

NO. CVOC-20-0000100

MELISSA CHECKOVAGE, JANA HERRERA, and NELIA MCNEAL	§ § § § § § § § § § §	IN THE DISTRICT COURT
VS.		198th JUDICIAL DISTRICT
BANDERA CENTRAL APPRAISAL DISTRICT		BANDERA COUNTY, TEXAS

ORIGINAL PETITION

Plaintiffs Melissa Checkovage, Jana Herrera, and Nelia McNeal file their original petition against Defendant Bandera Central Appraisal District, also known as Central Appraisal District of Bandera County (“BANCAD”), and request disclosures pursuant to TRCP 194 and requests for production under TRCP 196.

VENUE

1. Venue is proper in Bandera County. This case relates to Defendant’s wrongful termination of the Plaintiffs. Tex. Gov’t Code § 554.007(b).

SERVICE

2. BANCAD may be served at 1206 Main St, Bandera, TX 78003.

CONDITIONS PRECEDENT

3. Plaintiffs have performed all conditions precedent to recover on their claims.

BASIC FACTS

4. On December 27, 2018, the Bandera County River Authority & Groundwater District (“River Authority”) filed a complaint against BANCAD’s Chief Appraiser Wendy Grams with the Texas Department of Licensing and Regulation (“TDLR”). A copy of the complaint is attached as Exhibit A. The complaint was directed to Ron Foster, TDLR’s chief prosecutor, and detailed a years-long pattern of fraud, abuse, and incompetence. Specifically, the River Authority complained that Grams was not appraising properties uniformly for the express purpose of avoiding a comptroller audit; that she had personally signed off on appraisals for property which was submerged by the waters of Medina lake and owned by Bexar-Medina-Atascosa Counties Water Control & Improvement District No. 1 (“BMA”), an untaxable governmental entity; that she improperly used Multiple Listing Service (“MLS”) data to override the values determined by her field appraisers; that she falsely indicated that thousands of properties were appraised in a single day; and regularly falsified BANCAD official documents, destroyed documents, and used other employees’ credentials to conceal her misconduct. The TDLR investigation is still ongoing.

5. Plaintiffs Melissa Checkovage and Nelia McNeal were field appraisers employed by BANCAD; they reported to their supervisor, the Chief Appraiser Wendy Grams. When these employees heard that the River Authority intended to file a formal complaint with TDLR, knowing that they had information relevant to the matter, they offered to assist with the complaint and in the ensuing

investigation, so long as they remained anonymous. Melissa and Nelia found documents relevant to the River Authority's allegations and assisted David Mauk, the River Authority's General Manager, in preparing the complaint. After the River Authority filed its complaint with the state agency, Melissa and Nelia obtained additional documents to assist with the investigation, and Melissa was interviewed by TDLR investigators.

6. Once Chief Appraiser Grams learned of the complaint and the possibility that BANCAD employees were assisting the investigation, tensions rose dramatically in the office as Grams began to focus on identifying and punishing the whistleblower(s). Grams terminated Katherine Nini's employment with BANCAD because she suspected her of being a whistleblower. During this time, Grams also tasked her Deputy Chief Appraiser, plaintiff Jana Herrera, to devote much of her time responding to the complaint against Grams. Grams' obsession with identifying the whistleblower(s) caused her to become increasingly isolated from her employees, with the exception of Angie Massey, BANCAD's HR director, and her assistant Jana. This isolation, in combination with Grams' preoccupation with trying to defend herself against the complaint, led to an escalating series of confrontations with field appraisers related to their job performance and relationship with Grams.

7. On December 18, 2019, Grams and her attorneys traveled to TDLR's home office in Austin to review the evidence supporting the complaint against her. While TDLR made some efforts to protect the identities of the whistleblowers,

Grams was able to determine from the documents she reviewed that both Melissa and Nelia were providing information to the investigators. When Grams returned to Bandera, her smoldering rage over the complaint and whistleblowers burst into an open flame. She began an open campaign of retaliation against both whistleblowers, and asked Jana and HR Director Massey to assist her in paving the road to their termination.

8. This retaliation was thinly veiled with hastily-concocted pretext. At the time Grams was visiting TDLR, Jana was working on routine performance evaluations for both Melissa and Nelia. In early January 2020, Grams arbitrarily overrode Jana's evaluations and significantly downgraded the employees' scores, lowering them well below previous years. This intervention, coupled with admissions by Grams that she was looking for ways to discipline the whistleblowers in ways that would not "violate any protected status," convinced Jana that the downgrades to the employees' evaluations were retaliatory and pretextual in nature. The cloaked message conveyed by the Chief Appraiser was that she intended to retaliate against the field appraisers for cooperating with the state regulatory agency, but that it needed to be papered over to create the appearance of propriety.

9. As Grams escalated her attacks against Melissa and Nelia, Jana became increasingly concerned about what was going on, and began to question Grams directly regarding her motives and course of conduct. Jana attended a series of group meetings which occurred around the 2019 holidays, with the Board

Chairman Bo Mansfield, Chief Appraiser Grams, and HR Director Massey, in which the group discussed the plan to take adverse employment action against Melissa and Nelia. Following this meeting, Jana sought out meetings with the Board Chairman wherein she tried to express concerns about the propriety of the adverse action against the field appraisers and asked for an opportunity to present her concerns to the Board. The Board Chairman said he would get back to her, but never did.

10. The Board is BANCAD's governing body, Tex. Tax Code § 6.03(a), and is charged with ensuring that the Chief Appraiser and other employees comply with all relevant laws and statutes and conduct operations in a professional and proper manner. The Chief Appraiser is appointed by and serves at the pleasure of the Board of Directors. Id. § 6.05(c). The Board has the authority to investigate and resolve complaints made about the operation of the District. Id. § 6.04(g). The Board is an "appropriate law enforcement authority" under the Whistleblower Act because it has the power and duty to investigate and take enforcement or disciplinary action against any BANCAD employee who engages in conduct that is asserted to be illegal.

11. Jana's attempt to rouse the Board to rein in Chief Appraiser Grams' campaign of retaliation was for naught, and it drew the ire of Grams, who then accused Jana of "insubordination" and gave her disciplinary warnings. HR Director Massey, who remained aligned with Grams, asked Melissa for any negative information she could provide about Jana. Massey further indicated that

she told Grams that it was either her or Jana, and that once Jana was terminated, her salary would be reallocated to cover the legal fees Grams' conduct was causing BANCAD to incur. Grams terminated Jana's employment on January 23, 2020, without any legitimate cause.

10. Having dealt with Jana's "insubordination," Grams proceeded to fire both Melissa and Nelia in early February 2020, based in part on the performance evaluations she arbitrarily downgraded, and also on their allegedly unauthorized handling of BANCAD documents—the very same documents they provided to TDLR. She thus fired the employees for providing information to the state agency that regulates and oversees BANCAD, information that was relevant to the investigation—information that TDLR was entitled to review and BANCAD was not entitled to hide or destroy.

11. Chief Appraiser Grams resigned from her position at the end of February, 2020.

CLAIMS

12. **Texas Government Code Chapter 554:** For all three Plaintiffs, Ms. Grams' actions violated the Texas Whistleblower Act, Government Code Chapter 554. BANCAD is a "local government entity" pursuant to § 554.001(2)(D) which took adverse personnel actions against public employees who in good faith had reported suspected violations of the law by another public employee to an appropriate law enforcement authority. Tex. Gov't Code § 554.002(a). Ms. Herrera attempted to reach out to the BANCAD chairman of the board regarding her

concerns with Ms. Grams' improper retaliation against Ms. Checkovage and Ms. McNeal. Her subsequent termination for "insubordination" was in substantial part retribution for reporting improper activity to the chairman. Ms. Checkovage and Ms. McNeal shared documents with TDLR to assist in the ongoing investigation against Ms. Grams; for that they were terminated. These terminations were retaliatory in nature, designed not only to punish these employees but send a message to other employees that they should not question or express concerns about any aspect of Ms. Grams' performance and practices.

13. In her retaliatory actions against the Plaintiffs, Ms. Grams was acting in the course and scope of her employment by BANCAD. By failing to step in and take appropriate action to discipline Ms. Grams and protect the whistleblowers, the board of directors in effect ratified her misconduct.

14. **Wrongful termination – *Sabine Pilot* – *Ultra Vires*.** Officials do not have the discretion to terminate or take adverse employment action against public employees in violation of the Whistleblower Act; or to terminate an employee for refusing to commit or participate in an illegal act or activity. Jana Herrera was terminated in whole or part for refusing to participate in and support Ms. Grams' campaign of illegal retaliation against Melissa and Nelia, and for attempting to bring her concerns to the attention of the Board of Directors. In Justice Guzman's concurrence in *Hillman v. Nueces County*, 579 S.W.3d 354 (Tex. 2019), she and two other justices argued that a public official does not have legal authority to fire an employee for refusing to commit an illegal act—that the conduct

is beyond official authority or “ultra vires”—and that governmental immunity therefore should not bar the award of prospective equitable relief to vindicate the employee’s rights and protect the system against abuse of power. The majority agreed that such a remedy might exist, but declined to resolve the issue because the plaintiff—an assistant district attorney fired for refusing to disclose exculpatory evidence to the defense in a criminal prosecution in violation of his legal duties—chose not to request relief based on that remedy.

15. Jana Herrera asks this Court to award her all available relief based on her termination for trying to extricate herself from the illegal retaliatory campaign against the field appraisers, and for trying to bring the improper activity to the attention of the Chief Appraiser and Board of Directors. This is a good faith request for clarification and/or extension of existing law, a petition for redress that is within Jana’s constitutional rights under the First, Fifth, and Fourteenth Amendments to the United States Constitution (right to free speech, to petition for redress, due process, and equal protection), and the similar rights afforded by the Texas Constitution, including the right to open courts and a remedy by due course of law (Article I, §§ 8, 13, 19).

DAMAGES and ATTORNEY’S FEES

16. Due to Defendant’s misconduct by and through its Chief Appraiser, the Plaintiffs collectively have been damaged in an amount greater than \$200,000 but less than \$1,000,000. Plaintiffs are entitled to the restoration of their jobs, back pay, back benefits, actual damages, court costs, attorney’s fees, and

compensatory damages, including redress for their mental anguish, and any other relief authorized by Tex. Gov't Code § 554.003 or otherwise available under Texas law.

REQUEST FOR DISCLOSURE – REQUESTS FOR PRODUCTION

17. Defendant is requested to disclose, within 50 days of service of this request, the information or material described in TRCP 194.2.

18. Defendant is requested to produce the documents and tangible things as stated in the attached Request for Production of Documents pursuant to TRCP 196.

REQUEST FOR JURY

19. Plaintiffs request a trial by jury.

PRAYER

Plaintiffs ask this Court to grant them reinstatement, restoration of pay and benefits, and a permanent injunction against future retaliation and other improper adverse employment action; and to award them their back pay, past fringe benefits and seniority rights, and other actual damages, costs, pre- and post-judgment interest, attorney's fees, and any other relief they are entitled to at law or in equity.

Respectfully submitted,



Stephan B. Rogers
State Bar No. 17186350
Ross S. Elliott
State Bar No. 24080685
Rogers & Moore, PLLC
309 Water Street, Suite 201
Boerne, TX 78006
(830) 816-5487
Fax: (866) 786-4777
steve@rogersmoorelaw.com
ross@rogersmoorelaw.com

Brian Moffatt
State Bar No. 14249500
Moffatt Law Group
309 Water Street, Suite 201
Boerne, TX 78006
(713) 857-7586
btmoffatt@moffattlawgroup.com

Attorneys for the Plaintiffs

Date Filed: March 18, 2020

REQUESTS FOR PRODUCTION OF DOCUMENTS

Definitions & Instructions

1. "Any" means any and all.
2. "You" or "your" means Defendant and any director, officer, agent, employee, administrator, manager, supervisor or custodian of records for Defendant.
3. "Communication" is any transmittal or attempted transmittal of a message or information in any form, including oral statements, letters, emails, texts, voice mails, internet communications, messages sent via Facebook, Twitter or other social networks, whether made directly to the recipient, cc:'d or bcc:'d to the recipient, or made to a third person with the intention that the communication be conveyed to the recipient.
4. "Document" is any document or tangible thing within the scope of TRCP 192.3(b), and includes without limitation email and any other document kept or stored in electronic, magnetic or any other form, regardless of the format or location of the storage device. Access to an electronic document is possession of such document for purposes of these requests.
5. Unless and to the extent you make a proper written objection, you must produce the requested documents within your possession, custody or control at either the time and place requested or the time and place stated in the response, unless otherwise agreed by the parties or ordered by the court, and must provide the requesting party a reasonable opportunity to inspect them. TRCP 196.3(a).
6. You must either produce documents as they are kept in the usual course of business or organize and label them to correspond with the categories in the request. TRCP 196.3(c).
7. You are specifically requested to produce electronic and magnetic data responsive to the requests in an electronic form that is readable using standard and readily available software. If it is impossible or impractical to produce the data in electronic form, please object to the request and produce the data in paper form. TRCP 196.4.
8. Produce all non-identical copies of every document or communication requested, including any drafts or copies containing notations, edits or comments.

