

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ERICA BAKER,

Plaintiff,

v.

No. 1:22-cv-00574

CITY OF TRUTH OR CONSEQUENCES,
and CITY MANAGER BRUCE SWINGLE,

Defendants.

COMPLAINT

Plaintiff Erica Baker, for her causes of action against Defendants, states as follows:

INTRODUCTION

1. Plaintiff was the victim of retaliation and sex discrimination by the highest-ranking officials at the Defendant City of Truth or Consequences (“the City”), including but not limited to the City Manager, the Mayor, and officials at the Truth or Consequences Police Department (“TCPD”). The retaliatory actions were designed to punish and harass Plaintiff and destroy her exemplary 15-year law enforcement career, and ultimately culminated in her termination. This campaign was caused by a series of events, all of which involved conduct protected by the New Mexico Whistleblower Protection Act and animated by the treatment Defendants afford female peace officers.

2. As a direct result of Defendants’ conduct, Plaintiff suffered and continues to suffer damages, including a loss of income, loss of her career and future job opportunities, severe humiliation, embarrassment and emotional distress. In a short amount of time, Plaintiff went from Acting Chief of Police at TCPD who recently had been accepted to the FBI Academy and

whose future prospects looked bright to stocking shelves during the night shift at Walmart at half the hourly wage she earned at TCPD.

3. This action arises under the provisions of the First and Fourteenth Amendments to the United States Constitution pursuant to 42 U.S.C. § 1983, Title VII of the Federal Human Rights Act, the New Mexico Whistleblower Protection Act, the New Mexico Human Rights Act, and Article 2, Sections 17 and 18 of the New Mexico Constitution actionable under the New Mexico Tort Claims Act.

THE PARTIES

4. Plaintiff Erica Baker is a resident of Truth or Consequences, New Mexico, and was employed by Defendant City of Truth or Consequences as a law enforcement officer. At all times material to this Complaint, Plaintiff was a classified employee while she was employed by Defendant City of Truth or Consequences.

5. Defendant City of Truth or Consequences is a public employer within the meaning of the New Mexico Whistleblower Protection Act, NMSA 1978, § 10-16-C 3(A) and 3(C) and the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1 et. seq. At all times material to this lawsuit, the City of Truth or Consequences officers and employees mentioned in this lawsuit, with the exception of City Manager Bruce Swingle and then-Mayor Sandra Whitehead, were law enforcement officers employed by Defendant at the TCPD, acting within the course and scope of their duties as public employees, were state actors, and were acting under color of state law. The City of Truth or Consequences is liable for the retaliatory actions and the tortious actions undertaken by its employees alleged in this lawsuit, either directly or under the doctrine of respondeat superior.

6. Defendant Bruce Swingle is the City Manager for the City of Truth or Consequences pursuant to NMSA 1978, Section 3-14-13 and Code of Ordinances, City of Truth or Consequences, Section 2-91. In his role as City Manager, Defendant Swingle is the “chief administrative officer” for the City of Truth or Consequences and is “responsible to the Governing Body for the proper administration of all the affairs of the City, and he [is] charged with the enforcement and carrying out of all ordinances, rules, and regulations passed or enacted by the Governing Body.” Code of Ordinances, City of Truth or Consequences, Section 2-92. At all times material to this lawsuit, Defendant Swingle was acting within the course and scope of his duties as a public employee, was a state actor, and was acting under color of state law.

JURISDICTION AND VENUE

7. The Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.
8. The Court has personal jurisdiction over Defendants.
9. Venue is proper in this judicial district under 28 U.S.C. § 1391(b).

GENERAL ALLEGATIONS

Plaintiff’s Long History as A Dedicated and Superior Employee

10. Plaintiff was hired at TCPD on July 12, 2011, after spending five years as a law enforcement officer with the Lovington Police Department. For the next ten years, Plaintiff steadily worked her way up the ranks in TCPD. Plaintiff was promoted to Sergeant in 2013, Lieutenant in 2017, and Deputy Chief of Police in 2019.

11. During her employment with TCPD, Plaintiff was active in the community. She was widely regarded as an exemplary officer. By way of example, on February 8, 2021, Plaintiff’s supervisor, then-Chief of Police Michael Apodaca, conducted her annual Performance Appraisal. At the time, Plaintiff had been Deputy Chief of Police for almost two years. In the

appraisal, Chief Apodaca wrote that Deputy Chief Baker “is developing a good working understanding of the position.” He noted that Deputy Chief Baker “thinks things through before acting and does so in a well-balanced fashion,” is “quick and accurate in her decision making, but is not hesitant to ask for guidance when she is unsure,” is responsive in completing her assignments, appropriately recognizes priorities, investigates and gets problems solved effectively, “handles her responsibilities on her own,” and “has supervised some significant incident scenes and performed well on all of them.”

12. In addition, Chief Apodaca stated that Deputy Chief Baker is “very resourceful,” “works well under pressure,” “constantly strives for ways to make tasks easier and more efficient whenever she finds an issue,” is “always willing to try new things and is a quick learner,” and “always produces quality work and is not satisfied with mediocracy (sic).”

13. With regard to Deputy Chief Baker’s skills in “dealing with people” and supervision, Chief Apodaca characterized her as “very assertive as needed when giving directives and will act in the same manner as required,” and stated she “has always demonstrated an ability to cooperate with people she is required to interact with.” He also wrote that she is “very aware of the need for diversity in the workplace and has never displayed any bias based on a minority or protected class status.”

14. Finally, the appraisal states that “Deputy Chief Baker is always willing to try new things and is a quick learner. She works well with others whether it is a subordinate, other City employee or an[y] outside individual. Deputy Chief Baker has no problem adapting to new methods or conditions and is definitely capable of being trained.”

15. Prior to March 15, 2021, Plaintiff had not been disciplined in any significant action in her ten years with the TCPD and had an essentially unblemished record. Nor, unlike

other TCPD officers, was she ever alleged to have failed to meet her duties as a law enforcement officer or to have engaged in inappropriate conduct outside working hours.

16. Prior to March 15, 2021, no other TCPD officer or employee had ever filed a formal complaint against Plaintiff or otherwise complained that she had discriminated against them, harassed them, or treated them poorly in any way.

17. To the contrary, in February 2021, Chief Apodaca was so impressed with Plaintiff's professional development that he recommended that Plaintiff take over as Interim Chief of Police when he retired in April 2021.

18. In an email to the acting City Manager at the time, Chief Apodaca wrote that he had been "grooming Deputy Chief Baker for the last two years in . . . law enforcement administrative duties including budget, meeting demeanor, dealing with officer misconduct and basically all aspects of the job of Chief of Police."

19. Chief Apodaca stated that he was "confident that [Plaintiff] will do a great job leading the department and is prepared to do so."

