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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Patrick Gonzaga, Deputy Clerk

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

11 NICOLE PAPPAS,)
12)
13 Plaintiff,)
14 v.)
15 CITY OF SAN DIEGO, and DOES 1-40, inclusive,)
16)
17 Defendants.)
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CASE NO. 37-2017-00033953-CU-OE-CTL
COMPLAINT FOR GENDER
DISCRIMINATION, RETALIATION,
SEXUAL HARASSMENT, AND
FAILING TO PREVENT
HARASSMENT

17 1. Plaintiff Nicole Pappas (“Pappas”) is a resident of San Diego, California, and a
18 former employee of defendant City of San Diego.
19 2. Defendant City of San Diego (“City”) is a municipal entity established by charter
20 pursuant to California Constitution, article XI, section 3.
21 3. The true names or capacities, whether individual, corporate, associate, or
22 otherwise, of defendants DOES 1 to 40, inclusive, are unknown to plaintiff, who therefore sues
23 said defendants by such fictitious names.
24 4. Plaintiff is informed and believes and thereon alleges that each of the defendants
25 designated herein as a DOE is responsible in some manner for the events and happenings herein
26 referred to, and caused injury and damages proximately thereby to plaintiff as herein alleged.
27 Plaintiff will seek leave of court to amend this complaint to set forth the true names and
28 capacities of such named defendants when their identities become known to her.

1 5. Plaintiff is informed and believes and thereon alleges that each defendant named
2 in this action, including DOE defendants, at all relevant times, was the agent, ostensible agent,
3 servant, employee, representative, assistant, joint venturer, and/or co-conspirator of each of the
4 other defendants, and was at all times acting within the course and scope of his, her, or its
5 authority as agent, ostensible agent, servant, employee, representative, joint venturer, and/or
6 co-conspirator, and with the same authorization, consent, permission or ratification of each of the
7 other defendants.

8 6. Pappas is a 31-year old Emergency Medical Technician who works for American
9 Medical Response(“AMR”), which provides ambulance service in the City of San Diego
10 (“City”).

11 7. Pappas decided that she would like to make the transition to become a fire fighter
12 for the City. In order to become a fire fighter, applicants (1) must pass a written aptitude and
13 achievement test; (2) must be hired by the City (after passing background checks and oral
14 interview); and (3) successfully passing a four-month fire fighter academy.

15 8. Pappas was hired as a City employee in August 2015 and accepted into the fire
16 fighter academy. On November 14, 2015, the academy (the City’s 80th fire fighter academy)
17 began. This was also Pappas’s first day as a City employee.

18 9. The 80th academy had 36 recruits; 33 men and three women, including Pappas.
19 Female recruits were forced to share a locker room with the male recruits. Pappas was frequently
20 harassed by male recruits during periods where locker room use was required (i.e., changing
21 clothes for different academy exercises.) Pappas always wore at least a sports bra and shorts
22 because she did not feel comfortable changing completely in front of the male recruits.
23 Comments were made about Pappas’ body (i.e., skinny body, or fat butt); drawings of penises
24 were taped in the locker room for display, e-mailed to her by City employees, and posted on
25 social media by them.

26 10. Pappas was harassed in the presence of fire department supervisors during training
27 and drills. During runs one recruit shoulder checked her and tried to knock Pappas to the ground.
28 During drills, Pappas was pushed and shoved by male recruits. On other occasions male recruits

1 falsely belittled Pappas in front of instructors. On another occasion an instructor belittled a male
2 recruit because Pappas, and not the male recruit, knew the answer to a question. The instructor
3 said: “You’re going to let a girl answer the question and get it right before you,” the instructor
4 chided the male recruit.

5 11. Academy participants must pass class work, operational field tests, and run three
6 miles in 24 minutes or less. Recruits were allowed three chances during the academy to pass the
7 three-mile.

8 12. Pappas successfully passed the run and was doing well in her class work and
9 operational field tests. However, on December 23, 2015, Pappas fractured her leg during the
10 academy’s rigorous physical exercises and was forced to leave that academy.

11 13. The City told Pappas that, because she was a recruit in good standing, she could
12 return to another fire fighter academy after her leg healed.

13 14. Before Pappas’s leg healed, she became aware that an internal EEO investigation
14 had commenced regarding the harassment Pappas and others had endured during the 80th
15 academy. Pappas appeared before a fact finding panel as a witness. The City has not produced
16 the results of the fact finding despite a Public Records Act request.

17 15. While Pappas was healing, she ran into fire fighter Jason Rivera at a bar. Mr.
18 Rivera, who professed to have some knowledge of the sexual harassment fact finding regarding
19 harassment Pappas endured during the 80th academy, told Pappas: “you will never be a fire
20 fighter in this City.”

21 16. Pappas was told before she returned to the academy by a City human resources
22 employee that the fire department had been instructed to eliminate the three-mile run because it
23 was unnecessarily discriminatory to female recruits and not sufficiently job related.

24 17. After Pappas’s leg healed, she was admitted to the 82nd fire fighter academy
25 which was set to begin on October 1, 2016. However, despite the City’s Human Resources
26 Department’s directive to eliminate the three-mile run, the fire department made completing that
27 run in less than 24 minutes *mandatory for entry to the academy*. Pappas, who was later
28 diagnosed with an infection requiring antibiotics, did not pass the run before the 82nd academy

1 started. Pappas was then terminated.

2 18. The City has since eliminated the three-mile run as part of the fire fighter
3 academy.

4 19. Pappas remains employed as an EMT for AMR, where she works a full-time job
5 earning substantially less than she would have earned as a fire fighter employed by the City.

6 20. Pappas has exhausted all applicable administrative remedies before she filed this
7 complaint.

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF GOVERNMENT CODE SECTION 12940, SUBDIVISION (a)**

10 **(Against the City and DOES 1-10)**

11 21. Pappas incorporates all previous paragraphs of this complaint as if fully set forth
12 here.

13 22. The City is and was an employer subject to California's Fair Employment and
14 Housing Act.

15 23. Pappas was an employee of the City.

16 24. Government Code section 12940, subdivision (a), makes it unlawful for an
17 employer, such as the City, to discriminate based on gender.

18 25. The City discriminated against Pappas based on her gender by, among other
19 things, requiring her to share a locker room with men, subjecting her to an unnecessary three-
20 mile run, changing that run to a pre-condition of Pappas enrolling in the 82nd fire fighter
21 academy, subjecting her to harassment, and failing to prevent that harassment.

22 26. Pappas's gender was a substantial motivating reason for the City's decision to
23 terminate her.

24 27. Pappas was harmed.

25 28. The City's conduct was a substantial factor in causing Pappas' harm.

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1 **SECOND CAUSE OF ACTION**

2 **RETALIATION IN VIOLATION OF GOVERNMENT CODE SECTION 12940,**

3 **SUBDIVISION (h)**

4 **(Against the City and DOES 11-20)**

5 29. Pappas incorporates all previous paragraphs of this complaint as if fully set forth
6 here.

7 30. During her employment at the City, Pappas was subjected to numerous offensive
8 and harassing conduct with the knowledge of fire department supervisors. Such conduct
9 included requiring her to share a locker room with men, comments about Pappas's body (i.e.,
10 skinny body, or fat butt), and drawings of penises which were taped in the locker room for
11 display and posted on social media. Pappas also was discriminated against by the City subjecting
12 her to an unnecessary three-mile run, changing that run to a pre-condition of Pappas enrolling in
13 the 82nd fire fighter academy, and failing to prevent harassment

14 31. Pappas complained about this discrimination and harassment.

15 32. The City terminated Pappas.

16 33. Pappas' protected activity was a substantial motivating reason for the City's
17 decision to terminate her.

18 34. Pappas was harmed.

19 35. The City's conduct was a substantial factor in causing Pappas' harm.

20 **THIRD CAUSE OF ACTION**

21 **HOSTILE WORK ENVIRONMENT HARASSMENT IN VIOLATION OF**

22 **GOVERNMENT CODE SECTION 12940, SUBDIVISION (j)**

23 **(Against the City and DOES 21-30)**

24 36. Pappas incorporates all previous paragraphs of this complaint as if fully set forth
25 here.

26 37. Pappas was an employee of the City.

27 38. During her employment at the City, Pappas was subjected to numerous offensive
28 and harassing comments because of her gender, including subjected to numerous offensive and

1 harassing conduct with the knowledge of fire department supervisors. Such conduct included
2 requiring her to share a locker room with men, comments about Pappas's body (i.e., skinny body,
3 or fat butt), and drawings of penises which were taped in the locker room for display and posted
4 on social media.

5 39. The harassing conduct was severe or pervasive.

6 40. A reasonable person in Pappas's circumstances would have considered the work
7 environment to be hostile or abusive.

8 41. Pappas considered the work environment to be hostile or abusive.

9 42. Fire department supervisors knew or should have known of the conduct and failed
10 to take immediate and appropriate corrective action.

11 43. Pappas was harmed.

12 44. The City's conduct was a substantial factor in causing harm to Pappas.

13
14 **FOURTH CAUSE OF ACTION**

15 **FAILURE TO PREVENT HARASSMENT, DISCRIMINATION, AND RETALIATION**
16 **IN VIOLATION OF GOVERNMENT CODE SECTION 12940, SUBDIVISION (k)**

17 **(Against The City and DOES 31-40)**

18 45. Pappas incorporates all previous paragraphs of this complaint as if fully set forth
19 here.

20 46. Pappas was an employee of the City.

21 47. During the course of her employment at the City, Pappas was subjected to
22 harassment, discrimination, and retaliation.

23 48. The City failed to take all reasonable steps to prevent the harassment,
24 discrimination, and retaliation.

25 49. Pappas was harmed.

26 50. The City's failure to take all reasonable steps to prevent harassment,
27 discrimination, and retaliation was a substantial factor in causing Pappas' harm.

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WHEREFORE, plaintiff prays for the following:

1. For general damages according to proof;
2. For special damages according to proof;
3. For pre-judgment interest;
4. For costs of the suit incurred by the plaintiff;
5. For reasonable attorney fees incurred by the plaintiff;
6. For declaratory relief and injunctive relief; and
7. For such additional and further relief as this Court may deem just.

Dated: September 13, 2017

LAW OFFICE OF MICHAEL A. CONGER

By:



Michael A. Conger
Attorney for Plaintiff

Jury trial demanded