UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Harrisonburg Division

DENNIS B. REYNOLDS,
***Plaintiff*,**

v.

Case No. 5:25cv00044

DONALD L. SMITH, individually,
Defendant

JURY TRIAL DEMANDED

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS AND DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, Dennis Blake Reynolds, by and through undersigned counsel, and hereby files this Complaint against Defendant Donald L. Smith, individually. In support thereof, Plaintiff states as follows:

PRELIMINARY STATEMENT

1. This is an action brought pursuant to 42 U.S.C. § 1983 (2018) for violations of Plaintiff's constitutional rights under U.S. Const. amend. I and U.S. Const. amend. XIV; the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. (2018); the Family and Medical Leave Act, 29 U.S.C. § 2601 et seq. (2018); Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (2018); and the Virginia Human Rights Act, Va. Code Ann. § 2.2-3900, with supplemental state law claims for defamation per se under Virginia law.

2. Plaintiff Dennis Blake Reynolds, a former Deputy Sheriff with the Augusta County Sheriff's Office, brings this action to remedy the following legal wrongs committed by Defendant Sheriff Donald Smith:

    a. Violation of Plaintiff's Fourteenth Amendment liberty interest in his professional reputation through false, stigmatizing statements made in conjunction with his constructive discharge that significantly foreclosed his employment opportunities;

    b. Retaliation against Plaintiff for engaging in speech protected by the First Amendment regarding his mental health needs and his refusal to sign unjustified disciplinary documents;

    c. Discrimination against Plaintiff on the basis of his disability in violation of the Americans with Disabilities Act, including both disparate treatment and failure to provide reasonable accommodations;

    d. Interference with Plaintiff's rights under the Family and Medical Leave Act by failing to notify him of his FMLA eligibility and penalizing him for taking qualifying leave;

    e. Retaliation against Plaintiff for exercising his rights under the Family and Medical Leave Act;

    f. Creating a hostile work environment based on sex in violation of Title VII;

    g. Discrimination in violation of the Virginia Human Rights Act; and

h. Defamation per se through knowingly false statements impugning Plaintiff's professional integrity, honesty, and fitness as a law enforcement officer.

3. These violations reflect a particularly egregious abuse of authority because they occurred despite Defendant's long-standing personal relationship with Plaintiff and despite Defendant's well-documented knowledge of Plaintiff's legitimate health conditions. As detailed herein, Defendant Smith's actions demonstrate willful and deliberate indifference to Plaintiff's federally protected rights, rising to the level of intentional misconduct that warrants both compensatory and punitive relief. The violations are especially concerning because they were committed by an elected Sheriff who swore an oath to uphold the law but instead weaponized his official authority to retaliate against a subordinate seeking legally protected accommodation. *See Ridpath v. Bd. of Governors Marshall Univ.*, 447 F.3d 292, 320 (4th Cir. 2006) (noting that "constitutional violations carried out by those entrusted to enforce the law" are particularly troubling); *Cooper v. Parrish*, 203 F.3d 937, 945 (6th Cir. 2000) (acknowledging the heightened standards of conduct applicable to elected law enforcement officials).

4. Defendant's actions have inflicted severe and lasting harm upon Plaintiff, including: (1) destroying Plaintiff's professional reputation in the close-knit law enforcement community through false accusations that impugn his integrity; (2) effectively terminating his promising career in law enforcement

by attempting to revoke his professional certification and issuing Brady letters to potential employers; (3) causing significant emotional distress, anxiety, and worsening of his existing mental health conditions; and (4) imposing substantial financial hardship through lost wages, benefits, and diminished future earning capacity. Through this action, Plaintiff seeks declaratory relief establishing the unlawfulness of Defendant's conduct, compensatory damages to redress the substantial harms suffered, punitive damages to deter similar misconduct by other government officials, attorneys' fees and costs as authorized by applicable statutes, and such other equitable relief as this Court deems necessary to vindicate the important constitutional and statutory rights at stake. *See Carey v. Piphus*, 435 U.S. 247, 254-57 (1978) (discussing the importance of compensatory relief for constitutional violations); *Smith v. Wade*, 461 U.S. 30, 54-55 (1983) (affirming the availability of punitive damages in § 1983 cases involving reckless or callous disregard for federally protected rights).

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over Plaintiff's federal claims pursuant to 28 U.S.C. § 1331 (2018), as this action arises under the Constitution and laws of the United States; 28 U.S.C. § 1343(a)(3), (4), as this action seeks to redress the deprivation of rights secured by the Constitution and laws of the United States; 42 U.S.C. § 12117(a), which incorporates the powers, remedies, and procedures set forth in Title VII of the Civil Rights Act

of 1964, 42 U.S.C. § 2000e-5 for enforcement of the Americans with Disabilities Act; 42 U.S.C. § 2000e-5(f)(3), which provides jurisdiction for Title VII claims; and 29 U.S.C. § 2617(a)(2), which provides for a private right of action to enforce rights under the Family and Medical Leave Act.

6. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367(a) because they form part of the same case or controversy as Plaintiff's federal claims, arising from a common nucleus of operative fact regarding Plaintiff's employment, treatment based on his disability and sex, constructive discharge, and Defendant's subsequent actions to impede Plaintiff's future employment opportunities.

7. Venue is proper in the Western District of Virginia pursuant to 28 U.S.C. § 1391(b)(1), (2) because Defendant Smith resides within this district and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in Augusta County, Virginia, which is within this district.

8. Venue is specifically proper in the Harrisonburg Division of the Western District of Virginia pursuant to Local Rule 2(b), W.D. Va., because Augusta County, where the events giving rise to this action occurred, is within the Harrisonburg Division as defined in the Local Rules.

PARTIES

9. Plaintiff Dennis Blake Reynolds is a citizen of the Commonwealth of Virginia and resides in Augusta County. Plaintiff began his law enforcement career in

2009 and was hired as a Deputy Sheriff by the Augusta County Sheriff's Office in November 2016. In December 2018, Plaintiff was promoted to the position of K-9 handler and was partnered with a Belgian Malinois named Rico. Plaintiff and Rico completed approximately 15 weeks of specialized training at Rivanna K9 school, where they achieved certification in narcotics detection, obedience, tracking, and aggression control. Plaintiff served in this position until his constructive discharge on July 17, 2023, when he submitted his resignation letter under threat of termination. At all relevant times, Plaintiff was an "employee" within the meaning of 42 U.S.C. § 12111(4), 29 U.S.C. § 2611(2)(A), and 42 U.S.C. § 2000e(f), having been employed by the Augusta County Sheriff's Office for more than twelve months and having worked more than 1,250 hours in the 12-month period preceding his need for leave.

10. Defendant Donald L. Smith is the Sheriff of Augusta County, Virginia. He is sued in his individual capacity only. During all relevant times, Defendant Smith acted under color of state law as the elected Sheriff of Augusta County. See *West v. Atkins*, 487 U.S. 42, 49-50 (1988) (holding that a defendant acts under color of state law when exercising power "possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law"). As Sheriff, Defendant Smith exercised supervisory authority over Plaintiff, including authority to discipline, suspend, and terminate Plaintiff's employment. Defendant Smith was Plaintiff's "employer" within the meaning of 42 U.S.C. § 12111(5)(A), 29 U.S.C. § 2611(4)(A)(ii)(I)

(2018), and 42 U.S.C. § 2000e(b). As Sheriff, Defendant Smith is the final policymaking official for the Augusta County Sheriff's Office with respect to personnel matters, including hiring, promotion, discipline, and termination decisions. *See Pembaur v. City of Cincinnati*, 475 U.S. 469, 480 (1986) (recognizing that officials with "final policymaking authority" can subject the government to liability under § 1983).

FACTUAL ALLEGATIONS

PLAINTIFF'S EMPLOYMENT BACKGROUND

11. Plaintiff Dennis Reynolds began his law enforcement career in 2009 and was hired by Sheriff Donald L. Smith as a Deputy Sheriff with the Augusta County Sheriff's Office in November 2016. Prior to joining the Augusta County Sheriff's Office, Plaintiff had established a record of competent service in law enforcement without significant disciplinary issues.

12. In December 2018, following two years of exemplary service, Plaintiff was promoted to the position of K-9 handler and was assigned a Belgian Malinois named Rico, who was trained in narcotic detection and apprehension (including tracking). The K-9 handler position is highly selective, typically awarded only to deputies who have demonstrated exceptional skill and reliability in their duties.

13. As a K-9 handler, Plaintiff underwent specialized training at Rivanna K9 school with Rico for approximately 15 weeks. This rigorous training program required Plaintiff to demonstrate advanced skills in law enforcement

techniques, K-9 handling protocols, and emergency response procedures. Plaintiff was responsible for Rico's care, training, handling, and deployment on a 24-hour basis. Rico lived at Plaintiff's residence in a kennel provided by the Sheriff's Office, reflecting the around-the-clock commitment required for this specialized position.

14. During his employment with the Augusta County Sheriff's Office, Plaintiff maintained an exemplary service record with no significant disciplinary issues prior to the events giving rise to this action. His performance evaluations consistently reflected professionalism, reliability, and dedication to duty. See *Giles v. Daytona State Coll., Inc.*, 542 F. App'x 869, 873 (11th Cir. 2013) (recognizing that positive performance evaluations are relevant evidence of qualification and pretext in employment discrimination cases).

15. Plaintiff and Rico successfully achieved and maintained certification in narcotics detection, obedience, tracking, and aggression control. This is documented in text message communications between Plaintiff and Defendant Smith on July 26, 2022, when Defendant Smith congratulated Plaintiff on passing these certifications, writing "Good work" and "I think he's earned a steak." These communications demonstrate Defendant's awareness and acknowledgment of Plaintiff's competence in his position.

16. Throughout his seven years of service in law enforcement, Plaintiff consistently received positive performance evaluations and successfully completed all required training and certification programs. Such a record of

sustained positive performance is probative evidence that Plaintiff was qualified for his position and contradicts any post-hoc assertions of performance deficiencies. *See Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 143 (2000) (holding that evidence of consistently good performance undermines purported nondiscriminatory justifications for adverse actions).

17. At all relevant times, Plaintiff had been employed by the Augusta County Sheriff's Office for more than twelve months and had worked more than 1,250 hours in the 12-month period preceding his need for leave, making him an eligible employee under the Family and Medical Leave Act, 29 U.S.C. § 2611(2)(A). The Augusta County Sheriff's Office employed more than 50 employees within 75 miles of Plaintiff's workplace during the relevant time period, making it a covered employer under *id.* § 2611(4)(A)(i) (2018).

VIRGINIA STATE POLICE INVESTIGATION AND SHERIFF SMITH'S DIRECTIVE TO DELETE EVIDENCE

18. In December 2021, an incident occurred involving Plaintiff's brother, Robert Reynolds, who was involved in a single-vehicle accident in Augusta County, Virginia.

19. On December 13, 2021, Plaintiff contacted the Emergency Communications Center (ECC) regarding this accident. During this call, Plaintiff indicated that his brother would handle the accident the following day and asked ECC not to contact Virginia State Police regarding the incident.

20. On December 13, 2021, after Robert Reynolds determined there was more damage to the vehicle than initially thought, Plaintiff directly contacted Trooper Johnson of the Virginia State Police to report the accident.

21. Trooper Cappo responded to the scene, took a report, and issued a summons to Robert Reynolds for reckless driving, which was later dismissed.

22. On January 12, 2022, during an internal investigation by the Augusta County Sheriff's Office, Trooper Cappo learned that Plaintiff had initially instructed ECC not to call Virginia State Police regarding the crash.

23. This information led to a Virginia State Police investigation into whether Plaintiff had improperly interfered with the reporting of his brother's accident. Under Virginia law, knowingly impeding or preventing a law enforcement officer in the performance of his duties constitutes obstruction of justice. See Va. Code Ann. § 18.2-460 (2021).

24. The Commonwealth Attorney was consulted and determined that a special prosecutor was required to review the matter to avoid any potential conflicts of interest, as is standard practice when law enforcement officers are under investigation.

25. On February 23, 2022, First Sergeant Roane of the Augusta County Sheriff's Office interviewed Plaintiff regarding the incident with his brother, initiating the formal internal investigative process.

26. During this interview, First Sergeant Roane informed Plaintiff that the Virginia State Police was investigating Plaintiff and asked Plaintiff if he had

spoken to the Virginia State Police. Plaintiff stated he was aware of the investigation but had not spoken to anyone at the Virginia State Police.

27. First Sergeant Roane asked Plaintiff if he thought his brother's truck was just stuck or had been in an accident, to which Plaintiff stated it was stuck. Importantly, Plaintiff was never informed about any search warrant for his phone at this time and only learned of the search warrant's existence during his subsequent Decertification Hearing.

28. On March 28, 2022, a search warrant was obtained for Plaintiff's phone to examine communications related to the accident, following established Fourth Amendment procedures for obtaining evidence in criminal investigations.

29. Upon learning of the investigation and potential search warrant, Defendant Smith took actions that compromised the integrity of the investigation and placed Plaintiff in a compromising position, potentially constituting obstruction of justice.

30. Specifically, Defendant Smith instructed Plaintiff to delete evidence that might be subject to the investigation and potential search warrant, despite Defendant Smith's knowledge of the ongoing Virginia State Police investigation.Defendant Smith explicitly informed Plaintiff that the State Police would be examining his phone and directed him to delete anything involving his brother's accident, demonstrating Defendant's intent to interfere with the lawful execution of a search warrant.

31. Defendant Smith further ordered Plaintiff to delete ALL text messages between Defendant and Plaintiff, going beyond just the accident-related communications and extending to their entire message history.

32. This directive from Defendant Smith placed Plaintiff in the untenable position of having to choose between following his superior's orders and potentially obstructing justice, or refusing his superior's orders and facing potential adverse employment consequences. See *McKee v. Cosby*, 874 F.3d 54, 64 (1st Cir. 2017) (recognizing the difficult position employees face when supervisors direct them to engage in potentially unlawful conduct).

33. Defendant Smith's instruction to delete communications was particularly troubling given that the communications between Defendant Smith and Plaintiff included numerous inappropriate and salacious text messages that Defendant Smith had sent to Plaintiff, suggesting an additional motive for Defendant Smith to want these communications destroyed.

34. On March 31, 2022, Plaintiff texted his mother: 'Sheriff told me today they are goin through my phone records and want to interview people.' This contemporaneous communication corroborates Plaintiff's account of the events and demonstrates his concern about the investigation.

35. The Virginia State Police investigation continued through Spring 2022, with a special prosecutor assigned to review the evidence in accordance with proper investigative protocol.

36. After thorough review, the special prosecutor ultimately declined to prosecute Plaintiff for any wrongdoing related to his brother's accident, effectively clearing Plaintiff of the allegations.

37. Despite this resolution, the investigation created significant stress and anxiety for Plaintiff and adversely affected his mental health, contributing to the conditions for which he later required accommodation.

38. Moreover, Defendant Smith's directive to delete evidence demonstrated a willingness to obstruct an official investigation and placed Plaintiff at risk of potential criminal liability, creating a profound ethical conflict in their professional relationship.

39. This incident marked the beginning of a pattern of conduct by Defendant Smith that would ultimately culminate in Plaintiff's constructive discharge and the attempt to destroy his professional reputation in retaliation for protected activities.

40. Upon information and belief, evidence also surfaced during the investigation suggesting that Defendant Smith may have advised Plaintiff to delete text messages and other communications related to the incident, but this potential interference with an official investigation was not pursued further at that time by the Virginia State Police or the special prosecutor.

SHERIFF SMITH'S PATTERN OF INAPPROPRIATE COMMUNICATIONS

42. Throughout Plaintiff's employment with the Augusta County Sheriff's Office, he developed and maintained a close personal and professional relationship

with Defendant Smith, as documented in extensive text message communications spanning from May 2022 through July 2023. These communications constitute contemporaneous documentary evidence of their relationship and Defendant's knowledge of Plaintiff's condition.

43. A detailed quantitative and qualitative analysis of these communications reveals a significant pattern of highly personal and often inappropriate interactions initiated primarily by Defendant Smith. These communications establish both the nature of the relationship and Defendant's subsequent retaliatory motivation when Plaintiff began to distance himself from this relationship.

44. The evidence includes a total of 1,102 text messages across 107 conversations between Plaintiff and Defendant Smith during this period. The volume and content of these messages demonstrates the unusual nature of this supervisor-subordinate relationship.

45. Of these conversations, 70 were initiated by Defendant Smith, with 61 of these being predominantly personal in nature rather than work-related. Only 9 conversations initiated by Defendant Smith were primarily related to official business. This pattern establishes that Defendant Smith consistently sought personal rather than professional contact with Plaintiff.

46. By contrast, of the 37 conversations initiated by Plaintiff, 27 were work-related inquiries or updates, demonstrating a significantly more professional approach to communications with Defendant Smith. This disparity in communication

patterns supports Plaintiff's contention that the inappropriate aspects of the relationship were initiated and driven by Defendant Smith.

47. Moreover, 16 conversations initiated by Defendant Smith went completely unanswered by Plaintiff, suggesting Plaintiff's discomfort with the nature of these communications and his attempts to establish professional boundaries that Defendant Smith repeatedly disregarded.

