

1 Rosemary S. Lewis, Esq., SBN 158891
Edward J. Morales, Esq., SBN 176062
2 BORTON PETRINI, LLP
626 Wilshire Boulevard, Suite 975
3 Los Angeles, California 90017
Tel: (213) 624-2869
4 Fax: (213) 489-3930
emorales@bortonpetrini.com

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County of Orange
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5 Attorneys for Plaintiff CRISTINA TALLEY
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ORANGE

11 CRISTINA TALLEY,
12
13 Plaintiffs,

14 v.

15 CITY OF ANAHEIM a municipality, and
DOES 1 through 50, inclusive,
16 Defendants.

Case No. 30-2014-00751921-CU-OE-CJC
Judge Kirk Nakamura

PLAINTIFF'S COMPLAINT FOR

- 1) Violation Of Constitutional Right In
Employment Of A Tenured Public Employee –
Due Process – 42 U.S.C. 1983
- 2) Breach Of Implied and/or Express Contract Of
Continued Employment
- 3) Breach Of The Covenant Of Good Faith And
Fair Dealing
- 4) National Origin-Ethnic Discrimination (Gov.
Code Section 12940)
- 5) Gender Discrimination (Gov. Code Section
12940)
- 6) Age Discrimination (Gov. Section 12940)
- 7) Retaliation (Gov. Code Section 12940)
- 8) Failure To Properly Investigate Claim Of
Discrimination, Harassment And Retaliation
- 9) Failure To Provide A Work Environment Free
Of Discrimination, Harassment And Retaliation
- 10) Failure To Provide A Non-Hostile Work
Environment

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27 COMES NOW Plaintiff and alleges as follows:
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1 1. Plaintiff CRISTINA TALLEY at all relevant times to this action was a resident of
2 the County of Orange, State of California.

3 2. Plaintiff is informed and believes, and thereon alleges, that Defendant the CITY
4 OF ANAHEIM is a California municipality located in the County of Orange, State of California and
5 was incorporated on or about February 10, 1870.

6 3. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
7 DOES 1 to 50, inclusive. On information and belief, said defendants are in some manner responsible
8 for the wrongful conduct hereinafter alleged. Plaintiff will amend this complaint to set forth the true
9 names, capacities, and involvement when said information is ascertained. Plaintiff is informed and
10 believes, and upon such information and belief, alleges that at all times relevant herein, each of the
11 defendants acted in a manner set forth below and therefore became jointly and severably responsible for
12 the damages suffered by plaintiff.

13 4. This court has subject matter jurisdiction of the claims set forth herein because the
14 monetary and equitable relief sought herein can only be awarded by this court. The court has personal
15 jurisdiction over the named defendants and each of them, because they are residents of the County of
16 Orange, State of California.

17 5. Venue is proper in this judicial district because the acts and omissions given rise
18 to the claims alleged herein took place in this judicial district.

19 6. Plaintiff has exhausted all administrative remedies. Plaintiff has obtained a Right
20 to Sue Letter from the Department of Fair Employment and Housing ("DFEH"). A copy which is
21 attached hereto as Exhibit "A".

22 **FACTUAL BACKGROUND**

23 7. Cristina Talley, female, was born on October 2, 1956 and is of Hispanic descent.
24 She was 56 years old at the time of her termination in January 2013.

25 8. During all relevant times herein, until her date of termination, Ms. Talley was
26 employed by the City of Anaheim. The City of Anaheim is an employer as defined by California
27 Government Code §12926(d).
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1 9. The Anaheim City Council (hereinafter referred to as “City Council”), as the
2 governing body of the City of Anaheim, acts, represents, and implements policy on behalf of the City
3 of Anaheim.

4 10. Ms. Talley was hired in 1996 as a Senior Assistant City Attorney, a tenured
5 position. In December 2008, Ms. Talley was promoted to the position of City Attorney on an “acting
6 basis” for the City of Anaheim. Ms. Talley and the City of Anaheim did not enter into an employment
7 agreement when she was hired as the City Attorney. Her employment status was never changed from a
8 tenured position to an at-will position.

9 11. At no time during her employment with the City of Anaheim, did Ms. Talley
10 waive her constitutional rights guaranteed to public employees by the due process clause of the United
11 States and California Constitutions.

12 12. In April 2009, the City Council, by unanimous vote, promoted Ms. Talley to City
13 Attorney. Ms. Talley completed her probationary period in April 2010. Upon her promotion, she did
14 not execute an at-will employment agreement. At all times during her tenure as City Attorney, Ms.
15 Talley’s employment records reflected a “Seniority Date” of August 26, 2005.

16 13. Ms. Talley’s was the first Latina City Attorney hired in Orange County.

17 14. The City Charter does not provide that the City Attorney is appointed “at the will
18 and pleasure” of the Council, thereby evidencing an intent by the voters of Anaheim who approved the
19 Charter to create a property interest in that position. The City Charter does include the language “at the
20 will and pleasure” of the Council in reference to the City Manager position.

21 15. Prior to her appointment as City Attorney, Ms. Talley received the highest
22 performance evaluations. Further, Ms. Talley was highly regarded throughout the City organization,
23 and continues to be considered one of the most experienced and qualified municipal lawyers throughout
24 the state.

