IN THE
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

AMANDA J. ENSOR, *Plaintiff,*	*	
v.	*	No. 1:20-cv-01266-ELH
CHARLES A. JENKINS, ET AL., *Defendants*.	*	

* * * * * * * * * * * *

DEFENDANTS CHARLES JENKINS, RONALD HIBBARD, JASON NULL, GREGORY WARNER, AND THE FREDERICK COUNTY SHERIFF'S OFFICE'S MOTION TO DISMISS

Defendants Charles Jenkins, Ronald Hibbard, Jason Null, Gregory Warner, and the Frederick County Sheriff's Office, by and through their attorneys, Brian E. Frosh, Attorney General of Maryland, and Kirstin Lustila, Assistant Attorney General, move this Honorable Court under Fed. R. Civ. P. 12(b)(1) and 12(b)(6) to dismiss the amended complaint filed by plaintiff Amanda J. Ensor (ECF No. 3), for the reasons set forth in the accompanying Memorandum of Law.

Respectfully submitted,

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July 31, 2020

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CERTIFICATE OF SERVICE

I certify that, on this 31st day of July, 2020 the foregoing was served by CM/ECF on all registered CM/ECF users.

/s/ Kirstin Lustila
Kirstin Lustila

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* * * * * * * * * * * *

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

Defendants Sheriff Charles Jenkins, Captain Ronald Hibbard, Captain Jason Null, Lieutenant Gregory Warner, and the Frederick County Sheriff's Office submit this memorandum in support of their motion to dismiss.

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INTRODUCTION

Plaintiff Amanda J. Ensor, a sergeant with the Frederick County Sheriff's Office, seeks relief for alleged wrongs that resulted from an unapproved and unauthorized YouTube video that featured a staged arrest using uniformed on-duty deputies under her supervision. Although she accepted discipline for the video, she apparently still sees nothing wrong with her conduct. Worse, she asks the Court to find that the punishment she received resulted from discrimination and animus against her. In effect, she asks this Court to retroactively approve the video and to penalize the Sheriff personnel who investigated the incident and imposed the discipline. The Court should reject the invitation and dismiss Sgt. Ensor's complaint.

FACTUAL BACKGROUND

YouTube Video and Investigation

On September 29, 2018, Sgt. Ensor and two Frederick County Sheriff's deputies participated in an unauthorized prank video with the Dobre Brothers, internet personalities who live in Frederick County, Maryland. ECF No. 3 at ¶ 19; *see also* Ex. 1, Notification of Complaint.[1] The prank was the physical arrest of one of the Dobres, and the

[1] In resolving a Rule 12(b)(6) motion, and without converting it into one for summary judgment, a court may properly consider documents "attached to the complaint, as well as those attached to the motion to dismiss, so long as they are integral to the complaint and authentic." *Philips v. Pitt Cnty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009) (citations omitted). An "integral" document is one that "by its 'very existence, and not the mere information it contains, gives rise to the legal rights asserted.'" *Chesapeake Bay Foundation, Inc. v. Severstal Sparrows Point, LLC*, 794 F. Supp. 2d 602, 611 (D. Md. July 5, 2011) (quoting *Walker v. S.W.I.F.T. SCRL*, 517 F. Supp. 2d 801, 806 (E.D. Va. 2007)) (emphasis omitted).

encounter was filmed and posted on the Dobre Brothers' YouTube channel. ECF No. 3 at ¶ 19; *see also* Police Prank on Twin Brother!, YouTube.com, https://youtu.be/7zIR375d0ww (last visited July 30, 2020). Sgt. Ensor and the other two deputies were on duty and in uniform. Neither Sgt. Ensor nor the other two deputies sought permission from the Frederick County Sheriff or command staff to participate in the prank or its filming.[2]

Two days later, the Frederick County Sheriff's Office started an investigation into the unauthorized video, led by Lt. Gregory Warner of the Frederick County Sheriff Office of Policy and Compliance. ECF No. 3 at ¶ 6. That same day, Sgt. Ensor underwent scheduled surgery to her shoulder and arm and began a period of leave pursuant to the Family Medical Leave Act ("FMLA"). ECF No. 3 at ¶ 18.

During the investigation, Lt. Warner reviewed the YouTube video, social media posts, and records of radio calls, and he interviewed seven people who knew about or participated in the video. Ex. 2, FCSO Internal Investigation Case #18-020, Executive Summary. He served Sgt. Ensor with notification of the investigation at her home on November 15. ECF No. 3 at ¶ 18; Ex. 1. Sgt. Ensor's counsel offered to have her come in for an interrogation[3] on November 29, *see* ECF No. 1-1, however, when her FMLA leave

[2] Sgt. Ensor repeatedly refers to her tenure as the Frederick County Sheriff "Police Information Officer" or PIO in 2016, *e.g.*, ECF No. 3 at ¶¶ 20, 22, 23, as justification for her actions. However, she was not serving as the PIO when the video was filmed in September 2018.

[3] The term "interrogation" comes from the Law Enforcement Officers' Bill of Rights, Md. Code Ann., Pub. Safety § 3-104(a), and refers to "[t]he investigation or

was later extended to December 15, the interrogation was moved to December 7. ECF No. 3 at ¶ 18; Ex. 3, Preamble to Internal Affairs Statement/Interrogation.

As a result of the investigation, Lt. Warner determined that four charges applied to Sgt. Ensor's conduct:

Rule	**Description**	**Finding**
Rule 4-4	An employee shall not permit or authorize the use of his/her name, photograph, or official title identifying him/her as an employee of the Frederick County Sheriff's Office in connection with testimonials or advertisements of any commodity or commercial enterprise, or for personal reasons without the written approval of the Sheriff.	Sustained
Rule 26-2	An employee will not read, play games, watch television or movies, or engage in any activity or personal business while on duty that would cause neglect or inattentiveness to that duty.	Sustained
Rule 34-1	Employees of the Frederick County Sheriff's Office shall be held strictly responsible for the proper performance of their duties. Employees shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions.	Sustained
Rule 34-2	Employees shall perform their duties in a manner which will maintain the highest standards of efficiency of the Frederick County Sheriff's Office.	Sustained

Ex. 2, Applicable General Orders and Findings, at 2-3. Lt. Warner then submitted the investigation through the chain of command for a final decision. ECF No. 3 at ¶ 26.

On January 23, 2019, Sgt. Ensor was notified of the charges against her for participating in the unauthorized video. ECF No. 3 at ¶ 26; Ex. 4, Notification of Charges. Three charges remained, with discipline for each:

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interrogation by a law enforcement agency of a law enforcement officer for a reason that may lead to disciplinary action, demotion, or dismissal . . . ."

Rule	Summary	Discipline
Rule 4-4	Abuse of Position / Unauthorized Use of Likeness	Written reprimand
Rule 26-2	Neglect of Duty (Inattentiveness to Duty)	Loss of take-home vehicle for 30 working days
Rule 34-2	Incompetence (Perform to the Highest Standard)	15 day suspension without pay (120 hours) Transfer from Patrol Operations to Judicial Services

ECF No. 3 at ¶ 26; Ex. 4.

Five days later, Sgt. Ensor waived her rights to a hearing under the Law Enforcement Officers' Bill of Rights, Md. Code Ann., Pub. Safety §§ 3-101 *et seq.*, pleaded guilty to the charges, and accepted the discipline for each charge. Ex. 5, Waiver of Law Enforcement Officer's Bill of Rights and Acceptance of Disciplinary Action.

Equal Employment Opportunity Commission Charge

On March 19, 2019, Sgt. Ensor filed a Charge of Discrimination with the United States Equal Employment Opportunity Commission. Ex. 6, Charge of Discrimination. She claimed that she was discriminated against on the basis of sex and that the discrimination took place on November 15, 2018. The charge reads in its entirety:

> I. I began my employment with the above-named Respondent on October 2002, as a Sergeant. On November 15, 2018, I was disciplined and suspended by Charles A. Jenkins (Sheriff). However, Lieutenant Jeffrey Eyler (male) who committed a similar violation was not disciplined or suspended.
>
> II. Respondent stated that I was disciplined and suspended for violating departments policies.
>
> III. I believe that I was discriminated against based on my sex (Female) with respect to discipline and suspension in violation of Title VII of the Civil Rights Act of 1964, as amended.

Ex. 6.

According to Sgt. Ensor, Lt. Eyler participated in a "similar prank . . . around the same time as the Dobre brothers." ECF No. 3 at ¶ 36. When Lt. Eyler "responded to a call for an alarm at [a church] during an evening church session" in June 2018, "[a]n attractive, young female . . . asked [him] to place her in handcuffs and pretend to arrest her by walking her inside, in handcuffs, in front of the entire congregation . . . ." ECF No. 3 at ¶ 36. Lt. Eyler "agreed and placed the female in handcuffs," then "walk[ed] her into the church, past a group of members, to the front of the church." ECF No. 3 at ¶ 36.

Nearly a year after Sgt. Ensor filed the EEOC charge, on February 20, 2020, the EEOC advised Sgt. Ensor that "[r]eview of the available evidence does not establish a violation of the statute" and issued a right to sue letter. ECF No. 3 at ¶ 12; Ex. 7, Dismissal and Notice of Rights.

March 2020 Surgery

In March 2020, Sgt. Ensor requested and was granted another period of FMLA leave, this time for hernia surgery. ECF No. 3 at ¶¶ 84-85. She claims she requested but was denied the opportunity to work a restricted duty assignment and that she had to "use her sick leave to cover time off" from the surgery. ECF No. 3 at ¶ 85.

Federal Complaint

On May 20, 2020, Sgt. Ensor filed this suit against Sheriff Jenkins, Capt. Hibbard, Capt. Null, Lt. Warner, the Frederick County Sheriff's Office, and Frederick County. ECF

No. 1. She amended the complaint the next day. ECF No. 3. Frederick County has separately moved for dismissal or, in the alternative, summary judgment.[4] ECF No. 5.

Sgt. Ensor first alleges sex discrimination based on disparate treatment, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* (Count I). She also claims sex discrimination based on disparate treatment in violation of the Maryland Fair Employment Practices Act, Md. Code Ann., State Gov't § 20-606, *et seq.* (Count II). She alleges that Lt. Eyler "engaged in very similar conduct" to her participation in the unauthorized video but was not investigated. ECF No. 3 at ¶¶ 41, 49. She claims that she was transferred from Patrol Operations to Judicial Services "because of . . . discrimination against her on the basis of her sex." ECF No. 3 at ¶¶ 42, 50. And, she contends that she was discriminated against "in her position at Judicial Services on the terms and conditions of her employment on the basis of her sex," ECF No. 3 at ¶¶ 43, 51, and that Capt. Null treated her in a discriminatory manner "in depriving her of lunch and other privileges accorded male employees . . . ." ECF No. 3 at ¶¶ 45, 53.

Sgt. Ensor next alleges "unlawful interference and denial of FMLA benefits due to transfer/demotion in violation of 29 U.S.C. § 2615(a)(1)" (Count III) and "discrimination/retaliation for taking FMLA leave in violation of 28 U.S.C. § 2615(a)(2)" (Count IV) related to her October 2018 surgery. She claims that defendants violated her FMLA rights "by serving [her] with an internal affairs complaint and requiring her to attend a retaliato-

[4] Defendants support the dismissal of Frederick County from this action, although without supporting all of the arguments regarding the state and local functions of Maryland sheriffs and deputy sheriffs.

ry internal affairs interrogation of her while she was out on protected leave . . . .” ECF No. 3 at ¶ 63. She also asserts that the transfer violated her FMLA rights because defendants “fail[ed] to restore [her] to the same or an equivalent position at the conclusion of her FMLA qualified medical leave . . . .” ECF No. 3 at ¶ 65. And, she claims that the investigation into the unauthorized video, the guilty findings of “egregious misconduct and incompetency,” the penalties of a 15-day suspension without pay and the loss of her take-home car for 30 days, and the transfer from Patrol to Judicial Services constituted retaliation against her for requesting and using FMLA leave. ECF No. 3 at ¶ 76.

Finally, Sgt. Ensor alleges a second count of “discrimination/retaliation for taking FMLA leave in violation of 29 U.S.C. § 2615(a)(2),” this one stemming from her second instance of FMLA leave in March 2020 (Count V). According to Sgt. Ensor, defendants retaliated against her for “taking protected action by requesting and using FMLA leave” when they denied her request for a restricted duty assignment. ECF No. 3 at ¶¶ 85, 87. She claims that a male colleague was “allowed to work a restricted duty assignment in the same time period that [she] was denied such work.” ECF No. 3 at ¶ 85.

LEGAL STANDARDS

Rule 12(b)(6)

To survive a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, “a complaint must contain sufficient factual matter, accepted as true, ‘to state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “While legal conclusions can provide the framework of a complaint, they must be supported by

factual allegations." *Iqbal*, 556 U.S. at 679. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* at 678.

When ruling on a motion under Rule 12(b)(6), "a judge must accept as true all of the factual allegations contained in the complaint." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (citations omitted). Nevertheless, it is insufficient that the well-pleaded facts create "the mere possibility of misconduct." *Iqbal*, 556 U.S. at 679. Simply put, "legal conclusions, elements of a cause of action, and bare assertions devoid of further factual enhancement fail to constitute well-pled facts for Rule 12(b)(6) purposes." *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 255 (4th Cir. 2009) (citing *Iqbal*, 556 U.S. at 678).

Rule 12(b)(1)

The Court reviews assertions of Eleventh Amendment immunity and failure to exhaust Title VII administrative remedies under Rule 12(b)(1), as challenges to subject matter jurisdiction. *See Verizon Maryland Inc. v. RCN Telecom Servs., Inc.*, 232 F. Supp. 2d 539, 546 (D. Md. 2002), *aff'd in part, dismissed in part sub nom. Verizon Maryland, Inc. v. Glob. NAPS, Inc.*, 377 F.3d 355 (4th Cir. 2004) ("Because 'the principle of sovereign immunity is a constitutional limitation on the federal judicial power established in Art[icle] III,' it would seem to limit the extent of a federal court's subject-matter jurisdiction.") (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98 (1984)); *Balas v. Huntington Ingalls Indus., Inc.*, 711 F.3d 401, 406 (4th Cir. 2013) ("[F]ederal courts lack subject matter jurisdiction over Title VII claims for which a plaintiff has failed to exhaust administrative remedies.").

Defendants may challenge subject matter jurisdiction under Rule 12(b)(1) in two ways: facial and factual challenges. *See Kerns v. United States*, 585 F.3d 187, 192 (4th Cir. 2009). In a facial challenge, the defendant alleges that the complaint, accepted as true, has failed to state sufficient facts on which subject matter jurisdiction can be based. *Id*. In a factual challenge, the defendant argues that "the jurisdictional allegations of the complaint [are] not true." *Id.* (quoting *Adams v. Bain*, 697 F.2d. 1213, 1219 (4th. Cir. 1982)).

ARGUMENT

I. THE FREDERICK COUNTY SHERIFF'S OFFICE IS NOT A SUABLE ENTITY

The Frederick County Sheriff's Office is not a separate legal entity subject to suit. *See, e.g., Jarvis v. Montgomery Cnty.*, No. 11-cv-00654-AW, 2011 WL 5547979, at *3 (D. Md. Nov. 14, 2011) ("Under [Fed. R. Civ. P.] 17(b), a plaintiff may bring suit against any entity capable of being sued. Under Maryland law, the Sheriff's Office is not such an entity."); *Boyers v. State*, 323 Md. 558, 572 n.9 (1991) (affirming grant of summary judgment to Charles County "Sheriff's Department" because it was "not an entity capable of being sued"); *Hines v. French*, 157 Md. App. 536, 578 (2004) (affirming dismissal of Harford County Sheriff's Office because it was "not a separate legal entity capable of being sued"). The Court should therefore dismiss the complaint against the Frederick County Sheriff's Office.

II. SGT. ENSOR HAS FAILED TO STATE A CLAIM FOR DISPARATE TREATMENT ON THE BASIS OF SEX

Sgt. Ensor alleges that all defendants discriminated against her on the basis of sex in violation of Title VII, 42 U.S.C. § 2000e, *et seq.*, and the Maryland Fair Employment Practices Act ("FEPA"), Md. Code Ann., State Gov't § 20-606, *et seq.* ECF No. 3 at 17-20. The Court should dismiss her claims because (a) individual supervisors are not liable for Title VII or FEPA violations in their individual or official capacity; (b) Eleventh Amendment immunity bars Sgt. Ensor's remaining FEPA claim against Sheriff Jenkins; and (c) Sgt. Ensor has not demonstrated that she had satisfactory job performance or that she was treated differently from a similarly situated employee.

A. There is No Individual or Supervisor Liability Under Title VII or FEPA

Preliminarily, Sgt. Ensor's Title VII and FEPA claims against Sheriff Jenkins, Capt. Hibbard, Capt. Null, and Lt. Warner largely fail to state a claim because (1) there is no individual or personal liability under Title VII or FEPA, and (2) supervisors[5] are not liable under Title VII or FEPA. *See Lissau v. Southern Food Service, Inc.*, 159 F.3d 177, 181 (4th Cir. 1999) (holding that "supervisors are not liable in their individual capacities for Title VII violations"); *Brown v. Baltimore Police Dep't*, No. RDB-11-00136, 2011 WL 6415366, at *14 (D. Md. Dec. 21, 2011) (finding that "supervisors cannot be individually

[5] Defendants assume for the purposes of this memorandum that Lt. Warner would qualify as Sgt. Ensor's supervisor, however, she has not alleged any facts suggesting that he is. *E.g.*, ECF No. 3 at ¶ 3 (Sheriff Jenkins is "responsible for day-to-day supervision of FCSO personnel, including Sgt. Ensor"); ¶ 4 (Capt. Hibbard is the Patrol Operations Commander, and "Sgt. Ensor was the only female patrol supervisor under his command"); ¶ 36 (Sgt. Ensor submitted "paperwork to her then supervisor, Lt. Null"). Defendants reserve the right to argue that Lt. Warner is not a supervisor.

liable under FEPA") (citing *Lissau*, 159 F.3d at 180); *Baird ex rel. Baird v. Rose*, 192 F.3d 462, 472 (4th Cir. 1999) ("Title VII does not provide a remedy against individual defendants who do not qualify as 'employers'"); *Murphy-Taylor v. Hofmann*, 968 F. Supp. 2d 693, 719 (D. Md. 2013) (dismissing Title VII individual-capacity claims against sheriff and major).

"An individual person can only be liable under Title VII if that person qualifies as an 'employer' within the meaning of the statute." *Weathersbee v. Baltimore City Fire Dep't*, 970 F. Supp. 2d 418, 425 (D. Md. 2013) (citing *Lissau*, 159 F.3d at 181). Only Sheriff Jenkins, in his official capacity, is Sgt. Ensor's employer. *See, e.g.*, *O'Connor v. Cameron*, No. DKC-17-3394, 2019 WL 1112281, at *3 (D. Md. Mar. 11, 2019) (finding that sheriff was plaintiff's employer in his official capacity); *Roberts v. Coffey*, No. DKC-10-3359, 2012 WL 2000353, at *3 (D. Md. June 4, 2012) (same).

The Court should therefore dismiss Counts I and II against (1) Capt. Hibbard, Capt. Null, and Lt. Warner in their official and individual capacities, and (2) Sheriff Jenkins in his individual capacity.

B. The Eleventh Amendment Bars the Remaining FEPA Claim

The Court should also dismiss Sgt. Ensor's FEPA claims against Sheriff Jenkins in his official capacity because he is immune from suit. Sheriff Jenkins is a State constitutional official. Md. Const., art. IV, § 44; *see also Kronk v. Carroll County, Md.*, No. L-11-0277, 2012 WL 245059, at *6-*7 (D. Md. Jan. 25, 2012) (surveying cases and concluding that "county sheriffs in Maryland are State actors"). Because Eleventh Amendment immunity bars FEPA claims against the State in federal court, *Pense v. Md.*

Dep't of Pub. Safety & Corr. Servs., 926 F.3d 97, 102 (4th Cir. 2019), and because a suit against a state official in his official capacity "is no different from a suit against the State itself," *Will v. Michigan Dep't of Police*, 491 U.S. 58, 71 (1989), Sheriff Jenkins is immune from suit on Sgt. Ensor's FEPA claim. The Court should dismiss Count II against Sheriff Jenkins in his official capacity.

C. Sgt. Ensor Has Not Stated a Claim of Disparate Treatment Under Title VII

Sgt. Ensor describes three discrete instances of alleged discrimination on the basis of sex.[6] First, she alleges that Lt. Eyler "engaged in very similar conduct" to her participation in the unauthorized video but was not investigated. ECF No. 3 at ¶¶ 41, 49. Second, she claims that she was transferred from Patrol Operations to Judicial Services "because of . . . discrimination against her on the basis of her sex." ECF No. 3 at ¶¶ 42, 50. Third, she contends that she was discriminated against "in her position at Judicial Services on the terms and conditions of her employment on the basis of her sex," ECF No. 3 at ¶¶ 43, 51, and that Capt. Null treated her in a discriminatory manner "in depriving her of lunch and other privileges accorded male employees . . . ." ECF No. 3 at ¶¶ 45, 53. Only the first was stated in Sgt. Ensor's initial EEOC charge, and only the second is reasonably related to the original complaint. The third set of allegations, about her posi-

[6] Sgt. Ensor alleges other instances of discriminatory conduct she has faced, in varying degrees of detail and with varying degrees of relevance to her complaint. *E.g.*, ECF No. 3 at ¶¶ 32-35. All fall outside the statute of limitations for the Title VII claim. *See* 42 U.S.C. § 2000e-5(e)(1) (providing a limitations period of 300 days for Title VII claims); *EEOC v. R&R Ventures*, 244 F.3d 344, 338 n.* (4th Cir. 2001) ("In a deferral state such as Maryland, a charge is timely if it is filed with the Commission with 300 days of the last alleged act of discrimination . . . .").

tion at Judicial Services, is outside Sgt. Ensor's EEOC charge and thus she has failed to exhaust her administrative remedies, meriting dismissal of the claim. *See Chacko v. Patuxent Institution*, 429 F.3d 505, 506 (4th Cir. 2005); *see also* ECF No. 5-1 at 26-29.

A plaintiff claiming discrimination under Title VII may proceed under the direct or indirect evidence approach or the *McDonnell-Douglas* burden-shifting framework. *See Brennan v. Deluxe Corp.*, 361 F. Supp. 3d 494, 505 (D. Md. 2019). Although these two methods apply at trial, a court faced with a motion to dismiss nonetheless refers to and relies on these two avenues to inform its review of the motion. *Id.* "[W]hile a plaintiff is not required to plead facts that constitute a prima facie case in order to survive a motion to dismiss, factual allegations must be enough to raise a right to relief above the speculative level." *Coleman v. Md. Court of Appeals*, 626 F.3d 187, 190 (4th Cir. 2010), *aff'd*, 566 U.S. 30 (2012) (citing *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 510-15 (2002)) (internal quotation omitted).

Sgt. Ensor has failed to satisfy either approach, and the Court should dismiss Count I against Sheriff Jenkins in his official capacity.

1. Sgt. Ensor Has Not Satisfied the Direct Evidence Standard

"Direct evidence must be 'evidence of conduct or statements that both reflect directly the alleged discriminatory attitude and that bear directly on the contested employment decision.' Even if there is a statement that reflects a discriminatory attitude, it must have a nexus with the adverse employment action." *Warch v. Phio Cas. Ins. Co.*, 435 F.3d 510, 520 (4th Cir. 2006) (quoting *Taylor v. Va. Union Univ.*, 193 F.3d 219, 232 (4th Cir.

1999)) (citation and internal quotation marks omitted). Sgt. Ensor names a litany of alleged examples of "discriminatory animus," *e.g.*, ECF No. 3 at ¶¶ 14, 17, 30-35, but none of these relates to the adverse employment actions that form the basis for Sgt. Ensor's claims. *See Dyer v. Oracle Corporation*, No. PWG-16-521, 2016 WL 7048943, at *4 (D. Md. Dec. 5, 2016) (finding that statements made nearly two years before alleged adverse employment action and not "referenc[ing] or relat[ing] to the later employment actions" were not direct evidence of discrimination). She has thus failed to allege direct evidence of discrimination.

2. Sgt. Ensor Has Not Satisfied the *McDonnell-Douglas* Framework

"In a disparate treatment case, the elements of a prima facie case of discrimination under Title VII are: '(1) membership in a protected class; (2) satisfactory job performance; (3) adverse employment action; and (4) different treatment from similarly situated employees outside the protected class.'" *Brennan*, 361 F. Supp. 3d at 506 (quoting *Coleman*, 626 F.3d at 190). "Merely parroting these elements, however, or attempting to satisfy them with nothing more than conclusory allegations, is insufficient to survive a motion to dismiss." *Cole v. Hillside Family of Agencies, Inc.*, No. PJM-10-3326, 2011 WL 2413928, at *4 (D. Md. June 9, 2011) (citation omitted). Because "[l]iability in a disparate-treatment case 'depends on whether the protected trait . . . actually motivated the employer's decision,'" *Raytheon Co. v. Hernandez*, 540 U.S. 44, 52 (2003) (citation omitted), Sgt. Ensor must show that she was treated less favorably because of her sex.

See, e.g., Luy v. Baltimore Police Dep't, 326 F. Supp. 2d 682, 689 (D. Md. 2004); *Foreman v. Weinstein*, 485 F. Supp. 2d 608, 612 (D. Md. 2007).

Sgt. Ensor is a woman and thus a member of a protected class. And, defendants assume for the purposes of this memorandum that she was subject to an adverse employment action.[7] However, Sgt. Ensor did not have satisfactory job performance, nor did she receive different treatment from a similarly treated employee outside her protected class. Therefore, she has not stated "a plausible claim for relief under Title VII . . . ." *Ciociola v. Baltimore City Bd. of School Comm'rs*, No. CCB-15-1451, 2016 WL 125597, at *4 (D. Md. Jan. 12, 2016).

a. Sgt. Ensor Did Not Have Satisfactory Job Performance

Demonstrating satisfactory job performance requires demonstrating that the employee was "performing at a level that met [her] employer's legitimate expectations at the time of the adverse employment action." *Dones v. Donahoe*, 987 F. Supp. 2d 659, 668 (D. Md. Dec. 2013) (citing *Coleman*, 626 F.3d at 190). A plaintiff's "own testimony, of course, cannot establish a genuine issue as to whether [she] was meeting [the employer's] expectations." *King v. Rumsfeld*, 328 F.3d 145, 149 (4th Cir. 2003) (citing *Evans v. Technologies Applications & Serv. Co.*, 80 F.3d 954, 960-61 (4th Cir. 1996)). And, "simply working for [an employer] for many years cannot be extrapolated to mean satisfactory

[7] Defendants reserve rights on whether Sgt. Ensor was actually subject to an adverse employment action, which "constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." *Burling Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998). For example, Sgt. Ensor was not demoted; she was a sergeant in Patrol Operations and remains a sergeant today. ECF No. 3 at ¶¶ 2, 16.

job performance over those years." *Smith v. Mission Hosp.*, No., 1:17-cv-220, 2018 WL 3326843, at *4 (W.D.N.C. Apr. 2, 2018).

In *Goode v. Central Virginia Legal Aid Soc.*, No. 3:14-cv-281-HEH, 2014 WL 3945870, at *4-*5 (E.D. Va. Aug. 12, 2014), *appeal dismissed*, 807 F.3d 619 (4th Cir. 2015), a plaintiff alleging discriminatory termination based on race described the various positions and duties he held over 25 years with the employer, noted an award he won four years prior to termination, and alleged that he "has always met or exceeded the performance expectations of [the employer]." These allegations did not satisfy the pleading standards for satisfactory job performance under the *McDonnell-Douglas* framework, and the court granted the employer's motion to dismiss. *Id.* at *7. In particular, the court noted that meeting or exceeding the performance expectations of the employer was "insufficient to show that [the employer] was satisfied with [the plaintiff's] job performance at the time of his termination" and that "[m]erely bolstering the statement with the word 'exceeded' does not transform the conclusory allegation into a plausible fact." *Id.* at *4-*5. Similarly, in *Bynum v. Martin*, No. GJH-16-2067, 2016 WL 7468050, at *5 (D. Md. Dec. 27, 2016), this Court found that the plaintiff's mere allegation "that 'at all times prior to August 13, 2014, [she] was at least a fully successful performer'" was a "conclusory statement" that was "not sufficient to state a claim for disparate treatment." *See also Young v. Giant Food Stores, LLC*, 108 F. Supp. 3d 301, 313 (D. Md. 2015) (finding that plaintiff did not satisfy pleading burden merely by alleging "she had performed adequately over a seven year period prior to" her termination).

Here, Sgt. Ensor alleges that "[s]he has been a hard-working employee with FCSO for 18 years, regularly receiving accolades and 'attaboys' from both internal and external contacts complimenting her for a job well done" and that, "[a]t all relevant times, [she] was performing her job to, and above, FCSO's legitimate expectations." ECF No. 3 at ¶ 15. Like the plaintiffs in *Goode*, *Bynum*, and *Young*, these allegations are insufficient to "nudge[] [her] claims across the line from conceivable to plausible." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

b. Sgt. Ensor Did Not Receive Different Treatment from a Similarly Situated Employee

A plaintiff who bases her allegations entirely upon a comparison to another employee "must demonstrate that the comparator was 'similarly situated' in all relevant respects." *Sawyers v. United Parcel Service*, 946 F. Supp. 2d 432, 442 (D. Md. 2013). Sgt. Ensor is thus "required to show that [she is] similar in all relevant respects to [her] comparator," Lt. Eyler. *Haywood v. Locke*, 387 F. App'x 355, 359 (4th Cir. 2010) (citations omitted). "Such a showing would include evidence that the employees 'dealt with the same supervisor, [were] subject to the same standards and . . . engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer's treatment of them for it." *Id.* (quoting *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 583 (6th Cir. 1992)) (alterations in original); *see also Lightner v. City of Wilmington, N.C.*, 545 F.3d 260, 265 (4th Cir. 2008) ("The similarity between comparators and the seriousness of their respective offenses must be clearly established in order to be meaningful.").

Sgt. Ensor cannot make this showing. Although she claims that she and Lt. Eyler engaged "in very similar conduct," the incidents are plainly dissimilar. ECF No. 3 at ¶¶ 41, 49. She participated in a prank video with the Dobre Brothers, "famous YouTubers who live in Frederick County," that involved the filmed fake arrest of one of the brothers. ECF No. 3 at ¶ 19. Sgt. Ensor and two other deputies went to the Dobre Brothers' residence for the sole purpose of the prank; they did not respond to a call, and in fact Sgt. Ensor "opened a card on the radio"[8] in order to treat the visit as a call. ECF No. 3 at ¶ 20. The video remains on the Dobre Brothers' YouTube channel and has amassed "7.7 million views and approximately 90,000 'likes' as of May 2020." ECF No. 3 at ¶ 29. By contrast, Lt Eyler responded to a genuine call for service, ECF No. 3 at ¶ 36, and the encounter was not recorded or posted on the Internet. The incident itself is distinct as well: Lt. Eyler put a young woman in handcuffs, at her request, and "walk[ed] her into [a] church, past a group of members, to the front of the church." ECF No. 3 at ¶ 36.

To the extent that Sgt. Ensor also alleges that pseudonymous male officers received less discipline "for committing more egregious actions" at unknown times, ECF No. 3 at ¶¶ 30, 31, she has neither alleged sufficient facts to substantiate these claims nor demonstrated that these other officers were similarly situated to her. *See Ruffin v. Lockheed Martin Corp.*, 126 F. Supp. 3d 521, 528 (D. Md. 2015), *aff'd as modified*, 659 F.

[8] "All incidents of Sheriff's Office Service will be documented by opening a card with Central Dispatch." Frederick County Sheriff's Office, Policies, General Order 82.1.6 Report Numbering, at 699, *available at* https://www.frederickcountymd.gov/DocumentCenter/View/324933/Policy--Procedures-2020-Update.

App'x 744 (4th Cir. 2016) ("Conclusionary allegations that similar actions were not taken against white employees are 'insufficient' to state a discrimination claim.") (quoting *Francis v. Giacomelli*, 588 F.3d 186, 195 (4th Cir. 2009)); *see also Sillah v. Burwell*, 244 F. Supp. 3d 499, 513 (D. Md. 2017) ("[B]are allegations that white colleagues were treated more favorably amounts to little more than speculation that the adverse treatment of Plaintiff was race-based.") (citing *Coleman*, 626 F.3d at 191); *Ramos v. Molina Healthcare, Inc.*, 603 F. App'x 173, 178 (4th Cir. 2015) (affirming dismissal of racial discrimination claim when plaintiff "merely alleged that [a supervisor] once made a derogatory comment about Hispanics and that [plaintiff's] supervisors generally disliked Hispanics").

Finally, although Sgt. Ensor asserts that she was transferred from "Patrol Operations to Judicial Services . . . because of [] discrimination against her on the basis of her sex," ECF No. 3 at ¶¶ 42, 50, she has alleged no facts from which one could plausibly draw that inference. For example, she provides no information about transfers of any other employees, for disciplinary or other reasons. "The mere fact that a certain action is potentially consistent with discrimination does not alone support a reasonable inference that the action was motivated by bias." *Bing v. Brivo Systems, LLC*, 959 F.3d 605, 618 (4th Cir. 2020) (citing *McCleary-Evans v. Md. Dep't of Transp., State Highway Admin.*, 780 F.3d 582, 586 (4th Cir. 2015)).

The Court should dismiss Count I against Sheriff Jenkins in his official capacity.

III. SGT. ENSOR HAS FAILED TO STATE A CLAIM FOR VIOLATIONS OF THE FMLA

The FMLA grants employees the right to take up to twelve weeks of leave during any twelve-month period when, among other reasons, the employee has "a serious health condition that makes [her] unable to perform" her job. 29 U.S.C. § 2612(a)(1)(D). "When returning from FMLA leave, an employee is also entitled to be restored to his previous position or an equivalent position, so long as he would have retained that position or an equivalent one absent the taking of leave." *Adams v. Anne Arundel County Public Schools*, 789 F.3d 422, 426 (4th Cir. 2015) (citing *Yashenko v. Harrah's NC Casino Co.*, 446 F.3d 541, 546-47 (4th Cir. 2006)). Although it is "unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise" an employee's FMLA rights, 29 U.S.C. § 2615(a)(1), "there is 'no absolute right to restoration to a prior employment position.'" *Adams*, 780 F.3d at 426 (quoting *Yashenko*, 446 F.3d at 549).

Sgt. Ensor claims that defendants interfered with and denied her FMLA benefits (Count III) and discriminated and/or retaliated against her for taking FMLA leave (Counts IV and V). All counts stem from two instances of Sgt. Ensor taking FMLA leave for self-care reasons: Counts III and IV relate to her shoulder surgery in October 2018, and Count V relates to her hernia surgery in March 2020.[9] ECF No. 3 at ¶¶ 60, 74, 85.

None of the defendants is liable for any alleged FMLA violations. First, as state officials, the individual defendants are immune from suit in their official capacities.

[9] As with her Title VII claims, Sgt. Ensor alleges an unrelated instance of discrimination for using FMLA leave. ECF No. 3 at ¶ 17. And as with the Title VII claims, these allegations fall outside the statute of limitations. *See* 29 U.S.C. § 2617(c)(1) (providing two-year statute of limitations for FMLA claims).

Second, the FMLA does not authorize individual capacity claims. Third, and in the alternative, Sgt. Ensor has failed to state a claim against the defendants in their individual capacities.

A. Defendants Are Not Liable in Their Official or Individual Capacities

1. Defendants Are Immune in Their Official Capacities

The individual defendants are immune from suit on the FMLA claims in their official capacities. Because the State has sovereign immunity from monetary damages under an FMLA self-care claim, *Coleman v. Maryland Court of Appeals*, 566 U.S. 30, 43 (2012), sheriffs and their deputies are likewise entitled to Eleventh Amendment immunity in their official capacity. *See Will*, 491 U.S. at 71; *Kronk*, 2012 WL 245059, at *8. The Court should therefore dismiss all FMLA counts against Sheriff Jenkins, Capt. Hibbard, Capt. Null, and Lt. Warner in their official capacities.

2. The FMLA Does Not Provide for Individual Liability for Public Supervisors

Although this Court is divided as to whether individual liability applies to supervisors at public agencies under the FMLA, the vast majority of judges in this district have found that public supervisors are not individually liable. *See Hayes v. MTA*, No. RDB-18-0691, 2018 WL 5809681, at *9 (D. Md. Nov. 6, 2018); *Mattison v. Md. Transit Admin.*, No. RDB-15-1627, 2016 WL 2898020, at *6-*7 (D. Md. May 18, 2016); *Kronk*, 2012 WL 245059, at *8; *Adams v. Wallenstein*, 814 F. Supp. 2d 516, 523 n.3 (D. Md. 2011); *Mezu v. Morgan State Univ.*, No. WMN-09-2855, 2010 WL 1068063, at *12 n.15 (D. Md. Mar. 18, 2010); *Bosse v. Baltimore Cnty.*, 692 F. Supp. 2d 574, 581-83 (D. Md. 2010);

Sadowski v. U.S. Postal Service, 643 F. Supp. 2d 749, 752-57 (D. Md. 2009). *But see Dennard v. Towson Univ.*, 62 F. Supp. 3d 446, 452-55 (D. Md. 2014) (finding that public supervisor can be liable for monetary relief in her individual capacity under the FMLA); *Reed v. Md. Dep't of Human Res.*, No. ELH-12-0472, 2013 WL 489985, at *7-*14 (D. Md. Feb. 7, 2013) (finding that "individual liability applies to supervisors at public agencies under the FMLA"); *Knussman v. Maryland*, 16 F. Supp. 2d 601, 610-11 (D. Md. 1998) (finding that individual supervisors could be liable for FMLA violations but that qualified immunity foreclosed liability).

This Court should adhere to the majority view and conclude that individual public supervisors are not liable for FMLA violations. As the Fourth Circuit has previously noted, "naming the individual supervisor as the employer" in a case alleging FMLA violations by the State would create an "anomaly" in the existing "Eleventh Amendment prohibition against suing a state." *Lizzi v. Alexander*, 255 F.3d 128, 137 (4th Cir. 2001), *overruled in part on other grounds by Nev. Dep't of Resources v. Hibbs*, 538 U.S. 721 (2001). According to the Fourth Circuit, "[a] rule permitting such individual liability would do nothing more than 'adhere to an empty formalism and [would] undermine the principle, reaffirmed . . . in *Seminole Tribe*, that Eleventh Amendment immunity represents a real limitation on a federal court's federal-question jurisdiction.'" *Id.* (quoting *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 270 (1997)) (alterations in original). The Court should therefore dismiss the FMLA counts against Sheriff Jenkins, Capt. Hibbard, Capt. Null, and Lt. Warner in their individual capacities.

B. Sgt. Ensor Has Failed to State a Claim for FMLA Violations

Even if the Court finds that the individual defendants can be liable in their individual capacities, Sgt. Ensor has failed to state a claim on any of her FMLA counts, and the Court should dismiss them.

1. Defendants Did Not Interfere with or Deny FMLA Benefits

"To make out an 'interference' claim under the FMLA, an employee must . . . demonstrate that (1) he is entitled to an FMLA benefit; (2) his employer interfered with the provision of that benefit; and (3) that interference caused harm." *Adams*, 789 F.3d at 427 (citing *Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81, 89 (2002)). The employee must "prove not only the fact of interference, but also that the violation prejudiced her in some way," such as through lost compensation or benefits, other monetary losses, or some loss in employment status. *Anderson v. Discovery Comms., LLC*, 517 F. App'x 190, 197-98 (4th Cir. 2013) (citing *Ragsdale*, 535 U.S. at 89; 29 U.S.C. § 2617(a)(1)).

In *Adams*, the plaintiff, a high school assistant principal, got into a physical altercation with a student at the school. 789 F.3d at 424-25. About a month later, the plaintiff met with the school board's investigators about the incident; that same day, he went on medical leave. *Id.* at 425. The school board's investigation continued while he was on leave, and a pre-disciplinary conference was held with the plaintiff and his attorney during his leave. *Id.* The plaintiff later sued the school system and alleged, among other claims, that the board interfered with his FMLA rights and retaliated against him for taking medical leave. *Id.* at 426. The Fourth Circuit disagreed. Noting first that the

plaintiff "was not denied FMLA leave," the court found that "the one-time conference was a legitimate piece of an ongoing investigation into the . . . incident between [the plaintiff] and the student." *Id.* at 427. The court described a "standard procedure during which due process was accorded to [the plaintiff] every step along the way," one in which "seeking the participation of [the plaintiff] and his attorney . . . did not constitute an impermissible interference with [his] FMLA leave." *Id.* at 428.

Like the plaintiff in *Adams*, Sgt. Ensor was not denied FMLA leave for her October 2018 surgery, *see* ECF No. 3 at ¶ 61, nor has she suggested that defendants denied her any FMLA leave she requested. In fact, her leave initially ran from October 1 to November 29, before being extended to December 15. ECF Nos. 1-1; 3 at ¶ 18. Although Sgt. Ensor claims interference from being served with an internal affairs investigation at her home and from participating in an interrogation, ECF No. 3 at ¶ 66, neither of these events satisfies the requirement that the "interference caused harm," *Adams*, 789 F.3d at 427, in the form of lost compensation or benefits, monetary loss, or loss in employment status. *See Anderson*, 517 F. App'x at 197-98. Having to receive and sign paperwork at one's home during a period of leave does not meet that standard. Nor does having to attend an interrogation—particularly one that occurred as a "legitimate piece of an ongoing investigation" into actions Sgt. Ensor took *prior* to her FMLA leave, as in *Adams*, 789 F.3d at 427. Finally, there was no interference with Sgt. Ensor's FMLA benefits when she was transferred from Patrol Operations to Judicial Services because this transfer occurred as a result of the pending investigation, after she returned from FMLA leave. *See* ECF

No. 3 at ¶ 24.e; Ex. 4. Moreover, "there is 'no absolute right to restoration to a prior employment position.'" *Adams*, 780 F.3d at 426 (quoting *Yashenko*, 446 F.3d at 549).

The Court should dismiss Count III against Sheriff Jenkins, Capt. Hibbard, and Lt. Warner in their individual capacities.

2. Defendants Did Not Retaliate Against Sgt. Ensor for Using FMLA Leave

"A retaliation claim under the FMLA differs from an interference claim under the FMLA in that 'the interference claim merely requires proof that the employer denied the employee his entitlements under the FMLA, while the retaliation claim requires proof of retaliatory intent.'" *Bosse*, 692 F. Supp. 2d at 588 (quoting *Stallings v. Hussmann Corp.*, 447 F.3d 1041, 1051 (8th Cir. 2006)). "Retaliation claims brought under the FMLA are analogous to those brought under Title VII." *Adams*, 789 F.3d at 429 (citing *Laing v. Federal Express Corp.*, 703 F.3d 713, 717 (4th Cir. 2013)). Establishing a prima facie case of retaliation requires Sgt. Ensor to prove that "(1) she engaged in a protected activity, (2) her employer took an adverse employment action against her, and (3) there was a causal link between the two events." *Adams*, 789 F.3d at 429 (internal quotations omitted). "If the defendant advances a lawful explanation for the alleged retaliatory action, the plaintiff must demonstrate that the defendant's reason for taking the adverse employment action was pretextual." *Id.* (citing *Laing*, 703 F.3d at 717, 719).

Sgt. Ensor alleges that defendants discriminated and/or retaliated against her for taking FMLA leave in (a) October 2018 (Count IV), and (b) March 2020 (Count V). She can prove neither, and the Court should dismiss both counts.

a. The Internal Affairs Investigation and Associated Penalties Were Not Retaliation for Sgt. Ensor's October 2018 FMLA Leave

Sgt. Ensor alleges that defendants retaliated against her for taking FMLA leave in October 2018 by (1) removing her take-home vehicle, (2) conducting and serving her with an internal affairs investigation, (3) finding her guilty in the investigation, and (4) disciplining her by suspending her without pay for 15 days, suspending the use of her take-home car for 30 days, and transferring her from Patrol Operations to Judicial Services. ECF No. 3 at ¶ 76.

