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7 Attorneys for
8 Plaintiff Cathy Wilcox-Barnes
9
10

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12
13 FOR THE COUNTY OF NEVADA

14 CATHY WILCOX-BARNES,
15 Plaintiff

16 v.

17 CITY OF NEVADA CITY, a
18 governmental entity, and DOES 1
19 through 20, inclusive,
20 Defendants

) Case No.
)
) VERIFIED COMPLAINT FOR DUE
) PROCESS & WHISTLEBLOWER
) VIOLATIONS, WRONGFUL
) TERMINATION, DEFAMATION,
) AND RELATED CAUSES OF
) ACTION.
)
) Demand Exceeds \$50,000.00
) Jury Trial Requested

21
22
23 **JURISDICTION AND PARTIES**

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25 Plaintiff CATHY WILCOX-BARNES ("Plaintiff") alleges:

26 1. Defendant CITY OF NEVADA CITY ("Defendant") is a governmental
27 entity.
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2 2. Plaintiff is ignorant of the true names and capacities of defendants sued
3 herein as DOES 1 – 20, inclusive, and therefore sues these defendants by such
4 fictitious names. Plaintiff will amend this Complaint to allege the true names and
5 capacities when they have been ascertained.
6

7
8 3. Plaintiff is citizen of the United States and the state of California who
9 currently resides in Nevada City, Nevada County, California. Unless otherwise
10 alleged, at all times material hereto, Plaintiff was an employee of Defendant.
11

12 4. The unlawful employment practices complained of herein occurred in
13 Nevada County.
14

15 5. Plaintiff has timely filed a governmental tort claim, which was denied by
16 letter dated November 30, 2006. A true and accurate copy of the denial letter is
17 attached hereto as Exhibit "A."
18

19 **STATEMENT OF FACTS**

20 6. In or about 1987 Plaintiff was appointed to fill the elected position of City
21 Clerk and commenced full-time employment with the City of Nevada City. She was
22 reelected to the City Clerk position each time it came before the voters, up to and
23 including the election on June 6, 2006. She is presently serving a four-year term as
24 City Clerk.
25

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27 7. In or about the early 1990s, when the City had a Finance Director, the title
28 of "Office Operations Supervisor" was added onto Plaintiff's "City Clerk" position.

1
2 The two job functions were blended into a single one. A written job description for
3
4 "Office Operations Supervisor/City Clerk" is attached hereto as Exhibit "B." The
5 job duties are not separated.

6
7 8. In or about June 2002, Mark Miller became the City Manager. Plaintiff's
8 job responsibilities increased at this time as she picked up some of the duties that had
9 been done by the prior City Manager, such as preparing the City's budget and coding
10 accounts payable. These additional job responsibilities were outside the scope of
11 Plaintiff's duties.
12

13
14 9. From June 2002 to April 2006, Plaintiff's job responsibilities continued to
15 increase and she routinely worked 50 and 60 hours a week. Plaintiff never received
16 any type of job evaluation. During this time, she repeatedly asked the City Manager
17 for help in handling the additional work, but no help was provided. Instead of hiring
18 a person with higher-level financial and accounting skills as urged by Plaintiff, Mr.
19 Miller filled a position of entry-level office clerk.
20

21
22 10. From June 2002 to April 2006, Plaintiff brought numerous concerns about
23 the efficient functioning of City government and City processes to the City
24 Manager's attention (both orally and in writing). The City Manager failed to
25 adequately address these concerns, which included, but were not limited to, problems
26 relating to the City's accounts payable procedures, problems with the water and
27 sewer rate structure and other fee structures.
28

1 11. On or about September 23, 2005, Plaintiff and two other City employees
2 delivered a written memorandum to the City Manager demanding a meeting "to
3 discuss items concerning wages, hours and other terms and conditions of
4 employment," pursuant to the Meyers-Milias-Brown Act, Government Code §3500
5
6 *et seq.*
7

8 12. On or about December 27, 2005, Plaintiff wrote a memorandum to City
9 Manager Mark Miller regarding "Processing – Campus Properties – Portion of
10 Former Grass Valley Group Annexation/Development Agreement – APN: 05-190-
11 45." In the memorandum, Plaintiff questioned the City's processing of the
12 application, stating that it left the City "vulnerable to a challenge." She wrote that
13 "my reservations are not based on the qualities of the project but on the inadequacies
14 of the public process. The previous EIR was done more than 20 years ago and
15 should at the very least be reaffirmed."
16
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18 13. After December 2005, the City Manager retaliated against Plaintiff with a
19 number of inappropriate actions, including but not limited to undermining her job
20 performance; taking away more of her executive, administrative and professional job
21 responsibilities; creating a hostile work environment; ordering her not to interact
22 with other department heads; losing his temper and yelling at her on numerous
23 occasions; on January 17, 2006, disciplining her in writing; and finally, on April 25,
24 2006, locking her out of her office and placing her on the administrative leave which
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28 resulted in her termination.

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3 14. Miller's actions undermining Plaintiff's job performance include but are
4 not limited to directing City staff not to send out business license renewals that had
5 been prepared by Plaintiff in the weeks prior to February 1, 2006 and left with the
6 office clerk for mailing. When Plaintiff asked the office clerk why the renewals had
7 not gone out, she was told that Mr. Miller had specifically directed that they not be
8 mailed. There were approximately 500 to 600 of these renewals downstairs waiting
9 to be sent when Plaintiff was locked out of her office on April 25, 2006.
10
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12 15. On or about January 17, 2006, the City Manager formally disciplined
13 Plaintiff by a memorandum entitled "Concerns Regarding Performance and
14 Unprofessional Conduct." Plaintiff denied the basis of the discipline and responded
15 to the discipline in writing.
16

17 16. On April 24, 2006, the Nevada City City Council (the "City Council")
18 met in closed session. The only agenda item listed for the closed session was
19 "Public Employee Performance Evaluation" for each of the five department heads
20 (City Manager, Office Operations Supervisor, Police Chief, Public Works Director
21 and Water Treatment Plant Supervisor). This single agenda item was placed on the
22 agenda by Councilman Steve Cottrell.
23
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25 17. The final, amended minutes from the April 24, 2006 City Council meeting
26 show there was a public announcement after the closed session by Councilman
27 Cottrell that he had withdrawn his request for a closed meeting because the majority
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2 of the Council would not meet in closed session unless the City Manager was
3 present. Councilman Cottrell's item took just a few moments. The City Council was
4 in closed session from approximately 8:35 pm to 8:56 pm (21 minutes). Plaintiff is
5 informed and believes and based thereon alleges that the majority of the closed
6 session on April 24, 2006 was spent discussing the position of the "Office
7 Operations Supervisor."

8
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10 18. Plaintiff was not given written notice of her right to have the alleged
11 complaints against her heard in open session rather than closed session on April 24,
12 2006, as required by §54957 of the Ralph M. Brown Act, Government Code §54950
13 *et seq.* ("the Brown Act"). She was not given any notice of her right to attend the
14 closed session, and in fact was told that she did not need to attend. Plaintiff was told
15 that the only people attending the closed session would be the five council members
16 and the City Attorney, but is informed and believes and based
17 thereon alleges that the City Manager also attended the meeting.

18
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20 19. At the conclusion of the closed session on April 24, 2006, other than the
21 statement made by Councilman Cottrell referred to above, there was no
22 announcement of any other action taken during the closed session, nor was there a
23 tally of the votes or abstention of every member present as required by §54957.1 of
24 the Brown Act. This section of the Brown Act also requires that any action taken to
25 affect the employment status of a public employee shall be reported at the public
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2 meeting during which the closed session is held. This was not done on April 24,
3 2006 as to any action affecting Plaintiff's employment status.

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5 20. On April 25, 2006, Plaintiff was placed on administrative leave. Plaintiff
6 did not receive any hearings, *Skelley* or otherwise, before her position of "Office
7 Operations Supervisor" was abolished by the City Council on June 26, 2006 and a
8 new "City Finance Manager" position authorized. Plaintiff was not permitted to
9 participate in the so-called reorganization of the office and was not allowed to
10 exercise any rights she may have had to transfer to a different position.
11

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13 21. When Plaintiff was placed on administrative leave on April 25, 2006, she
14 was also locked out of her office and escorted out of the building, with an armed
15 police chief in attendance. Some of her personal property remains in the City's
16 possession.
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19 22. On April 25, 2006, the City Manager gave Plaintiff a memorandum in
20 which he stated that the "City has sufficient reason to conduct an evaluative Program
21 Review of the functions and responsibilities assigned/assumed by the Office
22 Operations Supervisor position." Her job was singled out. A true and accurate copy
23 of the City Manager's April 25, 2006 memorandum to Plaintiff is attached hereto as
24 Exhibit "C."
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27 23. At a regularly scheduled public meeting of the City Council on May 8,
28 2006, the City Manager personally handed out a one-page document to those in

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2 attendance entitled "Protecting an Employee's Rights and the Taxpayers' Dollars."
3
4 (A true and accurate copy of the City Manager's May 8, 2006 handout is attached
5 hereto as Exhibit "D"). This document had a tendency to injure Plaintiff in her
6 profession or occupation. The document states that despite "numerous efforts on the
7 part of the City to provide the employee with professional outside assistance... the
8 employee has resisted and failed to cooperate adequately with them" and refers to
9 "complaints and concerns" about Plaintiff.
10
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12 24. The number of times that any "professional outside assistance" was
13 offered to Plaintiff was exactly once, when Wes Peters came into the office and
14 Plaintiff provided him the tools and information he needed to get started. After that
15 one day, Mr. Peters did not return to work with Plaintiff in City Hall. On numerous
16 occasions during her employment, Plaintiff told the City Manager that she was
17 overwhelmed with work and also made specific suggestions to him for hiring
18 someone to help with the higher-level financial job responsibilities, which
19 suggestions were ignored.
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23 25. The "objective program review" focused solely on the "Office Operations
24 Supervisor" position, despite problems in other areas of City government. Despite
25 Plaintiff's numerous requests to talk to the investigators about her job, they never
26 made any contact with her and she was prevented from participating in the
27 investigation.
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3 26. At or about 4:00 pm on May 17, 2006 a report entitled "City of Nevada
4 City Preliminary Program Review Report" (the "Preliminary Report") was released
5 to the public at City Hall and not a moment sooner to Plaintiff. The 13-page report
6 has an additional 51 pages of attachments (64 pages).
7

8 27. On May 26, 2006, Scott Browne, an attorney hired by the City, offered
9 Plaintiff four working days to provide a written response to the 64-page Preliminary
10 Report (including attachments), which Plaintiff agreed to do provided she was not
11 going to be disciplined and would be allowed to see her office files to prepare her
12 response. The City refused, despite its repeated prior statements that the matter
13 against her was "non-disciplinary." On the advice of legal counsel, Plaintiff did not
14 provide a written response. Plaintiff was never disciplined.
15
16

17 28. At a regularly scheduled public meeting of the out-going City Council on
18 June 26, 2006, the position of "Office Operations Supervisor" was abolished and
19 Plaintiff's employment as "Office Operations Supervisor" terminated immediately.
20 Plaintiff was not given any opportunity to perform the rest of her job responsibilities
21 or to transfer to a different position. Plaintiff continues to serve as City Clerk for a
22 \$100.00 per month stipend.
23
24

25 29. On June 30, 2006, attorney Scott Browne had a meeting with Plaintiff and
26 her counsel in which he said the City would be willing to drop potential criminal
27 charges for self-dealing in the matter of sewer fees on an unoccupied house owned
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2 by Plaintiff if she resigned immediately as City Clerk. There was no severance
3 payment associated with the City's offer, but the City wanted Plaintiff to give up all
4 her rights to file any action against it for violation of her rights. Plaintiff denied, and
5 continues to deny, the potential criminal charges and refused the City's offer.
6

7
8 30. Plaintiff continues to serve in her elected position of City Clerk, but has
9 been, and continues to be, severely compromised in her ability to fulfill the
10 requirements of that elected position because of Defendant's actions since April 25,
11 2006.
12

13 **DAMAGES**
14

15 31. As a direct, foreseeable and proximate result of Defendant's conduct,
16 Plaintiff has lost back pay, front pay and other employment benefits, employment
17 and career opportunities, deprivation of a career opportunity and has suffered other
18 economic loss in an amount that exceeds \$50,000.00, the precise amount of which
19 will be proven at trial.
20

21 32. As a direct, foreseeable and proximate result of Defendant's conduct,
22 Plaintiff has incurred medical expenses, legal costs, attorneys fees and costs of suit,
23 the precise amount of which will be proven at trial.
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25 33. As a direct, foreseeable and proximate result of Defendant's conduct,
26 Plaintiff has suffered great anxiety, humiliation, embarrassment, anger, loss of
27 enjoyment of life, and severe emotional distress in an amount which exceeds
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2 \$50,000.00, the precise amount of which will be proven at trial.
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4 **FIRST CAUSE OF ACTION**
5 **(Due Process Violations)**

6 34. Plaintiff realleges and incorporates herein by reference as though fully set
7 forth the allegations of Paragraphs 1 through 33, inclusive, above.
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9 35. As alleged above, Defendant violated the Brown Act by its actions at the
10 April 24, 2006 meeting, including violations of Government Code §§54954.5, 54957
11 and 54957.1.
12

13 36. Plaintiff's employment was subject to certain procedural safeguards and
14 was not to be terminated except for cause. After almost twenty years of employment
15 as a public employee, Plaintiff had a constitutionally protected right to her job as a
16 property interest under the 14th Amendment to the United States Constitution.
17

18 37. The 14th Amendment to the United States Constitution also gives Plaintiff
19 constitutionally protected liberty interests in her personal and business reputations.
20

21 38. As alleged above, Plaintiff's rights to the due process of law were violated
22 at the April 24, 2006 closed session meeting held in violation of the Brown Act,
23 Government Code §54950 *et seq.*
24

25 39. As alleged above, Plaintiff's rights to the due process of law were violated
26 by Defendant's failure to satisfy the minimum requirements of a pre-termination
27 hearing when she was denied a *Skelley* hearing, pursuant to the California Supreme
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2 Court case of *Skelley v. State Personnel Board* (1975) 15 Cal.3d 194 and its progeny.
3

4 40. As alleged above, Plaintiff's rights to the due process of law were violated
5 by Defendant when it failed and refused to provide her with the opportunity to
6 participate in the so-called "investigation" of her job and when it failed to give her a
7 meaningful opportunity to rebut the charges against her before her employment was
8 terminated.
9

10 41. As a result of such denial of due process and consequent harm, Plaintiff
11 has suffered damages in an amount according to proof.
12

13 WHEREFORE, Plaintiff prays for judgment against Defendant as hereinafter
14 set forth.
15

16 **SECOND CAUSE OF ACTION**
17 **(Wrongful Termination in Violation of Public Policy)**

18 42. Plaintiff realleges and incorporates herein by reference as though fully set
19 forth the allegations of Paragraphs 1 through 33, inclusive, above.
20

21 43. Plaintiff has been discharged from her employment with Defendant
22 arbitrarily, without just cause and in violation of fundamental, substantial and well-
23 established public policies of the State of California, in the following respects:
24

25 44. Plaintiff alleges that her termination was in violation of the public policy
26 set forth in the Labor Code §1102.5 and Government Code §53296 (the
27 "whistleblower" statutes).
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3 45. Plaintiff alleges that her termination was in violation of the public policy
4 as expressed in the 14th Amendment to the United States Constitution (the due
5 process provision).

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7 46. Plaintiff alleges that her termination was in violation of the Ralph M.
8 Brown Act, Government Code §54950 *et seq.* (the Brown Act).

