergasted that McDermott would stick his head in the sand on such a sensitive issue. They patiently explained to McDermott that, yes, it was appropriate for him to know the details of all internal affairs issues, since, when he took over as Sheriff, he would be responsible to the public for resolving them. Capt. Dominick was disappointed (if not surprised) that instead of speaking with him, or investigating the issues with other current staff members, McDermott immediately went to the deputy in question and told him Capt. Dominick's was "saying bad things about him."

26. In late July, early August, 2014, a senior staff member advised Capt. Dominick of statements by the then future Undersheriff, Johnson, made to at least two detention officers at the Law Enforcement Youth Camp. According to Detention staff, Johnson told them that "Dominick is going to be Captain of the Warehouse, so that he will be out of the way." Two detention officers then later came in to report these disconcerting statements to Undersheriff Josh Clark.

27. On December 4, 2015, Capt. Dominick was speaking with a staff member about transition issues when the staff member told Capt. Dominick that Johnson had recently said Capt. Dominick would be

"Captain of the Warehouse" and would be processing crime scenes since they did not want Capt. Dominick around.

28. A department member, Chaplain Chuck Lee, advised Capt. Dominick that in a meeting with Sheriff McDermott, McDermott told him that Capt. Dominick "needed to be punished," and that the punishment was being pushed by Cpts. Burt and Rio. McDermott explained to the Chaplain that Capt. Dominick could "work his way back downtown from the warehouse."

E.

Missoula County's Complicity

29. A couple days after the primary election in June 2014, hoping to find a constructive way to move forward with professionalism, Capt. Dominick went to see HR Director Patty Baumgart for advice. Capt. Dominick told her that he thought he would have to retire since he did not trust the future Sheriff. She encouraged Capt. Dominick to reconsider and described Capt. Dominick as "a paragon of strength within the Sheriff's Office." Capt. Dominick went back to his office and over the next few days spoke with his wife, friends, and colleagues.

30. A few days after the first meeting Capt. Dominick went back and told Ms. Baumgart that he had reconsidered and that he was going to stay and try to work with the new team. On August 5, 2014, Capt. Dominick emailed Ms. Baumgart when he heard about the July and August discussions about his future, and asked her if she was willing to monitor it and not tell McDermott, since the request would cause Capt. Dominick more problems with the newly elected Sheriff. Ms. Baumgart agreed, and assured Capt. Dominick of her confidence, except that she needed to inform Steve Johnson, her boss.

31. Within days Capt. Dominick found out that Ms. Baumgart had divulged these confidences to McDermott and Jason Johnson. McDermott complained to Undersheriff Josh Clark, during a transition meeting

between the two in August 2014, about Capt. Dominick's contact with Ms. Baumgart. McDermott said Ms. Baumgart told him that Dominick said "I won't work for the son of a bitch," then came back a few days later and told her that he was staying to make McDermott's term "a living hell."

32. This is not remotely what Capt. Dominick said to Ms. Baumgart. Capt. Dominick felt horribly betrayed by Ms. Baumgart and went to see Missoula County Chief Operating Officer Steve Johnson to voice his concerns. Steve Johnson told Capt. Dominick that Ms. Baumgart should not be divulging to McDermott private conversations of this nature, and that he, Steve Johnson, had expected the email from Capt. Dominick to Patty Baumgart regarding Dominick's concerns to be confidential. On August 15, 2014, Capt. Dominick received a follow-up email from Ms. Baumgart, wherein she rationalized that she had shared only part of Capt. Dominick's email with Jason Johnson.

33. In September 2014, Josh Clark filed as a write in candidate for Sheriff. Capt. Dominick appeared at functions with him and endorsed him once again. Clark lost the campaign.

34. After the election, during the month of November, 2014, Commissioner Jean Curtis, McDermott's campaign manager, did a walkthrough of the Sheriff's Office. She asked a staff member about a video system for the criminal interview rooms. The staff member had no answer and later asked Capt. Dominick. He walked over to the Commissioner's office and met with Commissioner Curtis. Capt. Dominick explained what system the Sheriff's office was buying and why they were purchasing it. Capt. Dominick had known Commissioner Curtis since she was originally elected, and felt comfortable in making small talk with her. Capt. Dominick told her that there were a lot of hard feeling over the election and they were all working hard to get past it. Capt. Dominick thought he was speaking in a positive manner. She responded "Mike, you can retire," in a manner that suggested someone had told her Capt. Dominick should retire. She seemed very surprised when Capt. Dominick told her that he planned on working for Missoula County at least another 4 years. It was apparent from the tone and context of the conversation that someone from the Sheriff's Office had

already discussed the need for Capt. Dominick's retirement with the County Commissioners. Capt. Dominick believes it was Sheriff McDermott.

