

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
JUDICIAL DISTRICT COURT

ERIC FLORES,

Plaintiff,

vs.

Cause No. D-307-CV-2024-00043

Judge Arrieta, Manuel I.

BOARD OF COUNTY COMMISSIONERS
FOR DOÑA ANA COUNTY

Defendants.

**COMPLAINT FOR VIOLATIONS
OF THE WHISTLEBLOWER PROTECTION ACT AND DAMAGES**

COMES NOW the Petitioner, Eric Flores, by and through his counsel of record, The Justice Legal Team, LLC (Amy L. Orlando), and respectfully submit this Complaint for Violations of the Whistleblower Protection Act and Damages. Plaintiff seeks to recover damages based on the retaliation he suffered after reporting and/or refusing to go along with illegal or improper conduct on the part of the Doña Ana County Sheriff's Department, Doña Ana County Sheriff Kim Stewart, and Doña Ana County. In support of his Complaint, Plaintiff alleges the following:

PARTIES, JURISDICTION AND VENUE

1. The Doña Ana County Sheriff's Department and Doña Ana County are both agencies, departments, or divisions of the County of Doña Ana and are headquartered in Doña Ana County, New Mexico, and are both a "public employer" as that term has meaning within the Whistleblower Protection Act ("the Act"), NMSA 1978 § 10-16C-1 *et seq.*

2. The Plaintiff is an employee of the Doña Ana County Sheriff's Department ("DASO") and has been for fifteen (15) years. The Plaintiff held multiple positions while at DASO and currently holds the position of Lieutenant.

3. The Plaintiff was a "public employee" as that term has meaning within the Act at all times material to the allegations in this Complaint.

4. The Plaintiff is a resident of Doña Ana County, New Mexico.

5. Kim Stewart, ("Defendant Stewart") is the sheriff for Doña Ana County and as such is the final decision-making authority for DASO. She is sued here in her official capacity.

6. This Court has jurisdiction over the subject matter and the parties to this action pursuant to the Court's general jurisdiction and NMSA 1978 § 10-16C-4, NMSA 1978 §38-3-1.1, and upon Article VI, Section 13 of the New Mexico Constitution.

7. Venue is proper in Doña Ana County and in this judicial district pursuant to NMSA 1978 § 38-3-1(A) and (G).

FACTUAL BACKGROUND

1. The Plaintiff is employed by DASO and started his law enforcement career in August of 2008. The Plaintiff has survived at DASO for fifteen (15) years; however, he has been harassed, discriminated against, and bullied since he pointed out numerous dishonest and discriminatory actions that Defendant Stewart has been involved in.

2. The Plaintiff's career survived multiple Sheriffs and he rose to the rank of Sergeant and finally after a long battle, received his Lieutenant's promotion in March 2022. The Plaintiff has never been disciplined or reprimanded prior to the bullying and harassment by Defendant Stewart.

3. In January 2019 Defendant Stewart became the Sheriff for Doña Ana County.

4. Initially, the Plaintiff believed he would work well with Defendant Stewart based on her campaign promises, but he soon realized that she was unethical, corrupt, and demanded that her employees never challenge her or disagree with her. DASO staff were expected to do as told no matter what the consequences were. Moreover, he realized that she would handpick the individuals she wanted to promote no matter if it followed DASO's or Defendant County's policies and procedures.

5. During the Plaintiff's career but especially during the time that Defendant Stewart was Sheriff, Plaintiff and his wife, Sergeant Eden Flores, were union members and were extremely active with union activities. In fact, in 2022 on multiple occasions the Plaintiff and his wife spoke to the union board and informed them they needed to push back against Defendant Stewart and tell her to stop doing MOU's and to stop changing timelines contrary to the union contract. As described in more detail below this is a reason Defendant Stewart did not promote the Plaintiff and has retaliated against him continuously up until the filing of this lawsuit.

6. Defendant Stewart told other staff at DASO that she would not promote the Plaintiff because she did not trust him or his wife because of their union affiliation. This is a clear violation of law and public interest.

7. Sometime in early 2020, Defendant Stewart hired a company to help run the process of promotions of law enforcement officers in the department. The company's Director Kimberly Miller refused to turn over any documents requested by the Plaintiff. The company was an out of state company that purported to help find the

best candidate for any position. The Plaintiff believes Doña Ana County paid well over \$20,000.00 for the contract with Ms. Miller. However, Defendant Stewart never followed the new procedure and instead simply handpicked candidates of her own choosing.

8. As described in detail below the Plaintiff was the victim of and reported the actions of Defendant Stewart to Defendant County, and Defendant Macias the fact that Defendant Stewart pre-selected candidates that she wanted to promote which clearly constituted an unlawful or improper act.

9. The following is a summary of when the corrupt behavior of Defendant Stewart began and how it continued until recently:

- a. **July 29, 2021** - Petitioner, who was a Sergeant at the time, was qualified and tested for Lieutenant. The process that was utilized by the candidates was the newly paid for procedure under the direction of Dr. Kimberly Miller. However, the process for selecting and promoting candidates was not followed by Defendant Stewart.
- b. **August 26, 2021** - The Plaintiff was called into Captain Hash's Office and told that no one passed Sergeant testing so as of that moment there would be no one being promoted to the Sergeant position. The Plaintiff had tested for Lieutenant during the same testing time as the Sergeant test and Defendant Stewart knew at that time the Plaintiff was in line to be promoted but had already made the decision she would not promote him. Captain Hash stated the union was going to take a vote to see if the union body was willing to bypass the contract and allow management to repost the test and allow to re-test in 90

days. Captain Hash stated that if the union voted not to repost and re-test then there would be no promotions for a year and if that were to occur then the Specialized Intel Unit the Plaintiff belonged to would be disbanded and he would have to go back to patrol. This was a direct threat from Defendant Stewart through Captain Hash to have the Plaintiff lobby the union body to vote on re-testing in 90 days. The Plaintiff was not only not being promoted but was also being threatened to be removed from his specialized unit.

