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SCOTT KESSLER

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

SCOTT KESSLER, an individual,

Case No.:

Plaintiff,

PLAINTIFF'S COMPLAINT FOR:

V.

THE CITY OF SAN DIEGO, and DOES 1 through 25, Inclusive,

1. RETALIATION [Cal. Labor Code § 1102.5];
2. RETALIATION [San Diego Municipal Code § 26.0415];
3. RETALIATION [San Diego Municipal Code § 27.3573];
4. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY [Cal. Labor Code § 1102.5];
5. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY [San Diego Municipal Code § 26.0415];
6. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY [San Diego Municipal Code § 27.3573];
7. INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS.

Defendants.

[JURY TRIAL DEMANDED]

COMES NOW THE PLAINTIFF, alleging against Defendants as follows:

GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

- 25 1. Plaintiff, SCOTT KESSLER, (hereinafter "Plaintiff" or "KESSLER") is, and at all times
26 herein mentioned was, a resident of the County of San Diego in the State of California.
27 2. Plaintiff is informed and believes and thereon alleges that Defendant, THE CITY OF
28 SAN DIEGO (hereinafter "Defendant" or "THE CITY"), is a City in the State of

1 California. THE CITY is an “employer” as defined in the California Fair Employment
2 and Housing Act, Government Code § 12926(d), et seq., and is subject to suit under the
3 California Fair Employment and Housing Act, Government Code § 12940, et seq.

4 3. Plaintiff is ignorant to the true names and capacities of the Defendants sued herein as
5 DOES 1 through 25 and therefore sues these defendants by such fictitious names.
6 Plaintiff will amend this Complaint to allege the true names and capacities when they are
7 ascertained.

8 4. Plaintiff is informed and believes and thereon alleges that each fictitiously named
9 Defendant is responsible in some manner for the occurrences herein alleged, and
10 Plaintiff’s injuries and damages as herein alleged are directly, proximately and/or legally
11 caused by Defendant.

12 5. Plaintiff is informed and believes and thereon alleges that the aforementioned DOES are
13 somehow responsible for the acts alleged herein as the agents, employers, representatives
14 or employees of other named Defendant, and in doing the acts herein alleged were acting
15 within the scope of their agency, employment or representative capacity of said named
16 Defendant.

17 6. The tortious acts and omissions alleged herein were performed by management level
18 employees of Defendant. Defendant allowed and/or condoned a continuing pattern of
19 discriminatory practices.

20 7. On or about May 5, 2009, Plaintiff filed a claim for damages against THE CITY pursuant
21 to Government Code § 910, et seq. Plaintiff’s claim is attached hereto as “EXHIBIT A,”
22 and is incorporated herein by reference.

23 8. The individual employees and agents of THE CITY identified herein are “supervisors” or
24 “managers” within the meaning of Government Code § 12940, et seq.

25 9. Plaintiff seeks compensatory damages, costs of suit herein, and attorney’s fees pursuant to
26 Cal. Gov’t Code §12940 et seq.

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SPECIFIC FACTUAL ALLEGATIONS

- 2 10. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
3 the preceding paragraphs as though fully set forth herein.

4 11. Plaintiff is a 53 year old male.

5 12. At all times pertinent to the Complaint, Plaintiff was employed by Defendant. On or
6 about April 2006, THE CITY's then Deputy Chief Jim Waring solicited Plaintiff to serve
7 as THE CITY's Deputy Director of the Economic Development Division. Plaintiff
8 accepted the position one week later. On or about May 1, 2006, THE CITY hired
9 Plaintiff as the Deputy Director of the Economic Development Division. During his
10 employment, Plaintiff performed the duties of his work assignments in a capable and
11 competent manner.

12 13. Plaintiff's job responsibilities with Defendant included administering and enforcing
13 ongoing contractual obligations involving THE CITY, and San Diego Municipal Code
14 provisions. As part of Plaintiff's job responsibilities, he was required to prevent
15 illegitimate awards of public funds, and enforce contractual obligations of public funds
16 under his administration.

17 14. Beginning in our around 2005, Plaintiff was interviewed several times by Detective Dan
18 Vile ("Detective Vile") of the San Diego Police Department, and Special Agent Gerald
19 Cook ("Agent Cook") of the Federal Bureau of Investigation. Detective Vile and Agent
20 Cook were conducting a criminal investigation into Marco LiMandri ("LiMandri").
21 Simultaneous with Detective Vile and Agent Cook's criminal investigation into
22 LiMandri, LiMandri was under several contracts with THE CITY.

23 15. On or about February 12, 2007, Plaintiff was summoned to a meeting in Mayor Sanders'
24 office. The meeting was organized by Legislative Director Julie Dubick ("Legislative
25 Director Dubick"). Legislative Director Dubick instructed Plaintiff that Plaintiff was to
26 meet with LiMandri, Little Italy Board of Director members, and Little Italy Board of
27 Director attorney Theresa McAteer. The meeting concerned a subcontract agreement that
28 New City America ("NCA"), LiMandri's company, had with the Little Italy Association

- 1 (“LIA”). The LIA was under contract with Plaintiff’s division of THE CITY.
- 2 16. In the meeting, LiMandri proposed that THE CITY discontinue its long standing practice,
- 3 pursuant to San Diego Municipal Code, of conducting monthly audits of expenditures of
- 4 public funds under contract to provide public services. LiMandri proposed that THE
- 5 CITY instead accept a year end audit provided by a private firm, and assign the monthly
- 6 audit responsibilities to a bank, as opposed to THE CITY. However, in LiMandri’s
- 7 proposal, the local branch manager of the bank was also a LIA Board Member.
- 8 Legislative Director Dubick fully supported LiMandri’s proposal. However, Plaintiff,
- 9 pursuant to his job responsibilities with THE CITY, objected to the proposal because of
- 10 the present conflict of interest and the violation of San Diego Municipal Codes and other
- 11 city procedures that the proposal entailed. The proposal did not go forward.
- 12 17. Plaintiff believes and thereon alleges that LiMandri’s proposal was a reaction to
- 13 Plaintiff’s June 2006 discovery of NCA exceeding its set management fee in a contract
- 14 administered by Plaintiff.
- 15 18. New conditions were placed on contracts between NCA, LIA, and Plaintiff’s division
- 16 with THE CITY, based on several previous instances of non-compliance with the San
- 17 Diego Municipal Code. Specifically, Plaintiff discovered conflicts-of-interest regarding
- 18 LiMandri’s influence on the Board of the LIA, and the lack of a competitive procurement
- 19 process which resulted in LiMandri being sole-sourced sub-contract awards.
- 20 19. Even though Plaintiff was acting pursuant to his job responsibilities, LiMandri made
- 21 several complaints to San Diego Mayor Jerry Sanders (“Mayor Sanders”), and Mayor
- 22 Sanders’ senior staff. Inexplicably, Mayor Sanders and his staff supported LiMandri’s
- 23 illicit proposals. Specifically, Mayor Sanders’ office called Plaintiff into several meetings
- 24 where they required Plaintiff to account for his actions regarding LiMandri. Thereafter,
- 25 Mayor Sanders’ office instructed Plaintiff to “bend contracting rules” in violation of San
- 26 Diego Municipal Code for LiMandri. Plaintiff refused. Legislative Director Dubick also
- 27 asked Plaintiff why LIA was not reimbursed for their submittal of legal expenses for
- 28 Theresa McAteer. Plaintiff informed Legislative Director Dubick that THE CITY was