35. Despite Capt. Dominick's attempts to warn the County about Sheriff McDermott's conduct, and to seek guidance and support from Missoula County officials, he was still exiled to the Warehouse on December 31, 2014. The County joined in punishing Capt. Dominick for publically campaigning against McDermott in the election. The punishment continues to this day.

F.

Captain of the Warehouse

36. About two weeks before he was sworn in as Sheriff, McDermott came to Capt. Dominick's office and asked if they could meet privately in McDermott's office. Capt. Dominick complied. McDermott inquired with Capt. Dominick what role he would like to fulfill in the Sheriff's Office. McDermott told Capt. Dominick that he wanted Capt. Dominick to remain the Chief Deputy Coroner. McDermott then spoke of the possibility of creating a Coroner's Unit. McDermott told Capt. Dominick that when he got the manpower, he wanted Capt. Dominick to lead it and pick two people to assist. Capt. Dominick explained that the two positions for investigators would have to be posted with the association and that a board of at least Capt. Dominick and the Undersheriff should recommend them. Capt. Dominick explained that the Coroner's Unit would have to be in the main Sheriff's Office since that was where the files were and that is where bereaved families seek information and request meetings. They discussed the special qualifications and skill-sets needed by the investigators. McDermott seemed in earnest, and Capt. Dominick believed him. McDermott never mentioned anything about his decision to assign Dominick to a new role as supervisor of the Secure Evidence Facility or leading crime-scene investigations – or what Johnson had been mocking as "Captain of the Warehouse."

37. On December 30, 2014, just prior to McDermott being sworn in

as Sheriff, Johnson asked Capt. Dominick for a meeting in McDermott's office. When Capt. Dominick complied, McDermott handed him a sheet of paper advising Capt. Dominick that he had been selected to lead the Secure Evidence Facility – known commonly as “the Warehouse.” Capt. Dominick would no longer be Captain of Detectives. Capt. Dominick explained how it would be almost impossible for him to function as the Chief Deputy Coroner from out at the warehouse, when all the information he would need for the difficult and stressful task would be located downtown. After the meeting, Capt. Dominick felt he was being punished for his past opposition to McDermott, and followed up with an email to Undersheriff Johnson. Capt. Dominick told Johnson that the new plan was fraught with needless and unwise difficulty, and feared McDermott was purposely setting Capt. Dominick up for failure. Johnson never responded or otherwise denied Capt. Dominick's suspicion. McDermott told Capt. Dominick he would temporarily act as chief deputy coroner until the coroner unit was created and then he could reapply for the job.

38. On December 31, 2014, Sheriff McDermott had his first staff meeting, Capt. Dominick was officially removed as Captain of Detectives where he previously had a staff of ten, a corner office in the Courthouse, and a successful track record. Capt. Dominick was publicly called-out and told to “report to the warehouse,” where there would be no supervisory functions and little else to do. The deputies and staff was provided a new department flow chart which also detailed Capt. Dominick's role as the sole individual in this function. McDermott could only have intended that Capt. Dominick would be humiliated to be “warehoused” in front of his colleagues.

G.

McDermott's Enemies List

39. Capt. Dominick's treatment is part of McDermott's pattern, practice or policy of maintaining an “enemies list” of those who either opposed or even did not actively support McDermott's campaign for Sheriff

during the primary and general elections. McDermott has in the short time since taking office subjected at least five sworn deputies to this treatment, three of whom have worked the internal affairs or professional standards function at Missoula County since 2002. Capt. Brad Giffin felt pressured to leave when they told him his position in Professional Standards would be eliminated. Undersheriff Clark, the former Capt. of Professional Standards, was demoted to patrol deputy, and stuck on the night shift. Capt. Taylor was terminated as Captain of Patrol and moved over to the newly created position of "Administrative Captain" to perform non-law enforcement functions previously handled by a civilian employee. Former Deputy Pavalone was demoted from public information officer, labeled "Brady impaired," and then fired. Capt. Dominick, despite his expertise, leadership and years of service with distinction, has been banished to Captain of the Warehouse, in a remote building behind the jail, and given a low-level, non-supervisory job best suited to an evidence technician.

40. National guidelines recommend that non-sworn personnel supervise the secure evidence facility so that an interested person is not in charge. Having Capt. Dominick in charge of the warehouse could be a conflict since he has collected evidence of crimes and then is the person in charge of the storage of the evidence. McDermott gives his enemies list priority over good management.

41. McDermott's enemies list is intended to both punish its unfortunate members, and to set an intimidating example for others who in the future might consider fail to actively support his political ambitions.

42. In this case, McDermott is pursuing his enemies list policy by attempting to humiliate Capt. Dominick, and to otherwise create an impossibly difficult work environment for him. For example, from January through April, 2015, McDermott dangled to Capt. Dominick command of the HIDTA task force. Capt. Dominick twice discussed it with McDermott and Johnson, both of whom encouraged him to apply. Capt. Dominick did so in writing, but the prospect only lingered for months. Then Sheriff McDermott sent Capt. Dominick an email, on the day he left for a two-week vacation, denying his HIDTA request.

