

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**

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*Exempt from filing fees per
Government Code § 6103*

6 Attorneys for Defendant City of Santa Ana, non-
7 jural entity, Santa Ana Police Department,
8 Kristine Ridge, Sonia Carvalho, and Jason
9 Motsick

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF ORANGE – CENTRAL DISTRICT

13 SANTA ANA POLICE OFFICERS
14 ASSOCIATION; GERRY SERRANO,

15 Plaintiffs,

16 vs.

17 CITY OF SANTA ANA, a Municipal
18 Corporation; SANTA ANA POLICE
19 DEPARTMENT, a public safety department;
20 DAVID VALENTIN, Chief of Police;
KRISTIN RIDGE, City Manager; SONIA
MOTSICK, Director of Human Resources;
DOES 1 – X, inclusive,

21 Defendants.

Case No. 30-2021-01230129-CU-OE-CJC

[Assigned to Honorable Lon Hurwitz Dept. 20]

**DECLARATION OF SONIA CARVALHO
IN SUPPORT OF SPECIAL MOTION TO
STRIKE PURSUANT TO C.C.P. § 425.16,
BY DEFENDANTS CITY OF SANTA
ANA, KRISTINE RIDGE, SONIA
CARVALHO, AND JASON MOTSICK**

Date: June 15, 2022

Time: 1:30 p.m.

Dept: 20

Reservation No.: 73705096

Action Filed: 11/08/2021

Trial Date: None Set

23 I, SONIA CARVALO, declare as follows:

24 1. I am an attorney at law, duly licensed to practice before all courts of the States of
25 California. I am a partner with the law firm of Best, Best & Krieger LLP and appointed by the
26 Santa Ana City Council as the City Attorney for the City of Santa Ana. I am also a Defendant in
27 the above-entitled action. I have personal knowledge of the matters stated in this declaration,
28 except those matters stated on information and belief, which I believe to be true. If called and

1 sworn as a witness, I could and would competently testify thereto.

2 2. I make this declaration in support of the Special Motion to Strike pursuant to Code
3 of Civil Procedure § 425.16, by Defendants City of Santa Ana, Kristine Ridge, Sonia Carvalho,
4 and Jason Motsick.

5 3. I have served as a City Attorney to several cities across Southern California during
6 a 29-year legal career. In carrying out my duties as City Attorney, over the years, I have requested
7 advice from the California Fair Political Practices Commissions (“FPPC”) on various matters that
8 involve the potential for a conflict of interest. I have made these requests on behalf of individuals
9 and public agencies as permitted by the FPPC. Attached as Exhibit “H” is a true and correct copy
10 of the advice letter, dated March 8, 2021, that I received from the FPPC in response to my request
11 for advice about whether the City of Santa Ana is prohibited from negotiating with Plaintiff
12 Serrano a side letter agreement for his retirement benefits, by Government Code § 1090 which
13 generally prohibits public officers, while acting in their official capacities, from making contracts
14 in which they are financially interested. I requested this advice as requested by the City of Santa
15 Ana City Council in the course and scope of my duties as City Attorney to ensure that the City of
16 Santa Ana complies with its obligations under the Political Reform Act and the regulations of the
17 FPPC and statutory provisions that relate to government contracting law which have recently
18 come under the jurisdiction of the FPPC, i.e., Government Code §§ 1090 et seq. The allegation
19 that I had a “vendetta” and was acting with “the sole purpose of personally interfering with the
20 SAPOA/Serrano and/or with intent to harm Serrano” are categorically false. I have requested
21 advice from the FPPC on numerous occasions, including several other requests with respect to the
22 City of Santa Ana, none of which involved Plaintiff Serrano or the Santa Ana Police Officers
23 Association.

24 4. Attached as **Exhibit I** is a true and correct copy of a letter from Santa Ana Police
25 Chief David Valentin to Paul Walters, Chief of the Bureau of Investigations at the Orange County
26 District Attorney’s Office, dated September 30, 2020, on which I was copied. Attached as
27 **Exhibit J** is a true and correct copy of a letter from Chief Valentin to Paul Walters, dated October
28 21, 2020, on which I was copied. I was not involved in drafting this letter and only became aware

1 of the letter when I received a copy of it.

