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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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11 PASCALE NADYA WOWAK, et al.,  
12 Plaintiff(s),  
13 v.  
14 CITY OF SUNNYVALE, et al.,  
15 Defendant(s).  
16

**\*E-FILED - 5/6/04\***

CASE NO.: C-03-00394-RMW

**ORDER DISMISSING CASE WITH  
PREJUDICE**

17 This case has been reported as settled. Therefore, the court takes any and all pending  
18 motions or other proceedings off calendar and authorizes the case to be administratively  
19 closed.

20 It is also hereby ordered that the case is dismissed with prejudice. If any party believes  
21 that the case should not have been dismissed, or if closing documents are not properly  
22 executed and exchanged on a timely basis, a motion to set aside the dismissal may be made  
23 within sixty (60) days of the date of this order.

24  
25 DATED: May 6, 2004

26  
27 **/s/ Ronald M. Whyte**  
28 RONALD M. WHYTE  
United States District Judge

Vincent P. Hurley - State Bar No. 111215  
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Derek J. Timm, State Bar No. 191669  
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PASCALE NADYA WOWAK,  
JOY BOOKER and PENNY LENEE ALDERIN

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PASCALE NADYA WOWAK, JOY  
BOOKER, and PENNY LENEE ALDERIN

Plaintiff,

vs.

CITY OF SUNNYVALE, CITY OF  
SUNNYVALE DEPARTMENT OF PUBLIC  
SAFETY, IRWIN BAKIN, KIRK  
SANFILIPPO, CHUCK EANEFF, Jr., DAVID  
MILLER, KEVIN NELSON, TIMOTHY  
SARTWELL, MARTIN WRIGHT, DAVID  
DAVIS, WILLIAM HONSAL, and KIRK KIM

Defendants.

Case No. C03 00394 HRL

**First Amended Complaint for Damages for  
Violations of Title VII of the Civil Rights Act  
of 1964, the California Fair Employment and  
Housing Act, the Family Medical Leave Act,  
the California Family Care and Medical  
Leave Act, and Violation of Civil Rights,  
Conspiracy to Violate Civil Rights, Assault,  
Battery, and for Injunctive Relief  
[42 U.S.C. § 2000(e), et. seq., 42 U.S.C. §  
1983, 42 U.S.C. § 1985(2)&(3), 29 U.S.C. §  
2601 et. seq., Calif. Government Code  
Section 12940 and 12945.2 et. seq.]**

**DEMAND FOR JURY TRIAL**

**I. PARTIES**

1. Plaintiff Pascale Nadya Wowak, formerly Pascale Nadya Drozek, is a competent adult woman and a resident of Santa Cruz County.

2. Plaintiff Joy Booker is a competent adult woman and a resident of Santa Cruz County.

1           3. Plaintiff Penny Lenee Alderin is a competent adult woman and a resident of Santa  
2 Cruz County.

3           4. Defendant the City of Sunnyvale was and is a municipal corporation within the  
4 Northern District organized and existing under the laws of the State of California.

5           5. Defendant the Sunnyvale Department of Public Safety (“the Department” or “SDPS”)  
6 was and is a Public Safety Department of the City of Sunnyvale.

7           6. Defendant, IRWIN BAKIN was and is the Director of the SDPS, a competent male  
8 adult and resident of the State of California. He is sued as an individual and in his official  
9 capacity as an employee of Defendants City and SDPS.

10          7. Defendant, KIRK SANFILIPPO was and is a Captain for the SDPS, a competent  
11 male adult and resident of the State of California. He is sued as an individual and in his official  
12 capacity as an employee of Defendants City and SDPS.

13          8. Defendant, CHUCK EANEFF, Jr., was and is a Captain for the SDPS, a competent  
14 male adult and resident of the State of California. He is sued as an individual and in his official  
15 capacity as an employee of Defendants City and SDPS.

16          9. Defendant, DAVID MILLER was a Public Safety Officer employed in the SDPS, a  
17 competent male adult and resident of the State of California. He is sued as an individual and in  
18 his official capacity as an employee of Defendants City and SDPS.

19          10. Defendant, KEVIN NELSON was a Public Safety Officer employed in the SDPS and  
20 now is a Lieutenant, and a competent male adult and resident of the State of California. He is  
21 sued as an individual and in his official capacity as an employee of Defendants City and SDPS.

22          11. Defendant, TIMOTHY SARTWELL was and is a Public Safety Officer employed in  
23 the SDPS, a competent male adult and resident of the State of California. He is sued as an  
24 individual and in his official capacity as an employee of Defendants City and SDPS.

25          12. Defendant, MARTIN WRIGHT was and is a Lieutenant employed in the SDPS, and  
26 is a competent male adult and resident of the State of California. He is sued as an individual and  
27 in his official capacity as an employee of Defendants City and SDPS.

28

13. Defendant, DAVID DAVIS was and is a Lieutenant employed in the SDPS, and is a competent male adult and resident of the State of California. He is sued as an individual and in his official capacity as an employee of Defendants City and SDPS.

14. Defendant, WILLIAM HONSAL, was and is a Public Safety Officer employed in the SDPS, and is a competent male adult and resident of the State of California. He is sued as an individual and in his official capacity as an employee of Defendants City and SDPS.

15. Defendant, KIRK KIM, was and is a Public Safety Officer employed in the SDPS, and is a competent male adult and resident of the State of California. He is sued as an individual and in his official capacity as an employee of Defendants City and SDPS.

16. Each of the Defendants was the agent, joint venturer and employee of each of the other remaining defendants, and in doing the things hereinafter alleged, each was acting within the course and scope of said agency, employment, partnership and joint venture with the advance knowledge, acquiescence or subsequent ratification of each and every remaining Defendant.

17. Plaintiffs Wowak, Booker and Alderin join together in the instant complaint, as there are several questions of law and fact that are common to all plaintiffs, including but not limited to the facts surrounding conduct of the Defendants that is part of a policy, custom, practice and pattern of discrimination that has caused a disparate impact on Plaintiffs. Further, Plaintiffs allegations concerning the Defendants' pattern of unequal assignments, special evaluations, arbitrary probation terms, unequal pay and advancement opportunities and harassment address common factual issues and raise common questions of law.

18. Plaintiffs have complied with the claims filing provisions of the California Tort Claims Act, with regard to their state law causes of action, by exhausting their administrative remedies as prescribed by FEHA, pursuant to Murray v. Oceanside Unified School District, (2000) 79 Cal.App.4<sup>th</sup> 1338, 1358-1359.

## II. JURISDICTION AND VENUE

19. Plaintiffs' claims arise under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et. seq., 42 U.S.C. § 1985(2)&(3), 42 U.S.C. § 1983, and 29 U.S.C. 2601 et. seq. Plaintiffs have fully complied with all prerequisites for jurisdiction within this court. On March

1, 2002, Plaintiff(s) Wowak and Alderin filed with the Equal Employment Opportunity Commission charges of discrimination setting forth their allegations against Defendants. On August 14, 2002, Plaintiff Booker filed with the Equal Employment Opportunity Commission charges of discrimination setting forth her allegations against Defendants. Said charges were concurrently filed with the California Fair Employment and Housing Commission.

20. On November 4, 2002, all Plaintiffs received from the EEOC letters authorizing Plaintiffs to file suit against Defendants, and, as a matter of law, thereby obtained a right to sue pursuant to both relevant federal and state law. This Court has jurisdiction over this matter pursuant to 42 U.S.C. § 2000e5(f), 29 U.S.C. § 2617(a)(2), 28 U.S.C. §§ 1331 and 1343(a)(4). The Court has supplemental jurisdiction pursuant to 28 U.S.C. 1367 over claims under the California Fair Employment & Housing Act, California Government Code § 12940, et. seq, the California Family Care and Medical Leave Act, California Government Code § 12945.2 et. seq., and the applicable California tort claims set forth herein.

21. On January 8, 2003, plaintiff Wowak filed a charge of retaliation, sexual discrimination and pregnancy discrimination against the City and SDPS with the United States Equal Employment Opportunity Commission.

22. On January 17, 2003, Penny Alderin filed a charge of retaliation and sexual discrimination against the City and SDPS with the United States Equal Employment Opportunity Commission.

23. Plaintiff Wowak has received a right to sue from DFEH at the time of the filing of the charge of retaliation, and on February 10, 2003, Plaintiff Wowak received a letter from the EEOC authorizing Plaintiff to file suit on her charges of retaliation, sexual discrimination and pregnancy discrimination.

24. Plaintiff Alderin received a right to sue from DFEH at the time of the filing of her charge of retaliation, and on February 19, 2003, Plaintiff Alderin received a letter from the EEOC authorizing Plaintiff to file suit on her charges of retaliation and sexual discrimination.

1 25. Venue is proper in this district pursuant to 42 U.S.C. § 2000e5(f) and 28 U.S.C. §  
2 1391(b) & (c). Plaintiffs' claims arose in California, and all Plaintiffs and Defendants reside in  
3 or are incorporated in the Northern District of California.

### 4 **III. INTRODUCTION**

5 26. The City of Sunnyvale ("City") a political subdivision of the State of California, by  
6 and through its Department, the Sunnyvale Department of Public Safety ("the Department" or  
7 "SDPS") and the above named individual Defendants have maintained an ongoing course and  
8 conduct of discrimination against Pascale Nadya Wowak ("Wowak" or "Plaintiff") on the basis  
9 of her sex and pregnancy, and against Penny Lenee Alderin ("Alderin" or "Plaintiff") and Joy  
10 Booker ("Booker" or "Plaintiff") on the basis of sex.

11 27. SDPS maintains formal and informal selection practices which intentionally screen  
12 out female applicants for employment and promotion. The conduct of the Department and City  
13 of Sunnyvale is part of a policy, custom, practice and pattern of discrimination that has caused a  
14 disparate impact on female officers in the Department. The administration and senior officials  
15 within the SDPS and the City of Sunnyvale have ratified the discriminatory conduct of the  
16 Sunnyvale Department of Public Safety and its Director and Captains who systematically attempt  
17 to deny employment rights to female employees, including Plaintiffs.

18 28. At the time Plaintiffs filed their EEOC complaints, there were only 12 female officers  
19 out of approximately 220 officers in the Sunnyvale Department of Public Safety. There were 42  
20 Lieutenants and five Captains in the SDPS. Since the Department's inception, and prior to the  
21 EEOC complaint, no female has ever been promoted to the rank of Lieutenant or Captain. Before  
22 the filing of the underlying EEOC complaint, no female had ever been assigned to the specialty  
23 units of motorcycles, SWAT, hostage negotiators, defensive tactics, firearms instructor, or fire  
24 investigations in the history of the SDPS. No female officer has ever left on maternity leave and  
25 returned to employment with the SDPS. Until January 2002, no female had ever been assigned to  
26 Detectives and could not rise in the ranks above the position of Public Safety Officer. In the past,  
27 females have applied for such promotions and been denied. This disparate distribution of the  
28

1 genders is the result of purposeful discrimination and of practices that serve no reasonable  
2 business purpose yet have a disproportionate impact on women.

3 29. SDPS discriminates against its female employees by advancing male employees more  
4 quickly than female employees, by denying female employees equal job assignments,  
5 promotions, and compensation, and by retaliating against those who oppose its unlawful  
6 practices. The on-going and continuous patterns and practices of the Defendants are not only  
7 discriminatory, but have created a hostile work environment for Plaintiffs and women within the  
8 Department. Defendants' actions and statements have made it clear to women in the Department  
9 that further efforts at informal conciliation to end the harassment are futile. This action seeks to  
10 provide relief from and an end to Defendants' discriminatory practices.

#### 11 **IV. DEFENDANTS' PRACTICE OF DISCRIMINATION**

12 30. All Plaintiffs incorporate Paragraph Numbers 1-29 as though fully set forth herein.

13 31. Defendants discriminated against Wowak, Alderin and Booker on basis of their sex  
14 and, in addition, against Wowak on the basis of her pregnancy.

15 32. The conduct of the Defendants is part of a policy, custom, practice and pattern of  
16 discrimination that has caused a disparate impact on female officers in the Department. The  
17 administration of SDPS and the City of Sunnyvale have ratified the discriminatory conduct of the  
18 Sunnyvale Department of Public Safety and its supervising officers who systematically attempt  
19 to deny employment rights to female employees, including Plaintiffs.

20 33. The Department maintains formal and informal selection practices which  
21 intentionally screen out female applicants for employment and promotion.

22 34. Prior to the filing of the EEOC complaint, the Department had no enforceable anti-  
23 discrimination policies and procedures, no substantive training programs about discrimination in  
24 employment, and no standardized evaluation system designed to prevent discrimination by  
25 subjective, unbiased individual evaluation of female employees.

26 35. Through subjective screening, the Public Safety Department limits hiring of female  
27 Public Safety Officers, then harasses and discriminates against those employees during training  
28 and evaluation in order to terminate such employees on pretext. Further, the Department extends

1 the probation of female officers without cause subjecting females, like Plaintiff, to constructive  
2 termination.

3 36. Plaintiffs and other female officers are routinely placed on special audits without just  
4 or legal cause, and are regularly subjected to special audit procedures and probation extensions  
5 that are not directed at male officers.

6 37. Plaintiffs and other female officers have been continuously and systematically  
7 excluded from and not notified of special recruiting for SDPS specialty positions that provide for  
8 additional compensation. As an example, a recent notice for special recruiting of new  
9 department training officers was sent to a large number of specifically identified male officers,  
10 some of whom had equal or less experience or knowledge than Plaintiffs, asking for “all good  
11 men” to sign up for the position. The notice was not sent to Plaintiffs or any of the other female  
12 officers in SDPS.

13 38. No female officer in SDPS who has become pregnant while employed by SDPS has  
14 ever returned to full-time employment with SDPS because of the treatment given to female  
15 officers who take pregnancy leave.

16 39. Male public safety officers refer to female clerks as “bitch” and subject female  
17 employees to such comments as women need to stay “barefoot and pregnant”. Such comments  
18 are made in an environment where such derogatory comments are overlooked, condoned, ratified  
19 and/or permitted by the City.

20 40. Female employees were and are forced to work overtime in special training in order  
21 to “prove” that “they can cut it” in the words of their training officers, because they are women.  
22 Male employees are not routinely subjected to such forced overtime training.

23 41. Female employees were and are actively prevented from entering specialty positions  
24 by male officers, as underscored by male field training and specialty officer David Miller, who  
25 stated, “there will be no women on the SWAT team, and I will make sure of that.”

26 42. The pattern of unequal assignments, special evaluations, arbitrary probation terms,  
27 unequal pay and advancement opportunities and harassment is not the result of random or non-  
28 discriminatory factors, and is the result of an on-going and continuous pattern and practice of



1 intentional sex discrimination in assignments, pay, training and promotions, and reliance on  
2 policies and practices that have an adverse impact on female employees that cannot be justified  
3 by business necessity, and for which alternative policies and practices with less discriminatory  
4 impact could be utilized. The on-going and continuous patterns and practices of the Defendants  
5 are not only discriminatory, but have created a hostile work environment for Plaintiffs and  
6 women within the Department. Plaintiffs are informed and believe that such policies and  
7 practices include, without limitation:

- 8 a. Failure to consistently notify females of job and promotional openings to ensure  
9 that all employees have notice of and an opportunity to seek advancement or more  
10 desirable assignments and training.
- 11 b. Reliance upon unweighted, arbitrary and subjective criteria utilized by a nearly all  
12 male managerial workforce in making assignments, training, pay, performance  
13 review and promotional decisions. Even where the Department's policy states  
14 objective requirements, these requirements are often applied in an inconsistent  
15 manner and ignored at the discretion of management.
- 16 c. Reliance on gender stereotypes in making employment decisions such as  
17 assignments, promotions, pay and training.
- 18 d. Pre-selection and "grooming" of male employees for advancement, favorable  
19 assignments and training.
- 20 e. Maintenance of largely sex segregated job categories and departments.
- 21 f. Deterrence and discouragement of female employees from seeking advancement,  
22 training, and favorable assignments and pay.
- 23 g. Paying female employees lower compensation than men with similar or lesser  
24 credentials and skills through the use of specialty assignments with specialty pay.
- 25 h. Assigning women to lower paying positions, and positions with lesser  
26 advancement potential than those given to men, and advancing women more  
27 slowly than similarly situated male employees.

- 1 i. Harassing female employees interested in advancement and subjecting them to a  
2 hostile work environment and at times, physical abuse.
- 3 j. Retaliating against female employees who have complained either internally or  
4 externally about the Department's treatment of its female employees. The  
5 Department maintains a year-end evaluation form, on which employees can report  
6 instances of harassment or discrimination. SDPS has fail and refused to  
7 investigate claims of harassment or discrimination reported on the form, and then  
8 retaliates against women and any other officer who use this form to report  
9 discrimination, sexual harassment or other unfair working conditions.

10 **V. SPECIFIC ACTS OF DISCRIMINATION, HARASSMENT AND**  
11 **RETALIATION AGAINST PASCALE WOWAK**

12 43. Plaintiff Wowak incorporates Paragraph Numbers 1-42 as though fully set forth  
13 herein.

14 44. Wowak had six years experience as a police officer in Walnut Creek, and was hired  
15 by Defendants in September 2000. She was informed her probationary period before attaining  
16 civil service employment status would be eighteen months. Plaintiff Wowak completed the  
17 SDPS fire academy in December 2000, and for the next two years was wrongly disciplined,  
18 placed on special audits, denied rights given to male officers, and unlawfully extended on her  
19 probationary status, all discriminatory acts based on her sex.