43. McDermott made changes to the coroner's unit in early 2015, in another effort to create an impossible work environment for Capt. Dominick. Prior to McDermott, Capt. Dominick had 12 coroners under him, and they would rotate taking coroner's calls, to give one another essential relief from work that is highly stressful. In January, Capt. Dominick was directed by McDermott, that he was to be on call for Coroner duty during his entire four day, 40 hour work week. During this time period he took every coroner call that came in between 6:00 o'clock, a.m., and 4:00 o'clock, p.m. At this time the department was short shift coroners so Capt. Dominick stepped up to help. During a March meeting to discuss a transfer to HIDTA, Capt. Dominick told both McDermott and Johnson that he could not keep doing it, the stress was too overwhelming for one person to do by himself. They assured him that they expected to make the HIDTA transfer work. McDermott later told Capt. Dominick that he wanted to seek approval of the HIDTA transfer from the Deputy's Association. His proxy, Lt. Jon Gunter, then lead a fight in the Association to prevent the transfer and it was denied.

44. In late April, 2015, Capt. Dominick spoke with Undersheriff Johnson and told him again that he could not keep taking all the coroner cases by himself, the stress was overwhelming and it was "killing him." Johnson advised that since Capt. Dominick had trained new shift coroners that he did not have to. The day after Capt. Dominick sent a preservation letter to the County Attorney's office, on April 29, 2015, indicating that this Human Rights Complaint was going to be filed, Capt. Dominick was ordered to once again be on call coroner for his entire working days along with his scheduled on call rotation. Capt. Dominick wrote a letter to the Sheriff telling him for the third time of the personal and overwhelming toll this was taking on his mental and physical health. At this time, the Sheriff has finally relented because he learned of this lawsuit.

45. Another problem Capt. Dominick has voiced to Sheriff McDermott and Undersheriff Johnson is that meeting with families of the deceased is a critical role for the chief deputy coroner. These meetings are private and best done in an intimate setting. In the past, Capt. Dominick

would meet with families personally at his office. The public now has to go to the jail to see Capt. Dominick. They cannot meet with him in his office because it is part of a secure evidence facility. The public is not comfortable meeting with Capt. Dominick at the jail. In punishing Capt. Dominick, McDermott is punishing the public.

46. Sheriff McDermott's proxy, Detective Lt. Gunter asked Capt. Dominick at least twice in the last three months if he was going to sue the department. Capt. Dominick told Lt. Gunter that if Dominick felt he was not being treated fairly he would have to sue. Lt. Gunter told Capt. Dominick that Dominick had "made his bed" during the election by writing the letter to the editor, and if Capt. Dominick sued he would be all alone and no one in the County would support him. Lt. Gunter was handpicked by Sheriff McDermott to replace Capt. Dominick, has been placed in Capt. Dominick's prior office and is waiting for Capt. Dominick to leave or be forced out to be given Capt. Dominick's spot as a Captain.

47. Several days after the County was given notice of the forthcoming HRB complaint, McDermott ordered Capt. Dominick to complete a 100% audit of the Evidence Facility. McDermott gave him a deadline of June 1, 2015 to have the audit completed, which McDermott knows is completely impossible, once again setting Capt. Dominick up to fail. National guidelines for secure evidence facilities recommend outside audits, with a staff of at least four people for a facility of the size of the Missoula evidence facility. As a member of McDermott's enemies list, Capt. Dominick was given an impossible task to complete alone, on short notice, with an unrealistic deadline, to punish him and set an example for others.

V.

LAW AND ANALYSIS

A.

Unlawful Discrimination

48. To establish a prima facie case of discrimination, in violation of MONT. CODE ANN. §§ 49-2-303 and 308, Capt. Dominick need show only that:

- (a) He is a member of a protected class;
- (b) He was qualified for the job;
- (c) McDermott and the County took adverse action against him; and
- (d) Evidence establishes a reasonable inference that Capt. Dominick was replaced by someone outside of his protected class.

49. *Capt. Dominick is a member of a protected class.* Employees of political subdivisions of the State of Montana, like Missoula County, are protected under Mont. Code Ann. § 49-2-308(1)(c), with respect to their political beliefs and activities. Capt. Dominick support of McDermott's opponent in the election for Sheriff, Josh Clark, and his opposition to McDermott, establishes his membership in a protected class.

50. *Capt. Dominick was qualified.* Capt. Dominick was thoroughly qualified for his captaincy of Detectives, having served as both Captain of Detectives and as Undersheriff. Capt. Dominick was known for being the person in the Sheriff's department who could elicit confessions. He had more than adequate training and an exemplary personnel record.

