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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

JOHN MICHAEL GARDNER,  
  
Plaintiff,  
  
v.

COUNTY OF LOS ANGELES SHERIFF'S  
DEPARTMENT; COUNTY OF LOS  
ANGELES, a municipal entity; SHERIFF  
ALEX VILLANUEVA; and DOES 1 through  
10, inclusive,  
  
Defendants.

Case No. 2:22-cv-01101-GW-PD

Superior Ct Case No. 22STCV01427

**FIRST AMENDED COMPLAINT  
FOR DAMAGES:**

- 1. FEHA RETALIATION**
- 2. FEHA HARASSMENT**
- 3. FEHA DISCRIMINATION**
- 4. FAILURE TO TAKE  
CORRECTIVE ACTION**
- 5. PRIVATE ATTORNEYS  
GENERAL ACT**
- 6. CA CIVIL CODE § 52.1**
- 7. RETALIATION (CA GOV.  
CODE § 53298)**

Action Filed: January 13, 2022  
Removal Date: February 17, 2022  
Trial Date: None Set

**DEMAND FOR JURY TRIAL**

**COMES NOW**, Plaintiff, JOHN GARDNER ("Plaintiff"), who hereby alleges against  
defendants, COUNTY OF LOS ANGELES SHERIFF'S DEPARTMENT, COUNTY OF LOS  
ANGELES, a municipal entity, and SHERIFF ALEX VILLANUEVA, an individual, the  
following based on his knowledge, information and belief:

**PARTIES**

1. At all times relevant hereto, JOHN MICHAEL GARDNER ("Plaintiff") was and is a  
resident of the County of Los Angeles, State of California ("County"), and was and is a

1 competent adult. County was and is, and at all times herein mentioned, a duly chartered county  
2 of the State of California and a legal subdivision of the state charged with governmental powers.

3 2. At all times relevant hereto, County of Los Angeles Sheriff's Department ("Department")  
4 is now, and at all times herein mentioned was, the official agency of the County charged with  
5 maintaining peace and order in the community. In its capacity as a peace-keeping agency, the  
6 Department is responsible for hiring and maintaining employees whose function is to protect and  
7 serve the public at large.

8 3. At all times relevant hereto, the Department was and is the public agency employer of  
9 Plaintiff.

10 4. At all times relevant hereto, Plaintiff was and is a nonsworn civilian worker employed by  
11 the Department. As such, Plaintiff is a permanent employee and member of the civil service  
12 system of the County.

13 5. At all times relevant hereto, the Civil Service Commission of the County of Los Angeles  
14 is and at all times mentioned herein was, a duly constituted commission of the County created by  
15 virtue of certain provisions of the Charter of the County. The Civil Service Commission is  
16 charged with the function, inter alia, of making administrative determinations relating to the  
17 appropriateness of significant discipline of employees of the County and the appropriateness of  
18 the penalties imposed upon employees of the County for misconduct based on recommendations  
19 provided by duly appointed Hearing Officers.

20 6. At all times relevant hereto, the Employee Relations Commission of the County of Los  
21 Angeles is and at all times mentioned herein was, a duly constituted commission of the County  
22 created by virtue of certain provisions of the Charter of the County. The Employee Relations  
23 Commission is charged with the function, inter alia, of administering the County's Employee  
24 Relations Ordinance, which includes determining employee representation units, arranging for  
25 elections in such units, determining the validity of claims of Unfair Practice Charges filed  
26 against management and employee organizations, and acting on requests for mediation, fact  
27 finding and impasses. Additionally, the Employee Relations Commission authorizes arbitrations  
28 for minor disciplinary matters involving employees of the County.

1 7. At all times relevant hereto, since 2014, the County's Office of Inspector General  
2 ("OIG") is and at all times mentioned herein was, a duly constituted department of the County  
3 Board of Supervisors created to provide independent and comprehensive oversight, monitoring  
4 of, and reporting about the Department's policies, practices, procedures and operations; the  
5 County's custody and/or detention facilities; and the departments, contractors, and employees  
6 involved with the Department. The OIG is also responsible for serving as the investigative arm  
7 of the Los Angeles County Sheriff Civilian Oversight Commission and Probation Oversight  
8 Commission under the leadership of an Inspector General appointed by the County Board of  
9 Supervisors. The OIG is independent from the Department but operates as a County entity.

10 8. At all times relevant hereto, Sheriff Alex Villanueva ("Sheriff") is and at all times  
11 mentioned herein was, the Los Angeles County Sheriff and, pursuant to the Charter of the  
12 County of Los Angeles and Government Code section 26600 is required to adhere to all relevant  
13 Civil Service Rules and labor and employment laws when hiring, supervising or disciplining  
14 employees in support of County's goals.

15 9. Plaintiff is informed and believes and thereupon alleges that Defendants DOES 1 through  
16 10, inclusive, and each of them, were, all times relevant hereto, residents of the County, and were  
17 agents, employees, partners, and/or joint venturers of Defendants and/or each other, acting as  
18 supervisors, policy-makers, managers, administrators, owners, and/or directors or in some other  
19 unknown capacity.

20 10. The true names and capacities of Defendants DOES 1 through 10, and each of them,  
21 whether individual, corporate, associate or otherwise, are unknown to Plaintiff at this time, who  
22 therefore sues said Defendants by such fictitious names. Plaintiff will file DOE amendments,  
23 and/or ask leave of court to amend this complaint to assert the true names and capacities of these  
24 Defendants when they have been ascertained. Plaintiff is informed and believes, and upon such  
25 information and belief alleges, that each Defendant herein designated as a DOE was and is in  
26 some manner, negligently, wrongfully, or otherwise, responsible and liable to Plaintiff for the  
27 injuries and damages hereinafter alleged, and that Plaintiff's damages as herein alleged were  
28 proximately caused by their conduct.

1 11. Plaintiff is informed and believes, and thereupon alleges, that at all times material herein  
2 the Defendants, and each of them, were the agents, servants, and employees, or ostensible agents,  
3 servants, or employees of each other Defendant, and as such, were acting within the course and  
4 scope of said agency and employment or ostensible agency and employment, except on those  
5 occasions when Defendants were acting as principals, in which case, said Defendants, and each  
6 of them, were negligent in the selection, hiring, and use of the other Defendants.

7 12. Plaintiff is further informed and believes, and thereupon alleges, that at all relevant times  
8 hereto, Defendants, and each of them, acted in concert and in furtherance of the interests of each  
9 other Defendant.

### 10 **JURISDICTION**

11 13. Venue is proper in the Superior Court of the State of California, for the County of Los  
12 Angeles, South Central District, in that the underlying acts, omissions, injuries and related facts  
13 and circumstances giving rise to the present action occurred in the County of Los Angeles,  
14 California.

15 14. The California Superior Court has subject matter jurisdiction over this matter pursuant to  
16 Article VI, § 10 of the California Constitution and Labor Code § 2698 et seq.

17 15. Plaintiff has complied with and/or exhausted any applicable claims statutes and/or  
18 administrative and/or internal remedies and/or grievance procedures, or is excused from  
19 complying therewith pursuant to the following:

- 20 a. On or around June 8, 2021, Plaintiff filed a claim for damages with the County of Los  
21 Angeles. On or around August 16, 2021, Plaintiff received Defendants' rejection of  
22 Plaintiff's claim. (File Number: 21-4385170\*001).
- 23 b. On or around June 7, 2021, Plaintiff filed a government claim with the California  
24 Department of Fair Employment and Housing. Due to mailing issues, on or around  
25 December 1, 2021, Plaintiff refiled his government claim with the California Department  
26 of Fair Employment and Housing. Subsequently, on or around December 1, 2021,  
27 Plaintiff was provided a right to sue notice from the California Department of Fair  
28

1 Employment and Housing. (DFEH Matter Number: 202112-15523301). The DFEH right  
2 to sue notice is attached hereto as Exhibit A.

- 3 c. On or around June 7, 2021, Plaintiff filed a government claim with the California Labor  
4 and Workforce Development Agency. On or around June 8, 2021, Plaintiff mailed  
5 Defendants and the PAGA Administrator a PAGA notice pursuant to Cal. Labor Code §  
6 2699. (LWDA Case No. LWDA-CM-834236-21). Plaintiff's LWDA filing constitutes  
7 filing with the Division of Occupational Safety and Health pursuant to Labor Code  
8 Section 2699.3(b).
- 9 d. On or around June 7, 2021, Plaintiff filed a government claim with the California  
10 Department of Industrial Relations; Division of Labor and Standards Enforcement. On or  
11 around December 28, 2021, after initially participating in DLSE's investigation process,  
12 Plaintiff voluntarily withdrew his claim in order to pursue this current civil action against  
13 Defendants. (Case No. RCI-CM-834245).

14 **FACTUAL ALLEGATIONS**

15 16. Each and every allegation set forth in the preceding paragraphs is incorporated herein by  
16 reference with the same effect as if realleged herein.

17 **Background**

18 17. Since on or around May 3, 2012, Plaintiff has been employed by the County as a  
19 Department nonsworn civilian employee. Plaintiff was initially hired as a civilian Security  
20 Assistant on or around May 3, 2012 and promoted to the position of civilian Law Enforcement  
21 Technician on or around January 4, 2016.

22 18. From May 27, 2013 to January 4, 2016, Plaintiff received "Outstanding" Performance  
23 Evaluation ratings, the highest rating available, for his overall rating and within all evaluation  
24 subcategories during each of these annual rating periods.

25 19. Plaintiff's date of birth is March 13, 1993 and his race/ethnicity is African-American.

26 **2-Days Suspension**

27 20. On or around April 14, 2017, Plaintiff contacted the Department's internal Policy of  
28 Equality ("POE") Intake Unit in order to file a complaint concerning one of his female

1 coworkers, Law Enforcement Technician Heather Fuquay, for creating a sexually harassing  
2 environment that was threatening and made him feel uncomfortable when she solicited Plaintiff  
3 to come to her work computer while she had sexually explicit photographs accessible and/or  
4 displayed on her work computer screen.

