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**MONTANA FIRST JUDICIAL DISTRICT COURT,
LEWIS AND CLARK COUNTY**

STEVE LAVIN,

Plaintiff,

v.

THE STATE OF MONTANA, and
ATTORNEY GENERAL AUSTIN
KNUDSEN, in his individual capacity,

Defendants.

Dept _____

Judge Presiding Judge: Hon. Mike Menahan

Cause No. ADV-25-2024-0000613-WS

COMPLAINT

This lawsuit seeks declaratory and injunctive relief on behalf of the former Colonel of the Montana Highway Patrol (“MHP”).

After 29 years of unblemished service, Steve Lavin (“Col. Lavin”), was selected as Highway Patrol Chief and promoted to the rank of Colonel. In 2021, Col. Lavin sought permission to begin a management review process, and he received approval later that year from Kris Hansen, the Chief Deputy Attorney General. This process included an anonymous survey of all staff of MHP. The survey results indicated, unsurprisingly, that some of the line patrol officers had negative views of their superiors in MHP and in the Attorney General’s Office

(“AGO”) – including Defendant Attorney General Austin Knudsen (“Defendant Knudsen”) himself.

When the survey results were presented to Defendant Knudsen, he became extremely upset. Defendant Knudsen had no control over the company that conducted the survey and he had no immediate way to determine which line officers had said negative things about Defendant Knudsen or his office. Defendant Knudsen, therefore, decided that he would take out his anger on Col. Lavin. With neither warning nor cause, Defendant Knudsen gave Col. Lavin the option of resigning or being fired. Because Col. Lavin had had no notice of this, his vehicle and other issued equipment were at his residence; Defendant Knudsen had one of his minions escort Col. Lavin home, where, in full view of the public, he required Col. Lavin to surrender his MHP equipment.

For his cause of action, Plaintiff Steve Lavin alleges as follows:

PARTIES & JURISDICTION

1. Plaintiff Col. Lavin lives in Helena, Montana.
2. Defendant State of Montana is a State that has established the Montana Highway Patrol under the control and supervision of the Department of Justice.
3. Defendant Knudsen is an attorney, is Attorney General for the State of Montana, and is the administrative head of the Department of Justice.
4. Jurisdiction and venue are proper in this Court pursuant to Mont. Code Ann. § 25-2-126.

COMMON ALLEGATIONS

5. Col. Lavin joined MHP in 1992 as a patrol officer. Since then, he has held the ranks of Trooper, Sergeant, Captain, Major, and Colonel.

6. As a Trooper, he engaged in basic law enforcement and crash reconstruction. As he rose in rank, his duties included more and more management, from a few Troopers to several counties to half the state until he was made Colonel.
7. The Attorney General's Office, headed by Defendant Knudsen, functions as the lawyers for the State of Montana; the attorneys in the Office have expertise in a wide range of legal topics and handle a broad range of legal cases involving the State of Montana and its people. Defendant Knudsen is an attorney – in fact, he has represented just about every kind of legal case imaginable.
8. Col. Lavin was appointed chief of MHP by Defendant Knudsen on January 1, 2021.
9. On or about that date, Defendant Knudsen required Col. Lavin to sign a document indicating that Col. Lavin served at the pleasure of Defendant Knudsen. Defendant Knudsen represented that this was a legal requirement for Col. Lavin to begin work.
10. In fact, under Montana law, the MHP chief holds office until the appointment is terminated for cause, and Defendant Knudsen was aware of the falsity of his representation. However, he intended that Col. Lavin should rely upon his representation.
11. Col. Lavin did, in fact, rely on this representation. He understood Defendant Knudsen's representation to mean that he could be terminated for no cause and believed this to be true.
12. In 2020, Col. Lavin entered the Deferred Retirement Option Plan ("DROP"), as per Title 19, Chapter 6, Part 10, MCA, with the intention to retire on May 31, 2025; under this plan, he had roughly \$5,800/mo. extra contributed to his retirement at 7% interest.
13. After serving for two to three months, Col. Lavin, in consultation with the MHP management team, determined that MHP should hire a management consultant.

14. After drafting a proposal, he made the presentation to contract for those services with Dr. Eric Murray of Team Training Associates to the Chief Deputy Attorney General, Kris Hansen.
15. On or about June 2021, Ms. Hansen approved that contract.
16. Team Training Associates proposed the first step, a climate assessment, which was essentially a survey of all staff; this was initiated on or about January 2024.
17. The survey was developed and administered by Team Training Associates.
18. The climate assessment was both quantitative and qualitative and, therefore, had not only statistical reports of respondents' answers but also included narrative results from respondents.
19. On or about March 4th, 2024, Col. Lavin, his second in command, and Dr. Eric Murray were called in to meet with Defendant Knudsen and his minions. At that time, Defendant Knudsen expressed his displeasure with the survey results, particularly with the narrative portion of those results and with the parties involved in it.
20. The survey results indicated that some line patrol officers had negative views of their superiors in MHP and the AGO.
21. These included allegations that MHP management and certain AGO staff were engaged in acts and practices that violated public policy.
22. On or about March 14, 2024, Defendant Knudsen called Col. Lavin and insinuated that he had "leaked" information regarding the survey to the press because a Freedom of Information Act or similar public information request had been sent to the Attorney General's Office for the results of the survey.

23. On March 15, 2024, Col. Lavin was called in to meet with Defendant Knudsen, a human resources officer, and others of Defendant Knudsen's minions, and Col. Lavin was given the choice of termination or resignation.
24. When Col. Lavin asked why he was being fired, he was informed that they did not need a reason to fire him because he worked at the pleasure of Defendant Knudsen.
25. Defendant Knudsen and his human resources and legal staff knew, or should have known, that this statement was false; Col. Lavin did not.
26. Col. Lavin believed that, since Defendant Knudsen held the office of Attorney General, he must understand the law better than Col. Lavin did.
27. Col. Lavin asked for the weekend to think this over and for an opportunity to explain or appeal; Defendant Knudsen denied these requests and told Col. Lavin he had to make the decision immediately, though he could contact an attorney if he wished.
28. Col. Lavin retired to an adjacent room, attempted to contact the attorneys he knew, but failed; he realized he did not know who would be best to contact and returned to Defendant Knudsen's presence.
29. Col. Lavin knew this forced resignation was contrary to law, but feared further reprisal, such as the threat of losing his retirement and benefits after 32 years of service, so he signed the provided resignation form.
30. He also was forced to sign an employment severance agreement that required his unconditional release of any claims against Defendant Knudsen and the State, and his non-disclosure of any information acquired during his employment, that did not limit the restrictions to that non-disclosure as to either time or place.

31. Col. Lavin was then escorted by the Bureau Chief of the Law Enforcement Academy Bureau to Col. Lavin's house, where he was made to turn over his issued equipment in his driveway in full view of the public.

COUNT I: WRONGFUL DISCHARGE

32. Col. Lavin re-alleges the allegations contained in all previous paragraphs.

33. Col. Lavin was offered the choice between termination and resignation – “voluntary” termination.

34. Col. Lavin chose “voluntary” termination because the situation created by Defendant Knudsen's demands created an intolerable situation for him, and “voluntary” termination was the only reasonable alternative.

35. This “voluntary” termination was nevertheless a constructive discharge; Col. Lavin did not resign willingly.

36. The discharge was in retaliation for Col. Lavin's refusal to violate public policy or for reporting a violation of public policy. § 39-2-904(1)(a), MCA.

37. The discharge was not for good cause as specifically required under § 44-1-201, MCA, and Col. Lavin had long since completed his probationary period of employment. § 39-2-904(1)(a), MCA.

38. The discharge materially violated express provisions of the State's written personnel policy, and that violation deprived Col. Lavin of a fair and reasonable opportunity to remain in a position of employment with the State. § 39-2-904(1)(c), MCA.

39. Defendant Knudsen engaged in actual fraud or actual malice in this discharge.

40. Col. Lavin lost not only wages and benefits but the benefits of the DROP he had signed up for - roughly \$5,800/mo. The money contributed to his retirement at 7% interest from the time of his forced resignation through May 31, 2025.

**COUNT II: 42 U.S.C. §§1983 and 1988
(PROCEDURAL DUE PROCESS)**

41. Col. Lavin re-alleges the allegations contained in the previous paragraphs.
42. Col. Lavin was an employee of the State of Montana.
43. By virtue of state law, Col. Lavin's employment could not be terminated without cause. § 44-1-201, MCA; Title 44, Section 1, chapters 7 and 8 of the Montana Code, Annotated.
44. By virtue of the personnel policy of the State of Montana, Col. Lavin's employment could not be terminated without cause.
45. By virtue of law and policy, Col. Lavin had a property interest in his employment.
46. Defendant Knudsen acted as described above in his individual capacity and under color of state law.
47. Defendant Knudsen, in his official capacity, acted to deprive Col. Lavin of this property right protected by the Fifth and Fourteenth Amendments of the United States Constitution without due process of law in terminating his employment as aforesaid.
48. Accordingly, Defendant Knudsen violated Col. Lavin's procedural due process rights under the Fourteenth Amendment of the U.S. Constitution.

COUNT III: FRAUD

49. Col. Lavin re-alleges the allegations contained in all previous paragraphs.
50. Defendant Knudsen was bound to disclose the conditions of Col. Lavin's employment, including that Col. Lavin could only be terminated for good cause.
51. Defendant Knudsen instead represented to Col. Lavin that Col. Lavin served at the pleasure of Defendant Knudsen and would have to sign a contract indicating as much.
52. By so representing and by requiring Col. Lavin to sign a contract that indicated that Col. Lavin served at the pleasure of Defendant Knudsen, Defendant Knudsen was giving Col.

Lavin information that was likely to mislead for want of communication of the conditions of Col. Lavin's employment.

53. By asserting that Col. Lavin served at the pleasure of Defendant Knudsen and, therefore, could be terminated without good cause, Defendant Knudsen was asserting a fact that he knew not to be true.
54. Defendant Knudsen had no reasonable ground for believing that Col. Lavin served at the pleasure of Defendant Knudsen.
55. Defendant Knudsen had no reasonable ground for believing that Col. Lavin could be terminated without good cause.
56. By requiring Col. Lavin to sign a contract asserting that he served at the pleasure of Defendant Knudsen and, therefore, could be terminated without good cause, Defendant Knudsen willfully deceived Col. Lavin as to the conditions of Col. Lavin's employment, the requirements of Montana law, and the human resources policy of the State of Montana.
57. Defendant Knudsen conducted himself as described above with intent to induce Col. Lavin to believe that he had no property right in his own employment and thus to alter Col. Lavin's position to Col. Lavin's injury or risk.
58. Col. Lavin reasonably believed that Defendant Knudsen would be aware of the appropriate process and legal basis for termination and relied on Defendant Knudsen's representation.
59. Defendant Knudsen was aware of the appropriate process and legal basis for termination and acted intentionally by omitting these steps.
60. Col. Lavin suffered injuries because of his reliance on Defendant Knudsen's representation, and that representation was the consequent and proximate cause of that injury.

COUNT IV: INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS

61. Col. Lavin re-alleges the allegations contained in all previous paragraphs.

62. In engaging in the conduct above, Defendant Knudsen acted intentionally or recklessly.

63. Defendant Knudsen's conduct was extreme and outrageous.

64. Col. Lavin suffered severe emotional distress because of Defendant Knudsen's conduct.

65. Col. Lavin has experienced physical manifestations of his severe emotional distress, including sleeplessness, a racing heart, and stomach problems.

66. Defendant Knudsen's conduct was foreseeably the direct and proximate cause of Col. Lavin's emotional distress.

REMEDY

WHEREFORE, Col. Lavin hereby requests the following remedies:

1. For a judgment and order imposing all relief allowed including wages and benefits, including the benefits of the Deferred Retirement Option Plan, and interest thereon.
2. For punitive damages consistent with §§ 27-1-221 and 39-2-905(3), MCA;
3. For the payment of all salary from the date of his termination through the date of his planned retirement under the Deferred Retirement Option Plan;
4. For attorney fees and costs necessitated by this action pursuant to Mont. Code Ann. § 27-1-221, MCA, and the private attorney general doctrine; and
5. For all other relief appropriate under the facts and law.

DATED this 27th day of September, 2024.

/s/ Benjamin Reed
Benjamin Reed

/s/ Sam L. Martin III
Sam L. Martin III

Attorneys for Plaintiff Steve Lavin