- 1 not allowed to do so. Legislative Director Dubick instructed Plaintiff to “find a way to
2 pay for it.” Plaintiff again refused. The day after Legislative Director Dubick’s
3 instruction, Plaintiff saw her, Theresa McAteer, and Mayor Sanders’ Chief of Staff Kris
4 Michell (“Chief of Staff Mitchell”), having lunch together. Plaintiff believed that a
5 conflict-of-interest was present.
- 6 20. In or around April 2007, a final report recommending prosecution of LiMandri based on
7 Detective Vile and Agent Cook’s investigation, was submitted to the San Diego District
8 Attorney’s Office. In or around January 2008, Plaintiff testified in front of the Grand
9 Jury. Plaintiff, under oath, provided truthful and honest testimony.
- 10 21. In or around July 2008, Plaintiff reviewed a copy of Detective Vile and Agent Cook’s
11 investigative report, summarizing their investigation of LiMandri. Plaintiff believed that
12 the facts documented in the investigative report were sufficient to debar LiMandri from
13 being awarded any future contracts with THE CITY. In Plaintiff’s opinion, LiMandri’s
14 misuse of public funds exceeded the threshold prescribed by the San Diego Municipal
15 Code. Plaintiff was required to report the misuse of public funds to THE CITY pursuant
16 to San Diego Municipal Code §§ 26.0415, 27.3573.
- 17 22. Plaintiff utilized his chain-of-command to bring his recommendation regarding debarment
18 of LiMandri to the attention of Mayor Sanders’ office. Specifically, on or about October
19 10, 2008, Plaintiff met with his supervisor, Assistant Deputy Chief Beth Murray
20 (“Assistant Deputy Chief Murray”). Plaintiff provided Assistant Deputy Chief Murray
21 with his recommendation to debar LiMandri, and provided her with a copy of the
22 investigative report. Assistant Deputy Chief Murray then forwarded Plaintiff’s debarment
23 recommendation and the investigative report to Deputy Chief William Anderson (“Deputy
24 Chief Anderson”). After reviewing the investigative report, Deputy Chief Anderson
25 forwarded the report to his supervisor, THE CITY’s Chief Operating Officer Jay
26 Goldstone (“Chief Operating Officer Goldstone”). At that time, Deputy Chief Anderson
27 stated to Chief Operating Officer Goldstone, “I guess Scott was right about [LiMandri].”
- 28 23. On or about October 15, 2008, Plaintiff received a telephone call from Laurie Davis, an

1 investigator for the San Diego Ethics Commission (“Ethics Commission”). Ms. Davis
2 inquired into a sub-contract with THE CITY, in which LiMandri withdrew in or around
3 August 2006 after Plaintiff discovered that LiMandri had knowingly exceeded the set fee
4 under the contract. LiMandri appealed Plaintiff’s decision. The appeal was denied by
5 Plaintiff’s supervisor, the San Diego City Attorney, Mayor Sanders’ office, the
6 Comptroller, and Councilman Ben Hueso’s office. A complaint that was filed with the
7 Ethics Commission, was the reason for Laurie Davis’ telephone call. Laurie Davis asked
8 Plaintiff to submit a copy of Detective Vile and Agent Cook’s investigative report
9 concerning LiMandri.

- 10 24. Thereafter, Plaintiff informed Deputy Chief Anderson of his exchange with Laurie Davis.
11 Deputy Chief Anderson advised Plaintiff that he should not have cooperated with the
12 Ethics Commission without prior approval from Mayor Sanders’ office. Deputy Chief
13 Anderson also informed Plaintiff that he would need to report Plaintiff to Mayor Sanders’
14 office. Plaintiff informed Deputy Chief Anderson that he had also spoken with the Ethics
15 Commission on previous occasions.
- 16 25. On or about October 16, 2008, Plaintiff received a telephone call from Assistant Deputy
17 Chief Murray. Assistant Deputy Chief Murray told Plaintiff that, “all hell had broken
18 loose in the Mayor’s office, and that people were upset with [Plaintiff], including the
19 Mayor himself, and that [Plaintiff] should lay low for awhile.” Assistant Deputy Chief
20 Murray directed Plaintiff to discontinue any communications with Detective Vile and
21 Agent Cook, and to further turn over all copies of Detective Vile and Agent Cook’s
22 investigative report to Chief Operating Officer Goldstone immediately.
- 23 26. Assistant Deputy Chief Murray informed Plaintiff that his cooperation with Detective
24 Vile and Agent Cook into the investigation of LiMandri, combined with his cooperation
25 with the Ethics Commission, angered Chief of Staff Michell, and Legislative Director
26 Dubick.
- 27 27. On or about October 16, 2008, following his conversation with Assistant Deputy Chief
28 Murray, Plaintiff met with Chief Operating Officer Goldstone. Plaintiff provided him

1 copies of Detective Vile and Agent Cook's investigative report. Goldstone represented to
2 Plaintiff that Mayor Sanders' office was concerned that they may get "dragged into this
3 now that the Ethics Commission had the report."

