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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GABRIEL SHIN,

Case No.: 4:23-cv-456

Plaintiff,

**COMPLAINT FOR:**

v.

BATTERY

CITY AND COUNTY OF SAN  
FRANCISCO; ROBERT MUHAMMAD, in  
his official and individual capacities;  
JEANINE NICHOLSON in her official and  
individual capacities; ROBERT POSTEL, in  
his official and individual capacities; TOM  
O'CONNOR, in his official and individual  
capacities; DAVID BROWN, in his official  
and individual capacities; JOE CERTAIN, in  
his official and individual capacities; and  
DOES 1 through 20, inclusive,

ASSAULT  
CALIFORNIA GOVERNMENT CODE §§  
12940 et seq. RACE AND COLOR  
DISCRIMINATION

Defendants.

CALIFORNIA GOVERNMENT CODE §§  
12940 et seq. DISABILITY DISCRIMINATION

CALIFORNIA GOVERNMENT CODE §§  
12940 et seq. RETALIATION

LABOR CODE § 1102.5 RETALIAION

LABOR CODE §§ 230 (C), (E), AND 230.1  
RETALIATION

FAILURE TO PREVENT DISCRIMINATION  
AND RETALIATION

CALIFORNIA GOVERNMENT CODE §  
12923, 12940(j) HARASSMENT

UNFAIR BUSINESS PRACTICES

42 U.S.C. §1983 RACIAL DISCRIMINATION

VIOLATION OF 42 U.S.C. §1981 RACIAL  
DISCRIMINATION

INTENTIONAL INFILCTION OF  
EMOTIONAL DISTRESS

**DEMAND FOR JURY TRIAL**

## **NATURE OF THE ACTION**

2       1. Plaintiff Gabriel Shin is a Korean American who proudly served the community of San  
3 Francisco as a firefighter for over 27 years. Before joining the San Francisco Fire Department  
4 (“SFFD”), Firefighter Shin honorably served his country for several years overseas as a member  
5 of the United States Army Infantry. As someone who has put his life on the line to protect others,  
6 he never believed a threat to his own would come from within the SFFD. That all changed on  
7 February 1, 2022, when he was violently attacked by SFFD’s Robert Muhammad for a workplace  
8 grievance.

9        2. Defendant Muhammad had a history of threatening, bullying, and aggressive behavior  
10 in the firehouse spanning over a decade prior to his attack of Firefighter Shin. High-ranking SFFD  
11 officials knew of this history yet failed to take any corrective action to address Defendant  
12 Muhammad's dangerous volatility that he exhibited toward fellow firefighters. After getting away  
13 with this behavior for years due to the SFFD's dereliction of its duty to protect employees from  
14 known threats of violence, Defendant Muhammad put his threats into action.

15       3. When SFFD officials learned that Defendant Muhammad was making direct threats of  
16 violence against Firefighter Shin, the SFFD refused to act. SFFD officials permitted Defendant  
17 Muhammad to remain at the firehouse without so much as a word to discourage his planned attack.  
18 While at work, Defendant Muhammad used an SFFD database to locate Firefighter Shin's home  
19 address and schedule, information crucial in planning his attack. Defendant Muhammad also used  
20 this time afforded by the SFFD to select his deadly weapon: a large brass wrench used to pry open  
21 fire hydrants that he took from a fire truck. Despite knowing that he had shared plans to physically  
22 attack Firefighter Shin, the SFFD gave Defendant Muhammad the means and opportunity  
23 necessary to perpetrate his violent crime motivated by a workplace grievance of his own making.

24       4. On February 1, 2022, Defendant Muhammad traveled from his fire station to Firefighter  
25 Shin's home, where he waited for Firefighter Shin to return from work. When Firefighter Shin  
26 arrived home and began to help his neighbors by sweeping the sidewalk, Defendant Muhammad  
27 surprised Firefighter Shin from behind. Although Defendant Muhammad's intent to harm was  
28 clear, Firefighter Shin put his broom down and said that he would not fight. At that moment,

1 Defendant Muhammad pulled out the large hydrant wrench from behind his back and began  
2 swinging full force at Firefighter Shin's head. As Firefighter Shin blocked the wrench from striking  
3 his head, his arm was broken by the crushing force of Defendant Muhammad's deadly blows. With  
4 Firefighter Shin defenseless and bloodied after suffering multiple strikes to his body, Defendant  
5 Muhammad raised the large wrench to strike Firefighter Shin's skull. In that moment, the  
6 community Firefighter Shin had dedicated his life to protecting came to his rescue. Observing that  
7 Defendant Muhammad was about to carry out a potentially lethal blow to a defenseless person's  
8 head, a heroic bystander yelled at Defendant Muhammad to show him that she was carrying a gun.  
9 Only then did Defendant Muhammad put down his weapon and flee. The Alameda County District  
10 Attorney's Office has charged Defendant Muhammad with felony assault with a deadly weapon  
11 causing great bodily injury. A judge has issued a criminal restraining order against Defendant  
12 Muhammad requiring that he have no contact and remain 100 yards away from Firefighter Shin.

13       5. The Chief of the San Francisco Fire Department, Jeanine Nicholson, knows all of this.  
14 Her highest-ranking deputies know all of this. Even with this knowledge, Chief Nicholson never  
15 issued any form of discipline against Defendant Muhammad for coming close to killing Firefighter  
16 Shin. Instead, she chose to bring Defendant Muhammad back into the public workplace on active  
17 duty, undisciplined and undeterred from committing further acts of violence against firefighters  
18 and citizens. Defendant Muhammad has not missed a single publicly funded paycheck since  
19 attacking Firefighter Shin.

20       6. In stark contrast, Firefighter Shin had to remain away from work in order to avoid  
21 coming into contact with his attempted murderer — a work condition created by Chief Nicholson  
22 and her deputies. Chief Nicholson and her deputies went so far as to attempt to interfere with a  
23 criminal investigation to cover up the violent crime perpetrated against Firefighter Shin. When  
24 Firefighter Shin resisted the hostile pressure and direct order from SFFD superior officers to cease  
25 cooperation with the criminal investigation against Defendant Muhammad, Chief Nicholson  
26 punished Firefighter Shin by stripping him of his compensation and taking away his health  
27 insurance before the broken bones in his arm had even set.

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1       7. Firefighter Shin should be back at work serving the community he loves. But he is not.  
2 And this is because of the intentional wrongdoing of Chief Nicholson and her deputies, who went  
3 to astonishing lengths to protect the attacker and to punish an innocent firefighter who was almost  
4 killed. They retaliated and discriminated against Firefighter Shin, unleashing a torrent of  
5 harassment to silence an Asian victim of violent crime.

6       8. Chief Nicholson and her deputies knew that Defendant Muhammad came close to killing  
7 Firefighter Shin; they knew that Firefighter Shin had been diagnosed with PTSD driven by the  
8 attack and the SFFD's remarkably callous and dangerous response; they knew their harassing and  
9 retaliatory actions would force Firefighter Shin out of work, his life's passion. Chief Nicholson's  
10 design worked; Firefighter Shin was forced to leave the SFFD.

## THE PARTIES

12 9. Plaintiff Gabriel Shin is a United States citizen and is a resident of Alameda County,  
13 California. Plaintiff has been employed as a Firefighter by the City and County of San Francisco  
14 since 1995. Plaintiff Shin is Korean American.

15        10. Defendant City and County of San Francisco (“San Francisco Fire Department” or  
16 “SFFD” or the “City”) is now and at all times mentioned herein was, a public entity organized and  
17 existing under the laws of the State of California.

18        11. Defendant Robert Muhammad is an employee and agent of Defendant City and County  
19 of San Francisco. Defendant Muhammad is a Firefighter employed by Defendant City and County  
20 of San Francisco. Defendant Muhammad acted within the course and scope of his employment  
21 and agency with Defendant City and County of San Francisco at all times material to this complaint.  
22 Plaintiff Shin sues Defendant Muhammad in his official and individual capacity.

23        12. Defendant Jeanine Nicholson is an employee and agent of Defendant City and County  
24 of San Francisco. Defendant Nicholson is the Fire Chief of the San Francisco Fire Department and  
25 was Plaintiff Shin's supervisor at all times material to this complaint. Defendant Nicholson acted  
26 within the course and scope of her employment and agency with Defendant City and County of  
27 San Francisco at all times. Plaintiff Shin sues Defendant Nicholson in her official and individual  
28 capacity.

1           13. Defendant Robert Postel is an employee and agent of Defendant City and County of  
2 San Francisco. Defendant Postel is the Deputy Chief of Operations of the San Francisco Fire  
3 Department and was Plaintiff Shin's supervisor at all times material to this complaint. Defendant  
4 Postel acted within the course and scope of his employment and agency with Defendant City and  
5 County of San Francisco at all times. Plaintiff Shin sues Defendant Postel in his official and  
6 individual capacity.

7           14. Defendant Tom O'Connor is an employee and agent of Defendant City and County of  
8 San Francisco. Defendant O'Connor is the Deputy Chief of Administration of the San Francisco  
9 Fire Department and was Plaintiff Shin's supervisor at all times material to this complaint.  
10 Defendant O'Connor acted within the course and scope of his employment and agency with  
11 Defendant City and County of San Francisco at all times. Plaintiff Shin sues Defendant O'Connor  
12 in his official and individual capacity.

13           15. Defendant David Brown is an employee and agent of Defendant City and County of  
14 San Francisco. Defendant Brown is the Assistant Deputy Chief of the Airport Division of the San  
15 Francisco Fire Department and was Plaintiff Shin's supervisor at all times material to this  
16 complaint. Defendant Brown acted within the course and scope of his employment and agency  
17 with Defendant City and County of San Francisco at all times. Plaintiff Shin sues Defendant Brown  
18 in his official and individual capacity.

19           16. Defendant Joe Certain is an employee and agent of Defendant City and County of San  
20 Francisco. Defendant Certain is a Lieutenant of the San Francisco Fire Department and was  
21 Plaintiff Shin's supervisor at all times material to this complaint. Defendant Certain acted within  
22 the course and scope of his employment and agency with Defendant City and County of San  
23 Francisco at all times. Plaintiff Shin sues Defendant Certain in his official and individual capacity.

24           17. The true names and capacities, whether individual, corporate, subsidiary,  
25 partnership, associate, or otherwise, of Defendants DOES 1 through 20, inclusive, are presently  
26 unknown to Plaintiff, who therefore sues these Defendants by such fictitious names. Plaintiff  
27 will seek leave to amend this Complaint to allege the true names and capacities of DOES 1  
28 through 20, inclusive, when they are ascertained. Plaintiff is informed and believes, and thereon

1 alleges, that Defendants named in this Complaint, including DOES 1 through 20, inclusive, are  
2 responsible in some manner for one or more of the events and happenings that proximately  
3 caused the injuries and damages hereinafter alleged.

4 18. Unless otherwise specified, "Defendants" as used herein shall refer collectively to  
5 Defendants City and County of San Francisco, Robert Muhammad, Jeanine Nicholson, Robert  
6 Postel, Tom O'Connor, David Brown, Joe Certain and Does 1 through 20, inclusive.

7 19. Upon information and belief, at all relevant times, each of the Defendants, including  
8 DOES 1-20, inclusive, was the agent, servant, employee, co-conspirator and/or joint venture  
9 of each of the other Defendants. In doing the things herein alleged, each and every Defendant,  
10 as well as each and every City and County of San Francisco officer, manager, employee, agent,  
11 or assign mentioned herein other than Plaintiff, was acting within the course and scope of this  
12 agency, employment, conspiracy, and/or joint venture, and was acting with the consent,  
13 permission and authorization of each of the other Defendants. All actions as alleged in the  
14 causes of action stated herein, except for those of Plaintiff, were ratified, approved, and/or  
15 authorized by the Defendants with full knowledge of such acts. Defendants are thus jointly and  
16 severally liable for such actions.

17 **JURISDICTION AND VENUE**

18 20. This Court This action arises under 42 U.S.C. §§ 1981(a), 2000(e) and 1983.  
19 Plaintiff invokes jurisdiction over his federal claim pursuant to the provisions of 28 U.S.C. §  
20 1331 and 28 U.S.C. § 1343. The acts and practices complained of herein occurred in the County  
21 of Alameda, California, and the County of San Francisco, California, within this judicial  
22 district.

23 21. Jurisdiction over Plaintiff's pendent state law claims is appropriate under 28 U.S.C.  
24 § 1367. The state law claims are related to the claims brought pursuant to the original  
25 jurisdiction of the court, and form part of the same case and controversy under Article III of the  
26 United States Constitution.

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1       22. This Court has personal jurisdiction over all defendants as the legal violations  
2 occurred in San Francisco County and Alameda County, and the Defendants conduct business  
3 in San Francisco County, which is located within this judicial district.

4        23. Assignment to the Oakland Division of the United States District Court for the  
5 Northern District of California is appropriate pursuant to Northern District Local Rule 3-2(d).

## **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7 ||| 24. Plaintiff has exhausted his administrative remedies.

8       25. On or about July 29, 2022, Plaintiff submitted a Claim against the City and County of  
9 San Francisco for Money and Damages (the “Claim”) with the Claims Division of the Controller’s  
10 Office of the City and County of San Francisco. The Claim contained substantially the same legal  
11 causes of action, and factual premises for those claims, as this complaint. The Claim was then  
12 rejected by the City and County of San Francisco. Plaintiff has thus presented a timely  
13 governmental tort claim with Defendant City and County of San Francisco in satisfaction of  
14 Government Code section 945.4, *et seq.*

15        26. On or about January 31, 2023, Plaintiff filed a complaint against Defendants with  
16 California's Department of Fair Employment and Housing ("DFEH") alleging multiple violations  
17 of California's Fair Employment and Housing Act ("FEHA"). Plaintiff immediately received a  
18 Right to Sue letter from the DFEH.

## FACTUAL BACKGROUND

20        27. "I'm gonna give you a chance to save yourself." This is the threat San Francisco  
21 Firefighter Gabriel Shin heard against his life on the morning of February 1, 2022. It came from a  
22 man who snuck up from behind as Firefighter Shin swept the public sidewalk in front of his home.  
23 Firefighter Shin turned around to find Robert Muhammad, an SFFD coworker, standing directly  
24 behind him. Although Defendant Muhammad's intent to harm was clear, Firefighter Shin put his  
25 broom down and said that he would not fight.

26        28. Defendant Muhammad then pulled out an SFFD large hydrant spanner from behind his  
27 back. The SFFD hydrant spanner is a 15-inch-long solid brass wrench used to pry open fire  
28 hydrants. Defendant Muhammad, who is approximately six inches taller, nine years younger and

1 30 pounds heavier than Firefighter Shin, raised the spanner high overhead and swung down with  
 2 full force at Firefighter Shin's head. Firefighter Shin ducked and started running for his life.  
 3 Defendant Muhammad gave chase and continued swinging the SFFD hydrant spanner with full  
 4 force, aiming each strike directly at Firefighter Shin's head. Firefighter Shin yelled for help and  
 5 repeatedly yelled for "Robert" to stop. Neighbors witnessing the attack also yelled at Defendant  
 6 Muhammad to stop. One neighbor yelled that she had called the police. However, neither the  
 7 prospect of eyewitnesses nor the potential for police arrest were enough to stop Defendant  
 8 Muhammad's brutal and unprovoked attack as he continued swinging the hydrant spanner with  
 9 full force at Firefighter Shin's head.

10       29. After swinging the hydrant spanner approximately 12 times at Firefighter Shin's head,  
 11 Defendant Muhammad landed three blows to Firefighter Shin's right arm as he attempted to block  
 12 the strikes. His right arm became swollen and bloodied by the severe beating it took as Firefighter  
 13 Shin did his best to protect his life. Defendant Muhammad then aimed for the left side of Firefighter  
 14 Shin's head. As Firefighter Shin used his left arm to block his head from the SFFD hydrant spanner,  
 15 Defendant Muhammad struck with so much force that he snapped Firefighter Shin's ulna bone in  
 16 half and made contact with Shin's face and head—breaking his glasses in half and giving  
 17 Firefighter Shin a concussion.

18       30. Defendant Muhammad had rendered Firefighter Shin defenseless. As Firefighter Shin  
 19 stumbled backward and began to collapse toward the ground, Defendant Muhammad was not  
 20 satisfied with the damage he had already done to Firefighter Shin. He raised the SFFD hydrant  
 21 spanner high overhead as he prepared to land a direct strike to Firefighter Shin's skull—a strike  
 22 with lethal potential. But just before Defendant Muhammad swung the hydrant spanner, a neighbor  
 23 yelled and diverted his attention. Defendant Muhammad observed that the neighbor was  
 24 brandishing a gun. Upon observing the gun, Defendant Muhammad slowly lowered the hydrant  
 25 spanner and began moving away from Firefighter Shin. Defendant Muhammad looked toward the  
 26 ground in an effort to avoid further detection, but continued darting his eyes toward the neighbor  
 27 as he quickly fled the scene.

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1       31. It was not until later that Firefighter Shin learned that the only reason Defendant  
 2 Muhammad had stopped his attack was because the neighbor was holding a gun. The neighbor—  
 3 a person who has dedicated her life to protecting victims of human trafficking—had determined  
 4 that Defendant Muhammad was using lethal force with the intent to kill Firefighter Shin and she  
 5 heroically intervened, likely saving Firefighter Shin’s life.

6       32. As Firefighter Shin staggered to the sidewalk, he did not tend to his wounds or in any  
 7 way focus on himself. A veteran who served three years overseas in US Army Infantry and a  
 8 firefighter of over 27 years, Firefighter Shin is a public servant who has always put the safety and  
 9 welfare of others above his own. Immediately following the attack, he directed his energy to  
 10 protecting his fellow firefighters, whom he feared were in danger. Fearing that Defendant  
 11 Muhammad may return to a firehouse to harm other firefighters, the first thing Firefighter Shin did  
 12 was call his SFFD firehouse to warn them about Defendant Muhammad.

13       33. But this was not the first warning Firefighter Shin had given to the SFFD about the  
 14 threat posed by Defendant Muhammad. Tragically, Firefighter Shin’s instinct to protect those he  
 15 worked with was not shared by SFFD itself. The SFFD knew that Defendant Muhammad had a  
 16 history of threatening, bullying, and aggressive behavior in the workplace spanning over a decade.  
 17 And in the days immediately leading up to his brutal attack, Firefighter Shin and at least one other  
 18 SFFD firefighter had reported to multiple SFFD supervisory officers that Defendant Muhammad  
 19 had threatened to harm them. The SFFD did not act on any of these reports, just as it had failed to  
 20 address Defendant Muhammad’s dangerous volatility that he exhibited toward fellow firefighters  
 21 for years. While the SFFD sat on this critical information, Defendant Muhammad was allowed to  
 22 spend his time at work freely utilizing the SFFD resources that he would need to carry out his  
 23 violent attack the following day. And after Firefighter Shin reported to SFFD command the  
 24 material facts surrounding Defendant Muhammad’s brutal attack, the SFFD unleashed a hostile  
 25 and discriminatory campaign to silence him. The SFFD hostilely pressured Firefighter Shin to stop  
 26 cooperating with law enforcement. This pressure campaign was known, condoned, and  
 27 orchestrated by the highest levels of the SFFD. With full knowledge of Defendant Muhammad’s  
 28 actions, the SFFD in effect approved his conduct, going to great lengths to protect and defend him

1 against criminal prosecution and the loss of his job. When Firefighter Shin withstood against the  
 2 SFFD's unlawful pressure, the SFFD cut off Firefighter Shin's livelihood. Defendant Muhammad  
 3 remains at work on active duty, undisciplined and fully compensated by the SFFD to this day.

4 **A. Muhammad displayed acts of aggression toward colleagues and superiors for over a  
 5 decade that went undocumented and unaddressed by the SFFD.**

6 34. Defendant Muhammad has a history of aggressive, threatening, bullying, and  
 7 dangerous behavior directed at SFFD coworkers and superior officers spanning over a decade. The  
 8 SFFD knew of Defendant Muhammad's pattern of misconduct but brushed it under the rug for  
 9 years. The following are examples of his dangerous pattern.

10 35. When an SFFD superior officer told Defendant Muhammad that he was engaging in  
 11 an unpermitted activity at an SFFD firehouse, Defendant Muhammad aggressively stated, "Fuck  
 12 you," and told the officer, "Shove your badge up your ass." Defendant Muhammad later bragged  
 13 about this confrontation, prompting another SFFD officer to tell him that his behavior was  
 14 inappropriate. Defendant Muhammad then stated to the officer, "Fuck you too," before  
 15 aggressively moving towards the officer. As Defendant Muhammad stood face to face with the  
 16 officer, another firefighter intervened to prevent a violent altercation. Although an SFFD battalion  
 17 chief was summoned and apprised of the situation, Defendant Muhammad was not disciplined,  
 18 and the incident went undocumented.

19 36. On another occasion, Defendant Muhammad became so enraged and physically  
 20 aggressive toward a firefighter over a simple scheduling issue that the firefighter stated that he  
 21 believed Defendant Muhammad was going to physically attack him. Another firefighter once again  
 22 had to intervene to stop Defendant Muhammad from engaging in violence in the workplace. And  
 23 once again, this incident went undocumented and undisciplined.

24 37. In October 2021, a COVID-19 vaccine mandate went into effect barring SFFD  
 25 firefighters who had not shown proof of vaccination from returning to work. Despite knowing he  
 26 was no longer permitted to work, Defendant Muhammad arrived at SFFD Airport Station 1 anyway.  
 27 On information and belief, SFFD Captain Patricia Lee told Defendant Muhammad in person that  
 28 he was not permitted to work. Defendant Muhammad became so enraged at Captain Lee that an

1 SFFD superior officer had to talk Defendant Muhammad out of physically harming Captain Lee.  
 2 Defendant Muhammad conveyed to the superior officer his desire to physically harm Captain Lee.  
 3 “Rob wanted to fuck her up,” the SFFD superior officer said of Defendant Muhammad’s state of  
 4 mind. On information and belief, Defendant Muhammad again faced no disciplinary action for his  
 5 physically threatening outburst against Captain Lee.

