

## CLAIM AGAINST THE CITY OF MILPITAS

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| Complete the following information, attaching additional sheets and receipts, as necessary.<br><br>Return the signed original form to: | City of Milpitas<br>Attn: City Clerk<br>455 E. Calaveras Blvd.<br>Milpitas, CA 95035 | City Clerk's Office<br><br><span style="font-size: 1.2em; color: red;">MAY 02 2023</span><br><br><small>For office use only</small> |
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RECEIVED

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| <b>Claimant's Name:</b> <i>(please print)</i> | STEVEN McHARRIS |
|---|-----------------|

|                            |   |
|----------------------------|---|
| <b>Claimant's Address:</b> | <div style="background-color: black; color: white; padding: 2px; font-size: 0.8em;">Personal Information</div> San Jose, CA 95112 |
|----------------------------|---|

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|----------------------|--|----------------------|
| <b>Home Phone #:</b> |  | <b>Work Phone #:</b> |
|----------------------|--|----------------------|

|                        |  |   |
|------------------------|--|---|
| <b>Mobile Phone #:</b> |  | <b>Amount of Claim: \$</b> This claim will not be filed as a limited civil case |
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**Address to which notices are to be sent, if different than above (please print):**

|                         |   |
|-------------------------|---|
| <b>Mailing Address:</b> | R. Craig Scott, Esq./Executive Law Group, Inc.<br>4675 MacArthur Court, Suite 1240<br>Newport Beach, CA 92660<br>email: rcraigscott@execlaw.com |
|-------------------------|---|

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|---|--------------------------|------------------------------|
| <b>Date of Incident s and Background:</b> | <b>Time of Incident:</b> | <b>Location of Incident:</b> |
| 10/2021 - Present                         |                          |                              |

**Description of the incident or accident, including your reason for believing that the City is liable for your damages:**  
*(If you need more space, you may include additional sheet with this form)*

Please see accompanying letter dated May 1, 2023, and the accompanying Summary of Facts

**Description of all damages which you believe you have incurred as a result of the incident:**  
*(If you need more space, you may include additional sheets with this form)*

Please see accompanying letter dated May 1, 2023, and the accompanying Summary of Facts

**Name(s) of any City employee(s) causing the damage(s) you are claiming:**

MICHAEL MUTALIPASSI, CARMEN MONTANO, and EVELYN CHUA

**Dollar amount of all damages you are claiming (please attach all bills and/or estimates that are available):**

This claim will not be filed as a limited civil case

**If this is a claim for indemnity, on what date were you served with the underlying lawsuit?**

|   |                                 |
|---|---------------------------------|
| <b>SIGNATURE OF CLAIMANT:</b><br><br>X.<br>R. Craig Scott, Executive Law Group, Inc., for Claimant STEVE McHARRIS | <b>Date:</b><br><br>May 1, 2023 |
|---|---------------------------------|

**NOTE:** Claims must be filed not later than six months after the incident, per California Government Code §911.2 Every person who, with intent to defraud, presents any false or fraudulent claim may be punished by imprisonment or fine or both.



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www.execlaw.com

May 1, 2023

Suzanne Guzzetta, City Clerk  
City of Milpitas  
455 East Calaveras Blvd.  
Milpitas, CA 95035  
Email: [sguzzetta@milpitas.gov](mailto:sguzzetta@milpitas.gov)

**RE: CLAIM FOR DAMAGES – CITY MANAGER, STEVEN McHARRIS**

TO: THE CITY OF MILPITAS, THE CITY ATTORNEY AND THE COUNCIL MEMBERS  
NAMED HEREIN:

YOU ARE HEREBY NOTIFIED that STEVEN McHARRIS (“McHARRIS”), whose address is [Personal Information] San Jose, CA 95112, claims damages from the CITY OF MILPITAS, its City Attorney, MICHAEL MUTALIPASSI (“MUTALIPASSI”), and its Councilmembers CARMEN MONTANO and EVELYN CHUA.

This Claim is based upon the continuous injuries and damages suffered by McHARRIS spanning the time from January 2022 up to and including the date of this Claim, and going forward, in the nature of:

1. Breach of Contract.

The CITY OF MILPITAS (“CITY”) has violated its Employment Agreement with McHARRIS by, among other things, the Council’s taking action on his employment within six months of a Council election; the Council’s failing to abide by its contractual commitment to follow provisions of the City’s Municipal Code regarding the administration of personnel issues; and the Council’s holding a series of performance evaluations contrary to the provisions of the Employment Agreement.

2. Violation of the Milpitas Municipal Code.

The CITY, by and through MONTANO and CHUA, violated the City's Municipal Code by conduct referenced in this Claim, including by refusing to deal with administrative matters only through the City Manager, by their giving orders to subordinates of the City Manager, and by their demanding the hire, removal or discipline of applicants or employees by the City Manager.

3. Defamation and Damage to Reputation.

The CITY, by and through MONTANO and CHUA, has repeatedly and with malice engaged in unprivileged conduct by which McHARRIS has been illegally and untruthfully defamed, with substantial damage to McHARRIS's reputation, as referenced in this Claim.

4. Constructive Discharge.

The CITY, by and through MUTALIPASSI, MONTANO and CHUA, knowingly created and intentionally forced upon McHARRIS intolerable working conditions that were so unusually adverse that no reasonable employee could continue working thereunder, leaving no alternative but for McHARRIS to leave the CITY.

5. Intentional and Negligent Infliction of Emotional Distress.

The CITY, by and through, MUTALIPASSI, MONTANO and CHUA, both intentionally and negligently inflicted severe emotional distress on McHARRIS by conduct referenced in this Claim.

6. Age Discrimination.

The CITY has discriminated against McHARRIS on the basis of his age, as manifested by conduct referenced in this Claim. The CITY, by and through MONTANO and CHUA, has harassed and retaliated against McHARRIS on the basis of his age, as manifested by conduct referenced in this Claim.

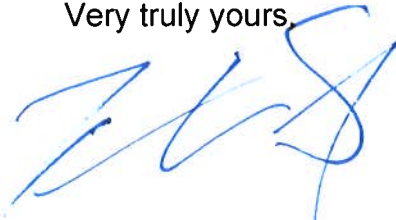
Suzanne Guzzetta, City Clerk  
City of Milpitas  
May 1, 2023  
Page 3

7. Hostile Work Environment.

The CITY, by and through MUTALIPASSI, MONTANO and CHUA, subjected McHARRIS to a hostile, abusive work environment, as referenced in this Claim.

Following is a Summary of Facts supporting the foregoing seven-point summary of this Claim.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'RCS', is written over the closing text.

R. Craig Scott  
For Claimant  
City Manager, Steven McHarris

**Executive Summary**

On February 2, 2022, the City Council held a closed session meeting to consider renewal of the City Manager’s employment contract terms and conditions. The City Manager had met with each Councilmember days before the meeting to review the agenda item and check in with each Councilmember to be certain relations and city performance were good. He asked each Councilmember the following two key questions:

- 1) Do you trust the City Manager?
- 2) Do you trust the City Manager to run the city?

Each Councilmember responded yes to both questions. After closed session, the Council announced there was deliberation and a 3 to 2 vote to not renew the City Manager’s contract. This was again affirmed by Mayor Montano at a subsequent 2023 Council meeting in response to in an inquiry to revisit the Council action, stating “We already made that decision.” This was in violation of the City Manager’s Employment Agreement which stipulates the Council may not take any action within six months of a council election.

On February 3, 2023, City Attorney Mutalipassi informed the Executive Assistant to the City Manager of a closed session item to be placed on the upcoming Council Agenda for the formation of a Council Subcommittee to search for a new City Manager. The City Manager believed the Council’s was taking swift action to lock him out of his city office and network system, prompting him to remove most personal effects from his office the following day, and to avoid the shame of being walked out of the building.

From this point forward, the City Manager experienced minimized direct communications and increasingly strained relationships with the City Attorney, Mayor, and Vice Mayor to the point of them physically avoiding him at City Hall, and their direct communications being abruptly reduced. The City Manager was constructively terminated just two months after the municipal election, not for performance reasons, but as a final act of vindictive retaliation, after months of mistreatment and harassment derived from matters such as his refusing to fire a city employee, and as a cost-savings strategy, further detailed in the Summary Items 1)–6) below.

It became evident to the City Manager that the pattern of vindictive and retaliatory conduct and communication he had received during the time of the

prior Council and during the November 2022 Council elections had carried through to the new Council. This was reinforced upon:

- 1) Mayor Montano's refusal to meet 1:1 with the City Manager;
- 2) Mayor Montano's opposition to public and Councilmember's request for re-visiting the decision of non-renewal;
- 3) The fact the three Councilmembers that voted against the renewal would not disclose what prompted their non-renewal decision;
- 4) Given Montano and Chua were not new to the Council and all three members were successfully supported by former Mayor Tran; and
- 5) Montano and Barbadillo were subject to Tran's arrangement for them to terminate the City Manager as their first order of business in exchange for Tran's Council elections endorsement and active support.

The City Manager engaged his Attorney Craig Scott to negotiate a settlement agreement for the City of Milpitas' Constructive Termination of the City Manager's employment, amongst other below-stated actions against him, many in violation of City Ordinance, City Council Policy, City Policy, and the City Manager's Employment Agreement. From Attorney Scott's initial contact with City Attorney Mutalipassi, discussion quickly turned very negative by Mutalipassi, including assertions to Attorney Scott that the City Manager had abandoned his office since he:

- 1) Removed personal items from his office.  
Response: Items were removed upon notification by City Attorney that a Council Subcommittee was being formed immediately to replace him; however, the City Manager utilizes his laptop computer for daily work activities, which does not require personal items in his office.
- 2) Worked more than one remote day per week in violation of City remote work policy  
Response: There is no one-day restriction and City Manager does not exceed the policy. City Manager had also scheduled time for a pre-approved city manager's conference, personal time to visit his mother in hospice care, followed by bereavement time for his mother's passing, prepare funeral arrangements, and care for his elderly father.
- 3) Only present at City Hall one hour in the afternoons for meetings.  
Response: Time sheets and staff can verify this has never happened.
- 4) Took two unplanned leave days.

Response: The leave was pre-planned and documented on his city Microsoft outlook calendar, and pre-programmed outlook email notification, and discussed with his staff.

Then City Manager's father began experiencing health issues and City Manager appropriately filed for FMLA with City approval on April 3, 2023. It was made known to the City Manager that Attorney Mutalipassi tried to use his absence from the office as another action to terminate him by stating that the City Manager was not in the office. Attorney Scott had to inform Mutalipassi's that City Manager was protected under FMLA.

The City Attorney Mutalipassi's most recent action to attempt to make it appear as if the City Manager had abandoned his position was in directing city staff to remove the City Manager's name from all new city materials, to be replaced with Acting City Manager Ashwini Kantak. City Manager first noticed this on the April "Milpitas Matters" publication and was informed on April 15, 2023 by the City's Public Information Officer that direction for this and all city materials was to eliminate the City Manager's name, as directed by Acting City Manager Kantak, via the City Attorney Mutalipassi.

Attorney Mutalipassi's false accusations have contributed to the City's ongoing harassment and pressure applied to the City Manager for him to resign, thus avoiding the City Manager's contract-mandated payout for breach of contract (no action by the City Council may be taken against the City Manager's employment within six months following a City Council election) and without cause. The City Manager believes Attorney Mutalipassi and the three Council members anticipated he would resign under pressure.

During the last settlement negotiation, City Attorney Mutalipassi offered a \$10,000 settlement and nothing for the estimated \$20,000 attorney fees. The following day, the City Manager's counteroffer was met with immediate denial by Mutalipassi proclaiming "bargaining has run its course, further bargaining cannot be done in good faith." Mutalipassi acted unilaterally without first consulting with the City Council in a closed session (upon 72-hour closed session public notification requirement). In fact, it is questionable if Mutalipassi presented any offer in writing by the City Manager.

#### Overview of City Manager's Claim:

City Manager has been subjected by the City Council to a hostile work environment, severe mistreatment, continuous harassment, bullying, unfair

characterization of his performance, and discrimination, which ultimately led to the Council's adverse employment action (3-2 vote) of refusal to reappoint him.

The City Manager has been subjected to the following areas of workplace harm to which he has reasonably and consistently objected:

- 1) Coercing the City Manager on Staff Oversight, Hiring, Firing, and Discipline;
- 2) Circumventing and Destabilizing the City Manager's Authority;
- 3) Requests in Violation of City Council Policy or Law;
- 4) Refusal to Communicate with the City Manager and Circumvent the City Manager;
- 5) Protected Class Complaints to the City Manager; and
- 6) Age-related "Pretext": Falsely accusing City Manager of misconduct and poor performance.

The refusal of certain Councilmembers' demands to fire specifically-named city employees lead up to a severe occurrence in October 2021 which commenced a series of unprecedented retaliatory and vindictive actions against the City Manager. Those included violations of City Ordinances, City Policies, and the City Manager's Employment Agreement. This Summary of Facts supporting the City Manager's claim exposes former Mayor Tran's political strategy to pressure the City Manager out of his position through unlawful coercion that extended throughout the November 2022 municipal election into 2023. Most notably, Mayor Tran offered his active campaign endorsement, which included his active social media platforms, and walking city precincts door-to-door in exchange for a successful candidate's firm commitment to remove the City Manager as their first order of business. Mayor Tran also revealed to the City Manager in December 2022 that after he leaves office, his policy work would continue through his successful candidates. Newly-elected Montano and Barbadillo were the two heavily endorsed successful candidates of Mayor Tran. By their February 2023 votes against the City Manager's employment, Barbadillo was able to quickly fulfill his campaign commitment to Mayor Tran while Montano was able to do the same while implementing the first step in her labor cost saving strategy by removing the City Manager.

Despite the constant undermining efforts of certain past and present Councilmembers, the City Manager did not capitulate or quit. He continued to perform his duties professionally in managing the affairs of the city.

Set out below is a summary of part of the factual bases of McHarris' claims:



**1) Coercing the City Manager on Staff Oversight, Hiring, Firing, and Discipline:**

- Mayor Tran and Vice Mayor Montano angrily pressured the City Manager to fire a specific employee for unsubstantiated racist wrong doings over multiple meetings, commencing on the evening of a November 2, 2021 Council meeting, followed by a November 3, 2021 meeting request regarding the employee, again on November 9, 2021 with Vice Mayor Montano, followed by a November 15, 2021 meeting with the Human Resources Director, Mayor and Vice Mayor regarding the employee, and again on November 22, 2021 with the Vice Mayor regarding the employee. They offered no credible proof of their charges. Montano merely stated that, “she cannot say because it is a personnel matter,” and Tran stated he, “expects standards of the organization to be clear and organization morale is one of his 3 pillars.” The City Manager consistently warned them against their interference and bold accusations against this employee and sought legal assistance from the City Attorney to help push back on their unlawful request to fire the employee. This was highly stressful to the City Manager due to the frequency, intensity, and recurring insistence, and questions regarding nepotism, employment policy, and City Manager approvals of employment below the department head level, hiring ethics, and conducting business by the book. The City Manager was confident his not succumbing to their threats would result in future retaliation. Prior to these demands by Tran and Montano, the City Manager was praised for outstanding service publicly and in email the City Council. But subsequently he was treated differently in being subjected to a series of retaliatory and vindictive actions and behavior in meetings and in email, and as further identified in the numerous examples of workplace maltreatment within this Summary.
- Vice Mayor Montano pressured the City Manager to fire a specifically named Fire Department employee for political reasons. The City Manager consistently and with sound reason opposed and warned her of this interference and sought legal assistance from the City Attorney to help push back on her request, to the Vice Mayor’s displeasure.
- Vice Mayor Montano pressured the City Manager several times in February 2022 to hire a specific named friend of the Vice Mayor’s, to a city social services position in which that individual had been unsuccessful in the

employment process. The Vice Mayor's initial complaints were: "not knowing the position was open," "application questions are too hard, too strict," and "the interview process too hard to get a job." With each complaint and inquiry of the Vice Mayor, the City Manager reasonably explained the hiring process but was sure that his refusal to intervene in the hiring process would result in future retaliation against him.

- Mayor Tran and Vice Mayor Montano angrily pressured the City Manager to address a specifically-named Fire Department employee for alleged attendance and remote work commencing March 2020 for an extended period of time. This caused staff morale problems within the department. This occurred over multiple meetings with no credible proof or source of information other than the Mayor stating he has dinner with fire personnel weekly and the Vice Mayor stating she hears about it too. The City Manager investigated their complaints, found no wrongdoings and provided a reasonable response to each of their complaints. Despite their continued displeasure, the City Manager advised them to not interfere with Fire Department personnel and operations. This was highly stressful to the City Manager due to the frequency, intensity, and recurring insistence, and questions regarding specific confidential personnel information, and related employment policy. The City Manager knew that his pushing back on the Mayor and Vice Mayor would result in future retaliation.
- Mayor Tran and City Council held four separate City Manager performance evaluations in early 2022 commencing on January 8, 2022, which the City Manager opposed, in defiance of City Attorney's cautions, and in violation of the City Ordinance and City Manager's Employment Agreement regarding the City Manager's role over the Planning Director as described in the attachment to the City Manager's June 2022 self-evaluation (5th closed session performance evaluation). Vice Mayor Montano criticized the City Manager for responding in writing to the Council's request as to why he would be involved in staff analysis of a carwash on Main Street permit application. She was specifically concerned that the response would be a public record. The City Manager believed his response is accurate but contrary to the Councilmembers' attempts to disparage and discipline him and would result in future retaliation against him. On April 27, 2022,

Councilmember Chua disclosed to the City Manager that the Mayor in closed session was “focused on his unhappiness with the City Manager’s decision making,” and “focused on the Economic Development and Planning Department and the City Manager’s Employment Agreement.” Again in August 2022, Councilmember Chua, with disregard to the City Manager’s role, joined the Mayor and Vice Mayor’s false accusations and criticism in the 5th evaluation, disclosing to the City Manager that his intervening in the carwash analysis “was a big deal in interference with the Planning Department” as her reason for ranking the City Manager poorly.

- Mayor Montano frequently pressured City Manager to favor hiring residents of Milpitas for staff positions and not persons that had worked for the City of San Jose.
- Mayor Montano frequently accused the City Manager of “allowing” staff to be involved in campaign activities on their own time during local 2022 elections. She did not stop, even after the City Manager reasonably explained, multiple times, employee civil rights away from the workplace. This caused the City Manager undue stress. He knew his refusal to intervene would result in future retaliation against him.
- Mayor Montano frequently accused the City Manager of “allowing” staff members to be friends with other Councilmembers, even after City Manager explained several times of employee civil rights away from the workplace. This caused the City Manager undue stress. He knew his refusal to intervene would result in future retaliation against him.
- Vice Mayor Chua requested the City Manager be “professionally distant” from department heads in his July 2022 performance evaluation and at the January 2023 Council Retreat. This was clearly in contrary to the City Manager’s role. She held this against him in his last performance evaluation, acting contrary to the City Manager’s role.

**2) Circumventing and Destabilizing the City Manager's Authority:**

- Mayor Tran revealed to the City Manager his practice of direct communications with employee union members. During a specific ongoing Council-directed labor negotiation, the formal negotiation abruptly ceased at the time the Mayor mentioned his employee involvement to the City Manager. On January 24, 2022, Mayor Tran informs the City Manager that “he meets with union, he hears what is going on, he needs to find some answers.” On March 3, 2022 Mayor Tran informed the City Manager that the union expects the (Council-directed) pilot program be dropped per deal with the Mayor. On March 4, 2023, the Mayor informed the City Manager that he went to the union. On April 11, 2022, Mayor Tran stated to the City Manager that the union wanted new positions to be full-time in the budget. On March 24, 2023, Mayor Tran shared a union leader letter sent to him regarding new positions. At the June 7, 2022 budget adoption, Mayor Tran publicly denied any improper communications with the union. This interference resulted in a loss of up to six months of previous City-labor negotiating by designated professional staff. Vice Mayor Montano informed the City Manager that she fully supported the labor group. The City Manager sought the assistance of the City Attorney and reasonably identified this as a key issue impacting his ability to perform his duties in his “Self-Evaluation” attached to his performance evaluation. This was followed by further retaliation by Mayor Tran and Vice Mayor Montano, as described in this Summary of Facts.
- Mayor Tran vehemently opposed a County “Home Key” affordable housing project, which was consistent with Council policy and direction. He falsely and publicly accusing the City Manager and his staff of working with Santa Clara County officials without Council authorization, and maliciously threatened the City Manager with a Public Records Act (PRA) request for the City Manager’s e-mails and the City Manager’s Employment Agreement. PRA requests from mayors of city managers are unheard of, and are demoralizing to any city manager, demonstrating to city staff and the public that Mayor Tran has no trust in the City Manager’s key role, which is to support and implement City Council policy. The Mayor’s ongoing related comments and actions were further acts of retaliation and hostility.

- Mayor Tran frequently communicated social media criticism of staff performance in late 2021 through 2022, impacting staff morale, which in turn hindered City services, adding undue stress to the City Manager and staff. The City Manager tried to reason with the City Council about this demoralizing practice through individual 1:1 meetings and through his Self-Evaluation attached to his performance evaluation; however, the practice continued.
- Mayor Tran inflicted ongoing belittlement, harassment, and intimidation, commencing late 2021 through 2022 causing undue stress to the City Manager with his emails asserting communication “failures” of the City Manager with malicious intent to establish negative performance.
- Mayor Tran, in coordination with Vice Mayor Montano, solicited a significant amount of “constituent complaints” through his social media with intent to establish negative performance which were sent to the City Manager’s Office for resolution, disrupting programmed city services, and impacting staff morale, and contributing to a hostile work environment for the City Manager. The City Manager requested multiple times to have Councilmembers use and encourage the public to utilize the My Milpitas App for such complaints/service requests to little avail as the practice continued and worsened.
- Mayor Tran, Vice Mayor Montano, and Councilmember Chua frequently messaged on their social media platforms city wide operations, encouraging negative resident postings, perceived by the City Manager and staff as criticism of City services impacting staff morale, which in turn hindered City services. This added undue stress to the City Manager and staff. The City Manager was unsuccessful in his attempts to have these Councilmembers reasonably curtail this practice.
- Mayor Montano and Vice Mayor Chua maliciously and falsely accused the City Manager on August 18, 2022 of conspiring with the City Clerk in processing public records requests that would be of political detriment to them. They worked with the City Attorney, independent of the City Manager and City Council, to change the City Ordinance so that the City Clerk would report directly to the City Council to assure exclusion of all

public records act requests from the City Manager. This information was received from the City Attorney. It caused undue stress to the City Manager and City Clerk, knowing that the Mayor and Vice Mayor were attempting wrongfully to influence City administration work. Their accusations were perceived by the City Manager as a threat to his and the City Clerk's future employment status.

- Mayor Montano and Vice Mayor Chua consistently circumvented City ordinance, City policy, and the City Manager's Employment Agreement, by giving direction directly to Department Heads and staff members, causing confusion and anxiety within the City administration and consuming significant amounts of the City Manager's time and efforts in keeping the Department Heads focused on their work programs. The City Manager reasonably communicated opposition to this practice to little avail.
- Mayor Montano frequently complained to the City Manager about his not working on her items, when those items have not been prioritized or budgeted by the City Council, for the City Manager and staff to implement. Subsequently and unfairly, Mayor Montano complained that the City Manager is not doing his job, despite the City Manager reasonably and routinely explaining the City Council Policy for staff work prioritization.
- Mayor Montano and Vice Mayor Chua requested they be provided with individual employee remote work schedules, and proof of supervisory oversight on December 2, 5, and 6, 2022. The Mayor referred to remote workdays as "days off" for employees, and the Vice Mayor inaccurately referenced different non-comparable employee groups work schedules as reasons for the City Manager to reduce remote work. The Mayor requested remote work be eliminated; the Vice Mayor requested it be scaled back. These repeated requests overreach the Councilmembers' defined roles and responsibilities, demonstrating their refusal to accept the Council-Manager form of government per City Ordinance, Council Policy, and the City Manager's Employment Agreement. Despite, the City Manger's reasonable explanations and City Policy, they continue to interfere with the City Manager's responsibilities to the detriment of city operations, and Council-accepted remote work policy, employee morale, and employee attraction and retention.

