**SUPERIOR COURT OF CALIFORNIA**
**COUNTY OF ALAMEDA**

**24CV062749: ARMSTRONG vs THE CITY OF OAKLAND, CALIFORNIA, A PUBLIC CORPORATION, et al.**
**10/16/2025 Hearing on Demurrer to Plaintiff's Second Amended Complaint; filed by THE CITY OF OAKLAND, CALIFORNIA, a public corporation (Defendant) CRS# 437899288952 in Department 15**

Tentative Ruling - 10/14/2025 Peter Borkon

The Demurrer to Second Amended Complaint filed by THE CITY OF OAKLAND, CALIFORNIA, a public corporation on 07/07/2025 is Sustained with Leave to Amend.

Plaintiff is the former Chief of the Oakland Police Department; he was placed on administrative leave on January 19, 2023 and terminated on February 15, 2023. (See Second Amended Complaint ("SAC") ¶¶ 21-22.) Plaintiff alleges he was terminated in retaliation for disclosing information to former Oakland Mayor Sheng Thao ("Thao") that he reasonably believed to be illegal. (*Id*. ¶ 38.) Specifically, Plaintiff alleges he complained to Thao that Robert Warshaw ("Warshaw"), the federal court-appointed monitor for the Oakland Police Department, had issued false reports "in order to falsely and fraudulently receive public money" in violation of local, state, and federal statutes. (SAC ¶ 24.) Plaintiff asserts a single cause of action against the City for retaliation in violation of Labor Code section 1102.5.

The City of Oakland ("City") demurs to the Second Amended Complaint. For the reasons discussed below, the demurrer is SUSTAINED WITH LEAVE TO AMEND.

Labor Code § 1102.5(b) prohibits an employer from retaliating against an employee for "disclosing information . . . to a government or law enforcement agency, to a person with authority over the employee or another employee who as the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation."

Whether an employee has reasonable cause to believe that the information he reveals discloses a legal violation is subject to "a requirement of objective reasonableness", and it excludes from whistleblower protection disclosures that involve only "disagreements over discretionary decisions, policy choices, interpersonal dynamics, or other nonactionable issues." (See *People ex rel. Garcia-Brower v. Kolla's Inc.* (2023) 14 Cal.5th 719, 734.)

In its order sustaining the City's demurrer to the First Amended Complaint, the Court found that Plaintiff had not alleged the disclosure of information which Plaintiff reasonably believed to violate the law. (See 6/12/2025 Order at p. 3.) The Court gave Plaintiff leave to amend to "clearly and concisely identify one or more communications he had with a person or agency specified in Labor Code § 1102.5(b) in which he disclosed information that he reasonably believed constituted a violation of a federal, state, or local statute. In amending, Plaintiff shall clearly allege what he said during those communication(s), to whom, and what law he reasonably

believed Warshaw was violating by engaging in the conduct Plaintiff disclosed." (*Id*. at pp. 3-4.)

The allegations in the Second Amended Complaint do not rise to the level of whistleblower violations for two reasons. First, Plaintiff now alleges that the sole basis for his claim is his January 19, 2023 phone conversation with Thao and City Administrator Reiskin, but fails to clearly allege what he said during that communication. Second, Plaintiff lists statutes which he alleges he "reasonably believed the Federal Monitor was violating," but fails to support this assertion with non-conclusory facts. (SAC ¶ 24.)

For example, Plaintiff again alleges that Warshaw violated California Civil Code sections 1709 and 1710 (setting forth elements of fraud), and 18 U.S.C. sections 1341 (mail fraud), 1343 (wire fraud), and 1346 (honest services fraud), but fails to include any details that indicate he reasonably believed Warshaw was engaged in fraud. (See e.g., SAC ¶¶ 25-34.)

Plaintiff also alleges that Warshaw violated Government Code section 8314 and Oakland Municipal Code section 2.25.060(A)(2), which prohibit the use of public resources for unauthorized purposes or private gain. Both of these statutes prohibit the use of public resources for unauthorized purposes or private gain, but neither applies to federal monitors such as Warshaw. (See Gov. Code, § 8314, subd. (a) [prohibiting use of public funds for unauthorized purposes by "elected state or local officer[s], including any state or local appointee, employee, or consultant"]; see also Oakland Mun. Code § 2.25.060(A)(2) [prohibiting use of public funds for unauthorized purposes by "public servants"]; § 2.25.030(D) [defining "public servants" to include elected or appointed city officeholders, City board or commission members, full- or part-time city employees and consultants].)

Even if these statutes could be construed to apply to Warshaw in his capacity as federal monitor of the OPD (which the Court does not address or decide in this order), Plaintiff does not provide facts demonstrating an objectively reasonable belief that Warshaw was issuing "false reports regarding the OPD and Chief Armstrong in order to continue to personally receive tax payer money[.]" (SAC ¶ 24.) Rather, the allegations concerning Warshaw's motivations are speculative and fail to meet the objective standard under section 1102.5.

For the foregoing reasons, the Court SUSTAINS the demurrer. Plaintiff is granted one final opportunity to amend the complaint to state a claim for whistleblower retaliation under section 1102.5.

Plaintiff shall file the Third Amended Complaint, along with a red-lined version reflecting all deletions, omissions, and changes from the Second Amended Complaint, within 10 days of this order.