



December 24, 2020

Owen Byrd, Chairperson of the Board  
Downtown Streets Team, Inc.  
1671 The Alameda  
San Jose CA 95126

Re: Demand for Retraction

Dear Mr. Byrd:

On December 7, 2020 you addressed the Palo Alto City Council in your capacity as chairperson of the board of directors of Downtown Streets Team, Inc. ("DST") to urge its approval of a three-year contract with DST and to answer questions regarding allegations of sexual harassment on the part of senior executives.

In response to a question, you claimed the Palo Alto Weekly "got it wrong" when it reported that the California Unemployment Insurance Appeals Board made findings of fact that DST Chief Executive Officer Eileen Richardson and her son, Chris Richardson, had engaged in sexual harassment of a former DST employee. Your statement was demonstrably false and defamatory, and I believe you made it with full knowledge of its falsity.

By your public statement you and Downtown Streets Team, Inc. have damaged our reputation and standing in the community. In addition, you created the false impression with the city council and the public that the allegations of sexual harassment by former employees were made exclusively through the media and not in any government proceeding. By withholding the fact that there had been two rulings made in a case before the Unemployment Insurance Appeals Board based on evidence presented, including sworn testimony, you also misled the city council and city attorney to believe they had no means of obtaining further information about the harassment, when in fact there is a written record in the case. (In fact, one of the two rulings was posted with the Palo Alto Weekly's January 22, 2020 story.)

Since you have failed to respond to any of my three emails to you requesting that you publicly retract and correct your statement, I am writing to put you and the DST board on notice of potential legal claims against you and DST.

#### Background

On January 22, 2020, the Palo Alto Weekly and Palo Alto Online published a story entitled, "Downtown Streets Team executives accused of sexual harassment, creating drinking culture." The story reported on the allegations of six former employees of DST regarding behavior by CEO Eileen Richardson and her son, Chris Richardson, including sexual harassment, and of an organizational culture that created a hostile work environment.

In addition to these allegations, the story also reported on a case (CUIAB #6024010) brought before the California Unemployment Insurance Appeals Board by a former female DST employee challenging a decision denying her unemployment insurance benefits after she quit her job at DST. The case was important because it resulted in findings of fact by an Administrative Law Judge about the alleged sexual harassment.

On November 17, 2017, after receiving sworn testimony from the employee claimant and DST CEO Eileen Richardson at a hearing on November 14, 2017, the ALJ who heard the case, Robert M. Lofgren, issued a written decision that found the employee had been sexually harassed by both Eileen and Chris Richardson:

“The claimant was subjected to sexual harassment by the CEO when the claimant was advised that she was interested in a female coworker, but not her. She was also subjected to sexual banter by the CEO’s son at a party attended by the claimant.” (Page 3, paragraph 1 of ALJ decision in Case No. 6024010, Nov. 17, 2017)

“Based on the claimant’s sworn testimony, which was provided in a manner which caused the administrative law judge to conclude her testimony credible, it is found that the claimant was subjected to incidences of sexual harassment as result of being subjected to sexual banter. A reasonable person generally desirous of retaining their employment if confronted in similar circumstances that confronted the claimant would have elected to quit the employment as a consequence of the sexual harassment.” (Page 3, paragraph 8)

“The claimant’s sworn testimony about the issue is accorded greater evidentiary weight and probative value than the sworn testimony of the employer witness which was lacking in conviction and frequently nonresponsive to questions posed to her regarding the issue of sexual harassment.” (Page 4, paragraph 2)

But while finding that the former employee had just cause for quitting, the judge ruled that she was not eligible for unemployment benefits because she failed “to take reasonable steps to preserve the employment prior to doing so.” “The claimant knew she had the ability to complain to the third-party HR administrator and to the CEO but neglected to do so because she wished to avoid a potential conflict.” (Page 4, paragraph 8)

The former employee appealed the decision of the Administrative Law Judge to the Unemployment Insurance Appeals Board. On January 16, 2018, the board reversed the eligibility decision of the ALJ and awarded the former employee unemployment insurance benefits.

The two-person appeals panel found that the claimant had, in fact, made “a reasonable effort to resolve his or her dissatisfactions.” (Page 4, paragraph 10, Case AO-410803)

“The claimant was in regular communication with her supervisor about the working environment. The claimant also complained to the person second in command about the way in which she had been treated by the CEO’s son. Nothing was done. The complaints did not change the work environment.” (Page 1, paragraph 6)

The panel agreed with and restated the findings of fact made by the ALJ regarding the sexual harassment claims and added additional findings, including the following:

“The claimant did not specifically report the sexual harassment [to her supervisor] because she did not believe anything would be done because persons responsible for the sexual harassment and creating the hostile work environment were the CEO and the CEO’s son, because of the close knit relationship of the management team members, and because of the employer’s unwillingness to address other concerns the claimant had expressed.” (Page 3, paragraph 2)

“Thus, the claimant was reasonable in her belief that complaining about the highest levels of management would not have resulted in a change in the working environment or preserved the employment.” (Page 5, paragraph 3)

DST chose not to seek court review of the ruling by petitioning in Superior Court for a Writ of Mandate against the Unemployment Insurance Appeals Board.

As you know, prior to publishing the January 22, 2020 story, the Palo Alto Weekly requested interviews or comment from Eileen and Chris Richardson and you in your role as board chair. The Richardsons declined to comment or answer questions, but you responded to our reporter’s questions on behalf of DST and were quoted in the story. You stated at the time that you were aware of the Unemployment Insurance Appeals Board case and explained that DST’s attorney had failed to appear for the hearing.

At no time since the story was published 11 months ago have you, nor anyone else associated with DST, brought to our attention any errors in the story, requested any correction or retraction, nor submitted any clarifying or additional comments for publication.

#### December 7, 2020 Palo Alto City Council Meeting

On December 7, 2020, the Palo Alto City Council met to consider whether to approve a new three-year \$323,000 contract between the city and DST. You were present at the meeting representing DST. The meeting was held virtually with council members, the city attorney and other city staff participating from their homes or offices. It was publicly accessible through Zoom, YouTube and on local public access television through the Midpeninsula Media Center, which also maintains and archives complete recordings of the meetings for public viewing (and from which the transcripts below were prepared.)

During the discussion, the public and council members raised questions and sought clarification about the allegations of sexual harassment and of a hostile work environment by former employees and the results of a DST-commissioned investigation into those allegations. In your responses, you stated that the sexual harassment allegations by former employees had only been made through the media.

When asked specifically about the Unemployment Insurance Appeals Board case and the Palo Alto Weekly’s reporting on the ruling in the case, you attempted to deflect the question by referencing a completely unrelated pending class action lawsuit filed by a former employee against DST over wage and hour practices. You correctly stated that the case had nothing to do with the allegations of sexual harassment, leaving the impression that the Palo Alto Weekly story had incorrectly made that connection, which it had not. In fact, the story in the Palo Alto Weekly made no reference to the wage and hour litigation.

In addition, the claimant in the unemployment appeals case is not the named plaintiff in the wage and hour lawsuit, as you stated to the City Council. While the claimant is likely within the class of employees on whose behalf the litigation is being brought, to suggest that there was “confusion” due to that individual being “involved” in both matters was disingenuous and obfuscated the issue. While you have every right to obfuscate, you do not have the right to do so at the expense of the Palo Alto Weekly’s reputation.

Here is a transcript of your exchange with Councilman Tom DuBois (at 3:42:45):

COUNCILMAN TOM DUBOIS: "Just one question for Mr. Byrd. So one of the speakers mentioned the ruling by the Administrative Law Judge. Was that essentially settling a lawsuit or how would you characterize that?"

OWEN BYRD: "Two completely different things. There was, and the confusion is that the same person is involved in both matters. So there are all these allegations that were brought that were revealed in the press and were brought to us that have never been the subject of any civil or criminal matter. Separately, there is a wage and hour investigation about whether or not we did our record-keeping correctly around hourly employees and that matter is before a judge and is going to mediation next month and there has been no finding of fact in that matter. The judge said that the claimant alleged facts that, if proved, would substantiate a claim. But there hasn't been any fact-finding in it yet so there hasn't even yet been a claim substantiated."

DUBOIS: I think we're talking about two different things. I'm referring to what was in the Palo Alto Weekly. It said the California Unemployment Insurance Board..

BYRD (INTERUPTING): Two different things.

DUBOIS: ...in 2018 they made a ruling.

BYRD: That's a wage and hour dispute that is separate from these allegations of harassment.

DUBOIS: OK, so the Weekly got it wrong you're saying. It said they ruled the Richardsons engaged in sexual harassment.

BYRD: Yes, the Weekly got it wrong.

There are two possible explanations for your false statement.

One is that you had forgotten about the Unemployment Insurance Appeals Board proceeding and its rulings. That is simply not credible. You have been deeply involved in responding to the media coverage of the allegations of sexual harassment and commented directly to our reporter about that proceeding. In addition, if you had simply forgotten, as a licensed attorney and officer of the court I would have expected you to promptly apologize and retract your false statement after receiving my first email the day after the meeting and after refreshing your memory of the details. You did neither, nor even respond.

The only other explanation is that you deliberately withheld the truth from the City Council while knowingly making a false accusation against the Palo Alto Weekly.

When Councilmember DuBois asked for confirmation that you were stating that the Palo Alto Weekly got it wrong when it reported the Unemployment Insurance Appeals Board ruled the Richardsons engaged in sexual harassment, your response was, "Yes, the Weekly got it wrong."

