IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DANNY LAMONTE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO:
	:	
CITY OF HAMPTON, GEORGIA,	:	1:19-cv-3227-AT
	:	
Defendants.	:	
	:	

OPINION AND ORDER

In this employment action, Plaintiff Danny Lamonte brings claims against his former employer, the City of Hampton, for race discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq*. ("Title VII"); retaliation in violation of the Georgia Whistleblower Act, O.C.G.A. § 45-1-4; breach of contract; attorney's fees; and punitive damages. The City of Hampton has moved for summary judgment [Doc. 82]. After full briefing by the Parties, the Magistrate Judge recommends granting summary judgment to Defendant on all claims. [Report & Recommendation ("R&R"), Doc. 106.] Plaintiff Lamonte filed specific objections to the R&R but only as to the Georgia Whistleblower Act claim [Doc. 108]. Accordingly, the Magistrate Judge's R&R and Plaintiff's objections are now before the Court.

I. Standard of Review

After conducting a careful and complete review of a magistrate judge's findings and recommendations, a district judge may accept, reject, or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1)(C); *Williams v. Wainwright,* 681 F.2d 732, 732 (11th Cir. 1982). Pursuant to 28 U.S.C. § 636(b)(1), the Court reviews any portion of the R&R that is the subject of a proper objection on a *de novo* basis and any non-objected portion for plain error. 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 154 (1985). The district judge must "give fresh consideration to those issues to which specific objection has been made by a party." *Jeffrey S. v. State Bd. Of Educ. Of Ga.*, 896 F.2d 507, 512 (11th Cir. 1990). A district judge retains "ultimate adjudicatory power over dispositive motions" and the "widest discretion" over how to treat a report and recommendation. *Gonzales v. United States*, 981 F.3d 845, 851 (11th Cir. 2020) (citing *Williams v. McNeil*, 557 F.3d 1287, 1291 (11th Cir. 2009)).

In review, the Court applies the standards for grant of summary judgment under Rule 56 of the Federal Rules of Civil Procedure set forth in *Anderson v. Liberty Lobby Inc.,* 477 U.S. 242, 248 (1986) and its progeny. The district court should resolve all reasonable doubts about the facts in favor of the non-movant and draw all justifiable inferences in [her] favor." *United States v. Four Parcels of Real Prop. in Greene & Tuscaloosa Cntys. in State of Ala.*, 941 F.2d 1428, 1437 (11th Cir. 1991) (*en banc*) (citations and punctuation omitted). The Court may not weigh conflicting evidence or make credibility determinations. *Hairston v.*

Gainesville Sun Publ'g Co., 9 F.3d 913, 919 (11th Cir. 1993), *reh'g denied*, 16 F.3d 1233 (11th Cir. 1994) (*en banc*).

II. Report and Recommendation of the Magistrate Judge

After reviewing the relevant facts and the Parties' arguments, the Magistrate Judge recommends that Defendant's Motion for Summary Judgment (Doc. 82) be granted in full. (R&R, Doc. 106 at 2.) Plaintiff Lamonte does not object to the R&R's recommendations that summary judgment be granted to the City on his Title VII race discrimination and breach of contract claims. In accordance with the standard of review outlined above, the Court reviews these findings for plain error. The Court finds that the Magistrate Judge correctly analyzed the facts in light of the governing law with respect to the Title VII and breach of contract claims. Consequently, finding no error, the Court **ADOPTS** these specific findings and the Magistrate Judge's recommendation. Summary judgment is **GRANTED** in favor of the City of Hampton as to the Title VII and breach of contract claims (Counts I and III).

The Magistrate Judge also recommends granting summary judgment to the City of Hampton on Lamonte's Georgia Whistleblower Act Claim (Count II). Specifically, the R&R finds that Lamonte did not establish a *prima facie* case under the Whistleblower Act, O.C.G.A. § 45-1-4, because he did not engage in protected activity (R&R at 40-41), and, even if he had, he failed to proffer any evidence that the City's legitimate nonretaliatory reasons were pretextual (*id.* at 41-43). The Magistrate Judge also recommends that summary judgment be granted on

Plaintiff's attorney's fees and punitive damages claims, which are dependent on the substantive claims. (*Id.* at 48-49.)

III. Discussion

As a preliminary matter, the Court acknowledges that, having adopted the R&R's recommendation to grant summary judgment to Defendant on the sole federal claim in this matter, the Court must determine whether to continue to exercise its supplemental jurisdiction in this matter under 28 U.S.C. §1367. "The policy of supplemental jurisdiction is to support the conservation of judicial energy and avoid multiplicity in litigation. Having a state court rehash issues that have already been argued in federal court is [] likely to cause multiplicity in litigation." *Parker v. Scrap Metal Processors, Inc.*, 468 F.3d 733, 746 (11th Cir. 2006) (citing *Rosado v. Wyman*, 397 U.S. 397, 405 (1970)). In assessing whether to retain or reject supplemental jurisdiction, courts consider the factors set out by the Supreme Court in *United Mine Workers of America v. Gibbs*, 383 U.S. 715, 726 (1966). *See West v. City of Albany, Georgia*, 839 F. App'x 588, 597 (11th Cir. 2020). These factors include judicial economy, convenience, fairness, and comity. *Id.* (citing *Ameritox, Ltd. v. Millennium Laboratories, Inc.*, 803 F.3d 518, 537 (11th Cir. 2015)).

This case was originally filed in federal court. At this juncture, Plaintiff does not ask the Court to reject its exercise of supplemental jurisdiction. Defendant, however, urges the Court to retain the Whistleblower Act claim, as the Parties have conducted full, extensive discovery, including the exchange of 7,000 pages of

documents and 10 depositions, and have fully briefed all issues. (Reply to Obj., Doc. 109 at 15.) The City also maintains that, because Plaintiff originally filed this case in federal court and has not asked the Court to reject jurisdiction, the *Gibbs* fairness factor does not weigh against retention. (*Id.*) Finally, the City asserts that the remaining Whistleblower Act issue is not novel or complex.

The City's reasoning is sound and supported by the relevant legal authority. *See West,* 839 F. App'x at 597. Retaining jurisdiction here serves the goals of conserving judicial resources and avoiding a rehashing of the same issues in state court. Accordingly, the Court turns to Plaintiff's objections regarding his Whistleblower Act claim.

A. Georgia Whistleblower Act, O.C.G.A. § 45-1-4

The Georgia Whistleblower Act prohibits a public employer from retaliating against an employee for engaging in protected activity by making a protected disclosure or objection, as follows:

> (2) No public employer shall retaliate against a public employee for disclosing a violation of or noncompliance with a law, rule, or regulation to either a supervisor or government agency, unless the disclosure was made with knowledge that the disclosure was false or with reckless disregard for its truth or falsity.
>
> (3) No public employer shall retaliate against a public employee *for objecting to, or refusing to participate in, any activity, policy, or practice of the public employer that the public employee has reasonable cause to believe is in violation of or noncompliance with a law, rule, or regulation*.

O.C.G.A. § 45-1-4(d)(2)-(3) (emphasis added). Courts apply the *McDonnell-Douglas* burden-shifting analysis used in Title VII retaliation cases to Georgia

Whistleblower Act claims. *Baptiste v. Mann*, 861 S.E.2d 212, 217 (Ga. Ct. App. 2021); *Coward v. MCG Health, Inc.*, 802 S.E.2d 396, 399 (Ga. Ct. App. 2017).

To make out a *prima facie* case of retaliation under the Georgia Whistleblower Act ("GWA"), "a public employee must demonstrate that (1) he was employed by a public employer; (2) he made a protected disclosure or objection; (3) he suffered an adverse employment action; and (4) there is some causal relationship between the protected activity and the adverse employment action." *Albers v. Georgia Bd. Of Regents of University System of Georgia*, 766 S.E.2d 520, 523 (Ga. Ct. App. 2014); *Baptiste*, 861 S.E.2d at 217 (same).

i. Protected Disclosure or Objection

Here, the Magistrate Judge found that Plaintiff Lamonte did not establish that he made a protected disclosure or objection. (R&R at 40-41.) Plaintiff objects. The issue of Plaintiff's protected disclosure revolves around a discussion Plaintiff had with the mayor of the City of Hampton, Steve Hutchison, on September 6, 2018. But before delving into the details of this discussion, the Court rewinds to provide necessary background information.

In his first days of employment, Plaintiff was tasked by City Manager Coney with looking at the City's finances, including budgets, transactions, credit card statements and more. (Deposition of Danny Lamonte ("Lamonte Dep."), Doc. 84-1 p. 93:1-12.) This was because City Manager Coney had concerns about discrepancies and irregularities in the City's finances. (*Id.* p. 93:14-16.) In conducting his review, Lamonte found questionable credit cards and credit card

charges, for example, a credit card for a boot company (*id*. p. 99:14-22) and charges for foot massages (*id*. p. 118:23-24); 30 to 40 credit cards and merchant accounts in the former city clerk's desk drawer (*id*. p. 119:14-20); an alarming number of unsupported budget amendments (*id*. p. 101:12-13); former employees still listed on City bank accounts (*id*. p. 101:15-16); current employees conducting financial transactions without appropriate credentials and logins (*id*. p. 101:16-19); and overrun budgets (*id*. p. 101:20-21). Of note, Lamonte had particular questions about a City credit card in Mayor Hutchison's name, as well as questions about the Mayor's budget, which was over the limit. (*Id*. p. 120:10-15.) Plaintiff first shared his findings and concerns with two people: City Manager Coney and Tiffany Wilson, an employee who handled payroll and other administrative and financial tasks. Plaintiff talked with Ms. Wilson for approximately an hour on the afternoon of September 4 or the morning of September 5 about his concerns and current city procedures, such as individuals transferring funds without having proper authorization. (*Id*. pp. 112:15-113:15.) Lamonte spoke with City Manager Coney consistently to update Coney on his concerns and findings, including questionable transactions and particular expenditures. (*Id*. pp. 115:9-21; 118:9-10.)

Within days, on September 6, Mayor Hutchison called Plaintiff into his office to talk about Plaintiff's findings. (*Id*. p. 121:11-16.) Lamonte describes the interaction as follows:

> I met — he — the mayor wanted to meet with me. He called me into his office to meet with me. And I – I thought it was strange, because he called me in and closed the door. . . . So he started off with some

> small talk, and then he told me that he had—he understands I'm looking at a lot of different things, and he wanted me to update him on what I was looking at and what I found so far. And I just told him, I have some concerns *even with his budget*, even with some transactions I saw in there. And then he went—he commenced to say, [l]ook, you know, it's not good thing for things to be over budget line by line. We can actually do some amendments and transfer some funds to make the whole department budget look okay *in my line item*. *And I said, Well, Mr. Mayor, I can't do that*, I wasn't here on some of those. And he said, Well*, you can do that now, especially for my—my department because the public doesn't need to see it*. They need to see that, you know it's solid. *He wanted to put that, and I just kept telling him, I'm not going to do that. That's not going to be something I'm going to do. If there's questionable charges or line items overspent, that's what it's going to be*. And then he just … I want to say threatened me, but I – then he asked me how long I been doing this. He made comments like that. Okay how long you been doing this? And I said, I've been doing this for a little while, so. And then he said, Okay, so you just got here. And he started making comments like that. And so — and then in the middle of — towards the end of our conversation, one of the councilwomen just came in the office while we had the door closed. . .
>
> After *I wouldn't do what he wanted me to do*, I think he was letting me know, Look, how long you been doing this? How long more you want to do this?

(Lamonte Dep., Doc. 84-1 pp. 121:11-122:24) (emphases added). Plaintiff further testified that he told the Mayor multiple times that he would not change the Mayor's line items on the budget to hide information from the public. (*Id*. p. 123:2-11.)[1]

Plaintiff explained that he believed that the expenditures that the Mayor was asking him to cover up cover up were unlawful. (*Id*. p. 179:4-19; 180:2-5) (Q: "Is

[1] The Mayor acknowledges that a conversation with Plaintiff did take place but disputes Plaintiff's account. According to Mayor Hutchison, "I asked him to come to my office and welcomed him aboard the City of Hampton" and "I asked him to give me a little background about himself and he did." (Deposition of Steve Hutchison ("Hutchison Dep."), Doc. 85-1 p. 78:2-5.)

there any particular law that you were relying on with the conclusion that the expenditures were unlawful?" A: "If they are not for city purposes, that's theft.") Plaintiff also believed that the alarming number of budget amendments were improper. (*Id*. p. 103:6-17) ("There were a lot of them . . . . I didn't see any backup that supported the budget amendments. Usually when you make a budget amendment in an adopted budget, you have to have backup for either some approval from the commission or something that—that justifies that amendment . . ."). He also had concerns of fraud related to former employees' names on City bank accounts (*id*. p. 104:3-5) and current employees transferring funds without authorization. (*Id*. p. 116:1-8) ("[T]he transferring of public funds without—that's fraud. I mean . . . she's transferring money, and she's not even on the account. She's transferring—pulling money down from federal systems and she's not even on the system. So at a bare minimum, that's fraud.")

In *Albers*, *supra*, 766 S.E.2d at 523, the Georgia Court of Appeals reversed the trial court's grant of summary judgment to the defendant where some evidence supported the conclusion that plaintiff opposed activity that he believed to be unlawful. Specifically, the plaintiff, the Chief of Police of Georgia Perimeter College, objected to a directive to speak with the local district attorney about having charges dropped or reduced against a student who had allegedly stolen a laptop. *Id*. at 521-22. The plaintiff refused, telling his superior that it would be inappropriate and unethical for him to do so. *Id*. at 522. The trial court determined that the plaintiff's objections were not protected activity because they were about

"potential, speculative, or nonexistent violations." *Id.* at 523. The Georgia Court of Appeals reversed, explaining that the Statute "protects a public employee who objects to employer-related activity that he reasonably believes violates the law." *Id.* (citing O.C.G.A. § 45-1-4(d)(3)).

The same logic applies here. Plaintiff's testimony is evidence supporting his Whistleblower Act theory that the Mayor requested that he conceal expenditures with unsupported budget amendments and that he objected and refused to participate in this endeavor. Further, Lamonte's testimony shows that he refused to participate because he reasonably believed that the expenditures were unlawful and that he was being asked to cover up those unlawful expenditures and hide them from public view. The Court's conclusion that Plaintiff's belief was reasonable is supported by the City's Charter itself, which provides that "[n]o elected official, appointed officer, or employee of the city . . . shall use property owned by such governmental entity for personal benefit" and "[n]o expenditure shall be made or encumbrance created in excess of the . . . appropriations or allotment thereof to which it is chargeable." (City Charter, Doc. 83 at 11, 24.)

Construing the evidence in the light most favorable to Lamonte, a jury could, crediting his testimony, find that he "object[ed] to, or refus[ed] to participate in" an "activity, policy, or practice" of the City that he had "reasonable cause to believe [was] in violation of or noncompliance with a law, rule, or regulation." O.C.G.A. § 45-1-4(d)(3); *Albers*, 766 S.E.2d at 523.

The R&R and Defendant both rely on *West v. City of Albany, Georgia*, 830 F. App'x 588, 598 (11th Cir. 2020). But *West* did not concern the "objecting to, or refusing to participate in," provision of the Georgia Whistleblower Act, § 45-1-4(d)(3). Moreover, the plaintiff in *West* never argued that the internal cash protocols she disclosed violated any law, rule or regulation. Here, Plaintiff argues that the practices he objected to were unlawful, or even theft. Likewise for *Coward v. MCG Health, Inc.*, 802 S.E.2d 396, 399-400 (Ga. Ct. App. 2017), where the plaintiff only asserted that she *disclosed* internal staffing procedures, not that she *objected* to a practice she believed to be unlawful.[2] Under the circumstances, it is a close call. But, under subsection 3 of the statute, a plaintiff must only "object[] to, or refus[e] to participate in, any activity, policy, or practice of the public employer that the public employee has reasonable cause to believe is in violation of or noncompliance with a law, rule, or regulation." O.C.G.A. § 45-1-4(d)(3). Thus, the Court concludes that a jury could find, crediting Plaintiff's testimony over the Mayor's account, that Plaintiff made a protected objection in refusing to manipulate the the Mayor's budget in order to hide improper expenditures from the public. The Court therefore does not adopt the portion of the R&R that finds that Plaintiff did not engage in protected conduct.

[2] Even as to the disclosure provision of the GWA, another district court in Georgia has noted, in discussing subsection 2 of the statute, where a plaintiff disclosing a violation of a law, rule, or regulation is not required to "name the specific code section he feels the defendant violated … in order to win protection under Georgia's Whistleblower Statute." *Jordan v. City of Waycross, Georgia*, 2018 WL 4089206, at *10 (S.D. Ga. Aug. 27, 2018) (Godbey Wood, J.).

ii. Causation

The fourth element of a GWA violation requires a plaintiff to establish that "there is some causal relationship between the protected activity and the adverse employment action." *Baptiste*, 861 S.E.2d at 217; *Albers*, 766 S.E.2d 523.

The burden to establish causation under the Whistleblower Act is not high. Georgia courts have explained that "[t]he causal link element is construed *broadly* so that a plaintiff *merely* has to prove that the protected activity and the negative employment action *are not completely unrelated*." *Baptiste*, 861 S.E.2d at 219 (emphasis added); *see also*, *Forrester v. Georgia Dept. of Human Services*, 708 S.E.2d 660, 668 (Ga. Ct. App. 2011) ("[T]he appellants must show that these communications and the adverse employment action are causally connected—i.e., that there is evidence *linking* their [protected activity] to the adverse employment action taken against them") (emphasis in original).

Causation is a core issue in dispute in this case. According to Plaintiff, Mayor Hutchison, inspired by a retaliatory motive, intentionally sought to influence (1) the City Manager to recommend that Lamonte be terminated and (2) the councilmembers to vote to fire him. (Obj. at 21-22.) In contrast, Defendant contends that the councilmembers who actually voted to fire Lamonte were (mostly) not aware of Plaintiff's asserted discoveries of financial improprieties or

his objection to the Mayor's request to manipulate the budget, thereby precluding any causal connection.[3]

The R&R addresses causation through the lens of the pretext analysis. In response to the City's summary judgment motion, Plaintiff argued that the short period of time between Lamonte's protected activity and his termination allowed for an inference of causation and also supported pretext. In assessing this argument, the Magistrate Judge reasoned that any link between Plaintiff's protected activity and his termination was severed by the intervening event of Councilwoman Bodie's discovery of Plaintiff's mugshot. (R&R at 41-42.) Plaintiff objects to this finding.

As causation is at the crux of this dispute, the Court begins its *de novo* analysis of causation at the *prima facie* stage. Before jumping in, however, the Court lays out the timeline of events that occurred after Lamonte engaged in protected activity.

