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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO - CENTRAL DIVISION

10 JOHN GHIOTTO, CHAD ALLISON,
11 JASON HEWITT, and ALEXANDER
KANE

12 Plaintiffs,

13 v.

14 CITY OF SAN DIEGO FIRE-RESCUE
15 DEPARTMENT, and DOES 1 to 50,
inclusive,

16 Defendants.

CASE NO.

**COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES**

- 1. **SEXUAL HARASSMENT**
- 2. **FAILURE TO PREVENT
HARASSMENT**
- 3. **NEGLIGENT INFLECTION OF
EMOTIONAL DISTRESS**
- 4. **VIOLATION OF FREEDOM OF
SPEECH**

19
20 Plaintiffs allege as follows:

21 **PARTIES AND VENUE**

22 1. Plaintiff John L. Ghiotto is an individual over the age of 18 who is, and at all times
23 relevant to this lawsuit was, a resident of the County of San Diego and a captain with the San
24 Diego Fire-Rescue Department. He has served in the San Diego Fire-Rescue Department for 19
25 years. He has received 7 letters of thanks and appreciation, 2 memoranda of commendation, 8
26 certificates of appreciation, an exemplary performance memo, and a life saving citation.

27 2. Plaintiff Chad S. Allison is an individual over the age of 18 who is, and at all times
28 relevant to this lawsuit was, a resident of the County of San Diego and a firefighter with the San

1 Diego Fire-Rescue Department. He began working as a firefighter in 2000, and has twice been
2 awarded the Steven F. Holladay Memorial Award for “outstanding commitment to the San Diego
3 Fire-Rescue Department and extraordinary dedication to community service” (2003 and 2005).
4 In December 2005, he received a lifesaving medal for “saving a life by direct action performed
5 under conditions requiring bravery or exposure to danger or by performance above and beyond the
6 normal call of duty.” He was named “Employee of the Quarter” for the second quarter of 2007.

7 3. Plaintiff Jason Hewitt is an individual over the age of 18 who is, and at all times
8 relevant to this lawsuit was, a resident of the County of San Diego and an engineer with the San
9 Diego Fire-Rescue Department. He has been a firefighter for 11 years, a paramedic for 10 and an
10 engineer for 4. He was chosen to serve as an instructor/driver/mentor for six Fire Academies and
11 received several letters of recognition from the San Diego Fire-Rescue Department for his
12 participation and contribution. He was recently selected to be an Assistant Fire Academy
13 Coordinator.

14 4. Plaintiff Alexander Kane is an individual over the age of 18 who is, and at all times
15 relevant to this lawsuit was, a resident of the County of San Diego and a firefighter/ paramedic
16 with the San Diego Fire-Rescue Department. He has worked at Fire Station 5 in Hillcrest for over
17 two and one-half years, and has received a life saving citation.

18 5. Defendant San Diego Fire-Rescue Department (“SDFD”) is, and at all times relevant
19 to this lawsuit was, a fire department organized under the laws of the State of California and a
20 department of the City of San Diego, located in the County of San Diego.

21 6. Plaintiffs do not know the names or capacities of those defendants sued herein as
22 Does 1 through 50 and for that reason have sued such defendants by fictitious names. Plaintiffs
23 are informed and believe and thereon allege that each of the Doe defendants is in some manner
24 responsible for the events and happenings set forth herein and proximately caused injury and
25 damages to plaintiffs as alleged herein. Plaintiffs will seek leave of this Court to amend this
26 complaint to reflect the true names and capacities of Does 1 through 50 as soon as they are
27 ascertained.

28 7. Plaintiffs are informed and believe and thereon allege that, at all times mentioned

1 herein, each of the defendants was the agent and employee of the other defendants, acting within
2 the scope of that agency and employment and with the full knowledge, consent, and approval of
3 the other defendants. The conduct of each of the defendants was fully ratified by the other
4 defendants and was performed at the express or implied direction of the other defendants.

5 8. Venue is proper in this judicial district under Code of Civil Procedure section 394
6 because the SDFD is located in this district.

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

8 9. Plaintiffs are informed and believe and thereon allege that the San Diego Gay Pride
9 Parade and Festival is an annual event sponsored by a private community organization known as
10 San Diego Lesbian Gay Bisexual Transgender (“LGBT”) Pride.

11 10. Plaintiffs are informed and believe and thereon allege that the City of San Diego
12 officially sanctions the annual San Diego Gay Pride Parade and Festival. Plaintiffs are further
13 informed and believe and thereon allege that the Mayor, City Council Members, the City Attorney,
14 the Police Chief, and the Fire Chief regularly ride or march in the Gay Pride Parade.

15 11. Plaintiffs are informed and believe and thereon allege that it is the policy of the
16 SDFD to participate in the Gay Pride Parade by, among other things, having on-duty personnel
17 operate and ride on front-line fire engines in the Parade. Plaintiffs are further informed and believe
18 and thereon allege that the front-line apparatus is taken out of service for the purpose of
19 participating in the Parade.

20 12. Plaintiffs are informed and believe and thereon allege that the Gay Pride Parade is
21 promoted and marketed as a “display of diversity, acceptance and celebration,” with thousands of
22 “enthusiastically cheering spectators.” A memorandum from the Fire Chief to all personnel
23 encouraging them to participate in the 2007 Gay Pride Parade describes it as a “fun event.”

24 13. Plaintiffs are informed and believe and thereon allege that a licentious and prurient
25 atmosphere regularly permeates the Gay Pride Parade. Some participants engage in debauched
26 behavior, including for example a group of radical homosexual men who mock the chastity of
27 Catholic nuns by dressing in religious habits and wearing bizarre make-up. Some spectators also
28 wear sexually suggestive clothing, expose themselves, engage in lewd displays of sexualized

1 conduct and simulated sex acts, use profanity, and yell vulgar and obscene catcalls. In this way,
2 the Gay Pride Parade is unlike any other parade sanctioned by the City or in which City officials
3 and employees participate.

4 14. Plaintiffs are informed and believe and thereon allege that the firefighters assigned
5 to represent the SDFD in the Gay Pride Parade over the years were regularly harassed, subjected
6 to sexually explicit taunts and propositions, and made the targets of lewd and obscene gestures
7 throughout the three-hour duration of each Parade.

8 15. Plaintiffs are informed and believe and thereon allege that because of the sexual
9 harassment regularly directed at firefighters who participated in the Gay Pride Parade, few if any
10 firefighters were willing to take part on a voluntary basis. Each year the SDFD struggled to find
11 a crew to ride in the parade and regularly resorted to ordering a crew to do so.

12 16. Plaintiffs are informed and believe and thereon allege that the firefighters who were
13 ordered to participate in the Gay Pride Parade regularly did so only to avoid disciplinary action.
14 Plaintiffs are further informed and thereon allege that firefighters informally complained to their
15 own captains about the harassment to which they were subjected, but rarely filed formal complaints
16 because they feared a retaliatory effect on their careers.

17 17. Plaintiffs are informed and believe and thereon allege that individual firefighters
18 would often take off the day of the Gay Pride Parade in order to avoid being subjected to the
19 sexual harassment which regularly took place there.

20 18. Plaintiffs are informed and believe and thereon allege that for several years
21 immediately prior to 2007, a crew from Fire Station 8, located in Mission Hills, was required by
22 the SDFD to participate in the Gay Pride Parade.

23 19. Plaintiffs are informed and believe and thereon allege that for several weeks
24 following the 2005 and 2006 Gay Pride Parades, Fire Station 8 received offensive, sexually explicit
25 brochures of a homoerotic nature.

26 20. In an August 24, 2006 SDFD Inter-Department Communication, Lynda Lynch,
27 captain of the Engine 8 crew, notified her supervisor, Battalion Chief Robert Zepeda, about “cat
28 calls” directed at her crew by Gay Pride Parade spectators and about the “harassing, sexually

1 explicit” materials. She explained that she believed that the materials were being sent to Fire
2 Station 8 because of that crew’s participation in the Gay Pride Parade. Captain Lynch also stated
3 that the crew of Engine 8 had been required to participate in the Parade because the crew of Engine
4 5, located in the Hillcrest neighborhood where the Parade takes place, had successfully refused to
5 participate. Finally, Captain Lynch suggested that the SDFD use off-duty personnel and a vehicle
6 from the Fire House Museum or Training Department in the Parade in order to prevent any one
7 crew from being targeted with unwanted attention or brochures at their workplace.

8 21. Plaintiffs are informed and believe and thereon allege that the members of Captain
9 Lynch’s crew read and approved her August 24, 2006 memo, but did not want to put their names
10 on it because of fear of possible retaliation.

11 22. Plaintiffs are informed and believe and thereon allege that Battalion Chief Zepeda
12 brought Captain Lynch’s memo regarding the Gay Pride Parade to the attention of the other
13 battalion chiefs and Assistant Chief Jeff Carle. Battalion Chief Zepeda subsequently told Captain
14 Lynch just to throw the pornographic material away. Plaintiffs are further informed and believe
15 and thereon allege that Captain Lynch received no other response to her August 24, 2006 memo
16 and that the SDFD took no action to address her concerns or her suggestion regarding volunteer
17 participation in the Gay Pride Parades.