- 4 28. On or about October 17, 2008, Plaintiff received a telephone call from Deputy Chief
5 Anderson. Deputy Chief Anderson asked Plaintiff if he had been contacted by any law
6 enforcement officers. Deputy Chief Anderson informed Plaintiff that he should not speak
7 to any law enforcement officers. Deputy Chief Anderson went further to suggest to
8 Plaintiff that, as a public employee, he took direction from his supervisors, and was no
9 longer a private citizen that could do as he wished.
- 10 29. Deputy Chief Anderson asked Plaintiff if he would agree to "leave LiMandri's current
11 contracts in place, and just not allow him to enter into any new contracts going forward
12 with THE CITY."
- 13 30. On or about October 17, 2008, after speaking to Deputy Chief Anderson, Plaintiff
14 received a telephone call from Assistant Deputy Chief Murray. Assistant Deputy Chief
15 Murray asked Plaintiff if he was afraid that he would be fired due to his cooperation with
16 Detective Vile, Agent Cook, and the Ethics Commission? Plaintiff asked Assistant
17 Deputy Chief Murray if she heard anyone discussing that he would be fired. She
18 responded, "yes." She commented that Phil Rath, a Senior Policy Analyst to Mayor
19 Sanders, stated, "I hope I never get put under oath about what I've witnessed in the
20 Mayor's office regarding LiMandri."
- 21 31. While speaking with Deputy Chief Anderson and Assistant Deputy Chief Murray on or
22 about October 17, 2008, Plaintiff maintained that he had done nothing wrong by
23 cooperating with Detective Vile, Agent Cook, and the Ethics Commission.
- 24 32. In addition to Plaintiff's cooperation in the investigation of LiMandri, THE CITY had
25 knowledge that Plaintiff had cooperated with the Department of Housing and Urban
26 Affairs ("HUD"). HUD's Office of the Inspector General was conducting an in-depth
27 audit of THE CITY with regard to THE CITY's past management of HUD funds.
- 28 33. On or about October 20, 2008, Plaintiff had a conversation with Frank Alessi, the Chief

1 Financial Officer of the Center City Development Corporation (“CCDC”). Mr. Alessi
2 complained to Plaintiff about a proposal from LiMandri to the Downtown Parking
3 Management Group. Mr. Alessi explained to Plaintiff that Mayor Sanders’ office
4 supported LiMandri’s proposal that would pay LiMandri approximately \$20,000.00 to
5 perform services that the CCDC was currently doing free of charge. LiMandri’s proposal
6 was a no-bid/sole-source contract in LiMandri’s favor. Even though the Community
7 Parking District was managed by Plaintiff’s division, he had not been previously informed
8 of the proposal. When LiMandri’s proposal was heard in late October 2008 or early
9 November 2008, LiMandri withdrew his proposal without comment. This proposal from
10 LiMandri was the same illegitimate contracting process documented in Detective Vile and
11 Agent Cook’s investigative report. Regardless of LiMandri’s proposal being illegitimate,
12 Mayor Sanders’ office supported the proposal. Therefore, Plaintiff now understood why
13 Mayor Sanders’ office was upset with Plaintiff’s cooperation with Detective Vile, Agent
14 Cook, and the Ethics Commission regarding debarring LiMandri from receiving any
15 contracts for public funds.