20. Plaintiff became the Interim Chief of Police upon Chief Apodaca's retirement in April 2021.

21. Plaintiff was the Interim Chief of Police at TCPD until July 19, 2021, the same day Defendant Swingle, as City Manager, terminated her employment.

Michael Lanford's Hiring and Employment with TCPD

22. In March 2020, the TCPD hired a retired detective named Michael Lanford as a contract investigator to train officers on narcotics investigations, with a contract term of three (3) months.

23. Lanford had worked for TCPD in the past, but had retired in 2013.

24. Lanford is the son-in-law of Sandra Whitehead, who was the Mayor of Truth or Consequences at all times relevant to this lawsuit.

25. TCPD hired Lanford on contract without putting the contract out to bid.

26. After TCPD hired Lanford, it allowed him to circumvent the normal chain of command and report directly to Chief Apodaca, even though Plaintiff was Deputy Chief of Police at the time and Lanford was her subordinate and was supposed to report to her.

27. When Lanford was employed by TCPD previously, he was allowed to violate the chain of command in a similar manner, by circumventing the female Captain who was his direct superior and reporting directly to the male Chief of Police.

28. Because he had retired in 2013, Lanford's law enforcement certification had lapsed by the time he was rehired.

Lanford's Illegal Actions as a Contracted TCPD Officer

29. Although Lanford's law enforcement certification had lapsed and he had not been recertified, upon being hired by TCPD in March 2020, Lanford immediately started performing the work duties of a fully commissioned and certified officer, including executing and signing search warrants. In doing so, he made repeated false representations in affidavits that he was a fully commissioned officer, even though he had not completed the requisite certifications to earn his commission.

30. In March 2020, Lanford was issued a Peace Officer Commission and a Special Investigator Commission from the Seventh Judicial District Attorney's Office, in large part due to his personal relationships with employees or agents of the City and within the District Attorney's Office.

31. The fact that Lanford was granted these commissions at the time he contracted with the City from March 2020 through September 2020 was illegal because, based on his and the City's representations, Lanford was not an employee of the City or a certified law enforcement officer at the time.

32. Since his retirement from TCPD in 2013, Lanford had been collecting PERA benefits.

33. Because Lanford had been rehired on contract at TCPD in March 2020 and was again receiving a paycheck from TCPD, he was required to notify PERA of his contract with TCPD to avoid violating NMSA 1978, Section 10-11-8, commonly known as the "double dipping statute." He did not do so, but instead continued to collect his PERA benefits, even while under contract with the City.

34. In June 2020, the City renewed Lanford's three-month contract, and he remained on contract until September 2020. In September 2020, TCPD made him a full time law enforcement officer. Lanford's day-to-day job duties did not change from when he was a purported contract detective.

The SCSO Investigation Into Lanford's Illegal Actions

35. In June 2020, the Sierra County Sherriff's Office ("SCSO") initiated an investigation into Lanford's employment because they believed Lanford was working illegally – both with respect to the fact that he was double-dipping in violation of PERA, and because he was illegally performing the work duties of a fully commissioned officer even though he was not certified and did not have a certification waiver.

36. Plaintiff's husband, Josh Baker, is a Lieutenant with the SCSO and was assigned to the investigation.

Plaintiff's Attempts to Correct and Report Lanford's Illegal Actions and the Harassment, Retaliation, and Discrimination Plaintiff Was Subjected to Because She Engaged in Conduct Protected by the New Mexico Whistleblower Protection Act

37. Although Plaintiff was neither aware of nor involved with that investigation until a meeting on July 7, 2020 with various members of TCPD and SCSO, Lanford blamed her for giving the information that led to the investigation to her husband and, thus, to the SCSO.

38. Word got around, and eventually found its way to then-Mayor Sandra Whitehead, Lanford's mother-in-law. In or around July 2020, Mayor Whitehead approached then-City Manager Morris Madrid and told him he needed to "wrangle [Plaintiff] in" with regard to how she spoke to the Mayor's son-in-law Lanford. That message was conveyed to Chief Apodaca, and subsequently to Plaintiff.

39. In August 2020, Plaintiff had a run-in with Mayor Whitehead in which the Mayor grabbed her roughly by the arm and reprimanded her in a threatening manner about the way Plaintiff was managing an aspect of social media for the City, even though then-City Manager Madrid approved of the manner in which Plaintiff had managed the account.

40. In addition to wrongfully blaming Plaintiff for reporting his illegal actions to the SCSO, Lanford resented Plaintiff questioning him about other shortcomings in his job duties, including that he was frequently taking patrol officers off their shifts leaving coverage for the TCPD short, failing to timely process SANE kits in violation of NMSA 1978, Section 30-9-21, and about other violations and citizen complaints about Lanford's conduct.

41. When confronted about these demonstrated failures to meet his job duties, Lanford acted rudely and insubordinately toward Plaintiff, started to counsel her on how to do her job, and refused to respond to her requests to complete even routine tasks, such as properly handling rape kits or turning in necessary paperwork.

42. Plaintiff expressed these and other concerns to Chief Apodaca. She further raised the fact that Lanford was executing search warrants for the Seventh Judicial District Attorney's office and illegally signing the warrants as a fully commissioned and certified officer when he was not one.

43. In March 2021, Plaintiff went to then-Acting City Manager, Traci Alvarez, regarding Lanford's lack of certification. At that time, one year had passed since Lanford was hired at TCPD and he still refused to get recertified, in clear violation of NMSA 1978, Section 29-7-6, which requires any person employed as a police officer by any law enforcement agency in New Mexico to forfeit his position unless, no later than twelve months after beginning his employment as a police officer, the person satisfies the statutory qualifications for certification.

Lanford's Unfounded and Vindictive Complaints

44. Lanford reacted almost immediately by filing a complaint with then-Acting City Manager, Traci Alvarez, against Plaintiff, on March 15, 2021. In his complaint, Lanford described Plaintiff as "narcissistic, denigrating, arrogant, and unsupporting or outright undermining of her subordinates, which creates a hostile work environment."

45. On April 8, 2021, Plaintiff submitted a detailed rebuttal, which thoroughly and methodically refutes those claims. In the rebuttal, Plaintiff again raised her concerns about Lanford's illegal actions and the potential liability to which those actions exposed the City.

46. In response, and in an apparent attempt to supplement his otherwise anemic claims, Lanford submitted a second complaint on April 23, 2021, in which he claimed Plaintiff "engaged in additional acts of sexual harassment creating a hostile work environment."

47. By the end of April 2021, Erica Baker was the Acting Chief of the TCPD.

Defendants' Gross Mishandling of the Investigation

48. On May 6, 2021, Defendant Bruce Swingle was hired as the City Manager and took over the investigation of Lanford's complaints against Plaintiff.

49. Defendant Swingle admits he did not follow the investigative procedures outlined in the TCPD Policy for Administrative Investigations.

