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 JANE DOE and ANNE RASKIN

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RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 -Oakland/San Francisco-

JANE DOE and ANNE RASKIN,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
 FRANCISCO; JANICE MADSEN, an
 individual; KYM DOUGHERTY, an
 individual; AUDREY HILLMAN, an
 individual; HEATHER GRIVES, an
 individual, and DOES 1-10.

Defendants.

Case No. **010-04700 EMC**
COMPLAINT FOR DAMAGES

1. VIOLATION OF THE FEDERAL STORED COMMUNICATIONS ACT 18 U.S.C. §§ 2701 TO 2711;
2. VIOLATION OF CALIFORNIA WHISTLE-BLOWING STATUTES CAL LABOR CODE §§98.6; 1102.5; 6310
3. VIOLATION OF CALIFORNIA CONSTITUTION ARTICLE 1, SECTION 1 (INVASION OF PRIVACY)
4. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
5. VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT - SEX DISCRIMINATION
6. VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT - SE HARASSMENT
7. VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT - RETALIATION
8. VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT - FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT

AMOUNT IN CONTROVERSY:
 \$3,000,000

PLAINTIFFS' COMPLAINT FOR DAMAGES/ REQUEST FOR JURY TRIAL

	REQUEST FOR JURY TRIAL
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COME NOW Plaintiffs JANE DOE and ANNE RASKIN complain against Defendants CITY AND COUNTY OF SAN FRANCISCO [Department of Emergency Management Division of Emergency Communications]; JANICE MADSEN, an individual; KYM DOUGHERTY, an individual; AUDREY HILLMAN, an individual; HEATHER GRIVES, an individual, and DOES 1-10 as follows:

JURISDICTION

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(3) as the controversy arises under “the constitution, laws or treaties of the United States.” This Court has authority to exercise supplemental jurisdiction over California state claims under 28 U.S.C. § 1367(a).

2. The Amount in controversy is in excess of \$3,000,000.

VENUE

3. Venue is proper in the Northern District of California pursuant to 28 U.S.C § 1391(b) because a substantial part of the acts, events or omissions giving rise to this action occurred in this District.

PARTIES

4. Plaintiff “Jane Doe” is suing here under the pseudonym “Jane Doe” because she fears retaliation and harm to her personal safety. Plaintiff Jane Doe seeks immediate leave of Court to proceed in this litigation as “Jane Doe.” Plaintiff Jane Doe will disclose her true identity to the Defendants at the time they are served with this Complaint for Damages in the matter. Plaintiff Jane Doe is a United States citizen and resident of the County of Alameda. Plaintiff Jane Doe is and was at all relevant times, an employee of the City and County of San Francisco, Department of Emergency Management, San Francisco, State of California.

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1 5. Plaintiff Anne Raskin is a United States Citizen and resident of the County of
2 San Mateo, State of California and is and was an employee of the City and County of San
3 Francisco, Department of Emergency Management, San Francisco, State of California.

4 6. Defendant City and County of San Francisco, State of California (hereinafter as
5 "Defendant CCSF" or "CCSF"), is a political subdivision of the State of California located
6 within California. Defendant CCSF has created and operates the Department of Emergency
7 Management which oversees the Division of Emergency Communications (hereinafter
8 "DEMDEC"). Plaintiff is informed and believes that DEMDEC is a separate unit or division
9 of Defendant CCSF, organized and existing pursuant to the rules promulgated by the CCSF.

10 7. Defendant Janice Madsen, is a United States citizen and resident of the State of
11 California. Defendant Madsen is currently employed by DEMDEC. At all times relevant
12 hereto, Defendant Madsen was supervisory employee of Defendant CCSF, acting within the
13 course and scope of her employment with and pursuant to and under color of the authority of
14 Defendant CCSF and/or DEMDEC. Defendant Madsen is being sued herein in her individual
15 capacity as well as her capacity as supervisory employee of Defendant CCSF.

16 8. Defendant Heather Grives is a United States citizen and resident of the State of
17 California. At all times relevant hereto, Defendant Grives was supervisory employee of
18 Defendant CCSF, acting within the course and scope of her employment with and pursuant to
19 and under color of the authority of Defendant CCSF and/or DEMDEC. Defendant Grives is
20 being sued herein in her individual capacity as well as her capacity as supervisory employee
21 of Defendant CCSF.

22 9. Defendant Kym Dougherty is a United States citizen and resident of the State of
23 California. At all times relevant hereto, Defendant Dougherty was supervisory employee of
24 Defendant CCSF, acting within the course and scope of her employment with and pursuant to
25 and under color of the authority of Defendant CCSF and/or DEMDEC. Defendant Dougherty
26 is being sued herein in her individual capacity as well as her capacity as supervisory employee
27 of Defendant CCSF.

28 10. Defendant Audrey Hillman is a United States citizen and resident of the State of

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1 California. At all times relevant hereto, Defendant Hillman was supervisory employee of
2 Defendant CCSF, acting within the course and scope of her employment with and pursuant to
3 and under color of the authority of Defendant CCSF and/or DEMDEC. Defendant Hillman is
4 being sued herein in her individual capacity as well as her capacity as supervisory employee
5 of Defendant CCSF.

6 11. Each of the DOES 1 through 10, inclusive, are so named because Plaintiffs Jane
7 Doe and Anne Raskin do not know their true names and/or capacities at this time. Plaintiffs
8 Jane Doe and Anne Raskin will seek leave of Court to amend this Complaint when true names
9 and capacities of the Defendants designated herein as DOES 1 through 10 have been
10 ascertained.

11 12. Plaintiffs Jane Doe and Anne Raskin are informed and believes that each
12 Defendant herein willfully committed, ordered, directed, supervised, allowed, planned,
13 ratified, concealed, organized, conspired or otherwise participated in the unlawful acts
14 complained of herein.

15 13. Defendants, and each of them, were at all material times an "employer" within
16 the meaning of California Government Code §12926(d), and as such were bound by the
17 California Fair Employment and Housing Act (California Government Code §12900 et seq.)
18 (hereinafter, "California Fair Employment and Housing Act ("FEHA)"), prohibiting it from
19 discrimination, harassment or retaliation against any employees based on sex, and requiring
20 them to take all reasonable steps necessary to prevent discrimination and harassment from
21 occurring, including taking immediate and appropriate corrective action in response to
22 unlawful conduct under the FEHA
23

24 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**
25

26 14. Plaintiffs Jane Doe and Anne Raskin filed timely charges of discrimination with
27 the California Department of Fair Employment and Housing (hereinafter "DFEH"). The
28 DFEH issued Right to Sue Notices on those charges. Plaintiffs Jane Doe and Anne Raskin

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1 allege, on information and belief that these Right to Sue Notices were served on Defendants.
 2 Plaintiffs Jane Doe and Anne Raskin reserve the right to amend this Complaint when they
 3 receive Right to Sue Notices from the United State Equal Employment Opportunity
 4 Commission.

5 15. Plaintiffs Jane Doe and Anne Raskin filed timely claims under the California
 6 Government Tort Claims Act.

7
 8 **FACTS COMMON TO CLAIMS FOR RELIEF**
 9

10 16. This matter involves, among other matters, whistle-blowing claims (retaliation
 11 of against Plaintiffs Jane Doe and Anne Raskin for reporting misuse of government monies,
 12 violation of federal laws regarding Stored Communications , public safety concerns) as well
 13 as claims for violation of Plaintiffs' constitutional rights, violations of state and federal laws
 14 proscribing gender-based harassment and discrimination and breach of privacy suffered by
 15 Plaintiffs while in the employment of the Defendant City and County of San Francisco,
 16 Department of Emergency Management ("DEM"), Division of Emergency Communications
 17 ("DEC").
 18

19 **A. BACKGROUND: DEFENDANT CITY AND COUNTY OF SAN FRANCISCO'S**
 20 **DEPARTMENT OF EMERGENCY MANAGEMENT, DIVISION OF EMERGENCY**
 21 **COMMUNICATIONS.**
 22

23 17. Defendant CCSF's Department of Emergency Management consists of two
 24 divisions. The Division of Emergency Communications (DEC) provides 9-1-1 emergency
 25 dispatch services for Police, Fire, and the Emergency Medical System (EMS). The Division of
 26 Emergency Services (DES) coordinates disaster preparation and response planning in
 27 partnership with City agencies, non-profit entities, schools and the private sector. DES also
 28

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1 houses the Emergency Medical Services Agency (EMSA), which coordinates all of the
2 components of the City's pre-hospital care system.

3 18. The San Francisco Department of Emergency Management (DEM) manages
4 disaster preparation, mitigation, and response; 9-1-1 dispatch; and homeland security grant
5 distribution for the City and County of San Francisco. DEM was created in 2006 by local
6 legislation that reorganized the Emergency Communications Department and the Office of
7 Emergency Services into a single agency.

8 19. DEM is composed of two divisions: Emergency Communications Division
9 "(DEC") and Emergency Services. DEC or "9-1-1":

- 10 a. Receives approximately 3500 calls per day
- 11 b. Provides combined dispatch for:
 - 12 - Police - 80% of calls
 - 13 - EMS - 14% of calls
 - 14 - Fire - 6% of calls
- 15 c. Utilizes a Computer Aided Dispatch (CAD) system
- 16 d. Utilizes an 800 MHz voice & data system to provide quality wireless
17 communication
- 18 e. Serves as the Custodian of Records for Community Safety Camera data
19 and 9-1-1 data
- 20 f. Activates the Tuesday at Noon outdoor public warning siren (managed
21 by the Department of Technology)

22 20. DEC has over one hundred and fifty (150) employees. The following are some
23 of the Essential Job Functions of DEC dispatchers such as Plaintiffs Doe and Raskin:

- 24 a. Receive emergency and non-emergency calls and efficiently gathers, evaluates,
25 prioritizes, and documents information from callers.
- 26 b. Dispatch Police, Fire and EMS field units to specific locations using a computer
27 aided dispatch system, multiple video display terminals, two-way radio dispatch console and
28 related equipment.

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1 c. Evaluate incoming reports of Police, Fire and EMS; immediately transmits
2 complete and accurate information to appropriate field personnel.

3 d. Monitor, coordinate and accurately maintain the status of incidents and record
4 of dispatched emergency service personnel and apparatus.

5 e. Receive and disseminate information from other law enforcement and
6 emergency service computer networks related to jurisdictional requests for Police, Fire or
7 EMS, or to notices of wanted persons, stolen property, warrants and all points bulletins and
8 maintains confidentiality of information.

9 f. Maintain familiarity with area geography including major streets, buildings and
10 recognizes circumstances that may pose hazards to public safety field units and the public.

11 g. Maintains up-to-date understanding of public safety policies and procedures for
12 the DEM, Police, Fire, EMS and other emergency service providers.

13 h. Respond to routine and non-routine inquiries regarding Police, Fire, or EMS;
14 properly classify and prioritize any report or complaint information and determines
15 appropriate course of action; provides appropriate referrals as necessary.

16 i. Respond report and mobilize as necessary.

17 j. Work various eight-hour or 10-hour shifts, or longer, including days, nights,
18 weekends, holidays and overtime.

19 21. Plaintiffs Jane Doe and Anne Raskin and other dispatchers working for
20 Defendant CCSF are the first people to take 9-1-1 calls for Police or Fire assistance. It takes a
21 great deal of training and dedication to provide this important public service for the City and
22 County of San Francisco.

23 22. In particular, in order to work as a Dispatcher for Defendant CCSF, one must
24 first complete rigorous training with The Commission on Peace Officers Standard and
25 Training (hereinafter referred to as "POST"). Plaintiffs Jane Doe and Anne Raskin are
26 informed and believe that POST was established by the Legislature in 1959 to set minimum
27 selection and training standards for California law enforcement. The POST organization, with
28

1 more than 130 staff members, functions under the direction of an Executive Director
2 appointed by the Commission.

3 23. Plaintiffs Jane Doe, Anne Raskin and other DEC Dispatchers were given the
4 benefit of using of certain community computers located in their worksite for their personal
5 and private benefit so long as it was not for an illegal purpose (as detailed in a July 24, 2009
6 DEM memo authored by Deputy Director Lisa Hoffman). Plaintiffs Jane Doe and Anne
7 Raskin, and other DEC workers were allowed to use these computers during their breaks for
8 their own personal and private use (e.g., to shop, access e-mails etc.). (Plaintiff Anne Raskin
9 never availed herself of this benefit to check personal emails.)

10 24. Since Plaintiffs Jane Doe and Anne Raskin were told they may use certain
11 computers for their own personal and private use, during their breaks or lunch, Plaintiffs Jane
12 Doe and Anne Raskin had an explicit expectation of privacy in their use of these computers
13 when accessing them for personal reason as allowed by the DEM policy.

14 25. Plaintiffs Jane Doe and Anne Raskin never gave anyone consent or
15 authorizations to review, print-out, republish, track, or otherwise access their personal and
16 private email communications.

17 26. Plaintiff Jane Doe exercised her rights under the DEM policy and occasionally
18 used the computer during her breaks or lunch to check personal emails and engage in personal
19 business while on breaks. In doing, so, she used her personal and private username and
20 password.

21 27. Plaintiffs Jane Doe and Anne Raskin never gave their personal or private
22 username or passwords to any Defendant.

23
24 **FACTUAL ALLEGATIONS OF PLAINTIFF JANE DOE**

25
26 **A. 2002: PLAINTIFF JANE DOE JOINS DEFENDANT CCSF'S DEC MIDNIGHT**
27 **SHIFT AND IS SUBJECTED TO BRUTAL GENDER-BASED DISCRIMINATION.**
28

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**BULLYING, HAZING AND HARASSMENT BY HER FEMALE SUPERIORS AND
THEIR MINIONS.**

28. In 2002, Plaintiff Jane Doe commenced employment with Defendant CCSF DEC.

29. Plaintiff Jane Doe, a newly released Dispatcher, was on her third rotation of training when she was assigned to the DEC Midnight Shift (11PM to 7AM).

30. The Watch Coordinator for DEC Midnight Shift was Defendant Madsen. When Defendant Madsen was on duty, she was the most senior person in charge of the entire DEC. The exception being if more senior personnel were on site – which was rare.

31. Once Plaintiff Jane Doe joined the DEC Midnight shift, she quickly learned that it was not run like a proper government agency, but as Defendant Madsen's personal fiefdom and that hazing, bullying and harassment were the norm.

32. Then Dispatcher Defendant Heather Grives was Plaintiff Jane Doe's third rotation trainer.

33. Defendant Grives was very abusive to Plaintiff Jane Doe, often calling Plaintiff Jane Doe "stupid" or "bitch." Defendant Grives refused to assist Plaintiff Jane Doe when she needed help. Defendant Grives would tell Plaintiff Jane Doe to go home early as a way to set her up for disciplinary action. Plaintiff Jane Doe knew this would be career suicide so she would stay the entire shift. When Plaintiff Jane Doe was on a call dealing with the public, Defendant Grives would yell at Plaintiff Jane Doe to get off the phone when Defendant Grives wanted to talk to Plaintiff Jane Doe. Plaintiff Jane Doe was supposed to be given an hour of training each night, but instead Defendant Grives would leave Plaintiff Jane Doe alone to listen to radio traffic while Defendant Grives would visit with her friends.

34. While Plaintiff Jane Doe was being trained by then dispatcher Defendant Grives, in January 2003, other employees went to Deputy Director Glenn Ortiz-Schultz to complain about Defendant Grives's abuse toward Plaintiff Jane Doe. In response, Plaintiff Jane Doe was put with another trainer and successfully completed her training. However,

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1 Defendant Grives never forgot that a complaint had been made about her and continued her
2 campaign of harassment and retaliation against Plaintiff Jane Doe. Plaintiff Jane Doe
3 complained about Defendant Heather Grives's abusive tactics.

4 35. In retaliation for Plaintiff Jane Doe's complaints about Defendant Grives, who
5 was one of Defendant Madsen's pets, Defendant Madsen escalated the abuse toward Plaintiff
6 Jane Doe. Defendant Madsen caused Plaintiff Jane Doe to be "unreleased" as a Dispatcher,
7 twice, which, in turn, could have cost her job with Defendant CCSF. It was usually a
8 supervisor function to monitor new people but Defendant Madsen made Plaintiff Jane Doe her
9 personal "project."

10 36. Plaintiff Jane Doe's experience of the DEC Midnight Shift was that it operated
11 with a great deal of gender discrimination, harassment and bullying. The employees
12 (predominately female) working the DEC Midnight Shift under Defendant Madsen were
13 expected to behave in a very subservient manner toward Defendant Madsen and her sentries.
14 Dispatchers were in fear of Defendant Madsen, Defendant Grives, and Defendant Hillman.
15 Plaintiff Jane Doe quickly learned that this subservient behavior was expected of her but she
16 found it offensive and would not consent to this non-work-related gender based submission.
17 Plaintiff Jane Doe paid the ultimate price for following the law: endless months of bullying
18 and harassment. This hurtful and illegal conduct perpetuated by Defendant Madsen,
19 Defendant Grives, and Defendant Hillman in the DEC Midnight Shift was adopted by other
20 Dispatchers who sought to curry favor. Thus, the harassment and bullying was mimicked or
21 carried out by subordinate employees who were "in favor" with Defendant Madsen.

22 37. Not surprising, males were not treated in the same sexist, abusive bullying
23 manner that was directed toward Plaintiff Jane Doe.

24 38. Plaintiff Jane Doe was not alone in suffering the harassment and bullying.
25 Plaintiff Jane Doe is informed and believes that this has been happening to other females for
26 years; that other female employees have suffered gender-based harassment and
27 discrimination. As a consequence, the retentions rate was very low as noted in a June 2008
28 comprehensive management study of DEM prepared the outside consulting firm MGT of

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America, Inc., retained by Defendant CCSF. (That report specifically referenced a systemic intimidating atmosphere and a “hazing” environment.”) Thus, Defendant CCSF had full knowledge the hazing, bullying, harassment and discrimination was occurring within the DEC, yet it did nothing to stop it.

39. Examples of the continuous severe and pervasive hazing and harassment that Defendants Madsen, Defendant Grives, Defendant Hillman, and some of the other dispatchers directed toward Plaintiff Jane Doe and others included:

- Bullying;
- Persistent psychological intimidation;
- Deeply hurtful and belittling comments,
- Persistent baseless criticism of work;
- Withholding resources necessary to work successfully;
- Eye-rolling, sighing, whispering, tongue-clucking and other body language designed to undermine Plaintiff Jane Doe and to send the message to other employees that Plaintiff Jane Doe was not a welcomed member of the Plaintiff Madsen’s clique otherwise known as the DEC Midnight Shift;
- When Plaintiff Jane Doe worked the DEC Midnight Shift with Defendant Grives and Defendant Hillman, they shunned Plaintiff Jane Doe and tried to undermine her work for the City and County of San Francisco or made it extremely difficult for her to serve the City and the needs of the 9-1-1 callers;
- Defendant Madsen would micro-manage Plaintiff Jane Doe, speak to her in a dismissive and demeaning manner, loudly whisper hurtful thing about her to others, hyper-scrutinize Plaintiff Jane Doe’s calls with a fine tooth comb to pick out minor and inconsequential matters.

40. Defendant Madsen, Defendant Grives, and Defendant Hillman demonstrated little concern for the safety of the City and 9-1-1 callers.

B. 2003: PLAINTIFF DOE TRANSFERS OUT OF ABUSIVE DEC MIDNIGHT SHIFT.

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1 30. Later in 2003, Plaintiff Jane Doe signed up for the DEC Swing Shift and
2 flourished. Plaintiff Jane Doe went to DEC Swing Shift to get away from the harassment of
3 the DEC Midnight Shift. This change was a financial hardship as it cost her dearly in income
4 and additional commute costs because it was a five (5) day eight (8) hour shift instead of the
5 4/10's she worked on the DEC Midnight Shift.

6 41. A few years later, Plaintiff Jane Doe signed up for the DEC "Overlap:" Shift
7 (hours of 5PM to 3AM) so that she could have Sundays off; unfortunately, the last four (4)
8 hours of the DEC Overlap Shift overlapped with the DEC Midnight Shift. Thus, Plaintiff Jane
9 Doe was exposed to her harassers once again.

10 42. In a transparent act of harassment and retaliation, Plaintiff Jane Doe was singled
11 out to work mandatory overtime four (4) different times in six (6) months; once on Plaintiff
12 Jane Doe's birthday, once on Father's Day, and two other times. One of Plaintiff Jane Doe's
13 co-workers (a senior dispatcher) offered to work on Plaintiff Jane Doe's birthday and
14 miraculously the overtime was no longer needed. Another time the scheduling supervisor
15 came in and moved some things around and, suddenly, Plaintiff Jane Doe was not required to
16 work the mandatory overtime. (As supervisors, they all have scheduling training, so Plaintiff
17 Jane Doe's supervisors could have moved the schedule around as well.)

18 43. The renewed harassment on the DEC Mid-Night Shift was much like what she
19 experienced before, but increasingly worse, and included a campaign of psychological abuse
20 such as:

- 21 a. Bullying;
- 22 b. Shunning;
- 23 c. Micro-management;
- 24 d. Defamatory and hurtful gossip; and,
- 25 e. False and baseless work criticism;

26 44. Around 2005, the harassment and abuse was so severe that Plaintiff Jane Doe
27 suffered physical manifestations in the form of unbearable back, shoulder and neck pain.
28 Plaintiff Jane Doe had to take time off from work because of the physical manifestations from

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1 the abuse she faced at work every single day from her colleagues. On or about
2 February 28, 2005, Plaintiff went to Janice Madsen and pleaded with her to stop the
3 harassment as it caused, Plaintiff to experience physical pain due to the stress.
4 Defendant Madsen's response was, "I can make you work sixteen (16) hours a day if I want."
5 The next day, March 1, 2005, Plaintiff went to see the workers compensation doctor who
6 placed Plaintiff Doe on leave for about eleven (11) months for the work related injury.

7 45. In October 2008, Plaintiff became a Supervisor.

8 46. While working the DEC Midnight Shift as a Supervisor, Plaintiff Jane Doe
9 observed that Defendants Heather Grives, Kym Dougherty, and Audrey Hillman would also
10 cover for Defendant Madsen when she didn't show up for work. Similarly, Defendant Madsen
11 would cover for them. This blatant misuse of City monies was brought to the attention of
12 Defendant CCSF by Plaintiff Jane Doe and another Supervisor. Much to Plaintiff Jane Doe's
13 shock, Defendant CCSF was not discreet about this whistle-blowing complaint and refused to
14 take it seriously. There was no internal investigation of this matter even though it clearly had
15 been going on for months if not years. Plaintiff Jane Doe's superior's (Defendant Madsen,
16 Hillman and Grives) found out about the complaint and Plaintiff Jane Doe was subjected to
17 further retaliation. Of note, it would have been a simple investigation for Defendant CCSF to
18 research the issue raised by Plaintiff Jane doe, as employees had key cards that electronically
19 recorded every time they entered or left a secure area. This type of outrageous abuse of City
20 monies would be, in many other departments or organizations, an immediate ground for
21 dismissal as it is tantamount to stealing.

22 47. During the period Plaintiff was a supervisor, Defendant Madsen, Defendant
23 Grives, Defendant Dougherty and Defendant Hillman left Plaintiff Jane Doe alone for hours at
24 a time in the police dispatch room and would not relieve Plaintiff Jane Doe for breaks.

25 48. During the period Plaintiff was a supervisor, Defendant Madsen, Defendant
26 Grives, Defendant Dougherty and Defendant Hillman would spend several hours each night in
27 the supervisor's room eating, playing on the internet, or chatting with their buddies.
28

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1 49. Defendant Madsen, Defendant Grives, Defendant Dougherty, and Defendant
2 Hillman would let dispatchers they favored come off the floor and hang out in the supervisor's
3 room with them instead of working. This left the dispatch area under-staffed and stressed.

4 50. On or about December 31, 2008, Defendant Madsen asked Plaintiff Jane Doe,
5 "What time is it that you think you are going home?" and then made Plaintiff Jane Doe stay
6 an extra two (2) hours monitoring a hand held radio in a room where there is nothing
7 happening . When Defendant Madsen did this type of thing to Plaintiff Jane Doe (and it
8 happened often) she would do it in front of the other employees who would later taunt
9 Plaintiff Jane Doe about how Defendant Madsen had it in for her.

10
11 **C. JANUARY 18, 2009: PLAINTIFF JANE DOE IS ASSIGNED TO DEC MIDNIGHT**
12 **SHIFT AS A SUPERVISOR.**

13 51. On January 18, 2009, Plaintiff Jane Doe was assigned to DEC Midnight Shift as
14 a Supervisor. The very first night, Plaintiff Jane Doe is told by Defendant Grives and
15 Defendant Hillman that, "*No one takes lunch breaks,*" and if she wanted a break to, "*just leave*
16 *the room.*"

17 52. Plaintiff Jane Doe was blown away by the directive because the police and fire
18 dispatch rooms are supposed to have a supervisor present at all times. Plaintiff Jane Doe was
19 not trained as a Fire Dispatch Supervisor so she was left alone as the sole supervisor, night
20 after night, in the police dispatch and call taker room-- often without relief

21 53. The DEC Midnight Shift harassment was ongoing even though Plaintiff Jane
22 Doe had been elevated to Supervisor. Plaintiff Jane Doe (and others) made repeated
23 complaints to her superiors about the harassment she was experiencing from the DEC
24 Midnight Shift gang but nothing was done and the retaliation and harassment continued.

25 54. For example, Plaintiff Jane Doe was excluded and not allowed to participate in
26 any social activities with the other Supervisors, including birthday parties, mini-events, and
27 feeds. Plaintiff Jane Doe was excluded from conversation with other shift Supervisors and
28 Supervisor specific training. Plaintiff Jane Doe often heard her "co-workers" snickering and

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1 talking about her behind her back. Plaintiff Jane Doe was not given any additional training by
2 Defendant Madsen.

3 55. Beginning in January 2009 through July 2009, Plaintiff Jane Doe was
4 continuously denied breaks or lunches because Defendant Hillman, Defendant Dougherty and
5 Defendant Grives spent their time in the office chatting on the internet or throwing parties,
6 leaving Plaintiff Jane Doe to be the only shift Supervisor.

7 56. On Sunday January 19, 2009, at approximately 1:00AM, Defendant Madsen and
8 Defendant Dougherty ran out of the building hand-in-hand giggling in front of subordinates so
9 they could put a phony stolen vehicle report on a certain fire-fighter's personal vehicle that
10 was parked at a fire station.

11 57. Defendant Madsen and Defendant Dougherty ran this fire-fighter's license
12 plates on Defendants CCSF's computer system which is a direct violation of the Criminal
13 Law Enforcement Telecommunications Systems (CLETS) and invasion of his privacy under
14 California Constitution Article 1, § 1. Management was made aware of this incident by
15 Plaintiff Jane Doe and another Supervisor. Again, nothing was done

16 58. On Monday January 26, 2009, Plaintiff Jane Doe asked Defendant Madsen to
17 show her how to work the radio system in case of an emergency. Defendant Madsen
18 responded that since they had moved into temporary quarters, that the system was set up
19 differently and that she did not know how it worked.

20 59. During the month of February 2009, Defendant Madsen called in sick three (3)
21 Sunday's in a row and Defendant Hillman frequently left two (2) hours early on Sunday
22 mornings to go to church.

23 60. Defendant Hillman is frequently 1 to 2 hours late coming to work, yet this was
24 not always reflected in the PeopleSoft™ (payroll software).

25 61. On January 31, 2009, there is no Watch Coordinator on duty and Plaintiff Jane
26 Doe and Supervisor Cynthia Haynes were left alone to cover the DEC. Neither Plaintiff Jane
27 Doe nor Supervisor Cynthia Haynes received a break or lunch during the entire ten hour shift.

28
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1 62. On March 9, 2009, Defendant Madsen read aloud an email from the computer in
2 the police dispatch room. The email was sent to her from Deputy Director Lisa Hoffmann
3 regarding a job opportunity. Defendant Madsen became furious and started yelling out loud
4 her thoughts about the email. She spent over an hour yelling and ranting. The dispatchers can
5 heard her speaking disrespectfully about Deputy Director Lisa Hoffman.

6 63. On March 20, 2009, Defendant Hillman and Defendant Grives spent over three
7 (3) hours in the office playing on the internet and socializing. In the meantime, the fire
8 dispatch room was unsupervised and Plaintiff Jane Doe was the sole supervisor in the
9 Police/Call taker Room supervising approximately sixteen (16) dispatchers.

10 64. On March 21, 2009, Plaintiff Jane Doe and Supervisor Cynthia Haynes were
11 left alone to supervise dispatch. Once again, no breaks or no lunches in a ten hour shift.

12 65. On March 20, 2009, Defendant Hillman and Defendant Grives spent over four
13 (4) hours in the office playing on the internet and socializing. In the interim, the fire dispatch
14 room was unsupervised.

15 66. On March 29, 2009, Defendant Hillman and Plaintiff Jane Doe had to deal with
16 two employees who have gotten into a heated verbal argument. That left none to cover
17 dispatch. Once again, Plaintiff received no lunch and only one twenty (20) minute break

18 67. Sometime during March or April, 2009, Plaintiff Jane Doe spoke to Deputy
19 Director Lisa Hoffmann and Operations Manager Cecile Soto about the behavior on the DEC
20 Midnight Shift. Plaintiff Jane Doe told them Defendant Madsen was rarely present and there
21 were inaccuracies as to her time at work in the Defendant DEC's time-keeping system
22 ("PeopleSoft"). That is, Defendant Madsen was getting paid for time not worked. Deputy
23 Director Lisa Hoffmann and Operations Manager Cecile Soto assured Plaintiff Jane Doe that
24 they would pop in unannounced and keep an eye on the shift but they only did it once (each).

25 68. Plaintiff Jane Doe is informed and believes that Deputy Director Lisa Hoffmann
26 and Operations Manager Cecile Soto told Defendant Madsen about Plaintiff Jane Doe's
27 complaints. Once again, Plaintiff was subjected to retaliation.

28
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1 69. On April 10, 2009, Defendant Hillman and Plaintiff Jane Doe are left alone to
2 supervise the entire DEC. Again, no breaks and no lunch.

3 70. On April 11, 2009, Defendant Hillman and Plaintiff Jane Doe are left alone to
4 supervise the entire DEC. Again, no breaks and no lunch.