5 21. At the time Plaintiff contacted the POE Intake Unit, Plaintiff and Law Enforcement  
6 Technician Heather Fuquay were both assigned to the Department's Sheriff's Information  
7 Bureau under the supervision of Captain Darren Harris. In addition, at the time when Plaintiff  
8 contacted the POE Intake Unit, Law Enforcement Technician Heather Fuquay was actively  
9 dating a sworn Department lieutenant who was friends with and had previously worked with  
10 Captain Darren Harris.

11 22. As a result of Plaintiff contacting the POE Intake Unit to lawfully report sexually  
12 harassing conduct, on or around May 2, 2017, Plaintiff was relieved of duty by Captain Darren  
13 Harris and made the subject of an internal Department disciplinary investigation (Internal Affairs  
14 Bureau Case Number IV2426891).

15 23. During the Department's investigation of Internal Affairs Bureau Case Number  
16 IV2426891, significant evidence was discovered demonstrating Law Enforcement Technician  
17 Heather Fuquay receiving preferential, privileged, favorable, and/or special treatment within the  
18 Department's Sheriff's Information Bureau. Further evidence was discovered directly  
19 undermining Law Enforcement Technician Heather Fuquay's credibility and challenging the  
20 legitimacy of all of her statements.

21 24. However, despite this evidence, or perhaps as a consequence of the evidence  
22 demonstrating her preferential treatment, on February 19, 2019, the Department served Plaintiff  
23 with a 2 Days Suspension letter of intent based on the Department's investigation of Case  
24 Number IV2426891. The alleged misconduct included in the Department's letter of intent  
25 provides that Plaintiff violated Department policy by "being witnessed by a co-worker viewing  
26 inappropriate material on a Department computer while at work, including, but not limited to  
27 nude photographs."  
28

1 25. On April 9, 2019, Plaintiff was returned back to work and on May 16, 2019, the  
2 Department ultimately imposed the 2 Days Suspension on Plaintiff.

3 26. Plaintiff was relieved of duty from May 2, 2017 to April 9, 2019 as a result of his own  
4 utilization of the POE Intake Unit process. Throughout this over two year period, Plaintiff was  
5 assigned to his home, rather than reassigned to any other position within the County as the  
6 Department's multi-year investigation progressed. Furthermore, despite Plaintiff being the  
7 undisputed initial complaining party, Law Enforcement Technician Heather Fuquay was allowed  
8 to remain assigned to the Sheriff's Information Bureau without any restrictions throughout  
9 Plaintiff's entire relieved of duty period.

10 27. In addition, throughout this relieved of duty period, the Department opened an additional  
11 disciplinary investigation into Plaintiff based on contrived allegations of misconduct, which will  
12 be discussed further below.

13 28. Plaintiff's 2 Days Suspension was appealed with the Los Angeles County Employee  
14 Relations Commission (ERCOM Arb. No. 102-19). Arbitrator Elizabeth Moreno was selected as  
15 the neutral arbitrator. Arbitration hearing dates for ERCOM Arb. No. 102-19 were held on  
16 February 13, 2020, December 6, 2021 and December 8, 2021.

17 29. On February 4, 2022, Arbitrator Moreno provided her binding arbitration decision which  
18 overturned Plaintiff's 2 Days Suspension and concluded that the Department did not have just  
19 cause to impose any discipline on Plaintiff.

20 30. As a result, Plaintiff's 2 Days Suspension was removed from his personnel file and all  
21 administrative remedies relating to his 2 Days Suspension have been exhausted.

### 22 **10-Days Suspension**

23 31. While Plaintiff was relieved of duty in relation to his POE Complaint concerning Law  
24 Enforcement Technician Fuquay's sexually harassing on-duty conduct (IV2426891), on June 9,  
25 2017, the Department opened an *additional* disciplinary investigation into Plaintiff regarding  
26 allegations that he misplaced and/or stole County keys when he failed to return them when he  
27 was relieved of duty on May 2, 2017 (Internal Affairs Bureau Case Number IV2427829).

1 32. Plaintiff was not interviewed regarding any of the allegations concerning IV2427829  
2 until April 10, 2018, 10 months after the Department initially opened this investigation and  
3 almost one year after Plaintiff supposedly failed to return all relevant County property when  
4 being relieved of duty.

5 33. On December 21, 2018, Plaintiff provided a second interview regarding IV2427829.  
6 During this second interview, Plaintiff was asked specific questions regarding whether he  
7 misplaced and/or stole County keys when being relieved of duty on May 2, 2017.

8 34. On January 23, 2019, Plaintiff's civilian, non-Department or County employee, ex-  
9 girlfriend was contacted by Plaintiff's supervising Operations Lieutenant, Lieutenant A.J.  
10 Rotella. Lieutenant A.J. Rotella did not specify why he was contacting Plaintiff's ex-girlfriend  
11 and even contacted her a second time after she explicitly told him that "If this is regarding John  
12 Gardner, I would like to request that you do not make any attempts to contact me in any capacity  
13 this day moving forward..."

14 35. On or around January 31, 2019, the Department's Internal Affairs Bureau investigation of  
15 IV2427829 **was closed**.

16 36. However, on or around February 28, 2019, the Department's Internal Affairs Bureau  
17 investigation Case Number IV2427829 **was reopened** and Plaintiff was asked to provide a third  
18 interview. During his third interview provided on February 28, 2019, Plaintiff was asked NO  
19 questions regarding allegations that he misplaced and/or stole County keys and was provided an  
20 administrative rights admonition indicating that the nature of investigation was changed to also  
21 concern "...emails sent from your Department email account."

22 37. Ultimately, on April 4, 2019, the Department served Plaintiff with a 10 Days Suspension  
23 letter of intent containing allegations that Plaintiff violated Department policy for "on or about  
24 August 13, 2016 through January 3, 2017...transmitting, sending and/or receiving a series of  
25 non-work related email messages via the Sheriff's Data Network..." and for "on or about or  
26 between January or February 2017... [giving] yourself access authority via your Departmental  
27 identification card to all sheriff's stations."

1 38. Plaintiff's 10 Days Suspension letter of imposition specifically cites Department  
2 investigation Case Number IV2427829 yet does not include a single allegation regarding County  
3 keys. Plaintiff was not questioned about either of the allegations contained in Plaintiff's final 10  
4 Days Suspension letter of imposition until after the Department reopened their investigation of  
5 Case Number IV2427829 in or around February 2019.

6 39. At no point from June 9, 2017 to February 28, 2019 did anyone from the Department ever  
7 indicate or represent that Case Number IV2427829 had anything to do with misuse of  
8 Department emails or access to Department stations. Furthermore, throughout this entire time  
9 period, Plaintiff remained assigned at home and would have prompted no scrutiny from relevant  
10 Department supervisors outside of their own proactive steps taken to influence and/or  
11 supplement Plaintiff's multiple disciplinary investigations.

12 40. The Department closed their investigation of IV2427829 on or around January 31, 2019,  
13 after a multi-year investigation period which inexplicably included a Department supervisor  
14 reaching out one of Plaintiff's ex-girlfriends. When the Department closed this investigation on  
15 or around January 31, 2019, there was no information or allegations concerning any misuse of  
16 Department emails.

17 41. Only after Plaintiff was provided a 2 Days Suspension letter of intent regarding his  
18 IV2426891 investigation on February 19, 2019 was this IV2427829 investigation specifically  
19 reopened. Plaintiff was forced to provide a third interview for IV2427829 on February 28, 2019  
20 regarding completely new allegations concerning his misuse of Department emails from 2016.

21 42. The entire basis for initiating Department investigation IV2427829 was completely  
22 abandoned by Defendants after almost two years of investigation. Furthermore, the timing of the  
23 Department's decision to reopen this IV2427829 investigation came immediately after the  
24 Department provided notice to Plaintiff that he would only receive a 2 Days Suspension for a  
25 multi-year and multi-agency investigation specifically initiated to retaliate against Plaintiff. This  
26 demonstrates Defendants' fraudulent utilization of the Department's disciplinary investigative  
27 process in order to purposefully harass, discriminate and retaliate against Plaintiff. The  
28 Department's reopening and closing of Case Number IV2427829 within a span of only a few

1 months for the sole purpose of bolstering completely new allegations of misconduct represents  
2 malicious and intentional actions taken to specifically discriminate, harass and retaliate against  
3 Plaintiff. These actions have caused significant harm to Plaintiff's law enforcement career.

4 43. On May 16, 2019, the Department ultimately imposed the 10 Days Suspension on  
5 Plaintiff.

6 44. Both of Plaintiff's 2 Days and 10 Days Suspension were served on May 16, 2019 despite  
7 the Department's assertion that neither of these disciplinary investigations had anything to do  
8 with Plaintiff's utilization of the POE Complaint process. Although Plaintiff's 2019 10 Days  
9 Suspension was ultimately supported based on allegations of misuse of Department emails from  
10 2016, the Department provided no explanation as to why these IV2427829 allegations were only  
11 scrutinized years later and/or how these new allegations were discovered within the same time  
12 frame as his 2 Days Suspension investigation. Furthermore, absolutely no explanation was  
13 provided regarding why the Department chose to close and reopen Case Number IV2427829  
14 during the same time period when Plaintiff received his letter of intent for his 2 Days  
15 Suspension.

16 45. In addition, there was no explanation provided by the Department regarding what  
17 prompted the Department to change the entire scope of the Department's IV2427829  
18 investigation upon their reopening of IV2427829. If these were new allegations of misconduct  
19 separate from any missing keys allegation, this should have merited a completely independent  
20 investigation with an entirely separate case number. However, Case Number IV2427829 was  
21 being specifically used by the Department as a vehicle to punitively discipline Plaintiff,  
22 regardless of what allegations Case Number IV2427829 supported.

23 46. Most importantly, there was no evidentiary basis to motivate the inherently retaliatory  
24 timing of any of these Department investigatory changes as all evidence used to support  
25 Plaintiff's 10 Days Suspension would have been readily available to investigators since  
26 IV2427829 investigation's initiation on June 9, 2017. All of these modifications to the  
27 Department's investigation of IV2427829 were based solely on internal Department decisions  
28 made to purposefully harass, discriminate and/or retaliate against Plaintiff.

