

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Malcolm Mackey

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BRIAN MURPHY

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

BRIAN MURPHY,

Plaintiff,

v.

CITY OF GLENDALE, a government entity;
CITY OF GLENDALE FIRE
DEPARTMENT, a government entity; and
DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 20STCV29677

COMPLAINT FOR DAMAGES:

**1. RETALIATION IN VIOLATION
OF CALIFORNIA LABOR CODE
§ 1102.5**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, BRIAN MURPHY, and hereby demands a trial by jury, and based on information and belief complains and alleges as follows:

THE PARTIES

1. At all times relevant hereto, Plaintiff BRIAN MURPHY (“Murphy” or “Plaintiff”) was a Firefighter employed with the Glendale Fire Department (“GFD” or “Department”), and was a competent adult.

2. Plaintiff is informed and believes and thereon alleges that, at all times relevant hereto, Defendant CITY OF GLENDALE (“City” or “Defendant”) was a public entity violating laws within the State of California in the County of Los Angeles. At all times pertinent hereto, Defendant City owned, controlled, and operated the firefighting agency known as the GFD.

1 3. Plaintiff is informed and believes and thereupon alleges that Defendants DOES 1
2 through 100, inclusive, and each of them, at all times relevant hereto, were individuals or public,
3 business, and/or other entities whose form is unknown committing torts in and/or engaged in
4 purposeful economic activity within the County of Los Angeles, State of California.

5 4. The true names and capacities of Defendants DOES 1 through 100, and each of
6 them, whether individual, corporate, associate or otherwise, are unknown to Plaintiff at this time,
7 therefore Plaintiff sues said Defendants by such fictitious names. Plaintiff will file DOE
8 amendments, and/or ask leave of court to amend this complaint to assert the true names and
9 capacities of these Defendants when they have been ascertained. Plaintiff is informed and believes,
10 and upon such information and belief alleges, that each Defendant herein designated as a DOE was
11 and is in some manner, negligently, wrongfully, or otherwise, responsible and liable to Plaintiff for
12 the injuries and damages hereinafter alleged, and that Plaintiff's damages as herein alleged were
13 proximately caused by their conduct.

14 5. Plaintiff is informed and believes, and thereon alleges, that at all times material
15 herein the Defendants, and each of them, were the agents, servants, or employees, or ostensible
16 agents, servants, and employees of each other Defendant, and as such, were acting within the
17 course and scope of said agency and employment or ostensible agency and employment, except on
18 those occasions when Defendants were acting as principals, in which case, said Defendants, and
19 each of them, were negligent in the selection, hiring, and use of the other Defendants.

20 6. At all times mentioned herein, each of the Defendants was the co-tortfeasor of each
21 of the other Defendants in doing the things hereinafter alleged.

22 7. Plaintiff is further informed and believes that at all times relevant hereto,
23 Defendants, and each of them, acted in concert and in furtherance of the interests of each other
24 Defendant. The conduct of each Defendant combined and cooperated with the conduct of each of
25 the remaining Defendants so as to cause the herein described incidents and the resulting injuries
26 and damages to Plaintiff.

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1 **VENUE AND JURISDICTION**

2 8. At all relevant times hereto, Plaintiff Murphy was residing in the County of Los
3 Angeles, State of California.

4 9. At all relevant times hereto, the Defendants, and each of them, were residents of the
5 County of Los Angeles, State of California.

6 10. The wrongful conduct alleged against the Defendants, and each of them, occurred in
7 the County of Los Angeles, State of California. At all relevant times hereto, the conduct at issue
8 was part of a continuous and ongoing pattern of behavior.

9 11. This Court is the proper court because the wrongful acts that are the subject of this
10 action occurred here, at least one Defendant now resides in its jurisdictional area, and injury to
11 person or damage to personal property occurred in its jurisdictional area.

12 12. Plaintiff has complied with and/or exhausted any applicable claims statutes and/or
13 administrative and/or internal remedies and/or grievance procedures, and/or is excused from
14 complying therewith. Plaintiff has complied with the claim presentation requirement of California
15 Government Code § 945.4 and § 912.4. Plaintiff filed a timely government claim with the City of
16 Glendale on or about May 26, 2020, which was denied on or about June 10, 2020.

17 **GENERAL ALLEGATIONS**

18 13. At all relevant times to this claim, Plaintiff Sims was a Probationary Battalion Chief
19 of Fire Prevention Bureau within the Glendale Fire Department. Plaintiff was qualified for the
20 positions he held by reason of his education and training. Plaintiff joined the GFD in October 1997
21 as a Firefighter and worked his way up to Fire Captain in 2013. During the course of his
22 employment with the City, Plaintiff Murphy has performed his various responsibilities in an
23 exemplary fashion and otherwise capably performed each and every condition of his employment
24 agreement.

25 **a. Plaintiff's Promoted to Battallion Chief**

26 14. Starting in 2018, Plaintiff served as a move up battalion chief on a number of
27 occasions.

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1 15. On or around March 17, 2019 Plaintiff was promoted from his title of Fire Captain
2 to the position of Battalion Chief, where he would serve a one-year probationary term before
3 permanently being appointed as the Battalion Chief, in or around March 2020.

4 16. On or around September 17, 2019, Plaintiff was provided with a performance
5 evaluation. Plaintiff's overall rating on the September 2019 performance evaluation was "meets
6 standards."

7 **b. The "Preposition Red Flag Warning Event"**

8 17. As the Battalion Chief, Plaintiff was responsible for the Verdugo Communication
9 Center (hereinafter "Verdugo"). Verdugo is responsible for "Area C" which includes Burbank,
10 Glendale, Monrovia, Pasadena, Arcadia, Sierra Madre, San Gabriel, Monterey Park, Alhambra,
11 Montebello, and Hollywood/Burbank airport. The purpose of Verdugo was to receive
12 911/emergency calls and to direct the calls to the appropriate stations within "Area C". The
13 emergency calls include, but are not limited, calls for to medical attention, calls regarding
14 structural fires, and calls regarding auto-collisions. The emergency calls also can include reports of
15 brush and wildfires.

16 18. Depending on the time of the year and the weather and drought conditions, there can
17 be an increased fire danger to the State of California. During "Red Flag Warning," the weather
18 conditions are such that they lead to rapid and dramatic increases in wildfire and brush activity. A
19 Red Flag Warning may last for one or two days or could last several weeks or months. The
20 determination is made on a daily basis. The period of a Red Flag Warning event is known as the
21 "preposition red flag warning event." In order to help combat wildfires, the State of California has
22 agreed to fund local and municipal fire engines, for the purpose of being on call to augment
23 responding agencies in the area. Amongst other costs, the State funding pays for the per-day cost of
24 the fire apparatus, the administrative costs, and the personnel costs.

25 19. Each municipal entity can choose whether to apply for State funding during a
26 preposition red flag warning event. If the municipal or local agency wants to participate, the
27 municipal or local agency needs to designate a fire apparatus and apply to the State for funding.
28 Once the State approves the application, the designated apparatus is funded by the State, and must

1 remain on call for the purpose of augmenting local agencies to combat wildfires and brushfires
2 during the pendency preposition period. Because the red flag warnings are evaluated on a daily
3 basis, the municipal or local agencies apply for State funding on a daily basis during the pendency
4 of the preposition period.

5 20. On or around October 22, 2019, it was determined that there was going to be a
6 “preposition Red Flag Warning event” for Area C starting on October 23, 2019. Ultimately, this
7 preposition period ended up lasting until November 2, 2019.

8 21. On or around October 22, 2019, Plaintiff sent an email to the Area C fire
9 departments to determine whether any of the fire departments wanted to provide a fire apparatus to
10 participate in the State funding for the preposition period. Without explanation, City of Glendale
11 Fire Chief Silvio Lanzas (“Chief Lanzas”) directed Plaintiff to not inquire as to whether other
12 agencies wanted to participate in the State funded program. Specifically, Chief Lanzas told
13 Plaintiff, “Do not ask other agencies if they want to participate.”

14 22. Plaintiff proceeded and applied for State funding and designated a City of Glendale
15 type three fire engine as a participating fire apparatus. The application was approved. At that time,
16 the type three fire engine was funded by the State of California, and the designated purpose of the
17 type three fire engine was to augment wildfire and brushfire calls in Area C during the pendency of
18 the preposition period. Moreover, because the type three fire engine was funded by the State during
19 the preposition period, the type three fire engine was not meant for routine calls in the City of
20 Glendale. In addition to the City of Glendale type three engine, the City of Monrovia designated a
21 type one engine to participate in the State funded program during the preposition period starting on
22 October 23, 2019.

23 **c. Plaintiff Engages in Protected Activity**

24 23. On or around October 28, 2019, Chief Lanzas directed the Plaintiff to make the
25 participating fire engines (the type three engine from City of Glendale and type one engine from
26 the City of Monrovia) available for routine calls, which fell outside the purpose of which those
27 engines were being funded by the State during the preposition period.
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1 24. Plaintiff had a reasonable belief that the directive violated State and local rules,
2 regulations, and laws. Plaintiff engaged in protected activity when Plaintiff reported the activity to
3 Chief Lanzas and opposed Chief Lanzas' illegal directive. Specifically, Plaintiff reported to and
4 opposed Chief Lanza's directive when he informed Chief Lanzas that because the fire engines were
5 State funded, the State dictates what the fire engine can be used for. During the preposition period,
6 the fire engines' purpose of being funded was meant to augment wildfire and brushfire response. In
7 other words, making the fire engines available for routine calls meant the City of Glendale would
8 be misappropriating State funds.

9 **d. Plaintiff Suffers Adverse Employment Actions in Retaliation for Protected**
10 **Activity**

11 25. In retaliation for engaging in protected activity for reporting and opposing Chief
12 Lanza's illegal direction, Chief Lanza immediately reprimanded Plaintiff. Chief Lanza yelled at
13 Plaintiff and stated, "You work for me! This is the most pissed off I have been since I have been
14 here. Do you really think the State is going to come after us for using their rig if we are short!?"

15 26. Shortly thereafter, on or around December 9, 2019, in further retaliation for
16 opposing Chief Lanzas' illegal directive, Chief Lanzas demoted Plaintiff back to the Fire Captain
17 position. As a result, Plaintiff's career has been materially and adversely affected.

18 27. On or around February 10, 2020, Plaintiff again engaged in protected activity when
19 he reported the retaliation to the City of Glendale City Manager. In further retaliation, City of
20 Glendale conducted a sham investigation to sweep Chief Lanza's illegal activity under the rug. On
21 or around March 30, 2020, the City of Glendale's retaliation continued when City of Glendale
22 authorized and ratified Chief Lanza's retaliatory conduct and confirmed Plaintiff's demotion when
23 the City's sham investigation concluded.

24 28. On or around May 26, 2020 and July 7, 2020, in further retaliation, the City
25 removed Plaintiff from two special projects upon Plaintiff's demotion, and denied allowing
26 Plaintiff to re-join this projects. Plaintiff was an essential part of both these special projects prior to
27 and during his probationary period as Batallion Chief.

1 29. The City's retaliation is continuing on an ongoing basis, the extent of which is not
2 presently known. Plaintiff's career is now permanently and irreparably damaged as a result of
3 being demoted from the Battalion Chief position.

4 30. Defendants have created, ratified, condoned, and failed to remedy the unlawful
5 conduct. Such retaliation is known by all Defendants, throughout the chain of command and the
6 Department, and has been carried out and/or ratified by Defendants, or Defendants have otherwise
7 failed to take steps to prevent or undo the retaliation, or both. This is a continuing and ongoing
8 violation and therefore subject to the continuing violation doctrine.

9 31. Plaintiff has suffered both general and special damages in the past and present and
10 will continue to suffer such damages in the future for an unknown period of time. Plaintiff has also
11 suffered and continues to suffer losses in earnings and other employment benefits, as well as past
12 and future non-economic injury. The retaliation has caused damage to Plaintiff's reputation, his
13 ability to promote, his ability to be selected for other units, his ability to work, will cause him to
14 have to take a different retirement path, including possibly forcing him to leave the Department,
15 has caused him to lose pay and future pay opportunities, and will adversely affect his income and
16 other benefits. Plaintiff's damages are continuing and, in an amount, not yet determined, but in
17 excess of \$25,000.

18 32. Plaintiff has also suffered extensive general damages in the form of anxiety,
19 anguish, and mental suffering. Plaintiff's damages are continuing and in an amount not yet
20 determined, but in excess of \$25,000.

21 33. The conduct of Defendants, and each of them, was a violation of Plaintiff's rights,
22 as described above, as well as his rights under both state and federal law, including but not limited
23 to the Firefighter's Procedural Bill of Rights Act (CAL. GOV'T C. §§ 3250, *et seq.*) and California
24 Labor Code § 1102.5. The wrongful conduct of Defendants, and each of them, is continuing and
25 ongoing as of the present date

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1 **FIRST CAUSE OF ACTION**

2 **BY PLAINTIFF AGAINST ALL DEFENDANTS**

3 VIOLATION OF CALIFORNIA LABOR CODE SECTION 1102.5

4 34. Plaintiff re-alleges and incorporates by reference each and every allegation
5 contained in paragraphs 1–33 of this complaint as though fully set forth herein again.

6 35. At all times herein mentioned, California Labor Code section 1102.5 was in full
7 force and effect and was binding on the Defendants, and each of them.

8 36. Defendants, and each of them, made, adopted, and/or enforced rules, regulations,
9 and/or policies designed to prevent employees from disclosing information to a government or law
10 enforcement agency, which Plaintiff had reasonable cause to believe disclosed violations of state or
11 federal statutes, or state or federal rules and regulations, as identified herein.

12 37. All of the complaints and disclosures of violation of law mentioned above were
13 made by Plaintiff to the Glendale Fire Department, and Plaintiff had reasonable cause to believe
14 that the allegations disclosed violations of state or federal statutes, or state or federal rules and
15 regulations, as identified herein.

16 38. Defendants, and each of them, retaliated against Plaintiff for disclosing information
17 to the GFD and/or refusing to engage in the illegal activity, which the Plaintiff had reasonable
18 cause to believe disclosed violations of state or federal statutes, or violations or noncompliance
19 with state or federal rules or regulations, as identified herein.

20 39. As a direct, foreseeable and proximate result of reporting such misconduct and
21 testifying honestly about such misconduct, Plaintiff was subject to adverse employment actions
22 including but not limited to: being demoted in rank from Battalion Chief to Fire Captain, having a
23 sham investigation conducted against him, denied being able to re-join special projects that
24 Plaintiff was part of prior to and during his probationary time as Battalion Chief, being relieved of
25 his preferable position, and damage to his reputation.

26 40. A motivating factor for the Defendants to engage in the foregoing adverse
27 employment actions against Plaintiff was to retaliate for the Plaintiff's refusal to engage in illegal
28 activity and his engaging in the protected activities of disclosing information to the City of

1 Glendale and the Glendale Fire Department, which Plaintiff had reasonable cause to believe
2 disclosed violations of state or federal statutes, or violations or noncompliance with state or federal
3 rules or regulations, as identified herein.

4 41. Defendants, and each of them, allowed, permitted, condoned, ratified, and/or
5 enabled the retaliation and/or other wrongful conduct as described herein.

6 42. As a legal result of the above-described conduct of Defendants, and each of them,
7 Plaintiff has sustained and will continue to sustain physical, mental, and emotional injuries, pain,
8 distress, suffering, anguish, fright, nervousness, grief, anxiety, worry, shame, mortification, injured
9 feelings, mental suffering, shock, humiliation, and indignity, as well as other unpleasant physical,
10 mental, and emotional reactions, damages to good name, reputation, standing in the community,
11 and other non-economic damages.

12 43. As a further legal result of the above-described conduct of Defendants, and each of
13 them, Plaintiff was required, and/or in the future may be required, to engage the services of health
14 care providers, and incurred expenses for medicines, health care appliances, modalities, and/or
15 other related expenses in a sum to be ascertained according to proof.

16 44. As a further legal result of the above-described conduct of Defendants, and each of
17 them, Plaintiff was and/or will be hindered, prevented, and/or precluded from performing Plaintiff's
18 usual activities, including attempting to promote or transfer, causing the Plaintiff to sustain
19 damages for loss of income, wages, earnings, and earning capacity, and other economic damages,
20 in an amount to be ascertained according to proof. Plaintiff claims such amount as damages
21 together with prejudgment interest pursuant to California Civil Code section 3287 and/or any other
22 provision of law providing for prejudgment interest.

23 45. As a further legal result of the above-described conduct of Defendants, and each of
24 them, Plaintiff suffered incidental, consequential, and/or special damages, in an amount according
25 to proof.

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1 46. As a further legal result of the above-described conduct of Defendants, and each of
2 them, Plaintiff has and will continue to incur attorneys' fees and costs in an amount according to
3 proof.

4 47. Finally, as a direct and proximate result of the aforesaid unlawful acts of
5 Defendants, and each of them, Plaintiff suffered stress-related health consequences. Plaintiff
6 claims general damages for such health problems in an amount to be proven at time of trial.
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PRAYER

WHEREFORE, Plaintiff seeks judgment against all Defendants, and each of them, on all Causes of Action for:

1. Physical, mental, and emotional injuries, pain, distress, suffering, anguish, fright, nervousness, grief, anxiety, worry, shame, mortification, injured feelings, shock, humiliation and indignity, as well as other unpleasant physical, mental, and emotional reactions, damages to reputation, and other non-economic damages, in a sum to be ascertained according to proof;
2. Health care, services, supplies, medicines, health care appliances, modalities, and other related expenses in a sum to be ascertained according to proof;
3. Loss of wages, income, earnings, earning capacity, support, domestic services, benefits, and other economic damages in a sum to be ascertained according to proof;
4. Other actual, consequential, and/or incidental damages in a sum to be ascertained according to proof;
5. Attorney fees and costs of suit pursuant to statute;
6. Costs of suit herein incurred;
7. Pre-judgment interest; and
8. Such other and further relief as the Court may deem just and proper.

Dated: August 5, 2020

McNICHOLAS & McNICHOLAS, LLP

By: _____


Patrick McNicholas
Michael J. Kent
Attorneys for Plaintiff
Brian Murphy

DEMAND FOR JURY TRIAL

Plaintiff Brian Murphy hereby demands a jury trial.

Dated: August 5, 2020

McNICHOLAS & McNICHOLAS, LLP

By: _____



Patrick McNicholas
Michael J. Kent
Attorneys for Plaintiff
Brian Murphy