

**ORIGINAL**

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**FILED**  
**SAN MATEO COUNTY**

JUN 18 2018

Clerk of the Superior Court  
By \_\_\_\_\_  
DEPUTY CLERK

9  
10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SAN MATEO

12 JON A. PRIOLO,

CASE NO.

13 18 CIV 03131

14 Plaintiff

15 COMPLAINT AND DEMAND FOR JURY  
16 TRIAL:

- 17 (1) SEXUAL HARASSMENT; AND  
18 (2) RETALIATION.

19  
20 18-CIV-03131  
CMP  
Complaint  
1213942



21 PLAINTIFF Jon A. Priolo ("PRIOLO" or "PLAINTIFF") demands a jury trial on all  
22 causes of action set forth in this pleading and complain and allege as follows::

- 23 (1) At all material times herein, PLAINTIFF Jon A. Priolo was a citizen of the United  
24 States of America and a resident of the County of San Mateo, State of California.  
25 (2) PLAINTIFF is informed and believes, and thereupon alleges that Defendant THE  
26 CITY OF SAN BRUNO FIRE DEPARTMENT ("SAN BRUNO") is located in the City of San  
Bruno, San Mateo County, California.

EY  
FAX

(3) PLAINTIFF is informed and believes, and thereupon alleges that DEFENDANTS BEN MINKIN, TYLER CHARLES, SEAN BERUBE, CHRIS DE LA CRUZ, and DOES 1 to 10 are citizens of the United States of America, and residents of San Mateo County, California.

(4) The true names and capacities of DEFENDANTS named herein as DOES 1 through 10, inclusive, whether individual, corporate, associate, or otherwise, are unknown to PLAINTIFF who therefore sues such DEFENDANTS by such fictitious names pursuant to California Code of Civil Procedure § 474. PLAINTIFF is informed and believes that DOE DEFENDANTS are California residents and/or unknown business entities conducting business in the State of California. PLAINTIFF will amend this Complaint to show the true names and capacities of such DOE DEFENDANTS when and as they have been determined.

(5) PLAINTIFF is informed and believes, and thereupon alleges, that each of the DEFENDANTS herein was at all times relevant to this action the owner, agent, representative, employee, subsidiary, or joint-venturer of one or more of DEFENDANTS and was acting within the course and scope of that relationship. PLAINTIFF are further informed and believe, and thereupon allege, that each of the DEFENDANTS engaged in, gave consent to, ratified, and/or authorized the acts alleged herein.

(6) At all times relevant herein, SAN BRUNO was an employer covered by the California Fair Employment and Housing Act (FEHA), Government Code § 12926(d), as a person regularly employing five or more employees.

(7) At all times relevant herein, PLAINTIFF was an employee of SAN BRUNO.

(8) PLAINTIFF was hired by SAN BRUNO on or about September 21, 2000 as a Firefighter/Paramedic. During his more than 17 years working at SAN BRUNO, PLAINTIFF has been an exemplary employee and has never been officially reprimanded during his entire period of employment with SAN BRUNO.

(9) Firefighters are vital members of our communities entrusted by the public to provide professional emergency services in peoples' greatest times of need. Community members rely on firefighters to act with professionalism, courtesy, and respect in carrying out their duties. Moreover, firefighters must be able to respect and trust each other in order to effectively carryout their mission.

(10) From 2010 through September of 2015, Ben Minkin, a San Bruno Firefighter, made numerous comments and jokes suggesting PLAINTIFF was homosexual, and despite

1 PLAINTIFF telling him numerous times to stop, he continued. The harassment progressed to the  
2 point when Minkin would expose his genitals to PLAINTIFF.

3 (11) During the incidents of harassment, PRIOLO responded to Minkin with objection and  
4 demands that the harassment stops. The DEFENDANTS were aware of the harassment and  
PLAINTIFF'S objections, but failed to take actions to address this behavior.

5 (12) From 2013 to 2014, PLAINTIFF almost every day working together Minkin made  
6 homosexual comments about PLAINTIFF.

7 (13) Upon information and belief, on or around July, 4, 2013, Minkin was promoted to  
8 Acting Captain with SAN BRUNO.

9 (14) In January 2015, Minkin, Acting Captain at the time, entered the alarm room where  
10 Brandon Colar, Holly Nelson, and PLAINTIFF were sitting. After making a derogatory  
comment about homosexuals, Minkin said, "Jon, you know what I am talking about."

11 (15) In January 2015, PLAINTIFF filed a complaint with SAN BRUNO. In it,  
12 PLAINTIFF complained of ongoing harassment by Ben Minkin beginning in January of 2010.

13 (16) On September 13, 2015, Minkin made a derogatory comment referring to male to  
male oral copulation, and assertively stated, "But you like that kind of thing Priolo, right."

15 (17) On October 1, 2015, PLAINTIFF filed a formal complaint with the City of San Bruno  
16 with regard to the ongoing harassment by Minkin.

