

**IN THE SUPERIOR COURT  
FOR THE DISTRICT OF COLUMBIA**

ERIC W. PAYNE,	)	
	)	
Plaintiff,	)	
	)	Case No. 2012 CA 006163B
v.	)	
	)	
DISTRICT OF COLUMBIA, <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**AMENDED COMPLAINT**

Comes now Plaintiff, Eric W. Payne (“Payne”), by and through undersigned counsel and respectfully files this Amended Complaint against the above captioned Defendants for making false and defamatory statements about Plaintiff and for constitutional defamation as set forth herein. Defendants’ actions have caused Plaintiff to suffer personal and professional injury, loss of career opportunities with the attendant loss of earnings and income, anxiety, stress, and other emotional pain and suffering.

**JURISDICTION AND VENUE**

Jurisdiction in this case is based upon D.C. Code § 11-921. The actions complained of herein occurred within the District of Columbia. The Office of the Chief Financial Officer is located at 1350 Pennsylvania Avenue NW, Suite 203, Washington, D.C. 20004.

**PARTIES**

1. Plaintiff is a former District of Columbia Contracting Officer who served as Director of Contracts for the Office of the Chief Financial Officer (“OCFO”), an independent agency within the District of Columbia. Payne, a resident of Virginia, is an attorney, licensed to

practice law in multiple jurisdictions. He was terminated by the OCFO in January of 2009. He is also the plaintiff in a pending federal lawsuit against the District of Columbia and Defendant Gandhi regarding a violation of the D.C. Whistleblower Protection Act, as well as on wrongful termination and constitutional defamation grounds.

2. Defendant, District of Columbia (OCFO), is a municipal entity. OCFO is a District of Columbia agency that employs Defendant Natwar Gandhi. Plaintiff asserts *respondeat superior* where appropriate.

3. Defendant, Natwar Gandhi (“Gandhi”), is the Chief Financial Officer (“CFO”) and the titular head of the OCFO. Defendant Gandhi was twice deposed in the aforementioned federal action and has made numerous sworn and material representations. Further, he is well aware that any public statements about Plaintiff since his termination and about his termination effectively stigmatizes Plaintiff and impedes his ability to seek and gain employment in his practice of procurement and commercial law.

#### **FACTS COMMON TO ALL COUNTS**

4. Paragraphs 1 through 3 are incorporated by reference as if fully set forth herein.

5. Plaintiff began his career with the OCFO as an Assistant General Counsel around August of 2004. In this role, he was responsible for advising, reviewing and opining on the legal sufficiency of all OCFO procurement related actions, including contracts submitted for D.C. Council review and approval. The Office of Contracts for the OCFO was responsible for all acquisition, procurement and termination activities within the OCFO.

6. Plaintiff played an integral and significant role in responding to major procurement flaws within the OCFO and related audits. He was the OCFO representative and Executive Branch

designee for the D.C. Procurement Reform Task Force,<sup>1</sup> which found that “the problems in the procurement system were not its laws, regulations and implementing procedures, but rather the government’s commitment to train its personnel and to follow existing rules and generally recognized best practices.”<sup>2</sup> Plaintiff represented OCFO’s interests in responding to procurement problems cited by the United States Government Accountability Office, and was directed to reform the deficient procurement practices of the OCFO.<sup>3</sup>

7. On May 11, 2006, Plaintiff became the sixth OCFO Director of Contracts in two and one-half years. Through 2008, Payne received stellar employment evaluations. However, after awarding a contract to a new lottery vendor, significant efforts were made to coerce Payne to modify, cancel and/or amend the contract award. He refused such illegal action. Thereafter, Payne’s managers began to systematically alter their assessment of his performance, with the goal in mind of demotion and ultimately termination. In July of 2008, after making several disclosures about contract improprieties in the OCFO to its internal investigative arm, Office of Integrity and Oversight (“OIO”), and externally to the Office of Inspector General (“OIG”), Payne’s supervisors demoted and stripped Payne of his professional duties as Director of Contracts.