First, as for the removal of her take-home vehicle, Sgt. Ensor has alleged no facts in support of this claim, and the Court should dismiss it. *See Iqbal*, 556 U.S. at 678 ("[A] complaint must contain sufficient factual matter, accepted as true, 'to state a claim to relief that is plausible on its face.'") (quoting *Twombly*, 550 U.S. at 570).

Second, neither the investigation nor serving Sgt. Ensor with the investigation was an adverse employment action.[10] *See Blakes v. City of Hyattsville*, 909 F. Supp. 2d 431, 436-37 (D. Md. 2012).

Third, finding her guilty in the investigation did not result from retaliation for using FMLA leave. As an initial matter, a guilty finding resulting from an investigation proceeding in its usual course is not an adverse employment action. *See Wilder v. Balti-*

[10] Further, Sgt. Ensor has not "alleged that the investigation resulted in some form of employment injury that was independent of injury caused by the alleged disparate . . . discipline." *Jenkins v. Baltimore City Fire Dep't*, 862 F. Supp. 2d 427, 446 (D. Md. 2012). "The fact that the investigation may have caused embarrassment, anxiety or other emotional distress does not render the investigation an 'adverse employment action.'" *Id.* (quoting *Settle v. Baltimore County*, 34 F. Supp. 2d 969, 992 (D. Md. Jan. 20, 1999)).

more City Police Dep't, No. AMD-07-3090, 2009 WL 10727178, at *4 (D. Md. May 19, 2009) (finding no adverse employment action where employer followed "facially neutral procedures") (citing *Von Gunten v. Maryland*, 243 F.3d 858, 869 (4th Cir. 2001), *abrogated on other grounds by Burling Northern & Santa Fe Ry. Co. v. White*, 548 U.S. 53 (2006); *McKenzie v. Illinois Dep't of Transp.*, 92 F.3d 473, 484 (7th Cir. 1996)). Even if it were, however, Sgt. Ensor has not alleged sufficient facts to connect the guilty finding in the investigation with any retaliation against her for using FMLA leave. She claims that the investigation "was not independent" and that the charges against her stemmed from "a personal attack [on her] by Defendants Hibbard and Jenkins . . . ." ECF No. 3 at ¶ 26. Nowhere, however, is there any suggestion that there was "a causal link" between the guilty finding on the charges and her FMLA leave, and thus the Court should dismiss this claim. *See Iqbal*, 556 U.S. at 678.

Finally, the discipline that Sgt. Ensor received came as a result of the investigation, not any retaliation for using FMLA leave. *See* ECF No. 3 at ¶ 24.e; Ex. 4. Again, Sgt. Ensor fails to allege any causal link between the discipline and her use of FMLA leave, thus meriting dismissal of the claim. *See Iqbal*, 556 U.S. at 678. Moreover, the amount of time that passed between Sgt. Ensor's October 1 surgery and January 23 discipline cannot support an inference of retaliation in a prima facie case. *See Clark County School Dist. v. Breeden*, 532 U.S. 268, 273-74 (2001) (noting that plaintiffs relying on temporal proximity must show that that timing is "very close" and that periods of three and four months were insufficient) (citations omitted); *see also Anusie-Howard v. Todd*, 983 F. Supp. 2d 645, 649 n.9 (D. Md. 2013).

The Court should therefore dismiss Count IV against Sheriff Jenkins, Capt. Hibbard, Capt. Null, and Lt. Warner in their individual capacities.

b. The Denial of Restricted Duty in March 2020 Was Not Discriminatory

Finally, Sgt. Ensor alleges that Sheriff Jenkins, Capt. Hibbard, and Capt. Null retaliated against her in March 2020 when they denied her request for a restricted duty assignment following her hernia surgery. ECF No. 3 at ¶¶ 85, 87. She claims retaliation because a male colleague "recently had surgery, and he has been allowed to work a restricted duty assignment in the same time period that Sgt. Ensor was denied such work." ECF No. 3 at ¶¶ 85, 87. Sgt. Ensor "was forced to use her sick leave to cover time off when she was capable of working a restricted duty assignment." ECF No. 3 at ¶ 85.

Sgt. Ensor has failed to state a claim because she has alleged no "more than bald accusations or mere speculation." *Chappel v. Baltimore County Public Schools*, No. ELH-18-3328, 2019 WL 1746697, at *2 (D. Md. Apr. 17, 2019) (citing *Twombly*, 550 U.S. at 555). There is no suggestion that a restricted duty assignment was available to a sergeant in Judicial Services; that Sgt. Ensor's doctor cleared her for restricted duty in time for such an assignment; or that the male colleague was similarly situated to her in any relevant way, among other details.

Finally, even if the Court were to permit this claim to proceed, it should dismiss Capt. Hibbard. Regarding Capt. Hibbard, Sgt. Ensor states only that "Defendants Jenkins, Hibbard, and Null acted directly or indirectly in the interest of an employer to Sgt. Ensor and thus are 'employers' covered by the FMLA." ECF No. 3 at ¶ 81. However, in March

2020, Capt. Null was Sgt. Ensor's commanding officer. ECF No. 3 at ¶¶ 5, 85. Sgt. Ensor presents no facts connecting Capt. Hibbard with the allegedly retaliatory treatment and has thus failed to state a claim against him.

The Court should therefore dismiss Count V against Sheriff Jenkins, Capt. Hibbard, and Captain Null in their individual capacities.

CONCLUSION

The Court should dismiss the complaint against Charles Jenkins, Ronald Hibbard, Jason Null, Gregory Warner, and the Frederick County Sheriff's Office.

Respectfully submitted,

BRIAN E. FROSH
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Attorneys for Charles Jenkins, Ronald Hibbard, Jason Null, Gregory Warner, and the Frederick County Sheriff's Office

July 31, 2020

Exhibit 1

Amanda J. Ensor v. Charles Jenkins, et al.
United States District Court for the District of Maryland
Case No.: 1:20-cv-001266-ELH

FREDERICK COUNTY SHERIFF'S OFFICE

NOTIFICATION OF COMPLAINT

If there is not an interrogation, complete this form only. If an interrogation is conducted, also complete FCSO FORM 52-D.

DATE: 11/15/18

TO: Sgt. (Rank) Amanda Ensor (Name) #0343 (I.D. Number)

A complaint has been received concerning an incident in which you were alleged to have been involved. The details of the complaint are as follows:

On or about 9/29/2018 a video was made that involved you and other deputies involving the fake arrest of a subject. The video was subsequently posted on a Youtube channel associated with the Dobre brothers and was available to the public to view. The video showed you in the uniform of the day and marked Frederick County Sheriff's Office cars. This is alleged to have happened during your evening shift tour of duty on or about 09/29/2018.

You will be apprised of other issues which may arise from the investigation of this complaint.

Investigators & Assignments:

Lt. Warner Office of Policy and Compliance

Signed and Received by:

0543
(Rank, Name, and I.D. #)

11-15-18 10:21 am
(Date and Time)

Distribution: Original with case file
Copy given to accused

FCSO Form #52-C
Revised 8/2016

Exhibit 2

Amanda J. Ensor v. Charles Jenkins, et al.
United States District Court for the District of Maryland
Case No.: 1:20-cv-001266-ELH

FREDERICK COUNTY
SHERIFF'S OFFICE
Office of Policy and Compliance

Internal Investigation
Case #18-020

Office of Policy and Compliance Tracking Number 18-020

FREDERICK COUNTY SHERIFF'S OFFICE

Complaint Reception Form

Employee Involved (Name) Sgt. Amanda Ensor #0343, Dep. Brandon Jewell #0532, Dep. Amber Blackmire #0543		Case # 	Assignment Patrol Ops- Team 1
Complainant, Reporting Party, or Agency Lt. Jeff Eyler #0339	Residence Address NA		Residence Phone NA
Employed By NA	Business Address NA		Business Phone NA
Witness or Other Complainants Unk	Address Unk		Phone Unk
Name NA	Address NA		Phone NA
Date and Time of Incident 10/29/18 unk time	Location 7688 Stewart Hill Rd, Adamstown, MD		
Date and Time Reported 10/30/18 2230 hrs	Reported By ☐ Phone ☐ In Person ☐ Letter ☒ Other Via Internet		
Received By – Title Lt. Jeff Eyler #0339	Date Received 10/30/18	Time 2230	Assignment Patrol Ops

Brief Description of Allegation

Lucas and Marcus Dobre-Mofid are YouTube sensations that have over 10 million subscribers. They are known as "The Dobre Twins". I had the opportunity to view a YouTube post where the above listed deputies assisted with a "prank" on one of the brothers. The deputies were on-duty during the time they participated in the "prank". The deputies can be seen in the video arresting two subjects, and at the end of the video it is revealed that the incident was only a "prank". None of the involved deputies received permission to participate in this video. It is believed that this took place at their residence of 7688 Stewart Hill Rd in Adamstown, MD.

Office of Policy and Compliance Tracking Number 18-020

Investigated By	Rank
Lt. Jeff Eyler #0339	Lieutenant

Supervisors Actions/Comments (attachments can be used).

I have not spoken to any of the subjects involved in making the video to include the deputies. To my knowledge the deputies are unaware of the fact that I have viewed the video.

Complainant Contacted? Yes ____ No ✓ Via Phone ___ Email___ In Person _____
Contacted by who? _____ Date Contacted. _____

Supervisor's Recommendation –
Informal : Resolved at intake ____ Performance issue ____ Early Warning System _____ Training Issue_____

Formal : Forward to Office of Policy and Compliance for disposition ✓ Assign to First Line Supervisor ____

Other _____

Distribution: 1. Original w/Case File
2. Copy to the Office of Policy and Compliance

Office of Policy and Compliance Tracking Number 18-030

Supervisors Signature	Date

Lieutenant Signature/Comments	Date
Lt. [signature] #0335	10/1/18

Captain Signature/Comments	Date
CPT [signature]	10/1/18

If section commander concurs with an informal classification forward directly to the Office of Policy and Compliance for tracking purposes.

Major Signature/Comments	Date

Lt. Colonel Signature/Comments	Date

Distribution: 1. Original w/Case File
2. Copy to the Office of Policy and Compliance

FCSO Form #52-A
Revised 1/2018

Frederick County Sheriff's Office
Office of Policy and Compliance

Applicable General Orders and Findings

Deputy Jewell

1. **Rule 4-4** - An employee shall not permit or authorize the use of his/her name, photograph, or official title identifying him/her as an employee of the Frederick County Sheriff's Office in connection with testimonials or advertisements of any commodity or commercial enterprise, or for personal reasons without the written approval of the Sheriff.

Findings – **Non-Sustained**

2. **Rule 26-2** - An employee will not read, play games, watch television or movies, or engage in any activity or personal business while on duty that would cause neglect or inattentiveness to that duty.

Findings – **Non-Sustained**

Deputy Blackmire

1. **Rule 4-4** - An employee shall not permit or authorize the use of his/her name, photograph, or official title identifying him/her as an employee of the Frederick County Sheriff's Office in connection with testimonials or advertisements of any commodity

or commercial enterprise, or for personal reasons without the written approval of the Sheriff.