6       38. Without any corrective counseling or other necessary intervention after his most recent  
 7 threatening conduct, the SFFD permitted Defendant Muhammad to return to work in mid-January  
 8 2022. Shortly thereafter, he would turn his known propensity for threatening and dangerous  
 9 conduct in the workplace against Firefighter Shin.

10       **B. The SFFD knowingly allowed Defendant Muhammad to threaten violence against**  
 11       **Firefighter Shin, and Defendant Muhammad acted with impunity as he freely utilized**  
 12       **the SFFD resources he would need for his brutal attack.**

13       39. On January 30, 2022, an SFFD firefighter met with Defendant Muhammad at a San  
 14 Francisco coffee shop. This firefighter will be referred to herein as “Firefighter GG” out of concern  
 15 for his safety. Sitting at a table outside of the coffee shop with Firefighter GG, Defendant  
 16 Muhammad began complaining to Firefighter GG about a workplace grievance he had with a  
 17 number of firefighters, including Firefighters GG and Shin. Defendant Muhammad became  
 18 enraged when Firefighter GG disagreed with Defendant Muhammad’s claims regarding the  
 19 workplace dispute. Defendant Muhammad slammed both fists on the table and abruptly lunged  
 20 across the table at Firefighter GG. Firefighter GG feared that Defendant Muhammad was going to  
 21 attack him. Defendant Muhammad then focused on Firefighter Shin and became irate. “I’m going  
 22 to straighten Gabe [Gabriel Shin] out,” he shouted with extreme aggression. Firefighter GG  
 23 perceived this as a threat of physical violence against Firefighter Shin.

24       40. Immediately after Defendant Muhammad left the coffee shop, he called Firefighter  
 25 Shin regarding the workplace dispute. Defendant Muhammad then stated, “The next time I see  
 26 you, I am going to fuck you up.” He then hung up.

27       41. Shortly thereafter, Firefighter GG called Firefighter Shin and shared what had  
 28 transpired at the coffee shop, including that he had feared Defendant Muhammad was going to

1 attack him and that Defendant Muhammad had threatened physical violence against Firefighter  
 2 Shin. Firefighter Shin shared with Firefighter GG the details of the threatening call he had just  
 3 received from Defendant Muhammad.

4 42. After concluding his conversation with Firefighter Shin, Firefighter GG had a phone  
 5 call with an SFFD coworker who disclosed that Defendant Muhammad had recently stated that he  
 6 was angry at Firefighter Shin and Firefighter GG and that he wanted to “beat up” both.

7 43. Concerned for his own safety and that of Firefighter Shin’s, on January 31, 2022,  
 8 Firefighter GG made two separate reports to SFFD superior officers detailing Defendant  
 9 Muhammad’s threats.

10 44. While Firefighter Shin was on duty at Airport Fire Station 1 on January 31, 2022,  
 11 Firefighter Shin told Captain Patricia Lee about threats Defendant Muhammad had just made.  
 12 Firefighter Shin said that he believed Defendant Muhammad remained incredibly upset at him and  
 13 that he was very volatile. Firefighter Shin then told Captain Lee that he was so worried about  
 14 Defendant Muhammad’s volatility that he would not even use a locker that once belonged to  
 15 Defendant Muhammad for fear of what Defendant Muhammad might do if he found out. Captain  
 16 Lee was dismissive of Firefighter Shin’s concerns. Captain Lee failed to document or take any  
 17 action on Firefighter Shin’s report, abrogating the duty of an SFFD officer to act on a report of  
 18 threats against firefighters under that officer’s command.

19 45. While multiple SFFD superior officers were aware of the threats Defendant  
 20 Muhammad had made against two firefighters, Defendant Muhammad was on duty working at  
 21 SFFD Station 25 on January 31, 2022. With this knowledge, the SFFD had the duty to immediately  
 22 investigate and respond to these serious reports with corrective action, and it had the opportunity  
 23 to swiftly intervene while Defendant Muhammad was on duty on January 31. Instead, as SFFD  
 24 superior officers sat on this vital information, Defendant Muhammad spent the nearly 24 hours  
 25 before his attack freely utilizing SFFD resources while on duty—resources necessary to carrying  
 26 out his attack. Defendant Muhammad used an SFFD computer system to locate Firefighter Shin’s  
 27 home address and real-time work schedule. With confidence in the knowledge that the SFFD  
 28 would allow him to make threats against fellow firefighters as he had done for years, Defendant

1 Muhammad brazenly shared his plan to attack Firefighter Shin, disclosing to at least one SFFD  
 2 firefighter while at work on January 31 that he “was going to beat the fuck out of Gabe [Shin].”  
 3 And as senior SFFD officers continued to disregard their duty to act on their knowledge of  
 4 Defendant Muhammad’s threats, Defendant Muhammad was free to leave the firehouse with a 15-  
 5 inch solid brass hydrant spanner that he took from a fire engine. Because the SFFD failed to  
 6 intervene, Defendant Muhammad was able to drive directly from SFFD Station 25 to Firefighter  
 7 Shin’s home in Oakland with all of the SFFD resources that made his attack possible.

8 **C. After Firefighter Shin reported to SFFD command the material facts surrounding  
 9 Defendant Muhammad’s brutal attack, the SFFD unleashed a hostile campaign to  
 10 silence him.**

11 46. As Firefighter Shin lay bloodied on the ground with a broken arm and a concussion,  
 12 he began calling top brass within the SFFD to warn of the immediate danger posed by Defendant  
 13 Muhammad. When Firefighter Shin could not reach Chief of the Department Jeanine Nicholson,  
 14 Firefighter Shin called Deputy Chief of Operations Robert Postel and reported the material facts  
 15 of Defendant Muhammad’s attack with great detail, including the injuries he had sustained, and  
 16 that Defendant Muhammad had threatened his life before swinging an SFFD hydrant spanner  
 17 approximately 12 times at his head. In response to Deputy Chief Postel skeptically questioning  
 18 whether it was Defendant Muhammad who had attacked him, Firefighter Shin confirmed that he  
 19 was certain. As paramedics began readying Firefighter Shin for transport to Highland Hospital,  
 20 Firefighter Shin handed his cell phone to an officer with the Oakland Police Department, who also  
 21 reiterated the details of Defendant Muhammad’s attack.

22 47. Chief of Department Jeanine Nicholson returned Firefighter Shin’s call hours later  
 23 while he was laying at the hospital. As he had done with Deputy Chief Postel, Firefighter Shin  
 24 gave Chief of Department Nicholson a detailed account of the attack, the events leading up to the  
 25 attack, identified Defendant Muhammad as the attacker, and shared that he had suffered a broken  
 26 arm and a concussion. Chief of Department Nicholson told Firefighter Shin that the SFFD would  
 27 take care of things. By this, it appears Chief of Department Nicholson meant that the SFFD would  
 28 take care to protect Defendant Muhammad and silence Firefighter Shin.

1       48. While Firefighter Shin laid in the hospital on February 1, Defendant Muhammad had  
 2 not been apprehended. An Oakland Police officer informed Firefighter Shin that the Oakland  
 3 Police Department wanted to immediately obtain an arrest warrant, but could not because the  
 4 SFFD refused to provide the police department with the basic identifying information about  
 5 Defendant Muhammad required for the issuance of an arrest warrant (e.g., his photo and date of  
 6 birth). Without that information from the SFFD, the police department could not quickly identify  
 7 Defendant Muhammad, including because of the number of people who share the same name.

8       49. The SFFD's refusal to provide needed information to the Oakland Police Department  
 9 caused a significant delay in obtaining an arrest warrant. Firefighter Shin pleaded with Chief of  
 10 Department Nicholson and Deputy Chief Postel that he was in fear for his life and sleeping in his  
 11 car for fear of being attacked in his home by Defendant Muhammad. The SFFD never provided  
 12 the Oakland Police Department with this crucial information needed to effectuate a prompt arrest.  
 13 Defendant Muhammad was not placed into custody until February 8.

14       50. While the Oakland Police Department was made to have difficulty locating  
 15 Defendant Muhammad, the SFFD experienced no such difficulty. Immediately after the attack as  
 16 Firefighter Shin lay in his hospital bed, Deputy Chief Postel was in direct communication with  
 17 Defendant Muhammad, who provided Chief Postel with information about his knowledge of the  
 18 crime and his whereabouts.

19       51. As Defendant Muhammad walked free and Firefighter Shin lived out of his car and  
 20 pleaded for the SFFD to cooperate with law enforcement, SFFD supervisory officers initiated a  
 21 concerted effort to pressure Firefighter Shin to end his own cooperation with law enforcement. On  
 22 February 2, 2022, the day after the attack, an SFFD supervisory officer called Firefighter Shin.  
 23 After Firefighter Shin shared material details of the attack, the supervisory officer asked if "we  
 24 [the SFFD] could work something out" that involved Firefighter Shin not participating in a  
 25 criminal proceeding against Defendant Muhammad. When Firefighter Shin held firm against this  
 26 supervisory officer using the weight of his SFFD rank to intimidate and silence him, a second  
 27 SFFD supervisory officer named Lieutenant Joe Certain called Firefighter Shin later the same day.  
 28 After Firefighter Shin again shared a detailed account of the attack and his injuries, Lieutenant

1 Certain defended Muhammad and repeatedly stated with the tone of an order, “you’re not really  
 2 going to press charges.” When Firefighter Shin refused to cave to his direct supervisor’s pressure,  
 3 Lieutenant Certain became irate, yelling as he issued Firefighter Shin a direct order to end his  
 4 cooperation with the law enforcement investigation of Defendant Muhammad.

5       52. Firefighter Shin reported to Chief of Department Nicholson and Assistant Deputy  
 6 Chief of the Airport Division David Brown that Lieutenant Certain had ordered him to end his  
 7 cooperation with law enforcement while defending Defendant Muhammad. Firefighter Shin told  
 8 them that Lieutenant Certain’s conduct was witness intimidation. Assistant Deputy Chief Brown  
 9 defended and excused Lieutenant Certain’s actions. Chief of Department Nicholson did not offer  
 10 to take any corrective action to stop SFFD witness and victim intimidation. Two days later, a third  
 11 SFFD supervisory officer called Firefighter Shin and pressured him to stop cooperating with the  
 12 law enforcement investigation of Defendant Muhammad.

13       53. On February 3, 2022, Firefighter Shin went to his SFFD station to submit medical  
 14 documentation. An SFFD officer blocked Firefighter Shin from entering the station. The officer  
 15 told Firefighter Shin that he was barred from entering the station and that SFFD members were  
 16 prohibited from speaking with him, an order that had come down from SFFD command, along  
 17 with the threat of discipline by Deputy Chief Postel for any violation.

18       54. Firefighter Shin then travelled to a neighboring airport fire station to submit his  
 19 medical documentation and met with Captain Patricia Lee and Assistant Deputy Chief Brown. As  
 20 they sat together in a room, Firefighter Shin shared the material details of Defendant Muhammad’s  
 21 attack. He further informed Assistant Deputy Chief Brown of the information he had reported to  
 22 Captain Lee the day before the attack, including threats Defendant Muhammad had made on  
 23 January 30, 2022. Captain Lee confirmed that she had sat on this vital information, making no  
 24 report of her own to document or act upon Firefighter Shin’s complaint. Upon hearing this,  
 25 Assistant Deputy Chief Brown directed Captain Lee to write an “Unusual Occurrence” report after  
 26 the fact. However, in the Unusual Occurrence report, Captain Lee mischaracterized Firefighter  
 27 Shin, severely downplaying his own report by claiming that he had merely stated that Defendant  
 28 Muhammad was “mad at him”. Despite having knowledge of the vital warning Firefighter Shin

1 had made the day before the attack, Assistant Deputy Chief Brown approved Captain Lee's false  
 2 recitation of fact in the Unusual Occurrence report before issuing the report to Chief of Department  
 3 Nicholson.

4       55. Within days of the attack, Firefighter Shin received a call from Lieutenant Zachary  
 5 Tibbits, an internal investigator for the SFFD. Responding to Mr. Tibbits' questioning, Firefighter  
 6 Shin recounted the material details of Defendant Muhammad's attack. Without warning, Mr.  
 7 Tibbits began to interrogate Firefighter Shin, cross examining him as if he were a hostile witness.  
 8 Approximately a month later, Mr. Tibbits again contacted Firefighter Shin to inform him that he  
 9 was required to sit for what is characterized by the Firefighter Bill of Rights Act as an interrogation  
 10 even though he was off duty due to his serious injuries as a victim of Defendant Muhammad's  
 11 brutal attack. Mr. Tibbits stated that he had received details of Muhammad's attack on Shin from  
 12 another eyewitness. However, Mr. Tibbits informed that one of the primary reasons for speaking  
 13 to Firefighter Shin again (since Shin had already shared the material facts of the attack) was to  
 14 discuss Muhammad's reason for attacking Shin. He also stated that it was possible Shin could be  
 15 a target of disciplinary action depending on his statements. With Shin's numerous statements to  
 16 Tibbits and the top-ranking officials sharing the material details of Muhammad's attack, and with  
 17 added information from another eyewitness to the attack, it was clear of the SFFD had more than  
 18 sufficient information to find that Defendant Muhammad had attacked Firefighter Shin. Troubling  
 19 was Tibbits' suggestion that, in the context of an employment investigation, an employee's  
 20 purported reason for severely beating a coworker could ever justify or otherwise defend against  
 21 disciplinary action. Firefighter Shin explained that he was not ready or medically permitted to sit  
 22 for an interrogation because he was off duty and had recently been diagnosed with Post Traumatic  
 23 Stress Disorder ("PTSD").

24       56. Chief of Department Nicholson called Firefighter Shin shortly thereafter to tell him  
 25 that he had to sit for an interrogation with Mr. Tibbits. Firefighter Shin shared that he had been  
 26 diagnosed with PTSD and was not medically cleared to be interrogated. He further stated that Mr.  
 27 Tibbits had triggered his PTSD symptoms by speaking to him as though he were a criminal rather  
 28 than a victim. Chief of Department Nicholson expressed no concern for Firefighter Shin's health

1 or well-being and continued to pressure him to be interrogated. Firefighter Shin also raised the fact  
 2 that multiple SFFD superior officers had condoned Defendant Muhammad's actions and hostilely  
 3 pressured him to stop cooperating with authorities. He asked what steps the SFFD had taken to  
 4 prevent this witness intimidation. Chief of Department Nicholson blatantly dismissed Firefighter  
 5 Shin, making clear the SFFD had not taken corrective action to address this serious misconduct as  
 6 she would not so much as condemn the SFFD's victim intimidation or defense of Muhammad.  
 7 Instead, Chief of Department Nicholson continued to pressure Firefighter Shin to appear for an  
 8 interrogation while he was off duty — a violation of the Firefighters Procedural Bill of Rights Act  
 9 — threatening that his time was running out.

10       57. On or about April 29, 2022, Firefighter Shin received a phone call from Deputy Chief  
 11 of Administration Tom O'Connor. Deputy Chief O'Connor told Firefighter Shin that he needed to  
 12 promptly sit for an interrogation by Mr. Tibbits. Deputy Chief O'Connor also told Firefighter Shin  
 13 that he should not have an attorney present. When Firefighter Shin reiterated that he was not yet  
 14 medically cleared to sit for an interrogation because he has been diagnosed with PTSD, Deputy  
 15 Chief O'Connor became irate, yelling at Firefighter Shin that if he did not show in person for an  
 16 interrogation, the SFFD would remove him from paid leave. Deputy Chief O'Connor has a history  
 17 of open hostility against firefighters who report unlawful activity within the SFFD. In a newsletter  
 18 sent throughout the SFFD, O'Connor referred to such firefighters as "snitches" focused on  
 19 "destroying all this department stands for."<sup>1</sup>

20       58. No one at the SFFD could explain why Firefighter Shin needed to sit for an  
 21 interrogation with Mr. Tibbits, given that he had already explained the material details surrounding  
 22 Defendant Muhammad's violent attack to Mr. Tibbits and, more importantly, to the SFFD's top-  
 23 ranking officials. The only difference was that with an in-person interrogation, the SFFD would  
 24 record their cross examination of Firefighter Shin while, according to Mr. Tibbits, focusing on  
 25 Defendant Muhammad's rationale behind the attack.

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28       <sup>1</sup> <https://www.sfgate.com/bayarea/article/san-francisco-fire-dept-flap-over-article-2803976.php>

1       59. The SFFD had condoned Defendant Muhammad's actions and, through a coordinated  
 2 intimidation campaign, hostilely pressured Firefighter Shin to stop cooperating with authorities.  
 3 The SFFD had drafted a false report after the attack about Firefighter Shin's disclosure of  
 4 Defendant Muhammad's threats. The SFFD had barred Firefighter Shin from entering his own  
 5 firehouse and threatened other firefighters not to speak with him. The SFFD had failed to provide  
 6 the Oakland Police Department with requested information about Defendant Muhammad needed  
 7 for the issuance of an arrest warrant, all the while maintaining direct contact with Defendant  
 8 Muhammad. The SFFD had already cross-examined Firefighter Shin as though he were a hostile  
 9 witness. Now the SFFD was pressuring the victim of a violent crime suffering from PTSD, a  
 10 concussion and a shattered arm, to submit to a recorded interrogation without an attorney present  
 11 regarding the rationale behind his attacker's crime. Given the totality of the SFFD's hostile  
 12 treatment of Firefighter Shin and the fact that it was undisputed that Defendant Muhammad had  
 13 perpetrated the violent attack, this recorded interrogation by the same individual who had already  
 14 treated Firefighter Shin like a hostile witness was plainly aimed at fabricating evidence to blame  
 15 the victim and seek some defensible justification for the attacker's actions. The SFFD more than  
 16 condoned Defendant Muhammad's actions; the SFFD was actively treating Firefighter Shin as an  
 17 adversary and conspiring to harm the victim of a violent crime in favor of the coworker who had  
 18 attacked him.

19       60. The SFFD followed through on Deputy Chief O'Connor's threat, ending Firefighter  
 20 Shin's pay in May 2022. The SFFD also cut off Firefighter Shin's health insurance without notice  
 21 as he worked to rehabilitate from his shattered arm, concussion, and PTSD.

22       61. The SFFD continues to employ Robert Muhammad as a firefighter and has not  
 23 subjected him to any form of discipline. The SFFD has issued Muhammad his taxpayer-funded  
 24 salary without interruption since he attacked Firefighter Shin. Most troubling, after the SFFD  
 25 placed him on a brief paid leave in the wake of brutally attacking Firefighter Shin, the SFFD  
 26 elected to put Defendant Muhammad back to work as a uniformed, active-duty firefighter. Because  
 27 of this, the SFFD has endangered firefighters in proximity to Muhammad, including Firefighter  
 28 GG, who has now been forced to be in the same room as Muhammad at work after he threatened

1 Firefighter GG and attacked Firefighter Shin. Further, prior to the SFFD deciding to place  
2 Muhammad back to work, the SFFD knew that Muhammad had been charged by the Alameda  
3 County District Attorney with felony assault with a deadly weapon causing great bodily injury  
4 upon Firefighter Shin, and that Muhammad was subject to a criminal protective order requiring  
5 that he remain 100 yards away from Firefighter Shin and have no contact with him. Yet the SFFD  
6 still chose to bring Muhammad back to work, knowing that Muhammad's presence would force  
7 Firefighter Shin to remain away from work without pay. Chief Nicholson and her deputies forced  
8 Firefighter Shin to remain away from work under threat of further violence by a coworker that  
9 they had invited back into the public workplace with open arms. Chief Nicholson and her deputies  
10 forced Firefighter Shin to choose self-preservation and leave the SFFD.

11        62. In response to reporters' questions about Defendant Muhammad's attack of Firefighter  
12 Shin, Chief of Department Nicholson's office referred to the incident as an "HR matter" and  
13 declined to offer further comment—refusing to so much as disavow a violent criminal act by their  
14 employee. However, a high-ranking SFFD chief spoke directly to Firefighter Shin and  
15 acknowledged that the SFFD was responsible for the harm he suffered at the hands of Defendant  
16 Muhammad. The SFFD chief stated that the SFFD knew of Defendant Muhammad's history of  
17 misconduct and had the SFFD properly acted on this knowledge, Firefighter Shin would have  
18 never been harmed by the SFFD's employee over a workplace dispute.

## LEGAL CLAIMS

## **FIRST CAUSE OF ACTION**

### (Battery)

**(Against Defendants Robert Muhammad and City and County of San Francisco)**

23       63. On February 1, 2022, Robert Muhammad intentionally made harmful and offensive  
24 contact with Gabriel Shin's body by repeatedly hitting him with a hydrant spanner owned by the  
25 SFFD. At no time did Firefighter Shin consent to said contact. A reasonable person in Firefighter  
26 Shin's situation would have been offended by the contact. As a result of Defendant Muhammad's  
27 acts, Firefighter Shin was in fact harmed and offended by Muhammad's contact with Shin's person.

1           64. Defendant City and County of San Francisco (the “City”) is responsible for the  
 2 wrongful conduct of employee Defendant Muhammad as alleged herein pursuant to California  
 3 Government Code section 815.2 (a).

4           65. In this case, the City’s employee, Defendant Muhammad, was acting within the course  
 5 and scope of his employment when he brutally attacked Firefighter Shin. The beating incident and  
 6 Firefighter Shin’s injuries as alleged herein resulted from a dispute arising out of the employment,  
 7 and did not arise from personal malice unrelated to the employment. Outside of their connection  
 8 through their employment, Firefighter Shin and Defendant Muhammad did not know each other  
 9 or associate at all with each other. Neither had ever been to the other’s home (prior to Defendant  
 10 Muhammad showing up at Shin’s home to attack him) nor socialized outside of the workplace in  
 11 any way whatsoever. The dispute which was the proximate cause of the assault and battery arose  
 12 out of the employment. Defendant Muhammad’s tortious conduct results from a dispute over  
 13 Shin’s actions in performing his duties. Defendant Muhammad believed that Firefighter Shin’s  
 14 workplace performance of his duties negatively affected Muhammad’s ability to perform his work.  
 15 This workplace dispute of Defendant Muhammad’s own making escalated and ultimately turned  
 16 violent.

