

1 BARBARA PARKER, City Attorney (State Bar No. 69722)
MARIA BEE, Chief Assistant City Attorney (State Bar No. 167716)
2 One Frank H. Ogawa Plaza, 6th Floor
Oakland, California 94612
3 Telephone: 510.238.2964
Facsimile: 510.238.6500
4 Email: bjparker@oaklandcityattorney.org
mbee@oaklandcityattorney.org

5 KATHARINE VAN DUSEN (State Bar No. 276021)
6 KENNETH NABITY (State Bar No. 287927)
LAURA R. SEEGAL (State Bar No. 307344)
7 ONESIROSAN L. AGBAJOH (State Bar No. 316748)
TOM LIN (State Bar No. 319911)
8 COBLENTZ PATCH DUFFY & BASS LLP
One Montgomery Street, Suite 3000
9 San Francisco, California 94104-5500
Telephone: 415.391.4800
10 Facsimile: 415.989.1663
Email: ef-ktv@cpdb.com
11 ef-kpn@cpdb.com
12 ef-lrs@cpdb.com
13 ef-ola@cpdb.com
ef-txl@cpdb.com

Attorneys for Defendant
14 THE CITY OF OAKLAND, CALIFORNIA

15 **UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

17 ANNE KIRKPATRICK, an individual,
18 Plaintiff,
19 v.
20 THE CITY OF OAKLAND, CALIFORNIA,
a public corporation,
21 Defendant.

Case No. 3:20-cv-05843-JSC

**DEFENDANT THE CITY OF OAKLAND,
CALIFORNIA’S NOTICE OF MOTION &
MOTION FOR SUMMARY JUDGMENT
OR, IN THE ALTERNATIVE, PARTIAL
SUMMARY JUDGMENT**

Date: March 31, 2022
Time: 9:00 a.m.
Crtm.: Courtroom E, 15th Floor
Judge: Hon. Jacqueline Scott Corley

Action Filed: August 19, 2020
Trial Date: May 16, 2022

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION AND MOTION 1

 I. INTRODUCTION..... 2

 II. FACTUAL BACKGROUND 3

 A. In 2018, the Police Commission Begins Its Work in Earnest. 4

 B. Plaintiff’s Prejudgment of the Investigation into an Officer-Involved Shooting Leads to Criticisms by the Monitor and Public Calls for Change at the Top. 5

 C. Just as the Monitor’s Criticisms of Plaintiff Become Public, Plaintiff Also Drew Public Scrutiny About Her Inaction On Racial Bias Within OPD..... 7

 D. OPD Backslides on NSA Compliance Under Plaintiff’s Leadership..... 8

 E. Plaintiff Targets the Police Commission and the Monitor. 10

 F. The Mayor Joins with the Police Commission to Terminate Plaintiff’s Employment. 12

 III. PROCEDURAL HISTORY 13

 IV. LEGAL STANDARD 13

 V. ARGUMENT 13

 A. Section 1102.5 Protects Whistleblowers Who Disclose Violations of Law, Not Personnel Disputes. 14

 1. Plaintiff’s personnel complaints are not protected activity. 14

 2. Plaintiff reported personnel and administrative disputes, not legal violations. 15

 a. Reports of staff interactions do not reveal violations of bribery or public corruption laws..... 16

 b. Plaintiff’s reports of Police Commission conduct during public meetings do not disclose a violation of law. 17

 c. Plaintiff’s disclosures about the scope of Police Commission powers are not protected. 18

 3. Passing along public information is not whistleblowing. 18

 B. Even If Plaintiff Were a Whistleblower, Plaintiff Cannot Show Her Reports Contributed to Her Termination. 19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- C. Plaintiff Cannot Succeed on Her First Amendment Claim, Because She Did Not Engage in Any Protected First Amendment Activity.....22
 - 1. Plaintiff spoke as an on-duty police chief, not a private citizen.22
 - 2. Plaintiff did not speak on matters of public concern.....24
- D. The City Would Have Terminated Plaintiff Irrespective of Any Protected Conduct.24

CONCLUSION25

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cases

Akers v. Cnty. of San Diego,
95 Cal. App. 4th 1441 (2002).....15

Anderson v. Liberty Lobby, Inc.,
477 U.S. 242 (1986)13

Anthoine v. N. Cent. Ctys. Consortium,
605 F.3d 740 (9th Cir. 2010).....22

Canupp v. Children’s Receiving Home of Sacramento,
181 F. Supp. 3d 767 (E.D. Cal. 2016).....20

Carter v. Escondido Union High Sch. Dist.,
148 Cal. App. 4th 922 (2007).....15

Celotex Corp. v. Catrett,
477 U.S. 317 (1986)13

Clark v. City of Oakland,
No. C 06-06872-CRB, 2008 WL 2357321 (N.D. Cal. June 6, 2008),
aff’d, 385 F. App’x 665 (9th Cir. 2010).....23

Conn v. W. Placer Unified Sch. Dist.,
186 Cal. App. 4th 1163 (2010), *as modified on denial of reh’g* (Aug. 10, 2010).....15

Connick v. Myers,
461 U.S. 138 (1983)24

Coszalter v. City of Salem,
320 F.3d 968 (9th Cir. 2003).....24

CTC Glob. Corp. v. Huang,
No. SACV 17-02202 AG (KESx), 2019 WL 4164971 (C.D. Cal. July 29, 2019)20

Dahlia v. Rodriguez,
735 F.3d 1060 (9th Cir. 2013).....22

Desrochers v. City of San Bernardino,
572 F.3d 703 (9th Cir. 2009).....24

Filipovic v. K & R Express Sys., Inc.,
176 F.3d 390 (7th Cir. 1999).....20

Fitzgerald v. El Dorado Cnty.,
94 F. Supp. 3d 1155 (E.D. Cal. 2015).....14

1 *Garcetti v. Ceballos*,
 2 547 U.S. 410 (2006)22

3 *Hager v. Cnty of Los Angeles*,
 4 228 Cal. App. 4th 1538 (2014).....19

5 *Howard v. City of Coos Bay*,
 6 871 F.3d 1032 (9th Cir. 2017).....22

7 *Jadwin v. Cnty. of Kern*,
 8 610 F. Supp. 2d 1129 (E.D. Cal. 2009).....20

9 *Killgore v. Specpro Pro. Servs., LLC*,
 10 No. 5:18-CV-03413-EJD, 2019 WL 6911975 (N.D. Cal. Dec. 19, 2019).....19

11 *Lawson v. PPG Architectural Finishes, Inc.*,
 12 12 Cal. 5th 703 (2022).....14, 15, 19, 24

13 *Manatt v. Bank of Am., NA*,
 14 339 F.3d 792 (9th Cir. 2003).....21

15 *McKinley v. City of Eloy*,
 16 705 F.2d 1110 (9th Cir. 1983).....24

17 *McRae v. Dep’t of Corr. & Rehab.*,
 18 142 Cal. App. 4th 377 (2006).....19, 21

19 *Miller v. City of Los Angeles*,
 20 No. CV 13-5148-GW(CWX), 2015 WL 12811238 (C.D. Cal. Oct. 22, 2015)19

21 *Mize-Kurzman v. Marin Cmty. Coll. Dist.*,
 22 202 Cal. App. 4th 832 (2012).....18, 19, 25

23 *Morgan v. Regents of Univ. of Cal.*,
 24 88 Cal. App. 4th 52 (2000).....19

25 *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*,
 26 429 U.S. 274 (1977)22, 24

27 *Mueller v. Cty. of Los Angeles*,
 28 176 Cal. App. 4th 809 (2009).....17

Navarro v. DHL Glob. Forwarding,
 No. 2:15-CV-05510-CAS (Ex), 2017 WL 901880 (C.D. Cal. Mar. 6, 2017).....11

Nejadian v. Cnty. of Los Angeles,
 40 Cal. App. 5th 703 (2019).....17

Patten v. Grant Joint Union High Sch. Dist.,
 134 Cal. App. 4th 1378 (2005).....15, 17

1 *Posey v. Lake Pend Oreille Sch. Dist. No. 84*,
 546 F.3d 1121 (9th Cir. 2008).....22

2

3 *Pyke v. Arcadis, US Inc.*,
 35 F. Supp. 3d 1093 (N.D. Cal. 2014) (Breyer, J.), *aff'd*, 649 F. App'x 593 (9th
 4 Cir. 2016)23

5 *Tam v. Qualcomm, Inc.*,
 300 F. Supp. 3d 1130 (S.D. Cal. 2018).....14

6

7 *Texas v. Lesage*,
 528 U.S. 18 (1999)24

8 *Villiarimo v. Aloha Island Air, Inc.*,
 281 F.3d 1054 (9th Cir. 2002).....20

9

10 **Statutes & Rules**

11 42 U.S.C. § 19831, 13, 22

12 Cal. Lab. Code § 1102.5..... *passim*

13 Cal. Lab. Code § 1102.6.....14, 19, 24

14 Fed. R. Civ. P. 561

15 Fed. R. Civ. P. 56(a).....13

16 Oakland Charter § 60114

17 Oakland Charter § 604(a)(1)3, 4

18 Oakland Charter § 902(b).....14

19 Oakland Municipal Code § 2.24.10016, 17, 18

20 Oakland Municipal Code § 2.25.06016

21 Oakland Municipal Code § 2.25.060(A)(2)16

22 Oakland Municipal Code § 2.45.08018

23 Penal Code § 7.....16

24 Penal Code § 68(a)16

25 Penal Code § 832.7.....18

26

27

28

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE THAT on March 31, 2022 at 9:00 a.m., or as soon thereafter as counsel may be heard, in the courtroom of the Honorable Jacqueline Scott Corley, located in Courtroom E, 15th Floor of the United States Courthouse, 450 Golden Gate Avenue, San Francisco, California 94102, Defendant the City of Oakland, California (“Defendant” or the “City”) will, and now does, move for summary judgment, or, in the alternative, partial summary judgment under Federal Rule of Civil Procedure 56 on the first and second claims for relief in Plaintiff Anne Kirkpatrick’s (“Plaintiff” or “Chief Kirkpatrick”) Complaint (Dkt. 1. [“Compl.”]).

The City moves for summary judgment on the following grounds:

(1) Plaintiff’s first claim for retaliatory discharge, California Labor Code section 1102.5, fails because Plaintiff cannot show that she engaged in protected activity and cannot adduce evidence that any such alleged protected activity was a contributing factor in her termination;

(2) Plaintiff’s second claim for violation of First Amendment rights, 42 U.S.C. section 1983, fails because the undisputed evidence shows Plaintiff’s alleged protected speech was made pursuant to her official duties as a public employee, rather than as a private citizen, and such speech did not encompass matters of public concern; and

(3) Both of Plaintiff’s claims fail because the City can demonstrate that it would have terminated Plaintiff notwithstanding the existence of any alleged protected activity because it is undisputed that key stakeholders lost confidence in her ability to lead the Oakland Police Department.

This Motion is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities in Support of the Motion, the Declarations of Katharine Van Dusen, Ryan Richardson, Ginale Harris, Thomas Smith, Henry Gage, Tara Anderson, Edwin Prather, Regina Jackson, José Dorado, and Elizabeth Schaaf (and all exhibits thereto), all filed concurrently herewith, as well as all of the pleadings, files, and records in this proceeding, all other matters of which the Court may take judicial notice, and any argument or evidence that may be presented and considered by the Court prior to its ruling.

///

1 **I. INTRODUCTION**

2 Plaintiff Anne Kirkpatrick is the former Chief of Police of the City of Oakland. She served
 3 in that capacity from February 2017, until February 20, 2020, when she was terminated by
 4 unanimous vote of the City’s Police Commission joined by the Mayor. While the termination was
 5 “without cause,” and therefore required no justification, the City had good reasons for its action.
 6 Plaintiff had, during her tenure, shown herself to be—to put it diplomatically—a poor fit for the
 7 City, which needed a leader of the Oakland Police Department (“OPD”) who could foster positive
 8 relationships with a range of demanding stakeholders. Plaintiff turned out not to be that leader. She
 9 responded to her lawful termination by filing this lawsuit, in which she advances two claims: (1) she
 10 was fired for being a whistleblower, and (2) that she was fired in retaliation for exercising of her
 11 First Amendment rights. Neither claim has any legal merit.

12 Plaintiff was terminated as the City’s Police Chief because, in the judgment of the Police
 13 Commission and the Mayor, she was incapable of leading OPD in the manner the City needed.
 14 Under her watch, there had been a reversal of progress on the reforms required by the federal court
 15 Negotiated Settlement Agreement (“NSA”). She acted impulsively and inappropriately in response
 16 to a high-profile, officer-involved shooting. She demonstrated a lack of interest in engaging with
 17 the City’s many communities. She faltered and stumbled in the face of reports of racial
 18 discrimination within OPD. Rather than focus her attention on vital issues affecting public safety
 19 and policing, she fixated on trivial disputes with members of the Police Commission, a body created
 20 by the City’s voters to provide civilian oversight of OPD.

21 She was not a whistleblower (she had not reported any unlawful conduct), and she was not
 22 exercising her First Amendment rights (she was speaking, at all times, in her official capacity, and
 23 not on matters of any public concern). And the behavior that she now attempts to characterize as
 24 whistleblowing and free speech was not a contributing cause of her termination in any event.

25 Plaintiff, it must be emphasized, was not a mid-level City employee, with no responsibility
 26 regarding the City’s core functions and policies. She was the head of a City department whose
 27 officers were responsible for decisions that could have—and did have—life-or-death consequences.
 28 The Police Chief’s performance—and the *perception* of that performance—carry great significance.

1 The Police Commission and the Mayor had the responsibility to ensure that the person occupying
2 that position was right for the job, and that her ability to perform was not undermined by avoidable
3 distractions or frictions. Plaintiff, unfortunately, was a magnet for distractions and frictions.

4 She may have felt—she probably *did* feel—that none of that was *her* fault, and that her
5 termination therefore reflects illegitimate motives. That lack of self-awareness—her insistence that
6 she was always right, and her critics always wrong or ill-intentioned—was a large part of the
7 problem. Her claims of retaliation are backed by no competent evidence. She was terminated for
8 reasons that had nothing to do with her supposed whistleblowing, or her exercise of any First
9 Amendment rights. Her claims do not merit a trial. The case should end now.

10 **II. FACTUAL BACKGROUND**

11 The Chief of the Oakland Police Department has a challenging job. The position requires
12 trust from multiple stakeholders, including rank-and-file officers, City administrators, the Mayor,
13 the federal court, the federal monitoring team, the Police Commission, and communities within
14 Oakland. Van Dusen Decl. Ex. 56. The role is visible and public-facing. The City Administrator
15 acts as the Chief’s day-to-day supervisor, but both the Mayor and the Police Commission have the
16 authority to supervise the Chief’s work and to terminate her. Richardson Decl. Ex. 13 (Oakland
17 Charter § 604(a)(1)). The Police Commission comprises seven volunteers whose role is to “oversee
18 the Oakland Police Department.” *Id.*

19 In addition to City oversight, since 2003 OPD has been subject to the NSA, under which the
20 federal court and a court-appointed monitor and compliance director, Robert Warshaw (the
21 “Monitor”) oversee OPD’s implementation of 52 tasks necessary to ensure constitutional policing.
22 The NSA arose from the *Allen v. City of Oakland* litigation, and the plaintiffs’ attorneys in that
23 action (Jim Chanin and John Burris) have the authority to observe whether the City is on track to
24 comply with its tasks. Schaaf Decl. ¶ 2. The Monitor has the independent authority to terminate
25 the Chief of Police. Richardson Decl. Ex. 16 at ¶ 7.

26 When she was hired as Chief of Police in 2017, Plaintiff committed to get the City into “full
27 compliance” with the NSA; in her words, “there will be no retreat.” Van Dusen Decl. Ex. 57 at
28 -057. Unfortunately, Plaintiff’s service as Chief of Police saw regression on key NSA tasks, and a

1 series of high-profile missteps on her part. The Mayor and Police Commission, having lost
 2 confidence in Plaintiff's ability to serve as Chief of Police, terminated her employment on
 3 February 20, 2020. Jackson Decl. Ex. 5.

4 **A. In 2018, the Police Commission Begins Its Work in Earnest.**

5 When 83 percent of Oakland voters cast ballots in favor of Measure LL in 2016, they
 6 established a civilian Police Commission with meaningful oversight authority. Richardson Decl.
 7 ¶ 2a. The first Commission meeting occurred in December 2017 (Jackson Decl. ¶ 2), and from then
 8 on the Commission met regularly to hear community concerns and to ensure that OPD's "policies,
 9 practices and customs conform to the national standards of constitutional policing." Richardson
 10 Decl. Ex. 13 (Oakland Charter § 604(a)(1)).

11 As the Police Commission began to find its footing, on March 2, 2018, two Police
 12 Commissioners (Ginale Harris and José Dorado) met with OPD's Neighborhood Services
 13 Coordinators ("NSCs") to discuss the program and identify areas for improvement. Van Dusen
 14 Decl. Ex. 36. During the meeting, Commissioner Harris mentioned that she had a "history" of
 15 having people fired, and Commissioner Dorado stated concerns that the Ghost Ship fire—a tragic,
 16 deadly warehouse fire—was preventable. *Id.* at -371. An OPD deputy director forwarded a
 17 summary of the meeting to City officials, as well as to Plaintiff. *Id.* at -370. Plaintiff then forwarded
 18 this "NSC Incident"¹ email to higher-ranking City officials "due to the seriousness of the issues
 19 described below—particularly the reference to the Ghost Ship fire." *Id.*

20 Six months later, Commissioner Harris visited the OPD Records Department to deal with
 21 fees after her car was towed. Van Dusen Decl. Ex. 37; Harris Decl. ¶ 18. Commissioner Harris was
 22 upset—Plaintiff claims Commissioner Harris "threw a fit." Van Dusen Decl. Ex. 30 (Kirkpatrick
 23 Depo.) at 31:18-34:2, 35:3-19, 59:17-60:8. Commissioner Harris was escorted to Plaintiff's office,
 24 and Plaintiff accused Commissioner Harris of using her position on the Police Commission to seek
 25 ///

26
 27 ¹ Here and throughout this memorandum, bolded defined terms refer to the conduct that Plaintiff
 28 contends constitutes protected whistleblowing activity under Labor Code section 1102.5, or
 protected speech under the First Amendment.

