

July 2016

Update on Civil Grand Jury Whistleblower Report

Bullying Costs Soar to \$41.6 Million

by Patrick Monette-Shaw

Imagine being a public employee who lacks basic First Amendment protections to use free speech on matters of “public concern” guaranteed by the U.S. Supreme Court.

Thirteen years after voters passed Prop “C” in 2003 requiring the Board of Supervisors to enact adequate protections to curtail retaliation against City employees who file complaints involving improper government activity and matters of public concern, progress has inched forward over the past year — but just barely.

During the past year there’s been more “collateral damage” to City employees who faced bullying in one form or another in a whole host of prohibited personnel practices already proscribed by law.

Since 2007, the costs of bullying San Francisco City employees has soared to \$41.6 million, but that’s counting only those employees fortunate enough to afford filing lawsuits against the City. That \$41.6 million could have been better spent solving a myriad of problems facing the City.

Costs of Retaliation Against City Employees Keeps Soaring

In May 2013, the *Westside Observer* carried my first [article](#) on the high costs of retaliation and bullying of City employees. In July 2015, I wrote an update on the subject in “[Retaliators Keep Their City Jobs](#)” for the *Observer*.

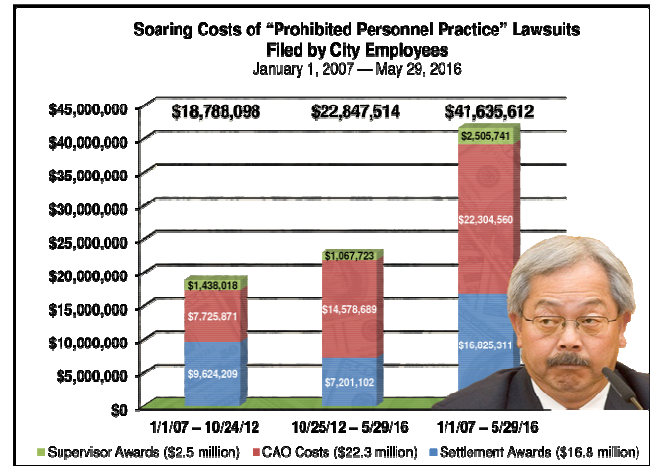
Dr. Derek Kerr — a former Senior Physician Specialist at Laguna Honda Hospital for over 20 years wrongfully terminated for his exposé of the raid of the hospital’s patient gift fund used for staff perks instead — first placed a records request with the City Attorney’s Office in October 2012 for records involving lawsuit settlements for a host of prohibited personnel practices. The first 103 cases involved \$9.6 million in lawsuit settlements, and another \$7.7 million for the costs of City Attorney time and expenses trying to stop the lawsuits.

The lawsuit settlement amounts paid by the City Attorney do not include back pay awards or other amounts not processed through the City Attorney. Checking Board of Supervisor’s agendas, six of the 103 settlement received a total of an additional \$1.4 million, ostensibly for back pay or other awards, bringing the total to \$18.8 million for the first 103 cases that I reported on in 2013.

In my July 2015 article, the initial 103 cases settled prior to October 24, 2012 had climbed between October 2012 and May 2015 by an additional 123 cases to 226 cases that had been settled, plus 66 cases that then remained pending.

On May 29 of this year, I placed another records request for updated data on lawsuits settled between October 2012 and May 29, 2016. The number of cases settled in that period surged from 123 to 159, involving \$7.2 million in settlements awarded, and a whopping \$14.6 million costs in City Attorney time and expenses, for a total of \$21.8 million, plus an additional \$1 million awarded by the Board of Supervisors for back pay or other awards, pushing the total since October 2012 to \$22.8 million, above and beyond the first 103 lawsuits.

Combining all cases *settled* since 2007, the City Attorney has settled 259 lawsuits totaling \$16.8 million in settlement awards, plus \$22.3 million in City Attorney time and expenses, plus \$2.5 million awarded by the Board of Supervisors for back pay or other awards, bringing the costs across the past nine years to a staggering \$41.6 million, with now 63 lawsuits still pending, which will likely fuel additional costs! **[Please see “Notes on the Data” at the end of this article.]**



During Mayor Lee’s tenure, San Francisco’s costs to settle prohibited personnel practice lawsuits filed by City employees has skyrocketed.

“The costs of bullying San Francisco City employees has soared to \$41.6 million, but that’s counting only those employees fortunate enough to afford filing lawsuits against the City.”

“The first 103 prohibited personnel practice lawsuits settled prior to October 2012 involved a total of \$18.8 million.”

“Combining all cases since 2007, the City Attorney has settled 259 lawsuits totaling a staggering \$41.6 million across the past nine years, with 63 lawsuits still pending, for a total of 322 cases.”

That there’s been 322 such lawsuits *settled* in the past nine years, shows the City clearly has a problem on its hands in not avoiding costs for 27 various categories of already-prohibited personnel practices on the law books.

Table 1 below shows that four of the 27 categories — Racial Discrimination, Disability Discrimination, Wrongful Termination, and “Other-Actions by Employees Against the City” — have accounted for 67% (\$27.8 million) of the total costs for the 259 cases settled to date, including \$8.6 million involving Racial Discrimination (40 cases), \$6.6 million involving Disability Discrimination (46 cases), \$6.4 million involving Wrongful Termination (41 cases), and \$6.3 million involving Other Actions (45 cases).

Together they total 172 — 66.4%, fully two-thirds — of the 259 cases settled to date, but there are another 41 pending cases spread across these four categories that will push the combined total to 213 of the 322 cases filed to date between January 2007 and May 29, 2016.

Of interest, of the \$27.8 million in total costs for the four categories, the City Attorney Office’s (CAO) costs for time and expenses total \$15.4 million — 69.1% — of the \$22.3 million in CAO costs trying to stop all 259 cases settled to date, and \$12.4 million was awarded to employees in these four categories — 64.5% — of the \$19.3 million in total settlement awards (combining the CAO awards and Board of Supervisor awards).

Table 1 shows the cumulative total of lawsuits filed between 2007 and 2016, sorted by descending Total Amount.

Table 1: Prohibited Personnel Practice Lawsuits, 2007 – 2016, Filed by City Employees Against the City of San Francisco

| Total Cases Settled 2007–2016 | | | | | | | | | | |
|-------------------------------|--|-----------------------------|---------------------------------|----------------------------|----------------------|---------------------|--------------------|----------------------------|--------------------|-------------|
| Code | Type of Case | City Attny Settlement Amont | Additional Board of Supes Award | City Attny Time & Expenses | Total Cost | Total Cases Settled | % of Cases Settled | % of Total Costs to Settle | Pending # of Cases | Total Cases |
| 6035 | Racial Discrimination (Emp agst. City) | \$ 3,673,856 | \$ 260,000 | \$ 4,642,326 | \$ 8,576,181 | 40 | 15.4% | 20.6% | 11 | 51 |
| 6080 | Disability Discrimination (Emp v City) | \$ 2,863,943 | \$ 511,035 | \$ 3,188,660 | \$ 6,563,637 | 46 | 17.8% | 15.8% | 3 | 49 |
| 6010 | Wrongful Termination (Emp agst. City) | \$ 2,517,071 | \$ 438,413 | \$ 3,406,615 | \$ 6,362,099 | 41 | 15.8% | 15.3% | 9 | 50 |
| 6099 | Other-Actions by Employees against City | \$ 2,128,959 | \$ 31,410 | \$ 4,172,177 | \$ 6,332,546 | 45 | 17.4% | 15.2% | 18 | 63 |
| 6030 | Sexual Discrimination (Emp against City) | \$ 1,575,000 | \$ 40,000 | \$ 1,934,652 | \$ 3,549,652 | 7 | 2.7% | 8.5% | | 7 |
| 6020 | Compensation (Employee against City) | \$ 1,065,063 | \$ 1,042,383 | \$ 909,223 | \$ 3,016,669 | 14 | 5.4% | 7.2% | 2 | 16 |
| 6070 | General Harassment (Emp against City) | \$ 1,113,452 | \$ 182,500 | \$ 1,143,632 | \$ 2,439,584 | 12 | 4.6% | 5.9% | 5 | 17 |
| 6050 | Sexual Harassment (Emp against City) | \$ 783,838 | | \$ 734,348 | \$ 1,518,185 | 9 | 3.5% | 3.6% | 3 | 12 |
| 6040 | Sexual Orientation Discrim (Emp vs City) | \$ 120,000 | | \$ 476,866 | \$ 596,866 | 3 | 1.2% | 1.4% | | 3 |
| 6075 | Age Discrimination (Emp against City) | \$ 189,690 | | \$ 364,998 | \$ 554,688 | 7 | 2.7% | 1.3% | 6 | 13 |
| 6055 | Racial Harassment (Emp against City) | \$ 210,000 | | \$ 314,524 | \$ 524,524 | 2 | 0.8% | 1.3% | | 2 |
| 4103 | Labor Related Issue | \$ 188,166 | | \$ 317,654 | \$ 505,819 | 10 | 3.9% | 1.2% | 1 | 11 |
| 4101 | Grievance Arbitration | \$ 206,697 | | \$ 95,218 | \$ 301,915 | 5 | 1.9% | 0.7% | | 5 |
| 4020 | Sexual Harassment (Employee Conduct) | | | \$ 99,976 | \$ 99,976 | 1 | 0.4% | 0.2% | | 1 |
| 4810 | Retirement | | | \$ 79,322 | \$ 79,322 | 1 | 0.4% | 0.2% | 1 | 2 |
| 4102 | PERB Matters (Labor Adjudication) | \$ 10,000 | | \$ 48,949 | \$ 58,949 | 6 | 2.3% | 0.1% | | 6 |
| 6005 | First Amendment Violation (Emp vs City) | | | \$ 55,685 | \$ 55,685 | 1 | 0.4% | 0.1% | | 1 |
| 4599 | Other Malpractice | | | \$ 47,493 | \$ 47,493 | 1 | 0.4% | 0.1% | | 1 |
| 4025 | Racial Harassment (Employee Conduct) | | | \$ 33,082 | \$ 33,082 | 1 | 0.4% | 0.1% | | 1 |
| 6015 | Assault by another employee | | | \$ 17,316 | \$ 17,316 | 1 | 0.4% | 0.0% | | 1 |
| 2099 | Other (Police) | | | \$ 11,532 | \$ 11,532 | 1 | 0.4% | 0.0% | | 1 |
| 4099 | Other (Employee Conduct) | | | \$ 7,278 | \$ 7,278 | 2 | 0.8% | 0.0% | 1 | 3 |
| 41 | Labor Relations | \$ 4,578 | | \$ 487 | \$ 5,065 | 1 | 0.4% | 0.0% | | 1 |
| 9051 | Lit-Breach of Contract | | | \$ 823 | \$ 823 | 1 | 0.4% | 0.0% | | 1 |
| 9925 | Defamation | | | | | | 0.0% | 0.0% | 1 | 1 |
| 4104 | Prevailing Wage Enforcement | | | | | | 0.0% | 0.0% | 1 | 1 |
| 4030 | Sexual Orient. Harass. (Emp. Conduct) | | | | | | 0.0% | 0.0% | 1 | 1 |
| | Unknown (From City Attorney Office) | \$ 175,000 | | \$ 201,725 | \$ 376,725 | 1 | 0.4% | 0.9% | | 1 |
| Total | | \$ 16,825,311 | \$ 2,505,741 | \$ 22,304,560 | \$ 41,635,612 | 259 | 100.0% | 100.0% | 63 | 322 |

Of some concern is that many of the lawsuits filed by City employees are apparently classified by the CAO as a given type of complaint, but Superior Court records show the case to be something entirely different.

Of the 322 lawsuits filed since 2007, only one involved a claim of First Amendment retaliation, in a lawsuit filed by a City employee, *Andrew Cohen v. Gavin Newsom et al.*, a case that was transferred from San Francisco Superior Court to the U.S. District Court for the Northern District of California at the City’s request.

“ Four of the 28 categories — Racial Discrimination, Disability Discrimination, Wrongful Termination, and ‘Other-Actions by Employees Against the City’ — have accounted for 172 — 67% (\$27.8 million) — of the total costs for the 259 cases settled to date. ”

“ The City Attorney’s Office spent \$15.4 million in time and expenses trying to stop the \$12.4 million that was awarded to employees in the 172 settlement awards across these four categories. ”

Although the City Attorney's Office had logged the case as involving a First Amendment lawsuit, the Superior Court web site showed that it was a Civil Rights lawsuit involving approximately 18 officers of the San Francisco Police Department over the "*Cops Gone Wild*" video scandal in 2005 who had alleged "Racial Discrimination," not "Civil Rights" or the "First Amendment." The 18 officers asserted that everyone on the video was suspended, *except* Asian American SFPD officers. Why the City Attorney had not initially recorded it as a Racial Discrimination case, instead of a First Amendment case, isn't known.

Cohen's case was dismissed in District Court in Newsom's favor. That means that to date, there has been not one actual First Amendment retaliation lawsuit filed by City employees against the City, in part because San Francisco's Campaign and Government Conduct Code §4.115(a) does *not* currently contain anti-retaliation protections for City employees who exercise their First Amendment free speech rights. In addition to *Andrew Cohen v. Gavin Newsom et al.* lawsuit, there are other cases that appear to have been misclassified by the CAO.

“ Because of the potential misclassification of lawsuits by the CAO, we may not have an accurate count of the total number of wrongful discharge and wrongful termination lawsuits. ”

A second example is the still-pending lawsuit *Shirley Moore vs. San Francisco General Hospital*, (CGC-12-524344), the CAO categorized it as a "6099 *Other-Actions by Employees Against City*" case, but the initial lawsuit filed in Superior Court alleged 10 factors, including Racial Discrimination, Harassment Based on Race, Constructive Discharge, Retaliation, and Harassment Based on Disability, along with five other causes.

A third example is in the *Christine McGuire vs. City and County of San Francisco* lawsuit (CGC-11-511007), which the CAO categorized as a "6080 *Disability Discrimination*" case, but Superior Court records shows it to be a "Wrongful Discharge" lawsuit.

A fourth example is the lawsuit *Abel Gonzalez vs. Department of Public Health* (Court Case 481-910) that the CAO had categorized as a "6070 *General Harassment (Emp against City)*" case, but Superior Court records also show it to be another "Wrongful Discharge" lawsuit.

“ That's a lot of careers and lives damaged after being wrongfully fired, and suggests much of it may likely be due to retaliation by managers and City Department heads. ”

A fifth example is the lawsuit *Teresa Yeung vs. City and County of San Francisco, et al.* — actually against the Mayor's Office of Community Development — (CGC-07-465400) that the CAO had categorized as a "6080 *Disability Discrimination*" case, but Superior Court records also show it to be another "Wrongful Discharge" lawsuit.

Between 41 cases settled to date, and 9 more still pending, the number of wrongful termination cases since 2007 totals 50 cases.

Of the \$6.4 million paid to date to settle wrongful termination cases, fully \$2.7 million of it — 42.1% — is attributed to just two of the 41 cases (Dr. Derek Kerr's lawsuit against the Department of Public Health at \$1.2 million between settlements and City Attorney fees, and Kelly O'Haire's lawsuit against the Police Department at \$1.5 million).

“ It's clear from the 322 lawsuits filed to date that you can only push people so far before they start fighting back, a concept apparently lost on senior City managers, department heads, and the City Attorney's Office. ”

Of the nine pending wrongful termination lawsuits, Joanne Hoepfer's case against the City Attorney's Office and City Attorney Dennis Herrera will more than likely be another million-and-a-half-dollars gone up in smoke.

Fifty wrongful termination lawsuits involve a lot of careers and lives damaged after being wrongfully fired, and suggests much of it may be likely due to retaliation by managers and City department heads who think they can get away with firing employees wrongfully.

However, because of the potential misclassification of lawsuits by the CAO, we may not have an accurate count of the total number of wrongful discharge and wrongful termination lawsuits filed by City employees.

It's clear from the 322 lawsuits filed to date that you can only push people so far before they start fighting back, a concept apparently lost on senior City managers, department heads, and the City Attorney's Office.

