IN THE NINETEENTH JUDICIAL CIRCUIT COURT IN AND
FOR MARTIN COUNTY, FLORIDA

LAKE POINT PHASE I, LLC, and
LAKE POINT PHASE II, LLC,
Florida limited liability companies,

Plaintiffs,

Case No.: 2013-1321 CA

v.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT, a
public corporation of the State of
Florida, MARTIN COUNTY, a
political subdivision of the State of
Florida, and MAGGY
HURCHALLA,

Defendants.
_____/

ORDER ON PUBLIC RECORDS ACT CLAIMS

This action came on for a final hearing on August 27 and 31, 2015, on the Plaintiffs Lake Point Phase I, LLC, and Lake Point Phase II, LLC,'s claims against Martin County pursuant to Chapter 119, Florida Statutes (the Public Records Act), in Counts VII and VIII of the Third Amended Complaint. Having considered the testimony, exhibits, pleadings, and arguments of counsel, the Court finds and determines:

1. The Plaintiffs allege that Martin County ("the County") has violated Chapter 119 by willful destruction, alteration, and delay in production of public records which were, in effect, an unlawful denial of various public records requests. Although the existing records have now been produced, the plaintiffs maintain that the matter is not moot because they are entitled to attorney's fees and costs for having to sue to enforce their rights to inspect and copy public records of Martin County.

2. Martin County opposes plaintiffs' claim for attorney's fees arguing that the lawsuit was not about public records enforcement, all public records were being produced without the amended claim, and there was no willful violation of Chapter 119, among other defenses. The County also makes a claim for attorney's fees pursuant to section 57.105, Florida Statutes.

3. The Plaintiffs summarize the alleged violations in three parts: (1) destruction of the notes of County Commissioner Sarah Heard used at a public Commission meeting on February 5, 2013; (2) alteration of emails between Commissioner Heard and defendant Maggy Hurchalla; and (3) alteration and delay in production of emails between Commissioner Ed Fielding and Ms. Hurchalla. They also make various allegations of misconduct such as the County attorney failed to take prompt action to preserve Commissioner Heard's notes, and that Commissioner Heard failed to make reasonable efforts to recover emails which she claims were lost when her email account was "hacked".

4. The claims pursuant to Chapter 119 were first made in the Second Amended Complaint filed on February 14, 2014. By that time it was already established by discovery in the lawsuit that the notes of Commissioner Heard did not exist, and that the County had produced all unaltered emails of Commissioner Heard with Ms. Hurchalla and, from Commissioner Fielding's personal email account, an email by Ms. Hurchalla to Commissioner Fielding dated January 12, 2013 in native format. An email string with two additional emails by Ms. Hurchalla to Commissioner Fielding dated July 2012 in his personal email account were produced a few days after the lawsuit was amended to add the Chapter 119 claims. (Pl. Exhibit 34.)

5. Section 119.12, Florida Statutes, states:

> Attorney's fees.—If a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against the

agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees.

6. The Court finds by the greater weight of the evidence that by the time the plaintiffs first filed the public record counts against Martin County, the County had already made a reasonable effort to respond and provide public records to the Plaintiffs. This was done both by responses to the public records requests and by responses to discovery in the lawsuit pending for a year. Martin County did not unlawfully refuse to permit the emails of Ms. Hurchalla with the Commissioners to be inspected and copied. The delay in discovery of the email string with two additional emails of Ms. Hurchalla with Commissioner Fielding dated July 2012 was inadvertent.

7. Although the County never produced a copy of the notes of Commissioner Heard from February 5, 2013, the Court finds by the greater weight of the evidence that the notes were made for the Commissioner's personal use to aid her memory at the meeting and were not intended nor utilized as an end product to perpetuate, communicate, or formalize knowledge of the Commissioner's study or research. The evidence included a video of the Commissioner using her notes at the meeting as well as her testimony describing how she used the notes. The notes were not a "public record" within the meaning of Chapter 119. Therefore, the amended complaint's claim for enforcement of plaintiffs' demand to produce the notes is denied.

8. All claims in Counts VII and VIII of the Third Amended Complaint are denied.

9. As to the County's claims for attorney's fees, the Court finds by the greater weight of the evidence that when the Second Amended Complaint was initially presented, the plaintiffs and their attorneys did not know, nor should have known, that the public records claim was not supported by the material facts necessary to establish the claim. There were many circumstances which would cause a reasonable person to suspect there were records not yet disclosed. The destruction of Commission Heard's notes was not clarified. The destruction of

Commissioner Heard's emails was very curious and remains unexplained. Commissioner Fielding's personal email account was not disclosed initially and one email was not initially disclosed in native format, although the substance was unchanged. It was not until further discovery was done that the facts became clearer.

10. By the time of the case management conference on March 25, 2015, however, plaintiffs' counsel conceded that the documents requested had all been produced or did not exist and the remedies of injunction and mandamus were moot. Nevertheless, plaintiffs' counsel requested a trial on Counts VII and VIII in order to obtain an award of attorney's fees and costs for the plaintiffs on the basis that the violations of Chapter 119 had not been timely corrected or had occurred after the Complaint was amended.

11. The County's claim for attorney's fees is pursuant to section 57.105(1), Florida Statutes, which requires that the Court find that "the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial ... [w]as not supported by the material facts necessary to establish the claim; ..." § 57.105(1)(a). The Court cannot agree that plaintiffs' attorneys knew or should have known that the claim was without any support by the material facts. Although records were eventually produced, the Court's conclusions herein are not such as an attorney should have known what they would be.

12. Therefore, Martin County's claim for attorney's fees is denied.

ORDERED at Stuart, Martin County, Florida on this 3rd day of September, 2015.

F. Shields McManus

F. Shields McManus, Circuit Court Judge

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