

This Document is Presented Courtesy of



Workplace Champions Protecting Your Civil Rights®



Contact Us:

1-202-331-3911

Or Visit Us Online:

<https://www.EmploymentLawGroup.com>

The Employment Law Group, P.C., has reproduced this document from public records as an educational service to users of its Web site. With the exception of this cover page and any other work of its own authorship herein, for which it reserves all rights, The Employment Law Group disclaims all copyright interest in this public domain work. If you believe you hold a valid copyright on any material in this document and wish to assert your rights, please contact us at inquiry@EmploymentLawGroup.com.

1 CHRISTINA M. DENNING, ESQ. (Bar No. 211137)
2 denninc@dennningmoores.com
3 BRIAN M. COOK, ESQ. (Bar No. 255142)
4 cookb@dennningmoores.com
5 DENNING MOORES, APC
12526 High Bluff Drive, Ste. 300
San Diego, CA 92130
Tel: (858) 356-5610
Fax: (858) 356-5508

6 Attorneys for Plaintiff,
7 MARLEA DELL'ANNO

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
02/04/2020 at 04:17:00 PM
Clerk of the Superior Court
By Tamara Parra, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**

11 MARLEA DELL'ANNO, an individual,
12 Plaintiff,

13 v.

14 CITY OF SAN DIEGO, a municipal
15 corporation, and DOES 1-20,
16 Defendants.

Case No.: 37-2017-00000118-CU-OE-CTL

FOURTH AMENDED COMPLAINT

“IMAGED FILE”

Judge: Hon. Joel R. Wohlfeil
Dept.: 73
Complaint Filed: January 3, 2017
Trial Date: April 17, 2020

17
18
19 Plaintiff Marlea Dell'Anno (“Dell'Anno”) alleges:

20 1. Dell'Anno is an adult resident of San Diego County, California. At all material
21 times, she was a licensed California attorney in good standing with the State Bar of California,
22 and was the Assistant City Attorney for the City of San Diego, an appointed (non-elected)
23 position. At all material times, in addition to other laws, Dell'Anno was bound by ethical rules,
24 such as California Rules of Professional Conduct, Rule 5-110, not to file criminal charges against
25 someone unless probable cause existed to obtain a unanimous (12-0) verdict, at the highest level
26 of proof, “beyond a reasonable doubt.”

27 2. Defendant City of San Diego (“the City”) is a municipal corporation in San Diego
28 County, California. At all material times, the City was Dell'Anno's employer.

1 3. The true names and capacities, whether individual or otherwise, of defendants
2 Does 1 to 20 are unknown to Dell' Anno who, therefore, sues them by such fictitious names under
3 C.C.P. §474. She is informed and believes that each of the defendants is responsible in some
4 manner for the acts or omissions alleged in this complaint or caused her damages.

5 4. At all material times, all the defendants were agents and employees of the other
6 defendants and when doing the acts alleged in this complaint, they acted within the course and
7 scope of such agency and employment.

8 5. Dell' Anno's only superior was then City Attorney, Jan Goldsmith ("Goldsmith").
9 Goldsmith was a managing agent for the City acting in the course and scope of his capacity as an
10 elected official.

11 6. Dell' Anno is a career prosecutor with a documented history of exemplary
12 performance while maintaining the highest of ethical standards. She began her career as a
13 prosecutor in 2005 as a Deputy District Attorney with the Fresno County District Attorney's
14 Office where she quickly developed a reputation among her peers on both sides of the bar and
15 the judiciary for being a tenacious and ethical trial attorney. During her tenure with the office,
16 Dell' Anno was selected as the District Attorney coordinator for the countywide, multi-agency
17 S.A.F.E. Team to address management of the county's sex offender population and seek
18 strategies to enhance community safety. She was also peer-elected as the Vice President of the
19 Fresno County Deputy District Attorneys' Association.

20 7. Jan Goldsmith ("Goldsmith") was the City Attorney of San Diego and was
21 Dell' Anno's only supervisor at all material times. Like Dell' Anno, Goldsmith was ethically
22 prohibited from initiating criminal charges unless he reasonably believed his office could prove
23 the case beyond a reasonable doubt. However, at all material times, Goldsmith was also a
24 politician, and Goldsmith prioritized his political ambitions and interests over his ethical
25 obligations. In furtherance of his political advancement, as will be explained in this complaint,
26 Goldsmith intentionally caused harm to Dell' Anno. Under Government Code § 815.3, as an
27 "elected official," Goldsmith's intentional conduct nonetheless "arose from and was directly
28 related to [his] official duties."

1 8. In September 2009, Dell'Anno relocated to San Diego and joined the San Diego
2 City Attorney's Office as a Deputy City Attorney. Based upon her exemplary performance and
3 strong managerial and project management skills, Goldsmith quickly promoted her to the
4 position of Chief Deputy City Attorney in charge of the nationally-recognized Domestic
5 Violence/Sexual Assault Unit. By promoting Dell'Anno to that position, Goldsmith recognized
6 she was best suited to restore the unit to its previous success. Dell'Anno succeeded. She quickly
7 and effectively led the reorganization of the unit by implementing revised strategies that
8 dramatically increased the number of domestic violence, elder abuse, child abuse and sexual
9 assault cases prosecuted while maintaining an overall conviction rate of 94 percent, an increase
10 of nearly 20 percent from when she assumed that leadership role. Dell'Anno also worked closely
11 with justice partners to revitalize and enhance the office's relationships with the Family Justice
12 Center and other community stakeholders.

13 9. Again, in recognition of Dell'Anno's outstanding performance and managerial
14 skills, Goldsmith promoted her to the position of Assistant City Attorney, the position she held
15 from 2012 until her wrongful termination on November 20, 2015. In that role, Dell'Anno was
16 charged with overseeing the review of nearly 20,000 criminal cases per year, leading a team of
17 approximately 60 prosecutors and 100 investigators, paralegals, clerks and support staff.
18 Dell'Anno's restructuring of the Criminal Division resulted in increased efficiency, improved
19 case outcomes and integrated community-based prosecution practices. Throughout her tenure
20 in the office, Dell'Anno received outstanding performance reviews.

21 10. In her role as Assistant City Attorney, Dell'Anno expanded and obtained highly-
22 competitive federal funding for the nationally recognized San Diego Community Court Program.
23 The program focused on using risk assessment tools and procedural justice concepts to address
24 criminal recidivism as early and effectively as possible. In recognition of her outstanding
25 performance, she was an invited participant in the national White House LEAD Conference
26 focused on implementing strategic alternatives to inequalities in the criminal justice system.
27 Dell'Anno was also charged with regularly making presentations to the City Council and
28 addressing the media as required.

1 11. Almost immediately in her role as second in command, however, Dell’Anno
2 recognized that Goldsmith’s primary interest was his personal, political advancement, which she
3 quickly realized was on a collision course with her own professional and ethical obligations as a
4 criminal prosecutor, Rule 5-110. A central figure in the inevitable collision was Goldsmith’s
5 public relations official, a City employee, Gerry Braun, who was inextricably involved in
6 Goldsmith’s day-to-day decision-making, strategy and tactics as the City Attorney of San Diego.

7 12. Just as quickly, Goldsmith (and Mr. Braun) learned that Dell’Anno would not
8 bend her ethics to accommodate his political ambitions. For example, with other incidents to be
9 proven at trial, in 2013, Tanya Tomlinson, a member of Goldsmith’s management team, asked
10 Dell’Anno to attend a public City Council budget meeting to address any questions the Council
11 might have had about the budget for the Criminal Division. Ultimately, the Council directed
12 their questions to Dell’Anno who, consistent with her previous positions, truthfully answered
13 each of their questions, even though her answers did not align with Goldsmith’s agenda.
14 Goldsmith was watching the live feed of the meeting and heard and saw Dell’Anno’s responses
15 to the Council’s questions. Goldsmith became irate and denigrated her in front of the City
16 Attorney’s entire management team. When Goldsmith intimated that her conduct could
17 jeopardize her position with the office, Dell’Anno told Goldsmith that if telling the truth to the
18 City Council, an elected body, were an issue, he might as well fire her because she would
19 continue to tell the truth. Thereafter, and in retaliation for her conduct before the City Council,
20 Goldsmith increasingly limited her contact with the City Council and forbade her at various
21 stretches of time from speaking to councilmembers.

22 13. Dell’Anno sought the counsel of Mr. Braun, also known as “the Jan whisperer,”
23 about how she could get back in Goldsmith’s good graces so that she could participate in meetings
24 that directly affected her and the operation of her division, Mr. Braun told her Goldsmith “wants
25 you to get your hands dirty. If you would just get your hands dirty, they would let you in the
26 room.” Dell’Anno insisted that her integrity was not negotiable, but as time would tell, her
27 refusal to “get her hands dirty” for Goldsmith would lead to her humiliating and wrongful
28 discharge from the City Attorney’s Office.

1 14. The beginning of the end was an incident in late 2014, when Goldsmith saw a
2 political advantage in filing criminal charges against a person, i.e., to help him promote an image
3 that he supported the San Diego Police Department. However, Dell’Anno reviewed the case --
4 as any ethical prosecutor was required to -- and thought the case lacked probable cause, and as
5 was also her duty as a prosecutor under Rule 5-110, she refused to file any charges. During this
6 same time frame, Dell’Anno continued to push back against Goldsmith’s attempted use of the
7 criminal justice system to advance his political ambitions. There were several other cases where
8 this occurred. One was when Dell’Anno refused, as Rule 5-110 required her to do, Goldsmith’s
9 demand to file criminal charges against a political rival, Cory Briggs, because she believed there
10 was an absence of any evidence Briggs had committed a crime. Dell’Anno also refused
11 Goldsmith’s demand that she use a civil case subpoena to obtain evidence for potential criminal
12 charges against a local newspaper. This angered Goldsmith.

13 15. The final straw for Goldsmith came in October 2015, when, faced with a political
14 problem with the Deputy City Attorneys Association of San Diego, Goldsmith ordered
15 Dell’Anno to illegally remove a negative evaluation that had been placed in the file of a Deputy
16 City Attorney. Dell’Anno refused, and documented her reasons in a memorandum dated
17 October 6, 2015, a (redacted) copy of which is attached as Exhibit 1. Dell’Anno’s stated reason
18 for refusing Goldsmith’s order was unambiguous: “I cannot retract the negative evaluation I
19 would be acting in violation of the Government Code to do so.”

20 16. Goldsmith had had his fill of Dell’Anno’s ethics and insistence on following the
21 law. Within a few weeks, on October 27, 2015, he retaliated against Dell’Anno with an
22 unwanted and punitive transfer from her position in charge of the criminal division to one in
23 charge of “homeless issues,” with nobody reporting to her. This was a demotion. She was
24 removed from her large corner office and ordered to a smaller, filthy office with a sign on the
25 door stating, “Do Not Enter.” In response— Dell’Anno emailed Goldsmith, stating in part:

26 Your adverse action today is the most professionally and
27 personally devastating event of my twenty-year career. I cannot
28 express how unbelievable your actions today are in light of the
 work I do and the measurable success I have brought to your
 Criminal Division. Your decision is clearly the result of my

1 continued and documented refusal to engage in an on-going
2 pattern of illegal, unethical and fraudulent conduct by you and
other members of your administration.

3 (Ex.2)

4 17. But Goldsmith did not stop there. He knew Dell'Anno's refusing to violate Rule
5 5-110 by filing the unfounded criminal cases described in paragraph 13 and the October 6, 2015
6 memorandum would create substantial evidence of his retaliatory motives, Goldsmith decided
7 to hit first by targeting Dell'Anno's reputation and then terminating her, such that, if she sued,
8 he could label her as a "disgruntled ex-employee who was fired for cause."

9 18. To accomplish this, Goldsmith exploited a known issue in the City Attorney's
10 office, which was that some Domestic Violence ("DV") cases previously rejected by attorneys
11 in the office had not been filed within the statute of limitations. Goldsmith decided to use this
12 as a pretext to retaliate against Dell'Anno and wrongfully terminate her employment. On
13 November 13, 2015, he and Paul Cooper, the Executive Assistant City Attorney, conducted a
14 "fact finding" interview of Dell'Anno about these DV cases, which was recorded by a court
15 reporter. The same day, Goldsmith placed Dell'Anno on administrative leave.

16 19. A week later, on November 20, 2015, Goldsmith terminated Dell'Anno's
17 employment with the City in a letter full of false hyperbole. He simultaneously blamed Dell'Anno
18 for failing to supervise an attorney, which resulted in what he implied were meritorious DV cases
19 being time-barred because they were not filed within the statute of limitations while at the same
20 time he attempted to exculpate himself and other supervisors from any responsibility. (Ex. 3).
21 Goldsmith wrote, "[y]ou did not inform me of this matter, the cases, the circumstances or the
22 problems with the particular attorney." Goldsmith knew full well that Dell'Anno had followed
23 protocol by informing members of his management team with whom he regularly met. He also
24 knew that no DV case deadlines for filing had been missed.

25 20. In his pretext letter, Goldsmith also chided Dell'Anno for giving the "particular
26 attorney," who Goldsmith had fired too as a sacrificial lamb, a recommendation for a job with
27 the District Attorney's office. This angered Goldsmith because he knew the attorney Dell'Anno
28 had recommended (and he had fired) had been an excellent, hard-working Deputy City Attorney.

1 Goldsmith knew this other attorney had not done anything worthy of termination (like missing
2 deadlines on the DV cases). This was confirmed when the District Attorney's office conducted
3 an independent investigation of the allegations made against the other attorney by Goldsmith,
4 and hired her anyway.

5 21. Goldsmith's pretext letter harkened back to Dell'Anno's October 6, 2015
6 memorandum - the "final straw" that had angered him so deeply. Knowing he needed more to
7 show Dell'Anno's termination was justified, Goldsmith falsely accused Dell'Anno of
8 "unprofessional behavior as ACA toward Deputy City Attorneys and staff." Quite clearly,
9 Goldsmith was referencing the allegations made by the Deputy City Attorney whose negative
10 evaluation Goldsmith had illegally demanded Dell'Anno remove from her file.

11 22. Dell'Anno is informed and believes that other current and former City
12 employees, including but not limited to other attorneys working in the City Attorney's office
13 and their staff; were also retaliated against and suffered adverse employment arising out of their
14 protected activity, including but not limited to their refusal to participate in violations of state
15 and local law and ethical requirements and the City's belief that such former or current
16 employees disclosed or may disclose the violations of state and local law and ethical
17 requirements. Dell'Anno is further informed and believes that several City employees were
18 terminated from their positions arising out of such protected activity.

19 23. After she was terminated in our around late November or early December 2015, a
20 senior official at the San Diego County District Attorney's Office reached out to Dell'Anno to
21 inform her that a new position was opening up at the DA's office and encouraged her to apply for
22 the position. The position which was open was a special prosecutor role in the financial crimes
23 division. Dell'Anno applied for the position and as part of the application, took the county
24 screening test, and scored 100%. In or around February 2016, Dell'Anno appeared for an
25 interview, however, all the questions directed at her were focused on Jan Goldsmith and her
26 relationship with him. Approximately one day later Dell'Anno was informally told that she did
27 not get the position. No real reason was given as to why she did not get the job. Dell'Anno is
28 informed and believes that one or more high ranking officials and/or employees at the City

1 Attorney's office made statements about Dell'Anno's employment at the City Attorney's office
2 that were not true - i.e. what has been alleged above - to persons at the District Attorney's office
3 to ensure that she did not get the position.

4 24. Dell'Anno complied with the Tort Claims Act (Government Code § 810 et seq.)
5 and filed a claim against the City on May 19, 2016. The City rejected the claim in a letter dated
6 July 6, 2016. (Ex. 4.)

7 **CAUSE OF ACTION**

8 **(Retaliation, Violation of Labor Code § 1102.5, Against the City of San Diego**
9 **and Does 1 to 20)**

10 25. Dell'Anno re-alleges paragraphs 1 through 22.

11 26. Labor Code § 1102.5(b)(c) provides:

12 (b) An employer, or any person acting on behalf of the
13 employer, shall not retaliate against an employee for disclosing
14 information, or because the employer believes that the employee
15 disclosed or may disclose information, to a government or law
16 enforcement agency, to a person with authority over the employee
17 or another employee who has the authority to investigate,
18 discover, or correct the violation or noncompliance, or for
19 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,
regardless of whether disclosing the information is part of the
employee's job duties.

20 (c) An employer, or any person acting on behalf of the
21 employer, shall not retaliate against an employee for refusing to
22 participate in an activity that would result in a violation of state or
federal statute, or a violation of or noncompliance with a local,
state, or federal rule or regulation.

23 27. As alleged in paragraphs 12, 14 and 15, Dell'Anno engaged in protected activity
24 under Labor Code § 1102.5(b)(c), the City retaliated against Dell'Anno as alleged in paragraphs
25 16 through 23.

26 28. As a legal result of Defendants' retaliation against Plaintiff she has suffered, and
27 will continue to suffer, special damages according to proof. Plaintiff also suffered general
28 damages, according to proof, including garden variety emotional distress that is not a level of

1 distress more significant than that of a normal person who had been subjected to conduct similar
2 to Defendant's conduct. Plaintiff's garden variety emotional distress ceased prior to the filing
3 of her lawsuit.

4 **REQUEST FOR RELIEF**

5 THEREFORE, Plaintiff Marlea Dell'Anno requests judgment against defendants the
6 City of San Diego and Does 1 through 20 for:

- 7 a. General and special damages according to proof;
8 b. Costs of suit;
9 c. Reasonable attorney fees and expert witness costs allowable by law;
10 d. Treble damages allowable by law;
11 e. Civil penalties allowable by law; and
12 f. Any other proper relief.

13
14 Dated: January 30, 2020

DENNING MOORES, APC

15
16 By: 

17 Christina M. Denning, Esq.
18 Brian M. Cook, Esq.
19 Attorneys for Plaintiff
20 MARLEA DELL'ANNO
21
22
23
24
25
26
27
28