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**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

CITY OF CAPE CORAL,

Petitioner,

v.

JENNIFER GERNAND,

Respondent.

CIVIL ACTION

Case No. 17-1225

Judge: John D. C. Newton, II

**RESPONDENT’S RESPONSE TO PETITIONER’S MOTION FOR PROTECTIVE
ORDER, MOTION TO STRIKE DISCOVERY REQUEST AND MOTION FOR
EXPEDITED TELEPHONIC CONFERENCE**

NOW COMES the Respondent, **JENNIFER GERNAND** (“Respondent”), by and through undersigned counsel, and files this Response to Petitioner’s Motion for Protective Order, Motion to Strike Discovery Request¹ and Motion for Expedited Telephonic Conference,² and states as follows:

INTRODUCTION

In order to fully understand the discovery dispute raised by the Petitioner, it is necessary to understand some of the relevant facts as this is a classic case of retaliation under Florida’s Public Whistleblower’s Act (PWA). The Petitioner, City of Cape Coral, employed the Respondent, Jennifer Gernand, as a risk management analyst. With one isolated exception discussed below, the Respondent consistently received excellent performance reviews. During the course of Ms. Gernand’s employment, she became aware of what appeared to be widespread worker’s

¹ A discovery request is not a pleading under [Fla. R. Civ. P. 1.140\(f\)](#). A motion to strike must be directed towards a pleading or a portion thereof. Because a request for production is not a pleading, a motion to strike is inappropriate.

² The Respondent does not oppose this requested relief but does not believe a telephone hearing is necessary to dispose of the Petitioner’s Motion(s).

compensation insurance fraud, which stemmed from her observation that several employees in the Petitioner's police department who were off work due to a worker's compensation injury were not only receiving the statutorily afforded 66.7% wages but were then receiving an additional 100% pay check, which resulted in the employees receiving 167% of their usual wage, a gross overpayment. The Respondent also noticed that her supervisor was sending just about every employee with a work-related injury to a Dr. Kagan, who would then order a multitude of expensive and unnecessary tests and procedures.

In October 2014, the Respondent reported her concerns to her supervisor, Mr. Michael Quigley. After Mr. Quigley failed to take any remedial action, the Respondent again complained to him in January 2015. However, by April 2015, Mr. Quigley had still done nothing and the Respondent again complained to him. However, just one day later, Mr. Quigley drafted and presented the Respondent with a "performance improvement plan" and an unscheduled, negative performance review. Mr. Quigley communicated to the Respondent that she had 90-days to improve or else she would be terminated. In response, the Respondent informed Mr. Quigley that this was retaliation because she complained of insurance fraud and that if he did not stop retaliating she would have to take appropriate action. When Quigley refused to rescind the retaliatory performance improvement plan and performance review, the Respondent approached the Petitioner's Director of Finance, Ms. Victoria Bateman, with her concerns of both retaliation and insurance fraud. Ms. Bateman ordered the retaliatory performance improvement plan and performance review rescinded and further ordered the Respondent to fully investigate the insurance fraud. Facing an impending investigation, Mr. Quigley then abruptly resigned.

From April 2015 through November 2015, the Respondent conducted and participated in several investigations, including those conducted by the Cape Coral Police Department and FCI

Investigations (on orders from the Petitioner's City Attorney's Office) and the Florida Division of Insurance Fraud. The City Attorney's Office was intimately involved in these investigations. For example, on June 23, 2015, City Attorney Dolores Menendez was specifically involved in a meeting to discuss the Respondent's insurance fraud allegations. On or about July 8, 2015, the City Attorney's Office approved the hiring of FCI Investigations

On August 13, 2015, FCI Investigations contacted the Florida Division of Insurance Fraud to report suspected criminal activity by Mr. Quigley. The Respondent had other matters pending with the Florida Division of Insurance Fraud and had a meeting scheduled on September 3, 2015 to discuss them. However, during that meeting, the Florida Division of Insurance Fraud investigators also asked the Respondent about matters pertaining to the investigation of Mr. Quigley. Thereafter, Ms. Bateman asked the Respondent if she set up the meeting to discuss Mr. Quigley, to which the Respondent truthfully responded in the negative as the meeting was set up to discuss other matters and the Florida Division of Insurance Fraud wanted to also discuss Mr. Quigley.

On October 6, 2015, months after the City of Cape Coral Police Department's investigation was completed, Chief Bart Connelly sent email correspondence to Ms. Gail Roberts and Ms. Dolores Menendez providing an advanced copy of his report. On October 8, 2015, City Attorney Dolores Menendez sent email correspondence to Ms. Bateman specifically requesting any audio recordings of interviews of the Respondent.

On October 22, 2015, Assistant City Attorney Gail Roberts sent email correspondence to City Attorney Dolores Menendez that included a proposed "Scope of Work Statement" for an investigation to be performed by the law firm of Constangy, Brooks, Smith & Prophete LLP ("Constangy"). Importantly, Constangy is a law firm that has "represented management

exclusively since 1946.”³ Constangy is not an independent law firm and does not pretend to be. As they represent on their website as a reason that employers should hire them, “[e]mployment litigation is one of the few areas where an **employer’s motivation is on trial**.” (Emphasis in original). Constangy also serves its clients because, as they put it, “[w]e understand how to build the employer’s defense to demonstrate, not only technical legal compliance, but also that the employer treated the plaintiff fairly.”

In the Scope of Work Statement for Constangy, Ms. Roberts writes “[d]uring these [prior] investigations, potential employee(s) misconduct and possible criminal activity was found.” Ms. Roberts then specifically identified the Respondent as being a target of the Constangy investigation, writing that the very first thing Constangy was to do was to “[i]nvestigate potential violations of Cape Coral Rules and Regulations by City Employees, including but not limited to, Risk Generalist Jennifer Gernand.” The *only* employee identified by the Petitioner in the Scope of Work was the Respondent. Ms. Menendez adopted the Scope of Work Statement and forwarded it to Constangy. At no time did the Petitioner advise the Respondent she was a target for discipline and thus her Weingarten rights were plainly violated. Throughout Constangy’s purported investigation, the Petitioner’s City Attorney’s Office was intimately involved in providing information and corresponding with Constangy. In fact, on November 19 or 20, 2015, Constangy conducted a witness interview of City Attorney Ms. Dolores Menendez. On November 20, 2015, Ms. Bateman sent the following email correspondence to the Constangy attorney that interviewed her:

“...Today, a lot of the questions seemed to be around Jennifer Gernand and that she had a grudge against Mike Quigley. You asked why I let her be involved. You should understand why I asked her a lot of questions – she may have had a grudge, but everything she was providing to me was factual and we did make

³ See <http://www.constangy.com/firm>

overpayments – among many other things that were not right or ethical. I didn't care she had a grudge as I was presented with information, checked and validated that information myself and found many issues and abuse of worker's compensation. I wanted the truth. The other focus seemed to be that Jennifer worked previously with Justin G. When I learned of this, it didn't matter to me as neither she nor I were going to do the investigation and David Roos [City's outside worker's compensation counsel] was making the decision – only a referral was made to David. Just because someone worked with someone in the past doesn't raise red flags to me..."

On February 2, 2016, Constangy released its report. In it, Constangy found that the Respondent (1) "blackmailed" Mr. Quigley by stating that if he did not stop retaliating that she would "do what she felt is appropriate,"⁴ (2) she disobeyed orders not to become involved in the selection of the auditor despite being explicitly directed by her supervisor to provide such a referral, and (3) she lied to her supervisor as to why she attended the September 3, 2015 meeting with the Florida Division of Insurance Fraud.

From February 2, 2016 through June 29, 2016, the Petitioner kept the Respondent fully employed and at no time prior to June 29, 2016 did the Petitioner place the Respondent on any kind of administrative leave. On February 2, 2017, the Petitioner effectuated the termination of the Respondent. The lengthy amount of time between the alleged misdeeds by the Respondent and the Petitioner actually terminating her are more than suspicious. For example, the time between alleged "blackmail" and her being placed on administrative leave is a whopping 14.5 months. Similarly, the time between the alleged "lying" to her supervisor about the September 3, 2015 meeting and her being placed on administrative leave is nearly 10 full months. And the time between the Constangy report's release and the Respondent being placed on administrative leave is nearly 5 full months.

⁴ There is no record that Mr. Quigley ever complained of or even intimated that he felt "blackmailed."

Oddly, discovery in this matter has revealed that the Petitioner's City Attorney's Office has been trying to go back and substantiate its case against the Respondent *after* it served her the pre-disciplinary notice on June 29, 2016. On August 24, 2016, the City Attorney's Office began making public records requests to the Florida Division of Insurance Fraud regarding the Respondent's September 3, 2015 meeting so, as Assistant City Attorney Gail Roberts put it, "I can keep our file complete." On September 23, 2016, the City Attorney's Office received from Constangy a draft "second" pre-disciplinary notice that was to defend "the actual claim made by Jennifer at the [pre-disciplinary] conference." On September 26, 2016, Ms. Roberts asked City Attorney Dolores Menendez whether a decision has been made regarding a second pre-disciplinary notice to the Respondent. Interestingly, Ms. Menendez responds on September 27, 2016 that they are to wait until a transcript arrives but that there should be no further communications made by email. On October 11, 2016, Ms. Roberts agreed to then set up a meeting between herself, Ms. Menendez, the assistant City Manager and Constangy attorneys regarding the Respondent.

As discussed below, all the Respondent had done was report possible insurance fraud, conduct an investigation into the same on orders from Ms. Bateman and cooperate in several investigations into insurance fraud. As a result of the Respondent's actions, the City of Cape Coral taxpayers have been saved millions of dollars. Notwithstanding the same, the Petitioner persists in its pursuit of terminating the Respondent in violation of the PWA.

FLORIDA'S PUBLIC WHISTLEBLOWER ACT

To put the discovery requests into their proper context, it is necessary to discuss the governing legal standard. As discussed above, it is the Respondent's position that she was terminated as a result of her statutorily protected disclosures and participation into an

investigation. The PWA protects public employees "who disclose information on their own initiative in a written and signed complaint," or "who are requested to participate in an investigation." [Fla. Stat. § 112.3187\(7\)](#).⁵ Retaliation claims under the PWA require proof (1) that the employee engaged in statutorily protected activity; (2) that the employee suffered an adverse employment action; and (3) that a causal connection exists between the protected activity and the adverse action. See *Wagner v. Lee Cnty.*, [2017 U.S. App. LEXIS 1900, *17, 2017 WL 456430 \(11th Cir. Fla. Feb. 2, 2017\)](#). Public employee whistle-blower claims are analyzed under the familiar burden-shifting framework applicable in Title VII cases. See *id.* (citing *McDonnell Douglas Corp. v. Green*, [411 U.S. 792, 801-805 \(1973\)](#)); see also *Rustowicz v. N. Broward Hosp. Dist.*, [174 So. 3d 414, 419 \(Fla. 4th DCA 2015\)](#). In this case, there will be no question that the Respondent engaged in protected activity, at which point the burden shifts to the Petitioner to produce evidence of a legitimate, nondiscriminatory reason for the adverse employment action. If the Petitioner does so, the Respondent has the opportunity to demonstrate pretext, that is, to show that the proffered reason was merely a pretext for retaliation. See *Rustowicz*, [174 So. 3d at 419-20](#). Also, the PWA is remedial, "and should be liberally construed in favor of granting access to protection from retaliatory actions." *Igwe v. City of Miami*, [208 So. 3d 150, 155 \(Fla. 3d Dist. App. 2016\)](#) (citing *Irven v. Dep't of Health & Rehabilitative Servs.*, [790 So. 2d 403, 406 \(Fla. 2001\)](#))(stating that "[section 112.3187(2)] could not have been more broadly worded").

⁵ The PWA protects disclosures of "[a]ny act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor." It also protects disclosures of "[a]ny violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public's health, safety, or welfare." Malfeasance is "the doing of an act which a person ought not do at all," while misfeasance is "the improper doing of an act which a person might lawfully do." *Burden v. City of Opa Locka*, No. 11-22018-CIV, [2012 U.S. Dist. LEXIS 144903, 2012 WL 4764592, at *10 \(S.D. Fla. Oct. 7, 2012\)](#)(citations omitted).

To show she engaged in the protected activity of disclosure, the Petitioner must have disclosed (1) protected information, (2) to a protected recipient, (3) in a protected manner. [*Wagner*, 2017 U.S. App. LEXIS 1900, 2017 WL 456430, at *17](#) (citing [Fla. Stat. § 112.3187\(5\)-\(7\)](#)). It is beyond doubt that the Respondent disclosed protected information because she disclosed suspected violations of law, gross mismanagement, or malfeasance on a number of occasions. Protected conduct under the PWA also includes situations where employees "are requested to participate in an investigation" about any act or suspected act of gross mismanagement or malfeasance. [Fla. Stat. § 112.3187\(7\)](#). The record will show that the Respondent was interviewed by investigators multiple times, including on September 3, 2015. Also, there is no dispute that the Respondent suffered an adverse employment action.

While the Petitioner offers a legitimate nonretaliatory reason for the Respondent's termination, the Respondent, in turn, will offer evidence that that her termination was a pretext for retaliation, relying in part on the temporal proximity between her protected activity and the termination. To establish a causal connection, the Respondent must show that the protected activity and the adverse action "are not completely unrelated." [*Rice-Lamar v. City of Fort Lauderdale*, 853 So. 2d 1125, 1133 \(Fla. 4th DCA 2003\)](#) (quoting [*Olmsted v. Taco Bell Corp.*, 141 F.3d 1457, 1460 \(11th Cir. 1998\)](#)). Also, "the plaintiff must generally show that the decision maker was aware of the protected conduct at the time of the adverse employment action." [*Goldsmith v. Bagby Elevator Co., Inc.*, 513 F.3d 1261, 1278 \(11th Cir. 2008\)](#); see also [*Wagner*, 2017 U.S. App. LEXIS 1900, 2017 WL 456430, at *19](#). Here, the evidence already shows that the Respondent engaged in statutorily protected conduct under the PWA on September 3, 2015 and that on October 22, 2015, the City Attorney's Office identified the Respondent for

discipline.⁶ For purposes of the PWA, the Respondent's September 3, 2015 interview, which was only approximately 6-weeks prior to her being targeted for discipline and/or termination by the City Attorney's Office is the close temporal proximity that establishes a causal connection under the PWA. This is the kind of "very close" temporal proximity the Eleventh Circuit has held satisfies the causal connection. *Thomas v. Cooper Lighting, Inc.*, [506 F.3d 1361, 1364](#) (11th Cir. 2007).

To carry its burden of showing that it terminated the Respondent for a legitimate, non-retaliatory reason, the Petitioner must only articulate a reason that "might motivate" a reasonable employer to take the challenged employment action. *Chapman v. AI Transp.*, [229 F.3d 1012, 1030](#) (11th Cir. 2000). As the Petitioner has stated such reasons (*see* discussion *supra*), the issue to be litigated is whether the Petitioner truly had cause to terminate the Respondent and whether the reason stated by the Petitioner is merely pretext for retaliation under the PWA. To prove pretext, the Respondent must produce sufficient evidence from which a fact finder could conclude that the proffered reasons by the Petitioner did not actually motivate the termination. *See id. at 1024.*

With that context in mind, we turn to the Petitioner's objection to providing responses to the Respondent's Second Request for Production contained in its Motion.

PROCEDURAL HISTORY

1. On February 14, 2017, the Respondent served her Notice of Appeal on the Petitioner.
2. On February 23, 2017, the Department of Administrative Hearings (DOAH) issued its Initial Order.

⁶ The Respondent also engaged in statutorily protected activity by participating in the Constangy investigation, part of which was actually directed to insurance fraud.

3. On March 8, 2017, Hon. ALJ Newton conducted a preliminary pre-hearing conference. During that conference, the parties agreed to serve discovery responses within fifteen (15) days of being served with a discovery request.

4. Also on March 8, 2017, Hon. ALJ Newton issued the Case Management Order (CMO). In regard to discovery, the CMO specifically states as follows: “The parties shall conduct discovery so that the due date for any discovery requested shall not be later than 15 days before the hearing date.” (CMO, ¶1). Additionally, “[t]he time period for responding to any form of written discovery is shortened to 15 days. (*Id.*, ¶5). The CMO does not otherwise restrict the parties’ ability to serve discovery.

5. On March 9, 2017, the Respondent served a Request for Production, Interrogatories and a Request for Admissions. Pursuant to the CMO, the Petitioner’s discovery responses were due on or before March 24, 2017. (*See* First Request for Production, Ex. 1).

6. However, during a subsequent teleconference between the parties, the Respondent agreed to allow the Petitioner an additional fifteen (15) days to serve the discovery responses.

7. After much back and forth as to when the documents would finally be served, the Respondent provided the Petitioner with a firm deadline of April 21, 2017 because of the volume of documents and because the Pre-hearing Stipulation, including exhibit lists, was due on April 25, 2017. The Petitioner, however, could only merely assure the Respondent that they were still “trying” to meet that deadline, some six (6) week after the requests were served.

8. However, the Petitioner failed to serve the responsive documents notwithstanding the Respondent’s reasonable request for the documents to be provided by April 21, 2017 so that Respondent’s counsel could work through the weekend and keep the matter on track for a Final Hearing to begin on May 2, 2017.

9. The Petitioner finally served the 5,000 responsive documents at approximately 2:30 P.M. on April 24, 2017, which counsel for the Respondent then began reviewing. After reviewing the documents produced by the Petitioner, counsel for the Respondent reviewed many relevant, never-before-seen documents that are very likely become exhibits during the Final Hearing.

10. Due to the Petitioner's incredibly late disclosure of 5,000 pages of documents just one week prior to the Final Hearing and barely 48 hours before the Prehearing Stipulation is due, the Respondent's Motion to Continue was granted on April 27, 2017. The Final Hearing was also rescheduled and is now set to begin on June 15, 2017.

11. Based on the Petitioner's Discovery Responses, including reviewing documents that implicated the Cape Coral City Attorney's Office in orchestrating the termination of the Respondent in close temporal proximity to her engaging in statutorily protected activity under the PWA, on April 26, 2017, the Respondent served a Second Request for Production. (*See Ex. 2*).⁷ The Second Request for production is narrowly tailored, a fact the Petitioner has not opposed.

12. In so granting the Respondent's Motion to Continue, Hon. ALJ Newton specifically ordered that "[e]xcept as modified herein, all other provisions of the first Notice of Hearing shall remain in full force and effect." (*See* April 27, 2017 Order, p. 2, ¶3). As such, the April 27, 2017 Order did not alter the CMO or otherwise restrict the pursuit of discovery so long as the discovery request is served "so that the due date for any discovery requested shall not be later than 15 days before the hearing date." (CMO, ¶1). The Respondent has complied with the CMO.

⁷ The Petitioner fails to cite, and the Respondent is unaware of, any rule or precedent requiring the Respondent to inform DOAH or the Petitioner prior to serving a discovery request. Additionally, counsel for the Petitioner misreads the Respondent's Second Request for Production, which references the timeframe within which to respond and states merely that counsel stipulated that all discovery requests were to be responded to within 15-days. This is consistent with Hon. ALJ's CMO, which also establishes a 15-day window within which the parties are to serve their discovery responses.

13. Now, the Petitioner seeks to avoid its obligations to respond to properly served discovery arguing (i) that the Second Request for Production is somehow untimely, (ii) that the Second Request for Production seeks documents already produced and, curiously, that it will take the Petitioner time to respond in producing additional documents, and (iii) that Respondent's counsel is acting in bad faith.

14. Importantly, the Petitioner's Motion does not argue that the Respondent's Second Request for Production seeks anything other than relevant information reasonably calculated to lead to the discovery of admissible information.

