

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 2:14-CV-14501-ROSENBERG/LYNCH

CRAIG KOVALESKI,

Plaintiff,

v.

DEPUTY SHERIFF MICHAEL
CAVANAUGH, in his individual capacity,
and SHERIFF DERYL LOAR, in his
individual and official capacities,

Defendants.

SECOND AMENDED COMPLAINT AND JURY TRIAL DEMAND

Plaintiff, CRAIG KOVALESKI, by and through undersigned counsel, sues Defendants and alleges:

INTRODUCTION

1. This is an action involving the violation of Plaintiff's federal civil rights, by Defendants acting under color of state law, and contains state causes of action pursuant to this Court's concurrent and pendant jurisdiction. The aggregate amount of damages claimed by the Plaintiff against all Defendants is in excess of \$75,000.00.

JURISDICTION AND VENUE

2. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1331 in that this is a civil action arising under the Constitution of the United States and pursuant to 28 U.S.C. §1343(a)(3) in that this action seeks to redress the deprivation, under color of state law, of rights secured to the Plaintiff by the Fourth and Fourteenth Amendments to the Constitution of the United States of America.

3. Plaintiff's claims for relief are predicated on 42 U.S.C. § 1983, which authorizes actions to redress the deprivation, under color of state law, of rights, privileges and immunities secured to Plaintiff by the Constitution and laws of the United States and by 42 U.S.C. § 1988 which authorizes the award of attorneys' fees and costs to prevailing plaintiffs in actions brought pursuant to 42 U.S.C. § 1983.

4. Venue is appropriate in this Court as the illegal acts alleged to have been committed by Defendants against Plaintiff occurred wholly within Indian River County, Florida.

5. A written notice of Plaintiff's claims asserted was submitted to Dylan Reingold, as County Attorney for Indian River County, Florida, and to the Florida Department of Financial Service on or about May 23, 2014, a copy of which is attached hereto as Exhibit A. This written notice, in turn, was provided by the County Attorney to counsel for Defendant, DERYL LOAR. No response was received by Plaintiff, therefore the allegations contained therein are deemed denied by operation of law.

6. All conditions precedent to bringing this action and for recovery of attorney's fees under state and federal law has occurred or have been satisfied.

PARTIES

7. Plaintiff, CRAIG KOVALESKI, is a citizen of the State of Florida residing in Indian River County and is otherwise *sui juris*.

8. Defendant, DERYL LOAR, (hereinafter "LOAR"), is the Sheriff of Indian River County, Florida and is otherwise *sui juris*. At all material times, LOAR was in charge of the Indian River County Sheriff's Office ("IRSO"), its agents and employees, including supervising, training and establishing policies, customs and procedures to conform their conduct to the United

States Constitution and Florida common law. LOAR is sued in his individual and official capacities.

9. Defendant, DEPUTY SHERIFF MICHAEL CAVANAUGH (hereinafter “CAVANAUGH”), at all times material to this action, was employed by the IRSO as a deputy sheriff. He is sued in his individual capacity.

UNDERLYING FACTS

10. On or about early March 2013, CRAIG KOVALESKI (hereinafter “KOVALESKI”) became separated from his estranged wife, the mother of his three young children, and was going through a bitter divorce and custody battle. At the time, KOVALESKI was a successful financial consultant with Charles Schwab, in Vero Beach, Florida, providing financial guidance to high net worth individuals.

11. The divorce was precipitated, in part, by an affair that his estranged wife was having with a police officer with the City of Sebastian, Florida. CAVANAUGH was an associate of her lover. Although the estranged wife no longer resided in the Vero Beach marital home with KOVALESKI, the couple shared custody of their three children.

12. On the morning of Thursday, October 10, 2013, (the subject date) KOVALESKI was at home, playing with two of his young children, ages 3 and 4, as well as the family’s dog. KOVALESKI dropped off his third child, age 5, at kindergarten earlier that morning.

13. Just before 11 a.m., KOVALESKI ordered pizza for he, his mother, and his two children at home.

14. Given the ongoing contentious nature of the divorce and custody proceedings, and concern over potential false accusations that could come from his estranged wife and others, KOVALESKI installed a video recording system throughout portions of his home. The home is

located on three and a half acres, with a large metal fence and gate securing the front entrance to the property. A code is required to open the gate, gain access to the property and be able to drive up a long driveway to the KOVALESKI residence.

15. On the subject date, at about 11:30 am, while waiting for the pizza and his mother to arrive, KOVALESKI set Hadley and Jackson down to watch a Disney movie on the second floor loft of his home.

16. At about that same time, unknown to KOVALESKI, his estranged wife contacted IRSO falsely claiming KOVALESKI was intoxicated and asleep, with the children essentially home alone and on their own.

17. A few days earlier, the estranged wife made a similar false claim, resulting in a deputy with IRSO coming to KOVALESKI's home, finding these claims to be false and unfounded.

18. After talking to his mother on the phone, KOVALESKI proceeded to go the restroom near the pool area of his home and while doing so heard his dogs barking.

