

**IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION**

CASE NO. 2018-011899-CA-01 (09)

**NEAL CUEVAS,
Plaintiff,**

vs.

**CITY OF NORTH MIAMI, FLORIDA,
a municipal corporation authorized
under the laws of the State of Florida,
Defendants.**

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Neal Cuevas (“Cuevas” or “Plaintiff”) sues the City of North Miami, Florida (“City”) for damages, demands a jury trial, and states:

INTRODUCTION

1. This is a Florida Whistleblower complaint arising from the City of North Miami’s retaliatory demotion and other adverse action against former Assistant Police Chief Neal Cuevas for reporting the misconduct of senior City officials in connection with the horrific and unjustified police shooting by Officer Jonathan Aledda of unarmed behavioral therapist Charles Kinsey as he tried to coax an autistic man back into the group home he supervised. The shooting roiled the City’s Police Department. Former Assistant Chief Cuevas’ objected to the City’s investigation and findings following the police shooting. As a direct result of his

whistleblower activities, Cuevas was demoted. His demotion followed a pattern of other adverse actions taken against him for blowing the whistle, simply because he chose to stand up and object to the pervasive cover-up by the City, its Police Department, and senior City officials.

2. The personal and community tragedy in this case is that former Assistant Chief Cuevas had realized his childhood dream of serving and protecting the public by becoming a sworn law enforcement officer in the City of North Miami. He was (and is) an exemplary officer, having achieved respect within the Police Department and in the community through his selfless dedication of public service. He rose through the police ranks to become the City's highest ranked Hispanic officer with an unblemished record as the City's longest serving police officer. On merit, Cuevas earned a senior position as an Assistant Police Chief, the second highest ranking officer in the Police Department.

3. But his sterling credentials and personal integrity were not enough to maintain his career when he discovered and reported the occurrence of material misconduct within the Police Department and senior City officials who contrived, misled, and schemed to cover-up and misdirect fault for the senseless police shooting on July 18, 2016, during which an innocent citizen assisting a special needs individual was shot by a North Miami police officer. Almost immediately, the City, its senior administrators, and its elected officials engaged in a concerted, outrageous,

and illegal pattern of due process violations, humiliation, lies, deceit, racism, and slander directed against Cuevas and others. This was done in an effort to obstruct a fair investigation of the police shooting and to cast blame for the shooting on officers who were not responsible for the police misconduct. Because of his adamant refusal to participate in the City's wrongful and illicit activities, as noted in his June 2, 2017 whistleblower memo, Cuevas was subjected to a purposeful and unlawful pattern of retaliation by City officials.

4. As a result of the retaliatory conduct by the City and its responsible officials, Cuevas, whose professional life as a police officer had always followed the path of righteousness, truthfulness, and integrity, saw his law enforcement career and reputation effectively destroyed. He is viewed with suspicion and mistrust by law enforcement officers and the public because of the City's retaliation, humiliation, and false accusations against him. This lawsuit seeks to vindicate his rights as protected by Florida law.

NATURE OF ACTION AND JURISDICTION

5. Cuevas brings this action seeking damages well in excess of \$1 million and other allowable relief as a result of being subjected to adverse personnel action by the City in punishing him for having the integrity to disclose acts of illegality, misconduct, and malfeasance by City officials, and for his participation in multiple investigations of City-involved misconduct as outlined in this amended complaint.

6. Plaintiff is *sui juris*, a resident of Broward County, and an employee of the City of North Miami, Florida. He works and has his principal place of business in Miami-Dade County, Florida.

7. Defendant City of North Miami is a municipal government entity organized under the Constitution and laws of the State of Florida, and as such is an “agency” within the scope of Section 122.3187(3)(a), Florida Statutes.

8. Non-party Larry Juriga, Jr. is the North Miami Police Chief. He was first named Acting Chief in May 2017, when then-Police Chief Gary Eugene went on medical leave. Juriga continued as Acting Police Chief when Eugene was fired in June 2017, supposedly for his handling of the Charles Kinsey shooting. Juriga became Police Chief in March 2018.

9. Non-party Larry Spring is the North Miami City Manager.

10. Venue is proper in this judicial circuit because defendant North Miami is located within Miami-Dade County, Florida. All of the acts relevant to this complaint occurred within Miami-Dade County, Florida.

11. All conditions precedent to this cause of action have been met, waived, excused, occurred, or would be otherwise futile.

GENERAL ALLEGATIONS

12. For purposes of this amended complaint, Cuevas at all times was a sworn North Miami Police Officer who became the Assistant Police Chief for the

City of North Miami. He has been employed in a law enforcement capacity for the City for nearly forty-four (44) years. During the entire time of his law enforcement service, he had a well-deserved and hard-earned reputation for honesty, integrity, professional commitment, and dedicated service to protect and defend the North Miami community.

13. Cuevas was hired by the City as a sworn police officer in 1975. Through professionalism, merit, and unswerving dedication to the community, he steadily moved up the ranks to sergeant, lieutenant, major, and assistant chief. Each of these achievements were earned through hard work and dedication to his profession as a law enforcement officer and public servant.

14. Cuevas became Assistant Chief on June 26, 2016, and served in that capacity until March 5, 2018. Police Chief Larry Juriga had become Police Chief a few days before demoting Cuevas. However, during the time Juriga was Acting Chief, the City took a number of adverse personnel actions against Cuevas directly as a result of his whistleblowing activities. As soon as Juriga became Police Chief, the City, Juriga, acting through and in concert with City Manager Spring, demoted Cuevas because of his whistleblower activities of refusing to participate in the City's improper investigations of police conduct. He also "blew the whistle" on malfeasance, misconduct, and illegal actions in the City. Cuevas' whistleblower activities had long enraged Juriga.