18 23. The most recent Gay Pride Parade took place on July 21, 2007 in the Hillcrest
19 neighborhood of the City of San Diego.

20 24. Plaintiffs are informed and believe and thereon allege that a lesbian captain of
21 Engine 25 wanted to participate in the 2007 Gay Pride Parade and that at her request her crew
22 volunteered to take part in it. The regular engineer of that crew was taking that day off, however,
23 and when the substitute engineer heard several days in advance that the Engine 25 crew was to take
24 part in the Parade, he refused. Plaintiffs are further informed and believe and thereon allege that
25 the battalion chief at that fire station declined to order the substitute engineer or the rest of the crew
26 to participate, so the captain took the day off to walk in the Parade on her own time.

27 25. Plaintiffs are informed and believe and thereon allege that Captain Lynch of Engine
28 8 took the day off rather than be compelled to ride in the Gay Pride Parade again, and that the

1 substitute captain and the rest of the Engine 8 crew refused to participate again.

2 26. Plaintiffs were all scheduled to work at Fire Station 5 in Hillcrest on July 21, 2007.
3 Plaintiff Ghiotto is captain of one of the Engine 5 crews. Plaintiff Kane, a firefighter, is a regular
4 member of Captain Ghiotto's crew. Plaintiffs Ghiotto and Kane were working a regularly
5 scheduled shift. Plaintiff Allison, a firefighter (usually assigned to Engine 17), and Plaintiff
6 Hewitt, an engineer (usually assigned to the Training Facility), were working over-time shifts.

7 27. On July 20, 2007, the on-duty captain at Fire Station 5 called Captain Ghiotto at his
8 home to inform him that he and his crew would be required by the SDFD to participate in the Gay
9 Pride Parade the following day.

10 28. Captain Ghiotto then called Battalion Chief Pollard at Fire Station 5 to inquire
11 whether it was true that he and his crew had been assigned to participate in the Gay Pride Parade.
12 Battalion Chief Pollard indicated that participation in the Gay Pride Parade had been discussed at
13 the battalion chiefs' meeting that morning. Captain Ghiotto told Battalion Chief Pollard that he
14 would not participate, and would not make his crew participate, unless given a direct order to do
15 so. Captain Ghiotto suggested that volunteers staff the Parade. Battalion Chief Pollard stated that
16 if a direct order for Captain Ghiotto's crew to participate were given, he would pass it on to
17 Captain Ghiotto.

18 29. Captain Ghiotto then attempted to contact his regular crew members to let them
19 know that they might be expected to participate in the Gay Pride Parade the following day.
20 Captain Ghiotto spoke with one firefighter who said that he did not want to participate and ended
21 up taking the day off. Captain Ghiotto was not able to reach Firefighter Kane, and the regular
22 engineer already had the day off.

23 30. Meanwhile, also on July 20, 2007, Engineer Hewitt encountered Battalion Chief
24 Tony Pollard at the San Diego Fire Training facility and mentioned that he would be working at
25 Fire Station 5 the next day.

26 31. Battalion Chief Pollard told him to be prepared because the crew of Engine 5 was
27 going to ride in the Gay Pride Parade. Battalion Chief Pollard went on to say that every year the
28 department had difficulty finding personnel to drive an apparatus in the Gay Pride Parade and he

1 was sick and tired of being the one who has to make it work. He said that the Parade was in
2 Engine 5's district and so Engine 5 was going to participate. He also said that he had not yet been
3 told to issue a direct order, but if so, he would give it. Battalion Chief Pollard told Engineer
4 Hewitt that if he refused the direct order, he would be sent home for the remainder of the shift.
5 He went on to say that if the entire crew refused, he would shut down Engine 5 and go to Fire
6 Station 8. If everyone at Station 8 refused, he would shut down Engine 8, and go to Fire Station
7 14. If everyone at Station 14 refused, he would shut down Engine 14. He said that he would shut
8 down the whole Battalion if he had to.

9 32. Engineer Hewitt asked Battalion Chief Pollard if Captain Ghiotto was aware that
10 Engine 5 was expected to participate in the Gay Pride Parade, and Battalion Chief Pollard said that
11 he was. Engineer Hewitt asked what Captain Ghiotto was going to do, and Battalion Chief Pollard
12 answered, "I guess we'll find out."

13 33. Engineer Hewitt was very concerned because being sent home would be a suspension
14 that would make him ineligible on the current captain's list, ineligible for the next captain's test,
15 and ineligible for any special assignment for the next two years. Thus, he knew that refusing a
16 direct order, if indeed one were given, would have severe consequences for the promotions process
17 and his career opportunities.

18 34. Engineer Hewitt called Captain Ghiotto at home and explained that he did not want
19 to participate in the Parade. