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8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**  
11

12 LARRY WHITHORN,

13 Plaintiff,

14 vs.

15 THE CITY OF WEST COVINA,  
WEST COVINA FIRE  
16 DEPARTMENT, LLOYD  
JOHNSON, an individual, TONY  
17 WU, an individual, GLENN  
KENNEDY, an individual, DAVID  
18 CARMANY, an individual, and  
DOES 1 to 100, inclusive,  
19

20 Defendants.  
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) Case No.: 20STCV08916

) **PLAINTIFF LARRY WHITHORN'S**  
) **COMPLAINT FOR DAMAGES FOR:**

) **(1) DISCRIMINATION IN VIOLATION**  
) **OF THE FEHA;**

) **(2) HOSTILE WORK ENVIRONMENT**  
) **HARASSMENT IN VIOLATION OF**  
) **THE FEHA;**

) **(3) RETALIATION IN VIOLATION OF**  
) **THE FEHA;**

) **(4) FAILURE TO PROVIDE**  
) **REASONABLE**  
) **ACCOMMODATION IN**  
) **VIOLATION OF FEHA;**

) **(5) FAILURE TO ENGAGE IN THE**  
) **INTERACTIVE PROCESS IN**  
) **VIOLATION OF FEHA;**

) **(6) FAILURE TO PREVENT**  
) **DISCRIMINATION, HARASSMENT,**  
) **AND RETALIATION IN**  
) **VIOLATION OF FEHA;**

) **(7) VIOLATION OF CALIFORNIA**  
) **FAMILY RIGHTS ACT ("CFRA");**

) **(8) VIOLATION OF LABOR CODE**

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- ) § 1102.5;
- ) (9) VIOLATION OF THE  
FIREFIGHTER BILL OF RIGHTS,  
GOV. CODE, § 3250 ET SEQ.
- ) (10) WRONGFUL TERMINATION IN  
VIOLATION OF PUBLIC POLICY
- ) (11) INTENTIONAL INFLECTION OF  
EMOTIONAL DISTRESS;
- ) (12) NEGLIGENCE INFLECTION OF  
EMOTIONAL DISTRESS;
- ) DEMAND FOR JURY TRIAL

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1 Plaintiff, Larry Whithorn, alleges, on the basis of personal knowledge and/or  
2 information and belief:

3  
4 **SUMMARY**

5 This is an action by plaintiff, Larry Whithorn (“plaintiff” or “Whithorn”), whose  
6 employment with defendant The City of West Covina (“CWC”) and defendant West  
7 Covina Fire Department (“WCFD”) was wrongfully terminated. Plaintiff brings this  
8 action against defendants CWC, WCFD, LLOYD JOHNSON (“Johnson”), TONY WU  
9 (“Wu”), GLENN KENNEDY (“Kennedy”), DAVID CARMANY (“Carmany”) for  
10 economic, non-economic, compensatory, and punitive damages, pursuant to Civil Code  
11 section 3294, pre-judgment interest pursuant to Code of Civil Procedure section 3291, and  
12 costs and reasonable attorneys’ fees pursuant to Government Code section 12965(b) and  
13 Code of Civil Procedure section 1021.5.

14  
15 **PARTIES**

16 1. *Plaintiff:* Plaintiff Whithorn is, and at all times mentioned in this Complaint was,  
17 a resident of the County of Los Angeles, California.

18 2. *Defendants:* Defendant CWC and defendant WCFD are, and at all times  
19 mentioned in this Complaint were, authorized to operate by the State of California and the  
20 United States government and authorized and qualified to do business in the County of  
21 Los Angeles. Defendants Wu, Johnson, Carmany, and Kennedy are all employed in the  
22 County of Los Angeles and on information and belief reside in the County of Los Angeles.  
23 Defendants’ place of business, where the following causes of action took place, was and  
24 is in the County of Los Angeles, at 1444 West Garvey Ave South West Covina, CA 91790.

25 3. *Doe defendants:* Defendants Does 1 to 100, inclusive, are sued under fictitious  
26 names pursuant to Code of Civil Procedure section 474. Plaintiff is informed and believes,  
27 and on that basis alleges, that each of the defendants sued under fictitious names is in some  
28 manner responsible for the wrongs and damages alleged below, in so acting was functioning

1 as the agent, servant, partner, and employee of the co-defendants, and in taking the actions  
2 mentioned below was acting within the course and scope of his or her authority as such  
3 agent, servant, partner, and employee, with the permission and consent of the co-defendants.  
4 The named defendants and Doe defendants are sometimes hereafter referred to, collectively  
5 and/or individually, as “defendants.”

6 4. *Relationship of defendants:* All defendants compelled, coerced, aided, and/or  
7 abetted the discrimination, retaliation, and harassment alleged in this Complaint, which  
8 conduct is prohibited under California Government Code section 12940(i). All defendants  
9 were responsible for the events and damages alleged herein, including on the following  
10 bases: (a) defendants committed the acts alleged; (b) at all relevant times, one or more of  
11 the defendants was the agent or employee, and/or acted under the control or supervision,  
12 of one or more of the remaining defendants and, in committing the acts alleged, acted  
13 within the course and scope of such agency and employment and/or is or are otherwise  
14 liable for plaintiff’s damages; (c) at all relevant times, there existed a unity of ownership  
15 and interest between or among two or more of the defendants such that any individuality  
16 and separateness between or among those defendants has ceased, and defendants are the  
17 alter egos of one another. Defendants exercised domination and control over one another  
18 to such an extent that any individuality or separateness of defendants does not, and at all  
19 times herein mentioned did not, exist. Adherence to the fiction of the separate existence  
20 of defendants would permit abuse of the corporate privilege and would sanction fraud and  
21 promote injustice. All actions of all defendants were taken by employees, supervisors,  
22 executives, officers, and directors during employment with all defendants, were taken on  
23 behalf of all defendants, and were engaged in, authorized, ratified, and approved of by all  
24 other defendants.

25 5. Defendants CWC and WCFD both directly and indirectly employed plaintiff  
26 Whithorn, as defined in the Fair Employment and Housing Act (“FEHA”) at Government  
27 Code section 12926(d).

28 6. In addition, defendants CWC and WCFD compelled, coerced, aided, and abetted

1 the discrimination, which is prohibited under California Government Code section  
2 12940(i).

3 7. Finally, at all relevant times mentioned herein, all defendants acted as agents of  
4 all other defendants in committing the acts alleged herein.  
5

### 6 VENUE

7 8. The actions at issue in this case occurred in the State of California, in the County  
8 of Los Angeles. Under the California Fair Employment and Housing Act, this case can  
9 alternatively, at Plaintiff's choice, be filed:

10 [I]n any county in the state in which the unlawful practice is alleged  
11 to have been committed, in the county in which the records relevant  
12 to the practice are maintained . . . or in the county in which the  
13 aggrieved person would have worked or would have had access to the  
14 public accommodation but for the alleged unlawful practice, but if the  
15 defendant is not found within any of these counties, an action may be  
16 brought within the county of the defendant's residence or principal  
17 office . . .

18 (California Government Code § 12965(b).)

19 9. Here, the plaintiff worked in California in the County of Los Angeles. The  
20 location where plaintiff worked was located in West Covina, California. West Covina is  
21 located in Los Angeles County, California. The majority of the unlawful actions on the  
22 part of the defendants occurred at said West Covina location.

23 10. “[I]n the absence of an affirmative showing to the contrary, the presumption is  
24 that the county in which the title of the actions shows that the case is brought is, prima  
25 facie, the proper county for the commencement and trial of the action.” (*Mission Imports,*  
26 *Inc. v. Superior Court* (1982) 31 Cal.3d 921, 928.) The FEHA venue statute – section  
27 12965(b) – thus affords a wide choice of venue to persons who bring actions under FEHA.  
28 (*Brown v. Superior Court* (1984) 37 Cal.3d 477, 486.) “[T]he special provisions of the  
FEHA venue statute control in cases involving FEHA claims joined with non-FEHA  
claims arising from the same facts.” (*Id.* at 487.)

1                                 **FACTS COMMON TO ALL CAUSES OF ACTION**

2             11. *Plaintiff's hiring:*     In July 1991, Larry Whithorn was hired as a  
3 firefighter/paramedic for the City of West Covina after being interviewed by the fire chief.

4             12. *Plaintiff's job performance:*   In July 1991, Larry Whithorn was hired as a  
5 firefighter/paramedic for defendant CWC after being interviewed by the fire chief.  
6 Whithorn worked nearly every position in the department until he was selected as fire  
7 chief in December 2014. Whithorn finished as number one in an open/competitive  
8 recruitment for fire chief and was promoted. Throughout his employment, Whithorn  
9 received outstanding annual performance reviews without receiving a write-up.

10            13. *Plaintiff's protected status:*

11                a. Whithorn is 49 years old.

12                b. Whithorn had actual and/or perceived disabilities while employed with  
13 Defendants.

14                c. Whithorn's relative had an actual and/or perceived disability during  
15 Whithorn's employment with Defendants.

16                d. Whithorn took a medical leave for his actual and/or perceived disability  
17 and/or the actual and/or perceived disability of a relative.

18                e. Whithorn requested an accommodation in the form of a medical leave.

19                f. Throughout his employment with Defendants, Whithorn reported various  
20 improprieties to his superiors, Human Resources, and the acting city manager, as well as  
21 opposed conduct which he believed to be unlawful. Several of these improprieties were  
22 extremely serious, and if left unattended, had the potential to expose defendant CWC and  
23 WCFD to extreme risk.

24            14. *Plaintiff's protected activity*

25                a. Shortly after defendant Wu was elected to the City Council in 2015, he  
26 offered Whithorn to be his "bank" so that he could move back to West Covina. Whithorn  
27 quickly resisted as he knew that a city councilman trying to make a side deal is unethical  
28 and unlawful.



1           b. From December 2016 to April 2017, Whithorn took FMLA/CFRA leave for  
2 a series of medical issues. He took non-FMLA/CFRA medical leave again from June to  
3 September 2017. During this time, Whithorn’s supervisor asked Whithorn where he was  
4 and also met with him during his leave as Whithorn’s supervisor was getting pressure to  
5 either get Whithorn to come back or get someone else in Whithorn’s position. Taking these  
6 leaves caused Whithorn to be viewed by many in the department as an “absentee” fire  
7 chief, and he received backlash from many for taking time off. His absence was also  
8 improperly shared with the media.

9           c. In January 2018, Whithorn had to take additional time off to care for a very  
10 sick relative. He knew that any more time he spent away was dangerous for his career but  
11 had no choice but to take the time to care for his relative.

12           d. Not long after taking time off in January 2018, Whithorn’s social media  
13 account was hacked. He quickly complained that he felt harassed and threatened by this  
14 action and wanted to make city management aware that this was happening to him.

15           e. In April 2018, while visiting West Covina Fire Station #2, defendant  
16 Kennedy said, “I’m here to get the chief fired.” Whithorn complained about this to the city  
17 manager, who informed defendant Johnson. Around the same time, Whithorn saw that  
18 someone wrote “fired” next to his name on the phone directory and also made complaints  
19 to HR about feeling harassed and targeted by that conduct.

20           f. In May 2018, Whithorn learned that defendant Wu was trying to gain a  
21 majority in the City Council and his next order of business would be to fire the fire chief.

22           g. In June 2018, defendant Wu approached Whithorn and told him that his  
23 loyalty to the City Council should supersede his commitments to the city manager, to  
24 which Whithorn replied, “I work for you, but my boss is Chris.” Defendant Wu threatened  
25 to fire Whithorn. Whithorn continued to receive threats of termination, which caused an  
26 extremely hostile work environment.

27           h. In August 2018, defendant Kennedy verbally taunted Whithorn and Whithorn  
28 again complained about the misconduct to his supervisor who again passed the message

1 to defendant Johnson, who is now the Mayor. Not long after, Whithorn started receiving  
2 threatening and harassing emails from an unknown email address.

3 i. In September 2018, Whithorn took time off to help his sick relative again  
4 with the illness and to move the relative to California. Again, this fueled department  
5 rumors that Whithorn was an “absentee” fire chief.

6 j. In November 2018, defendant Wu won the City Council majority. According  
7 to municipal code, he couldn’t make any firings until after his first 90 days.

8 k. In January 2019, Chris Freeland called a meeting with Whithorn, newly  
9 elected council members Dario Castellanos (“Castellanos”) and Letty Lopez-Viado  
10 (“Lopez-Viado”), Police Chief Marc Taylor (“Taylor”), and HR Director Edward Macias  
11 to address the rumors that the new Council planned on firing Whithorn and Taylor.  
12 Castellanos and Lopez-Viado did not deny that this was the case.

13 l. In February 2019, defendant Johnson seemed to confirm these rumors when  
14 he told Whithorn and Taylor that they are going to fire Whithorn and Taylor. Mayor  
15 Johnson later asked Whithorn, "How old are you, Chief...are you 50 yet? How much  
16 longer do you have to retire, 1 year...2 years?" Whithorn felt offended by the comments.  
17 No one had any shame to tell Whithorn that he was going to be replaced soon. Whithorn  
18 again complained about these comments. He was assured only the city manager could fire  
19 him and that was not going to happen.

20 m. Whithorn complained and opposed the changing of the municipal code to his  
21 supervisor. Whithorn’s supervisor brought it to Whithorn’s attention that it was in the  
22 works to get the municipal code changed so that the council can terminate the Fire Chief  
23 and Police Chief positions.

24 n. On March 4, 2019, it was announced that the city manager was resigning.  
25 Whithorn was informed that defendant Kennedy said in relation to the city manager’s  
26 resignation, “I got one. I have two more on my list and they know who they are!” In  
27 response to the news, the interim HR Director asked Whithorn, “Hey, Chief, how old are  
28 you? When can you retire?”

1           o. Around March 5, 2019 at the end of a City Council meeting, defendant  
2 Kennedy was seen speaking to Fire Department personnel that attended the City Council  
3 Meeting loudly announcing “60 more days”! This is the time it takes to change the  
4 municipal code regarding an agenda item at that meeting, which would include the new  
5 recruitment process of City Department Heads by City Council. Whithorn complained  
6 about this to defendant Johnson as he believed this comment related to his termination.

7           p. Whithorn received several harassing messages and what he perceived to be  
8 threats on his life by the unknown sender. An email regarding his imminent termination  
9 was also sent to the former city manager.

10           q. On March 19, 2019, Whithorn filed a grievance to the Acting City Manager  
11 alleging that defendant Kennedy was harassing him, disparaging his name, and  
12 campaigning to get rid of him. Later that month, Whithorn asked for an update on the  
13 grievance from the city attorney, who responded, “Technically, your grievance will be  
14 denied. No hard feelings.” A few weeks later HR asked Whithorn about his age and when  
15 he was planning to retire. In this complaint, Whithorn complained that the City Council  
16 members were trying to change the municipal code regarding an agenda item at the March  
17 5th council meeting, concerning the new recruitment process of City Department Heads  
18 by City Council.

19           r. In April 2019, the city attorney informed Whithorn that his grievance was  
20 denied because technically he cannot file one. By the way the city attorney was talking,  
21 Whithorn knew he had not even read his grievance. During this conversation, the city  
22 attorney asked Whithorn how old he was and when he was planning on retiring.

23           s. Although he was told he could not file a grievance, the HR Director informed  
24 Whithorn that he would treat his grievance as a complaint and begin an investigation. The  
25 HR Director who promised this to Whithorn was fired the day after, and no investigation  
26 was ever initiated.

27 //

28 //

1 15. *Defendants' adverse employment actions and behavior and termination of*  
2 *plaintiff's employment:*

3 a. On April 22, 2019, defendant Carmany, City Attorney Scott Porter ("Porter"),  
4 and Jamaar Boyd-Weatherby met with Whithorn and asked him to resign. Defendant  
5 Carmany had been harassing Whithorn since Carmany was appointed to the Interim City  
6 Manager position. After Whithorn refused to resign, defendant Carmany emailed  
7 Whithorn his official termination letter stating that the termination was effective  
8 "immediately." A hearing was set for only a few days later.

9 b. On April 25, 2019, Whithorn attempted to file an appeal for his termination.  
10 Instead of informing Whithorn of their *intent* on terminating him, the letter he received  
11 made it clear that the decision was final in violation of the Firefighter Bill of Rights.

12 c. On April 28, 2019, Whithorn received an email scheduling a hearing for his  
13 appeal with less than 48 hours' notice. Whithorn was not given the option of the type of  
14 hearing he desired.. He never was able to properly appeal his termination.

15 d. The decision makers to his termination were either involved in the unlawful  
16 conduct or were associated with individuals who committed it. Whithorn believes and  
17 alleges that Respondents' true reasons for terminating his employment were his age,  
18 medical leaves, disabilities, medical conditions, need for accommodations, association  
19 with a member of a protected class, and/or good faith complaints of, resistance to, or  
20 opposition to unlawful activity. Whithorn believes and alleges that Respondents  
21 intentionally, or in the alternative negligently, inflicted emotional distress on Whithorn  
22 because they terminated him in order to hurt and humiliate him. Whithorn's reputation has  
23 been completely damaged due to the false and offensive statements made by Respondents  
24 regarding his professional reputation as Fire Chief.

25 16. *Plaintiff's compliance with Government Tort Claims Act:* On September 17,  
26 2019, plaintiff presented a governmental tort claim to the defendants setting forth  
27 plaintiff's claims including, but not limited to each claim referenced in plaintiff's causes  
28 of action 1 through 12. Around September 18, 2019, plaintiff's counsel received a letter

1 from defendants' claims administrator advising plaintiff that defendants' agent was  
2 "investigating and handling" plaintiff's claim on the City's behalf. Around November 8,  
3 2019, plaintiff's counsel received correspondence dated November 8, 2019 rejecting  
4 plaintiff's tort claims.

5 17. *Economic damages:* As a consequence of defendants' conduct, plaintiff has  
6 suffered and will suffer harm, including lost past and future income and employment  
7 benefits, damage to his career, and lost wages, overtime, unpaid expenses, and penalties,  
8 as well as interest on unpaid wages at the legal rate from and after each payday on which  
9 those wages should have been paid, in a sum to be proven at trial. Since his termination,  
10 plaintiff has had difficulty finding employment, especially due to defendants' actions and  
11 comments to prospective employers.

12 18. *Non-economic damages:* As a consequence of defendants' conduct, plaintiff has  
13 suffered and will suffer psychological and emotional distress, humiliation, and mental and  
14 physical pain and anguish, in a sum to be proven at trial.

15 19. *Punitive damages:* Defendants' conduct constitutes oppression, fraud, and/or  
16 malice under California Civil Code section 3294 and, thus, entitles plaintiff to an award  
17 of exemplary and/or punitive damages.

18 a. *Malice:* Defendants' conduct was committed with malice within the meaning  
19 of California Civil Code section 3294, including that (a) defendants acted with intent to  
20 cause injury to plaintiff and/or acted with reckless disregard for plaintiff's injury, in-  
21 cluding by terminating plaintiff's employment and/or taking other adverse job actions  
22 against plaintiff because of his age, disability, medical leave, race, national origin,  
23 ancestry, pregnancy, gender, sexual orientation, and/or good faith complaints, and/or  
24 (b) defendants' conduct was despicable and committed in willful and conscious disregard  
25 of plaintiff's rights, health, and safety, including plaintiff's right to be free of  
26 discrimination, harassment, retaliation, abuse of the requirements of accommodation and  
27 engaging in the interactive process, and wrongful employment termination.

28 b. *Oppression:* In addition, and/or alternatively, defendants' conduct was

1 committed with oppression within the meaning of California Civil Code section 3294,  
2 including that defendants' actions against plaintiff because of his age, disability, medical  
3 leave, race, national origin, ancestry, pregnancy, gender, sexual orientation, and/or good  
4 faith complaints were "despicable" and subjected plaintiff to cruel and unjust hardship, in  
5 knowing disregard of plaintiff's rights to a work place free of discrimination, harassment,  
6 retaliation, abuse of the requirements of accommodation and engaging in the interactive  
7 process, and wrongful employment termination.

8 c. *Fraud*: In addition, and/or alternatively, defendants' conduct, as alleged, was  
9 fraudulent within the meaning of California Civil Code section 3294, including that  
10 defendants asserted false (pretextual) grounds for terminating plaintiff's employment  
11 and/or other adverse job actions, thereby to cause plaintiff hardship and deprive him of  
12 legal rights.

13 20. *Attorneys' fees*: Plaintiff has incurred and continues to incur legal expenses and  
14 attorneys' fees.

15 21. *Exhaustion of administrative remedies*: Prior to filing this action, plaintiff ex-  
16 hausted his administrative remedies by filing a timely administrative complaint with the  
17 Department of Fair Employment and Housing ("DFEH") and receiving a DFEH right-to-  
18 sue letter.

19  
20 **FIRST CAUSE OF ACTION**

21 **Discrimination on the Bases of Age and Disability and**

22 **Requesting an Accommodation**

23 **(Government Code § 12900, et seq.)**

24 **Against All Defendants; and Does 1 to 100, Inclusive**

25 22. The allegations set forth in preceding paragraphs are re-alleged and incorporated  
26 herein by reference.

27 23. At all times herein mentioned, FEHA, Government Code section 12940, et seq.,  
28 was in full force and effect and was binding on defendants. This statute requires defen-

1 dants to refrain from discriminating against any employee because but not limited to he or  
2 she is more than 40 years old or because of the employee's actual and/or perceived  
3 disability, and requesting an accommodation.

4 24. Plaintiff's age and actual and/or perceived disability, and other characteristics  
5 protected by FEHA, Government Code section 12900, *et seq.*, were substantial motivating  
6 reasons in defendants' decision to terminate plaintiff's employment, not to retain, hire, or  
7 otherwise employ plaintiff in any position, and/or to take other adverse employment  
8 actions against plaintiff.

9 25. As a proximate result of defendants' willful, knowing, and intentional discrimi-  
10 nation against plaintiff, plaintiff has sustained and continues to sustain substantial losses  
11 of earnings and other employment benefits.

12 26. As a proximate result of defendants' willful, knowing, and intentional discrimi-  
13 nation against plaintiff, plaintiff has suffered and continues to suffer humiliation, emo-  
14 tional distress, and mental and physical pain and anguish, all to his damage in a sum  
15 according to proof.

16 27. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.  
17 Pursuant to Government Code section 12965(b), plaintiff is entitled to recover reasonable  
18 attorneys' fees and costs (including expert costs) in an amount according to proof.

19 28. Defendants' discrimination was committed intentionally, in a malicious, fraudu-  
20 lent, and/or oppressive manner, and this entitles plaintiff to punitive damages against  
21 defendants.

22  
23 **SECOND CAUSE OF ACTION**

24 **Hostile Work Environment Harassment on the Bases of Age**  
25 **and Disability and Requesting an Accommodation**

26 **(Government Code § 12900, *et seq.*)**

27 **Against All Defendants; and Does 1 to 100, Inclusive**

28 29. The allegations set forth in preceding paragraphs are re-alleged and incorporated

1 herein by reference.

2 30. At all times herein mentioned, FEHA, Government Code section 12940, *et seq.*,  
3 was in full force and effect and was binding on defendants. This statute requires defen-  
4 dants to refrain from harassing any employee because he or she is more than 40 years old  
5 or because of the employee's actual and/or perceived disability.

6 31. Plaintiff was subjected to harassing conduct through a hostile work environment,  
7 in whole or in part on the basis of plaintiff's age, actual and/or perceived disability,  
8 requesting an accommodation, and/or other protected characteristics, in violation of  
9 Government Code sections 12940(j) and 12923.

10 32. Pursuant to Government Code section 12923(b), a single incident of harassing  
11 conduct is sufficient to create a hostile work environment if the harassing conduct has  
12 unreasonably interfered with plaintiff's work performance or created an intimidating,  
13 hostile, or offensive working environment.

14 33. As a proximate result of defendants' willful, knowing, and intentional harassment  
15 of plaintiff, plaintiff has sustained and continues to sustain substantial losses of earnings  
16 and other employment benefits.

17 34. As a proximate result of defendants' willful, knowing, and intentional harassment  
18 of plaintiff, plaintiff has suffered and continues to suffer humiliation, emotional distress,  
19 and mental and physical pain and anguish, all to his damage in a sum according to proof.

20 35. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.  
21 Pursuant to Government Code section 12965(b), plaintiff is entitled to recover reasonable  
22 attorneys' fees and costs (including expert costs) in an amount according to proof.

23 36. Defendants' harassment was committed intentionally, in a malicious, fraudulent,  
24 and/or oppressive manner, and this entitles plaintiff to punitive damages against  
25 defendants.

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1 **THIRD CAUSE OF ACTION**

2 **Retaliation for Engaging in Protected Activity**

3 **(Government Code § 12900, et seq.)**

4 **Against All Defendants; and Does 1 to 100, Inclusive**

5 37. The allegations set forth in preceding paragraphs are re-alleged and incorporated  
6 herein by reference.

7 38. At all times herein mentioned, FEHA, Government Code section 12940, *et seq.*,  
8 was in full force and effect and was binding on defendants. This statute requires defen-  
9 dants to refrain from retaliating against any employee making complaints or opposing  
10 discrimination, harassment, or retaliation, or otherwise engaging in activity protected by  
11 the FEHA, including for seeking to exercise rights guaranteed under FEHA and/or  
12 assisting and/or participating in an investigation, opposing defendants' failure to provide  
13 rights, including rights to complain and to assist in a lawsuit, and/or the right to be free of  
14 retaliation, in violation of Government Code section 12940(h).

15 39. Requesting an accommodation is also a protected activity. Govt. Code §§  
16 12940(1)(4), (m)(2).

17 40. Plaintiff's seeking to exercise rights guaranteed under FEHA and/or opposing  
18 defendants' failure to provide such rights, including the right to be free of discrimination,  
19 harassment, or retaliation, in violation of Government Code section 12940(h), were  
20 substantial motivating reasons in defendants' decision to terminate plaintiff's  
21 employment, not to retain, hire, or otherwise employ plaintiff in any position, and/or to  
22 take other adverse employment actions against plaintiff.

23 41. As a proximate result of defendants' willful, knowing, and intentional retaliation  
24 against plaintiff, plaintiff has sustained and continues to sustain substantial losses of  
25 earnings and other employment benefits.

26 42. As a proximate result of defendants' willful, knowing, and intentional retaliation  
27 against plaintiff, plaintiff has suffered and continues to suffer humiliation, emotional  
28 distress, and mental and physical pain and anguish, all to his damage in a sum according

1 to proof.

2 43. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.  
3 Pursuant to Government Code section 12965(b), plaintiff is entitled to recover reasonable  
4 attorneys' fees and costs (including expert costs) in an amount according to proof.

5 44. Defendants' retaliation was committed intentionally, in a malicious, fraudulent,  
6 and/or oppressive manner, and this entitles plaintiff to punitive damages against defen-  
7 dants.

8  
9 **FOURTH CAUSE OF ACTION**

10 **Failure to Provide Reasonable Accommodation**

11 **(Government Code § 12940(a), (i), (m), (n))**

12 **Against CWC and WCFD; and Does 1 to 100, Inclusive**

13 45. The allegations set forth in preceding paragraphs are re-alleged and incorporated  
14 herein by reference.

15 46. At all times herein mentioned, FEHA, Government Code section 12940(a), (i),  
16 (m), and (n), was in full force and effect and was binding on defendants. This statute  
17 requires defendants to provide reasonable accommodations to known disabled employees.  
18 Within the time provided by law, plaintiff filed a complaint with the DFEH, in full  
19 compliance with administrative requirements, and received a right-to-sue letter.

20 47. Defendants wholly failed to attempt any reasonable accommodation of plaintiff's  
21 known disability. Defendants used plaintiff's disability and his need to take medical leave  
22 as an excuse for terminating plaintiff's employment.

23 48. Plaintiff believes and on that basis alleges that his disability and the need to  
24 accommodate his disability were substantial motivating factors in defendants' termination  
25 of his employment.

26 49. As a proximate result of defendants' willful, knowing, and intentional miscon-  
27 duct, plaintiff has sustained and continues to sustain substantial losses of earnings and  
28 other employment benefits.

1 50. As a proximate result of defendants' willful, knowing, and intentional miscon-  
2 duct, plaintiff has suffered and continues to suffer humiliation, emotional distress, and  
3 physical and mental pain and anguish, all to his damage in a sum according to proof.

4 51. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.  
5 Pursuant to Government Code section 12965(b), plaintiff is entitled to recover reasonable  
6 attorneys' fees and costs (including expert costs) in an amount according to proof.

7 52. Defendants' misconduct was committed intentionally, in a malicious, despicable,  
8 fraudulent and/or oppressive manner, entitling plaintiff to punitive damages against  
9 defendants.

10  
11 **FIFTH CAUSE OF ACTION**

12 **Failure to Engage in Interactive Process**

13 **(Government Code § 12940(a), (i), (m), (n))**

14 **Against CWC and WCFD; and Does 1 to 100, Inclusive**

15 53. The allegations set forth in preceding paragraphs are re-alleged and incorporated  
16 herein by reference.

17 54. At all times herein mentioned, FEHA, Government Code section 12940(a), (i),  
18 (m), and (n), was in full force and effect and was binding on defendants. This statute  
19 requires defendants to engage in a timely, good faith interactive process to accommodate  
20 known disabled employees. Within the time provided by law, plaintiff filed a complaint  
21 with the DFEH, in full compliance with administrative requirements, and received a right-  
22 to-sue letter.

23 55. Defendants wholly failed to engage in a timely, good-faith interactive process  
24 with plaintiff to accommodate his known disabilities. Instead, defendants terminated  
25 plaintiff's employment in part because of his disabilities.

26 56. Plaintiff believes and on that basis alleges that his disability was a motivating  
27 factor in defendants' termination of his employment.

28 57. As a proximate result of defendants' willful, knowing, and intentional miscon-

1 duct, plaintiff has sustained and continues to sustain substantial losses of earnings and  
2 other employment benefits.

3 58. As a proximate result of defendants' willful, knowing, and intentional miscon-  
4 duct, plaintiff has suffered and continues to suffer humiliation, emotional distress, and  
5 physical and mental pain and anguish, all to his damage in a sum according to proof.

6 59. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.  
7 Pursuant to Government Code section 12965(b), plaintiff is entitled to recover reasonable  
8 attorneys' fees and costs (including expert costs) in an amount according to proof.

9 60. Defendants' misconduct was committed intentionally, in a malicious, despicable,  
10 fraudulent and/or oppressive manner, entitling plaintiff to punitive damages against  
11 defendants.

12  
13 **SIXTH CAUSE OF ACTION**

14 **Failure to Prevent Discrimination, Harassment, and**  
15 **Retaliation (Government Code § 12900, et seq.)**

16 **Against All Defendants; and Does 1 to 100, Inclusive**

17 61. The allegations set forth in preceding paragraphs are re-alleged and incorporated  
18 herein by reference.

19 62. At all times herein mentioned, FEHA, Government Code section 12940(k), was  
20 in full force and effect and was binding on defendants. This statute states that it is an  
21 unlawful employment practice in California for an employer "to fail to take all reasonable  
22 steps necessary to prevent discrimination and harassment from occurring."

23 63. During the course of plaintiff's employment, defendants failed to prevent their  
24 employees from engaging in intentional actions that resulted in plaintiff being treated less  
25 favorably because of plaintiff's age, race, color, ancestry, and/or national origin, and/or or  
26 because plaintiff had engaged in protected activity.

27 64. Plaintiff believes that he was subjected to discrimination, harassment and  
28 retaliation because of his age, and/or perceived disability, and/or protected activity.

1 65. As a proximate result of defendants' willful, knowing, and intentional miscon-  
2 duct, plaintiffs have sustained and continue to sustain substantial losses of earnings and  
3 other employment benefits.

4 66. As a proximate result of defendants' willful, knowing, and intentional miscon-  
5 duct, plaintiffs have suffered and continue to suffer humiliation, emotional distress, and  
6 physical and mental pain and anguish, all to their damage in a sum according to proof.

7 67. Plaintiffs have incurred and continue to incur legal expenses and attorneys' fees.  
8 Pursuant to Government Code section 12965(b), plaintiffs are entitled to recover reason-  
9 able attorneys' fees and costs (including expert costs) in an amount according to proof.

10 68. Defendants' misconduct was committed intentionally, in a malicious, fraudulent,  
11 despicable, and/or oppressive manner, entitling plaintiffs to punitive damages against  
12 defendants.

13  
14 **SEVENTH CAUSE OF ACTION**

15 **Violation of California Family Rights Act ("CFRA")**

16 **(Government Code §§ 12945.1-12945.2)**

17 **Against All Defendants; and Does 1 to 100, Inclusive**

18 69. The allegations set forth in preceding paragraphs are re-alleged and incorporated  
19 herein by reference.

20 70. At all times herein mentioned, FEHA, Government Code section 12940, *et seq.*,  
21 was in full force and effect and was binding on defendants. This statute requires defen-  
22 dants to refrain from discriminating against any employee because but not limited to he or  
23 she has taken CFRA leave for himself or herself or the illness of a qualified relative.

24 71. Plaintiff's taking CFRA leave was a substantial motivating reason in defendants'  
25 decision to terminate plaintiff's employment, not to retain, hire, or otherwise employ  
26 plaintiff in any position, and/or to take other adverse employment actions against plaintiff.

27 72. As a proximate result of defendants' willful, knowing, and intentional discrimi-  
28 nation against plaintiff, plaintiff has sustained and continues to sustain substantial losses

1 of earnings and other employment benefits.

2 73. As a proximate result of defendants' willful, knowing, and intentional discrimi-  
3 nation against plaintiff, plaintiff has suffered and continues to suffer humiliation, emo-  
4 tional distress, and mental and physical pain and anguish, all to his damage in a sum  
5 according to proof.

6 74. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.  
7 Pursuant to Government Code section 12965(b), plaintiff is entitled to recover reasonable  
8 attorneys' fees and costs (including expert costs) in an amount according to proof.

9 75. Defendants' discrimination was committed intentionally, in a malicious, fraudu-  
10 lent, and/or oppressive manner, and this entitles plaintiff to punitive damages against  
11 defendants.

12  
13 **EIGHTH CAUSE OF ACTION**

14 **Whistleblower Retaliation**

15 **(Labor Code § 1102.5, et seq.)**

16 **Against All Defendants; and Does 1 to 100, Inclusive**

17 76. The allegations set forth in preceding paragraphs are re-alleged and incorporated  
18 herein by reference.

19 77. At all relevant times, Labor Code section 1102.5 was in effect and was binding  
20 on defendants. This statute prohibits defendants from retaliating against any employee,  
21 including plaintiff, for opposing or actually raising complaints of actual or potential  
22 illegality, for providing information of such potential illegality, because the employee is  
23 believed to have engaged in such conduct, or because the employee may engage in such  
24 conduct. Labor code section 1102.5 (b) prohibits an employer, or any person acting on  
25 behalf of the employer from retaliating against an employee for disclosing information, or  
26 because the employer believes that the employee disclosed or may disclose information,  
27 to a government or law enforcement agency, to a person with authority over the employee  
28 or another employee who has the authority to investigate, discover, or correct the violation

1 or noncompliance, or for providing information to, or testifying before, any public body  
2 conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to  
3 believe that the information discloses a violation of state or federal statute, or a violation  
4 of or noncompliance with a local, state, or federal rule or regulation. Labor Code section  
5 1102.5 (c) further prohibits defendants from retaliating against any employee, including  
6 plaintiff, where the employee refused to participate in activity that would result in a  
7 violation of the law.

8 78. At all relevant times, plaintiff reasonably believed, believes, and therefore alleges  
9 that defendants violated various laws (*i.e.*, statutes, rules, and regulations.) Plaintiff raised  
10 complaints of actual and/or potential illegality of which he had a reasonable belief,  
11 including but not limited to complaints about violations of the FEHA, California  
12 Constitution, the City of West Covina's Municipal Code, California Business and  
13 Professions Code, and Government Code Section 12900 et seq. while he worked for  
14 defendants, and defendants retaliated against him by taking adverse employment actions,  
15 including employment termination, against him.

16 79. As a proximate result of defendants' willful, knowing, and intentional violations  
17 of Labor Code section 1102.5, plaintiff has suffered and continues to suffer humiliation,  
18 emotional distress, and mental and physical pain and anguish, all to his damage in a sum  
19 according to proof.

20 80. As a result of defendants' adverse employment actions against plaintiff, plaintiff  
21 has suffered general and special damages in sums according to proof.

22 81. Defendants' misconduct was committed intentionally, in a malicious, fraudulent,  
23 and/or oppressive manner, and this entitles plaintiff to punitive damages against  
24 defendants.

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**NINTH CAUSE OF ACTION**  
**Violation of the Firefighter Bill of Rights**  
**(Government Code § 3250 et seq.)**

**Against Defendants CWC and WCFD; and Does 1 to 100,**  
**Inclusive**

82. The allegations set forth in preceding paragraphs are re-alleged and incorporated herein by reference.

83. This cause of action is brought pursuant to the California Firefighter's Procedural Bill Of Rights Act ("Firefighter's Act"), section 3260 of the California Government Code mandating that it is unlawful for an employer to deny any firefighter the rights and protections of the Firefighter's Act.

84. At all times mentioned in this complaint, plaintiff was a firefighter as defined by California Government Code Section 3251, entitled to the rights and protections of the Firefighter's Act.

85. At all times mentioned in this complaint, defendants CWCC and WCFD were, and are, a public agency as defined by California Government Code Section 53101, requiring them not to deny plaintiff any of the rights and protections of the Firefighter's Act.

86. In violation of section 3253, Whithorn was not notified of any investigation into him.

87. In violation of section 3254, Whithorn was subjected to punitive action and or threatened with punitive action. Whithorn was removed by defendants CWC and WCFD without "written notice, the reason or reasons for removal, and an opportunity for administrative appeal."

88. In violation of section 3254.5, Whithorn was denied an administrative appeal pursuant to section 11500 et seq. Section 3254.5 of the California Government Code provides that administrative appeals instituted by a firefighter shall be conducted under the rules and provisions of the employer in accordance with the California Administrative



1 Procedure Act.

2 89. In violation of sections 3255 and 3256, Whithorn had adverse comments in his  
3 personnel file without having first read and signed the instrument or an opportunity to  
4 respond.

5 90. Section 3260 of the California Government Code provides for recovery of actual  
6 damages, civil penalties, injunctive relief or other extraordinary relief, and attorney's fees  
7 to remedy violations of the Firefighter's Act.

8 91. As a direct and proximate result of the Defendants' unlawful conduct as alleged  
9 in the complaint, plaintiff suffered substantial losses in employment benefits, including  
10 loss of reputation, lost wages, and job benefits, and expenses incurred in the search for  
11 comparable employment in an amount not less than the jurisdictional minimum of this  
12 court. The precise amounts of the damages are presently unknown and will be proven at  
13 trial. Plaintiff I also claims all amounts there under together with prejudgment interest  
14 pursuant to California Civil Code section 3287 and pursuant to any other provision of law  
15 providing for prejudgment interest.

16 92. As a further direct and proximate result of the Defendants' unlawful conduct,  
17 suffered anguish, humiliation, emotional distress, nervousness, tension, anxiety, and  
18 depression, the extent of which is not fully known at this time, and the amount of damages  
19 caused by defendants' conduct is not yet fully ascertained but in an amount not less than  
20 the jurisdictional minimum of this court. The precise amounts of the damages are presently  
21 unknown and will be proven at trial. Plaintiff also claims all amounts there under together  
22 with prejudgment interest pursuant to California Civil Code section 3287 and pursuant to  
23 any other provision of law providing for prejudgment interest.

24 93. In doing the acts herein alleged, Defendants acted with the intent to injure  
25 plaintiff and plaintiff is therefore entitled to a civil penalty of \$25,000 as provided in  
26 Section 3260 of the California Government Code and reasonable attorney's fees.

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1                                   **TENTH CAUSE OF ACTION**

2                                   **Wrongful Termination in Violation of Public Policy**

3                                   **(FEHA; Labor Code § 1102.5;**

4                                   **Firefighter Bill of Rights; West Covina Municipal Code)**

5                                   **Against Defendants CWC and WCFD; and Does 1 to 100,**

6                                   **Inclusive**

7           94. The allegations set forth in preceding paragraphs are re-alleged and incorporated  
8 herein by reference.

9           95. At all times herein mentioned, the FEHA was in full force and effect and was  
10 binding on Defendants. Discrimination based on disability and age are violations of the  
11 FEHA.

12          96. At all times herein mentioned, Labor Code § 1102.5 was in full force and effect  
13 and was binding on Defendants.

14          97. At all times herein mentioned, the Fire Fighter Bill of Rights contained in  
15 Government Code § 3250 et. seq. was in full force and effect and was binding on  
16 Defendants.

17          98. At all times herein mentioned, the West Covina Municipal Code was in full force  
18 and effect and binding on Defendants.

19          99. Plaintiff complained to Defendants about his harassment, discrimination, as well  
20 as violations of the Fire Fighter Bill of Rights, West Covina Municipal Code, and  
21 California Business and Professions Code.

22          100. On the basis of the above, plaintiff believes and alleges that his age, disability,  
23 and good faith complaints of illegal activity in violation of the FEHA, Fire Fighter Bill of  
24 Rights, ADA, and West Covina Municipal Code were substantial motivating reasons in  
25 Defendants' termination of his employment.

26          101. As a proximate result of Defendants' willful, knowing, and intentional  
27 misconduct, plaintiff has suffered and continues to suffer humiliation, emotional distress,  
28 and mental and physical pain and anguish, all to her damage in a sum according to proof.

1 102. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.  
2 Pursuant to Code of Civil Procedure sections 1021.5 and 1032, *et seq.*, plaintiff is entitled  
3 to recover reasonable attorneys' fees and costs in an amount according to proof.  
4

5 **ELEVENTH CAUSE OF ACTION**  
6 **Intentional Infliction of Emotional Distress**  
7 **(Hughes v. Pair (2009) 46 Cal.4th 1035)**

8 **Against All Defendants; and Does 1 to 100, Inclusive**

9 103. The allegations set forth in preceding paragraphs are re-alleged and incorporated  
10 herein by reference.

11 104. Defendants' discriminatory, harassing, and retaliatory actions against plaintiff  
12 constituted extreme and outrageous misconduct and caused plaintiff severe emotional  
13 distress. Defendants were aware that treating plaintiff in the manner alleged above,  
14 including depriving plaintiff of his livelihood, would devastate plaintiff and cause him  
15 extreme hardship.

16 105. As a proximate result of defendants' extreme and outrageous conduct, plaintiff  
17 has suffered and continues to suffer severe emotional distress. Plaintiff has sustained and  
18 continues to sustain substantial losses of earnings and other employment benefits as a  
19 result of being emotionally distressed.

20 106. As a proximate result of defendants' extreme and outrageous conduct, plaintiff  
21 has suffered and continues to suffer humiliation, emotional distress, and mental and  
22 physical pain and anguish, all to his damage in a sum according to proof.

23 Defendants' misconduct was committed intentionally, in a malicious, fraudulent, and/or  
24 oppressive manner, and this entitles plaintiff to punitive damages.

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1 **TWELTH CAUSE OF ACTION**

2 **Negligent Infliction of Emotional Distress**

3 **Against Defendants; and Does 1 to 100, Inclusive**

4 107. The allegations set forth in preceding paragraphs are re-alleged and incorporated  
5 herein by reference.

6 108. Defendants' discriminatory, harassing, and retaliatory actions against plaintiff  
7 constituted severe and outrageous misconduct and caused plaintiff extreme emotional  
8 distress.

9 109. In treating plaintiff in the manner alleged above, including depriving plaintiff of  
10 his livelihood while he was suffering from an actual, perceived, and/or history of  
11 disability, defendants acted with reckless disregard of the likelihood that their conduct  
12 would devastate plaintiff and cause him extreme hardship.

13 110. As a proximate result of defendants' extreme and outrageous conduct, plaintiff  
14 has suffered and continues to suffer severe emotional distress. Plaintiff has sustained and  
15 continues to sustain substantial losses of earnings and other employment benefits as a  
16 result of being emotionally distressed

17 111. As a proximate result of defendants' extreme and outrageous conduct, plaintiff  
18 has suffered and continues to suffer humiliation, emotional distress, and mental and  
19 physical pain and anguish, all to his damage in a sum according to proof.

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1 **PRAYER**

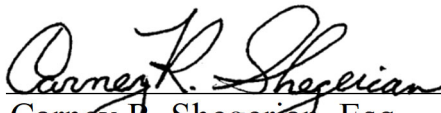
2 WHEREFORE, plaintiff, Larry Whithorn, prays for judgment against defendants as  
3 follows:

- 4 1. For general and special damages according to proof;  
5 2. For exemplary damages, according to proof;  
6 3. For pre-judgment and post-judgment interest on all damages awarded;  
7 4. For reasonable attorneys' fees;  
8 5. For costs of suit incurred;  
9 6. For such other and further relief as the Court may deem just and proper;  
10 7. For declaratory relief.

11  
12 ADDITIONALLY, plaintiff, Larry Whithorn, demands trial of this matter by jury.  
13 The amount demanded exceeds \$25,000.00 (Government Code § 72055).

14  
15 Dated: March 3, 2020

SHEGERIAN & ASSOCIATES, INC.

16  
17 By:   
18 Carney R. Shegerian, Esq.

19 Attorneys for Plaintiff,  
20 LARRY WHITHORN