

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FILED

2011 MAY 20 AM 9: 26

SENIOR US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

DARRALYN C. COUNCIL, Pro Se

Plaintiff

v.

Case No.: 6:11-cv-847-ORL-18-GJK

UNITED STATES OF AMERICA;
ERIC SHINSEKI, Secretary, Department of Veterans Affairs;
Angela Bishop, James Mantia, Charles Coeyman, Deborah Berry,
Timothy Liezert, David Mosakowski, Eric Schwartze, III
Edgar Tucker, Carlos Escobar, Donna Kyle and Frank Cassata, et al

Defendants

**COMPLAINT FOR VIOLATION OF CIVIL RIGHTS UNDER THE UNITED STATES CONSTITUTION,
BREACH OF CONTRACT, AMERICAN WITH DISABILITIES ACT, LIBEL AND DEFAMATION**

STATEMENT OF CLAIM

1. This is a Civil Rights Act and American With Disabilities Act complaint for declaratory, monetary and other appropriate relief brought by Plaintiff, Darralyn C. Council, a United States citizen, appearing pro se. Mr. Council brings this complaint for deprivation of his procedural due process, substantive due process rights under the First, Fourth, Fifth, Sixth, Ninth and Fourteenth Amendments to the United States Constitution, the contractual master collective bargaining agreement between the Department of Veterans Affairs and AFGE Union, in violation of 42 U.S.C. 1983, 1985 and 1986; Title 18 U.S.C. Section 241, 242 and 245 Color of Law; 42 U.S.C. 12132, 12203 and the American with Disabilities Act of 1990, as amended; 29 U.S.C. 794 (Rehabilitation Act of 1973).

JURISDICTION

2. This Court has jurisdiction pursuant to 42 U.S.C. 1983.

PARTIES

3. Defendant is an Executive Agency of the United States Federal Government.

4. Mr. Council is a qualified individual with VA service-connected disabilities covered by the American with Disabilities Act and a veteran's preference civil service employee, employed by the federal government since 1981.

BACKGROUND

5. On March 31, 2008, the Department of Veterans Affairs (Orlando Veterans Affairs Medical Center) Veterans Affairs Office of Inspector General and Senior Regional Counsel Attorney placed Mr. Council, a man with disabilities under custodial interrogation for an allege violation of 5 U.S.C. 552a and 18 U.S.C. 641, without rendering him his Miranda Rights, Due Process rights and absent exigent circumstances, thereby violating Mr. Council's right under the Fourth and Fifth Amendment [through the Fourteenth Amendment] to the United States Constitution [violating 42 U.S.C. 1983].

6. Defendants March 28, 2008 custodial interrogation of Mr. Council, a person with cognitive emotional and physical disabilities was in violation of 29 U.S.C. 794, 42 U.S.C. 3604(f) (2) (C), 3617; 42 U.S.C. 12132, 12182(b) (1) (E), 12203(a-c).

7. The Defendants (Orlando Veterans Affairs Medical Center) March 31, 2008 custodial interrogation led to Mr. Council being removed from federal employment; without providing specificity, exculpatory and beyond reasonable evidence by the defendants Mr. Council improperly retained copies of personally identifiable information data documents protected by 5 U.S.C. 552a the Privacy Act of 1974 for his personal gain from the Houston Veterans Affairs Medical Center.

A custodial interrogation (or, generally, custodial situation) is a situation in which the suspect's freedom of movement is restrained, even if he is not under arrest.

Per *Miranda v. Arizona*, 384 U.S. 436, 444 (1966), "custodial interrogation [refers to] questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." The United States Supreme Court has clarified that a person is being subjected to a custodial interrogation if "a reasonable person would have felt he or she was not at liberty to terminate the interrogation and leave."

Thompson v. Keohane, 516 U.S. 99, 112 (1995). This test is objective and thus does not depend on the individual suspect's subjective mindset, age, or previous personal experience with law enforcement. *Yarborough v. Alvarado*, 541 U.S. 652, 666-69 (2004). Rather, the ultimate inquiry is whether a normal, reasonable person would feel free to end the encounter with law enforcement and leave the scene.

8. Defendants Department of Veterans Affairs (Orlando Veterans Affairs Medical Center) allege Mr. Council improperly retained/removed copies of personally identifiable information (PII) from the Houston Veterans Affairs Medical Center for his personal use, a violation of the criminal provision of the Privacy Act, 5 U.S.C. 552a; and committing theft of government property in violation of 18 U.S.C. 641.

Paragraphs 1 through 8 are referenced, incorporated and re-allege.

CLAIMS FOR RELIEF

9. The following causes of action are asserted against the Defendant herein without prejudice to any rights the Plaintiff, or which this Court may grant to the Plaintiff, to assert *additional* causes of action or allegations based on facts disclosed in documents or other information made available to the Plaintiff in the future or developed as a result of discovery or otherwise.

COUNT I

VIOLATION OF PLAINTIFFS CONSTITUTIONAL DUE PROCESS RIGHTS OF EQUAL ACCESS TO JUSTICE

10. On March 31, 2008, Defendants actions created a type of malicious prosecution based on "guilt by association," when Mr. Council was placed under custodial interrogation by Veterans Affairs Office of Inspector General Special Agent David Mosakowski and Orlando Veteran Affairs Senior Regional Counsel Attorney James Mantia, which violated his due process rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution [under 42 U.S.C. 1983]; Weingarten rights, the specific right of a federal employee to union representation during investigative interviews and under Article 21 of the contractual, In-force collective bargaining agreement between the Department of Veterans Affairs and American Federation of Government Employees AFGE Union.

COUNT II

FAILURE TO PREVENT CONSPIRACY TO DEPRIVE FEDERALLY PROTECTED RIGHTS

11. Defendants failed to prevent a conspiracy between Houston VA Medical Center and Orlando VA Medical Center of Mr. Council's constitutional amendment rights to deprive him of his federally-protected rights on March 31, 2008 in violation of 42 U.S.C. 1985 and 1986

12. On or about March 28, 2008 defendants failed to prevent a conspiracy against Mr. Council's rights under Title 18 U.S.C. Section 241 when defendants conspired and manufactured the allege misconduct he approved the installation of unapproved software on the Houston VA Medical Center computer system, he improperly retained copies of patient identifiable information of sensitive data documents protected by the privacy act of 1974 from the Houston VA Medical Center for his personal use.

13. Defendants failed to prevent deprivation of rights under color of law Title 18 U.S.C Section 242. Mr. Council was denied legal and union representation while under custodial interrogation for the allege misconduct he improperly retained copies of personally identifiable information for his personal use in violation of 5 U.S.C. 552a and 18 U.S.C 641 without defendants meeting its required threshold burden of proof "beyond reasonable doubt to prove he committed the allege misconduct and that he possessed criminal intent for the allege misconduct, Mr. Council was terminated from federal employment for the allege misconduct.

14. Defendants on March 9, 2009 failed to prevent the violation of Mr. Council's rights during a Merit Systems Protection Board judicial proceeding and an Equal Employment Opportunity Commission judicial proceeding on April 20, 2009, by inducing and procuring its Houston VA Medical Center and Orlando VA Medical Center responsible management officials and employees to commit perjury, by presenting material false statements under oath before a court proceeding, when each defendant (1) knowingly made a (2) false (3) material declaration (4) under oath (5) in a judicial proceeding to a court of the United States.

COUNT III

FALSE ARREST/IMPRISONMENT/CONFINEMENT VIOLATION OF RIGHTS UNDER THE UNITED STATES CONSTITUTION [42 U.S.C. 1983]

15. Defendants March 31, 2008 custodial interrogation interview denied Mr. Council the right to equal justice when he was reluctant to answer questions by the defendant after being denied legal and union representation when requested prior to and during the custodial interrogation interview. Defendants Senior Veterans Affairs Regional Counsel Attorney was present during the entire interview process and he and Agent Mosakowski locked plaintiff into the Orlando VA Safety Office conference room. The Plaintiff was deprived of significant liberty and property interests under the due process clause of the First, Ninth and Fourteenth Amendment of the United States Constitution [42 U.S.C. 1983]

16. On March 31, 2008 the Defendants executed false arrest/imprisonment/confinement of the Plaintiff within the confines of the Orlando VA Medical Center, in specific the Safety Conference room, by Senior VA Attorney Mantia locking the door which prevented him from leaving. See, Spano v. New York that under the totality of circumstances a confession obtained in a post-indictment interrogation was involuntary and four Justices wished to place the holding solely on the basis that post-indictment interrogation in the absence of plaintiff's lawyer was denial of his right to assistance of counsel.

17. Defendants violated the Plaintiffs rights of liberty under the First, Ninth and Fourteenth Amendments to the United States Constitution under [42 U.S.C. 1983] on March 31, 2008, when he escorted by VA OIG Special Agent Mosakowski and Senior VA Regional Counsel Attorney Mantia, and locked into the Orlando VA Safety conference.

COUNT IV

FAILURE TO RENDER DUE PROCESS UNDER AN IN-FORCE, CONTRACTUAL MASTER COLLECTIVE BARGAINING AGREEMENT BETWEEN THE DEPARTMENT OF VETERANS AFFAIRS AND AFGE UNION.

18. Defendants violated the Plaintiffs due process rights as a bargaining unit employee under the associated Articles of the contractual, in-force collective bargaining agreement between the Dept. of VA and AFGE Union.

23. These rules are historically grounded rights of our system, developed to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty and property. In *Davis v. United States*, supra, 160 U.S., at 488 stated that the requirement is implicit in constitutions ... (Which) recognize the fundamental principles that are deemed essential for the protection of life and liberty?

COUNT VI

DEFAMATION AND LIBEL CONCERNING THE PLAINTIFF

24. Plaintiff repeats and re-alleges each and every allegation set forth in agency misconduct charge allegation herein is falsely stated.

25. The May 3, 2007 and May 9, 2008 defamatory document, statements made by defendant Angela Bishop and interpreted by Timothy Liezert Orlando Department of Veterans Affairs deciding official were repeated over and over again, caused Mr. Council substantial harm. The untrue, libelous statements falsely implied that Mr. Council had allege misconduct issues, that as a act of theft Mr. Council removed privacy act protected documents and authorized the unapproved installation of software on a Michael E. DeBakey Houston VA computer, putting the entire hospital computer system at cyber security risk, was unethical.

26. The defamatory document, statements caused Mr. Council to suffer hatred and contempt, from management and his peers not only at the Houston VA Medical Center but also at the Orlando VA Medical Center.

27. In addition, the defamatory document, statements made by defendant Angela Bishop and Timothy Liezert transformed Mr. Council from a high level, well liked federal civil service employee to an unemployed and in fact unemployable individual who was terminated from 27 years of federal employment.

28. On numerous occasions, Mr. Council has asked Defendants to issue any and all documents clarifying the allege misconduct issues, of removing/ retaining copies of patient identifiable information, especially that he authorized the installation of unapproved software on a Houston VA computer. The defendant's refused to do so.

29. The Defendants May 3, 2007 and May 9, 2008 memorandum letters were published and broadcast by defendants by Houston VA Medical Center officials Angela Bishop and Eric Schwartz, III and Orlando Department of Veteran Affairs officials Timothy Liezert, Deborah Berry, Frank Cassata, James Mantia, Deborah Berry, Frank Cassata and Charles Coeyman.

30. Defendants, knew that the allege misconduct was false when made and Eric Schwartz, III, James Mantia, Timothy Liezert and Angela Bishop, acted negligently, maliciously and with reckless disregard for the truth in making those statements.

COUNT V

DEFENDANTS USE OF DEFECTIVE MISCONDUCT DOCUMENT

19. Defendants use of a defective document, when its May 9, 2008, misconduct charge document failed to state a violation of Dept. of VA Policy, rule, regulation or Agency Table of Penalty law, in which Mr. Council was to defend against. See, *State v. Jendrusch*, 58 Haw. 279, 281,567 P.2d 1242, 1244 (1977) [; accord *State v. Israel*, 78 Hawai'i 66, 69-70,890 P.2d 303, 306-07 (1995); *State v. Elliott*, 77 Hawai'i 309, 311,884 P.2d 372, 374 (1994)]. Put differently, the sufficiency of the charging instrument is measured, inter alia, by "whether it contains elements of the offense intended to be charged, and sufficiently apprises the defendant of what he [or she] must be prepared to meet [*State v. Wells*, 78 Hawai'i 373,379-80,894 P.2d 70, 76-77 (1995) (citations and intimal quotation marks omitted) (brackets in original)]. "A charge defective in this regard amounts to a failure to state an offense, and a conviction based upon it cannot be sustained, for what would constitute a denial of due process." *Jendrusch*, 58 Haws. At 281,567 P.2d at 1244 (citations omitted).

[*State v.*] *Merino*, 81 Hawai'i [198,] 212, 915 P.2d [672,] 686 [(1996)] (some brackets added and some original). In other words, an oral charge, complaint, or indictment that does not state an offense contains within it a substantive jurisdictional defect, rather than simply a defect in form, which renders any subsequent trial, judgment of conviction, or sentence a nullity.

20. The Defendants May 9, 2008 misconduct complaint allege Mr. Council with improperly retaining copies of confidential patient identifiable information documents from the Houston VA Medical, for his personal use, but did not charge Mr. Council with violating any particular statute, when an agency chooses to charge an employee with conduct that constitutes a criminal offense, it must prove the elements of the criminal misconduct. 50 M.S.P. R. at 459 (citing *Messersmith v. General Services Administration*, 9 M.S.P.R. 150, 157 (1981)).

21. The Defendant May 9, 2008 memorandum derived its charge from 5 U.S.C. 552a (1) and 18 U.S.C. 641, to determine the elements of the charge. Mr. Council was subsequently removed from federal employment for the allege misconduct charge on August 15, 2008 by the defendant. In the absence of a particular statute which Mr. Council was accused of violating

22. On March 31, 2008, Defendants falsely allege Mr. Council of misconduct act of theft, of removing/retaining copies of Privacy Act protected patient identifiable information documents from the Houston VA without meeting its threshold required burden of proof, (1) the allege criminal act of theft occurred, (2) criminal intent, without exculpatory specificity evidence of its required threshold burden of proof "beyond reasonable doubt" for the allege misconduct. The Supreme Court has ruled that the DUE PROCESS CLAUSE of the Fifth Amendment and Fourteenth Amendment prohibit defendants from being convicted on any quantum of evidence less than proof beyond reasonable doubt.

31. The defendant May 9, 2008 memorandum letter was defamatory on its face and has harmed Mr. Council's personal and federal civil service career reputation. Mr. Council has become unemployable as a result of the defendants letter, which have exposed him to hatred, contempt, ridicule, and disgrace.

32. As a proximate result of Defendants defamatory statements, Mr. Council has suffered damages. Those damages include loss of wages, loss of future wages; lost medical, life insurance and vacation benefits; and lost Civil Service Retirement Service retirement benefits.

33. Plaintiff repeats and re-alleges each and every allegation set forth in defendant memorandum letter herein are false.

34. The May 3, 2007 and May 9, 2008 memorandum letter statements were of and concerning Mr. Council, and were interpreted by Orlando VA officials Timothy Liezert, James Mantia, Deborah Berry, Charles Coeyman and Frank Cassata to be of and concerning Mr. Council.

35. The May 3, 2007 and May 9, 2008 memorandum letters and statement were published and broadcast by Defendants.

36. Defendants knew that the May 3, 2007 and May 9, 2008 memorandum letter statements were false when made and Defendant acted negligently, maliciously and with reckless disregard for the truth in making those statements.

37. Without meeting its threshold burden of proof "beyond reasonable doubt" to sustain Defendant allege misconduct charge defendants libeled Mr. Council; by alleging he improperly retained copies of patient identifiable information data documents and not being candid during a Dept. of VA VAOIG custodial interrogation for the allege misconduct.

38. Defendants also defamed Mr. Council by alleging as mitigating circumstances, Mr. Council authorized the installation of unapproved software on a government computer, which put the entire VA facility computer system at cyber security risk, when it knew no such incident occurred.