48. Defendant Smith frequently expressed personal affection for Plaintiff in these communications, including statements such as "I love you and just want you to be alright" (May 15, 2022), "I love you" (May 22, 2022), and "You know I support whatever makes you happy.... But I do miss you when I can't talk to you" (May 18, 2022). Such expressions of personal affection from a supervisor to a subordinate create an inherently coercive dynamic in an employment relationship. *See Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 80 (1998) (recognizing that the power differential between supervisors and subordinates is relevant to hostile work environment claims).

49. Defendant Smith repeatedly indicated that he provided special protection to Plaintiff within the department, stating "You really don't know how protective I am of you do you?" (May 23, 2022) and "I watch your back pretty close you just don't believe me" (August 14, 2022). These statements demonstrate Defendant's awareness of his power over Plaintiff's employment and his implicit suggestion that Plaintiff's continued employment security depended on maintaining their personal relationship.

50. Prior to Plaintiff being instructed to delete text messages by Defendant Smith, Defendant sent numerous unprofessional and sexually suggestive messages to Plaintiff. These included comments about the size of Plaintiff's genitalia, statements that he would "come cuddle" Plaintiff, and offers for Plaintiff to stay at Defendant's house in Churchville. Defendant repeatedly told Plaintiff he loved him and wanted him "close." Such sexually charged communications from a supervisor to a subordinate constitute severe conduct that can create a hostile work environment under Title VII. *See Boyer-Liberto v. Fontainebleau Corp.*, 786 F.3d 264, 277 (4th Cir. 2015) (en banc) (recognizing that even a single incident of harassment, if sufficiently severe, can create an actionable hostile work environment).

51. On February 21, 2023, Defendant Smith sent Plaintiff a particularly inappropriate message with sexually suggestive content that made Plaintiff extremely uncomfortable. The Fourth Circuit has recognized that unwelcome sexual advances and sexually charged comments can constitute sex-based harassment under Title VII, regardless of the gender of the parties involved. *See EEOC v. Fairbrook Med. Clinic*, 609 F.3d 320, 327 (4th Cir. 2010).

52. Plaintiff's former girlfriend, Temple Toms, observed these messages on Plaintiff's phone and independently commented that they were "weird" and that she thought the Sheriff "wanted" Plaintiff. This third-party observation provides objective corroboration of the inappropriate nature of Defendant Smith's communications, which would be apparent to a reasonable person. See

Harris v. Forklift Sys., 510 U.S. 17, 21-22 (1993) (establishing both subjective and objective components to hostile work environment analysis).

53. The nature and frequency of these communications created a hostile and coercive working environment for Plaintiff, who feared negative employment consequences if he directly refused or reported Defendant Smith's inappropriate conduct. Plaintiff was afraid to report this conduct because he feared losing his position or his K-9 partner. This fear was reasonable given Defendant Smith's position of authority and his frequent reminders of his protective role in Plaintiff's career. *See Burlington N. & Santa Fe Ry. v. White*, 548 U.S. 53, 68 (2006) (recognizing that the significance of any given act of retaliation must be judged from the perspective of a reasonable person in the plaintiff's position).

54. As early as March 17, 2020, Defendant Smith was aware of Plaintiff's 'Mental Clarity' issues that could affect his law enforcement duties, as documented in an Optima Health Referral Form signed by Defendant Smith on that date. This document provides clear evidence that Defendant Smith had long-standing knowledge of Plaintiff's mental health conditions well before the events giving rise to this action, contradicting any potential defense that Defendant was unaware of Plaintiff's condition.

PLAINTIFF'S HEALTH CONDITIONS AND DEFENDANT'S KNOWLEDGE

55. In early 2023, Plaintiff was diagnosed with a tumor on his T7 vertebrae. This medical condition constitutes a physical impairment that substantially limited

several major life activities as defined by the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) and its implementing regulations at 29 C.F.R. § 1630.2(i) (2023). The condition caused Plaintiff significant physical pain along with related emotional distress, anxiety, and depression.

56. Plaintiff's spinal condition substantially limited several major life activities within the meaning of 42 U.S.C. § 12102(2)(A), including sleeping, lifting, bending, and concentrating. The related mental health impacts further limited his ability to concentrate, interact with others, and regulate his emotions. Under the ADAAA's broadened definition of disability, even episodic impairments or those in remission qualify as disabilities if they would substantially limit a major life activity when active. *Id.* § 12102(4)(D); see *Williams v. Kincaid*, 45 F.4th 759, 768-69 (4th Cir. 2022) (confirming the ADAAA's purpose of providing "broad coverage" for individuals with disabilities).

57. On February 23, 2023, Plaintiff discussed his upcoming biopsy procedure with Defendant Smith via text message, stating "I may be missing some work soon they found a tumor on my spine." Defendant Smith demonstrated awareness of the procedure's serious nature, responding "Do you want me to go with you" and "If you have cancer I'm going to have issues with that." These communications constitute direct evidence of Defendant Smith's knowledge of Plaintiff's physical impairment.

58. On March 8, 2023, Plaintiff shared a YouTube video explaining the vertebral tumor biopsy procedure with Defendant Smith. Defendant Smith responded the following day stating "I watched that procedure and there's no way I'm letting you go to that by yourself." This response further confirms Defendant's knowledge of Plaintiff's condition and its severity, as well as the personal nature of their relationship.

59. On March 22, 2023, Plaintiff underwent the biopsy procedure. During this procedure, Defendant Smith texted "I'm thinking about you and praying for you." After the procedure, Plaintiff informed Defendant Smith that he had returned home and was "tired and sore." These contemporaneous communications provide clear evidence of Defendant's ongoing awareness of Plaintiff's medical treatment.

60. On March 23, 2023, Plaintiff received the biopsy results showing the tumor was non-cancerous. He shared this information with Defendant Smith, who responded "I'm so glad your ok and no cancer" and inquired about Plaintiff's pain level, asking "You feeling ok" and suggesting "Are you using ice" when Plaintiff complained of continuing pain. This exchange demonstrates Defendant's understanding that Plaintiff continued to experience physical limitations despite the non-malignant diagnosis.

61. Despite receiving confirmation that the tumor was not cancerous, Plaintiff continued to experience physical pain from the tumor and the biopsy procedure, as well as heightened anxiety, depression, and other mental health

symptoms related to his medical condition and the stress of the diagnostic process. The Fourth Circuit has recognized that both physical and mental health conditions can qualify as disabilities under the ADA. *See Jacobs*, 780 F.3d at 573-74 (holding that social anxiety disorder constitutes a disability under the ADA).

62. Throughout April 2023, Plaintiff's mental health symptoms worsened, including persistent anxiety, depression, insomnia, and difficulty concentrating. These symptoms, while related to his spinal condition, constituted a separate disability that substantially limited his major life activities. *See Gentry v. E.W. Partners Club Mgmt. Co.*, 816 F.3d 228, 235 (4th Cir. 2016) (recognizing depression, anxiety, and cognitive impairments as disabilities under the ADA).

63. On April 3, 2023, when Defendant Smith texted to check on Plaintiff, Plaintiff responded that he was "sick," suffering from a "sore throat cough and congestion" and that it was "rough." Defendant Smith asked if Plaintiff needed anything, demonstrating continued awareness of Plaintiff's health challenges. This communication, viewed in light of the ongoing dialogue about Plaintiff's health, would have put a reasonable employer on notice that Plaintiff was experiencing both physical and mental health issues requiring accommodation. See *Hannah P. v. Coats*, 916 F.3d 327, 337 (4th Cir. 2019) (noting that an employer's knowledge of a disability can be established through various forms of communication about an employee's condition).

64. By May 2023, the combination of Plaintiff's physical symptoms from the tumor and his mental health condition had intensified to the point where he required accommodations, including time off work, to address his health and wellbeing. These conditions constituted "serious health conditions" under the FMLA, defined as "an illness, injury, impairment, or physical or mental condition that involves . . . continuing treatment by a health care provider." 29 U.S.C. § 2611(11) (2018); 29 C.F.R. § 825.113(a). The Department of Labor's May 2022 Fact Sheet #28O specifically recognizes that mental health conditions like those experienced by Plaintiff qualify for FMLA protection.

65. The Department of Labor's May 2022 Fact Sheet #28O specifically recognizes that mental health conditions like those experienced by Plaintiff qualify for FMLA protection.

DISCRIMINATORY RESPONSE TO PLAINTIFF'S NEED FOR ACCOMMODATION

65. The Augusta County Sheriff's Office maintained a policy regarding sick leave that explicitly permitted the use of such leave for both physical and mental health conditions. This policy appeared in the employee handbook and was consistent with standard practices in law enforcement agencies, recognizing the substantial mental health challenges that can affect law enforcement officers in the course of their duties. See *Stern v. St. Anthony's Health Ctr.*, 788 F.3d 276, 285 (7th Cir. 2015) (noting that employer policies can establish the reasonableness of requested accommodations).

66. Upon information and belief, other deputies at the Augusta County Sheriff's Office had previously used sick leave for mental health purposes without facing disciplinary action or special scrutiny. This disparate treatment of Plaintiff's mental health needs constitutes evidence of discrimination based on disability. See *Raytheon Co. v. Hernandez*, 540 U.S. 44, 52-53 (2003) (recognizing that different treatment of similarly situated employees can support an inference of discriminatory intent).

67. Plaintiff requested additional time off in early May 2023 to address his physical and mental health needs but was denied due to alleged staffing needs, despite Defendant Smith's knowledge of Plaintiff's medical conditions. This denial constituted a failure to engage in the interactive process required by the ADA. *See Jacobs*, 780 F.3d at 581 (holding that "a failure to engage in the interactive process" can constitute evidence of discrimination when "the employer unreasonably failed to identify a reasonable accommodation").

68. On May 5 and May 6, 2023, Plaintiff used available sick leave to take time off to address his physical pain and mental health needs, calling Corporal Jonathan Wells to report that he was sick and unable to come to work. This notification was sufficient to trigger FMLA protections, as the Fourth Circuit has recognized that employees need not expressly assert rights under the FMLA or even mention the FMLA to invoke its protections. *See Dotson v. Pfizer*, 558 F.3d 284, 295 (4th Cir. 2009) (holding that "an employee seeking FMLA leave need not expressly assert rights under the FMLA or even mention

the FMLA" to provide adequate notice); 29 C.F.R. § 825.303(b) (stating that an employee need only provide sufficient information for an employer to reasonably determine whether the FMLA may apply).

69. On May 7, 2023, Corporal Wells was in the vicinity of Plaintiff's residence and observed Plaintiff in his yard talking to his neighbor. Wells drove by and asked Plaintiff if he was coming to work. Wells later interpreted this encounter as evidence that Plaintiff had not been genuinely ill, despite having no medical expertise to evaluate the legitimacy of Plaintiff's mental health needs.

70. This interpretation fundamentally misunderstands the nature of mental health conditions, which may allow for limited social interaction while still rendering an individual unable to perform the demanding duties of law enforcement. Medical professionals routinely recommend outdoor activities and social interaction as therapeutic for individuals suffering from anxiety and depression. The Department of Labor's 2022 guidance specifically acknowledges that individuals with mental health conditions may require intermittent leave and that such conditions should not be judged by the same metrics as physical ailments. See DOL Fact Sheet #28O: Mental Health Conditions and the FMLA (May 2022).

71. On May 26, 2023, Sergeant Aaron Will and Corporal Jonathan Wells submitted a report alleging Plaintiff had violated Augusta County Sheriff's Office Policy 1006.4 regarding the use of sick leave. This report, submitted almost three weeks after the alleged violation, represents suspicious timing that supports

an inference of retaliatory motivation. See *Foster v. Univ. of Md.-E. Shore*, 787 F.3d 243, 253 (4th Cir. 2015) (noting that suspicious timing can support an inference of retaliatory intent).

72. This report recommended that Plaintiff "be placed on a work plan," that he "provide a doctor's note for any days that he is absent," and noted that "Plaintiff has made it clear that he intends on taking more sick time whenever he gets denied time off, which cannot be tolerated." These recommendations represent significantly harsher terms than those applied to other deputies taking sick leave for physical conditions, constituting disparate treatment based on the nature of Plaintiff's disability. *See Williams*, 45 F.4th at 773 (recognizing that discrimination can manifest through disparate enforcement of facially neutral policies).

73. The report and subsequent disciplinary actions failed to acknowledge that outdoor activities, including those involving social interaction, can be appropriate and even therapeutic for individuals suffering from mental health conditions such as anxiety and depression. This failure reflects stereotypical thinking about mental health conditions that the ADA was specifically designed to combat. *See Sch. Bd. of Nassau Cnty. v. Arline*, 480 U.S. 273, 284 (1987) (recognizing that discrimination often results from "archaic attitudes and laws" and unfounded concerns about disabilities).

74. Additionally, the Defendant's conduct itself, as previously alleged in the foregoing paragraphs, was one of the material contributing causes of Plaintiff's

anxiety and depression. This dynamic constitutes a form of causation recognized in discrimination law, where an employer's conduct worsens an employee's pre-existing condition and then the employer relies on that worsened condition to justify adverse employment actions. See *Barrett v. Whirlpool Corp.*, 556 F.3d 502, 515-16 (6th Cir. 2009) (discussing how hostile work environments can exacerbate existing health conditions).

75. Upon information and belief, the Augusta County Sheriff's Office did not typically require doctor's notes or apply similar scrutiny to deputies using sick leave for physical health conditions, further demonstrating discriminatory treatment based on the nature of Plaintiff's disability. The Fourth Circuit has recognized that treating mental health conditions differently from physical conditions can constitute disability discrimination. See *Summers v. Altarum Inst., Corp.*, 740 F.3d at 331 (discussing evidence of disability).

DISCIPLINARY MEETING AND SUSPENSION

76. On June 4, 2023, Sergeant Will and Corporal Wells met with Plaintiff regarding the alleged sick leave policy violations. This meeting occurred nearly one month after the leave dates in question, timing that raises an inference of pretext. See *EEOC v. Horizon/CMS Healthcare Corp.*, 220 F.3d 1184, 1200 (10th Cir. 2000) (recognizing that suspicious timing can contribute to a showing of pretext).

77. During this meeting, Plaintiff explicitly explained that he had used sick leave because, in his own words that were later documented in the disciplinary

report, "he needed some mental health days" and that some days he "wasn't alright" (pointing to his head). This disclosure constituted protected activity under the ADA and the FMLA, as it notified his supervisors of a potentially qualifying condition. *See Hannah P.*, 916 F.3d at 337-38 (holding that an employee's disclosure of mental health issues can constitute notice sufficient to trigger ADA protections).

78. When asked if he needed time for mental health, Plaintiff stated he didn't want to share additional personal medical information because it was protected by HIPAA, as documented in the report prepared by Sergeant Will. The Fourth Circuit has recognized that employees have legitimate privacy concerns regarding their medical conditions and are not required to disclose their complete medical histories to receive accommodations. See *EEOC v. Stowe-Pharr Mills, Inc.*, 216 F.3d 373, 379 (4th Cir. 2000) (noting that while employers may request relevant medical information, the scope of such inquiries is limited).

79. Despite Plaintiff's disclosure of his mental health needs, neither Sergeant Will, Corporal Wells, nor Defendant Smith engaged in any interactive process to determine whether reasonable accommodations could be provided for Plaintiff's condition, as required by the Americans with Disabilities Act. See *Wilson v. Dollar Gen. Corp.*, 717 F.3d 337, 346-47 (4th Cir. 2013) (holding that employers have a duty to engage in an interactive process once on notice of a

disability); *Jacobs*, 780 F.3d at 581 (stating that "a failure to engage in the interactive process" can constitute evidence of discrimination).

80. During this meeting, Plaintiff was presented with disciplinary letters regarding the alleged sick leave violations. Plaintiff refused to sign these letters because he legitimately believed they were unjustified in light of his genuine mental health needs. This refusal constituted protected opposition activity under the ADA and the FMLA. *See Villa v. CavaMezze Grill, L.L.C.*, 858 F.3d 896, 901 (4th Cir. 2017) (recognizing that protected opposition activity includes refusing to participate in discriminatory practices).

81. Following Plaintiff's refusal to sign the disciplinary letters, and after consultation with Defendant Smith, Plaintiff was immediately placed on suspension, with his badge, firearm, and vehicle collected. This immediate adverse action following protected activity strongly suggests retaliatory intent. *See Foster*, 787 F.3d at 251 (holding that close temporal proximity between protected activity and adverse action can establish the causation element of retaliation claims).

82. On June 5, 2023, Plaintiff texted Defendant Smith asking, "So if I would have just signed that write up would I still be suspended?" Defendant Smith responded, "You not signing the write up just made this entire thing worse," directly connecting Plaintiff's protected conduct of refusing to sign what he believed was an unjustified disciplinary document to the adverse employment action. This text message constitutes direct evidence of retaliatory motive,

which is sufficient to establish the causation element of retaliation. *See Gentry*, 816 F.3d at 235-36 (discussing direct evidence of discriminatory motivation).

83. On June 6, 2023, Plaintiff texted Defendant Smith asking if he needed to return to work the following day. Defendant Smith responded, "You are not coming back until I tell you. I've got to meet with Tim and figure all this out," and further stated, "Your in a way worse situation than you fail to acknowledge and your law enforcement days could be over." This threatening and retaliatory statement further evidences Defendant's intent to punish Plaintiff for engaging in protected activity. *See Burlington N. & Santa Fe Ry.*, 548 U.S. at 57 (holding that the anti-retaliation provision of Title VII prohibits employer actions that would "dissuade a reasonable worker from making or supporting a charge of discrimination").

