

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA**

HENRY LEWIS )

Plaintiff, )

v. )

CITY OF ALEXANDRIA, )  
VIRGINIA )

Service On: )

Office of the City Attorney )  
301 King Street, Suite 1300 )  
P. O. Box 178 )  
Alexandria, Virginia 22313 )

Case No. CL12002242

With supplemental service on )  
the City through: )

City Mayor William Eulle )  
301 King St., Room 2300 )  
Alexandria, VA 22314 )

And )

Jeremy McPike )  
(In his individual capacity) )  
110 N. Royal St., Suite 300 )  
Alexandria, VA 22314 )

Defendants.

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**COMPLAINT**

Plaintiff Henry Lewis brings this Complaint against his former employers the City of Alexandria and Jeremy McPike for wrongful termination and discrimination in violation of the anti-retaliation provisions of the Virginia Fraud Against Taxpayers Act (Va. Code § 8.01-216.8) and in support thereof states as follows.

1. Plaintiff Henry Lewis is an adult male resident of the Commonwealth of Virginia. Lewis received his Bachelor of Architecture degree from Howard University in 1977 and has

more than 34 years of experience in architecture and construction project management. Lewis is a licensed architect both in the Commonwealth of Virginia and the state of Maryland.

2. From January, 2008 until August 3, 2011 Lewis was employed by the City of Alexandria in the Department of General Services. Among other duties, Lewis was assigned to be the Senior Project Manager for the new Alexandria Police Facility, as well as a related project called "133 S.Quaker Lane."
3. During his employment with the City of Alexandria, the Director of the Department of General Services and other city officials had the power and authority to affect Lewis' wages and compensation, hire and fire Lewis, and otherwise affect the terms and conditions of Lewis' employment.
4. Defendant Jeremy McPike is an adult male resident of the Commonwealth of Virginia. In February of 2011 McPike was named acting Director of the Department of General Services, and in April of 2011 he was named Director of the Department. Prior to McPike's promotion to Director of the Department of General Services, McPike served as Deputy Director of the Department of General Services.
5. At all times relevant to this Complaint, McPike had actual and/or apparent authority to hire and fire Lewis, to affect the wages and compensation Lewis received, and to control the working conditions of Lewis and others.

#### **ALLEGATIONS COMMON TO ALL COUNTS**

6. At all times relevant hereto, construction of the Alexandria Police Facility was governed by the Virginia Public Procurement Act ("VPPA")(Virginia Code § 2.2-4300 *et seq.*).
7. In particular, the VPPA expressly requires that public bodies use specified procurement methods, with only limited exceptions.

8. The VPPA provides for localities within the Commonwealth to procure construction services on a "design-build basis" or on a "construction management" basis.
9. The VPPA also requires that before a determination is made to use a design-build or construction management method, the public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the public body regarding the use of either a design-build or a construction management arrangement for that project and who shall assist the public body with the preparation of the Request for Proposals and the evaluation of such proposals.
10. Lewis fulfilled this role during his employment with the City of Alexandria.
11. Pursuant to the VPPA, in 2008 the City of Alexandria elected to use the "Construction Management" method for the construction of the new Police Facility. As such the City elected to use one company to prepare the designs and a different, unrelated company, to build the Policy Facility.
12. The City of Alexandria hired an architectural and engineering company called HDR Inc. to design the building.
13. After HDR finished its designs, the City of Alexandria issued a Request for Qualifications ("RFQ") to construction contractors interested in bidding on the construction of the new Alexandria Policy Facility.
14. From the responses to the RFQs, the City of Alexandria selected several construction companies to submit formal proposals for the work associated with the Alexandria Police Project.