17 (18) On December 17, 2015, PLAINTIFF was called by his Union President, Sean Berube,  
18 and told he would be working with Minkin. PLAINTIFF told Battalion Chief Charlie Barringer  
19 that he would not work with Minkin due to the ongoing harassment. When the Barringer refused  
20 to make a change in the schedule, PLAINTIFF informed him that he would not be at work the  
21 following day. Chief Dave Downy called PLAINTIFF and asked if PLAINTIFF would give him  
22 a chance to work things out, and PLAINTIFF responded by informing Chief Downy that he had  
given Minkin five years to work things out, but nothing had been done to stop the harassment.

23 (19) December 18, 2015, the following day, Battalion Chief Dave Cresta called  
24 PLAINTIFF and asked him to return to work. PLAINTIFF informed him that his blood pressure  
25 was out of control and that he would report the time as workers compensation leave. Cresta then  
26 told PLAINTIFF that he was "going down a path" from which it would be hard to return to  
work.

27 (20) PLAINTIFF was unable to work immediately following the December 17, 2015  
28 incident due to ongoing depression, anxiety, excessive appetite, decreased energy, feelings of

1       guilt, difficulty sleeping. On December 19, 2015, PLAINTIFF was diagnosed with hypertension  
2       and psychiatric issues that required therapy before he was able to return to active duty.

3       (21) An investigative report prepared by an external investigator for SAN BRUNO, dated  
4       January 25, 2016, clearly identifies that PRIOLO had been subject to many sexual harassment  
incidents from 2010 to January, 2015.

5       (22) On February 3, 2016, SAN BRUNO issued a report that sustained PLAINTIFF'S  
6       allegations that Minkin engaged in harassing behavior toward PLAINTIFF in the form of  
7       periodic derogatory comments and exposing himself between 2010 and January 2015.

8       (23) On March 3, 2016, PLAINTIFF filed a charge of sexual harassment with the EEOC.

9       (24) On Feb 27, 2017, Battalion Chief Dave Cresta made inflammatory and derogatory  
10      comments directed at PRIOLO, fostering a hostile work environment.

11      (25) On August 8, 2017, PLAINTIFF was harassed and intimidated by Tyler Charles,  
12      Sean Berube, and Chris De La Cruz who belittled PLAINTIFF and made multiple derogatory  
13      comments about him. The incident almost ended in a physical altercation because both  
supervising Fire Captains on location encouraged the confrontation.

14      (26) On September 10, 2017, PLAINTIFF filed a second charge of discrimination with the  
15      EEOC, claiming he suffered retaliation from Battalion Chief Dave Cresta, two interim Fire  
16      Captains, Tyler Charles and Sean Berube, and a fellow firefighter, Chris De La Cruz.

17      (27) Upon information and belief, the continued harassing and retaliatory treatment stems  
18      from PLAINTIFF'S sexual harassment charge initiated at the EEOC on March 3, 2016. Since  
19      filing that charge, PRIOLO has been isolated, harassed, and exposed to a hostile work  
environment by fellow firefighters and supervising staff.

20      (28) Additionally, the SAN BRUNO was well aware of the conduct taking place. PRIOLO  
21      reported all of the misconduct he was subjected to directly to his supervisors at SAN BRUNO  
22      with the expectation that management would address the situation and correct the inappropriate  
23      activities. Command staff failed to take corrective actions necessary to ensure a work  
environment free from harassment and retaliation.

24      (29) As a direct and proximate result of the unlawful acts of DEFENDANTS, PLAINTIFF  
25      has suffered and continues to suffer from loss in amounts as of yet unascertained, but subject to  
26      proof at trial.

27      (30) PLAINTIFF timely exhausted her administrative remedies as to the first cause of  
28      action on his complaint by filing a complaint on March 3, 2016 with the EEOC against

1 DEFENDANTS. The EEOC issued a right to sue notice on March 19, 2018. This complaint is  
2 timely filed within the statute of limitations period pursuant to Cal. Gov't Code § 12965.

3 (31) PLAINTIFF timely exhausted his administrative remedies as to the second cause of  
4 action on his complaint by filing a complaint on September 10, 2017 with the EEOC against  
5 SAN BRUNO. The EEOC issued a right to sue notice on February 8, 2018. This complaint is  
6 timely filed within the statute of limitations period pursuant to Cal. Gov't Code § 12965.

7

**FIRST CAUSE OF ACTION**  
**SEXUAL AND RETALIATORY HARASSMENT IN VIOLATION OF GOV. CODE**  
**12940(A)**  
**- AGAINST ALL DEFENDANTS**

8

9 (32) PLAINTIFF incorporates all preceding paragraphs of this complaint into this cause of  
10 action as if fully set forth herein.

11 (33) At all times relevant herein, the SAN BRUNO was an employer covered by the  
12 California Fair Employment and Housing Act (FEHA), Government Code § 12940(j)(4)(a), as a  
13 person regularly employing one or more employees.

14 (34) At all times relevant herein, MINKIN, CHARLES, BERUBE, DE LA CRUZ, AND  
15 DOES 1 to 10 were employees of SAN BRUNO.

16 (35) At all times relevant to this complaint, PLAINTIFF was an employee of the SAN  
17 BRUNO.

18 (36) During his employment with SAN BRUNO, DEFENDANTS directed pervasive  
19 openly sexual remarks and actions relating to the PLAINTIFF'S perceived sexual orientation at  
20 the PLAINTIFF.

21 (37) PLAINTIFF objected to the pervasive sexually harassing comments to no avail. The  
22 pervasive sexually charged comments created a hostile work environment such that it affected  
23 PLAINTIFFS' ability to work and caused him severe daily stress.

24 (38) The DEFENDANTS created and maintained an extremely hostile work environment.

25 (39) The SAN BRUNO is strictly liable for the harassing actions of its supervisory  
26 employees.

27 (40) Furthermore, the DEFENDANTS failed to take appropriate remedial actions  
28 calculated to prevent further misconduct even after the PLAINTIFF protested the sexually  
charged and inappropriate comments. By the failure to take appropriate remedial actions, the  
SAN BRUNO condoned and ratified the harassment.

(41) The sexual harassment of PLAINTIFF by DEFENDANTS was a substantial factor in causing PLAINTIFF'S harm. As a result of DEFENDANTS unlawful actions, PLAINTIFF suffered severe emotional distress.

(42) DEFENDANTS committed the above acts maliciously, fraudulently, and oppressively, in bad faith, with the wrongful intent of injuring PLAINTIFF, and in conscious disregard of PLAINTIFF'S rights. As such, PLAINTIFF is entitled to an award of punitive damages in an amount according to proof.

**SECOND CAUSE OF ACTION**  
**RETALIATION IN VIOLATION OF GOV. CODE § 12940(H)**  
**- AGAINST SAN BRUNO FIRE DEPARTMENT**

(43) PLAINTIFF incorporates all preceding paragraphs of this complaint into this cause of action as if fully set forth herein.

(44) At all times relevant herein, SAN BRUNO was an employer covered by the California Fair Employment and Housing Act (FEHA), Government Code § 12926(d), as a corporation regularly employing five or more employees.

(45) At all times relevant to this complaint, PLAINTIFF was an employee of SAN BRUNO.

(46) PLAINTIFF engaged in protected activity by complaining on numerous occasions to DEFENDANTS and SAN BRUNO about his treatment from 2010 until present; including complaining to SAN BRUNO on October 1, 2015 about experiencing harassment at work; and asking Captain Mike Ferretti, on February 18, 2017, to investigate PLAINTIFF'S reports of harassment and retaliation, and to determine if it constituted a hostile work environment.

(47) On March, 3, 2016, PLAINTIFF engaged in protected activity by complaining of harassment and retaliation to the EEOC.

(48) Following PLAINTIFF'S protected activity, DEFENDANTS retaliated against PLAINTIFF by further harassing him and failing to provide him with proper notice of promotional opportunity.

(49) Upon information and belief, PLAINTIFF's protected activity was the motivating reason for SAN BRUNO'S adverse employment actions against PLAINTIFF.

(50) As a result of SAN BRUNO'S retaliation against PLAINTIFF, PLAINTIFF has suffered severe emotional distress.

1                     (51) DEFENDANTS committed the acts alleged herein maliciously, fraudulently, and  
2 oppressively, in bad faith, with the wrongful intent of injuring PLAINTIFF, and in conscious  
3 disregard of PLAINTIFF'S rights. As such, PLAINTIFF is entitled to an award of punitive  
4 damages against these DEFENDANTS in an amount according to proof, but not yet ascertained.

5                     **PRAAYER FOR RELIEF**

6                     WHEREFORE, PLAINTIFFS requests a jury trial and prays for judgment in an amount  
7 within the unlimited jurisdiction of this court against DEFENDANTS as follows:

- 8                     1. For compensatory damages including lost wages, lost future wages, lost employee  
9                     benefits, and lost future benefits and special damages, together with interest on  
10                     those amounts, according to proof;
- 11                     2. For an award of punitive damages against DEFENDANTS on all causes of action;
- 12                     3. For an award of interest, including prejudgment interest, at the legal rate;
- 13                     4. For an award to PLAINTIFF of attorney's fees pursuant to Govt. Code §12900 *et*  
14                     *seq.* or any other applicable statute, according to proof;
- 15                     5. For an award to PLAINTIFF of costs of suit incurred herein on all causes of  
16                     action; and
- 17                     6. For any other relief as the Court deems just and proper.

18                     DATED: June 18, 2018

19                     LAW OFFICES OF JOHN F. MARTIN  
20                     A Professional Corporation

21                     By:

22                       
23                     Andrew P. Matera, Esq.  
24                     Attorney for PLAINTIFF  
25                     JON A. PRIOLO