

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION AT LEXINGTON**

**JAMES J. ROGERS, GARRY MURPHY and  
BRIAN HENSLEY**

*Plaintiffs*

*v.*

**SHERIFF NELSON O'DONNELL, INDIVIDUALLY  
AND IN HIS OFFICIAL CAPACITY AS THE  
MADISON COUNTY SHERIFF**

Serve: Sheriff Nelson O'Donnell  
Madison County Sheriff's Dept.  
135 West Irvine Street  
Richmond, KY 40475

and

**THE MADISON COUNTY SHERIFF'S  
DEPARTMENT**

Serve: Sheriff Nelson O'Donnell  
Madison County Sheriff's Dept.  
135 West Irvine Street  
Richmond, KY 40475

and

**DAVID W. SMITH, INDIVIDUALLY  
AND IN HIS OFFICIAL CAPACITY AS THE  
COMMONWEALTH'S ATTORNEY  
FOR THE 25<sup>TH</sup> JUDICIAL CIRCUIT**

Serve: David W. Smith  
Commonwealth's Attorney,  
25<sup>th</sup> Judicial Circuit  
Madison County Courthouse  
Room 201  
Richmond, KY 40475

and

**JENNIFER HALL SMITH, INDIVIDUALLY**

Civil Action No.: \_\_\_\_\_

Judge \_\_\_\_\_

**COMPLAINT**

**AND IN HER OFFICIAL CAPACITY AS AN  
ASSISTANT COMMONWEALTH'S ATTORNEY  
FOR THE 25<sup>TH</sup> JUDICIAL CIRCUIT**

**Serve: Jennifer Hall Smith  
Asst. Commonwealth's Attorney  
25<sup>th</sup> Judicial Circuit  
Madison County Courthouse  
Room 201  
Richmond, KY 40475**

**and**

**SCOTTY ANDERSON, INDIVIDUALLY  
AND IN HIS OFFICIAL CAPACITY AS A  
SERGEANT WITH THE MADISON COUNTY  
SHERIFF'S DEPARTMENT**

**Serve: Scotty Anderson  
7962 Golden Pond Court  
Kissimmee, FL 34737**

**and**

**STEVE KING, INDIVIDUALLY AND IN  
HIS OFFICIAL CAPACITY AS A DETECTIVE  
WITH THE MADISON COUNTY SHERIFF'S  
DEPARTMENT**

**Serve: Steve King  
Madison County Sheriff's Dept.  
135 West Irvine Street  
Richmond, KY 40475**

**and**

**BOBBI JUDD**

**Serve: Bobbi Judd  
312 Michelle Drive  
Richmond, KY 40475  
  
720 Candlewood Drive  
Berea, KY 40403**

**and**

**TINA GRANT** )  
 )  
 **Serve: Tina Grant** )  
 **1656 Berea Road** )  
 **Richmond, KY 40475** )  
 )  
 **200 South Keenland Drive** )  
 **Richmond, KY 40475** )  
 )  
 **223 Keystone Drive** )  
 **Richmond, KY 40475** )  
 )  
 **304 McDougal Avenue** )  
 **Richmond, KY 40475** )  
 )  
 **and** )  
 )  
 **VIVIAN MADDEN** )  
 )  
 **Serve: Vivian Madden** )  
 **743 B North Third Street** )  
 **Richmond, KY 40475** )  
 )  
 **and** )  
 )  
 **JANE AND JOHN DOES 1 THROUGH 5** )  
 )  
 *Defendants* )

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**I. Introduction**

1. Plaintiffs, James Rogers, Garry Murphy and Brian Hensley bring this Complaint against the various Defendants due to their malicious, intentional and negligent actions in attempting to indict and convict the Plaintiffs of crimes they did not commit.

**II. Jurisdiction and Venue**

2. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, which provides for original district court jurisdiction over cases presenting federal questions.

3. Jurisdiction over the state law claims is conferred upon this Court by 28 U.S.C. § 1367, which provides for supplemental jurisdiction over state law claims which are so related to the federal law claims that they form one case or controversy for Article III purposes.

4. Venue in this district is proper pursuant to 28 U.S.C. § 1391.

### **III. Parties**

5. Plaintiffs, James Rogers and Garry Murphy were, at all relevant times, residents of Madison County, Kentucky; Plaintiff Brian Hensley was, at all relevant times, a resident of Laurel County, Kentucky. In 2009, Plaintiff Rogers was a Sergeant with the Richmond Police Department in Madison County, Kentucky, and Plaintiffs Murphy and Hensley were sworn police officers working for the Richmond Police Department in Madison County, Kentucky.

6. The Defendant, Nelson O'Donnell is the Sheriff of Madison County, Kentucky. The claims outlined in this Complaint are against Sheriff Nelson O'Donnell in his individual and official capacity as the Sheriff of Madison County, and the Madison County Sheriff's Department.

7. The Defendant, David W. Smith is the Commonwealth's Attorney for the 25<sup>th</sup> Judicial Circuit, which includes Madison and Clark Counties. The claims outlined in this Complaint are against Mr. Smith in his individual and official capacity as the Commonwealth's Attorney for the 25<sup>th</sup> Judicial Circuit.

8. The Defendant, Jennifer Hall Smith, is an Assistant Commonwealth's Attorney for the 25<sup>th</sup> Judicial Circuit, which includes Madison and Clark Counties. The claims outlined in this Complaint are against Ms. Smith in her individual and official capacity as the Commonwealth's Attorney for the 25<sup>th</sup> Judicial Circuit.

9. The Defendant, Scotty Anderson was a Sergeant with the Madison County Sheriff's Department. The claims outlined in this Complaint are against Sgt. Anderson individually and in his official capacity as a Sergeant with the Madison County Sheriff's Department.

10. The Defendant Steve King was a Detective with the Madison County Sheriff's Department. The claims outlined in this Complaint are against Detective King individually and in his official capacities as a Detective with the Madison County Sheriff's Department.

11. The defendant, Bobbie Judd, was a resident of Richmond, Madison County, Kentucky. She resides at 312 Michelle Drive, Richmond, KY 40475 or 720 Candlewood Drive, Berea, Kentucky 40403.

12. The defendant, Tina Grant, was a resident of Richmond, Madison County, Kentucky. She resides at 200 South Keenland Drive Richmond, KY 40475 or 223 Keystone Drive, Richmond, KY 40475 or at 304 McDougal Avenue, Richmond, KY 40475.

13. The defendant, Vivian Madden, was a resident of Richmond, Madison County, Kentucky. She resides at 743 B North Third Street, Richmond, KY 40475

14. The defendants, Jane or John Does 1 through 5 are individuals currently unknown to Plaintiff's who may have played a part in causing the injuries and damages to the Plaintiffs

#### **IV. Facts**

15. In October of 2009, the Plaintiffs, James Rogers, Garry Murphy and Brian Hensley were sworn officers working for the Richmond Police Department (RPD). Plaintiff Rogers was a Sergeant and supervised Plaintiff's Murphy and Hensley. Prior to October 26, 2009, none of the officers had any type of disciplinary history.