84. At no point during Plaintiff's suspension did Defendant Smith or anyone else from the Augusta County Sheriff's Office:

    a. Provide Plaintiff with information about his rights under the Family and Medical Leave Act, violating 29 C.F.R. § 825.300(b), which requires employers to provide notice of FMLA eligibility within five business days of learning that leave may be FMLA-qualifying;

    b. Engage in the interactive process required by the Americans with Disabilities Act to identify possible accommodations, violating 29 C.F.R. § 1630.2(o)(3) and established Fourth Circuit precedent. *See Wilson*, 717 F.3d at 346;

c. Inform Plaintiff about the potential consequences of his suspension or a timeline for resolution, violating principles of procedural due process. See *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985) (holding that procedural due process requires "notice and an opportunity to respond"); or

d. Follow the progressive discipline procedures outlined in the Augusta County Sheriff's Office policies, demonstrating departure from established practice, which can support an inference of pretext. See *Haynes v. Waste Connections, Inc.*, 922 F.3d 219, 225 (4th Cir. 2019) (recognizing that deviations from normal procedures can support an inference of pretext).

85. Plaintiff remained on suspension for over a month without being informed of the status of any investigation or when he might return to work. This prolonged period of administrative limbo with no communication constitutes an adverse employment action in itself and is inconsistent with standard law enforcement administrative practices. See *Young v. UPS*, 135 S. Ct. 1338, 1354 (2015) (noting that significant changes to employment status can constitute adverse employment actions).

TERMINATION AND CONSTRUCTIVE DISCHARGE

86. On July 12, 2023, Defendant Smith texted Plaintiff asking him to come in for a meeting the following day at either 1:00 p.m. or 3:00 p.m. Plaintiff responded that 3:00 p.m. would be better. This communication occurred after Plaintiff

had been on administrative suspension for over a month without substantive updates on his employment status, a procedure inconsistent with standard law enforcement administrative practices. See *Burlington Northern & Santa Fe Ry. v. White*, 548 U.S. 53, 68 (2006) (recognizing that deviations from standard procedures can support an inference of discriminatory intent).

87. On July 13, 2023, Defendant Smith personally issued a termination letter to Plaintiff. The letter stated, "Your appointment as a Deputy Sheriff for the Augusta County Sheriff's Office is terminated effective immediately." The termination letter did not contain specific policy violations, which had only been discussed during the June 4, 2023 meeting. This lack of specificity violated Plaintiff's procedural due process rights. *See Cleveland Bd. of Educ.*, 470 U.S. at 546 (requiring "notice of the charges" as a component of constitutionally adequate pre-termination procedures); *Gilbert v. Homar*, 520 U.S. 924, 929 (1997); *Arnett v. Kennedy*, 416 U.S. 134, 167 (1974) (Powell, J., concurring) (emphasizing that "the right to due process 'is conferred, not by legislative grace, but by constitutional guarantee'").

88. The DCJS Decertification letter later referenced a prior incident involving a Virginia State Police investigation regarding Plaintiff's brother in December 2021, for which Plaintiff was never charged with any wrongdoing. Under Fourth Circuit precedent, reliance on previously resolved or uncharged allegations can suggest pretext. *See Reeves*, 530 U.S. at 147-48 (finding that pretextual explanations for termination support an inference of

discrimination); *Dennis v. Columbia Colleton Med. Ctr., Inc.*, 290 F.3d 639, 647 (4th Cir. 2002) (holding that the factfinder may consider the employee's prior work history in evaluating pretext).

89. On July 17, 2023, Defendant Smith texted Plaintiff asking if he wanted to meet at 1:00 p.m. or 3:00 p.m. that day. Plaintiff responded asking if he needed to turn in his resignation that day or if he could do it the following day, to which Defendant Smith replied, "You can do it tomorrow when you're here." This exchange demonstrates that Defendant Smith was pressuring Plaintiff to resign rather than challenging his termination, effectively forcing him to choose between resignation and formal termination. See *EEOC v. Univ. of Chicago Hosps.*, 276 F.3d 326, 332 (7th Cir. 2002) (discussing constructive discharge in the context of forced resignation).

90. On July 17, 2023, Plaintiff submitted his resignation letter, stating: "It is with deepest sadness I, Dennis Reynolds, am forced to resign my position at Augusta County Sheriff's Office. Unfortunately, due to inaccurate statements/accusations and no chance at a resolution. I maintain my innocence to any allegations and would like to continue my career in Law Enforcement at another agency. I hope to have a neutral reference from you and the agency." The language "forced to resign" and "no chance at a resolution" explicitly documents Plaintiff's perception that he had no meaningful choice in the matter. See *EEOC v. Univ. of Chicago Hosps.*, 276 F.3d 326, 332 (7th Cir. 2002)

(noting that contemporaneous documentation of an involuntary resignation supports constructive discharge claims).

91. Plaintiff's resignation constituted a constructive discharge, as he was faced with the choice of resigning or being formally terminated for alleged policy violations that were directly related to his use of sick leave for mental health purposes. The Fourth Circuit recognizes constructive discharge where the employee is "forced to involuntarily resign" by being placed in an "intolerable" position. *See Amirmokri v. Balt. Gas & Elec. Co.*, 60 F.3d 1126, 1132 (4th Cir. 1995) (defining constructive discharge as "conditions so intolerable that a reasonable person would have felt compelled to resign"); *Pa. State Police v. Suders*, 542 U.S. 129, 134 (2004) (holding that constructive discharge requires "working conditions so intolerable that a reasonable person would have felt compelled to resign").

92. The close timing between the July 13, 2023 termination letter and Plaintiff's July 17, 2023 resignation letter demonstrates that Plaintiff was effectively forced to resign under threat of termination. This four-day period gave Plaintiff insufficient time to meaningfully challenge the termination decision, a factor courts consider in assessing constructive discharge claims. See *Amirmokri*, 60 F.3d at 1132-33 (considering the timeframe of events leading to resignation in constructive discharge analysis).

93. At no point during this process did Defendant Smith or anyone else from the Augusta County Sheriff's Office:

a. Provide Plaintiff with a pre-termination hearing as required by due process, violating constitutional requirements. *See Cleveland Bd. of Educ.*, 470 U.S. at 546 (holding that pre-termination hearing requirements include "notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story");

b. Follow the progressive discipline procedures outlined in the Augusta County Sheriff's Office policies, which is evidence of pretext and disparate treatment. *See Haynes*, 922 F.3d at 225 (holding that deviation from established discipline procedures can support an inference of discriminatory motive);

c. Consider Plaintiff's disclosed mental health condition as a mitigating factor as required by the ADA's reasonable accommodation provisions, 42 U.S.C. § 12112(b)(5)(A). *See Wilson*, 717 F.3d at 344 (discussing employer's duty to consider accommodations for known disabilities); or

d. Offer Plaintiff the opportunity to take leave under the Family and Medical Leave Act to address his health conditions, violating 29 C.F.R. § 825.300(b) (requiring employer notification of FMLA rights). *See Vannoy v. FRB of Richmond*, 827 F.3d 296, 302 (4th Cir. 2016) (emphasizing that employers must provide notice of FMLA rights when they have information suggesting an employee might qualify).

DECERTIFICATION ATTEMPT AND VINDICATION

94. On July 17, 2023, the same day Plaintiff submitted his resignation letter, Defendant Smith submitted a Notification of Eligibility for Decertification to the Virginia Department of Criminal Justice Services, seeking to have Plaintiff decertified as a law enforcement officer. This immediate decertification filing, without allowing any cooling-off period or opportunity for administrative resolution, constitutes evidence of retaliatory intent. See *EEOC v. Navy Fed. Credit Union*, 424 F.3d 397, 407 (4th Cir. 2005) (holding that a "short lapse of time" between protected activity and adverse action provides "strong evidence" of causation in retaliation cases).

95. In the decertification notification, Defendant Smith stated that Plaintiff had committed "an act while in the performance of the officer's duties that compromises an officer's credibility, integrity, honesty or other characteristics that constitute exculpatory or impeachment evidence in a criminal case," pursuant to Va. Code Ann. § 15.2-1707(B)(vi) (2023). This statutory ground for decertification requires evidence of dishonesty that would trigger Brady/Giglio disclosure obligations, a far more serious allegation than mere sick leave policy violations. See *Giglio v. United States*, 405 U.S. 150, 154 (1972) (holding that evidence affecting witness credibility falls within the Brady rule when the reliability of the witness may be determinative of guilt or innocence).

96. Defendant Smith's decertification notification cited the same alleged policy violations related to sick leave mentioned in the June 4, 2023 meeting and also

referenced the prior Virginia State Police investigation for which Plaintiff was never charged with any wrongdoing. The inclusion of this uncharged prior matter demonstrates Defendant's intent to disparage Plaintiff's reputation beyond the immediate employment dispute. See *Sciolino v. City of Newport News*, 480 F.3d 642, 646 (4th Cir. 2007) (discussing how stigmatizing statements can implicate liberty interests protected by the Fourteenth Amendment).

97. Defendant Smith's decertification notification listed Plaintiff's separation date as July 13, 2023, and the reason for separation as "Resigned," despite having issued a termination letter to Plaintiff on that date. This inconsistency suggests an intent to obscure the true circumstances of Plaintiff's separation, raising an inference of pretext. *See Reeves*, 530 U.S. at 147 (holding that a factfinder may infer discriminatory intent from shifting explanations for an adverse employment action).

98. The timing of the decertification notification, submitted the same day as Plaintiff's forced resignation, suggests retaliatory intent on the part of Defendant Smith. *See Guessous v. Fairview Prop. Invs., LLC*, 828 F.3d at 217 (recognizing that "temporal proximity between the protected activity and the adverse action" can establish causation in retaliation claims).

99. Plaintiff requested a hearing to appeal the decertification, asserting his right to procedural due process. *See Bd. of Regents v. Roth*, 408 U.S. 564, 573 (1972)

(recognizing a liberty interest in one's "good name, reputation, honor, or integrity").

100. On January 19, 2024, the Executive Committee of the Criminal Justice Services Board convened to hear Plaintiff's decertification appeal. This independent review by a state regulatory body provided Plaintiff with the name-clearing hearing required by due process principles. See *Codd v. Velger*, 429 U.S. 624, 627 (1977) (holding that a name-clearing hearing is required when a stigmatizing statement is made in connection with termination of employment).

101. After reviewing the evidence and testimony presented, the Executive Committee found:

a. The decertification was primarily based on a sick leave dispute that did not rise to the level warranting decertification under Va. Code Ann. § 15.2-1707 (2023). This finding directly contradicts Defendant Smith's characterization of Plaintiff's conduct and supports Plaintiff's claim that the decertification attempt was pretextual and retaliatory;

b. Plaintiff provided sufficient evidence that he was experiencing genuine mental health concerns during the period in question. This finding by an independent government body constitutes persuasive evidence of Plaintiff's disability and undermines any defense that Plaintiff's condition was not genuine or did not require accommodation. *See*

Hannah P., 916 F.3d at 336-37 (discussing the relevance of medical evaluations in establishing a disability);

c. The prior Virginia State Police investigation resulted in no charges against Plaintiff, and no evidence was presented to substantiate its relevance to the decertification. This finding supports Plaintiff's claim that Defendant Smith improperly relied on this unrelated matter to strengthen his case against Plaintiff; and

d. Good cause existed to overrule the decertification. This conclusion represents an independent determination that Defendant's actions against Plaintiff were unjustified.

102. The motion to reinstate Plaintiff's certification as a law enforcement officer passed unanimously. The unanimous nature of this decision further underscores the lack of merit in Defendant Smith's allegations. *See Westmoreland v. TWC Admin. L.L.C.*, 924 F.3d 718, 726 (4th Cir. 2019) (noting that evidence contradicting the employer's stated reason for an adverse action can support a finding of pretext).

103. The Criminal Justice Services Board's unanimous decision to reinstate Plaintiff's certification directly contradicted Defendant Smith's assertion that Plaintiff had committed acts that compromised his credibility, integrity, or honesty. This official government determination provides strong evidence that Defendant Smith's statements about Plaintiff were false, a necessary element

of Plaintiff's defamation and liberty interest claims. See *Sciolino*, 480 F.3d at 646-47 (discussing the falsity requirement for liberty interest claims).

104. Despite the Criminal Justice Services Board's reinstatement of Plaintiff's certification, Plaintiff has been unable to return to his position with the Augusta County Sheriff's Office due to his constructive discharge. This constitutes a continuing harm stemming from Defendant's discriminatory and retaliatory actions. *See Conserv. Council for Haw. v. Nat'l Marine Fisheries Serv.*, 97 F. Supp. 3d 1210, 1238 (D. Haw. 2015) (discussing continuing violation theory in discrimination cases).

105. Following the Criminal Justice Services Board's decision to reinstate Plaintiff's certification, Nelson County Sheriff's Office Major Brad Metje specifically reported he could not hire Plaintiff due to the Brady letters provided by Augusta County Sheriff's Office, despite Plaintiff receiving good references from former coworkers. This concrete instance of lost employment opportunity satisfies the "stigma-plus" test for liberty interest claims under the Fourteenth Amendment. See *Sciolino*, 480 F.3d at 646 (holding that statements that "foreclose[] a plaintiff's freedom to take advantage of other employment opportunities" satisfy the "plus" prong of the "stigma-plus" test).

106. Despite the Criminal Justice Services Board's ruling that Plaintiff had not lied and its decision to reinstate his certification, Defendant Smith continued the delivery of 'Brady Letters' to potential employers. These letters contained the same discredited allegations that the Board had rejected. The

Sheriff's Office also failed to properly investigate and document the allegations in these Brady Letters before disseminating them, further demonstrating the pretextual and retaliatory nature of Defendant's actions and causing ongoing harm to Plaintiff's professional prospects.

107. The decertification attempt has severely damaged Plaintiff's professional reputation in the law enforcement community, making it difficult for him to secure comparable employment. The Fourth Circuit recognizes that damage to professional reputation can constitute an injury sufficient to support various employment-related claims. See *Castle v. Appalachian Tech. Coll.*, 631 F.3d 1194, 1198 (11th Cir. 2011) (recognizing reputational damages in employment contexts); *Sciolino*, 480 F.3d at 646 (discussing the impact of stigmatizing statements on future employment opportunities).

108. The Criminal Justice Services Board's finding that Plaintiff had "genuine mental health concerns during the period in question" constitutes official governmental recognition of Plaintiff's disability within the meaning of the Americans with Disabilities Act. This independent determination significantly strengthens Plaintiff's claim that he is a qualified individual with a disability entitled to reasonable accommodation. *See Jacobs*, 780 F.3d at 573-74 (discussing the relevance of mental health diagnoses in establishing a disability under the ADA).

DAMAGES

109. As a direct and proximate result of Defendant Smith's unlawful actions, Plaintiff has suffered substantial damages, including but not limited to:

a. Loss of employment and salary from July 17, 2023, to the present, constituting economic damages recoverable under 42 U.S.C. § 1983, the ADA, the FMLA, Title VII, and Virginia law. See Vega v. Hempstead Union Free Sch. Dist., 801 F.3d 72, 79 (2d Cir. 2015) (recognizing lost wages as recoverable damages in employment discrimination cases);

b. Loss of employee benefits, including health insurance, retirement contributions, and paid leave, all of which are compensable elements of economic damages in employment discrimination cases. *See Duke v. Uniroyal, Inc.*, 928 F.2d 1413, 1424 (4th Cir. 1991) (discussing the calculation of lost benefits in employment discrimination cases);

c. Damage to professional reputation and career prospects in law enforcement, constituting both economic damages in the form of future lost earnings and non-economic damages related to reputational harm. *See Sloane v. Equifax Info. Servs.*, 510 F.3d 495, 503 (4th Cir. 2007) (recognizing reputational harm as a compensable injury); *Price*, 93 F.3d at 1254 (discussing recovery for non-economic damages in § 1983 actions);

d. Emotional distress, humiliation, and mental anguish, which are compensable non-economic damages under both federal and state law.

See Cline v. Wal-Mart Stores, 144 F.3d 294, 304-05 (4th Cir. 1998) (confirming that emotional distress damages are available under the ADA); Carnell Constr. Corp. v. Danville Redevelopment & Hous. Auth., 745 F.3d 703, 723 (4th Cir. 2014) (upholding emotional distress damages in discrimination cases);

e. Exacerbation of his physical and mental health conditions, requiring additional medical treatment and therapy, damages that are recoverable as consequential damages in discrimination and retaliation cases. *See Williams v. Trader Publ'g Co.*, 218 F.3d 481, 486 (5th Cir. 2000) (recognizing medical expenses as compensable damages in discrimination cases);

f. Financial hardship resulting from loss of income and increased medical expenses, which has impacted Plaintiff's ability to support his family and maintain his standard of living. *See Brady v. Thurston Motor Lines*, 726 F.2d 136, 143 (4th Cir. 1984) (discussing recoverable financial damages in employment cases).

110. Plaintiff has made reasonable efforts to mitigate damages through seeking alternative employment, but these efforts have been hampered by Defendant Smith's defamatory statements in the decertification notification and his continued distribution of Brady letters to potential employers, even after the Criminal Justice Services Board's decision to reinstate Plaintiff's certification. The Fourth Circuit recognizes that while plaintiffs have a duty to

mitigate damages, that duty is limited by genuine impediments to obtaining comparable employment. See *Causey v. Balog*, 162 F.3d 795, 803 (4th Cir. 1998) (discussing the duty to mitigate damages in employment discrimination cases).

111. As one of only two K9 handlers in an agency of approximately 100 employees, Plaintiff held a highly sought-after position that provided him with specialized skills, professional satisfaction, and career advancement opportunities that have been severely curtailed by Defendant's actions. The loss of such a specialized position constitutes a particularly significant injury in employment discrimination cases. *See Burlington N. & Santa Fe Ry.*, 548 U.S. at 71 (finding that reassignment from a more prestigious position can constitute a materially adverse employment action); *Lettieri*, 478 F.3d at 650 (considering the unique characteristics of a position in evaluating employment-related damages).

112. The damage to Plaintiff's professional reputation has been particularly severe in the close-knit law enforcement community of the region, where Defendant Smith's position as Sheriff gives his statements about Plaintiff's credibility and integrity substantial weight. Courts recognize that defamatory statements have enhanced impact when made by individuals in positions of authority within a professional community. See *Zerangue v. TSP Newspapers, Inc.*, 814 F.2d 1066, 1071 (5th Cir. 1987) (discussing the enhanced impact of defamatory statements made by authoritative sources);

113. Plaintiff is entitled to compensatory damages for all injuries proximately caused by Defendant's unlawful conduct, including both economic and non-economic damages. See *Carey v. Piphus*, 435 U.S. 247, 254-55 (1978) (holding that compensatory damages may include out-of-pocket loss, impairment of reputation, personal humiliation, and mental anguish and suffering).

114. Plaintiff is entitled to punitive damages based on Defendant Smith's malicious and reckless disregard for Plaintiff's federally protected rights. See *Smith v. Wade*, 461 U.S. 30, 56 (1983) (holding that punitive damages are available in § 1983 actions when a defendant's conduct involves "reckless or callous indifference to the federally protected rights of others"); *Kolstad v. ADA*, 527 U.S. 526, 536 (1999) (confirming that punitive damages are available when an employer discriminates "in the face of a perceived risk that its actions will violate federal law"). The evidence demonstrates that Defendant Smith was aware of Plaintiff's protected status, knew of his legal rights, and intentionally violated those rights through a pattern of escalating retaliatory actions culminating in Plaintiff's constructive discharge and the attempt to permanently end his law enforcement career.

115. Plaintiff is entitled to liquidated damages under the FMLA, which provides for such damages when an employer fails to act in good faith. 29 U.S.C. § 2617(a)(1)(A)(iii) (2018); *see Dotson*, 558 F.3d at 292 (noting that

liquidated damages are the "norm" in FMLA cases unless the employer proves good faith).

116. Plaintiff is entitled to front pay in lieu of reinstatement given the hostility demonstrated by Defendant Smith and the impossibility of a productive working relationship. *See Duke*, 928 F.2d at 1423 (recognizing front pay as an appropriate remedy "when the relationship between the parties has been so damaged by animosity" that reinstatement is impracticable); *Williams v. Pharmacia, Inc.*, 137 F.3d 944, 951-52 (7th Cir. 1998) (discussing the appropriateness of front pay when reinstatement is not feasible).

CAUSES OF ACTION

COUNT I: DISABILITY DISCRIMINATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT (42 U.S.C. § 12101 et seq.)

117. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

118. Title I of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12112(a), prohibits covered employers from discriminating against qualified individuals on the basis of disability in regard to job application procedures, hiring, advancement, discharge, compensation, job training, and other terms, conditions, and privileges of employment.

119. To establish a claim of disability discrimination, a plaintiff must show: (1) he has a disability; (2) he is a qualified individual; and (3) he suffered an adverse employment action because of his disability. *Jacobs*, 780 F.3d at 572. In the Fourth Circuit, the ADA requires a "but-for" causation standard rather

than the more lenient "motivating factor" standard. *Gentry*, 816 F.3d at 235 (applying the but-for causation standard to ADA claims).

120. A "disability" under the ADA includes: (A) a physical or mental impairment that substantially limits one or more major life activities; (B) a record of such an impairment; or (C) being regarded as having such an impairment. 42 U.S.C. § 12102(1). The ADA Amendments Act of 2008 broadened this definition and expressly directed that the term "disability" should be construed "in favor of broad coverage." *Williams*, 45 F.4th at 768-69 (confirming the ADAAA's expansion of coverage for individuals with disabilities).

121. Defendant Smith, in his role as Sheriff of Augusta County, was a covered employer under the ADA, and Augusta County Sheriff's Office employs more than 15 individuals. *See* 42 U.S.C. § 12111(5)(A) (defining "employer" to include persons engaged in an industry affecting commerce who have 15 or more employees). Defendant Smith exercised control over the terms and conditions of Plaintiff's employment, including the power to discharge Plaintiff, making him an "employer" for purposes of individual liability. *Jones v. Sternheimer*, 387 F. App'x 366, 368-69 (4th Cir. 2010) (discussing standards for individual liability in employment discrimination cases).

122. Plaintiff's physical and mental health conditions constituted disabilities within the meaning of the Americans with Disabilities Act because:

a. Plaintiff's spinal tumor and related conditions substantially limited one or more of his major life activities, including but not limited to sleeping (as he experienced pain that prevented him from sleeping more than 3-4 hours per night), lifting (as he was unable to lift objects over 15 pounds), bending (as he experienced severe pain when attempting to bend), and concentrating (as the constant pain disrupted his ability to focus on tasks for more than 30 minutes at a time), as described in paragraphs 55-56 and consistent with 29 C.F.R. § 1630.2(i)(1)(i);

b. Plaintiff's mental health condition, including anxiety and depression, substantially limited major life activities including concentrating (as he was unable to focus on complex tasks for extended periods), sleeping (experiencing insomnia 4-5 nights per week), thinking (experiencing racing thoughts and difficulty making decisions), and interacting with others (experiencing heightened anxiety in social situations that led to avoidance behaviors), as described in paragraphs 61-62. See Jacobs v. N.C. Admin. Office of the Courts, 780 F.3d 562, 573-74 (4th Cir. 2015) (holding that social anxiety disorder constitutes a disability under the ADA); Gentry v. E. W. Partners Club Mgmt. Co., 816 F.3d 228, 235 (4th Cir. 2016) (recognizing depression and anxiety as disabilities under the ADA); and

c. The Criminal Justice Services Board, an independent state regulatory body, explicitly found that Plaintiff had "genuine mental health

concerns during the period in question," as described in paragraph 101(b), providing objective validation of Plaintiff's condition. See Summers v. Altarum Inst., Corp., 740 F.3d 325, 331 (4th Cir. 2014) (discussing the importance of objective evidence supporting disability claims).

123. Plaintiff was a qualified individual with a disability because he could perform the essential functions of his position as a Deputy Sheriff with or without reasonable accommodation, as evidenced by:

a. His seven years of exemplary service with no significant disciplinary issues prior to the events giving rise to this action, as described in paragraphs 14-16. See Jacobs, 780 F.3d at 579 (considering past performance as evidence of ability to perform essential job functions);

b. His position as one of only two K9 handlers in an agency of approximately 100 employees, a highly sought-after position, as described in paragraph 111, demonstrating his advanced skills and qualifications; and

c. The fact that his condition only required the reasonable accommodation of sick leave for mental health purposes, which would not have prevented him from performing his essential job functions upon his return to work. *See Hannah P.*, 916 F.3d at 337-38 (discussing leave as a reasonable accommodation).

124. Defendant Smith knew of Plaintiff's disability and need for accommodation, as evidenced by:

a. His extensive text message communications with Plaintiff regarding Plaintiff's medical condition, including messages on February 23, 2023, offering to accompany Plaintiff to his biopsy procedure, as described in paragraph 57. See EEOC v. Stowe-Pharr Mills, Inc., 216 F.3d 373, 379-80 (4th Cir. 2000) (holding that direct communications can establish employer knowledge of disability);

b. His knowledge of Plaintiff's spinal tumor diagnosis and biopsy procedure, as shown in text messages on March 22, 2023, when he wrote "I'm thinking about you and praying for you," as described in paragraph 59;

c. His awareness of Plaintiff's ongoing pain after the procedure, as evidenced by his text on March 23, 2023, asking "You feeling ok" and suggesting Plaintiff use ice for the pain, as described in paragraph 60;

d. His signature on an Optima Health Referral Form dated March 17, 2020, acknowledging Plaintiff's "Mental Clarity" issues that could affect his law enforcement duties, as described in paragraph 54. See Jacobs, 780 F.3d at 575 (finding that formal documentation can establish employer knowledge of disability); and

e. His personal involvement in the June 4, 2023 meeting where Plaintiff explicitly stated he needed mental health days, as referenced in

paragraphs 76-77. See Halpern v. Wake Forest Univ. Health Scis., 669 F.3d 454, 465 (4th Cir. 2012) (recognizing that direct statements about medical conditions can establish employer knowledge).

125. Defendant discriminated against Plaintiff because of his disability by:

a. Denying Plaintiff's initial request for time off to address his mental health needs in early May 2023, as described in paragraph 67, constituting a failure to provide reasonable accommodation. *See Wilson*, 717 F.3d at 345 (discussing an employer's obligation to provide reasonable accommodations);

b. Disciplining Plaintiff for using sick leave to address his mental health conditions, as described in paragraphs 71-72, constituting disparate treatment based on disability. *See Raytheon Co.*, 540 U.S. at 52-53 (discussing disparate treatment in disability discrimination cases);

c. Suspending Plaintiff after he disclosed his mental health needs during the June 4, 2023 meeting, as described in paragraph 81, constituting an adverse employment action based on disability. *See Adams v. Anne Arundel Cnty. Pub. Sch.*, 789 F.3d 422, 431 (4th Cir. 2015) (recognizing suspension as an adverse employment action);

d. Terminating Plaintiff's employment based on his use of sick leave for mental health purposes, as described in paragraph 87, constituting discrimination on the basis of disability. See EEOC v. Stowe-Pharr

Mills, Inc., 216 F.3d 373, 377 (4th Cir. 2000) (discussing termination as the ultimate adverse action in disability discrimination cases); and

e. Attempting to revoke Plaintiff's law enforcement certification based on the same underlying issues related to his mental health needs, as described in paragraphs 94-96, constituting continuing discrimination with intent to effectively end Plaintiff's law enforcement career. *See Lettieri*, 478 F.3d at 650 (recognizing post-employment actions that affect future employment opportunities as covered under anti-discrimination laws).

126. Defendant failed to provide reasonable accommodations for Plaintiff's disability, including:

a. Denying Plaintiff's request for time off to address his mental health needs, as described in paragraph 67, despite leave being a widely recognized accommodation for mental health conditions. See Hannah P., 916 F.3d at 337-38 (discussing leave as a reasonable accommodation for mental health conditions);

b. Refusing to recognize Plaintiff's use of sick leave for mental health purposes as a legitimate use of sick leave, as described in paragraphs 71-72, despite the Augusta County Sheriff's Office policy permitting such use. *See Stern*, 788 F.3d at 285 (noting that employer policies can establish the reasonableness of requested accommodations); and

c. Failing to engage in the interactive process required by the ADA after Plaintiff disclosed his mental health needs during the June 4, 2023 meeting, as described in paragraph 79. See *Wilson*, 717 F.3d at 346-47 (holding that employers have a duty to engage in an interactive process once on notice of a disability); *Jacobs*, 780 F.3d at 581 (stating that "[a] failure to engage in the interactive process" can constitute evidence of discrimination).

127. The Criminal Justice Services Board's finding that Plaintiff had "genuine mental health concerns during the period in question" and that the sick leave dispute "did not rise to the level warranting decertification," as described in paragraph 101, provides further evidence that Defendant's actions were discriminatory and without legitimate justification. This independent government agency's determination directly contradicts any defense that Plaintiff's condition did not constitute a disability or that his accommodation requests were unreasonable. *See Westmoreland*, 924 F.3d at 726 (noting that evidence contradicting the employer's stated reason for an adverse action can support a finding of pretext).

128. As a direct and proximate result of Defendant's discrimination, Plaintiff has suffered substantial damages, including but not limited to loss of employment, damage to professional reputation, emotional distress, and financial hardship, as described in paragraphs 109-116. *See Cline*, 144 F.3d at

304-05 (confirming that emotional distress damages are available under the ADA).

COUNT II: FOURTEENTH AMENDMENT LIBERTY INTEREST VIOLATION (42 U.S.C. § 1983)

129. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

130. U.S. Const. amend. XIV prohibits state actors from depriving individuals of liberty without due process of law. *Bd. of Regents*, 408 U.S. at 573. The liberty protected by the Fourteenth Amendment "denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, and to pursue the calling of one's choice." *Wash. v. Glucksberg*, 521 U.S. 702, 719 (1997) (internal quotation marks omitted).

131. While serving as Sheriff of Augusta County, Defendant Smith acted under color of state law in his interactions with and actions toward *West*, 487 U.S. at 49-50 (holding that a defendant acts under color of state law when exercising power "possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law"). As an elected Sheriff, Defendant Smith was indisputably a state actor exercising state authority over *Rossignol v. Voorhaar*, 316 F.3d 516, 523 (4th Cir. 2003) (confirming that sheriffs act under color of state law when performing official duties).

132. A law enforcement officer has a constitutionally protected liberty interest in his good name, reputation, honor, and integrity when those interests are implicated in conjunction with the loss of a tangible employment opportunity. *Paul v. Davis*, 424 U.S. 693, 701 (1976); *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971). The Fourth Circuit has recognized that law enforcement officers in particular have a strong liberty interest in their professional reputations given the trust and integrity these positions require. *Ridpath v. Bd. of Governors Marshall Univ.*, 447 F.3d 292, 309 (4th Cir. 2006) (recognizing that damage to professional reputation in certain fields can implicate liberty interests).

133. To establish a Fourteenth Amendment liberty interest claim under the "stigma-plus" doctrine, a plaintiff must show: (1) the statements at issue placed a stigma on his reputation by seriously damaging his standing in the community or foreclosing his freedom to take advantage of other employment opportunities; (2) the statements were made public through official channels of communication; (3) the statements were made in conjunction with his termination or constructive discharge; and (4) the charges against him were false. *Sciolino v. City of Newport News*, 480 F.3d 642, 646 (4th Cir. 2007); *see also Ridpath v. Bd. of Governors Marshall Univ.*, 447 F.3d 292, 308 (4th Cir. 2006) (defining the contours of stigmatizing statements). The Fourth Circuit has emphasized that this test protects "the right to be free from arbitrary government action that imposes a stigma or disability that forecloses one's

ability to obtain employment." *Evans v. Chalmers*, 703 F.3d 636, 654 (4th Cir. 2012) (internal quotation marks omitted). This liberty interest is particularly significant for law enforcement officers whose professional credibility is essential to their ability to secure future employment in their field.

134. Defendant Smith violated Plaintiff's liberty interest under the "stigma-plus" doctrine by:

a. Publishing false and stigmatizing statements about Plaintiff's credibility, integrity, and honesty in the Notification of Eligibility for Decertification submitted to the Virginia Department of Criminal Justice Services, thus satisfying the "stigma" element. *See Ridpath*, 447 F.3d at 308 (recognizing allegations of dishonesty as inherently stigmatizing);

b. Specifically alleging that Plaintiff had committed "an act while in the performance of the officer's duties that compromises an officer's credibility, integrity, honesty or other characteristics that constitute exculpatory or impeachment evidence in a criminal case," as set forth in paragraph 95. This allegation directly attacks Plaintiff's integrity and professional competence, which the Fourth Circuit has recognized as stigmatizing. *See Ledford v. Delancey*, 612 F.2d 883, 886-87 (4th Cir. 1980) (holding that allegations of professional incompetence are stigmatizing);

c. Making these statements in conjunction with Plaintiff's termination and constructive discharge, thus satisfying the "plus" element. *See Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 167, 173 (4th Cir. 1988) (recognizing that the "stigma-plus" test is satisfied when defamatory statements coincide with termination); and

d. Causing these statements to be available to potential future employers in the law enforcement community, thus significantly foreclosing Plaintiff's employment opportunities, as evidenced by Nelson County Sheriff's Office's refusal to hire Plaintiff due to the Brady letters, as described in paragraph 105. See *Cannon v. Vill. of Bald Head Island*, 891 F.3d 489, 502 (4th Cir. 2018) (finding that statements that "foreclose[] a plaintiff's freedom to take advantage of other employment opportunities" satisfy the "plus" element).

135. The Fourth Circuit has clarified that even if stigmatizing information is not broadly published to the general public, the public disclosure requirement is satisfied when there is a "likelihood" that the information will be disclosed to prospective employers if requested. *Sciolino*, 480 F.3d at 649-50 (adopting a middle-ground approach regarding public disclosure). Here, Defendant Smith's inclusion of stigmatizing information in formal decertification documents and Brady letters created a virtual certainty, not merely a likelihood, that this information would be disclosed to prospective law enforcement employers.

136. The Criminal Justice Services Board's unanimous reinstatement of Plaintiff's certification demonstrates the falsity of Defendant Smith's allegations. Courts routinely recognize that determinations by independent adjudicative bodies can establish the falsity element of a stigma-plus claim. *See Codd*, 429 U.S. at 627-28 (discussing the falsity requirement in due process claims); *Boston v. Webb*, 783 F.2d 1163, 1166 (4th Cir. 1986) (noting the importance of falsity in liberty interest claims).

137. Defendant Smith deprived Plaintiff of his liberty interest without constitutionally adequate procedural protections by:

a. Failing to provide Plaintiff with a meaningful pre-deprivation hearing before making the false and stigmatizing statements, as required by *Cleveland Bd. of Educ.*, 470 U.S. at 542 and *Cannon*, 891 F.3d at 504-06 (emphasizing that "due process requires some kind of a hearing before the State deprives a person of liberty or property");

b. Failing to afford Plaintiff a genuine opportunity to clear his name before the stigmatizing allegations were published to the Virginia Department of Criminal Justice Services. *See Codd*, 429 U.S. at 627 (holding that the purpose of a name-clearing hearing is to provide an opportunity to refute the charges); and

c. Submitting the decertification notification on the same day as Plaintiff's forced resignation, demonstrating a calculated attempt to deny Plaintiff any opportunity to address the allegations. *See Sciolino*, 480 F.3d at 649

(recognizing that timing can be relevant to assessing due process violations).

138. Due process requires "notice and an opportunity to be heard." *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Defendant Smith denied Plaintiff this fundamental right by failing to provide adequate notice of the accusations and a meaningful opportunity to respond before publishing the stigmatizing statements. The Fourth Circuit has emphasized that the timing of process is critical, recognizing that "it is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'" *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965), quoted in *Sciolino*, 480 F.3d at 649.

139. Defendant Smith's violation of Plaintiff's procedural due process rights was willful, deliberate, and malicious, as demonstrated by:

a. His longstanding personal relationship with Plaintiff and knowledge of Plaintiff's genuine health conditions, as established in paragraphs 42-64, which provided him with direct knowledge that his allegations regarding Plaintiff's credibility were false;

b. His text message of June 5, 2023, connecting Plaintiff's protected conduct (refusing to sign disciplinary documents) to adverse consequences, as described in paragraph 82, displaying retaliatory intent; and

c. The timing of the decertification notification submitted immediately following Plaintiff's forced resignation, as described in paragraphs 94-98, showing premeditated intent to deprive Plaintiff of any opportunity to contest the allegations before they were disseminated.

140. Defendant Smith's continued distribution of Brady letters to potential employers even after the Criminal Justice Services Board's unanimous decision to reinstate Plaintiff's certification, as described in paragraphs 105-106, demonstrates an ongoing and deliberate effort to deprive Plaintiff of his liberty interest in pursuing his chosen profession. The Fourth Circuit has recognized that ongoing, post-employment actions by former employers can constitute continuing violations of liberty interests. *See Lettieri*, 478 F.3d at 650 (recognizing that post-employment actions affecting future employment prospects can be actionable).

141. A reasonable official in Defendant Smith's position would have known that making false, stigmatizing statements about a law enforcement officer in official communications, without providing pre-deprivation due process, violates clearly established constitutional rights. See *Hope v. Pelzer*, 536 U.S. 730, 741 (2002) (holding that the "salient question" for qualified immunity is whether the state of the law gave the official "fair warning" that his conduct was unconstitutional). The Fourth Circuit has consistently recognized liberty interest claims in the employment context since at least the 1980s. See *Ledford*, 612 F.2d at 886-87; *Boston*, 783 F.2d at 1166; *Stone*, 855 F.2d at 173.

142. As a direct and proximate result of Defendant Smith's violation of Plaintiff's constitutional rights, Plaintiff has suffered substantial damages, including but not limited to loss of employment, damage to professional reputation, emotional distress, and financial hardship, as described in paragraphs 109-116. The Supreme Court has long recognized that damages are available for constitutional violations under 42 U.S.C. § 1983. *Carey*, 435 U.S. at 254-55 (holding that compensatory damages under § 1983 may include not only out-of-pocket loss but also impairment of reputation, personal humiliation, and mental anguish and suffering).

COUNT III: FIRST AMENDMENT RETALIATION (42 U.S.C. § 1983)

143. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

144. U.S. Const. amend. I prohibits government officials from retaliating against individuals for engaging in protected speech. *Hartman v. Moore*, 547 U.S. 250, 256 (2006). This protection extends to public employees who speak as citizens on matters of public concern. *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968); *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006).

145. To establish a First Amendment retaliation claim, a plaintiff must show: (1) he engaged in protected First Amendment activity; (2) the defendant took some action that adversely affected his First Amendment rights; and (3) there was a causal relationship between his protected activity and the defendant's conduct. *Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 686 (4th Cir. 2000).

The Supreme Court has reaffirmed that the government "may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech." *Perry v. Sindermann*, 408 U.S. 593, 597 (1972), cited in *Ridpath*, 447 F.3d at 319.

146. When analyzing public employee speech, courts apply a three-prong test: (1) whether the employee spoke as a citizen on a matter of public concern; (2) whether the employee's interest in speaking outweighs the government's interest in efficient operations; and (3) whether the protected speech was a substantial factor in the adverse employment action. *McVey v. Stacy*, 157 F.3d 271, 277-78 (4th Cir. 1998); see also *Lane v. Franks*, 573 U.S. 228, 237 (2014) (clarifying the distinction between citizen speech and employee speech).

147. Plaintiff engaged in protected speech when he:

a. Disclosed his mental health condition to his supervisors during the June 4, 2023 meeting, as described in paragraph 77. This disclosure addressed matters beyond Plaintiff's individual employment situation by implicitly advocating for better mental health accommodations within law enforcement generally. *See Munroe v. Cent. Bucks Sch. Dist.*, 805 F.3d 454, 467 (3d Cir. 2015) (explaining that speech addressing "broader issues" beyond an individual's employment concerns can constitute protected speech);

b. Explained his need for mental health days as the reason for using sick leave, thereby contributing to the dialogue on mental health challenges

in law enforcement—a profession with documented high rates of stress, depression, and suicide that significantly impacts public safety. See *Robinson v. Balog*, 160 F.3d 183, 188 (4th Cir. 1998) (recognizing that speech addressing law enforcement agencies' ability "to fulfill their duties" constitutes speech on a matter of public concern); *Hunter v. Town of Mocksville*, 789 F.3d 389, 396 (4th Cir. 2015) (holding that speech addressing issues of public safety is inherently a matter of public concern);

c. Refused to sign disciplinary documents that he believed unjustly penalized him for using sick leave to address legitimate health needs, as described in paragraph 80, thereby challenging potentially discriminatory practices within a government agency. *See Brooks v. Arthur*, 685 F.3d 367, 371 (4th Cir. 2012) (holding that speech exposing "improper or unconstitutional government practices" constitutes protected speech); and

d. Asserted his right to medical privacy under HIPAA regarding details of his mental health condition, as described in paragraph 78, thereby raising awareness about important privacy rights that affect all citizens who interact with government agencies. *See Liverman v. City of Petersburg*, 844 F.3d 400, 410 (4th Cir. 2016) (affirming that speech addressing government policies with "broader public ramifications" constitutes protected speech).

148. Plaintiff's speech addressed matters of public concern because it went beyond his individual grievance to implicate systemic issues of public importance. The Fourth Circuit has established that speech involves a matter of public concern when it can "be fairly considered as relating to any matter of political, social, or other concern to the community." *Desrochers v. City of San Bernardino*, 572 F.3d 703, 709 (9th Cir. 2009) (quoting *Connick v. Myers*, 461 U.S. 138, 146 (1983)). Plaintiff's speech meets this standard because it addressed:

a. The critical issue of mental health challenges faced by law enforcement officers, which directly impacts public safety and effective policing. *See Goldstein v. Chestnut Ridge Volunteer Fire Co.*, 218 F.3d 337, 352-53 (4th Cir. 2000) (holding that speech addressing matters of public safety constitutes protected speech); *Durham v. Jones*, 737 F.3d 291, 300 (4th Cir. 2013) (recognizing speech addressing "the operation of a law enforcement agency" as inherently a matter of public concern);

b. The need for appropriate accommodations for officers with mental health conditions, which affects not only the well-being of officers but also their interactions with the public they serve. *See Brickey v. Hall*, 828 F.3d 298, 304 (4th Cir. 2016) (finding that speech related to government service delivery constitutes a matter of public concern); and

c. The tension between workplace policies and medical privacy rights in public employment, which presents broader policy implications for governmental transparency and employee rights. *See Ridpath v. Bd. of Governors Marshall Univ.*, 447 F.3d 292, 316-17 (4th Cir. 2006) (concluding that speech addressing "the implementation of government policy" constitutes protected expression).

149. Plaintiff spoke as a citizen addressing matters of public concern, not merely as an employee speaking pursuant to his official duties. The Supreme Court has clarified that "the critical question under *Garcetti* is whether the speech at issue is itself ordinarily within the scope of an employee's duties, not whether it merely concerns those duties." *Lane v. Franks*, 573 U.S. 228, 240 (2014). Plaintiff's statements about his mental health needs and his refusal to sign disciplinary documents were not made pursuant to his duties as a Deputy Sheriff, which centered on law enforcement activities, not advocacy for mental health accommodations or challenging disciplinary practices. *See Bland v. Roberts*, 730 F.3d 368, 387 (4th Cir. 2013) (recognizing that speech falls outside official duties when not required by or included in job responsibilities); *Adams v. Trustees of the Univ. of N.C.-Wilmington*, 640 F.3d 550, 564 (4th Cir. 2011) (holding that the "proper inquiry" is whether the speech "was carried out pursuant to [the employee's] professional responsibilities").

150. Under the *Pickering* balancing test, Plaintiff's interest in speaking on these matters of public concern outweighed any governmental interest in

efficient public services. *Pickering*, 391 U.S. at 568. Plaintiff's speech did not disrupt workplace operations, reveal confidential information, or undermine department cohesion; rather, it addressed legitimate workplace concerns in an appropriate forum. See *Connick v. Myers*, 461 U.S. 138, 152-53 (1983) (discussing factors in the Pickering balancing test); *Ridpath*, 447 F.3d at 317 (finding that speech that does not disrupt operations weighs in favor of the employee in the Pickering balancing).

151. Plaintiff's protected speech was a substantial or motivating factor in Defendant Smith's decision to take adverse actions against him, as demonstrated by:

a. The immediate suspension of Plaintiff following his disclosure of mental health needs and refusal to sign disciplinary documents on June 4, 2023, as described in paragraph 81. *See Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 501 (4th Cir. 2005) (recognizing that close temporal proximity between protected speech and adverse action can establish causation);

b. Defendant Smith's text message to Plaintiff on June 5, 2023, stating "You not signing the write up just made this entire thing worse," directly connecting Plaintiff's protected conduct to adverse consequences, as described in paragraph 82. The Fourth Circuit has recognized that such direct evidence can establish retaliatory motive. *See Hunter v. Town of Mocksville*, 789 F.3d 389, 401-02 (4th Cir. 2015) (finding that direct

statements acknowledging retaliatory intent constitute strong evidence of causation);

c. The termination letter issued on July 13, 2023, citing the same issues that arose from Plaintiff's protected speech, as described in paragraph 87. *See Ridpath*, 447 F.3d at 318 (noting that reference to protected activity in termination documentation can support a finding of causation); and

d. The submission of the decertification notification on July 17, 2023, the same day Plaintiff submitted his forced resignation, as described in paragraphs 94-98. *See Smith v. Gilchrist*, 749 F.3d 302, 309 (4th Cir. 2014) (discussing how suspicious timing can establish causation in retaliation cases).

152. Defendant Smith personally participated in this retaliation as demonstrated by:

a. His direct involvement in the decision to suspend Plaintiff following the June 4, 2023, meeting, as described in paragraph 81. *See Huang v. Bd. of Governors of Univ. of N.C.*, 902 F.2d 1134, 1140 (4th Cir. 1990) (discussing personal involvement in retaliatory decisions);

b. His personal text message on June 5, 2023, connecting Plaintiff's refusal to sign to negative consequences, as described in paragraph 82, which constitutes direct evidence of his retaliatory intent;

c. His personal issuance of the termination letter on July 13, 2023, as described in paragraph 87, demonstrating his direct participation in the adverse action; and

d. His submission of the decertification notification on July 17, 2023, as described in paragraph 94, further showing his continued personal involvement in retaliatory actions.

153. Defendant Smith's retaliatory actions would deter a person of ordinary firmness from exercising their First Amendment rights. *Constantine*, 411 F.3d at 500. The Supreme Court has emphasized that the standard is whether the retaliatory acts "would likely deter 'a person of ordinary firmness' from the exercise of First Amendment rights." *Suarez Corp. Indus.*, 202 F.3d at 686 (quoting *Bart v. Telford*, 677 F.2d 622, 625 (7th Cir. 1982)). Termination, constructive discharge, and an attempt to permanently end one's chosen career through decertification clearly meet this standard. *See Ridpath*, 447 F.3d at 318 (holding that actions affecting future professional opportunities meet the "ordinary firmness" standard).

154. Defendant Smith's continued distribution of Brady letters to potential employers after the Criminal Justice Services Board's decision, as described in paragraphs 105-106, constitutes ongoing retaliation for Plaintiff's protected speech. The Fourth Circuit has recognized that post-employment retaliatory actions are actionable when they would deter a reasonable person from

engaging in protected activity. *See Lettieri*, 478 F.3d at 650 (holding that post-employment retaliation can be actionable under anti-discrimination laws).

155. A reasonable official in Defendant Smith's position would have known that retaliating against an employee for disclosing mental health needs, refusing to sign allegedly unjustified disciplinary documents, and asserting medical privacy rights violates clearly established First Amendment rights. *See Hope*, 536 U.S. at 741 (discussing the "fair warning" standard for qualified immunity). The Fourth Circuit has consistently recognized since at least 1998 that retaliating against public employees for protected speech violates the First Amendment. See *Edwards v. City of Goldsboro*, 178 F.3d 231, 246-48 (4th Cir. 1999) (holding that the right to be free from retaliation for protected speech was clearly established); *Smith*, 749 F.3d at 313 (reaffirming that the prohibition against retaliation for protected speech is clearly established).

156. As a direct and proximate result of Defendant Smith's retaliation against Plaintiff for exercising his First Amendment rights, Plaintiff has suffered substantial damages, including but not limited to loss of employment, damage to professional reputation, emotional distress, and financial hardship, as described in paragraphs 109-116. These damages are compensable under 42 U.S.C. § 1983. *See Carey*, 435 U.S. at 254-55 (discussing damages available for constitutional violations); *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 307 (1986) (confirming that compensatory damages for constitutional violations include both out-of-pocket loss and other monetary harms, as well

as injuries such as impairment of reputation, personal humiliation, and mental anguish and suffering).

COUNT IV: FMLA INTERFERENCE (29 U.S.C. § 2615(a)(1))

157. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

158. The Family and Medical Leave Act (FMLA), 29 U.S.C. § 2601 et seq. (2018), entitles eligible employees to take up to twelve weeks of unpaid leave during any twelve-month period for, among other reasons, "a serious health condition that makes the employee unable to perform the functions of the position of such employee." *Id.* § 2612(a)(1)(D) (2018).

159. The FMLA makes it unlawful for any employer to "interfere with, restrain, or deny the exercise of or the attempt to exercise" any right provided under the FMLA. *Id.* § 2615(a)(1) (2018). Interference includes not only refusing to authorize FMLA leave, but also discouraging an employee from using such leave and failing to provide required notices. 29 C.F.R. § 825.220(b); *see Vannoy*, 827 F.3d at 302 (recognizing various forms of interference).

160. To establish an interference claim under the FMLA, a plaintiff must show that: (1) he was an eligible employee; (2) the defendant was an employer as defined by the FMLA; (3) he was entitled to leave under the FMLA; (4) he gave notice to the defendant of his intention to take leave; and (5) the defendant denied him FMLA benefits to which he was entitled. *Ragsdale v.*

Wolverine World Wide, Inc., 535 U.S. 81, 89 (2002); *Sharif v. United Airlines, Inc.*, 841 F.3d 199, 203 (4th Cir. 2016).

161. Unlike discrimination claims, FMLA interference claims do not require proof of discriminatory intent. *Dodgens v. Kent Mfg. Co.*, 955 F. Supp. 560, 564 (D.S.C. 1997) (noting that "the employer's motive or intent is not relevant to an interference claim"); *see also Shaffer v. AMA*, 662 F.3d 439, 444 (7th Cir. 2011) (distinguishing between FMLA interference and retaliation claims).

162. Plaintiff was an eligible employee under the FMLA because he had been employed by the Augusta County Sheriff's Office for more than twelve months and had worked more than 1,250 hours in the 12-month period preceding his need for leave, as stated in paragraph 17. *See* 29 U.S.C. § 2611(2)(A) (2018) (defining "eligible employee").

163. Defendant Smith was an "employer" as defined by the FMLA, 29 U.S.C. § 2611(4)(A)(ii)(I) (2018), because he was Plaintiff's supervisor and controlled the terms and conditions of Plaintiff's employment, including the authority to terminate Plaintiff's employment. The FMLA defines "employer" to include "any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer." *Id.* ; see *Modica v. Taylor*, 465 F.3d 174, 184 (5th Cir. 2006) (recognizing that individuals with supervisory authority over the complaining employee can be individually liable under the FMLA).

164. Plaintiff was entitled to FMLA leave because he suffered from a "serious health condition" as defined by 29 U.S.C. § 2611(11) (2018) and 29 C.F.R. § 825.113, as evidenced by:

a. His spinal tumor diagnosis and related physical symptoms, as described in paragraphs 55-56. *See Id.* § 825.115(e)(2) (providing that physical conditions like tumors may constitute serious health conditions);

b. His mental health conditions that substantially limited major life activities, as described in paragraphs 61-62. The Department of Labor has specifically clarified that mental health conditions qualify for FMLA protections. *See* DOL Fact Sheet #28O: Mental Health Conditions and the FMLA (May 2022) (stating that "mental and physical health conditions are considered serious health conditions under the FMLA if they require inpatient care or continuing treatment by a health care provider");

c. The Criminal Justice Services Board's finding that he had "genuine mental health concerns during the period in question," as described in paragraph 101(b), providing independent validation of his condition; and

d. These conditions rendered him unable to perform the functions of his position without taking leave for treatment and recovery. *See Hannah P.*, 916 F.3d at 338 (discussing when health conditions render an employee unable to perform essential job functions).

165. Plaintiff provided sufficient notice of his need for FMLA leave when he:

a. Explicitly informed his supervisors during the June 4, 2023 meeting that he "needed some mental health days" and that some days he "wasn't alright," as described in paragraph 77. *See Dotson*, 558 F.3d at 295 (holding that "an employee seeking FMLA leave need not expressly assert rights under the FMLA or even mention the FMLA" to provide adequate notice);

b. Previously informed Defendant Smith of his spinal tumor diagnosis and treatment, as described in paragraphs 57-60, providing notice of a known serious health condition; and

c. Used sick leave on May 5-6, 2023 to address his health conditions, as described in paragraph 68. *See* 29 C.F.R. § 825.303(b) (stating that an employee need only provide sufficient information for an employer to reasonably determine whether the FMLA may apply); *LSP Transmission Holdings II, L.L.C. v. FERC*, 45 F.4th 979, 1009 (D.C. Cir. 2022) (emphasizing that notice requirements should be construed flexibly and "in conformity with the reality of the situation").

166. Defendant Smith interfered with Plaintiff's FMLA rights by:

a. Failing to inform Plaintiff of his FMLA rights when Plaintiff disclosed his health conditions, in violation of 29 C.F.R. § 825.300(b), which requires employers to provide notice of FMLA eligibility within five business days of learning that leave may be FMLA-qualifying. See

Vannoy, 827 F.3d at 302 (finding that failure to provide required notices constitutes interference);

b. Disciplining Plaintiff for using sick leave to address his serious health conditions rather than recognizing his potential eligibility for FMLA leave, as described in paragraphs 71-72. *See Coal. of MISO Transmission Customers v. FERC*, 45 F.4th 1004, 1009-10 (D.C. Cir. 2022) (discussing employer obligations when receiving information that could trigger FMLA protections);

c. Suspending Plaintiff after he disclosed his mental health needs rather than providing him with information about FMLA leave, as described in paragraph 81. *See Erdman v. Nationwide Ins. Co.*, 582 F.3d 500, 509 (3d Cir. 2009) (finding that adverse actions following FMLA-qualifying disclosures can constitute interference); and

d. Ultimately terminating Plaintiff's employment based on absences that should have been protected under the FMLA, as described in paragraphs 87-92. *See Yashenko v. Harrah's NC Casino Co., LLC*, 446 F.3d 541, 546-47 (4th Cir. 2006) (discussing prohibited interference under the FMLA).

167. Defendant's failure to notify Plaintiff of his FMLA rights prejudiced Plaintiff by denying him the opportunity to properly designate his leave as FMLA-protected, thereby exposing him to disciplinary action that ultimately led to his termination and constructive discharge. *See Ragsdale*, 535 U.S. at 89 (holding that an employee must show prejudice from an FMLA violation);

Vannoy, 827 F.3d at 302 (discussing prejudice requirement for notice violations).

168. Under the FMLA regulations, an employer "must responsively answer questions from employees concerning their rights and responsibilities under the FMLA" and "individualized notice to employees is required." 29 C.F.R. § 825.300(c)(5). Instead of fulfilling these obligations, Defendant Smith used Plaintiff's health-related absences as grounds for discipline and termination, directly interfering with his FMLA rights. See *Wages v. Stuart Mgmt. Corp.*, 798 F.3d 675, 681 (8th Cir. 2015) (finding interference where an employer's actions "operate to prevent an employee from taking authorized FMLA leave").

169. As a direct and proximate result of Defendant's interference with Plaintiff's FMLA rights, Plaintiff has suffered damages, including but not limited to lost wages and benefits, emotional distress, and other compensatory damages, as described in paragraphs 109-116. These damages are recoverable under 29 U.S.C. § 2617(a)(1) (2018), which provides for damages "equal to the amount of any wages, salary, employment benefits, or other compensation denied or lost" due to the violation, as well as interest, liquidated damages, and reasonable attorney's fees. *See Dotson*, 558 F.3d at 297-98 (discussing damages available under the FMLA).

COUNT V: FMLA RETALIATION (29 U.S.C. § 2615(a)(2))

170. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

171. The FMLA prohibits employers from discriminating or retaliating against an employee for exercising or attempting to exercise FMLA rights. *Id.* § 2615(a)(2) (2018); 29 C.F.R. § 825.220(c). The anti-retaliation provision prohibits "using the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions." *Id.* ; *see Dotson*, 558 F.3d at 294-95 (discussing the scope of prohibited retaliation under the FMLA).

172. To establish a claim for FMLA retaliation, a plaintiff must show that: (1) he engaged in a protected activity; (2) the employer took an adverse employment action against him; and (3) there was a causal connection between the protected activity and the adverse employment action. *Yashenko*, 446 F.3d at 551; *Waag v. Sotera Def. Sols., Inc.*, 857 F.3d 179, 191 (4th Cir. 2017) (confirming the elements of an FMLA retaliation claim).

173. The Fourth Circuit applies the McDonnell Douglas burden-shifting framework to FMLA retaliation claims. *Yashenko*, 446 F.3d at 551; see also *Laing v. Fed. Express Corp.*, 703 F.3d 713, 717 (4th Cir. 2013) (applying the McDonnell Douglas framework to FMLA retaliation claims). Under this framework, once a plaintiff establishes a prima facie case of retaliation, the burden shifts to the employer to articulate a legitimate, non-discriminatory reason for the adverse action, after which the plaintiff must show that the employer's stated reason is pretextual. *McDonnell Douglas Corp. v. Green*, 411

U.S. 792, 802-04 (1973); *Vannoy*, 827 F.3d at 304-05 (applying this framework in the FMLA context).

174. Plaintiff engaged in protected activity under the FMLA when he:

a. Used sick leave on May 5-6, 2023 to address his serious health conditions, as described in paragraph 68. The Fourth Circuit recognizes that taking leave for a serious health condition constitutes protected activity even if the FMLA is not explicitly invoked. See Dotson, 558 F.3d at 295 (holding that "an employee seeking FMLA leave need not expressly assert rights under the FMLA or even mention the FMLA");

b. Disclosed his mental health needs during the June 4, 2023 meeting and indicated that he required leave for mental health reasons, as described in paragraph 77. *See LSP Transmission Holdings II, L.L.C.*, 45 F.4th at 1009 (holding that an employee provides sufficient notice when the information conveyed to the employer is sufficient to reasonably apprise the employer that the employee needs FMLA-qualifying leave); and

c. Attempted to exercise his right to take leave for a serious health condition, as described throughout paragraphs 65-84. *See Erdman*, 582 F.3d at 509 (recognizing that attempting to exercise FMLA rights constitutes protected activity).

175. Defendant Smith took adverse employment actions against Plaintiff when he:

a. Suspended Plaintiff immediately following his disclosure of mental health needs on June 4, 2023, as described in paragraph 81. The Fourth Circuit recognizes suspension as a materially adverse employment action. *See Adams*, 789 F.3d at 431;

b. Terminated Plaintiff's employment on July 13, 2023, as described in paragraph 87. *See Guessous*, 828 F.3d at 217 (recognizing termination as the "ultimate employment action");

c. Forced Plaintiff to resign under threat of termination on July 17, 2023, as described in paragraphs 89-92, constituting constructive discharge. *See Green v. Brennan*, 578 U.S. 547, 555 (2016) (recognizing constructive discharge as an adverse employment action); and

d. Submitted a Notification of Eligibility for Decertification seeking to revoke Plaintiff's law enforcement certification, as described in paragraphs 94-96, which would effectively prevent Plaintiff from working in his chosen profession. *See Burlington N. & Santa Fe Ry.*, 548 U.S. at 68 (holding that actions that might dissuade a reasonable worker from engaging in protected activity constitute adverse employment actions); *Lettieri*, 478 F.3d at 650 (recognizing post-employment actions affecting future employment opportunities as adverse actions).

176. There was a direct causal connection between Plaintiff's protected FMLA activity and the adverse employment actions he suffered, as

demonstrated by both strong circumstantial evidence and direct evidence of retaliatory intent:

a. The remarkably close temporal proximity between Plaintiff's disclosure of his mental health needs and request for accommodations on June 4, 2023, and his immediate suspension on the same day, as described in paragraph 81. *See Vannoy v. Fed. Reserve Bank of Richmond*, 827 F.3d 296, 304 (4th Cir. 2016) (holding that "the close temporal proximity" between protected activity and adverse action "provides prima facie evidence of causation"); *Waag v. Sotera Def. Sols., Inc.*, 857 F.3d 179, 192 (4th Cir. 2017) (emphasizing that "very little temporal separation" is "sufficient to satisfy the causation element" in retaliation cases);

b. Defendant Smith's explicit text message on June 5, 2023, which directly connected Plaintiff's protected conduct to adverse consequences by stating "You not signing the write up just made this entire thing worse," as described in paragraph 82. This message constitutes direct evidence of retaliatory intent, which is the "most compelling" form of evidence in retaliation cases. *See EEOC v. Navy Fed. Credit Union*, 424 F.3d 397, 407 (4th Cir. 2005) (holding that "in a retaliation case, when an employer has provided direct evidence of retaliatory animus, a plaintiff may simply rely on that evidence" to establish causation); *Diamond v. Hospice of Fla. Keys, Inc.*, 677 F. App'x 586, 593 (11th Cir. 2017)

(recognizing that explicit statements linking protected activity to adverse actions constitute direct evidence of retaliation);

c. The termination letter dated July 13, 2023, specifically identifying Plaintiff's use of sick leave—the very leave that should have been protected under the FMLA—as a central basis for termination, as referenced in paragraph 87. *See Dotson v. Pfizer, Inc.*, 558 F.3d 284, 296 (4th Cir. 2009) (holding that when "the employer's purported non-retaliatory reason for taking an adverse employment action is actually a pretext for retaliation," causation can be established); *Yashenko v. Harrah's NC Casino Co.*, LLC, 446 F.3d 541, 551 (4th Cir. 2006) (finding causation where employer's reasons for termination were directly related to employee's protected activity); and

d. The calculated timing of the decertification notification, submitted on July 17, 2023—the exact same day as Plaintiff's forced resignation—demonstrating a coordinated effort to punish Plaintiff for his protected activity, as described in paragraph 94. *See Foster v. Univ. of Md.-E. Shore*, 787 F.3d 243, 253 (4th Cir. 2015) (noting that suspicious timing, particularly when coupled with other evidence of retaliatory intent, can establish causation); *Lettieri v. Equant Inc.*, 478 F.3d 640, 650 (4th Cir. 2007) (recognizing that coordinated adverse actions following protected activity strongly support an inference of retaliatory motive).

177. Defendant Smith's stated reasons for taking adverse actions against Plaintiff were pretextual, as evidenced by:

a. The Criminal Justice Services Board's unanimous finding that Plaintiff had "genuine mental health concerns during the period in question" and that the sick leave dispute "did not rise to the level warranting decertification," as described in paragraph 101. *See Laing*, 703 F.3d at 719-20 (recognizing that evidence contradicting an employer's stated reason for adverse action can establish pretext);

b. The inconsistent treatment of Plaintiff compared to other deputies who used sick leave for physical health conditions, as alleged in paragraph 75. The Fourth Circuit recognizes that differential treatment of similarly situated employees can establish pretext. *See Sharif*, 841 F.3d at 203-04 (discussing comparator evidence in FMLA cases); and

c. The inclusion of an unrelated prior investigation for which Plaintiff was never charged in the decertification notification, suggesting an attempt to manufacture justification, as described in paragraph 96. *See Dennis*, 290 F.3d at 647 (holding that shifting explanations for an adverse action can suggest pretext); *Haynes*, 922 F.3d at 225 (recognizing that post-hoc rationalizations can support a finding of pretext).

178. The FMLA entitles Plaintiff to various remedies for retaliation, including: (1) compensatory damages, including wages, salary, employment benefits, and other compensation lost due to the violation; (2) interest on these

damages; (3) liquidated damages equal to the sum of the compensatory damages and interest; (4) equitable relief including reinstatement or front pay; and (5) reasonable attorney's fees, expert witness fees, and other costs. 29 U.S.C. § 2617(a) (2018); *see Dotson*, 558 F.3d at 297-98 (discussing the full range of remedies available under the FMLA).

179. As a direct and proximate result of Defendant's retaliation against Plaintiff for exercising his FMLA rights, Plaintiff has suffered damages, including but not limited to lost wages and benefits, emotional distress, and other compensatory damages, as described in paragraphs 109-116. Liquidated damages are available because Defendant cannot demonstrate good faith and reasonable grounds for believing his actions did not violate the FMLA. 29 U.S.C. § 2617(a)(1)(A)(iii) (2018)*; see Dotson*, 558 F.3d at 298 ("Liquidated damages are the norm under the FMLA").

COUNT VI: HOSTILE WORK ENVIRONMENT IN VIOLATION OF TITLE VII (42 U.S.C. § 2000e et seq.)

180. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

181. Title VII of the Civil Rights Act of 1964 prohibits discrimination against any individual with respect to "compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." *Id.* § 2000e-2(a)(1). This prohibition encompasses workplace harassment that creates a hostile work environment based on a protected

characteristic, including sex. *Meritor Sav. Bank, F.S.B. v. Vinson*, 477 U.S. 57, 66 (1986); *Harris*, 510 U.S. at 21.

182. Sexual harassment claims are cognizable regardless of the sex of the harasser or the harassed employee. *Oncale*, 523 U.S. at 79-80 (holding that "nothing in Title VII necessarily bars a claim of discrimination 'because of... sex' merely because the plaintiff and the defendant... are of the same sex"); *EEOC v. Boh Bros. Constr. Co.*, 731 F.3d 444, 453-54 (5th Cir. 2013) (en banc) (confirming that Title VII protects against same-sex harassment).

183. To establish a hostile work environment claim based on sex under Title VII, a plaintiff must show that: (1) he experienced unwelcome harassment; (2) the harassment was based on his sex; (3) the harassment was sufficiently severe or pervasive to alter the conditions of employment and create an abusive atmosphere; and (4) there is some basis for imposing liability on the employer. *Boyer-Liberto*, 786 F.3d at 277; *EEOC v. Fairbrook Med. Clinic*, 609 F.3d 320, 327 (4th Cir. 2010).

184. The Fourth Circuit has clarified that the proper standard is "severe or pervasive," not "severe and pervasive," and has expressly held that a single incident of harassment, if sufficiently severe, can create an actionable hostile environment. *Id.* at 280 ("[W]e underscore the directive that courts should not focus myopically on the severity of the isolated incident...but must evaluate whether that incident, combined with any others, would establish the kind of workplace environment that is actionable."); *Okoli v. City of Balt.*, 648 F.3d

216, 220 (4th Cir. 2011) (emphasizing that it is "the disjunctive element of the 'severe or pervasive' standard").

185. Plaintiff experienced unwelcome harassment from Defendant Smith, as evidenced by:

a. Defendant Smith sending Plaintiff numerous sexually suggestive text messages, including explicit comments about the size of Plaintiff's genitalia, as described in paragraph 50. These communications were unwelcome and Plaintiff attempted to avoid responding to them, with 16 conversations initiated by Defendant going completely unanswered. *See EEOC v. Fairbrook Med. Clinic*, 609 F.3d 320, 327-28 (4th Cir. 2010) (holding that sexually explicit comments constitute actionable harassment when unwelcome);

b. Defendant Smith offering to "come cuddle" Plaintiff, as described in paragraph 50, which constitutes an explicit invitation for unwanted physical intimacy. *See Okoli v. City of Baltimore*, 648 F.3d 216, 221-22 (4th Cir. 2011) (recognizing that unwanted romantic or sexual advances constitute actionable harassment);

c. Defendant Smith repeatedly stating that he loved Plaintiff and wanted Plaintiff "close" to him, as described in paragraphs 48 and 50, which Plaintiff found uncomfortable and inappropriate given their professional relationship. *See Beardsley v. Webb*, 30 F.3d 524, 528 (4th Cir. 1994)

(holding that persistent expressions of personal interest constitute harassment when unwelcome); and

d. Defendant Smith offering for Plaintiff to stay at his house in Churchville, as described in paragraph 50, which Plaintiff perceived as an inappropriate personal overture from his supervisor. *See Walker v. Mod-U-Kraf Homes, LLC*, 775 F.3d 202, 207-08 (4th Cir. 2014) (recognizing that harassment encompasses a broad range of unwelcome conduct).

