

RECEIVED

SEP 10 2020

C-2983-20-E
275TH DISTRICT COURT, HIDALGO COUNTY, TEXAS

BY: CG

**CITATION
THE STATE OF TEXAS**

NOTICE TO DEFENDANT: You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty (20) days after you were served with this citation and petition, a default judgment may be taken against you.

**CITY OF PHARR, TEXAS
MAYOR: DR. AMBROSIO "AMOS" HERNANDEZ
118 S. CAGE BLVD.
PHARR, TX 78577**

You are hereby commanded to appear by filing a written answer to the **PLAINTIFF'S ORIGINAL PETITION** on or before 10:00 o'clock a.m. on the Monday next after the expiration of twenty (20) days after the date of service hereof, before the **Honorable Marla Cuellar, 275th District Court** of Hidalgo County, Texas at the Courthouse at 100 North Closner, Edinburg, Texas 78539.

Said petition was filed on this the 31st day of August, 2020 and a copy of same accompanies this citation. The file number and style of said suit being C-2983-20-E, **JOSE LUENGO VS. CITY OF PHARR**

Said Petition was filed in said court by Attorney DAVID PATRICK WILLIS, 1534 E 6TH ST STE 201 BROWNSVILLE TX 78520.

The nature of the demand is fully shown by a true and correct copy of the petition accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at Edinburg, Texas on this the 1st day of September, 2020.

**LAURA HINOJOSA, DISTRICT CLERK
100 N. CLOSNER, EDINBURG, TEXAS
HIDALGO COUNTY, TEXAS**



KEILA HERNANDEZ, DEPUTY CLERK



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OFFICER'S RETURN

Came to hand on 10TH of September, 2020 at 9:20 o'clock AM.m. and executed in INDAGO County, Texas by delivering to each of the within named Defendant in person, a true copy of this citation, upon which I endorsed the date of delivery to said Defendant together with the accompanying copy of the (petition) at the following times and places, to-wit:

Plaintiff's ORIGINAL Petition

NAME	DATE	TIME	PLACE
<i>Pharr, TX</i>	<i>9/10/20</i>	<i>10:52 AM</i>	<i>118 SCAGE BLVD PHARR, TX</i>

And not executed as to the defendant, _____ the diligence used in finding said defendant, being: _____ and the cause of failure to execute this process is: _____ and the information received as to the whereabouts of said defendant, being: _____. I actually and necessarily traveled _____ miles in the service of this citation, in addition to any other mileage I may have traveled in the service of other process in the same case during the same trip.

Fees: serving ... copy(s) \$ _____
miles\$ _____

[Signature]
DEPUTY

COMPLETE IF YOU ARE PERSON OTHER THAN A SHERIFF,
CONSTABLE OR CLERK OF THE COURT

In accordance to Rule 107, the officer or authorized person who serves or attempts to serve a citation must sign the return. If the return is signed by a person other than a sheriff, constable or the clerk of the court, the return must either be verified or be signed under the penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is _____, my date of birth is _____ and the address is _____, and I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED in _____ County, State of Texas, on the _____ day of _____, 2020.

Declarant"

If Certified by the Supreme Court of Texas
Date of Expiration / PSC Number

Cause No. C-2983-20-E

JOSE LUENGO
Plaintiff,

v.

CITY OF PHARR, TEXAS
Defendant.

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IN THE DISTRICT COURT,

____ JUDICIAL DISTRICT

HIDALGO COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, JOSE LUENGO, pursuant to Texas Government Code Chapter 554, bringing this Whistleblower Act action against Defendant, CITY OF PHARR, TEXAS, and would respectfully show the Court as follows:

DISCOVERY CONTROL PLAN

1. Plaintiff alleges a Discovery Control Plan Level 2 of Rule 190.3 of the Texas Rules of Civil Procedure.

PARTIES

2. Plaintiff, JOSE LUENGO, is an individual, resident of Hidalgo County, Texas.
3. Defendant, CITY OF PHARR, TEXAS, is a city located in Hidalgo County, Texas, and may be served with process by serving the mayor, Dr. Ambrosio "Amos" Hernandez, at 118 S. Cage Blvd., Pharr, TX, 78577, under the authority of Texas Civil Practices and Remedies Code § 17.024(b).

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this case because the amount in controversy exceeds this Court's minimum jurisdictional requirements.

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5. Venue for this case is proper in Hidalgo County, Texas, pursuant to Texas Civil Practices and Remedies Code § 15.002, because all or substantial part of the events or omissions giving rise to the claim occurred in said county.

FACTS

6. During the times made relevant by Plaintiff's claims, Plaintiff was employed with the City of Pharr Police Department (hereafter the "Department") as Chief of Police.

7. On or about May 8, 2020, an employee of the City of Pharr instructed an officer conducting an investigation into the misuse of public funds (hereafter the "Investigator") to turn over an investigatory report regarding said ongoing investigation (hereafter the "Report of Investigation"). The Investigator refused the instruction because one of the persons included in the investigation was a close family member of the employee.