15. The proposals were to be based on a type of construction contract known as a "Construction Manager At-Risk Guaranteed Maximum Price" contract. In the vernacular of construction management, these contracts are often abbreviated as "CM at risk" or "GMP at risk contracts."
16. In such contracts the construction manager is contractually committed to the owner to deliver the project within a Guaranteed Maximum Price; if the costs of the project exceed the guaranteed maximum price set forth in the contract, the construction manager (and not the owner) must absorb the loss.
17. Also as part of the construction management arrangement, the City elected to hire one company to serve as the construction manager and build the Facility.
18. As required by the VPPA, Lewis was one of the individuals assigned to the committee that graded and then ranked the proposals submitted at the invitation of the city.
19. Numerous meetings were held with the companies that submitted formal proposals, including Whiting-Turner, as part of the contract negotiation process. Present at some or all of these meetings were City of Alexandria employees Ed Mandley, Willard Walton, John Soderberg, Fulmer Collins, and Lewis. Whiting-Turner employees Bill Whiting, Susan Castellon and Bryan Embrey were also present at some or all of these meetings.
20. During his review of the proposals, as well as during the meetings that took place with each of the companies submitting proposals (and the oral presentations made by each company at the meetings) Lewis came away with the distinct impression that Whiting-Turner did not intend to deliver services consistent with the city's request for a GMP contract, but instead viewed the city's request for a GMP at risk contract as an offer of a time and materials-type contract.

21. A time and materials contractual arrangement is very different from a GMP at risk contract. Under a time and materials arrangement, the contractor is paid for time and materials used in constructing the Facility.
22. There is very little risk associated with a time and materials contract for the contractor, but there is a high risk of abuse for the owner of the project, in this case the City of Alexandria.
23. Lewis advised Mandley that he had concerns that Whiting-Turner intended to circumvent the GMP at risk contract. Specifically, Lewis advised Mandley that Whiting-Turner would, in his opinion, view the contract as a time and materials contract instead of GMP at risk.
24. Mandley was strongly in favor of the Whiting-Turner proposal because, among other reasons, the City had worked with them before and had had a good experience with them.
25. It was announced that Whiting-Turner would be awarded the contract; at that point, negotiations over certain parts of the contract began.
26. In most construction projects, small minor changes and variations arise over the course of a building project.
27. In a GMP at risk type-contract, the sorts of minor changes usually necessary during a construction project are normally administered through a contingency line item.
28. The need for those changes could arise either as a result of the need for a change in the design of the building (in which case it would fall under a design contingency line item) or as a result of the need for a change in the construction of the building (in which case it would fall under a construction contingency line item).

29. In a GMP at risk contract, the construction contingency line item may or may not be included within the Guaranteed Maximum Price accepted by the contractor.
30. As part of the negotiations over the GMP at risk contract, the City of Alexandria and Whiting-Turner discussed moving the construction contingency line item outside the scope of the GMP.
31. The result of this would have been that those items subject to the construction contingency would not have been included in the guaranteed-maximum price, and Whiting-Turner would in fact be able to bill the City more money than the GMP would allow them to bill.
32. In the final analysis the City of Alexandria decided to keep the contingency line item within the Guaranteed Maximum Price of the at risk contract. This was to the City's advantage because the City knew exactly how much money to budget.
33. Whiting-Turner accepted this as a term of the contract.
34. Because there was only one construction contingency in the agreement, the City of Alexandria maintained that it must be used for all items that were unforeseen subsequent to the start of construction.
35. The City and Whiting-Turner agreed that only new work items would be subject to a change order and that those work items within the existing scope of the project would not be subject to a change order. Because there was only one construction contingency in the project, the City maintained that it must be used for all items that might have been unforeseen subsequent to the start of construction.

36. Once construction was under way, however, Whiting-Turner took the position that more or less every contingency item requested by the City of Alexandria was not a construction contingency item but a design contingency item.
37. By arguing that more or less every change the City requested was a design contingency and not a construction contingency, Whiting-Turner forced the City to make a claim to HDR Architects, the company that had designed the building.
38. Among other issues, the refusal of Whiting-Turner to allow the City to use items under the construction contingency strained relations between Whiting-Turner and various City officials.
39. Whiting-Turner proceeded to use the construction contingency again and again for work billed on a time and materials basis. By charging work on a time and materials basis to the contingency, Whiting-Turner was in effect able to circumvent the GMP at-risk agreement.
40. Because Lewis was assigned to work on both the New Police Facility (which was to be located at 3600 Wheeler Ave.) as well as a related project at 133 S. Quaker Lane, Lewis saw first-hand the issues and problems with Whiting-Turner.
41. During the year 2009 Lewis had numerous disagreements with Whiting-Turner.
42. For example, the roof trusses to be used in building 133 S. Quaker Lane were made of wood. Whiting-Turner delivered roof trusses to the construction site that were covered with mold and warped.
43. Lewis informed Mandley that Whiting-Turner had delivered unsafe and unacceptable roof trusses, and Whiting-Turner was required to take the roof trusses back and replace them with new roof trusses.

44. Whiting-Turner senior project manager Susan Castellan at first refused to replace the roof trusses; eventually she did replace them. From that point forward, Ms. Castellan (and other Whiting-Turner employees) became extremely hostile to City officials, including Lewis.
45. At about this time, Whiting-Turner requested that Lewis be removed from the Police Project and be replaced by McPike.
46. McPike however lacked the credentials to replace Lewis on the Police Project as per the VPPA. Pursuant to the VPPA the employment of a licensed architect on the Police Project was required.
47. Eventually, Mandley requested in a letter that Ms. Castellan be removed from her role on all work for the City of Alexandria.
48. Numerous other issues also arose including but not limited to questionable quality control, unnecessary testing, unexplained delays, and further use of the contingency line item for time and materials billing.
49. Lewis brought his concerns with Whiting-Turner's performance to the attention of Mandley on an on-going basis during 2009.
50. As a result of the information Lewis brought to Mandley's attention, on January 7, 2010, Mandley wrote a letter to Whiting-Turner putting Whiting-Turner on notice of the issues Lewis brought to his attention, including questionable quality control, unnecessary testing, unexplained delays, and the use of the contingency line item for time and materials billing.
51. Mandley's letter did not have the desired result, and Whiting-Turner continued to engage in all of the above practices.



**WHITING-TURNER SUBMITTED FALSE INVOICES CONSTRUCTION  
MATERIALS STORED OFF-SITE AND RECEIVED PAYMENT ON THOSE  
FALSE INVOICES WITH THE ASSISTANCE OF CITY OF ALEXANDRIA  
EMPLOYEE JEREMY MCPIKE**

52. In construction projects like the Police Facility, it is necessary for the contractor to purchase materials to be used for the construction. Sometimes, those materials arrive before they are actually needed; when that happens, the materials must be stored until such time as they are needed. Because the storage of such materials on a large project like the Police Facility can require an enormous amount of space, it is not unusual for materials to be stored at a location other than the actual construction site.
53. In order for a contractor to bill for the purchase of materials that are stored off-site, however, certain requirements must normally be met. These conditions were included in the contract between the City of Alexandria and Whiting-Turner.
54. Those conditions include but are not limited to the following: in order to receive payment for materials stored off-site, Whiting-Turner was required to submit, together with the invoice for the storage of off-site materials, a list or inventory of the materials stored off-site, proof that the materials actually existed and were purchased for the Police Facility project, proof that the materials were properly insured and proof that the materials had been inspected.
55. The above-mentioned requirements are important to the protection of the taxpayer and the integrity of the government procurement process.
56. On or about February of 2010, a request for payment for materials stored off-site was made to Lewis by Whiting-Turner project manager Bryan Embrey.

57. At first, Embrey made this request orally, and Lewis informed Embrey that as per the project's contractual requirements, payment for materials stored off-site would not be approved unless certain conditions were met.
58. Pursuant to the Alexandria Police Facility Construction Management agreement between the City of Alexandria and Whiting-Turner, payment for off-site materials was not generally allowed; however, payment for such materials could be made (at the discretion of the Owner) if the contractor provided proper documentation acceptable to the Owner.
59. Lewis shared with Embrey these requirements and expressed his concerns, and invited him to submit corrected invoices – i.e., invoices with the above-referenced documentation attached.
60. Despite Lewis' clear instruction to Embrey on March 11, 2010, Whiting-Turner submitted an Application and Certificate for Payment (i.e., an invoice) #6 which included charges to the City for the purchase and storage of off-site materials but did not include any of the required documentation, including but not limited to proof that the materials had been purchased.
61. Whiting-Turner submitted this invoice for payment despite Lewis' clear instructions and his statement that he would not approve invoices for materials stored off-site without the required documentation including but not limited to documentation that the materials had been purchased.
62. Through employee Bryan Embrey, Whiting -Turner submitted this claim despite the fact that the claim lacked proof that the materials had actually been purchased.
63. The front page of each Application and Certificate for Payment (invoice) submitted by Whiting-Turner to the City of Alexandria for payment contained a certification section.

