

CLAIM

BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY

BOARD ACTION: May 11, 2021

NOTICE TO CLAIMANT

Claim Against the County, or District Governed by)
the Board of Supervisors, Routing Endorsements,)
and Board Action. All Section references are to)
California Government Codes.)

The copy of this document mailed to you is your notice of the
action taken on your claim by the Board of Supervisors
(Paragraph IV below), given Pursuant to Government Code
Sections 913, 915.2, 915.4. Please note all "Warnings".



AMOUNT: \$325,000.00

CLAIMANT: Gus S. Kramer

ATTORNEY: Michael L. Rains

ADDRESS: 2300 Contra Costa Blvd., Ste.500
Pleasant Hill, CA 94523

COUNTY COUNSEL
MARTINEZ CALIF.

BY DELIVERY TO COB ON: 3/29/2021

BY MAIL TO COB POSTMARKED:

I. FROM: Clerk of the Board of Supervisors

TO: County Counsel

Attached is a copy of the above-noted Claim.

MONICA NINO, Clerk

Dated: March 29, 2021

By: [Signature], Deputy

II. FROM: County Counsel

TO: Clerk of the Board of Supervisors

This claim complies substantially with Sections 910 and 910.2.

This claim FAILS to comply substantially with Sections 910 and 910.2, and we are so
notifying claimant. The Board cannot act for 15 days (Section 910.8).

Claim is not timely filed. The Clerk should return the claim on the ground that it was filed late and
send warning of claimant's right to apply for leave to present a late claim (Section 911.3).

Other:

Dated: By: , Deputy County Counsel

III. FROM: Clerk of the Board TO: County Counsel (1) County Administrator (2)

Claim was returned as untimely with notice to claimant (Section 911.3).

IV. BOARD ORDER By unanimous vote of the Supervisors present:

This claim is rejected in full.

Other:

I certify that this is a true and correct copy of the Board's Order entered in its minutes for this date.

Dated: MONICA NINO, Clerk, By Deputy Clerk

WARNING (Gov. Code section 913)

Subject to certain exceptions, you have only six (6) months from the date of this notice was personally
delivered or deposited in the mail to file a court action on this claim. See Government Code Section
945.6. You may seek the advice of an attorney of your choice in connection with this matter. If you
desire to consult with an attorney, you should do so immediately.

*For Additional Warning See Reverse Side of This Notice.

AFFIDAVIT OF MAILING

I declare under penalty of perjury that I am now, and at all times herin mentioned, have been a citizen
of the United States, over age 18; and that today I deposited in the United States Postal Service in
Martinez, California, postage fully prepaid a certified copy of this Board Order and Notice to
Claimant, addressed to the claimant or claimant's attorney as shown above.

Dated: MONICA NINO, Clerk, By Deputy Clerk

This warning does not apply to claims which are not subject to the California Tort Claims Act, such as actions in inverse condemnation, actions for specific relief such as mandamus or injunction, or Federal Civil Rights claims. The above list is not exhaustive and legal consultation is essential to understand all the separate limitations periods that may apply. The limitations period within which suit must be filed may be shorter or longer depending on the nature of the claim. Consult the specific statutes and cases applicable to your particular claim.

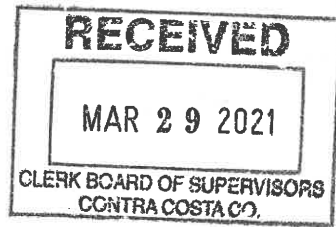
The County of Contra Costa does not waive any of its rights under California Tort Claims Act nor does it waive its rights under the statutes of limitations applicable to actions not subject to the California Tort Claims Act.

BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY
INSTRUCTIONS TO CLAIMANT

- A. A claim relating to a cause of action for death or for injury to person or to personal property or growing crops shall be presented not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented not later than one year after the accrual of the cause of action.
(Gov. Code § 911.2.)
- B. Claims must be filed with the Clerk of the Board of Supervisors at its office located at: County Administration Building, 1025 Escobar Street, 1st Floor, Martinez, CA 94553.
- C. If claim is against a district governed by the Board of Supervisors, rather than the County, the name of the District should be filed in.
- D. If the claim is against more than one public entity, separate claims must be filed against each public entity.
- E. Fraud- See penalty or fraudulent claims, Penal Code Sec. 72 at the end of this form.

RE: Claim By: _____)
Gus S. Kramer)
_____)
_____)
Against the County of Contra Costa or/and)
Board of Supervisors District)
(Fill in the name))
_____)
_____)

Reserved for Clerk's filing stamp



The undersigned claimant hereby makes claim against the County of Contra Costa or the above-named district in the sum of \$ 325,000 and in support of the claim represents as follows:

1. When did the damage or injury occur? (Give exact date and hour)
See attached
2. Where did the damage or injury occur? (Include city and county)
See attached
3. How did the damage or injury occur? (Give full details; use extra paper if required)
See attached
4. What particular act or omission on the part of county or district officers, servants or employees caused the damage or injury?
See attached
5. What are the names of county or district officers, servants or employees causing the damage or injury?
See attached
6. What damage or injuries do you claim resulted? (Give full extent of injuries or damages claimed. Attach two estimates for auto damage.) See attached

7. How was the amount claimed above computed? (Include the estimated amount of any prospective damage or injury.) *See attached*

8. Names and addresses of witnesses, doctors and hospitals:
Not Applicable

9. List the expenditures you made on account of the accident or injury:

<u>DATE</u>	<u>TIME</u>	<u>AMOUNT</u>
<i>On or about August 14, 2018</i>		<i>\$ 325,000</i>
<i>and continuing through present</i>		

) Gov. Code Sec. 9110.2 provides "The claim shall be signed by the claimant or by some person on his behalf.

SEND NOTICES TO: (Attorney)

Name and address of Attorney

*Michael L. Rains
Rains, Lucia, Stern
2300 Contra Costa Blvd.,
Suite 500
Pleasant Hill, CA 94523*

Michael Rains
(Claimant's Signature)

(Address)

Telephone No. *(925) 609-1699*

Telephone No. _____

mrains@rlslawyers.com

PUBLIC RECORDS NOTICE:

Please be advised that this claim form, or any claim filed with the County under the Tort Claims Act is subject to public disclosure under the California Public Records Act. (Gov. Code §§ 6500 et seq.) Furthermore, any attachments, addendums, or supplements attached to the claim form, including medical records, are also subject to public disclosure.

NOTICE:

Section 72 of the Penal Code provides:

Every person who, with intent to defraud, presents for allowance or for payment to any state board or officer, or to any county, city or district board or officer, authorized to allow or pay the same if genuine, any false or fraudulent claim, bill, account voucher, or writing, is punishable either by imprisonment in the County jail for a period of not more than one year, by a fine of not exceeding one thousand dollars (\$1000.00), or by both such imprisonment and fine, or by imprisonment in the state prison, by a fine of not exceeding ten thousand dollars (\$10,000.000, or by both such imprisonment and fine.

1 Michael L. Rains, SBN: 091013
2 mrains@rlslawyers.com
3 **RAINS LUCIA STERN**
4 **ST. PHALLE & SILVER, PC**
5 2300 Contra Costa Blvd., Suite 500
6 Pleasant Hill, CA 94523
7 Tel: (925) 609-1699
8 Fax: (925) 609-1690

9 Attorneys for Gus S. Kramer, Assessor

10 Claim By: Gus S. Kramer)
11)
12 Against the County of Contra Costa)
13 (and Board of Supervisors))
14)
15)

16 Statement of Tort Claim filed on behalf of Gus Kramer against the County of Contra
17 Costa, Board of Supervisors, County of Contra Costa and David Twa, former County
18 Administrator, County of Contra Costa.

19 INTRODUCTION

20 This Claim, filed on behalf of County Assessor Gus Kramer, seeks to recover payment
21 of attorney's fees Mr. Kramer has been required to pay as the result of actions initiated by the
22 Board of Supervisors in August 2018, through and including the dismissal of a Grand Jury
23 Accusation to remove Mr. Kramer from office as County Assessor on February 12, 2021, and
24 additional fees incurred since that date seeking, informally, and by way of this claim, to recover
25 attorney's fees. This Statement contains information responsive to Questions 1, 2, 3, 4, 6, 7 and
26 9 contained in the Government Tort Claim Form submitted contemporaneously herewith.

27 It should be noted that this claim does not seek payment from the County of additional
28 general damages as a result of the actions described more particularly below, despite the fact
that the conduct of the Board of Supervisors ("Board") and others acting as the Board's agent,
as described below, demonstrate extreme and outrageous conduct of the various types described
and would and can amply support claims for general damages for damage to Mr. Kramer's
reputation as a result of fraud, facilitation of the destruction of relevant and exculpatory

1 evidence, which allowed at least one of Mr. Kramer's accusers to present false-evidence to the
2 Grand Jury, and which resulted in the filing of an Accusation by the Grand Jury to remove Mr.
3 Kramer from elected office after serving as the elected Assessor of the County continuously for
4 26 years.

5 **STATEMENT OF FACTS FOR CLAIM FOR ATTORNEY'S FEES**

6 This Claim for payment of attorney's fees is based on a claim of malicious prosecution
7 involving a Grand Jury Accusation to remove him from office, initiated by the Board of
8 Supervisors, but finally resolved favorably to Mr. Kramer on February 12, 2021. In addition,
9 the claim for repayment of attorney's fees incurred between August, 2018 and the present date
10 is based, in addition to a claim for malicious prosecution, by a claim against the Board of
11 Supervisors of interference with prospective economic advantage in light of the fact that Mr.
12 Kramer, as the elected Assessor of the County, had an ongoing economic relationship with the
13 County to be paid the salary of his elective office at the time the acts more particularly
14 described below and in the attached document occurred.

15 Additionally, after a Grand Jury Accusation was issued against Mr. Kramer on June 5,
16 2019 and Mr. Kramer's retained attorneys were preparing to defend him in connection with the
17 specious Accusation, Mr. Kramer met in person with County Administrator David Twa in
18 January, 2020. Mr. Kramer specifically recalls this meeting, the fact that it occurred in Mr.
19 Twa's office, and that the discussion included a discussion of issues concerning the Tax Roll,
20 which was slated to occur in May, 2020. During that discussion, Mr. Kramer discussed the
21 Grand Jury Accusation which had been filed and the trial he was facing as a result, and made a
22 request that the County Administrator authorize payment of Counsel to defend against the
23 specious Accusation. In response to Mr. Kramer's request, Mr. Twa stated that if Mr. Kramer
24 was successful in defending against the Accusation and retained his position following a trial,
25 "I will get the County to pay your legal fees." Mr. Kramer through counsel, has informally
26 advised the County of Mr. Twa's explicit and unequivocal representation that his fees would be
27 paid if he was successful in defending the Accusation, but the County has, to date, refused Mr.
28 Kramer's previous written informal request to pay the fees. Thus, this Tort Claim alleges fraud

1 and fraudulent representations by the County Administrator and the County of Contra Costa
2 which hired Mr. Twa as County Administrator, and authorized him to make representations of
3 this nature on behalf of the County.

4 The sequence of events which was commenced by the Board of Supervisors on August
5 14, 2018 and which ultimately resulted in the dismissal of the Grand Jury Accusation against
6 Mr. Kramer on February 12, 2021 is more specifically described in the Motion to Dismiss the
7 Accusation (48 pages), attached to this Claim and incorporated herein by reference as though
8 fully set forth, as **Exhibit A** to this statement. A hearing on the Motion to Dismiss the
9 Accusation occurred in the Trial Court prior to the commencement of a jury trial. The Trial
10 Court did not permit Mr. Kramer's legal counsel to expose the misconduct of the Board of
11 Supervisors and its "Agent," the Grand Jury Foreperson who manipulated evidence and
12 testimony before a Grand Jury subcommittee and ultimately manipulated a vote of the entire
13 Grand Jury to file an Accusation despite the absence of evidence of "willful or corrupt
14 conduct," to remove Mr. Kramer from office. Similarly, Mr. Kramer's Counsel were precluded
15 from exposing the Foreperson's dishonesty concerning his destruction of evidence and
16 testimony delivered to the Grand Jury Subcommittee by witnesses, which would have
17 demonstrated that the testimony of at least one of Mr. Kramer's accusers before the full Grand
18 Jury was entirely different than the testimony he had previously provided to the Subcommittee.
19 As the Motion to Dismiss, Exhibit A attached hereto indicates, in its unavailing attempt by the
20 Board of Supervisors to have a jury do what the voters had not done for 2 ½ decades – remove
21 Mr. Kramer from office – the Grand Jury, with little or no legal advice, and with entirely
22 insufficient guidance by a Deputy County Counsel from Solano County, was improperly
23 instructed on the law concerning hostile work environment harassment, and allowed to consider
24 hearsay evidence which was legally inadmissible in voting on an Accusation. Indeed, as the
25 Motion to Dismiss points out in greater detail, the Grand Jury and its Foreperson, an agent of
26 the Board of Supervisors (and later appointed by the Board following the issuance of the
27 Accusation against Mr. Kramer to serve on another County Commission) declined to consider
28 exculpatory evidence offered by Mr. Kramer, and made no attempt to obtain relevant and

1 exculpatory documents to Mr. Kramer which were identified by other witnesses testifying either
2 before a Grand Jury Subcommittee or the Grand Jury, in order to achieve the Board's objective
3 that Mr. Kramer be removed from office.

4 When the trial court denied the effort of Mr. Kramer's counsel to prove the misconduct
5 claims raised in the Motion to Dismiss, Mr. Kramer's Counsel sought review in the District
6 Court of Appeal on expedited basis before the commencement of the trial shortly thereafter,
7 resulting in extensive Appellate Court briefing and submissions by outside appellate lawyer
8 experts, the extensive cost which is included in the damages/attorney's fees sought by way of
9 this claim.

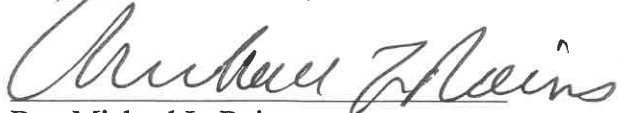
10 In response to question no. 7 of the claim form, Mr. Kramer, through the undersigned,
11 seeks reimbursement of attorney's fees in the sum of \$325,000. This damage amount will be
12 supplied to the County upon request through invoices prepared by this office and by the
13 appellate lawyer who filed an emergency Writ in the First District Court of Appeal seeking that
14 Court's intervention in the case prior to the commencement of the jury trial. In addition, as
15 stated above, Mr. Kramer has occurred additional attorney's fees since the dismissal of the
16 Accusation on February 12th to prepare informal requests on the County to pay his attorney's
17 fees and to prepare and file the within claim for damages.

18 **Question No. 5: What are the names of county or district officers, servants or**
19 **employees causing the damage or injury?** Board of Supervisors, Contra Costa County;
20 David Twa, former County Administrator, County of Contra Costa.

21 **Question No. 8: Names and addresses of witnesses, doctors and hospitals:** Not
22 Applicable.

23 Dated: March 29, 2021

Respectfully submitted,
RAINS LUCIA STERN
ST. PHALLE & SILVER, PC

24
25
26 

By: Michael L. Rains
Attorneys for Defendant Gus S. Kramer

EXHIBIT A

1 Michael L. Rains, SBN: 91013
2 Nicole A. Pifari, SBN: 297031
3 RAINS LUCIA STERN
4 ST. PHALLE & SILVER, PC
5 2300 Contra Costa Blvd., Suite 500
6 Pleasant Hill, CA 94523
7 Telephone: (925) 609-1699
8 Facsimile: (925) 609-1690
9 Email: MRains@RLSlawyers.com
10 Npifari@RLSlawyers.com

11 Attorneys for Defendant
12 GUS KRAMER

FILED

AUG 7 2020

By 
K. B. JEFFERSON, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF CONTRA COSTA

12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA,

14 Plaintiffs

15 v.

16 GUS KRAMER;

17 Defendant.

CASE No. 5-191106-4

18 NOTICE OF MOTION AND MOTION TO SET
19 ASIDE ACCUSATION FOR INSUFFICIENT
20 EVIDENCE; SUPPRESSION BY COUNTY
21 COUNSEL OF EXCULPATORY EVIDENCE;
22 DESTRUCTION OF EVIDENCE.;
23 MISINSTRUCTION OF GRAND JURY;
24 MEMORANDUM OF POINTS AND
25 AUTHORITIES; AND DECLARATION OF
26 MICHAEL RAINS

[PEN. CODE §§ 995; 939.6;
939.71 TROMBETTA, YOUNGBLOOD.]

9-11-2020

9:00

DPZ

24 TO THE ABOVE ENTITLED COURT, AND TO THE DISTRICT ATTORNEY OF
25 CONTRA COSTA COUNTY, STATE OF CALIFORNIA:

26 PLEASE TAKE NOTICE that on September 11, 18, and 25, 2020 or as soon thereafter as
27 counsel can be heard, in Department No. 22 of the above Court, the Defendant, Gus Kramer, will move
28 that the Court issue an Order dismissing the Accusation against him.

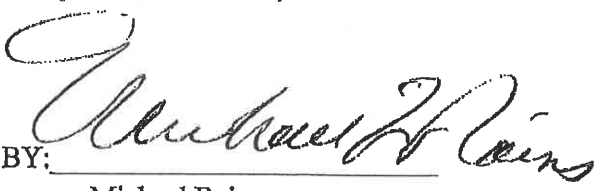
MOTION TO DISMISS THE ACCUSATION OF GUS KRAMER

1 This Motion will be based on the Notice, the Memorandum of Points and Authorities, the
2 Declaration of Michael Rains, the pleadings and records on file, and such other oral and documentary
3 evidence as may be presented at the hearing on the Motion.

4 Dated: August 7, 2020

Respectfully submitted,

5 RAINS LUCIA STERN
6 ST. PHALLE & SILVER, PC

7 
8
9 BY: _____

10 Michael Rains
11 Attorneys for Defendant
12 GUS KRAMER
13
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1 I. INTRODUCTION

2 This is an Accusation which owes its genesis and current existence to an antagonistic if not
3 combative relationship between Defendant Gus Kramer (“Kramer”), the elected Assessor of Contra
4 Costa County for the previous 25 years, and all five members of the Contra Costa County Board of
5 Supervisors (“Board”) who, on August 14, 2018, set the wheels of this injustice into motion in a hastily
6 concocted, unanimously approved written censure, for which they are now being sued by Kramer. The
7 Board issued the Censure after rejecting a request from Kramer’s lawyer to defer such action until
8 affording him the courtesy to respond to Accusations and present relevant information.

9 Wasting no time, on August 15th, the Clerk of the Board sent a copy of the written Censure
10 directly to Richard Nakano (“Nakano”), the then-foreperson of the Contra Costa County Civil Grand
11 Jury “for your consideration.”

12 From that point forward, to the filing of this Accusation on June 5, 2019, Nakano appears to
13 have served willingly, albeit, as indicated below – incompetently – as the Board’s agent in an effort to
14 achieve the Board’s objective of subverting the decision of the electorate for the last 25 years, and
15 remove Kramer from office by way of Grand Jury Accusation for Commission of “willful misconduct
16 in office.”

17 Nakano, who appears to have no legal background nor formal or even informal training in the
18 law himself, *delivered for the Board* – or, to be more precise:

- 19 • As a result of Nakano’s attempt to rehearse Kramer’s accusers to more convincingly deliver
20 their Accusations against Kramer to the full Grand Jury, by having them first tell their
21 stories to a Subcommittee of Grand Jurors which included Nakano;
- 22 • and as a result of his subsequent unilateral decision to delete the tape-recorded statements
23 of Kramer’s accusers to the Grand Jury Subcommittee and destroy documents/exhibits they
24 presented (only to lie about it until finally being forced to admit that he had done so);
- 25 • And as a result of his “lead role” in eliciting testimony from Grand Jury witnesses, and
26 asking virtually no questions of Kramer’s accusers to question their motives, memories, or
27 credibility;
- 28 • And as a result of his apparently not seeking or receiving guidance or advice from an
apparently absentee legal advisor from the Solano County Counsel’s Office to issue
subpoenas for documents which the Grand Jury was aware of, and which would have
undermined and/or impeached most or all of the allegations by Kramer’s accusers;
- And by not even asking Kramer to respond to some of the allegations made against him to

1 the Grand Jury by Kramer's accusers when Kramer himself testified;

- 2 • And by declining to interview three witnesses who Kramer said would provide evidence to
3 refute the allegations against him;
- 4 • And by ignoring the content or import of the testimony of several witnesses (Robin Cantu,
5 Sara Holman, Tnai Jackson) whose testimony called into question both the motives and
6 credibility of his accusers;
- 7 • And by ignoring a series of documentary exhibits provided by way of email directly to
8 Nakano from Kramer which undermined the credibility of some of Kramer's accusers;
- 9 • And after receiving two written memoranda from Solano County Counsel concerning jury
10 deliberations and the "proof" required before an Accusation could be filed against Kramer –
11 and maybe or maybe not sharing those memoranda with other Grand Jury members – and
12 maybe or maybe not discussing his understanding of what "proof" had to exist before an
13 Accusation was filed– or maybe simply telling them that there was "sufficient evidence" for
14 the issuance of an Accusation based on the law which had been provided to him;
- 15 • **Based on all of this misfeasance – Nakano *delivered*.**

16 Nakano (who was later appointed to the Finance Committee of the East Bay Fire Protection
17 District in Contra Costa County by a unanimous vote of the Board of Supervisors following his "stent"
18 as Grand Jury Foreperson) wasn't supposed to be an agent of the politically-motivated Board of
19 Supervisors. At least, there is nothing in the written County Grand Jury policies and procedures saying
20 that the Grand Jury Foreperson serves as an agent of the Board. By all accounts, the Grand Jury's
21 decision concerning whether or not to file an Accusation against Kramer should have been conveyed to
22 its (largely non-existent, and never physically-present) lawyer from Solano County, and then, if an
23 Accusation was filed, it was to be filed in the Superior Court.

24 But that was not the way Nakano understood how he was supposed to operate. When he was
25 asked by Witness No. 4 at the conclusion of his (perjurious) testimony before the full Grand Jury if
26 Witness No. 4 "was going to hear anything as a result of my testimony," Nakano's response was:

27 "There will be a disposition back to the Board of Supervisors."

28 (RT 278:3-17).

There are so many atrocities with the process which led to this Accusation being prepared and
filed. There are so many failures of the Grand Jury to follow its own written policies and procedures, to
preserve evidence and testimony, and to evaluate witness credibility. There is an absence of actual
"evidence" that even a few of the allegations against Kramer might be true, and for those remaining

1 which may or not be true, there is an overwhelming body of clear and consistent law that none of
2 Kramer’s alleged actions meet the definition of “severe and pervasive harassment” of his accusers.

3 But for the politics of it all – the District Attorney of the County would acknowledge all of this
4 to be true – and dismiss this case in the interest of justice. Hence, this Motion, and with it a sincere
5 hope that the politics which have infested and infected the rights of Kramer to fair and equal treatment
6 under the law thus far will not slither their way into this Trial Department when the parties appear to
7 argue this Motion.

8 II. STATEMENT OF FACTS

9 A. RELEVANT FACTS ON THE PROCEDURAL HISTORY OF GRAND JURY PROCEEDINGS

10 On June 5, 2019, the 2018-2019 Contra Costa Grand Jury (“Grand Jury”) filed an accusation
11 against County Assessor for Contra Costa County, Gus Kramer (“Mr. Kramer”), accusing him of
12 “willful or corrupt misconduct in office” by “knowingly engag[ing] in conduct that created a hostile
13 work environment for employees within his office and under his supervision” (Accusation 2:4-8.)

14 The matter came to the attention of the Grand Jury when the Contra Costa Board of Supervisors
15 issued a written resolution censuring of Mr. Kramer on August 14, 2018, for what they described as
16 engaging in conduct that two individuals in his department considered to be offensive and
17 inappropriate in the workplace, and sent the Resolution to Grand Jury Foreperson Richard Nakano the
18 following day “for your consideration.” [Decl. of Michael Rains, hereinafter “Decl.,” ¶ 2.]

19 The Grand Jury convened a subcommittee (“Subcommittee”) in December 2018 consisting of
20 five grand jurors, including Foreperson Richard Nakano. From a transcript of witness testimony before
21 the whole Grand Jury, it is clear that the Subcommittee interviewed, at a minimum, individuals
22 identified in the Accusation at Witness Number 1, 2, and 4. (Decl., ¶ 3.). Those witnesses also
23 provided documentary exhibits to the Subcommittee.

24 The statements made by various witnesses to the Subcommittee were audio-recorded, and the
25 recording of that testimony was overseen by the Grand Jury foreperson, Richard Nakano. (“Nakano”).
26 [Decl. ¶ 25.] On an unknown date Mr. Nakano destroyed the recordings of all witness testimony
27 provided to the Subcommittee. [Decl. ¶ 25.] When District Attorney Investigator Dave Lewellyn
28 (“Insp. Lewellyn”) asked Mr. Nakano about whether the testimony had been recorded, Mr. Nakano

1 initially lied to him, claiming that although the Grand Jury would normally record such witness
2 testimony, they did not do so in this matter. [Decl. ¶ 21.]

3 Insp. Lewellyn later obtained information that, contrary to Nakano's statement to Inspector
4 Lewellyn, the witness testimony to the Subcommittee actually had been recorded. [Decl. ¶ 22.] He
5 called Mr. Nakano again and Mr. Nakano lied a second time, claiming none of the Subcommittee
6 testimony was recorded. [Decl. ¶ 23.] Later that day, Mr. Nakano called Insp. Lewellyn back, and
7 surprisingly made a complete reversal of his position, admitting that, in fact, the witness testimony had
8 been recorded, but had since been deleted. [Decl. ¶ 24.] During a third conversation with Insp.
9 Lewellyn, Mr. Nakano revealed he was the person in charge of recording witness testimony, and was
10 certain the witness testimony recordings had been destroyed because he did it himself. [Decl. ¶ 25.]
11 The defense is aware of no explanation offered by Nakano as to why he destroyed the evidence and
12 then twice lied about it, or how he could possibly not remember the recordings existed when he was
13 the one who both created and destroyed them.

14 Before the full Grand Jury convened to hear testimony, Solano County Deputy County Counsel
15 James Laughlin provided Nakano with a memorandum, instructing him to determine "whether the
16 Assessor willfully engaged in one or more acts that amount to harassment," and to use the County's
17 anti-harassment policy to help them determine what that means. [Decl. ¶ 14(a).] There is no evidence
18 in the record that Nakano shared the memorandum or any information in it with the other grand jurors.

19 The full Grand Jury convened to hear sworn witness testimony on February 12, February 13,
20 February 19, and February 25 of 2019. In the middle of the witness testimony on February 15, 2019,
21 Mr. Laughlin provided Mr. Nakano a second memorandum, listing some of the elements of sexual
22 harassment as defined under Judicial Council of California Civil Jury Instructions. [Decl. ¶ 14(b).]
23 There is no evidence in the record that Nakano shared that memorandum or the information in it with
24 the other grand jurors.

25 The testimony of 12 witnesses was captured in approximately 458 pages of reporter's
26 transcripts. (Reporter's Transcript, hereinafter referred to as "RT") The transcript did not capture or
27 include county counsel reading any instructions to the Grand Jury before the Accusation was filed
28 against Kramer. [Decl. ¶ 15.] In fact, there is no way of knowing whether any jury instructions were

1 read to the Grand Jury by anyone, or whether the February 15 memorandum from Laughlin to Mr.
2 Nakano was ever read by or even discussed by Mr. Nakano with other jurors. There is no record of
3 how any questions by grand jurors concerning the meaning of the instructions were answered, or if
4 they were answered at all. [Decl. ¶ 15.] There is no record of when or whether the grand jurors voted,
5 and if so how many of them participated or how many of the votes were cast in favor of filing an
6 accusation against Mr. Kramer. [Decl. ¶ 16.] Government Code Section 3060 requires that at least 12
7 jurors vote in favor of the Accusation.

8 The Accusation alleges that Mr. Kramer committed misconduct by creating a hostile work
9 environment through verbal interaction with subordinate employees, and purports to support those
10 allegations with testimony from four witnesses: eight incidents are alleged by Witness 1 (W1)
11 (Accusation, pp. 2-3); three incidents are alleged by Witness 2 (W2) (Accusation, p. 4); three incidents
12 are alleged by Witness 3 (W3), (Accusation, p. 5); four incidents are alleged by Witness 4 (W4)
13 (Accusation, pp. 5-6). In addition, the Allegation references several exhibits, some of which are
14 identified and others which are not: Exhibit A (undescribed); “Exhibit B; screen shot of text message
15 dated June 17, 2014”; “Exhibit C; screen shot of text message dated, August 2, 2014.”; Exhibit D
16 (undescribed).

17 **B. NON-HEARSAY TESTIMONY FROM W1 AND W4**

18 As discussed below, almost all of the testimony from W1 and W4 was inadmissible hearsay,
19 and therefore cannot be used to support the charges against him. To assist the Court with its analysis,
20 the statement of facts is divided into admissible testimony that was not hearsay, and that testimony
21 which was hearsay and therefore, inadmissible.

22 **1. The Only Admissible Testimony of W1, applicable to Accusation Allegations 1(a)-(h).**

23 W1 testified in front of the Grand Jury on February 12, 2019. She answered exactly two
24 foundational questions from her unassisted memory before beginning to read to the Grand Jury from a
25 prepared written statement. [RT 3:8-2.] She actually sought permission to do so by asking the Grand
26 Jury, “Is it alright with you if I read some notes?” to which the foreperson answered “Yes.” [RT 4:1-3.]
27 W1 proceeded to read from her prepared statement for the equivalent of 14, nearly uninterrupted pages
28

1 in the transcript¹. [RT 4-18.] At no time did any of member of the Grand Jury ask W1 to identify the
2 document she was reading from, ask her whether she or someone else was the author of the document,
3 ask her when the document was drafted or whether she was under oath when she prepared it, or inquire
4 if the reason she needed to read the statement was because her independent memory of the alleged
5 events was so faded or insufficient that she was unable to relay the facts without the assistance of the
6 “notes.”

7 W1 provided very limited, non-hearsay testimony. The limited, relevant W1 testimony which
8 was *not* read into the record from her prepared notes is as follows: Mr. Kramer usually initiated their
9 text conversations, but she initiated some of them. [RT 18:18-28.] She never told Mr. Kramer she was
10 uncomfortable with what she calls “his advances.” [RT 19:1-3.] She believes co-worker W2 overheard
11 Mr. Kramer telling a story about a sex toy he gave to his adult niece. [RT 19:17-18.] She reported these
12 allegations of harassment to Beth Grose in October of 2015. [RT 19:22-25.] The “findings” that
13 resulted from her complaints about sexual harassment came from County Administrator David Twa,
14 and he determined in his report that although the described incidents made her uncomfortable, **no**
15 **harassment occurred.** [RT 19:26-20:19] After she complained in 2015, the alleged harassing conduct
16 stopped completely, and there was never a single additional incident. [RT 20:20-24; 23:10-17.] She
17 did claim that since 2015, Mr. Kramer once tried to intimidate her by smiling when the two of them
18 happened to pass each other on a sidewalk. [RT 21:14-21.] Notwithstanding the 2015 complaint, which
19 apparently put an immediate end to what she considered sexual harassment, W1 decided to file a
20 second complaint in 2018 about the same conduct investigated in 2015. [RT 24:1-9.]

21 W1 told the Grand Jury that, in addition the David Twa investigation, there were at least two
22 other investigations for which she had been interviewed, one conducted by Ellis Makus, and one by
23 Terry Roemer. [24:25-25:7.] She gave multiple statements to Mr. Makus, including one in which *she*
24 *was the target of his investigation*, having been accused by another county employee of racial
25

26 _____
27 ¹ W1 was briefly interrupted by the reporter, who admonished her to “just read slowly” [RT 11:12], and also interrupted
28 herself once to ask the Grand Jury whether she should “continue with this, or . . . just kind of skip over that” in reference to a
portion of her prepared statement she apparently thought might be inapplicable to the Grand Jury’s inquiry into possible
sexual harassment. [RT 13:11-15.] A Grand Juror responded, “It’s up to you,” and W1 continued to read. [RT 13:18.] Other
than that, she apparently read from her prepared notes without interruption.

1 discrimination, intimidation, aggressiveness, and threats against her coworkers. [RT 25:23-28.]

2 **2. The Only Admissible Testimony of W4, Applicable to Accusation Allegations 4(a)-(d).**

3 W4 is a male employee who testified before the Grand Jury on February 13, 2019. [RT 222:23-
4 24.] After preliminary introductions and admonishments, a Grand Juror invited W4 to read hearsay
5 into the record, stating, "I know last time you had a statement you wanted to read. Do you have similar
6 statement today?" [RT 224:4-6.] W4 responded, "I have the exact piece of paper I brought last time,"
7 and the grand juror responded, "Excellent." [RT 224:7-9.]

8 At no time did any of member of the Grand Jury ask W4 to identify the document he was
9 reading from, ask him whether he or someone else was the author of the document, ask him when the
10 document was drafted, ask him whether he had been placed under oath when he prepared it, or inquire
11 as to whether his independent memory of the alleged events was so faded or insufficient that he was
12 unable to relay the facts to the Grand Jury without the assistance of the hearsay document.

13 Pausing only to make sure his pace was okay for the reporter [226:25], W4 read his statement
14 into the record for the equivalent of 16, uninterrupted pages in the reporter's transcript. [RT 225-
15 241:6.] The alleged facts testified to by W4 which were not read into the record through hearsay
16 documents provide no support whatsoever for the four allegations listed in the Accusation which stem
17 from his [hearsay] testimony.

18 W4's relevant non-hearsay testimony was quite limited, but provided the following alleged
19 facts. He met with an outside investigator named Eli Makus on November 9, 2018 regarding what he
20 described as his "threatened termination" and Mr. Kramer asking W4 to "tell me," "what do you know
21 that you haven't told me?" [RT 244:1-9; 254:9-12.] W4 believes that Mr. Kramer blames him for Mr.
22 Kramer's "censure," but he doesn't know why. [RT 245:21-23.] W4 "[h]as never been on the wrong
23 side of anything," and as far as the reason for which he was demoted, has found himself asking himself
24 over and over again, "Why? Why is this? Why is it? Why is it?" [RT 245:28-246:3.]

25 In his 33 years on the job, W4 never heard Mr. Kramer make a sexual comment to a woman,
26 and has never observed him taking inappropriate actions in the workplace. [RT 246:23-26; 262:15-19.]
27 W4 discussed W1's complaint with her, but did not discuss W2's claim with her. [RT 251:21-252:5.]
28 W4 claimed that it had only been in the last 6 months that Mr. Kramer made a sexual or racist

1 comment or told any sexual stories, but he does not go into detail about what these so-called sexual
2 stories or racist comments were. [RT 253:18-28.] In his 33 years at the Assessor's Office, and there
3 was never a source of friction between him and Mr. Kramer. [RT 224:17-18; 262:16-19.] He never
4 confronted Mr. Kramer or told him that any story he told was inappropriate. [RT 254:1-8.] He has no
5 idea what Mr. Kramer was referring to when he said, "what do you know that you haven't told me."
6 [RT 254:9-12.] W4 provided extensive testimony about his theory on why he was demoted without
7 ever going into details of the alleged harassing incidents, and without ever mentioning any of the
8 obvious and documented reasons he was demoted (discussed further below). [RT 256-259]

9
10 **C. WITNESS TESTIMONY RELEVANT TO ALL ALLEGATIONS IN THE ACCUSATION, INCLUDING THE**
HEARSAY STATEMENTS OF W1 AND W4.

11 The balance of the Statement of Facts summarizes relevant witness testimony related to each
12 allegation listed in the Accusation, in the order they appear on the Accusation, to include the
13 inadmissible hearsay claims of W1 and W4.

14 **1. W1 allegation, found at Accusation 1(a)**

15 The only evidence heard by the Grand Jury on this claim was inadmissible hearsay. Through
16 that inadmissible testimony, W1 claimed Mr. Kramer had a history of visiting her cubicle to tell her
17 different stories, including what she describes as "his conquests with women." [RT 4:14-18.] Starting
18 in the spring of 2014, Mr. Kramer began to visit her cubicle "almost daily," hanging out there for 15-
19 20 minutes "just talking about whatever." [RT 4:21-26.]

20 Relevant to whether W1 was subjectively offended by her conversations and interactions with
21 Mr. Kramer (as relates to the claim in Accusation 1(a) and those that follow), W1 described Mr.
22 Kramer as acting like there was a friendship between the two of them, but she asserted it was "never
23 reciprocated." [RT 4:18-20.] However, she also described herself texting Mr. Kramer on his personal
24 cell phone when he was on vacation to ask him if he was drinking beer; asking him about his
25 girlfriend; accepting a rose from him without protest or further comment; and teasing him over private
26 text about "cancelling her birthday party," when really what he had done was cancel a work picnic that
27 happened to be scheduled on her birthday. [RT 7:13; 9:15-18; 10:7-11; 11:27-28.]

28 Robin Cantu, who has worked for the county for 32 years and considers herself a friend of W1,

1 explained that she "...considered [W1 and Mr. Kramer] to be very friendly with one another. I guess
2 you could say they were friends." [RT 417:10-11; 421:21] Tni Jackson testified that W1 was "not
3 subtle" about letting people know that Gus Kramer was her mentor and she had both of his cell phone
4 numbers. [RT 396:22-26.] Kramer similarly described something more akin to a friendship with W1,
5 describing her as someone who shared a lot of personal information with him, - including, for example,
6 details about her anticipated divorce for years before her husband knew about it. [RT 307:22-26.]

7 W1 told Mr. Kramer about how her daughter had "come out of the closet" and how traumatic
8 that was for her. [RT 307:28-308:2.] Additionally, she confided in Mr. Kramer that she was having an
9 illicit affair with a married man, and that her boyfriend had broken up with her after his wife learned
10 about the affair. [RT 322:7-12] Mr. Kramer described W1 as making a regular fixture of herself
11 outside of and around his office, and explained that she commonly found reasons to be on the fourth
12 floor (his floor), and that "most of the time her reasons were not work related...she'd find a reason to
13 engage me in a conversation..." [RT 306:24-25; 325:8-14.] Mr. Kramer provided the Grand Jury with
14 the names of three different witnesses who could confirm W1's behavior (Perry Bhatia, Rebecca
15 Hooley, and Vince Robb), but the Grand Jury did not call any of them to testify. [RT 326:28-327:12.]
16 Mr. Kramer also described publically-available video of a County Counsel meeting, during which W1
17 is depicted reaching over and grabbing a hold of Mr. Kramer's upper leg to get his attention. [RT
18 353:14-18.]]

19 **2. W1 allegation, found at Accusation 1(b)**

20 The only evidence heard by the Grand Jury on this claim was inadmissible hearsay. In May of
21 2014, Mr. Kramer and W1 met while she was in the midst of contract negotiations. [RT 6:14-16.] She
22 claims her memory of this alleged incident is supported by a text she provided to the Grand Jury
23 showing that Mr. Kramer texted her during negotiations and asked her to step out and meet him in the
24 lobby. [6:3-7] The text is not described as mentioning anything about a rose. [*Id.*]

25 W1 claimed when she came out to the lobby to meet Mr. Kramer, he pointed to a red rose
26 sitting on a nearby table and told her, "I brought that for you." [RT 6:17-21.] She also claims he
27 announced he was "smitten" by her. [RT 6:27-28.] W1 did not relay to the Grand Jury what, if
28 anything, she claims to have said to Mr. Kramer in response to the alleged "rose gift" and romantic

1 proclamation, and strangely: the Grand Jury did not ask. She did, however, describe the conversation
2 as ending with her picking up the rose and taking it back with her into negotiations. [RT 7:13.]

3 Mr. Kramer remembers the meeting differently, in that he agrees they discussed union
4 negotiations, but denies there was any rose or romantic proclamation involved. [RT 331:3-7.]

5 **3. W1 allegation, found at Accusation 1(c)**

6 The only evidence heard by the Grand Jury on this claim was inadmissible hearsay. W1
7 provided evidence of a partial text conversation as evidence, which provides no before-and-after
8 context. [RT 319:10-11.] Through inadmissible testimony, W1 explained that she texted Mr. Kramer
9 on his personal cell phone about the cancellation of a work picnic, which happened to be the same day
10 as her birthday and said, "you canceled my birthday party tomorrow." [RT 9:15-18.] Mr. Kramer
11 responded, "Because I wanted to have you all to myself, ha, ha. Sorry. Wait until you hear the rest of
12 the story." [RT 9:19-21.] W1 reports she does not remember what "the end of the story" was, and
13 because the text conversation is once again incomplete, we cannot tell if there was texting before this
14 snippet that would have provided valuable context. [RT 9:22-24.]

15 Upon reading the partial text conversation provided to him by the jury, Mr. Kramer testified
16 that the words clearly show it was a joke, with no sexual intimation or proposal. [RT 319:1-7] He also
17 explained that this way of talking is quite normal for W1, as she tends to talk to people using
18 provocative conversation. [Id.] "Ha, ha, ha" – type language is used to connote a joke. [Id.]

19 **4. W1 allegation, found at Accusation 1(d)**

20 The only testimony heard by the Grand Jury on this claim was inadmissible hearsay. Through
21 inadmissible hearsay, W1 described herself as texting Mr. Kramer, on a weekend, at night, while he
22 was on vacation at a lake. [RT 320:3-4.] We know from Mr. Kramer, that this conversation happened
23 within hours of W1 confiding in Mr. Kramer that she was extremely upset because her boyfriend had
24 just broken up after his wife found out they were sleeping together. [RT 323:1-12.] After she told him
25 about the break up and the affair, Mr. Kramer offered to rally colleagues to help her move out over the
26 weekend, but she did not need the move-out help. [RT 323:16-22.]

27 The text conversation started with W1 asking Mr. Kramer if he had a cold beer in his hand, and
28 he responded by asking, "How did you know?" [RT 10:7-11.] W1 answered "Out by the lake. Hot

1 outside. Cold beer required to complete the picture.” [RT 10:12-13.] Mr. Kramer told her, “No, you
2 and beer, but that stays between you and I.” [RT 10:14-15.] W1 did not respond. The next morning Mr.
3 Kramer looked at his text and worried that what he had said could be misconstrued, so he texted her
4 the next morning saying, “Sorry about getting carried away yesterday. Have a good day and safe
5 move.” [RT 320:17-19.] W1 responded, “Got it. Thank you.” [RT 320:11-12.] A copy of this text
6 conversation was presented to the Grand Jury during W1’s testimony.

7 **5. W1 allegation, found at Accusation 1(e)**

8 The only evidence heard by the Grand Jury on this claim was inadmissible hearsay. Through
9 that inadmissible testimony, W1 claimed that on April 30, 2014, Mr. Kramer texted her asking if she
10 was alone so she could talk. [RT 5:21-22.] When she responded that she was not alone because her
11 husband was there, he responded, “okay. Mañana.” [5:21-24.] She admitted she did not know what his
12 purpose was in texting her, and she does not ever remember talking to him about anything. [RT 5:25-
13 28.] Mr. Kramer does not remember this text conversation.

14 **6. W1 allegation, found at Accusation 1(f)**

15 The only evidence heard by the Grand Jury on this claim was inadmissible hearsay. Through
16 that inadmissible testimony, W1 claimed that in early 2015 Mr. Kramer visited her cubicle several
17 times each week for 20-30 minutes to “talk about personal things” such as his parents and his
18 experience with women. [RT 11:16-17.] Once after his father passed away, she claims Mr. Kramer
19 told her about his dad’s sexual virility. [RT 11:18-19.]

20 The Grand Jury failed to ask Mr. Kramer about this accusation, so he was denied any
21 opportunity to respond. They did hear from other witnesses, however, that W1 was herself a very
22 frequent visitor to Mr. Kramer’s office. For example, observe the following exchange between Ms.
23 Cantu and the Grand Jury:

24 Q. How often did W1 visit Mr. Kramer in his office?

25 A. A lot.

26 Q. Compared to others?

27 A. A lot more than others.

28 [RT 418:18-22.]

1 **7. W1 allegation, found at Accusation 1(g)**

2 W1 provided almost no admissible testimony to the Grand Jury about this accusation, in which
3 she alleges Mr. Kramer told her a story about giving a sex toy to his adult niece for Christmas. [RT
4 11:20-24.] Related, W2 claimed in December 2014 she overheard Mr. Kramer tell W1 a story about
5 giving a vibrator to a brother's girlfriend as a Christmas gift, and that he thought it was very funny
6 [RT 58:21-22; 59:4-5.]

7 Mr. Kramer denies that he ever told such a story, or ever gave such a present to his adult niece.
8 [RT 311:14-27] However, he does recall being asked about the "worst dark gift" he had ever seen
9 somebody receive, and in response describing seeing someone receive an item sold at Macy's called a
10 "facial vibrator." [RT 312:14-17] He did not describe it as a sex toy, use improper words, or describe
11 it as anything other than what it was described to be on the box: "facial vibrator." [RT 312:21-24.]

12 **8. W1 allegation, found at Accusation 1(h)**

13 W1 claims that when she and Mr. Kramer passed each other on the sidewalk, he smiled at her,
14 which she found offensive. [RT 21:14-21.] Mr. Kramer was never asked about this smile (or any
15 other), so he was denied the opportunity to explain why he smiled at her that day, if he remembers it.

16 **9. W2 allegation, found at Accusation 2(a)**

17 The allegation found in (2)(a) of the Accusation is related to W2's claim that around December
18 2013, Mr. Kramer told her about a dinner he had with a female business partner, who was "coming on"
19 to him, and that he described her as wearing "a white blouse with no bra." [RT 58:1-6.] When asked by
20 the Grand Jury about this incident, Mr. Kramer strongly stated "No. That conversation -- that
21 conversation did not happen as you've depicted it. It did not happen." [RT 348:27-28.] However, the
22 topic of the Grand Jury's questioning then shifted, so that Mr. Kramer was never able to explain how it
23 was that the actual conversation differed from the way it was depicted by W2.

24 **10. W2 allegation, found at Accusation 2(b)**

25 The allegation found at (2)(b) of the Accusation claims that in December 2014, a full year after
26 the alleged "white blouse" story described above, W2 overheard Mr. Kramer tell W1 a story about
27 giving a vibrator to a "female relative" as a Christmas gift. [Accusation, 2(b), pg. 4; RT 58:21-22.]
28 W2's actual testimony was that she overheard him talk about giving the gift to his brother's girlfriend,

1 and that he thought it was very funny. [RT 59:4-5.]

2 Mr. Kramer denies ever giving such a gift or telling a story about giving such a gift. [RT
3 311:14-27] But as described under section 7 above, he does remember talking about someone
4 receiving a gift called a “facial vibrator.” [RT 312:21-24.]

5 **11. W2 allegation, found at Accusation 2(c)**

6 The third and last allegation from W2, found in (2)(c) of the Accusation, stems from what she
7 described as a conversation with Mr. Kramer that occurred in May of 2015, when they were riding the
8 elevator together. [RT 61:26-62:2.] W2 claimed Mr. Kramer told her he had been thinking of her, to
9 which she responded, “Oh, hopefully good thoughts.” [RT 62:2-4.] She alleged Mr. Kramer answered
10 “Inappropriately” while raising his eyebrows at her, then he started laughing and said “Oh Carol, you
11 know how I am, ha ha ha.” [RT 62:5-9.] The Grand Jury did not ask Mr. Kramer about this incident, so
12 he was never given the opportunity to respond, deny, or add context to what she claims occurred.

13 **12. W3 allegations, found at Accusation 3(a)-(b)**

14 The Accusation against Mr. Kramer purports to be supported by two allegations from W3,
15 found at section (3)(a)-(b), page 5. She claims that the first alleged incident occurred in 2014, around
16 the time when she was getting ready for a wedding, and someone apparently had shown Mr. Kramer a
17 picture of W3 in her wedding dress. [RT 37:21-28.] Mr. Kramer stopped her as she was walking down
18 the hallway, told her he had seen the wedding dress picture, and commented that she “looked really
19 hot” in the dress. [RT 37:23-38:2.] She described this comment as “pretty awful.” [RT 38:3] W3’s
20 second allegation is that Mr. Kramer occasionally “over the years” asked her if she was being good,
21 because he had heard she was being bad. [RT 38:22-24.]

22 The Grand Jury failed to ask Mr. Kramer about this accusation, so he was completely denied
23 the opportunity to respond in any way. However, they did ask Robin Cantu about it, and Ms. Cantu
24 revealed that it was her own son who was engaged to marry W3. [RT 421:2-3.] Although she never
25 heard about a picture of a wedding dress or any alleged comments, she expressed confusion because
26 the wedding never happened. [*Id.*] Specifically, she commented, “I wouldn't know what wedding dress
27 that would be because they didn't get married” and “They never got married, so she/we didn't have any
28 pictures of her in a wedding dress.” [RT 421:5-6; 9-11.]

1 **13. Facts Relevant to the W4 allegations, found at Accusation 4(a)-(c)**

2 This rendition of the facts as relates to W4's claims includes his inadmissible hearsay
3 statements. W4 worked for the County Assessor's office for 33 years, and in that time there was never
4 a source of friction between he and Mr. Kramer. [RT 224:17-18; 262:16-19.] W4 never heard Mr.
5 Kramer make a sexual comment to a woman, and (apparently besides what he describes below) has
6 never observed him taking inappropriate actions in the workplace. [RT 246:23-26; 262:15-19.] W4
7 gave a recorded statement to Investigator Eli Makus on November 9, 2018, 3 months before his Grand
8 Jury testimony, which was word-for-word identical to the story he told the Grand Jury, except it did
9 not include any of the following salacious allegations, which were apparently added in after the
10 November version of his story failed to produce sustained findings against Mr. Kramer. [Decl., ¶¶ 6-9.
11]

12 W4 testified to the Grand Jury that Mr. Kramer entered his office on three different occasions
13 over a 3-month period in 2018 to tell the exact same story about a husband and wife who tried anal sex
14 for the first time, and ended up covered in feces. [RT 235:16-20.] W4 claimed each time Mr. Kramer
15 told the story, he would laugh and walk out of the office. [*Id.*]

16 W4 also testified Mr. Kramer began to come into W4's office, start out with "I saw..." then go
17 on to name some woman, describe her physical attributes, and announce he would like to "bend her
18 over the couch." [RT 235:23-27.] Like the raunchy sex story, W4 claimed this also happened exactly
19 three times. [*Id.*] Again, the Grand Jury did not ask a single question.

20 Lastly, W4 claimed that one day Mr. Kramer came into his office and proclaimed that "White
21 males would never vote for a fucking Mexican." [RT 237:15-16.] On another day, he claimed Mr.
22 Kramer walked into his office and blurted out "so you're a fucking beaner." [RT 237:18-21.] The
23 Grand Jury asked no follow up questions and sought no clarifying information about this allegation,
24 and W4 offered no insight as to why, after 33 years with no sexual stories or derogatory racial
25 comments, he claims Mr. Kramer would suddenly engage in this inexplicable behavior in the months
26 before W4 was demoted.

27 **III. APPLICABLE LAW**

28 **A. LAW ON GRAND JURY ACCUSATIONS UNDER GOV. CODE 3060**

1 With respect to Government Code Section 3060, the California grand jury has three basic
2 functions, one of which is to weigh allegations of misconduct against a official public to determine
3 whether to present a formal Accusation requesting the official's removal from office (Pen. Code § 922;
4 Gov. Code § 3060 et seq.) "An Accusation may not be presented without the concurrence of at least
5 12 grand jurors." (§ 3060) Although grand juries which seek to remove public officials are often
6 referred to as "civil" grand juries, the law dictates that such proceedings be "conducted in all respects
7 in the same manner as the trial of [a criminal] indictment." (§ 3070.) Therefore, most statutes which
8 govern grand jury proceedings under § 3060 are found in the Penal Code.

9 The grand jury's Accusation against a public official, much like a Criminal Indictment, can be
10 challenged under Penal Code § 995. A defendant is entitled to make a 995 challenge based on the
11 nature and extent of the evidence used to support the Accusation, and the manner in which the grand
12 jury proceedings were conducted. (*People v. Backus* (1979) 23 Cal. 3d 360, 393; *Cummiskey v.*
13 *Superior Court* (1992) 3 Cal. 4th 1018, 1022, fn. 1.)

14 The transcript of witness testimony, while very important, is not the only relevant evidence in
15 such a challenge. On the contrary, "[i]n reviewing the merits of such a challenge, courts have routinely
16 considered relevant nontestimonial portions of the record of the grand jury proceedings," such as
17 transcripts of grand jury proceedings other than witness testimony or copies of communications
18 between the grand jury and attorneys advising the grand jury. (*People v. Superior Court*
19 *(Mouchaourab)* (2000) 78 Cal.App.4th 403, 408-425). Thus the Court here is empowered to review the
20 sufficiency of the Accusation using both testimonial and nontestimonial evidence of the grand jury
21 proceedings.

22 **B. LAW ON HOSTILE WORK ENVIRONMENT BASED ON SEXUAL HARASSMENT**

23 Sexual harassment is unlawful in California. (Cal. Gov. Code 12940(j)(4)(C).) The Fair
24 Employment and Housing Act ("FEHA") makes it "an unlawful employment practice for an employer
25 . . . to discriminate against any individual with respect to... sex." (*Harris v. Forklift Sys.* (1993) 510
26 U.S. 17, 21.) Under FEHA, sexual harassment occurs when a plaintiff who belongs to a protected
27 group is subject to unwelcome sexual harassment based on sex, and the harassment complained of is
28 sufficiently severe or pervasive so as to alter the conditions of employment, thereby creating an

1 abusive working environment, (*Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590,
2 608.)

3 The requirement that the conduct be sufficiently severe or pervasive to create a
4 working environment a reasonable person would find hostile or abusive is a
5 crucial limitation that prevents sexual harassment law from being expanded into a
6 “general civility code.” **The conduct must be extreme: “simple teasing...
offhand comments, and isolated incidents (unless extremely serious) will not
amount to discriminatory changes in the “terms and conditions of
employment.”**

7 (*Jones v. Department of Corrections* (2007) 152 Cal. App. 4th 1367, 1377, internal citations omitted.)
8 (Emphasis added.)

9 To be clear, “[t]here is no recovery ‘for harassment that is occasional, isolated, sporadic, or
10 trivial,’ and when a sexual harassment claim is based on “a few isolated incidents of harassing
11 conduct,” the complainant “must show that the conduct was **severe in the extreme.**” (*Brennan v.*
12 *Townsend & O’Leary Enterprises, Inc.* (2011) 199 Cal.App.4th 1336, 1347, emphasis added.) There is
13 extensive case law available on this issue, which shows that even if the allegations in the current matter
14 were true, they would fall far short of the requisite standard. To illustrate the point, we quickly
15 summarize the alleged misbehavior described three cases which were all found to be so deficient the
16 complaints could not survive summary judgment: *Lyle, Hughes, and Mokler.*

17 In *Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, the California
18 Supreme Court concluded, as a matter of law on summary judgment, that the plaintiff had not
19 experienced severe or pervasive sexual harassment at her workplace. In that matter, the Court
20 acknowledged that a female employee complained of “sexually coarse and vulgar language and
21 conduct, including the recounting of [defendant’s] own sexual experiences” and including statements
22 about what [he] wanted to do sexually to various female employees. (*Id.* at pp. 271–272.) One
23 demeaning comment included asking whether a female coworker “was competent in sexually servicing
24 her boyfriend and remarking she probably had ‘dried twigs’ or ‘dried branches’ in her vagina.” (*Id.* at
25 p. 288.) These comments were insufficiently severe or pervasive to support a claim of sexual
26 harassment.

27 In *Hughes v. Patr* (2009) 46 Cal.4th 1035, the California Supreme Court granted summary
28 judgment to the defendant in a matter that involved a complaint of verbal conduct that was both

1 indirectly suggestive and very directly sexual. The suggestive comments at issue included things like
2 telling the complainant he thought of her “in a special way, if you know what I mean” (*Id.* at 1040);
3 “You know everyone always had a thing for you. You are one of the most beautiful, unattainable
4 women in the world. Here’s my home telephone number and call me when you’re ready to give me
5 what I want” (*Ibid.*); and “[h]ow crazy do you want to get [with me]?” (*Ibid.*) More direct sexual
6 comments included, “I’ll get you on your knees eventually. I’m going to fuck you one way or another.”
7 (*Ibid.*) According to our state’s Supreme Court, these types of comments were insufficient to avoid
8 dismissal through summary judgment.

9 In *Mokler v. County of Orange* (2007) 157 Cal.App.4th 121, the Fourth Appellate District.
10 granted summary judgment to the Defendant for alleged harassment which occurred on three occasions
11 over a five-week period, and involved physical touching but no physical threats. (*Id.* at 145.) During
12 the three incidents, the defendant allegedly called the complainant an “aging nun” after she told him
13 she was not married; took her by the arm and pulled her to his body while making sexually suggestive
14 comments; told her that she had a nice suit and nice legs while looking her up and down; and put his
15 arm around her while demanding to know her exact address and rubbing his arm against her breast. (*Id.*
16 at p. 144.) These alleged acts, although involving offensive physical touching, were still insufficiently
17 severe or pervasive to survive summary judgment.

18 **C. LAW ON THE EVIDENCE THE GRAND JURY MAY LAWFULLY CONSIDER.**

19 A grand jury cannot fulfill its obligation to protect citizens from unfounded, legally insufficient
20 allegations if it is invited to indict on the basis of incompetent or irrelevant evidence. (*People v. Gnass*
21 (2002) 101 Cal.App.4th 1271, 1310). “[W]hen the extent of incompetent and irrelevant evidence
22 before the grand jury is such that...it is unreasonable to expect that the grand jury could limit its
23 consideration to the admissible, relevant evidence, the defendants have been denied due process
24 and the indictment must be dismissed.” (*Id.*, emphasis added)

25 The grand jury has vast powers to conduct its investigations; however, those powers are not
26 absolute. For example, an indictment which is wholly without evidentiary support cannot stand.
27 (*People v. Hale* (1965), 232 Cal. App. 2d 112; *Pinell v. Superior Court of San Francisco* (Cal. App.
28 1st Dist. Feb. 15, 1965), 232 Cal. App. 2d 284). In addition, the quality of the evidence used by the

1 grand jury to reach its decision is quite relevant. If it presents an Accusation which is not based upon
2 the requisite quality of evidence, or is otherwise not found, endorsed, or presented as required by law,
3 the superior court can set aside the indictment. (*People v. Boehm* (Cal. App. 1st Dist. Feb. 21, 1969),
4 270 Cal. App. 2d 13, 75.

5 Of note, all of the same restrictions on sufficiency of evidence which apply to criminal
6 indictments also apply to the sufficiency evidence used to support an Accusation against a public
7 official, like the one at issue here. (*Hale*, 232 Cal.App.2d at 121.) Although grand jurors are
8 empowered to receive sworn witness testimony, “writings, material objects, or other things presented
9 to the senses,” the Penal Code explicitly restricts this evidentiary universe to “**that which would be**
10 **admissible over objection at the trial of a criminal action.**” (Cal Pen Code § 939.6) In other words,
11 the grand jury cannot just accept *any* document into evidence. It can only accept those documents
12 which would fall under some sort of hearsay exception, such as a business record, a prior consistent or
13 inconsistent statement, and the like. All other hearsay documents or testimony are inadmissible at trial,
14 and therefore inadmissible under § 939.6.

15 In order for a grand jury’s Accusation to stand, it must consider only competent evidence to
16 support each and every element of the offense charged. A grand jury may not consider evidence unless
17 and until the proper foundation for that evidence has been established. (*Mott v. Superior Court of*
18 *Orange County* (Cal. App. 4th Dist. Apr. 22, 1964), 226 Cal. App. 2d 617) [Accused person’s
19 confession should not have been considered because no one established the requisite foundation of
20 voluntariness]

21 These evidentiary restrictions are likely the exact reason why the Contra Costa Civil Grand
22 Jury Policies and Procedures admonish jurors that “[i]t is highly recommended that legal counsel be
23 consulted [at the investigation phase], especially if witness testimony is taken that could potentially
24 compromise the accused’s rights, or successful prosecution of the case” [Decl. ¶ 26, Exh. G.] In fact
25 the same policies declare that when the full grand jury embarks on an accusation investigation, that
26 they “...should be proceeding as directed by competent legal counsel, and should not attempt to
27 proceed without such counsel. Errors by the Grand Jury in this important phase could compromise the
28 case.” [Decl. 27, Exh. G.] The Rules of Evidence are complicated, which is likely why the Grand Jury

1 was instructed to include legal counsel when taking witness testimony.

2 **IV. ARGUMENT**

3 **A. THE MAJORITY OF THE ACCUSATION AGAINST GUS KRAMER MUST BE DISMISSED BECAUSE IT**
4 **IS BASED ON INADMISSIBLE EVIDENCE**

5 Hearsay evidence, also known as an out-of-court statement offered for the truth of the matter
6 asserted, is inadmissible. (Evid. Code § 1200.) Under limited circumstances, a witness might be
7 allowed to read a hearsay document into the record; however, such record must fit under an applicable
8 exception, such as the “past recollection recorded” exception. (Evid. Code § 1237.) When a witness
9 wants to read something into the record as a “past recollection recorded,” it is essential that the
10 prosecution establish the incident or events recorded in the written statement were fresh in the
11 declarant's mind at the time they were written. (*People v. Royal* (2019) 43 Cal.App.5th 121, 145.) In
12 2019, when *People v. Royal* was argued, the longest permissible time gap between the occurrence of
13 event and the creation of the writing of which the parties were aware and able to argue before the court
14 was 3 months. (*Id.*) The court ruled it was an error to admit hearsay testimony when the proper
15 foundation had not been established.

16 Perhaps the strongest “authority” requiring the Grand Jury to not consider the written
17 statements read by Witnesses 1, and 4 is contained in the March 1, 2019 memorandum authored by the
18 Grand Jury’s legal advisor, Solano Deputy County Counsel James Laughlin.

19 In that memo, Mr. Laughlin instructed Foreperson Nakano that the Grand Jury “*must not*
20 *consider any of the statements made by Mr. Kramer in his email*” (presented to the Grand Jury because
21 he was not reminded that he was under oath when he prepared the email and “there is no indication in
22 the email that he considered statements he made therein to be made under oath.) (See Exhibit E to
23 Declaration of Michael Rains)

24 **1. Almost all of W4’s and W1’s testimony was inadmissible hearsay.**

25 Here, the grand jury improperly allowed its two key witnesses to read hearsay into the record
26 without establishing any evidentiary exception for the admissibility of those hearsay statements or
27 documents. Without a doubt, consideration of this hearsay testimony violates § 939.6, because unless
28 some exception applies, such evidence is unequivocally inadmissible in a criminal trial. Of the four
witnesses who claimed sexual harassment, W1 and W4 arguably produced the most inflammatory

1 accusations. Yet, the so-called testimony of these two witnesses consisted almost exclusively of
2 statements which were read into the record with the approval of the Grand Jury. When the hearsay is
3 stripped away, the remaining admissible statements provide paltry and insufficient support for the
4 Accusation. W1 actually sought and received the Grand Jury's permission to do so, asking, "Is it
5 alright with you if I read some notes?" to which the foreperson answered "Yes." [RT 4:1-3.]