Hours after Plaintiff spoke with Mayor Hutchison and, according to him, refused to manipulate budgets to cover up what he believed to be unlawful public expenditures, Councilwoman Bodie received an apparently random call from a friend (her pastor, Craig McAdams) informing her that he had seen Plaintiff's mugshot online. (Deposition of Stephanie Bodie ("Bodie Dep."), Doc. 85-3 pp. 23:25-24:9.) Councilwoman Bodie emailed Mayor Hutchison and City Attorney

[3] Councilman Turner, at least, did know that Plaintiff had been reviewing the City's finances and had found "problems with the mayor's budget" and expenditures in that budget. (Turner Dep. p. 22:22-23:6.)

Wiggins, attaching Plaintiff's mugshot and stating, "I wanted you both [to be] aware of this that was brought to my attention today. I realize [sic] maybe innocent til proven guilty but we should have known this before this man was hired and went around children on Friday." (Email from Bodie, Doc. 92-2.)

In response, the Mayor then engaged in a series of actions outside the scope of his authority under the City Charter, which vests authority over personnel matters in the city manager, as discussed at length below. First, the Mayor called Chief of Police (Derrick Austin) to his home. (Deposition of Derrick Austin ("Austin Dep."), Doc. 91, pp. 55:15-16.)[4] When Chief Austin arrived, the Mayor was on the phone with City Attorney Wiggins (*id.* p. 56:16-17) and the two were discussing what to do about the information Councilwoman Bodie had provided (*id.* p. 57:22-25). The Mayor decided to place Plaintiff on administrative leave with pay pending the outcome of an investigation. (*Id.* p. 58:21-59:6.)[5] Mayor Hutchison did not contact or inform any of the councilmembers before making this decision, (Hutchison Dep. pp. 102:24-103:8), and also did not confer with City Manager Coney (*id.* pp. 96:16-97:12; Austin Dep. pp. 62:16-63:1). The Court notes that City Manager Coney passed away during the pendency of this litigation before his

[4] This was the first and only time the Mayor ever called Police Chief Austin to his home. (Austin Dep. p. 56:7-13.)

[5] Mayor Hutchison's emphatic deposition testimony is that he was *directed* by Attorney Wiggins to place Plaintiff on administrative leave. (Hutchison Dep. pp. 101:9-17; 102:10-23.) But Police Chief Austin deposed that it was "the mayor's decision." (Austin Dep. p. 59:5-6.) Attorney Wiggins also testified that she did not instruct the mayor to place Lamonte on administrative leave. (Deposition of L'Erin Wiggins, Doc. 97, p. 33:6-9.)

deposition could be taken. The Court takes notice of this fact, which neither party disputes.

After making the determination to place Lamonte on administrative leave, the Mayor instructed Police Chief Austin to pick up a memo from the city clerk to provide to Plaintiff regarding his leave. (*Id.* p. 60:4-10.) The memo states as follows:

> Dear Mr. Lamonte:
>
> Effective immediately you are being placed on paid administrative leave, pending an investigation. The purpose of this leave is to give the City an opportunity to investigate with minimal disruption to the workplace and to consider if disciplinary action, up to and including termination, may be appropriate.
>
> While on administrative leave, you may not come to the workplace, perform any work, or access any work email or systems. Please refrain from contacting staff to discuss this matter and please do not return to City Hall until you are notified. You will need to return any government property (ID badge, keys) immediately.
>
> Respectfully,
> Steve Hutchison
> Mayor

(Administrative Leave Memo, Doc. 91-8.) In accordance with the memo, Police Chief Austin collected Plaintiff's keys and ID card and escorted him out of the building. (Austin Dep. p. 60:4-10.) Plaintiff testified that, when he asked why he was being escorted out, Police Chief Austin told him that "the mayor wants this done." (Lamonte Dep., Doc. 84-1 pp. 135:22, 141:10-12.)

At some point, Chief Austin got in touch with City Manager Coney. Plaintiff had previously disclosed to Coney the arrest in question and Coney had explained that it was not a problem. (Lamonte Dep. p. 83:7-10; Deposition of Elton Brown ("Brown Dep."), Doc. 85-6 p. 31:1:8.) When Chief Austin reached out to Coney after Councilwoman Bodie had discovered Plaintiff's mugshot, City Manager Coney directed Chief Austin to "follow up and find out the details of the arrest." (Austin Dep. p. 64:1-11.) After investigating and speaking to the Waycross Police Department, Chief Austin learned that the arrest was for family violence, that the case had been dismissed, and that the state court judge had restricted the file. (*Id.* pp. 64:23-65:3.) Chief Austin relayed these findings to City Manager Coney. (*Id.* p. 65:8-9.)

Also around this time, Mayor Hutchison called Wilton Deloach, the acting city manager of Waycross, Georgia, where Plaintiff previously worked. (Excerpts of Deposition of Wilton Deloach, Doc. 98-11 p. 24:2-21.) The Mayor called to ask Deloach if he had information about Lamonte's arrest. (*Id.* p. 25:14-16.) Deloach testified that the first thing Mayor Hutchison said upon calling was that "on his way in [to work] there was wanted posters posted all over town with Danny Lamonte's picture in a police jumpsuit." (*Id.* pp. 24:8-13; 25:8-12.)[6] Deloach told the Mayor that he had heard about the arrest but did not have any additional

[6] Again here, Mayor Hutchison's testimony does not line up with the testimony of other present witnesses. Mayor Hutchison insisted that he did not call Deloach to ask about Lamonte's arrest and did not even ask Deloach about the arrest. (Hutchison Dep. p. 105:2-5.)

information. (*Id*. p. 26:4-15.) Deloach did not say anything negative about Plaintiff's work performance, honesty, or integrity. (*Id*. p. 28:2-6.)

On the afternoon of September 7, Plaintiff forwarded to Coney the dismissal paperwork for his criminal charge. (Lamonte Email to Coney, Doc. 84-11.) Coney then forwarded this information to Mayor Hutchison, City Attorney Wiggins and Councilwoman Tarpley. (*Id*.)

A few days later, on September 10, the Mayor directed Chief Austin to provide him (Mayor Hutchison) with a copy of Plaintiff's Accurint report. (Austin Dep. p. 71:14-21.) Notably, Mayor Hutchison directed Chief Austin to leave the report in an envelope for his wife at his home, and also directed Chief Austin *not to tell* City Manager Coney that he had asked for the Accurint report. (*Id*.) Police Chief Austin's contemporaneous notes state the following:

> I was called by Mayor Hutchison who wanted a copy of the Accurint report for Mr. Lamonte. I questioned that Mr. Coney should be notified and he [the Mayor] said he did not want him to know *that it would be used in executive session*.