8. On January 9, 2009, Plaintiff was terminated. Under oath, Payne’s supervisor, Paul Lundquist, confirmed that no single negative performance documentation exists in Payne’s

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<sup>1</sup> This task force was created in 2005 to improve D.C. contracting and procurement laws and regulations. It made a number of recommendations to the Mayor and Council on December 4, 2006.

<sup>2</sup> See District of Columbia Contracting and Procurement Task Force Final Report, December 4, 2006.

<sup>3</sup> See U.S. GAO report number GAO-07-159– District of Columbia: Procurement Needs Major Reform, <http://www.gao.gov/assets/260/255522.pdf>, released on February 14, 2007.

personnel file, nor were any negative written performance evaluations communicated to him prior to his termination. On April 30, 2010, Plaintiff filed a complaint in the United States District Court for the District of Columbia based on his wrongful termination against the District of Columbia and, individually, against Natwar Gandhi, alleging constitutional defamation, violation of the D.C. Whistleblower Protection Act and wrongful termination. That case is presently in the dispositive motions stage.

9. On November 30, 2011, Counsel for Payne deposed Gandhi relative to the above-referenced federal case. During that deposition and while under oath, Gandhi repeatedly and unequivocally stated that he played no part in the decision to terminate Payne.

Donald Temple (Counsel for Plaintiff): I asked you, did there come a time when you thought that Mr. Payne, for whatever reason, should be fired?

Dr. Gandhi: *Not in particular, no, because as I keep saying to you, sir, that it is not my decision to fire Mr. Payne.* (Gandhi Dep. 52.) (Emphasis added).

Donald Temple: And what were you told about Mr. Payne in that meeting?

Dr. Gandhi: That, basically, that Mr. Payne was beyond counseling and that he has let Mr. Payne go and that is - I said, that is your decision.

Donald Temple: You – that was not your decision then, you had nothing to do then with – well, let me rephrase the question. It was not your decision that Mr. Payne should be terminated; is that your testimony?

Dr. Gandhi: That is correct. (Gandhi Dep. 54).

Donald Temple: Now, Mr. Lundquist, according to Mr. Payne, states that it was, quote unquote, the will of Gandhi, and that being, that you – it was your order, essentially, that he be removed; is that statement, it was the will of Gandhi, true?

Dr. Gandhi: No. (Gandhi Dep. 87-88).

Donald Temple: And I understand your answer. I'm attempting to elicit a very specific response from you. There was a decision made that Mr. Payne would be removed?

Dr. Gandhi: Right.

Donald Temple: Okay. And who made that decision?

Dr. Gandhi: His supervisor. (Gandhi Dep. 88).

10. Gandhi again stated under oath that he was not involved in Payne's firing in his supplemental answers to the Plaintiff's interrogatories, dated June 1, 2012, and signed by Gandhi six (6) months after his deposition.

**INTERROGATORY NO. 2:** Please identify each person involved in the decision to terminate Eric W. Payne. Your answer should include their full names, including present or last known address, and the extent, if any, to which you presently represent said individuals.

**Gandhi's Sworn Response:** *I was not involved in the decision to terminate the plaintiff.* I understand that the District of Columbia has determined that Paul Lundquist, Angell Jacobs and LaSharn Moreland were involved in the decision to terminate plaintiff. Each of these individuals can be contacted through defense counsel. I do not represent them. (Emphasis added)

**INTERROGATORY NO. 3:** Please describe in detail the circumstances leading to your decision to terminate Plaintiff, including any and all meetings in which the subject of his performance or termination was discussed, the dates of such meetings, attendees at each meeting, documents relied upon in support of said termination, and the specific reasons for your termination of Plaintiff.

**Gandhi's Sworn Response:** *I did not decide to terminate the plaintiff's employment.* I understand that the District of Columbia has provided documents that outline the circumstances of his termination from the OCFO.<sup>4</sup> (Emphasis added)

11. On June 8, 2012, Washington Post reporter, Colbert I. King ("King"), published an article in which Gandhi's reappointment as CFO was called into question. On June 11, 2012, in response to King's article, Gandhi stated in a published e-mail that he had decided to terminate Payne because of Payne's poor performance. According to Gandhi, Payne was "terminated [from his position as Director of Contracts] because of his poor performance

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<sup>4</sup> Notably, Plaintiff's counsel and the court relied upon the veracity of Gandhi's testimony and representations during the discovery process in the federal litigation.

issues as manager of the OCFO Contracts Office.”<sup>5</sup> Gandhi’s statement that he terminated Payne is false and inconsistent with Gandhi’s prior sworn testimony and representations, nor is the statement that Gandhi fired Payne because of his poor performance true. According to Gandhi’s statement to King, Gandhi implies that he monitored and observed Payne’s performance over the years and decided to terminate him as a result of his performance. This false statement casts Payne in a false light.