- Vice Mayor Chua publicly criticized staff at a 2023 Council meeting while seeking and wrongly insisting that certain service contracts that followed City-established policy and procedure be rebid. She did this to seek out businesses she personally believed should have participated in the contract process. She did not discuss the matter with the City Manager in advance. This undermined his authority, diminished staff morale, and caused undue stress.
- Mayor Montano allowed four non-employees unauthorized entry into the City Hall building on January 29, 2023 to accompany her in walking City Hall floors, most of which are badge-restricted from public access. They engaged in some form of a ritual, surprising and interrupting the work of employees. Mandatory City procedures for requesting permission or approval from the City Manager or staff were not followed. The City Manager appropriately documented this incident and HR investigated with a rapid conclusion by the City Attorney that there is no ordinance or policy prohibiting such rituals in City Hall. This incident demonstrates Mayor Montano's disregard for the City Manager's authority and responsibility for security and access to all city facilities. It also demonstrates the City Attorney's willingness to defend the Mayor at the City Manager's expense, both undermining and causing the City Manager added undue stress in managing City facilities (City Hall) and operations, including HR investigations.
- Mayor Montano consistently failed to recall discussions and repeated requests with the City Manager, City Clerk, Senior Executive Assistant to the City Manager, and other senior staff members, accusing them of not working on her items, not scheduling meetings, and sabotaging her in various ways. This caused the City Manager and staff undue stress, frustration, and was a waste of resources, contributing to her many instances of harassment toward the City Manager and staff.
- Mayor Montano frequently cited her disapproval and lack of trust in the new City Attorney and warned the City Manager not to trust him. This caused the City Manager undue stress and anxiety, as under normal

circumstances, he requires an effective working relationship with the City Attorney to manage the affairs of the City.

- Mayor Montano frequently insisted the City Manager should not trust or listen to Councilmembers, including Councilmember Phan and former Councilmember Dominguez, and specific members of the public whom she finds objectionable. Despite the City Manager's multiple responses and explanations that he serves all five Councilmembers, he feels intimidated and stressed by the Mayor's warnings. He knows that he will be retaliated against if he does not respond favorably to the Mayor.
- Mayor Montano confided in the City Manager in January 2023 stating: "Evelyn is afraid of Rich, worried if Carmen does not do what he wants, he is going to be really mad. This happened with Juliette and Rich where Juliette is fully out because Rich was too demanding and she would not take it anymore," acknowledging Tran's influence on the Vice Mayor and Council candidates during the 2022 election. The City Manager is deeply concerned due to the past retaliation Tran has subjected him to.
- Mayor Montano expected the City Manager to referee the frequent Council arguments and disruptions amongst Councilmembers in public meetings. This was discussed at Council Retreats, and it was agreed it is not the role of the City Manager to interject, referee or facilitate City Council meetings. Yet her complaints against the City Manager continue, further demonstrating her misperception of the City Manager's roles and responsibilities.
- Mayor Montano consistently blamed the City Manager and staff for missing and mis-scheduling meetings due to her incapability to utilize the City's Microsoft Outlook scheduling and remote meeting programs. Mayor Montano's consistent blame and criticism of staff for her inability to utilize basic technology continues to significantly impact the City Manager's ability to buffer his staff from her criticism, further impacting staff morale.
- Mayor Montano frequently misunderstood, and questioned staff work due to her lack of preparation and comprehension prior to meetings with staff, and public City Council meetings. This results in her further



misunderstanding of City operations, budgeting, and staff's roles in administering those operations, and impacting the City Manager's and staff's ability to successfully assist her, even in the most basic of issues facing the City.

- Mayor Montano consistently threatened the City Manager in 2022 and 2023 that all her discussions with the City Manager are “confidential,” even when such discussions require follow-up staff communication and coordination for positive outcomes that benefit her and the City. Mayor Montano further complains to other Councilmembers of the City Manager's “breach of confidentiality,” causing her and other Councilmembers to erroneously assess the City Manager's performance as unprofessional and wrongly impressing on the City Manager and others that he is not doing a good job.
- Mayor Montano and Vice Mayor Chua coerced the City's professional Council Retreat facilitator by contacting the facilitator the night prior and showing up at the January 26, 2023 Retreat location early in the morning to further pressure the facilitator into changing the pre-planned agenda and presentation items and eliminating the City Manager's presentation, without notifying the City Manager. The facilitator later informed the City Manager that this Retreat was the most difficult she has encountered with the Mayor and Vice Mayor pressuring her in the morning and their fundamental misunderstanding of Council-City Manager form of government during the Retreat. This experienced facilitator further stated that the Mayor and Vice Mayor were so far out of their roles that she would not want to work with this Council again. She foresaw continued friction caused by the Mayor and Vice Mayor against the City Manager and staff, the direct cause for ongoing divisiveness within the five-member Council itself. This impacts the City Manager's ability to perform his duties. The City Manager feels this event will result in continued retaliation against him by Mayor Montano and Vice Mayor Chua, as described in this Summary of Facts.