19. Unknown to KOVALESKI, while using the restroom, CAVANAUGH entered through the front gates without permission using the security code provided by his estranged wife.

20. CAVANAUGH knew at this time that KOVALESKI's estranged wife did not reside at KOVALESKI's home.

21. CAVANAUGH then drove to the front entrance of the home with his patrol car lights flashing. This attracted the attention of the two children, who came downstairs to the home's front door.

22. Without a warrant, probable cause or exigent circumstances, CAVANAUGH opened the front door to the home, letting the young children and dogs wander outside on their own.

23. CAVANAUGH entered and walked around inside KOVALESKI's home without a warrant, probable cause or exigent circumstances.

24. When KOVALESKI finished in the bathroom he walked to the main entryway of his home and saw CAVANAUGH standing inside his home.

25. CAVANAUGH walked towards KOVALESKI, who asked what was going on. CAVANAUGH then shoved KOVALESKI up against a hallway wall and told KOVALESKI he was under arrest, all of which caused KOVALESKI great distress.

26. Without probable cause, CAVANAUGH then handcuffed KOVALESKI informing him that he was being charged with felony child neglect.

27. KOVALESKI did not neglect his children in any manner on the subject date.

28. CAVANAUGH then forced KOVALESKI, while handcuffed, outside of his own home, and was shoved into the back seat of CAVANAUGH's patrol car, while KOVALESKI's children watched.

29. While in the back seat of the patrol car, CAVANAUGH verbally and mentally berated and harassed KOVALESKI.

30. KOVALESKI was taken to the Indian River County jail and was charged with felony child neglect.

31. KOVALESKI spent the rest of the subject day and overnight in jail, before he was allowed to make bail the following day.

32. In support of the arrest, CAVANAUGH filled out and executed a false sworn arrest affidavit. In the arrest affidavit, CAVANAUGH made false statements concerning his observations and activities at KOVALESKI's home, in order to justify his entry onto the property and home without probable cause or warrant, and to support his arrest and fabricated charges against KOVALESKI.

33. CAVANAUGH's false sworn statements included:

a) When he arrived at the residence he observed two small children in the front yard playing with two dogs, completely unsupervised.

b) One of the children informed him that KOVALESKI was asleep and could not be awoken.

c) When he entered the home he observed KOVALESKI sleeping on a couch and, when awoken, was extremely disoriented, unable to answer questions.

34. As a result of the false arrest and bogus charges, local media published the same false allegations to the general public, including KOVALESKI's existing and potential business clients.

35. Further, as a result of KOVALESKI being arrested and charged with felony child neglect, KOVALESKI's estranged wife filed a motion in the divorce and custody proceeding challenging KOVALESKI's custodial rights.

36. On October 22, 2013, a hearing was convened by the estranged wife seeking to terminate KOVALESKI's parental custodial rights (the custody hearing).

37. The estranged wife called CAVANAUGH as a witness at the custody hearing. Under oath, CAVANAUGH provided the same false evidence as contained in the false arrest

affidavit as summarized in paragraph 33 herein and additionally, with even greater false factual details in an attempt to bolster and cover up the falsity of the original arrest affidavit.

38. At the custody hearing, KOVALESKI showed the court video from his home's security system that showed beyond a shadow of a doubt that the events described by CAVANAUGH in both the arrest affidavit and in his courtroom testimony, were false and fabricated by CAVANAUGH.

39. On November 5, 2013, the state attorneys' office issued a, "no information" as to the felony child neglect charges against KOVALESKI effectively dropping the false charges initiated by CAVANAUGH and making KOVALESKI the prevailing party in the criminal action.

40. Thereafter, the IRSO conducted an internal investigation of CAVANAUGH and the subject incident, Administrative Investigation Case No. 2013-CC-0058. Ultimately, the investigation determined CAVANAUGH had engaged in multiple instances of misconduct, including:

a) General Order 2531.00(F)(53), provides that IRSO personnel shall not knowingly falsify any official record or document. It is deemed by IRSO a Group III Offense, a major offense, with a maximum punishment of termination.

b) General Order 2531.00(F)(56), provides that IRSO personnel shall not knowingly make false or untrue statements in the performance of their duties, including making false statements under oath to any official of a government agency. It is also deemed by IRSO a Group III Offense, a major offense, with a maximum punishment of termination.

c) General Order 2531.00(G)(1), provides that IRSO personnel are to maintain and demonstrate proficiency in required interpersonal skills and in the care and use of IRSO vehicles

and equipment. It is deemed by IRSO a Group I Offense, a minor offense, with a maximum punishment of 5 days (or sixty hours) of unpaid suspension.

41. Notwithstanding CAVANAUGH's multiple instances of lying and providing false sworn statements, *i.e.*, perjury, which IRSO views as "major offenses," resulting in the false arrest of KOVALESKI, and tarnishing his reputation in the Vero Beach community, IRSO ultimately punished CAVANAUGH with a 5 day suspension, literally a slap on the wrist for the outrageous conduct described herein.