Finally, as the transcript below shows, you listened while councilmembers and the city attorney struggled over how the city attorney might look further into proceedings that might shed light on the sexual harassment allegations. Instead of helping clear up their confusion by acknowledging that there was indeed a case and a written ruling on the sexual harassment allegations by an Administrative Law Judge and the Unemployment Insurance Appeals Board, you remained silent about the case. Amidst the confusion that you helped create, the council then proceeded to

approve a new contract with DST (albeit for only one year), accomplishing just what you had come to achieve.

Here is a transcript of the final discussion (at 4:03:15) prior to the council voting 6-0 to approve the one-year contract:

COUNCILWOMAN LYDIA KOU: "What was said about the Administrative Law Judge-- that sexual harassment was found and that it was a hostile workplace. That should be public record, right Molly?"

CITY ATTORNEY MOLLY STUMP: "I'm sorry Councilmember. I am not familiar with the proceedings that occurred and I'm not sure any of us are. It might be that we are only reading materials in the local press and those are not original sources. So I think at this point the best source of information about the proceedings is Mr. Byrd. And in general it is the case that courts are open forums but some administrative agencies are not. It can depend on various stages of proceedings."

KOU: "So that would be something that you can obtain from the courts, or wherever this resides?"

STUMP: "If I'm understanding Mr. Byrd, there is no court case."

BYRD: "No, there is a court case. The court case is a wage and hour dispute having nothing to do with the allegations of harassment that were the subject of the press coverage."

STUMP: "Thank you for that clarification. So in that case we can get copies of the public pleadings in that case. Yes."

KOU: "So that would be one, if the maker and seconder would be willing to put on your motion."

STUMP: "So Councilmember, what you'd be looking for is someone from my office to look at the pleadings in that case and summarize the matter for the Council?"

KOU: "Or if Downtown Streets Team would be willing to provide, you know. Actually, I take that back. I would like your office to provide that, to obtain that."

STUMP: "And what you're looking for is a summary of a court proceeding?"

KOU: "Yes, I think we have a due diligence at this point, you know, to make sure that since we're not getting the report on the investigation, we want to make sure that this practice that we find public records of what is available since we're not able to ascertain. And I think we have a duty to due diligence and we have a fiduciary responsibility, especially it's in our contract and also in our updated mission statement for the recent equity mission statement which we say that we want to achieve the equity in Palo Alto and it's not just the responsibility of our residents but also of the organization, governments and other institutions. Now this agency, while it has a very valuable mission, it is also a public supplier, as Councilmember Filseth said, and also provides a public social good. And it is getting public money, general funds money. And if that's the case then we as a Council do need to step up and ensure transparency and accountability for everyone involved. And that includes the employees, the 11 women, and it also includes the people that work over there, their members, which are a vulnerable population and they might be scared to speak up if they are in any way harmed, fearing retaliation or anything else. So we need to have more due diligence in all of this matter. I wish

that you could help out more in terms of providing the necessary documentation to see impartiality."

COUNCILMAN TOM DUBOIS: "So Lydia, if I understand, if your motion is to ask the city attorney's office to summarize the proceeding I would support that."

STUMP: "Yes, and there's no problem in us doing that. We're happy to do that. We might give Downtown Streets a call and ask them to assist us with copies of key pleadings and any court rulings but otherwise we have access to that material because it's publicly filed in court and we're happy to review it and provide a summary for you."

KOU: "So, Ms. Stump, it's not only going to be requesting the documentation from Downtown Streets Team but also obtaining those from the court."

STUMP: "That's fine."

MAYOR ADRIAN FINE: "Councilmember Kou, do you want to make that part of the motion or just as an advisory to staff."

KOU: "I'd like to make that as part of the motion, because we're extending the contract for a year again but there needs to be an ask. We need to put in place what we want to see from them in order for us to be comfortable to extend further beyond that one year."

FINE: "OK. Does the proposed language here fit what you're looking for? "To direct the City Attorney's Office to review and summarize legal documents relating to the ongoing lawsuit with Downtown Streets Team."

KOU: "Ongoing and concluded, perhaps. Because, as I understand this was a year ago according to Mr. Byrd."

BYRD: "No, it's not concluded. It's going to mediation next month. It's a separate wage and hour dispute that is completely independent from what hit the press a year ago."

FINE: "So Councilmember Kou, do you want to distinguish between those two or do both?"

KOU: "I need to distinguish, because there is the ongoing wage and hour but then you know we are specifically also looking for, to ensure there is no sexual harassment or harassment otherwise going on. So, if Ms. Stump you could help with that?"

STUMP: "Assuming that when we look we agree with the description Mr. Byrd has provided which is that that there is a public law suit that concerns wage and hour issues that aren't related to harassment or discrimination, then I'm happy to review the public filings and summarize them for you. They won't have any information about discrimination or harassment, assuming we agree with the description Mr. Byrd has provided. It sounds like the documents that Downtown Streets have that address those issues are internal, retained third party investigation and internal documents and those are not something that I am able to have access to unless Downtown Streets wishes to provide them."