6 As for W4, the Grand Jury did not wait for the witness to ask permission, but actually invited
7 him to read hearsay into the record, stating "I know last time you had a statement you wanted to read.
8 Do you have similar statement today?" [RT 224:4-6.] W4 responded, "I have the exact piece of paper I
9 brought last time," and the grand juror responded, "Excellent." [RT 224:7-9.] Allowance of this
10 testimony was an egregious error which requires dismissal of the charges.

11 **2. The non hearsay testimony of W1 is insufficient to support the allegations in the**
12 **Accusation related to her testimony.**

13 The non-hearsay testimony of W1 was extremely limited. Of the eight incidents alleged in the
14 Accusation related to W1's claims (labeled (1)(a)-(h), pp 2-3), only two were touched upon at all,
15 albeit in a very shallow and indirect way. Therefore, the alleged offenses labeled as 1(a)-(f) must be
16 dismissed for lack of sufficient evidence, because an Accusation "which is wholly without evidentiary
17 support cannot stand." (*Pinell v. Superior Court of San Francisco* (1965) 232 Cal.App.2d 284, 287.)

18 The remaining two W1 accusations ((g) and (h), p 3) must also be dismissed, because the scant
19 admissible testimony which applies to them is grossly insufficient to support the Accusation. The
20 allegation described in 1(g) of the Accusation is the alleged vibrator story. W1's sole admissible
21 testimony on this allegation consists of single statement that she thinks her co-worker, W2, overheard
22 Mr. Kramer tell a story about giving a sex toy to his adult niece. [RT 19:17-18.] This is corroborated
23 by W2's testimony that she overheard Mr. Kramer tell a story about giving a vibrator to his brother's
24 girlfriend. [RT 59:1-5.]

25 The allegation described in 1(h) of the Accusation is that by smiling at W1 as he passed her on
26 the sidewalk, Mr. Kramer was hostile and offensive to her. (Accusation, pg. 3) In support of that
27 allegation, W1 did offer an admissible statement that this smile, delivered when they happened to pass
28 on the sidewalk, intimidated her. [RT 21:14-21.]

1 Other than these two statements, the only other admissible testimony from W1 that is
2 potentially relevant is her admission that after she complained about these incidents in 2015, there was
3 never a single additional alleged incident of harassment from Mr. Kramer. [RT 20:20-24; 23:10-17.] If
4 anything- this shows that Mr. Kramer was chivalrous and responsive when he realized that some of his
5 comments or jokes had missed their mark and caused offense. She also admitted that the County
6 investigation into the matter determined no offense had occurred. [RT 19:4-11 (“[Mr. Makus]
7 did...agree that there were some things that happened that made me uncomfortable, [but] never called it
8 sexual harassment.”)]

9 Therefore, the allegations found at 1(g) and 1(h) must also be dismissed for lack of evidence,
10 because even if it occurred as described (which Mr. Kramer vehemently denies), neither a single story
11 about a sex toy gift, nor a smile exchanged in passing are severe or pervasive enough to warrant
12 removing a public official from office.

13
14 **3. The non hearsay testimony of W4 is insufficient to support the allegations in the
Accusation related to his testimony.**

15 The non-hearsay testimony provided by W4 is also extremely limited, and accordingly,
16 insufficient to support any allegation against Mr. Kramer. Of the 4 incidents alleged by W4 and
17 referenced in the Accusation (labeled (4)(a)-(d), pp 5-6), none was described with admissible
18 testimony. The closest he came was alleging that it was only in the last 6 months (of his 33-year
19 career) that Mr. Kramer had ever made a sexual or racist comment to him or told a sexual story, but
20 W4 failed to go into any detail about what exactly he claimed to have occurred. [RT 253:18-28.] He
21 admitted that he has never heard Mr. Kramer make a sexual comment to a woman at work, and has
22 never observed him taking inappropriate actions in the workplace. [RT 246:23-26; 262:15-19.] The
23 only other thing W4’s hearsay testimony did was expose his dishonesty, as explained in detail below in
24 Section B(3)(a).

25 Serious credibility issues aside, under the law the Court must dismiss all four of the allegations
26 related to W4’s claims, because they are simply unsupported by any admissible evidence whatsoever.
27
28

1 4. There is No evidence that the out-of-court statements read by Witness 1 and 4 were
2 prepared when they had been placed under oath, and No hearsay exception applies to the
3 testimony of W1 or W4

4 The only hearsay exception of which Defendant is aware that W1's or W4's hearsay documents
5 could have fallen under is often referred to as the "past recollection recorded" exception. According to
6 Evidence Code § 1237, in order for a hearsay document to become admissible under this exception, the
7 following five foundational requirements must be established:

- 8 a. The writing must concern "a matter as to which the witness has insufficient present
9 recollection to enable him to testify fully and accurately";
- 10 b. The writing in question must have been made at the same time the facts recorded
11 therein occurred, or when the facts were fresh in the witness' memory;
- 12 c. The writing in question must have been made by the witness himself, under his
13 direction, or by some other person for the explicit purpose of recording her statement at
14 the time the statement was made;
- 15 d. The writing must be offered only after the witness testifies that the statement he made
16 was a true statement of fact;
- 17 e. The writing may only be offered after it has been authenticated as an accurate record of
18 the statement.

19 The failure on the part of the Grand Jury to establish the proper foundation for the reading of
20 these statements is fatal. (*Mott, v. Superior Court of Orange County* (Cal. App. 4th Dist. Apr. 22,
21 1964), 226 Cal. App. 2d 617) More than 5 years passed between when the events are alleged to have
22 occurred in 2013-2015 and when W1 read a written statement into the record in 2019. Because the
23 Grand Jury failed to ask a single foundational question, there is no evidence as to when W1 wrote her
24 statement. If she wrote the statement, someone may have helped her with it. There is no evidence the
25 statement was prepared under oath. There was no showing that she needed to read the statement
26 because she no longer has an independent recollection of the events. The Grand Jury utterly failed to
27 ask imperative foundational question regarding the hearsay documents, so this exception does not and
28 cannot apply. After the inadmissible hearsay is stripped away from the record at hand, what remains is
plainly inadequate; therefore, all of the allegations stemming from the testimony of W1 and W4 must

1 be dismissed.

2 **B. THE ALLEGATION MUST BE DISMISSED IN ITS ENTIRELY BECAUSE THE MISCONDUCT AS**
3 **ALLEGED DOES NOT MEET THE STANDARD FOR SEXUAL HARASSMENT.**

4 **1. The Allegations from W2 do not describe pervasive conduct.**

5 The Accusation against Mr. Kramer purports to be supported by three allegations from W2,
6 found at section (2)(a)-(c), page 4. First of all, these incidents are described as occurring one each in
7 2013, 2014, and 2015. Even if true, the conduct described is sporadic and isolated.

8 The allegation found in (2)(a) of the Accusation is related to W2's claim that in 2013, Mr.
9 Kramer told her about a dinner he had with a female business partner, saying the woman was "coming
10 on" to him, and was wearing "a white blouse with no bra." [RT 58:1-6.] Mr. Kramer denies this
11 conversation happened as described by W2 and the Grand Jury did not allow him to expand on that.
12 Yet, even if it did occur as W2 depicted it, it fails to meet the standard for severe or pervasive sexual
13 harassment. In fact, even if this did occur as described by W2, the California Supreme Court has
14 already explained that "the recounting of [his] own sexual experiences" is not severe or pervasive
15 conduct sufficient for a sexual harassment claim. (*Lyle*, 38 Cal.4th at 271-272.)

16 Mr. Kramer's alleged comment that someone may have come on to him, coupled with the
17 observation that she wore provocative clothing, is arguably not the best choice for workplace
18 conversation topic. However, it is not graphic or raunchy, it wasn't a comment directed at W2, and it
19 occurred a full year apart from her next alleged incident.

20 The next incident, alleged in (2)(b) of the Accusation is related to W2's story that she
21 overheard Mr. Kramer tell W1 a story about giving a vibrator to his brother's girlfriend. [RT 59:4-5.]
22 Mr. Kramer denies he told this story or ever gave such a gift. However, even if Mr. Kramer had told a
23 story about giving his brother's girlfriend such a gift, telling such a story also fails to meet the standard
24 for severe or pervasive. Once again, it is not graphic or raunchy, wasn't told directly to W2, and it
25 occurred a year or more from the other two alleged [minor] incidents. Furthermore, courts have found
26 that "a sexual harassment claim by a plaintiff who was not personally subjected to offensive
27 remarks...requires an 'even higher showing' than a claim by one who had been sexually harassed."
28 (*Brennan*, 199 Cal.App.4th at 1347.) Here, W2 failed to describe an overheard conversation that was
so offensive it could support her claim.

1 The third and last allegation from W2, found in (2)(c) of the Accusation, stems from what she
2 described as a conversation with Mr. Kramer that occurred when they were riding the elevator together
3 and he allegedly said he was having “thoughts” about her. The Grand Jury never asked Mr. Kramer
4 about this incident, so he was never given the opportunity to respond, deny, or add context to what she
5 claims occurred. However, even as described, the incident is minor. His alleged answer of
6 “inappropriately,” to her question about whether his thoughts were good, stated in conjunction with
7 raised eyebrows and laughter, represents misplaced humor that was apparently unappreciated by his
8 audience. It certainly isn’t severe. Compare W2’s allegations to *Mokler*, found to be facts insufficient
9 to support a claim, in which the defendant was accused of pulling the complainant to his body while
10 making sexually suggestive comments, telling her that she had a nice suit and nice legs while looking
11 her up and down, and putting his arm around her while demanding to know her exact address and
12 rubbing his arm against her breast. (*Mokler*, 157 Cal.App.4th at 145.)

13 Not only do W2’s allegations fail to describe “severe” conduct, they do not describe conduct
14 that “a reasonable person would find hostile or abusive,” as is necessary to support a claim that a
15 supervisor’s conduct constitutes sexual harassment. (*Jones* 152 Cal. App. 4th at, 1377.) Lastly, the
16 three events alleged by W2, each happening a year or more apart, utterly fail to describe behavior that
17 is “pervasive enough to create an objectively hostile or abusive work environment.” (*Lyle v. Warner*
18 *Brothers Television Productions* (2006) 38 Cal.4th 264, 283.) Workplace comments that are annoying
19 or “merely offensive” are simply not actionable. (*Id.*)

20 Therefore, those portions of the Accusation relating to W2’s testimony must be dismissed for
21 lack of evidence.

22 **2. The Allegations from W3 do not describe pervasive conduct.**

23 The Accusation against Mr. Kramer purports to be supported by two allegations from W3,
24 found at section (3)(a)-(2), page 5. She claims that the first alleged incident occurred in 2014, when
25 Mr. Kramer told her he had seen her wedding dress picture, and commented that she “looked really
26 hot” in the dress. [RT 37:23-38:2.] W3’s second allegation is that Mr. Kramer occasionally “over the
27 years” asked her if she was being good, because he had heard she was being bad. [RT 38:22-24.]

28 Disappointingly, the Grand Jury failed to ask Mr. Kramer about this accusation, so he was
completely denied the opportunity to respond in any way. Furthermore Ms. Cantu’s testimony shed

1 serious doubt on whether this even happened. As the mother of the groom, Ms. Cantu should know
2 whether a wedding dress existed, and according to her there was no dress. [RT 421:5-6; 9-11.]
3 Regardless, both of these comments as described by W3 are not “extreme” and utterly fail to describe
4 conduct that “a reasonable person would find hostile or abusive.” The dress comment – again, could
5 have been worded differently or more artfully – however, such a comment, if it occurred, was likely
6 intended as a compliment. The second alleged comments about being good or bad are so vaguely
7 described that (if they occurred at all), without more context and information it is impossible to tell
8 what Mr. Kramer may have been referring to when he said it so as to ascertain if what he said was
9 offensive. Furthermore, the grand jury failed to elicit any information as to when these comments
10 supposedly occurred. Use of “over the years” in combination with “occasionally” fails to show the
11 kind of frequency that could help to show “pervasive” behavior. Because W3 failed to describe
12 extreme conduct, it was absolutely necessary for the Grand Jury to elicit additional information to
13 determine if the events as explained through W3’s testimony could reach the requisite threshold of
14 “pervasive” in order to support its accusation. As is, her testimony fails to do so.

15 Therefore, the Accusation as it pertains to W3’s allegations must be dismissed for lack of
16 evidence.

17 **3. The Allegations from W4 cannot sustain a charge of hostile working environment.**

18 The Accusation against Mr. Kramer purports to be supported by four allegations from W4,
19 found at section (4)(a)-(d), pages 5-6. As argued above in section A of this motion, none of W4’s
20 allegations are supported by admissible evidence, and for that reason alone the Accusation as related to
21 his allegations must be dismissed.

22 **a. W4’s Testimony to the Grand Jury Demonstrated His Dishonesty Concerning His
23 Allegations Against Kramer.**

24 Even if, for the sake of argument, we consider all of W4’s inadmissible hearsay, those portions
25 of the Accusation which stem from his allegations should still fail. W4 has major credibility issues,
26 some of which the Grand Jury should have been aware of, but likely was not (because it purposely
27 turned a blind eye to information which impeached Kramer’s accusers, and which exonerated Kramer).
28 The Grand Jury failed to recognize the objective evidence before it which proves W4 is a liar.

Through his prepared hearsay statement, read to the full Grand Jury, W4 spoke extensively
about his belief that Mr. Kramer “threatened termination,” then demoted him for some sort of improper

1 purpose, and W4 feigned ignorance as to why he would possibly be treated this way. [RT 244:1-9;
2 245:28-246:3, in which W4 describes himself at work as never having been “on the wrong side of
3 anything,” and that since his demotion he has found himself asking himself over and over again,
4 “Why? Why is this? Why is it? Why is it?”] When the Grand Jury discovered the extent to which W4
5 misrepresented himself to them, it should have discounted everything he told them based on
6 irreconcilable credibility issues.

7 Mr. Kramer explained to the Grand Jury that W4 had a litany of performance issues, and was a
8 substandard supervisor. [See RT 341:5-17; 341:19-25; 342:10-15, in which W4 is described as
9 refusing to follow direct requests from his superiors to perform assigned tasks, and is also described as
10 the target of multiple complaints from subordinates who reported he was not doing his job.] Mr.
11 Kramer’s opinions were bolstered by Robin Cantu, who, when asked if W4 was well-liked at the
12 Assessor’s office answered, “If you were to ask any of his managers, direct managers, I think you
13 would get a ‘no’ across the board. Not that he wasn’t liked, because he’s a likeable person, but I think
14 you would get an answer that he wasn’t doing his job as they felt a manager should.” [RT 441:7-14.]

15 What’s worse, W4 engaged in behavior at work which, quite frankly, would not only have
16 justified his termination, but would have also justified criminal charges. For example, W4 was caught
17 lying on a time sheets to unjustly enrich a fellow employee, something that would likely be deemed a
18 felony. [RT 340:2-6; 428:9-20.] He could have been fired then, but instead was issued a warning and
19 given another chance. [RT 340:7-20.] And in an even greater act of misconduct, after being warned not
20 to do so, W4 purposely and nefariously caused the county’s mapping system to crash – an act of
21 defiance that cost the county over a quarter of a million dollars to fix. [RT 343:9-11.] W4 mentioned
22 none of this, instead choosing to tell the Grand Jury he essentially wanders around all day in despair,
23 asking himself “why? Why? Why is this happening??” [RT 246:3.]