The certification, which was required for the invoice to be submitted for payment, read as follows: **The undersigned General Contractor certifies that to the best of the General Contractor's knowledge, Information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents ...**

64. Embrey signed this certification despite the fact that the off-site stored materials had not been verified as per the contract and no documentation had been attached to the invoice to show that the materials had been purchased.
65. The invoice was false because the invoices lacked proof that the off-site stored materials existed and were properly insured, among other reasons.
66. Embrey knew that this invoice was false because Lewis told him that the above-referenced information was required; despite his knowledge of the falsity, Embrey signed and submitted the invoice.
67. Alternatively, Embrey and Whiting-Turner showed reckless disregard for the truth or falsity of the invoice.
68. Lewis promptly rejected the invoice because it lacked the documentation required for payment.
69. After Lewis rejected the invoice, he received a number of angry emails and phone calls from McPike about the rejected invoice.
70. Lewis replied informing McPike of the risks of paying invoices that did not have these basic requirements. Moreover, Lewis reminded McPike of the dangers of paying for materials that had not even been verified to exist.

71. Lewis further informed McPike that his ultimate responsibility was to the taxpayers of the City of Alexandria to ensure that they received full value for their money and to ensure that the taxpayers were not defrauded.
72. Specifically, Lewis sent McPike an email reminding him why these invoices should not be approved and the dangers of paying for such invoices. Lewis' email read, in relevant part: "**Payment for off-site stored materials presents unanticipated problems. If the vendor goes bankrupt then the City is in the position of paying for the product twice or the City may be caught in a lengthy legal situation ... [n]either [the City of Alexandria] nor the architect can visit the location (in this case over 100 miles) to confirm what is being paid for has actually been bought. Furthermore the material must be adequately insured and provisions must be made to have them transported to the site ... [L]astly the [the City of Alexandria] must be provided with documents that will establish the [City's] clear title to any material [the City] pays for ...**
73. McPike continued to insist that the invoices be paid even though the invoices were false and were improper and lacked the proper documentation.
74. From March 2010 through June 2010, Whiting-Turner submitted three additional invoices (Invoices 7, 9 and 10) despite the fact that these additional invoices were similarly insufficient.
75. The top of each invoice submitted to the City of Alexandria for payment contained a section marked CERT. BY DEPARTMENT HEAD. The certification, which was required for the invoice to be submitted for payment, read as follows: "**I certify that the items or services listed hereon have been received, that payment has not previously**

**been made and that this expenditure is a proper charge as indicated in conformance with all City Purchasing Ordinances and Regulations."**

76. McPike signed all of these invoices with the above-referenced certification, even though the items had not been received and even though the expenditures were not proper and were not in conformance with the ordinances and regulations of the City.
77. Each invoice also contained a section marked RECEIVING REPORT. That section, which was for Lewis to sign, certifies that "Goods received as ordered and in good condition. Received by: \_\_\_\_\_." That section of the invoice was designed for Lewis to sign.
78. When Lewis refused to authorize payment on these invoices, McPike simply authorized payment on the invoices by signing his name in the signature blank for Lewis' name on the invoice.
79. Lewis rejected these invoices because among other reasons the off-site stored materials had not been verified to exist, had not been properly insured if they did exist, and no arrangements had been made to transport the materials to the construction site.
80. McPike again ordered Lewis to approve the invoice for payment from the City; Lewis again refused to sign invoices 7, 9 and 10 for the same reason he had refused to authorize invoice 6.
81. McPike authorized these invoices even though the invoices were false.
82. All totaled, Whiting-Turner submitted, and McPike authorized payment of more than \$2,102,580 in invoices for the purchase of materials that were not verified to exist as per the contract between the City and Whiting-Turner.

83. Despite the fact Lewis' approval of the invoices was required, McPike authorized the invoices in the blank for Lewis' signature.

