

1 Michael J. Lampe #82199
Michael P. Smith #206927
2 Law Offices of Michael J. Lampe
108 West Center Avenue
3 Visalia, California 93291
Telephone (559) 738-5975
4 Facsimile (559) 738-5644

5 Attorneys for Plaintiffs
6
7

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

MAY 01 2018

STEPHANE CAMERON
BY: *Stephane Cameron*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF TULARE

11 WESLEY J. HENSLEY,
12 Petitioner,
13 vs.
14 CITY OF TULARE,
15 Respondent.

Case No. **273730**

VERIFIED PETITION FOR WRIT OF
ADMINISTRATIVE MANDATE

EXHIBITS 1-22

17 Petitioner Wesley J. Hensley petitions this court for a writ of administrative mandate
18 pursuant to California Code of Civil Procedure §1094.5, directing Respondent City of Tulare (*the*
19 *City*) to provide him an administrative appeal of his termination as Chief of Police, conducted in
20 compliance with Government Code §11513(b) and the Public Safety Officers Procedural Bill of
21 Rights Act (Government Code §§3300-3312). In the alternative, Hensley seeks a writ of
22 administrative mandate directing the City to set aside its March 20, 2018, Notice of Termination
23 of Hensley's employment with the City.

24 This petition is based upon the attached exhibits, and the separately filed memorandum
25 of points and authorities, all of which are incorporated herein by reference.
26
27
28

VERIFIED PETITION FOR WRIT OF
ADMINISTRATIVE MANDATE; EXHIBITS 1-22

1 Petitioner Wesley J. Hensley (*Hensley*) alleges:

2 1. Hensley was employed as a police officer with the City for 27 years.

3 2. On March 5, 2016, Hensley entered into a written employment agreement with the
4 City to act as the Police Chief for the City of Tulare. [Exhibit 1]

5 3. On September 19, 2017, former City Manager Joseph Carlini (*Carlini*) approached
6 Chief Hensley and requested that his department investigate Mayor Carlton Jones' use of a City-
7 issued credit card. According to Carlini, a City credit card was issued to the Mayor for use at a
8 League of California Cities conference that ended on Friday, September 15, and the Mayor
9 submitted an unauthorized dinner charge at Cattleman's Restaurant in Selma on Saturday,
10 September 16. [Exhibit 2]

11 4. During the course of the day, various witnesses overheard Carlini make the following
12 statements:

13 "Man I need some fucking therapy."

14 "The mayor turns in his receipts from our League of California Cities trip and there
15 is a receipt from Saturday night from Cattleman's in Selma and on the receipt it
states plus 1 with the total bill being around \$144."

16 "I asked Carlton [Mayor Jones] who is the plus 1 on the receipt and he basically tells
17 me to go fuck myself that it was a meeting regarding potential personnel issues with
the police department."

18 "This is total bullshit now. I have the fucking Mayor committing fraud with the city
19 credit card, what is next?"

20 "I can't trust the City Attorney."

21 5. After announcing his distrust of the City Attorney, Carlini authorized Hensley to
22 contact Attorney Shelline Bennett at Liebert, Cassidy and Whitmore to discuss the legal
23 ramifications of conducting the requested investigation.

24 6. On September 22, Hensley obtained a surveillance video from Cattlemen's
25 Restaurant which reflected that the Mayor entered the restaurant with his wife and minor
26 daughter, and later greeted James Kelly, the President of the Tulare Police Union and a retired
27 Tulare Police Department officer named Patrick O'Donohoe. [Exhibit 3; submitted by thumb drive.]
28

1 7. On September 27, Carlini placed Hensley on paid administrative leave, "... pending
2 the City's investigation into allegations of misconduct by you, relating to an incident on Friday,
3 September 22, 2107." [Exhibit 4]

4 8. Hensley alleges on information and belief that Carlini placed him on administrative
5 leave after being unlawfully pressured to do so by the Mayor, who was upset that Hensley's
6 department had secured the Cattlemen's Restaurant video.

7 9. Hensley alleges on information and belief that his placement on administrative leave
8 under the circumstances set forth above was intentionally designed to injure his reputation,
9 entitling him to the civil penalties provided for in Government Code §3309.5(e).

10 10. On October 25, after the Mayor's use of the City credit card became a public issue,
11 the Mayor repaid the City in full for the Cattlemen's Restaurant charge. [Exhibit 5] (The Mayor did
12 not publicly announce his repayment of the questioned credit card charge; it only came to light
13 pursuant to a Public Records Act request.)

14 11. On November 6, the Mayor made the following public statement in his weekly
15 interview on KTIP Radio:

16 "You know, it's -- I got -- *I did get my first update on where we are with that, and I*
17 *can say now that -- that I do support the city manager's decision to -- and what he's*
18 *doing.* There's still a lot of parts that needs to come out of that. You know, those --
 they're very confidential investigations." [Exhibit 6; emphasis added.]

