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6 VERNON CRESWELL

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UNLIMITED JURISDICTION

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

12

FOR THE COUNTY OF LOS ANGELES

13

14

VERNON CRESWELL,

) **CASE NO.**

15

Plaintiff,

) **COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

16

vs.

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CITY OF MONTEBELLO, and DOES 1
through 100, inclusive,

- 1. Retaliation in Violation of FEHA
- 2. Failure to Accommodate
Disability in Violation of FEHA
- 3. Failure to Engage in Interactive
Process in Violation of FEHA
- 4. Violation of Govt Code § 3253(g)
- 5. Violation of Govt Code § 3255
- 6. Violation of Govt Code § 3256
- 7. Violation of Govt Code § 3253(i)

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Defendants.

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) **JURY TRIAL DEMANDED**

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1 **INTRODUCTION**

- 2 1. The City of Montebello and its Fire Department are mistaken in treating every
3 single body of rights for Plaintiff Vernon Creswell as a ceiling, rather than a floor.
4 This violation of rights is being done systematically against Plaintiff, in retaliation for
5 his complaining about being called racist epithets, and complaining about
6 discriminatory and retaliatory promotional exam processes that intentionally
7 exclude him and punish him for being a whistleblower.
- 8 2. If the Municipal Code provides a minimum of 10 days to respond to a negative
9 personnel comment, and the California Government Code provides a minimum of
10 30 days, the City cherry picks the shorter timeline, in an attempt to jam Plaintiff up
11 over the holidays, while he is on disability leave. It seems to never have occurred
12 to the City of Montebello that rights are cumulative, rather than disjunctive. So if
13 state law provides for rights not contemplated in the municipal code, the City must
14 adhere to all bodies of law by ensuring that all of Plaintiff's rights are protected.
15 The City may not pick and choose which body of law is most conducive to its
16 campaign to damage and malign Mr. Creswell, and then disregard every other
17 body of law.
- 18 3. In other instances, the City disregards its own clear policies and state law as if they
19 were mere suggestions. Meanwhile, the City stretches the interpretation of other
20 policies beyond recognition, so as to construe a subjective violation by Plaintiff
21 where in reality there is none.
- 22 4. In California, Firefighters are protected by the Firefighters' Bill of Rights (Cal. Govt.
23 Code Sections 3250-3262). This groundbreaking legislation formalizes a social
24 contract between firefighters and the public they serve. Firefighters risk their lives
25 to help victims of fires, traffic accidents, shootings, medical emergencies, people
26 considering suicide, and the occasional cat stuck in the tree. Firefighters' on the
27 job risk is astronomically higher than almost any other profession, and their life
28 expectancy at retirement is shorter than those in other professions. The California

1 State Legislature, in appreciation for Firefighters' sacrifices, adopted the
2 Firefighters' Bill of Rights to ensure due process protections that most other
3 professions lack. For example, an employer may not inquire about income earned
4 by a Firefighter during their days off work (Section 3258) and a Firefighter's locker
5 at work is not subject to random searches (Section 3259). Further, Firefighters are
6 entitled to sign for receipt of any adverse comments in their personnel file, and
7 have 30 days to contest those comments. (Sections 3255-56). In any interview
8 regarding a potential punitive personnel action, the Firefighter is allowed to record
9 the proceeding, so as to ensure that the Firefighter's words are not taken out of
10 context or misconstrued (Section 3253(g)).

11 5. The Firefighters Bill of Rights is one perquisite that the public bestows on
12 firefighters in exchange for their service, but not the only one. With a 48-hour
13 standard shift for the Firefighters in Montebello, which is often extended to 96 hours
14 (due to forced overtime), it is no wonder that the public looks for ways to help out
15 firefighters. In Montebello, some restaurants offer 50% discounts to fire personnel.
16 Costco encourages fire personnel to use a faster lane to check out. Olive Garden
17 delivers an annual Italian feast to the Montebello fire department. The DMV offers
18 the Fire Department a faster lane to take care of DMV business. None of these
19 courtesies are codified into formal policies, as far as Plaintiff is aware. But they are
20 an innocent and harmless way to make the challenge of a forced 96-hour shift of
21 saving lives a little more tolerable, and Firefighters tend to appreciate the gesture.
22 If a firefighter is in between emergency calls, and has perhaps a couple of hours to
23 get some fresh air, run a couple of errands, and then catch a quick nap before the
24 next call comes, no one can fault the DMV staff for voluntarily deciding that creating
25 a faster line at the DMV for Fire personnel is likely to advance the greater good.

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GENERAL ALLEGATIONS

- 6. At all times relevant hereto, VERNON CRESWELL (“Plaintiff”) was and is a resident of the County of Riverside, State of California, and was and is a competent adult.
- 7. At all times relevant hereto, Plaintiff was a Fire Captain employed by Defendant City of Montebello (“the City” or “Defendant”). Plaintiff has been employed by the City since 2008.
- 8. Plaintiff is informed and believes and thereon alleges that, at all times relevant herein, the City was a public entity located in the County of Los Angeles, California. On information and belief, Plaintiff alleges that the Montebello Fire Department (“the Department”) is an administrative agency of the City.
- 9. Defendants DOES 1 – 100, and each of them, whether individual, corporate, associate or otherwise, are unknown to Plaintiff at this time, who therefore sues said Defendants by such fictitious names, until such time as those names are ascertained.
- 10. Plaintiff alleges on information and belief that each DOE Defendant was and is in some matter liable to Plaintiff for the injuries and conduct alleged herein, and that Plaintiff’s damages were and are proximately caused by their conduct.
- 11. On information and belief, Plaintiff alleges that all relevant times herein the Defendants, and each of them, were the agents, servants and/or employees or ostensible agents, servants and/or employees of each other Defendant. As such, the Defendants were acting within the course and scope of said actual or ostensible agency or employment – except on those occasions when Defendants were acting as principals, in which case, said Defendants, and each of them, were negligent in the selection, hiring, and use of the other Defendants.
- 12. Plaintiff further alleges, on information and belief, that at all times relevant herein,

1 Defendants, and each of them, acted in concert and in furtherance of the interests
2 of each other Defendant.

3 13. This court is the proper court because Defendant City is located in the County of
4 Los Angeles, and Plaintiff is employed in the County of Los Angeles, and many or
5 all of the facts herein alleged took place in the County of Los Angeles.

6 14. Plaintiff has complied or will comply with any applicable claims statutes and/or
7 administrative or internal remedies and/or grievance procedures, or is excused
8 from complying therewith. In the alternative, the money damages are incidental to
9 Plaintiff's Firefighter Bill of Rights ("FBOR") Injunctive Relief Claims.

10
11 **FACTUAL ALLEGATIONS**

12
13 15. Plaintiff is an African-American Fire Captain employed by the City.

14 16. In 2013, Plaintiff filed a lawsuit for race harassment under the Fair Employment and
15 Housing Act ("FEHA"). Plaintiff alleged, among other things, that his supervisor
16 was referring to Plaintiff as a "ni**er"¹ based on his African-American Race.

17 17. In June of 2015, Plaintiff prevailed in his race harassment claim at trial and was
18 awarded damages by a jury.

19 18. In or around, 2017, Plaintiff filed a lawsuit under FEHA for retaliation, based on the
20 first lawsuit. Plaintiff applied for Battalion Chief Position and received scores on the
21 simulation exam that were biased, discriminatory and/or retaliatory and implausibly
22 low. Plaintiff had overhead Department leadership saying things evincing
23 retaliatory and discriminatory animus along the lines of Plaintiff "had stolen money
24 from the City" (by winning the prior lawsuit), Plaintiff "just can't be a Battalion Chief
25 in Montebello"; Plaintiff and/or other minorities "cheat or attempt to cheat" on

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27 ¹ * = g.

1 promotional exams.

2 19. As a result of the City's unlawful discrimination and/or retaliation, Plaintiff was
3 denied a promotion or otherwise suffered a/an adverse employment action(s) in
4 2017.

5 20. A jury trial is presently pending in that case from 2017, to be heard in or about April
6 2021.

7 21. On or about August 11, 2020, Plaintiff was placed on paid administrative leave by
8 the City while the City investigated alleged wrongdoing by Plaintiff from the
9 previous day. The City accused Plaintiff alleged wrongdoing while meeting another
10 Fire Department Employee to show the employee which line at the Montebello
11 DMV had traditionally allowed Montebello Fire Department staff to conduct
12 personal and/or fire department-related business in an expedited manner. The Fire
13 Department staff were even occasionally invited to socialize with the DMV staff in
14 order to learn about the expedited line and Fire Department Staff were encouraged
15 to use it.

16 22. The expedited DMV line had always been allowed and encouraged by Fire
17 Department leadership, until Mr. Creswell was singled out for retaliation. Given
18 that fire department staff often have forced-overtime shifts of 96 hours (2
19 consecutive 48 hours shifts) or even more, the reality is that Fire Department staff
20 need to run errands such as going to the bank for personal matters, going to the
21 DMV for personal or work matters, going out to lunch or dinner to get a break from
22 "cabin fever" from being at the fire station, all while being on "stand-by", i.e., in
23 uniform, close to their fire station, with their Fire Department radio "on" and with the
24 fire truck and co-workers, so that they are ready to deploy if there is an emergency
25 call.

26 23. Apparently recognizing the benefit to the public of having Fire Department staff who
27 were fresh and ready to save lives, rather than exhausted from waiting in line for
28 hours at the DMV, the DMV had permitted and encouraged Fire Department staff to

1 use an expedited window. No written or verbal policy was provided to Plaintiff –
2 either by the DMV or the City – which specified which Fire Department staff could
3 use the expedited line, or for what types of matters the expedited line was
4 available. City and/or Fire Department leadership had also encouraged the
5 practice of using the expedited DMV line and prior to this incident had made no
6 mention of which types of matters were appropriate to resolve at the expedited
7 DMV line while at work (but on “stand-by” and ready to deploy if needed).

8 24. Mr. Creswell did not know if the Fire Department staff person who requested
9 assistance in locating the expedited line at the DMV was handling a personal or
10 work-related matter.

11 25. During the entire period of approximately 10 minutes that Mr. Creswell was near
12 the DMV, he was near to the fire truck and his crew, and ready to deploy should a
13 call come in.

14 26. The Fire Department staff-person who requested assistance at the DMV had e-
15 mailed several supervisors, including Captains and at least one Battalion Chief,
16 and none of them objected to the request as wrongful in the approximately three-
17 or-four hours between when the request was sent and when Mr. Creswell
18 responded to it.

19 27. If responding to the request from a Fire Department employee for DMV assistance
20 had been a clear violation of any policy so as to warrant discipline, one would
21 reasonably expect the supervisors to intervene and discourage responding to the
22 request for DMV assistance during the approximately three-to-four-hour time period
23 mentioned herein.

24 28. Placing Mr. Creswell on administrative leave starting on or about August 11, 2020
25 was, in reality, retaliation in violation of FEHA. The administrative leave was at
26 least substantially motivated by Plaintiff having alleged race discrimination,
27 harassment, and retaliation in Mr. Creswell’s two previous civil lawsuits, mentioned
28 above, and the related complaints (DFEH charges as well as verbal and/or written

1 complaints which opposed race discrimination, race harassment, and retaliation for
2 complaining about race discrimination or race harassment). This administrative
3 leave was punitive in that it prohibited Mr. Creswell from accessing his City e-mail
4 address, stepping foot on City property, and Mr. Creswell was physically escorted
5 out of the Fire Station while he was at work in front of his co-workers, which was
6 totally unnecessary and done as an act of further retaliation to falsely depict Mr.
7 Creswell as if he were a criminal. All of this had the effect of deterring Mr. Creswell
8 and other employees from asserting their rights to oppose discrimination under
9 FEHA, even though Mr. Creswell did not immediately suffer a loss of “base pay”
10 due to the administrative leave.

11 29. Placing Mr. Creswell on administrative leave on or about August 11, 2020 was an
12 adverse employment action, as it resulted in lost training opportunities, lost
13 opportunities for promotion and was done with the intent to terminate Mr.
14 Creswell’s employment. Also, it materially and adversely affected the terms,
15 conditions, or privileges Plaintiff’s employment, and at the time it was done, was
16 likely to impair Plaintiff’s job performance or prospects for advancement or
17 promotion.

18 30. Plaintiff further complained of other unlawful conduct, including race discrimination
19 and retaliation for complaining about race discrimination or harassment in or about
20 September 2020, when Mr. Creswell wrote the following correspondence (or a
21 version of it) to Montebello City Council members, Montebello Mayor, the City
22 Manager, City Human Resources Director and others:

23 *“IT’S TIME TO END SYSTEMIC RACISM AND RETALIATION IN THE*
24 *MONTEBELLO FIRE DEPARTMENT*

25
26 *As people across the State of California have their lives upended by*
27 *fires that are encroaching on residential areas, this is a good time to*
28 *ask what it’s like to actually work as a firefighter. Too often, the “old*

1 *boys network” inside fire departments hinders newcomers’ ability to not*
2 *only put out fires, but also to help the public in many other ways.*

3
4 *I have proudly been a Firefighter/Paramedic for 26 years, including 12*
5 *of those years with the City of Montebello. I love my chosen profession*
6 *servicing the public. I love the fact that I have been able to cherish a*
7 *career helping hundreds if not thousands of people over the years.*

8
9 *As an African-American Firefighter, I have always sought to improve*
10 *the Montebello Fire Department and make it more welcoming to*
11 *minorities including women, while at the same time respecting my*
12 *coworkers of different backgrounds. I am not someone whose first*
13 *instinct is to sue. I have let many problematic remarks by fire*
14 *department employees slide, so as to try to get along with my*
15 *coworkers and supervisors.*

16
17 *I finally sued the City of Montebello for the first time in 2013 after a*
18 *series of incidents, the worst of which included being called the “N-*
19 *word”, “Compton Gang Banger”, and “Mush Mouth” from the television*
20 *show Fat Albert. A jury agreed that I had been subject to racial*
21 *harassment and retaliation.*

22
23 *I sued the City of Montebello again for retaliation in 2017, after I*
24 *applied for promotion to Battalion Chief and was unfairly denied. Some*
25 *of the department leadership made remarks such as “If promoted to*
26 *Battalion Chief, I would destroy the organization” and “minorities*
27 *always cheat on exams,” indicating that they would never give me a*
28 *fair chance at the promotion because of my prior complaints of race*

1 *discrimination, harassment, and retaliation.*

2
3 *The 2017 case has not yet been heard by a jury. In settlement*
4 *conferences, the City has insisted that I leave the fire department and*
5 *retire (15 years early) as a condition of settlement. I feel the City wants*
6 *to push me out for having the courage to assert my legal rights. I have*
7 *made it very clear on several occasions that I do not want to leave the*
8 *department and give up my career. I want to be treated fairly, included*
9 *in the decision making that helps with the growth and a more racially*
10 *diverse department, and continue to do my job helping the public.*

11
12 *Recently I was notified of an “investigation” into my on-the-job actions,*
13 *which I feel are unwarranted and is completely retaliatory. I won’t go*
14 *into details since the so-called “investigation” is ongoing and I’m*
15 *prohibited from discussing the details.*

16
17 *If someone wants to do a true investigation into real misconduct, they*
18 *should start at the top. It’s time for the Montebello City Council or the*
19 *California Attorney General to look into a pattern of discrimination and*
20 *retaliation, and other misconduct within the Montebello Fire*
21 *Department that is perpetuated by the department leadership. If the*
22 *City of Montebello or the Fire Department wants to truly clean up its act*
23 *and change the culture, it will need to take a new approach with*
24 *independent oversight. The leadership current team is not up to the job*
25 *and has enabled or perpetuated the culture of harassment,*
26 *discrimination, and retaliation against those who stand up for what is*
27 *right.*

28

1 *Recently I was told by one of the Fire Department leaders that the City*
2 *Manager Mr. Bobadilla wanted to have lunch with me and really get to*
3 *know me as a person, and had given him my cell number. This turned*
4 *out to be a bait and switch. Instead of a friendly phone call that I*
5 *expected, the only communication from the City has been settlement*
6 *offers contingent on me leaving the department, 15 years before I had*
7 *planned to.*

8
9 *On several occasions I reached out to the Fire department leadership*
10 *with the hope to collaboratively work towards expanding the candidate*
11 *pool in an effort to hire qualified African-American Chief Officers in*
12 *some key leadership roles within the fire department. My efforts have*
13 *gone unreciprocated, and none of the current leadership seems to be*
14 *interested in building a department which reflects the community we*
15 *serve.*

16
17 *Further, current Montebello Fire Department leadership has engaged*
18 *in dubious behaviors such as ordering an employee to take a city*
19 *vehicle out of the city to pick up expensive watches (for leaders'*
20 *personal use) while on duty.*

21
22 *On another occasion current Montebello Fire Department leadership*
23 *ordered a fire engine while on duty to go out of the city limits and into*
24 *East Los Angeles to attend a birthday parade.*

25
26 *One of the members of the Montebello Fire Department leadership*
27 *boasted to me (back when we were friendly) that he could slow down*
28 *the workers' compensation processing for firefighters who he did not*

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like. Indeed, it is suspicious that lately I have not been able to obtain workers' comp treatment that I need and am entitled to.

If Montebello City Council or the California Attorney General wants to investigate this misconduct and pattern of systemic racial bias and retaliation, they should interview myself and other firefighters under the auspices of a "truth commission" and a guarantee of absolutely no retaliation. This is essential to bringing about transparency and equality that is severely needed.

All I want is to be able to do my job, serve the public, and have a fair shot at promotions, without being subjected to systemic race-based harassment, retaliation and discrimination. The Fire Department and City Staff seem to view me as a problem for speaking up, rather than seeing me as a part of the solution. It's time that whistleblowers like me be thanked for bringing forward important issues to see the light of day, rather than repeatedly and unfairly punished.

Respectfully,

Vernon Creswell

Montebello Fire Department Captain"

31. The City was at least substantially motivated by retaliatory animus based on Mr. Creswell's September, 2020 complaint above (including complaints of race discrimination, race harassment, and/or retaliation for FEHA-protected complaints , as well as Mr. Creswell's other complaints of harassment, discrimination and/or retaliation in violation of FEHA cited herein) when the City, acting by and through Fire Chief Fernando Pelaez, retaliated further against Mr. Creswell by excluding

1 Mr. Creswell from Fire Department “leadership training” which was being offered
2 on-line via “zoom” which ran during the fall of 2020, taught by the Los Angeles Area
3 Regional Training Group. At any point during the month’s long leadership training,
4 Mr. Peleaz could have and should have offered Mr. Creswell to participate in the
5 training, as Mr. Peleaz knew that Mr. Creswell aspired to leadership. And nothing
6 about Mr. Creswell’s administrative leave prevented Mr. Creswell from participating
7 in the “zoom” virtual leadership training.

8 32. Two of the fall 2020 “leadership trainers” became the test raters for the ensuing
9 Battalion Chief promotional exam, showing that the motive for excluding Plaintiff
10 from the trainings was so that the other candidates would have a personal
11 relationship with the test raters. On information and belief, it is unheard of for the
12 trainers to also be the exam raters, because of the potential for preferential exam
13 scores toward whoever developed a close relationship with the trainers.

14 33. As a result of the administrative leave, Plaintiff lost approximately 134 hours of
15 accrued vacation time, which expired since Plaintiff was unable to use it while on
16 administrative leave.

17 34. As a result of the administrative leave, Plaintiff lost the ability to receive the Covid
18 vaccine, which was made available to other firefighters.

19 35. On information and belief, the Fire Chief instructed the sports psychologist who
20 offered consultations to Firefighters employed by the City not to have
21 communication with Plaintiff while on administrative leave, resulting in yet another
22 lost benefit to Plaintiff.

23 36. Mr. Creswell being placed on administrative leave (in a retaliatory manner) also
24 resulted in Mr. Creswell not learning of the November 2020 Battalion Chief Exam.

25 37. The City was also at least substantially motivated by retaliatory animus (in violation of
26 FEHA) when it denied Mr. Creswell the opportunity to take the November, 2020
27 Battalion Chief promotional exam. The City intentionally shortened the Battalion
28 Chief exam application window from 90 days to 7 days, and did not notify Mr.

1 Creswell of the exam. When Mr. Creswell did contact the City and request to take
2 the exam, the City did not accommodate Mr. Creswell's request.

3 38. The City was also at least substantially motivated by retaliatory animus when it
4 refused to provide Mr. Creswell with a written notice of what he was accused of
5 doing, prior to being interviewed by a third-party investigator (who was contracted
6 by and paid by the City, and on information and belief beholden to the City's desire
7 to retaliate against Mr. Creswell). The City's policy manual (Policy 1014.6.2)
8 requires that "The following procedures shall also be followed with regard to any
9 accused member covered by FBOR (Government Code 3253): "Not less than 48
10 hours before an investigator begins an interview to obtain facts and statements..."
11 the City must provide the member a "written summary of the alleged misconduct
12 and description of the nature of the investigation."

13 39. Absent this written notice, Mr. Creswell was not adequately apprised of what policy
14 or policies he was believed to have violated prior to the interrogation by the City's
15 third-party investigator in September 2020. As a result, Mr. Creswell was
16 insufficiently prepared for the interrogation.

17 40. The City's third-party investigator (who was the City's agent at all relevant times,
18 and/or whose unlawful conduct the City ratified) made findings that were false
19 and/or not supported by the evidence, in furtherance of the City's and/or Fire
20 Department's desire to retaliate against Plaintiff. For example, the City's third-party
21 investigator found that other Fire Department employees who obtained a "Real ID"
22 at the DMV, in the expedited line during work hours, could have been conducting
23 work-related DMV business because they were "potentially related to the job" as
24 the City's third-party investigator put it. In reality, there is no City or Fire
25 Department policy that requires Fire Department employees to have a "Real ID"
26 license. The old licenses suffice, as long as the employee has the proper
27 endorsements to drive a large Fire Department vehicle (the endorsements are also
28 needed with the Real ID, so the fact of it being the Real ID is irrelevant). Thus, the

1 City's third-party investigator made a distinction without a difference, in order to
2 justify disciplinary action toward Mr. Creswell. In reality, contrary to the City's third-
3 party investigator's skewed logic, obtaining a "Real ID" on work time is personal
4 business, and Mr. Creswell helping a Fire Department employee navigate the DMV
5 line is could have been work-related or not, but Mr. Creswell did not know when he
6 received the request. In any event the practice had long been tolerated,
7 encouraged, and ratified by Fire Department leadership, whether the DMV
8 business was work or personal – and no clear policies had ever been enunciated
9 with respect to going to the DMV and using the expedited line on Fire Department
10 time.

11 41. Additionally, the City's third-party investigator falsely or misleadingly stated in his
12 report that Mr. Creswell "assumed" that the Fire Department staff who had asked
13 for help at the DMV was there for personal business, while failing to mention that
14 Mr. Creswell clearly stated that he did not know whether she was there for personal
15 or Fire Department-related business until after she got to the DMV window and
16 started asking for help, and even then it was not totally clear. In any event, Mr.
17 Creswell could not be sure was personal or work related (for example it is plausible
18 that a fire department vehicle had received some parking ticket and the employee
19 was there to sort it out). Mr. Creswell did not know for sure one way or the other.

20 42. Moreover, the City's third-party investigator misleadingly suggested that Mr.
21 Creswell was "out of service" during the DMV visit, when in reality Mr. Creswell
22 clearly stated in the interview / interrogation that he was able to respond to any
23 calls (there were none) during the 5 or 10 minutes that he was in the DMV, and had
24 2 forms of communication on him inside the DMV, and an additional form inside the
25 fire truck which was fully loaded with the crew and on "stand-by" and ready to
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1 deploy if needed.²

2 43. Indeed, the City's third-party investigator appears to have bent over backwards to
3 misconstrue the recorded witness interviews and City and Fire Department policies
4 (or lack thereof) to determine that Mr. Creswell was out of policy. The interviews
5 and policies were clear that there is no requirement of having a "Real ID" for work,
6 but Firefighters routinely used work time to obtain one, and did so using the fast
7 DMV line. The interviews and policies were also clear that Mr. Creswell did not
8 know whether the Fire Department employee who requested DMV assistance was
9 on work or personal business, and did not have reason to suspect that it might
10 have been personal until the employee was already at the DMV window and Mr.
11 Creswell overheard some of the conversation. Further, there was no evidence in
12 the interviews that Mr. Creswell was "out of service" during the 5 or 10 minutes
13 inside the DMV (as he was on "stand-by" with his crew and truck, within the area
14 immediately surrounding his station, and had 2 forms of communication should
15 there be an emergency) yet the City's third-party investigator misleadingly
16 suggested that Mr. Creswell should have informed administrators that he was "out
17 of service" (even though he was not "out of service"). Further, the City's third-party
18 investigator failed to note that he found no written policy anywhere about which Fire
19 Department employees were allowed to use the expedited DMV line for which
20 types of matters, and under what conditions, even though the practice has been

21
22 ² In the report, the City's third-party investigator misleadingly wrote Mr. Creswell "did not
23 inform Verdugo Fire Communications that they would be out of service at the DMV while
24 he went in to assist [his co-worker]." The City's chose investigator failed to note that if Mr.
25 Creswell did not inform anyone that he was out of service, it was because he was not, in
26 point of fact, "out of service". Mr. Creswell was with his crew and readily able to respond
27 to any emergencies that came up while he was at the DMV for 5 or 10 minutes, just as if
28 he went to the grocery store or the bank with his crew in a fire truck. Indeed, in the
interview Mr. Creswell noted that he was approximately a mile from the fire station, had
two forms of department-approved communication on his person while in the DMV, and
the fire truck and crew were just outside the DMV on "stand-by" and ready to deploy if
needed.

1 going on for well over a decade (the entire time that Plaintiff has been employed by
2 the City). The Fire Department's leadership's failure to clarify what the policies are,
3 then opportunistically seize on Mr. Creswell trying to help out a co-worker who by
4 all accounts was part of the Fire Department family, is the real scandal. The City's
5 third-party investigator also failed to investigate some of the Fire Department
6 leadership's ordering Firefighters while on duty and using fire department
7 equipment to go outside of the city to attend a birthday party and/or parade, and go
8 outside of the City to pick up expensive watches from outside of the City while on
9 duty and using Fire Department equipment. Even if the City's third-party
10 investigator was not contracted (by the City) to investigate these incidents, he
11 should have looked into them once raised by Mr. Creswell in order to explore the
12 policies and practices of when the Fire Department leadership deems it appropriate
13 to leave the Fire Station in a Fire Department vehicle, and for what purposes.

14 44. On or about December 3, 2020, the City's Fire Chief, Mr. Pelaez sent Mr. Creswell
15 a notice of intent to terminate employment, and gave Mr. Creswell only 7 days to
16 respond, instead of the 10 required by Montebello Municipal Code Section
17 2.60.210(A). This failure to follow City law is further evidence of the City's
18 retaliatory animus and a violation of Mr. Creswell's rights.

19 45. On or about December 9, 2020, Plaintiff notified the City of his Total Temporary
20 Disability, with a letter signed by his physician. The City refused to engage in the
21 interactive process and/or accommodate Plaintiff's request that the Skelly³ hearing
22 take place at a later date in light of Plaintiff's disability.

23 46. The City also refused to permit Plaintiff's request to record the upcoming putative
24 Skelly hearing, as required by the Firefighters' Bill of Rights (Govt. Code Section
25

26 ³ A "Skelly hearing" is essentially a due-process hearing which an employee of a public
27 entity in California is entitled to prior to a demotion or termination of employment, per
28 *Skelly v. State Personnel Board*, 15 Cal.3d 194 (1975).

1 3253(g)) for any interrogation which may lead to discipline. The City incorrectly
2 reasoned that Mr. Creswell is not required to answer the Skelly hearing officer's
3 questions, so it is not an interrogation. But this logic fails because nobody is ever
4 truly required to speak or not speak in this Country (see U.S. Const., Amendments
5 I, V) but in the context of a Skelly hearing, failure to answer the hearing officer's
6 questions could be used to justify discipline. Thus, Plaintiff is entitled to record the
7 hearing under the Firefighters' Bill of Rights.

8 47. The City refused to agree to provide Mr. Creswell with a hearing officer who is not
9 likely to be a witness involved in the underlying dispute and any subsequent
10 proceedings. The hearing officer who was chosen over Mr. Creswell's objection,
11 City Manager Mr. Rene Bobadilla, will be a witness to any civil service and/or civil
12 proceedings, since, Mr. Creswell alleged to City leadership in or about September
13 2020 that "*Recently I was told by one of the Fire Department leaders that the City
14 Manager Mr. Bobadilla wanted to have lunch with me and really get to know me as
15 a person, and had given him my cell number. This turned out to be a bait and
16 switch. Instead of a friendly phone call that I expected, the only communication
17 from the City has been settlement offers contingent on me leaving the department,
18 15 years before I had planned to.*"

19 48. California law requires that Mr. Creswell's right to respond to the allegations and
20 proposed discipline via a Skelly hearing includes the right that the Skelly hearing
21 officer be a "reasonably impartial, noninvolved reviewer." *Williams v. County of Los*
22 *Angeles*, 22 Cal.3d 731, 736-37 (1978).

23 49. Also, Mr. Bobadilla has not, to Plaintiff's knowledge, taken any steps to investigate
24 the serious wrongdoing Mr. Creswell alleged in the Sept. 2020 whistleblower
25 complaint that one or more of the Fire Department leadership had engaged in,
26 leading to a reasonable inference that Mr. Bobadilla is likely not reasonably
27 impartial.

