

Cause No. 2017-42127

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|---------------------------------------|---|------------------------|
| WILLIAM COLEMAN,<br><i>Plaintiff,</i> | § | IN THE DISTRICT COURT  |
|                                       | § |                        |
| v.                                    | § | HARRIS COUNTY, TEXAS   |
|                                       | § |                        |
| SCI TEXAS FUNERAL SERVICES, LLC       | § |                        |
| d/b/a GEO. H. LEWIS & SONS            | § |                        |
| FUNERAL DIRECTORS,                    | § |                        |
| SCI TEXAS FUNERAL SERVICES, INC.      | § |                        |
| d/b/a GEO. H. LEWIS & SONS            | § |                        |
| FUNERAL DIRECTORS,                    | § |                        |
| <i>Defendants.</i>                    | § | 61ST JUDICIAL DISTRICT |

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**PLAINTIFF'S SECOND AMENDED PETITION**

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Plaintiff William Coleman files this Second Amended Petition against Defendant SCI Texas Funeral Services, LLC d/b/a Geo H. Lewis & Sons Funeral Directors, showing the following in support:

**Discovery-Control Plan**

1. Coleman intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4. He affirmatively pleads that this suit isn't governed by the expedited-actions process in Texas Rule of Civil Procedure 169 since he's seeking monetary relief greater than \$100,000.

## **The Parties**

2. Plaintiff William Coleman is an individual residing in McLennan County, Texas. He can be reached through his attorneys of record.

3. Defendant SCI Texas Funeral Services, LLC ("SCI"), as successor of SCI Texas Funeral Services, Inc.—d/b/a Geo H. Lewis & Sons Funeral Directors is a domestic for-profit limited-liability company.<sup>1</sup> Its principal office is located at 1929 Allen Parkway, Houston, Texas, 77019, which is in Harris County. It has been served and has answered.

## **Venue and Jurisdiction**

4. Venue is proper in Harris County, as that's where SCI has its principal Texas offices and where all or a substantial part of the events or omissions giving rise to Coleman's claims occurred.<sup>2</sup>

5. The Court has jurisdiction because the amount in controversy exceeds the Court's minimum jurisdictional requirements.

## **Procedural Requirements**

6. On May 16, 2016, Coleman filed a Charge of Discrimination under the Texas Labor Code with the Equal Opportunity Employment Commission and the Texas Workforce Commission Civil Rights Division.<sup>3</sup> In this charge—Charge No. 460-2016-02845—Coleman asserted discrimination based on age, sex, and religion and retaliation.<sup>4</sup>

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<sup>1</sup>See (Ex. 4) (showing that SCI Texas Funeral Services, LLC is a successor entity of SCI Texas Funeral Services, Inc.—which it previously operated as a for-profit domestic corporation until converting and merging into a limited-liability company in March 2017).

<sup>2</sup>See TEX. CIV. PRAC. & REM. Code § 15.002.

<sup>3</sup>See (Ex. 1).

<sup>4</sup>See (Ex. 1); *see also* (Ex. 2).

7. On May 5, 2017, Coleman received a Notice of Right to Sue.<sup>5</sup>
8. All conditions precedent to filing this lawsuit have been met.

## **Background**

9. In the spring of 2014, Bill Coleman at age 51 was enjoying life. On a personal level, he was happily dating his longtime sweetheart and proudly raising a teenaged daughter. On a professional level, having worked as a licensed funeral director for over 30 years, he served as a leading director at a funeral home in Waco. While directing funerals isn't a job for everyone, it was Coleman's calling. Helping families bid farewell to their loved ones was a duty he was honored to hold and proud to fulfill. So life for Coleman in Waco was happy and meaningful.

10. *Coleman joins the SCI team.* Then that summer Coleman came upon a once-in-a-lifetime opportunity. He was offered his dream job—funeral director at Geo. H. Lewis & Sons Funeral Directors (“George H. Lewis”). George H. Lewis is the flagship funeral home of SCI Texas Funeral Services. Located in Houston, it's one of the four elite funeral homes in the nation—the other three being in New York, Los Angeles, and Chicago.

