

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

Court File No.: _____

Jesse Garcia III,

Plaintiff,

v.

SUMMONS

City of Minneapolis,

Defendant.

THIS SUMMONS IS DIRECTED TO DEFENDANT CITY OF MINNEAPOLIS, c/o CASEY JOE CARL, CITY CLERK, OFFICE OF CITY CLERK, CITY HALL, ROOM 304, 350 SOUTH 5TH STREET, MINNEAPOLIS, MINNESOTA 55402:

1. **YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this Summons.
2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this Summons a **written response** called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at:

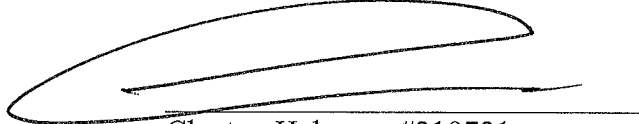
HALUNEN LAW
1650 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: 612-605-4098
Facsimile: 612-605-4099

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Complaint. If you do not want to contest the claims stated in the Complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the Complaint.
5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. **Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.**
6. **ALTERNATE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: March 10, 2015

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ATTORNEYS FOR PLAINTIFF

STATE OF MINNESOTA

DISTRICT COURT

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Plaintiff,

v.

**COMPLAINT AND
JURY DEMAND**

City of Minneapolis,

Defendant.

Sergeant Jesse Garcia III ("Plaintiff"), for his Complaint against the City of Minneapolis ("Defendant"), states and alleges as follows:

PARTIES

1. Plaintiff is a resident of the City of St. Paul, County of Ramsey, State of Minnesota.
2. Defendant is the City of Minneapolis located in the County of Hennepin, State of Minnesota.
3. At all times relevant, Plaintiff was employed by the City of Minneapolis and lived in the State of Minnesota.

JURISDICTION AND VENUE

4. The jurisdiction of this Court is invoked as violations occurred in the State of Minnesota and involve state law.
5. Venue is appropriate because Defendant is a City located in the County of Hennepin, State of Minnesota and the facts giving rise to this action occurred within the borders of the State of Minnesota, County of Hennepin.

FACTS

6. Plaintiff is a twenty-five year veteran of the Minneapolis Police Department with a valiant record of distinguished service and countless awards—many of them recent. His three most recent annual performance reviews rated him as “Outstanding.” In his 2014 review, completed on October 5, 2014, before “Pointergate” occurred (discussed *infra*), his supervisor, Robbery Unit Lieutenant John Kelly, wrote “Sgt. Garcia makes excellent decisions and has good judgment. He knows when to push on things and when to back off. [He] is one of the best level-headed persons I know. He has great tact in dealing with all people.” Kelly concluded Plaintiff’s review by stating, “I am proud of Sgt. Garcia’s work product and consider him a huge strength in the [Robbery] unit!” Plaintiff has been employed with Defendant since June 18, 1990.

7. On August 2, 2014, an attempted robbery occurred at Broadway Avenue W. and Penn Avenue N. in Minneapolis. A male suspect allegedly pulled a gun out of a black bag and pointed it at another male victim walking with a group, yelling at him to stop. Despite this threat, the male kept walking and called 911. After officers arrived on the scene, five suspects were sitting by a nearby bus stop, with one of the suspects who fit the caller’s 911 description, having a black bag directly behind him with the gun subsequently found nearby. All five suspects were apprehended. One of those suspects was NG, a convicted felon with violent tendencies. Two days later, this incident was given a case number and assigned to Plaintiff by Defendant in the Robbery Unit.

8. On August 7, 2014, the case was deferred by the Hennepin County Attorney’s Office with instructions to submit the evidence for DNA analysis for all five suspects.

9. On October 1, 2014, the DNA evidence was submitted to the Bureau of Criminal Apprehension.

10. During the week of November 3, 2014, Minneapolis Mayor Betsy Hodges posed for a picture with NG who was acting as a get-out-the-vote organizer. According to a television news report, NG, who has been linked to gangs operating in North Minneapolis, flashed a gang sign for the picture with his hands, with Hodges doing the same. The news report stated that the demonstration of the signs constituted the flashing of “gang signs,” which undermined the Police Department’s work. The story was an embarrassment for Mayor Hodges who publically sought to disassociate herself from the picture and NG. In the ensuing weeks and months, many local news stations and papers ran stories weighing in on the gang sign situation, which the media dubbed “Pointergate.”

11. On the night of November 8, 2014, Plaintiff was working an overtime shift with Sergeant Kelly O’Rourke near the Cedar Riverside complex outside of Downtown East — Minneapolis. Plaintiff and O’Rourke discussed Pointergate and NG. Plaintiff then requested NG’s “STS” (Suspect Tracking System) from the Strategic Information Center (“SIC”). After receiving the file, Plaintiff noticed that NG’s most recent case was an alleged robbery with a familiar date and case number. He then requested NG’s offense report, which was provided by SIC. Plaintiff then was able to conclude that the person with Mayor Hodges in the Pointergate photo, NG, was also a suspect in the August 2nd robbery case.

12. On November 9, 2014, a news reporter called Plaintiff. The reporter questioned Plaintiff on the August 2nd robbery case because he had also identified NG. As is standard practice, Plaintiff told the reporter that he could not disclose any information because the investigation was ongoing. Before hanging up the phone, he told the reporter that the call would

have to be reported. Immediately after the call, Plaintiff reported it to Defendant's Public Information Officer.

13. On November 10, 2014, Plaintiff requested that the case be protected from any unauthorized access. Plaintiff then arrived at work and accessed the file for the first time since his October 1, 2014 DNA submission.

14. Also on November 10, 2014, Plaintiff sent an email to Mayor Hodges' security officer and left a voicemail. The officer returned Plaintiff's phone call shortly thereafter. Plaintiff informed the officer about his ongoing investigation implicating NG and his connection to Pointergate. The officer noted the information and briefed Mayor Hodges. After no response, Plaintiff called another one of the Mayor's security officers and briefed him on the situation. That officer suggested they meet with Mayor Hodges in her office. That meeting never occurred.

15. Later on November 10, 2014, Plaintiff followed up with SIC and learned that additional evidence was collected connecting NG to the handgun used in the August 2nd robbery.

16. On November 12, 2014, Plaintiff received the results of the DNA analysis back from the Bureau of Criminal Apprehension. The analysis concluded that NG's DNA could not be excluded from being a possible contributor to types of DNA found on the weapon.

17. Shortly after receiving those results, Plaintiff and O'Rourke met with a Hennepin County Attorney and briefed him on the DNA results and the case. The Attorney verbally confirmed his office's intent to prosecute the case and requested a list of items to strengthen its prosecution.

18. On November 13, 2014, Plaintiff and O'Rourke met with Commander Catherine Johnson. Both officers briefed Johnson on NG's connection to the August 2nd robbery case, including its sensitive nature and relationship to Pointergate.

19. Approximately five minutes after the meeting concluded, Johnson met with both officers again and removed them from the case, directing them to turn over all investigative data, including emails and notes. Johnson gave no explanation for their removal. Johnson then stated that a decision had been made to not prosecute the August 2nd robbery case. Plaintiff cautioned Johnson that, given the evidence, the case needed to be prosecuted because it was their legal duty to prosecute crimes. He then asked Johnson if she was sure she wanted to go down that road. It was obvious to Plaintiff that the only reason for killing the investigation was because of the bad press Pointergate had created for Mayor Hodges. The directive to kill the investigation constituted obstruction of justice. As Plaintiff was aware, it would be a crime for any public official of Defendant to obstruct an investigation for personal or political reasons. For that reason, Plaintiff objected to Johnson's plan and reported, in good faith, what he believed to be a violation of law.

20. Johnson responded to Plaintiff's objection by informing him that she was opening an Internal Affairs ("IA") investigation on him. After Plaintiff asked why, she cited no reasons, and said she was "unaware of the details." It was clear that the IA investigation was nothing more than retaliation for Plaintiff's protected conduct.

21. Later on November 13, 2014, Defendant further retaliated against Plaintiff. Lieutenant Kelly called Plaintiff into his office and informed him that his transfer to the high-profile Violent Offender Task Force, which was to take place on November 16, 2014, had been

rescinded. Plaintiff asked why. Kelly responded that he did not know and that he was following Commander Johnson's orders.

22. On December 2, 2014, Plaintiff sent a letter of concern to Lieutenant Bob Kroll, Vice President of the Minneapolis Police Federation, which made Defendant aware of Johnson's retaliation. Plaintiff closed the letter by writing, "I enjoy my position in robbery and am fearful that the [*sic*] may transfer me in a retaliatory move in the near future."

23. On December 3, 2014, Johnson demoted Plaintiff by transferring him to Third Precinct Property Crimes, a unit with less prestige and significantly reduced job responsibilities. The demotion was further retaliation for Plaintiff's report of illegal activity. Plaintiff asked the Commander for an explanation. Johnson replied, "for the betterment of the Department." Plaintiff then asked how the transfer of a senior-ranking Sergeant in a high-profile unit bettered the Department. Johnson replied, "we are reallocating resources where needed."

24. Plaintiff then discovered that his demotion was not a reallocation of resources, but was rather a one-for-one swap with another officer. Plaintiff asked the officer how he felt about the switch. The officer replied that it had not been requested and that he did not understand the switch.

25. As a direct and proximate result of Defendant's illegal conduct, Plaintiff has suffered, and continues to suffer, emotional distress, humiliation, embarrassment, pain and suffering, loss of reputation, loss of enjoyment of life, lost wages and benefits, and has incurred attorneys' fees and expenses and other serious damages.

CLAIMS**COUNT ONE****VIOLATIONS OF THE MINNESOTA WHISTLEBLOWER ACT**

Plaintiff realleges each and every paragraph of this Complaint.

26. The Minnesota Whistleblower Act (“MWA”) prohibits retaliation against employees for making good-faith reports of violations of law. Minn. Stat. § 181.932 provides:

An employer shall not discharge, discipline, threaten, otherwise discriminate against, or penalize an employee regarding the employee’s compensation, terms, conditions, location, or privileges of employment because:

- (1) the employee ..., in good faith, reports a violation, or suspected violation, or planned violation of any federal or state law or common law or rule adopted pursuant to law to an employer or to any governmental body or law enforcement official;
- (2) the employee is requested by a public body or office to participate in an investigation, hearing, inquiry;
- (3) the employee refuses an employer’s order to perform an action that the employee has an objective basis in fact to believe violates any state or federal law or rule or regulation adopted pursuant to law, and the employee informs the employer that the order is being refused for that reason.

27. Plaintiff reported what he reasonably and in good faith believed to be violations of law. As such, Plaintiff has a claim under subdivision 1 of the MWA.

28. The law that Plaintiff believed Defendant violated includes, but is not limited to:

- Minn. Stat. § 609.50 – Obstructing the Legal Process, Arrest, or Firefighting
Obstruction of Justice: It is a crime for any person to obstruct, hinder, or prevent the lawful execution of any legal process or apprehension of another on a charge or conviction of a criminal offense. It is also a crime to obstruct or interfere with a police officer while that officer is engaged in official duties.

29. Plaintiff was also requested to participate in an investigation by Defendant (a public body) by his assignment to the August 2nd robbery case. As such, Plaintiff has a claim under subdivision 2 of the MWA.

30. Plaintiff participated in the investigation by investigating the August 2nd robbery case. After informing Defendant of certain results of that investigation, he was then retaliated against for his participation in that investigation.

31. Defendant retaliated against Plaintiff as a result of his reported objections and participation in the investigation by demoting him to a less-favorable position, among other adverse actions.

32. The adverse employment actions as alleged herein constitute violations of the MWA, Minn. Stat. § 181.932 *et seq.*

33. The effect of the practices complained of above has been to deprive Plaintiff of equal employment opportunities and otherwise adversely affecting his employment.

34. The unlawful employment practices complained of above were intentional and were performed by Defendant with malice and/or with reckless indifference to the MWA, which protects Plaintiff.

35. As a direct and proximate result of Defendant's illegal conduct, Plaintiff has suffered, and continues to suffer, emotional distress, humiliation, embarrassment, pain and suffering, loss of reputation, loss of enjoyment of life, lost wages and benefits, and has incurred attorneys' fees and expenses and other serious damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays:

- a. That the practices of Defendant complained of herein be adjudged, decreed, and declared to be in violation of the rights secured to Plaintiff by state law.
- b. That Defendant be required to make Plaintiff whole for its adverse, retaliatory and unlawful actions through restitution in the form of back pay, with interest of an appropriate inflation factor.
- c. That Plaintiff be awarded front pay and the monetary value of any employment benefits he would have been entitled to prior to Defendant's adverse, retaliatory, and unlawful actions.
- d. That a permanent prohibitory injunction be issued prohibiting Defendant from engaging in the practices complained of herein.
- e. That Plaintiff be awarded compensatory damages in an amount to be determined at trial.
- f. That the Court award Plaintiff his attorneys' fees, costs and disbursements pursuant statute.
- g. That the Court grant such other and further relief as it deems fair and equitable.

PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS WHERE TRIAL BY JURY IS AVAILABLE.

Dated: March 10, 2015

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ATTORNEYS FOR PLAINTIFF

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney's fees may be awarded pursuant to Minn. Stat. § 549.211 to the party against whom the allegations in this pleading are asserted.

Dated: March 10, 2015



Clayton D. Halunen