42. As a result of CAVANAUGH's actions as described herein, including the attendant, foreseeable media publicity, KOVALESKI suffered special damages including past and future lost earnings and earning potential, incurred legal fees and investigation expenses necessitated solely by CAVANAUGH's illegal and improper acts.

43. CAVANAUGH violated KOVALESKI's civil rights, granted to KOVALESKI by the Fourth, Eighth and Fourteenth Amendments of the United States Constitution, by: (a) entering onto KOVALESKI's property and into KOVALESKI's home without a warrant or probable cause; (b) falsely charging and arresting KOVALESKI, including providing false arrest warrants and providing "sworn" false testimony as to same; and (c) incarcerating KOVALESKI for alleged crimes he knew KOVALESKI did not commit.

44. All of the foregoing violations of KOVALESKI's civil rights caused him injury and damages. These violations were of a type and character as to which any reasonable person would be aware, and further, the law prohibiting such conduct as unconstitutional is clearly established in Florida, including, but not limited to, the case law of Federal Court of Appeals of the United States, 11th Circuit, and the U.S. Supreme Court.

45. LOAR, as the Sheriff of Indian River County at the time of this incident, was responsible for the proper and efficient training of deputy sheriffs, the investigation and admonishment of deputy sheriffs, in addition to the enforcement of the laws, regulations, policies, practices and procedures of IRSO, the laws, regulations and Constitution of the State of Florida, and the laws, regulations and Constitution of the United States.

46. LOAR, as Sheriff of Indian River County at the time of this incident, was responsible for the proper in-service training and instruction of the officers and personnel of the IRSO regarding the enforcement of the laws, regulations, policies, practices and procedure of the IRSO, the laws, regulations and Constitution of the State of Florida, and the laws, regulation and Constitution of the United States.

47. LOAR, as Sheriff of Indian River County at the time of this incident, was responsible for the investigation of the improper acts of the officers and personnel of the IRSO, in addition to the punishment of the officers and personnel of the IRSO for their violations of the law and the General Orders of the IRSO.

48. CAVANAUGH has a history of reports of wanton behavior, being abusive, cruel, vindictive and unreasonable to law abiding citizens, in addition to violations of rules and regulations of the IRSO, and was neither counseled on correction of same by his supervisors, including LOAR, nor provided appropriate punishment for same.

COUNT I: 42 U.S.C. §1983 DEPRIVATION OF PLAINTIFF'S CIVIL RIGHTS
AGAINST CAVANAUGH
(SEARCH & SEIZURE WITHOUT WARRANT OR PROBABLE CAUSE)

49. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 48, inclusive, as if fully set forth herein.

50. The actions of CAVANAUGH occurred within the scope of his employment with IRSO, under color of state law, having occurred within the authorized time and space limits of his duties and for a purpose to serve LOAR.

51. At all times material hereto, CAVANAUGH had a legal duty not to subject KOVALESKI to unreasonable search and seizure, without probable cause, warrant or exigent circumstances.

52. On October 10, 2013, CAVANAUGH subjected KOVALESKI to unreasonable search and seizure, without probable cause, warrant or exigent circumstances, which was objectively unreasonable in light of the facts and circumstances confronting CAVANAUGH.

53. CAVANAUGH violated KOVALESKI's rights under the Fourth and Fourteenth Amendments to the Constitution of the United States and violated KOVALESKI's right to be free from unreasonable searches and seizures, by entering onto KOVALESKI's property and entering into his home, without a search warrant, probable cause or exigent circumstances.

54. CAVANAUGH knew or should have known and every reasonable deputy sheriff in his position would have concluded that KOVALESKI had a Fourth Amendment right not to have a deputy sheriff enter onto his property and in his home, without warrant or exigent circumstances.

55. These violations were of a type or character as to which any reasonable person would be aware, and further, the law prohibiting such conduct as unconstitutional is clearly established in Florida, in federal case law, including that of the Federal Court of Appeals of the United States, 11th Circuit, and under the case law of the U.S. Supreme Court.

56. The aforesaid acts of CAVANAUGH were performed knowingly, intentionally, and maliciously, and/or were performed in a reckless manner with callous and deliberate

indifference to the health, safety and civil rights of KOVALESKI and his children, and for this reason KOVALESKI is entitled to an award of punitive damages.

57. As a direct and proximate result of the unlawful conduct of CAVANAUGH as aforesaid, KOVALESKI was deprived of his civil rights and forced to suffer great aggravation, humiliation, embarrassment, mental anguish and harm, loss of standing in the community and pecuniary losses including loss of income and loss of earning capacity.

WHEREFORE, Plaintiff demands judgment against CAVANAUGH for compensatory and punitive damages, costs, reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and any other relief which the Court determines is appropriate.

COUNT II: 42 U.S.C. §1983 DEPRIVATION OF PLAINTIFF'S CIVIL RIGHTS
(CAVANAUGH - FALSE ARREST AND IMPRISONMENT)

58. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 48, inclusive, as if fully set forth herein.

