

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY**

STEPHEN M. DAVIS

Plaintiff,

v.

ORANGE COUNTY

Defendant.

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Case No. 2022-CA-003432-O

FIRST AMENDED COMPLAINT

COMES NOW, Plaintiff Stephen M. Davis, by and through undersigned counsel, and petitions this Court for redress and damages against Defendant for violating his rights under Florida's Whistleblower Act Fl. Stat. § 112.3187, and for retaliating against him as prohibited by Title VII of the federal Civil Rights Act of 1964, (42 USC §2000e-2, *et seq*, §1981a), as amended, the Americans with Disabilities Act of 1990 (42 USC §12101 *et seq*), as amended, and Fl. Stat. §760.10(7), alleging as follows:

INTRODUCTION

1. Stephen M. Davis was a Battalion Chief for Orange County Battalion 4, until his unlawful termination on October 19, 2021. As Battalion Chief, it was his responsibility to run the battalion according to outlined principles, and to discipline and issue written reprimands to his subordinates who were in violation of required standards. Moreover, as Battalion Chief, it was his duty to lead the firefighters under his command and protect their best interests. Chief Davis led with his decades of experience and protected those under his command by following the law and standards of conduct for his department. For abiding by federal and

state law and following union procedures to disclose and report his employer's violations of law and negligence, Chief Davis was illegally terminated from his position.

2. Due to the covid-19 Pandemic, Defendant, through Mayor Demings, announced a vaccinate or terminate policy ("vaccine mandate") on July 28, 2021. Under impact negotiations in light of the vaccine mandate, the Orange County Fire Fighters Association, specifically I.A.F.F., Local 2057 (the "Union"), asserted that it reached an agreement with Defendant that, in lieu of vaccinations, employees were allowed to submit exemption requests or vaccination certification by September 30, 2021. Those who did not submit a request or vaccination certification on time were subjected to a written reprimand, but with no further disciplinary action to be taken nor any evaluation weight be given to the written reprimand. All unvaccinated employees were to be subject to weekly mandatory covid-19 testing.
3. On October 5, 2021, Chief Davis received a general order to give written reprimands for alleged violations of the vaccine mandate deadline. He knew the list of employees under his command to receive written reprimand against the vaccine mandate violated the union agreement, and because reprimands were to be given to those seeking exemption, violated both state and federal laws. Chief Davis properly brought this error to his supervisor and withheld discipline against those under his command until the list could be verified, but his supervisors up his chain of command refused to verify the list.
4. Instead of looking into the clear procedural and legal violations raised by Chief Davis, or even making a call to Human Resources to make a quick verification of the reprimand list, his superiors gave him a direct order to issue the improper written reprimands. When he refused, Chief Davis was immediately relieved of duty and charged with multiple counts of wrong-doing.

5. It is precisely this situation that Florida law prohibits, where an ethical employee is terminated for properly disclosing information and reporting to his chain of command violations of law, abuse, and gross neglect of duty by a public agency, and this malfeasance must be remedied for the victimized employee. Defendant is the wrong-doer. Defendant violated state and local laws and violated a negotiated agreement. Chief Davis should not be punished for Defendant's wrong-doing. Defendant must not be allowed to retaliate and punish conscientious employees like Chief Davis.

PARTIES

6. Plaintiff Stephen Davis resides in Mount Dora, Florida and at all times pertinent to this complaint, was an employee within Orange County Fire and Rescue, reporting to the Orange County Fire Chief. Chief Davis worked within Field Operations as a lieutenant and then battalion chief. He had been employed by OCFR for nearly fifteen years before being unlawfully terminated on October 19, 2021.
7. Defendant Orange County employed Chief Davis within the county Fire and Rescue department. Its legislative branch is comprised of the County Board of County Commissioners; and county Mayor Jerry L. Demings is both chair of the BCC and the head of the executive branch of the Orange County government. Pursuant to Fla. Stat. 48.111, Mayor Demings is the agent for service of process against Defendant.

JURISDICTION

8. Jurisdiction is proper in the Circuit Court for Chief Davis' state and federal claims under Fla. Stat. § 26.012 and pursuant to Fla. Stat. § 112.3187(8)(c) of the "Whistle-blower's Act" and Fl. Stat. § 760.11(4), under which Chief Davis brings his claims.

9. As this matter involves the Orange County government and a former public employee of Orange County, this matter is properly brought before the Circuit Court in and for Orange County.
10. All conditions precedent to this action have occurred, have been performed, or have been waived.

BACKGROUND FACTS

Plaintiff Battalion Chief Stephen Davis was an Exemplary Employee

11. Plaintiff faithfully served the people of Orange County under Orange County Fire and Rescue (“OCFR”) for almost fifteen years, three of those years as Battalion Chief, until his unlawful termination in October 2021.
12. Chief Davis during his years of service received commendations for several Unit Citations for Service in saving lives of children and adults in perilous conditions in 2009, 2010, 2012, and 2019. He has received several Life Saving Awards, including in 2014 and 2016. OCFR has declared in honoring Chief Davis for his service that he “demonstrated OCFR’s values of duty, respect, and integrity to the fullest extent.”
13. He was also trained and approved to act as Assistant Chief; and having interviewed for the position, he was on the current and active promotional list for Assistant Chief prior to his request for religious accommodation in lieu of obtaining covid-19 vaccination. Prior to serving with OCFR, Chief Davis had years of experience as a medic, including with the military. He has completed many special operations trainings in multiple disciplines: Dive Instructor, Critical Care Paramedic, and Preceptor. He holds a Masters degree in Emergency Disaster Management, a Bachelors degree in Fire Emergency Services, and an Associates degree in EMS. Given his experience and training, Chief Davis also pioneered and developed the current OCFR Paramedic evaluation and assessment system. Prior to his

termination, Chief Davis also oversaw and managed the Community Assessment Response Team (CART) during local disasters for OCFR.

14. In his role as Battalion Chief, Plaintiff was responsible to oversee and manage the employees of six stations within the county, representing over 50 employees. Among other management and supervisory responsibilities, a Battalion Chief is the officer that issues discipline in OCFR. He is well versed in the standards of conduct and the disciplinary matrix, including standard progressive discipline and where discretion is available in a given circumstance. However, any discipline above a written reprimand is handled at a higher level by the Assistant Chief in the employee's chain of command.

Defendant Orange County's Vaccine Mandate

15. On July 28, 2021, Mayor Demings announced a local state of emergency due to covid-19, and in conjunction therewith, Defendant instituted a vaccine "requirement" for all Orange County employees, as announced by the mayor on the same day. All employees were required to submit certifications of the Johnson & Johnson vaccine or the first dose of the two-dose Pfizer and Moderna shots by August 31, 2021. As the deadline approached, Defendant pushed back the deadline to September 30, 2021. Defendant's written announcement of the vaccine mandate declared that the county would engage in impact negotiations over the change in employment terms with labor unions, and employees were instructed that religious or medical exemptions must be submitted by September 30, 2021.
16. On August 25, 2021, Chief Davis submitted his religious exemption request against covid-19 vaccination. **Exhibit A.** Upon information and belief, Defendant has never processed, approved, or denied Chief Davis' exemption request.

17. On behalf of firefighters employed by Defendant, their Union initiated discussions in advance of the September vaccination deadline and asserted a negotiated Memorandum of Understanding (“MOU”) was reached on September 30, 2021 after the close of business.

Exhibit B.

18. The MOU reiterated the extended deadlines imposed by Defendant for the vaccine mandate, but also provided that those who had met the deadline to certify their vaccination by August 31 would receive money incentives; that those who requested timely exemptions and were approved or those who obtained no exemption and remained unvaccinated would be subject to mandatory weekly covid-19 testing; and those who did not certify vaccination nor request exemption by September 30 would receive one written discipline in their employee file with “no further disciplinary action” under the mandate. It further specified that, should an employee receive written discipline, the reprimand would “not be considered or used in the bargaining unit member’s performance evaluation.” However, if any employee who did not comply with the vaccine mandate further refused weekly testing, additional discipline would apply, including beyond written reprimand. **Exhibit B.**

19. Weekly testing protocol with written reprimands where applicable under the MOU began in OCFR on October 4, 2021. Chief Davis was informed of the testing and discipline protocol (GO-21-016) under the MOU as an officer in charge of issuing discipline under the MOU. Battalion Chiefs would receive a written list of employees who were to be issued discipline and a list of employees who were required to test on the first shift of the week under the MOU.

20. The night of imposition of the MOU, early on October 1, 2021, several dozen firefighters and first responders of OCFR, including Chief Davis, filed a lawsuit before this Court (*Wheat, et*

al. v. Orange County, 2021-CA-009579-O) against Defendant Orange County to stop the vaccine mandate, citing constitutional grounds violating fundamental rights of privacy and Due Process and Equal Protection violations and asserting Mayor Demings was also without legal authority to impose the mandate.

***Defendant Demanded that Chief Davis Comply with Unlawful Orders, and
He Reported the Unlawful Orders Through Chain of Command***

21. On October 5, 2021, Chief Davis began his shift, and toward mid-afternoon, Assistant Chief (AC) Buffkin called the battalion chiefs under her command to Chief Davis' station 51 to advise them on the new scheme under the vaccine mandate and MOU and provide some instruction.
22. Finally, after close of business, Chief Davis received a list from Defendant's Centralized Staffing Unit ("CSU") through AC Buffkin including every employee in C shift for all battalions who were to receive written reprimand and be subject to covid-19 testing. Twelve of the nearly 100 names on the list were in Chief Davis' Battalion.
23. Chief Davis reviewed the names, and based on his personal knowledge of the employees under his charge, he was aware that certain of the individuals listed had actually timely requested exemption from the mandate, and according to the MOU terms as well as state and federal civil rights law prohibiting adverse employment action for protected conduct, should not have been listed for discipline. He was also familiar with the circumstances for employees under other Battalions and knew the error was widespread. Still others were vaccinated but were nonetheless listed for reprimand.
24. Chief Davis understood that issuing discipline to an individual for compliance when that individual had lawfully requested exemption was a violation of state and federal laws, and a

further violation of the MOU with Defendant, constituting violations of the fundamental rights of OCFR employees, malfeasance, misfeasance, abuse, and gross neglect of duty on the part of Defendant.

25. Since he had received his list for reprimand after close of business, Chief Davis could not contact Human Resources to verify the status of the employees on his list. He therefore had a phone conversation with AC Buffkin that evening regarding his concerns of Defendant's unlawful conduct and objecting to his being commanded to participate therein.

26. OCFR Department Rules 33 and 35 govern the department and provide as follows:

R.33 Unlawful Orders

Employees shall not knowingly issue any order that is in violation of laws, statutes, ordinances, rules and regulations, or SOPs.

R.35 Disobedience to Unlawful Orders

No employee is expected to, or shall obey any order, that he/she knows to be contrary to federal or state law or County ordinance. At the time an unlawful order is issued, the employee shall:

- Advise the issuing authority of its illegality.
- Should that authority persist in demanding compliance, an employee of superior rank or status to all parties involved should be summoned to decide the controversy.
- Responsibility for refusal to obey rests with the employee, and he/she shall be required to justify his/her actions. He/she shall, prior to the conclusion of the tour of duty in which the order was given, report the facts in writing to the Division Chief or Deputy Chief/Manager through official channels.

Exhibit C – material sections of OCFR Rules

27. Chief Davis is subject to the OCFR Rules and Regulations by specific reference of Article 9 of Unit B IAFF collective bargaining agreement (“CBA”) with Defendant. **Exhibit D.** Also under the CBA Unit B, Article 10, Defendant through OCFR leadership may only discipline employees “for just cause.” Additionally, the only provisions for discipline and grievance and appeal procedures applicable to Chief Davis’ employment are those within the CBA.

28. In accordance with OCFR Rule 35, Chief Davis expressed his concern regarding the unlawful order to issue discipline to the twelve employees on his list. He provided details by telephone to his superior Assistant Chief Buffkin regarding the laws he believed would be violated if he were to pursue enforcement of the county's vaccine mandate and issue discipline to all twelve individuals on his list.
29. Specifically, he cited in the call Fl. Stat. § 252.38(4) from the lawsuit in which he was a plaintiff, showing the mayor had no authority to impose the mandate; that any MOU testing alternatives were to be enforced only until local state of emergency ended (which was ended by operation of law, but ignored and violated by Defendant through misconduct of Mayor Demings); Nuremburg Code regarding unlawful experimentation on people (the vaccines available were untested, emergency use authorized only) without informed consent; the fact that he personally had filed his religious exemption and was being discriminated against under the segregating nature of Defendant's vaccine mandate, even with the function of the MOU terms; that, like him, other employees in OCFR who sought exemption were also being discriminated against on that basis under the vaccine mandate and segregated alternative testing scheme; and that, to issue written discipline against those employees who sought exemption violated Florida's civil rights law and federal law under Title VII and Americans with Disabilities Act.
30. Chief Davis emailed AC Buffkin that evening regarding his concerns in enforcing the written reprimands and testing protocol. **Exhibit E**. He would not comply with the order to issue discipline, at minimum, unless and until all names were verified through Human Resources for compliance with federal and state law. Even so, Chief Davis made it clear he considered the entirety of the vaccine mandate unlawful, indeed as he had expressed in the Complaint

which he filed with co-plaintiffs on October 1, 2021. Chief Davis is the only battalion chief, tasked in his position with discipline of those under his command, who joined that lawsuit against Defendant's vaccine mandate.

***Defendant Terminates Chief Davis for Reporting Unlawful Orders, Then
Defendant Admits the Orders Issued Were Unlawful.***

31. During the shift on October 5, Chief Davis met with AC Buffkin to express his valid concerns regarding the accuracy of the list of twelve employees to receive a written reprimand. Another battalion chief (BC) Sherrill was present at the meeting as representative of the union ("steward"). Chief Buffkin disregarded Chief Davis' concerns, failed to follow OCFR Rule 35 and call a ranking officer in chain of command to resolve the dispute, and instead gave a direct order to Chief Davis to issue the reprimands, without acknowledging or verifying if his concerns were correct. Chief Davis refused. Chief Davis was then immediately relieved of duty by AC Buffkin.
32. Later discovery under public records request shows Chief Davis was not the only employee or battalion chief raising the issue of error in the disciplinary lists on October 5, 2021. Ronald Joseph, a newer employee, timely requested accommodation from the vaccine mandate and received notice of the same from HR before close of business on September 30, 2021. On October 5, he forward the response email from HR to his command, Lieutenant Daniel Novoa, who promptly forwarded the same to his battalion chief Juan Atan, stating the reprimand should be null and void. The same night, around 11pm on October 5, BC Atan forward the same thread to AC Buffkin asking for her instruction in light of the obvious unlawful reprimand. **Exhibit F.**

33. Having just suspended Chief Davis only hours before regarding the *same unlawful orders*, AC Buffkin doubled down and responded to BC Atan to issue the reprimands regardless of law, and that HR would “update their records” and “discipline will be adjusted accordingly once HR confirms the status.” She also instructed that the employee needed to contact HR to “ensure they update his status,” even though she had the email in front of her showing HR’s confirmation response regarding receipt of the accommodation request on September 30.

Exhibit F.

34. BC Sherrill heard Plaintiff’s concerns in the meeting with AC Buffkin on October 5 and brought them forward to Human Resources the next day. BC Sherrill was one of many employees on a disciplinary list to receive reprimands, but he had complied with the vaccine mandate by sending his documentation timely. In his email, he questioned the lawfulness of his receiving discipline, while having sought exemption timely.

35. Because of the BC Sherrill’s inquiry, that same day, October 6, 2021, Defendant, through OCFR HR, acknowledged the erroneous disciplinary lists. HR responded to BC Sherrill that, “the department has been asked to first verify” with employees their status and whether they filed exemption requests, and “after that verification is done, you would ultimately not receive any discipline if you submitted on or before Sept 30th”, even if the employee name were initially included in a disciplinary list. **Exhibit G.** Division Chief Wadja was copied in the email thread with HR and BC Sherrill regarding the unverified and erroneous discipline lists.

36. Indeed, even AC Buffkin acknowledged Defendant’s error. Despite having issued Chief Davis a direct order to issue discipline to individuals whose status was unverified on his list the day before, early on October 6, she emailed Battalion Chiefs under her supervision

reminding them to complete written reprimands under the vaccine mandate and MOU. She also told them, “Remember if anyone has received the vaccine or believe their status is incorrect, have them email 3 people at HR: Charles Welch, Kathy Mora AND Latarsha Gibson and include any supporting documentation they have such as emails, etc.” **Exhibit H.**

37. AC Buffkin on October 6 advised her officers to complete the same verification with HR prior to issuing written reprimands that she refused to complete at the request of Chief Davis on October 5 before he issued reprimands. Rather than even contact HR or her superior officer regarding the dispute, she suspended Chief Davis for requesting verification.
38. Public records requests show that *eleven* reprimands were subsequently issued to Chief Davis’ battalion employees from his original list of twelve names – five on October 8, 2021, and the remaining six issued over a month later.
39. All eleven issued written reprimands originally showed an October 2021 issue date but no HR representative signature from records requested prior to March 2022, which is required for processing and official filing of the reprimand in employee files, per county policy.
40. In addition to Defendant’s admitted error in submitting employee lists for disciplinary action, Defendant further violated the MOU and federal and state law through the language of the reprimand itself. The written reprimands stated in capitalized type: “CONSEQUENCES OF INSUFFICIENT IMPROVEMENT OR RECURRENCE MAY RESULT IN FUTURE DISCIPLINARY ACTION UP TO AND INCLUDING TERMINATION.”
41. Chief Davis was subjected to a Predetermination Hearing (“PDH”) on October 13, 2021, pertaining to his refusal to follow the direct order given on October 5. He was charged with violation of his “performance of duty”, “unbecoming conduct”, “insubordination”, and

violation of “adhering to and reporting improper orders,” under OCFR rules 5, 24, 32, and 36, as well as violating a direct order and the procedures for grievance and his managerial responsibilities. Defendant found that Chief Davis engaged in “conduct in a work or non-work environment which discredits the County Government, public officials, fellow employee(s), or themselves.” **Exhibit I.**

42. At the PDH, Chief Davis yet again, in writing expressed his grave concerns of the illegality of Defendant’s conduct and demand that he engage in that unlawful conduct. This written defense was provided to higher command after the PDH, which was attended by two assistant chiefs and a union representative, together with Chief Davis.

43. Despite Chief Davis’ properly expressing his concern under Rule 35 in disobeying an *unlawful* order, and despite AC Buffkin’s violation of Rule 35, as well as Defendant’s own admission of its legal error in issuing written discipline, Defendant failed to address these material facts regarding Chief Davis’ conduct at any time.

44. AC Michael Howe, despite ample, written warnings provided by Chief Davis of Defendant’s unlawful actions, signed in agreement by letter dated October 18, 2021 for Chief Davis’ unlawful termination effective the following day, October 19, 2021. **Exhibit I.**

45. Although, according to the terms of the CBA, Defendant would have ten days in which to make a final determination after a PDH is held, Defendant through AC Howe made a very fast decision in six days, including weekend days.

46. Pursuant to later public records request production, it is clear AC Buffkin had full knowledge of the fact that Defendant was issuing reprimands to employees with pending accommodation requests, precisely the error of which Chief Davis warned. **Exhibit J.**

47. Based on AC Buffkin's actions, Chief Davis was terminated in retaliation by Defendant for his disclosure of protected information under Florida's Whistle-blower's Act and for his engaging in protected acts under state and federal law, supporting and protecting the rights of employees in his command to assert their exemptions to Defendant's vaccine mandate on religious and medical grounds.
48. Defendant's suspension of Chief Davis comes immediately after he asserted to AC Buffkin that Defendant discriminated against him because of his religious beliefs, expressed through his own religious exemption request, and only days after he filed suit against Defendant to assert his constitutional rights. His unlawful termination followed shortly after and on the same pretextual basis as his suspension.
49. The legally and factually erroneous termination letter painting Chief Davis in a light as an insubordinate employee worthy of summary termination was copied to nine individuals within OCFR and other departments within Defendant's administration.
50. Chief Davis provided written notice of the unlawful termination and retaliation to Mayor Demings on October 19, 2021.

***Defendant Continues to Violate State and Federal Law and Contractual Obligations,
Regarding its Handling of OCFR Employee Discipline***

51. After his termination, Chief Davis submitted a Public Records Request for the discipline records of the twelve individuals under his command. The records provided in response in mid-March 2022, showed *none of the twelve individuals in the discipline list submitted to Chief Davis* ever had their issued written reprimands processed and signed by HR.
52. Since his requests for public records were not fulfilled in their entirety by Defendant, on March 9, 2022, Chief Davis emailed Director Banks and Director Torres of the OCFR to

highlight public record inconsistencies and violations by Defendant regarding the written reprimands issued under the vaccine mandate. Director Banks, the next morning, replied stating, "I do not believe the information you were provided in response to your PRR was accurate. But I will ensure someone follows up with you promptly." That day, Chief Davis received public records of the written reprimands for his battalion.

53. On March 12, 2022, Chief Davis replied to Director Banks detailing what he believed to be "extreme ethical misconduct" within the department. And that "[t]his misconduct has led to county employees working hours upon hours to correct these unethical mistakes and negligence, which is funded directly by the taxpayers of Orange County." He indicated that one of the employees under Chief Davis' command, Lt. Dan Coats received a reprimand, despite his timely accommodation request. He also raised the point that the reprimands were improper, as they were not processed by HR with HR signature.
54. Later records requests show that after that email exchange, on March 17, 2022 many reprimands that had been unsigned by HR were signed and dated for March 17, 2022.
55. Effectively, as a result of Chief Davis' reporting of legal violations to Defendant through his chain of command, Defendant has internally admitted its violations of law and attempted to retract and cover-up its unlawful and reckless actions, albeit with additional unlawful mishandling and disposition of public records. However, Defendant refuses to reinstate Chief Davis or clear his name of the myriad erroneous charges it leveled against him.
56. One reprimand was never completed at all until Chief Davis drew attention to the record retention cover-up. Another duplicate set of reprimands exist for an employee who properly submitted his request for religious exemption to HR on September 30, 2021, and received a reply from HR, confirming the request received. However, of the two reprimands in the

records for this employee: one had blacked out the capitalized font language contrary to the terms of the MOU and was signed on October 20, 2021, two weeks after Chief Davis received the employee's name for reprimand and the day after Defendant terminated Chief Davis. The other reprimand version appeared to be the original, signed only by the employee with a date of October 7 (a replica matching signature and date are on the redacted second reprimand), and including without redaction the language contrary to MOU terms.

57. On November 30, 2021, Chief Davis had his grievance hearing regarding his challenge to his unlawful termination. He cited Defendant on eighteen (18) violations of his employment contract (CBA), County Policies, Ethics Code terms, and OCFR Standard Operating Procedures (SOP) in its unlawful and unsubstantiated, retaliatory termination of his employment.

58. Despite having many records proving Chief Davis' allegations regarding his refusal to follow unlawful orders, Defendant issued its decision on the grievance hearing quickly on December 13, 2021, asserting no analysis or assessment whatsoever, but only baldly alleging, "I find that management did not violate the collective bargaining unit articles cited in your grievance. Therefore, your grievance is denied." **Exhibit K**. Notably, though the one page decision cites all the violations raised by Chief Davis in his hearing, Chief Rathbun only asserted that the CBA terms were not violated, in his opinion.

59. On February 28, 2022, Chief Davis had his Step III grievance hearing. In similar fashion to his pre-determination hearing for discipline based on October 5, 2021 events and to his Step II grievance hearing, Defendant again concealed the records within its possession showing that Chief Davis was correct regarding the individuals on the disciplinary list who should not have received reprimand. Defendant failed to analyze Chief Davis' evidence and argument

regarding his proper compliance with his CBA and OCFR SOPs in refusing unlawful orders.

The union then voted on behalf of Chief Davis to proceed to arbitration in the dispute.

60. However, sometime between the filing of this suit before the court and September 7, 2022, Defendant and Chief Davis' union IAFF Local 2057 apparently agreed upon terminating his grievance process and no longer proceeding to arbitration. To date, Chief Davis has received no notice from Defendant regarding its refusal to pursue his grievance, no written statement from his union regarding Defendant's decision to refuse arbitration, nor any written notice regarding the union's agreement not to push for arbitration.
61. In light of the clear refusal by Defendant to address any of the voluminous evidence presented by Chief Davis regarding his appropriate questioning of the lawfulness of Defendant's actions in pursuing enforcement of its vaccine mandate and issuing reprimands and Defendant's unlawful and retaliatory termination of his employment, Chief Davis opened an investigation before the Equal Employment Opportunity Commission (EEOC) on or around July 26, 2022, basing his claims in retaliation prohibited by law.
62. On September 20, 2022, the EEOC issued Chief Davis a Right to Sue Notice.
63. To date, Chief Davis has not received any response in explanation, exoneration, apology, or reinstatement as a result of proof of Defendant's misconduct, malfeasance, misfeasance, abuse, gross neglect of duty, probable mishandling or destruction of public records, and other legal and regulatory violations by Defendant related to its unlawful termination of Chief Davis.

COUNT I

Violation of Florida Whistle-blower's Act Fl. Stat. § 112.3187.

64. Paragraphs 1-63 are incorporated by reference herein.

65. The Florida Whistle-blower's Act prohibits an agency "from taking retaliatory action against an employee who reports to an appropriate agency violations of law." Fl. Stat. §

112.3187(2). An agency "shall not dismiss, discipline, or take any other adverse personnel action...[nor] take any adverse action that affects the rights or interest of a person in retaliation for the person's disclosure of information" identified in the Act. *Id.* at (4)(a)-(b).

66. The Act covers disclosure of information that includes:

- a. Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee of an agency which creates and presents a substantial and specific danger to the public's health, safety, or welfare.
- b. Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds...or gross neglect of duty committed by an employee or agent of an agency.

Fl. Stat. § 112.3187(5).

67. The employee's disclosure of protected information concerning a local governmental entity, including a county entity, such as Orange County government, must be to the mayor, as a chief executive officer (Fl. Stat. § 447.203(9)) or other appropriate local officials. Fl. Stat. § 112.3187(6). The "other appropriate local officials," for OCFR include supervisors and upper management in Chief Davis' line of command.

68. The Act protects employees "who refuse to participate in any adverse action prohibited by this section" and "file any written complaint to their supervisory officials." Fl. Stat. § 112.3187(7). "Adverse personnel action" means the discharge, suspension, transfer, or demotion of any employee or the withholding of bonuses, the reduction in salary or benefits,

or any other adverse action taken against an employee within the terms and conditions of employment by an agency or independent contractor. §112.3187(3)(c).

69. Chief Davis was a public employee protected under the Whistleblower statute. At all relevant times to this complaint, Chief Davis was an employee in the supervisory position of Battalion Chief within Defendant Orange County's Fire and Rescue Department.
70. When he accurately suspected he was being ordered to violate federal and state law to issue written reprimands to firefighters who had timely filed for exemptions and accommodation, he initiated the proper complaint to his commanding officer, AC Buffkin, in accordance with OCFR Rule 35 and his collective bargaining agreement.
71. Specifically, Chief Davis suspected violations of federal and state civil rights laws, implicating his employees' fundamental rights, if he were to discipline individuals who were timely requesting accommodation through exemption to the vaccine mandate. Such violations are abusive and a gross neglect of duty by Defendant toward its employees and would subject Defendant to liability and waste public resources in correcting the legal violation.
72. Indeed, evidence, including Defendant's own communications through OCFR and HR public records obtained from Defendant, vindicate Chief Davis' suspicion that Defendant was issuing orders contrary to law. Defendant has, in fact, never formally processed the twelve written reprimands it commanded Chief Davis to issue to employees under his command.
73. Because Chief Davis challenged unlawful orders to his superior officer and reported his concerns in writing through official channels, without backing down from his conviction of their illegality, Defendant unlawfully terminated him, in violation of Fl. Stat. § 112.3187, on October 19, 2021.

74. As a direct consequence of Defendant's unlawful termination, Chief Davis has suffered damages through lost wages, loss of his accrued benefits and time off pay, other employment benefits and pension, denigration of his character and impeccable employment record, and costs in seeking future employment.

WHEREFORE, Plaintiff Stephen Davis respectfully requests that this Court enter judgment for Plaintiff and against Defendant; and order Defendant to reinstate Plaintiff to the same position held before his termination, or to an equivalent position and remove the unlawful termination from his employee file; to reinstate full fringe benefits and seniority rights; to compensate Plaintiff for lost wages, benefits, and other remuneration as proper; and enter an award for reasonable attorney's fees and costs to Plaintiff together with any other relief the court deems just and proper.

COUNT II

Retaliation under the Florida Civil Rights Act Fl. Stat. § 760.10(7).

75. Paragraphs 1-63 are incorporated by reference herein.

76. The Florida Civil Rights Act ("FL CRA") prohibits an employer "discriminat[ing] against any person because that person has opposed any practice which is an unlawful employment practice under this section, or because that person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section.."

Fl. Stat. § 760.10(7).

77. Other prohibited employment practices include:

- a. "(1)(a) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms,

conditions, or privileges of employment, because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.”

- b. “(1)(b) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.”
- c. “(2) to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status or to classify or refer for employment any individual on the basis of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status.”
- d. “(6) to print, or cause to be printed or published, any notice or advertisement relating to employment, membership, classification, referral for employment, or apprenticeship or other training, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, pregnancy, national origin, age, absence of handicap, or marital status.”

Fl. Stat. § 760.10.

78. Defendant is subject to FL CRA, as an employer “employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year....” Fl. Stat. § 760.02(7).

79. Defendant engaged in prohibited employment practices under FL CRA by imposing a covid-19 vaccine mandate which threatened to fire and refuse to hire individuals because of their

religious belief against covid-19 vaccination and Defendant's perception of their "handicap" of lack of vaccination.

80. Defendant's mandate limited, segregated, and classified employees (and applicants) to OCFR in a way that adversely affected their employment status, threatening to terminate or refusing to hire those who were unvaccinated for covid-19 for religious reasons and because Defendant perceived these employees to be handicapped or unable to perform their job functions in their status as unvaccinated. Defendant as a result of this discriminatory, unlawful mandate did issue written reprimands to employees for their medical status as unvaccinated, including to those who had sought medical and religious exemptions. All employees discriminated against under the mandate, with and without "accommodations" were forced regularly to take invasive nasal tests, even when entirely asymptomatic for illness, further adversely affecting their status as employees.
81. Chief Davis opposed Defendant's unlawful practices pursuant to FL CRA and filed a lawsuit opposing Defendant's discriminatory and unlawful mandate.
82. Chief Davis further suspected violations of federal and state civil rights laws, implicating his employees' fundamental rights, if he were to discipline individuals who were timely requesting accommodation through exemption to the vaccine mandate. Such violations are abusive and a gross neglect of duty by Defendant toward its employees and would subject Defendant to liability for the legal violations.
83. Indeed, evidence, including Defendant's own communications through OCFR and HR public records obtained from Defendant, vindicate Chief Davis' suspicion that Defendant was issuing orders contrary to law and Defendant's knowledge that its actions were unlawful.

84. Defendant, upon learning Chief Davis' religious position in refusing covid-19 injections and after Chief Davis entered a lawsuit to challenge Defendant's unlawful mandate, rejected him for promotion to Assistant Chief, a position for which he was immensely qualified, had interviewed for the promotion, and was trained and approved to the active list for promotion.
85. When Chief Davis actively opposed Defendant's violations of FL CRA, and refused to issue unlawful reprimands to protect the rights of those under his command, Defendant unlawfully terminated him on October 19, 2021.
86. As a direct consequence of Defendant's unlawful suspension and subsequent termination, Chief Davis has suffered damages through lost wages, loss of his accrued benefits and time off pay, other employment benefits and pension, denigration of his character and impeccable employment record, and costs in seeking future employment.

WHEREFORE, Plaintiff Stephen Davis respectfully requests that this Court enter judgment for Plaintiff and against Defendant; and order Defendant to reinstate Plaintiff to the same position held before his termination, or to an equivalent position and remove the unlawful termination from his employee file; to reinstate full fringe benefits and seniority rights; to compensate Plaintiff for lost wages, benefits, and other remuneration as proper; and enter an award for reasonable attorney's fees and costs to Plaintiff together with any other relief the court deems just and proper.

COUNT III

Retaliation under Title VII of the Civil Rights Act of 1964, As Amended ("Title VII") 42 USC §§2000e-3(a).

87. Paragraphs 1-59 are incorporated by reference herein.
88. Title VII (42 USC § 2000e-3(a) provides that: "It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment,

...because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.”

89. Other prohibited employment practices include:

- a. “(a)(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin;”
- b. “(a)(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin..”
- c. “(2) to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.”

42 USC § 2000e-2.

90. Defendant is subject to 42 USC § 2000e, *et seq*, as an employer employing “fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year....” 42 USC § 2000e (b).

91. Defendant engaged in prohibited employment practices under Title VI by imposing a covid-19 vaccine mandate which threatened to fire and refuse to hire individuals because of their religious belief against covid-19 vaccination.

92. Defendant's mandate limited, segregated, and classified employees (and applicants) to OCFR in a way that adversely affected their employment status, threatening to terminate or refusing to hire those who were unvaccinated for covid-19 for religious reasons. Defendant, as a result of this discriminatory, unlawful mandate did issue written reprimands to employees for their medical status as unvaccinated, including to those who had sought medical and religious exemptions. All employees discriminated against under the mandate, with and without "accommodations" were forced regularly to take invasive nasal tests, even when entirely asymptomatic for illness, further adversely affecting their status as employees.
93. Chief Davis opposed Defendant's unlawful practices pursuant to Title VII and filed a lawsuit opposing Defendant's discriminatory and unlawful mandate.
94. Chief Davis further suspected violations of federal and state civil rights laws, implicating his employees' fundamental rights, if he were to discipline individuals who were timely requesting accommodation through exemption to the vaccine mandate. Such violations are abusive and a gross neglect of duty by Defendant toward its employees and would subject Defendant to liability for the legal violations.
95. Indeed, evidence, including Defendant's own communications through OCFR and HR public records obtained from Defendant, vindicate Chief Davis' suspicion that Defendant was issuing orders contrary to law and Defendant's knowledge that its actions were unlawful.
96. Defendant, upon learning Chief Davis' religious position in refusing covid-19 injections and after Chief Davis entered a lawsuit to challenge Defendant's unlawful mandate, rejected him for promotion to Assistant Chief, a position for which he was immensely qualified, had interviewed for the promotion, and was trained and approved to the active list for promotion.

97. When Chief Davis actively opposed Defendant's violations of FL CRA protecting the rights of those under his command, Defendant unlawfully terminated him on October 19, 2021.

Defendant's retaliation against Chief Davis is malicious and intentional, showing reckless indifference to his protected rights.

98. As a direct consequence of Defendant's unlawful suspension and subsequent termination, Chief Davis has suffered damages through lost wages, loss of his accrued benefits and time off pay, other employment benefits and pension, denigration of his character and impeccable employment record, and costs in seeking future employment.

WHEREFORE, Plaintiff Stephen Davis respectfully requests that this Court enter judgment for Plaintiff and against Defendant; and order Defendant to reinstate Plaintiff to the same position held before his termination, or to an equivalent position and remove the unlawful termination from his employee file; to reinstate full fringe benefits and seniority rights; to compensate Plaintiff for lost wages, benefits, and other remuneration as proper; and enter an award for reasonable attorney's fees and costs to Plaintiff together with any other relief the court deems just and proper.

COUNT IV

Retaliation under the Americans with Disabilities Act 42 U.S.C. §12203(a).

99. Paragraphs 1-59 are incorporated by reference herein.

100. The Americans with Disabilities Act ("ADA") prohibits an employer "discriminat[ing] against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter." 42 U.S.C. §12203(a).

101. The ADA prohibits discrimination “against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” 42 USC § 12112(a). Such discrimination includes:

- a. “(b)(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee.”
- c. “(b)(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity’s qualified applicant or employee with a disability to the discrimination prohibited by this subchapter.”
- d. “(b)(3) utilizing standards, criteria, or methods of administration – (A) that have the effect of discrimination on the basis of disability; or (B) that perpetuate the discrimination of others who are subject to common administrative control.”
- e. “(b)(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or class of individuals with disabilities unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity.”
- f. “(d)(1) The prohibition against discrimination...shall include medical examinations and inquiries.”

42 USC § 12112.

102. Disability is defined by the ADA as including “physical or mental impairment that substantially limits one or more major life activities of such individual;...or being regarded

as having such an impairment....” 42 USC § 12102(1)(A) and (C). “An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.” 42 USC § 12102(3)(A).

103. Defendant is subject to ADA, as an employer “employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year....” 42 USC 12111(5)(A).

104. Defendant engaged in prohibited employment practices under the ADA by imposing a covid-19 vaccine mandate which threatened to fire and refuse to hire individuals because of Defendant’s perception of their disability due to their medical status as unvaccinated against covid-19.

105. Defendant’s actions to coerce and threaten employees with termination without obtaining the covid-19 vaccination, indicates Defendant’s view that receiving the injections is a necessary and essential function of OCFR employee’s job duties, and that, without this treatment, OCFR employees could not complete a major life function – working. Further, Defendant required only those unvaccinated for covid-19 to continue to wear PPE at all times and to take medical testing continuously, even when asymptomatic for any illness, indicating Defendant’s view of their continuous, perpetual danger in the workplace due to their medical status.

106. Defendant’s mandate limited, segregated, and classified employees (and applicants) to OCFR in a way that adversely affected their employment status, threatening to terminate or refusing to hire those who were unvaccinated for covid-19 because Defendant perceived

these employees to be disabled and unable to perform their job functions in their status as unvaccinated. Defendant as a result of this discriminatory, unlawful mandate and by alleged contractual terms of the MOU, did issue written reprimands to employees for their medical status as unvaccinated, including to those who had sought medical and religious exemptions. All employees discriminated against under the mandate, with and without “accommodations” were forced regularly to take invasive nasal tests, even when entirely asymptomatic for illness, further adversely affecting their status as employees.

107. Chief Davis opposed Defendant’s unlawful practices pursuant to the ADA and filed a lawsuit opposing Defendant’s discriminatory and unlawful mandate.

108. Chief Davis further suspected violations of the ADA, implicating his employees’ fundamental rights, if he were to discipline individuals who were timely requesting accommodation through exemption to the vaccine mandate. Such violations are abusive and a gross neglect of duty by Defendant toward its employees and would subject Defendant to liability for the legal violations.

109. Indeed, evidence, including Defendant’s own communications through OCFR and HR public records obtained from Defendant, vindicate Chief Davis’ suspicion that Defendant was issuing orders contrary to law and Defendant’s knowledge that its actions were unlawful.

110. When Chief Davis actively opposed Defendant’s violations of ADA, and refused to issue unlawful reprimands to protect the rights of those under his command, Defendant unlawfully terminated him on October 19, 2021.

111. As a direct consequence of Defendant’s unlawful suspension and subsequent termination, Chief Davis has suffered damages through lost wages, loss of his accrued benefits and time

off pay, other employment benefits and pension, denigration of his character and impeccable employment record, and costs in seeking future employment.

WHEREFORE, Plaintiff Stephen Davis respectfully requests that this Court enter judgment for Plaintiff and against Defendant; and order Defendant to reinstate Plaintiff to the same position held before his termination, or to an equivalent position and remove the unlawful termination from his employee file; to reinstate full fringe benefits and seniority rights; to compensate Plaintiff for lost wages, benefits, and other remuneration as proper; and enter an award for reasonable attorney's fees and costs to Plaintiff together with any other relief the court deems just and proper.

COUNT V
Breach of Contract

112. Paragraphs 1-63 are incorporated by reference herein.
113. Defendant is bound by the Collective Bargaining Agreement between Orange County Fire Fighters Association, I.A.F.F. Local 2057, and Defendant pertaining to officers "B-Unit", ("CBA") which has the authoritative weight of county ordinance. **Exhibit D.**
114. Under the CBA, Article 6, 10, and 12, Defendant has a duty to engage in the grievance process in good faith and carefully to weigh various factors in determining appropriate disciplinary action, together with conducting an efficient and thorough investigation. Defendant further must work with the union and Chief Davis to select an arbitrator within ten working days from the notice of arbitration.
115. Defendant breached these duties by engaging in the grievance process in bad faith and deception, withholding evidence in the form of its own public records that supported Chief Davis' allegations of Defendant's unlawful conduct and unlawful orders to him and further

public records that showed that Defendant sought to rectify its misconduct after suspending Chief Davis in retaliation. Defendant failed to conduct a fair and objective investigation, applied the rules of the OCFR unequally, and issued discipline against Chief Davis that was not commensurate to the offense alleged and his employee work record. Defendant further breached its duty under the CBA, upon information and belief, by failing to select an arbitrator timely and move forward with the grievance process after Chief Davis' Step III grievance proceeding.

116. Defendant has a duty under Art 2 to recognize the local union as the exclusive bargaining agent for Chief Davis as battalion chief. Defendant breached this duty by making unilateral changes to the CBA terms and conditions of employment related to the disciplinary process as applied against Chief Davis without any bargaining process with the union.
117. Defendant has a duty under Articles 3, 6, and 10 to issue discipline against covered member employees for *just cause* only. Defendant breached this contractual duty by issuing discipline against Chief Davis in the form of suspension and termination as retaliation against him, not for just cause of his own misconduct.
118. Defendant has a duty under Article 9 to post any changes to rules, regulations, SOPs, or policy for ninety-six (96) hours prior to enforcement with disciplinary action thereunder. Defendant breached this duty by failing to post the MOU at all and failing to vet the disciplinary list provided to Chief Davis for issuance of written discipline thereunder. Defendant then retaliated against Chief Davis for his compliance with this term of the CBA and his identifying Defendant's breach.
119. Pursuant to the CBA Articles 16 and 25, Defendant has a duty to comply with all equal employment opportunity law. Defendant breached that duty by issuing discipline to covered

employees in violation of Title VII, the ADA, and Florida's Civil Rights Act. Defendant further breached that duty by compelling Chief Davis to violate those laws through issuing an unlawful order for him to issue the unlawful discipline. Defendant also violated its duty to comply with law by instituting the vaccine mandate and segregated alternative testing scheme under the alleged MOU, and by retaliating against Chief Davis when he raised objection to these policies. Defendant's passing over Chief Davis for promotion to assistant chief after he filed a lawsuit alleging Defendant's misconduct also breached its duties under these CBA sections to comply with applicable laws.

120. Defendant's many breaches of its duties is the proximate cause of Chief Davis' damages, including but not limited to, lost wages, loss of his accrued benefits and time off pay, other employment benefits and pension, denigration of his character and impeccable employment record, and costs in seeking subsequent employment.

WHEREFORE, Plaintiff Stephen Davis respectfully requests that this Court enter judgment for Plaintiff and against Defendant; and order Defendant to remove the unlawful termination from his employee file; to compensate Plaintiff for lost wages, benefits, and other remuneration as proper; and enter an award for reasonable attorney's fees and costs to Plaintiff together with any other relief the court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated this 8th day of November, 2022.

Respectfully Submitted,

 /s/ Rachel Rodriguez
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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was filed and served utilizing the Florida Courts E-Filing Portal on November 8, 2022 to Patricia Rego Chapman, Esq.

/S/ Rachel L.T. Rodriguez, Esq.

Counsel for Plaintiff