- c. **August 26, 2021** - The union body voted to re-test in 90 days. The Plaintiff notified Captain Hash and stated that the Specialized Intel Unit he belonged to would not need to be disbanded and Captain Hash agreed.
- d. **September 1, 2021** - At the direction of Defendant Stewart, the Plaintiff was called into Captain Hash's office once again. Captain Hash explained that the County was refusing to accept the results of the recent Lieutenant promotional testing. He said because of that, Defendant Stewart was going to temporarily promote the top three people from the test. He said those people would be Sergeant Peter Skowronski, Sergeant Joe Medina, and Sergeant Scott Bayless. Captain Hash stated specifically "these were the top three testers on the list." These three individuals all had a personal relationship with Defendant Stewart. Sergeant Skowronski was a political supporter and attended numerous political events with Defendant Stewart.

Sergeant Bayless was a personal friend of Defendant Stewart and would take her on ride-alongs with him as well as hosting each other for personal dinners on a regular basis. Captain Hash then informed the Plaintiff that because the three would be temporarily promoted, the Specialized Intel Unit would be disbanded, and the Plaintiff would be placed back on patrol. Captain Hash informed the Plaintiff he was required to give him 30-day notice before he could be moved, therefore, the move would not occur until October 4, 2021. Captain Hash informed the Plaintiff he would be placed in the training division because it matched the exact days off and hours the Plaintiff was already working.

- e. **September 14, 2021**- Plaintiff had a meeting with Human Resources Director Deborah Weir and Human Resources Representative Cindy Capana in the Human Resource office. Ms. Weir advised the Plaintiff that the County was accepting the results of the recent Lieutenant testing and that the Plaintiff had scored number 3 on the list which put the Plaintiff in line to be promoted. Therefore, the statement made by Captain Hash at the direction of Defendant Stewart, the top three testers were Sergeant Peter Skowronski, Sergeant Joe Medina, and Sergeant Scott Bayless, was a lie. Ms. Weir on behalf of Defendant County, stated that they could not promote the Plaintiff because his wife was a patrol Sergeant and that would cause a nepotism issue. Ms.

Weir said the only way the Plaintiff could be promoted was if his wife, Eden Flores, was to quit the agency.

- f. **September 14, 2021**- The Plaintiff submitted a letter to Human Resources Director Deborah Weir defending the erroneous statement she made and pointed out the following facts:
 - i. When the Plaintiff was promoted to Sergeant, his wife was a Deputy and that was not an issue; and
 - ii. Another member of DASO, Sergeant Chase Thouvenelle and Deputy Megan Dow were involved in a relationship and the ruling from County Manager Fernando Macias was that they were not in violation of nepotism as long as Sergeant Thouvenelle was not Deputy Dow's immediate supervisor.
- g. **September 14, 2021**- Pursuant to the department's chain of command policy, the Plaintiff notified Captain Hash and advised him of what was occurring. Captain Hash advised the Plaintiff he would speak with Defendant Stewart about the events.
- h. **September 14, 2021**- The Plaintiff submitted a rebuttal letter and there was a second meeting with Ms. Weir. Ms. Weir advised the Plaintiff that she would give the letter to County Manager Macias and the County Attorney and wait for a finding from them. In this meeting Ms. Weir also stated to the Plaintiff that the nepotism concern was brought to them by Defendant Stewart.

- i. **September 14, 2021-** Petitioner learned that Defendant Stewart was not only lying to her Captain, but she was also lying to the Union President, Ivan Zarate. The Union President Zarate shared with the Plaintiff that the week before, Defendant Stewart informed him the County was refusing to accept the Lieutenant testing results because they had issues with the testing process. The Union President informed the Plaintiff that he had prior knowledge that the Plaintiff had scored number 3 on the testing process. The Union President informed the Plaintiff that he believed it was wrong that Defendant Stewart had attempted to appoint temporary Lieutenants and had lied about the fact saying that the “temporary appointed” individuals were the top three (3) on the list when in fact they were not.
- j. **September 15, 2021-** The Plaintiff received a phone call from Defendant Stewart who was extremely angry and seemed to be ranting. The following is what Defendant Stewart stated to the Plaintiff; “she read the response the Plaintiff wrote to Human Resources and went on to say, she had no reason to not believe what the Plaintiff had written.” She stated that “she believed what the Plaintiff had said in his letter about the conversation between Ms. Weir and Ms. Capana.” Defendant Stewart became increasingly angrier and began to tell the Plaintiff that “HR had no right to call him up to their office and tell him what they told him and that what they did was illegal.” Defendant Stewart went on to tell the Plaintiff that he “needed to get an attorney

