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8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF LOS ANGELES

11 CHUONG THAI, an individual,  
12 Plaintiff,

13 v.

14 CITY OF MONTEREY PARK, a public  
15 entity; and DOES 1 through 20,  
16 inclusive,  
17 Defendant.

Case No.: BC696884

[ASSIGNED FOR ALL PURPOSES TO HON.  
HOLLY J. FUJIE, DEPT. 56]

Complaint Filed: March 6, 2018

**DEFENDANT CITY OF MONTEREY PARK'S  
SEPARATE STATEMENT OF UNDISPUTED  
MATERIAL FACTS IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT, OR  
IN THE ALTERNATIVE, SUMMARY  
ADJUDICATION, AGAINST PLAINTIFF  
CHUONG THAI**

[Filed concurrently with Notice of Motion and  
Motion for Summary Judgment/Adjudication;  
Appendix of Evidence and [Proposed] Order]

Date: November 1, 2019  
Time: 8:30 a.m.  
Dept.: 56

**RESERVATION ID: 336543270303**

Trial Date: December 9, 2019

(\*Exempt from filing fees pursuant to Gov.  
Code, § 6103.)

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**TO THE COURT, PLAINTIFF AND HIS ATTORNEYS OF RECORD:**

Defendant City of Monterey Park (“Defendant” or “City”) hereby submit its Separate Statement of Undisputed Material Facts in support of its Motion for Summary Judgment, or in the Alternative, Summary Adjudication of Plaintiff Chuong Thai’s claims, and citations for exhibits (“Ex.”) filed concurrently with Defendant’s Appendix of Evidence.

**SEPARATE STATEMENT**

**ISSUE NO. 1**

Defendant is entitled to summary adjudication in its favor and against Plaintiff on the First Cause of Action because Plaintiff cannot establish a *prima facie* claim of retaliation in violation of Labor Code section 1102.5.

<p align="center"><b><u>MOVING PARTY’S UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE</u></b></p>	<p align="center"><b><u>OPPOSING PARTY’S RESPONSE AND SUPPORTING EVIDENCE</u></b></p>
<p>1. Plaintiff was hired by the City in January 2014 as the Management Services Director (“MSD”), which is an at-will position. (Plaintiff Chuong Thai’s Deposition (“Thai Depo.”), 31:14-22; 32:6-10, attached as Exh. (“Exh.”) “1” to Defendant’s Appendix of Evidence filed concurrently herewith.)</p>	<p>1.</p>
<p>2. As the MSD, Plaintiff had overall responsibility for the finance and information technology for the City, including accounting, purchasing, treasury, budget, risk management, payroll, utility billing, technology, communications, phones, data, computers, software and hardware. (Thai Depo., 31:23-</p>	<p>2.</p>

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<p>32:5, attached as Exh. “1”.)</p>	
<p>3. Plaintiff also had the responsibility of ensuring that the City’s expenditures, budget, and the fees charged to customers were accurate. (Thai Depo., 31:23-32:5; 62:9-22.)</p>	<p>3.</p>
<p>4. As the MSD, Plaintiff was required to attend every City Council meeting. (Thai Depo., 85:20-22.)</p>	<p>4.</p>
<p>5. As the MSD, Plaintiff directly supervised two City employees, Support Services Manager Tim Shay (“Mr. Shay”) and Controller Annie Yaung (“Ms. Yaung”). (Thai Depo., 33:14-21; Declaration of Annie Yaung (“Yaung Decl.”), 2:13-17, attached as Exh. “G”; Declaration of Tim Shay (“Shay Decl.”), 2:11-15, attached as Exh. “F”.)</p>	<p>5.</p>
<p>6. Plaintiff’s direct supervisor was City Manager Paul Talbot from January 2014 through November 30, 2016, and Interim City Manager Ron Bow (“Mr. Bow”) from December 1, 2016 until Plaintiff’s termination on April 29, 2017. (Thai Depo., 32:24 – 33:13; Declaration of Ron Bow (“Bow Decl.”), 2:13-17, attached as Exh. “A”; Declaration of Dan</p>	<p>6.</p>

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<p>Costley (“Costley Decl.”), 2:12-17, attached as Exh. “C.”)</p>	
<p>7. Plaintiff oversaw two divisions within Management Services, i.e. finance and support services, and everyone working within those divisions. (Thai Depo., 34:4-20.)</p>	<p>7.</p>
<p>8. On April 17, 2018, Plaintiff’s subordinate, Mr. Shay, met with and reported various allegations of Plaintiff’s misconduct to Ms. Yaung. (Shay Decl., 14:19-24-15:2, Exh. “22” (April 17, 2017 Memorandum by Tim Shay); Yaung Decl., 4:21-5:1.)</p>	<p>8.</p>
<p>9. The allegations reported to Ms. Yaung were generally that Plaintiff had accepted an inappropriate gift from a vendor, that Plaintiff had purchased two expensive cell phones using public funds without prior approval and in violation of City policy, and that Plaintiff had used a City credit card to purchase gift cards for staff prior to a holiday party. (Shay Decl., 14:19-24-15:2, Exh. “22” (April 17, 2017</p>	<p>9.</p>

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<p>Memorandum by Tim Shay); Yaung Decl., 4:21-5:1.)</p>	
<p>10. On April 18, 2018, Mr. Shay, reported the foregoing concerns to Human Resources and Risk Management Director Tom Cody (“Mr. Cody”) and Mr. Bow in addition to concerns relating to Plaintiff’s mishandling of the City budget and mishandling of the trash rate study through exclusion of his subordinate Ms. Yaung from those processes. (Shay Decl., 5:27-6:6; 15:3-17, Exh. “23” (April 18, 2017 Memorandum by Tim Shay); Declaration of Thomas J. Cody (“Cody Decl.”), 6:15-7:10, attached as Exh. “B”; Bow Decl., 10:1-11:28; 12:1-11, Exh. “7” (City’s Personnel Rules and Regulations, pp. 34-36).)</p>	<p>10.</p>

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<p>11. City Administrative Policy #50-19 provides specific requirements for purchasing cell phones, including submitting a request in writing to the City Manager, which must be approved, then submitted to the Support Services Division, within Management Services. All City cellular phone purchases must be made through the Support Services Division, and specifically by either Mr. Shay or Support Services Supervisor Dia Khuu (“Mr. Khuu”). (Bow Decl., 2:22-3:12, Exh. “6” (City’s Administrative Policy #50-19); Shay Decl., 3:1-18; Declaration of Dia Khuu (“Khuu Decl.”), 3:3:20, attached as Exh. “D”.)</p>	<p>11.</p>
<p>12. Plaintiff admits that there was no City policy in place which provided that the MSD can order cell phones directly from the provider. (Thai Depo., 236:20-25.)</p>	<p>12.</p>
<p>13. On or around December 13, 2016, Mr. Shay, discovered through an email notification from Verizon, the City’s cellular phone provider, that Plaintiff ordered a new iPhone 7 (128 gb) on the City’s Verizon account without following established cell phone ordering</p>	<p>13.</p>

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<p>procedures. (Shay Decl., 6:7-14; Khuu Decl., 3:21-4:5, Exh. “14” (December 13, 2016 Email from Dia Khuu to Tim Shay).)</p>	
<p>14. In reviewing the City’s Verizon account, Mr. Shay discovered that Plaintiff unilaterally ordered an “upgrade” to a City-issued cell phone that was previously assigned to the phone number of a City employee who was separated from the City a month earlier. (Shay Decl., 6:26-7:19, Exh. “16” (Tim Shay’s Photographs of Package from Verizon to Plaintiff); Khuu Decl., 4:15-20, Exh. “14” (December 13, 2016 Email from Dia Khuu to Tim Shay).)</p>	<p>14.</p>
<p>15. Plaintiff admits that he did not get approval from anyone to order the iPhone 7 for testing purposes. (Thai Depo., 252:17-253:3.)</p>	<p>15.</p>

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<p>16. On December 14, 2016, Mr. Shay emailed Plaintiff and advised him that Support Services had just received cell phones, one of which was an iPhone 7 ordered under a former City employee’s phone line, and asked Plaintiff why he ordered the iPhone 7. (Thai Depo., 249:7-10; Shay Decl., 8:1-21, Exh. “17” (Chain of Emails between Tim Shay and Plaintiff dated December 14, 2016 to January 4, 2017).)</p>	<p>16.</p>
<p>17. Plaintiff stated, in an email, that he was “testing [the iPhone 7] out to see if it's worth City's future direction in smartphone. Going to see how durable (waterproof) and useful it is. I was testing a Google Pixel phone before, and will return it once I get the iPhone.” (Shay Decl., 8:1-9:3, Exh. “17” (Chain of Emails between Tim Shay and Plaintiff dated December 14, 2016 to January 4, 2017).)</p>	<p>17.</p>
<p>18. While the City has ordered “test phones” in the past, the phones were not ordered as a “new item” since the City would get billed for that new item purchase. (Shay Decl., 6:26-7:19; Khuu Decl., 4:21-5:7.)</p>	<p>18.</p>



