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SHELIA LATTING

VS.

SID MILLER, IN HIS OFFICIAL
CAPACITY AS COMMISSIONER OF THE
TEXAS DEPARTMENT OF
AGRICULTURE AND
TEXAS DEPARTMENT OF
AGRICULTURE

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IN THE DISTRICT COURT
OF TRAVIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

SHELIA LATTING, Plaintiff, files this her original petition against **SID MILLER**, in his official capacity as **Commissioner of the Texas Department of Agriculture and the TEXAS DEPARTMENT OF AGRICULTURE**, Defendants, and in support hereof respectfully shows the court as follows:

I. PARTIES

1. Plaintiff SHELIA LATTING (“Ms. Latting”) is an individual residing in Travis County, Texas.

2. Defendant SID MILLER, in his official capacity as Commissioner of the Texas Department of Agriculture, is an individual who may be served with citation at his office at the Texas Department of Agriculture, 1700 N. Congress, 11th Floor, Austin, Travis County, Texas 78701.

3. Defendant TEXAS DEPARTMENT OF AGRICULTURE (“TDA”) is a department of the State of Texas, who may be served with citation by serving its Commissioner, Sid Miller, at 1700 N. Congress, 11th Floor, Austin, Travis County, Texas 78701.

II. JURISDICTION AND VENUE

4. Jurisdiction is proper in this court under TEX. GOVT. CODE ANN. § 24.007 et seq. Venue is proper in Travis County, Texas under TEX. CIV. PRAC. & REM. CODE ANN. § 15.001 et seq. in that all or part of the cause of action asserted hereunder arose in Travis County, Texas and § 15.014.

III. DISCOVERY CONTROL

5. This case is to be governed by discovery control plan level three.

IV. BACKGROUND FACTS

6. Shelia Latting is an African-American female who had been employed by the State of Texas for approximately 21 years.

7. At all relevant times, Sid Miller was acting in his official capacity as Commissioner of TDA.

8. In June, 2012, Shelia Latting was hired as the Deputy Chief Financial Officer of TDA. On December 23, 2014, she was called into Commissioner Miller's office where she met with the Commissioner and the Commissioner's campaign manager Todd Smith.

9. Commissioner Miller and Mr. Smith questioned Ms. Latting at length about the possible reorganization of the budget. Commissioner Miller found Ms. Latting so knowledgeable about the budget that he offered her the job of Chief Financial Officer (replacing Heather Griffith Peterson, Hispanic female). Ms. Peterson was out of the office at the time and Commissioner Miller informed Ms. Latting that Ms. Peterson would not be returning to TDA as CFO. Mr. Smith told Ms. Latting that if she could continue the Connected Texas program, she would have a bright future with the agency. Commissioner Miller and Mr. Smith informed Ms. Latting that Mr. Smith's wife, Kellie Housewright-Smith,

appointed by Commissioner Miller as the Assistant Commissioner of Agriculture for Operations, would be working with Ms. Latting the following week and would give Ms. Latting a telephone call to discuss the details of the transition.

10. During this meeting, Commissioner Miller and Smith asked Ms. Latting many questions about the timing of restructuring the budget and Ms. Latting's desired team. After approving Ms. Latting's desired team members, they told Ms. Latting to start assembling her team and to prepare a re-organization of TDA showing Ms. Latting as CFO. Commissioner Miller gave Ms. Latting his personal cell phone number and promised she would receive a call from Housewright-Smith. After Ms. Latting left the Commissioner's office, Smith came to Ms. Latting's office and gave her her first assignment as CFO.

11. Ms. Latting called her colleagues to assemble a team, including one employee who had given his resignation notice but rescinded it so that he could accept a position on Ms. Latting's team. Ms. Latting worked on restructuring the Capital Budget to accommodate Commissioner Miller's requests for funds for his new executive staff.¹

12. The following week, on December 29, Housewright-Smith arranged a meeting with Ms. Latting, Ms. Housewright-Smith and Walt Roberts, appointed by Commissioner Miller, as the Assistant Commissioner of Agriculture for Legislative Affairs and External Relations, to discuss the promotion and transition. Ms. Latting accepted the promotion.

13. At this meeting, in Ms. Latting's presence, Ms. Kelly Housewright-Smith called a representative from the Human Resources Department of TDA to determine what needed to be done to move Ms. Latting into the CFO position in compliance with TDA policy.

¹Ms. Latting's restructure of the budget was ultimately used after her dismissal by Commissioner Miller's team headed by Terry Keel.

Human Resources reported to Houseright-Smith and Deputy Roberts that Ms. Latting could be promoted immediately to the CFO position without it being posted, but pointed out that Ms. Latting's Deputy Financial Officer job would need to be posted for 10 days before it could be filled. The HR representative stated that the Deputy Finance Officer Job could be posted as an emergency posting, but would still need to be posted for a minimum of 5 days.

14. Ms. Latting worked over the holidays to prepare for her promotion and transition to the new team she had assembled. On December 31, Ms. Latting met with Houseright-Smith, Deputy Roberts and Deputy Commissioner Jason Fearneyhough. They met with a contractor to discuss the Connect Texas program and the termination of Ms. Peterson as CFO. On Friday, January 2, 2015, Ms. Latting again checked in with Deputy Fearneyhough, letting him know what she had been able to accomplish.

15. When Ms. Latting returned to the TDA office on January 5, 2015, expecting to be appointed CFO, she found Ms. Peterson in her office. Ms. Latting called, emailed and texted Ms. Houseright-Smith and Deputy Commissioner Fearneyhough, asking them about the plan moving forward but neither of them responded.

16. Unknown to Ms. Latting, evidently during the same period, Commissioner Miller appointed Terry Keel ("Keel"), then executive director of the Texas Facilities Commission ("TFC"), as an assistant commissioner at TDA. Keel, who has a long history of cronyism in his career with the State, especially at the TFC², evidently insisted on

²Investigative reporting by Sean Collins Wash, *At Texas Facilities Commission, Special Treatment for Some*, published in Austin American Statesman, November 14, 2015.

bringing at least six of his colleagues from TFC with him to TDA. While cronyism violates basic public policy, it is not necessarily against the law, unless the victims of cronyism are chosen because of their race.

17. On January 12, 2015, Ms. Latting was called into a meeting with Ms. Housewright-Smith, Ms. Peterson and Cynthia Mendoza from HR. Ms. Latting was given a letter stating that TDA was going through a reduction in force and her position was eliminated, but Ms. Latting would remain on the payroll until April 12, 2015. Ms. Latting was then told that her services were no longer needed and that she could leave that day. The next day Ms. Peterson announced that she was resigning as CFO.

18. Keeping in mind that TDA used the pretense of a "reduction of force" to terminate Ms. Latting, the next day, TDA posted two hiring positions that mirrored Ms. Latting's job description (Classification No. 1620). The two job postings (one marked as Classification no. 1620) are effectively the same job as the position Ms. Latting held, but split into two positions.

19. The two job postings by TDA were posted as emergency postings, meaning that there is an immediate need for filling and the jobs will be posted for only 5 days, rather than the usual 10 days. However, the job postings were only posted for 3 business days and were filled by 2 Caucasian women, April Bacon and Rebecca Sanchez, both of whom were brought from the TFC to TDA by Keel. The combined salaries for the two new employees exceed the salary that was paid to Ms. Latting by approximately \$5,000 per month, in addition to the other employment benefits now being received by the new employees.

20. While Keel, with Commissioner Miller's acquiescence and approval, brought in Bacon and Sanchez as a part of his pattern of cronyism, Ms. Latting was clearly replaced because of her race, despite her exceptional qualifications and career with the State of Texas.

21. Ms. Latting filed a complaint with the EEOC based upon the facts stated above. The EEOC issued a right to sue letter on November 19, 2015.

22. All conditions precedent to the filing of this lawsuit have occurred.

**V. CAUSE OF ACTION: Violations of TCHRA
and Tex. Civ. Prac. & Rem. Code**

23. Ms. Latting brings this lawsuit pursuant to the Texas Commission on Human Rights Act ("TCHRA"), TEX. LAB. CODE ANN. §21.051 for unlawful discrimination by the Commission by discriminating against her in her workplace because of her race.

24. Ms. Latting belongs to a protected class, was subjected to discrimination based upon her race that negatively affected a term, condition or privilege of employment, of which TDA had notice but failed to take prompt remedial action. The discrimination to which Ms. Latting was subjected created a hostile work environment, because of her race. Ms. Latting was treated differently from her peers and colleagues as a result of her race.

25. TDA's conduct was intentional and was the proximate cause of injuries and damages to Ms. Latting for physical and emotional pain and suffering, inconvenience, loss of enjoyment of life, future pecuniary losses in the form of back pay and front pay, and incidental and consequential damages, including but not limited to the loss of her ability to retire earlier because of the break in service.

26. As a result of TDA's conduct, Ms. Latting has been required to retain the undersigned attorneys to institute this suit on her behalf and she seeks recovery of her reasonable and customary attorneys' fees from Defendant.

27. **Rule 47 Statement**. Ms. Latting is seeking monetary relief over \$200,000.00 but not more than \$1,000,000.00.

28. Additionally, Ms. Latting requests the Court to enter such other relief, at law or in equity, including declaratory relief and injunctive relief against Defendant as the Court deems in its discretion is appropriate under TEX. LABOR CODE § 21.125(b), including but not limited to requiring TDA to ensure that policies are in place to prevent their employees from being subjected to discrimination.

WHEREFORE, Plaintiff prays that on final hearing Plaintiff have and recover judgment of and from Defendant for her damages, including economic, physical and emotional pain and suffering, inconvenience, loss of enjoyment of life, future pecuniary losses and incidental and consequential damages, for costs of court, attorney's fees, pre-judgment and post-judgment interest as may be allowed by law, and for such other and further relief, both legal and equitable, including declaratory and injunctive relief, to which she may show herself justly entitled.

Respectfully submitted,

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