17           66. The SFFD knew of Defendant Muhammad’s propensity for aggressive, threatening,  
 18 and dangerous behavior toward supervisors and coworkers in the workplace, but failed to take any  
 19 corrective action. The SFFD knew of the specific threat that Defendant Muhammad posed to  
 20 Firefighter Shin, as Firefighter Shin and a coworker both informed multiple SFFD supervisors that  
 21 Defendant Muhammad had made recent and credible threats against them. Firefighter Shin was on  
 22 duty at his SFFD firehouse when he reported Defendant Muhammad’s threats to a supervisor. At  
 23 the same time, Defendant Muhammad was also on duty, yet the SFFD supervisors failed to take  
 24 any action whatsoever to protect Firefighter Shin from a known threat posed by Defendant  
 25 Muhammad. Instead, Defendant Muhammad was permitted to sit at work for nearly 24 hours after  
 26 his threats were reported by Firefighter Shin and the coworker. The City’s intervention during this  
 27 period when the SFFD had direct and unfettered access to Defendant Muhammad while he was on  
 28 duty would have prevented his ability to carry out the attack. While the City once again brushed

1 the known threat posed by Defendant Muhammad under the rug as the SFFD had done for many  
 2 years, he had free access to the SFFD resources he would need to attack Firefighter Shin. While  
 3 he was on duty and after the SFFD knew of his recent threats, Defendant Muhammad utilized an  
 4 SFFD computer database to locate Firefighter Shin's home address. Defendant Muhammad then  
 5 used an SFFD computer database to determine Firefighter Shin's schedule—information that  
 6 changes up to the last moment before a new shift begins and information that Defendant  
 7 Muhammad would have needed immediately before he went off duty on February 1, 2022, to time  
 8 his attack. Defendant Muhammad then took the SFFD hydrant spanner that he would use to attack  
 9 Firefighter Shin from a fire engine—a tool that Defendant Muhammad found ideal in carrying out  
 10 his attack because it is a solid brass bar easily capable of inflicting serious bodily injury, yet easier  
 11 to conceal than other potential weapons, such as a baseball bat.

12 67. With the SFFD resources he was able to freely utilize over the course of nearly 24  
 13 hours while the SFFD was aware that he was on duty and had made serious and credible threats of  
 14 violence against coworkers, Defendant Muhammad was able to immediately carry out his plan to  
 15 attack Firefighter Shin—a plan that Defendant Muhammad had openly shared with at least one  
 16 coworker while at SFFD Fire Station 25 the day before the attack. Defendant Muhammad drove  
 17 directly from SFFD Fire Station 25 to Firefighter Shin's home, where he knew Firefighter Shin  
 18 was likely located because he knew that Firefighter Shin had just completed a tour of duty and,  
 19 given the strain and duration of time away from home incidental to the job, most firefighters go  
 20 home to rest. As soon as Defendant Muhammad saw Firefighter Shin alone in front of his home  
 21 on the morning of February 1, 2022, he used the SFFD hydrant spanner to brutally attack  
 22 Firefighter Shin. The SFFD gave Defendant Muhammad the means and opportunity to carry out  
 23 his attack, all the while knowing of his motive and stated intent.

24 68. Chief of Department Nicholson's office has acknowledged that Defendant  
 25 Muhammad's attack of Firefighter Shin is a work-related matter by publicly announcing that it is  
 26 an "HR matter" internal to the SFFD. And a high-ranking SFFD chief acknowledged to Firefighter  
 27 Shin that the SFFD was responsible for the harm he suffered at the hands of Defendant Muhammad.  
 28

1       69. The SFFD authorized or subsequently ratified the attack carried out by Defendant  
2 Muhammad against Firefighter Shin. As previously described, the SFFD knew in the years and  
3 days leading up to the attack of the specific threat to employees posed by Defendant Muhammad  
4 and the SFFD intentionally failed to take any corrective action to stop him from harming other  
5 employees. After Defendant Muhammad's brutal beating of Firefighter Shin, the SFFD  
6 immediately learned of the facts surrounding the attack. Firefighter Shin shared these material  
7 facts in great detail directly with Chief of Department Jeanine Nicholson, Deputy Chief Robert  
8 Postel, Deputy Chief Tom O'Connor, Assistant Deputy Chief David Brown, Captain Patricia Lee,  
9 SFFD investigator Zachary Tibbits, and many other high-ranking SFFD officials. With this  
10 information, the SFFD has failed to properly and fully investigate Defendant Muhammad and has  
11 taken no steps to punish him, ameliorate the threat he poses, redress any of the harm he has done,  
12 or in any way repudiate his actions. Instead, the SFFD continues to employ Defendant Muhammad  
13 to this day and, on information and belief, continues to have Defendant Muhammad work on active  
14 duty and pay him his regular compensation. By contrast, the SFFD has taken various adverse  
15 employment actions against Firefighter Shin for reporting Defendant Muhammad's attack.  
16 Importantly, three separate SFFD supervising officers have pressured Firefighter Shin not to  
17 cooperate with the Alameda County District Attorney's criminal case against Defendant  
18 Muhammad—in one instance directly ordering Firefighter Shin to cease cooperation. When  
19 Firefighter Shin reported that a supervising officer had defended Defendant Muhammad's actions  
20 and hostilely ordered Firefighter Shin to cease his cooperation with authorities investigating  
21 Defendant Muhammad, the SFFD's top brass defended the conduct of the SFFD supervising  
22 officer and condoned his behavior. Thereafter, SFFD supervising officers continued to contact  
23 Firefighter Shin and pressure him to cease his cooperation with law enforcement authorities. The  
24 SFFD thus demonstrated their condonation and approval of Defendant Muhammad's tortious  
25 actions by defending his actions and undertaking a concerted effort to protect him by attempting  
26 to silence Firefighter Shin. When Firefighter Shin disobeyed the SFFD's pressure and direct order  
27 for him to stop cooperating with law enforcement, the SFFD cut off Firefighter Shin's  
28 compensation. The SFFD has not paid Firefighter Shin since April 2022.

1       70. As a direct and proximate result of the unlawful conduct as alleged herein, Firefighter  
2 Shin has suffered physical injury, severe emotional distress, humiliation, embarrassment, mental  
3 and emotional distress and anxiety, economic harm and other consequential damages.

4       71. The aforementioned conduct by the City and Defendant Muhammad was willful,  
5 wanton, and malicious. At all relevant times, the City and Defendant Muhammad acted with  
6 conscious disregard of Firefighter Shin's rights and also acted with the knowledge of or with  
7 reckless disregard for the fact that their conduct was certain to cause injury and/or humiliation to  
8 Firefighter Shin. Firefighter Shin is further informed and believes that the City and Defendant  
9 Muhammad intended to cause fear, physical injury and/or pain and suffering to Firefighter Shin.  
10 By virtue of the foregoing, Firefighter Shin is entitled to recover punitive and exemplary damages.

## **SECOND CAUSE OF ACTION**

### (Assault)

**(Against Defendants Robert Muhammad and City and County of San Francisco)**

14       72. On February 1, 2022, Robert Muhammad acted with intent to cause harmful and  
15 offensive conduct, and threatened to touch Plaintiff in a harmful or offensive manner. Plaintiff  
16 reasonably believed he was about to be touched in a harmful or offensive manner and it reasonably  
17 appeared to Plaintiff that Defendant Muhammad was about to carry out the threat. At no time did  
18 Firefighter Shin consent to said contact. A reasonable person in Firefighter Shin's situation would  
19 have been offended by the contact. Defendant's conduct was a substantial factor in causing  
20 Plaintiff's harm. As a result of Defendant Muhammad's acts, Firefighter Shin was in fact placed  
21 in great apprehension of imminent harmful and offensive contact with his person.

22       73. The City is responsible for the wrongful conduct of employee Defendant Muhammad  
23 as alleged herein pursuant to California Government Code section 815.2 (a), as described in  
24 paragraphs 56 through 63 herein.

25       74. As a direct and proximate result of the unlawful conduct as alleged herein, Firefighter  
26 Shin has suffered physical injury, severe emotional distress, humiliation, embarrassment, mental  
27 and emotional distress and anxiety, economic harm and other consequential damages.

1       75. The aforementioned conduct by the City and Defendant Muhammad was willful,  
2 wanton, and malicious. At all relevant times, the City and Defendant Muhammad acted with  
3 conscious disregard of Firefighter Shin's rights and also acted with the knowledge of or with  
4 reckless disregard for the fact that their conduct was certain to cause injury and/or humiliation to  
5 Firefighter Shin. Firefighter Shin is further informed and believes that the City and Defendant  
6 Muhammad intended to cause fear, physical injury and/or pain and suffering to Firefighter Shin.  
7 By virtue of the foregoing, Firefighter Shin is entitled to recover punitive and exemplary damages.

### **THIRD CAUSE OF ACTION**

## (Negligence)

(Against All Defendants)

76. Defendant Muhammad's attack of Firefighter Shin violated the law, including section 245 (a) (1) of the Penal Code of California. While the City did not directly commit the assault and battery, the City had a duty to exercise ordinary care in its interactions with its employees—including Firefighters Shin and Muhammad—and failed to use a degree of care that would have been used by a person of ordinary prudence under the same or similar circumstances by at least (but not limited to—as described above) the following:

- 17 • The City had a duty to properly supervise its employees, including Defendant Muhammad,  
18 so as to reasonably protect co-workers from the dangerous propensities shown by  
19 Defendant Muhammad towards his co-workers. A special relationship exists between  
20 employers and employees, such as between the City and Firefighter Shin, giving rise to an  
21 employer's duty to protect employees. The City was charged with taking all reasonable  
22 and appropriate action to address and prevent the aggressive, threatening, and dangerous  
23 behavior of its employee toward coworkers and superiors, and it failed to do so.  
24 • The City knew of Defendant Muhammad's propensity for aggressive, threatening, and  
25 dangerous behavior toward supervisors and coworkers in the workplace, but failed to take  
26 any corrective action. Moreover, the City knew of the specific threat that Defendant  
27 Muhammad posed to Firefighter Shin, as Firefighter Shin and a coworker both informed  
28 multiple SFFD supervisors that Defendant Muhammad had made recent and credible  
multiple SFFD supervisors that Defendant Muhammad had made recent and credible  
threats against them. Still, the City refused to act.  
• The City hired and continues to employ Defendant Muhammad, who had a history of  
aggressive, threatening, and dangerous behavior toward supervisors and coworkers in the  
workplace that was known to the City. The City knew Defendant Muhammad's behaviors  
created a particular risk to others, including Firefighter Shin, but failed to properly hire,  
retain, and supervise him.  
• The City failed to properly investigate Muhammad's history of insubordination,  
aggressiveness, and violence and to pursue appropriate corrective and disciplinary action.  
• The City failed to properly monitor Muhammad, including to ensure that he was not using

- 1 City and/or SFFD resources improperly (including obtaining confidential information  
 2 about Firefighter Shin and a potentially deadly weapon).
- 3 • The City failed to properly secure the confidential information of Firefighter Shin,  
 4 including his home address.
- 5 • The City failed to implement, enforce, and otherwise promulgate safety policies and  
 6 procedures.
- 7 • The City failed to properly train, supervise, and monitor how its employees handled the  
 8 aftermath of the assault on Firefighter Shin, which resulted in retaliation, discrimination,  
 9 emotional distress, and economic damage to Firefighter Shin.
- 10 • The City negligently retained Muhammad knowing that he had severely assaulted and  
 11 battered fellow City employee, Shin. The City also knew a criminal restraining order was  
 12 and continues to be in effect barring Muhammad from having any contact with Shin and  
 13 requiring that he remain 100 yards away from Shin. By placing Muhammad back at work,  
 14 the City caused substantial harm to Shin, forcing him to either abstain from showing up to  
 15 work or to show up to work in order to attend to his livelihood and chosen occupation and  
 16 calling while facing the trauma and potential for serious injury of having to face his attacker  
 17 in the workplace in violation of a restraining order.

18 77. Each and all of the foregoing acts (of omission or commission), including those  
 19 detailed more expansively further above, were negligent and constituted negligence, and were each  
 20 and all, independently and/or concurrently the proximate cause of the harm to Firefighter Shin  
 21 described above.

22 78. As a direct and proximate result of the unlawful conduct as alleged herein, Firefighter  
 23 Shin has suffered physical injury, severe emotional distress, humiliation, embarrassment, mental  
 24 and emotional distress and anxiety, economic harm and other consequential damages.

25 79. The aforementioned conduct by the City and Defendant Muhammad was willful,  
 26 wanton, and malicious. At all relevant times, the City and Defendant Muhammad acted with  
 27 conscious disregard of Firefighter Shin's rights and also acted with the knowledge of or with  
 28 reckless disregard for the fact that their conduct was certain to cause injury and/or humiliation to  
 Firefighter Shin. Firefighter Shin is further informed and believes that the City and Defendant  
 Muhammad intended to cause fear, physical injury and/or pain and suffering to Firefighter Shin.  
 By virtue of the foregoing, Firefighter Shin is entitled to recover punitive and exemplary damages.

#### 29 **FOURTH CAUSE OF ACTION**

30 **(Retaliation for Engaging in Protected Activity: Violation of Labor Code § 12940(h))**

31 **(Against Defendant City and County of San Francisco)**

80. Plaintiff re-alleges and incorporates herein by reference each and every allegation of the preceding paragraphs as though fully set forth herein.

81. At all relevant times herein mentioned, FEHA, Gov. Code, § 12940, *et seq.*, was in full force and effect and was fully binding upon Defendant as an employer. Specifically, section 12940(l)(4) and (m)(2) make it an unlawful employment practice for an employer to retaliate against any employee for requesting an accommodation for a serious medical condition.

82. Firefighter Shin engaged in protected activity by requesting accommodation for his serious medical conditions, which is also a protected activity. Govt. Code §§ 12940(l)(4), (m)(2).

83. The City punished Firefighter Shin with a series of adverse employment actions for requesting accommodation for his serious medical conditions.

84. Plaintiff's seeking to exercise rights guaranteed under FEHA was a substantial motivating reason for Defendant's decision to subject Plaintiff to adverse employment actions, including, but not limited to, placing Plaintiff on unpaid leave status, as well as Defendant's course of conduct that, taken as a whole, materially and adversely affected the terms, conditions, or privileges of Plaintiff's employment.

85. Defendant's unlawful actions were a direct, foreseeable, and proximate cause of the harm suffered by Plaintiff, which included substantial losses in earnings, other employment benefits, and other economic losses, in addition to emotional distress, humiliation, shame, anxiety, depression, and embarrassment, all to Plaintiff's damage in an amount to be proven at the time of trial.

86. WHEREFORE Plaintiff prays for relief as set forth below.

## **FIFTH CAUSE OF ACTION**

### **(Retaliation: Violation of Labor Code § 1102.5)**

**(Against Defendant City and County of San Francisco)**

87. Plaintiff re-alleges and incorporates herein by reference each and every allegation of the preceding paragraphs as though fully set forth herein.

88. At all relevant times, Defendant has been subject to the requirements of Labor Code section 1102.5, which applied to Plaintiff as an employee of Defendant.

1       89. Firefighter Shin engaged in protected activity by reporting and objecting to conduct  
2 that he reasonably believed to constitute, and in fact was, the illegal acts of his coworker,  
3 Defendant Muhammad. Firefighter Shin reported this conduct both to the SFFD and law  
4 enforcement.

5        90. Firefighter Shin engaged in further protected activity by reporting and objecting to  
6 conduct that he reasonably believed to constitute, and in fact was, illegal victim intimidation by  
7 the SFFD in violation of Penal Code 131.6.

8       91. Firefighter Shin also requested accommodation for his serious medical conditions,  
9 which is also a protected activity. Govt. Code §§ 12940(l)(4), (m)(2).

10       92. The City punished Firefighter Shin with a series of adverse employment actions for  
11       objecting to the illegal acts of Defendant Muhammad, for objecting to the illegal witness  
12       intimidation of his superior officers, for requesting accommodation for his serious medical  
13       conditions, and for his reports of these matters to SFFD superior officers who had authority to  
14       investigate or correct legal violations, for which he had reasonable cause to believe that the  
15       information disclosed violations of state laws, rules, and/or regulations. Plaintiff's objections were  
16       contributing factors in Defendant's decision to punish Plaintiff with a series of adverse  
17       employment actions, including, but not limited to, placing Plaintiff on unpaid leave status, as well  
18       as Defendant's course of conduct that, taken as a whole, materially and adversely affected the  
19       terms, conditions, or privileges of Plaintiff's employment

20       93. Defendant's unlawful actions were a direct, foreseeable, and proximate cause of the  
21 harm suffered by Plaintiff, which included substantial losses in earnings, other employment  
22 benefits, and other economic losses, in addition to emotional distress, humiliation, shame, anxiety,  
23 depression, and embarrassment, all to Plaintiff's damage in an amount to be proven at the time of  
24 trial.

25 || 94. WHEREFORE Plaintiff prays for relief as set forth below.

## SIXTH CAUSE OF ACTION

27 | **(Retaliation: Violation of Labor Code §§ 230 (c), (e), and 230.1)**

28 | **(Against Defendant City and County of San Francisco)**

95. Plaintiff re-alleges and incorporates herein by reference each and every allegation of the preceding paragraphs as though fully set forth herein.

96. At all relevant times, Defendant has been subject to the requirements of Labor Code sections §§ 230 (c), (e), and 230.1, which applied to Plaintiff as an employee of Defendant.

97. As detailed above, the City discriminated and retaliated against Firefighter Shin, who is a victim of crime, for taking time off from work to obtain or attempt to obtain relief, including help ensuring his health, safety, and welfare, as well as to seek medical attention for injuries caused by crime or abuse, to obtain psychological counseling or mental health services related to an experience of crime or abuse, and to participate in safety planning and take other actions to increase safety from future crime or abuse, including temporary or permanent relocation.

98. Further, the City discriminated and retaliated against Firefighter Shin because of his status as a victim of crime or abuse. Firefighter Shin provided notice to the City of his status as a victim of crime and abuse, and the City has actual knowledge of the same.

99. Defendant's unlawful actions were a direct, foreseeable, and proximate cause of the harm suffered by Plaintiff, which included substantial losses in earnings, other employment benefits, and other economic losses, in addition to emotional distress, humiliation, shame, anxiety, depression, and embarrassment, all to Plaintiff's damage in an amount to be proven at the time of trial.

100. WHEREFORE Plaintiff prays for relief as set forth below.

## **SEVENTH CAUSE OF ACTION**

## **(Race and Color Discrimination: Violation of Government Code § 12940(a))**

**(Against Defendant City and County of San Francisco)**

101. Plaintiff re-alleges and incorporates herein by reference each and every allegation of the preceding paragraphs as though fully set forth herein.

102. At all relevant times herein mentioned, Defendant was an employer and Plaintiff was an employee of Defendant.

103. At all relevant times herein mentioned, the Fair Employment and Housing Act (“FEHA”), Gov. Code, § 12940, *et seq.*, was in full force and effect and was fully binding upon

1 Defendant as an employer. Section 12940(a) prohibits an employer from discriminating against an  
 2 employee because of their race or color.

3       104. Firefighter Shin has felt the weight of the SFFD’s disparate treatment in the wake of  
 4 being brutally beaten by a coworker. As a Korean American member of the SFFD, race-based  
 5 mistreatment is something Firefighter Shin has observed within the SFFD. Racial disparities are  
 6 apparent in the statistical underrepresentation of Asian Americans within the SFFD. Asian  
 7 Americans represent 37.2% of San Francisco’s population.<sup>2</sup> Yet Asian and Pacific Islanders (the  
 8 SFFD lumps these groups together in demographic analyses) represent only 17.2% of the SFFD.<sup>3</sup>  
 9 The underrepresentation in the SFFD’s management is even more pronounced, with Asian and  
 10 Pacific Islanders comprising a meager 1.8% of Lieutenants, 1.5% of Captains, and 1.4% of Chiefs.  
 11 Asian and Pacific Islanders are overrepresented, however, when it comes to SFFD disciplinary  
 12 action—33% of firefighters suspended in 2020 were Asian and Pacific Islanders.

13       105. Beyond underrepresentation in higher ranks of the SFFD, the SFFD hosts a workplace  
 14 culture wherein it is acceptable to express vitriol against the Asian community. This vitriol  
 15 heightened with the emergence of COVID-19, as certain SFFD members openly and derogatorily  
 16 referred to COVID-19 as the “kung flu” around Firefighter Shin and made statements such as,  
 17 “Those Asians are screwing us over. We got it because of them.” When Firefighter Shin spoke of  
 18 the importance of wearing a mask to protect others, another firefighter aggressively yelled that  
 19 Firefighter Shin was a “fucking piece of shit.” The disparate treatment experienced by Firefighter  
 20 Shin at the hands of the SFFD when he was the victim of a violent crime at the hands of a coworker  
 21 was informed by the workplace culture of intolerance against the Asian community that the SFFD  
 22 has fostered and tolerated.

23       106. When Firefighter Shin was brutally beaten by Firefighter Muhammed (African  
 24 American), the SFFD did not respond by coming to the aid of the victim of a violent crime and  
 25 punishing the perpetrator of that crime—a response that would have been logical, reasonable, and  
 26 just. Instead, the SFFD went to great lengths to protect the violent attacker and absurdly punish

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28       2 <https://www.census.gov/quickfacts/sanfranciscocountycalifornia>

3 <https://sf-fire.org/files/2021-05/Fire%20Racial%20Equity%20Action%20Plan.pdf>

1 the victim. The SFFD has gone so far as to attempt to interfere with a criminal investigation to  
 2 cover up the violent crime perpetrated against Firefighter Shin. When Firefighter Shin resisted the  
 3 hostile pressure and direct order from SFFD superior officers (including three African American  
 4 supervisors) to cease cooperation with the criminal investigation against Defendant Muhammad,  
 5 the SFFD punished Firefighter Shin by stripping him of his compensation (an act carried out by  
 6 O'Connor, who is white).

7 107. In stark contrast, on information and belief Defendant Muhammad has not missed a  
 8 single paycheck from the SFFD since attacking Firefighter Shin and has not received any form of  
 9 discipline for viciously beating a coworker. Because the SFFD knew with sufficient certainty that  
 10 Muhammad severely beat Shin, it was incumbent upon the SFFD to terminate Muhammad to  
 11 protect firefighters and the citizens of San Francisco from an individual known to be highly violent  
 12 and dangerous. Instead, the SFFD has gone to great lengths to protect Muhammad, marshalling  
 13 the weight of the organization to coerce his victim into silence and thwart the law enforcement  
 14 action against him. And with the knowledge that Muhammad was being prosecuted for felony  
 15 assault with a deadly weapon inflicting great bodily injury on Firefighter Shin and was restrained  
 16 by a criminal protective order from going within 100 yards or having any contact with Firefighter  
 17 Shin, the SFFD chose to bring Muhammad back into the government workplace on active duty,  
 18 undisciplined and undeterred from committing further violence against coworkers or the citizens  
 19 of San Francisco. While Muhammad maintained his pay and his job, the SFFD forced Firefighter  
 20 Shin to remain away from work without pay if he wished to avoid further violent contact with  
 21 Muhammad. Through this course of conduct, which is otherwise inexplicable upon a race-neutral  
 22 rationale, the SFFD ratified Muhammad's violent actions against Shin. The SFFD has undertaken  
 23 these deplorable actions in substantial part because Firefighter Shin is an Asian victim of violent  
 24 crime, in keeping with the workplace culture it has fostered.

25 108. Plaintiff's race and color were substantial motivating reasons for Defendant's  
 26 decision to subject Plaintiff to adverse employment actions that, taken as a whole, materially and  
 27 adversely affected the terms, conditions, or privileges of Plaintiff's employment.

28

1 109. As a direct, foreseeable, and proximate result of Defendant's unlawful actions,  
2 Plaintiff has suffered and continues to suffer substantial losses in earnings, other employment  
3 benefits, and other economic losses, in addition to emotional distress, humiliation, shame, anxiety,  
4 depression, and embarrassment, all to Plaintiff's damage in an amount to be proven at the time of  
5 trial.

6 ||| 110. WHEREFORE Plaintiff prays for relief as set forth below.

## **EIGHTH CAUSE OF ACTION**

## **(Disability Discrimination: Violation of Government Code § 12940(a))**

**(Against Defendant City and County of San Francisco)**

10        111. Plaintiff re-alleges and incorporates herein by reference each and every allegation of  
11 the preceding paragraphs as though fully set forth herein.

12        112. At all relevant times herein mentioned, Defendant was an employer and Plaintiff was  
13        an employee of Defendant.

14 113. At all relevant times herein mentioned, the Fair Employment and Housing Act  
15 (“FEHA”), Gov. Code, § 12940, *et seq.*, was in full force and effect and was fulling binding upon  
16 Defendant as an employer. Section 12940(a) prohibits an employer from discriminating against an  
17 employee because of their physical or mental disability.

18        114. Since being severely beaten, Firefighter Shin has been unable to return to work due  
19 to his serious injuries. In addition to the severe physical injuries he sustained, Firefighter Shin was  
20 also diagnosed with PTSD resulting from being violently attacked by a coworker and the emotional  
21 injury he has suffered by the egregious misconduct of the SFFD. Firefighter Shin communicated  
22 the fact that he had been diagnosed with PTSD to Chief of Department Nicholson, Deputy Chief  
23 O'Connor, and SFFD investigator Tibbits, among other high ranking SFFD officials. Despite  
24 telling these SFFD officials that he was not medically cleared to sit for an off-duty interrogation  
25 due to his PTSD diagnosis and requesting for interrogation to be scheduled at a later date, these  
26 SFFD officials continued to insist that Firefighter Shin sit for an interrogation. When Firefighter  
27 Shin reiterated that he was not medically cleared to sit for an interrogation because he has been  
28 diagnosed with PTSD, Deputy Chief O'Connor became irate and yelled at Firefighter Shin that

1 the SFFD would therefore remove him from paid leave. In contrast, the SFFD has not interrogated  
2 Defendant Muhammad even though he is at work on active duty and has continued to pay his  
3 compensation. The SFFD stripped Firefighter Shin of his paid leave in substantial part because of  
4 his physical and mental injuries.

5 115. Plaintiff's disabilities were substantial motivating reasons for Defendant's decision  
6 to subject Plaintiff to adverse employment actions that, taken as a whole, materially and adversely  
7 affected the terms, conditions, or privileges of Plaintiff's employment.

8 116. As a direct, foreseeable, and proximate result of Defendant's unlawful actions,  
9 Plaintiff has suffered and continues to suffer substantial losses in earnings, other employment  
10 benefits, and other economic losses, in addition to emotional distress, humiliation, shame, anxiety,  
11 depression, and embarrassment, all to Plaintiff's damage in an amount to be proven at the time of  
12 trial.

13 117. WHEREFORE Plaintiff prays for relief as set forth below.

14 **NINTH CAUSE OF ACTION**

15 **(Failure to Take All Reasonable Steps to Prevent Discrimination: Violation of Government  
16 Code § 12940(k))**

17 **(Against Defendant City and County of San Francisco)**

18 118. Plaintiff re-alleges and incorporates herein by reference each and every allegation of  
19 the preceding paragraphs as though fully set forth herein.

20 119. At all relevant times herein mentioned, Defendant was an employer and Plaintiff was  
21 an employee of Defendant.

22 120. At all times herein mentioned, California's FEHA § 12900, *et seq.*, was in full force  
23 and effect and was fully binding upon Defendant. Specifically, § 12940(k) makes it an unlawful  
24 employment practice for an employer to fail to take all reasonable steps necessary to prevent  
25 unlawful discrimination and retaliation from occurring.

26 121. Plaintiff was subjected to race, color and disability discrimination in the course of his  
27 employment, which Defendant failed to take all reasonable steps to prevent.

28

1 122. This failure by Defendant was a direct, foreseeable, and proximate cause of the harm  
2 suffered by Plaintiff, which included substantial economic losses in addition to emotional distress,  
3 humiliation, shame, anxiety, depression, and embarrassment, all to Plaintiff's damage in an amount  
4 to be proven at the time of trial.

5 123. WHEREFORE, Plaintiff prays for relief as set forth below.

## **TENTH CAUSE OF ACTION**

## **(Harassment in Violation of Government Code §§ 12923, 12940(j)))**

8 **(Against Defendants Nicholson, O'Connor, Certain, and City and County of San Francisco)**

9       124. Plaintiff re-alleges and incorporates herein by reference each and every allegation of  
10 the preceding paragraphs as though fully set forth herein.

11 125. At all relevant times herein mentioned, SFFD was an employer and Plaintiff was an  
12 employee of Defendant. At all relevant times, Defendants were Plaintiff's work supervisors.

13        126. At all relevant times herein mentioned, FEHA, Gov. Code, § 12940, *et seq.*, was in  
14 full force and effect and was fully binding upon Defendant as an employer. Specifically, section  
15 12940(j)(1) makes the harassment of an employee because of their race, color, or disability  
16 unlawful if the entity, or its agents or supervisors, knew or should have known of this conduct and  
17 failed to take immediate and appropriate corrective action.

18 127. SFFD commanding officers with supervisory authority over Firefighter Shin  
19 subjected Firefighter Shin to harassment on the basis of his race, color and disability.

128. The hostile environment created by Defendants' conduct was so severe and pervasive  
that it altered Plaintiff's working conditions.

129. A reasonable person who is Asian and/or suffered from a disability in Plaintiff's  
130 circumstances would have considered the work environment to be hostile, intimidating, offensive,  
131 oppressive, or abusive. And, in fact, Plaintiff considered it to be so.

25        130. Defendants Nicholson, O'Connor, and Certain participated in, assisted, and/or  
26 encouraged the harassing conduct against Plaintiff.

27 131. SFFD either directly engaged in the harassment, through its employees, managers,  
28 partners, agents and/or assigns, or knew (or should have known) the conduct placed employees at

1 risk of harassment and, on information and belief, failed to take immediate and appropriate  
2 corrective or preventative action, action that was within SFFD's control.

3 132. Defendants' unlawful actions were a direct, foreseeable, and proximate cause of the  
4 harm suffered by Plaintiff, which included emotional distress, humiliation, shame, anxiety,  
5 depression, and embarrassment, in addition to economic losses, all to Plaintiff's damage in an  
6 amount to be proven at the time of trial.

7 133. Defendants committed the acts herein despicably, maliciously, fraudulently, and  
8 oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive  
9 amounting to malice, and in conscious disregard of the rights and safety of Plaintiff and others.  
10 Plaintiff is thus entitled to recover punitive damages from Defendants in an amount according to  
11 proof.

12 134. WHEREFORE, Plaintiff prays for relief as set forth below.

13 **ELEVENTH CAUSE OF ACTION**

14 **(Unfair Business Practices in Violation of California Business and Professions Code §§**  
15 **17200-17208)**

16 **(Against Defendant City and County of San Francisco)**

17 135. Plaintiff re-alleges and incorporates herein by reference each and every allegation of  
18 the preceding paragraphs as though fully set forth herein.

19 136. The foregoing conduct, as alleged, violates the California Unfair Competition Law  
20 ("UCL"), Cal. Bus. & Prof. Code § 17200 *et seq.* Section 17200 of the Cal. Bus. & Prof. Code  
21 prohibits unfair competition by prohibiting, *inter alia*, any unlawful or unfair business acts or  
22 practices.

23 137. Throughout the course of Plaintiff's employment, Defendant committed acts of unfair  
24 competition, as defined by the UCL, by, among other things, engaging in the acts and practices  
25 described herein, including but not limited to subjecting Plaintiff to unlawful discrimination.

26 138. Defendant's conduct as herein alleged has damaged Plaintiff and was substantially  
27 injurious to Plaintiff by, among other things, wrongfully suspending Plaintiff without pay and  
28

1 preventing him from returning to work by knowingly continuing to employ the individual who  
2 severely beat Plaintiff and therefore maintaining highly dangerous work conditions.

3       139. Defendant's course of conduct, acts, and practices in violation of the California laws  
4 mentioned above violate the policy or spirit of such laws or otherwise significantly threatens or  
5 harms competition.

6 140. Plaintiff seeks disgorgement in the amount of the respective unpaid wages and all  
7 other legal and equitable relief under the UCL.

8 141. WHEREFORE, Plaintiff prays for relief as set forth below.