9
10 47. Plaintiff alleges that her termination was in violation of the Meyers-
11 Miliias-Brown Act, Government Code §3500 *et seq.* (Meyers-Miliias-Brown).

12 48. As a direct, foreseeable and proximate result of Defendant's conduct in
13 violation of law, Plaintiff has suffered and continues to suffer substantial losses in
14 earnings, and other employment benefits, all to her damage in an amount to be
15 determined according to proof at time of trial.

16
17 49. As a direct and proximate result of the statutory violations as set forth
18 above, Plaintiff has incurred attorneys' fees and costs in an amount to be established
19 at trial.

20
21 50. Plaintiff alleges that such conduct was done in reckless disregard of the
22 probability of said conduct causing severe emotional distress. As a proximate result
23 of said conduct, Plaintiff suffered embarrassment, anxiety, humiliation, and
24 emotional distress, and will continue to suffer said emotional distress.
25

26
27 WHEREFORE, Plaintiff prays for judgment against Defendant, as hereinafter
28 set forth.

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3 **THIRD CAUSE OF ACTION**
4 **(Violation of Whistleblower Laws)**

5 51. Plaintiff realleges and incorporates herein by reference as though fully set
6 forth the allegations of Paragraphs 1 through 33, inclusive, above.

7 52. Labor Code §1102.5(b) provides, in part, that: "(n)o employer shall
8 retaliate against an employee for disclosing information to a government or law
9 enforcement agency, where the employee has reasonable cause to believe that the
10 information discloses a violation of a state or federal statute."
11

12 53. California Government Code §53296 protects employees of local
13 governmental entities from management retaliation for complaining about official
14 misconduct, including complaints alleging "gross mismanagement or significant
15 waste of funds, an abuse of authority, or a substantial and specific danger to public
16 health or safety."
17

18 54. Plaintiff "blew the whistle" on Defendant when she confronted the City
19 Manager's poor management style, brought numerous critical issues to his attention
20 without resolution and finally when she questioned the lack of public process in the
21 project described in her memorandum dated December 27, 2005. By retaliating
22 against Plaintiff in her employment, Defendant has violated Labor Code §1102.5 and
23 Government Code §53296.
24
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27 55. In terminating Plaintiff's employment, Defendant has violated Labor
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2 Code §1102.5 and Government Code §53296.
3

4 WHEREFORE, Plaintiff prays for judgment against Defendant, as hereinafter
5 set forth.

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7 **FOURTH CAUSE OF ACTION**
8 **(Defamation)**

9 56. Plaintiff realleges and incorporates herein by reference as though fully set
10 forth the allegations of Paragraphs 1 through 33, inclusive, above.

11 57. Plaintiff has resided in the City of Nevada City for her entire life (except
12 for eight years between 1968 and 1976) and at all times has enjoyed a good
13 reputation both generally and in her occupation.
14

15 58. On or about April 25, 2006, and on subsequent occasions, Defendant
16 accused Plaintiff of not doing her job properly. (e.g. Exhibits "C" and "D" hereto).
17

18 59. On or about May 8, 2006, Defendant published a document that was
19 distributed to the public at a City Council meeting by the City Manager. (Exhibit "D"
20 hereto).
21

22 60. On or about May 17, 2006 Defendant published the Preliminary Report
23 which contains numerous false, misleading and incomplete conclusions about
24 Plaintiff's job performance.
25

26 61. The Preliminary Report contains misleading photographs and other
27 attachments, including but not limited to a photograph showing numerous open
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2 bankers' boxes on the floor in Plaintiff's office, which is not how it was kept by
3 Plaintiff. Plaintiff had asked for office filing cabinets on more than one occasion and
4 City staff had taken measurements, but the file cabinets were never installed.
5

6 62. Both the City's May 8, 2006 hand-out (Exhibit "D") and the May 17,
7 2006 Preliminary Report contain numerous false, misleading and incomplete
8 conclusions about Plaintiff and her ability to do her job.
9

10 63. The publications referred to above both used the term "Office Operations
11 Supervisor" which was understood by those who read and discussed it to be Plaintiff.
12 The publications were defamatory because they had a tendency to injure Plaintiff in
13 her profession or occupation because they infer that the "Office Operations
14 Supervisor" was incompetent.
15

16 64. The publications referred to above were completed without talking to
17 Plaintiff or allowing her to participate in the investigation like others who had been
18 interviewed, despite her repeated offers to do so. The City's actions prevented
19 Plaintiff from talking to the investigators, ultimately resulting in an extremely biased
20 and one-sided report injurious to Plaintiff.
21

22 65. The publications referred to above were seen and read by some in Nevada
23 County. Plaintiff is informed and believes and based thereon alleges that the May
24 17, 2006 Preliminary Report was read and discussed by various citizens of Nevada
25 County including patrons of Nevada City bars the evening of its release.
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3 66. Many more Nevada County citizens became aware of the issues
4 concerning the "City Clerk" by reading the numerous subsequent articles in "The
5 Union" newspaper concerning the issue, which led some people to assume that
6 Plaintiff engaged in some wrong-doing. The newspaper repeatedly referred to (and
7 continues to refer to) financial losses to the City in the amount of "\$400,000.00,"
8 which amount is always linked to Plaintiff's name, as in "Wilcox-Barnes was
9 suspended after the city found it had failed to collect \$400,000 in fees." (The Union,
10 Editorial, March 7, 2007). This statement is false, misleading and unsupported by
11 the facts.
12

13
14 67. As a proximate result of the above-described publications by the City,
15 Plaintiff has suffered loss of her reputation, shame, mortification, and hurt feelings
16 all to her general damage.
17

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19 68. As a further proximate result of the above-described publications by the
20 City, Plaintiff has suffered special damages such as injury to her trade, profession or
21 occupation, all to her injury in an amount according to proof.
22

23 **FIFTH CAUSE OF ACTION**
24 **(Unpaid Overtime Compensation)**

25 69. Plaintiff realleges and incorporates herein by reference as though fully set
26 forth the allegations of Paragraphs 1 through 33, inclusive, above.
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28 70. Labor Code section 1198 provides that it is unlawful to employ persons

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2 for longer than the hours set by the Industrial Welfare Commission or under
3
4 conditions prohibited by applicable wage orders.

5 71. At all times relevant herein, Industrial Welfare Commission (“IWC”)
6 Wage Order No. 4, which applied to Plaintiff’s employment by Defendant in the
7
8 “professional, technical (or) clerical” occupations, provides that employees
9 employed more than eight (8) hours in one day or forty (40) hours in one week are
10 entitled to payment at the rate of time and a half for those hours.
11

12 72. In or before April, 2004, most of Plaintiff’s executive, administrative and
13 professional job responsibilities had been taken away from her by the City Manager
14 and Plaintiff was not primarily engaged in duties meeting any exemption to overtime
15 requirements.
16

17 73. Under the provisions of IWC Wage Order No. 4, Plaintiff should have
18 received a total of approximately \$40,710.00 for the unpaid overtime for the period
19 from April 12, 2004 to April 25, 2006, as shown by Exhibit “E” attached hereto.
20 Defendant has failed and refused and continues to fail and refuse to pay Plaintiff the
21 amount owed.
22

23
24 74. Defendant’s failure to pay Plaintiff the sum of \$40,710.00, as required by
25 the applicable Wage Orders, violates the provisions of Labor Code §1198 and is
26 therefore unlawful.
27

28 75. Pursuant to Labor Code §218.5, Plaintiff requests that this Court award

1
2 her reasonable attorney's fees and costs incurred by her in this action.

3
4 WHEREFORE, Plaintiff prays for judgment against Defendant, as hereinafter
5 set forth.

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7 **SIXTH CAUSE OF ACTION**
8 **(Waiting Time Penalties under Labor Code §203)**

9 76. Plaintiff realleges and incorporates herein by reference as though fully set
10 forth the allegations of Paragraphs 1 through 33, inclusive, above.

11 77. Defendant's failure to pay the overtime wages as alleged above was
12 willful. As a result, Plaintiff is entitled to penalties under Labor Code section 203,
13 which provides that an employee's wages shall continue as a penalty until paid or for
14 a period of up to 30 days from the time they were due, whichever period is shorter.

15 78. Pursuant to the provisions of Labor Code section 203, Plaintiff is entitled
16 to a penalty in the amount of \$6,501.60, which is her daily rate (\$216.72) multiplied
17 by 30 days.

18 WHEREFORE, Plaintiff prays for judgment against Defendant, as hereinafter
19 set forth.

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21 **SEVENTH CAUSE OF ACTION**
22 **(Unpaid Regular Compensation & Benefits)**

23 79. Plaintiff realleges and incorporates herein by reference as though fully set
24 forth the allegations of Paragraphs 1 through 33, inclusive, above.

25 80. At the time of her termination, either through Defendant's inadvertence or
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2 neglect, Plaintiff was not paid properly for her wages and benefits in the amount of
3 \$3,938.32. This amount is broken down as follows: 5% Underpayment for Vacation
4 pay-out (\$1,752.76); 5% Underpayment last paycheck (\$108.37); July, 2006
5 Vacation Accrual (\$473.93); Administrative Leave (\$1,052.54); Banked Holiday Pay
6 (\$327.14); Section 125 Deduction (\$24.46); and Sick Leave Incentive (\$199.12).
7

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9 WHEREFORE, Plaintiff prays for judgment against Defendant, as hereinafter
10 set forth.
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12 **EIGHTH CAUSE OF ACTION**
13 **(Claim for Reimbursement of Attorneys' Fees)**

14 81. Plaintiff realleges and incorporates herein by reference as though fully set
15 forth the allegations of Paragraphs 1 through 33, inclusive, above.
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17 82. As a result of the City's actions against her, Plaintiff's duties and
18 responsibilities as the elected City Clerk have been made difficult if not impossible
19 to perform. Plaintiff has incurred, and continues to incur, legal costs in her efforts to
20 the duties and responsibilities of her elected position.
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22 83. These costs are in an amount according to proof and include attorneys
23 fees for legal services, which should be indemnified by the City.
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25 WHEREFORE, Plaintiff prays for judgment against Defendant, as hereinafter
26 set forth.
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3 **NINTH CAUSE OF ACTION**
4 **(Breach of Employment Contract)**

5 84. Plaintiff realleges and incorporates herein by reference as though fully set
6 forth the allegations of Paragraphs 1 through 33, inclusive, above.

7 85. Plaintiff was employed by Defendant under the terms of an employment
8 contract which was both written and oral and contained provisions implied in fact
9 and in law. The terms of the contract relied on by Plaintiff included, but were not
10 limited to, that she would be treated fairly and in accordance with the law and that
11 she could not be terminated without good cause.
12

13 86. Defendant breached the contract with Plaintiff by refusing to permit her to
14 perform her job, by illegally retaliating against Plaintiff, by terminating her
15 employment in breach of the promises made to her and by refusing to allow her to
16 transfer to a different position.
17

18 87. As a direct, foreseeable and proximate result of Defendant's breach,
19 Plaintiff has suffered and continues to suffer substantial losses in earnings, bonuses,
20 and job benefits, the precise amount of which will be proven at trial.
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22 88. As a direct and proximate result of the above-described conduct by
23 Defendant, Plaintiff has suffered special damages in an amount to be proven at trial.
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25 WHEREFORE, Plaintiff prays for judgment against Defendant, as hereinafter
26 set forth.
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TENTH CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith & Fair Dealing)

89. Plaintiff realleges and incorporates herein by reference as though fully set forth the allegations of Paragraphs 1 through 33, inclusive, above.

90. As a result of the employment relationship which existed between Plaintiff and Defendant, the express and implied promises made in connection with that relationship, and the acts, conduct, and communications resulting in these promises, Defendant promised to act in good faith toward and to deal fairly with Plaintiff, which requires, among other things:

- a. each party in the relationship must act with good faith toward the other concerning all matters relating to employment;
- b. each party in the relationship must act with fairness towards the other concerning all matters relating to employment; and
- c. neither party would take any action to unfairly prevent the other from obtaining the benefits of the employment relationship.

91. Defendant's treatment of Plaintiff was wrongful, in bad faith and unfair, and therefore a violation of Defendant's legal duties. Plaintiff further alleges that Defendant breached the covenant of good faith and fair dealing when it:

- a. denied the existence of the contracts and agreements it had made with Plaintiff;

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- b. unfairly prevented Plaintiff from obtaining the benefits of her employment relationship;
- c. placed Plaintiff on administrative leave without cause; and
- d. terminated Plaintiff's employment for false reasons.

92. Defendant's breach of the covenant of good faith and fair dealing was a substantial factor in causing injury and damage to Plaintiff. As a direct, foreseeable and proximate result of Defendant's breach, Plaintiff has suffered and continue to suffer substantial losses in earnings, bonuses, job benefits and has incurred expenses in the search for comparable employment, the precise amount of which will be proven at trial.

WHEREFORE, Plaintiff prays for judgment against Defendant, as hereinafter set forth.

ELEVENTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

93. Plaintiff realleges and incorporates herein by reference as though fully set forth the allegations of Paragraphs 1 through 33, inclusive, above.

94. By its discrimination against, harassment, intimidation and differential treatment of Plaintiff, Defendant has acted outrageously and with reckless disregard for the foreseeable consequences to Plaintiff.

95. The conduct of Defendants was intentionally and unreasonably or

1
2 maliciously engaged in for the purposes of intimidating Plaintiff and was further
3
4 done to cause Plaintiff humiliation, frustration, fear, emotional injury and distress.

5 96. As a direct and proximate result of Defendants' conduct, Plaintiff has
6
7 suffered and continues to suffer shock, anger, mental anguish, frustration,
8
9 humiliation and emotional distress. All of Plaintiff's damages are in an amount to be
10
11 proven at trial.

12 WHEREFORE, Plaintiff prays for judgment against Defendant, as hereinafter
13
14 set forth.

15 **RELIEF REQUESTED**

16 Plaintiff requests the judgment of this court against Defendant as follows:


- 17 a. For back pay, front pay, lost benefits and other special damages according
18 to proof;
- 19 b. For general damages in an amount according to proof;
- 20 c. For medical expenses according to proof;
- 21 d. For other and further damages against Defendant, including compensatory
22 damages for Plaintiff's emotional distress, in an amount according to proof;
- 23 e. For reasonable attorneys' fees and costs incurred, including expert witness
24 fees where applicable by statute or legal principle;
- 25 f. For any allowable interest, including prejudgment interest, at the legal rate
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27 and on all amounts claimed;
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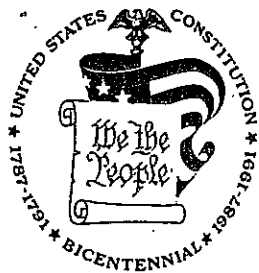
- g. For all unpaid overtime and regular compensation, benefits and any penalties thereon; and
- h. For any other further relief that this Court considers just and proper.

March 30, 2007

Law Office of M. Catherine Jones



M. Catherine Jones



CITY OF NEVADA CITY

CALIFORNIA

Nevada City
A Bicentennial
Community

November 30, 2006

Cathy Wilcox-Barnes
c/o M. Catherine Jones
P. O. Box 1128
Nevada City, CA 95959

Re: Claim of Cathy Wilcox-Barnes

NOTICE OF ACTION TAKEN ON CLAIM

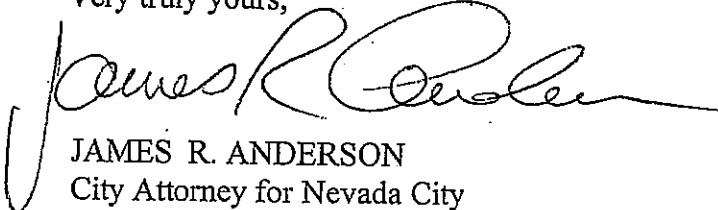
NOTICE IS HEREBY GIVEN that the claim which you presented to the City of Nevada City on November 13, 2006 was submitted to the City Manager pursuant to Resolution 98-07 and was denied by the City Manager and City Council on November 27, 2006.

WARNING

Subject to certain exceptions, you have only six (6) months from the date of this letter personally delivered or deposited in the mail to file a court action on this claim. See *Government Code §945.6*.

You may seek the advice of an attorney of your choice in connection with the matter. If you desire to consult an attorney, you should do so immediately.

Very truly yours,


JAMES R. ANDERSON
City Attorney for Nevada City

JRA:fh



OFFICE OPERATIONS SUPERVISOR/CITY CLERK

Definition:

Under administrative direction of the City Manager, to assist with planning, organizing, supervising and coordinating the administrative and financial operations of the City; to provide technical and staff support to the City Manager and Council; to coordinate interdepartmental tasks and assignments; to perform related duties as assigned.

Distinguishing Characteristics:

This position performs a wide variety of financial, clerical-support, and administrative tasks, some routine, some highly complex. The incumbent is required to complete multiple tasks in a variety of competing areas: City Clerk, coordination of special projects, preparation of mandated reports and reconciling ledgers, overseeing bank and payroll accounts, establishing and maintaining files and records, issuing notices and responding to notices/complaints.

CORE ("essential") Duties:

Emphasis varies with assignment or seasonal/legal demands, however incumbent is expected to perform all of the following:

1. Plans, organizes, coordinates and participates in the work of the City Clerk's office; maintains documents, prepares legal notices and agendas, conducts elections; provides information to staff, Council, public, prepares resolutions and provides general clerical support to Council.
2. Supervises support staff and monitors evaluations of employee performance; maintains records of employee attendance for payroll purposes; gathers and analyzes data for a variety of studies and reports; assists in preparation of departmental budgets; maintains and balances records of fee charges, collections, and refunds, reconciles and makes deposits to accounts.
3. Serves as risk-manager; coordinates health benefits, Workers' Compensation, SDI and Unemployment claims; coordinates safety (SB 198) program, Americans with Disabilities Act implementation, Blood-borne pathogens, other.
4. Serves as finance officer/technician; reconciles receipts and computer audit trails, maintains ledger, tracks accounts from departments; monitors and maintains accounts/investments; plan, implement and monitor general accounting functions, including computer processing so same; prepares treasurer's reports.
5. Coordinates special projects and provides support for commissions; responds to planning inquiries, sets up planning files; coordinates ADA personnel and facilities projects, AB 1600 study, Fire Department tax study; various analytical studies to assure fiscal/organizational efficiency.



OFFICE OPERATIONS SUPERVISOR/CITY CLERK
Page 2

6. Performs other tasks/duties needed to complete Core or Marginal duties, consistent with departmental duty statements.

EMPLOYMENT STANDARDS:

Knowledge of:

State, City and County laws governing the acceptance, filing and recording of documents, administration of elections. Legal requirements governing the maintenance and destruction of documents used in transactions. Laws and regulations affecting the issue of licenses and maintenance of vital statistics.

Bookkeeping, posting and balancing and audit procedures; arithmetic, filing, recordkeeping and general office procedures; the operation of office equipment; familiarity with standard purchasing, cash records and payroll procedures and with financial records and procedures. Basic supervision, personnel administration, budgeting.

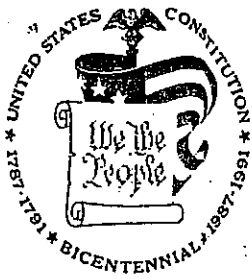
Ability to:

Meet the physical, mental and environmental demands of the position as per the Job Analysis Summary (qv).

Make statistical arithmetic calculations and check written and statistical records quickly and accurately; work independently; present written and oral reports; post, total and balance accurately and rapidly; use good English; deal effectively, interact with employees, managers, Council and the public, analyze and interpret and compile statistical and policy reports; work on a variety of tasks and meet deadlines; utilize pc or other computer to generate statistical or written reports; provide clear and concise direction to subordinate staff, information to public and Council, maintain current knowledge of program rules, regulations, requirements and restrictions, analyze situations accurately and adopt an effective course of action, plan and organize work, meet schedules and time lines, negotiate with department heads, contractors and others regarding budgets and costs.

Education and Experience:

Any combination of education and experience may be qualifying, however, the standard is : graduation from high school, with advance study in community college or university with emphasis on public accounting, supervision, administration or closely related field and three years increasingly responsible experience with a governmental agency.



CITY OF NEVADA CITY

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MEMORANDUM

TO: Cathy Wilcox-Barnes, Office Operations Supervisor
FROM: Mark Miller, City Manager *Mark Miller*
COPY: Jim Anderson, City Attorney
RE: Notice of Placement on Administrative Leave
DATE: April 25, 2006

Please take notice that effective immediately, which is 9:15 AM on April 25, 2006, I am placing you on administrative leave from your appointed position of Office Operations Supervisor. This placement on mandatory leave is made for valid business reasons and to assure that the furtherance of the mission of this agency is being realized in an effective, efficient and reasonable manner. The City has sufficient reason to conduct an evaluative Program Review of the functions and responsibilities assigned/assumed by the Office Operations Supervisor position. You shall be given the opportunity to remove personal belongings, under supervision, from your office area and must turn in all City keys, access codes, and advise the location of City materials, if any, that have been stored or situated at another location, such as your home.

