



LAW OFFICES OF PELAYES & YU

A PROFESSIONAL CORPORATION

10803 Foothill Blvd., Ste 112
Rancho Cucamonga, CA 91730

T: 909-481-3833
F: 909-801-7004

July 22, 2020

City of San Bernardino
290 North D Street
San Bernardino, CA 92401

RE: GOVERNMENTAL TORT CLAIM FOR DAMAGES

1. NAME AND ADDRESS OF CLAIMANT

MATTHEW BROWN, Claimant
C/O Tom Yu, Esq.
LAW OFFICES OF PELAYES & YU, APC
10803 Foothill Blvd., Suite 112
Rancho Cucamonga, CA 91730

2. DATE, TIME, & PLACE OF INJURY OR DAMAGE

On or about June 1, 2020 to present.

3. GENERAL DESCRIPTION OF DAMAGES, INJURY OR LOSS

At all times alleged within this claim, Mayor John Valdivia's ("Valdivia") daily conduct towards his employees was often hostile, aggressive and verbally abusive. Valdivia's negative conduct created a toxic work environment that impacted his employee's physical health and mental wellbeing. Valdivia's behavior was so egregious he negatively altered the workplace conditions impacting staff's ability to effectively perform their job duties, including the Claimant.

As his Chief of Staff, Claimant endured and witnessed firsthand Valdivia's harassment and unwelcome behavior.

Valdivia's behavior pattern consisted of sexually inappropriate comments, manipulation through bullying and verbal abuse, derogatory remarks, insults and quid pro quos by promising promotions and career advancement opportunities to female staff members, specifically Mirna Cisneros, a customer service representative and Karen Cervantes, one of Valdivia's field representatives.

Valdivia regularly subjected his employees, including Claimant to verbal and mental abuse which included screaming, continually threatening employees with termination for no reason, humiliation, and belittling of employees in front of other staff and colleagues.

Valdivia's abusive behavior undermined his staff's work performance, including Claimant. For example, by the time Karen Cervantes, was forced to resign, Valdivia had destroyed her confidence in her ability to perform her duties the point she was afraid to make a simple decision.

Valdivia regularly ordered staff, including Claimant to work additional hours while not being paid and would reprimand staff if they did not. Valdivia made it clear that it was his expectation staff would work uncompensated.

On or about November 4, 2019, in Valdivia's office, during an agenda briefing meeting with City Manager Teri Ledoux and Assistant City Attorney Thomas Rice Valdivia screamed at Ledoux and he pounded on the table because she would not do what he wanted her to do within the timeframe he wanted. Mr. Rice's eyes were as big as saucers and he leaned back from the table in shock Valdivia's shouting, demeanor and treatment of Ledoux. After Valdivia's tirade, Ledoux stormed out of the meeting leaving Claimant, Rice and Valdivia at the table to finish the meeting.

On or about November 6, 2019, during the city council public meeting, Valdivia publicly berated Ledoux. At the end of the same meeting Valdivia aggressively confronted Councilmember Fred Shorett. Valdivia got in Shorett's face, physically blocking him from leaving the dais and verbally threatened to take him out politically. Valdivia then engaged in a profanity laced tirade directed at Shorett that continued into the parking lot.

Valdivia's offensive behavior and bullying of his support staff, city administrators and even other elected officials was severe and pervasive. For example, Karen Cervantes, Donald Smith, and Jackie Aboud (his field representatives) endured constant threats of termination that were often witnessed by Valdivia's entire staff.

It was Valdivia's policy not to serve residents above the 210 freeway and when staff responded to constituent inquiries from residents above the 210 freeway, he would routinely reprimand them verbally during staff meetings and threatened all staff, including Claimant with their jobs.

Valdivia's legislative field representatives, Jackie Aboud and Donald Smith were routinely reprimanded by Valdivia in front of our entire staff during weekly meetings about CRM goals and were required to explain any use of their time to respond to constituent inquiries above the 210 freeway or outside of wards of council members he considered part of his team that were up for reelection.

In weekly staff meetings, Valdivia exposed all of his staff, including Claimant to his crude remarks that included sexual innuendos, homophobic statements, racist remarks, and comments about female city employees. Valdivia regularly insisted that his staff, perform tasks that were outside of the scope of their job classification. This behavior was highly offensive to Claimant and unwelcomed. Claimant discussed his concerns with Valdivia privately on several occasions, but he continued. In retaliation, Valdivia would harass and create a hostile work environment for Claimant.