15. Cuevas' demotion from Assistant Chief resulted from his refusal to participate in the City's ongoing misconduct. He refused to keep silent about his knowledge of the wrongdoing being committed by City officials. Cuevas was demoted because he refused to turn a blind eye to irregularities in the police department. He was retaliated against by City Manager Larry Spring, Police Chief Larry Juriga, and other senior City officials.

16. Cuevas had been the highest ranking Hispanic law enforcement officer in the history of the North Miami Police Department until March 5, 2018. As Assistant Chief in charge of the Field Operations Division and Uniform Support, Cuevas was responsible for overseeing more than 70% of the police department personnel.

17. In direct retaliation for his whistleblower activities, Cuevas' authority was undermined by then Interim Police Chief Larry Juriga, who circumvented the chain of command and issued instructions to Cuevas' subordinates without Cuevas' knowledge, deliberately keeping Cuevas out of rotation as acting chief when the Police Chief was unavailable in violation of Police Department practices and protocol. Interim Police Chief Juriga was then unable to demote Cuevas because of the opposition of the Police Chief, even though Juriga acted to do just that in retaliation for Cuevas' protected workplace disclosures. City Manager Larry Spring

publicly disparaged Cuevas' qualifications as assistant chief by stating Cuevas was unqualified and merely a "political appointment."

18. Cuevas was publicly disparaged, maligned, and marginalized at a town hall community meeting by both City Manager Larry Spring and the City Attorney in retaliation to Cuevas' whistleblowing memorandum. This town hall meeting was sponsored and publicized by the City, and included the attendance of numerous City officials in their official capacities and members of the media.

19. Cuevas became aware of corruption within the Police Department. He refused to participate in or acquiesce to it. He did not go along with the City's preferred practice of supporting the Police Department and officers at all costs, even in the face of known misconduct. Among other things, he was concerned that the Police Department had acted in an illegal cover-up of the fault and responsibility for the Kinsey police shooting. Cuevas refused to keep silent about his concerns. In his official capacity, he reviewed the Police Department Memorandum to Police Chief Gary Eugene from the Disposition Panel. Also in his official role, he analyzed the complete file concerning the North Miami Internal Affairs Investigation of Commander Emile Hollant, IA Case No. 16-06 (May 24, 2017).

20. The Disposition Panel investigated Commander Hollant in connection with the events surrounding one of the most significant and notorious acts of

misconduct in municipal history – the shooting of an unarmed black man who was merely caring for a special needs minor.

21. The Disposition Panel was obligated by Florida Law, the Police Officers Bills of Right, the North Miami City Charter, and prevailing practices and protocols, to conduct its activities fairly, impartially, and within the bounds of the law.

22. Intentional police or municipal misconduct, rigged outcomes, and false statements are acts of illegality, gross mismanagement, misconduct, malfeasance, misfeasance to the highest degree, and in conjunction with one of the most high profile crimes in City history.

23. When Cuevas reviewed the Disposition Panel memo, he found and reported both in a written and signed memo and verbally to City officials what were plainly acts of gross mismanagement, malfeasance, misconduct, and illegality on the part of City officials.

24. In both his memo and his verbal reports about the panel investigation, Cuevas blew the whistle on this pervasive misconduct. He also refused to participate in improper and illegal adverse action.

25. The Disposition Panel memo stated that the panel reached its decision “based on the Preponderance of the evidence in this case.” Cuevas, in his written

and signed memo of June 2, 2017 memo (attached as Exhibit “A”) alleged improper and illegal conduct on the part of the Disposition Panel:

“The Disposition Panel did not prove any preponderance of evidence to support its findings. In fact, its findings are replete with misinformation, half-truths and blatant inconsistencies.”

26. The Cuevas memo refuted the Disposition Panel memo:

“Based on a thorough review of this file, I cannot endorse the findings of the panel. The allegation of “Obstruction of a Law Enforcement Investigation by way of False Statements” made against Commander Hollant is unequivocally NOT sustainable.”

27. Cuevas also stated, among other findings and conclusions:

“It is glaringly obvious that the NMPD Internal Affairs Disposition Panel has inexplicably ignored the findings of the State Attorney’s Office in order to back up the erroneous assumptions of those unnamed “North Miami police investigators who were intent on proving that Commander Hollant was responsible for the shooting and that he lied about his involvement.” And that:

“That the panel found the allegations against Commander Hollant sustainable is an unmitigated miscarriage of justice.”

28. Cuevas did not merely disagree with the Disposition Panel, but he instead affirmatively “blew the whistle” on what he observed as the wrongful framing of a senior police officer through a manipulated and rigged process devoid of evidence and legal authority.

29. The City, through its Disposition Panel and the conduct of its officials, acted in a manner evincing gross mismanagement, malfeasance, misfeasance, and wrongful (illegal) conduct. The Disposition Panel’s conduct and actions were in

violation of laws, rules, regulations, and practices. The City, through the Disposition Panel, intentionally committed a “miscarriage of justice.” Its misconduct constitutes a direct and intolerable obstruction of justice that is expressive of the City’s illegal actions. Additionally, Cuevas “blew the whistle” on the City’s lies concerning the facts in order to frame an innocent police commander for wrongdoing he did not commit – and of which he was exonerated.

30. Cuevas also “blew the whistle” in his memo on the wrongful and illegal conduct of the Disposition Panel in intentionally cherry picking evidence by knowingly relying on perjured testimony and other acts of malfeasance.

31. By officially standing in opposition to the City’s illegal conduct in scapegoating a North Miami Police Commander, City officials made an affirmative decision to retaliate against Cuevas. The City did so by the concerted conduct of police employees and senior City officials to disseminate documents that contained unsubstantiated derogatory information pertaining to Cuevas via anonymous emails to the City Council, City officials, and Police Department employees.

32. The City, through its City Manager, ordered the initiation of an Internal Affairs investigation of Cuevas directly as a result of Cuevas’ whistleblowing memorandum. This Internal Affairs investigation was commenced contrary to City practices, and based on Cuevas’ objection to the City’s wrongful determination of blame for the citizen shooting.

33. In direct retaliation for Cuevas' whistleblower memorandum, the City, in particular City Manager Spring and Police Chief Juriga, slandered and publicly humiliated Cuevas, and also illegally took adverse action against Cuevas by demoting him to a lower salary with inferior working conditions. The City illegally replaced Cuevas with a lesser qualified Haitian female officer nearly 20 years younger than Cuevas. City officials slandered Cuevas by casting him in a negative light by, among other things, the following:

- a. Publicly stating that Cuevas was a "political appointment" and denigrating his qualifications as a career law enforcement officer.
- b. Deliberately leaving Cuevas out of decisions and refusing to notify him of events and activities in which he should have participated, contrary to longstanding practices.
- c. Intentionally undermining Cuevas' authority by issuing instructions to his subordinates without his knowledge, contrary to longstanding practices.
- d. Deliberately keeping Cuevas out of rotation as acting chief when the chief was unavailable, contrary to longstanding practices and protocols.

34. Juriga and Spring intentionally published to third parties, and made public to potentially millions of people, false statements designed to punish Cuevas in retaliation for his whistleblowing activities.

35. Juriga and Spring purposely and knowingly disseminated false statements and information to third parties to have the effect of destroying Cuevas' reputation, done in retaliation for Cuevas' whistleblowing conduct. They achieved their intended effect by punishing Cuevas for being a whistleblower, and in the process intentionally harming him by denying him promotions and salary adjustments to which he was due, and removing him from his senior police position and destroying his earning potential.

36. Juriga's and Spring's actions were done in their capacity as City officials directly for and on behalf of the City. They acted knowingly, intentionally, and in bad faith, with a malicious purpose, and in wanton disregard of Cuevas's human dignity, life, safety, property, and right to employment without retaliation.

37. Juriga's and Spring's actions were done directly on behalf of the City in their capacities as responsible City officials, knowing and intending that the City was exacting retaliation and punishment for Cuevas' whistleblower conduct.

38. Under the City Charter, City Manager Spring owed Cuevas a duty of care to provide him with a safe work environment free from harassment,

unreasonable working conditions, and emotional duress. The City also owed Cuevas a duty to not retaliate against him for his whistleblower actions.

39. The City, through the actions of its City Manager, breached that duty owed to Cuevas by intentionally, recklessly, and/or negligently failing to provide Cuevas with a safe work environment free from harassment, unreasonable working conditions, emotional duress, and retaliation for whistleblower conduct.

40. The City, through the actions of its City Manager, illegally took adverse action against Cuevas by demoting him by three ranks, and one rank below his last civil service position of Lieutenant, in retaliation for Cuevas blowing the whistle. The City's demotion directly followed a pattern of retaliation that began with its deprivation of a bonus due to Cuevas, the truncation of duties and assignments to which Cuevas was entitled as Assistant Chief, and the making of false and inaccurate statements impugning Cuevas' integrity and professionalism as a law enforcement officer.

41. This City's adverse personnel action was in direct retaliation against Cuevas for his disclosures of misconduct and illegalities, as well as for his steadfast refusal to turn a blind eye to the illegalities and gross malfeasance and misfeasance within the City by City officials, including the Disposition Panel.

42. The City's demotion of Cuevas from Assistant Chief to Sergeant occurred on or about March 3, 2018. This demotion was not the first of the

adverse actions taken against Cuevas for his whistleblowing conduct. Instead, it was the culmination of an intended pattern and practice of multiple acts of retaliation that started immediately after he wrote the whistleblowing memo and continued through the demotion.

43. Subsequent to and as a direct result of his writing the memo, Cuevas was, among other acts of retaliation, subjected to an unfair, contrived, and retaliatory internal affairs investigation in violation of policy and practices.

44. Cuevas was also subjected to ongoing humiliation that altered the conditions of his employment directly as a result of his whistleblower activities.

45. Among other acts of retaliation for his whistleblower activities, the City illegally withheld Cuevas' cost of living adjustment and mandated pay increase, thus intentionally causing significant financial harm to Cuevas.

46. Cuevas was entitled to a merit increase on June 26, 2017, three weeks after he wrote his whistleblower memorandum. In direct retaliation for his memo, Cuevas' merit raise was withheld until February 2018 – eight months later, but one week before his demotion. This delay was intentionally designed to punish Cuevas for his conduct as a whistleblower.

47. The City's withholding of the pay and benefits to Cuevas was a direct act of retaliation because of his whistleblowing activities.

48. Cuevas' demotion, occurring nine months after he wrote the memo, occurred as soon as Juriga was named Police Chief, and done in direct retaliation for his whistleblower activities. Prior to that time, Juriga was only Acting Chief, and unable to demote Cuevas, who became Assistant Chief in the tenure of then-Chief Eugene.

49. City Manager Spring's decision to appoint Juriga as Chief was announced in March 2018. Within days of his appointment, Juriga retaliated against Cuevas by demoting him three ranks to Sergeant as additional punishment for his whistleblowing memo and conduct. Juriga was unable to demote Cuevas earlier because he was not yet the permanent Chief of Police.

50. In July 2017, City Manager Spring initiated an Internal Affairs Investigation against Cuevas, who was then Assistant Chief. This was done with the knowledge and assent of then-Acting Chief Juriga, both of whom intended to retaliate against Cuevas for his whistleblowing conduct. The Internal Affairs investigation was initiated in violation of practices and protocols, and was not disclosed to Cuevas.

51. The initiation of the Internal Affairs investigation by the City Manager's directive is illegal in direct violation of the North Miami Police

Department's Standard Operating Procedure regarding Internal Investigations Complaints, Counseling, and Discipline (January 16, 2013). Section V. COMPLAINT PROCEDURES: CFA 11.03, 27.01(A), ¶ C(1)(b), states with respect to complaints received, "The information will be recorded on the Initial Report – Allegation of Employee Misconduct (Appendix A)."

52. The City, including City Manager Spring, was so incensed by Cuevas' whistleblowing memo that it was withheld from public view.

53. *Biscayne Times* journalist Mark Sell directly asked City Manager Spring why those documents, the Cuevas memo in particular, were not posted on the City's website, to which Spring replied that the matter was "under investigation." Spring intentionally suggested, in another instance of retaliation, the Cuevas had engaged in conduct warranting an investigation.

54. On June 21, 2017, City Manager Spring held a City Community Council Forum, during which he distributed a City-memorandum discussing the shooting. Spring publicly denounced Police Chief Eugene and Commander Hollant.

55. Acting Chief Juriga did not notify then-Assistant Chief Neal Cuevas that this Forum was scheduled. This was intentionally done by Juriga and Spring to prevent Cuevas from attending, in direct retaliation for Cuevas' whistleblowing conduct. Cuevas, however, learned of this meeting through

residents and, in fact, did attend. Cuevas' attendance infuriated both Spring and Juriga.

56. The official public records video recording of the Forum reveals, at hour 2:06,, City Attorney Cazeau stated that all relevant documents of the Kinsey shooting and Commander Hollant's Internal Affairs investigation were available on the City's website. When an audience member asked why Cuevas' whistleblower memo was not posted, Cazeau responded:

“The reason that memo hasn't been put out is because it's not officially part of our, um, it's not part of any of this process. Ma'am, ma'am, *PLEASE!* There is a process in all of this and we've been following the process through all of this. The way this process works is once the internal affairs investigation is over, the internal affairs package goes to three officers who review it. Once those three officers make their determination, that package then goes to the person's supervisor. In this case it would be Major Belcher. It goes through the person's chain of command. In other words, whoever the highest person in the chain of command, they get the package, it goes down to the person to make their recommendation. That's the way it's supposed to work. The only person supposed to make that recommendation on that IA investigation is the direct supervisor. That memo that you're talking about is outside the Standard Operating Procedures. It's outside the Standard Operating Procedures, it's not called for in any of the city's processes. So you can't on one side say make this a process and follow the process, follow the process, and on the other side, someone just comes out and writes whatever they want to write now here's the thing. Whether or not he has the right to do it, that that's I'm not saying he has he doesn't have the right to make up whatever he wants to say I mean the man's been in in the force for a long time, he has his opinion. But at the same time, that does not go in our procedure. So that was not the forum for it.”

57. The City's withholding of the Cuevas memo from public records violates the Florida Public Records Law. Allowable exemptions from public access,

denoted in the Public Records Law, include, but are not limited to, documents that are part of a public bidding process, criminal investigation, criminal or civil litigation, data processing licensing and trade secrets, active criminal intelligence and/or investigative information, information revealing surveillance techniques, information revealing the identity of a confidential informant or source, and any information revealing “highly sensitive personal information” of a victim of a crime, including the identity of a victim of child abuse or rape, none of which apply to the Cuevas memo unless City Attorney Cazeau was intending to falsely claim an exemption because of a “criminal investigation” against Cuevas. If so, that is yet another intended retaliatory action to falsely accuse Cuevas of being the subject of a criminal investigation as a direct punishment for his whistleblowing conduct.

58. Cuevas fully cooperated with the illegal Internal Affairs investigation, even submitting to an interview by North Miami Police Department Internal Affairs Sergeant Diana Roman on July 20, 2017. Sgt. Roman informed Cuevas he was being investigated for allegations of “improper procedures relating to a memorandum you wrote on June 2, 2017, and the North Miami Police Department disciplinary process which includes (unintelligible) investigative files.” Cuevas was also “alleged to have mishandled the investigative file of an open Internal Affairs investigation #16-06 [against Commander Hollant], and the information contained

therein.” These statements and the Internal Affairs investigation were in direct retaliation for Cuevas’ whistleblowing memorandum, and were intended to punish and intimidate Cuevas through the improper use of City power.

59. The Internal Affairs investigation was initiated as a direct result of Cuevas’ whistleblowing memo that identified myriad violations of law, Police Department rules and regulations, North Miami Police Department Standard Operating Procedures, Commission for Florida Accreditation Standards (<http://www.flaccreditation.org/standards.htm>), and North Miami Civil Service Rules.

60. Cuevas revealed additional acts of misconduct in his capacity as a whistleblower:

61. Cuevas revealed the illegitimacy of the contrived Internal Affairs investigation against Commander Hollant:

62. The Miami-Dade State Attorney’s Office reviewed and rejected a complaint initiated by City officials. The City persisted by bringing the complaint a second time for State Attorney review, requesting it be evaluated “as a courtesy” to unnamed “North Miami police investigators,” per an email from Chief Assistant State Attorney Arrojo to City Manager Spring and City Attorney Cazeau.

63. In both instances, the State Attorney's Office decisively determined "that Commander Hollant did not lie, and that there was no intent by Commander Hollant to mislead or obstruct investigators or command staff officers regarding his involvement in the police shooting." This definitive determination by the State Attorney's Office incenses both City Manager Spring and Chief Juriga.

64. The State Attorney's conclusive determination represents Cuevas' assertion of a violation by the City of Section 7, North Miami Police Department General Rules and Regulations, which reads: "Members withholding information or furnishing unauthorized and/or confidential information with a view to personal gain or for any other reason shall be subject to disciplinary action."

65. The City's conduct, as described by whistleblower Cuevas also violated North Miami Civil Service Rule III, Section F(2), which reads: "No person shall willfully or corruptly make any false statement, certificate, mark, rating or report, in regard to any test, certification or appointment, held or made under the personnel provisions of this Charter or in any manner commit or attempt to commit any fraud preventing the impartial execution of such personnel provisions or of the Rules and Regulations made thereunder.

66. Cuevas pointed out that two key witnesses, Sergeant Reid and Officer Bernadeau, changed their testimony between their interviews with FDLE shortly after

the shooting and then with Internal Affairs approximately eight months after the shooting. This represents another finding by Cuevas of City misconduct that is likely illegal.

67. The Disposition Panel intentionally and wrongly claimed Commander Holland's statement to the Florida Department of Law Enforcement (FDLE) that he was present on the scene, but did not witness the actual shooting by Officer Jonathan Aledda, to be "contradictory to statements made by other officers on the scene." To back up that false contrivance, the Panel quoted Sergeant Milton Reid "And then I lost track of him because I'm focusing on the targets and I then see Hollant come back with binoculars..."

68. Sergeant Reid was well aware Commander Hollant did not initially have binoculars with him since he subsequently saw him "come back with binoculars."

69. The Disposition Panel then quoted Sergeant Reid, by taking his statement out of context, as stating that Hollant was away from the scene for "less than 30 seconds."

70. The Disposition Panel noted that Sgt. Diana Roman "reported that it would have taken approximately 1 minute and 22 seconds at a jogging pace" for Commander Hollant to retrieve his binoculars from his vehicle."

71. In light of the fact that Sgt. Reid had admitted he “lost track” of Commander Hollant while he was “focusing on the targets,” unless Sergeant Reid had a stopwatch and timed Commander Hollant’s jog to his vehicle and back, it would have been practically impossible to determine whether Hollant was out of his presence for 30 seconds or 82 seconds. Accordingly, either Reid was focused on the victims, as he so stated, or he was keeping his eye on Commander Hollant during the entirety of the incident, but not both.

72. Another identified discrepancy with the Disposition Panel report is the inclusion of a statement made by Officer Alens Bernadeau, who claimed that Commander Hollant “was there” for the shooting.

73. According to the FDLE investigative evidence, Officer Bernadeau and Officer Kevin Crespo were 20 feet to the south of the shooting victim, while Commander Hollant and Sergeant Reid were located 150’ north of the shooting victim. The distance between Commander Hollant and Officer Bernadeau was 170 feet.

74. According to the Affidavit in Support of Arrest Warrant (beginning on page 10) sworn by FDLE Special Agent Daniel Mosquera, “Officers Bernadeau and Crespo moved tactically; leap frogging behind poles on opposite sides of the street as they moved northbound towards Mr. Soto and Mr. Kinsey.”

75. The FDLE probable cause Affidavit continues: “Eventually Officers Bernadeau and Crespo positioned themselves behind poles on opposite sides of NE 14th Avenue,” and “were communicating with each other as they moved from two blocks away toward the two men in the intersection.” They eventually “worked their way to about 20 feet or so away” from the two men.

76. Sergeant Reid and Officer Bernadeau violated Section 44, North Miami Police Department General Rules and Regulations, which reads: “Members of the Police Department shall not make false official reports, or knowingly enter or cause to be entered in any Police Department books or records any inaccurate, or false information.

77. In addition, they violated Florida Statute §837.02, Perjury in official proceedings, which reads:

(1) Except as provided in subsection (2), whoever makes a false statement, which he or she does not believe to be true, under oath in an official proceeding in regard to any material matter, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Whoever makes a false statement, which he or she does not believe to be true, under oath in an official proceeding that relates to the prosecution of a capital felony, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Knowledge of the materiality of the statement is not an element of the crime of perjury under subsection (1) or subsection (2), and the defendant’s mistaken belief that the statement was not material is not a defense.

78. Cuevas’s memo cited material inconsistencies in the witness testimony.

79. Based on Cuevas' memo, Det. Gaucio violated Section 44, North Miami Police Department General Rules and Regulations, which reads: "Members of the Police Department shall not make false official reports, or knowingly enter or cause to be entered in any Police Department books or records any inaccurate, or false information.

80. In addition, Det. Gaucio violated Florida Statute §837.02, Perjury in official proceedings, which reads:

(1) Except as provided in subsection (2), whoever makes a false statement, which he or she does not believe to be true, under oath in an official proceeding in regard to any material matter, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Whoever makes a false statement, which he or she does not believe to be true, under oath in an official proceeding that relates to the prosecution of a capital felony, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Knowledge of the materiality of the statement is not an element of the crime of perjury under subsection (1) or subsection (2), and the defendant's mistaken belief that the statement was not material is not a defense.

81. Cuevas' demotion and the other adverse action taken against him was and is wrongful and in violation of the City Charter.

82. Cuevas retained the undersigned attorneys, and said lawyers are entitled to the recovery of their reasonable attorneys' fees and costs pursuant to Florida Statutes § 112.3187.

COUNT I
VIOLATION OF § 112.3187, FLORIDA STATUTES
(Against Defendant CITY)

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

84. The City of North Miami is an agency, a term defined by § 112.3187(3)(a), Florida Statutes.

85. Plaintiff was, at all times material, an employee as that term is defined by § 112.3187(3)(b), Florida Statutes.

86. The City of North Miami took adverse personnel action against the Plaintiff, as that term is defined by § 112.3187(3)(c), Florida Statutes.

87. The action taken against Plaintiff included demotion, and loss of titles, positions, reduced compensation, and benefits within the City.

88. The actions taken by the City were prohibitive under §112.3187(4), Florida Statutes.

89. The prohibitive actions were taken directly as a result of an in retaliation to Plaintiff disclosing information, as defined by § 112.3187(5)(a) & (b), Florida Statutes.

90. On June 2, 2017, the Plaintiff disclosed acts and suspected acts of gross management, malfeasance, misfeasance, gross waste of public funds, and illegal conduct committed by employees and agents of the City of North Miami.

91. The defendants took several retaliatory steps directly in response to Plaintiff's whistleblower memorandum that culminated in Plaintiff's demotion. Three weeks after issuance of the whistleblower memorandum, the City withheld a merit increase due to the Plaintiff. Five days later, on July 1, 2017, the City clandestinely and illegally initiated an Internal Affairs Investigation against Plaintiff. These and the other retaliatory actions described in this complaint caused, supported, led to, and culminated in the Plaintiff's demotion.

92. Plaintiff participated in investigations and other inquiries conducted by agencies of the local, state, and federal government as defined in §112.3187(7), Florida Statutes.

93. Plaintiff filed written and signed complaints disclosing information enumerated in § 112.3187(5), Florida Statutes and to parties and entities enumerated in § 112.3187(6), Florida Statutes.

94. Plaintiff refused to participate in adverse actions prohibited by § 112.3187, Florida Statutes.

95. Plaintiff refused to participate in unethical, illegal, and inappropriate violations of federal, state, and local laws, rules, regulations, and policies, and disclosed to City officials and officers such violations and misrepresentations to City and state officials.

96. For these reasons, Plaintiff requests immediate reinstatement to his position as Assistant Chief, together with reinstatement to his former position, with full pay including back pay and front pay, benefits, compensation, seniority rights, any lost income, compensatory damages, and all other relief deemed appropriate. Plaintiff also seeks immediate payment of his attorney's fees and costs.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury for all issues so triable as a matter of law.

Dated: July 20, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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By: S/ Benedict P. Kuehne
BENEDICT P. KUEHNE



To: Police Chief Gary Eugene Date: June 2, 2017
Assistant Chief Neal Cuevas
From: *AC Neal Cuevas* Subject: IA Investigation
Case No. 16-06
Distribution:

I have reviewed the North Miami Police Department Memorandum dated May 24, 2017 to Police Chief Gary Eugene from the Disposition Panel regarding the Internal Affairs Investigation of Commander Emile Hollant, Case No. 16-06.

Paragraph I(B) Disposition, states that the Panel made its decision "based on the preponderance of the evidence in this case."

The Cornell University School of Law, however, defines "preponderance of evidence" as: "A requirement that more than 50% of the evidence points to something."

Accordingly, the Disposition Panel did not prove any preponderance of evidence to support its findings. In fact, its findings are replete with misinformation, half-truths and blatant inconsistencies.

As such, the Miami-Dade State Attorney's Office, on two separate occasions, ruled "that Commander Hollant did not lie, and that there was no intent by Commander Hollant to mislead or obstruct investigators or command staff officers regarding his involvement in the police shooting."

Therefore, I cannot go against the State Attorney's ruling, and I cannot endorse the findings of the Disposition Panel.

First and foremost, it must be noted for the record that the Miami-Dade State Attorney's Office initially reviewed a complaint, and a second time "as a courtesy" to unnamed "North Miami police investigators," per an email from Chief Assistant State Attorney Jose J. Arrojo to City Manager Larry Spring and City Attorney Jeff Cazeau.

In both instances, the State Attorney's Office decisively determined "that Commander Hollant did not lie, and that there was no intent by Commander Hollant to mislead or obstruct investigators or command staff officers regarding his involvement in the police shooting."

In his Close-Out Memo dated August 2, 2016, Deputy Assistant State Attorney Arrojo emphatically stated that "at best, the allegation that he provided inconsistent statements to investigators or command staff officers appears to have been the result of simple miscommunication."

Ironically, if the Disposition Panel was concerned about a "preponderance of evidence," they need look no further than the final decision by the State Attorney's Office that Commander Hollant committed no wrongdoing.

It is glaringly obvious that the NMPD Internal Affairs Disposition Panel has inexplicably ignored the findings of the State Attorney's Office in order to back up the erroneous assumptions of those unnamed "North Miami police investigators" who were intent on proving that Commander Hollant was responsible for the shooting and that he lied about his involvement.

That this Panel found the allegations against Commander Hollant sustainable is an unmitigated miscarriage of justice.

For one thing, the Disposition Panel inexplicably chose specific portions of witness statements that fit a predetermined outcome, which was to find fault with Commander Hollant. At the same time, this Disposition Panel omitted, and outright ignored, crucial statements made by witnesses and yourself that coincided with the State Attorney's findings that Commander Hollant committed no wrongdoing.

When interviewed by the Florida Department of Law Enforcement (FDLE), Commander Hollant truthfully stated that he was present on the scene, but **did not witness the actual shooting by Officer Jonathan Aledda.**

The Panel noted that "these statements are contradictory to statements made by other officers on the scene." To back up that theory, the Panel quoted Sergeant Milton Reid, who stated in his interview "And then I lost track of him because I'm focusing on the targets and I then see Hollant come back with binoculars..."

