

**ATTORNEY CLIENT PRIVILEGED WAIVED BY THE
CITY COUNCIL NOVEMBER 4, 2024**

CITY OF SAN LEANDRO

INVESTIGATION REPORT

October 30, 2024

[REDACTED]

[REDACTED]

Submitted by:

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[REDACTED]

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Introduction and Background Information

On or around May 20, 2024, the City of San Leandro hired me, attorney Carl Botterud, to conduct a workplace investigation. The investigation arises from a complaint made by former city manager Fran Robustelli.

Robustelli alleged that she was subjected to misconduct by council members Fred Simon and Victor Aguilar.

Scope of the Investigation

Robustelli alleged that council member Simon inappropriately interfered with her position and authority as city manager. She also claimed that Simon treated her poorly because of her gender.

Robustelli also asserted that council member Victor Aguilar interfered with her position and authority as city manager.

The Standard of Proof Applied in Making Findings

The standard of proof used in reaching factual findings and other conclusions is a "preponderance of the evidence." "Preponderance of the evidence" means the greater weight of the evidence: that the evidence on one side outweighs, or is more than, the evidence on the other side. Put simply, a preponderance of the evidence shows it is "more likely than not" that the disputed fact or incident happened. This standard also applies when making credibility determinations.¹

Overview and Methodology

I interviewed 14 witnesses and reviewed electronically stored information ("ESI"). ESI material for my findings is cited in the footnotes and included in the Evidence Appendix.

¹ Credibility determinations, when necessary to make factual determinations, are weighed in light of the California Civil Rights Department Harassment Prevention Guide for California Employers "Credibility Factors" including; (1) Inherent plausibility, (2) Motive to lie, (3) Corroboration, (4) Extent a witness was able to perceive, recollect or communicate about the matter, (5) History of honesty/dishonesty, (6) Habit/consistency, (7) Inconsistent statements, (8) Manner of testimony, and (9) Demeanor. A full explanation of these factors is published by the California Civil Rights Department and may be found at: <https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH-Workplace-Harassment-Guide.pdf>.

Witnesses and the City were reasonably cooperative and responsive to my requests. I was allowed to conduct a reasonably thorough investigation consistent with the scope of the allegations.

There were delays in the investigation. Some delays were due to Simon's and Aguilar's availability. Others due to my summer travel schedule.

Applicable Rules and Policies

City Council Member Handbook

CHAPTER 1 – MAYOR AND CITY COUNCIL

GENERAL POWERS AND RESPONSIBILITIES OF THE CITY COUNCIL

The City Council is the legislative body of the City.; Its members are the community's decision-makers. Power is centralized in the elected council collectively, and not in individual members of the Council. The Council approves the budget and determines the public services to be provided and the taxes, fees, and assessments to pay for these public services. It focuses on the community's goals, major projects, and such long-term considerations as community growth, general plan and land use, development standards, capital improvements, financing and strategic planning. The Council appoints a professional City Manager to carry out the policy and administrative responsibilities.

Councilmembers are not full-time City officials and do not manage the day-to-day activities of the City organization. This is being done by the City Manager under the direction of the City Council. ...

NON-INTERFERENCE WITH ADMINISTRATIVE SERVICE

The Mayor and Council Members shall not interfere with the execution of the powers and duties of the City Manager; this includes interference with hiring appointments or terminations of City staff. Except for inquiry, the Mayor and Council

Members shall not direct any subordinate of the City Manager. The Mayor and Council must deal with the City Manager directly on all matters related to the administrative service.
(Section 345, City Charter)

COMMUNICATIONS WITH STAFF

A Councilmember shall not direct staff to initiate any action, change a course of action, or prepare any report that is significant, nor shall a councilmember initiate any project or study without the approval of a majority of the Council.

City of San Leandro Municipal Code

Section 1-4-305 – Equal Opportunity

It is the policy of the City and of the Council that the merit personnel program be administered in a manner designed to attract and to retain in municipal service competent and dedicated officers and employees, to assure that appointments and promotions are based upon merit and ability, to eliminate mediocrity and to provide incentive to perform to capacity. No officer, employee or applicant shall enjoy or suffer discrimination based upon religion, race, color, sex, national origin, ancestry, political affiliation or physical handicap.

Personnel Rules of the City of San Leandro

Rule 2

Section 1. ***Equal Opportunity*** - All persons, regardless of race, color, religion, sex, national origin, ancestry, age, marital status, sexual orientation, political affiliations, or physical disability shall have equal access to positions in the City of San Leandro, limited only by their ability to do the job. The City shall make every effort to ensure that positions in the competitive

service are genuinely and equally accessible to qualified persons.

Summary of Issues and Findings

Did Council Member Simon Breach his Obligation to Not Interfere With Robustelli's Execution of her Duties as City Manager? SUBSTANTIATED.

Summary finding: Yes. Council member Simon breached his obligation to not interfere with Robustelli's execution of her duties as the city manager.

Did Council Member Aguilar Breach his Obligation to Not Interfere With Robustelli's Execution of her Duties as City Manager? SUBSTANTIATED.

Summary finding: Yes. Council member Aguilar breached his obligation to not interfere with Robustelli's execution of her duties as city manager.

Did Council Member Simon Subject Robustelli to Misconduct Based on her Decision to [REDACTED]? SUBSTANTIATED

Summary finding: Yes. Council member Simon subjected Robustelli to misconduct, interfering with her ability to perform her duties, based on her decision to [REDACTED].

Did Council Member Simon Subject Robustelli to Misconduct Based on her Gender? NOT SUBSTANTIATED.

Summary finding: No. Council member Simon did not subject Robustelli to misconduct based on her gender.

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Witness List²

#	Name	Role	Title	Interview Date
1	Fran Robustelli	Reporting witness	Former City Manager	May 29, 2024
2	Tom Liao	Witness	Community Development Director	June 17, 2024
3	Janelle Cameron	Witness	Current City Manager	June 24, 2024
4	Juan González III	Witness	Mayor	July 9, 2024
5	Pete Ballew	Witness	Council Member	July 9, 2024
6	Xouhoa Bowen	Witness	Council Member	July 11, 2024
7	Bryan Azevedo	Witness	Council Member	July 11, 2024
8	Sbeydeh Viveros-Walton	Witness	Council Member	July 23, 2024
9	Victor Aguilar, Jr.	Responding witness	Council Member	August 7, 2024 October 2, 2024
10	Fred Simon	Responding witness	Council Member	August 13, 2024 August 14, 2024 September 18, 2024
11	Deborah Cox	Witness	Former Council Member	August 27, 2024
12	Pauline Cutter	Witness	Former Council Member	September 4, 2024

² . All witnesses were interviewed using Zoom and audio recorded. All witnesses were informed of my role. I told each witness that retaliation is against applicable law and City policy. I explained that they are protected against retaliation for bringing good faith claims or participating in the investigation. I further told them they are obligated not to retaliate against others. I asked them to keep our conversations confidential during the course of the investigation.

