

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

FILED

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US DISTRICT COURT
MIDDLE DISTRICT OF FL
ORLANDO FLORIDA

DANIELLE SMITH,)
)
 Plaintiff,)
 v.)
)
 VOLUSIA COUNTY, FLORIDA,)
 a political subdivision of the State of Florida,)
 CURTISS M. GEBER, individually, and)
 KEVIN SWEAT, individually,)
)
 Defendants.)
 _____)
 /

CASE NO.:

6:11-cv-35-ORL-280JK

COMPLAINT

Plaintiff brings this suit pursuant to 42 U.S.C. §1983 seeking damages arising from certain policies, practices and actions of VOLUSIA COUNTY, FLORIDA, and certain of its individual officers and representatives, which have violated Plaintiff's rights under the Fourth and Fourteenth Amendments to the United States Constitution. Plaintiff also brings certain state law claims under this Court's supplemental jurisdiction.

JURISDICTION

1. This suit is brought pursuant to 42 U.S.C. §1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

2. This Court has "Federal Question" jurisdiction pursuant to 28 U.S.C. §1331 to hear cases arising under the Constitution of the United States, under 28 U.S.C.

§1343(3) to redress the deprivation under color of state law of any right, privilege or immunity secured by the Constitution, and under 28 U.S.C. §1343(4) to recover damages and secure other relief for the invasion of civil rights.

3. This Court is authorized to award damages for violation of Plaintiff's constitutional rights under 42 U.S.C. §1983.

4. This Complaint seeks damages for violations of Plaintiff's rights, privileges and immunities secured by the Fourth and Fourteenth Amendments to the Constitution.

5. This Court may enter an award of attorney's fees pursuant to 42 U.S.C. §1988.

6. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. §1366.

7. Plaintiff has satisfied the requirements of §768.28(6) Fla.Stat. by notifying VOLUSIA COUNTY and the Florida Department of Financial Services in writing of her claims.

8. Plaintiff has complied with all conditions precedent to maintaining this action or those conditions have been waived or become moot.

VENUE

9. Venue is proper in the Middle District of Florida, Orlando Division, since the policies and acts complained of are those of the VOLUSIA COUNTY, FLORIDA, which is within the district and geographical area assigned to the Orlando Division.

PARTIES

10. Plaintiff, DANIELLE SMITH, is an individual, *sui juris*. DANIELLE SMITH is beneficially interested in the relief herein sought and seeks to invoke the original jurisdiction of this Court on account of the facts and matters herein stated.

11. Defendant, VOLUSIA COUNTY, Florida (hereinafter "COUNTY" or "VOLUSIA COUNTY") is a political subdivision of the State of Florida.

12. Defendant CURTISS M. GEBER ("GEBER") is a natural person, *sui juris*, residing in Volusia County, Florida. At all times material hereto, GEBER was an officer with the Volusia County Beach Patrol and was employed by Volusia County, Florida. GEBER is sued in his individual capacity.

13. Defendant KEVIN SWEAT ("SWEAT") is a natural person, *sui juris*, residing in Volusia County, Florida. At all times material hereto, SWEAT was the Director of the Volusia County Beach Patrol and was employed by Volusia County, Florida. SWEAT is sued in his individual capacity.

BACKGROUND FACTS

14. The Volusia County Beach Patrol is a division of the Volusia County Department of Public Protection. The Volusia County Department of Public Protection is in turn a Department of Volusia County, Florida.

15. Volusia County, Florida is governed by its elected Board of County Councilmen, and is managed by the County Manager, James Dinneen.

16. Assistant County Manager Mary Anne Connors is responsible for managing that portion of Volusia County government which includes the Volusia County Department of Public Protection and the Volusia County Beach Patrol. Connors reports directly to Dinneen.

17. Mike Coffin is the Director of the Volusia County Department of Public Protection. Among his responsibilities is the management and oversight of the Volusia County Beach Patrol. Coffin is responsible for policy-making decisions with respect to the Volusia County Beach Patrol in conjunction with SWEAT.

18. KEVIN SWEAT is the director of the Volusia County Beach Patrol. KEVIN SWEAT has the power to hire and fire Beach Patrol personnel and is directly responsible for the day-to-day management of the Volusia County Beach Patrol. SWEAT is responsible for policy-making decisions with respect to the Volusia County Beach Patrol in conjunction with Coffin.

19. Employees of the Volusia County Beach Patrol include both sworn law enforcement officers and unsworn lifeguards. The law enforcement officers employed by the Volusia County Beach Patrol are cross-trained in lifeguard and rescue techniques.

20. At all times material hereto Defendant GEBER was a sworn law enforcement officer with the Volusia County Beach Patrol.

21. The Volusia County Beach Patrol has employed minor children as summer lifeguards for several decades and continues to do so.

SEXUAL ABUSE OF PLAINTIFF

22. Plaintiff was born on June 14, 1989. While now over the age of majority, Plaintiff was a minor child at all times material to this Complaint.

23. Beginning in 2006 and continuing through 2008, Plaintiff was employed as a lifeguard by the Volusia County Beach Patrol.

24. Plaintiff was sixteen (16) years of age at the beginning of her employment as a lifeguard and was seventeen (17) years of age when the sexual abuse described below took place.

25. Plaintiff was introduced to GEBER while employed as a lifeguard.

26. As an officer with the Volusia County Beach Patrol, GEBER was the Plaintiff's superior and exercised direct supervisory control over her.

27. It was well known among employees of the Volusia County Beach Patrol, including SWEAT, that GEBER was attracted to minor lifeguards and regularly flirted with them.

28. During one of their work shifts together, on or about January 17, 2007, GEBER asked Plaintiff to go out on a date with him.

29. GEBER and Plaintiff met at the Red Tail Sports Bar & Grill on the evening of July 17, 2007.

30. GEBER purchased alcohol for the Plaintiff and invited her to return with GEBER to his home in Volusia County, Florida.

31. Plaintiff accompanied GEBER to his home and spent the night there.

32. GEBER initiated sexual contact with the Plaintiff during the evening of January 17, 2007. In particular, GEBER performed cunnilingus on Plaintiff's genitals at his suggestion and urging.

33. Plaintiff advised GEBER that she did not feel comfortable with that level of intimacy and would not allow him to proceed further.

34. At the time of the sexual contact between GEBER and Plaintiff, Plaintiff was seventeen (17) years of age and GEBER was approximately thirty-six (36) years old.

35. GEBER was aware that Plaintiff was a minor child at the time he performed cunnilingus on her.

36. By engaging in sexual intercourse with the Plaintiff, GEBER violated §794.05, Fla.Stat., which prohibits sexual activity with a minor child.

37. Plaintiff did not give consent to sexual activity with GEBER because she was a minor child at the time of the sexual contact and was therefore legally incapable of giving consent.

38. Furthermore, the sexual intercourse between GEBER took place in a coercive environment where voluntary consent was not possible. As will be described below, sexual encounters between underage lifeguards and officers and senior lifeguards employed by the Volusia County Beach Patrol, where both part of the culture of the Beach Patrol and a condition for employment of Plaintiff and other minors.

SUBSEQUENT HARASSMENT

39. Plaintiff reported the sexual abuse by GEBER to her parents, who then notified the Director of the Beach Patrol, KEVIN SWEAT.

40. Following an investigation, GEBER was allowed to resign from the Beach Patrol. No formal discipline was taken against him and the County took no action against GEBER's law enforcement certification.

41. The COUNTY and SWEAT both failed to report this instance of abuse of a minor child to the Florida Department of Children and Family Services as required by §32.201(1), Fla.Stat. [§39.201(2)(b)6. specifically lists law enforcement officers as among those who have a mandatory duty to report under that statute].

42. SWEAT was not sympathetic to Plaintiff's complaint of sexual abuse. Instead, SWEAT accused Plaintiff of encouraging the sexual abuse and blamed her for failing to rebuff GEBER's sexual advances.

43. SWEAT let it be known to others in the administration that he would have preferred to fire Plaintiff but was afraid that he would be sued if he did so.

44. Rather than keep the matter confidential in keeping with Plaintiff's status as a minor victim of sexual abuse, SWEAT notified many other individuals with the Beach Patrol that Plaintiff had sexual relations with GEBER.

45. SWEAT's disclosure of Plaintiff's identity, and of the sexual abuse she suffered, was made to so many individuals that the information became widely known to most or all of the employees of the Beach Patrol.

46. As a consequence of SWEAT's gross indiscretion and violation of Plaintiff's privacy, other lifeguards employed by the Beach Patrol came to believe that Plaintiff might be "fair game" for sexual activity.

47. Among those predatory lifeguards were Robert Paul Tameris, Jecoa Duane Simmons and Christian Duarte, all of whom were employed by the Volusia County Beach Patrol.

48. Plaintiff did not seek, solicit or encourage any relationship or interaction with Tameris, Simmons or Duarte.

49. Beginning in February and March, 2007, when she was still a minor child, Tameris repeatedly asked if she would go out with him since he knew "she liked older guys." Plaintiff refused those requests.

50. Simmons obtained Plaintiff's cell phone number from her employee records maintained by the Beach Patrol. That employee log was supposed to have been confidential and was not supposed to be used for anything other than work-related contact.

51. In the summer of 2007, Simmons began sending Plaintiff unsolicited sexually explicit text messages. Plaintiff advised Simmons that she was not interested in a relationship with him. Nevertheless, Simmons continued to send Plaintiff sexually

explicit texts for the next two years, stopping only when he was alerted to an investigation by the Florida Department of Law Enforcement into sexual abuse claims brought by Ashley Drury, another minor employed by the Volusia County Beach Patrol.

52. In the summer of 2008, Duarte also began sending Plaintiff unsolicited sexually explicit text messages. Duarte also encouraged Plaintiff to come drink a bottle of tequila with him. Plaintiff rebuffed those requests and requested that Duarte cease sending her sexually explicit messages.

53. The unwanted and unsolicited sexually explicit communications from those lifeguards was encouraged and made possible by SWEAT's disclosure of the sexual abuse Plaintiff suffered at the hands of GEBER.

ESTABLISHED CULTURE OF SEXUAL ABUSE

54. While the Volusia County Beach Patrol is part of the organizational structure of Volusia County and is supervised and managed by Dinneen, Connors and Coffin, in practice the Beach Patrol has been relatively autonomous.

55. That relative autonomy and the lack of firm oversight by high-level managers, including Dinneen, Connors, Coffin and SWEAT, has allowed a culture of sexual abuse and depravity to take hold of the Volusia County Beach Patrol.

56. Over the years, that culture of sexual abuse has focused on the minor children employed as lifeguards by the Volusia County Beach Patrol.

57. For minor children living in Volusia County, the position of lifeguard is considered both glamorous and fun. That perspective is fostered and encouraged by Volusia County through the Beach Explorer program and the annual Junior Lifeguard Camp, which attracts children between the ages of 9 and 15.

58. It is common knowledge that minors employed as lifeguards by the Volusia County Beach Patrol will be expected to have sexual intercourse with the officers and adult lifeguards employed by that Division. Sex with an adult officer or lifeguard is considered a “rite of passage” among the minor lifeguards.

59. It is also common knowledge that minor lifeguards will not be re-hired the following summer unless they have engaged in sex with the officers and adult lifeguards employed by the Beach Patrol.

60. None of these sexual encounters with minor lifeguards has been consensual as the lifeguards were minors and are incapable of giving consent. Furthermore, the minors were placed in coercive situations where sexual intercourse was required as a condition for their employment.

61. The sexual abuse and coerced intercourse by employees of the Volusia County Beach Patrol was not an occasional occurrence by a few isolated individuals, but was a regular fact of life for members of the Beach Patrol, occurring over the course of many, many years.

62. As far back as 1996, a Volusia County Beach Patrol spokesman was quoted in a national publication (Penthouse Magazine) as saying that the lifeguards employed by the Volusia County Beach Patrol were “sexaholics” and “hustlers” for whom having sex on their lunch hour was routine.

63. Furthermore, Plaintiff was not the only minor child to suffer sexual abuse and coerced intercourse at the hands of Volusia County Beach Patrol employees. Plaintiff’s inquiries have discovered that other minor children have suffered the same abuse she was forced to endure. While some of these events occurred prior to Plaintiff’s molestation and some occurred afterwards, the unbroken chain of this sexual abuse

demonstrates the long-standing culture at the Beach Patrol that allowed such acts to occur.

Plaintiff alleges the following particulars:

A. In the summer of 1999, Tameris engaged in sexual intercourse with a minor known as "J.A.", then 17 years of age. Tameris met and seduced J.A. while working as a lifeguard with the Volusia County Beach Patrol. The sexual relationship lasted for approximately 2-3 years and included 3 or 4 instances of sexual intercourse when J.A. was 17. One of those sexual encounters took place at the Main Street lifeguard tower.

B. Tameris, Simmons and Duarte each engaged in sexual intercourse with ASHLEY DRURY who is a 17 year old lifeguard employed by the Volusia County Beach Patrol. The particular facts and circumstances of those sexual encounters is described in the Federal litigation pending in this Court styled, Ashley Drury v. Volusia County, Florida, et al., Case No.: 6:10-cv-1176-Orl-18DAB (M.D. Fla.).

C. Beginning in September or October of 2007, Tameris engaged in sexual intercourse with a minor known as "W.C.", then 16 years of age. Tameris met and seduced W.C. while working as a lifeguard with the Volusia County Beach Patrol. The sexual relationship lasted until March 2008 when the victim turned 17. There were approximately 20-25 incidents of sexual activity between Tameris and W.C. Tameris also sent sexually explicit photographs and text messages to W.C. One such photograph of Tameris' erect penis was taken on the third floor of the Main Street lifeguard tower.

D. In July and August of 2009, Tameris kissed and fondled the breasts of a minor known as "N.L." then 17 years of age. N.L. was employed by the Volusia County Beach Patrol as a lifeguard beginning in May 2008, when she was 16 years of age.

E. On information and belief, Simmons engaged in similar conduct with minor children either employed as lifeguards by the Volusia County Beach Patrol, or seduced while Simmons was on duty as a lifeguard for the Beach Patrol.

F. Both Simmons and Tameris are also known to have engaged in sexual intercourse with adults while on duty as lifeguards for the Beach Patrol. Many of those encounters also occurred at the Main Street lifeguard station.

G. It was commonplace knowledge that members of the Volusia County Beach Patrol viewed pornographic materials on their computers while on duty.

KNOWLEDGE OF SEXUAL ABUSE BY COUNTY OFFICIALS;
RATIFICATION THROUGH INACTION

64. Volusia County, and its management-level employees, including SWEAT, have a duty to ensure that all County employees are properly trained in the identification and prevention of sexual abuse of minor children.

65. The frequent sexual encounters between underage lifeguards and senior staff were known or should have been known to SWEAT, Dinneen, Connors and Coffin, and to other officers, agents and employees of Volusia County.

66. The sheer volume of abuse cases across many years and involving multiple victims shows a reckless disregard for the well-being of the minors entrusted to the Volusia County Beach Patrol. These crimes occurred over the course of decades and may have involved dozens of innocent young women such as Plaintiff.

67. Furthermore, the culture of sexual abuse in the Volusia County Beach Patrol was common knowledge among high school students applying for summer jobs as lifeguards and among the officers and lifeguards employed by the Beach Patrol. By “common knowledge” Plaintiff asserts that the culture of sexual abuse was not mere

rumor or hearsay. Rather, the actual identity of prior victims of sexual abuse was known to employees of the Beach Patrol as well as to many of the high school students applying for jobs. Sexual intercourse with officers and senior officers was accepted as a condition for employment by those young applicants.

68. Even prior to Plaintiff's report of abuse at the hands of GEBER, officers, agents and employees of Volusia County, including Dinneen, Connors, Coffin and SWEAT, had sufficient information of ongoing sexual abuse of underage lifeguards to have imposed upon them a duty to investigate and to correct the lack of oversight and the culture of abuse which led to Plaintiff's injuries and those of other minor children.

69. Despite an abundance of information regarding ongoing sexual abuse of underage lifeguards – information which was commonly known to other members of the community - Dinneen, Connors, Coffin and SWEAT took no action to correct the lack of oversight and the culture of abuse which led to Plaintiff's injuries and those of other minor children.

70. Even after Plaintiff reported her abuse at the hands of GEBER, the COUNTY took no remedial measures and enacted no new policies to protect their minor lifeguards against the predatory behavior of their adult supervisors and other employees.

71. Had VOLUSIA COUNTY and its various officers, agents and employees, taken timely action to correct the lack of oversight and the long-standing culture of abuse at the Beach Patrol, Plaintiff would not have been sexually abused by GEBER and other minor children would not have suffered similar abuse.

COLOR OF STATE LAW

72. As a political subdivision of the State of Florida, organized and operating under the laws of the State of Florida, VOLUSIA COUNTY and its agents, were, and are, acting under color of state law and authority.

73. At the time GEBER sexually abused Plaintiff, he used his position as her supervisor to foster that sexual abuse. That is, Plaintiff engaged in sexual activity with GEBER solely because of his position of authority and control over her as an agent of the COUNTY.

DAMAGES AND ATTORNEY'S FEES

74. Plaintiff has suffered damages as a direct result of Defendants' unconstitutional policies, practices and actions. Plaintiff's damages consist of infringement upon her constitutional rights as well as physical and emotional injuries.

75. Under the Due Process Clause of the Fourteenth Amendment, Plaintiff has a constitutional right and liberty interest to bodily privacy and the integrity of her person.

76. Under the Equal Protection Clause of the Fourteenth Amendment, Plaintiff has a right not to be discriminated against by virtue of her gender.

77. Under the Due Process Clause of the Fourteenth Amendment, Plaintiff has a constitutional right and liberty interest to be free from sexual abuse at the hands of County employees, including GEBER.

78. Plaintiff's Fourteenth Amendment rights were infringed through coerced sexual intercourse with a government employee in violation of her right to personal security and bodily integrity. Plaintiff suffered extreme humiliation, embarrassment and psychological injury as a result of the violation of her Fourteenth Amendment rights.

79. Plaintiff's Fourth Amendment rights were violated by the unconstitutional seizure of her person, including the invasion of her privacy through coerced sexual intercourse with government employees. Plaintiff suffered extreme humiliation, embarrassment and psychological injury as a result of the violation of her Fourth Amendment rights.

80. Plaintiff has retained BRETT HARTLEY, P.A. and GARY S. EDINGER & ASSOCIATES, P.A. as her attorneys to represent her in this action and has agreed to pay them a reasonable fee, which fee Defendants must pay pursuant to 42 U.S.C. §1988.

COUNT I

(Fourteenth Amendment Violation – Due Process Clause)

81. Plaintiff realleges each and every allegation set forth in paragraphs 1 through 80 of this Complaint and incorporates them herein by reference.

82. This is an action against Defendants VOLUSIA COUNTY and GEBER pursuant to 42 U.S.C. §1983 for damages associated with the violation of Plaintiff's constitutional rights.

83. Plaintiff's Due Process rights protected by the Fourteenth Amendment have been violated by the sexual abuse inflicted upon her by GEBER, which assault was fostered and allowed by the COUNTY's policies and ratification of similar acts.

84. Defendant GEBER violated Plaintiff's Due Process rights by coercing her to engage in sexual intercourse with them.

85. Defendant GEBER was placed in a position to violate Plaintiff's constitutional rights by virtue of his employment by VOLUSIA COUNTY as a law enforcement officer in a supervisory capacity.

86. Defendant VOLUSIA COUNTY fostered and encouraged a culture of sexual abuse and depravity at the Volusia County Beach Patrol and failed to take any corrective action to change that long-established policy even after knowledge that minors had been sexually abused came to its attention.

87. Defendant VOLUSIA COUNTY failed to develop policies or afford training for the detection and investigation of sexual abuse of minor employees and failed to protect Plaintiff from sexual abuse despite abundant evidence and actual knowledge that such abuse was regularly taking place at the Volusia County Beach Patrol.

88. As the individuals responsible for making and implementing policies pertaining to the Volusia County Beach Patrol, and the employees directly charged with managing the Beach Patrol, Dinneen, Connors, Coffin and SWEAT, set and fostered the conditions and policies which allowed the sexual abuse of minor children, including Plaintiff, to take place.

89. Through its long toleration and reckless disregard of the sexual abuse and depravity at the Volusia County Beach Patrol, Defendant VOLUSIA COUNTY ratified and approved that illegal conduct and adopted the same as the *de facto* policy of the COUNTY.

90. Plaintiff has been damaged by the violation of her Fourteenth Amendment rights.

WHEREFORE, Plaintiff prays for the following relief:

A. That this Court take jurisdiction over the parties and this cause;

B. That this Court award Plaintiff money damages against Defendants VOLUSIA COUNTY and GEBER, individually, for infringement of Plaintiff's constitutional rights pursuant to 42 U.S.C. §1983, and for injury to her person.

C. That this Court award Plaintiff punitive damages against Defendant GEBER to punish Defendant for his unlawful actions and to deter Defendant and others from engaging in the same or similar acts in the future.

D. That this Court award Plaintiff her recoverable costs, including a reasonable attorney's fee pursuant to 42 U.S.C. §1988.

E. That this Court award Plaintiff all other relief in law and in equity to which she may be entitled.

COUNT II

(Fourteenth Amendment Violation – Equal Protection)

91. Plaintiff realleges each and every allegation set forth in paragraphs 1 through 80 of this Complaint and incorporates them herein by reference.

92. This is an action against Defendants VOLUSIA COUNTY and GEBER pursuant to 42 U.S.C. §1983 for damages associated with the violation of Plaintiff's constitutional rights.

93. Plaintiff's right of Equal Protection, protected by the Fourteenth Amendment, has been violated by the sexual abuse inflicted upon her by the Defendants because Plaintiff would not have been subjected to such abuse had she been male.

94. Defendant GEBER violated Plaintiff's right of Equal Protection by coercing her to engage in sexual intercourse with him.

95. Defendant GEBER was placed in a position to violate Plaintiff's constitutional rights by virtue of his employment by VOLUSIA COUNTY as a law enforcement officer in a supervisory capacity.

96. Defendant VOLUSIA COUNTY fostered and encouraged a culture of sexual abuse and depravity at the Volusia County Beach Patrol and failed to take any corrective action to change that long-established policy even after knowledge that female minors had been sexually abused came to the attention of policy-making employees.

97. Defendant VOLUSIA COUNTY failed to develop policies or afford training for the detection and investigation of sexual abuse of minor female employees and failed to protect Plaintiff from sexual abuse despite abundant evidence and actual knowledge that such abuse was regularly taking place at the Volusia County Beach Patrol.

98. As the individuals responsible for making and implementing policies pertaining to the Volusia County Beach Patrol, and the employees directly charged with managing the Beach Patrol, Dinneen, Connors, Coffin and SWEAT, set and fostered the conditions and policies which allowed the sexual abuse of female minor children, including Plaintiff, to take place.

99. Through its long toleration and reckless disregard of the sexual abuse and depravity at the Volusia County Beach Patrol, Defendant VOLUSIA COUNTY ratified and approved that illegal conduct and adopted the same as the *de facto* policy of the COUNTY.

100. Plaintiff has been damaged by the violation of her Fourteenth Amendment rights.

WHEREFORE, Plaintiff prays for the following relief:

- A. That this Court take jurisdiction over the parties and this cause;
- B. That this Court award Plaintiff money damages against Defendants VOLUSIA COUNTY and GEBER, individually, for infringement of Plaintiff's constitutional rights pursuant to 42 U.S.C. §1983, and for injury to her person.
- C. That this Court award Plaintiff punitive damages against Defendant GEBER to punish Defendant for his unlawful actions and to deter Defendant and others from engaging in the same or similar acts in the future.
- D. That this Court award Plaintiff her recoverable costs, including a reasonable attorney's fee pursuant to 42 U.S.C. §1988.
- E. That this Court award Plaintiff all other relief in law and in equity to which she may be entitled.

COUNT III

(Fourth Amendment Violation)

101. Plaintiff realleges each and every allegation set forth in paragraphs 1 through 80 of this Complaint and incorporates them herein by reference.

102. This is an action against Defendants VOLUSIA COUNTY and GEBER pursuant to 42 U.S.C. §1983 for damages associated with the violation of Plaintiff's constitutional rights.

103. Plaintiff's Fourth Amendment rights against the unreasonable and illegal seizure of her person have been violated by the sexual abuse inflicted upon her by the Defendants.

104. Defendant GEBER violated Plaintiff's Fourth Amendment rights by coercing her to engage in sexual intercourse with him.

105. Defendant GEBER was placed in a position to violate Plaintiff's constitutional rights by virtue of his employment by VOLUSIA COUNTY as a law enforcement officer in a supervisory capacity.

106. Defendant VOLUSIA COUNTY fostered and encouraged a culture of sexual abuse and depravity at the Volusia County Beach Patrol and failed to take any corrective action to change that long-established policy even after knowledge that minors had been sexually abused came to the attention of policy-making employees.

107. Defendant VOLUSIA COUNTY failed to develop policies or afford training for the detection and investigation of sexual abuse of minor employees and failed to protect Plaintiff from sexual abuse despite abundant evidence and actual knowledge that such abuse was regularly taking place at the Volusia County Beach Patrol.

108. As the individuals responsible for making and implementing policies pertaining to the Volusia County Beach Patrol, and the employees directly charged with managing the Beach Patrol, Dinneen, Connors, Coffin and SWEAT, set and fostered the conditions and policies which allowed the sexual abuse of minor children, including Plaintiff, to take place.

109. Through their long toleration and reckless disregard of the sexual abuse and depravity at the Volusia County Beach Patrol, Defendant VOLUSIA COUNTY, ratified and approved that illegal conduct and adopted the same as the *de facto* policy of the COUNTY.

110. Plaintiff has been damaged by the violation of her Fourth Amendment rights.

WHEREFORE, Plaintiff prays for the following relief:

- A. That this Court take jurisdiction over the parties and this cause;
- B. That this Court award Plaintiff money damages against Defendants VOLUSIA COUNTY and GEBER, individually, for infringement of Plaintiff's constitutional rights pursuant to 42 U.S.C. §1983, and for injury to her person.
- C. That this Court award Plaintiff punitive damages against Defendant GEBER to punish Defendant for his unlawful actions and to deter Defendant and others from engaging in the same or similar acts in the future.
- D. That this Court award Plaintiff her recoverable costs, including a reasonable attorney's fee pursuant to 42 U.S.C. §1988.
- E. That this Court award Plaintiff all other relief in law and in equity to which she may be entitled.

COUNT IV

(Negligent Supervision – State Law Tort)

111. Plaintiff realleges each and every allegation set forth in paragraphs 2 and 6 through 80 of this Complaint and incorporates them herein by reference.

112. This Court has jurisdiction over this state law cause of action because Plaintiff's other claims involve Federal Questions and this Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367.

113. This is an action under Florida law for damages against the Defendant VOLUSIA COUNTY for its failure to adequately supervise its employee, GEBER.

114. At all times material hereto, Defendant VOLUSIA COUNTY was the Plaintiff's employer as well as the employer of GEBER.

115. VOLUSIA COUNTY owed a duty of care to its employees to safeguard them against sexual abuse perpetrated by other employees.

116. This duty of care was heightened when the individuals employed as lifeguards were minor children, as was the case with Plaintiff. In this instance, VOLUSIA COUNTY's duty of care was equivalent to the *parens patrie* relationship of a public school as the Defendant actively solicited and trained minors to serve as lifeguards through a camp system starting with children as young as nine years of age.

117. VOLUSIA COUNTY knew or should have known that the Volusia County Beach Patrol had a long-standing and well-documented reputation for sexual abuse and depravity, including the sexual abuse of minors.

118. VOLUSIA COUNTY knew or should have known that GEBER was likely to engage in illegal sexual relations with Plaintiff, and other minors employed by the County as lifeguards, by virtue of the longstanding culture of abuse at the Beach Patrol and given GEBER's known attraction to minor lifeguards.

119. VOLUSIA COUNTY knew or should have known that GEBER was attracted to and flirted with minor lifeguards employed by the COUNTY.

120. While Plaintiff was still employed by VOLUSIA COUNTY as a life guard, the Defendant VOLUSIA COUNTY had actual and imputed knowledge that officers and senior life guards at the Volusia County Beach Patrol were engaging in illegal sexual relations with minors, including Plaintiff.

121. While Plaintiff was still employed by VOLUSIA COUNTY as a life guard, the Defendant VOLUSIA COUNTY, knew or should have known that GEBER intended to engage in illegal sexual activity with the Plaintiff and had the opportunity to do so by virtue of his position as her supervisor.

122. Reasonable managers and supervisors would have recognized the dangers posed by GEBER and would have taken remedial action to guard minors against ongoing sexual abuse.