59. The actions of CAVANAUGH occurred within the scope of his employment with IRSO, under color of state law, having occurred within the authorized time and space limits of his duties and for a purpose to serve LOAR.

60. The arrest and detention were not objectively reasonable under the totality of the circumstances.

61. At all times material hereto, CAVANAUGH had a legal duty not to subject KOVALESKI to arrest for an alleged crime that KOVALESKI did not commit and to imprison him in connection with same. CAVANAUGH willfully detained KOVALESKI without consent and without authority of law.

62. On October 10, 2013, CAVANAUGH subjected KOVALESKI to false arrest, without any probable cause or justification and imprisoned KOVALESKI following the false

arrest, which was objectively unreasonable in light of the facts and circumstances confronting CAVANAUGH.

63. CAVANAUGH violated KOVALESKI's rights under the Fourth and Fourteenth Amendments to the Constitution of the United States and violated KOVALESKI's right to be free from being unlawfully detained and charged with committing a crime without any basis in law or fact and by causing KOVALESKI to be imprisoned in connection with same.

64. CAVANAUGH knew or should have known and every reasonable deputy sheriff in his position would have concluded that KOVALESKI had constitutional rights not to have a deputy sheriff enter onto KOVALESKI's property, detain and arrest KOVALESKI for a crime he did not commit, unfounded in law or in fact, and subsequently incarcerate KOVALESKI in connection with same.

65. These violations were of a type or character as to which any reasonable person would be aware, and further, the law prohibiting such conduct as unconstitutional is clearly established in Florida, in federal case law, including that of the Federal Court of Appeals of the United States, 11th Circuit, and under the case law of the U.S. Supreme Court.

66. The aforesaid acts of CAVANAUGH were performed knowingly, intentionally, and maliciously, and/or were performed in a reckless manner with callous and deliberate indifference to the health, safety and civil rights of KOVALESKI and his children, and for this reason KOVALESKI is entitled to an award of punitive damages.

67. As a direct and proximate result of the unlawful conduct of CAVANAUGH as aforesaid, KOVALESKI was deprived of his civil rights and forced to suffer great aggravation, humiliation, embarrassment, mental anguish and harm, loss of standing in the community and pecuniary losses including loss of income and loss of earning capacity.

WHEREFORE, Plaintiff demands judgment against CAVANAUGH for compensatory and punitive damages, costs, reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and any other relief which the Court determines is appropriate.

COUNT III: 42 U.S.C. §1983 DEPRIVATION OF PLAINTIFF'S CIVIL RIGHTS
(CAVANAUGH - DEFAMATION)

68. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 48, inclusive, as if fully set forth herein.

69. The actions of CAVANAUGH occurred within the scope of his employment with IRSO, having occurred within the authorized time and space limits of his duties and for a purpose to serve LOAR.

70. At all times material hereto, CAVANAUGH had a legal duty not to subject KOVALESKI to false statements of fact, as to KOVALESKI's treatment of his children and KOVALESKI having committed a crime.

71. On October 10, 2013, CAVANAUGH defamed KOVALESKI by making false statements of fact as to KOVALESKI in a fabricated arrest warrant, including accusing KOVALESKI of mistreatment of his children, the events surrounding same and the commission of a felony by KOVALESKI. Further, on October 22, 2013, CAVANAUGH made the same false statements of fact under oath in a court proceeding involving the custody of KOVALESKI's children.

72. CAVANAUGH knew the statements were false and defamatory, but did so with the intent to injure KOVALESKI in connection with his divorce and custody proceeding and to harm KOVALESKI's reputation in the community and financial standing. As a sheriff's deputy, CAVANAUGH knew that the fabricated statements giving rise to the false arrest and the similar

fabricated testimony would receive the attention of the local media, resulting in the publication of the false statements of fact to the public. Indeed, this publication took place.

73. Given the malicious intent and background surrounding CAVANAUGH's actions, his repeated false statements of fact were not privileged.

74. CAVANAUGH violated KOVALESKI's rights under the Constitution of the United States and violated KOVALESKI's right to be free from false statements of fact by a deputy sheriff acting under color of law.

75. CAVANAUGH knew or should have known and every reasonable deputy sheriff in his position would have concluded that KOVALESKI had constitutional rights not to be defamed by a deputy sheriff making false statements of fact, which the deputy sheriff knew were false and defamatory.

76. These violations were of a type or character as to which any reasonable person would be aware, and further, the law prohibiting such conduct as unconstitutional is clearly established in Florida, in federal case law, including that of the Federal Court of Appeals of the United States, 11th Circuit, and under the case law of the U.S. Supreme Court.

77. The aforesaid acts of CAVANAUGH were performed knowingly, intentionally, and maliciously, and/or were performed in a reckless manner with callous and deliberate indifference to the health, safety and civil rights of KOVALESKI, and for this reason KOVALESKI is entitled to an award of punitive damages.

78. As a direct and proximate result of the unlawful conduct of CAVANAUGH as aforesaid, KOVALESKI was deprived of his civil rights and forced to suffer great aggravation, humiliation, embarrassment, mental anguish and harm, loss of standing in the community and pecuniary losses including loss of income and loss of earning capacity.

