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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12 UNLIMITED JURISDICTION

13 KELLY O'HAIRE,

14 Plaintiff,

15 vs.

16 CITY AND COUNTY OF SAN
FRANCISCO, GREG SUHR, and DOES 1-
17 100,

18 Defendants.
19

Case No. CGC 13-531419

**REDACTED DEFENDANTS' OBJECTIONS
TO EVIDENCE SUBMITTED WITH
PLAINTIFF'S OPPOSITION TO
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT**

**UNREDACTED VERSION LODGED
CONDITIONALLY UNDER SEAL**

Hearing Date Reservation No. 120114-15

Hearing Date: March 19, 2015
Hearing Judge: Hon. Ernest H. Goldsmith
Time: 9:30 a.m.
Place: Department 302

Date Action Filed: May 15, 2013
Trial Date: April 20, 2015

ELECTRONICALLY

FILED

*Superior Court of California,
County of San Francisco*

MAR 13 2015

Clerk of the Court

BY: BOWMAN LIU

Deputy Clerk

Following are Defendants' specific objections to the evidence submitted with Plaintiffs' Opposition:

Declaration of Kelly O'Haire In Support of Plaintiffs' Objections to Defendants' Evidence In Support of Motion for Summary Judgment

EVIDENCE	OBJECTION	SUSTAINED	OVERRULED
1. [REDACTED] (O'Haire Declaration, Paragraph 5.)	Lacks foundation/speculation and offers a legal conclusion. Evid. Code §§352, 702, 802.		
2. [REDACTED] his Department General Order was implemented per the requirements of Penal Code §§13701, 13730." (O'Haire Declaration, Paragraph 6.)	Lacks foundation/speculation and offers a legal conclusion. Evid. Code §§352, 702, 808.		
3. "Penal Code 13701 and Penal Code 13730 went into effect during the time that I was a police officer and all officers were required to undergo extensive training on responding to domestic violence incidents in order to be in compliance with the new Penal Code requirements. (O'Haire Declaration, Paragraph 7.)	Lacks foundation/speculation and offers a legal conclusion. Evid. Code §§352, 702, 808.		
4. Based on my training as a police officer, a district attorney, and my review of the Penal Code sections, I believed Suhr's conduct was a violation of the Penal Code. [REDACTED] I believe if the Department did not enforce DGO 6.09, it would be in violation of the Penal Code.'" (O'Haire Declaration, Paragraph 7.)	Lacks foundation/speculation and offers a legal conclusion. Evid. Code §§352, 702, 808.		
5. [REDACTED] (O'Haire Declaration, Paragraph 9.)	Relevance, lacks foundation/speculation and offers a legal conclusion. Evid. Code §§350, 352, 702, 808.		
6. [REDACTED]	Relevance, lacks foundation/		