- The City Attorney carelessly informed the City Manager’s staff that the City Council was forming a subcommittee in February 2023 to replace the City Manager, signaling to the City Manager and staff that he had been constructively terminated by City Council action. The City Attorney followed up, causing significant uncertainty, confusion, and stress on City Manager and City staff.
- The City Attorney, Mayor Montano, and Councilmember Chua wrongly accused, embarrassed, and demoralized the City Manager at a March 21, 2023 City Council meeting of “improperly” adding an item to the City Council meeting agenda due to “rules of order,” disallowing the City Manager to reasonably explain (cutting him off in mid-sentence) regarding the City Manager’s authority over City Council meeting agendas by City Ordinance and Council policy. No “rules of order” exist in City Ordinance or Council policy.
- After February 2, 2023, Mayor Montano and Vice Mayor Chua noticeably refused direct contact with the City Manager, despite the City Manager’s reasonable requests to be directly engaged, and despite his multiple requests to the Mayor and Vice Mayor to curtail this practice.
- The City Council immediately and pre-maturely took action on the City Manager’s Employment Agreement on February 2, 2023 in violation of that Agreement causing unnecessary media headlines, and stress and disruption to the City Manager and city staff. The City Council further published a press release dated March 24, 2023, leading to several additional media headlines wrongly revealing the City Manager’s legal request of settlement (to avoid litigation) as “potential litigation” and “damages to the City” by the City Manager. That should have remained confidential rather than needlessly damaging the City Manager’s career and reputation.
- Upon bereavement leave of the City Manager for the February 2023 death of his mother, the City Attorney carelessly and maliciously accused the City Manager of the following, which contributed to the constructive termination of the City Manager: (1) removing personal items from his office; (2) violating City remote work policy; and (3) being at City Hall only

one hour in the afternoons for meetings. These accusations added to a hostile work environment, causing the City Manager additional and substantial stress, impacting on his ability to effectively work with the City Attorney.

- The City Attorney carelessly and maliciously accused the City Manager of not fulfilling his duties during a week of two pre-planned and documented management leave days on March 29 and 30, 2023 that were documented in advance on his City Microsoft Outlook calendar, and pre-programmed Outlook email notification. These accusations added to a hostile work environment, causing the City Manager additional and substantial stress, and impacting his ability to effectively work with the City Attorney.
- Upon the City Manager taking FMLA in March 2023, the City Attorney, without authority and maliciously, directed the Assistant City Manager to replace the City Manager's name with her name on all new City materials. This he did without notifying the City Manager.

### **3) Requests in Violation of City Council Policy or Law:**

- During the 2022 Council elections, Mayor Tran offered his active campaign endorsement, which included his active social media platforms, and walking city precincts door to door in exchange for a successful candidate's firm commitment to remove the City Manager as their first order of business. According to an unnamed City Council candidate, Mayor Tran stated: "I ran my election three times. I always win. I did Evelyn Chua's and she won. You must listen to me. You endorse Carmen and Garry and I will support you. First thing is to change the City Manager. He is not doing a good job." The candidate refused and Mayor Tran demanded the candidate remove his name from the candidate's campaign materials.
- Mayor Tran and Vice Mayor Montano consistently pressured the City Manager to establish legally unenforceable no-parking and no-loitering zones in public areas occupied with vehicles or unhoused/unknown individuals. Despite the City Manager's limited ability to establish an

unenforceable parking policy, he was confident that his inability to satisfy these demands would result in further retaliation.

- Mayor Montano frequently requested that the City Manager fund events and holiday dinners, including a gala ball, none of which qualified as bona fide City expenditures. Upon the denials of some requests, Mayor Montano pressured the City Manager with a response that a former city manager would have approved her requests with City funds. Despite the City Manager's reasonable explanation of City Policy, he received this as a threat of replacing him in the future with someone of less tenure, experience, and fortitude.
- Mayor Montano frequently complained to the City Manager in January 2023 about her supposed payroll underpayments, proclaiming she is the Mayor and should be paid more for her work as "the mayor," refusing to understand the City Manager's reasonable explanation that he has no authority over her stipends. His inability to increase her pay would lead to future retaliation against him.
- Mayor Montano and Vice Mayor Chua repeatedly pressured the City Manager to violate established Council Policy on Council seating arrangements in December 2022 and January 2023. Despite his reasonable explanation and opposition, the Mayor continued with statements that Council Policy is only guidelines that do not need to be followed by the City Manager. Mayor Montano repeatedly made it clear she is the mayor, and the City Manager must follow her direction as "the mayor." The City Manager felt threatened and intimidated by the Mayor's expectation that she is entitled to rights and privileges apart from the entire Council in her new role. Worse, she lied to the City Manager about another Councilmember's "acceptance" of her request, causing a Brown Act violation.
- Mayor Montano and Vice Mayor Chua repeatedly pressured the City Manager to violate Council/Administrative Policy – Employee Remote Work Policy. Despite the City Manager's reasonable explanation of the topic and City Policy, Mayor Montano repeatedly made it clear she is the mayor, and

the City Manager must follow her direction as “the mayor.” Without consulting the City Manager, the Vice Mayor discussed employee remote work as an issue with Fire Department personnel (unaffected by the issue) and falsely claimed they are demoralized by the City’s remote work policy. This further undermined the City Manager’s ability to manage potential employee issues of concern, rumor, or hearsay, and demonstrated the Vice Mayor’s disregard for the City Manager’s roles and responsibilities.

- Mayor Montano and Vice Mayor Chua repeatedly pressured the City Manager to violate Council Policy - City Hall Hours on December 6 and 12, 2022 and January 2023. Mayor Montano repeatedly made it clear she was unaware of Council accepted policy on this matter and that she is the mayor, and the City Manager must follow her direction, as “the mayor.” The Vice Mayor rebuffed City Manager’s information/justification including the Council staff report on City Hall hours, claiming his response does not matter, as they are pressing the issue to address their “perception” that City workers are paid to not work on Fridays. On January 19, 2023, Mayor Montano questioned the City Council Retreat facilitator about City Hall hours. The facilitator reported her response to the Mayor as, “this is administrative not policy” to the City Manager that the Mayor “does not know her role” and “does not like having a title with no power.” Despite the City Manager’s reasonable explanation of City Policy, he received this as a threat to replace him in the future with someone of less tenure, experience, and fortitude.
- Mayor Montano frequently complained that the City Manager does not prioritize or work on her items (that are not essential operational items and not prioritized by the Council), despite the City Manager’s reasonable explanation of his roles and responsibilities, violation of the City Manager’s contract and City ordinances, and failure to allow the City Manager to administer his duties fairly amongst the desires and direction of the Council majority. Equally important, this demonstrates the Mayor’s lack of understanding and assessment of the City Manager’s performance of duties, and her continued pressure on the City Manager to do as he is told

or be replaced in the future with someone of less tenure, experience, and fortitude.

