

“Time’s Up” on One of San Francisco’s Dirty Little Secrets City’s #MeToo Sexual Harassment Scandal

by Patrick Monette-Shaw

San Francisco City government is no more immune from sexual harassment scandals than other jurisdictions around our nation.

The *Time’s Up*, and #MeToo, movements need to focus on San Francisco City government.

When the sexual harassment bombshell exploded around Harvey Weinstein and the entertainment business, it quickly spread to Washington, D.C., ensnaring Senator Al Franken and others. From there, it quickly spread to California’s state legislature in Sacramento, where we learned five sexual harassment settlements had cost \$950,000 over the past two decades.

By way of contrast, at least 34 sexual harassment and sexual discrimination lawsuits filed by City employees against the City have cost at least \$9.1 million since 2007. Eight of the lawsuits remain outstanding, so costs will increase. Another five sexual harassment unlitigated claims added another \$565,946, bringing the combined costs to \$9.6 million. Those costs continue spiraling upwards.

This article focuses on sexual harassment and discrimination facing City employees, and the nexus — retaliation — to wrongful termination.

Time Magazine reported in its 2017 *Person of the Year* issue that “In 1980 the Equal Employment Opportunity Commission (EEOC), the federal agency tasked with enforcing civil rights laws in the workplace, issued guidelines declaring sexual harassment a violation of Title VII of the Civil Rights Act.”

Why are Title VII Civil Rights Act violations tolerated 38 years later in San Francisco city government? And why has San Francisco retained at least 22 (52.4%) of the 42 accused of sexual harassment or sexual discrimination across the 34 separate lawsuits and who are still on the City’s payroll, rather than being terminated?

California’s Fair Employee and Housing Act (FEHA), Government Code §§ 12940, et. seq., also stipulates that harassment of employees on the basis of sex [or sexual harassment] is an unlawful employment practice.

San Francisco’s Own “#MeToo” and “Time’s Up” Scandal

San Francisco appears to tolerate sexual harassment and sexual discrimination of City employees. The City has done a minimal amount of sexual harassment *prevention* training. The City should have a zero-tolerance policy for sexual harassment.

On December 24, a records request was submitted to the City’s Department of Human Resources (DHR) asking merely for three dates of when sexual harassment prevention training began for City employees. Rather than simply providing the three requested dates, DHR responded on December 27, foolishly and wrongly invoking a 14-day extension claiming a need to consult with another City department over DHR’s own programmatic records. A formal complaint was submitted to the Sunshine Ordinance Task Force on December 29 alleging DHR was engaging in a blatant abuse of discretion by stonewalling. DHR finally responded by providing the three requested dates on January 5, within 10 calendar days.



Photo: Access Hollywood videotape still photo.

Sexual Abuser-in-Chief Donald Trump: Despite the Access Hollywood videotape of Trump and Billy Bush, Trump went on to become President, but so far there’s been no justice for the 20 or more women who have accused Trump of sexual misconduct.

“ The 34 sexual harassment and sexual discrimination lawsuits filed by City employees against the City, plus another five sexual harassment unlitigated claims have cost at least \$9.6 million. ”

“ Why are Title VII Civil Rights Act violations tolerated 38 years later in San Francisco city government? ”

“ San Francisco appears to tolerate sexual harassment and sexual discrimination of City employees. The City has done a minimal amount of sexual harassment prevention training. ”

Back on March 8, 2005 San Francisco's Department of Human Resources (DHR) rolled out its sexual harassment prevention training program for City supervisors and managers, and City employees who could conceivably supervise other City employees. It was a PowerPoint-based presentation made in live training sessions. As a then-secretary with the City, I was required to take that training, even though I was not supervising anyone else but *potentially* could.

Two-and-a-half years later, DHR upgraded and switched on November 20, 2007 to an on-line-based training program that ended up requiring only a sub-set of City employees take the training over the City's secured Internet connections.

“DHR upgraded, switching on November 20, 2007 to an on-line-based training program that ended up requiring only a sub-set of City employees take the sexual harassment *prevention* training.”

DHR's response on January 5, 2018 said: “Effective October 28, 2013, DHR *recommended* that departments require employees provide copies of their certificates of completion for placement in their personnel files.” It shouldn't have taken another six years for the City to require signed certificates of training completion.

And this is just plain silly: “Recommending” is **not** the same thing as “requiring,” suggesting that perhaps all City departments are not uniformly *requiring* employees who are required to take the sexual harassment prevention training to actually attest with their signatures and submit the completion-of-training certificates to departmental H.R. sub-departments. It's not yet known whether some City departments have failed to implement the on-line training.

Unfortunately, DHR confirmed the sexual harassment prevention training program **isn't** required for **all** City employees. DHR indicated on January 5:

“DHR currently does not require non-supervisory employees to complete Harassment Prevention Training. Effective October 28, 2013, employees in acting supervisor assignments were required to take the training in addition to supervisors. Effective October 30, 2017, employees who regularly receive lead assignments are required to take the training, in addition to supervisors and acting supervisors.”

Data presented below were obtained from public records requests to the City Attorney's Office for lawsuits since 2007 against the City, the City Controller's payroll database (including annual updates), and records of City retirees obtained from the City's Employees' Retirement System (SFERS), and sexual harassment annual reports prepared by the City's Department of Human Resources (DHR), which were cross-referenced to public records of lawsuits available on the San Francisco Superior Court's web site.

Additionally, DHR eventually coughed up 23 sexual harassment settlement agreements revealing an additional eight sexual harassment cases that the City Attorney's Office had not previously reported at all, despite years of responding to public records requests.

DHR also provided 27 heavily redacted files that it asserted were “additional responsive records involving confirmed [sexual harassment/discrimination] misconduct.” It's unclear whether those 27 cases involved termination of the accused named Defendant employees.

**Table 1: Sexual Discrimination and Sexual Harassment Lawsuits Naming Retaliation as a “Cause of Action”
January 1, 2007 to December 22, 2017**

Code	Type of Case	# of Lawsuits	City Atty Settlement Amount	Additional BoS Award	CAO Time & Expenses	Total	Cases Naming Retaliation
6030	Sexual Discrimination	11	\$ 1,705,000	\$ 90,000	\$ 2,411,517	\$ 4,206,517	6
6050	Sexual Harassment	23	\$ 1,914,337	\$ 178,193	\$ 2,792,048	\$ 4,884,578	15
Lawsuits Thru 3/8/2017		34	\$ 3,619,337	\$ 268,193	\$ 5,203,566	\$ 9,091,096	21
Sexual Harassment		5		\$ 565,946		\$ 565,946	
Unlitigated Claims							
Combined Cases		39	\$ 3,619,337	\$ 834,139	\$ 5,203,566	\$ 9,657,041	

61.8% of 34 Cases

Source: San Francisco City Attorney's Office, Department of Human Resources settlement agreements, and additional data.

The City Attorney's time and expenses shown in Table 1 represents fully \$5.2 million (57.2%) of the total \$9.1 million across the combined 34 lawsuits (excluding the five unlitigated claims), and just \$3.9 million (42.8%) was paid as settlements plus Board of Supervisors awards to the 40 Plaintiffs.

The "City Attorney Settlement Amounts" are amounts paid through the City Attorney's office only, and does not include any back-pay awards or other amounts processed by other offices. The additional Board of Supervisor awards are for such things as back pay, and/or worker compensation claims not paid by the City Attorney's Office.

The 34 lawsuits (excluding the five unlitigated claims) are significant because:

- There were a total 130 "Causes of Action" across the 34 lawsuits.
- Fully 21 (61.8%) of the 34 sexual harassment and sexual discrimination cases listed "Retaliation" as either a named "cause of action," or included retaliation in the description of other causes of action, is really disturbing.
- Of the 34 cases, 27 (79.4%) of the main Plaintiffs were female.
- At least one of the female Plaintiffs who alleged Sexual Harassment in her lawsuit identified herself as a lesbian.
- Of the 7 male Plaintiffs, two were gay men who alleged sexual discrimination based on sexual orientation. Of the remaining five male Plaintiffs, two identified as heterosexual, alleging sexual harassment by a gay male co-worker.
- Of the two straight males who alleged sexual harassment by a gay male co-worker, one received no settlement award, even though the City Attorney's Office had spent \$1.5 million in time and expenses in fighting the lawsuit. The second case, filed on June 25, 2015 paid the Plaintiff \$120,000 as a settlement award but the costs of City Attorney time and expenses in that case are not yet known due to delays to a records request to the City Attorney.
- The 34 lawsuits involved 40 named Plaintiffs. Only 17 (42.5%) of the 40 appear to have retained their City jobs.
- The 34 lawsuits involved at least 42 named Defendants. Of the 42, 22 (52.4%) appear to have retained their City jobs, and another 7 (16.7%) retired, collecting City pensions. Fully 69% of the named Defendants are either still collecting their City salaries, or their City pensions.
- Of the 34 lawsuits, two also alleged wrongful termination as an additional cause of action.
- Of the 34 lawsuits, one noted that the Plaintiff's supervisor filed a complaint with the Controller's Whistleblower Program on March 25, 2008. On May 7, 2008 the Whistleblower program contacted the supervisor and indicated there "were a few obstacles which had lengthened the investigation." The lawsuit did not include the Whistleblower program's eventual disposition of the whistleblower complaint. Subsequently the Plaintiff received a \$127,000 settlement (and the City Attorney had spent another \$79,234 to stop the Plaintiff's lawsuit) even after a DHR EEO Division report claimed the relationship between Plaintiff and Defendant had been mutual and didn't amount to sexual harassment. DHR's EEO Division did uphold a second complaint that the Defendant had, in fact, retaliated against the Plaintiff. The Defendant was not disciplined despite EEO's finding he had retaliated against the Plaintiff, and he remains on the City payroll as of June 30, 2017. The Plaintiff was apparently terminated prior to July 1, 2012.
- One case involved a Plaintiff at Muni who alleged her manager, the Defendant (we'll call him "W") expressly demanded Plaintiff engage in various forms of sex with him on numerous occasions, including performing oral sex and sexual intercourse during work hours. Plaintiff believed the Defendant would retaliate against her if she didn't comply with his sexual demands and believed her continued employment depended on complying. The

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The 34 lawsuits involved at least 42 named Defendants, 22 (52.4%) of whom appear to have retained their City jobs. Another 7 (16.7%) of the Defendants retired. Fully 69% of the Defendants are either still collecting their City salaries, or their City pensions."

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Plaintiff filed her case on December 7, 2016; it has not been fully adjudicated as of January 5, 2017. As of June 30, 2017, both the Plaintiff and the Defendant are still on the City's payroll.

- Eight (23.5%) of the 34 cases do not appear to have been fully adjudicated.
- One of the 34 cases (that is only partially adjudicated) involved sexual harassment of female firefighter Kristen Odlaug. She received a \$400,000 settlement award, but costs of City Attorney time and expenses fighting her lawsuit are not yet known. Her initial [court filing](#) (CGC-04-430509), available as a public record on the San Francisco Superior Court web site, listed Fire Department Lieutenant Robert Palu as a named Defendant. Details in her court filing named Palu and four other male¹ firefighters, and described the sexual harassment Odlaug endured from her five male co-workers. The allegations described in Odlaug's lawsuit are truly *disgusting*, illustrating just how juvenile the five male firefighters' harassing behaviors had been. Firefighters who felt themselves somehow entitled by virtue of their male gender.
- One of the five unlitigated sexual harassment claims involved Fire Department Deputy Chief Ken Lombardi, who was the named Defendant. Fire Chief Joanne Haye-White reduced him to the rank of Captain. He chose to retire (with benefits) shortly after being demoted.

“ One of the sexual harassment lawsuits was filed by Kristen Odlaug, a female firefighter. She received a \$400,000 settlement award. Court records show Fire Department Lieutenant Robert Palu was a named Defendant. The allegations described in Odlaug's lawsuit are truly disgusting.”

Since eight of the 34 sexual harassment and discrimination cases remain pending, the \$9.6 million in settlement awards City Attorney expenses, and unlitigated claim settlements shown in Tables 1 through 3 will likely increase.

These 34 cases represent just the tip of the proverbial iceberg, since many City employees may not have the financial means to file harassment and discrimination lawsuits, or they may choose to remain silent to prevent further harassment and retaliation, or to retain their sources of income from employment with the City.

And it could also be just the tip of the iceberg, since it's widely known sexual harassers are often serial, repeat offenders, and other employees sexually harassed or discriminated against may not have come forward yet.

**Table 2: Sexual Discrimination and Sexual Harassment Lawsuits by City Department
January 1, 2007 to December 22, 2017**

Dept	City Department	# of Lawsuits	% of Cases	City Atty Settlement Amount	Additional BoS Award	CAO Time & Expenses	Total	% of Total Costs
1	SHF Sheriff	4	11.8%	\$ 911,000	\$ 50,000	\$ 1,182,692	\$ 2,143,692	23.6%
2	DPH Public Health	6	17.6%	\$ 275,000		\$ 1,649,595	\$ 1,924,595	21.2%
3	POL Police	4	11.8%	\$ 720,000		\$ 888,346	\$ 1,608,346	17.7%
4	AIR Airport Commission	1	2.9%	\$ 425,000	\$ 40,000	\$ 441,193	\$ 906,193	10.0%
5	PUC PUC	1	2.9%	\$ 350,000	\$ 100,000	\$ 159,964	\$ 609,964	6.7%
6	MTA Municipal Transportation Agcy	8	23.5%	\$ 207,838		\$ 330,986	\$ 538,823	5.9%
7	FIR Fire Department	1	2.9%	\$ 400,000			\$ 400,000	4.4%
8	Housing Authority	1	2.9%	\$ 49,999		\$ 237,654	\$ 287,653	3.2%
9	HSA Human Services Agency	2	5.9%	\$ 160,000	\$ 78,193		\$ 238,193	2.6%
10	ADM Administrative Services	2	5.9%	\$ 120,000		\$ 99,862	\$ 219,862	2.4%
11	REC Recreation and Park Department	2	5.9%	\$ -		\$ 175,990	\$ 175,990	1.9%
12	RNT San Francisco Rent Board	1	2.9%	\$ -		\$ 37,284	\$ 37,284	0.4%
13	DPW Department of Public Works	1		\$ 500			\$ 500	0.0%
Total		34		\$ 3,619,337	\$ 268,193	\$ 5,203,566	\$ 9,091,096	
Sexual Harassment Unlitigated Claims		5			\$ 565,946		\$ 565,946	
Combined Cases		39		\$ 3,619,337	\$ 834,139	\$ 5,203,566	\$ 9,657,041	

Source: San Francisco City Attorney's Office, Department of Human Resources settlement agreements, and additional data.

- It's significant that of the 34 lawsuits (excluding unlitigated claims), 15 (44.1%) occurred in just four City departments: The Sheriff, Public Health, the Airport, and the Police Department.
- City Attorney time and expenses in the 15 cases in the four Departments accounted for \$6.6 million (72.4%) of the \$9.1 million in total costs for the 34 total lawsuits (excluding the unlitigated claims).

- Across all 34 lawsuits, City Attorney time and expenses accounted for 57.2% of the \$9.1 million in total costs, while the settlement awards and Board of Supervisor awards to Plaintiff's amounted to just 42.8% of total costs (excluding unlitigated claims).

The City requires all supervisors (including those appointed to acting positions as supervisors, or employees who regularly receive lead assignments) to complete harassment prevention training, but only *every two years* (not annually), in accordance with California state law. This requirement extends to supervisors in all City departments.

Despite the fact that the City rolled out its sexual harassment prevention program in 2005, upgraded it in 2007 to an on-line training program, and then six years later began "*recommending*" in 2013 that *some* City employees print and sign a training certificate-of-completion to submit to their departmental H.R. sub-departments, not much has changed since 2005:

Table 3: Sexual Discrimination and Sexual Harassment Lawsuits by Year 2004 to December 22, 2017

Year	# of Cases	% of Cases	City Atty Settlement Amount	Additional BoS Award	CAO Time & Expenses	Total
2004	2		\$ 495,000		\$ 341,330	\$ 836,330
2005	1		\$ -		\$ 37,284	\$ 37,284
2006						
2007	5		\$ 907,500	\$ 50,000	\$ 2,781,284	\$ 3,738,784
2008	2		\$ 270,000		\$ 135,279	\$ 405,279
2009	1		\$ 25,000		\$ 135,535	\$ 160,535
2010	3		\$ 138,000		\$ 92,024	\$ 230,024
14	41.2%		\$ 1,835,500	\$ 50,000	\$ 3,522,737	\$ 5,408,237
Ed Lee Appointed Mayor January 11, 2011						
2011	2		\$ 350,000	\$ 100,000	\$ 335,954	\$ 785,954
2012	3		\$ 675,000	\$ 40,000	\$ 704,456	\$ 1,419,456
2013	1		\$ -		\$ 89,737	\$ 89,737
2014	2		\$ 399,999		\$ 392,517	\$ 792,516
2015	1		\$ 120,000		\$ 99,862	\$ 219,862
2016	9		\$ 238,838	\$ 78,193	\$ 58,303	\$ 375,334
2017	2					\$ -
20	58.8%		\$ 1,783,837	\$ 218,193	\$ 1,680,829	\$ 3,682,859
34	100.0%		\$ 3,619,337	\$ 268,193	\$ 5,203,566	\$ 9,091,096
Unlitigated Claims	5			\$ 565,946		\$ 565,946
Combined	39		\$ 3,619,337	\$ 834,139	\$ 5,203,566	\$ 9,657,041

"Once Lee was appointed as mayor on January 11, 2011 the number of sexual harassment and sexual discrimination lawsuits, and the number of wrongful termination lawsuits involving whistleblower retaliation, increased."

Source: San Francisco City Attorney's Office, Department of Human Resources settlement agreements, and additional data.

Table 3 is significant, because back in 1989 San Francisco's then-Mayor Art Agnos appointed Ed Lee to be the city's first investigator under the city's whistleblower ordinance. But once Lee was appointed as mayor on January 11, 2011 the number of sexual harassment and sexual discrimination lawsuits, and the wrongful termination lawsuits involving whistleblower retaliation, increased.

But Table 3 is somewhat deceptive because:

Even though the City's sexual harassment *prevention* training program was rolled out in 2005 at least 31 of the 34 sexual harassment and sexual discrimination lawsuits were filed *after* the prevention training program was introduced.

"Of the 34 sexual harassment and sexual discrimination lawsuits, 21 (61.8%) — nearly two-thirds — alleged retaliation as an additional cause of action."

- Of the 34 sexual harassment and sexual discrimination lawsuits, 21 (61.8%) — nearly two-thirds — alleged retaliation as an additional cause of action.
- Currently, of the 34 lawsuits the combined total costs of \$9.1 million are *unevenly* split, with just \$3.9 million paid in settlement awards and Board of Supervisors awards to Plaintiffs, and \$5.2 million devoted City Attorney time and expenses costs.

- Of the 20 cases filed after Lee was appointed mayor, 4 lawsuits involved sexual discrimination and the other 16 lawsuits involved sexual harassment.
- The 20 lawsuits filed *after* Lee became mayor represent a 42.8% increase over the 14 lawsuits before he became mayor.
- The 20 lawsuits filed after Lee became mayor involve settlement *awards* to the Plaintiffs that are about equal to settlement awards paid in the 14 cases before he became mayor (at approximately \$1.8 million, respectively), but again, not all of the 20 lawsuits filed after he became mayor are fully settled.
- Prior to becoming mayor, 7 (50%) of the 14 sexual harassment cases alleged retaliation as an additional cause of action.
- After Lee became mayor, 14 (70%) of the 20 sexual harassment cases alleged retaliation as an additional cause of action.

It's unfortunate San Francisco officials have not already introduced legislation to require that City employees named as Defendants in sexual harassment and discrimination lawsuits — and those City employees named as defendants in other types of already-prohibited personnel practice lawsuits, including wrongful termination — must foot the settlement agreements and legal fees out of their own pockets, rather than taxpayers footing the bills for the settlements. They're the ones who should be footing the bill for the costs.

Civil penalties must be assessed against named Defendants and they must be held personally liable in civil actions, particularly when the Plaintiffs prevail and are awarded settlement amounts.

Were City employees accused of retaliation, and sexual discrimination and harassment against other employees required to pay for their misbehavior themselves — or at a minimum, be required under personal liability to pay a portion of the settlements eventually awarded — you would see the wrongful behavior stop almost immediately!

And rather than the Defendants being allowed to keep their jobs after the Plaintiffs are awarded substantial settlements, if the Defendants knew they would face immediate termination from their City employment there would be an additional instantaneous stoppage of the wrongful behavior. Just ask U.S. Senator Al Franken, if not asking Donald Trump.

For that matter, were City Departments required to pay the settlement awards and attorney fees out of their appropriated departmental budgets, rather than from the City's General Fund, you'd see City Department Heads clamp down almost instantly on the wrongful behavior that may take a significant bite out of their Departmental budgets.

Nexus: Sexual Harassment and Wrongful Termination

Although wrongful termination lawsuits don't rise to the same level of community outrage as sexual harassment lawsuits do that erupted as a result of the #MeToo and Time's Up movements following the Harvey Weinstein scandal, there are a couple of parallels between the various types of lawsuits. The nexus between them is *retaliation*.

Fully 54 wrongful termination lawsuits have been settled since 2005, at a cost of \$17.8 million between settlement awards and City Attorney time and expenses fighting the lawsuits. Another 9 wrongful termination cases remain pending, with additional costs to come.

As noted in previous reporting, the City Attorney's prohibited personnel practices database seems to be one-dimensional, and doesn't capture the full number of "*causes of actions*" in lawsuits against the City.

Between the sexual harassment, sexual discrimination, and wrongful termination lawsuits, the combined 102 lawsuits have involved a whopping 335 named causes of action. Unfortunately, the City Attorney's nomenclature for categorizing lawsuits into various categories appears to be arbitrary at best, and often incorrect based on the primary cause of action

"The 20 lawsuits filed *after* Lee became mayor represent a 42.8% increase over the 14 lawsuits *before* he became mayor."

"Prior to becoming mayor, 7 (50%) of the 14 sexual harassment cases alleged retaliation as an additional cause of action."

"After Lee became mayor, 14 (70%) of the 20 sexual harassment cases alleged retaliation as an additional cause of action."

"There are a couple of parallels between sexual harassment, sexual discrimination, and wrongful termination lawsuits

The nexus between them is *retaliation*."

listed on the cover page of lawsuits filed in Superior Court. It seems that the City Attorney's Office arbitrarily classifies the various kinds of lawsuits based on their nomenclature.

Table 4: Wrongful Termination Lawsuits by Year — 2005 to December 22, 2017

Year	# Cases Settled	# Cases Pending (12/22/17)	Total # Cases ¹	% of Total Cases	City Atty Settlement Amount	Additional BoS Award	CAO Time & Expenses	Total
Unknown	2		2		\$ 10,500		\$ 41,561	\$ 52,061
2005	1		1		\$ 15,000		\$ 247,773	\$ 262,773
2006	2		2		\$ 4,500		\$ 143,002	\$ 147,502
2007	4		4		\$ 165,000	\$ -	\$ 255,067	\$ 420,067
2008	2		2		\$ 95,000	\$ 50,000	\$ 91,360	\$ 236,360
2009	2		2		\$ 97,000	\$ 8,000	\$ 136,732	\$ 241,732
2010	10		10		\$ 675,000	\$ 170,000	\$ 1,082,290	\$ 1,927,290
	23		23	36.5%	\$ 1,062,000	\$ 228,000	\$ 1,997,785	\$ 3,287,785
Ed Lee Appointed Mayor January 11, 2011								
Unknown	2		2		\$ 7,500	\$ -	\$ 113,999	\$ 121,499
2011	7		7		\$ -	\$ -	\$ 451,508	\$ 451,508
2012	4	1	5		\$ 70,275	\$ -	\$ 137,382	\$ 207,657
2013	6	1	7		\$ 1,189,093	\$ 45,907	\$ 1,079,531	\$ 2,314,531
2014	5	2	7		\$ 73,500	\$ 164,507	\$ 629,972	\$ 867,979
2015	4		4		\$ 2,687,499	\$ 2,783,639	\$ 5,089,093	\$ 10,560,230
2016	3	2	5				\$ 1,821	\$ 1,821
2017		3	3					
	31	9	40	63.5%	\$ 4,027,867	\$ 2,994,052	\$ 7,503,304	\$ 14,525,223
	54	9	63	100.0%	\$ 5,089,867	\$ 3,222,052	\$ 9,501,089	\$ 17,813,008

Source: San Francisco City Attorney's Office and additional data.

It should be noted that one of the wrongful termination cases filed in 2015 has not been fully adjudicated, but estimated costs have been included in Table 4 above. That's the lawsuit Joanne Hooper filed against San Francisco's City Attorney Dennis Herrera and the City over her wrongful termination following the so-called "Sewergate" scandal involving \$10 million paid in unnecessary and fraudulent sewer repair claims paid by the City Attorney's Claims Unit.

Following a jury verdict in Hooper's favor, Superior Court public records dated August 9, 2017 [document](#) that Hooper's jury and additional judge awards, interest due, and her lawyers' fees now total \$5.47 million. Credible reports have documented that Herrera's own legal fees will reach an additional \$5 million, at minimum, since Herrera was required to hire outside legal representation — John Kekers' law firm Keker, Van Nest, et al. — given the conflict of interest in having City Attorney's represent the City Attorney himself. The City will nonetheless have to pay Herrera's legal fees.

One of the wrongful termination cases filed in 2015 has not been fully adjudicated, but estimated costs have been included in Table 4 above. That's the lawsuit Joanne Hooper filed against San Francisco's City Attorney Dennis Herrera.

There are credible reports Hooper's case may end up costing the City at least \$12.7 million, if not more.

Stupidly, on September 29, Herrera appealed the Superior Court's August 9 judgement again to the Court of Appeals for a second time, after losing his first Appellate Court appeal and then appealing to the California Supreme Court, which declined to hear Herrera's Supreme Court appeal.

All of this is driving the legal-billing-clock and interest due even higher, and increasing the probable \$10.5 million in costs in this case even higher. There are credible reports Hooper's case may end up costing the City at least \$12.7 million, if not more, adding another \$2 million to the \$17.8 million shown in Table 4.

Table 4, and data supporting Table, 4 also illustrates that:

- Of the 54 wrongful termination lawsuits settled, there were a total 172 "Causes of Action" named in the 54 cases.
- Of the 54 wrongful termination cases settled, 27 (50.0%) alleged retaliation as an additional named cause of action, or described retaliatory actions in the other causes of action.

- The number of wrongful termination lawsuits jumped from 23 before Lee became mayor to at least 40 wrongful termination lawsuits (including 9 outstanding pending cases through December 22, 2017) after becoming mayor. That represents a 74% increase in the number of wrongful termination lawsuits filed under Mayor Lee's "watch." So much for the Mayor who was the first whistleblower investigator in City history. Lee's administration signaled from the top that wrongful termination would be tolerated.

"Of the 54 wrongful termination cases settled, 27 (50.0%) alleged retaliation as an additional named cause of action."

- Four of the wrongful termination cases involved "free speech" violations:

- Dr. Derek Kerr's wrongful termination lawsuit had named as the primary cause of action deprivation of First Amendment free speech and 14th Amendment due process violations.
- Prudence Fisher's still-pending lawsuit alleged wrongful termination from MUNI because of postings she had filed after hours to her private Facebook page expressing her views on religion and gun control, which became known to MUNI's management who held different views. She was asked to make those Facebook pages private, not for public view, which request she complied with. She was terminated nonetheless, in violation of her First Amendment free-speech rights to speak out on matters of public concern.
- Patricia Burley's wrongful termination lawsuit (by way of forced retirement) specifically named a free speech violation, since she had reported embezzlement from the Police Department's Pride Alliance in January 2014.
- Lynn Federle Orr's lawsuit had named as an additional cause of action a free-speech cause.

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Orr had objected to potential fraudulent illegal activity at the Fine Art Museum by intentionally understating the value of paintings shipped internationally in order to reduce international customs fees. Orr attended a union rally after hours at the de Young Museum on September 12, 2012 during labor negotiation/contract talks in support of her unionized co-workers, of which she was not a member. She did not speak, or carry protest signs, or speak in support of the Union, but her attendance made Museum Board of Trustees president Dede Wilsey "mad" at Orr and she was subsequently terminated, even though she was exercising her free-speech rights after hours.

"Four of the wrongful termination cases involved 'free speech' violations."

Orr's termination for sympathizing with her co-workers may have been a *pretext* for what may have actually made Dede Wilsey really mad: That Orr had exposed the fraudulent, illegal activity of undervaluing paintings shipped internationally to reduce customs fees.