8. Moments later, the Interim City Manager for the City of Pharr, Ed Wylie, ordered Plaintiff to give him the Report of Investigation. Ed Wylie told Plaintiff that the Office of the District Attorney for Hidalgo County wanted information from him, Ed Wylie, about the contents of the Report of Investigation. Plaintiff has over eleven (11) years of law enforcement experience, and in that time, Plaintiff had never heard of a member of the Office of the District Attorney go through a city manager to get the status of an ongoing investigation. Plaintiff refused to turn over the report out of concern that the information contained therein may be misused or may result in interference with the ongoing investigation.

9. Later that day, the Investigator turned over the report to Ed Wylie.

10. Also that same day, Ed Wylie suspended Plaintiff for three (3) days.

11. In a subsequent meeting with the Investigator, Ed Wylie, without any law enforcement experience, said that the report was vague and instructed the Investigator to produce to him all

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the evidence related to the on-going investigation. Plaintiff believed that the instruction to produce evidence in an on-going criminal case was not only improper, but a violation of law.

12. On or about May 11, 2020, Plaintiff met with the Texas Rangers to report what he believed to be a violation of Texas Penal Code § 39.06, titled "Misuse of Official Information." The Investigator was aware of Plaintiff's meeting with the Texas Rangers.

13. On or about May 21, 2020, the mayor of the CITY OF PHARR, Dr. Ambrosio "Amos" Hernandez, contacted Plaintiff to inquire about a news article related to Plaintiff's suspension.

14. On or about May 22, 2020, Plaintiff met with the Mayor Ambrosio Hernandez regarding the article and his suspension. During the meeting, Plaintiff advised Mayor Ambrosio Hernandez that Ed Wylie had requested the report of the ongoing investigation and he had refused to release it.

15. On or about May 26, 2020, Ed Wylie requested the report once again. Plaintiff advised Mayor Ambrosio Hernandez of Ed Wylie's request. That same day, Plaintiff contacted the Texas Rangers via text message to inquire about the status of the Texas Rangers investigation.

16. On or about June 1, 2020, Plaintiff requested a meeting with Mayor Ambrosio Hernandez. During the meeting, Mayor Ambrosio Hernandez asked Plaintiff "why did you go to a third-party?" in reference to Plaintiff's meeting with the Texas Ranger.

17. On or about July 2, 2020, Plaintiff was demoted from his position as Chief of Police to Lieutenant. That same day, Ed Wylie had a meeting with the Investigator and acknowledged that he knew of Plaintiff's meeting with the Texas Rangers.

18. Plaintiff's employment is not subject to any grievance procedure.

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DAMAGES

19. As a result of the Defendant's actions, Plaintiff suffered past lost wages and benefits, lost future earnings, lost future earning capacity, emotional pain, suffering, inconvenience, mental anguish, and loss of enjoyment of life.

CAUSES OF ACTION

WHISTLEBLOWER ACT VIOLATION

20. Plaintiff herein incorporates the factual allegations contained in the section titled "Facts", above.

21. Plaintiff was employed as Chief of Police by Defendant, the CITY OF PHARR, TEXAS.

22. Plaintiff, in good-faith, reasonably believed that Ed Wylie's actions violated Texas Penal Code § 39.06.

23. Plaintiff reported Ed Wylie's actions to the Texas Rangers because the Texas Rangers have the authority to investigate criminal activity.

24. Plaintiff's report resulted in his demotion from his position as Chief of Police.

25. Defendant's acts against Plaintiff were in retaliation for Plaintiff's report and would not have occurred when they did but for the report.

26. Plaintiff's report is presumed to have caused Defendant's demotion of Plaintiff because Defendant's acts against Plaintiff occurred within 90 days of Plaintiff's report. Plaintiff reported Ed Wylie's actions on May 11, 2020 to the Texas Rangers. On July 2, 2020, he was demoted reducing his salary by almost half. Fifty-two (52) days passed between Plaintiff's report and the adverse personnel action against him. There were no other disciplinary actions taken against Plaintiff between the date of the report and the date of the demotion.

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27. Therefore, Defendant is liable to Plaintiff for discharge of public-employee whistleblower.

ATTORNEY FEES

28. Pursuant to Texas Government Code § 554.003(a)(1), Plaintiff is entitled to recover reasonable attorney fees incurred in the prosecution of this action.

CONDITIONS PRECEDENT

29. All conditions precedent to Plaintiff's claim for relief have been performed or occurred.

STATEMENT REGARDING RELIEF

30. Pursuant to Texas Rules of Civil Procedure 47, Plaintiff seeks monetary relief of \$200,000 but no more than \$1,000,000 and within the jurisdictional limits of the court, in addition to penalties, costs, expenses, pre-judgment interest and attorney fees.

REQUESTS FOR DISCLOSURE

31. Pursuant to Texas Rule of Civil Procedure 194, Defendant is requested to produce within fifty (50) days of service of this document, the information or material described in Rule 194.2.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff, JOSE LUENGO, prays Defendant, CITY OF PHARR, TEXAS be cited to appear and answer, and that plaintiff have:

- Judgment against Defendant for actual damages;
- Attorney fees;
- All costs of court;
- Pre- and post-judgment interest at the highest rate allowed by law; and
- Any such other relief to which he may be entitled.

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Respectfully submitted,

DAVID WILLIS, P.C.
1534 E. 6th Street, Suite 201
Brownsville, Texas 78520
Ph: 956-986-2525
Fax: 956-986-2528

____/s/ David Willis_____
David Willis
State Bar No. 24039455