Majority of Lawsuits Filed By Employees in Just Five City Departments

An analysis of data provided by the City Attorney’s Office suggests that five City Departments are responsible for a goodly chunk of the prohibited personnel practice lawsuits, suggesting employees in those Departments know how to lawyer-up, particularly those in San Francisco’s Police Department.

Public records requests to date have not previously requested which City Departments the lawsuits were filed against. But matching up employee names from five separate fiscal years of City Controller payroll data uncovered significant details. Of the 322 lawsuits filed to date — including pending cases — payroll records showed 237 of the cases could be matched to employee names to track which City Department they had worked for; the remaining 85 cases were researched on the Superior Court’s case information web site to determine City Department.

Table 2 shows that of the 259 lawsuits settled between 2007 and 2016, 221 were matched to payroll records or court records to determine the corresponding City Department. The 221 accounted for fully \$39.8 million — 95.6% — of the total \$41.6 million in lawsuit costs. The remaining 38 of the 259 settled cases that could not be matched to a corresponding City Department accounted for \$1.6 million — 4.4% — of total settlement costs.

Table 2: Prohibited Personnel Practice Lawsuits, 2007 – 2016, Filed by City Employees, by City Department

| City Department | Total Cases Settled 2007–2016 | | | | Total Cases Settled | % of Cases Settled | % of Total Costs to Settle | Pending Lawsuits | Total Cases |
|---|--------------------------------|---------------------------------|-------------------------------|----------------------|---------------------|--------------------|----------------------------|------------------|-------------|
| | City Attorney Settlement Award | Additional Board of Supes Award | City Attorney Time & Expenses | Total Cost | | | | | |
| Police | \$ 5,524,570 | \$ 470,000 | \$ 6,429,808 | \$ 12,424,379 | 33 | 12.7% | 29.8% | 8 | 41 |
| Public Health | \$ 2,065,283 | \$ 258,580 | \$ 3,160,420 | \$ 5,484,283 | 42 | 16.2% | 13.2% | 9 | 51 |
| Municipal Transportation Agency | \$ 1,617,240 | | \$ 3,028,599 | \$ 4,645,838 | 37 | 14.3% | 11.2% | 11 | 48 |
| Sheriff | \$ 1,241,034 | \$ 396,966 | \$ 1,584,527 | \$ 3,222,527 | 12 | 4.6% | 7.7% | 2 | 14 |
| Fire Department | \$ 893,220 | \$ 645,417 | \$ 777,983 | \$ 2,316,620 | 9 | 3.5% | 5.6% | 9 | 18 |
| Department of Public Works | \$ 704,937 | \$ 85,000 | \$ 1,176,872 | \$ 1,966,809 | 11 | 4.2% | 4.7% | 2 | 13 |
| Department of Emergency Management | \$ 892,000 | | \$ 462,947 | \$ 1,354,947 | 3 | 1.2% | 3.3% | | 3 |
| Airport Commission | \$ 425,000 | \$ 40,000 | \$ 478,319 | \$ 943,319 | 2 | 0.8% | 2.3% | 1 | 3 |
| Water Department | \$ 400,000 | \$ 30,400 | \$ 443,993 | \$ 874,393 | 5 | 1.9% | 2.1% | 1 | 6 |
| Recreation And Park Commission | \$ 212,539 | \$ 124,197 | \$ 483,222 | \$ 819,958 | 7 | 2.7% | 2.0% | 3 | 10 |
| Administrative Services | \$ 462,000 | \$ 28,000 | \$ 315,978 | \$ 805,978 | 6 | 2.3% | 1.9% | 3 | 9 |
| Wastewater Enterprise | \$ 280,000 | | \$ 419,659 | \$ 699,659 | 4 | 1.5% | 1.7% | | 4 |
| Human Services Agency | \$ 270,000 | \$ 50,000 | \$ 275,214 | \$ 595,214 | 10 | 3.9% | 1.4% | | 10 |
| Public Utilities Commission | \$ 187,500 | \$ 164,507 | \$ 192,390 | \$ 544,397 | 4 | 1.5% | 1.3% | | 4 |
| Juvenile Probation | \$ 114,075 | \$ 18,425 | \$ 331,738 | \$ 464,238 | 6 | 2.3% | 1.1% | | 6 |
| War Memorial | \$ 115,000 | | \$ 283,112 | \$ 398,112 | 2 | 0.8% | 1.0% | | 2 |
| Fine Arts Museum | \$ 57,500 | | \$ 283,483 | \$ 340,983 | 3 | 1.2% | 0.8% | 1 | 4 |
| Department of Building Inspection | \$ 49,506 | | \$ 209,791 | \$ 259,297 | 1 | 0.4% | 0.6% | | 1 |
| San Francisco Port Authority | | | \$ 251,888 | \$ 251,888 | 2 | 0.8% | 0.6% | | 2 |
| Juvenile Court | | | \$ 184,864 | \$ 184,864 | 2 | 0.8% | 0.4% | | 2 |
| Treasurer/Tax Collector | | \$ 110,000 | \$ 63,943 | \$ 173,943 | 1 | 0.4% | 0.4% | 2 | 3 |
| Public Defender | \$ 57,000 | \$ 18,000 | \$ 86,001 | \$ 161,001 | 1 | 0.4% | 0.4% | | 1 |
| Child Protective Services | \$ 27,000 | | \$ 130,876 | \$ 157,876 | 1 | 0.4% | 0.4% | | 1 |
| District Attorney | \$ 4,500 | | \$ 147,738 | \$ 152,238 | 1 | 0.4% | 0.4% | 2 | 3 |
| Clean Water | \$ 24,000 | | \$ 84,761 | \$ 108,761 | 2 | 0.8% | 0.3% | 3 | 5 |
| Fire Commission, San Francisco | | | \$ 99,754 | \$ 99,754 | 2 | 0.8% | 0.2% | | 2 |
| Human Resources | \$ 42,750 | \$ 16,250 | \$ 39,343 | \$ 98,343 | 2 | 0.8% | 0.2% | | 2 |
| Mayor’s Office of Community Development | \$ 87,500 | | \$ 2,645 | \$ 90,145 | 1 | 0.4% | 0.2% | | 1 |
| Adult Probation Department | \$ 3,200 | | \$ 52,248 | \$ 55,448 | 1 | 0.4% | 0.1% | | 1 |
| City Planning Department | | | \$ 46,161 | \$ 46,161 | 1 | 0.4% | 0.1% | | 1 |
| San Francisco Rent Board | | | \$ 37,284 | \$ 37,284 | 1 | 0.4% | 0.1% | | 1 |
| San Francisco Housing Authority | | | \$ 21,154 | \$ 21,154 | 1 | 0.4% | 0.1% | | 1 |
| Assessor / Recorder | | | \$ 8,018 | \$ 8,018 | 1 | 0.4% | 0.0% | | 1 |
| City Attorney | | | \$ 2,579 | \$ 2,579 | 1 | 0.4% | 0.0% | 1 | 2 |
| Health Services System | | | \$ 823 | \$ 823 | 1 | 0.4% | 0.0% | | 1 |
| San Francisco Law Library | | | \$ 748 | \$ 748 | 1 | 0.4% | 0.0% | | 1 |
| Economic, Workforce Development | | | \$ 219 | \$ 219 | 1 | 0.4% | 0.0% | | 1 |
| Hetch Hetchy | | | | | 0 | 0.0% | 0.0% | 1 | 1 |
| Public Library | | | | | 0 | 0.0% | 0.0% | 2 | 2 |
| Lawsuit Not Found — Filed by Organization | | | \$ 1,288 | \$ 1,288 | 2 | 0.8% | 0.0% | | 2 |
| Lawsuit Not Found — Filed by Labor Union | \$ 10,000 | | \$ 132,752 | \$ 142,752 | 8 | 3.1% | 0.3% | | 8 |
| Lawsuit Not Available for Public View | \$ 50,000 | \$ 50,000 | \$ 137,287 | \$ 237,287 | 1 | 0.4% | 0.6% | | 1 |
| City Department Not Named | \$ 30,000 | | \$ 66,578 | \$ 96,578 | 2 | 0.8% | 0.2% | | 2 |
| Unknown City Department | \$ 977,958 | | \$ 367,555 | \$ 1,345,513 | 25 | 9.7% | 3.2% | 2 | 27 |
| Total Cases | \$ 16,825,311 | \$ 2,505,741 | \$ 22,304,560 | \$ 41,635,612 | 259 | 100.0% | 100.0% | 63 | 322 |

Of the 259 cases settled, 133 — 51.4% — were filed by employees in just five City Departments: The San Francisco Police Department, the Department of Public Health, the Municipal Transportation Agency, the Sheriff’s Department, and the San Francisco Fire Department in descending order, at a combined cost of \$28 million — two-thirds, or actually, 67.5% — of the total \$41.6 million in combined costs between 2007 and 2016.

“Of the 259 cases settled, 133 – 51.4% – were filed by employees in just five City Departments, at a combined cost of \$28 million – two-thirds, or actually, 67.5% – of the total \$41.6 million in combined costs between 2007 and 2016.”

Some of the employee’s who filed lawsuits that were not identified by payroll records were not found on the Superior Court web site, including some that are blocked from public access viewing, for whatever reason, and are listed in Table 2 as “Unknown City Department,” “Lawsuit Not Found” or “Not Available,” or the City Department wasn’t named.

Digging in My Toes: A Closer Look at the Police Department

Because the 33 lawsuits filed by Police Department employees represented just 12.7% of the total 259 cases settled to date — but consumed fully 29.8% of the total costs — the Police Department deserves a closer look. [Note: It is beyond the scope of this report to analyze the type of cases filed by employees in *each* of the 39 City Departments.]

“ The five ‘Racial Discrimination’ lawsuits in the Police Department are *not* an outlier, since Table 1 shows that the 40 ‘Racial Discrimination’ lawsuits Citywide cost a total of \$8.6 million. ”

Table 3: Prohibited Personnel Practice Lawsuits, 2007 – 2016, Filed by City Employees, Police Department Only

| Total Cases Settled 2007–2016 | | | | | | | | | | |
|-------------------------------|--|--------------------------------|---------------------------------|----------------------------|----------------------|---------------------|-------------------------|---------------------------------|------------------|-------------|
| Code | Type Case | City Attorney Settlement Award | Additional Board of Supes Award | City Attny Time & Expenses | Total Cost | Total Cases Settled | % of SFPD Cases Settled | % of SFPD Total Costs to Settle | Pending Lawsuits | Total Cases |
| 6099 | Other-Actions by Employees against City | \$ 1,305,147 | | \$ 2,866,767 | \$ 4,171,914 | 12 | 36.4% | 33.6% | 3 | 15 |
| 6035 | Racial Discrimination (Emp agst. City) | \$ 1,685,258 | \$ 100,000 | \$ 1,266,720 | \$ 3,051,978 | 5 | 15.2% | 24.6% | | 5 |
| 6080 | Disability Discrimination (Emp v City) | \$ 1,289,587 | \$ 250,000 | \$ 288,148 | \$ 1,827,735 | 2 | 6.1% | 14.7% | | 2 |
| 6010 | Wrongful Termination (Emp agst. City) | \$ 725,000 | | \$ 842,634 | \$ 1,567,634 | 3 | 9.1% | 12.6% | 2 | 5 |
| 6030 | Sexual Discrimination (Emp against City) | \$ 370,000 | | \$ 733,483 | \$ 1,103,483 | 3 | 9.1% | 8.9% | 1 | 4 |
| 6070 | General Harassment (Emp against City) | \$ 130,000 | \$ 120,000 | \$ 145,875 | \$ 395,875 | 1 | 3.0% | 3.2% | | 1 |
| 6020 | Compensation (Employee against City) | \$ 15,000 | | \$ 147,602 | \$ 162,602 | 2 | 6.1% | 1.3% | | 2 |
| 4103 | Labor Related Issue | | | \$ 70,875 | \$ 70,875 | 2 | 6.1% | 0.6% | | 2 |
| 6005 | First Amendment Violation (Emp vs City) | | | \$ 55,685 | \$ 55,685 | 1 | 3.0% | 0.4% | | 1 |
| 2099 | Other (Police) | | | \$ 11,532 | \$ 11,532 | 1 | 3.0% | 0.1% | | 1 |
| 41 | Labor Relations | \$ 4,578 | | \$ 487 | \$ 5,065 | 1 | 3.0% | 0.0% | | 1 |
| 6075 | Age Discrimination (Emp against City) | | | | | | | | 1 | 1 |
| 4810 | Retirement | | | | | | | | 1 | 1 |
| Total | | \$ 5,524,570 | \$ 470,000 | \$ 6,429,808 | \$ 12,424,379 | 33 | 100.0% | 100.0% | 8 | 41 |

Clearly, the City Attorney’s Office fought tooth-and-nail — spending nearly \$3 million — to fight the “Other Actions by Employees Against the City” category, which accounted for well over one-third of the \$12.4 million in total costs.

But what’s more shocking is that the “Racial Discrimination” lawsuits resulted in the highest amount of City Attorney settlement awards (at \$1.7 million), and although they represented just 15.2% of the lawsuits, those cases gobbled a quarter — 24.6% — of the total costs to settle the 33 cases filed by SFPD employees settled to date, with “Sexual Discrimination,” “Disability Discrimination,” and “Wrongful Termination” not far behind.

“ Sadly, data isn’t available showing which ethnicities are being targeted for ‘Racial Discrimination’. ”

This suggests not only that SFPD has a problem with racial and homophobic bias against members of the public, they have the same problem internally with its own employees.

The five “Racial Discrimination” lawsuits in the Police Department are *not* an outlier, since Table 1 shows that the 40 “Racial Discrimination” lawsuits Citywide cost a total of \$8.6 million, and is the number one cause of lawsuits filed by City employees. Sadly, data isn’t available showing which ethnicities are being targeted for “Racial Discrimination.”

“ All of this suggests that this is precisely why the City’s Whistleblower Protection Ordinance needs to be amended. ”

All of this suggests that this is precisely why the City’s Whistleblower Protection Ordinance needs to be amended, as the Civil Grand Jury recommended over a year ago.

[Note: **A Word on the Methodology:** The lawsuit data in this report does not include unlitigated claims that were not included in responses from the City Attorney’s Office to public records requests. For instance, on April 3, 2014, the Board of Supervisors approved a settlement of an unlitigated claim filed by Dr. Rajiv Bhatia against the City and County of San Francisco for \$155,000. Dr. Bhatia had formerly been the Director of Occupational and Environmental Health for the San Francisco Department of Public Health, but was forced out by DPH’s current Director of Public Health Barbara Garcia. It is not known how many other disputes between City employees and their supervisors have resulted in additional unlitigated claim settlement costs related to bullying of City employees.

Efforts to Strengthen the Whistleblower Protection Ordinance

As I wrote in July 2015, on June 8, 2015 San Francisco's 2014–2015 Civil Grand Jury released its [report](#) "*San Francisco's Whistleblower Protection Ordinance Is in Need of Change*," dated May 2015. The Grand Jury's report was a damning indictment of City Hall's failure to adequately strengthen whistleblower protections for City employees since directed to by voters in 2013 — now 13 years ago.

The Grand Jury noted that since 1989, the scope of San Francisco's whistleblower protection laws had narrowed, providing weaker protections for City employees than for state and federal government employees. That narrowing, or shrinkage, of protections for City employees who blow the whistle had been no accident, but was driven by the "powers who be" who have tried valiantly to silence City employees for years.

Board president London Breed finally introduced legislation on June 14 to amend the WPO, as the Grand Jury and Ethics Commission recommended."

Following the Grand Jury's report, our Ethics Commission held two hearings (on January 20 and February 24, 2016) and forwarded recommendations to the Board of Supervisors to amend the Whistleblower Protection Ordinance (WPO).

Board president London Breed finally introduced legislation on June 14 to amend the WPO, as the Grand Jury and Ethics Commission recommended, which legislation will be heard by the Board's Rules Committee in late July or after the Board's recess in August. Breed's amendments address most of the recommendations made by the Friends of Ethics, which the Ethics Commission had incorporated, including:

- Greater specificity on whistleblower complaints filed by City employees and City contractors, adding protections against retaliation for City contractors.
- Authority for the Ethics Commission to order reversal of wrongful retaliatory actions.
- The ability to sanction City officials and contractors who retaliate (including a provision to permit civil lawsuits against specifically-named employees who engage in retaliation).
- Requirements that reports of action taken by City Departments action or inaction with explanations be filed after a referral.
- Greater confidentiality protections for whistleblowers.
- Whistleblower complaints can be filed without being required to be in writing.
- Increasing civil penalties for City officers and employees who violate §4.115(a) of the WPO from \$5,000 to \$10,000, for which they may be personally liable in court proceedings.

President Breed should be thanked for introducing amendments to strengthen the WPO. However, Friends of Ethics is working to have additional recommendations incorporated into the legislation's amendments.

Unfortunately, a glaring omission remains:

As I have written in the past, Federal Judge Claudia Wilken had noted in her September 6, 2012 Court Order keeping Dr. Kerr's wrongful termination lawsuit alive, that San Francisco's Campaign and Government Conduct Code §4.115(a) does not contain anti-retaliation protections for City employees who exercise their First Amendment free speech rights to speak out **on matters of public concern**, despite U.S. Supreme Court rulings that have consistently upheld that federal, state, and municipal employees absolutely have those First Amendment rights when it comes to issues of public concern.

A glaring omission remains: The City's Campaign and Government Conduct Code §4.115(a) does not contain anti-retaliation protections for City employees who exercise their First Amendment free speech rights to speak out on matters of public concern, despite U.S. Supreme Court rulings upholding those protections regarding matters of public concern."

The elephant in the room is this: Wilken had also noted in her Court Order that San Francisco's current Sunshine Ordinance explicitly states in §67.22(d) that City employees ***absolutely are*** guaranteed these First Amendment protections when they speak on matters of public concern, which appears to have unfortunately escaped the attention of the 2014–2015 Civil Grand Jury, who mentioned nothing of this issue in its June 2015 report. The Sunshine Ordinance currently reads:

Sec. 67.22. Release of Oral Public Information.

“(d) *Public employees shall not be discouraged from or **disciplined** for the expression of their **personal opinions on any matter of public concern while not on duty**, so long as the opinion (1) is not represented as that of the department and does not misrepresent the department position; and (2) does not disrupt coworker relations, impair discipline or control by superiors, erode a close working relationship premised on personal loyalty and confidentiality, interfere with the employee's performance of his or her duties or obstruct the routine operation of the office in a manner that outweighs the employee's interests in expressing that opinion. In adopting this subdivision, **the Board of Supervisors intends merely to restate and affirm court decisions recognizing the First Amendment rights enjoyed by public employees.** Nothing in this section shall be construed to provide rights to City employees beyond those recognized by courts, now or in the future, under the First Amendment, or to create any new private cause of action or defense to disciplinary action.”*
[Emphasis added]

Those protections need to be explicitly duplicated in Campaign and Government Conduct Code §4.115(a).

I have repeatedly testified to the Ethics Commission that this disconnect must be fixed, so that all 39,122 current full- and part-time City employees are finally afforded this anti-retaliation protection, but in the right City ordinance. I'll continue to do so before the Board of Supervisors.

Retaliation “Tone” Set at the Top

As I noted in July 2015, D. Jan Duffy — an expert witness Kelly O'Haire's wrongful termination lawsuit against the Police Department — is correct in indicating that Mayor Lee had both a duty to ensure retaliation against whistleblowers is detected and remedied, and that organizations should set the tone from the top on down that retaliation is not acceptable and will not be tolerated. Unfortunately, all along Mayor Lee has also failed to set the appropriate tone regarding amendments to the Whistleblower Protection Ordinance.

I also noted in July 2015 that the WPO needs to have a provision added specifying that any manager in every City department found to have engaged in retaliation will face immediate suspension, and in instances where a harmed individual prevails in civil court, the manager(s) responsible for wrongful termination should themselves face immediate termination.

Unfortunately, the amendments advanced by Supervisor Breed do not fully incorporate a key provision recommended by Friends of Ethics, which had suggested specific penalties for City employees who wrongly retaliate against other City employees, such as a minimum two-week suspension without pay. Breed's amendments do allow for administrative actions to be taken and a report on what was done, which is a step in the right direction to hold individuals accountable for their wrongful actions.

Breed's amendments don't go far enough, because there won't be a uniform policy that applies to every Department citywide, which may likely result in disparate outcomes for those who wrongly face retaliation, since administrative actions may wildly vary across City departments.

“The elephant in the room is this: Wilken had also noted in her Court Order that San Francisco's current Sunshine Ordinance explicitly states in §67.22(d) that City employees *absolutely are*** guaranteed these First Amendment protections when they speak on matters of public concern.”**

“Breed's amendments don't go far enough, because there won't be a uniform policy that applies to every Department citywide, which may likely result in disparate outcomes for those who wrongly face retaliation.”

City employees deserve to have the First Amendment anti-retaliation protections on matters of public concern replicated and enshrined in the WPO, in addition to being in the Sunshine Ordinance. Anything less will be inadequate.

If the Whistleblower Protection Ordinance is fully amended and enhanced, it may well help reduce the amount of lawsuits filed against the City by City employees who wrongly face retaliation.

The savings could be in the millions of dollars, and should be pursued, if for no other reason than for the potential cost savings.

“ City employees deserve to have the First Amendment anti-retaliation protections on matters of public concern replicated and enshrined in the WPO, in addition to being in the Sunshine Ordinance. Anything less will be inadequate. ”

Monette-Shaw is a columnist for San Francisco’s Westside Observer newspaper. He received a James Madison Freedom of Information Award from the Society of Professional Journalists–Northern California Chapter in 2012. He can be contacted at monette-shaw@westsideobserver.

Notes on the Data

Throughout this article, data presented was for the 103 lawsuits that were settled between January 1, 2007 to October 24, 2012 (a 5-year, 10-month period) vs. the 156 cases settled between October 25, 2012 and May 29, 2016, (a 4-year, 2-month period), irrespective of the date the lawsuits were actually filed. The surge in cases settled — from 103 to 156 — represents a 51.5% net **increase** in settlements concluded, comparing an almost six-year period to just over a four-year period.

There’s some telling data involved:

Number of Lawsuits Filed Per Year

“ The surge in cases settled — from 103 to 156 — represents a 51.5% net increase in settlements concluded. ”

Table A-1: Prohibited Personnel Practice Lawsuits Filed, 2007 – 2016, By Calendar Year

| | Lawsuits Prior to 10/24/2012 | Lawsuits After 10/24/2012 | Pending Lawsuits | Total Lawsuits | |
|-------------------------------------|------------------------------|---------------------------|------------------|----------------|---|
| No Date From CAO | 30 | 17 | | 47 | |
| 1999 | 1 | | | 1 | |
| 2000 | | 1 | | 1 | |
| 2001 | 1 | | | 1 | |
| 2002 | 1 | | | 1 | |
| 2003 | 1 | | | 1 | |
| 2004 | 3 | | | 3 | |
| 2005 | 7 | 1 | | 8 | |
| 2006 | 11 | 1 | | 12 | 28 |
| 2007 | 9 | 9 | | 18 | |
| 2008 | 13 | 5 | | 18 | |
| 2009 | 12 | 10 | | 22 | |
| 2010 | 13 | 22 | | 35 | |
| 2011 | 1 | 29 | | 30 | |
| 2012 (Before first records request) | | 23 | 9 | 32 | |
| | | | | | |
| 2012 (After first records request) | | 2 | 1 | 3 | |
| 2013 | | 20 | 9 | 29 | |
| 2014 | | 12 | 19 | 31 | |
| 2015 | | 4 | 20 | 24 | |
| 2016 | | | 5 | 5 | |
| | | | | | 92 Four years and two months |
| Total | 103 | 156 | 63 | 322 | |
| | | | | | 154 Lawsuits Filed After 1/1/2011 during Mayor Ed Lee 5.5-year tenure |
| | | | | | 121 Lawsuits in 12-year period 1999 – 2010 |

Table A-1 shows that of the 103 lawsuits settled, many of them were first filed as far back as 1999. While the number of cases filed after January 1, 2007 outpaced cases filed after October 25, 2012, the key trend is the number of lawsuits filed during Mayor Ed Lee’s tenure after he took office in January 2011. The growth from 121 lawsuits filed between 1999 and 2010 — over a 12-year period — to 154 cases filed in the 5.5-year period since January 2011 represents a 27.3% net increase in cases filed during Lee’s tenure, which is significant precisely because this involves a 12-year period vs. a 5.5-year period. Lawsuits filed under Lee’s “watch” are definitely going up!

Sadly, data provided by the City Attorney’s Office failed to include the dates on which 47 — 14.6% — of the 322 lawsuits were filed, suggesting rotten recordkeeping by the CAO.

What About the Size-of-a-City-Department “Denominator”?

A reasonable person might suspect that the City Departments having the largest number of employees might result in more lawsuits being filed. But the correlation between size of a City Department and the number of prohibited personnel practice lawsuits filed appears to be a weak and tenuous correlation:

“ The trend is the number of lawsuits filed during Mayor Ed Lee’s tenure. The growth from 121 lawsuits filed between 1999 and 2010 to 154 cases represents a 27.3% net increase in cases filed during his tenure. ”

Table A-2: Prohibited Personnel Practice Lawsuits, 2007 – 2016, By Size of Department

| City Department | Total Cases Settled 2007–2016 | | | | | | Rank City Attorney Settlement Award | Rank Additional Board of Supes Award | Rank City Attorney Time & Expenses |
|---|-------------------------------|------------------|----------------------------|----------------------|-----------------|----------------------|-------------------------------------|--------------------------------------|------------------------------------|
| | Total Cases | Rank Total Cases | Total Employees (FY 14-15) | Rank Total Employees | Rank Total Cost | Total Cost | | | |
| Public Health | 51 | 1 | 8,886 | 1 | 2 | \$ 5,484,283 | 2 | 4 | 2 |
| Municipal Transportation Agency | 48 | 2 | 6,087 | 2 | 3 | \$ 4,645,838 | 3 | | 3 |
| Police | 41 | 3 | 2,979 | 4 | 1 | \$ 12,424,379 | 1 | 2 | 1 |
| Fire Department | 18 | 4 | 1,621 | 7 | 5 | \$ 2,316,620 | 5 | 1 | 6 |
| Sheriff | 14 | 5 | 1,023 | 9 | 4 | \$ 3,222,527 | 4 | 3 | 4 |
| Department of Public Works | 13 | 6 | 1,441 | 8 | 6 | \$ 1,966,809 | 7 | 8 | 5 |
| Human Services Agency | 10 | 7 | 3,183 | 3 | 13 | \$ 595,214 | 12 | 9 | 16 |
| Recreation And Park Commission | 10 | 8 | 2,364 | 5 | 10 | \$ 819,958 | 13 | 6 | 7 |
| Administrative Services | 9 | 9 | 970 | 10 | 11 | \$ 805,978 | 8 | 12 | 13 |
| Water Department | 6 | 10 | 788 | 13 | 9 | \$ 874,393 | 10 | 11 | 10 |
| Juvenile Probation | 6 | 11 | | 35 | 15 | \$ 464,238 | 16 | 13 | 12 |
| Clean Water | 5 | 12 | 559 | 14 | 25 | \$ 108,761 | 23 | | 25 |
| Public Utilities Commission | 4 | 13 | 830 | 12 | 14 | \$ 544,397 | 14 | 5 | 19 |
| Fine Arts Museum | 4 | 14 | 284 | 21 | 17 | \$ 340,983 | 18 | | 14 |
| Wastewater Enterprise | 4 | 15 | | 36 | 12 | \$ 699,659 | 11 | | 11 |
| Airport Commission | 3 | 16 | 1,808 | 6 | 8 | \$ 943,319 | 9 | 10 | 8 |
| District Attorney | 3 | 17 | 302 | 19 | 24 | \$ 152,238 | 24 | | 21 |
| Department of Emergency Management | 3 | 18 | 280 | 22 | 7 | \$ 1,354,947 | 6 | | 9 |
| Treasurer/Tax Collector | 3 | 19 | 233 | 25 | 21 | \$ 173,943 | | 7 | 26 |
| Public Library | 2 | 20 | 909 | 11 | 39 | | | | 38 |
| Juvenile Court | 2 | 21 | 326 | 16 | 20 | \$ 184,864 | | | 20 |
| City Attorney | 2 | 22 | 324 | 17 | 34 | \$ 2,579 | | | 34 |
| San Francisco Port Authority | 2 | 23 | 287 | 20 | 19 | \$ 251,888 | | | 17 |
| Human Resources | 2 | 24 | 248 | 24 | 27 | \$ 98,343 | 21 | | 29 |
| War Memorial | 2 | 25 | 81 | 31 | 16 | \$ 398,112 | 15 | | 15 |
| Fire Commission, San Francisco | 2 | 26 | | 37 | 26 | \$ 99,754 | | | 23 |
| Hetch Hetchy | 1 | 27 | 389 | 15 | 38 | | | | 39 |
| Department of Building Inspection | 1 | 28 | 308 | 18 | 18 | \$ 259,297 | 20 | | 18 |
| City Planning Department | 1 | 29 | 260 | 23 | 30 | \$ 46,161 | | | 28 |
| Public Defender | 1 | 30 | 179 | 26 | 22 | \$ 161,001 | 19 | 14 | 24 |
| Adult Probation Department | 1 | 31 | 165 | 27 | 29 | \$ 55,448 | 25 | | 27 |
| Assessor / Recorder | 1 | 32 | 162 | 28 | 33 | \$ 8,018 | | | 32 |
| Economic, Workforce Development | 1 | 33 | 112 | 29 | 37 | \$ 219 | | | 37 |
| Child Protective Services | 1 | 34 | 87 | 30 | 23 | \$ 157,876 | 22 | | 22 |
| Health Services System | 1 | 35 | 53 | 32 | 35 | \$ 823 | | | 35 |
| San Francisco Rent Board | 1 | 36 | 48 | 33 | 31 | \$ 37,284 | | | 30 |
| San Francisco Law Library | 1 | 37 | 3 | 34 | 36 | \$ 748 | | | 36 |
| San Francisco Housing Authority | 1 | 38 | | 38 | 32 | \$ 21,154 | | | 31 |
| Mayor’s Office of Community Development | 1 | 39 | | 39 | 28 | \$ 90,145 | 17 | | 33 |
| Lawsuit Not Available for Public View | 1 | | | | | \$ 237,287 | | | |
| Lawsuit Not Found — Filed by Organization | 2 | | | | | \$ 1,288 | | | |
| City Department Not Named | 2 | | | | | \$ 96,578 | | | |
| Lawsuit Not Found — Filed by Labor Union | 8 | | | | | \$ 142,752 | | | |
| Unknown City Department | 27 | | | | | \$ 1,345,513 | | | |
| Total Cases | 322 | | | | | \$ 41,635,612 | | | |

For instance:

- The Police Department ranked #4 in the number of employees (2,979), but ranked #3 in the number of lawsuits filed (41), and ranked #1 in the total costs of lawsuits (\$12.4 million).
- The Department of Public Health ranked #1 in the number of employees (8,886), ranked #1 in the number of lawsuits filed (51), but ranked #2 in the total costs of lawsuits (\$5.5 million).
- MUNI ranked #2 in the number of employees (6,087), ranked #2 in the number of lawsuits filed (48), but ranked #3 in the total costs of lawsuits (\$4.6 million).

From there, the correlations grow weaker:

- The Human Services Agency ranked #3 in the number of employees (3,183) employees, but ranked #7 in the number of lawsuits filed.

- The Recreation and Park Department ranked #5 in the number of employees (2,364), but ranked #8 in the number of lawsuits filed.
- The Airport Commission ranked #6 in the number of employees (1,808), but ranked #16 in the number of lawsuits filed.
- The Fire Department ranked #7 in the number of employees (1,621), but ranked #9 in the number of lawsuits filed.
- The Department of Public Works ranked #8 in the number of employees (1,441), but ranked #6 in the number of lawsuits filed.
- The Sheriff's Department ranked #9 in the number of employees (1,023), but ranked #5 in the number of lawsuits filed.

