

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

ADAM SMIDDY,

Plaintiff,

-v-

Case No. 18-30101CD
Judge:

JUDGE HATTY
P-30990

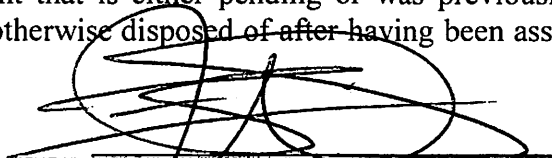
LIVINGSTON COUNTY,
a Michigan Municipal Corporation, and
HANSEL KEENE,
in his individual and corporate capacities,

Defendants.

FILED
LIVINGSTON COUNTY CLERK
2018 NOV 21 PM 3:33

BOGAS & KONCIUS P.C.
BRIAN E. KONCIUS (P69278)
Attorneys for Plaintiff
31700 Telegraph Road, Suite 160
Bingham Farms, MI 48025
(248) 502-5000
office@kbogaslaw.com

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, nor do I know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this court.


BRIAN E. KONCIUS (P69278)

COMPLAINT AND DEMAND FOR JURY TRIAL

NOW COMES Plaintiff, ADAM SMIDDY, by and through his attorneys, BOGAS & KONCIUS P.C., and state as follows:

PARTIES AND JURISDICTION

1. Plaintiff Adam Smiddy is a resident of the City of Howell, Livingston County, Michigan.

2. Defendant Livingston County is a Michigan Municipal Corporation with its administrative offices located at 304 E. Grand River Avenue, Howell, Livingston County, Michigan.

1. Defendant Livingston County is an employer as defined by the Michigan Whistleblower's Protection Act, MCLA § 15.361, et seq.

2. Defendant Livingston County's Board of Commissioners has appointed a five-member Veterans Affairs Committee pursuant to the County Department of Veterans' Affairs Act (MCL 35.621 et al).

3. Defendant Hansel Keene is the Chairman and member of the Veterans Affairs Committee of Defendant Livingston County and, upon information and belief, is a resident of the City of Howell, Livingston County, Michigan.

4. As member and Chair of the Veterans Affairs Committee, Defendant Keene is an employer as defined by the Michigan Whistleblower's Protection Act, MCLA § 15.361, et seq.

5. The amount in controversy exceeds \$25,000 exclusive of interests and costs.

6. Plaintiff Smiddy was employed by Defendants in Livingston County, Michigan.

7. The events giving rise to the causes of action pled herein occurred in Livingston County, Michigan.

GENERAL ALLEGATIONS

8. Plaintiff Smiddy incorporates by reference herein the allegations contained in the

preceding paragraphs.

9. Plaintiff Smiddy was employed by Defendants from on or about July 5, 2017 until August 28, 2018 when he was informed of his termination. The termination decision itself was allegedly made on August 27, 2018.

10. Plaintiff Smiddy served in the United States Army from November 2006 to February 2016 as a Special Forces (Green Beret) Communications Sergeant and was honorably discharged.

11. Plaintiff Smiddy was hired as Director of Veteran Services for Livingston County on or about July 5, 2017 and, at all times, he performed satisfactorily or better in this position.

12. Plaintiff Smiddy reported to both (1) Defendant Livingston County's Board of Commissioners and (2) the Veterans Affairs Committee, the Chair of which was/is Defendant Keene.

13. As Director of Veterans Affairs, Plaintiff Smiddy was responsible for, amongst other things, overall, day to day, management of the Veteran Services Department and its operations, supervising the employees of the Department, budget processing and requests, , coordinating veterans' programs, interacting with and counseling the veterans of and/or citizens of Livingston County concerning Veterans affairs, resources, and benefits, including donations.

14. On Thursday, August 23, 2018, Plaintiff Smiddy was forwarded an email sent to the Veterans Affairs office on or about 9:07 p.m. on August 22, 2018 written and sent by a Livingston County resident (the "Resident"). The Resident stated she had donated a number of items to the Veterans Services Committee, giving both \$400 in "cash" for a memorial plaque and in-kind donations (*e.g.*, a used riding lawn mower, a new vacuum cleaner, and a new floor cleaner). She noted that she had given these items to Defendant Keene. She stated that although

she had repeatedly asked Defendant Keene for a receipt, Keene had not provided one. The Resident asked for assistance in securing this receipt.

15. That same day, on Thursday, August 23, 2018, Plaintiff Smiddy reported his concerns about the Resident's request to the County Administrator, Ken Hinton, because Plaintiff Smiddy had never been made aware of the \$400 donation or the in-kind items donated. He suspected a misappropriation of these items by Defendant Keene. Administrator Hinton recommended that Plaintiff Smiddy ask the Resident for a copy of the \$400 check and instructed Plaintiff Smiddy to cooperate with the Defendant County's legal offices.

16. On Friday, August 24, 2018, on the instructions of Administrator Hinton, Plaintiff Smiddy spoke to Defendant Keene concerning the Resident's donations and what had become of them. During this conversation, Defendant Keene admitted cashing the check but only using \$125 toward the plague and retaining the balance. Further, Defendant Keene stated that he had "scrapped" the lawnmower and other items (vacuum and floor cleaner) were being kept by him in his garage.

17. Plaintiff Smiddy responded that that Defendant Keene needed to provide a copy of the deposit slip for the check, a receipt from the scrap yard (evidencing the value given to Defendant Keene), and that Defendant Keene had to return the items that were in Defendant Keene's garage.

18. The following Monday, August 27, 2018, four of the members of the Veterans Affairs Committee voted to terminate Plaintiff Smiddy's employment effective August 28, 2018. Upon information and belief, Defendant Keene improperly influenced these members to terminate Plaintiff Smiddy's employment because of the Plaintiff Smiddy's reports of possible misappropriation by Defendant Keene to Administrator Hinton and to Defendant Keene.

19. Prior to Plaintiff Smiddy's reports to Administrator Hinton and Defendant Keene and his notification of his termination, Plaintiff Smiddy had not received any negative performance reviews nor had he been informed that his position was in jeopardy based on allegations of poor performance.

20. The alleged performance issues raised on August 28, 2018 with Plaintiff Smiddy were never addressed previously, were never raised contemporaneous with the alleged incidents, and/or many of these pertained to incidents that had occurred months prior to and all were *before* the reports Plaintiff Smiddy made on August 23 and August 24.

21. Plaintiff has suffered an unjust loss or injury by the actions of Defendants including, but not limited to, loss of employment and employment opportunities, loss of past and future employment income and fringe benefits, mental and emotional distress and the physical effects thereof.

**COUNT I - VIOLATION OF THE
MICHIGAN WHISTLEBLOWER'S PROTECTION ACT**

22. Plaintiff Smiddy incorporates by reference herein the allegations contained in the foregoing paragraphs.

23. Plaintiff Smiddy's reports of violations and/or suspected fraud and misappropriation to Administrator Hinton and Defendant Keene constitute protected activity under Michigan's Whistleblower Protection Act, MCLA § 15.361, *et seq.*

24. Defendants violated Michigan's Whistleblower Protection Act by intentionally discriminating against Plaintiff Smiddy as described herein regarding the terms, benefits, conditions and privileges of employment because he reported a violation or suspected violation of a law, regulation, or rule of the State or Michigan and/or of the United States or a political subdivision of the State or Michigan and/or of the United States to a public body.

25. As a direct and proximate result of Defendants' violation of Michigan's Whistleblower Protection Act, Plaintiff Smiddy has suffered bodily injury, emotional and physical distress, mental and physical anguish, feelings of depression, loss of reputation, humiliation and embarrassment and the physical manifestations thereof, and will so suffer in the future.

26. As a further direct and proximate result of Defendants' violation of Michigan's Whistleblower Protection Act, Plaintiff Smiddy has been placed in financial distress and has suffered a loss of earnings and benefits, a loss and impairment of his earning capacity and ability to work, and will so suffer in the future; he has been required to obtain legal services in order to bring this lawsuit and will suffer additional damages in the future.

WHEREFORE, Plaintiff Smiddy asks that this Honorable Court grant the following remedies:

- a. declare that the aforementioned practices and actions of Defendants constitute unlawful employment practices in violation of Michigan's Whistleblower Protection Act;
- b. reinstate Plaintiff to his position with appropriate salary and benefits;
- c. award Plaintiff all lost wages, past and future, to which he is entitled;
- d. award Plaintiff compensatory damages;
- e. award Plaintiff exemplary damages;
- f. award Plaintiff reasonable attorney fees, costs and interest; and
- g. award such other legal and equitable relief as this Court deems just and proper.

COUNT II
VIOLATION OF MICHIGAN PUBLIC POLICY

27. Plaintiff Smiddy incorporates by reference herein the allegations contained in the preceding paragraphs.

28. An employee's discharge violates Michigan's public policy if any one of the following occurs: (1) the employee is discharged in violation of an explicit legislative statement prohibiting discharge of employees who act in accordance with a statutory right or duty; (2) the employee is discharged for the failure or refusal to violate the law in the course of employment; or (3) the employee is discharged for exercising a right conferred by a well-established legislative enactment.

29. Plaintiff Smiddy was protected from discipline, adverse treatment or termination by Defendants under Michigan's public policy which protects public employees, such as Plaintiff Smiddy, from dismissal from employment for reporting or about to report violations of the standards of conduct for public officers and employees as set forth in the Standards of Conduct Act, MCLA § 15.341, *et seq.*

30. As a direct and proximate consequence of Plaintiff's reports as set forth herein, Defendants retaliated against Plaintiff, as described herein, by terminating his employment.

31. Defendants' retaliation against and termination of Plaintiff's employment was a violation of the public policy of the State of Michigan, including a violation of the Standards of Conduct Act, MCLA § 15.341, *et seq.*

32. Defendants retaliated against and terminated Plaintiff in whole or in part because of his conduct in conformance with the public policy of the State of Michigan *to-wit*, his reports or about to reporting of violations of the standards of conduct for public officers and employees as set forth in the Standards of Conduct Act, MCLA § 15.341, *et seq.*

33. As a direct and proximate result of Defendants' violation of public policy, Plaintiff Smiddy has suffered bodily injury, emotional and physical distress, mental and physical

anguish, feelings of depression, loss of reputation, humiliation and embarrassment and the physical manifestations thereof, and will so suffer in the future.

34. As a direct and proximate result of Defendants' violation of public policy, Plaintiff Smiddy has been placed in financial distress and has suffered a loss of earnings and benefits, a loss and impairment of his earning capacity and ability to work, and will so suffer in the future; he has been required to obtain legal services in order to bring this lawsuit and will suffer additional damages in the future.

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- b. reinstate Plaintiff to his position with appropriate salary and benefits;
- c. award Plaintiff all lost wages, past and future, to which he is entitled;
- d. award Plaintiff compensatory damages;
- e. award Plaintiff exemplary damages;
- f. award Plaintiff reasonable attorney fees, costs and interest; and
- g. award such other legal and equitable relief as this Court deems just and proper.

Respectfully submitted,

BOGAS & KONCIUS P.C.

By:

BRIAN E. KONCIUS (P69278)

Attorneys for Plaintiff

31700 Telegraph Road, Suite 160

Bingham Farms, MI 48025

(248) 502-5000

Dated: November 20, 2018

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF LIVINGSTON

ADAM SMIDDY,

Plaintiff,

-v-

Case No. 18-
Judge:

-CD

LIVINGSTON COUNTY, a Michigan Municipal Corporation, and
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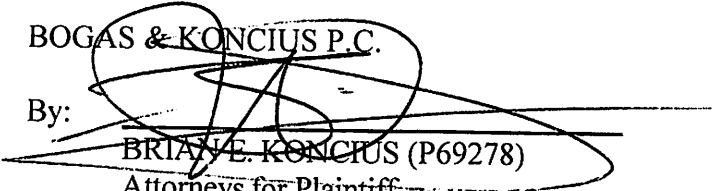
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DEMAND FOR JURY TRIAL

Plaintiff, ADAM SMIDDY, by and through his attorneys hereby demands a trial by jury
of the issues in the above-captioned cause of action.

BOGAS & KONCIUS P.C.

By:


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Attorneys for Plaintiff
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DATED: November 20, 2018