12. Gandhi, as a party in the federal lawsuit, is well aware of the implications of his public statements about Payne and the harm which Payne experienced as a result, including but not limited to procuring permanent employment. Further, Gandhi is fully aware of his prior sworn testimony, which is inconsistent with his most recent communications.

13. Gandhi’s false, derogatory and defamatory e-mail was disseminated locally, domestically and internationally through several known media outlets, including the Washington Post, the Washingtonian Magazine<sup>6</sup> and the Washington Times.<sup>7</sup> Such prominent and wide publication of Gandhi’s defamatory e-mail ensured that a countless number of Payne’s prospective employers were made aware of Ghandi’s statements.

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<sup>5</sup> E-mail from Natwar Gandhi, dated June 11, 2012, regarding “My response to Colby King’s 6/9 WP column.”

<sup>6</sup> Washingtonian article, *Natwar Gandhi Sends Angry E-mail to the Post’s Colbert King*, dated June 12, 2012, by Harry Jaffe.

<sup>7</sup> The Washington Times article, *Gandhi makes pre-emptive pitch to stay amid D.C. political turmoil*, dated June 12, 2012, by Jeffrey Anderson.

14. Gandhi again contradicted his sworn deposition and interrogatory responses by stating to another media source, Washington Post reporter Mike DeBonis (“DeBonis”), that he had personally made the decision to terminate Payne.<sup>8</sup>

15. In his interview with DeBonis, in addition to falsely stating that he directly and independently terminated Payne, Gandhi impugned Payne’s character and competency when he stated that Payne was “a very poor manager.” Gandhi’s aforementioned statement, as per his role in Payne’s termination and Payne’s performance as a manager at OCFO, were knowingly false and malicious, and further placed Payne in a false light.<sup>9</sup>

16. When Gandhi made these statements to DeBonis, he knew that Payne had been terminated, was no longer a government employee, had filed a federal law suit based upon his previous remarks about Payne, and that Payne was unemployed and experiencing difficulty in securing gainful employment. Gandhi also intentionally communicated these statements to the media knowing that his statements would be further publicized and that he had given prior contradictory sworn testimony in a federal lawsuit.

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<sup>8</sup> Washington Post article, *Gandhi lashes out at fired deputy now suing him*, dated July 3, 2012, by Mike DeBonis.

<sup>9</sup> Notably, Payne received high performance evaluation scores as well as financial bonuses during the years 2005-2008 and his performance was not an issue until he reported contractual improprieties in the OCFO.

**COUNT I**  
**DEFAMATION**

17. Paragraphs 1 through 16 are incorporated by reference as if fully set forth herein.

18. Defendant Gandhi, between June 8, 2012 and July 6, 2012, knowingly, intentionally and maliciously libeled and slandered Payne. Gandhi knew that his public statements about Payne were false and harmful.

19. The making and publication of these false and defamatory statements was intentional and malicious.

20. As a proximate result of Gandhi's publication of these defamatory statements, an already emotionally and economically traumatized Payne was further victimized. Defendant's comments caused Payne additional personal and professional humiliation, damage to his personal and professional reputation, mental and emotional distress, and loss of professional and/or business opportunities.

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment for him and against Defendants jointly and severally and;

(a) Award compensatory damages against Defendants in an amount in excess of \$1,000,000.00, plus interest thereon;

(b) Award punitive damages against Defendant Gandhi in an amount deemed appropriate; and

(c) Award such other and further relief against Defendants as this Court may deem just and proper.



**COUNT II**  
**FALSE LIGHT**

21. Paragraphs 1 through 20 are incorporated by reference as if fully set forth herein.

22. Between June 8, 2012 and July 6, 2012, Defendant Gandhi falsely stated that he personally terminated Payne based upon poor performance. He thus placed Payne in a false light which would be highly offensive to a reasonable person.

23. In composing his statements and causing them to be published by several media outlets as noted above, Gandhi knew or should have known that these statements were false, and/or Gandhi acted with reckless disregard to the truth.

24. As a proximate cause of Gandhi's actions, an already vulnerable Payne's injuries were exacerbated, including, but not limited to, loss of reputation, emotional distress, embarrassment and personal humiliation.

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment for him and against Defendants jointly and severally and;

(a) Award compensatory damages against Defendants in an amount in excess of \$1,000,000.00, plus interest thereon;

(b) Award punitive damages against Defendant Gandhi in an amount deemed appropriate; and

(c) Award such other and further relief against Defendants as this Court may deem just and proper.

**COUNT III**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

25. Paragraphs 1 through 24 are incorporated by reference as if fully set forth herein.

26. Between June 8, 2012 and July 6, 2012, Defendant Gandhi made false statements regarding former employee Payne's performance at OCFO. In view of his prior sworn testimony, Gandhi's actions were intentional, extreme and outrageous, and were done with the intent to cause Payne serious emotional distress or with reckless disregard of the probability of causing Payne serious emotional distress.

27. As a direct, legal and proximate result of Gandhi's intentional and outrageous acts, Payne suffered significant emotional distress.

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment for him and against Defendants jointly and severally and;

(a) Award compensatory damages against Defendants in an amount in excess of \$1,000,000.00, plus interest thereon;

(b) Award punitive damages against Defendant Gandhi in an amount deemed appropriate; and

(c) Award such other and further relief against Defendants as this Court may deem just and proper.

**COUNT IV**  
**CONSTITUTIONAL DEFAMATION**  
**VIOLATION OF FIFTH AMENDMENT LIBERTY INTEREST**  
**42 U.S.C. SECTION 1983**

28. Paragraphs 1 through 27 are incorporated by reference as if fully set forth herein.

29. Gandhi's aforementioned comments to the media suggest that Plaintiff, as the responsible lottery contract officer, was professionally incompetent and dishonest, and was terminated in January of 2009 for poor performance.

30. Further, Gandhi's aforementioned statements were made subsequent to Plaintiff's termination and during a time in which it has been difficult for him to regain employment, which further impugned and tarnished Plaintiff's professional reputation and placed a significant roadblock on his ability to obtain permanent full-time employment in his chosen field of contract procurement law specifically and law in general.

31. Defendant Gandhi's statements exacerbated his prior statement about Payne and created a stigma that foreclosed Plaintiff's freedom to take advantage of other employment opportunities, including pursuing employment in his chosen field as an attorney interested in government procurement.

32. Defendant's termination and Gandhi's ongoing public chastisement of him substantially reduced the value of Plaintiff's human capital and his access to other professional opportunities.

33. As a direct and proximate result of Defendant's actions, Plaintiff suffered and continues to suffer from injury to his liberty interest under the Fifth Amendment, including embarrassment, humiliation, mental anguish and loss of reputation.

**WHEREFORE**, Plaintiff respectfully requests that this Court enter judgment for him and against Defendant Gandhi and;

- (a) Compensatory damages in the exact amount to be determined at trial, but in no event less than \$5,000,000;
- (b) Punitive damages, if appropriate, in an exact amount to be determined at trial, but in no event less than \$1,000,000;
- (c) Attorney's fees and costs; and
- (d) Such further relief as this Court deems just and fair.

**JURY DEMAND**

Plaintiff respectfully demands a trial by jury on all issues so triable.

Date: November 2, 2012

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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*Attorney for Plaintiff*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 2, 2012, a copy of Plaintiff's Amended Complaint was served electronically to:

Keith D. Parsons  
Public Interest Division, Equity Section I  
441 Fourth Street, NW, Sixth Floor South  
Washington, D.C. 20001

\_\_\_\_\_/s/\_\_\_\_\_  
Donald M. Temple