20 45. All acts described herein were part of a continuous and related course of action by  
21 Defendants that took place during and after Wowak's employment.

22 46. Plaintiff spoke out at a Public Safety Officers Association meeting that she would not  
23 recommend application to the SDPS by other female officers or any other interested applicants  
24 who might transfer employment to SDPS, because of the conduct of the City of Sunnyvale,  
25 SDPS, Defendants Sanfilippo and Eaneff and their unlawful treatment of females.

26 47. In retaliation and as part of the ongoing discrimination Defendant Sanfilippo  
27 conducted an improper and illegal investigation, alleging Wowak "fraudulently" submitted a  
28 request for payment of overtime pay. Sanfilippo carried on said investigation of Plaintiff without  
proper notice required under the California Public Safety Officers Procedural Bill of Rights,

1 interviewed other Department employees about Plaintiff, and denied Plaintiff rights provided to  
2 her under the Public Safety Officers Bill of Rights and California public policy that are routinely  
3 and lawfully provided to males. He called Wowak in for a surprise meeting, and proceeded to  
4 improperly interview her about her request for payment of overtime pay. He never advised her  
5 that the interview could be used against her for discipline, nor that she was being informally or  
6 formally investigated.

7 48. After Sanfilippo completed his improper and illegal investigation, he called Wowak  
8 in for another surprise meeting. In this meeting, Sanfilippo told Wowak that she must resign, or  
9 she would be terminated and prosecuted for fraud. He then presented Plaintiff with a resignation  
10 letter for her to sign. Plaintiff requested to have an attorney present at the meeting, and she also  
11 requested to have a department representative present at the meeting, all of which Sanfilippo  
12 refused. Sanfilippo's denial of Plaintiff's right to an attorney and his refusal to permit a  
13 department representative to be present were violations of the California Public Safety Officers  
14 Bill of Rights, Plaintiff's constitutional rights, and violation of California public policy.

15 49. When Plaintiff refused to sign the forced resignation, Defendant Sanfilippo  
16 suspended her on administrative leave, pending termination. Plaintiff was ordered to turn over  
17 all of her equipment including her Police ID, gun, badge and department keys, and was escorted  
18 from the building for the purpose of causing Plaintiff extreme humiliation and emotional distress  
19 in front of her co-workers. Thereafter, Sanfilippo caused a notice to be posted, which notified all  
20 officers that Plaintiff was on administrative leave and not permitted inside the building. Said  
21 action was to further humiliate Plaintiff in front of her co-workers and cause her emotional  
22 distress.

23 50. Defendant Sanfilippo suspended Plaintiff without an internal affairs investigation and  
24 in violation of California law and the California Public Safety Officers Procedural Bill of Rights.  
25 Such conduct was specifically taken against Plaintiff because of her sex, and males are not  
26 treated in the same or similar manner during both internal and criminal investigations.  
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1           51. All of said conduct was in furtherance of and part of a continuous course of conduct  
2 fostering discrimination based on Plaintiff's sex, and as retaliation for her opposition to the  
3 SDPS's unlawful discriminatory practices.

4           52. While Plaintiff was on administrative leave, the Department began a formal  
5 investigation into Sanfilippo's charges against Plaintiff. Sanfilippo telephoned Plaintiff's  
6 attorneys, attempting to interfere with Plaintiff's employment, her attorney-client relationship,  
7 and with Plaintiff's due process rights during the status of the investigation, all because of bias  
8 against Plaintiff based on her sex, and for retaliation for Plaintiff's statements at the association  
9 meeting. Plaintiff's attorneys were required to correspond with senior Sunnyvale officials to  
10 have Sanfilippo stop interfering with the investigation. Plaintiff was required to retain counsel to  
11 represent her, and five weeks later Defendant Bakin notified Plaintiff that she was exonerated of  
12 the fraud charges that were falsely brought by Sanfilippo in order to try to intimidate Plaintiff  
13 into resigning.

14           53. All male employees who had worked the same overtime hours worked by Plaintiff  
15 Wowak and disputed by Defendant Sanfilippo received overtime pay for the same incident  
16 because the City determined that all were entitled to the overtime. However, two months after  
17 Plaintiff was exonerated of the charges, Defendants Sanfilippo and Bakin ordered Plaintiff  
18 placed on special audit, the highest form of discipline prior to actual suspension or termination,  
19 on the same charges that she had wrongfully submitted overtime requests, even though she had  
20 been exonerated and all other male employees had been paid for the same hours. In so doing,  
21 Defendants passed over lower levels of discipline that are required by Department policies and  
22 procedures before ordering a special audit. The special audit constitutes an adverse employment  
23 action and affected Plaintiff's opportunities for special assignments that would have provided  
24 increased compensation and opportunities for promotion.

25           54. Defendants Bakin and Sanfilippo extended Plaintiff's probationary period and term of  
26 special audit for a time period longer than permitted by Sunnyvale personnel procedures.  
27 Female employees were and are regularly subjected to such evaluation practices and probation  
28 extensions when male employees are not.

1           55. When Plaintiff demanded a complete copy of the investigation that led to her  
2 probation extension and her special evaluation, Plaintiff's rightful demand was denied by the  
3 SDPS. Such demands for investigation and/or evaluations by female officers are denied by  
4 SDPS when similar demands by male officers are granted.

5           56. Since March 1, 2002, when Defendants City, SDPS, and Sanfilippo received  
6 Wowak's EEOC charges, Defendants increased the already continuous course of discriminatory  
7 and retaliatory conduct in order to retaliate and force Plaintiff out of the Department. This  
8 process culminated in an adverse employment action, wherein the Department placed Plaintiff on  
9 another extended probationary status while Plaintiff was on lawful pregnancy leave, resulting in  
10 a loss of permanent employment status, a loss of opportunities for special assignments with  
11 increased compensation and opportunity for promotion, and eventually Plaintiff's constructive  
12 termination.

13           57. After Wowak's and Alderin's EEOC charges were filed, Defendant Sanfilippo  
14 ordered a special meeting with women in the Department to discuss "women's issues."  
15 Defendant Sanfilippo served as the moderator for the meeting. All women in the Department  
16 were invited to the meeting except Plaintiffs Wowak and Alderin, the remaining female  
17 employees who had filed EEOC charges. Plaintiffs were deliberately excluded from the meeting,  
18 thereby segregating them from other women in the Department and in retaliation for filing claims  
19 with the EEOC. SDPS had never held such meetings before. The Department purposefully  
20 treated Plaintiffs differently from other women in the Department to intimidate employees who  
21 had not filed charges and to retaliate against those who did.

22           58. In December 2001, Plaintiff was placed on medical light duty because of pregnancy.  
23 As a further act in their continuous course of conduct, Defendants City, SDPS, Bakin and  
24 Sanfilippo assigned Plaintiff to work under the direct supervision of Sanfilippo, despite his  
25 previous retaliation and actions of harassment and discrimination against Plaintiff.

26           59. Sanfilippo assigned Plaintiff to report directly to Sanfilippo, he moved Plaintiff's  
27 workspace to an office adjacent to his, and required her to report directly to him even though he  
28 was not her immediate supervisor.

1           60. Following her assignment to Sanfilippo, Sanfilippo confronted Plaintiff in a hostile  
2 and demeaning manner, in a way that required Plaintiff to respond to him in the employment  
3 environment and created a hostile work environment.

4           61. After Wowak filed her EEOC charge, Defendants moved her office a second time to  
5 another new work location, giving her only 24 hours notice to move. She was ordered to move  
6 from an office with a private door to a shared cubicle located in a different department than her  
7 co-workers, sharing the workspace with another employee. At the second new work station  
8 Plaintiff was denied access to a computer, voicemail, telephone or confidential facsimile, making  
9 it impossible for her to perform her job duties.

10           62. On June 24, 2002 Wowak went into pre-term labor and was ordered to leave work  
11 and remain on bed rest for the remainder of her pregnancy. Despite Wowak's condition and the  
12 fact that she left work on lawful pregnancy leave, Defendants continued to harass, retaliate and  
13 discriminate against her. While on leave, Plaintiff worked with the Santa Clara County District  
14 Attorney's Office to reschedule cases requiring her testimony until after the birth of her child.  
15 However, even though Plaintiff made all the necessary arrangements and no criminal cases were  
16 jeopardized, Defendant Bakin ordered Plaintiff to attend the criminal court proceedings, and  
17 ordered her to contact Defendant Sanfilippo to confirm her compliance. The District Attorney's  
18 Office was required to intercede when Plaintiff was again faced with the threat of another  
19 fabricated disciplinary action. The conduct of Defendants Bakin and Sanfilippo was more action  
20 in the continuing course of all Defendants' conduct of harassment, discrimination and retaliation  
21 for filing the EEOC/DFEH claim and for asserting her right to take pregnancy leave.