and sue the County because what they did was wrong and illegal. Defendant Stewart offered the Plaintiff the name and number of her own attorney so that he could sue the County. Defendant Stewart told the Plaintiff that “HR had lied to him about the number they told him and that the number they told him was wrong.” The Plaintiff wasn’t able to clarify what she meant because she continued to yell. Defendant Stewart went on to say that “all of this was because of Fernando Macias, and he was the one controlling the Sheriff’s office.” Defendant Stewart then stated that “HR could not give the Plaintiff an ultimatum the way they did and that it was ridiculous that they were saying they could not promote him because his wife also worked in the same department.” She further yelled that “there was no problem with that and that they had no basis to say that, and in fact recently Fernando Macias had said the opposite in his finding in Chase and Dow’s case.” Defendant Stewart specifically stated, “it was ridiculous that they would say that the only possible way to promote the Plaintiff would be for his wife to quit as she had a right to her career also.” Defendant Stewart directly told the Plaintiff that “he had done nothing wrong and that he did not deserve any of this and then thanked him for everything he had done for this department.” She then told the Plaintiff that “she would text him her lawyer’s name and number.” After hanging up with Defendant Stewart, the Plaintiff received a text message from her with her lawyer’s name.

- k. **September 16, 2021**- The Plaintiff again spoke with Capitan Hash in the conference room at 1851 Copper Loop. Present in the room was Captain Hash, the Plaintiff, Lieutenant Benito Casillas, and Lieutenant Alfred Sanchez. Captain Hash informed the Plaintiff that he had a meeting with Defendant Stewart, and they were just waiting for the County for permission to promote the Plaintiff and that he would be placed in District Court which would avoid any possible conflict because Plaintiff would not have any contact with his wife.
- l. **September 17, 2021**- The Plaintiff received a phone call from Defendant Stewart and was advised that she was told by the County that Plaintiff was not third on the list and instead was fourth and they would not be promoting him.
- m. **September 21, 2021**- The Plaintiff received an email from Ms. Weir stating, "Dear Sgt. Flores, I wanted to update you about the status of the Lieutenant selection and promotion process that we discussed last week. A request was sent to Sheriff Stewart regarding her ability to adjust DASO operations in order to mitigate the nepotism issue that would exist if you were to promote to Lieutenant. No response has been received at this time. The County cannot require the Sheriff to make accommodations to address the nepotism because of the operational impact on the department. As long as this situation exists, it could continue to be an impediment to future promotional opportunities. Respectfully, Deborah."

- n. **September 21, 2021**- The Plaintiff received an email from Defendant Stewart in response to Ms. Weir's email saying, "I know you know this is untrue Sgt. Flores."
- o. **September 21, 2021**- The Plaintiff responded to Ms. Weir's and Defendant Stewart's emails saying, "Good Afternoon Ms. Weir, I am confused now, based on your initial email and the Sheriff's response it appears as though accommodations can be made, so am I not being promoted based on your previous understanding accommodations could not be made or because of my ranking on the list? It's my understanding that Lieutenants have already been promoted last week."
- p. **September 22, 2021**- The Plaintiff received an email from Ms. Weir which read, "Good afternoon, Mr. Macias and I would like to meet with you tomorrow at 8:15 a.m. to respond to your questions. I will send a calendar invitation shortly."
- q. **September 23, 2021**- The Plaintiff attended a meeting with County Manager Macias and Human Resource Director Deborah Weir. During that meeting Mr. Macias told the Plaintiff that it is absolutely certain that without a doubt he was number 3 on the list and he doesn't know why the Sheriff is saying that he is not. County Manager Macias also told the Plaintiff he was only waiting for the Sheriff to respond to him acknowledging that there was indeed a position he could be placed in

which would not be in his wife's chain of command, however the Sheriff was refusing to respond to them.

- r. **September 27, 2021**- The Plaintiff sent an email to Ms. Weir which read, "I'm sorry to bother you I know you are very busy, but I was wondering if you or Mr. Macias have heard anything from Sheriff Stewart about approving my position for promotion yet?"
- s. **September 28, 2021**- The Plaintiff received a phone call from Ms. Weir stating that they had received a response from Sheriff Stewart in which Sheriff Stewart said there was no spot available to place him. It was apparent that Defendant Stewart was lying to the County Manager because the Plaintiff had already been informed by Defendant Stewart and Capitan Hash that he would be placed at the district courthouse because there was no conflict there involving his wife.
- t. **September 28, 2021**- The Plaintiff prepared a county grievance, code of conduct complaint and an EEOC complaint and turned those forms into the County.
- u. **September 28, 2021**- The Plaintiff filled out an IPRA request form and turned it in to County HR. The IPRA request asked for "Any and ALL E-mails between Sheriff Kim Stewart, County Manager Fernando Macias, HR Director Deborah Weir, Captain Jon Day, Captain Samuel Ramos, Captain Jeremy Hash, Coordinator Stacy Reyes, and Doctor Kimberly Miller. All e-mails concerning the promotional Lieutenants' process

between the 12th of July 2021 and September 29, 2021, to include any communications reference to Eric Flores and/or the promotion process.

- v. **September 30, 2021**- The Plaintiff was informed he had to go through his chain of command before the County Manager would review the grievance. Plaintiff turned in the grievance to Captain Hash who wrote a memo stating that he did not have the authority to decide if there was a location the Plaintiff could be placed in that would not involve supervising his wife. The Plaintiff then turned the grievance along with the memo from Captain Hash to his next chain of command which was Defendant Stewart.