28 50. Thus, Mr. Bobadilla should not be the Skelly hearing officer, pursuant to *Williams v.*

1 County of Los Angeles, 22 Cal.3d 731, 736-37 (1978) which requires a “reasonably
2 impartial, noninvolved reviewer.”

3 51. Mr. Creswell was not timely provided with certain adverse comments from the
4 Notice of Intent to Terminate, and not asked to sign for them, and was not provided
5 with 30 days to respond to them, in violation of Govt. Code Sections 3255 and
6 3256. As a result, these findings and any personnel decisions based on these
7 findings should be should be stricken from his personnel file by court order. Any
8 personnel decisions based on these findings are irreparably tainted and cannot be
9 cured by merely offering Mr. Creswell an opportunity to respond to the adverse
10 comments now (when the City’s determination based on the comments unlawfully
11 entered into Mr. Creswell’s personnel file without the opportunity to respond has
12 already been made). It would be far too easy for the City to conveniently and
13 unlawfully attempt to “cure” its violation of Mr. Creswell’s rights under the
14 Firefighters’ Bill of Rights and go back and theatrically re-do a few steps but arrive
15 at the same conclusion.

16 52. The City refused to accommodate Mr. Creswell’s request that the Skelly hearing
17 (currently unilaterally scheduled by the City for December 30, 2020) be set at a
18 time when Mr. Creswell’s counsel is available, in a further violation of Mr.
19 Creswell’s rights, pursuant to Govt. Code Section 3253(i).

20 53. Together and individually, the actions of the City toward Mr. Creswell from August
21 11, 2020 to present, constitute one or more “adverse employment actions” in
22 violation of FEHA.

23 54. The actions complained of herein where done with malice, entitling Plaintiff to
24 statutory damages and other relief under the Firefighters’ Bill of Rights.

25 **FIRST CAUSE OF ACTION**

26 **Retaliation in Violation of FEHA**

27 **Plaintiff vs. All Defendants**

28 55. Plaintiff repeats and re-alleges the preceding paragraphs as if set forth herein.

1 56. Plaintiff has filed a DFEH charge and obtained a right to sue.

2 57. In retaliation for opposing practices prohibited by FEHA, the Defendants, and each
3 of them, subjected Plaintiff to one or more adverse employment actions from
4 August 11, 2020 to present, as described herein.

5 58. Plaintiff's FEHA-protected activities were a substantial motivating factor in
6 Defendants' adverse employment actions.

7 59. The actions and conduct of Defendants, constituted unlawful retaliation pursuant to
8 Cal. Govt. Code § 12940(h).

9 60. As a result of the aforementioned unlawful conduct, Plaintiff has suffered and will
10 continue to suffer economic damages including, wages, earnings, overtime,
11 earning capacity, pension and other benefits in an amount to be proven at trial.

12 61. As a result of the aforementioned unlawful conduct, Plaintiff has suffered and will
13 continue to suffer emotional distress, anguish, grief, humiliation, and other non-
14 economic damages in an amount to be proven at trial.

15 **SECOND CAUSE OF ACTION**

16 **Failure to Accommodate Disability in Violation of FEHA**

17 **Plaintiff vs. All Defendants**

18 62. Plaintiff repeats and re-alleges the preceding paragraphs as if set forth herein.

19 63. Plaintiff has filed a DFEH charge and obtained a right to sue.

20 64. In violation of Govt. Code Section 12940 et. seq, Defendant failed to accommodate
21 Plaintiff's request for a reasonable accommodation, that any "Skelly hearing" take
22 place after Plaintiff returns from Temporary Total Disability leave.

23 65. As a result of the aforementioned unlawful conduct, Plaintiff has suffered and will
24 continue to suffer economic damages including, wages, earnings, overtime,
25 earning capacity, pension and other benefits in an amount to be proven at trial.

26 66. As a result of the aforementioned unlawful conduct, Plaintiff has suffered and will
27 continue to suffer emotional distress, anguish, grief, humiliation, and other non-
28 economic damages in an amount to be proven at trial.

1 **THIRD CAUSE OF ACTION**

2 **Failure to Engage in Interactive Process in Violation of FEHA**

3 **Plaintiff vs. All Defendants**

4 67. Plaintiff repeats and re-alleges the preceding paragraphs as if set forth herein.

5 68. Plaintiff has filed a DFEH charge and obtained a right to sue.

6 69. In violation of Govt. Code Section 12940 et. seq, Defendant failed to engage in the
7 interactive process regarding Plaintiff's request, that any "Skelly hearing" take place
8 after Plaintiff returns from Temporary Total Disability leave.

9 70. As a result of the aforementioned unlawful conduct, Plaintiff has suffered and will
10 continue to suffer economic damages including, wages, earnings, overtime,
11 earning capacity, pension and other benefits in an amount to be proven at trial.

12 71. As a result of the aforementioned unlawful conduct, Plaintiff has suffered and will
13 continue to suffer emotional distress, anguish, grief, humiliation, and other non-
14 economic damages in an amount to be proven at trial.

15 **FOURTH CAUSE OF ACTION**

16 **Unlawful Ban on Recording Personnel Interrogation Govt Code § 3253(g)**

17 **Plaintiff vs. All Defendants**

18 72. Plaintiff repeats and re-alleges the preceding paragraphs as if set forth herein.

19 73. Plaintiff is covered by the Firefighter's Bill of Rights.

20 74. In violation of Govt. Code Section 3253(g), the City has refused to agree to permit
21 Plaintiff to record a personnel interview / interrogation which could lead to punitive
22 action.

23 75. As a result of the aforementioned unlawful conduct, Plaintiff has suffered and will
24 continue to suffer economic damages including, wages, earnings, overtime,
25 earning capacity, pension and other benefits in an amount to be proven at trial.

26 76. As a result of the aforementioned unlawful conduct, Plaintiff has suffered and will
27 continue to suffer emotional distress, anguish, grief, humiliation, and other non-
28 economic damages in an amount to be proven at trial.

1 **FIFTH CAUSE OF ACTION**

2 **Failure to Obtain Signature of Personnel Comments Govt Code § 3255**

3 **Plaintiff vs. All Defendants**

4 77. Plaintiff repeats and re-alleges the preceding paragraphs as if set forth herein.

5 78. Plaintiff is covered by the Firefighter's Bill of Rights.

6 79. In violation of Govt. Code Section 3255, the City has failed to present negative
7 personnel comments to Plaintiff to read and sign.

8 80. As a result of the aforementioned unlawful conduct, Plaintiff has suffered and will
9 continue to suffer economic damages including, wages, earnings, overtime,
10 earning capacity, pension and other benefits in an amount to be proven at trial.

11 81. As a result of the aforementioned unlawful conduct, Plaintiff has suffered and will
12 continue to suffer emotional distress, anguish, grief, humiliation, and other non-
13 economic damages in an amount to be proven at trial.

14 **SIXTH CAUSE OF ACTION**

15 **Failure to Grant 30 Days to Oppose Adverse Personnel Comments**

16 **Govt Code § 3255**

17 **Plaintiff vs. All Defendants**

18 82. Plaintiff repeats and re-alleges the preceding paragraphs as if set forth herein.

19 83. Plaintiff is covered by the Firefighter's Bill of Rights.

20 84. In violation of Govt. Code Section 3256, the City has failed to grant Plaintiff 30 days
21 to file a written response to oppose adverse personnel comments.

22 85. As a result of the aforementioned unlawful conduct, Plaintiff has suffered and will
23 continue to suffer economic damages including, wages, earnings, overtime,
24 earning capacity, pension and other benefits in an amount to be proven at trial.

25 86. As a result of the aforementioned unlawful conduct, Plaintiff has suffered and will
26 continue to suffer emotional distress, anguish, grief, humiliation, and other non-
27 economic damages in an amount to be proven at trial.

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SEVENTH CAUSE OF ACTION
Failure to Accommodate Counsel's Availability
Govt Code § 3253(i)
Plaintiff vs. All Defendants

87. Plaintiff repeats and re-alleges the preceding paragraphs as if set forth herein.

88. Plaintiff is covered by the Firefighter's Bill of Rights.

89. In violation of Govt. Code Section 3253(i), the City has failed to accommodate Plaintiff's request that any Skelly hearing not take place during the busy week between Christmas and New Year's when Plaintiff's counsel is largely unavailable. Plaintiff has requested that any Skelly hearing take place at a mutually agreeable date and time, which the City has refused.

90. As a result of the aforementioned unlawful conduct, Plaintiff has suffered and will continue to suffer economic damages including, wages, earnings, overtime, earning capacity, pension and other benefits in an amount to be proven at trial.

91. As a result of the aforementioned unlawful conduct, Plaintiff has suffered and will continue to suffer emotional distress, anguish, grief, humiliation, and other non-economic damages in an amount to be proven at trial.

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PRAYER FOR RELIEF

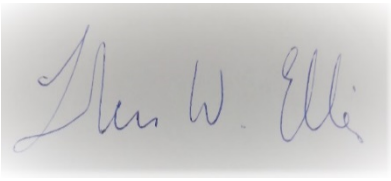
WHEREFORE, Plaintiff respectfully requests the following relief:

- A. For general damages to compensate Plaintiff for his past, present, and future emotional distress, pain and suffering, and loss of pleasure and enjoyment of life;
- B. For compensatory damages;
- C. For all applicable injunctive relief as allowed by law;
- D. For an award of interest, including prejudgment interest, at the legal rate;
- E. For an award of attorney fees as allowed by law (e.g. Code of Civil Procedure Section and 1021.5 and Govt. Code 12940 et seq.; 3260(d).);
- F. Statutory damages;
- G. For costs of suit incurred;
- H. For such other and further relief as this Court deems appropriate.

Dated: December 28, 2020

LAW OFFICES OF LINCOLN W. ELLIS

By:



Lincoln Ellis, Esq.
Attorneys for Plaintiff
VERNON CRESWELL

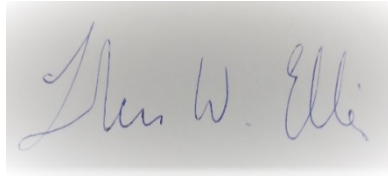
1 **Jury Trial Demand**

2 Plaintiff demands a jury trial on all claims and causes of action with respect to
3 which he has a right to a jury trial.

4 Dated: December 28, 2020

LAW OFFICES OF LINCOLN W. ELLIS

6 By:

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8 

9 Lincoln Ellis, Esq.
10 Attorneys for Plaintiff
11 VERNON CRESWELL

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