

# THE SUTTON LAW FIRM

November 18, 2012

VIA PERSONAL DELIVERY

**To the Proponents of the Recall Effort Against  
Huntington Park City Council Member Rosa Perez:**

Yvonne Caraballo	Rolando Romero	Victor Garcia	Irma Garcia
Edna Avila	Maria Rangel	Betty Retama	Rosa Martinez
Daniel Martinez	Maria Arias	Miguel Hernandez	Alejandro Preciado
Dolores Silva	Cynthia Martinez	Gloria Alonzo	Nick Ioannidis
David M. Leija	Balle Dario Machuca	Rodolfo Vallejo	Exsa Vallejo
Rosario Tapia	Macario A. Tapia	Rosario Emerick	Daniel G. Emerick

**Re: Demand to Withdraw Notice of Intention to Circulate Recall Petition**

Be advised that this law firm represents Huntington Park City Councilwoman Rosa Perez in connection with the recall effort you have commenced against her. While Ms. Perez respects the right of recall and your rights to serve as proponents of a recall effort against her, many of your "grounds for the recall" as set forth in your "Notice of Intention to Circulate Recall Petition" that was filed with the Huntington Park City Clerk on November 15, 2012 are false, defamatory and libelous statements that have no place in a Notice of Intention.

The Notice of Intention is a written statement which will be distributed widely throughout the community, potentially read by thousands of Huntington Park residents, published in a newspaper of general circulation, and likely to be covered by local media. As such, it is important and legally required that the claims you make are either your opinions or accurate statements of fact.

Because your Notice of Intention deceives and misleads those who read it, especially prospective signers of the recall petition, **demand is hereby made that you withdraw the Notice and start over with a new Notice that does not include statements that are false, defamatory or libelous.**

Specifically, the following false statements appear to have been made with “actual malice” -- with knowledge of their falsity or with reckless disregard for their truth or falsity. Some of the statements even constitute “libel per se” in that they falsely accuse Ms. Perez of a crime, and thus can subject each of you to substantial damages for the harm these false statements cause to Ms. Perez.

The false, defamatory, and libelous statements that must be removed from the Notice of Intention are:

- 1) “Rosa Perez is [a] John Noguez’s political puppet. John Noguez, the former Mayor of Huntington Park who is currently in jail facing 30 Felony Counts for Misappropriation of Public Funds, Bribery and Money Laundering. With all the millions of dollars that John Noguez made from his illegal activities, he has funded Rosa Perez’ campaigns in exchange for all of her votes to approve contracts to John Noguez’s friends.”

This set of statements is untrue and unjustified on many levels. First, it paints with too broad of a brush and is more about Mr. Noguez than about Ms. Perez, even though the attempted recall is of Ms. Perez and not Mr. Noguez. Second, Mr. Noguez has not funded Ms. Perez’ campaigns. Ms. Perez has received no campaign contributions from Mr. Noguez. Because Mr. Noguez has not funded Ms. Perez’ campaigns, it follows that such alleged funding could not have been “in exchange for” Ms. Perez’ votes. Moreover, Ms. Perez’ did not vote to approve contracts to Mr. Noguez’s friends. As to any contracts that Ms. Perez voted for as a member of the City Council, she had no knowledge, and still has no knowledge, that any of Mr. Noguez’ friends are parties to, or are involved in, any of these contracts.

These allegations are not only false, defamatory, libelous, and inflammatory, but they illegally accuse Ms. Perez of committing a crime – essentially selling her votes in exchange for Mr. Noguez’ alleged funding of her campaigns. Your knowingly false and unprivileged allegations in a written statement to the public could expose Ms. Perez to contempt, ridicule, or unjustified criticism from members of the public, could encourage citizens to avoid her, and could very likely damage her professional reputation and occupation. As such, your statements constitute libel pursuant to California Civil Code section 45. Moreover, your statements also constitute libel per se in that they are defamatory on their face, and could subject you to further liability pursuant to California Civil Code section 45a.

- 2) "Rosa Perez has driven the city to the verge of bankruptcy with a debt of \$9,000,000 dollars. Rosa Perez has caused police officers, city employees, after school programs and Senior Citizens programs to be cut."

These claims are false and defamatory in that: 1) they overstate Ms. Perez' role in City governance, given that she is only one of five City Council members; 2) the City's debt is far less than \$9,000,000, according to the Interim City Manager's most recent calculations; and 3) Ms. Perez has not caused police officers, City employees, after-school programs or Senior Citizens programs to be cut. In fact, other than new police officers and City employees contributing more toward their pensions, we are informed that the City has not recently made cuts in police officers, City employees, after-school programs or Senior Citizens programs.

- 3) "Rosa Perez conspired with the City Attorney not to disclose that the City Attorney had a conflict of interest for being the Attorney for the Water Replenishment District."