2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct. Executed this 22nd day of February 2022, at Fullerton,
4 California.

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7 Sonia Carvalho
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EXHIBIT H



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

March 8, 2021

Sonia R. Carvalho
City Attorney
City of Santa Ana
20 Civic Center Plaza,
P.O. Box 1988
Santa Ana, California 92702

Re: Your Request for Advice
Our File No. A-20-136

Dear Ms. Carvalho:

This letter responds to your request for advice regarding Government Code Section 1090, et seq.¹ Please note that we are only providing advice under Section 1090, not under other general conflict of interest prohibitions including common law conflict of interest.

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

We are required to forward your request regarding Section 1090 and all pertinent facts relating to the request to the Attorney General's Office and the Orange County District Attorney's Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice "is not admissible in a criminal proceeding against any individual other than the requestor." (See Section 1097.1(c)(5).)

QUESTION

Does Section 1090 prohibit the City of Santa Ana ("City") from negotiating a side letter agreement for the retirement benefits of its City employee, Gerry Serrano related to his role as union president where Mr. Serrano has participated in the negotiations?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

CONCLUSION

No. As Mr. Serrano is participating in his personal capacity and not his official capacity, his participation in negotiation of the side letter agreement regarding his retirement benefits does not give rise to a conflict of interest under Section 1090.

FACTS AS PRESENTED BY REQUESTER

Gerry Serrano is a City employee and currently serves as the Police Officer's Association ("POA") President. There is a Memorandum of Understanding ("MOU") between the POA and the City that permits the POA President full time release from work to serve the union. The MOU provides for payment of "confidential pay" (roughly \$57,000 per year) to the POA President.² This pay is to be included in the POA President's retirement pay calculations, subject to CalPERS approval.

In conducting a routine review of the City's retirement and pay records, CalPERS questioned whether the confidential pay was eligible to be included within the POA President's retirement pay calculation and subsequently made a formal decision that the confidentiality pay is not reportable by the City for inclusion in retirement pay calculations. The City has appealed, and the appeal is pending.

After CalPERS questioned inclusion of the confidentiality pay, Mr. Serrano contacted City staff, the Mayor, and Council Members to discuss alternative ways for him to receive retirement credit or benefits to offset his potential loss. These conversations have been ongoing and resulted in raising various solutions, including a "side letter" agreement which would serve to modify the MOU and make him whole. The side letter will only affect the pay of Mr. Serrano, and he has indicated that the changes can be made such that they will not impact future POA Presidents, only him.

You have not identified any financial interests on the part of the City Council members, the Mayor, or other City staff which may be affected by the side letter agreement.

ANALYSIS

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended "not only to strike at actual impropriety, but also to strike at the appearance of impropriety." (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.)

² The POA members are all required to donate one of their personal holiday days back to the City on an annual basis to reimburse the City for the pay and benefits provided by the City to the POA President.

Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest.” (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) And this prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.)

As a threshold matter, Section 1090 is not applicable if an individual is not acting in his or her official capacity in the making of a contract. Previous guidance pertaining to Section 1090 issued by the Attorney General is instructive here in determining whether Mr. Serrano is acting in an official role. ([80 Ops.Cal.Atty.Gen. 41](#).) In a matter where two firefighters developed a firefighting protective device in their personal capacities and sought to sell it to the City’s fire department, the Attorney General concluded:

...the two firefighters will be contracting with the city solely in their individual capacities and will not be involved officially with the making of the contract. They will have no input, as employees, into the city's decision whether to make the purchase. The decision will be made by the city council or city manager upon the recommendation of the fire chief. Under such circumstances, we conclude that they may sell their protective masks to the city without violating the “self-dealing” contractual prohibition of section 1090.

Similarly, here, Mr. Serrano in this instance is not acting in any official role on behalf of the POA or as a City employee, but rather, as an individual in the negotiation of his own personal employment contract. He will play no role in the actual decision as to whether and if a contract in the form of a “side letter” agreement is promulgated by the City – that decision lies with the City Council.

Further, the matter at hand can be distinguished from the seminal case of *Lexin v. Superior Court*. (47 Cal.4th 1050, 1151 (2010).) In *Lexin*, members of the San Diego Employees’ Retirement System Board (“SDCERS Board”) were accused of violating Section 1090 through their participation on the Board and recommendations made to the City which impacted pension benefits to City employees, including themselves. The Court noted, “...there is a concern that public officials negotiating with another entity for which they work will have divided loyalties and fail to ensure that the agency they represent (here, SDCERS) obtains the best deal from the entity that employs them (here, the City).” (*Id.* at 1084.) In the instant case, however, there are no such divided loyalties, or confusion about representation in the decision-making process. Mr. Serrano is not acting as a representative of his agency, plays no role as an officer in the decision-making, and is participating solely in regard to his own personal employment contract. The City is aware that Mr. Serrano is representing his own interests in this matter.

Accordingly, Section 1090 does not prohibit the City from making a side letter agreement regarding Mr. Serrano’s retirement benefits.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in blue ink, appearing to read "EM Boyd". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

By: Erika M. Boyd
Senior Counsel, Legal Division

EMB:aja

EXHIBIT I

MAYOR
Miguel A. Pulido
MAYOR PRO TEM
Juan Villegas
COUNCILMEMBERS
Phil Bacerra
Nelida Mendoza
David Penaloza
Vicente Sarmiento
Jose Solorio



CITY MANAGER
Kristine Ridge
CITY ATTORNEY
Sonia R. Carvalho
CLERK OF THE COUNCIL
Daisy Gomez

CITY OF SANTA ANA

POLICE DEPARTMENT

60 Civic Center Plaza • P.O. Box 1988
Santa Ana, California 92702
www.santa-ana.org/pd

OFFICE OF THE CHIEF OF POLICE

September 30, 2020

VIA CERTIFIED U.S. MAIL & E-MAIL

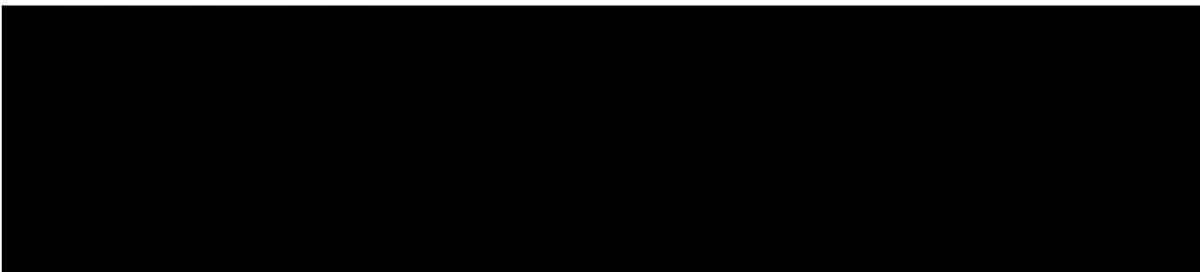
Paul.Walters@da.ocgov.com

Chief Paul Walters
Bureau of Investigations
Orange County District Attorney's Office
401 Civic Center Drive West
Santa Ana, California 92701

Chief Walters, *PW*

This letter is to memorialize our discussion on September 10, 2020 wherein you advised me of the new protocol instituted by the Orange County District Attorney's Office (OCDA) in connection with investigations of alleged criminal law violations involving peace officers. Specifically, you advised that once a law enforcement agency provides OCDA with information related to allegations of potential criminal law violations by a peace officer, OCDA attorneys then evaluate the information related to the allegations to determine whether sufficient basis exist to launch a criminal investigation against the officer.

It is my understanding that the OCDA's Office currently has criminal investigations *pending* for the following three (3) Santa Ana Police Department officers:



SANTA ANA CITY COUNCIL

Miguel A. Pulido
Mayor
mpulido@santa-ana.org

Juan Villegas
Mayor Pro Tem, Ward 5
jvillegas@santa-ana.org

Vicente Sarmiento
Ward 1
vsarmiento@santa-ana.org

David Penaloza
Ward 2
dpenaloza@santa-ana.org

Jose Solorio
Ward 3
jsolorio@santa-ana.org

Phil Bacerra
Ward 4
pbacerra@santa-ana.org

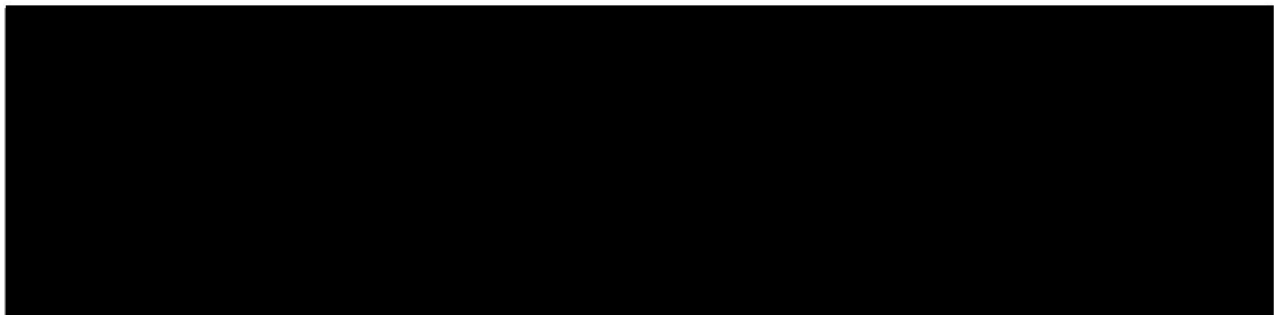
Nelida Mendoza
Ward 6
nmendoza@santa-ana.org

Page Two
Chief Paul Walters
Orange County District Attorney's Office
September 30, 2020

Sergeant Gerry Serrano, #2338

Date of Alleged Incident: April 30, 2020 [SAPD discovered alleged incident on May 1, 2020 and notified OCDA on May 8, 2020]

Brief Summary of Allegations: Sgt. Serrano is currently under investigation for allegations involving evidence and witness tampering in a related criminal case involving political signs, which your office is also investigating.



Please do not hesitate to contact me if you have any questions regarding the foregoing.

Sincerely,

DAVID VALENTIN
Chief of Police

cc: Todd Spitzer, Orange County District Attorney - VIA CERTIFIED U.S. MAIL & E-MAIL
Gary Schons, Of Counsel, Best Best & Krieger - VIA E-MAIL
Sonia R. Carvalho, City Attorney, City of Santa Ana - VIA E-MAIL

File

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Jose Solorio
Ward 3
jsolorio@santa-ana.org

Phil Bacerra
Ward 4
pbacerra@santa-ana.org

Nelida M.
Ward
nmendoza@santa-ana.org

EXHIBIT J

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POLICE DEPARTMENT

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www.santa-ana.org/pd

OFFICE OF THE CHIEF OF POLICE

October 21, 2020

VIA CERTIFIED U.S. MAIL & E-MAIL

Paul.Walters@da.ocgov.com

Chief Paul Walters
Bureau of Investigations
Orange County District Attorney's Office
401 Civic Center Drive West
Santa Ana, California 92701

Chief Walters,

I have carefully reviewed your letter dated October 8, 2020, that arrived at my office on October 20, 2020.

You indicate the Orange County District Attorney's Office (OCDA) does **not** have a pending criminal investigation against SAPD Sergeant Gerry Serrano ("Sgt. Serrano") stemming from an April 30 incident ("Investigation"). Allow me to provide a historical timeline of events as it relates to the investigation that appears wholly inconsistent with your letter:

- **May 8, 2020**, SAPD Commander [REDACTED] provided OCDA Investigator [REDACTED] a Memorandum dated May 1, 2020 documenting an incident that occurred on April 29-30, 2020 involving an allegation that Sgt. Serrano tampered with a witness and evidence.
- **On May 15, 2020 at 1:17 p.m.**, Cmdr. [REDACTED] e-mailed Inv. [REDACTED] correspondence the City received from attorney Colin C. Holley of Watt, Tieder, Hoffar & Fitzgerald, LLP on behalf of a Santa Ana businessman stemming from issues dealing with political signs.

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Chief Paul Walters
October 21, 2020
Page Two

- On **May 15, 2020 at 2:16 p.m.**, Inv. [REDACTED] responded to Cmdr. [REDACTED] (via e-mail) and stated, *"Thank you for forwarding a copy of that letter. It is much appreciate [sic] will be made part of the record."*

SAPD never assigned Sgt. Serrano to the investigation involving the campaign signs. As such, the information provided to your office involving an active on duty peace officer, allegedly interfering and tampering with evidence in a criminal investigation is highly problematic and could amount to a criminal violation.

Based on the foregoing, if indeed the OCDA's office has not commenced a criminal investigation in connection with the allegations against Sgt. Serrano, I am hereby requesting an investigation be conducted. It is worth mentioning that it has been over five (5) months, (bordering on six) that the documents involving these allegations were provided to your office.¹ Surely, Inv. [REDACTED] has the documents outlined above. In the event you would like another set of the documents, please do not hesitate to contact me.

Sincerely,



DAVID VALENTIN
Chief of Police

cc: Todd Spitzer, Orange County District Attorney - VIA E-MAIL
Gary Schons, Of Counsel, Best Best & Krieger - VIA E-MAIL
Sonia R. Carvalho, City Attorney, City of Santa Ana - VIA E-MAIL
File

¹ Penal Code §802(a) provides for a one-year statute of limitations for misdemeanors.

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Neida M.
Ward
nmendoza@santa-ana.org

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PROOF OF SERVICE

Santa Ana Police Officers Association, et al. v City of Santa Ana, et al.
Orange County Superior Court Case No.: 30-2021-01230134-CU-WT-CJC
(LBBS File No.: 51601-02)

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES) ss.

At the time of service, I was over 18 years of age and not a party to the action. My business address is 633 West 5th Street, Suite 4000, Los Angeles, California, 90071.

On February 22, 2022, I served the following document(s):

DECLARATION OF SONIA CARVALHO IN SUPPORT OF SPECIAL MOTION TO STRIKE PURSUANT TO C.C.P. § 425.16, BY DEFENDANTS CITY OF SANTA ANA, KRISTINE RIDGE, SONIA CARVALHO, AND JASON MOTSICK

I served true and correct COPIES of the above-referenced document(s) on the following person(s) at the following address(es) (including fax numbers and e-mail addresses, if applicable):

SEE ATTACHED SERVICE LIST

The documents were served by the following means:

(BY E-MAIL OR ELECTRONIC TRANSMISSION) Based upon a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent from e-mail address kirk.gile-creque@lewisbrisbois.com to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 22, 2022, at Los Angeles, California.

Kirk D. Gile-Creque

KIRK D. GILE-CREQUE

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SERVICE LIST

Santa Ana Police Officers Association, et al. v City of Santa Ana, et al.
Orange County Superior Court Case No.: 30-2021-01230134-CU-WT-CJC
(LBBS File No.: 51601-02)

<p>Corey W. Glave, Esq. Attorney at Law 632 S. Gertruda Ave. Redondo Beach, CA 90277 Tel: 323.547.0472 E-Mail: POAattorney@aol.com E-Mail: CoreyGlave@gmail.com <i>Attorneys for Plaintiffs, SANTA ANA POLICE OFFICERS ASSN and GERRY SERRANO</i></p>	<p>Seymour B. Everett, III, Esq. Samantha E. Dorey, Esq. Christopher D. Lee, Esq. James C. Truxaw, Esq. EVERETT DOREY LLP 18300 Von Karman Avenue, Suite 900 Irvine, CA 92612 Tel: 949.771.9233; Fax: 949.377.3110 E-Mail: severett@everettdorey.com E-Mail: sdorey@everettdorey.com E-Mail: clee@everettdorey.com E-Mail: jtruxaw@everettdorey.com <i>Attorneys for Defendant, DAVID VALENTIN</i></p>
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