Eight (14.8%) of 54 the wrongful termination cases settled to date explicitly named retaliation against whistleblowers as a cause of action, including Andrew P. Hayes, Jerry Rodriguez, Paul Brennan, Livio (Rob) Rossi, Xiaomei Ma, Paulette Gaines, and Patricia Burley.

"Eight (14.8%) of 54 the wrongful termination cases settled to date explicitly named retaliation against whistleblowers as a cause of action."

- Hayes had whistleblown, in part, in the media (*Street Sheet*) that homeless policies enacted by the Office of the Mayor (in 2005 when Gavin Newsom was then mayor) and DPH encouraged homeless people to re-locate to other cities.
- Rodriguez had whistleblown over the dangerous misuse of a City vehicle by a City employee as a safety issue.
- Brennan had whistleblown over timecard fraud by his supervisor in the District Attorney's Office.
- Rossi had whistleblown on false "recidivism" rates in the Adult Probation Department.
- Xiaomei Ma had whistleblown by reporting safety violations at SFGH to Cal OSHA.
- Gaines' lawsuit available on the Superior Court's web site did not provide details about the whistleblower complaint she had filed while an employee at the Treasurer/Tax Collector's office.

- Burley had filed a whistleblower complaint with San Francisco's Ethics Commission in March 2016 before she had filed a claim with the City Controller's Office Claims Division in May 2016 regarding embezzlement from the Police Department's *Pride Alliance* in January 2014. The Controller denied her claim eight days later in May 2016. It's not known how the Ethics Commission had ruled in Burley's whistleblower complaint.
- Dr. Derek Kerr had named in his First Amendment deprivation lawsuit an additional cause of action that he had faced whistleblower retaliation for having filed one whistleblower complaint with the City Controller's whistleblower program, and was retaliated against in violation of California Code §53298 that prohibits reprisals against employees who file complaints over gross mismanagement or significant waste of funds.

Kerr's first whistleblower complaint involved then-Director of Public Health Dr. Mitch Katz's financial relationship with Health Management Associates, a contractor to DPH. Kerr had also filed a second complaint with both the Controller's Whistleblower Program and the Ethics Commission regarding the raid of Laguna Honda Hospital's patient gift fund, improperly spent on staff rather than on patients, which raid of funds the City eventually required be re-paid.

The eight wrongful termination lawsuits settled that had named whistleblower retaliation represent 14.8% of the 54 cases settled!

A ninth case involving whistleblower retaliation was classified by the City as a code 6099 "Other Actions by Employees Against City," not as a wrongful termination lawsuit. The lawsuit indicated that Richard A. Denton (whose case is not yet settled) had whistleblown to rectify government waste and possible safety violations on a traffic tunnel construction project. Denton also faced on-the-job retaliation. Denton remains on the City payroll as of June 30, 2017.

It's not yet known how many other of the 9 wrongful termination lawsuits that remain pending will also allege whistleblower retaliation.

Of note, at least one of the whistleblower retaliation and wrongful termination lawsuits had also alleged that the Plaintiff had been sexually assaulted by one of the named Defendants, illustrating another nexus among various causes of actions filed in the lawsuits.

A January 8 *Baltimore Sun* [article](#) by Aaron Jordan titled "For #MeToo moment to last, strengthen whistleblower protections" is instructive. Jordan noted that "The #MeToo movement has shown that women who have been harassed in the workplace are far from alone."

Jordan argued enhancing and ensuring whistleblower protections are important next steps for the #MeToo movement, and that Congress should pass ironclad laws strengthening anti-retaliation provisions against those who report harassment and should change overly strict time limits on reporting harassment either internally or to the Equal Employment Opportunity Commission.

Mr. Jordan reasoned that to build on the #MeToo moment, "*we must mold our laws so that the sexual misconduct whistleblowers of tomorrow have less to fear and more to gain from coming forward.*"

What About City Department Head Neglect?

The California Whistleblower Protection Act, Government Code §9149.20 et seq., and California's Civil Code §2307, provides that public *employers* are liable for the wrongful acts of their employees who clothe their wrongful behavior under the authority of their employer. That suggests that City Departments named in lawsuits are also liable.

At least eight City Department Heads were named as responsible for some of the lawsuits filed by City employees:

" At least one of the whistleblower retaliation and wrongful termination lawsuits had also alleged that the Plaintiff had been sexually assaulted by one of the named Defendants, illustrating another nexus. "

" Aaron Jordan argued enhancing and ensuring whistleblower protections are important next steps for the #MeToo movement, and that Congress should pass ironclad laws strengthening anti-retaliation provisions against those who report harassment. "

" At least eight City Department Heads were named as responsible for some of the lawsuits filed by City employees, and are liable for the wrongful acts of their employees. "

- Kerr had explicitly named former Director of Public Health Mitch Katz as a Defendant in Kerr’s wrongful termination lawsuit, along with naming Mivic Hirose, Laguna Honda Hospital’s then- and current-executive administrator also as a Defendant.
- Hayes had named then-Deputy Director of Public Health Barbara Garcia (who is now DPH’s Director) as a Defendant for knowing about but not preventing the wrongful termination of him for having been a whistleblower. Ms. Garcia was also named as a Defendant in a sexual harassment lawsuit filed in 2016 by Mikaela Merchant.
- John Martin, Director of the Airport, had been named as a Defendant by Sonya Knudsen in her 2012 sexual discrimination lawsuit as having failed to prevent the discrimination against her. Knudsen’s lawsuit also alleged Frist Amendment free speech rights retaliation.
- Kelly O’Haire named then-Police Chief Greg Suhr in her wrongful termination lawsuit.
- Patricia Burley also named then-Police Chief Greg Suhr in her wrongful termination lawsuit.
- Joanne Hoper had named City Attorney Dennis Herrera in her wrongful termination lawsuit.
- Another wrongful termination complainant, Toni Battle, named Director of the Department of Public Works, Mohammed Nuru, as having engaged in retaliatory termination, although she did not allege whistleblower retaliation.

Each of the eight were named as Defendants in eight separate lawsuits, if for no other reason than their roles as department heads who should have been aware of, and prevented, the retaliatory actions of their subordinates. Some department heads were named in multiple, separate lawsuits.

Katz retained his job for some time after wrongfully terminating Kerr before Katz resigned to take employment in Los Angeles. Suhr — named in two different lawsuits — retained his job for some time until he was asked to retire by then-Mayor Ed Lee, just hours after a fatal police shooting. Hirose, Garcia, Martin, and Herrera have all retained their City employment. Herrera is both a Department Head and an elected City official.

“ Each of the eight were named as Defendants in eight separate lawsuits, if for no other reason than their roles as department heads who should have been aware of, and prevented, the retaliatory actions of their subordinates. ”

Table 5: The Nexus Between Sexual Discrimination, Sexual Harassment, and Wrongful Termination Lawsuits 2005 to December 22, 2017

Type of Case	# of Cases	City Atty Settlement Amount	Additional BoS Award	CAO Time & Expenses	Total	Cases Naming Retaliation	% of Cases
Sexual Harassment & Discrimination	34	\$ 3,619,337	\$ 268,193	\$ 5,203,566	\$ 9,091,096	21	61.8%
Sexual Harassment Unlitigated Claims	5		\$ 565,946		\$ 565,946		
Wrongful Termination Cases Settled	54	\$ 5,189,867	\$ 3,222,052	\$ 9,501,089	\$ 17,813,008	27	50.0%
Wrongful Termination Cases Pending	9					6	66.7%
Total	102	\$ 8,809,204	\$ 4,056,190	\$ 14,704,655	\$ 27,470,049	54	52.9%

Source: San Francisco City Attorney’s Office, Department of Human Resources settlement agreements, and additional data.

One significant common thread in the 102 sexual discrimination, sexual harassment, and wrongful termination lawsuits is that fully 54 (52.9%) of them explicitly named retaliation as a named cause of action, or a contributing factor in other causes of action. At a combined cost of \$27.5 million, these lawsuits cannot simply be ignored, especially not the cases naming retaliation.

The City’s Whistleblower Protection Ordinance (WPO) is supposed to *prevent* retaliation against City employees.

In May 2015, San Francisco’s Civil Grand Jury recommended strengthening the WPO. The Ethics Commission developed WPO amendments — including allowing whistleblower complaints to be submitted to external agencies, not just in-house in the City — and submitted them to the Board of Supervisors in March 2016, where they have languished for almost two years after Supervisor London Breed latched on to them. The amendments became inactive in

“ One significant common thread in the 102 sexual discrimination, sexual harassment, and wrongful termination lawsuits is that fully 54 (52.9%) of them explicitly named retaliation as a named cause of action. At a combined cost of \$27.5 million, these lawsuits cannot simply be ignored. ”

October 2017, and Breed had to revive them. The WPO amendments need to be adopted and implemented immediately.

Anemic City Efforts to Prevent Retaliation and Harassment

All lawsuits alleging discrimination by City employees are required to obtain a “right-to-sue” letter from the California Department of Fair Employment and Housing (DFEH) before they can file lawsuits. The employees must first demonstrate that they have exhausted administrative remedies before filing a charge of discrimination with DFEH. Alternatively, they can file with the federal Equal Employment Opportunity Commission (EEOC).

“The City’s Whistleblower Protection Ordinance (WPO) is supposed to prevent retaliation against City employees. The WPO amendments need to be adopted and implemented immediately.”

Then, if an employee then wants to sue in court, DFEH or the EEOC will issue the employee a “right-to-sue” letter.

If they proceed to filing a lawsuit, they typically repeat in Court filings that they had exhausted all administrative remedies.

Department of Human Resources (DHR)

DHR’s web site indicates that San Francisco Administrative Code 16.9-25 (Sexual Harassment of City Employees) prohibits sexual harassment. San Francisco’s [Harassment-Free Workplace Policy](#) published by DHR indicates that retaliation against employees who report sexual harassment is prohibited, and the policy applies to both supervisory and non-supervisory employees. Unfortunately, DHR requires only supervisory, not non-supervisory, employees to take sexual harassment *prevention* training every two years.

DHR’s “[Sexual Harassment Policy](#)” available on its web site states DHR is required to provide an annual written report to the Mayor, Board of Supervisors, San Francisco’s Human Rights Commission, and San Francisco’s Commission on the Status of Women on the number of sexual harassment complaints filed, including pending complaints, and a breakout of the number of complaints filed by City department. The annual reports are not to include identifying information.

That policy also requires DHR to provide quarterly written reports to the Commission on the Status of Women indicating the number of sexual harassment complaints reported, the City Departments involved, the disposition of complaints concluded, and the status of pending complaints. The policy specifically states “*The [quarterly] reports shall not include names or other identifying information regarding the parties or the alleged harassers*” [emphasis added].

In response to an initial records request, DHR failed to provide its annual sexual harassment reports. Instead, the Clerk of the Board of San Francisco’s Board of Supervisors provided seven of DHR’s annual reports. DHR eventually provided the remaining seven years of data in quarterly report format, which were in an apples-vs.-oranges format, since the quarterly reports reported different data elements in a different format. Some of the data was totally redacted, despite the prohibition against including identifying information. Piecing the data together shows a staggering 240 sexual harassment complaints filed across the 14 fiscal years between “internal” complaints filed with DHR and City departments, and “external” complaints filed with the U.S. EEOC or California Department of Fair Employment and Housing (DFEH).

“DHR is required to provide an annual written report to the Mayor, Board of Supervisors, San Francisco’s Human Rights Commission, and San Francisco’s Commission on the Status of Women on the number of sexual harassment complaints filed.”

Not only was DHR unable to provide all of its annual reports, the Human Rights Commission, Board of Supervisors, and the Commission on the Status of Women were also unable to locate all of DHR’s annual reports.

The reports provided did not consistently, or uniformly, report the number of employees accused of sexual harassment who were separated or terminated from City employment. The seven annual reports provided by the Board of Supervisors contained no information at all on the number of Defendants who were terminated.

“Not only was DHR unable to provide all of its annual reports, the Human Rights Commission, Board of Supervisors, and the Commission on the Status of Women were also unable to locate all of DHR’s annual reports.”

Mistakenly, DHR refers to sexual harassment complaints filed as being “claims,” when in fact they are “complaints,” as noted in DHR’s *Sexual Harassment Policy*. Only the City Controller and the City Attorney accept actual “claims.” The City Controller does not accept “complaints,” it only accepts “claims.” Likewise, the City Attorney accepts both sexual harassment lawsuits and unlitigated claims submitted to the City Attorney’s Claims Unit.

“The reports provided did not uniformly report the number of employees accused of sexual harassment who were separated or terminated from City employment.”

Table 6: Sexual Harassment Claims Submitted to San Francisco’s Department of Human Resources

Fiscal Year	External Claims	Internal Claims	Total Claims	"Internal" Sexual Harassment Claims Investigated by DHR							"Internal"
	U.S. EEO and DFEH	City DHR		Pending / Potential	Closed	Settled	Insufficient Evidence	Sustained	Not Investigated	"Internal" Total	Terminated/ Removed
2003–2004	1	16	17	12	4					16	0
2004–2005	1	7	8	6	1					7	0
2005–2006	2	8	10	6	2					8	0
2006–2007	1	11	12	9	2					11	0
2007–2008	2	11	13	2	8		1			11	1
2008–2009	6	19	25	6			4	1	8	19	
2009–2010	0	18	18	7				1	10	18	
Subtotal	13	90	103	48	17	0	5	2	18	90	1
Ed Lee Appointed Mayor January 11, 2011											
2010–2011	6	9	15				3	2	4	9	
2011–2012	3	8	11	3			3	1	1	8	
2012–2013	1	4	5							4	0
2013–2014	3	12	15	3			6	1	2	12	
2014–2015	5	15	20	7		0	0	1	7	15	
2015–2016	2	29	31	9		2		4	14	29	
2016–2017	?	40	40	16	7		13		4	40	1
Subtotal	20	117	137	38	7	2	25	9	32	117	1
Total	33	207	240	86	24	2	30	11	50	207	2
Percent Mix of Total Internal Claims				41.5%	11.6%	1.0%	14.5%	5.3%	24.2%	100.0%	

Sources: "Annual Report on Sexual Harassment Complaints" and Quarterly reports authored by DHR provided by the Board of Supervisors and DHR.

- Annual data Provided courtesy of the Clerk of the Board, Board of Supervisors office.
- Annual data reconstructed from only **three quarterly reports** provided by Human Resources Department that didn't include the Internal or External corr .
- Annual report provided by Human Resources Department did not stratify how many of the 40 cases were Internal claims vs. External claims; assigned as Internal.
- Annual data reconstructed from **all four quarterly reports** provided by Human Resources Department that didn't include the Internal or External complaint dispositions.

