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November 20, 2023

Ms. Kathy Hayes, Clerk
Board of Supervisors
County of Humboldt
825 5th Street
Eureka, CA 95501
khayes@co.humboldt.ca.us

VIA PERSONAL SERVICE and EMAIL

RE: Claim for Damages against County of Humboldt by Cyndy Day-Wilson for Malicious Prosecution and Violation of Civil Rights

Dear Ms. Hayes:

Please allow this to serve as a formal claim against the County of Humboldt for malicious prosecution and violation of my civil rights.

The County of Humboldt (“County”) filed an action for injunctive relief on May 25, 2023 against me and my former client Cathie Childs. On May 26, 2023, the County filed a first amended complaint (FAC) against us both, adding an additional cause of action for declaratory relief.

This action against me was maliciously filed not only to create a conflict with my former client, Ms. Childs, but also very clearly based upon allegations that arise from an act or acts by me in furtherance of my right of free speech under the United States and California Constitutions in connection with a public issue and communicative petitioning conduct. The County’s action was also further barred against me by the absolute litigation privilege under Civil Code section 47(b). This action was brought solely to chill the valid exercise of my constitutional rights and was voluntarily dismissed by the County only after it was threatened with a lawsuit for malicious prosecution and an anti-SLAPP motion. I am thus seeking my attorneys’ fees and costs I spent defending the County’s baseless lawsuit; damages for the County’s malicious filing of a baseless lawsuit which was not only constitutionally protected but was also barred by Civil Code section 47(b); damage to my law practice due to the County’s intentional interference with my relationship with my former client; and mental anguish and emotional distress.

I was retained as an attorney by Cathie Childs in late August 2022. In my capacity as Ms. Childs’ attorney, I submitted a claim on behalf of Ms. Childs to Ms. Childs’ former employer, the

County of Humboldt, on or about January 20, 2023. This claim detailed Ms. Childs' allegations against the County during her time as a Deputy County Counsel and informed the County that Ms. Childs would be filing an action in federal court should her claim be rejected by the County.

On or about May 10, 2023, the Lost Coast Outpost (known locally as "LoCo") published an article by Isabella Vanderheiden, which detailed Ms. Childs' claims against the County regarding her wrongful termination, which included allegations of gender discrimination, First Amendment violations, and violations of whistleblower protections. The article states that the County was asked for comment regarding these allegations before publication.

The County, through its outside counsel Nathan Jackson and Jack Hughes of the law firm of Liebert Cassidy Whitmore, alleged a false and evidentiarily unsupported dialogue that I had provided the claim to the Lost Coast Outpost.

I had received previous vague communications from the County's outside counsel regarding attorney-client privileged and/or confidential information. At no point has the County provided an example of the information they believe to be privileged and/or confidential that has been publicly revealed by either me or Ms. Childs. The first of these communications occurred on or about September 30, 2022, only seven (7) days after Ms. Childs' termination from the County. The timing of these statements regarding attorney-client privileged and/or confidential information led me to believe that the County was attempting to prevent Ms. Childs from speaking with her own attorney, which is contrary to long-established California case law.

The second of these communications occurred on or about March 8, 2023, at which the County's outside counsel wrote me with a statement of rejection of Ms. Childs' claim by the County. Not only did this communication fail to state what information was believed to be attorney-client privileged and/or confidential, but the submission of a claim to the County itself is not a revelation of any information to a third party at all – there can be no wrongful disclosure in a scenario where an attorney is speaking directly to the former client. These communications at no point stated what privileged and/or confidential information the County believed to have been wrongfully revealed.

On or about May 16, 2023, my office phone received two (2) calls from an unknown Sacramento number. This number called once more on May 17, 2023, despite the voicemail message stating that my office was closed until the afternoon of May 22, 2023. This caller did not identify themselves until May 22, when a voicemail was left by an LCW attorney, Nathan Jackson, who purported to represent the County regarding Ms. Childs' claims. I received an e-mail from Mr. Jackson on May 22, which once again vaguely stated that he wanted to speak about the alleged disclosure of attorney-client privileged and/or confidential information; this e-mail once again failed to state *what* information was allegedly disclosed.

I was not back in my office until the morning of May 23, 2023. Instead of waiting for me to call him back or respond to his e-mail, Mr. Jackson appears to have called my office a total of six (6) times, that day calling nearly every hour. This is despite the fact that my office had just been closed for ten (10) days, and he had no idea the reason for this closure. I reviewed his e-mail and determined that there was no reason to have a phone conversation with Mr. Jackson as he did

not state what attorney-client privileged and/or confidential information that the County believed to have been wrongfully revealed, nor did he provide any suggestions or requests for a resolution. I felt that it would be a waste of time to discuss this on the phone – Mr. Jackson had already correctly stated that I likely disagreed with his assertions and offered no solution.

The County filed an injunctive relief action against both me and Ms. Childs on May 25, 2023. They filed an FAC on May 26, 2023, which contains only one case of action – for declaratory relief – and continues to pray for relief in the form of a preliminary and permanent injunction.

This action alleged that I and Ms. Childs, *on information and belief*, “intentionally disclosed confidential and privileged information obtained during the course of Ms. Childs’s employment at Humboldt County to the [Lost Coast] Outpost, and perhaps others...” The action further alleged *again on information and belief*, that “Childs and Day-Wilson have, and **are continuing to, act** on a knowingly erroneous interpretation of the scope of the attorney client privilege and duty of confidentiality...”

The FAC also alleges *on information and belief* that “Childs and Day-Wilson provided an unredacted copy of Childs’s Claim for Damages to the [Lost Coast] Outpost.” As a result of the County’s filing of the state court action, I retained the legal services of Dustin Owens. Mr. Owens is a local attorney and charges \$500 per hour which is a typical hourly rate for an attorney in Humboldt County of his experience. Despite Mr. Owens attempts to inform the County, through its outside counsel, that its lawsuit was without merit the County continued to maintain the state court action and I continued to incur attorney’s fees and costs.

Of particular note, is the incompetence of outside counsel to effect service of the FAC upon me. Their first attempt at service of the FAC was unsuccessful as they failed to serve a legally required summons along with the FAC. The County’s outside counsel was informed of the service issue, but they refused to properly serve as required by law. Mr. Owens was thus forced to file a motion to quash service as the County refused to admit its error and noncompliance with the law. The County’s legally unsupported stance on this issue caused me to further incur unnecessary attorney’s fees and costs.

Ms. Childs filed an action in federal court on or about June 8, 2023 against the County and Scott Miles, Interim County Counsel for: (1) violation of 42 U.S.C. § 1983 [Retaliation for Exercising Free Speech]; (2) violation of the whistleblower protection law [Cal. Labor Code Section 1102.5]; (3) wrongful discharge in violation of public policy; (4) violation of Cal. Gov. Code § 12940 [Retaliation, Gender Discrimination]; (5) violation of Cal. Labor Code §§ 201, 203; (6) violation of the Tom Bane Civil Rights Act [Cal. Civil Code Section 52.1]; and (7) violation of Title VII of the Civil Rights Act of 1964 [Gender Discrimination, Hostile Work Environment, Harassment]. Ms. Childs filed a first amended complaint on or about June 26, 2023 for: (1) violation of 14 U.S.C. § 1983 [Retaliation for Exercising Free Speech]; (2) violation of the whistleblower protection law [Cal. Labor Code Section 1102.5]; (3) violation of Cal. Gov. Code § 12940 [Retaliation, Gender Discrimination, Failure to Prevent]; (4) violation of the Tom Bane Civil Rights Act [Cal. Civil Code Section 52.1]; and (5) Violation of Title VII of the Civil Rights Act of 1964 [Gender Discrimination, Hostile Work Environment, Harassment].

The *only* thing that has occurred following the May 10 article in LoCo is that Ms. Childs, by and through me, as her counsel, filed an action in federal court.

Of particular importance, which the County refused to ever admit despite the overwhelming evidence supplied, was that the information in Ms. Childs' claim was all public information most of which can be found to this day on the County's website. Most importantly, the County is a public entity, and thus a large portion of its actions and dealings are **by law** public knowledge. In fact, nearly every item of information the County argued should be sealed under a theory of confidentiality *has already been revealed to the public by the County*. Large amounts of information are contained on the County's own website and/or are detailed in the Board of Supervisors' and other County boards' agendas, meeting minutes, and staff reports. Ms. Childs' reporting of the misuse of public funds and the unauthorized practice of law by non-lawyer staff **has already been revealed by the County** when the redacted copy of Ms. Childs' claim was attached to a Board of Supervisors agenda. The County did not redact these allegations from Ms. Childs in that publicly posted claim, and they cannot now claim that constitutes confidential information that cannot be used in court.

Despite this, and despite the fact that neither the County or its outside counsel had any evidence to support its baseless allegations that the claim had been supplied to LoCo by me or Ms. Childs the County, through its outside counsel, Nathan Jackson and Jack Hughes of LCW, continued to prosecute the state action against me and Ms. Childs. The continued prosecution created a conflict, which was created intentionally, between me and my former client, Ms. Childs, and I was left with no choice but to withdraw as her counsel in the federal action. My withdrawal deprived me not only the opportunity to assist my client with her legal needs but also deprived me of attorney's fees and costs which would have been paid as a result of my representation of Ms. Childs.

Even after I withdrew from the federal action (with permission from the federal court), the County through its outside counsel continued to prosecute the state court action even though it had been informed that I had not provided LoCo with a copy of Ms. Child's claim. In addition, the County and its outside counsel took steps to increase my legal fees not only through the aforementioned improper service but also through continued badgering of Attorney Owens and through many attempts to forum shop its way through the Humboldt County Superior Court in pursuit of a trial judge that would rule in its favor.

My fees and costs continued to mount when the County, through its outside counsel, attempted to obtain an injunction against me even though the correct legal process had not been followed. The County's forum shopping also caused me to draft a writ of mandamus to the California Court of Appeal requesting the disqualification of Greg Elvine-Kreis, a current sitting judge in Humboldt County Superior Court because of my representation of Rory Kalin in his lawsuit against Judge Kreis and his refusal to recuse himself. The County, and its outside counsel, even fought that in an attempt to intentionally prejudice my rights in court.

It was only after many months and after the threat and drafting of an anti-SLAPP motion and filing of lawsuit for malicious prosecution by Mr. Owens that the County voluntarily dismissed its case against me.

However, the damage was done, and I have incurred significant damages as a result of the County and its outside counsel. To date, I have paid my attorney \$25,000.00 in attorney's fees and costs, the state court action filed by the County also impacted my law firm billables in that I was forced to spend time defending the County's state court action instead of focusing on my law practice. I estimate that this cost me another \$25,000.00 in legal fees that I would have otherwise billed and collected from clients.

In addition, I lost out on collecting attorneys' fees for representing Ms. Childs in her federal court action. Given my past experience in federal civil rights employment lawsuits I would have expected to have received approximately \$250,000 in legal fees for my representation of Ms. Childs. I was deprived of that opportunity when the County, and its outside counsel, intentionally conflicted me out of continuing to represent Ms. Childs.

In sum, I am seeking in excess of \$300,000 in damages from the County of Humboldt for its malicious and unconstitutional lawsuit against me exclusive of the mental anguish which the County's baseless action caused. I am pursuing this claim not only to recover my damages but also to send a message to the County that its motives and actions were improper and cannot be replicated against another attorney.

Once this claim is rejected (and I assume it will be as the County has a pattern and practice of failing to take responsibility for its bad behavior) I will immediately file a lawsuit against the County of Humboldt and seek payment of my damages pursuant to any and all available legal theories.

If the County wishes to discuss this matter you may contact me or my attorney, Dustin Owens. Otherwise, I will see you in court.

Sincerely,

A handwritten signature in black ink that reads "Cyndy Day-Wilson". The signature is written in a cursive, flowing style with a large initial "C".

Cyndy Day-Wilson, Esq.

cc: Dustin Owens, Esq.