

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

JERRY LANCE PETTY, §

*Plaintiff* §

v. §

CITY OF FREEPORT, TEXAS and § CIVIL ACTION NO. 3:25-296-cv  
JEFFREY MICHAEL PENA, in his §  
individual capacity and, for §  
injunctive relief, in his official §  
capacity, §

*Defendants* §

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Lance Petty files this Complaint against the City of Freeport, Texas (the “City”) and Councilmember Jeffrey Peña and alleges as follows:

I. INTRODUCTION

1. Plaintiff is the former City Manager of Freeport. On June 11, 2025, the City Council terminated his employment without advance notice or an opportunity to respond and without obtaining the contractually required supermajority.
2. Plaintiff’s written employment agreement provides \$50,000 severance if he is terminated without cause. The City recorded the termination as “for cause,” did not articulate or establish cause, and did not pay the severance.

3. Plaintiff alleges that Councilmember Peña used official channels to publish accusations about Plaintiff relying on an excerpted recording created and published by him despite determinations by the District Attorney and Texas Rangers that the recording reflected no threat. Plaintiff further alleges Councilman Peña directed, or attempted to direct, city employees outside the organizational hierarchy in violation of the Charter.

## II. PARTIES

4. Plaintiff Lance Petty is a Texas resident and the former City Manager of Freeport, Texas.
5. Defendant City of Freeport, Texas is a Texas home-rule municipality. The City of Freeport, Texas may be served by serving the City Secretary at 1201 North Avenue H, Freeport, Texas 77541.
6. Defendant Jeffrey “Jeff” Michael Peña is an elected City Councilmember. He is sued in his individual capacity and, for prospective relief only, in his official capacity. Jeffrey Michael Peña may be served by service at 224 West Park Avenue, Apt. 200, Freeport, Texas 77541.

## III. JURISDICTION AND VENUE

7. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343. Supplemental jurisdiction exists for related state-law claims under 28 U.S.C. § 1367. Venue is proper under 28 U.S.C. § 1391 because the events occurred in Brazoria County, Texas, and the Galveston Division of the Southern District of Texas.

8. Additionally, Plaintiff's breach of contract claim arises under Tex. Loc. Gov't Code § 271.152, which expressly waives governmental immunity for written contracts for services entered into by a municipality.

#### IV. DISCOVERY CONTROL PLAN

9. Discovery in this matter will be conducted in accordance with the Federal Rules of Civil Procedure, including Rules 26 through 37, and all applicable local rules of the Southern District of Texas.

#### V. FACTUAL ALLEGATIONS

##### A. Employment and contract terms

10. Plaintiff was appointed City Manager on or about December 2023 pursuant to a written employment agreement approved by the City Council (the "Employment Agreement")
11. The Employment Agreement—drafted by the city attorney—includes a severance of \$50,000 upon termination without cause and sets procedures for termination for cause. The Employment Agreement requires a supermajority vote to terminate the City Manager. Exhibit D – Employment Agreement.

##### B. Councilmember contact with staff and directive conduct

12. Beginning in 2023, Councilmember Peña met with staff outside the City Manager chain of command, requested internal spreadsheets and contracts, and commented on personnel matters. Exhibit E – Memo to Mayor Cain dated May 29, 2024; Exhibit F - Memo to Mayor Cain dated December 19, 2024; Exhibit G – Memo to City Council dated November 20, 2024; Exhibit H –

Memorandum dated December 3, 2024; Exhibit I – Memorandum dated December 4, 2024; Exhibit J - Memorandum to City Council dated February 26, 2025; Exhibit K - Memorandum regarding John Perez December 6, 2024.

13. On December 18, 2024, at approximately 10:00 a.m., Councilmember Peña recorded a video with Finance Director Ashlee Hurst at City Hall. Immediately thereafter, he recorded a second video in which he told Plaintiff he would ask for Plaintiff's resignation, demanded that RFPs be released that day, and asserted that Plaintiff was concealing information. Exhibit A – Transcript of Peña Video 1; Exhibit B – Transcript of Pena Video 2; NCF A – Pena Video 1 at 00:00:13 – 00:04:26; NCF-B – Pena Video 2 at 00:00:23 – 00:14:40.

14. On December 20, 2023, at approximately 9:30 a.m., an audio recording captured Councilmember Peña telling Plaintiff to have Plaintiff's spouse refrain from posting on social media and to leave a local civic board. Exhibit C – Transcript of PenaThreatAmanada; NCF-C – PenaThreatAmanda at 00:00:05 – 00:01:18.

15. Pena's actions including the direction of personnel, threatening Plaintiff's continued employment based on his spouse's speech, and publishing stigmatizing materials, were administrative and executive in nature, not legislative. These acts were taken outside the deliberative lawmaking process and thus are not subject to legislative immunity.

C. December 2024 memoranda and communications

16. Plaintiff and staff prepared memoranda in late 2024 documenting direct contact by Councilmember Peña with the Police Chief and others, including a statement that Peña would “come down hard” on Plaintiff and that the Chief should be prepared to act in Plaintiff’s place. Exhibit F –Memorandum to Mayor Cain November 19, 2024.

D. District Attorney review; suspension of Police Chief; Rangers’ findings; public posting

17. In November 2024, after reviewing the complete audio recording, the Texas Rangers concluded that no credible threat had been made by Plaintiff. Shortly thereafter, the Brazoria County District Attorney concluded likewise. Both agencies closed their involvement in the matter and communicated their conclusions directly to Police Chief Howell, who then informed Councilman Peña.

18. Despite having been personally told by both the Texas Rangers and the District Attorney that no threat had occurred, Councilmember Peña rejected those determinations. He publicly insisted that the authorities were wrong and, in defiance of their findings, published heavily edited excerpts of the recording and related video on social media accounts branded as official City Council publications. Exhibit Y – Peña Web Page; Exhibit Z - Peña Web Page; NCF-E — 2025-06-12\_0237 Peña J FB; NCF-F — 2025-06-13 Peña J FB; NCF-G — 2025-06-15 Peña J FB; NCF-H — 2025-06-20\_1136 Peña J FB; NCF-I — 2025-07-13\_2010 Peña J FB.

19. By presenting altered segments of the recording and video as proof of wrongdoing, Peña stigmatized Plaintiff in connection with his termination, revived already-

dispelled allegations, and caused them to be reported in the press and circulated to the public.

20. Within weeks, several officers filed complaints regarding the Police Chief. At the direction of the Mayor and with agreement from outside counsel, Plaintiff—who had formal authority to execute the action—was directed to suspend the Chief with pay pending an investigation. The suspension lasted approximately two months. Exhibit Q – The Brazosport Facts – Jun 1, 2025; Exhibit R - The Brazosport Facts – Jun 3, 2025.

21. Councilmen Peña and Davis requested an agenda item for the March 17, 2025, meeting to “Discuss and take possible action regarding Lance Petty’s retention of Personal Legal Counsel.” Exhibit W – Special Meeting Request – Peña April 11, 2025. That request was a repeat for the March 17, 2025, Agenda. Exhibit S – City of Freeport Agenda – March 17, 2025. No action was taken on the matter. Exhibit T – City of Freeport Meeting Minutes – March 17, 2025.

22. Mayor Cain and Councilman Matamoros then requested an agenda item for the April 7, 2025, meeting for “Discussion and possible action regarding a Resolution of Censure against Councilman Jeff Peña for 1) Responding to a demand letter by attorney Clay Thomas in a manner that does not represent the position of the majority of council, and 2) Continual Charter violations involving with and directing City staff.” Exhibit U – City of Freeport Agenda –

April 7, 2025. The minutes of the meeting reflect that Councilman Peña moved the matter be tabled because his information packet was incomplete.

Exhibit V - City of Freeport – City Council Meeting Minutes – April 7, 2025.

The issue was never revisited.

23. On April 11, 2025, Councilman Peña requested a Special Meeting for April 15, 2025, to “Discuss and take possible action regarding Lance Petty’s retention of personal legal counsel AGAINST the City of Freeport AND his illegal suspension of the Police Chief without Council Approval.” Exhibit W – Special Meeting Request – Peña April 15, 2025. It appeared that Councilmen Peña and Davis found excuse to ignore Peña’s retention of Christopher Duncan, the former City Attorney, as his counsel in Peña’s suit against the City. Exhibit O – Docket Sheet, *Park Avenue Lofts LLC and Jeff Peña vs. The Board of Adjustment for The City of Freeport, Texas and the City of Freeport*, Cause number 125934-CV in the 239th Judicial District Court of Brazoria County.

24. The investigation of Chief Howell was closed with no finding of misconduct after the complaining officers withdrew their complaints on June 2, 2025. That same day, Peña made a knowingly false accusation through the use of his city-branded Facebook page that the Police Chief’s suspension had been made illegally by Petty, knowing that Petty had responded to demands by Mayor Cain and the City Attorney to do so. Peña foreshadowed the planned disclosure of his false accusations. Additionally, Peña knowingly made false accusations of

grift against Petty and other members of the City Council. NCF-D — 2025-06-02 Peña.

25. After Councilmember Peña later posted the audio publicly, the Rangers re-investigated and again concluded no threat.

26. During a second investigation, Councilmember Peña posted the audio on the Facebook page branded “City Council Ward A, Freeport, Texas.” NCF-E — 2025-06-12\_0237 Peña J FB; NCF-F — 2025-06-13 Peña J FB; NCF-G — 2025-06-15 Peña J FB; NCF-H — 2025-06-20\_1136 Peña J FB; NCF-I — 2025-07-13\_2010 Peña J FB.

27. The City did not advise Plaintiff that stigmatizing charges would be addressed or used as a basis for discharge; he understood the June 11, 2025, proceeding to be ordinary policy debate and received no invitation or instruction to present evidence to clear his name. Exhibit L – Agenda – June 11, 2025.

28. Prior to the vote on termination, Mayor Cain questioned City Attorney David Olson, the architect of Petty’s contract regarding the requirement for a supermajority to terminate. Olson replied, “It doesn’t matter. The City Charter requires only a majority.”

29. Also prior to the Council’s vote, Councilman Jarvis Davis publicly stated that citizens should get the audio information through public records so they could judge. NCF-E — 2025-06-12\_0237 Peña J FB. However, various attempts have been made to obtain the audio that Councilman Davis claims to have “discovered.” However, current City Attorney, Christopher Duncan, who is also



Peña's personal attorney has rebuffed all requests. Councilman Peña stated that he had been unaware of the audio recordings until 48 hours previously. NCF-E — 2025-06-12\_0237 Peña J FB. That statement directly refutes Chief Howell's assertion that she told Jerry Lance Petty that she had informed Peña in November of 2024.

30. At the Special Meeting, Petty was dismissed for cause, preventing his collection of the \$50,000 termination payout to which he was contractually entitled.

E. Appointment of Chief as Interim City Manager; media reports; public-comment policy

31. After Plaintiff's termination on June 11, 2025, the City appointed the Police Chief as Interim City Manager. Exhibit S – Appointment of Chief.

32. From June 13, 2025, through at least July 13, 2025, Peña posted heavily edited audio and video on his city-branded website of what he claimed to be threats made against him.

33. On June 18, 2025, the *Brazosport Facts* reported: "Freeport police chief named interim city manager after city manager fired over alleged murder plot," referencing "secret audio recordings." In the same news cycle, Councilmember Peña, Police Chief Jennifer Howell, and Councilmember Jarvis Davis made public statements regarding the recording. City policy/ordinance reserves official public statements for the Mayor or City Manager.

34. In August 2025, Peña continued his harassment of Plaintiff by filming the Plaintiff's new place of employment, Turbeville Construction. Peña subjected that entity to ridicule by making official claims of wrongdoing on his city-branded Facebook page. Peña falsely states' "Well, it's probably because I just exposed Lance Petty for working here at Tuberville Construction on some illegal grift. Very likely as I'm being told, he got hired by Tuberville Construction only after trying to sell the City Hall building to them for one dollar., which is right there. NCF-J — 2025-08-14 Peña J FB; NCF-J — 2025-08-14 (20) Peña J FB. That discussion occurred during a closed executive session. Those sealed records and testimony of other City Council members will affirm that Lance Petty presented Turbeville Construction's offer to purchase the Freeport City Hall for an amount of ten dollars; that when asked his opinion, Lance Petty stated the building listed at well over \$800,000 and advised them to reject the offer. However, prior to an employment interview taking place after his dismissal, Jerry Lance Petty and James Turbeville had never met.

F. HOT-tax counsel overlap and unemployment-benefits communications

35. Councilmember Peña maintained a lawsuit adverse to the City concerning hotel-occupancy tax for a short-term rental. The City later rehired a former City Attorney as temporary City Attorney while that attorney was still counsel of record for Peña in the HOT-tax matter. Exhibit O – Docket Sheet, *Park Avenue Lofts LLC and Jeff Peña vs. The Board of Adjustment for The City of Freeport*,

*Texas and the City of Freeport*, Cause number 125934-CV in the 239th Judicial District Court of Brazoria County. Exhibit X – Complaint – *Park Avenue Lofts LLC And Jeff Pena v. The Board of Adjustment For The City Of Freeport, Texas And The City of Freeport* Cause No. 125934-CV.

36. After Plaintiff applied for unemployment benefits, HR did not contest and stated Plaintiff had no disciplinary actions and received no notice. Soon after, the temporary City Attorney contacted the Texas Workforce Commission, asserted that Plaintiff was terminated for “poor decisions,” “illegally suspending the Police Chief,” and referenced “the audio,” and stating the City did not possess the audio when asked to provide it. Exhibit P – TWC Correspondence.

#### G. Employment impact and continuing publications

37. Plaintiff lost several high-value employment opportunities and later accepted employment at less than fifty percent of his City-Manager salary. Exhibit AA – Petty Affidavit.

38. Councilmember Peña has continued to publish statements and videos to official-branded accounts, including statements characterizing Plaintiff as involved in serious criminal conduct.

## VI. CAUSES OF ACTION

Count 1 — Procedural Due Process (Property Interest), 42 U.S.C. § 1983 (Against the City and Peña)

39. Plaintiff had a property interest in continued employment arising from state law, the City Charter, and the Employment Agreement's supermajority and "cause" provisions.

40. Defendants deprived Plaintiff of that interest without due process by terminating him on June 11, 2025, without notice of specific charges, access to the materials used, or a pre-termination opportunity to respond, and without the contractually required vote.

41. The Council's termination decision is attributable to the City as a final-policymaker action.

42. The right to notice and an opportunity to respond prior to deprivation of a protected property interest has been long clearly established. At the time of Defendants' actions, no reasonable official could have believed that terminating a City Manager without the required supermajority or any pre-termination process was lawful.

43. The Supreme Court has long recognized that public employees with a legitimate claim of entitlement to continued employment have a protected property interest. *Board of Regents v. Roth*, 408 U.S. 564, 576–78 (1972); *Perry v. Sindermann*, 408 U.S. 593, 601–02 (1972). The Fifth Circuit similarly holds

that contractual or statutory “for cause” protections create such interests. *Moulton v. City of Beaumont*, 991 F.2d 227, 230 (5th Cir. 1993).

44. Defendant Peña’s conduct was administrative in nature and objectively unreasonable under clearly established law; qualified and legislative immunity are not applicable.

Count 2 — Liberty Interest (Stigma-Plus / Name-Clearing Hearing), 42 U.S.C. § 1983 (Against the City and Peña)

45. Defendants disseminated or relied upon stigmatizing accusations in connection with Plaintiff’s termination, including an excerpted audio recording and subsequent statements suggesting Plaintiff threatened or plotted violent crime.

46. In November 2024, the Texas Rangers reviewed the complete audio recording and concluded that no threat had been made by Plaintiff. Shortly thereafter, the Brazoria County District Attorney independently reviewed the same recording and likewise determined that no threat had occurred. Both agencies communicated their conclusions verbally to Police Chief Howell, who then informed Peña.

47. Despite these authoritative findings, Councilmember Peña publicly rejected the conclusions of the Rangers and District Attorney and published heavily edited excerpts of the recording and video on social media accounts branded as official City Council channels. Peña’s publications, made with knowledge of

law enforcement's contrary determinations, portrayed Plaintiff as dangerous and unfit for office, stigmatizing him in connection with his termination.

48. The City did not provide Plaintiff with notice of specific stigmatizing charges or a pre- or post-termination opportunity to clear his name. Plaintiff reasonably understood the June 2025 proceedings to be ordinary debate and was not advised that stigmatizing charges forming the basis of discharge would be addressed.

49. To the extent a request for a name-clearing hearing is required, such request was excused by lack of notice and would have been futile in light of the City's reliance on the edited recording and Peña's publications. In all events, the City did not offer or schedule a name-clearing hearing.

50. The right to a name-clearing hearing when stigmatizing charges accompany termination was clearly established prior to June 2025. Defendants' failure to provide such a hearing was objectively unreasonable.

51. The Supreme Court has held that a name-clearing hearing is required when stigmatizing charges accompany termination. *Codd v. Velger*, 429 U.S. 624, 627 (1977). The Fifth Circuit has repeatedly required this process where public officials disseminate false or stigmatizing reasons for termination. *Rosenstein v. City of Dallas*, 876 F.2d 392, 395–96 (5th Cir. 1989); *Bledsoe v. City of Horn Lake*, 449 F.3d 650, 653–54 (5th Cir. 2006).

52. Defendant Peña's conduct was administrative in nature and objectively unreasonable under clearly established law; qualified and legislative immunity are not applicable.

Count 3 — First Amendment Retaliation (Speech and Spousal Association), 42 U.S.C. § 1983 (Against the City and Peña)

53. Councilmember Peña's directives about Plaintiff's spouse's public speech and civic participation, and demands for personnel actions, were followed by adverse actions.

54. Defendants' actions were motivated by and in response to protected speech and association and would chill a person of ordinary firmness.

55. The City's actions and inaction constitute policy, ratification, or deliberate indifference under *Monell*.

56. The right of public employees and their spouses to speak on matters of public concern without retaliatory discharge was clearly established. Defendants' conduct in conditioning Plaintiff's continued employment on his spouse's silence violated this principle.

57. The Supreme Court has made clear that a public employer may not retaliate against employees or their close family members for protected speech. *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968); *Rankin v. McPherson*, 483 U.S. 378, 384–85 (1987). Courts recognize that retaliation against a spouse's

speech or association can support a First Amendment claim. *Adler v. Pataki*, 185 F.3d 35, 44 (2d Cir. 1999) (persuasive authority cited by Fifth Circuit).

58. Defendant Peña's conduct was administrative in nature and objectively unreasonable under clearly established law; qualified and legislative immunity are not applicable.

Count 4 — Municipal Liability (*Monell*), 42 U.S.C. § 1983 (Against the City)

59. The City maintained customs or policies whereby Councilmembers used official branding to publish accusations, engaged directly with staff outside the chain of command, and took employment actions without providing process.

60. The City ratified Councilmember Peña's conduct by declining to curb it, by acting at his behest to terminate Plaintiff, and by permitting continued use of official identifiers and channels.

61. The City Council, as final policymaker under the Charter, acted directly in terminating Plaintiff without the required supermajority or due process. This constitutes an official policy or decision attributable to the City. The City also maintained a practice of allowing Councilmembers to use official-branded accounts for unilateral statements, despite its ordinance reserving such authority to the Mayor, reflecting deliberate indifference and tacit authorization of unconstitutional conduct.

62. A municipality is liable under § 1983 when the challenged action represents official policy or when final policymakers ratify unconstitutional conduct.



*Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978); *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480–81 (1986); *Webster v. City of Houston*, 735 F.2d 838, 841 (5th Cir. 1984) (en banc).

Count 5 — Breach of Contract (Against the City)

63. The City breached the Employment Agreement by terminating without the contractually required supermajority, by recording the termination “for cause” without articulating or establishing cause, and by refusing to pay the \$50,000 severance owed upon any termination without cause.

64. Plaintiff performed or was excused. Any governmental-immunity limitations are waived or inapplicable under Texas law for written contracts for services with a local governmental entity.

Count 6 — Defamation (Per Se and Per Quod) (Against Peña)

65. Councilmember Peña published and republished statements of fact accusing Plaintiff of serious criminal conduct and professional unfitness using official-branded social-media pages and videos. These publications included edited excerpts of audio and video recordings that Peña knew had already been reviewed by law enforcement authorities and found to contain no threat.

66. In November 2024, the Texas Rangers verbally informed Police Chief Howell that Plaintiff had made no credible threat in the audio recording. Shortly thereafter, the Brazoria County District Attorney concluded likewise. Both agencies communicated their determinations directly to Police Chief Howell.

67.Despite having been told by both the Rangers and the District Attorney that the allegations were unfounded, Peña publicly rejected their conclusions and continued to publish heavily edited excerpts of the recording and related video as supposed evidence of wrongdoing. By doing so, Peña knowingly conveyed a false impression that Plaintiff had threatened violence and concealed wrongdoing.

68.Peña's publications were defamatory *per se* because they accused Plaintiff of serious criminal conduct and professional dishonesty. They were also defamatory *per quod* in that they directly caused Plaintiff to lose employment opportunities, suffer reputational damage, and endure economic loss.

69.Any privilege claimed by Peña is overcome by his actual malice. Peña published the edited recording and repeated accusations with knowledge of falsity or, at a minimum, with reckless disregard for the truth.

70.As a direct and proximate result of Peña's false statements, Plaintiff has suffered special damages, including loss of prospective employment opportunities and diminished earning capacity, as well as reputational harm and emotional distress.

#### Count 7 — Tortious Interference with Prospective Relations (Against Peña)

71.Peña intentionally interfered with Plaintiff's prospective employment by publishing the statements described above to the public and to prospective employers, causing loss of opportunities.

Count 8 — Intentional Infliction of Emotional Distress (Against Peña; pled in the alternative)

72.If no other tort remedy is adequate, Peña's described course of conduct constitutes extreme and outrageous behavior that caused severe emotional distress.

Count 9 — Ultra Vires (Texas law; official-capacity, prospective relief)

73.Plaintiff seeks prospective declarations and injunctions requiring compliance with Charter requirements, prohibiting reliance on edited or unauthenticated recordings in official actions, and ensuring conflict-free legal advice in matters touching Plaintiff.

## VII. INJURY AND DAMAGES

74.Plaintiff has suffered lost wages and benefits, loss of earning capacity, out-of-pocket expenses, reputational harm, and emotional distress, in amounts to be proven at trial. Plaintiff seeks nominal damages for constitutional violations and punitive damages against Peña where permitted by law.

75.In addition to damages, Plaintiff seeks reinstatement to his position as City Manager or, alternatively, front pay in lieu of reinstatement, to fully remedy the violations of his constitutional and contractual rights.

76.Defendant City's deliberate indifference and ratifications of Peña's actions caused Plaintiff to suffer not only the contractual severance loss, but years of lost earning capacity, reputational harm resulting in diminished future employment and emotional distress. Despite repeated memoranda, District

Attorney findings, and Texas Rangers' determinations that no threat existed, the City failed to supervise or discipline Pena and allowed him to misuse official branding and channels to attack Plaintiff. The failure to rein in Peña was the moving force behind Plaintiff's termination and reputational destruction.

77. As a result, Plaintiff has lost prospective employment opportunities with compensation substantially greater than his mitigated income. He seeks full compensatory damages against the City and Pena for back pay, front pay for a reasonable period into the future, lost benefits, damage to reputation, and emotional distress, in an amount exceeding \$1,000,000, subject to proof at trial, including lost salary, front pay, reputational harm, and emotional distress commensurate with the magnitude of Plaintiff's losses. Exhibit AA — Petty Affidavit.

#### VIII. IMMUNITY NOT APPLICABLE

78. Qualified Immunity Not Applicable. Defendant Peña is not entitled to qualified immunity. The constitutional rights asserted herein—including the right to notice and a pre-termination opportunity to respond before deprivation of a protected property interest, the right to a name-clearing hearing when stigmatizing charges accompany termination, and the right to be free from retaliation based on protected speech and spousal association—were all clearly established at the time of Defendants' conduct. *Board of Regents v. Roth*, 408 U.S. 564, 576–78 (1972); *Perry v. Sindermann*, 408 U.S. 593, 601–02

(1972); *Codd v. Velger*, 429 U.S. 624, 627 (1977); *Rosenstein v. City of Dallas*, 876 F.2d 392, 395–96 (5th Cir. 1989); *Bledsoe v. City of Horn Lake*, 449 F.3d 650, 653–54 (5th Cir. 2006); *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968); *Rankin v. McPherson*, 483 U.S. 378, 384–85 (1987). No reasonable official could have believed that terminating Plaintiff without the contractually required vote or a name-clearing opportunity, or retaliating against him for his spouse’s protected speech, was lawful.

79. Legislative Immunity Not Applicable. Defendant Peña is likewise not entitled to legislative immunity. His conduct—directing staff, publishing edited recordings, threatening Plaintiff based on his spouse’s civic participation, and interfering with Plaintiff’s employment—were administrative and executive acts, not integral to any deliberative legislative function. See *Bogan v. Scott-Harris*, 523 U.S. 44, 55 (1998) (distinguishing protected legislative activity from unprotected administrative action). Peña’s actions were undertaken unilaterally, outside the lawmaking process, and are therefore not shielded by legislative immunity. Such misuse of office also constitutes conduct outside lawful discretion, akin to ‘Official Oppression’ under Tex. Penal Code § 39.03, further confirming it is not protected by legislative immunity.

80. Malice And Punitive Damages. Defendant Peña acted with actual malice and reckless disregard for the truth in publishing knowingly false accusations against Plaintiff. Such conduct strips him of any claim to immunity or privilege

and subjects him to liability for both compensatory and punitive damages under federal and state law. Because Defendant Peña acted with actual malice and reckless disregard, Plaintiff is entitled to punitive damages under 42 U.S.C. § 1983, in addition to state-law remedies. Plaintiff specifically seeks punitive damages against Defendant Peña in an amount sufficient to punish and deter such misconduct, as authorized by 42 U.S.C. § 1983.

81. City Ratification. The City of Freeport is independently liable under *Monell* because, as final policymaker through its City Council, ratified Peña's conduct by acting at his behest, declining to curb his use of official-branded platforms, and terminating Plaintiff without the process required by law and contract. These final-policymaker actions are attributable to the City under *Monell v. Department of Social Services*, 436 U.S. 658, 694 (1978), and its progeny.

## IX. REQUESTED RELIEF

### Declaratory Relief

82. A declaration that Defendants violated Plaintiff's rights under the First and Fourteenth Amendments and that the City breached the Employment Agreement.

### Injunctive/Structural Relief

83. An order requiring (a) a name-clearing hearing; (b) removal or correction of stigmatizing records; (c) enforcement of the Charter chain-of-command and

public-communications provisions; (d) appointment of conflict-free special counsel for matters involving Plaintiff; and (e) preservation of all native recordings and social-media data.

## Damages

84. Plaintiff seeks full compensatory damages against the City and Peña for back pay, front pay for a reasonable period into the future, lost benefits, damage to reputation, and emotional distress, in an amount exceeding \$1,000,000, subject to proof at trial. These damages include lost salary, front pay, reputational harm, and emotional distress commensurate with the magnitude of Plaintiff's losses. Plaintiff also seeks recovery of the \$50,000 contractual severance, nominal damages for constitutional violations, and punitive damages against Peña for his malicious and reckless conduct, as authorized by federal and state law.

## Fees and Costs

85. Attorney's fees and costs under 42 U.S.C. § 1988 and other applicable law.

## Interest and Other Relief

86. Pre- and post-judgment interest and all further relief to which Plaintiff is entitled.

X. JURY DEMAND

87. Plaintiff demands a jury trial on all issues triable to a jury.

Respectfully submitted,

/s/ Clay Dean Thomas

Clay Dean Thomas

Tex. Bar No. 24088520

legal@claythomaspc.com

Clay Thomas, PC

15344 West State Highway 21

Douglass, Texas 75943

TEL: (936) 715-7144

FAC: (979) 773-5055