50. Although she was permitted to read Lanford's complaint against her, Plaintiff was never told she was under investigation and was never given a list of what she had allegedly done wrong from the City's perspective.

51. Defendant Swingle hired a contract attorney to investigate Lanford's complaint.

52. The contract attorney's investigation was neither thorough nor fair. For instance, she never spoke with Chief Apodaca, even though he was the highest officer in the chain of command and a key witness to the events underlying Lanford's complaint by all accounts. Moreover, the interviews the contract attorney did conduct included interviews with officers not involved with any of the alleged wrongdoing (but who were friends of Lanford's) and included Lanford's wife (the Mayor's daughter).

53. In her investigation, the contract attorney interviewed Plaintiff, and Plaintiff once again raised her opinions about Lanford's wrongdoing, as well as his apparent inability to report in an appropriate manner to a female supervisor.

54. The contract attorney issued her report on July 1, 2021. Despite not being based on a thorough investigation, the contract attorney's report concluded that Plaintiff had not discriminated against Lanford on the basis of his age, race or gender. She further concluded that the poor relationship between Plaintiff and Lanford was related to Chief Apodaca, Lanford, Plaintiff, and the SCSO, and to Chief Apodaca's decision to have Lanford report directly to him.

55. Although the contract attorney found that Plaintiff's conduct was "unprofessional," she "could not locate evidence of a hostile work environment." Further, the report states that it is unclear Plaintiff violated any City ordinance or standard operating procedure.

56. The contract attorney noted it may be appropriate for Plaintiff to undergo some training or discipline related to this matter, but notably did not recommend or mention termination.

Defendants' Retaliatory Discharge of Plaintiff, Made Against the Recommendation of the Contract Attorney

57. Notwithstanding those findings, one week later, on July 7, 2021, and hours after Plaintiff swore in the new Chief of Police, Defendant Swingle handed Plaintiff a letter of intent to terminate and put her on administrative leave.

58. According to the letter of intent to terminate, the City's decision was based on (1) conspiring with the SCSO "in an inappropriate investigation" that "was nothing more than a political and/or personal witch hunt;" (2) engaging in "unprofessional behavior" by yelling or talking down to Lanford; and (3) threatening Lanford's employment. The letter also complained of how much it cost the City to investigate Lanford's allegations.

Defendants' Violation of Plaintiff's Due Process Rights During the *Loudermill* Hearing

59. On July 15, 2021, City Manager Swingle convened a disciplinary predetermination hearing, also known as a *Loudermill* hearing.

60. The predetermination hearing departed from the requirements of a *Loudermill* hearing in several key respects. Crucially, rather than Defendant Swingle providing the nature of the evidence and the proposed charges against Plaintiff, Plaintiff was compelled to present evidence and arguments to prove her innocence.

61. In spite of the evidence Plaintiff presented at the predetermination hearing, on July 19, 2021, Defendant Swingle terminated Plaintiff's employment. In doing so, he stated he "consider[ed Plaintiff's] behavior to be so concerning and of such magnitude that [he] cannot consider any other discipline short of termination."

62. In spite of that assertion, in the letter of termination, City Manager Swingle provided only three reasons for Plaintiff's termination: (1) that she "conspired against Lanford, [was] complacent (sic) in the sheriff's investigation or used information from the investigation against Lanford;" (2) that "[o]n numerous occasions[, Plaintiff] engaged in unprofessional behavior by yelling and/or talking down to Lanford;" and (3) that "[o]n at least one occasion, [she] threatened Lanford's employment and/or made statements that [she was] working on firing him."

63. Plaintiff timely appealed her termination.

The Hearing Officer's Review of Plaintiff's Termination, Which Revealed Defendants Abused Their Discretion in Terminating Plaintiff

64. On September 23, 2021, an evidentiary hearing to review Plaintiff's termination was held before a Hearing Officer.

65. At the evidentiary hearing, SCSO Sheriff Glenn Hamilton testified and cited evidence that rebuts that Plaintiff conspired with the SCSO to force Lanford to be terminated due to his illegal conduct.

66. In addition, at the evidentiary hearing, Retired Chief of Police Michael Apodaca testified as follows:

Well, what I want to say, and I brought it up to Mr. Appel when he called me about it, I would be derelict in my duty if I was allowing any supervisor, whether it's a frontline supervisor – definitely not my assistant chief, to use their position to intimidate, harass, threaten, annoy, any shape or form, just like – it would be like letting a subordinate be insubordinate to his superior. I would not tolerate any of that activity. So when I heard that this was the reason that you [Plaintiff] were being terminated, I was taken aback. I have never seen you use your position that way. Like I said, that day, the battering back and forth, that was nothing more

than two people not liking each other is what that boiled down to. But that's not you using your position against [Lanford].

67. The Hearing Officer filed his advisory report with the City Commission on October 24, 2021. Applying an abuse of discretion standard, the Hearing Officer's report criticized the City's handling of the complaints against Plaintiff, found several key deficiencies in the City's investigation, and disagreed that Plaintiff's termination was appropriate under the circumstances.

68. In particular, the report found that the City's investigation of Lanford's complaint "was not as thorough or fair as it could have been" because (1) the City failed to interview Chief Apodaca, who was a key witness, and (2) that because "the pre-determination hearing did not provide [Plaintiff] with [her] full due process rights[,] . . . essential requirements of due process were not met in the instant matter."

69. The advisory report further found that the conclusion drawn from the contract attorney's investigation "does not rise to the level of 'substantial proof of guilt,'" which is necessary for the City to prove its General Rules of Conduct and personnel policies were violated.

70. Further, the Hearing Officer found that Plaintiff's termination was not justified. Specifically, he found "that discharge was too punitive."

71. The Hearing Officer noted that "[t]he appropriate disciplinary action should be based upon the severity of the infraction and scaled to the manager's overall competence and managerial style. A competent manager who makes an error may benefit from mentoring, retraining, or a performance improvement plan . . . Deputy Chief Baker's employment record, including her prior experience in disciplining lower ranking officers confirm that her basic competency skills meet expectations."

72. Crucially, the report found that “discharge is not warranted by the evidence presented at the fact-finding hearing.”

73. The Hearing Officer’s report recommended that Plaintiff’s employment be reinstated, that she be demoted to Lieutenant, and that she be awarded full back pay, benefits and seniority at the Lieutenant rank to the date of termination.

74. Notwithstanding the Hearing Officer’s recommendations, the City upheld Plaintiff’s termination.

The Concerns Plaintiff Expressed About Lanford Were Well-Founded

75. Plaintiff’s concerns related to Lanford’s employment were ultimately substantiated.

76. Lanford continued to refuse to perform the tasks necessary to become recertified as a law enforcement officer before March 2021.

77. In April 2021, City Attorney Jaime Rubin agreed with Plaintiff that Lanford’s date of hire as a police officer was March 2020 when he first contracted with TCPD, and that he was required to recertify by March 2021.

78. On April 22, 2021, Lanford was placed on paid administrative leave and decommissioned as a police officer with TCPD.

79. In April or May 2021, the Seventh Judicial District Attorney’s Office was forced to dismiss all cases involving Lanford while he was contracted with the City because Lanford was not a full time employee or fully commissioned or certified officer during that time, and the District Attorney’s Office found that his contract with the City between March and September 2020 was neither legal nor valid.

80. Lanford’s employment was ultimately terminated on June 25, 2021.

81. In addition, the Office of the Attorney General and/or PERA contacted Lanford and told him he could not collect PERA benefits while working for the TCPD. After an investigation by the Office of the Attorney General, Lanford was required to pay back PERA for benefits he received in violation of the double-dipping statute.

Defendants Imposed Different Standards on Male Employees

82. The standards for the City's investigation and the criteria it applied in imposing its disciplinary penalty on Plaintiff differs drastically from the manner in which the City treats its male officers and the criteria it has applied in the past when imposing penalties on male officers for much worse infractions.

83. For instance, the laissez-faire manner in which the City addressed the widespread complaints against Lanford for his illegal actions versus the way it staunchly sought to vindicate his isolated personal complaints against Plaintiff is a prime example of the disparate and discriminatory treatment the City afforded Plaintiff, as one of its first female Deputy Chiefs of Police at the TCPD.

84. As yet another example, there is a male TCPD officer with serial violations in his disciplinary record that the City has repeatedly chosen not to terminate. On one occasion, that officer was caught shooting rabbits that passed through his truck's headlights in a residential neighborhood, potentially with an AR-15, and subsequently charged with criminally negligent use of a deadly weapon. The same officer was the subject of another complaint because a Snapchat video was sent to various members of the public in which the officer's girlfriend rode around on the dashboard or hood of the officer's car, while the officer was driving, after they spent a night drinking at the bar. Yet another complaint was filed against the same officer after he went on Facebook while on shift, identified himself as an officer with TCPD, and harassed a

member of the public, including by taunting that person that he had arrested the person's father-in-law and using the word "douche nozzle" in his public posts. Another administrative investigation against the officer revealed that one night he got "highly intoxicated," that his actions while drunk that night led to two calls for law enforcement intervention within an hour apart for domestic disturbances, that he was not cooperative with the officer called to the scene, and that he made a false claim to the officer that his motorcycle had been stolen when it had not. In spite of these facts, and in contrast to Plaintiff, that officer has not faced termination. After all of these incidents, the highest level of progressive discipline he received was a demotion.

85. On the other hand, the City appears to have reserved termination exclusively as a last-ditch disciplinary action for employees found to have committed serious infractions that are not similar at all to the offenses for which Plaintiff was accused. For example, the few instances of officers recently being terminated from TCPD involve particularly egregious acts that involve harm to third parties, such as officers engaging in multiple heinous instances of animal abuse, wrongfully arresting and detaining minors in an improper investigation, or other similarly extreme infractions.

Defendants' Frivolously Severe Discipline of Plaintiff Has Equally Severe Consequences

86. Due to the City and Defendant Swingle's actions, Plaintiff lost a career in law enforcement, the goodwill she built by being an exemplary officer over the last 15 years, and the monetary benefits that would have been realized upon her retirement. She also was forced to forfeit a rare opportunity to go to the National FBI Academy to which she had been accepted shortly before her termination, along with all the opportunities for job advancement that training would have provided. Now, Plaintiff's record is tarnished and she cannot find comparable work at comparable pay.

CAUSES OF ACTION

**Violations of the New Mexico Whistleblower Protection Act, NMSA 1978, Section 10-16C-3
(Count I – NM Whistleblower Protection Act)**

87. Plaintiff realleges and incorporates by reference all the above paragraphs and all subparagraphs as if they were fully set forth herein.

88. Plaintiff made multiple protected public disclosures when she communicated to employees or agents of the TCPD and Defendant City information about actions she believed in good faith were unlawful or improper.

89. Plaintiff's disclosures and objections concerned the City's practices, procedures, actions or failure to act that: (a) violated federal law, state law, and/or any political subdivision law; (b) constituted malfeasance in public office; and/or (c) constituted gross mismanagement, waste of funds or an abuse of authority.

90. The following statements made by Plaintiff to Chief Apodaca, former City Manager Traci Alvarez, Defendant Swingle, and other employees and agents of Defendant City while she was an employee of Defendant City were conduct protected by NMSA 1978, Section 10-16-3(A): (a) the fact that the TCPD contracted with, hired, and continued to employ Lanford when he had not obtained the requisite certification to act as a fully commissioned law enforcement officer; (b) the fact that Lanford refused to attend a recertification course or fill out the necessary paperwork to get the requisite certification to act as a fully commissioned law enforcement officer; (c) the fact that Lanford performed tasks – such as executing and signing search warrants – that are only permitted when performed by certified and fully commissioned law enforcement officers, when Lanford was not a certified and fully commissioned law enforcement officer at the time; (d) the fact that Lanford made repeated false representations in affidavits that he was a commissioned officer when he was not; (e) the fact that Lanford failed to

timely process SANE kits in violation of NMSA 1978, Section 30-9-21; (f) the fact that Lanford was taking other officers off their shifts and leaving the TCPD short to fulfill its duties; (g) the fact that Lanford was violating the established chain of command by reporting directly to Chief Apodaca and later to Plaintiff's subordinate, Lieutenant Venable, but not to Plaintiff as Deputy Chief of Police and Defendant City and TCPD's endorsement of those violations; and (H) the fact that Lanford was violating NMSA 1978, Section 10-11-8, the double-dipping statute, by not properly disclosing his employment with TCPD to PERA and by continuing to draw benefits from PERA after contracting with Defendant City and/or becoming employed at the City and collecting taxpayer-funded wages.

91. In making these disclosures, Plaintiff acted in good faith out of her concern that Lanford's actions would expose Defendant City to potential liability and would compromise the integrity of the TCPD's active investigations and the ability of the Seventh Judicial District Attorney's Office to prosecute the appropriate parties.

92. Plaintiff's disclosures about Lanford's potential violations of the double-dipping statute were made in good faith and aimed to serve the public interest by assisting in the elimination of fraud, waste, abuse, and unnecessary government expenditures by attempting to prevent excess payment of retirement funds coupled with taxpayer-funded wages.

93. Plaintiff's concerns had a reasonable basis, evidenced by facts available to Plaintiff at the time and subsequently substantiated by the City Attorney, Seventh Judicial District Attorney's Office, Office of the Attorney General, PERA, and others.

