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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Michelle Tyler and Katherine Ragazzino,
Plaintiffs,

vs.

City of San Diego, Robert Filner, individually and as the former Mayor of the City of San Diego, and Does 1-10

Defendants.

CASE NO. 37-2014-00082976-CU-PO-CTL

PLAINTIFFS' OPPOSITION TO THE DEMURRER OF THE DEFENDANT CITY OF SAN DIEGO

Date: March 28, 2014
Time: 9:00 a.m.
Judge: Judge Joel R. Wohlfeil
Dept.: 73
Trial date: Not set

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I. SUMMARY OF PLAINTIFFS' OPPOSITION

Plaintiffs Michelle Tyler and Katherine Ragazzino sued the City of San Diego ("the city") and its former mayor Robert Filner for sexual harassment and related claims. Ms. Tyler is a nurse and the Veterans Administration Caregiver for Ms. Ragazzino, a 100% disabled U.S. marine who served in Iraq and Afghanistan and was injured while serving our country.

On June 11, 2013, at an official meeting in San Diego city hall, Mayor Filner tried to extract sexual favors from Ms. Tyler in exchange for helping a 100% disabled marine. (Complaint ¶¶ 18-22). At that time, the city had known for at least four months that the mayor had emotional problems and was abusive. (Id., ¶¶ 2, 27). Yet, the city did not warn the Plaintiffs before their meeting with the mayor or take any remedial measures to prevent and correct the sexual harassment. (Id.). City attorney Jan Goldsmith told the media, "*I understood that he needed therapy [by February 2013].*" (Ptf. Request for Judicial Notice "RJN", Ex. B, p. 1, filed herewith). Yet, the city is now claiming that they did not know. The city's contradictory political and litigation positions raise questions about the city's decision making process.

Plaintiffs have claims against Mr. Filner for his tortious conduct, and separately against the city for direct and vicarious liability.

The city's demurrer should be denied because there are sufficient allegations to withstand challenge on a demurrer (and summary judgement). Plaintiffs have properly plead averments for each cause of action, which must be accepted as true. No more is required. Plaintiffs' causes of action should be decided by a jury.

Generally speaking, it is unusual for a mayor to be sued for sexual harassment. So far, Plaintiffs have found no factually analogous California cases. However, to give some context, other sates have held *both* the mayor and the municipality responsible for the mayor's sexual harassment. In *May v. Borough of Pine Hill*, 2012 U.S. Dist. LEXIS 112107, 20-22, reconsideration denied 2013, the town of Pine Hill's mayor was accused of sexual harassment by tax collector, Diana May. The district court denied the mayor and the town's summary judgment motion on the sexual harassment cause of action under quid pro quo and hostile work environment. The court said, "[i]t is the role of the jury, not the judge, to determine credibility. Accordingly, Defendants' Motion must be denied ..." (*May,* lodged at Exhibit A). Similarly, a mayor and city's motion for summary judgment on a sex harassment cause of action was denied in

Kopman v. City of Centerville (2012) 871 F.Supp.2d 875, 891-893. (*Kopman*, lodged at Exhibit B).

The fact that summary judgments were denied supports Plaintiffs' position that the city's demurrer should be denied and this case should be decided by a jury, assuming that the city continues to refuse mediation and the case cannot settle.

II. FACTS

A. Summary of the complaint

A summary of this case is set forth in the complaint's introduction, which states:

> On June 11, 2013, Ms. Tyler and Ms. Ragazzino attended a business meeting with Mayor Filner in San Diego City Hall. Ms. Tyler, a nurse, was Ms. Ragazzino's Veterans Administration Caregiver. Ms. Ragazzino is a United States Marine who served two tours of duty in Iraq and Afghanistan and became 100% disabled while serving our country. She suffers from traumatic brain injury, post traumatic stress disorder, spinal cord injury, nerve damage and more. Ms. Tyler and Ms. Ragazzino met with Mayor Filner to try to secure help that Ms. Ragazzino needed to live. At that meeting, Mayor Filner essentially said that he would help Ms. Ragazzino (the Marine) *if* Ms. Tyler (the nurse) had sex with him. What Mayor Filner did was an extreme abuse of power. The City of San Diego knew that Mayor Filner needed help, was unable to control himself, and had sexually harassed other women. Yet, the City did not protect the Plaintiffs, it did not train or supervise Mayor Filner, it did not discipline him prior to the incidents herein, it never warned the Plaintiffs of the dangers of meeting with the mayor, and it did not prevent his sexual misconduct until after the Plaintiffs were damaged and eighteen women courageously stepped forward and publicly complained that the City's mayor was essentially a serial harasser. Ms. Tyler and Ms. Ragazzino have suffered damages as a result of Mayor Filner *and* the City of San Diego, including but not limited to emotional and economic damages, in an amount to be determined at trial if the City continues to refuse to mediate Ms. Tyler and Ms. Ragazzino's claims. (Complaint, ¶1).

There are four causes of action: (1) battery against only Mr. Filner, (2) sexual harassment, Civil Code §51.9, against both defendants, (3) negligent infliction of emotional distress ("NIED") against both defendants, and (4) negligence against Mr. Filner for his treatment of the Plaintiffs, and negligence against the city for failure to warn, train, supervise and discipline.

Plaintiff Tyler's sex harassment cause of action is based upon two theories: quid pro quo and hostile environment harassment. (Complaint ¶¶ 21-22, 31-32, 41-49). Civil Code §51.9 instructs courts to look to Government Code §12940 for guidance regarding sexual harassment, which is discussed infra.

As for Ms. Tyler's quid pro quo theory, boiled down, the complaint alleges that the mayor said that if Ms. Tyler did sexual favors for him, then he would help her marine. (Id., ¶¶21-32).

Regarding her hostile work environment theory, she must prove that the harassment was "pervasive **or** severe." (CC §51.9(a)(2) [emphasis added]). One or the other. "An isolated incident of harassing conduct may qualify as 'severe' when it consists of a physical assault or the threat thereof."

(*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1049). Here we have a physical assault. (Complaint ¶¶ 21-22, 35-40).

The complaint states that the at the time of the incident, the mayor was employed by the city, acting within the scope of his employment, during a meeting set up by the mayor's staff, in city hall, during business hours and while the mayor was conducting official city business. (Complaint ¶¶5, 9, 16-19).

After this incident, at least eighteen women publicly complained about the mayor's misconduct and he resigned his position as city mayor. (Id., ¶28). October 15, 2013, he plead guilty to one felony and two misdemeanors concerning his sexual misconduct while he was the city's mayor. (Id., ¶29).

B. Summary of the grounds for defendant city's demurrer

The city moves to dismiss every cause of action contending that they fail to set forth sufficient facts to constitute a cause of action pursuant to CCP §430.10, and that the Plaintiffs allegedly did not plead facts showing the City's liability. (Demurrer 1:25-2:2).

III. LEGAL ANALYSIS

Demurrers are disfavored. The policy of the law is to construe the pleadings "liberally . . . with a view to substantial justice." (CCP §452). "It is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory." *(Aubrey v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 967). In reviewing the sufficiency of the pleading, the court should treat the demurrer as "admitting all material facts properly pleaded." *(Blank v. Kirwan* (1985) 39 Cal. 3d 311, 318 216 Cal. Rptr. 718; *Cundiff v. GTE Cal., Inc.* (2002) 101 Cal.App.4th 1395, 1404-05, 125 CR2d 445). The court must also accept as true, facts that may be inferred from those expressly alleged. *(Id., Cundiff).*

A. The city's contention that it is not vicariously liable for sexual misconduct, battery and sexual harassment, is incorrect

1. Battery. The city argues that it cannot be vicariously liable for battery and it is not within the scope of employment. (Demurrer memo, hereinafter "Df memo", 2:18-19, 3:26). However, there is no battery claim against the city. (Complaint, 7:1-12). Something that does not exist cannot be dismissed.

2. Sexual harassment. Taking the allegations in the complaint at true, Plaintiffs plead that the mayor sexually harassed Ms. Tyler on June 11, 2013—he essentially said that if she sexually put out, he would help her marine—and that this occurred in city hall during business hours at an official city meeting, it was unwelcome, severe, a quid pro quo advance, she was unable to easily terminate the relationship, and it caused her to suffer damages. (Complaint ¶¶ 18-22, 42-49). Having plead the elements of CC §51.9, no more is required. Additionally, the city's arguments regarding sexual harassment fail because:

■ The city's contention that the Plaintiffs did not plead a "nexus" to Mr. Filner's official duties, and therefore the complaint is demurrable, is incorrect. [1] (Df memo, 2:18-19; 3:5-6, 3:21-22). Assuming a nexus must be plead, a nexus can clearly be inferred from the averments. (Complaint ¶¶ 5 [mayor, within the scope], 9, 19, 47-49 [causation], 56-57 [causation], 64 [causation]). The city cited no case that said the word "nexus" must be plead. The city's absence of law on this point requires denial of its demurrer.

■ The city's contention that it cannot be held liable for intentional torts is also incorrect. Government Code §820 codifies the common law rule that public employees, and therefore public entities, are liable for intentional or negligent wrongs. (Gov. Code §820). Courts have long held that liability under the respondeat superior doctrine may extend to willful and malicious torts as well as negligence. *(John R. v. Oakland Unified Sch. Dist.* (1989) 38 Cal.3d 438, 447, 256 CR 766). In other words, the respondeat superior principle of Gov't C §815.2(a) is not limited to negligent acts or omissions but includes intentional torts as well. *(See Ramos v. County of Madera* (1971) 4 Cal.3d 685, 94 CR 421 [coercion and willful harassment]; *Ruppe v. City of Los Angeles* (1921) 186 Cal. 400, 199 Pac. 496 [assault and battery]; *Alma W. v. Oakland Unified Sch. Dist.* (1981) 123 Cal.App.3d 133, 141, 176 CR 27 [employer can be vicariously liable for employees's intentional torts if employees acts leading up to tort

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[1] In *Ghiotto v. City of San Diego,* 2010 Cal.App. Unpub. LEXIS 8161, the city also claimed no liability for sex harassment. The *Ghiotto* court said, "we conclude that the record contains substantial evidence to support a finding that the sexual harassment experienced by the [city] firefighters was severe and pervasive." The court affirmed a $34,200 judgrnent for the firefighters, $532,980 in attorney fees and $49,036 in costs, paid by city taxpayers because the city attorney office did not settle the case.

bear some relation to employees duties]; *Allison v. County of Ventura* (1977) 68 Cal.App.3d 689, 137 CR 542 [false imprisonment]; *Freidman v. City of Los Angeles* (1975) 52 Cal.App.3d 317, 125 CR 93 [wrongful demolition of building]).

Also, although factually dissimilar, *Meester v. Davies* (1970) 11 Cal.App.3d 342, 346, 89 CR 711, defeats the city's position that intentional torts are not within the scope of a mayor's employment. In *Meester*, alleged conspiracy by *a mayor* acting in concert with private persons to obtain dismissal of the chief of police was held within the scope of employment. (*Meester, id.*, at 345-47). *Meester* states, "[w]e conclude that, in view of the broad language in *Hardy v. Vial* ... defendant mayor and defendant policemen were acting within the 'scope of official duties.'" (*Meester, id.* at 347). *Meester* was dismissed for failing to present a claim to the city prior to filing, which is not applicable here.

■ The city's attempt to avoid liability by claiming that the acts were outside the scope of employment also fails because:

(a) There are sufficient allegations in the complaint regarding scope of employment to withstand a challenge at the demurrer (and summary judgment) stage. (Complaint ¶¶ 5, 9, 19). Also, a general allegation of agency is one of ultimate fact, sufficient against a demurrer. *(Kiseskey v. Carpenters' Trust for S. Calif.* (1983) 144 Cal.App.3d 222, 230, 192 Cal. Rptr. 492);

(b) *Whether an employee's tortious act was committed within the scope of his or her employment is ordinarily a question of fact for a jury. (Mary M. v. City of Los Angles* (1991) 54 Cal.3d 202, 213-221, 285 CR 99 [entity's vicarious liability for rape under the doctrine of respondeat superior is question of fact for a jury]; *John R. v. Oakland Unified Sch. Dist.* (1989) 48 Cal.3d 438, 447, 256 CR 766).

(c) Courts have given a broad interpretation to "scope of employment." (*See Mary M.*, 54 Cal.3d at 221 [uniformed police officer in police car was acting within the scope of employment when he raped a detainee]; *Ruppe,* 186 Cal. 400 [meter reader's assault on householder within scope of employment]; *Doe v. Capital Cities* (1996) 50 Cal.App.4th 1038 [sexual assault not in workplace or during work hours within

scope]). In *Doe,* even though the alleged sexual assault occurred away from the workplace and not during working hours, the defendant's alleged conduct was sufficiently work related so as to render the employer liable. (*Doe, id.,* at 1046-1052). Here the facts are much stronger because the incident occurred in a meeting scheduled by the mayor's staff, in city hall, during business hours, and during an official business meeting that involved official mayoral duties.

(d) The city's contention that *Farmers Ins. Group v. County of Santa Clara* (1995) 11 Cal.4th 992, requires dismissal of the sex harassment cause of action is also incorrect. (Df memo, 3:9, 4:27-5:13). *Farmers* found that the employee may recover fees and costs only if the proceedings arise out of and act or omission within the scope of employment. (*Farmers*, 11 Cal.4th at 1007). *Farmers* does not state that sex harassment claims are never within the scope of employment. As mentioned above, intentional torts against a municipality may or may not be within the scope of employment and it is an jury issue. (*See Mary M.,* 54 Cal.3d at 221 [rape by on duty police officer in a police cruiser within scope]); *Ruppe,* 186 Cal. at 401 [meter reader's assault on householder within scope]; *contra Farmers Ins.,* 11 Cal.4th 992 [sex harassment by deputy sheriff outside scope]).

■The city's reliance on Gov. C §815.3, (df memo, 3:24-25), is misplaced for the following reasons:

In pertinent part, Government Code §815.3 states that if the elected official and the public entity are named as codefendants, (as they are in this lawsuit), the public entity will be liable for the elected official's intentional torts if the trier of fact determines that the act or omission arose from and was directly related tot he elected official's performance of his or her official duties. (Gov't Code §815.3 (b)). Such intentional torts include harassment and battery, (which we have here). (Id., §815(a)). Managerial functions are deemed to arise from and directly relate to the official's duties, but sexual harassment is not. (Id., §815.3(b)). If the trier of fact determines that the elected official's act or omission did not arise from and was not directly related to the elected official's performance of his or her official duties, on final judgement, the plaintiff must first seek recovery of the judgement against the assets of the elected official.

If the court determines that the elected official's assets are insufficient, the court must determine the amount of the deficiency and the plaintiff may seek collection of the remainder of the judgement from the public entity, (here the city). (Id., §815.3, subd. (c)). Therefore, the city's position that it can be dismissed on a demurrer based upon §815.3, is contrary to the statute's plain language that makes clear that this is an issue for the "**trier of fact**" and therefore is not demurrable.

Additionally, the city has been sued for both direct and vicarious liability. Section 815.3 only addresses vicarious liability. Accordingly, the complaint cannot be dismissed because portions of a cause of action cannot be dismissed on a demurrer. The averments in the complaint show that the city is *directly liable* for its own tortious conduct because it "failed to warn" the Plaintiffs, and it "knew or should ... have known of the harassing conduct," and "failed to take reasonable steps to prevent the harassment." (Complaint ¶¶ 27, 46). *Doe v. Capital Cities* also alleged direct liability under a knew or should have known theory citing Gov. Code §12940 subd. (h)(1), and it survived summary judgment, a more difficult hurdle. (*Doe*, 50 Cal.App.4th at 1046).

Additionally, § 815.3(b) seemingly should not apply because it applies to indemnification, the elected official and the municipality's relationship, and it does not address liability to a plaintiff.

Additionally, if the city's interpretation was correct, and the city was immune from liability for sex harassment, then harassment would not be listed in §815.3(a); *and* such immunity would be listed in Government Code §815's immunity provisions—and it is not.

Finally, the city did not cite any cases to support its position regarding § 815.3 or dismissal on a demurrer. (Df memo 3:16-25). The absence of case law should require denial of the city's demurrer.

■Plaintiff has a claim for sexual harassment under Civil Code §51.9 and that section instructs the court to look to Government Code §12940 for guidance. "The Legislature intended to conform Civil Code §51.9 to the California and federal laws pertaining to sexual harassment in the workplace." (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1046). Pursuant to §12940, subdivision (j)(1), the city can be held liable

when it "knew or should ... have known of the harassing conduct," and "failed to take reasonable steps to prevent the harassment," which is what Plaintiffs have plead. (Complaint ¶46). Therefore, looking to §12940 for guidance, the issue of whether the city knew or should have known that the mayor was sexually harassing women prior to June 11, 2013, the date of the incident, is for the trier of fact to decide.

■The city's cite to §815(f) is error, and to §815(b) is irrelevant. [2]

Finally, the city's contention—that "the official business of the meeting was concluded" *before* the sex harassment, and "Filner fully completed all discussions ... before any improper conduct is alleged,"—is incorrect. (Df memo, 4:9-10, 3:13-15). The complaint is clear that the business meeting concluded *after* the mayor's sexual harassment. (Complaint ¶18-23).

Therefore, no intentional torts can be dismissed on a demurrer.

B. The city's contention that sexual harassment was not within Mr. Filner's scope of employment so it must be dismissed on a demurrer is also incorrect

The city makes a confusing argument and its paragraph heading states one thing but the content of its paragraph states another. (Df memo, 4:15-28). The city again appears to argue that nothing is plead to show a *nexus between the mayor's duties and the sex harassment*. (Df memo, 4:19-20). That argument fails for the reasons set forth above, which will not be repeated here. (*Supra* § III.A).

C. The city's contention that the second cause of action is missing three key elements is incorrect

1. Plaintiffs did plead a "special or business relationship"

The complaint states that there was a "business, service or professional relationship." (Complaint, ¶ 42).

The city's contention that the mayor's relationship with Plaintiff Tyler was not one contemplated by § 51.9 should fail because:

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[2] The city's cite to Government Code §815(f), (Df memo 8:17), is error because there is no §815(f). The city's cite to §815(b), (Df memo 3:21-23), is irrelevant here because that section is a general provision that a public entity's liability is subject to immunity and has defenses.

•§ 51.9 subdivision (a)(1)(A) through (F) is a nonexclusive listing of relationships where sexual harassment can give rise to civil liability. (*See* §51.9(a)(1) and §51.9(a)(1)(F)).

•§ 51.9 (a)(1) uses the words "including, but not limited to," so the relationship does not need to be specifically listed.

•§ 51.9(a)(1)(F) states, "a relationship that is substantially similar to any of the above," [3] and the mayoral/citizen relationship fits this definition.

• §51.9 "prohibits sexual harassment in certain business relationships *outside* the workplace," as plead here. (*Hughes*, 46 Cal.4th at 1039 [emphasis in original]).

The city's opinion that each of the situations contemplated by the statute has "some kind of extraordinary obligation owed by the harasser to the victim" was seemingly rejected in *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.1094, 1109-13, which states, "there is nothing in the language of section 51.9 that requires a fiduciary relationship exist." In *C.R.*, the trial court's order dismissing a § 51.9 claim was reversed and the case was reinstated.

2. The conduct was severe

Plaintiffs have plead two forms of sex harassment: quid pro quo and "severe or pervasive" (which is analogous to a hostile work environment). Demanding sex in exchange for helping a 100% disabled marine fits both forms of sexual harassment.

Notably § 51.9 does not require both pervasive and severe. It requires one or the other. (CC §51.9(a)(2)). Here, Plaintiffs meet the "severe" element due to the nature of the incident and because, it was accompanied with an assault. *Hughes*, 46 Cal.4th at 1049 [isolated incident of harassing conduct may qualify as "severe" when it consists of a physical assault]). Moreover, this is for a jury to decide.

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[3]Additionally, *C.R. v. Tenet Healthcare Corp.*, 169 Cal.App. at 1113, ftnt. 5 states that Senate Bill 612 (1993-94 Reg. Sess.) stated that "sexual harassment occurs not only in the workplace, but in public places ... including, but not limited to, relationships between professional service providers and their clients." The incident in the Plaintiffs' complaint occurred in a public place.

The city's opinion that *Hughes v. Pair* was "far more severe than anything plead here," is incorrect and irrelevant. (Df memo 6:21-11). If we look to FEHA for guidance, as *Hughes* clearly instructs, the existence of a "hostile work environment depends upon the totality of the circumstances." (*Hughes*, 46 Cal.4th at 1043-46). Here we have a person in a substantial power position (Mayor Filner) trying to extract sexual favors in exchange for helping a 100% disabled marine. That is "severe in the extreme," disgraceful and shocks the conscious. The city's reliance on *Hughes* is also misplaced because *Hughes* did not allege quid pro quo harassment, like this case; and *Hughes* was decided on a summary judgment, but here we have a demurrer, a more difficult hurdle for the city. (*Hughes,* 46 Cal.4th at 1040).

The city's argument that §51.9 requires a "concerted pattern of harassment of a repeated, routine or a generalized nature, or in the case of an isolated incident, a physical assault or the threat thereof," is peculiar because Plaintiffs' complaint has, in fact, set forth an "isolate incident" with "a physical assault." (Df memo 7:22-25; complaint ¶35-40 [battery]; *Hughes*, 46 Cal.4th at 1049 [isolated incident]).

3. Ms. Tyler could not easily terminate the relationship—she needed the mayor's help for Ms. Ragazzino

Boiled down, the city argues that Ms. Tyler walked out the door, so that means that she terminated the relationship. (Df memo 8:1-9). The city is wrong. One does not equal the other. Walking out the door does not equal "terminating" the relationship.

D. The city's contention that the city is immune from liability for negligence is incorrect

A public entity, here the city, can be liable for its own conduct (direct liability) and the liability arising from the conduct of a public employee (vicarious liability). (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1127, 119 CR2d 709).

Plaintiffs have sufficiently plead that the city is liable because the mayor's acts were within the scope of his employment. (*Supra* §III.A, including complaint ¶¶ 5, 9, 19). The Plaintiffs arguments are set forth above so they will not be repeated here. (Id.). Vicarious liability is imposed under Government

Code §815.2(a) on public entities for the "tortious acts and omission of their employees." *(See* Gov. Code §815.2(a) Legislative Committee Comment to Gov't Code §815.2).

The city's claim that the Plaintiffs needed to cite to Gov. Code §815.2 in their complaint is not supported by any law. *C.A. v. William S. Hart Union High Sch. Dist.* (2012) 53 Cal.4th 861, 872, does not state that a complaint should be dismissed if the Plaintiff does not cite Gov. Code §815.2 in the complaint.

E. The city's contention that the complaint fails to state a claim for negligent infliction of emotional distress is incorrect

The city misunderstands Ms. Ragazzino's NIED cause of action. The city argues that it should be dismissed "now" because "Plaintiffs already admit that Ragazzino never witnessed the trauma allegedly inflicted on Tyler" and she cannot suffer "bystander NIED." (Df memo 9:7-9, 9:14-22). However, Ms. Ragazzino's NIED cause of action is not based upon "witnessing the trauma ... inflicted on Tyler." Rather, Ms. Ragazzino's damages are based upon what the mayor did *to her*. (Complaint ¶ 51-56). The mayor used Ms. Ragazziono as a bargaining chip to get sex from her nurse. (Id.). Ms. Ragazzino has no parents, she is not married, she is 100% disabled, suffers from TBI, spinal cord injury, nerve damage, PTSD and more and depends upon Ms. Tyler for support. (Complaint ¶12). Ms. Ragazzino had met continuous road blocks after returning from Iraq, and, at one point, wound up unable to care for herself. (Id.) For this disabled veteran to learn that a final attempt to get help that she needed depended upon her nurse having sex with the mayor, was devastating to her, extremely difficult for her to process, reignited prior injuries, and set her life back. (Id., ¶24, 26). Accordingly, this cause of action should not be dismissed.

Also, taking the allegations in the complaint as true, Ms. Ragazzino has alleged the elements of negligent infliction of emotional distress. (Complaint ¶¶ 51-57; *Aguirre-Alvarez v. Regents of the Univ. of Calif.*, 67 Cal. App. 4th 1058, 1063, 79 Cal. Rptr.2d 580, 583 [duty, breach causation damages, duty owed to victims and serious emotional distress]. Having plead the requisite elements, NIED is not demurrable.

As for the city's claim that a NIED depends upon a violation of a duty owed to the Plaintiff, the city

again misses the mark because the complaint alleges that the defendants owed Plaintiff Ragazzino a duty of reasonable care when she was at City Hall. (Complaint ¶51).

The city's allegation that Ms. Tyler "chose to shock her friend with a lurid representation" of the mayor's wrongdoing is meritless. The complaint sets forth that it is the mayor and the city that caused Ms. Ragazzino's damages, and no one else.

Finally, the city cited no law that allows dismissal at the demurrer stage. The city only cites to a CACI *jury* instruction, which supports that this cause of action should go to a *jury*.

F. The city's contention that the complaint fails to allege a cause of action for negligence, because (allegedly) no breach or duty is established, is also incorrect

The city alleges that it had "no authority" over the mayor and therefore it cannot be held liable for negligence. (Df memo 10:1-10).[4]

First, even assuming that was correct, it does not allow for dismissal on a demurrer. The city's failure to do anything to protect the Plaintiffs is an issue that needs to be fleshed out in discovery.

Second, putting aside the accuracy of the city's allegation, Plaintiffs request that the Court take judicial notice of public statements made by city attorney Jan Goldsmith which seemingly contradict the city's current positions in this lawsuit. (Ptf RJN, including Exh. 1-4, filed herewith). For example, the city attorney claimed that he did a "defacto impeachment" of the mayor. (Id.). Yet, now the city is claiming that the city had "no control" over the mayor. Which is it? "Impeachment" is the ultimate form of control. If the city attorney "impeached" they mayor, then the city had "control" over the mayor. Other comments to the media by the city attorney which evidence control are in the Plaintiffs' RJN.

A demurrer challenges defects on the face of a pleading or judicially noticeable. (*Blank v. Kirwin* (1985) 39 Cal.3d 311, 318, 216 CR 718, 721). It is permissible for defendants to rely on matters judicially

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[4] The city claims it had "*no authority whatever to supervise or train [the mayor]. ... The city had no authority over him and therefore it cannot be responsible for his negligence ....*" (Df memo 10:1-10).

noticeable for a demurrer, so plaintiffs should also be able to defend with the same matters. The court may take judicial notice of facts not reasonably subject to dispute and "capable of immediate and accurate verification," or of "official acts" of the city. (Ev. Code §452(h), §452(c)). Here the city attorney's statements to the media are capable of immediate and accurate verification because he is listed as one of five attorneys on the city's demurrer and he can be asked about his statements; when he knew that the mayor needed therapy or was abusive, (according to his statements to the media, February 2013); and whether the city had control over the mayor (according to his statements to the media, yes).

The city next contends that there was no special relationship between the mayor and Plaintiffs to impose municipal liability. (Df memo 10:11-20). That is wrong. The complaint sets forth the relationship. (Complaint ¶¶14-19). A city employee arranged the meeting, it took place in city hall, during work hours, they discussed official city business, so the city owed Plaintiffs a duty of reasonable care at that time.

The city argues that unlike the student/school district relationship in *C.A. v. William S. Hart Union High Sch. Dist.* (2012) 53 Cal.4th 861, 872-3, Plaintiffs cannot allege such a relationship. Plaintiffs disagree. A constituent/mayor relationship is similar to the student/school district relationship, and other relationships described in §51.9. The city's argument that an exception should be carved out to exonerate the city for negligence would undo parts of the Government Code and contravene negligence principles.

IV. CONCLUSION

The city's demurrer should be denied in its entirety.

LAW OFFICE OF CARLA DIMARE, P.C.

March 13, 2014

By: C DiMare
Carla DiMare

noticeable for a demurrer, so plaintiffs should also be able to defend with the same matters. The court may take judicial notice of facts not reasonably subject to dispute and "capable of immediate and accurate verification," or of "official acts" of the city. (Ev. Code §452(h), §452(c)). Here the city attorney's statements to the media are capable of immediate and accurate verification because he is listed as one of five attorneys on the city's demurrer and he can be asked about his statements; when he knew that the mayor needed therapy or was abusive, (according to his statements to the media, February 2013); and whether the city had control over the mayor (according to his statements to the media, yes).

The city next contends that there was no special relationship between the mayor and Plaintiffs to impose municipal liability. (Df memo 10:11-20). That is wrong. The complaint sets forth the relationship. (Complaint ¶¶14-19). A city employee arranged the meeting, it took place in city hall, during work hours, they discussed official city business, so the city owed Plaintiffs a duty of reasonable care at that time.

The city argues that unlike the student/school district relationship in *C.A. v. William S. Hart Union High Sch. Dist.* (2012) 53 Cal.4th 861, 872-3, Plaintiffs cannot allege such a relationship. Plaintiffs disagree. A constituent/mayor relationship is similar to the student/school district relationship, and other relationships described in §51.9. The city's argument that an exception should be carved out to exonerate the city for negligence would undo parts of the Government Code and contravene negligence principles.

IV. CONCLUSION

The city's demurrer should be denied in its entirety.

LAW OFFICE OF CARLA DIMARE, P.C.

March 13, 2014

By: C DiMare
Carla DiMare

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Attorney for Plaintiffs

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Michelle Tyler and Katherine Ragazzino, Plaintiffs, vs. City of San Diego, Robert Filner, individually and as the former Mayor of the City of San Diego, and Does 1-10 Defendants.	CASE NO. 37-2014-00082976-CU-PO-CTL **PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF PLAINTIFF'S OPPOSITION TO THE DEFENDANT CITY OF SAN DIEGO'S DEMURRER.** Date: March 28, 2014 Time: 9:00 a.m. Judge: Judge Joel R. Wohlfeil Dept.: 73 Trial date: Not set

Pursuant to CRC 3.1306(c) and 3.1113(l) and Evid. Code §452-453, Plaintiffs respectfully ask this Court to take judicial notice that the city attorney Jan Goldsmith was quoted as making the following statements to the media concerning Mr. Filner when he was mayor, which seemingly contradict positions taken by the city in its demurrer now before this Court.

●1. "Filner-Goldsmith feud ratchets up," San Diego Union Tribune, July 1, 2013. The article states,

Goldsmith said, "*The mayor is bound by state and local rules against harassment and abuse of employees in the workplace as well as other workplace protections,*" ... "*Although these are personal rights of our employees, as a supervisor I am responsible to protect those employees under my supervision from such conduct. As a result, I cannot look the other way and take no action.*"

●2. "San Diego city attorney maneuvered to force Filner from office," Los Angeles Times, November 3, 2013. The article states,

A. "*We strategized as lawyers: how were we going to remove the mayor?*" Goldsmith said in a

recent interview. "*It was a de facto impeachment.*"

B. "*I understood that he needed therapy [by February 2013],*" Goldsmith said.

C. "*On February 15, 2013, Goldsmith sent another memo to Filner citing his 'abusive conduct'* during a meeting with lawyers...."

D. "A decision was made to squeeze Filner, giving him the choice to resign or wage an expensive legal fight. *'We didn't think he had the willingness or financial ability to deal with the legal issues*,' Goldsmith said."

●3. "City Attorney on Filner: 'It was a de Facto impeachment," November 4, 2013, http://VoiceofSanDiego.org, November 4, 2013. The article states,

"On Twitter, I asked Goldsmith to clarify. Here's his definition of de facto impeachment: *'A removal from office with city council and mayor agreement, but without a formal process*. How's that?' he wrote."

●4. "Filner accuser settles for $250,000," February 10, 2014, San Diego Union Tribune. The article states,

"*City attorney Jan Goldsmith said he recommended the settlement because the costs to both sides to prepare for a trial .....*"

LAW OFFICE OF CARLA DIMARE, P.C.

March 13, 2014

By: C DiMare
Carla DiMare

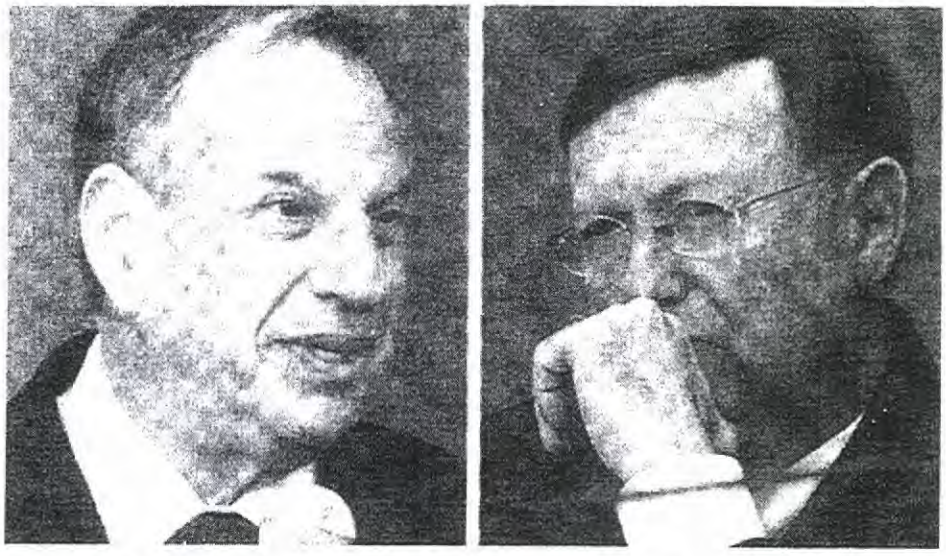
EXHIBIT 1

PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE

Filner-Goldsmith feud ratchets up

Goldsmith cites mayor's "abusive" behavior in shutting down closed sessions

By Craig Gustafson (/staff/craig-gustafson/) 2:30 p.m. July 1, 2013 Updated 3:32 p.m.



San Diego Mayor Bob Filner and San Diego City Attorney Jan Goldsmith. *U-T*

DOWNTOWN SAN DIEGO — City Attorney Jan Goldsmith called a halt Monday to any further closed session meetings at City Hall until city leaders provide guarantees that his lawyers won't face further acts of abuse or harassment. He cited Mayor Bob Filner's "abusive and incorrigible" behavior as the reason.

Goldsmith's decision comes two weeks after his top lieutenant, Andrew Jones, was removed by police from a closed session hearing at the mayor's behest. Filner accused Jones of being disruptive and leaking confidential information which Jones denied.

In a letter Monday to Filner and City Council members, Goldsmith accused Filner of violating the city charter by forcibly removing Goldsmith's representative from the session, illegally reprimanding an employee without due process and ordering police action in violation of the law.

"The mayor is bound by state and local rules against harassment and abuse of employees in the workplace as well as other workplace protections," Goldsmith said. "Although these are personal rights of our employees, as a supervisor I am responsible to protect those employees under my supervision from such conduct. As a result, I cannot look the other way and take no action."

The next scheduled closed session — in which the mayor, city attorney and council discuss sensitive legal matters — set for July 9 has been canceled.

Filner didn't immediately respond Monday to the letter. He did address his feud with Goldsmith at a news conference Friday.

"This is bad for the city that these disputes are occurring," Filner said. "I do not want them to happen. They're not in my interests. They're not in Jan's interests. They're not in the city's interest. So we do have to find a way of working them out."

Filner, a Democrat, and Goldsmith, a Republican, are the only officials elected citywide in San Diego. They've been at odds since Filner took office in December. They aren't on speaking terms and have clashed repeatedly over civic issues. Each insists the disputes aren't personal but rather institutional conflicts despite mounting evidence to the contrary.

Council President Todd Gloria issued a statement Monday saying things between the mayor and city attorney were getting out of hand.

"I believe you both love San Diego," Gloria said. "I think you're both aware that your relationship is a distraction that is affecting our ability to run an efficient and effective organization for the benefit of our citizens. The city can't go on this way. I urge you to put our city and our citizens first and consider using a mediator to resolve this dispute quickly. This conflict has got to stop, and our collective focus must return to priorities like public safety and road repair."

a U-T San Diego reporter in April that Filner verbally attacked him in closed session and told him to sit in the back of the room.

"I, of course, considered it something similar to asking Rosa Parks to sit in the back of the bus," said Jones, who is black, in the interview. "I was extremely offended by it."

Filner said Friday that he has been told repeatedly by the City Attorney's Office that officials can't disclose what is discussed in closed session publicly and Jones broke that rule. Filner raised the issue at the June 18 closed session and then accused Jones of trying to intimidate the council by interrupting conversations before having him removed by police.

"I'm the chairman of that closed session and I say 'Please sit down. I did not recognize you.' And he refuses," Filner said. "That's a personality conflict. He's disrupting the flow of business in closed session and it's deliberately done."

Goldsmith and Jones have a different view.

"The transcript showed that Mayor Filner acted as accuser, judge and jury, and then used his police force to enforce a sanction (forced removal)," Goldsmith wrote. "This was not based on anything that Mr. Jones did or said during the June 18 closed session meeting, but allegedly at sometime in the past. Mr. Jones received no due process — not a statement of the charge or what disclosure the mayor was referring to; no right of Mr. Jones to be heard; and no impartial hearing officer to make a finding. What's more, the 'remedy' of forced removal from this meeting was not permitted by any rule of law."

The absence of closed session meetings could have a detrimental impact on city business. Legal settlements and decisions to initiate litigation would have to be discussed in open session which could give an information advantage to legal opponents.

EXHIBIT 2

PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE

Los Angeles Times | ARTICLE COLLECTIONS

— Back to Original Article

San Diego city attorney maneuvered to force Filner from office

Jan Goldsmith worked for weeks to remove the first-term Democrat by squeezing him financially and releasing documents showing the anger and dismay of his staff.

November 03, 2013 | By Tony Perry

SAN DIEGO — In Bob Filner's final days as mayor, the city attorney was prepared to do something never before done here: plead with a judge that the mayor posed a threat to women and should be barred from City Hall.

A psychologist retained by City Atty. Jan Goldsmith was set to testify that, in her opinion, Filner fit the characteristics of a sociopath, was "without shame, empathy or compassion," and believed no rules applied to him.

A court hearing was set for Aug. 21.

It was not necessary.

The night before the hearing, after two days of intense negotiations, Filner agreed to resign in exchange for the city paying most of his legal bills in a sexual harassment suit filed by Los Angeles attorney Gloria Allred on behalf of a former mayoral staffer.

For six weeks, Goldsmith had maneuvered to force Filner out of office — by squeezing him financially, bluffing him about state law, embarrassing him by releasing documents showing the anger and dismay of his staff and threatening to force a trial on his alleged misuse of public funds, including for a junket to Paris.

Goldsmith, 62, a former judge and state legislator, said he believes the threat of a restraining order — and the national media storm certain to follow — finally persuaded the normally combative mayor to step down.

Filner's attorneys declined comment for this story. So did Filner, now awaiting a Dec. 9 sentencing for his guilty plea on charges brought by the state attorney general.

In early July, as one woman after another went public with accusations of sexual harassment against Filner, Goldsmith and his staff concluded that Filner was an unrepentant felon and that women at City Hall needed to be protected from him.

But the City Charter contains no provision for removing a mayor except through the difficult, expensive, politically unpredictable process of a recall election.

"We strategized as lawyers: How were we going to remove the mayor?" Goldsmith said in a recent interview. "It was a de facto impeachment."

Filner and Goldsmith had a rocky relationship from the beginning.

Filner, 71, was the first Democratic mayor elected in San Diego in two decades. Goldsmith, a Republican serving his second term as city attorney, had endorsed Filner's GOP opponent.

Filner arrived at City Hall with a long reputation — earned on the school board, City Council and then 10 terms in Congress — as a hardball political player.

At their first meeting, Goldsmith said, Filner announced that he did not plan to take legal advice from the city attorney's office. He threw a sheaf of legal papers in the air.

"Your blow-up yesterday concerns me," Goldsmith wrote in a Jan. 3 memo. "Our office is a law office, and we expected to be treated as professionals. Yesterday's meeting was the first and only meeting in which we (any of my lawyers) will tolerate being yelled at, called names or having things thrown at us.... Now it is zero tolerance."

But the friction continued unabated. By February, months before any sexual harassment allegations appeared, "I understood he needed therapy," Goldsmith said.

On Feb. 15, Goldsmith sent another memo to Filner citing his "abusive conduct" during a meeting with lawyers from Goldsmith's office.

"It did not take you very long to violate the zero tolerance standard," Goldsmith wrote.

Still, Goldsmith suggested the two meet privately and agree to a peace treaty. "I still think we should get together for coffee," Goldsmith wrote Filner on Feb. 26.

There was no coffee.

Filner clashed with Goldsmith over the city's marijuana ordinance, a misdemeanor charge brought by Goldsmith's office against a beach demonstrator in La Jolla and a charge against a protester for chalking anti-bank messages on city sidewalks.

The mayor crashed one of Goldsmith's news conferences. Later he had a police officer escort one of Goldsmith's top aides out of a closed meeting.

After Allred sued on behalf of Irene McCormack Jackson, Filner's former communications director, Goldsmith's investigators examined Filner's finances and concluded that he could not afford lawyers to fight the lawsuit.

One fact seemed telling: Filner had waited months to reimburse the city for $900 in personal expenses on a city credit card.

A decision was made to squeeze Filner, giving him the choice to resign or wage an expensive legal fight.

"We didn't think he had the willingness or [financial] ability to deal with the legal issue," Goldsmith said.

Goldsmith persuaded the City Council to refuse to defend Filner in the Jackson lawsuit and instead force him to hire private attorneys.

"It was a bluff," said Goldsmith, noting that California law requires a public employer to represent an employee, even a mayor, accused of on-the-job misdeeds.

Goldsmith's investigators gathered numerous declarations from women who alleged that they had been sexually harassed by the mayor. The mayor's office was forced to disclose notes taken at staff meetings that showed growing anger at Filner's abusive treatment.

As Filner hid from the media, Goldsmith said in numerous interviews that it was only a matter of time until Filner would be out. By mid-August, all nine City Council members — five Democrats and four Republicans — wanted Filner to resign.

A retired federal judge was persuaded to oversee negotiations between Filner, his attorneys, Goldsmith and his staff, and Councilman Kevin Faulconer and Council President Todd Gloria.

After two days of intense negotiations, one of the last items to be resolved involved money.

Under the agreement, the city would pay up to $98,000 for Filner's private attorneys defending him in the Jackson lawsuit. Those attorneys billed about $28,000 above that amount and would work out the difference with Filner.

The city is not paying any of Filner's legal costs related to the state attorney general's investigation that led to his guilty plea or to any other civil suits that might arise.

Filner signed the agreement Aug. 21, and it was approved by the council two days later. After a farewell speech that was alternately sorrowful and defiant, Filner's resignation was effective Aug. 30.

On Oct. 15, Filner pleaded guilty to felony false imprisonment and two counts of misdemeanor battery, all involving mistreatment of women during his months as mayor.

Under the plea bargain with the attorney general, Filner will not go to jail or prison but will serve three months of home confinement, agree to never again seek public office, have his mayoral pension reduced and undergo mental health counseling.

For the psychological analysis of Filner that was never used, the city paid $4,550 — calculated at 13 hours of consultation at $350 an hour, according to documents obtained by The Times under the California Public Records Act.

Solana Beach psychologist Sage de Beixedon Breslin never interviewed Filner but studied his many public statements and demeanor on Google and YouTube.

An expert witness in numerous cases involving restraining orders and accusations of sexual harassment, Breslin said in an interview that she was "cautiously optimistic that watching someone toppled from power because of these kind of crimes might have a good impact, might instill just a little fear in people like this."

Goldsmith has proposed a charter amendment to allow for a mayoral impeachment process.

Looking back on his long dispute with Filner, he said his years as a judge helped him maintain his composure.

"It was like having the litigant from hell in your courtroom for eight months," he said.

tony.perry@latimes.com

EXHIBIT 3

PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE

City Attorney on Filner: 'It Was a De Facto Impeachment'

BY: SCOTT LEWIS (HTTP://VOICEOFSANDIEGO.ORG/AUTHOR/SCOTTLEWIS/)
CONNECT | NOVEMBER 4, 2013 | 22 COMMENTS

Scott Lewis

Via NBC 7 San Diego

Kevin Faulconer, Jan Goldsmith, Todd Gloria and attorneys for the mayor and city.

Not much is new in this Los Angeles Times piece (http://www.latimes.com/local/la-me-filner-ouster-20131104,0,3221666,full.story#axzz2jeDcWIIJ) looking back on City Attorney Jan Goldsmith's perspective during the scandal surrounding Mayor Bob Filner and his resignation.

Don't get me wrong. It's a good story that helps us take a step back at an extraordinary time. But we knew, for instance, that the city attorney was pushing Filner on multiple legal angles. We knew he was finding his own witnesses to Filner's behavior toward women. We knew he pushed on other legal concerns apart from women to gain leverage.

(http://voiceofsandiego.org/wp-content/uploads/4fc57e806d6b9.image.jpg) And we knew Goldsmith was saying something fascinating that day at Politifest when he said (http://voiceofsandiego.org/2013/08/07/as-friends-fall-off-filners-out-becoming-clearer/) he'd be offering Filner an "out" sometime soon.

What was new about the L.A. Times piece was Goldsmith's own view of what he had done. In short, the man believes he removed Filner. Here's how it reads:

> In early July, as one woman after another went public with accusations of sexual harassment against Filner, Goldsmith and his staff concluded that Filner was an unrepentant felon and that women at City Hall needed to be protected from him.
>
> But the City Charter contains no provision for removing a mayor except through the difficult, expensive, politically unpredictable process of a recall election.
>
> "We strategized as lawyers: How were we going to remove the mayor?" Goldsmith said in a recent interview. "It was a de facto impeachment."

I have before praised Goldsmith's effort to create a settlement with Filner. My view of the history was that many folks, led initially by former City Councilwoman Donna Frye and lawyers Marco Gonzalez and Cory Briggs, ended up putting so much pressure on Filner that he was faced with three simultaneous crises: 1) Women were coming forward at a regular frequency and creating a media firestorm

that led virtually every city elected leader to call for his resignation; 2) a recall campaign was moving forward, raising money and collecting signatures and 3) legal threats from Goldsmith, Gloria Allred and criminal prosecutors were being filed, with more looming.

All that left the mayor isolated. Goldsmith adroitly helped negotiate the legal threats, secured Filner's resignation and the rest fell into place.

And now, Filner's admissions of guilt on three counts of criminal harassment of women seem to close the case on whether we had something real to worry about as Filner interacted with women.

But I was struck by the language Goldsmith used in his reflection. Impeachment? As the article notes, we have no provision in San Diego for "impeaching" anyone. Filner resigned. What the heck is a "de facto impeachment," as Goldsmith put it?

To me, de facto means "Call it what you want and maybe it was not official but it was in actuality an impeachment."

On Twitter, I asked Goldsmith to clarify. Here's his definition of de facto impeachment:

"A removal from office with city council and mayor agreement, but without a formal process. How's that?" he wrote (https://twitter.com/JanIGoldsmith/status/397380061059248128).

Got that? The mayor was *removed* but without a formal process.

Also, it seems kind of weird for Goldsmith to include "City Council *and* mayor agreement."

Isn't that like saying the mayor did not resign but instead joined Goldsmith and the City Council in removing himself from office?

In other lands, removing yourself from office is also known as "resigning."

Goldsmith even cops to a significant bluff. He says he persuaded the City Council to agree to not defend Filner against sexual harassment lawsuits even though he knew they had no choice but to defend him.

The whole L.A. Times piece reads as though Goldsmith wants credit for being the clever Filner slayer.

When I tweeted (https://twitter.com/vosdscott/status/397383127200321536) that Goldsmith wanted it to be known that Filner had not resigned but was "removed" and that Goldsmith was the one who did it, Goldsmith was not happy.

"Scott, you need to get some self-control. I did not say that. A reporter asked what we did and I responded," he wrote (https://twitter.com/JanIGoldsmith/status/397396066544279552).

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Scott Lewis
(http://voiceofsandiego.org/author/scottlewis/)

I'm Scott Lewis, the CEO of Voice of San Diego. Please contact me if you'd like at scott.lewis@voiceofsandiego.org (mailto:scott.lewis@voiceofsandiego.org) or 619.325.0527 and follow

me on Twitter (it's a blast!):
@vosdscott
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OPENMINDJON Nov 5, 2013

The only equal with Goldsmith's distortions is the toupee LYING on his head!
Hahahahaha!

Like Reply

John Falchi Nov 5, 2013

Dear Folks-
This recent story in the L.A. Times seems to give City Attorney Jan Goldsmith a great deal of credit for "...a de facto impeachment

EXHIBIT 4

PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE

Filner accuser settles for $250,000

Former mayor signed off on settlement , has no financial liability

By Craig Gustafson (/staff/craig-gustafson/), Mark Walker (/staff/mark-walker/) and Lori Weisberg (/staff/lori-weisberg/) 1:59 p.m. Feb. 10, 2014 Updated 5:57 p.m.

Irene Jackson with Attorney Gloria Allred. *U-T file photo*

The first woman to come forward publicly to accuse former Mayor Bob Filner of sexual harassment has settled her lawsuit against Filner and the city for $250,000.

The City Council unanimously approved the settlement Monday for Irene McCormack Jackson, 57, who served as Filner's communications director from January to June 2013. She had accused Filner of repeated sexual advances and lewd comments, such as suggesting she work without her panties and that they should get married, while working for him.

Filner, 71, resigned Aug. 30 after nearly 20 women told similar stories of inappropriate sexual behavior, such as touching and kissing. He is currently serving three months of house arrest after pleading guilty to felony false imprisonment and two misdemeanor counts of battery, stemming from his interactions with three unnamed female victims.

The settlement came a day before a special runoff election between City Council members David Alvarez and Kevin Faulconer to determine who will serve the remaining 33 months of Filner's term.

McCormack Jackson, who had sought $1.5 million in her lawsuit, and her attorney Gloria Allred planned to hold a news conference at 10:30 a.m. Tuesday and declined to comment until then.

City Attorney Jan Goldsmith said he recommended the settlement because the costs to both sides to prepare for a trial set to begin next February would have far exceeded $250,000. He said McCormack Jackson handled the whole situation with dignity and called her courageous for bringing Filner's behavior to light.

"This is a big step toward putting this behind our community," Goldsmith said. "I think we do need to move on."

The terms of the settlement call for McCormack Jackson, who has been on unpaid leave since Sept. 27, to drop all current and future claims against the city related to Filner's behavior and for both sides to pay their own legal fees. She also voluntarily agreed to resign from city employment on April 1. Goldsmith said he didn't know why she chose that date.

Filner bears no financial responsibility for the settlement because the city agreed to defend him in the case as a condition of his resignation. The city, however, does reserve the right to go after Filner for damages related to other claims made against him.

Fellow Filner accusers on Monday applauded McCormack Jackson for courageously stepping forward and starting the avalanche that led to Filner's downfall.

Cloward, a friend of McCormack Jackson one of a number of high-profile women w st year accused Filner of unwanted sexual advances. "She deserves every cent and more. She's like a hero to me. She left her job at the port to work for Bob Filner to make change. You wonder how much worse this would have gotten without her coming forward."

San Diego political consultant Laura Fink, the second woman to come forward last year, agreed that McCormack Jackson's lawsuit was a pivotal step in helping force Filner from office.

"Her lawsuit played a significant role in securing Bob Filner's resignation, curtailing future damage to our great city," Fink said in a written statement. "She deserves remuneration for her lost wages, and for the reprehensible behavior she has had to endure while simply doing her job."

It's difficult to say how the settlement compares with payments in sexual harassment cases because details vary and often are not public.

San Diego County paid a $100,000 settlement in 2002 when then-Treasurer Bart Hartman was accused of sexual harassment. A Los Angeles firefighter won a $220,000 settlement in 2006 after accusing his captain of repeated lewd and sexually suggestive comments and gestures. And Riverside County paid $490,000 to settle a harassment suit earlier this year accusing a top health official of unwanted and inappropriate advances.

McCormack Jackson, a Rancho San Diego resident, is a familiar figure in local newsrooms and board rooms. Beginning as a student intern in 1977, McCormack Jackson logged more than 26 years at San Diego newspapers. At The San Diego Union and its successor, The San Diego Union-Tribune, she was a reporter and assistant city editor. She covered everything from wildfires to murders to hate crimes.

Divorced and the mother of two grown daughters, McCormack Jackson left the newspaper in October 2003 to become the Port of San Diego's director of communications and community services. At the end of her nine-year tenure, she was vice president in charge of external relations and public policy.

She left that job and took a roughly $50,000-a-year pay cut to work as Filner's top spokeswoman shortly after he took office. Her annual salary was $125,000 with the city so the settlement she received is essentially two years' pay.

She left the Mayor's Office for undisclosed reasons in June and didn't speak publicly about the departure until July 22 when she filed a lawsuit against Filner and the city. She accused her boss of subjecting her to "various forms of verbal and physical sexual harassment," including putting his arm around her neck in what became known as a "Filner headlock" to pull her close to him and trying to kiss her without permission.

The comments McCormack Jackson says Filner made included: "I would do a better job if you kissed me," "When are you going to get naked?" "Wouldn't it be great if you took off your panties and worked without them on?" and "When are we going to get married? Wouldn't it be great if we consummated the marriage?"

"I had to work and do my job in an atmosphere where women were viewed by Mayor Filner as sexual objects or stupid idiots," McCormack Jackson said in July.

The response to Monday's settlement from city leaders was one of universal praise for McCormack Jackson.

Interim Mayor Todd Gloria said "she deserves the gratitude of our city for standing up courageously against treatment no one should ever endure," he said.

Both mayoral candidates voted in favor of the settlement.

"This is a fair agreement for taxpayers, and as mayor I will continue to lead our city past this difficult time and restore integrity to City Hall," Faulconer said. "I commend Irene McCormack Jackson for her courage, and thank City Attorney Goldsmith for working tirelessly toward this agreement."

Alvarez said, "I am glad to close this chapter in our city's history and, as mayor, I am looking forward to continuing the stability and confidence that interim Mayor Todd Gloria restored at City Hall."

The city isn't quite done dealing with the mess Filner left behind despite Tuesday's election. Two other women have sued Filner and the city over his alleged misconduct.

Stacy McKenzie, a city parks official, contends the ex-mayor grabbed her from behind, put her in a headlock and rubbed her breasts at an event at a city park. Michelle Tyler was seeking help for a friend, a Marine veteran, when she says Filner demanded a personal and sexual relationship.

lawsuit on behalf of Marilyn McGaughy, a vocate against domestic violence who alle that Filner kissed and groped her while at a school event last year.

"It just doesn't seem like Ms. Jackson was interested in taking Filner's deposition and discovering whether there was ample evidence that people in the city knew Mr. Filner was assaulting women and didn't do anything about it," he said. "His deposition would be very enlightening."

Gilleon said he expects to depose Filner as early as March.

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Attorney for Plaintiffs

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Michelle Tyler and Katherine Ragazzino, Plaintiffs, vs. City of San Diego, Robert Filner, individually and as the former Mayor of the City of San Diego, and Does 1-10 Defendants.	CASE NO. 37-2014-00082976-CU-PO-CTL **PLAINTIFFS' NOTICE OF LODGMENT IN SUPPORT OF PLAINTIFF'S OPPOSITION TO THE DEFENDANT CITY OF SAN DIEGO'S DEMURRER.** Date: March 28, 2014 Time: 9:00 a.m. Judge: Judge Joel R. Wohlfeil Dept.: 73 Trial date: Not set

TO ALL PARTIES AND THEIR ATTORNEYS: Plaintiffs hereby lodge the following with the Court:

1. A true and accurate copy of *May v. Borough of Pine Hill*, 2012 U.S. Dist. LEXIS 112107, 20-22 [mayor and town's summary judgment motion on sexual harassment cause of action was denied], attached here at **EXHIBIT A**.

2. A true and accurate copy of *Kopman v. City of Centerville,* 871 F.Supp.2d 875, 891-893 (2012) [mayor and city's summary judgment on state and federal sexual harassment causes of action was denied], attached here at **EXHIBIT B**.

March 13, 2014

LAW OFFICE OF CARLA DIMARE, P.C.

By: C. DiMare
Carla DiMare

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

Michelle Tyler, et al
v.
City of San Diego, Robert Filner

Case No. 37-2014-00082976-CU-PO-CTL

I am employed in the County of San Diego, state of California. I am over the age of 18, and not a party to the within action. My address is P.O. Box 1668, Rancho Santa Fe, CA 92067.

On March 13, 2014, I served the foregoing document described as:

1. **Plaintiffs' Opposition to the Defendant City of San Diego's Demurrer;**
2. **Plaintiffs' Request for Judicial Notice (in support of Plaintiffs' Opposition to the Defendant City of San Diego's Demurrer);**
3. **Plaintiffs' Notice of Lodgment (in support of Plaintiffs' Opposition to the Defendant City of San Diego's Demurrer);**
4. **This proof of service.**

on the interested parties in this action by placing a true and correct copy thereof enclosed in sealed envelopes addressed as follows:

1. Jan I. Goldsmith, Office of the City Attorney, 1200 Third Avenue, Suite 1100, San Diego, CA 92101-4100
2. Harvey Berger, Pope, Berger & Williams, LLP, 3555 Fifth Avenue, Suite 300, San Diego, CA 92103

___x____ **BY MAIL**

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid, in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing.

_____ **BY PERSONAL SERVICE**

_____ **VIA EMAIL**

_____ **BY FACSIMILE**, I faxed such document to the offices of the addressee(s). Executed on _____ at San Diego County, California.

__x_ (State) I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on March 13, 2014, in San Diego County

C DiMare

By: Carla DiMare, Atty. at Law