

1 John Houston Scott (SBN 72578)
2 **SCOTT LAW FIRM**
3 1388 Sutter Street, Suite 715
4 San Francisco, California 94109
5 Telephone: (415) 561-9601
6 Facsimile: (415) 561-9609
7 E-mail: john@scottlawfirm.net

8 Attorneys for Plaintiffs ANNABEL BOBBITT,
9 FREDERICK MICHAEL BOBBITT, and
10 TAYLOR BOBBITT

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA –HAYWARD DIVISION

ANNABEL BOBBITT, FREDERICK
MICHAEL BOBBITT and TAYLOR
BOBBITT,

Plaintiff,

v.

CITY OF FREMONT and DOES
1-25, inclusive

Defendants.

Case No.

COMPLAINT FOR DAMAGES

(Wrongful Death/ C.C.P. §377.60 et seq.)

JURY TRIAL DEMANDED

1 Plaintiffs, ANNABEL BOBBITT, FREDERICK MICHAEL BOBBITT and TAYLOR
2 BOBBITT, allege as follows:

3 PARTIES

4 1. Plaintiff, ANNABEL BOBBITT, is the wife and widow of decedent Frederick H.
5 Bobbitt, Jr. aka Captain Fred Bobbitt.

6 2. Plaintiff, FREDERICK MICHAEL BOBBITT, is the son of decedent Frederick H.
7 Bobbitt, Jr. aka Captain Fred Bobbitt.

8 3. Plaintiff, TAYLOR BOBBITT, is the daughter of decedent Frederick H. Bobbitt,
9 Jr. aka Captain Fred Bobbitt.

10 4. Defendant CITY OF FREMONT (hereafter “the City”) is a municipal corporation
11 located in the County of Alameda, State of California.

12 5. In doing the acts or omissions complained of the City of Fremont’s officials,
13 agents and employees, acted or failed to act in the course and scope of their employment and/or
14 official positions. In addition, they acted in concert and/or in coordination with one another.

15 6. Plaintiffs are ignorant of the true names and capacities, whether individual,
16 corporate or otherwise of DOES 1 through 25 herein, and prays for leave of Court to insert the
17 true names and capacities of such Defendants when they become known or ascertained together
18 with appropriate charging allegations.

19 STATEMENT OF FACTS

20 7. Frederick Bobbitt, Jr. joined the City of Fremont Police Department in 1985 as a
21 police explorer. He was hired as a full-time employee on February 1, 1990. He served as a
22 Detention Technician, Detention Supervisor, Patrol Officer, Robbery/Homicide OIS Detective
23 Sergeant, Lieutenant, Captain, and Acting Chief. He was highly decorated, including being
24 selected as “Officer of the Year” in 2004, and a “Community Hero” Honoree by the California
25 State Assembly. He was most proud of founding the “Building Bridges Program” which allowed
26 more than 9,000 6th graders of the Fremont Unified School District to build relationships with
27 Fremont Police employees.
28

1 8. Frederick Bobbitt, Jr. spent countless hours volunteering in the community and
2 mentoring police officers on his own time. He was everyone’s “fix it man.”

3 9. Frederick Bobbitt, Jr. was promoted to Captain on August 9, 2015. He had an
4 unblemished record and a history of positive performance evaluations. It was anticipated he
5 would be promoted to Chief upon the retirement Chief Kim Peterson. (Add??)

6 10. Things changed dramatically in September 2020. Chief Kim Peterson advised
7 Captain Bobbitt that the City Manager Mark Danaj was upset with him and did not like him. This
8 stemmed from Captain Bobbitt’s refusal to violate the Meyers-Milias-Brown Act while
9 negotiating in good faith with the Fremont Police Association during the summer of 2019. Rather,
10 he corrected misstatements made by City Manager Danaj to the City Council.

11 11. In September 2020, at the request of City Manager Danaj, Chief Peterson told
12 Captain Bobbitt to come up with an early exit plan. In October 2020 Captain Bobbitt was
13 presented with a separation agreement drafted by the City Attorney. (See Exhibit A attached).

14 12. When he rejected the separation agreement he was (1) removed from his position
15 leading the Patrol Division, (2) reassigned to an undefined administrative position and (3) placed
16 on a performance improvement plan (PIP) that would be retained for one year. This would result
17 in the PIP still being in effect during any Chief selection process, which would be potentially
18 disqualifying.

19 13. The retaliation by the City of Fremont continued. On March 22, 2021 Captain
20 Bobbitt submitted a complaint of discrimination and retaliation to the Department of Fair
21 Employment and Housing. (See Exhibit B attached). In or about in March/April 2021 City
22 Manager Danaj, with the knowledge and consent of the Mayor and other City officials,
23 announced his decision to appoint Sean Washington, a less experienced Captain mentored by
24 Captain Bobbitt, as the new Chief effective upon Chief Peterson’s retirement.

25 14. On or about April 19, 2021 the Officers for Justice sent a letter to Mayor Lily Mei
26 and members of the City Council in support of Captain Bobbitt - protesting his reassignment and
27 requesting an independent investigation of the City Manager’s personnel decision. (See Exhibit
28 C attached).

1 15. On or about May 19, 2021 Captain Bobbitt filed a claim of ongoing retaliation and
2 other violations with the City of Fremont. (See Exhibit **D** attached).

3 16. In August 2021 the arbitration convened regarding a union grievance made on
4 behalf of Captain Bobbitt in April 2021 pursuant to the MOU between the Fremont Police
5 Managers Association and the City of Fremont.

6 17. On or about October 2021 Chief Peterson retired and Captain Sean Washington, a
7 less qualified candidate who was mentored by Captain Fred Bobbitt, was appointed Chief of
8 Police despite the fact that City Officials and members of the Police Department knew that
9 Captain Bobbitt was more experienced and better qualified for the position. He was also more
10 respected in the community.

11 18. On December 14, 2021 Arbitrator Rence Mayne issued her opinion and award.
12 She found there was clear and convincing evidence that City Manager Danaj and Police Chief
13 Peterson violated the City's anti-retaliation policy. The award was intended to make Captain
14 Bobbitt whole by restoring the status quo. This included (1) rescinding the PIP, (2) expunging all
15 adverse comments in Captain Bobbitt's personnel file and (3) immediately returning Captain
16 Bobbitt to his position leading the Patrol Division. (See Exhibit **E** attached).

17 19. City officials including Mayor Lily Mei, City Manager Karena Shackleford and
18 Police Chief Sean Washington did not schedule a meeting with Captain Bobbitt or take any action
19 to design and implement a plan to make Captain Fred Bobbitt whole. Rather, they circled the
20 wagons. Captain Bobbitt was reassigned to the Patrol Division without acknowledging how the
21 former City Manager and Police Chief, with the knowledge and consent of other City officials,
22 had caused serious, if not irreparable, damage his career. This was the opportunity to make him
23 whole and, to the extent possible, undo the damage to his career.

24 20. There was no apology and no contrition despite the fact that the former City
25 Manager Danaj and former Chief of Police Peterson were exposed as wrongdoers and left City
26 employment under a cloud of suspicion. Mr. Danaj is now facing criminal charges. The retaliation
27 continued unabated - even after the City received the binding decision of the Arbitrator finding
28 clear and convincing evidence existed that the City's anti-retaliation policy had been violated by

1 top City officials. Captain Bobbitt was stigmatized for complaining about retaliation and
2 challenging top City officials. For this he deserved retribution, not justice.

3 21. On January 15, 2022 Captain Bobbitt sent an email to Chief Sean Washington
4 asking him to respond to a statement former Chief Kim Peterson made to him (Bobbitt) after City
5 Manager Denaj announced Sean Washington would be named as Fremont's next police chief.
6 "Fred, I was talking to Sean about 'all of this' and he (Sean) said he believes we (Kim, Mark and
7 Brian) were within our rights to do this to you (put me on a PIP, create a division for me and
8 force me out as patrol commander because I refused a forced retirement). Sean my question to
9 you is did you state this to Kim (Chief Peterson)? I think about Kim's comment daily and just
10 really need to know if it is true."

11 22. In a rambling and defensive reply Sean Washington proceeded to provide context,
12 background and his perspective. (See Exhibit F attached). He admitted that during the **binding**
13 arbitration process he was included in high level briefings regarding the City's defense to
14 Bobbitt's allegations of retaliation. In relation to the PIP and reassignment he states he did not
15 witness any performance deficiencies. Yet, he could see a scenario where Chief Kim Peterson
16 felt it was an appropriate and necessary management tool. This email can be fairly characterized
17 as an awkward admission that Sean Washington agreed to go along with the PIP and
18 reassignment plan, and defend it, in exchange for being named the new Chief. It is clearly
19 implied that the City Manager had a right to retaliate after Captain Bobbitt rejected the retirement
20 offer proposed by the City Manager and City Attorney that included a forced resignation. (See
21 Exhibit A)

22 23. This was the ultimate betrayal by a man he thought was his friend and the man he
23 mentored. Frederick Bobbitt, Jr. was principally responsible for sponsoring and promoting Sean
24 Washington's career in the Fremont Police Department. Rather than embrace and enforce a
25 binding and enforceable "order" from the arbitrator, Chief Washington chose to stay "neutral"
26 and pretend nothing had happened. There was no need to apologize and remedy a wrong because
27 Captain Bobbitt "had it coming."
28

1 24. On January 31, 2022 Captain Bobbitt received an email from the California
2 Department of Fair Employment and Housing notifying him that the City of Fremont declined
3 mediation regarding his May 2021 retaliation complaint. (See Exhibit G attached).

4 25. On or about February 10, 2022 the City of Fremont announced it would be
5 conducting an unprecedented national search to hire a Deputy Chief. (See Exhibit H attached). It
6 was common knowledge among City officials including Mayor Mei, City Manager Shackelford,
7 Chief Washington, members of the Police Department and members of the community that
8 Captain Bobbitt was over-qualified, and most deserving, for appointment to the position

9 26. The City of Fremont was on notice that Captain Bobbitt was seeking treatment for
10 work related psychological and emotional injuries as a result of the ongoing retaliation.

11 27. During the weekend of February 19 -20, 2022 Captain Bobbitt had a phone
12 conversation with Chief Washington.

13 28. On the morning of Monday, February 21, 2022 Captain Bobbitt got up for work
14 and told his wife, Annabel, that he did not think he could go to work. He told her that if he went
15 to work, he feared Sean Washington would have him 5150'd. This would be the ultimate
16 disgrace.

17 29. Later that morning at approximately 8:30 am Captain Bobbitt, without any
18 warning, took his own life. He did not leave a suicide note. He responded to an uncontrollable
19 impulse and did not have the power to control his acts.

20 30. The City of Fremont is responsible because officials for the City of Fremont
21 including, but not limited to the Mayor, the City Manager and the Chief of Police intended to and
22 did cause serious and severe emotional distress that was a substantial factor in bringing about the
23 wrongful death. *Tate v. Canonica*, 180 Cal.App.2d 898 (1960).

24 31. On August 16, 2022 Plaintiffs timely brought a 6-months tort claim prior to
25 bringing this action. The claim is deemed denied.

26
27
28

1 DAMAGES

2 29. Plaintiffs are the widow and children (the surviving heirs) of decedent Frederick
3 Bobbitt, Jr. They seek noneconomic damages for the loss of familial association, society, comfort,
4 and affection in an amount to be determined according to proof.

5 21. As a further result of the acts and omissions of the defendant, the plaintiffs have
6 suffered and will continue to suffer economic damages, including but not limited to lost income,
7 support and benefits, in an amount to be determined according to proof.

8 22. As a further result of the acts and omissions of the defendant, the plaintiff Annabel
9 Bobbitt has suffered a loss of retirement benefits as a widow based on (a) the denial of
10 promotions and career opportunities, (b) the increased retirement benefits had Captain Bobbitt
11 retired after more years of service and (c) the reduction in retirement benefits because of his
12 death. For example, had Captain Bobbitt been promoted to Deputy Chief and retired in 2030 his
13 retirement benefits, that would be shared with his wife, would be substantially greater than the
14 retirement benefits now received by his widow because of his February 2022 death. Said
15 damages will be sought in an amount to be determined according to proof.

16 FIRST CAUSE OF ACTION
17 **(Wrongful Death- California Civil Code § 377.60)**

18 23. The Plaintiffs refer to and incorporate by reference all paragraphs above.

19 24. The City of Fremont, by and through its employees and officials, intentionally and
20 negligently acted and failed to act for the purpose of causing Captain Bobbitt to suffer severe
21 emotional distress. The goal was to force Captain Bobbitt to voluntarily separate from his position
22 with the Fremont Police Department, damage his career and reputation, and abandon his
23 retaliation claims, i.e., chill his speech.

24 25. These acts and omissions did cause Captain Fred Bobbitt to suffer severe
25 emotional distress. The emotional distress was a substantial factor in causing Captain Bobbitt to
26 commit suicide by responding to an uncontrollable impulse he could not control.

27 WHEREFORE, plaintiffs pray for relief as set forth herein.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY DEMAND

Plaintiffs hereby demand a jury trial.

PRAYER FOR RELIEF

The Plaintiffs pray for relief as follows:

1. For general and compensatory damages according to proof;
2. For economic damages according to proof;
3. For an award of costs as permitted by law; and,
4. For such other and further relief as the Court may deem necessary and appropriate.

Dated: October 31, 2022

SCOTT LAW FIRM

By: 
John Houston Scott
Attorney for Plaintiffs

Exhibits to Complaint

EXHIBIT

A	October 2020 Agreement and General Release
B	2021-03-22 Berry Wilkinson Law Group Letter to Dept. of Fair Employment & Housing
C	2021-04-19 Officers For Justice Letter to Mayor Lilly Mei & Councilmembers
D	2021-05-19 Claim Against the City of Fremont Form
E	2021-12-14 Renee Mayne, Arbitrator Letter to Lim, Margolis & Hoffman
F	2022-01-15 E-mail exchange between Frederick Bobbitt and Sean Washington
G	2022-01-31 E-mail from Frederick Bobbitt to Robin Blackwell
H	February 2022 Fremont Police Deputy Chief Job Announcement

Exhibit A

**AGREEMENT
AND GENERAL RELEASE
BETWEEN THE CITY OF FREMONT AND
FREDERICK BOBBITT**

This Agreement and General Release (hereafter "Agreement") is entered into by and between the City of Fremont ("City") and Police Captain Frederick Bobbitt ("Bobbitt" or "Employee"). City and Bobbitt are collectively referred to as the "Parties" and individually as a "Party." The effective date of the Agreement is October __, 2020 ("Effective Date").

WHEREAS, Bobbitt has been employed by the City since February 1, 1990 most recently in the position of Police Captain;

WHEREAS, in order to facilitate Bobbitt's transition from City employment and to settle fully and finally all differences that may exist between them, the Parties have reached the mutual decision to end their employment relationship on the terms and conditions outlined in this Agreement;

WHEREAS, the intent of this Agreement is to mutually and amicably resolve and compromise all issues and claims concerning Bobbitt's employment with the City of Fremont including all actions and conduct occurring during and/or in connection with his employment with the City and the separation thereof;

WHEREAS, the execution of this agreement affirms that Bobbitt is separating from City service in good standing; and

WHEREAS, the execution of this Agreement is not, in any way, an admission by either Bobbitt or the City of Fremont of any fault, wrongdoing, or liability.

NOW, THEREFORE, the Parties agree as follows:

1. The City accepts Employee's resignation, with the understanding that Employee's last day of employment is December 30, 2020.
2. Employee shall receive a severance payment in the amount of **\$99,070.28** ("Severance Payment"), which is equal to four (4) months of his current salary and specialty pays (\$93,870.28) and four (4) months of consideration for health benefits (\$5,200.00), subject to the appropriate state and federal tax deductions. Said sum shall be conveyed through payroll via direct deposit to the employee's authorized financial account of record, and reported on a W-2 provided Employee has not revoked the Agreement pursuant to paragraph 14. Said payment, along with any conventional end of employment or retirement benefits conferred by employee's bargaining unit agreement(s) shall represent all monies owed to Bobbitt by City, and Bobbitt does not have any other claim for any other monies or compensation in connection with his employment.

3. Bobbitt acknowledges and agrees that the City has made no representations to him regarding the tax consequences of any amounts received pursuant to this Agreement. The parties agree that in the event any taxing authority determines that any settlement monies tendered as part of this Agreement are taxable, Employee shall be solely responsible for the payment of all such taxes and penalties assessed against him, and that, the City has no duty to defend Employee against any such tax claim, penalty or assessment. Employee further agrees to indemnify the City, in the event any taxing authority seeks payment from the City, of any taxes, interest, penalties or assessments owed by Employee, and to hold the City harmless to the fullest extent allowed by law.
4. In exchange for the valuable consideration and compromises set forth in this Agreement, Employee, on behalf of himself, his heirs, executors, administrators and assignees, hereby fully and forever releases and discharges the City, including its past and present City Council members, employees, officers, directors, trustees, agents, attorneys, and assigns (collectively "Released Parties"), and each of them, of and from any and all rights, claims, actions, demands, contracts, liabilities, damages, claims of omissions, or causes of action, of whatever kind or nature, kind and description, in law, equity, or otherwise, whether or not now known or unknown, which heretofore do or may exist, in any way arising out of, connected with or related to Bobbitt's employment with City, and the negotiation, terms and execution of this Agreement, up to and including the Effective Date. These released claims include without limitation:
 - a. Any and all claims for salary and/or benefits;
 - b. Any and all claims for wrongful or constructive discharge;
 - c. Any and all tort claims of any nature including but not limited to claims of defamation, invasion of privacy, misrepresentation, fraud or negligent or intentional infliction of emotional distress;
 - d. Any and all claims arising from federal, state, or municipal law, including without limitation violation of the provisions of the California Labor Code, City of Fremont rules, contracts, or enactments, claims under the California Fair Employment and Housing Act, the Americans with Disabilities Act, the Rehabilitation act, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, and 42 U.S.C. sections 1981 and 1983, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act the Equal Pay Act, the Fair Labor Standards Act, or any other laws and regulations relating to employment; and, any and all claims of discrimination and/or harassment whether allegedly based upon age, race, gender, sex, sexual orientation, religion or any other basis;

- e. Any and all grievances or other claims under the City of Fremont Personnel Rules or any other City policies.
- f. Any and all claims arising under common law, including but not limited to those for breach of contract, interference with contractual relationships, interference with prospective economic advantage, or defamation; and
- g. Any and all claims for attorneys' fees and court costs connected with or arising from the above-listed claims.

The release contained in this paragraph 4 is a complete and general release that will forever bar Bobbitt from pursuing any claims or rights against any Released Party, except those which cannot by law be waived.

- 5. Bobbitt warrants that he is not a plaintiff, complainant, claimant, or party in any suit, action, legal proceeding, or administrative proceeding relating to the released claims in which any Released Party is a named party. Bobbitt further agrees that if any such claim is prosecuted in his name, on his behalf or for his benefit before any court or administrative agency, he waives any right to and agrees not to take any award of money or other damages from such action.
- 6. This Agreement and Release shall be binding upon Employee, his heirs, administrators, representative, executors, successors and assignees, and shall inure to the benefit of the City, its officers, agents, employees, attorneys, and each of them to their respective successors and assigns. Bobbitt understands and expressly agrees that this Agreement and the releases contained herein extend to all claims of any kind, known or unknown, suspected or unsuspected, past, present or future, arising out of, connected with, or related to Bobbitt's employment at the City of Fremont, and the negotiation, terms and execution of this agreement, up to and including the effective date and that any and all rights under Section 1542 of the California Civil Code or any analogous state law or federal law or regulation are hereby expressly waived. Section 1542 of the California Civil Code, as amended, reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Bobbitt hereby agrees to accept and assume the risk that any fact with respect to any matter in this Agreement may hereafter be found to be other than or different from the facts he believes at the time of this Agreement to be true, and he agrees

that this Agreement shall be and will remain effective notwithstanding any such differences in fact. ____ (INITIAL)

7. Employee warrants that he has not assigned any claim released herein or authorized any other person or entity to assert any such claim on his behalf. Further, Employee agrees to waive any claim for damages incurred at any time after the effective date of this Agreement because of alleged continuing effects of any alleged wrong-doing involving the City and Employee which occurred on or before the date of execution of this Agreement and any right to sue for injunctive relief against the alleged continuing effects of such conduct based on alleged acts or omissions occurring prior to the date of execution of this Agreement.
8. Employee acknowledges that prior to signing this Agreement, he was provided the opportunity to consult with legal counsel of his choice and that he is voluntarily entering into this Agreement and not relying on any representations made by the City of Fremont except as expressly provided herein. The Parties acknowledge that this Agreement constitutes a single integrated Agreement expressing the entire Agreement between the Parties, and that it supersedes any prior oral or written agreements, and that it may be modified only by a writing signed by all Parties to this Agreement.
9. In the event that the parties incur legal expenses to enforce or interpret any provision of this agreement, each side shall bear their own attorneys' fees. This Agreement is made and entered into pursuant to the laws of the State of California and shall in all respects be interpreted, construed, governed and enforced in accordance with the laws of the State of California.
10. Bobbitt agrees not to disparage the City of Fremont's Police Chief, Police management staff, City Council or the City's executive managers. Should potential employers contact the City for a reference, the request shall be referred to the Human Resources Director. The Human Resources Director shall provide the following information: the Employee's dates of employment, last held position; and that Employee resigned in good standing. The City shall not provide additional information unless Employee has authorized access through a fully executed written authorization/release. This section shall not be construed to require the City to do anything contrary to local, state, or federal law. In the event that Employee files and is eligible for unemployment insurance benefits, the City will not contest any such claim for unemployment insurance benefits.
11. Employee agrees not to publicize or disclose or cause or knowingly permit or authorize the publication or disclosure of the terms and financial amounts of this Agreement to any person, firm, organization, or entity of any type, public or private, for any reason, at any time. Employee further agrees not to disclose any confidential, attorney-client privileged information he may have obtained in the course and scope of his employment with the City of Fremont. Notwithstanding the above, Employee shall make any disclosure required by law. Also, Employee may disclose the settlement terms to his spouse, attorneys, and tax advisor. Those

individuals shall be advised that this confidentiality provision applies to any such disclosure, and Employee agrees to use his efforts to secure non-parties agreement not to divulge such information. Employee agrees to use his best efforts to prevent any prohibited disclosure.

12. The City agrees that with the exception of those City Officials required to approve this Agreement and those City employees required to execute this Agreement, the terms, financial conditions and negotiations leading to this Agreement shall remain confidential to the extent permitted by law. The City further agrees that this Agreement shall not be maintained in Employee's personnel file but shall be kept under separate cover in a confidential file at the Office of the Human Resources Director, prominently marked "CONFIDENTIAL".
13. In connection with the Age Discrimination in Employment Act ("ADEA"), which prohibits discrimination against older workers in a variety of different contexts, Bobbitt acknowledges that the City has advised him to consult with an attorney prior to signing this Agreement. As set forth in the ADEA, 29 U.S.C. Section 626(f)(1), Bobbitt hereby acknowledges the following: (1) that this Agreement is written in a manner calculated to be understood by Bobbitt and that Bobbitt in fact understands the Agreement; (2) that this Agreement specifically refers to and waives rights or claims arising under the ADEA; (3) that this Agreement applies only to claims arising up to and including the date that Bobbitt signs this Agreement; (4) that in exchange for this Agreement, Bobbitt received consideration in addition to anything of value to which he already is entitled; (5) that the City has advised Bobbitt in writing to consult with an attorney before executing the Agreement; and (6) that Bobbitt has been provided with an adequate period of time to review this Agreement. Bobbitt further acknowledges that Bobbitt is entitled to consider this Agreement for twenty-one (21) days before signing and that Bobbitt expressly waives this notice period and confirms that he has made a knowing and voluntary decision to sign this Agreement before expiration of the twenty-one (21) day period. Bobbitt may revoke this Agreement for a period of seven (7) days after executing the Agreement. Any such revocation must be communicated in writing to email address MDanaj@fremont.gov and to City Manager, City of Fremont, 3300 Capitol Avenue, Fremont, CA 94538, within the seven-day revocation period. This Agreement shall not become effective or enforceable until the revocation period has expired. No payments shall be made pursuant to this Agreement prior to expiration of this revocation period. _____
(INITIAL)
14. This Agreement is entered into with the understanding that it is non-precedent setting and shall not be referred to nor relied upon in any other matter involving any other employee. The City and Employee in making this Agreement warrant that this Agreement, including any and all references to the settlement terms, may not be cited as precedent or past practice in any other action, or the appeal or arbitration thereof, involving any other employee.

15. If any clause or provision herein shall be found invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision, which shall remain in full force and effect.

16. Bobbitt acknowledges that he has read and understands this Agreement and that he agrees to its terms and signs this Agreement voluntarily and without coercion. Bobbitt further acknowledges that the release and waivers he has made herein are knowing, conscious and with full appreciation that he is forever foreclosed from pursuing any of the rights or claims so released or waived.

17. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which shall constitute one single instrument. The Parties agree that their signatures on any facsimile or electronic transmission thereof shall be fully binding upon them in the same manner as if the Parties had each signed a single original document.

AGREED:

Dated: _____

Mark Danaj, City Manager

Dated: _____

Frederick Bobbitt

Dated: _____

Attorney for Bobbitt (optional)

APPROVED AS TO FORM:

Dated: _____

City Attorney

Exhibit B

Berry | Wilkinson | Law Group

Alison Berry Wilkinson
alison@berrywilkinson.com

March 22, 2021

Via United States Priority Mail [Tracking No. 9410 8118 9956 0380 9997 75]

Department of Fair Employment and Housing
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758-7178

**Re: *DFEH Complaint Intake Form
for Fremont Police Captain Frederick H. Bobbitt, Jr.***

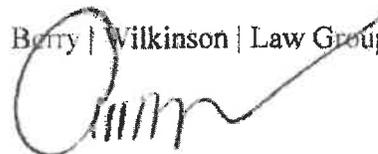
Dear Department of Fair Employment and Housing:

Enclosed please find the Intake Form (Employment) with the complaint of discrimination and retaliation submitted by Fremont Police Captain Frederick H. Bobbitt, Jr. He requests that DFEH conduct an investigation of his claims.

Please do not hesitate to contact me if you have any questions or concerns related to this matter.

Very truly yours,

Berry | Wilkinson | Law Group



Alison Berry Wilkinson

Cc: Frederick H. Bobbitt, Jr.



**CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
INTAKE FORM
EMPLOYMENT**

The completion and submission of this Intake Form will initiate an intake interview with a Department of Fair Employment and Housing (DFEH) representative. The Intake Form is not a filed complaint. The DFEH representative will determine if a complaint can be accepted for investigation. Your submission of this document acknowledges that you have read and agree to the DFEH's Privacy Policy.

COMPLAINANT:

NAME:
Frederick H. Bobbitt, Jr. (Care of Alison Berry Wilkinson)

TELEPHONE NUMBER:
415.259.6638

ADDRESS:
Care of: Berry Wilkinson Law Group, 165 N. Redwood Dr. Ste. 206

EMAIL ADDRESS:
alison@berrywilkinson.com

CITY/STATE/ZIP:
San Rafael, CA 94903

Do you need an interpreter during the complaint process? Yes No

If yes, indicate language _____

RESPONDENT:

NAME:
CITY OF FREMONT and its City Manager MARK DANAJ

TELEPHONE NUMBER:
(510) 284-4000

ADDRESS:
3300 Capital Avenue, Building A

CITY/STATE/ZIP:
Fremont, CA 94538

NUMBER OF EMPLOYEES: Approx. 900

TYPE OF EMPLOYER: Public Entity - City

ADD CO-RESPONDENT:

NAME: FREMONT POLICE DEPARTMENT and its Police Chief KIMBERLY PETERSON

TITLE: 2000 Stevenson Blvd.

ADDRESS: Fremont, CA 94538

TELEPHONE NUMBER: (510) 790-6811

DATES OF HARM:

FIRST DATE OF HARM (Month/Day/Year): September 24, 2020

LAST DATE OF HARM (Month/Day/Year): March 22, 2021

1. I ALLEGE THAT I EXPERIENCED: Discrimination Harassment

BECAUSE OF MY ACTUAL OR PERCEIVED:

- Age (40 and over)
- Ancestry
- Association with a member of a protected class
- Color
- Disability (physical or mental)
- Family Care and Medical Leave (CFRA) (employers of 5 or more people) includes serious health condition of employee or family member, child bonding, and military exigencies.
- Gender Identity or Expression
- Genetic Information or Characteristic
- Marital Status
- Medical Condition (cancer or genetic characteristic)
- Military and Veteran Status
- National Origin (includes language restrictions)
- Pregnancy, childbirth, breastfeeding, or related medical conditions
- Race
- Religious creed (includes dress and grooming practices)
- Sex/Gender
- Sexual harassment – hostile environment
- Sexual harassment – quid pro quo
- Sexual orientation
- Other (specify) _____

AS A RESULT, I WAS:

- Asked impermissible non-job-related questions
- Demoted
- Denied accommodation for pregnancy
- Denied accommodation for religious beliefs
- Denied any employment benefit or privilege
- Denied employer paid health care while on pregnancy disability leave
- Denied equal pay (includes violations of the Equal Pay Act)
- Denied Family Care and Medical Leave (CFRA) (employers of 5 or more people) includes serious health condition of employee or family member, child bonding, and military exigencies.
- Denied hire or promotion
- Denied or forced to transfer
- Denied reasonable accommodation for a disability
- Denied the right to wear pants
- Denied work opportunities or assignments
- Forced to quit
- Laid off
- Reprimanded
- Suspended
- Terminated
- Other (specify) Placed on a Performance Improvement Plan

I ALLEGE THAT I EXPERIENCED: Retaliation

BECAUSE I:

- Participated as a witness in a discrimination or harassment complaint
- Reported or resisted any form of discrimination or harassment
- Reported patient abuse (hospital employees only)
- Requested or used a disability-related accommodation
- Requested or used a pregnancy-disability-related accommodation
- Requested or used a religious accommodation
- Requested or used Family Care and Medical Leave (CFRA) (employers of 5 or more people) includes serious health condition of employee or family member, child bonding, and military exigencies.

AS A RESULT I WAS:

- Asked impermissible non-job-related questions
- Demoted
- Denied accommodation for pregnancy
- Denied accommodation for religious beliefs
- Denied any employment benefit or privilege
- Denied employer paid health care while on pregnancy disability leave
- Denied equal pay (includes violations of the Equal Pay Act)
- Denied Family Care and Medical Leave (CFRA) (employers of 5 or more people) includes serious health condition of employee or family member, child bonding, and military exigencies.
- Denied hire or promotion
- Denied or forced to transfer
- Denied reasonable accommodation for a disability
- Denied the right to wear pants
- Denied work opportunities or assignments
- Forced to quit
- Laid off
- Reprimanded
- Suspended
- Terminated
- Other (specify) Placed on a Performance Improvement Plan

2. Do you have an attorney who agreed to represent you in this matter? Yes No
If yes, please provide the attorney's contact information.

COMPLAINANT'S REPRESENTATIVE INFORMATION

Attorney Name: Alison Berry Wilkinson (SBN 135890)

Attorney Firm Name: Berry Wilkinson Law Group

Attorney Address: 165 North Redwood Drive, Suite 206

Attorney City, State, and Zip: San Rafael, CA 94903

3. Briefly describe what you believe to be the reason(s) for the discrimination, harassment, or retaliation. (Optional)

SEE ATTACHED.

DEMOGRAPHIC INFORMATION

THIS INFORMATION IS OPTIONAL AND IS ONLY USED FOR STATISTICAL PURPOSES.

Primary Language: English

DOB: July 1, 1967

GENDER / GENDER IDENTITY:

- Male Female Non-Binary Other

MARITAL STATUS:

- Single Married Cohabitation Divorced

RACE:

- | | |
|---|--|
| <input type="checkbox"/> American Indian, Native American or Alaskan Native | <input type="checkbox"/> Native Hawaiian or Other Pacific Islander |
| <input type="checkbox"/> Asian | <input type="checkbox"/> White |
| <input checked="" type="checkbox"/> Black or African American | <input type="checkbox"/> Other |

ETHNICITY:

- Hispanic or Latino Non-Hispanic or Latino

NATIONAL ORIGIN:

- | | | | |
|--|-------------------------------------|--|---|
| <input type="checkbox"/> Afghani | <input type="checkbox"/> German | <input type="checkbox"/> Japanese | <input type="checkbox"/> Other Middle Eastern |
| <input checked="" type="checkbox"/> American [U.S.A] | <input type="checkbox"/> Ghanaian | <input type="checkbox"/> Korean | <input type="checkbox"/> Pakistani |
| <input type="checkbox"/> Asian Indian | <input type="checkbox"/> Guamanian | <input type="checkbox"/> Laotian | <input type="checkbox"/> Puerto Rican |
| <input type="checkbox"/> Bangladeshi | <input type="checkbox"/> Haitian | <input type="checkbox"/> Lebanese | <input type="checkbox"/> Salvadoran |
| <input type="checkbox"/> Cambodian | <input type="checkbox"/> Hawaiian | <input type="checkbox"/> Malaysian | <input type="checkbox"/> Samoan |
| <input type="checkbox"/> Canadian | <input type="checkbox"/> Hmong | <input type="checkbox"/> Mexican | <input type="checkbox"/> Sri Lankan |
| <input type="checkbox"/> Chinese | <input type="checkbox"/> Indonesian | <input type="checkbox"/> Nigerian | <input type="checkbox"/> Syrian |
| <input type="checkbox"/> Cuban | <input type="checkbox"/> Iranian | <input type="checkbox"/> Other | <input type="checkbox"/> Taiwanese |
| <input type="checkbox"/> Dominican | <input type="checkbox"/> Iraqi | <input type="checkbox"/> Other African | <input type="checkbox"/> Thai |
| <input type="checkbox"/> Egyptian | <input type="checkbox"/> Irish | <input type="checkbox"/> Other Asian | <input type="checkbox"/> Tongan |
| <input type="checkbox"/> English | <input type="checkbox"/> Israeli | <input type="checkbox"/> Other Caribbean | <input type="checkbox"/> Vietnamese |
| <input type="checkbox"/> Ethiopian | <input type="checkbox"/> Italian | <input type="checkbox"/> Other European | |
| <input type="checkbox"/> Fijian | <input type="checkbox"/> Jamaican | <input type="checkbox"/> Other Hispanic/Latino | |
| <input type="checkbox"/> Filipino | | | |

DEMOGRAPHIC INFORMATION

THIS INFORMATION IS OPTIONAL AND IS ONLY USED FOR STATISTICAL PURPOSES.

DISABILITY:

- | | |
|---|--|
| <input type="checkbox"/> AIDS or HIV | <input type="checkbox"/> Limbs [Arms / Legs] |
| <input type="checkbox"/> Blood / Circulation | <input type="checkbox"/> Mental |
| <input type="checkbox"/> Brain / Nerves / Muscles | <input type="checkbox"/> Sight |
| <input type="checkbox"/> Digestive / Urinary / Reproduction | <input type="checkbox"/> Speech / Respiration |
| <input type="checkbox"/> Hearing | <input type="checkbox"/> Spinal / Back / Respiration |
| <input type="checkbox"/> Heart | <input type="checkbox"/> Other Disability |

RELIGION:

- | | |
|--|---|
| <input type="checkbox"/> Agnostic | <input type="checkbox"/> Nonreligious |
| <input type="checkbox"/> Atheist | <input type="checkbox"/> Protestantism |
| <input type="checkbox"/> Bahai | <input type="checkbox"/> Primal-indigenous |
| <input type="checkbox"/> Buddhism | <input type="checkbox"/> Quakers |
| <input type="checkbox"/> Catholicism | <input type="checkbox"/> Rastafarianism |
| <input type="checkbox"/> Christianity | <input type="checkbox"/> Spiritism |
| <input type="checkbox"/> Confucianism | <input type="checkbox"/> Shinto |
| <input type="checkbox"/> Hinduism | <input type="checkbox"/> Sikhism |
| <input type="checkbox"/> Islam | <input type="checkbox"/> Taoism |
| <input type="checkbox"/> Jehovah's Witness | <input type="checkbox"/> Unitarian-Universalism |
| <input type="checkbox"/> Judaism | <input type="checkbox"/> Zoroastrianism |
| <input type="checkbox"/> Neo-Paganism | <input type="checkbox"/> Other |

SEXUAL ORIENTATION:

- Straight or Heterosexual Gay or Lesbian Bisexual Other

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT & HOUSING PRIVACY POLICY

The California Department of Fair Employment & Housing (DFEH) has adopted this Privacy Policy, effective January 1, 2017. DFEH values the security and privacy of your personal information and is committed to protecting your privacy rights. The DFEH seeks only to collect relevant personal information that enables us to assist you in investigating and resolving complaints of discrimination as prescribed by California Government Code sections 11135 et seq., 12900 et seq., and California Civil Code sections 51, 51.7, 52.5, and 54 et seq.

All personal information we collect is governed by the State of California Information Practices Act of 1977 (Civ. Code, §§ 1798-1798.78), Government Code sections 11015.5 and 11019.9, and the California Public Records Act (Gov. Code § 6250 et seq.).

Outlined below is our online Privacy Policy and Notice:

- [Legal Authority for Collection and Use of Information](#)
- [Disclosure and Sharing](#)
- [What happens to information you submit to us?](#)
- [Cookies](#)
- [Links](#)
- [Public Disclosure](#)
- [Minors](#)
- [Security](#)
- [Access and Corrections to your Personal Information](#)
- [How to contact us if you have any questions regarding this policy](#)
- [Changes to our Privacy Policy](#)
- [Effective date](#)

Legal Authority for Collection and Use of Information

We collect information that may be directly associated with a specific person. We call this "Personal Information," and it includes, names, addresses, telephone numbers and email addresses. We collect this Personal Information through lawful means from individuals who seek to file a complaint with the DFEH, and we use this information to establish jurisdiction and to conduct an investigation of any allegations of Civil Rights violations. If you seek to file a complaint, you are required to provide us with sufficient information in accordance with California Government Code sections 11135 et seq., 12900 et seq., and California Civil Code sections 51, 51.7, 52.5, and 54 et seq.

Disclosure and Sharing

We do not sell your personal information. Government Code section 11015.5, subdivision (6), prohibits DFEH and all state agencies from distributing or selling any electronically collected personal information about users to any third party without the permission of the user. Any distribution of electronically collected personal information will be solely for the purposes for which it was provided to us, as described below.

We also may share your personal information under the following circumstances:

1. You give us permission.
2. We receive a request from a party with legal authority to obtain the information, such as a subpoena.
3. As authorized by law, it is transferred to / shared with the U.S. Equal Employment Opportunity Commission, the National Labor Relations Board, the U.S. Department of Labor, the U.S. Department of Housing and Urban Development, the U.S. Department of Health and Human Services, the U.S. Department of Education, the U.S. Department of Justice, or any branch of the California State Government, or any other local or Federal agency with similar jurisdiction.
4. Non personal information, including the allegations in the complaint document itself, may be disclosed to the public under the California Public Records Act.

What happens to information you submit to us?

The Personal Information we obtain from you will be used for the purposes for which it was provided: to further the DFEH's efforts to investigate and attempt to resolve the allegations of unlawful discrimination, harassment and/or retaliation that you filed. Electronically collected Personal Information we gather about visits to our website is used to help us improve the user experience and for basic web metrics of our website.

Links

Our website may contain links to other websites on the Internet that are owned and operated by third parties. DFEH does not control the privacy policies or practices of these websites. You are advised to review the privacy policies of the third party offering the website before providing any personal information to these websites. DFEH is not responsible for the content or practices of any linked third party website and such third party websites are provided solely for the convenience and information to our visitors.

Cookies

We do not collect information such as names, addresses, and emails from individuals browsing DFEH's website. However, when you visit our website, a "cookie" may be saved on your computer. A cookie is a tiny piece of data stored by your browser that helps us recognize your unique computer and your preferences when using our website. The information DFEH automatically collects may include the type of browser used, date and time you visited the site, and web pages you visited. This information is collected to improve the user experience and for basic web metrics. The information is deleted after 30 days. This type of electronic information collection is permitted by law and is exempt from requests made under the Public Records Act.

You can refuse the cookie or delete the cookie file from your computer after you visit our website. You can find instructions for managing cookie controls on websites for particular browsers. For example:

- [Microsoft Internet Explorer browsers](#)
- [Macintosh Safari browsers](#)
- [Mozilla Firefox browsers](#)

Public Disclosure

In the State of California, laws exist to ensure that government is open and that the public has a right to access appropriate records and information possessed by state government. At the same time, there are exceptions to the public's right to access public records.

These exceptions serve various needs including maintaining the privacy of individuals. Both state and federal laws provide exceptions. All information collected at this site becomes a public record that may be subject to inspection and copying by the public, unless an exemption in law exists. In the event of a conflict between this Privacy Notice and the Public Records Act, the Information Practices Act and/or other law governing the disclosure of records, the Public Records Act, the Information Practices Act and/or other applicable law will control.

Minors

We recognize the importance of protecting privacy where minors (a person under 18 years of age) are involved. We are committed to protecting the privacy of minors and do not knowingly collect personal information from minors or create profiles of minors through our website. Users are cautioned, however, that the collection of personal information submitted online or in an e-mail will be treated as though it was submitted by an adult. DFEH strongly encourages parents, guardians and adults to be involved in the internet activities of their children or other minors they are responsible for and to provide guidance whenever minors are asked to provide personal information online. If you believe a minor has provided us with personal information, we ask that a parent or guardian contact us at 1-800-884-1684.

Security

DFEH has put security measures in place to safeguard and protect your information from unauthorized access, disclosure, and loss. Our policy limits access to personal information to employees who have an established business need for the Personal Information including those directly involved in the filing, investigation, resolution and/or litigation of your complaint. Information that is physically located within the DFEH is protected by various security measures, which may include the use of encryption software to protect the security of an individuals' personal information during transmission and storage. Personal Information is destroyed according to the DFEH's records retention policy, and we only retain these records for as long as necessary to fulfill our business need. We train our employees on procedures and management of personal information we collect as well as on taking precautions and complying with limitations on the release of personal information.

Access and Corrections to your Personal Information

You have the right to review any Personal Information we collect about you. If you request all or a portion of the Personal Information collected about you by the DFEH, we will provide you with the Personal Information requested and explain how we use the information. You may request changes to your Personal Information you believe is incorrect by submitting a written request that credibly shows the error. If you believe that your Personal Information is being used for a purpose other than what you intended when you submitted it, you may contact us so we can rectify the misuse. In all cases, we will take reasonable steps to verify your identity before granting access or making corrections.

How to contact us if you have any questions regarding this policy

If you have any questions or concerns about the information presented in this Privacy Notice, you may contact:

DFEH Privacy Officer
2218 Kausen Drive, Suite 100
Elk Grove, CA 95758
1-800-884-1684

Changes to our Privacy Policy

We may update and revise our Privacy Policy. We will post any privacy policy changes on this page and, if the changes are significant, we will provide a more prominent notice.

Effective date

January 1, 2017

ATTACHMENT (1)

ATTACHMENT TO DFEH INTAKE FORM
Item 3

Captain Bobbitt is an experienced, veteran, law enforcement officer who joined the City of Fremont Police Department in 1985 as a Police Explorer. He was hired by the City of Fremont as a full-time employee on February 1, 1990. Captain Bobbitt then rose through the ranks to the position of Police Captain, which he has held for approximately five (5) years. Captain Bobbitt also has a Bachelor of Science Degree, a Masters' Degree, a Management Certificate from the California Commission on Peace Officers' Standards and Training, and is a graduate of Command College.

Until October 2020, Captain Bobbitt's performance evaluations repeatedly rated him as an exceptional employee. For example, in his most recent evaluation, issued in January 2020, Police Chief Kimberly Peterson commented that Captain Bobbitt is "experienced," "conscientious," "an excellent teammate," and "possesses an exceptional work ethic." She closed the evaluation by stating: "Captain Fred Bobbitt is a highly effective commander and continues to influence the department in a positive manner."

When the pandemic surged after the January 2020 evaluation, Captain Bobbitt rose to the challenge while leading the largest, most visible, and closely scrutinized element of the police department - the patrol division. His performance was so exceptional that Chief Peterson sent him a hand-written note, which stated:

"Thank you for your leadership, your dedication and your support throughout this COVID crisis. You've done an excellent job changing our patrol deployment, protecting our people, and being visible all the time for your team. You were the perfect person to lead Patrol through such an anxious time because of your strong communication skills and your ability to connect. Your dedication to the department and your people are second to none. Thank you for everything you do for this department."

A copy of the January 2020 Evaluation and the handwritten note are included with this attachment.

Things shifted dramatically in September 2020. The Police Chief suddenly became critical of Captain Bobbitt, he was told to come up with an exit plan for an early retirement, and was provided a draft exit agreement. This effort was designed to ensure the Department could promote a younger person and to prevent Captain Bobbitt from being a candidate for the Police Chief position in October 2021 when Chief Peterson retired. If appointed, Captain Bobbitt would be the first African-American Police Chief in the City of Fremont.

Captain Bobbitt was presented with a draft separation agreement in November 2020, and was told that if he rejected it, he would be removed from his position and placed on a performance improvement plan for six months and that the plan would be retained for one year. This would

result in the performance improvement plan still being in effect during any chief selection process, which would be potentially disqualifying.

During the discussions about the requested exit plan, Chief Peterson advised Captain Bobbitt that the City Manager was upset with him, and did not like him. It appeared to Captain Bobbitt that the City Manager wanted him to take an early retirement so that he would not be a candidate to replace the Police Chief when she retired. Captain Bobbitt was a leading candidate, as he is well-liked and respected by both the City Council, the Community, and the members of the Department.

Because Captain Bobbitt felt the City Manager might not be familiar with his accomplishments and contributions to the City as well as its police department, he drafted a memorandum to the City Manager dated November 1, 2020. The Police Chief declined to allow him to submit the memo, and so it was not sent. A copy of that memorandum is enclosed for your reference.

Captain Bobbitt protested the suggestion that his performance warranted an improvement plan, and countered the pretextual reasons given for such a plan. Captain Bobbitt did, ultimately, reject the exit plan drafted by the City and was retaliated against by the Police Chief who, with the support of the City Manager, issued an unlawful and unwarranted performance improvement plan. He was also threatened with a transfer from his coveted and high profile position to a unit that was newly created and appeared designed to minimize his public profile, which would then undermine his attractiveness as chief's candidate.

Captain Bobbitt protested the retaliatory action in December 2020. His union, the Fremont Police Managers' Association, also filed a grievance on his behalf. Both are attached and included with this intake form.

Shortly after the filing his protests, Captain Bobbitt suffered additional retaliation, including the threatened transfer. Captain Bobbitt believes these actions were discriminatory based on his race and age, were taken in an effort to disparage his otherwise spotless reputation, force him to resign, prevent his ability to promote, and also to retaliate against him.

The retaliation reached its peak on and around March 18, 2021, when Chief Peterson announced her retirement. At or around the same time, despite having received positive and glowing reviews during the Performance Improvement Plan, the Chief suddenly became critical of Captain Bobbitt's handling of a subordinate's complaint despite Captain Bobbitt having followed proper protocol and the policy manual. Immediately thereafter, the City Manager announced, without any selection process, that a younger Captain with a far narrower experience within the agency would be selected as the next Police Chief.

ATTACHMENT (2)



Police Department
memorandum

Date: January 15, 2020
To: Personnel File
From: Chief Kimberly Petersen
Subject: Personnel Evaluation for Captain Fred Bobbitt

This memo shall serve as the annual personnel evaluation for Captain Fred Bobbitt. The time period covered by this evaluation is August 2018, through January 18, 2020.

Fred Bobbitt has served with the Fremont Police Department since joining as a Police Explorer in 1985. Captain Bobbitt has a strong educational background and practices life-long learning. He holds a Bachelor of Science from Union Institute University, and recently earned a Master's degree in 2014 from American Military University. Captain Bobbitt holds a POST Management Certificate and attended Command College, Class #59 in 2016.

Captain Bobbitt is an experienced captain of more than four years. Fred is conscientious and possesses an exceptional work ethic. He can be counted on to manage major projects and is able to get work done through other people. During this evaluation period he oversaw the rollout of the body-worn cameras, the implementation of a marijuana diversion program in the schools, and compliance with Assembly Bill 1421 requiring the department to release videos publicly. Each of these projects is complex with highly involved stakeholders and potential impacts on community trust. All have ongoing management needs such as dealing with storing and sharing hundreds of thousands of body-worn videos, the creation of a new Digital Evidence Supervisor position, and other long-term changes. Fred is able to prioritize and delegate appropriately, keeping projects moving forward.

During the rating period we received feedback that our Administrative Investigation procedure was not compliant with the Peace Officer Bill of Rights and was causing unnecessary angst for the line level. Captain Bobbitt helped the IA sergeants revamp the process, communicate with the Fremont Police Association and restructure the protocol.

Captain Bobbitt oversaw the Special Operations Division from the summer of 2017 through January of 2020, at which time he transitioned to Patrol. During his time with Special Operations he put his significant investigative experience to good use, ensuring the division prioritized appropriately and functioned at a high level. He puts the right people into leadership positions, then trusted them to drive the mission. He also supported them as needed, allowing them to focus on the work and leave the politics to him.

Captain Bobbitt's greatest strengths are connecting with and investing in other people. He has a love of people and genuinely cares for others. Captain Bobbitt regularly participates in events that promote community connection, such as, Coffee with a Cop, Fantasy Flight, and his own

creation, Building Bridges. Assembly Member Kansen Chu celebrated Captain Bobbitt as a Community Hero at a community recognition event in May of 2019.

Captain Bobbitt mentored and on-boarded two new managers over the rating period, both of whom blossomed under his guidance and have become highly effective. The new Management Analyst oversaw a complete overhaul of the department's website. The project was completed on time and has received rave reviews. The new Special Investigations Unit Manager has driven our Intelligence-Led Policing model to new heights, and we are enjoying a more than 20% drop in violent crime, as well as drops in some property crime. In addition, she is guiding a department-wide staffing study that will have major implications for the department's future.

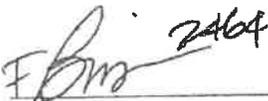
Captain Bobbitt is an excellent teammate to me and the other captains and does more than his fair share of the weekend and evening events. I appreciate Fred's willingness to express a differing opinion, and I always value his input. Captain Bobbitt is transitioning to the Patrol Division to round out his experience and bring a fresh perspective to the department's largest unit.

In summary, Captain Fred Bobbitt is a highly effective commander and continues to influence the department in a positive manner.



Kimberly Petersen
Chief of Police

2/18/2020
Date



Acknowledged by
Captain Fred Bobbitt

2/18/2020
Date

ATTACHMENT (3)



FROM CHIEF KIMBERLY A. PETERSEN

Fred,

Thank you for your leadership, your dedication and your support through out this COVID crisis. You've done an excellent job changing our patrol deployment, protecting our people, and being visible all the time for your team. You were the perfect person to lead Patrol through such an anxious time because of your strong communication skills and your ability to connect. Your dedication to this department and your people are second to none. Thank you for everything you do for this department.

[Signature]

ATTACHMENT (4)



Police Department
2000 Stevenson Boulevard, P.O. Box 5007, Fremont CA 94537-5007
510 790-6800 ph · 510 790-6801 fax · www.fremontpolice.org

November 1, 2020

To: City Manager Mark Danaj

From: Captain Frederick H. Bobbitt

Re: Notable accomplishments

- **Race Relations:** As a result of the George Floyd incident, during multiple Monday evening protests at Mayor Mei's residence and one at City Manager Danaj's residence, I had command over all of these protests, which concluded well after midnight. Managing these incidents required me to remain at work for approximately 19-20 hours. All of the protests ended peacefully without any use of force or arrests.
 - **Race Relations:** During civil unrest and protests in Fremont due to the George Floyd incident, I attended all protests, met with organizers, and shared my perspective, which led to successful outcomes.
 - **Mediation:** In the areas of mediation, I have assisted our Risk Manager and outside counsel, Greg Fox, with mediation which resulted in a settlement rather than a lawsuit against the city; in addition, I have given presentations to attorney John Burris (2 cases), which resulted to no claims/lawsuits being filed against the city.
1. Fatal officer-involved shooting of Nathaniel Prasad, 18-year-old male, Hayward resident
 2. In-custody death of Christian Madrigal, 20-year-old male, Fremont resident. Mr. Madrigal was arrested by Fremont police officers in September 2019 and later transported to Santa Rita Jail after we used force on him while he was in our custody in Fremont Jail (Alameda County Sheriff's Department settled with the Madrigal family for 5 million in October 2020). In their claim against Alameda County, Burris' office stated that the City of Fremont Police Department was a very transparent agency based on our meeting with them where I answered their questions and shared all police reports and body-worn and in-car camera video.
- **Risk Management:** Based on my experience with handling police officer worker's compensation claims, at the request of our risk manager and outside attorney, Keith Epstein, I have presented to outside cities, most recently to the City of Hayward's Police Chief, Assistant City Manager, Risk Manager and Human Resources Director on how to manage IOD claims from a police executive's perspective.

- **Race Relations:** Planned and led a Town Hall lunch with our Muslim community over concerns with racism, immigration, and deportation. (Outcome was positive relationships built between officers and our Muslim community to include immigration attorneys)
- **Police Community Relations:** Developed and led our Building Bridges initiative/program that has allowed officers and professional employees to connect with 9,000 6th graders over three years. I developed this program after meeting with a group of diverse 6th graders from Grimmer Elementary who asked: (1) why do you shoot people of color; (2) why do police officers turn off their body cameras; (3) we don't trust and are afraid of police officers.

To measure the success and positive impact of our Building Bridges program:

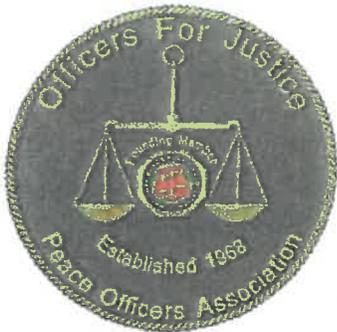
- i. Grimmer Elementary School Principal Mrs. Judy Nye, where the vast majority of her students live below the poverty level stated, *"Freddie Bobbitt, not only have you and your officers touched the lives of 9000+ students in Fremont by showing them that you care deeply, you have touched our hearts! You light up the room and have truly changed this little part of our world forever. We are all so very thankful to FPD for the commitment of time and most of all KINDNESS (exactly what our world needs now, more than ever. Truly grateful!"*
 - ii. The police department, pre-COVID, was scheduled to be recognized for the success of Building Bridges by the FUSD Fremont Council PTA and President Vinita Verma at an FUSD School Board Meeting. We will be recognized and honored at an upcoming school board meeting.
 - iii. Mayor Mei commended me on this program and its positive impact on our youth, teachers, administrators, and community.
- **Human Relations Commission:** Out of concern that our SRO program was a school-to-prison pipeline for students of color, I presented three years of arrest data to the Human Relations Commission, leading to positive results. Human Services Director Suzanne Shenfil commended me on my presentation.
 - **City Council/FUSD:** At the request of City leadership, I presented at a joint City Council/FUSD School Board meeting on the value of our SRO program. All members stated unanimously that our SRO program was an outstanding program and resource for our students. I was commended by Assistant City Manager Karena McGee Shackelford and Community Services Director Suzanne Wolf on my presentation.
 - At FUSD School Board President Desiree Campbell's request, I presented at the July 29, 2020 school board meeting where a vote would later be held to potentially terminate the SRO MOU/contract.

- i. A motion to terminate the contract did not pass by a 2-3 vote; President Campbell was the swing vote not to terminate the SRO contract.
- ii. A motion to suspend the contract and conduct a comprehensive review of the program passed by a 3-2 vote.

(The meeting concluded just after 2 a.m. At 2:14 a.m., I received a message from Councilmember Jones commending me on my presentation to the school board)

- **School District and City Relations:** Led an initiative in partnership with FUSD and Human Services' YFS division to develop and implement an Alternative to Suspension program for students found vaping on campus. This successful program allowed students to attend a 5-week program that concluded with a presentation to parents on the dangers of vaping. The program also provides resources to students addicted to nicotine.
- **Race Relations:** Based on my relationship with South Alameda County NAACP President Freddie Davis and VP Lamont Allen, I was contacted by VP Allen regarding an African American Fremont community member who felt she was mistreated by Fremont police officers based on race. After several in-person meetings, the incident was resolved without a formal complaint.
- **Race Relations:** Based on the relationship I developed with Mrs. Linda Anderson, Principal at Oliveira Elementary, she contacted me after learning that an African American mother posted on social media that her adult son, who is employed as a janitor at Patterson Elementary, and was once Mrs. Anderson's student, was unlawfully detained and racially profiled by Fremont police officers as he raised the United States flag in front of the school as part of his daily duties. The African American mother was in the process of planning a protest, sharing that FPD was a racist police department. Mrs. Anderson provided me with the mother's phone number. It should be noted this incident made it to the FUSD school board trustees, who wanted an explanation and apology from FPD. Mayor Mei was also contacted. I had multiple phone conversations with the janitor's parents and met with them at their Fremont residence. After thoroughly investigating the claim and sharing my thoughts regarding the incident with the parents, [this was falsely reported and never occurred], the incident was resolved and closed. I sent an email to FUSD Interim Superintendent Dr. Raul Zamora who shared my findings with school board trustees. I also emailed Mayor Mei informing her that the incident had been resolved.

Exhibit C



OFFICERS FOR JUSTICE
PEACE OFFICERS' ASSOCIATION
5126 Third Street, San Francisco, CA 94124
P.O. BOX 24068, San Francisco, CA 94124
TELEPHONE: (415) 822-2225 * FAX: (415) 822-2357

April 19, 2021

Mayor Lily Mei
Councilmember Jenny Kassan
Councilmember Teresa Cox
Councilmember Raj Salwan
Councilmember Teresa Keng
Councilmember Rick Jones
Councilmember Yang Shao

City of Fremont
3300 Capitol Avenue
Fremont, CA 94538

Dear Mayor Mei and members of the Fremont City Council,

My name is Yulanda Williams, President of Officers for Justice and 3rd Vice President of the San Francisco NAACP. I have also included the leadership of BWOPA (Black Women Organized for Political Action), and the leadership of the Niagara Movement Democratic Club on this communication.

I am writing you regarding Captain Fred Bobbitt. The four organizations mentioned above have had a relationship with the Bobbitt family for several decades. Many members of the Bobbitt family have spent countless volunteer hours graciously serving the Bay Area community and in particular supporting at risk youth within the African American Community. They are well respected and trusted.

Our organizations were asked (and are committed to) facilitating support for the Bobbitt Family; as they begin executing a public plan to protect their family member Captain Fred Bobbitt, against what they believe is a retaliatory and racially biased attack against him.

As you are aware, the African American Community has a long history of fighting against racial discrimination within City, County, State, and Federal Municipalities. Standing up against the power of large institutions takes courage but can also come with great risk including potential unfair-intentional retaliation. As a result, organizations like ours are in existence to support members of our community when they are demanding change, transparency, and accountability.

It is concerning to all of us that the Fremont Police Department's most experienced Commanding Officer, who has not had one complaint or disciplinary action in 36 years, would be asked to retire at a time in history where our entire country is desperate for African American leadership in Law Enforcement.

It seems to be perceived by many in the community that Captain Bobbitt being reassigned was completely ill advised; as crime in Fremont has increased, officers are feeling more stress, and community members are growing more concerned.

"Unless you stand for something, you will fall for anything"
Life member NAACP

As we stand days away from the George Floyd verdict, with the Duane Wright case pending, with the (Army Lt.) Caron Nazario case pending, with the Adam Toledo case pending, and more importantly as Fremont itself is faced with two separate fatal Officer involved shootings within 8 days of each other (who's details have not yet been highly publicized); the Police Department and its Officers will undoubtedly need as much experienced support as possible. Therefore, you would think that reassigning Captain Bobbitt back to help manage and support officers and help engage the public in this time of extreme adversity would be a priority that would outweigh the Municipal Politics of the City Manager's Office.

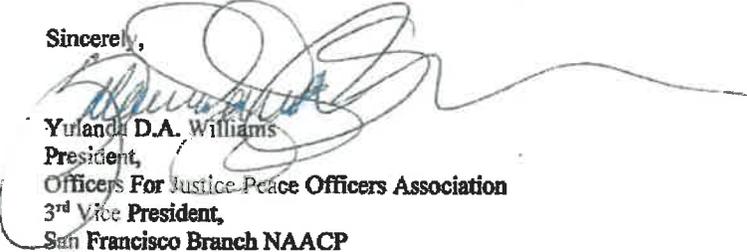
While we realize that Fremont has a strong City Manager form of Governing, and the Mayor and Council do not make personnel decisions; logic and leadership must prevail in this critical moment. Consequently, the Bobbitt Family effectively pointed out to us, that while the Fremont City Manager may be a strong administrator and fiscal manager, it seems noticeably clear (through media reports) that his career as a City Manager has been continuously and seriously impacted when it comes to the area of making important personnel decisions. These facts might reasonably require an emergency order/decision by Council to conduct an investigation regarding Captain Bobbitt's situation independent from anyone under the City Manager, including the City Attorney.

More importantly, in the event that Fremont eventually becomes directly affected by its recent incidents, the City Manager's Office will be insulated within the Administrative Institution, while the City's Police Department, its Officers, and (you) the Elected Officials will be on the front lines having to be held publicly and politically accountable by the community at large. Captain Bobbitt is a proven vehicle of trust between the Police and the Community who is absolutely needed in this moment. If Captain Bobbitt had disciplinary actions for violent conduct, had cost the City through lawsuits due to his conduct, or been suspended for scandal, this letter would not have been written. But Captain Bobbitt is one of the best from our community.

Attached is the PR Piece related to the Bobbitt Family's first Fremont town hall meeting that they are planning. Other leaders and I would be happy to facilitate a meeting this week that might open dialogue regarding the issue of Captain Bobbitt. We would respectfully ask that Councilmember Teresa Cox be a part of a call if it were to occur. Alameda County Supervisor Miley has already agreed to be part of a call if it were to occur, as he is the elected representative of several Bobbitt family members who reside in Oakland.

I will look forward to hearing from you, and please "reply all" in your response.

Sincerely,



Yulanda D.A. Williams
President,
Officers For Justice-Peace Officers Association
3rd Vice President,
San Francisco Branch NAACP
Lifetime Member BWPOA

yw/has

/file

Support Community Policing Legend

CAPTAIN FRED BOBBITT

Join members of the community and a panel of Bay Area leaders as we host a virtual Town Hall meeting and discussion regarding the treatment of Captain Fred Bobbitt; as well as next steps to correct the unbelievable attempt by the Fremont City Manager to "Pay him Off and Push him Out".

Where: Virtual Town Hall Meeting

Register with Link Below
<https://bit.ly/BobbittTownHall>

**When: Monday April 26th, 2021
at 7pm**



Summary:

Fremont City Manager Mark DanaJ Attempted to Secretly "Pay Off and Push Out" our Beloved "Community Policing Legend" Captain Fred Bobbitt. This unfathomable action by the City Manager against this incredibly effective African American Commanding Officer, who has also been a critical vehicle of trust between the Fremont Police and the Fremont Community, has ironically been perpetrated against Captain Bobbitt during one of our country's most historical periods of renewed emphasis on Social Justice. During this moment when our entire country is desperate for African American Police Leaders that are skilled at Reimagining Public Safety and holding the trust of both the community and officers alike, Captain Bobbitt's value and impact is immeasurable.

The City Manager's actions are motivated by politics, racial bias and ignorance, while showing complete disregard for the admiration and respect that the general community and officers alike hold for Captain Bobbitt. In 36 years with the Fremont Police Department, Captain Bobbitt has never had even ONE community complaint or disciplinary action. Captain Bobbitt is a highly decorated Pillar of the Community. He is the recognized founder of the "Building Bridges Program" which has directly introduced over 9,000 Fremont 6th grade Students to Fremont Police Officers as a personal and fun first step to building trust.

Actions:

**Demand that Captain Bobbitt be reassigned to contact with the community and with fellow Officers where he is unquestionably the most effective.*

**Discuss a petition asking for the resignation of City Manager DanaJ*

**Set a date to be heard by the Fremont City Council. We will hold a press conference, fill Council chambers, present our petition, and let our elected leaders hear our voices*

Captain Fred Bobbitt at a Glance:

Captain Bobbitt was born and raised in Oakland until he was 12 years old. He then moved to Fremont at the start of 7th Grade.

Captain Bobbitt was a graduate of the Oakland Police Academy and has gone 36 years without one single complaint from the community and not one single disciplinary action in his entire career.

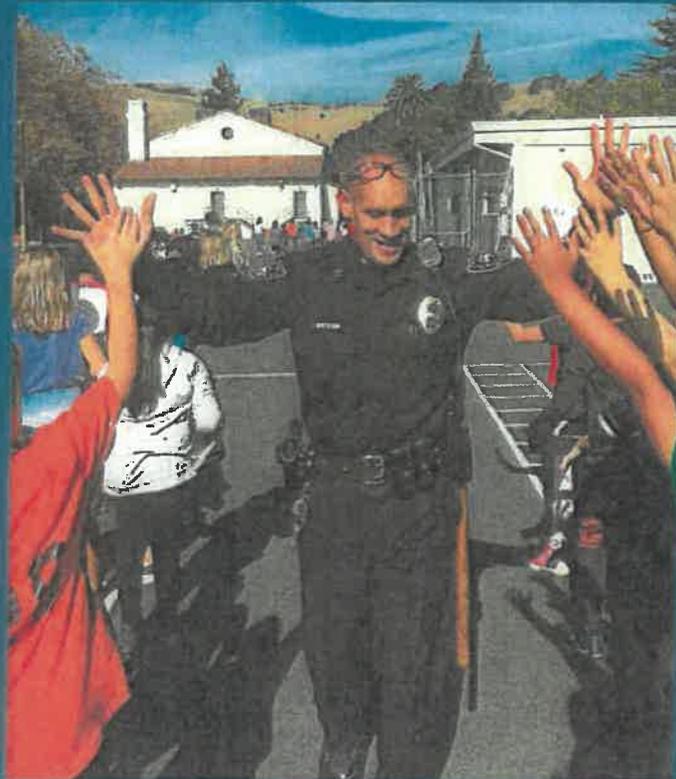
Captain Bobbitt is highly decorated and has been recognized by the Community for his implementation of reimagined, creative, and very low cost Community Policing strategies.

Captain Bobbitt is the longest serving African American in the history of the Fremont Police Department.

Captain Bobbitt founded the enormously successful "Building Bridges" program. A collaboration with the school district that brings the Police together with 6th Grade Students and their families as a way to build trust between the Community and the Police. To date 9,000 kids have participated in this trust building program that Captain Bobbitt founded.

Captain Bobbitt has mentored hundreds of Police officers with his "Community First" style of leadership, which has lead to one of the most effective relationships between the Community and the Police (in the Bay Areas 4th largest City).

Captain Bobbitt is highly regarded by City Leaders, Employee Unions, and community leaders.





Questions for Discussion Regarding City Manager Mark Danaj:

Why would City Manager Danaj attempt to "Pay Off and Push Out" Captain Bobbitt who has an excellent relationship with the community, has had no complaints in 36 years, and serves as a vehicle of trust between the Community and the Police, especially during this pivotal moment in history with respect to the fragile relationship between the police and the African American community in particular?

Why would City Manager Danaj attempt to secretly "Pay Off and Push Out" Captain Bobbitt for an undisclosed amount of money, without City Council Approval?

Was City Manager Danaj the subject of an investigation during his brief position just prior to coming to Fremont?

Why was City Manager Danaj put on administrative leave and ultimately fired without explanation from his position in 2018 as the City Manager of Manhattan Beach CA?

Has City Manager Danaj been criticized for pushing budget expenditures to questionable limits that fall just shy of City Council approvals, in order to support a personal agenda?

Why did City Manager Danaj facilitate criticism of Captain Bobbitt for his decision not to kneel while managing protests, and possibly assume that just because Captain Bobbitt is African American that he is required to do so?

Likely Timeline (Based on Family Discussions without Captain Bobbitt)

January 2020 - Captain Bobbitt receives excellent Evaluation By Chief

June 2020 - Captain Bobbitt effectively Managed Protests

July 2020 - Captain Bobbitt recognized by Chief for Effectively Managing Patrol

September 2020 - Captain Bobbitt offered a secret payout to "retire"

November 2020 - Captain Bobbitt rejects secret payout to push him out

January 2021 - Captain Bobbitt taken off of patrol and oversight of Officers without justification

March 9th 2021 - Ray Bobbitt writes a letter to the Mayor and City Council accusing City Manager of retaliation and racial bias

March 16th 2021 - African American leaders contact City officials to meet regarding the accusations of retaliation and racial bias outlined in Ray Bobbitt's letter

March 18th 2021 - Chief announces Retirement, and hours later the City Manager forgoes a traditional search for a new Chief and names an African American as next Chief

Did City Manager Danaj make the decision to name an African American as the next Chief, in order to make it appear as though his attack against Captain was not racially biased?

***Note: This process is being organized by Ray Bobbitt without the endorsement, or guidance of Captain Fred Bobbitt. If you have any questions please feel to email me at rayb8080@gmail.com**

Exhibit D



City Attorney's Office | Risk Management

Reserve for Filing Stamp

CLAIM AGAINST THE CITY OF FREMONT.

SUBMIT TO: CITY CLERK
CITY OF FREMONT
3300 Capitol Avenue
Fremont, CA 94538

- 1. Claimant's Name: Frederick Bobbitt
Claimant's Address: 1944 Kristoff Court, Tracy, CA 95376
Claimant's Daytime Phone Number: (209) 914-2996
2. When did the damage or injury occur (date and time)? November 20, 2020 and continuing through the present and onward.
3. Place of occurrence: City of Fremont, Fremont Police Department.
4. What happened and why do you believe the City is responsible? Ongoing retaliation, including Whistle-Blower Retaliation, Harassment, violations of rights, due process, MMBA Gov Code § 3500 et seq, POBR Gov Code § 3300 et seq, including, issuance of an untimely and unlawful disciplinary PIP, denial of appeal and retaliation for exercising rights under POBR, discrimination. See Exhibit 4.A.
5. Description of damage or loss: Reputation damage, denial of promotion and other opportunities, emotional damages, tortious interference with contract, statutory damages and attorneys fees pursuant to Gov. Code § 3309.5, statutory and punitive damages as well as attorneys fees otherwise available.
6. *Total amount claimed: Claim exceeds \$10,000. Unlimited Civil Case Exceeding \$25,000.
7. Date: 5/19/2021 Signed: [Signature]

* If total amount claimed is less than \$10,000.00, enter amount claimed and the basis for computation of that amount. If it is more than \$10,000.00, no dollar amount shall be included in the claim. However, it shall indicate whether the claim would be a limited civil case. Government Code Section 910(f).

Exhibit E

RENÉE MAYNE
ARBITRATOR, MEDIATOR

POST OFFICE BOX 1827
SACRAMENTO, CA 95812
OFFICE 916-245-0625

Sent via Electronic Mail

December 14, 2021

David G. Lim, Senior Attorney
Richards, Watson & Gershon
A Professional Corporation
dlim@rwglaw.com

Debra Margolis
City Attorney
City Of Fremont
dmargolis@fremont.gov

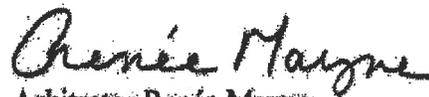
Peter A. Hoffmann, Partner
Rains Lucia Stern St. Phalle & Silver, Pc
phoffmann@rlslawyers.com

Arbitrator's Opinion and Award: Fremont Police Managers Association v. City of Fremont
CSMCS Case No. Arb-20-0197; Arbitrator Case No. 21-04-23ARB

Dear Mr. Lim, Ms. Margolis, and Mr. Hoffmann,

Enclosed you will find the Arbitrator's Opinion and Award for the grievance arbitration in the above-referenced case between the Fremont Police Managers Association and the City of Fremont.

Sincerely,


Arbitrator Renée Mayne

Enclosure: Arbitrator's Opinion and Award.



Labor-ADR



RENÉE MAYNE
ARBITRATOR, MEDIATOR
Labor-ADR
Post Office Box 1827
Sacramento, California 95812
mayne.adr@gmail.com
(916) 245-0625

CSMCS Case No. ARB-20-0197
Arbitrator Case No. 21-04-23ARB

IN THE ARBITRATION PROCEEDINGS PURSUANT TO
THE AGREEMENT BETWEEN THE PARTIES

FREMONT POLICE MANAGERS ASSOCIATION

Grievant,

v.

CITY OF FREMONT

Respondents.

ARBITRATOR'S
OPINION AND AWARD

December 14, 2021

APPEARANCES

For the Employer:

DAVID G. LIM, SENIOR ATTORNEY
RICHARDS, WATSON & GERSHON
A Professional Corporation
One Sansome Street, Suite 2850
San Francisco, California 94104
dlim@rwglaw.com
(415) 421-8484

DEBRA MARGOLIS
CITY ATTORNEY
Fremont City Hall
3300 Capitol Ave., Building A
Fremont, California 94538
dmargolis@fremont.gov
(510) 284-4030

For the Grievant:

PETER A. HOFFMANN, PARTNER
RAINS LUCIA STERN ST. PHALLE &
SILVER, PC
2300 Contra Costa Boulevard, Suite 500
Pleasant Hill, California 94523
phoffmann@rlslawyers.com
(925) 609-1699

TABLE OF CONTENTS

INTRODUCTION 3

STIPULATED ISSUE STATEMENT 4

EXHIBITS ADMITTED INTO EVIDENCE 4

SUMMARY OF FACTS 5

POSITION OF THE GRIEVANT 19

POSITION OF THE EMPLOYER 20

RELEVANT POLICY AND CONTRACT LANGUAGE 20

OPINION 23

AWARD 28

INTRODUCTION

This arbitration arose under the terms of the collective bargaining agreement (Agreement, Memorandum of Understanding, MOU) between the Fremont Police Managers Association (FPMA, Union) on behalf of Fred Bobbitt, Police Captain (Grievant), and the City of Fremont (City, Employer).

Under the terms of the Agreement, the parties selected Arbitrator Renée Mayne to preside over the arbitration proceedings. The parties agreed the grievance had met all procedural requirements, and the dispute was properly before the Arbitrator to issue an Opinion and Award. (California State Mediation and Conciliation Service letter dated April 15, 2021)

The parties submitted pre-hearing briefs to the Arbitrator on August 4, 2021 (City) and August 12, 2021 (Union). The arbitration hearing convened two days, August 19, 2021, and October 5, 2021. A written transcription of the hearing was provided to the Arbitrator and counsel for the parties by Branco Reporting Services, Inc. The parties submitted their closing briefs to the Arbitrator on November 15, 2021.

The Arbitrator administered an oath of honesty to the witnesses: Kim Petersen, Fremont Police Chief; Mike Gebhardt, Fremont Police Detective and Fremont Police Association President; and Fred Bobbitt, Fremont Police Captain. The parties had full opportunity to examine and cross-examine witnesses, submit relevant exhibits and evidence, and argue the issues in dispute.

After the counsel for the parties filed their post-hearing briefs with Arbitrator Mayne on November 15, 2021, the arbitration record closed. The dispute was then deemed submitted for the Arbitrator's final and binding decision.

STIPULATED ISSUE STATEMENT

The City and Union stipulated to the issue statement before the Arbitrator. The two-part issue statement is based upon the policy violations described in the Union's grievance:

1. Has the City of Fremont violated Fremont Police Department Policy 1002.5 titled Full-Time Permitted Status Personnel? If so, what shall be the remedy? (Tr. 285:14-17)
2. Has the City of Fremont violated Fremont Police Department Policy 1005.3 titled Retaliation Prohibited? If so, what shall be the remedy? (Tr. 285:10-14)

EXHIBITS ADMITTED INTO EVIDENCE

Joint Exhibits

- 1 City of Fremont and Fremont Police Managers Association MOU 2019-2021
- 2 Fremont Police Department Policy 1002
- 3 Fremont Police Department Policy 1005
- 4A Union's Step 1 and 2 Grievance Letter, dated 12-9-2020
- 4B City's Step 1 and Step 2 Responses, dated 12-18-2020
- 4C Union's Step 3 Grievance Letter, dated 12-28-2020
- 4D City's Step 3 Response, dated 2-02-2021
- 4E Union's Step 4 Grievance, dated 2-04-2021
- 5A City's Performance Improvement Plan to Grievant version 1, dated 11-6-2020
- 5B City's Performance Improvement Plan to Grievant version 2, dated 11-20-2020
- 5C City's Final Performance Improvement Plan to Grievant version 3, dated 12-20-2020
- 6 City's Performance Evaluation of Grievant, covering 8-18-2019 to 01-15-2020
- 7A Email from City Human Resources Director to Grievant, dated 10-6-2020
- 7B Draft Settlement Agreement and General Release between City and Grievant (undated)
- 8 City Manager Email to Police Department, dated 3-18-2021
- 9 Tier 2 Patrol Staffing Plan, dated 8-12-2019
- 10 Tier 2 Patrol Staffing Plan, dated 9-12-2019
- 11 Policy 1027 Mandatory Overtime
- 12 Patrol Expectations Memo, dated 9-16-2020
- 13 Patrol Expectations Memo, dated 10-22-2020
- 14A 2015-16 Table of Organization, dated 01-06-2016
- 14B 2016-17 Table of Organization, dated 06-27-2016
- 14C 2016-17 Table of Organization, dated 01-01-2017
- 14D 2017-18 Table of Organization, dated 07-09-2017
- 14E 2017-18 Table of Organization, dated 10-04-2017
- 14F 2017-18 Table of Organization, dated 01-12-2018
- 14G 2018-19 Table of Organization, undated
- 14H 2019-20 Table of Organization, undated
- 14I 2019-20 Table of Organization, effective 11-09-2019
- 14J 2019-20 Table of Organization, effective 03-01-2020

- 14K 2020-21 Table of Organization, effective 7-05-2020
- 14L 2020-21 Table of Organization, effective 01-17-2021
- 15 Handwritten Note from Police Chief Petersen to Grievant (undated)
- 16 Did.Not.Kneel. Photo of Grievant (undated)

Union Exhibits

- 1 Gebhardt and Petersen Email Exchange re Patrol Expectation, dated 9-16-2020
- 2 Grievant Email to Petersen re Performance Evaluation, dated 01-04-2020
- 3 Grievant and Petersen Email Exchange, dated 7-03-2020
- 4 Grievant Email re Covid Leave, dated 8-17-2020
- 5 Petersen Email to Captains re Acting Chief during Fires, dated 8-24-2020
- 6 Petersen Email to City Leadership Team re Acting Chief, dated 8-24-2020

City Exhibits

- 1 2018 Compensation for City Police Captains
- 2 2019 Compensation for City Police Captains
- 3 2020 Compensation for City Police Captains
- 4 2021-22 Operating Budget for Police Dept. Professional Support Services Division
- 5 Police Dept. Professional Support Services Division Staff List (undated)

SUMMARY OF FACTS

This arbitration involves the appeal of the Grievant, a City of Fremont Police Captain. The Grievant alleged he experienced retaliation for telling the truth to the Fremont City Council and attempting to resolve an unprecedented officer staffing shortage within the Police Department's Patrol Division. Further, following the onset of the worldwide pandemic in March 2020, mass civil and racial protests ineluctably arrived at the front doors of the City of Fremont in June 2020. The Grievant alleged he was subject to a Performance Improvement Plan in violation of the Police Department policy and based upon false, inaccurate, and or misleading charges by the Police Chief.

According to the Grievant, the Police Chief attempted to coerce him to resign after working 30 years in the Police Department. The City proffered the Grievant a confidential, non-disclosure settlement agreement which included a \$100,000 payment. Before his resignation became effective, the Grievant rescinded his decision to resign and retire from the City, and he rejected the

City's settlement offer. Then, the Police Chief issued a Performance Improvement Plan to the Grievant. She also constructed a new division within the command structure titled Professional Support Services, and it included almost all the Police Department's civilian employees. The Grievant alleged the Police Chief transferred him from leading patrol to the professional support services unit in retaliation for his truthfulness, dispute resolution efforts, and refusal to resign and accept a secretive monetary settlement. Thereafter, on December 9, 2020, the Union filed a grievance on the Grievant's behalf against the City of Fremont. (J. Ex. 4A)

As background, the Grievant began his law enforcement career in high school in the Fremont Police Explorers program in 1985. He was first hired by the Fremont Police Department in its corrections unit, and he has worked in the City's Police Department his entire career. The Grievant held the positions of reserve officer (1987), detention technician (1990), police officer (1997), investigator (2000), detective (2001), sergeant (2008), lieutenant (2012), and captain (2015). He had never been disciplined nor filed a grievance in his 30 years with the City. (Tr. 205:22-25; 206:1-3)

The Police Chief began her career as a police officer with the City in 1996. She was promoted through the ranks of the Police Department until the City appointed her as police chief in July 2018. On March 18, 2021, the Police Chief announced her retirement effective October 1, 2021, and the City Manager announced his appointment of Captain Sean Washington as the next Chief of Police. (Tr. 12:16-23; J. Ex. 8)

Incident – City Council Closed Session, June 2019

Mark Danaj was the Fremont City Manager in June 2019. The Police Chief was on vacation and out of the country. She was unavailable to attend the City Council's closed session and discuss the status of labor negotiations with the Fremont Police Association (FPA). In her

absence, the Grievant served as the Acting Police Chief, and he attended the closed session on her behalf. It was the first time the Police Chief asked the Grievant to join a closed session with the City Manager and City Council. The critical issues in the FPA labor negotiations were short staffing, concerns for further resignations, and salary increases. As the Police Chief's representative, the Grievant answered council members' questions. (Tr. 208:9-25; 209)

While in the closed session room, the City Manager presented salary offer information to the City Council from the labor negotiations with the FPA. When asked by a council member whether police officers were considering resigning from the City, the City Manager said only problem officers were interested in leaving. The Grievant took offense to that statement, and he told the City Manager that it was not correct. The City Council, City Manager, and Grievant then engaged in a discussion of comparable compensation for the City's police officers. When the Grievant explained the Bay Area Rapid Transit's police compensation, the City Manager said that was not an actual police department. The Grievant again corrected the City Manager's information to the City Council, saying "that is not factual." The Council then authorized the Finance Department to evaluate comparable salary costs with neighboring police agencies. Thereafter, the Grievant reported the closed session discussions to the Police Chief. (Tr. 210-211)

According to the Police Chief, the City Manager had called her while she was on vacation in France. He was upset about the closed session. The City Manager asked the Police Chief for the Grievant not to serve as the Acting Police Chief any further, and she told him that was not necessary. The Police Chief testified that sometimes staff needed to give the Council information, or filter information. For example, she said one city council member felt as if the Grievant was negotiating for the FPA in the closed session. Nevertheless, the Police Chief said she admonished

the Grievant for not supporting a unified front to the City Council. However, she said she did not document her warning to the Grievant.

(Tr. 36:24-25; 37:1-3, 19-25; 38:1-2; 41:6-25; 43:18-25; 44:1-2)

The Police Chief further testified that she always knew that the Grievant “struggles in difficult decisions; however, it wasn’t until we had seen several of these situations occur, I was becoming concerned that he wasn’t...acknowledging them himself.” The Police Chief said, “I hoped he could carry the water. He is, in many ways, a good captain. You can be both effective and still have areas of growth.” (Tr. 49:24-25; 50:1-12)

Incident – Tier II Staffing Plan Negotiations, August 2019

On August 12, 2019, Police Captain Washington announced an outline of a staffing plan he negotiated with the FPA. The Tier II Staffing Plan addressed officer vacancies in the Patrol Division by creating a pool of all specialty unit officers and detectives. As an alternative to mandatory overtime in patrol, the Police Department would require the specialty unit members to sign up for open slots by seniority and on a rotating basis. However, there was a problem implementing the terms of the sign-up. The FPA President testified that it came to his attention some specialty unit officers were letting patrol officers work their slots, which was counter to the intention of the agreement: to give relief to the Patrol Division. The FPA then asked the Police Chief to meet with them. She testified the FPA “backed out [of the plan at the] last hour right before it was about to launch.” (Tr. 55:12-25; 56; 146:5-23)

The Police Chief testified that Captain Washington, the Grievant, and she decided before they entered the FPA meeting, they would hold firm on the agreed-upon deal. She said she was willing to discuss the FPA’s issues, but she did not concur with the FPA that there was a misunderstanding. The Police Chief thought they just wanted to change the deal. (Tr. 59:2-15)

During the meeting with the FPA, there were heightened emotions, and FPA representatives threatened to walk out of the meeting. According to the Police Chief, the Grievant derailed the executive team's agreement to hold firm. Instead, the Grievant began to present hypotheticals to resolve the City and FPA's dispute. The Police Chief said that after the Grievant threw Police Captain Washington "under the bus" and she saw the shock on his face, she called for a caucus. However, since the City needed the deal, she decided that she would offer the FPA a compromise between the first agreement and the Grievant's alleged offer.

(Tr. 59:16-25; 60-64; 65:1-6; J. Exs. 9, 10)

Grievant's Positive Performance Evaluation – January 2020

Following the two incidents in 2019 involving discussions between the City Manager and City Council, and the Police Chief and FPA, the Grievant received a highly favorable evaluation for the period from August 2018 through January 15, 2020. The Police Chief wrote in her closing comments in the Grievant's evaluation, "Captain Bobbitt is an excellent teammate to me and the other captains and does more than his fair share of weekend and evening events. I appreciate Fred's willingness to express a differing opinion, and I always value his input. Captain Bobbitt is transitioning to the Patrol Division to round out his experience and bring a fresh perspective to the department's largest unit. In summary, Captain Bobbitt is a highly effective commander and continues to influence the department in a positive manner." The Police Chief then assigned him to lead the Patrol Division. (J. Ex. 6)

The Police Chief testified that she did not include the June 2019 City Manager–City Council incident in his performance evaluation because she thought he had learned to stand behind the executive management team and "carry the water." Moreover, she testified that he wants to be popular and has difficulty making hard decisions. Regarding the August 2019 Police Department–

FPA negotiation incident, the Police Chief also did not include that in the Grievant's appraisal. On February 18, 2020, the Police Chief and Grievant signed the evaluation.

