IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
_____ DIVISION

Case No. _____

KEITH TAIG, individually, and on behalf of others similarly situated,	)
Plaintiffs,	)
v.	)
CITY OF VERO BEACH, CHIEF DAVID CURREY in his individual capacity, CAPTAIN KEVIN MARTIN (RETIRED) in his individual capacity, LIEUTENANT JOHN PEDERSEN in his individual capacity, DETECTIVE PHIL HUDDY in his individual capacity, DETECTIVE SEAN CROWLEY in his individual capacity, AND DETECTIVE MIKE GASBARRINI in his individual capacity,	)
Defendants.	

_____

CLASS ACTION COMPLAINT

Plaintiff/Class Representative, Keith Taig, on behalf of himself and all others similarly situated, hereby files this Class Action Complaint against the City of Vero Beach, Chief David Currey, Captain Kevin Martin (retired), Lieutenant John Pedersen, Detective Phil Huddy, Detective Sean Crowley, and Detective Mike Gasbarrini (collectively, "Defendants") and alleges as follows:

JURISDICTION AND VENUE

1. This is an action at law pursuant to 42 U.S.C. § 1983 for deprivation under color of state law of rights, privileges, and immunities secured by the Fourth Amendment of the United States Constitution.

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 28 U.S.C. §§ 1343(a)(3) and (4).

3. The Court may award attorney's fees pursuant to 42 U.S.C. § 1988(b) and should tax costs pursuant to 28 U.S.C. § 1920.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because this is the District in which all the events or omissions giving rise to Plaintiff and the class members' claims occurred; and pursuant to 28 U.S.C. §1391(c) because all Defendants reside within this District.

PARTIES

5. Plaintiff Keith Taig is an individual residing in Indian River County, Florida.

6. The City of Vero Beach ("the City") is located in Indian River County, Florida. Its police department is a law enforcement agency located within Vero Beach in Indian River County.

7. David Currey is employed as a Chief of Police by the City of Vero Beach, is over the age of eighteen (18), on information and belief is a resident of Indian River County, Florida, and is being sued in his individual capacity for knowingly violating the class members' constitutional rights. Currey is the individual (1) tasked with the ultimate responsibility of ensuring his officers are properly trained; (2) that supervised and approved of the illegal surveillance; and (3) personally identified all of the members of the class in a press conference and falsely identified them as being involved in human trafficking.

8. Kevin Martin was formerly employed as a Captain of Police by the City of Vero Beach, is over the age of eighteen (18), on information and belief is a resident of Indian River County, Florida, and is being sued in his individual capacity for knowingly violating the class members' constitutional rights. He is currently retired and previously had direct supervision and responsibility over the officers who conducted the illegal surveillance.

9. John Pedersen is employed as a Lieutenant of Police by the City of Vero Beach, is over the age of eighteen (18), on information and belief is a resident of Indian River County, Florida, and is being sued in his individual capacity for knowingly violating the class members' constitutional rights. At all times relevant to this action, Pedersen had direct supervision and responsibility for the officers who conducted the illegal surveillance.

10. Phil Huddy is employed as a Sergeant of Police by the City of Vero Beach, is over the age of eighteen (18), on information and belief is a resident of Indian River County, Florida, and is being sued in his individual capacity for knowingly violating the class members' constitutional rights. At all times relevant to this action, Huddy was a supervisor within the Detective Division with direct supervision and responsibility for the officers who conducted the illegal surveillance.

11. Sean Crowley is employed as a Detective by the City of Vero Beach, is over the age of eighteen (18), on information and belief is a resident of Indian River County, Florida, and is being sued in his individual capacity for knowingly violating the class members' constitutional rights. Crowley is the affiant responsible for the two affidavits (later referenced in this action as the "November Affidavit" and "December Affidavit") that led to the improper issuance of the surveillance order; and the improper surveillance and ultimate arrest of the class members. At all

times relevant to this action, Crowley was a co-lead detective that executed the improper investigation that led to the illegal recording of the class members in a private place.

12. Mike Gasbarrini is employed as a Detective by the City of Vero Beach, is over the age of eighteen (18), on information and belief is a resident of Indian River County, Florida, and is being sued in his individual capacity for knowingly violating the class members' constitutional rights. At all times relevant to this action, Gasbarrini was a co-lead detective that executed the improper investigation that led to the illegal recording of the class members in a private place.

CLASS ACTION ALLEGATIONS

13. Keith Taig is an adequate class representative because he, like all members of the proposed class, suffered the same injury (invasion of privacy under § 1983 and subsequent arrest and prosecution) caused by the same unlawful conduct (unconstitutional/unlawful video recording), which was committed by the same defendants, at the same location (the Spa), during approximately the same time period. Moreover, like all members of the proposed class, Mr. Taig was recorded without his permission.

14. The class is defined as customers who visited the Spa from November 29, 2018 to January 27, 2019, who were illegally video-recorded without their knowledge or consent, criminally charged, identified in the media for their wrongful charge during the referenced time period, and publicly humiliated in the media as being involved.

15. Damages would be readily ascertainable as to the effect of the unlawful and unconstitutional activity committed by the Defendants upon the members of the class.

16. Questions of law common to the class, include, without limitation, whether:

(a) Defendants deprived the class of their collective rights, privileges, or immunities secured by the Constitution of the United States and laws while acting under color of law;

(b) Defendants improperly applied for and obtained the "sneak and peek" warrants for the video surveillance recklessly or under false pretenses;

(c) The "sneak and peek" warrants issued in the investigation were unconstitutional;

(d) Whether Defendants intentionally misrepresented their investigation to the public as human trafficking, rather than solicitation of prostitution, in an effort to inflame public opinion against members of the class and subject these members to humiliation, ridicule, and scorn, effectively creating a punishment for members of the class without a hearing being conducted;

(e) Defendants violated the strict requirement of minimization contained in the warrants by failing to minimize the intrusion upon the class members' constitutionally protected right to privacy in direct violation of the trial court's order; and

(f) The class members had a reasonable expectation of privacy in the locations where they were illegally recorded.

17. Mr. Taig seeks class certification pursuant to Federal Rule of Civil Procedure 23(b)(1) because prosecuting separate actions would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Defendants. Moreover, prosecuting separate actions would create a risk of adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

18. Mr. Taig seeks class certification pursuant to Federal Rule of Civil Procedure 23(b)(3) because the questions of law and fact common to class members predominate over any questions affecting only individual members, and a class action is superior to other available methods for fairly and efficiently adjudicating this controversy. If Defendants are found liable as to one class member, including Mr. Taig, they will be liable as to all class members. Moreover, a

class action is required because, adjudicating this matter in separate actions could lead to conflicting determinations of fact and law.

19. Class action treatment is superior as it will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort and expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons with a method of obtaining redress on claims that it might not be practicable to pursue individually, substantially outweigh the difficulties, if any, that may arise in the management of this class action.

20. Defendants have acted unconstitutionally on grounds that apply to the class members.

21. Members of the class are numerous and joinder is impracticable. The number of injured class members in this action is a number closer to one hundred fifty (150).

22. The claims of Mr. Taig are typical, if not identical, to those of absent class members. All members of the class were damaged by the same wrongful conduct of Defendants.

FACTUAL BACKGROUND

23. This class action stems from an egregious constitutional violation of the class members' fundamental right to privacy guaranteed by the Fourth Amendment to the United States Constitution when they were surreptitiously monitored, and illegally recorded, and filmed by the Vero Beach Police Department ("VBPD") during their investigation for suspected prostitution, racketeering, and human trafficking activities occurring at the East Spa, located at 2345 14th Avenue, Suite 10, Vero Beach, Florida ("the Spa").

24. On or about the fourth week of August 2018, investigators from the VBPD's Special Investigations Unit ("SIU") and the United States' Department of Homeland Security

("Homeland Security") initiated its investigation into alleged prostitution activities occurring at the Spa.

25. On or about September 14, 2018 and September 18, 2018, the VBPD's SIU conducted an undercover operation and sting of the Spa. The SIU executed this by sending Detective Brock in as an undercover patron of the Spa, and equipped him with a hidden audio/video device for safety and evidentiary purposes.

26. On both occasions, Detective Brock received massages by an Asian female, believed to be Lanfen Ma ("Ma"), and on both occasions, he was approached and asked if he would like sexual favors or acts performed on him for a monetary sum. Detective Brock declined these offers on both occasions, and Detectives Gasbarrini and Crowley de-briefed Detective Brock after each encounter with Ma.

27. On September 25, 2018, Detectives Gasbarrini and Crowley and Homeland Security Investigations Special Agent McCreary ("Agent McCreary") conducted further surveillance of the exterior areas of the East Spa. During that surveillance, they spoke with two males who left the Spa about what occurred while inside the Spa. In recorded interviews, both males advised the detectives and agent that they were offered multiple sexual favors for money by an Asian woman at the Spa. The experiences of these two males were similar to that of Detective Brock's undercover visits to the Spa.