15. For the reasons discussed *infra*, the Petitioner's Motion is due to be denied.

MEMORANDUM OF LAW

A. Legal Standard on Motion for Protective Order.

Under the Florida discovery rules, any nonprivileged matter that is relevant to the subject matter of the action is discoverable. [Fla. R. Civ. P. 1.280\(b\)\(1\)](#). *Rasmussen v. South Florida Blood Service, Inc.*, [500 So. 2d 533, 534](#) (Fla. 1987). Discovery may be limited only when the movant has made an affirmative showing of good cause. *Deltona Corp. v. Bailey*, [336 So.2d 1163](#) (Fla. 1976); *Travelers Indem. Co. v. Hill*, [388 So.2d 648](#) (Fla. 5th DCA 1980). Rule [1.280\(c\)](#) provides that a party or person from whom discovery is sought may seek a protective order and that the trial court may issue an order that denies or restricts discovery "for good cause shown." When "justice requires," the court may issue an "order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." *Id.* The party seeking the protective order has the burden to show good cause. *Bush v. Schiavo*, [866 So. 2d 136, 138](#) (Fla. 2d DCA 2004).

It is important to note that the Petitioner raises no challenge to the relevance of the requested categories of documents whatsoever, nor does it allege that the Second Request for Production exposes it to annoyance, embarrassment, oppression or expense, which is fatal to its Motion. Instead, the Petitioner spends its time arguing that the Respondent's Second Request for Production is untimely and that responding to it would be inconvenient and a burden, neither of which are proper bases for a protective order to issue, and thus the Petitioner's Motion is due to be denied.

B. The Petitioner's Motion is Not Based On Relevance And the Petitioner Thus Concedes That Respondent's Second Request for Production Seeks Information and Documents Reasonably Calculated to Lead to the Discovery of Admissible Information.

Under the Florida discovery rules, any nonprivileged matter that is relevant to the subject matter of the action is discoverable. [Fla. R. Civ. P. 1.280\(b\)\(1\)](#). In fact, a "part[y] may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party." [Fla. R. Civ. P. 1.280\(b\)\(1\)](#). "It is not ground for objection that the information sought will be inadmissible at the trial *if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.*" [Id.](#) (emphasis added). [Rule 1.350\(a\)](#) includes electronically stored information within the scope of discovery. [Nucci v. Target Corp.](#), [162 So. 3d 146, 152](#) (Fla. Dist. Ct. App. 4th Dist. 2015).

Nowhere in the Petitioner's Motion does it suggest that the Respondent's Second Request for Production seeks anything other than relevant and discoverable documents. Indeed, the documents that the Respondent seeks are public records and in any event are subject to production under [F.S. §119](#). Additionally, the Petitioner does not allege that any part of the Respondent's Second Request for Production calls for the production of privileged documents.

The Petitioner does not argue that the requests are overly broad, nor does it argue that responding to the same will expose it to annoyance, embarrassment, oppression or expense. Instead, it merely argues that it should not have to produce relevant and discoverable documents because it will take too much time. But time is something we now have given the continuance of the Final Hearing until June 15, 2017. As discussed *infra*, broad claims that producing documents will take time and be inconvenient are wholly insufficient and fall far short of establishing the requisite “good cause” necessary for a protective order to issue.

C. The Alleged Time It Will Take to Produce Relevant, Discoverable Documents Does Not Abridge the Respondent’s Discovery Rights.

Inconvenience is *not* a substitute for good cause under Rule 1.280(c). [*Beekie v. Morgan*, 751 So. 2d 694, 697 \(Fla. Dist. Ct. App. 5th Dist. 2000\)](#); *see also* [*Certain Underwriters at Lloyd's London v. Taylor, Bean & Whitaker Mortg. Corp. \(In re Taylor\)*, 2013 Bankr. LEXIS 4289, *14 \(Bankr. M.D. Fla. Apr. 8, 2013\)](#)(“good cause for issuance of a protective order is not established by a mere showing of inconvenience and expense.”) *citing* [*Lockheed Martin Corp. v. L-3 Communs. Corp.*, 2007 U.S. Dist. LEXIS 101872, *6 \(N.D. Ga. Oct. 10, 2007\)](#)(good cause not established merely by showing that discovery involves inconvenience and expense; “the potential expenditure of 117 hours in responding to 5,016 requests for admission was not necessarily disproportionate to the complexities of the case”); [*Provide Commerce, Inc. v. Preferred Commerce, Inc.*, 2008 U.S. Dist. LEXIS 9563, *4 \(S.D. Fla. Feb. 7, 2008\)](#); [*Stelor Prods. v. Google, Inc.*, 2008 U.S. Dist. LEXIS 74936, *9, 2008 WL 4218107 \(S.D. Fla. Sept. 11, 2008\)](#).⁸ Here, the Respondent merely submits 23 additional categories of documents.

⁸ In *Lloyd's*, the court flatly rejected much more potent cries of inconvenience where it was argued that “responding to the 5,597 Requests will require Freddie Mac to expend a substantial amount of time, possibly 186 hours or more.”

On this issue, the Fifth District Court of Appeal's holding in [*Kyker v. Lopez*, 718 So. 2d 957 \(Fla. Dist. Ct. App. 5th Dist. 1998\)](#) is instructive. In *Kyker*, the issue presented was the production of "every receipt for every sale made every day." There, the plaintiff filed a motion for protective order and argued that such production would be unduly burdensome. However, the court rejected such an argument, pointing out that a protective order was inappropriate because the receipts went to the heart of the claims at issue in the case. Moreover, the court pointed out that a protective order was also inappropriate given that the documents were subject to statutory production. The court also pointed out that where the requested documents were relevant, they were also discoverable and ought not be subject to a protective order. Recently, the Second District Court of Appeals echoed the holding in *Kyker*, reversing the entry of a motion for protective order when requested information was discoverable. [*Dees v. Kidney Group, LLC*, 16 So. 3d 277, 280 \(Fla. Dist. Ct. App. 2d Dist. 2009\)](#).

In its Motion, the Petitioner does not allege that it would be harmed in any of the ways enumerated in [Rule 1.280\(c\)](#). Instead, it conflates inconvenience with undue burden, simply concluding that it should not be required to exert some 350-400 hours in producing otherwise relevant and discoverable documents.⁹ But such conclusions and cries of inconvenience as to the production of relevant and discoverable documents are of no moment and certainly fail to rise to the lofty level of good cause necessary for a protective order to issue. Since the relevance of the Respondent's Second Request for Production is not in dispute, and no other basis is provided upon which the number of requests should be restricted, the Petitioner has failed to discharge its burden. Simply put, relevant and discoverable documents ought to be produced, alleged

⁹ It is unclear why responding to the Second Request for Production would take this length of time given that the overwhelming majority of the requested documents are electronically stored and thus should be easily reproduced in electronic form or at least reduced to a CD.

inconvenience to the Petitioner notwithstanding.¹⁰ See *Dees* at 280. While the Rule protects parties from some hardships, it plainly does not protect from the kind of mere inconvenience complained of by the Petitioner, and thus, the Petitioner's Motion is due to be denied.

