

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
JUDICIAL DISTRICT COURT

MANION PAUL LONG,

Plaintiff,

vs.

Case No. D-307-CV-2023-01472
Judge Fitch, Casey B.

DONA ANA COUNTY SHERIFF'S DEPARTMENT,
KIM STEWART, IN HER OFFICIAL CAPACITY,
DOÑA ANA COUNTY, AND
FERNANDO MACIAS, IN HIS OFFICIAL CAPACITY

Defendants.

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

COMES NOW the Petitioner, Manion Paul Long, 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 Dona Ana County Sheriff's Department, Dona Ana County Sheriff Kim Stewart, County Manager Fernando Macias, 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 was an employee of the Dona Ana County Sheriff’s Department (“DASO”) for twenty-two years. The Plaintiff held multiple positions while at DASO and at the time of the retaliation he held the title of Captain.

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. Plaintiff is a resident of Dona Ana County, New Mexico.

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

6. Fernando Macias, (“Defendant Macias”) is the County Manager for Dona Ana County and as such has final decision-making authority for the County which oversees DASO. Defendant Macias was the individual that signed off of on the decision to retaliate against Plaintiff Long that was made by Defendant Stewart. He is sued here in his official capacity.

7. 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.

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

FACTUAL BACKGROUND

1. The Plaintiff was employed by DASO starting his law enforcement career in 1998. The Plaintiff intended to remain with DASO for twenty-five years even though he was eligible to retire after twenty years. The Plaintiff survived at DASO for twenty-two years after which he felt he had no other option but to leave DASO in 2021. The Plaintiff could no longer work for Defendant Stewart because of Defendant Stewart's multiple requests that the Plaintiff participate in improper and illegal conduct.

2. The Plaintiff's career survived multiple Sheriffs and he rose to the rank of Captain.

3. In January 2019 Defendant Stewart became the Sheriff in Dona 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.

5. The Plaintiff attempted to guide Defendant Stewart in the right direction, and he explained to her on multiple occasions that there were rules she had to follow.

6. On some occasions Defendant Stewart would listen to the Plaintiff and change her directives and or behaviors. On many occasions Defendant Stewart would ignore the Plaintiff and continue with her corrupt directives and would force the Plaintiff to go behind her and attempt to fix the mess or simply ignore the corrupt directives.

7. When Defendant Stewart realized the Plaintiff was not following her directives and in fact was challenging her corrupt behavior, she retaliated against the Plaintiff for his unwillingness to be part of her corruption.

8. To effectuate her retaliation against the Plaintiff, DASO and Defendant Stewart systematically took away the Plaintiff's authority and job duties.

9. Due to the severe emotional and mental distress caused by DASO and Defendant Stewart, the Plaintiff put in his notice to retire effective July 1, 2021.

10. Defendant Stewart retaliated by locking the Plaintiff out of the DASO building, cutting off his access to his computer and work phone. Defendant Stewart also required the Plaintiff, a twenty-two-year veteran who had done absolutely nothing wrong, to be escorted inside DASO to return all his equipment. Defendant Stewart treated the Plaintiff as if he was a criminal.

11. The Plaintiff immediately notified the human resource department with Dona Ana County and while they admitted the Plaintiff did nothing wrong, they would not assist him, nor would they force Defendant Stewart to cease her corrupt behavior.

12. The Plaintiff filed a grievance with Dona Ana County on June 30, 2021. On July 13, 2021, Dona ana County, Defendant Macias, responded stating they did not find any discrimination or wrongdoing on behalf of Defendant Stewart.

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

**SPECIFIC ACTIONS OF DEFENDANT STEWART WHICH WERE CONDONED BY
DEFENDANT MACIAS**

14. The Plaintiff is aware of multiple times that Defendant Stewart targeted an employee and made 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.

15. 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 Dona Ana County paid well over \$20,000.00 for the contract with Ms. Miller. However, Defendant never followed the new procedure and instead simply picked candidates of her own choosing.

16. In December 2020, a position for Captain became available and Defendant Stewart instructed the Plaintiff to sit in the interview process. The Plaintiff understood his role to be a monitor of the procedure because the interview panel Defendant Stewart put together did not contain any DASO staff. Defendant Stewart told the Plaintiff multiple times that she had a candidate in mind and that candidate was going to be the next Captain. This person was Jeremey Hash.

17. Long after the interview process was completed, Defendant Stewart instructed the Plaintiff to score the candidates. The Plaintiff had to rely on his memory and the notes from the other panel members. He was again instructed by Defendant Stewart who to pick and she told him the rest of the panel had selected Mr. Hash. Defendant Stewart specifically told the Plaintiff that Jeremy Hash should be at least number 3 on the list so she could promote him. The Plaintiff has personal knowledge that Defendant Stewart skipped the highest-ranking candidate and promoted Mr. Hash.

This incident caused extreme stress and pressure on the Plaintiff. Defendant Stewart's directive to Plaintiff is in violation of the County's hiring policies against pre-selecting a candidate and intended to protect the hiring committee, DASO, and County against claims of discrimination and such.

18. Defendant Stewart temporarily assigned the Plaintiff to the position of DASO Major in January of 2020. He was responsible for the operations of the entire department during that time. County policy dictates that temporary assignments are not to be longer than one year. In late fall of 2020, DASO advertised internally for promotions for command staff to fill vacancies in the lieutenant, captain, and the major ranks. There is only one Major position in the agency, and the Plaintiff was temporarily assigned to that position. The Plaintiff applied for the permanent Major position.

19. In November 2020 during a zoom meeting that Defendant Stewart and the Plaintiff had with Ms. Miller, (who is the consultant Stewart contracted with for assistance with staff promotion matters), Defendant Stewart told the Plaintiff that she was going to permanently promote the Plaintiff to Major. A short time later, the panel interviews for promotions were held. Defendant Stewart did not conduct interviews for the Major position, even though the Plaintiff and one other candidate met the requirements and applied.

20. During December of 2020 or early January of 2021, Defendant Stewart directed the Plaintiff to reassign the DASO Chaplain to the patrol division as a patrol officer. Even though the Chaplain was a certified deputy, the Plaintiff knew the Chaplain did not possess the physical stamina and experience. In addition, the Plaintiff advised Defendant Stewart that the Chaplain's (Conant Carr) wife had just been placed in

hospice as she was dying of cancer and that he did not believe that he was mentally or emotionally prepared to pass a field training program. Defendant Stewart's response was "Tough". Ultimately, Chaplain Carr was forced to resign by Defendant Stewart. Under information and belief from statements made by Defendant Stewart she does not believe in God and did not want the Chaplain working at her agency.

21. Also, in December of 2020, Captain Jon Day was absent from work the morning a homicide occurred. He did not call in nor was he answering his phone. He was the Captain of the Criminal Investigation's Unit at the time. He eventually contacted the Plaintiff (who was his supervisor) and stated that he overslept, and his phone had died. Defendant Stewart instructed the Plaintiff to demote Captain Day. The Plaintiff placed Captain Day on a performance improvement plan contrary to what Defendant Stewart wanted because he believed it was the appropriate level of discipline.

22. In January 2021, immediately after the above two incidents, Defendant Stewart informed the Plaintiff that she was not going to fill the Major's position and that the Plaintiff would return to his permanent rank of Captain. It is important to note that the Plaintiff was already in the role of the Major.

23. Defendant Stewart retaliated against the Plaintiff by not filing the Major position because of the Plaintiff's pushback on reassigning Chaplain Carr and his decision to correct Captain Day's behavior. Had the Plaintiff demoted Captain Day, the appearance of impropriety would have existed because Captain Day was the only other candidate for the Major position. Had the Plaintiff recommended demotion he would have made him ineligible for promotion to Major, effectively removing the Plaintiff's competition. The Plaintiff felt this was unethical. Moreover, he also felt a demotion for

the Captain's actions was not consistent with a demotion.

24. In June 2021 the Plaintiff learned from Defendant Stewart that she was going to contract with an individual that donated and worked on Defendant Stewart's political campaign. When the Plaintiff learned of this, he made the office staff at DASO aware that Defendant Stewart had to disclose her personal relationship with all individuals she contracts with. The Plaintiff knew that this was pursuant to State rules.

25. The day after the Plaintiff discussed the issue with DASO staff, Defendant Stewart immediately retaliated against the Plaintiff. Specifically, Defendant Stewart emailed the Plaintiff on June 17, 2021 at 6:30 a.m. directing the Plaintiff to work from home until his last day of employment.

26. The Plaintiff immediately contacted the Dona Ana County Human Resources Department and Defendant Macias, and they told him that he, the Plaintiff, had done nothing wrong, therefore, they could not intervene or even start an investigation. They advised the Plaintiff to stay home and work.

27. Approximately two hours after the Plaintiff notified the Dona Ana County Human Resources Department and Defendant Macias, Defendant Stewart restricted (locked him out) of all access to all his accounts, emails, Workforce Solutions log ins, work files, access to log in his work hours and entry to his office. Defendant Stewart essentially made it impossible for the Plaintiff to work.

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

29. This action on the part of Defendant Stewart caused the Plaintiff to worry that he would be retaliated against further and that he should move up his date of

retirement. The Plaintiff was informed he could not move up his retirement, so he lived in fear for several weeks.

30. The Plaintiff was not even allowed to attend his retirement party because he was not allowed into his office or the DASO building.

31. Defendant Stewart did not stop her vindictive retaliatory behavior, she instructed Captain Jeremy Hash (the same individual that Defendant Stewart had preselected as described above) to escort the Plaintiff to his office to retrieve his personal belongings.

32. The act of escorting the Plaintiff was no different than the way a criminal is treated when being arrested.

33. Not only was the Plaintiff escorted through the DASO offices like a criminal, Defendant Stewart instructed the department manager Naomi Terry, to not allow any of the staff to talk to the Plaintiff.

34. It needs to be emphasized that the Plaintiff was never accused of doing anything wrong.

35. When Defendant Stewart realized that the Plaintiff was informing “her” staff of her hiring someone that worked on her political campaign, Defendant Stewart realized everything else the Plaintiff knew she had done was unlawful and corrupt. Defendant Stewart had to shut the Plaintiff down and attempt to attack his credibility.

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

37. This conduct by Defendant Stewart and Defendant Macias constituted time-fraud. They instructed the Plaintiff to stay home and “work” when they both knew he had no ability to work. The Defendants had to approve his hours as worked when they had taken away his ability to work.

38. The Plaintiff filed a grievance with Dona Ana County on June 30, 2021. On July 13, 2021, Dona ana County, Defendant Macias, responded stating they did not find any discrimination or wrongdoing on behalf of Defendant Stewart.

39. Because Dona Ana County and Defendant Macias directly informed the Plaintiff he had done nothing wrong, the Plaintiff was not afforded the opportunity to be interviewed and give his side of the story. Dona Ana County and Defendant Macias should have immediately granted the Plaintiff access to everything to allow him to work and started an investigation in Defendant Stewart. This would have provided the Plaintiff with the proper protection that was due him. This would have protected the Plaintiff’s due process rights.

40. It is illegal for an employer to discipline an employee without making even an allegation of wrongdoing and providing due process rights.

41. Defendant Stewart retaliated against the Plaintiff because she instructed him to stay home and work and simultaneously cut off all his access to work.

42. Placing the Plaintiff on “leave” and denying all access to his ability to work were in retaliation because the Plaintiff informed other staff of an act by Defendant Stewart that appeared to be corrupt and for all the other information the Plaintiff has regarding Defendant Stewart’s wrongdoings and corruption.

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

44. Even though the Plaintiff was retiring shortly after the act of ordering him to stay home and denying him the ability to work, the Defendants constructively fired the Plaintiff. Simply because Defendant Stewart did not use the words “you are fired” the action of restricting all access within two hours of the Plaintiff notifying the Human Resources Department and Defendant Macias, the Plaintiff was fired on June 17, 2021. Therefore, the Defendants are liable for double damages because the Plaintiff was fired in violation of the Act.

45. Defendant Stewart not only made it impossible for the Plaintiff to work because of her treatment, she literally shut down his access to work.

46. 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

47. Plaintiff incorporates by reference all the foregoing allegations.

48. DASO, Dona Ana County, and Defendant Macias, allowed Defendant Stewart to constructively discharge the Plaintiff by creating a hostile work environment and by retaliating against the Plaintiff because the Plaintiff refused to violate state law or participate in corrupt behavior.

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

50. The Defendants retaliated against Plaintiff by taking away his promotion and effectively discharged him from his duties.

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

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

53. 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, including double lost back pay and future lost pay;

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;

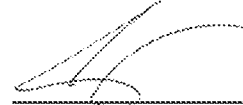
E. Pre- and post- judgement interest as authorized by law; and

F. Orders such other relief that is just and proper.

Respectfully submitted,

THE JUSTICE LEGAL TEAM, LLC

By:



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