

NO. [REDACTED]

ALICIA FITZPATRICK,	§	IN THE DISTRICT COURT
Plaintiff,	§	
	§	
V.	§	455TH JUDICIAL DISTRICT
	§	
CITY OF PFLUGERVILLE, TEXAS,	§	
Defendant.	§	TRAVIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW ALICIA FITZPATRICK, Plaintiff in the above-styled and captioned cause, and complaining of **CITY OF PFLUGERVILLE, TEXAS** ("Pflugerville" or "Defendant"), Defendant and for cause of action would respectfully show the Court and Jury as follows:

I. DISCOVERY CONTROL PLAN AND CLAIM FOR RELIEF

- 1.1 Plaintiff intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4, and hereby requests that the Court enter a discovery control order under Rule 190.4.
- 1.2 Plaintiff seeks monetary relief in excess of \$250,000, but less than \$1,000,000, including damages of any kind, penalties, court costs, expenses, prejudgment interest, and attorney fees.

II. PARTIES

- 2.1 Plaintiff **ALICIA FITZPATRICK** is a Texas domicile. [REDACTED]

[REDACTED]

[REDACTED]

- 2.2 Defendant **CITY OF PFLUGERVILLE, TEXAS**, is a public, local government entity established and organized under, and pursuant to, the laws of the State of Texas, with authority to sue and be sued in its own name, and may be served by serving its Mayor, Honorable [REDACTED]

██████████ 100 East Main Street, Suite 300, Pflugerville, Texas 78660, or by serving its City Secretary, Ms. ██████████ at 100 East Main Street, Suite 300, Pflugerville, Texas 78660.

III. JURISDICTION AND VENUE

3.1 Jurisdiction and venue of this action are proper in this Court, in that Plaintiff's damages exceed the minimum jurisdictional limits of this Court. Venue is proper in Travis County, because all or a substantial part of the events or omissions giving rise to the claim occurred in Travis County, and Defendant is located in Travis County, Texas.

IV. FACTS

4.1 At all times material to her claims against Defendant, Plaintiff Alicia Fitzpatrick has been employed by Defendant City of Pflugerville, as a police officer in the City of Pflugerville Police Department. On January 20, 2021, Officer Fitzpatrick filed a Request to Investigate with the Public Integrity Unit of the Travis County District Attorney's office, in which Officer Fitzpatrick alleged Abuse of Official Capacity and Official Oppression by Pflugerville Police Department Sergeant ██████████ and the City of Pflugerville's City Manager, Ms. ██████████. *See* Exhibit A, incorporated herein for all purposes.

4.2 In support of her report to the Public Integrity Unit regarding violations of law by public employees, Officer Fitzpatrick furnished the Unit investigative findings by The Austin Institute LLC to the Travis County District Attorney's Office. The Austin Institute LLC was a private consultant the City of Pflugerville had retained to investigate and report on allegations of a misogynistic culture within the City of Pflugerville's Police Department. *See* Exhibit B, incorporated herein for all purposes.

4.3 In her January 20, 2021, report, Officer Fitzpatrick informed the Public Integrity Unit that Sergeant ██████████ was found to have lied during a formal investigation, that she (Fitzpatrick)

had ethical concerns regarding the behavior of Ms. [REDACTED]

[REDACTED] On January 21, 2021, Sgt. [REDACTED] an Investigator of the Travis County District Attorney's Special Prosecution Division acknowledged receipt of the Request to Investigate that Officer Fitzpatrick filed. A copy of the Request to Investigate was provided to the Pflugerville City Attorney, who was also made aware Officer Fitzpatrick had filed a criminal complaint. He stated he would notify the involved parties (Ms. [REDACTED] and Sergeant [REDACTED])

4.4 On January 28, 2021 – seven (7) days later and approximately one week after Officer Fitzpatrick made reported these violations of law to the Public Integrity Unit – Officer Fitzpatrick and several other Pflugerville Police Department employees received an order to report to the department's briefing room at 6:00 p.m. As soon as all who had been summoned were all present, [REDACTED], Commander [REDACTED] and Commander [REDACTED] stated that all employees present were there to receive disciplinary action, allegedly for the content of messages between Officer Fitzpatrick and the others over Spillman CAD – the Pflugerville Police Department's communication system. The affected employees learned that the City of Pflugerville had previously received two Public Information Requests – 1) the first by Plaintiff seeking documents in support of her 2020 internal report of a hostile work environment based on sex discrimination, including communications about her by Sergeant [REDACTED] (one of the PPD officers primarily implicated in her report); and 2) a second PIA request by Sergeant [REDACTED] attorneys ("All Spillman CAD messages from or to Alicia Fitzpatrick [REDACTED])

