

Le Sueur County
Board of Commissioners

Special Meeting Agenda

County Board Room

Le Sueur County Courthouse

March 9, 2021 at 9:00 A.M.

1. WebEx Meeting Information - March 9 At 9 Am

Documents:

[LE SUEUR COUNTY BOARD ROOM INVITES YOU TO JOIN THIS WEBEX MEETING 03-09-2021.PDF](#)

2. 9:00 A.M. Call The Le Sueur County Board Of Commissioners Meeting To Order
3. Pledge Of Allegiance
4. Agenda Review And Approval
5. 9:03 A.M. Claims (2 Min)
6. 9:05 A.M. Dave Tiegs, Highway Dept (5 Minutes)
 1. Change bid letting date to Monday, April 12th at 1 p.m.
7. 9:07 A.M. Cindy Westerhouse, Human Resources Director (5 Min)
8. 9:10 A.M. Ann R Goering, Ratwik, Roszak & Maloney, P.A.

1. **Closed meeting based on the attorney-client privilege Minn. Stat. 13D.05 to discuss *Thelemann v. County of Le Sueur***

Documents:

[40-CV-20-849 NOTICE OF FILING OF ORDER - ORDER DENYING MOTION.PDF](#)

9. Adjourn
10. 10:00 A.M. AP & Widseth
 1. Kick off meeting for East entry
 1. Danny O'Keefe and Lance Wetzel



Le Sueur County Board Room invites you to join this Webex meeting.

Tuesday, March 9, 2021

9:00 a.m. | (UTC-05:00) Central Time (US & Canada) | 2 hrs 30 mins

Please copy and paste this link into a web browser to connect to the meeting:

<https://lesueurcounty.webex.com/lesueurcounty/j.php?MTID=m9a7e9aa174820deac923c8967c9abe36>

Meeting number (access code): 187 047 5475

Meeting password: 0309CountyBoard

Tap to join from a mobile device (attendees only)

[+1-408-418-9388,1870475475###](tel:+1-408-418-9388,1870475475###) United Toll States

Join by phone

+1-408-418-9388 United States Toll

[Global call-in numbers](#)

Join from a video system or application

Dial [1870475475@lesueurcounty.webex.com](tel:1870475475@lesueurcounty.webex.com)

You can also dial 173.243.2.68 and enter your meeting number.

Join using Microsoft Lync or Microsoft Skype for Business

Dial [1870475475.lesueurcounty@lync.webex.com](tel:1870475475.lesueurcounty@lync.webex.com)

Need help? Got to: <http://help.webex.com>

State of Minnesota
LeSueur County

District Court
First District

Court File Number: **40-CV-20-849**

Case Type: Civil Other/Misc.

Notice of Filing of Order

FILE COPY

Jeffrey Thelemann vs County of LeSueur

You are notified that on March 04, 2021, the following was filed:

Order Denying Motion

Dated: March 4, 2021

Joanne M. Kopet
Court Administrator
LeSueur County District Court
435 E. Derrynane St. 2nd Floor
LeCenter MN 56057
507-357-8260

cc: ANNA PURNA PRAKASH
ANN ROSE MARGARET GOERING

A true and correct copy of this notice has been served pursuant to Minnesota Rules of Civil Procedure, Rule 77.04.

Jeffrey Thelemann, individually and
On behalf of all others similarly situated,

Plaintiff,

vs.

**ORDER DENYING
DEFENDANT’S MOTION TO
DISMISS**

Le Sueur County,

Court File No. 40-CV-20-849

Defendant.

This matter came before the Court for a motion hearing on February 11th, 2021. Given the restrictions in place due to COVID-19 pandemic, the hearing was held via Zoom. The Plaintiff was represented by his attorney, Anna P. Prakash. Defendant was represented by its attorney, Ann R. Goering. The hearing was held to address Defendant’s amended motion to dismiss. Prior to the hearing, both parties submitted written arguments.

Based upon all the files, records, and proceedings herein and the Court being duly advised in the premises makes the following:

ORDER

1. Defendant’s motion for dismiss pursuant to Minn. R. Civ. Pro. 12.02(e) is **DENIED**.
2. The attached memorandum is incorporated herein.
3. Unless otherwise modified by this Order, all previous Orders shall remain in full force and effect.

IT IS SO ORDERED.

Patrick H. Goggins
Judge of District Court

MEMORANDUM

Plaintiff, Jeffrey Thelemann, was employed with the Le Sueur County Sheriff's Department from March 1991 to June 24, 2020. In conjunction with his employment with Defendant, Le Sueur County, Plaintiff is a member of the Public Employees Retirement Association (aka PERA) and eligible to receive a pension. Throughout his employment, both Plaintiff and Defendant contributed to Plaintiff's pension.

On or about December 14, 2017 through May 28, 2018, Plaintiff went on a leave of absence as allowed under the Family and Medical Leave Act (FMLA). This leave was authorized. Plaintiff alleges Defendant did not report Plaintiff's leave to PERA until more than a year following the end of the leave. As a result, Plaintiff's salary was reduced because of and during his leave of absence. Furthermore, Defendant did not notify the Plaintiff that Plaintiff's high-five salary may be potentially impacted by the reduction of the salary. The high-five salary is based on when the employee's salary was the greatest for a consecutive 60 month period.

On or about January 17, 2020, Plaintiff met with a PERA representative to formalize plans for retirement. At this meeting, Plaintiff learned that Defendant failed to notify PERA of his FMLA leave, which in turn, impacted Plaintiff's high-five salary for retirement. Plaintiff was also never notified of his ability to purchase salary credits to make his salary whole.

Plaintiff retired on June 24, 2020. Plaintiff's high-five salary was calculated using his 2013-2017 earnings. Because Plaintiff did not purchase salary credit for 2018, it impacted his ability to use 2018 and 2019 earnings as part of his high-five salary. Plaintiff's 2019 annual earnings were his highest year of earnings. Plaintiff asserts his monthly retirement benefit is approximately \$300 less per month.

Plaintiff filed a class action complaint on October 7, 2020, alleging negligence.¹

In accordance with MINN. R. CIV. P. 12.02(e), the court must dismiss a cause of action if it fails to articulate a legally sufficient basis entitling the plaintiff to relief. A claim is legally sufficient "if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." *Abel v. Abbott Nw. Hosp.*, 947 N.W.2d 58, 68 (Minn. 2020), quoting *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014). "The reviewing court must consider only the facts alleged in the complaint, accepting those facts as true and must construe all

¹ The Court reviewed and considered the factual allegations provided in the complaint. This memorandum summarizes that factual background.

reasonable inferences in favor of the nonmoving party.” *Id.*, quoting *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003).

“[A] court should construe the complaint to allow the plaintiff’s claim to go forward unless there is no way to construe the alleged facts—and the inferences drawn from those facts—in support of the plaintiff’s claim.” *Hansen v. U. S. Bank Nat’l Ass’n*, 934 N.W.2d 319, 326 (Minn. 2019). But the Court would note a plaintiff is not required to “allege facts and every element of a cause of action.” *Abel* at 78, quoting *N. States Power Co. v. Franklin*, 265 Minn. 391, 395, 122 N.W.2d 26, 29 (1963), (“No longer is a pleader required to allege facts and every element of a cause of action. A claim is sufficient against a motion to dismiss based on Rule 12.02(5) if it is possible on any evidence which might be produced, consistent with the pleader’s theory, to grant the relief demanded.”)

“The basic elements of a negligence claim are: (1) existence of a duty of care; (2) breach of that duty; (3) proximate causation; and (4) injury. *Abel* at 77, quoting *Bjerke v. Johnson*, 742 N.W.2d 660, 664 (Minn. 2007). Plaintiff’s complaint alleges facts that would support his claim for negligence. Plaintiff’s claim must go forward. Upon review of the complaint and the arguments asserted by counsel, the Court cannot grant the Defendant’s motion to dismiss.