25 16. In the months prior to Ms. Talley’s termination, she was continuously harassed
26 and subjected to a hostile work environment by certain members of the City Council. Those members
27 of the Council improperly attempted to involve Ms. Talley in political issues and challenged her legal
28 opinions, even though the opinions were supported and affirmed by outside legal counsel hired by the

1 City. She was accused, without justification, of advocating for and acting on behalf of individual
2 council members.

3 17. Additionally, when certain issues pending before the City Council angered the
4 Latino Community, resulting in large turnouts of Latino citizens at Council meetings, certain members
5 of the City Council implied that perhaps Ms. Talley would not and could not be objective in those
6 matters. These issues included an economic assistance agreement (“EAA”) pursuant to which the City
7 waived the collection of the Transient Occupancy Tax (“TOT”) for a hotel developer, and the filing of a
8 lawsuit against the City alleging that the City’s at-large voting system violated the California Voting
9 Rights Act.

10 18. The Transient Occupancy Tax is a tax levied by the City on hotels. The money
11 collected by this tax goes into the City’s General Fund from which funds are available to build and
12 maintain infrastructure, parks and pay for public safety, all of which the Latino community consider
13 important. The EAA waived payment of these taxes for a period of years, which amounted to a multi-
14 million dollar subsidy to the developer. Many members of the Latino community saw this as a “tax
15 give away” arguing that these funds were being taken from their community.

16 19. The California Voting Rights Act of 2001, codified at Elections Code §14025, et
17 seq., prohibits election methods which result in polarized voting along racial lines. The City of
18 Anaheim was sued by members of the Latino community claiming that the City’s at-large election
19 system resulted in the lack of Latino representation on the City Council.

20 20. At the time of her termination, the on-going harassment that Ms. Talley endured
21 was severe and pervasive. The ongoing harassing, disparaging, and humiliating conduct by the City
22 Council created a hostile work environment.

23 21. During the March 6, 2012, City Council meeting, Council Member Kris Murray
24 openly impugned Ms. Talley’s integrity and character after she provided legal opinions with respect to
25 the EAA and a potential initiative measure designed to prohibit such agreements without a vote of the
26 citizens.

1 22. During a telephone conference call in or about March 2012, with Council
2 Member Murray, Ms. Talley, and other Senior City staff, Murray became extremely rude,
3 condescending, and sarcastic toward Ms. Talley attempting to embarrass her in front of her colleagues.

4 23. In a June 18, 2012 meeting among City staff, Murray and representatives of a
5 potential City contractor, Bike Nation, Murray verbally attacked Ms. Talley. Without any basis in fact,
6 Murray intimidated that Ms. Talley was intentionally trying to sabotage the project. Several City staff
7 members approached Ms. Talley after this encounter to express their concern for her having had to
8 endure such treatment. Not content to drop this issue, Murray continued to berate Ms. Talley in a
9 subsequent email message that was copied to the City Manager and the Deputy City Manager.

10 24. Prior to the June 10, 2012 City Council meeting held at a community center,
11 Murray, asked the City Clerk, in a private conversation in which Murray intentionally excluded Ms.
12 Talley, whether Ms. Talley had knowledge of purportedly erroneous information provided by the City
13 Clerk concerning the number of signatures necessary for a TOT initiative measure which was being
14 circulated within the city. The City Clerk advised Council Member Murray that it was solely the City
15 Clerk's error and the City Clerk accepted full responsibility for providing the erroneous information.

16 25. During meetings and in the presence of her colleagues and outside counsel,
17 Murray openly criticized Ms. Talley's performance without justification and reason. The unfounded
18 criticism was offered with indifference to any humiliation or embarrassment Ms. Talley may suffer.

19 26. During an August, 2012 "performance evaluation" scheduled on 24-hours' notice
20 by Council Members Murray, Eastman and Sidhu, conducted in part over a telephone conference, the
21 following was discussed and/or occurred:

22 a. Eastman, via telephone conference, stated that she felt as though Ms.
23 Talley was not representing "her" interests, yet could not articulate a single
24 incident in support of her position. Instead, Eastman proclaimed her purported
25 concern was based solely on a "feeling" she had about Ms. Talley;

26 b. Similarly, Sidhu stated that he had been unhappy with Ms. Talley for
27 approximately six months (coincidentally, this six-month time period coincided
28 with the Council's action on the TOT and EAA, strongly opposed by the Latino

1 Community). Like Eastman, Sidhu could not identify a single example to support
2 his dissatisfaction;

3 c. Murray, without any factual basis, repeatedly accused Ms. Talley of
4 improper conduct and poor performance, suggesting that Ms. Talley's loyalty was
5 only to the Mayor (whose position with respect to the EAA and the Voting Rights
6 Act lawsuit was in line with the Latino Community and polar opposite to Murray,
7 Eastman and Sidhu), to the exclusion of the City Council majority;

8 d. Murray came to the "performance evaluation" armed and alleged a list of
9 baseless criticisms, including the TOT initiative measure signature issue for
10 which the City Clerk had previously accepted full responsibility. Murray decided
11 to blame Ms. Talley for this error anyway, despite the fact that the City Clerk had
12 accepted complete responsibility for the error;

13 e. Notwithstanding the lack of any legitimate performance concerns, Ms.
14 Talley was given a "Needs Improvement" rating on her evaluation by Council
15 Members Murray, Eastman and Sidhu. On the other hand, Mayor Tait and
16 Council Member Galloway rated Ms. Talley's performance as "Far Exceeds
17 Expectations," which is consistent with Ms. Talley's previous performance
18 ratings as Sr. Assistant City Attorney. Ms. Talley was provided with no
19 performance measures, goals, or objectives, which, according to Human
20 Resources Director Kristine Ridge, is the City's policy and practice with respect
21 to performance evaluations, including those of Council appointees. This review
22 was the first time in Ms. Talley's 16 years with the City where her performance
23 was criticized, and it came at a time during which the City Council majority was
24 under increasing criticism from the Latino Community.

25 27. Less than six months following the August, 2012 evaluation, the City Council
26 convened again in closed session at the beginning of its January 29, 2013, meeting, under the guise of
27 conducting yet another "performance evaluation" of Ms. Talley. During this sham performance
28 evaluation initiated by Murray, Eastman again reiterated that she was not comfortable with Ms. Talley.

1 Once again, however, Eastman could not articulate a single objective reason for her discomfort.
2 Instead, Eastman simply stated that there was "just something about" Ms. Talley that made her feel
3 uneasy about her representation of the City.

4 28. During this sham performance in January 2013, Ms. Talley was not provided with
5 a single specific instance where she failed to perform her duties as City Attorney. To the contrary, Ms.
6 Talley was complemented for the creative initiatives she was prepared to bring forward during the next
7 12 months. Underscoring the disdain that Council Member Murray had for Ms. Talley, on the morning
8 of January 29, 2013, Council Member Murray sent to Ms. Talley an email message -- the first that Ms.
9 Talley had received from her in months -- stating that she was looking forward to meeting with Ms.
10 Talley that evening. Of course, Council Member Murray knew full well of the action and intent that
11 she and the Council majority possessed in seeking to pursue the termination of Ms. Talley as the City
12 Attorney.

13 29. At the conclusion of the open session of the January 29, 2013 meeting, the City
14 Council convened in closed session again to discuss Ms. Talley. As Ms. Talley walked into the closed
15 session conference room, she was advised by Human Resources Director Kristine Ridge that she was
16 going to be asked to resign and that Ms. Talley should just listen and not say anything.

17 30. After being called back into the closed session, Ms. Talley was informed by the
18 City Council that a majority of the City Council had decided to go in a different direction. As a result,
19 the City Council offered Ms. Talley an option to resign or face public termination.

20 31. Council Member Jordan Brandman, speaking on behalf of the City Council
21 majority, stated that Ms. Talley had until the close of business on January 31, 2013 (approximately 48
22 hours) to submit her resignation, which would be effective on April 30, 2013. Ms. Talley was further
23 told that she would be placed on administrative leave commencing February 1, 2013.

24 32. The next day, Ms. Talley discussed the matter with Human Resources Director
25 Ridge. Ms. Talley inquired as to what the consequences might be if she did not follow Council Member
26 Brandman's directive to resign by close of business on January 31st. She was told by Ms. Ridge that
27 the City Council would place her dismissal as City Attorney on the February 5, 2013 council meeting
28 agenda, an action which would place the matter in the public arena and ensure that the press would

1 report on the matter. Furthermore, Ms. Ridge explained that if she did not meet the January 31st
2 deadline, the "offer" would be withdrawn.

3 33. After consideration of the matter during the short time period provided and given
4 the circumstances, potential financial consequences, embarrassment, humiliation and the likely
5 potential future embarrassment and humiliation for Ms. Talley and her family, Ms. Talley submitted her
6 letter of resignation at approximately 4:00 p.m. on January 31, 2013. Ms. Talley's letter included a
7 statement that her resignation was involuntary and in lieu of being fired.

8 34. Ms. Talley was never afforded notice of the proposed discipline and the reasons
9 therefor or a hearing on this issue or an opportunity to be heard. She was never provided a reason for
10 her termination (i.e. where she failed in her duties as City Attorney). Ms. Talley was unlawfully and
11 discriminately deprived of an opportunity to respond to any discipline, refute any factual allegations,
12 point out the lack of any corroborating evidence or to mitigate the severity of the penalty. Rather, the
13 City Council proceeded to terminate Ms. Talley and corner her into an inferior position wherein the
14 best option was to resign instead of facing the humiliation of a public termination that would also hurt
15 her family.

16 35. Ms. Talley was not provided notice or a *Skelly* hearing as required by law. (*Skelly*
17 *v State Personnel Board* (1975) 15 Cal.3d. 194.) Ms. Talley was deprived of an opportunity to respond
18 to any discipline, refute any factual allegations, point out the lack of any corroborating evidence, to
19 mitigate the severity of the penalty, and was not provided with any specific instance wherein she failed
20 to fulfill her duty as City Attorney.

21 36. Further, Ms. Talley was not even afforded the minimal notice that is provided
22 under the City Charter to the City Manager, which is an at-will position.

23 37. After Ms. Talley's termination, she was replaced by a white male, under the age
24 of 40, and with less experience. Additionally, Ms. Talley's successor was given a starting salary that
25 was higher than that paid to Ms. Talley despite his inexperience.

26 38. In a little over two months, Ms. Talley was able to find new employment with a
27 law firm and commenced working on July 8, 2013. However, the position only pays her approximately
28 35% of the salary she was making as the City Attorney.

