

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

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**MATTHEW STERLING,**

Plaintiff,

CASE NO. 24-7850-CZ

HON. KAREN J. MIEDEMA

v.

**GRAND HAVEN BOARD OF  
LIGHT & POWER;** and  
**ROBERT SHELLEY**, Interim General  
Manager of the Grand Haven Board of  
Light & Power, in his individual and  
official capacity,

Defendants.

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**COMPLAINT AND JURY DEMAND**

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**There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this court, nor has any such action been previously filed and dismissed after having been assigned to a judge.**

**COMPLAINT**

Plaintiff Matthew Sterling, by and through his attorneys, Pinsky Smith, PC, states as follows:

**JURISDICTION, VENUE, AND PARTIES**

1. This is an action seeking to remedy violations of the Whistleblowers' Protection Act, MCL 15.361 *et seq.* ("WPA") and the common law tort of termination

in violation of public policy.

2. Plaintiff Matthew Sterling is an individual who resides in Ottawa County, Michigan, and was employed by the Grand Haven Board of Light of Power until his termination on April 25, 2024.

3. Defendant Grand Haven Board of Light and Power (the BLP) is an electric utility established by the City of Grand Haven through the Grand Haven City Charter, and is located in Ottawa County, Michigan. The BLP is governed by an elected Board who appoints a General Manger to run the day-to-day operations and oversee the employees of the BLP.

4. Defendant Robert Shelley is the Interim General Manager of the BLP and upon information and belief, a resident of Muskegon County.

5. The acts that are the subject of this action occurred in Ottawa County, Michigan.

6. The amount in controversy exceeds \$25,000, exclusive of costs and attorney fees, and the matter is otherwise within the jurisdiction of this Court.

### **FACTUAL ALLEGATIONS**

7. In August 2013, the BLP hired Plaintiff as its Information Technology (“IT”) Specialist in a Supervisory role. This was a new position. As BLP officials explained to Plaintiff at the time of his hire, Plaintiff was hired in this new position to build and develop an IT department for the BLP. The position was classified as a supervisory role at time of hire, even though Plaintiff was the sole employee in IT.

8. Job responsibilities and duties performed by Plaintiff in the

Information Technology Specialist position included managing and supporting IT operations for the entire organization, including but not limited to network LAN/WAN infrastructure systems/equipment, maintaining and supporting business applications, servers, cloud services and storage, and all manner of electronic systems, including payment, email, and security systems. Plaintiff was also solely charged with managing the BLP backup systems and data retention. He also supported the BLP with all hardware and software, troubleshooting and repair of all devices, and providing user education and training. BLP gave him complete and unfettered access to manage and support every IT aspect of its business.

9. Throughout most of Plaintiff's tenure, the BLP's General Manager was Dave Walters.

10. On September 9, 2022, Mr. Walters called Plaintiff into his office and requested that Plaintiff show him how to delete and purge emails so that they are not recoverable. Mr. Walters told Plaintiff that a member of the BLP Board, Andrea Hendrick, had made a request through her attorney under the Freedom of Information Act (FOIA). Mr. Walters told Plaintiff that Mr. Walters was concerned that an email he sent to another BLP employee, Renee Molyneux, would have to be produced in response to Board Member Hendrick's request, and that he did not want to produce it. Mr. Walters explained that he had instructed Ms. Molyneux to delete the email before the BLP received the FOIA request, but that Ms. Molyneux had failed to purge the deleted email.

11. Mr. Walters further instructed Plaintiff to delete and purge email

items in other BLP's executives' Microsoft Exchange deleted items folder and then to change the BLP's email retention policy to automatically purge, i.e. permanently delete, emails after only a day or two. Plaintiff understood that the purpose of the change was to remove emails from the BLP's server to evade future FOIA requests.

12. Plaintiff was concerned that Mr. Walters's instructions could be an illegal attempt to avoid FOIA, and he was unsure how to proceed. Plaintiff brought his concerns to Defendant Shelley, who was his direct supervisor. Defendant Shelley did not provide any guidance to Plaintiff as to how he could address or report his concerns, but Defendant Shelley merely said that he would speak to Mr. Walters.

13. Defendant Shelley later told Plaintiff that he had seen the email at issue and that "it wasn't that bad." Defendant Shelley told Plaintiff that he no longer needed to delete any emails, but that he should focus on changing the default Microsoft 365 Exchange online email retention policy. Plaintiff believed at that point that BLP management had figured out how to purge emails themselves once Plaintiff brought his concern to Defendant Shelley, and that was why they no longer sought his assistance.

14. Despite having two separate conversations about Plaintiff's concerns, Defendant Shelley never provided any guidance to Plaintiff about how to report his concerns that BLP might be violating the law. He did not suggest that Plaintiff contact the City Attorney or the Board. Instead, his message to Plaintiff strongly implied the exact opposite – that he should not report the wrongdoing, and that he

should move on and ensure that emails would be deleted before FOIA requests were received in the future.

15. The BLP policies and employee handbook provided no further guidance for Plaintiff. In fact, the BLP had no procedure for employees to follow if they have complaints or concerns of illegal conduct by BLP management. Upon information and belief, BLP still has no procedure or reporting mechanism offered to employees with concerns of illegal conduct.

16. Without any guidance from his supervisor, Plaintiff contacted a fellow IT professional at a large, well-known local company and sought advice on how to handle Mr. Walters's request, and to simultaneously preserve any evidence of illegal conduct while Plaintiff tried to determine what his moral, ethical, and legal obligations were. That IT professional advised Plaintiff to place a litigation hold on email accounts, which would preserve emails even if Mr. Walters or other employees deleted emails to evade FOIA.

17. On September 16, 2022 – one week after Plaintiff's initial conversation with Mr. Walters – Plaintiff placed a litigation hold on the email accounts for Mr. Walters and Ms. Molyneux. It is not clear whether employees of the BLP deleted or purged emails that were responsive to FOIA requests during the one-week gap between Mr. Walters's initial request to purge emails and the litigation hold.

### ***The Charter Amendment***

18. In the Spring of 2023, a group of citizens announced that they would seek an amendment to the Grand Haven City Charter (the "Charter Amendment")

that would dissolve the BLP and replace it with a new department within the City of Grand Haven. The Charter Amendment was ultimately placed on the ballot in November 2023.

19. The leadership within the BLP, including Mr. Walters and Defendant Shelley, were vigorously opposed to the Charter Amendment. On several different occasions, Defendant Shelley – who supervised Plaintiff – approached Plaintiff during work hours and pressured him to contribute to the campaign against the Charter Amendment. Several other employees told Plaintiff that Defendant Shelley had also pressured them to contribute to the campaign during work hours.

***Plaintiff's Whistleblower Complaint***

20. Without any guidance from BLP policies or management, Plaintiff sought out legal counsel for advice about how to report his concerns that the BLP was engaging in illegal conduct.

21. On or around July 2023, after attempting to engage other attorneys without success, Plaintiff contacted Attorney Sarah Howard (“Plaintiff’s Counsel”) for legal advice. In connection with that request for legal advice, Plaintiff provided BLP emails saved pursuant to the litigation hold to Plaintiff’s Counsel. Those files were saved on an external hard drive. Plaintiff’s Counsel and her staff reviewed a very small number of those documents to attempt to evaluate Plaintiff’s claims. However, Plaintiff’s Counsel quickly determined that the hard drive contained emails potentially subject to attorney-client privilege, and that there was no way to reliably separate potentially attorney-client privileged communications, and thus

ended the review.

22. In or about August 2023, Plaintiff's Counsel contacted Ron Bultje, the City Attorney for Grand Haven and legal counsel to the BLP. Plaintiff's Counsel reported to City Attorney Bultje on Plaintiff's behalf that Plaintiff believed that the BLP and its employees had engaged in various illegal actions. Plaintiff's Counsel reported Plaintiff's belief that: (1) the BLP had attempted to delete emails to avoid producing them pursuant to a FOIA request, and that the BLP changed its document retention policy to avoid its obligation to respond to FOIA requests; (2) Plaintiff's belief that the BLP had attempted to violate Michigan's Open Meetings Act; and (3) Plaintiff's belief that the BLP had engaged in illegal action related to the proposed Charter amendment, including pressuring employees to engage in political action and using BLP resources and funds for political actions, including on company time. Plaintiff's Counsel explained to City Attorney Bultje that she was unable to review Plaintiff's email evidence of potential illegal activities by BLP officials because of the inability to separate potentially attorney-client privileged communications within Plaintiff's materials.

23. Plaintiff's Counsel also advised City Attorney Bultje on Plaintiff's behalf that she intended to contact the Attorney General's office and report Plaintiff's claims, which she did.

24. Plaintiff provided the saved emails to City Attorney Bultje upon his request. Plaintiff's Counsel did not retain the documents provided by Plaintiff.

***The Investigation of Plaintiff's Whistleblower Report***

25. On September 18, 2023, the Grand Haven City Council passed a resolution authorizing an investigation of complaints made by Plaintiff, who the resolution identified only as the whistleblower. Thereafter, the City of Grand Haven engaged the Foster Swift law firm to conduct the investigation into Plaintiff's whistleblower complaints.

26. Although the City Council did not identify Plaintiff by name in its resolution to hire an outside law firm to investigate, Plaintiff's identity as the whistleblower was well known within the BLP. Plaintiff was the only employee with direct IT responsibilities at the BLP. Plaintiff had originally spoken to Defendant Shelley about his concerns, and Defendant Shelley had told Dave Walters. BLP staff, particularly management like Defendant Shelley, began to treat Plaintiff very poorly at work and to isolate him socially. Defendant Shelley and others began to take steps to move IT duties from Plaintiff to an outside solo IT contractor with a long working and friendship history with Dave Walters and Defendant Shelley.

27. The job environment for Plaintiff was extremely stressful during the months of the Foster Swift investigation.

***The BLP Starts an Unnecessary Investigation into Plaintiff to Drum Up a Pretextual Reason to Fire Plaintiff***

28. Shortly after Foster Swift began its investigation of Plaintiff's whistleblower report, the BLP caused its insurer to begin an investigation into Plaintiff. Upon information and belief, the BLP had determined that it wanted to terminate Plaintiff, and the investigation was the beginning of an effort to create a



record to use as pretextual justification for that termination.

29. While both investigations were ongoing, the BLP Board fired Mr. Walters's and appointed Defendant Shelley to serve as the Interim General Manager of the BLP.

30. Defendant Shelley and others on behalf of BLP told Plaintiff that he was being investigated by outside IT contractors for causing an alleged data breach by turning over emails to Plaintiff's Counsel, City Attorney Bultje and the Foster Swift investigators when Plaintiff was seeking legal advice and reporting in good faith what he believed to be unlawful activity by BLP officials. Defendant Shelley and others on behalf of BLP insinuated that the BLP would sue Plaintiff to pay for the cost of the investigation. Defendant Shelley repeatedly accused Plaintiff of refusing to cooperate with the outside IT contractor in turning over all login credentials immediately, or accede to other demands instantaneously, when Plaintiff reasonably wanted to check first with Plaintiff's Counsel, City Attorney Bultje, and the Foster Swift investigators before he gave BLP the keys to potentially destroy electronic evidence.

31. On March 8, 2024, Foster Swift provided the City of Grand Haven with a report from its investigation of Plaintiff's claims (the Foster Swift Report). The Foster Swift Report concluded that Plaintiff's claims could not be supported by the available evidence but cautioned the BLP against taking any retaliatory action Plaintiff because his reports were based on suspected violations of the law.

32. The Foster Swift Report concluded that there was no evidence that the

BLP had permanently deleted emails in response to Board Member Hendrick's FOIA request. There was, however, a week-long period between when Mr. Walters first asked Plaintiff how to delete emails, when Plaintiff went to Defendant Shelley for help about how to respond to a request from Walters that Plaintiff feared was illegal, and when Plaintiff eventually initiated the litigation hold. In addition, Defendant Shelley and Walters were aware that Plaintiff had concerns about Walters' direction to Plaintiff to permanently delete an email which was responsive to the FOIA, as well as the direction to cause near-instantaneous permanent deletion of future emails to thwart future FOIA requests. The Foster Swift investigators said in their Report that they were not able to determine whether any emails were deleted during that period because they did not have the BLP's audit logs. According to the Foster Swift Report, the investigators requested the audit logs for that period, but the BLP said that the audit logs no longer existed because Microsoft's default policy deleted audit logs after 365 days. Upon information and belief, however, the audit logs had been retained due to the litigation hold.

33. Moreover, although the Foster Swift Report specifically declined to address whether the BLP produced all relevant documents in response to the FOIA request from Ms. Hendrick, its investigation makes clear that such documents were not produced. The Report highlighted an email chain that included both Mr. Walters and Ms. Molyneux that was well within the parameters of the FOIA request. Mr. Walters told investigators that he had allegedly purged the email out of concern that the recipient of the email could get in trouble if the email were made

public. It is unclear what that means or why a BLP Board member should be denied this type of information about BLP operations. Ms. Molyneux, however, had deleted the email but not purged it. That email was not produced in response to the FOIA request when BLP was legally required to do so under FOIA.

34. The Report stated that witnesses did not substantiate Plaintiff's claims that senior staff pressured employees to contribute to the campaign to defeat the Charter Amendment or that any Open Meetings Act violation had occurred. Upon information and belief, however, witnesses did not report what they had witnessed because they were concerned about retaliation from the BLP. The investigators conducted the interviews remotely, with the employees participating at the BLP offices on a BLP laptop, and the witnesses believed that the BLP may have listened in or recorded the interviews.

35. After the issuance of the Report, multiple BLP employees told Plaintiff in confidence that they knew that Plaintiff had been truthful in his reports, or believed he probably was if they did not have direct knowledge. But employees told Plaintiff that they were afraid to acknowledge to investigators what they witnessed since everyone at BLP knew who was interviewed once witnesses participated on BLP property, and that they were concerned that the BLP management might be listening in on the interviews.

36. The Foster Swift Report also uncritically accepted Walters' interview answers on various items. For example, Plaintiff alleged that he overheard a quorum of Board members engaged in a discussion about BLP business with

Walters in Walters' office, but the Report determined that it was not necessary to interview other Board members. As another example, the Report's investigators, upon information and belief, did not consult separate IT professionals regarding issues like whether the Microsoft email audit log should still exist and would show whether an email was deleted to thwart a FOIA request, but simply took BLP's word for it. Upon information and belief, the Foster Swift investigators permitted the BLP to have outside contractors delete the litigation hold and operate unchecked in the BLP IT system without supervision by a neutrally-appointed IT contractor, or at least failed to protest this occurrence and/or note it as a potential problem in their Report. As yet another example, given the working environment that Plaintiff described at the BLP, and the small size of the BLP workplace, it was unreasonable for investigators to interview employees remotely and to have them answer questions from BLP's premises.

### ***Plaintiff's Termination***

37. Despite the issues with the methods used by investigators, and his continued, genuinely-held belief that various BLP officials knowingly broke various laws, Plaintiff was prepared to accept the Report's conclusions, put his head down, and soldier on with his work at the BLP.

38. Three weeks later, on April 17, 2024, however, Defendant Shelley sent a memorandum to Plaintiff notifying him that he was being placed on administrative leave and that a disciplinary hearing would be held two days later. That hearing was ultimately postponed until April 22, 2024, upon request from

Plaintiff's Counsel to permit time to review and respond to the allegations.

39. The BLP made several allegations against Plaintiff. An examination of each of the allegations makes clear that they are without substance, and that they were part of the BLP's months-long effort to paper Plaintiff's file to justify its decision to fire him because of his whistleblowing activity. See Exhibit A and B, BLP's Allegations and Plaintiff's Response.

40. First, the BLP asserted that Plaintiff's efforts to retain and produce documents that he believed would demonstrate illegal conduct on the part of BLP employees necessitated a data breach investigation. In fact, that investigation was not required by Michigan law because there was no real risk of identity theft under the circumstances. Upon information and belief, the investigation was undertaken in order to create grounds to terminate Plaintiff.

41. The BLP further asserted that Plaintiff's efforts to find and save emails that he believed would show illegality violated the BLP's rules and policies. However, Plaintiff's actions were well within his authority as the Network Administrator and did not violate the BLP's rules and policies.

42. Finally, the BLP asserted that Plaintiff did not cooperate with its investigation. However, the facts cited by the BLP in support of that assertion were either entirely false or a mischaracterization of what actually transpired.

43. On April 22, 2024, the BLP held the disciplinary hearing. Plaintiff submitted a written response to the BLP's allegations, and the BLP concluded the hearing without rendering a decision.

44. On April 25, 2024, the BLP sent Plaintiff a notice terminating his employment. The notice of termination, which was signed by Defendant Shelley, asserted that Plaintiff had violated the BLP Employee Handbook and Technology Use Policy. As the document makes clear, however, Plaintiff's alleged violations were simply efforts to preserve documents that he reasonably believed would demonstrate illegal activity on the part of the BLP. The notice of termination's stated reasons were mere pretext for the BLP's actual motivation to terminate Plaintiff.

45. Defendants' actual reason for terminating Plaintiff's employment was in retaliation for his whistleblowing activity.

**Count I – Violation of WPA – as to all Defendants**

46. Plaintiff incorporates the allegations of all prior paragraphs as if set forth herein.

47. Plaintiff was an employee of the BLP as defined by the WPA.

48. The BLP is an "employer" as defined by WPA.

49. The City Attorney of Grand Haven is a "public body" as defined by the WPA.

50. Plaintiff reported violations of the law, and/or what he suspected in good faith were violations of the law, when he reported to City Attorney Bultje that Mr. Walters and other BLP officials were attempting to avoid the requirements of FOIA and when he reported other potential state and federal law violations.

51. Defendants engaged in acts of retaliation toward Plaintiff because of

his reports.

52. Defendants terminated Plaintiff's employment with the BLP at least in part because of Plaintiff's reports.

53. Defendants' termination of Plaintiff was a violation of WPA, for which Defendants are liable to Plaintiff for damages under WPA.

54. As a result of the foregoing, Plaintiff lost earnings and benefits and future earnings and benefits and suffered mental anguish, emotional distress, unfair reputational damage, and undue harm to his career, as well as incurred attorney fees, for which Defendants are liable.

WHEREFORE, Plaintiff requests that the Court grant him judgment against Defendants including the following relief: (1) an award of lost wages and benefits; (2) an award of future lost wages and benefits; (3) compensatory damages for emotional and mental distress; (4) punitive damages in an amount as determined by a jury; plus (5) interest and costs, including reasonable attorney's fees, and any other relief deemed necessary and proper by the Court.

**Count II – Termination in violation of Public Policy – as to all Defendants**

55. Plaintiffs rely on the allegations of all prior paragraphs, as if they were restated herein.

56. Defendants' termination of Plaintiff violated Michigan public policy because Defendants did so in retaliation for Plaintiff's report that the Mr. Walters and other leaders of the BLP were engaging in actions intended to avoid the requirements of FOIA.

57. Michigan's public policy requires that government employees follow both the legal requirements and the spirit of FOIA to allow citizens transparency into the working of public bodies. Employees of public entities like the BLP who are in a position to know that other employees are engaging in attempts to thwart the goals of FOIA and public transparency must be encouraged to report those facts to legal counsel for the entity. Permitting their termination in motivation for coming forward would violate Michigan public policy.

58. By terminating Plaintiff under the conditions as stated aforesaid, Defendants violated Michigan public policy, a common law tort in Michigan law.

59. As a result of the foregoing, Plaintiff lost earnings and benefits and future earnings and benefits and suffered mental anguish, emotional distress, unfair reputational damage, and undue harm to his career, as well as incurred attorney fees, for which Defendants are liable.

WHEREFORE, Plaintiff requests that the Court grant him judgment against Defendants including the following relief: (1) an award of lost wages and benefits; (2) an award of future lost wages and benefits; (3) compensatory damages for emotional and mental distress; (4) punitive damages in an amount as determined by a jury; plus (5) interest and costs, including reasonable attorney's fees, and any other relief deemed necessary and proper by the Court.

PINSKY SMITH, PC  
Attorneys for Plaintiff

Dated: July 15, 2024

By: /s/ Sarah R. Howard  
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**JURY DEMAND**

To the extent that jury trial is available as to any of the issues set forth above, Plaintiff hereby demands same.

PINSKY SMITH, PC  
Attorneys for Plaintiff

Dated: July 15, 2024

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