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Mr. Rusty Bailey
Mayor, City of Riverside
3900 Main St.
Riverside, CA 92501
July 17, 2014

RE: *Darlene Elliot, Assistant to Mayor Bailey*

Dear Mayor Bailey,

Please be advised that this office represents Ms. Elliot in a pending employment matter concerning the City of Riverside.

FACTS

Ms. Elliot, age 47, has been employed by the City of Riverside for over thirteen years, and is well respected in the community as well as statewide. As an Assistant to the Mayor for both Mayor Loveridge and now Mayor Bailey, she represents the Mayor in the community and outreach projects. Ms. Elliot is a trailblazer in the Hispanic community, and is involved in non-profit organizations such as the renovation of the Trujillo Adobe, one of the oldest buildings in Riverside and a designated historic building. Darlene is also involved in LGBT issues in the City of Riverside. Darlene's evaluations over the course of her career described her as an excellent and capable employee.

However, it now appears that Ms. Elliot has potential causes of action against the City for race and national origin discrimination, and failure to provide a discrimination-free environment.

EXAMPLES OF DISCRIMINATION/HARASSMENT

The following, although not an exhaustive list, is a representative sampling of the harassment/discrimination perpetrated by your managers against Ms. Elliot for the purpose of forcing her to quit, or ultimately terminate her, on a pretextual basis:

- ✦ A June 20, 2014, meeting with Maureen Kane in which Ms. Elliot was told by Ms. Kane that she would be transferred to Parks and Recreation against her wishes;
- ✦ Kane falsely described the involuntary transfer as a "promotion:"

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- ⊕ Maureen Kane told Ms. Elliot that she wanted to see an "investigation" as to how Councilman Davis became aware of her plan to oust Darlene, obviously overstepping her authority and implying it was Ms. Elliot communicating to the Councilman:
- ⊕ When Darlene capitulated to the pressure and asked for a position in Public Utilities, she was denied same:
- ⊕ At a July 7 meeting, Ms. Elliot was told by the new Assistant HR Director that her option is to find another job or take severance pay, in yet another effort to force out Ms. Elliot:
- ⊕ Ms. Kane routinely uses the phrase "your people" to Ms. Elliot;
- ⊕ Ms. Kane stated to Darlene that her daughter was having a "Mexican" party and everyone was dressing up as Mexicans.

As to the race/national origin discrimination claims, the FEHA prohibits a variety of unfair labor practices, including discrimination, "in terms, conditions or privileges of employment" on the basis of specified characteristics. (§ 12940, subd. (a); *Beyda v. City of Los Angeles* (1998) 10 Cal. App. 4th 511, 516.) Specifically, The FEHA prohibits an employer from discriminating on the basis of race. (Gov. Code, § 12940.) and it is illegal to discriminate or harass any employee on the basis of their race or national origin.

In California, courts employ the three-prong test that was established in *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 763 (*McDonnell Douglas*) to resolve discrimination claims, including race discrimination. (*Guz v. Bechtel National Inc.* (2000) 10 Cal. App. 4th 354, 354.) First, the employee must establish a prima facie case of discrimination. (*Id.* at p. 354.) The employee "must at least show actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were 'based on a [prohibited] discriminatory criterion.'" (*Id.* at p. 355.) Thus, the employee must establish: "(1) he was a member of a protected class. (2) he was qualified for the position he sought or was performing competently in the position he held. (3) he suffered an adverse employment action, such as termination, demotion, or denial of an available job, and (4) some other circumstance suggests discriminatory motive." (*Ibid.*) Once the employee satisfies this burden, there is a presumption of discrimination, and the burden then shifts to the employer to show that its action was motivated by legitimate, nondiscriminatory reasons. (*Id.* at pp. 355-356.)

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A reason is “ ‘legitimate’ ” if it is “*facially unrelated to a prohibited bias*, and which if true, would preclude a finding of *discrimination*.” (*Id.* at p. 358.) If the employer meets this burden, the employee then must show that the employer’s reasons are pretexts for discrimination, or produce other evidence of intentional discrimination. (*Id.* at p. 356.)

Ms. Elliot can easily establish a prima facie case of race discrimination, as well as a separate cause of action for failure to prevent discrimination and retaliation. In *Reid v. Google, Inc.*, (50 Cal. 4th 512) an age discrimination case, the California Supreme Court underscored an employer's need to take reasonable steps to eliminate all inappropriate comments from the workplace at every level of the organization. Under *Reid*, even casual comments made by non-decisionmaking employees may be used to bolster claims of discrimination.

Whether an environment is hostile or abusive can be determined only by looking at all the circumstances. (*Harris v. Forklift Systems, Inc.*, *supra*, 510 U.S. at p. 23; *Faragher v. City of Boca Raton*, *supra*, 524 U.S. at p. 788.) "These may include the frequency of discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. The effect on the employee's psychological well being is, of course, relevant to determining whether the plaintiff actually found the environment abusive. But while psychological harm, like any other factor, may be taken into account, no single factor is required." The city’s efforts attempting to force out Ms. Elliot has caused her severe emotional distress, mental anguish, psychological pain and suffering, and related items such as humiliation, embarrassment, nervousness, sleeplessness, irritability, agitation, fear, anger, anxiety, frustration, hopelessness, despair, depression, and possible other related or similar items.

Additionally, Ms. Elliot may have a viable **associational discrimination** claim under California Government code 12940 et seq. given her open activism on behalf of the gay and lesbian community. She also has a valid claim for violation of **First Amendment rights**, as these statements are protected speech.

As Ms. Elliot remains a City employee, I trust she will suffer no retaliation as a result of this correspondence.

SETTLEMENT DEMAND

With respect to damages, California law provides that a prevailing Plaintiff may obtain compensatory damages (loss of income), punitive damages, attorney’s fees and costs.

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Thus, even if the award to compensate Ms. Elliot for the humiliation and injustice is modest, the costs, attorney's fees and loss of income, will likely be greater than the settlement demand referenced below. The tort claim and complaint filed in Superior Court is a matter of public record and should the case go to trial, a public airing of the attempt by your staff to force out Ms. Elliot will surely result in negative publicity to the City.

This matter can be amicably resolved by a lateral transfer to the position of Principal Management Analyst in Public Utilities, a position for which Ms. Elliot is eminently qualified.

Additionally, please provide a copy of Darlene's personnel file pursuant to California Labor code 432 and 1198.5.

This offer is made pursuant to Evidence Code section 1152 and 1154.

We look forward to hearing from you or your attorney in the immediate future.

Regards.

QuickTime™ and a
TIFF (Uncompressed) decompressor
are required to see this picture.

Danuta W. Tuszynska
Attorney at Law

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