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<p>19. Here, Plaintiff ordered and received a new, sealed cell phone from Verizon by circumventing the cell phone purchasing process and ordering the phone directly from Verizon and not through Mr. Shay or Mr. Khuu. (Shay Decl., 6:26-7:19, Exh. “16” (Tim Shay’s Photographs of Package from Verizon to Plaintiff); Khuu Decl., 4:21-5:7.)</p>	<p>19.</p>
<p>20. The iPhone 7 ordered by Mr. Thai was placed on the City's accounts as new equipment and appeared on the next Verizon bill as a purchase using City funds. (Shay Decl., 6:26-7:19, Exh. “16” (Tim Shay’s Photographs of Package from Verizon to Plaintiff), Exh. “17” (Chain of Emails between Tim Shay and Plaintiff dated December 14, 2016 to January 4, 2017); Khuu Decl., 4:21-5:7.)</p>	<p>20.</p>
<p>21. Mr. Shay confirmed that Plaintiff ordered a Google Pixel cell phone directly from Verizon, without following City processes, on the same cell phone number previously assigned to former City employee, Nancy Romo. (Shay Decl., 8:1-21, Exh. “17” (Chain of Emails between Tim Shay and Plaintiff</p>	<p>21.</p>

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<p>dated December 14, 2016 to January 4, 2017);  Yaung Decl., 6:24-7:3, Exh. “13” (City's  Verizon Phone Records for December 2016).)</p>	
<p>22. Plaintiff admits that the City was  charged for the two phones and that public  funds were used to make the initial payments.  (Thai Depo., 258:4-23.)</p>	<p>22.</p>
<p>23. The Verizon bill had \$1,184.96 of  equipment charges for the two cell phones.  (Shay Decl., 8:1-21, Exh. “17” (Chain of  Emails between Tim Shay and Plaintiff dated  December 14, 2016 to January 4, 2017); Yaung  Decl., 6:24-7:3, Exh. “13” (City's Verizon  Phone Records for December 2016).)</p>	<p>23.</p>
<p>24. Between December 14 and December  21, 2016, Plaintiff was asked on multiple  occasions when the two “test” cell phones that  he purchased would be returned to Verizon  within the 30-day cancellation period so that  the City would receive a refund for both  phones. (Shay Decl., 9:4-14, Exh. “17” (Chain  of Emails between Tim Shay and Plaintiff  dated December 14, 2016 to January 4, 2017).)</p>	<p>24.</p>

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<p>25. Ultimately, both phones were returned to Verizon and the City was credited for the purchases. (Cody Decl., 3:1-8; Shay Decl., 9:4-14; Yaung Decl., 4:4-14.)</p>	<p>25.</p>
<p>26. Plaintiff initially had online access to the City’s Verizon account with ordering privileges. (Shay Decl., 9:15-25, Exh. “15” Verizon’s Corporate Liability Authorization Form(s); Khuu Decl., 5:15-21.)</p>	<p>26.</p>
<p>27. Plaintiff subsequently lost his online access privileges due to the foregoing issues. (Shay Decl., 9:15-25; 9:26-10:2, Exh. “15” (Verizon’s Corporate Liability Authorization Form(s)); Khuu Decl., 5:15-6:7.)</p>	<p>27.</p>
<p>28. On January 11, 2017, Mr. Shay requested that Dia Khuu be “added” as an authorized contact for online orders, and requested that Plaintiff be “deleted” as an authorized contact or user for the City. (Shay Decl., 9:26-10:2, Exh. “15” (Verizon’s Corporate Liability Authorization Form(s)); Khuu Decl., 6:3-7.)</p>	<p>28.</p>

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<p>29. City Administrative Policy #20-13 provides that City credit cards cannot be used for personal expenses under any circumstances. Expenses that are explicitly not allowed per City policy include: purchases of computer equipment and software, purchases of cell phones, radios or other communications or wireless devices, and personal transactions unrelated to official City business, including where an employee reimburses the City for purchases. (Bow Decl., 4:15-5:4, Exh. “5” (City’s Administrative Policy #20-13); CostleyCostley Decl., 2:18-3:10; Shay Decl., 10:3-11:4; Young Decl., 5:2-20.)</p>	<p>29.</p>
<p>30. In or around December 2016, Mr. Shay believed that Plaintiff may have used the City-issued credit card to purchase gift cards to give to staff during a City Holiday party. (Shay Decl., 10:21-11:4.)</p>	<p>30.</p>
<p>31. Mr. Shay discussed Plaintiff’s potential use of the City’s credit card with Director of Recreation and Community Services Dan Costley. (Bow Decl., 5:20-6:2; Costley Decl., 3:1-10; Shay Decl., 10:21-11:4.)</p>	<p>31.</p>

