



March 5, 2024

Sent Via Email and U.S. Mail
dan@gilleon.com

Daniel Gilleon, Esq.
Gilleon Law Firm APC
1320 Columbia Street, Suite 200
San Diego, CA 92101-7490

Re: Rejection of Tort Claim filed by Emily Outlaw dated February 16, 2024

Dear Mr. Gilleon,

MTS is in receipt of the above-referenced Tort Claim (the "Claim"). This letter is intended to respond to the specific concerns identified in Ms. Emily Outlaw's Claim.

As a preliminary matter, Ms. Emily Outlaw ("Ms. Outlaw") is still employed with MTS as its Chief Information Officer (CIO) and has not incurred any economic losses for past or future wages.

MTS Performance Review and Improvement Efforts

MTS values all of its employees and takes steps to assist and develop our employees' technical and professional skills so that they can achieve at the high levels that MTS expects. As raised in the Claim, Ms. Outlaw's contributions and achievements during her first year as MTS's CIO were acknowledged in her 2022 performance evaluation and she was recognized with a higher-than-normal merit increase of 6.5%. This is consistent with MTS's efforts to recognize and reward performance. It was also to compensate for the additional staff and responsibilities Ms. Outlaw assumed during the review period.

From 2022 to 2023, Ms. Outlaw's duties and team expanded in scope and breadth. Ms. Outlaw struggled in adapting to her expanded role and responsibilities. Her peers and supervisor observed declines in her attendance, responsiveness, focus and industriousness. These issues contributed to her not meeting the expectations of the role. On November 6, 2023, as part of MTS's normal annual evaluations of employees, Chief Executive Officer (CEO) Sharon Cooney met with Ms. Outlaw to review her performance in light of these changes and her related challenges. The feedback provided in that meeting was part of MTS's efforts to help Ms. Outlaw understand what she needed to improve on in order to achieve long-term success in the CIO position. While the significant decline in Ms. Outlaw's job performance was disappointing to all involved, her 2023 performance evaluation contains

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San Diego Metropolitan Transit System (MTS) is a California public agency comprised of San Diego Transit Corp., San Diego Trolley, Inc. and San Diego and Arizona Eastern Railway Company (nonprofit public benefit corporations). MTS member agencies include the cities of Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Poway, San Diego, Santee, and the County of San Diego. MTS is also the For-Hire Vehicle administrator for nine cities.



accurate, verifiable feedback, both positive and negative, regarding her job performance during the review period.

The 2023 Performance Evaluation included a commitment to work with Ms. Outlaw to “*develop a performance improvement plan that will support her in becoming more reliable and able to manage her team and its portfolio of projects. We want you to succeed in this position and are confident you can return to being a positive, productive, and respected leader.*” While the review did not recommend a merit increase, it stated that the CEO would formally review Ms. Outlaw’s performance in 6 months and recommend an increase at that time—provided that there was sufficient improvement.

Despite her receipt of constructive feedback during the normal employee cycle of evaluations, the Claim states that the CEO was “*trying to get her CIO to quit*”, citing the poor performance review rating, and an example that the CEO “*stopped responding to Ms. Outlaw’s communications, and when they interacted, Ms. Cooney was short, abrasive, and rude.*” This is not an accurate description of the CEO and CIO interactions during this time. The CEO was actively trying to counsel Ms. Outlaw on improving her communication and dependability, which is essential for the CIO’s role in maintaining safe and reliable MTS operations. In furtherance of this, the CEO had also been actively supporting initiatives to seek Board approval for additional IT employees and improved compensation for employees through a salary survey. These were all efforts to support Ms. Outlaw’s technical and professional recommendations and to improve the resources available to her department.

Because having a readily accessible, visible, and responsive Executive Team is important for MTS’s continued operations, MTS’s CEO does not authorize any of her Chief or Director level reports to have a regular work from home day. Only intermittent, case-by-case work from home is approved, and only if duties can be appropriately covered. Chief and Director level Executive Team members need to be in-person to appropriately confer with colleagues as issues arise, respond to workplace issues (particularly emergencies), more directly engage in discussions during in-person meetings, and to set an example for subordinates about MTS’s office culture.