1 a favor.² Van Dusen Decl. Ex. 37 at OAK00008438; Harris Decl. ¶ 18. On September 19, 2018,
 2 Plaintiff forwarded emails and a summary of this “**Tow Incident**” to City officials, including the
 3 Mayor, calling it “bullying behavior.” Van Dusen Decl. Ex. 37 at -436. Six weeks later, the Mayor
 4 renewed Plaintiff’s at-will contract for a two-and-a-half year term. Van Dusen Decl. Ex. 43.

5 Plaintiff was not the first or only person to complain to City officials about Commissioner
 6 Harris’s sharp demeanor or perceived bullying. In December 2018, the City hired an outside
 7 investigator over a series of allegations, by Plaintiff and others, of inappropriate conduct and
 8 statements by Commissioner Harris. Van Dusen Decl. Ex. 60.

9 **B. Plaintiff’s Prejudgment of the Investigation into an Officer-Involved Shooting**
 10 **Leads to Criticisms by the Monitor and Public Calls for Change at the Top.**

11 On March 11, 2018, four OPD officers fired shots at Joshua Pawlik, killing him as he awoke.
 12 On the night of the shooting, and before the start of any investigation, Plaintiff told the Monitor that
 13 the shooting looked “good.” Richardson Decl. Ex. 27 at -858. Her premature judgment was the
 14 first in a series of missteps that led the Monitor to “question both the Chief’s willingness and ability
 15 to oversee the investigative responsibilities of the department.” *Id.* at -897. Nearly a year later,
 16 Plaintiff concluded that the officers should be exonerated for their use of force. Van Dusen Decl.
 17 Ex. 65 at -993–94.

18 The Monitor issued an addendum in February 2019, stating “I reject the Chief’s principal
 19 conclusions in this matter.” Richardson Decl. Ex. 29 at -307. The Monitor found that Plaintiff had
 20 “prematurely assessed the shooting on the evening of its occurrence” and developed immediate
 21 “predispositions” that “never wavered, even as the investigations moved forward.” Richardson
 22 Decl. Ex. 27 at -900. She had not “adequately considered the event as a whole,” her assessment was
 23 “both disappointing and myopic,” and she had utilized “flawed logic.” *Id.*; Richardson Decl. Ex. 29
 24 at -306–07. In short, Plaintiff had “failed her leadership role.” Richardson Decl. Ex. 27 at -901.

25
 26 _____
 27 ² Commissioner Harris was offended by Plaintiff’s accusation and demeanor during the interaction.
 28 Van Dusen Decl. Ex. 37 at OAK00008437–38; Harris Decl. ¶ 18. In particular, Commissioner
 Harris was upset that she never received an apology from Plaintiff (Harris Decl. ¶ 18), a concern
 that she shared with two other Commissioners on September 4, 2019. Van Dusen Decl. Ex. 54.

1 The Monitor overruled Plaintiff’s decision and recommended termination of the officers involved.
 2 Richardson Decl. Ex. 29 at -308. In addition, the Monitor required that Plaintiff be “recused” from
 3 the Pawlik matter entirely. Van Dusen Decl. Ex. 31 (Kirkpatrick Depo.) at 440:7-443:21.

4 The incident, and Plaintiff’s mishandling of it, were splashed across local headlines;
 5 community groups began to call for Plaintiff’s termination. Jackson Decl. Ex. 6; Gage Decl. ¶ 9 &
 6 Ex. 10. For example, Henry Gage, who became a Police Commissioner six months later (Gage
 7 Decl. ¶ 12), published an op-ed calling for Plaintiff to be terminated because of her handling of the
 8 officer-involved shooting:

9 It is profoundly disappointing to discover that Chief Kirkpatrick
 10 believes her officers’ use of lethal force against an unconscious man
 11 was “within law and policy,”. . . This is not language of a reformer.
 12 This is a failure to advocate for progressive changes to both law and
 13 policy. . . . [¶] Kirkpatrick’s report is an unmistakable signal that she
 14 will never be a truly transformational leader. ***If, like me, you want
 community accountability from the Oakland Police Department,
 then the department needs new leadership. It’s time for the Oakland
 Police Commission to act. We need new leadership and new policy.***
 This can’t happen again. It’s time for consequences.

15 Gage Decl. ¶ 8 & Ex. 9 (emphasis added).

16 At the next Police Commission meeting, on March 28, 2019, Mr. Gage provided public
 17 comment calling upon the Commission to take action against Plaintiff, pointing out that the City
 18 can’t “continue to move backwards” under the NSA.³ Jackson Decl. Ex. 1 at -574; Gage Decl. ¶ 10.
 19 At that same meeting, while the Police Commission was considering revisions to OPD’s search
 20 policy, Commissioner Harris, a Black woman, charged the Alameda County Public Defender⁴ with
 21 a lack of understanding of the Black community: “you have the skin color of a Black man, okay.
 22 But that don’t mean you live like a Black man.” Jackson Decl. Ex. 1 at -533–34. Plaintiff emailed

23 _____
 24 ³ Part of Mr. Gage’s comments related to what framework, if any, should be used to perform a
 25 review of Plaintiff’s performance. Jackson Decl. Ex. 1 at -574. The Commission engaged counsel
 26 in April 2019 to help evaluate Plaintiff’s performance (Jackson Decl. Ex. 2 at 57), but ultimately
 27 the Commission and the Mayor elected to exercise their power to terminate the Chief before any
 28 review was finalized. While the Commission had the authority to provide a performance evaluation,
 they were not obligated to do so prior to exercising their termination authority. Richardson Decl.
 Ex. 13.

⁴ The Alameda County Public Defender is not an employee of the City.

1 a City attorney about this “**Brendan Woods Comment**” in part because Plaintiff thought she had a
 2 “mandatory reporting obligation.” Van Dusen Decl. Exs. 38 & Ex. 30 (Kirkpatrick Depo.) at 87:7–
 3 91:4; 95:17–96:23. Plaintiff was not the only one to remark that the comment was misguided:
 4 Commissioner Edwin Prather apologized to Mr. Woods from the dais that night, and Commission
 5 Chair Regina Jackson criticized the comment at the next Commission meeting. Jackson Decl. Ex. 1
 6 at -545 & Ex. 2 at 1.

7 The Police Commission had concerns about the investigations into Mr. Pawlik’s death, and
 8 subpoenaed records about the investigations. Jackson Decl. Ex. 3 at -699-700. Plaintiff received
 9 one of the subpoenas and, although Plaintiff claims to have reported “**The Subpoena**” to City
 10 officials as unlawful, she identifies only that she made a phone call to a City attorney, and explains
 11 the City attorney provided legal advice. Van Dusen Decl. Ex. 34 (Interrogatory No. 1).

12 C. **Just as the Monitor’s Criticisms of Plaintiff Become Public, Plaintiff Also Drew**
 13 **Public Scrutiny About Her Inaction On Racial Bias Within OPD.**

14 The Chief of Police has an obligation to report allegations of racial bias within OPD
 15 immediately. Richardson Decl. Ex. 14. Yet she did nothing when, on October 15, 2018, the
 16 President of the Oakland Black Officers Association (the “OBOA”) presented Plaintiff with the
 17 OBOA’s concerns regarding officer misconduct, racial disparities, and discrimination within OPD’s
 18 backgrounding and recruiting unit. Van Dusen Decl. Ex. 33 (A. Smith Depo.) at 27:13-28:24.
 19 Plaintiff admitted that she “missed the possible bias issues” in the presentation. Compl. ¶ 53. Seeing
 20 no action from the leader of OPD, the OBOA penned an open letter in March 2019 criticizing
 21 Plaintiff’s “inaction and unwillingness to address disparate treatment in the hiring and retention of
 22 officers,” and concluded that it “cannot continue with this lack of leadership.” Van Dusen Decl.
 23 Ex. 53 at -777. The letter “caused serious disruption within the Department,” (Compl. ¶ 55), and
 24 OPD’s Internal Affairs division opened an investigation into Plaintiff’s failure to make the required
 25 report under AI 71. Van Dusen Decl. Ex. 61. The OBOA open letter was also discussed at the next
 26 *Allen* case management conference. Richardson Decl. Ex. 25 at -357-359.

27 The Police Commission placed the OBOA item on its April 11, 2019 agenda. Jackson Decl.
 28 ¶ 14 & Ex. 6. Commissioners sought to understand the scope of the racial bias identified in the

1 OBOA letter, as well as why it had been so difficult for the OBOA to draw attention to the issues.⁵
 2 Commissioners also began discussions about scheduling closed session meetings to evaluate
 3 Plaintiff’s performance. Smith Decl. ¶¶ 12, 14 & Ex. 11.

4 Plaintiff attended the April 11 meeting and defended her inaction, explaining that she could
 5 not make immediate changes after the OBOA approached her in October 2018. Jackson Decl. Ex. 2
 6 at 32-33. The Police Commission listened to public comments about the OBOA issues, and
 7 discussed on the dais how to ensure that the Commission provided a forum for members of the
 8 OBOA to “respond” to Plaintiff’s comments. *Id.* at 38-49. Commissioner Harris asked Plaintiff to
 9 provide the “date” that the Internal Affairs investigation was opened, and Plaintiff explained that
 10 she “had been counseled by our legal team not to address those issues.” *Id.* at 35.

11 At no point did Plaintiff reveal any personnel information.⁶ Nevertheless, she complained
 12 about these “**OBOA Questions**” to a City attorney. Van Dusen Decl. Ex. 39.

13 The Police Commission’s concern about the issues raised in the OBOA open letter
 14 continued. At an August 2019 meeting, Commissioners pressed Plaintiff to understand the
 15 fundamental need to eliminate racial bias in OPD. Jackson Decl. Ex. 4 at -699-706. Plaintiff, too,
 16 continued to recognize the importance of the OBOA open letter. In June 2020, four months after
 17 her termination, Plaintiff wrote to a former OPD colleague to ask her to “write a letter on my behalf.”
 18 Plaintiff complained that the OBOA president had not “written another Open letter giving me any
 19 credit” and that the OBOA letter “damaged” her. Van Dusen Decl. Ex. 45.

20 **D. OPD Backslides on NSA Compliance Under Plaintiff’s Leadership.**

21 As 2019 progressed, Plaintiff’s working relationship with the Federal Monitor and the *Allen*
 22 plaintiffs’ attorneys continued to deteriorate. In June 2019, Plaintiff’s friend and hand-picked
 23 Deputy Director, Virginia Gleason, responded with outrage at Mr. Chanin’s and Mr. Burris’s

24

25 ⁵ *Id.*; Prather Decl. ¶¶ 8-9 (“The allegations raised by the March 2019 OBOA letter were severe and
 26 farreaching, and required follow-up and investigation.”); *see also* Anderson Decl. ¶ 5; Harris Decl.
 ¶¶ 20-21; Dorado Decl. ¶¶ 14-15; Smith Decl. ¶¶ 10-11.

27 ⁶ Plaintiff is not always reluctant to share such details—she told a friend outside Oakland that she
 28 was the subject of an Internal Affairs investigation, explaining that “what can you expect from a
 community where the New Black Panthers hijacked the City Council Chambers . . .” Van Dusen
 Decl. Ex. 46.

1 allegation that she had exhibited racial bias. Schaaf Decl. Ex. 12 at -662-663. That incident led
 2 Mr. Chanin and Mr. Burris to write directly to the Mayor, describing Ms. Gleason’s message as a
 3 “diatribe.” Van Dusen Decl. Ex. 66 at -296. Rather than report the allegation of racial bias, Plaintiff
 4 sent a private email to Ms. Gleason that she supported her “100%.” *Id.* at -294. The incident led
 5 the Mayor to question Plaintiff’s professional judgment. Schaaf Decl. ¶ 2.

6 Around that same time, the Police Commission requested that Plaintiff assign then-Deputy-
 7 Chief LeRonne Armstrong⁷ as the OPD liaison to the Police Commission, “based upon his
 8 experience both in the neighborhoods and expertise in community engagement.” Van Dusen Decl.
 9 Ex. 63 at -532. Although the word “request” is used 12 times in the correspondence, Plaintiff
 10 forwarded the email chain to the City officials, reporting that the Commissioners were
 11 inappropriately “giving staff direction.” Van Dusen Decl. Ex. 59 at -467. The “**Liaison**
 12 **Assignment**” issue resolved when Plaintiff decided to assign Deputy Chief Armstrong to be the
 13 liaison. Van Dusen Decl. Ex. 51 at -800.

14 The year 2019 saw a downward slide under the NSA. When Plaintiff began in February
 15 2017, the City was in compliance with forty-nine NSA Tasks and in partial compliance with three.
 16 Richardson Decl. Ex. 17 at -356. Despite Plaintiff’s promise to timely bring the City into full
 17 compliance, during her tenure the City not only failed to make meaningful progress toward the three⁸
 18 open NSA Tasks, but fell *out of compliance* on four⁹ other Tasks. Richardson Decl. Exs. 18-24. In
 19 addition, an audit on use-of-force underreporting raised questions about ongoing racial disparities
 20 in policing. Richardson Decl. Ex. 26 at -802. A case filing summarized: “After years of progress,
 21 OPD is backsliding away from full compliance. It is clear that OPD has regressed on multiple fronts,
 22 and across several tasks, in the past year.” *Id.* at -796.

23 ///

24 _____
 25 ⁷ LeRonne Armstrong has been serving as Chief of Police since Feb. 8, 2021. Van Dusen Decl.
 Ex. 32 (Armstrong Depo.) at 18:9-17.

26 ⁸ Task 5 (Internal Affairs Division (IAD) Complaint Procedures), Task 34 (Stop Data, and Task 45
 (Consistency of Discipline).

27 ⁹ Task 2 (Timeliness Standards and Compliance with IAD Investigations), Task 24 (Use of Force
 28 Reporting Policy), Task 25 (Use of Force Investigations and Report Responsibility), and Task 30
 (Executive Force Review Board).

1 Plaintiff had an opportunity to address these issues during an August 21, 2020 *Allen* case
 2 management conference, yet when asked to identify the biggest problem facing OPD, Plaintiff did
 3 not identify any substantive issue, like the racial disparities reflected in the Use of Force audit, or
 4 the procedural issues that had derailed the Executive Force Review Board task. Instead, she said
 5 that the biggest issue was “the narrative that we are not making progress.” Richardson Decl. Ex. 28
 6 at 47. In the car ride home following that conference, the Mayor told Plaintiff that she was upset
 7 with that response. Van Dusen Decl. Ex. 31 (Kirkpatrick Depo.) at 614:24-615:24; Schaaf Decl.
 8 ¶ 3. The next day, Plaintiff attended a Police Commission meeting, at which Commissioner Harris
 9 noted that she was “extremely disappointed and absolutely disgusted” with the case management
 10 conference. Jackson Decl. Ex. 4 at -672; Harris Decl. ¶ 23.

11 A day later, Plaintiff expressed fears that the “Mayor is going to fire me” and that “there is
 12 a movement among the [Police Commission] to terminate my employment.” Van Dusen Decl.
 13 Ex. 47. Rather than work to repair her “challenging relationships” with the Monitor, Plaintiff told
 14 the Monitor about perceived misconduct by others at OPD. Van Dusen Decl. Exs. 55 & 47. She
 15 also wrote a note to herself that the Monitor had discriminated against her or harassed her due to her
 16 gender. Van Dusen Decl. Ex. 47.

17 **E. Plaintiff Targets the Police Commission and the Monitor.**

18 The confluence of criticisms about the Pawlik investigation, the OBOA matter, and NSA
 19 backsliding alarmed Plaintiff, who began to bristle at the criticisms. In April 2019, she wrote that
 20 “there is a group of activist [sic] who hate me and are building the guillotine in the public square for
 21 my execution and the Federal Monitor is not too happy with me either.” Van Dusen Decl. Ex. 48.

22 At the October 10, 2019 Police Commission Meeting, Ms. Gleason was scheduled to provide
 23 a report on diversity and discrimination in hiring. Jackson Decl. Ex. 7 at -907. The meeting became
 24 contentious, with Ms. Gleason criticizing a question as “beyond offensive,” and Commissioner
 25 Harris criticizing Ms. Gleason’s report as “disgraceful.” *Id.* at Ex. 8 at 90. Plaintiff jumped up to
 26 the podium, dismissed Ms. Gleason from the meeting, chastised the Commission, and demanded an
 27 apology. Van Dusen Decl. Ex. 30 (Kirkpatrick Depo.) at 172:8–178:1; Harris Decl. ¶ 28; Jackson
 28 Decl. ¶ 18 & Ex. 8 at 91-93. Commissioners were upset that, rather than seeking to deescalate the

1 situation, Plaintiff had only further enflamed tensions.¹⁰ Anderson Decl. ¶ 8; Jackson Decl. ¶ 18;
 2 Dorado Decl. ¶ 19.

3 The next day, Plaintiff emailed a “**Formal Complaint**” reporting that Commissioners Harris
 4 and Jackson had forced Ms. Gleason to attend the meeting when she had a planned vacation, and
 5 that their criticism of her were “tainted in racism.” Van Dusen Decl. Ex. 41. According to Plaintiff,
 6 “What was most disturbing was the insolent and rude manner in which [Gleason] was spoken to.”
 7 *Id.* This, Plaintiff believed, rose to “illegal behavior in terms of abuse of their positions, hostile
 8 work environment and bullying behavior.” *Id.*

9 A few weeks later, Plaintiff became aware that Commissioner Harris had been involved in
 10 a dispute at her son’s school in San Francisco. Plaintiff forwarded the “**School Incident**” complaint
 11 to five City officials and the Monitor “for follow up.”¹¹ Van Dusen Decl. Ex. 42. Plaintiff also
 12 informed Chair Jackson as “a courtesy.” Van Dusen Decl. Ex. 30 (Kirkpatrick Depo.) at 273:14-
 13 274:7; Van Dusen Decl. Ex. 62; Jackson Decl. ¶ 25.

14 Sometime that Fall, Plaintiff also elected to report to the Department of Justice her concerns
 15 that the Monitor was engaged in misconduct, including a concern that the Monitor intentionally
 16 overruled her conclusions in the investigation into the death of Joshua Pawlik for selfish gain. Van
 17 Dusen Decl. Exs. 30 & 31 (Kirkpatrick Depo.) at 308:2-315:23; 352:10-353:18.

18 ///

19 ///

20 ///

21 ///

22

23

24 ¹⁰ In the Commission’s view, “a veteran law enforcement officer and seasoned administrator would
 25 have sought to de-escalate the matter, ease the tension, and revisit the matter at a later time in a more
 productive fashion. Instead, you used your time at the podium to interrupt and yell at the
 Commission.” Van Dusen Decl. Ex. 64.

26 ¹¹ On February 9, 2022, Plaintiff claimed for the first time that she engaged in protected activity
 27 when she forwarded this information to City officials. Van Dusen Decl. Ex. 34 (‘Interrogatory No.
 3). Plaintiff did not make this allegation in the Complaint and cannot amend her pleading through
 28 an interrogatory response. *Navarro v. DHL Glob. Forwarding*, No. 215CV05510CASEX, 2017
 WL 901880, at *10 (C.D. Cal. Mar. 6, 2017) (plaintiff cannot rely on factual claims outside the
 pleadings in order to demonstrate a material issue of disputed fact).

1 **F. The Mayor Joins with the Police Commission to Terminate Plaintiff's**
 2 **Employment.**

3 On February 20, 2020, the Mayor and all seven members of the Commission elected to
 4 remove Plaintiff from her position as Chief of Police.¹² Jackson Decl. Ex. 5; Schaaf Decl. ¶ 7.
 5 Although only five Police Commission votes were required to join with the Mayor, all seven
 6 Commissioners reached the decision to terminate Plaintiff's employment. Different Commissioners
 7 had different specific concerns. Commissioner Tara Anderson focused on Plaintiff's performance
 8 issues. Anderson Decl. ¶ 10. Commissioners Edwin Prather and José Dorado became concerned
 9 that Plaintiff was not the agent of change she represented herself to be. Prather Decl. ¶ 12; Dorado
 10 Decl. ¶¶ 4, 11. Commissioner Henry Gage was deeply troubled by Plaintiff's handling of the
 11 investigation into Mr. Pawlik's death. Gage Decl. ¶¶ 7-8 & Ex. 9. Chair Regina Jackson lacked
 12 trust in Plaintiff. Jackson Decl. ¶ 21. Commissioners Harris and Smith concluded that Plaintiff
 13 was incapable of leading the City to real change. *See* Harris Decl. ¶¶ 19, 21, 23-25, 32; Smith Decl.
 14 ¶ 18. But there were common themes. Nearly all Commissioners were concerned about the
 15 backsliding on the NSA,¹³ Plaintiff's failure to acknowledge or take seriously claims of racism when
 16 they were presented to her in a meeting,¹⁴ and her mishandling of the Pawlik investigation.¹⁵ The
 17 Mayor, for her part, recognized that Plaintiff had lost the trust and confidence of the Commission
 18 and the Monitor, both critical stakeholders in OPD's reform efforts, and agreed that terminating
 19 Plaintiff was necessary for the City to move forward. Schaaf Decl. ¶ 8. All agreed on one thing:
 20 Plaintiff was not the right Chief of Police for Oakland.

21
 22
 23 ¹² Before she left OPD, Plaintiff forwarded herself 70 emails, which she then used to build a case
 against the City. Van Dusen Decl. Ex. 49. Plaintiff otherwise used her personal email address only
 to correspond with friends, and not for official City business.

24 ¹³ Dorado Decl. ¶¶ 23-24; Harris Decl. ¶¶ 22-23, 31; Anderson Decl. ¶¶ 7, 10; Jackson Decl. ¶¶ 16,
 25 24; Prather Decl. ¶¶ 13, 17; Gage Decl. ¶¶ 6, 9-11, 14, 15; Smith Decl. ¶ 15; *see also* Schaaf Decl.
 ¶ 7.

26 ¹⁴ Harris Decl. ¶¶ 21, 31; Prather Decl. ¶¶ 9, 17; Anderson Decl. ¶¶ 5, 10; Jackson Decl. ¶¶ 14, 21,
 27 24; Dorado Decl. ¶¶ 15, 23; Gage Decl. ¶¶ 11, 15; Smith Decl. ¶¶ 10-12.

28 ¹⁵ Harris Decl. ¶¶ 19, 31; Anderson Decl. ¶¶ 6, 10; Jackson Decl. ¶ 15; Prather Decl. ¶ 7; Dorado
 Decl. ¶¶ 12-13; Gage Decl. ¶¶ 7-8 & Ex. 9; Smith Decl. ¶¶ 7-9, 19.

1 Consistent with her resistance to taking responsibility for her part in creating of these
 2 problems, Plaintiff attributed the decision to her outsider status and her race, telling the media in the
 3 days following her termination: “I don’t think I was who they wanted to begin with. I’m not an
 4 Oaklander.”¹⁶ and “I’m not from Oakland. I think that is very important to them. And I’m not a
 5 person of color. And I think that has been very important to them.”¹⁷ In reality, what was important
 6 to the Commissioners and the Mayor was that the Police Chief do her job effectively.

7 **III. PROCEDURAL HISTORY**

8 Plaintiff filed her Complaint on August 19, 2020, alleging claims for (1) whistleblower
 9 retaliation in violation of Labor Code section 1102.5; and (2) First Amendment retaliation in
 10 violation of 42 U.S.C. section 1983. *See* Compl. Trial is set to begin on May 16, 2022.

11 **IV. LEGAL STANDARD**

12 A “court shall grant summary judgment [to a moving party] if the movant shows that there
 13 is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of
 14 law.” Fed. R. Civ. P. 56(a). An issue of fact is genuine only if there is sufficient evidence for a
 15 reasonable jury to find for the nonmoving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
 16 248–49 (1986). “The mere existence of a scintilla of evidence . . . will be insufficient; there must
 17 be evidence on which the jury could reasonably find for the [nonmoving party].” *Id.* at 252. Where
 18 a defendant moves for summary judgment based on a claim for which the plaintiff bears the burden
 19 of proof, the defendant need only point to the plaintiff’s failure “to make a showing sufficient to
 20 establish the existence of an element essential to [the plaintiff’s] case[.]” *Celotex Corp. v. Catrett*,
 21 477 U.S. 317, 322 (1986).

22 **V. ARGUMENT**

23 The Chief of Police is an at-will position, and the City’s discretion to decide the best fit for
 24 the role is critical to successful municipal operation. Measure LL, and Plaintiff’s contract, recognize
 25 ///

26 _____
 27 ¹⁶ <https://abc7news.com/5964109/>

28 ¹⁷ <https://www.nbcbayarea.com/news/local/ex-oakland-police-chief-speaks-out-after-firing/2241022/>

1 that Plaintiff could be terminated at “any time with or without good cause and without prior notice.”
 2 Van Dusen Decl. Ex. 43 at -366; Oakland Charter §§ 601 and 902(b).

3 Plaintiff contends that a series of reports by her concerning Police Commissioner conduct,
 4 over a period of nearly two years, caused or contributed to her termination. Her contention falls
 5 short. With respect to her whistleblower claim, Plaintiff’s reports did not concern violations of law
 6 and so cannot support her claim. Moreover, Plaintiff has no evidence, beyond her own inadmissible
 7 suppositions, that her reports influenced any decisionmaker’s vote to terminate her employment. As
 8 to the First Amendment claim, she made her reports while on duty, as part of her official
 9 responsibilities, and on issues that were not worthy of public concern. Finally, Plaintiff’s claims
 10 fail because key stakeholders had lost confidence in her ability to lead OPD. She would have been
 11 terminated whether or not she engaged in any protected activity.

12 A. **Section 1102.5 Protects Whistleblowers Who Disclose Violations of Law, Not**
 13 **Personnel Disputes.**

14 To prevail on her claim under Labor Code section 1102.5, Plaintiff must show by a
 15 preponderance of evidence that whistleblowing contributed to her termination. Cal. Lab. Code §
 16 1102.6; *Lawson v. PPG Architectural Finishes, Inc.*, 12 Cal. 5th 703, 711 (2022) (*McDonnell*
 17 *Douglas* burden-shifting framework does not apply to Section 1102.5 claims, but the plaintiff retains
 18 the burden to prove that her engagement in protected activity contributed to her termination).
 19 Plaintiff cannot meet this burden, because her reports were not protected under Section 1102.5, and
 20 because no evidence connects any of her reports to her termination.

21 1. **Plaintiff’s personnel complaints are not protected activity.**

22 Section 1102.5 makes it unlawful to retaliate against an employee who discloses information
 23 revealing a “violation of state or federal statute, or a violation or noncompliance with a local, state,
 24 or federal rule or regulation[.]” Cal. Lab Code § 1102.5(b). Plaintiff “must be able to point to some
 25 legal foundation for her suspicion—some statute, rule or regulation which may have been violated
 26 by the conduct [s]he disclosed.” *Fitzgerald v. El Dorado Cnty.*, 94 F. Supp. 3d 1155, 1172 (E.D.
 27 Cal. 2015). “The employee must have an actual belief that the employer’s actions were unlawful
 28 and the employee’s belief, even if mistaken, must be reasonable.” *Tam v. Qualcomm, Inc.*, 300 F.

1 Supp. 3d 1130, 1148 (S.D. Cal. 2018). The employee’s reasonable belief must be reflected in the
 2 disclosure itself. *Patten v. Grant Joint Union High Sch. Dist.*, 134 Cal. App. 4th 1378, 1385 (2005),
 3 *disapproved on other grounds by Lawson*, 12 Cal. 5th at 711, (the disclosures “do not show any
 4 belief on Patten’s part that she was disclosing a violation of state or federal law in any sort of
 5 whistleblowing context, as required for a section 1102.5(b) whistleblowing action”).

6 Section 1102.5 does not protect disclosures involving internal personnel matters. *Id.* at
 7 1384-85. This limitation relieves the judiciary from micromanaging employee disputes. *Id.* at 1385
 8 (citing *Akers v. Cnty. of San Diego*, 95 Cal. App. 4th 1441, 1455 (2002)); *see also Carter v.*
 9 *Escondido Union High Sch. Dist.*, 148 Cal. App. 4th 922, 934-35 (2007) (terminated coach’s
 10 communication was an “internal personnel disclosure” and not whistleblowing when he reported to
 11 another coach that a hospitalized student athlete’s failed liver was due to the consumption of a
 12 creatine drink); *Conn v. W. Placer Unified Sch. Dist.*, 186 Cal. App. 4th 1163, 1182 (2010), *as*
 13 *modified on denial of reh’g* (Aug. 10, 2010) (teacher’s complaints about unruly students, improper
 14 special-education screenings, and failure of the school to perform special-needs assessments were
 15 internal administrative or personnel decisions rather than whistleblowing).

16 In *Patten*, the high-school-principal plaintiff reported a series of incidents at the school,
 17 including complaints from students that a teacher invaded their privacy in the locker room, an
 18 inappropriate remark from a teacher to a student, and a request for additional staff on campus
 19 following a student assault. 134 Cal. App. 4th at 1382. The *Patten* court held that these disclosures
 20 were “made in an exclusively internal administrative context . . . [and] do not show any belief on
 21 Patten’s part that she was disclosing a violation of state or federal law”¹⁸ *Id.* at 1384–85.

22 **2. Plaintiff reported personnel and administrative disputes, not legal**
 23 **violations.**

24 Plaintiff has pointed to multiple reports of misconduct that she claims give her the mantle of
 25 a whistleblower. But in each instance, Plaintiff was reporting a personnel dispute, disagreement, or
 26

27 ¹⁸ Only one disclosure in *Patten* received whistleblower-protection: the plaintiff’s report to the state
 28 legislature about the school’s improper use of funds, which the court described as the
 “whistleblowing archetype.” *Id.* at 1385–86. None of Plaintiff’s reports come close.

1 workplace grievance rather than a violation of law. If Plaintiff—a chief law enforcement officer—
 2 had intended to identify a violation of law, she knew how to do so. Here, her disclosures cover
 3 administrative and personnel disputes; only after her termination did she attempt to repurpose them
 4 as whistleblowing.

5 **a. Reports of staff interactions do not reveal violations of bribery**
 6 **or public corruption laws.**

7 Several of Plaintiff’s reports concern Police Commissioners’ treatment of others—that a
 8 Commissioner threatened an NSC’s job or blamed the NSCs for a devastating fire—in the **NSC**
 9 **Incident** (Van Dusen Decl. Ex. 37), or that a Commissioner engaged in “bullying behavior” and
 10 “was not going to pay the towing fee and was going to the chief of police over it” during the **Tow**
 11 **Incident**. Van Dusen Decl. Ex. 37. Plaintiff now claims that these reports disclosed bribery, public
 12 corruption, and retaliation in violation of Penal Code section 68(a) and Oakland Municipal Code
 13 (“OMC”) sections 2.25.060 and 2.24.100. Van Dusen Decl. Ex. 34 (Interrogatory No. 2).

14 Nothing in these reports reveals a violation of any state or local law. As to the **NSC Incident**,
 15 nothing in the email reveals that Commissioners sought or received a bribe (defined as “anything of
 16 value or advantage . . . asked, given, or accepted, with a corrupt intent to influence” under Penal
 17 Code § 7) or were seeking a “private advantage, benefit, or economic gain” based on their role as
 18 Commissioners (as OMC § 2.25.060(A)(2) requires). Richardson Decl. Ex. 15. Similarly, OMC
 19 § 2.24.100 prohibits retaliation related to reporting violations of the City’s Government Ethics Act
 20 (*id.*), and nothing in the **NSC Incident** email refers to such reporting.

21 Plaintiff now suggests that the **Tow Incident** involved an effort by Commission Harris to
 22 avoid her tow fees because of her status as a Commissioner. But that after-the-fact framing is
 23 conspicuously absent from Plaintiff’s email about the **Tow Incident**. Instead, the email says only
 24 that Plaintiff told records staff that “my car should not have been towed” and that she “was not going
 25 to pay the fee” and was going to the “chief of police” about it. A member of the Police Commission,
 26 like any member of the public, can complain about an unfair tow. Nothing in the email Plaintiff
 27 forwarded states that Commissioner Harris tried to use her status to avoid paying a tow fee. This is
 28 why Plaintiff frames the interaction as “bullying behavior,” not bribery. Van Dusen Decl. Ex. 37.

1 Primarily, the **NSC Incident** and the **Tow Incident** relate to whether the Police
2 Commissioner(s) involved were treating OPD staff in a manner that would require investigation
3 and, perhaps, discipline or counseling. But “[m]atters such as transferring employees, writing up
4 employees, and counseling employees are personnel matters.” *Mueller v. Cty. of Los Angeles*, 176
5 Cal. App. 4th 809, 822 (2009). Plaintiff’s reporting of incidents for which Commissioners might
6 have received employee discipline (had they been employees rather than volunteers) is precisely the
7 sort of workplace matter that Section 1102.5 does not protect.

8 Plaintiff also claims that the **School Incident** reported violations of these same bribery and
9 public corruption provisions. Van Dusen Decl. Ex. 34 (Interrogatory No. 2). Even if Plaintiff could
10 base her claim on an act of whistleblowing absent from her complaint, the **School Incident** is not
11 protected whistleblowing. The report reveals that a commissioner showed her badge, not that she
12 sought any benefit by doing so. Tellingly, Plaintiff only forwarded the **School Incident** to
13 Commissioner Jackson as a “courtesy” for anticipated media. Van Dusen Decl. Ex. 30 (Kirkpatrick
14 Depo.) at 273:14-274:7; Jackson Decl. ¶ 25.

15 **b. Plaintiff’s reports of Police Commission conduct during public**
16 **meetings do not disclose a violation of law.**

17 Plaintiff reported that a Police Commissioner made a comment about the Public Defender’s
18 race in the **Brendan Woods Comment**. That report does not disclose a violation of law. Even if
19 the comment violated Oakland administrative policies, it is not illegal to comment on a person’s
20 race. *See Nejadian v. Cnty. of Los Angeles*, 40 Cal. App. 5th 703, 721 (2019) (internal procedures
21 are not “statutes, rules, or regulations” within the meaning of Labor Code section 1102.5). Plaintiff
22 claims the comment also violated laws against racial discrimination or harassment in the workplace
23 (Van Dusen Decl. Ex. 34 (Interrogatory No. 2), but such violations cannot be exalted to
24 whistleblower status—*Patten* provides otherwise. Similarly, Plaintiff’s **Formal Complaint** alleged
25 that Commissioners were “insolent and rude” during a meeting, and that their “vitriol” was “tainted
26 in racism.” Plaintiff now claims that the **Formal Complaint** revealed a violation of OMC
27 § 2.24.100, but nothing in the report touches on the Government Ethics Act, as that code provision

28 ///

1 requires. Richardson Decl. Ex. 15. The **Formal Complaint** reveals nothing more than unprotected
2 interpersonal disputes.

3 Plaintiff's **OBOA Questions** report alleges that the Police Commission asked her when the
4 OBOA investigation was opened. Plaintiff could not have reasonably believed that the
5 Commission's *question* violated Penal Code section 832.7 or OMC section 2.45.080, as she now
6 claims. Van Dusen Decl. Ex. 34 (Interrogatory No. 2). The version of Section 832.7 then in effect
7 prohibits *disclosure* of personnel records, not requests (*see* Van Dusen Decl. Ex. 52), and section
8 2.45.080 merely identifies the records available to Police Commission (Richardson Decl. Ex. 15).
9 Plaintiff was not compelled to, and did not, disclose any information about the investigation that she
10 did not want to provide. Nor could Plaintiff have believed the **OBOA Questions** implicated OMC
11 section 2.2.4.100, as her complaint reveals nothing to suggest the Commission was reacting to a
12 report of a Public Ethics Act violation.

13 **c. Plaintiff's disclosures about the scope of Police Commission**
14 **powers are not protected.**

15 The remainder of Plaintiff's disclosures relate to the scope of the Police Commission's
16 authority, which are administrative issues that cannot amount to whistleblowing. Plaintiff could not
17 have reasonably believed **The Subpoena** violated Penal Code section 832.7 or OMC section
18 2.45.080, as she now claims. First, while Plaintiff called an attorney about the subpoena, Plaintiff
19 did not report that the subpoena violated any laws. Second, the Police Commission had the authority
20 to issue subpoenas as a general matter (Richardson Decl. Ex. 13 (Section 604(b)(3))). At no point
21 were any personnel records improperly revealed. Similarly, Plaintiff's **Liaison Assignment** email
22 reported that the Police Commission attempted to direct staff. Plaintiff now claims that the Police
23 Commission's act violated Measure LL, but Measure LL does not *prohibit* directing staff.

24 **3. Passing along public information is not whistleblowing.**

25 Several of Plaintiff's reports are not protected for an independent reason: the reports merely
26 passed along information that was publicly available. The term "disclosure," as used in Section
27 1102.5, "means to reveal something that was hidden and not known." *Mize-Kurzman v. Marin*

28 ///

1 *Cnty. Coll. Dist.*, 202 Cal. App. 4th 832, 858–59 (2012)¹⁹; *see Miller v. City of Los Angeles*, No.
 2 CV 13-5148-GW(CWX), 2015 WL 12811238, at *7 (C.D. Cal. Oct. 22, 2015) (“[r]eporting publicly
 3 known facts is not a disclosure of information.”).

4 Plaintiff’s reporting of public information is not protected activity. The **Brendan Woods**
 5 **Comment** (Jackson Decl. Ex. 1 at OAK00014533-34), **OBOA Questions** (Jackson Decl. Ex. 2 at
 6 35-38), **Subpoena** (Jackson Decl. Ex. 3 at OAK00321698-700), and **Formal Complaint** (Jackson
 7 Decl. Ex. 8 at 82-96) all concern matters that were discussed at Police Commission meetings, which
 8 are open to the public and recorded.

9 The **School Incident** concerns a publicly available police report. Van Dusen Decl. Ex. 62.

10 **B. Even If Plaintiff Were a Whistleblower, Plaintiff Cannot Show Her Reports**
 11 **Contributed to Her Termination.**

12 Plaintiff’s reports were not a contributing factor in her termination. Cal. Lab. Code § 1102.6;
 13 *Lawson*, 12 Cal. 5th at 711. Plaintiff has no direct evidence of retaliation (*see* Van Dusen Decl. Ex.
 14 34 (Interrogatory No. 3)), and her speculation is insufficient. *McRae v. Dep’t of Corr. & Rehab.*,
 15 142 Cal. App. 4th 377, 398 (2006).

16 First, Plaintiff lacks evidence that most decisionmakers were ever *aware* of most of her
 17 disclosures, which is fatal to her claims. *Morgan v. Regents of Univ. of Cal.*, 88 Cal. App. 4th 52,
 18 69 (2000) (“In the absence of evidence that the individuals who [made the adverse employment
 19 decision] were aware of [a] past filing of a grievance, the causal link necessary for a claim of
 20 retaliation cannot be established.”); Harris Decl. ¶ 29; Jackson Decl. ¶ 25; Prather Decl. ¶ 17; Dorado
 21 Decl. ¶ 25; Anderson Decl. ¶¶ 9, 11; Gage Decl. ¶¶ 15-16; Smith Decl. ¶¶ 19-21.

22 Second, even if those decisionmakers were aware, Plaintiff can only argue temporal
 23 proximity to establish an inference of retaliation. But almost all of Plaintiff’s complaints occurred
 24

25 ¹⁹ *Hager v. Cnty of Los Angeles*, 228 Cal. App. 4th 1538 (2014), does not alter this bright-line rule.
 26 There, the court narrowly held that a subsequent employee’s whistleblowing is still protected. *Id.*
 27 at 1552; *see also Killgore v. Specpro Pro. Servs., LLC*, No. 5:18-CV-03413-EJD, 2019 WL
 28 6911975, at *9 (N.D. Cal. Dec. 19, 2019) (“*Hager* and *Mize-Kurzman* [] both concern situations
 where an employee discloses a legal violation *to someone who does not already know about it.*”)
 (emphasis in original).

1 between four and twenty-three months before her termination. The Ninth Circuit has “repeatedly
 2 found that durations of four months and greater between the protected activity and termination are
 3 too remote to support a finding of causation based on temporal proximity.” *Canupp v. Children’s*
 4 *Receiving Home of Sacramento*, 181 F. Supp. 3d 767, 793 (E.D. Cal. 2016) (quoting *Villiarimo v.*
 5 *Aloha Island Air, Inc.*, 281 F.3d 1054, 1065 (9th Cir. 2002)); accord *Filipovic v. K & R Express*
 6 *Sys., Inc.*, 176 F.3d 390, 399 (7th Cir. 1999) (affirming summary judgment for defendant where four
 7 months elapsed between Title VII plaintiff’s protected activity and his termination). Plaintiff’s
 8 Complaint does not allege a single instance of protected activity that occurred within four months
 9 of her termination.²⁰ Only the **School Incident**—which is not part of the Complaint—is within the
 10 four-month window.

11 Unable to establish a close temporal connection between her complaints and her termination,
 12 Plaintiff points to instances in which the Commission “discussed Chief Kirkpatrick’s employment
 13 status” in closed sessions during the course of 2019. Van Dusen Decl. Ex. 35 (‘Interrogatory No.
 14 20). Even assuming it would be reasonable to infer a connection between Plaintiff’s complaints and
 15 the closed session scheduling—and Plaintiff has nothing but her own speculation to connect the
 16 two—a closed session is not an adverse employment action. If the Commissioners had wanted to
 17 terminate Plaintiff, they had no legal reason they needed to wait to take action.

18 Section 1102.5 requires Plaintiff to prove that a protected *disclosure* motivated her
 19 termination; unprofessional behavior is not a disclosure. For example, Police Commissioners
 20 reprimanded Plaintiff for her “unprofessional and unbecoming” conduct at the podium during the
 21 October 10 meeting. Van Dusen Decl. Ex. 64. That reprimand had nothing to do with Plaintiff’s
 22
 23

24 ²⁰ The closest disclosure included in the Complaint is the “Formal Complaint” submitted on October
 25 11, 2019, four months and nine days before she was terminated. See Compl. ¶ 72. That complaint’s
 26 recitation of several prior complaints is legally irrelevant. *CTC Glob. Corp. v. Huang*, No. SACV
 27 17-02202 AG (KESx), 2019 WL 4164971, at *3 (C.D. Cal. July 29, 2019) (“The Court doesn’t
 28 consider Huang’s ‘reiteration’ of earlier concerns to be a strong new basis for retaliatory intent, nor
 have other courts in this district analyzed causation in this manner.”); see *Jadwin v. Cnty. of Kern*,
 610 F. Supp. 2d 1129, 1156 (E.D. Cal. 2009) (summary judgment not appropriate for plaintiff when
 the evidence showed that prior raising of same concerns without apparent retaliation suggested no
 retaliatory motive).

1 **Formal Complaint**, which had not been shared with Commissioners.²¹ Similarly, Commissioner
 2 Harris and Chair Jackson discussed that it was “extremely disrespectful” that Plaintiff had never
 3 apologized for accusing Commissioner Harris of seeking a favor. Van Dusen Decl. Ex. 54; Harris
 4 Decl. ¶ 28. The exchange concerned Plaintiff’s treatment of Commissioner Harris during their in-
 5 person interaction; Plaintiff’s disclosure about the **Tow Incident** never came up.

6 Indeed, the **Tow Incident** occurred nearly a year-and-a-half before Plaintiff’s termination.
 7 The Mayor knew of Plaintiff’s report and elected to renew Plaintiff’s contract shortly thereafter.
 8 Van Dusen Decl. Ex. 43; *Manatt v. Bank of Am., NA*, 339 F.3d 792, 802 (9th Cir. 2003) (“the
 9 evidence suggests no causality at all” where “the Bank gave Manatt a pay raise and selected her for
 10 a prestigious assignment” in between her complaint and the adverse employment action). No
 11 evidence supports the illogical suggestion that the Mayor, knowing of the matter when she renewed
 12 Plaintiff’s employment contract, then decided, a year-and-a-half later, to fire Plaintiff because of it.

13 Temporal proximity alone is insufficient to support a judgment in favor of Plaintiff. If that
 14 were enough, a poorly performing employee would be shielded simply by making complaints at
 15 regular intervals, as Plaintiff did here. Plaintiff must have some evidence, beyond her own
 16 speculation, that the decisionmakers were actually motivated by her reports. *McRae*, 142 Cal. App.
 17 4th at 398 (plaintiff’s personal belief and speculation that defendants had retaliated against her was
 18 not evidence and could not support jury verdict in her favor under FEHA). Instead, Police
 19 Commissioners and the Mayor were focused on real issues facing Oakland: whether Plaintiff was
 20 guiding the City towards sustained constitutional policing; whether Plaintiff could address racism
 21 in OPD; and whether Plaintiff had the community and stakeholder support necessary to lead OPD.

22 ///
 23 ///
 24 ///
 25 ///

26 _____
 27 ²¹ *After* Plaintiff received the Commission’s reprimand, she informed the Commission Chair that
 28 she had “written up” a complaint but did not provide substantive information about its content.
 Jackson Decl. ¶ 19.

1 C. **Plaintiff Cannot Succeed on Her First Amendment Claim, Because She Did**
 2 **Not Engage in Any Protected First Amendment Activity.**

3 Plaintiff’s First Amendment claim fails for the same reason as her Section 1102.5 claim: the
 4 Commissioners and the Mayor were not motivated by her reports.²² The claim also fails for two
 5 additional reasons: (1) her speech as a public employee does not enjoy First Amendment protection;
 6 and (2) the issues about which she complained were not matters of public concern.

7 “To establish a prima facie case of First Amendment retaliation, a plaintiff must prove that
 8 (1) she engaged in protected speech; (2) the defendants took an adverse employment action against
 9 her; and (3) her speech was a substantial or motivating factor for the adverse employment action.”
 10 *Howard v. City of Coos Bay*, 871 F.3d 1032, 1044 (9th Cir. 2017) (internal quotations and citations
 11 omitted). The Ninth Circuit employs a “sequential five-step series of questions” to determine
 12 whether an employer impermissibly retaliated against an employee for protected speech, including:
 13 (1) whether the plaintiff spoke on a matter of public concern; (2) whether the plaintiff spoke as a
 14 private citizen or public employee. *Anthoine v. N. Cent. Ctys. Consortium*, 605 F.3d 740, 748 (9th
 15 Cir. 2010) (citations omitted).

16 **1. Plaintiff spoke as an on-duty police chief, not a private citizen.**

17 For each statement now alleged to form the basis of Plaintiff’s First Amendment claim,
 18 Plaintiff spoke as the Chief of Police of the City of Oakland, and not in her personal capacity.
 19 “[W]hen public employees make statements pursuant to their official duties, the employees are not
 20 speaking as citizens for First Amendment purposes, and the Constitution does not insulate their
 21 communications from employer discipline.” *Dahlia v. Rodriguez*, 735 F.3d 1060, 1068 (9th Cir.
 22 2013) (quoting *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006)). Plaintiff bears the burden of
 23 establishing that she “had no official duty to make the questioned statements” or that “the speech
 24 was not the product of performing the tasks the employee was paid to perform.” *Posey v. Lake Pend*

25 _____
 26 ²² If the Court finds that Plaintiff cannot prove that her purported whistleblowing was a contributing
 27 factor to her termination under the Labor Code, then it must also find an absence of evidence that
 28 the adverse employment action was in retaliation for exercising free speech (the same speech on
 which her whistleblowing is based) because a Section 1983 claim for First Amendment retaliation
 requires that it be a substantial and motivating factor in the decision. *Mt. Healthy City Sch. Dist.*
Bd. of Educ. v. Doyle, 429 U.S. 274, 285–86 (1977).

1 *Oreille Sch. Dist. No. 84*, 546 F.3d 1121, 1127 n.2 (9th Cir. 2008) (internal quotations and citations
2 omitted).

3 All of Plaintiff’s communications occurred while she was on duty, in her OPD uniform or
4 professional dress, and with her service weapon on her person. *See e.g.*, Van Dusen Decl. Exs. 36
5 (11:07 a.m.), 37 (8:44 a.m.), 38 (9:49 a.m.), 39 (12:41 p.m.), 40 (4:26 p.m.) 41 (5:56 p.m.) & Ex. 30
6 (Kirkpatrick Depo.) at 50:2-4; 115:24-116:1; 143:16-21; 225:8-239:14; 280:15-281:6. The reports
7 came from her City-issued email account and were sent from a City-issued computer or phone. *Id.*;
8 Van Dusen Decl. ¶¶ 8-13.

9 Plaintiff directed each communication to City leaders—her supervisors or attorneys for the
10 City. This, too, counsels against the speech being worthy of First Amendment protection. *See, e.g.*,
11 *Pyke v. Arcadis, US Inc.*, 35 F. Supp. 3d 1093, 1100-01 (N.D. Cal. 2014) (Breyer, J.), *aff’d*, 649 F.
12 App’x 593 (9th Cir. 2016) (granting summary judgment against public-employee plaintiff because
13 his email was (1) confined to his chain of command; (2) the subject matter of the email was typical
14 of his job duties; and (3) he did not speak in contravention of his supervisor); *Clark v. City of*
15 *Oakland*, No. C 06-06872-CRB, 2008 WL 2357321, at *7 (N.D. Cal. June 6, 2008), *aff’d*, 385 F.
16 App’x 665 (9th Cir. 2010) (summary judgment appropriate for employer because the speech was “a
17 personnel grievance” brought to a supervisor in a close-door meeting).

18 Plaintiff may argue that she had no official duty to make these reports, but that flies in the
19 face of documents that spell out her job duties, and also demonstrates that she never fully grasped
20 the responsibilities that came with serving as Chief of Police. Plaintiff’s official duties as Chief of
21 Police include “oversight of OPD’s day-to-day operations, the management of its officers and staff,
22 and setting the policies by which it operates.” Van Dusen Decl. Ex. 34 (Interrogatory No. 6). They
23 also include the official duty to “[c]ontinuously monitor agency issues and programs, and advise the
24 City Manager and City Council of important issues in a timely and proactive manner. *Id.* Ex. 58.
25 She also had a duty, under Administrative Instruction 71, to report instances of discrimination or

26 ///

27 ///

28 ///

1 mistreatment of City employees.²³ Her reporting falls squarely within oversight of OPD’s day-to-
 2 day, management of OPD personnel, her duty to report under AI 71, and her broad duty to report
 3 important issues to City leaders.

4 **2. Plaintiff did not speak on matters of public concern.**

5 Speech involves a matter of public concern when it fairly can be said to relate to any matter
 6 of political, social, or other concern to the community. “Public concern” does not have a precise
 7 definition, but “the essential question is whether the speech addressed matters of ‘public’ as opposed
 8 to ‘personal’ interest.” *Desrochers v. City of San Bernardino*, 572 F.3d 703, 709 (9th Cir. 2009)
 9 (quoting *Connick v. Myers*, 461 U.S. 138, 147 (1983). “[S]peech that deals with ‘individual
 10 personnel disputes and grievances’ and that would be of ‘no relevance to the public’s evaluation of
 11 the performance of governmental agencies’ is generally not of public concern.” *Coszalter v. City of*
 12 *Salem*, 320 F.3d 968, 973 (9th Cir. 2003) (quoting *McKinley v. City of Eloy*, 705 F.2d 1110, 1114
 13 (9th Cir. 1983)).

14 Plaintiff’s complaints were exclusively about individual personnel disputes and grievances,
 15 without widespread public implications. “To presume that all matters which transpire within a
 16 government office are of public concern would mean that virtually every remark—and certainly
 17 every criticism directed at a public official—would plant the seed of a constitutional case [T]he
 18 First Amendment does not require a public office to be run as a roundtable for employee complaints
 19 over internal office affairs.” *See Connick*, 461 U.S. at 149.

20 **D. The City Would Have Terminated Plaintiff Irrespective of Any Protected**
 21 **Conduct.**

22 The City is entitled to summary judgment on Plaintiff’s claims if it can show that it would
 23 have terminated Plaintiff “for legitimate, independent reasons even had [she] not engaged in
 24 protected activity.” Cal. Lab. Code § 1102.6; *Lawson*, 12 Cal. 5th at 711 (citing *Texas v. Lesage*,
 25 528 U.S. 18, 20–21 (1999) (upholding summary judgment based on the same-decision defense));
 26 *Mt. Healthy*, 429 U.S. at 287.

27 _____
 28 ²³ “It is the responsibility of each . . . employee who believes that (s)he has experienced conduct that
 may violate this policy to report the conduct promptly.” Richardson Decl. Ex. 14 at 399.

1 The City meets this burden if it demonstrates that “those engaging in the alleged retaliation
 2 reasonably believed their conduct was justified on the basis of evidence separate and apart from the
 3 fact that the employee made a protected disclosure.” *Mize-Kurzman*, 202 Cal. App. 4th at 862.
 4 Uncontroverted evidence demonstrates that, while each decisionmaker made a personal decision,
 5 all were convinced that Plaintiff was not the right Chief of Police for Oakland, and that her track
 6 record was unconvincing: her inability to make progress towards sustained constitutional policing,
 7 her failure to recognize reports of race discrimination when made directly to her, her inability to
 8 gain the trust and confidence of key stakeholders and community groups. Anderson Decl. ¶¶ 5-9,
 9 10; Dorado Decl. ¶¶ 4, 6-8, 11-16, 19-20, 23-24, 26; Gage Decl. ¶¶ 6-12, 14-15; Harris Decl. ¶¶ 12-
 10 15, 17, 19-21, 23-25, 27-28, 30-32; Jackson Decl. ¶¶ 12, 14-16, 18, 21-22, 24, 26; Prather Decl.
 11 ¶¶ 7-10, 12-13, 16-17, 19-20; Smith Decl. ¶¶ 7-12, 15-16, 18-19, 22-23; Schaaf Decl. ¶¶ 2-5, 8-9.

12 CONCLUSION

13 Plaintiff may well have felt that she was doing a good job as Oakland’s Police Chief, and
 14 that the City officials who made the decision to terminate her were ill-informed or motivated by
 15 “politics.” But this case is not about whether she was doing a good job, or whether her positive
 16 achievements outweighed her shortcomings or her missteps. It is about whether she was terminated
 17 for the unlawful reasons she claims. In order to reach that conclusion, one would have to ascribe to
 18 the Commissioners and the Mayor an intention to punish Plaintiff for acting as a whistleblower, or
 19 for exercising her First Amendment rights. But she was not a whistleblower, nor was she exercising
 20 her First Amendment rights. There is no evidence, moreover, that the decision to terminate her had
 21 anything to do with her reports or her speech.

22 A police chief in a city like Oakland faces innumerable challenges. The determination
 23 whether she has met them lies, in this case, with the Oakland Police Commission and the Oakland
 24 Mayor. They made their judgment. This Court is not the proper forum for Plaintiff to debate the
 25 wisdom of their decisions, or to ask a jury to second-guess their judgment.

26 Plaintiff’s claims cannot prevail as a matter of law. The Court should grant summary
 27 judgment in favor of the City.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: February 24, 2022

Respectfully submitted,

COBLENTZ PATCH DUFFY & BASS LLP

By: /s/ Katharine Van Dusen
KATHARINE VAN DUSEN
Attorney for Defendant
THE CITY OF OAKLAND, CALIFORNIA