**MCPIKE AND WHITING-TURNER IMPROPERLY USED THE CONSTRUCTION CONTINGENCY FOR THE REMOVAL OF SOILS**

84. On August 20, 2010, Embrey sent Lewis an email informing him that Whiting-Turner would be submitting a change order for the removal of certain soils, and that the removal of these soils was not within the original contract price. McPike and others were carbon-copied on the email.

85. Embrey further informed Lewis that the change-order had already been "agreed upon" by McPike and Whiting-Turner employee Bill Whiting.

86. McPike lacked authority to agree to such a change order as he was not the design professional in charge of the project pursuant to the VPPA. McPike had authorized this without even telling Lewis about the change order.

87. Moreover Lewis was alarmed by this development because McPike had a demonstrated history of approving expensive change orders submitted by Whiting-Turner without scrutinizing those change orders.

88. Lewis responded that he had no knowledge of any agreement between McPike and Turner, and that he was not bound by any such agreement. Lewis further informed Embrey that McPike was not the project manager and had no authority to authorize change orders.

89. As part of that same email Lewis **stated "Work must be done in accordance with the contract per my direction as project manager."**

90. McPike responded to Lewis that **"Failure to follow direction provided will be considered insubordination and will be subject to disciplinary action. I am giving**

**you an opportunity to right this situation immediately before we go that route and expect that you as project manager to [sic] follow through on this direction provided by the close of business today."**

91. This was an obvious attempt at intimidating Lewis and forcing him to go along with McPike's idea of cooperation with Whiting-Turner.
92. Lewis responded that "**Because you are my supervisor does not give you the right to demand that I sign what I believe to be an illegal document ... If I sign a document that I believe not to be in accordance with the contract and payment is made on that document – I have committed fraud. I will not sign an illegal document at your direction.**"
93. In addition to this email, Lewis took other steps to protect the taxpayers of the City of Alexandria from fraud and false claims associated with the Police Facility.
94. Lewis was threatened and harassed as a result of his refusal to go along with McPike and McPike's willingness to submit to Whiting-Turner's false claims as alleged herein.
95. For example, as part of the dispute over the soil change order, Lewis attended a meeting with McPike and Irina Jamison regarding a change order for soil removal. At that meeting, McPike accused Lewis of being "too tough" on Whiting-Turner, and urged Lewis to "give them a break because I worked with them on the Potomac Yards Fire Station" or words to that effect.
96. Lewis responded that it was his job to protect the budget of each construction project to which he was assigned, and that ultimately it was his responsibility to protect the taxpayers of the City of Alexandria.

97. At that meeting, McPike asked Jamison to leave the room and when she did, McPike threatened Lewis with termination if he did not sign the change orders.
98. McPike then spoke at length about "the City's relationship with Whiting-Turner" and about his perception that Lewis was "souring" the relationship, or words to that effect.
99. Lewis responded that while he was not completely indifferent to the relationship between the City and Whiting-Turner, such a relationship did not trump his duties to the City, or to the taxpayers of the City.
100. Lewis refused to sign the change orders relating to soil removal and as a result was subjected to unlawful discrimination and harassment as described herein.
101. As with the Payment Applications, McPike simply went ahead and endorsed the change orders in the blank in place of Lewis' name. As with the Payment Applications, McPike's signature was unauthorized.
102. Lewis took various steps to try and prevent the false claims complained of above, including but not limited to writing several memos to his direct supervisor and other City officials.

**WHITING-TURNER SUBMITTED FALSE CLAIMS TO THE CITY OF  
ALEXANDRIA FOR BONDING COSTS**

103. Virginia Code § 2.2-4337 provides that upon the award of a qualifying construction contract the contractor shall obtain and then furnish proof of a performance bond (in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract) as well as a payment bond for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor).



104. Unlike the bond requirements for private construction projects, the bond requirements for public construction projects are mandatory.
105. Virginia law and regulation provides that the contractor will be reimbursed for cost of the performance and payment by the Owner of the project, in this case the City of Alexandria; in other words, after the bond has been purchased the Owner will pay the contractor for the costs of the bond.
106. During his employment Lewis learned that Whiting-Turner had invoiced the City of Alexandria for the costs of the bond *prior* to the bond's purchase.
107. When Whiting-Turner invoiced the City of Alexandria for the cost of the bond that invoice was false because it was submitted for payment (and was paid) prior to the bond having been purchased by Whiting-Turner.
108. Whiting-Turner submitted additional false claims and made numerous false statements relating to reimbursement of the bonds.
109. Lewis identified these issues during his employment and took steps to stop such action, and was retaliated against as a result.

**LEWIS' CONTINUING EFFORTS TO STOP FRAUD AND FALSE CLAIMS AGAINST THE CITY OF ALEXANDRIA RESULTS IN HIS TERMINATION**

110. Throughout the fall and winter of 2010-2011, Lewis was unable to prevent any of the false claims submitted by Whiting-Turner and approved by McPike.
111. Throughout that period of time, Lewis was continually threatened and harassed by McPike.
112. In addition, McPike was able to convince some City employees that Lewis was acting improperly; other employees took Lewis's side from time to time, but were ultimately outmaneuvered by McPike and his allies.

113. In January of 2011, Mandley suddenly announced his retirement from the City of Alexandria, effective as of Feb. 1, 2011; also in February of 2011, McPike was named Acting Director of the Department of General Services.
114. In April of 2011 McPike was promoted to the position of Director of General Services.
115. On May 26, 2011 McPike issued a written reprimand to Lewis. McPike did not mention in the written reprimand that Lewis had complained about fraud and false claims being made to the City; McPike intentionally omitted any reference to the real reasons for the written reprimand and did so to hide the false claims from Whiting-Turner that he knew he had approved.
116. On June 13, 2011, Lewis submitted a response to McPike's formal reprimand which clearly outlined that the reason he was being retaliated against was his refusal to go along with the false claims McPike had ordered him to sign.
117. Lewis attached to that memo two previous letters he had sent to Mandley 2010 in which Lewis addressed in detail the fraud and false claims outlined in this Complaint.
118. McPike was furious that Lewis had included the two internal memoranda Lewis had written to Mandley in his written rebuttal to the written reprimand; at that point Lewis knew that he needed to seek help outside the City's Department of General Services.
119. On June 15, 2011 Lewis attempted to address the fraud and false claims he found on the city contract through a different method. Specifically, that day Lewis hand-delivered to the City Attorney's office a letter to the City Attorney complaining of illegal

activities by McPike and requesting that the City Attorney conduct an investigation of his allegations.

120. The City Attorney's office never replied to Lewis' letter and never conducted any sort of an investigation into Lewis' complaint.
121. On July 14, 2011, at the demand of McPike, Lewis attended a meeting with Bryan Embrey, who at that time served as the Whiting-Turner project manager. Lewis was specifically instructed before the meeting to reach an agreement with Whiting-Turner on the schedule delay that Whiting-Turner claimed.
122. On or about July 14, 2011, Bryan Embrey by email or other means informed Jeremy McPike that he "was not getting the things he needs" from Lewis, referring to the approval of disputed change orders and the false invoices complained of herein.
123. On July 15, 2011, Lewis was called into McPike's office for a meeting. Also present at that meeting were Cheryl Orr, Tim Wanamaker, and a representative from the City Attorney's office. McPike told Lewis that Embrey had complained that Lewis was not "cooperating" with Whiting-Turner, or words to that effect. McPike further complained that Lewis did not have a harmonious relationship with Whiting-Turner.
124. Lewis responded that the need for a harmonious relationship with Whiting-Turner did not trump his professional duties or responsibilities or his duty to ensure that the taxpayers of the City of Alexandria received full value for their money.
125. That same day Lewis was placed on Administrative for five working days; this action was taken in direct retaliation for Lewis' efforts to stop McPike's collusion in the false claims complained of herein.

126. Upon his return Lewis was required to report to Human resources for a meeting; at that meeting, he was presented with a Performance Agreement. The agreement contained provisions that required Lewis to "halt" his pending grievances and resign from the City of Alexandria.

127. Lewis refused to sign the agreement and was terminated on August 3, 2011.

**COUNT ONE – UNLAWFUL DICRIMINATION AND RETALIATION IN  
VIOLATION OF VIRGINIA CODE § 8.01- 216.8  
(Wrongful termination)**

128. All of the preceding paragraphs are reincorporated by reference.

129. At all times relevant hereto, Lewis had a protected right (and indeed it was his job) to protect the taxpayers of the City of Alexandria from fraud and false claims on the public fisc.

130. Lewis at all times relevant to this complaint, exercised his right and took every step within his power to prevent the false claims submitted by Whiting-Turner and approved by McPike.

131. Alternatively, Lewis had a good-faith belief that his actions were necessary to prevent fraud and false claims on the public fisc.

132. When his superiors in the City of Alexandria were either outmaneuvered and thus unable to stop the fraud and false claims alleged herein (as in the case of Mandley) or were involved in the wrongdoing (as in the case of McPike) or simply didn't care and wished Lewis would be quiet (as in the case of Michelle Evans) Lewis took other steps as outlined in this complaint, and was terminated in retaliation for his actions.

133. Alternatively, unlawful retaliation and discrimination was one motivation for Lewis' termination.

134. As a result, Lewis has been damaged.

**COUNT TWO – UNLAWFUL RETALIATION IN VIOLATION OF VIRGINIA  
CODE § 8.01-216.8**

**(Withholding performance appraisal and merit pay increase)**

135. All of the preceding paragraphs are reincorporated and realleged by reference herein.

136. Lewis experienced retaliation as a result of his refusal to cooperate with McPike, Whiting-Turner, and others on the issues outlined above.

137. Following Lewis' disclosure to Mandley of the false claims complained of herein, McPike retaliated against Lewis by withholding Lewis' performance appraisal and his merit pay increase for approximately six months.

138. Lewis then received two outstanding evaluations in January of 2011. One such appraisal was from Mandley and one was from McPike.

139. Lewis also received a raise in January of 2011 and back pay making the raise retroactive for the last six months.

140. McPike withheld Lewis' performance appraisals and merit increase in retaliation for Lewis's refusal to approve the false claims complained of herein and his efforts to prevent those false claims.

141. Alternatively, unlawful retaliation was a contributing factor in McPike's unlawful retaliation and discrimination.

142. As a result Lewis was damaged.

143. WHEREFORE, plaintiff demands judgment as follows as to COUNT ONE:

Plaintiff Henry Lewis demands that the Court enter Judgment in an amount equal to 2 times his back pay plus interest on the back pay; that the Court enter an Order reinstating

him as an employee of the City of Alexandria with the same seniority status he would have had but for the discrimination; and that all disciplinary actions entered on his employee file with the City be expunged; and Lewis further requests that he be compensated for any special damages sustained as a result of the discrimination, including any loss in pension benefits he incurs as a result of the discrimination; and he further prays that he be awarded his litigation costs and reasonable attorneys' fees incurred in the prosecution of this claim, as well as any other relief provided for in Va. Code § 8.01-216.8.

144. Pleading in the alternative, if the Court determines reinstatement to be impractical and unworkable, Plaintiff demands in addition to 2 times his back pay, compensation for his lost earnings and for his loss of earning capacity, for any and all compensatory and special damages sustained as a result of the discrimination, including any loss in pension benefits he incurs as a result of the discrimination; and he further prays that he be awarded his litigation costs and reasonable attorneys' fees incurred in the prosecution of this claim, as well as pre and post judgment interest on the above amount, and any other relief provided for in Va. Code § 8.01-216.8, in the amount of \$1,000,000.00 (one million dollars).

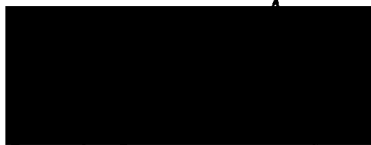
145. As to COUNT TWO, Lewis prays for judgment in an amount equal to one time his back pay as liquidated damages pursuant to Va. Code § 8.01-216.8, interest on the back pay, and his attorney's fees and costs incurred in prosecuting this claim, as well as pre and post judgment interest on the above amount, and any other relief provided for in Va. Code § 8.01-216.8.

146. Plaintiff demands a trial by jury.

Date:

4/2/12

Respectfully Submitted,



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