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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT**
10

11 DARYN DRUM,

12 Plaintiff,

13 v.

14 CITY OF MANHATTAN BEACH; BRUCE
MOE, in his official capacity as City Manager,
15 and DOES 1 through 25, inclusive,

16 Defendants.
17

Case No.: 21STCP02990

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PETITION FOR ADMINISTRATIVE
MANDAMUS (CODE CIV. PROC.
§§ 1094.5 and 1085)**

IMAGED FILE

18
19 **INTRODUCTION**

20 Petitioner Daryn Drum (“Drum”), a thirty-year veteran of emergency services, was pressured
21 to resign and ultimately terminated from his position as Fire Chief of the City of Manhattan Beach
22 (“City of MB”) after repeatedly disclosing his concerns related to the City of MB’s Computer Aided
23 Dispatch (“CAD”) system and the vendor hired by the City of MB to replace the CAD system.

24 **STATEMENT OF FACTS**

25 Drum was hired as Fire Chief of the City of MB in April 2019. As Fire Chief, the safety of all
26 citizens and inhabitants of the City of MB was Drum’s constant, paramount concern. During his tenure
27 as Fire Chief, Drum received a multitude of compliments and commendations for his work
28 performance. Pursuant to his employment contract, Drum possessed the duty and authority to exercise

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1 the full powers of the Fire Chief Classification as set forth in the job specification for the position.
2 Pursuant to the job specification for the Fire Chief position, the Fire Chief:
3 “directs, plans, organizes, budgets, and controls the programs and services of the Fire Department,
4 including fire prevention and safety inspections, suppression, medical rescue, emergency planning,
5 training and development, and administration; directs departmental staffing, budgeting, and capital
6 improvement project planning; instills ethical decision-making, public responsiveness, and innovation
7 in the delivery of services; participates as a member of the Executive Management Team; and performs
8 other related duties as assigned.” Furthermore, the job specification for the Fire Chief position
9 specifically listed that Drum’s duties included evaluating the effectiveness of Fire Department
10 operations.

11 As Fire Chief, Drum reported directly to City Manager Bruce Moe (“Moe”), who was his direct
12 supervisor. Drum had weekly one-one-meetings with Moe to keep Moe apprised of issues relating to
13 the Fire Department.

14 After being hired as Fire Chief, Drum quickly learned that one aspect of the Fire Department
15 which required immediate attention was the organization which dispatched Fire Department services
16 for the City of MB. Technology plays an ever-increasingly important role in emergency services and
17 Computer Aided Dispatch (CAD) systems are the backbone of the modern dispatch process. After a
18 call is reported through the 911 call center, incident information is entered into the CAD system, which
19 initiates a particular dispatch response based on various factors including incident location, location
20 of assets and type of call. The CAD system is the critical first step in initiating the dispatch of
21 emergency resources to an emergency incident. The organization which dispatched Fire Department
22 services for the City of MB is the South Bay Regional Public Communications Authority (SBRPCA),
23 also known as the RCC (Regional Communications Center), a publicly owned regional Fire and Police
24 Dispatch center which was formed as a Joint Powers Authority between the cities of Gardena,
25 Hawthorne and the City of MB. However, the City of MB was the only city of the three which uses
26 the RCC for fire dispatch services. The Executive Director of the RCC while Drum was Fire Chief
27 was Erick Lee.

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1 Shortly after Drum was hired as Fire Chief, he learned that serious, dangerous vulnerabilities
2 existed in the CAD software used by the RCC. Specifically, Drum learned that the CAD system in use
3 at the time was originally placed into service in 2000, almost twenty years before he was hired as Fire
4 Chief. The City of MB's CAD system was so antiquated that the vendor which had created the original
5 CAD system was no longer able to provide ongoing support for the system. The CAD system did not
6 even have the ability to properly screen calls to determine the appropriate response for a given
7 situation.

8 Drum also learned that the vendor platform hired to replace that CAD system, Mark 43, had
9 no experience building a Fire/EMS CAD and was years behind in the delivery of its product, which it
10 originally estimated would be ready by September 2017. Additionally, Drum learned that Mark 43
11 was the lowest bidder for the project; that the City of Hawthorne alone authorized the purchase with
12 Mark 43 and would be the owners of the software; that the Hawthorne Police Chief Michael Ishii was
13 the Project Manager; and that the City of Hawthorne was to receive a percentage of the purchase price
14 for the project. Furthermore, Drum learned that the RCC did not possess an effective backup plan in
15 the event of further delays or failures from Mark 43. This left the RCC and each of its member and
16 contract agencies, including the City of MB, facing the potential collapse of their 911 dispatching
17 services.

18 Due to the CAD system's vulnerabilities, Drum requested a copy of the Emergency Operations
19 Plan for catastrophic failure of the dispatch center. Drum was told that the City of Torrance was the
20 backup dispatch center, but there was no Emergency Plan outlining the specifics or details. When
21 asked for details, Lee acknowledged that the RCC was deficient in developing a backup plan for
22 catastrophic failure.

23 Drum was extremely concerned with Mark 43's ability to deliver a safe, effective, reliable
24 CAD system. On multiple occasions, Drum disclosed his concerns to Moe. Moe indicated to Drum
25 that he shared Drum's concerns and instructed him to keep pushing for a resolution. During a private
26 meeting with Moe in October 2019, Drum once again disclosed his concerns relating to the Mark 43
27 CAD system build. At Drum's recommendation, Moe requested that the RCC Executive Director Lee
28 serve as project manager instead of Ishii, as the RCC should have been the organization to take

1 responsibility for the project, and this change in leadership was made.

2 In the November 2019 RCC Executive and User Committee meeting, Moe questioned Lee and
3 Ishii about the delays and vulnerabilities associated with the project. Both Lee and Ishii were unable
4 to provide explanations or reasonable answers to Drum's concerns.

5 On December 10, 2019, at Moe's direction, Drum attended a meeting with Mark 43 staff at
6 their corporate offices in New York City. Lee and Ishii were also present. Drum reiterated his concerns
7 regarding the lack of progress on the project and the fact that Mark 43 was now twenty-seven months
8 behind on what was originally supposed to be a six-month project. Mark 43 staff admitted that they
9 were ill-equipped and inexperienced with regards to creating a fire dispatch CAD. Drum left the
10 meeting extremely skeptical about Mark 43's ability to complete the project in a reasonable amount
11 of time. Accordingly, Drum continued to stress to Moe that Moe needed to take action to ensure the
12 safety of the citizens of the City of MB.

13 However, throughout January and February 2020, no substantial progress was made. In March
14 2020, the COVID-19 pandemic created additional, unforeseen challenges that further shifted the City
15 of MB's focus away from the need to secure an effective CAD system.

16 Around this time, Moe informed Drum that there was a concern from at least one member of
17 the City Council that Drum had "gone native," meaning he was overly loyal to the fire union.

18 In May 2020, Drum again met with Lee and asked for an update on the CAD system and
19 whether there was an effective backup plan in place. Lee informed Drum that there was no such "plan
20 B" and Drum accordingly advised that RCC staff begin seeking alternative vendors to establish the
21 CAD system because Mark 43 had completely failed to do so. Lee advised Drum that he was reluctant
22 to dedicate additional resources to develop an alternative plan.

23 Although Moe indicated he shared Drum's concerns about Mark 43, he failed to take
24 meaningful, lasting steps to address them for the safety of the inhabitants of the City of MB. Drum
25 specifically told Moe that the Mark 43 CAD system issue was failing the citizens of the City of MB.
26 Drum had to constantly remind Moe that it was his job to take Drum's concerns about Mark 43
27 seriously.

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1 **Comments At Issue**

2 On June 11, 2020, Drum participated in a podcast with City of MB police chief Abell where
3 he made a comment expressing his support for police and the incredibly difficult job they have in
4 keeping people safe. The comment was: “You’re one good shooting away from civil unrest.” Drum
5 was using the term “good” to describe something which is “of a noticeably large size or quantity:
6 considerable.” (See <https://www.merriam-webster.com/dictionary/good>.) Neither Abell, Moe, nor any
7 other City of MB official or employee expressed any concern with the comments to Drum following
8 the podcast.

9 In June 2020, Lee advised Drum that Mark 43 had informed him that the CAD system build
10 would be delayed at least another six to nine months. Lee relayed that Mark 43 was willing to offer
11 financial incentives to RCC in order to maintain the business.

12 During the June 16, 2020 RCC meeting, Drum used a popular expression to explain that he
13 would support keeping Mark 43 as the CAD vendor as long as the RCC maintained pressure on Mark
14 43 to ensure they delivered an effective product in a timely fashion. The comment was: “I’m
15 comfortable continuing to move forward, but not letting our guard down. And pardon my vernacular,
16 but not taking our foot of their throat either...I think your foot needs to be clearly on their throat, and
17 they need to feel it and they need to feel that constant pressure every single day that we mean business.”

18 Drum made absolutely no reference to any news topics or incidents involving law enforcement
19 at the meeting. Police chiefs, fire chiefs, and other representatives present at the meeting agreed with
20 the comments and the sentiment he expressed. One individual even be heard saying “I agree” in the
21 audio recording of the meeting.

22 The City of MB failed to undertake an investigation to properly consider the context in which
23 the statements were made.

24 On June 19th, 2020, Drum was instructed to meet with Moe and other City of MB officials. In
25 that meeting, Moe and other City of MB officials pressured Drum to resign. Drum asked for the chance
26 to think about this difficult, important decision and speak to his family about it over the weekend, but
27 he was not allowed to do so.

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1 After pressuring Drum to resign, Moe told Drum that he was terminating his employment
2 contract with the City of MB. No City of MB officials gave Drum prior notice that he was going to be
3 reprimanded for his comments, let alone terminated. The stated reason for Drum's termination was a
4 difference in "management styles" in addition to these two comments. Moe made this decision without
5 affording Drum even a minimal level of due process, civility, or professionalism by meeting with him
6 to discuss any concerns he may have had with these comments beforehand.

7 To add insult to injury, the City of MB published a press release in which it included links to
8 audio files containing the comments taken completely and purposely out of context. Moe was quoted
9 in the press release as saying, "We need thoughtful leaders offering voices that are open and inclusive.
10 Chief Drum's recent comments do not reflect our core values as a City, and an immediate change of
11 Fire Department leadership is in the community's best interests." The clear implication behind Moe's
12 statement published in the City of MB's press release was that Drum is a racist.

13 On April 21, 2021, a hearing on the appeal of Drum's termination was held before hearing
14 officer Tony Butka. The hearing was severely lacking in due process and fundamental fairness. On
15 several occasions, Butka refused to allow counsel for Drum to introduce testimony and evidence
16 regarding the retaliatory nature of his termination. On May 25, 2021, Mr. Butka published his Report
17 and Recommendations in which he recommended that Drum's termination was proper, without even
18 addressing Drum's arguments in opposition. On July 6, 2021, the City Council voted to accept Mr.
19 Butka's recommendation. On July 15, 2021, the City of MB formally notified Drum of the City
20 Council's decision to accept Mr. Butka's recommendation. However, the City of MB's formal notice
21 did not provide Drum with any information or notice as to how he could seek to challenge the City
22 Council's decision.

23 As a direct result of Moe's and the City Council's decision, the sterling reputation Drum built
24 over the course of 30 years in emergency services was destroyed overnight, which effectively
25 precluded his chances of obtaining alternative employment in his field. Furthermore, he and his family
26 and have been hounded by media and he has suffered severe emotional distress.

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1 Prior to filing the instant Petition for Writ of Mandamus, Drum filed a Claim for Damages to
2 Person with the City of MB, and also received a Right to Sue notice from the Department of Fair
3 Employment and Housing (DFEH), after filing a claim with the DFEH.

4 Drum seeks an alternative writ of mandate directing the City of MB to vacate the decision of
5 the City Council or ordering the City of MB to show cause why it has not done so. Drum further
6 petitions the Court to order Drum's reinstatement as Fire Chief; award Drum damages in back pay and
7 emotional distress; and award Drum costs of suit and reasonable attorney fees. (Code Civ. Proc., §§
8 1085, 1094.5, 1095.)

9 LEGAL ARGUMENT

10 Under the California Constitution, a "person may not be deprived of life, liberty, or property
11 without due process of law." Cal. Const. art. I, §§ 7, 15. The City of MB had a duty to treat employees,
12 including Drum, in a nondiscriminatory manner, and in a manner that conforms with fundamental
13 fairness and due process. Drum had a beneficial interest in the City of MB's performance of these
14 duties. The City of MB failed to perform its duty and abused its discretion in the performance of its
15 duty, even though the City of MB had, and still has, the ability to perform its duty, reinstate Drum,
16 and rectify its grave miscarriage of justice.

17 Furthermore, Drum's termination was done in violation of Labor Code section 1102.5, which
18 prohibited the City of MB from retaliating against any employee, including Drum, for opposing actual
19 or reasonably perceived violations of law, for raising complaints of actual or reasonably perceived
20 violations of law, or for otherwise reporting actual or reasonably perceived improper governmental
21 activities. Labor Code section 1102.5 protects a public employee who reports a suspected violation
22 directly to his public entity employer.

23 Pursuant to the City of MB Municipal Code, Title 2, Chapter 2.04.070, it was Moe's duty to
24 see that all City laws and ordinances were properly enforced. Moreover, the first duty of government
25 is the protection of its citizens, and the City of MB had a duty and responsibility to "establish and
26 improve emergency communication procedures [.]" (Gov. Code, 53100.5(d).) Additionally, fire
27 emergency services are governed by statutes such as the Federal Fire Prevention and Control Act.

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1 Drum disclosed his concerns relating to the CAD system project and the vendor, Mark 43, to
2 his supervisor, Moe, in weekly one-one-meetings, on numerous occasions. For example, Drum
3 believed there existed, and disclosed his concerns relating to, conflict-of-interest violations associated
4 with the City of Hawthorne and the Police Chief Ishii's involvement in the project, to Moe.
5 (Government Code, § 1090.) Drum believed there existed, and disclosed his concerns relating to, gift
6 of public funds violations associated with the City of Hawthorne and the Police Chief Ishii's
7 involvement in the project, to Moe. Drum also believed there existed and disclosed his concerns
8 relating to gift of public funds violations regarding the Mark 43 project in general and the multiple
9 delays associated with it. Drum also reasonably believed the City's failure to secure competent CAD
10 services constituted waste, fraud, and abuse, and repeatedly disclosed his concerns relating to such
11 waste, fraud, abuse to Moe. In general, Drum reasonably believed the City's failure to secure
12 competent CAD services constituted a violation of law.

13 Defendants' actions against Drum, as alleged above, constitute unlawful retaliation in
14 employment in violation of Labor Code section 1102.5, because Defendants terminated Drum's
15 employment on account of Drum's disclosure of information to persons with authority over him that
16 Drum had reasonable cause to believe described violations of state or federal law or a violation of or
17 noncompliance with a local, state, or federal rule or regulation.

18 Furthermore, Drum's termination was done in violation of his free speech rights. Drum's
19 comments relating to Mark 43 and his support for the police were related to items of public concern.
20 Rather than take Drum's disclosures of actual or reasonably perceived violations of law, the City of
21 MB retaliated against Drum for reporting those concerns, and used the excuse of a "poor choice of
22 words" to do so.

23 Finally, hearing officer Tony Butka refused to allow Drum to introduce relevant testimony and
24 evidence concerning the true nature of the statements in question. The City Council's approval of Mr.
25 Butka's recommendation was thus the product of a hearing which lacked any meaningful degree of
26 due process and should be rescinded.

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1 **CONCLUSION**

2 Based on the foregoing, Drum respectfully requests the Court issue a writ of mandamus
3 directing as described above. Pursuant to Code of Civil Procedure section 1094.5, Drum will ensure
4 that the administrative record is prepared as necessary for the Court's decision prior to the hearing on
5 the petition.

6
7 Dated: September 10, 2021

ARTIANO SHINOFF

David R. Shinoff

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9 By: _____
10 Daniel R. Shinoff
11 Maurice A. Bumbu
12 Attornev for Petitioner/Plaintiff DARYN DRUM

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