D. The Petitioner Tries to Have It Both Ways By Simultaneously Arguing That It Has Already Produced Responsive Documents While Also Arguing That Responding to the Second Request for Production Will Require the Production of an Additional 27,813 Emails Alone.

In the Petitioner's Motion, it seeks to proverbially have its cake and eat it too. On the one hand it claims all responsive documents have been produced and that the Respondent's Second Request for Production is almost wholly duplicative, but on the other it claims there are thousands yet to be produced if it is required to respond to the Respondent's Second Request for Production. Specifically, the Respondent's Motion at p. 3, ¶6 argues "Respondent's counsel is requesting documents already provided to him as part of the first request."¹¹ But curiously at p. 2, ¶4 of its Motion, the Petitioner admits that there are an additional 27,813 emails that it has not otherwise produced. The Petitioner offers no explanation for this dichotomy, instead doubling down on its mudslinging by proclaiming "[i]t appears there is little to no attempt to only ask for documents already provided. The logical conclusion is that Respondent's counsel is either deliberately misusing the discovery process or ignoring his earlier request, both of which are unfairly detrimental to Petitioner." (Petitioner's Motion at p. 3, ¶6).

The Petitioner's two positions are logically incoherent and are obviously incongruent. If the Respondent's discovery requests are duplicative as the Petitioner claims, it has then withheld or

¹⁰ The City of Cape Coral has specifically established an ordinance and has contracted with DOAH to allow an employee a full hearing to challenge their termination. But faced with this particular challenge the Petitioner intimates that it is not equipped to allow its full participation in these proceedings, and specifically during the discovery process. This is not of the Respondent's concern, nor DOAH's concern. The City submitted itself to DOAH's jurisdiction and it must adhere to the discovery rules, its' cries of understaffing notwithstanding.

¹¹ However, the Petitioner fails to even casually mention what categories of documents it is referencing that have allegedly already been produced.

failed to produce thousands of otherwise discoverable documents. While a plain review of the Respondent's two discovery requests shows they are different (the Second Request for Production being very narrowly tailored), the fact remains that the Petitioner has not produced thousands of relevant and discoverable documents in this case. Of particular concern, the Petitioner offers no explanation as to why, if the Respondent's two discovery requests are the same, that these documents were not *already* produced. If one accepts the Petitioner's argument that the Respondent's Second Request for Production is duplicative of her First Request for Production, there is clearly no reason to enter a protective order where the Petitioner has failed to produce thousands of relevant and discoverable additional documents. For this reason alone, the Petitioner's Motion is due to be denied.

E. The Respondent's Second Request for Production is Timely.

As discussed *supra*, Hon. ALJ Newton's CMO made clear that the governing rule is that all discovery must be served so that the response is due no later than 15-days prior to the Final Hearing. In granting the Respondent's Motion to Continue to June 15, 2017, Hon. ALJ Newton specifically ordered "[e]xcept as modified herein, all other provisions of the first Notice of Hearing shall remain in full force and effect." (See April 27, 2017 Order, p. 2, ¶3). As such, the April 27, 2017 Order did not alter the CMO or otherwise restrict the pursuit of discovery so long as the discovery request was served "so that the due date for any discovery requested shall not be later than 15 days before the hearing date." (CMO, ¶1).

By serving the Respondent's Second Request for Production on March 26, 2017 (which is 50-days prior to the Final Hearing), the Petitioner's response is due on or before May 11, 2017, which is 35-days prior to the Final Hearing. This is ample time for the Petitioner to respond to the Second Request for Production. As the Respondent's Second Request for Production was

served in compliance with the CMO, the Petitioner's argument that the Request is untimely is without merit and the petitioner's Motion is due to be denied.

CONCLUSION

WHEREFORE, the Respondent respectfully requests that the Court enter an Order denying the Petitioner's Motion for Protective Order, Motion to Strike Discovery Request and Motion for Expedited Telephonic Conference and all other relief deemed just and proper.

Respectfully submitted,

Dated: May 3, 2017

s/ Benjamin H. Yormak
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CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2017, I filed the foregoing with the DOAH Clerk by using the eALJ system, which caused delivery to all counsel of record in this matter. I further certify that I mailed the foregoing document to the following non-eALJ participants: None.

s/ Benjamin H. Yormak
Benjamin H. Yormak

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

CITY OF CAPE CORAL,

Petitioner,

v.

JENNIFER GERNAND,

Respondent.

CIVIL ACTION

Case No. 17-1225

Judge: John D. C. Newton, II

RESPONDENT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Respondent, **JENNIFER GERNAND** ("Respondent") by and through undersigned counsel, and pursuant to Florida Rule of Civil Procedure 1.350, requests that the Petitioner produce all documents set forth herein within fifteen (15) days¹ after service of the same.

DEFINITIONS/INSTRUCTIONS

1. These Requests for Production of Documents are to be read, interpreted and answered in accordance with these instructions and the definitions set forth below.
2. Under Fla.R.Civ.P. 1.350, unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:
 - a. A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;
 - b. If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and
 - c. A party need not produce the same electronically stored information in more than one form.

¹ Pursuant to Stipulation of the parties on the record during the March 8, 2017 telephonic hearing.

3. Under Fla.R.Civ.P. 1.350(b), you must respond in writing to counsel for the Respondent, Benjamin H. Yormak, Esq., Yormak Employment & Disability Law, 9990 Coconut Road, Bonita Springs, Florida 34135, within 30 days after being served, unless a shorter or longer time is stipulated or ordered by the court.
4. Unless otherwise specified, these Requests for Production of Documents relate solely to the Respondent and the matters and allegations raised in the Petitioner's DOAH filings and/or Petitioner's purported basis for terminating the Respondent, and refers to facts and matters that are within the knowledge, information and belief of the Petitioner, its agents, employees, representatives, subsidiaries/ related entities and, unless privileged, his attorneys, or any combination of the above.
5. A request to produce documents or other things includes all documents or things in the custody, possession, or control of the Petitioner (or any of its agents, representatives, subsidiaries/related entities or attorneys) that are known or that can be located or discovered through reasonably diligent effort.
6. If a document was, but is no longer in the possession of the Petitioner or its agents, employees, representatives or subsidiaries/related entities, state with whom and where it is at present. If any such document has been destroyed, state when and why.
7. A document "regards," is "related to," or "discusses" a subject, person or organization if it refers to, has been made available to, or in any other way relates to the subject, person or organization, either in whole or in part. A document called for in part is to be produced in its entirety, without abbreviation or expurgation, including any attachments thereto, whether referred to in the document or otherwise.
8. Under Fla.R.Civ.P. 1.350(b) the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons. And under Fla.R.Civ.P. 1.350(b) an objection to part of a request must specify the part being objected to and permit inspection of the rest.
9. If a privilege or other protection is claimed as to any requested document, your response to these Requests for Production of Documents must furnish information sufficient to identify such document and to permit the adjudication of the propriety of such claim, including (1) the date the document was prepared or the date that it bears;(2) the author; (3) the signatory; (4) the name of each addressee, copy, and actual recipient; (5) the type or form of document (e.g., letter, memorandum, etc.); (6) its present location and the identity of its custodian; (7) the subject matter

(without revealing the information as to which the privilege or protection is claimed); (8) the privilege or protection that you claim precludes disclosure; and (9) any additional facts on which you base your claim of privilege or protection.

10. The following terms shall have the following definitions:
- a. Document: means the original (or any copy when the original is not available) and any non-identical copies (whether different from the original because of notes made on such copies or otherwise) of writings of every kind and description, including electronically stored information, whether inscribed by hand or by mechanical, electronic, microfilm, photographic or other means, as well as phonic (such as tape recordings) or visual reproductions of oral statements, conversations or events, and including, but not limited to, correspondence; letters; forms; agreements; applications; calendars; tables; computations; summaries; digest or any other record or records of any conference, meeting, visit, interview and/or telephone conversation; employment records; financial and statistical data; analysis; surveys; transcripts of testimony and written statements; affidavits; printed matter (including published materials); lien waivers; purchase and sale requirements; order slips; wire orders; confirmations; other wire communications; teletype messages; internal memoranda; notes; reports; compilations; studies; tabulations; tallies; maps; diagrams; plans; pictures; computer printouts and summaries of computer printouts; and video and audio tape recordings wherever located, in the possession, custody or control of the individual to whom this request for production of documents is addressed, his or her employees, agents, assistants, attorneys or other representatives.
 - b. Any: means “any and all;”
 - c. All: means “any and all.”
 - d. Correspondence: means “any letter, report, statement, memorandum, email, or other written or electronic document sent by one party to another by any physical or electronic method of transmittal.”
 - e. Including: means “including, but not limited to.”
 - f. Possession: means any document in your possession, custody or control.
 - g. Relevant time period: means October 1, 2014 to present.

2. TIME AND PLACE OF PRODUCTION:

You are requested to produce the documents by either mailing copies of them to: Benjamin H. Yormak, Esq., Yormak Employment & Disability Law, 9990 Coconut Road, Bonita Springs, Florida 34135, or by making them available for inspection and copying at a mutually agreed upon time and place, within fifteen (15) days of the date of this Request.

3. DOCUMENTS REQUESTED:

Please see Exhibit "A" attached hereto.

EXHIBIT A

1. Produce all documents that the Petitioner may introduce at any trial, motion hearing, deposition, or other proceeding in the above-captioned matter.

2. Produce all documents that supports any affirmative defense asserted by the Petitioner in the above-captioned matter.

3. Produce all documents which support or relate to the Petitioner's answer to any interrogatory or request for admission served by Respondent in the above-captioned matter.

4. Produce all documents which the Petitioner reviewed or used in forming their answer to any interrogatory or request for admission served by Respondent in the above-captioned matter.

5. Produce all reports from any testifying expert that the Petitioner intends to introduce testimony from at any trial, motion hearing, deposition, or other proceeding in the above-captioned matter.

6. Produce a complete copy of all personnel files maintained by the Petitioner related to the Respondent, a complete copy of the personnel file of any employee the Petitioner hired up to one year subsequent to the Respondent's separation for the same or similar position held by the Respondent and a complete copy of the personnel files maintained by the Petitioner that relate to each such employee, including their applications for employment or promotion.

7. Produce a copy of the results of each and every job description, job posting or job advertisement that the Petitioner may have used for the positions held by the Respondent from 2009 to present, including those solicitations for employment that may have been undertaken by a third party such as a headhunter or job placement agency.

8. Produce a copy of each employee handbook, policy manuals, or procedural manuals related to Respondent's employment or the Petitioner's employment

practices and procedures that was provided to the Respondent by the Petitioner during the course of the Respondent's employment.

9. Produce a copy of every document evidencing any counseling, warning, or other disciplinary action taken against the Respondent by the Petitioner.

10. Produce a copy of all training manuals or procedural guidelines issued to the Respondent by the Petitioner during the course of the Respondent's employment that is related to the performance of Respondent's job duties.

11. Produce all employment contracts between the Respondent and the Petitioner. This Request includes any post-separation agreement between the Respondent and Petitioner.

12. Produce all policies and procedures in place during the relevant time period that are maintained by the Petitioner to deter, prevent, or respond to claims of unlawful retaliation under any local, state, or federal law.

13. Produce a copy of all documents evidencing the compensation the Petitioner paid to the Respondent during the course of Respondent's employment with the Petitioner.

14. Produce a copy of each document evidencing employment benefits received by the Respondent from the Petitioner during the course of Respondent's employment with the Petitioner, including but not limited to: holiday pay, health, dental, and vision benefits, profit sharing plans, pension plans, 401(k) plans, paid time off, sick pay, or other similar benefits.

15. Produce a copy of any summary plan description, or any similar benefit plans, that the Petitioner offered to its employees during the course of the Respondent's employment with the Petitioner and which the Respondent actually participated in.

16. Produce a copy of any document provided by the Petitioner to the Respondent and its employees, or other employees with similar job descriptions, with respect to the company policy harassment, discrimination, retaliation or workplace grievances and how the Petitioner requests its employees handle such allegations.

17. Produce a copy of all time records maintained by the Petitioner that establishes the hours worked by the Respondent during the course of Respondent's employment with the Petitioner.

18. Produce all documents evidencing any complimentary job performance reviews, either formal or informal, during the course of Respondent's employment with the Petitioner.

19. Produce all employee performance evaluations performed by the Petitioner with respect to the Respondent's job performance during the course of Respondent's employment with the Petitioner.

20. Produce all documents evidencing a disclosure or threat of disclosure to a local, state or federal agency of any activity, policy, or practice of the Petitioner (or any employee of the Petitioner) by the Respondent during the relevant time period.

21. Produce all documents evidencing a disclosure or threat of disclosure to a local, state or federal agency of any activity, policy, or practice of the Petitioner regarding any payroll irregularities, workers' compensation fraud, double payments to employees receiving workers' compensation benefits, exclusive referrals to Dr. Kagan, overpayment of insurance premiums or illegal kickbacks during the relevant time period. This Request includes email correspondences or other communications to/from sitting or former members of city council.

22. Produce all correspondence, emails, text messages, notes, memorandum, minutes, meeting agenda, or other documents related to any meetings, discussions, or conferences where the Respondent's complaints or audits were investigated by the Cape Coral Police Department. This Request includes email correspondences or other communications to/from sitting or former members of city council.

23. Produce all correspondence, emails, text messages, notes, memorandum, minutes, meeting agenda, or other documents from any member of the Cape Coral Police Department or City Council that contain the Respondent's name during the relevant time period.

24. Produce all correspondence, emails, text messages, notes, memorandum, minutes, meeting agenda, or other documents related to any meetings, discussions, or conferences where the Respondent's position, job performance, complaints, audit, the terms of Respondent's employment, or Respondent's separation was a topic that was discussed. This Request includes email correspondences or other communications to/from sitting or former members of city council.

25. Produce all correspondence, emails, text messages, notes, memorandum, minutes, meeting agenda, draft reports or other documents sent to/from Constangy, Brooks, Smith & Prophete, LLP related to the Respondent's complaints during the relevant time period. This Request includes email correspondences or other communications to/from sitting or former members of city council.

26. For those employees of Petitioner who received payments for worker's compensation benefits during the relevant time period, produce copies of all wage payments and worker's compensation payments made to those employees.

27. Produce copies of all budgets and draft budgets for the Petitioner's police department for the fiscal years 2014, 2015 and 2016.

28. Produce copies of any statements obtained that relate to any issue in this case.

29. Produce all documents received in response to any subpoena issued by the Petitioner.

30. Produce copies of all documents, notes, memoranda, emails, correspondences, interview transcripts (or other recordings) or other materials that relate to any investigation the Petitioner conducted into any complaints made by the Respondent or any other of the Petitioner's employees.

31. Produce a complete copy of the personnel file of Michael Quigley.

32. Produce a copy of all documents reflecting the referral of Petitioner's employees who suffered a suspected workplace injury to Dr. Kagan.

33. Produce copies of all documents, notes, notes of the investigating attorney (or other investigator), memoranda, emails, correspondences, interview transcripts (or other recordings) or other materials that are in the possession of the Petitioner or its counsel that relate to any investigation the Petitioner conducted into any complaints made by the Respondent during the relevant time period.

34. Produce all documents submitted to the Florida Division of Administrative Hearings or any governmental state or federal body that relate to the Respondent.

35. Produce copies of all employee rosters or lists during the relevant time period for the same department where the Respondent worked.

36. Produce a complete copy of the Respondent's email account for the relevant time period.

37. Produce all correspondence, emails, text messages, notes, memorandum, minutes, meeting agenda, cell phone records, or other documents relating to communication from/to the Petitioner, the Respondent, or any other of the Petitioner's staff that in any way form a basis for the Petitioner (or the person supervising the Respondent) for terminating the Respondent.

38. Produce correspondence sent to Constangy Constangy, Brooks, Smith & Prophete, LLP requesting their independent investigation into the allegations made by the Respondent.

39. Produce any retainer agreement or engagement letter from Constangy, Brooks, Smith & Prophete, LLP related to the Respondent or the Respondent's complaints.

40. Produce all emails, memoranda or other written communications sent to or received by the Cape Coral Police Chief that contains the name “Gernand” during the relevant time period.

41. Produce all emails, memoranda or other written communications sent to or received by Michael Ilczyszyn that contains the name “Gernand” during the relevant time period.

42. Produce all documents that support, refute or relate to Petitioner’s allegation that the Respondent committed blackmail of her supervisor.

43. Produce all documents that support, refute or relate to Petitioner’s allegation that the Respondent lied to the Finance Director regarding a meeting she had with the Division of Insurance Fraud.

Dated: March 9, 2017

s/ Benjamin H. Yormak
Benjamin H. Yormak
Florida Bar Number 71272
Trial Counsel for Respondent
YORMAK EMPLOYMENT & DISABILITY LAW
9990 Coconut Road
Bonita Springs, Florida 34135
Telephone: (239) 985-9691
Fax: (239) 288-2534
Email: byormak@yormaklaw.com

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2017, I delivered the foregoing document by electronic mail to:

Gail Roberts, Esq.
groberts@capecoral.net

Steven Griffin, Esq.
sgriffin@capecoral.net

/s Benjamin H. Yormak
Benjamin H. Yormak

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

CITY OF CAPE CORAL,

Petitioner,

v.

JENNIFER GERNAND,

Respondent.

CIVIL ACTION

Case No. 17-1225

Judge: John D. C. Newton, II

RESPONDENT'S SECOND REQUEST FOR PRODUCTION OF DOCUMENTS

Respondent, **JENNIFER GERNAND** ("Respondent") by and through undersigned counsel, and pursuant to Florida Rule of Civil Procedure 1.350, requests that the Petitioner produce all documents set forth herein within fifteen (15) days¹ after service of the same.

DEFINITIONS/INSTRUCTIONS

1. These Requests for Production of Documents are to be read, interpreted and answered in accordance with these instructions and the definitions set forth below.
2. Under Fla.R.Civ.P. 1.350, unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:
 - a. A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;
 - b. If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and
 - c. A party need not produce the same electronically stored information in more than one form.

¹ Pursuant to Stipulation of the parties on the record during the March 8, 2017 telephonic hearing.

3. Under Fla.R.Civ.P. 1.350(b), you must respond in writing to counsel for the Respondent, Benjamin H. Yormak, Esq., Yormak Employment & Disability Law, 9990 Coconut Road, Bonita Springs, Florida 34135, within 30 days after being served, unless a shorter or longer time is stipulated or ordered by the court.
4. Unless otherwise specified, these Requests for Production of Documents relate solely to the Respondent and the matters and allegations raised in the Petitioner's DOAH filings and/or Petitioner's purported basis for terminating the Respondent, and refers to facts and matters that are within the knowledge, information and belief of the Petitioner, its agents, employees, representatives, subsidiaries/ related entities and, unless privileged, his attorneys, or any combination of the above.
5. A request to produce documents or other things includes all documents or things in the custody, possession, or control of the Petitioner (or any of its agents, representatives, subsidiaries/related entities or attorneys) that are known or that can be located or discovered through reasonably diligent effort.
6. If a document was, but is no longer in the possession of the Petitioner or its agents, employees, representatives or subsidiaries/related entities, state with whom and where it is at present. If any such document has been destroyed, state when and why.
7. A document "regards," is "related to," or "discusses" a subject, person or organization if it refers to, has been made available to, or in any other way relates to the subject, person or organization, either in whole or in part. A document called for in part is to be produced in its entirety, without abbreviation or expurgation, including any attachments thereto, whether referred to in the document or otherwise.
8. Under Fla.R.Civ.P. 1.350(b) the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons. And under Fla.R.Civ.P. 1.350(b) an objection to part of a request must specify the part being objected to and permit inspection of the rest.
9. If a privilege or other protection is claimed as to any requested document, your response to these Requests for Production of Documents must furnish information sufficient to identify such document and to permit the adjudication of the propriety of such claim, including (1) the date the document was prepared or the date that it bears;(2) the author; (3) the signatory; (4) the name of each addressee, copy, and actual recipient; (5) the type or form of document (e.g., letter, memorandum, etc.); (6) its present location and the identity of its custodian; (7) the subject matter

(without revealing the information as to which the privilege or protection is claimed); (8) the privilege or protection that you claim precludes disclosure; and (9) any additional facts on which you base your claim of privilege or protection.

10. The following terms shall have the following definitions:
- a. Document: means the original (or any copy when the original is not available) and any non-identical copies (whether different from the original because of notes made on such copies or otherwise) of writings of every kind and description, including electronically stored information, whether inscribed by hand or by mechanical, electronic, microfilm, photographic or other means, as well as phonic (such as tape recordings) or visual reproductions of oral statements, conversations or events, and including, but not limited to, correspondence; letters; forms; agreements; applications; calendars; tables; computations; summaries; digest or any other record or records of any conference, meeting, visit, interview and/or telephone conversation; employment records; financial and statistical data; analysis; surveys; transcripts of testimony and written statements; affidavits; printed matter (including published materials); lien waivers; purchase and sale requirements; order slips; wire orders; confirmations; other wire communications; teletype messages; internal memoranda; notes; reports; compilations; studies; tabulations; tallies; maps; diagrams; plans; pictures; computer printouts and summaries of computer printouts; and video and audio tape recordings wherever located, in the possession, custody or control of the individual to whom this request for production of documents is addressed, his or her employees, agents, assistants, attorneys or other representatives.
 - b. Any: means “any and all;”
 - c. All: means “any and all.”
 - d. Correspondence: means “any letter, report, statement, memorandum, email, or other written or electronic document sent by one party to another by any physical or electronic method of transmittal.”
 - e. Including: means “including, but not limited to.”
 - f. Possession: means any document in your possession, custody or control.
 - g. Relevant time period: means October 1, 2014 to present.

2. TIME AND PLACE OF PRODUCTION:

You are requested to produce the documents by either mailing copies of them to: Benjamin H. Yormak, Esq., Yormak Employment & Disability Law, 9990 Coconut Road, Bonita Springs, Florida 34135, or by making them available for inspection and copying at a mutually agreed upon time and place, within fifteen (15) days of the date of this Request.

3. DOCUMENTS REQUESTED:

Please see Exhibit "A" attached hereto.

EXHIBIT A

1. Produce all correspondence, emails, text messages, notes, memoranda, minutes, meeting agendas, or other documents related to any meetings, discussions, or conferences where the Respondent was the subject of any allegation of wrongdoing, whether the nature of such alleged wrongdoing is criminal, is civil or is an alleged violation of the City's work rules or policies.

2. Produce all emails sent to or received by the Petitioner's Human Resources Department (including to/from any employee of the City's Human Resources Department) related to any possible allegation of wrongdoing by the Respondent during the relevant time period.

3. Produce all emails sent to or received by the Petitioner's City Attorney's Office (including to/from any employee of the City Attorney's Office) related to any possible allegation of wrongdoing by the Respondent from October 1, 2014 through June 29, 2016.

4. Produce all emails sent to or received by the Petitioner's Human Resources Department (including to/from any employee of the City's Human Resources Department) related to any possible discipline contemplated or instituted against the Respondent during the relevant time period.

5. Produce all emails sent to or received by the Petitioner's City Attorney's Office (including to/from any employee of the City Attorney's Office) related to any possible discipline contemplated or instituted against the Respondent from October 1, 2014 through June 29, 2016.

6. Produce all correspondence, emails, text messages, or any other documents sent to or received from Constangy, Brooks, Smith & Prophete, LLP during the relevant time period. This request relates to the "Investigation of Workers' Compensation Processes, Employee Misconduct, and Overpayments by the City of Cape Coral, Florida."

7. Produce all invoices or billing statements received from Constangy, Brooks, Smith & Prophete, LLP during the relevant time period. This request relates to the “Investigation of Workers’ Compensation Processes, Employee Misconduct, and Overpayments by the City of Cape Coral, Florida.”

8. Produce all correspondence, emails, text messages, notes, memorandum, minutes, meeting agenda, electronic calendar invites (such as Outlook) or other documents related to any meetings, discussions, or conferences where the Respondent’s alleged wrongdoing or termination was a topic that was discussed. This Request includes email correspondences or other communications to/from sitting or former members of city council.

9. Produce copies of all documents, notes, memoranda, emails, correspondences, interview transcripts (or other recordings) or other materials that relate to any investigation the Petitioner conducted into Michael Quigley during the relevant time period.

10. Produce all emails, memoranda or other written communications sent to or received by John Szerlag that contains the name “Gernand” during the relevant time period.

11. Produce all emails, memoranda or other written communications sent to or received by Scott Slusser that contains the name “Gernand” during the relevant time period.

12. Produce all emails, memoranda or other written communications sent to or received by Lisa Sonogo that contains the name “Gernand” during the relevant time period.

13. Produce all emails, memoranda or other written communications sent to or received by Victoria Bateman that contains the name “Gernand” during the relevant time period.

14. Produce all emails, memoranda or other written communications sent to or received by David Newlan that contains the name “Gernand” during the relevant time period.

15. Produce all emails, memoranda or other written communications sent to or received by Christopher Ellis that contains the name “Gernand” during the relevant time period.

16. Produce all emails, memoranda or other written communications sent to or received by Margaret Krym that contains the name “Gernand” during the relevant time period.

17. Produce all emails, memoranda or other written communications sent to or received by Marc Czerwinski that contains the name “Gernand” during the relevant time period.

18. Produce all emails, memoranda or other written communications sent to or received by Deana Watson that contains the name “Gernand” during the relevant time period.

19. Produce all emails, memoranda or other written communications sent to or received by Dolores Menendez that contains the name “Gernand” from October 1, 2014 through June 29, 2016.

20. Produce all emails, memoranda or other written communications sent to or received by Gail Roberts that contains the name “Gernand” from October 1, 2014 through June 29, 2016.

21. Produce all emails, memoranda or other written communications sent to or received by Steven Griffin that contains the name “Gernand” from October 1, 2014 through June 29, 2016.

22. Produce any document authored by Michael Quigley wherein he accused the Respondent of “blackmail,” threats or coercive conduct.

23. Produce any document authored by Victoria Bateman that accuses the Respondent of lying regarding a meeting she had with the Division of Insurance Fraud.

Dated: April 26, 2017

s/ Benjamin H. Yormak

Benjamin H. Yormak

Florida Bar Number 71272

Trial Counsel for Respondent

YORMAK EMPLOYMENT & DISABILITY LAW

9990 Coconut Road

Bonita Springs, Florida 34135

Telephone: (239) 985-9691

Fax: (239) 288-2534

Email: byormak@yormaklaw.com

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2017, I delivered the foregoing document by electronic mail to:

Gail Roberts, Esq.
groberts@capecoral.net

Steven Griffin, Esq.
sgriffin@capecoral.net

/s Benjamin H. Yormak
Benjamin H. Yormak

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