Ms. Outlaw was routinely granted work from home privileges when she stated emergencies prevented her in-person attendance – more than any other Chief level employee. In addition to approved work from home days, Ms. Outlaw began working from home without approval or advance notice, and this pattern continued even after she was admonished to adhere to the established process.

Contrary to Ms. Outlaw’s claims that she was inadequately supported or ostracized, she was encouraged to attend the American Public Transportation Association (APTA) conference in Orlando with the CEO in October 2023, was approved to attend an international conference in Ireland in October 2023, had most of her recommended IT projects approved by the CEO, was allowed to proceed with her department promotional recommendations, and has been included in all high level and confidential meetings for the MTS Executive Team. None of the above is consistent with an effort to encourage Ms. Outlaw to quit her job.

Retaliation and Unlawful Conduct Allegations

There is no evidence that supports the retaliation allegations described in Ms. Outlaw's Claim form.

The Claim attributes her late 2023 poor performance rating to two IT-related issues that arose during the investigation of an unrelated lawsuit brought against MTS and former Board Chair Nathan Fletcher by plaintiff Grecia Figueroa ("Figueroa"). Ms. Outlaw's involvement in the investigation was minimal. Of note, before the filing of her first Tort Claim with MTS, Ms. Outlaw had never complained about any retaliation related to events described in the Claim.

The Claim alleges that misrepresentations were made about the receipt of two letters from Figueroa's attorney dated February 17, 2023, and that MTS legal counsel "unlawfully" requested that the IT Department download and save any chat messages then-employee Figueroa may have made or received in the MTS Jabber chat function. The description and characterization of these two events are misleadingly set forth in the Claim. Neither incident supports a finding that any negative action or opinion was taken in regards to Ms. Outlaw related to these incidents. Simply put, the facts also do not support the Claim's description of these instances as false statements or unlawful acts.

Timeline Regarding February 17 Emails from Figueroa's Attorney. The Claim appears to take out of context both the importance of the February 17, 2023 email receipt dates and the legal significance of such correspondence.

Please note that the details of closed session discussions with the Board, and MTS attorney-client communications are confidential as a matter of law, and that Ms. Outlaw was not a participant in those discussions, nor did she review or prepare any documents that were submitted to the Board. Without waiving any privileges related to the *Figueroa vs. Fletcher* matter, MTS can provide the following information:

- Figueroa's attorney sent two separate emails to the email address of Jeff Stumbo, MTS Chief Human Resources Officer (CHRO), (jeff.stumbo@sdmts.com) on February 17, 2023 – one at 2:42pm and a second at 4:43pm.
- The first email contained a Demand for Employment Records and Evidence Preservation and it was directed by the MTS Darktrace cybersecurity software into the CHRO's junk mail folder. A hard copy of the letter was delivered several days later to Jeff Stumbo in the mail on February 21, 2023.
- The second email contained a "Letter of Representation – Do Not Contact" and was delivered directly to the CHRO's email inbox on February 17.
- After the Figueroa lawsuit was filed on March 28, 2023, the IT department was asked to confirm and document the Darktrace quarantine of the first email (which it did, and Ms. Outlaw was copied on the email). This fact simply allowed staff to confirm their recollection of the timing and receipt of each February 17 email/letter.

Both February 17 emails and attached letters were provided to local media outlets on April 3, 2023 in response to Public Records Act requests.

Specifically, the February 17, 2023 Demand for Employment Records and Evidence Preservation did not contain any facts or circumstances describing Figueroa's potential claims and it did NOT identify Mr. Fletcher as a person accused of any misconduct. Instead, it included a collective "YOU" that was defined to include MTS, its Board Chair Nathan Fletcher, and other related entities or individuals. This provided no context or information regarding who, what, or when the alleged violations involved. No information was provided as to whether Mr. Fletcher was included in the correspondence because of his role as Board Chair (as many claims are so styled) or for some other reason. No additional tort claim or correspondence including such facts and circumstances (as required by Government Code section 910) was ever provided to MTS before Ms. Figueroa filed her lawsuit on March 28, 2023.

Not only was Ms. Outlaw aware of the above timeline, her staff (not her) was responsible for investigating the timing of these emails. At no point were Ms. Outlaw or her staff asked to do anything besides document the findings of the information gathering they were directed to perform.

The Claim alleges that MTS lied about making this statement on March 30, 2024: "*The filing of Ms. Figueroa's lawsuit on March 28, 2023 was the first time that MTS executive management was provided with the specific details of Ms. Figueroa's allegations.*" In fact, it was not until March 28 when MTS officials were aware of the specifics of Figueroa's allegations against Mr. Fletcher. This was later confirmed in by a third-party investigation that was conducted last year. The investigation report was made public in early 2024 (which can be accessed here: <https://www.sdmts.com/inside-mts/media-center/news-releases/findings-released-independent-investigation-wrongful>.)

Allegations Related to Jabber Messages. After the *Figueroa vs. Fletcher* lawsuit was underway (initially filed on or around March 28, 2023), Ms. Outlaw's department was asked to assist in document collection in the ordinary course of litigation preparation, including in response to the February 17, 2023 evidence preservation demand letter from Ms. Figueroa's attorney.¹ Nonetheless, the Claim describes a routine request for the IT Department to assist in the identification, preservation, and downloading of electronic communications owned and controlled by MTS as "hacking" into an employee's account.

The *Jabber* chat platform is an internal messaging system maintained by MTS for use by MTS employees for business related purposes—not for any personal usage. Therefore, there is no employee privacy right in such messages. MTS's Technology Resources Policy makes clear

¹ The February 17, 2023 letter titled "Demand for Employment Records and Evidence Preservation" included a demand that MTS preserve and be prepared to produce an exhaustive list of potential electronic files, including any applicable chat or text messaging platforms used by MTS. Ms. Figueroa's own communications on the MTS Jabber system fall within the scope of this demand. Even if there were an employee privacy rights in such messages (there is not), the February 17, 2023 demand letter acts as a waiver of any privacy rights Ms. Figueroa may have had in such messages.

that all electronic communications on MTS-provided devices or platforms are the property of MTS, that employees should expect no privacy in such communications, and that MTS has the sole right and discretion to monitor such communications.

Further, MTS had and has legal obligations under litigation/discovery rules and the Public Records Act to preserve, download, and produce records like Jabber messages, unless a recognized exemption or privilege applies to a particular communication. The request to download Ms. Figueroa's Jabber communications was pursuant to MTS's obligations to investigate her claims, preserve evidence demanded by her attorney, and respond to Public Records Act requests. It was in no way "unlawful" as she contends. As CIO of a complex agency, she knew or should have known that such actions were normal, routine, and necessary.

Conclusion

Based on the above, MTS rejects Ms. Outlaw's Tort Claim dated February 16, 2024. Under Government Code section 913, please note:

Notice is hereby given that the claim that presented to the MTS on February 16, 2024 was rejected on March 5, 2024.

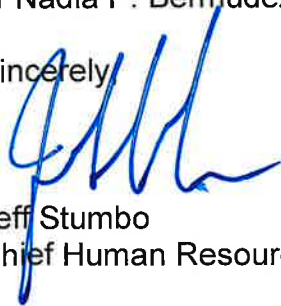
WARNING

Subject to certain exceptions, you have only six (6) months from the date 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 an attorney, you should do so immediately.

Please contact MTS via outside counsel: Janice P. Brown, Esq. at jbrown@meyersnave.com or Nadia P. Bermudez, Esq. at nbermudez@meyersnave.com to discuss this further.

Sincerely,



Jeff Stumbo
Chief Human Resources Officer