(Doc. 91-6) (emphasis added.)

On September 11, 2018, the Hampton City Council held a meeting concerning a number of issues. The Regular Meeting Minutes from that day reflect that the councilmembers went into executive session to "discuss personnel, possible litigation, and real estate" at 7:09 p.m. and then returned to open session at 8:33 p.m. (Sept. 11, 2018 Meeting Minutes, Doc. 97-3 at 5.) Upon returning, Mayor Pro Tem Ann Tarpley made a motion to approve the City Manager Coney's

recommendation to fire Plaintiff, Councilmember Brown seconded the motion, and the motion passed unanimously (6-0). (*Id.*)

In discovery in this case, Plaintiff requested minutes of the executive session, but apparently none exist, in contravention of Georgia law. *See* O.C.G.A., § 50-14-1(e)(2)(C) ("Minutes of executive sessions shall also be recorded but shall not be open to the public. Such minutes shall specify each issue discussed in executive session by the agency or committee. . . . Such minutes shall be kept and preserved for in camera inspection by an appropriate court should a dispute arise as to the propriety of any executive session."). As a result, the events of the executive session are shrouded in darkness, compounded by the fact that the testimony of the councilmembers is in conflict as well as the absence of testimony from City Manager Coney, as discussed above.

There is significant disagreement about the stated basis for City Manager Coney's recommendation to fire Plaintiff. For example, Councilman Brown testified that Coney recommended that Plaintiff be fired *only* because his reputation had been so tarnished that he would not be able to do his job effectively. (Brown Dep., Doc. 85-6 p. 35:11-19.) Brown testified that Coney's recommendation was *not* based on the criminal charge or how Plaintiff filled out his application, stating:

> Q: Did [Coney] say that Mr. Lamonte should be fired because he lied on his application?

> A: No. In fact, that was brought up in that executive session, and I believe Mr. Coney showed the application, and the application asked the question were you ever convicted of a crime, and he stated no.

(*Id*. p. 35:24-36:5.) Councilwoman Tarpley's testimony is different, stating that the reasons Coney presented were that "Plaintiff's arrest that was not disclosed in his employment application and the damage to Plaintiff's reputation as a result." (Declaration of Ann Tarpley, Doc. 82-2 ¶ 11.) Councilwoman Bodie remembers the only reason being that Mr. Lamonte was "not truthful on his application" and does not mention the tarnished reputation rationale. (Bodie Dep. p. 48:2-4.)[7]

There is also some dispute as to whether Plaintiff's credit history was discussed and, if so, whether Mayor Hutchison or City Manager Coney brought it up. (*Compare* Bodie Dep., Doc. 85-3 p. 43:22-44:9 *with* Brown Dep., Doc. 85-6 p. 20:8-11.) Record evidence indicates that the councilmembers ***were not told*** that the charges against Lamonte had in fact been dismissed. (Byrd Dep. pp. 51:9-13; 54:7-12; Turner Dep. p. 26:21- 23.) This was true even though it is undisputed that, days earlier, Lamonte had provided evidence of his dismissal to City Manager Coney and that City Manager Coney sent the dismissal to Mayor Hutchison. (Doc.

[7] The question on the application at issue asked "[h]ave you ever been convicted of, or pleaded guilty or not guilty to, a felony or misdemeanor in the past 8 years?" (Lamonte Application, Doc. 97-2 at 15.) Lamonte checked "no" in response. The charge was dismissed and Lamonte did not remember ever entering a plea in connection with the arrest. (Lamonte Dep. p. 78:5-7; 79:4-18.) After he had been terminated and well after this lawsuit had been filed, the City obtained a document indicating that Plaintiff had pled "not guilty" at some point before his charge was dismissed. (Accusation Paperwork, Doc. 82-4.) As Plaintiff points out, noting in the record suggests this document was known to Defendant at the time of Plaintiff's termination.

84-11, Email from Coney).[8] As a result, at least some of the councilmembers were unaware that Plaintiff's charge had been dismissed. (Byrd Dep. p. 51:9-13) (testifying that "I don't know what happened in the arrest . . . from what I understand, maybe the records w[ere] sealed and you can't find it out" Q: "Is that what you were told?" A: "Yes."); (Brown Dep. p. 47:15-22) ("It never went to trial, so I don't know if he pled guilty or not guilty."). Other testimony further supports that the councilmembers conducted no investigation and instead relied entirely on information given to them in the unrecorded executive session. (*See e.g.*, Mitchell Dep., 44:7- 45:13) ("I was following the direction of the city manager because I guess I was tired that day. . . . The only reason why I [was] involved in termination was because of the recommendation.").

Ultimately, the councilmembers provide overlapping and, in some cases, different reasons for voting to fire Plaintiff. The below chart reflects each member's stated rationale:

Councilmember	Cited reason
Bodie	Bodie testified that she voted to terminate Lamonte's employment "because he had lied on the application." (Bodie Dep., Doc. 85-3 p. 46:12-23.)
Brown	Brown explained he voted to terminate Lamonte's employment because the rumors against Lamonte had done significant harm to his reputation. (Brown Dep., Doc. 85-6 p. 35:11-19.)
Byrd	"Because of his credit records and the not telling the truth on the application, and I didn't feel like we needed him anyways." (Deposition of Henry Byrd, Doc. 85-4 p. 49:20-22.)

[8] Mayor Hutchison testified that he did not know whether the charges against Plaintiff were dismissed. (Hutchison Dep. p. 109:12-22.) Again here, Mayor Hutchison's testimony contradicts concrete documentary record evidence. (Doc. 84-11.)

Mitchell	Mitchell explained that he voted to fire Plaintiff because "I was following the direction of the City Manager." (Deposition of Erroll Mitchell, Doc. 85-2 p. 45:7-8).
Tarpley	"I voted to terminate Plaintiff Danny Lamonte based on the reasons Coney presented in Executive Session on September 11, 2018 including Plaintiff's arrest that was not disclosed in his employment application and the damage to Plaintiff's reputation as a result." (Declaration of Ann Tarpley, Doc. 82-2 ¶ 11.)
Turner	"I didn't base my decision based on a mugshot. My decision[s] were based on the financial issues that he was having and had in the past." (Excerpts of Deposition of Willie Turner, Doc. 85-8 p. 29:21-25.)

It is not disputed that City Manager Coney was the individual who officially recommended that Plaintiff be terminated. However, Plaintiff relies on record evidence that Coney was influenced by Mayor Hutchison in making his recommendation. In particular, Councilman Brown testified that, after Lamonte's termination, City Manager Coney told him (Brown) that the Mayor wanted to "get rid of" Plaintiff because Plaintiff refused to do something the Mayor wanted. Specifically, Councilman Brown stated:

> In speaking with Mr. Coney –it was after the fact—he mentioned to me that *Mr. Lamonte had uncovered some discrepancy with one of the—I think it's one of the two accounts that the mayor had and that ultimately led up to the mayor wanting to get rid of him*. He did mention that he learned that *Mr. Lamonte had met with the mayor, and he said that the mayor wanted him to do something*. I don't recall if that's what you're talking about specifically or not, *but Mr. Lamonte told him he couldn't do that*.

(Brown Dep. p. 38:11-21) (emphasis added.)[9] Relatedly, Plaintiff testified that City Manager Coney told him (Plaintiff) that Mayor Hutchison passed along information that "forced his hand" to recommend Plaintiff's dismissal. (Lamonte Dep. pp. 172:21-173:8; 174:9-11) (also noting that Coney told Plaintiff he felt pressured to get rid of him by the Mayor). Specifically, Plaintiff testified that Coney told him (Plaintiff) that Mayor Hutchison told Coney that he (the Mayor) had spoken with Wilton Deloach (acting city manager of Waycross) and that Deloach had reported a lot of negative information about Plaintiff. (*Id.* p. 174:9-175:10.)[10] But Deloach testified that he did not say anything negative about Plaintiff's work performance, honesty, or integrity. (Deloach Dep. Excerpts, Doc. 98-11 p. 28:2-6.)

With this full understanding of the facts, viewed in the light most favorable to Lamonte, it is plain that a reasonable juror could find that Plaintiff has established *prima facie* evidence of causation between his protected objection and subsequent termination. In so finding, the Court is mindful that, under the Georgia Whistleblower Act, "the plaintiff need only establish that the protected activity and adverse action *were not completely unrelated*." *Batiste*, 861 S.E.2d at 221 (emphasis added).

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[9] Plaintiff correctly points out that this statement is not hearsay because it is a party admission under Federal Rule of Evidence 801(d)(2)(D) (explaining that a statement is not hearsay if it is an opposing party statement made by the opposing party's employee or officer on a matter within the scope of that employment relationship).

[10] This statement also is not hearsay (or "triple hearsay") as indicated in the R&R. Both Coney's and Mayor Hutchison's statements are party admissions under Rule 801(d)(2)(D), as indicated above. And Deloach's statement is not presented for the truth of the matter asserted but instead is brought to impeach Mayor Hutchison's testimony that he did not report to Coney any negative information from Deloach. (Hutchison Dep. p. 105:6-9). A statement is not hearsay where it is offered to impeach rather than prove the truth of the matter asserted. Rule 801(c)(2).

Here, a reasonable jury could find that the Mayor's retaliatory conduct influenced both the City Manager's initial recommendation and the councilmembers' ultimate votes. As to City Manager Coney's recommendation, a jury could credit Plaintiff's testimony that Coney was influenced by Mayor Hutchison's misrepresentations about his conversation with Deloach. A jury could also credit Councilman Brown's testimony explaining what Coney saw as the reasons Mayor Hutchison wanted to "get rid of" Plaintiff. In addition, a reasonable jury could find that the councilmembers' ultimate votes were influenced by the Mayor's activities and public removal of Plaintiff from work during work hours under police escort. At least two of the councilmembers asserted that they voted to fire Plaintiff because his reputation was so tarnished it would be difficult for him to do his job. But Plaintiff's reputation was, viewing the evidence in the light most favorable to Plaintiff, specifically damaged by the Mayor's decision — contrary to the City Charter, as described below — to have him marched out of the building and placed on administrative leave.

In addition, at least two councilmembers testified that they voted to remove Lamonte because of his alleged credit issues. The record is unclear as to who brought up the credit issues in executive session but there is evidence that Mayor Hutchison specifically sought Plaintiff's Accurint record (which included the credit issues) intending to use this *in executive session* and *intentionally kept it secret from City Manager Coney*. On top of this, the Court does not view the sudden, timely introduction of Plaintiff's mugshot — hours after Plaintiff made his alleged

protected objection to Mayor Hutchison's request — as a wholly unrelated and intervening event, as characterized in the R&R. (R&R at 41-42.) The City of Hampton is small—with fewer than 8,000 residents.[11] Considering the close-knit nature of a small town like Hampton, the *deus ex machina* timing of the discovery of Plaintiff's mugshot invites suspicion.[12]

Taken together, all of these facts are "evidence linking" Lamont's protected activity "to the adverse employment action taken against" him. *Forrester*, 708 S.E.2d at 668. This finding of causation is not precluded because most of the councilmembers were not aware of Plaintiff's financial findings or protected expression of objection to modifying the City and Mayor's financial records. The Court notes that, Councilman Turner, at least, did know that Plaintiff had been reviewing the City's finances and had found "problems with the mayor's budget" and expenditures in that budget. (Turner Dep. p. 22:22-23:6.) But regardless, Plaintiff can rely on a cat's paw theory to show causation.

Recently, in *Ziyadat v. Diamondrock Hospitality Co.*, the Eleventh Circuit explained that a "cat's paw theory" is simply a theory that a non-decisionmaker's

[11] The Court takes judicial notice of the population of the City.

