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CLERK SUPERIOR COURT  
SAN DIEGO COUNTY, CA

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11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
12 COUNTY OF SAN DIEGO, CENTRAL DIVISION, HALL OF JUSTICE

13 RICKIE G. REYNOLDS, an individual,  
14 Plaintiff,  
15 vs.  
16 CITY OF SAN DIEGO, a California  
17 Charter City; and DOES 1 through 10,  
18 Defendants.

19 Case No. 37-2008-00082006-CU-WT-CTL  
20 COMPLAINT FOR WRONGFUL  
21 TERMINATION IN VIOLATION OF PUBLIC  
22 POLICY; VIOLATION OF MANDATORY  
23 DUTY (GOV. CODE § 815.6)  
24 Unlimited Jurisdiction (amount demanded  
25 exceeds \$25,000)

26 Plaintiff Rickie G. Reynolds ("Mr. Reynolds") alleges as follows:

27 **JURISDICTION AND PARTIES**

- 28 1. This complaint seeks damages which exceed \$25,000, according to proof, for wrongful termination of an at-will high level municipal government employee in violation of public policy.
- 29 2. Plaintiff is, and at all times mentioned in this complaint was, an individual residing in San Diego County, California.
- 30 3. Defendant City of San Diego (sometimes referred to herein as "City") is, and at all times mentioned in this complaint was, a California Charter City and municipal government located in San Diego County, California.
- 31 4. Jurisdiction and venue are proper in this Court because defendant City is a municipality with its principal government offices located within the geographical

1 boundaries of the Central Division.

2 5. Civil Code sections 1812.10 and 2984.4 do not apply.

3 6. Plaintiff is required to comply with a claims statute and may be required to  
4 exhaust certain administrative remedies. Plaintiff has complied with applicable claims  
5 statutes and exhausted any required administrative remedies.

6 7. Plaintiff does not know the true names of defendants Doe 1 through Doe 10.  
7 Does 1 through 10, if they exist, are officials or employees of the City of San Diego who  
8 may be personally liable to plaintiff for their acts under color of their office or employment  
9 with the City of San Diego.

10 GENERAL ALLEGATIONS

11 8. On January 17, 2006, Mr. Reynolds was hired and appointed as Business  
12 Office Director of the City of San Diego.

13 9. On October 20, 2006, Mr. Reynolds was promoted to Assistant Chief  
14 Operating Officer of the City of San Diego.

15 10. From January 17, 2006 through September 28, 2007, Mr. Reynolds  
16 performed admirably in these high level municipal government positions, ultimately  
17 assuming responsibility for nine City departments, approximately 1,400 City employees and  
18 more than \$300 million of the City's annual budget.

19 11. On August 25, 2007, shortly before his termination, Mr. Reynolds was given  
20 additional management responsibilities and a significant raise in compensation.

21 12. During his 20 months of employment by the City of San Diego, Mr. Reynolds,  
22 as the leader and principal architect, and other dedicated City personnel working with him,  
23 were responsible for a number of significant business process reengineering programs,  
24 financial reforms and other changes to the City's operations and management that resulted  
25 in millions of dollars in savings to the City.

26 13. In his 2008 State of the City Speech, Mayor Jerry Sanders extolled three of  
27 these accomplishments as major achievements of his administration during the previous  
28 two years, one of which he explained resulted in permanent savings for the City of

1 \$50,000,000 per year (business process reengineering efforts).

2 STATUTORY BASIS FOR VIOLATION OF PUBLIC POLICY

3 AND MANDATORY DUTY

4 14. Section 27.3564 of the San Diego Municipal Code (City of San Diego Ethics  
5 Ordinance) describes certain acts by City officials as prohibited and unlawful, including, in  
6 part:

7 (a) It is unlawful for any *City Official* to use his or her position  
8 . . . or the power or authority of his or her office or position, in  
9 any manner intended to induce or coerce any *person* to  
10 provide, directly or indirectly, anything of value which shall  
accrue to the private advantage, benefit, or economic gain,  
of the *City Official* or his or her immediate family.

11 As used in this section, the term "private advantage, benefit,  
12 or economic gain" means any advantage, benefit, or  
13 economic gain, distinct from that enjoyed by members of the  
14 public without regard to official status or not resulting  
15 naturally from lawful and proper performance of duties. A  
*City Official* engages in a prohibited use of his or her official  
16 position or prospective position when he or she engages in  
activities other than in the lawful and proper performance of  
his or her *City* duties.

17 (b) It is unlawful for any *City Official* to engage in campaign-  
18 related activities, such as . . . research, for a campaign for  
19 any elective office using *City* facilities, equipment, supplies,  
or other *City* resources.

20 (c) It is unlawful for any *person* to induce . . ., or attempt to  
21 induce . . . any other *person* to engage in any activity  
22 prohibited by subsections (a) and (b).

23 . . .

24 (e) It is unlawful for any current or former *City Official* to use  
25 or disclose to any *person* any *confidential information* he or  
26 she acquired in the course of his or her official duties, except  
when such disclosure is a necessary function of his or her  
official duties.

27 15. San Diego City Council Policy No. 000-04 regarding the Code of Ethics and  
28 Ethics Training provides, in part:

1 No elected official, officer, appointee or employee of The  
2 City of San Diego shall engage in any enterprise or activity  
3 which results in any of the following:

4 (c) Using official information not available to the general  
5 public for private gain or advantage.

6 16. Section 27.3573 of the San Diego Municipal Code provides, in part:

7 (a) It is unlawful for any *City Official* to use or threaten to use  
8 any official authority or influence to discourage, restrain, or  
9 interfere with any other *person* for the purpose of preventing  
10 such *person* from acting in good faith to report or otherwise  
11 bring to the attention of the *Ethics Commission* or other  
12 appropriate agency, office, or department any information  
13 which, if true, would constitute:

14 (1) a work-related violation by a *City Official* of any law or  
15 regulation; or

16 (2) a gross waste of *City* funds; or

17 (3) a gross abuse of authority; or

18 (4) a conflict of interest of a *City Official*; or

19 (5) a specific and substantial danger to public health or  
20 safety due to an act or omission of a *City Official*, use of a  
21 *City* office or position, or use of *City* resources for personal  
22 gain.

23 (b) It is unlawful for any *City Official* to use or threaten to use  
24 any official authority or influence to effect any action as a  
25 reprisal against a *City Official* who reports or otherwise  
26 brings to the attention of the *Ethics Commission* or other  
27 appropriate agency, office, or department any information  
28 regarding the subjects described in subsection (a).

17. The City's Personnel Manual and Personnel Regulations Code of Ethics and  
26 Conduct states, in part:

27 C. Each position in our government is one of public trust.  
28 Therefore, employees must each perform their duties in a  
manner which will bring honor and credit to the City

1 government, in accordance with the highest moral and  
2 ethical standards.

3 ...

4 F. Every City employee is expected to uphold the public  
5 interest as opposed to personal or group interests.

6 ...

7 G. City employees have an obligation to the citizens, to  
8 the people's elected representatives, to fellow employees,  
9 and to management to cooperate in accomplishing the goals  
10 of this City and their individual departments and work units.

11 18. City Administrative Regulation No. 95.60 regarding Conflict of Interest and  
12 Employee Conduct states, in part:

13 3.2 Responsibility of Public Services

14 All City of San Diego employees are bound to uphold the  
15 Constitution of the United States and the Constitution of the  
16 State of California, and to abide by the laws of the nation,  
17 state, and the City. They are bound to observe in their official  
18 acts, the highest standards of integrity and to discharge  
19 faithfully the duties of their position, recognizing that the  
20 lives, safety, health and welfare of the general public must  
21 be their primary concern. Their conduct in both their official  
22 and private affairs should be above reproach to assure that  
23 their public position is not used nor perceived as being used  
24 for personal gain. The conduct of all employees shall be  
25 such as to provide the best public service to each citizen and  
26 the community as a whole. The conduct of all employees  
27 shall be consistent with the goals and values of this  
28 organization.

3.7 Use of Confidential Information

Persons in the public service shall not use confidential  
information acquired by or available to them in the course of  
their employment with the City for speculation or personal  
gain. ...

3.12 Reporting of Improper Government Activities

Persons in the City service are strongly encouraged to fulfill  
their own moral obligations to the City by disclosing to the  
extent not expressly prohibited by law, improper

1 governmental activities within their knowledge. Employees  
2 are encouraged to contact departmental management with  
3 this information.

4 No officer or employee of the City shall directly or indirectly  
5 use or attempt to use the authority or influence of such  
6 officer or employee for the purpose of intimidating,  
7 threatening, coercing, commanding, or influencing any  
8 person with the intent of interfering with that person's duty to  
9 disclose such improper activity.

10 19. As a high level City official, having read and accepted the foregoing ethics  
11 standards and duties and, among other things, having attended and participated in City  
12 ethics training, having interacted with the Mayor's Office of Ethics and Integrity, and having  
13 signed the Mayor's Pledge of Ethical Principals and Core Values, Mr. Reynolds believed he  
14 was under a duty, and in fact was under a duty, to report acts and requests from other City  
15 officials which may be improper.

