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August 29, 2024

Sent via Email: ccaputo@bickerstaff.com

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City Attorney- City of Lago Vista, Texas
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CONFIDENTIAL COMMUNICATION PURSUANT TO RULE 408

RE: Employment of Tracie Hlavinka-City Manager

Counsel:

As you are aware, this law firm has been retained by Ms. Tracie Hlavinka to represent her in her legal claims against the City of Lago Vista, Texas for gender discrimination and retaliation in violation of Title VII of the Civil Rights Act of 1964 and Chapter 21 of the Texas Labor Code. Ultimately, the purpose of this letter is to communicate my client's amenability to resolving this matter prior to engaging in costly and time-consuming litigation. However, Ms. Hlavinka is fully committed to pursuing all available remedies if this matter cannot be resolved in a timely manner.

BACKGROUND AND FACTS

Tracie Hlavinka has served as City Manager for Lago Vista since July 14, 2021. The terms and conditions of her employment with the City are memorialized in an agreement between the Parties executed on October 31, 2023. Ms. Hlavinka was selected for this position based largely on her extensive background in municipal government and demonstrated management experience. In her capacity as City Manager, Ms. Hlavinka interacts directly with the City's employees and its elected leadership, including the Mayor and members of the City Council. Despite her experience and documented successes as City Manager, Ms. Hlavinka was continually targeted by members of the City Council because of her gender. After she reported vulgar, gender-based comments by

members of the City Council, she has experienced retaliation and a persistently hostile work environment. For all intents and purposes, Ms. Hlavinka has already been constructively discharged from her position.

On April 4, 2024, during a meeting of the Lago Vista City Council, Councilmember Rob Durbin referred to Ms. Hlavinka as a “big girl.” During that same meeting Councilmember Chelaine Marion stated that Ms. Hlavinka needed to “put her big girl panties on.” These are unquestionably derogatory comments that refer directly to Ms. Hlavinka’s gender. She was shocked by the references to her gender by two City Council members at a public meeting. She immediately contacted Mayor Kevin Sullivan to report the discriminatory comments. On April 10, 2024, she attended a follow-up meeting with Mayor Sullivan to again express her concern about the discriminatory comments made by these Councilmembers.

While other members of the City Council remained silent and failed to address discriminatory comments made by Councilmember(s) Durbin and Marion, the public was outraged. On April 16, 2024, a Lago Vista resident approached Councilmember Marion and objected to the discriminatory comments made about Ms. Hlavinka at the City Council meeting. When Councilmember Marion approached Mayor Sullivan about the comment, he immediately reminded her that she had in fact made the comment. On April 17, 2024, Ms. Hlavinka sent a follow-up email to Mayor Sullivan and City Attorney Cobby Caputo regarding the discriminatory comments made at the April 4th meeting. Despite multiple opportunities, the City failed to address Ms. Hlavinka’s internal discrimination report(s).

As a direct result of Ms. Hlavinka’s internal discrimination report(s), she experienced immediate retaliation from the City. On April 18, 2024, Councilmember Rob Durbin stated that the City had “one ass to kick” referred directly to Ms. Hlavinka. Unfortunately, retaliation from the City rapidly escalated into more vile comments and threats against Ms. Hlavinka. On April 20, 2024, at Lago Fest Councilmember Paul Roberts called her a “p*ssy.” He also made a direct reference to her internal report by stating that he had his “big boy panties on.” Ms. Hlavinka immediately reported Councilmember Roberts’ filthy comment to Mayor Sullivan. She also reported the comment to City Attorney Cobby Caputo on April 22, 2024.

Although she appropriately reported discriminatory comments made by members of the City Council to the Mayor and City Attorney, Ms. Hlavinka believed she had a duty to directly address behavior that fell below the decorum for meetings of the Lago Vista City Council. On April 24, 2024, she emailed the City Council to propose an executive session item to provide sensitivity training meant to address the recent offensive behavior by several members. On April 25, 2024, Councilmember Roberts responded to the agenda item and expressed his objection to the training. Councilmember Saum also expressed concern that the training would appear to be “punitive” for the City Council.

Even as Ms. Hlavinka took steps to address discriminatory comments and lack of decorum by City Council members, she continued to experience retaliation and constant undermining of her authority. On May 2, 2024, the City conducted a mid-year evaluation of her performance. Halfway through the evaluation, Ms. Hlavinka was asked to leave the room. When she returned, Councilmember Paul Prince stated that the City “was better under her leadership” and directed her

to move forward with the sensitivity training. On May 16, 2024, Ms. Hlavinka was sick and unable to attend the City Council meeting in person. She attended the meeting remotely via Zoom Videoconference. During this meeting Councilmember Roberts failed to mute himself and was overheard stating “when we fire Tracie.” Ms. Hlavinka immediately received a message from Councilmember Marion apologizing for the remark.

Retaliation against Ms. Hlavinka has continued unabated since she reported discrimination in April of 2024. These efforts have included Councilmember Roberts’ repeated efforts to terminate her employment. She has been subjected to excessive scrutiny and blamed for multiple issues outside the scope of her duties. In the face of unrelenting retaliatory efforts by members of the City Council, Ms. Hlavinka has experienced the physical manifestations of stress and anxiety. These factors have made it abundantly clear that the City has created an environment so intolerable that a reasonable person in Ms. Hlavinka’s position would feel compelled to resign.