24 The Grand Jury watched and listened to W4 feign ignorance about why he was demoted, then
25 heard the real, documented reasons that he was demoted, both from Mr. Kramer and from Ms. Cantu.
26 These reasons demonstrated he had lied to the Grand Jury by claiming to have “never been on the
27 wrong side of anything.” Yet they accepted his completely fabricated yarn, without asking a single
28 question. This failure to inquire at all into the viability of such salacious accusations demonstrates an
indifference to performing their duty. Put simply, an unbiased grand jury would have asked questions

1 which related to the accuracy of claims by W4. Mr. Kramer has a due process right to an unbiased
2 grand jury, and as appears, he did not get one. (*Stark v. Superior Court* (2011) 52 Cal.4th 368, 417
3 [holding that impairment of the independence or impartiality of the grand jury is a violation of due
4 process.]

5 **b. W4's claims are unbelievable and patently false.**

6 Given his overt lies (in combination with his likely perjury, described further below), W4's
7 allegations are entitled to no weight at all. According to W4, after 33 years of working with Gus
8 Kramer, and never once having heard or seen Mr. Kramer do or say anything inappropriate at work,
9 Mr. Kramer suddenly and without explanation entered W4's office to repeatedly tell the same,
10 incredibly raunchy and unsolicited sex story and to utter offensive racial epithets about Mexicans (W4
11 is Mexican). [RT 246:23-26; 262:15-19; 235:16-20; 235:23-27.] Perhaps a sign the Grand Jury was
12 afraid of what it would find if it poked around too much in this unbelievable tale, it failed to ask a
13 single follow up question about these horrendously inflammatory claims. There was not even one
14 question directed to W4 about the strange timing, duplicity, and sudden frequency of the alleged, out-
15 of-character proclamations by Kramer. Instead, the Grand Jury just copied and the untested claims into
16 its Accusation.

17 W4 testified that Mr. Kramer entered his office on three different occasions over a 3-month
18 period to tell the identical story about a husband and wife who tried anal sex for the first time, and who
19 ended up covered in feces. [RT 235:16-20.] W4 claimed each time Mr. Kramer told the story, he
20 would laugh and walk out of the office. [*Id.*] All else aside, it is undeniable that it would be incredibly
21 strange for any person to tell such a story at work unsolicited, let alone to tell such a story in the exact
22 same way three different times, unsolicited and without warning. It would be an especially unlikely
23 thing to do after a 33-year history of never having done anything inappropriate at work. Nevertheless,
24 that was W4's claim, and the Grand Jury asked no clarifying questions.

25 W4 also testified that despite Mr. Kramer's long history of doing nothing inappropriate at
26 work, he began to come into W4's office, start out with "I saw..." then go on to name some woman,
27 describe her physical attributes, and announce he would like to "bend her over the couch." [RT 235:23-
28 27.] W4 claimed this also happened exactly three times. [*Id.*] Again, the Grand Jury did not ask a

1 single question. Who does W4 claim these stories were about and when did they occur? We do not
2 know.

3 Lastly, W4 claimed that one day Mr. Kramer came into his office and proclaimed that “White
4 males would never vote for a fucking Mexican.” [RT 237:15-16.] On another day, he claims Mr.
5 Kramer walked into his office to blurt out “so you’re a fucking beaner.” [RT 237:18-21.] We cannot
6 imagine when W4 is alleging this happened, or why, or what if anything W4 supposedly said in return
7 to the supposed onslaught of racial slurs, because once again, the Grand Jury didn’t ask him a single
8 follow up question. They just copied and pasted his baseless claims into their Accusation.

9 W4’s stories about Mr. Kramer’s off-the-wall comments describe behavior that is suspiciously
10 out-of-character for Mr. Kramer, even by W 4’s own description. W4 described Mr. Kramer as
11 someone that in 33 years had never acted inappropriately in the workplace. He never made sexual
12 comments to women, and there was never any source of friction between the two of them. [RT 246:23-
13 26; 262:15-19]. In light of this chivalrous description of the assessor, W4’s claims about incredibly
14 offensive comments and stories are particularly unbelievable.

15 **c. W4’s omission from an earlier statement of these salacious claims concerning**
16 **Kramer prove he perjured himself.**

17 W4’s apparent preference for reading prepared statements into the record is also what
18 establishes beyond any doubt that he perjured himself in front of the Grand Jury. On November 9,
19 2018, W4 read his statement to investigator Eli Makus, about the exact same set of facts and
20 circumstances he would later read into the record for the Grand Jury on February 13, 2019. [Decl. ¶ 7,
21 Exh. A.] However, time would reveal that after his complaint to Mr. Makus failed to result in any
22 “sustained” charges of misconduct against Mr. Kramer ; W4 embellished his written statement with
23 new, completely fabricated stories about never-before-mentioned transgressions. [Decl. ¶ 12.]

24 When W4 read his statement to Mr. Makus, he revealed his penchant for histrionics, passing up
25 no opportunity to speak in hyperbole and use dramatic language to describe the events leading up to
26 his demotion (for what we now know was felonious behavior costing the County a quarter of a million
27 dollars.) W4 was almost theatrical as he demonized Mr. Kramer as someone who “had me frightened
28 for my family and personal welfare...” and that “many single mothers are afraid to speak up.” [Decl. ¶
9.] W4 attempted to bolster his unbelievable story by repeatedly making vague references to a never-

1 identified coworker source who supposedly claimed Mr. Kramer blamed his censure on W4. [Decl. ¶
2 9.] What's more, before Mr. Makus concluded his interview with W4, he asked him whether there was
3 anything else he should about Mr. Kramer. W4 made NO MENTION of any sex, racial slurs, or
4 offensive comments about women. In the end Mr. Makus's investigation revealed nothing to sustain
5 against Mr. Kramer based on W4's histrionics.

6 Three months later, W4 appeared before the Grand Jury. Once again, he read his prepared
7 statement into the record, which was nearly word-for-word the same, prepared statement he had read
8 for Mr. Makus. [Decl. ¶ 12.] **This time, however, he inserted three, never-before-mentioned stories**
9 **of sordid racial slurs, raunchy sex stories, and offensive statements about female coworkers.**
10 [Decl. ¶ 12.] From page 234:4-238:18 in the reporter's transcript, W4 suddenly departed from version
11 1 of his story (as recited to Mr. Makus), and inserted a series of salacious allegations to create "version
12 2." Those salacious allegations eventually made their way into the Accusation. [Decl. ¶ 12.]

13 W4's propensity to exaggerate, coupled with the fact that none of the salacious accusations
14 relayed to the Grand Jury made an appearance three months earlier to Mr. Makus, proves that W4 is a
15 liar. There is absolutely zero chance that a person like W4, who went so far as to describe Mr. Kramer
16 as someone who frightens families and terrifies single mothers, would inadvertently forget to tell the
17 investigator about raunchy anal sex stories, horrendous racial slurs, and overtly offensive sexual
18 remarks about coworkers. W4 "forgot" to tell the investigator those stories because they didn't happen.
19 He made them up after the first, truthful version of his story failed to produce the desired result. A
20 comparison of his two written statements makes it quite obvious where he inserted his fabricated lies.
21 Given this objective evidence of Grand Jury perjury, all of W4's claims should be dismissed for lack of
22 sufficient evidence.

23 **4. There is insufficient evidence to support any of the Allegations from W1.**

24 The Accusation filed against Mr. Kramer purports to be supported by eight allegations from
25 W1, found at section (1)(a)-(j), pages 1-2. As argued above in section A of this Motion, none of those
26 accusations are supported by adequate, admissible evidence, and for that reason alone the Accusation
27 as related to her allegations must be dismissed. However, even if, for the sake of argument, we
28 improperly consider all of W1's inadmissible hearsay, those portions of the Accusation which stem

1 from her allegations still fail, because W1 cannot show she was subjectively offended, and her
2 allegations do not describe behavior that is sufficient severe and/or pervasive to support her claim.

3 **a. Evidence fails to show W1 was Subjectively Offended**

4 "A plaintiff who subjectively perceives the workplace as hostile or abusive will not prevail
5 under the FEHA, if a reasonable person in the plaintiff's position, considering all the circumstances,
6 would not share the same perception. Likewise, a plaintiff who does not perceive the workplace as
7 hostile or abusive will not prevail, even if it objectively is so." (*Lyle*, 38 Cal.4th at 284.) W1 was not
8 subjectively offended by the conversations in which she participated with Mr. Kramer, and to hide that
9 fact, she was not honest with the Grand Jury about her friendship with him.

10 W1's claim that she did not reciprocate friendship with Mr. Kramer is contradicted by the
11 evidence. [RT 4:18-20.] W1 described *herself* engaging in behavior that is inconsistent with someone
12 who has a strictly professional relationship with her boss. W1 described *herself* texting Mr. Kramer on
13 his personal cell phone when he is on vacation to ask him if he is drinking beer; asking him about his
14 girlfriend; accepting a rose from him without protest or further comment; and teasing him over private
15 text about "cancelling her birthday party," when really what he had done was cancel a work picnic that
16 happened to be scheduled on her birthday. [RT 7:13; 9:15-18; 10:7-11; 11:27-28.]

17 Mr. Kramer also described a relationship exceedingly more casual than a "purely professional
18 one," describing W1 as someone who regularly shared a lot of personal information with him-
19 including, for example, about her anticipated divorce for years before her husband knew about it. [RT
20 307:22-26.] She also told Mr. Kramer about how her daughter had "come out of the closet" and how
21 traumatic that was for her. [RT 307:28-308:2.] Additionally, she confided in Mr. Kramer that she was
22 having an affair with a married man, and that her boyfriend had broken up with her after his wife
23 learned about the affair. [RT 322:7-12]

24 Mr. Kramer described W1 as making a regular fixture of herself outside of and around his
25 office, and explained that she commonly found reasons to be on the fourth floor, and that "most of the
26 time her reasons were not work related...she'd find a reason to engage me in a conversation..." [RT
27 306:24-25; 325:8-14.] This assertion clearly cuts against W1's claim that she was offended by Mr.
28 Kramer's alleged visits to her work area. To support his testimony, Mr. Kramer provided the Grand
Jury with the names of five witnesses who could and would confirm what he was telling them about

1 W1's behavior: Tnai Jackson, Robin Cantu, Vince Robb, Perry Bhatia, and Rebecca Hooley. [RT
2 326:28-327:12.] The first two witnesses, Robin Cantu and Tnai Jackson, had already been called
3 before the Grand Jury and, as promised, had delivered a wealth of testimony that seriously undermined
4 W1's claims. Yet despite this affirmation that Mr. Kramer was speaking the truth, the Grand Jury
5 refused to call or interview the remaining three witnesses he identified who could provide exculpatory
6 information (Vince Robb, Perry Bhatia, and Rebecca Hooley).

7 Furthermore, Mr. Kramer described publically-available video of a County Counsel meeting,
8 during which W1 got Mr. Kramer's attention by reaching over and grabbing a hold of his upper leg.
9 This non-verbal conduct does not espouse the fear, disgust, dislike, or repulsion of a woman who is
10 months away from filing an inflammatory complaint – rather, this non-verbal conduct is that of
11 someone who evinces the ease and informal comfort of a friend.

12 These facts paint a picture, and that picture does not depict a relationship which was strictly
13 business or a perceived friendship by Kramer which was “not reciprocated,” as claimed by W1. These
14 facts describe work colleagues who are also friends, and they show that W1 cannot show she was
15 subjectively offended by the sporadic and petty comments of which she complains.

16 **b. Regardless of her subjective feelings, W1's claims are unsupported by the evidence**

17 **i. Insufficient evidence to support W1's (a) claim**

18 Through inadmissible hearsay, W1 claimed the following about her first allegation: Mr. Kramer
19 had a history of visiting her cubicle to tell her different stories, including what she describes as “his
20 conquests with women.” [RT 4:14-18.] Starting in the spring of 2014, Mr. Kramer began to visit her
21 cubicle “almost daily,” hanging out there for 15-20 minutes “just talking about whatever.” [RT 4:21-
22 26.]

23 It must be noted that Grand Jury mischaracterized W's testimony in its Accusation, by
24 combining the two statements above into a new, more inflammatory claim – that Mr. Kramer would
25 “visit Witness-1's office cubicle almost daily, for 15-20 minutes at a time, and would tell her stories
26 about his conquests with women.” (Accusation 1(a), pg. 2.) What W1 actually testified was that
27 starting in 2014 he came by her cubicle to just talk about “whatever,” which she stated were “different
28 stories” *including* allegedly “conquests with women.”

1 W1's actual testimony, that he visited her cubicle to just talk about "different stories" or
2 whatever" does not describe behavior, under the previously stated standards, that a reasonable person
3 would find offensive. Especially given W1's friendship with Mr. Kramer, "talking about whatever"
4 does not describe behavior she found personally offensive either. If W1, as she claims, was offended
5 by Mr. Kramer's alleged, occasional discussion of conquests of women fails to describe behavior that
6 is sufficiently severe or pervasive to support a claim.

7 **ii. Insufficient evidence to support W1's (b) claim :**

8 Through inadmissible hearsay, W1 claimed the following: In May of 2014, Mr. Kramer met
9 W1 near the chambers of the board of supervisors. [RT 6:14-16.] When she came out to the lobby, Mr.
10 Kramer pointed to a red rose sitting on a nearby table and told her, "I brought that for you," then he
11 told her he was smitten. [RT 6:17-28.] Mr. Kramer remembered meeting her to discuss union
12 negotiations, but denies anything about the exchange of a rose. W1 described the conversation ending
13 with her picking up the rose and taking it back with her into the meeting she was attending. [RT 7:13.]

14 There is really no viable evidence that a rose exchange ever occurred. However, even if this did
15 occur as described by W1, her actions of accepting the rose and taking it with her back into contract
16 negotiations are inconsistent with someone who is offended by that gesture. Therefore, even if the
17 Court believes her [hearsay] allegation, it fails to meet the standard for sexual harassment, because her
18 actions are inconsistent with a person who subjectively viewed the gesture as hostile or abusive, as
19 required under *Lyle*. (38 Cal.4th at 284) Keep in mind that the Supreme Court found that a comment
20 from a man to a woman of "I'll get you on your knees eventually. I'm going to fuck you one way or
21 another" was insufficiently severe (even in combination with other offensive conduct) to support a
22 charge of sexual harassment. (*Hughes*, 46 Cal.4th at 1040.)

23 **iii. Insufficient evidence to support W1's (c) claim**

24 Through inadmissible hearsay, W1 explained that she texted Mr. Kramer on his personal cell
25 phone (apparently being playful and sarcastic) telling him, "you canceled my birthday party
26 tomorrow." [RT 9:15-18.] To her playful text Mr. Kramer responded, "Because I wanted to have you
27 all to myself, ha, ha. Sorry. Wait until you hear the rest of the story." [RT 9:19-21.] W1 does not
28 remember what "the end of the story" was, and because the text conversation is once again incomplete,

1 we cannot tell if there was texting before or after this snippet that would have provided valuable
2 context.

3 We can tell, however, that the tone of the text conversation was sarcastic, playful, and friendly.
4 W1 initiated the conversation, and she initiated the sarcastic and playful tone. Mr. Kramer's "ha, ha,
5 ha" response is a universally-understood texting practice that communicates that whatever was just
6 said is not to be taken seriously. Given the casual relationship which obviously existed between these
7 two people, it takes a serious stretch of the imagination to believe that W1 subjectively viewed this
8 conversation as hostile or abusive. Even under an objective standard, the message doesn't pass muster.

9 **iv. Insufficient evidence to support W1's (d) claim**

10 Through inadmissible hearsay, W1 described herself as texting Mr. Kramer, on a weekend, at
11 night, while he was on vacation at a lake. [RT 320:3-4.] We know from Mr. Kramer, that this
12 conversation happened within hours of W1 confiding in Mr. Kramer that she was extremely upset
13 because her boyfriend had just broken up with her due to his wife finding out about their extramarital
14 affair, and that Mr. Kramer had offered to help her move. [RT 323:1-12.] Again, these are not "strictly
15 professional" work conversations.