- w. **October 4, 2021**- The Plaintiff received the requested IPRA from the County containing all emails in reference to the Lieutenant promotions. Contained in the responses are emails from Defendant Stewart acknowledging that she knew the Plaintiff was number 3 on the list and discussions as to how to skip the Plaintiff on the list. The responses also contain emails from County Manager Macias and Ms. Weir to Defendant Stewart stating that they will promote the Plaintiff and all they need from Defendant Stewart is for her to tell them she is able to place him in a position not in his wife's chain of command. One such email from Mr. Macias to Sheriff Stewart reads, "You must not have written the email that came to me from you on September 23rd where you are addressing the issue of nepotism. You were recorded by Dr. Kimberly Miller during the conversation we jointly had with her that you

were passing on Sgt. Flores because of his wife (nepotism) and that they were both close to the union and your concerns about confidentiality. Since you do not see a concern about nepotism restrictions applying to Sgt. Flores, will you accommodate him so that he does not supervise his wife. Please make it simple, yes or no.”

Defendant Stewart then responds to his email with a one-word response, “NO”. This email shows that Defendant Stewart is not only discriminating against Plaintiff based on spousal affiliation but also because of his union participation, both of which are violations of Article 23 in the Union Contract and are directly forbidden in the Whistleblower Protection Act. Article 16C Whistleblower Protection Act section 10-16C-3 provides: “A public employer shall not take any retaliatory action against a public employee because the public employee:

A. communicates to the public employer or a third-party information about an action or a failure to act that the public employee believes in good faith constitutes an unlawful or improper act;

B. provides information to, or testifies before, a public body as part of an investigation, hearing, or inquiry into an unlawful or improper act; or

C. objects to or refuses to participate in an activity, policy or practice that constitutes an unlawful or improper act.”

Therefore, the Plaintiff should have been protected for reporting the blatant discrimination and retaliation he found in the IPRA documents for

participating with the Union. Instead, the Plaintiff was targeted even more and harassed.

- x. **October 4, 2021**- The Plaintiff received an email from Captain Hash asking him to start putting together a project to combat criminal activity involving stolen property. The Plaintiff responded to Captain Hash saying, "Sir, it was my understanding, based on the conversation we had in your office, that as of Monday, October 4, I was to begin to report to the training division. Am I to cancel those orders and instead remain in intel division? I would love to remain in intel and begin working on this project immediately if that is my new orders." Captain Hash replied, "As of yesterday, you are on a temporary reprieve. Stay in intel until further notice." The language used by Captain Hash proves that the threat of the initial movement was a form of discipline even though the Plaintiff had done absolutely nothing wrong.
- y. **October 5, 2021**- The Plaintiff met with Defendant Stewart and Captain Hash in her office. Defendant Stewart started the meeting by accusing the Plaintiff of attacking her by filing the grievance. She also shared that if the Plaintiff had received the IPRA results containing all the emails, the Plaintiff would see that the County was at fault not Defendant Stewart. This was a blatant misstatement of facts because the Plaintiff did have the emails where it was Defendant Stewart that was blocking the Plaintiff's promotion.

- z. **October 13, 2021**- The Plaintiff received the response to his grievance from Defendant Stewart. Defendant Stewart responded that she believed that these were not “grievable matters”. Defendant Stewart also stated in her response, “I have never identified to anyone this was a nepotism matter. We Have accommodated similar situations, as you cite, and will continue to do so.” Also, “I have never made any written request to skip you on the list; we have never seen a list.” Again, this was a blatant false statement made by Defendant Stewart.
- aa. **October 13, 2021**- After receiving Defendant Stewart’s response, the Plaintiff amended the grievance to add the newly learned information from the IPRA results he received concerning being discriminated on based on Union Affiliation. The Plaintiff then turned in the grievance to County Management so the grievance could be forwarded to County Manager Macias.
- bb. **Sometime between October 19, 2021, and October 21, 2021**- The Plaintiff met with Ms. Weir and County Manager Macias in his office in reference to the grievance. County Manager Macias informed the Plaintiff that he believes that the Plaintiff was right in his grievance and there was no reason for the Sheriff not to promote him, however she was still refusing to acknowledge there was a position the Plaintiff could be placed in which would not be in his wife’s chain of command. The Plaintiff explained to Mr. Macias that Defendant Stewart had recently promoted another individual to the Lieutenant position instead

of the Plaintiff (by virtue of skipping him) and placed the individual over court security which is the position Captain Hash had told him would be the best position for the Plaintiff to be placed in so he could be promoted and not be in his wife's chain of command. Mr. Macias stated he understood but he had no say in where the Sheriff places people, that decision would have to be made by her.

cc. **November 5, 2021**- Plaintiff received a formal letter from County Manager Macias in response to his grievance. In Mr. Macias' response he writes, "Sheriff Stewart has provided conflicting information to you and the County regarding her ability or willingness to make an accommodation to avoid a violation of County's nepotism policy. If Sheriff Stewart is willing to make the accommodation as stated in her October 5, 2021, email to you, it is recommended that she contact the HR department to work out the details and promote you to Lieutenant. As discussed in our meeting regarding the grievance, if Sheriff Stewart is not willing to accommodate your situation, the County cannot intervene because of the impact to DASO operations which is within the purview and authority of the Sheriff." Clearly Defendant County has a duty to protect employees from being discriminated against and retaliated against. Defendant County recognized the lies and illegal activity Defendant Stewart was engaging in and simply turned their back on the Plaintiff and did nothing to protect the Plaintiff.

dd. **December 15, 2021**- Captain Hash informed the Plaintiff that another Sergeant was going to be disciplined and part of his discipline was to be moved from patrol and moved to the courts thus creating an open position on Day Shift Patrol. Therefore, the Plaintiff would be immediately removed from his specialized unit and moved to that position on patrol. This changed the Plaintiff's working hours and his days off as well. Clearly this constitutes a retaliatory act on behalf of Defendant Stewart.

ee. **December 15, 2021**- Plaintiff sent an email to Captain Hash stating, "Sir, quick question, back when I was originally going to be moved to the training division temporarily you told me that I had to be given a 30-day notice before I was to be moved. Wouldn't that apply to this movement also?" Captain Hash replied, "No, because back when I told you that you were eventually going to be moved that began the 30-day notice. I gave you a reprieve and kept you in intel for as long as I could, but you have previously been advised that the move would take place." Using the terminology, "reprieve", clearly proves the Plaintiff was being removed from his specialized intel unit (which he had tried out for and was previously selected) as retaliation for the Plaintiff's grievance and potential pending lawsuit.

ff. **December 21, 2021**- In a station meeting involving all certified police officers, the staff was advised that six people would be promoted to Sergeant positions. After the meeting, the Plaintiff met with Captain

Hash and asked him since there will be six people being promoted and the Plaintiff was moved from the specialized intel unit because of a shortage of Sergeant's, would he be placed back in the specialized intel unit once the promotions occurred. Captain Hash first said that he did not know the answer, but then said that it was more than likely they would repost for the position from which the Plaintiff was moved.

Clearly this is an act of retaliation by Defendant Stewart.

gg. **December 22, 2021**- Plaintiff's wife, Eden Flores, received a target notice advising her that she was the target of an internal investigation. The target notice was alleging that Ms. Flores violated a pursuit policy that was not even a valid policy at DASO. When Ms. Flores inquired with her supervisor, who did not break off the pursuit, why she was being targeted, her supervisor responded that he was getting pressure from the top. This is clear retaliation and hostile work environment. Defendant Stewart took away the specialized unit Plaintiff had been in, was blocking his promotion that he earned and now was starting to target and attack Plaintiff's wife.

hh. **March 7, 2022** – Plaintiff was called into a meeting with Defendant Stewart. During the meeting Defendant Stewart told the Plaintiff that there are currently two Lieutenant's positions open in the Department. She told him that she had spoken to County Manager Macias requesting that the Plaintiff along with another person from the last Lieutenant's testing be promoted to fill these spots. She said that Mr.

Macias would not allow her to promote the two individuals and she would have to re-test for the positions. Defendant Stewart emphasized that she wanted to promote the Plaintiff, however she was not allowed to.

- ii. **March 8, 2022** – The Plaintiff sent an email to County Manager Macias. In the email the Plaintiff explained that he was told by Defendant Stewart that she wanted to promote him and another individual from the last testing however she was not allowed to by Mr. Macias. In the email the Plaintiff said, " I am unsure at this point why I was told all of this and once again I feel that I am somewhat back into the same boat I was in before with some slight difference. One thing that concerns me is that I was asked to come into this meeting just a couple of days after my wife, Eden Flores, delivered a grievance to your office. I'm sure you are already aware, but Eden was recently the target of an Internal Investigation that is retaliation based on my previous filing of complaints on Sheriff Stewart. Also, as I am sure you already know, my attorney has recently given Sheriff Stewart a letter of intent to sue her based on the circumstance around what occurred with me. Our attorney has also delivered a letter of intent to sue Sheriff Stewart based on the retaliation. I believe Sheriff Stewart probably received that letter the day of, or the day prior to her calling me in for this meeting. Again Sir, I just wanted to reach out to you on all of this because I'm confused on what is going on and confused on the

meeting I had with the Sheriff and Major Day. Thank you for your time Sir.”

- jj. **March 12, 2022** – The Plaintiff received a response to his email from County Manager Macias which read “If the information that you have provided me is correct and I have no reason to believe that it is not, you have been misinformed. I have been operating under the understanding that you were going to be promoted to lieutenant and would be supervising court security to avoid any conflict with Sgt Eden Flores. In a direct conversation with the Sheriff, I indicated I was willing to approve your promotion outside of the 90-day eligibility list. It is easily justified because that was my original recommendation which should have been followed and accommodations should have been granted and that it is in the best interest of county. I can assure you that I never indicated to either the Sheriff or Major Day that there was any impediment to proceeding with your promotion. I supported your promotion resulting from the original competitive process and remain prepared to proceed with your promotion. Through this email, I encourage the Sheriff to proceed with the paperwork initiating your immediate promotion. Do not hesitate to contact me if you have any additional questions.” Clearly Defendant Stewart lied to the Plaintiff and continued to discriminate against him and commit retaliatory acts against him.

- kk. **March 13, 2022** – The Plaintiff received an email response from Defendant Stewart stating “Good job Sgt. You did what I couldn't get done. P-1 will be sent tomorrow”.
- ll. **April 24, 2022** – The Plaintiff was finally promoted to Lieutenant and given command of Judicial Services, stationed at the Third Judicial District Court building. This is the exact location that was first offered to him almost seven months previously. This should have ended the nightmare for the Plaintiff, instead the retaliatory behavior simply intensified.
- mm. **May 9, 2022** – Plaintiff becomes Firearms Team Commander.
- nn. **March 29, 2023** – The harassment and bullying continue. The Plaintiff was informed that Captain Sam Ramos would be taking over training division first week of April 2023 and as the Firearms Supervisor the Plaintiff would be reporting to him. At that meeting Captain Ramos, though not officially over firearms yet, gave the Plaintiff some very unrealistic tasks with short turnaround dates. Moreover, essential information was being kept from the Plaintiff which clearly hindered his ability to perform. It was clear Defendant Stewart was trying to set the Plaintiff up to fail. The following are some of those examples:
- i. Transcribing the Firearms policy into a PowerPoint format.
 - ii. On July 21, 2023, Captain Ramos called the Plaintiff at 4:00 p.m. and told him that he would need to contact all Deputies issued a Sage Deuce Weapon System, and the weapons would

have to be turned into the armory by the Plaintiff by 5:00 p.m. the same day. This only gave the Plaintiff one hour to contact all the Deputies issued this weapon system and tell them they needed to bring them to him at the main station. This task was given to Plaintiff at the last minute at the end of the day knowing Plaintiff would not be able to accomplish this in an hour.

- iii. **July 24, 2023**, while the Plaintiff was on vacation in Ruidoso he was contacted by a Sergeant, who was the firearms team coordinator, and was told that he must report to the main station because there was a problem with the inventory. After the Sergeant arrived, he was yelled at for an extended amount of time by Captain Ramos for a rifle that Captain Ramos stated was not on the inventory spreadsheet. After being yelled at, the Sergeant realized that the rifle was on the inventory sheet, and it was just a printer error. Captain Ramos did not apologize for the mistake and instead ordered that the Sergeant be pulled from patrol for two weeks to perform a full audit of the armory. The Plaintiff was informed of this by the Sergeant but not Captain Ramos, even though the Plaintiff was the supervisor of the division. In fact, to prove that this was a setup, when the Plaintiff arrived back from his vacation, he asked Captain Ramos if there were any problems while he was gone or

anything he needed to know about, and Captain Ramos told him there were no issues.

iv. September 18, 2023 a Deputy lost his department issued gun and had to be re-issued a gun. The Plaintiff was not told about any of it, despite still being the Supervisor of Firearms. This was Defendant Stewart's way of setting the Plaintiff up for failure.

oo. **September 5, 2023** – During a firearms committee meeting Captain Ramos stated that the Plaintiff would be helping test for the new range master position and new firearms instructors and once that was done the Plaintiff would be removed as the Firearms Commander and removed from the team all together. This was another form of harassment and bullying. The Plaintiff had done absolutely nothing wrong; he had never been reprimanded yet another position was being removed from him.

pp. **September 19, 2023** – Captain Drake, Plaintiff's direct supervisor, told the Plaintiff he had turned in the Plaintiff's evaluation and then was instructed by Captain Ramos that the Plaintiff's scores needed to be lowered. There was no reason given to lower the Plaintiff's scores. Plaintiff had not done nothing wrong and had not been disciplined in any way.

qq. Since Captain Ramos took over firearms and was put in a position over the other Captains, the Plaintiff was constantly retaliated against by Captain Ramos on behalf of Defendant Stewart because of his prior

grievance and pending lawsuit. Before Captain Ramos was placed in the position of performing Defendant Stewart's illegal and unethical retaliation and harassment, the Plaintiff never had any problems with any of his supervisors and had never received any complaints about any of his work product.

rr. **September 28, 2023** – The Plaintiff received a written sham reprimand from Captain Ramos. In the sham reprimand one of the reasons for the write up was that the Plaintiff, as the firearms supervisor, did not put on a class for the Sage Deuce Weapon System since 2020 and policy says that it must be qualified on annually. This is blatantly untrue. The policy in place at the time did not state that the system had to be qualified annually. It was not until 2023 that a new policy was adopted stating the system must be qualified annually. Moreover, the facts are the Plaintiff did schedule a class to train on the Sage Deuce Weapon System for August 4, 2023, however, Captain Ramos canceled the class. This would have been the first qualification to fulfill the requirements of the newly adopted policy. In the disingenuous written reprimand, Captain Ramos states, "Your inability or unwillingness to perform the duties required of this collateral supervisor position had an impact on the Organization." He goes on to state, "You will be removed from the following collateral duties: 1. Firearms Instructor, immediately. 2. Supervisor over the entire Firearms Team, after the Range Master position is filled you will be relieved of this position." Captain Ramos

was telling the Plaintiff, you are not capable of doing your job, however, you will stay in the position to train your replacement. This alone proves that Defendant Stewart and her followers were continuing to harass and retaliate against the Plaintiff.

ss. The Plaintiff expressed his concern to Captain Ramos explaining that in his opinion he had an inability to perform the duties required in these collateral duties, egregiously enough to be removed immediately as a firearms instructor, then why leave me in the role of Supervisor of the Firearms Team. Plaintiff told Captain Ramos that he believed that this was, "setting me up for failure." Captain Ramos' response was if he (Plaintiff) felt that way he could withdraw from the position of Supervisor for the Firearms Team. He told the Plaintiff to send him an email requesting to resign from this collateral duty. Clearly, this was a way Defendant Stewart could punish the Plaintiff by forcing him to resign.

tt. **September 28, 2023**, the same day as receiving the written reprimand, Plaintiff felt forced to resign to protect his career and sent an email to Captain Ramos resigning his position as Firearms Team Supervisor.