19 12. Section 1013 of the Rules and Regulations for the Administration of the City of
20 Tulare Merit Personnel System (*the City's Personnel Rules*) prohibited the Mayor from publicly
21 commenting on Chief Hensley's placement on administrative leave. Specifically, §1013 provides
22 that:

23 "In the interest of preventing undue embarrassment and subsequent loss of ability
24 to perform city work effectively, the following policy will prevail regarding release of
 information to the news media on personnel actions:

- 25 a. No information shall be released without prior approval of the City Manager.
26 b. No information shall be released until final action has been determined and
27 taken.

1 c. Even after final disposition of the matter, no details will be released other
2 than the exact nature of the action taken.”

3 13. Hensley alleges on information and belief that the Mayor’s public announcement of
4 “support” for the placement of Chief Hensley on administrative leave violated §§1013(a), (b) and
5 (c) of the City’s Personnel Rules, as well as the Public Safety Officers Procedural Bill of Rights
6 Act (Government Code §§3300-3312 – hereinafter referred to as *POBRA*).

7 14. On November 14, the City was notified in writing of the above-referenced violations
8 of Chief Hensley’s rights. [Exhibit 7]

9 15. The City took no corrective action with respect to the Mayor’s November 6 radio
10 interview.

11 16. Hensley alleges on information and belief that the City’s failure to take corrective
12 action with respect to the Mayor’s November 6 radio interview was intentionally designed to injure
13 Chief Hensley’s reputation, entitling him to the civil penalties provided for in Government Code
14 §3309.5(e).

15 17. On December 14, the Mayor posted a completely false statement on his Facebook
16 page (*the Mayor’s Facebook post*). This post stated, among other things:

17 ... “Are you aware that chief ran an internal affairs investigation into what was said at
18 a union meeting? A conversation which he and everyone else knew was privileged.
19 The goal, simply to teach the union president a lesson. The result was unfounded
but the stress it caused the union president sent the message.” [Exhibit 8]

20 18. The Mayor’s Facebook post was completely false, and Hensley alleges on
21 information and belief that the Mayor knew it to be false at the time.

22 19. The Mayor’s Facebook post constituted an independent, serious violation of the
23 City’s Personnel Rules as well as Hensley’s rights under *POBRA*.

24 20. On December 14, the City was notified in writing of the defamatory nature of the
25 Mayor’s Facebook post, as well as the violation of Hensley’s rights under both *POBRA* and the
26 City’s Personnel Rules. [Exhibit 9]

1 21. The City took no corrective action with respect to the Mayor's December 14
2 Facebook post.

3 22. Hensley alleges on information and belief that the City's failure to take corrective
4 action with respect to the Mayor's December 14 Facebook post was intentionally designed to
5 injure Chief Hensley's reputation, entitling him to the civil penalties provided for in Government
6 Code §3309.5(e).

7 23. On December 18, City Attorney Heather N. Phillips responded to various matters
8 raised in Hensley's December 14 correspondence, Exhibit 9 hereto. In her December 18
9 correspondence, Phillips raised the spectre of "additional" (unspecified) allegations being
10 investigated:

11 "Since the time that Mr. Hensley was placed on leave, additional information has
12 continued to come to light that requires investigation. Additional information relating
13 to each and every one of the numerous allegations *now being investigated* will be
provided to Mr. Hensley, when appropriate and as required by law." [Exhibit 10;
emphasis added.]

14 24. The following day, on December 19, City Attorney Phillips was quoted in the Visalia
15 Times Delta as having said, "... an out-of-the-area investigator will be hired to handle the
16 investigation, *but no one has been appointed.*" [Exhibit 11]

17 25. On December 22, the City was notified in writing of the contradiction between the
18 City Attorney publicly alluding to additional allegations "now being investigated," and her public
19 statement the following day that no independent investigator had yet been appointed. [Exhibit 12]
20 This notification asked the following question, which the City never answered:

21 "If there was no investigator appointed on December 19, how could you represent
22 to me on December 18 that there is 'additional information [with] numerous
allegations *now being investigated.*' By whom, you and the mayor?"

23 26. On January 19, 2018, the City entered into a Consulting Services Agreement with
24 John McGinness to conduct the investigation that the City Attorney contended was under
25 investigation on December 22, 2017. [Exhibit 13]

26 27. The City took no corrective action with respect to the misrepresentations of the City
27 Attorney.

1 28. Hensley alleges on information and belief that the City's failure to take corrective
2 action with respect to the misrepresentations of the City Attorney was intentionally designed to
3 injure Chief Hensley's reputation, entitling him to the civil penalties provided for in Government
4 Code §3309.5(e).

5 29. On March 20, 2018, Hensley was unexpectedly served, through his legal counsel,
6 with a Notice of Termination by then City Manager Joseph Carlini. [Exhibit 14] The Notice of
7 Termination was served on Hensley's legal counsel by email at 4:24 p.m. [Exhibit 15]

8 30. The Notice of Termination did not terminate Hensley's employment as a result of
9 misconduct.

10 31. Hensley alleges on information and belief that his sudden and unexpected
11 termination was a mere pretext designed to cover up the fact that Carlini was pressured by the
12 Mayor to terminate Hensley's employment with the City prior to Carlini being fired later that day
13 by the Tulare City Counsel.

14 32. Within hours of his termination of Hensley's employment, Carlini's employment with
15 the City was terminated. [Exhibit 16; Agenda Item XII]

16 33. Hensley alleges on information and belief that the termination of his employment
17 under the circumstances set forth above was intentionally designed to injure his reputation,
18 entitling him to the civil penalties provided for in Government Code §3309.5(e).

19 34. On March 26, 2018, Hensley timely served notice of appeal of the termination of his
20 employment, and demanded his right to have an administrative appeal conducted in a public
21 setting. [Exhibit 17]

22 35. The City acknowledged receipt of Hensley's notice of appeal the same day. [Exhibit
23 18]

24 36. Under §1008 of the City of Tulare Merit System Rules and Regulations, the hearing
25 of Hensley's administrative appeal was to commence not later than April 25, 2018 (*i.e.* within 30
26 days of receipt of the notice of appeal), unless the city manager continued the hearing for the
27 convenience of the City or upon Hensley's written application. [Exhibit 19]

1 37. The city manager did not continue the hearing for the convenience of the City, and
2 Hensley specifically refused to waive his right to a timely hearing.

3 38. At all times mentioned herein, Hensley was vested with certain procedural due
4 process rights under both *POBRA* and the City's Personnel Rules. These right include, but are
5 not limited to, Henley's right to an administrative appeal.

6 39. Government Code §3304(c) mandates that the City afford Hensley his right to an
7 administrative appeal, as follows:

8 “No chief of police may be removed by a public agency, or appointing authority,
9 without providing the chief of police with written notice and the reason or reasons
therefor *and an opportunity for administrative appeal.*” (Emphasis added.)

10 40. Section 1008 of the City of Tulare Merit System Rules and Regulations, which apply
11 to Hensley, also mandates that the City afford him the right to an administrative appeal, conducted
12 in accordance with Government Code §11513:

13 “Such hearing shall be conducted in accordance with the provisions of SEC. 11513
14 of the Government Code of the State of California ...” [Exhibit 19]

15 41. Government Code §11513(b) enumerates certain rights guaranteed to Hensley
16 regarding the scope of his administrative appeal:

17 “*Each party shall have these rights: to call and examine witnesses; to introduce*
18 *exhibits; to cross-examine opposing witnesses on any matter relevant to the issues*
19 *even though that matter was not covered in the direct examination; to impeach any*
20 *witness regardless of which party first called him or her to testify; and to rebut the*
evidence against him or her. If respondent does not testify in his or her own behalf
he or she may be called and examined as if under cross-examination.” (Emphasis
added.)

21 42. On March 27, 2018, in derogation of Hensley's due process rights, the City
22 announced, in advance of the hearing, that Hensley will be afforded “very limited due process,”
23 with no opportunity to call witnesses as mandated by *POBRA*, the City's Personnel Rules, and
24 Government Code §11513(b). [Exhibit 20]

25 43. On March 30, Hensley made a written offer of proof as to what he believed a portion
26 of the evidence adduced at an administrative hearing would reveal, and why the introduction of
27 that evidence would lead a neutral hearing officer to reinstate Chief Hensley. [Exhibit 21]

1 44. On April 25, City Attorney Phillips, relying on a single case decided 25 years ago –
2 *before* the legislature enacted Government Code §3304(c), mandating that the City afford Hensley
3 his right to an administrative appeal – doubled down on her “very limited due process” decree and
4 declared:

5 *“This will not be a full evidentiary hearing, however. It is going to be a liberty interest*
6 *hearing only – The City’s position and Wes’ response.*

7 *In Binkley, the only witness was the Chief, no cross examination or other “trial type”*
8 *evidentiary hearing procedures were allowed ...” [Exhibit 22]*

9 45. The City continues to deny Chief Hensley the procural due process that he is legally
10 entitled to receive. The denial of Chief Hensley’s due process rights constitutes an abuse of
11 discretion by the City.

12 WHEREFORE, Hensley prays for the following relief:

13 1. A peremptory writ of mandate pursuant to California Code of Civil Procedure
14 §1094.5, directing Respondent City of Tulare to provide Hensley an administrative appeal of his
15 termination as Chief of Police, conducted in compliance with Government Code §11513(b) and
16 the Public Safety Officers Procedural Bill of Rights Act (Government Code §§3300-3312). In the
17 alternative, Hensley seeks a peremptory writ of mandate directing the City to set aside its March
18 20, 2018, Notice of Termination of Hensley’s employment with the City.

19 2. For multiple civil penalties as set forth in Government Code §3309.5(e).

20 3. For costs of suit and attorneys’ fees incurred in bringing this action.

21 4. For such other relief as this court may consider proper.

22
23
24 Dated: May 1, 2018


LAW OFFICES OF MICHAEL J. LAMPE,
Attorneys for Plaintiff
By: Michael J. Lampe