

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

Timothy Stathis,

Plaintiff,

vs.

Marty Indian School Board, Inc., a South
Dakota Nonprofit Corporation,

Defendant.

4:20-cv-4174

VERIFIED COMPLAINT

Jury Trial Requested

Comes now Plaintiff, Timothy Stathis, who for his Complaint against Defendant, states and alleges as follows:

JURISDICTION, VENUE, AND PARTIES

1. This is an action for damages pursuant to 42 U.S.C. § 1981 based upon retaliatory conduct on the part of Defendant against Plaintiff. Jurisdiction exists pursuant to 28 U.S.C. §1331 based upon 42 U.S.C. § 1981, as well as based upon 28 U.S.C. § 1332. Supplemental jurisdiction over Plaintiff's state law claims exists pursuant to 28 U.S.C. § 1367, as said claims form part of the same case and controversy pursuant to Article III of the United States Constitution.
2. Venue is proper in the District of South Dakota pursuant to 28 U.S.C. § 1391(b).
3. Plaintiff is a natural person, and currently a resident of the state of California.
4. Defendant operates an Indian School located in Marty, South Dakota, and at all times relevant to this action held itself out as a South Dakota Nonprofit Corporation.

5. Defendant, at all times relevant to this action, received federal funding *vis-à-vis* Bureau of Indian Education School Grants issued pursuant to 25 U.S.C. § 2504.

FACTUAL ALLEGATIONS

6. On or about May 8, 2017, Plaintiff entered into an “Administrator or Supervisor’s Contract” with Defendant. A copy of said contract is attached hereto and identified as “Exhibit A” and incorporated herein by that reference.
7. The term of employment under said contract was from August 1, 2017, through June 30, 2018.
8. Said contract stipulated that “Timothy Stathis shall assume the responsibility of High School Principal and provide all other services as required for an effective and successful year”.
9. Defendant did indeed assume the responsibilities of High School Principal for the Marty Indian School on August 1, 2017.
10. A significant portion of the aforesaid responsibilities involved the oversight and management of grant funds received from the Bureau of Indian Education.
11. The specific intent of the aforementioned grant funds was to provide performance bonuses to school staff that “directly contribute to increased student achievement”. A copy of the aforesaid grant paperwork is attached hereto and identified as “Exhibit B” and incorporated herein by that reference.
12. Plaintiff, consistent with the specific intent of the aforementioned grant funds, had designed a system which utilized those funds such that higher performing employees of Defendant would receive larger performance bonuses than lower performing employees of Defendant.

13. Multiple lower performing employees of the Defendant objected to the aforementioned system designed by Plaintiff and felt that the aforementioned grant funds should be utilized to provide equal bonuses to all employees of Defendant, irrespective of high or low performance.
14. Plaintiff believed that the objections of the lower performing employees of Defendant were self-serving, inconsistent with the specific intent of the grant funds, and was resultingly nonreceptive to those objections.
15. Plaintiff was indeed correct that the objections and proposals made by the lower performing employees of Defendant were inconsistent with the specific intent of the grant funds.
16. Plaintiff, as a Non-Indian working for an Indian School, was a racial minority in the context of his employment with Defendant.
17. Plaintiff's insistence on maintaining the system he had designed wherein higher performing employees of Defendant would receive larger performance bonuses than lower performing employees of Defendant would eventually become the subject of an escalating dispute between Plaintiff, Defendant, the lower performing employees of Defendant, and members of the local Native American community.
18. On November 15, 2017, the aforesaid dispute between Plaintiff, Defendant, the lower performing employees of Defendant, and members of the local Native American community reached a boiling point which led to an impromptu sit-in demonstration at the school library.

19. The aforesaid impromptu sit-in demonstration was attended by Defendant, several of the lower performing employees of Defendant, and members of the local Native American community.
20. The aforesaid impromptu sit-in demonstration would eventually, after several hours, lead to the Defendant entering into an executive session in which Plaintiff was given the opportunity to answer questions from the Defendant, and later excused.
21. On the evening of November 16, 2017, Plaintiff received an email from Defendant's Superintendent, which was a forwarded message from the School Board Chair, containing no directive or any words directly from the Superintendent, advising that Plaintiff had been suspended from his employment for ten (10) days.
22. Upon suspension of Plaintiff from his employment by Defendant, Plaintiff was advised that his suspension would be unpaid.
23. Upon the filing of a grievance by Plaintiff with Defendant as a result of the suspension, Plaintiff was later advised that he would be repaid his wages lost as a result of the suspension.
24. Plaintiff returned to work for Defendant on November 30, 2017.
25. Subsequent to Plaintiff's return to work on November 30, 2017, Plaintiff was advised by Defendant not to return to work until the matter of his employment was settled. At this point Plaintiff still considered himself to be employed by Defendant, and Plaintiff retained possession of his keys and computer.
26. Defendant would hold an additional meeting without the presence of Plaintiff on December 1, 2017, and at the conclusion of that meeting Plaintiff was advised that his employment had been terminated, and an offer was made to pay out to Plaintiff the

remainder of his contract, for the purposes of settling any potential claims that might be made by Plaintiff against Defendant in connection with his termination. This settlement offer was accepted by Plaintiff.

27. On the late afternoon of December 11, 2017, Plaintiff was advised by Superintendent of Defendant that a settlement check had been prepared representing the amount remaining due and payable to Plaintiff under the terms of his contract as agreed during the December 1, 2017 meeting. An appointment was made to a settlement exchange of the check and Plaintiff's keys and computer the following morning.

28. On December 12, 2017, Plaintiff returned to the school to turn in remaining items of school property in his possession, and to receive the payout check for the remainder of his contract.

29. After receiving the remaining items of school property from Plaintiff and delivering the settlement check to Plaintiff, the Superintendent of Defendant suddenly received a phone call having the result upon which Superintendent of Defendant would then demand that Plaintiff return the settlement check, or a stop pay order would be issued by Defendant on it rendering the check worthless.

30. Plaintiff then returned the settlement check to the Superintendent of Defendant and was subsequently escorted off school property by Tribal Police.

31. Defendant did eventually pay to Plaintiff his wages withheld during his suspension of November of 2017.

32. Defendant would eventually offer to Plaintiff a one-time payment of One Thousand Five Hundred Dollars (\$1,500.00) as a full and final settlement, however this offer was rejected by Plaintiff.

33. As a result of the actions of Defendant, Plaintiff experienced an extended period of unemployment, lasting until August 13, 2018.
34. During this extended period of employment, Plaintiff conducted a nationwide search for replacement employment as a school administrator or principal.
35. The aforesaid nationwide search for replacement employment as a school administrator or principal was ultimately unsuccessful.
36. Plaintiff was eventually able to secure replacement employment as a school teacher, however was required to relocate to California, at his own expense, as a condition of accepting this new position.

COUNT ONE – RETALIATION UNDER 42 U.S.C. § 1981

37. Plaintiff was a racial minority in the context of his employment with Defendant, and in designing a system in which Bureau of Indian Affairs grant funds were utilized in a manner consistent with the specific intent of said funds, was engaging in protected activity.
38. Plaintiff suffered adverse employment action by his employer, Defendant, to wit, the suspension from his employment, and subsequent termination of his employment.
39. The aforementioned protected activity engaged in by Plaintiff was causally related to the adverse employment action suffered by Plaintiff.
40. Plaintiff was damaged by the aforementioned retaliatory conduct on the part of Defendant.

COUNT TWO – WRONGFUL TERMINATION

41. The specific intent that the Bureau of Indian Affairs grant funds be utilized to provide performance bonuses to school staff that “directly contribute to increased student

achievement” represents a clear statement and mandate of public policy relative to said grant funds.

42. Plaintiff’s termination of employment by Defendant was motivated by Plaintiff’s insistence on adhering to the aforementioned clear statement and mandate of public policy relative to the use of said grant funds.

43. Plaintiff’s termination of employment by Defendant was wrongful, in that it contravened a clear mandate of public policy.

44. Plaintiff was damaged by the aforesaid wrongful termination of his employment.

COUNT THREE – BREACH OF EMPLOYMENT CONTRACT

45. The employment contract between Plaintiff and Defendant is an enforceable promise.

46. The employment contract between Plaintiff and Defendant incorporated by reference the By-laws and Policies and Procedure Manual of Defendant.

47. Plaintiff’s suspension of employment by Defendant, and subsequent termination of employment by Defendant, was not conducted in a manner consistent with the By-laws and Policies and Procedure Manual of Defendant.

48. Plaintiff’s suspension of employment by Defendant, and subsequent termination of employment by Defendant, constituted a breach of Plaintiff’s employment contract.

49. Plaintiff was damaged by Defendant’s breach of Plaintiff’s employment contract.

COUNT FOUR - BREACH OF SETTLEMENT AGREEMENT

50. The offer by Defendant to payout the remainder of Plaintiff’s contract, which was accepted by Plaintiff, represents a both a settlement agreement and an enforceable promise.

51. Defendant's subsequent failure to payout the remainder of Plaintiff's contract as agreed constituted a breach of the aforementioned settlement agreement.

52. Plaintiff was damaged by the Defendant's breach of the aforementioned settlement agreement.

WHEREFORE, Plaintiff requests the following relief:

A. Under COUNT ONE, COUNT THREE, and COUNT FOUR, and award of damages to Plaintiff from Defendant in an amount equivalent to the remainder of Plaintiff's contract at the time of his termination.

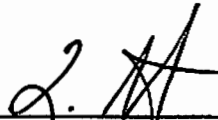
B. Under COUNT ONE, an award of damages to Plaintiff from Defendant in the amount of Plaintiff's reasonable attorney's fees, and expert fees, if any, as allowable under 42 U.S.C. § 1988, and an award of punitive damages as allowable under 42 U.S.C. § 1981a(b).

C. Under COUNT TWO, an award of damages to Plaintiff from Defendant in an amount to be proven at trial, sufficient to compensate Plaintiff for his wages lost during the time period between the date of his termination of employment by Defendant, and date of his obtaining replacement employment in California, plus reasonable relocation expenses and general damages.

D. An award of prejudgment interest to Plaintiff from Defendant as allowable under SDCL 21-1-13.1.

E. Any and all further relief deemed just and equitable by the Court under the circumstances.

Dated this 26 day of September, 2020.



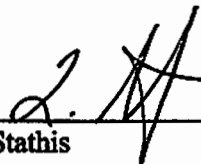
Timothy Stathis, Plaintiff

VERIFICATION

STATE OF CALIFORNIA)
 : SS
COUNTY OF SOLANO)

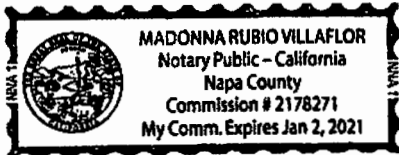
Timothy Stathis, being first duly sworn upon his oath, deposes and says that he is the Plaintiff in the above and foregoing Complaint, that he has read the above and foregoing Complaint and knows the contents thereof and that the same is true of his knowledge and belief.

Dated this 26 day of September, 2020.

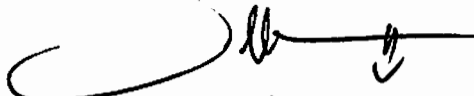


Timothy Stathis

Subscribed and sworn to before me this 26 day of September, 2020.



(SEAL)

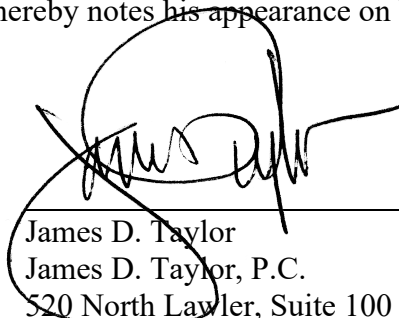


Madonna Rubio Villafior
Notary Public, California
My Commission Expires: January 2, 2021

NOTICE OF APPEARANCE

James D. Taylor of James D. Taylor, P.C. hereby notes his appearance on behalf of the Plaintiff.