Notes:

- Seven reports provided by Board of Supervisors didn't indicate whether Defendants were terminated; seven reports from Department of Human Resources did.
- **"Internal" Claims:** Filed with San Francisco's Department of Human Resources or with the employees' Departmental HR offices.
- **"External" Claims:** Filed with the U.S. EEOC, or with California's Department of Fair Employment and Housing (DFEH).

Legend:

- **"Pending":** It's not known whether the pending cases are eventually concluded and reported in subsequent years.
- **"Settled":** Complaint was resolved.
- **"Insufficient Evidence":** Complaint investigated but insufficient evidence to establish sexual harassment.
- **"Sustained":** Complaint investigated and there was sufficient evidence that sexual harassment had occurred.
- **"Not Investigated":** The claim was not investigated because there was no EEO jurisdiction or didn't meet EEO standards of discrimination, the claim was **withdrawn**, or the claim was **"untimely."**

Source: San Francisco Board of Supervisors and Department of Human Resources.

Among other things, Table 6 illustrates:

- Of note, the quarterly reports provided by DHR and two of the annual reports provided by the Department on the Status of Women, contained redacted information, implying that despite DHR’s *Sexual Harassment Policy* that prohibits including identifying information in the reports, DHR redacted portions of the quarterly and annual reports anyway, most probably because identifying information had wrongly been included. The redactions prevented learning whether some of the redacted complaints had, in fact, involved sexual harassment (distinct from other kinds of harassment) complaints. So, the data in Table 6 above may be under-reported.

“DHR wrongly refers to sexual harassment complaints filed as being ‘claims,’ when in fact they are ‘complaints’.”

“Fully 33 (13.8%) of the total 240 sexual harassment complaints reported in DHR’s annual and quarterly reports were filed ‘externally.’ The Whistleblower Protection Ordinance does not provide anti-retaliation protections for employees who file complaints with external agencies.”

- Fully 33 (13.8%) of the total 240 sexual harassment complaints reported in DHR’s annual and quarterly reports were filed “externally” with either the U.S. EEOC or California’s DFEH. This is significant precisely because San Francisco’s current Whistleblower Protection Ordinance (WPO) does **not** provide

anti-retaliation protections for employees who file complaints with *external* agencies outside of our local City government. The WPO provides only anti-retaliation protections for complainants who file complaints “in-house,” with City government agencies.

- Another 41.5% (86) of the 207 sexual harassment complaints filed *internally* with DHR were classified as “pending.” It isn’t known how those pending cases were eventually resolved, or whether they were rolled over from one fiscal year into subsequent fiscal years for resolution, if ever.
- And another 14.5% (30) of the 207 sexual harassment complaints filed internally with DHR were classified as “insufficient evidence,” meaning those complaints were investigated, but there was insufficient evidence to establish, or prove, sexual harassment had occurred.
- Fully 24.2% (50) of the 207 sexual harassment complaints filed internally with DHR were classified as “not investigated,” either because the complaints somehow didn’t meet EEO “standards,” there was no EEO jurisdiction, or had not been filed in a “timely manner” (ostensibly within the EEOC’s statute of limitations deadlines) — or that the complaints were “withdrawn.”
- Just 5.3% (only 11) of the 207 sexual harassment complaints filed internally with DHR were classified as “sustained,” suggesting there *had been* sufficient evidence sexual harassment *had* occurred.
- Most damning in Table 6, is the quarterly reports (but not the data annual reports) identified just two — a mere 2% — of the 207 sexual harassment complaints filed internally within the City ended up in termination of the accused Defendants. The quarterly reports didn’t report any terminations of the 33 complaints filed externally with EEOC the and DFEH.

DHR initially failed to respond to a January 19 records request seeking clarification about the legend shown in Table 6 above, including how the “settled” vs. “sustained” categories are different, how the “closed” vs. “settled” categories are different, and whether the 86 cases classified as “pending” were ever resolved, or further reported.

When I reminded DHR on January 30 that it had failed to respond to the January 19 records request, DHR responded indicating it had “conducted a reasonable and diligent search for records responsive to your request and found none.”

DHR declined to explain its legend, noting on January 30:

“San Francisco Administrative Code Section 67.20(b) defines public information as ‘... the content of “public records” as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form or in an oral communication.’ *Requests for explanations of terms found in records* received through this process are not included in this ordinance.”

DHR’s lame stance is: *We’re not required to explain terms used in our records, so we’re not going to.*

A High Bar to Cross: DHR’s Burden of Proof

Separate from its annual and quarterly reports of sexual harassment, on January 22 DHR informed journalist Larry Bush that DHR had located records of 423 sexual harassment complaints that it determined after investigating had no merit and weren’t sustained. Rather than the 30 internal complaints it had reported as “insufficient evidence” in its annual and quarterly reports shown in Table 6, why hadn’t DHR reported all 423 of the sexual harassment complaints found to have no merit in its annual and quarterly reports?

“ Another 41.5% (86) of the 207 sexual harassment complaints filed internally with DHR were classified as ‘pending.’ It isn’t known how those pending cases were eventually resolved, or whether they were rolled over from one fiscal year into subsequent fiscal years for resolution. ”

“ Fully 24.2% (50) of the 207 sexual harassment complaints filed internally with DHR were classified as ‘not investigated,’ either because the complaints somehow didn’t meet EEO ‘standards,’ there was no EEO jurisdiction, or had not been filed in a ‘timely manner’ — or that the complaints were ‘withdrawn’. ”

“ Most damning, the quarterly reports identified just two — a mere 2% — of the 207 sexual harassment complaints filed internally within the City ended up in termination of the accused Defendants. ”

“ DHR declined to explain its legend, lamely noting, in essence, ‘We don’t have to explain terms used in our records’. ”

It isn't known how many of those 423 cases deemed to have no merit were due directly to the high bar DHR sets as a "burden of proof" for employees. From the 27 heavily redacted additional files that DHR found confirming sexual harassment misconduct occurred, complainants are instructed:

"To establish a claim of harassment that creates a hostile work environment, you must meet all of the following:

1) You were subject to physical, verbal or visual conduct on account of your membership in a protected category; 2) The conduct is unwelcome; and 3) The conduct is sufficiently *severe* or *pervasive* as to alter the condition of your employment and create an abusive working environment." [emphasis added]

That's a high bar to cross. It's not known how many of the 423 cases found to have no merit weren't sustained simply because they had not been "severe" or "pervasive," as if a single occurrence might be *tolerated* because it wasn't "pervasive." The 27 redacted files reportedly show misconduct had been confirmed.

Department on the Status of Women and the Commission on the Status of Women

The San Francisco Department on the Status of Women (DSOW) [web site](#) contains a page about creating workplaces free of sexual harassment, but — sadly — there doesn't appear to be an active hyperlink for City employees to follow to actually submit a sexual harassment complaint. The DSOW web site merely contains lists of agencies to contact.

Worse, although DSOW's web site has a page claiming to contain various reports, none of the hyperlinks on that page are active, working hyperlinks.

DSOW's web site notes in a section titled "Employer Liability for Harassment" that employers are:

"... automatically liable for harassment by a supervisor that results in a negative employment action such as termination, failure to promote or hire, and loss of wages. If the supervisor's harassment results in a hostile work environment, the employer can avoid liability only if it can prove that: 1) it reasonably tried to prevent and promptly correct the harassing behavior; and 2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.

*The employer will be liable for harassment by **non-supervisory employees** or non-employees over whom it has control (e.g., independent contractors or customers on the premises), if it knew, or should have known about the harassment and failed to take prompt and appropriate corrective action."*

While doing research for this article, a records request was placed with San Francisco's DSOW asking for documents or reports it had *authored* or *produced* involving sexual harassment and sexual discrimination of female City employees in the past five years, and had presented to its Commission on the Status of Women (CSOW), including:

1. The number of claims filed by female City employees,
2. The number of lawsuits and the amount of settlement awards paid out to female City employees, and
3. Any other sexual harassment and sexual discrimination issues facing female City employees that were placed on CSOW meeting agendas.

In response, DSOW provided 18 documents, none of which addressed any of the three requested issues that DSOW had authored or produced. Of note, DSOW provided no meeting agendas, suggesting San Francisco's Commission on the Status of Women hasn't held any hearings focusing on sexual harassment of San Francisco City employees in the past five years.

"Separate from its annual and quarterly reports of sexual harassment, on January 22 DHR claimed it located records of 423 sexual harassment complaints. Rather than the 30 internal complaints it had reported as 'insufficient evidence,' why hadn't DHR reported all 423 of the sexual harassment complaints found to have no merit?"

"It's not known how many of the 423 cases found to have no merit weren't sustained simply because they had not been 'severe' or 'pervasive,' as if a single occurrence might be *tolerated* because it wasn't 'pervasive'."

"DSOW provided no meeting agendas, suggesting San Francisco's Commission on the Status of Women hasn't held any hearings focusing on sexual harassment of San Francisco City employees in the past five years."

Separately, another journalist, Larry Bush, had requested DSOW records “for all data, reports, studies, hearings, agendas, or other materials related to sex harassment in the workplace *conducted by* the Commission on the Status of Women or the Department, and *complaints*, studies, actions and related activity involving San Francisco city employees or contractors subject to the protections for city workers and contractors, between 2012 and January 8, 2018.” DSOW provided Bush the 18 documents it had provided to me, plus an additional seven documents.

Of note, of the 25 documents provided to Bush and I, none of them included any data on the number of sexual harassment cases filed by City employees.

To be fair, two of the DSOW Director’s reports to CSOW provided to both Bush and I contained tables showing that in FY 11-12 and FY 12-13, there were fewer sexual harassment cases filed against the City than had been projected in DSOW’s City Controller performance reports, (22 actual of 35 projected cases, and 26 actual of 30 projected cases, respectively). But there was no substantial discussion of the cases in the body of the Director’s reports, other than passing mention in the two tables.

And the data in those two tables do not match — and are significantly higher than — the data pieced together from actual sexual harassment cases reported to DHR in its pathetic quarterly and annual sexual harassment reports.

Why did CSOW brag about a fewer number of actual sexual harassment complaints filed than had been projected, when the number of complaints apparently filed are far higher than the number of cases DHR had reported in those two years shown in Table 6?

What About City Controller’s Office?

As a threshold matter, it is thought that all City employee alleging sexual harassment, sexual discrimination, and other prohibited personnel practices must first submit claims with the City Controller’s Claims Division. Notably, the City Controller only accepts claims, *not* actual complaints alleging any of these three prohibited personnel practice behaviors.

“ Why did CSOW brag about a fewer number of actual sexual harassment complaints filed than had been projected, when the number of complaints apparently filed are far higher than the number of cases DHR had reported in those two years? ”

“ Table 7 shows that just *one* of the 108 claims submitted to the City Controller was ‘paid,’ and that was a sexual harassment claim. Notably, none of the 100 claims submitted to the Controller alleging Sexual Discrimination or Wrongful Termination were paid. ”

Table 7: Claims Data From the City Controller’s Office: January 1, 2007 to December 30, 2017

FY	Claims Alleging Sexual Harassment			Claims Alleging Sexual Discrimination			Claims Alleging Wrongful Termination			Total Claims
	Not Paid	Paid	Total	Not Paid	Paid	Total	Not Paid	Paid	Total	
1 2007	1		1	9		9	8		8	18
2 2008				1		1	12		12	13
3 2009							7		7	7
4 2010							7		7	7
Subtotal	1	0	1	10	0	10	34	0	34	45
Ed Lee Appointed Mayor January 11, 2011										
5 2011		1	1				8		8	9
6 2012				1		1	5		5	6
7 2013				1		1	7		7	8
8 2014	1		1				3		3	4
9 2015							13		13	13
10 2016	3		3				10		10	13
11 2017	2		2				8		8	10
Subtotal	6	1	7	2	0	2	54	0	54	63
Total	7	1	8	12	0	12	88	0	88	108

Source: San Francisco City Controller’s Office.

It's sad that Table 7 shows that just one of the 108 claims submitted to the City Controller was "paid," and that was a sexual harassment claim. Notably, none of the 100 claims submitted to the Controller alleging Sexual Discrimination and Wrongful Termination were paid, and were apparently denied. Had the Controller paid some of those claims, perhaps the \$27.5 million in the 102 lawsuits that have been filed might have been avoided, or at least reduced.

What About the Human Rights Commission?

Unfortunately, in response to a records request, the City's Human Rights Commission reported it had no records of receipt of DHR's annual sexual harassment reports.

Zero Tolerance in San Francisco

If the U.S. Congress, State legislatures, broadcast and print media, and entertainment industries can rapidly expel or terminate employees accused of sexual misconduct, why can't San Francisco do so, too, at the municipal level?

San Francisco should adopt a zero-tolerance policy and terminate Defendants found by Courts and juries to have engaged in sexual harassment, sexual discrimination, and wrongful termination of other City employees.

We all must stand with victims and survivors of sexual harassment and sexual assault. San Francisco city employees should start their own #MeToo-SF-City-Employees Twitter campaign to document the magnitude of the sexual harassment problem within City government.

As Oprah Winfrey implied accepting the Golden Globe's "Lifetime Achievement Award" on January 7, City employees also deserve "leaders who take us to the time when *nobody ever has to say 'Me Too!' again.*"

Or have to say "Time's Up," City Hall!

Data presented in this article is under-reported and incomplete, because as of January 31, 2018 the City Attorney's Office has failed to adequately respond for 40 days to a records request placed on December 22, 2017 — and subsequent records requests placed since then. They're required to respond within 10 to 14 days but continue to stall.

Monette-Shaw is a columnist for San Francisco's Westside Observer newspaper, and a member of the California First Amendment Coalition (FAC) and the ACLU. He operates stopLHHdownsize.com. Contact him at monette-shaw@westsideobserver.com.

¹ Firefighter Kristen Odlaug's lawsuit had named Fire Department Lieutenant Robert Palu as a defendant, and Superior Court records named four other male firefighters who had also sexually harassed Odlaug, including firefighters James Vargas, Gregory Blatman, Clyde Watarai, and Mortimer Joyce. Palu, Vargas, and Joyce are each now collecting their City pensions. For his part, Greg Blatman is still on the City's payroll as of June 30, 2017; he is now himself a Fire Department Lieutenant.

"San Francisco city employees should start their own #MeToo-SF-City-Employees Twitter campaign to document the magnitude of the sexual harassment problem within City government."
