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11

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14

15 JUDON CHERRY,

16 Plaintiff,

17 v.

18 CONTRA COSTA COUNTY FIRE
19 PROTECTION DISTRICT; SCOTT
20 VALENCIA; LON GOETSCH; CHARLES
"CHUCK" STARK; and DOES 1 through 50,
inclusive,

21 Defendants.
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Case No. 4:22-cv-2748

**COMPLAINT FOR DAMAGES,
EQUITABLE, AND/OR INJUNCTIVE
RELIEF**

RACIAL DISCRIMINATION- FEHA;

RACIAL HARASSMENT-FEHA;

FAILURE TO PREVENT-FEHA;

**RETALIATION FOR ENGAGING IN
PROTECTED ACTIVITY-FEHA;**

**VIOLATION OF 42 U.S.C. § 2000e
(TITLE VII OF THE 1964 CIVIL
RIGHTS ACT);**

VIOLATION OF 42 U.S.C. § 1983;

**VIOLATION OF 42 U.S.C. § 1981
(EQUAL RIGHTS);**

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**VIOLATION OF CALIFORNIA
LABOR CODE § 1102.5;**

**NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS;**

**INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS;**

**WRONGFUL CONSTRUCTIVE
TERMINATION IN VIOLATION OF
PUBLIC POLICY;**

**VIOLATION OF THE FAMILY
MEDICAL LEAVE ACT (FMLA);**

**VIOLATION OF THE CALIFORNIA
FAMILY RIGHTS ACT (CFRA)**

JURY TRIAL DEMANDED

Plaintiff JUDON CHERRY complains and alleges as follows:

PARTIES AND JURISDICTION

1. Plaintiff JUDON CHERRY (“Plaintiff”) is, and at all relevant times hereto, has been a resident of the State of California.

2. Plaintiff is informed and believes and thereby alleges that Defendant CONTRA COSTA COUNTY FIRE PROTECTION DISTRICT (“Defendant” or “CCCFPD”) is and at all relevant times hereto, was a public entity that operated in the State of California, in this judicial district, within the territory of the Northern District of California, Oakland Division.

3. Plaintiff is informed and believes and thereby alleges that Defendant SCOTT VALENCIA (“Valencia” or “Defendant”) is an individual whose residence is located in the State of California. Defendant Valencia was a supervisor and/or managerial employee of Defendant CCCFPD. For purposes of the cause of action under the Civil Rights Act, Defendant Valencia is being sued in his official and/or individual capacity acting under color of law.

1 4. Plaintiff is informed and believes and thereby alleges that Defendant LON
2 GOETSCH (“Goetsch” or “Defendant”) is an individual whose residence is located in the State
3 of California. Defendant Goetsch was a supervisor and/or managerial employee of Defendant
4 CCCFPD. For purposes of the cause of action under the Civil Rights Act, Defendant Goetsch is
5 being sued in his official and/or individual capacity acting under color of law.

6 5. Plaintiff is informed and believes and thereby alleges that Defendant CHARLES
7 “CHUCK” STARK (“Stark” or “Defendant”) is an individual whose residence is located in the
8 State of California. Defendant Stark was a supervisor and/or managerial employee of Defendant
9 CCCFPD. For purposes of the cause of action under the Civil Rights Act, Defendant Stark is
10 being sued in his official and/or individual capacity acting under color of law.

11 6. This Court has jurisdiction and venue over this action in that Defendant CCCFPD
12 employed Plaintiff within this judicial district in the State of California. This Court has subject
13 matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 in that Plaintiff is asserting
14 federal claims. This Court has supplemental jurisdiction over any state law claims, in that they
15 arose from the same common nucleus of operative facts as the federal claims.

16 7. Plaintiff has exhausted all administrative remedies prior to filing this action,
17 including obtaining a Right to Sue Notice from the California Department of Fair Employment
18 and Housing. Plaintiff also timely submitted a public entity claim, pursuant to the California
19 Government Code, on October 8, 2021, which was rejected by Defendants on November 9, 2021.

20 8. Unless otherwise indicated as acting in individual capacity, Plaintiff is informed
21 and believes, and thereby alleges that each of the defendants herein were at all times relevant
22 hereto, the agents, representatives, servants and employees of the remaining defendants, and were
23 acting at least in part within the course and scope of such relationship, and that the wrongful acts
24 alleged herein were committed by such defendants, and each of them.

25 9. Plaintiff does not know the true names and capacities of Defendants sued herein as
26 DOES 1 through 50, and therefore sues these defendants by fictitious names. Plaintiff will amend
27 this complaint to state the true names and capacities when ascertained. Plaintiff is informed and
28 believes and thereon alleges that each of the fictitiously named defendants is responsible in some

1 manner for the occurrences and damages alleged herein, and that Plaintiff's damages as
2 hereinafter set forth were proximately caused by said defendants.