[12] The Court notes that the motivations of Councilwoman Bodie's church pastor, Craig McAdams, in apparently randomly searching for Plaintiff's mugshot were not fleshed out in the record. Councilwoman Bodie attends Hampton First Baptist Church. (Bodie Dep. p. 11:25-12:2.) It is established law that a court may take judicial notice of government websites. *See* Fed. R. Evid. 201(b)(2); *Coastal Wellness Centers, inc. v. Progressive American Insurance Co.*, 309 F. Supp. 3d 1216 n. 4 (S.D. Fla. 2018); *Setai Hotel Acquisition, LLC v. Miami Beach Luxury Rentals, Inc.*, 2017 WL 3503371, at *7 (S.D. Fla. Aug. 15, 2017) (citing *Gent v. CUNA Mutual Ins. Society*, 611 F.3d 79, 84 n.5 (1st Cir. 2010); *Denius v. Dunlap*, 330 F.3d 919, 927 (7th Cir. 2003)). The government website for the City of Hampton indicates that Mayor Hutchison "is an active member of Hampton First Baptist Church and serves in various areas of the church work." This information at least demonstrates the small-town connections in the Hampton community.

animus can be imputed to a decisionmaker. 3 F.4th 1291, 1298 (11th Cir. 2021). The *Ziyadat* Court indicated that this theory can be applied in the context of various statutes, and there applied the concept to a § 1981 race discrimination claim. *Id.* When applying the cat's paw theory to different statutes, the *Ziyadat* Court instructed that courts should "merely apply the operative causation standard—whatever it may be—to the actions of the lower-level employee." *Id.* (explaining that cat's paw theory could apply to § 1981, applying the statute's but-for causation standard). Here, as repeated, the causation standard is less stringent than but-for causation as all that is required is that plaintiff "prove that the protected activity and the negative employment action *are not completely unrelated*." *Baptiste*, 861 S.E.2d at 219 (emphasis added).

For the reasons stated above, Plaintiff has proffered evidence to support that his protected opposition conduct was "not completely unrelated" to the councilmembers' decision to fire him. Specifically, a jury could find that Mayor Hutchison influenced the City Manager Coney's recommendation; injected negative information about Plaintiff (for example about Plaintiff's credit history) into the decisionmaking process; failed to provide known exonerating information about the dismissal; and took actions to cause Plaintiff reputational harm, one of the stated bases for termination. Further, there is no evidence that the councilmembers did any independent investigation of their own, instead accepting everything that they were told. Lamonte therefore sufficiently establishes a *prima facie* case. Of course, a jury could also find to the contrary that the Mayor and City

Council acted solely based on legitimate grounds that were not tainted by retaliation for Plaintiff's protected conduct.

iii. Pretext[13]

Evidence used to establish a *prima facie* case may also be used to support pretext. *Combs v. Plantation Patterns*, 106 F.3d 1519, 1528 (11th Cir. 1997). While a nondiscriminatory reason by the defendant eliminates the "legally mandatory inference of discrimination" arising from the plaintiff's initial evidence, "this evidence and inferences properly drawn therefrom may be considered by the trier of fact on the issue of whether the defendant's explanation is pretextual." *Texas Dept' of Community Affairs v. Burdine*, 450 U.S. 248, 255 & n. 10 (1981) ("Indeed, there may be some cases where the plaintiff's initial evidence, combined with effective cross-examination of the defendant, will suffice to discredit the defendant's explanation.").

Here, much of the evidence discussed above also supports pretext. First, there is the temporal proximity between Plaintiff's protected objection and his suspension (one day) and then his termination (five days). For the reasons stated already, the Court finds that the happenstance discovery of Plaintiff's mugshot is

[13] Plaintiff argues that his cited pretextual reasons establish a convincing mosaic of circumstantial evidence to create a triable issue concerning the City's retaliatory intent. (Pl. Obj. at 7-8.) The City argues that Plaintiff cannot rely on the "convincing mosaic" analysis to support a Georgia Whistleblower Act claim. (Reply to Obj. at 22-23.) Plaintiff did not frame his GWA argument under the "convincing mosaic" analysis before the Magistrate Judge. The Parties have not briefed the issue of whether the mosaic analysis can or should be applied in the context of the GWA. Further, the Court has found no authority where Georgia courts have approached a Whistleblower Act claim through the lens of the convincing mosaic analysis. Given these realities, the Court declines to apply the analysis here, and instead assesses Plaintiff's claim through the *McDonnell-Douglas* burden-shifting framework.

insufficient to wipe away the inference generally allowed by such a short timespan between protected conduct and adverse action. Accordingly, this evidence of close temporal proximity — no more than five days, "under the broadest reading of the facts — is evidence of pretext, though probably insufficient to establish pretext by itself." *Hurlbert v. St. Mary's Health Care System, Inc.*, 439 F.3d 1286, 1298 (11th Cir. 2006). Lamonte's "evidence of temporal proximity, however, does not stand alone." *Id.*

An employer's deviation from its own standard procedures may also serve as evidence of pretext. *Id.* at 1299; *see also, Morrison v. Booth*, 763 F.2d 1366, 1374 (11th Cir. 1985) ("Departures from normal procedures may be suggestive of discrimination."). Here, the record is rife with instances of the City, and the Mayor in particular, not following normal procedures.

Under the City Charter, it is the city manager, not the mayor, that has authority to supervise and appoint city employees. (City Charter, Doc. 82-3, § 3.10(d)-(e) at 17) (noting that each director of a department shall be subject to the direction and supervision of the city manager, and that such a director "shall be nominated by the city manager with confirmation of appointment by the city council"). The duties of the city manager include to

> (1) supervise any department directors;
> (2) "recommend to the mayor and council for appointment or removal all city department heads . . .";
> (3) "[a]ct as the appointing and removing authority for all other city employees . . .";
> (4) "[i]nvestigate the affairs of the city or any department or division thereof;"

> (5) "investigate all complaints in relation to matter concerning the administration of the government of the city . . . "; and
> (6) act "as the liaison between the mayor/city council and the public by responding to inquiries and resolving conflicts."

(*id.* § 2-120(d)(2)-(16) at 43-44.) The City Charter also specifically identifies the powers and duties of the mayor, who is the "head of the city for the purpose of service of process and for ceremonial purposes and [is] the official spokesperson for the city and the chief advocate of policy." (City Charter, § 2.32(2) at 16.) In contrast to the duties of the city manager, the mayor's duties do not include the hiring and firing of department heads or other employees. As described by Mayor Hutchison, the role of the mayor is more of a "baby-kisser" as opposed to a head of city governance and personnel matters. (Hutchison Dep. p. 36:16-18; *see also*, Brown Dep. p. 10:18-22; 12:1-6) (noting that the mayor is a "figurehead" and that the city manager "pretty much runs the city").

