

**COPY**

**SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

**FILED IN OFFICE**  
AUG 14 2015  
DEPUTY CLERK SUPERIOR COURT  
FULTON COUNTY, GA

**GWENDOLYN WINSTON and  
LOREN YARBROUGH,**

**Plaintiffs,**

**v.**

**CITY OF ATLANTA,**

**Defendant.**

**CIVIL ACTION**

**FILE NO. 2015 CV 264 580**

**JURY TRIAL DEMANDED**

**COMPLAINT**

Gwendolyn Winston and Loren Yarbrough (“Plaintiffs”) file their Complaint against the City of Atlanta (“Defendant”), showing the Court as follows:

**INTRODUCTION**

1. This case is brought under the Georgia Whistleblower Act, O.C.G.A. § 45-1-4 *et. seq.* Plaintiff, Ms. Winston, a Safety Manager for the City of Atlanta, learned of massive fraud, waste, and abuse taking place within the Department of Watershed Management. Specifically, Ms. Winston learned of health violations, safety hazards, compliance issues, and fraud within the Department of Watershed management. Ms. Winston brought her concerns to the attention of the department’s management, including but not limited to, Director of the Department of Watershed Oz Hill (“Hill”), Deputy Commissioner Reginald Wells (“Wells”), Administrative Manager Mike Silva (“Silva”), Benjamin Gaines (“Gaines”), and Terrance Jackson (“Jackson”). Hill told Ms. Winston not to report her violations via email correspondence, so it would not be traceable through an open records request. After Ms. Winston reported her concerns, an outside audit was conducted which revealed that there were health and safety violations and fraud, waste,

and abuse taking place within the Department. As a consequence of reporting safety violations and department mismanagement, the City of Atlanta terminated Ms. Winston's employment.

2. Mr. Yarbrough, Assistant Watershed Manager, learned of massive fraud, waste and abuse taking place within the Department of Watershed Management. Specifically, Mr. Yarbrough learned that inventory was missing in the department. The City of Atlanta delayed addressing the missing equipment that Mr. Yarbrough reported. Not only did the City of Atlanta fail to address his concerns immediately, but Director of Watershed's Office of Customer and Business Services Benjamin Kuku ("Kuku") specifically told Mr. Yarbrough not to conduct an inventory of the vehicles and equipment. As a consequence of Mr. Yarbrough reporting the department's fraud, waste, and abuse, the City of Atlanta terminated Mr. Yarbrough's employment.

#### **JURISDICTION AND VENUE**

3. This action involves claims of retaliation asserted under the Georgia Whistleblower Act, O.C.G.A. § 45-1-4 *et. seq.*

4. Venue is proper in the Superior Court of Fulton County.

#### **PARTIES**

5. Plaintiff Winston is a resident of Douglas County, Georgia and began her employment with the City of Atlanta in May 2014. Plaintiff worked as a Safety Manager until she was terminated on August 15, 2014.

6. Plaintiff Yarbrough is a resident of Coweta County, Georgia and began his employment with the City of Atlanta in January 1997. Plaintiff worked as an Assistant Watershed Manager until he was terminated on August 15, 2014.

7. Defendant City of Atlanta is a government authority and is subject to suit under the Georgia Whistleblower Act, O.C.G.A. § 45-1-4 *et. seq.*

8. Defendant City of Atlanta can be served with summons and complaint by service upon Mayor Kasim Reed at the Office of the Mayor, Executive Offices, 55 Trinity Avenue, Atlanta, Georgia 30303.

### **FACTUAL ALLEGATIONS**

#### **Plaintiff Gwendolyn Winston**

9. Plaintiff Gwendolyn Winston (“Ms. Winston”) began employment with the City of Atlanta as a Safety Manager, on or about May 1, 2014.

10. Ms. Winston worked in the Department of Watershed Management as an employee for the City of Atlanta.

11. During the course of her employment with the City of Atlanta, Ms. Winston became aware of health and safety violations, compliance violations, and fraud in the Department of Watershed Management.

12. Ms. Winston has a background in compliance. She is certified in OSHA and regulatory compliance.

13. Approximately one week after she was hired, she was asked to join a team that was completing inventory.

14. While on the inventory team, she completed briefing and took photographs of the deficiencies within the Department of Watershed Management.

15. Ms. Winston was responsible for inspecting ten (10) locations which included eight (8) warehouses.

16. In June 2014, Ms. Winston began an audit project and reported to Oz Hill (“Hill”), Senior Director of Inventory.

17. On June 9, 2014, Ms. Winston met with Hill and reported all of the safety hazards that she found. Ms. Winston reported that there were injuries and that the injured employees were receiving worker’s compensation, but the City was not taking preventative or corrective measures to prevent injuries.

18. Ms. Winston reported her concerns to Hill via email correspondence.

19. Hill told Ms. Winston not to send emails reporting deficiencies because emails could be obtained through an open records request.

20. In July 2014, Ms. Winston reported that the 14th Street facility, Entrenchment Creek Warehouses, and Hemphill Warehouse had compliance issues with chemical storage and handling, electrical wiring, means of egress, and fire extinguisher placement.

21. In addition the meter room at the 14th Street Warehouse had compliance violations concerning electrical wiring, emergency evacuation, fire hazards, trip hazards, and housekeeping.

22. Further, Ms. Winston reported that the Clear Creek facility had not properly labeled chemical containers, and that the electrical wiring was improper.

23. Ms. Winston reported that the Flint River Warehouse had compliance issues concerning grounds maintenance (poison sumac and faulty fence at entrance) and improper chemical storage.

24. In July 2014, Ms. Winston reported to Hill that the Englewood facility had an illegal landfill.

25. Hill responded that Ms. Winston should use the word “rubbish” rather than “landfill,” so that the landfill problem would not be discoverable through an open records request.

26. Ms. Winston reported that the Inglewood facility not only had an illegal landfill, but asbestos, no warning signs (“No Smoking” or “Flammable”), inadequate storm drain, and that they were digging holes without proper trenches.

27. As a result of failing to dig holes properly, two (2) employees were buried.

28. Also, in July 2014, Ms. Winston reported that the Entrenchment Creek facility had copperhead snakes, and that the grass was not being properly cut which created a risk to the safety of employees.

29. Ms. Winston reported multiple electrical problems at various facilities including wires hanging dangerously from chemical plugs and fire extinguishers not hanging appropriately.

30. Ms. Winston reported to Terrance Jackson (“Jackson”) that one facility did not have exit doors sufficient for egress.

31. Many of Ms. Winston’s concerns and reports of violations were ignored by the Department of Watershed Management.

32. Ms. Winston had superior performance during her employment with the City of Atlanta.

33. Ms. Winston received accolades from commissioners and deputy commissioners.

34. On August 12, 2014, Hill asked Ms. Winston to take the lead on a new project. Yafete Bekele (“Bekele”), Senior Director of the Office of Safety, Security, and Emergency Management, gave Hill the approval.

35. Commissioner Jo Ann Macrina emailed Hill and stated that because Ms. Winston was doing such a great job with the audit, Commissioner Macrina wanted her to take the lead in all corrective actions for each location to ensure that they were completed.

36. A mere three days later, on Friday, August 15, 2014, Ms. Winston was called into the office and told that her services were no longer needed.

37. Following her termination, Ms. Winston returned a flash drive to Defendant which included her inspections, audits, findings, and the like.

38. The City of Atlanta terminated Ms. Winston's employment because she identified and reported numerous public safety hazards and compliance deficiencies throughout the city's facilities.

#### **Plaintiff Loren Yarbrough**

39. Mr. Yarbrough began working for the City of Atlanta on January 1, 1997.

40. On October 30, 2013, Mr. Yarbrough emailed Andrew Barney ("Barney"), Fleet Vehicle Manager, Bobby Smith ("Smith"), and Maia Mahone ("Mahone"), Business Process Analyst/Project Manager, regarding vehicle inventory. Mr. Yarbrough reported that there were fourteen (14) vehicles/equipment that could not be located.

41. Throughout Mr. Yarbrough's employment, the Department of Watershed management verbally reprimanded him for legitimately issuing disciplinary actions to employees. A large portion of the disciplinary actions that he issued concerned violations of the National Pollution Discharge Elimination ("NPDE") permit, among other policies.

42. On May 30, 2013, Mr. Yarbrough met with Lydia Jamison ("Jamison") from Labor Relations regarding his choice to discipline employees that were in violation of complying with policies, such as NPDE. Jamison told Mr. Yarbrough that he was making her job hard by

pursuing disciplinary actions against employees that violated policies. Therefore, Jamison stated that she would make Mr. Yarbrough's job hard in return.

43. On or about July 25, 2015, Michelle Stewart Ware ("Ware"), Human Resources Manager, called Mr. Yarbrough and told him to "quit starting stuff," in response to his inquiry about employees that had violated compliance and safety policies.

44. On June 30, 2014, Mr. Yarbrough emailed Asset Accountability Manager Oz Hill, Benjamin Gaines ("Gaines"), Administrative Security Manager Mike Silva, Asset Protection Investigations Manager Earl Burns, Project Manager Maia Mahone, Safety/Training Officer Olden Abraham, Information Systems Manager Keith Whitaker, Director of Watershed Office of Customer and Business Services Benjamin Kuku ("Kuku"), and Architectural & Facilities Projects Manager Terrance Franklin ("Franklin") regarding his results from the inventory. Mr. Yarbrough stated that he would report all non-inventoried equipment as "lost or stolen." Franklin responded that the equipment and vehicle audits would be performed during the following week. The audit was not performed the following week, and Franklin stated to Mr. Yarbrough that the effort was being pushed back until September.

45. In response to Mr. Yarbrough's email, Kuku told him to stop reporting stuff. Kuku told Mr. Yarbrough that he needed to stop making inventories and reports.

46. On July 15, 2014, Mr. Yarbrough emailed Gaines and Cc'd Hill and Glenn regarding the RM Clayton Vehicle/equipment inventory. Mr. Yarbrough reported that he was waiting on Franklin for grounds and building maintenance's participation in the inventory.

47. The City of Atlanta Security and Safety Department did not attempt to resolve Mr. Yarbrough's reports of missing equipment.

48. On or about August 4, 2014, Mr. Yarbrough inquired about the policy violation issues he had with specific employees. Ware and Sherri Dickerson told Mr. Yarbrough that “it would be easier for him if he dropped the issues.” Jamison accused Mr. Yarbrough of being tough on employees.

49. On August 15, 2014, the City of Atlanta informed Mr. Yarbrough that his services were no longer needed.

50. Prior to his termination, Mr. Yarbrough had 1000 hours of sick leave.

51. After his termination, Mike Geisler called Mr. Yarbrough and stated that he would try to pay him his sick leave. However, Mr. Yarbrough was never compensated for his earned sick leave.

52. Mr. Yarbrough lost his pension benefits after working for Defendant for almost seventeen (17) years.

53. The City of Atlanta terminated Mr. Yarbrough’s employment because he identified and reported safety hazards and missing equipment within the Department of Watershed Management.

54. Following Ms. Winston’s and Mr. Yarbrough’s termination, the City Auditor completed an audit in September 2014, of the Department of Watershed Management. The City Auditor found, *inter alia*, that there was an inconsistent and incomplete recording of inventory transactions, security weaknesses at warehouse locations, and weaknesses in the department’s homeland security measures to reduce risks to the city’s water supply.

**COUNT I**  
**VIOLATION OF O.C.G.A. § 45-1-4**

55. Paragraphs 1 through 21 above are incorporated herein by reference as if restated herein in their entirety.



56. Ms. Winston and Mr. Yarbrough, at all relevant times, were public employees as that term is defined by O.C.G.A. § 45-1-4(a)(3).

57. Defendant City of Atlanta is a public employer as that term is defined by O.C.G.A. § 45-1-4(a)(4).

58. Defendant City of Atlanta retaliated against Plaintiffs by terminating their employment for disclosing violations of a law, rule, or regulation to their supervisors.

59. The violations disclosed included, but were not limited to, safety hazards and missing/stolen equipment and vehicles.

60. Plaintiffs are entitled to reinstatement to the positions that they held at the time of their termination.

61. Plaintiffs are entitled to reinstatement of full fringe benefits and seniority rights that they would have had in the absence of the retaliatory discharge that they suffered.

62. In the alternative, Plaintiffs are entitled to front pay.

63. Plaintiffs are entitled to compensation for lost wages, benefits, and other remuneration that they would have earned or received in the absence of the retaliatory discharge that they suffered.

64. Plaintiffs are entitled to recover compensatory damages for the physical and emotional distress they experienced as a result of their termination, as well as their reasonable attorney's fees, court costs and expenses.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that:

(a) They have and recover of Defendant all actual and/or compensatory damages as will be shown by the evidence at trial and determined by an impartial jury; and

(b) They have and recover of Defendant reasonable attorney's fees, costs, and expenses of this action;

(c) They be granted immediate affirmative injunctive relief requiring Defendant to reinstate them to their position, pending a final resolution of the issues; and

(d) They have a trial by a jury of their peers; and

(e) They have such other and further relief as this court may deem just and equitable.

**JURY DEMAND**

Plaintiffs demand a jury trial on all issues.

Respectfully submitted this the 14<sup>th</sup> day of August, 2015.

BUCKLEY BEAL, LLP

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