These claims are false and defamatory in that: 1) Ms. Perez did not conspire with the City Attorney not to disclose an alleged conflict of interest; and 2) Ms. Perez was not and is not aware of any City Attorney conflict of interest. To the extent this allegation accuses Ms. Perez of a crime, it constitutes libel per se and further subjects you to damages.

- 4) "Rosa Perez is constantly being-watched by the Public Integrity Division of the District Attorneys' Office and by the Political Corruption Unit of the FBI."

These claims are false and defamatory in that Ms. Perez is not, to the best of her knowledge and belief, being "watched" by either the District Attorney or FBI. In fact, Ms. Perez has asked the District Attorney's office if she is being investigated and has been informed that there is no pending investigation or surveillance of her or her activities.

To the extent you have any information backing up any of the claims discussed above, Ms. Perez requests that you provide us with proof of the accuracy and reliability of these claims immediately. Because you do not and can not have such proof, you must immediately remove these false claims from your Notice of Intention.

Please be advised that to the extent certain statements contained in your Notice are not discussed in this letter, it is not because Ms. Perez agrees with them but only because they are statements of opinion that you are entitled to express to the City's voters as "grounds for the recall." The one factual statement that is accurate in your Notice of Intention is that Ms. Perez



voted to increase water rates, although Ms. Perez does not agree that these rates are “the highest levels in the City’s History.” The other statements, especially those which attempt to link Ms. Perez to Mr. Noguez and his alleged crimes, are false, inflammatory efforts to create “guilt by association,” which demean the recall process and undermine your standing to exercise this important constitutionally protected right.

Because your statements were made with actual malice, each of you, and others who are responsible for the statements, may be legally liable for defamation, regardless of whether Ms. Perez is a “public figure.” (See New York Times v. Sullivan (1964) 376 U.S. 254, 280; and Boyce & Isley v. Cooper (2002) 568 S.E.2d 893 [“The context of a political campaign does not alter the fact that ‘false speech, even political speech, does not merit constitutional protection if the speaker knows of the falsehood or recklessly disregards the truth.’”].)

You should be aware that courts have been more vigorous lately in enforcing defamation cases in the context of political campaigns. For example, in Iowa, a jury recently issued a \$231,000 damage verdict against parties who made defamatory statements about a candidate.

Be further advised that this letter is written in anticipation of litigation, and if you do not withdraw your Notice of Intention immediately, we will be authorized by Ms. Perez to file a lawsuit seeking to invalidate your recall effort until you cure the false and defamatory statements (Cal. Elections Code section 13314) and for damages caused by your statements (Cal. Civil Code sections 45, 45a, and 3333), including court costs and attorneys’ fees to the extent allowable by law.

You should know that courts have invalidated petitions that contain objectively inaccurate information and calculated untruths that substantially mislead and misinform a reasonable voter, and have issued writs of mandate to prevent the circulation of such petitions. For example, in San Francisco Forty-Niners v. Nishioka (1999) 75 Cal.App.4th 637, the proponents of an initiative were found to have knowingly misled petition signers with regard to the substance of the petition, and the court therefore found the petition to be fatally flawed.

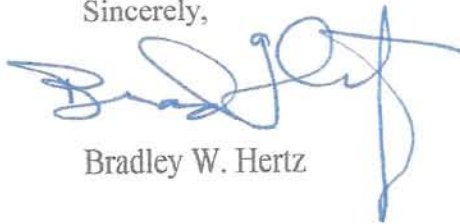
We also note that California Elections Code section 18600 makes it a misdemeanor for a person to make certain kinds of intentional misrepresentations and false statements in connection with local recall petitions.

Yet another flaw in your Notice is that it fails to comply with California Elections Code section 11020 regarding the form of the Notice. Specifically, section 11020(d) requires the Notice to include "the provisions of [s]ection 11023." However, instead of containing those provisions, the Notice merely contains an inaccurate paraphrasing of that section.

Finally, we note that one of the recall proponents, Betty Retama, was the person who served Ms. Perez with the Notice of Intention, according to Ms. Retama's Proof of Service by Certified Mail. As a proponent, Ms. Retama is a party to this proceeding and therefore disqualified from serving the Notice of Intention. (See, e.g., Cal. Code of Civil Procedure section 1013A(1)). This improper service is yet another reason why your current recall effort is fatally flawed and must be abandoned.

We look forward to hearing from you, or an attorney on your behalf, no later than the close of business on Tuesday, November 20, 2012 with regard to the foregoing and specifically, that you have contacted the City Clerk's office to withdraw your Notice of Intention.

Sincerely,



Bradley W. Hertz

cc: (via email only)  
Rosanna Ramirez, City Clerk  
Rene' Bobadilla, City Manager  
Todd O. Litfin, Esq., City Attorney

BWH/slf  
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