4.5 Apparently, the two PIA requests had been handled differently: Officer Fitzpatrick's PIA request had been delayed by appeals to the Office of Attorney General, while the documents

responsive to Sergeant [REDACTED] PIA request had not only been compiled, they had also been thoroughly reviewed by the City Manager – not typical protocol for the handling of open records requests. It appears Ms. [REDACTED] – the City Manager – personally reviewed roughly 900 pages of communications between Officer Fitzpatrick and others friendly to her or supportive of her. After learning of Officer Fitzpatrick’s report of violations of law to the Public Integrity Unit, Ms. [REDACTED] then apparently ordered that former Chief [REDACTED] immediately discipline Officer Fitzpatrick and all of the others – allegedly for the contents of their Spillman CAD messages. All such employees were all then ordered to sign and acknowledge their write-ups immediately, with the implication that if they refused, they would be fired.

4.6 Specifically, upon information and belief, Chief [REDACTED] was required to write the following disciplinary action on all employees present at the briefing:

“On 01/26/2021, upon review of documents associated with a Public Information Request, City Manager [REDACTED] [REDACTED] notified me that officers (on what appeared to be Shift 3 patrol) were inappropriately using Spillman Instant Messaging (Exhibit C). It should be noted, that Patrol Shift 3, is the shift I work on. Myself and my peers were given an Officer Final Classification Agreement in relation to IAD Case # [REDACTED] with an allegation of “Acts Prohibited on Premises of Department 1.10.25” found as SUSTAINED (Exhibit D). Pflugerville Police Department Policy 1.10.25 States the Following:

“Acts Prohibited on Premises of Department- while on duty, authorized breaks or on the premises of the Police Department no employee shall:

- .1 Conduct themselves in such a manner as to bring discredit upon themselves or the Department
- .2 Use loud, indecent, profane or harsh language
- .3 Address anyone in harsh, derogatory, or belittling terms
- .4 indulge in “horseplay”
- .5 Engage in card playing or any other game on duty or on the premises of the Police Department 4
- .6 Read a newspaper, book, or a magazine in a public place unless such reading is about official duty
- .7 Engage in watching TV or VCR unless duty related and out of the view of the public. Off duty employees are authorized to

engage in watching TV or VCR at the Police Department
.8 Actively engage (read, listen, review, interact with) in the studying of materials that are not directly related to their job (ie. Reading of promotional textbooks, college courses, secondary employment material.” See Exhibit E.

4.7 The affected employees were then ordered to sign the Officer Classification Agreement “accepting responsibility” for their actions – again with the clear implication they would be fired – and they were told that that an Internal Affairs allegation of SUSTAINED would be placed in their personnel files. Upon information and belief, the disciplinary action taken against personnel at the rank of “officer” was a written reprimand and SUSTAINED finding for violating department policy in their personnel files. The employees at rank of “Sergeant,” namely Sergeant [REDACTED] [REDACTED] and Sergeant [REDACTED] [REDACTED] were disciplined with two days suspension without pay and a SUSTAINED finding for violating department policy placed in their personnel files. Upon information and belief, prior to settling on this disciplinary action against Plaintiff and all PPD employees friendly to her, Ms. [REDACTED] had initially demanded Chief [REDACTED] terminate all such employees.

4.8 It is beyond dispute that write-ups such as the one described above would tend to dissuade a reasonable worker from reporting violations of law to an appropriate law enforcement authority, if it were known in advance that such a retaliatory write up would be the result. Further, since it is common practice in the field of law enforcement for a prospective employer to order past personnel files of a prospective employee, this unjustified and retaliatory write-up harms Officer Fitzpatrick’s ability to obtain outside employment or move to other law enforcement agencies. The write up also serves as a blemish on Officer Fitzpatrick’s prestige and interferes with her opportunities for advancement within PPD. Finally, the write-ups of Officer Fitzpatrick’s co-workers also sends the message that anyone who communicates with Officer

Fitzpatrick is likely to be disciplined and/or subjected to greater scrutiny, which has the effect of isolating Officer Fitzpatrick and undermining her potential for advancement in the PPD. Officer Fitzpatrick would show the Court that this retaliatory action was taken, in part, because she reported violations of law by [REDACTED] and [REDACTED] to the Public Integrity Unit.

V. CAUSES OF ACTION

A) Whistleblower Claim:

5.1 The Texas Whistleblower Act provides that a local governmental entity may not suspend or terminate the employment of, or take other adverse personnel action against a public employee who in good faith reports a violation of law by the employing governmental entity or another public employee to an appropriate law enforcement authority. Tex. Govt. Code §554.002(a).

5.2 An appropriate law enforcement authority is a part of a state or local governmental entity or of the federal government that the employee in good faith believes is authorized to:

- (1) regulate under or enforce the law alleged to be violated in the report; or
- (2) investigate or prosecute a violation of criminal law.

Tex. Govt. Code §554.002(b). The Public Integrity Unit is an appropriate law enforcement authority, in that it is authorized, or a public employee could reasonably believe in good faith it is authorized, to investigate and/or prosecute abuse of official capacity and official oppression.

5.3 The Texas Supreme Court has held that, in order to constitute retaliation under the Act, the government employer's action need not be an "ultimate employment action" (such as termination, demotion, etc.). Rather, an employer's action constitutes retaliation under the Act if it is action likely to dissuade a reasonable, similarly situated worker from making a report under the Act. *Montgomery County v. Park*, 246 S.W.3d 610, 614-15 (Tex. 2007). Following *Montgomery County*, the Houston Court of Appeals articulated five non-exclusive factors:

whether the action was likely to negatively affect the employee's (1) prestige, (2) opportunity for advancement, (3) working conditions, (4) pay or income, or (5) ability to obtain outside employment. *Ward v. Lamar*, 484 S.W.3d 440, 446 (Tex.App. – Houston [14th] 2016, no pet.). No factor is dispositive, and a challenged action is considered in light of all the circumstances. *Id.* As demonstrated above, write ups such as the write up described above would tend to dissuade a reasonable worker from making such a report.

5.4 The actions of the City of Pflugerville, Texas, set forth in the foregoing facts therefore constitute a violation of the Texas Whistleblower Act, Tex. Gov. Code Ann. §554.001, et seq. Retaliation against a public employee is expressly prohibited by Tex. Gov. Code Ann. §554.002, and a public employee so retaliated against has the right to bring a private cause of action.

5.5 Plaintiff reported violations of law in good faith to appropriate law enforcement authorities – parts of state and local governmental entities that he reasonably believed were authorized to: (1) regulate under or enforce the law alleged to have been violated in the report; or (2) investigate or prosecute violations of criminal law.

5.6 Pursuant to Texas Government Code §554.006(a), Plaintiff timely initiated the grievance procedure provided by Defendant on all claims above, by initiating his grievance within ninety (90) days of the earliest retaliatory act described above – the date she was notified of her demotion (i.e., the rescinding of his promotion). Tex. Govt. Code §554.006(b). Any rule shortening a public employee's right to file a grievance or appeal based on a whistleblower retaliation to a period of less than ninety (90) days is unlawful. *Montgomery Cty. Hosp. Dist. v. Smith*, 181 S.W.3d 844, 850 (Tex.App. – Beaumont 2005, no pet.).

5.7 Pursuant to Texas Government Code §554.005, Plaintiff filed this lawsuit within ninety (90) days of January 28, 2021 – the date of the retaliation discipline – excluding the time frame

during which her grievance was under consideration (April 26, 2021 – May 24, 2021). Therefore, Plaintiff's lawsuit is timely filed.

B) Damages on Whistleblower Claim:

5.8 As a result of Defendant's violations of the Texas Whistleblower Act, Plaintiff has suffered and hereby seeks actual damages in an amount not less than the maximum amount permitted by applicable law, based upon the allegations above.

5.9 More specifically, as a result of Defendant's violations of the Texas Whistleblower Act, Plaintiff has suffered and hereby sues for: (1) reinstatement with back pay, or front pay in lieu of reinstatement; (2) any and all actual damages, including but not limited to past, present and future compensation for wages lost, as well as any retirement benefits and fringe benefits; (3) past, present and future emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life; (4) court costs; and (5) reasonable attorney's fees.

VI. CONDITIONS PRECEDENT

6.1 All conditions precedent to the filing of this suit have been met.

VII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein, that Plaintiff be granted judgment against Defendant for her damages as they may appear upon the trial hereof, reserving her right to amend these pleadings to conform to the facts as they may develop, costs, pre-judgment and post-judgment interest at the maximum rate allowed by law, whether equitable or statutory, and for such other and further relief, special or general, legal or equitable to which Plaintiff may show herself justly entitled.



Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Alicia Fitzpatrick', located below the closing text.

██████ L. ██████

State Bar No. 19727030



HART LAW FIRM, PLLC

6630 Colleyville Blvd, Suite 100

Colleyville, Texas 76034

Tel: (817) 329-7020

Fax: (682) 292-7406

ATTORNEY FOR PLAINTIFF

ALICIA FITZPATRICK