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Consent
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CITY OF GAINESVILLE
CITY COMMISSION

12 SEP 20 PM 12:11

IN THE CIRCUIT COURT, EIGHTH JUDICIAL CIRCUIT, IN AND
FOR ALACHUA COUNTY, FLORIDA
CIVIL DIVISION, ALACHUA COUNTY COURTHOUSE
201 East University Avenue – Post Office Box 600
Gainesville, Florida 32602
PHONE (352) 374-3636 FAX (352) 338-3207

ALISON ZITTEL,

Plaintiff,

v.

Case No.: 2012CA3490
Division:

CITY OF GAINESVILLE and BRETT ROBISON, individually and in his official capacity,

Defendants.

SUMMONS/PERSONAL SERVICE OF A CORPORATION/INDIVIDUAL

THE STATE OF FLORIDA:

To Each Sheriff of the State:

YOU ARE COMMANDED to serve this Summons and a copy of the Complaint or Petition in this action on Defendant: **CITY OF GAINESVILLE, by serving Mayor Craig Lowe, 200 East University Avenue, Gainesville, Florida 32601.**

Each Defendant is required to serve written defenses to the Amended Complaint or Petition on Plaintiff's attorney whose name and address is: **Jason Miller, Esq., Morgan & Morgan, 76 South Laura Street, Ste. 1100, Jacksonville, FL 32202** within 20 ~~30~~ days after service of this summons on that Defendant, exclusive of the day of service, and to file the original of the defenses with the clerk of this court either before service on plaintiff's attorney ore immediately thereafter. If a defendant fails to do so, a default will be entered against that Defendant for the relief demanded in the complaint or petition.

WITNESS my hand and seal of said Court on August 29, 2012.

J. K. "Buddy" Irby
Clerk of the Circuit Court

By D. Thomas
Deputy Clerk

PLAINTIFF'S ATTORNEY
Jason Miller, Esq.
Morgan & Morgan, P.A.
76 S. Laura Street, Suite 1100
Jacksonville, Florida 32202
Fla. Bar #0519758

A True Copy
SADIE DARNELL, SHERIFF
ALACHUA COUNTY, FLORIDA
Served at [illegible] on this 20 Day
of Sept, 20 12
BY [illegible]
AS DEPUTY SHERIFF

IN THE CIRCUIT COURT, OF THE EIGHTH JUDICIAL CIRCUIT
IN AND FOR ALACHUA COUNTY, FLORIDA

ALISON ZITTEL,
Plaintiff,

Case No.: 2012 CA 3490

Div.:

vs.
CITY OF GAINESVILLE and
BRETT ROBISON, individually and in his official capacity,

Defendants.
_____/

COMPLAINT

COMES NOW the Plaintiff, ALISON ZITTEL, by and through her undersigned attorneys, and sues the Defendants, The CITY OF GAINESVILLE, Florida, a municipal corporation; and BRETT ROBISON in his individual and official capacity, and alleges as follows:

JURISDICTION AND VENUE

1. This is an action for damages in excess of Fifteen Thousand Dollars ($15,000.00), exclusive of costs and interest.
2. Prior to filing of this Complaint, Defendant, The CITY OF GAINESVILLE, was served notice of this claim pursuant to Florida Statutes, Section 768.28. Over 180 days have elapsed since service of Plaintiff's Notice of Administrative Claim. Attached hereto as Exhibit "A" is a copy of the Notice of Claim.

3. The events giving rise to this complaint occurred or originated in Alachua County, Florida; specifically within the City limits of Gainesville, Florida.

4. This is an action for money damages for injuries suffered by Plaintiff, ALISON ZITTEL, as a result of negligent conduct by the City of Gainesville, and tortious conduct by Brett Robison.

PARTIES

5. At all times material hereto, Plaintiff, ALISON ZITTEL was a resident of Gainesville, Alachua County, Florida and entitled to the protections of the laws of the State of Florida.

6. At all times relevant, the City of Gainesville, Florida was and is responsible for the administration, operation and supervision of the Gainesville police department and for promulgation, enforcement and review of rules, regulations, policies, customs and practices relevant hereto.

7. At all times relevant, Defendant, the CITY OF GAINESVILLE was under a nondelegable duty to promulgate and/or assure the promulgation of policies, practices, procedures and/or customs such that City employees, operating under color of their employment are properly hired, supervised, trained, and/or disciplined.

8. At all times material hereto, Defendant, THE CITY OF GAINESVILLE, was a Political Subdivision of the State of Florida, and the employer of Defendant, BRETT ROBISON.

9. At all times material hereto, Defendant, BRETT ROBISON was a resident of Alachua County, Florida.

10. At all times material hereto, Defendant, BRETT ROBISON was a police officer employed by Defendant, the CITY OF GAINESVILLE's police department acting within the course and scope of his employment. He is sued in his individual and official capacity.

GENERAL ALLEGATIONS

11. The claims asserted herein arise from acts, failures to act, and omissions committed, and policies, procedures, and customs in place and/or implemented, while Plaintiff, ALISON ZITTEL, was a citizen of Gainesville, Alachua County, Florida from approximately 2007 through 2008.

12. Plaintiff, ALISON ZITTEL alleges that a Gainesville police officer Defendant, BRETT ROBISON, at various times during 2007 and 2008 videotaped her without her knowledge or permission while she was in her bedroom naked, in the guise of performing his duties as a police officer. Plaintiff did not know Defendant, BRETT ROBISON, in any capacity, professionally or personally.

13. In order to spy on and record Plaintiff, ALISON ZITTEL, Defendant, BRETT ROBISON used the DAVID (Driver and Vehicle Information Database) system to look up her address and other confidential information. This database is not available to the general public and was only accessible by Defendant,

BRETT ROBISON because of his employment with the Gainesville Police Department.

14. The Gainesville police department does not monitor the use of or require an officer to adequately account for their use of the DAVID system, even though confidential information on members of the public is contained in the database.

15. The access of Plaintiff's confidential information by Defendant, BRETT ROBISON, through the DAVID system, occurred during the time he was on duty as a police officer with the City of Gainesville and while acting under color of state law.

16. At all times relevant, it was the policy, practice, custom and/or procedure of the Defendant, the CITY OF GAINESVILLE, and/or their employees who have final decision making authority to allow improper supervision of employee use or unfettered employee use of the DAVID system.

17. The video voyeurism complained of herein occurred during the time, Defendant, BRETT ROBISON was on duty as a police officer with the City of Gainesville and acting under color of state law.

18. Upon information and belief, Plaintiff alleges that Defendant, BRETT ROBISON, was in uniform and in a marked Gainesville Police Department patrol car at the time of the incidents complained of herein.

19. Upon information and belief, Plaintiff alleges that Defendant, BRETT ROBISON, at the time of the video voyeurism had his police radio with him,

which enabled him to know where other officers were and hear dispatch calls for service and thus avoid detection by law enforcement.

20. The Gainesville police department does not monitor the location of or require an officer to accurately account for their location or time while they are on duty.

21. Upon information and belief there were between 16 and 33 other women, many of them unidentified, who were also videoed by, Defendant, BRETT ROBISON while he was on duty as a City of Gainesville police officer.

22. Plaintiff is informed and believes and thereon alleges that on at least one occasion, one victim reported suspicion of a video camera being used outside of her window to her apartment complex rental office.

23. Plaintiff alleges that Defendant, BRETT ROBISON, avoided detection of his video voyeurism activity by wearing his uniform and taking full advantage of his position of authority as a police officer and lack of supervision by Gainesville Police Department.

24. At all times relevant, it was the policy, practice, custom and/or procedure of the Defendant, the CITY OF GAINESVILLE, and/or their employees who have final decision making authority to allow police officers such as Defendant, BRETT ROBISON, while ostensibly on duty, to patrol the streets of Gainesville, Florida with no oversight or accountability as to their location or activity such that Plaintiff, ALISON ZITTEL suffered harm.

25. Defendant, BRETT ROBISON used Defendant, the CITY OF GAINESVILLE's police department's chattel to record the unauthorized and invasive video of Plaintiff, ALISON ZITTEL.

26. Defendant, BRETT ROBISON used Defendant, the CITY OF GAINESVILLE's police department's chattel to drive to the location where he did the unauthorized and invasive videoing of Plaintiff, ALISON ZITTEL.

27. Defendant, BRETT ROBISON used Defendant, the CITY OF GAINESVILLE's police department's chattel to avoid detection and inhibit apprehension while he did the unauthorized and invasive videoing of Plaintiff, ALISON ZITTEL.

28. The first notice to Plaintiff, ALISON ZITTEL of the tortious conduct of Defendant, BRETT ROBISON was given when Plaintiff, ALLISON ZITTEL was contacted by a Gainesville Police Department (GPD) detective on or about June, 2010, and told she had been filmed by GPD Officer, Defendant, BRETT ROBISON while she was in her apartment.

29. Plaintiff, ALISON ZITTEL lived at The Landings Apartments (Apt. D-128), 3801 SW 13th Street in Gainesville, Florida during portions of 2007 and 2008.

30. Upon information and belief, Defendant, BRETT ROBISON, did conduct video voyeurism against multiple victims, and recorded the victims in various states of undress and nude, while BRETT ROBISON was on duty as a police officer, in uniform, driving a marked Gainesville police Department

patrol car and utilizing Gainesville Police Department communications systems including a police radio, and the databases of Department of Highway Safety and Motor Vehicle DAVID system and Florida Crime Information Center.

31. BRETT ROBISON utilized his position as a sworn police officer with Gainesville police officer, the databases and confidential information contained therein to conduct multiple incidents of video voyeurism.

32. Brett Robison is responsible for the unlawful conduct which resulted in harm by personally participating in the conduct.

33. The City of Gainesville is responsible for harm to Plaintiff by authorizing, acquiescing, or failing or refusing, with deliberate indifference to and reckless disregard for Plaintiff's clearly established and known rights and safety, by failing to initiate and maintain adequate training, supervision, and staffing; by failing to maintain proper and adequate policies, procedures and protocols, customs and practices.

COUNT I

INTRUSION UPON SECLUSION
(Brett Robison)

The allegations of Paragraphs 1 through 33 are re-alleged as though fully set out herein.

34. At times during 2007 through 2008 at the Landings Apartments, 3801 SW 13th Street, Gainesville, FL 32608, Alachua County, Florida, Defendant, BRETT ROBISON, while in uniform, used police department chattel, while on

duty, to video record Plaintiff, ALISON ZITTEL, in her apartment while she was nude.

35. This invasion into Plaintiff, ALISON ZITTEL's private life was without her knowledge or permission.

36. Plaintiff, ALISON ZITTEL had no knowledge of this invasion and in fact she was in her bedroom with her blinds drawn to prevent exposure of her person to the defendant and any others.

37. This conduct by Defendant, BRETT ROBISON was intentional and of a nature that would cause mental injury to a person of ordinary feelings and intelligence in the same circumstances.

38. As a result of the actions of the Defendant, BRETT ROBISON, Plaintiff, ALISON ZITTEL suffered damages including pain and suffering, mental anguish, loss of capacity for the enjoyment of life. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff ALISON ZITTEL demands judgment for Damages together with costs against Defendant, BRETT ROBISON, and all other relief which the Court deems appropriate and to which Plaintiff is entitled by law and further demands a trial by jury as to all issues so triable.

COUNT II

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Brett Robison)

The allegations of Paragraphs 1 through 33 are re-alleged as though fully set out herein.

39. Defendant, BRETT ROBISON, intentionally and deliberately inflicted emotional distress on Plaintiff by invading her privacy, making a video recording of her without her knowledge when she was cloistered in her home with the full expectation of privacy.

40. Defendant, BRETT ROBISON's intentional conduct was extreme and outrageous, and well beyond the boundaries of acceptable civilized behavior and would be offensive or objectionable to any reasonable person.

41. Defendant, BRETT ROBISON conducted himself with either intent to cause, or in disregard of a substantial probability of causing, severe emotional distress to Plaintiff.

42. Plaintiff has suffered severe emotional distress as a consequence of Defendant, BRETT ROBISON's conduct and more over by the fact that the violation was perpetrated by a police officer while on duty.

43. Plaintiff has been therefore harmed and damaged as a proximate consequence of the Defendant, BRETT ROBISON's outrageous conduct.

WHEREFORE, Plaintiff ALISON ZITTEL demands judgment for damages together with costs against Defendant, BRETT ROBISON, and all other relief which the Court deems appropriate and to which Plaintiff is entitled by law and further demands a trial by jury as to all issues so triable.

COUNT III

NEGLIGENT HIRING
(City of Gainesville)

The allegations of Paragraphs 1 through 33 are re-alleged as though fully set out herein.

44. Defendant, City of Gainesville, was required to investigate the qualifications of Defendant, BRETT ROBISON, prior to hiring BRETT ROBISON as a police officer for the City of Gainesville, Florida.

45. Defendant, City of Gainesville, unreasonably hired Defendant, BRETT ROBISON, based upon information the City knew or should have known regarding the suitability of BRETT ROBISON for employment as a police officer.

46. Plaintiff has been therefore harmed and damaged as a proximate consequence of the Defendant, BRETT ROBISON's conduct, and Defendant, CITY OF GAINESVILLE'S improper employment of officer BRETT ROBISON.

47. As a result of the negligence of the Defendant, CITY OF GAINESVILLE, Plaintiff, ALISON ZITTEL, suffered damages including pain and suffering, mental anguish, loss of capacity for the enjoyment of life. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff ALISON ZITTEL demands judgment for damages together with costs against Defendant, CITY OF GAINESVILLE and all other relief which

the Court deems appropriate and to which Plaintiff is entitled by law and further demands a trial by jury as to all issues so triable.

COUNT IV

NEGLIGENT SUPERVISION
(City of Gainesville)

The allegations of Paragraphs 1 through 33 are re-alleged as though fully set out herein.

48. Defendant, City of Gainesville, at all times relevant to this proceeding, had a continuing and ongoing duty to properly supervise Defendant, BRETT ROBISON.

49. Defendant, City of Gainesville, failed to properly supervise its employee, BRETT ROBISON.

50. Had Defendant, City of Gainesville properly supervised Defendant, BRETT ROBISON, City of Gainesville would have known or should have known that BRETT ROBISON was participating in activities that were likely to cause, and did cause, harm to Plaintiff.

51. As a result of the negligence of the Defendant, CITY OF GAINESVILLE, Plaintiff, ALISON ZITTEL suffered damages including pain and suffering, mental anguish, loss of capacity for the enjoyment of life. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff ALISON ZITTEL demands judgment for damages together with costs against Defendant, CITY OF GAINESVILLE, and all other relief which

the Court deems appropriate and to which Plaintiff is entitled by law and further demands a trial by jury as to all issues so triable.

COUNT V

NEGLIGENT RETENTION
(City of Gainesville)

The allegations of Paragraphs 1 through 33 are re-alleged as though fully set out herein.

52. Defendant, City of Gainesville, had a duty to from time to time consider the fitness of its employee, BRETT ROBISON, to continue work in his position as a police officer.

53. An appropriate investigation by Defendant, CITY OF GAINESVILLE would have revealed unsuitability of the continued employment of BRETT ROBISON as a police officer.

54. Defendant, City of Gainesville failed to make appropriate investigation into the suitability of retaining Defendant, BRETT ROBISON, as a police officer.

55. Had Defendant, City of Gainesville properly terminated the employment of Defendant, BRETT ROBISON, when Defendant knew of should have known continued employment was inappropriate, BRETT ROBISON would not have been able to participate in activities that were likely to cause, and did cause harm to Plaintiff.

56. As a result of the negligence of the Defendant, CITY OF GAINESVILLE, Plaintiff, ALISON ZITTEL suffered damages including pain and suffering,

mental anguish, loss of capacity for the enjoyment of life. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff ALISON ZITTEL demands judgment for damages together with costs against Defendant, CITY OF GAINESVILLE, and all other relief which the Court deems appropriate and to which Plaintiff is entitled by law and further demands a trial by jury as to all issues so triable.

COUNT VI

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS,
(City of Gainesville)

The allegations of Paragraphs 1 through 33 are re-alleged as though fully set out herein.

57. Defendant, City of Gainesville, knew or should have known about activities in which BRETT ROBISON was engaged which were improper given Defendant, BRETT ROBISON'S, employment as a police officer.

58. Had City of Gainesville properly hired, supervised and declined to retain BRETT ROBISON as a police officer for the CITY OF GAINESVILLE, the emotional distress caused by BRETT ROBISON, would not have occurred while Defendant, BRETT ROBISON, was employed as a City of Gainesville police officer.

59. As a result of the actions of the Defendant, BRETT ROBISON, Plaintiff, ALISON ZITTEL suffered damages including pain and suffering, mental

anguish, loss of capacity for the enjoyment of life. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff ALISON ZITTEL demands judgment for damages together with costs against Defendant, CITY OF GAINESVILLE, and all other relief which the Court deems appropriate and to which Plaintiff is entitled by law and further demands a trial by jury as to all issues so triable.

Respectfully submitted this 16th day of August, 2012.

MORGAN & MORGAN, P.A.

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