IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

TERRY RIGGINS,

Plaintiff,

vs.

CITY OF ATLANTA; KASIM REED, in his official capacity as Mayor of the City of Atlanta; MICHAEL GEISLER, in his official capacity as former Chief Operation Officer of the City of Atlanta; DANIEL L. GORDON, in his official capacity as Chief Operating Officer of the City of Atlanta; KRISTIN CANAVAN WILSON, in her official capacity as Deputy Chief Operating Officer and Interim Chief Operating Officer of the City of Atlanta; CITY OF ATLANTA DEPARTMENT OF WATERSHED MANAGEMENT; and JO ANN MACRINA, in her official capacity as Commissioner of City of Atlanta Department of Watershed Management,

Defendants.

CIVIL ACTION FILE NO. 2015CV268119

HON. KIMBERLY M. ESMOND ADAMS

FINAL ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

The above-styled case came before the Court on Defendants' Motion to Dismiss wherein Defendants argued that Plaintiff failed to state a claim upon which relief could be granted because she failed to comply with the ante litem notice requirement of O.C.G.A. § 36-33-5. Upon consideration of the complaint, amended complaint, and

applicable authority and for the reasons discussed below, Defendants' Motion to Dismiss is hereby **GRANTED**. As a result, Plaintiff's complaint and amended complaint are hereby **DISMISSED WITH PREJUDICE** in their entirety.

STATEMENT OF FACTS

Construing the complaint and amended complaint in a light most favorable to Plaintiff, Plaintiff alleged that she had been employed in various positions within Defendant City of Atlanta Department of Watershed Management ("Department") since 1992. (Am. Compl. ¶ 12.) Prior to the termination of her employment, Plaintiff held Wastewater Laboratory Analyst and Wastewater Operator Class 3 licenses and had an exemplary record of employment without having any formal disciplinary action taken against her. (Id. ¶¶ 13-14.) At a City Council meeting on March 17, 2014, Plaintiff made statements regarding Defendant Department's practices of sewer employees using the same gloves, uniforms, tools and machinery for their work on the clean water system that had been used during their work on the waste water system and that the waste water contained human waste, hospital waste, blood borne pathogens, and AIDS. (Id. ¶¶ 36-42.) During an investigatory interview on June 13, 2014, Plaintiff spoke to an attorney hired by Defendant City of Atlanta ("City") to conduct an investigation into Defendant Department. (Id. ¶ 47.) Plaintiff explained her assertion that blood borne pathogens were present in the water system, and if sewer workers did into change their uniforms or use different tools and equipment while working on the clean water system, the clean water system could become contaminated. (Id. ¶¶ 48-49.) Defendant Department failed to act

or to respond to these concerns. (Id. ¶ 51.)

Plaintiff received a letter dated August 15, 2014 informing her that she had inexplicably been placed on administrative leave, effective immediately, pending the conclusion of an investigation. (Id. ¶ 15.) Plaintiff also received a Notice of Proposed Adverse Action that Defendant City proposed termination of her employment for misconduct for making false statements concerning the safety of the City's water supply in the course of her employment. (Id. ¶ 16; Compl. Ex. A.) On November 3, 2014, Defendant City issued a Notice of Final Adverse Action stating that her employment would be terminated effective November 11, 2014. (Am. Compl. ¶ 26; Compl. Ex. B.)

Plaintiff filed her original complaint on November 12, 2015 against Defendants under the Georgia Whistleblower Protection Act ("GWA"), O.C.G.A. § 45-1-4, for retaliation for making protected disclosures about Defendants' unsanitary, potentially hazardous, and possibly illegal practices. (Am. Compl. ¶¶ 1-2, 9, 61, 65.) Plaintiff seeks, *inter alia*, economic and non-economic damages for lost wages, lost benefits, tarnishment of reputation, and emotional distress and prays for "[c]ompensatory damages in an amount of $3,000,000.00 for the diminished future earning capacity, mental anguish, humiliation, pain and suffering, and such other damages as resulted from the Defendants' improper conduct." (Am. Compl.)

CONCLUSIONS OF LAW

Defendants filed their Motion to Dismiss, pursuant to O.C.G.A. § 9-11-12(b)(6), asserting that Plaintiff failed to state a claim upon which relief could be granted because

she did not provide the requisite ante litem notice. On a motion to dismiss,

> [t]he standard used to evaluate the grant of a motion to dismiss when the sufficiency of the complaint is questioned is whether the allegations of the complaint, when construed in the light most favorable to the plaintiff with all doubts resolved in the plaintiff's favor, disclose with certainty that the plaintiff would not be entitled to relief under any state of provable facts.

Cooper v. Unified Gov't, 275 Ga. 433, 434 (2002). See O.C.G.A. § 9-11-12(b)(6). "A motion to dismiss may be granted where a complaint lacks any legal basis for recovery." Seay v. Roberts, 275 Ga. App. 295, 296 (2005). Under Georgia law, the ante litem notice requirements for claims against municipalities are, in pertinent part, as follows:

> (a) No person, firm, or corporation having a claim for money damages against any municipal corporation on account of injuries to person or property shall bring any action against the municipal corporation for such injuries, without first giving notice as provided in this Code section.
>
> (b) Within six months of the happening of the event upon which a claim against a municipal corporation is predicated, the person, firm, or corporation having the claim shall present the claim in writing to the governing authority of the municipal corporation for adjustment, stating the time, place, and extent of the injury, as nearly as practicable, and the negligence which caused the injury. No action shall be entertained by the courts against the municipal corporation until the cause of action therein has first been presented to the governing authority for adjustment. . . .
>
> (e) The description of the extent of the injury required in subsection (b) of this Code section shall include the specific amount of monetary damages being sought from the municipal corporation. The amount of monetary damages set forth in such claim shall constitute an offer of compromise. In the event such claim is not settled by the municipal corporation and the claimant litigates such claim, the amount of monetary damage set forth in such claim shall not be binding on the claimant.
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> (f) A claim submitted under this Code section shall be served upon the mayor or the chairperson of the city council or city commission, as the case may be, by delivering the claim to such official

personally or by certified mail or statutory overnight delivery.

O.C.G.A. § 36-33-5 (2015). "Satisfaction of this notice requirement is a condition precedent to bringing suit against a municipal corporation for damages resulting from injuries to person or property." Simmons v. Mayor & Alderman of City of Savannah, 303 Ga. App. 452, 454 (2010). Moreover, the purpose of the ante litem notice is "to provide the municipality with an opportunity to investigate before litigation is commenced so as to determine whether suit can be avoided." Id.

In this case, Plaintiff's complaint or amended complaint does not show that she gave Defendants an ante litem notice. Instead, Plaintiff argues that a notice is not required for claims under the GWA and cites Tuttle v. Bd. of Regents of Univ. Sys. of Georgia, 326 Ga. App. 350, 355 (2014), in support of her position. In Tuttle, the plaintiff brought a whistleblower suit against the Board of Regents and sent the ante litem notice required by the Georgia Tort Claims Act ("GTCA"). Id. at 350. The Tuttle court found that the plaintiff's claim was brought under the GWA, and the GWA itself did not contain an ante litem notice requirement. Id. at 355. However, this Court distinguishes Tuttle on the basis that it did not involve an action against a municipal corporation as the case at bar does. Although the GWA does not contain an ante litem notice requirement, O.C.G.A. § 36-33-5 does. Furthermore, the Court finds that O.C.G.A. § 36-33-5 is applicable here because Plaintiff brought a claim for money damages of $3,000,000 against a municipal corporation, Defendant City, for injuries to her person including tarnishment of her reputation, emotional distress, mental anguish, humiliation, and pain and suffering. As such, Plaintiff was required to provide an ante litem notice and present

her claim in writing to the governing authority of Defendant City for adjustment, stating the time, place, and extent of the injury, as nearly as practicable, and the negligence which caused the injury within six months of the event upon which her claim is predicated. The Court finds it cannot entertain Plaintiff's action because she failed to meet the condition precedent to bringing suit against Defendant City for damages, and because the six-month deadline for presenting the ante litem notice has passed, the Court finds Plaintiff's claims against Defendant City and its Department are barred. Moreover, inasmuch as the individual defendants were sued only in their official capacities, these claims are all in reality suits against the City of Atlanta and are likewise barred. See Cameron v. Lang, 274 Ga. 122, 126 (2001); Layer v. Barrow Cty., 297 Ga. 871 (2015). Therefore, Defendants' Motion to Dismiss is **GRANTED**.

SO ORDERED this 6th day of April, 2016.

Kimberly M. Esmond Adams

HONORABLE KIMBERLY M. ESMOND ADAMS
JUDGE, SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT