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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SANTA CLARA
15

16 FIRST AMENDMENT COALITION,
17 Petitioner,
18 v.
19 CITY OF MILPITAS,
20 Respondent.
21

Case No. 17 CV 310994
22 VERIFIED PETITION FOR WRIT OF
MANDATE PURSUANT TO THE
23 CALIFORNIA CONSTITUTION AND
THE CALIFORNIA PUBLIC RECORDS
24 ACT, AND COMPLAINT FOR
25 DECLARATORY AND INJUNCTIVE
26 RELIEF
Date:
27 Time:
28 Dept.:

(ENDORSED)
FILED
MAY 26 2017
Clerk of the Court
Superior Court of CA County of Santa Clara
BY J. CAO-NGUYEN DEPUTY

Fax & File

1 Petitioner First Amendment Coalition (“FAC” or “Petitioner”) petitions this Court for a
2 writ of mandate directed to Respondent City of Milpitas (“City” or “Respondent”) commanding
3 Respondent to comply with the California Public Records Act, Government Code section 6250 *et*
4 *seq.* (“CPRA”), Article I, section 3(b) of the California Constitution (“Article I, section 3(b)”), and
5 the Milpitas Open Government Ordinance, Milpitas Municipal Code Title I, Chapter 310 (the
6 Milpitas Sunshine Ordinance”), by promptly making available records concerning the conduct of
7 the people’s business.

8 Petitioner avers as follows:

9 **PARTIES**

10 1. FAC is a nonprofit public interest organization organized under the laws of the
11 state of California and doing business in the state of California. FAC is dedicated to advancing
12 free speech, more open and accountable government, and public participation in civic affairs.
13 Under the CPRA (Government Code section 6258), Article I, section 3(b), and the Milpitas
14 Sunshine Ordinance (section I-310-320(f)), FAC is entitled to pursue its right of access to the
15 records sought herein by petitioning this Court for a writ of mandate and/or declaratory and
16 injunctive relief prohibiting the City from withholding the records FAC has requested, and
17 compelling the City to make those records public.

18 2. Pursuant to California law and the Milpitas Sunshine Ordinance, the City prepares
19 and collects information regarding the conduct and activities of its City Council members and
20 employees, and maintains records regarding the their conduct and activities. As a city and a
21 municipal corporation, the City is a local agency for purposes of the CPRA, and has a mandatory
22 duty to comply with its provisions. (*See* Government Code sections 6252-6253.) The City has
23 also adopted the Milpitas Sunshine Ordinance, which imposes disclosure obligations and other
24 requirements on the City in addition to and greater than those imposed by California law. (*See*
25 Milpitas Municipal Code Title I, section I-310-1.10, *et seq.*)

26 **JURISDICTION AND VENUE**

27 3. The Court has jurisdiction of this matter under Article I, section 3 of the California
28 Constitution, the CPRA, and Code of Civil Procedure section 1085. Venue is proper in this Court

1 under Government Code section 6259(a) and Code of Civil Procedure section 393 because the
2 City of Milpitas is located in the County of Santa Clara, California.

3
4 **FACTS**

5 **Charges of Misconduct by Milpitas City Manager Tom Williams
6 and Milpitas Mayor Richard Tran**

7 4. The Mayor of Milpitas, Richard Tran (“Mayor” or “Tran”), has repeatedly accused
8 Milpitas City Manager Tom Williams (“City Manager” or “Williams”) of poor performance and
9 misconduct in office, including in numerous statements made by Tran that have been published by
10 the media and/or on Tran’s Facebook page.

11 5. For example, on October 28, 2016, the following statements by Tran were
12 published by the Mercury News: “If elected, I would make it a top priority to do a formal
13 performance review of our City Manager Tom Williams;” “As the our [sic] nation continues to
14 recover from the Great Recession and our Valley has become prosperous from the tech boom,
15 Mr. Williams has found ways to harm our city;” and “Mr. Williams’ actions are hurting
16 taxpayers.” A true and correct copy of the October 28, 2016 news article is attached hereto as
17 **Exhibit 1** and is incorporated herein by reference.

18 6. As another example, on March 15, 2017, the Mercury News published an article
19 titled “Milpitas: Mayor calls for independent performance review of city manager.” This article
20 included the following statements by Tran: “I knew before hand [sic] there needed to be greater
21 accountability in city hall, particularly with the lawsuit settlements I would read about these
22 lawsuit settlements and it was a concern to me over a million [dollars] have been spent on
23 lawsuit settlements and as the mayor I don’t find that acceptable.” A true and correct copy of the
24 March 15, 2017 news article is attached hereto as **Exhibit 2** and is incorporated herein by
25 reference.

26 7. On April 13, 2017, counsel for Williams wrote a letter to Tran and City Attorney
27 Christopher Diaz (“City Attorney” or “Diaz”) detailing various instances of Tran’s alleged
28 disparagement of Williams, and asserting that this alleged disparagement violated 42 U.S.C.
§ 1983, the Ralph M. Brown Act, California Government Code §§ 54950 *et seq.*, and the City

1 Council’s rules and policies. Williams also made charges of age discrimination against the
2 Mayor. Williams is seeking damages for the alleged violations. This letter was obtained and
3 published by the media. *See, e.g., San Jose Inside, Milpitas City Manager Demands \$1 Million,*
4 *Seeks Injunction*, available at [http://www.sanjoseinside.com/2017/04/28/milpitas-city-manager-](http://www.sanjoseinside.com/2017/04/28/milpitas-city-manager-threatens-mayor-with-1-million-demand/)
5 [threatens-mayor-with-1-million-demand/](http://www.sanjoseinside.com/2017/04/28/milpitas-city-manager-threatens-mayor-with-1-million-demand/), and the letter, available at
6 [http://www.sanjoseinside.com/wp-content/uploads/2017/04/Web-Version-Demand-](http://www.sanjoseinside.com/wp-content/uploads/2017/04/Web-Version-Demand-Correspondence-4.12.17-FINAL-c1.pdf)
7 [Correspondence-4.12.17-FINAL-c1.pdf](http://www.sanjoseinside.com/wp-content/uploads/2017/04/Web-Version-Demand-Correspondence-4.12.17-FINAL-c1.pdf). A true and correct copy of this letter as published by the
8 press (the “Claim Letter”) is attached hereto as **Exhibit 3** and is incorporated herein by reference.

9 8. A Notice of Special Meeting and corresponding agenda was published in advance
10 of the April 18 City Council meeting. This agenda detailed that the following would be discussed
11 during closed session: “CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED
12 LITIGATION [¶] City as Defendant - Pursuant to Government Code Section 54956.9(d)(2).” A
13 true and correct copy of the Notice of Special Meeting is attached hereto as **Exhibit 4** and is
14 incorporated herein by reference.

15 9. On April 18, 2017, the Milpitas City Council held a closed session meeting. On
16 information and belief, Williams’s charges against Tran and his Claim Letter were apparently
17 discussed at this meeting. However, the Claim Letter predates the April 18, 2017 meeting.

18 **Members of the Media Send CPRA Requests to the City**

19 10. On information and belief, on April 19, 2017, the City received a CPRA request
20 from Aliyah Mohammed, Reporter and Social Media Coordinator / Editorial for Bay Area News
21 Group, for “any and all documents related to” the April 18, 2017 closed session meeting of the
22 City Council. A true and correct copy of the April 19 CPRA request is attached hereto as **Exhibit**
23 **5** and is incorporated herein by reference.

24 11. On information and belief, the City received two additional CPRA requests:
25 another one from Aliyah Mohammed on April 19, 2017, and one from Jennifer Wadsworth on
26 April 21, 2017 (collectively with the April 19 CPRA request, “Media CPRA Requests”). Both
27 requests sought production of various emails between Williams and members of the City
28

1 government. True and correct copies of these CPRA requests are attached hereto as **Exhibits 6**
2 **and 7** and are incorporated herein by reference.

3 12. On April 28, 2017, Williams appeared ex parte in the Santa Clara County Superior
4 Court, seeking a temporary restraining order and an order to show cause re preliminary injunction
5 to prohibit the City from releasing the documents requested under the Media CPRA Requests.
6 Section I-310-3.20(i) of the Milpitas Sunshine Ordinance provides that “[t]he Milpitas City
7 Attorney’s office shall act to protect and secure the rights of the people of Milpitas to access
8 public information.” However, on information and belief, the City Attorney’s office did not
9 oppose the City Manager’s application, and no one else appeared to oppose the ex parte
10 application. A true and correct copy of this application for a temporary restraining order is
11 attached hereto as **Exhibit 8** and is incorporated herein by reference.

12 13. The court granted Williams’ application and issued an order entitled “Order re
13 Plaintiff’s Ex Parte Application for Temporary Restraining Order and Order to Show Cause re:
14 Preliminary Injunction” (“Williams TRO”). The Williams TRO prohibited the City, the City
15 Clerk, and the City Attorney from disclosing public records and required them to show cause why
16 a preliminary injunction should not be granted enjoining them from producing or disclosing the
17 documents requested in the Media CPRA Requests. The Williams TRO stated, in part:

18 Defendants City of Milpitas, Mary Lavelle and Christopher Diaz
19 (collectively "Defendants"), their officers, agents, employees,
20 attorneys and representatives and each of them, SHALL NOT
21 PRODUCE OR DISCLOSE Plaintiff’s Letter, Plaintiff’s personnel
22 records, Plaintiff’s performance evaluations or any meeting minutes,
23 emails or other documents which reference, pertain, discuss, or relate
24 to the Letter or Plaintiff’s personnel records or performance
25 evaluations (collectively "The Documents"), to Aliyah Mohammed,
26 Jennifer Wadsworth, or any other member of the public pursuant to a
27 CPRA request unless otherwise agreed by all parties

24 A true and correct copy of the Williams TRO is attached hereto as **Exhibit 9** and is incorporated
25 herein by reference.

26 **Additional Misconduct by the City Manager**

27 14. On May 17, 2017, a letter written by the City Attorney to the City Council was
28 obtained by the media. According to press reports, the letter states that Williams used a City

1 credit card to pay \$7,000 in legal fees to the attorney personally representing Williams against
2 Tran and the City, and signed off on the expenses as “official city business.” The letter also states
3 that Williams attempted to charge \$30,000 in City funds to pay the same attorney after the initial
4 \$7,000 was paid. True and correct copies of press reports describing this letter are attached hereto
5 as **Exhibits 12 and 13** and are incorporated herein by reference.

6 15. On May 19, 2017, Williams was reportedly placed on indefinite administrative
7 leave, according to an announcement by Milpitas City Attorney Christopher Diaz. True and
8 correct copies of press reports of the City Attorney’s announcement are attached hereto as
9 **Exhibits 13 and 14** and are incorporated herein by reference.

10 **FAC’s Request to the City for Disclosure of Public Records**

11 16. On May 10, 2017, pursuant to the CPRA, Article I, section 3(b), California
12 common law, and the Milpitas Sunshine Ordinance, FAC requested certain records from the City
13 pertaining to the alleged misconduct of Williams and statements made by Tran (“FAC CPRA
14 Request”). A true and correct copy of the FAC CPRA Request is attached hereto as **Exhibit 10**
15 and is incorporated herein by reference.

16 17. Specifically, FAC requested the following records:

- 17 (1) The letter dated April 13, 2017, sent to Milpitas Mayor Rich Tran
18 and City Attorney Christopher Diaz by counsel for City Manager
19 Tom Williams, and any related correspondence;
20 (2) All records supporting, reflecting, or addressing the claims made
21 by Mr. Williams in the letter dated April 13, 2017, sent to Milpitas
22 Mayor Rich Tran and City Attorney Christopher Diaz by counsel
23 for City Manager Tom Williams;
24 (3) All other records of misconduct by Mr. Tran, including without
25 limitation complaints, claims or charges of misconduct by Mr.
26 Tran;
27 (4) All evaluations of Mr. Williams’ performance as City Manager of
28 the City of Milpitas, including without limitation evaluations that
reflect or address misconduct by Mr. Williams, or any complaints,
claims, or charges of misconduct by Mr. Williams;
(5) All personnel records relating to Mr. Williams, including without
limitation records that reflect or address misconduct by Mr.
Williams, or any complaints, claims or charges of misconduct by
Mr. Williams;
(6) Any other records of misconduct by Mr. Williams, including
without limitation complaints, claims or charges of misconduct by
Mr. Williams;
(7) All records relating to investigations or inquiries into claims or
charges of misconduct by Mr. Tran or Mr. Williams;

1 (8) All records constituting or describing any response by the City of
2 Milpitas or any officer or employee of the City of Milpitas to the
3 letter dated April 13, 2017, sent to Milpitas Mayor Rich Tran and
4 City Attorney Christopher Diaz by counsel for City Manager Tom
5 Williams.

6 18. On May 19, 2017, the City responded to the FAC CPRA Request by letter. In the
7 letter, the City stated that based on the Williams TRO and Government Code section 6254(c) “the
8 documents requested in Nos. 1-2 and 4-8 above are exempt from disclosure.” The City provided
9 records responsive to request numbers 3 and 7, which pertain to allegations of misconduct
10 conducted by the Mayor. A true and correct copy of this letter is attached hereto as **Exhibit 11**
11 and is incorporated herein by reference.

12 19. The City’s failure to provide all of the records sought by the FAC CPRA Request is
13 a violation of the CPRA, the California Constitution, and the Milpitas Sunshine Ordinance.

14 **The Records Sought Are Not Exempt from Disclosure, and Must Be Provided**

15 20. Under the CPRA, all records of public entities must be disclosed unless one of the
16 specifically enumerated exemptions to disclosure under the CPRA applies. (Gov’t Code §
17 6253(b) [“Except with respect to public records exempt from disclosure by express provisions of
18 law, each state or local agency, upon a request for a copy of records that reasonably describes an
19 identifiable record or records, shall make the records promptly available to any person upon
20 payment of fees covering direct costs of duplication, or a statutory fee if applicable.”].) The City’s
21 failure to disclose the requested records violates the CPRA, the California Constitution, and the
22 Milpitas Sunshine Ordinance.

23 21. Under California law and the Milpitas Sunshine Ordinance, pre-litigation demand
24 letters, such as the Claim Letter, are not exempt from disclosure and are required to be made
25 public. Under California law, records regarding actual misconduct of public official or employees
26 or well-founded charges of misconduct against public officials or employees, such as the records
27 of misconduct or charges of misconduct on the part of the City Manager and the Mayor, are not
28 exempt from disclosure and are required to be made public. The records the City has refused to
disclose fall into one or both of these categories. Therefore, they are not exempt from disclosure
and must be made public.

1 22. Disclosure of the requested records does not constitute an unwarranted invasion of
2 the personal privacy of the City Manager or the Mayor. The public interest in the release of these
3 records is profound. The records requested are critical to the public’s understanding of well-
4 founded charges of misconduct by senior public officials in the City, as well as the City’s response
5 to such allegations.

6 23. The actions of the City violate FAC’s rights under the CPRA, the California
7 Constitution, and the Milpitas Sunshine Ordinance, because FAC has been denied its right to
8 inspect and obtain copies of records and information obtained by, and in the possession of, a
9 public entity, and because the information sought by FAC is not exempt from disclosure.

10 24. The City’s denial of access to the records and information sought by FAC is a
11 violation of Government Code sections 6253 and 2655. Government Code sections 6253 and
12 6255 require all public records to be made available for inspection and copying unless exempt
13 from disclosure under the CPRA. The records withheld by the City are not exempt from
14 disclosure under the CPRA.

15 25. The City’s denial of access to the records and information sought by FAC is a
16 violation of Article I, section 3(b) of the California Constitution, which provides that: “The
17 people have the right of access to information concerning the conduct of the people’s business,
18 and, therefore, the meetings of public bodies and the writings of public officials and agencies shall
19 be open to public scrutiny.” Article I, section 3(b) creates an independent right of access to the
20 City’s records, unless the disclosure of those records is expressly prohibited by the California
21 Constitution or by statute. No provision of the California Constitution prohibits disclosure of the
22 requested records, nor does any statute.

23 26. The City’s denial of access to the records based on the Williams TRO is a violation
24 of the First Amendment to the United States Constitution, Article I, Section 2 of the California
25 Constitution, Article I, section 3(b) of the California Constitution, the CPRA, and the Milpitas
26 Sunshine Ordinance. To the extent the Williams TRO, which was obtained in an unopposed
27 proceeding, purports or is construed to prohibit the disclosure of records that are not exempt from
28 disclosure and that are required or permitted to be made public under the CPRA, Article I, section

1 3(b), or the Milpitas Sunshine Ordinance, it is contrary to California law and the Milpitas
2 Sunshine Ordinance, and the refusal to disclose records in reliance on the Williams TRO is a
3 violation of Article I, section 3(b), the CPRA, and the Milpitas Sunshine Ordinance. Furthermore,
4 to the extent the Williams TRO purports or is construed to prohibit the disclosure of records that
5 are not exempt from disclosure and that are required or permitted to be made public, it constitutes
6 an unconstitutional prior restraint that violates the First Amendment to the United States
7 Constitution and Article I, Section 2 of the California Constitution.

8 27. FAC is interested in the outcome of this action, and has a clear, present, and
9 substantial right to the release of the records sought herein. The City has a manifest legal duty to
10 provide those records. FAC has no plain, speedy, and adequate remedy other than the relief
11 sought.

12 28. There is a real, present, and ongoing controversy and dispute between FAC and the
13 City of Milpitas with respect to FAC's right to obtain and the City's obligation to provide the
14 requested records that the City has refused to provide.

15 29. Pursuant to Government Code section 6259(d) and California Code of Civil
16 Procedure section 1021.5, FAC is entitled to costs and attorneys' fees incurred pursuing this
17 matter.

18 30. Pursuant to Government Code section 6258, the times for responsive pleadings and
19 for hearings in actions such as this one shall be set with the object of securing a decision at the
20 earliest possible time.

21 **PRAYER**

22 WHEREFORE, FAC prays as follows:

23 (a) That the Court find and determine that the City's conduct in denying access to the
24 requested records was and is in violation of applicable provisions of the California Public Records
25 Act and Article I, Section 3 of the California Constitution, and that FAC and the public are entitled
26 to inspect, obtain, and copy the requested records, and that the Court issue a peremptory writ of
27 mandate commanding the City to permit public access to and copying of all of the records
28 requested by FAC;

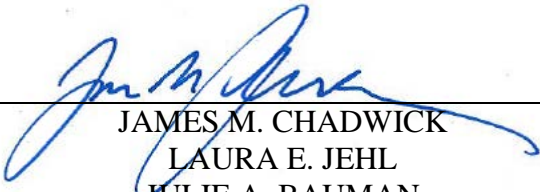
1 (b) That the Court find and declare that FAC and the public are entitled under the
2 California Public Records Act, Article I, Section 3 of the California Constitution, and the Milpitas
3 Sunshine Ordinance to inspect, obtain, and copy all of the records requested by FAC, that the
4 Court enjoin the City from withholding or denying access to the requested records, that the Court
5 require the City to permit public access to and copying of all of the records requested by FAC;

6 (c) That the Court find and determine that the Williams TRO, and the City's reliance
7 on it in denying access to the records requested by FAC, violates the California Public Records
8 Act, Article I, section 3 of the California Constitution, and the Milpitas Sunshine Ordinance by
9 enjoining and denying the disclosure of records that are not exempt from disclosure and that are
10 required to be made public, and violates the First Amendment to the United States Constitution
11 and Article I, section 2 of the California Constitution, by imposing and enforcing a prior restraint
12 on protected communication.

- 13 (d) That FAC be awarded its costs and attorneys' fees incurred in this matter;
14 (e) That the Court enter judgment accordingly; and
15 (f) For such other and further relief as the Court deems just and proper.

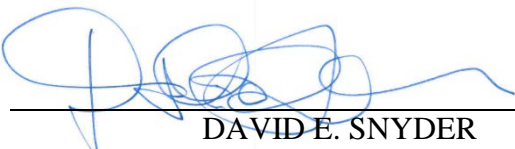
16 Dated: May 25, 2017

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

17
18 By 
19 JAMES M. CHADWICK
20 LAURA E. JEHL
21 JULIE A. BAUMAN
Attorneys for First Amendment Coalition

22 Dated: May 25, 2017

FIRST AMENDMENT COALITION

23
24 By 
25 DAVID E. SNYDER
Attorneys for First Amendment Coalition

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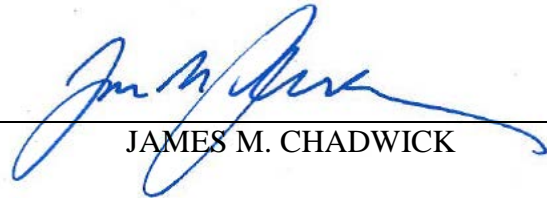
VERIFICATION

I, James M. Chadwick, declare as follows:

1. I am counsel for First Amendment Coalition, petitioner in the above-named action, and I am authorized to make this verification on its behalf.

2. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE PURSUANT TO THE CALIFORNIA CONSTITUTION AND THE CALIFORNIA PUBLIC RECORDS ACT, AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know the contents thereof, and certify that the same are true of my own knowledge, except as to the matters which are stated on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed May 25, 2017 at Palo Alto, California.



JAMES M. CHADWICK

Exhibit 1

Community News

2

Milpitas candidates' question: How will you prevent further 'turmoil' at city hall?



Candidates for mayor of Milpitas listen as challenger Richard Tran, far right, answers questions during the 2016 Milpitas Chamber of Commerce's Candidates Forum held at city hall on Oct. 13. From left, the candidates are Debbie Indihar Giordano, Robert Marini, Carmen Montano, Voltaire Montemayor and Tran. Photo by Stephen Balsbaugh/MSA Photos

By **MILPITAS POST STAFF** |
October 28, 2016 at 4:41 pm

The Milpitas Post Newspaper recently asked the 11 candidates variously running for Milpitas City Council and the office of mayor in 2016 about one aspect of the future of the city — dealing with ongoing monetary settlements and lawsuits by former or, in some cases, rehired City of Milpitas employees. This includes a pending \$2.7 million wrongful termination lawsuit filed by former city attorney Michael Ogaz who was sacked from his position last year.

The Post's question to the candidates is as follows: Among the responsibilities of the Milpitas City Council an important one is to help guide and direct the governance of the city through its power to hire and fire the top city officials responsible for carrying out its policies. Given the past year's turnover of senior city officials and the costly settlements stemming from personnel-related lawsuits, what would you do if elected to prevent further turmoil inside the city's administration?

The candidates' for mayor and council individual responses are as follows:

MAYOR

Debbie Indihar Giordano

If elected mayor, I will hold all top city officials accountable. I represent the people of Milpitas and ultimately must do what is best for the city as a whole. Every employee will be held to the high standards that the community deserves and demands.

Most importantly, we need to make our decisions based on fact, not rumor, emotion or political expedience. This is not always the easy way, but not all decisions are easy. As your mayor I will, most importantly, be held accountable to the citizens of Milpitas. Staff morale has suffered over the last few years with the difficult budgetary decisions the council was forced to make to keep the city solvent.

The questioning of top city officials quality of performance has been made a controversial topic, one I will address as mayor. All five of the employee unions support and endorse my candidacy for mayor. I believe this to be a bold statement of trust that I will make decisions in the best interest of our community.

I am confident that my service on the council demonstrates that my only goal is the best for Milpitas. As mayor, I will continue to serve that goal.

Robert Marini

To prevent further turmoil one needs to investigate who is responsible for the current lawsuits and turnovers and terminate that employee. The reason the lawsuits and turnovers exist is because council members have a "don't care" attitude. Top city officials do favors for their council members by approving excessive benefits such as medical bills, education or get involved in private matters with council members. Debbie Giordano received over \$20,000 in medical expenses and \$10,000 in education benefits for a part-time job. City Manager Tom Williams helped one council member when her dog bit someone. Favors handed out by top officials result in council members ignoring state/federal laws violated by city employees.

Giordano violated election code by not allowing the tiered water rates to be voted on. Mayor Estevez violated California public records costing residents \$80,000. All council members violated Proposition 218, Sec. 6 b4, by charging residents for irrigation water that they will not receive.

To prevent new violations residents must know Proposition 218 and vote out council members violating or ignoring laws. I would introduce an ordinance or ballot for two-term limit like the Santa Clara City ballot to get rid of self-serving council members and uphold all federal and state laws.

Carmen Montano

As the next mayor, it will be my responsibility to lead our city council to ensure that we are held responsible and to hold our city administration accountable for their actions. Each department is expected to follow procedure, protocol, and perform their duties in a professional manner. Should this fail, there is a legal process that must be followed.

Community members have expressed real concerns as it relates to our city administration. Some of these concerns stem from the 2015 and 2016 terminations, resignations, or early retirement of city employees. In addition, there have been several lawsuits and settlements that are cause for concern and have put the financial burden on the Milpitas taxpayer.

As civic leaders we need to be proactive about preventing such problems, and strive for our best team effort, partly by attending department meetings and understanding their processes or changes. It will be important to pay close attention to any potential causes for concern that arise, whether formally or informally, in order to prevent problems before they escalate.

I will make every effort to represent, guide, and govern our city with a strong moral compass and fairness. I will continue being deeply involved in our community, and will listen to citizens, city employees, and city officials when issues arise.

Voltaire Montemayor

To stay within the Code of Ethics; in reference to the California Republic Rules down to the City of Milpitas Library book, I will research. At the moment for instance, when it comes to firing, I will first base on the gravity of the failures. If it is a crime related action, misconduct, or a work related inefficient performance, there should be a respective "protocol" steps. I will fairly, carefully lead and participate in the investigations. I will not condone wrongdoings. When it comes to hiring, I may go with the no ties with the "Affirmative Action" I will suspend it. I know that we should consider "demographics" for a practical and good referral records, but it may or will deprive the hidden or undiscovered talents of a certain individual. I may consider very well though, the employment of a local resident but not bias. Outsourcing is a vague topic. I will clear up the complexity accordingly. Dignity for others is important. Retention of high-rated, conscientious, well-respected employees is vital. Dialogue, dialogue and more dialogue is needed. A transition and smooth exit should be made.

Adapt, overcome and improve.

Richard Tran

If elected, I would make it a top priority to do a formal performance review of our City Manager Tom Williams. Like a majority of the city council, Mr. Williams has over 10 years of service at city hall.

As the our nation continues to recover from the Great Recession and our Valley has become prosperous from the tech boom, Mr. Williams has found ways to harm our city.

The exodus of department leaders is alarming and the complaints of workplace harassment are widespread. Furthermore, Mr. Williams actions are hurting taxpayers. The lawsuit from former city attorney Mike Ogaz is in the multi-millions and will be sure to drag on in the press or cost the city what might be a record amount to settle.

The hiring of executive secretary Rachele Currie has set a poor example for long time city employees who are looking for promotion opportunities or outside talent that may be looking at joining our fine city. Add in the departures of the Human Resources Director, Public Works Director, the Public Works Director successor, and Planning Director to the long list. Milpitas has a problem that needs to be addressed by a new council that is non-partial.

CITY COUNCIL

Gwan Alisantosa

Utilize my experiences and leadership/management trainings after serving as an elected member of the School Board for almost eight years, and people manager in a high technology company, to move forward.

Do fact finding first. Information available in public may not be as complete compared to what's available in closed session due to confidentiality.

Root cause of the problems may not be the City Manager, but his leadership is important. With information gathered, taking past turmoils into account, create S.M.A.R.T goal for the City Manager for upcoming performance review process, making sure properly document everything, support him if he needs more tool and training. Performance review process shall include anonymous survey and written feedback from employees. This will ensure the City Manager will work well with everyone, and the governing body will know any issues, too. Without micromanaging, have an open door policy, listen to employees concerns and issues. Provide feedback to the City Manager quickly, provide opportunity for corrective actions if needed.

Last but not least, any action taken by the City Council requires minimum of three votes, therefore, I will do my best to build consensus, work as a team in order to be effective.

Evelyn Chua

Having my master's in human resource management, I can state that hiring and firing of employees are two of most important responsibilities of any organization. Moreover, termination must be done cautiously in order to prevent exposing an organization in a lawsuit.

It is obvious that there is a "turmoil" in city's administration because of the personnel lawsuits and departures of senior city officials. It's easy to conclude that the performance evaluation of the city manager is not based on employee retention and zero lawsuits. As a council member this is what I'm going to do:

First 30 days in council:

Review, evaluate, revise and communicate new performance evaluation criteria of a city manager with the highest priority on employee retention and zero lawsuit effective immediately

Review the summary all of lawsuits with cost settlements in the last three years

Review the statistical data of all employee departures in the last three years with associated costs of recruitment/hiring/training of replacements

Evaluate overall performance with new evaluation criteria with Council

Discuss/decide appropriate action

Direct staff to immediately conduct a search for a Survey Company to conduct employee job satisfaction and with absolute confidentiality of results.

Next 30 days:

Monitor and evaluate performance of direct reports

Direct staff to present a rigorous recruitment, hiring and retention plans with the strategy of "hiring the right person for the right job the first time"

Evaluate overall city staff performance review process

Evaluate goals with contributions, reiterate reward system

Review coaching/counselling system, fire non-contributing employees after due process

Review survey results, determine appropriate actions and implement.

Ongoing:

Monitor and evaluate performance of direct reports

Monitor implementation of actions taken from the survey

Take appropriate action based on results.

Bob Nunez

The question being asked of mayor and city council candidates is "What would they do to prevent turmoil inside city administration due to costly settlements from personnel related lawsuits?" The only thing I know with regard to any kind of personnel related lawsuits or settlements is what I have read in the press. Not everyone that I have spoken with has described the city as being in turmoil.

As a newly elected city council person, I would want to gather all the facts that only a sitting council member or the mayor would be privy to. This would allow me to determine why settlements were entered into, what steps had been taken to reach agreement, and what positive policies and practices were implemented moving forward.

I believe that all senior city officials should be held accountable. After thorough review in a relatively short period of time, in concert with the new city council, I would do what is in the best interest of the City of Milpitas.

Anthony Phan

The way our system is set right now, unchecked power is centralized to the city manager. I would challenge my colleagues into rethinking this.

Last year, the city council voted to terminate the employment of our city attorney and opted to outsource legal services. The rationale was that this decision would save money. This has been proven to be false. The outsourcing of legal services has produced inefficient and costly results. I would prioritize reorganizing our city staff and creating two key positions with resources for their respective departments: Office of the City Attorney and office of the City Auditor. These new departments are intentioned to streamline our legal operations, provide accountability and transparency, and save money for our taxpayers.

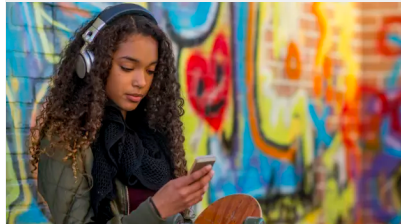
I honestly can't believe that we don't already have these departments established, as these are considered by many to be basic necessities for any functioning municipality.

Jennifer Strohfus

To avoid turmoil in the future, the city council needs to ask the city attorney if any bias exists and make sure to do it right every time when making decisions.

Mark Tiernan

I have had growing concerns about two recent trends at Milpitas City Hall. One is the spending of over \$2 million in legal fees and lawsuit settlements. The second is the sudden and unexpected departures of several senior city officials in a relatively short period of time. As an elected Council member, I would take the following steps to reverse these two trends: First, I would seek City Council approval to direct the City Attorney to present recommendations to improve the effectiveness of our current training of all City managers and supervisors on personnel-related policies and procedures. Better knowledge of the rules should reduce or eliminate the situations leading to these lawsuits. Second, I would seek City Council approval to hire an independent firm to conduct "exit interviews" of any manager who recently left City employment. The firm should report aggregated results that protect the confidentiality of those who left and submit them directly to the Council. However, the place to discuss the City Manager's performance is in his performance review and not in the media. If fortunate to be elected, I would meet with our City Manager to present the compliments and complaints that I have heard in my conversations with voters. As your City Council member, I am committed to acting in a fiscally responsible manner in spending taxpayer funds and to be proactive if I see violations of public law.



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By  DeVry University

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Exhibit 2

Community News

3

Milpitas: Mayor calls for independent performance review of city manager



courtesy Rich Tran Facebook page

Mayor Richard Tran recaps the votes the council took during the Feb. 7 city council meeting in a segment shot at the Milpitas Channel 26 station located at Milpitas City Hall. Photo courtesy of Richard Tran Facebook page

By **ALIYAH MOHAMMED** | amohammed@bayareanewsgroup.com |
 PUBLISHED: March 15, 2017 at 5:42 pm | UPDATED: March 16, 2017 at 4:50 am

Mayor Rich Tran said in a social media post last week that the city's almost \$1 million settlement with former city attorney Michael Ogaz over his prior workplace retaliation complaint against City Manager Tom Williams, former councilwoman Debbie Indihar Giordano and City of Milpitas was "too much money."

"I will be calling for an independent formal performance review of our city manager. Nearly \$1 million settlement involved, way too much money. We will seek the truth and go from there," said Tran in a March 6 post on his official Facebook page.

During a priority setting council meeting last month, Tran had asked when the council would be able to review the city manager and was told such reviews take place annually in December.