Dated this 26th day of October, 2020.

A handwritten signature in black ink, appearing to read "James D. Taylor", is written over a horizontal line. The signature is somewhat stylized and overlaps the line.

James D. Taylor
James D. Taylor, P.C.
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P.O. Box 6
Mitchell, SD 57301
(605) 996-3882
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Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS Timothy Stathis
(b) County of Residence of First Listed Plaintiff Solano County, CA
(c) Attorneys (Firm Name, Address, and Telephone Number) James D. Taylor, P.C. - P.O. Box 6 Mitchell SD 57301 605-996-3882

DEFENDANTS Marty Indian School Board Inc., a South Dakota Nonprofit Corporation
County of Residence of First Listed Defendant Charles Mix County, SD
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known) Unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
CONTRACT: 110 Insurance, 120 Marine, 130 Miller Act, 140 Negotiable Instrument, 150 Recovery of Overpayment & Enforcement of Judgment, 151 Medicare Act, 152 Recovery of Defaulted Student Loans (Excludes Veterans), 153 Recovery of Overpayment of Veteran's Benefits, 160 Stockholders' Suits, 190 Other Contract, 195 Contract Product Liability, 196 Franchise
TORTS: PERSONAL INJURY: 310 Airplane, 315 Airplane Product Liability, 320 Assault, Libel & Slander, 330 Federal Employers' Liability, 340 Marine, 345 Marine Product Liability, 350 Motor Vehicle, 355 Motor Vehicle Product Liability, 360 Other Personal Injury, 362 Personal Injury - Medical Malpractice; 365 Personal Injury - Product Liability, 367 Health Care/Pharmaceutical Personal Injury Product Liability, 368 Asbestos Personal Injury Product Liability; PERSONAL PROPERTY: 370 Other Fraud, 371 Truth in Lending, 380 Other Personal Property Damage, 385 Property Damage Product Liability
FORFEITURE/PENALTY: 625 Drug Related Seizure of Property 21 USC 881, 690 Other
LABOR: 710 Fair Labor Standards Act, 720 Labor/Management Relations, 740 Railway Labor Act, 751 Family and Medical Leave Act, 790 Other Labor Litigation, 791 Employee Retirement Income Security Act
IMMIGRATION: 462 Naturalization Application, 465 Other Immigration Actions
BANKRUPTCY: 422 Appeal 28 USC 158, 423 Withdrawal 28 USC 157
PROPERTY RIGHTS: 820 Copyrights, 830 Patent, 835 Patent - Abbreviated New Drug Application, 840 Trademark
SOCIAL SECURITY: 861 HIA (1395ff), 862 Black Lung (923), 863 DIWC/DIWW (405(g)), 864 SSID Title XVI, 865 RSI (405(g))
FEDERAL TAX SUITS: 870 Taxes (U.S. Plaintiff or Defendant), 871 IRS—Third Party 26 USC 7609
OTHER STATUTES: 375 False Claims Act, 376 Qui Tam (31 USC 3729(a)), 400 State Reapportionment, 410 Antitrust, 430 Banks and Banking, 450 Commerce, 460 Deportation, 470 Racketeer Influenced and Corrupt Organizations, 480 Consumer Credit (15 USC 1681 or 1692), 485 Telephone Consumer Protection Act, 490 Cable/Sat TV, 850 Securities/Commodities/Exchange, 890 Other Statutory Actions, 891 Agricultural Acts, 893 Environmental Matters, 895 Freedom of Information Act, 896 Arbitration, 899 Administrative Procedure Act/Review or Appeal of Agency Decision, 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. 1981
Brief description of cause: Retaliatory Conduct, Wrongful Termination, Breach of Contract, Breach of Settlement Agreement

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE October 26, 2020 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE