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only and was essentially stripped of all job duties when she raised concerns about conduct she observed while working for the Defendant. While employed for Defendant, Plaintiff noticed that the OAOA was engaged in a scheme to flout state procurement law in the award of contracts. Plaintiff surmised that the Defendant cast aside well-established policies and procedures of the OAOA and under Delaware's state procurement law, circumventing safeguards to prevent enrichment of the personal contacts of elected officials.

When the Plaintiff refused to participate or otherwise approve improper and unlawful policies and procedures for conducting audits, reported the deviations from the law and proper policy to OAOA internally, or questioned the Auditor of Account's conduct and actions she was isolated, bullied, intimidated, disciplined, and ultimately retaliated against. When Plaintiff sought to retain documents and information regarding Defendant's retaliatory behavior, demands to approve or develop unlawful and improper policies, and other materials related to efforts to circumvent the law respecting contract procurement, she was reprimanded, forced out of her job due to a campaign of abuse and the resulting psychological trauma, and ultimately improperly and unlawfully terminated. The Plaintiff has been under the care of a medical professional related to symptoms caused by this treatment and has lost wages and employment opportunities related as a result of the unlawful termination.

JURISDICTIONAL STATEMENT

The exercise of Jurisdiction in this matter is appropriate in this case pursuant to 10 *Del. C.* § 3103, and 19 *Del. C.* § 1704.

THE PARTIES

1. Kathleen Davies (“Plaintiff”) is a resident of Kent County, Delaware and former Chief Administrative Auditor for the Office of the Auditor of Accounts of the State of Delaware.

2. The Office of the Auditor of Accounts for the State of Delaware (“Defendant” or “OAOA”) is a State of Delaware agency, currently headed by Kathleen McGuiness (“Auditor of Accounts” or “Auditor McGuiness”), the current Auditor of Accounts for the State of Delaware, who is being prosecuted for corruption by the Delaware Department of Justice. Other then-employees of the Defendant involved in the actions serving as an underlying basis for this complaint are Spiros Mantzavinos, former Chief of Staff to the State Auditor (“Chief of Staff”), and Elizabeth Vasilikos, the former First Deputy State Auditor (“First Deputy”).

3. Plaintiff was hired as Chief Administrative Auditor for the Office of the Auditor in 2010.

4. Defendant was elected to be the State Auditor of Accounts in November 2018.

FACTUAL BACKGROUND

5. Shortly after the Auditor of Account's election, the Plaintiff noticed irregularities in the execution and administration of OAOA functions. For example, the Plaintiff noticed that the State Auditor deviated from well- established Auditor's office and State of Delaware policies related to the awarding of contracts for services to the Auditor's office. In particular, the OAOA was contracting with various CPA firms with the express intent of fragmenting the contracted services to avoid the public procurement process for public contracts. Further, the work assignments repeated work already assigned or completed by Defendant's employees. The Plaintiff first became aware of the Auditor of Account's efforts to fragment contracts in a conversation with the First Deputy Auditor. Plaintiff had objected to and refused to approve new policies and a new auditing manual which contained material that was not consistent with the relevant auditing standards and that would flout the proper functioning of audits at the office. Plaintiff raised a concern that she did not have all information needed to assess the policies, and the First Deputy Responded that she would not provide information related to the entities or individuals to receive contracts to conduct the audits because the Office of the Auditor was attempting to fragment contracts to keep the total amount of those

contracts under a certain threshold.

6. During the spring of 2019, the State Auditor contracted for hotel facilities located five blocks away from Defendant's Offices to hold multi-day training events exclusively for the Auditor's Office when there was an adequately sized training room that had been used regularly during the same period for staff training. Furthermore, the State Auditor disregarded the Budget and Accounting Manual's prohibitions with respect to food and drinks, and snacks for the multi-day event. The amount of food and drinks purchased were well in excess of what was required for the session and the excess was used to supply the break room with snacks and drinks.

7. Additionally, in May of 2019 the Auditor McGuinness attempted to demand that work be performed without regard for the professional code of conduct or standards relevant to the audit assignments, attempted to force Plaintiff to approve and provide "sign off" on improper policies and standards, and continuously intervened in an effort to override the application of these professional standards. Further, Auditor McGuinness attempted to force the Plaintiff to sign-off on incomplete and non-compliant work. These repeated demands to approve the incorrect and improper policies, coupled with the above-mentioned discussion with the First Deputy Auditor, prompted the Plaintiff to request the Whistleblower and Workplace Violence reporting contact for the State of Delaware from then Chief of Staff Mantzavinos. The Chief of Staff ultimately failed to take any action to address

Plaintiff's efforts to report unlawful activity and facilitated or assisted in carrying out the campaign of harassment against Plaintiff.

8. After requesting the noted reporting contacts, the abusive conduct perpetuated by the Auditor of Accounts intensified. Auditor McGuiness continued to retaliate against Plaintiff and repeatedly refused to follow Delaware State Merit rules and State of Delaware Human Resources policies and procedures. These actions included but were not limited to refusing to file Plaintiff's workers' compensation claim, failing to provide Plaintiff with her pension service record upon separation, and refusing to allow the Plaintiff the same training and certification accommodations provided to other staff in the Office.

9. In one instance, the Auditor McGuiness interfered with the Plaintiff's professional certification by moving the payment for licensure renewal from the Plaintiff to another staff member in an effort to cause irrevocable harm to the Plaintiff's professional credentials. Plaintiff ultimately had to take action on her own to remedy this, and was given no notice or information about the Auditor of Account's decision to interfere with her certification.

10. Further, the Auditor of Accounts and the Chief of Staff would regularly engage staff in playing games of corn hole toss directly in the center of the work areas at various hours throughout the workday outside of time allotted to said employees for regularly scheduled breaks and lunch periods. Plaintiff refrained from

objecting to this conduct for fear of additional retaliation but refused to participate in behavior that amounted to a waste of taxpayer dollars during working hours.

11. Whenever Plaintiff raised concerns in compliance with the OAOA's own policy and procedures regarding the noted irregularities, unlawful behavior regarding procurement law, and improper content within the policies being foisted upon Plaintiff, which were in fact violations of state law and office policy, she was either admonished and berated directly by the Auditor of Accounts, the Chief of Staff, or the First Deputy, and ultimately subjected to further retaliation.

12. In February 2019, Plaintiff began treatment with a medical professional to address stress and anxiety caused by the treatment of Plaintiff at work. Once Defendant began to receive reports from Plaintiff regarding various illegal behavior or deviations from policy and after Plaintiff's refusal to cooperate in Defendant's unlawful and illegal demands, Defendant's mistreatment of Plaintiff and acts of abuse, adverse employment actions, and ultimately retaliation intensified. Beginning on or around September 2019, Plaintiff was taken out of work by order of her treating physician on short term disability because of Defendant's, and in particular Auditor McGuiness and her managerial employees' abusive actions, which include but are not limited to the following specific types of conduct, noted herein by way of specific examples:

A. Denying Plaintiff access to a computer or a state e-mail address and

placing plaintiff in a small office without windows, isolated from other staff.

- B. Removing all job functions from Plaintiff and relegating her solely to reviewing hard copies of materials related to the review of old office policies, writing manuals that were simultaneously contracted out to CPA firms, and working on a training program without any intent to utilize the training. Essentially, Plaintiff was tasked with busy work unrelated to her actual job duties.
- C. Ignoring Plaintiff's request for additional work assignments.
- D. Demanding that the Plaintiff sign an auditing policy for sue within the OAOA that was developed by an outside CPA Firm, for a CPA firm, without Plaintiff being able to confirm that the policies were compliant with state law, policies, and the appropriate auditing standards. Plaintiff refused to sign this policy, consistent with her prior refusal to participate in unlawful or improper activity.
- E. Instructing the Plaintiff that everything in the OAOA's offices was considered Confidential and that nothing that occurred in the Office was to be discussed outside the OAOA, including Plaintiff's concerns about illegal conduct. When Plaintiff referenced reporting conduct or providing copies of documentation to private legal counsel, she was

advised that such behavior amounted to insubordination and would result in disciplinary action.

