CAUSE NO. D-1-GN-11-003857

CHRISTINA GASTON Plaintiff,	§ §	IN THE DISTRICT COURT
V.	§	250TH JUDICIAL DISTRICT
HUNT COUNTY COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENT, Defendant.	§ §	TRAVIS COUNTY, TEXAS

DEFENDANT'S CONSOLIDATED RESPONSE TO PLAINTIFF'S TRADITIONAL AND "NO EVIDENCE" MOTION FOR SUMMARY JUDGMENT

TO THE HONORABLE JUDGE PRESIDING:

COMES NOW the Defendant, the Hunt County Community Supervision and Corrections Department ("HCCSCD"), and files this Consolidated Response to Plaintiff's Traditional and No Evidence Motions for Summary Judgment filed by Plaintiff Christina Gaston ("Gaston" or "Plaintiff").

I.
INTRODUCTION

A. Procedural Posture

Plaintiff's sole claim against HCCSCD is that the termination of her employment as a Community Supervision Officer ("CSO") was allegedly in violation of the Texas Whistleblower Act, Texas Gov't Code Ch. 554.001 *et seq* (the "Whistleblower Act" or the "Act"). Suit was filed in December of 2011, discovery has concluded, and this case is ripe for dismissal.

Plaintiff has filed two summary judgment motions – a "no evidence" summary judgment on Defendant's Affirmative Defenses (the "No Evidence" motion) and a traditional "Partial Motion for Summary Judgment (the "Traditional Motion"). Both are fraught with immediate and obvious substantive and procedural flaws that preclude the entry of a summary judgment on

behalf of Gaston. Accordingly, Defendant reiterates its request that, instead, the Court grant either its previously filed Plea to the Jurisdiction or its Motion for Summary Judgment and properly dispose of this case.

B. Summary of Arguments

As this Court is well aware, in order to prevail on a claim under the Whistleblower Act's, Gaston must provide some evidence that each of the act's *prima facie* elements were violated. Further, Gaston must also present some evidence that the individual(s) involved with her termination were motivated by her alleged reporting of illegal conduct to an appropriate law enforcement authority.

The undisputed evidence shows that Gaston's alleged report was not (1) a "good faith report" of (2) a "violation of law" to (3) an "appropriate law enforcement authority" which (4) motivated her employer to terminate her employment. Accordingly, there is no scenario by which either of Gaston's summary judgment motions can be granted. Indeed, Gaston's assertion that there is no genuine issue of fact regarding these points is technically accurate, but for the opposite reasons posited by Gaston: the conclusive evidence is that she did not make a "good faith report" of a "violation of law" to an "appropriate law enforcement authority" that motivated her employer to terminate her employment. Moreover, HCCSCD's evidence that it had legitimate, non-discriminatory reasons to terminate her employment and would have terminated her even in the absence of the allegedly protected conduct precludes Gaston's ability to obtain summary judgment and, instead, entitles HCCSCD to an order dismissing the case for want of jurisdiction and/or a summary judgment in favor of HCCSCD.

II.
SUMMARY JUDGMENT EVIDENCE

The evidence upon which HCCSCD relies and herein incorporates to support its

Response to Gaston's Traditional and "No Evidence " Summary Judgment Motion is attached as follows:

Exhibit	Date	Description
A	1/18/13	Affidavit of James "Jim" McKenzie
B	6/28/12	Deposition Excerpts of Christina Gaston
C	5/2/12	Deposition Excerpts of Hon. Steve Tittle
D	1/6/11	Letter re Gaston reassignment and job responsibilities
E	2/14/11	Email from Jim McKenzie re fitness equipment from probationers not allowed
F		Long annotated email chain between Jim McKenzie and others regarding Gaston, CSR, and other topics
G	9/29/11	Amber Richardson Statement
H	9/29/11	Joey Jackson Statement
I	9/29/11	Paige Richardson statement
J	7/18/11	Chronological recording of events of Probationer who did not receive credit for donations to YMCA (recorded by Gaston)
K	8/30/11	Email from McKenzie confirming that donations in lieu of CSR were no longer permitted except to food banks
L	9/29/11	Statement by John Washburn
M	9/27/11	Email from Judge Tittle to McKenzie re Tittle's prior requirement that Tittle be informed of any complaints re Gaston by local attorneys
N	12/20/11	Statement by Jim McKenzie
O	10/3/11	Letter from Jim McKenzie to Hunt County Judges re Investigation into Gaston's Conduct (Tittle Ex. 8)
P	10/4/11	McKenzie letter to judges explaining history of events involving Gaston and Tittle
Q	10/6/11	Gaston's Notice of Termination

