

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Fardin Oliaei,	)	
	)	Court File No. _____
Plaintiff,	)	
	)	
vs.	)	
	)	<b>COMPLAINT</b>
State of Minnesota,	)	
Minnesota Pollution Control Agency,	)	<b>JURY TRIAL DEMANDED</b>
Sheryl Corrigan,	)	
Mike Sandusky,	)	
Marvin Hora, and	)	
Paul Hoff,	)	
	)	
Defendants.	)	
_____	)	

Plaintiff Fardin Oliaei, for her complaint against the above-named Defendants, states and alleges as follows:

**JURISDICTION**

1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1331(federal question) and 1343 (civil rights); Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e (hereinafter “Title VII”); First and Fourteenth Amendments to the U.S. Constitution; and 42 U.S.C. § 1983. This Court has supplemental jurisdiction of Plaintiff’s claims brought under state law pursuant to 28 U.S.C. § 1367.

**PARTIES**

2. Plaintiff is a resident of Ramsey County, Minnesota. At all times material, Plaintiff has been an employee of Defendant State of Minnesota, Pollution Control Agency.

3. Defendant Minnesota Pollution Control Agency (MPCA) is a department organized within the governmental organization of the State of Minnesota; Defendant

State of Minnesota is vested with the control and operation of said Pollution Control Agency.

4. Defendant Sheryl Corrigan is the Commissioner of the Minnesota Pollution Control Agency. Defendant Mike Sandusky is MPCA Division Director of Environmental Analysis and Outcomes. Based on information and belief, Corrigan and Sandusky were the highest ranking officials and final decision makers for matters related to this cause of action, and at all times acted within the scope of their employment.

5. Defendant Marvin Hora is a MPCA Water Assessment and Environmental Information Section Manager and Defendant Paul Hoff is a MPCA Environmental Information and Reporting Supervisor. Hora and Hoff direct, manage, and/or supervise the work and communications of the Plaintiff.

#### **ADMINISTRATIVE REMEDIES**

6. On March 8, 2004, Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”) charging Defendant with unlawful discrimination on the basis of national origin and with unlawful retaliation for previously filing charges of discrimination against Defendant, in violation of Title VII and the MHRA. On May 23, 2005, Plaintiff received a Right-to-Sue Notice from the EEOC with regard to her Charge No. 265-2004-00632.

#### **FACTUAL BACKGROUND**

7. Plaintiff is a female and a native of Iran. She was raised in Iran and came to the United States in 1977. She speaks English as a second language with an accent. She received her PhD. in Environmental Sciences from Western Michigan University in 1986 and is well respected in her field.

8. The MPCA is charged with protection of the environment, which includes protection of public health through administration of state, and Federal laws related to environmental protection, including laws related to contamination of groundwater. The MPCA administers Federal laws for or in collaboration with the Environmental Protection Agency (EPA) including but not limited to the Resource, Conservation and Recovery Act (RCRA), 42 U.S.C. § 6971; the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9610; the Clean Water Act (CWA), 33 U.S.C. § 1367; the Clean Air Act, 42 U.S.C. § 7401; and the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300j-9.

9. Plaintiff was hired by the MPCA on October 25, 1989 as a Research Scientist 2. Since December 2000, she has held the classification of Research Scientist 3 and has been designated as the MPCA's Coordinator of Emerging Contaminants.

10. On or about May 18, 2000, Plaintiff filed a charge of discrimination against Defendant with the Equal Employment Opportunity Commission because she believed she was not being properly recognized for her work and qualifications by Defendant and was being denied opportunities for advancement and promotion due to her national origin. Specifically, Plaintiff claimed the Defendant discriminated against her by denying her the opportunity to advance from the position of Research Scientist 2 to the position of Research Scientist 3, despite the fact that she was performing the work of a Research Scientist 3.

11. On September 6, 2000, Plaintiff reached an agreement with the Defendant to resolve the EEOC charge. The Agreement provided, among other things, as follows:

5. This document constitutes a final and complete statement of the agreement between the parties.

6. The parties agree that the EEOC is authorized to investigate compliance with this agreement and that this agreement may be specifically enforced in court by the EEOC or the parties and may be used as evidence in a subsequent proceeding in which a breach of this agreement is alleged.

7. The Charging Party acknowledges that s/he has been advised to consult with an attorney and has been given a reasonable time to consider the agreement before signing. (ADEA CLAUSE)

8. As evidence of a good faith effort to resolve the above-referenced EEOC Charge, Respondent offers and Charging Party accepts the following proposal of settlement:

1. Charging Party will be permitted to telecommute two days per week for 6 months at which time the telecommuting process will be evaluated. Charging Party will be allowed to continue telecommuting after 6 months unless it has been shown to be unproductive and not working. At the request of either party, after the parties have first tried to communicate directly, Kimberly Peck, or another representative from the State Employee Assistance Program (EAP) who is acceptable to the Charging Party, shall be involved in the evaluation.

2. Charging Party's work shall be evaluated by a representative Minnesota Department of Employee Relations (DOER) to determine whether or not her position should be reclassified as Research Scientist 3, based on her Position Description dated July 14, 1998, and her Work Plan dated October 9, 1999, and any other information DOER deems relevant. Kimberly Peck of the EAP shall choose the DOER representative who will perform this evaluation. The parties will abide by the result of the DOER representative's evaluation.

3. Respondent shall provide positive references for the Charging Party when requested.

4. Respondent shall distribute an announcement to employees, after approval by Charging Party, regarding Charging Party's return to work and her job duties.

12. On December 18, 2000, the DOER representative issued a finding that Plaintiff should be classified as a Research Scientist 3 - as she had asserted in her EEOC charge and previously to her supervisors.

13. Since the settlement of the EEOC charge in September 2000, Plaintiff continues to be extremely committed to her work and has performed all of her assignments and responsibilities in a very professional and competent manner. Despite this fact, Plaintiff has been and continues to be treated in a harsh, negative, unfair and discriminatory manner by her supervisors with regard to the assignment of work and responsibilities among staff, recognition and credit for work performed, support for the work she performs, requests for approval of travel expenses for professional meetings, the creation of an updated position description, performance reviews and disciplinary actions.

14. Similarly situated employees who are not Iranian and who have not previously filed a charge of discrimination against the Agency have been treated more favorably, have not been disciplined, threatened or penalized and have been given support and opportunities that Plaintiff has been denied.

15. Sometime prior to 2001, the MPCA became aware of new emerging contaminants that have been manufactured by Minnesota Mining and Manufacturing (3M). These new chemical contaminants were perfluorochemical compounds (PFCs) that had been manufactured by 3M for approximately 50 years to make products that resist heat, oil, stains, grease and water.

16. In 2001, pursuant to her role as emerging contaminant coordinator at the MPCA, Plaintiff reviewed studies 3M had commissioned regarding these PFC compounds, including data on toxicity, bioaccumulation, environmental degradation, physical characteristics, and other studies including the carcinogenicity of PFC compounds. After reviewing this data, Plaintiff conducted a study examining the PFC

compounds (PFOS) in fish collected at Voyageurs National Park and found that PFCs were detected in half of the fish samples.

17. Based on her study in 2000-2002 finding the presence of PFCs in fish located in a remote area, in 2002 Plaintiff proposed to MPCA management for fiscal year 2003 that a more comprehensive study be conducted to evaluate the potential extent of PFC contamination resulting from 3M's manufacturing and disposal practices in Minnesota. Plaintiff's proposal was rejected

18. Subsequently, at a meeting to discuss her request to study the PFC contamination problem, Plaintiff's section manager, Marvin Hora, stated that if Plaintiff kept pushing the fluorochemical issue he would terminate the entire emerging contaminant program, stating, "I have the power and I will terminate the program and you are the only one in this program".

19. On another occasion in 2003, Hora told Plaintiff that the agency had lost its trust in her because she had betrayed the MPCA family and sought help outside the agency (her EEOC complaint in 2000).

20. In 2003, after Hora rejected Plaintiff's PFC study request, Plaintiff met with the MPCA Commissioner Sheryl Corrigan to ask that she consider and approve of Plaintiff's PFC study proposal. At that meeting, Commissioner Corrigan (a former manager of 3M) told Plaintiff that the MPCA was not a research institution and that if Plaintiff has a passion for this kind of work, she strongly suggested that Plaintiff look for another job.

21. In December 2003, Plaintiff received an unfavorable performance review from her supervisor, Doug Hall. Hall stated that the poor performance rating was due to

Plaintiff's persistence in pushing to study certain issues such as emerging contaminant problems, including the 3M PFC contamination problem. Hall further stated that Plaintiff pushing on these issues was inconsistent with the MPCA's priorities - even though such research is included in her position description.

22. In December 2003, Plaintiff spoke with MPCA Human Resources Director, Denise Legato, regarding her performance evaluation from Mr. Hall. Legato told Plaintiff that Hall was very unfair in his performance review and believed that Mr. Hall had no interest in listening to Plaintiff and that he had a different agenda. Ms. Legato stated that MPCA management was working to find a way to get rid of her, and that so far they could not find an excuse to fire her, so they keep trying to create a stressful environment for her to push her out the door. Ms. Legato also stated that if Plaintiff took external action (filing an EEOC charge) against the MPCA they (MPCA managers) would punish her for it.

23. In 2003, Mike Sandusky, the director of Plaintiff's division, told her that the managers and some of the staff had a negative perception of her due to her past efforts to pursue the EEOC charge against Defendant.

24. In 2003, Plaintiff was invited to present her work on emerging contaminants at an EPA meeting in Chicago. Defendant opted to send a less experienced American-born employee to Chicago instead of Plaintiff.

25. Since 2002, due to public requests, Plaintiff had been asked by the MPCA Public Information Officers to prepare fact sheets on PFCs. Several times Plaintiff spent 3-4 hours preparing such fact sheets and other related information, but it was never used or published. Later Plaintiff found out that Mike Sandusky and Marvin Hora had

told the Public Information Officers not to even think about publishing Plaintiff's statements in regard to these chemicals in any of the MPCA publications. In fact, on one occasion a Public Information Officer came to Plaintiff's office and, disappointedly, told her, "Fardin do not waste your time any more, we were ordered from above not to publish your information related to the PFCs."

26. In December 2004, Plaintiff was contacted by a reporter with Minnesota Public Radio (MPR) and asked to provide an interview in connection with a one-hour program that MPR was producing, featuring the 3M PFC contamination problem. The interviews Plaintiff gave in December 2004 and January 2005 were sanctioned by the MPCA, and in one instance an MPR interview with Plaintiff was overseen by Plaintiff's manager, Marvin Hora. During the interviews, Plaintiff gave straightforward and factual information regarding the PFC contamination problem. The program aired on February 22, 2005.

27. In February 2005, Plaintiff was contacted by the publisher of Town Life, a local magazine, and asked to give an interview about the MPCA's work on emerging contaminants in the environment and about herself as a resident of the community. After discussing the request with her supervisor, Plaintiff met with the publisher as a private citizen at her home on a Saturday and expressed her personal opinions regarding PFCs and the MPCA's policies concerning such contaminants.

28. On or about April 13, 2005, Plaintiff was issued a written reprimand from her supervisor stating that she had violated the MPCA media policy as a result of the interviews with MPR and Town Life Magazine.



29. Other MPCA employees similarly situated have not been not sanctioned for comparable communications with the media.

30. In the beginning of 2005, Plaintiff was contacted by a Minnesota State Representative, who requested information regarding Plaintiff's work concerning emerging contaminants and the 3M PFC contamination issue.

31. On Friday, April 22, 2005, Plaintiff attended a meeting with a group of Minnesota legislators concerning her work and research as emerging contaminants coordinator. During the meeting the legislators asked Plaintiff about her work and the importance of specific emerging contaminants Plaintiff was involved with, notably the 3M PFC contamination problem and polybrominated diphenyl ethers (PBDEs); and about the delays in performing work related to determining the extent of the 3M PFC contamination problem and how this may negatively affect public health. At the end of the meeting, the legislators asked Plaintiff to provide them with her proposed work plans for PFC and PBDE contaminants, and information on the PFC contamination problem.

32. Prior to the meeting on April 22, 2005, Plaintiff informed her supervisor, Paul Hoff, and her manager, Marvin Hora, of the meeting request. Hora then insisted on attending the meeting, even though he had not been asked to attend. Immediately after the meeting, Hora specifically instructed Plaintiff, despite their request, not to submit anything to the legislators or have any contact with them legislators on the issues.

33. On or about April 29, 2005, Defendant informed Plaintiff that she must give at least three weeks notice before giving any talk. Other MPCA employees have no such notice requirement.

34. On May 11, 2005, Plaintiff's supervisor encouraged her to get a job elsewhere if she wanted to be effective because, he claimed, she had created a stressful working environment.

35. On July 12, 2005, despite the clear terms of the written agreement reached between Plaintiff and the MPCA and despite the fact that there had been no complaints about the process in almost 5 years, Plaintiff was informed that her telecommuting privileges were revoked, effective July 20, 2005.

36. Based on information and belief, the actions directed against Plaintiff by her supervisor, Hoff, were directed and/or reviewed and approved by Defendants Corrigan, Sandusky and Hora.

### **COUNT I**

#### **DISCRIMINATION UNDER TITLE VII**

37. Plaintiff restates and realleges by reference the allegations contained in the preceding paragraphs 1-36.

38. The acts, omissions, and behavior of Defendant as set forth above constitute discrimination based on national origin, in violation of Title VII, 42 U.S.C. §2000e et seq.

39. As a result of Defendant's acts, Plaintiff has suffered and will continue to suffer humiliation, pain, anxiety, depression, anguish and harm to reputation and career.

### **COUNT II**

#### **DISCRIMINATION UNDER MHRA**

40. Plaintiff restates and realleges by reference the allegations contained in the preceding paragraphs 1-39.

41. The acts, omissions and behavior of Defendant as described above constitute discrimination based on national origin, in violation of the MHRA, Minn. Stat. § 363A.08 et seq.

42. As a result of Defendant's acts, Plaintiff has suffered and will continue to suffer humiliation, pain, anxiety, depression, anguish and harm to reputation and career.

**COUNT III**

**RETALIATION UNDER TITLE VII**

43. Plaintiff restates and realleges by reference the allegations contained in the preceding paragraphs 1-42.

44. The acts, omissions, and behavior of Defendant as set forth above constitute retaliation, in violation of Title VII, 42 U.S.C. §2000e et seq.

45. As a result of Defendant's acts, Plaintiff has suffered and will continue to suffer humiliation, pain, anxiety, depression, anguish and harm to reputation and career.

**COUNT IV**

**RETALIATION UNDER MHRA**

46. Plaintiff restates and realleges by reference the allegations contained in the preceding paragraphs 1-45.

47. The acts, omissions and behavior of Defendant as described above constitute retaliation, in violation of the MHRA, Minn. Stat. § 363A.08 et seq.

48. As a result of Defendant's acts, Plaintiff has suffered and will continue to suffer humiliation, pain, anxiety, depression, anguish and harm to reputation and career.

**COUNT V**

**VIOLATION OF MINNESOTA WHISTLEBLOWER ACT**

49. Plaintiff restates and realleges by reference the allegations contained in the preceding paragraphs 1-48.

50. By its acts, omissions and behavior as described above Defendant disciplined, threatened, discriminated against, and penalized Plaintiff with regard to the terms, conditions, location, and privileges of her employment because she, in good faith, reported a violation or suspected violation of federal and/or state laws to law to a governmental body and was requested by a public body or office to participate in an investigation, hearing, inquiry, in violation of the Minnesota Whistleblower Act, Minn. Stat. § 181.932.

51. As a result of Defendant's acts, Plaintiff has suffered and will continue to suffer humiliation, pain, anxiety, depression, anguish and harm to reputation and career.

**COUNT VI**

**U.S. CONSTITUTION**  
**FREEDOM OF SPEECH VIOLATIONS**

52. Plaintiff restates and realleges by reference the allegations contained in the preceding paragraphs 1-51.

53. Plaintiff engaged in an act of speech or expression touching on matters of public concern when she conducted a series of interviews with Minnesota Public Radio (MPR) in February 2005. Defendants Corrigan, Sandusky, Hora and Hoff deprived the Plaintiff of her right to free speech and/or expression under the First Amendment of the U.S. Constitution when a written reprimand was issued to Plaintiff in response to comments she made in the interviews.

54. Plaintiff engaged in an act of speech or expression touching on matters of public concern when she conducted an interview with *Town Life* magazine in 2005. Defendants Corrigan, Sandusky, Hora and Hoff deprived the Plaintiff of her right to free speech and/or expression under the First Amendment of the U.S. Constitution when a written reprimand was issued to Plaintiff in response to comments she made in the interviews

55. Plaintiff engaged in an act of speech or expression touching on matters of public concern when she attempted to publish fact sheets on PFCs for public consumption through Defendant MPCA's Public Information Office (PIO). Defendants Sandusky and Hora, and possibly other Defendants, deprived the Plaintiff of her right to free speech and/or expression under the First Amendment of the U.S. Constitution when they ordered the PIO to not publish any information submitted by the Plaintiff for public consumption.

56. Plaintiff engaged in an act of speech or expression touching on matters of public concern when she met with Minnesota state legislators in April 2005 at their behest to discuss the PFC contamination issue and the obstacles she has faced in attempting to pursue it. Defendant Hora, and possibly other Defendants, deprived the Plaintiff of her right to free speech and/or expression under the First Amendment of the U.S. Constitution when he insisted on accompanying Plaintiff to the meeting and when, after the meeting, he forbade Plaintiff from submitting the documents requested by the legislators or communicating directly with them.

57. The acts, omissions, and behavior of Defendants as described above constitute violations and continuing violation of Plaintiff's right to freedom of speech, in violation of the First Amendment to the U.S. Constitution.

58. As a result of Defendant's acts, Plaintiff has suffered and will continue to suffer humiliation, pain, anxiety, depression, anguish and harm to reputation and career.

## **COUNT VII**

### **MINNESOTA CONSTITUTION** **FREEDOM OF SPEECH VIOLATIONS**

59. Plaintiff restates and realleges by reference the allegations contained in the preceding paragraphs 1-58.

60. The acts, omissions, and behavior of Defendants as described above constitute violations and continuing violation of Plaintiff's right to freedom of speech, in violation of the Minnesota Constitution, Article I § 3.

61. As a result of Defendant's acts, Plaintiff has suffered and will continue to suffer humiliation, pain, anxiety, depression, anguish and harm to reputation and career.

## **COUNT VIII**

### **BREACH OF CONTRACT**

62. Plaintiff restates and realleges by reference the allegations contained in the preceding paragraphs 1-61.

63. The acts, omissions, and behavior of Defendants as described above constitute a breach of Plaintiff's 2000 settlement agreement with the MPCA.

64. As a result of Defendant's acts, Plaintiff has suffered and will continue to suffer irreparable harm.

**WHEREFORE**, Plaintiff requests judgment against Defendants as follows:

1. For an injunction enjoining Defendants from violating the provisions of Title VII and the MHRA with respect to national origin discrimination and retaliation;
2. For an injunction enjoining Defendants from further violating Plaintiff's Constitutional right to free speech;
3. For an injunction enjoining Defendants from further violating Plaintiff's contractual right to telecommute;
4. For compensatory damages for humiliation, pain, suffering, mental anguish and damage to her reputation and career;
5. For punitive damages;
6. For reasonable attorney's fees and costs of this action; and
7. For such further relief as this court deems just and equitable.

**JURY TRIAL DEMAND**

The Plaintiff requests a jury trial on all counts.

CHRASTIL and STEINBERG, P.L.L.P.

Dated: \_\_\_\_\_

By: \_\_\_\_\_

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