- 16 34. On or about October 20, 2008, Plaintiff was summoned to a meeting with Mayor Sanders’
17 office. In this meeting, Mayor Sanders’ office announced a reorganization of THE
18 CITY’s workforce. Under this reorganization, Mayor Sanders’ office announced that one-
19 third of the staff in Plaintiff’s division would be transferred from under Plaintiff’s
20 authority, and would now report directly to Mayor Sanders’ office. However, this
21 reorganization failed to comply with the required Business Process Reengineering
22 (“BPR”) plan implemented by THE CITY to reorganize staff.
- 23 35. Additionally, In or around the later part of October 2008, Mayor Sanders’ office
24 announced that THE CITY was going to lay-off employees. On or about November 5,
25 2008, THE CITY posted a list of eliminated positions. Plaintiff’s position was not
26 included on the list of those THE CITY sought to eliminate. Deputy Chief Anderson told
27 Plaintiff that his position was secure.
- 28 36. On or about November 8, 2008, Plaintiff received a telephone call from a personal friend,

1 who was an engineer employed by THE CITY. Plaintiff's friend told him that he heard
2 that Plaintiff had lost his job with THE CITY. Plaintiff told his friend that he must be
3 mistaken, because his position was not one of those eliminated. Plaintiff's friend told him
4 that Plaintiff's termination was announced during his department meeting on or about
5 November 5, 2008, by his Director, Patti Boekamp. The week of November 10, 2008,
6 two additional employees of THE CITY informed Plaintiff that there was a rumor that
7 Plaintiff was being terminated.

- 8 37. On or about November 14, 2008, Plaintiff confronted Deputy Chief Anderson regarding
9 the rumor that he was terminated. After first acting surprised, Deputy Chief Anderson
10 finally admitted to Plaintiff that he was being terminated as of January 1, 2009.
11 Furthermore, Deputy Chief Anderson stated that Mayor Sanders' office instructed him
12 that he was not allowed to disclose the termination to Plaintiff. Deputy Chief Anderson
13 informed Plaintiff that Assistant Deputy Chief Murray would be "bumped down" into
14 Plaintiff's position, and that Plaintiff was to train Assistant Deputy Chief Murray for the
15 next few weeks.
- 16 38. Plaintiff asked Deputy Chief Anderson if his cooperation with Detective Vile, Agent
17 Cook, and the Ethics Commission was considered in THE CITY's decision to terminate
18 his employment. Deputy Chief Anderson replied, "It certainly ruined [Plaintiff's]
19 relationship with Mayor Sanders' office, and Mayor Sanders's office lost their trust in
20 [Plaintiff]."
- 21 39. On or about November 21, 2008, Deputy Chief Anderson informed Plaintiff that
22 November 21, 2008, as opposed to January 1, 2009, would be Plaintiff's final day of
23 work. Deputy Chief Anderson instructed Plaintiff that he had to be "cleared out by 5:00
24 p.m."
- 25 40. Plaintiff is informed and believes and thereon alleges that his termination was motivated
26 by his cooperation with Detective Vile, Agent Cook, and the Ethics Commission, as
27 stated herein.
- 28 41. Plaintiff is further informed and believes and thereon alleges that his termination was

motivated by his cooperation with HUD, concerning HUD's audit of THE CITY's past management of HUD funds.

FIRST CAUSE OF ACTION

RETALIATION

[Cal. Labor Code § 1102.5]

- 6 42. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
7 the preceding paragraphs as though fully set forth herein.

8 43. At all times mentioned herein, California Labor Code § 1102.5 (“section 1102.5”) was in
9 effect, and binding on Defendant. Section 1102.5 provides that an employer may not
10 make, adopt, or enforce any rule, regulation, or policy preventing an employee from
11 disclosing information to a government or law enforcement agency, where the employee
12 has reasonable cause to believe that the information discloses a violation of state or
13 federal statute, or a violation or noncompliance with a state or federal rule or regulation.
14 Section 1102.5 further provides that an employer may not retaliate against an employee
15 for disclosing information to a government or law enforcement agency, where the
16 employee has reasonable cause to believe that the information discloses a violation of
17 state or federal statute, or a violation or noncompliance with a state or federal rule or
18 regulation. Section 1102.5 further provides that an employee may not retaliate against an
19 employee for refusing to participate in an activity that would result in violation of state or
20 federal statute, or a violation or noncompliance with a state or federal rule or regulation.