Findings – **Non-Sustained**

2. **Rule 26-2** - An employee will not read, play games, watch television or movies, or engage in any activity or personal business while on duty that would cause neglect or inattentiveness to that duty.

Findings – **Non-Sustained**

Sgt. Ensor

1. **Rule 4-4** - An employee shall not permit or authorize the use of his/her name, photograph, or official title identifying him/her as an employee of the Frederick County Sheriff's Office in connection with testimonials or advertisements of any commodity or commercial enterprise, or for personal reasons without the written approval of the Sheriff.

Findings – **Sustained**

Frederick County Sheriff's Office
Office of Policy and Compliance

2. **Rule 26-2** - An employee will not read, play games, watch television or movies, or engage in any activity or personal business while on duty that would cause neglect or inattentiveness to that duty.

Findings – **Sustained**

3. **Rule 34-1**- Employees of the Frederick County Sheriff's Office shall be held strictly responsible for the proper performance of their duties. Employees shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions.

Findings – **Sustained**

4. **Rule 34-2** - Employees shall perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the Frederick County Sheriff's Office.

Findings – **Sustained**

Frederick County Sheriff's Office
Office of Policy and Compliance

Lt. Warner evaluated the circumstances/facts of this incident and how that related to the Sheriff's Office Rules and General Orders. The video was allowed to be made on the authority of Sgt. Ensor exclusively. The relationship with the Dobre brothers appears to be because of Sgt. Ensor's daughter being a fan of theirs. Sgt. Ensor requested the assistance of two of her younger deputies assigned to her patrol team. In Lt. Warner's opinion this placed the younger deputies in a difficult position more evident in Deputy Jewell's interview when he indicated not wanting to be there. Deputy Blackmire's personality and community involvement appear to make her more suited for something like this and it didn't appear to impact her as much. Both deputies ultimately agreed to do this because their Sergeant asked them to. For these reasons Lt. Warner believes that Sgt. Ensor carries the vast majority of the responsibility for this occurring and should relieve Deputy Blackmire and Deputy Jewell of a sustained finding.

Lt. Warner found that Sgt. Ensor had posted a Facebook picture of the Dobre brothers with her daughter at her residence on 9/24/2018 when they delivered an autographed sweatshirt. The video in this incident was made on 9/29/2018. Lt. Warner doesn't believe that there was an agreement for the Sheriff's Office to be part of a video in exchange for the sweatshirt however it explains the relationship between Sgt. Ensor and the Dobre brothers. In reviewing the video multiple times and

learning a little about the Dobre brothers Lt. Warner didn't observe anything related to content that was alarming. Lt. Warner is not aware of any citizen complaints about the video or much public opposition. Lt. Warner believes the decision making process of this occurring was more concerning. The Sheriff should have the ultimate decision if the image /personnel / vehicles of the Sheriff's Office is going to be used in the making of a video that was posted online. The Sheriff should also have the final decision who the agency partners with. If the Sheriff would decide to participate in a public relations type video the agency should be filming it and own the rights to it. This was outside the core functions of the Sheriff's Office and calls into question if being involved with the making of video was the most appropriate use of personnel during their patrol shift.

Lt. Warner is also aware that the Sheriff's Office considered doing the Lip-Sync challenge but ultimately never did. The recent popularity of choreographed police videos, the general positive responses and social media may have created an atmosphere where this was more likely to be accepted in the Law Enforcement community today than in years past.

Sgt. Ensor did come in for her interview while still on FMLA. Sgt. Ensor indicated the reason for not asking for permission was because of her previous position as the PIO and that she was entrusted with the Sheriff's Office social media platforms while in that position. She indicated this was something she would have

done when working in the office beside the Sheriff. Lt. Warner is not aware of any Calls for Service that were not handled during the time the video was recorded. Lt. Warner evaluated all the circumstances and recommends the aforementioned findings.

Frederick County Sheriff's Office
Office of Policy and Compliance

Executive Summary.

This administrative investigation was initiated to find out the details surrounding a YouTube video that was posted online. The video was posted on Youtube on or about 9/30/2018 and was available for the public to view. The video was named "Police Prank on Twin Brother! (He cries)." The video showed uniformed Sheriff's Deputies and marked Sheriff's Office vehicles. The video was posted on the Dobre Brothers' You Tube Channel. The video was just over 10 minutes long and portrayed two deputies pulling over one of the Dobre brothers, handcuffing and subsequently interviewing the Dobre brothers about a dog that was abandoned. Both the Dobre brothers ended up being handcuffed. The plot of the video was that one of the Dobre brothers was pranking the other to make it appear that one was being arrested / investigated for abandoning a dog. The two deputies involved were Deputy Jewell and Deputy Blackmire. Sgt. Amanda Ensor was observed toward the end of the video. The video was recorded at the Dobre's residence on Stewart Hill Road in Adamstown. At the end of the video the Dobre brothers thanked the Sheriff's Office for participating in the video. Lt. Warner did not hear any curse words while reviewing the video and handcuffs were used during the video. No weapons were used or displayed during the video or revealed being used during the interviews.

Through the investigation it was learned the video was made during the evening hours of 9/29/2018 while Sgt. Ensor, Deputy Blackmire and Deputy Jewell were on duty and working their assigned evening shift. Sgt. Ensor orchestrated the video in the sense she

contacted both Deputy Blackmire and Deputy Jewell during the shift on 9/29/2018 asking them to be involved. Sgt. Ensor's daughter is a fan of the Dobre brothers and the Dobre brothers previous to this video had provided a signed piece of clothing to her daughter at the Ensor residence. Everyone involved in the video was interviewed and confirmed that the video was a "staged prank" and that all parties knew what was going to take place before the video was recorded. Neither one of the Dobre brothers was grabbed, handcuffed, or searched unknowingly. There was discussion between the deputies, Dobre brothers and their camera man prior to the video being recorded outlining what they were going to do. Through interviews it was learned that minor editing occurred as small segments of video were recorded then put together. The video had over 1.5 million views at one point. Lt. Warner is not aware of any citizen complaints about the video and the investigation was requested internally. Lt. Warner was aware of a Facebook post that appeared to be politically motivated against the current Sheriff just prior to the recent election that shows a link to the video. The post did not appear to get much traction or attention. All the interviews were consistent that the deputies did not receive any compensation, tickets, etc. in exchange for participating in the video.

The Dobre brothers are identical twins (Marcus and Lucas) and are very popular on You Tube for the videos they make. The twins have other siblings but they were not part of this particular video. They also tour the country and appear to have a celebrity type status with younger children and young teenagers. The Dobre Brothers portray that they are well off financially, often seen with expensive sports cars etc. in their

videos. The Dobre brothers have posted numerous videos, some that include what appear to be police from other jurisdictions in similar prank videos. Lt. Warner has viewed several of the other videos they posted and has not found any alarming content.

During this investigation a total of 7 people were interviewed that included Sgt. Ensor, Deputy Jewell, Deputy Blackmire, Deputy Mcguire, Lucas Dobre, Marcus Dobre and the cameraman Steve Perez-Munoz. Lt. Warner viewed GPS data available from each of the deputies MDT's to estimate the amount of time spent at the Dobre's residence. Located a Call for Service #2018-104217 opened by Sgt. Ensor. Found a facebook post from Sgt. Ensor showing the Dobre brothers and her daughter in a picture. Lt. Warner also ran a call for service query of other calls during the time frame the video was produced.

The Deputies were all on scene at the Dobre's residence for about 50 - 55 minutes. Deputy Blackmire arrived first followed by Sgt. Ensor and Deputy Jewell a few minutes later. The CFS # 2018-104217 was open for about 1 hour and 18 minutes. The CFS was opened before deputies arrived on scene and was closed after leaving the residence. Lt. Warner ran a CFS query for the time the Deputies were at the residence using the time frame of 1839 hrs (Dep. Blackmire's arrival time) and1935 hrs the time the three deputies left. Eighteen calls for service were located. Some of the CFS were deputy generated types of calls and others were citizen complaints. One of those calls was handled by Deputy Jewell when he left the Dobre's residence. It was a drag racing complaint on Lily Pons road. The print outs are attached.

Frederick County Sheriff's Office
Office of Policy and Compliance

Below is information from all the interviews. All interviews were recorded and a more detailed written report for each interview is part of this administrative investigation.

On 9/29/2018 during her shift, Sgt. Ensor was forwarded a message from her husband, Cpl. Dave Ensor. The Dobre brothers (Lucas and Marcus) inquired about a video. Sgt. Ensor indicated that when leaving for her shift that day she had no idea she would be helping with the video. Sgt. Ensor explained the background of how her husband, Cpl. Dave Ensor, has met the Dobre brothers while working. One of these meetings occurred at a Mcdonald's and led them to bringing the autographed clothing to the residence for her daughter. She explained that the Dobre brothers coming to her house was a surprise and that they were under the impression that they would mail something. Sgt. Ensor explained that she and her daughter also had a chance meeting with the Dobre brothers after leaving a restaurant in Hagerstown.

Sgt. Ensor explained that she had responded back to her husband that she would come if she could and if the call volume was low. Sgt. Ensor advised that she didn't have their numbers. During the shift she contacted both Deputy Blackmire and Deputy Jewell and asked for assistance. Sgt. Ensor advised that she opened a card and went to the residence where she met up with the other deputies and the Dobre Brothers in the driveway. Sgt. Ensor advised that they talked beforehand about was going to happen and that the Dobre brothers would thank the Sheriff's Office at the end. Sgt. Ensor advised that she didn't ask any other deputies to participate in the video. Sgt. Ensor explained why she chose Deputy Blackmire and spoke

highly of her. Sgt. Ensor explained Deputy Blackmire's background and interests in the community. Sgt. Ensor advised that she did not get prior approval from a superior for the making of the video. Sgt. Ensor explained that she had experience managing the Sheriff's Office social media and that this was not outside something she would have done when she was in that position. Sgt. Ensor advised that her objective was to do something positive for the Sheriff's Office and the community. Sgt. Ensor advised that she was not trying to shed a bad light on anyone. Sgt. Ensor reiterated that the Dobre Brothers were good kids, anti-bullying, and a positive influence in the community.

Both Deputy Jewell and Deputy Blackmire provided similar accounts, confirming that they were contacted by Sgt. Ensor and asked to assist. They had no prior knowledge of this until contacted by Sgt. Ensor on 09/29/2018 during their shift. They confirmed the same information as far as the prank was staged, everyone was aware what the video was going to entail and nobody was unknowingly grabbed. Both deputies were aware of some sort of relationship between Sgt. Ensor and the Dobre brothers. Deputy Jewell knew that the Dobre brothers had done something nice for Sgt. Ensor's daughter, mentioning signing a sweatshirt and Deputy Blackmire knew of some sort of relationship but didn't know the extent of it.

Deputy Jewell expressed through his interview that he was far from excited about being part of the video and mentioned at a point during his interview that he "Hated everything about it". Deputy Jewell indicated that he contacted Dfc. Mcguire afterwards saying that he didn't want to be there. Deputy Jewell advised that he had called Deputy Blackmire at some point

afterwards having a conversation about if they could get in trouble for this. Deputy Jewell added that he told Deputy Blackmire that he knew that Sgt. Ensor wouldn't put them in a bad position.