## **TWELFTH CAUSE OF ACTION**

**(Violation of 42 U.S.C. Section 1983 Racial Discrimination)**

**(Against Defendants Nicholson, Postel, O'Connor, Brown, Certain)**

12 142. Plaintiff re-alleges and incorporates herein by reference each and every allegation of  
13 the preceding paragraphs as though fully set forth herein.

14        143. Defendant Nicholson, O'Connor, Brown, and Certain acted under color of state law  
15 in causing the harm alleged herein.

16        144. By the conduct alleged herein, defendants Nicholson, Postel, O'Connor, Brown,  
17 Certain, and Tibbits willfully and without justification deprived Plaintiff of his rights, privileges  
18 and immunities as secured to him by the laws and Constitution of the United States. All  
19 Constitutional rights covered, specifically including the due process and equal protection rights as  
20 afforded by the 14th (Fourteenth) Amendment in violation of 42 U.S.C. Section 1983.

21 || 145. WHEREFORE Plaintiff prays for relief as set forth below.

## **THIRTEENTH CAUSE OF ACTION**

### **(Violation of 42 U.S.C. Section 1981 Racial Discrimination)**

24 (Against Defendants Nicholson, Postel, O'Connor, Brown, Certain, City and County of San  
25 Francisco)

26 146. Plaintiff re-alleges and incorporates herein by reference each and every allegation of  
27 the preceding paragraphs as though fully set forth herein.

1       147. In doing the acts alleged herein, Defendants intentionally and without justification  
2 deprived Plaintiff of the rights, privileges and immunities secured to him by the Constitution and  
3 laws of the United States, including Plaintiff's right to be free from discrimination based on his  
4 race as provided by 42 U.S.C. Section 1981.

5 148. Plaintiff's race was a but-for cause for Defendants' decision to subject Plaintiff to  
6 adverse employment actions, including, but not limited to, eliminating Plaintiff's compensation  
7 and knowingly subjecting him to dangerous working conditions, as well as engaging on a course  
8 of conduct that, taken as a whole, materially and adversely affected the terms, conditions, or  
9 privileges of Plaintiff's employment.

10        149. As a direct, foreseeable, and proximate result of Defendants' unlawful actions,  
11 Plaintiff has suffered and continues to suffer substantial losses in earnings, other employment  
12 benefits, and other economic losses, in addition to emotional distress, humiliation, shame, anxiety,  
13 depression, and embarrassment, all to Plaintiff's damage in an amount to be proven at the time of  
14 trial.

15        150. By perpetrating the acts as alleged in this complaint, defendants acted in conformance  
16 with the City's custom, practice and policy of discriminating against Asian Americans.

17 151. Defendants' conduct as detailed in this complaint violates 42 U.S.C. Section 1981.

18 || 152. WHEREFORE plaintiff prays for relief as set forth below.

Geometric Morphometric Evolution and Biogeography

21 | *Asian Population Medicine and Nutrition Research* | 2018 | 5(1)

21 (Against Defendants Muhammad, Nicholson, Foster, O' Connor, Certain, City and County of  
22 San Francisco)

23 153. Plaintiff re-alleges and incorporates herein by reference each and every allegation of  
24 the preceding paragraphs as though fully set forth herein.

154. The conduct of the City's employees and SFFD superior officers, including Defendants Muhammad, Nicholson, Postel, O'Connor, and Certain, as set forth above, was outrageous and exceeded the boundaries of human decency. This is particularly true here, where aggravating circumstances are present, including the fact that the SFFD superior officer

1 Defendants abused their positions as Firefighter Shin's supervisors through their conduct described  
 2 above, positions that gave the superior officer Defendants the power to damage Firefighter Shin's  
 3 employment interest, as well as by the fact that the superior officer Defendants knew that  
 4 Firefighter Shin was susceptible to injury through mental distress and acted intentionally or  
 5 unreasonably with the recognition that their actions were likely to result in illness through mental  
 6 distress to Firefighter Shin. The City negligently retained Defendant Muhammad knowing that he  
 7 had severely assaulted and battered fellow City employee, Firefighter Shin. The City also knew a  
 8 criminal restraining order was and continues to be in effect barring Muhammad from having any  
 9 contact with Shin and requiring that he remain 100 yards away from Shin. By placing Defendant  
 10 Muhammad back at work, the City caused substantial harm to Shin, forcing him to either abstain  
 11 from showing up to work or to show up to work in order to attend to his livelihood and chosen  
 12 occupation and calling while facing the trauma and potential for deadly injury of having to face  
 13 his attacker in the workplace in violation of a restraining order.

14 155. As an actual and proximate result of the wrongful conduct of Defendants, Firefighter  
 15 Shin has suffered and continues to suffer severe and continuous humiliation, emotional distress,  
 16 and physical and mental pain and anguish, all to his damage in an amount according to proof at  
 17 the time of trial.

18 156. The City is liable for this conduct because the actions or omissions of its employees,  
 19 Defendant Muhammad and SFFD superior officer Defendants, were within their scope of  
 20 employment and rise to a cause of action against them. Government Code § 815.2(a).

21 157. In addition, Defendant Muhammad and the SFFD superior officer Defendants  
 22 committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful  
 23 intention of injuring Firefighter Shin, and acted with an improper and evil motive amounting to  
 24 malice and in conscious disregard of Firefighter Shin's rights. Because the acts taken  
 25 toward Firefighter Shin were carried out by Defendant Muhammad and the SFFD superior officer  
 26 Defendants acting in a deliberate, cold, callous, and intentional manner in order to injure and  
 27 damage Firefighter Shin, Firefighter Shin is entitled to recover punitive damages from Defendants  
 28 Muhammad, Nicholson, Postel, O'Connor, and Certain in an amount according to proof.

**REQUEST FOR PUNITIVE DAMAGES**  
**(California Civil Code Section 3294)**

158. Plaintiff incorporates by reference each of the foregoing paragraphs as if they were set forth fully herein.

159. Defendants committed the acts herein despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice, and in conscious disregard of the rights and safety of Plaintiff and others. The conduct of Defendants as alleged herein is extreme and outrageous and falls within the protection of California Civil Code Section 3294 for the imposition of punitive damages against Defendants.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff, prays for judgment against Defendants as follows:

1. For compensatory damages, including but not limited to, lost back pay, plus interest, lost fringe benefits and future lost earnings and fringe benefits, lost equity, damages for emotional distress and pain and suffering, according to proof allowed by law;
  2. For punitive damages allowed by law;
  3. For restitution and/or disgorgement;
  4. For an award to Plaintiff of costs of suit incurred herein and reasonable attorneys' fees;
  5. For an award of prejudgment and post-judgment interest; and
  6. For an award to Plaintiff of such other and further legal and equitable relief as the Court deems just and proper.

Dated: January 31, 2023

TORRES & TOLMAN

By: /s/ James J. Torres  
James J. Torres

*Attorneys for Plaintiff*

**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38, plaintiff hereby demands a trial by jury on all issues triable to a jury in each cause of action of his complaint.

Dated: January 31, 2023

TORRES & TOLMAN

By: /s/ James J. Torres  
James J. Torres

*Attorneys for Plaintiff*

## CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

GABRIEL SHIN

**(b) County of Residence of First Listed Plaintiff**  
(EXCEPT IN U.S. PLAINTIFF CASES)  
Alameda

**(c) Attorneys (Firm Name, Address, and Telephone Number)**

James Torres (SBN 320192), Benjamin Tolman (SBN 301942), Torres &amp; Tolman, 201 Spear Street, Suite 1100, San Francisco, CA 94105

**DEFENDANTS**

CITY AND COUNTY OF SAN FRANCISCO; ROBERT MUHAMMAD, in his official and individual capacities; JEANINE NICHOLSON in her official and individual capacities; ROBERT POSTEL, in his official and individual capacities; TOM O'CONNOR, in his official and individual capacities; DAVID BROWN, in his official and individual capacities; JOE CERTAIN, in his official and individual capacities; and DOES 1 through 20, inclusive

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	625 Drug Related Seizure of Property 21 USC § 881	375 False Claims Act
120 Marine	310 Airplane	365 Personal Injury – Product Liability	422 Appeal 28 USC § 158	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability	367 Health Care/Pharmaceutical Personal Injury Product Liability	423 Withdrawal 28 USC § 157	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	330 Federal Employers' Liability		410 Antitrust
150 Recovery of Overpayment Of Veteran's Benefits	340 Marine	368 Asbestos Personal Injury Product Liability		430 Banks and Banking
151 Medicare Act	345 Marine Product Liability			450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	350 Motor Vehicle	<b>PERSONAL PROPERTY</b>	710 Fair Labor Standards Act	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	355 Motor Vehicle Product Liability	370 Other Fraud	720 Labor/Management Relations	470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	360 Other Personal Injury	371 Truth in Lending	740 Railway Labor Act	480 Consumer Credit
190 Other Contract	362 Personal Injury -Medical Malpractice	380 Other Personal Property Damage	751 Family and Medical Leave Act	485 Telephone Consumer Protection Act
195 Contract Product Liability		385 Property Damage Product Liability	790 Other Labor Litigation	490 Cable/Sat TV
196 Franchise			791 Employee Retirement Income Security Act	850 Securities/Commodities/ Exchange
REAL PROPERTY	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>		<b>SOCIAL SECURITY</b>
210 Land Condemnation	440 Other Civil Rights	<b>HABEAS CORPUS</b>	861 HIA (1395ff)	890 Other Statutory Actions
220 Foreclosure	441 Voting	463 Alien Detainee	862 Black Lung (923)	891 Agricultural Acts
230 Rent Lease & Ejectment	X 442 Employment	510 Motions to Vacate Sentence	863 DIWC/DIWW (405(g))	893 Environmental Matters
240 Torts to Land	443 Housing/ Accommodations	530 General	864 SSID Title XVI	895 Freedom of Information Act
245 Tort Product Liability	445 Amer. w/Disabilities– Employment	535 Death Penalty	865 RSI (405(g))	896 Arbitration
290 All Other Real Property	446 Amer. w/Disabilities–Other	<b>OTHER</b>		899 Administrative Procedure Act/Review or Appeal of Agency Decision
	448 Education	540 Mandamus & Other		950 Constitutionality of State Statutes
		550 Civil Rights		
		555 Prison Condition		
		560 Civil Detainee– Conditions of Confinement		

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding  2 Removed from State Court  3 Remanded from Appellate Court  4 Reinstated or Reopened  5 Transferred from Another District (specify)  6 Multidistrict Litigation–Transfer  8 Multidistrict Litigation–Direct File

**VI. CAUSE OF ACTION** Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 U.S.C. Section 1981 and 42 U.S.C. Section 1983

Brief description of cause:

Employment discrimination and retaliation

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$

CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No**VIII. RELATED CASE(S), IF ANY** (See instructions):

JUDGE

DOCKET NUMBER

**IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)**

(Place an "X" in One Box Only)

 SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 01/31/2023

SIGNATURE OF ATTORNEY OF RECORD

/s/ James Torres

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44**

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
  - (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
  - (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.
- Please note that there is no Origin Code 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23.  
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."

**Date and Attorney Signature.** Date and sign the civil cover sheet.