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15 Attorneys for Claimant
16 TRACY MILLER

17
18 **THE STATE OF CALIFORNIA**
19 **COUNTY OF ORANGE**
20 **GOVERNMENT CLAIM**

21 IN THE MATTER OF THE CLAIM OF
22 TRACY MILLER,
23
24 Claimant,
25
26 vs.
27 COUNTY OF ORANGE, and DOES 1 to 100,
28 inclusive,
29
30 Respondents.

**GOVERNMENT CLAIM FOR DAMAGES
PURSUANT TO CALIFORNIA
GOVERNMENT CODE §§ 905 AND 910 et
seq.**

31 Please be advised that Claimant TRACY MILLER (“Miller”) hereby submits a
32 Governmental Claim pursuant to *Government Code* sections 905 and 910, et seq. and other
33 authorities.

1 **1. NAME AND ADDRESS OF MILLER:** TRACY MILLER, c/o Bijan Darvish,
2 Esq., Law Office of Bijan Darvish, 17011 Beach Boulevard, Suite 900, Huntington Beach,
3 California, 92647, Telephone: 866-915-9406; Fax: 866-915-9436.

4 **2. ADDRESS TO SEND ALL CLAIMS AND OTHER NOTICES:** TRACY
5 MILLER, c/o Bijan Darvish, Esq., Law Office of Bijan Darvish, 17011 Beach Boulevard, Suite 900,
6 Huntington Beach, California, 92647, Telephone: 866-915-9406; Fax: 866-915-9436.

7 **3. TIMELINESS OF CLAIM:** Miller has timely filed a Government Claim within six
8 months of at least one of the acts of retaliation Miller has suffered as a result of reporting and/or
9 refusing to engage in illegal practices of the Respondent. Miller asserts the continuing acts doctrine
10 with acts that occurred outside the six-month statute.
11

12 **4. THE DATE, AND OTHER CIRCUMSTANCES OF THE OCCURRENCE OR**
13 **TRANSACTIONS WHICH GIVE RISE TO THE CLAIMS ASSERTED:**
14

15 **Date:** In or around August of 2021 and continuing.

16 **Place:** The Orange County District Attorney's Office, 300 North Flower Street, Santa Ana,
17 California, 92703, and other locations.

18 **Facts:** Tracy Miller served as a Deputy District Attorney for Orange County for almost 25
19 years. Since 2019, Miller served as a Senior Assistant District Attorney. Miller was the only female
20 in that position from June 2019 to January 2022. Spitzer, the elected District Attorney, forced her
21 from that position by purposeful and intentional retaliation and by creating a hostile work
22 environment. This environment was created by gender-based harassment, which was hostile,
23 intimidating, offensive, oppressive, or abusive, and continual and calculated to undermine Miller's
24 effectiveness and authority. This environment was created in retaliation for Miller's refusal to adopt
25 race-based practices, her refusal to accept race-based attorney assignments and her refusal to remain
26 silent when race was offered as justification for Spitzer's decision-making process. This
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1 environment was created in retaliation for, and in order to disable Miller from, protecting her
2 females subordinates who had properly and painfully reported sexual misconduct by a male superior,
3 Gary Logalbo, who was Spitzer's Best Man at his wedding. Miller was punished for refusing to
4 allow Spitzer to lionize the predator, gas-light, and further savage the reputation of the victims. This
5 environment was created in retaliation for, and in order to disable Miller from, disclosing or at least
6 delaying her reporting of Spitzer's conduct in Death Penalty Cases.

7
8 In or around December of 2020, Miller and other Senior Assistant District Attorneys met
9 with the OCDA Human Resources Director Matthew Pettit. Miller reported what she reasonably
10 believed to be violations of and/or noncompliance with federal and state statutes, regulations, and
11 rules, including but not limited to unlawful harassment, unlawful hostile work environment,
12 unlawful sexual harassment, failure to prevent sexual harassment, and conduct prohibited under
13 *Government Code* section 12940, et seq., and/or other applicable federal and state statutes,
14 regulations, or rules. Miller's reporting included information that the OCDA was ignoring the sexual
15 harassment that was committed by former Senior Assistant District Attorney Gary LoGalbo¹ and that
16 the workplace was becoming hostile and unsafe.