22           63. On September 11, 2002, while Plaintiff was still on lawful pregnancy leave,  
23 Defendants Bakin, Sanfilippo and Eaneff ordered Wowak's probation extended by City and  
24 SDPS, citing a Civil Service Rule that permitted extended probation when performance audits  
25 (evaluations) showed that Plaintiff's performance needed improvement. In fact, no such  
26 evaluation was ever given to Plaintiff.

27           64. In violation of the California Public Safety Officers Bill of Rights and other  
28 California law, Defendants failed and refused to give Plaintiff the evaluation used to extend her

1 probation. Instead, Defendants issued a new order extending Plaintiff's probation for a new and  
2 different reason, this time alleging that Plaintiff had not completed her probationary fire  
3 department training in time, thereby denying Plaintiff permanent employment. Said order was  
4 issued as an adverse employment action against Plaintiff even though SDPS had two years to  
5 assign Plaintiff to such duty before she left on pregnancy leave.

6 65. By extending her probation and not granting Plaintiff civil service employment SDPS  
7 denied Plaintiff pay step increases, opportunities for pay raises and special assignments, and  
8 disqualified her for promotion, all leaving Plaintiff subject to termination "without cause" based  
9 on City's policy that probationary periods were indefinite, at will employment with no set ending  
10 dates.

11 66. The continuing and unrelenting harassment and intimidation, discrimination and  
12 retaliation carried on by Defendants City, SDPS, Bakin, Sanfilippo and Eaneff left Plaintiff with  
13 no recourse. Plaintiff Wowak was aware that Defendant Bakin had previously falsely assured  
14 Plaintiff Booker that she would not suffer physical or emotional harm, when, in fact, Bakin knew  
15 that at least one officer who had battered and assaulted Booker was an "enforcer" for a  
16 prostitution ring and could very likely further harm Booker. Based on all of the acts  
17 continuously committed against her, Plaintiff Wowak was left with no reasonable choice but to  
18 resign and preserve her employment reputation for future opportunities. The adverse  
19 employment actions continuously directed by Defendants against Plaintiff Wowak were intended  
20 to and did constitute constructive termination.

21 67. In furtherance of their harassment and retaliation against Plaintiff Wowak, and as a  
22 warning to others, Defendants posted notice of Wowak's resignation, published to all employees,  
23 in such a way that it was made to appear that Wowak had been fired versus resigned.

24 **VI. SPECIFIC ACTS OF DISCRIMINATION, HARASSMENT AND**  
25 **RETALIATION AGAINST JOY BOOKER**

26 68. Plaintiff Joy Booker incorporates Paragraph Numbers 1-42 as though fully set forth  
27 herein.

28 69. Joy Booker was employed by the SDPS for 18 months, during which time she  
graduated from the Alameda County Law Enforcement Academy with honors.

1           70. With the consent and ratification of senior SDPS officers, SDPS Training Lieutenant  
2 Dave Davis harassed Booker and other women throughout their Academy training, continually  
3 making comments that her belt and pants would not fit her if she did not lose weight, even  
4 though Booker and the other women had passed the height and weight requirements for  
5 employment. In his visits to the Academy, Davis performed visual inspections of waist and  
6 buttocks size of Booker and other female employees, and required the women to submit to  
7 weekly weigh-ins. Davis made derogatory comments in front of Plaintiff's co-workers, higher  
8 ranking officers of the SDPS, and ranking officers of other departments, which included a  
9 statement to Booker that the women should "turn around and see where your weight is". Male  
10 officers were not subjected to such sexual and demeaning inspections, criticisms and comments.

11           71. Davis made sexually explicit comments to females in the presence of female trainees.  
12 Because of the intimidating policies, customs and practices of Defendants City and SDPS, and the  
13 unspecified and open-ended probation status of the female employees, women were intimidated  
14 and chilled from asserting any complaint about the training lieutenant's conduct.

15           72. Booker was injured while training in the Academy and reported the injury to  
16 Defendant Davis. Davis ignored her injury report and told Booker that she was not trying hard  
17 enough and would fail the Academy, forcing Booker to continue physical activity in the  
18 Academy and causing her further injury to her shoulder. Male employees were not intimidated  
19 into continued physical training when injured.

20           73. Though she completed the first two months of the three-month field training,  
21 throughout her training, Booker was subjected to offensive comments about her body and her  
22 sexuality, and harassed and intimidated to resign from employment. She was physically battered,  
23 assaulted and physically threatened by senior male training and special weapons officers, and  
24 was laughed at and derided by the same officers after she was battered and harassed, all as part  
25 of a continuous course of conduct designed to force female employees to resign from SDPS  
26 during training and while on probation to further discriminatory policies, customs and practices  
27 of Defendants City, SDPS, Bakin, Sanfilippo and Eaneff.



1           74. Defendant Kirk Kim was assigned as Booker's third training officer after she had  
2 successfully completed the first two phases of training with two other officers. Defendant Kim  
3 refused to talk to Booker when they were on patrol, and told her to speak to him with hand  
4 gestures. Kim yelled at her and demeaned her in front of the citizens while investigating calls,  
5 and accused Booker of having an "attitude problem." Kim did not complete required daily  
6 evaluations and refused to train Booker or provide her any form of criticism. Defendant Kim  
7 brought Booker before Defendant Wright, who threatened Booker, telling her that her that she  
8 would likely be terminated because of her "attitude problem," even though Defendant Kim had  
9 never documented that she had such an "attitude," or other training deficiency warranting  
10 termination. Booker was taken by surprise in the unscheduled meeting, and, when she started to  
11 cry, Defendants Kim and Wright began mocking her. Kim stated, "Your role is to be quiet and  
12 to learn." Kim and Wright then placed Booker on their version of "remedial training," requiring  
13 Booker to work overtime for several hours after each shift to lecture her and unnecessarily  
14 rewrite reports, keeping her at work up to 16 hours a day with no legitimate training purpose  
15 when they knew that unscheduled, repetitive forced overtime affected Booker's ability to pick up  
16 her daughter or arrange child care.

17           75. Defendants Kim and Wright failed or refused to prepare required daily and weekly  
18 evaluations of Booker as required by policy, and Booker was frequently left to guess what  
19 complaints Kim might have, without being provided any training or written criticism.  
20 Evaluations that were completed were not done in a timely manner or on the required daily  
21 schedule, and did not accurately reflect her work. In January 2002 Wright and Kim then  
22 presented Booker with multiple negative written evaluations that contained false statements and  
23 quotes from alleged conversations that never took place. Booker initially refused to sign the  
24 evaluations because of the false statements they contained. Wright and Kim then pressured her  
25 to sign the evaluations claiming that her refusal was further evidence of her "bad attitude," and  
26 that she should stop "whining, complaining and acting like a baby." When Booker protested that  
27 she was not being trained or evaluated, Defendants Kim and Wright told her she would be  
28 terminated for having "an attitude problem."

1           76. The SWAT team of the SDPS was and is a specialized unit whose members were  
2 selected by Defendants Bakin, Sanfilippo and Eaneff, and consisted of all male members, many  
3 of whom carry out the discriminatory practices of the City and the SDPS, and at least one of  
4 whom is now known to have been involved in racketeering and acted as an enforcer for  
5 prostitution organizations. It is also now known that, during the time that Defendants Sartwell,  
6 Miller and Nelson carried out unlawful acts against Booker and other female employees,  
7 Defendants Bakin and Sanfilippo were aware that Defendant Miller was involved in organized  
8 crime and prostitution. The City and the SDPS, and Defendants Bakin, Sanfilippo and Eaneff  
9 did nothing to supervise or regulate the conduct of training officers and SWAT team members,  
10 and ratified and condoned their conduct throughout.

11           77. Defendants Miller, Nelson, and Sartwell were assigned by Defendant Davis to  
12 participate in “training” exercises for the trainee group that included three female trainees.  
13 When Booker and other females participated in such required training, Defendant Sartwell  
14 suggested that all the women turn around because “you all look the same from behind”.  
15 Defendants Sartwell and Miller made demeaning reference to Booker’s and other women’s  
16 bodies, and walked around the female trainees pointing at their buttocks while male officers  
17 laughed.

18           78. During the same SDPS sanctioned and supervised training, in front of other male  
19 training officers and SWAT team members, Defendant Sartwell asked Booker if she was a  
20 virgin. Shocked by the question, Booker responded that she had a five-year-old daughter to  
21 which Sartwell and other male employees responded with laughter and Sartwell told Booker that  
22 she “must have started young.”

23           79. In front of Booker and other SDPS records employees, Defendant Sartwell frequently  
24 referred to women in demeaning terms, referring to woman as “hoes” and bragging about  
25 “banging some hoes,” and how “good it felt to bang a ho.”

26           80. All Plaintiffs and all female trainees were intimidated and threatened with  
27 termination from employment if anyone were to complain about conditions of employment, or  
28 the conduct of Defendants, training officers and SWAT team members.

1           81. Booker and other female recruits were told by Defendants Miller and Nelson that they  
2 were weak, and Defendants forced the women to come to work on their days off for more  
3 training. During the training, Booker was constantly harassed by Defendants Miller, Sartwell  
4 and Nelson, and Nelson mocked Booker in front of other officers, telling her she “had weak hits”  
5 and she “hit like a girl.”

6           82. Defendant Miller told Booker that he and the other males needed to trust her and “feel  
7 comfortable going out on calls” with her, and that the other males were worried about working  
8 with Booker and other female trainees. Male officers were not subjected to such harassment,  
9 abuse and statements that the allegedly respected SWAT team members did not want to work  
10 with them. All of such conduct took place during City and SDPS sanctioned forced overtime  
11 training of female employees, and the conduct of Defendants was ratified and condoned by  
12 Defendants City, SDPS, Sanfilippo and Eaneff as part of the policies, customs, and practices of  
13 discriminating against female employees.

14           83. Booker was subjected by Defendants Miller, Sartwell, Nelson, Honsal and Kim to  
15 “training scenarios” at secluded locations late at night, without supervision or regulation of  
16 authorized supervisors. During such role playing Defendant Miller rolled around on the ground  
17 on top of and under Booker and touched various parts of her body. The “scenarios,” were  
18 subterfuge to commit sexual battery on Booker, and made it impossible for her to overcome the  
19 attacks, and were intended to sexually harass and to intimidate the trainee to resign.

20           84. Defendant Sartwell put his face up against Booker’s and screamed at her that she  
21 could not handle the job. While screaming at Booker, Defendant Sartwell, without warning or  
22 justification of any kind, struck Booker in her chest, knocking her backward over a police car  
23 and screaming at her that she was “not ready for that” indicating that she was supposed to  
24 anticipate that another officer was about to punch her and knock her down. In violation of all  
25 training practices and procedures, Booker was subjected to situations in which she was  
26 physically assaulted and battered, and referred to as a “f\*\*\*ing bitch cop,” and could not use any  
27 defensive weapon because the persons committing the battery were other police officers. The  
28 scenarios were so violent and abusive that Defendants required Booker to unload her gun before

1 they commenced their illegal assaults. When another male trainee was present during the  
2 assaults, Defendants diverted and redirected the trainee so that the male trainee would not  
3 witness the assault or be able to protect Booker.

4 85. After the physical assaults, Defendants carried out contrived critiques of the  
5 scenarios, severely criticizing Booker, laughing at her and mocking her. They told her that she  
6 was weak and out of control. Defendant Kim continually told Booker that she looked “like a girl  
7 in a cat fight,” and made whimpering noises, claiming to mock Booker’s affect when she was  
8 trying to gain control of Sartwell, and the other Defendants present laughed.

9 86. During the so-called scenarios and subsequent critiques, Defendant Nelson directed  
10 Booker to step on suspect’s toes in order to provoke the suspects to fight. When Booker  
11 questioned the technique, she was threatened and told by Defendant Nelson that he learned the  
12 technique as a correctional officer in the Santa Clara County jail and she would be expected to  
13 “do what it takes” to “legally” provoke suspects to fight, if she was to remain employed in the  
14 SDPS.

15 87. On January 24, 2002, Defendant Miller pursued a theft suspect and captured the  
16 suspect while alone. When Booker and Defendant Honsal arrived the suspect was significantly  
17 injured and very bloody. While transporting the suspect to jail, Booker expressed her concern to  
18 Honsal that Miller might have used excessive force.

19 88. Because the suspect bled so profusely, Booker and Miller had to go to a hospital for  
20 blood decontamination. While alone with Miller on the way to the Hospital, Booker questioned  
21 Miller about what happened. Miller did not provide a reason why such injurious force was  
22 necessary, but Miller bragged to Booker that he struck the suspect a number of times with a  
23 baton and that his baton strikes were “perfect” because they had caused such deep bleeding  
24 wounds. Booker then asked if the suspect had fought back, and Miller responded, “not really”.

25 89. As soon as Booker returned from the hospital, she again expressed concern to Honsal  
26 that Miller used excessive force. Defendant Honsal then immediately accused Booker of missing  
27 an object in the back seat of the car, and then accused Booker of lying about whether or not she  
28 had searched the car before or after the injured suspect’s arrest. Honsal then informed Booker

1 that her credibility was damaged and threatened her that she would be terminated. All of this  
2 conduct was part of the discriminatory practices of City, SDPS, and all Defendants, and was  
3 evidence of Defendants' continuous attempts to cover up for misconduct and intimidate  
4 probationary and female employees into consenting to illegal conduct, all in violation of state  
5 and federal law and public policy.

6 90. On January 28, 2002, Booker informed Defendant Sanfilippo about the on-going  
7 sexual harassment, discrimination, battery, assault, and intimidation she had been enduring, that  
8 the misconduct toward her was increasing, and that the other defendants had now called her  
9 credibility into question in order to protect one Defendant from a potential charge of excessive  
10 force. Booker told Sanfilippo that she had no choice but to resign for her own safety.

11 91. On a date unknown, but on or after January 24, 2002, Defendants Wright, Honsal,  
12 Kim and other SDPS officials prepared and falsely back dated negative reports and evaluations  
13 of Booker that were never shown to Booker, yet appeared in her personnel file while Sanfilippo  
14 supervised the alleged investigation into Booker's reports about the conduct of other Defendants.

15 92. After submitting to an interview by the City's human resources investigator, and  
16 again after a second interview by the City's outside investigator and internal affairs investigator,  
17 Booker was placed on administrative leave with pay so that the investigation could be  
18 completed. No male officer was suspended or placed on administrative leave for the  
19 investigation of Booker's complaints. This was further evidence of Defendants ongoing policies,  
20 customs, and practices of discrimination and disparate treatment of female employees in that  
21 Plaintiff Wowak had been immediately placed on administrative leave when Defendant  
22 Sanfilippo falsely accused her of submitting a false time card, but no action was taken to place  
23 male officers on administrative leave who were suspected of assaulting and battering, and  
24 sexually battering and threatening a female officer, and committing excessive force on a suspect.

25 93. Defendants City, SDPS, Bakin, Sanfilippo and Eaneff failed and refused to complete  
26 the investigation of Booker's charges. After almost three months, and having failed or refused to  
27 complete the investigation of Booker's charges, Defendant Bakin sent a letter to Booker telling  
28 her that she was not in any danger from Defendants Miller, Nelson, Sartwell, Honsal or Kim, and

1 ordered Booker to return to work or resign by April 13, 2002. Bakin claimed that the City and  
2 SDPS intended to complete the investigation and take all corrective action “should this be found  
3 to be necessary.”

4 94. Bakin’s statements in the letter were false, and Bakin knew when writing the letter  
5 that he and the other Defendants had no intention of completing any investigation. Bakin knew  
6 that Booker was in fact in danger, and that Defendant Miller, one of the persons who had  
7 committed battery and assaults on Booker, was an enforcer for an organized crime prostitution  
8 ring. Bakin failed and refused to warn Booker of Miller’s dangerous character and falsely  
9 represented to Booker that, because she was in no danger, she would have to resign if she did not  
10 return to duty on the deadline. Bakin’s conduct was an adverse employment action and  
11 constituted constructive discharge, since Booker knew what Miller had done to her, and knew  
12 that other training officers and SWAT team members had laughed throughout his assault on  
13 Booker and condoned his conduct. In addition, Booker knew that Honsal had manufactured an  
14 accusation against Booker of lying in order to protect Miller, and that it was only a matter of  
15 time before Defendants fired her.

16 95. As of the date of the filing of this complaint Plaintiffs are informed and believe that  
17 Defendants never completed the investigation that they claimed they started in January 2002.

18 **VII. SPECIFIC ACTS OF DISCRIMINATION, HARASSMENT AND**  
19 **RETALIATION AGAINST PENNY ALDERIN**

20 96. Plaintiff Penny Alderin incorporates Paragraph Numbers 1-42 as though fully set  
21 forth herein.

22 97. Plaintiff Alderin has been subjected to a continuous course of conduct of  
23 discrimination based on her sex and recurring retaliation by Defendants City, SDPS, Bakin,  
24 Sanfilippo, Eaneff and Wright.

25 98. When first interviewed for employment in 1999, Alderin was questioned by SDPS  
26 employees about whether she intended to have any more children if employed. Alderin was told  
27 when hired that her probationary period would be 18 months.

28 99. After being hired and her successful completion of the SDPS fire academy, Alderin  
was assigned to police duty in October 1999. Shortly after her assignment, Alderin was forced to

1 attend a "morals and ethics" discussion with Defendant Sanfilippo, who was not her supervisor,  
2 but who discussed with her the need to be "unsullied" as a female officer. Male officers were  
3 not required to attend such discussions.

4 100. While in field training, Alderin asserted her right to a non "quid quo pro" work  
5 environment and explained to a training officer that she wanted only a professional relationship  
6 after he had invited her for drinks and suggested a more intimate relationship. Alderin was  
7 thereafter subjected to retaliation from that officer, and complained about the retaliation to  
8 Defendant Dennis Wong, an SDPS lieutenant with the duty to report her complaint to SDPS  
9 supervisors and/or the City Human Resources. Defendant Wong did not report Plaintiff's  
10 complaint, and told her to "work it out," he then denied Alderin's request to transfer to another  
11 shift.

12 101. When Wong took no action, Plaintiff later reported the aforementioned retaliation  
13 to Defendant Wright. Defendant Wright also took no action.

14 102. Defendant Wright and other male officers then retaliated against Alderin for  
15 asserting her rights and placed her on special audit evaluation in furtherance of the same policies,  
16 customs and practices of the City and the SDPS to discriminate against women and retaliate  
17 against any woman who asserted her rights under the Equal Employment Opportunity or Fair  
18 Employment laws. Defendant Wright placed Alderin on special audit without following the  
19 requisite increasing levels of discipline as mandated by law and Department policy.

20 103. For over two years, Alderin was subjected to special audit evaluation and  
21 extensions of probation without cause or justification. Defendants placed Alderin on special  
22 evaluation, extending her probation on the pretext that she missed two overtime shifts in three  
23 years. Males in similar situations in the Department were not subjected to such penalties for the  
24 same or similar conduct. The special audits to which Plaintiff was subjected was/were negative  
25 employment actions and caused loss of permanent employment status, loss of certain seniority  
26 rights in the future, and a loss of opportunities for special assignments with increased  
27 compensation and potential for promotion.

1           104. Alderin complained to Lieutenant Mark Stivers who had a duty to report such  
2 complaints. Stivers did not report her complaint, and, during the course of their conversation,  
3 told Plaintiff that she and other female officers would look good in a bikini.

4           105. Defendant Wright was Alderin's direct supervisor. He was in charge of writing  
5 Plaintiff's performance evaluation also known as an Employee Achievement Audit. In his  
6 evaluation he criticized Alderin, characterizing her as a person that had severe changes in  
7 attitude because she was a woman. He falsely quoted in her evaluation conversations that never  
8 took place. When Plaintiff received this evaluation from Wright, she refused to sign it because  
9 the alleged conversations about her being a moody woman never took place.

10           106. When Alderin was ordered at the last minute to stay for unscheduled overtime  
11 training and told the person in charge, Tactical Specialist Paul Parsons that she could not stay  
12 because of childcare scheduling, Parsons announced to her training group that males could stay  
13 for training but "mothers could not."

14           107. During her training, Alderin was told by Field Training Officer Kim Bianconi that  
15 a single mother would not make it in the Sunnyvale Department of Public Safety.

16           108. In July 2001, while on duty with other officers, Defendant Tim Sartwell told her  
17 to turn around because he wanted to see if she had a "firehouse ass". Plaintiff was embarrassed  
18 and humiliated by said comments made in front of the other officers.

19           109. After filing her EEOC claim in March 2002, Alderin was transferred to the  
20 detective unit. Since then, Captain Pipkin and Lieutenant Blohm have repeatedly singled her out  
21 and addressed her and referred to Alderin as "the girl."

22           110. Since March 1, 2002, when Defendants City, SDPS, and Sanfilippo received  
23 Alderin's EEOC charges, Defendants increased the already continuous course of discriminatory  
24 and retaliatory conduct, including several events which constituted adverse employment actions,  
25 in order to retaliate against Plaintiff and force Plaintiff out of the Department.

26           111. As part of Defendants' continuous course of discriminatory and retaliatory  
27 conduct after her EEOC charge was filed, Alderin's direct supervisor, Lt. Thomas Piatanesi told  
28 Alderin that other officers did not want to work with her and felt uncomfortable around her



1 because she filed an EEOC charge. Lt. Piatanesi blamed Alderin for creating the situation by  
2 filing the EEOC charge.

3 112. The failure of the Department to address the refusal of other officers to work with  
4 Alderin created a dangerous work environment for Alderin.

5 113. Lieutenant Bloom, one of Alderin's supervisors, told her that it was a bad idea to  
6 hire a lawyer, and that she should not be "rocking the boat." Lieutenant Bloom told Alderin that  
7 if she pursued her claim with the EEOC she did not have a future in the Department. Lt.  
8 Bloom's actions were part of the Department's ongoing policy and practice of discrimination and  
9 retaliation against women.

10 114. Other officers in the detective bureau, in front of supervisors suggested Alderin  
11 should bake cookies, and the supervisors did nothing to correct such conduct, stating only, "that  
12 is sexual harassment.

13 115. Alderin was contacted by another SDPS Lieutenant, who told her that she should  
14 "be one of the guys" and not pursue any legal action regarding discrimination. Such comments  
15 are part of the Department's policies, customs and practices to retaliate against women who  
16 assert their rights.

17 **FIRST CAUSE OF ACTION**  
18 **Violation of Title VII, 42 U.S.C. § 2000e**

19 116. Plaintiffs incorporate Sections I-VII as though fully set forth herein.

20 117. Defendants' conduct was a violation of Title VII of the Civil Rights Act of 1964,  
21 42 U.S.C. §§ 2000(e), et. seq.

22 118. The SDPS failed to respond to the EEOC charges in the time required by law, and  
23 Plaintiffs therefore requested from the EEOC and FEHA the right to file suit against Defendants  
24 for allegations set forth herein.

25 119. The City and SDPS, and Defendants Bakin, Sanfilippo and Eaneff continuously  
26 maintained and perpetuated a system for making decisions and did make decisions about hiring,  
27 assignments, promotions, compensation, terms, conditions and privileges of employment that  
28 were and are excessively subjective and which have had a disparate impact on Plaintiffs and

1 other female employees. The conduct is not and cannot be justified by business necessity and  
2 less discriminatory alternatives exist that could equally serve any alleged necessity.

3 120. The City and SDPS, and Defendants Bakin, Sanfilippo and Eaneff continuously  
4 maintained and perpetuated a system that intentionally discriminated against Plaintiffs by  
5 making decisions about hiring, assignments, promotions, compensation, terms, conditions and  
6 privileges of employment that was and is excessively subjective and through which SDPS  
7 discriminated against female employees by denying them the same opportunities for job  
8 assignments, upward mobility and compensation that adversely affected their employment status  
9 and that was not done to similarly situated male employees.

10 121. All Defendants discriminated against female employees based on their sex and  
11 committed overt acts of sexual harassment toward Plaintiffs and other female employees all in  
12 violation of federal law. Defendants participated in conduct intended to cause the termination of  
13 female employees including Plaintiffs by sexual harassment, intimidation, assault, and falsifying  
14 evaluations.

15 122. All Defendants operated on the job training programs for Defendant City and  
16 SDPS that discriminated against Plaintiffs based on sex.

17 123. All Defendants falsified and altered evaluations and test scores of Plaintiffs and  
18 altered the results of employment related field testing and evaluations in connection with  
19 selection, permanent employment and promotion of Plaintiffs.

20 124. All defendants have systematically retaliated against Plaintiffs and other women  
21 who have complained about discrimination and unfair treatment.

22 125. All Defendants acted in their capacities as individuals, employers and trainers  
23 involved in on the job training programs to discriminate against Plaintiffs because Plaintiffs  
24 opposed Defendants' discriminatory practices, and because Plaintiffs brought charges against  
25 Defendants to the SDPS and the EEOC and DFEH for violations of 42 U.S.C. §2000e.

26 126. Defendants City, Bakin, SDPS, Sanfilippo, and Eaneff published and or ratified  
27 and condoned the publication of notices to SDPS male employees for promotional or specialty  
28

positions which expressly indicated Defendants' preference, limitation, specification and discrimination in favor of male employees and against female employees based on sex.

127. The employment practices of Defendants each individually caused a disparate impact on the basis of sex not related to the business of public safety, law enforcement or fire service and not consistent with any business necessity; and, the totality of the Defendants' policies, customs and practices relating to recruiting, hiring, training, evaluation, harassment and discrimination constitute one employment practice.

128. The conduct of Defendants was done with intent to oppress Plaintiffs and female employees and with malice toward Plaintiffs and female employees, and, therefore, Defendants should be assessed exemplary and punitive damages to punish and deter similar future conduct.

Wherefore, Plaintiffs pray for damages as further set forth below.

**SECOND CAUSE OF ACTION**  
**Violation of California Fair Employment and Housing Act,**  
**California Government Code § 12940**

129. Plaintiffs incorporate Sections I-VII and the First Cause of Action as though fully set forth herein.

130. The conduct of City and its department, directors, officers, supervisors, and employees is and was in violation of the California Fair Employment and Housing Act, Government Code §12940 et.seq.

131. The City, through its department, directors, officers, supervisors, and employees refused to hire and/or select women for its training programs, and barred or discharged women from employment and from training programs, and discriminated against women in terms, conditions, privileges and employment based on their sex.

132. The City, through its department, directors, officers, supervisors, and employees published and or ratified and condoned the publication of notices to SDPS male employees for promotional or specialty positions which expressly indicated Defendants' preference, limitation, specification and discrimination in favor of male employees and against female employees based on sex.

1           133. The City, through its department, directors, officers, supervisors, and employees  
2 discriminated against and retaliated against Plaintiffs and other employees because the Plaintiffs  
3 opposed practices of the Department that were forbidden under federal and state law, and  
4 because Plaintiffs filed complaints to the Fair Employment and Housing Commission.

5           134. Defendants City, Bakin, Sanfilippo, Eaneff, Miller, Nelson, Sartwell, Wright,  
6 Honsal and Kim personally harassed Plaintiffs by sexual harassment, gender harassment, and  
7 based on Plaintiff Wowak's pregnancy, and/or ratified, assisted or condoned such harassment.  
8 Defendants knew or should have known of the conduct of other Defendants and failed and  
9 refused to take immediate corrective action, and failed to take steps to prevent discrimination and  
10 harassment from occurring.

11           135. The employment practices of Defendants each individually caused a disparate  
12 impact on the basis of sex not related to the business of public safety, law enforcement or fire  
13 service and not consistent with any business necessity; and, the totality of the Defendants'  
14 policies, customs and practices relating to recruiting, hiring, training, evaluation, harassment and  
15 discrimination constitute one employment practice. Defendants' training and evaluation  
16 policies, customs and practices were established, implemented and applied as a pretext to  
17 discriminate against Plaintiffs, other women and other protected classes.

18           136. Defendants committed the acts described in this complaint oppressively,  
19 fraudulently, and maliciously, entitling plaintiff to an award of punitive damages against  
20 defendants in an amount appropriate to punish and make an example of defendants.

21           Wherefore, Plaintiffs pray for damages as further set forth below.

22                                   **THIRD CAUSE OF ACTION**  
23                                   **Violation of Civil Rights, 42 U.S.C. § 1983**

24           137. Plaintiffs incorporate Sections I-VII and the First and Second Causes of Action as  
25 though fully set forth herein.

26           138. Plaintiffs achieved or should have achieved the status of permanent, civil service  
27 employees, and, in such status, held property interests in the continuation of employment under  
28 the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution.

1           139. Defendants maintained a probationary employment system that is and was  
2 discriminatory and subjective, that permitted Defendants to keep Plaintiffs and others on  
3 probationary status for unlimited time, often in excess of three years, while Defendants were then  
4 able to contrive and fabricate reasons to deprive Plaintiffs and others of their constitutional rights  
5 provided in the 5<sup>th</sup> and 14<sup>th</sup> Amendments.

6           140. Defendants conspired to and did prevent Plaintiffs from attaining the status of  
7 permanent employees by means of false evaluation reports, back dating and inserting into files  
8 reports never seen or confirmed by Plaintiffs, negative reports and evaluations that were never  
9 shown to Plaintiffs that later were unlawfully inserted into Plaintiffs' personnel and training files,  
10 and by bringing false charges of misconduct against Plaintiffs.

11           141. As the Plaintiffs had or should have attained permanent status, they possessed the  
12 right not to be terminated or be subjected to other disciplinary methods unless facts existed  
13 constituting cause for such discipline. In the absence of sufficient cause Plaintiffs had a statutory  
14 right to continued employment free of punitive measures and interference with their  
15 constitutional rights under the 5<sup>th</sup> and 14<sup>th</sup> Amendments.

16           142. Every significant deprivation of an interest set forth herein -- permanent or merely  
17 temporary, which qualifies, as 'property' was required under the mandate of due process to be  
18 preceded by notice and a hearing, and Defendants repeatedly deprived Plaintiffs of their property  
19 rights in their continued employment with SDPS.

20           143. Defendants, and each of them, have repeatedly failed to provide Plaintiffs with  
21 notice of intended adverse employment action, the opportunity to confront and cross-examine  
22 accusers, or to have any type of hearing prior to being deprived of their property rights or obtain  
23 the right to clear their name or names in an evidentiary hearing.

24           144. Defendants Sanfilippo, Eaneff, Miller, Nelson, Sartwell, Honsal and Kim acting  
25 individually and outside the course and scope of the employment, acted under color of law when  
26 assaulting and battering Plaintiff Booker, and used excessive and unreasonable force and  
27 violence upon her in violation of the 4<sup>th</sup> and 14<sup>th</sup> Amendments. In so acting under color of  
28 authority and participating in violence against Plaintiff, or by permitting, failing to intercede,

1 ratifying and condoning excessive force, Defendants violated Plaintiff's 4<sup>th</sup> and 14<sup>th</sup> Amendment  
2 rights.

3 145. The conduct of Defendants was done with intent to oppress Plaintiffs and female  
4 employees and with malice toward Plaintiffs and female employees, and, therefore, Defendants  
5 should be assessed exemplary and punitive damages to punish and deter similar future conduct.  
6

7 Wherefore, Plaintiffs pray for damages as further set forth below.

8 **FOURTH CAUSE OF ACTION**  
9 **Violation of the Family and Medical Leave Act**  
10 **29 U.S.C. § 2601 et. seq.**

11 146. Plaintiff Wowak incorporates Sections I-V and the First through Third Causes of  
12 Action as though fully set forth herein and alleges against Defendants City, SDPS, Sanfilippo,  
13 and Eaneff:

14 147. Plaintiff was employed by Defendants for a period of more than 12 months and  
15 over 1,250 hours, and Defendants City and SDPS are a public agency employing more than 50  
16 employees.

17 148. Plaintiff's leave for the birth of her child entitled her to be restored to her  
18 employment without loss of benefits of employment accrued prior to commencement of her  
19 leave.

20 149. While Plaintiff was on lawful family medical leave, Defendants unlawfully  
21 interfered with, restrained and denied Plaintiff her rights protected by the Family Medical Leave  
22 Act, and discriminated against and constructively terminated Plaintiff for her assertion of her  
23 rights under the Act, and because Plaintiff filed a charge of pregnancy discrimination.

24 150. Defendants committed the acts described in this Complaint oppressively,  
25 fraudulently, and maliciously, entitling Plaintiff to an award of punitive damages against  
26 Defendants in an amount appropriate to punish and make an example of Defendants.

27 Wherefore, Plaintiff prays for damages as further set forth below.

28 **FIFTH CAUSE OF ACTION**  
29 **Violation of the California Family Rights Act**  
**California Government Code § 12945.2 et. seq.**

151. Plaintiff Wowak incorporates Sections I-V and the First through Fourth Causes of

1 Action as though fully set forth herein and alleges against Defendants City, SDPS, Sanfilippo,  
2 and Eaneff:

3 152. While Plaintiff was on lawful family care and medical leave, Defendants notified  
4 Plaintiff that her leave constituted a break in service for purposes of longevity, seniority and  
5 permanent employee status, which would have an adverse action on Plaintiff's eligibility for  
6 promotion, job assignments and seniority related benefits.

7 153. Defendants unlawfully indicated refusal to establish Plaintiff's right to permanent  
8 employment and to discharge her and discriminate against Plaintiff for her exercise of her right  
9 to family care and medical leave, and for giving information to the EEOC and FEHA as a  
10 proceeding relating to the rights guaranteed by the Family Care and Medical Leave Act.

11 154. Defendants committed the acts described in this complaint oppressively,  
12 fraudulently, and maliciously, entitling Plaintiff to an award of punitive damages against  
13 Defendants in an amount appropriate to punish and make an example of Defendants.

14 Wherefore, Plaintiffs pray for damages as further set forth below.

15 **SIXTH CAUSE OF ACTION**

16 **Conspiracy**

17 **42 U.S.C. § 1985(2)&(3)**

18 155. Plaintiffs incorporate Sections I-VII and the First through Fifth Causes of Action  
19 as though fully set forth herein.

20 156. Defendants' conduct constituted a Conspiracy in violation of 42 U.S.C. §  
21 1985(2)-(3), which deprived Plaintiffs of equal protection under the law.

22 157. Plaintiffs achieved or should have achieved the status of permanent, civil service  
23 employees, and, in such status, held property interests in the continuation of employment under  
24 the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution.

25 158. Defendants Eaneff, Sanfilippo, Miller, Nelson, Honsal, Sartwell, Wright, Davis,  
26 Kim, acting in their individual capacity did agree, with and amongst each other, both directly and  
27 indirectly to pursue a course of conduct to deny, impede, hinder and obstruct justice with  
28 purposeful intent to deny equal protection of law to Plaintiffs with regard to their employment  
with SDPS.

1           159. Defendants Eaneff, Sanfilippo, Miller, Nelson, Honsal, Sartwell, Wright, Davis,  
2 Kim, and each of them in furtherance of said conspiracy, undertook a course of conduct, as set  
3 forth herein, which included refusing to hire and/or select women for its training programs,  
4 barring or discharging women from employment and from training programs, and discriminating  
5 against women in terms, conditions, privileges and employment based on their sex.

6           160. Defendants, Eaneff, Sanfilippo, Miller, Nelson, Honsal, Sartwell, Wright, Davis,  
7 Kim, and each of them, conspired to deny Plaintiffs' equal protection of the law by publishing,  
8 ratifying and condoning the publication of notices to SDPS male employees for promotional or  
9 specialty positions which expressly indicated Defendants' preference, limitation, specification  
10 and discrimination in favor of male employees and against female employees based on sex.

11           161. Defendants, Eaneff, Sanfilippo, Miller, Nelson, Honsal, Sartwell, Wright, Davis,  
12 Kim, and each of them, conspired to deny Plaintiffs' equal protection of the law by  
13 discriminating against and retaliating against Plaintiffs and other employees because the  
14 Plaintiffs opposed practices of the Department that were forbidden under federal and state law,  
15 and because Plaintiffs filed complaints to the Fair Employment and Housing Commission.

16           162. Defendants, Eaneff, Sanfilippo, Miller, Nelson, Honsal, Sartwell, Wright, Davis,  
17 Kim, and each of them, conspired to deny Plaintiffs' equal protection of the law by harassing  
18 Plaintiffs through sexual harassment, gender harassment, and based on Plaintiff Wowak's  
19 pregnancy, and/or ratified, assisted or condoned such harassment.

20           163. When the Defendants Irwin Bakin, the City and the SDPS discovered the acts and  
21 conspiracy of Defendants, Eaneff, Sanfilippo, Miller, Nelson, Honsal, Sartwell, Wright, Davis,  
22 Kim, and each of them, Irwin Bakin, the City and the SDPS agreed with the acts of Defendants,  
23 actively sought to protect the individuals responsible for the conspiracy and then actively  
24 undertook new and discreet acts in furtherance of said conspiracy.

25           164. These acts were done by Defendants, and each of them, under color of state law  
26 or authority, and Plaintiffs were injured in person, property and were deprived of their civil  
27 rights and the equal protection of the law.

28



165. Defendants committed the acts described in this complaint oppressively, fraudulently, and maliciously, entitling Plaintiff to an award of punitive damages against Defendants in an amount appropriate to punish and make an example of Defendants.

Wherefore, Plaintiffs pray for damages as further set forth below.

## SEVENTH CAUSE OF ACTION

## Assault

166. Plaintiff Booker incorporates Sections I-IV and VI as though fully set forth herein and alleges against Defendants City, SDPS, Sanfilippo, Miller, Nelson, Sartwell, Honsal and Kim.

167. Defendants committed acts, or assisted, participated in, ratified and condoned assaults on Plaintiff Booker that were intended to and did cause plaintiff to be apprehensive of a harmful contact with Plaintiff's person.

168. Said threatened contact was in excess of that consented to and/or reasonably anticipated by Plaintiff Booker as part of her employment and for police training exercises.

169. As a proximate result of said conduct, Plaintiff suffered embarrassment, anxiety, shock, anger, rage, grief, dismay, shame, indignity, humiliation, and other mental and emotional distress and will continue to suffer said injuries and emotional distress in an amount to be proven at the time of trial. Plaintiff suffers and will continue to suffer special damages, which are ongoing.

170. The conduct of Defendants was done with intent to oppress Plaintiffs and female employees by despicable actions that subjected Plaintiff to cruel and unjust hardship in conscious disregard of her rights; and with malice by actions intended to cause injury to Plaintiff and carried on with willful and conscious disregard of Plaintiff's safety and rights.

171. Defendants City, SDPS, Sanfilippo and Eaneff had advance knowledge of the unfitness of one or more of its Defendant employees and continued to keep Defendants in its employ with conscious disregard of the rights and safety of Plaintiff and others, and authorized and ratified the wrongful conduct of the Defendant employees, and was/were personally guilty of fraud for the intentional misrepresentations, and concealment by inserting false reports and

documents into Plaintiff's personnel and training files in order to deprive Plaintiff of her property rights and other legal rights.

172. Defendants should be assessed exemplary and punitive damages to punish and deter similar future conduct.

Wherefore, Plaintiffs pray for damages as further set forth below.

## **EIGHTH CAUSE OF ACTION**

### **Battery**

173. Plaintiff Booker incorporates Sections I-IV and VI as though fully set forth herein, and alleges against Defendants City, SDPS, Sanfilippo, Miller, Nelson, Sartwell, Honsal and Kim.

174. Defendants committed harmful physical contact on Plaintiff Booker, or assisted, participated in, ratified and condoned such harmful physical contact on Plaintiff Booker. Said contact was in excess of that consented to, legally permitted and/or reasonably anticipated by Plaintiff Booker as part of police training exercises.

175. As a result of Defendants' battery on Plaintiff Booker, Plaintiff was physically and emotionally injured, and suffered embarrassment, anxiety, shock, anger, rage, grief, dismay, shame, indignity, humiliation, and other mental and emotional distress and will continue to suffer said injuries and emotional distress in an amount to be proven at the time of trial. Plaintiff suffers and will continue to suffer special damages, which are ongoing.

176. The conduct of Defendants was done with intent to oppress Plaintiff and female employees by despicable actions that subjected Plaintiff to cruel and unjust hardship in conscious disregard of her rights; and with malice by actions intended to cause injury to Plaintiff and carried on with willful and conscious disregard of Plaintiff's safety and rights.

177. Defendants City, SDPS, Sanfilippo and Eaneff had advance knowledge of the unfitness of one or more of its Defendant employees and continued to keep Defendants in its employ with conscious disregard of the rights and safety of Plaintiff and others, and authorized and ratified the wrongful conduct of the Defendant employees, and was/were personally guilty of fraud for the intentional misrepresentations, and concealment by inserting false reports and

documents into Plaintiff's personnel and training files in order to deprive Plaintiff of her property rights and other legal rights.

178. Defendants should be assessed exemplary and punitive damages to punish and deter similar future conduct.

Wherefore, Plaintiffs pray for damages as further set forth below.

**NINTH CAUSE OF ACTION**  
**Injunction**

179. Plaintiff, Penny Alderin alleges against Defendants City, SDPS, Sanfilippo, Eaneff and Wright, and incorporates Sections I-IV and VII, and the First, Second, Third and Sixth Causes of Action as though fully set forth herein.

180. Plaintiff has no plain, timely, adequate or complete remedy at law to redress the wrongs alleged herein, and the injunctive relief sought in this action is the only means of securing complete and adequate relief for Plaintiff Alderin and other women similarly situated and continuing to be employed by Defendants. Plaintiff Alderin is now suffering and will continue to suffer irreparable injury from Defendants' discriminatory acts and omissions.

181. The actions on the part of Defendants have caused and continue to cause Plaintiff substantial losses in earnings, promotional opportunities and other employment benefits, and further resulted in the constructive termination of Pascale Wowak and Joy Booker and their now reduced salaries in an amount to be determined according to proof.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief as follows:

1. For all special damages which Plaintiffs have sustained as a result of Defendants conduct, including but not limited to back pay, front pay, lost compensation and job benefits that Plaintiffs would have received but for the discriminatory practices of Defendants;

2. For general damages;

3. For damages specified in 29 U.S.C. § 2617;

4. For exemplary and punitive damages;

5. For a preliminary and permanent injunction against the City, the SDPS and its directors, officers, owners, agents, successors, employees and representatives, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies, customs and usages set forth herein;

6. For costs incurred;

7. For attorney's fees;

8. For Pre-Judgment and Post-Judgment interest, as provided by law; and

9. For such other and further legal and equitable relief as this Court deems necessary,  
just and proper.

### Demand For Jury Trial

Plaintiffs hereby demand a jury trial as provided by Rule 38 of the Federal Rules of Civil Procedure.

Dated: January 29, 2003

LAW OFFICES OF VINCENT P. HURLEY  
A Professional Corporation

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