Tran, who has been active on social media as mayor, creating video recaps of city council meetings, said his post was about being transparent and reaching out to the public. He added that he came to the council knowing that an audit or third-party review of the city manager was a priority for him.

"I knew before hand there needed to be greater accountability in city hall, particularly with the lawsuit settlements," Tran told the Post. "I would read about these lawsuit settlements and it was a concern to me. ...over a million have been spent on lawsuit settlements and as the mayor I don't find that acceptable."

Tran said that he was not pointing fingers at anyone. "This is not a personal agenda, this just happens to be strictly professional," he added.

Tran said he did not feel it was improper to announce his plans to call for an independent audit via social media and he would continue to use it as a mode of communication to reach out to the public.

He said apart from the social media post he was also planning to go through the traditional channels and get his requested audit agendaed for the closed session portion of a council meeting. Tran said he wants the council to take a formal vote on the matter by April.

Still, Tran asserted Williams was not blindsided by his post, as he had several discussions with Williams about an independent audit instead of one done by the council.

“I also want to add the city manager denied any wrongdoing. I am not accusing him of wrongdoing. I just want the truth. If there is no wrongdoing by the city manager I’ll stand by him. I just want there to be transparency in city hall,” Tran said.

This week, Williams would not comment on the mayor’s call for an independent performance review of his office. Likewise, City Attorney Christopher Diaz did not respond to calls and emails about this matter by press time.

However, Tran’s fellow council members disagreed with the mayor’s view over the necessity to have a pre-December review of the city manager’s job performance.

“I have no idea why the mayor is talking about independent third party review of the city manager. He threw out that we needed to do a performance evaluation, we do one every year and it’s appropriate to do as a school board or city council as yearly review,” Vice Mayor Marsha Grilli said.

She added that she could not comment on the mayor’s social media posts.

For his part, Councilman Anthony Phan said that it would be a disservice for the council to do a performance review four months into the new council’s term, saying there had not been enough time to properly evaluate the city manager.

Councilman Bob Nunez said it was the purview of the council to review the city manger when appropriate and asserted that having the mayor make that decision via social media was “inappropriate.”

“He should come and ask the city council. He had his opportunity during the last city council meeting and he didn’t do it, so I’m going to assume that he decided not to do it,” Nunez said.

Nunez added hiring someone to do an independent review would be “a waste of taxpayer dollars.”

Meanwhile, Tran said he thought Williams had done a good job making sure the city runs properly, but argued the city’s more than \$1 million in legal settlements with past employees who’ve leveled workplace grievances against the city manager and his on-the-job conduct was “unacceptable.”

“So I really want to get down to the truth. It’s been mixed reviews of the city manager from all the input I’ve been receiving,” Tran said. “I’ve told the city manager if his name is cleared from all the allegations I will look forward to supporting him, but if revelations unfold I will look to take corrective action.”



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Aliyah Mohammed, staff reporter, Milpitas Post, Fremont Bulletin, Berryesa Sun, for her Wordpress profile. (Michael Malone/Bay Area News Group)

Aliyah Mohammed Aliyah Mohammed covers local government, education, breaking news and community issues in Milpitas and Fremont. She is also the web and social media coordinator for the Milpitas Post and Fremont Argus. Aliyah has been working for Bay Area News Group since 2013. She graduated from U.C. Berkeley with a double bachelors in English and media studies in 2013. Aliyah loves coffee, traveling, soccer and being a devoted bibliophile.

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Exhibit 3

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April 13, 2017

PERSONAL & CONFIDENTIAL
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Via E-mail – Original to Follow

Mayor Rich Tran
rtran@ci.milpitas.ca.gov

Christopher J. Diaz, Esq.
Christopher.Diaz@bbklaw.com

455 E. Calaveras Boulevard
Milpitas, CA 95035-5411

Re: Tom Williams v. City of Milpitas, Mayor Tran

Dear Mr. Tran and Mr. Diaz;

Ad Astra Law Group, LLP has been retained by Tom Williams to represent his interests with regard to his legal disputes with you and with certain of your agents and employees. This letter operates as both a demand to cease and desist violations of the Civil Rights Act, which continues to repeatedly and aggressively be violated by Mayor Tran on an almost daily basis, and also to serve as notice of pending litigation for age related discrimination, retaliation and hostile work environment, also stemming from Mayor Tran's behavior. Additionally, the Mayor and the City must preserve all evidence related to this dispute, which will be articulated in more detail in a separate letter demanding such preservation of evidence.

At the close of this letter is a demand for damages resulting from both the repeated Civil Rights violations, and the on-going treatment by the Mayor of Mr. Williams under both the Age Discrimination in Employment Act ("ADEA") as well as the related Fair Housing and Employment Act ("FEHA"). If the respective parties to this correspondence are unable to successfully resolve these on-going issues, with an agreement that the behavior from Mayor Tran cease, as well as an agreement for monetary compensation for Williams' on-going suffering at the hands of Mayor Tran, then we will file an Equal Opportunity and Employment Act complaint, as well as a related Civil Action. We demand resolution in two (2) weeks' time from the date of this correspondence. If unsuccessful, the respective complaints will be filed on April 28, 2017.

Facts:

Over the last year, both during Mayor Tran's campaign for office, and presently, during his time in office, he has openly and repeatedly disparaged Mr. Williams' job performance as City Manager of Milpitas. Mr. Williams has been City Manager for Milpitas for ten (10) years and to date, has never received a performance evaluation (which is done annually) from the City Council that has been less than excellent. Mayor Tran is aware of these excellent ratings and yet continues to insist that Mr. Williams has done less than an excellent job in his position.

In addition to these repeated and misguided public comments about Mr. William's constitutionally protected job evaluations, Mayor Tran has followed up his statements by directly confronting Mr. Williams' about his age (53), suggesting repeatedly that Mr. Williams should quit his job because he is "too old."

What is most concerning about the Mayor's actions is that he continues to disparage Williams' job performance in a public forum, despite being directed by the City Attorney, on multiple occasions, that he is in violation of the Brown Act (California Government Code 54950 *et seq.*) when he makes these statements. Further, the Mayor has been warned that by publicly discussing Williams' job performance, and criticizing his past performance, he is in direct violation of the City of Milpitas' own internal policies.¹

Below is just a sampling of statements and actions by Mayor Tran that support Williams' claims.

On or about October 28, 2016, Mayor Tran's statements were published in the Milpitas Post:

"If elected, I would make it a top priority to do a formal performance review of our City Manager Tom Williams."

"Mr. Williams has found ways to harm our city,"

"The exodus of department leaders is alarming and the complaints of workplace harassment are widespread."

"Furthermore, Mr. Williams [sic] actions are hurting taxpayers."

"The lawsuit from former city attorney Mike Ogaz is in the multi-millions and will be sure to drag on in the process or cost the city what might be a record amount to settle."

¹ 2004, *Internal City Memo*:

"Never publicly criticize an individual employee. The Mayor and Councilmembers should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's supervisor. Comments about staff performance should only be made to the City Manager through private correspondence or conversation. Comments about staff in the office of the City Attorney should be made directly to the City Attorney."

“The hiring of executive secretary Rachelle Currie has set a poor example for long-time city employees who are looking for promotion opportunities or outside talent that may be looking at joining our fine city.”

On or about January 20, 2017, Mayor Tran entered Williams’ office and made the following statement:

“Hey, what’s up. Now ya know I told the voters I had to investigate you, so noth’en personal but I gotta do what I gotta do. Hey, by the way, when are you going to retire? I need to mix it up with some younger people around here. People that look more like me.”

On or about February 7, 2017, Mayor Tran approached Mr. Williams in the common area adjacent to Williams’ office:

“Hey there, Mr. City Manager. You don’t look so good. You look stressed. Now, I’m not stressing you out, am I? But you know what I gotta do. My people are telling you’re to blame for all this cost. You have cost the City way too much money. You sure you don’t want to retire now?”

On or about March 6, 2017, Mayor Tran posted the following on his Facebook page:

“I will be calling for an independent formal performance review of our City Manager. Nearly \$1 million settlement involved, way too much money. We will seek the truth and go from there.”

Following Mayor Tran’s Facebook post, the City Attorney issued the following statement:

Mayor Tran and Honorable City Council:

A few legal issues have come to my attention based on recent Facebook postings. ~I write with some legal guidance to follow when using social media.

Personnel Issues

I received word that the Mayor posted a Facebook post regarding the Ogaz matter and our City Manager. ~With regard to personnel issues involving any employee that you hire or fire (this would include the City Manager and City Attorney), the recommended forum to raise any issues regarding performance is in the context of a closed session discussion.

~In fact, the Brown Act specifically authorizes a closed session for performance evaluations. ~

The risk with not using the closed session forum, is that any statements you make to the media or on social media, may create on-going issues with the employee, and it may expose the City to liability. ~Finally, it may also expose the individual councilmember who is making the statements to liability, including the risk of a personal libel suit. ~I would strongly recommend that any personnel issues be discussed in a closed session forum and not in any public format, including social media....(*irrelevant text deleted*)

Thank you.

On or about March 15, 2017, Mayor Tran's statement was published in The Fly:

"Yes, there are folks in city hall who are concerned about the information I'm providing to the public on Facebook. I remind myself daily that I work for the community. I'm going to give people the truth and folks appreciate it very much. Sometimes there will be issues that are difficult and during these times I'll always be fair and balanced in my views."

"I've had formal discussions with the city attorney and I'm going to continue to post videos, photos, and comments on Facebook to the full extent of the law. We've discussed risk management. I express views as an individual and do not express any views of the city council body or city government."

"...like any great organization, there will always be those who are against change."

On or about March 15, 2017, Mayor Tran made the following statements to The Mercury News:

"I am not accusing [Williams] of wrongdoing. I just want the truth. If there is no wrongdoing by the city manager I'll stand by him. I just want there to be transparency in city hall."

"This is not a personal agenda, this just happens to be strictly professional."

"I knew beforehand there needed to be greater accountability in city hall, particularly with the lawsuit settlements."

"I would read about these lawsuit settlements and it was a concern to me...over a million have been spent on lawsuit settlements and as mayor I don't find that acceptable."

On or about March 19, 2017, Mayor Tran approached Mr. Williams in his office and made the following statement:

“I am going to put your review on the Council agenda. I don’t care what your contract says, I don’t care about Ogaz and all that, my job is to get rid of you for my people. You old guys need to move out of the way.”

On or about March 31, 2017, Mayor Tran approached Mr. Williams at the Cesar Chavez Plaza opening event in Milpitas and made the following statement:

“I am really upset with you not allowing me and Hai to just have the video recordings we requested. I don’t know why we have to pay for them. Ya know Tom, I am the Mayor. I’m putting your review on the agenda and you’ll be paying the price.”

On or about April 2, 2017, Mayor Tran posted on his Facebook page under the header, “100 Day Report Card:”

“CITY MANAGER PERFORMANCE REVIEW: Council will vote on this decision April 18.

On or about April 4, 2017, at an Open Session of the City Council, Mayor Tran repeatedly made demands that a performance review of Williams’ be made in Open Session at the Council’s next meeting. In this meeting, the City Attorney went on the record stating that Mayor Tran’s repeated discussion of Williams’ job performance in a public forum not only continues to violate the Brown Act, but also violates the Council’s own policies regarding publicly discussing a City employee’s job performance and/or publicly disparaging a City employee. (<http://vp.telvue.com/preview?id=T02061&video=308510> (31:30 - 43:45)). This discussion also violated the Brown Act and Mr. Williams’ rights under that Act because Mr. Williams’ performance evaluation and the discussion of that agenda item for future meetings was not on the agenda for the April 4th meeting and Mr. Williams was not given notice that it would be discussed, whether in an open or closed session.

In addition to the comments listed above, Mr. Williams has been informed by countless City employees of Mayor Tran’s discussions with them regarding Williams’ “poor” job performance. Members of the public approach Mr. Williams almost daily inquiring into his job performance as well, as a result of the Facebook postings by Mayor Tran.

In accordance with the policies and practices of the City of Milpitas there have been annual reviews conducted by the City Council (including the sitting mayor) into the City Manager’s job performance. Those reviews are available to the Mayor to inspect. The reviews were conducted in the years in which the lawsuits to which the Mayor constantly refers were

settled and/or defended. Williams' performance, as it relates to these past events, has already been evaluated. It would appear Mayor Tran is engaging in a witch hunt against Mr. Williams unnecessarily and with malice, in violation of Mr. Williams constitutional and employment rights, to try to oust an older employee and retaliate against him to further the Mayor's own agenda.

42 U.S. 1983 and The Ralph M. Brown Act:

42 US Code Section 1983 reads as follows, "Every **person** who, **under color of any statute, ordinance, regulation, custom, or usage**, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the **deprivation of any rights, privileges, or immunities secured by the Constitution and laws**, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."

Under 42 US 1983 ("1983"), an individual may seek redress for actions taken that deprive him or her of their constitutionally protected rights as well as due process. The damages that flow from a violation of 1983 are broad and include injunctive relief as well as related monetary compensation for emotional distress, damage to reputation, and both front and back pay:

There is no requirement that the plaintiff sue in federal court because state courts have concurrent jurisdiction, and the usual rule is exhaustion of administrative and judicial state remedies is not a prerequisite to a section 1983 action. Also, the existence of concurrent state remedies is not a bar to a section 1983 action. **With respect to the extent of damages available, the Supreme Court has noted that the basic purpose of a section 1983 damages award is to compensate the victims of official misconduct, and therefore held that there is no limit on actual damages if they can be proven.** (see Carey v. Piphus, 435 U.S. 247 (1978).)

Furthermore, the Mayor can be sued for his actions not only as a public servant, thereby implicating the City of Milpitas, but also as an individual, making him personally liable, "Individual employees of federal, state and local government may be sued in their individual capacities for damages, declaratory or injunctive relief. (see Kentucky v. Graham, 473 U.S. 159, 165 (1985).)

To succeed on a 1983 claim, the individual must be able to establish a causal connection between the actions of the entity or the individual (in this case Mayor Tran acting on behalf of the

City of Milpitas) and the deprivation of an essential constitutional right. (see Monell v. Department of Social Services of the City of New York, 436 U.S. 658, 690-691, (1978).)

In this instance, the identified essential right of which Mr. Williams is being deprived is that which is set forth in The Ralph M. Brown Act (“the Brown Act”), which governs local meetings of government bodies:

The body may conduct a closed session to consider appointment, employment, evaluation of performance, discipline or dismissal of an employee. With respect to complaints or charges against an employee brought by another person or another employee, the employee must be notified, at least 24 hours in advance, of his or her right to have the hearing conducted in public. (Government Code Section 54957.)

The public policy behind the Brown Act, specifically section 54957, is to prevent intimidation and harassment on the part of an elected official, or Council, against a Government employee who does not enjoy the same public forum as the individual making the statements about job performance. The closed session mandate set forth in Section 54597 is an exception to the general rule authorizing open sessions because of the constitutionally protected rights of an individual with regard to their private job performance and discipline. (see *Rowen v. Santa Clara Unified School District* (1981) 121 Cal.App.3d 231, 234; 68 Ops.Cal.Atty.Gen. 34, 41-42 (1985).)

At present, Mayor Tran has disparaged Williams’ job performance in the public sphere repeatedly, as seen in the opening facts of this letter.² The Milpitas City Attorney has directed Mayor Tran to cease making these statements on no less than two occasions, in an email and also publicly at the April 4th City Council meeting, to no avail. Despite the fact that Tran has been informed of his continued violations of the Brown Act, he persists in publicly degrading Williams’ job performance. These actions seem nonsensical given the fact that Mr. Williams has been subject to annual reviews of performance for the last ten years, by Council members and mayors that observed first hand his work in any given year. There is little to be gained by attempting to retrospectively impose a performance review, of a time in which Mayor Tran has no knowledge. Which leads to discussions of other possible motives for Mayor Tran’s actions, age discrimination.

² In addition to the claims described in this letter, we are investigating whether the Mayor has liability for libel and slander regarding the numerous harmful statements he has made about Mr. Williams.

Violation of the City Council's Own Rules and Policies:

Additionally, the Mayor's words and conduct have violated at least three of the rules adopted by the City Council in the 2004 City of Milpitas City Council Handbook in the section for Mayor and Council Conduct with City Staff (*see* Handbook pages 10-11).

First, under these rules the Mayor must never publicly criticize an individual employee. Specifically, under the Handbook, "[t]he Mayor and Councilmembers should never express concerns about the performance of a City employee in public, to the employee directly, or to the employee's supervisor. Comments about staff performance should only be made to the City Manager through private correspondence or conversation." Mayor Tran has clearly violated this rule with his comments and posts on social media about Mr. Williams, statements given to the press, statements made on the record at City Council meetings, and conversations with voters and citizens of Milpitas.

For example, as I have described above, in Mayor Tran's Facebook post about the City's settlement with Mr. Ogaz, he wrote "I will be calling for an independent formal performance review of our City Manager. Nearly \$1 million settlement involved, way too much money. We will seek the truth and go from there." As another example, Mayor Tran spent a significant portion of time during the open session of the April 4, 2017 City Council meeting asking questions about Mr. Williams' upcoming performance assessment and whether the assessment could be held in an open session. We are also aware that the Mayor has been making such statements during public conversations on numerous occasions questioning Mr. Williams' performance and his role in certain legal actions involving the City (for which we still maintain Mr. Williams' engaged in no wrongdoing).

Second, the Mayor is required to direct staff issues and assignments to the City Manager. The Handbook requires that "[a]ssignments for City staff and/or requests for additional background information should be directed **only** to the City Manager unless the matter involves the desire for a legal opinion or other legal issue in which case the request should be directed to the City Attorney." Further, "[r]equests for follow-up or directions to staff should only be made through the City Manager or the City Attorney when appropriate."

Third, the Mayor must limit requests for staff support. For this rule the Handbook requires that "[r]outine secretarial support will be provided to the Mayor and all Councilmembers. Requests for additional staff support - even in high priority or emergency situations — should be made to the City Manager who is responsible for allocating City resources in order to maintain a professional, well-run City government."

For each these last two rules, Mayor Tran has routinely gone around the City Manager's office and engaged with administrative staff employed by the City. As one example, Mayor Tran

has been harassing the City Clerk and her staff about his demand to place the performance review of Mr. Williams on the City Council meeting agenda for April 18, 2017. Mayor Tran has been engaging in this kind of improper direct conduct and aggressive behavior towards city employees on a nearly daily basis. This results in a less professional and well-run City government because such employees are given conflicting instructions from the Mayor and their supervisors, they become less efficient, they are made to feel that they are being forced to pick sides between Mayor Tran and Mr. Williams, and they are made to feel as if there is a witch hunt against Mr. Williams. This conduct undermines Mr. Williams with city employees, supporting the argument that Tran has an ulterior, discriminatory agenda.

Age Discrimination:

The Age Discrimination in Employment Act of 1967 (ADEA) protects certain applicants and employees 40 years of age and older from discrimination on the basis of age in hiring, promotion, discharge, compensation, or terms, conditions or privileges of employment. The ADEA is enforced by the Equal Employment Opportunity Commission (EEOC).

The Department of Fair Housing and Employment (“DFEH”) enforces the Fair Employment and Housing Act (“FEHA”) which prohibits discrimination and harassment based on race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, medical condition, age, pregnancy, denial of medical and family care leave, or pregnancy disability leave, or retaliation based on any of these protected categories.

The statements made by Mayor Tran to Mr. Williams regarding his age are clear evidence of discriminatory motive and intent. These statements, combined with Mayor Tran’s tireless attempts to disparage Williams’ job performance in the public forum, support a finding that Mayor Tran is attempting to get Williams fired, or to make him retire, due to his age.³

In addition to supporting a finding of discriminatory pattern and practice on the part of the Mayor against Williams, the statements themselves create a hostile work environment, also actionable under the law.

³ The City also remains under the April 13, 2016 Consent Decree with the EEOC resulting from Northern District Court Case No. CV 15-04444, which enjoins the City from, among other things, unlawfully discriminating against any employee due to his or her age, or retaliating against any employee or former employee because he or she opposes or opposed discriminatory practices made unlawful by the ADEA. Further, the Consent Decree requires certain affirmative steps be taken by the City to prevent further discrimination like what Mayor Tran has been perpetrating against Mr. Williams; however, the Mayor has been causing delays in implementing this training.

Damages:

The most significant aspect of William's damages to date are those relating to damage to reputation. Mr. Williams has been working as a City Manager in the Bay Area for many years. With the dissemination of negative statements regarding his job performance in the press, on the internet, and generally to the public, he has detrimentally been affected. Not only has Mr. Williams' ability to perform his own job has been radically transformed by the statements and actions of the Mayor, which have undermined his authority with City staff and employees, but Mayor Tran's statements have been echoing around the Bay, making Williams' ability to find a new job next to impossible. Williams' job prospects have been radically altered for life. Even if he were to try to leave Milpitas and work in another State, a quick internet search would pull up Tran's repeated disparaging comments.

In addition to radically altering Williams' job prospects for the rest of his career, Mayor Tran's statements, and actions against him, have had a deep and resounding emotion impact on Mr. Williams and his family. Mr. Williams has gone from being a trusted and loved City Manager, to someone treated with suspicion and hostility by both City employees and members of the public. Mr. Williams has begun to suffer from depressed thoughts and anxiety as a result of his private, job related performance being played out in a public forum.

Mr. Williams is entitled to seek attorney's fees relating to various claims brought against the Mayor and City of Milpitas, including, but not limited to, those authorized under 42 US 1983 as well as ADEA and DFEH related statutes.

Mr. Williams is willing to resolve these on-going issues with the City and Mayor Tran if the following compensation is paid, as well as an agreement entered into whereby the Mayor agrees to cease and desist any and all public statements that relate to Williams' performance of his job at City Manager and his age.

Damage to reputation:	\$500,000.00
Emotional Distress Damages:	\$500,000.00
Attorney's fees to date:	\$15,000.00

Obviously, if this matter is not resolved quickly and efficiently it is possible that evidence will be uncovered that will make Mayor Tran liable for punitive damages, which could more than

AD ASTRA LAW GROUP, LLP
Mayor Tran and City Attorney Diaz
April 13, 2017
Page 11

double Williams' current damages.⁴ Further, attorney's fees will continue to grow substantially with the filing of complaints and related discovery practice.

Conclusion:

I am hopeful that this matter can be resolved to the mutual benefit of all parties. The Mayor will arrive at an understanding of the current state of the law, which prevents him from making personal, private, employment related topics a matter of public discussion, and Mr. Williams will be able to move forward in his position as City Manager without the constant worry that his private information will be disseminated to the public.

As noted in the opening paragraphs of this correspondence, we would like to move quickly and efficiently to get this matter resolved before moving to litigation. Please contact me at your earliest convenience to discuss resolution.

AD ASTRA LAW GROUP, LLP

By: _____



Claire E. Cochran
Senior Counsel

cc: Tom Williams via email.

⁴ 42 US 1983 allows for punitive damage against an individual. (see Farrar v. Hobby, 506 U.S. 103, 112 (1992); Carey v. Piphus, 435 U.S. 247, 266-267 (1978).)

Exhibit 4

City Council

Richard Tran, Mayor
Marsha Grilli, Vice Mayor
Garry Barbadillo, Councilmember
Bob Nuñez, Councilmember
Anthony Phan, Councilmember



NOTICE OF SPECIAL MEETING

NOTICE IS HEREBY GIVEN that a Special Meeting of the Milpitas City Council will be held at 5:30 P.M. on Tuesday, April 18, 2017 at Milpitas City Hall, 455 East Calaveras Boulevard., Milpitas, CA in City Council Chambers on the second floor. Agenda for the meeting is as follows:

SPECIAL MEETING AGENDA

TUESDAY, APRIL 18, 2017

5:30 P.M.

**Milpitas City Hall
City Council Chambers, 2nd Floor
455 East Calaveras Boulevard
Milpitas, CA 95035**

I. CALL TO ORDER / ROLL CALL

II. CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION
City as Defendant - Pursuant to Government Code Section 54956.9(d)(2)

III. ANNOUNCEMENT OUT OF CLOSED SESSION (if any)

IV. ADJOURNMENT

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review.

For more information on your rights under the Open Government Ordinance or to report a violation, contact the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035
e-mail: cdiaz@ci.milpitas.ca.gov / Phone: 408-586-3040

The Open Government Ordinance is codified in the Milpitas Municipal Code as Title I Chapter 310 and is available online at the City's website www.ci.milpitas.ca.gov by selecting the Milpitas Municipal Code link.

Materials related to an item on this agenda submitted to the City Council after initial distribution of the agenda packet are available for public inspection at the City Clerk's office at Milpitas City Hall, 3rd floor 455 E. Calaveras Blvd., Milpitas and on the City website.

If you need assistance, per the Americans with Disabilities Act, for any City of Milpitas public meeting, call the City Clerk at 408-586-3001 or send an e-mail to mlavelle@ci.milpitas.ca.gov prior to the meeting. You may request a larger font agenda or arrange for mobility assistance. For hearing assistance, headsets are available in Council Chambers for all meetings.

Exhibit 5

From: **Aliyah Mohammed** <amohammed@bayareanewsgroup.com>
Date: Wed, Apr 19, 2017 at 5:38 PM
Subject: Public Records Request
To: Christopher Diaz <cdiaz@ci.milpitas.ca.gov>, Mary Lavelle <mlavelle@ci.milpitas.ca.gov>
Cc: Christopher Diaz <Christopher.Diaz@bbklaw.com>

Hi Chris and Mary,

I would like to put in a public records request for any and all documents related to the following item listed as a special closed session meeting:

April 18:CONFERENCE WITH LEGAL COUNSEL, ANTICIPATED LITIGATION City as Defendant - Pursuant to Government Code Section 54956.9(d)(2)

Thank you,

--

Aliyah Mohammed Reporter and Social Media Coordinator
| Editorial
amohammed@bayareanewsgroup.com
[408-707-1196](tel:408-707-1196) Direct | [408-859-5370](tel:408-859-5370) Mobile
[@Aliyah_JM](#)



bayareanewsgroup.com

**Over 5 million engaged readers
weekly**

The Mercury News EAST BAY TIMES **Marin Independent Journal**

Exhibit 6

From: **Aliyah Mohammed** <amohammed@bayareanewsgroup.com>
Date: Wed, Apr 19, 2017 at 5:45 PM
Subject: Public Records Request
To: Mary Lavelle <mlavelle@ci.milpitas.ca.gov>, Christopher Diaz <cdiaz@ci.milpitas.ca.gov>
Cc: Christopher Diaz <Christopher.Diaz@bbklaw.com>

To Mary Lavelle and Chris Diaz,

The Milpitas Post Newspaper, through the California Public Records Act, requests emails between City Manager Tom Williams to and from City Attorney Christopher Diaz, Mayor Rich Tran, Vice Mayor Marsha Grilli, Councilman Bob Nunez, Councilman Garry Barbadillo and Councilman Anthony Phan for the dates of April 4 through April 18.

Please let us know if there are questions. Thank you for your assistance.

Regards,

Aliyah

Aliyah Mohammed Reporter and Social Media Coordinator

| Editorial

amohammed@bayareanewsgroup.com

[408-707-1196](tel:408-707-1196) Direct | [408-859-5370](tel:408-859-5370) Mobile

[@Aliyah_JM](#)



bayareanewsgroup.com

**Over 5 million engaged readers
weekly**

The Mercury News EAST BAY TIMES **Marin Independent Journal**

Exhibit 7

From: Wadsworth, Jennifer <jenniferw@metronews.com>

Sent: Friday, April 21, 2017 11:50 AM

Subject: PRA Request: Correspondence

Hi Chris,

One more request. I would like to obtain copies of all written and electronic correspondence between City Manager Tom Williams and Mayor Rich Tran for the month of April up to the present date, April 21.

Let me know if you need clarification on the request.

I appreciate your help!

Jennifer Wadsworth

Staff Writer

[408.515.7611](tel:408.515.7611)

[@jennwadsworth](https://twitter.com/jennwadsworth)



Exhibit 8

1 Claire Cochran (SBN #222469)
2 Email: ccochran@astralegal.com
3 Trina Clayton (SBN #204215)
4 Email: tclayton@astralegal.com
5 Sean B. Gentry (SBN #273061)
6 Email: sgentry@astralegal.com
7 AD ASTRA LAW GROUP, LLP
8 582 Market Street, 17th Floor
9 San Francisco, CA 94104
10 Telephone: (415) 795-3579
11 Facsimile: (415) 276-1976

12 *Attorneys for*
13 *Plaintiff Tom Williams*

14 **IN THE SUPERIOR COURT OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SANTA CLARA**

16 TOM WILLIAMS,

17 Petitioner and Plaintiff,

18 vs.

19 CITY OF MILPITAS, MARY LAVELLE,
20 CHRISTOPHER DIAS, and DOES 1 – 10,

21 Respondents and Defendants;

22 and

23 ALIYAH MOHAMMED, BAY AREA NEWS
24 GROUP, JENNIFER WADSWORTH, METRO
25 NEWSPAPER, and DOES 11 – 49,

26 Real Parties in Interest.

Civ No...:

**EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATIONS OF
TOM WILLIAMS AND CLAIRE E.
COCHRAN IN SUPPORT THEREOF**

Date: 4/28/17
Time: 8:15 AM
Dept: ____

27 TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

28 PLEASE TAKE NOTICE Plaintiff hereby applies for a Temporary Restraining Order and an
Order to Show Cause why a Preliminary Injunction should not be granted enjoining Defendants City
of Milpitas, Mary Lavelle, and Christopher Diaz (collectively “Defendants”) and their officers, agents,

**EX PARTE APPLICATION FOR TRO AND ORDER TO SHOW CAUSE RE: PRELIMINARY
INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS IN SUPPORT
THEREOF**

1 employees, attorneys and representatives and each of them, from producing or disclosing Plaintiff's
2 Letter, Plaintiff's personnel records, Plaintiff's performance evaluations or any meeting minutes,
3 emails or other documents which reference, pertain, discuss, or relate to the Letter or Plaintiff's
4 personnel records or performance evaluations (collectively "The Documents"), Aliyah Mohammad,
5 Jennifer Wadsworth, or any other member of the public pursuant to a California Public Records Act
6 ("CPRA") request.

7 This application is made on the grounds that the documents at issue in the instant CPRA
8 request contain preliminary allegations and assertions based on investigation conducted to date in
9 conjunction with pending litigation; privileged confidential communications subject to the
10 provisions of Cal. Evid. Code §§ 1152 and 1154; and private personnel record information and
11 similar personal privacy files – the public interest in the non-disclosure of which clearly outweighs
12 whatever public interest might be served by their disclosure.

13 Cal. Gov. Code § 6259(a) provides for an *in camera* inspection of the records which are
14 requested to be withheld from public view. After such inspection, if the Court determines that the
15 documents Plaintiff seeks to prevent from disclosure are privileged or attorney work product, the
16 Court may not require disclosure of such information. Cal. Evid. Code § 915(a).

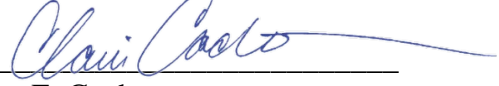
17 Ex parte relief is necessary as the CPRA request was made on April 19, 2017. Unless
18 Defendants seek the permissive 14-day request for extension under Cal. Gov. Code § 6253(c), they
19 are to produce responsive records by April 29, 2017. Without the immediate issuance of a
20 temporary restraining order enjoining Defendants from producing the requested documents,
21 Plaintiff will suffer great and irreparable harm in that disclosure will violate his privileged right to
22 confidentiality, statutory rights to privacy, the attorney client privilege, and public policy. Plaintiff
23 has no adequate remedy at law for the harm he will suffer unless said disclosure is enjoined. No
24 administrative remedies are available. Pecuniary compensation is not sufficient to rectify the
25 damage which will be done if the identified documents are disclosed. Allegations set forth in
26 Plaintiff's Complaint demonstrate that he is entitled to the requested relief of enjoining Defendants
27 from disclosing the documents at issue.

28 This application is based on the Complaint⁻²⁻ on file herein, and the attached Memorandum

1 of Points and Authorities, the Declaration of Claire Cochran, the Declaration of Tom Williams,
2 and upon all other such other and further evidence of which the Court may take notice at the
3 hearing.

4
5 Dated: April 27, 2017

AD ASTRA LAW GROUP, LLP

By 

Claire E. Cochran
Attorney for Tom Williams

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1 Claire Cochran (SBN #222469)
Email: ccochran@astralegal.com
2 Trina Clayton (SBN #204215)
Email: tclayton@astralegal.com
3 Sean B. Gentry (SBN #273061)
Email: sgentry@astralegal.com
4 AD ASTRA LAW GROUP, LLP
582 Market Street, 17th Floor
5 San Francisco, CA 94104
Telephone: (415) 795-3579
6 Facsimile: (415) 276-1976

7 *Attorneys for*
8 *Plaintiff Tom Williams*

10 IN THE SUPERIOR COURT OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SANTA CLARA

14 TOM WILLIAMS,
15 Petitioner and Plaintiff,
16 vs.
17 CITY OF MILPITAS, MARY LAVELLE,
CHRISTOPHER DIAS, and DOES 1 – 10,
18 Respondents and Defendants;
19 and
20 ALIYAH MOHAMMED, BAY AREA NEWS
21 GROUP, JENNIFER WADSWORTH, METRO
NEWSPAPER, and DOES 11 – 49,
22 Real Parties in Interest.

Civ. No.:

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF EX
PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION**

Date: 4/28/17
Time: 8:15 AM
Dept.:

23
24 **I. INTRODUCTION**

25 Petitioner and Plaintiff Tom Williams (“Plaintiff” or “Williams”) brings this action to
26 preserve his privileged confidential communications, preserve his privacy rights, and prevent the
27 public disclosure of Plaintiff’s Letter, Plaintiff’s personnel records, Plaintiff’s performance
28 evaluations or any meeting minutes, emails or other documents which reference, pertain, discuss, or

1 relate to same (collectively “The Documents”), in response to three California Public Record Act
2 (“CPRA”) requests made by Aliyah Mohammed and Jennifer Wadsworth. This ex parte
3 application requests a Temporary Restraining Order and an Order to Show Cause why a
4 Preliminary Injunction should not be granted, enjoining Respondents and Defendants, City of
5 Milpitas, Mary Lavelle and Christopher Diaz (collectively “Defendants”), their officers, agents,
6 employees, attorneys and representatives and each of them, from producing or disclosing The
7 Documents.

8 Cal. Gov. Code § 6259(a) provides for an *in camera* inspection of the records which are
9 requested to be withheld from public view. After such inspection, if the Court determines that the
10 documents Plaintiff seeks to prevent from disclosure are privileged or attorney work product, the
11 Court may not require disclosure of such information. Cal. Evid. Code § 915(a).

12 Ex parte relief is proper and necessary as the first CPRA request was made on April 19, 2017.
13 Unless Defendants seek the permissive 14-day request for extension under Cal. Gov. Code § 6253(c),
14 they are to produce responsive records by April 29, 2017. Without the immediate issuance of a
15 temporary restraining order enjoining Defendants from producing the requested documents,
16 Plaintiff will suffer great and irreparable harm in that disclosure will violate his privileged right to
17 confidentiality, statutory rights to privacy, the attorney client privilege, and public policy. Plaintiff
18 has no adequate remedy at law for the harm he will suffer unless said disclosure is enjoined. No
19 administrative remedies are available. Pecuniary compensation is not sufficient to rectify the
20 damage which will be done if the identified documents are disclosed. Allegations set forth in
21 Plaintiff’s Complaint demonstrate that he is entitled to the requested relief of enjoining Defendants
22 from disclosing The Documents.

23 **II. STATEMENT OF FACTS**

24 Tom Williams is currently employed as the City Manager for the City of Milpitas (“City”);
25 he has been employed in this position for the past ten years. (Declaration of Tom Williams, ¶ 2.)
26 Mr. Williams is currently involved in a legal dispute with the City and Mayor Tran. (Williams
27 Decl. ¶ 3.) Mr. Williams hired Ad Astra Law Group, LLP (“Ad Astra”) to represent his interests in
28 this dispute. (Williams Decl. ¶ 4.) On April 13, 2017, at Mr. Williams’ direction and in the capacity

1 of his legal counsel, Ad Astra sent the City and Mayor Tran personal and confidential correspondence
2 subject to the provisions of Cal. Evid. Code §§ 1152 and 1154 (“Letter”). (Williams Decl. ¶ 5.)
3 (Declaration of Claire E. Cochran, ¶ 3.) Information contained in the Letter pertains to Mr.
4 Williams’ legal dispute with the City and with Mayor Tran, and includes preliminary allegations
5 and assertions based on investigation conducted to date. (Williams Decl. ¶ 6.)

6 On April 18, 2017, the Milpitas City Council held a closed session meeting pursuant to Gov.
7 Code § 54956.9(d)(2). The agenda for the April 18 meeting was identified to the public as
8 “Conference with legal counsel, anticipated litigation City as Defendant.” (Williams Decl. ¶ 7.)
9 Individuals in attendance at the April 18, 2017 meeting included Mayor Tran, the City Council and
10 Christopher Diaz, attorney for the City. (Williams Decl. ¶ 8.) Mr. Williams’ Letter was discussed
11 during the April 18, 2017 closed session meeting. (Williams Decl. ¶ 9.) Minutes of the April 18,
12 2017 meeting were recorded. (Williams Decl. ¶ 10.)

13 On April 19, 2017, the City, through its attorney, Christopher Diaz, and city clerk, Mary
14 Lavelle, received a CPRA request from Aliyah Mohammed, Reporter and Social Media Coordinator /
15 Editorial for Bay Area News Group, for “any and all documents related to” an April 18, 2017 closed
16 session meeting of the City Council. (Cochran Decl., ¶ 4.) The City of Milpitas received two
17 additional CPRA requests, another one from Aliyah Mohammed on or about April 19, 2017 and one
18 from Jennifer Wadsworth on April 21, 2017. Both these requests sought production of various emails
19 between Tom Williams and different members of the City government. (Cochran Decl., ¶ 5.)

20 Ad Astra was contacted by Christopher Diaz on or about April 21, 2017, and again on April
21 26, 2017. Mr. Diaz informed Ad Astra of the CPRA requests and told them he intended to produce
22 documents responsive to said requests, documents specifically including the Letter. (Cochran Decl., ¶
23 6.) Ad Astra notified Mr. Diaz on April 25, 2017 that they, on behalf of Mr. Williams, would be filing
24 a Petition for Writ of Mandate and Complaint for Temporary Restraining Order, Injunctive Relief and
25 Declaratory Relief. (Cochran Decl., ¶ 7.)

26 On April 26, 2017 at 8:20 p.m., our office gave written email notice to Christopher Diaz,
27 personally and on behalf of the City of Milpitas, that Mr. Williams would be appearing *ex parte* on
28 Friday, April 28, 2017 to seek a temporary restraining order and an order to show cause re: preliminary

1 injunction. (Cochran Decl., ¶ 8.) Our office gave the same notice to Mary Lavelle, Aliyah
2 Mohammed, personally and on behalf of the Bay Area News Group, and Jennifer Wadsworth,
3 personally and on behalf of Metro Newspaper, on April 26, 2017 at 8:20 p.m., 8:21 p.m. and 8:34 p.m.,
4 respectively. (Cochran Decl., ¶¶ 9-11.)

5 As of 4:00 p.m. on Thursday, April 27, 2017, our office had not received notice from any party
6 that they intended to oppose this *ex parte* application. (Cochran Decl., ¶ 12.)

7 Ex parte relief is proper and necessary as the first CPRA request was made on April 19, 2017.
8 Unless Defendants seek the permissive 14-day request for extension under Cal. Gov. Code § 6253(c),
9 they are to produce responsive records by April 29, 2017. (Cochran Decl., ¶ 13.) Without the
10 immediate issuance of a temporary restraining order enjoining Defendants from producing the
11 requested documents, Plaintiff will suffer great and irreparable harm in that disclosure will violate
12 his privileged right to confidentiality, statutory rights to privacy, the attorney client privilege, and
13 public policy.

14 III. ARGUMENT

15 A. Public Disclosure of Plaintiff's Letter is Prohibited Under Cal. Evid. Code § 915

16 Cal. Gov. Code § 6259(a) provides for an *in camera* inspection of the records which are
17 requested to be withheld from public view. After such inspection, if the Court determines that the
18 documents Plaintiff seeks to prevent from disclosure are privileged or attorney work product, the
19 Court may not require disclosure of such information. Cal. Evid. Code § 915(a). Plaintiff's Letter
20 was sent by his attorneys, Ad Astra, to the City and Mayor Tran as personal and confidential
21 correspondence subject to the provisions of Cal. Evid. Code §§ 1152 and 1154. (Williams Decl. ¶ 5.)
22 (Cochran Decl. ¶ 3.) Information contained in the Letter pertains to Mr. Williams' legal dispute
23 with the City and with Mayor Tran, and includes preliminary allegations and assertions based on
24 investigation conducted to date. (Williams Decl. ¶ 6.) The Letter is clearly privileged
25 communication.

26 The well-established policy behind Evid. Code § 1152 is to "avoid deterring parties from
27 making offers of settlement and to facilitate candid discussion which may lead to settlement of
28 disputes." *Fieldson Associates, Inc. v. Whitecliff Laboratories, Inc.*, 276 Cal. App. 2d 770, 773

1 (Cal. App. 1st Dist. 1969). Negotiations might well be discouraged if a party knew that statements
2 made by him might later be used or disclosed to the public as a result of a *per forma* CPRA request,
3 such as we have in the instant case.

4 The public policy reasons for protecting confidential communications such as those set forth
5 in Plaintiff’s Letter, necessitate that the Letter, and any meeting minutes or other documents that
6 reference, pertain, discuss or relate to the Letter be prevented from disclosure by Defendants.

7
8 **B. Plaintiff Has A Legally Protected Privacy Interest in His Letter, Personnel**
9 **Records, Performance Evaluations, And Any Documents Including Meeting**
10 **Minutes, Which Reference, Pertain, Discuss, or Relate to Same, Which Are**
11 **Protected From Disclosure Pursuant to Cal. Gov. Code §§ 6254(b)(c) and (k),**
12 **Gov. Code § 6255(a), and the California Constitution**

13 “The California Constitution guarantees both the individual’s right of privacy and the
14 public’s right of access to information concerning the public’s business (Cal. Const., art. I, § 3,
15 subd. (b)(1)), including the writings of public officials and agencies.” *Marken v. Santa Monica-*
16 *Malibu Unified School Dist.*, 202 Cal. App. 4th 1250, 1261 (Cal. App. 2d Dist. 2012) (internal
17 citations and quotations omitted).

18 In the California Public Records Act, codified at Cal. Gov. Code § 6254 et seq., the
19 Legislature has attempted to reconcile these two fundamental, but sometimes conflicting rights.

20 While ‘mindful of the right of individuals to privacy’ (§ 6250), the Legislature has declared
21 access to information concerning the conduct of the people’s business is a fundamental and
22 necessary right of every person in this state.” (*Ibid.*) Thus, the CPRA generally provides
23 ‘every person has a right to inspect any public record ...’ (§ 6253, subd. (a)), ‘[e]xcept with
24 respect to public records exempt from disclosure by express provisions of law ...’ (§ 6253,
25 subd. (b).)

26 *Marken v. Santa Monica-Malibu Unified School Dist.* At 1261.

27 Gov. Code § 6254 lists 29 categories of documents exempt from the requirement of public
28 disclosure, many of which are designed to protect individual privacy, including, “Records
pertaining to litigation,” (§ 6254 (b)), and “personnel, medical, or similar files, the disclosure of
which would constitute an unwarranted invasion of personal privacy.” (§ 6254 (c).) Gov. Code §

1 6254 (k) further exempts records, “the disclosure of which is exempted or prohibited pursuant to
2 federal or state law.” Additionally, Gov. Code § 6255(a) permits the withholding of other records
3 upon demonstration that “the facts of the particular case the public interest served by not disclosing
4 the record clearly outweighs the public interest served by disclosure of the record.”

5 In *Hill v. National Collegiate Athletic Assn.*, 7 Cal. 4th 1 (1994), the court set out the
6 elements of a cause of action for invasion of the right to privacy guaranteed by the California
7 Constitution. The court stated that a Plaintiff must show (1) a legally protected privacy interest; (2)
8 a reasonable expectation of privacy; and (3) a serious invasion of the privacy interest. *Id.* at 35-37.
9 In explaining these factors, the court stated that one class of legally protected privacy interest in
10 informational privacy, or the right to preclude dissemination of personal, confidential information.
11 *Id.* At 35. As stated above, CPRA recognizes these same privacy rights in sections 6254 (b)(c) and
12 (k). It is abundantly clear that The Documents are protected by both the Gov. Code §16254, as well
13 as the Constitutional right to privacy and must not be disclosed to Aliyah Mohammed, Jennifer
14 Wadsworth, or any other member of the public.

15 Additionally, Gov. Code § 6255(a) permits a public agency to withhold other records if it
16 can demonstrate “on the facts of the particular case the public interest served by not disclosing the
17 record clearly outweighs the public interest served by disclosure of the record.” Given the long-
18 established statutory protections afforded confidential and privileged communications such as
19 Plaintiff’s Letter, as well as the undeniable right to privacy afforded to documents such as
20 Plaintiff’s personnel records and performance evaluations (or any documents referencing, relating
21 or discussing same), even to the unlikely extent the court finds disclosure of such documents might
22 be otherwise permissible, it is without question that the public interest in keeping these records
23 from disclosure far outweighs the public interest which might be served by their production.
24 Accordingly, the Court should grant Plaintiff’s request for a Temporary Restraining Order and
25 Order to Show Cause why a Preliminary Injunction should not be granted, enjoining Defendants
26 from producing or disclosing The Documents.

27 ///

28 ///

1 C. **Plaintiff’s Letter, Personnel Records, Performance Evaluations,**
2 **And Any Documents Including Meeting Minutes, Which Reference, Pertain,**
3 **Discuss, or Relate to Same, Are Prohibited from Disclosure Under Gov. Code §**
4 **54956.9**

5 One of the CPRA requests at issue, Ms. Mohammad’s April 19, 2017 request, is for “any
6 and all documents related to” an April 18, 2017 closed session meeting of the City Council.
7 (Cochran Decl., ¶ 4.) This April 18 meeting was a special closed session meeting pursuant to Gov.
8 Code § 54956.9(d)(2). The agenda for the April 18 meeting was identified to the public as
9 “Conference with legal counsel, anticipated litigation City as Defendant.” (Williams Decl. ¶ 7.)
10 Under § 54956.9(a), local government is permitted to hold closed sessions concerning pending
11 litigation, based on the attorney-client privilege, so that the legislative body can “confer with, or
12 receive advice from, its legal counsel regarding pending litigating when discussion in open session
13 concerning those matters would prejudice the position of the local agency in the ligation.”

14 Mr. Williams’ Letter was discussed during the April 18, 2017 closed session meeting.
15 (Williams Decl. ¶ 9.) It is presently unknown whether Plaintiff’s personnel records or performance
16 evaluations were also discussed at this meeting. It is assumed that, per protocol, minutes of this
17 meeting were recorded. The Legislature in § 54956.9 has made it abundantly clear that the
18 attorney-client privilege and the pending litigation interests are so profound, government can
19 preclude the general public from these meetings, despite the public interest in being allowed right
20 of access to information concerning the public's business. The incontrovertible corollary to this
21 privilege is that any information or documents discussed or produced in such a closed session
22 meeting *must also necessarily be prevented from disclosure*. To find otherwise would obliterate the
23 Legislative purpose of § 54956.9 for holding closed sessions.

24 D. **Plaintiff Will Suffer Irreparable Harm if He Is Not Granted A Temporary**
25 **Restraining Order**

26 The City’s intended disclosure of Plaintiff’s Letter, personnel records, performance
27 evaluations, and any documents including meeting minutes, which reference, pertain, discuss, or
28 relate to same, will cause great and irreparable injury to Plaintiff in that their disclosure will violate
 his privileged right to confidentiality, statutory rights to privacy, the attorney client privilege, and

1 public policy, as set forth above.

2 Plaintiff has no adequate remedy at law for the harm he will suffer unless said disclosure is
3 enjoined. No administrative remedies are available. Pecuniary compensation is not sufficient to
4 rectify the damage which will be done if the identified documents are disclosed. Allegations set
5 forth in Plaintiff’s Complaint demonstrate that he is entitled to the requested relief of enjoining
6 Defendants from disclosing the documents at issue.

7 Accordingly, Plaintiff respectfully requests the Court grant a Temporary Restraining Order
8 and Order to Show Cause why a preliminary injunction should not be granted, enjoining
9 Defendants, officers, agents, employees, attorneys and representatives and each of them, from
10 producing or disclosing The Documents.

11 **E. Injunctive Relief is Proper**

12 “An injunction may be granted ...[w]hen it appears by the complaint that the Plaintiff is
13 entitled to the relief demanded and the relief, or any part thereof, consists in restraining the
14 commission or continuance of the act complained of, either for a limited period or perpetually.”
15 Cal. Code Civ. Proc. § 526(a)(1). An injunction may further be granted, “when it appears, during
16 the litigation, that a party. . . is about to do. . . some act in violation of the rights of another party”
17 Code Civ. Proc. § 526(a)(3); or “when pecuniary compensation would not afford adequate relief”
18 Code Civ. Proc. § 526(a)(4). All such circumstances exist in the instant matter.

19 Moreover, a temporary restraining order and preliminary injunction are the *only* remedies
20 available to Plaintiff to preserve the status quo. In the absence of such order and injunction,
21 Defendants will produce The Documents to Aliyah Mohammed and Jennifer Wadsworth pursuant
22 to their CPRA requests. The Documents will then likely be disseminated to hundreds of thousands
23 of members of the general public through Ms. Mohammed’s and Ms. Wadsworth’s respective
24 media outlets. The production of The Documents will effectively render this action, and Plaintiff’s
25 protected confidential and privacy rights, moot.

26 As set out *supra*, Plaintiff has a strong likelihood of succeeding on the merits of this case
27 and without immediate injunctive relief, the case will be rendered moot by Defendants’ disclosure
28

1 of The Documents.

2 **IV. CONCLUSION**

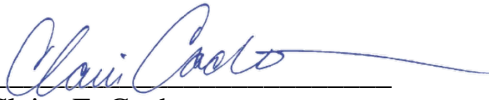
3 For the reasons set forth above, Plaintiff respectfully requests the Court immediately grant a
4 Temporary Restraining Order Enjoining Defendants, their officers, agents, employees, attorneys
5 and representatives and each of them, from producing or disclosing The Documents.

6 Plaintiff additionally requests this Court issue an Order to Show Cause why a preliminary
7 injunction should not be issued, providing the same injunctive relief as the Temporary Restraining
8 Order.

9 To the extent the Court may deem necessary to make a determination concerning the Order
10 to Show Cause, Plaintiff further respectfully requests the Court conduct an *in camera* inspection of
11 The Documents, pursuant to Cal. Gov. Code § 6259(a), in order to “balance” the competing
12 interests in this case.

13 Dated: April 27, 2017

AD ASTRA LAW GROUP, LLP

14
15 By 
16 Claire E. Cochran
17 Attorney for Tom Williams

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1 Claire Cochran (SBN #222469)
Email: ccochran@astralegal.com
2 Trina Clayton (SBN #204215)
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3 Sean B. Gentry (SBN #273061)
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4 AD ASTRA LAW GROUP, LLP
582 Market Street, 17th Floor
5 San Francisco, CA 94104
Telephone: (415) 795-3579
6 Facsimile: (415) 276-1976

7 *Attorneys for*
8 *Plaintiff Tom Williams*

9
10 **IN THE SUPERIOR COURT OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SANTA CLARA**

12 TOM WILLIAMS,

13 Petitioner and Plaintiff,

14 vs.

15 CITY OF MILPITAS, MARY LAVELLE,
16 CHRISTOPHER DIAZ, and DOES 1 – 10,

17 Respondents and Defendants;

18 and

19 ALIYAH MOHAMMED, BAY AREA NEWS
20 GROUP, JENNIFER WADSWORTH, METRO
21 NEWSPAPER, and DOES 11 – 49,

22 Real Parties in Interest.

Civ. No.:

**DECLARATION OF TOM WILLIAMS
IN SUPPORT OF *EX PARTE*
APPLICATION FOR TEMPORARY
RESTRAINING ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION**

Date: 4/28/17
Time: 8:15 AM
Dept.:

23
24 I, TOM WILLIAMS, declare as follows:

25 1. I am the Plaintiff in this action. I have personal knowledge of the facts set forth
26 herein and, if called upon to do so, I could and would competently testify thereto. As to those
27 matters stated on information and belief, I am informed and believe them to be true.

28 2. I am currently employed as the City Manager for the City of Milpitas (“City”). I

1 have been employed in this position for the past ten years.

2 3. I am currently involved in a legal dispute with the City and Mayor Tran.

3 4. I have hired the Ad Astra Law Group, LLP (“Ad Astra”) to represent my interests in
4 this dispute.

5 5. On April 13, 2017, at my direction and in the capacity of my legal counsel, Ad Astra
6 sent the City and Mayor Tran personal and confidential correspondence subject to the provisions of
7 Cal. Evid. Code §§ 1152 and 1154 (“Letter”).

8 6. Information contained in the Letter pertains to my legal dispute with the City and
9 with Mayor Tran and includes preliminary allegations and assertions based on investigation
10 conducted to date.


11 7. On April 18, 2017, the Milpitas City Council held a closed session meeting
12 pursuant to Gov. Code § 54956.9(d)(2). The agenda for the April 18 meeting was identified to the
13 public as “Conference with legal counsel, anticipated litigation City as Defendant.”

14 8. On information and belief, individuals present at the April 18, 2017 meeting
15 included Mayor Tran, the City Council and Christopher Diaz, attorney for the City.

16 9. On information and belief, my Letter was discussed at the April 18, 2017 meeting.

17 10. On information and belief, minutes of the April 18, 2017 meeting were recorded.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct. Executed this 27th day of April, 2017, in Milpitas, California.

20
21
22 By 
Tom Williams

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8 *Attorneys for*
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10 **IN THE SUPERIOR COURT OF CALIFORNIA**
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12 TOM WILLIAMS,

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15 vs.

16 CITY OF MILPITAS, MARY LAVELLE,
CHRISTOPHER DIAZ, and DOES 1 – 10,

17 Respondents and Defendants;

18 and

19 ALIYAH MOHAMMED, BAY AREA NEWS
GROUP, JENNIFER WADSWORTH, METRO
20 NEWSPAPER, and DOES 11 – 49,

21 Real Parties in Interest.

Civ. No.:

**DECLARATION OF CLAIRE E.
COCHRAN IN SUPPORT OF EX PARTE
APPLICATION FOR TEMPORARY
RESTRAINING ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION**

Date: 4/28/17
Time: 8:15 AM
Dept.

22
23
24 I, CLAIRE E. COCHRAN, declare as follows:

25 1. I am an attorney at law and senior associate with Ad Astra Law Group, LLP. I am
26 licensed to practice before all courts of the State of California and am counsel of record for Plaintiff
27 Tom Williams in the above-captioned matter. I am familiar with all of the matters set forth herein,
28 and, if called upon to testify, I could and would do so competently.

1 2. I represent Plaintiff Tom Williams with regard to legal disputes he has with the City
2 of Milpitas (“City”) and with Mayor Tran.

3 3. On April 13, 2017, I sent personal and confidential correspondence subject to the
4 provisions of Cal. Evid. Code §§ 1152 and 1154 (“Letter”) to the City and to Mayor Tran.

5 4. On April 19, 2017, the City, through its attorney, Christopher Diaz, and city clerk,
6 Mary Lavelle, received a California Public Record Act (“CPRA”) request from Aliyah Mohammed,
7 Reporter and Social Media Coordinator / Editorial for Bay Area News Group, for “any and all
8 documents related to” an April 18, 2017 closed session meeting of the City Council. Attached hereto
9 as **Exhibit “A”** is a true and correct copy of the April 19, 2017 CPRA request.

10 5. The City of Milpitas received two additional CPRA requests, another one from
11 Aliyah Mohammed on or about April 19, 2017 and one from Jennifer Wadsworth on April 21, 2017.
12 Both these requests sought production of various emails between Tom Williams and different
13 members of the City government. Attached hereto as **Exhibits “B” and “C”** are true and correct
14 copies of the Ms. Mohammed’s second April 19, 2017 request and Ms. Wadsworth’s April 21, 2017
15 request, respectively.

16 6. I was contacted by Christopher Diaz on or about April 21, 2017 and again on April
17 26, 2017. Mr. Diaz informed me of the CPRA requests and told me he intended to produce
18 documents responsive to said requests, documents specifically including the Letter.

19 7. On April 25, 2017, I notified Mr. Diaz that our client would be filing a Petition for
20 Writ of Mandate and Complaint for Temporary Restraining Order, Injunctive Relief and Declaratory
21 Relief.

22 8. On April 26, 2017 at 8:20 p.m. our office gave written email notice to Christopher
23 Diaz, personally and on behalf of the City of Milpitas, that Mr. Williams would be appearing *ex*
24 *parte* on Friday, April 28, 2017 to seek a temporary restraining order and an order to show cause re:
25 preliminary injunction. Attached hereto as **Exhibit “D”** is a true and correct copy of our notice to
26 Mr. Diaz.

27 9. On April 26, 2017 at 8:20p.m. our office gave written email notice to Mary Lavelle
28 that Mr. Williams would be appearing *ex parte* on Friday, April 28, 2017 to seek a temporary

1 restraining order and an order to show cause re: preliminary injunction. Attached hereto as **Exhibit**
2 **“E”** is a true and correct copy of our notice to Ms. Lavelle.

3 10. On April 26, 2017 at 8:21 p.m. our office gave written email notice to Aliyah
4 Mohammed, personally and on behalf of the Bay Area News Group, that Mr. Williams would be
5 appearing *ex parte* on Friday, April 28, 2017 to seek a temporary restraining order and an order to
6 show cause re: preliminary injunction. Attached hereto as **Exhibit “F”** is a true and correct copy of
7 our notice to Ms. Mohammed.

8 11. On April 26, 2017 at 8:34 p.m. our office gave written email notice to Jennifer
9 Wadsworth, personally and on behalf of Metro Newspaper, that Mr. Williams would be appearing *ex*
10 *parte* on Friday, April 28, 2017 to seek a temporary restraining order and an order to show cause re:
11 preliminary injunction. Attached hereto as **Exhibit “G”** is a true and correct copy of our notice to
12 Ms. Wadsworth.

13 12. As of 4:00 p.m. on Thursday, April 27, 2017, our office had not received notice from
14 any party that they intended to oppose this *ex parte* application.

15 13. Ex parte relief is proper and necessary as the first CPRA request was made on April
16 19, 2017. Unless Defendants seek the permissive 14-day request for extension under Cal. Gov. Code
17 § 6253(c), they are to produce responsive records by April 29, 2017.

18 I declare under penalty of perjury under the laws of the State of California that the foregoing
19 is true and correct.

20 Executed this 27th day of April, 2017, in San Francisco, California.

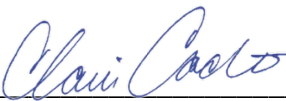
21
22
23 By 
24 Claire E. Cochran
25 Attorney for Tom Williams
26
27
28

Exhibit 9

AD ASTRA LAW GROUP, LLP
582 Market Street, 17th Floor
San Francisco, CA 94104

1 Claire Cochran (SBN #222469)
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582 Market Street, 17th Floor
5 San Francisco, CA 94104
6 Telephone: (415) 795-3579
Facsimile: (415) 276-1976

(ENDORSED)
FILED
APR 28 2017
Chief Executive Officer, Clerk
Superior Court of CA, County of Santa Clara
By BARAGON Deputy

7 *Attorneys for*
8 *Plaintiff Tom Williams*

9 **SUPERIOR COURT OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SANTA CLARA**

11 TOM WILLIAMS,
12
13 Petitioner and Plaintiff,
14
15 vs.
16 CITY OF MILPITAS, MARY LAVELLE,
CHRISTOPHER DIAS, and DOES 1 – 10,
17
18 Respondents and Defendants;
19
20 and
21 ALIYAH MOHAMMED, BAY AREA NEWS
22 GROUP, JENNIFER WADSWORTH, METRO
23 NEWSPAPER, and DOES 11 – 49,
24
25 Real Parties in Interest.

Civ No.: 17CV309235

**[PROPOSED] ORDER RE PLAINTIFF'S
EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION**

Date: 4/28/17
Time: 8:15 AM
Dept.:

22 The *Ex Parte* Application of Plaintiff Tom Williams for Temporary Restraining Order and
23 Order to Show Cause Re: Preliminary Injunction came on for hearing on April 28, 2017 at 8:30
24 a.m. in the department of the case management judge at the above-titled court. Plaintiff appeared
25 through his counsel of record, Claire E. Cochran. No party appeared to oppose the *ex parte*
26 application.

27 The Court, having considered the moving papers and the arguments at hearing, upon full
28 consideration, hereby rules as follows:

AD ASTRA LAW GROUP, LLP
582 Market Street, 17th Floor
San Francisco, CA 94104

1 1) Plaintiff's Application for Temporary Restraining Order is **GRANTED**.
2 Defendants City of Milpitas, Mary Lavelle and Christopher Diaz (collectively "Defendants"),
3 their officers, agents, employees, attorneys and representatives and each of them, SHALL NOT
4 PRODUCE OR DISCLOSE Plaintiff's Letter, Plaintiff's personnel records, Plaintiff's performance
5 evaluations or any meeting minutes, emails or other documents which reference, pertain, discuss, or
6 relate to the Letter or Plaintiff's personnel records or performance evaluations (collectively "The
7 Documents"), to Aliyah Mohammed, Jennifer Wadsworth, or any other member of the public
8 pursuant to a CPRA request.

9 2) Plaintiff's Application for an Order to Show Cause why a Preliminary Injunction *unless otherwise agreed by all parties, parties*
to meet and confer on documents that may be produced before the
10 should not be granted, enjoining Defendants, their officers, agents, employees, attorneys and *hearing.*
11 representatives and each of them, from producing or disclosing The Documents to Aliyah

12 Mohammed, Jennifer Wadsworth, or any other member of the public pursuant to a CPRA request, is
13 **GRANTED.** *This OSC is set for a trial Setting Conference*
14 **IT IS SO ORDERED.** *on May 16, 2017 at 11:00 a.m.*

15
16 Dated: 4/28 , 2017

17
18 Mary E. Arand
19 _____
20 JUDGE OF THE SUPERIOR COURT

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Exhibit 10



May 10, 2017

City Clerk
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, California 95035
mlavelle@ci.milpitas.ca.gov

Via Email and Online Submission Portal at <http://www.ci.milpitas.ca.gov/public-record-request/>

Request for Public Records

Dear Ms. Lavelle:

On behalf of the First Amendment Coalition (“FAC”), I hereby request the records set forth below. This request is submitted pursuant to the California Public Records Act (“CPRA”), Gov. Code sec. 6250 *et seq.*; the California Constitution, Article I, section 3; FAC’s rights of access under California common law; and Milpitas Municipal Code, Title I, Chapter 310, Section 1 *et seq.*

FAC requests the following records:

- (1) The letter dated April 13, 2017, sent to Milpitas Mayor Rich Tran and City Attorney Christopher Diaz by counsel for City Manager Tom Williams, and any related correspondence;**
- (2) All records supporting, reflecting, or addressing the claims made by Mr. Williams in the letter dated April 13, 2017, sent to Milpitas Mayor Rich Tran and City Attorney Christopher Diaz by counsel for City Manager Tom Williams;**
- (3) All other records of misconduct by Mr. Tran, including without limitation complaints, claims or charges of misconduct by Mr. Tran;**

- (4) All evaluations of Mr. Williams' performance as City Manager of the City of Milpitas, including without limitation evaluations that reflect or address misconduct by Mr. Williams, or any complaints, claims, or charges of misconduct by Mr. Williams;**
- (5) All personnel records relating to Mr. Williams, including without limitation records that reflect or address misconduct by Mr. Williams, or any complaints, claims or charges of misconduct by Mr. Williams;**
- (6) Any other records of misconduct by Mr. Williams, including without limitation complaints, claims or charges of misconduct by Mr. Williams;**
- (7) All records relating to investigations or inquiries into claims or charges of misconduct by Mr. Tran or Mr. Williams;**
- (8) All records constituting or describing any response by the City of Milpitas or any officer or employee of the City of Milpitas to the letter dated April 13, 2017, sent to Milpitas Mayor Rich Tran and City Attorney Christopher Diaz by counsel for City Manager Tom Williams.**

If any portion of the records requested is exempt from disclosure by express provisions of law, Government Code Section 6253(a) requires segregation and redaction of that material in order that the remainder of the information may be released. If you believe that any express provision of law exists to exempt from disclosure all or a portion of the records FAC has requested, you must notify FAC of the reasons for the determination not later than 10 days from your receipt of this request letter. Cal. Gov't. Code § 6253(c). Any response to this request that includes a determination that the request is denied, in whole or in part, must be in writing. Cal. Gov't. Code § 6255(b).

Government Code section 6253(d) prohibits the use of the 10-day period, or any provisions of the CPRA or any other law, "to delay access for purposes of inspecting

public records.”

In addressing this request, please keep in mind that the California Constitution expressly requires you to broadly construe all provisions that further the public’s right of access, and to apply any limitations on access as narrowly as possible. Cal. Const., Art. 1, sec. 3(b)(2). The CPRA recognizes “no limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.” Cal. Gov’t Code § 6257.5.

In addition, the CPRA requires public agencies and officials to assist the public in making a focused and effective request by: (1) identifying records and information responsive to the request; (2) describing the information technology and physical location in which the records exist; and (3) providing suggestions for overcoming any practical basis for denying access to the records or information sought. Cal. Gov’t Code § 6253.1. We request that you provide this mandated assistance, in order to assist us in identifying the correct records and ensuring that any concerns regarding the provision of access to these records can be addressed and resolved.

Please contact me to obtain my consent before incurring copying costs, chargeable to FAC, in excess of \$100.

Thank you for your timely attention to this request.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Snyder', with a stylized, cursive script.

David Snyder
Executive Director
First Amendment Coalition

Cc: Christopher J. Diaz, Milpitas City Attorney, cdiaz@ci.milpitas.ca.gov

Exhibit 11



Indian Wells
(760) 568-2611

Irvine
(949) 263-2600

Los Angeles
(213) 617-8100

Ontario
(909) 989-8584

BEST BEST & KRIEGER
ATTORNEYS AT LAW

2001 N. Main Street, Suite 390, Walnut Creek, CA 94596
Phone: (925) 977-3300 | Fax: (925) 977-1870 | www.bbklaw.com

Riverside
(951) 686-1450

Sacramento
(916) 325-4000

San Diego
(619) 525-1300

Washington, DC
(202) 785-0600

Christopher J. Diaz
(925) 977-3309
christopher.diaz@bbklaw.com

May 19, 2017

VIA EMAIL [DSNYDER@FIRSTAMENDMENTCOALITION.ORG]

David Snyder
Executive Director
First Amendment Coalition
534 Fourth Street, Suite B
San Rafael, CA 94901

Re: Response to Public Records Act Request re City of Milpitas

Dear Mr. Snyder:

This will respond to your May 10, 2017 Public Records Act (PRA) request for copies of the following:

- “1. The letter dated April 13, 2017, sent to Milpitas Mayor Rich Tran and City Attorney Christopher Diaz by counsel for City Manager Tom Williams, and any related correspondence;
2. All records supporting, reflecting, or addressing the claims made by Mr. Williams in the letter dated April 13, 2017, sent to Milpitas Mayor Rich Tran and City Attorney Christopher Diaz by counsel for City Manager Tom Williams;
3. All other records of misconduct by Mr. Tran, including without limitation complaints, claims or charges of misconduct by Mr. Tran;
4. All evaluations of Mr. Williams’ performance as City Manager of the City of Milpitas, including without limitation evaluations that reflect or address misconduct by Mr. Williams, or any complaints, claims, or charges of misconduct by Mr. Williams;
5. All personnel records relating to Mr. Williams, including without limitation records that reflect or address misconduct by Mr. Williams, or any complaints, claims or charges of misconduct by Mr. Williams;



BEST BEST & KRIEGER
ATTORNEYS AT LAW

David Snyder
May 19, 2017
Page 2

6. Any other records of misconduct by Mr. Williams, including without limitation complaints, claims or charges of misconduct by Mr. Williams;
7. All records relating to investigations or inquiries into claims or charges of misconduct by Mr. Tran or Mr. Williams;
8. All records constituting or describing any response by the City of Milpitas or any officer or employee of the City of Milpitas to the letter dated April 13, 2017, sent to Milpitas Mayor Rich Tran and City Attorney Christopher Diaz by counsel for City Manager Tom Williams.”

Pursuant to the attached Order re Plaintiff’s Ex Parte Application for Temporary Restraining Order and Order to Show Cause re: Preliminary Injunction, filed April 28, 2017 (“TRO”), and Gov. Code § 6254(c) the documents requested in Nos. 1-2 and 4-8 above are exempt from disclosure. As to No. 3 and No. 7 to the extent they refer to complaints against the Mayor, there have been several comments the Mayor allegedly made regarding the age and treatment of staff that employees and others have mentioned, which are noted in the attached record. The attached record, Bates Nos. MIL-FAC000001 – MIL-FAC000002 has been redacted to protect the identity and privacy of the employees and out of concern that disclosure may chill future complaints. Gov. Code § 6254(c) and § 6255(a); *see also City of San Jose v. Superior Court*, 74 Cal. App. 4th 1008 (1999) (holding that public interest in nondisclosure of the names, addresses and telephone numbers of airport noise complainants clearly outweighed the public interest in disclosure); *BRV, Inc. v. Superior Court*, 143 Cal. App. 4th 742, 760 (2006) (permitting redaction of names, home addresses, phone numbers, and job titles of persons mentioned in investigation report concerning superintendent). Other than the attached and the letter you requested in No. 1, which the City is precluded from disclosing by the TRO, the City has no further records responsive to Nos. 3 and 7 regarding the Mayor.

I have also attached a courtesy copy of the Verified Petition for Writ of Mandate and Complaint for Temporary Restraining Order, Injunctive Relief, and Declaratory Relief filed by the Ad Astra Law Group, attorneys for Tom Williams, filed on April 28, 2017.

The City has additional records responsive to your requests that are also protected by the attorney-client privilege and will not be disclosed. *See Roberts v. City of Palmdale*, 5 Cal.4th 363 (1993); Gov. Code § 6254(k).



BEST BEST & KRIEGER
ATTORNEYS AT LAW

David Snyder
May 19, 2017
Page 3

The person responsible for the decision not to disclose the requested records is the undersigned.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Chris Diaz', with a long horizontal flourish extending to the right.

Christopher J. Diaz
for BEST BEST & KRIEGER LLP
City Attorney, City of Milpitas

Encls.

cc: Mary Lavelle, City Clerk

Comments and Actions of Rich Tran

Age Discrimination

During election season, Rich Tran came to City Hall and was sitting in [REDACTED] office. [REDACTED] Mr. Tran asked [REDACTED] "As those your grandchildren?"

After Mr. Tran was elected to Mayor, he was on a tour of City Hall. On [REDACTED] [REDACTED] [REDACTED]. [REDACTED] the Mayor commented something similar to "Oh, you must be our oldest employee."

After work hours on December 19, 2016, newly elected Mayor Tran and Councilmember Nuñez joined the Unrepresented Management Team for our holiday dinner at Macaroni Grill. Before our meals arrived, [REDACTED] the mayor ask [REDACTED], "How old are you? You look young."

Sexual Discrimination

At the holiday dinner on December 19, 2016, the Mayor asked [REDACTED] and [REDACTED] [REDACTED] [REDACTED] and he discussed with them his need to obtain dates. [REDACTED] [REDACTED] he may have asked them if they knew anyone that they could set up with him.

At the Council meeting on April 4th, several department heads were sitting in the rear of the Council Chambers. [REDACTED] was sitting in the row in front of me. I cannot recall the exact nature of my conversation with [REDACTED], but [REDACTED] said the Mayor had invited the POA representatives to dinner and [REDACTED] was so flustered that [REDACTED] left without paying. When I asked why [REDACTED] was flustered, [REDACTED] said that the Mayor had asked [REDACTED] if [REDACTED] knew of anyone that he could date. [REDACTED] also said [REDACTED] had shown him photos of [REDACTED] on her phone before those comments, so he knew [REDACTED] was not available.

On the "Mayor Rich Tran" Facebook page, there is a link to a Milpitas Post article about the former City Attorney Mike Ogaz settlement. The mayor allows his followers to "like" and/or comment on his postings. In the postings, the internet comments made by followers insinuate that there is an inappropriate relationship between the City Manager and his Executive Secretary. The Mayor has done nothing to put a stop to those rumors or comments.

At the April 4, 2017 City Council meeting, the Mayor spoke several words in Tagalog. I requested that these words be translated since I did not know what they meant ("Make sure that we are taking care of our Pares and our Kuyas"). [REDACTED] translated them to be only the masculine terms for buddy or brother, ignoring the female counterparts of the words.

Racial Discrimination

At the Council meeting on April 18, 2017, the Mayor made several comments regarding his Vietnamese heritage and the younger generation of Vietnamese sitting around “eating noodles” all the time. █

█ thought this overly broad generalization was insensitive and discriminatory toward Asian and Asian-American residents.

Miscellaneous

On March 20, 2017, Council member Grilli called to let me know that she has also received complaints from staff about the Mayor’s behavior. She said that at least one other Councilmember had heard similar complaints. She did not elaborate on the complaints, but I shared her concerns with Chris Diaz and Stacey Sheston.

█ witnessed awkward hugs of █ at the holiday dinner on December 19, 2016; █ (at the Cesar Chavez Plaza dedication on March 31, 2017) and a representative who sat next to him at the La Raza Roundtable presentation on March 31st.

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San Francisco, CA 94104

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(ENDORSED)
FILED
APR 28 2017
Chief Executive Officer, Clerk
Superior Court of CA, County of Santa Clara
By BARAGON Deputy

7 *Attorneys for*
8 *Plaintiff Tom Williams*

9 **SUPERIOR COURT OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SANTA CLARA**

11 TOM WILLIAMS,
12 Petitioner and Plaintiff,
13 vs.
14 CITY OF MILPITAS, MARY LAVELLE,
15 CHRISTOPHER DIAS, and DOES 1 – 10,
16 Respondents and Defendants;
17 and
18 ALIYAH MOHAMMED, BAY AREA NEWS
19 GROUP, JENNIFER WADSWORTH, METRO
20 NEWSPAPER, and DOES 11 – 49,
Real Parties in Interest.

Civ No.: 17CV309235

**[PROPOSED] ORDER RE PLAINTIFF'S
EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION**

Date: 4/28/17
Time: 8:15 AM
Dept.:

21
22 The *Ex Parte* Application of Plaintiff Tom Williams for Temporary Restraining Order and
23 Order to Show Cause Re: Preliminary Injunction came on for hearing on April 28, 2017 at 8:30
24 a.m. in the department of the case management judge at the above-titled court. Plaintiff appeared
25 through his counsel of record, Claire E. Cochran. No party appeared to oppose the *ex parte*
26 application.

27 The Court, having considered the moving papers and the arguments at hearing, upon full
28 consideration, hereby rules as follows:

1 Claire Cochran (SBN #222469)
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5 Sean B. Gentry (SBN #273061)
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9 San Francisco, CA 94104
10 Telephone: (415) 795-3579
11 Facsimile: (415) 276-1976

12 *Attorneys for*
13 *Plaintiff Tom Williams*

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

TOM WILLIAMS,

Petitioner and Plaintiff,

vs.

CITY OF MILPITAS, MARY LAVELLE,
CHRISTOPHER DIAZ, and DOES 1 – 10,

Respondents and Defendants;

and

ALIYAH MOHAMMED, BAY AREA NEWS
GROUP, JENNIFER WADSWORTH,
METRO NEWSPAPER, and DOES 11 – 49,

Real Parties in Interest.

17CV309235

Civ. No.:

**VERIFIED PETITION FOR WRIT OF
MANDATE (C.C.P. §§ 1085 AND 1086)
AND COMPLAINT FOR TEMPORARY
RESTRAINING ORDER, INJUNCTIVE
RELIEF, AND DECLARATORY RELIEF**

Date: 4/28/17
Time: 8:15 AM
Dept.:

Petitioner and Plaintiff Tom Williams (“Williams”) or (“Plaintiff”) brings this action to
preserve his privacy rights and prevent the unauthorized and improper disclosure of records by
Respondents and Defendants City of Milpitas, Mary Lavelle, and Christopher Diaz (collectively

ENDORSED
2017 APR 28 A 9 02
CLERK
COUNTY OF SANTA CLARA
BY: S. DUARTE
DEPUTY

1 “Defendants”), pursuant to California Public Records Act (“CPRA”) requests made by Real Parties
2 in Interest.

3 **INTRODUCTION**

4 1. On or about April 19, 2017, Real Party in Interest, Aliyah Mohammed, Reporter and
5 Social Media Coordinator/Editorial for Bay Area News Group, filed a request for public records
6 pursuant to CPRA, for documents relating to a closed session Milpitas City Council meeting held
7 on April 18, 2017.

8 2. This lawsuit seeks mandamus and other relieve to prevent Defendants from acting in
9 an unlawful manner by releasing information and documents relating to the April 18, 2017 meeting,
10 the disclosure of which is prohibited by law. (Cal. Code Civ. Proc. §§ 1085 and 1086.)

11 3. Among other relief, Williams seeks a temporary restraining order and preliminary
12 injunction enjoining Defendants from publicly disclosing the unauthorized information and
13 documents. (Cal. Civ. Proc. §§527 and 528 and Civ. Code §3420.)

14 4. Williams additionally seeks declaratory relieve under Code Civ. Proc. §1060.

15 **PARTIES**

16 5. Plaintiff Tom Williams, is an individual who at all relevant times mentioned herein
17 was and is a United States citizen and a resident of the State of California.

18 6. Defendant City of Milpitas (“City”), is at all relevant times mentioned herein a
19 municipal entity located in the county of Santa Clara, organized under the laws of the State of
20 California, and is a corporate entity capable of suing and being sued.

21 7. Defendant Mary Lavelle (“Lavelle”) is an individual who at all relevant times
22 mentioned herein was and is a United States citizen and a resident of the State of California.
23 Lavelle is the City Clerk for the City of Milpitas.

24 8. Defendant Christopher Diaz (“Diaz”) is an individual who at all relevant times
25 mentioned herein was and is a United States citizen and a resident of the State of California. Diaz is
26 the city attorney to the City of Milpitas.

1 **JURISDICTION AND VENUE**

2 13. This Court has jurisdiction over this action pursuant to Cal. Code Civ. Proc. § 1085.

3 14. This Court has jurisdiction over the City of Milpitas because it is a municipal entity,
4 organized under the laws of the State of California and located in the county of Santa Clara.

5 15. Venue is proper in this Court pursuant to Code of Civ. Proc. §§ 393 and 394.

6 **FACTS**

7 16. Plaintiff is currently employed as the City Manager of Milpitas. He has held this
8 position for the past ten years.

9 17. Plaintiff is currently involved in a legal dispute with the City and Mayor Tran.
10 Plaintiff has hired the Ad Astra Law Group, LLP ("Ad Astra") to represent his interests in this
11 dispute.

12 18. At Plaintiff's direction and in capacity as his legal counsel, Ad Astra sent the City
13 and Mayor Tran, through City attorney Diaz, personal and confidential correspondence subject to
14 the provisions of Cal. Evid. Code §§ 1152 and 1154 ("Letter"). The Letter is exempt from
15 mandatory disclosure under Cal. Gov. Code §6254(k).

16 19. Information contained in the Letter pertains to Plaintiff's legal dispute with the City
17 and Mayor Tran and includes preliminary allegations and assertions based on investigation
18 conducted to date and is exempt from disclosure under Cal. Gov. Code § 6254(b).

19 20. Information contained in the Letter further pertains to Plaintiff's personnel records
20 and the disclosure of said information would constitute an unwarranted invasion of Plaintiff's
21 personal privacy and is exempt from disclosure under Cal. Gov. Code § 6254(c).

22 21. The Letter is further exempt from disclosure in that the public interest served by not
23 disclosing the record clearly outweighs the public interest served by disclosure of the record. (Cal.
24 Gov. Code § 6255(a).)

25 22. On April 18, 2017, the Milpitas City Council held a closed session meeting pursuant
26 to Gov. Code § 54956.9(d)(2). The agenda for the April 18 meeting was identified to the public as
27 "Conference with legal counsel, anticipated litigation City as Defendant." Plaintiff's Letter was
28

1 produced and discussed at the April 18, 2017 meeting. Plaintiff's personnel records and
2 performance evaluations were also discussed.

3 23. On April 19, 2017, Aliyah Mohammad, individually and in her capacity as reporter
4 and social media coordinator/editorial for Bay Area News Group, filed a "public records request"
5 with Diaz and Lavelle for "any and all documents relating to" the April 18 closed session meeting.

6 24. On information and belief, on or about April 19 and April 21, 2017, the City, through
7 emails sent to City Attorney Diaz, received additional CPRA requests for various emails between
8 Tom Williams and various members of the City government.

9 25. After receipt of the public records request, Diaz notified Ad Astra, 1) of the request
10 and, 2) his intent to produce documents in response to the CPRA requests, specifically including the
11 Letter. Diaz also informed Ad Astra of his anticipated intent to produce the requested emails, as
12 well as Ad Astra's Litigation Hold letter. Minutes of the April 18 meeting were also recorded and
13 could conceivably be produced in response to the CPRA requests.

14 26. On April 25, 2017, Ad Astra notified Mr. Diaz that it would be filing a Petition for
15 Writ of Mandate and Complaint for Temporary Restraining Order, Declaratory Relief and
16 Injunctive Relief. Ad Astra further notified Mr. Diaz it would be going in *ex parte* on April 28,
17 2017 to obtain a temporary restraining order to prevent the release of Plaintiff's Letter and related
18 closed meeting minutes and documents.

19 27. The City's intended disclosure of Plaintiff's Letter, or any meeting minutes or other
20 documents referencing, pertaining, discussing, or relating to Plaintiff's Letter will cause great and
21 irreparable injury to Plaintiff in that the disclosure will violate Plaintiff's privileged right to
22 confidentiality under Cal. Evid. Code §§ 1152 and 1154.

23 28. The City's intended disclosure of Plaintiff's Letter; Plaintiff's personnel records;
24 Plaintiff's performance evaluations; or any associated meeting minutes or other related documents
25 referencing, pertaining, discussing, or relating to Plaintiff's Letter, Plaintiff's personnel records or
26 Plaintiff's performance evaluations (collectively "The Documents"), unless and until enjoined, will
27 cause great and irreparable injury to Plaintiff in that the disclosure will violate the attorney-client
28

1 privilege afforded under Cal. Gov. Code § 54956.9's provisions for holding closed sessions
2 concerning pending litigation. Disclosure of The Documents would further frustrate the Legislative
3 purpose of Gov. Code § 54956.9 for holding closed sessions in which to confer with, or receive
4 advice from, legal counsel regarding pending litigation where, as here, any such discussion in open
5 session concerning said litigation would prejudice the position of the local agency in the litigation.
6 Cal. Gov. Code § 6254(b) additionally demonstrates the Legislative's clear intent to prevent
7 disclosure of any records by exempting from mandatory disclosure any records pertaining to
8 pending litigation to which a public agency is a party.

9 29. The City's intended disclosure of The Documents, unless and until enjoined, will
10 cause great and irreparable injury to Plaintiff in that the disclosure will violate Plaintiff's rights to
11 privacy, including those provided by Cal. Gov. Code § 6254(c) and the California Constitution,
12 Article I, § 1.

13 30. The City's intended disclosure of The Documents, unless and until enjoined, will
14 cause great and irreparable injury to Plaintiff in that the disclosure will violate Plaintiff's rights and
15 further undermine the purpose and intent of the California Legislature to secure the privacy of its
16 citizens in general, and public employees in particular. Disclosure will cause irreparable harm to
17 Plaintiff directly with regard to his reputation and current position as City Manager of Milpitas.

18 31. The City's intended disclosure of The Documents, unless and until enjoined, will
19 further undermine the public policy interest against disclosure where the benefit of non-disclosure
20 clearly outweighs the public interest served by disclosure. (Cal. Gov. Code § 6255.)

21 **FIRST CAUSE OF ACTION**

22 **VERIFIED PETITION FOR WRIT OF MANDATE**

23 32. Plaintiff realleges and incorporates by reference the previous allegations in the
24 preceding paragraphs.

25 33. Plaintiff has no adequate remedy at law for the injuries he will suffer unless the
26 disclosure of The Documents is prevented by the issuance of a Writ of Mandate ordering
27 Defendants not to disclose.
28

1 34. As the Letter involves personal and confidential communications between Plaintiff's
2 attorney and Christopher Diaz, attorney for the City of Milpitas, pursuant to Evid. Code §§ 1152
3 and 1154 the Letter and all meeting minutes or other documents referencing, pertaining, discussing,
4 or relating to related to the Letter must not be produced.

5 35. Disclosure of The Documents will further violate the attorney-client privilege
6 afforded under Cal. Gov. Code § 54956.9 and frustrate the Legislative purpose of Gov. Code §
7 54956.9 for holding closed sessions in which to confer with, or receive advice from, legal counsel
8 regarding pending litigation where, as here, any such discussion in open session concerning said
9 litigation would prejudice the position of the local agency in the litigation. Disclosure will also
10 thwart the Legislature's intent to exempt from mandatory disclosure records pertaining to pending
11 litigation under Gov. Code § 6254(b).

12 36. As a public employee of the City and citizen of the State of California, Plaintiff has a
13 right to privacy in his personnel records and performance evaluations pursuant to Cal. Gov. Code §
14 6254(c) and the California Constitution, Article 1, §1. Defendants have a clear and present duty not
15 to disclose said personnel records and, by doing so, they will act beyond their authority and in
16 violation of the Government Code and California Constitution.

17 37. As a proximate result of Defendants' wrongful and unlawful conduct, Plaintiff will
18 suffer irreparable harm including, but not limited to the following: Disclosure of The Documents
19 will violate Plaintiff's privileged right to confidentiality, his guaranteed privacy rights, and the
20 attorney-client privilege associated with Gov. Code §54956.9; as well as undermine the purpose and
21 intent of the California Legislature to secure the privacy of its citizens in general and public
22 employees in particular, further undermine the public policy interest against disclosure as set forth
23 in Gov. Code § 6255.

24 38. Plaintiff has no plain or adequate remedy in that no other remedy other than mandate
25 is provided by law to compel Defendants not to disclose The Documents in response to the various
26 CPRA requests.

27 39. Defendants have indicted their intent not comply with their ministerial duties.

28

1 40. Plaintiff has exhausted all administrative remedies in that none exist. The exhaustion
2 by Plaintiff of any other remedies, even if available, would be futile.

3 41. Any production of The Documents by Defendants will be in violation of Plaintiff's
4 rights.

5 **SECOND CAUSE OF ACTION**

6 **INJUNCTIVE RELIEF**

7 42. Plaintiff realleges and incorporates by reference the previous allegations in the
8 preceding paragraphs.

9 43. Plaintiff has a privileged right to confidentiality in the Letter and all meeting minutes
10 and other associated documents relating to the Letter from the April 18, 2017 closed session City
11 Council meeting, as afforded by Cal. Evid. Code §§ 1152 and 1154. Said documents are exempt
12 from mandatory disclosure pursuant to Cal. Gov. Code § 6254 (k).

13 44. There is an attorney-client privileged attached to closed sessions concerning pending
14 litigation provided by Cal. Gov. Code § 54956.9 and records pertaining to pending litigation are
15 exempt from mandatory disclosure under Gov. Code §6254(b).

16 45. Public employees such as Plaintiff have a legally protected right to privacy in their
17 personnel records and performance evaluations under Gov. Code § 6254(c), in addition to their
18 general right to privacy granted by the California Constitution. Plaintiff has this right to privacy in
19 The Documents.

20 46. Public policy additionally mandates against disclosure in the instant case pursuant to
21 Gov. Code §6255.

22 47. Defendants have informed Plaintiff that they intend to produce documents in
23 response to the above-identified CPRA requests.

24 48. Defendants' intended disclosure of The Documents, unless and until enjoined, will
25 cause great and irreparable harm to Plaintiff in that disclosure will violate his privileged right to
26 confidentiality, statutory rights to privacy, the attorney client privilege, and public policy.

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57. For whatever further relief this Court deems proper.

Dated: April 27, 2017

AD ASTRA LAW GROUP, LLP

lm fax

By *Claire Cochran*
Claire Cochran, Esq.
Attorney for Tom Williams

VERIFICATION

I, Tom Williams, am the Plaintiff in this action. I have read the foregoing Verified Petition for Writ of Mandate (C.C.P. §§ 1085 and 1086) and Complaint for Temporary Restraining Order, Injunctive Relief and Declaratory Relief and know its contents. The facts therein are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Verification was executed in San Jose, California on April 28, 2017.

lm fax
Tom Williams
TOM WILLIAMS

Exhibit 12



Milpitas City Manager Accused Of Using Public Funds For Personal Bills

May 16, 2017 7:36 PM By Devin Fehely

Filed Under: [Accused](#), [City Manager](#), [Milpitas](#), [Personal Bills](#), [Public Funds](#)



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MILPITAS (KPIX 5) — The Milpitas City Council met behind closed doors Tuesday night to discuss allegations that City Manager Tom Williams used public money to fund his private lawsuit against newly-elected Mayor Richard Tran.

It's been revealed that the city manager — who has been in a public feud with an unapologetically brash mayor — used his city credit card to pay \$7,000 in his personal legal bills and tried to use the card to pay another \$30,000.

SJ Inside obtained the receipts and quotes the city attorney as saying the city manager should be fired.

Williams got a \$7,000 payment approved and then was instructed to pay the city back. His legal team has issued a cease-and-desist letter to the mayor accusing him of age discrimination.

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City Councilman Anthony Phan said, "The allegations of misuse of public funds are troubling. At the end of the day, we want to make sure we get all the facts."

Williams says he hired the Ad Astra law firm to investigate a dozen complaints of harassment and hostile work environment against Mayor Tran who's also led a public and vocal campaign to oust the city manager.

Williams claims he later decided to [hire](#) the same firm to represent him and paid the city back \$7,000 he'd charged in attorney fees.

The city manager denies any wrongdoing. "That was not the intent," said Williams. "And I would never use public [money](#) for personal use or personal gain. Those allegations are absolutely not true."

The city council says it wants to know if the same [law](#) firm should be representing the city, and Williams, at the same time.

Phan said, "I want to hear the justification for the use of the [funds](#) . I want to know why our own legal counsel couldn't provide those services."

Williams says he hired an outside law firm to investigate the complaints because he lacked confidence the city attorney could objectively weigh the conflicting [claims](#) of the mayor and several high-ranking city officials.

The Santa Clara County District Attorney's Public Integrity Unit says it is waiting for more facts to come out before deciding whether a crime was committed.

Devin Fehely

Follow @DevinFehely

Devin Fehely is an Emmy award winning general assignment reporter/MMJ for KPIX 5. Before joining KPIX 5 Devin was at WXIA in Atlanta where spent four years reporting. During that time, he won numerous awards, including three Murrow Awards and the...

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Exhibit 13

BREAKING NEWS | Ariana Grande concert explosion: 19 dead at English arena

Community News

Milpitas City Manager Tom Williams on leave 'until further notice'



Interim Milpitas Police Chief Steve Pangelinan, second from right, stepped in as the acting city manager at a budget study session that City Manager Tom Williams abruptly left on Thursday night. Photo by Aliyah Mohammed

By **ALIYAH MOHAMMED** | amohammed@bayareanewsgroup.com |
PUBLISHED: May 19, 2017 at 3:47 pm | UPDATED: May 20, 2017 at 1:05 pm

MILPITAS — Embattled Milpitas City Manager Tom Williams has been placed on leave “until further notice,” City Attorney Christopher Diaz said late Friday.

The announcement came a day after Williams abruptly left City Hall without explanation at the end of a City Council closed session and was replaced on the dais by interim police Chief Steve Pangelinan.

Asked to elaborate about Williams’ status, Diaz said in an email Friday: “Chief Pangelinan stepped in to sit with the Council for that one meeting. The City Council will make a more formal announcement on who will be serving as Acting City Manager at a future meeting.”

A City Hall source told the Bay Area News Group that Williams is being paid while on administrative leave.

Williams, the city’s top administrator for more than 10 years, has been in hot water since being accused of using a city charge card to pay for his private attorney. He has threatened Mayor Rich Tran and the city with a \$1 million lawsuit for harassment and defamation.

On Thursday, Williams was conversing with department heads while waiting for the closed session to end when Councilman Bob Nunez emerged and walked downstairs with Pangelinan and Human Resources Director Tina Murphy. While they were downstairs, Williams left the council chambers with budget binders in hand.

As the council was about to convene a study session on the city’s proposed budget, Diaz announced that “the city manager will not be sitting with the council this evening and the city will make a further statement tomorrow.” He said after the meeting that Pangelinan was the acting city manager.

Charles Lawson, a former Milpitas chief of police, was the last interim city manager before Williams took the job. Williams began working as the city's planning director in 2005 and was named permanent city manager by Lawson in late 2006.

According to a letter that Diaz wrote to the council, Williams had used a city credit card to pay \$7,000 in legal fees to his attorney at San Francisco-based Ad Astra Law Group and signed off on the expenses as "official city business." He then attempted to charge \$30,000 in city funds to pay the same attorney after the initial \$7,000 was paid out, Diaz's letter said.

Williams has denied the allegations. He told the Bay Area News Group in a recent phone call that no city charge card was used and that "100 percent of my legal fees have been paid for by me."

He followed up with an email, saying: "I absolutely in no way misused a city credit card. The accusations are ridiculous and another attempt by someone trying to hurt and retaliate against me."

Milpitas' policy on employee use of city credit cards states that personal use of them "is strictly prohibited," Diaz's letter pointed out.

According to the city's operating procedures, an employee found guilty of misusing public funds can be disciplined or terminated. And under state law, any such violation could result in a prison term of two to four years, Diaz's letter said.

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Aliyah Mohammed Aliyah Mohammed covers local government, education, breaking news and community issues in Milpitas and Fremont. She is also the web and social media coordinator for the Milpitas Post and Fremont Argus. Aliyah has been working for Bay Area News Group since 2013. She graduated from U.C. Berkeley with a double bachelors in English and media studies in 2013. Aliyah loves coffee, traveling, soccer and being a devoted bibliophile.

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Exhibit 14

NEWS

Milpitas Places City Manager Tom Williams on Paid Leave after Allegations of Misuse of Funds

By Jennifer Wadsworth @jennwadsworth / May 19, 2017

0



Milpitas City Manager Tom Williams (center) is out on paid leave. Police Chief Steve Pangelinan will fill his role in the interim.

Nearly two weeks after Milpitas City Manager Tom Williams (<http://www.sanjoseinside.com/2017/05/15/milpitas-city-manager-charged-personal-legal-fees-to-taxpayers/>) was accused of misusing public money to pay his personal legal fees, the city's top executive was placed on paid administrative leave.

According to sources at City Hall, Williams left right before the City Council convened for a budget hearing Thursday, following a discussion with Councilman Bob Nunez, Police Chief Steve Pangelinan and Human Resources Director Tina Murphy. The city's outsourced attorney, Chris Diaz, later announced that Pangelinan would assume the role of acting city manager.

Williams has been under fire since city auditors caught him spending taxpayer money on his personal legal expenses. According to records obtained by San Jose Inside, he spent \$37,000 on Ad Astra Law Firm to send a cease-and-desist letter accusing Mayor Rich Tran of harassment, age discrimination and defamation. The letter also threatened to sue and demanded more than \$1 million in damages.

When reporters asked for records pertaining to the brewing legal conflict, Williams sued to block their release. San Jose Inside obtained a copy of the cease-and-desist letter before the April 28 court hearing, however, and published the document before a judge granted a temporary restraining order to keep it and other records under wraps.

Apparently, Williams tried to get Milpitas to pay for the lawsuit he filed against the city.

Diaz subsequently warned him about the consequences of spending public money for private purposes. Those kinds of unauthorized expenditures violate city policy and state law, Diaz cautioned in a letter to the council, putting Williams at risk of losing his job and facing criminal prosecution.

Williams has repeatedly denied wrongdoing, but he did not deny that he spent the money. In memo released to San Jose Inside through a formal records request, Williams said he retained Ad Astra Law Group to investigate multiple complaints against Tran.

"In light of initial findings and recent turn of events, I am reimbursing the City of Milpitas the initial \$7,000 payment to avoid any potential alleged conflict of interest," Williams wrote in a May 8 memo.



Tom Williams (Photo courtesy of Milpitas Post)

MEMORANDUM

Office of the City Manager



To: Jane Corpus, Acting Director of Finance
From: Tom Williams, City Manager
Subject: Cal-Card Reimbursement
Date: May 8, 2017

I retained Ad Astra Law Firm to provide initial consultation and advisory services regarding several employee complaints against Mayor Rich Tran. In light of initial findings and recent turn of events, I am reimbursing the City of Milpitas the initial \$7,000 payment to avoid any potential or alleged conflict of interest.

Source: City of Milpitas

No mention was made of the additional \$30,000 he requested, which records show (<http://www.sanjoseinside.com/wp-content/uploads/2017/05/Milpitas-Ad-Astra-Statements.pdf>) was approved by his executive assistant, Rachele Currie, on April 28. It's possible that the \$30,000 payment was approved, but never fully processed.

Prosecutor John Chase, of the Santa Clara County's District Attorney's Office, told San Jose Inside that it the Public Integrity Unit is monitoring the situation in Milpitas. Meanwhile, the city's outside auditing firm has deemed the city "high risk" because of the city manager's financial misappropriation.

Williams, who was promoted to city manager in 2006, has been linked to several pricy lawsuits. The city has had to pay millions of dollars to settle claims of harassment, retaliation and age discrimination by former department heads and employees.

Tran, the city's 32-year-old mayor, was elected last fall after promising throughout his campaign to put Williams under the microscope. The mayor's vocal criticism of Williams has frequently placed him at odds with the city manager and his allies.

Williams continues to mount a legal defense.

His attorney, Claire Cochran, filed a public records request for all correspondence between Tran and reporters. Williams' personal friend, Joseph Weinstein, also submitted a request for all complaints filed against Tran and the rest of the council.

Jennifer Wadsworth is a staff writer for San Jose Inside and Metro Newspaper. Email tips to jenniferw@metronews.com (<mailto:jenniferw@metronews.com>) or follow her on Twitter at [@jennwadsworth](https://twitter.com/jennwadsworth) (<https://twitter.com/jennwadsworth>).