Deputy Blackmire and her attorney, Mr. McAndrew, indicated through the interview that Deputy Blackmire's intent was to put the agency in a positive light and that Deputy Blackmire is community oriented. Deputy Blackmire had never met the Dobre brothers prior to this incident but was aware of who they were.

Deputy Bryce McGuire was interviewed and confirmed that Dep. Jewell had called him after the video telling him about it and indicating that he (Deputy Jewell) did not want to be there.

Lucas and Marcus Dobre provided similar information as the deputies. The Dobre brothers became familiar with the Ensor's because of meeting Cpl. Dave Ensor at a McDonald's in Frederick. Cpl. Dave Ensor had approached them because his daughter was a fan. There was likely more than one meeting as Lucas indicated they had seen Cpl. Dave Ensor multiple times. This was well prior to the video. The Dobre brothers indicated that they did go to the Ensor's residence and provided a sweatshirt to the Ensor's daughter. This was also prior to the video being made. The Dobre brothers confirmed that this was a staged prank and that everyone knew what was going to happen prior to the video being recorded. The Dobre brothers confirmed that no deputies received anything for making the video.

Frederick County Sheriff's Office
Office of Policy and Compliance

Steve Perez-Munoz, the cameraman, confirmed the same information but it was clear that he didn't know the Ensor's as well. Steve thought the name of the male deputy to be Mark that they had met at the McDonald's.

Exhibit 3

Amanda J. Ensor v. Charles Jenkins, et al.
United States District Court for the District of Maryland
Case No.: 1:20-cv-001266-ELH

Law Offices of Patrick J. McAndrew, LLC.

Patrick J. McAndrew
Devon J. Miller

Of Counsel:
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(1939-2016)
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Montgomery Co. Office:

200-A Monroe Street
Suite 100
Rockville, MD. 20850

Reply to: Greenbelt Office

PREAMBLE TO INTERNAL AFFAIRS STATEMENT/INTERROGATION

Please let the record reflect that Sergeant Amanda Ensor is being represented here today, December 7, 2018, by Patrick J. McAndrew, Esquire or Devon J. Miller, Esquire and THE LAW OFFICES OF PATRICK J. MCANDREW, LLC.

Also, let the record reflect that it is the understanding of Sergeant Ensor that the statement being given today is to be used for administrative purposes only and that it is not admissible in any criminal proceeding, whether by prosecution or defense.

It is further understood that Sergeant Ensor has not been given her Miranda rights prior to the beginning of this interrogation.

It is also the understanding of Sergeant Ensor that the General Orders of the Frederick County Sheriff's Office compel her to answer your questions in reference to her conduct on September 29, 2018,as specified in the Notification of Complaint signed and dated November 15, 2018, under the authority of Lieutenant Greg Warner, the investigator in this matter designated by the Sheriff. It is further understood that if Sergeant Ensor were to refuse to answer your questions in reference to this allegation, that she would be in violation of the rules of this agency compelling her to answer your questions and to obey all lawful orders and, as such, she would be subjected to disciplinary action which could include possible loss of employment.

Since all statements, whether written, oral, in the form of drawings or diagrams, or other manner, are given by Sergeant Ensor as a result of the direct order of a superior officer and are employment related, she does not consent, or in any way agree to the release of her statement(s) in whatever form, to any third person(s), agency(ies), officer(s) or unit(s) of the Frederick County Sheriff's Office or any other entity, other than the designated representative acting pursuant to the authority of the Sheriff for the purposes of this administrative investigation.

Further, Sergeant Ensor does not in any way consent to the release of her statement(s) in whatever form, having been given as duress statements, to any court, agency, or any other governmental agency, to any attorney or representative of any complainant in any type of administrative, civil, or criminal proceeding or any combination thereof without her specific, written consent with such request directed through her attorney of record, Patrick J. McAndrew or Devon J. Miller; to any attorney or representative of any attorney or any complainant in any type of administrative or civil or criminal proceeding or any combination thereof without her specific written consent, with such request direct through her attorney of record, Patrick J. McAndrew or Devon J. Miller, given in advance of any such release; and, she further requests to be advised of any request by any individual for such information made to this department or any representative of this department.

Finally, by giving a duress statement today,Sergeant Ensor is not waiving any rights, in whole or in part, granted to her under the United States Constitution, the Maryland Declaration of Rights, the Maryland Law Enforcement Officers' Bill of Rights, or any decision of any court, or under any federal, state or local law, ordinance or regulation.

[Have Lieutenant Warner acknowledge receipt of the two page preamble into the interrogation record.]

Exhibit 4

Amanda J. Ensor v. Charles Jenkins, et al.
United States District Court for the District of Maryland
Case No.: 1:20-cv-001266-ELH

FREDERICK COUNTY SHERIFF'S OFFICE

NOTIFICATION OF CHARGES

TO: ***Sgt. Amanda Ensor*** ***Patrol Team 1***

DATE: 01-23-2019

You are hereby notified that you are charged with the following violations of this Agency's Rules, Policy, and Procedures to wit:

Rule 4-4 **Abuse of position**
Rule 26-2 **Neglect of Duty**
Rule 34-2 **Incompetence**

Charges – Violation of Frederick County Sheriff's Office Rules, Policy, and Procedures (explain in detail – include specific chapter and section where applicable).

Rule 4-4 Abuse of Position/Unauthorized Use of Likeness
An employee shall not permit or authorize the use of his/her name, photograph, or official title identifying him/her as an employee of the Frederick County Sheriff's Office in connection with testimonials or advertisements of any commodity or commercial enterprise, or for personal reasons without the written approval of the Sheriff.

SUSTAINED ****Written Reprimand****

Rule 26-2 Neglect of Duty (Inattentiveness to duty)
An employee will not read, play games, watch television or movies, or engage in any activity or personal business while on duty that would cause neglect or inattentiveness to that duty.

SUSTAINED ****Loss of take home vehicle 30 working days****

Rule 34-2 Incompetence (Perform to the highest standard)
Employees shall perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the Frederick County Sheriff's Office.

SUSTAINED ****15 Day Suspension without Pay (Total 120hrs)****
****Transfer from Patrol Operations to Judicial Services)****

FREDERICK COUNTY SHERIFF'S OFFICE

RIGHT TO HEARING

To: Sgt. Amanda Ensor # 0343 Judicial Operations (temporary)

Based upon the Sustained findings and recommended discipline in Administrative Investigation 18-020 and in accordance with *Section 3-107(a)* of the Law Enforcement Officer's Bill of Rights (*Title 3, Subtitle 1, of the Maryland Code)*, you are hereby notified that you are entitled, upon your request, to a hearing on the issues by a hearing board before the Sheriff's Office takes action in this matter; furthermore, it is your sole responsibility to request such a hearing.

Be advised that you have **5** days, from the date of this notice, to contact Major Troy Barrick if you choose to request a hearing board in this matter.

For a more detailed explanation of your rights, you should refer to the Law Enforcement Officer's Bill of Rights, and/or confer with an attorney.

I hereby acknowledge receipt of this ***Right to Hearing*** notification.

Sgt. 0343
Signature (Rank and I.D. #)

1/23/19 11:37am
(Date and Time)

Maj. TBR 0244
Signature (Rank and I.D. #) of Person Serving Notice

1-23-19
(Date and Time)

FCSO Form #52-V
Revised 8/2016

Statement of Facts (include date):

On September 29, 2018, Sgt. Amanda Ensor was on duty and coordinated and participated in an unapproved video "stunt" involving the Dobre Brothers that was filmed by a member of their crew, and the following day, the video was posted on the Dobre Brothers YouTube channel, which has garnerd over 1.5 million views. The video showed the two deputies pulling over one of the Dobre Brothers, handcuffing, and subsequently interviewing the Dobre Brothers about a dog that was abandoned. Both of the Dobre Brothers ended up being handcuffed. The plot of the video was that one of the Dobre Brothers was pranking the other to make it appear that one was being arrested/investigated for abandoning a dog. The deputies involved were Deputy Blackmire and Deputy Jewell, both subordinates of Sgt Ensor. Sgt. Ensor was observed on video at the end of the video. The video was recorded at the Dobre's residence on Stewart Hill Rd. in Adamstown, MD. The video was made during the evening hours of 09/29/2018 while Sgt. Ensor, Deputy Jewell, and Deputy Blackmire were on duty, wearing their agency issued uniforms, being compensated by the County, and working their assigned shift. Sgt. Ensor orchestrated the video by contacting both Deputy Blackmire and Jewell asking them to be involved, which both of them did. It was learned through the Internal Investigation that the deputies were at the Dobre Brothers residence for about 50-55 minutes.

Sgt. Ensor was on duty, wearing official Sheriff's Office uniform and equipment, being paid by the agency, and utilizing a marked Sheriff's Office vehicle. The video that was created was not approved by the Sheriff or by any members of the Command Staff.

Charge Preferred By:
Maj T Barrick
Major Troy Barrick 0244
Signature (Rank and I.D. #)

Signature of Accused: _____ BJB
(Signature acknowledges that the accused has been advised of the charges and statement of facts and understands same.)

Exhibit 5

Amanda J. Ensor v. Charles Jenkins, et al.
United States District Court for the District of Maryland
Case No.: 1:20-cv-001266-ELH

FREDERICK COUNTY SHERIFF'S OFFICE

WAIVER OF LAW ENFORCEMENT OFFICER'S BILL OF RIGHTS

AND ACCEPTANCE OF DISCIPLINARY ACTION

I, Sgt. Amanda Ensor, am familiar with the "Law Enforcement Officer's Bill of Rights" and pursuant to the *Maryland Code*, Public Safety Article, Sec. 3-103(f), I voluntarily waive all of my rights for the purpose of the disciplinary charges which have been filed against me.

I plead guilty to such violations and accept as disciplinary action, a penalty of:

1. Rule 4-4 - An employee shall not permit or authorize the use of his/her name, photograph, or official title identifying him/her as an employee of the Frederick County Sheriff's Office in connection with testimonials or advertisements of any commodity or commercial enterprise, or for personal reasons without the written approval of the Sheriff. **Penalty- Written Reprimand (Category B Violation)**

2. Rule 26-2 - An employee will not read, play games, watch television or movies, or engage in any activity or personal business while on duty that would cause neglect or inattentiveness to that duty. **Penalty -Loss of take home vehicle for 30 working days (Category B Violation)**

3. Rule 34-2 – Employees shall perform their duties in a manner which will maintain the highest standards of efficiency in carrying out the functions and objectives of the Frederick County Sheriff's Office. **Penalty– 15 day suspension without pay (120hrs) and transfer from Patrol Operations to Judicial Services. (Category E Violation)**

(If the accused is suspended, deprived of leave, or loses their police powers, exact dates must be specified.)

I have received a copy of, and acknowledged by signature, the Notification of Charges filed against me. I am aware that by waiving my rights under the Law Enforcement Officer's Bill of Rights, that I am waiving my rights to appeal the finding and disciplinary action.

