



**LAW OFFICES OF MELO AND
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May 3, 2021

Board of Directors
Tulare Cemetery District
900 E. Kern Ave.
Tulare, CA 93274

Re: Supplemental Government Code Section 910 Claim on behalf of Brian Viera

Dear Board of Directors and Clerk to the Board:

This letter supplements and clarifies the earlier Government Code 910 claim submitted on behalf of our client, Brian Viera. Please see Exhibit 1 attached hereto for additional information for claimant.

The following information is submitted by claimant on information and belief pursuant to the applicable provisions of the California Government Code (GC). The required information is set forth below:

GC Section 910(a) Name of Claimant and Post Office Address:

Brian Viera, % Law Offices of Melo and Sarsfield, 4216 S. Mooney Blvd, PMB 136, Visalia CA 93277

Name of Claimant's Attorney/Representative:

Law Offices of Melo and Sarsfield, LLP. Attention: Marguerite Melo or John Sarsfield

GC Section 910(b) Post Office Address to Which All Notices Regarding this Matter Are to be Sent:

Law Offices of Melo and Sarsfield, LLP, 4216 S. Mooney Blvd, PMB 136, Visalia, CA 93277

GC Section 910(c) Date, Place and Circumstances of Occurrence:

Claimant Brian Viera submits the following on information and belief:

The Tulare Cemetery District (district) is a governmental agency, bound by the laws of the State of California, including but not limited to Labor Code Section 1102.5 et seq.

The District is governed by a five member board of directors, who are appointed to serve four year terms.

The District employs a variety of persons to serve in various capacities, such as district manager, clerical, maintenance, etc.

The District's manager works directly for the board of directors. Xavier Avila is a member of the District Board of Directors. The district manager at all times relevant herein was Leonor Castaneda.

Claimant Brian Viera was a long-term employee of the District. He was employed from approximately July 2007 to approximately March 2021. Most recently he worked as a foreman. Claimant was an "at will" employee as the term is generally understood in California law.

During the course of claimant's employment with District, he generally received regular raises and positive work reviews. Claimant was promoted in 2018.

The decision to place human remains in any particular grave, or to disinter the same, is made only by the district manager, such as Ms. Castaneda and/or her predecessor(s). Claimant had no role in deciding where (which plot) to bury or exhume human remains.

On or about March 8, 2021, claimant reported to work at approximately 6 am. He was present with some co-workers. On that date, his duties were to disinter a body. Claimant was ordered to disinter the body by the district manager.

As claimant began work that date, he was contacted by the family of the deceased (Silvano Martinez). Family members as well as Channel 21 (Univision) were present on the cemetery grounds on that date. Family members informed claimant that they objected to the disinterment of their family member. They advised claimant that they had not given permission for the disinterment, and that they wanted it stopped. Claimant responded to them by telling them that he would contact the manager and report their objections to her.

Having worked at the cemetery district for many years, claimant believed that it was illegal to disinter bodies over the objection of the family. Claimant believed that a court or health department order was required before the disinterment of a body. Claimant believed that no such order was obtained in this case.

That same morning, claimant reported this violation of the law (or what he believed to be a violation of the law) to Ms. Castaneda, the district manager.

Immediately following claimant's report of the violation of the law to Ms. Castaneda, claimant was summoned to the district office. Present on the cemetery grounds was director Xavier Avila. Leonor Castaneda was present in the office. Claimant was immediately fired from his position of almost 14 years. No explanation was given for his immediate termination. No written explanation as to why he was fired has been given to claimant, at least as of this writing.

Claimant was not and has not been afforded any opportunity to appeal his termination, nor was he offered an opportunity to have a "Lubey" hearing to respond to any allegations of misconduct.¹ Other district employees have been afforded "Lubey" hearings, including the former district manager, Castaneda.

Claimant was fired because he refused to carry out Ms. Castaneda's illegal order and because he reported the violation of the law to his employer, the district. Claimant's firing by Ms. Castaneda was encouraged, ordered, tolerated, adopted, not corrected and/or ratified by director Xavier Avila, who was present on the cemetery grounds when it occurred.