COUNT VII

DEFENDANT'S FAILURE TO CONDUCT A THOROUGH INVESTIGATION CRIMINAL OR OTHERWISE

39. To date no defendant has conducted an "extensive Dept. of VA policy 0700 Administrative Investigation for the May 3, 2007 and May 9, 2008 memorandum misconduct allegations. Defendant's James Mantia, Eric Schwartze III, Timothy Liezert and Angela Bishop, from the very beginning planned to use Mr. Council as a convenient scapegoat.

40. Defendant's, Eric Shinseki, Edgar Tucker, Carlos Escobar, Donna Kyle, and Timothy Liezert, determined that it would shield itself especially actions taken by defendant Angela Bishop from liability for their neglect and improper actions. In its effort to deflect blame from itself, defendants made Mr. Council a scapegoat; for allege improper actions of its own. Mr. Council, did not have conduct issues as allege in the May 3, 2007 or May 9, 2008, memorandum letter, and especially was not involved in any improper retaining of patient identifiable information data documents and installation of unapproved software on a MED Houston VA computer. Defendants continue to refuse to correct the record and absolve Mr. Council. Despite no investigation report finding that Mr. Council ever committed neither misconduct allegation, especially he authorized any unapproved software installation.

41. The justification given for terminating Mr. Council was nothing more than a disingenuous attempt on the part of Department of Veterans Affairs to shift blame to Mr. Council. At the time Mr. Council was terminated from the Prosthetics Federal Career Intern Program, defendants knew or should have known that Mr. Council was not involved in any of the allege May 3, 2007 and May 9, 2008, misconduct charges and especially software incident. Mr. Council did not breach any VA policy and did not engage in any wrongdoing. Mr. Council's termination was a further element in Defendants' conspiracy to defame Mr. Council and an attempt to deflect their own liability, through the use of Mr. Council as a convenient scapegoat.

42. Evidentiary documents submitted by Defendant's Angela Bishop, Timothy Liezert, Senior Attorney James Mantia and General Attorney Erich Schwartze, III of communication between VA Central Office and non-defendant Kathy Pessagno assistant to defendant Fred Downs, Jr., show defendants worked in collusion in violation of Title 18, U.S.C., Section 241, 242 and 245 (1) (b) (2), conspired to injure, oppress, threaten, intimidate and willfully deprive Mr. Council his rights under the American with disabilities Act and the U.S. Constitution.

43. Each defendant knew Mr. Council never engaged in the misconduct act of improperly retaining copies of personally identifiable information and authorizing the installation of unapproved software on the Michael E. DeBakey computer system as allege by defendant, each defendant failed and refused to report and/or remove the false charges against Mr. Council which was used to demote and terminate Mr. Council from the Prosthetics Federal Career Intern Program, even after STREEM, National Account Manager Brett Resh and Marketing Communications Coordinator, Shelley Marian both informed defendant in February 2007 and March 2007, it "never accessed or installed any software on a Michael E. DeBakey Houston VA prosthetics service computer."

44. Defendants Erich Schwartze, III Timothy Liezert, James Mantia and Angela Bishop initiated a misconduct charge alleging Mr. Council violated 5 U.S.C. 552a and 18 U.S.C. 641, by theft Mr. Council Removed/Improperly Retained Copies of PII documents from the Prosthetics Sensory Aids Service of Michael E. DeBakey Houston VA during his employment from October 2006 to May 3, 2007, neither defendant Angela Bishop and Erich Schwartze, III, both involved in Mr. Council's federally protected activities, presented no affidavits, eyewitness accounts, video or evidence beyond reasonable doubt of such theft by Mr. Council to substantiate their allege

misconduct. Both Angela Bishop and Erich Schwartz, III gave under oath testimony, neither saw the Mr. Council remove or even make copies of any PII documents.

45. Defendant Angela Bishop falsely allege that Mr. Council in Charge A of her demotion and termination memorandum dated May 3, 2007, states "Instead of performing those duties as instructed, on February 12, 2007, you forwarded a message or memorandum to the Prosthetics administrative staff instructing them to perform your assignment with a due date of February 13, 2007, without obtaining any supervisor permission or guidance to do so." Evidence show defendant Angela Bishop and Mr. Council deliberately reviewed the completed February 2007 assignment together in her office; the documents bear both the handwriting of Mr. Council and defendant Angela Bishop for staff errors. Defendant Angela Bishop retrieved the PII documents from the agency system of records and had the PII documents in her possession. Defendant Angela Bishop then gave false testimony while under oath, that she "never kept or maintained" PII documents, evidence presented during Mr. Council's Merit Systems Protection Board hearing held in Orlando FL on March 9, 2009, showed Ms. Bishop did in fact keep and maintain patient identifiable information data documents in her office for prosthetics staff performance evaluations and ordered Mr. Council create and maintain an Excel spreadsheet to calculate errors by each prosthetic admin staff member.

46. Evidence show defendant Angela Bishop's Charge A is a false statement, prove Mr. Council never removed/Improperly retained copies of patient identifiable information data documents, if he did not complete as an assignment the retrieval of the privacy act documents, and used by the Orlando VA for removal of Mr. Council from employment.

47. Each defendant refused, denied, and ignored Mr. Council's chain of command request(s) for due process. The defendants knew or should have known the demotion and termination of Mr. Council from the Prosthetics Federal Career Intern Program was/is an unlawful prohibited personnel practice.

48. Defendant Fred Downs, Jr., issued Mr. Council a memorandum dated March 2, 2007, authorizing defendants Angela Bishop, Edgar Tucker, Carlos Escobar, and Donna Kyle to resolve Mr. Council's complaint and request to transfer for successful completion of the Prosthetics Technical Career Field Intern Program. On April 12, 2007, Houston VA Chief Prosthetics resolved Mr. Council's complaint. Shortly thereafter defendant Fred Downs without proper cause conspired to arrange Mr. Council's removal from the Intern program by personally overseeing the removal of Mr. Council by placing a direct phone call to the Network Director (ND) and Defendant Edgar Tucker then Houston VA Medical Center Director (MCD).

49. Defendants Angela Bishop, Edgar Tucker, Carlos Escobar, Donna Kyle and Fred Downs, Jr., issued Mr. Council an April 12, 2007, memorandum resolution allowing Mr. Council completion of his remaining training at the Houston VA, defendant Angela Bishop promise Mr. Council her active involvement and engagement in the oversight of his remaining internship with a firm commitment.

50. Defendants Edgar Tucker, Angela Bishop and Fred Downs, Jr., schemed and conspired without proper justification or cause and wrongfully removed Mr. Council from the Prosthetics Federal Career Intern Program by approval of the false charges by defendant Angela Bishop dated May 3, 2007.

COUNT VIII

DOUBLE JEOPARDY

51. Defendants committed "Double Jeopardy" against Mr. Council, when on May 3, 2007, while employed at the Houston VA Medical Center; Mr. Council was demoted and removed from his supervisory prosthetics intern position, under Charge A of an adverse action, which alleges "On February 12, 2007, you were given an assignment to pull National Scoreboard HCPC codes, review for correct data input, identify errors and present your work product to your preceptor. Instead of performing those duties as instructed, on February 12, 2007, you forwarded a message or memorandum to the Prosthetics administrative staff instructing them to perform your assignment with a due date of February 13, 2007, without obtaining any supervisor permission or guidance to do so."

52. On or about February 4-11, 2007, Defendants at the Houston VA Medical Center contacted Mr. Council's new duty station the Orlando VA Medical Center, alleging he removed/improperly retained copies of the exact, same February 12, 2007, National Scorecard HCPC code, he was allege to not have completed as an assignment by his Houston VA supervisor.

53. Defendants May 9, 2008 misconduct charge complaint document allege Mr. Council improperly retained copies of the exact, same (National Scorecard HCPC) confidential patient identifiable information from the Houston VA Medical Center, he was allege to have not completed as an assignment and was demoted and terminated from his position in the Federal Career Intern Program by the defendants.

COUNT IX

IRREVERSIBLE HARM/INJURY

54. The statements in the May 3, 2007 and May 9, 2008, memorandum letter, on its face, harmed Mr. Council's integrity, reputation and contributed to his removal by the Orlando VA.