3 **FACTUAL BACKGROUND**

4 10. On or about April 21, 2021, Plaintiff was unfairly demoted from his probationary
5 position as Fire Captain. Plaintiff's demotion was preceded by a Probationary Testing and
6 Evaluation process that violated anti-discrimination laws and the CCCFPD's own policies.
7 Namely, CCCFPD, their employees, agents, representatives, and contractors discriminated
8 against Plaintiff because of his race, created a hostile work environment, and retaliated against
9 him when he made formal and informal complaints about racism within the department.
10 CCCFPD's discriminatory conduct culminated with the orchestrated failing and demotion of
11 Plaintiff following the Fire Captain evaluation.

12 **Plaintiff's experience and credentials.**

13 11. Plaintiff, JuDon Cherry, an African American male, began his employment with
14 CCCFPD as a Fire Fighter in or around 2004. In fact, he was recruited from another fire
15 department in an apparent effort of increase diversity in a white male-dominated department. For
16 17 years, Plaintiff has been an outstanding Fire Fighter with an excellent employment record. He
17 also built a reputation as an advocate for equity and fairness within the department. His
18 colleagues at CCCFPD who experienced unfair treatment would often seek Plaintiff's advice and
19 support.

20 12. Plaintiff has always diligently and professionally performed his duties for
21 CCCFPD throughout his tenure. He was promoted to Fire Engineer Medic in 2010, and to Fire
22 Captain in 2020. Additionally, Plaintiff was specially-appointed by the Chief of CCCFPD to lead
23 and direct several anti-bias initiatives within the department.

24 **Defendant's pattern and practice of failing minorities.**

25 13. As early as 2015, Plaintiff began complaining about the department's history of
26 failing minority group members (African Americans, Asians, and Women) on various job hiring
27 and promotional exams. Plaintiff addressed his concerns with the Fire Chief. This led to Chief
28 Carmen appointing Plaintiff to lead the Recruitment Initiatives to explore the disparities, and to

1 promote more equitable hiring and promotional practices. Plaintiff's work in the areas of
2 diversity, equity, and inclusion was generally not well-received by the majority of his white
3 colleagues in the department.

4 14. In 2016, Plaintiff was publicly reprimanded and humiliated by Battalion Chief
5 Tom Oakley. Plaintiff was set to attend rescue "LARRO" training with his team, but he had a
6 serious family emergency on the morning of, and was not able to attend the training. Although
7 Tom Oakley was aware of Plaintiff's family emergency, that Plaintiff was already LARRO-
8 certified, and that this training was therefore optional, Tom Oakley still berated Plaintiff in front
9 of Plaintiff's subordinates with the intent to undermine his authority in front of his team. In
10 subsequent email correspondence, Tom Oakley relayed that Plaintiff would no longer be able to
11 attend any other federally-funded trainings.

12 15. In October 2017, Plaintiff complained to CCCFPD Operations Chief Lon Goetsch
13 and Human Resources Director Denise Cannon that the "No EBT!" (debit card for food stamps)
14 signs that were plastered around Station 81 (the Antioch Fire Station) were offensive, and created
15 a hostile work environment. The station captains asked to take down the items, but this was not
16 well-received by the station members, and Plaintiff began to notice race-based micro-aggressions
17 from them.

18 16. In 2017, Plaintiff was asked to provide a statement as part of a department-wide
19 racial disparity investigation. Plaintiff reported to Chief Edward Gonzalez, Captain Nick Barnes,
20 and Union President Vince Wells that a pattern and practice of racial discrimination existed in the
21 Department, that the Department needed to undergo some type of unconscious bias training, and
22 that Plaintiff feared retaliation for discussing his candid experiences with racial bias and
23 discrimination in the department. Once the investigation was completed, Plaintiff requested a
24 copy of the findings report. CCCFPD refused to provide Plaintiff with a copy of the findings
25 without a formal request by an attorney. Days after Plaintiff's request for the findings report, he
26 noticed that all of his department emails had mysteriously disappeared.

27 17. In October 2017, the Department Plaintiff's bedding was ripped up and
28 vandalized. Plaintiff complained to Chief Carmen and other chiefs/supervisors, and made a

1 formal complaint in the form of a letter. CCCFPD failed to properly investigate the incident, and
2 no disciplinary action was ever taken against the perpetrators.

3 18. In May 2018, Plaintiff took approximately 5 months of medical leave for Post-
4 Traumatic Stress Disorder resulting from multiple confrontations regarding racial indifferences
5 between Plaintiff and CCCFPD. Plaintiff was under the care of a clinical psychologist provided
6 by CCCFPD. He returned to work in or about October 2018.

7 19. On January 27, 2019, Plaintiff met with Chief Carmen, Chief Bouchard, and
8 Defendant Goetsch to discuss the lack of diversity and inclusion of minorities in the Fire
9 Department.

10 20. On January 29, 2020, Plaintiff raised the hiring and promotion disparity issue
11 again during a meeting with several chiefs/supervisors (Chief Lewis Broushard, Chief Lon
12 Goetsch, Chief Michael Quesada, Chief Charles “Chuck” Stark, Chief McAllister, and Captain
13 Tom Waller). The discussion was about how minorities were failing exams and probations and
14 not getting hired. Plaintiff told them that no one wants to work for CCCFPD because of its harsh
15 treatment towards minorities. This resulted in a heated discussion, especially by Chief Quesada
16 towards Captain Waller, an African-American. Plaintiff told the group that African Americans do
17 not want to work for the Department because they are known for failing minority firefighters,
18 who would rather go to Oakland where they are treated fairly and considered for promotions.

19 **The Diablo Fools.**

20 21. Plaintiff is informed and believes that Defendant CCCFPD incorporates, relies
21 upon, and contains an exclusive organization named the Diablo Fraternal Order Of Leatherheads
22 (“Diablo Fools”). Plaintiff is further informed and believes that the Diablo Fools was founded in
23 1995 in Contra Costa County and is comprised exclusively of Caucasian male fire fighters who
24 refer to themselves as the “Brotherhood.” The Diablo Fools socialize together and conduct
25 private fire-fighting training programs in which they instruct other white male fire fighters on
26 particular strategies for testing, fighting fires and operating equipment. Members of the Diablo
27 Fools follow unwritten policies which are not accessible to Plaintiff and other African-American
28 fire fighters, including their own jargon and language, which they incorporate into their daily

1 work routines for Defendant CCCFPD. Plaintiff and other minorities are at a distinct
2 disadvantage and are frequently criticized on the job when they are unable to understand or
3 perform techniques and procedures implemented by members of the Diablo Fools.

4 **Plaintiff's application for Fire Captain.**

5 22. In or around early 2020, Plaintiff applied for a Fire Captain position at CCCFPD.
6 He did so despite warnings from other African American and Asian individuals who previously
7 tested for the Captain position and were forced to endure severe and pervasive harassment that
8 their white counterparts were not subjected to. Plaintiff was provisionally promoted to Fire
9 Captain in July 2020, subject to passing written and performance examinations over a 10-month
10 probationary period.

11 23. During Plaintiff's probationary period, his assigned supervisor, Scott Valencia
12 (white male), frequently targeted and singled out Plaintiff with excessive criticism while on calls,
13 in front of Plaintiff's subordinates. Plaintiff's white counterparts who were also on probation
14 assignment were not ridiculed for identical conduct. Plaintiff confronted Defendant Valencia
15 about the harassment, and requested that Valencia refrain from berating and belittling Plaintiff
16 while on calls with his team. However, the harassment worsened after his complaint and
17 continued throughout his entire probationary period.

18 24. Therefore, Plaintiff reported the abuse to Training Captain Noel Luiz. Captain
19 Luiz encouraged Plaintiff to make a formal complaint with the Training Chief, Lon Goetsch. On
20 or around November 23, 2020, Plaintiff reported Scott Valencia's discriminatory targeting to
21 Training Chief Lon Goetsch. In response to the complaints, Defendant Goetsch promised
22 Plaintiff that he would be reassigned to a female Battalion Chief, however, the reassignment
23 never occurred. Instead, on Plaintiff's next rotation one week later, in retaliation for Plaintiff's
24 complaints, Plaintiff was summoned to report for a drill led by Defendant Valencia and in front of
25 Defendant Charles "Chuck" Stark, the Assistant Operations Chief. The drill was designed solely
26 for Plaintiff to lead four engine companies to conduct different fire attacking scenarios.
27 Defendants provided Plaintiff no reasonable notice for this drill, and set him up to fail in front of
28 upper management. Plaintiff completed the drill and was told he passed the drill.

1 25. CCCFPD continued to subject Plaintiff to discriminatory supervision and training,
2 which later proved detrimental to Plaintiff's health and his success during the performance
3 evaluations. Noel Luiz stated during the probationary period that he felt uncomfortable assisting
4 Plaintiff for fear of retaliation against himself as well.

5 26. As a result of the pervasive harassment from Defendant Valencia and other
6 chiefs/supervisors, and CCCFPD's ratification thereof, Plaintiff was forced to pause his probation
7 and take medical leave from December 2020 – March 2021.

8 27. When Plaintiff returned from leave in late March 2021, he found his locker had
9 been broken into and his personal belongings had been removed. Plaintiff later learned that
10 Defendant Valencia instructed Plaintiff's colleagues to empty his locker without his consent.
11 Prior to Plaintiff's return, he expressed to Noel Luiz that he did not want to go back to work
12 under Defendant Valencia, and that he feared that Valencia would intentionally fail Plaintiff on
13 the exam. Noel Luiz stated to Plaintiff that the test was not a failure test, and was just for
14 Plaintiff's educational purposes. Training Chief Lon Goetsch was informed of Plaintiff's
15 concerns, and nothing was done.

16 **Plaintiff's injury and examination in April 2021.**

17 28. On April 14, 2021, upon Plaintiff's return from medical leave, and while under
18 extreme duress and distress, Plaintiff fell from second floor steps, injured his head and arm, and
19 sustained a concussion while completing a drill during a performance examination for Scott
20 Valencia. Plaintiff experienced a brief loss of consciousness and orientation inside the building
21 and had to be escorted out by the firefighters.

22 29. Plaintiff expressed discomfort, given the vision impairment he was experiencing.
23 Instead of offering medical attention to Plaintiff, Defendant Valencia ordered Plaintiff to
24 complete the drill. The testing continued without medical attention. Thus, the testing conditions
25 were such that Plaintiff was set up to fail.

26 30. During the written part of the evaluation that same day, Plaintiff was placed in a
27 testing room with a single poster hanging on the wall directly in front of him. The poster was of
28 the television character Cosmo Kramer from the show Seinfeld. Plaintiff had previously

1 explained to CCCFPD personnel that the actor who played Cosmo Kramer (Michael Richards)
2 was well known for publicly making several racist statements referencing slavery and calling
3 people the N-word. Plaintiff had previously made a formal complaint to have the poster removed.
4 However, it reappeared on the day he was scheduled to take his written exam and practical exam,
5 and it was placed in Plaintiff's direct line of vision.

6 31. Plaintiff was also falsely accused of cheating on a practical exam as pretext for
7 CCCFPD's discriminatory intent to fail Plaintiff. The accusation of cheating occurred on the start
8 of the practical exam day. Scott Valencia decided to alter and manipulate the testing standards in
9 an attempt to confuse Plaintiff. Plaintiff was feeling deep anxiety and anger toward Scott
10 Valencia during the testing. These circumstances constituted a clear violation of the testing
11 performance policy.

12 32. On April 14, 2021, Plaintiff submitted a request for FMLA leave for the head
13 injury and concussion he suffered during training earlier in the day. CCCFPD knew of Plaintiff's
14 injuries and received a claim for them on April 19, 2021, and Plaintiff began his medical leave.

15 **Plaintiff was demoted to Fire Engineer.**

16 33. On April 21, 2021, Defendants CCCFPD, Goetsch, and Stark, as decision makers,
17 notified Plaintiff that he was being rejected for the Captain position, and was being demoted back
18 to Fire Engineer.

19 34. As a direct result on CCCFPD's pervasive and severe harassment and
20 discrimination, Plaintiff has experienced PTSD and severe anxiety. Plaintiff now remains under
21 the close supervision and treatment of a mental health professional.

22 **FIRST CAUSE OF ACTION**

23 **Racial Discrimination**

24 **Violation of FEHA, Govt. Code § 12900, et seq.**

25 **Against Defendant CCCFPD**

26 35. Plaintiff realleges and incorporates by reference the previous paragraphs of this
27 Complaint as though fully set forth herein.

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1 36. Defendant's conduct violated FEHA, Government Code § 12900, et. seq., and
2 Defendant committed unlawful employment practices, including the following bases for liability:

- 3 a. Discharging, barring, refusing to promote, select, and/or otherwise discriminating
4 against plaintiff, on the basis of Plaintiff's race, national origin, and/or color, in
5 violation of Government Code § 12940(a);
6 b. Harassing Plaintiff and/or creating a hostile work environment in whole or in part on
7 the basis of Plaintiff's race, national origin, and/or color, in violation of Government
8 Code § 12940(j);
9 c. Failing to take all reasonable steps to prevent discrimination and harassment based on
10 race, in violation of Government Code § 12940(k);
11 d. Retaliating against Plaintiff for seeking to exercise rights guaranteed under FEHA
12 and/or opposing Defendant's failure to provide such rights, in violation of
13 Government Code § 12940(h).

14 37. As a proximate result of Defendant's willful and intentional discrimination against
15 Plaintiff, plaintiff has suffered harm and continues to sustain substantial losses of earnings and
16 other employment benefits, and Plaintiff has suffered damages in an amount to be proven at trial.

17 38. As a proximate result of Defendant's willful and intentional discrimination against
18 Plaintiff, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and
19 physical and mental pain and anguish, in an amount to be proven at trial.

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

23 **SECOND CAUSE OF ACTION**

24 **Racial Harassment**

25 **Violation of FEHA, Govt. § 12940 et seq.**

26 **Against All Defendants**

27 40. Plaintiff realleges and incorporates the paragraphs previously referenced within
28 this Complaint.

1 41. Defendants' conduct, as alleged herein, violated FEHA, Government Code §
2 12900, et seq., and Defendants committed unlawful employment practices, including the
3 following bases for liability:

4 a. Harassing Plaintiff and/or creating a hostile work environment, based in whole or in
5 part on Plaintiff's race, national origin, and/or color, in violation of Government Code
6 § 12940(j);

7 b. Failing to take all reasonable steps to prevent discrimination, harassment, and
8 retaliation based on race, national origin, and/or color, in violation of Government
9 Code § 12940(k).

10 42. As a proximate result of Defendants' willful, knowing, and intentional harassment
11 of Plaintiff, Plaintiff has sustained and continues to sustain substantial losses of earnings and
12 other employment benefits.

13 43. As a proximate result of Defendant's willful and intentional discrimination against
14 Plaintiff, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and
15 physical and mental pain and anguish, in an amount to be proven at trial.

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

19 45. The individual Defendants' misconduct was committed intentionally, in a
20 malicious, despicable, oppressive, fraudulent manner, entitling Plaintiff to punitive damages
21 against the individual Defendants.

22 **THIRD CAUSE OF ACTION**

23 **Failure to Prevent Discrimination, Harassment, and Retaliation**

24 **Violation of FEHA, Govt. Code § 12940(k)**

25 **Against Defendant CCCFD**

26 46. Plaintiff realleges and incorporates the paragraphs previously referenced within
27 this Complaint.
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1 47. At all times herein, FEHA, Government Code § 12940(k), was in full force and
2 effect and was binding on Defendant. It is an unlawful employment practice in California for an
3 employer “to fail to take all reasonable steps necessary to prevent discrimination and harassment
4 from occurring.”

5 48. During the course of Plaintiff’s employment, Defendant failed to prevent its
6 employees from engaging in intentional actions that resulted in plaintiff being treated less
7 favorably because of Plaintiff’s protected status (i.e., his race, national origin, and/or color).

8 49. During the course of Plaintiff’s employment, Defendant failed to prevent its
9 employees from engaging in unjustified employment practices against employees in such
10 protected classes.

11 50. During the course of Plaintiff’s employment, Defendant failed to prevent a pattern
12 and practice by its employees of intentional discrimination and harassment on the bases of race,
13 national origin, and/or color.

14 51. Plaintiff believes and on that basis alleges that his race, national origin, color,
15 and/or protected status and/or protected activity were substantial motivating factors in
16 Defendant’s employees discrimination against and harassment of Plaintiff.

17 52. As a proximate result of Defendants’ willful, knowing, and intentional harassment
18 of Plaintiff, Plaintiff has sustained and continues to sustain substantial losses of earnings and
19 other employment benefits.

20 53. As a proximate result of Defendant’s willful and intentional discrimination against
21 Plaintiff, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and
22 physical and mental pain and anguish, in an amount to be proven at trial.

23 54. Plaintiff has incurred and continues to incur legal expenses and attorneys’ fees.
24 Pursuant to Government Code section 12965(b), Plaintiff is entitled to recover reasonable
25 attorneys’ fees and costs in an amount according to proof.
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FOURTH CAUSE OF ACTION

Retaliation for Engaging in Protected Activity

Violation of FEHA, Govt. Code § 12900, et seq.

Against Defendant CCCFPD

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5 55. Plaintiff realleges and incorporates the paragraphs previously referenced within
6 this Complaint.

7 56. Plaintiff's complaints to Defendant about racial harassment, and/or other
8 characteristics protected by FEHA, Government Code § 12900, et seq., were motivating factors in
9 Defendant's decision not to retain, hire, or otherwise employ Plaintiff in the Fire Captain position
10 and/or to take other adverse employment action, including constructive termination, against
11 Plaintiff.

12 57. Defendant CCCFPD failed to take all reasonable steps to prevent harassment and
13 discrimination as described above. Defendant knew or should have known that its employees
14 were engaged in racially offensive behavior in the past and failed to stop it.

15 58. Despite being on notice of Defendant's employees' propensity to engage in
16 harassing conduct, Defendant failed to act to prevent employees from harassing Plaintiff.

17 59. Defendant also failed to enact an anti-discrimination policy and/or failed to
18 distribute it appropriately and failed to effectively train its employees on racial harassment or
19 discrimination.

20 60. As a result of Defendant's violations of the FEHA, Plaintiff suffered harm as
21 described herein.

22 61. As a proximate result of Defendants' willful, knowing, and intentional harassment
23 of Plaintiff, Plaintiff has sustained and continues to sustain substantial losses of earnings and
24 other employment benefits.

25 62. As a proximate result of Defendant's willful and intentional discrimination against
26 Plaintiff, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and
27 physical and mental pain and anguish, in an amount to be proven at trial.
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1 conscious disregard of the risk of severe emotional harm to Plaintiff and with the intent to injure
2 Plaintiff, constituting oppression, fraud, and malice under California Civil Code §3294, entitling
3 Plaintiff to punitive damages against these Defendants only.

4 **SEVENTH CAUSE OF ACTION**

5 **Violations of 42 U.S.C. § 1981**

6 **Against All Defendants**

7 78. Plaintiff realleges and incorporates by reference the previous paragraphs of this
8 Complaint as though fully set forth herein

9 79. As an African-American man Plaintiff is a member of a protected class. At all
10 relevant times, Plaintiff was in a contractual relationship with Defendant CCCFPD within the
11 meaning of 42 U.S.C. § 1981, as amended.

12 80. During the course of Plaintiff's employment, Defendants violated Plaintiff's rights by
13 depriving him of his right to the enjoyment of all benefits, privileges, terms, and conditions of his
14 employment contract in violation of 42 U.S.C § 1981(b).

15 81. CCCFPD's employees and supervisors subjected Plaintiff and others to racial
16 harassment, racial discrimination, and a racially hostile work environment, resulting in an
17 economic loss and end to Plaintiff's employment relationship with CCCFPD.

18 82. Defendant failed to investigate and prevent incidents of racial harassment, despite
19 numerous reports and complaints, thereby evidencing a pattern and practice of racial
20 discrimination and harassment.

21 83. Defendants retaliated against Plaintiff for complaining of a hostile work environment
22 by berating and reprimanding Plaintiff, relying on and manipulating an examination to have a
23 discriminatory outcome, approving Plaintiff's demotion from Fire Captain to Fire Engineer, and
24 making the work environment so intolerable that Plaintiff had no choice but to leave his
25 employment.

26 84. Defendants ignored Plaintiff's repeated reports of harassment and discrimination and
27 failed to prevent this behavior directed at Plaintiff and others. Through their actions and
28 treatment, Defendants intended to discriminate against Plaintiff on the basis of race.

1 85. As a result of Defendants' violations, Plaintiff suffered harm and is entitled to
2 damages.

3 86. Defendants engaged in the acts alleged herein maliciously, fraudulently, and
4 oppressively; with the wrongful intention of injuring Plaintiff; with the conscious disregard of the
5 rights and safety of Plaintiff; and with an improper motive amounting to malice. Plaintiff is
6 entitled to recover punitive damages from individual Defendants Scott Valencia, Lon Goetsch,
7 and Charles "Chuck" Stark in an amount according to proof.

8 **EIGHTH CAUSE OF ACTION**

9 **Violation of California Labor Code § 1102.5**

10 **Against Defendant CCCFPD**

11 87. Plaintiff realleges and incorporates by reference the previous Paragraphs of this
12 Complaint as though fully set forth herein.

13 88. California Government Code §1102.5, *et. seq* provide that it is an unlawful
14 employment practice for an employer or any other person to retaliate against an employee for
15 opposing illegal conduct, or making workplace complaints of illegal conduct. Section 1102.5
16 prohibits retaliation against an employee for disclosing information, or because the employer
17 believes that the employee disclosed or may disclose information to a superior in the employee's
18 organization, so long as the employee has reasonable cause to believe that the information
19 discloses a violation of law or regulation. In 2014, the Legislature amended section 1102.5 to
20 protect not only actual whistleblowers, but also those who an employer fears may be a future
21 whistleblower. Section 1102.5 also applies to internal whistleblowers, both actual and potential.

22 89. Plaintiff made complaints in the workplace pertaining to racial discrimination and
23 harassment. These reports include but are not limited to violations of state and federal
24 regulations: (a) Government Code § 12940 et seq.; (b) 42 U.S.C. § 1983; (c) 42 U.S.C. § 1981;
25 and (d) Title VII of Civil Rights Act.

26 90. Plaintiff was subjected to adverse employment actions when he was demoted and
27 constructively terminated months after his last complaints of racial discrimination and
28 harassment, and one week after his training injuries.

1 91. Plaintiff's disclosures, and each of them, were contributing factors in Defendant's
2 decision to discharge him. As a result, Plaintiff has suffered loss of employment, great
3 humiliation and emotional distress manifesting in physical symptoms.

4 92. Defendant's actions have caused and continue to cause Plaintiff substantial losses
5 in earnings, significant reputation and professional injury, loss of promotional opportunities and
6 other employment benefits, lost wages, attorneys' fees, loss of future earnings and benefits, cost
7 of suit, humiliation, embarrassment and anguish, in an amount according to proof.

8 **NINTH CAUSE OF ACTION**

9 **Negligent Infliction of Emotional Distress**

10 **Against All Defendants**

11 93. Plaintiff incorporates herein by reference all the allegations contained in the previous
12 paragraphs of this complaint as though fully set forth herein.

13 94. Plaintiff was owed a duty of care by Defendants, and each of them, to ensure that he
14 was not exposed to foreseeable harms.

15 95. Defendants, and each of them, knew or should have known, that Plaintiff was being
16 subjected to racial harassment, discrimination and retaliation, and that by failing to exercise due
17 care to prevent racially harassing, discriminatory and retaliatory course of conduct could and
18 would cause Plaintiff to suffer serious emotional distress.

19 96. Defendants, and each of them, failed to exercise their duty of due care to prevent
20 their employees, managers, supervisors and/or officers from racially harassing, discriminating and
21 retaliating against Plaintiff.

22 97. As a direct and consequential result of Defendants' actions, Plaintiff suffered serious
23 mental and emotional distress, including but not limited to pain, anxiety, humiliation, anger,
24 shame, embarrassment, frustration and fear.

25 98. Defendants engaged in the acts alleged herein maliciously, fraudulently, and
26 oppressively; with the wrongful intention of injuring Plaintiff; with the conscious disregard of the
27 rights and safety of Plaintiff; and with an improper motive amounting to malice. Plaintiff is
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1 entitled to recover punitive damages from individual Defendants Scott Valencia, Lon Goetsch,
2 and Charles “Chuck” Stark in an amount according to proof.

3 **TENTH CAUSE OF ACTION**

4 **Intentional Infliction of Emotional Distress**

5 **Against All Defendants**

6 99. Plaintiff incorporates herein by reference all the allegations contained in the previous
7 paragraphs of this complaint as though fully set forth herein.

8 100. Plaintiff complained repeatedly to Defendants about the racial abuse he received,
9 and that was inflicted upon him by the individual Defendants. Plaintiff made clear that the racial
10 harassment caused him distress, humiliation, and suffering.

11 101. When Defendants failed to take corrective action, Defendants knew that Plaintiff
12 would continue to suffer extreme emotional distress and harm as a result of their failure to act.

13 102. As a direct and consequential result of Defendants’ actions, Plaintiff has suffered
14 severe emotional distress. This harm includes but is not limited to pain, anxiety, humiliation,
15 anger, shame, embarrassment, frustration, and fear.

16 103. Defendants engaged in the acts alleged herein maliciously, fraudulently, and
17 oppressively; with the wrongful intention of injuring Plaintiff; with the conscious disregard of the
18 rights and safety of Plaintiff; and with an improper motive amounting to malice. Plaintiff is
19 entitled to recover punitive damages from individual Defendants Scott Valencia, Lon Goetsch,
20 and Charles “Chuck” Stark in an amount according to proof.

21 **ELEVENTH CAUSE OF ACTION**

22 **Wrongful Constructive Termination in Violation of Public Policy**

23 **Against Defendant CCCFPD**

24 104. Plaintiff incorporates herein by reference all the allegations contained in the
25 previous paragraphs of this complaint as though fully set forth herein.

26 105. Defendant constructively terminated Plaintiff’s employment by permitting a
27 hostile work environment to grow, where Plaintiff was continuously subjected to harassment and
28 discrimination as alleged herein. When Plaintiff complained of this conduct, Defendant’s

1 employees escalated their threatening and discriminatory behavior and demoted Plaintiff. No
2 reasonable African American person could have or should have borne the harassment,
3 discrimination and intimidation directed at Plaintiff. Defendant repeatedly declined to intervene
4 and prevent the harassment. As a result, Plaintiff's work conditions became so intolerable he had
5 no choice but to leave.

6 106. Defendant constructively terminated Plaintiff in violation of various fundamental
7 public policies underlying both state and federal laws. Plaintiff's employment was terminated in
8 part because of his protected status (i.e., race, national origin, and/or color). These actions were
9 in violation of FEHA, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981, and California
10 Labor Code § 1102.5.

11 107. As a proximate result of defendant's wrongful termination of Plaintiff's
12 employment in violation of fundamental public policies, Plaintiff has suffered and continues to
13 suffer humiliation, emotional distress, and mental and physical pain and anguish, in a sum
14 according to proof.

15 108. As a result of Defendant's wrongful termination of his employment, Plaintiff has
16 suffered general and special damages in sums according to proof.

17 109. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees
18 which are recoverable pursuant to Code of Civil Procedure §§ 1021.5 and 1032, et seq.

19 **TWELFTH CAUSE OF ACTION**

20 **Violation of the FMLA**

21 **Against Defendant CCCFPD**

22 110. Plaintiff incorporates herein by reference all the allegations contained in the
23 previous paragraphs of this complaint as though fully set forth herein.

24 111. Plaintiff was an eligible employee for leave under the Family Medical Leave Act
25 ("FMLA").

26 112. Plaintiff requested family medical leave from Defendant.

27 113. Through the actions described herein, Defendant violated the FMLA with regard
28 to Plaintiff when it discriminated against Plaintiff for attempting to seek protected leave,

1 retaliated against Plaintiff in taking adverse employment actions for Plaintiff's exercise of rights
2 under the FMLA, interfered with Plaintiff's request for medical leave, restrained Plaintiff's
3 family medical leave, and ultimately demoted and constructively terminated Plaintiff's
4 employment as a result of Plaintiff's requests for FMLA leave.

5 114. As a direct and proximate result of Defendant's conduct, Plaintiff has sustained
6 damages in an amount to be proven at trial.

7 **THIRTEENTH CAUSE OF ACTION**

8 **Violation of the California Family Rights Act**

9 **Against Defendant CCCFPD**

10 115. Plaintiff incorporates herein by reference all the allegations contained in the
11 previous paragraphs of this complaint as though fully set forth herein.

12 116. The California Family Rights Act ("CFRA") prohibits an employer from denying
13 family or medical leave for a serious medical condition, and further prohibits an employer from
14 interfering with, or taking any adverse action against an employee for requesting protected CFRA
15 leave. Government Code §§ 12940 et seq., 12945, 12945.2.

16 117. Defendant violated the CFRA with regard to Plaintiff when it engaged in adverse
17 employment actions, interfered with, and denied requested medical leave that was protected under
18 the CFRA.

19 118. Defendant's conduct toward Plaintiff as alleged above, constitutes an unlawful
20 employment practice in violation of the CFRA.

21 119. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered loss
22 of employment, indignity, great humiliation and emotional distress manifesting in physical
23 symptoms.

24 120. Defendant's actions have caused and continue to cause Plaintiff substantial losses
25 in earnings, significant reputation and professional injury, loss of promotional opportunities and
26 other employment benefits, lost wages, attorneys' fees, medical expenses, loss of future earnings
27 and benefits, costs of suit, humiliation, embarrassment and anguish, all to his damage in an
28 amount according to proof.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendants, and each of them as follows:

1. For general damages in an amount according to proof;
2. For special damages in an amount according to proof;
3. For prejudgment interest in an amount according to proof;
4. For equitable, declaratory, and/or injunctive relief, including reinstatement;
5. For statutory penalties;
6. For reasonable attorney’s fees and costs of suit pursuant to applicable provisions of law, including but not limited to Government Code §§ 12940 et. seq., 12965(b), 29 U.S.C. § 2617(a)(3), 42 U.S.C. § 1981, Title VII, 42 U.S.C. § 1983, Labor Code § 1102.5(j), and Code of Civil Procedure §§ 1021.5 and 1032 et seq;
7. For such other and further relief as the court may deem proper; and,
8. For punitive or exemplary damages;
9. **Plaintiff hereby demands a trial by jury.**

Dated: May 9, 2022

BAILEY & GLASSER, LLP

By: /s/ Todd A. Walburg
Todd A. Walburg

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Attorneys for Plaintiff JUDON CHERRY

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

JUDON CHERRY

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

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

Todd A. Walburg, BAILEY & GLASSER, LLP, 1999 Harrison Street, Suite 660 (510) 272-8000

DEFENDANTS

CONTRA COSTA COUNTY FIRE PROTECTION DISTRICT, et al.

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

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

Attorneys (If Known)

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

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

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

Table with columns for Plaintiff (PIF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

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

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1331

Brief description of cause:

Violation of 42 U.S.C. Secs. 2000e, 1983, and 1981

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint. JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

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

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 05/09/2022

SIGNATURE OF ATTORNEY OF RECORD

/s/ Todd A. Walburg