16 Hours later, when W1 texted Mr. Kramer, on vacation, on a weekend evening, to discuss
17 drinking beer, he made an obliquely flirtatious comment that W1's presence would complete the
18 picture. [RT 10:7-15.] In case his comment was taken the wrong way, the next morning he apologized
19 for it, and that apology appeared to be well-received. [RT 320:8-12 (W1 responded, "Got it. Thank
20 you.")]

21 Again, we must ask ourselves whether "a reasonable person in the plaintiff's position would [or
22 would not] share the same perception" in light of **all the circumstances**, when the circumstances
23 include W1 feeling comfortable enough with Mr. Kramer to tell him the details of her extramarital
24 sexual relationships, hours earlier. (*Lyle*, 38 Cal.4th at 284.) "The circumstances" were that these two
25 work colleagues shared a friendship in which W1 felt comfortable sharing the details of her sexual
26 behavior and the ensuing emotional drama with him. She felt comfortable confessing to him that she
27 had been caught sleeping with a married man, and due to pressure from his wife, that man had broken
28 off their extramarital affair. She felt comfortable texting his personal cell phone, at night, on a
weekend, to ask him if he was drinking beer on the beach. On this "record" it cannot be reasoned that

1 Kramer's response caused her to feel subjectively offended, and that he created a hostile and abusive
2 work environment by sending it.

3 When considering all the circumstances, as required by the law, this allegation fails for lack of
4 sufficient proof.

5 **v. Insufficient evidence to support W1's (e) claim**

6 Through inadmissible hearsay, W1 claimed that on April 30, 2014, Mr. Kramer texted her
7 asking if she was alone so she could talk. [RT 5:21-22.] When she responded that she was not alone
8 because her husband was there, he responded, "okay. Mañana." [5:21-24.] She admitted she did not
9 know what his purpose was in texting her, and she does not ever remember talking to him about
10 anything. [RT 5:25-28.]

11 Mr. Kramer does not remember this text conversation, but he does not need to. Plain and
12 simple, the described conversation does not state facts that support a claim for sexual harassment. The
13 comment is not one that could be construed as harassing, either subjectively or objectively – especially
14 in light of the casual texting friendship she and Mr. Kramer appeared to have enjoyed. This texted
15 inquiry could have been about literally anything, and of course, have nothing to do with sexual
16 harassment.

17 This allegation fails as a matter of law for lack of sufficient proof.

18 **vi. Insufficient evidence to support W1's (f) claim**

19 Through inadmissible hearsay, W1 claimed that in early 2015 Mr. Kramer visited her cubicle
20 several times each week for 20-30 minutes to "talk about personal things" such as his parents and his
21 experience with women. [RT 11:16-17.] Once after his father passed away, she claims Mr. Kramer
22 told her about his dad's sexual virility. [RT 11:18-19.] The Grand Jury failed to ask Mr. Kramer about
23 this accusation, so he was denied any opportunity to respond to this accusation.

24 The first thing that should be noted is that, perhaps as a product of simply allowing W1 to read
25 things into the record instead of progressing in a proper, question-and-answer format, the Grand Jury
26 failed to ask a single follow up question about this so-called act of "harassment." As a result, the
27 accusation is, at best, hollow and vague. What kind of personal things? What does she mean by
28 "experiences with women?" The Grand Jury completely failed to extract vital facts about when, where,
why, how, and how often- which are the types of facts which are needed to make a proper

1 determination about whether or not the alleged conduct is “pervasive.” Secondly, W1’s claims that Mr.
2 Kramer’s visits to her desk actually bothered her are unconvincing, since she was described as being
3 the most frequent visitor to Mr. Kramer’s office of any other employee. (“A lot more than others.” [RT
4 418:18-22.]) If Mr. Kramer’s visits to W1’s work area were so offensive, or anything nearing
5 “pervasive,” she would not herself make such frequent stops in his own office.

6 Therefore, notwithstanding the fact it is based on completely inadmissible hearsay, W1’s (f)
7 claim, like the others, is unsupported by evidence.

8 **vii. Insufficient evidence to support W1’s (g) claim**

9 W1 provided almost no admissible testimony to the Grand Jury about this accusation, in which
10 she alleges Mr. Kramer told her a story about giving a sex toy to his adult niece for Christmas. [RT
11 11:20-24.] Mr. Kramer denies that he ever telling such a story, or ever giving such a present to his
12 niece. [RT 311:14-27] Although Mr. Kramer does recall being asked about the “worst dark gift” he had
13 ever seen somebody receive, and in response describing seeing someone receive an item sold at
14 Macy’s called a “facial vibrator.” [RT 312:14-17] He did not describe it as a sex toy, use improper
15 words, or describe it as anything other than what it was described to be on the box: “facial vibrator.”
16 [RT 312:21-24.]

17 Telling stories at work that include gag gifts called “vibrators,” is arguably done in poor taste.
18 However, “[w]orkplace comments that are annoying or ‘merely offensive’ are simply not actionable.”
19 (*Lyle*, 38 Cal.4th at 283.) Neither is “sexually coarse and vulgar language and conduct,” (*Id.* at pp.
20 271–272.) Especially in light of all the known circumstances about the work relationship between Mr.
21 Kramer and W1, it strains credibility for W1 to argue that mention of a gag gift such as this caused her
22 to subjectively perceive she was working in a hostile or abusive work environment.

23 Therefore, this allegation must be dismissed for lack of proof.

24 **viii. Insufficient evidence to support W1’s (h) claim**

25 W1 provided scant and insufficient nonhearsay testimony related to this allegation, and based
26 on that alone her claim must fail. Through her inadmissible hearsay, however, she described an
27 interaction that is not actionable anyway. W1 claims that when she and Mr. Kramer passed each other
28 on the sidewalk, he smiled at her, which she found offensive. [RT 21:14-21.] Mr. Kramer was never

1 asked about this smile (or any other), so he was denied the opportunity to explain why he smiled at her
2 that day, if he remembers it.

3 Upon comparison with the required legal standard to show sexual harassment, this allegation
4 falls flat. There is simply no authority, in case law or in statute, that would suggest that a smile,
5 delivered while in passing, constitutes sexual harassment or any other kind of harassment. Such a
6 universally friendly gesture is not something that could be perceived, either objectively or subjectively,
7 as offensive.

8 Therefore, this allegation must fail for insufficient evidence.

9 **C. W1's allegations do not describe behavior that is either severe or pervasive.**

10 Even if W1 could show she was subjectively offended and a reasonable person would also be
11 offended (which she cannot do), her claims still fail. Even if added together, W1's claims do not
12 constitute *pervasive behavior*. Because none of her claims describes "severe" behavior, such as an
13 assault or threat of assault, her claims must describe "pervasive" behavior to be cognizable. "In
14 determining what constitutes 'sufficiently pervasive' harassment, the courts have held that acts of
15 harassment cannot be **occasional, isolated, sporadic, or trivial**, rather the plaintiff must show a
16 **concerted pattern of harassment of a repeated, routine or a generalized nature.**" (*Fisher v. San*
17 *Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 610.) (Emphasis added). If a claim is based on
18 "a few isolated incidents of harassing conduct," the complainant "must show that the conduct was
19 **severe in the extreme.**" (*Brennan*, 199 Cal.App.4th at 1347.) (emphasis added.) W1 cannot show Mr.
20 Kramer's conduct every even approached anything that was "severe in the extreme."

21 When no touching is involved, then the nature of the conduct must be more severe to support
22 charges. (*Fisher v. San Pedro Peninsula Hospital* (1989) 214 Cal.App.3d 590, 609-610.) ["generally,
23 physical touching is more offensive than unwelcome verbal abuse."] The frequency of the alleged
24 offensive encounters, the "total number of days over which all of the offensive conduct occurs," and
25 the context in which the harassing conduct happened are all key inquiries for determine whether the
26 conduct was pervasive. (*Id.*) Even if alleged conduct is not severe, such as a physical assault, to
27 constitute actionable misconduct, it should be "extreme." (*Jones*, 152 Cal.App 4th at 1377.) "[S]imple
28 **teasing... offhand comments, and isolated incidents (unless extremely serious) will not amount to**
discriminatory changes in the 'terms and conditions of employment.'" (*Id.*, emphasis added.)

1 W1 described 8 alleged incidents, none of which are severe, and none of which are extreme.
2 The relevant time period in the instant matter covers *years*' worth of time. And, in fact, W1 admitted
3 that no harassment has occurred after she complained in 2015. Therefore, at worst, W1 has alleged 8
4 minor incidents spread out over hundreds if not thousands of days. This is the exact type of
5 "occasional, isolated, sporadic, or trivial" behavior that the Supreme Court has declared insufficient to
6 support a charge of sexual harassment. W1 failed to describe pervasive behavior, providing yet another
7 basis for dismissing her allegations for lack of sufficient evidence.

8 **D. The Accusation should be Dismissed based on Failure to Examine and Consider**
9 **Exculpatory Evidence**

10 "A grand jury should never forget that it sits as the great inquest between the State and the
11 citizen, to make accusations only upon sufficient evidence of guilt, and to protect the citizen against
12 unfounded accusations, whether from the government, from partisan passion, or private malice."
13 (*Johnson v. Superior Court of San Joaquin County* (1975) 15 Cal.3d 248, 254) Both the Grand Jury
14 and the lawyer who advises it have a statutorily mandated obligation to consider obvious exculpatory
15 evidence. Here, they both failed their duties under the law.

16 **1. County Counsel Failed to provide, known exculpatory information to the Grand jury.**

17 Before the Supreme Court's ruling in *Johnson*, the only way to have an indictment or
18 accusation dismissed under § 995 was insufficiency of the evidence. After *Johnson*, courts recognized
19 that a prosecutor's failure (or in the present case, county counsel's failure) to advise the grand jury of
20 the possible existence of exculpatory evidence also results in dismissal of the indictment. (see, for
21 example, *People v. Superior Court (Mouchaourab)* (2000) 78 Cal.App.4th 403, 420.) The duty to alert
22 the grand jury to potential exculpatory information is placed on the lawyer who advises the grand jury,
23 because counsel may have access to information or evidence that the jury is not privy to. (*Johnson*, 15
24 Cal.3d at 254 ["the grand jury ordinarily has no reason to believe that other evidence within its reach
25 will explain away the charge"]

26 This duty is codified under Penal Code § 939.71, which states "If the prosecutor is aware of
27 exculpatory evidence, the prosecutor shall inform the grand jury of its nature and existence." (Cal Pen
28 Code § 939.71) *These rules exist so that "the citizen may be protected from the trouble, expense, and*

1 *disgrace of being arraigned and tried in public on a criminal charge for which there is no sufficient*
2 *cause.” (Johnson, 15 Cal.3d at 254.) (Emphasis added).*

3 Here, the Contra Costa County Counsel knew multiple independent investigations exonerated
4 Mr. Kramer, and also knew that all of the same witnesses who would be testifying in front of the
5 Grand Jury had given previous statements to investigators. Any lawyer knows that previous statements
6 are invaluable, both for bolstering the testimony of truth-tellers, and for rooting-out the liars.

7 The exculpatory nature of the prior investigations in this case is not theoretical. It is obvious
8 and objective. It appears W4 perjured himself in front of the grand jury by providing salacious, sworn
9 testimony about raunchy anal sex stories and incredibly inflammatory racial statements – allegations
10 which he added to his “prepared statement” after an investigator hired by Contra Costa County found
11 the original version of his story to lack any credible or objective support for any allegation he made
12 against Mr. Kramer, [Decl. ¶¶ 7-9.] The fact that W4 lied is obvious to anyone who compares the
13 vastly different statements he gave, just nine weeks apart. It would have been obvious to the grand jury
14 as well, had Contra Costa County Counsel’s Office provided the Grand Jury with the exculpatory
15 information of which it was aware, as required by § 939.71. This could have been easily accomplished
16 by Contra Costa County Counsel proving a copy of W4’s statement to Makus to Solano County
17 Counsel.

18 Their failure to do so provides a separate grounds for complete dismissal.

19 **2. The Grand Jury Failed to Order Known Exculpatory Evidence be Produced.**

20 Notwithstanding County Counsel’s statutory duty to provide exculpatory information, when the
21 grand jury has reason to believe exculpatory evidence exists, it is duty bound under § 939.7 to make its
22 own inquiry, and order that evidence be produced. Penal Code Section 939.7 states that if a grand
23 jury has reason to believe that other evidence within its reach will explain away the charges, it
24 shall order that evidence be produced. These rules exist so that “the citizen may be protected from
25 the trouble, expense, and disgrace of being arraigned and tried in public on a criminal charge for which
26 there is no sufficient cause.” (Johnson, 15 Cal.3d at 254.)

27 Here, the Grand Jury heard sworn testimony about two prior investigations into the same set of
28 facts and circumstances underlying this Accusation against Mr. Kramer, *and it knew both*
investigations reached the same conclusion: no sexual harassment occurred. [RT 19:26-20:15; RT

1 313:2-16; 24:25-25:7.] The Grand Jury knew about at least one of these investigations before it even
2 started taking testimony, as it requested a copy of the County's investigation from the Board of
3 Supervisors. [Decl. ¶ 21.] This request for a copy of the investigation is akin to an admission that the
4 Grand Jury was aware of the potential evidentiary value of that investigative report. The Board of
5 Supervisors, undoubtedly on the advice of County Counsel's office, "denied" the request, but it had no
6 right to do so.

7 To the extent the grand jury was previously unaware that Mr. Kramer had been exonerated
8 through multiple independent investigations, it became aware of that fact through testimony and, again,
9 was duty bound to order that evidence be produced. The Grand Jury asked Ms. Cantu whether the
10 investigations concluded that sexual harassment had occurred and Ms. Cantu responded:
11 It's my understanding that the Board of Supervisor's censure says that, but it's my
12 understanding that the report does *not* say that... [it's my understanding the report
13 found that] more likely than not, there were or may have been -- I'm not sure --
14 inappropriate comments, but not to the degree to be considered sexual
15 harassment. So just an inappropriate statement that probably shouldn't have said,
16 and it was a more likely than not he said it, is my understanding.

17 [436:18-25, 437:5-10.]

18 Yet the Grand Jury, for perhaps any number of reasons, including the failure of the Contra
19 Costa County Counsel's office to alert Solano County Counsel Laughlin about the exculpatory
20 evidence, or Mr. Laughlin's failure to recommend issuance of subpoenas, failed to use its subpoena
21 powers to order those investigations be produced. The Grand Jury's failures are especially egregious
22 given the fact we now know that production of prior statements would have objectively shown W4
23 perjured himself, and that W1's claims were largely unsustainable and likely grossly exaggerated in
24 response to her childish disappointment resulting from not getting promoted. The Grand Jury was
25 required by law to issue a subpoena and order those reports be produced, and its failure to do is yet
26 another basis to dismiss the Accusation against Mr. Kramer.

27 **E. The Accusation should be dismissed for failure to preserve the record and for the**
28 **destruction of evidence.**

1. **There is no record that the Grand Jury was properly instructed on the law.**

"A claim of instructional error is a cognizable basis for a motion to set aside an [accusation]
under Penal Code section 995, subdivision (a)(1)(B), in that it is 'manifestly tantamount' to a claim the

1 grand jury, as instructed, may have indicted the defendant on less than reasonable or probable cause.”
2 (*Cummiskey*, supra, 3 Cal. 4th at p. 1022, fn. 1.) An indicted defendant is entitled to a challenge his
3 accusation under section 995 based on the manner in which the proceedings were conducted by the
4 attorney advising the grand jury. (*Mouchaourab*, supra, 78 Cal. App. 4th at pp. 424-425. (see, for
5 example *Berardi v. Superior Court* (2007) 149 Cal.App.4th 476 [substantial prejudice resulted from
6 the lawyer’s omission of an instruction concerning a key element of the offense.] How could any
7 defendant ever allege, argue, or prove instructional error if the prosecution and/or grand jury had no
8 duty to preserve the instructions? The duty of the government to memorialize jury instructions is
9 established by the Defendant’s right to challenge those instructions.