5 71. On April 17, 2009, Defendant Grives tries to find fault with Plaintiff Jane Doe's
6 schedule in front of Watch Coordinator Carol Bernard and Defendant Hillman. On the same
7 night, there is a big party in the supervisor's office. Defendant Grive's daughter is present in
8 the office using one of Defendant CCSF's computers. The CCSF computers contained
9 sensitive information and are only supposed to be accessed by CLETS-cleared personnel
10 (which her daughter was not). Plaintiff Jane Doe was the only Supervisor on duty in the
11 police dispatch room.

12 72. On or about April 17, 2009, Plaintiff Jane Doe informed Watch Coordinator
13 Carol Bernard how she has been harassed by Defendant Grives and Defendant Hillman.
14 Instead of investigating the matter, or taking corrective action, Watch Coordinator Carol
15 Bernard dismisses Plaintiff Jane Doe's complaint by saying, "*Don't give them [Defendants*
16 *Grives and Hillman] anything to complain about.*"

17 73. On April 18, 2009, Defendant Hillman and Defendant Grives hang out at the
18 office from 1AM until after 3:30AM playing on the internet and socializing. Meanwhile, no
19 one is supervising the fire dispatch room.

20 74. On April 18, 2009, Supervisor Cynthia Haynes and Plaintiff Jane Doe are the
21 only supervisors working and do not receive either a break or a lunch.

22 75. April 24, 2009, Defendant Hillman and Defendant Grives are in the supervisor's
23 office for over three (3) hours socializing and playing on the internet. Defendant Hillman
24 disappears until 4:40AM.

25 76. May 6, 2009, Defendant Hillman spends from 11PM to 12:30AM in the office
26 talking to Eileen David (her friend who is a dispatcher who should have been on the floor
27 working). Then, she spent until 3AM in the office on the internet. No lunch for Plaintiff Jane
28 Doe.

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1 77. May 9, 2009, Supervisor Cynthia Haynes and Plaintiff Jane Doe work a ten (10)
2 hour shift without any break or lunch.

3 78. May 10, 2009, Supervisor Cynthia Haynes and Plaintiff Jane Doe work the floor
4 with no lunch hour. Watch Coordinator Carol Bernard spent the entire night in her office and
5 did not give Supervisor Cynthia Hayne or Plaintiff Jane Doe a break.

6 79. May 15, 2009, Defendant Hillman and Defendant Grives are in the office on the
7 internet until 3:21AM. Plaintiff Jane Doe receives no breaks or lunch.

8 80. May 16, 2009, Defendant Hillman came in 1/2 hour late.

9 81. May 22, 2009, Defendant Hillman and Defendant Grives are in the supervisor's
10 office socializing and playing on the internet until after 3AM. Plaintiff Jane Doe does not
11 receive break until 3:30AM and no lunch.

12 82. On or about May 23, 2009, two call-takers on the DEC Midnight Shift received
13 "Pink Slips" (termination notices) and were expected to complete their shift. Plaintiff Jane
14 Doe was put in the untenable position of having to work with the disgruntled call takers after
15 they received their Pink Slips. The Swing Watch Coordinator instructed Plaintiff Jane Doe not
16 to discuss the Pink Slips because the DEC Midnight Watch Coordinator were not present.
17 However, the Pink-Slipped employees were upset, refused to plug-in and take the 911 calls.
18 This was a serious concern to Plaintiff Jane Doe so she tried to resolve the situation by
19 speaking to the Pink-Slipped employees by expressing her personal empathy for their
20 situation. Simultaneously, Plaintiff Jane Doe encouraged them to plug-in to answer the 911
21 calls. They refused. One went home and the other left the area upset. Plaintiff Jane Doe's
22 primary concern was the safety of the community and her duty to the City and County of San
23 Francisco.

24 83. When the Midnight Watch Commander Carol Bernard came on board, two and
25 half hours late, she falsely accused Plaintiff Jane Doe of being insensitive. In reality, Plaintiff
26 Jane Doe was sensitive and was only acting in the best interest of the safety of the citizens of
27 the City and County of San Francisco. Plaintiff Jane Doe is accused of being "insensitive" by
28 Watch Commander Carol Bernard for motivating the call takers that she is supervising to plug

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1 in and take calls after the call takers have been notified that they had been laid off. Again,
2 Plaintiff Jane Doe was concerned about public safety and that on Friday nights; every call
3 taker needs to be plugged in to take 911 phone calls.

4 84. May 29, 2009, only Defendant Grives and Plaintiff Jane Doe were on duty as
5 supervisors. Defendant Grives spends several hours in the supervisor's office not working for
6 the City and not supervising the fire dispatch room.

7 85. June 5, 2009, only Defendant Grives and Plaintiff Jane Doe were on duty as
8 supervisors. Once again, they did not receive breaks or lunch.

9 86. June 6 and 7, 2009, only Supervisor Cynthia Haynes and Plaintiff Jane Doe
10 were on duty as supervisors. Once again, they did not receive a breaks or lunch.

11 87. June 19, 2009, only Defendant Hillman and Plaintiff Jane Doe were on duty as
12 supervisors. Once again; they did not receive a breaks or lunch.

13 88. July 2, 2009, only Defendant Grives and Plaintiff Jane Doe were on duty as
14 supervisors. Once again they did not receive a breaks or lunch.

15 89. July 3, 2009, only Supervisor Cynthia Haynes and Plaintiff Jane Doe were on
16 duty as supervisors. Once again, they did not receive a breaks or lunch.

17 90. July 10, 2009, Defendant Grives and Defendant Hillman are in the office on the
18 internet for several hours and did not perform work for the City. Plaintiff Jane Doe never
19 received a lunch break

20 91. On average during the period between Januarys to July 2009, Plaintiff Jane Doe
21 only received a lunch hour once a week and very few rest breaks.

22
23 **C. JULY 2009: PLAINTIFF JANE DOES LEAVES DEC MIDNIGHT SHIFT (AGAIN).**

24
25 92. In July 2009, on Plaintiff Jane Doe's last day working the DEC Midnight Shift,
26 she was in the Supervisor's office and as she leaves, Defendant Kym Dougherty remarked to
27 the other supervisors, "*I am so glad I don't have to work with that bitch anymore.*"
28

1 93. In Thanksgiving 2009, one of Plaintiff Jane Doe's coworkers put together a
2 potluck at work. Against Plaintiff Jane Doe's objections (for obvious reasons [i.e., safety] and
3 because she is a vegetarian). Another supervisor fried turkey and left grease on the back patio.
4 Someone slipped in the grease and was injured. The Midnight Watch Coordinator Carol
5 Bernard became incensed and wrote a scathing manifest calling all DEC Swing Watch
6 Supervisors negligent and requested a full investigation of the matter. Plaintiff Jane Doe's
7 Supervisors and coworkers are certain that Watch Coordinator Carol Bernard retaliated
8 against all of them because of her disdain for Plaintiff Jane Doe (even though she had nothing
9 to do with the turkey).

10 94. December 31, 2009, Defendant Madsen calls Defendant Grives to come in early
11 at 7:00PM, two hours early for her scheduled shift even though they were not busy and over-
12 staffed. Defendant Grives comes in at 7:30PM. The PeopleSoft™ time-keeping software
13 reflects overtime from 7PM – a full half hour of overtime that she did not work. There was
14 finally a complaint by another Supervisor and the time was changed.

15 95. On the same night, Plaintiff Jane Doe came into work even though Plaintiff Jane
16 Doe had stomach issues and let her manager know that she wasn't feeling well. Defendants let
17 another Supervisor leave early to go to a party, but Plaintiff Jane Doe had to stay until the end
18 of her shift even though she was ill.

19 96. In mid-December 2009 Plaintiff Jane Doe received a report that when she left
20 the Supervisor's bridge in the dispatch room, Defendant Grives called Plaintiff Jane Doe a
21 "bitch" loud enough for a dispatcher to hear who was working a channel (and had headsets
22 on).

23
24 **D. DEFENDANTS RETALIATED BY HACKING PLAINTIFF'S PERSONAL AND**
25 **PRIVATE EMAIL ACCOUNT AND CIRCULATING PRIVATE AND CONFIDENTIAL**
26 **EMAILS IN A CONCERTED EFFORT TO GET COMPLAINT FIRED.**

27 97. On November 26, 2009 Plaintiff Jane Doe is told that she was the subject of an
28 internal investigation.

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1 98. On November 27th, Plaintiff Jane Doe attends a meeting with the union
2 representative Ron Davis and Terry Daniels from DHR to discuss the investigation.

3 99. In this meeting, Terry Daniels informed Plaintiff Jane Doe that Defendant
4 Madsen sat down at one of the community computer in a supervisor's office and "happened to
5 find" eight (8) or nine (9) emails up on the screen in full view for her to see. Terry Daniels
6 told Plaintiff Jane Doe this happened on October 18, 2009. Purportedly, these emails all came
7 from Plaintiff Jane Doe's personal Yahoo!™ account. Terry Daniels told Plaintiff Jane Doe
8 that her Yahoo!™ account had a box that was checked that kept her logged on, and that
9 Plaintiff Jane Doe allegedly "forgot" to hit the "sign off" button. Thus, when Defendant
10 Madsen went to use the computer, it showed Plaintiff Jane Doe as still logged on, so "she
11 decided to snoop." According to Terry Daniels, the emails were dated from September 2008
12 to July 2009. According to Terry Daniels, Defendant Madsen, "only" printed-out nine (9) or
13 (10) emails but DEC was only "concerned" about two (2) of the emails. Terry Daniels
14 showed the emails to Plaintiff Jane Doe and Ron Davis. Plaintiff Jane Doe expressed
15 extremely confidential, personal and private matters in these emails.

16 100. Incredibly, Defendant CCSF had full knowledge for over six (6) weeks that
17 Plaintiff Jane Doe's private and confidential email account had been hacked and did not tell
18 her – all the while knowing that extremely confidential, sensitive, personal and private
19 information about Plaintiff Jane Doe's person, family members, health, finances, and third
20 party privacy rights, had been callously violated and exposed to others without Plaintiff Jane
21 Doe's (or third parties') consent. Further, it was clear from looking at the dates of the emails,
22 that Defendant Madsen had perused over a thousand emails, which had to have taken hours if
23 not days, in order to cull out these few emails that Defendant Madsen "thought" were of
24 "concern."

25 101. Matters described in these preceding paragraphs, regarding Plaintiff Jane Doe's
26 Yahoo! Email account, will be referred to generally at the "Email Incident,"

27 102. Defendant Madsen had to search over 1000 emails in Plaintiff Jane Does'
28 Yahoo! account to find the ones she used to make her complaint. Of even greater concern was

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1 what emails if any, did Defendant Madsen create and send out in Plaintiff Jane Doe's name?
2 None of the emails "at issue" were written while Plaintiff Jane Doe was at work. Further,
3 Plaintiff Jane Doe is informed and believes that Defendant Madsen lied about how many
4 emails she printed.

5 103. Plaintiff Jane Doe is informed and believes that Defendant Madsen willfully,
6 maliciously and with intent to hurt, printed out, discussed, and distributed many other emails
7 from Plaintiff Jane Doe's Yahoo!™ email account, showed them to others, read them to
8 others, humiliated and defamed Plaintiff Jane Doe, and tried to get Plaintiff Jane Doe
9 disciplined or fired. This is was blatant retaliation because Plaintiff Jane Doe made
10 complaints about Defendant Madsen.

11 104. Months later, on April 29, 2010, Plaintiff Jane Doe learned that Defendant
12 Dougherty and possibly Defendant Grives and Defendant Hillman were part of the Email
13 Incident; that they, too, participated in scanning Plaintiff Jane Doe's email account, reading
14 her private confidential emails, intruding upon her innermost private thoughts, reading emails
15 from third-parties that Plaintiff Jane Doe had received, violating Plaintiff Jane Doe and others
16 privacy rights, reading Plaintiff Jane Doe's confidential financial information, reading
17 Plaintiff Jane Doe's confidential medical information and, possibly, creating and distributing
18 emails in Plaintiff Jane Doe's name without her knowledge. Plaintiff Jane Doe was beyond
19 devastated to learn of this new information.

20 105. As soon as the emails were distributed and talked about throughout Plaintiff
21 Jane Doe's workplace, without restriction, Plaintiff Jane Doe's work life went from horrible to
22 hellish.

23 106. Plaintiff Jane Doe asked her union rep to file a counter-complaint for
24 harassment and demanded the Defendant CCSF bring in the computer personnel to determine
25 the extent of the breach. Plaintiff Jane Doe was expressly assured that Defendant CCSF's
26 computer personnel would do a thorough investigation.

27 107. Meanwhile, Plaintiff Jane Doe's co-workers went from supportive and
28 respectful, to angry, hostile and vindictive toward Plaintiff Jane Doe because it disrupted the

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1 work schedules. Work schedules are set every six months and since Plaintiff Jane Doe could
 2 not work with Defendant Madsen, someone else had to get bumped to midnights and this
 3 made the other employees mad.

4 108. Prior to the Email Incident, and except with her harassers (the individual
 5 Defendants), Plaintiff Jane Doe had a great reputation at work and after the Email Incident, no
 6 one would look Plaintiff Jane Doe in the eye. Her career was ruined. The viscous attacks on
 7 her person, invasion her rights and privacy has affected Plaintiff Jane Doe greatly. Plaintiff
 8 Jane Doe loved her job and now she can barely get up to go to work.

9
 10 **E. DECEMBER 4, 2020: PLAINTIFF JANE DOES FILES A POLICE REPORT.**
 11

12 109. On December 4, 2009, Plaintiff Jane Doe filed a complaint with the San
 13 Francisco Police Department about the Email Incident.

14
 15 **ON DECEMBER 7, 2009 PLAINTIFF JANE DOE FILES A FORMAL HARASSMENT**
 16 **COMPLAINT – BUT RETALIATION CONTINUES.**
 17

18 110. On or about December 7, 2009, Plaintiff Jane Doe filed a formal harassment
 19 complaint with her department concerning Email Incident.

20 111. This complaint states as follows:

21
 22 *This memorandum serves as a preliminary written*
 23 *response to the meeting held on Friday, December 4, 2009*
 24 *concerning the investigation into my alleged "unprofessional*
 25 *workplace conduct." I am incensed that I am the subject of*
 26 *anything other than a huge apology. I insist upon a full inquiry*
 27 *into the breach of my privacy: How is it possible that not one*
 28 *person made aware of this incident possesses the very*

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1 *characteristics-a basic understanding of privacy and respect*
2 *among them-that are essential in positions of leadership?*
3 *Each of these people failed to recognize that my privacy was*
4 *violated and that the person or people who sat pouring over*
5 *my personal email account should be the sole focus of any*
6 *investigation. To add insult to injury, I am being charged with*
7 *unprofessional workplace conduct because people illegally*
8 *accessed printed communications contained in my PERSONAL*
9 *EMAIL ACCOUNT. That management has been aware of this*
10 *breach for several weeks yet took NO STEPS to advise me of*
11 *such is unconscionable. Each and every person with*
12 *knowledge of this breach had a duty to warn me that my*
13 *privacy was violated. It is beyond absurd to state that "I*
14 *brought the email into the workplace." That is akin to saying*
15 *that because I left my purse open with money in it it's my fault*
16 *that it was stolen. Moreover, I find it difficult to fathom how*
17 *anyone could possibly believe that all those emails were open*
18 *on the screen for the viewing pleasure of whoever sat down at*
19 *the computer after me. There are many reasons-technical and*
20 *logical alike-why that is impossible. Even had all those emails*
21 *been visible, there exists no valid reason for anyone to look at*
22 *them. Yet someone did just that. There are over 1500 emails in*
23 *my account; it was rummaged through for a VERY long time.*
24 *The perpetrator(s) not only violated my privacy, but also the*
25 *privacy of many of my co-workers, family members, banks,*
26 *creditors, doctors and DEC management, all of whom have*
27 *corresponded with me via my personal email account. My*
28 *inbox and my outbox were perused with the equivalent of a*

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1 *fine-tooth comb. A person of reasonable moral fiber*
2 *immediately would have closed the application. I need to*
3 *know the exact date of this privacy breach so I can advise all*
4 *my contacts to research any unusual communications that*
5 *may have been sent without my knowledge. Since my account*
6 *has a delete feature in both my inbox and my outbox, I will*
7 *need information about any communications that may have*
8 *been sent in my name and then deleted.*

9 *At this point in time I have no idea how far reaching this*
10 *breach is. It is imperative that I be able to secure my privacy*
11 *immediately. I need to know how many copies of emails from*
12 *my account were produced. I cannot assume that the copies in*
13 *your possession are the only emails that were printed.*

14 *For now, I am concentrating on my personal security.*
15 *You are on notice that the knowledge that my very personal*
16 *life has been fodder for a select group of bullies will be*
17 *addressed. I cannot help but wonder how management would*
18 *react if the deepest personal aspects of their lives were on*
19 *display.*

20 *This trespass is the most recent in a long series of*
21 *pointed attacks perpetrated by a select group of individuals,*
22 *individuals whose outrageous behavior has gone unchecked*
23 *for years. That management not only has not reprimanded*
24 *such behavior but has let it flourish is downright negligent. I*
25 *refuse to endure the harassment any longer.*

26 *I am not going to address the content of my email*
27 *communications because it is irrelevant. I have filed a police*
28 *report and will be supplementing the report as the*

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1 *investigation progresses. I work alongside unprofessional,*
2 *mean and vindictive people. That I should be further victimized*
3 *and violated by the very people whose job it is to oversee the*
4 *workplace is intolerable. I hope that steps can be taken so that*
5 *I can begin to regain some modicum of trust in my employer. If*
6 *not, I will have no choice but to explore my legal options.*

7
8 112. On Thursday January 13, 2010, Plaintiff Jane Doe went to Operations Manager
9 Cecile Soto, the most senior person in management on site, because Plaintiff Jane Doe's union
10 steward was concerned that co-workers were talking about the investigation openly in front of
11 subordinates. Instead of addressing the problem, Operations Manager Cecile Soto
12 reprimanded Plaintiff Jane Doe.

13 113. On Friday January 14, 2010, Operations Manager Cecile Soto pulled Plaintiff
14 Jane Doe into the manager's office, in front of all the staff, reprimanded Plaintiff Jane Doe for
15 talking about the investigation.

16 114. On January 22, 2010, it was reported to Plaintiff Jane Doe by another
17 Supervisor that two DEC Midnight Shift Supervisors Defendant Doherty and Wayne Propalis
18 were loudly discussing Plaintiff Jane Doe's complaint and the Email Incident on the operation
19 bridge. (It is in the middle of the dispatch room). They berated and defamed Plaintiff Jane
20 Doe. Wayne Propalis started a petition to keep Plaintiff Jane Doe on the DEC Midnight Shift,
21 even though everyone was told not to discuss this situation, Plaintiff Jane Doe was the only
22 one to be repeatedly reprimanded and yelled at by Operations Manager Cecile Soto in front of
23 other workers; apparently Plaintiff Jane Doe was the only who was expected to stay silent.

24 115. Incredibly, in January 2010, Plaintiff Jane Doe received a disciplinary action in
25 the form of Formal Retraining "Unprofessional Conduct" for notifications that were not made
26 by dispatchers under her supervision. There was no way possible that Plaintiff Jane Doe could
27 have known about these notifications. She was never interviewed and it occurred on
28 September 5, 2009. Dispatchers make mistakes all the time and they do not write up the

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Supervisors for their mistakes. This Disciplinary Action was retaliatory just to make Plaintiff Jane Doe look bad. The DEC policy and practice mandates that employees be informed within 30 days of an investigation – not four months later. The matter was later dropped.

116. Plaintiff Jane Doe had a clean record-- only one investigation in 7 years; now all of a sudden she is been involved in four (4) since September 2009.

117. On about January 22, 2010, Plaintiff Jane Doe went to the Defendant CCSF's Human Resource Department and made a complaint. Defendant CCSF's Human Resource Department told her that it was not only harassment, but Plaintiff was a "whistle-blower" because they were cheating the City out of money.

G. Defendant Refuse to Return the E-Mails Back to Plaintiff Jane Doe

118. On February 17, 2010, "spoliation of evidence warning" letter from Plaintiff Jane Doe's counsel was sent to letter to Defendant Madsen and others demanding, among other matters, that she:

a. Immediately retract any complaints against Plaintiff Jane Doe that are based on any email or information that was surreptitiously and illegally obtained from Plaintiff Jane Doe's' private email account;

b. Immediately retract all defamatory statements that she made regarding Plaintiff Jane Doe; and,

c. Immediately return, any and all copies of any e-mails that she had in her possession, custody and control regarding Plaintiff Jane Doe's and immediately destroy any electronic copies on her computer or elsewhere.

119. Defendant Madsen and Defendant CCSF did not respond or comply with this demand.

120. A similar letter was sent to the Director of DEM, Vicki Hennessy, and likewise, there no compliance; nothing was returned and no assurances were made about all the private emails that were taken from Plaintiff Jane Doe without her consent.

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1 121. To this date: No meaningful or effective investigation has ensued (had there
2 been one, Plaintiff Jane Doe and other key witnesses would have been interviewed and they
3 were not) and nothing was done to stop the re-publishing of these emails. Director of DEM,
4 Vicki Hennessy simply sent a curt response that they had investigated and Plaintiff Jane Doe's
5 claims had no merit.

6 122. On April 29, 2010, Plaintiff Jane Doe and her Union Representative Ron Davis
7 met with Director of DEM, Vicki Hennessey. Director of DEM, Vicki Hennessy said she
8 spoke to DHR and the City Attorney. The findings were that they essentially, "do not care
9 what another employee does in an email account that it is not the responsibility of the
10 Defendant CCSF." They said that Plaintiff Jane Doe inadvertently left her email account and
11 that what Defendant Madsen did in her account they do not want to get involved in. They said
12 that Defendant Madsen told them that she felt the emails were work related and therefore
13 within her scope of authority to look at. Despite the lack of an investigation, they said they
14 had no reason to doubt Defendant Madsen's story that the emails were "in plain view." The
15 person that saw them first was Defendant Dougherty who then brought them to Defendant
16 Madsen's attention. They would not answer Plaintiff Jane Doe's questions about what
17 Defendants Madsen and Defendant Doherty did when they were in Plaintiff Jane Doe's
18 Yahoo! TM Account.

19 123. According to Director of DEM, Vicki Hennessy, the server information was
20 saved but not gone through because Defendant CCSF determined, "it wasn't DEC's job to do
21 so." Even though they did not check the computer, Director of DEM, Vicki Hennessy said
22 the Plaintiff Jane Doe's complaint against Defendant Madsen was unfounded.

23
24 **FACTUAL ALLEGATIONS OF PLAINTIFF ANNE RASKIN**

25
26 124. Plaintiff Anne Raskin Is Senior Dispatcher with Defendant CCSF.

27 125. Plaintiff Raskin commenced employment on June 5, 2006.

28 126. Plaintiff Anne Raskin currently works the DEC Day shift.

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1 127. Like Plaintiff Jane Doe, Plaintiff Anne Raskin suffered discrimination and
2 harassment in a hostile work environment at the hands of her supervisors and co-workers with
3 seniority at the Department of Emergency Management (DEM) of the Defendant City and
4 County of San Francisco because of her sex (female).

5 128. In addition, Plaintiff Anne Raskin received no assistance or support from
6 supervisory staff while on DEC Midnight Shift after the email incident, in a job that requires
7 such, leaving her wide open for neglect of duty as is it humanly impossible to dispatch or train
8 proficiently without assistance.

9 129. This discrimination and harassment culminated on or about October 18, 2009,
10 when Defendant Madsen and Defendant Dougherty, both supervisors of Plaintiff Anne
11 Raskin, used DEM time and resources to access the private email account of Plaintiff Jane
12 Doe (a co-worker of Plaintiff Anne Raskin) without Plaintiff Jane Doe's authorization.
13 Defendant Madsen and Defendant Dougherty reviewed, printed, and republished private and
14 confidential emails between Plaintiff Jane Doe and Plaintiff Anne Raskin.

15 130. Plaintiff Anne Raskin never gave consent that anyone could read her personal
16 and private emails.

17 131. Because of Plaintiff Jane Doe and Plaintiff Anne Raskin's gender (female),
18 Defendant Madsen and Defendant Dougherty violated Plaintiff Anne Raskin's privacy
19 through the unauthorized review of her personal emails.

20 132. This harassment and invasion of privacy damaged Plaintiff Anne Raskin's
21 standing within the DEM.

22 133. Plaintiff Anne Raskin was mentioned in the complaints of harassment filed by
23 Plaintiff Jane Doe in relation to the October 18, 2009 event. Since then, Plaintiff Anne Raskin
24 has faced heightened scrutiny, undue and untrue criticism and reprimands, and shunning by her
25 coworkers. Before the "Email Incident" Plaintiff was being groomed for promotion, allowed
26 to attend a lot of training and meeting, and embraced by management. After the "Email
27 Incident," and Plaintiff Anne Raskin's personal and private emails with Plaintiff Jane Doe
28 were downloaded and published around the department, Plaintiff Anne Raskin became

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1 “persona non grata” and received a Notice of Investigation, initiated by Bernard. The
2 opportunities for advancement were withdrawn and she has been denied every class she has
3 asked to take.

4 134. Before the “Email Incident,” Plaintiff Anne Raskin had years of no behavioral
5 complaints from either the citizenry or public safety. This notice of investigation was clearly
6 retaliatory.

7 135. Plaintiff Anne Raskin realized that to protect herself, and for her own safety she
8 had to move to day shift, and in fact the 0900-1900 watch which effectively eliminates all
9 contact with Midnight shift who arrive at 2100 and stay until 0700. Plaintiff Anne Raskin has
10 been there since March, 2010. The resulted in a \$500 month cut in pay.

11 136. The ongoing campaign of discrimination, harassment, hostile work
12 environment, and retaliation Plaintiff Anne Raskin suffers is rooted in the fact that she is a
13 female who refused to make overtures to curry favor with Defendant Madsen, Defendant
14 Dougherty and other members of the DEC staff. Plaintiff Anne Raskin is far from alone in
15 experiencing this harassment and discrimination. Plaintiff Anne Raskin is informed and
16 believes that female subordinates to Defendant Madsen, Defendant Dougherty, Defendant
17 Bernard, Defendant Grives, Defendant Hillman and other female Supervisory members,
18 whose names at this time are unknown, of the DEC staff are subject to discrimination,
19 harassment and a hostile work environment if the subordinate females, including but not
20 limited to Plaintiff Anne Raskin, refuse to make overtures to curry favor with the
21 aforementioned Supervisors.

22 137. Plaintiff Anne Raskin is informed and believes that male subordinates do not
23 suffer consequences for refusing to submit to Defendant Madsen and the other
24 aforementioned female Supervisors. Defendant CCSF knew, or had it complied with state and
25 federal law, should have known, that Plaintiffs Jane Doe and Anne Raskin’s Supervisors,
26 including Defendant Madsen and Defendant Dougherty, and other employees had a
27 propensity to harass, discriminate and retaliate against other women, based on their past
28

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1 conduct and based on Defendants' management's direct knowledge of harassing conduct
2 committed by Plaintiffs' supervisors and other employees.

3
4 **FIRST CLAIM FOR RELIEF**

5 **VIOLATION OF THE FEDERAL STORED COMMUNICATIONS ACT**

6 **18 U.S.C. §§ 2701 to 2711**

7 (Against all Defendants)

8 138. Plaintiffs incorporate by reference as though fully set forth herein, each and
9 every allegation set forth above in this Complaint. As a separate and distinct claim for relief,
10 Plaintiffs complain against Defendants and each of them as follows:

11 139. The Stored Communications Act (SCA)[1] was passed by the United States
12 Congress in 1986 as part of the Electronic Communications Privacy Act, and is codified at 18
13 U.S.C. §§ 2701 to 2711.

14 140. Yahoo!™ is an electronic communication service. Plaintiff Jane Doe owned an
15 email account serviced by Yahoo!™ that could only be accessed by use of her personal,
16 private and confidential username and password. Yahoo!™ provided confidential private
17 storage of Plaintiff Jane Doe's incoming and outgoing electronic communications. Plaintiff
18 Jane Doe has a reasonable expectation of privacy as to the ingoing and outgoing emails that
19 were stored by Yahoo!™ in her electronic email account that was maintained by Yahoo!™.

20 141. Defendants violated the SCA as alleged herein by intentionally accessing
21 Plaintiff Jane Doe's personal, private and confidential Yahoo!™ email account without
22 authorization.

23 142. As a proximate and legal cause of Defendants unlawful violation of the SCA,
24 Plaintiff suffered damages including but not limited to shame, embarrassment, invasion of her
25 right of privacy, and of denial of her state and federal constitutional rights.

26 143. Plaintiffs Jane Doe and Anne Raskin are persons aggrieved by Defendants'
27 violation of the SCA because the conduct constituting the violation, as alleged herein was
28

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engaged in with a knowing or intentional state of mind. Accordingly, Plaintiffs seek recovery as follows:

(1) Such preliminary and other equitable or declaratory relief as may be appropriate; and,

(2) The Court may assess as damages in the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of \$1,000. If the violation is willful or intentional, the court may assess punitive damages.

In the case of a successful action to enforce liability under this section, the court may assess the costs of the action, together with reasonable attorney fees determined by the Court.

WHEREFORE, Plaintiffs request relief as herein set forth in the Prayer.

SECOND CLAIM FOR RELIEF

VIOLATION OF CALIFORNIA LABOR CODE §98.6; 1102.5; 6310

(Plaintiffs against Defendant CCSF AND Does 1 through 20)

144. Plaintiffs incorporate by reference as though fully set forth herein, each and every allegation set forth above in this Complaint. As a separate and distinct supplemental claim for relief, Plaintiffs complain against Defendants and each of them as follows:

145. California Labor Code § 98.6(a) provides that:

“No person shall discharge an employee or in any manner discriminate against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter... or because the employee [] has filed a bona fide complaint or claim...”

146. California Labor Code § 98.6(b) provides that:

“Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of his or her

PLAINTIFFS' COMPLAINT FOR DAMAGES/ REQUEST FOR JURY TRIAL

1 employment...is entitled to reinstatement and reimbursement for lost wages and work benefits
2 caused by those acts of the employer.”

3 147. California Labor Code § 6310 prohibits any manner of discrimination or
4 retaliation against any employee because the employee has made a complaint to a
5 governmental agency in reference to employee health and safety.

6 148. California Labor Code § 1102.5 provides that:

7 a) An employer may not make, adopt, or enforce any rule,
8 regulation, or policy preventing an employee from disclosing
9 information to a government or law enforcement agency, where the
10 employee has reasonable cause to believe that the information
11 discloses a violation of state or federal statute, or a violation or
12 noncompliance with a state or federal rule or regulation.

13 (b) An employer may not retaliate against an employee for
14 disclosing information to a government or law enforcement agency,
15 where the employee has reasonable cause to believe that the
16 information discloses a violation of state or federal statute, or a
17 violation or noncompliance with a state or federal rule or
18 regulation.

19 (c) An employer may not retaliate against an employee for refusing
20 to participate in an activity that would result in a violation of
21 state or federal statute, or a violation or noncompliance with a
22 state or federal rule or regulation.

23 (d) An employer may not retaliate against an employee for having
24 exercised his or her rights under subdivision (a), (b), or (c) in any
25 former employment.

26 (e) A report made by an employee of a government agency to his or
27 her employer is a disclosure of information to a government or law
28 enforcement agency pursuant to subdivisions (a) and (b).

PLAINTIFFS' COMPLAINT FOR DAMAGES/ REQUEST FOR JURY TRIAL

1 (f) In addition to other penalties, an employer that is a
2 corporation or limited liability company is liable for a civil
3 penalty not exceeding ten thousand dollars (\$10,000) for each
4 violation of this section.

5 (g) This section does not apply to rules, regulations, or policies
6 which implement, or to actions by employers against employees who
7 violate, the confidentiality of the lawyer-client privilege of
8 Article 3 (commencing with Section 950), the physician-patient
9 privilege of Article 6 (commencing with Section 990) of Chapter 4 of
10 Division 8 of the Evidence Code, or trade secret information.
11

12 149. Plaintiffs lodged numerous complaints with Defendant CCSF, including
13 Plaintiff Jane Doe's complaint with the San Francisco Police Department regarding the unsafe
14 work environment, violation of state and federal law, the misuse of government funds,
15 unlawful gender-based harassment and discrimination. These complaints included his
16 concerns for the health and safety (e.g., physical and emotional distress caused by
17 Defendants' actions) of those working under the abusive leadership of control of Defendants
18 Madsen, Hillman, Dougherty and Grives, including Plaintiff Jane Doe. These complaints
19 have been continuing to date.

20 150. Instead of responding to Plaintiff Jane Doe's complaints in a meaningful
21 manner, Defendants Defendant CCSF and Does 1 to 20 discriminated and retaliated against
22 Plaintiff Jane Doe by, among other matters, disciplining, bringing false charges,
23 reprimanding, and invading her privacy, in violation of the law.

24 151. As a direct, foreseeable and legal result of Defendants' conduct, Plaintiffs have
25 suffered and continues to suffer substantial damages including losses in earnings, bonus
26 compensation, seniority, retirement and other employment benefits in an amount to be proven
27 at trial.
28

PLAINTIFFS' COMPLAINT FOR DAMAGES/ REQUEST FOR JURY TRIAL

1 152. As a direct, foreseeable and legal result of Defendants' conduct, Plaintiffs have
2 suffered and continue to suffer humiliation, embarrassment, mental, emotional distress and
3 discomfort, all to Plaintiffs detriment in an amount to be proven at trial.

4 153. By reason of Defendants' unlawful conduct, and in seeking enforcement of
5 important rights affecting the public interest, Plaintiff has incurred and will incur legal
6 expenses including attorneys' fees and costs to remedy the wrongs perpetrated by Defendants
7 and each of them. Plaintiff Jane Doe is therefore entitled to reasonable attorneys' fees and
8 costs as a matter of law pursuant to, interalia California Code of Civil Procedure § 1021.5, et
9 seq.

10 WHEREFORE, Plaintiff Jane Doe requests relief as herein set forth in the Prayer.

11
12 **THIRD CLAIM FOR RELIEF -- SUPPLEMENTAL**

13 (INVASION OF PRIVACY – Against Individual Defendants and DOES 1 through 20)

14
15 154. Plaintiffs incorporate by reference as though fully set forth herein, each and
16 every allegation set forth above in this Complaint. As a separate and distinct supplemental
17 claim for relief, Plaintiffs complains against Defendants and each of them as follows:

18 155. Article I, Section 1, of the California Constitution establishes each person's
19 right to privacy in this State.

20 156. Plaintiffs Doe and Raskin at all times mentioned herein had a legally protected
21 privacy interest in the email communications and email account described herein, and a
22 reasonable expectation that her privacy would not be violated by Defendants.

23 157. A serious invasion of Plaintiffs Doe and Raskin's privacy occurred when,
24 Defendants

25 158. As a proximate result of this invasion of privacy, and the extreme and
26 outrageous conduct engaged in by Defendants, Plaintiffs suffered humiliation, mental anguish
27 and extreme emotion and physical distress all to her general damage in an amount according
28 to proof at trial.

PLAINTIFFS' COMPLAINT FOR DAMAGES/ REQUEST FOR JURY TRIAL

159. Defendants Madsen, Hillman, Dougherty and Grieves' conduct as herein alleged was malicious and oppressive in that it was conduct carried on by him in a willful and conscious disregard of Plaintiffs Doe and Raskin's rights and subjected her to cruel and unjust hardship. Plaintiffs Doe and Raskin is therefore entitled to an award of punitive damages against Defendants Madsen, Hillman, Dougherty and Grives.

WHEREFORE, Plaintiffs Doe and Raskin pray for judgment against Defendants as is more fully set forth below.

FOURTH CLAIM FOR RELIEF – SUPPLEMENTAL
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

160. Plaintiffs incorporate by reference as though fully set forth herein, each and every allegation set forth above in this Complaint. As a separate and distinct supplemental claim for relief, Plaintiffs complains against Defendants and each of them as follows:

161. This is an action for damages pursuant to the common law of the State of California as mandated by the California Supreme Court in the decision of *Rojo v. Kliger* (1990) 52 Cal. 3d 65. Defendants engaged in extreme and outrageous conduct individually and in their managerial and supervisory positions of authority over Plaintiffs Doe and Raskin, and terrorized and tormented Plaintiff as herein above alleged with the goal of causing her to suffer extreme duress, emotional distress, fright and intimidation.

162. Defendants engaged in the extreme and outrageous conduct herein above alleged with wanton and reckless disregard of the probability of causing Plaintiffs Doe and Raskin to suffer severe emotional distress.

163. As a proximate result of the extreme and outrageous conduct engaged in by Defendants, Plaintiffs Doe and Raskin suffered humiliation, mental anguish and extreme emotion and physical distress all to her general damage in an amount according to proof at trial.

164. Defendant's conduct as herein alleged was malicious and oppressive in that it was conduct carried on by Defendants in a willful and conscious disregard of Plaintiff's rights

PLAINTIFFS' COMPLAINT FOR DAMAGES/ REQUEST FOR JURY TRIAL

1 and subjected her to cruel and unjust hardship. Plaintiffs Doe and Raskin is therefore entitled
2 to an award of punitive damages.

3 WHEREFORE, Plaintiffs Doe and Raskin pray for judgment against Defendants as is
4 more fully set forth below.

5
6 **FIFTH CLAIM FOR RELIEF – SUPPLEMENTAL**

7 **VIOLATION OF CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT:**

8 **DISCRIMINATION BASED ON SEX**

9 **(Against Defendant City and Does 1 through 10)**

10 165. Plaintiffs incorporate by reference as though fully set forth herein, each and
11 every allegation set forth above in this Complaint. As a separate and distinct supplemental
12 claim for relief, Plaintiffs complain against Defendants CCSF and DOES 1 through 10, only,
13 each of them as follows:

14 166. Plaintiffs incorporate by reference as though fully set forth herein, each and
15 every allegation set forth above in this Complaint. As a separate and distinct claim for relief,
16 Plaintiffs complains against Defendant City and Does 1 through 10 as follows:

17 167. California Government Code Section 12940(a) prohibits any employer or
18 person from discriminating against any employee in the terms, conditions or privileges of
19 employment, on account of that employee's sex. Defendants' conduct toward Plaintiffs, as
20 described above, constituted discrimination on the basis of sex as prohibited by Government
21 Code Section 12940(a).

22 168. As a direct, foreseeable and legal result of Defendants' discriminatory acts,
23 Plaintiffs have suffered and continue to suffer substantial losses in earnings, bonuses and
24 other employment benefits, in addition to expenses incurred in obtaining alternative
25 employment, and has suffered and continues to suffer humiliation, embarrassment, mental and
26 emotional distress, and discomfort, all to Plaintiffs' damage in an amount to be proven at trial.

27 169. By reason of Defendants' unlawful conduct, and in order to enforce the
28 important right to a discrimination and harassment free workplace for herself and the public at

PLAINTIFFS' COMPLAINT FOR DAMAGES/ REQUEST FOR JURY TRIAL

1 large, Plaintiffs have incurred and continue to incur legal expenses and attorneys' fees.
2 Plaintiffs are therefore entitled to reasonable attorneys' fees and litigation expenses.
3 California Code of Civil Procedure 1021.5 and California Government Code §12900 et seq.

4 WHEREFORE, Plaintiffs request relief as set forth in the Prayer.
5

6 **SIXTH CLAIM FOR RELIEF -- SUPPLEMENTAL**

7 VIOLATION OF CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT:

8 SEXUAL HARASSMENT

9 (Against All Defendants)

10 170. Plaintiffs incorporate by reference as though fully set forth herein, each and
11 every allegation set forth above in this Complaint. As a separate and distinct supplemental
12 claim for relief, Plaintiffs complain against Defendants, and each of them, as follows:

13 171. California Government Code Section 12940(j) prohibits an employer or person
14 from harassing an employee on the basis of sex and sexual orientation. Government Code
15 Section 12940(h) also requires an employer who knows or should have known of this
16 harassment to take immediate and appropriate corrective action to stop such harassment, and
17 to take all reasonable steps to prevent harassment from occurring.

18 172. In doing the acts and omissions set forth above, Defendants, and each of them,
19 violated the California Government Code Section 12940(j) prohibitions against workplace
20 harassment of employees based on their sex and sexual orientation.

21 173. As a direct, foreseeable and legal result of Defendants' discriminatory acts,
22 Plaintiffs have suffered and continues to suffer substantial losses in earnings, bonuses and
23 other employment benefits, in addition to expenses incurred in obtaining alternative
24 employment, and have suffered and continue to suffer humiliation, embarrassment, mental
25 and emotional distress, and discomfort, all to Plaintiffs' damage in an amount to be proven at
26 trial.

27 174. Defendants committed the despicable acts as herein alleged maliciously,
28 fraudulently, and oppressively, with the wrongful intent of injuring Plaintiffs, and have acted

PLAINTIFFS' COMPLAINT FOR DAMAGES/ REQUEST FOR JURY TRIAL

1 with an improper and evil motive amounting to malice, and in conscious disregard of
 2 Plaintiffs rights and emotional well being. Plaintiffs are therefore entitled to recover punitive
 3 damages from Defendants in an amount according to proof.

4 175. By reason of Defendants' unlawful conduct, and in order to enforce the
 5 important right to a discrimination and harassment free workplace for herself and the public at
 6 large, Plaintiffs have incurred and continue to incur legal expenses and attorneys' fees.
 7 Plaintiffs are therefore entitled to reasonable attorneys' fees and litigation expenses.
 8 California Code of Civil Procedure §1021.5 and California Government Code §12900 et seq.

9 WHEREFORE, Plaintiffs requests relief as set forth in the Prayer.

10
 11 **SEVENTH CLAIM FOR RELIEF -- SUPPLEMENTAL**

12 VIOLATION OF CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT:

13 FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT

14 (Against Defendant CCSF and Defendants Does 1 through 10)

15 176. Plaintiffs incorporate by reference as though fully set forth herein, each and
 16 every allegation set forth above in this Complaint. As a separate and distinct supplemental
 17 claim for relief, Plaintiff complains against Defendant CCSF and Does 1 through 10 as
 18 follows:

19 177. California Fair Employment and Housing Act, Government Code Section
 20 12940(k), places on employers an affirmative, statutory obligation to take all reasonable steps
 21 to prevent unlawful discrimination and harassment from occurring.

22 178. Defendants failed to take meaningful, effective and reasonable steps to ensure
 23 that discrimination and harassment would not occur in the workplace.

24 179. As a direct, foreseeable and legal result of Defendants' actions and omissions,
 25 Plaintiffs have suffered and continues to suffer substantial losses in earnings, bonuses and
 26 other employment benefits, in addition to expenses incurred in obtaining alternative
 27 employment, and has suffered and continues to suffer humiliation, embarrassment, mental and
 28

PLAINTIFFS' COMPLAINT FOR DAMAGES/ REQUEST FOR JURY TRIAL

1 emotional distress, and discomfort, all to Plaintiff's damage in an amount to be proven at
2 trial.

3 180. By reason of Defendants' unlawful conduct, and in order to enforce the
4 important right to a discrimination and harassment free workplace for herself and the public at
5 large, Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
6 Plaintiff is therefore entitled to reasonable attorneys' fees and litigation expenses. California
7 Code of Civil Procedure §1021.5 and California Government Code §12900 et seq.

8 WHEREFORE, Plaintiff requests relief as set forth in the Prayer.

9
10 **EIGHTH CLAIM FOR RELIEF -- SUPPLEMENTAL**

11 VIOLATION OF CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT:

12 RETALIATION

13 (Against Defendant CCSF and Defendants Does 1 through 10)

14 181. Plaintiffs incorporate by reference as though fully set forth herein, each and
15 every allegation set forth above in this Complaint. As a separate and distinct supplemental
16 claim for relief, Plaintiffs complain against Defendants CCSF and Does 1 through 10 as
17 follows:

18 182. Defendants retaliated against Plaintiffs for having engaged in protected activity
19 by objecting to the hostile work environment caused by Defendants, as well as for expecting
20 Defendants to honor and abide laws designed to protect employee rights.

21 183. As a direct, foreseeable and legal result of Defendants' actions and omissions,
22 Plaintiffs have suffered and continues to suffer substantial losses in earnings, bonuses and
23 other employment benefits, in addition to expenses incurred in obtaining alternative
24 employment, and has suffered and continue to suffer humiliation, embarrassment, mental and
25 emotional distress, and discomfort, all to Plaintiffs' damages in an amount to be proven at
26 trial.

27 184. By reason of Defendants' unlawful conduct, and in order to enforce the
28 important right to a discrimination and harassment free workplace for herself and the public at

PLAINTIFFS' COMPLAINT FOR DAMAGES/ REQUEST FOR JURY TRIAL

1 emotional distress, and discomfort, all to Plaintiff's damage in an amount to be proven at
2 trial.

3 180. By reason of Defendants' unlawful conduct, and in order to enforce the
4 important right to a discrimination and harassment free workplace for herself and the public at
5 large, Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
6 Plaintiff is therefore entitled to reasonable attorneys' fees and litigation expenses. California
7 Code of Civil Procedure §1021.5 and California Government Code §12900 et seq.

8 WHEREFORE, Plaintiff requests relief as set forth in the Prayer.

9
10 **EIGHTH CLAIM FOR RELIEF -- SUPPLEMENTAL**

11 VIOLATION OF CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT:

12 RETALIATION

13 (Against Defendant CCSF and Defendants Does 1 through 10)

14 181. Plaintiffs incorporate by reference as though fully set forth herein, each and
15 every allegation set forth above in this Complaint. As a separate and distinct supplemental
16 claim for relief, Plaintiffs complain against Defendants CCSF and Does 1 through 10 as
17 follows:

18 182. Defendants retaliated against Plaintiffs for having engaged in protected activity
19 by objecting to the hostile work environment caused by Defendants, as well as for expecting
20 Defendants to honor and abide laws designed to protect employee rights.

21 183. As a direct, foreseeable and legal result of Defendants' actions and omissions,
22 Plaintiffs have suffered and continues to suffer substantial losses in earnings, bonuses and
23 other employment benefits, in addition to expenses incurred in obtaining alternative
24 employment, and has suffered and continue to suffer humiliation, embarrassment, mental and
25 emotional distress, and discomfort, all to Plaintiffs' damages in an amount to be proven at
26 trial.

27 184. By reason of Defendants' unlawful conduct, and in order to enforce the important
28 right to a discrimination and harassment free workplace for herself and public at large,

PLAINTIFFS' COMPLAINT FOR DAMAGES/ REQUEST FOR JURY TRIAL

1 Plaintiffs are therefore entitled to reasonable attorneys' fees and litigation expenses.
2 California Code of Civil Procedure §1021.5 and California Government Code §12900 et seq.

3 WHEREFORE, Plaintiff requests relief as set forth in the Prayer.

4
5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs, prays judgment against Defendants, and each of them, as
7 follows:

- 8 1. General and special damages in an amount according to proof, but in excess of
9 the jurisdictional limit of this Court;
10 2. Statutory damages as allowed by law
11 4. Attorneys fees and costs of litigation, and multiplier, according to proof and as
12 the law allows [California Code of Civil Procedure §1021.5; California Government Code
13 §12940, et seq];
14 5. Declaratory and injunctive relief;
15 6. Punitive and exemplary damages against Defendants Madsen, Hillman, Grives
16 and Dougherty;
17 7. Statutory penalties and interest as allowed under the law; and,
18 8. Such other and further relief as the Court deems just and proper.

19
20 Dated: October 18, 2010

SHEA LAW OFFICES

21
22 By: _____

Mary Shea Hagibols

Attorney for Plaintiffs

JANE DOE and ANNE RASKIN

23
24
25
26
27 **DEMAND FOR A JURY TRIAL**

28 Plaintiffs hereby demand a trial by jury.

PLAINTIFFS' COMPLAINT FOR DAMAGES/ REQUEST FOR JURY TRIAL

1 Dated: October 18, 2010

SHEA LAW OFFICES

2
3 By: _____

Mary Sheela Hagbols

Attorney for Plaintiffs

JANE DOE and ANNE RASKIN

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9 4814-0077-1591, v. 1

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11 4814-0077-1591, v. 2

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PLAINTIFFS' COMPLAINT FOR DAMAGES/ REQUEST FOR JURY TRIAL

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Attorneys for Defendants
CITY AND COUNTY OF SAN FRANCISCO,
JANICE MADSEN, KIM DOUGHERTY,
AUDREY HILLMAN and HEATHER GRIVES

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JANE DOE and ANNE RASKIN,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
FRANCISCO; JANICE MADSEN, an
individual; KIM DOUGHERTY, an
individual; AUDREY HILLMAN, an
individual; HEATHER GRIVES, an
individual; and DOES 1-10,.

Defendants.

Case No. C 10-04700 TEH

**DEFENDANTS' ANSWER TO PLAINTIFFS'
COMPLAINT**

Action Filed: October 14, 2010

Trial Date: None set

1 Defendants City & County of San Francisco ("the City"), Janice Madsen, Kim Dougherty,
2 Audrey Hillman and Heather Grives (collectively "Defendants"), in answer to Plaintiffs' Complaint for
3 Damages ("the Complaint"), hereby admit, deny and allege as follows:

4 1. In answer to Paragraph 1 of the Complaint, Defendants respond that this Paragraph
5 contains legal assertions, conclusions and characterizations to which Defendants are not required to
6 and do not respond, and that Defendants admit the remaining factual allegations, if any, contained
7 therein.

8 2. In answer to Paragraph 2 of the Complaint, Defendants respond that this Paragraph
9 contains legal assertions, conclusions and characterizations to which Defendants are not required to
10 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
11 therein.

12 3. In answer to Paragraph 3 of the Complaint, Defendants respond that this Paragraph
13 contains legal assertions, conclusions and characterizations to which Defendants are not required to
14 and do not respond.

15 4. In answer to Paragraph 4 of the Complaint, Defendants respond that this Paragraph
16 contains legal assertions, conclusions and characterizations to which Defendants are not required to
17 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
18 therein.

19 5. In answer to Paragraph 5 of the Complaint, Defendants admit that Plaintiff Anne
20 Raskin is employed by the City and respond that they lack sufficient information and belief as to the
21 additional facts alleged and on that basis deny those allegations.

22 6. In answer to Paragraph 6 of the Complaint, Defendants respond that this Paragraph
23 contains legal assertions, conclusions and characterizations to which Defendants are not required to
24 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
25 therein.

26 7. In answer to Paragraph 7 of the Complaint, Defendants admit that Defendant Madsen is
27 a supervisory employee, and further respond that this Paragraph contains legal assertions, conclusions
28 and characterizations to which Defendants are not required to and do not respond.

1 8. In answer to Paragraph 8 of the Complaint, Defendants admit that Defendant Grives is
2 a supervisory employee, and further respond that this Paragraph contains legal assertions, conclusions
3 and characterizations to which Defendants are not required to and do not respond.

4 9. In answer to Paragraph 9 of the Complaint, Defendants admit that Defendant
5 Dougherty is a supervisory employee, and further respond that this Paragraph contains legal assertions,
6 conclusions and characterizations to which Defendants are not required to and do not respond.

7 10. In answer to Paragraph 10 of the Complaint, Defendants admit that Defendant Hillman
8 is a supervisory employee, and further respond that this Paragraph contains legal assertions,
9 conclusions and characterizations to which Defendants are not required to and do not respond.

10 11. In answer to Paragraph 11 of the Complaint, Defendants respond that this Paragraph
11 contains legal assertions, conclusions and characterizations to which Defendants are not required to
12 and do not respond.

13 12. In answer to Paragraph 12 of the Complaint, Defendants deny each and every allegation
14 therein.

15 13. In answer to Paragraph 13 of the Complaint, Defendant City and County of San
16 Francisco admits that it is an "employer" under California's Fair Employment and Housing Act.
17 Defendants further respond that this Paragraph contains legal assertions, conclusions and
18 characterizations to which Defendants are not required to and do not respond, and that Defendants
19 deny the remaining factual allegations, if any, contained therein.

20 14. In answer to Paragraph 14 of the Complaint, the City admits that Right to Sue Notices
21 were served on the City. Defendants further respond that this Paragraph contains legal assertions,
22 conclusions and characterizations to which Defendants are not required to and do not respond, and that
23 Defendants deny the remaining factual allegations, if any, contained therein.

24 15. In answer to Paragraph 15 of the Complaint, Defendants respond that this Paragraph
25 contains legal assertions, conclusions and characterizations to which Defendants are not required to
26 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
27 therein.

1 16. In answer to Paragraph 16 of the Complaint, Defendants respond that this Paragraph
2 contains legal assertions, conclusions and characterizations to which Defendants are not required to
3 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
4 therein.

5 17. In answer to Paragraph 17 of the Complaint, Defendants admit the factual allegations
6 contained therein.

7 18. In answer to Paragraph 18 of the Complaint, Defendants admit the factual allegations
8 contained therein.

9 19. In answer to Paragraph 19 of the Complaint, Defendants admit the factual allegations
10 contained therein.

11 20. In answer to Paragraph 20 of the Complaint, Defendants admit the factual allegations
12 contained therein.

13 21. In answer to Paragraph 21 of the Complaint, Defendants deny the allegations contained
14 therein on the basis that they are vague, ambiguous and uncertain.

15 22. In answer to Paragraph 22 of the Complaint, Defendants admit the factual allegations
16 contained therein.

17 23. In answer to Paragraph 23 of the Complaint, Defendants admit that Plaintiffs were
18 permitted to use community computers during breaks for personal purposes, pursuant to Department
19 and City computer policies. Except as so expressly admitted, Defendants deny each and every factual
20 allegation in this Paragraph.

21 24. In answer to Paragraph 24 of the Complaint, Defendants respond that this Paragraph
22 contains legal assertions, conclusions and characterizations to which Defendants are not required to
23 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
24 therein.

25 25. In answer to Paragraph 25 of the Complaint, Defendants respond that this Paragraph
26 contains legal assertions, conclusions and characterizations to which Defendants are not required to
27 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
28 therein.

1 26. In answer to Paragraph 26 of the Complaint, Defendants lack sufficient information as
2 to the factual allegations contained therein and on that basis deny each and every such allegation.

3 27. In answer to Paragraph 27 of the Complaint, Defendants lack sufficient information as
4 to the factual allegations contained therein and on that basis deny each and every such allegation.

5 28. In answer to Paragraph 28 of the Complaint, Defendants admit the factual allegations
6 contained therein.

7 29. In answer to Paragraph 29 of the Complaint, Defendants admit the factual allegations
8 contained therein.

9 30. In answer to Paragraph 30 of the Complaint, Defendants admit the factual allegations
10 contained therein.

11 31. In answer to Paragraph 31 of the Complaint, Defendants deny each and every allegation
12 therein.

13 32. In answer to Paragraph 32, Defendants admit the factual allegations contained therein.

14 33. In answer to Paragraph 12 of the Complaint, Defendants deny each and every allegation
15 therein.

16 34. In answer to Paragraph 34 of the Complaint, Defendants admit that Plaintiff expressed
17 disagreement with performance criticisms, and that the City provided her a different trainer to
18 facilitate her passing probation. Except as so expressly admitted, Defendants deny each and every
19 allegation in this Paragraph.

20 35. In answer to Paragraph 35 of the Complaint, Defendants deny each and every allegation
21 therein.

22 36. In answer to Paragraph 36 of the Complaint, Defendants deny each and every
23 allegation therein.

24 37. In answer to Paragraph 37 of the Complaint, Defendants deny each and every allegation
25 therein.

26 38. In answer to Paragraph 38 of the Complaint, Defendants deny each and every allegation
27 therein.

1 39. In answer to Paragraph 39 of the Complaint, Defendants deny each and every allegation
2 therein.

3 40. In answer to Paragraph 40 of the Complaint, Defendants deny each and every allegation
4 therein.

5 41. In answer to Paragraph 41 of the Complaint, Defendants deny that Plaintiff was
6 exposed to harassment. With regard to the additional allegations in this Paragraph., Defendants lack
7 sufficient information as to the factual allegations contained therein and on that basis deny each and
8 every such allegation.

9 42. In answer to Paragraph 41 of the Complaint, Defendants deny that Plaintiff was
10 exposed to harassment or retaliation. With regard to the additional allegations in this Paragraph.,
11 Defendants lack sufficient information as to the factual allegations contained therein and on that basis
12 deny each and every such allegation.

13 43. In answer to Paragraph 43 of the Complaint, Defendants deny each and every allegation
14 contained therein.

15 44. In answer to Paragraph 44 of the Complaint, Defendants deny that Plaintiff was
16 exposed to harassment or retaliation. With regard to the additional allegations in this Paragraph.,
17 Defendants lack sufficient information as to the factual allegations contained therein and on that basis
18 deny each and every such allegation.

19 45. In answer to Paragraph 45 of the Complaint, Defendants admit each and every
20 allegation contained therein.

21 46. In answer to Paragraph 46 of the Complaint, Defendants deny that Plaintiff identified
22 any illegal practices or stealing as alleged. With regard to the additional allegations in this Paragraph.,
23 Defendants lack sufficient information as to the factual allegations contained therein and on that basis
24 deny each and every such allegation.

25 47. In answer to Paragraph 47 of the Complaint, Defendants deny the allegations contained
26 therein on the basis that they are vague, ambiguous and uncertain.

27 48. In answer to Paragraph 48 of the Complaint, Defendants deny the allegations contained
28 therein on the basis that they are vague, ambiguous and uncertain.

1 49. In answer to Paragraph 49 of the Complaint, Defendants deny each and every allegation
2 contained therein.

3 50. In answer to Paragraph 50 of the Complaint, Defendants deny each and every allegation
4 contained therein.

5 51. In answer to Paragraph 51 of the Complaint, Defendants deny the allegations contained
6 therein on the basis that they are vague, ambiguous and uncertain.

7 52. In answer to Paragraph 52 of the Complaint, Defendants deny the allegations contained
8 therein on the basis that they are vague, ambiguous and uncertain.

9 53. In answer to Paragraph 53 of the Complaint, Defendants deny each and every allegation
10 contained therein.

11 54. In answer to Paragraph 54 of the Complaint, Defendants deny each and every allegation
12 contained therein.

13 55. In answer to Paragraph 55 of the Complaint, Defendants deny each and every allegation
14 contained therein.

15 56. In answer to Paragraph 56 of the Complaint, Defendants deny each and every allegation
16 contained therein.

17 57. In answer to Paragraph 57 of the Complaint, Defendants deny each and every allegation
18 contained therein.

19 58. In answer to Paragraph 58 of the Complaint, Defendants admit that Defendant Madsen
20 advised Plaintiff to talk with a technician to learn how to work the radio system in its interim
21 configuration. Except as so expressly admitted, Defendants deny each and every allegation contained
22 therein.

23 59. In answer to Paragraph 59 of the Complaint, Defendants lack sufficient information to
24 form a belief and on that basis deny each and every allegation contained therein.

25 60. In answer to Paragraph 60 of the Complaint, Defendants deny each and every allegation
26 contained therein.

27 61. In answer to Paragraph 61 of the Complaint, Defendants lack sufficient information to
28 form a belief and on that basis deny each and every allegation contained therein.

1 62. In answer to Paragraph 62 of the Complaint, Defendants lack sufficient information to
2 form a belief and on that basis deny each and every allegation contained therein.

3 63. In answer to Paragraph 63 of the Complaint, Defendants lack sufficient information to
4 form a belief and on that basis deny each and every allegation contained therein.

5 64. In answer to Paragraph 64 of the Complaint, Defendants lack sufficient information to
6 form a belief and on that basis deny each and every allegation contained therein.

7 65. In answer to Paragraph 65 of the Complaint, Defendants deny each and every allegation
8 contained therein.

9 66. In answer to Paragraph 66 of the Complaint, Defendants lack sufficient information to
10 form a belief and on that basis deny each and every allegation contained therein.

11 67. In answer to Paragraph 67 of the Complaint, Defendants admit that Plaintiff
12 complained to Hoffman about the midnight shift, and that Hoffman agreed to monitor the shift.
13 Defendants lack sufficient information to form a belief and on that basis deny each and every
14 allegation contained therein.

15 68. In answer to Paragraph 68 of the Complaint, Defendants deny that Plaintiff was subject
16 to retaliation.

17 69. In answer to Paragraph 69 of the Complaint, Defendants deny each and every allegation
18 contained therein.

19 70. In answer to Paragraph 70 of the Complaint, Defendants deny each and every allegation
20 contained therein.

21 71. In answer to Paragraph 71 of the Complaint, Defendants admit that some but not all of
22 Defendant's computers are limited to CLETS-cleared personnel. Except as so expressly admitted,
23 Defendants deny each and every allegation contained therein.

24 72. In answer to Paragraph 72 of the Complaint, Defendants lack sufficient information as
25 to the factual allegations contained therein and on that basis deny each and every such allegation.

26 73. In answer to Paragraph 73 of the Complaint, Defendants deny each and every allegation
27 contained therein.
28

1 74. In answer to Paragraph 74 of the Complaint, Defendants deny each and every allegation
2 contained therein.

3 75. In answer to Paragraph 75 of the Complaint, Defendants deny each and every allegation
4 contained therein.

5 76. In answer to Paragraph 76 of the Complaint, Defendants deny each and every allegation
6 contained therein.

7 77. In answer to Paragraph 77 of the Complaint, Defendants lack sufficient information as
8 to the factual allegations contained therein and on that basis deny each and every such allegation.

9 78. In answer to Paragraph 78 of the Complaint, Defendants lack sufficient information as
10 to the factual allegations contained therein and on that basis deny each and every such allegation.

11 79. In answer to Paragraph 79 of the Complaint, Defendants deny each and every allegation
12 contained therein.

13 80. In answer to Paragraph 80 of the Complaint, Defendants lack sufficient information as
14 to the factual allegations contained therein and on that basis deny each and every such allegation.

15 81. In answer to Paragraph 81 of the Complaint, Defendants deny each and every allegation
16 contained therein.

17 82. In answer to Paragraph 82 of the Complaint, Defendants lack sufficient information as
18 to the factual allegations contained therein and on that basis deny each and every such allegation.

19 83. In answer to Paragraph 83 of the Complaint, Defendants lack sufficient information as
20 to the factual allegations contained therein and on that basis deny each and every such allegation.

21 84. In answer to Paragraph 84 of the Complaint, Defendants deny each and every allegation
22 contained therein.

23 85. In answer to Paragraph 85 of the Complaint, Defendants lack sufficient information as
24 to the factual allegations contained therein and on that basis deny each and every such allegation.

25 86. In answer to Paragraph 86 of the Complaint, Defendants lack sufficient information as
26 to the factual allegations contained therein and on that basis deny each and every such allegation.

27 87. In answer to Paragraph 87 of the Complaint, Defendants lack sufficient information as
28 to the factual allegations contained therein and on that basis deny each and every such allegation.

1 88. In answer to Paragraph 88 of the Complaint, Defendants lack sufficient information as
2 to the factual allegations contained therein and on that basis deny each and every such allegation.

3 89. In answer to Paragraph 89 of the Complaint, Defendants lack sufficient information as
4 to the factual allegations contained therein and on that basis deny each and every such allegation.

5 90. In answer to Paragraph 90 of the Complaint, Defendants lack sufficient information as
6 to the factual allegations contained therein and on that basis deny each and every such allegation.

7 91. In answer to Paragraph 91 of the Complaint, Defendants lack sufficient information as
8 to the factual allegations contained therein and on that basis deny each and every such allegation.

9 92. In answer to Paragraph 92 of the Complaint, Defendants deny each and every allegation
10 contained therein.

11 93. In answer to Paragraph 93 of the Complaint, Defendants admit that a potluck occurred
12 and that an employee slipped and fell. With regard to the remaining factual allegations in this
13 Paragraph., Defendants lack sufficient information and on that basis deny each and every such
14 allegation.

15 94. In answer to Paragraph 94 of the Complaint, Defendants admit that Madsen's time is
16 accurately reflected. With regard to the remaining factual allegations, Defendants lack sufficient
17 information and on that basis deny each and every such allegation.

18 95. In answer to Paragraph 95 of the Complaint, Defendants deny each and every allegation
19 contained therein.

20 96. In answer to Paragraph 96 of the Complaint, Defendants lack sufficient information and
21 on that basis deny each and every such allegation.

22 97. In answer to Paragraph 97 of the Complaint, Defendants admit the factual allegations
23 contained therein.

24 98. In answer to Paragraph 98 of the Complaint, Defendants admit the factual allegations
25 contained therein.

26 99. In answer to Paragraph 99 of the Complaint, Defendants admit that Daniel told Plaintiff
27 that Madsen had found Plaintiff's Yahoo e-mail open on a City computer and had looked at and
28 printed a number of work-related e-mails the substance of which caused them concern. Defendants

1 further admit that Daniel gave Plaintiff a copy of the e-mails. Except as so expressly admitted,
2 Defendants deny each and every factual allegation contained in this Paragraph.

3 100. In answer to Paragraph 100 of the Complaint, Defendants admit that Madsen and
4 another supervisor had found Plaintiff's Yahoo e-mail open on a City computer, had looked at and
5 printed a number of work-related e-mails the substance of which caused them concern, and had
6 reported their concerns. Other than as so expressly admitted, Defendants deny each and every factual
7 allegation contained in this Paragraph.

8 101. In answer to Paragraph 101 of the Complaint, Defendants deny the allegations
9 contained therein on the basis that they are vague, ambiguous and uncertain.

10 102. In answer to Paragraph 102 of the Complaint, Defendants admit that Madsen and
11 another supervisor had found Plaintiff's Yahoo e-mail open on a City computer, had looked at and
12 printed a number of work-related e-mails the substance of which caused them concern, and had
13 reported their concerns. Other than as so expressly admitted, Defendants deny each and every factual
14 allegation contained in this Paragraph.

15 103. In answer to Paragraph 103 of the Complaint, Defendants deny each and every
16 allegation contained therein.

17 104. In answer to Paragraph 104 of the Complaint, Defendants deny each and every
18 allegation contained therein.

19 105. In answer to Paragraph 105 of the Complaint, Defendants deny each and every
20 allegation contained therein.

21 106. In answer to Paragraph 106 of the Complaint, Defendants lack information sufficient to
22 form a belief as to the truth of these allegations and, on that basis, deny each and every allegation
23 contained therein.

24 107. In answer to Paragraph 107 of the Complaint, Defendants lack information sufficient to
25 form a belief as to the truth of these allegations and, on that basis, deny each and every allegation
26 contained therein.

1 108. In answer to Paragraph 108 of the Complaint, Defendants lack information sufficient to
2 form a belief as to the truth of these allegations and, on that basis, deny each and every allegation
3 contained therein.

4 109. In answer to Paragraph 109 of the Complaint, Defendants admit the factual allegations
5 contained therein.

6 110. In answer to Paragraph 110 of the Complaint, Defendants admit the factual allegations
7 contained therein.

8 111. In answer to Paragraph 111 of the Complaint, Defendants admit the factual allegations
9 contained therein.

10 112. In answer to Paragraph 112 of the Complaint, Defendants lack information sufficient to
11 form a belief as to the truth of these allegations and, on that basis, deny each and every allegation
12 contained therein.

13 113. In answer to Paragraph 113 of the Complaint, Defendants admit that Plaintiff was
14 instructed not to discuss the ongoing investigation. Defendants lack information sufficient to form a
15 belief as to the truth of the additional allegations in this Paragraph. and, on that basis, deny each and
16 every allegation contained therein.

17 114. In answer to Paragraph 114 of the Complaint, Defendants lack information sufficient to
18 form a belief as to the truth of these allegations and, on that basis, deny each and every allegation
19 contained therein.

20 115. In answer to Paragraph 115 of the Complaint, Defendants admit that Plaintiff failed to
21 provide notifications to her managers in September 2009, resulting in concerns relating to Homeland
22 Security communications and coordination, and that Plaintiff was retrained on notifications protocols
23 in January 2010. Defendants lack information sufficient to form a belief as to the truth of the
24 remaining allegations in this Paragraph. and, on that basis, deny each and every allegation contained
25 therein.

26 116. In answer to Paragraph 116 of the Complaint, Defendants lack information sufficient to
27 form a belief as to the truth of these allegations and, on that basis, deny each and every allegation
28 contained therein.

1 117. In answer to Paragraph 117 of the Complaint, Defendants lack information sufficient to
2 form a belief as to the truth of these allegations and, on that basis, deny each and every allegation
3 contained therein.

4 118. In answer to Paragraph 118 of the Complaint, Defendants admit the factual allegations
5 contained therein.

6 119. In answer to Paragraph 119 of the Complaint, Defendants admit that Defendants did not
7 respond to Plaintiff's counsel. Except as so expressly admitted, Defendants deny each and every
8 factual allegation contained in this Paragraph.

9 120. In answer to Paragraph 120 of the Complaint, Defendants admit that Defendants did not
10 respond to Plaintiff's counsel. Except as so expressly admitted, Defendants deny each and every
11 factual allegation contained in this Paragraph.

12 121. In answer to Paragraph 121 of the Complaint, Defendants admit that Defendants did not
13 respond to Plaintiff's counsel. Except as so expressly admitted, Defendants deny each and every
14 factual allegation contained in this Paragraph.

15 122. In answer to Paragraph 122 of the Complaint, Defendants admit the factual allegations
16 contained therein, to the extent the facts alleged are intelligible. Defendants deny the recitation of the
17 discussion on the grounds that the facts alleged are vague, ambiguous and uncertain.

18 123. In answer to Paragraph 123 of the Complaint, Defendants deny each and every factual
19 allegation contained in this Paragraph.

20 124. In answer to Paragraph 124 of the Complaint, Defendants admit the factual allegations
21 contained therein.

22 125. In answer to Paragraph 125 of the Complaint, Defendants admit the factual allegations
23 contained therein.

24 126. In answer to Paragraph 126 of the Complaint, Defendants admit the factual allegations
25 contained therein.

26 127. In answer to Paragraph 127 of the Complaint, Defendants deny each and every factual
27 allegation contained in this Paragraph.
28

128. In answer to Paragraph 128 of the Complaint, Defendants deny each and every factual allegation contained in this Paragraph.

129. In answer to Paragraph 129 of the Complaint, Defendants deny each and every factual allegation contained in this Paragraph.

130. In answer to Paragraph 130 of the Complaint, Defendants lack information sufficient to form a belief as to the truth of these allegations and, on that basis, deny each and every allegation contained therein.

131. In answer to Paragraph 131 of the Complaint, Defendants deny each and every factual allegation contained in this Paragraph.

132. In answer to Paragraph 132 of the Complaint, Defendants deny each and every factual allegation contained in this Paragraph.

133. In answer to Paragraph 133 of the Complaint, Defendants deny each and every factual allegation contained in this Paragraph.

134. In answer to Paragraph 134 of the Complaint, Defendants deny each and every factual allegation contained in this Paragraph.

135. In answer to Paragraph 135 of the Complaint, Defendants lack information sufficient to form a belief as to the truth of these allegations and, on that basis, deny each and every allegation contained therein.

136. In answer to Paragraph 136 of the Complaint, Defendants deny each and every factual allegation contained in this Paragraph.

137. In answer to Paragraph 137 of the Complaint, Defendants deny each and every factual allegation contained in this Paragraph.

First Claim For Relief

138. In answer to Paragraph 138 of the Complaint, Defendants incorporate their admissions and denials set forth above.

139. In answer to Paragraph 139 of the Complaint, Defendants respond that this Paragraph contains legal assertions, conclusions and characterizations to which Defendants are not required to

1 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
2 therein.

3 140. In answer to Paragraph 140 of the Complaint, Defendants lack information sufficient to
4 form a belief as to the truth of these allegations and, on that basis, deny each and every allegation
5 contained therein.

6 141. In answer to Paragraph 141 of the Complaint, Defendants deny each and every factual
7 allegation contained in this Paragraph.

8 142. In answer to Paragraph 142 of the Complaint, Defendants deny each and every factual
9 allegation contained in this Paragraph.

10 143. In answer to Paragraph 143 of the Complaint, Defendants deny each and every factual
11 allegation contained in this Paragraph.

12 **Second Claim For Relief**

13 144. In answer to Paragraph 144 of the Complaint, Defendants incorporate their admissions
14 and denials set forth above.

15 145. In answer to Paragraph 145 of the Complaint, Defendants respond that this Paragraph
16 contains legal assertions, conclusions and characterizations to which Defendants are not required to
17 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
18 therein.

19 146. In answer to Paragraph 146 of the Complaint, Defendants respond that this Paragraph
20 contains legal assertions, conclusions and characterizations to which Defendants are not required to
21 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
22 therein.

23 147. In answer to Paragraph 147 of the Complaint, Defendants respond that this Paragraph
24 contains legal assertions, conclusions and characterizations to which Defendants are not required to
25 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
26 therein.

27 148. In answer to Paragraph 148 of the Complaint, Defendants respond that this Paragraph
28 contains legal assertions, conclusions and characterizations to which Defendants are not required to

1 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
2 therein.

3 149. In answer to Paragraph 149 of the Complaint, Defendants admit that Plaintiff has made
4 complaints, that those complaints have been written and speak for themselves, and that they are
5 continuing to date. Except as so expressly admitted, Defendants deny the factual allegations of this
6 Paragraph.

7 150. In answer to Paragraph 150 of the Complaint, Defendants deny each and every factual
8 allegation contained in this Paragraph.

9 151. In answer to Paragraph 151 of the Complaint, Defendants deny each and every factual
10 allegation contained in this Paragraph.

11 152. In answer to Paragraph 152 of the Complaint, Defendants deny each and every factual
12 allegation contained in this Paragraph.

13 153. In answer to Paragraph 153 of the Complaint, Defendants lack information sufficient to
14 form a belief as to the truth of these allegations and, on that basis, deny each and every allegation
15 contained therein.

16 **Third Claim For Relief**

17 154. In answer to Paragraph 154 of the Complaint, Defendants incorporate their admissions
18 and denials set forth above.

19 155. In answer to Paragraph 155 of the Complaint, Defendants respond that this Paragraph
20 contains legal assertions, conclusions and characterizations to which Defendants are not required to
21 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
22 therein.

23 156. In answer to Paragraph 156 of the Complaint, Defendants respond that this Paragraph
24 contains legal assertions, conclusions and characterizations to which Defendants are not required to
25 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
26 therein.

27 157. In answer to Paragraph 157 of the Complaint, Defendants respond that this Paragraph
28 contains legal assertions, conclusions and characterizations to which Defendants are not required to

1 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
2 therein.

3 158. In answer to Paragraph 158 of the Complaint, Defendants respond that this Paragraph
4 contains legal assertions, conclusions and characterizations to which Defendants are not required to
5 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
6 therein.

7 159. In answer to Paragraph 159 of the Complaint, Defendants deny each and every factual
8 allegation contained in this Paragraph.

9 **Fourth Claim For Relief**

10 160. In answer to Paragraph 160 of the Complaint, Defendants incorporate their admissions
11 and denials set forth above.

12 161. In answer to Paragraph 161 of the Complaint, Defendants respond that this Paragraph
13 contains legal assertions, conclusions and characterizations to which Defendants are not required to
14 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
15 therein.

16 162. In answer to Paragraph 162 of the Complaint, Defendants respond that this Paragraph
17 contains legal assertions, conclusions and characterizations to which Defendants are not required to
18 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
19 therein.

20 163. In answer to Paragraph 163 of the Complaint, Defendants respond that this Paragraph
21 contains legal assertions, conclusions and characterizations to which Defendants are not required to
22 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
23 therein.

24 164. In answer to Paragraph 164 of the Complaint, Defendants respond that this Paragraph
25 contains legal assertions, conclusions and characterizations to which Defendants are not required to
26 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
27 therein.
28

Fifth Claim For Relief

1
2 165. In answer to Paragraph 165 of the Complaint, Defendants incorporate their admissions
3 and denials set forth above.

4 166. In answer to Paragraph 166 of the Complaint, Defendants incorporate their admissions
5 and denials set forth above.

6 167. In answer to Paragraph 167 of the Complaint, Defendants respond that this Paragraph
7 contains legal assertions, conclusions and characterizations to which Defendants are not required to
8 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
9 therein.

10 168. In answer to Paragraph 168 of the Complaint, Defendants respond that this Paragraph
11 contains legal assertions, conclusions and characterizations to which Defendants are not required to
12 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
13 therein.

14 169. In answer to Paragraph 169 of the Complaint, Defendants respond that this Paragraph
15 contains legal assertions, conclusions and characterizations to which Defendants are not required to
16 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
17 therein.

Sixth Claim For Relief

18
19 170. In answer to Paragraph 170 of the Complaint, Defendants incorporate their admissions
20 and denials set forth above.

21 171. In answer to Paragraph 171 of the Complaint, Defendants respond that this Paragraph
22 contains legal assertions, conclusions and characterizations to which Defendants are not required to
23 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
24 therein.

25 172. In answer to Paragraph 172 of the Complaint, Defendants respond that this Paragraph
26 contains legal assertions, conclusions and characterizations to which Defendants are not required to
27 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
28 therein.

1 173. In answer to Paragraph 173 of the Complaint, Defendants respond that this Paragraph
2 contains legal assertions, conclusions and characterizations to which Defendants are not required to
3 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
4 therein.

5 174. In answer to Paragraph 174 of the Complaint, Defendants respond that this Paragraph
6 contains legal assertions, conclusions and characterizations to which Defendants are not required to
7 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
8 therein.

9 175. In answer to Paragraph 175 of the Complaint, Defendants respond that this Paragraph
10 contains legal assertions, conclusions and characterizations to which Defendants are not required to
11 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
12 therein.

13 **Fifth Claim For Relief**

14 176. In answer to Paragraph 176 of the Complaint, Defendants incorporate their admissions
15 and denials set forth above.

16 177. In answer to Paragraph 177 of the Complaint, Defendants respond that this Paragraph
17 contains legal assertions, conclusions and characterizations to which Defendants are not required to
18 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
19 therein.

20 178. In answer to Paragraph 178 of the Complaint, Defendants respond that this Paragraph
21 contains legal assertions, conclusions and characterizations to which Defendants are not required to
22 and do not respond, and that Defendants deny the remaining factual allegations, if any, contained
23 therein.

24 179. In answer to Paragraph 179 of the Complaint, Defendants deny each and every factual
25 allegation contained in this Paragraph.

26 180. In answer to Paragraph 180 of the Complaint, Defendants deny each and every factual
27 allegation contained in this Paragraph.
28

Eighth Claim For Relief

181. In answer to Paragraph 181 of the Complaint, Defendants incorporate their admissions and denials set forth above.

182. In answer to Paragraph 182 of the Complaint, Defendants deny each and every factual allegation contained in this Paragraph.

183. In answer to Paragraph 183 of the Complaint, Defendants respond that this Paragraph contains legal assertions, conclusions and characterizations to which Defendants are not required to and do not respond, and that Defendants deny the remaining factual allegations, if any, contained therein.

184. In answer to Paragraph 184 of the Complaint, Defendants respond that this Paragraph contains legal assertions, conclusions and characterizations to which Defendants are not required to and do not respond, and that Defendants deny the remaining factual allegations, if any, contained therein.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendants allege that the City is a public entity and therefore Defendants have the benefit of immunities and privileges contained in California Government Code sections 815 *et seq.*, 820 *et seq.* and 821.6, the United States Constitution, and Federal/State common/statutory law.

SECOND AFFIRMATIVE DEFENSE

Defendants allege that Plaintiffs' claims are barred by the applicable statute of limitations, including, but not limited to, those set forth in Title VII of the Civil Rights Act of 1964; the California Fair Employment and Housing Act; the California Civil Code; and Chapter 3 of Title 2 of Part 2 of the California Code of Civil Procedure.

THIRD AFFIRMATIVE DEFENSE

Defendants allege that Plaintiffs failed (1) to exhaust their administrative and/or contractual remedies, and/or (2) to satisfy other jurisdictional and/or procedural prerequisites prior to filing suit.

FOURTH AFFIRMATIVE DEFENSE

1 Defendants allege that they acted without malice and with a good faith belief in the propriety
2 of their conduct.

3 FIFTH AFFIRMATIVE DEFENSE

4 Defendants allege that Plaintiff has failed to comply with the requirements of the California
5 Government Claims Act, Government Code sections 901 et seq.

6 SIXTH AFFIRMATIVE DEFENSE

7 Defendants allege that the Complaint is barred by the doctrine of estoppel, laches, unclean
8 hands, or that by their own conduct Plaintiffs have waived any right to recovery.

9
10
11 SEVENTH AFFIRMATIVE DEFENSE

12 Defendants allege that Plaintiffs' claims are barred, in whole or in part, by the exclusive
13 remedy provisions of the California Workers' Compensation Act.

14 EIGHTH AFFIRMATIVE DEFENSE

15 Defendants allege that Plaintiffs failed to use due diligence to mitigate their damages, if any.

16 WHEREFORE, Defendants prays for judgment as follows:

- 17 1. That plaintiffs takes nothing from Defendants;
18 2. That the complaint be dismissed with prejudice;
19 3. That Defendants recover costs of suit herein, including attorney's fees; and
20 4. For such other relief as is just and proper.

21 Dated: January 31, 2011

DENNIS J. HERRERA
City Attorney
ELIZABETH SALVESON
Chief Labor Attorney
LAWRENCE HECIMOVICH
Deputy City Attorney

22
23
24
25 By: /s/Lawrence Hecimovich.
LAWRENCE HECIMOVICH
Attorneys for Defendants

26
27 CITY AND COUNTY OF SAN FRANCISCO,
JANICE MADSEN, KIM DOUGHERTY,
28 AUDREY HILLMAN and HEATHER GRIVES

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Attorneys for Plaintiffs
JANE DOE and ANNE RASKIN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
-Oakland/San Francisco-

JANE DOE and ANNE RASKIN,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
FRANCISCO; JANICE MADSEN, an
individual; KYM DOUGHERTY, an
individual;; HEATHER GRIVES, an
individual, and DOES 1-10.

Defendants.

Civil Action No. C 10-4700 TEH

PLAINTIFFS' PROPOSED ORDER
DENYING DEFEDANTS' MOTION
FOR SUMMARY JUDGMENT OR IN
THE ALTERNATIVE PARTIAL
SUMMARY JUDGEMENT

Dated: November 28, 2011

Time: 10:00AM

Judge: Thelton E. Henderson

Dept 12, 19th Floor

450 Golden Gate Ave

San Francisco, CA

Trial Date: January 10, 2012

**PLAINTIFFS' PROPOSED ORDER DENYING DEFEDANTS' MOTION FOR SUMMARY
JUDGMENT OR IN THE ALTERNATIVE PARTIAL SUMMARY JUDGEMENT**
Civil Action No. C 10-4700 TEH

Plaintiffs Jane Doe and Anne Raskin bring this action against their employer Defendant City and County of San Francisco, and certain City and County employees, Defendants Madsen, Dougherty, and Grives. Defendant Audrey Hillman has been dismissed from the case. Defendants moved the Court for summary judgment *or* adjudication pursuant to *Federal Rule of Civil Procedure 56*. This Court reviewed the moving and the opposition papers, the evidence submitted by each party, and all evidentiary objections raised by each party. After the November 28, 2011 hearing on the motion, based on the submissions and the arguments, Defendants' motion for summary judgment *or* adjudication is DENIED.

I. PROCEDURAL BACKGROUND

1. Motion for Summary Judgment hearing: November 28, 2011
2. Motion to Amend hearing: November 28, 2011
3. Pre-Trial Conference: December 18, 2011
4. Trial Date: January 10, 2012

II. LEGAL STANDARD

The moving party bears the initial burden of establishing that there is no genuine issue of material fact. *Celotex Corp. v. Catrett*, (1986) 477 US 317, 323. The burden on the moving party may be discharged by pointing out to the district court that there is an absence of evidence to support the nonmoving party's case. *Id.* at 325. If the moving party has properly supported its motion, the burden shifts to the nonmoving party, who may not rest on the mere allegations plead.

1 The court's ultimate inquiry is whether a rational, reasonable jury might return a verdict
2 in the nonmoving party's favor based on the specific facts set forth combined with the
3 undisputed, background, and contextual facts *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors*
4 *Ass'n* (9th Cir 1987) 809 F.2d 626, 631. The Court does not make findings of fact at this stage.
5 The inquiry performed is the threshold inquiry of determining whether there is the need for a
6 trial; in other words, whether there are any genuine factual issues that properly can be resolved
7 only by a finder of fact because they may reasonably be resolved in favor of either party.
8 *Anderson v. Liberty Lobby, Inc.* (1986) 477 US 242, 250.

10
11 The Court draws all inferences in the light most favorable to the nonmoving party and
12 presumes that the nonmoving party's evidence is true. If the nonmoving party adduces direct
13 evidence of a fact, the Court does not weigh it against the moving party's conflicting evidence,
14 but rather submits it to the trier of fact for resolution. *Eisenberg v. Insurance Co. of N. Am.* (9th
15 Cir 1987) 815 F2d 1285, 1289.

18 **III. ANALYSIS**

20 In viewing the evidence in a light most favorable to nonmoving plaintiffs and from the
21 reasonable inferences that may be drawn in the nonmoving plaintiffs' favor, this Court finds that
22 Defendants have not (1) presented evidence that would negate an essential element of any of
23 Plaintiffs' claims, or (2) demonstrate that the Plaintiffs cannot meet their burden of proving an
24 element of any one of their alleged claims at trial.

The Court finds that each claim presented by Plaintiffs presents genuine factual issues that properly can be resolved only by a finder of fact, as specifically set forth for each cause of action below:

A. Triable Issues of Fact Exists that Defendant Dougherty's and Madsen's Access of Plaintiff Jane Doe's Private E-Mails Violates the Stored Communications Act

Defendants Dougherty and Madsen admit that they opened, viewed, closed, and printed e-mails from Doe's Yahoo!!! E-mail account. (Dougherty Decl. ¶6:9; Madsen Decl. ¶ 3; Daniel's Investigative Interview (CCSF 00007, Staff Analysis) [Sealed Exhibit M to Hecimovich Decl].)

Madsen told Investigator Terry Daniels that she accessed Doe's Yahoo! Inbox, after she had opened the previously minimized e-mails, viewed them, printed those e-mails, and closed them, she then reviewed the Inbox, identified those that appeared to be "work related" and printed those. (Daniel's Invest. Report, CCSF 00003 [Sealed Exh M to Hecimovich Decl.].)

Defendants' Response to Plaintiff Jane Doe's Special Interrogatories, (Set One), their response to special interrogatory No.1 includes: "Madsen then printed the open emails together with email that appeared similar in Moylan's open inbox". (Sealed Exh K to Amended Shea Dec; *See also* Krone Declaration fn. 1) Winston Krone, Plaintiffs' designated forensic expert in this matter, in his Declaration in Support of Plaintiff's Opposition to Motion for Summary Judgment, ¶¶ 23-31, identified that Defendants Dougherty and Madsen not only "accessed" Doe's personal e-mail account "without authorization" but that their explanation about the number of purportedly open (yet minimized) e-mails was implausible. (Krone Declaration ¶¶ 23-31.)

Defendants Dougherty and Madsen by their own testimony admit that they accessed Plaintiff's Doe's e-mails, her personal Yahoo! e-mail account, and the stored e-mails on the Yahoo server. (Dougherty Depo. 120:18-130:24;135:2-137:14 eh89 to Dougherty Depo; Defendants Response to Plaintiffs' Special Interrogatories, Defendants Response to Plaintiffs' Request for Admission, and Defendants Response to Plaintiffs' Request for Documents [Sealed Exhs.K, L, M and N to Amended Shea Dec.]; Madsen Depo.48:1-87:17 [Sealed Exh.G To Shea Decl.]; Sealed Exh 0 to Amended Shea Dec; Feeneey Depo. 34:21-43:3 [Sealed Exh. D to Amended Shea Decl.] Investigative Report of Terry Daniel [Sealed Exh. M to Hecimovich Dec.] They did so without Plaintiff's authorization and consent.

Defendants have each admitted in their deposition testimony that their sworn written testimonies in the case, directly accusing Jane Doe of leaving the emails open in plain view, were in fact lies. (Dougherty Depo 127:14 -130:15 [Sealed Exh. C. to Amended Shea Dec.]; Grives Depo 34:3 -41:1 [Sealed Exh E to Shea Dec.]; Hillman Depo. 6:18 10:12; 13:13 -14:9 [Sealed Exh. F to Shea Dec.]; Madsen Depo. 86:25 -87:16; 80:11 -83:6; 53:15-17 ("Q. Do you know who opened the email and left them on the computer? A No.") [Sealed Exh. G to Shea Dec.]; See also, Krone Declaration" 3-31; Davis Dec. "7-11 and group Exh. B thereto];

B. Triable Issues of Fact Exists that Defendant CCSF Failed to Preserve and Suppressed the Computer Evidence that Would Establish that Defendant Madsen and Dougherty Intentionally Opened and Accessed Doe's Private Yahoo! Email Account.

The computer evidence was not properly preserved. (Krone Declaration ¶¶ 7-22.)

Evid. Code § 412 states that if “weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust.” When there is sufficient circumstantial evidence of willful suppression, the issue should go to the jury. *Bihun v. AT&T Information Systems, Inc.*, 13 Cal. App. 4th 976 (Cal. App. 2d Dist. 1993) overruled on other grounds, *Lakin v. Watkins Associated Industries*, 6 Cal. 4th 644, (1993). Fed. Rules of Evid., Rule 302.

Applicability of State Law in Civil Actions and Proceedings:

In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to which State law supplies the rule of decision is determined in accordance with State law.

C. Defendants CCSF, Dougherty and Madsen Invaded Plaintiffs’ Privacy

1. Plaintiffs Had Legally Protected Privacy Interests

Plaintiff Doe had a privacy interest in the e-mail(s) that she sent to Joan Vallarino. (MMBA, Govt. Code §3506; Penal Code §502; Local 1021 CBA, Section N, ¶ 168; Lane Dec. ¶8; Davis Dec ¶ 13; Vallarino Sealed ¶¶ 2-17; Exhibit B to Lane Dec. ¶6; Raskin Dec ¶¶ 4-34; Sealed Doe Dec. ¶¶10-16.

Dougherty and Madsen acknowledged that first e-mail they discovered was one that was sent from Doe to Vallarino, the shop steward, regarding work related issues, including a personnel investigation. [Dougherty Decl. ¶ 3; Madsen Depo. 88:21-89:22; 109:18-25 [Exh D to Shea Dec. in Reply to Def’s Opposition to Motion to Amend filed on 11/22/2011] CCSF’s

1 investigation, conducted by DEMC HR Terry Daniel [Sealed Exh. M to Hecimovich Dec.] ,
 2 revealed that these messages,

3 Although work-related and communicated through a personal email account, are
 4 not inappropriate. For example, Ms. Moylan expressing concern to Ms. Vallarino
 5 that Ms. Madsen would not be objective if she were to conduct a certain
 6 investigation is not inappropriate because Ms. Vallarino is a union shop steward
 7 and has a legitimate concern that investigations involving union members be
 8 conducted in a fair and impartial manner.

9 (Terry Daniel's Investigative Report , Staff Analysis, CCSF 00007, ¶ 4 [Sealed Exh.
 10 M to Hecimovich Dec.])

11 **2. Plaintiffs Had a Reasonable Expectation of Privacy in Their E-Mails**

12 **Accessed By Defendants Dougherty and Madsen.**

13 Plaintiffs presented evidence that Plaintiffs had a reasonable expectation of privacy in
 14 their email. Lane Dec. ¶¶ 5-11; Exhibit B to Lane Dec; Exhibit C to Lane Dec [referring to
 15 Section N, ¶ 168 of Local 1021 CBA]; Acosta-Chea Dec. ¶¶ 7; Berland Dec. ¶¶ 24-25; Carter ¶¶
 16 22-23; David Dec. ¶¶ 4-15; Deressenge Dec. ¶ 16; Raskin Decl. ¶¶ 4-6; 9-17; Terris Dec. ¶12;
 17 Tuyay Dec.¶ 6; Vallarino Dec. ¶¶ 5-18; Jane Doe Dec. ¶¶10-16.

18
 19
 20 Plaintiffs presented evidence that it is the position of Local DEMIDEC 1021 that e-mail
 21 communications with union stewards (no matter what the rank) regarding work related matters,
 22 including discussions including other personnel, are protected union activities. (Lane Dec.¶ 8;
 23 Davis Dec ¶¶13; Vallarino Dec. ¶¶ 2-17.)
 24
 25
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 27
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1 Plaintiffs presented evidence that these communications are privileged and confidential
2 union actions that should not be subject of review by managers and superiors. (Lane Dec. ¶8
3 Davis Dec. ¶¶ 13; Vallarino Dec. ¶¶2-17.)

4
5 Plaintiffs presented evidence that looking at or printing emails communications between
6 an union representative and member, regarding a union issues, by a member of management is a
7 violation of DEC union members rights and constitutes interference and surveillance of union
8 activities. (Lane Dec. ¶8 Davis Dec. ¶¶ 13; Vallarino Dec. ¶¶2-17)

9
10
11 Plaintiffs presented evidence that to bring a disciplinary complaint against a member
12 regarding work related matters, including discussions about other personnel, is a form for
13 retaliation, intimidation and discrimination against an employee for having participated in
14 union activities. (Lane Dec. ¶8 Davis Dec. ¶¶ 13; Vallarino Dec. ¶¶2-17;)

15
16
17 Plaintiffs presented further evidence that such conduct would violate the foundations of
18 protected union activities and constitute interference with and/or surveillance of union activities.
19 (Lane Dec. ¶8 Davis Dec. ¶¶ 13; Vallarino Dec. ¶¶2-17;) Plaintiffs presented further evidence
20 that if a manager should come across such a communication, they should immediately stop their
21 review of the material and close the e-mail communication. (Lane Dec. ¶8 Davis Dec. ¶¶ 13;
22 Vallarino Dec. ¶¶2-17.)

23
24
25 Plaintiffs presented further evidence Management's continued search or review of any
26 further e-mail constitutes interference with and surveillance of protected union activities. (Lane
27 Dec. ¶8 Davis Dec. ¶¶ 13; Vallarino Dec. ¶¶2-17;)

28
**PLAINTIFFS' PROPOSED ORDER DENYING DEFEDANTS' MOTION FOR SUMMARY
JUDGMENT OR IN THE ALTERNATIVE PARTIAL SUMMARY JUDGEMENT**

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3. Defendants' Conduct Invaded Plaintiff's Privacy Interests

Raskin Decl. ¶¶ 4-6; 9-17; Sealed Doe Dec. ¶¶ 11-16; 92-124; Sealed Exh. K to Amended Shea Dec. [Defendants' Responses to Special Interrogatories ("Madsen then printed the open e-mails together with emails that appeared similar in [Doe's] open inbox..."); Sealed Exh. L to Amended Shea Dec. [Defendants' Responses to Request for Admission No. 2.]; Madsen Depo. 88:21-89:22; 109:18-25 [Exh. C to Shea Dec. In Support of Reply to Opposition to Motion to Amend]; Lane Dec. ¶8; Terry Daniel's Investigative Report, Staff Analysis, CCSF 00007 [Sealed Exh. M to Hecimovich]; Terry Daniel's Investigative Report, Summary of interview with Defendant Madsen. ("Ms. Madsen said there was one email message opened up and displayed on the screen regarding an incident among three dispatchers that had been handled by Mr. Daniel. Ms. Madsen said she saw four to five email messages open at the bottom of the screen including an old one to Glenn Ortiz-Schuldt who used to work at the OEM facility. Ms. Madsen said staff often leaves email messages open on the computers at work. Ms. Madsen noticed titles in the subject line such as, "work related" or "insanity," so she started opening and printing the email messages at the bottom of the screen. After she printed and closed the last email message from the bottom of the screen she said the inbox opened up and displayed a list of more email messages and she printed those email messages that appeared to be work-related as well.) [Sealed Exh. M to Hecimovich]; Lane Dec, ¶8; Davis Dec ¶ 13.

4. The Invasion into Plaintiffs' Privacy Interests Was Serious

Defendant Madsen and Dougherty's acts of continuing to investigate Doe's e-mails following the initial discovery of the July 20, 2009 e-mail to shop steward Vallarino, regarding Doe's concern about a biased investigation constituted management surveillance of union

activities, which constitutes interference with or coercive activities in that such actions amount to surveillance of union members activities and communications, and is an unfair labor practice, per Govt. Code §35062 and 3506 and 29 U.S.C. §§ 158(a)(1). See also, Lane Dec. ¶¶ 5-11; Exhibit B to Lane Dec; Exhibit C to Lane Dec [referring to Section N, ¶ 168 of Local 1021 CBA]; Acosta-Chea Dec.¶¶ 7; Berland Dec. ¶¶ 24-25; Carter ¶¶ 22-23; David Dec. ¶¶ 4-15; Deressenge Dec. ¶ 16; Raskin Decl. ¶¶ 4-6; 9-17; Terris Dec. ¶12; Tuyay Dec.¶ 6; Vallarino Dec. ¶¶ 5-18; Jane Doe Dec. ¶¶10-16; 92-124. Sealed Davis Depo 52:10-69:18; 70:1-181:6 [Exh A to Shea Dec.]

5. The Invasion Caused Plaintiffs To Suffer Injury, Damage, Loss Or Harm.

Harm is alleged in ¶ 168 of the complaint. Defendants Dougherty and Madsen's actions—surveilling (searching) a union members private e-mails after they discovered what they claim to be an open e-mail chilled the speech of Plaintiffs and other union members, who state in their declarations that they would not complain about their treatment out of fear of and actual retaliation.[Lea Acosta Chea Dec. ¶ 8; Melissa Carter Dec. ¶¶ 17-19; Ron Davis Dec ¶ 14; Teodros Deresseigne Dec ¶¶ 11-12, 16; Julie Lane Dec ¶¶ 8-10; *See also*, Jane Doe Dec. ¶¶10-16; 92-124; Raskin Decl. ¶¶ 4-6; 9-17

D. Triable Issues of Fact Exist as to Whether Plaintiffs' Discrimination Claims Based On Sex.

Plaintiffs presented evidence establishing a *prima facie* case of gender discrimination and creating triable issues of materials fact and Defendants presented no evidence that their actions were supported by a legitimate business reason. To extent that any legitimate business reason

might have been advanced, Defendants' unarticulated business reason was merely a pretext for unlawful discrimination. Sealed Jane Doe Dec. ¶¶10-16; 92-124; Raskin Decl. ¶¶ 4-6; 9-17; Acosta-Chea Dec. ¶¶8-11; Carter Dec. ¶¶4-["CCSF [DEC] is one of the most toxic places I have ever experienced as an adult;" "new hires are hazed and treated poorly until they are able to make an impression or gain the good graced of the supervisors."); Berland Dec. ¶¶ 5-22 [detailing female management harassment of subordinate female including herself and favoritism toward a select group and males; complaints made to human resources and no action taken] Critz Dec. ¶¶4-24; Crumbliss Dec., pages 1-3; Deresseigne Decl ¶¶4--16 [detailing among other matters observation of harassment of Jane Doe his reports to management regarding mistreatment of Jane Doe]; David Depo. 20;2070:123:7; 182:10 [Exh.A to Shea Dec.]; Neilson Decl Pgs 1-2; Terris Dec. ¶¶5-18; Tuyay Dec.¶¶ 2-15; Purington Dec. ¶¶ 5-22 [Detailing female v female bullying and favoritism toward males and hazing of new dispatchers]; Davis Depo.45:2-46:2548:19-52:15 [Exh. A to Shea Dec.]; Donohue Depo. 16:25-18:11; 18:25-21:5 (favoritism in DEC); 21:7-22:18;22:19-28:21 (she made complaints to management about disparate treatment); 29:7-33:21(name calling); 33:22-34:9 (clique called the "A-List") 65:11- 69:22 (Complaint about privileged given to the "A-List" and disparate treatment) 69:23-88:4 (female v female harassment). [Sealed Exh. B to Shea Dec.] ; Samuelson Depo. 12:15-152:9 [Sealed Exh. H to Shea Decl.] (Bullying is "heavily weighted toward the women."). Plaintiffs presented evidence There is pervasive and systemic problem off male v female gender bias and bullying that is causing disparate treatment toward a certain class of women including Plaintiffs. (Doe Dec.¶¶15-115; Raskin Dec. ¶¶8-38 [Exh. A to Raskin Dec]; Samuelson Depo 46:12-48:15, 57:5-58:19, [Sealed Exh. H to Shea Decl.])

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E. Triable Issues of Fact Exist As To Plaintiffs' Harassment Claims

1. Plaintiffs Evidence of Hostile Work Environment:

Plaintiffs presented evidence of triable issues of material fact of the existence of a hostile work environment violative of California Fair Employment and Housing Act. Cal Government Code § 12940(j). Sealed: Davis Depo [Exh A to Shea Dec] 14:22-24;16:22-25; 19:6-46:25; 48:15-52: (ongoing problem in DEC re hazing and bullying; gender based as to Jane Doe [52:16-19] 53:11-14 [Jane Doe treated differently by supervisors because of her gender];53:-15-54:8; 54:9-24 [Def Grives still mistreats Jane Doe including retaliation after the complaint relating to emails]; 57-138.

Sealed Jane Doe Dec. ¶¶10-16; 92-124; Raskin Decl. ¶¶4-6; 9-17; Acosta-Chea Dec. ¶¶8-11; Carter Dec. ¶¶4-["CCSF [DEC] is one of the most toxic places I have ever experienced as an adult;" "new hires are hazed and treated poorly until they are able to make an impression or gain the good graced of the supervisors."); Berland Dec!. ¶¶5-22 [detailing female management harassment of subordinate female including herself and favoritism toward a select group and males; complaints made to human resources and no action taken] Critz Dec. ¶¶4-24; Crumbliss Dec., pages 1-3; Deresseigne Decl ¶¶4--16 [detailing among other matters observation of harassment of Jane Doe his reports to management regarding mistreatment of Jane Doe]; David Depo. 20;2070:123:7; 182:10 [Exh.A to Shea Dec.]; Neilson Decl Pgs 1-2; Terris Dec. ¶¶5-18; Tuyay Dec.¶¶2-15; Purington Dec. ¶¶5-22 [Detailing female v female bullying and favoritism toward males and hazing of new dispatchers]; Davis Depo.45:2-46:2548:19-52:15 [Exh. A to Shea Dec.]; Donohue Depo. [Exh. B to Shea Dec.] ; Samuelson Depo. 12:15-152:9 [Sealed Exh. H to Shea Decl.] (Bullying is "heavily weighted toward the women."). Plaintiffs presented

evidence There is pervasive and systemic problem off male v female gender bias and bullying that is causing disparate treatment toward a certain class of women including Plaintiffs. (Doe Dec. ¶¶15-115; Raskin Dec. ¶¶8-38 [Exh. A to Raskin Dec]; Samuelson Depo 46:12-48:15, 57:5-58:19- [Sealed Exh. H to Shea Dec.])

F. Triable Issues of Fact Exist As To Plaintiffs' Retaliation Claim

1. Plaintiff Engaged In Protected Activities Covered Under The Act

Prior to October 2009 (and after): Complaints were made by and on behalf of Plaintiff Jane Doe . Sealed Doe Dec ¶¶17- 37 (Plaintiff Doe Harassed by Def. Grives; Plaintiff Doe pleaded with Defendant Madsen to stop the harassment ¶ 35); ¶¶ 38- 61 (Plaintiff Doe made whistle- blowing complaint about Defendant Madsen, Dougherty and Hillman misusing CCSF monies and they found out about the complaint and subjected Plaintiff Doe to further retaliation; ¶¶ 62-63 (March/April 2009 Plaintiff Doe complained to Director Lisa Hoffman and Plaintiff believes the complaints were repeated to Defendant Madsen) ¶¶ 64-86 (retaliation ensues); ¶¶ 87; 91 (Plaintiff leaves midnight shift and defendant Dougherty tell others “ I am glad I don’t have to work with the bitch anymore;” Def Grives calls her a bitch on dispatch floor) ; ¶¶ 92—125(emails incident occurs, further complaints and retaliation); Sealed Davis Depo 66:9-667:17 (Jane Doe called a bitch); Deressegne Dec ¶¶ 3-16 (made complaint on Jane Does behalf re way she was treated on midnight shift) ; Tuyay Dec. ¶¶10-15 (made complaint on behalf of Jane Doe early on re Def Grives) Def. Dougherty announced, ” I’m glad I don’t have to work that bitch [Jane Doe] any more (shortly before the email incident) (Donohue Depo 127-23-128:Sealed Exh B to Shea Dec.)

December 4, 2009 Plaintiff Jane Doe filed a Police Report with CCSF SFPD [Sealed Jane Doe Dec. ¶ 95; Exh. to Sealed Jane Doe Dec.]

December 6, 2009: Plaintiff Jane Doe made written internal complaint to DEC Human Resources Director Terry Daniel [Sealed Jane Doe Dec. ¶ 96; Exhibit B to Sealed Jane Doe Dec.]

January 13 and 14, 2010 Plaintiff Jane Doe complained to DEC Operations Manager Cecile Soto about retaliation [Plaintiff Jane Doe Sealed Doe Dec. ¶¶ 111, 112.]

January 22, 2010: Plaintiff made harassment and whistle-blowing complaint to CCSF Human Resources Department [Plaintiff Jane Doe Sealed Doe Dec. ¶¶ 114]

February 4, 2010: Plaintiff Jane Doe made a written Complaint to CCSF Human Resources Micki Callahan [Doe Dec. ¶¶ 114 [note typo: erroneously states 2011] Sealed Jane Doe Dec. Exhibit C]

October 13, 2011: Plaintiff Jane Doe and Anne Raskin Filed DFEH Complaints against Defendants and requested and received Right to Sue Notices [Sealed Exh. I to Amended Shea Dec.]

September 21, 2011: Plaintiff Jane Doe Filed Amended and Supplemental DFEH Complaint against Defendants CCSF, Madsen and Grives and requested and received Right to Sue Notices [Sealed Exh I to Amended Shea Dec.]

April 14, 2010 and September 9, 2010: Anne Raskin Filed Government Tort Claims with CCSF [Sealed Exh. J to Amended Shea Dec]

April 14, 2010 and September 9, 2010: Plaintiff Jane Doe filed Government Tort Claims with CCSF [Sealed Exh. J to Amended Shea Dec]

April 29, 2010: Plaintiff Jane Doe made verbal complaint to Director Vicki Hennessy Sealed Jane Doe Dec. ¶ 119 Sealed Jane Doe Dec. ¶¶ 14-125
Anne Raskin Dec ¶¶ 35-37

2. Adverse Employment Actions were Taken Against Plaintiffs

Sealed Jane Doe Dec. ¶¶ 17-125 (Plaintiff Jane Doe has suffered ever since complaint were first made on her behalf in 2009 and continue to this date. Immediately after emails

1 incident and complaints made to management Plaintiff Jane Doe suffered adverse
 2 employment action including disparate treatment disciplinary action; her whole career
 3 trajectory has been impacted.); see also Deressegne Dec ¶¶ 4-16; Sealed Samuelson Depo;
 4 Sealed Davis Depo [Exh A to Shea Dec. 52:10-69:18;

5
 6 Anne Raskin Dec ¶¶ 17-22; 25-31 (immediately after emails incident and complaints
 7 made to management Anne Raskin suffered adverse employment action including disparate
 8 treatment disciplinary action; her whole career trajectory has been impacted.)

9
 10 **3. There is a Causal Connection Between the Protected Activities and the**
 11 **Employer's Adverse Employment Actions.**

12
 13 Ongoing complaints were made by and on behalf of Plaintiff Jane Doe sin 2002 to the
 14 present. Sealed Doe Dec ¶¶17- 37 (Plaintiff Doe Harassed by Def. Grives; Plaintiff Doe pleaded
 15 with Defendant Madsen to stop the harassment ¶ 35); ¶¶ 38- 61 (Plaintiff Doe made whistle-
 16 blowing complaint about Defendant Madsen, Dougherty and Hillman misusing CCSF monies
 17 and they found out about the complaint and subjected Plaintiff Doe to further retaliation; ¶¶ 62-
 18 63 (March/April 2009 Plaintiff Doe complained to Director Lisa Hoffman and Plaintiff believes
 19 the complaints were repeated to Defendant Madsen) ¶¶ 64-86 (retaliation ensues); ¶¶ 87; 91
 20 (Plaintiff leaves midnight shift and defendant Dougherty tell others “ I am glad I don’t have to
 21 work with the bitch anymore;” Def Grives calls her a bitch on dispatch floor) ; ¶¶ 92—125(
 22 emails incident occurs, further complaints and retaliation); Sealed Davis Depo 66:9-667:17 (Jane
 23 Doe called a bitch); Deressegne Dec ¶¶ 3-16 (made complaint on Jane Does behalf re way she
 24 was treated on midnight shift) ; Tuyay Dec. ¶¶10-15 (made complaint on behalf of Jane Doe
 25 early on re Def Grives); **Sealed:** Davis Depo [Sealed Exh A to Amended Shea Dec] 54:9-24
 26 [Def Grives still mistreats Jane Doe including retaliation after the complaint relating to emails];
 27 see also 55- 180:24; Sealed Samuelson depo, passim. [Sealed Exh H to Amended Shea Dec.];
 28 91:18-92:24; 115:19-116:6 (Donohue Depo [Sealed Exh B to Shea Dec.])

**PLAINTIFFS’ PROPOSED ORDER DENYING DEFEDANTS’ MOTION FOR SUMMARY
 JUDGMENT OR IN THE ALTERNATIVE PARTIAL SUMMARY JUDGEMENT**

G. Plaintiff's Provided Evidence That They Exhausted Their Administrative Remedies Prior To Bringing This Lawsuit:

Plaintiffs Jane Doe and Anne Raskin proffered evidence that they exhausted their administrative remedies before filing this lawsuit:

December 4, 2009 Plaintiff Jane Doe filed a Police Report with CCSF SFPD [Sealed Jane Doe Dec. ¶ 95; Exh. to Sealed Jane Doe Dec.]

December 6, 2009: Plaintiff Jane Doe made written internal complaint to DEC Human Resources Director Terry Daniel [Sealed Jane Doe Dec. ¶ 96; Exhibit B to Sealed Jane Doe Dec.]

January 13 and 14, 2010 Plaintiff Jane Doe complained to DEC Operations Manager Cecile Soto about retaliation [Plaintiff Jane Doe Sealed Doe Dec. ¶¶ 111, 112.]

January 22, 2010: Plaintiff made harassment and whistle-blowing complaint to CCSF Human Resources Department [Plaintiff Jane Doe Sealed Doe Dec. ¶¶ 114]

February 4, 2010: Plaintiff Jane Doe made a written Complaint to CCSF Human Resources Micki Callahan [Doe Dec. ¶¶ 114 [note typo: erroneously states 2011] Sealed Jane Doe Dec. Exhibit C]

October 13, 2011: Plaintiff Jane Doe and Anne Raskin Filed DFEH Complaints against Defendants and requested and received Right to Sue Notices [Sealed Exh. I to Amended Shea Dec.]

September 21, 2011: Plaintiff Jane Doe Filed Amended and Supplemental DFEH Complaint against Defendants CCSF, Madsen and Grives and requested and received Right to Sue Notices [Sealed Exh I to Amended Shea Dec.]

April 14, 2010 and September 9, 2010: Anne Raskin Filed Government Tort Claims with CCSF [Sealed Exh. J to Amended Shea Dec]

April 14, 2010 and September 9, 2010: Plaintiff Jane Doe filed Government Tort Claims with CCSF [Sealed Exh. J to Amended Shea Dec]

1 **April 29, 2010:** Plaintiff Jane Doe made verbal complaint to Director Vicki Hennessy
2 Sealed Jane Doe Dec. ¶ 119

3
4 **H. Plaintiffs Provided Evidence that Defendants CCSF Failed to Prevent**
5 **Discrimination and Harassment from Occurring.**

6
7 **1. Plaintiffs' Evidence that Made Complaints of Harassment and Retaliation.**

8 **December 4, 2009** Plaintiff Jane Doe filed a Police Report with CCSF SFPD [Sealed
9 Jane Doe Dec. ¶ 95; Exh. to Sealed Jane Doe Dec.]

10 **December 6, 2009:** Plaintiff Jane Doe made written internal complaint to DEC Human
11 Resources Director Terry Daniel [Sealed Jane Doe Dec. ¶ 96; Exhibit B to Sealed Jane
12 Doe Dec.]

13 **January 13 and 14, 2010** Plaintiff Jane Doe complained to DEC Operations Manager
14 Cecile Soto about retaliation [Plaintiff Jane Doe Sealed Doe Dec. ¶¶ 111, 112.]

15 **January 22, 2010:** Plaintiff made harassment and whistle-blowing complaint to CCSF
16 Human Resources Department [Plaintiff Jane Doe Sealed Doe Dec. ¶¶ 114]

17 **February 4, 2010:** Plaintiff Jane Doe made a written Complaint to CCSF Human
18 Resources Micki Callahan [Doe Dec. ¶¶ 114 [note typo: erroneously states 2011] Sealed
19 Jane Doe Dec. Exhibit C]

20 **October 13, 2011:** Plaintiff Jane Doe and Anne Raskin Filed DFEH Complaints against
21 Defendants and requested and received Right to Sue Notices [Sealed Exh. I to Amended
22 Shea Dec.]

23 **September 21, 2011:** Plaintiff Jane Doe Filed Amended and Supplemental DFEH
24 Complaint against Defendants CCSF, Madsen and Grives and requested and received
25 Right to Sue Notices [Sealed Exh I to Amended Shea Dec.]

26 **April 14, 2010 and September 9, 2010:** Anne Raskin Filed Government Tort Claims
27 with CCSF [Sealed Exh. J to Amended Shea Dec]

April 14, 2010 and September 9, 2010: Plaintiff Jane Doe filed Government Tort Claims with CCSF [Sealed Exh. J to Amended Shea Dec]

April 29, 2010: Plaintiff Jane Doe made verbal complaint to Director Vicki Hennessy Sealed Jane Doe Dec. ¶ 119

Sealed Jane Doe Dec. ¶¶ 14-125

Anne Raskin Dec ¶¶ 35-37

2. Defendants Proffered No Evidence of that An Investigation Was Conducted or that They Took Corrective Action Sufficient to Make the Harassing Conduct Stop.

There is no evidence that Defendants CCFS investigated or took any action regarding the numerous harassment, discrimination, or retaliations complaints made by were ever investigated. [See also, sealed Jane Doe Dec. ¶¶ 14-125; Anne Raskin Dec ¶¶ 35-38.]

I. A Triable Issue of Fact Exists as to Plaintiff Jane Doe's Claim For Intentional Infliction of Emotional Distress.

1. Plaintiff Jane Doe proffered evidence that Defendants conduct toward Plaintiff Doe was outrageous and was with intent to cause, or with reckless disregard to the probability of causing, Plaintiff emotional distress.

Sealed: Jane Doe Declaration ¶¶ 14-125 and Exhs. A-C thereto;

Sealed: Davis Depo [Exh A to Shea Dec] 14:22-24;16:22-25; 19:6-46:25; 48:15-52: (ongoing problem in DEC re hazing and bullying; gender based as to Jane Doe [52:16-19] 53:11-14 [Jane Doe treated differently by supervisors because of her gender];53:-15-54:8; 54:9-24 [Def Grives still mistreats Jane Doe including retaliation after the complaint relating to emails]; Raskin Decl. ¶¶ 19

IV. RULINGS ON EVIDENTIARY OBJECTIONS

PLAINTIFFS' PROPOSED ORDER DENYING DEFEDANTS' MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE PARTIAL SUMMARY JUDGEMENT

Civil Action No. C 10-4700 TEH

Defendants' Objections to DECLARATION OF LEA ACOSTA CHEA, ¶¶ 8 & 10;
 DECLARATION OF BETH BERLAND ¶19; DECLARATION OF MELISSA CARTER ¶¶ 4,
 5, 6, 7, 8, 9, 14, and 19; DECLARATION OF PEGGY CRITZ ¶¶ 10, 11, 12, 13, 14, 15, 16, 17, 18,
 and 19; DECLARATION OF KELLIE CRUMBLISS ¶¶ 6, 10, 17, 20, and 21 ; DECLARATION
 OF TEODROS DERESSEGNE ¶¶ 10, 11, 12 and 16 ; DECLARATION OF MARIA NEILSON
 ¶¶ 10; DECLARATION OF STEVEN L. PURINGTON ¶¶ 7, 8, 9, 10, 18 and 19;
 DECLARATION OF ANNE RASKIN ¶¶ 14-19 and 27; DECLARATION OF MARK TERRIS
 ¶¶ 10-11; DECLARATION OF KIM TUYAY ¶¶ 10, 14, and 15 are overruled on the grounds
 that Plaintiffs are entitled to provide "me too" evidence, which is admissible to show intent under
 Evid. Code, § 1101, subd. (b), to impeach the credibility of a witness, and to rebut factual claims
 made by defense witnesses. *Pantoja v. Anton*, (2011)198 Cal. App. 4th 87.

Defendants objections to the SEIU Local 1021 Union representatives, DECLARATION
 OF RON DAVIS ¶¶ 14 ; DECLARATION OF JULIE LANE ¶¶ 8, 10; DECLARATION OF
 JOAN VALLARINO ¶¶ 7-8 are also overruled on the grounds that Plaintiffs are entitled to
 provide "me too" evidence, which is admissible to show intent under Evid. Code § 1101 (b) to
 impeach the credibility of a witness, and to rebut factual claims made by defense witnesses.
Pantoja v. Anton, (2011)198 Cal. App. 4th 87. In addition, these Union Representatives provide
 prohibitive evidence regarding the interpretation of the CBA and their understanding of the
 privacy expectations and protections provided to union member/employees and can identify what
 constitutes protected union communications and activities, per Govt. Code §§3502 and 3506.

V. CONCLUSION

PLAINTIFFS' PROPOSED ORDER DENYING DEFEDANTS' MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE PARTIAL SUMMARY JUDGEMENT

Civil Action No. C 10-4700 TEH

1 For the reasons set forth above, Defendant's motion for summary judgment *or* adjudication is
2
3 DENIED.

4
5 IT IS SO ORDERED.

6
7 Dated: _____.

8
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11 _____
12 Thelton E. Henderson
13 U.S. DISTRICT COURT JUDGE
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CITY AND COUNTY OF SAN FRANCISCO,
JANICE MADSEN, KIM DOUGHERTY,
AUDREY HILLMAN and HEATHER GRIVES

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JANE DOE and ANNE RASKIN,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
FRANCISCO; JANICE MADSEN, an
individual; KIM DOUGHERTY, an
individual; AUDREY HILLMAN, an
individual; HEATHER GRIVES, an
individual; and DOES 1-10,.

Defendant(s).

Case No. C 10-04700 TEH

**DECLARATION OF LAWRENCE
HECIMOVICH IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT OR, IN THE ALTERNATIVE,
PARTIAL SUMMARY JUDGMENT**

Hearing Date: November 21, 2011
Time: 10:00 a.m.
Judge: Hon. Thelton E. Henderson

Action File: October 14, 2010
Trial Date: January 10, 2012

1 I, LAWRENCE HECIMOVICH, declare and state as follows:

2 1. I am an attorney of record for Defendants in the above-captioned matter. I am admitted
3 to practice law in California and to appear before this Court. Except as otherwise set forth herein, I
4 have personal knowledge of the facts in this declaration, and if called upon to testify, I could and
5 would testify competently to the facts contained herein:

6 2. Attached hereto as Exhibit A is a true and correct copy of Plaintiffs' charges of
7 discrimination filed with the California Department of Fair Employment and Housing on October 13,
8 2010 and September 21, 2011, respectively. Plaintiffs produced these documents in discovery and
9 authenticated these documents at their sworn depositions in this matter.

10 3. Attached hereto as Exhibit B is a true and correct copy of the City's EEO policies
11 contained in the City's employee handbook. Plaintiffs authenticated these documents at their sworn
12 depositions in this matter.

13 4. Attached hereto as Exhibit C is a true and correct copy of the Department of
14 Emergency Management's July 24, 2009 Internet usage policy. Plaintiffs authenticated this document
15 at their sworn depositions in this matter.

16 5. Attached hereto as Exhibit D is a true and correct copy of the Department of
17 Emergency Management's May 2010 policy re Employee Use of DEM Equipment and Internet
18 Connection. Plaintiffs authenticated this document at their sworn depositions in this matter.

19 6. Attached hereto as Exhibit E is a true and correct copy of documents produced by
20 Yahoo incorporated in its subpoena return responding to Plaintiffs' subpoena. The documents show
21 that Does Yahoo account was opened at approximately 12:30 a.m. GMT on October 19, 2009, which
22 the on-line time zone converter correlates to approximately 5:30 p.m. PDT or 4:30 p.m. PST on
23 October 18, 2009.

24 7. Attached hereto as Exhibit F are true and correct copies of CONFIDENTIAL
25 performance reviews for Anne Raskin. Ms. Raskin authenticated these documents at her sworn
26 deposition in this matter.

1 8. Attached hereto as Exhibit G are true and correct copies of CONFIDENTIAL personnel
2 documents for Anne Raskin. Ms. Raskin authenticated these documents at her sworn deposition in
3 this matter.

4 9. Attached hereto as Exhibit H are true and correct copies of CONFIDENTIAL
5 performance reviews for Jane Doe. Ms. Does authenticated these documents at her sworn deposition
6 in this matter.

7 10. Attached hereto as Exhibit I are true and correct copies of CONFIDENTIAL memos
8 from Ms. Doe's union representative, Ron Davis, communicating Ms. Doe's allegations of supervisory
9 misconduct. Ms. Doe authenticated these documents at her sworn deposition in this matter.

