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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN FRANCISCO**

14
15 KEITH BARAKA, an individual,
16
17 Plaintiff,

17 v.

18 CITY AND COUNTY OF SAN FRANCISCO,
19 and Does 1 through 10, inclusive,
20
21 Defendants.

CASE NO.: CGC-20-587897

AMENDED COMPLAINT FOR
DAMAGES:

1. DISCRIMINATION BASED ON SEXUAL ORIENTATION IN VIOLATION OF FEHA;
2. RACE DISCRIMINATION IN EMPLOYMENT-FEHA
3. HARASSMENT IN VIOLATION OF FEHA;
4. UNLAWFUL RETALIATION FOR OPPOSING DISCRIMINATION BASED ON SEXUAL ORIENTATION IN VIOLATION OF FEHA UNLAWFUL RETALIATION FOR OPPOSING RACE DISCRIMINATION IN VIOLATION OF FEHA;
5. UNLAWFUL RETALIATION FOR OPPOSING DISCRIMINATION BASED ON GENDER IDENTITY IN VIOLATION OF FEHA
6. FAILURE TO TAKE REASONABLE

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STEPS TO INVESTIGATE AND
PREVENT DISCRIMINATION,
HARASSMENT, AND RETALIATION
IN VIOLATION OF FEHA; AND

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DEMAND FOR JURY TRIAL

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Plaintiff KEITH BARAKA (“Mr. Baraka” or “Plaintiff”) alleges as follows:

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I. PRELIMINARY STATEMENT

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Plaintiff Keith Baraka joined the ranks of the San Francisco Fire Department in 1997. As a black and gay individual, he thought he found his dream job after moving to San Francisco from his native Ohio. After 23 years of employment, Mr. Baraka still enjoys the honorable work of being a firefighter and being in service to his community. However, he has not enjoyed working for the San Francisco Fire Department. At Station 6, located in the heart of the Castro, he was the only openly gay firefighter assigned to the station. During his time at Station 6, Mr. Baraka not only witnessed maltreatment of the neighborhood residents because of their sexual orientation and gender identity by his fellow firefighters—he was also a target of similar harassment himself. Mr. Baraka was consistently harassed based on his race and sexual orientation. His locker was broken into, his name was erased from the assignment board, when he entered the room, all non-black personnel would leave. This went on for many years. This treatment occurred within the ranks of his peers and was further sanctioned by his supervisors. Instead of disciplining Mr. Baraka’s co-workers for engaging in discriminatory behavior, it was Mr. Baraka who was disciplined. The disciplinary process has continued to be weaponized against Mr. Baraka because he has spoken out about the discrimination he has experienced and has come to the aid of others who have experienced similar discrimination. The San Francisco Fire Department continues to resist efforts to diversify its ranks. When brave individuals like Mr. Baraka speak out against the discrimination pervasive throughout the department, its leadership takes active measures to single out those individuals and unlawfully punish them.

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The Chief of Department, Jeanine Nicholson recently admitted to the fact the department has failed to adequately recruit diverse candidates for employment. And she admitted the fact that

1 barriers to promotion for members of the Department’s diverse ranks were issues known to the
2 management and to her when she ascended to the role of Chief. Thus, it is clear that there is
3 rampant discrimination within the Department and those in management positions were aware of
4 this fact. Mr. Baraka has been one of its victims. In response to the Department’s discriminatory
5 conduct against Mr. Baraka, he hereby sues for relief under the California Fair Employment and
6 Housing Act (“FEHA”).

7 **II. JURISDICTION AND VENUE**

8 1. Jurisdiction and venue are proper in this Court because some or all of the claims
9 alleged herein arose in San Francisco County and some or all of the parties were and/or are
10 residents of San Francisco County or are doing or did business in San Francisco County at all times
11 relevant herein.

12 2. The amount in controversy in this matter exceeds the sum of \$25,000.00, exclusive of
13 interest and costs.

14 3. Plaintiff has met all of the jurisdictional requirements for proceeding with his claims
15 under the Fair Employment and Housing Act ("FEHA"), codified at California Government Code,
16 Sections 12940, *et. seq.*, and 12960, *et seq.*, by timely filing administrative complaints with the
17 Department of Fair Employment and Housing ("DFEH") and receiving Notice of Case Closure and
18 a Right to Sue letter. In addition, Plaintiff has complied with the Requirements of California
19 Government Code Section 12962 by serving Defendants with his DFEH Charge and Right-to-Sue
20 Letter.

21 **III. PARTIES**

22 4. Plaintiff KEITH BARAKA is an individual who at all times pertinent to this lawsuit
23 was a resident of the County of San Francisco, State of California. Plaintiff is entitled to the
24 protections of the Fair Employment and Housing Act (“FEHA”) because he is black and gay.
25 Plaintiff has been employed by Defendant employers since July, 1997.