1	(O'Haire Declaration, Paragraph 9.)	speculation and offers a legal conclusion. Evid. Code §§350, 352, 702, 808		
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3	7. [REDACTED]	Hearsay, relevance, and privilege. Evid. Code §§350, 352, 1200; Civ. Code §47(b).	_____	_____
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7	(O'Haire Declaration, Paragraph 10.)			
8	8. "I was often told by employees of the SFPD, including by officers who were friends with Suhr that Suhr was angry and that when he became Chief I would be 'taken out' or removed." (O'Haire Declaration, Paragraph 12.)	Hearsay, relevance, lacks foundation. Evid. Code §§350, 352, 702, 1200.	_____	_____
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12	9. "...a serious neglect of duty that put the City and the Department at risk of civil liability." (O'Haire Declaration, Paragraph 13.)	Relevance, lacks, foundation/ speculation and offers a legal conclusion. Evid. Code §§350, 352, 702, 802.	_____	_____
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16	10. "Chief Gascon told me that he would protect me from Suhr. He also told me to put this in writing and he would sign it in order to protect me." (O'Haire Declaration, Paragraph 14.)	Relevance, hearsay. Evid. Code §§350, 352, 702.	_____	_____
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19	11. "Mr. Delaganes told me and Jerry Tidwell that Suhr was angry and he was going to "take me and Jerry out" when he became Chief." (O'Haire Declaration, Paragraph 15.)	Relevance, hearsay. Evid. Code §§350, 352, 702.	_____	_____
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21				
22	12. "...told me that POA Labor Representative Stephen Johnson said that Suhr was going to "take me and Jerry out" when he is named Chief." (O'Haire Declaration, Paragraph 17.)	Relevance, hearsay. Evid. Code §§350, 352, 702.	_____	_____
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24	13. "SFPD had never before treated any employee who was being "laid-off" this way unless the employee had committed a crime." (O'Haire Declaration, Paragraph 21.)	Relevance and lacks foundation/ speculation. Evid. Code §§350, 352, 702.	_____	_____
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1	14. "...one of the attorneys in Risk Management Division had been previously counseled for poor performance on several occasions, and she was formally written up for a proposed termination. This attorney was paid the same amount as I was, and yet she was retained by the SFPD." (O'Haire Declaration, Paragraph 22.)	Relevance and lacks foundation/speculation, hearsay. Evid. Code §§350, 352, 702.	_____	_____
2	15. "I was told that "Greg Suhr is not interested in your services," and I was not re-hired." (O'Haire Declaration, Paragraph 23.)	Relevance, lacks foundation, hearsay. Evid. Code §§350, 352, 702, 1200.	_____	_____
3	16. "...told me that POA President Gary Delagnes announced to the group, 'We got rid of the ones we didn't like.'" (O'Haire Declaration, Paragraph 24.)	Relevance and lacks foundation/speculation, hearsay. Evid. Code §§350, 352, 702.	_____	_____
4	17. "They agreed that they would." "...and knew that the Legal Division accepted claims against the City and Police Department. (O'Haire Declaration, Paragraph 25.)	Hearsay, lacks foundation, and offers a legal conclusion. Evid. Code §§702, 802, 1200.	_____	_____
5	18. "I knew that the City Attorney's Office had lost claims, evidence and other legal documents on multiple occasions. This was common knowledge among top managers and employees in the Legal Division." (O'Haire Declaration, Paragraph 25.)	Relevance and lacks foundation/Speculation. Evid. Code §§350, 352, 702.	_____	_____
6	19. "I confirmed with both Sergeant Goss and Attorney Ronnie Wagner that my claim was received by the SFPD, and sent to the City Attorney, Captain of the Division and Controller's Office. (O'Haire Declaration, Paragraph 26.)	Hearsay and lacks foundation/speculation. Evid. Code §§702, 1200.	_____	_____
7	20. I mailed another copy of my claim, with the original signature, to Controller's Office at 1390 Market St., 7th Fl., San Francisco, CA 94102." (O'Haire Declaration, Paragraph 26.)	Hearsay and lacks foundation/speculation. Evid. Code §§702, 1200.	_____	_____
8	21. "He called me back and said that the City Attorney could not find a copy of my claim. He called me again later that day, and said that the City Attorney, the Captain and the Controller's Office had found the claim." (O'Haire Declaration, Paragraph 27.)	Hearsay and lacks foundation/speculation. Evid. Code §§702, 1200.	_____	_____
9	22. "I have been black-balled from finding alternative City employment	Relevance, lacks foundation/	_____	_____

1 because my employment record shows I 2 was 'terminated' rather than 'laid off,' and 3 it also does not state that I am eligible for 4 re-employment by the City." (O'Haire 5 Declaration, Paragraph 28.)	speculation. Evid. Code §§350, 352, 702.		
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Declaration of Sergeant Char W. Goss, III, In Support of Plaintiffs' Objections to Defendants' Evidence In Support of Motion for Summary Judgment

EVIDENCE	OBJECTION	SUSTAINED	OVERRULED
23. "Part of my job was to oversee and supervise the acceptance and service of documents at the San Francisco Police Legal Division." (W. Goss, III, Declaration, Paragraph 3.)	Relevance, lacks foundation and offers a legal conclusion. Evid. Code §§702, 802.		
24. "The Legal Division has a team of lawyers who appear on legal matters, and police officers who investigate claims. More complex claims are sent to the City Attorney's Office for investigation." (W. Goss, III, Declaration, Paragraph 4.)	Lacks foundation. Evid. Code §§350, 702.		
25. "On November 14, 2011, Ms. O'Haire called me and told me she had faxed the claim to Attorney Ronnie Wagner at my office. She asked me to hold it for one day, before sending it to the City Attorney's Office, as she wanted to have her attorney look at it." (W. Goss, III, Declaration, Paragraph 7.)	Hearsay. Evid. Code §1200.		
26. "I am aware that a number of weeks later, the City Attorney's Office could not locate the claim and a Deputy City Attorney called the police officers who worked for me, looking for a copy of the claim. It was eventually located." (W. Goss, III, Declaration, Paragraph 11)	Hearsay and lacks foundation/ speculation. Evid. Code §§702, 1200.		
27. "I had spoken with the Captain and that he told me he remembered seeing the complaint and a copy must be with either the City Attorney's Office or the Controller's Office." (W. Goss, III, Declaration, Paragraph 12)	Hearsay and lacks foundation/ speculation. Evid. Code §§702, 1200.		

Declaration of Sergeant Paget Mitchell, In Support of Plaintiffs' Objections to Defendants' Evidence In Support of Motion for Summary Judgment

EVIDENCE	OBJECTION	SUSTAINED	OVERRULED
28. "...it is my understanding that if an officer fails to report a domestic violence incident it is a violation of the Penal Code." (Mitchell's, Declaration, Paragraph 4.)	Lacks foundation and offers a legal conclusion. Evid. Code §§702, 802.		

1	29. "I was aware of threats to Ms. O'Haire by Greg Suhr's attorney, Mr. Collins and Mr. James Lassart."	Relevance, hearsay, lacks foundation, privilege.		
2	(Mitchell's, Declaration, Paragraph 6.)	Evid. Code §§350, 352, 702, 1200; Civ. Code §47(b).		
3				
4	30. "I never had any problems with Suhr until my wife, Susan Nangle, was the Internal Affairs Division investigator	Relevance, lacks foundation/ speculation.		
5	After that, because of my connections to Susan Nangle and Kelly O'Haire, I was treated differently."	Evid. Code §§350, 352, 702.		
6	(Mitchell's, Declaration, Paragraph 7.)			
7				
8	31. It became common knowledge in Internal Affairs that Kelly O'Haire would be terminated if Suhr became Chief. When she was terminated by Suhr, everyone who had worked in Internal Affairs Division knew that Ms. O'Haire's termination was	Relevance, lacks foundation/ speculation, hearsay.		
9	(Mitchell's, Declaration, Paragraph 8.)	Evid. Code §§350, 352, 702, 1200.		
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12	32. "I have never heard of anyone being escorted out of the building the way Ms. O'Haire was made to leave. This is not the way the Department previously handled (rare) layoffs and releases."	Relevance and lacks foundation.		
13	(Mitchell's, Declaration, Paragraph 9.)	Evid. Code §§350, 352, 702.		
14				
15	33. "I have seen the impact that this has had on Ms. O'Haire for years. Every time she tried to get a job somewhere else, something happened. The SFPD reported that she was terminated."	Relevance, lacks foundation, hearsay.		
16	(Mitchell's, Declaration, Paragraph 10.)	Evid. Code §§350, 352, 702, 1200.		
17				
18	34. "As my job required direct interaction with the chief, I told him I felt Suhr was unethical and I would rather go back to patrol than work with Suhr directly."	Relevance.		
19	(Mitchell's, Declaration, Paragraph 11.)	Evid. Code §§350, 352.		
20				
21	35. "Within a week of my request [or transfer,] I was served with an investigation notice by the Special Investigations Division. The notice meant that I was under investigation and needed to come in for an interview. I was told that I was a 'witness for an anonymous complaint,' and therefore, I had no right to representation in the meeting. The Special Investigations Division (SID) conducts criminal investigations of officers. Two investigators told me I was there because 'someone filed an anonymous complaint that said I might have information about	Relevance, lacks foundation/ speculation, hearsay.		
22		Evid. Code §§350, 352, 702, 1200.		
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criminal activity by Suhr's command staff.' I was the only person involved in this so-called investigation. I fully believe that his was simply done to intimidate me. I told them they could play the interview tape for Greg Suhr and that as a police officer, if I had any information about criminal activity by the Command Staff I would have reported the information to the FBI, not Suhr's own investigators that worked directly for him. I told them this 'investigation' was completely inappropriate.'" (Mitchell's, Declaration, Paragraph 12.)