11. In the weeks leading to this dream-job offer, George H. Lewis's then President and CEO, John Onstott, had been recruiting Coleman. Onstott would call and explain how Coleman's talent and extensive experience made him an asset to the management team. And Onstott promised that if Coleman joined George H. Lewis, he would quickly be promoted to a supervisory position accompanied with a \$5,000 raise. Based on SCI's promises, Coleman accepted SCI's offer to join the staff at George H. Lewis as a funeral director—with the agreement that he'd be promoted promptly to supervisor. He then left his life in Waco and headed for Houston.

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<sup>5</sup>See (Ex. 3).

12. *Coleman thrives at SCI.* Not long after joining the SCI team in August, Coleman showed he was as talented as SCI hoped. He consistently achieved outstanding JD Power & Associates performance reviews that nearly topped the Houston market area. In fact, he ranked second or third in the market area for eight consecutive months. SCI consistently recognized Coleman for his performance. And with each word of praise, Coleman had proved to not only SCI but also himself that he could flourish at the highest levels of his industry.

13. *Onstott reveals his hatred.* But Coleman's job was not the dream he'd expected. Within his first few months, he started realizing he was working for a discriminating bully: John Onstott. This nightmare was first revealed in October 2014—when Coleman discovered that John Onstott loathes Coleman's Episcopalian religion.

14. In October 2014, Coleman's Episcopalian uncle passed away. Arrangements were made at a Houston funeral home affiliated with SCI that's close to where the son of Coleman's uncle lived. Services were held at St. Martin's Episcopal Church—the largest Episcopal church in the country—where the family attended. Upon learning of the death of Coleman's uncle and the funeral arrangements, Onstott chastised Coleman about his cousin not using George H. Lewis to direct the funeral. Coleman answered that his cousin had a relationship with the manager at the other funeral home and that his cousin didn't want Coleman involved in directing the service; he wanted Coleman to join the grieving family. Onstott retorted, “the only reason your cousin isn't using George H. Lewis is because he is a cheap son of a bitch!” Piling on, Onstott declared that “All Episcopalians are cheap!”—an insulting sentiment he regularly voiced and directed at Coleman while Coleman worked for him.

15. That Onstott, the President and CEO of an SCI funeral home, showed no compassion or sympathy for Coleman's loss was shocking. After all, compassion and sympathy

at times of loss are key elements in SCI's mission statement. Yet Onstott berated Coleman about his faith at a time of religious grieving.

16. *Understanding the hate.* To be sure, hating Episcopalians is an unusual prejudice. But what Coleman didn't discover until later is that Onstott hates Episcopalians because he was released from their religion. Onstott was an ordained Episcopalian priest after completing seminary. He was later reprimanded by the Episcopal Church, however, and ultimately ousted for engaging in unbecoming conduct.

17. Being released from the Episcopal Church and stripped of his rights as a minister caused Onstott to hate people of that faith. He manifested his hatred by treating Episcopalians like Coleman with utter disregard for the sanctity of the Episcopal Church. For instance, despite being stripped of his rights as a minister, Onstott continued to portray himself as an Episcopalian priest at the most solemn and offensive times. When an Episcopalian funeral at George H. Lewis had no minister, Onstott would misrepresent himself as an Episcopalian priest and officiate the service. He'd actually dress himself as a priest, even wearing a priest's stole. Grieving families had no idea the funerals honoring their lost loved ones were being officiated by a fraud. Yet Onstott officiated these Episcopalian funerals without authority—essentially mocking these religious services and delegitimizing the Episcopal Church. This disregard for common decency, which deters ordinary people from mocking another religion at such sensitive times, illustrates Onstott's contempt for Episcopalians.

18. *The discrimination continues.* So did Onstott's continued discrimination and harassment of Coleman based on his faith. No one heard Onstott's October 2014 comments but Coleman. And Coleman tried to keep Onstott's piercing words to himself for months. But doing so became harder as Onstott continued the verbal abuse.