123. Rather than take any such remedial action, VOLUSIA COUNTY allowed GEBER to sexually abuse Plaintiff.

124. VOLUSIA COUNTY was negligent and breached its duty to Plaintiff by failing to timely discover and remedy the ongoing sexual abuse of Plaintiff and other minors employed as Beach Patrol life guards.

125. VOLUSIA COUNTY was negligent and breached its duty to Plaintiff by failing to take any remedial action given its knowledge both of GEBER's attraction to minor lifeguards and the longstanding culture of abuse at the Volusia County Beach Patrol.

126. Plaintiff suffered damages as a direct and proximate result of Defendant VOLUSIA COUNTY's failure to exercise reasonable supervision of its employees.

WHEREFORE, Plaintiff demands judgment against Defendant VOLUSIA COUNTY for damages, both general and special, together with the costs of this action.

COUNT V

(Negligent Retention – State Law Tort)

127. Plaintiff realleges each and every allegation set forth in paragraphs 2 and 6 through 80 of this Complaint and incorporates them herein by reference.

128. This Court has jurisdiction over this state law cause of action because Plaintiff's other claims involve Federal Questions and this Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367.

129. This is an action under Florida law for damages against the Defendant VOLUSIA COUNTY for the negligent retention of its employee, GEBER.

130. At all times material hereto, Defendant VOLUSIA COUNTY was the Plaintiff's employer as well as the employer of GEBER.

131. VOLUSIA COUNTY owed a duty of care to its employees to safeguard them from sexual abuse perpetrated by other employees.

132. This duty of care was heightened when the individuals employed as lifeguards were minor children, as was the case with Plaintiff. In this instance, VOLUSIA COUNTY's duty of care was equivalent to the *parens patrie* relationship of a public school as the Defendant actively solicited and trained minors to serve as lifeguards through a camp system starting with children as young as nine years of age.

133. VOLUSIA COUNTY knew or should have known that the Volusia County Beach Patrol had a long-standing and well-documented reputation for sexual abuse and depravity, including the sexual abuse of minors.

134. VOLUSIA COUNTY knew or should have known that GEBER was attracted to and flirted with minor lifeguards employed by the COUNTY.

135. While Plaintiff was still employed by VOLUSIA COUNTY as a life guard, the Defendant VOLUSIA COUNTY had actual and imputed knowledge that officers and senior life guards at the Volusia County Beach Patrol were engaging in illegal sexual relations with minors, including Plaintiff.

136. While Plaintiff was still employed by VOLUSIA COUNTY as a life guard, the Defendant VOLUSIA COUNTY, knew or should have known that GEBER intended to engage in illegal sexual activity with the Plaintiff and had the opportunity to do so by virtue of his position as her supervisor.

137. Reasonable managers and supervisors would have recognized the dangers posed by GEBER and would have taken remedial action to guard minors against ongoing sexual abuse. In particular, a reasonable employer would have fired GEBER immediately or removed him from contact with minors once his attraction to minor lifeguards became known to his supervisors.

138. Rather than take any such remedial action, VOLUSIA COUNTY allowed GEBER to sexually abuse Plaintiff.

139. VOLUSIA COUNTY breached its duty by failing to take remedial action following actual and imputed knowledge of that GEBER was attracted to minor lifeguards and that he intended to engage in illegal sexual activities with the Plaintiff.

140. Plaintiff suffered damages as a direct and proximate result of Defendant VOLUSIA COUNTY's failure to discharge GEBER.

WHEREFORE, Plaintiff demands judgment against Defendant VOLUSIA COUNTY for damages, both general and special, together with the costs of this action.

COUNT VI

(State Law Tort Claim – Battery - GEBER)

141. Plaintiff realleges each and every allegation set forth in paragraphs 2 and 6 through 80 of this Complaint and incorporates them herein by reference.

142. This Court has jurisdiction over this state law cause of action because Plaintiff's other claims involve Federal Questions and this Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367.

143. This is an action under Florida law to recover damages for battery against Defendant GEBER, individually.

144. Defendant GEBER had offensive, non-consensual sexual relations with Plaintiff at a time when she was a minor and incapable of giving consent.

145. The sexual contact between GEBER and Plaintiff was a criminal violation of §794.05, Fla.Stat.

146. GEBER's actions were taken intentionally, maliciously and with complete disregard for the Plaintiff's constitutional and state law rights.

147. As a direct and proximate result of Defendant's physical assaults on Plaintiff, Plaintiff has suffered severe harm and ongoing psychological injuries.

WHEREFORE, Plaintiff prays for the following relief:

- A. That this Court take jurisdiction over the parties and this cause.
- B. That this Court award Plaintiff money damages against GEBER for the unlawful battery against her.
- C. That this Court award Plaintiff punitive damages against Defendant GEBER, individually, to punish GEBER for his unlawful actions and to deter GEBER and others from engaging in the same or similar acts in the future.
- D. That this Court award Plaintiff her recoverable costs.
- E. That this Court award Plaintiff all other relief in law to which she may be entitled.

COUNT VII

(State Law Tort Claim

Intentional Infliction of Severe Emotional Distress - GEBER)

148. Plaintiff realleges each and every allegation set forth in paragraphs 2 and 6 through 80 of this Complaint and incorporates them herein by reference.

149. This Court has jurisdiction over this state law cause of action because Plaintiff's other claims involve Federal Questions and this Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367.

150. This is an action under Florida law to recover damages for intentional infliction of emotional distress, against Defendant, GEBER, individually.

151. Defendant GEBER had offensive, non-consensual sexual relations with Plaintiff at a time when she was a minor and incapable of giving consent.

152. The sexual contact by GEBER with Plaintiff was a criminal violation of §794.05, Fla.Stat.

153. GEBER acted intentionally, maliciously and with complete disregard for the Plaintiff's constitutional and state law rights.

154. Defendant acted recklessly and with complete indifference to Plaintiff's right of privacy, and emotional and physical well-being.

155. The emotional and psychological harm which Plaintiff suffered as a result of the illegal sexual abuse was completely foreseeable and was an intended consequence of those illegal and unconstitutional sexual acts.

156. As a direct and proximate result of GEBER's outrageous conduct, Plaintiff has suffered severe emotional distress and ongoing psychological injuries.

157. The emotional distress suffered by Plaintiff is unusually extreme and severe and is a direct and intended consequence of GEBER's intentional and outrageous conduct.

WHEREFORE, Plaintiff prays for the following relief:

A. That this Court take jurisdiction over the parties and this cause;

B. That this Court award Plaintiff money damages against Defendant GEBER, individually, for intentional infliction of emotional distress.

C. That this Court award Plaintiff punitive damages against Defendant GEBER, individually, to punish GEBER for his unlawful actions and to deter GEBER and others from engaging in the same or similar acts in the future.

D. That this Court award Plaintiff her recoverable costs.

E. That this Court award Plaintiff all other relief in law and in equity to which she may be entitled.

COUNT VIII

(State Law Tort Claim -

Intentional Infliction of Severe Emotional Distress - SWEAT)

158. Plaintiff realleges each and every allegation set forth in paragraphs 2 and 6 through 80 of this Complaint and incorporates them herein by reference.

159. This Court has jurisdiction over this state law cause of action because Plaintiff's other claims involve Federal Questions and this Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367.

160. This is an action under Florida law to recover damages for intentional infliction of emotional distress, against Defendant, SWEAT, individually.

161. At the time Plaintiff reported the sexual abuse by GEBER to SWEAT, that information was known to no other persons other than Plaintiff's parents.

162. Plaintiff reported the incident to SWEAT under the reasonable belief that her statements and any subsequent investigation would be kept confidential, within the limits allowed by Florida law.

163. Florida law exempts the disclosure of information concerning the identity of victims of sexual crimes, and of minors subject to abuse, from the general public records laws. *See, e.g.*, §119.071(2) (h)1.-B, Fla.Stat. and §39.202, Fla.Stat.

164. Following her report of the incident to SWEAT, and GEBER's discharge from employment, Plaintiff continued to treat her sexual abuse, and her report of that abuse to the authorities, as confidential and private information.

165. The sexual abuse against Plaintiff was not a matter of public knowledge.

166. SWEAT was angered by Plaintiff's report of the sexual abuse by GEBER because SWEAT liked GEBER and did not want to have to discharge him from the Beach Patrol.

167. SWEAT believed Plaintiff lured or enticed GEBER into engaging in sexual activities and blamed Plaintiff for failing to rebuff GEBER's sexual advances.

168. SWEAT wished to retaliate against Plaintiff for reporting her sexual abuse but was afraid to fire her directly because of fear that she would sue him for false discharge.

169. Because SWEAT could not retaliate against Plaintiff through adverse employment action, he chose to retaliate through an indirect campaign of harassment and embarrassment.

170. SWEAT disclosed to other members of the Volusia County Beach Patrol the fact that Plaintiff had engaged in sexual activity with GEBER, that Plaintiff had reported that activity to the authorities, and that Plaintiff's complaint was the reason why GEBER had been terminated from the Beach Patrol.

171. SWEAT's disclosure of Plaintiff's identity, and of the sexual abuse she suffered, was not motivated by any government purpose. Rather, SWEAT disclosed this

private information to other persons in the Beach Patrol for the improper purpose of harassing and embarrassing the Plaintiff.

172. SWEAT's disclosure of Plaintiff's identity, and of the sexual abuse she suffered, was not limited to persons involved in the investigation of GEBER or individuals in management positions. Rather, SWEAT disclosed this private information to individuals who had no legitimate interest in the subject matter.

173. SWEAT personally disclosed this information to many members of the Volusia County Beach Patrol without cautioning them that the information was confidential. SWEAT did so knowing and intending that persons to whom he disclosed this information would tell other persons and that this private and sensitive information would soon spread throughout the Beach Patrol and to the general public.

174. SWEAT's leak of this private and sensitive information concerning the Plaintiff resulted in her sexual abuse becoming common knowledge among the Beach Patrol and with members of the general public. This disclosure included not only the fact that Plaintiff was the victim of sexual abuse, but also the fact that Plaintiff's reporting of that abuse was the reason for the discharge of GEBER, who was a popular officer.

175. SWEAT disclosed this information for malicious purposes and with the specific intent of causing Plaintiff emotional anguish. SWEAT also wished to promote discord and mistrust between Plaintiff and her fellow lifeguards.

176. SWEAT acted intentionally, maliciously and with complete disregard for the Plaintiff's constitutional and state law rights.

177. SWEAT acted recklessly and with complete indifference to Plaintiff's right of privacy, and emotional and physical well-being.

178. The emotional and psychological harm which Plaintiff suffered as a result of SWEAT's disclosures of her sexual abuse, was completely foreseeable and was an intended consequence of that disclosure.

179. As a direct and proximate result of SWEAT's outrageous conduct, Plaintiff has suffered severe emotional distress and ongoing psychological injuries.

180. The emotional distress suffered by Plaintiff is unusually extreme and severe and is a direct and intended consequence of SWEAT's intentional and outrageous conduct.

WHEREFORE, Plaintiff prays for the following relief:

- A. That this Court take jurisdiction over the parties and this cause;
- B. That this Court award Plaintiff money damages against Defendant SWEAT, individually, for intentional infliction of emotional distress.
- C. That this Court award Plaintiff punitive damages against Defendant SWEAT, individually, to punish those SWEAT for his unlawful actions and to deter SWEAT and others from engaging in the same or similar acts in the future.
- D. That this Court award Plaintiff her recoverable costs.
- E. That this Court award Plaintiff all other relief in law and in equity to which she may be entitled.

COUNT IX

(State Law Tort Claim -

Invasion of Privacy – Public Disclosure of Private Information - SWEAT)

181. Plaintiff realleges each and every allegation set forth in paragraphs 2 and 6 through 80 of this Complaint and incorporates them herein by reference.

182. This Court has jurisdiction over this state law cause of action because Plaintiff's other claims involve Federal Questions and this Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367.

183. This is an action under Florida law against Defendant, SWEAT, to recover damages for tortious invasion of Plaintiff's right of privacy through public disclosure of private facts.

184. At the time Plaintiff reported the sexual abuse by GEBER to SWEAT, that information was known to no other persons other than Plaintiff's parents.

185. Plaintiff reported the incident to SWEAT under the reasonable belief that her statements and any subsequent investigation would be kept confidential, within the limits allowed by Florida law.

186. Florida law exempts the disclosure of information concerning the identity of victims of sexual crimes, and of minors subject to abuse, from the general public records laws. *See, e.g.*, §119.071(2) (h)1.-B, Fla.Stat. and §39.202, Fla.Stat.

187. Following her report of the incident to SWEAT, and GEBER's discharge from employment, Plaintiff continued to treat her sexual abuse, and her report of that abuse to the authorities, as confidential and private information.

188. The sexual abuse against Plaintiff was not a matter of public knowledge or of legitimate public interest.

189. Plaintiff wished to keep her sexual abuse at the hands of GEBER private as the matter was highly embarrassing and upsetting to her.

190. SWEAT was angered by Plaintiff's report of the sexual abuse by GEBER because SWEAT liked GEBER and did not want to have to discharge him from the Beach Patrol.

191. SWEAT believed Plaintiff lured or enticed GEBER into engaging in sexual activities and blamed Plaintiff for failing to rebuff GEBER's sexual advances.

192. SWEAT wished to retaliate against Plaintiff for reporting her sexual abuse but was afraid to fire her directly because of fear that she would sue him for false discharge.

193. Because SWEAT could not retaliate against Plaintiff through adverse employment action, he chose to retaliate through an indirect campaign of harassment and embarrassment.

194. SWEAT disclosed to other members of the Volusia County Beach Patrol the fact that Plaintiff had engaged in sexual activity with GEBER, that Plaintiff had reported that activity to the authorities, and that Plaintiff's complaint was the reason why GEBER had been terminated from the Beach Patrol.

195. SWEAT's disclosure of Plaintiff's identity, and of the sexual abuse she suffered, was not motivated by any government purpose. Rather, SWEAT disclosed this private information to other persons in the Beach Patrol for the improper purpose of harassing and embarrassing the Plaintiff.

196. SWEAT's disclosure of Plaintiff's identity, and of the sexual abuse she suffered, was not limited to persons involved in the investigation of GEBER or individuals in management positions. Rather, SWEAT disclosed this private information to individuals who had no legitimate interest in the subject matter.

197. SWEAT personally disclosed this information to many members of the Volusia County Beach Patrol without cautioning them that the information was confidential. SWEAT did so knowing and intending that persons to whom he disclosed

this information would tell other persons and that this private and sensitive information would soon spread throughout the Beach Patrol and to the general public.

198. A reasonable person would consider the disclosure of Plaintiff's sexual abuse to be highly offensive, particularly since Plaintiff was a minor child at the time of the abuse and at the time of her confidential report to SWEAT.

199. SWEAT's leak of this private and sensitive information concerning the Plaintiff resulted in her sexual abuse becoming common knowledge among the Beach Patrol and with members of the general public. This disclosure included not only the fact that Plaintiff was the victim of sexual abuse, but also the fact that Plaintiff's reporting of that abuse was the reason for the discharge of GEBER, who was a popular officer.

200. SWEAT disclosed this information for malicious purposes and with the specific intent of causing Plaintiff emotional anguish. SWEAT also wished to promote discord and mistrust between Plaintiff and her fellow lifeguards.

201. SWEAT acted intentionally, maliciously and with complete disregard for the Plaintiff's constitutional and state law rights.

202. SWEAT acted recklessly and with complete indifference to Plaintiff's right of privacy, and emotional and physical well-being.

203. The emotional and psychological harm which Plaintiff suffered as a result of SWEAT's disclosures of her sexual abuse, was completely foreseeable and was an intended consequence of that disclosure.

204. As a direct and proximate result of SWEAT's outrageous conduct, Plaintiff has suffered severe emotional distress and ongoing psychological injuries.

205. But for SWEAT's disclosure of this private information, the fact that Plaintiff was sexually abused by GEBER would not have been released to the public and would not have been common knowledge as it now is.

WHEREFORE, Plaintiff prays for the following relief:

- A. That this Court take jurisdiction over the parties and this cause;
- B. That this Court award Plaintiff money damages against Defendant SWEAT, individually, for invasion of Plaintiff's right of privacy through the public disclosure of private facts.
- C. That this Court award Plaintiff punitive damages against Defendant SWEAT, individually, to punish SWEAT for his unlawful actions and to deter SWEAT and others from engaging in the same or similar acts in the future.
- D. That this Court award Plaintiff her recoverable costs.
- E. That this Court award Plaintiff all other relief in law and in equity to which she may be entitled.

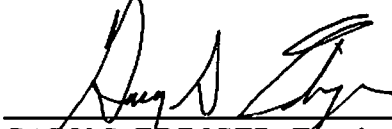
JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable as a matter of right.

BRETT HARTLEY, P.A.

BRETT HARTLEY, Esquire
Florida Bar No.: 140317
102 S Riverside Drive
New Smyrna Beach, FL 32168
(386) 427-1006/ (386) 427-1065 (Fax)
bretthartley@cfl.rr.com

GARY S. EDINGER & ASSOCIATES, P.A.



GARY S. EDINGER, Esquire
Florida Bar No.: 0606812
305 N.E. 1st Street
Gainesville, Florida 32601
(352) 338-4440/ 337-0696 (Fax)
GSEdinger@aol.com

Attorneys for Plaintiff