

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

MICHAEL L. HOLMES,)
)
Plaintiff,)

-vs-)

Case No. 2:21-cv-02020-CSB-EIL

PIATT COUNTY, ILLINOIS, a body)
corporate and politic; RAYMOND)
SPENCER, SHANNON CARROL, RENEE)
FRUENDT, DALE LATTZ, ROBERT)
MURRELL, and RANDY SHUMARD,)
in their individually and in their official)
capacities with the Piatt County Board,)

**JURY TRIAL
DEMANDED**

Defendants.

AMENDED COMPLAINT AT LAW

NOW COMES Plaintiff, Michael L. Holmes, by and through his attorney, Ronald S. Langacker of Langacker Law, Ltd., and for his Amended Complaint against Defendants, Piatt County, Illinois, a body corporate and politic; Raymond Spencer, Shannon Carrol, Renee Fruendt, Dale Lattz, Robert Murrell, and Randy Shumard (“Individual Defendants”) in their individual capacities, hereby states as follows:

INTRODUCTION

From 2007 until 2018, Piatt County received approximately \$292,000.00 in state grant monies meant to go toward funding the Piatt County Emergency Management Agency (“Piatt County EMA”). Piatt County applied for these funds by maintaining their accreditation with the Illinois Emergency Management Agency (“IEMA”) and through the submission of emergency operations plans, verifying that grant funds were needed in order to allow the Piatt County EMA to perform their non-discretionary duties.

For over ten years, grants awarded to the Piatt County EMA were never actually allocated to the Department. Instead, the County chose to fund the EMA at a near-starvation level, hiring only a part-time Director and generally neglecting the Department to the point where it was virtually non-functional.

In 2018, Piatt County hired Michael Holmes to rebuild and revitalize the Piatt County EMA. As EMA Director, Holmes immediately set to work to not only raise the EMA to a level that would finally meet IEMA requirements, but to transform the program into one that would fulfill its duty to serve, protect, and improve the lives of the citizens of Piatt County.

The Piatt County Board was initially supportive of Holmes' goals for the EMA. However, in late 2019, after Holmes began bringing to light discrepancies in grant allocations to the EMA that were never awarded to the Agency, that support vanished. The County Board Chairman went from being an open advocate for the EMA to abruptly demanding Holmes's termination. The EMA budget was reduced dramatically for the 2020 fiscal year. Holmes was forbidden from addressing the citizens of Piatt County on behalf of the EMA. The animosity went so far that the County Board even refused to grant additional funds the EMA during the COVID-19 Pandemic, which prompted the Piatt County State's Attorney to intervene and file a *Writ of Mandamus* to compel the Board to adequately fund the Agency.

Unfortunately, the dispute between the Piatt County Board and Holmes did not end with a so-called "gag order" and budget cuts. Around this same time, a grand jury was convened in order to investigate the grant monies received by Piatt County but never allocated to the Piatt County EMA. Holmes was subpoenaed and testified before the grand jury on three separate occasions in early 2020 regarding the unallocated grant awards. Shortly afterward, the Board publicly accused Holmes of misappropriating County funds. When Holmes took FMLA leave in late 2020, the

Board continued to accuse Holmes of theft, and blamed the interim EMA Director's inability to receive potential IEMA accreditation on Holmes' exercise of his FMLA rights. Only two days after Holmes began his FMLA leave, the Board eliminated the full-time EMA Director's position, but did not advise Holmes of this fact for nearly three months. With the full-time EMA Director position eliminated, Holmes's employment with Piatt County was effectively terminated.

This suit is an action for damages caused by Defendants' interference with and retaliation for Plaintiff exercising his rights in violation of 42 U.S.C. §1983; the Family and Medical Leave Act of 1993 (hereinafter "FMLA" or the "Act"), 29 U.S.C. § 2601 *et seq.*; the State Officials and Employees Ethics Act (5 ILCS 430/15-5 *et seq.*); Section 15(b) of the Illinois Whistleblower Act ("IWA"), 740 ILCS 174/15(b); and Illinois common law. Plaintiff Michael Holmes seeks injunctive relief including, but not limited to: back pay and reinstatement to his prior position, other make-whole relief, compensatory and punitive damages against Defendants, as well as attorney fees and costs of suit.

JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to the terms of Title 28, United States Code, Sections 1331, 1367 and Title 29 of the United States Code, Section 2617(a).
2. The venue of this Court to entertain the issues raised in this case is appropriate by virtue of Title 28, United States Code, Section 1391(b), since the Defendants engaged in their official activities within the judicial district and the claims giving rise to the above-captioned proceeding occurred within the judicial district of this Court.

ALLEGATIONS COMMON TO ALL COUNTS

3. Plaintiff, Michael L. Holmes ("Holmes" or "Plaintiff"), is an adult resident of the State of Illinois, and currently resides within this judicial district.