10 11. Attached hereto as Exhibit J are true and correct copies of CONFIDENTIAL memos
11 from Local 1021 representatives. Ms. Doe authenticated these documents at her sworn deposition in
12 this matter.

13 12. Attached hereto as Exhibit K is a true and correct copy of Doe's CONFIDENTIAL
14 February 4, 2010 letter to DHR Director Micki Callahan alleging violation of her rights and unlawful
15 conduct. Ms. Doe authenticated these documents at her sworn deposition in this matter.

16 13. Attached hereto as Exhibit L are true and correct copies of CONFIDENTIAL e-mails
17 printed from Plaintiff Doe's Yahoo account on October 18 or October 19, 2009. Plaintiffs
18 authenticated these documents to the court in a letter dated at her sworn deposition in this matter.

19 14. Attached hereto as Exhibit M is a true and correct copy of DEM Human Resource
20 Manager Terry Daniel's CONFIDENTIAL April 2, 2010 investigative report relating to the Yahoo e-
21 mails, attaching Manager Madsen's Complaint Report and Doe's July 20, 2009 e-mail disclosing
22 confidential investigatory information to non-supervisory union steward Joan Villarino. Terry Daniel
23 authenticates these documents in his sworn declaration filed herewith.

24 15. Attached hereto as Exhibit N is DEM Director Vicki Hennessy's CONFIDENTIAL
25 May 19, 2010 memo informing Doe that the investigation into her conduct has been closed.

26 16. Attached hereto as Exhibit O are true and correct copies of pages excerpted from the
27 deposition of Jane Doe. Plaintiffs have designated substantial portions of Ms. Doe's testimony as
28 CONFIDENTIAL.

18. Attached hereto as Exhibit Q are true and correct copies of pages excerpted from the deposition of Joanne Donahue. Plaintiffs have designated substantial portions of Ms. Donahue's testimony as CONFIDENTIAL.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed October 14, 2011 in San Francisco, California..


LAWRENCE HECIMOVICH

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Attorneys for Defendants
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JANICE MADSEN, KIM DOUGHERTY,
AUDREY HILLMAN and HEATHER GRIVES

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JANE DOE and ANNE RASKIN,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
FRANCISCO; JANICE MADSEN, an
individual; KIM DOUGHERTY, an
individual; AUDREY HILLMAN, an
individual; HEATHER GRIVES, an
individual; and DOES 1-10,,

Defendant(s).

Case No. C 10-04700 TEH

**DECLARATION OF HEATHER GRIVES IN
SUPPORT OF DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, PARTIAL SUMMARY
JUDGMENT**

Hearing Date: November 21, 2011
Time: 10:00 a.m.
Judge: Hon. Thelton E. Henderson

Action File: October 14, 2010
Trial Date: January 10, 2012

1 I, HEATHER GRIVES, declare and state as follows:

2 1. I am employed as a Dispatch Supervisor with the City and County of San Francisco's
3 Department of Emergency Management. I have personal knowledge of each of the facts set forth
4 herein and, if called as a witness, could and would testify truthfully thereto.

5 2. I was "Plaintiff Doe's" Communications Training Officer during the final phase of her
6 training as a dispatcher. I am now aware that she considered me to be overly critical of her work.
7 That was not my intention, nor did she complain other than to suggest that she deserved more praise
8 than I provided. I did not consider it my job to praise her, as opposed to ensure that she was fully
9 prepared to perform the duties of a DEM dispatcher to the standard that public safety requires.

10 3. Neither Plaintiff Doe nor anyone else has ever suggested that I treat female dispatchers
11 less favorably than men, and I am not aware of any facts that would support such an allegation.

12 4. I have hardly worked with Plaintiff Doe since her initial new hire training. I have
13 worked with Ann Raskin, and believe that Ann and I have always maintained a highly professional
14 and positive working relationship. Ann has always seemed interested in improving her skills as a
15 dispatcher. Ann told me after one assignment together that she truly enjoyed working with me and
16 appreciated my expertise as a supervisor.

17 5. I became aware at the end of 2009 or in early 2010 that Plaintiff Doe accused me of
18 having "hacked" her e-mail. I could not and did not "hack" anything and in fact had nothing to do
19 with the Yahoo e-mail episode she ranted about. I have never seen any of the e-mails Plaintiff Doe
20 has accused me of "hacking" into.

21 6. I have never treated Plaintiff Doe or Raskin differently on the basis of gender, nor have
22 I done so with any other DEM staff. I have never addressed either with hostility, and have never
23 intentionally insulted or demeaned either of them either personally or professionally.

24 7. Aside from Plaintiff Doe arranging to have a new trainer at the outset of her
25 employment, which I did not understand to involve any "complaint" against me, I am not aware of her
26 ever having made any complaint against me prior to the various complaints she has made since
27 December 2009. I have neither used nor heard any profanity directed at either Plaintiff.
28

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JANE DOE and ANNE RASKIN,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
FRANCISCO; JANICE MADSEN, an
individual; KIM DOUGHERTY, an
individual; AUDREY HILLMAN, an
individual; HEATHER GRIVES, an
individual; and DOES 1-10.

Defendant(s).

Case No. C 10-04700 TEH

**DECLARATION OF KYM DOUGHERTY IN
SUPPORT OF DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, PARTIAL SUMMARY
JUDGMENT**

Hearing Date: November 21, 2011
Time: 10:00 a.m.
Judge: Hon. Thelton E. Henderson

Action File: October 14, 2010
Trial Date: January 10, 2012

1 I, KYM DOUGHERTY, declare and state as follows:

2 1. I am employed as a Dispatch Supervisor with the City and County of San Francisco's
3 Department of Emergency Management. I have personal knowledge of each of the facts set forth
4 herein and, if called as a witness, could and would testify truthfully thereto.

5 2. I worked the midnight shift at DEM on the night of October 18, 2009. Shortly after I
6 came in, I sat down to use one of the computers in the dispatch supervisors' room, only to find an e-
7 mail open on the screen. I could tell the e-mail was not on our office e-mail system based on how it
8 looked, and determined that it was from the outside Yahoo account of "Plaintiff Doe". She worked the
9 1:00 to 11:00 p.m. swing-midnight overlap shift on October 18, 2009, and had left the supervisors'
10 room with the e-mails open on the monitor. When I closed the first e-mail, another filled the screen
11 and, after several attempts to close out, I realized there were a large number of e-mails open but
12 minimized at the bottom of the screen. I kept closing the e-mails one-by-one, not stopping to read
13 them. Then I saw an e-mail discussing confidential investigatory information, and saw that it was
14 addressed to a nonsupervisory employee.

15 3. I went and found my manager, Janice Madsen. Although Ms. Madsen's initial reaction
16 was that I needed to close the e-mail immediately and log out of the account, she changed her mind
17 when I related to Ms. Madsen the substance of the last e-mail I saw. I told her that it appeared to
18 communicate confidential information relating to a personnel investigation, and appeared to be to a
19 nonsupervisor, which would violate DEM policy. She expressed concern and went with me to the
20 supervisors' room. Ms. Madsen read the e-mail and confirmed that it contained an inappropriate
21 disclosure of personnel information. Ms. Madsen briefly discussed with Lynn Feeney, who was sitting
22 on the other side of the room, what was the appropriate thing to do, and both of them seemed
23 somewhat puzzled. I was called out of the room and had to leave, and Ms. Madsen said that was okay
24 but I needed to treat the matter as confidential. When I went back to the supervisors' room about two
25 hours later, Ms. Madsen was gone. She subsequently told me that she had forwarded the e-mails
26 confidentially to Human Resources for their review and determination what to do.

27 4. I did not read the e-mails that came up on the screen, and do not recall whether I
28 noticed anything about them, beyond the fact that they appeared to be largely between DEM staff

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Raskin, Anne v. CCSF, USDC # C 10-04700 TEH

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1 members and related to work. I did not discuss the substance of the e-mails with other managers,
2 except during Terry Daniel's investigatory interview. I don't recall whether I expressed anything
3 during that interview about any substance I had seen, but do recall saying that it was a pet peeve of
4 mine that people left their personal e-mail open on the supervisor room computers.

5 5. I do not have access to the e-mails, did not review them in conjunction with this
6 litigation, and have no knowledge or recollection of their content except as set forth above.

7 6. I became aware that Plaintiff Doe accused me of having "hacked" her e-mail. I could
8 not and did not "hack" anything. I did not access, enter or remove anything from Plaintiff Doe's inbox
9 or any other source, and did not open anything, since each of the e-mails I printed was already open,
10 either on the screen or "minimized" at the bottom. Rather I closed each of the e-mails that were open
11 before giving up that effort to consult Ms. Madsen about the disclosure issue.

12 7. I have had minimal interactions with Anne Raskin, have never acted inappropriately
13 toward her, and have never heard from her or anyone else that I have. I supervised Plaintiff Doe for a
14 period of time and treated her fairly, including providing a fair and accurate written evaluation of her
15 performance. I have worked very little with her over the last five years and do not recall any conflicts
16 during that time. I have never treated her differently because she is a woman, have never addressed
17 her with hostility, and have never intentionally insulted or demeaned her either personally or
18 professionally.

19 8. I am not aware of Plaintiff Doe ever having made any complaint against me prior to the
20 various complaints she has made since December 2009. I have neither used nor heard any profanity
21 directed at either Plaintiff.

22 I declare under penalty of perjury under the laws of the State of California that the forgoing is
23 true and correct to the best of my knowledge. Executed on October 14, 2011.

24
25 
26 KYM DOUGHERTY
27
28

1 DENNIS J. HERRERA, State Bar #139669
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9 AUDREY HILLMAN and HEATHER GRIVES

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 JANE DOE and ANNE RASKIN,

13 Plaintiffs,

14 vs.

15 CITY AND COUNTY OF SAN
FRANCISCO; JANICE MADSEN, an
16 individual; KIM DOUGHERTY, an
individual; AUDREY HILLMAN, an
17 individual; HEATHER GRIVES, an
individual; and DOES 1-10,.

18 Defendant(s).
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Case No. C 10-04700 TEH

**DECLARATION OF JANICE MADSEN IN
SUPPORT OF DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, PARTIAL SUMMARY
JUDGMENT**

Hearing Date: November 21, 2011
Time: 10:00 a.m.
Judge: Hon. Thelton E. Henderson

Action File: October 14, 2010
Trial Date: January 10, 2012

1 I, JANICE MADSEN, declare and state as follows:

2 1. I am employed as a Public Safety Communications Coordinator with the City and
3 County of San Francisco's Department of Emergency Management. I have personal knowledge of
4 each of the facts set forth herein and, if called as a witness, could and would testify truthfully thereto.

5 2. I was the manager for the midnight shift at DEM on the night of October 18, 2009.
6 Early in the shift, Supervisor Kym Dougherty reported a situation requiring my involvement. Kym
7 said that she had sat down to use one of the computers in the dispatch supervisors' room, only to find
8 an e-mail open on the screen. She told me that the e-mail was from the Yahoo account of the
9 supervisor called "Plaintiff Doe" in this action. My immediate reaction was to direct Kym to close the
10 e-mail and log out of the account. However Kym immediately explained that, while she had intended
11 to do so, an e-mail had opened on the screen showing the inappropriate disclosure of confidential
12 information relating to a personnel investigation. Kym told me the disclosure was to a non-
13 supervisory union steward, which clearly would violate DEM and City policies.

14 3. I accompanied Kym back to the supervisors' room and sat down at the computer
15 station. I read the e-mail and confirmed that it contained an inappropriate disclosure of personnel
16 information. I briefly discussed with Lynn Feeney the appropriate course of action, but neither one of
17 us was absolutely sure. Kym indicated that she needed to handle an unrelated issue and left. I
18 informed her that she needed to treat this matter as confidential. I remained at the computer, printed
19 the e-mail to submit it to DEM Human Resources, then closed it. When I did so another e-mail came
20 up from the bottom of the screen, and I printed and closed it and continued through maybe a dozen or
21 so e-mails. When no further e-mails came up, I logged out of the Yahoo site, collected the e-mails,
22 sealed the e-mails in an envelope, drafted a short form of complaint to alert Human Resources to the
23 nature of the problem, sealed the complaint form with the e-mails and delivered it in a confidential
24 manner.

25 4. The fact that the improper disclosure, along with various inappropriate statements
26 regarding other DEM supervisors, was contained in an e-mail from the supervisor's outside account
27 presented novel issues in my experience as a manager. By giving the e-mails to Human Resources, I
28 felt that I properly assured that they would only be reviewed and discussed, if at all, for proper

1 purposes. I did not discuss the substance of the e-mails with other managers, except during Mr.
2 Daniel's investigatory interview. I do not have access to the e-mails and did not review them in
3 conjunction with this litigation.

4 5. I became aware that Plaintiff Doe has alleged, in complaints to DEM management and
5 with the union's involvement, that I reviewed many e-mails from her account, that I may have printed
6 them out, and that I only gave Human Resources a small subset of what I had looked at. That is
7 entirely false. I only looked at e-mails that were open, I printed each one after looking at it, and I
8 provided the entire bunch to Human Resources.

9 6. I became aware that Plaintiff Doe also falsely publicly accused me, along with Kym
10 Dougherty and Heather Grives, who played no role in the incident, of having "hacked" her e-mail. I
11 am not technically savvy and did not "hack" anything, nor would I know how to do so. Rather, I
12 printed out e-mails that were already open in the server at the bottom of the screen. I did not access,
13 enter or remove anything from Plaintiff Doe's inbox or any other source, and did not open anything,
14 since each of the e-mails I printed was already open, either on the screen or "minimized" at the bottom.
15 Rather I closed each of the e-mails that were open prior to logging the computer out of the Yahoo
16 account. I did not tell Terry Daniel that I opened messages from inside the Yahoo inbox, but rather
17 only that I printed messages that I assumed came from the inbox, but which had already been opened.

18 7. I am aware that Plaintiffs in this case allege "gender-based hazing". I have never
19 treated any employee differently based on gender and have never observed that at DEM. As a woman
20 who has worked hard to get where I am, I find it utterly offensive and absurd to be accused of holding
21 women down and treating them with hostility.

22 8. I have had minimal interactions with Anne Raskin, and she has never conveyed any
23 belief of this nature in my interactions with her.

24 9. I have supervised Plaintiff Doe during several stints, the most recent being the first six
25 months of 2009, after several years of us not working together. I have never treated her differently
26 because she is a woman and have never addressed her with hostility.

27 10. As a supervisor, Plaintiff Doe has a duty to report any unfair treatment based on gender
28 or any other protected category. Prior to this lawsuit, I was not aware of her ever having said or done

1 anything to suggest that she believes she has been treated differently as a woman. I am not aware of
2 Plaintiff Doe ever having made any complaint against me prior to the various complaints she has made
3 since December 2009. I have neither used nor heard any profanity directed at either Plaintiff.

4 11. Dispatchers and dispatch supervisors have a very difficult job that needs to be
5 performed in an exacting manner, and it sometimes takes experience for supervisors to learn to
6 maintain their composure in emergencies. I am aware that more than one dispatcher has suggested
7 that Plaintiff Doe has herself been overly severe as a supervisor.

8 12. The midnight shift poses a unique set of challenges, for a number of reasons. Foremost
9 among them is the fact that many of the agencies and other resources the Department relies on are
10 closed during the midnight shift, requiring us to act autonomously more than on other shifts. The
11 Department provides supervisor training to help supervisors deal with difficult situations in a
12 professional way, and I expect nothing less from each of the supervisors who report to me.

13 I declare under penalty of perjury under the laws of the State of California that the forgoing is
14 true and correct to the best of my knowledge. Executed on October 14, 2011.

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17 JANICE MADSEN
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DENNIS J. HERRERA, State Bar #139669
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Attorneys for Defendants
CITY AND COUNTY OF SAN FRANCISCO,
JANICE MADSEN, KIM DOUGHERTY,
AUDREY HILLMAN and HEATHER GRIVES

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JANE DOE and ANNE RASKIN,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
FRANCISCO; JANICE MADSEN, an
individual; KIM DOUGHERTY, an
individual; AUDREY HILLMAN, an
individual; HEATHER GRIVES, an
individual; and DOES 1-10,.

Defendant(s).

Case No. C 10-04700 TEH

**DECLARATION OF TERRENCE DANIEL IN
SUPPORT OF DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, PARTIAL SUMMARY
JUDGMENT**

Hearing Date: November 21, 2011
Time: 10:00 a.m.
Judge: Hon. Thelton E. Henderson

Action File: October 14, 2010
Trial Date: January 10, 2012

1 I, TERRENCE DANIEL, declare and state as follows:

2 1. I am the Human Resources Manager for the City and County of San Francisco's
3 Department of Emergency Management. I have personal knowledge of each of the facts set forth
4 herein and, if called as a witness, could and would testify truthfully thereto.

5 2. DEM's Division of Emergency Communications (DEC) receives emergency and non-
6 emergency 911 calls and dispatchers police, fire and medical services. DEC operates 24 hours per
7 day, seven days per week, 365 days per year. The facility located at 1011 Turk Street never closes.
8 DEC staff work day, swing, and midnight shifts with staggered start times and various break times
9 depending on the activity on the operation floor.

10 3. On October 19, 2009, Public Safety Communications Coordinator Janice Madsen
11 reported to Deputy Director Lisa Hoffmann that she had found a number of personal email messages
12 from the Yahoo e-mail account of a dispatch supervisor (referred to herein as "Jane Doe") on a
13 Department computer in the dispatch supervisors' office. Ms. Madsen believed that Ms. Doe had
14 divulged confidential information to a nonsupervisory dispatcher about a pending investigation and
15 had made derogatory and disparaging remarks about staff. I was assigned to investigate that matter. A
16 true and correct copy of my final report, including Ms. Madsen's complaint and the July 2009 e-mail
17 that triggered the investigation, is attached as Exhibit M.

18 4. I interviewed Kym Dougherty, whom Ms. Madsen identified as having stumbled on the
19 e-mail, in November 2009 and again in February 2010. Ms. Dougherty reported that on October 18,
20 2009 she went into the supervisor's office to use a computer and found numerous email messages
21 open on the tool bar at the bottom of the screen. She said that so many messages were open that the
22 titles could not be read. She said that she often finds open email messages unattended on a multi-user
23 computer in the supervisor's office and it is a "pet peeve" of hers, so she immediately started closing
24 the email messages. She said she closed about five or six email messages but other messages came up
25 in their place. Ms. Dougherty said she did not open or enter an in-box and that all of the email
26 messages she saw were "open on the tool bar at the bottom of the screen."

27 5. Ms. Dougherty said that as she was doing this she saw an email message about an
28 incident between three dispatchers which was being investigated at the time. She was concerned

1 because this email message was on a personal email account, written to a nonsupervisor, discussing a
2 work-related matter and contained "snide" comments. She also pointed out that line staff (public
3 safety communication dispatchers) could not print PeopleSoft data from the computer in the "chair
4 room," and so used this computer in the supervisor's office.

5 6. Ms. Dougherty said that she immediately informed Ms. Madsen about the e-mail, did
6 not print, delete or forward any of the email, and does not have access to Ms. Doe's personal email
7 account. Ms. Dougherty said that when she brought Ms. Madsen to the computer in the supervisor's
8 office and started to explain what happened, initially Ms. Madsen told her, "If it's somebody's email,
9 just close it." But when Ms. Madsen saw the email message about an investigation, which was still
10 displayed on the screen in the supervisors' office, she (Ms. Madsen) sat down to look at the email
11 messages more carefully and ultimately Ms. Dougherty left, after committing to keeping the matter
12 confidential.

13 7. Together with Ms. Hoffmann and Operations Manager Cecile Soto, I met with Ms.
14 Madsen immediately after she first reported finding the e-mail. I also interviewed Ms. Madsen on
15 February 15, 2010. At the initial interview, Ms. Madsen provided a printed copy of the email
16 messages, which she said contained derogatory and disparaging statements against her co-workers and
17 superiors (including her). True and correct copies of the e-mails Ms. Madsen provided me are
18 attached as Exhibit L hereto.

19 8. As Ms. Madsen wrote in her complaint report dated October 18, 2009, she said that Ms.
20 Dougherty came to get Ms. Madsen in the coordinator's office and told her she needed to come and
21 look at some email messages in the supervisor's office. Ms. Madsen said there was one email message
22 opened up and displayed on the screen regarding an incident among three dispatchers, and a number of
23 others she said had been opened from the e-mail inbox and were at the bottom of the screen. Ms.
24 Madsen noticed titles in the subject-line such as "work related", and so started maximizing and
25 printing the messages from the bottom of the screen. After she printed and closed the last email
26 message from the bottom of the screen she said the inbox appeared, showing that these e-mails had
27 come from there and were among a host of similar e-mails that appeared to be work-related as well.
28

1 Ms. Madsen closed the e-mail account and did not open any e-mail and did not look at any e-mail
2 other than the ones were already open. Ms. Madsen said, "What I looked at I printed".

3 9. I interviewed Ms. Doe on December 4, 2009. She had S.E.I.U. representative Ron
4 Davis present during this interview. Ms. Doe was upset and began by saying that this is a violation of
5 her privacy. Ms. Doe was very concerned that they could have accessed her other personal email
6 messages, such as messages to her doctor and bank accounts. Ms. Doe believed that Supervisor
7 Heather Grives was responsible for inappropriately accessing her personal email account in order to
8 harass her or retaliate against her for a complaint she said she had made against Ms. Grives about 7 1/2
9 years ago. She said that supervisors Audrey Hillman, Heather Grives, Kym Dougherty, and
10 coordinators Janice Madsen and Carol Bernard all had reason to harass and retaliate against her for
11 that complaint. Ms. Doe demanded an investigation about how her personal email account was
12 accessed. Ms. Doe declined to answer any questions. After the interview, Ms. Doe filed a police
13 report.

14 10. In December 2009 and early 2010, Mr. Davis reiterated Ms. Doe's claims. He further
15 asserted that someone "deliberately and willfully" searched over 1500 of Ms. Doe's private emails
16 looking for a smoking gun." Mr. Davis also requested that Ms. Doe not be assigned to work on the
17 midnight shift again until this matter is resolved. Mr. Davis clarified that the "click-recorder" he had
18 referred to during the investigative interview with Ms. Doe on December 4, 2009 was not running on
19 the computer terminal where the email messages were found. True and correct copies of Mr. Davis'
20 memos are attached as Exhibit I.

21 11. The Department concluded that the evidence did not establish that either Ms.
22 Dougherty or Ms. Madsen deliberately accessed Ms. Doe's Yahoo account. Moreover, while the e-
23 mail messages from Ms. Doe contain remarks about several DEM staff that are uncomplimentary and
24 some of her email messages reflect poor judgment, the Department would not institute discipline under
25 these circumstances.

26 12. After Ms. Doe filed a December 4, 2009 complaint with the San Francisco Police
27 Department, DEM requested SFPD assistance in identifying possible means of preserving evidence
28 relating to the e-mail. The Police Department, after determining that the pertinent information would

1 be on Yahoo's servers and not the City's, sent Yahoo an evidence preservation letter. I have reviewed
2 Yahoo's subpoena return and believe that Yahoo properly preserved the information at issue. A true
3 and correct copy of the Yahoo subpoena return is attached as Exhibit E hereto.

4 13. Based on my own personal knowledge and my review of DEM Department records, I
5 have been unable to locate any record of any complaint of gender harassment or hazing, gender
6 discrimination or any other EEO violation raised by Plaintiffs prior to December 2009. In fact, there is
7 no record of any DEM employees other than Plaintiffs having brought any gender-based EEO claims
8 since 1995. Plaintiffs filed Government Claims with the City Controller's office, but have not filed
9 claims with the Labor Commissioner or other office.

10 I declare under penalty of perjury under the laws of the State of California that the forgoing is
11 true and correct to the best of my knowledge. Executed October 14, 2011.

12 
13 TERRENCE DANIEL

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Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JANE DOE and ANNE RASKIN,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN
FRANCISCO; JANICE MADSEN, an
individual; KIM DOUGHERTY, an
individual; AUDREY HILLMAN an
individual; HEATHER GRIVES, an
individual; and DOES 1-10,

Defendants.

Case No. C 10-04700 TEH

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The Parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3 "CONFIDENTIAL" Information or Items: information (regardless of how, generated, stored or maintained) or tangible things that qualify for protection under standards developed under F.R.Civ.P. 26(c).

2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.7. Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as "Confidential."

2.8 Protected Material: any Disclosure or Discovery Material that is designated as "Confidential."

2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

2.10 Counsel (without qualifier): Counsel representing Parties (as well as their support staffs).

2.11 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action and who is not a past or a current employee of a Party or of a competitor of a Party's and who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party's. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material.

4. DURATION

Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or non-party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. A Designating Party must take care to designate for protection only those parts of material, documents, items, or oral or written communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process, or to impose unnecessary expenses and burdens on other Parties), expose the Designating Party to sanctions.

If it comes to a Party's or a non-party's attention that information or items that it designated for protection do not qualify for protection at all, or do not qualify for the protection initially asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form, (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" on the page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

A Party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all of the material made available for inspection shall be deemed confidential. After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order, then, before producing the specified documents, the Producing Party must affix the "CONFIDENTIAL" label on the page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony. When it is impractical to identify separately each portion of testimony that is entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the Party or

1 non-party that sponsors, offers, or gives the testimony may invoke on the
 2 record (before the deposition or proceeding is concluded) a right to have up
 3 to 20 days to identify the specific portions of the testimony as to which
 4 protection is sought. Only those portions of the testimony that are
 5 appropriately designated for protection within the 20 days shall be covered by
 6 the provisions of this Stipulated Protective Order.

7 Transcript pages containing Protected Material must be separately bound by
 8 the court reporter, who must affix on the page the legend "CONFIDENTIAL"
 9 as instructed by the Party or nonparty offering or sponsoring the witness or
 10 presenting the testimony.

11 (c) for information produced in some form other than documentary, and for
 12 any other tangible items, that the Producing Party affix in a prominent place
 13 on the exterior of the container or containers in which the information or item
 14 is stored the legend "CONFIDENTIAL". If only portions of the information
 15 or item warrant protection, the Producing Party, to the extent practicable,
 16 shall identify the protected portions, specifying whether they qualify as
 17 "Confidential".

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
 19 to designate qualified information or items as "Confidential" does not, standing
 20 alone, waive the Designating Party's right to secure protection under this Order for
 21 such material. If material is appropriately designated as "Confidential" after the
 22 material was initially produced, the Receiving Party, on timely notification of the
 23 designation, must make reasonable efforts to assure that the material is treated in
 24 accordance with the provisions of this Order.

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

1 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
2 confidentiality designation is necessary to avoid foreseeable substantial unfairness,
3 unnecessary economic burdens, or a later significant disruption or delay of the
4 litigation, a Party does not waive its right to challenge a confidentiality designation
5 by electing not to mount a challenge promptly after the original designation is
6 disclosed.

7 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
8 Party's confidentiality designation must do so in good faith and must begin the
9 process by conferring directly (in voice to voice dialogue; other forms of
10 communication are not sufficient) with counsel for the Designating Party. In
11 conferring, the challenging Party must explain the basis for its belief that the
12 confidentiality designation was not proper and must give the Designating Party an
13 opportunity to review the designated material, to reconsider the circumstances, and,
14 if no change in designation is offered, to explain the basis for the chosen
15 designation. A challenging Party may proceed to the next stage of the challenge
16 process only if it has engaged in this meet and confer process first.

17 6.3 Judicial Intervention. A Party that elects to press a challenge to a
18 confidentiality designation after considering the justification offered by the
19 Designating Party may file and serve a motion under Civil Local Rule 7 (and in
20 compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged
21 material and sets forth in detail the basis for the challenge. Each such motion must
22 be accompanied by a competent declaration that affirms that the movant has
23 complied with the meet and confer requirements imposed in the preceding
24 paragraph and that sets forth with specificity the justification for the confidentiality
25 designation that was given by the Designating Party in the meet and confer
26 dialogue.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all parties shall continue to afford the material in question the protection to which it is entitled under the Producing Party's designation.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated CONFIDENTIAL only to:

- (a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;
- b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(f) during their depositions, witnesses in the, action disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL", the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

1 The purpose of imposing these duties is to alert the interested parties to the existence of this
 2 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
 3 confidentiality interests in the court from which the subpoena or order issued. The Designating
 4 Party shall bear the burdens and the expenses of seeking protection in that court of its confidential
 5 material - and nothing in these provisions should be construed as authorizing or encouraging a
 6 Receiving Party in this action to disobey a lawful directive from another court.

7
 8 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
 10 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
 11 the Receiving Party must immediately (a) notify in writing the Designating Party of the
 12 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)
 13 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
 14 Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to
 15 Be Bound" that is attached hereto as Exhibit A.

16 10. FILING PROTECTED MATERIAL. Without written permission from the
 17 Designating Party or an order secured after appropriate notice to all interested persons, a Party may
 18 not file in the public record in this action any Protected Material. A Party that seeks to file under
 19 seal any Protected Material must comply with Civil Local Rule 79-5.