**4) Refusal to Communicate with the City Manager and Circumvent the City Manager (effectively constructively terminating the City Manager):**

- Since the Council's February 2, 2023 action taken to end the City Manager's employment, the three Councilmembers voting in favor significantly reduced in-person and direct communications with the City Manager regarding City budgeting and City operations. Instead, they directly communicated with executive team members, despite his multiple requests to curtail this practice.
- Mayor Montano declined scheduled 1:1 meetings with the City Manager, utilizing other staff in communicating her requests and receiving information, other than through the City Manager.
- On February 2, 2023, Mayor Montano declined to meet with the City Manager without an advanced agenda and unless accompanied by the City Attorney or another person, making the City Manager feel penalized and retaliated against by the Council's early decision to constructively terminate his employment.
- Vice Mayor Chua continued to request meetings after February 2, 2023 with Department Heads without informing the City Manager, stating the City Attorney ok'd her requests. The City Manager felt maliciously overruled by the City Attorney, especially considering the City Manager's direction to staff and his coaching of staff on how to respond to such requests. The City Manager received this as further workplace harassment and adding to a hostile work environment, causing the City Manager additional and substantial stress, impacting on his ability to effectively work with the City Attorney.
- After February 2, 2023, Vice Mayor Chua continued to direct staff, against Council direction and Council Code of Conduct. This required the City Manager to prepare a response to staff members not to follow the Vice

Mayor's direction, placing the City Manager in another stressful position of disagreement with the Vice Mayor's intentional interference, requiring additional staff direction and staff coaching by the City Manager.

- Vice Mayor Montano declined scheduled 1:1 meetings with the City Manager throughout 2022, and was frequently absent for the City Manager/Mayor/Vice Mayor bi-weekly meetings, contributing to her lack of preparation of many Council meeting agenda items in which she often blamed the City Manager or staff for lack of knowledge of these items.
- Upon the City Manager taking FMLA in March 2023, the City Attorney acted maliciously and without authority by directing the Assistant City Manager to replace the City Manager's name with her name on all new City materials and publications.

#### **5) Protected Class Complaints to the City Manager:**

- Mayor Tran and Vice Mayor Montano consistently criticized the City Manager and Recreation Director regarding the City's LGBTQ Pride events, commencing on April 25, 2022. The City Manager was offended by their comments and lack of support as he contends all communities should be represented.
- Mayor Montano consistently criticized the City Manager for a new artful component of a pedestrian bridge, fearing it would be considered a Pride symbol with its rainbow-colored appearance. The City Manager was sickened each time by her comments as he contends all communities should be represented. She caused the City Manager ongoing undue stress with fear of ultimate retaliation for supporting the bridge art, each time she brought it up to him.
- Mayor Montano was instrumental in the firing of the previous City Attorney, who is a member of a protected class. Although the City Attorney was under contract to the City, Montano's disapproving comments about LGBTQ events and art, followed by the firing of the previous City Attorney were perceived by the City Manager as she did not wish to actively

promote this protected class in terms of employment, public expression, or in City events. The City Manager felt threatened with fear of ongoing retaliation each time this protected class was brought up to him.

- Mayor Montano frequently stated to the City Manager that Councilmember Phan is an Atheist (he affiliates with Buddhism) and Councilmember Karina Dominguez is the devil and evil (she affiliates with Catholicism), and the City Manager should not trust them. Despite the City Manager's reasonable explanation that he serves five Councilmembers, he knew her disapproval would add to further retaliation against him for his working with those Councilmembers.
- In a recent discussion about public safety, Mayor Montano identified a recent national policing incident involving Tyre Nichols as "Black-on-Black." The City Manager found the comment dismissive and offensive, and turned the discussion toward one of Black History in America and empathy yet knew his not agreeing with her would be held against him in the future.
- During national BLM protests in 2020, Montano forcefully discussed her opinion of the BLM protestors in San Jose and nationally with the City Manager, describing them as "thugs, criminals, outsiders," and saying, "it's all political." Because of the City Manager's response of empathy and compassion on the topic, he felt he was being pressured to concur against his ethics and values, and believed not agreeing with Montano would result in further retaliation in the future.

**6) Age-related "Pretext": Falsely accusing City Manager of misconduct and poor performance.**

- A City executive search firm reinforces the Council's age bias against the City Manager. The search firm recently stated they are not looking for an executive near the end of their career as the city wants younger, more enthusiastic people.
- After two consecutive years of outstanding performance evaluations, achievements, successful project delivery, and documented levels of



outstanding City services, in 2022, the City Manager suddenly faced four unfair and punitive “performance evaluations,” in early 2022, commencing on January 8, 2022 falsely accusing the City Manager of misconduct, in closed session without the City Manager or professional facilitator. These sessions were a vindictive effort to undermine, intimidate, increase scrutiny, and suddenly commence a series of complaints about the City Manager’s performance to Councilmembers in an attempt to discipline the City Manager. The City Manager engaged his private attorney to work with the City Attorney to reasonably oppose these unwarranted meetings with potential Brown Act violations; however, the evaluation meetings continued.