16. On October 26, 2009, April McQueen, an adult female who lived in Richmond, Kentucky invited Plaintiff Rogers to her apartment. Ms. McQueen asked Plaintiff Rogers to bring other police officers with him so they could fulfill Ms. McQueen's sexual fantasies. Plaintiff Rogers brought Plaintiffs Murphy and Hensley to Ms. McQueen's apartment. All three arrived at Ms. McQueen's apartment at around 11:30 pm. The three Plaintiffs were not on duty. After they arrived at Ms. McQueen's apartment the four consenting adults engaged in a consensual sexual encounter. The encounter included bondage and discipline, dominance and submission and sadism and masochism (BDSM).<sup>1</sup>

17. All four individuals at all times consented to what occurred during the consensual BDSM encounter. During the consensual BDSM encounter Ms. McQueen requested the three Plaintiffs to slap her multiple times. One of the slaps accidentally caused a minor injury to Ms. McQueen's lip. The consensual BDSM encounter lasted for about 3 hours and the Plaintiffs left Ms. McQueen's apartment at around 2:30 am.

18. At the time of the consensual BDSM encounter Defendant, Bobbie Judd was Ms. McQueen's neighbor. At the time, Ms. McQueen viewed Defendant Judd as a personal friend. Ms. McQueen had told Defendant Judd about her plans that evening. After the consensual BDSM encounter, Ms. McQueen went to Defendant Judd's apartment to brag about her experience. After discussing the evening's events, Ms. Judd told Ms. McQueen that the encounter was not "normal" and that Defendant Judd was offended by the description of the events. Defendant Judd wanted Ms. McQueen to call the police and report that she was raped. Ms. McQueen denied that there was any rape or any other criminal offense that took place, it was all consensual. Ms. McQueen left Ms. Judd's apartment at about 4:00 am on October 27, 2009.

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<sup>1</sup> This type of sexual encounter is referred to as BDSM. Information about BDSM can be found on Wikipedia at <http://en.wikipedia.org/wiki/BDSM>.

19. Ms. McQueen had arranged to meet with another male law enforcement officer at about 8:00 am. She kept her meeting with this individual and they had consensual sex until approximately 10:00 am.

20. In October of 2009 Ms. McQueen was separated from her husband and was involved in divorce proceedings in the Madison County Family Court. Ms. McQueen was the primary custodian for two of her minor children and was fighting for custody and visitation with her third minor child.<sup>2</sup>

21. Sometime after Ms. McQueen left Defendant Judd's apartment, Defendant Judd contacted Defendant, Tina Grant and discussed Ms. McQueen's private consensual BDSM encounter with the Plaintiffs. Defendant Judd and Defendant Grant decided, without Ms. McQueen's input or knowledge, that Ms. McQueen could not have consented to such an encounter, concluding the Plaintiffs must have forced her to do what she did. This was not true; not only did Ms. McQueen consent to the entire encounter; she requested it and all of the actions that took place during the encounter.

22. Defendant Grant, without Ms. McQueen's knowledge or consent contacted Jamie Wynn, a Deputy Jailer in Madison County and his wife Linda Wynn and told them Ms. McQueen had been raped by three Richmond Police Officers. This was not true; Ms. McQueen consented to the entire encounter.

23. Jamie Wynn, without Ms. McQueen's knowledge or consent, contacted Defendant Sgt. Scotty Anderson a Sergeant with the Madison County Sheriff's Department and told Defendant Sgt. Anderson that Ms. McQueen had been raped by three Richmond Police Officers. This was not true; Ms. McQueen consented to the encounter.

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<sup>2</sup> Ms. McQueen's children were never told about, knew about nor were involved in her private affairs.

24. Defendant Grant, Defendant Sgt. Anderson the Wynns and Detective Robert Short, a Detective with the Madison County Sheriff's Department, all went to Defendant Judd's apartment on the morning of October 27, 2009. That morning, Defendant Judd had repeatedly texted and attempted to call Ms. McQueen at her apartment. Ms. McQueen did not answer the phone because she was engaged in a consensual sexual encounter with another male. No one at Ms. Judd's apartment knew that Ms. McQueen was having a sexual encounter with another male.

25. After the male left, Ms. McQueen retrieved her phone messages and called Defendant Judd. Defendant Judd told Ms. McQueen that there was an emergency, but would not tell her what it was and asked Ms. McQueen to come to her apartment. Ms. McQueen was not aware that anyone else was at or was coming to Defendant Judd's apartment.

26. Shortly after Ms. McQueen arrived at Defendant Judd's apartment she was confronted by Defendant Sgt. Anderson, Detective Short, the Wynns, Defendant Grant and Defendant Judd. In the presence of this entourage, Defendant Sgt. Anderson began aggressively interrogating Ms. McQueen about her relationship with the three RPD officers and their consensual BDSM encounter the night before. Ms. McQueen told the deputies that she did not want to discuss the encounter, especially with everyone that was there.<sup>3</sup> Nevertheless, they continued to question and harass her until she answered their questions. Despite the serious allegations of rape by three Richmond Police Officers and despite the fact that the Madison County Sheriff's Department issues tape recorders to all of its officers, no one taped this initial interrogation of Ms. McQueen.

27. The questions asked by the Sheriff's deputies were personal and intrusive. And they conducted the interview in the presence of other strangers, people Ms. McQueen did not know. Ms. McQueen was told that "only a whore would engage in that kind of activity." When

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<sup>3</sup> Defendant Judd's child was in the apartment in the same room where the questioning was taking place.



she repeatedly stated that the sexual encounter was consensual, Defendant Sgt. Anderson stated that he “would get those bastards badges with or without your help” and that “it would be in her best interest to go along with the investigation.” Ms. McQueen was demeaned, insulted, called a “whore,” belittled, and tormented for her lawful, consensual sexual activity. Ms. McQueen was advised that the Richmond Police Officers do this “all of the time” and that she needed to state that she was sexually assaulted so that “other women would come forward.” In one instance, when Ms. McQueen refused to modify her statements, Defendant Sgt. Anderson kicked the living room sofa and stormed out of the premises to “cool down.”

28. Aware of the ongoing divorce proceedings between Ms. McQueen and her husband, Defendant Judd threatened Ms. McQueen that if she did not change her statements regarding the consensual nature of her sexual activity, she would lose custody of her three minor children. Ms. McQueen was told by one or more of the Defendants present in Defendant Judd’s apartment that she would look better as a “victim” as opposed to a willing participant if social services got involved.

29. The Defendants pressured Ms. McQueen to go to Pattie A. Clay Medical Center and submit to a rape kit. Eventually, Ms. McQueen relented to the pressure and badgering and reluctantly decided to go to the Medical Center. At the Medical Center, Ms. McQueen repeatedly told the Sexual Assault Nurse Examiner (SANE) nurse that the sexual encounter was consensual and she refused the rape kit. The SANE nurse noted in Ms. McQueen’s medical records that the Sheriff’s deputies and her neighbors were putting pressure on her to press rape charges against the Plaintiffs, but Ms. McQueen stated that everything was consensual.

30. Shortly after Ms. McQueen arrived at the Medical Center, Defendant Sheriff’s Detective Steve King and Defendant Sheriff Nelson O’Donnell came to the Medical Center.

While at the hospital Defendant Detective King started rubbing Ms. McQueen's lower back telling her that everything was going to be okay. Defendant Detective King told Ms. McQueen she needed to answer some questions for him even though she said that she did not want to press charges or file a police or sheriff's report. On the way to the Sheriff's Department, Defendant Detective King made lewd sexual references and highly personal inquiries into April McQueen's private life, repeatedly asked her about her interest in "sexual domination" and commented on the size of her breasts. Defendant Detective King had a tape recorder, but did not use it when he was initially questioning Ms. McQueen.

31. At the Sheriff's Department, Ms. McQueen was advised that if she identified the three RPD police officers in the presence of Defendant Detective King and Defendant Sgt. Anderson, the Sheriff's Department could conclude and close its investigation into the matter. Richmond Police Department Detective Brian Lafferty provided photographs of all of the Richmond Police Officers on a thumb drive. When Ms. McQueen identified Plaintiff Murphy, Defendant Sgt. Anderson commented that Plaintiff Murphy "did this type of thing all the time," insinuating that Plaintiff Murphy had sexually assaulted women in the past. This was untrue. Defendant Detective King extensively questioned Ms. McQueen about the events the previous evening. During this interrogation, Ms. McQueen repeatedly told Defendant Detective King that everything was consensual and that she did not want to file criminal charges. Ms. McQueen called the investigation "hogwash" and that the injury to her lip was unintentional.

32. Ms. McQueen was released after 5:00 pm on the afternoon of October 27, 2009. During that entire day she was harassed and badgered into saying that the Plaintiffs raped or sexually assaulted her. Defendant Detective King dropped Ms. McQueen off at her house and told her that he would see what he could do about getting the case dropped. Later that evening,

Ms. McQueen contacted Plaintiff Rogers and told him what had happened and that the Madison County Sheriff's Department was trying to get her to say she was raped by the Plaintiffs the night before.

33. That evening after speaking with Ms. McQueen, Plaintiff Rogers called Defendant Detective King and told Defendant Detective King that he would be at the Sheriff's office the next morning to talk to him about the investigation. Plaintiff Rogers contacted Plaintiffs Murphy and Hensley and they all decided to go to the Sheriff's Department the next morning to answer any questions the Sheriff's Department may have about the incident. Ms. McQueen also wanted to go to the Sheriff's office the next morning and asked if she could ride with Plaintiff Rogers, because she did not have another way to get there. The other two officers drove separately.

34. On the morning of October 28, 2009, the Plaintiffs were each questioned separately by Defendant Detective King; Ms. McQueen was questioned separately by Defendant Detective King and Defendant Sheriff Nelson O'Donnell. Ms. McQueen gave another detailed statement describing the sexual encounter with the three officers and, once again, repeated that all of the activities were entirely consensual, at all stages. During the course of her interview with Defendant Sheriff O'Donnell, he stated that he was a "preacher" and he knew that she could not have "consented" to this type of sexual activity. Defendant Sheriff O'Donnell described the acts as "gross" and that he knew she had been forced to do it because "good women" did not consent to those types of things. He told her that the Plaintiffs had done this before; insinuating that they had sexually assaulted women in the past. This was untrue. Again, she repeated that she requested and consented fully to the activities of the evening.

35. Late on the morning of October 28, 2009, the Plaintiffs asked Defendant Sheriff O'Donnell if charges were going to be filed against them or if there was going to be an investigation. Defendant Sheriff O'Donnell told the Plaintiffs that the case was over and he would not present any charges to the Grand Jury. Ms. McQueen had said all the events surrounding the sexual encounter were consensual and he did not have a victim. Defendant Sheriff O'Donnell told the Plaintiffs they would have already been fired if they had worked for him and they would probably lose their jobs, their families and their reputations, even though no charges were going to be filed. At this point the Plaintiffs believed that the investigation was over, they would not be charged with anything and there would be no Grand Jury investigation. Richmond Police Chief, Larry Brock was told about the investigation and decided not to suspend the Plaintiffs from duty, or take any other disciplinary action against them, because no crime had been committed and all activities occurred while the Plaintiffs were off duty.

36. The next day, October 29, 2009, Defendant Detective King contacted Ms. McQueen and asked her if she was okay. He told her that she could still press charges against the Plaintiffs if she wanted. Over the next few days Ms. McQueen received numerous calls from Defendant Detective King in an attempt to get her to change her story. Ms. McQueen went to the Sheriff's department on October 30, 2009, with Defendant Judd to pick up Defendant Judd's camera, which had been used to take a picture of Ms. McQueen's lip. Defendant Sheriff O'Donnell saw her and asked if she had changed her mind about filing charges. Defendant Sheriff O'Donnell told her if she did they would put the Plaintiffs in prison. Ms. McQueen again reiterated that everything was consensual. The Sheriff's Department then released the camera to Defendant Judd.

37. On October 30, 2009, an article appeared in the online version of the *Richmond Register* and was repeated in the October 31, 2009 newspaper.<sup>4</sup> The article states, in part, that

Three Richmond Police officers are being investigated by their own department and the Madison County Sheriff's Office following allegations of sexual and physical misconduct against a woman. . . . The alleged victim was interviewed first at her residence, O'Donnell said, where she said she was sexually assaulted by the three officers. . . . "She and the three officers were interviewed the following day, at which time she changed her story from being forced at some point (into having intercourse) to everything being consensual." . . . Her first story to the sheriff's (sic) deputies was that the sex began consensually, but then she became afraid, "and from that time on it was not," O'Donnell said. "the next morning she comes retracting (sic) her entire statement, and said the whole thing was consensual."

Ms. McQueen never said that she was sexually assaulted. Ms. McQueen never changed her story. Ms. McQueen never said she was afraid or that the sex was not consensual. Ms. McQueen did not retract her statement.

