

CAUSE NO. _____

STEPHEN TORRES,

Plaintiff,

v.

CITY OF SAN ANTONIO and
CHRISTOPHER CASALS,

Defendants.

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IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE DISTRICT COURT JUDGE:

NOW COMES Plaintiff, Stephen Torres, and files this, his Original Petition and Request for Disclosure, and respectfully shows the following:

I
DISCOVERY CONTROL PLAN

1. Plaintiff intends that this suit be governed by discovery control level two.

II
PARTIES

2. Plaintiff, Stephen Torres is an individual who resides in Bexar County, Texas.

3. Defendant, The City of San Antonio is a municipality located in Bexar County in the State of Texas. The City of San Antonio may be served with process by serving its mayor, Julián Castro at 100 Military Plz, San Antonio, TX 78205.

4. Defendant, Christopher Casals is a Captain and supervisor with the City of San Antonio Fire Department. Christopher Casals may be served with process at 515 South Frio San Antonio, TX 78207.

III JURISDICTION AND VENUE

5. Jurisdiction is appropriate because the City of San Antonio is a state governmental entity as defined by Tex. Gov. Code Ann. § 554.001(5)(C).

6. Sovereign Immunity has been expressly waived for whistleblower claims against state government entities under Tex. Gov. Code Ann. § 554.0035.

7. The Texas Whistle Blower act allows suit against supervisors who take adverse personnel action against an employee. *See* Tex. Gov. Code Ann. § 554.008 (a); *Dallas Indep. Sch. Dist. v. Lee*, 05-98-02145-CV, 1999 WL 682052 (Tex. App. Sept. 2, 1999).

8. Venue is appropriate because Tex. Gov. Code § 554.007(a) expressly creates venue for whistleblower claims against state governmental agencies in the county in which the cause of action arises.

IV FACTS

9. Mr. Torres is a decorated firefighter with over 17 years of experience with the City of San Antonio Fire Department.

10. Mr. Torres has never received any disciplinary action.

11. During Mr. Torres' time with the City of San Antonio Fire Department he noticed a violation of the law.

12. Specifically in June 2009, Mr. Torres became aware that fellow firefighters were maintaining their commissions by fraudulent means.

13. Mr. Torres immediately reported this illegal behavior to the Deputy Chief Rodney Hitzfelder through a memorandum dated June 23, 2009.

14. Mr. Torres also told his Captain.

15. After these two individuals did not investigate or do anything about the complaint Mr. Torres contacted the Office of Municipal Integrity.

16. Mr. Torres also contacted TCLEOSE and the Texas Rangers to report the illegal behavior.

17. Eventually arson investigators were given a new set of credentials.

18. When receiving this new set of credentials, it was stated that the reason they had these new credentials is because of Mr. Torres.

19. Following Mr. Torres' whistleblowing complaint there were several acts of retaliation lodged against Mr. Torres including arson investigators being singled out for "random drug testing."

20. Most blatantly however the retaliation experienced by Mr. Torres occurred in 2012 when he was non-selected for the arson lieutenant position.

21. Mr. Torres applied for the position of arson lieutenant in late 2011.

22. This position had an assignment pay of approximately \$450 dollars per month extra. In addition, this position had benefits such as a take home vehicle, city phone, and city computer. Moreover, this position was prestigious, was inline with Plaintiff's law enforcement background, and would allow Plaintiff more

experience if he desired to seek future advancements within the City of San Antonio.

23. Mr. Torres was well qualified for this position and was clearly the best qualified candidate for this position.

24. Mr. Torres not only had the 17 years of experience but he had certifications in advanced firefighter, arson investigator advance, fire officer II, fire service instructor II, and field examiner.

25. Mr. Torres also had a peace officer's license, intermediate peace officer certification, mental health officer certification and had TCLEOSE manager supervisor training.

26. The individual selected was James Bennett who only had firefighter intermediate certification and was required to attend police academy training.

27. Mr. Torres was clearly the best qualified candidate and also previously held this position for two years until stepping down on his own accord due to a cancer diagnosis.

28. Mr. Torres was retaliated against and not given this position because of his whistleblowing complaints of fraudulent credentials.

29. Not only do his qualifications speak for themselves, but the actions after the complaint in 2009 also indicates animus towards Mr. Torres.

30. In addition, coworker, Randy Reyes specifically told Mr. Torres that Earl Crayton stated the reason for non-selection is that “the uppers just can’t get past” Plaintiff’s fraud complaint.

31. Furthermore, during an EEO investigation into the non-selection, it was uncovered that the non-selection recommendation by Defendant Casals was based on Mr. Torres' previous fraud complaints.

32. Defendant Casals stated that Plaintiff engaged in activities that were distracting to the office such as Plaintiff's report of alleged fraud.

V
WHISTLEBLOWER RETALIATION CLAIM

33. Defendant violated the Texas Whistleblower Act when it non-selected Plaintiff for the arson lieutenant position for reporting in good faith a violation of law to an appropriate law enforcement authority.

34. A violation of law was reported in good faith because the actions reported by Plaintiff would indeed violate the law.

35. Plaintiff believed at the time he reported the activity that the activity was unlawful.

36. Plaintiff's belief was reasonable.

37. Plaintiff reported the activity to the appropriate law enforcement authority or authorities.

38. Plaintiff suffered an adverse employment action when he was non-selected for the arson lieutenant position.

39. Plaintiff's non-selection was caused by his report of a violation of law to an appropriate law enforcement authority or authorities.

40. Because of the actions of the Defendants, Plaintiff suffered damages within the jurisdictional limits of this Court.

41. Mr. Torres initiated a grievance within 90 days of the adverse action (non-selection) and files suit within 30 days of grievance exhaustion.

VI
JURY DEMAND

42. Plaintiff demands trial by jury and has tendered the appropriate fee.

VII
REQUEST FOR DISCLOSURE

43. Defendants are requested to disclose, within 50 days of service of this request, the information and material described in Rule 194.2.

VIII
DAMAGES

44. Plaintiff seeks all damages allowed under the law, including:

- (a) injunctive relief;
- (b) actual damages;
- (c) court costs;
- (d) reasonable attorney's fees;
- (e) reinstatement or promotion, including fringe benefits and seniority;
- (f) back pay, front pay, and other compensation for wages lost as a result of the non-selection;
- (g) reinstatement of fringe benefits and seniority lost because of the non-selection;
- (h) compensatory damages;
- (i) civil penalty under Tex. Gov. Code Ann. § 554.008 (a);

and

(j) pre- and post-judgment interest at the maximum rate allowed by law.

WHEREFORE, premises considered, Plaintiff respectfully prays that Defendants be cited to appear and, that upon a trial on the merits, that all relief requested be awarded to Plaintiff, and for such other and further relief to which Plaintiff is justly entitled.

Respectfully submitted,
ROB WILEY, P.C.

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