

**IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
IN AND FOR MIAMI-DADE COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION
CASE NO. 2018-011899-CA-01 (09)**

**NEAL CUEVAS,
Plaintiff,**

versus

**CITY OF NORTH MIAMI,
Defendant.**

**PLAINTIFF’S REPLY TO CITY’S RESPONSE TO PLAINTIFF’S
MOTION TO RECONSIDER ORDER OF DISMISSAL WITH
PREJUDICE AND/OR FOR REHEARING**

I. Introduction

Contrary to the City’s assertion in its Response to Plaintiff’s Motion to Reconsider Order of Dismissal with Prejudice and/or for rehearing (the “Response”), the plaintiff’s motion raised several matters overlooked, misapprehended, and not considered by the original judge during the hearing that led to the order dismissing this whistleblower case with prejudice. The underlying premise of the rehearing motion is that the court took into account facts not contained in the amended complaint and improperly imposed additional pleading requirements as conditions precedent in a whistleblower lawsuit. (Motion, ¶¶ 5-6).

II. Plaintiff’s Motion Presents Significant Reasons for Reconsideration

The City incorrectly asserts that the court’s statement that the plaintiff’s

statutorily protected disclosure was nothing more than “an unauthorized memorandum at best” is not a finding essential to the dismissal ruling. Yet, the dismissal was based entirely on the reasons stated on the **record of the hearing**. That record includes the court’s misconception about the protected nature of the plaintiff’s disclosure of wrongdoing on the part of City officials that led to the City’s adverse actions against him.

Additionally, paragraphs 8-10 of the Motion for Reconsideration reference several instances during the hearing at which the court overlooked and misapprehended the key pleading requirements for a whistleblower action that led to the dismissal with prejudice. Among the reasons are the court’s expansive statements that minimized the actions taken by the plaintiff in support of his claims of wrongdoing by the City that led to the series of employment-related hardships visited upon the plaintiff over time.

The court’s conclusion that the assertions in the amended complaint were inconsistent with a valid whistleblower action essentially disregarded the existing pleading requirements in favor of a more rigorous test for public employment based workplace whistleblower claims. The court misconstrued the pleading requirements by considering and adopting facts not pled in the amended complaint but argued by the City. The court’s approach created new requirements for a whistleblower action. The rehearing motion identified this as another reason for reconsidering the

dismissal with prejudice. (Motion, ¶ 4).

These new, independent matters identifying the court's misapprehension and misunderstanding of the controlling law and facts warrant reconsideration of the dismissal with prejudice. Plaintiff's reconsideration motion does not merely reargue the merits of the case, but instead presents plain reasons for re-evaluation of the approach used by the court in testing the legal sufficiency of the amended complaint.

III. Plaintiff Addressed All Issues Resulting In Dismissal, Including Lack of Causation

Contrary to the City's opposition to rehearing, plaintiff's motion states in pertinent part: "The Amended Complaint more than satisfied the Requirements of Florida's Whistleblower Law, and fully satisfied the pleading requirements of the Florida Rules of Civil Procedure." (Motion, ¶ 2). As the City concedes, causation is a fundamental element of a Whistleblower Act claim.¹ The Motion at paragraphs 2-5 incorporate the court's misimpression of the causation requirement that led to the erroneous dismissal with prejudice. The rehearing motion challenges the court's consideration of the narrow factual allegations in its imposition of non-required pleading requirements that gave rise to the dismissal, including the court's misunderstanding of causation. (Motion, ¶¶ 4-5).

¹ To state a claim under the Whistleblower Act, a plaintiff must allege that: "(1) she engaged in statutorily protected expression, (2) she suffered a materially adverse action of a type that would dissuade a reasonable employee from engaging in statutorily protected activity, and (3) there was some causal relation between the events." *Rutledge v. SunTrust Bank*, 262 Fed. Appx. 956, 958 (11th Cir. 2008) (citations omitted).

For these reasons, plaintiff respectfully asks the Court to grant reconsideration and deny the dismissal with prejudice.

Respectfully submitted,

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