38. While Defendant Detective King made repeated calls to Ms. McQueen asking her if she wanted to change her mind and file charges against the officers, Defendant Sgt. Anderson would call Defendant Judd and Defendant Grant and encourage them to talk to Ms. McQueen and encourage her to file charges against the Plaintiffs. Defendants Judd and Grant told Ms. McQueen that Defendant Sgt. Anderson was trying to help her and that she was making him look bad. Defendants Judd and Grant told Ms. McQueen that she could get money if she would file charges against the Plaintiffs and that she would be stupid if she did not file charges. Defendants Judd and Grant told Ms. McQueen that the Plaintiffs would kill her to prevent her from filing charges. Defendants Judd and Grant told Ms. McQueen that she should be very afraid of the Plaintiffs.

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<sup>4</sup> The article that appeared in the October 31, 2009, newspaper is attached as Exhibit 1, the article that appeared online on October 30, 2009, is not currently assessable. The initial newspaper reports did not mention the Plaintiffs by name. However, after they were indicted their names were a public record and were published on Friday January 29, 2010.

39. In early November of 2009, Defendant Assistant Commonwealth's Attorney Jennifer Smith contacted Ms. McQueen's divorce attorney Stephanie Flannery and asked her to relay a message to Ms. McQueen. If Ms. McQueen did not contact Ms. Smith she was going to present the case to the Madison County Grand Jury with or without Ms. McQueen. This was despite the fact that Defendant Sheriff O'Donnell assured Plaintiffs and Ms. McQueen that the case was over and would not be presented to the Madison County Grand Jury.

40. Once she got the message, Ms. McQueen agreed to be interviewed by Defendant Jennifer Smith in the presence of her new attorney Mary Sharpe. This interview occurred on November 12, 2009. During the course of her interview when Ms. McQueen talked about the morning of October 27 and 28, 2009, Defendant Jennifer Smith repeatedly turned off the interview tape claiming that the device was malfunctioning. Defendant, Jennifer Smith did this every time Ms. McQueen mentioned anything derogatory about the Sheriff's office or what the Sheriff and his deputies were trying to do to her. During the interview Defendant Jennifer Smith told Ms. McQueen that she was a victim and that she needed to do something about it. During the interview she asked Ms. McQueen if anyone had contacted Social Services about her kids, implying that her children would be taken away if Ms. McQueen did not testify against Plaintiffs.

41. On November 19, 2009, Attorney Mary Shape sent a letter to Defendant Sheriff O'Donnell notifying him that she would be representing Ms. McQueen, and his officers and employees were harassing Ms. McQueen. The letter requested Defendant Sheriff O'Donnell preserve all documents in the event Ms. McQueen filed a lawsuit against the Sheriff's office for the harassment that the Sheriff's Office was putting her through in an effort to get her to change her story.

42. According to Local Rule 2.07 of the Madison County Circuit Court the Madison County Grand Jury does not sit in December. However in December of 2009 the Commonwealth's Attorney's office convened two special Grand Juries, seeking indictments against Plaintiffs against Ms. McQueen's will.

43. Ms. McQueen testified before the Madison County Grand Jury on December 10, 2009. Defendant Jennifer Smith questioned Ms. McQueen about the events that occurred on October 27 and 28, 2009. She also questioned Ms. McQueen about a letter that Ms. Sharpe had sent to Sheriff O'Donnell. Finally she questioned Ms. McQueen about Attorney Mary Sharpe's representation of her, noting that Ms. Shape was from Louisville and that in the past she had represented police officers. No indictment was returned at this time.

44. Ms. McQueen was subpoenaed for a second appearance before the Madison County Grand Jury on December 21, 2009. Before this appearance Defendant Sheriff O'Donnell contacted Ms. McQueen's mother, Debra Neal. Defendant Sheriff O'Donnell told Ms. Neal details of the ongoing criminal investigation over the consensual sexual encounter that occurred on October 26, 2009. At that time Sheriff O'Donnell promised to investigate an alleged sexual assault against Ms. McQueen that occurred many years ago in Virginia or West Virginia. Defendant Sheriff O'Donnell encouraged Ms. Neal to put pressure on Ms. McQueen to testify against Plaintiffs at the grand jury. As a result, Ms. Neal tried to get Ms. McQueen to testify against Plaintiffs. She told Ms. McQueen that Defendant Sheriff O'Donnell was trying to help her and that he was her friend. Ms. McQueen's mother told her that the Plaintiffs would sue her for slander and that she was going to go to jail for perjury if she did not tell the "truth." Ms. Neil also told Ms. McQueen that the Sheriff had a lot of power and that she had better not go against him.

45. Ms. McQueen's landlord Defendant Vivian Madden spoke to Ms. McQueen just before she testified to the Madison County Grand Jury on December 21, 2009. Defendant Madden asked what Ms. McQueen was going to tell the grand jury.<sup>5</sup> She told Ms. McQueen that she needed to tell the "truth" because there would be a social worker sitting in the room taking notes, and if she lied for the Plaintiffs that they would immediately take all three of her kids away and that she would not see them anymore. She told Ms. McQueen the Plaintiffs needed to be prosecuted and if she did not tell the "truth" that she would look like a "scumbag ho". Defendant Madden also threatened Ms. McQueen with eviction if she did not testify against the Plaintiffs.

46. As a result of the actions and the pressures put on Ms. McQueen by the various Defendants, Ms. McQueen believed that she had to change her testimony or risk losing custody of her kids, face prosecution for perjury, lose her home and endure continued harassment by the Madison County Sheriff's Department.

47. Defendant Sheriff O'Donnell and Defendant Sgt. Anderson repeatedly told Ms. McQueen that Plaintiffs were bad cops who had done this before and that she could prevent other women from sexual assault. Ms. McQueen was also told by various defendants that if she did not want to join the Plaintiffs in jail she should do the "right thing." Defendant Grant told Ms. McQueen that Plaintiff Murphy had sexually assaulted another woman. Defendant Grant said that Plaintiff Murphy was on a domestic violence call where he arrested a boyfriend or husband and placed him in his cruiser. She said that Plaintiff Murphy then went back into the house and made the female victim perform oral sex on him. This is not true. Defendant Sheriff O'Donnell requested that Defendant Detective King investigate this incident. Defendant Detective King

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<sup>5</sup> It is currently not clear how Defendant Madden knew that Ms. McQueen was going to testify before the Grand Jury, especially since their proceedings are supposed to be secret and this was a special Grand Jury.



found out that something similar had been reported in Estill County, Kentucky but it did not involve Plaintiff Murphy. Later Ms. McQueen asked Defendant Sheriff O'Donnell if this was true, but Defendant Sheriff O'Donnell never told Ms. McQueen that this was a lie.

48. As a result of the Defendants' combined actions and continued harassment, on December 21, 2009, Ms. McQueen falsely testified that Plaintiff Rogers had threatened her, told her she would lose her children, told her that Richmond Police Officer Kelly Rouse would harm her, told her that Ms. McQueen would be charged with perjury, and told her that no one would protect her. She also falsely testified that Plaintiff Rogers promised a personal relationship with her in the future and promised future financial gains. The Madison County Grand Jury still did not return an indictment.

