

LAW OFFICES OF STEPHEN M. MURPHY

**BY FAX (415-703-4130) AND FIRST CLASS MAIL**

October 6, 2014

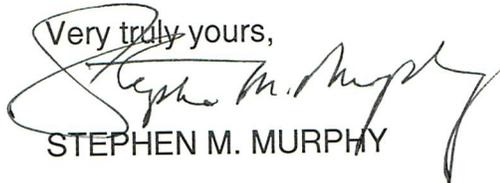
Dept. Of Industrial Relations  
Division of Labor Standards Enforcement  
Retaliation Complaint Investigations  
P.O. Box 420603  
San Francisco, CA 94142  
Attn: Jerome A. Moore  
Deputy Labor Commissioner

Re: State Case No.: 36202-SFRCI  
Complainant Joanne Hoepfer v. Respondent City and County of  
San Francisco, Office of the City Attorney

Dear Mr. Moore:

Please find attached Complainant Joanne Hoepfer's Reply to the Response filed by Respondent City and County of San Francisco, Office of the City Attorney. Exhibit A is the formal Reply and Exhibit B is a chronology of events.

Very truly yours,



STEPHEN M. MURPHY

SMM:mc  
Enclosures

# **EXHIBIT A**

**RE: JOANNE HOEPER v. CITY AND COUNTY OF SAN FRANCISCO  
LABOR COMMISSIONER Case No. 36202-SFRCI**

**HOEPER'S REPLY TO RESPONSE FILED BY THE CITY AND COUNTY OF SAN  
FRANCISCO**

**I. INTRODUCTION**

The City Attorney's Response misstates the evidence and ignores other evidence in Ms. Hoeper's favor.

**II. THE CITY ATTORNEY SELECTIVELY AND EXTENSIVELY QUOTES MS. HOEPER'S  
JULY 18 DRAFT REPORT OF INVESTIGATION; THE LABOR COMMISSIONER  
SHOULD REQUIRE THE CITY ATTORNEY TO PROVIDE THE COMPLETE REPORT**

The City Attorney's Response directly quotes the July 18 Draft Report at least seven times (Response at 5 (twice), 6, 7 (lengthy paragraph), 8 (three times)). He picks out isolated statements to misrepresent the Report and its conclusions, and then argues that the Report is evidence of a "scorched-earth" and "bungled" investigation that independently warranted Ms. Hoeper's termination. (Report at 8) Tellingly, the City Attorney fails to provide the Commissioner with the full Report, presumably because doing so would reveal that he is attempting to mislead the Commissioner as to its content.

Fairness requires that, since the City Attorney relies on the Report, he should provide the Commissioner with the complete document.

The City Attorney may attempt to argue that the Report is somehow confidential, or privileged. However, by extensively quoting from and relying on the Report, he has waived any confidentiality or privilege. Under Evidence Code section 912(a), the attorney client privilege "is waived with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone."

The full Report will demonstrate that the City Attorney is deliberately misleading the Commissioner in order to cover up his true motivations for terminating Ms. Hoeper. We provide three examples:

1) The City Attorney claims, as the centerpiece of his argument, that "[t]here is no evidence that anyone in the CAO received kickbacks for approving sewer claims." (Response at 7; see also Report at 8). However, as he well knows, Hoeper's Report contains, among other evidence of wrongdoing, four pages of detailed discussion, with names, dates and references to supporting documents, detailing Haase's payment of specific sewer claims in return for financial benefits to him or his family. According to the Report, in February 2012, Haase bought tickets to twelve Giants baseball games from a San Francisco contractor. He paid less than what the tickets were worth. Two months later, on April 19, after having lunch with the contractor, Haase initiated a sewer claim on behalf of the contractor. The documents he prepared to initiate the claim contained false statements and essentially awarded a no-bid contract to work on City property, in violation of the City's contracting laws. On May 14, Haase authorized payment of

\$12,000 to the contractor. At the same time, Haase received four additional discounted baseball tickets from the contractor for a May 5 game.

The report also describes a second set of likely kickbacks involving claims paid to another contractor, who also attended the April 19 lunch with Haase. Haase's son worked for that contractor until he was hired by the San Francisco Department of Public Works (DPW). Haase's email contains a letter of recommendation from the contractor to DPW dated March 27. A month before the contractor wrote the letter, Haase initiated a claim that had the effect of awarding the contractor an illegal no-bid contract of \$6,826 to perform work on City property. The Report also states that Haase approved seven similar claims (no-bid contracts) before the contractor hired his son or while his son was working for the contractor. The Report urged further investigation into the payment of these claims, which the City Attorney did not permit.

Haase approval of an illegal \$12,000 claim, apparently in return for below-market-value baseball tickets, and the approval of illegal claims by a contractor who employed and wrote a letter of reference for his son likely violates, *inter alia*, San Francisco Campaign and Governmental Code Code sections 3.206 (Financial Conflicts of Interest) and 3.212 (Decisions Involving Family Members) [incorporating California Government Code section 1090 et seq.], California Penal Code sections 72 (Fraudulent Claims), 424 (Theft of Public Money) and 504 (Embezzlement by a Public Employee).

Two other examples confirm that the City Attorney's misrepresentation of Hoeper's Report was not an accident; rather it was intentional and calculating.

2) The City Attorney selectively quotes from the Report to imply that the Report cleared Haase of any wrongdoing -- "there was no evidence that he [Haase] 'has a lifestyle beyond what would be expected.'" (Response at 7-8) In fact, the Report makes it clear that the investigators had only been allowed to conduct a limited review of public documents and that a great deal of additional work needed to be done. More importantly, the sentence is pulled from a section of the Report headed, in part, "Additional Investigation Is Needed." The very next paragraph in the Report states that "significant concerns remain" and is followed by four paragraphs listing specific suspicious facts and proposing issues for further investigation. The actual text of the Report has a meaning that is completely contrary to what the City Attorney would have the Commissioner believe.

3) Finally, the Response states that the "Report concluded that Haase . . . is regarded as a 'conscientious, hardworking, and competent employee'" and then claims that this is why Ms. Hoeper was wrong to believe that Haase engaged in illegal conduct. (Response at 8) However, the full Report reveals that this quote is far from a "conclusion." Rather, it was selected from a several paragraph introductory summary of Haase's career with the City, and it is preceded, and followed, by many pages of specific findings that Haase had engaged in unlawful acts. It also should go without saying that the fact that an employee enjoys a good reputation does not mean it is impossible for him to have acted illegally. Indeed, Ms. Hoeper's Report makes the point that it was Haase's good reputation that allowed him to pay out millions of dollars of taxpayer money without any meaningful oversight.

The Commissioner should demand a full copy of the Report.

### **III. MS. HOEPER DISCOVERED AND REPORTED MYRIAD UNLAWFUL ACTS BY THE**

## CITY ATTORNEY'S CLAIMS BUREAU

The City Attorney baldly claims that "Ms. Hoepfer is not a whistleblower because the sewer investigation did not uncover evidence of fraud or wrongdoing." Report at 5. This would be laughable if it were not being used to try and justify ending a twenty-year career. Ms. Hoepfer's verbal statements to the City Attorney in face-to-face meetings in April and May 2012, her 27-page Report, and her meeting with Terry Stewart the afternoon before she was removed from her position, are replete with detailed examples of wrongdoing by the Claims Bureau. Ms. Hoepfer supported her findings with dates, amounts, witnesses, and documents. And of course, there is the inconvenient fact that Ms. Hoepfer's investigation and her report to the City Attorney in April and May 2012 that the Claim Bureau was paying factually and legally meritless claims led to an immediate halt to the practice. Indeed, Ms. Stewart admitted to the investigators after Ms. Hoepfer had been reassigned that "Jo was right" and that the City should not have been paying the claims.

### **A. WHETHER OR NOT TO USE PUBLIC MONEY TO IMPROVE PRIVATE PROPERTY IS AN ISSUE THAT, BY LAW, MUST BE DETERMINED BY THE CITY'S ELECTED OFFICIALS AND THE VOTERS, NOT UNILATERALLY AND ILLEGALLY BY CAO CLAIMS STAFF; WHEN CITY OFFICIALS LEARNED WHAT THE CLAIMS BUREAU WAS DOING, THEY IMMEDIATELY HALTED THE PRACTICE**

The City Attorney claims that payment of the sewer claims is not unlawful because it is a policy decision. (Response at 6) Yet the City Attorney also admits that Ms. Hoepfer's "sewer investigation prompted the City to rethink its practice," that the City policy makers immediately halted payment of the claims, and that the judges in small claims court found as a matter of law that the City was not liable and should not pay claims for damage to private sewer laterals. (Response at 7). His efforts to extract himself from these contradictions lead him to deliberately obfuscate the separate roles under the City Charter of the City's policy makers and the City's attorney.

Under the San Francisco Charter, only the Board of Supervisors may set policy, and only through written ordinances and resolutions. Charter section 2.100 et seq. The City Attorney has no policy-setting authority under the Charter; his authority is limited to representing the City in legal proceedings and providing advice to City officials. Charter section 6.102. The authority of the City Attorney's Claims Bureau is expressly limited by the Charter to "the power to investigate, evaluate and settle ... claims for money or damages." *Id.* The Charter does not grant the Claims Bureau any policy-making authority, and certainly no authority to unilaterally create a multi-million dollar program to pay private property owners for capital improvements to their sewer lines. Because the Claims Bureau has no legal authority to implement such a policy, the use of the claims process in this way is illegal.

The San Francisco Board of Supervisors certainly could have enacted an ordinance, after notice and public comment, to create a policy of using public money to improve private sewers. It did not do so. When City Department heads learned that the Claims Bureau had been acting unilaterally and illegally exceeding its authority, they immediately repudiated the practice.

The Response references other cities which it claims have made a policy decision to pay

sewer claims. However, the cities they cite do not in fact use the claims process. San Mateo, for example, pays 50% of sewer replacement costs under a grant program created by the City Council through a 2011 ordinance. (SM ordinance 2011-8) The fact that San Mateo acted through an ordinance only proves Ms. Hoeper's point -- such policies can only be enacted by elected boards operating under their legal authority, not unilaterally by claims bureau staff. Likewise, the Los Angeles Times article relied on by the City Attorney makes it clear that the Los Angeles City Council is engaged in a public debate about whether to enact a new ordinance, not that its claims bureau unilaterally pays sewer claims.

The Response concedes that the payment of sewer claims was not a legitimate City policy enacted pursuant to the Charter, but rather the unilateral illegal actions of Claims Bureau staff. On page 7, the Response reveals that, after the City policy maker halted the payments, the City Attorney's Office "successfully defended the new policy in small claims court against homeowners who contend that the City is liable for damage to upper sewer laterals." The fact that a judge determined that the City was not liable proves Ms. Hoeper was right -- the City should not have been paying sewer claims. The law and the facts presented to the judge are the same law and facts that Ms. Hoeper relied on when she reported to the City Attorney that his Claims Bureau was paying legally and factually meritless claims.

Finally, and perhaps most fatal to the City Attorney's argument, Terry Stewart admitted to City Attorney's Office employees in 2012, after Ms. Hoeper was reassigned, that "Jo was right" and the City should not have been paying the sewer claims. Ms. Stewart made this statement as the office was preparing its defense in the small claims matters. Of course, the court later agreed with Ms. Stewart.

The City Attorney's Response distorts Ms. Hoeper's investigation and her findings. He misrepresents what Ms. Hoeper reported, and when she reported it, and he simply ignores the many independent examples of illegal conduct that Ms. Hoeper reported. However, the contemporaneous emails and other investigative documents in the possession of the City Attorney, the July 8 Draft Report, and the testimony of the investigators and others involved in the investigation establish beyond dispute that Ms. Hoeper blew the whistle on a scheme so pervasive, so obviously illegal, and so harmful to San Francisco that the City Attorney cannot mount a serious defense.

**B. MS. HOEPER BEGAN REPORTING UNLAWFUL CONDUCT IN THE CLAIMS BUREAU IN MID-APRIL 2012 AND SHE CONTINUED TO REPORT ADDITIONAL FINDINGS THROUGH JULY 24, 2012, THE DAY BEFORE THE CITY ATTORNEY TRANSFERRED HER**

Ms. Hoeper first blew the whistle in mid-April 2012 when she met with the City Attorney and told him that she had determined that the Claims Bureau was paying sewer claims that it should not be paying. She did so in a meeting in Mr. Herrera's office that was also attended by Chief of Investigations George Cothran and Managing Attorney Marisa Moret. At that meeting, she explained that she had started looking into the claims after receiving a call from an FBI agent. She told the City Attorney how the sewer claims were being submitted and paid. She told the City Attorney that she had looked at the documentation for specific claims and found that there were suspicious anomalies and patterns, which she described to him. She also told the City Attorney that a particular plumbing company appeared to be submitting false claims and that the Claims Bureau had paid those claims despite obvious red flags in the file. The City

Attorney authorized Ms. Hoyer to continue her investigation but specifically instructed her not to speak to Mr. Haase, Mr. Rothschild or any City employees outside the City Attorney's Office.

Ms. Hoyer met again with the City Attorney on May 15, 2012. Mr. Cothran and Ms. Moret were also present. This was her second meeting with the City Attorney (cf. Response at 7). Ms. Hoyer and Mr. Cothran presented their findings thus far, including specific examples of claims that should not have been paid. These examples included a spread sheet listing the suspect claims paid to a particular plumbing company. Ms. Hoyer and Mr. Cothran asked the City Attorney to authorize Mr. Cothran to interview Mr. Haase and the City Attorney agreed. He told Ms. Hoyer that he would speak to Mr. Rothschild himself. He also placed strict limits on what the investigators could look into, including prohibiting them looking further into possible time card fraud in the Claims Unit.

After the May 15 meeting, Ms. Hoyer met again with the City Attorney on May 17. As a result of these meetings, the City stopped paying sewer claims.

Also on May 17, the City Attorney informed Mr. Rothschild of the investigation. Mr. Rothschild went directly from Mr. Herrera's office to Ms. Hoyer's office, where he threatened Ms. Hoyer that she would "be sorry" she initiated the investigation. (Claim at 3)

Despite Mr. Rothschild's threats, Ms. Hoyer and the investigators continued their work. However, in mid-June, as Ms. Hoyer's Claim recounts, she left on a two-week family vacation. When she returned on July 2, investigator David Jensen told Ms. Hoyer that Ms. Stewart had called him and told him the City Attorney wanted him to "wrap up the investigation" and wanted him to prepare a one-page list of "bullet points" summarizing his findings. Ms. Hoyer met with Ms. Stewart and explained to her that the wrongdoing she had uncovered was too serious and too pervasive to reduce to bullet points. She told Ms. Stewart that she would prepare a report for the City Attorney setting out her findings thus far. She submitted her Draft Report on July 18.

Ms. Hoyer undertook to prepare her Report because she believed that the City Attorney would do the right thing and take steps to fully investigate the scope of wrongdoing in the Claims Department and take corrective action. She believed that, faced with a comprehensive report, the City Attorney would come to understand that the matter should be referred to an independent prosecutor, outside the City Attorney's Office, to determine whether crimes had been committed.

Ms. Hoyer's belief was based on her many years of investigating public corruption. On several occasions, Ms. Hoyer's investigation findings had been referred to the District Attorney's Office or the FBI and resulted in criminal prosecutions and/or civil damages. In particular, in 2002, Ms. Hoyer had investigated an entirely separate fraud scheme in the City Attorney Claims Bureau. As public records reflect, two low-level clerks had created fake claims of less than \$5,000 each and had checks issued to themselves. Ms. Hoyer investigated the scheme in conjunction with the then Chief of Investigations Tim Armistead. They prepared a report summarizing their findings and gave it to Louise Renne, the City Attorney at the time. Ms. Renne referred the matter to the District Attorney's Office and the clerks served jail time and repaid the money they had stolen.

The 2002 scheme was much smaller and less sophisticated and involved low-level employees, not the heads of the Claims Bureau. Ms. Hoyer believed that, once Mr. Herrera

received her report, Mr. Herrera would do as his predecessor had done -- complete the investigation and refer the matter to an independent prosecutor. Of course, instead, the City Attorney fired Ms. Hoeper and did nothing to improve oversight of claims payments.

Ms. Hoeper's whistleblowing did not stop with her July 18 Report. As she also describes in her Claim, on the afternoon of July 24, she and Mr. Jensen showed a spread sheet derived from City records to Ms. Stewart which revealed that Mr. Haase regularly paid one particular plumbing company, and only that company, approximately \$3,000 over what he himself characterized as the going rate for sewer claims. Haase paid the \$3,000 premium for every claim submitted by this company until mid-2011, when a concerned citizen telephoned Mr. Haase and said that he believed the company was engaged in fraud and that he intended to contact the press and law enforcement. (The investigators interviewed the citizen and concluded that he was credible.) After the citizen spoke to Haase, the spreadsheet showed that Haase no longer paid the premium. The spreadsheet also revealed that the company stopped submitting any claims at all as soon as Haase received Hoeper's email in December 2011 inquiring into the information she had received from the FBI. Yet, prior to Ms. Hoeper's email, this particular company had submitted several claims each and every month for the entire period for which records were available and had derived almost 100% of its income from San Francisco sewer claims. Ms. Hoeper also reminded Ms. Stewart of the well-documented fraudulent practices the company had engaged in, which were described in detail in the Report, and which were known to Mr. Haase. She told Ms. Stewart that the payment patterns on the spread sheet, and the fact that Mr. Haase paid the claims despite knowing of the fraudulent practices, was consistent with a kickback scheme -- Mr. Haase likely had paid an inflated amount to the company in return for a financial benefit, most likely a share of the \$3,000 premium.

As the above discussion makes clear, contrary to what the City Attorney now claims, the July 18 report was not the first instance of whistleblowing. Rather, it was a record of what Ms. Hoeper had already reported in April and May, with the addition of specific examples, complete with names of witnesses, addresses and references to supporting documents.

Space does not permit recounting each of the specific instances of illegal conduct Ms. Hoeper told the City Attorney about in face-to-face meetings or included in her July 18 Draft Report. However, in addition to the examples described above, Ms. Hoeper also reported:

--Mr. Haase used the claims process to pay plumbing companies to repair lower sewer laterals located in the public streets. Under Chapter 6 of the San Francisco Administrative Code, lower sewer laterals are owned by the Public Utilities Commission and their repair is a public work that must comply with City contracting requirements. Use of the claims process in this manner essentially awards no-bid public works contracts to plumbers in violation of the Administrative Code. It is illegal. As a result of Ms. Hoeper's investigation, the City ordered Mr. Haase to stop this practice.

-- Mr. Haase made demonstrably false statements in documents he prepared to support payment of sewer claims. He falsely stated, for example, that property owners requested that plumbing companies repair lower sewer laterals, when in fact property owners told the investigators that they had no involvement in requesting the work and in some cases did not know that their names had been used to submit claims.

-- Mr. Haase solicited fraudulent releases from entities that he knew had no legal interest in the claims that purportedly were being released.

The City Attorney's Response ignores this very specific evidence of wrongful conduct.

### **C. THE CITY ATTORNEY MAKES FALSE STATEMENTS ABOUT MS. HOEPER'S INVESTIGATION**

The City Attorney claims that Ms. Hoeper exercised "poor judgment in dealing with the investigation" and had a "predilection to take a scorched-earth path." (Response at 1) He levels several criticisms at her investigation.

Each of his criticisms relies on falsehoods.

The City Attorney claims that, in the May 15 meeting, Ms. Hoeper "called for Mr. Herrera to fire Mr. Haase straight away." (Response at 7) This is false, as Mr. Cothran, who attended the meeting, can confirm. Ms. Hoeper never recommended that Mr. Haase be fired -- not in May or in her July 18 Report.).

The City Attorney claims that Ms. Hoeper's "greatest error was jumping to conclusions before even speaking with Mr. Haase or Mr. Rothschild." (Response at 8). This is also demonstrably false. Ms. Hoeper was instructed by the City Attorney in their first meeting in mid-April 2012 not to speak to either Mr. Haase or Mr. Rothschild. She is the one, along with Mr. Cothran, who urged the City Attorney in the second meeting -- on May 15 -- to allow Mr. Haase to be interviewed. Mr. Haase was in fact interviewed twice by the investigators working with Ms. Hoeper (as confirmed by the July 8 Report, which quotes some of Mr. Haase's interview statements). Moreover, as the City Attorney is well-aware, due process and City contract provisions prohibit an employee like Mr. Haase from being interviewed about possible wrongdoing without receiving formal notice of the areas of inquiry and of his right to have a union representative present.

The City Attorney also makes false statements about whether Mr. Rothschild was interviewed. Again, the City Attorney instructed Ms. Hoeper and her investigators not to speak to Mr. Rothschild. When the City Attorney finally told Mr. Rothschild of the investigation on May 17, Mr. Rothschild immediately confronted Ms. Hoeper and the investigators and told them "I won't stand for this" and "you'll be sorry." Claim at 3. The Claim describes the many meetings Ms. Hoeper had with Mr. Rothschild after May 17 (in which he blamed Ms. Hoeper for causing trouble and unfairly picking on the Claims Bureau and he threatened a hunger strike). (*Id.* at 3-4) Mr. Cothran and other investigators were present for a number of Ms. Hoeper's meetings with Mr. Rothschild.

The City Attorney also spends two pages in the Response debunking what he claims is Ms. Hoeper's misunderstanding of the claims process and her alleged belief that it was unlawful for Mr. Haase to quickly approve sewer claims. (Response at 8) As a threshold matter, Ms. Hoeper did not conclude that Mr. Haase's quick approval of claims -- within a day of receiving them -- was unlawful in and of itself. Rather, she reported that this quick approval, along with false statements in the claims files and other facts, was evidence that pointed to wrongdoing. Moreover, the Response's recitation of the claims process is false, and is contradicted by documents and interviews summarized in the Report. For example:

-- The Response states that a claim was initiated after Mr. Haase or Mr. Devincenzi "received a call about sewer problems from a property owner." (Response at 8) In fact, it was the plumbing company, which stood to gain from the claim, who typically contacted the Claims Bureau. The investigators spoke to many property owners who told them that they had not been experiencing sewer problems and yet had been solicited by the plumbing companies, who told them that the City would pay for a new sewer if they signed documents. The July 18 report contains several examples.

--The Response claims that Mr. Devincenzi met the plumbing company at the site and confirmed that City-owned tree roots had infiltrated the sewers. (Response at 9) The investigation confirmed that Mr. Devincenzi often visited the site, but it documented many instances in which there were no roots in the sewer, because there were no City-owned trees near the sewer, the property owner or others had confirmed there were no roots, the sewers were relatively new and complied with modern building codes and are therefore generally impervious to roots, or for other reasons. The July 8 Report contains several examples. This evidence of course raises questions about Mr. Devincenzi's actions, which the investigators were not allowed to look into.

The Response's recitation of the sewer claims process therefore has no relation to the reality documented in the investigation and set forth in the Report. The City Attorney apparently was emboldened to misrepresent the process because the Commissioner does not have access to the Report.

Finally, in a true demonstration of chutzpah, the City Attorney portrays Mr. Haase as working to stop the sewer scheme, rather than being a part of it (Response at 10) Again, the true facts, as Ms. Hoeper reported to the City Attorney and wrote in her Report, are to the contrary (and easily confirmed by investigation documents and interviews). These facts include: Mr. Haase adopted a misleading response to Ms. Hoeper's initial inquiry in order to put her off any further investigation; Mr. Haase deliberately hid the fact that concerned citizens and others had contacted him with evidence of fraud; and Mr. Haase took every possible step to facilitate payment to the plumbing companies, including paying them directly when property owners balked at participating in what they believed to be a fraud. And, of course, the City halted the payment of sewer claims as soon as they learned what was going on, which flatly contradicts the Response's claim that Mr. Haase and Mr. Rothschild had been informing City department heads all along of the sewer scheme.

It appears that the City Attorney is willing to make untrue statements about these easily provable facts in order to bolster his false narrative that Ms. Hoeper has no evidence and therefore no reasonable cause to believe that illegal conduct was occurring in the Claims Bureau. This false narrative is easily disproved by the specific evidence of wrongdoing that Ms. Hoeper reported, and of course, the fact that the City halted the illegal conduct as soon as it learned of it.

**IV. HOEPER WAS TERMINATED BECAUSE SHE BLEW THE WHISTLE; SHE WAS A WELL-REGARDED AND VALUED MEMBER OF THE CITY ATTORNEY'S EXECUTIVE TEAM FOR OVER TEN YEARS -- UNTIL SHE BEGAN INVESTIGATING AND REPORTING WRONGDOING BY SENIOR MEMBERS OF THE CITY ATTORNEY'S STAFF**

The City Attorney would have the Commissioner believe that he harbored serious, but secret, concerns about Ms. Hoeper's job performance for at least seven years, since 2005, but in a total coincidence, only acted on those concerns after Ms. Hoeper reported that the Claims Unit, supervised by his close friend and confidant, had paid millions of dollars in meritless claims. Such an argument is without merit. First, there is the inconvenient multi-year lag between supposedly deciding that Ms. Hoeper was incompetent and taking action, and the inconvenient fact that the City Attorney only acted after Ms. Hoeper reported misconduct in the Claims Bureau. Second, the City Attorney expressly told Ms. Hoeper during this period, in face-to-face meetings, that he was happy with her work and wanted her to continue as his Chief Trial Deputy, most recently in May 2011. Third, Ms. Hoeper successfully supervised thousands of litigation matters in the more than ten years she served as Hererra's City's Chief Trial Deputy, involving hundreds of millions of dollars in potential liability. She was praised by judges, colleagues in the San Francisco legal community, City elected officials and department heads, individual clients, and coworkers. The City Attorney attempts to muddy her reputation by pointing to three events, all in 2005. His description of those events is false. In any case, the fact that the City Attorney could come up with only three examples of allegedly substandard work, out of thousands of matters, and had to reach back over seven years, proves that he terminated her for reasons other than her job performance. Fourth, the City Attorney's Response levels false criticisms against Ms. Hoeper's managerial style, which are easily contradicted by contemporaneous records or by talking to any of the current or former members of the Trial Team as well as other deputy city attorneys. Finally, anyone with a passing knowledge of the San Francisco legal community knows that there are many highly-qualified attorneys who would have leaped at the chance of becoming the City's Chief Trial Deputy. The fact that the City Attorney claims to have secretly and unsuccessfully searched for a replacement for at least two years, and then, only after Ms. Hoeper reported misconduct in his office, offered the position to an under-qualified individual who had been under his supervision during that entire time, is yet more evidence that he actually acted for an illegal and retaliatory reason.

**A. THE CITY ATTORNEY TOOK NO STEPS TO TRANSFER MS. HOEPER UNTIL SEVERAL MONTHS AFTER SHE BEGAN REPORTING MISCONDUCT IN THE CLAIMS BUREAU**

Ms. Hoeper first met with the City Attorney in mid-April 2012 to inform him that she believed that the Claims Bureau had been paying sewer claims with no factual or legal basis. She met again with the City Attorney on May 15 and had a detailed conversation with him about the unlawful conduct she had discovered thus far. Ms. Hoeper also met with the City Attorney on May 17 and discussed her investigation findings. After mid-May, she and her investigators continued to keep the City Attorney apprised of developments in the investigation.

By the end of May, the City's policy makers had put a stop to the sewer claims scheme.

The City Attorney admits he did not decide to reassign Ms. Hoeper until "mid-June" (Response at 4), several months after Ms. Hoeper reported the illegal sewer scheme. However, when the City Attorney met with Ms. Hoeper on July 25 to tell her that he was reassigning her to the District Attorney's Office, he also admitted that he had first spoken to the District Attorney about the reassignment about two weeks earlier (early July). The District Attorney, George Gascon, told Ms. Hoeper the same thing -- that the City Attorney had called him only a couple of weeks earlier. Likewise, Cheryl Adams, who replaced Ms. Hoeper as Chief

Trial Deputy, has said that she had very little advance notice of the new assignment.

The evidence therefore is undisputed that the City Attorney took no concrete steps to reassign Ms. Hoeper until more than two months after she began meeting with him and reporting misconduct in the Claims Unit.

**B. THE CITY ATTORNEY NEVER TOLD MS. HOEPER THAT HER JOB WAS AT RISK; IN FACT, AS RECENTLY AS MAY 2011, HE TOLD HER THAT HE WAS HAPPY WITH HER WORK AND THAT HE WANTED HER TO CONTINUE AS HIS CHIEF TRIAL DEPUTY**

As he implicitly concedes, the City Attorney did not provide Ms. Hoeper with written performance evaluations that would support the narrative that he sets forth in his Response -- that he was dissatisfied with Ms. Hoeper's job performance since at least 2005. There is a simple reason -- the narrative is false. It was created after-the-fact, out of whole cloth.

During Ms. Hoeper tenure as Chief Trial Deputy, she met regularly with the City Attorney to report on Trial Team matters, and to discuss significant cases. In none of these many meetings did the City Attorney tell Ms. Hoeper that he was dissatisfied with her job performance or that her job was at risk.

In fact, Ms. Hoeper believed just the opposite -- that the City Attorney thought she was doing a good job. This was the general tenor of her frequent interactions with the City Attorney. Moreover, the City Attorney on at least two occasions -- in 2007 and 2011 -- expressly told Ms. Hoeper that he valued her work and wanted her to continue in her position as Chief Trial Deputy.

In 2007, the City Attorney told Ms. Hoeper in a face-to-face meeting that he was very happy with her work. That meeting was at Ms. Hoeper's initiative. The City Attorney had recently decided to create a new litigation team so that the office's affirmative cases would have a dedicated team rather than being spread throughout the office. The new team was made up of several attorneys from the Trial Team who had already been handling affirmative cases under the supervision of the Chief of Affirmative Litigation (one of the managers who reported to Ms. Hoeper), as well as several litigation attorneys from other teams within the office. The City Attorney demoted the Chief of Affirmative Litigation and hired Danny Chou to supervise the new team. In announcing the formation of the new team, the City Attorney went to great lengths to reassure the office that the change was intended to facilitate his increasing emphasis on affirmative litigation and that it should not be perceived as reflecting negatively on other work in the office or as an indication that the affirmative work was more important.

When the City Attorney announced the formation of the new team, Ms. Hoeper was undergoing chemotherapy and out of the office one or two days per week. She asked for a meeting with the City Attorney to discuss the changes and how they would be implemented. In that meeting, she asked the City Attorney a direct question -- whether, despite what he had said publicly, he had created the new team because he was dissatisfied with her job performance. The City Attorney responded unambiguously. He said, "You're Jo Hoeper. You're invaluable to the office. Do not misunderstand what I'm doing. It has nothing to do with your job performance. I want you to keep doing what you're doing." The City Attorney either lied to Ms. Hoeper in this meeting or he fabricated his supposed dissatisfaction with her work after the fact.

In May 2011, the City Attorney was running for Mayor and was about to take a leave of absence from the office to concentrate on the election. At about that time, Ms. Hoeper was contacted about taking a high-level statewide legal position. Ms. Hoeper loved her job as Chief Trial Deputy and had no plans to leave. However, the very attractive job offer prompted her, on her own initiative, to meet with the City Attorney and solicit feedback about her job performance and her future at the City Attorney's Office. In that meeting, Ms. Hoeper told the City Attorney that she was over 58 years old and was hoping to stay at the City Attorney's Office until she retired. She asked the City Attorney how he viewed her work and her future in the office. She specifically asked whether, if the City Attorney was elected Mayor and had a role in selecting the next City Attorney, the new City Attorney would keep his same executive team or whether s/he would be inclined to replace the team. The City Attorney responded, "If you're asking me whether there will continue to be a place in the Office for you whether or not I am elected Mayor, yes there will be." He made other complimentary statements about Ms. Hoeper's work and encouraged her to remain as his Chief Trial Deputy. Ms. Hoeper left that meeting believing that the position she loved was secure, and she declined the job offer.

This meeting took place ten months before the City Attorney claims to have finally acted on his supposed long-standing dissatisfaction with Ms. Hoeper. The City Attorney voiced no concerns about Ms. Hoeper's job performance in the intervening months, as the City Attorney's Response implicitly concedes. Again, either the City Attorney lied to Ms. Hoeper in their May 2011 meeting and pretended to be happy with her work when he was secretly intending to fire her, or he is not telling the truth in his Response and he got rid of her because she blew the whistle on the sewer scheme.

### **C. THE CITY ATTORNEY ATTEMPTS TO UNDERMINE MS. HOEPER'S STELLAR REPUTATION BY MISREPRESENTING THREE EVENTS IN 2005**

During the course of her more than ten years as Chief Trial Deputy, the City Attorney entrusted Ms. Hoeper with handling thousands of cases that represented hundreds of millions of dollars of potential liability. He entrusted her with very significant public integrity investigations and affirmative litigation, a number of which resulted in seven figure recoveries for the City. He entrusted her with overseeing dozens of state and federal trials which resulted in defense verdicts and saved the City millions of dollars. He entrusted her with advising the Mayor, the Board of Supervisors, Department heads and City Boards and Commissions. He entrusted her with being the City's face in meetings with judges and other public entities. He entrusted her with supervising a team of two dozen attorneys and a dozen support staff. He entrusted her to conduct interviews and recommend new hires. He entrusted her with a place on his four person Executive Team.

If the City Attorney harbored such serious doubts about Ms. Hoeper's abilities, he does not explain why he nonetheless allowed such an incompetent attorney to supervise the City's litigation for a decade. The fact is that Ms. Hoeper's stellar reputation, both in the City Attorney's Office and the San Francisco legal community, is beyond dispute and easily confirmed.

Because the City Attorney cannot seriously impugn Ms. Hoeper's reputation or job performance, the best he can do is point to three incidents in 2005. He misrepresents each.

The magistrate judges did request a meeting with the City Attorney in 2005. The issue

was the City's settlement posture in civil rights cases (cases in which police officers or Sheriff's deputies are accused of false arrest, excessive force or otherwise violating plaintiffs' civil rights). The magistrate judges are tasked with attempting to mediate settlements so that cases do not need to go to trial. The magistrate judges expressed frustration because the City refused to pay money to plaintiffs who brought meritless lawsuits. Without a payment by the City, plaintiffs would not settle. In preparation for the meeting with the magistrate judges, Ms. Hoeper prepared an analysis for the City Attorney of the approximately one dozen civil rights cases in which the City had concluded that the peace officer had acted properly and there was no liability, and had therefore refused to pay money to settle the cases. Every one of those cases -- 100% -- resulted in a defense verdict for the City (ie. the City won summary judgment or won at trial and paid nothing). (This memorandum is in the possession of the City Attorney.) The City Attorney's Response omits this critical fact.

The City Attorney also fails to disclose the policy reasons behind refusing to offer money to settle non-meritorious cases, which he and Ms. Stewart claim to endorse and which they discussed with the magistrate judges. These policy reasons include the fact that paying money to plaintiffs who make false claims only encourages further false claims, and the fact that the City Attorney represents individual police officers and deputies and has an ethical duty to act in their best interests. Paying to settle a case is often perceived by the public as an admission that the individual peace officer did something wrong and harms their reputations and careers. The City Attorney also glosses over the fact that the clients -- the Police Chief, the Sheriff and the individual peace officers, not Ms. Hoeper -- make the ultimate decision about whether or not to settle.

Most egregiously, the City Attorney's Response neglects to mention that, after meeting with the magistrate judges, he and Ms. Stewart reported to Ms. Hoeper that the judges had been persuaded by their presentation. The City Attorney and Ms. Stewart told Ms. Hoeper that she was doing a good job representing the City and that she should continue to do what she was doing.

The City Attorney never again brought up the long-ago meeting with the magistrate judges, until he needed to come up with some reason, however thin, to try to justify his retaliation. Unfortunately, the actual facts only undermine his position.

The City Attorney likewise misrepresents the *Lopez* case. He fails to disclose that it was the client -- the School District -- who directed the litigation strategy. He also fails to disclose that the office failed to devote sufficient resources to the defense of the *Lopez* case, which seriously hampered the attorneys' ability to mount a successful defense. The City Attorney's failure to properly staff the case was well-known within the office.

The City Attorney's description of the *Dominguez* case is also false. He asserts that Ms. Hoeper described the case as "no liability" (and he thereby waived the attorney-client privilege as to this case). This is not true. The truth is that, far from telling the City Attorney that it was a no liability case, Ms. Hoeper recommended, and the City was prepared to offer, many millions of dollars in order to try settle this tragic case. And of course, the City Attorney's attempted reliance on this 2005 verdict ignores the dozens of cases Ms. Hoeper supervised before and after 2005 in which the City faced tens of millions of dollars of potential liability but won the cases and paid nothing.

#### **D. THE CITY ATTORNEY'S CRITICISMS OF MS. HOEPER'S MANAGEMENT ARE FALSE**

The City Attorney makes a number of claims about Ms. Hoeper's management style. These claims, like the other criticisms of Ms. Hoeper, are after-the-fact fabrications. We address each below.

The City Attorney claims that Ms. Hoeper wasted money and was hostile to efforts to control litigation costs (Response at 2-3). Any of the managing attorneys on the Trial Team, or indeed any of the deputies on the Team, would dispute this. In fact, Ms. Hoeper devoted substantial efforts, as she should, to ensuring that the City's litigation was handled in the most cost-effective manner..

One of the major tools to manage costs is the office's City Law software system, which tracks the amount of time and disbursements for each case. When the City Law system was introduced, Ms. Hoeper immediately began using it to monitor litigation costs. She trained her managers to do the same. The City Attorney and Ms. Moret, his Managing Attorney, frequently complained about other team leaders' inability or unwillingness to use the City Law system and held up the Trial Team as an example of best practices.

Another major tool to manage costs is the annual (now twice a year) review of the reserves that have been set aside for each case. The forms used for the review list the time and disbursements to date for each case. It was Ms. Hoeper's long-standing practice to meet with each deputy to discuss his or her cases and set the amount of the reserves. In the process, she discussed cost management strategies. Ms. Hoeper was startled to learn at an Executive Team meeting that the leaders of other litigation teams had not been reviewing the reserves and had delegated the setting of reserves to junior lawyers, even in cases involving tens of millions of dollars in potential liability. Ms. Hoeper urged the Executive Team to require each team leader to follow her practice and sign off on the reserves, which was done.

Ms. Hoeper also instituted another practice on the Trial Team to help manage costs -- an early "roundtable" (i.e. review) of each case. Costs were an explicit topic of discussion in each roundtable. The practice of holding roundtables continues under Ms. Hoeper's replacement. Ms. Stewart sat in on several of these roundtables in the second half of 2012, after Ms. Hoeper had been reassigned, and she expressed surprise that cost management was discussed. Her statements in 2012, as contrasted with the allegations in the Response, demonstrate that this issue was fabricated in 2014 in an attempt to discredit Ms. Hoeper.

Finally, Ms. Hoeper on her own initiative implemented other innovative cost-saving measures such as negotiating reduced rates for expert witnesses and mediators, and these initiatives were adopted by other teams in the office.

Ironically, Ms. Hoeper's vigilance about costs led her to discover in approximately 2011 that a Claims Bureau investigator, supervised by Matthew Rothschild, had fraudulently billed thousands of dollars of time to a case when he actually had done no work at all. In the course of a routine review of a deputy's case inventory, she discovered that the investigator claimed to have spent eight hours per day, day after day, with a value of tens of thousands of dollars, on a very small and routine personal injury case that had a reserve of only one or two thousand dollars. Because of her sensitivity to costs, Ms. Hoeper immediately called the responsible

deputy into her office. The deputy told her that he had not asked for any investigative work to be done on the matter and had received no work product from the investigator. He was shocked at the time the investigator had billed to the matter. The investigator was working part-time under Proposition F, which allows retired employees to be rehired and paid for up to 960 hours per year. Ms. Hoeper concluded that the employee had submitted false records in order to be paid for hours he had not worked, which likely violated the California Penal Code. She reported what she found to Mr. Rothschild. In a foreshadowing of the sewer investigation, Mr. Rothschild reacted defensively and blamed Ms. Hoeper for stirring up trouble. Ms. Hoeper subsequently met with Mr. Rothschild and Ms. Moret. They told her that the City Attorney would not refer the matter to the District Attorney's Office to determine whether a crime had been committed, and that no action would be taken against the investigator. The City Attorney has Ms. Hoeper's report and emails documenting what she discovered.

As the above examples demonstrate, the claim that Ms. Hoeper drove up litigation costs or failed to consider cost-effectiveness is false. The opposite is true.

The City Attorney similarly flips the truth on its head when he claims that "Ms. Hoeper often failed to provide him and/or Ms. Stewart with candid and accurate risk assessments for case outcomes or the City's exposure." (Response at 3) In reality, Ms. Hoeper informed the City Attorney and Ms. Stewart of all major cases and reported any significant developments as they occurred. She frequently scheduled meeting with the City Attorney and Ms. Stewart to discuss significant cases and the recommended strategy. The deputy city attorneys responsible for the day-to-day work on the cases typically attended these meetings along with Ms. Hoeper. The deputies presented the City Attorney with the facts and legal framework of the cases. They also presented the Trial Team's assessment of the cases and the proposed strategies, which were arrived at after internal Trial Team roundtables and meetings. The time records of deputies who attended the meetings with the City Attorney and Ms. Stewart will confirm that the meetings took place, and the deputies themselves will confirm that they made full presentations on strategy and potential exposure

In addition, Ms. Hoeper attempted to meet monthly with the City Attorney and Ms. Stewart to update them on Trial Team issues (although these meetings were often canceled or postponed.) Ms. Hoeper prepared an agenda for each meeting, which listed the key cases she intended to discuss. Between meetings, Ms. Hoeper sent regular emails reporting on developments in key cases, and, during trial, sent a daily report. These agendas and emails are in the possession of the City Attorney. The idea that Ms. Hoeper somehow interfered with the flow of information to the City Attorney or failed to divulge key information about cases is ludicrous.

The City Attorney also levels a series of accusations that Ms. Hoeper "refus[ed] to be a team player" and encouraged "an 'us versus them' mentality" (Response at 3). Again, just the opposite is true.

During Ms. Hoeper's ten-year tenure as Chief Trial Deputy, she worked closely with deputies from other teams in the office. Deputies regularly called her with questions or issues and she devoted significant time to helping other team leaders. As just one recent example, in 2010-11 she worked closely with the Government Team to protect the De Young Museum's priceless collection of New Guinea art from being carved up and sold by two individuals and Sothebys, all of whom claimed an ownership interest. The Museum Board honored her with a

special commendation. Ms. Hoeper's billing records will document the hundreds of hours she spent working with deputies throughout the office, and those deputies and team leaders will confirm the value of her contributions.

Likewise, it is completely false that Ms. Hoeper "stoke[d] divisions between deputies and Mr. Herrera." (Response at 3). As the City Attorney is well aware, Ms. Hoeper worked with the City Attorney to help address the acknowledged morale issues and other problems that have plagued the City Attorney's Office in recent years. In Ms. Hoeper's meetings with the City Attorney, she urged him to take specific steps to improve morale on the Trial Team and the office in general. Her suggestions included recognizing and thanking deputies who won important victories or did a particularly good job, something the City Attorney was not in the habit of doing. Ms. Hoeper also pointed out that the City Attorney almost never visited Fox Plaza (the building where the majority of the office's deputies worked). She urged the City Attorney to attend an occasional Trial Team meeting to let the deputies know that he valued their work. The City Attorney led Ms. Hoeper to believe that he valued her suggestions. As a result of Ms. Hoeper's efforts, the City Attorney scheduled at least two meetings with the City Attorney and the Trial Team in late 2011 and early 2012. The City Attorney subsequently cancelled both meetings. Emails and internal calendars will confirm that these meetings were scheduled and then cancelled.

Finally, Ms. Stewart's notes, with the date written in after the fact, simply document Ms. Stewart's opinions. Many of these opinions are not grounded in fact. As one brief example, Ms. Stewart states that Ms. Hoeper "should delegate more management responsibility to Ellen, Blake, Karen, David and Don" and "in particular, Ellen should directly oversee large tort cases." The individuals to whom she refers, Ellen Shapiro, Blake Loeb, Karen Kirby, David Delbon and Don Margolis, were Ms. Hoeper's managers on the Trial Team -- most held the title of Team Leader. Ms. Hoeper met with the Team Leaders every two weeks to discuss specific cases and the work of the deputies they supervised. She consulted with individual Team Leaders many times each day. Each of the Team Leaders will confirm that they were given very significant management authority and consulted in all major decisions on the Team. Ellen Shapiro, now retired, was the Chief of Tort Litigation. She would strongly object to Ms. Stewart's claim that she did not directly oversee the large tort cases.

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**E. THE CITY ATTORNEY'S CLAIM THAT HE SECRETLY TRIED FOR YEARS TO REPLACE MS. HOEPER IS NOT CREDIBLE**

The City Attorney would have the Commissioner believe that since at least 2005 -- for seven years -- he was secretly dissatisfied with Ms. Hoeper's job performance; he secretly but unsuccessfully sought to replace her; and, after hunting far and wide for a suitable replacement, it finally dawned on him to offer the position to a deputy who briefly worked on the Trial Team years before and who had been in an office just down the hall from him during most of his fruitless search. Unfortunately, his story does not stand up to scrutiny.

The City Attorney provides no documents to support his claim. He provides no job announcements, no resumes from potential candidates, no notes of interviews, or any other records that would be expected from a search to fill a high level position. Tellingly, the City

Attorney apparently intends to rely on corroboration from Jon Streeter, a member of the very law firm he is paying to defend Ms. Hoeper's claim. (Response at 4)

It also defies belief that the City Attorney was unable to find highly-qualified candidates in the San Francisco legal community -- not to mention the rest of California -- who would not leap at the opportunity to be the City's Chief Trial Deputy. Ms. Hoeper was responsible for screening and interviewing attorneys who were seeking positions on the Trial Team, and she knows first hand that even a position as an entry-level deputy city attorney was highly sought after and attracted extremely qualified applicants.

The City Attorney's sudden and last minute selection of Ms. Hoeper's replacement also undermines his claim. Ms. Adams did not learn of her promotion until just before the City Attorney announced his decision. Her qualifications and experience do not compare well with the qualifications and experience of the pool of attorneys that would have sought the position had the City Attorney actually made it known that he was seeking a new Chief Trial Deputy.

The City Attorney's attempt to rely on an almost completely redacted document raises only more doubts. The footer at the bottom of the document indicates that it was created by Ms. Stewart, not the City Attorney. It appears, at most, to reflect Ms. Stewart's personal suggestions. The date is handwritten in, after the fact, and is therefore suspect. In any case, whatever this document is or is not, it is undisputed that the City Attorney took no action to transfer Ms. Hoeper until at least six months after it was purportedly created, and only after Ms. Hoeper discovered and reported the sewer scheme. The timing makes it clear that the City Attorney was content to keep Ms. Hoeper in her position until she blew the whistle and that he replaced her only because she blew the whistle. The document, far from undermining Ms. Hoeper's claim, actually supports it.

## **V. HOEPER'S CLAIM IS TIMELY**

Ms. Hoeper's claim did not accrue until she was actually terminated. (*Romano v. Rockwell Int'l* (1996) 4 Cal.4th 479). The City Attorney's assertion that the claim accrued when Ms. Hoeper was transferred is without merit. She continued to be an employee of the San Francisco City Attorney's Office and retained her same civil service status and pay after the transfer. As a result of her termination, however, Ms. Hoeper sustained damages for lost earnings and benefits and emotional distress.

# **EXHIBIT B**

**HOEPER v. CITY AND COUNTY OF SAN FRANCISCO**  
**Case No. 36202-SFRCI**

**CHRONOLOGY**

2002	Herrera becomes City Attorney and appoints Hoeper to four-person executive team
MAY 2011	Herrera assures Hoeper he is satisfied with her performance; Hoeper rejects potential job opportunity
DECEMBER 2011	FBI contacts Hoeper regarding payment of claims for sewers allegedly damaged by tree roots; Hoeper commences investigation
MID-APRIL 2012	Hoeper meets with Herrera and informs him of fraudulent and false sewer claims
MAY 15, 2012	Hoeper again meets with Herrera and informs him of her preliminary findings
MAY 17, 2012	Hoeper again meets with Herrera to discuss investigation
JULY 18, 2012	Hoeper delivers hard copies of her draft report to Herrera and Therese Stewart
JULY 25, 2102	Herrera informs Hoeper he is transferring her to District Attorney's Office
JANUARY 7, 2013	Herrera terminates Hoeper's employment