COUNCILWOMAN LIZ KNISS: "They are the ones we've been asking for."

STUMP: "Right."

FINE: "What I would suggest is "direct the City Attorney's Office to review and summarize legal documents related to Downtown Streets" and I think we've discussed those."

STUMP: "Actually, can we keep it the way it is. Because I don't want there to be false expectations that I am able to review investigative reports that are not in the city's possession and are not being provided."

FINE: "Understood. It's things in the public legal domain."

STUMP: "Correct."

FINE: "Councilmember Kou, is that acceptable to you?"

KOU: "Yes."

FINE: "Councilmember Kniss. Do you accept this?"

KNISS: "Yes, but I have one question. The ongoing wage and hour lawsuit, is that for those who have taken a job that essentially leads to rehabilitation or is this people who work in the office. Who are the wage and hour folks we're discussing?"

BYRD: "Our staff. Our employees."

KNISS: "So no one who would be, no one who we're used to seeing on a daily basis, right?"

BYRD: "I'm not following you."

KNISS: "So no one would we see as a Downtown Streets Team?"

BYRD: "There is an ongoing wage and hour lawsuit. It's about whether or not we've done the paperwork correctly to keep track of our hourly employees. It's an administrative inquiry. It's about recordkeeping. It has nothing to do with the other stuff that hit the press a year ago. Other than there are people involved in both."

KNISS: "I understand that. But I wanted to know who are the people, who are the wage and hourly people?"

BYRD: "Employees of Downtown Streets Team. Former employees actually."

FINE: "OK."

### Defamation of the Palo Alto Weekly

The success of every professional news organization depends on its reputation for truthful and responsible reporting. The Palo Alto Weekly is no exception. Our integrity is the only "product" we have. Our success depends on readers, public officials, news sources and the business community believing that we consistently engage in accurate reporting and that they can trust and rely on us to fully carry out that defining mission. Anything that undermines that reputation directly threatens a news organization's ability to work with news sources and obtain and keep subscribers and advertisers. Without that, a news organization cannot survive.

It is especially threatening when a prominent community leader and attorney stands before an elected governing body of a city, at a public meeting that is being broadcast, and makes a false claim that our reporting on a subject as sensitive as sexual harassment in the workplace was wrong.

You have every right to publicly state that you don't like the Palo Alto Weekly, don't think we should have published the story and don't think the decision by the Unemployment Insurance Appeals Board was correct. But you don't have the right to knowingly make a false statement that the Palo Alto Weekly was wrong when it accurately reported on the outcome of a state agency's administrative proceeding.

The fact that this comes at a time when the credibility of responsible media organizations and their journalists across the nation is under malicious attack by those who seek to delegitimize their important work makes the damage done even greater since it plays directly into a false narrative.

We do not believe that you or DST had or has any good faith basis for the statements you have made regarding the accuracy of the Palo Alto Weekly's reporting. Your actions qualify as either knowingly making factually inaccurate statements or a reckless disregard for the truth. They undermine our reputation for reliability and truthful reporting that we have spent more than 40 years building, and it has wrongly harmed the reputations of reporter Sue Dremann, editor Jocelyn Dong and other employees involved in researching, editing and carefully fact-checking our January 22, 2020 story, including me.

It is now your responsibility to correct the record.

We demand that you, speaking for yourself and for DST, make a full written public retraction of your February 7, 2020 statement and an apology to the Palo Alto Weekly and its staff and send it to each member of the Palo Alto City Council, City Manager Ed Shikada and City Attorney Molly Stump and read it aloud during public comments at a January Palo Alto City Council meeting.

Such a statement must make clear that contrary to your statement to the city council on December 7, 2020, the California Unemployment Insurance Appeals Board did in fact issue two rulings that concluded a former employee of Downtown Streets Team was subjected to sexual harassment by Eileen and Chris Richardson, and that the Palo Alto Weekly story was correct in its characterization of the board's actions.

As the chairperson of the DST board and a practicing attorney, we expect you and the DST board of directors to treat this retraction and the issues raised in this letter with the attention and seriousness that any reputable business deserves.

We and the individual Palo Alto Weekly employees responsible for the reporting of this story reserve the right to pursue defamation and disparagement claims against you and DST.

Please confirm by January 4, 2021 that you, as board chair of Downtown Streets Team, Inc. and on behalf of yourself and the agency, will issue the requested retraction and apology.

Sincerely,

*/s/ William S Johnson*

William S. Johnson  
President & CEO

Cc: Owen Byrd (via email to [obyrd@lexmachina.com](mailto:obyrd@lexmachina.com))  
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