

No. _____

SHELTON CHARLES,

Plaintiff,

v.

**TEXAS LOTTERY COMMISSION,
and GARY GRIEF, in his Individual
and Official Capacity
Defendants.**

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IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT COURT

TRAVIS COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION AND JURY DEMAND

TO THE HONORABLE JUDGE OF THIS COURT:

Shelton Charles, Plaintiff, by and through the undersigned counsel, complains of the TEXAS LOTTERY COMMISSION and GARY GRIEF, in his individual and official capacity, Defendants, and for causes of action shows the Court and jury as follows.

**I.
NATURE OF THE CASE**

1. Pursuant to Tex. R. Civ. Proc. Rule 190.3, discovery is intended to be conducted under Discovery Control Level II. Plaintiff reserves the right to request a discovery control plan from the Court pursuant to Rule 190.4.

2. Mr. Charles sent an email to members of the Texas Legislature expressing his concerns that TEXAS LOTTERY COMMISSION officials had made misrepresentations to the Legislature and others regarding the agency’s computer records recovery system and had misused government funds. Additionally, Mr. Charles reported that the LOTTERY COMMISSION had violated the Open Records Act and had engaged in racial discrimination. Two days later, the LOTTERY COMMISSION and its Acting Executive Director, GARY GRIEF, retaliated against Mr. Charles by firing him. Mr. Charles alleges that the LOTTERY

COMMISSION violated Mr. Charles' First Amendment rights and the Texas Whistleblower Act. Mr. Charles seeks reinstatement, other injunctive relief, lost wages, compensatory damages, and attorneys' fees to compensate him for the LOTTERY COMMISSION'S unlawful actions. When procedurally appropriate, Mr. Charles will amend this lawsuit to include charges of racial discrimination and retaliation.

II. PARTIES AND SERVICE

3. Plaintiff, SHELTON CHARLES, ("Mr. Charles"), is a citizen and resident of Travis County, Texas.

4. Defendant, TEXAS LOTTERY COMMISSION, ("LOTTERY COMMISSION") is a State Agency which may be served by serving the Attorney General, Greg Abbott, Office of the Attorney General, 300 W. 15th Street, Austin, Texas 78701.

5. Defendant, GARY GRIEF, ("GRIEF") is an individual who is a citizen of Texas and who resides in or around Travis County. At all times relevant to this suit, GRIEF was employed by and served as the Acting Executive Director of the LOTTERY COMMISSION. GRIEF may be served at the offices of the LOTTERY COMMISSION at 611 E. 6th Street, Austin, Texas 78701.

III. JURISDICTION AND VENUE

6. This court has jurisdiction of the Plaintiffs' claims pursuant to Article 5, §8 of the Texas Constitution and Texas Government Code §§24.007 & 24.008.

7. The District Courts of Travis County, Texas have jurisdiction over this cause of action because Plaintiff's damages are in excess of the jurisdictional minimum amount in controversy for such courts.

8. Venue is proper in Travis County, Texas pursuant to Texas Civil Practice and Remedies Code §15.001 because that is where part or all of the cause of action accrued.

9. Pursuant to Section 554.006(b), Texas Government Code, this suit is proper in the District Court of Travis County, Texas.

IV. JURISDICTIONAL PREREQUISITES

10. Plaintiff has exhausted all applicable grievance procedures adopted by Defendant and has timely filed this suit in accordance with Sections 554.005 and 554.006, Texas Government Code.

V. FACTUAL BACKGROUND

11. Mr. Charles originally began working at the LOTTERY COMMISSION in 1991 and stayed until 1998 when he resigned to go to work for another employer. He returned to work for the LOTTERY COMMISSION on or about August 5, 2002 as a Systems Analyst IV (WAN Analyst). Mr. Charles performed his job in a highly competent and professional manner, as indicated by promotions he received and excellent performance ratings he received during his tenure with Defendant. Mr. Charles worked in the area of Information Resources as the senior technical lead coordinating and support all Lottery LAN/WAN (Local Area Network/ Wide Area Network) Operations.

12. On October 26, 2005, Mr. Charles sent an email to the LOTTERY COMMISSION's Acting Executive Director, GRIEF, and other management employees raising

concerns regarding racial discrimination at the LOTTERY COMMISSION. Mr. Charles, who is African-American, felt that the LOTTERY COMMISSION had treated himself and other minority employees in a racially discriminatory manner in terms of higher salary, preferential treatment and promotions for non-minority employees. In his email, Mr. Charles expressed his concerns that he would lose his job, his career with the state, and his ability to financially support his family for standing up and opposing LOTTERY COMMISSION'S discrimination. Nonetheless, Mr. Charles felt he had a morale obligation to take a stand against the discrimination and hostile work environment at the agency. A copy of this email is attached and incorporated into this Petition as **EXHIBIT A**.