20 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
 21 Producing Party, within sixty days after the final termination of this action, each Receiving Party
 22 must return all Protected material to the Producing Party. As used in this subdivision, "all Protected
 23 Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing
 24 or capturing any of the Protected Material. With permission in writing from the Designating Party,
 25 the Receiving Party may destroy some or all of the Protected Material instead of returning it.
 26 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written

certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: July 21, 2011

Respectfully submitted,

DENNIS J. HERRERA
City Attorney
ELIZABETH S. SALVESON
Chief Labor Attorney
LAWRENCE HECIMOVICH
Deputy City Attorneys

By: /s/
LAWRENCE HECIMOVICH
Attorneys for Defendants

Dated: July 21, 2011

By: /s/
MARY SHEA HAGEBOLS, Esq.
Shea Law Offices
Attorney for Plaintiffs

PURSUANT TO STIPULATION, IT IS SO ORDERED

DATED: 07/25/2011

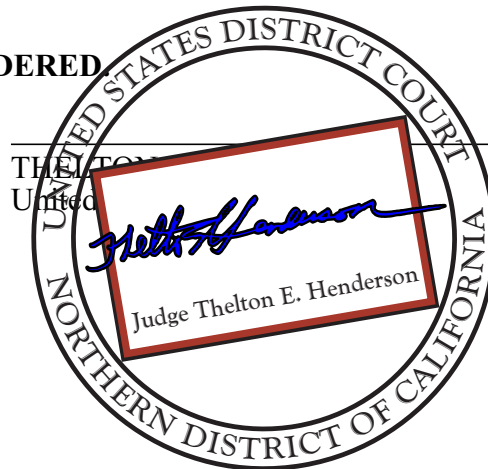


EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, [print or type full name], of [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of [insert formal name of the case and the number and initials assigned to it by the court]. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint [print, or type full name] of [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

[printed name]

Signature: _____

[signature]

United States District Court

Northern District of California

Before The Honorable Thelton E. Henderson

Jane Doe,)	
)	
Plaintiff,)	
)	
vs.)	No. C10-4700 TEH
)	
City and County of)	
San Francisco, et al.,)	
)	
Defendants.)	
_____)	

San Francisco, California
Monday, December 19, 2011

Reporter's Transcript Of Proceedings

Appearances:

For Plaintiff: Shea Law Offices
 1814 Franklin Street, Suite 800
 Oakland, California 94612
 By: Mary Shea Hagebols, Esquire

For Defendant: San Francisco City Attorney's Office
 1390 Market Street, 6th Floor
 San Francisco, California 94102
 By: Lawrence Hecimovich, Esquire

Reported By: Sahar Bartlett, RPR, CSR No. 12963
 Official Reporter, U.S. District Court
 For the Northern District of California

(Computerized Transcription By Eclipse)

Sahar Bartlett, C.S.R. No. 12963, RPR
Official Court Reporter, U.S. District Court
(415) 626-6060

Monday, December 19, 2011

P.M. Proceedings

P R O C E E D I N G S

THE CLERK: Calling civil matter 10-4700; Jane Doe versus City and County of San Francisco.

Counsel, please state your appearances for the record.

MS. SHEA: Yes, Mary Shea, S-h-e-a, Hagebols, H-a-g-e-b-o-l-s, for the plaintiffs.

MR. HECIMOVICH: And Larry Hecimovich, in the Office of the City Attorney for defendants.

THE COURT: Okay.

Tana, do you have the pre-trial order? Is that it there?

(Clerk hands Court pre-trial order.)

THE COURT: Okay, let me say at the outset that I'm becoming increasingly concerned about our preparedness to go forward in the trial.

I'm additionally concerned that I'm getting the feeling that counsel are considering my pre-trial order to be a kind of a guideline rather than an order to be followed by counsel. And you can expect me to start sanctioning you from henceforth when you don't follow any of my rules. Otherwise, trial is going to be a chaotic affair.

I don't quite know what to do with the Doe status of this case. This is about the sixth time that the Doe

1 plaintiff's name has been mentioned. Or today, I'm handed a
2 document with her name on it. What's going on? Is this a
3 serious situation, or what are we doing?

4 **MS. SHEA:** I apologize, Your Honor. And if there
5 was a document that was submitted with her name in it, it was
6 inadvertent.

7 **THE COURT:** I'm having trouble hearing you.

8 **MS. SHEA:** I apologize, Your Honor. If there was a
9 document that was submitted to the Court with her name on it,
10 it was inadvertent. And I know that we have been trying
11 painfully to make sure that her name does keep out of the
12 public documents.

13 **THE COURT:** What's the purpose of it, since it's
14 been out there so many times now?

15 **MS. SHEA:** Yes.

16 It's her -- she has a brother and a sister-in-law
17 who are on the Police Department, and she is concerned about
18 retaliation to her family because she is speaking out against
19 matters that are going on in the Dispatcher's department. And
20 she is more concerned about her family's safety.

21 She has represented to me that she will defer to
22 whatever the Court decides. And if the Court decides that it's
23 best to proceed with her real name, she will defer to the
24 Court's judgment. But that was the reason for -- it was out of
25 concern for her family's safety.

1 **THE COURT:** Okay. Well, I would suggest that her
2 counsel take that concern seriously. And I'll say no further
3 about it at this time.

4 Okay, I have another document, which is plaintiff's
5 counsel's declaration, which was filed today which says,

6 "I am making this declaration pursuant to this
7 Court's order for pre-trial preparation," which I've just read.
8 Tell me which part of that order have you filed this pursuant
9 to, Counsel?

10 **MS. SHEA:** Yes, Your Honor.

11 In the order for pre-trial preparation, the -- the
12 order states that --

13 **THE COURT:** Tell me where you're reading.

14 **MS. SHEA:** Um -- well, the first one that I see
15 is -- I apologize, Your Honor.

16 For instance, with the jury instructions, to --

17 **THE COURT:** Tell me what page you're reading.

18 **MS. SHEA:** Page 6, subsection (d).

19 **THE COURT:** Okay.

20 Where in there? Do you want me to read the whole --

21 **MS. SHEA:** Line 26:

22 "The proposed jury instructions must be accompanied
23 by a declaration stating that the parties have met and
24 conferred in good faith and attempted to agree upon as many
25 jury instructions as possible."

1 I apologize I didn't file the declaration with -- at
2 the time of the jury instructions; it was primarily because I
3 was struggling with how to present the problem to the Court
4 that I was having difficulty meeting and conferring with
5 opposing counsel. And I didn't want to have to bring this
6 to -- in front of the Court, but we have not been able to meet
7 and confer on the jury instructions.

8 **THE COURT:** Why is that, since I ordered quite a
9 while ago that you do so? Because there are a lot of things we
10 have to do to get ready for trial. And you are telling me you
11 are too busy to do the things I've ordered you to do?

12 **MS. SHEA:** I'm not too busy, Your Honor. And I have
13 made attempts to meet with Mr. Hecimovich. Mr. Hecimovich does
14 not like working with me, and that has been a problem --

15 **THE COURT:** Does not what?

16 **MS. SHEA:** Like to work with me.

17 **THE COURT:** Um-hmm.

18 **MS. SHEA:** And does not like to communicate with me.
19 And it is a problem in the case that I've been trying to deal
20 with.

21 I'm trying to abide by your Court's orders while
22 simultaneously dealing with someone that does not want to work
23 with me.

24 **THE COURT:** Let me tell both of you, you can think
25 what you want about each other; if it pours over and spills on

1 me, I'm going to sanction you in ways that will be memorable to
2 both of you. That's a promise to you.

3 So if that helps you get along or bite your tongue
4 to me -- you just follow my orders.

5 **MS. SHEA:** Yes, Your Honor.

6 **THE COURT:** Now, you say that you object to
7 defendant's proposed jury instructions that contain modified
8 language; are you going to be filing objection to plaintiff's
9 jury instructions?

10 **MS. SHEA:** Yes, Your Honor, as I understand your
11 order, we are supposed to do that seven days before trial.

12 **THE COURT:** Okay.

13 **MS. SHEA:** And what I would like is perhaps to go
14 back to Mr. Hecimovich and see if we can work some of this out.

15 **THE COURT:** Okay. And perhaps defense counsel can
16 tell me why his jury instructions weren't filed on time again.
17 I don't see anything in my pre-trial order that says you've --
18 give your jury instructions to the other party to be handed in.

19 **MR. HECIMOVICH:** Well, we were trying to meet and
20 confer to come up with joint instructions, Your Honor. So the
21 packet that I filed this week I had sent in its entirety to
22 Ms. Shea at the time. I actually had jury instructions
23 prepared before she did. She had some other things that were
24 ready to go before things that I was working on.

25 So but my understanding, there was actually a box on

1 her form that said, "insert defendant's jury instructions
2 here," and so when I sent her the jury instructions, it was my
3 understanding that either they would be inserted or, if we had
4 the time to finalize the process, we would continue to meet and
5 confer to solve the problem.

6 Only after the fact, only yesterday, Friday, did I
7 discover -- I'm sorry, Thursday -- did I discover that, in
8 fact, defendant's jury instructions had been omitted from the
9 package and therefore hadn't been filed at all.

10 **MS. SHEA:** I'm prepared to respond, if you would
11 like me to, Your Honor. It's not quite accurate.

12 **THE COURT:** Okay, after Counsel's finished.

13 What's your response?

14 **MS. SHEA:** Your Honor, I explained to Mr. Hecimovich
15 before the deadline that the Court had specific pre-trial
16 orders that we needed to comply with. One of them was that the
17 jury instructions need to be in Word Perfect format, that we
18 needed to split them apart, we needed to talk about them, and
19 that did not happen.

20 And by the time of the deadline, Mr. Hecimovich said
21 he was leaving town, to communicate with him by his g-mail
22 account; I tried to do that, and I couldn't format his Word
23 document in time to file by midnight.

24 **THE COURT:** Okay.

25 Again, looking at my pre-trial order on page 4,

1 under B(3)(b), "Witnesses to be Called," it tells you to submit
2 a list of all witnesses likely to be called at trial,
3 et cetera, "together with a brief statement following each
4 name, "a brief statement following each name describing the
5 substance of the testimony to be given."

6 Are either of you under the impression that you've
7 done that?

8 **MR. HECIMOVICH:** The chart, Your Honor, on pages 20
9 and 21 of the joint pre-trial conference statement, it was our
10 intent to comply with that.

11 Actually, that's -- those are defendant's witnesses.
12 And then plaintiff had set up her witnesses I believe on pages
13 14, 15, 16, and 17.

14 **THE COURT:** Ms. Shea?

15 **MS. SHEA:** Your Honor, it was our intent to give the
16 subject area, but we are prepared to amend to provide
17 additional information if this doesn't meet the Court's
18 satisfaction. And I apologize to the Court if we didn't give
19 you enough detail.

20 **THE COURT:** Looking at page 6 of the joint pre-trial
21 statement, both plaintiffs want a declaration from the Court of
22 certain things. What you do you mean by that? I'm not sure
23 what kind of declaration the Court would give you after this
24 trial, should you win. What is that?

25 **MS. SHEA:** That the e-mails in question were

1 improperly taken from Doe's Yahoo! account and instructing the
2 City to destroy all copies of them, including electronic
3 versions.

4 **THE COURT:** Is this under equitable relief that you
5 have prayed for? Which cause of action would I do this?
6 Again, I'm sorry to be so dense.

7 **MS. SHEA:** I believe, Your Honor, it was in our
8 prayer for relief related to the Stored Communications Act and
9 invasion of privacy.

10 **THE COURT:** Just so you'll know how I conduct my
11 trials: We have nine witnesses listed to support the emotional
12 distress damages claim, that's unusual. My practice is, once
13 the point has been made, of course, you can give it slightly
14 different with another witness, but understand that there won't
15 be nine witnesses, or even four witnesses, who get up and say
16 the same thing, which is essentially, yes, me, too.

17 After I've heard what seems to be the substantive
18 testimony, I will listen very carefully to subsequent
19 witnesses, make sure it's not cumulative.

20 On page 8, at line 20, again, the joint pre-trial
21 statement, "Documents to be Presented to Support Economic
22 Damages"; Item 3 I don't understand. It says, "Documents
23 plaintiff will be request defendant CCSF to product at trial,"
24 colon, "Training Applied for and Denied."

25 Tell me what that is, Counsel.

1 **MS. SHEA:** First of all, Your Honor, I apologize for
2 the typographical errors. It's documents that we are
3 presenting with respect to training that the plaintiff applied
4 for and did not receive. And I believe that we will be able to
5 present that evidence ourself.

6 **THE COURT:** Say that again, Counsel.

7 **MS. SHEA:** It's documents that plaintiff applied for
8 training that she was seeking and did not receive is what -- as
9 a result of the retaliation.

10 **THE COURT:** Okay, and so the idea is that had she
11 received that training, she would have been promoted and made
12 more money, or what is it?

13 **MS. SHEA:** Not necessarily promoted, but would
14 have -- it certainly would have enhanced her abilities to be
15 promoted.

16 And I would have to check on whether or not she
17 would make more money, but I believe that was part of it.

18 But it would definitely --

19 **THE COURT:** How does that translate into economic
20 damages is what I'm trying to decide. How would a jury --
21 let's hear your argument. You've seen these documents, ladies
22 and gentlemen of the jury, her economic damages --

23 **MS. SHEA:** Correct.

24 **THE COURT:** -- are what?

25 **MS. SHEA:** So there are certain --

1 **THE COURT:** And why.

2 **MS. SHEA:** Primarily, I would say that with
3 Plaintiff Raskin that her claim is that she feels inhibited
4 from promoting, although she is trying to seek promotion and
5 she also is not getting the type of overtime that she would
6 have otherwise received had she worked on the other shift.

7 The training, the additional training, I believe,
8 and I don't -- I apologize, Your Honor, I don't have this, I'm
9 stumbling on this, but I believe the additional training would
10 give her enhanced wages. But I could be incorrect on that.
11 And I apologize for not being prepared for that question.

12 **THE COURT:** Okay.

13 I don't -- it's hard for me to believe we are ready
14 to -- two weeks away from trial, roughly, and the
15 understandings are enormous -- plaintiff's version of
16 undisputed facts: You list,

17 "Plaintiff Jane Doe did not leave any personal
18 Yahoo! e-mails open." That's the central disputed fact, how
19 can you list that as an undisputed fact? That's about the fact
20 in this case. What -- tell me -- tell me what you're thinking
21 is, Counsel, or your understanding of "undisputed." Because we
22 are going to spend a couple of weeks -- and I'm not going to
23 spend it in trial before a jury stumbling around this kind of
24 thing, I'm not going to do it.

25 **MS. SHEA:** Your Honor, there is no evidence that she

1 left those e-mails open. And absent --

2 **THE COURT:** They say she did.

3 **MS. SHEA:** They have --

4 **THE COURT:** That's for the jury.

5 **MS. SHEA:** But all of their witnesses testified that
6 they don't have any evidence to confirm that. There is no
7 evidence that she did. They think she did, but there's no
8 evidence that she did. And my client --

9 **THE COURT:** Well, what's the evidence that she
10 didn't, if we're talking about evidence?

11 **MS. SHEA:** Because she said she didn't.

12 **THE COURT:** Oh, God, Counsel.

13 Have you met and conferred regarding plaintiff's
14 proposed stipulations? Has there been any discussion, or is
15 this the first time this has been discussed? I'm looking at
16 page 13.

17 **MS. SHEA:** We have presented them, and they have
18 been rejected by the defense.

19 **THE COURT:** Okay.

20 **MR. HECIMOVICH:** May I comment on that, Your Honor?

21 Both -- both in response to the request that there
22 be a declaration and the documents be gathered and destroyed
23 and the City not have them and this stipulation that they not
24 be admitted into evidence; the fact of the matter is, these
25 documents constituted fairly severe harassment by Ms. Moylan

1 (phonetic) and others.

2 Even aside from did it violate any policy, any
3 harassment policy, et cetera, clearly, in the context of this
4 case, it's undisputed that it triggered a response by the
5 supervisors and managers who were named in the e-mails. And
6 that response, therefore, is not based on gender-based animus
7 or retaliatory animus or free speech animus, it's based on
8 having been called names and a bunch of work-related e-mails
9 about their performance of their jobs.

10 So those documents definitely are going to be a key
11 part of the evidence in the City's case in explaining the
12 events so that, in fact, the events make sense to people.

13 **THE COURT:** On page 16, we have listed as one of
14 plaintiff's possible witnesses the SFPD officer who allegedly
15 did the investigation into the computer, "identity unknown."
16 How are we presenting, or where are we on that witness,
17 Counsel?

18 **MS. SHEA:** We're withdrawing that witness,
19 Your Honor.

20 **THE COURT:** I take it on page 17, where defendants
21 say, "Defendants object to and move to exclude the testimony of
22 plaintiff's experts as follows," that this isn't the actual
23 motion, thus will be in the motion in limine?

24 **MR. HECIMOVICH:** Correct, they've been prepared, and
25 they are going to be exchanged tomorrow, Your Honor.

1 **THE COURT:** Okay.

2 I take it plaintiffs, when they say at the bottom of
3 page 21 that, "plaintiffs object to and move to strike the
4 following proposed defense witnesses who were not disclosed,"
5 that this will be forthcoming in your motion in limine?

6 **MS. SHEA:** Yes, Your Honor.

7 **THE COURT:** Tell me about your expert,
8 Winston Krone. You say, "Plaintiffs will be meeting and
9 conferring with defendants to pursue certain additional
10 discovery relative to this matter."

11 What's the status of that as of now?

12 **MS. SHEA:** There is -- I don't think any additional
13 discovery is necessary. Winston Krone, prior to his deposition
14 being taken by defendants, submitted a supplemental report
15 where he found deliberate deletion of the electronic data that
16 occurred within 48 hours -- excuse me, within 24 hours after
17 the union steward, Ron Davis, informed HR to secure the
18 computer.

19 So in simple terms, on December 4th, 2009, when
20 plaintiff was apprised of the complaint and that her e-mails
21 had been accessed, her shop steward immediately instructed
22 Terry Daniels of -- Terry Daniel -- of HR for DEM to secure the
23 computer. That was December 4th.

24 Winston Krone, not knowing that date, provided us
25 with a supplemental report that says that on December 5th,

1 between 10:07 and 10:45, the -- there was deliberate deletion
2 of the electronic storage data.

3 And he also found some other deletion of the
4 electronic storage data, in particular, the files that would
5 have led us all to know the extent to which there was searching
6 and printing of Ms. Doe's Yahoo! account.

7 **MR. HECIMOVICH:** Your Honor, may I respond?

8 **THE COURT:** Briefly, yes.

9 **MR. HECIMOVICH:** Sure.

10 Your Honor probably recalls that during the summary
11 judgment argument, which was late last month, Ms. Shea's
12 co-counsel at the time made a reference to spoliation of the
13 evidence, and that their expert had put in his report that
14 there was this destruction of evidence on December 5th. And
15 Your Honor attempted to follow up with Counsel and was unable
16 to get further information.

17 It wasn't until long after the deadline for expert
18 disclosures had passed that Mr. Krone put in a supplemental
19 statement providing that allegation, saying that there was the
20 spoliation of evidence.

21 I took the one-hour deposition that was scheduled; I
22 indicated I wanted additional time but that I wouldn't
23 stipulate to the supplemental report coming in because I think
24 it's excludable. And Ms. Shea responded in writing that under
25 those circumstances she would not produce the witness again.

1 **MS. SHEA:** That is absolutely false, Your Honor.

2 **MR. HECIMOVICH:** It's in writing.

3 **THE COURT:** Okay, well, I'm not going to try to
4 resolve, did tos, did nots.

5 So referring to the statement here, "Plaintiffs may
6 be making a motion regarding spoliation"; do you intend to make
7 such a motion?

8 **MS. SHEA:** Yes, Your Honor.

9 **THE COURT:** And when will you make that motion?

10 **MS. SHEA:** That was one of the questions that I
11 wanted to ask the Court. In terms of timing, when could we --
12 I'd like to be able to file the motion Thursday, but I wanted
13 to --

14 **THE COURT:** For Thursday?

15 **MS. SHEA:** I would like to file the motion by
16 Thursday, the spoliation motion. But if you want me to file it
17 along with the --

18 **THE COURT:** To be heard when?

19 **MS. SHEA:** Whatever the Court determines is
20 appropriate.

21 **THE COURT:** When did you find out this information,
22 Counsel?

23 **MS. SHEA:** We found out December -- the report is
24 December 8th, Your Honor.

25 And we provided it to Counsel before Mr. Krone's

1 deposition. We have made Mr. Krone available for subsequent
2 deposition and also invited Counsel to visit the laboratory so
3 they could see how this all came about.

4 **THE COURT:** And this --

5 **MS. SHEA:** And Mr. Krone's deposition was just, I
6 believe, last week.

7 **THE COURT:** But that was -- when did you find out
8 about the alleged spoliation?

9 **MS. SHEA:** I found out on December 8th, Your Honor.

10 **MR. HECIMOVICH:** And, Your Honor, I'll represent to
11 the Court that several statements to that effect were made at
12 the summary judgment hearing saying that that was a finding of
13 the expert and that it was in an expert report.

14 Obviously, that was not correct, but the idea that
15 it wasn't until several weeks later that Ms. Shea's office
16 found out about this opinion is somewhat hard to believe.

17 **MS. SHEA:** Your Honor, the report speaks for itself.
18 This was a result of supplemental testing that Mr. Krone asked
19 me if he could do. He said, can I go in and do further
20 testing, I said that is fine, please do. It was a result of
21 the supplemental testing --

22 **THE COURT:** When was that? When did that take
23 place, Counsel?

24 **MS. SHEA:** Let's see, the initial findings
25 occurred -- the report that was submitted --

1 **THE COURT:** When did Mr. Krone say, may I go in and
2 do additional findings?

3 **MS. SHEA:** I'm trying to find that, Your Honor.

4 I believe it was after the summary judgment hearing,
5 but I'm -- I apologize, Your Honor, I'm just trying to find --
6 it was before his deposition. I believe it was after the
7 summary judgment hearing. It was around the time when we were
8 meeting with Magistrate Elena James in settlement discussions,
9 I know that.

10 It was around that time period that he had asked me
11 if he could do further testing and that -- and it was somewhere
12 around that time period that he informed me that he found
13 additional information.

14 And what we were struggling with is what to -- how
15 to present that to the Court. Do we present it while the Court
16 has got the matter under submission? We felt that the Court
17 might frown upon that and felt that the most prudent course of
18 action was to wait until the Court decided on the summary
19 judgment motion because we didn't want to influence the Court's
20 decision.

21 And so we were going to proceed by way of a
22 spoliation motion, Your Honor. It was a difficult decision,
23 but that was the one that we chose to make while the Court was
24 entertaining the summary judgment motion.

25 **THE COURT:** And when he said he would like to go out

1 and look further, what was your understanding that he would be
2 looking for?

3 **MS. SHEA:** He said that there was a way to go -- and
4 I'm not an expert, but to go in layman's terms, if I may
5 approach the Court, Your Honor --

6 **(Counsel approaches podium.)**

7 **MS. SHEA:** -- in layman's terms, to go deeper.
8 There was a way to go deeper into the computer that -- that I
9 think had not occurred to him before. And so they ran -- he
10 asked me, can I have an additional ten hours; I believe he
11 actually spent an additional 25 hours.

12 And so when they went in deeper and they literally
13 kind of went, for lack of a better word, went behind some
14 documents, they discovered that certain temporary Internet
15 files had been deliberately deleted.

16 And he explained to me that this is not something
17 that a layperson would know how to do, it's not something that
18 -- it's something that is done manually, it's not the result of
19 an automatic deletion. And so I asked him to please put this
20 in a report to us.

21 **THE COURT:** Up until this time, no reports had been
22 submitted by him?

23 **MS. SHEA:** Oh, there had been prior reports. He
24 submitted a report when we disclosed -- we disclosed him --
25 there was a declaration that went -- that was in support of the

1 motion for summary judgment. There was the disclosure of
2 expert witnesses that occurred I believe on November 4th. And
3 then within a timely manner of that, we submitted his Rule 26
4 report.

5 And then subsequent to that but before the close of
6 expert discovery, we submitted this report to Counsel. And it
7 was also before Counsel deposed Mr. Krone. And we have made
8 Mr. Krone available for further deposition and also have
9 invited the defendants to his laboratory.

10 And the supplemental report has not been filed with
11 the Court yet, but I do have the report.

12 **THE COURT:** The top of page 25, it states that,
13 "Plaintiffs may move to amend the complaint for
14 civil liability," et cetera; tell me what that is.

15 **MS. SHEA:** If, during the course of the trial, the
16 evidence demonstrates, in fact, that there have been other
17 violations, just as the Court ruled on the motion to amend, we
18 wanted to be able to leave open the option to seek an amendment
19 if there was a civil liability for Penal Code 502, if the
20 evidence supports that.

21 **MR. HECIMOVICH:** Your Honor, if I could note for the
22 Court: Right before I left my office to come over here,
23 Judge Maria Elena James' clerk called and informed me that a
24 settlement proceeding is set for January 4th. I believe she
25 said it was at 10:00 a.m. And she asked that I inform you of

1 that.

2 **THE COURT:** It's set for January 4th?

3 **MR. HECIMOVICH:** Correct.

4 **THE COURT:** After -- oh, okay.

5 Okay, let me ask you: Are there any other pending
6 things or loose ends, or call them whatever you want, that I
7 should know about that is still being worked on that isn't tied
8 up and ready for trial?

9 **MS. SHEA:** I believe, Your Honor, that the only
10 thing we need to tie down is to finish off the jury
11 instructions and to come to an agreement on the special verdict
12 forms. Other than that and other than the motions in limine, I
13 believe in your Court's determination of the briefing on the
14 spoliation motion, I don't believe there is anything else.
15 Mr. Hecimovich may have something to add.

16 **THE COURT:** Would you agree with that?

17 **MR. HECIMOVICH:** I think that's accurate.

18 **THE COURT:** When is your intention to file the jury
19 instructions? Have they been filed?

20 **MS. SHEA:** They've both been filed, we just need to
21 work -- work it out.

22 **THE COURT:** Work out what?

23 **MS. SHEA:** We need to decide what we agree on, what
24 we disagree on, and to work out the special verdict forms.

25 **THE COURT:** Okay. And let's set a deadline for

1 that, then. When will you do that?

2 **MR. HECIMOVICH:** Your Honor, given my vacation
3 schedule, I would propose this Friday, and that we just get it
4 done.

5 **THE COURT:** Okay, this Friday you will get me what,
6 agreed-upon jury instructions; is that correct?

7 **MS. SHEA:** Yes, Your Honor.

8 **THE COURT:** And as well as the jury instructions --
9 well, the rest of them, I take it, will be jury instructions
10 upon which you do not agree.

11 **MS. SHEA:** Correct, Your Honor. And then we'll
12 also -- proposed verdict forms.

13 **THE COURT:** Okay. And let's do it this way: If you
14 can agree upon a verdict form, submit that. If you can't
15 agree, then submit your competing verdict forms.

16 And let me be very clear: Any new jury instructions
17 that you come up with that you file will not be timely. And so
18 that I have your full attention, I'm going to sanction you \$50
19 for any such jury instructions you file with me.

20 Tell me if you have any questions on what I just
21 said.

22 **MS. SHEA:** No, Your Honor.

23 **THE COURT:** Okay.

24 Let's talk about conduct of the trial and selection
25 of the jury. And after that I'll answer any other questions

1 you might have, Counsel.

2 The way I select my jury, we're anticipating -- I'm
3 estimating seven days is what we did at the pre-trial when we
4 did the pre-trial order, so as you know, in Federal Court a
5 civil jury consists of six jurors. We don't have alternates,
6 as we do in State Court, in the same way. Any number of jurors
7 that we begin the trial with will be -- will be jurors.

8 I'm going to select eight jurors in this trial, so
9 that if all are healthy at the end of the trial, we'll have
10 eight jurors.

11 My practice of selecting is that we will fill the
12 jury box. And the numbers I will be relying upon are the eight
13 who will be jurors plus the number of peremptory challenges
14 that both sides have, and probably a couple of more in the box
15 to give a little flexibility to your choices.

16 I will then voir dire the jurors using some of your
17 proposed voir dire questions, not necessarily all of them,
18 probably not all of them.

19 I'm reserving whether I will -- as you know, in
20 Federal Court we are allowed to have counsel, at the Court's
21 discretion, voir dire the jurors, I'm not sure whether I will
22 do that yet. It's a possibility.

23 After the jurors have been voir dired, either by the
24 Court alone or in combination with time that I allow counsel to
25 voir dire, I will invite counsel to the sidebar so that you may

1 exercise challenges for cause to any of the jurors in the box.

2 Should I grant one or more challenges for cause,
3 those jurors will be excused and will be replaced by new jurors
4 who will be present and sitting in the audience, and we will
5 voir dire those new jurors.

6 It's my experience that that voir dire is all -- is
7 considerably shorter than the voir dire that will have gone
8 before for the reason that I've instructed the jurors in the
9 audience to listen carefully and be prepared to answer all the
10 questions that have previously been asked of the other jurors.

11 After the new voir dire for these new jurors, I will
12 invite counsel, if they have any challenges for cause, to the
13 sidebar for those challenges.

14 We would continue the challenges for cause process
15 in this way until there are no further challenges for cause.
16 At that point, you will begin your peremptory challenges and
17 will begin --

18 Do you begin with plaintiff, Tana?

19 **THE CLERK:** I believe so, Your Honor.

20 **THE COURT:** Okay.

21 We'll begin -- we'll have a sheet with the jurors'
22 numbers on them. And plaintiff will be given a sheet first and
23 will exercise a peremptory challenge, should she choose to do
24 so. The sheet will then be given to defense counsel, who can
25 see the challenge and make his peremptory challenge. And the

1 sheet will be passed back and forth until you have exercised
2 your peremptory challenges.

3 At any time, you can decline to exercise a
4 peremptory and you're not out of the game unless both sides
5 decide in sequence not to challenge for cause. If both sides
6 choose not to challenge for cause, then the peremptories are
7 over. But if one side doesn't challenge and the other side
8 does, the other side can then get back in and respond to that
9 challenge.

10 After we've -- and you should know that as you
11 challenge your peremptories, the seat to the front of the Court
12 in the first row will be Juror No. 1 and numbered across and
13 then continuing with the top seat to the front and across the
14 back row. So that you know that as you challenge -- exercise
15 your peremptories, the first eight jurors in that sequence that
16 I've just named will be the jurors. So you don't serve your
17 cause if you strike Juror No. 14 and 13 and 12 and you really
18 want one up in front, too, because the first eight,
19 numerically, will be the jury.

20 Any questions about that?

21 **MS. SHEA:** No, Your Honor.

22 **MR. HECIMOVICH:** No, Your Honor.

23 **THE COURT:** Okay.

24 Have you been notified that we're going to begin our
25 jury selection the Monday before the Tuesday we gave you?

1 **MS. SHEA:** I was not aware of that.

2 Is that on the 9th?

3 **THE COURT:** Pardon me?

4 **MS. SHEA:** I apologize. I will take note --

5 **THE CLERK:** I haven't done a notice yet.

6 **MR. HECIMOVICH:** Your Honor, I'm actually out of
7 town that date. I'm coming back from seeing my parents in
8 Florida.

9 **THE COURT:** Say that again, Counsel.

10 **MR. HECIMOVICH:** I'm actually flying back into town
11 from Orlando. I will not be available. I did not realize that
12 that was a possibility.

13 **THE COURT:** I see.

14 Well, we've got some big problems, then, because the
15 jury commissioner -- I'm trying to accommodate the jury
16 commissioner, who that same day is selecting a Grand Jury,
17 which creates big problems for him on the 9th.

18 **MR. HECIMOVICH:** I do apologize, Your Honor. I did
19 not know that that was a possibility at all.

20 **THE COURT:** Okay, well, we'll have to go back and
21 consider what our options are on there.

22 Okay, any other housekeeping matters that we need to
23 discuss?

24 **MS. SHEA:** No, Your Honor.

25 **MR. HECIMOVICH:** No, Your Honor.

1 **THE COURT:** Okay.

2 Okay, my understanding is that you will be filing
3 your motions in limine tomorrow; is that correct?

4 **MS. SHEA:** That is correct, Your Honor.

5 **THE COURT:** Okay.

6 If there's nothing further, that's all I have to
7 cover.

8 **MS. SHEA:** May I have one request for clarification?
9 Can we file our motion for spoliation on Thursday? You were
10 going to give us a briefing schedule.

11 **THE COURT:** You haven't prepared it yet; is that
12 correct?

13 **MS. SHEA:** It's in progress, Your Honor.

14 **THE COURT:** Okay.

15 **MR. HECIMOVICH:** And again, Your Honor, obviously
16 this is somewhat collateral, but --

17 **THE COURT:** I can't hear you, Counsel.

18 **MR. HECIMOVICH:** I'm sorry.

19 This is somewhat collateral, but I will be on
20 vacation next week and the week before trial. I will be back
21 in town briefly January 1, 2, and 3rd and then out of town the
22 rest of the interim break.

23 **THE CLERK:** What about your settlement conference on
24 the 4th?

25 **MR. HECIMOVICH:** On the 4th, somebody's -- actually,

1 someone else is handling that for me.

2 **THE COURT:** Well, I can't stagger into this trial
3 with all of these things going on. You file it Thursday.

4 When can you file a response, Counsel?

5 **MR. HECIMOVICH:** I could certainly do it by the 3rd.
6 I need to look at a calendar.

7 **THE COURT:** So Thursday's the 22nd, and you will
8 file a response by January 3rd.

9 When can you file a response, Counsel?

10 **MS. SHEA:** Whenever the Court would prefer.

11 **THE COURT:** You tell me.

12 **MS. SHEA:** I can -- Friday I believe is the 5th; I
13 could get you a reply by the 5th.

14 **THE COURT:** Okay, that will be the schedule.

15 Anything further?

16 **MS. SHEA:** No, Your Honor.

17 **MR. HECIMOVICH:** No, Your Honor.

18 I apologize about my vacation schedule. I'm going
19 back to see my parents. This is not a pleasure cruise, and it
20 just happened to fall this way.

21 **THE COURT:** No need to apologize for a vacation,
22 Counsel.

23 **MR. HECIMOVICH:** Okay.

24 **THE COURT:** Okay, court is adjourned.

25 **MS. SHEA:** Thank you, Your Honor.

(Proceedings adjourned at 4:25 p.m.)

---o0o---

CERTIFICATE OF REPORTER

I, Sahar Bartlett, Official Court Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings were reported by me, a certified shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings as bound by me at the time of filing. The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.

/s/ Sahar Bartlett

Sahar Bartlett, RPR, CSR No. 12963

Tuesday, January 3, 2012

***Sahar Bartlett, C.S.R. No. 12963, RPR
Official Court Reporter, U.S. District Court
(415) 626-6060***

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JANE DOE and ANNE RASKIN,

Plaintiffs,

v.

CITY AND COUNTY OF SAN
FRANCISCO, et al.,

Defendants.

NO. C10-4700 TEH

VERDICT FORM

We, the jury, unanimously find as follows:

LIABILITY

A. Stored Communications Act

1. Did Defendant Janice Madsen violate the Stored Communications Act as to Maura Moylan?

Yes X

No _____

2. Did Defendant Janice Madsen violate the Stored Communications Act as to Anne Raskin?

Yes X

No _____

3. Did Defendant Kym Dougherty violate the Stored Communications Act as to Maura Moylan?

Yes X

No _____

4. Did Defendant Kym Dougherty violate the Stored Communications Act as to Anne Raskin?

Yes X No

If you answered NO to questions 1-4, then you may proceed to question 7. If you answered YES to any of questions 1-4, please answer question 5 and 6, below.

5. Do you find that the City and County of San Francisco is liable as a principal for any violation of the Stored Communications Act carried out by its agent as to Plaintiff Maura Moylan?

Yes X No

6. Do you find that the City and County of San Francisco is liable as a principal for any violation of the Stored Communications Act carried out by its agent as to Plaintiff Anne Raskin?

Yes X No

B. Invasion of Privacy

7. Did Defendant Janice Madsen invade the privacy of Plaintiff Maura Moylan?

Yes X No

8. Did Defendant Janice Madsen invade the privacy of Plaintiff Anne Raskin?

Yes No X

1 9. Did Defendant Kym Dougherty invade the privacy of Plaintiff Maura Moylan?

2 Yes X No

3

4 10. Did Defendant Kym Dougherty invade the privacy of Plaintiff Anne Raskin?

5 Yes No X

6

7 If you answered NO to questions 7-10, then you may proceed to question 13. If you
8 answered YES to any of questions 7-10, please answer questions 11 and 12, below.

9

10 11. Do you find that the City and County of San Francisco is liable as a principal for any
11 invasion of privacy carried out by its agent as to Plaintiff Maura Moylan?

12 Yes X No

13

14 12. Do you find that the City and County of San Francisco is liable as a principal for any
15 invasion of privacy carried out by its agent as to Plaintiff Anne Raskin?

16 Yes No X

17

18 *C. Intentional Infliction of Emotional Distress*

19

20 13. Did Defendant Janice Madsen intentionally inflict emotional distress on Plaintiff
21 Maura Moylan?

22 Yes No X

23

24 14. Did Defendant Kym Dougherty intentionally inflict emotional distress on Plaintiff
25 Maura Moylan?

26 Yes X No

27

28

1 15. Did Defendant Heather Grives intentionally inflict emotional distress on Plaintiff
2 Maura Moylan?

3 Yes _____ No X

4
5 *D. Gender Discrimination*
6

7 16. Is Defendant City and County of San Francisco liable for a violation of California
8 Government Code section 12940(a), disparate treatment on the basis of gender, with
9 regards to Plaintiff Maura Moylan?

10 Yes _____ No X

11
12 17. Is Defendant City and County of San Francisco liable for a violation of California
13 Government Code section 12940(a), disparate treatment on the basis of gender, with
14 regards to Plaintiff Anne Raskin?

15 Yes _____ No X

16
17 *E. Hostile Work Environment Harassment*
18

19 18. Did Defendant Janice Madsen violate California Government Code section 12940(j)
20 by subjecting Plaintiff Maura Moylan to hostile work environment harassment?

21 Yes _____ No X

22
23 19. Did Defendant Kym Dougherty violate California Government Code section 12940(j)
24 by subjecting Plaintiff Maura Moylan to hostile work environment harassment?

25 Yes _____ No X
26
27
28

1 20. Did Defendant Heather Grives violate California Government Code section 12940(j)
2 by subjecting Plaintiff Maura Moylan to hostile work environment harassment?

3 Yes _____ No X

4
5 *F. Sexual Favoritism*
6

7 21. Is Defendant City and County of San Francisco liable for a violation of California
8 Government Code section 12940(j), sexual favoritism in the workplace, as to Plaintiff
9 Maura Moylan?

10 Yes _____ No X

11
12 22. Is Defendant City and County of San Francisco liable for a violation of California
13 Government Code section 12940(j), sexual favoritism in the workplace, as to Plaintiff
14 Anne Raskin?

15 Yes _____ No X

16
17 *G. Retaliation*
18

19 23. Is Defendant City and County of San Francisco liable for retaliation under California
20 Government Code section 12940(h) as to Plaintiff Maura Moylan?

21 Yes X No _____

22
23 24. Is Defendant City and County of San Francisco liable for retaliation under California
24 Government Code section 12940(h) as to Plaintiff Anne Raskin?

25 Yes X No _____
26
27
28

H. Failure To Prevent Harassment And Retaliation

25. Is Defendant City and County of San Francisco liable for failure to prevent harassment and retaliation under California Government Code section 12940(k) as to Plaintiff Maura Moylan?

Yes ☒

No ☐

26. Is Defendant City and County of San Francisco liable for failure to prevent harassment and retaliation under California Government Code section 12940(k) as to Plaintiff Anne Raskin?

Yes ☒

No ☐

If you answered NO to all of these questions, your deliberations are complete. Your foreperson shall now sign and date the last page in this document.

If you answered YES to any of the above questions involving Plaintiff Maura Moylan, please answer question 27, below.

If you answered YES to any of the above questions involving Plaintiff Anne Raskin, please answer question 28, below.

If you answered YES to any of questions 1, 3, 7, 9, 13, 14, 15, 18, 19, or 20, please answer Question 29, below.

If you answered YES to any of questions 2, 4, 8, or 10, please answer question 30, below.

DAMAGES

27. What amount of damages will fairly compensate Plaintiff Maura Moylan for her injury or injuries due to the violations you found above?

\$ 70,000

28. What amount of damages will fairly compensate Plaintiff Anne Raskin for her injury or injuries due to the violations you found above?

\$ 15,000

29. If you find that the conduct of the Defendant or Defendants in the violations above was malicious, oppressive or in reckless disregard of the plaintiff's rights, what amount of punitive damages, if any, do you find appropriate with regards to the violations against Plaintiff Maura Moylan?

\$ 150,000

30. If you find that the conduct of the Defendant or Defendants in the violations above was malicious, oppressive or in reckless disregard of the plaintiff's rights, what amount of punitive damages, if any, do you find appropriate with regards to the violations against Plaintiff Anne Raskin?

\$ 27,000

Dated: April 11, 2012

Margaret Law
JURY FOREPERSON (SIGN)

MARGARET LAW
JURY FOREPERSON (PRINT)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JANE DOE and ANNE RASKIN,

Plaintiffs,

v.

CITY AND COUNTY OF SAN
FRANCISCO, et al.,

Defendants.

NO. C10-04700 TEH

ORDER ON DEFENDANTS'
MOTION FOR JUDGMENT AS
A MATTER OF LAW

This matter comes before the Court on a motion for judgment as a matter of law brought by Defendants Janice Madsen, Kim Dougherty, Audrey Hillman, Heather Grives and City and County of San Francisco (collectively, "Defendants"). For the reasons set forth below, the motion is DENIED.

BACKGROUND

Plaintiffs Maura Moylan (formerly referred to as "Jane Doe"; hereinafter "Moylan") and Anne Raskin ("Raskin") contend that they were bullied, harassed, and discriminated against on the basis of gender by Defendants while employed by the Department of Emergency Management ("DEM"), and suffered further violations of their right to privacy and of the federal Stored Communications Act when Defendants accessed Moylan's email from a shared workplace computer. A seven-day jury trial was held, and, at the close of evidence, Defendants timely moved for judgment as a matter of law under Federal Rule of Civil Procedure 50. On April 23, 2012, following the April 11, 2012, return of the jury's verdict in this case, this Court requested further briefing on the instant motion, and timely received Plaintiffs' opposition and Defendants' reply on May 7 and 14, 2012, respectively.

LEGAL STANDARD

Federal Rule of Civil Procedure 50 governs motions for judgment as a matter of law.

Under Rule 50(a)(1),

If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient basis to find for the party on that issue, the court may:

(A) resolve the issue against the party; and

(B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

The motion must be made before the case is submitted to the jury and must “specify ... the law and facts that entitle the movant to the judgment.” Fed.R.Civ.P. 50(a)(2). The purpose of this requirement is “to call the claimed deficiency in the evidence to the attention of the court and to opposing counsel at a time when the opposing party is still in a position to correct the deficit.” *Waters v. Young*, 100 F.3d 1437, 1441 (9th Cir.1996) (quoting *Lifshitz v. Walter Drake & Sons*, 806 F.2d 1426, 1429 (9th Cir.1986)).

Federal Rule of Civil Procedure 50(a) provides that once a party has been fully heard on an issue during a jury trial, the court may grant a motion for judgment as a matter of law against the non-moving party only if “there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue.” Fed.R.Civ.P. 50(a); *Ritchie v. United States*, 451 F.3d 1019, 1022–23 (9th Cir.2006).

In deciding a motion under Rule 50(a), the Court reviews all of the evidence and draws all reasonable inferences in favor of the nonmoving party. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150, 120 S.Ct. 2097, 147 L.Ed.2d 105 (2000). The Court is not permitted to make credibility determinations or weigh the evidence. *Id.* The salient inquiry is whether the evidence “permits only one reasonable conclusion [.]” *Pavao v. Pagay*, 307 F.3d 915, 918 (9th Cir.2002).

DISCUSSION

Defendants move for judgment as a matter of law on all claims brought by Plaintiffs Raskin and Moylan. In light of the jury verdict for Defendants on Raskin's invasion of privacy claims, both Plaintiffs' intentional infliction of emotional distress claims against Defendants Madsen and Grives, both Plaintiffs' gender discrimination claims under California Government Code section 12940(a), both Plaintiffs' hostile work environment harassment claims under California Government Code section 12940(j), and both Plaintiffs' sexual favoritism claims under California Government Code section 12940(j), the motion as to these claims is DISMISSED AS MOOT.

I. Stored Communications Act

The Stored Communications Act provides a cause of action against anyone who "intentionally accesses without authorization a facility through which an electronic communication service is provided ... and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage." 18 U.S.C. §§ 2701(a)(1), 2707(a). "[E]lectronic storage" means either "temporary, intermediate storage ... incidental to ... electronic transmission," or "storage ... for purposes of backup protection." *Id.* § 2510(17). The Act exempts, *inter alia*, conduct "authorized ... by the person or entity providing a wire or electronic communications service," *id.* § 2701(c)(1), or "by a user of that service with respect to a communication of or intended for that user," *id.* § 2701(c)(2). Punitive damages may be recovered if the violation was willful or intentional. 18 U.S.C. § 2707(c).

In the Ninth Circuit, the Stored Communications Act has been compared to the common law tort of trespass: "[l]ike the tort of trespass, the Stored Communications Act protects individuals' privacy and proprietary interests. The Act reflects Congress's judgment that users have a legitimate interest in the confidentiality of communications in electronic storage at a communications facility. Just as trespass protects those who rent space from a commercial storage facility to hold sensitive documents, cf. Prosser and Keeton on the Law

1 of Torts § 13, at 78 (W. Page Keeton ed., 5th ed.1984), the Act protects users whose
2 electronic communications are in electronic storage with an ISP or other electronic
3 communications facility.” *Theofel v. Farey-Jones*, 359 F.3d 1066, 1072-1073 (9th Cir. 2004).
4 This protection has been extended to include an individual’s webmail inbox. *See Crispin v.*
5 *Christian Audigier, Inc.*, 717 F.Supp.2d 965, 974 (C.D. Cal. 2010).

6 Here, Defendants argue that Plaintiffs’ email communications were open at the time
7 they were accessed by Defendants—in other words, that all 28 emails had been opened in
8 separate windows on the computer screen, and then minimized in such a way as to cause
9 each to appear in succession when one was closed, and so as to make closing these windows
10 without viewing the contents impossible. The technical mechanism or software which would
11 cause this phenomenon remains unexplained, but, nevertheless, Defendants contend that this
12 was the means through which the emails were discovered, and that, therefore, any access by
13 Defendants of Plaintiffs’ email did not violate the Act. They argue that the webmail inbox
14 was only accessed once via the password entered by Moylan when she initially logged into
15 her email, and therefore any further viewing of the emails cannot constitute Access under the
16 Act.

17 Defendants’ argument that viewing open windows—or windows popping up onto a
18 screen, after a web mail inbox has been left open—does not constitute “access” under the Act
19 relies on a patchwork of cases from districts far afield. These cases are cited in Defendants’
20 motion solely for the fact that the means of access in those cases differed from that in the
21 instant case. For example, in *Miller v. Meyers*, a case from the western district of Arkansas, a
22 husband used a keystroke logger to obtain passwords and thereby accessed his ex-wife’s
23 online account. 766 F.Supp.2d 919, 923 (W.D. Ar. 2011). In *Pure Power Boot Camp, Inc.*
24 *v. Warrior Fitness Boot Camp*, a search of an office computer’s cache revealed passwords
25 which were then used to gain access to an employee’s email. 759 F.Supp.2d 417, 423
26 (S.D.N.Y. 2010).

27 However, neither of these cases hold that such methods are required—rather, they
28 merely provide examples of other means by which unauthorized access to an individual’s

1 stored online communications can be gained. Moreover, they arise in districts not governed
2 by the Ninth Circuit's analytical framework, which approaches this statute as equivalent to
3 the common law tort of trespass. The commonality between these cases is that, in each,
4 unauthorized access was gained to the stored online communications of an individual,
5 without that individual's permission. There is no specific technological means requirement
6 inherent in either the statute itself, or the relevant case law.

7 Even accepting the standard constructed by Defendants, the argument relies entirely
8 upon Defendants' version of the facts, which is hotly disputed by Plaintiffs, and against
9 which there was substantial evidence presented at trial. Defendant has contended, and
10 continues to contend, that Defendants did not open the emails themselves, but rather were
11 confronted by those emails, open on the screen, and could therefore not avoid viewing the
12 contents. The testimony given by various witnesses at trial, however, did not clearly
13 support—and in some instances, strongly disputed—this version of events. Moylan testified
14 unequivocally that she had not left her emails open on the screen. Tr. 480:7-10. Kim
15 Dougherty provided testimony which seemed in many ways to contradict itself, first
16 testifying that the emails were open on the screen, then testifying that clicking the "x" in the
17 corner of a window—to close the email window—somehow caused more email windows to
18 open spontaneously. Tr. 198:9-14; 200:5-15. Janice Madsen, for her part, gave, at trial, a
19 confusing account of how the emails came to be open, which contradicted her deposition
20 testimony. Tr. 226-229.

21 This testimony is evidence supporting a version of the facts not acknowledged by
22 Defendants in their motion, specifically, that the emails were affirmatively opened by
23 Defendants, and Moylan's inbox sifted through, rather than the messages having been simply
24 found open in their entirety. As this evidence makes reasonable the conclusion that
25 Defendants intentionally accessed Moylan and Raskin's¹ private email communications, the
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27 ¹Defendants also challenge Raskin's standing on this cause of action, contending that,
28 because it was not her inbox which was accessed, she has no standing to bring a claim under
this section. Though it was not her inbox, the Court nevertheless finds that it was her stored
online communication, giving her standing to sue under this section.

1 Court may not grant judgment as a matter of law in favor of Defendants. The motion for
2 judgment as a matter of law on this count is DENIED.

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4 *2. Invasion of Privacy*

5 Defendants' argument in favor of judgment as a matter of law on Plaintiffs' invasion
6 of privacy claims² rests on the reasonable expectation of privacy, which "is an objective
7 entitlement founded on broadly based and widely accepted community norms." *Sheehan v.*
8 *San Francisco 49ers, Ltd.*, 45 Cal.4th 992, 1000 (2009). Defendants argue that there was no
9 reasonable expectation of privacy on the shared work computer, that, even if there was such
10 an expectation, it was forfeited by leaving emails open on the screen, and, furthermore, that
11 even if there was an invasion of privacy, it was not sufficiently serious to merit relief.

12 The elements of a claim for violation of the right to privacy afforded by the California
13 Constitution are (1) conduct invading privacy interests, (2) a reasonable expectation of
14 privacy as to the interests invaded, (3) seriousness of the invasion and (4) a resultant injury,
15 damage, loss or harm. *Hill v. National Collegiate Athletic Ass'n.*, 7 Cal.4th 1, 39-40 (1994).
16 Here, Defendants argue that because the computer was a workplace machine, the expectation
17 of privacy is reduced, relying on cases where the employee was aware that his computer
18 usage could be monitored, and therefore had no reasonable expectation of privacy when such
19 use was, in fact, monitored by an employer. *See TBG Ins. Services Corp. v. Sup. Ct.*, 96 Cal.
20 App. 4th 443, 452 (2002). However, *TBG* applied community norms standard quoted above,
21 and, though it provides an example of a scenario in which a court found no legitimate privacy
22 interest, it is not dispositive in this case, nor does it alter the Court's analysis.

23 Evidence was presented that the machine used in this case was shared, but designated
24 specifically for personal use by employees. Tr. 480:14-15; Tr. 164-165. Furthermore, there
25 was testimony that employees routinely used this terminal for private, personal activities
26 such as accessing their personal web-based email, social networking websites, and even
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28 ²As the jury found no liability for invasion of Anne Raskin's privacy, only Maura Moylan's invasion of privacy claims are dealt with here.

1 printing their pay stubs. Tr. 164-165. When a user would inadvertently leave their inbox
2 open on the screen, it was routinely closed by the next user. Tr. 165:6-11. In short, it was
3 understood, in the workplace community, to be a terminal on which employees were able to
4 privately access their personal internet utilities and communications, without expectation of
5 employer intrusion. In light of this evidence, a reasonable jury could conclude that Plaintiff
6 Moylan had a legitimate expectation of privacy when she used the terminal to access her
7 personal web-based email.

8 Defendants' second argument, which is that the privacy interest Moylan might have
9 had in the computer was forfeited when she left emails open on the computer, is undermined
10 by the evidence presented at trial that she did not, in fact, leave her email open on the
11 computer. Tr. 480:7-10.³ In spite of Defendants' refusal to accept this version of events, it is
12 nevertheless evidence on which a reasonable juror might rely in finding that Moylan did, in
13 fact, have an unforfeited privacy interest, and therefore suffered a violation of her right to
14 privacy under the California constitution.

15 Defendants' final argument for judgment as a matter of law on the invasion of privacy
16 claims by Plaintiff Moylan is that any invasion was not sufficiently serious so as to constitute
17 an invasion of privacy. "'Complete privacy does not exist in this world except in a desert,
18 and anyone who is not a hermit must expect and endure the ordinary incidents of the
19 community life of which he is a part.' (Rest.2d Torts, supra, § 652D, com. c.) Actionable
20 invasions of privacy must be sufficiently serious in their nature, scope, and actual or potential
21 impact to constitute an egregious breach of the social norms underlying the privacy right.
22 Thus, the extent and gravity of the invasion is an indispensable consideration in assessing an
23 alleged invasion of privacy." *Hill*, 7 Cal.4th at 36-37. Defendants argue that the invasion, if
24 any, "did not breach social norms" as the "emails were in plain view". Mot. For J. As A
25 Matter Of Law at 8, lines 15-17. However, evidence was presented at trial that these
26 communications consisted of an employee's complaints to a union steward regarding

27 ³Plaintiff's contention that she did not leave 28 emails open and minimized on the
28 screen was further supported by her initial complaint to her department, in which she claimed
her emails had been searched through by Madsen, Dougherty and Grives. Tr. 290-291.

workplace conditions. Tr. 480:15-17, 485:11-19. Furthermore, as discussed above, evidence was presented in support of Plaintiff's version of events, which was that her email inbox was deliberately searched. Defendant's argument relies on a different version of events—specifically, that the emails were in “plain view”—and therefore does not account for the seriousness and violativeness of social norms inherent in searching the personal email inbox of another individual, without permission to do so. Because evidence of the seriousness of this invasion was presented, and a reasonable juror could find, on the basis of that evidence, that Moylan suffered a violation of her right to privacy, the motion for judgment as a matter of law on this claim is DENIED.

3. *Intentional Infliction of Emotional Distress*

The elements of the tort of intentional infliction of emotional distress are (1) extreme and outrageous conduct by the defendant; (2) extreme or severe emotional distress to the plaintiff; and (3) actual and proximate causation between the two. *Potter v. Firestone Tire & Rubber Co.*, 6 Cal.4th 965, 1001 (1993). To be outrageous, the defendant's conduct must be either intentional or reckless, and it must be so extreme as to exceed all bounds of decency in a civilized community. *Id.* Malicious or evil purpose is not essential to liability. *KOVR-TV v. Superior Court*, 31 Cal.App.4th 1023, 1031, 37 Cal.Rptr.2d 431 (1995). In the usual case, outrageousness is a question of fact. *Spinks v. Equity Residential Briarwood Apartments*, 171 Cal.App.4th 1004, 1045 (Cal.Ct.App. 2009); *Angie M. v. Superior Court*, 37 Cal.App.4th 1217, 1226 (1995); *Trerice v. Blue Cross of California*, 209 Cal.App.3d 878, 883 (1989).

Defendants ask the Court to find that the conduct in this case was, as a matter of law, insufficiently outrageous to constitute the basis for a claim of intentional infliction of emotional distress. However, as noted above, this is generally a question of fact for the jury, and therefore not appropriate grounds for judgment as a matter of law. The motion on this claim is therefore DENIED.⁴

⁴Defendants' further argument involving worker's compensation as the proper remedy for this claim as made against the City and County of San Francisco is moot, as the jury found no liability for intentional infliction of emotional distress on the part of the City and

4. Retaliation

In order to make out a claim for retaliation under California Government Code section 12940(h), “a plaintiff must show (1) he or she engaged in a protected activity, (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer's action.” *Yanowitz v. L’Oreal USA, Inc.*, 36 Cal.4th 1028, 1042 (2005) (internal quotations omitted). When an employee complains of conduct by the employer which is unlawful, such as gender-based discrimination or harassment in the workplace, it is considered protected activity whether the complaint is ultimately found to be valid or invalid. *Id.* at 1042-1043. The key inquiry is whether the complaining party believes the conduct about which they were complaining was unlawfully discriminatory. *Id.* Plaintiffs need not fully understand the legal basis for their complaint, nor use any specialized terminology to make their complaint a valid protected activity. *Miller v. Dept. of Corrections*, 36 Cal.4th 446, 474-475 (2005).

Though Defendants, in their motion, claim—without citation to the record—that both Plaintiffs testified that the complaints they made regarding the way in which they were being treated in the workplace were not about gender discrimination or harassment, the record reveals this representation to be patently false: both Plaintiffs made complaints regarding what they believed to be discriminatory and harassing conduct on the part of their superiors. Both Raskin and Moylan testified repeatedly that they made complaints regarding their treatment, which they believed to be discriminatory. Tr. 360-362; 373-374; 383-384; 384:9-15; 494-495; 514-515; 520-521.

Plaintiff Raskin testified that she felt that her work environment favors men (Tr. 362:21), that she made complaints to the city regarding the discriminatory treatment (Tr. 374:2-9), that she initially believed the conduct against her was personal and then realized it was gender-based when she saw it happen to other women (Tr. 383: 6-7) and that the bullying she suffered was only done to the women in her workplace (Tr. 384: 9-11).

1 Moylan testified that she made complaints about the way in which women in the
2 department were treated differently, and that others made complaints on her behalf as well
3 (Tr. 495:3-23), that the harassment got worse after she made the complaints (Tr. 514: 8-24),
4 that the Defendants about whom she complained were aware of the complaints and
5 subsequently increased the complained-of behavior (Tr. 514: 8-24 and 515:1-17), and that
6 she went to the Human Resources Department for the City and County of San Francisco and
7 complained—albeit after the email incident—and made an oral complaint followed by a written
8 complaint (Tr. 520-521).

9 Even if the testimony were inconclusive as to whether these complaints were
10 sufficient to constitute protected activity, the Court must, on a motion for judgment as a
11 matter of law, make all reasonable inferences in favor of the non-moving party. *Reeves*, 530
12 U.S. at 150.⁵ Therefore, the motion for judgment as a matter of law as to the cause of action
13 for retaliation under California Civil Code section 12940(h) is DENIED.

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15 *5. Failure to Prevent Retaliation, Harassment or Discrimination*

16 “[E]mployers must ‘take all reasonable steps necessary to prevent discrimination and
17 harassment from occurring.’ (Gov. Code, § 12940, subd. (k); *Weeks v. Baker & McKenzie*
18 (1998) 63 Cal.App.4th 1128, 1146 [74 Cal.Rptr.2d 510] [sexual harassment]; *Trujillo v.*
19 *North County Transit Dist.* (1998) 63 Cal.App.4th 280, 286 [73 Cal.Rptr.2d 596] [race
20 discrimination].) The employer's duty to prevent harassment and discrimination is affirmative

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22 ⁵Defendants further argue that the fact that hostility occurred both prior to and
23 following Plaintiffs’ complaints precludes an inference of retaliation. This argument is
24 unavailing. Defendants cite a number of cases where the conduct allegedly constituting
25 retaliation took place prior to the complaint. As a matter of logic as well as of law, these
26 claims must fail, as an action preceding a complaint cannot constitute a retaliation against
27 that complaint. However, here, the retaliatory conduct took place after the complaints, which
28 Plaintiffs made at various times during the course of their employment, and which largely
occurred prior to the email incident underlying the Stored Communications Act and invasion
of privacy claims. A reasonable jury could find that the conduct following complaints was
causally linked to the complaints about which Plaintiffs testified: the evidence presented
could support the conclusion that the conduct to which Plaintiffs were, in their view,
subjected could constitute retaliatory conduct and therefore support a finding of liability.
Because the Defendant cannot meet the standard required for judgment as a matter of law
and demonstrate that the evidence “permits only one reasonable conclusion,” the motion for
judgment as a matter of law on this claim must be denied. *Pavao*, 307 F.3d at 918

1 and mandatory. (Gov. Code, § 12940, subds. (j)(1) & (k).) Prompt investigation of a
 2 discrimination claim is a necessary step by which an employer meets its obligation to ensure
 3 a discrimination-free work environment. (*See, e.g., Adler v. Wal-Mart Stores, Inc.* (10th Cir.
 4 1998) 144 F.3d 664, 676; *Ellison v. Brady* (9th Cir. 1991) 924 F.2d 872, 881-882; *Jones v.*
 5 *Los Angeles Community College Dist.* (1988) 198 Cal.App.3d 794, 810-811 [244 Cal.Rptr.
 6 37].)” *Northrop Grumman Corp. v. Workers’ Comp. Appeals Bd.*, 103 Cal.App.4th 1021,
 7 1035-36 (2002).


8 Defendants’ argument with regard to this cause of action is straightforward, contained
 9 in only one sentence in their motion for judgment as a matter of law, on the fifth and sixth
 10 lines of page 15. Simply stated, they believe that the absence of a triable issue as to whether
 11 or not there was discrimination, harassment, or retaliation bars the claim of failure to prevent
 12 the same. As the Court has found that there was, indeed, a triable issue raised by Plaintiff’s
 13 retaliation claim, *supra*, this argument is invalid. Therefore, the motion for judgment as a
 14 matter of law as to this claim is DENIED.

15 16 **CONCLUSION**

17 For the reasons set forth above, Defendants’ motion for judgment as a matter of law is
 18 DENIED.

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20 **IT IS SO ORDERED.**

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22 Dated: 6/12/12



23 THELTON E. HENDERSON, JUDGE
 24 UNITED STATES DISTRICT COURT
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