By his own admission, Sergeant Reid was well aware that Commander Hollant did not initially have binoculars with him since he subsequently saw him "come back with binoculars."

In the very next paragraph of the Memorandum, however, the Panel quoted Sergeant Reid as stating that Hollant was away from the scene for "less than 30 seconds."

In an apparently vain attempt to corroborate Reid's statement, the Panel then noted that Sergeant Diana Roman "reported that it would have taken approximately 1 minute and 22 seconds at a jogging pace" for Commander Hollant to retrieve his binoculars from his vehicle."

In light of the fact that Sergeant Reid had already admitted that he "lost track" of Commander Hollant while he was "focusing on the targets," unless Sergeant Reid had a stopwatch and timed Commander Hollant's jog to his vehicle and back, it would have been practically impossible for him to determine whether Hollant was out of his presence for 30 seconds or 82 seconds. Accordingly, either Reid was

focused on the victims, as he so stated, or he was keeping his eye on Commander Hollant during the entirety of the incident, but not both.

Another major problem with the Disposition Panel's report is the inclusion of a statement made by Officer Alens Bernadeau, who claimed that Commander Hollant "was there" for the shooting.

According to the evidence provided by the FDLE after its investigation of the shooting, it was determined that Officer Bernadeau and Officer Kevin Crespo were located 20 feet to the south of the shooting victim, while Commander Hollant and Sergeant Reid were located 150 north of the shooting victim. The distance between Commander Hollant and Officer Bernadeau was 170 feet.

According to the Affidavit in Support of Arrest Warrant (beginning on page 10) sworn by FDLE Special Agent Daniel Mosquera, "Officers Bernadeau and Crespo moved tactically; leap frogging behind poles on opposite sides of the street as they moved northbound towards Mr. Soto and Mr. Kinsey."

The Affidavit continues, "Eventually Officers Bernadeau and Crespo positioned themselves behind poles on opposite sides of NE 14th Avenue," and "were communicating with each other as they moved from two blocks away toward the two men in the intersection." They eventually "worked their way to about 20 feet...20 feet or so away" from the two men.

In fact, there are two key lines of questioning noted in Officer Bernadeau's interview with Detective Michael Gaudio on the day of the shooting, July 18, 2016.

First:

Question: Okay. You see any officers north of you, north of the subject?

Answer: Yes. They were – as I'm saying, it wasn't too much of me seeing officers, I seen a bunch of marked police vehicles, I don't – like.

Second:

Question: Okay, but you don't know which (unintelligible)?

Answer: I'm not – who was who, was ...

Question: Okay. Okay. And then what happened?

Bernadeau testified that he was moving from pole to pole to get a better visual. "And I was trying to do that and I heard two shots."

In contradiction to his own words, when Officer Bernadeau was interviewed by internal affairs on February 14, 2017, he testified:

Question: When you see him there is it prior to the shooting or after the shooting?

Answer: No, it – it's – it was – it was prior to and after. After the shooting – he – he was on the scene the whole time – prior to and after he was there.

Question: And based on what you saw – based on the position that you were in – the position that Commander Hollant was in and the timing of what you're – you have described do you believe that Commander Hollant witnessed the actual shooting?

Answer: I mean I believe he should have from – from his – from his – his – his angle but I'm not sure if – if at that time he was looking or not, but I think he should have.

Clearly, Officer Bernadeau testified that he saw Commander Hollant "prior to and after" the shooting, but he never claimed he saw Hollant **during** the shooting.

This Disposition Panel relied solely on Officer Bernadeau's response, "Yeah, he was there," when questioned if Commander Hollant was "there for the shooting," yet they deliberately omitted that Bernadeau already testified only July 18, 2016 that he could not identify any officers, and only "a bunch of marked police cars" on the scene up until the moment of the shooting.

Furthermore, Officer Bernadeau's belief that Commander Hollant "should have" witnessed the shooting has absolutely no bearing on whether Hollant did or did not, in fact, **witness the shooting.**

I find it patently ludicrous that this Disposition Panel relied on Officer Bernadeau's claim that Hollant "**should have**" witnessed the shooting as he was leap frogging between, and positioning himself behind, poles a distance of 170 feet from where Hollant was located, and focused on the perceived threat before him.

It is impossible to fathom that Bernadeau had a clear and concise knowledge of what Commander Hollant may or may not have witnessed considering that he was at least 170 feet away from Hollant and allegedly focused solely on the victim, and at the same time, facing a potential threat of being in the line of fire.

The testimonies of Sergeant Reid and Officer Bernadeau, which the Disposition Panel obviously cherry-picked to prove their point, are simply not credible, nor do they rise to the level required for a "preponderance of evidence."

Sergeant Reid already admitted he "**lost track**" of Hollant when he went to get his binoculars, and Bernadeau claimed he saw Hollant before and after the shooting, but not during the actual shooting.

Neither of them could state with any degree of certainty that Hollant witnessed the shooting. And yet, this Panel is basing its decision on their ambiguous testimony.

Other individuals interviewed by internal affairs also claim they saw Commander Hollant before and/or after the shooting, but not one person interviewed was able to state that Hollant witnessed the shooting.

The Panel also noted that when shooting team lead investigator Detective Michael Gaudio arrived at the scene, and asked Commander Hollant if he was a witness, Gaudio stated that Hollant answered, "No, no, Mikey. I just got here."