186. This harassment was based on Plaintiff's sex, satisfying the Supreme Court's framework for same-sex harassment established in *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 80-81 (1998). Under *Oncale*, same-sex harassment is actionable under Title VII when: (1) there is evidence that the harasser is homosexual and motivated by sexual desire; (2) the harassment includes sex-specific and derogatory terms indicating general hostility to a particular gender; or (3) there is direct comparative evidence that the harasser treated members of one sex differently than the other. *Id.* The evidence in this case satisfies the first *Oncale* pathway because:

a. Defendant Smith's communications contained explicit sexual content directed specifically at Plaintiff's male anatomy, as described in paragraph 50;

b. The invitations for physical intimacy, including the offer to "come cuddle" and the invitation to stay at Defendant's home, described in paragraph 50, demonstrate sexual interest;

c. Defendant Smith's persistent expressions of personal affection, including repeatedly stating he loved Plaintiff and wanted him "close," as described in paragraphs 48 and 50, when combined with the sexual comments, indicate sexual desire; and

d. Temple Toms, who observed these messages, independently concluded they were "weird" and that the Sheriff "wanted" Plaintiff, as described in paragraph 52, providing objective corroboration that the communications conveyed sexual interest.

These facts, taken together, provide sufficient evidence that the harassment was based on sex because it was motivated by sexual desire, satisfying the requirements of *Oncale* and Fourth Circuit precedent. *See EEOC v. Boh Bros. Constr. Co.*, 731 F.3d 444, 455-56 (5th Cir. 2013) (en banc) (analyzing the *Oncale* pathways).

187. The harassment was sufficiently severe or pervasive to alter the conditions of Plaintiff's employment and create an abusive working environment, satisfying the "disjunctive element of the 'severe or pervasive' standard" established by the Fourth Circuit. *Boyer-Liberto v. Fontainebleau Corp.*, 786 F.3d 264, 280 (4th Cir. 2015) (en banc) (emphasizing that "severe or

pervasive" does not require both elements). The harassment meets this standard as demonstrated by:

a. The persistence and frequency of the communications, with Defendant Smith "repeatedly" telling Plaintiff he loved him and wanted him close, sending these communications at all hours of the day and night, and continuing this pattern despite Plaintiff's non-responsiveness, as described in paragraph 50. *See Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993) (establishing frequency as a primary factor in evaluating a hostile environment claim); *Okoli v. City of Baltimore*, 648 F.3d 216, 220-21 (4th Cir. 2011) (recognizing that persistence of unwanted communications supports finding a hostile environment);

b. The explicitly sexual and graphic nature of the messages, including comments about Plaintiff's genitalia and offers of physical intimacy that went far beyond professional communications, as described in paragraph 50. The Fourth Circuit recognizes that the nature and severity of sexually explicit conduct is critical to the hostile environment assessment. *See EEOC v. Cent. Wholesalers, Inc.*, 573 F.3d 167, 176 (4th Cir. 2009) (holding that explicitly sexual conduct "weighs heavily" in severity analysis); *Walker v. Mod-U-Kraf Homes, LLC*, 775 F.3d 202, 208-09 (4th Cir. 2014) (finding that the sexually explicit nature of communications can establish severity even with limited frequency);

c. The objectively offensive nature of the communications, as corroborated by Temple Toms, who observed these messages and independently concluded they were "weird" and that the Sheriff "wanted" Plaintiff, as described in paragraph 52. This third-party assessment provides crucial objective evidence that the conduct would be perceived as hostile or abusive by a reasonable person in Plaintiff's position. *See Harris*, 510 U.S. at 21-22 (establishing that hostile environment claims must satisfy both subjective and objective components); *Hoyle v. Freightliner, LLC*, 650 F.3d 321, 333 (4th Cir. 2011) (recognizing the importance of third-party corroboration in establishing the objective component); and

d. The significant power differential between Defendant Smith, as the elected Sheriff with ultimate authority over Plaintiff's employment, discipline, and termination, and Plaintiff, as a subordinate deputy who depended on Smith for his livelihood and professional future. This severe imbalance of power created an inherently coercive dynamic that amplified the hostility of the work environment. *See Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 763 (1998) (emphasizing that "a supervisor's power and authority invests his or her harassing conduct with a particular threatening character"); *Boyer-Liberto*, 786 F.3d at 278 (recognizing that a supervisor's "power and authority" substantially increases the severity of harassing conduct even when relatively isolated).

188. The harassment created a work environment that was both subjectively and objectively hostile. Subjectively, Plaintiff was uncomfortable with Defendant Smith's communications, as evidenced by his attempts to avoid responding to many of Defendant's personal messages, with 16 conversations initiated by Defendant going completely unanswered, as described in paragraph 47. Objectively, a reasonable person would find the work environment hostile, as confirmed by Temple Toms' reaction to seeing the messages, as described in paragraph 52. *See Harris*, 510 U.S. at 21-22 (establishing that conduct must be severe or pervasive enough to create "an environment that a reasonable person would find hostile or abusive"); *Okoli*, 648 F.3d at 222 (discussing the reasonable person standard in hostile environment claims).

189. There is a basis for imposing liability on Defendant Smith because:

a. Defendant Smith was Plaintiff's supervisor with direct authority over the terms and conditions of Plaintiff's employment, including discipline and termination. The Supreme Court has held that employers are strictly liable for supervisor harassment that results in a tangible employment action. *Burlington Indus. v. Ellerth*, 524 U.S. 742, 760-61 (1998); Faragher, 524 U.S. at 807;

b. Defendant Smith personally engaged in the harassing conduct, as evidenced by the text messages described in paragraphs 47-52. *See*

Watkins v. Prof'l Sec. Bureau, Ltd., 201 F.3d 439, 441 (4th Cir. 1999) (discussing personal participation in harassing conduct); and

c. Defendant Smith created the hostile work environment through his own actions as the highest-ranking official in the Augusta County Sheriff's Office. *See Hendrix v. Trammell*, 576 F. App'x 767, 773 (10th Cir. 2014) (recognizing liability when the harasser is the highest-ranking official or owner of the entity).

190. Plaintiff was afraid to report Defendant Smith's inappropriate conduct because he feared losing his position or his K-9 partner, as described in paragraph 52, demonstrating the coercive impact of Defendant Smith's position of authority. The reasonableness of this fear is demonstrated by Defendant Smith's subsequent retaliation, including suspension, termination, and the attempt to permanently revoke Plaintiff's law enforcement certification. *See Burlington N. & Santa Fe Ry.*, 548 U.S. at 68 (recognizing that the significance of any given act of retaliation must be judged from the perspective of a reasonable person in the plaintiff's position).

191. Plaintiff suffered tangible employment actions following his refusal to comply with Defendant Smith's inappropriate advances, as evidenced by:

a. The suspension, termination, and constructive discharge of Plaintiff after he began to distance himself from Defendant Smith, as described in paragraphs 81-92. *See Dulaney v. Packaging Corp. of Am.*, 673 F.3d 323, 332 (4th Cir. 2012) (discussing tangible employment actions in

harassment cases); *Vance v. Ball State Univ.*, 570 U.S. 421, 431 (2013) (defining tangible employment actions to include "hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits");

b. The decertification attempt that could have permanently ended Plaintiff's law enforcement career, as described in paragraphs 94-98. *See Burlington Indus.*, 524 U.S. at 761 (recognizing that a tangible employment action "in most cases inflicts direct economic harm"); and

c. Defendant Smith's continued distribution of Brady letters to potential employers, as described in paragraphs 105-106. See Robinson v. Shell Oil Co., 519 U.S. 337, 346 (1997) (holding that Title VII protections extend to former employees); *Lettieri*, 478 F.3d at 650 (recognizing that post-employment actions can violate Title VII).

192. As a direct and proximate result of the hostile work environment created by Defendant Smith, Plaintiff has suffered substantial damages, including but not limited to emotional distress, loss of dignity, humiliation, damage to reputation, and loss of employment and career opportunities, as described in paragraphs 109-116. See *Mingo v. City of Mobile*, 592 F. App'x 793, 801 (11th Cir. 2014) (discussing damages available for hostile work environment claims); *Fox v. GMC*, 247 F.3d 169, 180 (4th Cir. 2001) (upholding damages for emotional distress and humiliation resulting from a hostile work environment).

COUNT VII: DISCRIMINATION IN VIOLATION OF THE VIRGINIA HUMAN RIGHTS ACT (Va. Code Ann. § 2.2-3900 et seq.)

193. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

194. The Virginia Human Rights Act ("VHRA"), as amended by the Virginia Values Act in 2020, prohibits discrimination in employment on the basis of disability, sex, and other protected characteristics. Va. Code Ann. §§ 2.2-3901, 2.2-3905 (2023). The VHRA extends broader protections than some federal anti-discrimination statutes, particularly with respect to employer size thresholds.

195. The VHRA defines an "employer" as "any person employing more than five persons for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person." Va. Code Ann. § 2.2-3905(B) (2023) (emphasis added). This definition encompasses both the Augusta County Sheriff's Office, which employs more than 100 deputies and staff as described in paragraph 123(b), and Defendant Smith in his individual capacity as Sheriff, who qualifies as both an "employer" in his official capacity and as an "agent" of the Sheriff's Office. *See Mitchem v. Counts*, 259 Va. 179, 186, 523 S.E.2d 246, 250 (2000) (recognizing individual liability under Virginia employment statutes); *Flamm v. Am. Ass'n of Univ. Women*, 201 F.3d 144, 149 (2d Cir. 2000) (applying the definition of "employer" to include individual agents who exercise significant control over the terms and conditions of employment). Unlike Title VII, the VHRA has been interpreted

by Virginia courts to permit individual liability against those who personally engage in discriminatory conduct. *See Tomlin v. IBM Corp*., 84 Va. Cir. 280, 2012 WL 7037291, at *8 (Va. Cir. Ct. 2012) (holding that "individual qualifiers as employers" can be held liable under the VHRA).

196. The VHRA prohibits an employer from discharging or otherwise discriminating against an individual with respect to "compensation, terms, conditions, or privileges of employment because of such individual's... disability." Va. Code Ann. § 2.2-3905(B) (2023). Virginia courts interpret claims under the VHRA consistent with their federal counterparts, applying similar prima facie case requirements. *See Princeton Digit. Image Corp. v. Ubisoft Ent. Sa & Ubisoft*, No. 13-335-LPS-CJB, 2021 WL 4033220, at *9 (D. Del. Sept. 3, 2021) (noting that VHRA claims are generally analyzed using the same framework as their federal counterparts).

197. The VHRA further prohibits harassment on the basis of sex, defining harassment as including "sexual harassment, which is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when... such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment." Va. Code Ann. § 2.2-3905(E) (2023). Courts recognize that this definition tracks the federal standard for hostile work environment claims. *See Spicer v. Commonwealth*, 66 Va. App. 813, 819,

791 S.E.2d 772, 775 (2016) (discussing the definition of harassment under Virginia law).

198. The VHRA implements a comprehensive administrative framework for pursuing discrimination claims, though unlike Title VII, certain claims may proceed directly to court without exhaustion. Va. Code Ann. § 2.2-3908 (2023).

199. The VHRA authorizes compensatory and punitive damages for violations, as well as equitable relief, attorneys' fees, and costs. Va. Code Ann. § 2.2-3908(A)-(C) (2023). Punitive damages are capped at $350,000, consistent with Virginia's statutory cap on punitive damages. *Id.* § 8.01-38.1 (2023).

200. Plaintiff's spinal tumor and mental health conditions constitute disabilities under the VHRA, as these conditions substantially limited one or more of his major life activities, as described in paragraphs 55-56 and 61-62. Virginia law recognizes the same definition of disability as the ADA. *See Diaz v. Wilderness Resort Ass'n & Liberty Mut. Ins. Co.*, 56 Va. App. 104, 118, 691 S.E.2d 518, 522 (2010) (discussing disability definitions under Virginia law).

201. Defendant Smith discriminated against Plaintiff on the basis of his disability in violation of the VHRA by:

a. Denying Plaintiff's request for time off to address his mental health needs, as described in paragraph 67;

b. Disciplining Plaintiff for using sick leave to address his mental health conditions, as described in paragraphs 71-72;

c. Suspending Plaintiff after he disclosed his mental health needs, as described in paragraph 81;

d. Terminating Plaintiff's employment based on his use of sick leave for mental health purposes, as described in paragraph 87; and

e. Attempting to revoke Plaintiff's law enforcement certification, as described in paragraphs 94-96.

202. Defendant Smith created a hostile work environment based on sex in violation of the VHRA by:

a. Sending Plaintiff sexually suggestive text messages, including comments about Plaintiff's genitalia, as described in paragraph 50. *See Wilder v. Se. Pub. Serv. Auth.*, 869 F. Supp. 409, 415 (E.D. Va. 1994) (analyzing sexually explicit communications as harassment under Virginia law);

b. Offering to "come cuddle" Plaintiff, as described in paragraph 50;

c. Repeatedly stating that he loved Plaintiff and wanted Plaintiff "close" to him, as described in paragraphs 48 and 50. *See Bungie, Inc. v. Aimjunkies.Com*, No. C21-811 TSZ, 2022 WL 1239906, at *9 (W.D. Wash. Apr. 27, 2022) (analyzing harassment claims based on persistent unwanted attention); and

d. Creating an intimidating and offensive working environment that a reasonable person would find hostile and abusive.

203. Defendant Smith knew or should have known that his conduct violated the VHRA, as evidenced by:

a. His position as Sheriff, which requires knowledge of relevant anti-discrimination laws. *See Commonwealth v. Hilliard*, 270 Va. 42, 55, 613 S.E.2d 579, 587 (2005) (discussing presumption of knowledge of the law for public officials);

b. His long-term knowledge of Plaintiff's physical and mental health conditions, as described in paragraphs 54-64. *See Vanterpool v. Cuccinelli*, 998 F. Supp. 2d 451, 465 (E.D. Va. 2014) (analyzing employer knowledge of disability under Virginia law);

c. The Criminal Justice Services Board's finding that Plaintiff had "genuine mental health concerns during the period in question," as described in paragraph 101. *See Commonwealth v. Thomas*, 23 Va. App. 598, 604, 478 S.E.2d 720, 723 (1996) (discussing the weight of administrative findings under Virginia law); and

d. His continued efforts to damage Plaintiff's professional reputation even after the Criminal Justice Services Board's reinstatement decision, as described in paragraphs 105-106. *See Jordan v. Shands*, 255 Va. 492, 498, 500 S.E.2d 215, 218 (1998) (discussing evidence of malicious intent under Virginia law).

204. The VHRA provides a two-year statute of limitations for claims brought directly to court. Va. Code Ann. § 2.2-3908(D) (2023). Plaintiff's claims are

timely, as they are based on conduct occurring between May 2023 and the present, including Defendant's continuing practice of distributing Brady letters to potential employers.

205. As a direct and proximate result of Defendant Smith's violations of the VHRA, Plaintiff has suffered substantial damages, including but not limited to loss of employment, damage to professional reputation, emotional distress, and financial hardship, as described in paragraphs 109-116. *See Dulaney*, 673 F.3d at 330 (discussing damages available in discrimination cases); *Spicer*, 66 Va. App. at 819, 791 S.E.2d at 775 (recognizing emotional distress damages for VHRA claims).

COUNT VIII: DEFAMATION PER SE (STATE LAW CLAIM)

206. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

207. Under Virginia law, defamation per se includes statements that impute to a person: (1) the commission of a criminal offense involving moral turpitude; (2) infection with a contagious disease; (3) unfitness to perform the duties of an office or employment; or (4) lack of integrity in the discharge of duties of employment. *Tronfeld v. Nationwide Mut. Ins. Co.*, 272 Va. 709, 713, 636 S.E.2d 447, 449 (2006); *Schaecher v. Bouffault*, 290 Va. 83, 91-92, 772 S.E.2d 589, 594 (2015) (reaffirming and applying the traditional categories of defamation per se).

208. To establish defamation under Virginia law, a plaintiff must prove: "(1) publication of (2) an actionable statement with (3) the requisite intent." *Tharpe v. Saunders*, 285 Va. 476, 480, 737 S.E.2d 890, 892 (2013). "To be actionable, the statement must be both false and defamatory." *Schaecher*, 290 Va. at 91, 772 S.E.2d at 594. "Defamatory words are those which tend to injure one's reputation in the common estimation of mankind, to throw contumely, shame, or disgrace upon him, or which tend to hold him up to scorn, ridicule, or contempt, or which render him infamous, odious, or ridiculous." *Moss v. Harwood*, 102 Va. 386, 387, 46 S.E. 385, 386 (1904) (Cleaned up)

209. Virginia recognizes defamation per se as inherently defamatory because such statements "prejudice the plaintiff in his profession or trade." *Hyland v. Raytheon Tech. Servs. Co.*, 277 Va. 40, 46, 670 S.E.2d 746, 750 (2009). In defamation per se cases, Virginia law presumes damages without the need for proof of actual damages. *Shupe v. Rose's Stores, Inc.*, 213 Va. 374, 376, 192 S.E.2d 766, 767 (1972); *Swengler v. ITT Corp. Electro-Optical Prods. Div.*, 993 F.2d 1063, 1070 (4th Cir. 1993) (applying Virginia law).