Director Avila has not been acting as a "director" of the governmental agency, but rather, Mr. Avila has assumed the de-facto role of the actual chief executive, usurping the powers and position of the district manager. Director Avila has thereby forfeited any qualified immunity he may have otherwise had in this matter as a board member. As the de facto manager, along with Ms. Castaneda, Mr. Avila is liable for the illegal actions taken by district against claimant.

On/about May 3, 2021, the Valley Voice newspaper published a story regarding this matter. In the article, Director Avila stated words to the effect that "Brian wasn't fired for the reasons he is claiming." That statement is a clear insinuation of misconduct attributed to claimant and as such, triggers a right to a Lubey hearing. Further, the statement is violative of claimant's privacy in his employment personnel records. At no time did claimant authorize Director Avila to publicly discuss his employment, the reasons for his termination, or his performance of his duties as a government employee.

¹ See Lubey v. City and County of San Francisco (1979) 98 Cal.App.3d 344

GC Section 910(d) A General Description of the Injury:

As a result of the negligent and intentional actions/omissions of the Tulare Cemetery District, Ms. Castaneda, Mr. Avila, and the Doe employees/agents/directors, 1 through 5, Mr. Viera was wrongfully fired from his employment with the resulting loss of pay, benefits and retirement, as well as subjected to an intentional or negligent infliction of emotional distress and retaliated against for reporting to the district and its managers/directors what he believed to be violation of the law or policy. Further, he was denied his right to a Lubey hearing, and otherwise suffered a denial of due process. Finally, on /about May 3, 2021, Director Avila has wrongfully released private employment information regarding claimant to the public at large, including the media.

GC Section 910(e) Names of the Employees Causing the Injury:

Leonor Castaneda, Xavier Avila, and as yet unknown Tulare Cemetery District employees/agents/directors during the timeframe described in the above paragraphs, Numbers 1 through 5 (Doe employees/agents 1-5).

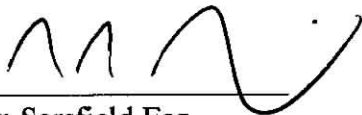
GC Section 910(f) The Amount Claimed for Damages:

The amount claimed against the Tulare Cemetery District, Ms. Castaneda, Mr. Avila, and each unknown individual exceeds \$10,000.00. The matter would be filed in Superior Court as "unlimited jurisdiction."

Thank you for your prompt attention to this matter.

Sincerely,

LAW OFFICES OF MELO AND SARFIELD LLP



John Sarsfield Esq.

Exhibit 1

Brian Viera Statement - April 1, 2021

On the morning of March 8, 2021, at approximately 7 a.m., I was told to report to the North Cemetery Office by Leonor Castaneda, Manager. She told me that she had to let me go, and handed me two payroll checks, one covering the current payroll period, and one for 134.41 hours of accumulated vacation hours. I asked her why she was terminating me – she said she couldn't tell me.

I was employed at the Tulare Public Cemetery from 7/2/2007 until the morning of 3/8/2021 – over 13 ½ years. I received raises and was promoted to Foreman of the North Cemetery in 2018. I have always received good reviews and have given exemplary service to the Cemetery District.

On Friday, March 5, 2021, the Cemetery Manager held a staff meeting during which 7 of the Groundskeepers were told to report to the North Cemetery at 6 a.m. on Monday, March 8, 2021 for disinterments. On March 5, 2021, I was told by Leonor that I was to be reassigned from the North Cemetery to the Kern Cemetery, effective Monday, March 8, 2021, due to of my knowledge of the Kern Avenue Cemetery. I asked her if I was going to receive a raise, and she said the Board decides.

On Monday, March 8, 2021, I reported at 6 a.m. to the North Cemetery, along with Bobby Jones, David Faria, Chris, Daniel, and two newer groundskeepers. Groundskeeper Ernie was to report to the Kern Avenue Cemetery. We encountered the family of Silvano Martinez and UniVision Channel 21. The family was Spanish speaking, with one member appearing partially bilingual. As we began the disinterment process, the family said they did not want the body disinterred and had not given permission to the Cemetery to do so. They said they had received a call from Leonor Castaneda on Friday, March 5, 2021, from Leonor Castaneda, stating their loved one had been buried in the wrong grave, and she was to be disinterred on Monday morning. The person(s) contacted, said they disagreed, and didn't want it to happen. Leonor stated they had no choice, that it was going to happen on Monday morning at 6 a.m. I told the family that I would stop the disinterment, and call Leonor Castaneda, the Cemetery Manager. In my experience and knowledge of the law, if the family had not consented, I had to stop the disinterment. Leonor responded to the location about 7 a.m.; with Chairman Xavier Avila arriving separately thereafter. I was told to report to the North Cemetery Office by Leonor. She asked for my keys and credit card, said she had to let me go and handed me two checks, dated Saturday, March 6, 2021. One was for the current pay period and one was for accumulated vacation. I left immediately. The disinterments and re-burials were performed by remaining groundskeepers.

Justiniana Jacinto was buried on 2/12/2021, at the North Cemetery in Section D, row D, plot 43, upon direction of the Cemetery Office, utilizing the Google Calendar app. Burial protocol is to dig the grave the day before the scheduled burial date, and to verify once again, the location of the burial site to be dug. Burial services were performed by myself and Groundskeeper Bobby Jones, with Sterling & Smith Funeral Directors in attendance.

On 2/19/2021, I was notified thru the Google Calendar app, that a burial was scheduled for Silvano Martinez at the site that I had previously dug a week earlier (Section D, row D, plot 43). I called the office and advised Leonor of the problem. She advised me "to dig the grave in front of row D, that the family didn't live in town, inferring that they wouldn't notice the difference, and that she would fix the paperwork.

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Barnes Memorial had recently finished placing the gravestone for Justiniana Jacinto. Leonor directed me to pick up the gravestone and move to Section D, row C, plot 43. Picture of gravestone available. She "fixed the paperwork, both the Google Calendar and office paper work."

I advised David Faria, Lead Foreman, of Leonor's actions, and he agreed with me "that it wasn't right, but what can you do? She's the Manager."

It has been over three weeks since I was terminated on 3/8/2021. No reason has ever been given. I appeared the next day, 3/9/2021, during the Closed Session of the Special Board meeting, and was not provided a reason. On 3/25/2021, I attended the Regular Board Meeting and spoke during Public Comments, and asked for a Skelly Hearing.

The Jacinto/Martinez incident is not an isolated event – most notable, the Faria family burials in 11/2019 (Dolly Faria) and 4/2020 (Manuel Faria). In 11/2019, David Faria, Lead Foreman, called me and said when he dug the grave site for Dolly Faria, he encountered bones – a full skeleton. He asked me what he should do. I advised him to tell Leonor – that the gravesite should be closed up, the family notified that there was an issue, and that the gravesite should not be used. David advised Leonor, who instructed him to place a vault on top of the bones, and bury Dolly on top of the bones. Dolly's husband Manuel died in 4/2020, and he was buried next to Dolly. Note: There is an elaborate headstone at the location, spanning three burial sites. Dolly and Manuel's son Valentino died in 1971 and is buried in the southern-most plot, with single plots adjacent for Dolly and Manuel. When the bones were discovered in the digging of Dolly's grave and the site closed up, it would have been feasible for a double-depth grave to be dug, to accommodate Dolly, and later Manuel.

Burial procedures are not being followed – the use of the Google app allows Leonor to "change the paperwork" – another burial mistake was averted in the burial of David Warnke on 2/27/2021, when the Office changed the original burial location.

I was wrongfully terminated. There is an atmosphere of fear among all staff at the Tulare Cemetery. I was the longest employed employee at the Cemetery (along with Bobby Jones who was hired the same day). Bobby Jones and David Faria are in fear of losing their jobs. Note: Agenda for 3/25/2021 Regular Meeting included a Closed Session item for the Evaluation of David Faria, by the Board. It was the intent of the Chair, Xavier Avila, to fire him. David was not fired.

I declare under Penalty of Perjury, that all of the foregoing is true.



Brian Viera



Date

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