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April 11, 2025

*VIA E-MAIL ONLY*

**Confidential Settlement Communication – Evidence Code section 1152 and 1154**

Neil Costanzo  
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City Council, City of Selma

Re: **Fernando Santillan v. City of Selma**  
**Summary of Claims and Response to Aril 9, 2025 Memorandum**

Dear City Council of the City of Selma, City Attorney Neil Costanzo, and Mayor Scott Robertson:

As you know, this office represents Fernando Santillan for his current and past employment claims against the City of Selma, Mayor Scott Robertson, and Councilmember Sarah Guerra. The purpose of this letter is to respond to the memorandum issued by City Attorney Neil Costanzo and Investigator John Kunkel and to correct some obvious misstatements of fact and law contained therein.

There are several misstatements of fact contained within the memorandum that are used to support unlawful and untenable conclusions. More troubling is what appears to be an attempt to re-argue Mr. Santillan's previously settled claims against the City of Selma. While this response letter does not address the merit of those previous claims in detail, it is important to note that the version of events represented in the Memorandum by the City Attorney does not match the two Complaints previously filed by Mr. Santillan, the investigative findings by Bridgett Hanson in its report, or the reality of what occurred.

The Memorandum also either misrepresents or intentionally misconstrues what Mr. Santillan's claims against the City of Selma, Mayor Scott Robertson, and Councilmember Sarah Guerra were based on. The Memorandum mistakenly asserts that Mr. Santillan's claims were based on comments made at a City Council meeting, and asserts such conduct was privileged. This is not at all what Mr. Santillan's claims were based on. Instead, Mr. Santillan's claims were based on unlawful conduct engaged in by Mayor Robertson and Councilmember Guerra. The Mayor and Councilmember Guerra may disagree with the decision to resolve those claims, but Mr. Santillan's claims were also corroborated by documentary evidence and the findings of Bridget Hanson, which also found the Mayor engaged in unlawful retaliation against Mr. Santillan.

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Another concern with the Memorandum is that the investigator, Mr. Kunkel, refused to interview Mr. Santillan about the claims and events, despite Mr. Santillan's willingness to participate in the investigation. This means that a primary source of relevant information, as well as key facts and details, were completely omitted from the investigation and not considered in rendering the opinions contained in the Memorandum.

The legal arguments and factual assertions made in the Memorandum are addressed in more detail below. Once you have reviewed this letter, we invite you to contact this office to resolve these outstanding issues before more significant liability for the City of Selma is incurred.

**A. Mr. Santillan's Settlement Agreement and Employment Contract Do Not Violate Government Code Section 1090**

The Memorandum asserts that the Settlement Agreement between the City Manager and the City of Selma to resolve the harassment and retaliation claims against the Mayor is in violation of Government Code section 1090. The Memorandum asserts the same claims related to Mr. Santillan's employment contract. This appears to be a simple misunderstanding of the applicable law and the facts of the surrounding the settlement by the author, or an attempt to mislead the City Council.

Government Code section 1090 prevents individuals who have the power to approve or deny agreements from having a financial interest in the outcome of such a decision. It is used to prevent voting members from enriching themselves by approving agreements in their official capacity to benefit themselves individually.

The case cited in the Memorandum is a perfect example of this. In *Lexin v. Superior Court* (2010) 47 Cal.4<sup>th</sup> 1050. In *Lexin*, the Board members of the retirement trust violated the conflict of interest rules when the trustees voted to limit funding to the retirement system in exchange for the City agreeing to increase pension benefits to City employees, including the trustees themselves. The trustees had a direct financial interest in the issue they were voting on because they stood to benefit from the increase pension benefits and, thus, had a prohibited interest in the outcome.

Mr. Santillan does not sit on the City Council for the City of Selma and does not vote to approve contracts entered into by the City Council. Mr. Santillan did not have a vote to approve or deny the settlement agreement on behalf of the City of Selma. Mr. Santillan did not engage in any actions in his official capacity related to his individual settlement agreement. Thus, Mr. Santillan could not have violated Government Code Section 1090. Government Code section 1090 could only be violated by Mr. Santillan if he had a vote to approve or deny his settlement agreement, contract extension, or addendum, which he did not.

The Memorandum either intentionally misconstrues the term "official capacity" to mislead the City Council or simply misunderstands how the law applies. Mr. Santillan was in no way approving a contract in his "official capacity," and never acted on behalf of the City of Selma related to his settlement agreement or employment agreement. Therefore, the assertion that Mr. Santillan has somehow violated Government Code section 1090 is meritless and cannot be relied on by the City of Selma.

**B. The Mayor and Councilmember Guerra Voting on the Approval of Santillan's Settlement Agreement Violated Government Code section 1090**

As discussed above, while it was impossible for Mr. Santillan to violate Government Code section 1090 because he did not have any authority in his official capacity representing the City of Selma to approve or deny his own settlement agreement, both Mayor Scott Robertson and Councilmember Sarah Guerra did have financial interests in the outcome of the settlement agreement with Mr. Santillan and did expressly violate the provision of Government Code section 1090 when they acted in voting to approve or deny the settlement.

Both Mayor Scott Robertson and Councilmember Sarah Guerra were expressly named in the complaints filed by Mr. Santillan with the Labor Commissioner's Retaliation Unit and the Civil Rights Department. As named parties, both had financial interests in the outcome of the settlement. The settlement agreement also resolved claims against Mayor Robertson and Councilmember Guerra, in addition to resolving the claims against the City of Selma. By voting to approve or deny the settlement agreement of Mr. Santillan, both Mayor Robertson and Councilmember Guerra expressly violated Section 1090's conflict of interest rules.

These are express black letter violations of the conflict of interest rules related to Mr. Santillan's settlement agreement with the City of Selma. Mr. Santillan has already taken steps to inform the Fresno County District Attorneys' Office of these clear violations and will be working with the City of Selma ERMA representatives. Both Mayor Robertson and Councilmember Guerra are encouraged to self-report these violations to the City's ERMA team for review.

**C. The Mayor Pro Tem Was Permitted to Sign the Settlement Agreement**

For the reason that Mayor Scott Robertson was expressly prohibited from voting to approve or deny the settlement agreement with Mr. Santillan, the Mayor was prevented and could not sign the Settlement Agreement on behalf of the City of Selma pursuant to Section 1090's conflict of interest rules.

Per Selma Municipal Code Title 1, Chapter 7, section 2, "If the mayor is absent or unable to act, the mayor pro tempore shall serve only until the mayor returns or is able to act. The mayor pro tempore shall have all of the powers and duties of the mayor in absence of the mayor."

Again, pursuant to Government Code section 1090, Mayor Scott Robertson, as an individual who was named in the Complaint at issue, whose claims were resolved in the settlement agreement, Mayor Robertson had a financial interest in the settlement agreement and the outcome of its approval or denial. Mayor Robertson was, therefore, prohibited from signing the agreement on behalf of the City of Selma and was "unable to act," pursuant to Section 1-7-2 of the Selma Municipal Code. This authorized the Mayor Pro Tem to act on behalf of the City of Selma.

Moreover, the Memorandum falsely claims that Mayor Robertson was never "absent" related to Mr. Santillan's employment agreement and the February 2023 revised employment agreement, but this is simply not true. The Mayor was not present when the revised employment agreement was signed, and such information is reflected in those meeting minutes. This is information that could have easily been obtained had the City Attorney or Investigator Kunkel investigated this issue at all. Again, the Mayor's

absence during the signing of the revised employment agreement authorized the Mayor Pro Tem to sign the agreement.

Additionally, the Mayor cannot secrete himself and refuse to sign the agreement, then use his refusal offensively to attempt to invalidate the settlement agreement or revised employment agreement. This is expressly forbidden under the principle of estoppel. The City of Selma will also be estopped from attempting to invalidate either the employment agreement revision or settlement agreement, as the City has already taken the benefit of both of those agreements.

Therefore, the assertion that the Settlement Agreement between Mr. Santillan and the City of Selma needed to be signed by the Mayor in order to be enforcement is incorrect. If the Mayor had signed the settlement agreement, it would have been a further conflict with the Mayor's obligations under Section 1090. The same is true for the employment agreement and the addendum to the employment agreement.

#### **D. Seeking Third-Party Legal Opinion Is Within the City Manager's Authority**

The Memorandum asserts that Mr. Santillan was not permitted to hire Bridgett Hanson to conduct a neutral investigation into the actions surrounding the December 12, December 19, and January 21 meetings. This is expressly within the duties Mr. Santillan is required to uphold and is delineated in the Selma Municipal Code.

- (A) Law Enforcement: It shall be the duty of the city manager to enforce all laws and ordinances of the city and to see that all franchises, contracts, permits and privileges granted by the city council are faithfully observed.
- (J) Investigations And Complaints: It shall be the duty of the city manager to make investigations into the affairs of the city and any department or division thereof, and any contract or the proper performance of any obligations of the city. Further, it shall be the duty of the city manager to investigate all complaints in relation to matters concerning the administration of the city government and in regard to the service maintained by public utilities in said city.

As the City Manager, Mr. Santillan has purchasing authority to facilitate his ability to fulfill his duties to the City of Selma. The hiring of Bridgett Hanson to issue its neutral report was within this authority. The suggestion by the City Attorney that Mr. Santillan somehow exceeded his authority does not appear to have any factual or legal support.

The District Attorney's letter on this topic also required Mr. Santillan to act on behalf of the City of Selma. The hiring of Bridget Hanson to investigate again was a reasonable step to investigating the concerns raised not only by Mr. Santillan, but also to investigate those issues identified by the Fresno County District Attorney. The issue as to the validity of the City Council's actions given the violation of the Election Code still remains an open subject causing potential liability for the City of Selma.

Lastly, it is worth noting that the City Attorney's assertion that Mr. Santillan hired Bridget Hanson to produce a report supporting a specific position appears to have come from his own mind and not from any fact or circumstance that actually exists. Bridgett Hanson was hired as a neutral investigator to provide

its own opinion as to the situation related to the installment of officers. This appears to be little more than a way for the City Attorney to undermine a legal opinion that he disagrees with.

#### **E. Continued Retaliation and Harassment of Mr. Santillan**

The City of Selma's actions in continuing to attack Mr. Santillan is troubling. The Course of conduct engaged in by the City of Selma and Mayor Robertson is textbook retaliation. The Memorandum prepared by the City Attorney outwardly admits that the City Attorney and Mayor want the City Council to retaliate against Mr. Santillan for engaging in a protected activity, namely, opposing the Mayor's violation of the Elections Code and raising concerns as to the failure to adhere to the Elections Code and established City of Selma procedure for peacefully transitioning to new councilmembers following an election.

The very wording of the memorandum, which encourages the City of Selma City Council to take action against Mr. Santillan for "procuring a legal opinion for the City and acting on that legal opinion which was contrary to the express position taken by the City Council," expressly admits that the City Attorney and Mayor want to punish Mr. Santillan for engaging in a protected activity in raising his legitimate concerns. This is the definition of retaliation under the Labor Code. Using this as a basis to take action against Mr. Santillan will only create more liability for the City of Selma and runs the risk of creating a chilling effect on all City of Selma employees.

The retaliatory conduct by the Mayor and City Attorney is not limited to the blatant retaliation noted above. The Mayor and City Attorney are continually undermining Mr. Santillan's ability to perform his job duties, which include attempting to usurp Mr. Santillan's authority as City Manager to organize or re-organize City offices (e.g. animal shelter), bullying and undermining Mr. Santillan's actions in his role as City Manager, creating additional work duties to punish Mr. Santillan and make his job more difficult, circumventing the City Manager via the City Attorney for items expressly within the City Manager's authority, including requesting financial updates and status of updates directly from the City CPA, requesting sensitive personnel information for staff that report directly to the City Manager and under the City Manager's supervision, and countless other examples of abusive conduct directed at the City Manager. Mr. Santillan has raised these concerns with the City Attorney, Mayor, and City Council, and is now being retaliated against for raising these concerns.

Lastly, we are aware of sexually harassing comments which have been made publicly online by the Mayor's wife. This is an express violation of Mr. Santillan's employment agreement, which includes actions made by the Mayor's wife. This is just further evidence of the animus and unlawful conduct the Mayor has engaged in against Mr. Santillan.

The requested actions of the Mayor and City Attorney invoke the protections of Civil Code section 52.1 and the Tom Bane Civil Rights Act and exposes the Mayor and potentially the City of Selma to punitive damages.

#### **CONCLUSION**

The unlawful retaliation against Mr. Santillan engaged in by Mayor Robertson and Councilmember Guerra has already caused significant liability for the city of Selma. This unlawful retaliation has continued to this day and has created an unsafe and hostile work environment for Mr. Santillan. Mr.

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City Attorney Neil Costanzo  
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Santillan is constantly being attacked for carrying out his job duties to the best of his ability to protect the City of Selma and for raising concerns about the City's actions which do not comply with governing laws.

By this letter, Mr. Santillan demands that the terms of his settlement agreement with the City are carried out, including the terms of the addendum to his employment agreement. Mr. Santillan also demands that the City cease and desist from retaliating against him for engaging in protected activities in attempting to uphold election and turnover procedures. Mr. Santillan also demands that the City of Selma, including Mayor Robertson and the City Attorney, cease its efforts to bully Mr. Santillan and undermine his performance. Lastly, the sexually harassing comments made by the Mayor through his wife must also immediately stop.

Once you have a chance to review the facts and claims asserted in this letter, we invite you to contact this office to attempt to resolve Mr. Santillan's current employment-related claims.

Very truly yours,



Charles P. Hamamjian

CPH:dvo

cc: Client