17
18 For example, Miller reported that Chief Assistant District Attorney Shawn Nelson, in the
19 presence of OCDA Todd Spitzer, would repeatedly say that Gary LoGalbo did not have real victims
20 of sexual harassment. Not only was this information false, but the statement by Nelson and
21 acceptance by Spitzer created a hostile working environment intended to silence reporters of
22 harassment. The statements also made clear that reporting of harassment in the OCDA's office
23 would not be tolerated.

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28 ¹ LoGalbo was accused of subjecting numerous female employees to sexual harassment in the workplace. An independent investigation by Attorney Elizabeth Frater confirmed that LoGalbo did sexually harass numerous female employees.

1 In December of 2020, Miller reported to Nelson that Gary LoGalbo had sexually harassed
2 another OCDA female employee. Nelson defended LoGalbo and referred to the female victim as a
3 "chicken" for not coming forward earlier.

4 In or around January of 2021, Miller reported to the HR Director Pettit that another female
5 employee had been the victim of sexual harassment by LoGalbo. After Miller's report to Pettit, Todd
6 Spitzer falsely accused the new sexual harassment victim of being dishonest. Spitzer, in retaliation
7 for this victim reporting sexual harassment, directed Miller's subordinate to have to this new sexual
8 harassment victim "written-up" for being dishonest. On or about February 1, 2021, Miller reported
9 Spitzer's retaliatory directive to write-up the victim to HR Director Pettit.
10

11 On or about February 5, 2021, Miller participated in an interview with attorney Elizabeth
12 Frater, who was investigating allegations of sexual harassment by LoGalbo. During the interview,
13 Miller reported what she reasonably believed to be unlawful sexual harassment by LoGalbo. Miller
14 reported that LoGalbo blocked the doorway in front of a female employee who was taking off her
15 jacket. LoGalbo said, as he was blocking the doorway so the female employee could not get out,
16 "How much for the show?" On a different day, LoGalbo made a comment to the same female
17 employee, "If you have babies, it better be because I'm making them with you." On another
18 occasion, LoGalbo stated to the female employee that he was on a boat, and he could not stop
19 thinking about the female employee. Additionally, Miller reported that almost daily LoGalbo would
20 tell the female that he and Spitzer were best friends, and LoGalbo was the best man at Spitzer's
21 wedding.
22

23
24 On or about February 8, 2021, Miller reported to the HR Director Pettit that there was
25 another victim of sexual harassment by Gary LoGalbo. Later that same day, in an Executive
26 Meeting, in retaliation for her protected activity, Nelson presented a plan to significantly diminish
27 Miller's material responsibilities and effectiveness. Such retaliatory conduct included taking away
28 many of the specialty units Miller supervised. Nelson proposed to assign Miller to the Branch

1 Courts, a position that under the prior administration, was assigned to the newest Senior Assistant
2 District Attorney.

3 On or about March 11, 2021, Spitzer, in retaliation for Miller's protected activity, sent a
4 group text to Miller and her peers to humiliate and damage Miller's reputation. Spitzer openly and
5 unfairly criticized Miller by alleging that Miller was not doing her job and getting Spitzer a press
6 conference. Spitzer's treatment was not only humiliating to Miller, but also indicated that Spitzer did
7 not believe Miller was an effective supervisor.

8 On or about April 29, 2021, Spitzer, to attack and destroy the career of Miller and other
9 employees, and an attempt to dissuade others from reporting unlawful conduct, stated that he was
10 going to make the investigation report into the conduct of Gary LoGalbo public. Spitzer was aware
11 that every employee of the OCDA and many in the community would know that Miller was
12 "Witness 21" in the report. "Witness 21" was described as a female Senior Assistant District
13 Attorney. Miller was the only female Senior Assistant District Attorney at the OCDA.
14

15 Throughout May of 2021, and continuing, after Spitzer released the LoGalbo report, people
16 at the OCDA would constantly refer to Miller as "Witness 21." Many in Spitzer's inner circle, such
17 as Kimberley Edds, Shawn Nelson, and Paul Walters, stopped speaking to Miller.
18

19 For example, Walters stopped speaking to Miller about essential matters related to her duties,
20 such as rotations and new supervisors being placed into her units. Edds would stop contacting Miller
21 for media issues, something she would regularly do in the past. Instead, Edds would contact Miller's
22 subordinates and exclude Miller from the conversations and decisions. Such contacts reasonably
23 undermined Miller's duties, effectiveness, and abilities to be leader. After the release of the report,
24 Nelson stopped talking to Miller about operational issues, something he would do on a regular basis
25 before the report was released. Instead, Miller would hear of operational changes from other sources,
26 which included her subordinates. All these acts of retaliation undermined Miller's duties,
27 effectiveness, and abilities to be leader.
28

1 During an Executive Meeting in or around May of 2021, where Miller had numerous
2 subordinates present, Spitzer was angry and yelling at Miller and one of her subordinates.. When
3 Miller spoke to clarify an issue, Spitzer yelled, "Why are you speaking. Be quiet!" Every time Miller
4 attempted to calm Spitzer down or to clarify an issue, Spitzer would intentionally diminish Miller's
5 effectiveness as a supervisor by saying, "You just shut up." Spitzer then admitted that his treatment
6 of Miller was retaliatory by stating, "You take your little notes about me that end up in reports."
7 Spitzer's retaliatory treatment of Miller, in the presence of her subordinates, was offensive,
8 humiliating, and undermined Miller's effectiveness as a supervisor in front of her subordinates and
9 peers.
10

11 After the meeting the subordinate Assistant District Attorney told Miller that Spitzer should
12 not have belittled Miller in front of her. Later that day, Spitzer called the subordinate Assistant
13 District Attorney and apologized for yelling at her. Spitzer also admitted to the subordinate Assistant
14 District Attorney that he was mad because of what Miller stated in the LoGalbo report. After this
15 meeting and continuing, Miller's effectiveness as a leader to this subordinate Assistant District
16 Attorney was greatly diminished.
17

18 In retaliation for Miller's protected activity, starting around the summer of 2021 and
19 continuing, Spitzer began to undermine Miller's supervisory role by speaking directly to Miller's
20 subordinates² on significant matters. Prior to Miller engaging in protected activity, Spitzer had stated
21 that he was a big believer in the chain of command. Spitzer would always talk to Miller about
22 matters that involved her subordinates. However, after Miller engaged in protected activity, Spitzer
23 continued to undermine Miller and diminish her effectiveness and supervisory responsibilities by
24 talking directly to her subordinates and excluding Miller on the matters.
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1 Further, nearly all of Miller's subordinates were aware of how Miller was being ignored,
2 undermined, and openly and unfairly criticized by Spitzer, Nelson and others.

3 In or around the summer of 2021, Spitzer spoke with Miller's subordinate, who was a
4 member of the attorney's union. Spitzer told this subordinate that he was angry at Miller and
5 another female witness because of protected statements they made in the LoGalbo investigation.
6 Spitzer knew or should have known that he had great influence over Miller's subordinates. Spitzer
7 was aware that every time he openly criticized Miller to her subordinates, it diminished Miller's
8 effectiveness as a supervisor. Thus, when Spitzer criticized Miller to her subordinate Union member
9 Spitzer knew that this subordinate would have no choice but to believe that Miller was less effective
10 as a supervisor. This was evident as this subordinate began taking union concerns and issues to other
11 Senior Assistant District Attorneys. Prior to Spitzer's comments, the union member would routinely
12 discuss union issues with Miller.
13

14 From the summer of 2021 and continuing, Miller's subordinates would repeatedly tell her
15 that Spitzer hated Miller and she had no power at the OCDA anymore. For example, one Senior
16 Deputy District Attorney told Miller that Spitzer undermines Miller, glares at Miller, and obviously
17 hates Miller. Some subordinates even told Miller that Spitzer would yell at the subordinate because
18 Spitzer did not like Miller. During 2021 and continuing, in retaliation for Miller's protected activity,
19 Spitzer and Nelson would repeatedly belittle and humiliate Miller in Executive Meetings. Some of
20 the retaliatory comments made towards Miller include, but are not limited to, "Be quiet," "Why are
21 you talking," "I am not asking for your feedback," "I don't need an opinion from you. Shut up and
22 listen." Often, these offensive and retaliatory comments were made in the presence of Miller's
23 subordinates and peers.
24