49. Later in the day on December 21, 2009, Ms. McQueen was at the Madison County Family Court waiting for a hearing on her divorce case. While Ms. McQueen was waiting Defendant Commonwealth Attorney David Smith came to the courtroom and told her to come with him back to the Grand Jury room. When they got there, Defendant Sheriff O'Donnell, Defendant Detective King and Defendant Jennifer Smith were waiting for them. The Grand Jurors were not in the room at this time. Ms. McQueen was all alone. One or more of the these Defendants told Ms. McQueen not to talk to her attorney, Mary Sharpe, because she was a defense attorney working for the Plaintiffs. They told her that any lawsuit she may file would be bogus. Defendant O'Donnell asked Ms. McQueen for a copy of the draft complaint attorney Ms. Sharpe had sent her, saying it would be the best Christmas gift he could ever get. He also asked for private and confidential e-mail communications between Attorney Sharpe and Ms. McQueen. As Ms. McQueen was getting ready to leave, Defendant, Jennifer Smith walked her to the bathroom and told her that she should be "honest" and not provide cover for the Plaintiffs,

because she could lose custody of her two daughters and that she should be afraid of the Plaintiffs. All Defendants were aware of the intimidating nature of this encounter.

50. Defendant Sheriff O'Donnell gave Ms. McQueen his personal cell phone number and told her to call him any time. He told her that he would be calling her every day to make sure she was "okay" and that he would be sending his deputies to her house to randomly check on her. After this meeting, Ms. McQueen was scared to contact Attorney Sharpe and did not contact her for over two weeks.

51. Defendant Sheriff O'Donnell called Ms. McQueen almost every day to "check on her" and asked repeatedly if she would give him a copy of the draft complaint and the e-mails between her and Attorney Sharpe. Defendant Sheriff O'Donnell called Ms. McQueen over 30 times, but recorded only 7 of these calls. Ms. McQueen finally succumbed to his pressures and printed a copy of the draft complaint for Defendant Sheriff O'Donnell. When she gave it to Defendant Sheriff O'Donnell, he told Ms. McQueen that she should be scared of the Plaintiffs and her attorney, Mary Sharpe. Defendant Sheriff O'Donnell asked if she would forward all of Attorney Sharpe's private and confidential e-mails to him. Defendant Sheriff O'Donnell kept calling Ms. McQueen each day asking her to forward the e-mails to him. Defendant Sheriff O'Donnell also told Ms. McQueen that she needed to be "honest" so she would not lose her kids. When Ms. McQueen did not answer Defendant Sheriff O'Donnell's calls, he would call Ms. Neal and have her call Ms. McQueen and demand that she call Defendant Sheriff O'Donnell.

52. Several weeks after her testimony in front of the second grand jury on December 21, 2009, Ms. McQueen finally contacted her attorney, Ms. Sharpe, and told her about what had happened. She told Ms. Sharpe that she was afraid of not going along with the Sheriff's and Commonwealth Attorney's requests. Ms. Sharpe sent a second letter to Defendant Sheriff

O'Donnell asking him to stop contacting Ms. McQueen. On January 20, 2010, after Defendant Sheriff O'Donnell received Ms. Sharpe's letter, he immediately called Ms. McQueen and was very angry that she had reestablished communication with Ms. Sharpe.

53. Due to the ongoing harassment by the Sheriff's Department and the Commonwealth Attorney's office, on January 27, 2010, Ms. McQueen gave a recorded statement to Trooper Matt Feltner with the Kentucky State Police. She wanted to file a criminal complaint against Defendant Sheriff O'Donnell and Defendant Jennifer Smith for harassing her and trying to get her to say she was raped and intimidated by the Plaintiffs. Attorney Sharpe accompanied her when she gave the statement.

54. On January 27, 2010, Ms. McQueen was again subpoenaed to appear before the Madison County Grand Jury on January 28, 2010. During her testimony Defendant Sheriff O'Donnell sat outside the door of the Grand Jury room. Again Ms. McQueen felt pressured to testify in the manner the Defendants had insisted upon, or face losing custody of her children, prosecution for perjury, harassment by the Madison County Sheriff's Department and eviction from her home. After her appearance and questioning by Defendant Jennifer Smith, the Grand Jury returned an indictment charging Plaintiff Rogers with intimidating a participant in the legal process in violation of KRS § 524.040, a class D felony, or in the alternative tampering with a witness in violation of KRS § 524.050, a class D felony. The Grand Jury returned an indictment charging Plaintiffs Murphy and Hensley with complicity to commit intimidating a participant in the legal process in violation of KRS § 524.040 and KRS § 502.020, a class D felony, and complicity to commit tampering with a witness in violation KRS § 524.050 and KRS § 502.020, a class D felony. The Grand Jury returned an indictment against Plaintiff Murphy for fourth

degree assault in violation of KRS §520.090, a class A misdemeanor. On Friday February 12, 2010, Plaintiffs were arraigned in Madison Circuit Court and pled not guilty to all charges.

55. The trial began on Monday, March 22, 2010, and lasted six days. During the trial Defendant Detective King testified that Ms. McQueen was adamant from the start that all sex was consensual, contradicting what Defendant Sheriff O'Donnell said to the *Richmond Register*. On Monday, March 29, 2010, the jury deliberated for a little more than three hours and returned "not guilty" verdicts on all charges. However, as a result of the actions of the Defendants, Plaintiffs Rogers and Murphy were terminated from the Richmond Police Department by the City Counsel and Plaintiff Hensley was forced to resign.

## **V. Causes of Action**

### **Count 1: 42 U.S.C. § 1983 - Malicious Prosecution**

56. The Defendants, Sheriff Nelson O'Donnell, Scotty Anderson, Steve King, David Smith and Jennifer Hall Smith wrongfully instituted a criminal action against the Plaintiffs by charging Plaintiff James Rogers with intimidating a participant in the legal process and tampering with a witness; Plaintiffs Garry Murphy and Brian Hensley with complicity to intimidate a participant in the legal process and complicity to tamper with a witness; and, Plaintiff Garry Murphy with assault. All Plaintiffs were acquitted of all charges.

57. There was no probable cause to initiate any of the criminal charges against any of the Plaintiffs. Until Ms. McQueen was called to testify at the Madison County Grand Jury there was no legal process occurring. Moreover, Plaintiffs did not believe that Ms. McQueen was a participant in a legal process, as required by KRS § 524.040, because she was not the victim of a crime and because they were told that the case would not be presented to the Madison County Grand Jury. Until Ms. McQueen was called to testify at the Madison County Grand Jury she was

not testifying as required by KRS § 524.050. There was never any underlying legal process or charges for rape or sexual assault ever instituted against Plaintiffs. Aside from her Grand Jury appearances, Ms. McQueen never testified. As such there was no crime. When Ms. McQueen testified before the Grand Jury on December 10, 2009, there was insufficient probable cause to indict the Plaintiffs. Since there was no indictment based on Ms. McQueen's testimony, the Plaintiffs did not have any reason attempt to get Ms. McQueen to change her testimony.

58. When the Grand Jury failed to indict the Plaintiffs, Defendants Sheriff Nelson O'Donnell, Scotty Anderson, David Smith, Jennifer Hall Smith, Steve King, Bobbie Judd, Tina Grant and Vivian Madden collectively threatened, intimidated and lied to Ms. McQueen to such an extent that she would testify falsely before the Grand Jury. The Defendants' actions in this regard are more particularly described above. The Defendants wanted Ms. McQueen to change her testimony.

59. All the Defendants named in Count I acted maliciously. The Plaintiffs suffered a deprivation of liberty consistent with the concept of seizure due to the legal proceedings instituted against them that resulted in acquittals on all charges. The Defendants violated Plaintiffs' procedural and substantive due process rights under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution when they initiated criminal proceeding with no probable cause, and when no crime could have been committed. As a direct and proximate result of these violations the Plaintiffs have lost wages, lost their earning capacity, and suffered severe emotional distress.

#### **Count 2: Kentucky State Law - Malicious Prosecution**

60. The Defendants, Sheriff Nelson O'Donnell, Scotty Anderson, Steve King, David Smith and Jennifer Hall Smith wrongfully instituted a criminal action against the Plaintiffs

charging Plaintiff James Rogers with intimidating a participant in the legal process and tampering with a witness; Plaintiffs Garry Murphy and Brian Hensley with complicity to intimidate a participant in the legal process and complicity to tamper with a witness; and, Plaintiff Garry Murphy with assault. All Plaintiffs were acquitted of all charges.

61. There was no probable cause to initiate any of the criminal charges against any of the Plaintiffs. Until Ms. McQueen was called to testify at the Madison County Grand Jury there was no legal process occurring. Moreover, Plaintiffs did not believe that Ms. McQueen was a participant in a legal process, as required by KRS § 524.040, because she was not the victim of a crime and because they were told that the case would not be presented to the Madison County Grand Jury. Until Ms. McQueen was called to testify at the Madison County Grand Jury she was not testifying as required by KRS § 524.050. There was never any underlying legal process or charges for rape or sexual assault ever instituted against Plaintiffs. Aside from her Grand Jury appearances, Ms. McQueen never testified. As such there was no crime. When Ms. McQueen testified before the Grand Jury on December 10, 2009, there was insufficient probable cause to indict the Plaintiffs. Since there was no indictment based on Ms. McQueen's testimony, the Plaintiffs did not have any reason to attempt to get Ms. McQueen to change her testimony.

62. When the Grand Jury failed to indict the Plaintiffs Defendants, Sheriff Nelson O'Donnell, Scotty Anderson, David Smith, Jennifer Hall Smith, Steve King, Bobbie Judd, Tina Grant and Vivian Madden collectively threatened, intimidated and lied to Ms. McQueen to such an extent that she would testify falsely before the Grand Jury. The Defendants' actions in this regard are more particularly described above. The Defendants wanted Ms. McQueen to change her testimony.

63. All the defendants named in Count II acted maliciously. As a direct and proximate result of these violations the Plaintiffs have lost wages, lost their earning capacity and suffered severe emotional distress.

**Count 3: 42 U.S.C. § 1983 - Abuse of Criminal Process**

64. The Defendants, Sheriff Nelson O'Donnell, Scotty Anderson, Steve King, David Smith and Jennifer Hall Smith wrongfully instituted a criminal action against the Plaintiffs charging Plaintiff James Rogers with intimidating a participant in the legal process and tampering with a witness; Plaintiffs Garry Murphy and Brian Hensley with complicity to intimidate a participant in the legal process and complicity to tamper with a witness; and, Plaintiff Garry Murphy with assault. All Plaintiffs were acquitted of all charges.

65. Defendants Sheriff Nelson O'Donnell, Scotty Anderson, Steve King, David Smith and Jennifer Hall Smith did not have sufficient evidence to, or a complaining witness that would allow them to indict Plaintiffs for rape, sodomy, sexual abuse, sexual misconduct or other related offenses. Upon information and belief the Defendants Sheriff Nelson O'Donnell, Scotty Anderson, David Smith and Jennifer Hall Smith also wanted to prevent Ms. McQueen from filing a lawsuit against the Madison County Sheriff's Department for harassment she suffered related to their actions in trying to indict the Plaintiffs for rape, sodomy, sexual abuse, sexual misconduct or other related offenses. Upon information and belief the Defendants Sheriff Nelson O'Donnell, Scotty Anderson, David Smith and Jennifer Hall Smith had a vendetta against these officers and/or the Richmond Police Department in general. Upon information and belief the Defendants Sheriff Nelson O'Donnell, Scotty Anderson, Steve King, David Smith and Jennifer Hall Smith knew there was a contested election for Madison County Sheriff in May of

2010 and the Defendants wanted to indict the Plaintiffs to enhance Defendant Sheriff O'Donnell's chances of being reelected.

66. The Defendants Sheriff Nelson O'Donnell, Scotty Anderson, Steve King, David Smith and Jennifer Hall Smith violated Plaintiffs' procedural and substantive due process rights under the Fourth, Fifth and Fourteenth Amendment to the United States Constitution when they willfully initiated a criminal action with an ulterior purpose. As a direct and proximate result of Defendants' violations the Plaintiffs have lost wages, lost their earning capacity and suffered severe emotional distress.

**Count 4: Kentucky State Law – Abuse of Criminal Process**

67. The Defendants, Sheriff Nelson O'Donnell, Scotty Anderson, Steve King, David Smith and Jennifer Hall Smith wrongfully instituted a criminal action against the Plaintiffs charging Plaintiff James Rogers with intimidating a participant in the legal process and tampering with a witness; Plaintiffs Garry Murphy and Brian Hensley with complicity to intimidate a participant in the legal process and complicity to tamper with a witness; and, Plaintiff Garry Murphy with assault. All Plaintiffs were acquitted of all charges.

68. Defendants Sheriff Nelson O'Donnell, Scotty Anderson, Steve King, David Smith and Jennifer Hall Smith did not have sufficient evidence to, or a complaining witness that would allow them to indict Plaintiffs for rape, sodomy, sexual abuse, sexual misconduct or other related offenses. Upon information and belief the Defendants Sheriff Nelson O'Donnell, Scotty Anderson, Steve King, David Smith and Jennifer Hall Smith also wanted to prevent Ms. McQueen from filing a lawsuit against the Madison County Sheriff's Department for harassment she suffered related to their actions in trying to indict the Plaintiffs for rape, sodomy, sexual abuse, sexual misconduct or other related offenses. Upon information and belief the Defendants



Sheriff Nelson O'Donnell, Scotty Anderson, Steve King, David Smith and Jennifer Hall Smith had a vendetta against these officers and/or the Richmond Police Department in general. Upon information and belief the Defendants Sheriff Nelson O'Donnell, Scotty Anderson, Steve, King David Smith and Jennifer Hall Smith knew there was a contested election for Madison County Sheriff in May of 2010 and the Defendants wanted to indict the Plaintiffs to enhance Defendant Sheriff O'Donnell's chances of being reelected.

69. The Defendants named in Count IV willfully initiated a criminal action with an ulterior purpose. As a direct and proximate result of Defendants' violations the Plaintiffs have lost wages, lost their earning capacity and suffered severe emotional distress.

**Count 5: 42 U.S.C. § 1983 - Violation of Privacy Rights**

70. The Plaintiffs have a fundamental constitutional right to nondisclosure of certain types of private information. The Plaintiffs' consensual sexual encounter with Ms. McQueen is the type of fundamental constitutional right to nondisclosure of private information that 42 U.S.C. § 1983 was designed to protect. Defendants Sheriff Nelson O'Donnell, Scotty Anderson, Bobbie Judd, Tina Grant and Vivian Madden and/or one or more of the other defendants violated Plaintiffs' constitution rights and disclosed personal sexual matters that were highly personal and private all in violation of the First and Fourth Amendment to the United States Constitution.

71. As a direct and proximate result of Defendants' Sheriff Nelson O'Donnell, Scotty Anderson, Bobbie Judd, Tina Grant and Vivian Madden and/or one or more of the other Defendants' violations the Plaintiffs have lost wages, lost their earning capacity and suffered severe emotional distress.

**Count 6: Kentucky State Law - Public Disclosure of Private Facts**

72. Defendants Sheriff Nelson O'Donnell, Scotty Anderson, Bobbie Judd, Tina Grant and Vivian Madden and/or one or more of the other Defendants have publicly disclosed and disseminated highly private facts about the Plaintiffs. The disclosed facts were not a matter of public record, were of no public concern, and served no legitimate law enforcement purpose. Disclosure of the private facts concerning the Plaintiffs was objectionable, offensive, and unreasonable.

73. As a direct and proximate result of Defendants' Sheriff Nelson O'Donnell, Scotty Anderson, Bobbie Judd, Tina Grant and Vivian Madden public disclosure of private facts the Plaintiffs have lost wages, lost their earning capacity and suffered severe emotional distress.

**Count 7: 42 U.S.C. § 1983 – Defamation**

74. Defendant Sheriff Nelson O'Donnell and/or one or more of the other Defendants made a false and defamatory statement about the Plaintiffs to the *Richmond Register* that was published on October 30 and 31, 2009.

75. In the online and print version of the article Defendant Sheriff O'Donnell stated that Ms. McQueen had originally reported that she was sexually assaulted. This was untrue because Ms. McQueen was adamant during all questioning by the Madison County Sheriff's Department that the entire encounter was consensual.

76. Defendant O'Donnell knew this statement was false and made it with malice. This statement imputes crime and constitutes slander *per se*.

77. Upon information and belief one or more of the Defendants including the Jane or John Doe 1 through 5 Defendants posted defamatory comments on the website Topix.<sup>6</sup> A comment made by “IKTT” on November 3, 2009 states:

For all of you that think this is about sex, you are idiots. This is about three men . . . that beat another human being. For your that are not police officers, that’s what is called an assault. Look in the KRS. I believe it covers that CRIME. . . . Not only should they not be police officers protecting all we hold so dear to each and everyone of us, but they should be behind bars.

A comment made by “Who cares” on November 3, 2009 states:

. . . They beat this girl up. Pissed in her mouth and no telling what else. You want to defendant this??These are men who are sworn to PROTECT our citizens. How can you sleep at night knowing they may pull over your Mom or Sister . . . Daughter etc etc . . . Maybe no one will believe them either . .

A comment made by “Hello1” on November 10, 2009 states

. . . it doesn’t matter what she says you can not assault another human being and not be charged with assault by the Commonwealth of Kentucky. You do not have to have her as a witness. The Commonwealth should prosecute them. You can’t consent to having the shit beat out of you and being pissed on!!!

A comment made by “StupidPPL” on November 11, 2009 states

She did NOT want to be pissed on you idiot thats when thing got bad and she asked them to stop.

A comment made by “tired of stupid” on November 12, 2009 states

You need to visit a rape crisis center sometime and see how differently each woman reacts to being raped. This woman was transported to the Sheriff’s office by the Officers that admittedly had rough sex with her, urinated in her mouth, until she threw up, and threatened to have her kids taken away. Unless she is certain she will be protected how dare you profess to know what she should do. What if you were sodomized by three individuals in power and your family was threatened? Would you come forward and risk the humiliation of yourself and the safety of your family. . . . the sheriff has turned the interview tapes over to the Commonwealth’s Attorneys office and a grand jury will be convened to hear the case.

A comment made by “tired of stupid” on November 12, 2009 states

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<sup>6</sup>The posts are reprinted exactly as they appear on the internet with the grammatical errors.

Again, you are wrong. Even if everything was consensual (it wasn't) but for arguments sake lets say it was. The officers can still be indicted for "official misconduct", class B misdemeanor, for transporting the victim to the Madison County Sheriff's Dept. after the initial report of a rape. As soon as any shadow was cast on any of these officers they were the last three that should have conducted the transport. . . . Is either Garry Murphy, J.J. Rogers or Brian Hensley related to you because you sure have a lot to say.

The information contained in these posts are false and would have probably only been known to individuals involved in the investigation of the Plaintiffs.

78. Plaintiffs' Constitutional rights to privacy and due process of law protected by the Fourth and Fourteenth Amendments to the United States Constitution were violated by this false dissemination of information by the Sheriff's office and/or other Defendants. As a direct and proximate result of Defendants' violations the Plaintiffs have lost wages, lost their earning capacity, and suffered severe emotional distress.

**Count 8: Kentucky State Law – Defamation**

79. Defendant Sheriff Nelson O'Donnell made a false and defamatory statement about the Plaintiffs to the *Richmond Register* that was published on October 30 and 31, 2009. In the online and print version of the article Defendant O'Donnell stated that Ms. McQueen had originally reported that she was sexually assaulted. This was untrue because Ms. McQueen was adamant during all questioning by the Madison County Sheriff's Department that the entire encounter was consensual.

80. Defendant O'Donnell knew this statement was false and made it with malice. This statement imputes crime and constitutes slander/liable *per se*.

81. Upon information and belief one or more of the Defendants including the Jane and John Doe 1 through 5 Defendants posted defamatory comments on the website Topix.<sup>7</sup> A comment made by “IKTT” on November 3, 2009 states

For all of you that think this is about sex, you are idiots. This is about three men . . . that beat another human being. For your that are not police officers, that’s what is called an assault. Look in the KRS. I believe it covers that CRIME. . . . Not only should they not be police officers protecting all we hold so dear to each and everyone of us, but they should be behind bars.

A comment made by “Who cares” on November 3, 2009 states

. . . They beat this girl up. Pissed in her mouth and no telling what else. You want to defendant this??These (sic) are men who are sworn to PROTECT ou citizens. How can you sleep at night knowing they may pull over your Mom or Sister (sic) . . . Daughter etc etc . . . (sic)Maybe no one will believe them either .

A comment made by “Hello1” on November 10, 2009 states

. . . it doesn’t matter what she says you (sic) can not (sic) assault another human being and not be charged with assault by the Commonwealth of Kentucky. You do not have to have her as a witness. The Commonwealth should prosecute them. You can’t consent to having the shit beat out of you and being pissed on!!!

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She did NOT want to be pissed on you idiot thats (sic) when thing got bad and she asked them to stop.

A comment made by “tired of stupid” on November 12, 2009 states

You need to visit a rape crisis center sometime and see how differently each woman reacts to being raped. This woman was transported to the Sheriff’s office by the Officers that admittedly had rough sex with her, urinated in her mounth, until she threw up, and threatened to have her kids taken away. Unless she is certain she will be protected how dare you profess to know what she should do. What if you were sodomized by three individuals in power and your family was threatened? Would you come forward and risk the humiliation of yourself and the safety of your family. . . . the sheriff has turned the interview tapes over to the Commonwealth’s Attorneys office and a grand jury will be convened to hear the case.

A comment made by “tired of stupid” on November 12, 2009 states

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<sup>7</sup> The posts are reprinted exactly as they appear on the internet with the grammatical errors.

Again, you are wrong. Even if everything was consensual (it wasn't) but for arguments sake lets say it was.(sic) The officers can still be indicted for "official misconduct", class B misdemeanor, for transporting the victim to the Madison County Sheriff's Dept. after the initial report of a rape. As soon as any shadow was cast on any of these officers they were the last three that should have conducted the transport. . . . Is either Garry Murphy, J.J. Rogers or Brian Hensley related to you because you sure have a lot to say.

82. Defendants, Scotty Anderson, Bobbie Judd, Tina Grant and Vivian Madden made false and defamatory statements about Plaintiffs to Ms. McQueen and other people. Among other things these Defendants told Ms. McQueen that the Plaintiff's had done this before and that there were other women who had been sexually assaulted and/or raped by Richmond Police Officers. One or more of the Defendants told Ms. McQueen that Plaintiff, Garry Murphy had arrested a male on a domestic violence call and proceeded to sodomize the female victim.

83. Defendants Bobbie Judd, Tina Grant and Vivian Madden knew or should have known that the statements were false or they made them intentionally knowing they were false. These statements tended to impute crime and constituted slander *per se*.

84. As a direct and proximate result of Defendants' defamation the Plaintiffs have lost wages, lost their earning capacity and suffered severe emotional distress.

**Count 9: False Light**

85. Defendants Sheriff Nelson O'Donnell, Scott Anderson, Jennifer Hall Smith, Steve King, Bobbi Judd, Tina Grant and Vivian Madden have publicly communicated and disseminated false information, more particularly described above, concerning Plaintiffs' character, conduct and beliefs, which has had the effect of placing Plaintiffs in an unreasonable and objectionable false light.

86. As a direct and proximate result of Defendants Sheriff Nelson O'Donnell, Scott Anderson, Jennifer Hall Smith, Steve King, Bobbi Judd, Tina Grant and Vivian Madden actions the Plaintiffs have lost wages, lost their earning capacity, and suffered severe emotional distress.

**Count 10: Conspiracy to Violate Civil Rights**

87. Defendants Sheriff Nelson O'Donnell, David W. Smith, Jennifer Hall Smith, Scotty Anderson, Steve King, Bobbi Judd, Tina Grant and Vivian Madden acted in concert to deprive Plaintiffs of their civil rights guaranteed under the Fourth and Fourteenth Amendments to the United States Constitution. As a direct and proximate result of Defendants' conspiracy to violate the Plaintiffs' civil rights, the Plaintiffs have lost wages, lost their earning capacity, and suffered severe emotional distress.

**Count 11: Failure to Supervise**

88. Defendants, the Madison County Sheriff's Department and Sheriff Nelson O'Donnell, were deliberately indifferent to the citizens of Madison County -- in particular Plaintiff's Rogers, Murphy and Hensley -- for their failure to properly supervise its employees, including Defendant Sgt. Anderson about interactions with individuals. Defendant Sgt. Anderson had a history of personnel confrontations with other employees of the Madison County Sheriff's Department, over aggressive behavior, extreme mood changes and uncontrollable outbursts of anger. Defendant Sheriff O'Donnell knew of this behavior, but chose to retain and allow Defendant Sgt. Anderson to continue working with the public and investigate complaints.

89. Defendants the Madison County Sheriff's Department and Sheriff Nelson O'Donnell, officially and individually are therefore liable for the constitutional deprivations and violations of Kentucky tort law caused by Defendant Sgt. Anderson.

90. As a result, the Plaintiffs have lost wages, lost their earning capacity and suffered severe emotional distress.

**Count 12: Negligent Hiring, Supervision and Retention**

91. Defendants the Madison County Sheriff's Department and Sheriff Nelson O'Donnell officially and individually had a duty to properly hire, supervise and retain its employees.

92. Defendants the Madison County Sheriff's Department and Sheriff Nelson O'Donnell officially and individually breached their duty in hiring, supervising and retaining Defendant Sgt. Anderson. Defendant Sgt. Anderson had a history of personnel confrontations with other employees of the Madison County Sheriff's Department, over aggressive behavior, extreme mood changes and uncontrollable outbursts of anger. Defendant Sheriff O'Donnell knew of this behavior, but chose to retain and allow Sgt. Anderson to continue working with the public and investigate complaints.

93. The acts and omissions described above were substantial factors in causing the Plaintiffs lost wages, loss of their earning capacity and severe emotional distress.

**Count 13: Outrage**

94. Defendants' intentional or reckless conduct described above was extreme and outrageous and caused the Plaintiffs extreme emotional distress. As a direct and proximate result of Defendants' outrageous conduct the Plaintiffs have lost wages, loss of their earning capacity and suffered severe emotional distress.

**VI. Request for Relief**

**WHEREFORE**, the Plaintiffs requests:

1. Trial by jury of all issues so triable;



2. An award of compensatory and punitive damages against all defendants in a fair and reasonable amount to be determined at the trial of this matter;
3. Recovery of their costs, including reasonable attorney fees, under 42 U.S.C. § 1988; and,
4. All other relief to which he may be entitled.

Respectfully submitted,

HUMFLEET LAW, PLC

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