- Mayor Tran, Vice Mayor Montano, and Councilmember Chua rebuffed and sabotaged the City Manager’s attempts in scheduling a legitimate facilitated 2022 performance evaluation per the terms of his Employment Agreement. The professional facilitator resigned due to the unethical behavior of these Councilmembers. The City Manager felt this was further Council harassment and retaliation against him, creating a hostile and uncomfortable working environment and adding pressure on him to vacate his position.
- The most recent City Manager performance evaluation was hurriedly arranged on July 11, 2022 when the City Council normally is on recess and when the City Manager had a Council-approved pre-scheduled month-long out-of-state training program. The evaluation rating was unsupported and significantly lower than it should have been. It effectively reduced the City Manager’s salary, given no cost of living (COLA) or other compensation adjustment, where all other eligible City employees received merit and COLA adjustments. This tactic was further harassment of and retaliation against him, in continuing a hostile and uncomfortable working environment.
- The City Council consistently attempted to shift the organizational culture away from the City Council – City Manager form of government, with documented opposition by the City Manager regarding deliberate disregard

of City Ordinance, City Council Policy, and the City Manager’s Employment Agreement. This increased scrutiny made the City Manager’s work more difficult in the later months of his tenure, adding to the ongoing harassment and hostile work environment initiated by Mayor Tran with Vice Mayor Montano. Newly-elected Mayor Montano and newly-appointed Vice Mayor Chua continued this behavior in early 2023, by taking swift action on February 2, 2023 to not renew the City Manager’s Employment Agreement just two months into its new term. This surprised the City Manager and City employees, and was in direct violation of the City Manager’s Employment Agreement, resulting in added pressure on him to vacate his position.

- The Council invested \$88,000 in the City Manager’s professional development this fiscal year, including sending him to Harvard University in July 2022 at a \$50,000 cost while at the same precise time hurriedly conducting and fabricating a poor and unsubstantiated performance evaluation with no documented evidence of diminished performance. This was another attempt by the Council to pressure the City Manager to vacate his position and replace him with someone of lesser age and experience. It also raises the question of why the Council would make such investment in the City Manager’s future professional development while at the exact same time issuing a poor performance rating with no substantive evidence of diminished performance. This set the stage for them to convince others going forward that the City Manager was not doing a good job, adding pressure on him to vacate his position.
- Mayor Montano’s frequent comments and complaints about the City Manager and her Fall 2022 campaign mailers inferring she does not support the City’s “highly paid bureaucrats,” are consistent with her prior instances of harassing the City Manager, along with the former Mayor Tran, and her intent to have the Council replace the City’s most senior executive, as part of her labor cost saving strategy.
- Throughout the entire 2022 municipal election and into 2023, Mayor Tran required his endorsed candidates to promise to get rid of the City Manager

as their first order of business in exchange for his endorsement and active support, as he spread rumors asserting the City Manager is not doing a good job. Montano and Barbadillo were successfully elected. One of their first major orders of business was not to renew the City Manager's contract, in violation of his Employment Agreement. This demonstrated an extraordinary attempt of past and present Councilmembers, coordinating together, in support of Mayor Montano's strategy to have the Council hurriedly replace the City Manager with someone of less age, knowledge, and experience.

- Mayor Montano often communicated her age bias that certain senior executives are highly paid. She expressed deep disappointment with the City Manager in appointing the new Deputy City Manager. She pressured the City Manager each year to eliminate specific executives. The City Manager consistently and reasonably opposed the Mayor's position, and her intent to replace the City Manager and possibly others with persons of less age, knowledge, and experience.
- City Attorney Mutalipassi disclosed to the City Manager on August 8, 2022 that Mayor Montano and Vice Mayor Chua utilized the City Attorney to isolate the City Manager from staff work involving a Public Records Act request seeking a Montano/former City Attorney email exchange related to Montano's controversial visit to China as a Councilmember. They directed the current City Attorney to prepare an amendment to the City's open government ordinance that would have the effect of covering up Montano's all-inclusive trip to China, where she represented herself as a Councilmember, and where no such travel had been authorized by the City, nor properly disclosed. According to Attorney Mutalipassi, this work was completed in January 2023. Mayor Montano and Vice Mayor Chua fully understand the benefit to Mayor Montano in directing the City Attorney to expend significant work in preparing this ordinance amendment. The City Manager notes that the City Attorney scheduled the item for Council hearing on January 17, 2023, then March 21, 2023 and later moved it to August 15, 2023. Isolating the City Manager from this ordinance work, further demonstrates that Mayor Montano and Vice Mayor Chua want him replaced with someone of less age, cost, knowledge, and experience who might support this ordinance change.

- Mayor Montano inappropriately requested the City Manager not allow the City Clerk to assist anyone involved in a pending recall campaign against her regarding her controversial China trip. Mayor Montano expressed to the City Manager significant concern that anyone can solicit the 8,000 signatures in front of Safeway to recall her and she knows a recall petition is coming to the City Clerk. This request by Mayor Montano caused undue stress to an already precarious situation. Mayor Montano's effort to isolate the City Manager from his staff, further demonstrates her desire to have the Council replace him with someone of less age, cost, knowledge, and experience.
- Mayor Montano frequently complained during the 2022 election about the City Clerk assisting other mayoral candidates running against her, with the City Clerk providing election guidance, and instruction, specifically regarding election statements. Montano expressed dissatisfaction with the City Clerk's performance, which resulted in a chilling effect on the City Manager and the City Clerk in carrying out their duties legitimately and ethically. In disagreeing with the Mayor, the City Manager knows there is a high probability of retaliation from the Mayor and Vice Mayor, furthering their desire to have the Council replace the City Manager with someone of less age, cost, knowledge, and experience.
- Mayor Montano frequently complained to the City Manager about her negative opinion of the City Clerk's performance related to duties to assist candidates filing for council and mayor positions during the recent municipal election, even after the City Manager reasonably explained the City Clerk's role. Mayor Montano is distrustful of the City Clerk and City Manager and she believes by having the Council replace the City Manager with someone of less age, cost, knowledge, and experience, she will have significantly more influence over the next City Manager and current City Clerk.

# Redaction Log

| Reason               | Page (# of occurrences) | Description   |
|----------------------|-------------------------|---|
| Personal Information | 1 (2)<br>2 (1)          | Public disclosure of the redacted personal information, such as a personal phone numbers, is exempt as disclosure would constitute an unwarranted invasion of personal privacy. The public interest served in withholding the redacted information clearly outweighs any public interest served in disclosure pursuant to Government Code § 6255. |