#### 16 **FIRST CAUSE OF ACTION**

17 (Wrongful Termination in Violation of Public Policy)

18 20. Plaintiff refers to and by this reference incorporates paragraphs 1 through 19,  
19 above, as though set forth in full herein.

20 21. In or about early September 2007, an e-mail from Fred Sainz, Director of  
21 Communications ("DOC") for the Office of the Mayor, to a reporter at the San Diego Union-  
22 Tribune, was intercepted by the City's e-mail screening system. That system flags  
23 potentially inappropriate use of City e-mail by screening for inappropriate language. The e-  
24 mail was brought to the attention of Mr. Reynolds by the Office of the CIO.

25 22. The e-mail was, in Mr. Reynolds' view, both an inappropriate use of City e-  
26 mail and a potential violation of City ethics codes and regulations. In accordance with City  
27 guidelines and standard practices, Mr. Reynolds brought the e-mail to the attention of his  
28 immediate superior, Jay Goldstone, the Chief Operating Officer ("COO"). Mr. Reynolds  
took no further action after reporting the potential improper conduct to his immediate  
superior.

1           23.    On information and belief, the interception, and, more importantly, the  
2 reporting of the e-mail to the COO as a potential violation of City policy and ethics codes  
3 and regulations, caused frustration, animosity and resentment by the Mayor's political  
4 advisors, which include Mr. Sainz and his immediate superiors.

5           24.    Later that month, on September 26, 2007, Mr. Reynolds was notified of a  
6 request by Fred Sainz, the Mayor's DOC, for a listing of the Internet Protocol ("IP")  
7 addresses assigned to the City Attorney's office located in the Civic Center Plaza Building.  
8 The request was directed to a subordinate of the CIO at a time when the Chief Information  
9 Officer was out of town. Following normal procedures, the subordinate brought the matter  
10 to the attention of Mr. Reynolds as ACOO having responsibility for the department and the  
11 next in line in the chain of authority.

12           25.    At this time, in or about September of 2007 and for some time before, there  
13 was some public and private rancor and a somewhat adverse political relationship between  
14 the Office of the Mayor and the City Attorney. Mr. Reynolds was concerned that the City  
15 Attorney's IP addresses might have been requested for political reasons or some other  
16 improper purpose.

17           26.    Mr. Reynolds verbally brought the matter to the attention of his immediate  
18 superior, Mr. Goldstone, the COO. Mr. Reynolds was directed to authorize delivery of the  
19 IP addresses to Mr. Sainz. Mr. Reynolds, in turn, asked the CIO subordinate to prepare the  
20 list and deliver it to him for further transmittal.

21           27.    Mr. Reynolds received the IP address list on September 27, 2007. He  
22 prepared a cover memo describing concerns about potential security risks and  
23 unauthorized use of the information. That same day Mr. Reynolds delivered the memo and  
24 attached IP addresses to Mr. Sainz. At the direction of the COO, he also delivered copies  
25 of the memo and IP addresses to the COO and the Mayor's DCOO for Community &  
26 Legislative Affairs, Kris Michell.

27           28.    At no time was Mr. Reynolds advised that the request was part of an official  
28 investigation or needed for any other legitimate purpose by the DOC. When he raised

1 concerns to the COO about the potential misuse of such information, the response was a  
2 question as to whether the IP addresses would be available through a Public Records Act  
3 request. Mr. Reynolds advised the COO that due to the sensitive nature of such  
4 information for confidentiality and information technology security reasons, it would most  
5 likely not be produced in response to a Public Records Act request.

6 29. Mr. Reynolds believed it was his duty to prepare the cover memo and express  
7 concerns over the request for sensitive information by the DOC. Although he did not  
8 expressly recite concerns over possible use of the IP addresses by other City officials for  
9 improper purposes, such as the unsanctioned monitoring or tracing of City Attorney  
10 communications for political gain, such concern was a major factor in his reporting the  
11 request to the COO and presenting the IP address list with the memo rather than simply  
12 handing the list over without question. He did so consistent with City ethical guidelines and  
13 limited the communication to his immediate superior and those to whom he was directed to  
14 deliver copies by that superior.

15 30. Upon leaving a meeting a short while later Mr. Reynolds was asked to see the  
16 COO. In the meeting the COO handed back the original memo and IP address list and one  
17 of the copies, and instructed Mr. Reynolds to get rid of it.

18 31. At 10:30 a.m. the following day, Friday, September 28, 2007, Mr. Reynolds  
19 was summoned to the office of the Chief Operating Officer and asked for his resignation in  
20 the presence of the Personnel Director. The only explanation given was that Mr. Reynolds  
21 did not fit into the mold of the Mayor's leadership team for the next administration.

22 32. A request for resignation of a high level City official by the Office of the Mayor  
23 is, in fact, a termination. On information and belief, and based on the circumstances and  
24 timing of the request for his resignation, Mr. Reynolds was summarily terminated in  
25 retaliation for his reporting of the IP address request and, it is now believed, reporting of the  
26 intercepted e-mail between Fred Sainz and the San Diego Union-Tribune.

27 33. Mr. Reynolds, although not an activist for political reform or self-appointed  
28 ethics crusader, was not willing to keep silent or turn a blind eye to potential misconduct by

1 other members of the Mayor's leadership team. Such action, or lack of action in the face of  
2 duty, is contrary to the Ethics Ordinance and City guidelines and policies regarding the  
3 duties of City employees.

4 34. Mr. Reynolds had a duty to report concerns and suspected ethics violations  
5 and misconduct of other City officials to his immediate superior. He did so in a businesslike  
6 and appropriate manner. As an obvious immediate and retaliatory reaction to those acts,  
7 he was terminated. Termination for such reasons, and in retaliation for reporting actual or  
8 potential misconduct of City officials, is in violation of public policy.

9 35. Mr. Reynolds has diligently sought new employment since the termination,  
10 without success. Mr. Reynolds has suffered loss of income and benefits, both past and  
11 future, as a result of the termination.

12 36. By reason of the foregoing, Mr. Reynolds has been damaged in a sum in  
13 excess of \$25,000, according to proof at the time of trial.

#### 14 SECOND CAUSE OF ACTION

15 (Breach of Mandatory Duty, Gov. Code § 815.6)

16 37. Plaintiff refers to and by this reference incorporates paragraphs 1 through 36,  
17 above, as though set forth in full herein.

18 38. San Diego Municipal Code Section 27.3573 ("section 27.3573") is a  
19 mandatory duty against retaliation for good faith reporting of information which, if true,  
20 would constitute a violation of the Ethics Ordinance, other work-related violation of a law or  
21 regulation, gross abuse of authority, conflict of interest or use of a City office, position or  
22 resources for personal gain by a City official.

23 39. Section 27.3573, entitled "Protection of Employees Against Retaliation for  
24 Reporting Violations," is designed to prevent injury to City employees from retaliatory  
25 actions by City officials, including retaliatory termination.

26 40. Defendant City breached the mandatory duty of section 27.3573 by  
27 summarily demanding Mr. Reynolds' resignation in retaliation for his reporting activity.

28 41. Mr. Reynolds has diligently sought new employment since the termination,

1 without success. Mr. Reynolds has suffered loss of income and benefits, both past and  
2 future, as a direct and proximate result of his termination in violation of section 27.3573.

3 42. Pursuant to Government Code section 815.6, defendant City is liable for the  
4 injury suffered by Mr. Reynolds as a result of breach of the mandatory duty of section  
5 27.3573, in a sum in excess of \$25,000, according to proof at the time of trial.

6 **WHEREFORE**, plaintiff prays judgment against defendant City of San Diego on the  
7 First and Second Causes of Action, as follows:

- 8 1. For damages in an amount to be proven at trial for lost past wages, future  
9 wages and benefits;
- 10 2. For interest on such sums from the time they would have become due;
- 11 3. For reasonable attorneys fees under Code Civ. Proc. § 1021.5 or otherwise  
12 as may be provided by statute;
- 13 3. For costs of suit incurred herein; and
- 14 4. For such other and further relief as the Court may deem just and proper.

15 Dated: April 15, 2008

RADFORD & EDWARDS

16  
17 By: 


Michael J. Radford

18 Attorneys for Plaintiff, Rickie G. Reynolds

19 **VERIFICATION**

20 I, Rickie G. Reynolds, am the plaintiff in this action. I have read the foregoing  
21 Complaint for Wrongful Termination in Violation of Public Policy and know its contents. The  
22 same is true of my own knowledge, except as to the matters which are therein stated on  
23 information or belief, and as to those matters I believe it to be true.

24 Executed this 15 day of April, 2008, at Chula Vista, California; I declare under  
25 penalty of perjury under the laws of the State of California that the foregoing is true and  
26 correct.

27   
28 Rickie G. Reynolds