1 39. As a result of her termination, Ms. Talley and her family are now forced to pay
2 increased monthly medical premiums, increased monthly dental premiums, and higher annual medical
3 deductibles. Additionally, Ms. Talley has lost and will lose substantial retirement pension benefits.

4 **FIRST CAUSE OF ACTION**
5 **VIOLATION OF CONSTITUTIONAL RIGHT IN**
6 **EMPLOYMENT OF A TENURED PUBLIC**
7 **EMPLOYEE – DUE PROCESS – 42 U.S.C. 1983**

8 40. Plaintiff incorporates by this reference all of the allegations contained in
9 paragraph 1 through 39 above as though fully set forth herein.

10 41. As a public employee in a tenured, non-probationary position, Ms. Talley had a
11 constitutional right to continued employment in her position as City Attorney. Ms. Talley had a
12 property right in her employment which prevented the City from terminating her without good cause.
13 Further, Ms. Talley had a vested property right in her previously held tenured position as Senior
14 Assistant City Attorney.

15 42. Ms. Talley was deprived of her property right in her employment position by the
16 City Council without due process of law in violation of the 42 U.S.C. §1983, the Fourteenth
17 Amendment of the United States Constitution and the California Constitution, Article I, Sec. 7.

18 43. Ms. Talley was initially promoted from Senior Assistant City Attorney to Acting
19 City Attorney in December 2008. Thereafter, in April 2009, following a City Council unanimous vote,
20 Ms. Talley was promoted to the position of City Attorney; her probationary period was completed in
21 April 2010. At no time did Ms. Talley sign, nor was she requested to sign, an employment agreement
22 with the City of Anaheim wherein her status was changed to that of an “at-will” employee. Nor did she
23 relinquish any rights she held in her prior tenured employment position as Senior Assistant City
24 Attorney.

25 44. For months prior to her termination, Ms. Talley began enduring unfounded and
26 meritless ridicule, unprofessional behavior, harassment, and criticism, by some members of the City
27 Council. Her professional and personal integrity were questioned and insulted by members of the City
28 Council. Her loyalty to the City and the City Council were also questioned without any foundation.
Ms. Talley’s legal opinions, even though supported by independent outside counsel, were challenged

1 without merit. The behavior exhibited by some members of the City Council towards Ms. Talley
2 coincided with political issues faced by the City Council wherein the Latino community raised vocal
3 opposition to the positions and actions of the City Council majority (comprised of Members Murray,
4 Eastman, and Sidhu).

5 45. Prior to the commencement of the warrantless and baseless accusations, criticism
6 and harassment of the City Council, Ms. Talley received stellar reviews for her work performance.
7 Even after the harassment began, members of the City Council were unable to provide any specific
8 instances to support their complaints of Ms. Talley.

9 46. After a City Council closed session (on January 29, 2013), the City Council,
10 acting on behalf of the City of Anaheim, decided to terminate Ms. Talley from her position. Ms. Talley
11 was informed by the City Council that it was offering her the opportunity to resign, within 48 hours, or,
12 if she did not resign (as informed by Ms. Ridge), have her termination placed on the agenda of a public
13 City Council open session vote in February, 2013.

14 47. At no time was Ms. Talley informed that she would be afforded a hearing or
15 review of the decision to terminate her as the City Attorney, or her previously held tenured position.

16 48. After shortly considering her options and given the potential embarrassment and
17 humiliation that she would endure if “publicly” terminated via vote at the City Council’s open session,
18 Ms. Talley submitted her letter of resignation on January 31, 2013; as proposed and directed by the City
19 Council. Ms. Talley’s letter of resignation included a statement that it was involuntary and that she did
20 not waive any of her rights.

21 49. Ms. Talley’s employment was terminated without notice or hearing and without
22 an independent investigation. She was not afforded due process as required by law upon the
23 termination of her property right in her employment by the City of Anaheim (acting by and through the
24 City Council). She was not provided sufficient notice, a hearing before impartial decision-makers, or
25 an opportunity to represent herself.

26 50. Ms. Talley was not provided a *Skelly* hearing as required by law. (*Skelly v State*
27 *Personnel Board* (1975) 15 Cal.3d. 194.) Ms. Talley was unlawfully and discriminately deprived of an
28 opportunity to respond to any discipline, was not provided with any specific instance wherein she failed

1 to fulfill her duties as City Attorney, refute any factual allegations, point out the lack of any
2 corroborating evidence or to mitigate the severity of the penalty. Rather, the members of the City
3 Council proceeded to terminate Ms. Talley and force her into a position wherein the best option was to
4 resign or face the humiliation of a public termination that would also hurt her family and professional
5 career.

6 51. Additionally, Ms. Talley was not afforded even the minimal notice that is
7 provided under the City Charter to the City Manager, which is an at-will position. Instead, the City
8 Council used intimidation and veiled threats of a public termination and withdrawal of the City's
9 "offer" to coerce Ms. Talley into involuntarily resigning her position with the City.

10 52. There was no consideration for the property right Ms. Talley had in the 16-year
11 career that she had with the City. Ms. Talley has a vested right to continued employment and the City
12 violated that right.

13 53. As a result of Ms. Talley's employment termination, she has been damaged. The
14 damages include: lost wages; loss of future earnings; increased monthly medical premium payments;
15 increased monthly dental premium payments; increased monthly medical deductibles; loss of retirement
16 pension benefits; and emotional distress. Although Ms. Talley has accepted a new position with a law
17 firm (practicing in municipal law), she is still suffering loss of earnings. Ms. Talley has sustained
18 damages in an amount as yet undetermined, which are ongoing and continuing to accrue, in an amount
19 to be determined at the time of trial. Additionally, Ms. Talley has incurred attorney's fees and costs.