Valdivia pressed Mirna Cisneros, his customer service representative and Renee Brizuela, his secretary to work on political campaigns for the councilmembers he considered part of his team that we are up for reelection while Cisneros and Brizuela were serving in the capacity as city employees. He requested they use their accrued vacation time to work on the campaigns of the candidates that Valdivia was endorsing, namely Juan Figueroa and Bessine Richard. Claimant advised Valdivia he was uncomfortable with this request. In retaliation, Valdivia would harass and create a hostile work environment for Claimant.

On several occasions, Valdivia told Mirna Cisneros, Karen Cervantes, and Jackie Aboud that they needed to spend time with him after hours and invest in a “friendship” with him if they wanted to reach their career goals. Claimant told Valdivia this was illegal and put him on notice. In retaliation, Valdivia would harass and create a hostile work environment for Claimant.

Valdivia seemed to take joy in mistreating his employees. He would belittle his staff in meetings and make fun of them by insulting their intelligence, calling them low functioning, and making derogatory comments about staff that were Cal State San Bernardino alumni. During one staff meeting Valdivia got angry at the Claimant’s suggestion to recruit interns from Cal State San Bernardino.

Claimant advised Valdivia that Aboud and Smith felt he routinely humiliated them in weekly staff meetings and had requested their update meetings with Valdivia be limited to Aboud, Smith and Claimant, so they did not have to endure the embarrassment of having their work criticized in front of the entire staff. Valdivia dismissed the request outright and said, “they need to get over it.” Again, Claimant told Valdivia his conduct was inappropriate and harassing.

In retaliation, Valdivia would harass and create a hostile work environment for Claimant. One example was when Mirna Cisneros’ grandfather had died, and Valdivia made several insensitive comments in Claimant’s presence questioning the need for Cisneros to be off work and spend time with her family. Valdivia made it clear he disapproved of how she used her bereavement leave and that it would affect her future job assignments.

Another example was when Cisneros went out on medical leave for a scheduled procedure. When Cisneros returned to work Valdivia asked her to share her diagnosis with him. Valdivia also directed her to contact him directly from that point forward if she were to call in sick, tardy, or request vacation time off. This was highly unusual, and Cisneros was the only employee that Valdivia required to report to him directly.

Valdivia made it clear to all his support staff that we were always expected to be in the office and that he could not have anyone out sick. Valdivia directed staff to report for duty even when they were ill, because he himself claimed he did not take days off and came into the office when he was sick.

On or about December 20, 2019, Valdivia and Claimant had a conversation about Valdivia's unprofessional treatment of staff and how he could improve the workplace environment and improve moral. This conversation took place in the morning while Valdivia drove Claimant to a Christmas toy drive distribution event. Claimant outlined issues specific to his treatment of all staff in general and some individual employees. The conversation concluded with Valdivia saying, "I'm not going to walk on eggshells and they need to get over it."

On or about January 27, 2020, during a staff meeting Valdivia announced to everyone in attendance that they were, in his words, in "reelection mode" and they needed to "get on board the train." Valdivia went on to outline a list of priority projects staff were assigned to complete to ensure Valdivia's reelection.

On the same day, during a staff meeting Valdivia yelled at Alexander Cousins, a paid intern serving in the capacity of policy analyst, saying "bullshit, bullshit, bullshit! I want results, not excuses!" This outburst was in response to an update Cousins provided on his efforts to raise funds from the Chinese government to pay for San Bernardino symphony travel to China.

Later, during the late afternoon following a staff meeting, Valdivia informed Claimant during a conversation in Valdivia's office that he was going to have a "mandatory office closure" for a Dodgers event to support his campaign sometime in mid-February or March. Valdivia indicated he was going to require all of his staff to use vacation leave to attend the event and that each employee would be given two tickets. Claimant told Valdivia this was illegal and he could not require employees to use their accrued leave to attend a mandatory event to support his reelection campaign. In retaliation, Valdivia would harass and create a hostile work environment for Claimant.

On or about January 29, 2020 during a meeting in Valdivia's office at approximately 10:35 AM shortly after Cisneros submitted an off-work order via email, Valdivia stated his desire to terminate Cisneros employment. Valdivia questioned Renee Brizuela and Claimant about the details of Cisneros' illness, Valdivia complained about the lack of detail on the off-work order

Cisneros submitted, and the fact that it was signed by a physician's assistant. Valdivia stated that he took it personally that Cisneros went on medical leave and that he was offended. Valdivia stated that he wanted to fire Cisneros and before Claimant could say anything, Brizuela told Valdivia "that's illegal".

At that point, Claimant told Valdivia he could not fire an employee for submitting an off-work order. Brizuela agreed. Later during this same meeting, Valdivia talked about switching things up when Cisneros returned to work and Valdivia said he was going to "recruit a bench and replace these clowns." Valdivia specifically stated his intent to replace Cisneros, Cervantes, and Smith. Again, Claimant told Valdivia his actions were illegal and inappropriate. In retaliation, Valdivia would harass and create a hostile work environment for Claimant.

The above described behavior by Valdivia towards his staff culminated in Cisneros, Cervantes, Smith and Aboud eventually filing claims against the city and lawsuits by some of them. This also culminated in the city hiring an attorney investigator, Carla Barboza to investigate the allegations in these claims. At that time, it was Claimant's understanding from the city manager and the director of human resources that Valdivia was not to have any direct contact with staff or interfere with the investigation and that all staff were to report to Claimant directly during the pendency of the investigation. Valdivia was not to be involved with any staff. All assignments would come through Claimant.

On or about February 4, 2020 during an early morning telephone call, Valdivia told Claimant about his intent to go on offensive with Cisneros' and Cervantes' and refute their allegations against him. Valdivia indicated he had spoken with Chris Jones, his spokesman and political consultant, and that Jones had convinced Valdivia he needed to be aggressive in dealing with Cisneros and Cervantes. Valdivia requested that Cousins, Brizuela and Claimant provide him with false written statements refuting the allegations from Cisneros and Cervantes. Claimant was stunned because he knew the allegations to be true since he witnessed them.

Additionally, Valdivia requested that Claimant write fake work performance evaluations for both employees emphasizing their poor work habits. Claimant refused to participate in the falsification of the said records, he would be required to testify under oath and perjure himself in a deposition, given that Cisneros and Cervantes had already filed their tort claim, which was a precursor of filing a lawsuit against the City of San Bernardino. Claimant, by refusing to engage in the falsification of records, documents, and performance evaluations, had reasonable cause to believe that if he had agreed to engage in these acts, it would result in violations of federal, state, and/or local laws, rules or regulations.

Instead, Claimant told Valdivia that Jones was giving him bad advice and recommended Valdivia discuss these requests with City Attorney Sonia Carvalho. This enraged him. Claimant then reported this conversation to Edilia Eveland, the City of San Bernardino's Human Resource Director at a prescheduled 8 AM meeting Claimant had with her the same morning. Upon returning to his office after the meeting with Eveland, Claimant spoke with Brizuela and discussed Valdivia's request for the written statement with her. Because Claimant refused to provide Valdivia with the fake statements and fake work performance evaluations he had requested, Valdivia began to doubt Claimant's loyalty towards him.

On or about February 10, 2020, Claimant had a meeting with Valdivia for approximately one hour and 45 minutes. Valdivia attempted to ask a lot of questions about the status of the personnel investigation and Claimant declined to provide any details. Valdivia requested Claimant speak with Smith and Cousins and "coach them" prior to their interviews with the human resources investigator because he wanted their interviews to reflect positively on him. Claimant refused. During the same meeting, Valdivia stated that he did not trust Smith.

Later that afternoon, Claimant reported Valdivia's request for an HR briefing on the status of the investigation and an update from the City Attorney Sonia Carvalho. Claimant successfully scheduled a 4 p.m. conference call for Valdivia that day with Assistant City Manager Rebekah Kramer and Edilia Eveland.

Claimant did not participate in that conference call. Valdivia had verbally requested Claimant participate in the call and he sent him a text message requesting Claimant to be on the call. Claimant told Valdivia he thought it was in his best interest that Claimant refrain from participating in any meetings he had regarding the status of the investigation. In retaliation, Valdivia would harass and create a hostile work environment for Claimant.

On or about February 11, 2020, in a telephone call with Valdivia, he told Claimant that on the afternoon of February 10, Valdivia spoke with Carvalho and requested that she contact Smith and Cousins and advise them not to have any contact with Cisneros or Cervantes.

During the same telephone conversation Valdivia told Claimant that he "had doubts and fears" about Smith because Smith had commented on a Facebook post that former employee Jackie About had made about Cisneros and Cervantes allegations. Valdivia advised Claimant to tread lightly with Smith and not to trust him. Valdivia went on to say he intended to do a "staffing reset" after the investigation concluded. This same afternoon Valdivia got angry via email with Renee Brizuela and Claimant because of a last-minute dinner meeting cancellation from Christie Myers and Brian Davis.

On or about February 24, 2020, at approximately 6 p.m., Claimant received a phone call from Valdivia followed by a telephone call from Brizuela. Brizuela said Valdivia called her directly regarding his deposition in the Pepe's towing case (an ongoing court case against the city) that was scheduled for February 25. Valdivia was advised not to contact any staff except Claimant during the investigation, yet he contacted Brizuela directly on several occasions. Valdivia wanted to ostracize Claimant in retaliation for not following his illegal orders to sabotage the ongoing investigation into Cisneros' and Cervantes' claims.

Shortly thereafter, Claimant retained counsel.

On or about March 2, 2020, at approximately 7:20 p.m., Claimant missed a telephone call from Valdivia and within 20 minutes Claimant had two additional missed telephone calls from Chris Jones. Neither Valdivia nor Jones left voicemail messages, but Jones sent claimant text messages at 7:49 p.m., 7:54 p.m. and 8:52 p.m., in response to reports on Facebook that Claimant had retained the Law Offices of Pelayes & Yu to represent his interests in the ongoing personnel investigations.

That is, when Valdivia and Ledoux escalated their retaliation against Claimant for the refusal to participate in Valdivia's scheme to falsify work performance evaluations against Cisneros and Cervantes, as well as Claimant's refusal to coach other staff members on what to say during the ongoing personnel investigations and his retention of legal counsel, Claimant was now completely ostracized by city management, and his duties and assignments were systematically and completely taken away.

On or about March 3, 2020, Claimant reported to Valdivia via text message that Brizuela would be out of the office sick that day. In retaliation for Claimant's refusal to participate in the above described illegal activities and retaining legal counsel, Valdivia did not respond to Claimant's text message or telephone calls. From this point forward his interactions with Claimant completely changed. Valdivia would not call, text, or email Claimant. Valdivia would not respond to any of Claimant's attempts to communicate with him regarding routine city business, constituent concerns, travel or meeting requests.

On or about March 4, 2020, at approximately 3 p.m., Claimant met with Councilmember Theodore Sanchez at his third-floor office prior to the city council meeting. During Claimant's conversation with Sanchez, he told Claimant about a conversation he had with Chris Jones on March 3 at approximately 3 p.m.. Councilmember Sanchez stated that Chris Jones asked Sanchez to make a motion during the March 4 council meeting to eliminate Claimant's position as the mayor's chief of staff, effectively firing him from city employment. Sanchez said he told Chris Jones that he believed that motion should come directly from Valdivia and not a city councilmember.

Claimant believes that the elimination of his position by the City of San Bernardino was in retaliation against Claimant for refusing to participate in the falsification of records, documents, and performance evaluations of Cisneros and Cervantes from the February 4, 2020 conversation with Valdivia.

Further, Claimant also believed that if he participated in the falsification of the said records, he would be required to testify under oath and perjure himself in a deposition, given that Cisneros and Cervantes had already filed their tort claim, which was a precursor of filing a lawsuit against the City of San Bernardino.

On or about March 4, 2020, immediately following a meeting with Sanchez Claimant walked over to City Manager Teri Ledoux's office. Claimant informed Ledoux about his conversation with Sanchez, specifically about Jones soliciting councilmembers to eliminate his position and city employment.

Additionally, Claimant showed her an angry text message on Claimant's personal cell phone he had received from Jones a couple of days prior. Also, during the same conversation with Ledoux Claimant passed along Sanchez request for an update on the city's lease for office space at the Vanir tower.

On or about March 4, 2020, at the public meeting of the San Bernardino city council Valdivia would not speak with Claimant even when he attempted to speak with him regarding city business. Claimant had not had any communication with Valdivia since March 2, 2020.

On March 9, 2020, Claimant emailed Eveland to express his concerns about Valdivia's attempts to influence the outcome of the personnel investigation and Valdivia's repeated engagement in retaliatory behavior because Claimant would not go along with his illegal demands. During this time Valdivia continued to exercise oversight over staffing assignments and duties despite the active investigation.

Claimant cited Valdivia's comments during the city council meeting on March 4, 2020 in which Valdivia publicly admitted to having a conversation with Ledoux about, "staffing opportunities" earlier that day. Valdivia's statement was a clear indication he was working with Ledoux to take adverse employment actions against the Claimant and his other employees and influence the outcome of the investigation. Valdivia was permitted to influence the development of staff reports in closed-door meetings with Ledoux while being advised by the city attorney.

Claimant's actions were legally protected activities and the city failed to protect him from negative employment actions. Valdivia successfully punished Claimant by reducing and eliminating his duties and responsibilities making it impossible for him to effectively perform his job. The changes to Claimant's job duties resulted in what amounted to a transfer to a less

desirable position while Valdivia and Jones, acting as his surrogate, worked to terminate his employment.

On or about March 12, 2020, during a lunch meeting with Councilmember Henry Nickel, Nickel confirmed that he had spoken with Jones and Jones was very angry with Claimant. Nickel indicated Jones was out to get him, but that Nickel fully supported Claimant's continued employment with the City.

On or about March 16, 2020, Claimant was interviewed for approximately five hours by Carla Barboza the City's outside attorney/investigator. During the interview, all concerns about Valdivia's unlawful behavior and retaliatory actions including his attempts to have Claimant terminated were told to the investigator.

However, nothing was done about it. In fact, the retaliation by the city and Valdivia became worse and "all" of Claimant's duties were stripped from him because he reported Valdivia's illegal actions to Ms. Barboza.

During the interview, Claimant provide information to the City of San Bernardino, the public body that was conducting an internal investigation on Valdivia and disclosed to the outside investigator of all of the non-compliances, unlawful conduct, and violations of federal, state, local laws, rules, and/or regulations.

Immediately thereafter, on Wednesday March 25, 2020, Claimant received an email from Assistant City Manager Rebekah Cramer regarding what was characterized as a "Work Assignment Project List" for the Office of the Mayor. This list formally memorialized the drastic changes to Claimant's job duties as chief of staff. What was not included on this list was the previous retaliatory verbal direction from Ledoux and Cramer not to review council agendas, nor attend council meetings, communicate with council members, provide support services to council members, or respond to constituent inquiries.

Additionally, Claimant's request to respond to council members and provide support for active projects was blocked by Valdivia because Claimant would not fabricate allegations against the staff that was accusing him of inappropriate behavior, because Claimant obtained legal counsel to represent him and because he reported to investigator Barboza Valdivia's illegal behavior and requests.

These changes eliminated Claimants ability to do his job and completely changed the nature of his job to nothing. (Attached hereto as is a copy of the digitally recorded interview.)

On May 18, 2020, 3:00 p.m., in retaliation of Claimant's reporting of the illegal activities by Valdivia, coupled with Claimant's refusal to engage in the unlawful conduct, Claimant was informed by Ledoux that his position would be eliminated at a special meeting of the city council on May 21, 2020, purportedly due to COVID-19 budget impacts.

The reason given to Claimant was pretextual and was designed to conceal the real reason, which was to retaliate against Claimant.

On June 1, 2020, 5, in retaliation of Claimant's whistle blowing activities, Claimant's employment with the City of San Bernardino was terminated.

If the City of Bernardino contends there are any administrative claims or remedies not pursuant by Claimant, please advise forthwith so we can fulfill the administrative remedies now.

4. NAMES OF PUBLIC EMPLOYEES CAUSING INJURY

JOHN VALDIVIA

5. AMOUNT CLAIMED

Pursuant to Government Code section 910(f), the amount of compensatory and other damages claims exceeds \$10,000 and will lie within the unlimited jurisdiction of the Superior Court. Claimant also claims and seeks to recover herein, the statutory and other penalties, damages, attorney's fees, expert fees, costs as provided by law, to include exemplary damages against John Valdivia.

DATED: July 22, 2020

LAW OFFICES OF PELAYES & YU, APC

Tristan Pelayes

Tristan Pelayes, Esq.
Tom Yu, Esq.
Attorneys for Claimant
MATTHEW BROWN