4. Defendant Piatt County, Illinois (“Piatt County”), is a unit of government organized in accordance with the “Counties Code” [55 ILCS 1-1001 *et al.*] which provides various governmental and public safety services for individuals residing within its corporate limits.
5. Defendant Raymond Spencer is an adult resident of the State of Illinois. At all times material to this action, Mr. Spencer served as a member of the Piatt County Board within Piatt County, Illinois. He is named in this proceeding both in his individual and his official capacity. At all times stated herein, Spencer was the Chairman of the Piatt County Board.
6. Defendant Shannon Carrol is an adult resident of the State of Illinois. At all times material to this action, Mr. Carrol served as a member of the Piatt County Board within Piatt County, Illinois. He is named in this proceeding both in his individual and official capacity as a member of the Piatt County Board.
7. Defendant Renee Fruendt is an adult resident of the State of Illinois. At all times material to this action, Ms. Fruendt served as a member of the Piatt County Board within Piatt County, Illinois. She is named in this proceeding both in her individual and official capacity as a member of the Piatt County Board.
8. Defendant Dale Lattz is an adult resident of the State of Illinois. At all times material to this action, Mr. Lattz served as a member of the Piatt County Board within Piatt County, Illinois. He is named in this proceeding both in his individual and official capacity as a member of the Piatt County Board.
9. Defendant Robert Murrell is an adult resident of the State of Illinois. At all times material to this action, Mr. Murrell served as a member of the Piatt County Board within Piatt County, Illinois. He is named in this proceeding both in his individual and official capacity as a member of the Piatt County Board.

10. Defendant Randy Shumard is an adult resident of the State of Illinois. At all times material to this action, Mr. Shumard served as a member of the Piatt County Board within Piatt County, Illinois. He is named in this proceeding both in his individual and official capacity as a member of the Piatt County Board.
11. From December 1, 2008 to November 30, 2020, Dana Rhoades was the elected State's Attorney for Piatt County, Illinois. In November of 2020, Dana Rhoades was elected to the position of Resident Circuit Judge for Piatt County in the Sixth Judicial Circuit of Illinois. On December 1, 2020, Sarah Perry began serving as the Piatt County State's Attorney.
12. Pursuant to Article II (4) of the *Piatt County Board Bylaws*, the Piatt County State's Attorney serves as the Parliamentarian for the Piatt County Board.

The Illinois Emergency Management Agency Act
and the Piatt County EMA

13. The Illinois Emergency Management Agency Act ("IEMAA") 20 ILCS 3305 *et seq.*, directs each political subdivision within the State to be served both by IEMAA and by a local emergency management agency otherwise responsible for emergency management programs.
14. Pursuant to 20 ILCS 3305/10(i) of the IEMAA, each local emergency services and disaster agency shall have a Coordinator who shall be appointed by the principal executive officer of the political subdivision in the same manner as are the heads of regular governmental departments. The Coordinator (or Director) shall have direct responsibility for the organization, administration, training, and operation of the emergency services and disaster agency.
15. Pursuant to 20 ILCS 3305/10(g) of the IEMAA, each emergency services and disaster agency shall prepare an emergency operations plan ("EOP") for its geographic boundaries that complies with planning, review, and approval standards promulgated by the IEMAA. An

EOP assigns responsibilities to organizations and individuals for carrying out actions at projected times and places in an emergency that exceeds the capability or routine responsibility of any one agency.

16. In coordination with the above statute, the Piatt County Emergency Management Agency (“Piatt County EMA”) was established through Piatt County Ordinance 32.20, which imposed the duty upon the County Board to preserve the lives and property of individuals within the County, and to otherwise protect the public peace, health, and safety in the event of a disaster or emergency. The Piatt County EMA is accredited agency with the IEMAA, which allows the agency to receive grant funding from the IEMAA.
17. The Piatt County Board determines the annual budget for the Piatt County EMA.
18. Both accreditation through IEMA and submission of an EOP are critical in order to allow Piatt County access to federal and state grant funding that will support emergency actions, both in terms of immediate support for victim and service providers, and the more long-term funding required to mitigate damages and financial losses.
19. In years prior to Holmes becoming EMA Director of Piatt County, the County Board failed to fund the EMA as required by their EOP, the Illinois state statutes, and the Piatt County Ordinances. From at least 2007 through 2018, the Piatt County EMA received hundreds of thousands of dollars in grants as a result of their accreditation with the IEMA and submission of emergency operations plans. However, these grants received by the County were never appropriated towards the Piatt County EMA in the County budget.
20. Despite the considerable grant funding, the Piatt County EMA was only funded on a part-time basis. The previous EMA Director, James Donaldson, was a part-time employee. Donaldson resigned as the EMA Director in May of 2018.

Holmes is Hired as EMA Director

21. Shortly after Donaldson's resignation, Michael Holmes was retained by Piatt County as an independent contractor and subsequently hired full-time as the Director of the Piatt County EMA in June of 2018.
22. At the time Holmes was hired, it was understood that the Piatt County EMA would require extensive reorganization and would require a full-time EMA Director. In June of 2018, the County Board established the EMA Director position as a full-time, salaried position of \$37,740 per year, with benefits.
23. While the EMA Director's position was full-time, the parties agreed that the Piatt County EMA itself would continue to be funded with a part-time operating budget. The Sheriff (David Hunt), County Board Chairman (Al Manint), and the Chief Finance Officer (Linda Leach), agreed that the operations budget would remain part-time for the first year, so that a determination could be made as to how much money was required to adequately support EMA operations.
24. In June of 2019, the Piatt County EMA Director began reporting directly to the County Board, and more specifically, the County Board Chairman, Raymond Spencer. From June until October of 2019, Chairman Ray Spencer appeared to be an open and vocal proponent of the EMA, and advocated on behalf of Holmes to adequately fund the agency.
25. When Holmes became the Piatt County EMA Director, the EMA was in critical need of additional equipment. The vehicle assigned to the EMA Director, a 2004 Ford Explorer, was so unreliable that on several occasions, Holmes had to ask Monticello police officers to give him a jump start the vehicle.
26. In order to address the vehicle issue, Holmes reviewed the grant applications and awards from

previous years in order to determine whether the EMA had sufficient funds available to support the purchase of a newer vehicle.

27. The records reviewed by Holmes indicated that there was approximately \$292,000.00 in grant funding that had been awarded to the Piatt County EMA from 2007 through 2018; however, these awards were never allocated into the EMA budget. Holmes contacted the Piatt County Treasurer's Office and Piatt County Finance Officer to find out how the EMA could access this funding. Holmes was told that no such money had been recorded in either in the EMA budget or as a separate line-item pertaining to the EMA. Holmes did not receive a response to his inquiry.
28. On July 15, 2019, the County purchased a newer model EMA vehicle, a 2014 Chevrolet Silverado pickup truck. At the time of the vehicle's purchase, Chairman Spencer was quoted in the local paper, stating, "[Holmes] is doing a fantastic job on multiple fronts. He's reinvigorated the agency, and now there is a sense of direction. Definite progress is being made toward our EMA becoming a state-of-the-art entity. The citizens of Piatt County can take pride in that." *Piatt County Adds Emergency Management Response Vehicle*, Press Release, July 15, 2019 (Exhibit 1).
29. On July 14, 2019, the EMA committee took up amotion made by Chairman Spencer to raise the EMA credit card limit from \$2,000.00 to \$5,000.00 to give the Director adequate emergency purchasing power. Committee members Lattz and Fruendt opposed the increase, and the motion failed for lack of a second. Chairman Spencer questioned the willingness of Lattz and Fruendt to support the EMA and the Director. In response, Lattz and Fruendt each resigned from the EMA committee.
30. Following that meeting, Holmes and Spencer discussed the matter, and Spencer stated in a

text to Elizabeth Dobson and Dana Rhoades:

“Mike has brought so much to the county above and beyond his immediate role as EMA director, like Piatt.gov and FirstNet, for which he received no additional compensation. The county should be thanking him and not criticizing him.”

Later on in the text Spencer stated:

“[...] [I]f we keep hamstringing our EMA director and our emergency response is not adequate and we get sued, that lawsuit will name individual county board members and we will all be hiring attorneys to defend us in court on charges of negligence. I don't think Renee and Dale grasp the seriousness of this. The state says we MUST do this EMA disaster preparedness. We have no choice. If we get sued after residents die, someone is going to receive a 6 or 7-figure settlement from the county. And they are saying Mike's credit card limit can't be raised by \$3,000? Give me a break! This nonsense is ludicrous! If it is payback for the truck, than that makes it even worse!” (Exhibit 2).

**Holmes Inquires About Grants and
Raises Concerns Regarding Piatt County's Previous EOP's**

31. On August 9, 2019, Holmes drafted a memorandum to the County Board regarding the proposed EMA budget. Holmes notified the County Board that previous EOP's submitted to the IEMA were factually inaccurate and misleading, and that Piatt County had consistently failed to adequately fund the EMA budget to carry out the provisions for the EOP.
32. Holmes advised the Board that the proposed budget was an increase over previous year's as critical expenditures by the County were needed to ensure the EMA program complied with the EOP by May of 2020, or else the EMA would be in noncompliance with state and federal requirements, and risk losing vital grant funding.
33. In September of 2019, Holmes sent a text message to Rhoades, Dobson, and Spencer to reiterate what he had noticed in June—a large sum of grant money from prior years which should have been allocated to the Piatt County EMA was unaccounted for, in the approximate sum of \$292,000.00.
34. On September 17, 2019, Spencer sent a text message to Rhoades, Dobson, and Holmes

praising Holmes' performance as EMA Director, indicating that he felt that Holmes was "knowledgeable and talented" and that Piatt County was "fortunate to have him," even stating that he felt that Holmes was the "gold standard" and "outstanding in his field" (Exhibit 3).

35. On October 11, 2019, States' Attorney Rhoades drafted a Memorandum to the Piatt County Board regarding the Piatt County EMA—specifically, regarding the funding issues (Exhibit 4). The following day, Spencer forwarded the Memorandum to the Board, stating that "maintaining the county EMA department is not an option, but a state mandate requiring us to fund the agency at a level which is stipulated by our local Emergency Operation's Plan and is outlined in the budget request submitted by EMA director Holmes" (Exhibit 5).

36. Chairman Spencer's support of Piatt County EMA came to an abrupt end on October 30, 2019, when Spencer sent a text to Rhoades with a list of alleged job performance problems issues he had with Holmes. Rhoades requested that Spencer address any alleged issues he had with Holmes directly, but he refused to do so.

37. At the October 30, 2019 Finance Meeting, Spencer proposed that the EMA would now not receive full-time funding but continue to be funded on a part-time basis, and that there would be no increase in the salary for the EMA Director.

38. On November 5, 2019, Rhoades wrote a memorandum to Spencer inquiring why his attitude toward the Piatt County EMA had changed so dramatically:

"You have acted against my legal advice during the past week [...] Your actions have now placed the county at risk for litigation under the whistleblower statute, for workplace bullying and harassment violations, for grievances that will go to court for resolution, and OMA violations that will involve joint and several liability for the county board members. By refusing to discuss work performance issues with your employee, and by simply advising that EMA will be cut in the salary and operations budgets, you have violated the request of the county board that you have a discussion with Mike Holmes to assist in the decision-making process" (Exhibit 6).

39. In November of 2019, the Piatt County Board approved the 2020 EMA budget which failed

to meet the legal requirements of the County's EOP. The budget did not contain any of the EMA Director's proposals, including emergency provisions such as protective gloves, goggles, masks, and other critical cleaning supplies. The Piatt County Board approved the measure to fund the EMA Department on a part-time basis.

40. On December 1, 2019, County Board Chairman Ray Spencer reprimanded Holmes for performing community outreach on the EMA's social media platforms and directed Holmes to "never represent yourself as a spokesperson for the county." Spencer threatened Holmes with further discipline if Holmes continued to communicate with the public.
41. In January, 2020, a grand jury was convened in Piatt County. Testimony was presented and the grand jury indicted Spencer for Forgery (manipulating emailed legal advice from State's Attorney Rhoades and sending the forged email to the local newspaper for publication) and for Official Misconduct (seeking legal advice from counsel outside of the Piatt County State's Attorney's Office, without the permission of the State's Attorney). Despite being charged with two felony counts, Spencer refused to resign or take a leave of absence from his position as Piatt County Board Chairman.
42. Following the grand jury proceeding which concluded on January 13, 2020, additional meetings of the grand jury were scheduled and held concerning the entire Piatt County Board in February and March of 2020. The grand jury was investigating the \$292,000.00 in federal and state grant money that had awarded to the Piatt County EMA from 2007 through 2018. Holmes was subpoenaed and testified at these proceedings regarding the unaccounted grant money received by the Piatt County EMA.
43. The Illinois Emergency Management Agency confirmed through recorded documents that the awards had been paid out to Piatt County. However, the financial records of the Piatt

County Finance Office and the Piatt County Treasurer's Office contained no accounting for the receipt or distribution of those funds.

44. The Piatt County Board was ultimately responsible for the oversight of these monies and their expenditures. Other Board members were aware of the proceedings and had summoned to testify, and members of the Board, including Spencer, were aware that Holmes had testified before the grand jury.
45. Before the grand jury's investigation could be completed, the COVID-19 pandemic in March of 2020 substantially disrupted the workings of the jury, and they were unable to complete the investigation and/or return indictments. The matter has since been turned over to the Illinois Attorney General's Office for further investigation.

Piatt County Board Refuses to Fund EMA
During the COVID-19 Pandemic

46. On March 9, 2020, as result of the COVID-19 pandemic, the Governor of Illinois issued a public health emergency declaration ("Declaration") under Section 4 of the Illinois Emergency Management Agency Act.
47. As a result of the Declaration, the Piatt County EMA received numerous and immediate directives from the IEMA, including the directive to immediate secure personal protective equipment, establish cleaning protocols, create supply lists, and provide assistance with quarantine housing procedures.
48. The 2020 budget for the Piatt County EMA—already underfunded during normal circumstances—was in no way adequate to comply with the Governor's Declaration, or to otherwise ensure that Piatt County was capable of protecting its citizens from the virus.
49. Despite the catastrophic pandemic and the emergency Declaration, on March 14, 2020, County Board Chairman Spencer expressly directed Holmes to not exceed the EMA's budget

no matter what COVID-19 supplies may be needed.

50. Spencer again reminded Holmes of the directive to not represent himself as a spokesperson for the County. Holmes' inability to communicate with the citizens of Piatt County during this unprecedented emergency posed a serious health risk.
51. On March 19, 2020, due to the deliberate constraints imposed upon Holmes by the Board, the Piatt County State's Attorney took the exceptional step to request a *Writ of Mandamus*, requesting the Circuit Court compel the County Board to allow the EMA Director to perform his legally required duties and communicate with the community regarding the COVID-19 pandemic (*People of Piatt County v. Piatt County Board*, 2020-MR-21, Exhibit 7).
52. On April 3, 2020, the parties reached an agreement where Board approved an amended budget for the EMA for an additional \$36,188.00 of emergency funding, and removed the "gag order" placed on Holmes by the County Board Chairman. In return, the State's Attorney dismissed the Writ of Mandamus.
53. Despite the escalating COVID-19 Pandemic and *Writ of Mandamus*, the Board continued to retaliate against Holmes and refused to allow payment for items such as cleaning supplies. During an EMA Committee meeting on April 28, 2020, Spencer publicly contested credit card claims submitted by Holmes and suggested Holmes was misappropriating EMA funds. The Committee refused to pay the credit card charges submitted by Holmes on that date.
54. On April 30, 2020, Holmes submitted a statement which he had originally intended to present at the EMA Committee Meeting two days earlier (Exhibit 8). Holmes again reiterated that he did not have the financial resources necessary to meet the state and federal requirements of the Piatt County EMA.

Holmes' FMLA Leave and Continued Retaliation

55. On October 7, 2020, Holmes requested a leave of absence pursuant to the FMLA. Holmes advised Piatt County that he suffered from a serious medical condition as defined by the FMLA and would be unable to perform the essential functions of his employment.
56. Piatt County granted Holmes' request for leave under the FMLA on October 26, 2020.
57. On October 28, 2020, two days after Holmes went on leave, the Piatt County Board passed a tentative budget for the 2021 fiscal year. The 2021 budget dramatically scaled back of EMA Director's position from full-time to part-time, reducing the Director's salary from \$37,740.00 to \$16,000.00 per year. The Board also reduced the budget for other EMA expenses—such as supplies, maintenance, and equipment—by 50% from the 2020 budget.
58. While the 2021 budget dramatically cut funds for the EMA, most other departments saw a minimal decrease in their respective budgets for 2020-21. Moreover, the budget provided a \$5,000.00 wage increase to Keri Nussbaum, who serves as the County Board Secretary.
59. The finalized 2021 budget was approved by the Board on November 12, 2020, and took effect on December 1, 2020. Defendants never advised Holmes that his position had been reduced from full time to part-time, nor that the position's salary would be less than half of what he had earned before taking protected leave.
60. In November of 2020, Sherriff Hunt was appointed as the interim Piatt County EMA Director.
61. After initially being granted FMLA leave, Holmes requested extensions of his leave in November and December of 2020, which were approved by the County Board. In total, Holmes was granted leave pursuant to the FMLA Act for twelve weeks, from October 26, 2020 until January 25, 2021.

62. While Holmes was on FMLA, his attorney, Ronald Langacker, was in contact with the Piatt County State's Attorney's office regarding Mr. Holmes's leave, first with State's Attorney Dana Rhoades, and subsequent to the November elections, with Sara Perry.
63. On January 5, 2021, States Attorney Sara Perry sent correspondence to Langacker regarding Holmes's leave, asking that Holmes forward any correspondence he received to the Interim EMA Director, Sherriff Hunt (Exhibit 9).
64. Langacker responded on January 12, stating that the Interim Director would have already had access to Holmes email and/or correspondence, and further, since November 18, 2020, Piatt County had only contacted Holmes' counsel on a handful of occasions to address any alleged outstanding business: "If there are in fact 'time sensitive' EMA matters which need to be addressed, those matters have not been brought to my attention for nearly two months" (Exhibit 10). Langacker closed the letter by noting, "to the extent your correspondence suggests that Mr. Holmes engage in and/or perform work while on FMLA leave, such a request could be construed as a violation of that protected leave" (Exhibit 10).
65. During the January 12, 2021 EMA Meeting, the Board criticized Holmes for credit card purchases dating back to March, which included items like Clorox bleach, which were critically needed during the early stages of the COVID-19 Pandemic. The article stated that as a result of Holmes taking FMLA leave, the County was behind on their upcoming certifications. Spencer insinuated that some of the charges could be personal, again alleging that Holmes had misappropriated County funds.
66. EMA Committee Chairman Carroll also stated to the press that "getting questions answered regarding bills has proved difficult, saying queries to Holmes were being directed to his attorney" (Exhibit 11). This statement is inaccurate, as neither Holmes nor Langacker were

contacted by anyone with Piatt County regarding any EMA expenditures while Holmes was on FMLA leave.

67. On January 19, 2021, Holmes, through counsel, inquired of State's Attorney Perry whether Holmes would be restored to the same or equivalent position upon his return from leave, as he had not officially been informed of any changes in the position.
68. On January 20, 2021, Holmes notified the County that he had been released by his physician to return to work on January 26, 2021.
69. On January 22, 2021, Holmes was notified that the EMA Director's position had been scaled down from full-time to part-time, and that the position he held prior to taking protective leave no longer existed.
70. Piatt County stated the only position available to Holmes upon his return would be the part-time EMA position, which does not involve the same or substantially similar duties, responsibility, compensation, or benefits as those when Holmes was employed full-time as the Piatt County EMA Director.
71. Holmes notified the County that he would not accept the part-time position, and again requested reinstatement to his previous position. The County refused, effectively terminating Holmes's employment as EMA Director.

COUNT I

First Amendment Retaliation – Freedom of Speech (Individual Defendants)

72. Plaintiff repeats and re-alleges all paragraphs in this Amended Complaint as if fully set forth herein.
73. As an employee of Piatt County, Plaintiff had a First Amendment right to freedom of speech.
74. Plaintiff not only spoke as a private citizen on a matter of public concern, but testified before

the grand jury regarding grants received by Piatt County but never allocated to the EMA, as well as other actions detailed within this Amended Complaint.

75. The statements Plaintiff made were constitutionally protected.
76. Plaintiff suffered a deprivation likely to deter speech, including but not limited to the Board accusing him of theft, the Board's refusal to fund Piatt County EMA to provide the resources necessary perform his job duties, and the Board eliminating the full-time EMA Director position while Plaintiff was on protected leave.
77. Defendants, acting under color of law, misused their authority and position with the County, and retaliated against Plaintiff for reporting the wrongdoing he believed had occurred, and Defendants did not have an adequate justification for treating an employee differently than the general public.
78. The individual Defendants' conduct would deter an ordinary person from exercising his or her First Amendment rights.
79. Defendants acted intentionally and with callous disregard for the Plaintiff's clearly established constitutional rights.
80. That as a direct and proximate result of the Defendants' foregoing conduct, Plaintiff sustained the loss of certain economic benefits derived through his position with the County, as well as his subsequent inability to secure employment. Additionally, Plaintiff has suffered emotional pain and anguish, damage to his reputation, embarrassment, inconvenience, and the loss of enjoyment of life, as well as attorneys' fees and costs of suit.

COUNT II
Section 1983 Monell Claim
(Piatt County)

81. Plaintiff repeats and re-alleges all paragraphs in this Amended Complaint as if fully set forth

herein.

82. As described more fully above, the individual Defendants retaliated against Plaintiff in violation of his rights under the First Amendment.
83. The individual Defendants were policymakers for the County and had final decision-making authority with regard to Plaintiff's employment, as described herein.
84. By taking the actions against Plaintiff as described above, Piatt County made a deliberate choice to follow a course of action as a matter of official government policy.
85. Plaintiff's constitutional injuries were directly caused by the individual Defendants in their exercise of final policymaking authority with Piatt County. Therefore, the official policy of Piatt County is the moving force behind the deprivation of Plaintiff's constitutional rights.
86. That as a direct and proximate result of the foregoing conduct by the Defendant, Piatt County, Plaintiff sustained the loss of certain economic benefits derived through his position with the County, as well as his subsequent inability to secure employment. Additionally, Plaintiff has suffered emotional pain and anguish, damage to his reputation, embarrassment, inconvenience, and the loss of enjoyment of life, as well as attorneys' fees and costs of suit.

COUNT III

Conspiracy – 42 U.S.C. § 1983 (Individual Defendants)

87. Plaintiff repeats and re-alleges all paragraphs in this Amended Complaint as if fully set forth herein.
88. The individual Defendants, acting together and under color of law, reached an understanding and agreement, engaged in a course of conduct, and otherwise conspired among and between themselves to deprive Plaintiff of her constitutional rights, and did deprive him of his constitutional rights as alleged herein, including rights to freedom of speech, and his right

to be free from retaliation for reporting suspected misconduct to government officials.

89. That in furtherance of the conspiracy, Defendants committed overt acts as described above and were otherwise willful participants in joint activity with state actors under color of law. Plaintiff was deprived of his Constitutional rights in the manner described in the preceding paragraphs.

90. Defendants' acts were undertaken willfully and maliciously in violation of Plaintiff's rights under 42 U.S.C. § 1983.

91. As a result of the aforementioned deprivation of federal rights, Plaintiff has suffered loss of employment, loss of wages, loss of other employment benefits, loss of job opportunities, emotional distress, and was otherwise damaged.

COUNT IV

Deprivation of Liberty Interest

Violation of the 14th Amendment to the U.S. Constitution

(Piatt County)

92. Plaintiff repeats and re-alleges all of the paragraphs in this Amended Complaint as if fully set forth herein.

93. That as a result of Plaintiff's abrupt termination, Defendants made statements significantly derogatory toward the Plaintiff, including but not limited to: allegations of insubordination, misconduct, violation of County rules and regulations, etc. Such comments were made to the public media by the Defendants.

94. The County Board and other Defendants, both individually and on behalf of the County Board knowingly made the allegations against Plaintiff public.

95. Plaintiff was stigmatized by the untrue statements made against him in a manner that damaged his professional reputation by hurting his good name, personal reputation, honor, and integrity.

96. Plaintiff suffered a tangible loss of other employment opportunities as a result of the public disclosures.

97. By their actions, Defendants deprived Plaintiff of his liberty interests without due process of law, in violation of the Fourteenth Amendment of the United States Constitution.

98. That as a direct and proximate result of the foregoing conduct, Plaintiff sustained the loss of certain economic benefits derived through his position of employment as well as his subsequent inability to secure employment. Additionally, Plaintiff has suffered emotional pain and anguish, damage to his reputation, embarrassment, humiliation, inconvenience, and the loss of enjoyment of life.

COUNT V

**Violation of FMLA, 29 U.S.C. § 2615 — Interference
(Piatt County)**

99. Plaintiff repeats and re-alleges all paragraphs in this Alleged Complaint as if fully set forth herein.

100. The FMLA prohibits an employer from “interfere[ing] with...the exercise or the attempt to exercise any right” provided by the FMLA, 29 U.S.C. § 2615(a)(1).

101. At all times relevant to this proceeding, Plaintiff was an “eligible employee,” as defined in the FMLA, 29 U.S.C. §2611(2).

102. At all times relevant to this proceeding, Defendants were an “employer” as that term is defined in the FMLA, 29 U.S.C. § 2611(4).

103. Throughout the course of his employment, Plaintiff performed his job duties in a satisfactory manner consistent with Defendants’ standards.

104. Plaintiff was entitled to twelve (12) weeks of leave during any twelve-month period under the FMLA because he had a serious health condition that made him unable to perform the functions of his position. 29 U.S.C. §2612(a)(1)(D).

105. At the expiration of Plaintiff's twelve-week family medical leave period, Plaintiff's serious medical condition had improved so that he was able to return to his position of employment with the Defendants.

106. Upon the expiration of Plaintiff's family medical leave, Defendants were obliged to return Plaintiff to either the same position he held at the time his leave commenced, or to an equivalent position with equivalent benefits, pay, and terms and conditions of employment.

107. The part-time position offered to Plaintiff did not involve the same or substantially similar duties, responsibilities, compensation, and/or benefits as those he had prior to requesting FMLA.

108. Defendants further intentionally interfered with, restrained, and denied the exercise of Plaintiff's rights provided under the FMLA by, among other things, publicly saying that delays in receiving potential IEMA accreditation were due to Plaintiff taking FMLA leave, failing to restore Plaintiff to the position he held before taking FMLA leave, and denying Plaintiff the benefits that he had held before his leave.

109. Defendants' conduct interfered with Plaintiff's rights to take FMLA as guaranteed under 29 U.S.C. § 2612 and is prohibited under the terms of 29 U.S.C. § 2615(a)(1).

110. As a direct and proximate result of the aforementioned actions, Plaintiff has suffered and continues to suffer loss of income and other employee benefits and has been required to retain an attorney to litigate this matter.

COUNT VI

**Violation of FMLA, 29 U.S.C. § 2615 — Retaliation
(Piatt County)**

111. Plaintiff repeats and re-alleges all paragraphs in this Amended Complaint as if fully set forth herein.

112. The FMLA prohibits discharging or discriminating against an employee for exercising his rights under the FMLA. 29 U.S.C. §§ 2615(a)(2), (b).

113. At all times relevant to this proceeding, Plaintiff was an “eligible employee,” as defined in the FMLA, 29 U.S.C. §2611(2).

114. At all times relevant to this proceeding, Defendants were an employer as that term is defined in the FMLA. 29 U.S.C. § 2611(4).

115. Throughout the course of his employment, Plaintiff performed his job duties in a satisfactory manner consistent with Defendants’ standards.

116. Plaintiff was entitled to twelve (12) weeks of leave during any twelve-month period under the FMLA because he had a serious health condition that made him unable to perform the functions of his position. 29 U.S.C. §2612(a)(1)(D).

117. At the expiration of his twelve-week eligible FMLA, Plaintiff’s serious medical condition had improved so that he was able to return to his position of employment with the Defendants.

118. Upon the expiration of Plaintiff’s family medical leave, Defendants were obliged to return Plaintiff to either the same position he held at the time his leave commenced, or to an equivalent position with equivalent benefits, pay, and terms and conditions of employment.

119. The part-time position offered to Plaintiff did not involve the same or substantially similar duties, responsibilities, compensation, and/or benefits as those he had prior to requesting FMLA.

120. The actions of Defendants, in refusing to return Plaintiff to his prior employment, discriminated and retaliated against Plaintiff, among other reasons, because he elected to use family medical leave benefits in violation of 29 U.S.C. § 2615(a)(2).
121. Defendants further retaliated against the Plaintiff by accusing him of being inaccessible while he was on leave, publicly stating without proof that the Plaintiff has misappropriated County funds, and blaming potential delays in IEMA certification on Plaintiff's exercise of FMLA leave.
122. Defendants' aforementioned actions constitute willful violations of the FMLA.
123. As a direct and proximate result of the aforementioned actions, Plaintiff has suffered and continues to suffer loss of income and other employee benefits and has been required to retain an attorney to litigate this matter.

COUNT VII
Illinois Whistleblower Act, 740 ILCS 174/1 et seq
(All Defendants)

124. Plaintiff repeats and re-alleges all paragraphs in this Amended Complaint as if fully set forth herein.
125. As set forth in the preceding paragraphs, Plaintiff engaged in activities for which government employees are protected from retaliation by the Whistleblower Act, 740 ILCS 174/1 et seq.
126. Under the Illinois Whistleblower Act, an employer may not retaliate against an employee "who discloses information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation," 740 ILCS 174/15(a).

127. In addition, an employer cannot retaliate against an employee “for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation,” 740 ILCS 174/15(b).
128. As described in the previous paragraphs, Plaintiff testified before a grand jury regarding state grants which were awarded to the Piatt County EMA but not allocated to the Agency, as well as other matters previously addressed within the Amended Complaint.
129. By engaging in the adverse conduct described in the preceding paragraphs, Defendants engaged in a pattern of retaliation against Plaintiff in violation of the Illinois Whistleblower Act, 740 ILCS 174/1 *et seq.*, by failing to adequately fund the Piatt County EMA to allow Plaintiff to perform his job duties as EMA Director, ordering Plaintiff to not to speak to the press, failing to adequately fund the Piatt County EMA during the COVID-19 Pandemic in March of 2020, calling EMA meetings while Plaintiff was on protected leave, and eliminating the full-time EMA Director’s position while Plaintiff utilized his protected leave.
130. Defendants’ unlawful conduct caused Plaintiff substantial damages, including but not limited to: loss of employment, loss of past and future income and benefits, loss of earning capacity, emotional distress, loss of reputation, humiliation, and embarrassment. Plaintiff will continue to suffer these damages in the future.
131. Defendants’ unlawful conduct was intentional and undertaken with malice and reckless indifference to Plaintiff’s rights under the Whistleblower Act, and Plaintiff therefore seeks awards of punitive damages against the Defendants in order to deter them and others similarly situated individuals from such wrongful conduct in the future.

COUNT VIII

**State Law Retaliatory Discharge
(All Defendants)**

132. Plaintiff repeats and re-alleges all paragraphs in this Amended Complaint as if fully set forth herein.
133. As set forth above, Plaintiff reported violations of state or federal law, rule, or regulation to the County Board, the Piatt County State's Attorney, and testified before a grand jury regarding unallocated grants awarded to Department, as well as other protected actions as previously stated within the Amended Complaint.
134. Plaintiff has reasonable cause to believe that the actions of the County Board as described above were a violation of state or federal law, rule, or regulation.
135. Defendants terminated Plaintiff in February of 2021 in retaliation for his reporting of violations of state or federal law, rule, or regulation.
136. The Board's retaliatory discharge of Plaintiff violates a clear mandate of public policy, in that the Board's violation of Illinois law is a matter that affects the citizens of Piatt County collectively.
137. Each Defendant made, took part in, assisted in, and or participated in the decision to retaliate against Plaintiff, as described above.
138. Plaintiff was subjected to retaliation in violation of rights guaranteed to him by the Illinois Whistleblower Act, 740 ILCS 174/15 and 740 ILCS 174/20.2, and he has suffered substantial losses as a result, including but not limited to lost wages and benefits, mental and emotional anguish, and embarrassment.

COUNT IX

**Illinois State Officials and Employees Ethics Act, 5 ILCS 430/15-10
(All Defendants)**

139. Plaintiff repeats and re-alleges all paragraphs in this Amended Complaint as if fully set forth herein.

140. The State Officials and Employees Ethics Act, 5 ILCS 430/15-10, prohibits retaliatory action by a State agency or employee against a State employee because he or she 1) disclosed or threatened to disclose to a supervisor or to a public body an activity, policy or practice of any State agency or other State employee that the State employee reasonably believes is in violation of a law, rule, or regulation; or 2) provides information to any public body conducting an investigation, hearing or inquiry into any violation of law, rule or regulation by any State agency or State employee.

141. Defendant, Piatt County, is a State agency within the meaning of 5 ILCS 430/15.

142. Pursuant to 5 ILCS 430/15-5 through 15-20, the actions against Plaintiff by the County were adverse employment actions in retaliation for Plaintiff's protected activity as described herein. Plaintiff reasonably believed the activities, policies and practices at the County violated the laws, rules and regulations. Plaintiff's protected activity was a contributing factor that caused such adverse actions to be taken against him.

143. Pursuant to 5 ILCS 430/15-25, Plaintiff is entitled to all remedies necessary to make him whole and prevent future violations of the Act, including but not limited to: reinstatement to his previous position within the County, including reinstatement with full benefits, and attorneys' fees. In order to make him whole, Plaintiff also seeks an award of compensatory damages for the severe emotional distress and humiliation he has had to incur.

144. Plaintiff seeks an award of punitive damages against the Defendants to prevent future

violations of the Act.

WHEREFORE, Plaintiff, Michael L. Holmes, respectfully requests that this Court enter the following relief:

- A. Award Plaintiff compensatory damages, back pay, front pay, pre-judgment interest, lost future wages, and future pecuniary damages;
- B. Award damages against the individual Defendants for emotional distress, humiliation, and embarrassment;
- C. Enter a declaratory judgment that Defendants' actions violated the First Amendment to the United States Constitution;
- D. Enter a declaratory judgment determining that the actions complained of in this Amended Complaint are unlawful in violation of the provisions of 29 U.S.C. § 2615 and issue a mandatory injunction against Defendants to refrain from engaging in any action which is prohibited under the terms of the foregoing law;
- E. Enter a declaratory judgment that Defendants have unlawfully retaliated against Plaintiff in violation of the State Officials and Employees Ethics Act, 5 ILCS 430/15-10, and the Illinois Whistleblower Act, 740 ILCS 174/1 *et seq.*;
- F. Permanently enjoin Defendants from continuing to violate Plaintiff's rights under the Illinois Whistleblower Act, by ordering Defendants to (1) stop engaging in retaliation; and (2) adopt employment practices and policies in accordance with the requirements of Illinois law;
- G. Issue a mandatory injunction directing Defendants to reinstate the Plaintiff to either: 1) the position of employment with the Defendant which he held prior to the conduct complained of in this Amended Complaint with all employment duties, responsibilities, salaries,

benefits and rights attendant to that position; or 2) a comparable position of employment with the Defendants;

- H. Award the Plaintiff damages sufficient to compensate him for the economic losses suffered as a result of the conduct as alleged in this complaint;
- I. Award punitive damages against Defendants;
- J. Award Plaintiff reasonable attorneys' fees and costs pursuant to 42 U.S.C. § 1988;
- K. Assess, pursuant to 29 U.S.C. §2617(a)(3), against Defendants the costs and expenses incurred by Plaintiff in maintaining the above captioned proceeding together with the reasonable attorney fees incurred by him in prosecuting the above captioned cause;
- L. Award Plaintiff prejudgment interest pursuant to 29 U.S.C. § 2617(a)(1)(A)(ii);
- M. Assess against Defendants and in favor of Plaintiff such liquidated damages as are permitted under 29 U.S.C. § 2617(a)(1)(A)(iii); and
- N. For all further relief the court deems equitable and just.

PLAINTIFF DEMANDS TRIAL BY JURY.

MICHAEL L. HOLMES,
PLAINTIFF

By: /s/Ronald S. Langacker
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