

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

DONALD WAYNE O'NEAL,

Plaintiff,

v.

Case No. 20 3248 CD

CITY OF FRASER,

CARL J. MARLINGA

Defendant.

_____/

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BONANNI & RIVERS
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MACOMB COUNTY CLERK
MT. CLEMENS, MICHIGAN

2020 SEP 10 AM 9:16

FILED

COMPLAINT AND DEMAND FOR JURY TRIAL

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a Judge.

/s/ Robert W. Palmer

Plaintiff, DONALD WAYNE O'NEAL, (hereinafter "Wayne O'Neal") by and through his counsel, PITT, McGEHEE, PALMER, BONANNI & RIVERS, complains against Defendant, CITY OF FRASER, as follows:

1. Plaintiff is a resident of Macomb County, Michigan and former employee of

City of Fraser ("the City").

2. Defendant City of Fraser is a municipal corporation located in Macomb County, Michigan.

3. This Court has jurisdiction over this matter pursuant to MCL 15.363(2) which provides that an action under the Whistleblower's Protection Act "may be brought in the circuit court for the county where the alleged violation occurred, the county where the complainant resides or the county where the person against whom the civil complaint is filed resides or has his or her principal place of business".

4. The Macomb County Circuit Court also has subject matter jurisdiction over this matter pursuant to MCL § 600.605 because the amount in controversy exceeds Twenty-Five Thousand (\$25,000.00) Dollars.

5. Venue is proper in this Court because the parties reside in Macomb County, Michigan and the events giving rise to the actions occurred in the City of Fraser, County of Macomb, State of Michigan.

6. Plaintiff's claims are timely under all applicable statutory provisions, the Michigan Court Rules and pursuant to Michigan Supreme Court Administrative Order No. 2020-3.

GENERAL ALLEGATIONS

7. Plaintiff began his employment with the City of Fraser on January 2, 2017 as interim city manager. He was permanently hired into that position on July 1, 2017.

8. As City Manager, the Plaintiff was required to perform the duties and responsibilities of the City Manager as set forth in the City of Fraser Code of Ordinances, as directed by the City Council and/or as required by law.

9. As part of his responsibilities, Plaintiff was required to do the following:
 - a. Direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by the Charter and/or by ordinance;
 - b. Attend all council meetings;
 - c. See that the laws, provisions of the charter, and acts of the council, subject to enforcement by him or by officers subject to his direction and supervision are faithfully exercised;
 - d. Make any reports as the council may require concerning the operation of the City departments, offices and agencies subject to his direction and supervision; and
 - e. Keep the council advised as to the financial condition and future needs of the City, and make such recommendations to the council concerning the affairs of the City as he deems necessary or appropriate for the improvement of the City and/or its services;

10. In December 2018, Plaintiff was required by the City Council to do a Michigan Municipal League (MML) wage survey to determine whether the City of Fraser's department heads' salary levels were comparable to other similarly situated communities.

11. The aforementioned survey was completed on or before January 3, 2019.

12. The aforementioned survey and report specifically noted that the three female department heads, specifically Christina Woods, the Parks and Recreation Director, Kelly Ann Dollard, City Clerk, and Michelle Kwiatkowski, IT Director were paid disparately low both in terms of their non-Fraser comparables, and with respect to the male directors and

administrators within the City of Fraser.

13. As a result of his study and report, Plaintiff prepared a recommendation to the City of Fraser that there be an across the board 2% raise to all male department heads, and further that the female department heads receive raises to bring them in line with their male counterparts.

14. At the time the Plaintiff prepared this report, he felt and believed in good faith based upon the evidence gathered that the disparate pay to female directors and department heads violated the Equal Pay Act, 29 USC § 206(d)(1) as well as both state and federal civil rights laws, including Title VII and the Elliott-Larsen Civil Rights Act.

15. The aforementioned recommendation to reduce this disparity through a pay increase for female employees was initially placed on the City Council agenda for January 10, 2019.

16. Prior the January 10, 2019 meeting, Plaintiff had discussions with the City administration relative to his findings and specifically indicated that the disparate pay received by the female department heads/directors violated the aforementioned laws.

17. Prior to January 10, 2019 council meeting, the Plaintiff's request for approval of salary adjustments for various department head positions was removed from the council meeting agenda and was not discussed on the record at that time.

18. Throughout the first 6 months of 2019, Plaintiff repeatedly informed the mayor and the council that there was a potential problem with this pay disparity for female department heads and that if the problem was not corrected, he was concerned that the female department heads would pursue legal claims through the EEOC and/or a lawsuit.

19. In May or June of 2019, the City Council formed a subcommittee to review the

wages of department heads and made a recommendation to the council. Plaintiff was not appointed to this subcommittee.

20. The aforementioned 3 female department heads filed a lawsuit on July 18, 2019 alleging civil rights violations based on disparate pay, Case No. 2019-002843-CD.

21. Although not part of the subcommittee, Plaintiff repeatedly voiced his concerns to the Council and the Mayor that the disparate treatment of the female department heads was illegal.

22. On or about February 19, 2020, Plaintiff gave a deposition in Case No. 2019-002843-CD and at that time testified truthfully as to the following:

- a. That he had conducted an MML wage survey;
- b. That he had concluded that the female department heads were paid significantly less than their male counterparts;
- c. That he had recommended as early as January of 2019 that pay adjustments be implemented;
- d. That although a subcommittee had been appointed by the council, he had not been appointed to said subcommittee;
- e. That he agreed the female departments heads had received disparate treatment because of their sex/gender;
- f. That the City of Fraser had been unwilling to address the above issue;
and
- g. That he had made recommendations for pay adjustments that were initially placed on the January 10, 2019 agenda and that that agenda item was in fact removed by the council.

23. On June 4, 2020 a transcript of Plaintiff's deposition was forwarded to all council members by councilwoman Amy Baranski for review.

24. On June 11, 2020, one week after the deposition was disseminated, Plaintiff was advised that he would be terminated on August 11, 2020.

25. On August 11, 2020 Plaintiff was in fact terminated from his position without cause.

26. At all times material hereto, Plaintiff carried out the duties of his position in an exemplary manner and in accord with the law.

27. As a direct result of the adverse treatment alleged above, Plaintiff has experienced and will continue to experience economic damages, including lost wages and benefits and other forms of compensation, both past and future.

28. As a direct result of the adverse treatment alleged above, Plaintiff has experienced and will continue to experience non-economic damages, including, but not limited to mental anguish, outrage, embarrassment and other pain and suffering.

COUNT I

29. Plaintiff incorporates all of the above allegations by reference.

30. The Whistleblower Protection Act, MCLA 15.362, et seq. provides:

An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee or a person acting on behalf of the employee, reports, or is about to report, verbally or in writing, a violation or a suspected violation of a law or a regulation or rule promulgated pursuant to law of this State, a political subdivision of this State, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requests by a public body to participate in an investigation, hearing, or inquiry held by the public body, or a court action.

31. Plaintiff engaged in protected activity under the Whistleblowers' Protection Act because he specifically reported a violation of the Equal Pay Act, ELCRA and Title VII to the administration of the City of Fraser, including the City Council and the Mayor and further, participated in an investigation regarding pay disparity, and further, specifically was involved in civil litigation including giving his deposition on or about February 19, 2020.

32. Defendant had knowledge of Plaintiff's protected activities.

33. Defendant took adverse action against Plaintiff because of the above protected activities by terminating the Plaintiff on August 11, 2020.

34. As a direct and proximate result of the Defendant's violations of the Whistleblower Protection Act, Plaintiff has experienced and will continue to experience all of the damages alleged in this complaint.

WHEREFORE, Plaintiff requests this Court enter a judgment in his favor against Defendant and award Plaintiff economic and non-economic damages sustained as a direct and proximate result of Defendant's conduct, along with all other legal, equitable and injunctive relief deemed appropriate at the time of the final judgment, together with costs and interest, attorney fees and all such other relief as this Court deems just and proper.

Respectfully submitted,

PITT, McGEHEE, PALMER,
BONANNI & RIVERS

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Dated: September 10, 2020