36. "Following my request to be transferred, normal SFPD protocol would be to transfer me to my home station which was Northern. However, because I had done an investigation of another officer at Northern when I was in Internal Affairs and that officer was friends with Greg Suhr, I was made to transfer to Park station. When you return to your home station, you are supposed to return to the shift that you left. However, I was made to transfer to a different station and I was put on the graveyard shift, which is undesirable. I considered this an adverse employment action. When I protested this to the Station management, they told me this was the result of a direct 'Chief's Order' to put me on that shift, instead of my regular day shift. This was clearly in retaliation for my work in Internal Affairs and for refusing to work in Risk Management under Greg Suhr." (Mitchell's, Declaration, Paragraph 13.)

Relevance, lacks foundation/speculation, hearsay. Evid. Code §§350, 352, 702, 1200.

Declaration of Owland Yerkes, In Support of Plaintiffs' Objections to Defendants' Evidence In Support of Motion for Summary Judgment

EVIDENCE	OBJECTION	SUSTAINED	OVERRULED
37. "Kelly had been carrying her government claim against San Francisco and Greg Suhr around in the house for at least a week, posted and addressed,...We drove through the US Post Office, and she handed the envelope postmarked to the Controller's Office 1390 Market St. 7th Fl., San Francisco, CA 94102" (Yerkes, Declaration, Paragraph 2.)	Lacks foundation/speculation. Evid. Code §702.		

Declaration of Jerry Tidwell, In Support of Plaintiffs' Objections to Defendants' Evidence In Support of Motion for Summary Judgment

EVIDENCE	OBJECTION	SUSTAINED	OVERRULED
38. In this case, the Department General Orders mirrored the Penal Code, and (Tidwell, Declaration, Paragraph 4.)	Lacks foundation/speculation, hearsay, offers a legal conclusion. Evid. Code §§702, 802, 1200.		
39. (Tidwell, Declaration, Paragraph 5.)	Lacks foundation/speculation, hearsay, privilege. Evid. Code §§702, 1200; Civ. Code §47(b).		
40. "Kelly O'Haire reported to me many times that she feared retaliation if Greg Suhr ever became Chief." (Tidwell, Declaration, Paragraph 6.)	Relevance and hearsay. Evid. Code §§350, 352, 1200.		
41. "I am aware that the Legal Division accepted service of government claims and, as a matter of practice, forwarded them to the City Attorney and the Controller's Office." (Tidwell, Declaration, Paragraph 8.)	Lack, foundation, offers a legal conclusion. Evid. Code §§702, 802.		

Videotaped Deposition of George Gascon, Confidential Portions, In Support of Plaintiffs' Objections to Defendants' Evidence In Support of Motion for Summary Judgment

EVIDENCE	OBJECTION	SUSTAINED	OVERRULED
42. "Do you feel – have you formed the opinion that Greg Suhr retaliated against Ms. O'Haire when he became chief by terminating her? A. It certainly appears that way." (Gascon Confidential, Deposition, Pages 17- 18, Lines 24 - 2.)	Relevance, lacks foundation/speculation, improper opinion. Evid. Code §§350, 352, 702, 802.		
43. "She asked if I would talk to the mayor about affording her the opportunity to work as an attorney somewhere else within the city." (Gascon Confidential, Deposition, Page 22, Lines 12 - 14 .)	Hearsay. Evid. Code §1200.		

Videotaped Deposition of Deborah Landis In Support of Plaintiffs' Objections to Defendants' Evidence In Support of Motion for Summary Judgment

EVIDENCE	OBJECTION	SUSTAINED	OVERRULED
<p>44. "Q. Do you know if Kelly O'Haire's termination was counter to that initiative in any way?</p> <p>A. I don't think it's a clear-cut enough initiative or -- I think 'maybe' is probably the best I can do to answer that." (Landis, Deposition, Page 89, Lines 4 - 8.)</p>	<p>Relevance, lacks foundation.</p> <p>Evid. Code §§350, 352, 702, 1200.</p>		

Videotaped Deposition of James Lynch, Confidential Portions, In Support of Plaintiffs' Objections to Defendants' Evidence In Support of Motion for Summary Judgment

EVIDENCE	OBJECTION	SUSTAINED	OVERRULED
<p>45. "A. I was advised that she had received -- or she had a conversation with counsel for -- I don't know how we reference -- this person we had charges against, I guess. Disciplinary case with or --." (Lynch, Deposition, Page 7, Lines 11 - 19.)</p>	<p>Lacks foundation/ speculation, hearsay relevance.</p> <p>Evid. Code §§350, 352, 702, 1200.</p>		
<p>45. "She informed me that she had a conversation with counsel for Deputy Chief Suhr and that it was unprofessional, I guess is one way to say it. There were a lot of allegations that were made about her motivations, Chief Fong's motivations. She felt it was a threatening conversation." (Lynch, Deposition, Page 9, Lines 2- 7.)</p>	<p>Relevance, lacks foundation/ speculation, hearsay.</p> <p>Evid. Code §§350, 352, 702, 1200.</p>		

Videotaped Deposition of Alice Villagomez In Support of Plaintiffs' Objections to Defendants' Evidence In Support of Motion for Summary Judgment

EVIDENCE	OBJECTION	SUSTAINED	OVERRULED
<p>46. "Q. Exhibit 13 is a three-page document which is a memorandum. it appears to be on San Francisco Police Department letterhead to Jerry Tidwell from Kelly O'Haire dated May 7th, 2009. Have you ever seen this document before?</p> <p>A. Yes.</p> <p>Q. How did you come across it?</p> <p>A. I saw this in 2011.</p> <p>Q. At what point in 2011?</p> <p>A. When Ms. O'Haire referenced the comments made by Steve Johnson.</p> <p>Q. Okay, So earlier we had a discussion where Ms. O'Haire felt that she was being harassed or intimidated by Steve Johnson and you testified out that. She showed you a document in connection with that conversation?</p> <p>A. Yes.</p>	<p>Lacks foundation, hearsay.</p> <p>Evid. Code §§702, 1200.</p>		

1 Q. And this is the document?

2 A. Yes."

3 (Villagomez, Deposition, Page 11 Lines 6 -
4 24, Exh. 13.)

5 47. "Q. Did she give you any specifics
6 about the threat that Steve Johnson
7 supposedly made?

8 A. Stating that -- representing that Steve
9 Johnson had stated to her that if Chief Suhr
10 becomes chief, we'll make sure that he gets
11 rid of you." (Villagomez, Deposition, Page
12 104 Lines 6 -11.)

Relevance, lacks
foundation, hearsay.
Evid. Code §§350,
352, 702, 1200.

9 Dated: March 12, 2015

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