94. The following adverse acts were undertaken by Defendants in retaliation for Plaintiff's conduct described in paragraphs 88-93 above and were part of a continuing violation that extended until Plaintiff left Defendant City's employment: (a) launching an unfair and

biased investigation into Lanford's vindictive complaints against Plaintiff; (b) putting Plaintiff on administrative leave while investigating those complaints; (c) subjecting Plaintiff to an investigation that was conducted in a manner that deviated from accepted law enforcement procedure and whose outcome was pre-determined; (d) terminating Plaintiff against the recommendation of the contract attorney Defendant Swingle hired to investigate Lanford's complaint; and (e) upholding her termination notwithstanding the findings of the Hearing Officer that termination was too punitive and not appropriate under the circumstances, and against the Hearing Officer's recommendation that Plaintiff be reinstated with back pay.

95. Defendants retaliated against Plaintiff because of the protected disclosures she made. Indeed, Defendant Swingle cited an alleged conspiracy between Plaintiff and the SCSO to investigate Lanford's improper and unlawful actions – which he called a “witch hunt” – in addition to the fact that the City had to spend thousands of dollars to investigate Lanford's complaints against Plaintiff, as a basis to terminate her. Further, the City was fully aware of the protected disclosures Plaintiff made when it terminated her and when it upheld her termination.

**Violation of the First Amendment to the United States Constitution
Actionable Under 42 U.S.C. Section 1983 (Count II - First Amendment Retaliation)**

96. Plaintiff realleges and incorporates by reference all the above paragraphs and all subparagraphs as if they were fully set forth herein.

97. Defendants wrongfully deprived Plaintiff of her First Amendment right to free speech and retaliated against her for exercising that right.

98. Plaintiff was acting as a private citizen when she communicated to employees and/or agents of the TCPD and Defendant City information about actions she believed in good faith were unlawful or improper.

99. The following statements by Plaintiff to Chief Apodaca, former City Manager Traci Alvarez, Defendant Swingle, and other employees and agents of Defendant City were conduct protected by the free speech clause of the First Amendment to the United States Constitution: (a) the fact that the TCPD contracted with, hired, and continued to employ Lanford when he had not obtained the requisite certification to act as a fully commissioned law enforcement officer; (b) the fact that Lanford refused to attend a recertification course or fill out the necessary paperwork to get the requisite certification to act as a fully commissioned law enforcement officer; (c) the fact that Lanford performed tasks – such as executing and signing search warrants – that are only permitted when performed by certified and fully commissioned law enforcement officers, when Lanford was not a certified and fully commissioned law enforcement officer at the time; (d) the fact that Lanford made repeated false representations in affidavits that he was a commissioned officer when he was not; (e) the fact that Lanford failed to timely process SANE kits in violation of NMSA 1978, Section 30-9-21; (f) the fact that Lanford was taking other officers off their shifts and leaving the TCPD short to fulfill its duties; (g) the fact that Lanford was violating the established chain of command by reporting directly to Chief Apodaca and later to Plaintiff's subordinate, Lieutenant Venable, but not to Plaintiff as Deputy Chief of Police and Defendant City and TCPD's endorsement of those violations; and (h) the fact that Lanford was violating NMSA 1978, Section 10-11-8, the double-dipping statute, by not properly disclosing his employment with TCPD to PERA and by continuing to draw benefits from PERA after contracting with Defendant City and/or becoming employed at the City and collecting taxpayer-funded wages.

100. The disclosures Plaintiff made are a matter of public concern because they regard misconduct which includes double dipping in a public retirement fund that state employees use,

paying wages to a potentially uncertified retired officer, allowing a potentially uncertified officer to investigate narcotic crimes on behalf of Defendant City in violation of state certification laws, the safety of the public related to an uncertified officer acting as a legal officer, and the integrity of the TCPD by employing an uncertified officer.

101. Defendants had no justification for treating Plaintiff differently than a member of the public who voiced those same concerns, and no valid interests as an employer in promoting the efficiency of public service that outweigh Plaintiff's free speech rights.

102. Restricting Plaintiff's free speech rights was not necessary for the City to operate efficiently and effectively as an employer.

103. The following adverse acts were undertaken by Defendants in retaliation for Plaintiff's conduct described in paragraphs 97-102 above and were part of a continuing violation that extended until Plaintiff left Defendant City's employment: (a) launching an unfair and biased investigation into Lanford's vindictive complaints against Plaintiff; (b) putting Plaintiff on administrative leave while investigating those complaints; (c) subjecting Plaintiff to an investigation that was conducted in a manner that deviated from accepted law enforcement procedure and whose outcome was pre-determined; (d) terminating Plaintiff against the recommendation of the contract attorney Defendant Swingle hired to investigate Lanford's complaint; and (e) upholding her termination notwithstanding the findings of the Hearing Officer that termination was too punitive and not appropriate under the circumstances, and against the Hearing Officer's recommendation that Plaintiff be reinstated with back pay.

104. Defendants retaliated against Plaintiff because of the protected disclosures she made. Indeed, Defendant Swingle cited an alleged conspiracy between Plaintiff and the SCSO to investigate Lanford's improper and unlawful actions – which he called a “witch hunt” – in

addition to the fact that the City had to spend thousands of dollars to investigate Lanford's complaints against Plaintiff, as a basis to terminate her. Further, the City was fully aware of the protected disclosures Plaintiff made when it terminated her and when it upheld her termination.

Violations of Article II, Section 17 of the New Mexico Constitution Actionable Under the New Mexico Tort Claims Act (Count III – Article II, Section 17 Retaliation)

105. Plaintiff realleges and incorporates by reference all the above paragraphs and all subparagraphs as if they were fully set forth herein.

106. The following statements by Plaintiff to Chief Apodaca, former City Manager Traci Alvarez, Defendant Swingle, and other employees and agents of Defendant City were conduct protected by the free speech clause of Article II, Section 17: (a) the fact that the TCPD contracted with, hired, and continued to employ Lanford when he had not obtained the requisite certification to act as a fully commissioned law enforcement officer; (b) the fact that Lanford refused to attend a recertification course or fill out the necessary paperwork to get the requisite certification to act as a fully commissioned law enforcement officer; (c) the fact that Lanford performed tasks – such as executing and signing search warrants – that are only permitted when performed by certified and fully commissioned law enforcement officers, when Lanford was not a certified and fully commissioned law enforcement officer at the time; (d) the fact that Lanford made repeated false representations in affidavits that he was a commissioned officer when he was not; (e) the fact that Lanford failed to timely process SANE kits in violation of NMSA 1978, Section 30-9-21; (f) the fact that Lanford was taking other officers off their shifts and leaving the TCPD short to fulfill its duties; (g) the fact that Lanford was violating the established chain of command by reporting directly to Chief Apodaca and later to Plaintiff's subordinate, Lieutenant Venable, but not to Plaintiff as Deputy Chief of Police and Defendant City and TCPD's endorsement of those violations; and (h) the fact that Lanford was violating NMSA 1978,

Section 10-11-8, the double-dipping statute, by not properly disclosing his employment with TCPD to PERA and by continuing to draw benefits from PERA after contracting with Defendant City and/or becoming employed at the City and collecting taxpayer-funded wages.

107. The following adverse acts were undertaken by Defendants in retaliation for Plaintiff's conduct described in paragraph 106 above and were part of a continuing violation that extended until Plaintiff left Defendant City's employment: (a) launching an unfair and biased investigation into Lanford's vindictive complaints against Plaintiff; (b) putting Plaintiff on administrative leave while investigating those complaints; (c) subjecting Plaintiff to an investigation that was conducted in a manner that deviated from accepted law enforcement procedure and whose outcome was pre-determined; (d) terminating Plaintiff against the recommendation of the contract attorney Defendant Swingle hired to investigate Lanford's complaint; and (e) upholding her termination notwithstanding the findings of the Hearing Officer that termination was too punitive and not appropriate under the circumstances, and against the Hearing Officer's recommendation that Plaintiff be reinstated with back pay.

108. Defendants retaliated against Plaintiff because of the protected disclosures she made. Indeed, Defendant Swingle, acting in concert with other employees and agents of TCPD and Defendant City, cited an alleged conspiracy between Plaintiff and the SCSO to investigate Lanford's improper and unlawful actions – which he called a “witch hunt” – in addition to the fact that the City had to spend thousands of dollars to investigate Lanford's complaints against Plaintiff, as a basis to terminate her. Further, the City was fully aware of the protected disclosures Plaintiff made when it terminated her and when it upheld her termination.

109. These violations of the New Mexico Constitution are actionable under NMSA 1978, Section 41-4-12 because they were committed by law enforcement officials acting within

the scope of their duties. Defendant City received actual notice of the alleged violations that occurred prior to April 7, 2021, on or around April 8, 2021 by virtue of Plaintiff's rebuttal to Lanford's formal complaint to the City about her. Defendants received notice of the allegations regarding Defendants' discriminatory and retaliatory actions against Plaintiff on or about December 29, 2021, by virtue of a notice sent by counsel for Plaintiff, and again on or before January 16, 2022, by virtue of receipt of the signed Charge of Discrimination Plaintiff dual-filed with the Equal Employment Opportunity Commission (EEOC) and New Mexico Human Rights Bureau (HRB).

Violations of the Fourteenth Amendment to the United States Constitution Actionable Under 42 U.S.C. Section 1983 (Count IV – Federal Due Process)

110. Plaintiff realleges and incorporates by reference all the above paragraphs and all subparagraphs as if they were fully set forth herein.

111. Defendants subjected Plaintiff to termination without providing proper notice of the charge or an adequate opportunity to be heard.

112. Plaintiff, as a classified employee, had a property interest in her position.

113. In investigating Lanford's complaints against Plaintiff, Defendant Swingle admits he did not follow the investigative procedures outlined in the TCPD Policy for Administrative Investigations.

114. Although she was permitted to read Lanford's complaint against her, Plaintiff was never told she was under investigation and was never given a list of what she had allegedly done wrong from the City's perspective.

115. The Hearing Officer's advisory report, filed with the City Commission on October 24, 2021, criticized the City's handling of the complaints against Plaintiff, found several

key deficiencies in the procedures applied during the City's investigation, and disagreed that Plaintiff's termination was appropriate under the circumstances.

116. The City's investigation of Lanford's complaint was biased and deficient, in part because the City failed to interview Chief Apodaca, who was a key witness, as reflected in a finding made by the Hearing Officer.

117. The July 15, 2021, disciplinary predetermination hearing, also known as a *Loudermill* hearing, which Defendant Swingle conducted, did not provide Plaintiff with her full due process rights. Accordingly, essential requirements of due process were not met in the instant matter.

118. The predetermination hearing departed from the requirements of a *Loudermill* hearing in several key respects. Crucially, rather than Swingle providing the nature of the evidence and the proposed charges against Plaintiff, Plaintiff was compelled to present evidence and arguments to prove her innocence.

119. In spite of the overwhelming evidence Plaintiff presented at the predetermination hearing and the evidentiary hearing the Hearing Officer conducted, and in spite of the recommendations of the contract attorney Defendants hired to investigate Lanford's complaints and the recommendations of the Hearing Officer that reviewed Plaintiff's termination, Defendants terminated Plaintiff and the City Commission upheld her termination.

120. This conduct deprived Plaintiff of her due process rights in violation of the Fourteenth Amendment to the United States Constitution. This claim is actionable under 42 U.S.C. Section 1984 and is brought pursuant to that statute.

Violations of Article II, Section 18 of the New Mexico Constitution Actionable Under the New Mexico Tort Claims Act (Count V – Article II, Section 18 Due Process)

121. Plaintiff realleges and incorporates by reference all the above paragraphs and all subparagraphs as if they were fully set forth herein.

122. Defendants subjected Plaintiff to termination without providing proper notice of the charge or an adequate opportunity to be heard.

123. Plaintiff, as a classified employee, had a property interest in her position.

124. In investigating Lanford's complaints against Plaintiff, Defendant Swingle admits he did not follow the investigative procedures outlined in the TCPD Policy for Administrative Investigations. In addition, Defendants did not conduct their investigation in compliance with the Peace Officer's Employer-Employee Relations Act, and specifically in compliance with NMSA 1978, Section 29-14-4, which sets forth mandatory requirements for conducting an investigation of a police officer that, as in this case, could result in administrative sanctions being taken against the officer.

125. Although she was permitted to read Lanford's complaint against her, Plaintiff was never told she was under investigation and was never given a list of what she had allegedly done wrong from the City's perspective.

126. The Hearing Officer's advisory report, filed with the City Commission on October 24, 2021, criticized the City's handling of the complaints against Plaintiff, found several key deficiencies in the City's investigation, and disagreed that Plaintiff's termination was appropriate under the circumstances.

127. The City's investigation of Lanford's complaint was biased and deficient, in part because the City failed to interview Chief Apodaca, who was a key witness.

128. In addition, the July 15, 2021, disciplinary predetermination hearing, also known as a *Loudermill* hearing, which Defendant Swingle conducted, did not provide Plaintiff with her full due process rights. Accordingly, essential requirements of due process were not met in the instant matter.

129. The predetermination hearing departed from the requirements of a *Loudermill* hearing in several key respects. Crucially, rather than Swingle providing the nature of the evidence and the proposed charges against Plaintiff, Plaintiff was compelled to present evidence and arguments to prove her innocence.

130. In spite of the overwhelming evidence Plaintiff presented at the predetermination hearing and the evidentiary hearing the Hearing Officer conducted, and in spite of the recommendations of the contract attorney Defendants hired to investigate Lanford's complaints and the recommendations of the Hearing Officer that reviewed Plaintiff's termination, Defendants terminated Plaintiff and the City Commission upheld her termination.

131. This conduct deprived Plaintiff of her due process rights and violated the due process clause of Article II, Section 18 of the New Mexico Constitution. This claim is actionable under the New Mexico Tort Claims Act and is brought pursuant to that Act.

132. Defendants received notice of the allegations regarding Defendants' discriminatory and retaliatory actions against Plaintiff on or about December 29, 2021, by virtue of a notice sent by counsel for Plaintiff, and again on or before January 16, 2022, by virtue of receipt of the signed Charge of Discrimination Plaintiff dual-filed with the Equal Employment Opportunity Commission (EEOC) and New Mexico Human Rights Bureau (HRB).

**Violations of Title VII of the Federal Civil Rights Act for Sex-Based Discrimination
(Count VI – Title VII Sex-Based Discrimination)**

133. Plaintiff realleges and incorporates by reference all the above paragraphs and all subparagraphs as if they were fully set forth herein.

134. Title VII of the Federal Civil Rights Act prohibits employers from discharging or otherwise discriminating against any individual and from depriving an employee of employment opportunities or otherwise adversely affecting an employee's status as an employee based on sex. 42 U.S.C. § 2000e-2.

135. Defendants intentionally discriminated against Plaintiff under Title VII by: (a) terminating her employment, contrary to the recommendation of the contract attorney Defendants hired to investigate Lanford's complaints against Plaintiff, and (b) upholding her termination against the findings and recommendation of the Hearing Officer that reviewed Plaintiff's termination.

136. In both instances, Plaintiff's sex was a motivating factor for Defendants' actions.

137. During Plaintiff's ten-year employment with the City, there were very few female law enforcement officers employed by the City or TCPD.

138. At the time of Plaintiff's termination, there was only one other female TCPD officer, and that officer was a family member of a City Commissioner.

139. Plaintiff was only one of two female officers that achieved the rank of Deputy Chief of Police or higher within TCPD during her ten-year employment with the City.

140. When Lanford was employed by Defendant City at the TCPD before his retirement, he was allowed to violate the chain of command by circumventing the female Captain who was his direct superior and reporting directly to the male Chief of Police.

141. After Defendant City hired Lanford as a contract detective in March 2020, it allowed him to circumvent the normal chain of command and report directly to Chief Apodaca, even though Plaintiff was Deputy Chief of Police at the time and Lanford was her subordinate and supposed to report to her.

142. Later, Defendant City allowed Lanford to circumvent the chain of command again, this time by allowing Lanford to report to one of Plaintiff's male subordinates instead of her, even though Plaintiff was Deputy Chief of Police at the time and Lanford was her subordinate and supposed to report to her.

143. The City did not permit any female TCPD officer to circumvent the chain of command in a similar manner.

144. The standards for the City's investigation and the criteria it applied in imposing its disciplinary penalty on Plaintiff differs drastically from the manner in which the City treats its male officers and the criteria it has applied in the past when imposing penalties on male officers for much worse infractions.

145. For instance, the lax manner in which the City addressed the widespread complaints against Lanford for his illegal actions versus the way it staunchly sought to vindicate his isolated personal complaints against Plaintiff is a prime example of the disparate and discriminatory treatment the City afforded Plaintiff, as one of its first female Deputy Chiefs of Police at the TCPD.

146. Similarly, the City has chosen not to terminate other male TCPD officers with serial violations in their disciplinary record, even when those violations include serious offenses, such as being charged with and pleading no contest to a crime or having a sexual relationship with a Field Training Officer.

147. On the other hand, the City appears to have reserved termination exclusively as a last-ditch disciplinary action for employees found to have committed serious infractions that are not similar at all to the offenses for which Plaintiff was accused. For example, the few instances of officers recently being terminated from TCPD involve particularly egregious acts that involve harm to third parties, such as officers engaging in multiple heinous acts of animal abuse, wrongfully arresting and detaining minors in an improper investigation, or other similarly extreme infractions.

148. The City's Personnel Policy includes a provision for progressive discipline and includes the language "an employee shall be progressively disciplined whenever warranted . . . The step of corrective action used depends on the severity of the infraction, the employee's previous work record, years of employment, and the employee's status within the organization." See CITY OF TRUTH OR CONSEQUENCES, N.M., BD. OF CITY COMM'RS ORDINANCE NO at 23 (2021), <https://cms5.revize.com/revize/truthorconsequences/Personnel%20Policy.pdf> (emphasis added).

149. Defendants violated this policy when they terminated Plaintiff without imposing any progressive discipline whatsoever, in spite of the minor nature of Plaintiff's alleged infraction, as well as Plaintiff's exemplary previous work record, decade of employment with Defendant City, and status as Deputy Chief of Police and Acting Chief of Police within TCPD.

150. Defendants have not violated this policy when disciplining Plaintiff's male counterparts.

151. In terminating Plaintiff, the City also acted contrary to its own unwritten policy and procedure to impose the lowest effective level of discipline on any TCPD officer accused of wrongdoing.

152. Defendants have not acted contrary to this unwritten policy when disciplining Plaintiff's male counterparts.

153. To the extent Defendants' employment and discipline practices can be considered fair in form, they still are discriminatory in operation when the effect is that female officers, such as Plaintiff, are discharged for relatively minor offenses, while male officers are not.

154. Defendants' application of its investigative and disciplinary policies, procedures, and practices is discriminatory in nature because they disparately impact female employees.

155. This conduct constitutes a violation of Title VII of the Federal Civil Rights Act for sex-based discrimination.

**Retaliation Actionable Under Title VII of the Civil Rights Act
(Count VII – Title VII Retaliation)**

156. Plaintiff realleges and incorporates by reference all the above paragraphs and all subparagraphs as if they were fully set forth herein.

157. Title VII prohibits an employer from discriminating against an employee because the employee opposed an unlawful employment practice. 42 U.S.C. § 2000e-3(a).

158. Plaintiff engaged in a protected opposition to discrimination when she reported Defendant City's complicity with Lanford's sexist behavior, including but not limited to Defendants' endorsement of Lanford's violations of the chain of command and accommodation of a male officer's apparent inability to report respectfully to a female senior officer.

159. That protected opposition resulted in Plaintiff incurring harassment from the Mayor, having to defend herself against Lanford's vindictive complaints in a biased and unfair investigation, and ultimately being terminated without just cause.

160. This conduct constitutes retaliation in violation of Title VII of the Federal Civil Rights Act.

Violations of Section 28-1-7(A) of the New Mexico Human Rights Act for Sex-Based Discrimination (Count VIII – NMHRA Sex-Based Discrimination)

161. Plaintiff realleges and incorporates by reference all the above paragraphs and all subparagraphs as if they were fully set forth herein.