25 From the summer of 2021 and continuing, Spitzer, in retaliation for Miller's protected
26 activity, repeatedly undermined Miller's effectiveness as a supervisor by excluding Miller from
27 conversations related to her supervision. As a result, Miller's subordinate, a Grade V Deputy District
28

1 Attorney, stopped contacting Miller about issues and concerns and instead spoke directly to Spitzer
2 or others.

3 Another example of undermining Miller's effectiveness as a supervisor, in September of
4 2021, Spitzer spoke to two of Miller's subordinates, Grade IV Deputy District Attorneys, about
5 matters that should have included Miller. After speaking to the subordinates, Spitzer forbid Miller's
6 subordinates from telling Miller about the conversations. This conduct was meant to undermine
7 Miller's effectiveness as a supervisor.

8
9 In or around September of 2021 and continuing, Nelson threatened to take away all
10 promotional responsibility from Miller and other Senior Assistant District Attorneys that provided
11 statements in the sexual harassment investigation against LoGalbo. Promotional responsibilities have
12 traditionally been the responsibility of the Senior Assistant District Attorneys. Threatening to
13 removing these responsibilities was further retaliatory treatment in order to undermine the
14 effectiveness of Miller's supervisory role. Now all of Miller's subordinates were aware that Miller
15 was no longer involved in the decision-making process for promotions.

16
17 **FARIAS/GAXIOLA GONZALES**

18 On March 31, 2021, Aminadab Gaxiola Gonzales shot and killed 4 people, including 9-year-
19 old Matthew Farias. DDA Mena Gurguis is prosecuting that Capital case. On 7/7/21 Rafael Farias,
20 Matthew's father was arrested for felony attempted grand theft and offering a false document. The
21 victim in the grand theft is Blanco Tamayo, the mother of Matthew Farias. The prosecutor handling
22 the case was supervised by an Assistant District Attorney who was supervised by Miller.

23
24 On November 15, 2021, Spitzer addressed the OCDA Executive Committee regarding the
25 Gonzales case. He reported a phone conversation he had with Rafael Farias, a victim in the Gonzales
26 case. Spitzer stated the conversation included a discussion of Farias' own pending criminal case.
27 The conversation revealed potential violations of Rule 2-100(A) of the Rules of Professional
28 Conduct, Massiah v. United States and the undermining of the prosecution of Gonzales.

1 Spitzer was advised by the Committee that the conversation with a represented defendant
2 was improper, and the fact of that conversation had to be documented, i.e., Spitzer would have to be
3 interviewed by an OCDA Investigator. Spitzer was told that interview would then be discovered to
4 attorneys for each defendant, Farias and Gonzales.

5 On November 30, 2021, Spitzer was interviewed by the OCDA homicide investigator
6 assigned to the case. Miller reviewed that interview and determined that Spitzer's account of the
7 November 15, 2021 interview was materially false and misleading. Miller was aware that Spitzer
8 may have infected another capital case (People v. Buggs) with non-race neutral comments. Miller
9 was aware that Spitzer was seeking to sanitize his comments and prevent, or at least delay the
10 mandatory discovery of these statements to the defense in the Buggs case. Miller was further aware,
11 that Assembly Bill # 2542 the "Racial Justice Act" made "all evidence relevant to a potential
12 violation" discoverable.
13

14 Miller reasonable believed that Spitzer's prior non race neutral statements made in or around
15 June of 2020, e.g., suggesting a prosecutor be assigned a case, *because* she was African-American
16 and comments at a November 2, 2020, Executive meeting regarding the selection of an OCDA
17 investigator to accompany him, where Spitzer stated, "I need a brown or a black face there at the
18 NAACP meeting", would also be discoverable.
19