1 47. Either the Department already had evidence of Plaintiff misusing Department email in  
2 2016 and neglected to act upon this evidence until deciding to reopen Case Number IV2427829,  
3 or, the Department proactively discovered this evidence from 2016 at some point in February  
4 2019 after already deciding to close Case Number IV2427829. Up until February 28, 2019, the  
5 represented purpose of Case Number IV2427829 concerned misplaced or stolen County keys,  
6 indicating that the Department did not discover Plaintiff's 2016 misuse of Department email  
7 until after reopening Case Number IV2427829. This case processing evidences the specifically  
8 retaliatory purpose of the entirety of Case Number IV2427829.

9 48. Furthermore, on April 24 2019, during the *Skelly* meeting held between the Department's  
10 disciplinary decision maker for this case, Chief Lawrence Del Mese, Plaintiff, and Counsel for  
11 Plaintiff, Chief Lawrence Del Mese explained that Plaintiff's discipline, both his 2 Days  
12 Suspension and his 10 Days Suspension, were actually being imposed to make Plaintiff "stay in  
13 his box" and for him to "learn how to respect the chain of command." Chief Lawrence Del Mese  
14 also informed Plaintiff that he was not allowed to step foot in the County's Hall of Justice, where  
15 the Department's essential command staff and primary decisionmakers all work, which is an  
16 unprecedented and unfounded restriction to institute as a condition of discipline for anyone, but  
17 specifically for Plaintiff, who is a Law Enforcement Technician frequently asked and expected to  
18 deliver items and documents to the Hall of Justice.

19 49. Plaintiff's 10 Days Suspension is currently under appeal with the Los Angeles County  
20 Civil Service Commission (CSC Case No. 19-136). One hearing date for CSC Case No. 19-136  
21 was conducted on February 26, 2020 and subsequent hearing dates are prospectively scheduled  
22 to be conducted on April 4, 7 and 11, 2022.

23 **Transfer to MET**

24 50. After Plaintiff was returned back to work, in or around August 2019, Plaintiff applied for  
25 a position within the Department's Mental Evaluation Team ("MET"), was told that his transfer  
26 to MET was accepted, was given a tour of the MET offices and was introduced to all MET staff  
27 as their new hire.

1 51. However, on or around August 12, 2019, Defendants opened a new disciplinary  
2 investigation into Plaintiff; Internal Affairs Bureau Case Number IV2490831. This new  
3 Department investigation Case Number IV2490831 was opened regarding allegations that  
4 Plaintiff's County cell phone was stolen in or around April 2019 and that he was dishonest to  
5 responding peace officers. This new Department investigation Case Number IV2490831 was  
6 opened into Plaintiff within 4 months of Plaintiff being returned to work and after a multiple year  
7 relieved of duty period where the Department was proactively seeking additional allegations of  
8 misconduct to investigate.

9 52. As a result, on August 14, 2019, Plaintiff was notified that his transfer to MET was being  
10 denied due to his pending Department investigation Case Number IV2490831.

11 53. Prior to August 14, 2019, Plaintiff was never notified that he was the subject of  
12 Department investigation Case Number IV2490831 and had not been contacted regarding any of  
13 the allegations contemplated within Case Number IV2490831.

14 54. Based on the foregoing, on August 15, 2019, Counsel for Plaintiff reached out to  
15 Plaintiff's Captain, Captain Rod Armalin, regarding his rejected transfer, his ongoing restricted  
16 access to the Hall of Justice, and a purported briefing that occurred amongst several of Plaintiff's  
17 coworkers when Plaintiff first returned back to work.

18 55. On August 20, 2019, Plaintiff filed a formal grievance with the Department regarding the  
19 Department's decision to prevent his transfer to MET.

20 56. On September 3, 2019, the Department notified Counsel for Plaintiff that his transfer to  
21 MET would be approved effective September 8, 2019 and indicated that Plaintiff was not  
22 restricted from accessing any specific Department facility.

23 57. On September 13, 2019, the Department notified Plaintiff that Department investigation  
24 Case Number IV2490831 was closed.

25 58. Department investigation Case Number IV2490831 was closed without ANY Department  
26 investigator ever interviewing or even reaching out to Plaintiff to attempt an interview.  
27 Department investigation Case Number IV2490831 was closed without the Department ever  
28 providing any official notice to Plaintiff that Department investigation Case Number IV2490831

1 was even opened. To this day, no investigative case materials regarding Case Number  
2 IV2490831 have been provided to Plaintiff.

3 59. Department investigation Case Number IV2490831 into Plaintiff was opened on or  
4 around August 12, 2019 and closed on or around September 13, 2019. Plaintiff's transfer to MET  
5 in August 2019 was specifically blocked due to the Department opening Case Number  
6 IV2490831 and his transfer may never have been authorized but for Plaintiff filing a grievance  
7 objecting to the Department's actions.

8 60. Plaintiff was never contacted pursuant to this new Department investigation asserting  
9 Plaintiff was dishonest despite the entire nature of the investigation concerning his own  
10 statements. As the Department quickly deemed the allegations from Case Number IV2490831 to  
11 be unfounded in only a month without even requiring an interview with Plaintiff, the entire basis  
12 for legitimizing Case Number IV2490831 as an official investigation, rather than analyzing this  
13 matter through a more informal inquiry or unit-level investigation, indicates that Case Number  
14 IV2490831 was initiated solely to harass, discriminate and retaliate against Plaintiff.

15 61. Furthermore, the Department's actions demonstrate that Plaintiff's pending disciplinary  
16 investigations have had and continue to have a legitimate negative impact on Plaintiff's  
17 reputation and perceived promotability within the Department.

#### 18 **OIG Anonymous Complaint and Intent to Discharge**

19 62. On or around March 19, 2020, while assigned to MET, Plaintiff observed a sworn  
20 Department supervisor shaming those surrounding him who believed in Covid-19 by: (1) making  
21 disparaging remarks about those who believed in Covid-19, (2) creating a hostile work  
22 environment towards those who wore face masks by remarking that "we are all going to die  
23 anyways," (3) writing on a shared conference room whiteboard that "if you think you'll die from  
24 Corona virus then you yourself have a mental illness," and (4) discriminating against those who  
25 attempted to keep Department members in compliance with relevant Covid-19 health and safety  
26 protocols. This Department supervisor's actions caused a County Department of Mental Health  
27 Supervisor to become emotional and upset in front of other County and Department employees.

1 Around 5-10 County employees, both from the Department and the County Department of  
2 Mental Health, witnessed this harassing conduct.

3 63. Considering the aforementioned conduct observed by Plaintiff, on March 20, 2020,  
4 Plaintiff filed an anonymous complaint, utilizing the County OIG anonymous online complaint  
5 form. In filing this OIG Complaint, Plaintiff disclosed information that he reasonably believed  
6 disclosed violations of local, state and federal policies, orders and/or statutes related to health and  
7 safety workplace requirements, and other applicable local, state and federal rules, statutes and  
8 regulations.

9 64. Plaintiff provided the identity of the involved Department of Mental Health Supervisor as  
10 the relevant party and did not include his own contact information in the anonymous OIG  
11 Complaint for fear of internal Department retaliation, which he inevitably faced after admitting  
12 to filing this anonymous OIG Complaint.

13 65. Plaintiff included contact information for the involved Department of Mental Health  
14 Supervisor in order to satisfy the OIG's online intake form submission requirement that specific  
15 contact information be provided while still maintaining his anonymity. Plaintiff did not want to  
16 include any information in the OIG Complaint potentially associating himself with the  
17 anonymous complaint as this would have undermined the fundamental purpose of using an  
18 anonymous complaint process.

19 66. As a result of Plaintiff's anonymous OIG complaint, on or around March 26, 2020,  
20 Plaintiff's supervising Lieutenant, Lieutenant John Gannon, sent an email to the entire MET,  
21 which includes Department and County Department of Mental Health employees across 14  
22 regional County offices, demanding that the person who filed the anonymous OIG complaint  
23 come forward or else the Department would seek "court orders and warrants to obtain IP and ISP  
24 information and 'follow the electronic trail' to determine who the perpetrator was."

25 67. Lieutenant Gannon also represented that a similar inquiry was being undertaken by the  
26 County Department of Mental Health to find the identity of the anonymous complainer,  
27 indicating Defendants' further attempts to undermine the anonymity and legitimacy of the OIG's  
28 anonymous complaint process.

1 68. On or around March 26, 2020, Plaintiff was also individually summoned into his  
2 Lieutenant Gannon's office and told that the OIG tapped the IP address of whoever submitted the  
3 anonymous complaint, that the person who submitted this anonymous complaint is being  
4 accused of criminally impersonating another individual, and that the person who submitted the  
5 anonymous complaint would face criminal scrutiny if they did not proactively come forward by  
6 the end of the week.

7 69. Based on all of the foregoing threats communicated unit-wide and personally to Plaintiff,  
8 on or around March 26, 2020, Plaintiff admitted to Lieutenant Gannon that he filed the  
9 anonymous OIG Complaint on March 20, 2020. On or around March 26, 2020, Plaintiff emailed  
10 Lieutenant Gannon a summary of their conversation wherein he admits to filing the March 20,  
11 2020 anonymous OIG Complaint.

12 70. After Plaintiff revealed himself as the anonymous OIG complaint filer to Lieutenant  
13 Gannon, Lieutenant Gannon assured him that he would not be subject to any criminal or  
14 administrative investigative scrutiny or face any Department retaliation for revealing himself as  
15 the anonymous OIG complaint filer.

16 71. However, less than a week after revealing himself to be the anonymous OIG complaint  
17 filer, on or around March 29, 2020, Plaintiff's Department work log-in credentials were frozen,  
18 and, on or around March 30, 2020, Plaintiff was involuntarily transferred out of MET and placed  
19 "on loan" to Century Station in spite of Lieutenant Gannon's assurances that no administrative  
20 action would be taken against Plaintiff.

21 72. In addition, on or around March 30, 2020, Lieutenant Gannon informed Plaintiff that  
22 Chief Myron Johnson originally wanted Plaintiff to be relieved of duty but then subsequently  
23 determined that moving him out of MET would be sufficient.

24 73. On or around March 31, 2020, Plaintiff was texted by Lieutenant Gannon to provide  
25 further details, via text, about the basis of his OIG anonymous complaint. This demonstrates the  
26 Department's specific awareness and understanding that Plaintiff filed the March 20, 2020  
27 anonymous OIG complaint. Furthermore, this was the only attempt made by Defendants to  
28 contact Plaintiff regarding any of the underlying health and safety workplace issues mentioned in

1 his OIG Complaint. To this day, Plaintiff has never been contacted by anyone from the OIG  
2 regarding any of the issues mentioned in his March 20, 2020 anonymous OIG complaint.

3 74. In addition, on or around March 31, 2020, Plaintiff was told by a supervising sergeant in  
4 front of one of his coworkers that he was not allowed to go to the Hall of Justice or do mail runs  
5 under any circumstances.

6 75. On or around April 15, 2020, the Department opened a new disciplinary investigation  
7 into Plaintiff; Internal Affairs Bureau Case Number IV2507573. This new investigation is  
8 concerning Plaintiff's utilization of the OIG anonymous complaint process and alleges that  
9 Plaintiff filed a false complaint with OIG by including contact information of the involved  
10 County Department of Mental Health Supervisor rather than his own contact information. This  
11 new investigation was opened in spite of Lieutenant Gannon's assurances that no administrative  
12 action would be taken against him and that he would specifically not be subjected to any  
13 disciplinary investigation for utilizing the OIG complaint process. In addition, Plaintiff was not  
14 notified that he is the named subject of ongoing investigation IV2507573 until over a year later,  
15 as will be discussed further below.

16 76. On or around April 20, 2020, Captain Johann Thrall informed Plaintiff that he would be  
17 formally transferred to Century Sheriff's Station based on Commander Andrew Rosso's orders  
18 and that Plaintiff was not in any trouble, despite Plaintiff already being named as the subject of a  
19 pending Department investigation at this time.

20 77. On or around April 22, 2020, Plaintiff attempted to speak to Captain Thrall regarding his  
21 transfer but Captain Thrall was unavailable.

22 78. On or around May 20, 2020, Plaintiff applied for a Law Enforcement Technician opening  
23 within the Department's Major Crimes Bureau. Plaintiff did not receive this position and was  
24 unaware that he was/is the subject of an active and ongoing Internal Affairs Bureau investigation  
25 throughout his application process.

26 79. On or around June 7, 2020, Plaintiff had his work responsibilities reduced to  
27 administrative duties processing overtime and other payroll forms.

1 80. On or around October 20, 2020, Plaintiff reached out to Century Station Operations to  
2 request a formal hard-item transfer to Century Station from MET and was informed that his item  
3 had already been transferred.

4 81. On or around January 28, 2021, Plaintiff was re-assigned to the Secretariat, had his work  
5 responsibilities reduced again, and was told by his supervising sergeant that he was on the  
6 Captain's radar.

7 82. On or around February 1, 2021, Plaintiff sent an email to his supervisor regarding  
8 concerns of being placed in a high-traffic area due to his underlying medical conditions and  
9 requests to work from home.

10 83. On or around February 2, 2021, Plaintiff was told by supervisor to remind others around  
11 him to wear their masks and that micro-management is not favored.

12 84. On or around February 22, 2021, Plaintiff applied for a Law Enforcement Technician  
13 opening within the Department's Special Enforcement Bureau. On or around April 2, 2021,  
14 Plaintiff was informed that he did not receive this position and was still unaware that he was/is  
15 the subject of an active and ongoing Internal Affairs Bureau investigation throughout his  
16 application process.

17 85. On or around April 21, 2021, Plaintiff reviewed his most recent Performance Evaluation  
18 and finally discovers that he was/is named the subject of an active Internal Affairs Bureau  
19 investigation regarding "false statements" (Case Number IV2507573).

20 86. As a result, on or around April 21, 2021, Counsel for Plaintiff reached out to the Internal  
21 Affairs Bureau Captain to confirm whether Plaintiff was, in fact, the subject of an ongoing  
22 Department investigation initially opened on April 15, 2020 and to request an explanation  
23 regarding why Plaintiff had not been notified that he was the named subject of Case Number  
24 IV2507573.

25 87. On or around April 28, 2021, the Internal Affairs Bureau Captain confirmed the existence  
26 of Department investigation Case Number IV2507573 into Plaintiff and stated "I am forwarding  
27 your concerns as to the lack of Subject notification to the unit commander, as that is their  
28

responsibility.” To this day, no communications have been received by the unit commander concerning the lack of notification to Plaintiff.

88. On or around April 29, 2021, the Department provided Plaintiff with an official Notice of Investigation for Case Number IV2507573 indicating an original Department knowledge date of March 20, 2020. This Notice of Investigation was provided over one year after the Department initially opened Case Number IV2507573, after Lieutenant Gannon assured him that no Department investigation would be conducted regarding his utilization of the anonymous OIG complaint process, and after already utilizing three separate disciplinary investigations from 2017 – 2019 to retaliate, discriminate and/or harass Plaintiff. The Department’s failure to adhere to normal investigation notification procedures, during this specific investigation and other Department investigations opened against Plaintiff, further demonstrates the retaliatory nature of the Department’s actions taken towards Plaintiff described herein.

89. On or around May 20, 2021, Plaintiff was contacted by Department investigators to provide an interview for Case Number IV2507573. On June 2, 2021, Counsel for Plaintiff requested Department investigators to provide a copy of the OIG anonymous complaint admittedly filed by Plaintiff and Department investigators *refused* to provide Plaintiff or Counsel for Plaintiff a copy of Plaintiff’s submitted OIG Complaint prior to his interview.

90. On or around June 7, 2021, Plaintiff filed claims with California Department of Industrial Relations/Division of Labor Standards Enforcement; California Labor and Workforce Development Agency; and California Department of Fair Employment and Housing alleging retaliation for his utilization of the anonymous OIG complaint process to report unsafe working conditions as it relates to health and safety workplace issues.

91. On or around June 8, 2021, Plaintiff mailed a Private Attorneys General Act Notice to the County.

92. On or around June 8, 2021, Plaintiff filed a claim for damages with the County.

93. On or around June 8, 2021, Plaintiff was interviewed by Department investigators regarding Department investigation Case Number IV2507573. During this interview, no questions were posed to Plaintiff regarding any of the health and safety workplace concerns

1 raised by Plaintiff in his initial March 20, 2020 OIG Complaint. Plaintiff's entire interview can  
2 be characterized as purported "neutral" investigators attempting to coerce Plaintiff to admit to  
3 having an intent to deceive the Department when utilizing the anonymous OIG complaint  
4 process. To this day, Department investigation Case Number IV2507573 is still pending and  
5 continues to negatively impact Plaintiff's career, emotional and financial well-being, and  
6 reputation. No investigative case materials from Case Number IV2507573 have been provided to  
7 Plaintiff by Defendants.

8 94. On or around September 3, 2021, Plaintiff was informed by a previous coworker from the  
9 Sheriff's Information Bureau that he was, once again, restricted from entering the Hall of Justice.  
10 This coworker was instructed by a sworn Department supervisor, Sergeant Oscar Martinez, to  
11 inform Plaintiff of his Hall of Justice restriction, rather than Sergeant Oscar Martinez  
12 communicating this restriction to Plaintiff himself. This new Hall of Justice restriction was  
13 placed on Plaintiff because a hostile phone call was placed to the Sheriff's Information Bureau  
14 and one deputy proclaimed that the unnamed anonymous caller sounded like Plaintiff.

15 95. On or around September 3, 2021, Plaintiff contacted Sergeant Oscar Martinez to confirm  
16 whether he was actually restricted from entering the Hall of Justice and Sergeant Oscar Martinez  
17 confirmed to Plaintiff that he was/is restricted from accessing any of the Sheriff's Information  
18 Bureau spaces and that he needs to contact him first for approval to visit the Sheriff's  
19 Information Bureau.

20 96. On or around September 8, 2021, Plaintiff communicated to Sergeant Oscar Martinez that  
21 there was no credible basis for any restrictions to be placed on him and explained to Sergeant  
22 Oscar Martinez that he was promoting negative rumors based on completely unfounded  
23 speculation.

24 97. As a result, on or around September 8, 2021, Plaintiff filed a POE Complaint against  
25 Sergeant Oscar Martinez and the deputy responsible for spreading false rumors asserting Plaintiff  
26 placed a hostile phone call to the Sheriff's Information Bureau.

27 98. Although Plaintiff was still under a pending administrative investigation (Case Number  
28 IV2507573) alleging that he falsely submitted an *anonymous* OIG Complaint using someone

1 else's identity, on or around September 21, 2021, Plaintiff was contacted by Department Deputy  
2 Compliance Officer Linda Vaisa from the POE intake unit to provide information regarding what  
3 they characterize to be *his own* March 20, 2020 OIG Complaint. The Department specifically  
4 requested Plaintiff to provide information regarding any alleged acts of Department retaliation  
5 and, once again, failed to ask any detailed questions regarding the legitimate health and safety  
6 concerns reported by Plaintiff on March 20, 2020.

7 99. The Department failed to make any inquiry, or even contact Plaintiff, about any of the  
8 health and safety issues raised in his anonymous OIG Complaint and now only seeks Plaintiff's  
9 input as it relates to the County's preparation of their legal defense strategy. The Department's  
10 utilization of the POE Intake process to get information from Plaintiff to bolster their legal  
11 retaliation defense highlights the Department's utilization of relevant internal investigative  
12 processes to further whatever specific discriminatory, harassing and/or retaliatory purpose  
13 benefits Defendants, rather than adhering to any objective or neutral factfinding obligations.

14 100. On or around September 22, 2021, Plaintiff informed Department Deputy Compliance  
15 Officer Linda Vaisa of his ongoing retaliation labor claims and hesitation to provide any written  
16 statements about case matters that are still under active Department investigation.

17 101. On or around January 13, 2022, Plaintiff filed this current action.

18 102. On or around March 8, 2022, Plaintiff was relieved of duty, reassigned to home and had  
19 all work responsibilities eliminated.

20 103. On or around March 21, 2022, Plaintiff was personally served by the Department with a  
21 Letter of Intent to Discharge authorized by Chief Laura Lecrivain based on IAB File Number  
22 IV2507573 regarding his utilization of the OIG's anonymous complaint process.

23 104. The Department's letter of intent to discharge served March 21, 2022 alleges Plaintiff  
24 violated the Department's policies regarding honesty, conduct towards others and general  
25 behavior and alleges that Plaintiff falsely impersonated another individual when filing his  
26 anonymous OIG complaint.

27 **Disciplinary Appeal Related Misconduct**  
28

1 105. On or around December 23, 2020, Counsel for Plaintiff provided significant new  
2 evidence involving Law Enforcement Technician Heather Fuquay which fundamentally related  
3 to Law Enforcement Technician Heather Fuquay's allegations of sexual harassment and invasion  
4 of privacy supporting Plaintiff's 2 Days Suspension. This significant new evidence involved Law  
5 Enforcement Technician Heather Fuquay actively posting sexually explicit videos of herself on  
6 publicly accessible pornographic adult websites, charging users money to access some of her  
7 sexually explicit videos, and purposefully including untruthful descriptions of who she was  
8 performing sexual acts with in her video descriptions. Over 15 sexually explicit videos were  
9 posted by Law Enforcement Technician Heather Fuquay over the course of multiple years,  
10 amassing over 175,000 total video views. Furthermore, Law Enforcement Technician Heather  
11 Fuquay is designated as the Sheriff Information Bureau's social media dispatcher, which causes  
12 her to have frequent public interactions with many different law enforcement agencies using a  
13 variety of online social media platforms. Almost all of Law Enforcement Technician Heather  
14 Fuquay's publicly posted sexually explicit videos contain prolonged images of her face and other  
15 identifying marks such as visible tattoos and piercings.

16 106. All of this new evidence was submitted to assigned Counsel for Department with the  
17 express request that this new information be considered grounds for reassessing the  
18 appropriateness of Plaintiff's discipline. However, no attempts were made to reassess Plaintiff's  
19 discipline and Defendants took no action regarding any of this new information towards Law  
20 Enforcement Technician Heather Fuquay. To this day, Law Enforcement Technician Heather  
21 Fuquay's sexually explicit videos are still publicly accessible despite the Department justifying  
22 Plaintiff's 2 Days Suspension on grounds of perceived Department embarrassment. From  
23 December 23, 2020 to the present, no administrative actions have presumably been taken  
24 towards Law Enforcement Technician Heather Fuquay regarding any of this new evidence.

25 107. Furthermore, on or around December 6, 2021, during a County Employee Relations  
26 Commission arbitration appeal hearing regarding Plaintiff's 2-Day Suspension (ERCOM Arb.  
27 No. 102-19), Captain Darren Harris specifically testified that he was never provided any of the  
28 new information submitted to Counsel for Department on December 23, 2020 despite Counsel

1 for Department's representation that this new information would be forwarded to the  
2 Department. Either this information was never submitted by Counsel for Department to relevant  
3 Department decisionmakers or Captain Darren Harris was attempting to falsely represent that the  
4 Department was unaware of this new information provided almost a year earlier. The  
5 Department's lack of scrutiny displayed towards Law Enforcement Technician Heather Fuquay's  
6 undeniably embarrassing conduct over the course of multiple years is wholly contrary to the  
7 Department's scrutiny displayed towards Plaintiff based on his legitimate utilization of the POE  
8 and OIG complaint processes over the course of his Department career.

9 108. In addition, on or around December 6, 2021, during Plaintiff's 2-Day Suspension  
10 ERCOM Arb. No. 102-19 arbitration hearing, Plaintiff learned for the first time that sometime in  
11 or around mid-to-late 2020, Counsel for Department requested Department investigators to  
12 proactively reinvestigate the allegations contained in Case Number IV2426891, **over a year**  
13 **after already imposing discipline and based on no new evidence or any changed**  
14 **circumstances**. This surreptitious request in 2020 was made over a year after the Department's  
15 imposition of Plaintiff's 2-Days Suspension on May 16, 2019 and over 3 years after Plaintiff  
16 filed his original POE Complaint on April 14, 2017.

17 109. The Department's 2020 reinvestigation of Plaintiff's 2-Days Suspension was  
18 undertaken for the sole purpose of bolstering Plaintiff's disciplinary case as Plaintiff was never  
19 notified of the Department's decision to reopen this IV2426891 investigation and, to this day,  
20 has not been provided any contents, summaries, notes or otherwise regarding what was  
21 uncovered pursuant to this 2020 reinvestigation of his 2-Days Suspension. No information or  
22 explanation was provided by the Department regarding why Plaintiff's 2-Days Suspension case  
23 was reopened in 2020, a year after Plaintiff already served his 2 Days Suspension in 2019 and  
24 multiple years after this case was originally investigated in 2017.

25 110. Furthermore, Plaintiff only became aware of this 2020 reopening of his IV2426891  
26 investigation through cross-examination of the Department's assigned detective to this case,  
27 Detective Gerhardt Groenow, which indicates that had these questions never been asked on  
28 December 6, 2021, Plaintiff would have **never** been informed or made aware that the

1 Department was proactively attempting to reopen this disciplinary investigation at some point in  
2 2020. Counsel for Department also initially allowed Detective Gerhardt Groenow to falsely  
3 testify that it was the District Attorney's Office who requested IV2426891 to be reinvestigated,  
4 when during cross-examination, Detective Gerhardt Groenow clarified that it was actually  
5 Counsel for Department who requested IV2426891 to be reinvestigated.

6 111. In addition, the Department did not choose to reopen Plaintiff's IV2426891  
7 investigation in light of any of the new evidence submitted by Counsel for Plaintiff on December  
8 23, 2020. The Department's proactive decision to secretly reopen IV2426891 based on no new  
9 evidence or any changed circumstances compared to their decision to ignore all new relevant  
10 evidence submitted by Counsel for Plaintiff on December 23, 2020 further highlights the  
11 Department's discriminatory and biased disciplinary investigative practices facing Plaintiff. For  
12 no explicable reason, at some point in 2020, the Department reopened Plaintiff's IV2426891  
13 investigation in order to collect more evidence to support his 2 Days Suspension and did not  
14 inform Plaintiff of any of these efforts. Yet when Counsel for Plaintiff directly provides  
15 specifically relevant and new evidence to Counsel for Department on December 23, 2020, no  
16 further investigation is deemed necessary and Captain Darren Harris is not presented with any of  
17 this new information until his ERCOM Arb. No. 102-19 cross-examination almost a year later on  
18 December 6, 2021.

19 112. Upon information and belief, outside of Plaintiff's case, the Department has never  
20 reopened a disciplinary internal investigation after imposing a 2 Days Suspension and already  
21 conducting a multi-year, multi-agency, and multi-volume administrative and criminal  
22 investigation, without having any new evidence to necessitate reopening the investigation. The  
23 notion that Plaintiff's 2 Days Suspension investigation was reopened in 2020 for no reason other  
24 than to further bolster his disciplinary penalty represents a fundamentally discriminatory,  
25 malicious and entirely unprecedented action indicative of Plaintiff's selectively harsh treatment  
26 within this Department.

27 113. Plaintiff's Department career timeline demonstrates an outstanding employee who has  
28 become increasingly targeted by this Department since his utilization of the POE complaint

1 process on April 14, 2017. All performance evaluation ratings and characterizations of Plaintiff's  
2 work product prior to his utilization of the POE complaint process on April 14, 2017 indicate  
3 that he was an exemplary employee on track to become a model County peace officer. However,  
4 since April 14, 2017, the Department has consistently harassed, discriminated and/or retaliated  
5 against Plaintiff by utilizing the Department's disciplinary investigative processes, amongst other  
6 retaliatory acts, to completely disrupt Plaintiff's Department employment and upend his entire  
7 law enforcement career. Defendants' actions towards Plaintiff represents explicit harassment,  
8 discrimination and retaliation. Furthermore, some of Defendants' retaliatory actions were taken  
9 against Plaintiff for his decision to file a complaint with a lawful oversight agency regarding  
10 legitimate health and safety workplace concerns. Plaintiff was specifically retaliated against for  
11 attempting to file a legitimate complaint highlighting Department attempts to circumvent local,  
12 state and federal Covid-19 health and safety protocols.

13 114. Most significantly, Plaintiff was relieved of duty, had all work responsibilities  
14 eliminated, and is now facing a proposed termination all after filing this lawsuit on January 13,  
15 2022.

16 115. As a result of the Department's actions described above, Plaintiff's Department and law  
17 enforcement career advancement prospects, Plaintiff's ability to earn income and/or other  
18 privileges and benefit, Plaintiff's promotability within the Department and County, Plaintiff's  
19 current employment opportunities, and Plaintiff's entire emotional well-being have all been  
20 adversely impacted.

### 21 **FIRST CAUSE OF ACTION**

#### 22 **RETALIATION (GOV. CODE § 12940)**

#### 23 **AGAINST ALL DEFENDANTS, AND EACH OF THEM**

24 116. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1  
25 through 115 above, and incorporates same by reference as though set forth fully herein.

26 117. Plaintiff engaged in legally protected activities under the FEHA by, through the filing  
27 of a lawful complaint, disclosing to the County and/or the Department information which  
28 Plaintiff had reasonable cause to believe disclosed violations of local, state and/or federal

1 statutes, including the FEHA, local, state and/or federal orders related to health and safety  
2 workplace requirements, effective County and Department policies, and other applicable local,  
3 state, and federal rules, statutes, and regulations.

4 118. Furthermore, Plaintiff engaged in legally protected activities by filing this instant action  
5 on January 13, 2022, disclosing to the County and/or the Department information which Plaintiff  
6 had reasonable cause to believe disclosed violations of local, state and/or federal statutes,  
7 including the FEHA, local, state and/or federal orders related to health and safety workplace  
8 requirements, effective County and Department policies, and other applicable local, state, and  
9 federal rules, statutes, and regulations.

10 119. Defendants retaliated against Plaintiff because he is an employee who engaged in  
11 protected reporting activities, including the initiation of this lawsuit, and utilized the anonymous  
12 OIG complaint process to attempt to disclose the Department's violation of state and local  
13 Covid-19 health and safety statutes and/or orders.

14 120. After Plaintiff utilized the OIG complaint process to report conditions at his workplace  
15 that posed a risk to the health and safety of hundreds of County employees, Defendants retaliated  
16 against Plaintiff by, amongst other things, punitively transferring him, opening an internal  
17 investigation into him, reducing all work responsibilities, relieving him of duty and seeking his  
18 termination.

19 121. Defendants, and each of them, and their respective supervisors, managers, officers,  
20 agents, and employees, retaliated against Plaintiff for engaging in protected activities by  
21 subjecting him to multiple adverse employment actions, stand-alone actions and/or an ongoing  
22 series of actions, which have caused substantial and material adverse effects on the terms and  
23 conditions of Plaintiff's employment. Said actions of retaliation were a direct violation of the  
24 FEHA.

25 122. A contributing cause for Defendants, and each of them, engaging in the foregoing  
26 adverse employment actions against Plaintiff was to retaliate against Plaintiff for engaging in the  
27 above-described protected activities.

1 123. As a result of the aforesaid unlawful acts of Defendants, and each of them, Plaintiff has  
2 lost and continues to lose income, wages, earnings, earning capacity, overtime, on-call pay,  
3 pension, benefits, and other economic loss, in an amount to be proven at time of trial.

4 124. As a further legal result of the conduct of Defendants, and each of them, Plaintiff has  
5 been punitively transferred, assigned to home, denied transfer requests, suffered reduced  
6 responsibilities, been intimidated, faced diminished chances for promotions and better  
7 assignments within the Department, and is currently facing a proposed termination.

8 125. In addition, the Department's March 21, 2022 termination action initiated against  
9 Plaintiff based on allegations of dishonesty will permanently impact Plaintiff's ability to testify  
10 in the future as a potential peace officer witness.

11 126. As a further legal result of the conduct of Defendants, and each of them, Plaintiff has  
12 suffered and will continue to suffer physical, mental, and emotional injuries, pain, distress,  
13 suffering, anguish, fright, nervousness, grief, anxiety, worry, shame, mortification, injured  
14 feelings, shock, humiliation and indignity, as well as other unpleasant physical, mental, and  
15 emotional reactions, damages to reputation, and other noneconomic damages, in a sum to be  
16 ascertained according to proof. Said damages are of the type that any person would suffer as  
17 result of the illegal and wrongful conduct of Defendants.

18 127. As a further legal result of the conduct of Defendants, and each of them, Plaintiff  
19 suffered other incidental and consequential damages, in an amount according to proof.

20 128. As a further legal result of the conduct of Defendants, and each of them, Plaintiff is  
21 entitled to attorneys' fees pursuant to C.C.P. § 1021.5 and other authorities, and costs in an  
22 amount according to proof.

23 129. As a further legal result of the conduct of Defendants, and each of them, Plaintiff is  
24 entitled to prejudgment interest pursuant to California Civil Code section 3287 and/or any other  
25 provision of law providing for prejudgment interest.

26 **SECOND CAUSE OF ACTION**

27 **HARASSMENT (GOV. CODE § 12923)**

28 **AGAINST ALL DEFENDANTS, AND EACH OF THEM**

1 130. Plaintiff repeats and re-alleges each any every allegation set forth in paragraphs 1  
2 through 129 above, and incorporates same by reference as though set forth fully herein.

3 131. Plaintiff is an African-American male. Law Enforcement Technician Heather Fuquay is  
4 a Caucasian female, her Department boyfriend during the relevant time period is a Caucasian  
5 male, and Captain Darren Harris is a Caucasian male.

6 132. Plaintiff brought to light wrongdoing involving a female Caucasian coworker who had  
7 subjected Plaintiff to unwelcome sexual harassment and created a hostile work environment.

8 133. In addition, Plaintiff brought to light wrongdoing involving a Caucasian coworker who  
9 was dating a Caucasian supervisor friendly with their shared Caucasian supervising Captain.

10 134. As a result of filing a POE Complaint against Law Enforcement Technician Heather  
11 Fuquay, Plaintiff was relieved of duty for multiple years and has been consistently subjected to  
12 unwanted discriminatory and harassing conduct throughout all facets of his Department career.  
13 Plaintiff has also been subjected to unwanted discriminatory and harassing conduct for his filing  
14 of an anonymous OIG Complaint and this current lawsuit.

15 135. The discriminatory and harassing conduct includes the Department opening and/or  
16 reopening separate meritless disciplinary investigations in order to impede Plaintiff's ability to  
17 carry out his job duties and impose unjustified discipline on Plaintiff, including his proposed  
18 March 21, 2022 termination, and the Department allowing Law Enforcement Technician Heather  
19 Fuquay to create a sexually harassing work environment that was offensive, severe, and  
20 unreasonable towards Plaintiff.

21 136. The discriminatory and harassing conduct was and is severe or pervasive.

22 137. Defendants' negligently failed to take appropriate corrective action regarding Plaintiff's  
23 formal complaint of unwelcome sexual harassment and a hostile work environment because of  
24 his sex and/or race.

25 138. A reasonable person with Plaintiff's protected characteristics in Plaintiff's  
26 circumstances would consider the environment as hostile, discriminatory and harassing as  
27 Plaintiff did.  
28

1 139. Defendants created this hostile work environment and Plaintiff was and is harmed by  
2 Defendants' discriminatory and harassing actions.

3 140. As a direct and legal result of the conduct of Defendants, and each of them, Plaintiff  
4 has suffered and will continue to suffer physical, mental, and emotional injuries, pain, distress,  
5 suffering, anguish, fright, nervousness, grief, anxiety, worry, shame, mortification, injured  
6 feelings, shock, humiliation and indignity, as well as other unpleasant physical, mental, and  
7 emotional reactions, damages to reputation, and other noneconomic damages, in a sum to be  
8 ascertained according to proof. Said damages are of the type that any person would suffer as  
9 result of the illegal and wrongful conduct of Defendants.

10 141. As a further legal result of the conduct of Defendants, and each of them, Plaintiff  
11 suffered other incidental and consequential damages, in an amount according to proof.

12 142. As a result, all Defendants, whose identities may be ascertained at a later date, and  
13 excluding the County which is statutorily immune, are responsible for punitive and exemplary  
14 damages in a sum according to proof at time of trial, and a sum sufficient to set an example and  
15 punish Defendants for their wrongdoing.

16 **THIRD CAUSE OF ACTION**

17 **DISCRIMINATION (GOV. CODE § 12940(a))**

18 **AGAINST ALL DEFENDANTS, AND EACH OF THEM**

19 143. Plaintiff repeats and re-alleges each any every allegation set forth in paragraphs 1  
20 through 142 above, and incorporates same by reference as though set forth fully herein.

21 144. Plaintiff is an African-American male. Law Enforcement Technician Heather Fuquay is  
22 a Caucasian female, her Department boyfriend during the relevant time period is a Caucasian  
23 male, and Captain Darren Harris is a Caucasian male.

24 145. After Plaintiff brought to light wrongdoing involving a female Caucasian coworker  
25 who was dating a male Caucasian supervisor friendly with their shared male Caucasian  
26 supervising Captain, Plaintiff was immediately relieved of duty for multiple years and has been  
27 consistently subjected to unwanted discriminatory and harassing conduct throughout all facets of  
28 his Department career since the filing of his POE Complaint. Plaintiff has also been subjected to

1 unwanted discriminatory and harassing conduct for his filing of an anonymous OIG Complaint  
2 and this current lawsuit.

3 146. The Department and Captain Harris' decision to credit Law Enforcement Technician  
4 Heather Fuquay's unsubstantiated allegations as a basis for relieving Plaintiff of duty for  
5 multiple years and imposing discipline (discipline that was entirely overturned by a neutral  
6 arbitrator), all in spite of Plaintiff first filing a formal POE Complaint against Law Enforcement  
7 Technician Fuquay, evidences a reasonable likelihood of bias on the basis of Plaintiff's sex  
8 and/or race.

9 147. The discriminatory and harassing conduct includes the Department opening and/or  
10 reopening separate meritless disciplinary investigations in order to impede Plaintiff's ability to  
11 carry out his job duties and impose unjustified discipline on Plaintiff, including his proposed  
12 March 21, 2022 termination, and the Department allowing Law Enforcement Technician Heather  
13 Fuquay to create a sexually harassing work environment that was offensive, severe, and  
14 unreasonable towards Plaintiff.

15 148. The discriminatory and harassing conduct was and is severe or pervasive.

16 149. A reasonable person with Plaintiff's protected characteristics in Plaintiff's  
17 circumstances would consider the environment as hostile, discriminatory and harassing as  
18 Plaintiff did.

19 150. Defendants allowed for this hostile work environment and Plaintiff was and is harmed  
20 by Defendants' discriminatory and harassing actions.

21 151. Plaintiff's race and/or sex was a substantial motivating reason for Defendants' harmful  
22 actions.

23 152. As a direct and legal result of the conduct of Defendants, and each of them, Plaintiff  
24 has suffered and will continue to suffer physical, mental, and emotional injuries, pain, distress,  
25 suffering, anguish, fright, nervousness, grief, anxiety, worry, shame, mortification, injured  
26 feelings, shock, humiliation and indignity, as well as other unpleasant physical, mental, and  
27 emotional reactions, damages to reputation, and other noneconomic damages, in a sum to be  
28

1 ascertained according to proof. Said damages are of the type that any person would suffer as  
2 result of the illegal and wrongful conduct of Defendants.

3 153. As a further legal result of the conduct of Defendants, and each of them, Plaintiff  
4 suffered other incidental and consequential damages, in an amount according to proof.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO TAKE CORRECTIVE ACTION (GOV. CODE § 12940)**

7 **AGAINST ALL DEFENDANTS, AND EACH OF THEM**

8 154. Plaintiff repeats and re-alleges each any every allegation set forth in paragraphs 1  
9 through 153 above, and incorporates same by reference as though set forth fully herein.

10 155. Defendant had an obligation to take corrective action to prevent further retaliation,  
11 discrimination and harassment of Plaintiff, but failed to do so in violation of Cal. Gov. Code  
12 Sections 12940(k) and 12940(j)(1). Defendants failed to conduct proper investigations,  
13 implement proper policies to prevent discrimination, harassment or retaliation, and failed to  
14 properly punish those who engaged in misconduct to deter such further actions in the future.  
15 Conversely, Defendants purposefully conducted improper investigations in order to specifically  
16 harass and discriminate against Plaintiff.

17 156. After Plaintiff made legitimate complaints about and opposed the harassing,  
18 discriminatory and retaliatory conduct set forth above, Defendants failed to conduct proper  
19 investigations, implement proper policies to prevent discrimination, harassment or retaliation,  
20 and failed to take corrective action or to properly punish those who engaged in misconduct, to  
21 deter such further actions.

22 157. Furthermore, Defendants relieved Plaintiff of duty, eliminated all of Plaintiff's work  
23 responsibilities and proposed Plaintiff's discharge on March 21, 2022 after the initiation of this  
24 lawsuit.

25 158. As a direct and legal consequence of the conduct by Defendants towards Plaintiff,  
26 Plaintiff has suffered economic and non-economic damages in a sum according to proof at time  
27 of trial.

**FIFTH CAUSE OF ACTION**

**CLAIMS/PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT**

**("PAGA")(LABOR CODE §§ 2698-2699.5)**

**AGAINST ALL DEFENDANTS, AND EACH OF THEM**

159. Plaintiff repeats and re-alleges each any every allegation set forth in paragraphs 1 through 158 above, and incorporates same by reference as though set forth fully herein.

160. As set forth in detail under "Factual Allegations," Defendants violated California Labor Code §§ 98.6, 232.5, 1102.5, 2699.5, 6310, 6399.7, 6400, 6401, 6402, 6403, 6404, and 6407.

161. Under Labor Code §§ 2699, 98.6, 1102.5 for each such violation, Plaintiff is entitled to penalties in an amount to be shown at the time of trial.

**Violation of Labor Code §§ 232.5, 6310 and 6399.7**

162. Under Cal. Labor Code § 232.5, no employer may discriminate against an employee who discloses information about the employer's working conditions.

163. Under Cal. Labor Code § 6310(a), no person may be discriminated against in any manner for making an oral or written complaint to governmental agencies having statutory responsibility for or assisting with reference to employee safety or health, his or her employer, or his or her representative.

164. Under Cal. Labor Code § 6399.7, no person shall discharge or in any manner discriminate against, any employee because such employee has filed any complaint or has instituted, or caused to be instituted, any proceeding under or related to occupational safety and health matters.

165. As alleged above, Plaintiff reported unsafe working conditions at his Department worksite to the County OIG utilizing an anonymous complaint process. Plaintiff also included information of relevant employees from his worksite whose rights to a safe working environment were being threatened. Defendants punitively transferred Plaintiff shortly after he submitted his OIG complaint asserting legitimate health and safety workplace concerns. Defendants also surreptitiously opened an internal investigation into Plaintiff for his utilization of the *anonymous* OIG complaint process and did not inform Plaintiff of this investigation until a year after its

1 commencement. Defendants also opened this investigation after Plaintiff's supervisor expressly  
2 represented to Plaintiff that no internal investigation would be initiated regarding his utilization  
3 of the OIG complaint process.

4 166. Plaintiff's utilization of the anonymous OIG Complaint process was a substantial  
5 motivating factor for Defendants' decision to discriminate against Plaintiff. Defendants' actions  
6 were therefore in violation of Cal. Labor Code §§ 232.5, 6310 and 6399.7.

7 167. As a result of the aforesaid violations, Plaintiff will seek civil penalties pursuant to Cal.  
8 Labor Code § 2699(a) and (f), and/or other provisions of law, against Defendants for violation of  
9 Cal. Labor Code §§ 232.5, 6310 and 6399.7. Pursuant to Cal. Labor Code § 2699, Plaintiff  
10 should be awarded twenty-five (25%) of all penalties due under California law.

11 **Violation of Cal. Labor Code §§ 6400, 6401, 6402, 6403, 6404, and 6407**

12 168. Cal. Labor Code §6400(a) provides that every employer shall furnish employment and  
13 a place of employment that is safe and healthful for the employees therein. Cal. Labor Code  
14 §6401 provides that every employer shall furnish and use safety devices and safeguards, and  
15 shall adopt and use practices, means, methods, operations, and processes which are reasonably  
16 adequate to render such employment and place of employment safe and healthful. Every  
17 employer shall do every other thing reasonably necessary to protect the life, safety, and health of  
18 employees.

19 169. Cal. Labor Code §6402 provides that no employer shall require, or permit any  
20 employee to go or be in any employment or place of employment which is not safe and healthful.

21 170. Cal. Labor Code §6403 provides that no employer shall fail or neglect to do any of the  
22 following: (a) To provide and use safety devices and safeguards reasonably adequate to render  
23 the employment and place of employment safe; (b) To adopt and use methods and processes  
24 reasonably adequate to render the employment and place of employment safe; (c) To do every  
25 other thing reasonably necessary to protect the life, safety, and health of employees.

26 171. Cal. Labor Code §6404 provides that no employer shall occupy or maintain any place  
27 of employment that is not safe and healthful.

1 172. Cal. Labor Code §6407 provides that every employer and every employee shall comply  
2 with occupational safety and health standards, with Section 25910 of the Health and Safety  
3 Code, and with all rules, regulations, and orders pursuant to this division which are applicable to  
4 his own actions and conduct.

5 173. As alleged hereinabove, when the Covid-19 pandemic began to spread in California,  
6 the Department did not follow state mandated health and safety protocols and failed to  
7 proactively adopt the use of safety devices and safeguards necessary to ensure protect the life,  
8 health, and safety of Plaintiff and all aggrieved employees. Plaintiff and all aggrieved employees  
9 were forced to work in a workplace that did not practice social distancing, did not mandate use of  
10 protective gear and safety devices like face masks by all employees, and which facilitated an  
11 atmosphere of noncompliance regarding relevant Covid-19 health and safety workplace policies.  
12 Some Department supervisors even purposefully shamed those who were attempting to comply  
13 with Covid-19 health and safety workplace policies.

14 174. Therefore, Defendants, and each of them, violated Cal. Labor Code §§6400, 6401,  
15 6402, 6403, 6404, and 6407 when they failed to employ Plaintiff and other similarly situated  
16 Department employees in safe and healthful working conditions. Plaintiff and other similarly  
17 situated Department employees were employed under unsafe conditions violative of Cal-OSHA  
18 regulations and the Health and Safety Code.

19 175. As a result of the aforesaid violations Plaintiff will seek civil penalties pursuant to Cal.  
20 Labor Code § 2699(a) and (f) against Defendants for each violation of Cal. Labor Code §§ 6400,  
21 6401, 6402, 6403, 6404, and 6407. Pursuant to Cal. Labor Code § 2699, Plaintiff should be  
22 awarded twenty-five (25%) of all penalties due under California law.

23 **Violation of Cal. Labor Code § 98.6**

24 176. Pursuant to Cal. Labor Code § 98.6(a) a person shall not discharge an employee or in  
25 any manner discriminate, retaliate, or take any adverse action against any employee or applicant  
26 for employment because the employee or applicant engaged in any legally protected activity.

27 177. Defendants retaliated against Plaintiff because he is an employee who engaged in  
28 legally protected reporting activities. Plaintiff used the Department's POE complaint process and

1 the County's OIG complaint process and, in both instances, Plaintiff was retaliated against.  
2 Plaintiff engaged in lawful complaint reporting activities, which included reporting conditions at  
3 his workplace that posed a risk to the health and safety of dozens to hundreds of County  
4 employees and which involved another Department member who created a sexually harassing  
5 and hostile work environment.

6 178. Under Cal. Labor Code § 98.6, an aggrieved employee can recover lost wages and a  
7 civil penalty of \$10,000 for each violation.

8 179. Therefore, pursuant to Cal. Labor Code § 98.6(b)(3), Plaintiff is entitled to a civil  
9 penalty of \$10,000 for each violation of Cal. Labor Code § 98.6 as a result of Defendants  
10 retaliatory conduct towards Plaintiff for engaging in protected whistleblowing activities.

11 **Violation of Cal. Labor Code § 1102.5**

12 180. Under Cal. Labor Code § 1102.5(b), an employer "shall not retaliate" against an  
13 employee for disclosing information "to a person with authority over the employee or another  
14 employee who has the authority to investigate, discover, or correct the violation or  
15 noncompliance" that the employee "has reasonable cause to believe . . . discloses a violation of  
16 state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or  
17 regulation, regardless of whether disclosing the information is part of the employee's job duties."

18 181. Defendants retaliated against Plaintiff because he is an employee who engaged in  
19 protected reporting activities and utilized the OIG complaint process to attempt to disclose the  
20 Department's violation of state and local Covid-19 health and safety statute, rule and/or  
21 regulation. Plaintiff utilized the OIG complaint process to report conditions at his workplace that  
22 posed a risk to the health and safety of hundreds of County employees.

23 182. Defendants, and each of them, and their respective supervisors, managers, officers,  
24 agents, and employees, retaliated against Plaintiff for engaging in protected activities by  
25 subjecting him to multiple adverse employment actions, stand-alone actions and/or an ongoing  
26 series of actions, which have caused substantial and material adverse effects on the terms and  
27 conditions of Plaintiff's employment. Said actions of retaliation were a direct violation of Cal.  
28 Labor Code § 1102.5, and pursuant to Cal. Labor Code § 1102.6, Defendants, and each of them,

1 have the burden of proof to demonstrate by clear and convincing evidence that each of the  
2 adverse employment actions alleged herein would have occurred for legitimate, independent  
3 reasons even if Plaintiff had not engaged in activities protected by Cal. Labor Code § 1102.5.

4 183. Under Cal. Labor Code § 1102.5(b), an employee can recover all actual damages  
5 flowing from the retaliation, including compensatory damages, lost wages, lost benefits, and  
6 emotional distress. In addition, under Cal. Labor Code § 1102.5(f), an aggrieved employee can  
7 recover a civil penalty of \$10,000 against the County as a municipal corporation for each  
8 violation. As a further legal result of the conduct of Defendants, and each of them, Plaintiff is  
9 entitled to attorneys' fees pursuant to Cal. Labor Code § 1102.5 (j).