In fact, in his first IA interview on February 2, 2017, Detective Gaudio stated, "I spoke with Milton, Sergeant Reid, who was on the scene. I asked him if he saw anything. He told me what he saw and that he'd seen the shooting."

At no time did Reid tell Gaudio that he saw Commander Hollant witness the shooting.

Interestingly, in his testimony under oath to the FDLE, when Commander Hollant was asked if he ever spoke with Detective Gaudio, he said he did not.

In fact, not one individual interviewed by either the FDLE or the internal affairs investigators would confirm that they witnessed or even overheard any conversation between Commander Hollant and Detective Gaudio.

The panel erred in not corroborating Detective Gaudio's statement.

Furthermore, when Commander Angel Rivera was interview by IA, he stated that he asked Commander Hollant, "Can you name one person who you told you were a witness or a possible witness?"

Had Commander Rivera referred to his own Crime Scene Entry Sheet, he would have seen that Commander Hollant's name was the 7th on the list and that his "time in" was 1712.

The Panel notes that "the North Miami report for the shooting was missing relevant information since Commander Hollant did not identify himself as a witness."

Established police procedure is such that every single person at the scene of an incident is considered a witness. Since Commander Hollant never denied being present at the scene, he was not required to "identify himself a witness." His physical presence at the scene, combined with his transmissions over the police radio, was proof enough that he was a witness.

Even more crucially, it's apparent that neither Detective Gaudio nor Sergeant Rivera referred to the North Miami Police Department's Crime Scene Entry Sheet, which clearly reflects Commander Hollant as being present on the scene. Had Gaudio and Rivera done their due diligence as experienced investigators, they would have noticed this entry, and known or surmised he was, in fact, present at the scene before and after the shooting and, therefore, a witness.

Nineteen individuals who were interviewed by internal affairs, including myself, all testified that they did not see or hear Commander Hollant speak to either yourself or Detective Gaudio. These individuals are: Sergeant Reyes, Sergeant Brooks, Officer Laguerre, Detective Tovar, Detective Pérez, Detective Castro, Sergeant Zuniga, Officer Veillard, Major Cardona, Commander Estrugo, Commander Rivera, Commander Fishel, Sergeant Reid, Officer Requejado, Officer Buissereth, Officer Crespo, Officer Llerena, and Officer Joachim.

Sergeant Mesidor saw Detective Gaudio approach Commander Hollant, but did not hear them converse. Mesidor never saw Hollant speak with Eugene. Only Assistant Chief Juriga heard Eugene speaking to Hollant.

More importantly, **none of these individuals testified that they saw Commander Hollant witness the shooting.**

According to the Miami-Dade State Attorney's Office, Commander Hollant's statement that he **did not witness the actual shooting**, is true and correct, and I wholeheartedly agree.

For the purposes of this investigation, Hollant is a "witness" by virtue of the fact that every law enforcement officer present at the scene of a major incident is considered to be a witness.

This Disposition Panel claims that "investigative personnel stated during their IA interviews that if Commander Hollant was identified as a witness, he would have been separated and a statement would have been taken from him."

Interestingly, "investigative personnel" had no problem with the shooter, Jonathan Aledda, being driven home by Sergeant Milton Reid, both of whom were witnesses to the shooting.

Although Commander Hollant was a witness (as defined by Black's Law Dictionary) at the scene of the incident, he has consistently stated from the very beginning that **he was not an eyewitness to the shooting.**

According to Black's Law Dictionary, the accurate definition of "witness" is "a **person who has knowledge of an event.**"

An "**eyewitness,**" on the other hand, is defined as "**a party that testifies about what they saw.**"

As such, Commander Hollant was a witness at the scene of the shooting, but he **was not an eyewitness.**

The Disposition Panel concluded that there was a preponderance of evidence to sustain the allegations made against Commander Hollant.

However, I see **absolutely no preponderance of evidence** that Hollant was an eyewitness to the shooting. He never once claimed that he had not been present at the scene, but he was adamant that he **did not** witness the actual shooting.

In fact, according to testimony provided by retired Major Trevor Shinn, when he heard Commander Hollant's voice on the audio recording, he and Assistant Chief Juriga questioned you about Hollant's statement to you the previous evening. Major Shinn stated that you asked Hollant if he was a witness, and you claim Hollant responded, "No, I had left – I had left to go to my car, I wasn't a witness."

Everyone present knew that Commander Hollant was at the scene. This is obvious. Statements by alleged witnesses such as "he must have seen" is not the same thing as "I know he saw."

The declaration that there is a "preponderance of evidence" by this Disposition Panel, without irrefutable evidence to back up that declaration, is meaningless, baseless and completely without merit.

Furthermore, there is absolutely no proof given in this report to contradict Commander Hollant's **sworn testimony** given to the Florida Department of Law Enforcement and the Miami-Dade State Attorney's Office affirming that **he did not witness the actual shooting**.

As I initially stated above, based on my thorough review of this file, I cannot endorse the findings of this panel. The allegation of "Obstruction of a Law Enforcement Investigation by way of False Statements" made against Commander Hollant is **unequivocally NOT sustainable**.

I strongly recommend that you rightly direct this Disposition Panel to revisit the evidence provided to it, and reconsider its irrational conclusion.

I respectfully request that my Memorandum to you be made a permanent record to this file.

Appendix:

Cornell University of Law Dictionary, "Preponderance of evidence:"
https://www.law.cornell.edu/wex/preponderance_of_the_evidence

Black's Law Dictionary, "Witness:" <http://thelawdictionary.org/witness->
[n/http://thelawdictionary.org/](http://thelawdictionary.org/)

Black's Law Dictionary, "Eyewitness:" <http://thelawdictionary.org/eyewitness/>