(Tr. 45:6-15; 48:23-25; 49; 65:3-6; J. Ex. 6)

Incident – Taking the Knee in the Summer of Unrest, June 2020

The Police Chief testified that after the murder of George Floyd on May 25, 2020, “at the hands of police in Minneapolis, from that event sparked...[a] huge backlash against law enforcement across the country, against racial injustice, and it was a beginning of real reckoning in our country in terms of race relations with law enforcement. [I]t was also a very polarized time politically in our country. We had...very strong feelings around all of these topics.” (Tr. 66:5-25)

According to the Police Chief, “Now along with that racial reckoning post-George Floyd, you know, police departments across the nation experienced massive protests against racism, against police brutality, and we were no different. The only thing for us is that this is really the first time we had experienced those types of massive protests in our City. We regularly assist Oakland and other outside agencies with these sorts of events, but this was the first time that -- in my 25 years that we've seen anything like that here.” (Tr. 67:3-12)

The Police Chief said the fallout from Mr. Floyd's death on the Police Department's internal relationships also became a source of conflict. “Just to provide some perspective, for some members of our organization, the idea of -- of kneeling in protest against police racism is -- is an affront to some members of our organization. You know, people really ascribe it to the former 49er, Kaepernick was his name, taking a knee during the National Anthem. And so, for some people, particularly in policing, they see that taking a knee as -- as really being an insult to the flag, or some people see it as, quote, bowing down to the idea of Black Lives Matter. And for some

people in our organization, even the term Black Lives Matter or the group Black Lives Matter – some members of our organization see that almost as a terrorist group.” (Tr. 67:13-25; 68:1-2)

The Police Chief also said that over time, people began to realize that the protests were about more than police racism, but also systemic racism throughout the United States. At one point, the protestors were at the door when the Police Chief, Captain Washington, and the Grievant were meeting with the City’s Mayor. As they were leaving the meeting, the Police Chief, who is not a racial minority, asked Captain Washington and the Grievant (both Black men) how they felt about taking a knee. The Grievant said he would follow the Police Chief’s lead. (Tr. 68:12-20)

The Police Chief, Grievant, and Captain Washington walked out from the meeting with the Mayor to address the crowd of protestors. As they each tried to speak, their voices were muted by the din of the protestors’ anger. The Police Chief said one protestor yelled to her, “get on your knees, bitch!” On another day, Captain Washington decided to take a knee with the protestors. According to the Police Chief, Captain Washington said he wanted to help the community heal. (Tr. 68:21-25; 69-70)

Thereafter, according to the Police Chief, three sworn personnel in the Police Department told her that the Grievant was unsupportive and he undermined Captain Washington for taking a knee with protestors. When she confronted the Grievant, he denied the allegations. Further, the Grievant said he supported Captain Washington’s decision to take a knee, though he would not do that. The Grievant testified he had contacted Captain Washington to convey the tensions within patrol about taking the knee, as well as his efforts to diffuse the situation. Their talk led to Captain Washington offering to address his actions during a patrol briefing. The Police Chief said she did not investigate these allegations against the Grievant. (Tr. 71; 72:1-2; 228:23-25; 229:1-9)

The Grievant testified that when Captain Washington decided to take a knee, they were standing side by side. He said, "That protest was the largest we had seen in Fremont. And it was a Saturday, and the plan was...we were going to have to address...the protesters." He also said, "I was really focused on officer safety to make sure he (Captain Washington) was going to be safe when he went among the protesters. And it was a...great conclusion." The Grievant said he stayed in touch with the Police Chief during this protest after she had gone home. (Tr. 367:4-25)

According to the Grievant, there were significant differences of opinion among the sworn officers in patrol over Captain Washington taking a knee with the protestors. The Grievant testified that he talked with the members of patrol over a two-week period to explain the reasons a police officer would take a knee. He said, "What I will tell you is that our employees -- support our employees." (Tr. 222:17-25; 223:1-14, 25; 224:1-19; 367)

Note of Appreciation from Police Chief to Grievant – July 2020

In July 2020, the Police Chief wrote a handwritten note to the Grievant, and she told him he was the perfect person to lead the Patrol Division. At that time, there was a record amount of turmoil affecting patrol officers, including the pandemic, wildfires, the murder of George Floyd by a police officer, and the mass public protests. (Tr. 237:11-22; J. Ex. 16)

The Police Chief wrote, "Fred, thank you for your leadership, your dedication, and your support throughout this COVID crisis. You've done an excellent job changing our patrol deployment, protecting our people, and being visible all the time to your team. You were the perfect person to lead patrol through such an anxious time due to your strong communication skills and your ability to connect. Your dedication to the department and your people is second to none. Thank you for everything you do for this department, Kim." (J. Ex. 16)

August 2020 - Police Chief Appointed Grievant Acting Chief During CZU Complex Fire

A California wildfire, the CZU Complex Fire, was approaching the City of Fremont. A secondary fire to the south was near the Police Chief's residence. The City was on evacuation watch, and the Police Chief had evacuated from her home. The Grievant was appointed by the Police Chief as the Acting Chief so she could deal with the personal impacts of the wildfire on her family. (Tr. 378-381; 382:1-8)

On August 24, 2020, the Police Chief wrote to the three captains (including the Grievant) to state that she was going to "keep Fred as the Acting Chief since he is able to give it full focus." The Grievant managed the City's police response to CZU Complex Fire as the Acting Chief for about two weeks. (U. Ex. 5)

Incident – Amending Patrol Procedures, September 2020

A meeting with the FPA to discuss their proposal to amend the patrol procedures was the final incident before the Police Chief suggested the Grievant retire. This meeting occurred after the Grievant's second assignment as Acting Chief of the Police Department ended on or about August 30, 2020. The meeting with the FPA occurred on September 16, 2020, as the civil unrest in the summer continued into the fall season. (U. Exs. 5, 6)

The FPA had proposed fourteen changes to the patrol procedures, and their top priority, according to the FPA President, was to protect police officers while responding to critical incidents involving suspects. Police officers' use of force was widely publicized, discussed, and debated throughout the nation, and police officers were more frequently getting prosecuted for their use of force while on duty. The FPA's proposals were intended to protect its members in the changing public domain. (Tr. 77-78; 164:15-25; 165-175:1-23; 317; J. Ex. 5C)

The Police Chief and Grievant were present at the September 16 meeting. However, the Police Chief departed from the meeting after about an hour. She left the Grievant with the FPA to continue the talks. She stated in the final version of the Grievant's Performance Improvement Plan, "I communicated (to the Grievant) that I intended to maintain a particular level of on-scene officer discretion in our operational responses." In her testimony, she said she left the meeting but instructed the Grievant to stand firm and "carry that decision home." The Grievant testified that before the meeting with the FPA, he did not recall the Police Chief averring that she would not agree to a three-unit response as FPA had proposed. However, he did recall that she expressed concerns about leaving the sole discretion to the officers. The FPA President testified that he followed up the meeting with a lengthy email to the Police Chief, requesting her concurrence on the outstanding issues. (Tr. 79; 80:2-11; 12-15; 233:19-25; 234:1-2; U. Ex. 1)

According to the Grievant, after the Police Chief left the meeting, he and the FPA discussed all fourteen union proposals. The Grievant said that some were not at all feasible. But the FPA's proposal for a three-unit response was one he discussed with the Police Chief in his debrief with her. He suggested to the Police Chief he could share the FPA proposal with his watch commanders to get their feedback, because they were responsible for their shifts. The Grievant said when he told the Police Chief he could support a three-unit proposal, she responded, "Okay." Thereafter, the Police Chief approved the FPA's proposal. (Tr. 234:22-25; 235:1-4, 19-25; 236:1-8, 17-19)

Possible FPA Vote of No-Confidence in the Police Chief

On September 18, 2020, two days after the FPA met with the Police Chief and the Grievant regarding their fourteen proposals, the Grievant said he saw the Police Chief in the parking lot, and she was tearful. He testified that on "the morning of September 18, she and I had attended a patrol briefing and rolled out the operational changes to the three-unit response...later that

morning...about 7:30, we (the Police Chief and Grievant) had a conversation in the parking lot...she was upset.” (Tr. 239:5-21)

The Grievant said, “She was concerned about someone from her command staff sharing information with the Fremont Police Association. And she said to me -- she asked me if it was me, and...I firmly said no, and she said, well, I think that the Fremont Police Association is trying to do a vote of no confidence against me because they want you as their chief.” (Tr. 239:21-25; 240:1-3)

The Grievant further testified as to the discussion he had with the Police Chief: “[C]hief, why would -- first off, I'm not sharing information, and why would I do something like that when we know that Mark Danaj doesn't like me[?] He wouldn't appoint me as chief. And she said, well, that's true. And she said, actually, Mark wanted me to write you up for how you handled a COVID exposure. [I] responded, the city manager is directing you to write me up? And she said, yes, but she told him she wasn't going to write me up.” (According to the Grievant, an officer had tested positive for Covid. After that officer had exhausted Covid leave time, the Grievant approved administrative leave time as discussed by the City Manager during a city leadership team meeting.) (Tr. 240:4-13; 241:13-24)

While still in the parking lot with the Police Chief on September 18, the Grievant said to her, “It smells like I'm the problem is what I'm getting from this conversation...it sounds like Mark Danaj doesn't want me here...If he wants me to go, he can call me and discuss the golden handshake. And that's how we ended [the conversation].” (Tr. 240:14-20)

Grievant Rescinds His Decision to Retire

Following the discussion between the Grievant and the Police Chief in the parking lot on September 18, the Police Chief testified she met with the Grievant on September 24, 2021, to let him know that she had lost trust in him and that he should retire. The Police Chief said it would be hard to “build that trust back in an executive group.” She told him it was “time to consider an exit plan.” (Tr. 89:16-25; 90:1, 15-25)

The Grievant testified he was “absolutely devastated” and said, “My entire career flashed in front of me, my entire 30-plus years.” He said she told him, “We will bring the community in and celebrate you. You actually would be a good police chief at an agency that needs to build morale. You should go apply at San Rafael because it is a different retirement system.” According to the Grievant’s testimony, the Police Chief then directed him not to tell anyone that she asked him to retire, except Captain Washington, because she was concerned the FPA would learn the Grievant was not retiring of his own volition. (Tr. 243:23-25; 244)

The Grievant waited to hear from the City Manager, but that did not occur. He then went back to the Police Chief on October 5, 2020, to inform her he would retire, and she directed him to talk to the Assistant City Manager, Brian Stotts. The Assistant City Manager, and the Human Resources Director, Alan DeMers, handled the Grievant’s resignation. On October 6, 2020, the Grievant announced his upcoming retirement. (Tr. 249:2-25; J. Ex. 7A)

On the same day, October 6, 2020, the Assistant City Manager and Human Resources Director provided the Grievant with a confidential, non-disclosure settlement agreement. The City also gave the Grievant a written itemization of the \$100,000 payment he would receive after he signed and approved the settlement. (J. Exs. 7A, 7B)

The Grievant testified that he was offended by the settlement terms, and he did not want to

retire. After the Grievant read part of the settlement agreement into the arbitration record, he said, "I was upset. I was hurt...It was clear I would receive...a hundred thousand dollars to not speak about this and not say anything bad about my chief who I've known for decades, I wouldn't speak bad about our Council...and I was devastated because I am looking at this and I'm -- being forced to retire and now I'm reading something where this money is not to talk about it." The Grievant testified that he had never threatened to disparage the City's police chief or management staff, or city executive managers. Nor had he threatened to disclose the series of events that led to his decision to take an early retirement. (Tr. 251:1-13; 252:12-19)

Thereafter, on November 2, 2020, the Grievant asked to meet with the City Manager and Assistant City Manager. However, instead he received a text message from the Assistant City Manager to talk to the Police Chief. The Grievant testified the Police Chief called him about 30 minutes after he received the message from the Assistant City Manager. (Tr. 253:9-25; 254:1-23)

According to the Grievant's testimony, when he answered the call from the Police Chief on November 2, she said, "Fred, if you don't retire, you're going to be removed from patrol commander, and you are going to be put maybe over the animal shelter and community engagement." The Grievant said the Police Chief told him the City Manager and Assistant City Manager did not want him to be rewarded for staying (and not retiring). (Tr. 254:23-25; 255:1-6)

On the morning of November 9, 2020, the Grievant met with the Police Chief and rescinded his retirement from the City. It was then that she raised the Performance Improvement Plan, and it was the first time he learned he would be subject to performance management if he did not resign. Then the Police Chief handed him the document. As he read the section of the Performance Improvement Plan about him allegedly undermining a fellow captain for taking a knee, the Police Chief said, "[I]f I told you to take a knee, you would." (Tr. 255:17-21; 256; J. Ex. 5A)

Performance Improvement Plan

After the Police Chief provided the Grievant with the Performance Improvement Plan on November 9, 2020 (dated November 6, 2020), it was the first of three versions before she finalized the plan. In the first version, the Police Chief included the City Council Incident in June 2019. However, she removed the June 2019 incident from the second and third versions of the Performance Improvement Plan. The Police Chief also included in the first, second (November 20, 2020), and third (December 20, 2020) versions the incidents involving the Tier II Staffing Plan in August 2019, Taking the Knee in June 2020, and the Amended Patrol Procedures in September 2020. (J. Exs. 5A, 5B, 5C)

On November 19, 2020, the Grievant announced to the Police Department that he was not retiring, and on the same day, he left for vacation “because of the stress,” and to spend time with his wife. The next day, on November 20, 2020, the Police Chief issued the Grievant the second version of the Performance Improvement Plan while he was on vacation. Further, she insisted they needed to “connect that day,” on November 20. He complied, and during their phone conversation, the Grievant said the Police Chief admonished him to speak positively about “being forced out of my patrol slot” and “going to the shelter” with no sworn personnel reporting to him. Following the Grievant’s receipt of the second version of the Performance Improvement Plan, the FPMA filed a grievance on his behalf on December 9, 2020. The grievance remained unresolved, and the FPMA filed for binding arbitration on February 4, 2021.

(Tr. 257:5-25; 258-260:1-11; J. Exs. 4A, 5B, 5C)

The Police Chief maintained that the Performance Improvement Plan was a training document. When asked during her testimony if she viewed the plan as a positive document to hand to somebody, the Police Chief said, “I think it can be. The whole point of it is to do training.”

She continued, “The whole point of the PIP (Performance Improvement Plan) is to get people back on track. It is a training document. It is not a disciplinary measure. The point of the PIP is so that you don’t have to go to discipline.” She further emphasized that “if you admonish someone over something...[and] if that issue becomes a pattern or if it becomes clear that they are not changing... then the next appropriate step is a PIP. Because if you can’t correct someone through a PIP, then what do you have left? Then simply you have discipline.” According to the Police Chief, to her knowledge, no police captain or lieutenant in the City had ever received a Performance Improvement Plan. The City firmly maintained that the Performance Improvement Plan was not a disciplinary action and submitted two judicial decisions^{1 2} supporting that position.

(Tr. 30:7-24; 47:25; 48:1-14)

The Grievant maintained it was inconceivable he could receive a glowing performance evaluation in January 2020, receive a note of appreciation from the Police Chief in July 2020 for how he led patrol, the largest unit in the Police Department during the unrest, then be appointed as Acting Police Chief in August 2020, only to be told by the Police Chief in September 2020, he could not be trusted to “carry the water” and support the decisions of the executive team.

POSITION OF THE GRIEVANT

The City tried to coerce the Grievant into early retirement. The Police Chief tarnished the Grievant’s reputation with false, inaccurate, and or misleading allegations after providing him with a performance evaluation that stated his work was exemplary. While the Police Chief had no personal knowledge of some of the allegations, she had charged the Grievant with, others she knew were erroneous. When the Grievant rejected the \$100,000 settlement offer from the City, the

¹ Doe v Department of Corrections and Rehabilitation 43 Cal.App.5th 721

² Turturici v City of Redwood City 190 Cal.App.3d 1447.App.3d 144

Police Chief took action to marginalize the Grievant. She placed the Grievant on a Performance Improvement Plan and assigned him to work from the animal shelter and manage a newly formed unit with no sworn personnel. Yet, the Grievant had a flawless employment record for 30 years with the Police Department. (Union Closing Brief)

POSITION OF THE EMPLOYER

The Grievant had difficulty making hard decisions because he wanted to be liked by the Police Department's personnel. The Police Chief was within her rights to issue the Performance Improvement Plan for the three incidents where the Grievant undermined the unified message of the Fremont Police Department command staff. The primary issue with the Grievant is that he cannot "carry the water" of the management team and help carry those decisions home. The whole point of the Performance Improvement Plan was for him to stand up for the executive management's decisions. Contrary to the Grievant's allegation that the Police Chief's decision to reorganize the Police Department and assign the Grievant to the new Professional Support Services Division was retaliation, there is no evidence to support this claim. Further, the City did not reduce the Grievant's salary nor benefits. (City Closing Brief)

RELEVANT POLICY AND CONTRACT LANGUAGE

Fremont Police Department Evaluation of Employees Policy

1002.5 FULL-TIME PERMANENT STATUS PERSONNEL

Permanent employees are subject to three types of performance evaluations:

Regular – Employee Performance Evaluations shall be completed by the employee's immediate supervisor at the middle (mid-year/six-month) and at the end of each shift year (annual).

Personnel Action recommendation – If an employee is due for a pay step increase or other Personnel Action in the middle of an evaluation period, then a performance evaluation may be required to recommend the Personnel Action.

Special – A special evaluation may be completed any time the rater and the rater’s supervisor feel one is necessary due to employee performance that is deemed less than standard. Generally, the special evaluation will be the tool used to demonstrate those areas of performance deemed less than standard and document any follow-up action planned (action plan, remedial training, retraining, etc.). The evaluation form and the attached documentation shall be submitted as one package. (J. Ex. 2)

Fremont Police Department Anti-Retaliation Policy

1005.3 RETALIATION PROHIBITED

No member may retaliate against another person for engaging in lawful or otherwise permitted behavior; for opposing a practice believed to be unlawful, unethical, discriminatory or retaliatory; reporting or making a complaint under this policy; or for participating in any investigation related to a complaint under this or any other policy.

Retaliation includes any adverse action or conduct, including but not limited to:

- Refusing to hire or denying a promotion.
- Extending the probationary period.
- Unjustified reassignment of duties or change of work schedule.
- Real or implied threats or other forms of intimidation to dissuade the reporting of wrongdoing or filing of a complaint, or as a consequence of having reported or participated in protected activity.
- Taking unwarranted disciplinary action.
- Spreading rumors about the person filing the complaint or about the alleged wrongdoing.
- Shunning or unreasonably avoiding a person because he/she had engaged in protected activity. (J. Ex. 3)

Fremont Police Managers Association 2019-2021 Memorandum of Understanding

CHAPTER 6. GRIEVANCE AND DISCIPLINARY APPEAL PROCEDURES

ARTICLE I. GRIEVANCE PROCEDURE

The Association and the City do hereby agree that, unless earlier resolved under these procedures, the final resolution of any Appeal available to an employee covered by the provisions of this Memorandum of Understanding shall be by arbitration. In agreeing to this method of resolving Appeals, both parties understand and agree that the City Council hereby formally confers upon the City Manager the responsibility to carry out any lawful decision of the arbitrators made pursuant to this procedure.

A. THE PURPOSE OF THIS PROCEDURE SHALL BE:

1. To establish orderly procedures providing a method of communication between employees and management concerning matters which may be subject to grievance.
2. To provide that the grievance procedure shall be as informal as possible.
3. To provide that grievances shall be settled as promptly as possible and at the lowest possible level of the procedure.
4. To provide employees, individually or with a representative of their own choosing, and/or the Association, a systematic means of obtaining formal consideration by higher authority, if reasonable efforts fail to resolve such matters through informal procedure. Provided, however, that no individual shall be accorded any relief through the grievance/appeal procedure as to any prior action of any kind whatsoever directed specifically at his or her individual employment status unless he or she shall prosecute such a proceeding as a named party—whether or not joined with other parties.

B. MATTERS SUBJECT TO GRIEVANCE PROCEDURE

1. Grievances: For the purpose of this procedure, a “Grievance” shall be defined as any complaint or dispute concerning the interpretation or application of any ordinance, or any rule or regulation of the City or the Department governing personnel practices or working conditions, or the practical consequences of a City’s rights, decision on wages, hours, and other terms and conditions of employment, or the interpretation or application of any of the provisions of the Memorandum of Understanding.
2. Exclusions: The procedures set forth herein shall not apply in matters where other methods of dispute resolution have been specifically provided for in State or Federal law, such as, but not limited to, appeals of worker’s compensation claims; claims made pursuant to the Fair Labor Standards Act (FLSA); unemployment insurance claims; or claims of employment discrimination based upon race, religious creed, sex, color, physical handicap, medical condition, age, national origin, political affiliation or marital status for which a remedy is provided by the California Fair Employment and Practices Act (Cal. Gov. Code Sec. 12900 et seq.), or Title VII (42 United States Code 2000e et seq.), except in cases where an employee contends his/her employment has been terminated in violation of said Acts or the City’s existing policies against such discrimination. (J. Ex. 1)

OPINION

The Grievant holds the burden of proof to show that the City violated the Police Department Policy Nos. 1002.5, *Evaluation of Employees*, and 1005.3, *Anti-Retaliation*. The Arbitrator will address each policy separately.

Evaluation of Employees

The only performance evaluation entered into evidence in this proceeding was the Police Chief's evaluation of the Grievant for the period of August 2019 through January 2020. The appraisal contained highly favorable descriptions of his strengths and accomplishments. The Police Chief and Grievant signed the evaluation on February 18, 2020. After that, the Police Chief assigned the Grievant to lead the Patrol Division.

The Union asserted that the Performance Improvement Plan issued to the Grievant on December 20, 2020, violated the Police Department Policy No. 1002.5, specifically regarding the language that described a special evaluation:

Special – A special evaluation may be completed any time the rater and the rater's supervisor feel one is necessary due to employee performance that is deemed less than standard. Generally, the special evaluation will be the tool used to demonstrate those areas of performance deemed less than standard and document any follow-up action planned (action plan, remedial training, retraining, etc.). *The evaluation form and the attached documentation shall be submitted as one package.*

(Emphasis added by the Arbitrator)

A special evaluation is also known as an interim evaluation within the Human Resources profession, and it is not a form of discipline. The special evaluation covers a shorter period (typically 30 to 90 days) and is usually written on the standard evaluation form or uses the same categories as its format, as stated in the policy language above.

In this case, the Police Chief issued a six-month Performance Improvement Plan to the Grievant after he rescinded his resignation. The plan referenced three areas of

performance for which the Grievant needed to improve: “(1) supporting cohesive executive function; (2) organizational decision-making, and (3) ensuring you represent the best interests of the Fremont Police Department and the City of Fremont.”

In August 2020, the Police Chief entrusted the Grievant with negotiating the terms and conditions of critical patrol incidents involving suspects and thirteen other union proposals the FPA had presented. The Police Chief then criticized the Grievant for an allegedly reaching an agreement in the negotiation. While he told her he had not made any commitments to the FPA, he also explained to the Police Chief there had to be some movement on both sides to resolve the issues. The Grievant’s assertion was verified by the FPA’s email they sent to the Police Chief immediately following the meeting that same day. The FPA expressed in that email they were upset because the Police Chief left the meeting after one hour and the issues still required her immediate attention.

The Police Chief used this negotiation in the Performance Improvement Plan to exemplify how the Grievant had failed to support organizational decisions. In her view, his discussions with the FPA resulted in the lack of a unified message and a cohesive approach to complex issues. Yet, even though she left him alone to discuss their fourteen issues, there was insufficient evidence presented to prove her statement in the Performance Improvement Plan that the Grievant had reached an agreement with the FPA in her absence after she left the meeting.

In the final version of the Performance Improvement Plan dated December 20, 2020, the Police Chief chastised the Grievant’s participation in the City and FPA Tier II Staffing negotiations that occurred sixteen months prior in August 2019. Her criticism alleged that he demonstrated an openness to modifying the negotiated agreement to make it work for both the Police Department

and the FPA. In her view, his actions eroded the unified message of the executive team. In the Performance Improvement Plan, she also included the allegation that he undermined Captain Washington for taking a knee with protestors in June 2020.

The Arbitrator finds that while the Police Chief held the right and privilege to train and develop her employees, there was little evidence of a training plan in the Performance Improvement Plan issued to the Grievant. The evidence does indicate the Police Chief's Performance Improvement Plan was likely designed to marginalize the Grievant. Her adverse actions toward the Grievant were more likely than not fueled by her expressed fear of the FPA issuing a vote of no confidence in her and supporting the Grievant as the next police chief.

The Arbitrator finds the Performance Improvement Plan appears disingenuous considering the City Manager and Police Chief had already tried to surreptitiously pay the Grievant a hefty sum from the City's coffer to leave. Regarding the two judicial decisions the City submitted in its closing brief in support of the right of an employer to issue a performance improvement plan, the Arbitrator does not disagree with the basic premise. Nonetheless, the facts of this proceeding indicate the City's intent under the Performance Improvement Plan issued to the Grievant was not a sincere effort but designed to encourage him to retire. A glaring paucity is that none of the alleged incidents written into the plan were reviewed through an investigation of the facts.

The Society for Human Resource Management (SHRM) provides guidelines for employers to help their employees succeed with a performance improvement plan. SHRM warns that such a plan must support the employee through an advising, training, and learning process. SHRM advises that managers who intend to lead the employee to the exit door should not use a performance improvement plan.³

³ SHRM: *How to Establish a Performance Improvement Plan* <https://www.shrm.org/resourcesandtools/tools-and-samples/how-to-guides/pages/performanceimprovementplan.aspx>

The Arbitrator will now address loyalty on the job. Norman Brand, a renowned professor, writer, and labor arbitrator, described the duty of loyalty in *Discipline and Discharge in Arbitration*⁴. He said that since the arbitrator's decision in *Los Angeles Herald Examiner* (Jones, 1967), one factor that determines whether an employee has been disloyal includes the "extent of authority or confidence reposed in the employee by the employer." In this matter, the Police Chief appointed the Grievant to serve as the Acting Chief for two weeks, which was just four weeks before she accused him of speaking poorly of her to the FPA.

The Arbitrator finds the Police Chief provided no convincing evidence the Grievant's conduct warranted a Performance Improvement Plan or that he be reassigned from patrol to the new professional support services unit (after he turned down the City's \$100,000 settlement offer). Without a fair and impartial investigative review of the documented facts for each of the three incidents, the allegations contained in the Performance Improvement Plan lack reliability. Based upon the foregoing, the Arbitrator finds that the preponderance of evidence indicates the Police Chief violated the intent of Policy 1002.5, *Special Evaluation*.

Anti-Retaliation

The evidence indicated that as early as July 2019, the City Manager, and to some degree, the Police Chief, was critical of the Grievant for correcting the information the City Manager provided in a closed session discussion with the City Council. The closed session topic involved labor negotiations with the FPA, and this was the Grievant's first closed session meeting. Police officer salaries and recruiting were the primary issues. The Grievant testified that when the City Manager misrepresented the FPA's position to the City Council and denigrated the FPA's motivations for more money than was being offered by the City, the Grievant said he immediately

⁴ ABA, 1999

corrected the facts the City Manager presented to the council. The Arbitrator finds the Grievant was required not to err by omission in his truth-telling as a fundamental professional requirement.

When the Police Chief accused the Grievant of fomenting discontent between her and the FPA, the Grievant implored her to understand he would not do that, but she continued to pressure him to leave the Police Department. There was no plausible reason based upon the evidence presented to explain why the Police Chief mistrusted the Grievant to continue serving as an exemplary commanding officer of the patrol unit.

The Police Chief created the new division (Professional Support Services) immediately after the Grievant refused to resign. She removed the Grievant from leading the Patrol Division and transferred him to an office in the animal shelter. Then he was assigned to manage the Police Department's civilian workforce. These two actions indicate the Police Chief was pressuring the Grievant to leave the City (with or without a settlement agreement). When the Police Chief averred that she could not trust him, without an investigative review of the evidence, her reasons could not factually support why he could not be trusted.

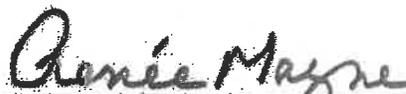
Through my conflict resolution research and practice, I learned that each person's interpretation of trust is unique and based upon their inherent personality and early life experiences. Therefore, when a person does not trust another person, that lack of trust may not be proven with facts but better understood through their feelings.

Retaliation can be quite nuanced and challenging to identify, but not in this case. Based upon the foregoing, the Arbitrator finds the evidence clear and convincing that the City Manager and the Police Chief violated Policy 1005.3, *Anti-Retaliation*.

AWARD

The grievance is sustained. The City and Police Department are ordered to make the Grievant whole by restoring the status quo ante as follows:

1. Rescind the Performance Improvement Plan dated December 20, 2020, and all iterations of the plan preceding that date, and acknowledge that the plan was premised upon unfounded allegations;
2. Expunge all adverse comments from the Grievant's personnel file related to the Performance Improvement Plan, and the events set forth therein unless previously included in conformance with the Public Safety Officers Procedural Bill of Rights Act; and
3. Immediately return the Grievant to his assignment leading the Patrol Division, as well as restoring the division of labor among the Police Captains as outlined in the Fremont Police Department Table of Organization for FY 2019-20.


RENEE MAYNE, ARBITRATOR

12-14-2021
DATE

PROOF OF SERVICE

I am a resident of the State of California. I am employed within the County of Sacramento. My business name is Renée Mayne, Labor-ADR. My business mailing address is Post Office Box 1827, Sacramento, California 95812. I am over the age of 18 years. On December 14, 2021, I served the following document on the parties named below:

ARBITRATOR'S OPINION AND AWARD FOR FREMONT POLICE MANAGERS ASSOCIATION V. CITY OF FREMONT (CSMCS CASE NO. ARB-20-0197 AND ARBITRATOR CASE NO. 21-04-23ARB).

For the Employer:

David G. Lim, Senior Attorney
Richards, Watson & Gershon
A Professional Corporation
dlim@rwglaw.com

Debra Margolis
City Attorney
City Of Fremont
dmargolis@fremont.gov

For the Grievant:

Peter A. Hoffmann, Partner
Rains Lucia Stern St. Phalle & Silver, Pc
phoffmann@rlslawyers.com

I declare that the document was served in the manner described below:

- By U.S. Mail: I placed a true copy of the documents enclosed in a sealed envelope, for collection and delivery by the U.S. Postal Service, with postage and all other costs prepaid, to each party's address.
- By Hand Delivery: I placed a true copy of the documents enclosed in a sealed envelope. I hand delivered the envelopes to each party's address.
- By Electronic Mail: I electronically transmitted a true copy of the documents via the Internet to each party's email address.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on December 14, 2021, in Sacramento, California.



Arbitrator Renée Mayne

Exhibit F

Begin forwarded message:

From: Fred Bobbitt <FBobbitt@fremont.gov>

Date: January 28, 2022 at 7:11:57 PM PST

To: freddiebobbitt@yahoo.com

Subject: Fwd: A question for you that has bothered me for nearly a year

Sent from my iPhone

Begin forwarded message:

Frederick H Bobbitt, Jr. #02464

POLICE CAPTAIN, PATROL DIVISION

City of Fremont | Police Department
2000 Stevenson Blvd., Fremont, CA 94538

(510) 790-6917 | FBobbitt@fremont.gov



From: Sean Washington <SWashington@fremont.gov>

Date: January 15, 2022 at 3:37:41 PM PST

To: Fred Bobbitt <FBobbitt@fremont.gov>

Subject: RE: A question for you that has bothered me for nearly a year

Fred,

Thanks for the email however it seems a bit unusual for you to communicate with me in this manner as we frequently speak by phone or in-person. The way in which you are addressing your concerns appears to be inconsistent with how you typically express yourself. I am assuming this communication is a genuine attempt to settle some unresolved questions you have or intended to make sense of partial, incomplete or unverified information. Serving as the Chief, a professional and your friend, I am in a complex position as you have communicated to me that in addition to the arbitration, you intend to have additional discussions with the City on matters related to the outcome of the arbitration and your ongoing dissatisfaction about what occurred. I am not sure if your email is related to your future plans and want to ensure I am maintaining a position of neutrality as you continue working with the City. With that said, I will provide context, background and my perspective if this helps you better understand and bring clarity to your question. I provide the below information because I care about you as an individual.

First I will start by saying that your email appears to try and connect me to actions and decisions made by Kim, Mark and apparently Brian. I have to say, I am disappointed if this is indeed your belief. I hope you can understand my thoughts as I live life personally and professionally with high standards and values. As you stated, this seems to be a question you have had for a long time. I am saddened (based on our friendship) that you did not come to me with this question sooner. I think a discussion about this as we have done in the past on a variety of topics would have saved months of you struggling with this question as you described. We just had a discussion a few weeks ago about your feelings on the

arbitration results which I thought was positive. It seemed at that point you were ready to move on and continue contributing at a high level which I was excited to hear. I am confused about why we could not have talked about this subject (your question) over the months. I feel like we had several opportunities during private discussions on other serious/important issues.

With the below context as background, the short answer to your question is **NO**. I believe your question draws unfair conclusions and makes many assumptions that require context and background. The context and background is important because I did and do have feelings about a Chief's right to take non-punitive/non-retaliatory actions to enhance performance, training or professionally develop an employee. Your question to me seems to suggest I would support or agree with actions in which I understood or had knowledge were retaliatory or punitive. Your question to me also seems to suggest I had access to specifics of your grievance and the City's position at the time you suggested this conversation with Kim occurred. You and I have discussed many times the fact that you had not shared specifics with me about your grievance. I at no time sought that information and you did not volunteer the information. I also never sought information from the City's perspective. After the City Manager announced his intent to appoint me as chief, I began to be included in high level briefings about the mediation process which I believe was done with the knowledge and approval of your attorney and the FPMA. I was never asked to weigh in on whether or not I felt Kim or Mark's actions were appropriate. If asked, I would not have had much to offer at this point anyway because I did not have details from your side or the City's side to give an opinion. I do however remember communicating several times that I am focused on my upcoming role as chief and did not want to get distracted or be involved in this matter. My belief was this had nothing to do with me and was an unresolved matter between you, Kim and Mark.

During the time you referenced, I do recall having several conversations with Kim, but have no recall of a specific conversation about your situation or my opinion on if I felt the City and Kim had the right to take the actions you listed. This would not make sense because as stated above, I at that time did not have your perspective or the complete perspective of Kim and the City. It is important to understand that early on Kim refrained from providing details about this matter. I also communicated early my desire to stay neutral of this matter because it does not involve me (in regards to your complaint or grievance). Shortly after the City Manager communicated his intent to appoint me as chief, Kim provided some background to me as the new incoming chief. She began to provide information on the PIPs and your performance. I saw then and continue to see this issue as something between you and your then supervisor. I did not directly experience or witness the performance deficiencies Kim would later articulate (other than a few specific situations). I also did not witness or experience many of the concerns you raised in the grievance and was not present or involved in your conversations with Kim. And of course I was not there during whatever communication or experience you had with Mark Danaj or Brian Stott. In fact, it was not until well after all of this started in 2020 that I learned about some of Kim's perceived performance based issues she had with you. Kim once told me that she just dealt with issues as your boss and intentionally did not communicate with me or John about your duty performance. I actually appreciated her doing that because it is not the business of John or I and is a matter between a subordinate and supervisor. You might remember that it was your idea to bring all of this out into the open and begin discussing some of Kim's perspectives and performance issues at our captain's meetings. John was in these meetings but I cant really recall how much detail was discussed regarding the PIP and your performance. As now the Chief, I assess your performance based on my own observations and experiences which I assumed Kim was doing all along.

Addressing your specific question requires the above/ below context and background because without it, it suggest that I was ok with what the arbitrator determined to be retaliation and improper issuance of the PIP. If that assertion if ever made it would be completely FALSE. I do not remember Kim ever specifically asking me if I thought she, Mark and Brian were “within our (their) rights to do this”. However, when placed in proper context I could see a scenario in which we discussed your PIP and I gave my opinion that it is a professional development/training tool. In context and when used in the right situation and for the right purpose, as the arbitrator stated, a Chief has the right to utilize a PIP. Based on the limited information I had, no knowledge of Kim’s motivation to issue the PIP and my ongoing belief that a PIP is an appropriate management/supervisory tool, I can certainly see me saying the use of the tool is not an issue if Kim felt it was necessary. As you know, I have provided training on this topic over the past few years and my position on this topic has not changed (utilized for non-disciplinary matters, professional development, training, etc.). I reject any suggestion that I would support the use of a PIP if I had knowledge of it being used for retaliation or discipline. I think my record and position on PIPs is well established and clear. At the time if I felt Kim’s actions were anything less than genuine, I would have an obligation to voice concern or make an attempt to intervene. I had no such feeling or belief at the time other than my communication to her to ensure the document did not include a reference to potential discipline, which is a topic I cover in my trainings. I assumed based on the limited information I had that whatever performance based issues Kim was attempting to address, she was doing so based on a legitimate purpose and what she perceived as her right and responsibility to help develop and train you. Again to be clear, I do not recall ever having this specific conversation with Kim but could see myself articulating my thoughts on PIPs. Giving my opinion on her ability to train and develop an employee is a long way from what you are inferring which is that I signed off on as you put it “proven and confirmed retaliation” actions.

Your second point on creating a division for you...again context and background matters. I have spoken to you several times that I don’t like rotating divisions so frequently because of the lack of leadership continuity which I believe impacts the agency and stalls our ability move forward. You know I resisted the division rotation prior to the one you are referencing and was not thrilled about rotating again based on my thoughts I previously articulated. Similar to the PIP issue, I do not recall a conversation with Kim specific to what you are questioning, however I am certain at some point we talked about the division rotation. I likely articulated my thoughts as I believe I am consistent with voicing my concerns when I don’t think it is in the best interest of the department and community. If Kim articulated her reasons, I could see me saying it is indeed the discretion of the Chief to make these moves. I told her the same thing when she rotated us prior to the time related to this matter. As I stated with the PIP, I had no reason to believe Kim’s motives were anything other than genuine and her desire to place division commanders in positions she felt, as chief, was in the best interest of the department/community. I believe that I have spoken to Matt Snelson and others briefly about a “manager’s right” to move captain’s around as they see fit. This in no way is tied or associated with making moves that retaliate or punish an individual. Obviously the arbitrator’s opinion felt the division transfer should not have occurred for the reasons articulated in that document. Unless I missed it, the arbitrator didn’t suggest Kim did not have the right to reassign captains to different divisions but took issue with the reasons the transfer occurred.

Lastly, background and context is needed in regards to your initial decision to retire because as you know, you spoke to me about accepting a retirement early on in all of this. I had no knowledge of the details, your conversations with the City or Kim for that matter. In the beginning of all of this I was under the impression, based on the talks you had with me, that you decided to work with the City on a retirement plan. I received additional details of how this all played out only after reading the arbitrator

findings. I am not sure how I would communicate support for a “forced retirement” when in April 2021 I was under the impression that you were still negotiating your retirement terms. The level of detail I was receiving at that time had to do with the progress of the negotiations. I have always wanted to take a neutral stance on this whole thing out of respect for you and at the time my position as the incoming police chief.

I wanted to clarify that the arbitrator’s decision seems to take issue with the process and potential motive of the PIP and other actions which is separate from my thoughts on a Chief’s ability to train and move staff around in the best interest of the department and community. I will add for even more context and background that never once did Kim communicate to me that Mark or Brian were directing her take any of the actions you listed. I never got the impression that any of this was driven by Brian or Mark. I did learn later (can’t remember the source) that Mark felt your behavior in closed session warranted some sort of action, but again I had little or no details about what it was he was upset with you about other than what he believed to be behavior inconsistent with your role as an executive manager. I have only recently heard you talk about Brian in your conversations with me. Up until the past few months I can’t remember you referencing Brian and that you were not pleased with his actions and role in this matter. You may have felt this way for a while, It is just surprising you had not communicated your thoughts to me about him early on in this process as you so clearly did with Kim and Mark. Again, never my business and I actually preferred not to have the information. I mention this because you mention Brian in your question. I have for a long time been under the impression that this matter involved you, Kim and Mark...not Brian.

Fred, I hope you understand why I took time today to write a detailed response to your email because I value our professional and personal relationship. Without context and background, your question seems a bit accusatory in its tone. If not able to provide context, I could not properly address your concerns and thoughts. With the above information as background I hope this brings clarity. It is also important for you to know that I did not want to discuss this email with Kim or Brian or Mark prior to responding to your email (I have not spoken to Mark since his resignation). I didn’t want you to think I am coordinating my thoughts with them in any way. At some point in the future, I would be curious to hear from Kim on how she communicated to you and what discussion she is referencing because again context matters. I have not had a lot of time to research specific timelines of communications so I offer the above information with the disclaimer that I am communicating to you off of memory and timing my require more follow up to be completely accurate.

To address your question (“...if it is true”) and support my “NO” response, I hope you can see and understand that context and background is important. To suggest I would support efforts to retaliate and force you to retire is ridiculous and honestly offensive. If Kim told you I made the statements to her regarding all of this, her comments may indeed be accurate with the context and background (explained above), limited information I had about your grievance and my belief that the actions occurred without any suspicion of being retaliation or punitive.

I hope you understand that like you, I have a tremendous amount of pride and respect for the interest of the community/department, professional standards and integrity. I will openly explain and defend my integrity, motives and actions when I feel those traits are in question. Communicating by email is not the most productive platform to discuss such important issues, however I wanted to respect your preference to initially have this discussion utilizing email. I don’t want to go back and forth with these emails if you have additional questions you would like answered. If you want to talk more in-person, I am always open to continue the dialogue. Since I cannot readily determine if this is a personal

communication, a supervisor/subordinate communication or both, I would not be offended if you want to continue the discussion (in-person) while in the presence of another to ensure we have an accurate recall of the information being discussed. Because I don't feel emails are an effective way to communicate on such an important matter the requires context, background, details and perspective, I will not continue utilizing email for these discussions.

Thanks Fred I look forward to all that we are going to be able to accomplish as an executive management team and as we move further into 2022. I hope this has been useful to you and has answered your question.

Sean W.

Sean Washington

POLICE CHIEF

City of Fremont | Police Department
2000 Stevenson Blvd., Fremont, CA 94538
(510) 790-6969 | SWashington@fremont.gov



From: Fred Bobbitt <FBobbitt@fremont.gov>

Sent: Saturday, January 15, 2022 5:36 AM

To: Sean Washington <SWashington@fremont.gov>

Subject: A question for you that has bothered me for nearly a year

Sean:

I've been awake for the last three hours thinking about what I have been going through since September 24, 2000; sixteen months ago - and I have a question to ask you that's been bothering me for almost a year. I spend a few hours each night awake thinking about all I have experienced related to proven and confirmed retaliation against me by three of our top city leaders and their corrupt behavior.

While I was being retaliated against and harassed by Mark Denaj, Brian Stott and Kim Petersen, Kim came into my office and made a comment. Her comment was made during one of our monthly PIP meetings. I believe it was in April 2001 after Mark had named you as Fremont's next police chief. Kim said, "Fred, I was talking to Sean about 'all of this' and he (Sean) said he believes we (Kim, Mark and Brian) were within our rights to do this to you (put me on a PIP, create a division for me and force me out as patrol commander because I refused a forced retirement)." Sean my question to you is did you state this to Kim? I think about Kim's comment daily and just really need to know if it is true.

Thank you,

Fred

Sent from my iPhone

Frederick H Bobbitt, Jr. #02464
POLICE CAPTAIN, PATROL DIVISION

City of Fremont | Police Department
2000 Stevenson Blvd., Fremont, CA 94538
(510) 790-6917 | FBobbitt@fremont.gov



Exhibit G

Begin forwarded message:

From: frederick bobbitt <freddiebobbitt@yahoo.com>
Date: January 31, 2022 at 3:16:45 PM PST
To: "Blackwell, Robin@DFEH" <Robin.Blackwell@dfeh.ca.gov>
Subject: Re: Bobbitt, Jr. / Fremont Police Department et al. - DFEH Case No.: 202104-13098401

Robin:

Thank you for your response; this is unfortunate. Please issue me a "Right to Sue" letter and I will secure an attorney.

Respectfully,

Frederick Bobbitt
209.914.2996

Sent from my iPhone

On Jan 31, 2022, at 10:31 AM, Blackwell, Robin@DFEH <Robin.Blackwell@dfeh.ca.gov> wrote:

Good morning,

I wanted to let you know that Fremont Police Department has declined mediation.

Thank you,

Robin Blackwell | DFEH Consultant III
California Department of Fair Employment and Housing
2218 Kausen Drive | Suite 100 | Elk Grove | California | 95758
Phone: (916) 582-6908
Mobile: (916) 201-8924
Email: Robin.Blackwell@dfeh.ca.gov



CONFIDENTIALITY NOTICE: This communication with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act. If you are not the intended recipient, please contact the sender and destroy this communication.

Exhibit H



**POLICE
DEPUTY
CHIEF**

 **BOB MURRAY
& ASSOCIATES**
EXPERTS IN EXECUTIVE SEARCH

THE COMMUNITY

Located on the southeast side of the San Francisco Bay, the City of Fremont boasts a thriving population (approximately 235,000) with an area of 90-square miles. Designated as the fourth most populous city in the Bay Area and the 15th largest in California, Fremont is an attractive example of metropolitan living at its best.

Fremont is home to a wide variety of over 1,200 innovative high tech, life science, and clean technology firms. Staffed by Fremont's highly educated population, firms such as Tesla Motors and Thermo Fisher Scientific are on the cutting edge of modern technology. These broad business opportunities and affordable locations make Fremont an exciting place to advance a career or start a business. Furthermore, downtown Fremont is transforming into an exciting pedestrian-friendly mixed-use district. Fremont is also a fantastic place to raise a family. Between Fremont's award-winning school districts, low crime rate, great restaurants, and outdoor recreational opportunities, there is no better place to work or play. The Bay Area's Regional Transit System also connects Fremont to the greater Bay Area, allowing for easy travel between other cities such as San Francisco, San Jose, and Oakland. Access to Interstates 680 and 880 also gives Fremont's residents the opportunity to easily travel throughout the Bay Area.



Municipal leadership is supportive of the department, and Fremont's residents trust that the department will carry out its mission of providing public safety through professional law enforcement.

THE POSITION

Under the direction of the Police Chief, the Police Deputy Chief is responsible for playing a central role in the planning, directing, administering, organizing, managing, and coordinating all activities of the Fremont Police Department in the enforcement of laws and ordinances, the prevention of crime, and the protection of life and property. The Police Deputy Chief serves as an advisor to the Police Chief and formulates policy and procedure recommendations for approval. The Police Deputy Chief also serves as the liaison between the department and a variety of local, state, and federal agencies and will act as the department head in the absence of the Police Chief.

Other essential functions include, but are not limited to:

- Providing oversight over the implementation of rules and programs related to professional standards, transparency, accountability, risk management, and emergency preparedness
- Assisting in the preparation and administration of the department budget and controlling budgetary expenditures and department appropriations
- Conferring with citizens and City officials on law enforcement issues and assisting in the

THE DEPARTMENT

The Fremont Police Department serves as the City of Fremont's law enforcement agency. The department employs over 300 staff to uphold the values of dedication, integrity, professionalism, and community partnership. Between more than 200 sworn officers and 100 professional staff, the Fremont Police Department includes a robust force of talented law enforcement professionals. The department is continuing to grow as it prepares to meet the social, technological, and ethical challenges of the future.

Since 1958, the Fremont Police Department has enjoyed an excellent rapport with the community and is one of the most reputable police agencies in California.



development of innovative municipal law enforcement practices

- Representing the department before the public and the media while remaining actively involved in community affairs
- Leading, motivating, supervising, and evaluating assigned department employees
- Assisting in the selection, development, evaluation, and supervision of principal subordinates
- Reviewing, directing, or conducting investigations of misconduct by police personnel, including internal affairs reporting and recommendations for disciplinary action
- Supervising and participating in police training programs



is critical for the incoming Police Deputy Chief. In order to succeed, the Police Deputy Chief will have an intuitive understanding of complex community-based issues and how the department can best be positioned to solve them. The ideal candidate will be comfortable pushing the envelope to find new and innovative ways to serve Fremont's citizens. Furthermore, candidates who are familiar with the City of Fremont and the greater Bay Area are encouraged to apply.

Any combination of education and experience that has provided the knowledge, skills, and abilities necessary for satisfactory job performance would be qualifying. Typically, the required knowledge is obtained through five (5) years of administrative law enforcement experience, including one (1) or more years at the rank of Police Captain or above. Graduation from an accredited four-year college or university with a

THE IDEAL CANDIDATE

The City of Fremont is seeking a proactive law enforcement professional to serve as its next Police Deputy Chief. The ideal candidate will be a strategic thinker with the ability to anticipate and prepare for future trends. The Police Deputy Chief will rely on their courageous leadership skills to drive the Department forward, staying abreast of new legal, technological, financial, and societal developments.

The ideal candidate will possess a deep knowledge of the principles and practices of modern municipal police administration, personnel management, leadership, administration, and community relations; technical and operating principles, practices, and techniques of law enforcement and crime prevention; and police requirements and limitations on police authority. The ideal candidate will also have the ability to plan, implement, and manage department divisions while motivating and developing departmental staff.

The selected candidate will utilize their excellent written and verbal communication skills to develop and maintain a healthy relationship with the community. A leader that truly cares about the profession and all members of the department is sought. Understanding that the City of Fremont is a diverse and unique place



bachelor's degree is required. A master's degree in a related field is highly desirable. Possession of a valid Class C California driver's license is required at the time of appointment. A P.O.S.T. Management Certificate is required.

Participation in top leadership programs, such as P.O.S.T. Command College, the FBI National Academy, California Police Chiefs Executive Leadership Institute, or the Senior Management Institute for Police (SMIP) is highly desirable.

COMPENSATION

The annual salary range for the Deputy Police Chief is \$201,791 - \$272,404; placement within this range will be dependent on qualifications. The City also offers an attractive benefits package including:

Retirement - CalPERS: 3% at 55 for classic members hired on or after April 8, 2012 (employee pays 12% of pre-tax contribution) or 2.7% at 57 for new members hired under the Public Employee Pension Reform Act (employee pays 12% of pre-tax contribution)

City Paid Health Benefits Allowance - \$2,350 monthly allowance is provided towards health benefits (CalPERS medical, dental, and vision) and employees are eligible to receive up to \$580 per month if full allowance is not allocated towards health programs

Life Insurance and Long-term Disability - Maximum life insurance coverage of \$100,000 and LTD coverage is provided

Annual Leave - 108 hours

Management Leave - 88 hours

Holidays - 104 hours

Uniform Allowance - \$1,000 annually (\$38.47 bi-weekly pay)

Tuition Reimbursement - Up to \$20,000 based on eligibility requirements

TO APPLY

If you are interested in this outstanding opportunity, please apply online at:

www.bobmurrayassoc.com

Filing Deadline:

March 18, 2022

Following the closing date, resumes will be screened according to the qualifications outlined above. The most qualified candidates will be invited to personal interviews with Bob Murray & Associates. A select group of candidates will be asked to provide references once it is anticipated that they may be recommended as finalists. References will be contacted only following candidate approval. Finalist interviews will be held with the City of Fremont. Candidates will be advised of the status of the recruitment following selection of the Police Deputy Chief.

If you have any questions, please do not hesitate to call Mr. Joel Bryden at:

(916) 784-9080

