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FLORIDA COMMISSION ON HUMAN RELATIONS
 4075 Esplanade Way, Room 110, Tallahassee, Florida 32399

**WHISTLE-BLOWER ACT RETALIATION
 CHARGE OF DISCRIMINATION**

A. PERSONAL INFORMATION		FCHR No.	
Name Michelle Wilson		E-Mail Address Michelle.wilson1991@yahoo.com	Date of Birth 02/03/1966
Mailing Address 9 Sparrow Path		Home Telephone Number (area code) 850-425-1997	
City, State, and Zip Code Crawfordville, FL 32327		Work (if possible to call you there) 850-425-1997	
B. LIST THE STATE AGENCY OR INDEPENDENT CONTRACTOR THAT DISCRIMINATED AGAINST YOU.			
Name	Contact Person Cheyanne Costilla	Telephone Number	
Florida Commission on Human Relations		850-488-7082	
Street Address 4075 Esplanade Way #110	City, State, and Zip Code Tallahassee, FL 32399	County Leon	
C. CAUSE OF DISCRIMINATION BASED ON – Check appropriate box (es)		DATE MOST RECENT DISCRIMINATION TOOK PLACE (month, day, year)	
☒ RETALIATION		October 15, 2020	

D. DISCRIMINATION STATEMENT

I believe that I have been discriminated against in violation of the Public Whistle-blower's Act, §§112.3187-112.31895, Florida Statutes for the following reasons:

The public whistleblower statute has three elements: (1) protected conduct, (2) adverse action; and (3) a connection between the protected conduct and the adverse action.

The "adverse action" element is easy. Charging party Wilson was fired as Executive Director of the Florida Commission on Human Relations on October 15, 2020, after 17 years' tenure with the agency.

Ms. Wilson also suffered numerous additional cognizable adverse actions. It is useful to discuss these additional adverse actions in connection with their nexus with the protected conduct rather than to discuss the three elements separately.

Beginning in 2018, two Commissioners, Jay Pichard and Latanya Peterson, began a campaign to either fire Ms. Wilson or make her life so unpleasant that she would quit. Mr. Pichard was antagonistic because his business had been the target of charges of discrimination to FCHR that he thought should have been processed differently. Section 760.11(3), Florida Statutes, requires that, "the commission shall investigate the allegations in the complaint," and that, "the commission shall determine if there is reasonable cause to believe that discriminatory practice has occurred" Mr. Pichard, smarting from the charges against his small company, felt aggrieved

FCHR Charge Form – Revised January 9, 2015

that Ms. Wilson would not violate the statute to the extent of dismissing certain "frivolous" charges without the appropriate administrative review. Ms. Wilson explained that procedural changes would require the legislature amending the statute and, following that, the agency amending the pertinent sections of the Florida Administrative Code. Mr. Pichard was unforgiving on this point and continued thereafter to seek replacement of Ms. Wilson. Ms. Wilson took FMLA leave from October, 2018, to January, 2019. This caused displeasure to Ms. Peterson and set in motion a course of hostility in which she joined Mr. Pichard's efforts to oust Ms. Wilson or to harass her into resigning.

Ms. Peterson had been disciplined for an ethics violation in the Clay County School District in 2014, an offense that was highly publicized in her 2018 losing campaign for Clay County school board. In the wake of that loss, Ms. Peterson appeared to be at professional loose ends. Some of her conduct as an FCHR Commissioner caused Ms. Wilson to believe that Ms. Peterson was seeking Ms. Wilson's job and using her position on the Commission to sabotage Ms. Wilson.

Mr. Pichard started going behind Ms. Wilson's back to get documents and oral information from the Human Resources Director, Jackie Steele - an employee with resentments and antagonisms against her supervisor, Ms. Wilson, whom Ms. Wilson eventually fired. FCHR recently settled a case with Ms. Steele about that firing, but the settlement is irrelevant to the point at issue here, which is that Mr. Pichard, as a Commissioner, violated formal policy by going around the Executive Director to seek information surreptitiously from a subordinate employee. Ms. Wilson's objections to that conduct are another example of protected conduct. The clandestine flow of information from Ms. Steele to Mr. Pichard continued. The information became part of Mr. Pichard's private archive that he could spin in support of his objective of firing Ms. Wilson.

Though Donna Elam and other Commissioners rebuked and admonished Mr. Pichard for his abuse of staff members, they never lived up to their obligations to take formal action to curb his misconduct.