28. On October 31, 2018, VBPD and Homeland Security took further steps in its surveillance of the Spa and installed a camera on a nearby telephone pole just southwest of the Spa. The purpose of this camera was to provide twenty-four (24) hour surveillance of the exterior of the business. Detective Crowley attested that between the dates of 10/31/2018 and 11/20/18 the

surveillance revealed that women working inside the Spa slept inside the Spa and only left when in the company of Ma.

29. In his November 27, 2018 "Affidavit for Surreptitious Entry and Installation of Electronic Surveillance Camera" ("November Affidavit"), submitted to County Court Judge Cynthia Cox ("Judge Cox"), Detective Crowley indicated that he and Detective Gasbarrini conducted multiple hours of covert surveillance during the months of September and October 2018, noting that all customers observed during that time were male. Despite the VBPD's two documented undercover operations, Detective Crowley asserted that "without the use of electronic surveillance the entire prostitution organization will not be able to be identified or prosecuted." A copy of the November Affidavit is attached hereto as **"Exhibit A"**.

30. Detective Crowley further indicated that he conducted trash pulls on the following dates: 10/8/18, 10/9/18, 10/10/18, 10/15/18, and 10/17/18. Those trash pulls revealed, *inter alia*, condoms, napkins or tissues with seminal fluid on them, packaging for a sex toy, and feminine hygiene products. The VBPD collected photos of these objects from those trash pulls and included them in the November Affidavit.

31. In the November Affidavit, Detective Crowley attested that he believed a prostitution organization was being operated at the premises based on the statements of the customers, the volume of male customers, short-term traffic, the items found in the trash pulls, undercover operations, and intelligence gathered from the surveillance.

32. Despite the various observations and surveillance conducted and outlined in the November Affidavit, Detective Crowley requested further authorization to enter the Spa to conduct covert electronic video surveillance of the interior of the Spa to identify participants believed to be a part of the "criminal enterprise" or deriving funds from the proceeds of any prostitution

activities. There was no indication that the intent was also to gather evidence so as to prosecute the actual customers of the Spa, including the Plaintiff's class.

33. On November 27, 2018, Judge Cox issued an "Order for Surreptitious Entry and Installation of Electronic Surveillance Camera" ("November Order" or "November Warrant"), which afforded VBPD the ability to enter the Spa and install surveillance cameras for the purpose of monitoring the premises "for a period no longer than 30 days." The November Order further required that officers were to take steps minimizing the invasion of privacy "to any parties not engaged in the unlawful acts set forth in the affidavit." This Order also required that the Defendants report back to the Court within ten days and provide an inventory. The Order specifically did not permit recording and only allowed monitoring. A copy of the November Order is attached hereto as **"Exhibit B"**.

34. On November 29, 2018, VBPD and Homeland Security installed cameras, without audio capability, within the Spa. Notably, cameras were installed where customers had a known expectation of privacy and where video surveillance is precluded by Florida statute.

35. Despite specifically being instructed to only monitor and not record, the detectives knowingly allowed the surveillance system to record 24 hours a day, 7 days a week for 60 days.

36. The acts that were observed via the installed surveillance system served as the premise for the next December 28, 2018 "Affidavit for Surreptitious Entry and Installation of Electronic Surveillance Camera" ("December Affidavit"), sworn and subscribed to by Detective Crowley, which was submitted to County Court Judge Paul B. Kanarek ("Judge Kanarek") despite the fact that the required return of service was never submitted for the first warrant. A copy of the December Affidavit is attached hereto as **"Exhibit C"**.

37. Between the dates of 11/29/18 and 12/27/18, Detective Crowley observed approximately one hundred (100) sex acts for money, therefore making this second 30-day video surveillance/recording period unnecessary.

38. On 12/06/18 and 12/22/18, tracking devices were installed on vehicles believed to transport "women participating in the criminal enterprise and funds used to contribute to the criminal enterprise or derived from the enterprise".

39. Despite observing multiple sex acts for money and the monitoring and tracking of the vehicles used to transport the females believed to be participating in the criminal enterprise at the Spa, Detective Crowley pursuant to a sworn affidavit improperly requested additional authorization to conduct an additional thirty (30) days of video surveillance at the Spa.

40. In the December Affidavit, Detective Crowley attested that there was probable cause to believe that the Spa "is being utilized to operate a prostitution and racketeering organization and/or derive support from the proceeds of prostitution".

41. On December 28, 2018, Judge Kanarek issued an "Order for Surreptitious Entry and Installation of Electronic Surveillance Camera" ("December Order" or "December Warrant") which again afforded VPBD the ability to enter the Spa and install surveillance cameras for the purpose of monitoring the premises "for a period no longer than 30 days". Similar to the prior November Order issued previously by Judge Cox, this December Order provided that officers were to take steps minimizing the invasion of privacy. Additionally, as in the prior November Order, the December Order did not authorize any recording. A copy of the December Order is attached hereto as **"Exhibit D"**.

42. In the wake of these various improper video-surveillance activities, warrants were sought for the class members' arrests for the charges of, *inter alia*, solicitation of prostitution pursuant to section 796.07, Fla. Stat.

43. Aside from seeking warrants, the VBPD also held a press conference on February 19, 2019, that lasted approximately one hour, in which the VBPD, not only named the class members subject to their investigation, but publicly made available the class members' photos as well, while wrongfully claiming they were involved in suspected human trafficking.

44. At the state trial court level, the class members moved to suppress the surveillance evidence gathered and obtained pursuant to Judge Cox's November Order and Judge Kanarek's December Order.

45. On April 23, 2019, County Court Judge Nicole P. Menz ("Judge Menz") heard arguments from the State of Florida and defense counsel for the class members on the issue of whether the surveillance evidence gathered and obtained pursuant to Judge Cox's November Order and Judge Kanarek's December Order were improperly obtained in a manner which violated the Fourth

Amendment of the United States Constitution and should be suppressed as an unreasonable search and seizure.

46. At that hearing, Detective Crowley testified that:

(a) The whole investigation was initiated when VBPD Chief, David Currey, alerted Detectives Crowley and Gasbarrini to anonymous citizen complaints made in reference to the Spa.

(b) He and Detective Gasbarrini initially conducted surveillance at the Spa location.

(c) Both he and Detective Gasbarrini were supervised by Detective Sergeant Huddy and Detective Lieutenant Pedersen.

(d) Prior to the arrests of the Plaintiff and his class, he had never made any prostitution arrest.

(e) "[W]e had to watch the entire massage to see if [the sex act] was going to take place."

(f) His interpretation of the minimization requirement meant that if he did not monitor the surveillance activities 24/7 for 60 days, as he was authorized, then he believed he was minimizing the surveillance.

(g) The VBPD knew it was a possibility that people would become nude in the massage room.

(h) Aside from the video surveillance at the Spa in which he was involved, Detective Eder, who was also involved in the operation, went into the business next door to the Spa, began listening through the walls, and audio-recorded it—none of which was authorized by Judges Cox or Kanarek.

(i) The VBPD did not report back to the judges with their findings from the investigation within a ten-day time period, as required by the November and December Orders.

47. The evidence presented at the Motion to Suppress hearing indicated the improper manner of the video surveillance that was carried out by the detectives responsible for the monitoring of the cameras at East Spa.

48. Each and every camera installed at the spa recorded all activity in the spa for 24 hours a day 7 days a week for 60 straight days regardless of whether anyone in law enforcement was actually monitoring the recordings.

49. Moreover, the cameras recorded when law enforcement decided to take a day off and not monitor any activity at the Spa.

50. There was no effort at all on the part of law enforcement to minimize the 60 days' worth of recordings, and law enforcement kept those recordings stored on a server at the VBPD.

51. Although the Orders contained express instructions to minimize and only allowed monitoring, it was apparent at the hearing that the VBPD violated those express instructions and chose to record instead of monitor and took no actions to minimize those recordings.

52. Specifically, at that hearing, Mr. Andrew Metcalf, Esq. (defense counsel) and Detective Crowley exchanged the following regarding minimization:

> 10 Q The Judge called -- you asked for the Judge to
> 11 specifically require you guys to take steps to minimize the
> 12 invasion of privacy to any parties not participating in
> 13 criminal conduct?
> 14 A Yes, sir.
> 15 Q That was put in the order?
> 16 A Yes.
> 17 Q That was asterisked and highlighted? There was an
> 18 asterisk put there by Judge Cox. Correct?
> 19 A Yes, sir.

(Hr. Tr. p. 67, ll. 10-19). A copy of the transcript of the April 23, 2019 motion to suppress hearing before Judge Nicole P. Menz is attached hereto as **"Exhibit E"**.

53. On May 16, 2019, Judge Menz issued an "Order Granting Defendant's Motion to Suppress" ("Order Granting Suppression"), explaining that the Motion to Suppress must be granted due to a "fatal flaw" in the manner in which the Orders permitting the surveillance were obtained; improper manner in which the Surveillance Orders were drafted and signed; as well as the manner in which Judge Cox's November Order and Judge Kanarek's December Order by the

representatives of the VBPD included as defendants herein was conducted. A copy of this Order Granting Suppression is attached hereto as **"Exhibit F"**.

54. In the Order Granting Suppression, Judge Menz addressed whether the Plaintiff and members of his class had a legitimate expectation of privacy in the massage room of the Spa and whether that expectation was reasonable. Judge Menz opined, "Clearly anyone seeking a massage in a professional setting has a reasonable subjective expectation of privacy. . . . it is the opinion of this Court that there is a reasonable expectation of privacy in a massage room and therefore the defendant had a legitimate expectation of privacy that is protected by the Fourth Amendment to the United States Constitution."

55. In that same Order Granting Suppression, Judge Menz addressed law enforcement's "disregard of the duties" to minimize the invasion of privacy of those not engaged in the unlawful acts, which as Judge Menz noted was "in direct violation of the Order signed by Judge Cox on November 27, 2018 and the Order signed by Judge Kanarek on December 28, 2018."

56. Specifically, Judge Menz detailed that the evidence presented at the suppression hearing indicated that detectives responsible for the monitoring of the cameras at the Spa recorded all activity in the Spa for 24 hours a day, 7 days a week, for 60 straight days – even on days when law enforcement decided to "take a day off." In the Order Granting Suppression, Judge Menz concluded that "[t]here is no doubt that this total lack of minimization is anything other than a violation which requires the suppression of all video evidence. . . . Video surveillance is the most intrusive form of surveillance utilized by the government to investigate crime. As such, it is incumbent upon the government that the rights of private law abiding citizens are not infringed upon during that surveillance."

57. Aside from the investigation of the activities occurring at the Spa named in this action, the State of Florida ("the State") had conducted investigations of other massage parlors located in Indian River, Martin, and Palm Beach counties using similar, if not identical, tactics as those used by the VBPD. Like Judge Menz, the trial court judges in the aforementioned counties entered orders suppressing the video surveillance conducted by the law enforcement officials in those jurisdictions.

58. The State thereafter appealed all of the trial court orders granting motions to suppress non-audio video surveillance that was recorded with hidden cameras covertly installed inside massage parlors suspected of housing prostitution activity.

59. On appeal, the Fourth District Court of Appeal consolidated all appellate issues emanating from the State's investigation of spas located in Indian River, Martin, and Palm Beach counties. These appeals were titled: *State v. Kraft*, 4D19-1499, *State v. Freels*, 4D19-1655, and *State v. Zhang*, 4D19-2024. The *State v. Freels* case involved the Order Granting Suppression that is applicable to the VBPD's investigation of the Spa.

60. The appellate court ultimately found that the trial courts in all of the jurisdictions properly concluded that the criminal defendants had standing to challenge the video surveillance and that total suppression of the video recordings was constitutionally warranted. A copy of this Opinion is attached hereto as "**Exhibit G"**.

61. For purposes of this class action, the Fourth District Court of Appeal's holding and reasoning concerning the VBPD's investigation in *State v. Freels* is the most relevant portion of the Opinion.

62. In *State v. Freels*, the county court had certified the following four questions of great public importance to the Fourth District Court of Appeal:

(a) Did the Defendant have a legitimate expectation of privacy such that he is entitled to claim the protection of the Fourth Amendment? and,

(b) Did the issuing Court have authority under the Fourth Amendment to authorize a Video Surveillance Warrant? and,

(c) If the issuing Court had the power to authorize a Video Surveillance Warrant, does the Video Surveillance Warrant issued in this case satisfy Fourth Amendment requirements? and,

(d) If the issuing Court had the power to authorize a Video Surveillance Warrant and the Warrant satisfied Fourth Amendment requirements, was the Video Surveillance Warrant executed in a manner sufficient to satisfy Fourth Amendment requirements?

63. The appellate court accepted jurisdiction to address these questions and discuss in detail the VBPD's undercover investigation of alleged prostitution activities occurring at the Spa.

64. There, the appellate court noted the following significant details:

(a) VBPD officials installed hidden cameras and used them to monitor and record spa customers as they undressed and received massages in private massage rooms;

(b) For the first twenty days, two detectives monitored the video feeds from 8 a.m. to 11 p.m., but after this fifteen-hour period, the cameras continually recorded and were unattended for the full 30 days;

(c) The police observed nearly 100 sex acts during this period;

(d) The co-lead detective in that investigation applied for an extension of the 30-day surveillance period, noting that police had witnessed the counting of large sums of money and women being transported to and from the spa;

(e) The judge approved the warrant and granted the extension, again instructing the VBPD to minimize the intrusion on lawful activity. Detectives monitored the feed only for an additional 10 days, but the cameras ran and recorded until the expiration of the period specified in the second warrant;

(f) In total, the VBPD monitored the video feeds for 30 out of the 60 possible days;

(g) Most of the prostitution activities occurred at the end of the massage or the beginning, which, as the Fourth District Court of Appeal noted "complicated efforts to minimize because, if the detectives did not monitor

the beginning of the massages, they may have missed an act of prostitution."; and

(h) After the video surveillance was conducted, numerous defendants were charged with misdemeanor counts of solicitation of prostitution, and the county court suppressed the videos, concluding that the police failed to minimize the intrusion on the privacy of individuals not engaged in unlawful activity and noting that the police monitored the feeds only 50% of the allowed time while the camera recorded for the entire 60 days.

65. The appellate court began its analysis with the Fourth Amendment's prohibition on unreasonable searches, which protects individual privacy against certain types of government intrusion.

66. In its analysis, the appellate court reasoned that the spa-client defendants in all of these cases had a subjective and objectively reasonable expectation of privacy in the massage parlor rooms because the surveillance took place in a professional private setting where clients are expected to partially or fully disrobe. Moreover, the appellate court reasoned the spa owners and their employees had a reasonable right to expect that the interactions with nude or partially nude clients in the massage rooms would not be exposed to the public.

67. Although the State argued that most of the customers who were recorded and monitored engaged in unlawful activity could not rely on Fourth Amendment rights, the appellate court rejected the "state's circular argument that the defendants lacked a privacy interest because they were engaging in criminal behavior", reasoning that "as case law shows us, Fourth Amendment rights are nearly always safeguarded by those who are criminally prosecuted."

68. After the appellate court concluded that the defendants had standing to challenge the search, it next considered whether minimization requirements were applicable to the surveillance utilized in the undercover investigations and whether those requirements were properly defined or applied in the affidavits submitted by VBPD.

69. Because the Fourth Amendment does not expressly reference the term "minimization", the State maintained to the appellate court that the existing probable cause and particularity requirements of the Warrant Clause amply safeguard protected privacy interests. However, the appellate court also rejected this argument, pointing the State to "many years of clear federal jurisprudence on this issue."

70. Specifically, the appellate court cited to *U.S. v. Mesa-Rincon*, 911 F.2d 1433 (10th Cir. 1990), which states five requirements for video surveillance that define more specifically the probable cause and particularity requirements of the Fourth Amendment, including a minimization requirement ("the order is specifically precise so as to minimize the recording of activities not related to the crimes under investigation.").

71. The appellate court declared that "[t]he act of video surveillance itself is perhaps the most intrusive form of electronic law enforcement spying," and, as support, cited to *Mesa-Rincon*'s analogy that "Television surveillance is identical in its indiscriminate character to wiretapping and bugging. [However], [i]t is even more invasive of privacy, just as a strip search is more invasive than a pat-down search . . ."

72. The appellate court concluded that the warrants failed to contain sufficient minimization guidelines and that the police did not sufficiently minimize the video recording of those with no connection to the ongoing spa investigation. In stark comparison, the detectives in Jupiter monitored the video feeds only during business hours and three detectives monitored and recorded video from the hidden cameras over five days.

73. Specifically, the appellate court noted that law enforcement failed to "take the most reasonable, basic, and obvious minimization technique, which was simply to not monitor or record female spa clients."

74. The Fourth District Court of Appeal even went so far as to specifically state that of all the cases it was considering in the appeals, the VBPD's investigation as the "most egregious example" of failure to minimize because their cameras recorded continuously (24 hours a day/7 days a week) for 60 days.

75. Having found no minimization employed in the surveillance used for the Spa, the Court next considered whether application of the exclusionary rule to bar evidence obtained in an illegal search and seizure was proper in light of the good faith exception set forth under *U.S. v. Leon*, 468 U.S. 897 (1984).

76. Under *Leon*, the appellate court acknowledged that the test is whether a reasonably well-trained officer would have known that the search was illegal despite the magistrate's authorization.

77. Although the State argued that the good faith exception applied, the appellate court again rejected the State's argument, reasoning that the warrant applications themselves cited *Mesa-Rincon*.

78. In its conclusion, the Fourth District Court of Appeal upheld the trial court orders suppressing unconstitutionally captured footage, commenting that the "type of law enforcement surveillance utilized in these cases is extreme."

79. In the wake of the Fourth District Court of Appeal's opinion, the class members that were subject to the VBPD investigation and who were charged now bring a civil suit seeking to deter future violations of this type of misconduct.

80. The Defendants' actions which exhibited an intentional and blatant disregard of the rights provided by the Fourth Amendment to the United States Constitution deprives them of the right to claim that they are protected by the concept of qualified immunity since they could not

have reasonably believed or concluded that their actions were constitutionally permissible. As reiterated, *supra*, these actions of the Defendants include, but are not limited, to the following:

(a) The November Affidavit, prepared by Detective Crowley, that the surveillance would be "conducted in such a way as to minimize the visual surveillance . . .", yet there was a complete failure of minimization.

(b) The November Affidavit requested that "…the Court Order [the Warrant] direct that video surveillance must immediately terminate when it is determined that the video surveillance is unrelated to this investigation", yet video surveillance unrelated to the investigation did take place.

(c) The November Order specifically required and emphasized that "While monitoring the premises to be searched, the executing officers shall take steps to minimize the invasion of privacy to any parties not engaged in the unlawful acts set forth in the affidavit." Despite this requirement in the November Order, there was no minimization.

(d) The November Order further required that an "original of this warrant, together with the original inventory shall be returned and filed with the Judge in and for Indian River County, or before any Court having jurisdiction as stated above within ten (10) days of the date of the issuance of this warrant." But, there was no return of the original of the warrant or an original inventory.

(e) The December Affidavit again provided that the surveillance would be conducted in such a way as to minimize the visual surveillance, yet there was no minimization.

(f) The December Affidavit again provided that surveillance "…must immediately terminate when it is determined that the video surveillance is unrelated to this investigation", yet this required termination did not take place.

(g) The December Order also required that minimization take place, but, again, there was no minimization.

(h) The December Order again required the warrant together with the original inventory shall be returned within ten (10) days of the issuance of the warrant, yet no return was made.

(i) The December Order required that the surveillance cameras be monitored for a period of no longer than thirty (30) days, yet after only ten (10) days, the VBPD abandoned the surveillance operation and kept the monitors

running for the full thirty (30) days with absolutely no monitoring or minimization.

(j) Detective Crowley admitted at the April 23, 2019 hearing before Judge Nicole P. Menz on the Motion to Suppress that he knew the difference between "monitoring" and "recording" and that the Orders permitting visual surveillance did not state that there could be recording.

(k) At all times material hereto, Detective Crowley was always aware of the concept of minimization, as evidenced by the fact that he admitted at the suppression hearing that it was he that requested the Judge to require the steps to be taken to minimize the invasion of privacy of individuals not engaged in criminal activity.

(l) At the suppression hearing, Detective Crowley admitted that, to his knowledge, only two predicate acts were required to show racketeering, but the VBPD actually observed one hundred (100) in the first thirty (30) days. In fact, he admitted that so many acts had been observed that he met with the Indian County State Attorney's Office and a joint decision was made to terminate the surveillance permitted by the December Order prior to the end of the 30-day period. Yet, despite this fact, the cameras and recording continued for the full period.

(m) Further, the Fourth District Court of Appeal explicitly provided that the VBPD's surveillance was the most egregious because they recorded continuously for sixty (60) days, and considering their blatant disregard/ignorance of decades-old federal law (such as *Mesa-Rincon*) setting out the requirements for obtaining a warrant to conduct secret video surveillance in private locations, did not act in good faith with respect to minimization.

81. Mr. Taig has retained undersigned counsel to represent him and the class members in this action to vindicate their rights.

82. All conditions and requirements to bringing this action have been satisfied.

Count I – 42 U.S.C. § 1983 (Fourth Amendment Violation – Search and Seizure)

83. Plaintiff incorporates paragraphs 1 through 82 as though fully set forth herein.

84. Plaintiff and the class members had a reasonable expectation of privacy when they were at the Spa, including while in private rooms located on private property at the Spa.

85. The Defendants' actions, including their monitoring and recording of the Plaintiff and the class members' conduct while in a private room located on private property, deprived Plaintiff and the class members of their rights, privileges, and immunities secured and guaranteed by the Fourth Amendment to the United States Constitution.

86. Specifically, and among other things, Defendants' actions: (1) violated Plaintiff and the class members' right to be free from unreasonable search and seizure; (2) violated Plaintiff and the class members' right to procedural due process; and (3) violated Plaintiff and the class members' constitutional right to privacy.

87. In doing so, the Defendants acted willfully, maliciously, and in violation of law, established practices, and their duties.

88. As a result, Plaintiff and the class members suffered and continue to suffer invasion of their privacy, embarrassment, emotional distress, loss of business opportunities, and substantial expenses—including legal fees and court costs—in vindicating their rights.

89. The Defendants improperly and maliciously deprived the plaintiff and members of the class of control over their privacy, person, and dignity.

90. The Defendants knew that minimization should have been employed by them at the time of surveillance, and as required by Judge Cox in her November Order and by Judge Kanarek in his December Order, but Defendants willfully and blatantly disregarded any attempts to minimize an intrusion of privacy by choosing to continuously record the activities of those within the private massage parlor.