13	Eric Englebart	Witness	Deputy City Manager	September 10, 2024 September 12, 2024
14	Corina Lopez	Witness	Former Council Member	October 28, 2024

Witness Summaries

Fran Robustelli

Robustelli is the former city manager. She alleges that she has been subjected to discrimination, retaliation, and harassment over the three years she served in that role. Robustelli said that council members have interfered with her position in a way that is inconsistent with the city charter.

Interference – [REDACTED]

[REDACTED]. Simon called Robustelli, saying he wanted to meet with [REDACTED]. Robustelli told Simon it would be inappropriate for him to meet directly with [REDACTED] regarding [REDACTED] employment situation, as doing so would interfere with Robustelli's role as city manager. Robustelli encouraged Simon to meet with Janelle Cameron, who served as assistant city manager.

Simon did not follow Robustelli's direction. He did not meet with Cameron. Robustelli said he privately met with [REDACTED]. Simon tried to change the city clerk's reporting structure to report directly to the city council rather than the city manager. The city clerk's reporting structure did not change.

Interference [REDACTED]

In fall 2023, San Leandro's then-serving [REDACTED], became the subject of a workplace investigation. In February 2024, Robustelli [REDACTED].

Robustelli said that she kept the city council informed throughout the process. She did so through a series of what she referred to as "2-2-3"

meetings. She would meet with two or three council members to update them on the progress of the investigation.³

One of those meetings included three elected officials – Simon, Council Member Victor Aguilar, and Mayor Juan González. Staff present were Robustelli, Cameron, and city attorney Richard Pio Roda. Robustelli told the group she was leaning toward [REDACTED].⁴ According to Robustelli, Simon threatened her continued employment if she made the wrong decision and [REDACTED].

Aguilar told Robustelli she should reconsider her decision to avoid retaliation from the public. Aguilar also told Robustelli that the community would call for her to be fired, which could impact her upcoming performance evaluation.⁵ Robustelli said that Simon built on Aguilar’s comments.

Robustelli said Simon threatened her employment if she made what he considered to be the wrong decision. Simon disagreed with her decision to [REDACTED] the [REDACTED] employment. Robustelli said she spoke with former council member Bob Glaze after she [REDACTED]. Glaze told Robustelli that Simon wanted her gone.

Harassment and Retaliation

Robustelli said that after she [REDACTED], Simon started sending her an increasing number of complaints via email and text. Robustelli said Simon flooded her with information requests, setting her up to fail.

Gender Discrimination

Robustelli said she thinks her gender played a role in Simon’s treatment of her. She said Simon is horrible toward women. For example, Robustelli cited Simon voting against hiring Janelle Cameron as the interim city manager to fill Robustelli’s role. Robustelli said Simon repeatedly accused Robustelli

³ The purpose of the meeting was to update council members about the ongoing investigation process, not to lead to discussion, deliberations, or action by the city council as a whole.

⁴ Per the City Charter, this decision belonged solely to the city manager. The City Council had no role to play.

⁵ Robustelli shared her view that certain members of the city council were leaking closed session information to the public. Robustelli did not offer direct evidence of such conduct. As it is not within the scope of this investigation, I do not include it in this summary.

of not hiring people of color and then voted against Cameron, who is black. Robustelli said Simon advocated for hiring Deputy City Manager Eric Engelbart, a less qualified white man. Robustelli cited this as an example of Simon being motivated by gender.

Credibility

Robustelli is a reliable narrator. Her recollection of events tracks with evidence from non-party witnesses. Her resignation aligns with her experiencing a challenging work environment. Robustelli has relocated and found a new position. Nothing suggests that she seeks to personally gain from raising her concerns. I found no reliable evidence that Robustelli had a motive to lie or manufacture claims.

Tom Liao

Liao is San Leandro's community development director. He has worked in the city for 20 years. He reports to the city manager. Liao has five direct reports. Liao said that he has had an opportunity to observe interactions between Robustelli and council members. He described Robustelli as professional.

Liao said he has been in meetings with Robustelli and Simon. He said that the meetings have always been professional. Liao described Simon as approachable, not a bully. Liao told me that Simon can be very single-minded when questioning staff. On specific issues, Simon sometimes gets into the weeds, seemingly micro-managing.

I asked Liao if he had ever experienced or observed Simon attempting to manage him or Robustelli directly. Liao said he had not seen Simon cross the line but that he sometimes toed it.

Liao has not observed Simon engage in abusive conduct toward Robustelli. He did not perceive gender bias.

Credibility

Liao is a reliable narrator—his narrative tracks with most non-party witnesses. I did not perceive bias for or against any party. He answered questions directly.

Janelle Cameron

Cameron started with the city in September 2021 and is now the city manager. I asked Cameron if she had the opportunity to observe interactions between Simon and Robustelli. She had. She characterized them as professional most of the time. There were a handful of times when she thought Simon said things that were not appropriate between a member of the city council and the city manager. She cited two incidents with employees.

The first instance involved city clerk [REDACTED]. [REDACTED] [REDACTED] [REDACTED]. Robustelli had [REDACTED] start reporting to Cameron, who was then serving as the assistant city manager, to give [REDACTED] more oversight.

Cameron heard that Simon came to the city clerk's office and tried to talk with staff about how they felt about work. Cameron said this is unacceptable interference from a council member. Cameron did not personally observe Simon but heard about it.

The second pertains to [REDACTED]. Cameron was in a 2-2-3 meeting involving Aguilar and others she could not remember. Cameron said that Aguilar was not happy with Robustelli's plan [REDACTED] [REDACTED] and said it would be brought up in her review. Cameron heard Aguilar's comment as a threat.

Cameron said she cannot definitively say that Simon or Aguilar treated Robustelli differently because of her gender.

Credibility

Cameron is a reliable narrator. Her narrative is consistent with the overall evidence. I did not perceive bias for or against any party. She answered questions directly.

Juan González III

González is San Leandro's mayor. He has served in that role for a year and a half. The mayor is directly elected by popular vote. González has personally observed Robustelli interact with Simon and Aguilar.

González said he has seen Simon make excessively persistent or picayune asks of Robustelli. It seemed to González that Simon was setting her up to fail. It got bad enough that González had Robustelli direct Simon to him so that he could manage Simon and try to get him to focus and prioritize. González said Simon's conduct toward Robustelli escalated after [REDACTED].

González recalls hearing Aguilar discuss how Robustelli's decision [REDACTED] would be factored into her performance evaluation. González said Simon expressed his agreement with Aguilar.

González heard Aguilar say he would rate Robustelli's performance lower because she [REDACTED]. González said that Simon gave Robustelli her lowest overall rating.

González does not perceive gender bias in Aguilar's conduct. He does see it with Simon but cannot articulate specific examples. He then cited a discussion about promoting Janelle Cameron, a Black woman, from assistant city manager to city manager.

According to González, Simon was the only council member who voted against hiring Cameron. Simon and Aguilar wanted the city to promote Eric Engelbart as interim city manager. Engelbart is a white male who serves as the deputy city manager. Engelbart did not want the job. Every city department chair wanted Cameron to fill the role. González said Simon could not articulate a reason not to hire Cameron.

Credibility

González is a reliable narrator. He did not offer hyperbole or try to cast others in a specific light. He answered questions directly, and his answers were consistent with the overall evidence.

Pete Ballew

Ballew has served on the city council for seven and a half years and will end his term on December 31, 2024. He also served as a member of the San Leandro police department for 30 years and retired as a captain.

He recalls that Aguilar and Simon were unhappy with how Robustelli managed employment matters with the city clerk. In response, they sought to have the council vote to revise the city charter so that the city clerk reported directly to the council rather than the city manager. Ballew described the conduct as undermining, not interfering, with the city manager.

Ballew recalls that Simon and Aguilar were unhappy with Robustelli's decision to [REDACTED]. He does not remember whether either of them directly threatened Robustelli's employment. It was implied as to how they would complete future evaluations.

Ballew said he has not seen gender bias from Aguilar. He thinks Simon does not have the same respect for women in leadership as he does for men.

Credibility

Ballew is a reliable witness. Ballew acknowledged that he does not get along politically with Aguilar or Simon and that his responses may be biased against them. I did not perceive that to be the case. He answered questions directly and factually. His responses were consistent with the overall evidence. His responses were measured. He did not appear to favor Robustelli over Simon or Aguilar.

Xouhoa Bowen

Bowen is a city council member who started her service on January 1, 2023. She has observed Simon and Aguilar interact with Robustelli and heard Simon threaten Robustelli's employment.

Bowen said she heard Simon implicitly threaten Robustelli's job by saying that if she went through [REDACTED], it would impact her performance evaluation. This was in a closed session.

Bowen cited the process of hiring Cameron to fill the city manager role as an example of gender bias. She recalls Simon and Aguilar both criticizing

Cameron on matters outside her scope of work. Bowen said Simon and Aguilar wanted deputy city manager Eric Engelbart to fill the role. They promoted Engelbart despite knowing he did not want the job. Engelbart had far less experience than Cameron. This caused Bowen to wonder whether Simon and Aguilar have a problem with a strong woman in a position of power.

Credibility

Bowen is a reliable witness. She answered questions directly, and her responses were consistent with the overall evidence. I did not perceive bias for or against Aguilar and Simon.

Bryan Azevedo

Azevedo is a council member who has served for four years and is up for re-election this year. He has seen Simon and Aguilar interact with Robustelli.

Azevedo does not recall Aguilar or Simon threatening Robustelli's job pertaining to employment decisions relating to the city clerk [REDACTED]. He does not recall whether Aguilar or Simon raised their voices to Robustelli.

Simon talked with Azevedo about firing Robustelli. This was privately, not in Robustelli's presence.

Credibility

Azevedo is a reliable narrator as much as he corroborates Simon's desire to have the council fire Robustelli. Other than that, Azevedo had limited recollection of events. I find no reason for Azevedo to lie about his conversation with Simon.

Sbeydeh Viveros-Walton

Viveros-Walton is a city council member. She was appointed to that position on March 4, 2024. Viveros-Walton was not on the city council during the [REDACTED].

Viveros-Walton has not observed Aguilar or Simon mistreat Robustelli. She recalls a conversation with Simon about Robustelli a few days before she was appointed to the city council.

Viveros-Walton said Simon called her about her being in the running to be appointed to the city council. This was on the Saturday or Sunday preceding her appointment at the March 4, 2024, meeting. Viveros-Walton said Simon was cautious in his language.

Viveros-Walton said Simon discussed the possibility of having enough votes to fire the city manager. He asked if Viveros-Walton would have the moral courage to stand up and relieve a person in leadership if it was called for. Simon did not use those specific words, but that is what Viveros-Walton inferred. Viveros-Walton said Simon asked her if she knew anything about [REDACTED]. Viveros-Walton said she knew only publicly available information.

Viveros-Walton's said that Simon asked whether she, as a new council member, would vote to relieve Robustelli of her duties if negative information emerged about how she managed [REDACTED]. Walton said she told Simon that she was not afraid to speak truth to power and that if she had information that caused her to question a leader's ability to perform her duty, she could vote that person out.

Viveros-Walton said Simon never touched on the topic again. Viveros-Walton said she thinks it became moot because Robustelli submitted her resignation.

Credibility

Viveros-Walton is a reliable narrator on a single issue. She joined the council on March 4, 2024, and was not involved during most of the material period. She brings relevant evidence about Simon's conduct toward Robustelli in March 2024. Viveros-Walton's conversation description was inherently plausible and consistent with the overall evidence. Viveros-Walton presented no bias for or against any of the parties.

Victor Aguilar, Jr.

Aguilar was first elected to the council in 2018. He served on the City Council during [REDACTED].

[REDACTED]

I asked Aguilar if he directed Robustelli not [REDACTED]. Aguilar did not directly answer the question. He referred to the community wanting the city council to prioritize [REDACTED]. I asked Aguilar whether he told Robustelli that she should reconsider her decision to [REDACTED] to avoid retaliation from the public. He said he did not. I asked Aguilar whether her evaluation would be impacted if she did not change her decision. Aguilar said he did not recall.

Aguilar spoke about a third party conducting Robustelli's review. Aguilar said that he told the third party reviewing Robustelli's performance that she failed to perform from the community's perspective. He wanted the reviewer to understand that the community was upset with Robustelli's decision.

Aguilar's counsel, Joe Goethals, sought to clarify:

Perhaps it was my confusion. I want to make sure that it was clear that the answers regarding the conversations with [Robustelli] around the time of the decision [REDACTED], that [Aguilar] did not say that he was encouraging her to change her decision or that there would be consequences for it other than expressing what he had heard in the community. Not that he was doing that. If that's what you heard, it doesn't need to be cleared up.

Aguilar added that he is the community's advocate and voice. He communicated what the community wanted, which was distinct from his opinion. Aguilar said Robustelli's decision [REDACTED] was inconsistent with the investigation findings [REDACTED].

Aguilar said that Robustelli's decision [REDACTED] was inconsistent with the City Council's priority [REDACTED]. Aguilar's counsel then asked Aguilar whether he saw it as his role to hire or fire personnel serving under the city manager. Aguilar said: "No, the only two people we can hire and fire are the city attorney and the city manager. According to our charter, I cannot [tell] the city manager what to do."

Hiring Janelle Cameron

Aguilar said Simon raised the possibility of hiring Engelbart to serve as city manager rather than Cameron. Aguilar had discussed that possibility with Engelbart before that time.

He also had a conversation with Simon before Engelbart was suggested. Simon asked Aguilar what he thought about Engelbart as a candidate. Aguilar told Simon that Engelbart was not interested in the position. Aguilar does not remember asking why Simon raised Engelbart as a candidate, knowing he was uninterested.

Aguilar recalls Simon opposing Cameron's hiring because of an alleged incident between Cameron and former council member Corina Lopez. Aguilar said a Spanish media outfit wanted to conduct an interview, and Cameron had given them an attitude. Lopez was upset and thought Cameron was unprofessional. Aguilar has no first-hand knowledge; this is what he recalls Simon saying in a closed session.