An issue with FCHR's funding for housing discrimination from HUD straddled 2018 and 2019. In short, HUD dumped an unprecedentedly large workload on FCHR - a load the agency had neither the staff nor the budget to handle. Mr. Pichard seized on the opportunity to seek a finding of wrongdoing against Ms. Wilson, from Florida's Chief Inspector General, Melinda Miguel, whose report cleared Ms. Wilson. HUD issued a Performance Improvement Plan (PIP) that FCHR could not meet with current staffing levels. The agency sought help from the governor's office, but that office declined to recommend new positions to the legislature, so none were funded. The HUD Region IV Director Carlos Osegueda proposed a suspension of FCHR from federal funding for its housing unit. Mr. Pichard invited Mr. Osegueda to an FCHR committee meeting without notifying Ms. Wilson. Mr. Pichard, and Ms. Peterson communicated with Mr. Osegueda before his visit. Mr. Osegueda said he wanted the removal of Ms. Wilson, Chief of Investigations Jacquelyn Dupree, and longtime housing investigator Regina Owens. This caused Ms. Owens to file a charge against Mr. Osegueda with his superiors at HUD. In 2019, the Florida Legislature finally appropriated funding for the staffing necessary to clear the housing backlog. However, Mr. Osegueda still recommended that FCHR be removed from the federal/state partnership. Assistant HUD Secretary Farias issued a humiliating rejection of the recommendation by Mr. Osegueda. The HUD issues were substantially resolved.

However, during the HUD furor, Commissioners, especially Pichard and Peterson, continued the effort to undermine and displace Ms. Wilson. The Commission panel handling the HUD issue, consisting of Peterson, Pichard, and McCambry, voted "no confidence" in Ms. Wilson and sought to have the whole Commission affirm the vote, which would be tantamount to firing Ms. Wilson. Due to lack of quorum, this hung-over Ms. Wilson's head for several meeting dates and damaged her ability to manage the agency. When a quorum finally appeared in September 2020, the "no confidence" vote came out in Ms. Wilson's favor. This resulted, in part, from Mr. McCambry saying he no longer wanted to replace Ms. Wilson because the HUD matter had been resolved satisfactorily and now the firing issue being raised by Mr. Pichard was about employment cases, not housing cases. Mr. Pichard was pushing the vote in gratification of his long-standing grievance about not enough cases being processed within 180 days. Under § 760.11(7), if FCHR finds "no cause" on an employment case within 180

days, that charging party's only remedy is a hearing before the Division of Administrative Hearings (DOAH). At that hearing, the DOAH Administrative Law Judge (ALJ), may award reinstatement, back pay, and attorney's fees and costs, but no intangible or punitive damages. The employer may appeal that result to FCHR. If the employee prevails there, she may renounce her DOAH victory and appeal to the First District Court of Appeal for a jury trial *de novo*. That is the only way to get to court. In the 28 years of existence of the statute, that has never happened. So an FCHR "no cause" finding is a kiss of death to any possibility of a jury trial and anything but a fairly modest recovery in most cases.

It is for that reason that Mr. Pichard and others facing discrimination charges push so unremittingly for FCHR to close cases in fewer than 180 days and to close them with a "no cause" finding.

After rejecting the "no-confidence" motion against Ms. Wilson, the Commission voted to adopt a format and standards for evaluating her at the next meeting in October. In violation of the Agency's Governance Policy, the Commission had failed for three years to issue Ms. Wilson's annual evaluation, despite her requests. This is important to anyone in the executive director slot because it helps her keep her job and keep good relations with the governing board. The evaluation provides a clear statement of what the employee needs to change or correct and what new directions to pursue. It affords a more objective means of measuring performance. The last evaluation was in 2017 and it was unanimously favorable to Ms. Wilson.

Ms. Wilson's protests against not being evaluated are clearly protected conduct. The board's failure to evaluate for three years is plainly the sort of misfeasance, malfeasance, gross mismanagement expressly forbidden by the whistleblower statute. The malfeasance applies because the violation was willful and flagrant. Indeed, in 2019, in furtherance of her efforts to fire Ms. Wilson, Ms. Peterson, acting as Chair, removed Ms. Wilson's scheduled evaluation from the meeting agenda. In doing so, she asked Executive Assistant, Casey Snipes, not to tell Ms. Wilson. In 2018, the evaluation was again removed from the agenda at Mr. Pichard's behest because he wanted to establish a performance review methodology.

Governor DeSantis filled several long-vacant positions on the Commission. Ms. Wilson believes that Mr. Pichard contacted some or all of them in violation of the Sunshine law at Chapter 286 to poison them against Ms. Wilson. A "no confidence" vote on Ms. Wilson was not on the October agenda. Such a vote would have been an earthquake in the employment law community and would have fetched a large attendance at the meeting if lawfully noticed. What was noticed in compliance with Sunshine law was the decision scheduled at the previous meeting to establish an evaluation framework and standards for Ms. Wilson. The vote of "no confidence" was unlawfully taken up at the meeting of October 15, 2020. Ms. Wilson was fired illegally.

Ms. Wilson's additional protected conduct includes repeated objections to conversations about agency business among and between Commissioners against the advice of agency counsel; objections to individual Commissioners giving direction to staff in violation of Governance Policy; objecting to Commissioner Peterson calling for the firing of an employee; objecting to Commissioners retaliating to her FMLA leave. As stated above, the main adverse action was being fired in retaliation for refusal to violate the law on case investigations.

Ms. Wilson demands the full relief to which she is entitled by law.

I REQUEST TO BE AFFORDED FULL RELIEF TO WHICH I AM ENTITLED TO UNDER THE LAW(S).

E. VERIFICATION. Under penalties of perjury, I declare that I have read the foregoing complaint of discrimination and that the facts stated in it are true. I will advise the agency if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

SIGNATURE OF COMPLAINANT

DATE

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