79. As a direct and proximate result of Cavanaugh's civil rights violations, Kovaleski suffered damages to his reputation, which resulted in loss of esteem, standing, and respectability both in the community and in his workplace.

80. Kovaleski was terminated in November 2014 from Charles Schwab & Company, where he had been employed as a licensed financial advisor and securities broker since 1999.

81. The damage to Kovaleski's reputation in his community caused by Cavanaugh as described herein directly caused or substantially contributed to the loss of Kovaleski's employment.

WHEREFORE, Plaintiff demands judgment against CAVANAUGH for compensatory and punitive damages, costs, reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and any other relief which the Court determines is appropriate.

**COUNT IV: 42 U.S.C. §1983 DEPRIVATION OF PLAINTIFF'S CIVIL RIGHTS
AGAINST LOAR**

82. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 48, inclusive, as if fully set forth herein.

83. At all material times, LOAR was responsible for IRSO, its agents and employees, including supervising, overseeing, training and establishing policies, customs and procedures to conform their conduct to the United States Constitution and Florida common law.

84. At all times material hereto, LOAR was charged with the responsibility of adopting and implementing rules and procedures for the proper and efficient maintenance, supervision and control of the officers of the IRSO. These duties include, but are not limited to:

a. To create, adopt and implement rules, regulations, practices and procedures, toward hiring and retaining law enforcement officers who do not have a propensity of entering into a citizen's home without warrant or exigent circumstances, arresting and incarcerating

citizens without cause, fabricating charges and making false sworn statements of fact in support of their false arrest and incarceration;

b. To create, adopt and implement rules and regulations, practices and procedures, for proper and efficient training of law enforcement officers in a way and to an extent necessary to ensure officers would be prevented from the entering into a citizen's home without warrant or exigent circumstances, arresting and incarcerating citizens without cause, fabricating charges and knowingly make false sworn statements of fact in support of the false arrest and incarceration;

c. To create, adopt and implement rules and regulations, practices and procedures for the proper and efficient supervision, control, discipline and assignment of law enforcement officers in a way and to an extent necessary to ensure that officers will not enter into a citizen's home without warrant or exigent circumstances, arrest and incarcerate citizens without cause, fabricate charges and knowingly make false sworn statements of fact in support of the false arrest and incarceration; and

d. To implement rules, regulations, policies, practices and procedures for the proper and efficient supervision, discipline and control of law enforcement officers to reduce or eliminate instances of untruthfulness and to properly punish those officers who commit same; and

e. To implement rules, regulation, policies, practices and procedures necessary to properly and fully investigate claims by citizens that law enforcement officers entered into a citizen's home without warrant or exigent circumstances, arrest and incarcerate citizens without cause, fabricated charges and knowingly made false sworn statements of fact in support of the false arrest and incarceration.

85. LOAR owed a legal duty to KOVALESKI to exercise reasonable care in hiring, training and retaining safe and competent employees. KOVALESKI was in the foreseeable zone of risk that was reasonably foreseeable to LOAR. LOAR breached that duty and that breach caused KOVALESKI's damages.

86. LOAR, with deliberate indifference, failed to adequately train or otherwise supervise and direct IRSO and its deputy sheriffs concerning the rights of the citizens they encounter in their duties, such that it is a policy, practice and custom for deputy sheriffs, including CAVANAUGH, to take extreme and reckless actions against the citizens they encounter, including KOVALESKI.

87. LOAR was on notice, by a history of widespread abuse, of the need to correct the extreme and reckless actions of IRSO and its deputy sheriffs as to the citizens they encounter. This need for more or different training has been so obvious and the inadequacy of same, combined with LOAR's conscious choice not to act has resulted in the violation of constitutional rights, including, but not limited to the deprivation of KOVALESKI's civil rights.

88. In August 2011, a Citizen's Complaint was filed as to CAVANAUGH going to a home and "snatching" or grabbing an individual, who was placed under arrest. The investigation was limited to calling CAVANAUGH and inquiring as to what he was doing, with the matter closed as "there was not sufficient evidence to conclude Cavanaugh violated department rules, regulations, policies or procedure." Given CAVANAUGH's propensity for lying, as shown above, the matter was closed based on CAVANAUGH's word as opposed to a legitimate investigation based on the citizen's word.

89. In August 2012, a Citizen's Complaint was filed as to CAVANAUGH refusing to arrest an individual, after being requested by a citizen. The citizen was attempting to stop an

individual without a driver's license from driving away with a truck full of young children. CAVANAUGH refused to even investigate the matter, let alone attempt an arrest. The investigation was limited to contacting CAVANAUGH and inquiring as to what he was doing. The investigator personally vouched for CAVANAUGH's "past work ethic" and the matter was closed, finding the citizen's complaint was "UNFOUNDED."