During this period of your mandatory scheduled absence you shall be paid your regular salary without loss of pay and without charge to your leave bank. During this leave you are directed (1) not to contact any City employee or elected official concerning matters related to your administrative leave or to interfere in any manner in the Program Review of the Office Operations Supervisor functions, responsibilities and products ;(2) You should check in with my office telephonically or by E-Mail every week to advise of your location and receive an update on your status;(3) You may be required by my office to respond to certain queries arising out of the course of the Program Review (4) You will be provided limited office space and necessary assistance upon direct written request to my office for any records to enable you to fulfill your elected duties as City Clerk, only. All other regular duties are to be abnegated during this period of administrative leave.

This leave is not disciplinary, and the results of the Program Review will be made available upon its completion. Nonetheless, a failure to adhere to the conditions of leave may result in disciplinary action being taken irrespective of the results of the Program Review of the Office Operations Supervisor's functions.

If you have any questions, please call the City Manager at (530) 265- 2496 or the City Attorney at (530) 265-9479.



PROTECTING AN EMPLOYEE'S RIGHTS AND THE TAXPAYERS' DOLLARS

Mark Miller, City Manager

There has been some speculation in the newspaper and the street about the recent placement on administrative leave of the Office Operations Supervisor in Nevada City. Let me re-emphasize, the employee has had no disciplinary action taken against her; she has been placed on Administrative Leave with Pay while an independent program review is underway. She has retained an attorney who has probably advised her of the inappropriateness of engaging in "self-help," and the employee has been cautioned by the City in writing not to interfere with its objective program review, which shall be made fully available upon completion. The employer, in this case the City of Nevada City through the City Manager, has the obligation to protect both the employee's rights and the taxpayers' dollars. It is not an easy balancing act, but it is the City Manager's responsibility.

The public has the right to know that its fiscal and operational interests are being served effectively, and that is at the core of the program review. Although the Office Operations Supervisor position has an "at will" employment status, subject to service at the discretion of the City Manager, the City has nonetheless undertaken an objective review of the Office Operations Supervisory functions before determining an appropriate course of action. With respect to numerous efforts on the part of the City to provide the employee with professional outside assistance, to ensure that the public's fiscal and operational interests are being served, the employee has resisted and failed to cooperate adequately with them. The most recent action of placing the employee on Administrative Leave with Pay, was taken following a preliminary review of complaints and concerns made to the City Manager regarding the Office Operations Supervisor's duties.

After an internal review, in March 2006 the City Attorney asked an outside professional to make a preliminary review of the concerns raised. Based upon the independent findings it was determined that substantial reasons justified further review. The further program review measures are in progress and it would be premature to release findings at this time. But be assured that an objective process will be followed to protect the public's best interests, and the employee.



Calculation of Plaintiff's Overtime Hours from Timesheets.

"AE" = Administrative Time Earned (from timesheets).

"AL" = Administrative Time Used (from timesheets).

\$27.09 = Plaintiff's Hourly Rate from 4/10/04 to 6/30/05,
or \$40.64 an hour at time-and-a-half.

\$28.45 = Plaintiff's Hourly Rate from 7/1/05 to 4/25/06 (termination),
or \$42.68 at hour at time-and-a-half.

2004: \$16,022.32.

460.25 "AE" Hours, Minus 66 "AL" Hours = 394.25 Hours Owed.
Times time-and-a-half (\$40.64) = \$16,022.32.

2005: \$19,353.14.

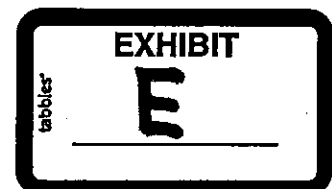
(a) from 1/1/05 to 6/30/05: 307.50 "AE" Hours, Minus 13.50 "AL" Hours = 294
Times time-and-a-half (\$40.64) = \$11,948.16

(b) from 7/1/05 to 12/31/05: 240 "AE" Hours, Minus 66.50 "AL" Hours = 173.50
Times time-and-a-half (\$42.68) = \$7,404.98.

2006: \$5,335.00. (to 4/25/06)

158.50 "AE" Hours, Minus 33.50 "AL" Hours = 125 Hours Owed
Times time-and-a-half (\$42.68) = \$5,335.00.

\$40,710.46 = TOTAL OVERTIME WAGES DUE FROM 4/10/04 TO 4/25/06



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4 **VERIFICATION**
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6

7 I, Cathy Wilcox-Barnes, do hereby declare:

8 I am the Plaintiff in the above-entitled action. I have read the foregoing
9
10 "Verified Complaint for Due Process & Whistleblower Violations, Wrongful
11 Termination, Defamation, and Related Causes of Action" and know the contents
12 thereof. The same is true of my own knowledge except as to those matters which are
13 alleged on information and belief and as to those matters, I believe them to be true.
14

15 I declare under the penalty of perjury that the foregoing is true and correct to
16 the best of my knowledge and is executed in Nevada City, Nevada County, in the
17 state of California on the 2nd day of April, 2007.
18
19

20 
21 Cathy Wilcox-Barnes
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