20 In this context, Miller was concerned that Spitzer's November 30, 2021, statement would
21 discovered to defense attorneys, who would thereby be misled. Not only would they be misled, but
22 Spitzer's November 30, 2021 could be viewed as an obstruction of justice. Thus, Miller directed the
23 Assistant District Attorney who supervised the Orange County Auto Theft Taskforce (OCATT) unit
24 to have the OCDA Investigator assigned to OCATT to interview Miller.
25

26 On December 22, 2021, Miller was interviewed by the OCATT investigator. During Miller's
27 interview, she disclosed that she reasonably believed the following:
28

- 1 • Spitzer had improper contact with Farias, a represented defendant.
- 2 • That contact prejudiced Farias' Constitutional Right to Counsel and the Marsy's Law
- 3 rights of the victim in that case, Blanco Tamayo
- 4 • That contact prejudiced the rights of the capital defendant Aminadab Gaxiola
- 5 Gonzales, by discussing favorable treatment with a witness (Rafael Farias) against
- 6 him and seeking to withhold the true facts of that contact.
- 7
- 8 • That contact prejudiced the victims' rights in Gonzales case.
- 9 • Spitzer's materially false and misleading 11/30/21 statement compounded his
- 10 previous misconduct, put in jeopardy the prosecution of both criminal cases and
- 11 jeopardized the careers of all the prosecutors who had any responsibilities in either
- 12 case.

13 Miller directed that her December 22, 2021, interview be given to the prosecutor assigned to
14 the special circumstance homicide case and the prosecutor assigned to the OCATT case and that her
15 interview be discovered to each defendant's attorney.

16
17 On January 3, 2022, during an Executive meeting, in retaliation, Spitzer undermined and
18 humiliated Miller in front of the entire Executive Committee, which included Miller's subordinate,
19 an Assistant District Attorney. Prior to the Executive Meeting, Spitzer had repeatedly ordered Miller
20 to inform this Assistant District Attorney that Spitzer was going to terminate or demote her if she did
21 not change her communication style. In the January 6th Executive Meeting, after this Assistant
22 District Attorney questioned Spitzer about his comments, Spitzer blamed Miller for telling her about
23 the threat of termination or demotion despite his repeated orders. This was meant to disable and
24 discredit Miller's mandated reporting of Spitzer's conduct. Thereafter Spitzer ordered the delay of
25 the release of Miller's December 22, 2021, interview. That order had the intended effect of
26 discrediting Miller's report and soiling her reputation.

1 As of January 13, 2022, Miller's December 22, 2021, interview had still not been released to
2 the defense. On January 13, 2022, Spitzer wrote a memo titled, "Memo to the Farias + Gaxiola
3 Files". The memo is Spitzer's re-imaging of his November 15, 2021, statement to the Executive
4 Committee and his November 30, 2021, statement to the OCDA Investigator. Spitzer first blamed
5 the OCATT Investigator who interviewed Miller on December 22, 2021. Spitzer claimed to be
6 "alarmed" that Investigator "lacked empathy and understanding" in his approach and wrote with
7 "aggressive and ill-intent language" and that Investigator merely summarized the tape-recorded
8 interview with Miller. Spitzer claimed that the OCATT Investigator summary was bland and, if
9 anything, charitable. "Aggressive and ill-intent" better describe Spitzer's attempt to re-write this
10 event. Spitzer then blamed the homicide Investigator for not asking him the right question. Spitzer
11 states, "I did not need Mr. Baytieh to inform me that we need to memorialize this conversation and I
12 readily agreed a DA Investigator should interview me." Of course, if Spitzer "did not need informing
13 by Mr. Baytieh," he would already have given his statement to any OCDA Investigator. In fact,
14 Spitzer would not have had the prohibited conversation with the represented defendant in the first
15 place. Spitzer was only "alarmed" that his conduct was revealed. In the end, Spitzer blamed three
16 very senior prosecutors and two OCDA Investigators for doing what they were required by law to
17 do.

20 Throughout the year, Spitzer had threatened to take away the OC GRIP (Gang Reduction and
21 Intervention Partnership) program. OC GRIP is a valuable program that helps prevent minors from
22 joining criminal street gangs. Miller was one of the people that created and lead GRIP and has
23 supervised the program on behalf of the OCDA Office for the past 14 years As Spitzer continuous
24 threats to take away GRIP were in retaliation for Miller's protected activity. By January of 2022,
25 Miller reasonably believed that Spitzer was going to dismantle the GRIP program because he knew
26 how much it meant to Miller. Miller knew that the only way Spitzer would not dismantle the GRIP
27 program would be if she retired early.

1 On or about January 14, 2022, after a continuous pattern of retaliatory treatment by Spitzer,
2 Nelson, and other employees of Respondent, Miller's working conditions had become intolerable.
3 Miller also reasonably believed that her working conditions would become even more intolerable
4 after she reported Spitzer's false statements. Based on the totality of circumstances, Miller believed
5 that she had no reasonable alternative except to retire early. Thus, Miller submitted an email to
6 Spitzer providing him notice that she would be retiring on January 27, 2022.

7
8 On or about January 20, 2022, while Miller was off work due to an illness, Spitzer subjected
9 her to further retaliation by sending Miller an email ordering her to call him before she returns to
10 work, to have someone clean out her desk, and stated that he needs Miller's office ASAP. That
11 same afternoon, Miller received an email from her paralegal that Spitzer came by Miller's office and
12 asked her about the status of packing up the office. Fortunately, HR Director Pettit was present and
13 told Spitzer it was unlawful to pack up Miller's belongings. Nonetheless, Spitzer, who believes he is
14 untouchable at the OCDA Office, told them, "I made myself clear in the email. It was a directive to
15 have Tracy clear out her office.
16

17 **5. GENERAL DESCRIPTION OF INJURY:**

18 Each one of Respondents' actions described in above amount to an adverse employment
19 action against Miller and/or the pattern of conduct, taken as a whole, materially and adversely
20 affected the terms, conditions, or privileges of Miller's employment. Additionally, the above-
21 described conduct was reasonably likely and did impair Miller's job performance and prospects for
22 advancement.
23

24 Miller further alleges that as an actual and proximate result of said conduct, Miller suffered
25 and will continue to suffer, emotional distress, loss of past and future earnings, including loss of
26 pension, and loss of reputation. Miller also claims attorney's fees under applicable provisions. All
27
28

1 the actions as set forth above constitute a violation of the California Labor Code section 1102.5 and
2 1102.6.

3 **6. KNOWN WITNESSES:**

4 Todd Spitzer, Shawn Nelson, Paul Walters, Patrick Dixon, Keith Bogardus, Brahim Baytieh,
5 Susan Price, Glenn Robinson, Kimberly Edds, Matthew Pettit, Barbara Kim, Gary LoGalbo,
6 Elizabeth Frater, Chris Duff, Mena Gurguis, Kenneth Schiffner, Tammy Spurgeon, Amanda
7 Maldonado, Troy Pino, Jason Baez, Kimberly Doyle, Nicole Nicholson, Lesly Young, Eric
8 Scarbough, Steve McGreevy, Ron Seeman, Barbara Kim, Shaddi Kamiabipour, Narah Jayasekera,
9 Scott Zidbeck, Tamika Williams, and additional witnesses from the District Attorney's Office, the
10 Public Defender's Office and/or the County of Orange.

11 **7. AMOUNTS CLAIMED:**

12 Pursuant to *Government Code* section 910(f), the amount of compensatory and other
13 damages claimed exceeds \$10,000.00 and will lie within the unlimited jurisdiction of the Superior
14 Court. Claimant also claims and seeks to recover herein statutory and other penalties, damages,
15 attorney's fees, expert fees, costs as provided by law, including, *inter alia*, *C.C.P.* section 1021.5,
16 *Labor Code* sections 923, 1101, 1102, 1102.5, et seq., and 2698, et seq. *Government Code* sections
17 3300, et seq., 3500, et seq., and 53298, et seq., and/or other applicable authorities.
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Dated: February 22, 2022

LAW OFFICE OF JOHN D. BARNETT LAW

By: John D Barnett
JOHN D. BARNETT
Attorneys for Claimant
TRACY MILLER

Dated: February 22, 2022

LAW OFFICE OF BIJAN DARVISH

By: [Signature]
BIJAN DARVISH
Attorneys for Claimant
TRACY MILLER