90. In March 2010, CAVANAUGH was the subject of an administrative investigation that determined that CAVANAUGH willfully violated official procedures and directives and intentionally abused IRSO equipment, resulting in a three-day suspension without pay.

91. In November 2011, CAVANAUGH was reprimanded for failing to adhere to all traffic laws and failing to drive in a safe and courteous manner after having three citizen complaints regarding his excessive speeding, careless driving and snide comment to a citizen who commented on his driving.

92. In further disregard of the rights of citizens that IRSO and its deputy sheriffs encounter, LOAR has, with deliberate indifference, either failed to direct, failed to otherwise fully require, or has sought to limit, IRSO and others in the proper investigation of the extreme and wanton acts of his deputy sheriffs, such that it is the policy, practice and custom of limiting investigations of deputy sheriffs with few or no serious questions raised as to deputy sheriff's actions or a deputy sheriff's claims as to citizens they encounter.

93. By limiting and/or failing to investigate, resulting in findings of no excessive force, accepting deputy sheriff's word as gospel and otherwise adopting the justification for his deputy sheriff's extreme and wanton actions, LOAR has ratified, condoned and consented to the deputy sheriff's unlawful conduct, including the ratification, condoning and consenting to the unlawful conduct of CAVANAUGH as to KOVALESKI.

94. Had LOAR not consciously engaged in the foregoing, keeping a blind eye to the actions of his deputy sheriffs, and properly investigated and punished (including terminating and bringing charges) against deputy sheriffs who violated the law and IRSO General Orders, the actions of CAVANAUGH as to KOVALESKI would not have taken place and the damages to KOVALESKI would not have occurred, thus obviating the need to bring this lawsuit.

95. The aforementioned actions in this case committed by CAVANAUGH were proximately caused by these policies, customs and practices of LOAR in failing to fulfill his duties as alleged in the previous paragraphs of this Complaint.

96. Had CAVANAUGH known he was not free to lie on police reports and make false arrests because such conduct was regularly being investigated by LOAR and his staff when such instances came to their attention, he would not have engaged in his illegal and fraudulent conduct against KOVALESKI and the consequences and damages of same would not have inured to KOVALESKI.

97. The aforementioned policies, customs and practices of LOAR and the actions of LOAR were the cause of KOVALESKI being deprived of his civil rights, being forced to suffer great aggravation, humiliation, embarrassment, mental anguish and harm, loss of standing in the community and pecuniary losses including loss of income and loss of earning capacity.

98. CAVANAUGH has a history of reports of violations of rules and regulations with the IRSO, of which LOAR was aware. CAVANAUGH was not counseled on correction of such willful violations of official procedures and directives causing injuries by his supervisors including LOAR.

99. The punishment of CAVANAUGH in this case, to wit: a five day suspension, upon the finding of multiple serious violations, including perjury (that likely would have resulted

in KOVALESKI serving serious prison time and the loss of custody and visitation of his children, but for the existence of security video to contradict CAVANAUGH's false assertions cloaked in correctness due his acting under color of state law) is a palpable example of the tacit approval of constitutional violations by LOAR and his command staff and the lack of seriousness to provide corrective action and/or counseling when such violations by deputies occur.

100. In addition to the policies, customs and practices referenced above, LOAR was grossly negligent, reckless or deliberately indifferent to the health, safety and welfare of KOVALESKI in that LOAR expressly acknowledged and assented to the failure to properly train, supervise, control, screen and review for continued employment, the persona and conduct of CAVANAUGH. As a result, LOAR had reason to know that CAVANAUGH would act unlawfully and he failed to stop CAVANAUGH's actions.

101. The gross negligence, recklessness and deliberate indifference of LOAR identified above was a further underlying cause of the constitutional torts committed by CAVANAUGH and was the proximate cause of KOVALESKI's injuries and damages noted above.

WHEREFORE, Plaintiff demands judgment against LOAR for compensatory damages, punitive damages (in LOAR's individual capacity only), costs, reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and any other relief which the Court determines is appropriate.

**COUNT V: FALSE ARREST AND DETENTION – STATE LAW CLAIM
AGAINST CAVANAUGH AND LOAR (OFFICIAL CAPACITY)**

102. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 48, inclusive, as if fully set forth herein.

103. CAVANAUGH, without process or authority of law, wrongfully, unlawfully, against KOVALESKI's will, and without probable cause, forcibly arrested and restrained KOVALESKI and compelled KOVALESKI to go to the Indian River County Jail.

104. KOVALESKI, at the time he was arrested and imprisoned, was acting peaceably and in a lawful manner. No warrant for KOVALESKI's arrest and imprisonment was ever issued.

105. The arrest was not objectively reasonable under the totality of the circumstances.

106. After spending a day and a night of imprisonment at the Indian River County jail, KOVALESKI was released without a hearing and without any formal charges being prosecuted.

107. The aforesaid acts of CAVANAUGH were performed knowingly, intentionally, and maliciously, and/or were performed in a reckless manner with callous and deliberate indifference to the health, safety and civil rights of KOVALESKI, and for this reason KOVALESKI is entitled to an award of punitive damages.