uu. **October 3, 2023** –the Plaintiff was approached by Major Day in the hallway of the Dona Ana County Sheriff's Office. Major Day informed the Plaintiff that he was not allowed to resign his collateral duty as Firearms Supervisor and would remain in the position until the Range Master Position was filled. As Major Day walked away from the Plaintiff

he said,” Welcome to the real world.” This directly proves retaliation and bullying by Defendant Stewart, DASO and the County. The Plaintiff had expressed that under the circumstance he felt as if he was being set up for failure and felt forced to resign, then was not allowed to protect himself.

vv. It is illegal for an employer to discipline an employee based on wrong or made-up allegations and without providing the employee with his due process rights. In this matter Captain Ramos and Major Day at the direction of Defendant Stewart made up an allegation and claimed it was policy when it wasn't and then did not allow the Plaintiff to defend and protect himself.

ww. **November 17, 2023** - Captain Ramos sent out an email Department wide stating that Deputy Alejandra Covarrubia had been selected as the new Range Master.

xx. **November 20, 2023** - The Plaintiff sent an email to Deputy Covarrubia congratulating her on the new position and advising her of some upcoming firearms events she should be aware of since she would be taking over firearms. The Plaintiff also explained to her that he did not know who from the old instructors had re-applied so he was unsure who were still instructors, and that she might have to combine the two firearms teams if not enough instructors from both teams had re-applied.

yy. **November 20, 2023** - After sending the email to Deputy Covarrubia the Plaintiff received a text message from Capt. Ramos stating, "Sir, when I release you as the firearms coordinator you will be advised. Please ensure the instructors also know they will remain on until we get these 13 trained. I will send you an email with specific instructions soon. Be sure you confirm the current firearms instructors for tomorrow's rifle class."

zz. **November 20, 2023** - The Plaintiff responded to Captain Ramos' text, saying, "Sir, according to the write up I received it stated, "after the range master position is filled you will be relieved of this position. the rangemaster position has been filled so I am abiding by the write up I received. In a committee meeting you said that if current instructors wished to remain instructors they would need to reapply at the next posting. That posting closed, so those who did not reapply are no longer on the team. I was written up for allowing an instructor, who is no longer on the team, to instruct. Is your directive that I disregard the write up I received and continue as the supervisor, and also is your directive to have instructors no longer on the team instruct even though I was written up for that? I feel that that is immoral and unethical to do."

aaa. **November 20, 2023** - Captain Ramos responded to the Plaintiff's text message stating, " Lt., Deputy Covarrubia will not assume her new position until December 4th. You will remain as the Firearms Supervisor until the transition is completed. Obviously, there will be

some type of transitional period between you and Deputy Covarrubia. As a Lieutenant and Firearms Supervisor, you are expected to assist Deputy Covarrubia and the Organization in any way possible. On the week of December 4th, we will meet to discuss how this transition will take place. You were directed to "...Communicate, ask questions, and get prior approval before you make any decisions concerning the Firearms Team," and "You will be expected to communicate all information concerning the Firearm Team with me." I did not give you approval for you to, "remove any instructors from the Firearms team." the following will occur: you will ensure the current firearms instructors attend the scheduled rifle training on November 21st, as you directed on email on November 6th. You will advise me when these instructors have confirmed with you their attendance for tomorrow. Send an email to the Firearms Instructors and advise them they will remain on the team until the new instructors are trained, transitioned, and Command approves their departure. (CC me on this email). Send me all the emails you sent to Deputy Covarrubia concerning the Firearms Team. I will not tolerate any sabotage. Your fellow peers and subordinates are depending upon you and any instructor to complete their required Biennium training. If you do not agree with my direction, you are approved to meet with Sheriff Stewart tomorrow morning. The instructors will still need to attend and instruct tomorrow." The Plaintiff at no time advised any firearms instructor they were no longer on the

team as Captain Ramos accused the Plaintiff of. This exchange clearly shows the continued pattern of Defendant Stewart and her followers to deliberately not communicate with the Plaintiff in order to keep him out of the loop and set him up for failure. This is a prime example of the violation of the Whistleblower Act and clearly retaliation.

bbb. **December 14, 2023** - The Plaintiff spoke with a current Firearms Instructor who told the Plaintiff that recently Captain Ramos held a practice qualification for the new firearms instructors who had applied. The Firearms Instructor told the Plaintiff that at that training Captain Ramos continuously spoke badly about the former instructors, to include the Plaintiff and his wife, stating that "Do not listen to them, they are snakes", and other derogatory remarks. The Firearms Instructor stated this continued through the entire training. The Plaintiff, though still in the position of Firearms Supervisor, was never told there would be a training being held, once again leaving him out of the loop intentionally. The comments made to the new instructors about the Plaintiff, his wife and the other former instructors was derogatory and defamation of character. This proves the motive and intentional acts of retaliation, harassment and bullying on behalf of Defendant Stewart and her allies.

ccc. **December 19, 2023** - While at the DASO main station, the Plaintiff saw the Inventory Technician, Damian Blaschka, in the hallway. Mr. Blaschka told the Plaintiff that they had taken care of the ammunition

problem and would be sending it all back. The Plaintiff told Mr. Blaschka that he did not know what he was talking about. Mr. Blaschka asked the Plaintiff if he did not receive an email advising the Plaintiff that the wrong ammunition had been ordered and received. The Plaintiff did not receive an email with this information and was not told about the ammunition by anybody prior to this conversation. Once again, the Plaintiff was left out of the loop, though at this time the Plaintiff had not been advised he was no longer the Firearms Supervisor was still acting in that capacity. This is another blatant act of retaliation by Defendant Stewart.

