

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TINA J. WALKER,)	Case No. 8:19CV356
)	
Plaintiff,)	
)	
vs.)	
)	
THE CITY OF FREMONT, a political)	
subdivision of the State of Nebraska;)	
)	
SCOTT GETZSCHMAN, in his official)	SECOND AMENDED COMPLAINT
capacity as mayor and individually;)	
)	
BRIAN NEWTON; in his official capacity as)	
city administrator and individually; and)	
)	
SHANE WIMER, in his official capacity as)	
assistant city administrator and individually;)	
)	
Defendants.)	

COMES NOW the Plaintiff, Tina J. Walker, by and through her attorneys, and for her second amended causes of action against the Defendants hereby states the following:

PARTIES-VENUE-JURISDICTION

1. Plaintiff Tina J. Walker (“Plaintiff” or “Walker”), at all relevant times alleged herein was a resident of Douglas County, Nebraska, and an employee of Defendant City of Fremont (“Fremont”).
2. At all times relevant, Defendant Fremont has continuously been a political subdivision doing business in the State of Nebraska and in the City of Fremont, Nebraska.
3. At all relevant times hereto, Defendant Scott Getzschman (“Getzschman”) was a resident of Fremont, Dodge County, Nebraska and Plaintiff’s supervisor under the elected title of Mayor of the City of Fremont. He is sued both individually and in his capacity as an employee,

agent or servant of the City of Fremont.

4. At all relevant times hereto, Defendant Brian Newton (“Newton”) was a resident of Fremont, Dodge County, Nebraska and Plaintiff’s supervisor under the appointed title of the City Administrator of the City of Fremont. He is sued both individually and in his capacity as an employee, agent or servant of the City of Fremont.

5. At all relevant times hereto, Defendant Shane Wimer (“Wimer”) was a resident of Fremont, Dodge County, Nebraska and Plaintiff’s supervisor under the appointed title of the Assistant City Administrator-City of the City of Fremont. He is sued both individually and in his capacity as an employee, agent or servant of the City of Fremont.

6. This Court has original jurisdiction over the claims arising under Federal law and concurrent jurisdiction over the state law claims. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1331 and the Court’s pendent claim jurisdiction under 28 U.S.C. §1367(a).

7. Venue is appropriate in this District under 28 U.S.C. §§1391(b) and (c).

8. To the extent require by law, Plaintiff sent appropriate notice of her claims to Defendant Fremont by certified mail to its City Clerk on or about September 10, 2018. On or about August 19, 2019, Plaintiff formally notified the City Clerk of Defendant Fremont by certified letter of her intention to withdraw her claim and proceed judicially in the appropriate court of law.

9. On or about April 20, 2018, Walker filed a charge of discrimination with the Nebraska Equal Opportunity Commission (NEB 1-17/18-5-49592-RD) and the U.S. Equal Opportunity Commission (EEOC 32E-2018-00490) claiming gender discrimination and retaliation.

10. On or about May 8, 2018, Walker filed a charge of whistleblower discrimination under state law with the Nebraska Equal Opportunity Commission, charge number NEB 1-17/18-

5-49593-S.

11. On or about May 27, 2019, Walker received her Notice of Right to Sue from the U.S. Equal Employment Opportunity Commission on charge number 32E-2018-00490.

12. On or about August 20, 2019, Walker filed a Complaint and Jury Demand in the United States District Court for the District of Nebraska, Case No. 8:19-cv-00356, against Fremont, Scott Getzschman, in his official and individual capacity, Brian Newton, in his official and individual capacity; and Shane Wimer, in his official and individual capacity for sex discrimination and retaliation under Title VII, violations of the Equal Pay Act, violations of the First Amendment under 42 U.S.C §1983, violations of Nebraska State Constitution and wrongful termination in violation of Nebraska public policy. At the time Walker filed Case No. 8:19-cv-00356, she did not yet have her Notice of Right to Sue or Administrative Dismissal for NEB 1-17/18-5-49592-RD or NEB 1-17/18-5-49593-RD.

13. On or about September 25, 2019, Walker received her Notice of Right to Sue from the Nebraska Equal Opportunity Commission for the state law charge number NEB 1-17/18-5-49592-RD.

14. On or about June 26, 2019, Walker filed another charge of discrimination with the Nebraska Equal Opportunity Commission, NEB 1-18/19-6-50584-RS, and the U.S. Equal Opportunity Commission, EEOC 32E-2019-00576, claiming sex discrimination, disability discrimination and retaliation under both federal and state laws.

15. On or about October 29, 2019, the U.S. Equal Opportunity Commission issued Plaintiff a Notice of Right to Sue for EEOC 32E-2019-00576 and NEB 1-18/19-6-50584-RS.

16. On or about December 20, 2019, Walker received a copy of the Administrative Dismissal from the Nebraska Equal Opportunity Commission for the state law charge number

NEB 1-17/18-5-49593-RD.

17. On or about June 22, 2020, Walker filed another charge of discrimination with the Nebraska Equal Opportunity Commission, NEB 1-19/20-6-51413-RD, and the U.S. Equal Opportunity Commission, EEOC 32E-2020-00512, claiming sex discrimination, disability discrimination and retaliation under both federal and state laws.

18. Pursuant to Neb. Rev. Stat. §48-1119(4), Walker has exhausted the administrative remedies for her state law claims in NEB 1-19/20-6-51413-RD by amending her complaint herein and providing written notice to the NEOC of the present action.

19. On or about July 30, 2020, Walker requested a Right to Sue Letter from the EEOC for 32E-2020-00512. On or about July 31, 2020, Walker was notified by the EEOC's public web portal that a Right to Sue Letter had been issued for 32E-2020-00512 and that the case has been closed by the EEOC. See Attached Exhibit A, a true and correct copy of the notice Walker received from the EEOC's public web portal. Due to administrative closures of the EEOC and Department of Justice caused by the current COVID-19 pandemic, Walker has not received a paper copy of her Right to Sue letter as of the Court ordered deadline to file an amended pleadings in this case.

20. Walker alleges that subsequent to May 21, 2020, Defendants have continued to discriminate against her due to her sex, disability and retaliate against her for participating in the protected activity of making internal complaints of discrimination, filing EEOC and NEOC charges, and filing a civil action in this Court alleging discrimination and retaliation. Walker reserves the right to amend this pleading to allege facts relevant to her federal and state discrimination and retaliation claims not pled herein due to the procedural requirement to exhaust her administrative remedies before filing said claims.

FACTUAL BACKGROUND

21. Walker commenced employment with Defendants on July 22, 2016, and was most recently employed as Library Director for the City of Fremont.

22. Beginning in or about July 2017, Walker was harassed because of her gender by her supervisor, Defendant Newton. Newton would constantly touch Walker on the arm or put his hand on her shoulder, even when she told him it was unwanted. During work meetings, Newton would treat Walker in a disrespectful way by talking over her, by telling her not to speak, and by making decisions for her department that she should have been making. Defendant Newton did not treat other director level employees this way at staff meetings. This harassment continued until October 2017.

23. On September 12, 2017, during a City Council meeting, Walker reported to the Fremont City Council Members that Newton had lied to the City Council and violated the City's Union Contract.

24. On September 13, 2017, during a city staff meeting, Defendant Getzschman started the meeting by disparaging Walker and accusing her of lying about the library budget, savings, accreditation, and other areas related to the library. The staff then spent 45 minutes disparaging Walker during the meeting. Walker was not present for the meeting, but was told about the event by a concerned co-worker. Getzschman had never disparaged another employee in this way during a city staff meeting while Walker was in attendance.

25. On September 13, 2017, Defendant Wimer, at Newton's direction, verbally reprimanded Walker for addressing the City Council and making her statements about Newton's illegal conduct to the City Council. Wimer told Walker that Getzschman was "pissed" at her, and that she was not to speak to the City Council during a meeting, unless Walker was called upon to speak. If Walker was to speak in violation of his order, Wimer would subject her to further

discipline.

26. On September 18, 2017, Walker filed a written complaint of gender discrimination and retaliation against Newton and Getzschman with the Fremont City Attorney, Paul Payne. An Omaha law firm, Baird Holm, was brought in by Fremont to investigate Walker's complaints. During an interview with one of Baird Holm's attorneys, Walker was told that she would receive a copy of the interview and that someone would get back to her about the outcome of the investigation. Among other things, Baird Holm's report did find that Newton had admitted that he intentionally retaliated against Walker. As of the time of this filing, no one representing any of the Defendants has ever gotten back with Walker about the investigation into her complaint. Walker heard from other employees that Newton was placed on a performance improvement plan following her complaint.

27. In October 2017, Defendant Wimer became Walker's supervisor. Wimer verbally disciplined Walker in November 2017 for discussing issues her department was having with Information Technology (IT). Wimer wore his police uniform and gun while he was disciplining Walker, even though he had been previously instructed by City Attorney Payne not to do so. Payne told Wimer that wearing his police uniform and gun was intimidating and not appropriate while performing his Assistant City Administrator duties.

28. On or about January 11, 2018, Walker received a cost of living raise, while Newton, Wimer, and Director of Human Resources, John Hemschemeyer all received raises substantially higher than Walker. This was during the time Newton was allegedly on a PIP, and Hemschemeyer was forced to resign due to inappropriate conduct. Walker complained to Human Resources about the inequity and never received a response.

29. On or about February 9, 2018, Wimer gave Walker a negative performance

evaluation. Prior to this evaluation, Wimer had told Walker verbally that she did outstanding work. Walker disagreed with the negative evaluation, and Wimer stated he would review it and make changes.

30. On or about February 13, 2018, a copy of Walker's negative performance evaluation was left in the copy machine, and everyone on the floor was able to review it.

31. On or about February 14, 2018, Wimer changed his mind, stating that he would not be changing anything on the evaluation. Wimer told Walker that Newton did not have any input in the evaluation, but Getzschman did. Wimer also said that if Newton offered input, that he would have taken it.

32. On or about February 15, 2018, Newton left a copy of Baird Holm's investigation summary into Walker's complaint on the copier, and everyone on the floor was able to review it. Walker had been told by Human Resources and Baird Holm that Newton would not have access to her interview in the investigation documentation.

33. On February 20, 2018, Walker's attorney sent an email letter to H.R. Director, Jennifer McDuffee, that (1) informed her that Walker had retained an attorney to represent her in employment claims against the City of Fremont, (2) requested that the City of Fremont, Newton and Wimer cease and desist from any further retaliation against Walker, (3) notified her that Walker was filing a Charge of discrimination and retaliation with the EEOC/NEOC and (4) notified her of anticipated litigation and the duty to preserve all relevant evidence. This email letter was also copied to Getzschman, Newton and Wimer. Based upon her best information and belief, Defendants have not been preserving all relevant evidence.

34. On February 28, 2018, Wimer sent Walker an email with another revised performance evaluation and requested that Walker return it with her goals and comments by 5pm

the next day. The revised performance evaluation was even more negative than the first two she was given by Wimer before he had received the letter from Walker's attorney. It is Walker's understanding from speaking with Wimer, that her review would affect her raise and her ability to apply for other positions within the City.

35. On March 9, 2018, Wimer gave Walker a written warning that alleged she was "untruthful" about the required number of continuing education credits for her staff. Walker disputed the claim by providing Wimer with a letter from the Nebraska Library Commission that showed she was not being untruthful and that the Commission gave her the wrong information. Wimer refused to amend or withdraw the written warning. It is Walker's understanding from speaking with Wimer, that her write up would affect her raises and her ability to apply for other positions within the City.

36. In March 2018, Getzchman sent an email to the County Attorney and other city administrators to disregard statements made by Walker. As a result, Walker is not able to do her job to the best of her abilities because she is not able to discuss City business and collaborate with other city workers or council members.

37. From April 24, 2018 to the present, Wimer has progressively taken away more of Walker's responsibility as Library Director when he started making decision for library budget and staffing. In particular, Wimer has refused to allow Walker hire additional staff needed to run the library and he has refused to provide an IT staff member for the library. These were decisions made by Walker prior to Wimer becoming her supervisor.

38. During her employment, Walker has suffered from the physical impairments of chronic L4-L5 back pain that also radiates into her legs and fibromyalgia that substantially limit her major life activities of lifting, bending, walking, sitting, standing, sleeping and her major bodily

functions of her musculoskeletal and neurological systems.

39. During her employment and as a result of the harassment, discrimination and retaliation she has endured, Walker suffered from the mental impairments of depression, anxiety and post-traumatic stress disorder that substantially limit her major life activities of sleeping, thinking, concentrating and communicating.

40. Defendants were aware of Walker's physical and mental impairments because Walker disclosed them to Defendants verbally and in writing in emails, her Family Medical paperwork, her ADA accommodation request paperwork and her short term disability paperwork that Walker provided to them.

41. In January, February and March 2019, Walker used Family Medical Leave for her serious health conditions and for treatment of her disabilities.

42. On January 23, 2019, Walker contacted McDuffee and requested to work from home as a reasonable accommodation for her disabilities. Walker explained that her back condition caused chronic pain that would flare up and make it difficult to walk, stand or sit for long periods of time. Walker requested the accommodation because doing administrative work at home would allow her to manage her symptoms better and change positions as needed for pain relief. Walker also explained that she would be receiving medical treatment on her back during this time as well. McDuffee deferred the accommodation decision to Wimer, who denied Walker's request, telling her that she needed to "rest and get better." Walker complained to McDuffee that she was being treated differently than other directors who were allowed to work from home. Walker gave the example that Director of IT, Nick Brand, was allowed to work from home for a weeks when he didn't have child care for his children during the day. As a result of the denial of her accommodation request and the disparate treatment, Walker had to use her sick leave, and when

that was exhausted, she had to use unpaid FMLA leave. Walker also had to return to work sooner than she should have because she could not afford to take unpaid time off.

43. On March 12, 2019, Walker returned to work and asked Wimer about her raise and performance evaluation that was due in January 2019. Walker asserts that she is the only director who doesn't receive her raises or evaluations on time.

44. On April 1, 2019, Walker contacted accounting to see if her annual raise had been submitted. Walker was told there was no paperwork submitted by McDuffee or Wimer.

45. On April 5, 2019, Wimer gave Walker what she considered to be a negative performance evaluation. One of his criticisms of Walker was that she does not "radiate enthusiasm." Upon information and belief, none of Walker's similarly situated male co-workers are required to "radiate enthusiasm" as part of their job duties. Additionally, Wimer criticized Walker for her attendance and commented negatively about her use of sick leave and FMLA leave in relation to the other directors like her. It is Walker's understanding from speaking with Wimer, that her write up would affect her future raises and her ability to apply for other positions within the City. Wimer's criticism of Walker's use of FMLA discouraged Walker from using additional FMLA time in 2019.

46. On April 10, 2019, Walker submitted to McDuffee her written response to the negative performance evaluation and further complaints of Wimer's discrimination and retaliation. Walker also told McDuffee that she was supposed to be evaluated and receive her annual raise in January. McDuffee never responded to Walker's complaints.

47. On or about April 19, 2019, Encore requested to use library auxiliary building due to their premises being flooded out. Walker began to make arrangements per city guidelines, but Wimer intervened and took those job responsibilities from Walker.

48. On May 1, 2019, Walker met with McDuffee to discuss various human resource matters related to the library. During said meeting Walker made a verbal complaint that she was being treated differently than other directors who Wimer was allowing to work from home. Walker explained that she should be able to perform all of her administrative duties at home. Walker also complained that Wimer's actions were retaliatory for her NEOC complaint and that he was denying her accommodation so that she would have to use up all her vacation and sick leave, eventually leading to unpaid time off and his negative comments about her attendance on her evaluation. McDuffee asked Walker to submit her complaint in writing.

49. During the May 1, 2019 meeting with McDuffee, Walker also complained that Newton was violating city ordinances by allowing one of the city employees bring their child to work with them. Walker explained that she knew it violated city ordinance because she was told by McDuffee's predecessor to write up a library employee for doing the same thing. McDuffee said she would look for the notes on it.

50. On May 6, 2019, Walker again requested to work from home as a reasonable accommodation for her disabilities. Wimer denied the request.

51. On May 7, 2019, Walker sent her written complaint to McDuffee, as directed. In addition to recounting the facts she provided in her January 2019 complaint, Walker gave examples of two other directors that had recently been allowed to work from home.

- a. Director of Planning, Jennifer Dam, was permitted to work from home while recovering from knee surgery in April 2019. This information was provided to Walker by Dam while in a staff meeting.
- b. Director of Parks and Recreation, Kim Koski, was permitted to work from home while she was ill for a week in April and May 2019. This information was provided

to Walker by Getzschman in a meeting.

- c. In addition to being in “director level” positions, both Dam and Koski were responsible for interfacing with the public and tasked with supervising their employees, just like Walker.
- d. To the best of Walker’s knowledge, neither Dam nor Koski has engaged in any protected activity by filing or participating in a charge with the NEOC against defendants.

52. On May 24, 2019, Walker was required to meet with an attorney from Dvorak Law Group. Walker was told the attorney was a third party brought into investigate her claims of discrimination and retaliation. Walker met with the attorney as requested, but to this day she has never been told what the results of the investigation were.

53. After Walker’s meeting with Dvorak Law, McDuffee contacted Walker about her complaint concerning her raise not being put on her check. McDuffee claimed to have put in for the raise, but admitted that she couldn’t find any paperwork for it. McDuffee said she would submit the raise that day and it would be retroactive back to January. Walker responded by letting McDuffee know that while she appreciated it, holding the raise for five months ended up costing Walker more money in taxes. McDuffee never addressed any of the other complaints that were allegedly investigated by Dvorak Law.

54. On June 10, 2019, Wimer demanded that Walker provide him with documents from the Friends Keene Memorial Library organization. Walker told Wimer that she didn’t have access to the information he was seeking because it is a private organization and referred Wimer to the president of the organization.

55. On June 12, 2019, City Attorney Molly Miller told Walker that she would not be

able to procure a donation for new security gates from Friends of the Library because it didn't follow city purchasing guidelines. Walker explained that the organization was not going to give a money donation, but they were actually going to buy the security gates and give them to the Library. Walker inquired as to why there was a sudden change in policy for handling donations and Miller refused to explain any further.

56. On July 15, 2019, the Master Fee Schedule for the City was due to be presented from Wimer to City Council. Wimer unilaterally proposed changing the library's fees against the recommendation of Walker and the Library Board. City Council instructed Wimer to follow the recommendation of Walker.

57. On or about July 31, 2019, portions of the Baird Holm report investigating Walker's discrimination and retaliation complaints were read during the public comment section of a City Council meeting. The entire report was also shared with the community on social media.

58. On August 6, 2019, Walker informed McDuffee and Wimer that her email and calendar were being tampered with. She noticed that emails and calendared appointments were being deleted from her accounts.

59. In or about August 2019, Wimer started to review the recordings of the Library Board meetings.

60. On August 19, 2019, the Fremont Tribune published an opinion article calling for resignation of Newton for what was revealed about Walker's complaint against him and other issues in the Baird Holm report.

61. On August 20, 2019, Plaintiff's Complaint, Case No. 8:19CV356, was filed with this Court.

62. On August 22, 2019, Wimer informs Walker that she is no longer allowed to contact

the City Attorney's office unless she gets permission from Wimer or Newton first. On or about the same date, Walker was informed by coworkers and city council members that they were instructed not to talk to her.

63. On August 26, 2019, City Council Member Glen Ellis makes a statement about Walker's recently filed Complaint on Facebook. Councilman Ellis' statement was supportive of Walker's claims and were negative towards the Mayor's response to her initial complaints in 2018.

64. On September 10, 2019, Walker requested that a row of chairs in the back of City Council chambers be removed so that she, and other disabled citizens that couldn't sit for long periods of time, could stand in the back of the room. Walker's request was denied by McDuffee. Thereafter, another citizen of Fremont posted a criticism of the City's failure to accommodate disabled persons at their council meetings.

65. On September 24, 2019, Wimer began to harass Walker with additional job duties to perform salary comparisons that were traditionally reserved for human resources.

66. On September 20, 2019, Walker found out that Wimer had retaliated against her by denying 3 of her staff changes that were proposed for the annual budget. Initially, Wimer had told Walker and the Director of Finance, Jody Sanders that all six of her requested staff changes were approved by him during a budget meeting on July 29, 2019. Walker made a complaint about Wimer's retaliation to McDuffee and Getzschman in a meeting on September 20, 2019. Neither of them did anything to investigate or resolve the complaint.

67. At a City Council meeting on October 1, 2019, Walker found out that Newton had taken yet another one of her job duties away from her. Walker had previously been leading a project with the Library Trust and two properties the Trust was purchasing to donate to the city for the library expansion. During the October 1, 2019 council meeting, Newton gave a "staff report"

and submitted documents on the project without even talking to Walker about it. It was discovered during the meeting that Newton's documents were riddled with errors and Walker was instructed to fix them before they could be submitted again.

68. On October 8, 2019, Troy Schaben, Assistant City Administrator for Utilities, spoke at a council meeting during public comment. Walker inquired with Mc Duffee and Getzschman asking why Schaben was permitted to speak when she was previously written-up for speaking when she was called upon. Neither the Mayor nor McDuffee responded to Walker's inquiry.

69. On October 21, 2019, Wimer started the process of trying to remove an already budgeted Library Technology position over Walker's objection.

70. On October 22, 2019, Walker received a disciplinary action from Wimer for allegedly giving false information to the Library Board back in July 2019. Walker disputed Wimer's allegations, made a complaint of retaliation and submitted her response to each of Wimer's allegations to McDuffee.

71. On November 4, 2019, Walker received another disciplinary action purportedly from Wimer for allegedly being hostile and argumentative with him during meetings on October 21st and October 22nd. Walker disputed Wimer's allegations and submitted her response to each of Wimer's allegations to McDuffee.

72. On November 8, 2019, Walker made a formal complaint to McDuffee that her recent disciplinary actions were retaliatory, and that as a result, Walker was suffering from depression, anxiety and PTSD symptoms.

73. From November 10, 2019 to November 23, 2019, Walker took FMLA leave to treat her increased symptoms caused by her depression, anxiety and PTSD symptoms.

74. From January 5, 2020 to January 18, 2020, Walker took FMLA leave to treat pneumonia and fibromyalgia. While Walker was out sick, Wimer interfered with Walker's security gate project by contacting vendors for purchase quotes. However, Wimer did not use the correct specifications and his chosen vendor was from overseas which is impermissible under city purchasing guidelines.

75. On February 11, 2020, City Clerk Tyler Ficken submitted a staff report to appoint a new Library Board member, without the knowledge and approval of Walker and the Library Board. Traditionally, Walker was responsible for this staff report, but Ficken was instructed by Getzschman to submit the report.

76. In February 2020, Wimer started to request meetings with the Library Board members, one on one, to discuss Walker. Wimer claimed it was for Walker's evaluation.

77. From February 26, 2020 to March 3, 2020, Walker attended a national library conference in Nashville, Tennessee. While she was there, several library directors approached her to inquire why Wimer was contacting them and questioning them about Walker. They were concerned when they found out Wimer had not told Walker that he was contacting them.

78. On March 9, 2020, Wimer informs Walker that she is no longer allowed to discuss library job descriptions with the Library Board for approval. Walker was previously told by Newton to perform her job in this way.

79. On March 10, 2020, Wimer was dishonest with the City Council about the hiring process for the library. Wimer was angry with Walker when she was questioned and disagreed with Wimer's statements.

80. On March 11, 2020, Walker started experiencing symptoms consistent with a COVID-19 viral infection. That first week, Walker worked partial hours at home and took 18

hours of sick time. The following week, Walker took the remaining sick and vacation time she had because she was too sick to work.

81. On March 18, 2020, Walker saw her doctor, was diagnosed presumptive COVID-19 (because her doctor's request for testing had been denied by Department of Health and Human Services) and was ordered to quarantine for 14 days plus 72 hours after symptoms cease. As a result, Walker applied for FMLA and short term disability benefits related to her absence.

82. On March 19, 2020, Walker received an email from Wimer instructing her not to work from home. Walker responded that other employees were being allowed to work from home during quarantine and that she (like everyone else) had a laptop from IT with everything she needed to work. Wimer responded that Walker's staff could work for her during her quarantine. Walker responded to Wimer and McDuffee that she had administrative deadlines to meet and that her staff couldn't perform that work. Wimer responded that he made his decision and it was final. Walker responded that she felt that she was being singled out again and that her request for accommodation was wrongfully denied. Walker was informed by McDuffee that she was not allowed to return from leave without a doctor's note.

83. On March 20, 2020, Walker had salary deducted from her check because she was in quarantine and denied the accommodation to work from home.

84. Walker was returned to work on April 2, 2020 with a doctor's note that was faxed to McDuffee on April 1, 2020. McDuffee denied receiving the fax, so the note was faxed again on April 2nd and April 3rd. McDuffee denied receiving those faxes as well. Walker's doctor informed her that they had fax confirmations for all three faxes.

85. On April 6, 2020, Walker had returned to the library for about an hour and half before McDuffee told her that she needed to leave until McDuffee had a note from her doctor.

Walker's doctor faxed another note, to the same fax number as before, and confirmed receipt that same morning. McDuffee called Walker in the afternoon and permitted her to return to work the next day.

86. On April 8, 2020, Wimer called Walker in for her annual performance evaluation. In addition to giving her a negative performance review, Wimer put Walker on a 6 month performance improvement plan requiring Walker to meet with Wimer every two weeks. Wimer communicated to Walker that she would be subject to termination at any time during the plan. Walker immediately made a formal complaint to McDuffee that the evaluation and performance improvement plan were retaliatory and that the performance improvement plan lacked specificity. Walker also requested accommodation for her disabilities because meeting with Wimer every two weeks would aggravate her anxiety, depression and PTSD.

87. On April 9, 2020, McDuffee confirmed for Walker that her placement on a performance improvement plan would make her ineligible for her annual raise that was due in January 2020.

88. On April 10, 2020, McDuffee gave Walker an ADA accommodation form to complete. Walker completed and signed the form that same day requesting that Wimer be removed as he supervisor or that he be instructed to use a different style of managing her.

89. On April 10, 2020, McDuffee denied Walker's FMLA leave from March 31, 2020 to April 6, 2020. As a result, Walker was not paid short term disability for April 1st through April 3rd.

90. On April 23, 2020, Walker had her first performance improvement plan meeting with Wimer and McDuffee. During the meeting, Wimer wrote Walker up for an email to McDuffee that stated Walker better be treated like everyone else. Wimer interpreted Walker's email

requesting equal treatment as “too threatening.”

91. On May 7, 2020, Walker had her second performance improvement plan meeting with Wimer. Walker was written up for telling Wimer that she doesn't understand why he went from chatting in her office every day to discriminating and retaliating against her after her complaints to human resources and the NEOC. Wimer said that Walker was being untruthful about him being in her office every day, so he needed to discipline her.

92. On May 21, 2020, Walker was informed that Defendant Fremont was denying her request for accommodation. McDuffee claimed that it was because she didn't receive the medical information she needed from Walker's doctor. However, McDuffee never told Walker what additional information she need so that Walker could try and obtain it for her. As of the date of this filing, Walker had not heard back from McDuffee the status of her complaint of retaliation on April 8th or her request that McDuffee reconsider her FMLA denial.

93. From April 15, 2019 to the present, Wimer and Newton have attended library board meetings and asserted authority over decisions that are to be made by the Library Board. Wimer and Newton have no authority over the Library Board, as the board is supposed to report to the Fremont City Council and the Mayor. Wimer and Newton regularly attend the meetings, record the meetings and criticize Walker's performance for the purposes of harassing, intimidating and retaliating against her. Wimer and City attorney, Molly Miller have even went so far as dictating to the Library Board what can be discussed during meetings and requiring that non-board members be present in closed executive session.

94. Upon information and belief, Wimer's actions and conduct towards Walker is influenced by and/or at the direction of his supervisors, Newton and Getzschman.

95. Defendants' harassment of Walker has been so severe, that she has had to seek

medical treatment related to her symptoms of stress and anxiety caused by the harassment.

96. Throughout her employment with Fremont, Walker alleges that her job performance was above satisfactory.

97. As a result of Defendants' wrongful conduct, Plaintiff suffered lost wages, compensatory damages, including emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and has also incurred attorney's fees and other costs that are continuing.

COUNTS I & II

Sex Discrimination Alleged Against Defendant Fremont

42 U.S.C. § 2000e-2 and Neb. Rev. Stat. §48-1004

98. Plaintiff hereby incorporates paragraphs 1 through 97 as if fully set forth herein and states:

99. Defendant Fremont discriminated against Plaintiff with respect to terms and conditions of her employment on the basis of her sex in violation of Title VII and NEFEPA by treating her differently than similarly-situated male coworkers.

100. Plaintiff suffered adverse action, including but not limited to harassment, unequal pay, negative performance evaluations that effect Plaintiff earning merit raises in her pay and promotions and disciplinary actions that made Plaintiff ineligible for a raise in pay.

101. Plaintiff's sex was a motivating factor in the decision-making regarding Plaintiff's terms and conditions of employment.

102. As a result of Defendant Fremont's acts and omissions, Plaintiff has in the past and will in the future suffer damages including, but not limited to, mental and emotional distress; fear; anguish; humiliation; embarrassment; lost enjoyment of life; lost wages, benefits, future earnings, and other emoluments of employment.

COUNTS III & IV

Retaliation Alleged Against Defendant Fremont

42 U.S.C. § 2000e-3 and Neb. Rev. Stat. §48-1114(1)(a) and (b)

103. Plaintiff hereby incorporates paragraphs 1 through 102 as if fully set forth herein and states:

104. During her employment, Plaintiff engaged in protected activity, including but not limited to exercising her rights under Title VII and the NEFEPA by internally complaining about sex discrimination, participating in an internal investigation, filing charges of discrimination with the NEOC and EEOC and filing a discrimination and retaliation lawsuit.

105. Defendant Fremont took adverse employment action against Plaintiff, including but not limited to subjecting her to harassment, a retaliatory hostile work environment, including but not limited to intimidation and damage to public reputation, unequal pay, lost pay, negative performance evaluations that effect Plaintiff earning merit raises in her pay and promotions, demotion in job duties and responsibilities and disciplinary actions that made Plaintiff ineligible for a raise in pay.

106. There is a causal connection between Plaintiff's participation in protected activity and Defendant Fremont's adverse action against her.

107. As a result of Defendant Fremont's retaliation, Plaintiff has in the past and will in the future suffer injuries and damages, including, but not limited to mental and emotional distress; humiliation; fear, embarrassment; lost enjoyment of life; lost wages and benefits; front pay and other emoluments of employment.

COUNT V

Violation of the Equal Pay Act Alleged Against All Defendants

29 U.S.C. § 206(d)(1) et seq.

108. Plaintiff hereby incorporates paragraphs 1 through 107 as if fully set forth herein and states:

109. Defendant Fremont employed the Plaintiff and one or more members of the opposite sex in positions requiring substantially equal skill, effort, and responsibility;

110. Plaintiff and at least one or more members of the opposite sex, former Director John Hemschmeyer, performed their positions under similar working conditions;

111. Plaintiff was paid a lower wage than Hemschmeyer and other the members of the opposite sex who were performing substantially equal work under similar working conditions.

112. Plaintiff's unequal pay was a result of decisions made by Defendant Fremont and/or Defendants Getzschman, Wimer and Newton, and therefore, Defendants Getzschman, Wimer and Newton should be held liable in their individual capacities.

113. As a result of Defendants' wrongful conduct, Plaintiff suffered damages.

COUNT VI

Violation of the First Amendment Alleged Against All Defendants

42 U.S.C. §1983

114. Plaintiff hereby incorporates paragraphs 1 through 112 as if fully set forth herein and states:

115. Plaintiff's speech and freedom of assembly was protected by the First Amendment.

116. Defendants took retaliatory adverse action against Plaintiff related to her employment, including but not limited to subjecting her to disciplinary action for speaking at a city council meeting, and threatening further disciplinary action if Plaintiff was to speak at another city council meeting.

117. Plaintiff's protected speech and freedom of assembly was a substantial or motivating factor in the Defendants' decision to take the retaliatory adverse action against Plaintiff.

118. The unlawful employment practices complained of above were malicious, intentional or recklessly indifferent to Plaintiff's rights as protected by Federal law, and by their conduct Defendants Getzschman, Wimer and Newton are subject to punitive damages in their individual capacities.

119. As a result of Defendants' wrongful conduct, Plaintiff has in the past and will in the future suffer injuries and damages, including, but not limited to mental and emotional distress; humiliation; embarrassment; lost enjoyment of life; lost wages and benefits; front pay and other emoluments of employment.

COUNT VII

Disability Discrimination Alleged Against Defendant Fremont

42 U.S.C. §§12101 et seq. ("ADA")

120. Plaintiff hereby incorporates paragraphs 1 through 119 as if fully set forth herein and states:

121. Defendant Fremont was at all times material an "employer" within the meaning of 42 U.S.C §12111.

122. At all times relevant, Plaintiff suffered from physical and mental impairments that substantially limited one or more of her major life activities and major bodily functions.

123. At all times relevant, Plaintiff was able to perform the essential functions of her job, with or without reasonable accommodation.

124. Defendant Fremont discriminated against Plaintiff because of her disability and altered a term, condition and/or privilege of her employment, including but not limited to harassing

Plaintiff about her disability, letting similarly situated non-disabled employees work from home, giving Plaintiff a negative performance review for taking sick time related to her disability when non-disabled employees were not given a negative performance review for taking their sick time and subjecting Walker to disciplinary action.

125. Defendant Fremont failed to accommodate Plaintiff's disability in violation of the ADA.

126. Defendant Fremont failed to engage in good faith in an interactive process with Plaintiff to assist her in accommodating her disability in violation of the ADA.

127. Plaintiff's disability was a motivating factor in such discrimination, failure to accommodate and failure to engage in the interactive process.

128. As a result of Defendant Fremont's acts and omissions, Plaintiff has in the past and will in the future suffer injuries and damages, including, but not limited to mental and emotional distress; humiliation; fear, embarrassment; lost enjoyment of life; lost wages and benefits; front pay and other emoluments of employment.

COUNT VIII

Disability Discrimination Alleged Against Defendant Fremont

Neb. Rev. Stat. §48-1104 ("NEFEPA")

129. Plaintiff hereby incorporates paragraphs 1 through 128 as if fully set forth herein and states:

130. Defendant Fremont was at all times material an "employer" within the meaning of Neb. Rev. Stat. §48-1102.

131. Plaintiff is and was disabled within the meaning of the NEFEPA.

132. Plaintiff was qualified to perform the essential functions of the job, with or without accommodation.

133. At all times relevant, Plaintiff suffered from a physical and mental impairment that substantially limited one or more of her major life activities and major bodily functions.

134. Defendant Fremont discriminated against Plaintiff because of her disability and altered a term, condition and/or privilege of her employment, including but not limited to harassing Plaintiff about her disability, letting similarly situated non-disabled employees work from home, giving Plaintiff a negative performance review for taking sick time related to her disability when non-disabled employees were not given a negative performance review for taking their sick time and subjecting Walker to disciplinary action.

135. Defendant Fremont failed to accommodate Plaintiff's disability in violation of the NEFEPA.

136. Defendant Fremont failed to engage in good faith in an interactive process with Plaintiff to assist in accommodating her disability in violation of the NEFEPA.

137. Plaintiff's disability was a motivating factor in such discrimination, failure to accommodate and failure to engage in the interactive process.

138. As a result of Defendant Fremont's acts and omissions, Plaintiff has in the past and will in the future suffer injuries and damages, including, but not limited to mental and emotional distress; humiliation; fear, embarrassment; lost enjoyment of life; lost wages and benefits; front pay and other emoluments of employment.

COUNTS IX & X

Disability Retaliation Alleged Against Defendant Fremont

42 U.S.C. §12203 and Neb. Rev. Stat. §48-1114(1)(a) and (b)

139. Plaintiff hereby incorporates paragraphs 1 through 138 as if fully set forth herein and states:

140. During her employment, Plaintiff engaged in protected activity, including but not limited to exercising her rights under the ADA and NEFEPA by seeking a disability accommodation, filing a charge of discrimination with the NEOC and EEOC and filing a lawsuit claiming discrimination and retaliation.

141. Defendant Fremont took adverse employment action against Plaintiff, including but not limited to subjecting her to harassment, a retaliatory hostile work environment, including but not limited to intimidation and damage to public reputation, unequal pay, lost pay, negative performance evaluations that effect Plaintiff earning merit raises in her pay and promotions, demotion in job duties and responsibilities and disciplinary actions that made Plaintiff ineligible for a raise in pay.

142. There is a causal connection between Plaintiff's participation in protected activity and Defendant Fremont's adverse action against her.

143. As a result of Defendant Fremont's retaliation, Plaintiff has in the past and will in the future suffer injuries and damages, including, but not limited to lost wages and benefits; front pay and other emoluments of employment and attorney's fees.

COUNT XI

Whistleblower Retaliation Alleged Against Defendant Fremont

Neb. Rev. Stat. §48-1114(1)(c)

144. Plaintiff hereby incorporates paragraphs 1 through 143 as if fully set forth herein and states:

145. During her employment, Plaintiff engaged in protected activity, including but not limited to, reporting illegal activity of Defendants Getzschman, Wimer and Newton, and refusing to commit a crime of misconduct in violation of Neb. Rev. Stat. §28-924 and §28-926.

146. Defendant Fremont took adverse employment action against Plaintiff, including but not limited to subjecting her to harassment, a retaliatory hostile work environment, including but not limited to intimidation and damage to public reputation, unequal pay, lost pay, negative performance evaluations that effect Plaintiff earning merit raises in her pay and promotions, demotion in job duties and responsibilities and disciplinary actions.

147. There is a causal connection between Plaintiff's participation in protected whistleblower activity and Defendant Fremont's adverse action against her.

148. As a result of Defendant Fremont's retaliation, Plaintiff has in the past and will in the future suffer injuries and damages, including, but not limited to mental and emotional distress; humiliation; fear, embarrassment; lost enjoyment of life; lost wages and benefits; front pay and other emoluments of employment.

COUNT XII

Violations of the Family Medical Leave Act Alleged Against All Defendants

29 U.S.C. 2601 et seq.

149. Plaintiff hereby incorporates paragraphs 1 through 147 as if fully set forth herein and states:

150. Defendant Fremont is and was at all times material an "employer" within the meaning of the Family Medical Leave Act.

151. Plaintiff is and was at all times material an "eligible employee" within the meaning of the Family Medical Leave Act.

152. During all times of her employment, Plaintiff suffered from one or more “serious health conditions” within the meaning of the Family Medical Leave Act.

153. Plaintiff was entitled to a leave of absence pursuant to her rights under the Family Medical Leave Act.

154. Plaintiff invoked her right to a leave of absence under the Family Medical Leave Act.

155. Defendants denied Plaintiff with the protected leave that the Family Medical Leave Act requires.

156. Defendants interfered with Plaintiff’s right to take leave under the Family Medical Leave Act by denying her leave, failing to reinstate Plaintiff promptly from leaving resulting in a loss in pay, and taking negative employment actions against Plaintiff to dissuade her and others from exercising their rights to leave.

157. Defendants retaliated against Plaintiff for exercising her rights under the Family Medical Leave Act by failing to reinstate Plaintiff promptly from leaving resulting in a loss in pay and disciplining Plaintiff with written warnings and performance improvement place upon her return from leave.

158. As a result of Defendants’ acts and omissions, Plaintiff has in the past, and will in the future, suffer damages including, but not limited to, lost wages, benefits, future earnings, liquidated damages and other emoluments of employment.

DAMAGES

159. Plaintiff hereby incorporates by reference paragraphs 1 through 158 and states:

160. As a result of Defendants’ discrimination and retaliation, Plaintiff has suffered damages and seeks the following relief:

- a. Back pay and lost benefits in an amount subject to discovery;
- b. Front pay including retirement and other benefits;
- c. Compensatory damages for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses;
- d. Liquidated damages against all defendant for Equal Pay Act violations;
- e. Liquidated damages against all defendants for FMLA violation as prescribed by 29 U.S.C §2617;
- f. Punitive damages under Federal law against Defendants Getzschman, Wimer and Newton in their individual capacities for Count VI;
- g. Attorney's fees, expert witness fees and other reasonable costs; and,
- h. Pre-judgment and post judgment interest.

WHEREFORE, Plaintiff demands judgment against Defendants in an amount which will fully and fairly compensate her for her injuries and damages, for all her general, special and punitive damages, for costs, attorney's fees, interest and for such other relief as just and equitable.

Plaintiff demands a trial by jury for all her federal claims as permitted by law.

Dated: August 12, 2020.

TINA J. WALKER, Plaintiff

BY: /s/ Jennifer Turco Meyer
Jennifer Turco Meyer, #23760
Of Dyer Law, P.C., LLO
10730 Pacific Street, #111
Omaha, Nebraska 68114
(402) 393-7529
(402) 391-2289 facsimile
Jennifer@dyerlaw.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Jerry L. Pigsley

and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: none.

/s/ Jennifer Turco Meyer
Jennifer Turco Meyer, #23760



My Charge

EEOC Number: 32E-2020-00512

Status: Notice of Right to Sue Issued was upon request and charge was closed

The charge of employment discrimination filed on **2020-06-22** with the U.S. Equal Employment Opportunity Commission (EEOC) by **Tina Walker** against **FREMONT, CITY OF** is available for you to view online

[View Representative](#)

[View My Information](#)

Notice of Right to Sue - Important Time Limit

If you choose to file a lawsuit against the respondent(s) named in your charge, you must file a complaint in court **within 90 days of the date you received the Notice of Right to**