108. By reason of the above, KOVALESKI was deprived of his liberty and has been caused great physical and mental suffering, humiliation, shame, public ridicule, and has been inconvenienced and suffered loss of standing in the community and resulting pecuniary losses. KOVALESKI suffered special damages including past and future lost earnings and earning potential, incurred legal fees and investigation expenses necessitated solely by CAVANAUGH's illegal and improper acts.

109. As CAVANAUGH's employer, LOAR was responsible for his acts and is liable to KOVALESKI for his damages, including pain and suffering, loss of capacity of life, mental suffering, shame, public ridicule, and has been inconvenienced and suffered loss of standing in

the community and resulting pecuniary losses, including loss of income and loss of earning capacity.

WHEREFORE, Plaintiff demands judgment against CAVANAUGH and LOAR for actual compensatory damages, pain, suffering and emotional distress and demands a jury trial of all issues so triable.

COUNT VI: BATTERY STATE LAW CLAIM
AGAINST CAVANAUGH AND LOAR (OFFICIAL CAPACITY)

110. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 48, inclusive, as if fully set forth herein.

111. CAVANAUGH did not have the discretionary authority to arrest KOVALESKI as CAVANAUGH did not have probable cause to believe had committed an offense.

112. Because CAVANAUGH'S actions were done without probable cause, without exigent circumstances or without a proper warrant, any touching by CAVANAUGH as to KOVALESKI was not an ordinary incident to an arrest.

113. Thus, CAVANAUGH committed an illegal, unjustified touching of KOVALESKI without his permission.

114. This illegal, unjustified touching of KOVALESKI caused him damages.

115. As CAVANAUGH's employer, LOAR was responsible for his acts and is liable to KOVALESKI for his damages, including pain and suffering, loss of capacity of life, mental suffering, shame, public ridicule, and has been inconvenienced and suffered loss of standing in the community and resulting pecuniary losses, including loss of income and loss of earning capacity.

WHEREFORE, Plaintiff demands judgment against CAVANAUGH and LOAR for actual compensatory damages, pain, suffering and emotional distress and demands a jury trial of all issues so triable.

**COUNT VII: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
STATE LAW CLAIM AGAINST CAVANAUGH AND LOAR (OFFICIAL CAPACITY)**

116. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 48, inclusive, as if fully set forth herein.

117. CAVANAUGH intentionally or with extreme recklessness, falsely accused, arrested and incarcerated KOVALESKI, in front of KOVALESKI's young children. CAVANAUGH fabricated falsehoods in support of his actions, providing false "sworn" statements, affecting KOVALESKI's right to have custody of his children, his standing in the community and the ability to earn an income.

118. CAVANAUGH's conduct was outrageous, so as to go beyond all bounds of decency, and is regarded as odious and utterly intolerable in a civilized community.

119. The actions of CAVANAUGH caused KOVALESKI emotional distress, which is severe and continues to this day. This has resulted in KOVALESKI enduring pain and suffering, loss of capacity of life, mental suffering, shame, public ridicule, and has been inconvenienced and suffered loss of standing in the community and resulting pecuniary losses, including loss of income and loss of earning capacity.

120. As CAVANAUGH's employer, LOAR was responsible for his acts and is liable to KOVALESKI for his damages, including pain and suffering, loss of capacity of life, mental suffering, shame, public ridicule, and has been inconvenienced and suffered loss of standing in the community and resulting pecuniary losses, including loss of income and loss of earning capacity.

WHEREFORE, Plaintiff demands judgment against CAVANAUGH and LOAR for actual compensatory damages, pain, suffering and emotional distress, special damages including past and future lost earnings and earning potential, incurred legal fees and investigation expenses necessitated solely by CAVANAUGH's illegal and improper acts, and demands a jury trial of all issues so triable.

**COUNT VIII: NEGLIGENCE STATE LAW CLAIM AGAINST CAVANAUGH
AND LOAR (OFFICIAL CAPACITY)**

121. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 48, inclusive, as if fully set forth herein.

122. This count is brought as an alternative cause of action to the intentional tort counts.

123. CAVANAUGH had a duty to act as a reasonably prudent police officer would have under the circumstances in connection with KOVALESKI.

124. CAVANAUGH breached this duty by accusing, arresting and incarcerating KOVALESKI, in front of KOVALESKI's young children.

125. CAVANAUGH further breached this duty by carelessly providing false statements supporting his actions in legal actions against the interests of KOVALESKI.

126. Because of CAVANAUGH's breach of these duties, KOVALESKI has been damaged, affecting KOVALESKI's custody rights of his children, his standing in the community and the ability to earn an income.

127. This has resulted in KOVALESKI enduring pain and suffering, loss of capacity of life, mental suffering, shame, public ridicule, and has been inconvenienced and suffered loss of standing in the community and resulting pecuniary losses, including loss of income and loss of earning capacity.

