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FRANCESCA TUCKER-SCHUYLER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

FRANCESCA TUCKER-SCHUYLER,
an individual,

Plaintiff,

v.

CITY OF MONTEBELLO, a Municipal
Corporation, and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: 20STCV22180

COMPLAINT FOR DAMAGES FOR:

- 1. WHISTLEBLOWER RETALIATION;**
- 2. DISCRIMINATION BASED ON SEX;**
- 3. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
AND**
- 4. FAILURE TO PREVENT DISCRIMINATION.**

JURY TRIAL DEMANDED

DAILY ALJIAN LLP
Newport Beach, California

1 Plaintiff FRANCESCA TUCKER-SCHUYLER (“Plaintiff” or “Ms. Schuyler”)
2 hereby complains against Defendants CITY OF MONTEBELLO (“Defendant” or “the
3 City”) and DOES 1 through 50 (collectively, “Defendants”), as follows:

4 **BRIEF SUMMARY OF THE CASE**

5 1. Plaintiff was employed by the City of Montebello for nearly a decade, most
6 recently as its City Manager. During her employment, Plaintiff received multiple raises
7 and promotions and never received a negative evaluation. After Plaintiff discovered that
8 the City had violated the Public Contract Code, she reported her findings to, among
9 others, the City’s Police Chief, the City Attorney’s office, and the Los Angeles District
10 Attorney’s Office. After making those complaints, the City unlawfully retaliated against
11 Plaintiff, placing her on administrative leave. The City kept Plaintiff on administrative
12 leave for over a year. Then, on February 28, 2019, the City abruptly terminated Plaintiff.
13 To date, the City has never given Plaintiff an official explanation for placing her on
14 administrative leave or for her termination. Aside from the obvious retaliation, and before
15 being placed on leave, Plaintiff was informed that the City wanted to replace her with a
16 male City Manager. In connection with this motive, each and every City manager hired by
17 the City after it placed Plaintiff on leave was a male, establishing she was terminated not
18 only in retaliation for her protected complaints but also because of her sex. Plaintiff files
19 this lawsuit to recover the damages caused by the City’s illegal actions.

20 **PARTIES**

21 2. Plaintiff is an individual who resides in Buena Park, California.

22 3. Plaintiff was employed by the City of Montebello from approximately
23 October 2010 to February 28, 2019.

24 4. The City of Montebello is an incorporated municipality and public entity
25 organized and existing under the laws of the State of California.

1 5. Montebello is an employer subject to suit under the California Fair
2 Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.) and the California
3 Labor Code.

4 6. Plaintiff is informed and believes and, on that basis, alleges that, at all times
5 relevant, Montebello was an entity engaged as a matter of commercial actuality in
6 purposeful economic activity within the County of Los Angeles, State of California.

7 7. The true names and capacities of Defendants DOES 1 through 50, inclusive,
8 and each of them, whether individual, corporate, associate or otherwise, are unknown to
9 Plaintiff at this time and therefore Plaintiff sues such Defendants as fictitious names
10 pursuant to Civil Procedure Code section 474. Plaintiff will amend this Complaint to
11 allege the true names and capacities of fictitiously named Defendants once ascertained.
12 Plaintiff is informed and believes, and upon such information and belief alleges, that each
13 Defendant herein designated as a DOE was and is in some manner, negligently,
14 wrongfully, or otherwise, responsible and liable to Plaintiff for the injuries and damages
15 hereinafter alleged, and that Plaintiff's damages as herein alleged were proximately
16 caused by their conduct.

17 8. At all times relevant to this action, each defendant, including those
18 fictitiously named, was the agent, servant, employee, partner, aider and abettor, co-
19 conspirator, joint venturer, alter ego or surety of the other defendants and was acting
20 within the scope of said agency, service, employment, partnership, enterprise, conspiracy,
21 venture, or suretyship, with the knowledge and consent or ratification of each of the other
22 defendants in committing the acts alleged herein. Each of the Defendants aided and
23 abetted, encouraged, and rendered substantial assistance to the other Defendants in
24 breaching their obligations to Plaintiff, as alleged herein. In taking action to aid and abet
25 and substantially assist the commission of these wrongful acts and other wrongdoings
26 complained of, as alleged herein, each of the Defendants acted with an awareness of

1 his/her/its primary wrongdoing and realized his/her/its conduct would substantially assist
2 the accomplishment of the wrongful conduct and wrongdoing.

3 **FACTUAL BACKGROUND**

4 9. In October of 2010, the City hired Plaintiff as Director of Finance. In May
5 of 2012, the City promoted Plaintiff to Interim City Administrator. In October of 2012,
6 the City promoted Plaintiff to City Administrator, gave her a raise, and gave her a three-
7 year contract.

8 10. In March of 2015, seven months before her contract expired, the City gave
9 Plaintiff another promotion, a contract extension, and another raise. Under this new
10 contract, Plaintiff received the title of City Manager and a \$30,000 per year salary
11 increase, with an annual CPI index increase and a five-year extension.

12 11. During Plaintiff's entire tenure with the City, she never received a negative
13 evaluation. Based upon the number of promotions, the number of pay raises and the
14 absence of any negative evaluation, as well as other factors, the City and its officials
15 clearly considered Plaintiff's performance to be exceptional.

16 12. On February 24, 2017, a lawsuit was filed on behalf of the City entitled *City*
17 *of Montebello v. Magallanes*, Case No. BC651874 ("the JCS Lawsuit"). The sole named
18 defendant was David Magallanes, doing business as JCS Construction. On or about
19 August 28, 2017, Mr. Magallanes filed a meritless cross-complaint in the matter, naming
20 Ms. Schuyler and two other City employees as cross-defendants –Assistant City Manager
21 Danilo Batson ("Mr. Batson") and Information Systems Manager David Tsuen ("Mr.
22 Tsuen"). The cross-complaint falsely implicated Ms. Schuyler in the alleged misconduct.
23 Messrs. Batson and Tsuen were also implicated in the alleged misconduct.

24 13. When Plaintiff worked as Director of Finance, purchasing and bidding were
25 handled by the Purchasing Manager. Bidding for projects related to City facility
26 maintenance were handled by the Building Maintenance Supervisor. However, after she
27 was promoted to City Manager, the City eliminated those positions to save money and the
28

1 City asked Plaintiff to become more involved in activities that were normally handled by
2 those employees. In 2017, Plaintiff became concerned that public works regulations were
3 not being followed by the City regarding contracts for repairs to City facilities. As a
4 result, she took it upon herself to inquire with the City regarding certain projects and
5 requested legal guidance. Plaintiff's inquiries were mostly ignored.

6 14. After the JCS Lawsuit was filed, and because her history of inquiries with
7 the City had been largely ignored, Plaintiff met with various current and former City staff
8 members, including members of the finance department, performed additional research
9 regarding the regulations regarding public works projects and bidding procedures, and
10 reviewed past and current projects. In connection with this research, Plaintiff sent multiple
11 emails to the City asking for guidance regarding the application of public works
12 regulations. Plaintiff also reported possible acts of noncompliance by the City in those
13 communications.

14 15. On August 2, 2017, Plaintiff emailed the City. Plaintiff explained that she
15 wanted answers to questions regarding the rules and regulations of relevant projects.

16 16. On September 19, 2017, Plaintiff emailed the City regarding the Quiet
17 Cannon, inquiring as to whether the Public Contract Code applied to the renovations,
18 since it was a City facility. Plaintiff never received a response.

19 17. On September 20, 2017, Plaintiff emailed the City regarding the Hilton
20 Garden Inn to inquire whether renovations and maintenance of the Hilton Garden Inn
21 complied with the Public Contract Code, since it was an enterprise fund owned by the
22 City. The City never responded.

23 18. These types of email correspondence between Plaintiff and the City
24 continued for several months. Plaintiff continued to ask questions regarding the relevant
25 regulations and requested training for her and her staff. On occasion, Plaintiff had
26 questions about specific jobs. The City was largely non-responsive.

1 19. Plaintiff became concerned why her questions were not being answered by
2 the City. On or about September 25, 2017, Plaintiff decided to report the City's apparent
3 violations of bidding laws to Montebello Police Chief Kevin McClure ("Chief McClure").
4 Specifically, Plaintiff informed him that contracts for various City projects, including 1)
5 the renovation of Quiet Cannon, 2) renovation of City Hall facilities, 3) repairs to the
6 roofs of the City police station, and 4) repairs to City sewers, were never put out for
7 formal bid, as she believed was required by the Public Contract Code.

8 20. Plaintiff is informed and believes that Chief McClure contacted Deputy
9 District Attorney Alan Yochelson at the Los Angeles District Attorney's office ("LADA")
10 so Plaintiff could speak with him about the City's apparent violations of bidding laws that
11 she had reported to Chief McClure. Mr. Yochelson spoke with Plaintiff over the phone
12 and Plaintiff provided the same information that she had given to Chief McClure. Mr.
13 Yochelson asked Plaintiff to put her findings in writing and send it to the LADA.

14 21. On September 27, 2017, Plaintiff sent an email to the City Attorney's office
15 communicating her findings that a City employee had failed to put contracts for city
16 facility repair and maintenance projects exceeding \$5,000 out to bid, in violation of the
17 Public Contract Code. The City Attorney's Office never responded to her email.

18 22. On September 28, 2017, Plaintiff submitted a formal complaint to the
19 LADA regarding the suspected violations of the Public Contract Code by the City.
20 Attached as [Exhibit 1](#) is a copy of that complaint.

21 23. A month later, the City Council scheduled a special closed session meeting
22 to take place on November 8, 2017. During that meeting, the City Council voted in closed
23 session to place Plaintiff on administrative leave. Plaintiff is informed and believes this
24 was the direct response to Plaintiff's complaints referenced herein. Plaintiff was escorted
25 to her office that evening by the City Attorney, was asked to take her personal belongings,
26 and was instructed to leave the building immediately.

1 24. Plaintiff was never given an official reason by the City for placing her on
2 leave.

3 25. Neither of Plaintiff's fellow cross-defendants in the JCS Lawsuit, who are
4 both male, were placed on leave. Plaintiff is informed, believes, and on that basis alleges
5 that neither of these other individual cross-defendants faced any other type of disciplinary
6 action.

7 26. Prior to her administrative leave, Plaintiff had been told on two separate
8 occasions by individuals who frequently met with members of the City Council that the
9 City wanted to replace Plaintiff with a male City Manager.

10 27. The acting and/or interim City Managers following Plaintiff's administrative
11 leave were all male, including Mr. Batson (one of Plaintiff's fellow cross-defendants in
12 the JCS Lawsuit), Andrew Pasmant, and Paul C. Talbot. On June 26, 2019, the City hired
13 another male, Rene Bobadilla, as Plaintiff's permanent replacement.

14 28. From November 2017 to February 2019, the City Council held
15 approximately 20 meetings while Plaintiff was on leave during which Plaintiff's potential
16 dismissal and/or the position of City Manager were on the agenda. Despite these 20
17 meetings, the City Council continued to keep Plaintiff on leave for more than one year.

18 29. During the entire time, Plaintiff is informed, believes, and on that basis
19 alleges that the City never opened an official investigation regarding Plaintiff.

20 30. The City never gave Plaintiff an opportunity to be heard regarding the
21 administrative leave.

22 31. Finally, on February 28, 2019, the City terminated Plaintiff. The City gave
23 no official explanation or a reason for her termination, or an opportunity to be heard
24 regarding her termination.

25 32. In doing so, the City failed to give Plaintiff at least 30 days' written notice
26 of its intent to remove Plaintiff and the reasons for her removal, and the opportunity to
27

1 request a public hearing within the 30-day notice period, in violation of the Montebello
2 Municipal Code.

3 33. Plaintiff's administrative leave and subsequent termination were highly
4 publicized, including on the Whittier Daily News and San Gabriel Valley Tribune
5 websites. Plaintiff is informed and believes members of the City participated in the news
6 articles, making false and damaging accusations regarding Plaintiff.

7 34. Within the time provided by law, Plaintiff filed a tort claim with the Office
8 of the City Clerk for the City of Montebello on or about August 5, 2019, which was
9 rejected on or about August 15, 2019, thus allowing Plaintiff to initiate this action.

10 35. Within the time provided by law, Plaintiff filed a Complaint of Employment
11 Discrimination with the Department of Fair Employment and Housing against the City.
12 On or about August 5, 2019, Plaintiff obtained a Right-to-Sue Notice authorizing her to
13 initiate this action and allege claims pursuant to the Fair Employment and Housing Act
14 ("FEHA").

15 36. The Parties subsequently entered into tolling agreements extending the time
16 Plaintiff has to file this action. This action has been timely filed.

17 **JURISDICTION AND VENUE**

18 37. This Court has jurisdiction over this matter because the acts complained of
19 occurred in the City of Montebello, California in Los Angeles County.

20 38. Venue is proper in this Court pursuant to California Code of Civil Procedure
21 section 395.

22 **FIRST CAUSE OF ACTION**

23 **Whistleblower Retaliation in Violation of Labor Code §1102.5**

24 **(Against All Defendants)**

25 39. Plaintiff alleges and incorporates by reference as though set forth in full at
26 this point all of the allegations of the preceding paragraphs.

1 40. At all relevant times, Labor Code section 1102.5 was in effect and was
2 binding on Defendants.

3 41. Pursuant to Labor Code section 1102.5, an employer, or any person acting
4 on behalf of the employer, shall not retaliate against an employee for disclosing
5 information to a government or law enforcement agency, or to a person with authority
6 over the employee or another employee who has the authority to investigate, discover, or
7 correct the violation or noncompliance, if the employee has reasonable cause to believe
8 that the information discloses a violation of state or federal statute, or a violation of or
9 noncompliance with a local, state, or federal rule or regulation, regardless of whether
10 disclosing the information is part of the employee's job duties.

11 42. During her employment, Plaintiff engaged in protected activity when she
12 made complaints to, among other parties, the City's police chief, the City Attorney's
13 office, and the Los Angeles District Attorney's office stating that the City had failed to put
14 various contracts exceeding \$5,000 for the improvement and/or repair of City owned
15 facilities out to formal bid, as required by Public Contract Code section 20162.

16 43. Plaintiff's belief that the City had violated the Public Contract Code was
17 reasonably based on the facts she uncovered, as explained herein and above.

18 44. Defendants retaliated against Plaintiff by placing her on administrative leave
19 for over one year, then terminating her employment, without giving any reasons and
20 without proper notice and the right to be heard pursuant to the Montebello Municipal
21 Code.

22 45. As a proximate cause of Defendants' willful, knowing, and intentional
23 violation of Labor Code section 1102.5, Plaintiff has suffered general and special damages
24 in an amount to be proven at trial.

25 46. Plaintiff has incurred and continues to incur legal expenses and attorney's
26 fees. Pursuant to Code of Civil Procedure sections 1021.5, Plaintiff is entitled to recover
27 reasonable attorneys' fees in an amount according to proof.
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10 55. Plaintiff prays for judgment as set forth herein.

Wrongful Termination in Violation of Public Policy

14 56. Plaintiff alleges and incorporates by reference as though set forth in full at
15 this point all of the allegations of the preceding paragraphs.

18 58. Specifically, Plaintiff was terminated for disclosing her reasonably based
19 suspicions of illegal conduct by the City’s employees, including violations of the Public
20 Contract Code. Defendants’ actions were in violation of California Labor Code section
21 1102.5, and the public policy behind this provision, which “is to encourage employees to
22 report suspected violations of law.” (*See Diego v. Pilgrim United Church of Christ*, 231
23 Cal.App.4th 913, 926 (2014).)

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1 60. Plaintiff is informed, believes, and thereon alleges that her employment was
2 terminated because of her sex. Plaintiff is informed, believes, and thereon alleges that
3 Defendants sought to terminate Plaintiff in order to replace her with a male City Manager.

4 61. Plaintiff's engagement in protected activity was a substantial motivating
5 reason for her termination.

6 62. Defendants never provided any reasons for terminating Plaintiff's
7 employment. Any arguments Defendants may raise for terminating Plaintiff are pretextual
8 in nature and calculated to disguise the motivating basis of the adverse employment
9 actions to which Plaintiff was subjected.

10 63. Defendants' wrongful termination of Plaintiff's employment has caused
11 Plaintiff to suffer general and special damages in an amount to be proven at trial.

12 64. Plaintiff has incurred and continues to incur legal expenses and attorney's
13 fees. Pursuant to Code of Civil Procedure sections 1021.5 and 1032, *et seq.*, Plaintiff
14 seeks to recover reasonable attorneys' fees and costs in an amount according to proof.

15 65. Plaintiff prays for judgment as set forth herein.

16 **FOURTH CAUSE OF ACTION**

17 **Failure to Prevent Discrimination**

18 **(Against All Defendants)**

19 66. Plaintiff alleges and incorporates by reference as though set forth in full at
20 this point all of the allegations of the preceding paragraphs.

21 67. Plaintiff was subjected to discrimination based on the fact that she is a female,
22 and experienced adverse employment actions up to and including termination that were not
23 experienced by her male colleagues and were initiated in order to replace Plaintiff with a
24 male employee.

25 68. Defendants failed to take reasonable steps to prevent the discrimination
26 and/or retaliation. Such conduct is in violation of California Government Code section
27 12900 *et seq.* and has resulted in damage and injury to Plaintiff as alleged herein.

69. As a proximate result of the wrongful conduct of Defendants, and each of them, Plaintiff has suffered and continues to sustain substantial losses in earnings and other employment benefits in an amount according to proof at the time of trial.

70. As a proximate result of the wrongful conduct of Defendants, and each of them, Plaintiff has suffered humiliation, emotional distress, and mental pain and anguish, all to her damage in an amount according to proof at the time of trial.

71. Defendants' failure to take reasonable steps to prevent the discrimination was a substantial factor in causing Plaintiff's harm.

72. Plaintiff has also incurred and continues to incur attorney's fees and legal expenses in an amount according to proof at the time of trial.

73. Plaintiff prays for judgment as set forth herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendant City of Montebello, and DOES 1-50 as follows:

1. For general and compensatory damages according to proof;

2. For compensatory damages according to proof, including past and future lost earnings and other employment benefits, bonuses, and costs of seeking other employment and damages for emotional distress, humiliation and mental anguish;

3. For attorneys' fees and costs of suit pursuant to Code of Civil Procedure sections 1021.5 and 1032, and California Government Code section 12965(b);

4. For pre-judgment interest pursuant to California Civil Code section 3287 and/or any other provision of law providing for prejudgment interest;

5. For interest at the legal rate; and

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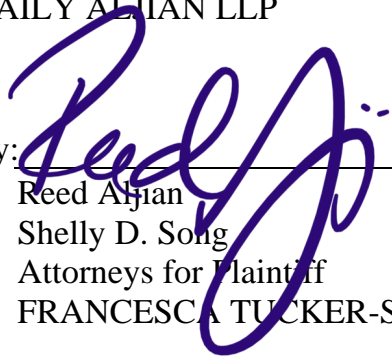
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1 6. For any and all further relief that this Court may deem just and proper.
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3 Dated: June 11, 2020

DAILY ALJIAN LLP

4
5 By: 
6 Reed Aljian
7 Shelly D. Song
8 Attorneys for Plaintiff
9 FRANCESCA TUCKER-SCHUYLER
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JURY TRIAL DEMANDED

Plaintiff demands a trial by Jury on all claims so triable.

Dated: June 11, 2020

DAILY ALJIAN LLP

By:


Reed Aljian
Shelly D. Song
Attorneys for Plaintiff
FRANCESCA TUCKER-SCHUYLER

DAILY ALJIAN LLP
Newport Beach, California

EXHIBIT 1

September 28, 2017

Alan Yochelson
Head Deputy
Los Angeles County District Attorney's Office
Hall of Justice
211 W. Temple Street Suite 1000
Los Angeles, Ca 90012

Re: City of Montebello, violation of Public Contracts Code (PCC 1100) bidding and payment of prevailing wages.

Dear Mr. Yochelson,

Thank you for speaking with me today on this matter. This is to report violations of the public works contract code and prevailing wage requirements by the City of Montebello. It appears that the violation has been going on for over 10 years and the State requirements for prevailing wages may not have been met.

I recently received a copy of the public contracts code requirements as prepared by the City Attorney's office of Montebello. Based on this information, I started to review the past practices of Montebello to see if the city has been in compliance with the public contracts code and prevailing wage requirements. The information that I have gathered indicates that the city has in fact been in violation of these requirements for a very long time. I have explained my discovery to Montebello's city attorney's office but no actions have been taken and due to the conflict of interest that may exist I am seeking to report these findings to an agency that can investigate this matter further.

I do not know which appropriate agency these violations should be reported to and hence this letter to the District Attorney's Office. I hope that your office can review the matter further or refer it to the proper agency for a full investigation.

Thank you for your time and efforts. I can be reached at [REDACTED] or [REDACTED] should there be any questions.

Cordially,


Francesca Tucker-Schuyler