19. At work, in front of staff and in private, Onstott bombarded Coleman with comments about his religion. He'd declare that "Episcopalians all are a bunch of stuck up sons of bitches!" He repeated that "All Episcopalians are cheap!" and delighted in using the phrase "cheap Episcopalians." To Coleman's face, Onstott often belittled Coleman's church and the priest of St. Martin's, Russ Levinson: "I'm getting tired of Russ and that church!" On several occasions, he literally referred to the Episcopalian Church as a "Godforsaken church." He even did so while discussing St. Martin's and the anticipated funeral of a heroic Episcopalian who served as President of the United States: "When President Bush dies, that will be the last time I have to go to that Godforsaken church!" With no sense of decency, Onstott actually referred to the deceased at George H. Lewis's Episcopalian funerals as "carcasses."

20. Onstott didn't merely broadcast these sentiments generally. He targeted them at Coleman, with the aim of hurting and humiliating Coleman—the only Episcopalian at George H. Lewis. When speaking of Episcopalians, Russ Levenson, or St. Martin's Episcopal Church, Onstott would often stick his finger in his mouth as to gag. He made this gagging gesture often during daily "call to the board" all-staff meetings to show off in front of the staff. Each time he'd look Coleman's way to make sure Coleman saw and heard him. Of course Coleman was appalled and offended. Fellow colleagues would look at Coleman, waiting for a reaction. Despite Onstott's barrage, however, Coleman never fired back—hoping perhaps that Onstott would eventually relent.

21. He didn't. In fact the treatment only got worse. In February 2015, Coleman's aunt died. She was the wife of Coleman's uncle who passed in October. Coleman's cousin again made arrangements at that same SCI funeral home. And this time Onstott approached Coleman's

desk two days before the service at St. Martin's and reiterated his disdain for "cheap Episcopalians": "You know your cousin is really a cheap son of a bitch!"

22. This time the vice president of George H. Lewis, Jerry Reyes, was standing at Coleman's desk and witnessed Onstott's nasty remarks. Mere days after this latest episode, Coleman received a call from a colleague informing him that someone had called SCI's employee help line and filed a complaint against Onstott for what he'd said to Coleman. Human Resources and upper management began investigating.

23. Soon after, Coleman met with members of SCI's HR and upper-management departments—including Virginia Brown and Mike White. In that meeting, Coleman reported to them everything. He complained to them about all of Onstott's verbal attacks against his Episcopalian faith and his discrimination against Coleman for being Episcopalian. They assured Coleman that Onstott would never snipe at Coleman's faith again and that Onstott's hurtful words would not be tolerated.

24. Onstott was then lightly reprimanded and forced to apologize. White orchestrated a breakfast meeting between him, Coleman, and Onstott. The March 2015 breakfast with Onstott and White was tense. Onstott apologized but then tried to deny the countless offensive statements he'd made. Coleman confronted Onstott about these denials in front of White. When it was clear that the issues were very much unresolved, White essentially remarked, "Hold on, this is going nowhere. If we can't work this out, I will have to look into transferring [Coleman] to another location." Coleman stressed that the only reason he moved to Houston was to work for George H. Lewis, his dream job. White continued to pressure Coleman into forgetting Onstott's painful words. That pressure was so great that Coleman feared he'd be fired or transferred. So Coleman and Onstott shook hands. Coleman never claimed his issues with Onstott were

resolved. He never forgave Onstott for the hateful treatment. He merely shook hands with Onstott at a forced breakfast meeting arranged by their boss.

25. SCI didn't act like the Coleman–Onstott matter was resolved either. In fact, White instructed Onstott to meet with Coleman weekly for breakfast. Though White said he would attend each breakfast meeting, he never did. That of course led to Coleman and Onstott meeting on only a few occasions. Yet even at those meetings, Onstott couldn't resist ranting against the Episcopal Church, its members, and its clergy. But with the fear of being fired or transferred hovering overhead, Coleman had no choice but to sit and listen.