In questioning by his counsel, Aguilar said that Cameron's race and gender had nothing to do with appointing Cameron.

Credibility

Aguilar is not a reliable narrator. He did not answer questions directly, and his memory seemed selective. He has a motive to shade his narrative to protect himself. He offered non-responsive narratives seeking to justify his conduct. His lawyer led him through self-serving responses. I find Aguilar less credible than Robustelli and non-party witnesses.

Fred Simon

Simon is a council member. He has served three and a half years and is up for re-election. Simon worked as a senior Contra Costa Water District civil engineer.

[REDACTED]

Simon said he read the investigation report on allegations made by the city clerk against Robustelli. He had concerns about what was in the report. Simon noted that an independent outside investigator conducted the investigation. I asked Simon to tell me about his concerns.

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Simon said he wanted to understand the city clerk's side of things. He said the city clerk was vocal about her concerns and wanted them brought to the city council. The city clerk complained about Robustelli. Simon said the investigation was not thorough.

Simon denied meeting individually with the city clerk. He said she came to a closed session addressing all council members.

Simon said he told Robustelli he wanted to meet and speak with staff. Simon remembers Robustelli telling him that meeting with staff was inconsistent with his role as a council member. He does not recall her talking about interference. Simon explained that he wanted to say hello to staff and understand how things are going in the city in general terms, [REDACTED].

Simon said he did not threaten Robustelli's employment. He said he gave her his opinion that [REDACTED] was not the right thing to do. Simon read the investigation report [REDACTED]. Simon said he had concerns about how the investigation was conducted.

Simon said the investigation was not thorough. It did not address the history of toxicity [REDACTED]. Simon explained that he wanted more information.

I asked Simon to help me understand the basis of his concerns. I asked what experience he had that informed his opinion. Simon said he was the complaining witness to a hostile work environment complaint at his employer. His complaint was substantiated. Simon said that he understands what investigations entail.

Simon said he told Robustelli that she should [REDACTED]. This was [REDACTED] and outside of council sessions. Simon provided greater context.

Simon said he was reading the report in person with Robustelli. Simon said he told Robustelli that the report should be more thorough and that more work was needed before making a decision. Simon said he told Robustelli,

“I’m not telling you what to do.” Simon said that he clarified to Robustelli that he was not interfering with her job performance.

Simon denied referring to Robustelli’s upcoming performance evaluation. Simon does not recall whether he discussed the sufficiency of the investigation in a closed session. He does not recall whether there was consensus among the council members on the adequacy of the investigation.

Treatment of Robustelli following the decision about [REDACTED]

I asked Simon to address Robustelli’s claim that after [REDACTED], he started increasing his communications with her, demanding her response and setting her up to fail. He answered that he did not know.

Simon said that he was doing his job as a council member. The city had many deficiencies, and community members were constantly on him regarding those deficiencies. Simon explained that Robustelli ran the city, and he had to work through her to accomplish his tasks.

Opposition to hiring Janelle Cameron

Simon said he advocated for Engelbart to serve as city manager because he is well respected in the community, sharp, and more qualified than Cameron. Simon said Cameron had a lot of negative feedback. Simon said his conduct was based purely on performance and feedback from the community.

I asked Simon whether he talked with Engelbart before proposing him as a candidate to replace Robustelli. Simon said Engelbart told him it was not his time to be city manager.

I then asked Simon why he proposed Engelbart. He said people change their minds and wanted to give Engelbart the opportunity. Simon does not recall whether he spoke with other council members about suggesting Engelbart before the meeting. Simon said he did not hear Engelbart say he would not take the job, so he threw Engelbart’s hat in the ring.

Simon said there was negative feedback about Cameron regarding her communication skills and professionalism. A Spanish-language station

newscaster said Cameron was rude and did not treat them well. Simon heard this from Aguilar. Simon said he was doing his duty as a council member.

Additional information offered by Simon

After privately conferring with counsel, Simon offered more information. He said it is his understanding that Robustelli made her complaint against him a few days after her performance review, during which he gave her a low performance rating. Simon said Robustelli was angry and vindictive. Simon claimed Robustelli's complaint was also based on his race.

Credibility

I find Simon an unreliable narrator. The majority of non-party witnesses contradict his narrative. After speaking with his lawyer, Simon said Robustelli's complaint was motivated by her anger and vindictiveness toward him and his race. This offering seemed calculated to paint himself in a good light and Robustelli in a bad light. He tied his view to Robustelli's actions related [REDACTED]. Toward the end of his interview, his lawyer commented on the possibility of future litigation. I took that as an attempt to shade the investigation's outcome rather than focus on the facts.

Simon identified the city attorney, Richard Pio Roda, as a witness who should be interviewed. Simon referenced following the city attorney's guidance in his conduct. He provided two draft documents on Simon's public statements during Black History Month. No findings in this report rely on Simon's public comments.⁶

Deborah Cox

Cox is a former council member who served for eight years, from 2013 through December 2022. She recalls that Robustelli started serving as interim city manager around December 2020 and was made permanent shortly after that.

⁶ I found that I could complete a thorough and fair investigation without interviewing the City Attorney. I weighed the potential value of evidence from the City Attorney against the burden of creating a potential or actual conflict of interest between the City and its counsel. Simon's public comments are given no weight in the analysis and findings in this report.

Cox recalled that Simon joined the council while Robustelli served in an interim capacity. The city did a search. Simon wanted to hire the other candidate, a man who was, in Cox's view, unqualified for the role.

Cox said that Simon made Robustelli's work life harder than needed. Cox said that the city clerk, [REDACTED] at her job. Robustelli put [REDACTED]. [REDACTED] alleged that Robustelli was mistreating her because of her ethnicity.

Cox thinks that Simon coached the clerk in raising the complaint. Cox thinks Simon met individually with the clerk but has no direct knowledge.

Credibility

Cox is a reliable narrator but is given little weight in the findings. Her perception of Simon's conduct toward Robustelli is consistent with the overall evidence. Her recollection of Simon's conduct in the search leading to Robustelli's hiring shows a pattern of Simon's conduct. I note that Cox does not have personal knowledge of whether Simon met individually with [REDACTED]. Cox appears to dislike Simon, which may shade her responses.

Pauline Cutter

Cutter is a former council member and mayor. She served on the city council for four years, starting in 2010. In 2014, she was elected mayor. She served eight years in that role.

Cutter thought that Simon mistreated Robustelli, with encouragement from Aguilar and former council member Corina Lopez.

Cutter said that [REDACTED] started contacting council members. [REDACTED] called Cutter, but Cutter did not speak with [REDACTED]. Cutter recalled Simon saying two or three times that he met [REDACTED]. This was when he was offering information learned from [REDACTED] during those discussions.

Credibility

Cutter is a reliable witness but is given little weight in the findings. She showed hostility toward Simon. Her responses regarding her perceptions of gender bias are consistent with the overall evidence. Her recollection that the city clerk called her and others individually is consistent with the evidence.

Eric Engelbart

Engelbart is the deputy city manager. He was interviewed but declined to answer most questions. He corroborated that he had no interest in filling the city manager position and refused to detail conversations with council members about his not wanting the position.

Credibility

Engelbart is credible to the limited extent that he corroborated that he was not interested in the city manager position. That fact is not in dispute.

Corina Lopez

Lopez is a former council member who served on the city council for eight years, leaving at the end of 2022. Before serving as a council member, Lopez held various appointed positions. She was on the city council when Robustelli was hired as the city manager.

Lopez was on the council when there were issues regarding [REDACTED] the city clerk. Lopez was not on the council during [REDACTED].

I asked Lopez whether she had any concerns about how the [REDACTED] investigation was managed. Lopez said she knew nothing about the investigation and that if she became involved, it would be interference and a violation of the city charter.

Lopez said that [REDACTED] personally contacted her when [REDACTED] was upset that questions were being raised about [REDACTED]. Lopez said she could not weigh in because that would have been interference. Lopez said she gave her ear to [REDACTED]. Lopez believes she spoke with other council members about [REDACTED] contacting her but cannot remember who. Lopez thinks it was Aguilar, Simon, or perhaps Azevedo. Lopez said she was concerned about discrimination. Lopez added that she had no concerns about Robustelli's subjecting [REDACTED] to discrimination.

I asked Lopez whether she recalled council members seeking to have the city charter revised so the city clerk could report to the city council. Lopez corrected me. Lopez said the city charter has the city clerk serving at the

council's pleasure.⁷ Lopez explained that the city council had passed a resolution placing the city clerk under the city manager's supervision and direction. Lopez said there was some discussion about removing or revising the earlier resolution to move the city clerk back to report to the city council. Lopez does not recall whether that came to a vote. Lopez said she decided there was no need for change.

Lopez said [REDACTED] contacted her before the investigation into [REDACTED] allegations. Lopez said she discussed [REDACTED] reporting line with [REDACTED]. Lopez said [REDACTED] told her about how other city clerks report directly to their respective city councils.

Lopez said she had been concerned about Cameron's interaction with a member of the Spanish-language media. Lopez asked Cameron whether she wanted to speak with the news anchor. Lopez could not remember whether the anchor was with Telemundo or Univision. Lopez said Cameron was extremely rude to the anchor and walked out on their conversation.

Lopez does not recall when the incident with her, the anchor, and Cameron occurred, but she believes it was near the end of her term. Lopez said she did not raise this incident while she was a council member but did so when Cameron was considered for the city manager role. Lopez said she communicated her concerns as a private citizen.

Lopez said she communicated her concern about Cameron to Aguilar and Viveros-Walton. I asked Lopez whether any council member had discussed a better internal candidate, but Lopez did not answer the question and ended the interview.⁸

Credibility

Lopez is a reliable witness on a limited scope. Her description of [REDACTED] personally calling her about her work issues tends to corroborate Cutter's description of [REDACTED] personally reaching out to her and other council members. Lopez tended not to answer questions directly, providing information beyond that requested. Several times, without prompt, Lopez

⁷ San Leandro City Charter Section 435.

⁸ Lopez ended the interview before I could ask about Robustelli's claim that Lopez reached out to her about her resignation when it had not been made public.

explained that she did not interfere with the city manager and followed the city attorney's guidance regarding interference. Lopez tended to offer information and frame her answers to protect herself against misconduct claims, though I told her there were no such claims.

Issues, Analysis, and Findings

Did Council Member Simon Breach his Obligation to Not Interfere With Robustelli's Execution of her Duties as City Manager? SUBSTANTIATED.

Summary finding: Yes. Council member Simon breached his obligation to not interfere with Robustelli's execution of her duties as city manager.

Analysis: Robustelli asserted that Simon interfered with her duties as the city manager two times: first, regarding the employment of city clerk [REDACTED] in 2022, and second, regarding [REDACTED] in 2024.

[REDACTED]

Robustelli planned [REDACTED]. Simon called Robustelli, saying he wanted to meet with [REDACTED]. Robustelli told Simon it would be inappropriate for him to meet directly with [REDACTED] regarding [REDACTED] employment situation, as doing so would interfere with Robustelli's role as city manager. Robustelli encouraged Simon to meet with Cameron, who was assistant city manager. Robustelli said that Simon did not follow her directions and met privately with [REDACTED].

Simon denied meeting individually with [REDACTED]. He explained that he was concerned about the thoroughness of the investigation report into [REDACTED] complaints against Robustelli and wanted to understand [REDACTED] side of things. Simon said that [REDACTED] was vocal about [REDACTED] concerns and brought them to the city council. Simon said he met with [REDACTED] in a closed city council session. Simon told me that the investigation was not thorough.

Ballew confirmed that Simon was unhappy with Robustelli's plan to [REDACTED]. Ballew said Simon and others sought to have the city charter revised so that the city clerk would report directly to the city council,

not the city manager. Ballew described this conduct as undermining, not interfering, with the city manager.

Cox said she believes that Simon met individually with [REDACTED] and coached [REDACTED] through [REDACTED] disagreements with Robustelli. Cox does not have direct, firsthand knowledge of that assertion.

Cutter said that [REDACTED] called her but did not speak with her. She believes [REDACTED] contacted Aguilar, Simon, and former council member Lopez. Cutter recalled Simon saying two or three times that he met [REDACTED] when he was offering information learned from [REDACTED] during discussions. Former council member Lopez confirmed [REDACTED] personally contacted her about [REDACTED] employment situation.

Simon admitted that he wanted the ability to speak directly with staff. He acknowledged that Robustelli told him that was not his role. Simon said his goal was not to talk with [REDACTED] but to understand how staff viewed things in the city.

Simon likely spoke directly with [REDACTED] to interfere with Robustelli's [REDACTED]. I am persuaded by Cutter's and Lopez's recollection that [REDACTED] tried to talk directly with each of them. This makes it likely that [REDACTED] reached out directly to other council members. I also note Cutter's recollection of Simon presenting facts about [REDACTED] in meetings that Simon would not have known without communicating with [REDACTED].

Simon likely communicated directly with [REDACTED] to thwart Robustelli's [REDACTED]. This is attempted interference and contrary to Simon's obligations as a council member. Considering witness narratives, documentary evidence, and witness credibility, this allegation is substantiated.

[REDACTED]

Robustelli said Simon threatened her employment if she made what he considered to be the wrong decision. Simon disagreed with her decision [REDACTED].

Simon denied threatening Robustelli's employment. He said he told Robustelli he disagreed with her decision [REDACTED].

González recalled that Simon agreed with Aguilar regarding the negative impact that [REDACTED] would have on her performance evaluation.

Bowen said she had heard Simon implicitly threaten Robustelli's job in a closed session by telling her that [REDACTED] would impact her performance evaluation.

Ballew remembers that Simon was unhappy with Robustelli's decision [REDACTED]. Ballew said Simon did not directly threaten Robustelli's employment. Ballew said Simon implicitly threatened Robustelli's job based on how he would evaluate her performance.

Bowen and Ballew recall Simon disagreeing with Robustelli's plan [REDACTED]. Their responses track with Robustelli's complaint. I find their recollections more persuasive than Simon's denial.

More likely than not, Simon attempted to influence Robustelli to change her decision [REDACTED]. His reference to the potential consequences of her decision on her future performance evaluation was intended to coerce Robustelli into making a different decision. This was an inappropriate attempt to influence Robustelli's decision about employing a subordinate staff member. Considering witness narratives, documentary evidence, and witness credibility, this allegation is substantiated.

Did Council Member Aguilar Breach his Obligation to Not Interfere With Robustelli's Execution of her Duties as City Manager? SUBSTANTIATED.

Summary finding: Yes. Council member Aguilar breached his obligation to not interfere with Robustelli's execution of her duties as city manager.

Analysis: Robustelli asserted that before finalizing her decision on [REDACTED], she met with Simon, Aguilar, González, Cameron, and the city attorney. Robustelli told the group she was [REDACTED].

According to Robustelli, Aguilar said that she should reconsider her decision because the community would call for her to be fired, which would affect her evaluation.

On the other hand, Aguilar denied telling Robustelli that she should reconsider her decision. He does not, however, deny discussing the potential impact of her decision on her future performance review.

Independent witnesses who were present during the meeting corroborate Robustelli's claim. González recalls hearing Aguilar discuss how Robustelli's decision [REDACTED] would be factored into her upcoming performance evaluation. Similarly, Cameron remembers that Aguilar was unhappy with Robustelli's plan [REDACTED] and said it would be brought up in her review. Cameron interpreted Aguilar's statement as a threat.

Ballew recalls that Aguilar was unhappy with Robustelli's decision [REDACTED]. He does not remember a direct threat to Robustelli's employment, but Ballew said the threat was implied in how Aguilar would complete future evaluations.

It is more likely than not that Aguilar attempted to influence Robustelli to change her decision [REDACTED]. His reference to the potential consequences of her decision on her future performance evaluation was intended to coerce Robustelli into making a different decision. This was an inappropriate attempt to influence Robustelli's decision to employ a subordinate staff member. Considering witness narratives, documentary evidence, and witness credibility, this allegation is substantiated.

Did Council Member Simon Subject Robustelli to Misconduct Based on her Decision [REDACTED]?
SUBSTANTIATED

Summary finding: Yes. Council member Simon subjected Robustelli to misconduct, interfering with her ability to perform her duties, based on her decision [REDACTED].

Analysis: Robustelli said that after she [REDACTED], Simon started sending her an increasing number of complaints via email and text. Robustelli said Simon flooded her with information requests, setting her up to fail.

I asked Simon to address Robustelli's claim that after the [REDACTED], he started increasing his communications with her, demanding responses and setting her up to fail. He answered that he did not know.

Simon said that he was doing his job as a council member. The city had many deficiencies, and community members were constantly on him regarding those deficiencies. Simon explained that Robustelli ran the city, and he had to work through her to accomplish his tasks.

Robustelli provided examples of communications she received from Simon during the relevant period. The following is a chronological summary of those communications.

Electronically Stored Evidence

Sunday, February 4, 2024, starting at 7:04 pm, continuing to Monday, February 5, 2024.

Simon sent texts with images to Robustelli about a blocked sidewalk, a vehicle without license plates, and the need for animal control related to a roped dog. He asked Robustelli to reply that day.⁹

Monday, February 5, 2024

Simon asked Robustelli to set a Zoom meeting with Simon, city staff, and Heron Bay Homeowners Association representatives regarding the secondary emergency access point across Union Pacific railroad tracks.¹⁰

Friday, February 9, 2024

Simon forwarded what he described as repeated concerns he had heard from the Manor area. He asked Robustelli to get back to him by February 16. Subject matter included tree trimming, dead branches creating hazards and damaging cars; Sonic placing poles in people's yards; concerning trees at 962 and 912 Purdue; water and tree leaves backups, debris, root pruning for sidewalks, landscaping at Manor Farnsworth, need for ordinance regarding realtor signs, cigarette butts in parking lot near market

⁹ EA page nos. 004-014,

¹⁰ EA page no. 072.

88, question of fence permitting at 15278 Hardin, and concrete covered front yards.¹¹

Saturday, February 17, 2024

Simon emailed Robustelli for an update regarding his February 9 inquiry related to the Manor area, asking for a response by February 21 for the Manor HOA meeting.¹²

Simon emailed Robustelli, forwarding an email he sent to Heron Bay HOA manager Brian Ritter, telling him to follow up with San Leandro Planning Manager Wayland Li, who confirmed he would coordinate an online meeting with Heron Bay HOA regarding railroad/secondary access issues. Simon also asked Robustelli to coordinate with Ritter to resolve the ongoing problems with pavers at the entry circle.¹³

Wednesday, February 21, 2024

Simon's email following up on February 9 and 17 requesting a response by 6:30 pm for the HOA meeting.¹⁴

Wednesday, February 28, 2024

Simon emailed asking for an update on February 9 concerns. Simon acknowledged receiving an update from Tom Liao before the February 21 HOA meeting. Simon asked for regular updates regarding the HOA's concerns. Simon asked for a response about the status of the large eucalyptus tree behind 912 Purdue Street.¹⁵

Friday, March 1, 2024

Simon texted Robustelli asking about getting IKEA or Sam's Club to open in San Leandro.¹⁶

¹¹ EA pages 028-029

¹² EA page no. 027.

¹³ EA page nos. 072-073.

¹⁴ EA page no. 027

¹⁵ EA page nos. 024-026..

¹⁶ EA page no. 030

Monday, March 11, 2024

Robustelli was included in an email sent by Simon regarding youth sailing programs and his hope to add funding provisions to the infrastructure plan.¹⁷

Wednesday, March 13, 2024

Simon emailed Robustelli, asking whether Safeway or other grocery stores have exclusivity rights in the Greenhouse Marketplace area, suggesting a location for a Tesla supercharger, and asking her to get back to him on this and what the city is doing to bring more Tesla superchargers.¹⁸

Friday, March 15, 2024

Simon asked for an update on the Steven Taylor Sanctity of Life event.¹⁹

Tuesday, March 19, 2024

Simon emailed Robustelli about addressing a safety issue impacting 629 homes and asked for date/time options to meet and develop a response that day.²⁰

Thursday, March 21, 2024

Simon emailed Robustelli and Cameron, asking whether there are plans to prevent barges, old pieces of docks filled with trash, sunken boats, and people living on boats in and around the boat launch and Cove area. He said they have moved from one spot to another and will only grow as a problem if addressed slowly.²¹

Monday, March 25, 2024

Simon emailed Robustelli, forwarding a message from a resident who called the San Leandro Police “Non-Emergency” number about loud music coming from the Marina. The person who answered told the caller he would be forwarded to the Alameda County Sheriff’s dispatch. Fifteen minutes later, the music was turned down. The resident wrote that he thought San Leandro

¹⁷ EA page no. 042.

¹⁸ EA page nos. 094-095.

¹⁹ EA page nos. 112-113.

²⁰ EA page no. 070.

²¹ EA page nos. 073-078

might be short on dispatchers and was having the Sheriff's Office help out. Simon asked Robustelli to confirm that San Leandro police dispatchers work 24/7.²²

Simon also emailed Robustelli requesting an update by Wednesday, March 27, regarding the Steven Taylor Sanctity of Life Pavilion event.²³ Robustelli confirmed she would do so.²⁴

Wednesday, March 27, 2024

Public Works Director Sheila Marquises sent Simon the update requested on March 25.²⁵ Simon replied to Marquises, copied to Robustelli, asking when the council would see an update and if any plans could be shared with the City Council before the council meeting.²⁶

Thursday, March 28, 2024

Simon emailed Robustelli about community concerns with the construction along Wicks Boulevard. Simon wrote that he reported a dangerous traffic condition related to construction on Wicks and Burroughs to the San Leandro Police Department's non-emergency dispatch number. He wrote that no one was present to attend traffic cones left up all night. He added that he received a report from a Mission Bay mobile home park resident complaining it was difficult for them to get out during construction because no construction personnel were directing traffic. Simon noted that one side of the street had no sidewalk, causing people to walk in the street.

Simon asked Robustelli to confirm that the traffic plan for the construction project had been reviewed and monitored to ensure safety. Simon asked Robustelli to respond by the next day or sooner.²⁷

Simon emailed Robustelli, informing her of his conversation with the San Leandro Times regarding an article about mental health that came out that day. He suggested they circle back with the paper on the city's progress

²² EA page nos. 079-080.

²³ EA page no. 112.

²⁴ EA page no. 111.

²⁵ EA page nos. 110-111.

²⁶ EA page no. 110.

²⁷ EA page no. 082.

with mental health responses and a concrete timeline for progress and meeting milestones.²⁸

He requested a follow-up with the San Leandro police department regarding how the Community Assessment Transport Team (CATT) outreach works. He asked to schedule a Zoom call the next week to coordinate. Simon said he is glad to reach out to the paper but wants to ensure they coordinate with all city departments for a holistic response.²⁹

Simon emailed Robustelli about the police dispatcher. Simon asked Robustelli to confirm that San Leandro dispatchers work 24 hours a day, seven days a week.³⁰ Interim police chief Kevin Hart replied to Simon regarding dispatcher staffing that afternoon. Hart explained that the department contracted with the Alameda County Sheriff's Office for dispatch services responding to non-emergency calls on midnight shifts. This was a temporary move for six months to get additional dispatchers trained. If needed, the dispatcher transfers the call to the Alameda Sheriff's office, which in turn dispatches the San Leandro police unit.³¹ Nine minutes after Hart's reply, Simon emailed Robustelli asking her to inform the full council about using contracted dispatchers on the midnight shift. He asked her to notify the council before future changes in the staff interfacing with the community.³²

Robustelli said that she would have the police chief prepare a response.³³ Simon replied to Robustelli, thanking her for the update, then said the issue is with the local paper and information in the community about contacting CATT.³⁴

Tuesday, April 2, 2024

Robustelli provided the mayor and city council with an update regarding the cleanup of the Burroughs Avenue RV encampment.³⁵ Simon replied at

²⁸ EA page nos. 091-092, 063.

²⁹ EA page no. 091-099.

³⁰ EA page no. 089-090.

³¹ EA page no. 088.

³² EA page no. 087-088.

³³ EA page no. 087.

³⁴ EA page nos. 086-087.

³⁵ EA page no. 084.

5:27 pm, thanking Robustelli for the update and asking what happens with waste discharge from the encampment.³⁶ Robustelli immediately responded that she would find out.³⁷

Robustelli responded to Simon about confusion with the dispatch system and CATT, explaining the process and noting that the system needed to be fixed.³⁸

Wednesday, April 3, 2024

Robustelli emailed Simon that the encampment sites are not monitored, so they do not have the information he requested regarding waste disposal.³⁹ Simon confirmed he received Robustelli's response. He asked whether the next time staff are on-site, they can visually check the storm drain inlet to look for signs of sewage disposal.⁴⁰

Simon emailed Robustelli, updating her on his contact with the local paper. He informed Robustelli of the reporter's concerns about CATT information. Simon asked her to schedule a meeting for him, her, the mayor, and the staff she deems necessary to discuss preparing material to share with the paper.⁴¹

Thursday, April 4, 2024

Simon emailed Sheila Marquises, San Leandro's Public Works Director (copied to Robustelli), asking her to elaborate on the May 18 Steven Taylor Sanctity of Life tree planting. He recommended a 5:00 pm starting time. He asked that the agenda include time for youth to express their thoughts. Simon requested a response by the next day.⁴²

Friday, April 5, 2024

Simon emailed Robustelli saying that he heard the 99 Cents store was moving. He also followed up on his March 13 question about whether

³⁶ EA page no. 084.

³⁷ EA page no. 083.

³⁸ EA page no. 086.

³⁹ EA page no. 083.

⁴⁰ EA page no. 083.

⁴¹ EA page no. 085-086.

⁴² EA page nos. 108-109.

Safeway or other grocery stores have exclusivity rights in the Greenhouse Marketplace area. He asked her to respond by Monday, April 8.⁴³

Monday, April 8, 2024

Simon emailed Marquises (copied to Robustelli) about the April 18 tree planting. He said he just learned that “Justice for Steven Taylor” was having an event at the marina starting at 5:00 pm on April 18. Simon said it made sense to keep the tree planting in the morning. He asked for details on what is planned for the tree planting.⁴⁴

Tuesday, April 9, 2024

Simon emailed Janelle Cameron (copied to Robustelli), noting that Cameron was temporarily filling in for Robustelli. Simon explained that a few months earlier, he asked Robustelli how to install a bench and plaque at the marina honoring his recently deceased father. He provided images of similar installations. He wrote about learning from Rosa at “seemylegacy.com,” where a QR code can be provided to share information about the deceased. Simon asked Cameron to pass this information on to the person in the city overseeing the installation of memorial benches. Simon said that “seemylegacy.com” would be an excellent service to the community and that the price is \$1,700 for unlimited tags on memorials, benches, and trees. Simon added that these were his thoughts, and he was not giving direction to Cameron. Simon then said that it would be great to look into it. Simon asked if someone could contact him to start the process.⁴⁵

Friday, April 12, 2024

Simon emailed Marquises (copied to Robustelli and other staff), explaining how he would like the 15 minutes allocated for the introductory speech at the tree planting to be allocated. He asked for more details on the CalFire tree planting project to aid his speech preparation. He asked her to share the run of the show and a description of where people would gather. Simon said he visited the site and noticed trash left in the area, suggesting

⁴³ EA page no. 093.

⁴⁴ EA page nos. 107-108.

⁴⁵ EA page nos. 096-097.

that public works do a cleanup. He asked about producing a signage plan about littering and fines.⁴⁶

Monday, April 15, 2024

Simon emailed Marquises, copied to Robustelli and others, asking whether the media would be present at the April 18 tree planting and how many people were expected to be present. He also asked whether the event was advertised in the local paper's community event section or on the city's website. He wondered about the podium and sound system set-up.⁴⁷

Tuesday, April 16, 2024

Marquises sent Simon the April 18 tree planting run of the show chart.⁴⁸

Friday, April 19, 2024

Simon emailed Marquises, copied to staff and others, thanking them for a job well done at the April 18 tree planting. Simon added that he intended to recommend funding for the renovation of the picnic area next to the Sanctity of Life Pavilion in the 2025 budget at the city council planning meeting scheduled for the next day. Simon expressed the importance of electric power running to the Pavilion to power a portable Sound system. Mayor González and Council Member Aguilar were included in this email.⁴⁹

Tuesday, April 23, 2024

Robustelli sent notice of her resignation to council members.⁵⁰

Monday, May 6, 2024

A special council closed-session meeting took place to review the city manager's performance.

Wednesday, May 8, 2024

Robustelli submitted her complaint to the mayor and city attorney.⁵¹

⁴⁶ EA page nos. 105-106.

⁴⁷ EA page nos. 102-103.

⁴⁸ EA page nos. 101-102.

⁴⁹ EA page no. 100.

⁵⁰ EA page no. 001

⁵¹ EA page nos. 002-003.

Continued Analysis

Simon did not deny Robustelli's characterization of his conduct but sought to justify his actions. Mayor González corroborated Robustelli's allegation.

González said that Simon made excessively persistent or picayune requests of Robustelli. It seemed to González that Simon was setting her up to fail. It got bad enough that González had Robustelli direct Simon to him so that he could manage Simon and try to get him to focus and prioritize.

González said Simon's conduct toward Robustelli escalated [REDACTED].

Robustelli linked Simon's increasing demands of her with her decision [REDACTED]. Simon and Aguilar told Robustelli that her performance review would be impacted if she [REDACTED]. Viveros-Walton described Simon's call to her while her appointment to the council was pending, asking if she had the grit to vote out the city manager. Azevedo said Simon spoke with him about firing Robustelli. This shows Simon's animus toward Robustelli and his desire to see her leave the city.

Simon does not deny the alleged conduct. He justified it by describing the existence of many deficiencies and his obligation to respond to community concerns.

A review of Simon's communications shows that his questions were not merely benign attempts to gather information. They appear more demanding and controlling, directing Robustelli in specific conduct. Simon likely intended to increase pressure on Robustelli with the threat of losing her job on the line.

The close timing with Robustelli's employment decision, Simon's lack of denial, Simon's expressed desire to fire Robustelli, and González's observation that Simon amplified his conduct toward Robustelli is persuasive. His conduct was intended to interfere with Robustelli's ability to perform her duties, which is inconsistent with his obligations as a council member. Considering witness narratives, documentary evidence, and witness credibility, this allegation is substantiated.

Did Council Member Simon Subject Robustelli to Misconduct Based on her Gender? NOT SUBSTANTIATED.

Summary finding: No. Council member Simon did not subject Robustelli to misconduct based on her gender.

Analysis: Robustelli asserts that Simon treated her poorly after she [REDACTED] based on gender. The finding of misconduct is explained above. The question is whether gender was also a motivating factor for that misconduct.

Robustelli said Simon is horrible toward women. Robustelli cited Simon's vote against hiring Cameron as the interim city manager as an example. Simon advocated for a less qualified man, who he knew did not want the job.

Other current and former council members think Simon demonstrated bias against women. Ballew thinks Simon has a different respect for women in leadership than men. Bowen wonders whether Simon has a problem with strong women being in a position of power based on Simon's opposition to Cameron's hiring while promoting a less qualified man. Cox said that Simon joined the council while Robustelli served as the interim city manager and was being considered to fill the role permanently. Cox said Simon preferred a less qualified male candidate over Robustelli. Cox said Simon made Robustelli's work life harder than needed, including when he interfered with the city clerk's employment.

I asked Simon to explain why he advocated for Engelbart to become city manager rather than Cameron, particularly given that Simon was aware that Engelbart did not want the job. Simon's response was lacking.

Simon said Englebart is well respected in the community, while Cameron received much negative feedback. Simon said his advocacy for Engelbert was based purely on Engelbert's performance and the community's negative feedback about Cameron.

Simon cited negative feedback about Cameron regarding her communication skills and professionalism. A Spanish-language station newscaster said Cameron was rude and did not treat them well. Simon

learned about this from Aguilar.⁵² Simon said he was doing his duty as a council member.

I find Simon's justification weak, especially since he knew Engelbart did not want the position. Simon cited one alleged incident of negative feedback about Cameron, purportedly coming from someone at the local Spanish language station. Simon said he heard this secondhand from Aguilar. Aguilar said he heard it secondhand from Simon.

It likely originated with former council member Corina Lopez. Simon's claim of material negative feedback from the community about Cameron is not supported by credible evidence. This lends credibility to Robustelli's claim that Simon has an implicit bias against women.

I believe Robustelli when she said that Simon created an intolerable workplace. As noted above, I find that Simon interfered with Robustelli's job duties and subjected her to misconduct because of a decision she made with which he disagreed.

Credible evidence suggests that Simon has a gender bias against women in power. This is not, however, sufficient to establish Robustelli's claim. As explained in the section above, substantial evidence shows that Simon's misconduct toward Robustelli springs from her decision [REDACTED]. I am not persuaded that Simon's implicit bias toward women was the reason for his action toward Robustelli. Considering witness narratives, documentary evidence, and witness credibility, this allegation is not substantiated.

Conclusion

Robustelli perceived Simon threatening her job, even before the issue with [REDACTED]. She was unable to settle comfortably into the position she hoped to hold until retirement. Her relationship with Simon appeared dysfunctional, creating an environment of distrust. This worsened following the decision to [REDACTED].

⁵² Aguilar said he has no personal knowledge of the alleged incident. He said he heard it from former Council member Corina Lopez. Lopez thought Cameron gave the media outfit "attitude."

Following that decision, Simon's demands on Robustelli grew in volume. They appeared punitive, intended to follow up on the previously made threat to give Robustelli a poor performance review.

Considering witness narratives, documentary evidence, and witness credibility, I find as follows:

- Council member Simon breached his obligation to not interfere with Robustelli's execution of her duties as the city manager.⁵³
- Council member Aguilar breached his obligation to not interfere with Robustelli's execution of her duties as city manager.⁵⁴
- Council member Simon subjected Robustelli to misconduct, interfering with her ability to perform her duties, based on her decision [REDACTED] [REDACTED].⁵⁵
- Council member Simon did not subject Robustelli to misconduct based on her gender.

Respectfully submitted,

/s/

Carl Botterud

⁵³ This finding is based on Simon's attempt to interfere with Robustelli's management of an employee. I find this contrary to the city policy of non-interference. It is not a legal finding.

⁵⁴ This finding is based on Aguilar's attempt to interfere with Robustelli's management of an employee. I find this contrary to the city policy of non-interference. It is not a legal finding.

⁵⁵ This finding is based on Simon's attempt to interfere with Robustelli's work performance. I find this contrary to the city policy of non-interference. It is not a legal finding.