Signature, Date 1/28/19

Bureau Chief, Date 1/29/19

Sheriff, Date 1/29/19

FCSO Form #52-J
Revised 8/2016

Exhibit 6

Amanda J. Ensor v. Charles Jenkins, et al.
United States District Court for the District of Maryland
Case No.: 1:20-cv-001266-ELH

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

[ ] FEPA

[X] EEOC 531-2019-01521

Maryland Commission on Civil Rights and EEOC

State or local Agency, if any

Name *(indicate Mr., Ms., Mrs.)*	Home Phone	Year of Birth
Ms. Amanda Ensor	(240) 285-1320	

Street Address: 13318 Unger Road, HAGERSTOWN, MD 21742

City, State and ZIP Code:

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (*If more than two, list under PARTICULARS below.*)

Name	No. Employees, Members	Phone No.
THE FREDERICK COUNTY SHERIFF'S OFFICE	15 - 100	(301) 600-1046

Street Address: 110 Airport Drive East, FREDERICK, MD 21701

City, State and ZIP Code:

Name	No. Employees, Members	Phone No.

Street Address:

City, State and ZIP Code:

DISCRIMINATION BASED ON *(Check appropriate box(es).)*

[ ] RACE [ ] COLOR [X] SEX [ ] RELIGION [ ] NATIONAL ORIGIN

[ ] RETALIATION [ ] AGE [ ] DISABILITY [ ] GENETIC INFORMATION

[ ] OTHER *(Specify)*

DATE(S) DISCRIMINATION TOOK PLACE

Earliest: 11-15-2018 Latest: 11-15-2018

[ ] CONTINUING ACTION

THE PARTICULARS ARE *(If additional paper is needed, attach extra sheet(s)):*

I. I began my employment with the above-named Respondent on October 2002, as a Sergeant. On November 15, 2018, I was disciplined and suspended by Charles A. Jenkins (Sheriff). However, Lieutenant Jeffrey Eyler (male) who committed a similar violation was not disciplined or suspended.

II. Respondent stated that I was disciplined and suspended for violating departments policies.

III. I believe that I was discriminated against based on my sex (Female) with respect to discipline and suspension in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Digitally signed by Amanda Ensor on 03-19-2019 10:36 AM EDT

NOTARY – *When necessary for State and Local Agency Requirements*

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(*month, day, year*)

PRIVACY ACT STATEMENT: Under the Privacy Act of 1974, Pub. Law 93-579, authority to request personal data and its uses are:

1. **FORM NUMBER/TITLE/DATE.** EEOC Form 5, Charge of Discrimination (11/09).

2. **AUTHORITY.** 42 U.S.C. 2000e-5(b), 29 U.S.C. 211, 29 U.S.C. 626, 42 U.S.C. 12117, 42 U.S.C. 2000ff-6.

3. **PRINCIPAL PURPOSES.** The purposes of a charge, taken on this form or otherwise reduced to writing (whether later recorded on this form or not) are, as applicable under the EEOC anti-discrimination statutes (EEOC statutes), to preserve private suit rights under the EEOC statutes, to invoke the EEOC's jurisdiction and, where dual-filing or referral arrangements exist, to begin state or local proceedings.

4. **ROUTINE USES.** This form is used to provide facts that may establish the existence of matters covered by the EEOC statutes (and as applicable, other federal, state or local laws). Information given will be used by staff to guide its mediation and investigation efforts and, as applicable, to determine, conciliate and litigate claims of unlawful discrimination. This form may be presented to or disclosed to other federal, state or local agencies as appropriate or necessary in carrying out EEOC's functions. A copy of this charge will ordinarily be sent to the respondent organization against which the charge is made.

5. **WHETHER DISCLOSURE IS MANDATORY; EFFECT OF NOT GIVING INFORMATION.** Charges must be reduced to writing and should identify the charging and responding parties and the actions or policies complained of. Without a written charge, EEOC will ordinarily not act on the complaint. Charges under Title VII, the ADA or GINA must be sworn to or affirmed (either by using this form or by presenting a notarized statement or unsworn declaration under penalty of perjury); charges under the ADEA should ordinarily be signed. Charges may be clarified or amplified later by amendment. It is not mandatory that this form be used to make a charge.

NOTICE OF RIGHT TO REQUEST SUBSTANTIAL WEIGHT REVIEW

Charges filed at a state or local Fair Employment Practices Agency (FEPA) that dual-files charges with EEOC will ordinarily be handled first by the FEPA. Some charges filed at EEOC may also be first handled by a FEPA under worksharing agreements. You will be told which agency will handle your charge. When the FEPA is the first to handle the charge, it will notify you of its final resolution of the matter. Then, if you wish EEOC to give Substantial Weight Review to the FEPA's final findings, you must ask us in writing to do so within 15 days of your receipt of its findings. Otherwise, we will ordinarily adopt the FEPA's finding and close our file on the charge.

NOTICE OF NON-RETALIATION REQUIREMENTS

Please **notify** EEOC or the state or local agency where you filed your charge **if retaliation is taken against you or others** who oppose discrimination or cooperate in any investigation or lawsuit concerning this charge. Under Section 704(a) of Title VII, Section 4(d) of the ADEA, Section 503(a) of the ADA and Section 207(f) of GINA, it is unlawful for an *employer* to discriminate against present or former employees or job applicants, for an *employment agency* to discriminate against anyone, or for a *union* to discriminate against its members or membership applicants, because they have opposed any practice made unlawful by the statutes, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the laws. The Equal Pay Act has similar provisions and Section 503(b) of the ADA prohibits coercion, intimidation, threats or interference with anyone for exercising or enjoying, or aiding or encouraging others in their exercise or enjoyment of, rights under the Act.

Exhibit 7

Amanda J. Ensor v. Charles Jenkins, et al.
United States District Court for the District of Maryland
Case No.: 1:20-cv-001266-ELH

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Baltimore Field Office

George H. Fallon Federal Building
31 Hopkins Plaza, Suite 1432
Baltimore, MD 21201
Intake Information Group: (800) 669-4000
Intake Information Group TTY: (800) 669-6820
Baltimore Direct Dial: (410) 209-2237
FAX (410) 209-2221
FAX (410) 962-4270
Website: www.eeoc.gov

Our Reference: Amanda Ensor v. THE FREDERICK COUNTY SHERIFF'S OFFICE Charge No. 531-2019-01521

Amanda Ensor
13318 Unger Road
Hagerstown, MD 21742

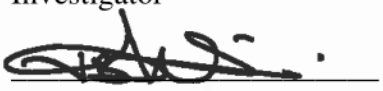
Dear Ms. Ensor:

This is with reference to your correspondence and subsequent communication with this office in which you alleged employment discrimination, in violation of Title VII of the Civil Rights Act of 1964, as amended by the above-named Respondent.

Review of the available evidence does not establish a violation of the statute. This does not certify that Respondent is in compliance with the statute. While we fully understand that the parties to a charge often have very firm views that the available evidence supports their respective positions, our final determinations must comport with our interpretations of the available evidence and the laws we enforce. For this reason, we will issue you a Dismissal and Notice of Rights, which will enable you to file suit in U.S. District Court within 90 days of your receipt of that Notice if you wish to pursue this matter further.

We regret that we could not be of further service to you in this matter.

Sincerely,
Investigator



___2/20/20___
Date

Victor
Federal
Victor.owolabi@eeoc.gov

EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Amanda Ensor**
13318 Unger Road
Hagerstown, MD 21742

From: **Baltimore Field Office**
G.H. Fallon Federal Building
31 Hopkins Plaza, Suite 1432
Baltimore, MD 21201

☐ *On behalf of person(s) aggrieved whose identity is CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
531-2019-01521	**Victor Owolabi, Investigator**	**(410) 209-2218**

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☒ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

☐ The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ Other *(briefly state)*

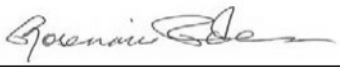
- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



Rosemarie Rhodes,
Director

2/20/20
(Date Mailed)

Enclosures(s)

cc: **Kirstin Lustila, Esq.**
Office of the Attorney General
Assistant Attorney General
80 Calvert Street, 4th Floor
Annapolis, MD 21401

INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

(This information relates to filing suit in Federal or State court under Federal law. If you also plan to sue claiming violations of State law, please be aware that time limits and other provisions of State law may be shorter or more limited than those described below.)

PRIVATE SUIT RIGHTS -- Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA), or the Age Discrimination in Employment Act (ADEA):

In order to pursue this matter further, you must file a lawsuit against the respondent(s) named in the charge **within 90 days of the date you *receive* this Notice**. Therefore, you should **keep a record of this date**. Once this 90-day period is over, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and its envelope, and tell him or her the date you received it. Furthermore, in order to avoid any question that you did not act in a timely manner, it is prudent that your suit be filed **within 90 days of the date this Notice was *mailed* to you** (as indicated where the Notice is signed) or the date of the postmark, if later.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. (Usually, the appropriate State court is the general civil trial court.) Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. Filing this Notice is not enough. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Courts often require that a copy of your charge must be attached to the complaint you file in court. If so, you should remove your birth date from the charge. Some courts will not accept your complaint where the charge includes a date of birth. Your suit may include any matter alleged in the charge or, to the extent permitted by court decisions, matters like or related to the matters alleged in the charge. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office. If you have simple questions, you usually can get answers from the office of the clerk of the court where you are bringing suit, but do not expect that office to write your complaint or make legal strategy decisions for you.

PRIVATE SUIT RIGHTS -- Equal Pay Act (EPA):

EPA suits must be filed in court within 2 years (3 years for willful violations) of the alleged EPA underpayment: back pay due for violations that occurred **more than 2 years (3 years) before you file suit** may not be collectible. For example, if you were underpaid under the EPA for work performed from 7/1/08 to 12/1/08, you should file suit before 7/1/10 – *not* 12/1/10 -- in order to recover unpaid wages due for July 2008. This time limit for filing an EPA suit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, suit must be filed within 90 days of this Notice and within the 2- or 3-year EPA back pay recovery period.

ATTORNEY REPRESENTATION -- Title VII, the ADA or GINA:

If you cannot afford or have been unable to obtain a lawyer to represent you, the U.S. District Court having jurisdiction in your case may, in limited circumstances, assist you in obtaining a lawyer. Requests for such assistance must be made to the U.S. District Court in the form and manner it requires (you should be prepared to explain in detail your efforts to retain an attorney). Requests should be made well before the end of the 90-day period mentioned above, because such requests do not relieve you of the requirement to bring suit within 90 days.

ATTORNEY REFERRAL AND EEOC ASSISTANCE -- All Statutes:

You may contact the EEOC representative shown on your Notice if you need help in finding a lawyer or if you have any questions about your legal rights, including advice on which U.S. District Court can hear your case. If you need to inspect or obtain a copy of information in EEOC's file on the charge, please request it promptly in writing and provide your charge number (as shown on your Notice). While EEOC destroys charge files after a certain time, all charge files are kept for at least 6 months after our last action on the case. Therefore, if you file suit and want to review the charge file, **please make your review request within 6 months of this Notice**. (Before filing suit, any request should be made within the next 90 days.)

IF YOU FILE SUIT, PLEASE SEND A COPY OF YOUR COURT COMPLAINT TO THIS OFFICE.