26. *Onstott retaliates.* The situation only worsened. Just weeks after Coleman met with HR and upper management, Onstott held his own meeting with George H. Lewis staff. At this April 2015 meeting, he announced that Bery Crispin was now Coleman's direct supervisor. The move was stunning, as Crispin was in her 20s with only three years of funeral-directing experience and nowhere near Coleman's productivity levels and performance marks. And the message was clear: Coleman was being punished for complaining to SCI. After all, Coleman was supposed to have become a supervisor soon after joining SCI. But now—nine months after starting at George H. Lewis—Onstott was assigning Crispin to be Coleman's direct supervisor. Onstott's actions confirmed that Coleman wouldn't be promoted and that he was essentially being demoted. Adding insult to injury, Onstott then chastised Coleman's religion and his priest at St. Martin's in front of everyone. And then, as if his retaliatory message wasn't already obvious, Onstott snarled, "Don't ever attempt to go behind my back again. It won't work. I have an agreement with corporate. If you call my supervisor or HR I will know about it, so just don't try it!"

27. That agreement with corporate was, in Onstott's words, his "agreement and special access" to SCI's senior Vice President, Jay Waring. Since the start of Coleman's employment with SCI, Onstott had touted his special access and agreement with Waring and that he could go over Mike White's head on a whim. And again in this April 2015 meeting, Onstott reminded Coleman of that connection with corporate. So Onstott's claims about his relationship with top executives at SCI only bolstered the seriousness of his threats to Coleman at that meeting. Coleman therefore had good reason to fear crossing Onstott again.

28. Soon after this humiliating meeting, Coleman noticed a change in the funeral work he was assigned. Normally, Onstott assigned directors to see a family once George H. Lewis received a death call. In most instances, Onstott assigned directors after looking up the zip code of the grieving family. If the family resided in the 77019 or 77057 zip codes, that meant the family resided in either the River Oaks or Tanglewood areas, increasing the odds of a high-end-expense service. On other occasions, Onstott assigned directors based on his "who's who" book of the richest Houston families. Before Coleman met with HR and upper management, Coleman—because of his performance—was often assigned to direct burial services for affluent clientele. But suddenly, following the April 2015 meeting, Onstott was only assigning Coleman to do cremation work for less affluent populations. Because of these changes, Coleman's pay decreased—as his income largely depended on commissions from funerals, in which burials cost substantially more than cremations. In other words, Onstott retaliated by assigning funerals in a way that punished Coleman financially.

29. Onstott also retaliated against Coleman financially by limiting his overtime. Specifically, Onstott dispatched Crispin to monitor Coleman's hours, days off, work load, dealings with families, and work in directing funeral services. Several times, she instructed

Coleman to report to work mid-day even though he was scheduled to report to work at 8:00 a.m. Other times she went to his desk in the middle of the afternoon and directed him to go home for the day. All of these maneuvers were geared towards reducing Coleman's overtime, which slashed his take-home pay. Meanwhile, Onstott allowed Crispin and other directors to work all the overtime they needed to complete their assignments and raise their customer-satisfaction scores.

30. So because Coleman complained to HR and upper management, Onstott retaliated against Coleman by revoking his promotion and cutting his pay.

31. *Despite Coleman's pleas, SCI does nothing.* Onstott's retaliatory words and actions were so intimidating that Coleman felt he couldn't go to HR. But with Onstott's continued attacks on Coleman's faith and career, Coleman ultimately complained again to Onstott's boss and HR. He informed SCI's human-resources department and Mike White many times about what Onstott was saying and doing. They assured Coleman this type of behavior wouldn't happen again, but it did. For instance in August 2015, Coleman spoke with Mike White, informing him again of the ongoing retaliation and offensive remarks by Onstott. But Mike White offered just words: "I know he is a problem and a bully. I will address this but please give me a few days!" Coleman waited, but nothing happened—besides more tension, anger, and an even more hostile work environment.

32. Finally in September 2015, White orchestrated another meeting between him, Coleman, and Onstott at the funeral home. White called Coleman and Onstott into Onstott's office for an update on the situation. Coleman announced during that meeting that he'd just renewed his Houston apartment lease. He further declared that he was sick of Onstott harassing him and that he wanted the treatment to end. Coleman's comments got Onstott's attention—as

they meant Coleman wasn't going anywhere. Before the meeting concluded, Onstott was forced to apologize once again. White then told Onstott and Coleman to shake hands and instructed them to continue their breakfast meetings.

