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Joel W. Baruch, Esq.
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2020 Main Street, Suite 900
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Re: Rejection of Conklin and Santos Government Claims

Dear Mr. Baruch:

The purpose of this letter is to advise you that the County of Orange is hereby rejecting the Government Tort claims filed by you on behalf of your clients Tom Conklin and Abe Santos. Although the County is not required to provide any explanation as to how or why these decisions were made, I will set out in this letter, in broad terms, the information and process by which the claims came to be rejected.

You are certainly aware that the County, through my office, retained the services of R. Craig Scott as an independent investigator to examine the claims made by your clients. Mr. Scott spent an entire day interviewing each of your clients. He conducted lengthy interviews of over a dozen other witnesses to gather facts relating to your clients' claims. Every single claim, regardless of how far-fetched it might have appeared on its face, was examined thoroughly by the investigator. No allegation was ignored; each aspect of every complaint was carefully considered. Though subject to the attorney-client and attorney work product privileges, the interviews conducted by Mr. Scott constitute thousands of pages of transcribed interviews and over 200 hours of interviews and analysis.

A principal reason the claims are being rejected is because your clients do not know the real facts upon which their claims are premised. Your clients have speculated and have frequently made incorrect assumptions. They boldly assert legal violations, but those "violations" are based on incorrect "facts."

For example, as to Mr. Santos, he takes umbrage at being the victim of "rumors" that he came in to work late and that he left early. Mr. Santos objects that he is being "harassed" by his current supervisor who repeatedly reminds him to get in on time, to not leave early, and to provide the necessary back up for claimed overtime. Mr. Santos alleges that he is the only investigator subjected to that treatment by his supervisor.

The reality? Reports of Mr. Santos working less than a full schedule were not rumors, but facts verified by the Deputy District Attorneys with whom Santos worked. He was late and left early for months and months and was counseled repeatedly. He acknowledged his errors contemporaneously. Mr. Santos was not picked on by his supervisor. That supervisor reviews investigator work logs, and closely monitors the arrival, departure, and overtime compliance requirements of all nine of the investigators under his supervision. Mr. Santos' claim that he is being singled out is simply not true.

As to Mr. Conklin, he claims employment discrimination and illegal retaliation for the reassignment of the Daniel Gidanian case away from him and Mr. Santos. Three wrongful motivations were charged: (1) Commander Mauger transferred the case as "payback" because Mr. Conklin had a four year-old conflict with Ms. Mauger's friend, Mark Gutierrez; (2) a "perceived disability" manufactured by management and used as a pretext to justify case reassignment; and (3) case reassignment due to Mr. Conklin's intent to testify before the Grand Jury.

Mr. Scott conducted an exhaustive look at each of these asserted wrongful motivations and concluded that each was false. Mr. Conklin does not accept that anyone else could or would do what he and Mr. Santos could accomplish by their work on the Gidanian case. Mr. Conklin may have been right on that point. But, even if he were, that could not justify his continuing to work on the case despite being repeatedly told, through his chain of command, that the case had been reassigned. Mr. Conklin's commitment to pursue his vision of what was "right" resulted in his properly being counseled for insubordination.

In addition to the facts being contrary to what Mr. Santos and Mr. Conklin assert, there are simply no viable legal claims based on that of which they complain. These principles are illustrative: the assignment of cases to work is a matter wholly within management's prerogative and discretion, as there is no "right" to continue working a particular case. Mr. Conklin and Mr. Santos have suffered no "adverse action," as the County has done *nothing* to materially affect the terms or conditions of their employment, even when viewed under the liberal standard of adverse employment action articulated by the Supreme Court in *Yanowitz v. L'Oreal USA, Inc.*, 36 Cal.4th 1028 (2005). There was no loss of position, pay, or benefits, nor has there been a change in duties.

Nor has there been unlawful retaliation. "Retaliation" is a term used by your clients with no apparent regard that "B" following "A" is not necessarily causation, nor illegal retaliation. Retaliation can only be a viable employment claim where a protected characteristic or activity is involved. Reassignment of the Gidanian case did not implicate race, sex, age or other protected characteristic, with the possible exception of disability. As to that point, the County acted in accordance with its obligation to accommodate the disability identified first by Mr. Conklin's own physician, and at all times by the County's physician. If Mr. Conklin suffered emotional and physical distress over the transfer of the Gidanian case, his exclusive remedy is in workers' compensation.

Speaking broadly, I have explained that many of your clients' allegations are not factually based, nor legally viable. The following specific claims by Mr. Conklin or Mr. Santos are likewise rejected following a careful examination.

High-level conspiracy in the D.A.'s office to cover-up the failure in the Stephenson Kim case to provide exculpatory evidence to the defense.

It may be that in 2011 and 2012 full discovery was not made to defense counsel. At that time, Investigators Talley and Wagner certainly offended Mr. Conklin, personally, and his sense of right. When in 2015 evidence came to light that full discovery may not have been made, there was no cover up or conspiracy to hide exculpatory evidence. Indeed, in a very timely fashion, significant efforts were made to produce, or re-produce, the appropriate discovery. How Mr. Conklin hopes to make of these circumstances a timely claim for personal damage is entirely unclear.

Whistleblowing to reveal an OCDA cover-up of obstruction of justice in the Joe Felz case

Assistant District Attorney Ebrahim Baytieh did not have a personal friendship with the Fullerton Police Chief, and never declared that he did. Mr. Santos is simply wrong in asserting that Mr. Baytieh declared that due to his friendship with Police Chief Hughes, the Orange County District Attorney ("OCDA") would only look at the D.U.I., and not at the possible obstruction of justice by the Fullerton Police Department. Obstruction of justice was always on the table. Despite Mr. Santos' uninformed claim of a cover-up, the case (still pending) has been, at all points, properly handled by the OCDA. Even if Mr. Santos were right that the OCDA turned a blind eye to Fullerton P.D. wrongdoing, Mr. Santos has no personal, viable claim for damages.

Illegal efforts to persuade Conklin not to testify before the Grand Jury; retaliatory actions against Conklin and Santos for having testified before the Grand Jury.

Mr. Conklin went to Senior Assistant District Attorney Mike Lubinski and asked for Mr. Lubinski's help to get in front of the Grand Jury. Mr. Lubinski happily assisted, and cleared the way for Mr. Conklin to testify. Contrary to Mr. Conklin's fabricated claim, Mr. Lubinski did not, a couple of days later, ask Mr. Conklin to not go or to postpone his Grand Jury testimony. Contrary to their claims, neither Mr. Conklin nor Mr. Santos suffered any retaliation for having testified before the Grand Jury. The claims that there was contemporary knowledge within the OCDA that each had been to the Grand Jury twice, and that there was knowledge of the supposed subject matter of their testimony, are nothing more than baseless speculation.

Conklin complains of multiple wrongs he has suffered in his workplace, and those go back as long as a decade, or more.

Mr. Conklin claims emotional and physical consequences resulting from such things as (1) the negligence of management in allowing a confidential source developed by Mr. Conklin to be compromised, and (2) his interview for a management position allegedly having been sabotaged by

his "coach," who deliberately failed to alert him to a particular technique for responding to questions. If Mr. Conklin suffered injury as a result of incidents such as these, his exclusive remedy is in workers' compensation. *See, Cole v. Fair Oaks Fire Protection Dist.,* 43 Cal.3d 148 (1978).

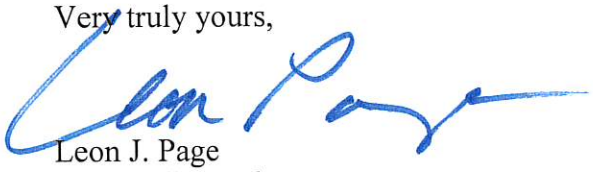
Santos claims multiple wrongs suffered in the workplace.

When carefully examined, Mr. Santos' claims can be demonstrated to lack factual support. Three examples: First, Mr. Santos complains of day-to-day harassment by his immediate supervisor. A careful examination of these charges reveals that all subordinates of this particular supervisor are treated in exactly the same way. He has not been singled out for illegal or different treatment. Second, Mr. Santos' reassignment to the Domestic Violence Unit was not for any of the five (supposedly wrongful, but none of them illegal) reasons put forward by Mr. Santos. Mr. Santos was reassigned in the entirely legal, non-retaliatory exercise of management prerogative. His reassignment was not "punishment." Third, Mr. Santos did not suffer retaliation by recently being directed to investigate the arresting officer from the Santa Ana Police Department in a domestic violence case. Mr. Santos is correct; it would not have been appropriate for him to have been so directed. But he was not. Santa Ana P.D. conducted its own investigation of its own officer. Mr. Santos was only ordered to take a statement from the girlfriend who accused the arresting officer of hitting on her. The accusation that Mr. Santos' supervisory investigator and commander retaliated against him by giving him an inappropriate order is untrue. That never happened.

To close, in our conversations, you have indicated that your clients may decide to voluntarily resign from County employment and claim "constructive discharge." Before they take that (in my view, rather reckless) step, I recommend that you review *Miklosy v. Regents of the University of California,* 44 Cal.4th 876 (2008), which recognizes, at pages 898-899, that the Government Claims Act abolished all common law or judicially declared forms of liability for public entities, except for such liability as may be required by the state or federal constitution, e.g., inverse condemnation.

In sum, please know that if I did believe that the County had legal exposure on any aspect of these claims, I would very much endeavor to avoid litigation through good faith settlement discussions. And while I do not expect that you will embrace the foregoing explanations, I do hope you can appreciate that the conclusions reached by the County are the result of a long and costly investigation. You can be assured that your clients' claims were not dismissed out of hand. Rather, deliberate consideration of each allegation has been the guiding principle that now leads the County to respectfully reject these claims.

Very truly yours,



Leon J. Page
County Counsel

LJP:rw