91. As a direct result, footage of Plaintiff and the class members' activities within the private massage parlor have been obtained, seized, recorded, and re-watched without their

knowledge or consent. This footage constitutes a gross invasion of privacy because Plaintiff and the class members were illegally recorded by the VBPD, instead of being monitored.

92. Further, as a result of the improper actions of the Defendants, Plaintiff and the class members were improperly charged with the crime of engaging in prostitution, charges which were ultimately withdrawn.

93. Plaintiff and the class members have also been fearful that videos of them engaging in sex acts are in danger of being broadcast online and republished *ad infinitum* causing further irrevocable and permanent damages to them.

Count II – 42 U.S.C. § 1983
(Fourth Amendment Violation – Lack of Proper Supervision and Training)

94. Plaintiff incorporates paragraphs 1 through 82 as though fully set forth herein.

95. The VBPD, while acting under color of state law and under the guise of investigating alleged human trafficking, did intentionally, willfully, and maliciously, with deliberate indifference, and/or reckless disregard for the natural and probable consequences of their actions, illegally record the class members while those members were located in a private massage room located on private property.

96. These actions were done in direct violation of the trial court's November and December Orders, which directed the VBPD, *inter alia*, "to monitor [the] surveillance cameras for a period of no longer than 30 days, and forthwith make return of your doings upon executing this warrant, which you are commanded to execute as the law directs within ten days from the date thereof."

97. Instead, the VBPD continuously recorded for sixty (60) days and made no return of their doings within the specified ten (10) days' time frame.

98. The trial court's November and December Orders further provided that "the executing officers shall take steps to minimize the invasion of privacy".

99. However, the continuous and gratuitous recording of all activities of those who visited the Spa indicate that the VBPD acted with no sense of minimization and with disregard for the privacy of anyone entering the Spa's private massage rooms.

100. The trial court's November and December Orders had further provided that the "original of this warrant, together with the original inventory shall be returned and filed with the Judge in and for Indian River County, or before any Court having jurisdiction as stated above within ten days of the date of issuance of this warrant."

101. However, the original of the warrant and the original inventory was never returned and filed with the trial court judges within the specified ten (10) days' time frame.

102. Aside from the express instructions/directions set forth by the trial court judges in their Orders, the VBPD is also governed by General Orders that address various subject matter law enforcement must be trained on.

103. Specifically, VBPD's General Order #28, which governs conduct, duties, and responsibilities of VBPD law enforcement, provides that "All members shall perform their duties as required or directed by law, department policy, or by order of a superior officer." A copy of General Order #28 is attached hereto as **"Exhibit H"**.

104. Despite being well aware of General Order #28, VBPD chose not to perform their duties as directed, required, and set forth by Judge Cox in the November Order and Judge Kanarek in the December Order.

105. Moreover, VBPD's General Order #57, which governs search warrants, provides that "The original search warrant together with the original affidavit and original inventory and

Return must be filed with the Clerk of Court having jurisdiction of the offense. This should be done within ten (10) days after issuance, or if the search was on the 10th day, then the day following. . . . The affiant will return the search warrant to the Clerk of Court as prescribed by Florida law." A copy of General Order #57 is attached hereto as **"Exhibit I"**.

106. Despite being well aware of General Order #57, the VBPD chose not to return the original affidavit and original inventory nor file the Return with the Clerk of Court.

107. Despite being well aware of General Order #57, the VBPD chose not to return the search warrant to the Clerk of Court as prescribed by Florida law.

108. Had the City properly trained their law enforcement officers (VBPD) to follow direct Court orders, as well as procedures outlined in their own General Orders, they would not have violated Plaintiff and the class members' Fourth Amendment rights.

109. Moreover, had the named individual Defendants in this action properly supervised the officers conducting the investigation and ensured their compliance with existing court orders and departmental rules and regulations, they would not have violated Plaintiff and the class members' Fourth Amendment rights.

110. Accordingly, the Defendants' overall failure to properly supervise and train the officers conducting the investigation was the direct and proximate cause of Plaintiff and the class members' injuries.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that

(a) The Court determine that this action may be maintained as a class action pursuant to Federal Rules of Civil Procedure 23(b)(1) and (3);

(b) The Court award Plaintiff and the class members compensatory and punitive damages against Defendants, including prejudgment interest, in an amount to be determined at trial;

(c) The Plaintiff and the class members recover their costs of this suit, including reasonable attorneys' fees, as provided by the law; and

(d) The Court grant the Plaintiff and the class members such relief as the nature of the case may require or as may be deemed just and proper by this Court.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby requests a trial by jury on all issues so triable.

Respectfully submitted,

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