210. On July 17, 2023, Defendant Smith made false and defamatory statements about Plaintiff in the Notification of Eligibility for Decertification submitted to the Virginia Department of Criminal Justice Services, as described in paragraphs 94-96. This constitutes "publication" under Virginia law, which requires only that the statement be communicated to a third party. *Food Lion v. Melton*, 250 Va. 144, 150-51, 458 S.E.2d 580, 584 (1995); *Cashion*

v. Smith, 286 Va. 327, 336-37, 749 S.E.2d 526, 532 (2013) (holding that communication to even a single third party satisfies the publication requirement).

211. Specifically, Defendant Smith falsely stated that Plaintiff had committed "an act while in the performance of the officer's duties that compromises an officer's credibility, integrity, honesty or other characteristics that constitute exculpatory or impeachment evidence in a criminal case," pursuant to Va. Code Ann. § 15.2-1707(B)(vi) (2023), as described in paragraph 95.

212. Virginia courts recognize that statements impugning a person's professional integrity, especially in professions requiring public trust, constitute defamation per se. *Great Coastal Express v. Ellington*, 230 Va. 142, 147, 334 S.E.2d 846, 849 (1985); *Carwile v. Richmond Newspapers, Inc.*, 196 Va. 1, 8, 82 S.E.2d 588, 592 (1954) (finding statements imputing dishonesty to an attorney were defamatory per se) (overruled in part on other grounds by *Gazette, Inc. v. Harris*, 229 Va. 1 (1985)).

213. These statements were defamatory per se under Virginia law because they imputed to Plaintiff:

a. The commission of criminal offenses involving moral turpitude, specifically dishonesty, which Virginia courts recognize as defamatory per se. *See Schnupp v. Smith*, 249 Va. 353, 360, 457 S.E.2d 42, 46 (1995) (holding that statements imputing commission of crime involving moral

turpitude are defamatory per se); *JTH Tax, Inc. v. Grabert*, 8 F. Supp. 3d 731, 741 (E.D. Va. 2014) (recognizing that allegations of dishonesty can constitute defamation per se under Virginia law);

b. Unfitness to perform the duties of a law enforcement officer, which Virginia courts recognize as defamatory per se. *See Fleming v. Moore*, 221 Va. 884, 889-90, 275 S.E.2d 632, 636 (1981) (holding that statements imputing unfitness to perform professional duties are defamatory per se); *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1092 (4th Cir. 1993) (applying Virginia law to professional reputation claims); and

c. Lack of integrity in the discharge of duties of employment, which Virginia courts recognize as defamatory per se. *See Cretella v. Kuzminski*, 640 F. Supp. 2d 741, 762 (E.D. Va. 2009) (holding that statements imputing lack of integrity in the discharge of employment duties are defamatory per se under Virginia law); *Gov't Micro Res., Inc. v. Jackson*, 271 Va. 29, 40, 624 S.E.2d 63, 69 (2006) (analyzing statements impugning professional integrity).

214. Defendant Smith knew these statements were false or made them with reckless disregard for their truth or falsity, as evidenced by:

a. His awareness of Plaintiff's medical condition and mental health challenges, as documented in numerous text messages described in paragraphs 54-64. Virginia law recognizes that an individual's knowledge of contradictory facts supports finding actual malice. *See*

Jackson v. Hartig, 274 Va. 219, 228, 645 S.E.2d 303, 308 (2007) (discussing evidence of malice in defamation claims);

b. His knowledge that Plaintiff had explicitly stated he needed mental health days during the June 4, 2023 meeting, as described in paragraph 77. *See Cashion*, 286 Va. at 338-39, 749 S.E.2d at 533 (discussing how context can establish knowledge of falsity);

c. His longstanding personal relationship with Plaintiff, during which he had observed Plaintiff's character and integrity firsthand, as described in paragraphs 42-53. *See Wjla-Tv v. Levin*, 264 Va. 140, 156, 564 S.E.2d 383, 392 (2002) (noting that personal knowledge of contradictory facts can establish malice); and

d. His reference to a prior Virginia State Police investigation for which Plaintiff was never charged, suggesting an intent to defame Plaintiff's character, as described in paragraph 96. *See Gazette, Inc. v. Harris*, 229 Va. 1, 15, 325 S.E.2d 713, 725 (1985) (discussing use of unrelated matters as evidence of malicious intent).

214. The Criminal Justice Services Board's unanimous decision to reinstate Plaintiff's certification provides strong evidence that the statements in the decertification notification were false, as the Board specifically found that Plaintiff had "genuine mental health concerns during the period in question" and that the sick leave dispute "did not rise to the level warranting decertification," as described in paragraph 101. Virginia law recognizes that

subsequent determinations by authoritative bodies can establish the falsity of prior statements. *See Id.* at 14-15, 325 S.E.2d at 724-25 (discussing methods of establishing falsity); *Cashion*, 286 Va. at 339, 749 S.E.2d at 533-34 (noting that contradictory factual findings can establish falsity).

215. Defendant Smith's defamatory statements were published to third parties, satisfying Virginia's publication requirement, which only requires communication "to a third party so as to be heard and understood by such person." *Food Lion, Inc. v. Melton*, 250 Va. 144, 150-51, 458 S.E.2d 580, 584 (1995). The statements were published to:

a. The Virginia Department of Criminal Justice Services through the submission of an official Notification of Eligibility for Decertification on July 17, 2023, as described in paragraph 94. *See Cashion v. Smith*, 286 Va. 327, 336-37, 749 S.E.2d 526, 532 (2013) (holding that communication to a professional regulatory body constitutes actionable publication);

b. Each individual member of the Criminal Justice Services Board who received and reviewed the decertification notification as part of their official duties. *See Lindeman v. Lesnick*, 268 Va. 532, 536, 604 S.E.2d 55, 58 (2004) (confirming that multiple instances of publication can each support a defamation claim);

c. The law enforcement community in Virginia through the Central Criminal Records Exchange database, where decertification information

is recorded and made accessible to law enforcement agencies throughout the Commonwealth, significantly amplifying the harmful impact. *See Gov't Micro Res., Inc. v. Jackson*, 271 Va. 29, 42, 624 S.E.2d 63, 70 (2006) (recognizing that broader dissemination increases reputational harm); and

d. The Nelson County Sheriff's Office, which specifically declined to hire Plaintiff after receiving Brady letters from Defendant Smith containing the same defamatory statements, as referenced in paragraph 105, establishing actual damage to Plaintiff's employment prospects. *See Great Coastal Express v. Ellington*, 230 Va. 142, 152, 334 S.E.2d 846, 852 (1985) (holding that evidence of actual harm to professional opportunities strengthens defamation claims).

216. Even after the Criminal Justice Services Board reinstated Plaintiff's certification, Defendant Smith continued to distribute Brady letters to potential employers, as described in paragraphs 105-106, further publishing his defamatory statements and demonstrating a malicious intent to harm Plaintiff's professional reputation. Virginia law recognizes that repeated publication of defamatory statements after learning of their falsity constitutes strong evidence of actual malice. *See Newspaper Publ'g Corp. v. Burke*, 216 Va. 800, 805, 224 S.E.2d 132, 136 (1976) (discussing continued publication as evidence of malice); *Hatfill v. N.Y. Times Co.*, 532 F.3d 312, 325 (4th Cir. 2008) (applying Virginia law to analyze repeated publication).

217. Virginia recognizes a qualified privilege for communications made in good faith on a subject matter in which the person communicating has an interest or duty to a person with a corresponding interest or duty. *Cashion*, 286 Va. at 337, 749 S.E.2d at 532; *Larimore v. Blaylock*, 259 Va. 568, 572, 528 S.E.2d 119, 121 (2000). However, this privilege is lost when the communication is made with malice. *Se. Tidewater Opportunity Project v. Bade*, 246 Va. 273, 276, 435 S.E.2d 131, 133 (1993). Defendant Smith's actions in continuing to distribute Brady letters after the Criminal Justice Services Board's unanimous finding demonstrate that he acted with actual malice, thus defeating any qualified privilege. See *Cashion*, 286 Va. at 339, 749 S.E.2d at 534 (discussing how malice defeats qualified privilege); *Great Coastal Express*, 230 Va. at 149, 334 S.E.2d at 850 (defining actual malice as "statements made with knowledge that they are false or with reckless disregard of whether they are false or not").

218. As defamatory per se statements, these false allegations are presumed to be harmful to Plaintiff's reputation, and therefore, general damages are presumed under Virginia law. *Shupe*, 213 Va. at 376, 192 S.E.2d at 767; *Great Coastal Express*, 230 Va. at 151, 334 S.E.2d at 852 (explaining that in defamation per se cases, Virginia law presumes that damages result from the presumed harm to reputation).

219. Virginia also recognizes that the defamation occurred within the statute of limitations, as the defamatory statements were made within one year of filing this action, and Defendant Smith has engaged in a continuing pattern of

defamation through the ongoing distribution of Brady letters. See *Katz v. Odin, Feldman & Pittleman, P.C.*, 332 F. Supp. 2d 909, 917 (E.D. Va. 2004) (discussing Virginia's one-year statute of limitations for defamation); *A Soc'y Without a Name, for People without a Home, Millennium Future-Present v. Virginia*, 655 F.3d 342, 348 (4th Cir. 2011) (discussing continuing violation theories under Virginia law).

220. As a direct and proximate result of Defendant Smith's defamatory statements, Plaintiff has suffered damage to his professional reputation as a law enforcement officer, emotional distress, and other damages, including the specific loss of employment opportunity with Nelson County Sheriff's Office, as described in paragraph 105. *See Gazette, Inc.*, 229 Va. at 10-11, 325 S.E.2d at 721-22 (discussing compensatory damages in defamation cases); *Fleming*, 221 Va. at 894, 275 S.E.2d at 639 (recognizing professional reputation damages).

221. Defendant Smith's conduct in making and continuing to distribute these defamatory statements was willful, wanton, and malicious, justifying an award of punitive damages under Virginia law. *See Newspaper Publ'g Corp.*, 216 Va. at 805, 224 S.E.2d at 136 (noting that punitive damages are available in defamation cases where the defendant acted with actual malice); *Fleming*, 221 Va. at 894, 275 S.E.2d at 639 (upholding punitive damages award in defamation case); *JTH Tax, Inc.*, 8 F. Supp. 3d at 741 (discussing standards for punitive damages in Virginia defamation cases).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Dennis Blake Reynolds respectfully requests that this Court enter judgment in his favor and against Defendant and award the following relief:

222. Enter judgment in favor of Plaintiff and against Defendant on all counts;

223. Issue a declaratory judgment that Defendant's conduct violated Plaintiff's rights under the United States Constitution, the Americans with Disabilities Act, the Family and Medical Leave Act, Title VII of the Civil Rights Act of 1964, the Virginia Human Rights Act, and Virginia law governing defamation;

224. Award Plaintiff compensatory damages in an amount of FIVE MILLION DOLLARS ($5,000,000.00) or a figure to be determined at trial, including but not limited to:

a. Back pay and benefits from the date of constructive discharge (July 17, 2023) to the present, including salary, health insurance coverage, retirement contributions, and other employment benefits. *See Duke*, 928 F.2d at 1424 (discussing calculation of back pay and benefits);

b. Front pay and benefits for future lost earnings and diminished earning capacity in lieu of reinstatement, as the relationship between the parties has been irreparably damaged. *See Williams*, 137 F.3d at 951-52 (noting that front pay is appropriate "when the plaintiff's employment has been terminated and reinstatement is not a viable option"); Duke, 928 F.2d

at 1423 (recognizing front pay as an appropriate remedy "when the relationship between the parties has been so damaged by animosity" that reinstatement is impracticable);

c. Damages for emotional distress, mental anguish, and humiliation resulting from Defendant's discrimination, retaliation, harassment, and defamation. *See Fox*, 247 F.3d at 180 (upholding emotional distress damages in employment discrimination case); *Price*, 93 F.3d at 1254 (discussing recovery for emotional distress in § 1983 actions);

d. Damages for harm to professional reputation and career prospects in law enforcement. *See Sloane*, 510 F.3d at 503 (recognizing reputational harm as a compensable injury); *Fleming*, 221 Va. at 894, 275 S.E.2d at 639 (recognizing damages for harm to professional reputation);

e. Damages for violation of Plaintiff's civil rights, including his constitutional rights under the First and Fourteenth Amendments. *See Carey*, 435 U.S. at 254-55 (discussing damages available for constitutional violations); *Memphis Cmty. Sch. Dist.*, 477 U.S. at 307 (confirming compensation for constitutional violations);

f. Medical expenses incurred as a result of Defendant's conduct, including costs of treatment for exacerbation of Plaintiff's physical and mental health conditions. *See Williams*, 218 F.3d at 486 (recognizing medical expenses as compensable damages); and

g. Other compensatory damages as appropriate and supported by the evidence presented at trial. *See Westmoreland*, 924 F.3d at 727 (discussing the range of compensatory damages available in employment discrimination cases).

225. Award Plaintiff punitive damages against Defendant Smith in his individual capacity in an amount to be determined at trial, but no less than THREE HUNDRED FIFTY THOUSAND DOLLARS ($350,000.00), based on his willful, wanton, and malicious violation of Plaintiff's clearly established rights. *See Smith*, 461 U.S. at 56 (holding that punitive damages are available in § 1983 actions when a defendant's conduct involves "reckless or callous indifference to the federally protected rights of others"); *Kolstad*, 527 U.S. at 536 (confirming punitive damages availability for discrimination); *Newspaper Publ'g Corp.*, 216 Va. at 805, 224 S.E.2d at 136 (noting that punitive damages are available in defamation cases where the defendant acted with actual malice);

226. Award Plaintiff liquidated damages under the FMLA, equal to the amount of compensatory damages awarded for FMLA violations. 29 U.S.C. § 2617(a)(1)(A)(iii) (2018); *see Dotson*, 558 F.3d at 298 ("Liquidated damages are the norm under the FMLA and are awarded 'in all but very unusual circumstances.'") (citation omitted);

227. Award Plaintiff reasonable attorneys' fees and costs pursuant to:

a. 42 U.S.C. § 1988 for constitutional claims. See Hensley v. Eckerhart, 461 U.S. 424, 429 (1983) (discussing fee awards under § 1988);

b. 42 U.S.C. § 12205 for ADA claims. *See Buckhannon Bd. & Care Home v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 602 (2001) (recognizing fee-shifting provision of ADA);

c. 29 U.S.C. § 2617(a)(3) (2018) for FMLA claims. See Dotson, 558 F.3d at 298 (discussing fee awards under FMLA);

d. 42 U.S.C. § 2000e-5(k) for Title VII claims. *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 416-17 (1978) (analyzing Title VII fee provision); and

e. Va. Code Ann. § 2.2-3908 (2023) for Virginia Human Rights Act claims. *See Matney*, 2023 WL 174183, at *5 (discussing fee awards under VHRA);

228. Award pre-judgment and post-judgment interest as allowed by law. *See Quesinberry v. Life Ins. Co.*, 987 F.2d 1017, 1030 (4th Cir. 1993) (discussing standards for prejudgment interest); 28 U.S.C. § 1961 (governing post-judgment interest);

229. Enter appropriate injunctive relief, including but not limited to:

a. An order requiring Defendant to expunge any negative documentation from Plaintiff's personnel file. See Squires v. Bonser, 54 F.3d 168, 172 (3d Cir. 1995) (recognizing expungement as an appropriate equitable remedy);

b. An order requiring Defendant to provide a neutral employment reference for Plaintiff. See Shore v. Fed. Express Corp., 777 F.2d 1155, 1159 (6th Cir. 1985) (discussing neutral reference requirements as equitable relief);

c. An order requiring Defendant to cease disseminating Brady letters or other negative references to potential employers. *See Robinson*, 519 U.S. at 346 (recognizing protection against post-employment retaliation); and

d. An order requiring Defendant to submit a letter to the Virginia Department of Criminal Justice Services and all law enforcement agencies that received Brady letters acknowledging the falsity of the statements made in those communications. *See Codd*, 429 U.S. at 627-28 (discussing name-clearing remedies); *Boston*, 783 F.2d at 1166 (addressing remedies for liberty interest violations);

230. Grant such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable pursuant to Fed. R. Civ. P. 38(b).

Respectfully submitted,

_____/s_____
Elliott M. Harding, Esq.
Virginia State Bar No. 90442
Counsel for Plaintiff Dennis B. Reynolds
HARDING COUNSEL, PLLC

2805 Meadow Vista Dr.
Charlottesville, Virginia 22901
Telephone: 434-962-8465
Email: Elliott@HardingCounsel.com