III.
FACTUAL BACKGROUND

A. HCCSCD

HCCSCD supervises and facilitates in the rehabilitation of offenders who are sentenced to community supervision by Hunt County Courts that try criminal cases. The HCCSCD receives office space, equipment and other forms of support from the Hunt County Commissioner's Court. A person employed as a HCCSCD is an employee of the department and not of the Hunt County Judges or Hunt County Judicial Districts. *See* Ex. A at ¶ 3.

B. Plaintiff Christina Gaston's History with HCCSCD

Gaston was hired by HCCSCD in October 1998 as a Community Supervision Officer ("CSO"). As a CSO for Hunt County, Gaston's primary job responsibility was to supervise offenders who have been placed on community supervision by the criminal courts. *See* Ex. D. As a CSO, Gaston was required to meet regularly with offenders in the office and/or in the field, to monitor their progress toward completion of all court ordered conditions, and to enforce those conditions. In May of 2006, Ms. Gaston was laterally transferred to the position as the HCCSCD felony court officer. While serving in the position as the felony court officer, Ms. Gaston's primary duties were to provide probation services to both of the Hunt County District Courts and, if needed, to the Hunt County Courts at Law in the event the misdemeanor court officer was not available to serve the misdemeanor courts. One of Ms. Gaston's services to the District Courts was the preparation and submission of presentence investigation reports if and when ordered by the court as assigned to her by HCCSCD Assistant Director John Washburn. *See* Ex. A at ¶ 4.

In 2006, Gaston served as the felony court officer in both the 354th Court of the Hon. Richard A. Beacom, Jr., and the 196th Court of the Hon. Joe M. Leonard on behalf of the HCCSCD. On January 1, 2011 the Hon. Stephen R. Tittle Jr. assumed the bench as the 196th Judicial District Judge and Gaston served his court in the capacity as the felony court officer. *See* Ex. A at ¶ 5.

C. Plaintiff's History with Judge Steve Tittle, Judge of the 196th District Court

Gaston and Judge Tittle had a cordial relationship dating back to the time when Judge Tittle was an Assistant District Attorney for Hunt County. At that time, Gaston was being provided office space by the Hunt County District Attorney's Office for convenience purposes in order for her to perform her job responsibilities as the felony court officer for the HCCSCD. *See* Ex. A at ¶ 6.

D. Judge Tittle's Relationship with Jim McKenzie, Director of HCCSCD

In March of 2011, Judge Tittle made it known that he disagreed with the way in which Jim McKenzie, Director of the HCCSCD, was managing the department. He began to assign specific pre-sentence investigation reports to McKenzie specifically by name and even threatened to hold McKenzie in contempt of court for allowing another employee in the HCCSCD to conduct a report Judge Tittle had assigned and intended for McKenzie to complete personally in December of 2011. *See* Ex. A at ¶ 7.

Prior to this event, McKenzie had never heard of a judge assigning a pre-sentencing investigation report to any specific employee of the local CSCD where the judge's intent was to have the person listed on the order to complete the report personally. There have been instances that a presentence investigation report had been ordered by the Court and Assistant Director John Washburn was listed as the officer assigned to complete the report but it was understood that Mr.

Washburn's name was placed on the order so that he got the order and could assign the report to an officer for completion. Nonetheless, in an attempt to mend his relationship with Judge Tittle, McKenzie made sure from that point forward to, insofar as possible, comply with any future presentence investigation report orders that required him to be involved with its completion. *See* Ex. A at ¶ 8.

One of Judge Tittle's directives to McKenzie was that McKenzie was required to immediately Tittle know if McKenzie received complaints relating to Gaston from any source, particularly defense attorneys. *See* Ex. A at ¶ 9.

E. Probationers in Hunt County and CSR in 2011

In February 2011, McKenzie became aware that HCCSCD employees were allowing probationers to receive credit for community service through charitable donations that were not authorized by statute. Specifically, on February 14, 2011, McKenzie saw a sign on CSO David Wooldridge's door stating that a probationer could receive credit towards their Community Service Restitution ("CSR") obligations by making monetary or exercise equipment donations in lieu of community service. McKenzie held a short staff meeting on February 14, 2011 to inform the staff that the practice of allowing probationers to make donations – whether in the form of monetary or exercise equipment -- was to end immediately. Since some of the community supervision officers were not at the staff meeting, I wrote and sent an email that same day to all CSO's informing them that this was not going to be allowed and to remove any signs on their doors referencing any such program. *See* Ex. A at ¶ 10; Ex. E.

The issue of CSR credit arose again in July of 2011, when McKenzie received information that Judge Tittle had refused to allow a probationer to receive credit for his CSR for a cash donation he had made to the local YMCA. McKenzie also received an email from Judge

Tittle indicating that he did not believe such a practice was authorized absent a court order. McKenzie responded to Judge Tittle, explaining that he was unaware that any such practice was occurring, since it was the YMCA who was making the choice to give the probationer credit for a cash donation in lieu of performing CSR, and reporting that information to HCCSCD and to the court without informing HCCSCD that the CSR had not, in fact, been performed. Furthermore, McKenzie sent an email to all CSO's making clear that Judge Tittle was not going to give credit to probationers for any donations made towards CSR. *See* Ex. A at ¶ 11; Ex. F at pp. HCCSCD2924-2927.

F. McKenzie Learns of Gaston's Conduct vis-à-vis Judge Tittle

In July 2011, McKenzie received reports from several sources that Gaston had made representations that she was able to influence Judge Tittle's decisions about probationers based on her relationship with Judge Tittle. *See* Exs. G, H & I. McKenzie asked the HCCSCD Assistant Director, John Washburn, to discuss with Gaston the need for her to be sure not to create the impression with anyone that she had the ability to influence Judge Tittle's decision making in connection with his role as Judge of the 196th Judicial Court. Mr. Washburn had that dialog with Gaston on or about September 26, 2011. *See* Ex. A at ¶ 13.

When Gaston confronted McKenzie about her counseling with Washburn, she indicated she believed that either Gaston or McKenzie had received a complaint from a local judge about her, and that such a complaint should have been shared with Judge Tittle per his prior directive. McKenzie assured Gaston that her fears were unfounded and that the sources of the reports were not defense lawyers. *See* Ex. A at ¶ 14. Nevertheless, Gaston apparently reported immediately to Judge Tittle that McKenzie was not following Tittle's prior instruction regarding complaints about Gaston. *See* Ex. A at ¶ 15.

G. McKenzie Investigates Gaston's Conduct

Concerned about Gaston's apparent lack of candor regarding her conduct, McKenzie initiated an investigation into the issue, and he informed all of the Judges of Hunt County of his investigation. *See* Ex. A at ¶18. During his investigation, McKenzie learned that, in addition to intimating that she could influence Judge Tittle's decisions and reporting that Judge Tittle "hated" a local attorney, Gaston had threatened another lawyer that if he did not stop "messing" with her, she would be sure to see it that this lawyer received no further criminal appointments in Judge Tittle's court. *See* Ex. N.

Curiously, just hours after delivering the letter to Judge Tittle's court informing him of his investigation on October 3, 2011, Judge Tittle responded to McKenzie's July 14, 2011 email, alleging for the very first time that he (Tittle) had received a report from an unidentified source that McKenzie had "allowed probationers to make cash donations to your office to buy off their community service hours and that [McKenzie] then took the money, purchased exercise equipment with it, and then gave it to someone you know." *See* Ex. F at p. HCCSCD002929.

H. HCCSCD Leadership Terminates Gaston's Employment

Based on the results of the investigation, Gaston's employment with HCCSCD was terminated due to Gaston's failure to comply with the department's ethical standards, including independence of the judiciary and appropriate treatment of members of the local bar appearing before the Courts. *See* Ex. A. at ¶¶ 17-18; Ex. Q.

At the time McKenzie made the decision to terminate Gaston's employment, he had no knowledge that she was involved in any reporting to anyone concerning alleged illegal conduct by the HCCSCD. McKenzie did not know that Gaston and Judge Tittle had discussed the issue of CSR at all (Ex. A at ¶¶ 12, 18), a fact supported by the sworn testimony of both Gaston (Ex. B

p. 46 ln. 22 – p. 47 line 1; p. 60 ln. 8-16; p. 67 ln 18 – p. 68 ln. 2) and Judge Tittle (Ex. C. p. 21 ln. 4-19).

Moreover, McKenzie was, himself, clearly *opposed* to the inappropriate reporting of CSR by probationers, a fact demonstrated by his written directives on the subject in February 2011 (Ex. E), July 2011 (Ex. F. at p. 2926), and August 2011 (Ex. F. at p. 2928 and Ex. K). Indeed, McKenzie met with the Judges in late August 2011 to come to a final resolution concerning what type of cash donations could be made by probationers that the Hunt County Courts would accept, and the group came up with a relatively non-controversial position that the only charitable donations that would be allowed would be those in line with Article 42.12 § 16(f) of the Texas Criminal Code. *See* Ex. K.

IV.
ARGUMENTS AND AUTHORITIES

A. Elements of the Whistleblower Cause of Action

The Whistleblower Statute has two key statutory provisions and a third common law element recognized by the Texas Supreme Court relevant to this Plea.

1. Statutory Elements

Two sections of the Whistleblower Statute contain the gravamen of the cause of action. Section 554.002(a) provides:

> A state or 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.

The statute further clarifies the term "appropriate law enforcement authority" in Section 554.002(b):

> [A] report is made to an appropriate law enforcement authority if the authority is a part of a state or local governmental . . . 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.

a. *Violation of Law*

A Plaintiff seeking protection under the Whistleblower statute must show that she reported a violation of law. For purposes of the Act, a "report" includes "any disclosure of information tending to directly or circumstantially prove the substances of a violation of criminal or civil law, ... statutes, administrative rules or regulations." *Texas Dep't of Assistive & Rehabilitative Servs. v. Howard*, 182 S.W.3d 393, 399-400 (Tex.App.-Austin 2005, pet. denied) (internal quotations omitted).

b. *Appropriate Law Enforcement Authority*

In 2010, the Texas Supreme Court reinforced the point that the "appropriate law enforcement authority" in the Whistleblower Act limits the universe of potential individuals who might qualify for that status:

> But the Whistleblower Act's limited definition of a law enforcement authority does not include an entity whose power is not shown to extend beyond its ability to comply with a law by acting or refusing to act or by preventing a violation of law by acting or refusing to act.

City of Elsa v. Gonzalez, 325 S.W.3d 622, 628 (Tex. 2010) (citations omitted). The Austin Court of Appeals has similarly held. *See Duvall v. Tex. Dep't of Human Services*, 82 S.W.3d 474, 481–82 (Tex.App.-Austin 2002, no pet.) (holding that the authority to take remedial action does not equate to the authority to regulate under, enforce, prosecute, or investigate a violation of law).

2. Common Law Element: Causal Link

In addition to the well-understood statutory elements of the Whistleblower Act, a Whistleblower plaintiff must also produce evidence that his report of a legal violation caused the adverse personnel action. *See City of Fort Worth v. Zimlich*, 29 S.W.3d 62, 67 (Tex. 2000). While "circumstantial evidence may be sufficient to establish a causal link between the adverse employment action and the reporting of illegal conduct," such evidence must, at a minimum, "show that the person who took the adverse employment action knew of the employee's report of illegal conduct." *Harris County v. Vernagallo*, 181 S.W.3d 17, 25 (Tex.App.-Houston [14th Dist.] 2005, pet. denied). "This is because the decision-maker could not fire an employee because of the employee's report of alleged illegal conduct if the decision-maker did not even know the employee made such a report." *Id.*

B. Response to "No Evidence" Summary Judgment Motion

Gaston's "no evidence" motion is demonstrably inconsistent with TRCP 166a(i), insofar as many of the elements alleged are items that Gaston, not HCCSCD, will have the ultimate burden of proof at trial. These include: "sovereign immunity," "failure to report to an appropriate law enforcement authority," "failure to report in good faith," "failure to make a report," "Plaintiff had no good faith reason to believe that a violation of law occurred," and "failure to mitigate" This point becomes inescapably clear in light of HCCSCD's own "no evidence" summary judgment: because Gaston has the burden of proof on these issues at trial, her failure to present evidence creating a genuine issue of material fact will result in a summary judgment in HCCSCD's favor, not Gaston's.

The remaining items are clearly contradicted by the evidence outlined above, insofar as McKenzie's termination of Gaston was made before even hearing of Gaston's alleged "report" to

Judge Tittle; therefore, as a matter of law McKenzie would have (and did) terminate Gaston even in the absence of the allegedly protected conduct. Furthermore, there is at least some evidenc that McKenzie's decision to terminate was made for legitimate, non-discriminatory and non-retaliatory reasons.

C. Response to Plaintiff's Traditional Motion for Summary Judgment: Plaintiff Cannot Present *Prima Facie* Evidence of a Violation of the Whistleblower Act

Gaston's claim to summary judgment is belied by the fact that, to the contrary, Gaston is unable to provide this court with sufficient evidence that she has a viable Whistleblower lawsuit in the first place, as no fewer than three of the *prima facie* elements are lacking.

1. No "Good Faith Report" of a "Violation of Law" by a "Public Employee"

In order to trigger the Whistleblower statute, Gaston must present some evidence tending to support the contention that she reported a "violation of law" by "the employing government entity [HCCSCD] or another public employee." Gaston alleges in her petition that "Jim McKenzie…was accepting cash donations from probationers in lieu of performing community service" and "using this money to buy sports equipment for the workout room in the sheriff's office." *See*, Pet. at ¶¶ 13-14. Further, Gaston alleges that McKenzie "was accepting donations in the form of sports equipment from probationers in lieu of performing community service." *Id.*, at ¶ 15.

However, the undisputed evidence is that McKenzie never engaged in these acts, and only became aware of the practice through a sign on the door of one of his CSOs. *See* Ex. A at ¶ 10. Further, McKenzie immediately declared via email on February 14, 2011, that "I don't think we should allow offenders to get CSR credit for donating fitness equipment to the sheriff's department" and that "I don't think it is appropriate." *See*, Ex E and Ex. A at ¶ 10. In any event,

the conduct allegedly complained of did not actually involve the HCCSCD, as explained by McKenzie in his affidavit, since it was ultimately up to the probationers and their respective charitable entities for whom they performed service to properly account for their CSR credit. *See* Ex. A, ¶¶ 19-20. HCCSCD was in no position to approve or disapprove of any particular method of CSR; indeed, only the sentencing court had the authority to approve or not approve CSR credit. HCCSCD was in a position to advise participants, but at no time was HCCSCD in a position to violate the "law" in this regard. As such, Gaston's alleged complaint does not constitute a violation of "law" by her employer (HCCSCD) or another employee, and any attempt by Gaston to obtain a summary judgment, is clearly unwarranted. Instead, HCCSCD is entitled to judgment as described in its Plea to the Jurisdiction and Summary Judgment.

Alternatively, the evidence conclusively shows that any report Gaston made could not have been in "good faith" insofar as Gaston had no legitimate basis to believe that McKenzie was personally "authorizing" or even "accepting" alleged illicit donations of money or goods personally, when in fact such acts simply were not occurring in the first place. At the very least, this, too, precludes summary judgment.

2. No "Appropriate Law Enforcement Authority"

Gaston alleges that the report she made was to Judge Tittle, the Judge of the 196th District Court. However, as the Texas Supreme Court made clear in *City of Elsa*, individuals and entities whose power does not extend beyond its ability to comply with a law by acting or refusing to act are not "appropriate law enforcement authorities" under the Whistleblower Act. *City of Elsa*, 325 S.W.3d at 629. Here, Gaston alleges that Tittle was an appropriate law enforcement authority, but Tittle had no authority to require the HCCSCD to comply with Article 42.12 § 16(f) of the Texas Criminal Code, which provides:

> In lieu of requiring a defendant to work a specified number of hours at a community service project or projects under Subsection (a),[1] the judge may order a defendant to make a specified donation to a nonprofit food bank or food pantry in the community in which the defendant resides.

It is plain from the language of this statute that the "law" in question is not one that Judge Tittle had any ability to enforce or investigate as to the conduct of Jim McKenzie, the HCCSCD, or anyone other than the Judge and the probationer. As such, there is no reasonable claim that Judge Tittle was an "appropriate law enforcement authority" to regulate, investigate, or prosecute Jim McKenzie. Quite the contrary, the law is clear that Tittle could only control his own conduct – presumably at the sentencing phase – and that of the sentenced probationer. Under the mandate of *City of Elsa*, Judge Tittle was not an "appropriate law enforcement authority" and Gaston's claim to summary judgment is clearly unwarranted.

3. No Causal Relationship between Gaston's Alleged Report and her Termination

In order to prevail under a Whistleblower theory, Gaston would additionally have to demonstrate that McKenzie's decision to terminate her employment was motivated by her alleged report to Judge Tittle. But two key indisputable facts require the opposite conclusion, thus precluding summary judgment and, instead, requiring dismissal of the cause.

a. *The Undisputed Evidence is that McKenzie was Unaware of Gaston's Alleged "Report" to Judge Tittle*

As detailed above, both Gaston and Judge Tittle affirmatively deny ever informing McKenzie that they had discussed the CSR issue at all. *See* Ex. B p. 46 ln. 22 – p. 47 line 1; p. 60 ln. 8-16; p. 67 ln 18 – p. 68 ln. 2 (Gaston) and Ex. C. p. 21 ln. 4-19 (Tittle). Not surprisingly, then, McKenzie himself flatly denies ever knowing that Gaston and Tittle ever discussed the

[1]Sec. 16. (a) provides, in part, that "[a] judge may require as a condition of community supervision that the

issue of CSR. *See* Ex. A at ¶¶ 12 & 18.

This failure is fatal to Gaston's claim, irrespective of the other infirmities in her claim. The *Zimlich* opinion makes clear that a plaintiff must demonstrate that "but for" her allegedly protected conduct, the adverse employment event would not have occurred. *Zimlich*, 29 S.W.3d at 67 (citing *Department of Human Servs. v. Hinds*, 904 S.W.2d 629, 633 (Tex.1995). Given that the two parties to the alleged conversation agree that they never told McKenzie of their communication, Gaston cannot show that her termination was motivated by her alleged conversations with Judge Tittle.

b. *The Undisputed Evidence is that McKenzie, the Decision Maker, was Fully Aligned with the Issue Allegedly Raised by Gaston, and thus McKenzie had no Reason to Retaliate against Gaston over the CSR Issue*

Even assuming, *arguendo*, that Plaintiff actually reported a violation of law by McKenzie in good faith to an "appropriate law enforcement authority" of which McKenzie was fully aware, Gaston's Whistleblower complaint still fails to raise a fact issue. At the bottom, the report Gaston allegedly made – that probationers were inappropriately obtaining credit for CSR obtained by donations of cash, rather than volunteer effort – related to an issue that McKenzie was clearly in agreement with Gaston. Indeed, he issued an email in February 2011 making sure that his division understood that probationers were not to be encouraged to make donations of cash or exercise equipment for CSR credit. *See* Ex. A, ¶ 10; Ex. E. Again in July and August of 2011, McKenzie again was directing his division in the manner fully consistent with Gaston's alleged complaint. *See* Ex. A. at ¶ 19, 20; Ex. F at pp. 2924-2926, 2928; Ex. K.

Given McKenzie's open and obviously willingness to be sure to advise probationers as to the appropriate manner to obtain credit for their CSR from the local courts, the entire theory of Gaston's case crumbles, since McKenzie would have no reason to hold it against Gaston that

Judge Tittle (or any other judge in Hunt County) was refusing to give CSR credit to probationers who had donated cash or property outside Article 42.12 § 16(f) of the Texas Criminal Code. This was, of course, well within Judge Tittle right, but the notion that McKenzie would have resented Gaston for Judge Tittle's choice is antithetical to Gaston's claim to summary judgment.

4. Legitimate, Non-Discriminatory Basis for Termination

McKenzie's motivations to terminate Gaston's employment were plain to all but Gaston (and, perhaps, Judge Tittle). Unaware of Gaston's allegedly protected conduct, McKenzie was deeply trouble by reports from Gaston's co-workers that Gaston (1) made disparaging remarks about Judge Tittle; (2) made disparaging remarks and threats about members of the local defense bar; (3) made statements tending to suggest that she (Gaston) could influence Judge Tittle's decision making processes; and (4) denied all of these allegations in the face of overwhelming evidence to the contrary. *See*, Ex A at ¶¶ 17-18; Ex. Q. Gaston will be unable to show that these legitimate, non-discriminatory bases for her termination were a pretext for illegal discrimination. As such, far from entitling Gaston to an affirmative summary judgment in her favor, Gaston's claims are ripe for summary judgment.

V.
CONCLUSION

Gaston's Whistleblower claim suffers numerous defects. Accordingly, HCCSCD is entitled to a summary judgment as to Gaston's claim and asks the Court to enter judgment accordingly.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument has been served via e-file, and by electronic delivery on this the 30nd day of January, 2013, to:

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