13. In spite of the seriousness of the concerns raised by Mr. Charles, GRIEF never responded to Mr. Charles' email.

14. In addition to the racial discrimination at the LOTTERY COMMISSION, Mr. Charles was aware that the LOTTERY COMMISSION had misused government funds and made misrepresentations to the Texas Legislature and others regarding the LOTTERY COMMISSION'S Disaster Recovery Site. The Disaster Recovery Site is a facility physically located away from the LOTTERY COMMISSION'S primary headquarters. At the Disaster Recovery Site, electronic computer information relating to crucial LOTTERY COMMISSION business functions is backed up and stored so that in the event of a disaster affecting the COMMISSION'S main headquarters, the LOTTERY COMMISSION could continue its operations. The Disaster Recovery Site is extremely important to the State of Texas because a shut down of the Texas Lottery could cost the state millions of dollars and result in a loss of credibility for the LOTTERY COMMISSION among the citizens of the State.

15. Based on his work on the Disaster Recovery Site and his expertise in this area, Mr. Charles had previously expressed to his managers at the LOTTERY COMMISSION his concerns that the Disaster Recover Site was not operational and would not work in the event of a disaster that caused the primary computer network to shut down. This was contrary to representations that LOTTERY COMMISSION officials had made to the Texas Legislature and others. When Mr. Charles and other LOTTERY COMMISSION employees expressed their concerns about the Disaster Recovery Site to their management, Mr. Charles and the other employees were threatened with their jobs if they revealed this information to anyone.

16. In addition to Mr. Charles' concerns regarding the Disaster Recovery Site, Mr. Charles was aware that the LOTTERY COMMISSION had on a number of occasions violated the Texas Open Records Act/Public Information Act by intentionally inflating the costs of obtaining public information in response to Open Records Requests from the media and citizen requestors. Mr. Charles had previously sat in on meetings of LOTTERY COMMISSION employees where the main topic of discussion was setting costs at a false high amount in response to Open Records Requests in an effort to avoid having to produce the documentation and/or to force the requests to be withdrawn or modified so as to limit the information that would have to be released.

17. On November 2, 2005, Mr. Charles sent an email to members of the Texas Legislature, identifying himself as a LOTTERY COMMISSION employee who had first-hand knowledge of the lack of integrity of the LOTTERY COMMISSION'S Disaster Recovery Site, the truthfulness of the LOTTERY COMMISSION'S representations concerning this matter, and the LOTTERY COMMISSION'S violations of the Open Records Act. Further, Mr. Charles stated that the LOTTERY COMMISSION was a hostile work environment where employees

were “bullied into silence” due to the management’s hostile threats and intimidation. Mr. Charles explained in the email that he had worked at the LOTTERY COMMISSION for almost ten years and had reached the point where he felt he wanted to speak out on these issues of serious public concern. A copy of this email is attached and incorporated into this Petition as **EXHIBIT B**.

18. On the morning of November 4, 2005, Mr. Charles was approached without any advance notice by Mr. Charles’ supervisor, Joe Goebler, and a LOTTERY COMMISSION Human Resources Officer, John Shaw. Mr. Charles was directed to attend a meeting with Goebler and Shaw who wanted “to talk” with Mr. Charles about his report to members of the Legislature regarding the Disaster Recovery Site. Mr. Charles attended the meeting, which was tape-recorded by the LOTTERY COMMISSION and later transcribed. A copy of the transcript is attached and incorporated into this Petition as **EXHIBIT C**. In the meeting, Goebler asked Mr. Charles questions regarding the issues Mr. Charles raised in his November 2, 2005 email to members of the Texas Legislature. Because of the nature of the questions, Mr. Charles explained to Goebler and Shaw that he felt he was being put on the spot and respectfully asked if the LOTTERY COMMISSION would put the questions in writing. Neither Goebler nor Shaw indicated in any way that Mr. Charles’ request was unreasonable and both stated “Okay” in response to Mr. Charles’ request to put the questions in writing.

19. Five hours later, at approximately 4:00 p.m. on November 4, 2005, GRIEF terminated Mr. Charles’ employment, citing the LOTTERY COMMISSION’S “at-will” employment policy and alleging that Mr. Charles refused to answer questions from Mr. Charles’ supervisor. The reason given for Mr. Charles’ termination was clearly false as Mr. Charles never refused to answer questions but simply asked that the questions be put in writing so he could

appropriately respond to them. Moreover, neither GRIEF nor any other employee of the LOTTERY COMMISSION counseled or reprimanded Mr. Charles, or inquired whether Mr. Charles actually “refused” to answer the questions. Mr. Charles had never been disciplined before for any other matter and Mr. Charles had consistently received strong performance reviews.