21 44. Plaintiff believes and thereon alleges that his disclosure of information to the San Diego
22 Police Department, Federal Bureau of Investigation, and/or Ethics Commission, as set
23 forth herein, was a motivating factor in Defendant’s adverse actions directed against him
24 as set forth herein. Such actions are unlawful, and retaliatory in violation of section
25 1102.5, and have resulted in damage and injury to Plaintiff, as alleged herein.

26 45. As a direct, foreseeable, and proximate result of Defendant’s conduct, Plaintiff has
27 sustained and continues to sustain substantial losses in earnings, employment benefits,
28 employment opportunities, and Plaintiff has suffered other economic losses in an amount

- 1 to be determined at time of trial. Plaintiff has sought to mitigate these damages.
- 2 46. As a proximate result of Defendant's willful, knowing and intentional discrimination
- 3 against Plaintiff, she has suffered and continues to suffer humiliation, emotional distress,
- 4 loss of reputation, and mental and physical pain and anguish, all to his damage in a sum to
- 5 be established according to proof.
- 6 47. As a result of Defendant's deliberate, outrageous, despicable conduct, plaintiff is entitled
- 7 to recover punitive and exemplary damages in an amount commensurate with Defendant's
- 8 wrongful acts and sufficient to punish and deter future similar reprehensible conduct.
- 9 48. In addition to such other damages as may properly be recovered herein, Plaintiff is
- 10 entitled to recover prevailing party attorney fees.

11 **SECOND CAUSE OF ACTION**

12 **RETALIATION**

13 **[San Diego Municipal Code § 26.0415]**

- 14 49. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
- 15 the preceding paragraphs as though fully set forth herein.
- 16 50. At all times mentioned herein, San Diego Municipal Code § 26.0415 ("section 26.0415")
- 17 was in effect, and binding on Defendant. Section 26.0415 provides that it is unlawful to
- 18 use or threaten to use any official authority, including discipline or termination, to
- 19 discourage, restrain, or interfere with any person acting in good faith to make a complaint
- 20 or provide information to the Ethics Commission.
- 21 51. Plaintiff believes and thereon alleges that his disclosure of information to the San Diego
- 22 Police Department, Federal Bureau of Investigation, and/or Ethics Commission, as set
- 23 forth herein, was a motivating factor in Defendant's adverse actions directed against him
- 24 as set forth herein. Such actions are unlawful, and retaliatory in violation of section
- 25 26.0415, and have resulted in damage and injury to Plaintiff, as alleged herein.
- 26 52. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
- 27 sustained and continues to sustain substantial losses in earnings, employment benefits,
- 28 employment opportunities, and Plaintiff has suffered other economic losses in an amount

- 1 to be determined at time of trial. Plaintiff has sought to mitigate these damages.
- 2 53. As a proximate result of Defendant's willful, knowing and intentional discrimination
- 3 against Plaintiff, she has suffered and continues to suffer humiliation, emotional distress,
- 4 loss of reputation, and mental and physical pain and anguish, all to his damage in a sum to
- 5 be established according to proof.
- 6 54. As a result of Defendant's deliberate, outrageous, despicable conduct, plaintiff is entitled
- 7 to recover punitive and exemplary damages in an amount commensurate with Defendant's
- 8 wrongful acts and sufficient to punish and deter future similar reprehensible conduct.
- 9 55. In addition to such other damages as may properly be recovered herein, Plaintiff is
- 10 entitled to recover prevailing party attorney fees.

11 **THIRD CAUSE OF ACTION**

12 **RETALIATION**

13 **[San Diego Municipal Code § 27.3573]**

- 14 56. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
- 15 the preceding paragraphs as though fully set forth herein.
- 16 57. At all times mentioned herein, San Diego Municipal Code § 27.3573 ("section 27.3573")
- 17 was in effect, and binding on Defendant. Section 27.3573 provides that it is unlawful for
- 18 a city official to use or threaten to use any official authority or other influence to
- 19 discourage, restrain, or interfere with any other person for the purpose of preventing such
- 20 person from acting in good faith to report or otherwise bring to the attention of the Ethics
- 21 Commission or other appropriate agency, office, or department any information which, if
- 22 true, would constitute: a work-related violation by a city official of any law or regulation;
- 23 a gross waste of city funds; a gross abuse of authority; a conflict of interest of a city
- 24 official; or a specific and substantial danger to public health or safety due to an act or
- 25 omission of a city official, use of a city office or position, or use of city resources for
- 26 personal gain.
- 27 58. Plaintiff believes and thereon alleges that his disclosure of information to the San Diego
- 28 Police Department, Federal Bureau of Investigation, and/or Ethics Commission, as set

- forth herein, was a motivating factor in Defendant's adverse actions directed against him as set forth herein. Such actions are unlawful, and retaliatory in violation of section 27.3573, and have resulted in damage and injury to Plaintiff, as alleged herein.
59. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has sustained and continues to sustain substantial losses in earnings, employment benefits, employment opportunities, and Plaintiff has suffered other economic losses in an amount to be determined at time of trial. Plaintiff has sought to mitigate these damages.
60. As a proximate result of Defendant's willful, knowing and intentional discrimination against Plaintiff, she has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and physical pain and anguish, all to his damage in a sum to be established according to proof.
61. As a result of Defendant's deliberate, outrageous, despicable conduct, plaintiff is entitled to recover punitive and exemplary damages in an amount commensurate with Defendant's wrongful acts and sufficient to punish and deter future similar reprehensible conduct.
62. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled to recover prevailing party attorney fees.

FOURTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

[Cal. Labor Code § 1102.5]

63. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
64. At all times mentioned herein, section 1102.5 was in effect, and binding on Defendant.
65. Plaintiff believes and thereon alleges that his disclosure of information to the San Diego Police Department, Federal Bureau of Investigation, and/or Ethics Commission, as set forth herein, was a motivating factor in Defendant's adverse actions directed against him as set forth herein. Such actions are unlawful, and retaliatory in violation of section 1102.5, and have resulted in damage and injury to Plaintiff, as alleged herein.
66. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has

- 1 sustained and continues to sustain substantial losses in earnings, employment benefits,
2 employment opportunities, and Plaintiff has suffered other economic losses in an amount
3 to be determined at time of trial. Plaintiff has sought to mitigate these damages.
- 4 67. As a proximate result of Defendant's willful, knowing and intentional discrimination
5 against Plaintiff, she has suffered and continues to suffer humiliation, emotional distress,
6 loss of reputation, and mental and physical pain and anguish, all to his damage in a sum to
7 be established according to proof.
- 8 68. As a result of Defendant's deliberate, outrageous, despicable conduct, plaintiff is entitled
9 to recover punitive and exemplary damages in an amount commensurate with Defendant's
10 wrongful acts and sufficient to punish and deter future similar reprehensible conduct.
- 11 69. In addition to such other damages as may properly be recovered herein, Plaintiff is
12 entitled to recover prevailing party attorney fees.

13 **FIFTH CAUSE OF ACTION**

14 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

15 **[San Diego Municipal Code § 26.0415]**

- 16 70. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
17 the preceding paragraphs as though fully set forth herein.
- 18 71. At all times mentioned herein, section 26.0415 was in effect, and binding on Defendant.
- 19 72. Plaintiff believes and thereon alleges that his disclosure of information to the San Diego
20 Police Department, Federal Bureau of Investigation, and/or Ethics Commission, as set
21 forth herein, was a motivating factor in Defendant's adverse actions directed against him
22 as set forth herein. Such actions are unlawful, and retaliatory in violation of section
23 26.0415, and have resulted in damage and injury to Plaintiff, as alleged herein.
- 24 73. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
25 sustained and continues to sustain substantial losses in earnings, employment benefits,
26 employment opportunities, and Plaintiff has suffered other economic losses in an amount
27 to be determined at time of trial. Plaintiff has sought to mitigate these damages.
- 28 74. As a proximate result of Defendant's willful, knowing and intentional discrimination

1 against Plaintiff, she has suffered and continues to suffer humiliation, emotional distress,
2 loss of reputation, and mental and physical pain and anguish, all to his damage in a sum to
3 be established according to proof.

- 4 75. As a result of Defendant's deliberate, outrageous, despicable conduct, plaintiff is entitled
5 to recover punitive and exemplary damages in an amount commensurate with Defendant's
6 wrongful acts and sufficient to punish and deter future similar reprehensible conduct.
7 76. In addition to such other damages as may properly be recovered herein, Plaintiff is
8 entitled to recover prevailing party attorney fees.

9 **SIXTH CAUSE OF ACTION**

10 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

11 **[San Diego Municipal Code § 27.3573]**

- 12 77. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
13 the preceding paragraphs as though fully set forth herein.
14 78. At all times mentioned herein, section 27.3573 was in effect, and binding on Defendant.
15 79. Plaintiff believes and thereon alleges that his disclosure of information to the San Diego
16 Police Department, Federal Bureau of Investigation, and/or Ethics Commission, as set
17 forth herein, was a motivating factor in Defendant's adverse actions directed against him
18 as set forth herein. Such actions are unlawful, and retaliatory in violation of section
19 27.3573, and have resulted in damage and injury to Plaintiff, as alleged herein.
20 80. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
21 sustained and continues to sustain substantial losses in earnings, employment benefits,
22 employment opportunities, and Plaintiff has suffered other economic losses in an amount
23 to be determined at time of trial. Plaintiff has sought to mitigate these damages.
24 81. As a proximate result of Defendant's willful, knowing and intentional discrimination
25 against Plaintiff, she has suffered and continues to suffer humiliation, emotional distress,
26 loss of reputation, and mental and physical pain and anguish, all to his damage in a sum to
27 be established according to proof.
28 82. As a result of Defendant's deliberate, outrageous, despicable conduct, plaintiff is entitled

1 to recover punitive and exemplary damages in an amount commensurate with Defendant's
2 wrongful acts and sufficient to punish and deter future similar reprehensible conduct.
3 83. In addition to such other damages as may properly be recovered herein, Plaintiff is
4 entitled to recover prevailing party attorney fees.

5 **SEVENTH CAUSE OF ACTION**

6 **INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS**

- 7 84. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
8 the preceding paragraphs as though fully set forth herein.
9 85. Defendant's intentional conduct was extreme and outrageous. Defendant intended to
10 cause Plaintiff to suffer extreme emotional distress. Plaintiff did suffer extreme
11 emotional distress.
12 86. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has
13 sustained and continues to sustain substantial losses in earnings and other employment
14 benefits and opportunities. Plaintiff has sought to mitigate these damages.
15 87. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has
16 suffered and continues to suffer humiliation, emotional distress, loss of reputation, and
17 mental and physical pain and anguish, all to his damage in a sum to be established
18 according to proof.

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WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages, including loss of wages, promotional opportunities, benefits and other opportunities of employment, according to proof;
 2. For special damages in an amount according to proof;
 3. For punitive damages in an amount necessary to make an example of and to punish defendants, and to deter future similar misconduct;
 4. For mental and emotional distress damages;
 5. For back pay, front pay and other monetary relief;
 6. For costs of suit, including attorneys fees as permitted by law;
 7. For an award if interest, including prejudgment interest, at the legal rate;
 8. For such other and further relief as the Court deems proper and just under all the circumstances.

PLAINTIFF SCOTT KESSLER demands a jury trial on all issues in this case.

16 | DATED: May ___, 2009

LAW OFFICE OF JOSHUA D. GRUENBERG

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COREY P. HANRAHAN, ESQ.
Attorneys for Plaintiff,
SCOTT KESSLER

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8 **EXHIBIT A**
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11 (1) PLAINTIFF'S CLAIM FOR DAMAGES AGAINST THE CITY PURSUANT TO
12 CALIFORNIA GOVERNMENT CODE § 910, ET SEQ.
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