10 No record was made of the way the Grand Jury was “instructed,” and in fact we do not know if
11 they were instructed at all, because no “instructions” were read into the record nor attached to the
12 record. Mr. Laughlin (County Counsel) sent two memoranda to Richard Nakano, the same Grand Jury
13 Foreperson who destroyed recorded witness statements and documents provided to the Sub-
14 Committee. One memorandum was sent to Mr. Nakano before the Grand Jury heard witness testimony,
15 and the second was provided a few days into the testimony. However, we do not know which grand
16 jurors (if any) received the memos sent to Nakano, and which jurors (if any) read the memos sent to
17 Nakano. We do not know whether Mr. Laughlin supplemented his memos with jury instructions
18 delivered in person, whether or not the jurors had questions for him, and if so how he answered those
19 questions or if his answers were proper. Suffice it to say, without any record that each Grand Juror was
20 properly instructed, the Accusation should be dismissed unless the People can demonstrate the Grand
21 Jury was properly instructed. **The People bear the burden of proving that the entire Grand Jury**
22 **was properly instructed on the law. Unless and until such proof is offered, this Accusation must**
23 **be dismissed for instructional error.**

24 **2. There is no record of how many grand jurors voted.**

25 The law explicitly states that an Accusation to remove a public official from office can only be
26 presented with “the concurrence of at least 12 grand jurors.” (§ 3060.) This is not optional, as the
27 statute declares it must occur. Here, there is no evidence of whether the grand jury even voted. If it did
28 vote we have no idea how many participated in the vote, or how many participating grand jurors
concurred with the decision to file an Accusation against Mr. Kramer.

1 Once again, the People's duty to supply a record of the vote is implied by the existence of §
2 3060, because without such a record the Defendant has no way to ensure his rights are protected and
3 the People complied with the law. Therefore, the Accusation should be dismissed unless the People are
4 prepared to establish through competent, non-hearsay evidence, that the Accusation was supported by
5 12 grand jurors.

6 **3. The Grand Jury Fore Person Destroyed the Recorded Subcommittee Witness**
7 **Statements and Documents Given to the Subcommittee.**

8 The debate about which evidence a grand jury should consider and which evidence should be
9 preserved is related to the traditional secrecy which shrouds such proceedings. The secrecy of grand
10 jury proceedings dates back to the common law. Based on the common law tradition of absolute
11 secrecy, neither the 1851 Criminal Practice Act, which codified grand jury proceedings, nor
12 California's first enactment of the Penal Code in 1872 provided for the recording of grand jury
13 proceedings.

14 The first time the reporting and transcribing of grand jury testimony was authorized in
15 California was in 1897 with the enactment of former Penal Code § 925. The practice of recording
16 grand jury testimony was deemed increasingly beneficial, "for the purpose of preventing witnesses of a
17 certain character from safely giving testimony before the trial jury differently from that which they
18 have given before the grand jury." (*In re Kennedy* (1904) 144 Cal. 634, 638). The prohibition against
19 using false testimony to support an Accusation remains incredibly important today, and provides the
20 basis for one of the most used hearsay exceptions: "inconsistent statement." (Evidence Code § 1235
21 [establishing that a witness's prior, inconsistent statements are admissible to impeach sworn testimony,
22 notwithstanding the fact they are hearsay]) But an inconsistent statement cannot be used to establish
23 previous false testimony if the inconsistent statement is not first recorded or transcribed.

24 Section 939.71 "includes an implied requirement that the portions of the proceedings directly
25 relevant to a claim under that section 'be recorded, transcribed and provided to the defendants, so they
26 may have an opportunity to make this statutory Motion to Dismiss the Indictment if they have been
27 substantially prejudiced.'" (*People v. Superior Court (Mouchaourab)* (2000) 78 Cal.App.4th 403, 428-
28 429." Penal Code § 938.1 establishes that a defendant subject to an Accusation is entitled to production
of a transcript of all testimony before the grand jury. Moreover, the Supreme Court has acknowledged

1 that a defendant is entitled to bring a Motion to Dismiss the Indictment under 995 on the basis of the
2 testimony received and on the manner in which the grand jury proceedings occurred. (*Id.*; *People v.*
3 *Backus* (1979) 23 Cal. 3d 360; *Cummiskey v. Superior Court* (1992) 3 Cal. 4th 1018, 1022, fn. 1.)

4 Here, the way in which the Grand Jury conducted its proceedings prejudiced Kramer and his
5 ability to defend himself. The Grand Jury convened the Subcommittee to look into whether or not Mr.
6 Kramer engaged in sexual harassment at his workplace. To that end, the Subcommittee called many of
7 the same witnesses who would later be called to testify before the full Grand Jury about the same set of
8 facts and circumstances. For the grand jurors who formed the Subcommittee, the initial witness
9 statements they heard was certainly not forgotten after they heard it; therefore, it necessarily formed
10 part of the materials those jurors considered when reaching a decision about whether the Accusation
11 was warranted. Mr. Nakano recorded the sworn witness testimony provided to the Subcommittee.
12 [Decl. ¶ 22.] Mr. Nakano subsequently destroyed those recordings, as well as exhibits provided by
13 witnesses, then repeatedly lied about what he had done to cover his tracks. [Decl. ¶¶ 18, 20, 22.]

14 The prejudiced suffered by Kramer as a result of Nakano's destruction of witness statements to
15 the Subcommittee is particularly highlighted with respect to W4.

16 When W4 appeared before County Investigator Ellis Makus and made allegations against
17 Kramer in November, 2018, he made no mention of Kramer telling salacious sex stories or engaging in
18 racial epithets at work.

19 But, when he testified before the "full" Grand Jury on February 13, 2019, he added those
20 allegations.

21 *What set of allegations did he read to the Subcommittee on December 11, 2018?* We will never
22 know. However, if he read the same set of allegations to the Subcommittee that he did to Mr. Makus in
23 November, and then changed his statement to add new and different allegations before the full Grand
24 Jury in February, 2019, it is even more clear that the Grand Jury was not the least bit interested in
25 assessing the truth of allegations made by Kramer's accusers.

26 The Grand Jury's Foreperson's destruction of the witness statements and documents violated
27 Mr. Kramer's due process rights. By failing to preserve those statements and documents, Mr. Kramer
28 cannot now show that those persons are "witnesses of a certain character" who testified "differently
from that which they [previously provided to] the grand jury." (*Kennedy*, 144 Cal. at 638.)

1 4. This matter should be dismissed under *Trombetta* and *Youngblood*.

2 The due process clause applies to any situation in which the government seeks to take life,
3 liberty, or property. (U.S. Const. amend. XIV.) Courts have long held that in a criminal case, the due
4 process clause establishes that prosecutors have a duty to disclose and retain evidence in a criminal
5 matter: *Brady v. Maryland* (1963) 373 U.S. 83 (“*Brady*”), *California v. Trombetta* (1984) 467 U.S. 479
6 (“*Trombetta*”) and *Arizona v. Youngblood* (1988) 488 U.S. 51. (“*Youngblood*”). While
7 *Brady* addresses a prosecutor’s duty to disclose to the defense any material evidence that is favorable
8 to the accused, *Trombetta* and *Youngblood* address the distinct situation in which someone on the
9 “Prosecution Team” either destroys or fails to preserve evidence.

10 Although *Trombetta* and *Youngblood* are typically discussed and applied to cases involving
11 criminal charges, those cases are premised upon the due process clause of the Fourteenth Amendment,
12 which has equal force and authority in the instant case. Mr. Kramer, as an elected official, has a
13 property interest in his job, and that interest is also protected by the Fourteenth Amendment, which
14 precludes the government from taking life, liberty, or property without due process of law. Not only is
15 **withholding** exculpatory evidence a violation of the Grand Jury’s and County Counsel’s duties under
16 Penal Codes §§ 939.71 and 939.7, the **withholding** of exculpatory evidence is also a violation of Mr.
17 Kramer’s due process rights. To **destroy** exculpatory evidence is a far more egregious offense with
18 weighty consequences.

19 Under *Trombetta*, a case can be dismissed for failure to destroy evidence when the exculpatory
20 value of the evidence was apparent or known before it was destroyed. (*Trombetta, supra*, 467 U.S. at
21 pp. 488–489.) *Youngblood*, on the other hand, addressed the proper standard for the destruction of
22 evidence that is only potentially exculpatory: “[We] think the Due Process Clause requires a different
23 result when we deal with the failure of the State to preserve evidentiary material of which no more can
24 be said than that it *could have* been subjected to tests, the results of which *might have* exonerated the
25 defendant.” (*Youngblood, supra*, 488 U.S. at pg. 57, *emphasis added*.) Because the *Youngblood*
26 decision concerned evidence that was only “potentially useful,” it established a higher standard for
27 these situations, requiring a showing of bad faith in connection with the destruction of evidence. (*Id.* at
28 pg. 58; *Trombetta, supra*, 467 U.S. at 488–489.) When there is evidence of bad faith destruction of
evidence, the case must be dismissed because it “raises an inference that the evidence could

1 demonstrate innocence rather than merely serve to impeach the test results, [and in] such an instance
2 dismissal may well be the proper sanction.” (*People v. Jackson* (1980) 102 Cal.App.3d 620, 623.)

3 Here, we know the jury foreman, Mr. Nakano, destroyed potentially exculpatory evidence in
4 the form of the recorded witness testimony and exhibits which was provided to the Subcommittee,
5 because he eventually confessed to it. The importance of prior statements was highlighted in this
6 matter, because we now know that at least two of the statements W4 read into various records were
7 dramatically inconsistent with each other. He also read a prepared statement to the Subcommittee – but
8 was that statement the first version, the second version, or yet a third version? The answer matters, and
9 we will never know because of Mr. Nakano’s choice to destroy evidence. This loss, and the potential
10 importance of that missing third statement, can hardly be overstated.

11 Most importantly, it seems clear that Mr. Nakano’s destruction of those recordings was done in
12 bad faith. Why else would he relatedly lie about it to a law enforcement officer? When asked by a law
13 enforcement officer whether those recordings existed, Mr. Nakano lied on two separate instances. He
14 cannot claim he was simply mistaken, because he also confessed that he was the person who actually
15 managed the recording of that testimony and then destroyed the recording. When he was asked about it
16 a second time, he lied a second time. Only when confronted with the fact that someone else had “let
17 the cat out of the bag” and told Insp. Lewellyn the testimony was recorded did Mr. Nakano confess.
18 The testimony was recorded. It was recorded by Mr. Nakano. It was destroyed by Mr. Nakano. Then
19 he lied about it twice.

20 Mr. Nakano’s dishonesty is disturbing evidence of bad faith. Under the law, his destruction of
21 that evidence in conjunction with this evidence of bad faith raises an inference that the recordings
22 could have demonstrated Mr. Kramer’s innocence and therefore, “dismissal is the proper sanction.”
23 (*People v. Jackson* (1980) 102 Cal.App.3d 620, 623.)

24 **F. The Accusation should be dismissed because the Grand Jury was biased against Mr.
25 Kramer.**

26 Mr. Kramer has a due process right to an unbiased grand jury, because a lack of independence
27 or impartiality on the part of a grand jury is a violation of due process. (*Stark*, 52 Cal.4th at 417.) In
28 this case, there are so many signs and evidence that the Grand Jury was biased against Mr. Kramer that

1 they are difficult to count. Were the Grand Jury truly impartial, or even vaguely interested in discovery
2 the truth, it would have asked the obvious questions, and opened up doors behind which it knew it
3 would find exculpatory information.

4 For example, Mr. Kramer provided the Grand Jury with the names of three witnesses who
5 could support his claims about W1, but the Grand Jury never called those witnesses. Mr. Kramer
6 described for the grand jurors a publically-available video which apparently depicts W1 grabbing his
7 upper leg in a manner that completely refutes her unbelievable claims that he is someone she was
8 offended by, but they apparently never looked at it. When Mr. Kramer provided the Grand Jury with
9 documents and information they had requested him to provided, Solano County Counsel instructed
10 Nakano to disregard those out-of-court statements-yet no one protested when W1 and W4 read their
11 hearsay fabrications straight into the record. [RT 3:8-2; RT 224:4-6] When Mr. Kramer attempted to
12 provide the Grand Jury with “his side of the story,” and asked to be given more time to testify, he was
13 literally was cut off by the foreperson. [RT 363:5-26.]

14 Perhaps most disturbingly, the Grand Jury failed to ask any searching questions of any of the
15 witnesses – but especially of W4, whose ludicrous story should have immediately raised suspicion.
16 They literally copied and pasted his harebrained tale into their Accusation, without having posed a
17 single probative inquiry to challenge his ludicrous claim.

18 Yet, W4 was not the only key witness with credibility issues. W1 sat in front of the Grand Jury
19 and provided a deceitfully insufficient description of her own actions, which led to her being accused
20 of racial harassment. [RT 27:5-23.] She also asserted to the Grand Jury that the report of those claims
21 against her “will show that all of these accusations are unfounded [and] they have no basis.” [RT 26:2-
22 3.] Both were false, as an examination of Mr. Makus’s report reveals that for months, W1 circulated
23 vile, racist remarks about her African American supervisor because she was upset she had not been
24 promoted. [Decl. ¶ 5.] Furthermore, Mr. Makus **sustained** the charges against W1 for racial
25 harassment. [Decl. ¶ 5.] Yet, even without having a copy of the Makus report (due to their own willful
26 negligence and failure of duty), the Grand Jury heard the truth about W1 from Ms. Cantu, who detailed
27 W1’s months-long tirade which Ms. Cantu described as, “quite disturbing.” [RT 455-450; 455:12.]

28 A review of all the evidence reveals what appears to be a willful refusal to ask searching

1 questions and examine obviously exculpatory evidence. This failure is evidence of bias, and provides
2 yet another reason this matter should be dismissed.

3 **CONCLUSION**

4 The reasons which justify the dismissal of this Accusation are numerous. For the voluminous
5 reasons laid out above, we respectfully request the Court dismiss the Accusation in its entirety.

6 Dated: August 7, 2020

7 Respectfully submitted,

8 **RAINS LUCIA STERN**
9 **ST. PHALLE & SILVER, PC**

10 By: 

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12 Attorneys for Defendant
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PROOF OF SERVICE

I, Sharon Abrahamson, am a citizen of the United States, and am over 18 years of age. I am employed in Contra Costa County and am not a party to the above-entitled action. My business address is Rains Lucia Stern St. Phalle & Silver, PC, 2300 Contra Costa Blvd., Suite 500, Pleasant Hill, California 94523. On the date set forth below I served a true and correct copy(ies) of the following document(s):

Notice of Motion and Motion to Set Aside Accusation for Insufficient Evidence; Suppression by County Counsel of Exculpatory Evidence; Destruction of Evidence; Misinstruction of Grand Jury; Memorandum of Points and Authorities; and Declaration of Michael L. Rains

upon all parties addressed as follows:

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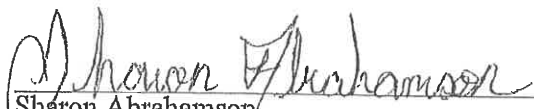
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said service was effected as indicated below:

- HAND DELIVERY - I placed true and correct copies of the above-referenced document(s) in a sealed envelope, addressed to the above-named parties, and personally delivered them.
- FACSIMILE TRANSMISSION - I caused true and correct copies of the above-referenced document(s) to be delivered by facsimile transmission.
- ELECTRONIC MAIL - I caused true and correct copies of the above-referenced document(s) to be delivered by electronic mail transmission.
- OVERNIGHT DELIVERY - I placed true and correct copies of above-referenced document(s) in a sealed envelope, properly addressed to the above-named parties, with fees prepaid in a receptacle regularly maintained by Fed Ex.
- MAIL - I placed true and correct copies of above-referenced document(s) in a sealed envelope, properly addressed to the above-named parties, with postage prepaid in a receptacle regularly maintained by the United States Post Office.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed on August 7, 2020, at Pleasant Hill, California.


Sharon Abrahamson