55. The fact that the Orlando VA Director understood the statements in the May 9, 2008, memorandum letter to state and imply that Mr. Council improperly removed/retained copies of patient identifiable information and authorized the installation of unapproved software and other false, slanderous, accusations was libel against Mr. Council, to harm the plaintiff.

56. As a result of Defendants false misconduct allegation against Mr. Council, has now an injury by being unemployable, labeled a thief. The ex-communication as a practicing, licensed, ordained clergyman.

57. Plaintiff repeats and re-alleges each and every allegation set forth its May 3, 2007, and May 9, 2008 memorandum letter fully set forth herein are false.

58. Defendant acted with malice and the simple desire to find a convenient scapegoat.

59. The acts of the Defendants as allege herein were done with the intent to cause severe emotional distress to Mr. Council. At no time did Defendants or Orlando VA officials, even when asked to do so, seek to clarify that Mr. Council committed the allege charges of the May 3, 2007, and May 9, 2008 memorandum letter were valid or true. Mr. Council was never part of any approval of unauthorized installation of software on a Houston VA computer, putting the entire Houston VA computer system at cyber security risk. At no time did Defendants or Orlando VA officials, even when asked to do so, seek to clarify that Mr. Council did not engage in any unethical act or misconduct issues. Moreover, even after defendant was aware that Mr. Council never, engaged in any unethical behavior, the defendants, none of them would agree to publicly issue an apology or rescission of their previous decision to terminate Mr. Council from federal employment, after receiving knowledge the allege misconduct were false charges.

60. Mr. Council's intent, at all times, was to comply with all legal requirements regarding conduct and official government property. The defendants engaged in extreme and outrageous conduct intended to cause Mr. Council to suffer emotional distress by causing him to be terminated from his career federal employment by publicly and falsely stating that he had acted improperly. The Defendants and Orlando Department of Veterans Affairs acted tortuously in summarily terminating Mr. Council. The defendants are liable to Mr. Council for damages related to this intentional infliction of emotional distress. Defendants' actions were outrageous, extreme, and intentional and caused Mr. Council to suffer extreme emotional distress.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. Under the First Cause of Action for Violation of Plaintiffs Constitutional Due Process Rights of Equal Access to Justice, compensatory and punitive damages to be determined at trial;
2. Under the Second Cause of Action for Failure to prevent conspiracy to deprive federally protected rights under the American with Disabilities Act; compensatory and punitive damages to be determined at trial;
3. Under the Third Cause of Action Violation of Rights under the United States Constitution [42 U.S.C. 1983] against Defendant, False Arrest/Imprisonment/Confinement during a custodial

interrogation against Defendants, in violation of his Civil Rights and American with Disabilities Act of 1990, compensatory and punitive damages to be determined at trial;

4. Under the Fourth Cause of Action for Failure to Render Due Process under the In-Force, Contractual Master Collective Bargaining Agreement between the Dept. of Veterans Affairs and AFGE Union against Defendants, compensatory damages and punitive damages to be determined at trial;

5. Under the Sixth Cause of Action for Defendants use of a Defective Charge Document in, against Defendants, compensatory damages and punitive damages to be determined at trial;

6. Under the Seventh Cause of Action for Defamation and Libel against Defendants, compensatory and punitive damages to be determined at trial;

7. Under the Eighth Cause of Action for Defendants Failure to Conduct a Thorough Investigation Criminal or otherwise, compensatory and punitive damages to be determined at trial;

8. Under the Ninth Cause of Action for Double Jeopardy against Defendants, compensatory damages and punitive damages to be determined at trial; and

9. Under the Tenth Cause of Action for Irreversible Harm/Injury against Defendants, compensatory and punitive damages to be determined at trial.

JURY DEMAND:

Plaintiff request trial by jury.



Date: May 20, 2011

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing: COMPLAINT FOR VIOLATION OF CIVIL RIGHTS AND AMERICAN WITH DISABILITIES ACT was served upon Defendants Eric Shinseki, Secretary, Dept. of VA U.S. Department of Veterans Affairs 810 Vermont Avenue, NW Washington, DC 20420 and U.S. Attorney's Office at 501 W. Church Street, Ste 300, Orlando, FL 32805 by U.S. mail on this 20th day of May 2011.



Darralyn C. Council Pro Se