26 5. Defendant City and County of San Francisco (“CCSF”) is and/or was the employer
27 of the Plaintiff herein. Except for Human Resources Director Micki Callahan and other Human
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1 Resources personnel, all individuals referred to herein are or were employed within the SFFD.
2 Accordingly, as used in this complaint “SFFD” and “Fire Department” refer to “employer.”
3 Plaintiff is ignorant of the true names or capacities of the defendants sued here under the fictitious
4 names DOE 1 through DOE 20, inclusive. Plaintiff is informed and believes that each DOE
5 defendant was responsible in some manner for the occurrences and injuries alleged in this
6 complaint.

7 6. At all times mentioned in the causes of action into which this paragraph is
8 incorporated by reference, each and every defendant was the agent or employee of each and every
9 other defendant. In doing the things alleged in the causes of action into which this paragraph is
10 incorporated by reference, each and every defendant was acting within the course and scope of the
11 agency or employment and was acting with the consent, permission, and authorization of each
12 remaining defendant. All actions of each defendant alleged in the causes of action into which this
13 paragraph is incorporated by reference were ratified and approved by the officers or managing
14 agents of every other defendant.

15 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

16 7. Plaintiff has fully exhausted his statutory administrative remedies.

17 **V. STATEMENT OF FACTS**

18 8. On or about July 30, 2020, in public remarks at City of San Francisco Supervisor
19 meeting, the current Chief of the San Francisco Fire Department Jeanine Nicholson stated “we are
20 not doing a good job in terms of recruiting a good amount of diverse candidates.” She also stated
21 that barriers to promotion for those employees from diverse backgrounds were among the issues
22 she knew the department needed to address when she became chief in 2019.

23 9. Keith Baraka started his 23 year long career with the SFFD in July, 1997 as a
24 Miscellaneous Employee while being trained on-the-job. This assignment was fairly standard of
25 new hires.

26 10. In November of 1997, Mr. Baraka was hired as an H-2 Firefighter and placed on
27 one year probation. This was also a standard assignment for new hires for this class of employee.
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1 11. Mr. Baraka served his probationary term at Station 1. At the end of his time there,
2 he was pulled aside by a fellow firefighter who was more senior and had mentored Mr. Baraka. He
3 warned Mr. Baraka that the culture of the department was such that for him to be an out and black
4 gay man would be difficult for other employees to accept. It would not be easy for him going
5 forward. Mr. Baraka had not experienced anything negative at this point, but that would soon
6 change.

7 12. Starting in January, 1999, Mr. Baraka was assigned to Station 18. He remained
8 there for 3 years.

9 13. The harassment started at Station 18 when Mr. Baraka was routinely singled out by
10 his supervisor, Captain Mike Ahumada for being an out, gay man. He frequently subjected Mr.
11 Baraka to racist jokes as well. Mr. Baraka filed his first EEO complaint while he worked at Station
12 18.

13 14. Starting in January of 2002, Mr. Baraka was assigned to Station 6 as an Assigned
14 EMT and later as a Driver on Engine 6. Station 6 is located in the Castro neighborhood of San
15 Francisco.

16 15. One of the first things Mr. Baraka did was to put a rainbow sticker on his helmet in
17 order to communicate that he was member of the community that was being served by Station 6.
18 The image and colors of the rainbow are a symbol of gay pride and visibility.

19 16. It was at Station 6 that Mr. Baraka experienced being a target of discrimination from
20 both his peers *and* from the management staff. He was the only out gay and black firefighter at the
21 stationhouse. A station that was situated in the heart of the Castro, the epicenter of the Lesbian,
22 Gay, Bisexual, Transgender and Queer (LGBTQ) community in San Francisco.

23 17. While at Station 6, Mr. Baraka was denied the opportunity to be an engine driver, a
24 prestigious and competitive role at each station house. Other non-black firefighters at the station
25 and less senior to him were given these opportunities before he was given one.

26 18. At Station 6, Mr. Baraka was denied the opportunity to serve in other “premium”
27 and sought after shifts. Shifts that other, less senior and non-black firefighters were given ahead of
28 him.

1 19. Mr. Baraka’s locker was broken into several times while he worked at Station 6.
2 His personal objects were stolen and/or destroyed.

3 20. When Mr. Baraka would enter the stationhouse kitchen and greet the occupants, all
4 non-black individuals, they would all stand up and leave the room.

5 21. Mr. Baraka was called names such as “faggot” and “sissy”—derogatory terms used
6 against those who are gay or perceived as gay.

7 22. Mr. Baraka was called “sambo,” a racial epithet.

8 23. Mr. Baraka would write requests to trade shifts on the stationhouse white board, a
9 common way to solicit coverage for an assigned shift. His name was often erased shortly after he
10 wrote it.

11 24. At one point, members of Station 6 were featured in a local magazine, called 7X7.
12 Mr. Baraka was present for the group photo and wore his helmet with the rainbow pride sticker. It
13 was visible in the photograph. The magazine cover was framed and hung on the wall of the
14 stationhouse. Shortly after, Mr. Baraka observed that it was on the floor and broken. He was told
15 by another firefighter “We don’t want that picture in here.”

16 25. In one instance, after already being signed in for his shift and in uniform, Captain
17 Ray Guzman called roll call (a rare occurrence at Station 6). Mr. Baraka was in another part of the
18 stationhouse. Given this unexpected and rare event, he made his way to the roll call as soon as he
19 was aware it was happening. He was one minute late. Later that day, Captain Guzman
20 reprimanded for Mr. Baraka being tardy even though he was signed in and in uniform at the time of
21 the roll call (which was the custom at Station 6 at that time). This occurred shortly after Captain
22 Guzman’s arrival to Station 6. He had made it clear what he thought of Mr. Baraka at that time.

23 26. After years of dealing with the stress of being the target of discrimination and his
24 superiors participating in that conduct or turning a blind eye toward it, Mr. Baraka began to
25 experience a great deal of stress. He began to struggle with mental health issues.

26 27. As part of his therapy and coping with the mental health stress he was enduring, Mr.
27 Baraka worked with a therapy dog. He requested and received oral permission from Captain
28 Driscoll to bring this dog to the stationhouse with him. He brought his therapy dog to the

1 stationhouse on at least three occasions without incident. Despite having Captain Driscoll's
2 permission, Mr. Baraka was ordered by Acting Captain Mark Castagnola to remove the dog from
3 the station. Despite the fact that Captain Castagnola had been present at the prior occasions when
4 Mr. Baraka brought his dog and said nothing, he filed a formal complaint and initiated disciplinary
5 charges against Mr. Baraka without honoring the progressive discipline requirements and giving a
6 warning. Subsequent to this, Mr. Baraka was disciplined with an 8 day suspension. He challenged
7 the discipline and it was reduced to 2 days. Dogs at firehouses are a frequent mainstay and other
8 non-black firefighters have frequently brought their dogs to the stationhouses. However, only Mr.
9 Baraka was ever levied with an 8 day suspension for doing so. In fact, as of December 2020, the
10 SFFD has endorsed a policy of using a Peer Support K-9 from Thor's Hope
11 Foundation/Performance K-9 Foundation. The department is seeking volunteer employees to be
12 trained as K-9 handlers per a communication from Natasha Parks, the Health, Safety and Wellness
13 Battalion Chief sent on December 1, 2020.

14 28. Because Mr. Baraka challenged the disparate discipline he received, he began
15 experiencing retaliatory conduct from his superiors. He filed complaints with the Department of
16 Human Resources (DHR) and they were ignored. Only because Mr. Baraka was persistent in
17 following up on these complaints for months, did DHR conduct a paltry investigation. DHR did
18 not take any action against the individuals complained of by Mr. Baraka.

19 29. There was so much disdain for Mr. Baraka's presence at Station 6, he was offered
20 money to leave the assignment. He did not accept.

21 30. After nearly 11 years at Station 6, Mr. Baraka finally requested a new assignment.
22 He moved to Station 21. On one of his last days at Station 6, Mr. Baraka found a note in his
23 locker. It read, "Good bye, Good Riddance, Bitch!!"

24 31. On at least two separate occasions, Mr. Baraka was asked by a senior official,
25 Captain Anita Paratley, if he was HIV positive.

26 32. Captain Paratley, a non-black individual, co-presented a cultural competency class
27 with Mr. Baraka for new recruits for which she developed materials that included the use of the
28 "N" word. She did not disclose these materials to Mr. Baraka ahead of time, so he was unaware of

1 the content until she produced them in the training. The use of the term in the materials was
2 extremely offensive to Mr. Baraka and to the other Black/African-American recruits in the training
3 (as they later relayed to the Chief of the Department in a letter). Mr. Baraka ended the session and
4 addressed the impropriety of using such materials in a cultural competence training. At SFFD, it is
5 unacceptable to point out the failings of one's superiors and Mr. Baraka would experience
6 retaliation for speaking out publicly about Captain Paratley's use of the "N" word.

7 33. An EEO complaint was filed regarding the "N" word incident. After conducting an
8 extensive investigation with several members of the probationary class who were present in the
9 cultural competency training, DHR administratively closed the complaint. No one was disciplined
10 and nothing else was done to remedy the harm of the incident.

11 34. Mr. Baraka has filed his own EEO complaints of discrimination with DHR on or
12 around the following dates: May 2003, January 2009, December 2012, April 2018 and July, 2020
13 (these are in addition to the one he filed while at Station 18).

14 35. While at Station 21, Mr. Baraka experienced a completely different culture. He felt
15 valued and respected. He remained there for 3 years.

16 36. In 2014, Mr. Baraka, along with a few other LGBTQ-identified employees of SFFD
17 formed an Employee Resource Group (ERG) in order to offer support to these employees and to
18 help fight the discrimination they were experiencing in the Department. Mr. Baraka was selected
19 as Chair of the group. The group took the name SF ResQ "ResQ."

20 37. ResQ received recognition from the Chief of Department in August of 2014.

21 38. In his work with ResQ, Mr. Baraka advocated publicly and privately within SFFD
22 for opportunities to discuss ways to bring cultural sensitivity training regarding LGBTQ issues to
23 the department. He also advocated for other LGBTQ employees who were coming forward with
24 their own stories of discriminatory treatment. ResQ sought out meetings with the Chief of the
25 Department where its members addressed their concerns directly. She noted that ResQ engaged
26 with her office more than the other ERGs.

1 39. On June 20, 2017, SF ResQ was given the highest commendation by the San
2 Francisco Board of Supervisors for “advancing the cause of equality for the LGBTQ community
3 and for advocacy and support of current and past members of the San Francisco Fire Department.”

4 40. Despite the recognition from the Chief and the commendation from the San
5 Francisco Board of Supervisors, SF ResQ was excluded from providing information in the recently
6 published Racial Equity Action Plan (REAP), a publication of the Racial Equity Advisory
7 Committee (REAC) of the Diversity, Equity and Inclusion Office (DEIO). All of the other
8 employee resource groups were invited to provide material for this publication. The leadership of
9 SF ResQ was also invited to provide a submission. The leadership provided a timely submission,
10 but it was rejected and not included in the final publication. As a result, the page highlighting SF
11 ResQ is virtually blank, with little information about the group for employees. Each of the
12 employee resource groups have information about their group except SF ResQ. This brochure
13 outlines the Racial Equity Action Plan for years 2021-2023 but does not offer substantive
14 information about resources for the LGBT/Queer employees of the department, despite receiving a
15 timely submission from SF ResQ’s leadership team.

16 41. In order to advance in his career, Mr. Baraka continued to look for opportunities in
17 the SFFD. He applied and was hired for the Firefighter/Recruitment Coordinator role in February
18 of 2016.

19 42. Upon being offered the job, Mr. Baraka was informed that he would be receiving a
20 pay cut. He was also informed that he could not work overtime in his Recruiter role. Not being
21 able to work overtime meant that he had to flex his schedule in order to attend off-hour and
22 weekend events that fall within his recruitment duties.

23 43. For his Recruiter role, Mr. Baraka was classified as an H-2 firefighter. He was also
24 told that he would report to the Division of Training (DOT) Captain and was assigned to work out
25 of the Division of Training offices at SFFD headquarters. He was given business cards that stated
26 he worked for DOT. He was featured on the website as a staff member of the DOT. He even paid
27 “house dues” at DOT (a common practice to solicit funds for common items like coffee supplies).

1 44. Mr. Baraka was aware that other firefighters who were performing administrative
2 duties received a higher classification for this work. Typically, they were classed as H-18 (as
3 defined in the Civil Service Rules). Other employees doing similar Coordinator roles such as the
4 Coordinator of Community Service and the COVID Response Coordinator were classified as H-18.
5 This was the case for SFFD employees who were not black and working in those roles.

6 45. Being classed as an H-18 over an H-2 would mean a difference in pay of at least
7 \$20 more per hour.

8 46. Mr. Baraka was the only person doing a Coordinator role who was not classified as
9 an H-18. He was kept at the H-2 classification. Mr. Baraka is also the only black and gay
10 firefighter in a Coordinator role who was receiving less pay than other non-black employees in
11 similar roles.

12 47. As a result of this difference in pay for substantially similar work, Mr. Baraka asked
13 for an increase in his pay. As part of his advocacy for an increase in his pay to be equal to those of
14 his peers doing the same work, Mr. Baraka requested documents through a public records request.
15 In these documents he requested and received a list of DOT employees, their classifications and
16 their pay rate. Upon receiving this list of DOT employees, Mr. Baraka observed that he was not on
17 the list. When he inquired why he was not on the list, he was told by management that he was not
18 a DOT employee.

19 48. To date, Mr. Baraka is not listed on the DOT roster and has not been given a job
20 description for his role. He was given a list of duties, however it was not a list of *all* his expected
21 duties. He has not been given regular performance reviews by those who directly supervise his
22 work. Without a clear job description, a consistent supervisor or consistent and clear guidance in
23 how to perform his job, the Department has created a set of circumstances whereby it can use the
24 resulting ambiguities in his current role against Mr. Baraka to create a narrative that he is not
25 performing his job duties properly. And in fact, Mr. Baraka has been targeted with arbitrary and
26 capricious disciplinary investigations as retaliation for his complaints of discrimination and
27 requests for equal pay. The following paragraphs outline examples of this use of the disciplinary
28 process to further discriminate against Mr. Baraka and harass him:

- 1 a. Mr. Baraka has been hamstrung in being able to perform his job duties. The current
2 Chief of the Department, Jeanine Nicholson, while serving as Assistant Chief,
3 ordered Mr. Baraka to stop meeting with recruits while he serves as Recruitment
4 Coordinator.
- 5 b. The current Chief of the Department, Jeanine Nicholson, while serving as Assistant
6 Chief, failed to invite Mr. Baraka, the only Recruitment Coordinator in SFFD, to a
7 meeting about recruitment strategies with another county fire department.
- 8 c. On October 4, 2019, Mr. Baraka received a letter from the Chief of the Department
9 Jeanine Nicholson outlining that he had violated City policies and that he would be
10 subject to an investigation. However, this letter did not outline the nature of the
11 conduct that allegedly violated policy.
- 12 d. On February 3, 2020, Mr. Baraka attended a meeting before the Civil Service
13 Commission (CSC) that was hearing an appeal filed by a ResQ member who
14 identifies as black and transgender. This member was appealing DHR's
15 administrative closure of his EEO complaint for discrimination based on gender
16 identity. Mr. Baraka spoke during the open comment period where he publicly
17 shared that he has recruited qualified transgender individuals to apply for
18 employment to the SFFD, only to have those recruits denied opportunities. Mr.
19 Baraka attended this meeting on his own time and out of uniform.
- 20 e. On March 5, 2020, Mr. Baraka attended a meeting of the Human Rights
21 Commission (HRC) to discuss outreach opportunities to members of the LGBTQ
22 community. He attended at the invitation of HRC because of his Recruitment
23 Coordinator role at SFFD. Because this fit squarely within his job duties, Mr.
24 Baraka attended the meeting in uniform.
- 25 f. On March 10, 2020, Mr. Baraka was counseled by his immediate supervisor Captain
26 Gering and Assistant General Chief Joel Sato for his attendance of the February 3rd
27 CSC appeal hearing and the March 5th HRC meeting. He was informed that his
28 attendance at both events violated policy because they had not been approved.

1 52. As a direct, foreseeable and proximate result of the SFFD's unlawful actions,
2 Plaintiff has suffered and continues to suffer substantial losses in earnings, equity, and other
3 employment benefits and has incurred other economic losses in an amount in excess of the
4 minimum jurisdiction of this Court and according to proof.

5 53. As a further direct, foreseeable and proximate result of the SFFD's unlawful actions,
6 Plaintiff has suffered emotional distress, humiliation, shame, mental anguish and embarrassment all
7 to the Plaintiff's damage in an amount in excess of the minimum jurisdiction of this Court and
8 according to proof.

9 54. As a further direct and proximate result of the SFFD's unlawful actions, Plaintiff
10 was required to and did seek medical attention, and will need medical attention in the future, all to
11 Plaintiff's damages in a sum according to proof.

12 55. As a further direct and proximate result of the SFFD's unlawful actions, Plaintiff
13 was forced to and did retain attorneys, and is accordingly entitled to an award of attorneys' fees
14 and costs according to proof at the time of trial.

15 56. The management of SFFD knew of discriminatory practices within the Department
16 and among managers generally, as evidenced by the Chief's public admissions on July 30, 2020,
17 but took no remedial action or, if remedial action was attempted, it was insufficient and not
18 supervised to assure compliance.

19 57. The adverse employment actions alleged in herein were and are continuing in
20 character.

21 58. Plaintiff is informed and believes and thereon allege that this cause of action is not
22 preempted by the California Workers' Compensation Act on the grounds that discrimination on the
23 basis of sexual orientation is not a risk of employment.

24 59. As a result of the aforesaid acts of discrimination based on sexual orientation,
25 Plaintiff has suffered and is continuing to suffer a loss of wages/salary, benefits and other
26 employee compensation in an amount which is currently unascertained. Plaintiff faces substantial
27 diminution of his future earning capacity and of his future retirement income in amounts which is
28 also currently unascertained. Plaintiff will request leave of the court to amend this Complaint to

1 state the amount of all such damages when they have been ascertained or upon proof at the time of
2 trial.

3 60. As a result of the aforesaid disparate treatment based on sexual orientation, Plaintiff
4 has been held up to great derision and embarrassment with fellow workers, friends, members of the
5 community and their families, and continue to suffer emotional distress because the Defendant
6 demonstrated to the Plaintiff that it would not recognize nor accept him as an employee solely
7 because of his sexual orientation. SFFD acted unreasonably because it knew and/or should have
8 known that its conduct was likely to result in additional, severe mental distress. Plaintiff therefore
9 seeks damages for such emotional distress in an amount to be proven at the time of trial.

10 61. In bringing this action, Plaintiff has been required to retain the services of counsel.
11 Pursuant to California Government Code § 12965(b), he is entitled to and hereby request an award
12 of attorney and expert witness fees and costs of suit.

13 **SECOND CAUSE OF ACTION**
14 **Racial Discrimination in Violation of FEHA**
15 **[Cal. Gov. Code § 12940(a)]**

16 Plaintiff incorporates by reference Paragraphs 1 through 61 of this Complaint as if fully set
17 forth herein and for a cause of action alleges as follows:

18 62. Jurisdiction in this court is invoked pursuant to California Government Code §§12900,
19 12921, 12926, 12940 and 12965 [Collectively referred to as "FEHA"]. SFFD is not exempted
20 from the statutes cited in this paragraph by any local, state or federal laws.

21 63. Plaintiff was targeted on account of his race as a black man.

22 64. There is and has been a long-standing, deep-rooted policy and practice of employment
23 discrimination against Blacks and African Americans in the SFFD.

24 65. Defendant City and County of San Francisco, by and through the San Francisco Fire
25 Department, engaged in racially motivated disparate treatment against the Plaintiff herein as
26 follows:

- 27 A. Refusal or failure to provide assignments to African American
28 employees at the same level as provided to non-members of the
protected class;
- B. Racially disparate discipline;

- C. Involuntary transfers of members of the protected class to less desirable or unwanted positions or assignments;
- D. Destruction or damage of personal property of members of the protected class;
- E. Removal of tools or accessories necessary for employees to perform their duties; and
- F. Demotion.

66. The management of Defendant SFFD knew of racially discriminatory practices in Stations 18 and 6 and in the training of new recruits and among managers generally by way of the multiple EEO complaints over several years, but took no remedial action or, if remedial action was attempted, it was insufficient and not supervised to assure compliance.

67. The adverse employment actions alleged in paragraph 47 herein were and are continuing in character.

68. Plaintiff is informed and believes and thereon alleges that this cause of action is not preempted by the California Workers' Compensation Act on the grounds that discrimination on the basis of race is not a risk of employment.

69. As a result of the aforesaid acts of race discrimination, Plaintiff has suffered and is continuing to suffer a loss of wages/salary, benefits and other employee compensation in an amount which is currently unascertained. Plaintiff faces substantial diminution of his future earning capacity and of his future retirement income in amounts which are also currently unascertained. Plaintiff will request leave of the court to amend this Complaint to state the amount of all such damages when they have been ascertained or upon proof at the time of trial.

70. As a result of the aforesaid racially disparate treatment, Plaintiff has been held up to great derision and embarrassment with fellow workers, friends, members of the community and their families, and continue to suffer emotional distress because the Defendant demonstrated to the Plaintiff that it would not recognize nor accept him as an employee solely because of his race. SFFD acted unreasonably because it knew and/or should have known that its conduct was likely to result in additional, severe mental distress.

71. Plaintiff therefore seek damages for such emotional distress in an amount to be

1 proven at the time of trial.

2 72. In bringing this action, Plaintiff has been required to retain the services of
3 counsel. Pursuant to California Government Code § 12965(b), he is entitled to and hereby
4 requests an award of attorney and expert witness fees and costs of suit.

5 **THIRD CAUSE OF ACTION**
6 **HARASSMENT VIOLATION**
7 **IN VIOLATION OF CAL. GOV'T CODE § 12940(j)**
8 **[AGAINST ALL DEFENDANTS]**

9 Plaintiff incorporates by reference Paragraphs 1 through 72 of this Complaint as if fully set
10 forth herein and for a cause of action alleges as follows:

11 73. At all times herein mentioned, California's Fair Employment and Housing Act
12 ("FEHA"), Cal. Government Code § 12900 *et seq.*, was in full force and effect and was fully
13 binding upon the Employer Defendants. Specifically, section 12940(j) prohibits an employer from
14 harassing an employee on the basis of his sexual orientation and/or race.

15 74. The actions of Captains Ahumada, Guzman, Castagnola, Paratley, Deputy Chief
16 Velo and Chief Nicholson, towards Plaintiff, their subordinate, as described herein, created a
17 hostile environment that materially altered Plaintiff's working conditions and that constitutes
18 harassment based on sexual orientation and/or race in violation of Cal. Gov't Code § 12940(j)(1).

19 75. As a direct, foreseeable and proximate result of the Employer Defendants' unlawful
20 actions, Plaintiff has suffered economic damages, including back pay, front pay, equity, benefits,
21 and other compensation.

22 76. As a further direct, foreseeable and proximate result of the Employer Defendants'
23 unlawful actions,

24 77. Plaintiff has suffered emotional distress, humiliation, shame, mental anguish and
25 embarrassment all to the Plaintiff's damage in an amount in excess of the minimum jurisdiction of
26 this Court and according to proof.

27 78. As a further direct and proximate result of the Employer Defendants' unlawful
28 actions, Plaintiff was required to and did seek medical attention, and will need medical attention in
the future, all to Plaintiff's damages in a sum according to proof.

79. As a further direct and proximate result of the Employer Defendants' unlawful
actions, Plaintiff was forced to and did retain attorneys, and is accordingly entitled to an award of
attorneys' fees and costs according to proof at the time of trial.

1 **FOURTH CAUSE OF ACTION**
2 **Retaliation in Violation of FEHA**
3 **Cal.Gov. Code § 12940 (h)**

4 Plaintiff incorporates by reference all of the allegations contained in paragraphs 1 through
5 79 with the same force for and effect as if fully pleaded at length herein

6 80. This is an action for damages arising from retaliation against the Plaintiff for
7 having opposed unlawful employment practices based on sexual orientation/and or gender
8 identity. This action is brought pursuant to the California FAIR EMPLOYMENT AND
9 HOUSING ACT ["FEHA"], i.e., Cal. Gov. Code §§ 12900, 12921, 12926, 129240 and 12965.

10 81. Plaintiff engaged in protected activity by stating his opposition to the use of
11 language such as “sissy” and “fag” amongst the other firefighters.

12 82. Plaintiff further engaged in protected activity by stating his opposition to the
13 discriminatory manner in which he and other employees who identify as LGBTQ employed at
14 SFFD were treated.

15 83. Furthermore, as hereinabove alleged, Mr. Baraka engaged in protected activity on
16 his own behalf.

17 84. Defendant SFFD retaliated against Mr. Baraka for his protected activity as follows:
18 First, by refusing to pay him a commensurate rate as other employees doing similar or
19 substantially the same work; Secondly, imposing disparate discipline; and, Thirdly by taking away
20 his Recruiter Coordinator job duties.

21 85. The adverse employment actions were taken in retaliation for the Plaintiff’s
22 protected and opposition activities.

23 86. Plaintiff further engaged in protected activity by filing complaints against those
24 who unlawfully discriminated against himself and others on account of sexual orientation.

25 87. Plaintiff is informed and believes and thereon alleges that this cause of action is not
26 preempted by the California Workers' Compensation Act on the grounds that retaliation for
27 opposing unlawful employment discrimination.

28 88. As a result of the aforesaid acts of retaliation, Plaintiff has suffered and is
continuing to suffer a loss of wages/salary, benefits and other employee compensation in an

1 amount which is currently unascertained. Plaintiff faces substantial diminution of his future
2 earning capacity and of his future retirement income in amounts which are also currently
3 unascertained. Plaintiff will request leave of the court to amend this Complaint to state the amount
4 of all such damages when they have been ascertained or upon proof at the time of trial.

5 89. As a result of the aforesaid retaliation, Plaintiff has been held up to great derision
6 and embarrassment with fellow workers, friends, members of the community and his family, and
7 continues to suffer emotional distress because the Defendant demonstrated to the Plaintiff that it
8 would not recognize nor accept him as an employee solely because of his opposition to
9 discriminatory practices based on sexual orientation. SFFD acted unreasonably because it knew
10 and/or should have known that its conduct was likely to result in additional, severe mental
11 distress.

12 90. Plaintiff therefore seeks damages for such emotional distress in an amount to be
13 proven at time of trial.

14 91. In bringing this action, Plaintiff has been required to retain the services of counsel.
15 Pursuant to California Government Code § 12965(b), he is entitled to and hereby requests an
16 award of attorney and expert witness fees and costs of suit.

17 **FIFTH CAUSE OF ACTION**
18 **Retaliation in Violation of FEHA**
19 **Cal. Gov. Code § 12940(h)**

20 Plaintiff incorporates by reference all of the allegations contained in paragraphs 1
21 through 91 with the same force and effect as if fully pleaded at length herein.

22 92. This is an action for damages arising from retaliation against Plaintiff for
23 having opposed unlawful employment practices based on race. This action is brought pursuant
24 to the California FAIR EMPLOYMENT AND HOUSING ACT ["FEHA"], i.e., Cal. Gov. Code
25 §12900, 12921, 12926, 129240 and 12965.

26 93. Plaintiff engaged in protected activity by stating his opposition to the use of racist
27 training materials that included use of the "N" word, a well-known racial epithet that carries a
28 long history of intimidating and creating a hostile environment for Black/African Americans
individuals.

1 94. Plaintiff engaged in protected activity by stating his opposition to the
2 disparate imposition of discipline he received on account of his race.

3 95. Plaintiff further engaged in protected activity by filing complaints against those
4 who unlawfully discriminated against himself and others on account of race.

5 96. Defendant SFFD retaliated against Plaintiff by: 1. Removing him from the work
6 place to which he was assigned (DOT); 2. Creating hostility against Plaintiff by inconsistently
7 enforcing department policy against him resulting in a disproportionate imposition of
8 disciplinary actions; 3. Refusing to pay him for duties and responsibilities at the H-18 rate, which
9 non-Black employees doing similar work received; 4. Enforcing new rules and standards without
10 notice of the new rules and standards; 8. Ransacking and vandalizing personal locker; 9. Failing
11 to hire culturally competent trainers to perform culturally sensitivity trainings; 10. Failing to
12 investigate his complaints of harassment, hostile environment and acts of discrimination.; and
13 11. Demoting Mr. Baraka when he refused to take on additional duties with receiving additional
14 pay.

15 97. The circumstances described in Paragraph 96 supra, when considered in their
16 totality created a work environment that a reasonable African American in Mr. Baraka's
17 circumstance would consider offensive and which Mr. Baraka did in fact consider offensive.

18 98. As a result of the hostile work environment described in Paragraphs 96 and 97
19 supra, Mr. Baraka's employment with Defendant SFFD was adversely affected.

20 99. Plaintiff is informed and believes and thereon alleges that this cause of action is
21 not preempted by the California Workers' Compensation Act on the grounds that retaliation for
22 opposing unlawful employment discrimination is not a risk of employment.

23 100. As a result of the aforesaid acts of retaliation, Plaintiff has suffered and is
24 continuing to suffer a loss of wages/salary, benefits and other employee compensation in an
25 amount which is currently un-ascertained. Plaintiff faces substantial diminution of his future
26 earning capacity and retirement income in an amount which is currently unascertained. Plaintiff
27 will request leave of the court to amend this Complaint to state the amount of all such damages
28 when they have been ascertained or upon proof at the time of trial.

1 his Recruiter Coordinator role;

2 107. The circumstances described in Paragraph 106 supra, when considered in their
3 totality created a work environment that a reasonable Black/African American in Mr. Baraka's
4 circumstance would consider offensive and which Mr. Baraka did in fact consider offensive.

5 108. Plaintiff is informed and believes and thereon alleges that this cause of action is not
6 preempted by the California Workers' Compensation Act on the grounds that retaliation for
7 opposing unlawful employment discrimination is not a risk of employment.

8 109. As a result of the aforesaid acts of retaliation, Plaintiff has suffered and is
9 continuing to suffer a loss of wages/salary, benefits and other employee compensation in an
10 amount which is currently un-ascertained. Plaintiff faces substantial diminution of his
11 future earning capacity and retirement income in an amount which is currently unascertained.
12 Plaintiff will request leave of the court to amend this Complaint to state the amount of all such
13 damages when they have been ascertained or upon proof at the time of trial.

14 110. As a result of the aforesaid retaliatory harassment, Plaintiff has been held up to
15 great derision and embarrassment with fellow workers, friends, members of the community and
16 families, and continues to suffer emotional distress because SFFD demonstrated to Plaintiff that
17 it would not recognize nor accept him as an employee solely because of the fact that opposed
18 discriminatory employment practices in his workplace. SFFD acted unreasonably because it
19 knew and/or should have known that its conduct was likely to result in additional, severe mental
20 distress. Plaintiff Baraka therefore seeks damages for such emotional distress in an amount to be
21 proven at time of trial.

22 111. In bringing this action, Plaintiff Baraka has been required to retain the services of
23 counsel. Pursuant to California Government Code § 12965(b), they are entitled to and hereby
24 request an award of attorney and expert witness fees and costs of suit.

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26 ///

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28 ///

1
2 **SEVENTH CAUSE OF ACTION**
3 **Failure to Prevent Discrimination and Harassment in Violation of FEHA**

4 **Cal. Gov. Code § 12940(k)**

5 Plaintiff incorporate by reference all of the allegations contained in paragraphs 1 through
6 111 with the same force and effect as if fully pleaded at length herein.

7 112. This is an action for damages based on the failure by SFFD to prevent unlawful
8 employment discrimination, harassment and retaliation. This action is brought pursuant to
9 FEHA.

10 113. Under FEHA, it is an unlawful employment practice to fail to take all reasonable
11 steps to prevent unlawful discrimination, harassment and retaliation.

12 114. The SFFD had and has a notorious reputation of denying employment to
13 candidates who are not white and/or heterosexual. This fact was publicly admitted by Chief
14 Nicholson in July of 2020. It is a reputation of which SFFD leadership and upper City and
15 County Management, including but not limited to Human Resources Director Micki Callahan,
16 were and are well aware. Notwithstanding said awareness, no action was taken to root out or
17 eliminate said segregation nor did Defendant take any action to protect the Plaintiff from
18 discrimination based on his sexual orientation, racial discrimination, harassment or retaliation.

19 115. The Defendants' failure to prevent discrimination and harassment is ongoing as
20 evidenced by its recent omission of the SF ResQ materials from its recently published Racial
21 Equity Action Plan.

22 116. As a result of said inaction by SFFD and San Francisco Human Resources
23 leadership, Plaintiff was denied equal pay given to other SFFD employees doing similar work
24 and experienced disparate discipline on account of his sexual orientation and race and his
25 attempts to prevent and report that discrimination.

26 117. Notwithstanding notice of discrimination, harassment and retaliation in the work
27 place, SFFD failed to take sufficient steps to prevent discrimination based on sexual orientation,
28 racial discrimination, harassment and retaliation from occurring.

118. Plaintiff is informed and believes and thereon alleges that this cause of action is

1 not preempted by the California Workers' Compensation Act on the grounds that unlawful
2 discrimination, harassment and retaliation are not risks of employment.

3 119. Because of the aforesaid acts of SFFD, Plaintiff has suffered, and is continuing to
4 suffer, losses of wages/salary, benefits and other employee compensation in an amount which is
5 currently unascertained. Plaintiff will therefore request leave of the court to amend this
6 Complaint to state the amount of all such damages when they have been ascertained or upon
7 proof at the time of trial.

8 120. Plaintiff has been held up to great derision and embarrassment with fellow
9 workers, friends, members of the community and family, and continues to suffer emotional
10 distress because SFFD demonstrated to the Plaintiff that it would not recognize nor accept him as
11 an employee solely because of his race and/or sexual orientation. SFFD acted unreasonably
12 because it knew and/or should have known that its conduct was likely to result in additional,
13 severe mental distress. Plaintiff therefore, seeks damages for such emotional distress in an
14 amount to be proven at time of trial.

15 121. In bringing this action, Plaintiff has been required to retain the services of
16 counsel. Pursuant to California Government Code § 12965(b), he is entitled to an award of
17 attorney and expert witness fees, and costs of suit.

18 **JURY TRIAL DEMANDED**

19 Plaintiff hereby requests a jury trial for all claims.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
22 follows:

- 23
- 24 1. For damages for lost employment income and benefits, past and future, according to
25 proof;
 - 26 2. For general damages including for pain and suffering past and future according to
27 proof;
 - 28 3. For attorney's fees according to proof;
 4. For costs of suit incurred herein;

