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CAUSE NO. 296-09499-2025

THE HON. VINCENT J. VENEGONI, JR., JUSTICE OF THE PEACE, PRECINCT 4, IN HIS OFFICIAL CAPACITY,	§	**IN THE DISTRICT COURT**
PLAINTIFF,	§	
v.	§	
COLLIN COUNTY COMMISSIONERS COURT; CHRIS HILL, COUNTY JUDGE; SUSAN FLETCHER, COMMISSIONER PCT. 1; CHERYL WILLIAMS, COMMISSIONER PCT. 2; DARREL HALE, COMMISSIONER PCT. 3; & DUNCAN WEBB, COMMISSIONER PCT. 4; IN THEIR OFFICIAL CAPACITIES,	§	**429TH JUDICIAL DISTRICT**
DEFENDANTS.	§	**COLLIN COUNTY, TEXAS**

DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S REQUEST FOR A TEMPORARY RESTRAINING ORDER

TO THE HONORABLE JOHN R. ROACH, JR.:

Defendants Collin County Commissioners Court; County Judge Chris Hill; Susan Fletcher, Commissioner Precinct 1; Cheryl Williams, Commissioner Precinct 2; Darrell Hale, Commissioner Precinct 3; and Duncan Webb, Commissioner Precinct 4 (collectively referred to as the "**County**")[1], hereby submit the following brief in opposition to the request of Plaintiff, the

[1] While the Collin County Commissioners Court ("**Commissioners Court**") is named as a defendant, it is not a jural entity subject to suit. Collin County is the proper party defendant in any effort to control the actions of the Commissioners Court. Additionally, the individual members of the Commissioners Court are sued in their official capacities only. A suit against a governmental official in an official capacity is effectively a suit against the governmental unit, except in those cases alleging the official has acted *ultra vires*. *Franka v. Velasquez*, 332 S.W.3d 367, 382 (Tex. 2011). Since the individual members of the Commissioners Court are sued only in their official capacities, and no *ultra vires* claims are asserted, the suit against them is simply another way of suing Collin

Honorable Vincent J. Venegoni, Jr. ("**Judge Venegoni**")[2] to enter a temporary restraining order ("**TRO**") in this matter, and respectfully shows this Court the following:

INTRODUCTION

Judge Venegoni challenges the legislative budgeting and staffing determinations of the Commissioners Court. As will be shown below, commissioners courts in Texas have the power of the purse strings and, in carrying out the legislative function of budget-making, commissioners courts have significant freedom of action. A district court does not have a right to second-guess the policy decisions of county commissioners except in very limited circumstances. Case law has established that the allocation of county funds is a discretionary act of the public officials who were elected to make such decisions, and that a district court's authority extends only to enjoin illegal expenditures and to situations where the commissioners abuse their discretion through arbitrary and capricious actions. A district court has no authority to substitute its judgment for that of these elected officials as to the particular expenditures that should be made.

In the case at bar, the decision to reclassify the Court Administrator position to a Clerk 1 position was not arbitrary and capricious. The decision was made to address serious human resources/culture/leadership issues going on in Justice of the Peace Precinct 4 ("**JP 4**"). Those issues include then Court Administrator Sandra Falcon ("**Falcon**") making inappropriate/false remarks about a County Constable to a subordinate via a text message. When the subordinate reported the text to the County's Human Resources Department ("**HR**"), HR investigated and

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County. Judge Venegoni should be required to replead and name Collin County as the sole defendant in this proceeding.

[2] Judge Venegoni purports to file suit in his official capacity as Justice of the Peace for Precinct 4. Such a suit, however, would be a suit on behalf of Collin County against Collin County. Accordingly, Judge Venegoni's suit must be treated as one asserted in his individual capacity and not his official capacity.

found the accusations to be unsupported. In response, Falcon and Judge Venegoni accused the subordinate of "falsifying records." HR felt like this charge was brought in retaliation against the subordinate.

The subordinate was accused of poor work product (although she was trained and supervised by Falcon). The subordinate was accused of falsifying records (although the Collin County Sheriff's Office determined the charge to be false). The subordinate was accused of being a troublemaker in JP 4 (although her evaluations up to that point showed she was performing adequately).

With this background, the Commissioners Court felt that Judge Venegoni was not taking appropriate action to discipline Falcon (who supervises and trains all the clerks) or to manage his office. As a result, the Commissioners Court reclassified Falcon from Court Administrator (which has supervisory responsibilities) to Clerk 1 (which does not).

Importantly, Falcon still works in JP 4 and she has not been terminated. Moreover, Judge Venegoni requested, and the Commissioners Court consented, to moving the whistleblowing subordinate's position to another département. There is no evidence before this Court that JP 4 cannot carry out that office's duties. JP 4 is sufficiently staffed and the office still has a Clerk 2 and seven Clerk 1 staffers, which is more staff that JP 1 and JP2. Furthermore, a TRO is used to maintain the status quo. The status quo since October 1st, when the current budget went into effect, is that the Court Administrator position has been demoted to Clerk 1. The County is asking to maintain the status quo.

II.

THE TRO REQUEST

Judge Venegoni, in his sole claim for relief in Plaintiff's Original Petition, Request for an Emergency Temporary Restraining Order, Temporary Injunction, and Request for Injunctive Relief ("**Petition**"), "seeks nonmonetary relief and back pay for his Administrator." *See* Petition, ¶ 2. The only cause of action asserted is an alleged violation of Texas Constitution Article II, Section 1 (addressing separation of powers). *See* Petition, ¶¶ 19-23.

No procedural vehicle for asserting such a claim, however, has been plead. While the assertion of rights under Article II, Section 1, may be brought by way of mandamus, or through the Uniform Declaratory Judgments Act, the County is aware of no case where a cause of action has been brought under Article II, Section 1 directly without an accompanying procedural process to assert such a claim. Accordingly, as a threshold matter, it is questionable whether the Petition even asserts a cause of action to support the request for a TRO.

Moreover, the Petition is unclear as to what is being requested to be enjoined through the issuance of a TRO. The application for a TRO must identify the relief sought. *Fairfield v. Stonehenge Ass'n*, 678 S.W.2d 608, 611 (Tex.App.-Houston [14th Dist.] 1984, no writ). The Petition requests "interim relief maintaining the status quo," but does not specify what relief is requested or what Judge Venegoni contends is the status quo. *See* Petition, ¶34. Accordingly, while it is difficult for the County to respond to the TRO request given the lack of specific conduct that Judge Venegoni seeks to enjoin, as will be shown below, however, this Court should deny the TRO request.

II.

JUDGE VENEGONI IS NOT ENTITLED TO THE EXTRAORDINARY RELIEF OF A TRO

Judge Venegoni does not qualify for a TRO in this matter because he cannot satisfy the elements of a TRO.

A. Obtaining a TRO.

Injunctive proceedings follow the "principles governing courts of equity" in Texas. Tex.Civ.Prac. & Rem. Code § 65.001. The same equity standards and pleading rules applicable to temporary injunctions also govern TRO proceedings. *See In re MetroPCS Commc'ns, Inc.*, 391 S.W.3d 329, 337 (Tex.App.-Dallas 2013) (verification requirement for injunctions under Tex. R. Civ. P. 682 also applies to TROs under Tex. R. Civ. P. 680).

In order to obtain a TRO, which is a form of emergency equitable relief, a plaintiff must establish by specific facts shown by affidavit or by verified petition that immediate and irreparable injury, loss, or damage will result to him. Tex. R. Civ. P. 680. The affidavit must be based on specific facts and may not be made on the basis of information and belief. *See Ex parte Rodriguez*, 568 S.W.2d 894, 897 (Tex.Civ.App.–Fort Worth 1978, orig. proceeding). A TRO serves to provide emergency relief and to preserve the status quo until a hearing may be had on a temporary injunction. *See Texas Aeronautics Comm'n v. Betts*, 469 S.W.2d 394, 398 (Tex. 1971); and *Ex parte Pierce*, 161 Tex. 524, 342 S.W.2d 424, 426 (1961), *cert. denied*, 366 U.S. 928 (1961). A TRO is always considered in connection with a request for temporary injunction. *Id.*

TRO applications must be verified on personal knowledge, *In re MetroPCS,* 391 S.W.3d at 337, and must contain a "plain and intelligible statement" of the grounds for the relief requested. Tex. R. Civ. P. 682. Specifically, the applicant must plead three specific elements:

"(1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable harm in the interim." *Butnaru v. Ford Motor* Co., 84 S.W.3d 198, 204 (Tex. 2002). A TRO cannot exceed the scope of the relief requested in the application. Gabe T. Vick, Temporary Restraining Orders and Temporary Injunctions, 64 *The Advoc.* 55 (2013).

B. Required Elements for a TRO.

The grant of a TRO is a grant of extraordinary relief, and can only be exercised in this instance if Judge Venegoni satisfies four prerequisites:

i) The existence of a wrongful act;

ii) The existence of imminent harm;

iii) The existence of irreparable injury; and

iv) The absence of an adequate remedy at law.

Green v. Unauthorized Practice of Law Committee, 883 S.W.2d 293, 296 (Tex.App.-Dallas 1994, no writ); *Morris v. Collins*, 881 S.W.2d 138, 140 (Tex.App.-Houston [1st Dist.] 1994, writ denied). *See, generally,* Tex. Civ. Prac. & Rem. Code, Chapter 65.

In other words, to obtain a TRO, Judge Venegoni must plead and prove: (1) a cause of action against the County; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Walling v. Metcalfe*, 863 S.W.2d 56, 57 (Tex. 1993). As will be discussed herein, Judge Venegoni cannot meet any of these elements.

C. A TRO Should Not Issue That Will Adversely Undermine the Public Interest.

In applying the legal prerequisites discussed above, courts have articulated other issues that must be considered in entertaining a request for a TRO. A paramount issue that this court must consider is whether the requested TRO relief, if granted, will be adverse to the public

interest. *See Chevron U.S.A. Inc. v. Stokes*, 666 S.W.2d 379, 382 (Tex.App.-Eastland 1984, writ dism'd); *Hardin v. Houston Chronicle Publishing Co.,* 572 F.2d 1106, 1107 (5th Cir. 1978); *Ward v. Resolution Trust Corp.*, 976 F.Supp. 256, 258 (S.D. Tex. 1992) (denying injunction that would undermine the public interest). As will be discussed herein, given the legislative discretion given the Commissioners Court in establishing a budget, the injunction presumably sought by Judge Venegoni - to require the Commissioners Court to convene and amend its previously adopted budget - would seriously undermine the public interest.

D. Judge Venegoni is Not Entitled to a TRO.

Applying the above-stated standards to the case at hand establishes that Judge Venegoni is not entitled to a TRO in this instance.

III.

THE COUNTY HAS NOT COMMITTED A WRONGFUL ACT

As previously noted, in order to be entitled to injunctive relief, a plaintiff must prove the existence of a wrongful act. *See Green*, 883 S.W.2d at 296; *Morris*, 881 S.W.2d at 140. A court should deny a request for a TRO when the plaintiff does not show the existence of a wrongful act. *See Priest v. Texas Animal Health Comm'n*, 780 S.W.2d 874, 875 (Tex.App.-Dallas 1989, no writ). For an act to be wrongful, the right threatened and sought to be protected by injunctive relief must be an existing one vested in the applicant. *See, e.g., Garland v. Shephard*, 445 S.W.2d 602, 604-05 (Tex.Civ.App.-Dallas 1969, no writ); *City of San Antonio v. Bee-Jay Enters., Inc.,* 626 S.W.2d 802, 804 (Tex.Civ.App.-San Antonio 1981, no writ).

A. The Texas Local Government Code Gives the Commissioners Court Exclusive Legislative Authority to Determine Staffing Levels and Funding Levels for Justice of Peace Offices.

Texas Local Government Code Chapters 151 and 152 address the authority of the Commissioners Court to take the actions that Judge Venegoni challenges.

Texas Local Government Code Section 151.001(a) provides, in pertinent part, that "[a] district, county, or precinct officer who requires the services of deputies, assistants, or clerks in the performance of the officer's duties shall apply to the commissioners court of the county in which the officer serves for the authority to appoint the employees." Once a commissioners court receives such a request, "the commissioners court by order shall determine the number of employees that may be appointed and shall authorize their appointment." *See* Tex. Loc. Gov't Code §151.002. The Local Government Code also provides that "[t]he commissioners court of a county may enter an order to employ and provide compensation for secretarial personnel for a district, county, or precinct officer if the court determines that the financial condition of the county and the staff needs of the officer justify doing so." *See* Tex. Loc. Gov't Code §151.901.

Accordingly, the law is clear that the Commissioners Court had the legislative authority and discretion to determine appropriate staffing levels for JP 4.

Additionally, the Commissioners Court had the exclusive authority and discretion to determine the compensation to be paid to JP 4 staffers. Texas Local Government Code Section 152.011, entitled "AMOUNT SET BY COMMISSIONERS COURT," provides that "[t]he commissioners court of a county shall set the amount of the compensation, office and travel expenses, and all other allowances for county and precinct officers and employees who are paid wholly from county funds."

B. The Law Allows an Extremely Limited Review of the Commissioners Court's Staffing and Budgeting Decisions.

Article V, Section 18 of the Texas Constitution establishes the Commissioners Court as the principal governing body of the County. The powers and duties of commissioners courts include aspects of legislative, executive, administrative, and judicial functions. *Comm. Court of Titus Cnty. v. Agan*, 940 S.W.2d 77, 80 (Tex. 1997). In creating a county budget, the commissioners court performs a legislative function. *Harris Cnty. v. Nagel*, 349 S.W.3d 769, 794 (Tex.App.-Houston [14th Dist.] 2011, pet. denied); *Griffin v. Birkman*, 266 S.W.3d 189, 193, 201-03 (Tex.App.-Austin 2008, pet. denied).

The allocation of county funds is a policymaking determination. *Nagel*, 349 S.W.3d at 794. This budgetary power carries with it broad discretion in making budgetary decisions. *Hooten v. Enriquez*, 863 S.W.2d 522, 528 (Tex.App.-El Paso 1993, no writ); district courts have no such legislative power. *Ector County v. Stringer*, 843 S.W.2d 477, 478-80 (Tex. 1992); *Randall Cnty. Comm. Court v. Sherrod*, 854 S.W.2d 914, 927-28 (Tex.App.-Amarillo, 1993, no writ). Accordingly, when commissioners courts perform this legislative function, they are generally protected from the scrutiny of the judicial branch by the constitutionally-mandated separation of powers doctrine. *See* Tex. Const. art. II, § 1; *Hooten*, 863 S.W.2d 522, 528.

The Texas Constitution vests in the district courts "appellate jurisdiction and general supervisory control over the County Commissioners Court, with such exceptions and under such regulations as may be prescribed by law." Tex. Const. art. V, § 8.1. Case law defines the scope of the district court's jurisdiction. The power contemplated is limited to the authority to judicially review improper acts. *Tabor v. Hogan*, 955 S.W.2d 894, 896 (Tex.App.-Amarillo 1997, no writ). The Texas Constitution does not authorize a district court to sit as the head of the commissioners court and thereby direct its actions. *Id*; *Bunton v. Bentley*, 176 S.W.3d 1, 10 (Tex.

App.-Tyler 1999, pet. granted), *aff'd in part, rev'd and remanded in part*, 94 S.W.3d 561 (Tex. 2002).

Therefore, in the area of county fiscal policy, the district court's supervisory role is necessarily a very limited one. As the *Stringer* Court stated:

> In short, the district court may order the commissioners court to exercise its discretion, but cannot tell the commissioners what decision to make. Once the commissioners court exercises its discretion, the district court may review the order for abuse of discretion, but it cannot substitute its discretion for that of the commissioners court.

Stringer, 843 S.W.2d at 479 (emphasis added).

In a factually similar case, the Texas Supreme Court in *Henry v. Cox*, 250 S.W.3d 28 (Tex. 2017), addressed the limited scope of review that a district court has in reviewing staffing and funding decisions of a commissioners court. In that case, an administrative judge for county district courts brought an action against the presiding officer of the county commissioners court, seeking an order reinstating a terminated county judicial employee and requiring the employee to be paid her old salary. The trial court entered a TRO and temporary injunction providing the requested relief, which relief was upheld by the court of appeals. *Id.* at 31-33.

The Supreme Court, however, reversed and remanded the case, holding that the district court lacked the authority to provide the relief it had ordered. *Id.* at 38-39. The Court noted that the judicial branch's authority to set aside the legislative decisions of a commissioners court was extremely limited and narrow.

> When exercising what the Constitution calls "general supervisory control," a court may not usurp legislative authority by substituting its policy judgment for that of the commissioners court acting as a legislative body. Instead, it can only set aside decisions or actions of the commissioners court that are illegal, unreasonable, or arbitrary — "but there the power of the court ends." The Constitution makes clear that a district court's supervisory power remains subject to "exceptions [and] regulations as may be prescribed by law."

Id. at 37.

In the instant case, the Texas Local Government Code sections previously cited are such a law that gives the Commissioners Court the authority to determined staffing and funding levels for JP 4. Indeed, whether the actions of the County were reasonable is an objective test, and it does not empower a district court to substitute its judgment for the judgment of the commissioners court.

> Determining reasonableness is an objective test and does not hinge on the district judges' subjective belief that the salary range is unreasonable. Commissioners courts' orders are entitled to the same respect shown all other courts provided for in our Constitution. Their decisions are reviewable only upon a showing of abuse of discretion or lack of jurisdiction. "In short, the district court may order the commissioners court to exercise its discretion, but cannot tell the commissioners what decision to make." Thus, the judges served may not substitute their view of what's reasonable for that of the commissioners court, and instead may only consider whether the commissioners court abused its discretion when selecting a "reasonable" salary range.

Id. at 37-38. In short, the Court held that "trial court lacked the authority—constitutional, statutory, inherent, or otherwise—to require County Judge Henry to reinstate a county judicial employee at a specific salary." Yet, that is exactly what Judge Venegoni seeks – to reinstate his former Court Administrator with back pay. *See* Petition, ¶ 2. As the relief Judge Venegoni requests exceeds the trial court's authority, the TRO request should be denied.

C. The Decisions of the Commissioners Court were not Illegal, Unreasonable, or Arbitrary.

While a TRO is not an evidentiary matter, the County represents that at a temporary injunction hearing it will offer evidence of the following:

> 1. The Commissioners Court defunded the Court Administrator position in JP 4 because Falcon, the holder of the position, had been determined by the Commissioners Court to not possess the supervisory skills needed to occupy the position, which requires supervisory skills.

2. Falcon has had a checkered human resources history with the County since her employment in 2015. That history includes her 2015 complaint, as a legal clerk in Constable 4, that a County Constable was having an improper relationship with one of his employees, a thorough investigation of which found the accusations to be unfounded.

3. In 2017, Falcon, now an administrator in JP 4, was the subject of multiple complaints regarding alleged inappropriate behaviors, including an allegation that Falcon did not want to hire a woman because she was pregnant; that she did not promote an employee due to her ethnicity and religious beliefs; and that, once again, Falcon accused a Justice of Peace of having an affair with one of his employees.

4. In 2019, Falcon was the subject of complaints that she was verbally and mentally abusive to employees, including issuing racial remarks to them.

5. In 2023, Falcon was the subject of complaints that she engaged in demeaning and belittling behavior to employees.

6. On July 18, 2025, the Legal Clerk II in JP 4 reported to HR that Falcon, the Court Administrator who was her supervisor, had made inappropriate comments via a text message concerning an accusation that an elected official in another office was having sexual relations with a member of his staff. Due to the seriousness of the accusation, HR conducted a thorough investigation. HR was unable to substantiate the claim. When questioned by HR during the investigation, Falcon admitted that she sent the text message and that the accusation was nothing more than hearsay.

7. HR was understandably very concerned since Falcon was the supervisor for the office and responsible for appropriate workplace behavior. Attempts by HR to discuss this concern with Judge Venegoni led to no action being taken.

8. On August 6, 2025, Falcon contacted HR and indicated that JP 4 wanted to fire the whistleblowing legal clerk that initially reported the inappropriate text message. The grounds for the dismissal request were the clerk's alleged falsification of County documents by backdating payments and instructing others to do the same. This led to multiple HR concerns since it was unclear if this was an actual felony offense or this was retaliation for reporting a supervisor to HR.

9. During discussions with Judge Venegoni and HR, Judge Venegoni was adamant that illegal activity of backdating documents was taking place in his office by the Legal Clerk II who had reported the Court Administrator's inappropriate actions in mid-July. When HR spoke with the Legal Clerk II specifically about the allegation by Judge Venegoni, the clerk advised HR that she

was trained and instructed by Falcon to backdate from the date payment was made.

10. When HR informed Judge Venegoni that Falcon was instructing clerks to backdate, Judge Venegoni doubled down that this was illegal activity. HR Director Cynthia Jacobson informed Judge Venegoni that she would, at his request, report the suspected illegal activity to the District Attorney's Office and the Sheriff's Office for investigation. Judge Venegoni agreed that was the proper next step and indicated that he would suspend Falcon pending the investigation. Judge Venegoni also indicated that he did not want the Legal Clerk II to return to his office. He indicated it was HR's responsibility to find somewhere else for her go.

11. Despite his representation, Judge Venegoni did not suspend Falcon and continued to allow both her and the Legal Clerk II whom he originally accused of illegal activity to work in his office. HR did report the concerns of illegal activity to both the District Attorney and the Sheriff's Office. Falcon, however, refused to cooperate in the Sheriff's Office investigation and Judge Venegoni did not return calls from the Sheriff's Office investigator prior to the time when the investigator closed the case as he was unable to substantiate any allegations of illegal activity.

12. Further investigation determined, however, that the clerk that Falcon had accused of committing illegal recordkeeping had not committed any violations of law. In short, the accusation used by Falcon in retaliation against the clerk, who had engaged in whistleblower activities against Falcon, in an effort to get the clerk fired turned out to be false.

13. During the 2025-2026 Fiscal Year budget discussions, a decision was made by the Commissioners Court to move one Legal Clerk I from JP 4 to JP 1, and to reclassify the Court Administer position in JP 4 to a Legal Clerk I. Falcon's pay was reduced to the maximum of the pay range for Legal Clerk I, which is standard practice upon reclassification. It has been common practice of the Commissioners Court to move a position from one department to another department, a practice that Falcon benefitted from in 2015.

This evidence, along with other matters, will demonstrate that the Commissioners Court's decision was not illegal, and was far from unreasonable or arbitrary, as it was a direct result of Falcon's job performance, her exposing the County to liability, not cooperating with the Sheriff's Office investigation, and her inability to competently supervise her office and be responsible for appropriate workplace behavior.

D. Other Reasons that Judge Venegoni is Not Likely to Prevail on the Merits.

Other reasons that Judge Venegoni is not likely to prevail on the merits include the following:

1. Judge Venegoni has not alleged a waiver of the County's governmental immunity.

In Texas, sovereign or governmental immunity deprives a trial court of subject-matter jurisdiction for lawsuits in which the state or other governmental units have been sued unless the State consents to suit. *Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 224 (Tex. 2004). Immunity from suit is jurisdictional and bars suit. *Harris County Hosp. Dist. v. Tomball Reg'l Hosp.*, 283 S.W.3d 838, 842 (Tex. 2009); *Miranda*, 133 S.W.3d at 224. Political subdivisions of the state, including counties, are entitled to such immunity - referred to as "governmental immunity" - unless it has been waived. *Reata Constr. Corp. v. City of Dallas*, 197 S.W.3d 371, 374 (Tex. 2006); *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 694 n.3 (Tex. 2003). Justice Venegoni has not alleged any waiver of governmental immunity in his Petition.

2. The only proper defendant in this case is Collin County, which has not been included as a defendant.

As previously noted, while the Commissioners Court is named as a defendant, it is not a jural entity subject to suit. Collin County is the proper party defendant in any effort to control the actions of the Commissioners Court. Additionally, the individual members of the Commissioners Court are sued in their official capacities only. A suit against a governmental official in an official capacity is effectively a suit against the governmental unit, except in those cases alleging the official has acted *ultra vires*. *Franka v. Velasquez*, 332 S.W.3d 367, 382 (Tex. 2011). As the individual members of the Commissioners Court are sued only in their official capacities, and no

ultra vires claims are asserted, the suit against them is simply another way of suing Collin County. Judge Venegoni should be required to replead and name Collin County as the sole defendant in this proceeding.

3. Judge Venegoni lacks standing to seek back pay for Falcon as that damages claim belongs to her.

Falcon is the only party with a justiciable interest and standing to complain of lost back due to her reclassification of position. Judge Venegoni has provided no authority to support that he has standing to fight this battle on her behalf. To establish standing, a plaintiff must show that he has some interest peculiar to himself. *Hunt v. Bass*, 664 S.W.2d 323, 324 (Tex. 1984).

4. The claim for back pay is barred by governmental immunity.

Back pay is a form of damages and governmental immunity bars the recovery of back pay absent an express legislative consent for such a suit. *See, e.g.*, *City of Amarillo v. Nurek*, 546 S.W.3d. 428, 434-36 (Tex.App.-Amarillo 2018, no pet.) (Firefighter's claim for declaratory relief, to extent that he sought declaration that city fire department and interim city manager were liable for back pay in amount equal to the difference between compensation he would have earned had he been promoted to vacant "fire fighter" position within fire marshal's office and amount he earned in his fire suppression position, was barred by governmental immunity from suit, absent legislature's consent to suit.).

IV.

IMMINENT AND IRREPARABLE HARM DOES NOT EXIST

Another prerequisite to Judge Venegoni's entitlement to the extraordinary relief of a TRO is the existence of imminent harm. *See Green*, 883 S.W.2d at 296; *Morris*, 881 S.W.2d at 140. A court should deny a TRO when the plaintiff does not plead facts that establish that the harm is

imminent. *See Operation Rescue—Nat'l v. Planned Parenthood*, 975 S.W.2d 546, 554 (Tex. 1998); *Bell v. Texas Workers Comp. Comm'n*, 102 S.W.3d 299, 302 (Tex.App.-Austin 2003, no pet.); Tex. R. Civ. P. 680. A plaintiff's fear or apprehension of the possibility of injury is not sufficient; the plaintiff must show that the defendant has attempted or intends to harm the plaintiff. *See Spears v. City of South Houston,* 150 S.W.2d 74, 77-78 (Tex. 1941); *Jones v. Jefferson County*, 15 S.W.3d 206, 213 (Tex.App.-Texarkana 2000, pet. denied). Similarly, the threat of harm must not be merely speculative. *Camarena v. Texas Employment Comm'n*, 754 S.W.2d 149, 151 (Tex. 1988).

Judge Venegoni asserts in conclusory fashion that the new County budget for JP 4 will interfere "with judicial administration and caseflow." *See* Petition, ¶ 21. Yet, that budget has been in effect since October 1st and Judge Venegoni offers no examples of how his court has suffered in the two and a half months without the funded Court Administrator position. The absence of particularized facts here is telling - the speculative fears of Judge Venegoni are not supported by a single alleged fact. The argument Judge Venegoni makes is policy based, but not upon factually supported grounds for the issuance of a TRO.

A court should deny a TRO when the plaintiff does not show that he will suffer irreparable harm if the TRO is not issued. Plaintiff must plead that, if the injunctive relief is not issued, the harm that will occur is irreparable. *See Town of Palm Valley v. Johnson*, 87 S.W.3d 110, 11 (Tex. 2001); *Butnaru*, 84 S.W.3d at 204; Tex. R. Civ. P. 680. It is not sufficient for the TRO applicant to show only a "theoretical possibility" of harm. *EMSL Analytical v. Younker*, 154 S.W.3d 693, 697 (Tex.App.- Houston [14th Dist.] 2004, no pet.). Rather, the applicant must show that acts causing injury are actually occurring or will probably, not potentially, occur. *Id.*

In this case, Judge Venegoni has operated under the new budget since October 1st and has not plead any factually based particularized harm. There is no imminent and irreparable harm. The TRO should be denied.

V.

JUDGE VENEGONI HAS AN ADEQUATE REMEDY AT LAW

A court should deny a TRO when the movant does not establish that he has "no adequate remedy at law for prevention or redress of wrongs and grievance of which complaint is made." *Hancock v. Bradshaw*, 350 S.W.2d 955, 957 (Tex.Civ.App.-Amarillo 1961, no writ); *see also McGlothlin v. Kliebert*, 672 S.W.2d 231, 232 (Tex. 1984); *Synergy Ctr., Ltd. v. Lone Star Franchising Inc.*, 63 S.W.3d 561, 567 (Tex.App.-Austin 2001, no pet.). A plaintiff must show that no other remedy, such as a specific statutory or administrative remedy, is available to redress his injury. *See, e.g., El Paso Elec. Co. v. Public Util. Comm'n*, 727 S.W.2d 283, 286-87 (Tex.App.-Austin 1987, no writ).

In this case, however, Judge Venegoni has sued for damages – back pay for Falcon. *See* Petition, ¶ 2. It is well established that "[a]n injunction will not issue if damages are adequate to compensate the plaintiffs for any wrong committed by the defendant and if the damages are subject to measurement by a certain pecuniary standard." *Minexa Arizona, Inc. v. Staubach*, 667 S.W.2d 563, 567 (Tex.App.-Dallas 1984, no writ). An irreparable injury is "an injury of such nature that the injured party cannot be adequately compensated therefor in damages, or that the damages which result therefrom cannot be measured by any certain pecuniary standard." *Canteen Corp. v. Republic of Tex. Props., Inc.*, 773 S.W.2d 398, 401 (Tex.App.-Dallas 1989, no writ). *See also Reynolds, Shannon, Miller, Blinn, White & Cook v. Flanary*, 872 S.W.2d 248, 251 (Tex.App.-Dallas 1993, no writ. An injury is irreparable if the injured party cannot be adequately

compensated in damages or if the damages cannot be measured by any certain pecuniary standard. *Canteen*, 773 S.W.2d at 401.

The mere fact that Judge Venegoni has sued for damages defeats a TRO request because a damages remedy, as a matter of law, provides an adequate remedy at law.

VI.

AN INJUNCTION WOULD DISSERVE THE PUBLIC INTEREST

As previously discussed, an injunction should not issue if it will be adverse to the public interest. *See Chevron*, 666 S.W.2d at 382. In this case, ordering the Commissioners Court to convene a meeting, post an agenda item to amend its budget, and amend its previously adopted budget through a TRO (which might be overturned after a full evidentiary temporary injunction hearing) would disserve the public interest. It would be improper for the judicial branch to enjoin the legislative branch without the benefit of an evidentiary hearing. The TRO should be denied.

Respectfully Submitted,

By: */s/ Robert F. Brown*

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