“ The correlation between size of a City Department and the number of prohibited personnel practice lawsuits filed appears to be a weak and tenuous correlation. ”

And going from there, the ranking of settlement awards from the CAO, ranking of settlement awards from the Board of Supervisors, and ranking of City Attorney time and expenses trying to stop the lawsuits are all over the map.

A larger version of this article’s cover graphic:

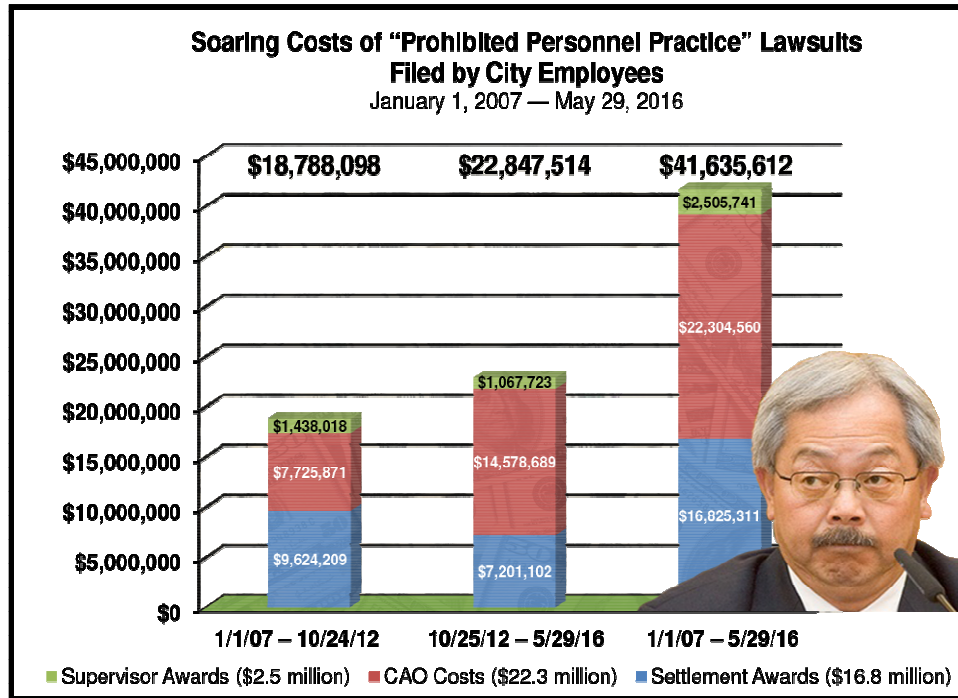


Table 4 below is the same as Table 1, but sorted alphabetically by Type of Case.

Table 4: Prohibited Personnel Practice Lawsuits, 2007 – 2016, Filed by City Employees Against the City of San Francisco

| | | Total Cases Settled 2007–2016 | | | | | | | Pending # of Cases | Total Cases |
|--------------|---|-------------------------------|---------------------------------|----------------------------|----------------------|---------------------|--------------------|----------------------------|--------------------|-------------|
| Code | Type of Case | City Attny Settlement Amont | Additional Board of Supes Award | City Attny Time & Expenses | Total Cost | Total Cases Settled | % of Cases Settled | % of Total Costs to Settle | | |
| 1 | 6075 Age Discrimination (Emp against City) | \$ 189,690 | | \$ 364,998 | \$ 554,688 | 7 | 2.7% | 1.3% | 6 | 13 |
| 2 | 6015 Assault by another employee | | | \$ 17,316 | \$ 17,316 | 1 | 0.4% | 0.0% | | 1 |
| 3 | 6020 Compensation (Employee against City) | \$ 1,065,063 | \$ 1,042,383 | \$ 909,223 | \$ 3,016,669 | 14 | 5.4% | 7.2% | 2 | 16 |
| 4 | 9925 Defamation | | | | | | 0.0% | 0.0% | 1 | 1 |
| 5 | 6080 Disability Discrimination (Emp v City) | \$ 2,863,943 | \$ 511,035 | \$ 3,188,660 | \$ 6,563,637 | 46 | 17.8% | 15.8% | 3 | 49 |
| 6 | 6005 First Amendment Violation (Emp vs City) | | | \$ 55,685 | \$ 55,685 | 1 | 0.4% | 0.1% | | 1 |
| 7 | 6070 General Harassment (Emp against City) | \$ 1,113,452 | \$ 182,500 | \$ 1,143,632 | \$ 2,439,584 | 12 | 4.6% | 5.9% | 5 | 17 |
| 8 | 4101 Grievance Arbitration | \$ 206,697 | | \$ 95,218 | \$ 301,915 | 5 | 1.9% | 0.7% | | 5 |
| 9 | 4103 Labor Related Issue | \$ 188,166 | | \$ 317,654 | \$ 505,819 | 10 | 3.9% | 1.2% | 1 | 11 |
| 10 | 41 Labor Relations | \$ 4,578 | | \$ 487 | \$ 5,065 | 1 | 0.4% | 0.0% | | 1 |
| 11 | 9051 Lit-Breach of Contract | | | \$ 823 | \$ 823 | 1 | 0.4% | 0.0% | | 1 |
| 12 | 4099 Other (Employee Conduct) | | | \$ 7,278 | \$ 7,278 | 2 | 0.8% | 0.0% | 1 | 3 |
| 13 | 2099 Other (Police) | | | \$ 11,532 | \$ 11,532 | 1 | 0.4% | 0.0% | | 1 |
| 14 | 4599 Other Malpractice | | | \$ 47,493 | \$ 47,493 | 1 | 0.4% | 0.1% | | 1 |
| 15 | 6099 Other-Actions by Employees against City | \$ 2,128,959 | \$ 31,410 | \$ 4,172,177 | \$ 6,332,546 | 45 | 17.4% | 15.2% | 18 | 63 |
| 16 | 4102 PERB Matters (Labor Adjudication) | \$ 10,000 | | \$ 48,949 | \$ 58,949 | 6 | 2.3% | 0.1% | | 6 |
| 17 | 4104 Prevailing Wage Enforcement | | | | | | 0.0% | 0.0% | 1 | 1 |
| 18 | 6035 Racial Discrimination (Emp agst. City) | \$ 3,673,856 | \$ 260,000 | \$ 4,642,326 | \$ 8,576,181 | 40 | 15.4% | 20.6% | 11 | 51 |
| 19 | 6055 Racial Harassment (Emp against City) | \$ 210,000 | | \$ 314,524 | \$ 524,524 | 2 | 0.8% | 1.3% | | 2 |
| 20 | 4025 Racial Harassment (Employee Conduct) | | | \$ 33,082 | \$ 33,082 | 1 | 0.4% | 0.1% | | 1 |
| 21 | 4810 Retirement | | | \$ 79,322 | \$ 79,322 | 1 | 0.4% | 0.2% | 1 | 2 |
| 22 | 6030 Sexual Discrimination (Emp against City) | \$ 1,575,000 | \$ 40,000 | \$ 1,934,652 | \$ 3,549,652 | 7 | 2.7% | 8.5% | | 7 |
| 23 | 6050 Sexual Harassment (Emp against City) | \$ 783,838 | | \$ 734,348 | \$ 1,518,185 | 9 | 3.5% | 3.6% | 3 | 12 |
| 24 | 4020 Sexual Harassment (Employee Conduct) | | | \$ 99,976 | \$ 99,976 | 1 | 0.4% | 0.2% | | 1 |
| 25 | 4030 Sexual Orient. Harass. (Emp. Conduct) | | | | | | 0.0% | 0.0% | 1 | 1 |
| 26 | 6040 Sexual Orientation Discrim (Emp vs City) | \$ 120,000 | | \$ 476,866 | \$ 596,866 | 3 | 1.2% | 1.4% | | 3 |
| 27 | 6010 Wrongful Termination (Emp agst. City) | \$ 2,517,071 | \$ 438,413 | \$ 3,406,615 | \$ 6,362,099 | 41 | 15.8% | 15.3% | 9 | 50 |
| | Unknown (From City Attorney Office) | \$ 175,000 | | \$ 201,725 | \$ 376,725 | 1 | 0.4% | 0.9% | | 1 |
| Total | | \$ 16,825,311 | \$ 2,505,741 | \$ 22,304,560 | \$ 41,635,612 | 259 | 100.0% | 100.0% | 63 | 322 |

Table 5 below is the same as Table 2, but sorted alphabetically by City Department.

Table 5: Prohibited Personnel Practice Lawsuits, 2007 – 2016, Filed by City Employees, by City Department

| Total Cases Settled 2007–2016 | | | | | | | | | | |
|--|--------------------------------------|---------------------------------------|-------------------------------------|----------------------|---------------------------|--------------------------|----------------------------------|---------------------|----------------|--|
| City Department | City Attorney Settlement Award | Additional Board of Supes Award | City Attorney Time & Expenses | Total Cost | Total Cases Settled | % of Cases Settled | % of Total Costs to Settle | Pending Lawsuits | Total Cases | |
| 1 Administrative Services | \$ 462,000 | \$ 28,000 | \$ 315,978 | \$ 805,978 | 6 | 2.3% | 1.9% | 3 | 9 | |
| 2 Adult Probation Department | \$ 3,200 | | \$ 52,248 | \$ 55,448 | 1 | 0.4% | 0.1% | | 1 | |
| 3 Airport Commission | \$ 425,000 | \$ 40,000 | \$ 478,319 | \$ 943,319 | 2 | 0.8% | 2.3% | 1 | 3 | |
| 4 Assessor / Recorder | | | \$ 8,018 | \$ 8,018 | 1 | 0.4% | 0.0% | | 1 | |
| 5 Child Protective Services | \$ 27,000 | | \$ 130,876 | \$ 157,876 | 1 | 0.4% | 0.4% | | 1 | |
| 6 City Attorney | | | \$ 2,579 | \$ 2,579 | 1 | 0.4% | 0.0% | 1 | 2 | |
| 7 City Planning Department | | | \$ 46,161 | \$ 46,161 | 1 | 0.4% | 0.1% | | 1 | |
| 8 Clean Water | \$ 24,000 | | \$ 84,761 | \$ 108,761 | 2 | 0.8% | 0.3% | 3 | 5 | |
| 9 Department of Building Inspection | \$ 49,506 | | \$ 209,791 | \$ 259,297 | 1 | 0.4% | 0.6% | | 1 | |
| 10 Department of Emergency Management | \$ 892,000 | | \$ 462,947 | \$ 1,354,947 | 3 | 1.2% | 3.3% | | 3 | |
| 11 Department of Public Works | \$ 704,937 | \$ 85,000 | \$ 1,176,872 | \$ 1,966,809 | 11 | 4.2% | 4.7% | 2 | 13 | |
| 12 District Attorney | \$ 4,500 | | \$ 147,738 | \$ 152,238 | 1 | 0.4% | 0.4% | 2 | 3 | |
| 13 Economic, Workforce Development | | | \$ 219 | \$ 219 | 1 | 0.4% | 0.0% | | 1 | |
| 14 Fine Arts Museum | \$ 57,500 | | \$ 283,483 | \$ 340,983 | 3 | 1.2% | 0.8% | 1 | 4 | |
| 15 Fire Commission, San Francisco | | | \$ 99,754 | \$ 99,754 | 2 | 0.8% | 0.2% | | 2 | |
| 16 Fire Department | \$ 893,220 | \$ 645,417 | \$ 777,983 | \$ 2,316,620 | 9 | 3.5% | 5.6% | 9 | 18 | |
| 17 Health Services System | | | \$ 823 | \$ 823 | 1 | 0.4% | 0.0% | | 1 | |
| 18 Hetch Hetchy | | | | | 0 | 0.0% | 0.0% | 1 | 1 | |
| 19 Human Resources | \$ 42,750 | \$ 16,250 | \$ 39,343 | \$ 98,343 | 2 | 0.8% | 0.2% | | 2 | |
| 20 Human Services Agency | \$ 270,000 | \$ 50,000 | \$ 275,214 | \$ 595,214 | 10 | 3.9% | 1.4% | | 10 | |
| 21 Juvenile Court | | | \$ 184,864 | \$ 184,864 | 2 | 0.8% | 0.4% | | 2 | |
| 22 Juvenile Probation | \$ 114,075 | \$ 18,425 | \$ 331,738 | \$ 464,238 | 6 | 2.3% | 1.1% | | 6 | |
| 23 Mayor's Office of Community Development | \$ 87,500 | | \$ 2,645 | \$ 90,145 | 1 | 0.4% | 0.2% | | 1 | |
| 24 Municipal Transportation Agency | \$ 1,617,240 | | \$ 3,028,599 | \$ 4,645,838 | 37 | 14.3% | 11.2% | 11 | 48 | |
| 25 Police | \$ 5,524,570 | \$ 470,000 | \$ 6,429,808 | \$ 12,424,379 | 33 | 12.7% | 29.8% | 8 | 41 | |
| 26 Public Defender | \$ 57,000 | \$ 18,000 | \$ 86,001 | \$ 161,001 | 1 | 0.4% | 0.4% | | 1 | |
| 27 Public Health | \$ 2,065,283 | \$ 258,580 | \$ 3,160,420 | \$ 5,484,283 | 42 | 16.2% | 13.2% | 9 | 51 | |
| 28 Public Library | | | | | 0 | 0.0% | 0.0% | 2 | 2 | |
| 29 Public Utilities Commission | \$ 187,500 | \$ 164,507 | \$ 192,390 | \$ 544,397 | 4 | 1.5% | 1.3% | | 4 | |
| 30 Recreation And Park Commission | \$ 212,539 | \$ 124,197 | \$ 483,222 | \$ 819,958 | 7 | 2.7% | 2.0% | 3 | 10 | |
| 31 San Francisco Housing Authority | | | \$ 21,154 | \$ 21,154 | 1 | 0.4% | 0.1% | | 1 | |
| 32 San Francisco Law Library | | | \$ 748 | \$ 748 | 1 | 0.4% | 0.0% | | 1 | |
| 33 San Francisco Port Authority | | | \$ 251,888 | \$ 251,888 | 2 | 0.8% | 0.6% | | 2 | |
| 34 San Francisco Rent Board | | | \$ 37,284 | \$ 37,284 | 1 | 0.4% | 0.1% | | 1 | |
| 35 Sheriff | \$ 1,241,034 | \$ 396,966 | \$ 1,584,527 | \$ 3,222,527 | 12 | 4.6% | 7.7% | 2 | 14 | |
| 36 Treasurer/Tax Collector | | \$ 110,000 | \$ 63,943 | \$ 173,943 | 1 | 0.4% | 0.4% | 2 | 3 | |
| 37 War Memorial | \$ 115,000 | | \$ 283,112 | \$ 398,112 | 2 | 0.8% | 1.0% | | 2 | |
| 38 Wastewater Enterprise | \$ 280,000 | | \$ 419,659 | \$ 699,659 | 4 | 1.5% | 1.7% | | 4 | |
| 39 Water Department | \$ 400,000 | \$ 30,400 | \$ 443,993 | \$ 874,393 | 5 | 1.9% | 2.1% | 1 | 6 | |
| Lawsuit Not Found — Filed by Organization | | | \$ 1,288 | \$ 1,288 | 2 | 0.8% | 0.0% | | 2 | |
| Lawsuit Not Found — Filed by Labor Union | \$ 10,000 | | \$ 132,752 | \$ 142,752 | 8 | 3.1% | 0.3% | | 8 | |
| Lawsuit Not Available for Public View | \$ 50,000 | \$ 50,000 | \$ 137,287 | \$ 237,287 | 1 | 0.4% | 0.6% | | 1 | |
| City Department Not Named | \$ 30,000 | | \$ 66,578 | \$ 96,578 | 2 | 0.8% | 0.2% | | 2 | |
| Unknown City Department | \$ 977,958 | | \$ 367,555 | \$ 1,345,513 | 25 | 9.7% | 3.2% | 2 | 27 | |
| Total Cases | \$ 16,825,311 | \$ 2,505,741 | \$ 22,304,560 | \$ 41,635,612 | 259 | 100.0% | 100.0% | 63 | 322 | |