9. If a requested document no longer exists or is no longer in your possession, please state where such document is located and whether and how the document was lost, destroyed, or removed from your possession.
10. If you assert a privilege and withhold documents from production, please provide a privilege log within fifteen days of serving your discovery responses. TRCP 193.3.
11. Unless otherwise indicated, the time period for production of documents is five years.

Requests for Production

Pursuant to TRCP 196, you are requested to produce the following documents:

1. Any communications between you and the Texas Department of Licensing and Regulation (or any official or investigator with said department) relating to Wendy Grams or her performance or actions as Chief Appraiser of BANCAD.
2. Any communications between you and any official with the Bandera River Authority and Groundwater District relating to complaints concerning the appraisal practices or operations of BANCAD or its Chief Appraiser.
3. Any witness statements relating to any investigation of Wendy Grams by the TDLR or the Board, including any statements given by Grams.
4. Any witness statements relating to or given by Melissa Checkovage, Nelia McNeal, or Jana Herrera.
5. The entire employment files for the following persons: Melissa Checkovage, Nelia McNeal, Jana Herrera, Wendy Grams.
6. Produce the entire disciplinary files for the following persons: Melissa Checkovage, Nelia McNeal, Jana Herrera, Wendy Grams.
7. Produce all documents and communications that relate to employee performance evaluations for the following persons: Melissa Checkovage, Nelia McNeal, Jana Herrera, Wendy Grams.

8. Produce all communications between Wendy Grams and any other person that relates to or mentions Melissa Checkovage, Nelia McNeal, or Jana Herrera.
9. Produce all communications between Angie Massey and any other person that relates to or mentions Melissa Checkovage, Nelia McNeal, or Jana Herrera.
10. Produce all communications between Bo Mansfield and any other person that relates to or mentions Melissa Checkovage, Nelia McNeal, or Jana Herrera.
11. Produce all minutes, resolutions and other documents of the BANCAD Board of Directors that relate to or mention Melissa Checkovage, Nelia McNeal, Jana Herrera, or Wendy Grams.
12. Any documents or communications relating to the May 25, 2017 meeting of the BANCAD Board of Directors.
13. Any agenda for any meeting of the BANCAD Board of Directors that refers to or mentions Melissa Checkovage, Nelia McNeal, Jana Herrera, or Wendy Grams.
14. Any minutes and recordings of any meeting wherein the TDLR investigation of Wendy Grams was discussed or deliberated.
15. Any minutes and recordings of any meeting wherein Wendy Grams' status or position as Chief Appraiser was discussed or deliberated.
16. Any minutes and recordings of any meeting wherein disciplinary action against Melissa Checkovage, Nelia McNeal, Jana Herrera, or Wendy Grams was discussed or deliberated.
17. For any documents shredded, recycled, or otherwise disposed by BANCAD since January 1, 2017, any log, report, list, or other document relating to the identity of the documents disposed of, the basis for their disposal, or the means of their disposal.

18. Any policies or procedures of BANCAD or its Board of Directors relating to the handling of employee or public complaints concerning the operation of the District.
19. Any policies or procedures of BANCAD or its Board of Directors relating to the preservation, retention, or destruction of records.
20. Any job description relating to the positions of Chief Appraiser, Deputy Chief Appraiser, or Field Appraiser.
21. Any organization chart or diagram that reflects the structure of the staff or leadership of BANCAD.
22. Any document or communication wherein BANCAD or its Board of Directors retained an attorney or law firm to represent Wendy Grams.
23. Any document or communication that relates to any agreement or decision by BANCAD to pay for legal representation for Wendy Grams.
24. Any legal services agreement BANCAD has with any attorney or law firm.
25. Any attorney's fees invoices reflecting attorney's fees or legal expenses paid by BANCAD or its Board of Directors since January 1, 2017.