20 **SECOND CAUSE OF ACTION**
21 **BREACH OF IMPLIED AND/OR EXPRESS**
22 **CONTRACT OF CONTINUED EMPLOYMENT**

23 54. Plaintiff incorporates by this reference all of the allegations contained in
24 paragraph 1 through 53 above as though fully set forth herein.

25 55. Plaintiff alleges that the completion of her probationary period as City Attorney
26 together with her employment records showing a seniority date of August 26, 2005, the fact that the
27 City Charter does not assert that the City Attorney is appointed at the will and pleasure of the City
28 Council, and the fact that Ms. Talley never signed an agreement or waiver of her right to continued

1 employment with the City formed the basis of an express or implied agreement between Ms. Talley and
2 the City.

3 56. Plaintiff was employed by the defendant for 16 years, consistently received
4 excellent performance evaluations, and remained in public employment in reliance on this agreement.
5 Plaintiff further relied on the Human Resources Director's statement that the City Attorney does not
6 have a written contract because the defendant has always dealt with its City Attorney professionally and
7 fairly as assurance that she would not be terminated arbitrarily, without due process or without good
8 cause.

9 57. Based on the implied and/or express contract, plaintiff had an employment
10 contract with the defendant that plaintiff would be employed by the defendant so long as her
11 performance was satisfactory and that the defendant would not discharge her without good or just
12 cause.

13 58. The terms of the employment contract included, but were not limited to the fact
14 that plaintiff had a constitutional right to continued employment with the defendant in that plaintiff, as a
15 public employee, had a property interest in her position. Plaintiff's property interest in her employment
16 could not be removed without due process of law. Further, defendant would not demote or discharge
17 plaintiff without good cause and fair warning, based on objective and reasonable job evaluations of
18 plaintiff.

19 59. Plaintiff at all times fulfilled her duties and conditions under the contract and has
20 been ready, willing, and able to continue to perform them in a competent and satisfactory manner.

21 60. Notwithstanding the express or implied promise to terminate the employment
22 contract only for good cause, on or about January 29, 2013, defendant terminated plaintiff's
23 employment without specifying any good cause for the termination even though plaintiff had received
24 consistently good performance evaluations, and was not told of any facts or instances where plaintiff
25 failed to perform her duties as City Attorney. The City's review of plaintiff was below City standards,
26 as explained by the City's Director of Human Resources, which requires objective instances where the
27 employee failed to meet their duties. Ms. Talley was not provided with any performance measures,
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1 goals or objectives, was not afforded an opportunity to be heard, and was not provided with reasonable
2 notice of her termination.

3 61. As a proximate result of defendant's breach of the express or implied contract,
4 plaintiff has suffered and continues to suffer losses in earnings and other benefits in an amount to be
5 established at trial.

6 **THIRD CAUSE OF ACTION**
7 **BREACH OF THE COVENANT OF**
8 **GOOD FAITH AND FAIR DEALING**

9 62. Plaintiff incorporates by this reference all of the allegations contained in
10 paragraph 1 through 61 above as though fully set forth herein.

11 63. Plaintiff performed all the duties conditions of the employment agreement.
12 Defendant knew that plaintiff had fulfilled her duties, conditions under the contract. Defendant
13 breached the implied covenant of good faith and fair dealing under the employment agreement by
14 discharging plaintiff intentionally, maliciously, and without cause in bad faith and for reasons
15 extraneous to the contract. Furthermore, defendant discharged plaintiff at a time when the City Council
16 majority was coming under increasing criticism from the Latino community. The angrier the Latino
17 community got, the more hostile the City Council majority became in its treatment of Ms. Talley.
18 Defendant further breached the implied covenant of good faith and fair dealing by violating and failing
19 to follow its own personnel policies by failing to provide an appropriate employment review which is
20 the custom and practice of defendant. Defendant further breached the covenant of good faith and fair
21 dealing by terminating plaintiff and depriving her of significant employment benefits, including but not
22 limited to salary and retirement benefits.

23 64. As a proximate result of defendant's breach of the implied covenant of good faith
24 and fair dealing, plaintiff has suffered and continues to suffer losses in an amount to be established at
25 trial. As a further and proximate result of defendant's breach of the implied covenant of good faith and
26 fair dealing, plaintiff has incurred reasonable attorney's fees in attempting to secure the benefits owed
27 plaintiff under the employment contract.
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FOURTH CAUSE OF ACTION
NATIONAL ORIGIN-ETHNIC DISCRIMINATION
(GOV. CODE SECTION 12940)

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3 65. Plaintiff incorporates by this reference all of the allegations contained in
4 paragraph 1 through 64 above as though fully set forth herein.

5 66. Ms. Talley was discriminated against on the basis of her National Origin in
6 violation of the California Fair Employment and Housing Act.

7 67. Ms. Talley was subjected to intimation and innuendo that her national origin
8 tainted her opinions and prevented her from being objective on issues affecting the Latino Community.
9 Additionally, members of the City Council questioned and defamed Ms. Talley's loyalty and
10 professional integrity and expressed concern that their personal interests and the interests of the City of
11 Anaheim were not being protected as a result of Ms. Talley's national origin as a Latina woman.

12 68. This discrimination, harassment, and hostility coincided with the period of time
13 during which the Latino Community began to vocally oppose positions and actions of the City Council
14 majority, comprised of and controlled by Council Members Murray, Eastman and Sidhu.

15 69. Council Member Murray's complaint that Ms. Talley had a "bias" in favor of
16 certain council members was nothing more than a pretext for Council Member Murray's real complaint:
17 Ms. Talley's legal opinions, although objective and fully supported by the law and outside counsel, had
18 the result of furthering the interests of the Latino Community with whom she associated Ms. Talley.
19 Similarly, Council Member Eastman's "feelings" about Ms. Talley and her statement that there was
20 "something about" Ms. Talley were thinly veiled references to Ms. Talley's national origin as a Latina
21 woman.

22 70. Based on the conduct of members of the City Council and in light of the issues
23 involved in the EAA and the Voting Rights Act lawsuit, Ms. Talley's national origin was a substantial
24 motivating reason for her termination.

25 71. Ms. Talley was treated less favorably than others because of her national origin.
26 It was because of the fact that Ms. Talley is a Latina that her loyalty and job performance were
27 questioned, ridiculed and discredited. There is no evidence to show a legitimate non-discriminatory
28 reason to explain the conduct of the City Council and the act to terminate Ms. Talley as the City

1 Attorney. This is especially true, considering that prior to the commencement of the harassment Ms.
2 Talley received stellar job performance reviews. Furthermore, even after members of the City Council
3 began to harass Ms. Talley, members of the City Council were unable to provide specific and concrete
4 circumstances/examples to explain any contention by them that Ms. Talley was not performing her
5 duties well.

6 72. The disparaging, harassing, humiliating, disrespectful, and condescending
7 conduct from the City Council towards Ms. Talley as a result of her national origin was severe and
8 pervasive. This conduct lasted for many months.

9 73. After Ms. Talley's termination, she was replaced by a white male under the age of
10 40 with less experience than Ms. Talley. The Council majority's intent to replace Ms. Talley with a
11 white male who was ultimately selected as Ms. Talley's successor was revealed as early as June 20,
12 2012, in an email in which Council Member Murray requested that Ms. Talley's successor be hired to
13 provide a second opinion regarding issues on which Ms. Talley had previously and correctly opined.

14 74. As a result of the above-mentioned conduct, Ms. Talley has suffered damages.
15 The damages include: lost wages; loss of future earnings; increased monthly medical premium
16 payments; increased monthly dental premium payments; increased medical deductibles; loss of
17 retirement pension benefits; and emotional distress. Although Ms. Talley has accepted a new position
18 with a law firm (practicing in municipal law), she is still suffering loss of earnings. Ms. Talley has
19 sustained damages in an amount as yet undetermined, which are ongoing and continuing to accrue, in an
20 amount to be determined at the time of trial. Additionally, Ms. Talley is entitled to attorneys' fees and
21 costs.

22 **FIFTH CAUSE OF ACTION**
23 **GENDER DISCRIMINATION**
24 **(GOV. CODE SECTION 12940)**

25 75. Plaintiff incorporates by this reference all of the allegations contained in
26 paragraph 1 through 74 above as though fully set forth herein.

27 76. Ms. Talley was discriminated against on the basis of her gender in violation of
28 California Fair Employment and Housing Act.

1 77. Ms. Talley endured ridicule and harassment by members of the City Council as a
2 result of being a woman (Latina). No other city official in a similar or equivalent level position was
3 treated in the same manner as Ms. Talley. There was absolutely no basis for the treatment proffered by
4 members of the City Council towards Ms. Talley.

5 78. Ms. Talley's work performance received positive reviews. Even after the
6 commencement of the disparate treatment, the members of the City Council were unable to provide
7 specific instances/examples that demonstrated Ms. Talley's work performance as sub-par. Therefore,
8 only ulterior reasons were behind Ms. Talley's employment termination by the City Council. The fact
9 that Ms. Talley is a woman, of Hispanic descent, and over the age of 40 are all substantial and
10 contributing reasons for Ms. Talley's employment termination.

11 79. Further showing of the City Council's motive is the fact that after Ms. Talley's
12 termination, she was replaced by a white male under the age of 40 with less experience than her.

13 80. Further evidence of the gender discrimination being exhibited stems from Ms.
14 Ridge, the Human Resources Director, telling Ms. Talley that she was going to file a Department of Fair
15 Employment and Housing ("DFEH") complaint for gender discrimination. Ms. Ridge stated that she
16 was going to use Ms. Talley as an example of the gender discrimination rampant "on the Seventh
17 Floor," referring to the Office of City Manager and the City Council offices.

18 81. The disparaging, harassing, humiliating, disrespectful, and condescending
19 conduct from the City Council towards Ms. Talley as a result of her gender was severe and pervasive.
20 This conduct by the City Council lasted for many months.

21 82. As a result of the above-mentioned conduct, Ms. Talley has suffered damages.
22 The damages include: lost wages; loss of future earnings; increased monthly medical premium
23 payments; increased monthly dental premium payments; increased medical deductibles; loss of
24 retirement pension benefits; and emotional distress. Although Ms. Talley has accepted a new position
25 with a law firm (practicing in municipal law), she is still suffering loss of earnings. Ms. Talley has
26 sustained damages in an amount as yet undetermined, which are ongoing and continuing to accrue, in an
27 amount to be determined at the time of trial. Additionally, Ms. Talley is entitled to attorneys' fees and
28 costs.

SIXTH CAUSE OF ACTION
AGE DISCRIMINATION
(GOV. SECTION 12940)

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3 83. Plaintiff incorporates by this reference all of the allegations contained in
4 paragraph 1 through 82 above as though fully set forth herein.

5 84. Ms. Talley was discriminated against on the basis of her age in violation of
6 California Fair Employment and Housing Act.

7 85. Ms. Talley's age was a substantial reason for her termination as the City Attorney.

8 86. The age discrimination became evident after her termination when she was
9 replaced by a white male under the age of 40 with less experience than Ms. Talley. The City Council
10 sought a City Attorney who was younger and more in-line with their views on the controversial and
11 difficult issues facing the City of Anaheim.

12 87. The disparaging, harassing, humiliating, disrespectful, and condescending
13 conduct from the City Council towards Ms. Talley was severe and pervasive. The conduct lasted for
14 many months.

15 88. As a result of the above-mentioned conduct, Ms. Talley has suffered damages.
16 The damages include: lost wages; loss of future earnings; increased monthly medical premium
17 payments; increased monthly dental premium payments; increased medical deductibles; loss of
18 retirement pension benefits; and emotional distress. Although Ms. Talley has accepted a new position
19 with a law firm (practicing in municipal law), she is still suffering loss of earnings. Ms. Talley has
20 sustained damages in an amount as yet undetermined, which are ongoing and continuing to accrue, in an
21 amount to be determined at the time of trial. Additionally, Ms. Talley is entitled to attorneys' fees and
22 costs.

SEVENTH CAUSE OF ACTION
RETALIATION (GOV. CODE SECTION 12940)

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25 89. Plaintiff incorporates by this reference all of the allegations contained in
26 paragraph 1 through 88 above as though fully set forth herein.

27 90. Ms. Talley was retaliated against by the City of Anaheim through the conduct of
28 the majority of the City Council. This conduct was done in violation of Cal. Govt. Code §12940(h).

1 91. Several political issues facing the City of Anaheim and its Council became
2 tumultuous and controversial. In particular were those related to the TOT, EAA, and allegations of
3 violations of the California Voting Rights Act. The beginning of the disparate, harassing and
4 discriminatory treatment against Ms. Talley coincided with the timing of the previously mentioned
5 political issues.

6 92. Ms. Talley's legal opinions regarding issues facing the City Council were
7 unjustifiably challenged and ridiculed. Ms. Talley was accused of advocating for and acting on behalf
8 of individual council members. Further, her loyalty, impartiality, and professional integrity were
9 questioned when Ms. Talley was accused of not being able to be objective when dealing with issues in
10 which the Latino Community was strongly opposed.

11 93. Ms. Talley was subjected to rude behavior, condescending, and sarcastic remarks,
12 public ridicule, verbal attacks, intimidation, false allegations, and sham performance evaluations.
13 Regardless, Ms. Talley continued to perform her job well and to the best of her ability.

14 94. Ms. Talley opposed the discrimination and harassment from members of the City
15 Council. She continued to provide sound, reliable, and lawful legal opinions, often confirmed by
16 outside counsel, despite the unremarkably awful treatment by members of the City Council. Further, she
17 continued to perform her essential job functions in the best interest of the City of Anaheim. This was
18 met by further harassment, embarrassment, humiliation, discrimination, and subsequently retaliation.

19 95. The City, by and through members of its City Council, retaliated against Ms.
20 Talley because her legal opinions opposed the positions of the Council's majority and because Ms.
21 Talley would not succumb to the Council's threat of intimidation, ridicule, harassment, embarrassment
22 and discrimination. As a result, she was terminated from her position as the City Attorney. She was
23 provided two termination options, resign within 48 hours, or be publicly terminated by City Council
24 vote.

25 96. Based on the above-mentioned conduct, Ms. Talley has suffered damages. The
26 damages include: lost wages; loss of future earnings; increased monthly medical premium payments;
27 increased monthly dental premium payments; increased medical deductibles; loss of retirement pension
28 benefits; and emotional distress. Although Ms. Talley has accepted a new position with a law firm

1 (practicing in municipal law), she is still suffering loss of earnings. Ms. Talley has sustained damages in
2 an amount as yet undetermined, which are ongoing and continuing to accrue, in an amount to be
3 determined at the time of trial. Additionally, Ms. Talley is entitled to attorneys' fees and costs.

4 **EIGHTH CAUSE OF ACTION**
5 **FAILURE TO PROPERLY INVESTIGATE CLAIM OF**
6 **DISCRIMINATION, HARASSMENT AND RETALIATION**

7 97. Plaintiff incorporates by this reference all of the allegations contained in
8 paragraph 1 through 96 above as though fully set forth herein.

9 98. As demonstrated above, Ms. Talley was subjected to discrimination, harassment,
10 and retaliation, in the course and scope of her employment. By a majority of the City Council, she was
11 subjected to the following: verbal abuse; professional and personal humiliation; faced unwarranted and
12 unfounded criticism; improper and false accusations of wrongdoing, poor performance, and was targeted
13 because of her national origin and gender; and unlawfully terminated.

14 99. The City failed to take any reasonable steps to investigate the harassment,
15 retaliation, or discrimination endured by Ms. Talley despite knowing of the conduct being directed
16 towards her. The course of events described above occurred over several months, yet no steps were
17 taken by the City to investigate the conduct.

18 100. The conduct described herein was observed by many City officials; yet, no
19 investigation was ever commenced. The despicable conduct was sufficiently evident that the City
20 should have engaged in measures to investigate the conduct.

21 101. Although no formal complaint was made by Ms. Talley, this does not alleviate the
22 City's obligation to investigate. The harassment, discrimination, retaliation, ridicules and disparaging
23 treatment was conducted both publicly and privately. Regardless, sufficient public officials were aware
24 of the conduct being proffered that the City knew and/or should have known of the improper conduct.

25 102. The failure to investigate (and, as a result thereof, failure to take any rectifying
26 measures) led to continuous humiliation, harassment, discrimination and retaliation against Ms. Talley.
27 The City's failure to address the improper conduct by members of the City Council led to the
28 termination of Ms. Talley from her employment position.

1 103. As a result of the above-mentioned conduct, Ms. Talley has suffered damages.
2 The damages include: lost wages; loss of future earnings; increased monthly medical premium
3 payments; increased monthly dental premium payments; increased medical deductibles; loss of
4 retirement pension benefits; and emotional distress. Although Ms. Talley has accepted a new position
5 with a law firm (practicing in municipal law), she is still suffering loss of earnings. Ms. Talley has
6 sustained damages in an amount as yet undetermined, which are ongoing and continuing to accrue, in an
7 amount to be determined at the time of trial. Additionally, Ms. Talley is entitled to attorneys' fees and
8 costs.

9 **NINTH CAUSE OF ACTION**
10 **FAILURE TO PROVIDE A WORK ENVIRONMENT FREE**
11 **OF DISCRIMINATION, HARASSMENT AND RETALIATION**

12 104. Plaintiff incorporates by this reference all of the allegations contained in
13 paragraph 1 through 103 above as though fully set forth herein.

14 105. The City failed to take any reasonable steps necessary to prevent discrimination
15 and harassment from occurring.

16 106. Ms. Talley was subjected to discrimination, harassment, and retaliation, in the
17 course and scope of her employment. By a majority of the City Council, she was subjected to the
18 following: verbal abuse; professional and personal humiliation; faced unwarranted and unfounded
19 criticism; improper and false accusations of wrongdoing, poor performance, and was targeted because of
20 her national origin and gender; and unlawfully terminated.

21 107. The City knew and/or should have known of the discriminatory and harassing
22 conduct being exhibited by members of the City Council. The conduct described herein was observed
23 by many City officials; yet, no remedial or preventive action was ever taken. Further, no investigation
24 was ever conducted. The despicable conduct was sufficiently evident that the City should have engaged
25 in measures to remedy and prevent the conduct.

26 108. The City had a mandatory and affirmative duty to prevent harassment and
27 discrimination. Yet, it failed to uphold its duty.

28 109. The failure to prevent a work environment free of harassment, discrimination and
retaliation led to the eventual termination of Ms. Talley from her City Attorney position.

1 continuous basis until her termination. Ms. Talley considered the work environment to be hostile and
2 abusive.

3 116. The harassing conduct was a substantial factor in causing Ms. Talley harm. As a
4 result of the harassing conduct, her employment was terminated. Because of the despicable conduct she
5 endured, when faced with the option to forcibly resign or face public termination by vote of the City
6 Council, Ms. Talley decided to involuntarily resign. Further, the continuous harassment caused great
7 emotional harm; including sleep deprivation, anxiety, embarrassment, and humiliation.

8 117. The damages suffered by Ms. Talley include: lost wages; loss of future earnings;
9 increased monthly medical premium payments; increased monthly dental premium payments; increased
10 medical deductibles; loss of retirement pension benefits; and emotional distress. Although Ms. Talley
11 has accepted a new position with a law firm (practicing in municipal law), she is still suffering loss of
12 earnings. Ms. Talley has sustained damages in an amount as yet undetermined, which are ongoing and
13 continuing to accrue, in an amount to be determined at the time of trial. Additionally, Ms. Talley is
14 entitled to attorneys' fees and costs.

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1 **WHEREFORE**, Plaintiff Cristina Talley prays as follows:

- 2 1. For judgment in favor of Plaintiff against Defendant City of Anaheim and Does 1 through
3 20;
- 4 2. For compensatory damages in an amount to be determined at the time of trial;
- 5 3. For reasonable attorneys' fees and allowable costs incurred by Plaintiff herein; and
- 6 4. For such other and further relief that is proper and just.

7 Dated: October 17, 2014

BORTON PETRINI, LLP

8
9
10 By



ROSEMARIE S. LEWIS, EDWARD J.
MORALES, Attorneys for Plaintiff
CRISTINA TALLEY

Exhibit A



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA 95758
800-884-1684 | Videophone 916-226-5285 | TTY 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

Jan 23, 2014

Cristina Talley
6 Golf Ridge
Dove Canyon, CA 92679

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 208524-87995
Right to Sue: Talley / City Of Anaheim c/o City Clerk, City of Anaheim

Dear Cristina Talley:

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective Jan 23, 2014 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

Enclosures

cc: City Of Anaheim c/o City Clerk