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<p>32. Mr. Costley advised Mr. Shay to tell Mr. Bow, about his concerns. (Bow Decl., 5:20-6:2; Costley Decl., 3:1-10; Shay Decl., 10:21-11:4.)</p>	<p>32.</p>
<p>33. Mr. Costley advised that he also had serious concerns about the allegations. (Bow Decl., 5:20-6:2; Costley Decl., 3:1-10; Shay Decl., 10:21-11:4.)</p>	<p>33.</p>
<p>34. Mr. Shay then had a brief discussion with Plaintiff in his office regarding the gift cards. (Shay Decl., 11:5-10; Costley Decl., 3:11-16.)</p>	<p>34.</p>
<p>35. Mr. Shay did not believe that Plaintiff understood the significance of purchasing gift cards with the City credit card and Mr. Shay believed that Plaintiff intended to proceed with the purchase of the gift cards. (Shay Decl., 11:5-17; Costley Decl., 3:11-21.)</p>	<p>35.</p>
<p>36. Mr. Shay then spoke with Senior Account Clerk Patricia Cruz, who works in the Management Services Department, and she mentioned to Mr. Shay that the following morning she was going to use the credit card assigned to Plaintiff to purchase supplies for</p>	<p>36.</p>

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<p>the Department’s Holiday party. (Shay Decl., 11:18-26; Costley Decl., 3:22-4:1.)</p>	
<p>37. Ms. Cruz stated that she was going to purchase decorations, wallpaper for a backdrop for picture-taking, and gift cards. (Shay Decl., 11:18-26; Costley Decl., 3:22-4:1.)</p>	<p>37.</p>
<p>38. Believing that Plaintiff had asked Ms. Cruz to make the purchases for him using the City credit card, Mr. Shay asked Ms. Cruz to refrain from purchasing gift cards for the Holiday party, and she complied. (Shay Decl., 11:18-26; Costley Decl., 3:22-4:1.)</p>	<p>38.</p>
<p>39. Following Mr. Shay’s conversations with Plaintiff and Ms. Cruz, Mr. Shay again spoke to Mr. Costley about his belief that Plaintiff intended to misuse the City-issued credit card. (Shay Decl., 11:18-12:4; Costley Decl., 4:2-15.)</p>	<p>39.</p>
<p>40. Mr. Costley then reported the issue to Mr. Bow because it may involve a violation of City policy and because Plaintiff reported</p>	<p>40.</p>

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<p>directly to Mr. Bow. (Shay Decl., 11:18-12:4; Costley Decl., 4:2-15; Bow Decl., 5:20-6:2.)</p>	
<p>41. Based on the information provided, Mr. Bow was extremely concerned that Plaintiff, a Director at the City, and in charge of the Department that oversaw the use of City finances, was improperly using a City credit card to purchase gifts for his staff using public funds. (Bow Decl., 5:20-6:2.)</p>	<p>41.</p>
<p>42. Mr. Bow then contacted Mr. Thai and asked him if he intended to use the City credit card to purchase gift cards for his staff. (Bow Decl., 6:3-13.)</p>	<p>42.</p>
<p>43. Plaintiff advised Mr. Bow that he decided to not use the City credit card to purchase the gift cards and that he would instead use his own money for that purchase. (Bow Decl., 6:3-13.)</p>	<p>43.</p>
<p>44. Although Plaintiff did not ultimately use the City credit card for this purchase, Mr. Bow was shocked by Plaintiff’s lack of judgment in even considering such a purchase as it was in direct violation of City policy.</p>	<p>44.</p>

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<p>(Bow Decl., 6:3-13.)</p>	
<p>45. Further, as the MSD and the person in charge of the City’s finances, Mr. Bow believed that Plaintiff should have been more familiar with City policy. (Bow Decl., 6:3-13.)</p>	<p>45.</p>
<p>46. As noted above, City Administrative Policy #20-13 provides that City credit cards cannot be used for personal expenses under any circumstances. (Bow Decl., 4:15-5:4, Exh. “5” (City’s Administrative Policy #20-13); Costley Decl., 2:18-3:10; Shay Decl., 10:3-11:4; Yaung Decl., 5:2-20.)</p>	<p>46.</p>
<p>47. City Administrative Policy #20-09A relates to City employee travel and meeting expense reimbursement, and provides for reimbursement only when attendance at such events provides a substantial benefit to the City and is for authorized and official City business. Similar to Policy #20-13, the policy also states that City-issued credit cards shall not be used for personal expenses, even if an employee subsequently reimburses the City. (Bow Decl.,</p>	<p>47.</p>



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<p>3:13-5:4, Exh. “4” (City's Administrative Policy #20-09A); Shay Decl., 10:3-11:4, Exh. “5” (City’s Administrative Policy #20-13); Costley Decl., 2:18-3:10; Yaung Decl., 5:2-20.)</p>	
<p>48. As of April 2017, all department heads at the City were issued City credit cards to be used for approved City expenditures within their respective departments pursuant to the City’s Credit Card Usage Policy #20-13, and Plaintiff, as the MSD, was issued such a City credit card. (Bow Decl., 3:13-5:4, Exh. “4” (City's Administrative Policy #20-09A); Shay Decl., 10:3-11:4, Exh. “5” (City’s Administrative Policy #20-13); Costley Decl., 2:18-3:10; Yaung Decl., 5:2-20.)</p>	<p>48.</p>

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<p align="center"><b><u>MOVING PARTY’S UNDISPUTED  MATERIAL FACTS AND SUPPORTING  EVIDENCE</u></b></p>	<p align="center"><b><u>OPPOSING PARTY’S RESPONSE AND  SUPPORTING EVIDENCE</u></b></p>
<p>49. Following a meeting between Ms. Yaung and Mr. Shay on or around April 17, 2017 in which Mr. Shay alleged a number of acts of misconduct committed by Plaintiff, as outlined in a memorandum, Ms. Yaung presented Mr. Shay’s memorandum to City Treasurer Joseph Leon. (Yaung Decl., 4:21-6:8; Shay Decl., 14:19-15:2, Exh. “22” (April 17, 2017 Memorandum by Tim Shay); Declaration of Joseph (“Leon Decl.”), 2:14-3:5, attached as Exh. “E”.)</p>	<p>49.</p>
<p>50. Mr. Leon reviewed Mr. Shay’s memorandum which alleged, among other things, that Plaintiff misused a City credit card to purchase gift cards for staff members. (Yaung Decl., 5:28-6:8, Exh. “22” (April 17, 2017 Memorandum by Tim Shay); Leon Decl., 2:14-3:5.)</p>	<p>50.</p>
<p>51. Mr. Leon suggested that Ms. Yaung (who had access to the City’s credit card statements and transaction histories as the Controller) investigate the claims with respect to questionable credit card charges made by Mr. Thai. (Yaung Decl., 5:28-6:8, Exh. “22”</p>	<p>51.</p>

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<p>(April 17, 2017 Memorandum by Tim Shay),  Exh. “26” (Memoranda from Annie Yaung to  Joseph Leon); Leon Decl., 2:14-3:5.)</p>	
<p>52. On or around April 18 and/or April 19,  2017, Ms. Yaung reviewed and compiled credit  card transaction information pertaining to  Plaintiff’s City credit card. (Yaung Decl., 6:9-  7:3, Exh. “26” (Memoranda from Annie Yaung  to Joseph Leon).)</p>	<p>52.</p>
<p>53. In reviewing the City’s Bank of the  West credit card statements, Ms. Yaung  discovered that between May 2016 and  February 2017, Plaintiff made a number of  purchases that Ms. Yaung considered to be  questionable. (Yaung Decl., 6:9-7:3, Exh. “26”  (Memoranda from Annie Yaung to Joseph  Leon).)</p>	<p>53.</p>

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<p>54. These purchases included meals at local restaurants while dining with vendors, a meal with a job candidate after the candidate had turned down the City’s job offer, Amazon.com purchases of a tablecloth and various IT supplies that did not appear to have any use at the City, a charge for a personal expense on the City credit card that Plaintiff later reimbursed to the City, as well as a \$17.00 beverage purchase at a hotel while Plaintiff attended a conference outside of the City. (Yaung Decl., 6:9-7:3, Exh. “26” (Memoranda from Annie Yaung to Joseph Leon).)</p>	<p>54.</p>
<p>55. Ms. Yaung drafted memoranda outlining the foregoing purchases and attached the back-up or supporting documentation and later provided her memoranda to Mr. Leon as a packet of documents for his review. (Yaung Decl., 6:9-7:3, Exh. “26” (Memoranda from Annie Yaung to Joseph Leon); Leon Decl., 3:15-4:3.)</p>	<p>55.</p>