10 **SIXTH CAUSE OF ACTION**

11 **VIOLATION OF BANE ACT (CIV. CODE § 52.1)**

12 **AGAINST ALL DEFENDANTS, AND EACH OF THEM**

13 184. Plaintiff repeats and re-alleges each any every allegation set forth in paragraphs 1  
14 through 183 above, and incorporates same by reference as though set forth fully herein.

15 185. Plaintiff is informed, believes, and thereon alleges the Tom Bane Civil Rights Act  
16 authorizes individuals whose legal rights have been interfered with by threats, intimidation, or  
17 coercion, to bring a civil action. (Civ. Code, § 52.1(a)). Moreover, an aggrieved person may  
18 bring an action for damages under Civil Code § 52, and may be awarded reasonable attorneys'  
19 fees. (Civ. Code, § 52.1(b), (h).).

20 186. Defendants, acting in concert and by way of conspiracy, through threatening,  
21 intimidating, and coercive conduct attempted to interfere and did interfere with Plaintiff's ability  
22 to fulfill his lawful duties and exercise his lawful rights. Plaintiff reasonably believed that he  
23 would be subjected to further harassment and adverse actions, including termination, if he did  
24 not refrain from complaining about unlawful workplace practices, retaliation, and discrimination.  
25 When Plaintiff made his complaints and otherwise opposed wrongful conduct, he was deprived  
26 of his right to speak freely regarding illegalities and/or wrongful conduct committed by the  
27 Department and was deprived of his right to report legitimate workplace issues consistent with  
28 relevant labor and employment law protections.

1 187. As a proximate result of the wrongful conduct of Defendants, and each of them,  
2 Plaintiff has suffered and continues to sustain substantial losses in earnings and other  
3 employment benefits in an amount according to proof at the time of trial.

4 188. As a proximate result of the wrongful conduct of Defendants, and each of them,  
5 Plaintiff has suffered humiliation, emotional distress, reputational harm, and mental pain and  
6 anguish, all to his damage in an amount according to proof at the time of trial.

7 189. Plaintiff has also incurred and continues to incur attorneys' fees and legal expenses in  
8 an amount according to proof at the time of trial.

9 **SEVENTH CAUSE OF ACTION**

10 **RETALIATION (GOV. CODE § 53298)**

11 **AGAINST ALL DEFENDANTS, AND EACH OF THEM**

12 190. Plaintiff repeats and re-alleges each any every allegation set forth in paragraphs 1  
13 through 189 above, and incorporates same by reference as though set forth fully herein.

14 191. Cal. Gov. Code § 53298 prohibits reprisals against any employee who files a complaint  
15 regarding "gross mismanagement, a significant waste of funds, an abuse of authority, or a  
16 substantial and specific danger to public health or safety." Cal. Gov. Code § 53296 (c).

17 192. Plaintiff filed a specific written complaint with the County's OIG regarding a  
18 Department supervisor who was actively promoting noncompliance with lawful Covid-19 health  
19 and safety workplace orders, rules and regulations and was thereafter punitively transferred,  
20 placed under disciplinary investigation, relieved of duty and ultimately terminated. Plaintiff  
21 disclosed said information to the OIG in order to provide evidence of a substantial and specific  
22 danger to public health or safety.

23 193. Defendants Sheriff Alex Villanueva, and DOES, whose identities can be further  
24 ascertained during trial, retaliated against Plaintiff in the manner described throughout,  
25 including, but not limited to, authorizing his proposed termination on March 21, 2022, due to  
26 Plaintiff's written OIG complaint which reported a specific and substantial danger to public  
27 health and safety relating to a Department supervisor's noncompliance with relevant health and  
28 safety orders and internal Department and/or County policies relating to Covid-19.

1 194. Defendants Sheriff Alex Villanueva, and DOES, whose identities can be further  
2 ascertained during trial, retaliated against Plaintiff in the manner described due to Plaintiff's  
3 written POE Complaint which alleged a hostile work environment and raised legitimate concerns  
4 of abuse of authority and gross mismanagement considering Captain Darren Harris' friendship  
5 with Law Enforcement Technician Fuquay's Department supervisor boyfriend.

6 195. Defendants Sheriff Villanueva, and DOES, whose identities can be further ascertained  
7 during trial, are all local officers, managers or supervisors of the Department.

8 196. Defendants, and each of them, participated in or directed the retaliatory conduct, or  
9 knew of the retaliatory conduct and failed to act to prevent it.

10 197. The above-cited actions of Defendants were done with malice, fraud and/or oppression,  
11 and in reckless disregard of Plaintiff's statutory rights as defined in Cal. Gov. Code § 53298.

12 198. As a proximate result of the wrongful conduct of Defendants, and each of them,  
13 Plaintiff has suffered and continues to sustain substantial losses in earnings and other  
14 employment benefits in an amount according to proof at the time of trial.

15 199. As a proximate result of the wrongful conduct of Defendants, and each of them,  
16 Plaintiff has suffered humiliation, emotional distress, reputational harm, and mental pain and  
17 anguish, all to his damage in an amount according to proof at the time of trial.

18 200. Under Cal. Gov. Code § 53298.5 (a), "any officer, manager, or supervisor who violates  
19 Section 53298 with malicious intent is punishable by a fine not to exceed ten thousand dollars  
20 (\$10,000) and imprisonment in the county jail for up to a period of one year. In addition, any  
21 local agency officer, manager, or supervisor who maliciously engages in conduct prohibited by  
22 Section 53298 shall be disciplined as provided by local personnel rules and regulations."

23 201. Furthermore, under Cal. Gov. Code § 53298.5 (b), "In addition to all other penalties  
24 provided by law, any local officer, manager, or supervisor who has been found by a court to have  
25 violated the provisions of Section 53298 with malicious intent shall be individually liable for  
26 damages in an action brought against him or her by the injured employee. Punitive damages may  
27 be awarded by the court where the offending party has acted with malice. Where liability has  
28

1 been established, the injured employee shall also be entitled to reasonable attorney's fees as  
2 provided by law."

3 202. Plaintiff has also incurred and continues to incur attorneys' fees and legal expenses in  
4 an amount according to proof at the time of trial.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff seeks judgment against all Defendants, and each of them, on all  
7 causes of action, for:

8 1. Physical, mental, and emotional injuries, pain, distress, suffering, anguish, fright,  
9 nervousness, grief, anxiety, worry, shame, mortification, injured feelings, shock, humiliation and  
10 indignity, as well as other unpleasant physical, mental, and emotional reactions, damages to  
11 reputation, and other non-economic damages, in a sum to be ascertained according to proof;

12 2. Loss of wages, income, earnings, earning capacity, overtime, pension, benefits, and other  
13 economic damages in a sum to be ascertained according to proof;

14 3. Other actual, consequential, and/or incidental damages in a sum to be ascertained  
15 according to proof;

16 4. All damages, statutory penalties and/or interest required by California law, including but  
17 not limited to Cal. Labor Code §§ 98.6, 1102.5, 2699, Cal. Gov. Code §53298.5 and all other  
18 applicable authority, for each initial and subsequent violations;

19 5. An award of reasonable Attorneys' fees and costs of suit pursuant to C.C.P. § 1021.5,  
20 Cal. Labor Code §§ 1102.5 and 2699, Cal. Gov. Code §53298.5, Civ. Code §52.1 and all other  
21 applicable authorities;

22 6. Pre-judgment interest pursuant to California Civil Code section 3287 and all other  
23 applicable authorities;

24 7. Punitive damages against any ascertained individual Defendants;

25 8. Such other and further relief as the Court may deem just and proper.

26  
27 **DATED:** March 24, 2022

28   
\_\_\_\_\_  
Christopher Morse, Esq.  
Attorney for PLAINTIFF

I, John Michael Gardner, declare:

I declare the allegations relevant to my case contained therein are true to my knowledge, except as to those matters which are alleged on information and belief, and as to those matters I believe them to be true.

Executed on March 24, 2022 at Los Angeles, California.

John Michael Gardner

1 **DEMAND FOR JURY TRIAL**

2 **TO THE CLERK OF THE ABOVE-ENTITLED COURT, DEFENDANTS AND**  
3 **ATTORNEYS OF RECORD:**

4 **PLEASE TAKE NOTICE** that, plaintiff, **JOHN GARDNER**, demands a trial by jury in the  
5 above-entitled action.

6  
7  
8 **DATED:** March 24, 2022

9  
10 

11 \_\_\_\_\_  
12 Christopher Morse, Esq.  
13 Attorney for PLAINTIFF  
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**PROOF OF SERVICE**  
**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

Re: Case No. 2:22-cv-01101-GW-PD

I am over the age of 18 and am not a party to the within action. I am employed by the Law Offices of James J. Cunningham in the County of San Diego, located at 10405 San Diego Mission Road, Ste 200 San Diego, CA 92108. My email address is cm@jimcunninghamlaw.com.

On March 24, 2022, I served the following document(s) on the interested parties in this action:

- 1. FIRST AMENDED COMPLAINT FOR DAMAGES: 1. FEHA RETALIATION, 2. FEHA HARASSMENT, 3. FEHA DISCRIMINATION, 4. FAILURE TO TAKE CORRECTIVE ACTION, 5. PRIVATE ATTORNEYS GENERAL ACT, 6. CA CIVIL CODE § 52.1, 7. RETALIATION (CA GOV. CODE § 53298)**

The document(s) were served upon:

Geoffrey S. Sheldon, Esq.  
gsheldon@lcwlegal.com  
Viddell Lee Heard, Esq.  
lheard@lcwlegal.com  
La Rita Turner, Esq.  
lturner@lcwlegal.com  
LIEBERT CASSIDY WHITMORE  
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Avi Burkwitz, Esq.  
aburkwitz@pblllp.com  
Peterson Bradford Burkwitz  
100 N. First Street, Ste 300  
Burbank, CA 91502

The documents were served by the following means:

**(X) BY ELECTRONIC SERVICE** – Per CCP § 1010.6/FRCP 5 I caused such document(s) to be sent to the person(s) at the email addresses listed above. I did not receive within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, except as to those matters stated on information and/or belief, and as to those matters, I believe them to be true, and that this Declaration was executed on March 24, 2022 in Los Angeles, California.



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Christopher Morse