10. To effectuate her retaliation against the Plaintiff, Defendant Stewart and Defendant County first discriminated against Plaintiff by trying for months to block the promotion he clearly qualified for. Then when they were forced to give Plaintiff his promotion because County Manger finally spoke up to Defendant Stewart and directly confronted her manipulating and outright lies, Defendant Stewart and her employees continued to harass, bully and systematically took away the Plaintiff's authority and job duties. They also set up the Plaintiff to fail. As of the filing of this lawsuit, Plaintiff has no idea what is expected of him at DASO.

11. Due to the severe emotional and mental distress caused by DASO and Defendant Stewart, the Plaintiff even attempted to resign from one of his positions.

12. DASO and Doña Ana County are vicariously liable under the doctrine of respondent superior for the wrongful act of their employees.

13. The Plaintiff has numerous witnesses that will testify that Defendant Stewart is known for targeting an employee and then systematically harasses them and makes their life miserable in the hopes of getting them to quit or be set up to be fired. Defendant Stewart is notorious for creating hostile work environments. It is clear from the timeline above that the Defendant County was aware of this behavior and did nothing to protect the Plaintiff.

14. The pre-selecting of candidates by Defendant Stewart is clearly a violation of the County's hiring processes. Plaintiff attempted to resolve the pre-selective and discrimination actions done by Defendant Stewart and condoned by Defendant County, but the pattern of harassment and discrimination continued.

15. This behavior by Defendant Stewart highlights her vindictive, unstable, and corrupt behavior.

16. As stated above, Defendant Macias and Defendant Doña Ana County did nothing to stop this vindictive and unlawful behavior of Defendant Stewart. Instead, they advised the Plaintiff to basically be quiet, and take the abuse. This is unconscionable.

17. Defendants DASO, Stewart, and Doña Ana County are liable for the unlawful retaliatory actions of its supervisory personnel as alleged herein.

18. Defendant Stewart refused a promotion that was rightfully Plaintiff's for over eight months, then she made it impossible for the Plaintiff to effectively do all of his work because of her bullying and retaliatory treatment of him for fighting for his Lieutenant position.

19. The Plaintiff continued to try and work with Defendant DASO's Human Resource Department however, during the course of this case, Plaintiff learned that a Major with DASO (one of the highest ranks in the department and supervisor of all staff) was having an intimate relationship with the Human Resource representative assigned to DASO. This individual was removed, and another employee appointed, and the Major started a relationship with this individual. This was all occurring during the time that the excuse for not promoting the Plaintiff was because of nepotism with his wife. Moreover, recently the original Human Resource representative was moved back to DASO and is dating a Lieutenant who is a supervisor and that is not an issue for any of the Defendants. This clearly shows that Defendant Stewart discriminated against Plaintiff because of his union activities which is a protected activity.

20. As a further direct and proximate result of the Defendants' wrongful actions as alleged herein, the Plaintiff has incurred expenses (past and future) and seeks damages to compensate him for the losses as well as for his emotional distress and pain and suffering resulting from Defendants' unlawful retaliatory actions and his constructive discharge.

COUNT 1- VIOLATION OF THE WHISTLEBLOWER PROTECTION ACT

21. Plaintiff incorporates by reference all the foregoing allegations.

22. DASO, Doña Ana County, and Defendant Macias, allowed Defendant Stewart to harass, discriminate against, and bully the Plaintiff by creating a hostile work environment and by retaliating against the Plaintiff because the Plaintiff refused to accept the unlawful pre-selection of the Lieutenants position and because the plaintiff and his wife were involved in union activities.

23. Plaintiff reported these unlawful and improper acts to Doña Ana County Human Resource Division and to Defendant Macias, in his official capacity.

24. The Defendants retaliated against Plaintiff by refusing to give him his earned position for over eight months, discharging him without reason from the specialized unit he had applied for, qualified for and had been selected, and then again effectively discharging him from his position of Firearms Team Commander without any legitimate reason or process.

25. Defendant Stewart, DASO, Doña Ana County, and Defendant Macias violated the Plaintiff's rights under NMSA 1978 §10-16C-1 et seq.

26. The Plaintiff has suffered damages as a result of the unlawful retaliatory actions of all of the Defendants.

27. The Plaintiff is also entitled to his reasonable and necessary attorney's fees, costs, and litigation expenses, and pre- and post-judgement interest as allowed by law.

PRAYER FOR RELIEF

WHEREFORE the Plaintiff prays for the following:

A. Actual and compensatory damages, to include all benefits Plaintiff should have been receiving for the eight months he was not given his promotion.

B. Equitable remedies, including the requirement that Defendants provide the Plaintiff with a good and truthful reference. The cleansing of his personnel files to remove from it any false and retaliatory comments, opinions, findings, conclusions, actions taken against him in retaliation for their protected whistleblower activities;

C. Special damages in such sums as will be proven at trial;

- D. Reasonable and necessary attorney's fees and costs, and litigation expenses;
- E. Pre- and post- judgement interest as authorized by law; and
- F. Orders such other relief that is just and proper.

Respectfully submitted,

THE JUSTICE LEGAL TEAM, LLC

By: 

Amy L. Orlando, NM Bar No. 7235
Counsel for Plaintiff
755 Telshor Blvd., Ste. C202
Las Cruces, NM 88011
(575) 652-4859
amy@thejusticelegalteam.com