LEGAL FRAMEWORK

Hostile Work Environment

The evidence in this case clearly demonstrates that the City has subjected Ms. Hlavinka to a hostile work environment based on her gender. To establish her *prima facie* case, the Fifth Circuit has held that Ms. Hlavinka must show that she (1) “was subjected to sexually discriminatory intimidation, ridicule, and insults that are (2) sufficiently severe and pervasive so as to (3) alter the conditions of employment and (4) create an abusive working environment.” *DeAngelis v. El Paso Mun. Police Officers Ass’n*, 51 F.3d 591, 594 (5th Cir. 1995) (citing *Harris v. Forklift Sys. Inc.* 510 U.S. 17 (1993); see also *Garner v. GLC of Pascagoula, LLC* 894 F.3d 654, 660 (5th Cir. 2018)).

Courts in this Circuit have held that conduct need not be explicitly sexual in nature to create a hostile work environment based on sex. See *Humphreys v. Medical Towers, Ltd.*, 893 F.Supp. 672, 683 (S.D. Tex. 1995), *aff’d*, 100 F.3d 952 (5th Cir. 1996). “If the victim would not have been treated in a particular manner but for his or her gender, then such treatment may constitute hostile environment sexual harassment.” *Shepherd v. Slater Steels Corp.*, 168 F.3d 998, 1009 (7th Cir. 1999). In *Humphreys*, the plaintiff alleged a hostile environment based on her subordinate’s conduct in referring to her with sexual epithets (“b*tch” and “whore”), and a supervisor’s conduct in supporting the subordinate’s behavior. *Humphreys*, 893 F.Supp. at 677. The court rejected the harasser’s claim that his conduct was based on personal anger and dislike and not on the plaintiff’s gender. The court stated, “it is not necessarily that the offending conduct be explicitly sexual in nature,” and ruled that the plaintiff had presented enough evidence for a jury to find that the harassment occurred because of her sex. *Id.* at 683. The court further held the supervisor’s conduct, while not sexual in nature, could constitute a hostile environment and be demonstrative of sexual harassment. *Id.*

Like the plaintiff in *Humphreys*, Ms. Hlavinka has been subjected to a hostile work environment at the City based on her gender. As previously discussed, in April 2024 Councilmember Durbin referred to her as a “big girl.” In that same meeting, Councilmember Marion stated that “Tracie can put her big girl panties on.” After she reported these discriminatory

remarks to the Mayor and City Attorney, Councilmember Roberts called her a “p*ssy” and mocked her complaint by stating that he had his “big boy panties on.” More importantly, the City has ratified the discriminatory behavior against Ms. Hlavinka by subjecting her to excessive scrutiny, holding her responsible for areas outside of her control and encouraging efforts to terminate her employment by the same members of the Council named in her discrimination complaint(s).

Retaliation

The evidence in this case also demonstrates that the City has retaliated against Ms. Hlavinka for reporting discrimination based on her gender. To establish a retaliation case, Ms. Hlavinka must show that she (1) participated in a protected activity; (2) suffered adverse employment action and (3) that a causal connection exists between her protected activity and the adverse employment action. *See Porter v. Houma Terrebonne Hous. Auth. Bd. Of. Comm’rs*, 810 F.3d 940, 945 (5th Cir. 2015); *Hernandez v. Yellow Transp., Inc.*, 670 F.3d 644, 657 (5th Cir. 2012). Clearly, Ms. Hlavinka engaged in protected activity when she reported experiencing discrimination based on her gender. She reported her concerns to Mayor Sullivan on April 8, and April 10, 2024. She also reported discrimination to the Mayor and City Attorney Cobby Caputo on April 16, 2024. She has subsequently reported being called a “p*ssy” by Councilmember Roberts to the City Attorney on April 22, 2024. A causal connection exists because Councilmember Roberts began openly boasting about terminating her employment immediately after she reported discrimination. Courts have consistently held “evidence that the alleged adverse action occurred shortly after the employer became aware of the protected activity is sufficient to satisfy the less onerous burden of making a *prima facie* case of causation...” *See Dowe v. Total Action Against Poverty*, 145 F.3d 653 (4th Cir. 1998). Any claims regarding Ms. Hlavinka’s performance are directly contradicted by Councilmember Prince’s statement that the City was “better under her leadership.”

RESOLUTION

If this matter is not resolved amicably, we will have no option but to initiate a Charge of Discrimination with the Texas Workforce Commission–Civil Rights Division (“TWC-CRD”) and the Equal Employment Opportunity Commission (“EEOC”), and ultimately to file a lawsuit seeking all damages, costs, and attorney’s fees. During this process I will utilize all available avenues to obtain appropriate redress for my client. Alternatively, we can engage in a dialogue to see if differences can be resolved.

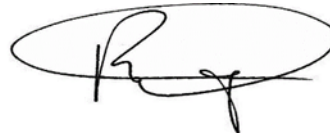
Ms. Hlavinka has authorized me to make a demand in the amount of **\$181,500.00** in exchange for a full confidential release. In addition, she is seeking continuation of her insurance benefits (life, accident, health and medical) for no less than twelve (12) months as well as a payout of all accrued vacation, holidays, sick time and compensatory time. Finally, she is seeking payment of the attorney’s fees she has been forced to incur to assert her rights. A mutual severance agreement consistent with these terms is specifically contemplated in the employment agreement between the Parties executed on October 31, 2023. *See Hlavinka Amended Contract* at pg. 6.

It is my understanding that Ms. Hlavinka’s employment is on the City Council agenda for Thursday, August 29, 2024. I am available to discuss a prompt resolution to this case at your

earliest convenience. Taking further action against Ms. Hlavinka at this meeting will only enhance an already strong retaliation case. Please contact me within ten (10) days of receipt of this letter to avoid further escalation and to work collaboratively towards resolution.

Thank you for your attention to this matter and I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Dupree, Jr.', enclosed within a large, hand-drawn oval.

Ronald E. Dupree, Jr.
Attorney for Tracie Hlavinka

CC: Teresa Hudson, Attorney at Law- THudson@munckwilson.com