33. At these breakfasts, no progress was being made and no issues were being resolved. Onstott would just carry on about his disdain for the Episcopalian faith and its members. So Coleman reached out to White and Brown again, but he was ignored. Desperate for help, Coleman approached White during a break at a seminar White was hosting. Coleman reminded White of his request to be updated on Onstott's actions. And Coleman then said he had some very troubling information that he needed to discuss. White gave his usual reply of "let me get back with you on this next week," and then he didn't get back with Coleman. White's silence forced Coleman to contact Brown at HR. But she insisted on first speaking to White before talking to Coleman. She never got back to Coleman either.

34. In October 2015, at the last mandated breakfast meeting at Hotel Granduca, Onstott vented again about his hate for the Episcopal Church, Russ Levenson, and other prominent clergy. He seemingly did so to antagonize Coleman. And then at the end of breakfast, Onstott looked Coleman in the eye and asked, "why don't you just go work for your cousin at the bank or go elsewhere?" The message was undeniable: Onstott wanted Coleman gone, and termination was imminent. Coleman was 52 at the time. He couldn't afford to lose his job, as finding another job with a termination from George H. Lewis on his record would've been almost impossible. So Coleman diplomatically replied that the only reason he moved to Houston was to work at his dream job of George H. Lewis. He added that he had no desire to work for his cousin or anywhere else. Onstott listened with a disappointed look. Seeing that face, Coleman

knew he needed to start looking for new work soon. Onstott had made it clear that Coleman was no longer welcome at George H. Lewis.

35. Meanwhile, Coleman was getting no help or protection from SCI. Indeed, by this point, HR and Mike White were ignoring Coleman's pleas. Even when Coleman's connected cousin reached out to CEO and President of SCI, Tom Ryan, nothing changed. Coleman's cousin spoke with Ryan several times over the phone during Coleman's last few weeks at SCI, hoping to remedy Coleman's hostile work environment. But SCI did nothing to fix his circumstances. Just the opposite, once Coleman's cousin involved Ryan in the matter, no one at SCI management spoke to Coleman. The silence was deafening.

36. *Coleman is constructively discharged.* The situation was dire. Onstott was relentlessly attacking Coleman for being Episcopalian—the religion from which Onstott had been excommunicated. After Coleman complained to SCI supervisors and HR, Onstott retaliated by cutting Coleman's pay, revoking his promotion, and demoting him. To add insult to injury, when the issues with Onstott persisted, no one at SCI helped. Indeed, White had even warned Coleman that he'd be transferred if the issues with Onstott continued. Onstott's severe and pervasive attacks were altering Coleman's employment conditions. They affected his mood, his dealings with family and friends, and his sleep. Onstott's bombardment raised Coleman's stress levels. That stress was only exacerbated by HR and management ignoring Coleman's pleas. Then came that fateful breakfast meeting in which Onstott revealed his intent to fire Coleman soon. Coleman feared that being terminated by George H. Lewis would tarnish any future employment opportunities. That fear paired with Onstott's attacks and punishments made the situation intolerable.

37. Financially punished, personally humiliated, and professionally abandoned, Coleman's tenure with SCI was forced to end. SCI's blind eye coupled with Onstott's continued discrimination and retaliation made work so utterly intolerable that Coleman was compelled to resign. Any reasonable person in his position would've felt compelled to resign too—and would've resigned. So on November 18, 2015, Coleman resigned. In reality, however, he was constructively discharged.

38. ***Returning to Waco.*** Since losing his dream job, Coleman has returned to Waco. Coleman is now working at a funeral home for about \$50,000 a year less than he earned at George H. Lewis. That figure consists of about \$40,000 in salary and \$10,000 in benefits, including the loss of affordable health insurance. The reality is that no matter where Coleman works, he'll suffer that same \$50,000-per-year loss. That's because funeral directors at George H. Lewis earn substantially more than any funeral home around. Coleman losing such a singular and high-paying job has harmed him financially. Given that he's only 54, that financial harm will continue for years.

39. But money isn't all that SCI has robbed from him. This nightmare has taken so much more from Coleman. Coleman returned to Waco dejected, depressed, angry, and distant. Every day he's been haunted by his experience at SCI. It's taken a tremendous toll on his family relationships. And it's taken such an emotional and mental toll on him that he's being treated.

40. ***Onstott is reassigned.*** After SCI discharged Coleman, he filed a Charge of Discrimination with the EEOC and the Texas Workforce Commission. Around the time of filing this Charge, SCI removed John Onstott from George H. Lewis. Onstott was initially reassigned within SCI.

41. For months, SCI and Coleman reported to an EEOC investigator about the facts surrounding Coleman's employment with SCI. At one point, SCI filed a position statement that doubted much of Coleman's account of the events. In response, Coleman detailed with supporting evidence the unsavory truths about Onstott's leadership at George H. Lewis and Onstott's relationship with the Episcopal Church.

42. *SCI terminates Onstott's employment.* Shortly after Coleman responded to SCI's position statement, John Onstott's employment with SCI terminated. Considering the circumstances and timing, there's little doubt that SCI fired Onstott in part because of the shocking truths unveiled in Coleman's response to SCI's position statement.

43. No one deserves to be treated the way Coleman was. While fault should be doled out to many at SCI—especially Onstott—for the wrongs done to Coleman, one person isn't at all to blame: Bill Coleman. Yet he's the one who's suffered most. That's precisely why Coleman has filed this lawsuit. He hopes that the Texas justice system will hold SCI accountable and right this wrong. And he prays for the Court's help in remedying his injuries.

### **CAUSES OF ACTION**

44. Coleman asserts claims against SCI for breach of contract; promissory estoppel; and violations of the Texas Labor Code. When appropriate, Coleman's claims should be understood as pleaded in the alternative.

45. Coleman's claims incorporate the facts alleged in this pleading. Based on the facts alleged, Coleman is an employee within the meaning of the Texas Labor Code.<sup>6</sup> SCI, which has

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<sup>6</sup>See TEX. LAB.CODE§ 21.002(7).

more than 500 employees, is an employer under the Texas Labor Code.<sup>7</sup> And at all relevant times, John Onstott—who served as an agent of SCI acting within the course and scope of his employment and within the authority delegated to him—was an employer as defined in the Texas Labor Code.<sup>8</sup> Hence SCI is not only directly liable but also vicariously liable for Onstott’s wrongful acts and omissions.

46. Given his claims and the facts, Coleman seeks monetary relief over \$200,000 but not more than \$1,000,000; he reserves the right to amend his petition to seek relief over \$1,000,000.<sup>9</sup>

### **Count 1—Breach of Contract**

47. SCI is liable for breach of contract. SCI and Coleman had a valid contract in which Coleman agreed to work for SCI as a George H. Lewis funeral director. As part of this agreement, SCI committed to promptly promoting Coleman to supervisor and raising his compensation by \$5,000. Coleman performed under this agreement—quitting his job in Waco and moving to Houston to work for SCI. But SCI breached the contract when it refused to honor its commitment to promote Coleman to supervisor with the accompanying raise. Coleman sustained damages as a result of SCI’s breach—including lost earnings that he would have made had SCI promoted him as promised. SCI is therefore liable for breach of contract, and Coleman is entitled to recover his actual, direct, and consequential damages.

### **Count 2—Promissory Estoppel**

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<sup>7</sup>See TEX. LAB. CODE§ 21.002(8)(A); *see also* TEX. LAB.CODE§ 21.2585(d), (e).

<sup>8</sup>See TEX. LAB. CODE § 21.002(8)(B).

<sup>9</sup>See TEX. R. CIV. P. 47(c).

48. SCI is liable under promissory estoppel because it refused to fulfill its promise to promote Coleman to supervisor and raise his compensation. SCI promised, if Coleman would join George H. Lewis, to promptly promote him to supervisor and raise his pay by \$5,000. Given the nature of the promise, Coleman's reliance was both reasonable and substantial. And indeed Coleman substantially relied on SCI's promise to promptly promote him to supervisor and raise his compensation by \$5,000. He quit his job, uprooted his life in Waco, and moved to Houston to work at George H. Lewis. SCI knew or reasonably should have known that Coleman would rely on SCI's promise. So by failing to fulfill its promise, SCI has caused Coleman to suffer to his detriment. And injustice to Coleman can be avoided only if SCI's promise is enforced. SCI is therefore liable under promissory estoppel, and Coleman is entitled to recover his actual, direct, and consequential damages.

### **Count 3—Violations under the Texas Labor Code**

49. SCI is liable under the Texas Commission on Human Rights Act, which is codified in Section 21 of the Texas Labor Code. Specifically, SCI is liable for:

- discriminating, harassing, and creating a hostile work environment based on Coleman's religion;
- aiding and abetting discrimination based on Coleman's religion; and
- retaliating against Coleman for engaging in protected activity.

Coleman will elaborate on each of these claims in turn.

#### **A. Discrimination, Harassment, and Hostile Work Environment under Section 21 of the Texas Labor Code.**

50. SCI is liable under Section 21 of the Texas Labor Code for discriminating, harassing, and creating a hostile work environment. As an Episcopalian employee, Coleman was

a member of a class the Texas Labor Code intended to protect. And as an employer, SCI committed unlawful employment practices when, because of religion, it:

- discriminated against Coleman in connection with his compensation and the terms, conditions, and privileges of his employment;
- limited, segregated, and classified Coleman in a manner that would deprive or tend to deprive him of any employment opportunity or adversely affected his status as an employee; and
- discharged Coleman constructively.<sup>10</sup>

As a result of SCI's adverse employment actions, Coleman was treated less favorably than similarly situated members outside his protected class. Moreover, SCI's harassment was severe and pervasive enough to alter the terms and conditions of Coleman's employment and created a hostile working environment that was intimidating, insulting, and abusive to a reasonable person in his position. And by failing to take any corrective action—like prompt remedial action for Coleman or disciplinary action against Onstott—SCI perpetuated this hostile working environment that Coleman endured.

51. SCI committed these unlawful employment practices intentionally—motivated by and aiming to discriminate against Coleman because of his religion.<sup>11</sup> Indeed, SCI engaged in these discriminatory practices with either malice or a reckless indifference to Coleman's state-protected rights. As a result of SCI's actions, Coleman suffered injuries—including a loss of benefits and wages in the past, present, and future. He also suffered emotional pain, mental anguish, emotional and mental impairment and disability, suffering, inconvenience, and loss of enjoyment of life. And he'll likely continue to suffer in the future.

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<sup>10</sup>See TEX. LAB.CODE§ 21.051.

<sup>11</sup>See TEX. LAB.CODE§ 21.125.

52. SCI is therefore liable under Section 21 of the Texas Labor Code, and Coleman is entitled to recover compensatory and punitive damages.<sup>12</sup>

### **B. Aiding or Abetting Discrimination under Section 21 of the Texas Labor Code.**

53. SCI is liable under Section 21 of the Texas Labor Code for aiding and abetting in discrimination. SCI committed unlawful employment practices by aiding and abetting Onstott to engage in his discriminatory practices against Coleman on the basis of Coleman's religion.<sup>13</sup> SCI committed these unlawful employment practices intentionally—motivated by and aiming to discriminate against Coleman because of his religion.<sup>14</sup> Indeed, SCI engaged in these discriminatory practices with either malice or a reckless indifference to Coleman's state-protected rights. As a result of SCI's actions, Coleman suffered injuries—including a loss of benefits and wages in the past, present, and future. He also suffered emotional pain, mental anguish, emotional and mental impairment and disability, suffering, inconvenience, and loss of enjoyment of life. And he'll likely continue to suffer in the future. SCI is therefore liable under Section 21 of the Texas Labor Code, and Coleman is entitled to recover compensatory and punitive damages.<sup>15</sup>

### **C. Retaliation under Section 21 of the Texas Labor Code.**

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<sup>12</sup>See TEX. LAB.CODE§ 21.2585.

<sup>13</sup>See TEX. LAB.CODE§ 21.056.

<sup>14</sup>See TEX. LAB.CODE§ 21.125.

<sup>15</sup>See TEX. LAB.CODE§ 21.2585.

54. SCI is liable under Section 21 of the Texas Labor Code for retaliation. SCI committed unlawful employment practices by retaliating and discriminating against Coleman with adverse employment actions against him because he opposed SCI's discriminatory practices; filed a complaint; and assisted and participated in an investigation of Onstott's conduct.<sup>16</sup>

55. SCI committed these unlawful employment practices intentionally—motivated by and aiming to retaliate against Coleman for opposing and reporting Onstott's discriminatory practices and ultimately assisting the investigation of Onstott's wrongdoing. Indeed, SCI engaged in these retaliatory practices with either malice or a reckless indifference to Coleman's state-protected rights. As a result of SCI's actions, Coleman suffered injuries—including a loss of benefits and wages in the past, present, and future. He also suffered emotional pain, mental anguish, emotional and mental impairment and disability, suffering, inconvenience, and loss of enjoyment of life. And he'll likely continue to suffer in the future.

56. SCI is therefore liable under Section 21 of the Texas Labor Code, and Coleman is entitled to recover compensatory and punitive damages.<sup>17</sup>

### **Destruction of Evidence**

57. During discovery Plaintiff has requested from the Defendant relevant documents which go to the core of his claims. Defendant has not produced them. Plaintiff requested relevant electronic communications. None have been produced. Plaintiff requested a copy of the investigation Defendant conducted into Plaintiff's complaints about Onstott. None was produced,

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<sup>16</sup>See TEX. LAB.CODE§ 21.055.

<sup>17</sup>See TEX. LAB.CODE§ 21.2585.

Defendant claiming that no documents exist. An investigation was conducted and it can only be inferred that Defendant destroyed the documents.

58. Plaintiff also requested a copy of the notes Virginia Brown and Mike White took when they interviewed him in February 2015 related to his complaints about Onstott. Both, Brown and White, took notes in Plaintiff's presence while they were interviewing him. Defendant did not produced the notes in discovery, claiming they do not exist. It can only be inferred that Defendant destroyed the notes.

### **Attorneys' Fees**

59. Coleman seeks and is entitled to recover reasonable and necessary attorneys' fees under the Texas Civil Practices and Remedies Code and the Texas Labor Code.<sup>18</sup>

### **Conditions Precedent**

60. All conditions precedent have been performed or have occurred.

### **Jury Demand**

61. Coleman demands a jury trial and has tendered the appropriate fee.

### **Notice of Intent**

62. Under Texas Rule of Civil Procedure 193.7, Coleman intends to use any documents produced in response to his written discovery requests at trial and in any pretrial matters during the course of litigation.

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<sup>18</sup>See TEX CIV. PRAC. & REM. CODE § 38.001(8) (authorizing a prevailing party on a breach-of-contract and promissory-estoppel claim to recover reasonable and necessary attorneys' fees); *see also* TEX. LAB.CODE § 21.259 (authorizing a prevailing party under this chapter to recover reasonable attorney's fees and costs, including reasonable expert fees).

## Prayer

63. For these reasons, Plaintiff asks that Defendant be cited to appear and answer.

And Plaintiff asks that he be awarded a judgment against Defendant for the following:

- actual damages, mental-anguish damages, economic damages, direct damages, and consequential damages—as allowed by law;
- compensatory damages for pecuniary and nonpecuniary losses;
- exemplary damages;
- punitive damages;
- attorneys' fees, expert-witness fees, and expenses;
- court costs;
- prejudgment and postjudgment interest; and
- all other relief that Plaintiff may be entitled to.

Respectfully submitted,

BY: //ss// ***peter costea***

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Peter Costea  
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### CERTIFICATE OF SERVICE

I certify that on November 2, 2018 a true and correct copy of the foregoing pleading was served electronically through the court's electronic filing system on counsel for Defendants, Mr. Carter Crow, Norton Rose Fulbright US LLP, Fulbright Tower, 1301 McKinney, Suite 5100, Houston, Texas 77010.

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Peter Costea