162. The New Mexico Human Rights Act prohibits an employer from discharging or discriminating against an otherwise qualified employee based on the employee's sex. NMSA 1978, § 28-1-7(A).

163. Generally, courts evaluate an NMHRA claim under the same standard as a federal Title VII claim.

164. Plaintiff, one of the first female Deputy Chiefs of Police for Defendant City, was fit to continue her employment outside of the alleged infractions contained in Lanford's baseless complaints, as evidenced by the comments of Chief Apodaca, the contract attorney Defendants hired to investigate Lanford's complaints, and the Hearing Officer charged with reviewing Plaintiff's termination.

165. The day of Plaintiff's termination, she swore in Victor Rodriguez as the new Chief of Police.

166. Since Plaintiff's termination, none of the highest ranking officers at TCPD, from the Chief down to the Sergeants, are women.

167. This conduct constitutes a violation of Section 28-1-7(A) of the New Mexico Human Rights Act for sex-based discrimination.

Violations of Section 28-1-7(A) of the New Mexico Human Rights Act for Discrimination Based on Spousal Affiliation (Count IX – NMHRA Spousal Affiliation Discrimination)

168. Plaintiff realleges and incorporates by reference all the above paragraphs and all subparagraphs as if they were fully set forth herein.

169. The NMHRA prohibits an employer from discharging or discriminating against an otherwise qualified employee based on the employee's spousal affiliation. § 28-1-7(A) (2001).

170. Defendants blamed Plaintiff for the SCSO's investigation into Lanford's illegal actions because she is married to Lieutenant Josh Baker, who was tasked with conducting that investigation.

171. Defendants admit they terminated Plaintiff, at least in part, because she allegedly conspired with the SCSO and her husband to investigate Lanford's illegal actions.

172. In particular, according to Defendant Swingle's letter of intent to terminate Plaintiff, the City made the decision to terminate Plaintiff because she allegedly conspired with the SCSO "in an inappropriate investigation" that "was nothing more than a political and/or personal witch hunt" and that she "conspired against Lanford, [and was] complacent (sic) in the sheriff's investigation or used information from the investigation against Lanford."

173. Defendants' justification for Plaintiff's termination is inseparable from the fact that Plaintiff's husband is a Lieutenant with the SCSO.

174. This conduct constitutes a violation of Section 28-1-7(A) of the New Mexico Human Rights Act for spousal affiliation.

**Violations of the Equal Protection Clause of the United States Constitution Actionable
Under 42 U.S.C. Section 1983 (Count X – Equal Protection)**

175. Plaintiff realleges and incorporates by reference all the above paragraphs and all subparagraphs as if they were fully set forth herein.

176. The Fourteenth Amendment to the United States Constitution provides that "[n]o State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 2. The Equal Protection Clause keeps

governmental decision makers from treating differently persons who are in all relevant respects alike.

177. At its core, the Equal Protection Clause functions as a constitutional guarantee that no person or group will be denied the protection under the law that is enjoyed by similar persons or groups. Persons similarly situated must be similarly treated.

178. Although similarly situated to her male counterparts, Plaintiff was not similarly treated.

179. Defendants' biased and unfair investigation of Plaintiff's alleged actions, termination of her employment, and subsequent upholding of her termination constitutes adverse employment action on the part of Defendants.

180. The different treatment Defendants afforded Plaintiff in investigating Lanford's complaints and disciplining her for those complaints was not based on a sufficient state interest.

181. The different treatment Defendants afforded Plaintiff was not narrowly tailored to meet a sufficient state interest.

182. The different treatment Defendants afforded Plaintiff in investigating Lanford's complaints and disciplining her for those complaints was not the least restrictive means of meeting whatever state interest underlies Defendants' actions.

183. The treatment Defendants afforded Plaintiff in investigating Lanford's complaints and disciplining her for those complaints was done because of, not in spite of, Defendants' differential treatment of its female employees.

184. The discriminatory effect of the different treatment Defendants afforded Plaintiff in investigating Lanford's complaints and disciplining her for those complaints was the intended consequence of Defendants' actions.

185. This conduct constitutes a violation of the Equal Protection Clause of the United States Constitution and is actionable under 42 U.S.C. Section 1983.

**Conspiracy Actionable Under 42 U.S.C. Section 1985
(Count XI – Section 1985 Conspiracy)**

186. Plaintiff realleges and incorporates by reference all the above paragraphs and all subparagraphs as if they were fully set forth herein.

187. Defendant Swingle, Defendant City, then-Mayor Sandra Whitehead, and various other employees and agents of Defendant City conspired to deprive Plaintiff of equal protection or equal privileges and immunities by working together to harass her and wrongfully terminate her employment, based at least in part on her sex.

188. In furtherance of this conspiracy, Defendant Swingle worked in concert with other employees and agents of Defendant City to fulfill then-Mayor Whitehead's wishes to "wrangle [Plaintiff] in" by conducting a pretextual investigation into Plaintiff with the pre-determined outcome that Plaintiff would ultimately be terminated.

DAMAGES

189. As a direct and proximate result of the acts and omissions of the City, its employees, and Defendant Swingle, Plaintiff suffered and continues to suffer substantial emotional pain and suffering, humiliation and embarrassment, loss of income, a corresponding loss of ability to pay bills and other necessary household expenses, and injury to future employment prospects.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, Plaintiff demands that a jury hear all issues and claims triable of right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief against Defendants:

1. Compensatory damages, including damages for emotional distress, in an amount to be determined by the jury.
2. Double back pay as provided by NMSA 1978, §10-16C-4.
3. Reinstatement with the same seniority status that Plaintiff would have had but for Defendants' violations, as provided by NMSA 1978, § 10-16C-4.
4. Future lost income.
5. Punitive damages.
6. Pre-judgment and post-judgment interest as allowed by law.
7. Reasonable attorneys' fees and costs of suit as provided by 42 U.S.C. § 1988 and NMSA 1978, §10-16C-4.
8. Such other and further relief as the Court deems just and proper.

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By /s/ Melanie B. Stambaugh

Linda M. Vanzi

Melanie B. Stambaugh

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Albuquerque, New Mexico 87103

Telephone: (505) 765-5900

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Attorneys for Plaintiff Erica Baker

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ERICA BAKER

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Linda M. Vanzi and Melanie B. Stambaugh, Rodey, Dickason, Sloan, Akin & Robb, P.A., PO Box 1888, Albuquerque, NM 87103-2888. (505) 765-5900

DEFENDANTS

CITY OF TRUTH OR CONSEQUENCES and CITY MANAGER BRUCE SWINGLE

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 1983; 42 U.S.C. § 2000e-2. Brief description of cause: civil rights: sex-based discrimination, equal protection, retaliation, whistleblower protection

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 08/02/2022 SIGNATURE OF ATTORNEY OF RECORD /s/ Melanie B. Stambaugh

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE