



CLAIM AGAINST THE CITY OF SANTA CLARA
(For Damages to Persons or Personal Property)

City Clerk's Office Date Stamp

Received By: M. Wellen
Via: U.S. Mail
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Other _____

(Please do not write above this line – for City use only)

A claim must be filed with the City Clerk of the City of Santa Clara within six months* after which the incident or event occurred. Be sure your claim is against the City of Santa Clara not some other public entity. Where space is insufficient, please use additional paper and identify the information by paragraph number. Your completed claim (original) must be mailed or delivered to: **City Clerk, City of Santa Clara, 1500 Warburton Avenue, Santa Clara, California 95050.**

TO THE HONORABLE MAYOR AND CITY COUNCIL OF THE CITY OF SANTA CLARA:

The undersigned respectfully submits the following claim and information relative to damage to persons and/or personal property:

1	NAME OF CLAIMANT	<u>Deanna J. Santana</u>		DATE OF BIRTH	[REDACTED]	
	ADDRESS OF CLAIMANT	[REDACTED]			ZIP CODE	[REDACTED]
	HOME PHONE	[REDACTED]	DRIVER'S LICENSE STATE AND NUMBER	[REDACTED]		
2	SEND NOTICES REGARDING THIS CLAIM TO: (List name, mailing address and telephone number if not same as name and address listed above.) <u>City Attorney, City Council</u>					
3	DATE AND TIME OF INCIDENT	<u>4-04-2023</u>	SPECIFIC ADDRESS OF INCIDENT (Address)			
4	BASIS OF CLAIM (Specify the occurrence, event, act, or omission which you claim caused the injury or damage for which you are submitting this claim.) <u>See Attachment A</u>					
5	CITY'S ACTION (Specify action by City or its employees which caused alleged damage or injury.) <u>See Attachment A</u>					

*One year for a claim relating to any cause of action for other than death, injury to person or to personal property, or growing crops." Government Code §911.2

6	NAME OF CITY EMPLOYEE WHO ALLEGEDLY CAUSED INJURY OR LOSS <i>City Council / see Attachment</i>										
7	DESCRIPTION OF CLAIMANT'S INJURY, PROPERTY DAMAGE, OR LOSS (If there were no injuries, state "NO INJURIES".) <i>See Attachment</i>										
8	OTHER INJURED PERSONS (List names and addresses.) <i>n/a</i>										
9	<p>DAMAGES CLAIMED: Amount of Claimant's damage or loss and method of computation. Include copies of bills, invoices, estimates, etc. Note: If your claim is for more than \$10,000, you need not fill in an amount but you must state whether jurisdiction for the claim would be in the Limited jurisdiction (up to \$25,000) or Unlimited jurisdiction of the Superior Court.</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; border-bottom: 1px solid black;">ITEMS</th> <th style="width: 10%;"></th> </tr> </thead> <tbody> <tr> <td style="border-bottom: 1px solid black; text-align: center;"><i>above \$25,000</i></td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td style="border-bottom: 1px solid black;"></td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td style="border-bottom: 1px solid black;"></td> <td style="text-align: right;">\$ _____</td> </tr> <tr> <td style="text-align: right; border-bottom: 1px solid black;">TOTAL AMOUNT:</td> <td style="text-align: right;">\$ _____</td> </tr> </tbody> </table> <p>Court Jurisdiction: (Check one)</p> <p style="text-align: center;"> Limited Civil: <input type="checkbox"/> Unlimited Civil: <input checked="" type="checkbox"/> </p>	ITEMS		<i>above \$25,000</i>	\$ _____		\$ _____		\$ _____	TOTAL AMOUNT:	\$ _____
ITEMS											
<i>above \$25,000</i>	\$ _____										
	\$ _____										
	\$ _____										
TOTAL AMOUNT:	\$ _____										
10	WITNESSES, HOSPITALS, DOCTORS, ETC. (List names and addresses.) <i>See Attachment A</i>										

WARNING! IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM (Penal Code §72).

I have read the matters and statements made in the above claim and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters I believe the same to be true. I certify under penalty of perjury that the foregoing is TRUE and CORRECT.

Signed this 11 day of September, 20 23 at _____

Seamus John

Claimant's Signature

**Deanna Santana adv. City of Santa Clara
Tort Claim
Attachment A**

I. The Dispute

A. Breach of Contract:

Deanna J. Santana ("Ms. Santana") is the former City Manager for the City of Santa Clara (City). The dispute involves implementation of an employment agreement ("Agreement") between Ms. Santana and the City. The Agreement for the Santa Clara City Manager position, dated October 2, 2017, included the terms of separation which became operative on March 8, 2022. The Agreement was unanimously approved by the City Council, available to the public for review since August 2017, and City's actions and intentions to implement the terms of the Agreement are reflecting in the City's public records.

The employment agreement permitted, and Ms. Santana did, elect the severance package under option "(b)", which provides in part:

6. Termination, Resignation, and Severance Pay. . . . In the event the City Council terminates Employee's employment as City Manager for no reason or for any reason other than as set forth in Subsection 6.3 below and Employee agrees to sign and deliver to the City Council a general and full release of all claims with the provisions contained in Exhibit C (Severance and Release Agreement) attached hereto ... Employee shall receive severance pay in accordance with Sec. 6.2 below.

* * *

6.2 If the City Council terminates Employee while employee is still willing and able to perform the duties of City Manager, the City Council agrees to pay Employee by either (a) a single lump sum payment ...; or (b) *allow her to continue to receive her usual compensation and benefits specified in Sec. 3, supra, through payroll for twelve (12) months, whichever is preferable to the Employee*

The City breached the Agreement by not completing its contractual obligations to pay for Ms. Santana's "usual compensation and benefits" benefits through March 31, 2023, as required under the Agreement. The term "Benefits" under section 6.2(b) means the aggregate of total compensation provision including all insurances (e.g., medical, vision, dentist, etc.), housing stipend, wage (salary and deferred compensation), pension contributions, and the value of all other benefits). The following are specific instances of the breach of the Agreement:

- 1) Ms. Santana remained on City paid administrative leave and payroll until March 31, 2023. While on paid administrative leave and payroll, Ms. Santana was entitled to, and did, accrue leaves (e.g., vacation, sick, and management leaves), holidays (including floating holidays), deferred compensation, CalPERS service credit, among other benefits from April 1, 2022 through March 18, 2023. The City breached the Agreement when it did not provide the contractually required accruals and benefits through March 31, 2023 and, in addition, clawed back all of the accrued leaves during that term on the pay period beginning of March 19, 2023.
- 2) Having elected the option under 6.2(b), the City publicly reported its approval in Closed Session and, as such, Ms. Santana was to be afforded all benefits provided to Unit 9 management employees, including COLAs and other provisions. While on paid administrative leave and payroll, Ms. Santana appropriately received COLAs. The Council's approval of a COLA was unanimously approved on a publicly noticed and available City Council agenda and recorded appropriately in the City's legal records. Additionally, in December 2022, the required annual approval of the City's Salary Schedule to submit to CalPERS, included reference to Ms. Santana's COLA approval and, again, was unanimously approved by the City Council on a Council agenda and recorded appropriately in the City's legal records. The City breached the Agreement by clawing back COLA on or about March 19, 2023, despite the Council's unanimous approval and acknowledgment of this contractual obligation in December 2022.
- 3) Ms. Santana has accrued sizable leave balances (e.g., vacation, management leave, etc.) while an employee from October 2017 through March 31, 2023. The City breached the Agreement, and violated employment and labor laws, when it refused to pay Ms. Santana the sum of all of those accrued balances, including the accrued leaves as noted above.
- 4) Ms. Santana was placed on paid administrative leave by the City and appropriately accrued CalPERS credit, as required while an employee is on City approved paid administrative leave. During the paid administrative leave term, the City continued the practice of processing Ms. Santana's payment of 8% of her salary for CalPERS service credit. The City breached the Agreement when it clawed back the accrued service credit. Additionally, the City has withheld the 8% annual CalPERS contribution that it processed on behalf of Ms. Santana while on paid administrative leave, which amounts to payment for a benefit that the City clawed back in violation of the Council approved Agreement.

B. Violations of Labor Laws, Discrimination and Whistleblower Retaliation:

On or about February 22 and 23, 2022, Ms. Santana disclosed information to the City Council and others concerning violations of law and local ordinances (both at a public session and in a formal personnel complaint). Ms. Santana was also subjected to racial slurs by at least one City Councilmember. Ms. Santana was thereafter placed on paid administrative leave from her duties as City Manager, and all terms of the severance agreement were unanimously approved by the City Council.

Over the course of the next year, certain city councilmembers have been the subject of investigations for public corruption on matters raised by Ms. Santana (e.g., City's lack of ability to obtain certain FIFA documents, for which over a year later, the City still does not fully possess). As of today, one councilmember has been criminally indicted.

Ms. Santana is aware that certain members of the City Council continue to press for retaliatory action against Ms. Santana, including but not limited to directing City employees and/or agents of the City to delay and ultimately fail to perform the City's lawful obligations to perform its contractual obligations owed to Ms. Santana and to unlawfully withhold earned wages and benefits.

This matter was the subject of review by the Civil Grand Jury in its report titled "Unsportmanlike Conduct: Santa Clara City Council," which made the following findings in its publicly issued report that the City was hostile toward Ms. Santana, her termination was linked to the February 22 public disclosure of FIFA details, and, in particular, opined that the City did indeed approve a "contractually obligated severance package" and the report stated as follows:

- (1) Another behavioral standard the City Council has adopted is "[t]reating the public and City Staff, at all times, the way I treat highly regarded colleagues in businesses or professions." And a behavior to be avoided is "criticizing or embarrassing the City Manager or City Staff in public." Throughout its investigation the Civil Grand Jury uncovered evidence of disrespect toward staff by members of the City Council Voting Bloc. Members of the City Council Voting Bloc doubted the accuracy of City staff's work and favored the 49ers' interpretation on a variety of subjects. **The Civil Grand Jury saw no evidence that this doubt was warranted.** As mentioned previously, the Civil Grand Jury viewed documents showing members of the City Council Voting Bloc advocating on behalf of the 49ers and arguing with staff about state safety codes and established norms.
- (2) Overall, the **Civil Grand Jury saw a hostile environment for City staff, illustrated by a text conversation between two members of the City Council Voting Bloc remarking that a member of the City staff was not afraid of them.**

- (3) A violation is a misdemeanor. Under the City Code, the City Manager is tasked as the chief administrative officer with responsibility for the administration of all affairs of the City. (Santa Clara City Code §§ 2.15.020(a) & (c).) **The Civil Grand Jury learned that the then-City Manager made a complaint that, among other things, a councilmember was directing City staff.** An outside investigator was hired to investigate the complaint. If true, the allegations in that complaint may have violated the Charter. On August 23, 2022, the City noticed a closed session meeting under the exception for "public employment appointment" for the City Manager. At that meeting, the City Council Voting Bloc voted to stop the investigation made from that complaint.
- (4) As detailed above, the former City Manager defended her staff against inappropriate behavior from the City Council Voting Bloc. She opened investigations. She raised concerns about ManCo's compliance with contractual agreements. She has had to defend herself from personal attacks by 49ers lobbyists, who told the City Council Voting Bloc that they wanted the City Manager/Stadium Authority Executive Director gone. On February 22, 2022, she spoke out about concerns related to the FIFA event, urging caution and the need for more information. She also raised the issue of potential conflicts of interest related to the 49ers. **Two days later, the City Council fired the City Manager with a contractually obligated severance package...**

Lastly, in its most recent act of retaliation, the City has now interposed an after-the-fact, pretextual claim that it had no obligation to pay such earned wages and benefits, required in the agreement and that the Council unanimously approved and implemented, from March 31, 2022 through pay period ending in March 18, 2023. Ultimately, on April 4, 2023, the City, through its outside counsel, informed Ms. Santana that the earned wages and benefits, including accrued leaves, would not be paid and that, further, the City unilaterally -- without the required notice and consent by Ms. Santana-- had unlawfully clawed back accrued leave accruals and CalPERS payments made by the City for service credit while Ms. Santana was on paid administrative leave.

Based on the foregoing, the City has violated the following California laws, including, *inter alia*, Government Code section 12940(a), Labor Code section 1102.5, 201, and 227.3

Ms. Santana has suffered monetary damages and emotional distress as a result of the foregoing wrongful conduct by the City.

II. Witnesses

Lisa M. Gillmor – Mayor

Suds Jain – Vice Mayor
Kathy Watanabe – Councilmember
Raj Chahal – Councilmember
Karen Hardy – Councilmember
Kevin Park – Councilmember
Anthony Becker – Councilmember
Brian Doyle – City Attorney
Steven Ngo – Interim City Attorney
Gary Baum – Outside City Attorney
Rod Diridon, Jr. City Clerk
Sujata Reuter, Assistant City Attorney
Nadine Nader, Assistant City Manager
Aracely Azevedo, Director of Human Resources
Teri Black- Brann, Executive Recruiter/City Liaison for Employment Agreement negotiations
Charles Sakai, Esq.

**CANNATA
O'TOOLE
FICKES
& OLSON**

100 Pine Street, Suite 350

San Francisco, California 94111

SAN FRANCISCO CA 940

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County of Santa Clara City Clerk
ATTN: City Clerks Office
1500 Warburton Avenue
Santa Clara CA 95050

95050-371300