Despite this accepted understanding of the respective roles of the city manager and the mayor, upon learning Lamonte's mugshot, the Mayor (1) called the Police Chief to his house (the only time this was ever done); (2) decided to place Lamonte on administrative leave without first conferring with City Manager Coney[14]; (3) conducted his own investigation by calling the City of Waycross; and (4) directed the Police Chief to deliver Lamonte's Accurint report to his wife at his home. According to councilmembers, this was not the way the situation should have been handled (Mitchell Dep. pp. 38:25; 42:23-43:2) (Q: "And it was your

[14] As noted above, the Mayor claimed that the City Attorney directed him to place Plaintiff on administrative leave but the City Attorney testified that she did no such thing.

understanding that [the Mayor] wasn't involved?" A: "Yes. He cannot be involved. Only because day-to-day activit[ies] go by Charles Coney" and also noting that requesting Police Chief to leave Plaintiff's Accurint report with his wife was "not the normal protocol" and "not something I would do" because "I follow policy"); (Brown Dep. pp. 33:19-34:11) (testifying that Mayor's request for Chief Austin to deliver Plaintiff's Accurint report to his wife was "absolutely not proper" because "the mayor nor the council should be directly involved in day-to-day activities. This is the responsibility of the city manager").

The Police Chief, who was a former city manager for the City, also testified that the general practice was to leave to the department head any consideration of whether an applicant's criminal history disqualified that applicant from employment. (Austin Dep. p. 20:10-12; 21:2-5; 22:16-18) (also agreeing that a dismissed charge would not be held against anyone, and noting that, in the police department, an individual can be hired even if they have a criminal arrest).

The Court also notes that the City deviated from procedures required by law in not retaining any record of the minutes of the executive session. *See* O.C.G.A., § 50-14-1(e)(2)(C) ("Minutes of executive sessions shall also be recorded but shall not be open to the public. Such minutes shall specify each issue discussed in executive session by the agency or committee. . . . Such minutes shall be kept and preserved for in camera inspection by an appropriate court should a dispute arise as to the propriety of any executive session."). As noted, without the minutes from

the executive session, there are disputed facts about what information was presented to the councilmembers and who presented it.

Under the circumstances, a reasonable jury could find that the Mayor's and the City's deviations from regular procedures support pretext, specifically with respect to (1) the Mayor placing Lamonte on administrative leave without authority and without consulting the City Manager or councilmembers; (2) the Mayor conducting a separate investigation into Plaintiff; (3) the Mayor directing the Police Chief to deliver private investigative materials to his wife at his home; (4) varying from the standard practice of allowing a direct supervisor to make a determination as to whether criminal history is disqualifying; and (5) the failure to record and retain minutes of the executive session.

There is further record support for pretext in the conflicting and inconsistent reasons for both the City Manager's recommended basis for dismissal and the councilmembers' votes for dismissal. The councilmembers offer varying testimony about why Coney recommended dismissal. Some of the testimony is in direct conflict, for example, with Councilman Brown claiming that Coney did not recommend dismissal for the reason that Plaintiff "lied on his application" whereas Councilwoman Bodie claims that was Coney's stated basis for his recommendation. Undeniably relevant is the fact that City Manager Coney knew of the criminal charge at issue from the time of Plaintiff's hire—because Plaintiff had disclosed it to him in detail. (Lamonte Dep. p. 83:7-10; Brown Dep. p. 31:1:8.)

The fact that Plaintiff's charge was previously not a problem diminishes its legitimacy as a basis for Coney to later recommend Plaintiff's dismissal.

In addition, according to Councilman Brown, Coney later told him that Plaintiff had uncovered discrepancies with one of the Mayor's accounts and that the Mayor wanted to "get rid of" Plaintiff because Plaintiff refused to do something the Mayor wanted. (Brown Dep. p. 38:11-21.) This post-termination admission is plainly inconsistent with the rationales upon which the City relies. Further, the councilmembers themselves offer differing rationales for voting to terminate Plaintiff's employment. And as detailed above, there are fact questions about the extent to which some or all of these rationales were infected with retaliatory animus. Evidence that the City's "explanation is unworthy of credence" would allow a jury to "reasonably infer that [the City] is 'dissembling to cover up a discriminatory purpose.'" *Cleveland v. Home Shopping Network, Inc.*, 369 F.3d 1189, 1194-95 (11th Cir. 2004) (noting that shifting reasons allowed a jury to find the employer's explanation unworthy of credence, and consequently to infer the real reason was" discrimination).

In sum, the record contains conflicting testimony, suspect timing, violations of standard procedures, and shifting/inconsistent reasons, all of which support a finding of pretext here. Plaintiff has therefore established jury questions on the issues of whether he engaged in protected activity, whether the Mayor's retaliatory animus had a causal effect on his termination, and whether the City's stated

rationales are pretextual. As a result, Plaintiff's Georgia Whistleblower Act claim survives Defendant's summary judgment motion.[15]

IV. Conclusion

For the reasons above, the Court **ADOPTS IN PART** the Report and Recommendation [Doc. 106]. Specifically, the Court **ADOPTS** the findings and recommendations as to Plaintiff's Title VII and breach of contract claims. The Court **DECLINES TO ADOPT** the R&R's findings with respect to Plaintiff's Georgia Whistleblower Act claim and the dependent attorney's fees and punitive damages claims.

Accordingly, Defendant's Motion for Summary Judgment [Doc. 82] is **GRANTED IN PART AND DENIED IN PART**. Summary judgment is **GRANTED** to Defendant on Count I (race discrimination under Title VII) and Count III (breach of contract). Summary judgment is **DENIED** as to Count II (retaliation under the Georgia Whistleblower Act), Count IV (attorney's fees), and Count V (punitive damages).

The Court **ORDERS** the parties to engage in mediation to be conducted by a magistrate judge of this Court. In engaging in mediation, the Court advises the Parties to look seriously at the strengths and weaknesses of their case in the context of a potential trial, and frankly assess the difficulties of presenting and defending their sides. It is in the interest of all Parties to mediate in good faith.

[15] Because the GWA claim survives so too do the dependent claims for attorney's fees and punitive damages.

The Clerk is **DIRECTED** to refer this action to the next available magistrate judge (other than Judge Salinas) for the purpose of conducting the mediation. The mediation shall be concluded within 45 days of the date of this order unless otherwise extended by the Magistrate Judge. If the case is not settled at the mediation, the parties are **DIRECTED** to file a status report with the Court within 5 days of the conclusion of the mediation and file a proposed consolidated pretrial order within twenty 20 days of the conclusion of the mediation.

IT IS SO ORDERED this 30th day of September 2021.

Honorable Amy Totenberg
United States District Judge