128. As CAVANAUGH's employer, LOAR was responsible for his acts and is liable to KOVALESKI for his damages, including pain and suffering, loss of capacity of life, mental suffering, shame, public ridicule, and has been inconvenienced and suffered loss of standing in the community and resulting pecuniary losses, including loss of income and loss of earning capacity.

WHEREFORE, Plaintiff demands judgment against CAVANAUGH and LOAR for actual compensatory damages, pain, suffering and emotional distress, special damages including past and future lost earnings and earning potential, incurred legal fees and investigation expenses necessitated solely by CAVANAUGH's illegal and improper acts, and demands a jury trial of all issues so triable.

JURY DEMAND

A demand for a jury trial is hereby made.

Dated: April 17, 2015.

s/ Guy Bennett Rubin, Esq.
Guy Bennett Rubin, Esq. (Florida Bar No. 691305)
grubin@rubinandrubin.com
Michael Compagno, Esq. (Florida Bar No.:886084)
mcompagno@rubinandrubin.com
Rubin & Rubin
PO Box 395
Stuart, Florida 34995
Telephone: (772) 283-2004
Facsimile: (772) 283-2009
Attorneys for the Plaintiff, Craig Kovaleski



May 23, 2014

Via Certified U.S. Mail

Dylan Reingold
Indian River County Attorney
1801 27th Street
Vero Beach, FL 32960

Department of Financial Services
Chief Financial Officer Jeff Atwater
200 E. Gaines St.
Tallahassee, Florida 32399

RE: Notice of Intent to Sue Pursuant to Florida Statutes § 768, et seq.

Dear Sirs,

This office represents the interests of Craig Kovaleski, in connection with his arrest by the Indian River County Sheriff's Office and its employee, Deputy Sheriff Michael Cavanaugh, on or about October 10, 2013.

Mr. Kovaleski suffered violations of rights afforded him under the Fourth and Fourteenth Amendments of the United States Constitution, as a result of the actions of Indian River County Sheriff Deryl Loar and Deputy Sheriff Michael Cavanaugh. Please accept this letter as our Notice of Claim on behalf of Craig Kovaleski, pursuant to § 768.28, Florida Statutes, for damages against the Indian River County Sheriff's Office and its employees, due to violation of his Civil Rights.

There are no adjudicated unpaid claims in excess of \$200.00. The Claimant is an entity without a federal tax ID number.

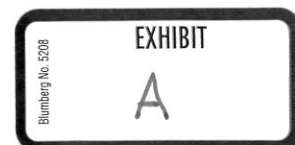
As required under Florida Statutes Chapter 627 et seq., please provide this office, within 30 days, all policies of insurance that were in place at the time of this incident, i.e., October 10, 2013. Additionally, please have the adjuster who is assigned to this case contact my office so that we can open discussions concerning resolution of this case prior to the filing of the complaint.

Finally, please provide me with all records, reports and other documents in possession of the Indian River County Sheriff's Office concerning the incident involving Mr. Kovaleski.

Please govern yourselves accordingly. If you have any questions about this notice or wish to communicate regarding the details of this claim, please contact me.

Sincerely,

Guy Bennett Rubin



BOARD OF COUNTY COMMISSIONERS
1800 27th Street, Vero Beach, Florida 32960-0310



Risk Management Division
May 27, 2014

Mr. Guy Bennett Rubin
Rubin & Rubin
110 SW Atlanta Avenue
Stuart FL 34994

Re: Craig Kovaleski
Date of loss 10/10/2013

Dear Mr. Rubin:

We received your letter of May 23, 2014 written on behalf of Mr. Kovaleski and have forwarded it to James Harpring, General Counsel, Indian River County Sheriff's Office, for handling.

If you have questions, please call me at (772) 567-8000, extension 1287.

Sincerely,

A handwritten signature in cursive script that reads "Beth Martin".

Beth Martin
Risk Manager

cc: Jason Brown, Director, OMB
James Harpring, General Counsel, IRSO
Christopher Jackson, Adjuster, JEC

RECEIVED
JUN 02 2014
RISK MANAGEMENT

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Department of
Financial Services
CFO Jeff Atwater
200 E. Gaines St.
Tallahassee, FL 32399

2. Article Number
(Transfer from service label)

7014 0510 0001 5556 7537

PS Form 3811, July 2013

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *F.N. Nicholas* Agent
 Addressee

B. Received by (Printed Name) *F.N. Nicholas* Addressee
Date of Delivery *7/23/13*

D. Is delivery address different from Item 1? Yes
If YES, print delivery address below: No

3. Service Type

- Certified Mail® Priority Mail Express™
- Registered Return Receipt for Merchandise
- Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p>
<p>Article Addressed to:</p> <p>Dylan Reingold Indian River County Att. 801 27th St. Vero Beach, FL 32960</p>	<p>B. Received by (Printed Name) <input type="checkbox"/> Date of Delivery</p> <p>Lynne Kellner</p>
	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
	<p>3. Service Type</p> <p><input type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p>
<p>Article Number (Transfer from service label)</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> <p>7014 0510 0001 5556 7520</p>

S Form 3811, July 2013

Domestic Return Receipt

955