51. *McDermott took adverse action.* McDermott summarily and immediately punished Capt. Dominick by making him the "Captain of the Warehouse," a made-up position, where he, as the senior-most Captain, who is paid the most in salary, has thousands of training hours, and has particularized skills in eliciting confessions from the criminally accused now spends his days in a remote location mopping the floors, and cleaning restrooms. Capt. Dominick, who formerly had ten detectives under his direct supervision, now has few law enforcement duties and supervises no

one. He remains as chief deputy coroner operating miles from the case files needed to do his job.

52. *The new deputy is not a member of a protected class.* Lt. Gunter who is now serving as Lt. of Detectives, shares McDermott's political perspective. He was a vocal supporter of McDermott in the campaign for sheriff. After McDermott took office, he leap-frogged from Det. II to Lt. Of Det. He is operating in the capacity of supervising the detectives, the job that Capt. Dominick previously held. Upon information and belief, Lt. Gunter has not been promoted to Captain because there is no more funding in the county budget for another captain. Lt. Gunter is not a member of a protected class because his political views do not differ from those of McDermott.

B.

Unlawful Retaliation

53. McDermott can also be said to have retaliated against Capt. Dominick, in violation of MONT. CODE ANN. § 49-2-301, if it can be shown merely that:

- (a) Capt. Dominick opposed or participated in a protected activity;
- (b) McDermott took an adverse action against him subsequent to his participation in the protected activity; and
- (c) There is a causal connection between the protected activity and the adverse action.

49. *Capt. Dominick participated in protected activity.* Capt. Dominick testified against McDermott in September, 2013, in McDermott's Human Rights Bureau proceedings; and Capt. Dominick openly supported Joshua Clark who ran against McDermott in two elections. And

McDermott retaliated, taking extreme adverse personnel action against Capt. Dominick.

50. *McDermott took adverse action.* McDermott Office created a whole new position for Capt. Dominick despite the fact that there only a budget for only three captaincies: Patrol, Detectives and Professional Standards. Capt. Dominick is the highest paid hourly employee in the Sheriff's office, yet he now spends his days in part mopping floors, cleaning toilet and re-tidying the warehouse, even as the Captain of Detectives remains unfilled. Yet, so intent is McDermott on retaliating against Capt. Dominick, he has given no heed to the difficulty this vacancy creates for the other deputies, who have to cover for the vacant captaincy. He also ignores the restrictions of the County's budget by having the highest paid sworn deputy filling the role of a civilian technician. McDermott put Capt. Dominick in the warehouse, out of the way, regardless of the profligate waste of resources in paying one of the Sheriff's Office highest paid employees to mop the floors and clean the toilets.

54. *There is a causal connection.* McDermott imposed punishment and retaliation against Capt. Dominick to make an example of him for others who might consider opposing McDermott. Capt. Dominick's decision to oppose McDermott, however, resulted in the loss of Capt. Dominick's "dream job," for which he had even left the job of Undersheriff. McDermott made sure that supporting Josh Clark would become a life-changing mistake for Capt. Dominick.

V.

REQUEST FOR RELIEF

55. Capt. Dominick requests the Human Rights Bureau to investigate his complaint, and enjoin McDermott and the County of Missoula from discriminating and retaliating against others like him in the Sheriff's Office who might disagree with McDermott's politics.

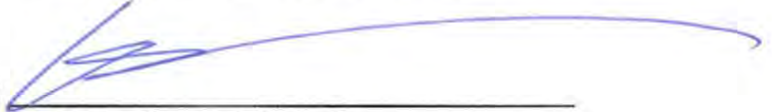
56. Capt. Dominick requests compensatory damages; and general

HRB.

57. Capt. Dominick requests full indemnification against the attorney fees and costs he has obligated himself to pay in bringing this complaint.

DATED this 1st day of June, 2015.

Respectfully Submitted,
RHOADES & SIEFERT, P.L.L.C.

By: 

Quentin M. Rhoades
Nicole L. Siefert
For the Charging Party

VI.

VERIFICATION

STATE OF MONTANA)

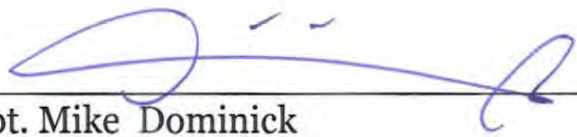
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County of Missoula)

Capt. Mike Dominick , being first duly sworn, states as follows:

That he is Capt. Dominick in this Complaint; that he has read the Complaint, and understands the contents; and that the matters, facts and things stated herein are true, accurate and complete.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year herein above first written.



Capt. Mike Dominick
Charging Party

SUBSCRIBED AND SWORN TO before me this 1st day of June, 2015,
by Capt. Mike Dominick .



