

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN AND
FOR LEON COUNTY, FLORIDA

PATRICIA MCCRAY,

CASE NO.: 2018 CA 000109

Plaintiff,

v.

CITY OF TALLAHASSEE,

Defendant.

AMENDED COMPLAINT

Plaintiff, PATRICIA McCRAY, hereby sues the Defendant, the City of Tallahassee, and would further allege as follows:

JURISDICTIONAL ALLEGATIONS:

1. This is an action for damages in excess of Fifteen-Thousand (\$15,000.00) Dollars, exclusive of attorney's fees and costs, brought pursuant to Florida's Public Employee Whistleblower Act (codified as the *Florida Statutes, Chapter 112.3175, et.seq.*) and Chapter 760, Florida Statutes.
2. At all times material to the instant Complaint, the Plaintiff, Patricia McCray (hereinafter to be referred to as "Ms. McCray"), was an employee of the Defendant, the City of Tallahassee. Accordingly, Plaintiff is *sui Juris*.
3. At all times material to the instant Complaint, the Defendant, the City of Tallahassee, has been a political subdivision of the State of Florida and a municipal entity existing and/or operating in Leon County, Florida. Accordingly, the Defendant, the City of Tallahassee, is *sui juris*. All conditions precedent to the initiation and/or maintenance of the instant lawsuit have been satisfied and/or, otherwise, waived by the enumerated

Defendant.

GENERAL ALLEGATIONS:

4. Plaintiff was hired by the Defendant, the City of Tallahassee, in or about 1998, in the capacity as Temporary Clerk I. The Plaintiff, Ms. McCray continued on with her employment with the Defendant, the City of Tallahassee, until she was terminated by the same on July 20, 2017. At that time, the Plaintiff, Ms. McCray was employed as an Assistant to the City Manager and had worked for the Defendant, the City of Tallahassee, for an aggregate period of approximately Nineteen (19) Years.

5. In or about the Spring of 2010, while working in the capacity of an Administrative Supervisor to Mr. Reese Goad in Utility Services, Plaintiff began to experience problems with management with respect to employment and/or hiring decisions being made in derogation of the public interest and/or the Defendant's, the City of Tallahassee's, own policies.

6. To wit, in or about the latter portion of April of 2010, Plaintiff was directed by current City Manager, Reese Goad (hereinafter to be referred to as "Mr. Goad"), to hire Kristina Fernandez, the daughter of the recently erstwhile City Manager, Ricardo "Rick" Fernandez (hereinafter to be referred to as "Mr. Fernandez").

7. When Plaintiff expressed her concerns to Mr. Goad as to the fact that the hiring of Kristina Fernandez would violate the Defendant's nepotism policy. When Plaintiff opposed Mr. Goad's attempts to hire Kristina Fernandez, Mr. Goad threatened Plaintiff and told her that she would lose her job if she did not comply with Mr. Goad's demand.

8. Similar to the Kristina Fernandez scenario, during this time period, the Plaintiff was

approached by Mr. Goad and instructed to hire an individual by the name of Adam Jacobs into the Customer Operations division of the Utility Services Department. It turned out that Adam Jacobs was the brother-in-law of Mr. Goad who was the Director of Utility Services at that time.

9. In yet another brazen act in contravention of the nepotism policy, the Plaintiff, Ms. McCray, was directed by Mr. Goad to hire an individual by the name of Layla Jabar, the son of another employee identified as Abdelrahman Jabar an in intern, despite the fact that the hiree/ applicant had several parking tickets which was also in violation of the Defendant's, the City of Tallahassee's, Human Resources policies.

10. In or about the Fall of 2015, Plaintiff became the Assistant to the City Manager, Mr. Fernandez, an executive level position. In addition to her duties attendant to that job, Plaintiff was also the supervisor in charge of City Hall Building Services which resulted in her supervising and/or overseeing the hiring and management of approximately fifteen (15) janitorial and building maintenance employees.

11. During this time period, Plaintiff was approached once again by Mr. Goad (who had become Assistant City Manager by that time) and directed to give a Twenty-Four (24) Percent (%) salary increase to a janitor by the name of Benjamin Pye (hereinafter to be referred to as "Mr. Pye"). In reviewing Mr. Pye's employment file, Plaintiff was not aware of any particular employment accomplishments or facts which would justify such a substantial increase in Mr. Pye's salary.

12. As such, Plaintiff inquired of Mr. Goad as to why he felt such an increase was justified and concurrently expressed her concern that other employees would feel slighted and/or treated differently if there was not a compelling reason to provide such a

raise.

13. Mr. Goad responded by telling Plaintiff to "just fucking do it". Mr. Goad also warned that Plaintiff would be "sorry" if Mr. Goad were compelled to put in for Mr. Pye's raise himself.

14. After several months working in her executive capacity as an Assistant to the City Manager, as well as Supervisor for Building Services, Plaintiff became concerned as to the fact that similarly-situated white employees at her same position level were receiving substantially larger raises than herself.

15. As a result of her concern over, what was believed to be, discriminatory racial practices, as well as other illegal activities relating to violating nepotism policies, the Plaintiff, Ms. McCray, wrote an e-mail to Ms. Ellen Blair (hereinafter to be referred to as "Ms. Blair"), who was the head of Human Resources for the Defendant, the City of Tallahassee.

16. Following Ms. Blair's receipt of the Plaintiff's written complaint, Ms. Blair asked Plaintiff to meet with her in person with the idea of discussing the Plaintiff's concerns/ complaints.

17. Upon the instance of the meeting with Ms. Blair, Plaintiff was disheartened when she was flatly told by Ms. Blair that she needed to keep quiet and not continue to bring problems and/or questionable activities by management to the fore if she wished to keep her job.

18. Thereafter, with Human Resources having abandoned its obligations, the problems continued. In addition to the other issues chronicled herein, Plaintiff was

assigned by Mr. Fernandez to perform work functions well outside her sphere of responsibility- specifically, and by way of illustration, Plaintiff was directed to negotiate with Comcast over Mr. Fernandez's personal home Comcast bill. Apparently, Mr. Fernandez felt that his home cable bill was too high and he directed Plaintiff on several occasions to contact Comcast and, using his position with the City, use the same as leverage to negotiate down his personal home cable bill.

19. In or about March of 2017, on the heels of the meeting Plaintiff had with Human resources regarding her various concerns, there occurred, what was alleged to be, an administrative reorganization, pursuant to which she was assigned to the supervision of an individual by the name of Mr. Raoul Lavin (hereinafter to be referred to as "Mr. Lavin").

20. Mr. Lavin asked for the Plaintiff's job description an instituted and novel process of conducting a mandatory meeting with Plaintiff to discuss her projects and duties-this was a wholly ironic turn of events given the fact that purported "reorganization" basically left Plaintiff stripped of any meaningful duties thereafter.

21. Around this time period, the Defendant, the City of Tallahassee, was, apparently scheduled to take part in some manner of civil rights and/or freedom event celebrating the same. The Defendant, the City of Tallahassee, was slated to co-sponsor and/or participate in the event in conjunction with the Florida Commission on Human Relations ("FCHR").

22. Attendant to the event in question, donations were being purportedly being solicited and/or accepted-however, an apparent wrinkle arose in that FCHR was

supposedly not able to accept and/or deposit any donations regarding the event.

Therefore, it was determined that the Defendant, the City of Tallahassee, was to be the depository for an aggregate donation figure of Five-Thousand (\$5,000.00) Dollars.

23. Inexplicably, the head of Revenue Management for the Defendant, the City of Tallahassee, Ms. Jennifer Whittaker (hereinafter to be referred to as "Ms. Whittaker"), informed Plaintiff that a Paypal account needed to be set up in the Plaintiff's name in order for the donations to be accepted by the Defendant, the City of Tallahassee.

24. Upon this information being conveyed to her by Ms. Whittaker, the Plaintiff, Ms. McCray, abjectly refused to participate and/or allow for an account to deposit the monies to be placed in her name. Plaintiff immediately reported, what she believed was an attempt to participate in an illegal endeavor, to her Supervisor, Mr. Lavin.

25. It was during this time period as well that Plaintiff learned that her office furniture was being moved to a smaller office further away from the City Manager, Mr. Fernandez, and that the preponderance of her duties were being assumed by Mr. John Powell, a Caucasian male. Plaintiff received no advance notice or explanation for the change.

26. In connection with the Plaintiff's, Ms. McCray's, employment tenure with the Defendant, the City of Tallahassee, she was exposed to and/or became aware of other similar illegal and/or unethical activities including, but not limited to, the provision of city contracts to vendors with special relationships to city management without said contracts being subject to an RFP; the administrator of Customer Services for the Utility Division, Mr. James Barnes, using a city credit card to pay for personal hotel stays; questionable

contracts with a company identified as "NoPetro", an energy trading company run by Mr. Roger McDonald and Mr. David Gingh; the dissemination and/or enforcement of a city policy regarding the manual manipulation of electrical smart meters from Honeywell by virtue of the fact that it was widely known that said "smart meters" did not, in fact, actually work; and records being withheld from public records request such as those previously requested in connection with the Vancore Jones Contract in which a Two-Hundred and Fifty Thousand (\$250,000.00) Dollar invoice from the BluePrint 2000 budget being improperly/illegally withheld by Mr. Goad from said request.

27. On or about July 20, 2017, Plaintiff arrived at City Hall only to find that her key card for electronic access had been turned off. While attempting to explain the dysfunction of the key card as some manner of electronic snafu and/or oversight, the Plaintiff was ushered into a room where Ms. Blair, the aforementioned head of Human Resources was sitting. It was later learned by Plaintiff that the monies were deposited into a personal account established in Ms. Whittaker's name.

28. At that point, Plaintiff was informed by Ms. Blair-quite quixotically-that she was one (1) of the "lucky ones" because she was being laid off and was going to obtain a severance package associated therewith.

29. At the time that Plaintiff was told on July 20, 2017 that she was losing her job for unexplainable circumstances, she had worked for the Defendant for 19 years and dedicated her life to the Defendant as an excellent employee. She was 58 years of age at the time. In the meeting with Ellen Blair and Raoul Lavin as Plaintiff was being fired, Ms. Blair said as she touched Plaintiff's hand, the severance package would be a good benefit and it would provide continued health coverage for Plaintiff. It would be the best for Plaintiff to sign the severance

agreement, according to Blair. She asked Plaintiff to sign it twice and she said no both times. Plaintiff was then told by Raoul Lavin, who was her boss at the time that she had 15 minutes to get her personal items and Donna, his assistant, and other staff would escort her to her vehicle. She was humiliated!

30. After she was fired on July 20, 2017, the City of Tallahassee HR Director, Ellen Blair, continued to pressure Plaintiff to sign the severance agreement. While she was visiting her brother in the hospital, Ellen Blair called again. Plaintiff's brother was concerned about her, told her that she did not look well and became more concerned about her than himself. Plaintiff then began to cry uncontrollably, most concerned about where she would get money to pay for her medication and medical condition. She had been deeply depressed since July 20, 2017.

31. Plaintiff's extreme duress was well founded and justified as she is a kidney-pancreas transplant patient and faces staggering medical, prescription, and insurance bills. Without insurance, she would be dead. Health insurance is the only way that she has been able to pay for medicine since her second kidney transplant in 2011.

32. Because Plaintiff was under extreme emotional and economic duress, she did, ultimately, accept said package not of her own free will and under circumstances in which it appears she was misled by the Defendant. Plaintiff was replaced by a white employee, John Powell, who was less qualified than Plaintiff for the position.

33. As a direct and/or proximate result of her termination, Plaintiff has sustained damages. Said injuries are continuing and will not abate in the future.

34. Plaintiff has retained the undersigned counsel(s) to represent his interests in this cause and is obligated to pay a fee for these services. The Defendant, the City of Tallahassee, should be made to pay said fee, along with costs incurred in connection with

this action, under applicable law.

**COUNT I-PUBLIC EMPLOYEE WHISTLEBLOWER
RETALIATION**
(codified as the *Florida Statutes, Chapter 112.3187, et.seq.*)

35. Plaintiff realleges and incorporates by reference Paragraphs 1 - 34 as if set forth in their entirety herein.

36. This Count sets forth a claim on behalf of Plaintiff against Defendant pursuant to *The Florida Statutes, Chapter 112.3187, et.seq.*

37. As stated more specifically herein in part above, Plaintiff reported and disclosed, verbally and in writing, violations of law, rules or regulations, gross mismanagement, malfeasance, misfeasance, gross waste of public funds and/or gross neglect of duty committed by one (1) or more employees, agents or independent contractors of the Defendant, the City of Tallahassee, to persons both inside and outside of her normal chain-of-command, and to others having the authority to investigate, police, manage and, otherwise, remedy the violations that she reported. She reported that actions were being taken by the Defendant, the City of Tallahassee, that were causing unnecessary and detrimental effects to the city's constituency.

38. After reporting these matters, opposing illegal activities, and/or participating in inquiries, investigations, hearings, or other agency inquiries, as related in part above, Plaintiff became the unwitting victim of retaliatory actions, as set forth in part above.

39. The Plaintiff's adverse treatment, including her termination, was a direct and/or proximate adverse result of her reporting/opposing violations of laws, rules or regulations, of her reporting malfeasance, misfeasance or gross misconduct, and/or of her participating in investigations, hearings or other inquiries, as chronicled in part above.

40. The actions of all of the employees and/or agents of the Defendant, the City of Tallahassee, who affected the Plaintiff's, Ms. McCray's, relationship with the Defendant, the City of Tallahassee, adversely did so at least in part in retaliation against her for her "whistleblowing" activities.

41. As a direct and/or proximate result of the actions taken against her by the Defendant, the City of Tallahassee, the Plaintiff has suffered injury, including, but not limited to, past and future wage losses, and other tangible and intangible damages. These damages have occurred in the past, are occurring at present, and will likely continue on into the future.

COUNT II
RACE DISCRIMINATION

42. Paragraphs 1-34 are re-alleged and incorporated herein by reference.

43. This is an action against Defendant for discrimination based upon race brought under Chapter 760, Florida Statutes.

44. Plaintiff has been the victim of discrimination on the basis of her race in that she was treated differently than similarly situated white employees of Defendant and has been subject to poor treatment on the basis, at least in part, because of her race.

45. Defendant is liable for the differential treatment towards Plaintiff because it controlled the actions and inactions of the persons making decisions affecting Plaintiff or it knew or should have known of these actions and inactions and failed to take prompt and adequate remedial action or took no action at all to prevent the abuses to Plaintiff.

46. Furthermore, Defendant knowingly condoned and ratified the differential treatment of Plaintiff as more fully set forth above because it allowed the differential treatment and participated in same.

47. In essence, the actions of agents of Defendant, which were each condoned and ratified by Defendant, were of a race-based nature and in violation of the laws set forth herein.

48. The discrimination complained of herein affected a term, condition, or privilege of Plaintiff's continued employment with Defendant.

49. The events set forth herein led, at least in part, to the adverse action taken against Plaintiff including without limitation her termination.

50. Defendant's conduct and omissions constitutes intentional discrimination and unlawful employment practices based upon race in violation of Chapter 760, Florida Statutes.

51. As a direct and proximate result of Defendant's conduct described above, Plaintiff has suffered emotional distress, mental pain and suffering, past and future pecuniary losses, inconvenience, bodily injury, mental anguish, loss of enjoyment of life and other non-pecuniary losses, along with lost back and front pay, interest on pay, bonuses, and other benefits. These damages have occurred in the past, are permanent and continuing. Plaintiff is entitled to injunctive/equitable relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant for the following:

- (a) that process issue and this Court take jurisdiction over this case;
- (b) that this Court grant equitable relief against Defendant under the applicable counts set forth above, mandating Defendant's obedience to the laws enumerated herein and providing other equitable relief to Plaintiff;
- (c) enter judgment against Defendant and for Plaintiff awarding all legally-available general and compensatory damages and economic loss to Plaintiff from Defendant for Defendant's violations of law enumerated herein;

- (d) enter judgment against Defendant and for Plaintiff permanently enjoining Defendant from future violations of law enumerated herein;
- (e) enter judgment against Defendant and for Plaintiff awarding Plaintiff attorney's fees and costs;
- (f) award Plaintiff interest where appropriate; and
- (g) grant such other further relief as being just and proper under the circumstances, including but not limited to reinstatement.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on all issues herein that are so triable.

Respectfully submitted,

/s/ Marie A. Mattox
Marie A. Mattox [FBN 0739685]
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to all counsel of record by eportal and efile this 23rd day of December, 2019.

/s/ Marie A. Mattox
Marie A. Mattox