20. On November 9, 2005, Mr. Charles filed a Charge of Discrimination with the Texas Workforce Commission alleging discrimination and retaliation. The Texas Workforce Commission investigation is not complete and, therefore, Mr. Charles asserts no claim at this time in this Petition for discrimination or retaliation under the Texas Labor Code and/or Title VII of the Civil Rights Act. Mr. Charles will amend this Petition at a future date as it becomes timely and appropriate to include such claims.

21. On or about November 14, 2005, The Texas House Committee on Licensing and Administrative Procedures held a hearing regarding the status of the LOTTERY COMMISSION’s Disaster Recovery Site and also the circumstances surrounding Mr. Charles’ termination. The Legislators conducting the hearing expressed serious concern regarding the matters brought to their attention by Mr. Charles, as well as the propriety of Mr. Charles’ termination.

VI. CAUSES OF ACTION

Count I – Whistleblower Retaliation

22. The preceding paragraphs are incorporated by reference in the following claim for relief.

23. Mr. Charles would show that the aforementioned conduct constitutes a violation of the Texas Whistleblower Act, Chapter 554, § 554.001, Tex. Gov’t Code, which prohibits a

governmental entity from retaliating against a public employee who in good faith reports a violation of law to an appropriate law enforcement authority.

24. Mr. Charles' clearly established rights under the Texas Whistleblower Act were violated by the LOTTERY COMMISSION when it terminated Mr. Charles' employment in retaliation for his good faith reports of violations of law to an appropriate law enforcement authority.

25. As a direct and proximate result of Defendant's wrongful conduct, Mr. Charles has and will continue to suffer loss of pay, benefits, and other monetary damages, loss of earning capacity, damage to his reputation, mental anguish, loss of enjoyment of life, and attorney's fees, costs and expenses.

Count II – Violation of First and Fourteenth Amendment Rights

26. The preceding paragraphs are incorporated by reference in the following claim for relief.

27. Mr. Charles' concerns expressed to members of the Texas Legislature relating to the Disaster Recovery Site, compliance with the Open Records Act, and racial discrimination at the LOTTERY COMMISSION were serious matters of legitimate public concern.

28. Defendant GRIEF, in his capacity as a policy-making officer of the LOTTERY COMMISSION, terminated Mr. Charles' employment in retaliation for Mr. Charles' protected speech on matters of legitimate public concern in violation of Mr. Charles' rights of freedom of speech guaranteed by the First and Fourteenth Amendments to the United States Constitution.

29. The actions of Defendant GRIEF deprived Mr. Charles of his First Amendment Rights provided to him by the provisions of the due process clause of the Fourteenth Amendment to the United States Constitution, made actionable by 42 U.S.C. §1983.

30. Defendant GRIEF acted without authorization of law, willfully, knowingly, and purposely, with the specific intent of depriving Mr. Charles of his First and Fourteenth Amendment rights of free speech.

VII. DAMAGES

31. As a direct and proximate result of Defendants' actions, Mr. Charles suffered and continues to suffer loss of comparable employment, loss of past and future income, loss of past and future employment benefits, loss of future earning capacity, and suffered and continues to suffer emotional distress, humiliation, embarrassment, loss of opportunities for career advancement, and damage to reputation.

VIII. EXEMPLARY DAMAGES

32. Mr. Charles would further show that the acts and omissions of Defendants complained of herein were committed with malice or reckless indifference to the protected rights of Mr. Charles. In order to punish Defendants for engaging in unlawful discrimination and retaliation and to deter such actions and/or omissions in the future, Mr. Charles also seeks recovery from Defendants for exemplary damages.

IX. JURY DEMAND

33. Plaintiff hereby requests a trial by jury of all issues of fact in this case and herewith tenders the jury fee.

X. RELIEF SOUGHT

34. Plaintiff seeks prospective and/or injunctive relief against Defendant GRIEF in his official capacity under 42 U.S.C.A. §1983. The prospective relief sought includes Plaintiff's

reinstatement of employment and an injunction to prevent future violations of Plaintiff's civil rights by GRIEF.

35. Plaintiff seeks monetary relief against Defendant GRIEF in his individual capacity under 42 U.S.C.A. §1983 for the damages set forth in this Petition.

36. Plaintiff seeks monetary relief against Defendant the LOTTERY COMMISSION under the Texas Whistleblower Act for the damages set forth in this Petition.

**X.
PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited and appear herein, and that upon final trial hereof, that Plaintiff recovery judgment against Defendants for his damages in a sum far in excess of the minimal jurisdictional limits of this Court. Plaintiff additionally prays for both compensatory and punitive damages, reasonable attorney's fees, prejudgment and post-judgment interest, court costs, and for such other and further relief, both general and special at law or in equity, to which Plaintiff may be justly entitled.

Respectfully Submitted,

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