- F. Admonishing and berating Plaintiff for utilizing the only printer available in the office and forbidding Plaintiff from contacting IT support despite contrasting directives contained in OAOA and State policy.
- G. Entering Plaintiff's office on multiple occasions per week for the sole purpose of screaming, yelling, and hurling verbal abuse at plaintiff, screaming at plaintiff within inches of Plaintiff's person such that the Auditor of Account's breath struck Plaintiff's face and in such a manner that caused Plaintiff to fear physical injury or assault.
- H. Disciplining Plaintiff for advising Auditor McGuinness that she wished to confer with legal counsel or inform legal counsel of actions and behaviors occurring at the Auditor's Offices.
- I. Barring Plaintiff from having interactions with all other employees throughout the day aside from the occasions wherein Plaintiff was conferring with HR about discipline or related issues or being berated and verbally assaulted by Defendant.
- J. Issuing Plaintiff a termination letter and proceeding to terminate Plaintiff from her job effective April 10, 2020, including for allegedly

violating a nonexistent policy regarding Plaintiff sending evidence of Defendant's illegal activity and retaliation to her personal e-mail address, despite the fact that Auditor McGuiness and Defendants agents had sent Plaintiff various communications related to work to her personal e-mail address. Plaintiff had sent these e-mails to her personal e-mail address for the purpose of preventing spoliation of evidence and in order to further report Defendant's unlawful conduct. Defendant's act in issuing an illegal *ex post facto* terminating Plaintiff for the illusory policy was motivated by a desire to prevent Plaintiff from reporting Defendant's illegal conduct to any and all public bodies, and for the purpose of destroying Plaintiff's credibility.

13. The State Auditor, First Deputy, and Chief of Staff regularly utilized their personal emails in addition to their State emails for communication and corresponded with the Plaintiff on her personal email account.

14. Plaintiff's work assignments were stripped away from her, and she was often given assignments with impossible deadlines, or opaque instructions to develop a pretextual basis to reprimand or terminate her. Further, in June of 2019 the Auditor of Accounts prevented Plaintiff from having access to her State of Delaware e-mail account.

15. The Plaintiff was subsequently subjected to official discipline on the

basis that she allegedly failed to disclose that she had retained an employment lawyer to assist her with the improper punishment that she was being subjected to.

16. Plaintiff filed multiple grievances regarding the retaliatory and improper discipline imposed upon her, and advised that the constant coercion, bullying, harassment and intimidation, in part due to her efforts to follow appropriate policy and law, was causing her to have to work in fear of termination on a daily basis.

17. Upon information and belief, the purpose of this discipline and Auditor McGuiness's abusive behavior towards Plaintiff was to punish the Plaintiff for questioning the abnormal and unlawful behavior exhibited by the Defendant and to prevent Plaintiff from sharing witnessed irregularities with the public. Plaintiff was continually subjected to verbal bullying, persistent written reprimands, and intimidation tactics either directly by the Auditor of Accounts, or by First Deputy and/or Chief of Staff, to include restricting her internet access, attempting to discontinue her membership to valuable professional associations, suspension from the office for sending documents to her personal email, and ultimately termination for sending the emails in question.

18. Plaintiff was often reprimanded in front of subordinates, which further undermined her authority in OAOA and made it difficult for her to perform her job duties.

19. As noted above, in the fall of 2019 Plaintiff was removed from work by her physician due to symptoms that she was suffering as a direct result of the work conditions that she was being subjected to. Plaintiff's Short-Term Disability ("STD") initially expired on December 17, 2019, but Plaintiff had leave time to use after the STD expired.

20. Plaintiff ultimately was able to extend her STD, but prior to the extension the Auditor of Accounts sought to withhold her pay, and terminate her based on absenteeism, as opposed to applying Plaintiff's sick leave and annual leave until she was able to return to work or exhausted her STD, at which point a state employee administratively separates from State employment by operation of state law.

21. On March 10, 2020, the Plaintiff's STD ended, and per the State of Delaware's policy the Plaintiff administratively separated from State employment. In a letter dated March 12, 2020, and hand-delivered to the Plaintiff's home, the Defendant proposed termination for communicating unspecified confidential and protected information to an unspecified third party, among other reasons. This basis constitutes tacit admission on behalf of the OAOA that Plaintiff was terminated for attempting to report violations of the law to third parties. Despite the Plaintiff's response and objections to the termination during a pre-deprivation hearing, the Defendant informed the Plaintiff that the Auditor of Accounts was changing Plaintiff

state employment record to reflect a disciplinary termination, effective April 10, 2020. This illegal *ex post facto* termination was an additional act of retaliation taken against Plaintiff, and the basis proffered by Defendant for the unlawful *ex post facto* termination are pretextual and without basis in law or in fact.

**COUNT I – BREACH OF IMPLIED
COVENANT OF GOOD FAITH AND FAIR DEALING**

22. Preceding paragraphs are hereby incorporated by reference, as if set forth herein in full.

23. Defendant's and Defendant's managerial employees' (managerial employees in this count include the Auditor of Accounts, Deputy Auditor, and Chief of Staff) conduct of intentionally providing Plaintiff with work assignments that were destined to fail, or allowed insufficient time to complete serves as an example of attempts to manufacture reasons to terminate the Plaintiff.

24. Defendant's and Defendant's managerial employees' actions related to alleging that Plaintiff violated an unknown, nonexistent, and unenforced policy against utilizing personal e- mail accounts, despite agents of the Defendant using personal email accounts for official OAOA purposes, amounts to the manufacture and fabrication of negative information about the Plaintiff to serve as pretext to terminate Plaintiff.

25. Defendant's managerial employees' conduct surrounding the

misapplication of State and Defendant's own policies on Worker's Compensation and Short-Term Disability evince attempts by the Defendant to create negative information about Plaintiff and discredit Plaintiff in an effort to provide a pretextual basis to terminate the Plaintiff from her employment.

26. Defendant's managerial employees manufactured false information, generated, and documented false negative information about the Plaintiff and sought to discredit Plaintiff as outlined above in retaliation for Plaintiff challenging illegal activity engaged in by the Defendant, and as a means to discredit and silence the Plaintiff for speaking up. This is illegal conduct is consistent with intentional misrepresentations with the intent to injure that provide for liability for breaching the implied covenant of good faith and fair dealing delineated in *E.I. DuPont de Nemours & Co. v. Pressman*, 679 A.2d 436, 444 (Del. 1996).

27. Defendant is liable for the harm caused to Plaintiff due to her improper and unlawful termination. Defendant placed materially false information in Plaintiff's employment file related to Defendant's unlawful and groundless termination of Plaintiff, which has obstructed Plaintiff's effort to secure further employment in her primary field of expertise, that of public sector auditing.

**COUNT II – VIOLATION OF DELAWARE
WHISTLEBLOWER PROTECTION ACT 19 DEL. C. § 1703**

28. Plaintiff hereby incorporates the allegations of all prior paragraphs as if

set forth herein in full.

29. On or about May 2019 Plaintiff advised Defendant, in particular the State Auditor, the Deputy Audit, and the Chief of Staff, that she believed that Defendant's attempts to implement unlawful and inadequate auditing policies would violate various professional standards and protections designed to ensure proper financial controls and auditing, and that she would not sign off on policies designed to facilitate the fragmentation of contracts so that Defendant could circumvent the requirements of state of Delaware procurement law. Implementing or changing auditing policies that would prevent proper audits and attempting to engage in fragmentation of public contracts both constitute violations as defined by the Delaware Whistle Blower Protection Act, Delaware Code Title 19, Chapter 17.

30. 29 Del. C. § 6903(a) provides that "[a]ny person, who, with intent to avoid compliance with this chapter, willfully fragments or subdivides any contract for the purchase of materiel, nonprofessional services, public works or professional services, shall be subject to the penalties listed in this section." The state procurement law, as referenced, is designed to prevent misappropriation of public funds. Defendant's effort to modify policies to effectuate circumvention of public procurement law is a plain effort by Defendant to misappropriate, in derogation of the law, monies within Defendant's control, as each state department is provided the authority to issue contracts for services under certain thresholds without putting said

contracts out for public bid.

31. Plaintiff questioned the Defendant about deviating from policies and laws related to appointing contracts to public entities, refused to facilitate or participate in said violations and deviations, and reported and attempted to report violations as defined by 19 Del. C. § 1702(6)(b). Plaintiff made internal reports regarding such violations and refused to participate in conduct believed to be in furtherance of said violations. Plaintiff also indicated to Defendant on various occasions that she intended to report violations to public bodies; in other words, Plaintiff plainly advised Defendant that she intended to “blow the whistle.” By information and belief, Defendant was unlawfully monitoring Plaintiff’s state e-mail, and when Plaintiff e-mailed documentation to herself Defendant retaliated against Plaintiff in an effort to stymie and obstruct efforts by Plaintiff to report Defendant’s violations.

32. The violations committed by Defendant, namely, improperly using state resources for Defendant’s own benefit, implementing improper or out of standard auditing policies and attempting to compel Plaintiff to approve them, and fragmenting contracts in derogation of public procurement law, constitute conduct by Defendant, including the Auditor of Accounts, Deputy Auditor, and Chief of Staff that is materially inconsistent with, and a serious deviation from, financial management or accounting standards implemented pursuant to a rule or regulation promulgated by

the Defendant or a law, rule, or regulation promulgated under the laws of this State, a political subdivision of this State, or the United States, to protect persons from fraud, deceit, or misappropriation of public or private funds or assets under the control of the Defendant.

33. Plaintiff was reprimanded, disciplined, subject to severe and traumatic abuse that placed her in fear of being physically attacked, and ultimately discharged for reporting and questioning deviations from policy and the law and violations as defined *supra*, refusing to participate in violations, and taking action which indicated that she intended to report violations to various public bodies. In sum, Defendant, via the Auditor of Accounts and other agents or managerial employees of Defendant threatened, discharged, and otherwise discriminated against Plaintiff, who was an employee of Defendant at all times relevant to the conduct described herein, for engaging in protected activity as defined by 19 Del. C. § 1703.

34. Auditor McGuiness is now subject to indictment and investigation for criminal corruption as a result of engaging in activity related to the very concerns raised by Plaintiff.

35. Plaintiff emailed herself documentary evidence of Defendant's conduct.

36. Defendant, via the Auditor of Accounts and other agents and managerial employees of Defendant, engaged in a campaign of abuse and retaliation against Plaintiff, and ultimately improperly processed an *ex post facto* termination

of Plaintiff, by Defendant's own tacit admission, for the purpose of punishing Plaintiff for engaging in protected activity under the Delaware Whistle Blower Protection Act, and to prevent her from sharing Defendant's conduct with the public or any public bodies. Plaintiff has attempted to gain employment at various state of Delaware agencies since Defendant placed materially false, fabricated, and unlawful material in Plaintiff's personnel file, which has prevented Plaintiff from gaining employment at various jobs well within Plaintiff's training and extensive capabilities. Defendant's misconduct has directly obstructed Plaintiff from securing employment in Plaintiff's field of expertise, that of public auditing.

37. Plaintiff has suffered physical, emotional, and financial harm as a direct and proximate result of Defendant's conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Kathleen Davies respectfully requests that the Court enter an order:

- A. Declaring that Defendant has violated the Delaware Whistleblower Protection Act;
- B. Finding that Defendant has intentionally breached the implied covenant of good faith and fair dealing;
- C. Finding that Defendant engaged in conduct that has destroyed

Plaintiff's professional credibility and prevented her from securing employment within her field;

D. Ordering Defendant to compensate Plaintiff through reinstatement to her prior position, the payment of back wages, full reinstatement of fringe benefits and seniority rights, expungement of records relating to the disciplinary action, and actual damages, in an amount to be determined at trial;

E. Ordering Defendant to compensate Plaintiff for all attorney's fees and costs incurred in pursuing this action; and,

F. Any other relief that the Court may deem just and necessary.

OFFIT KURMAN, P.A.

/s/ Anthony N. Delcollo

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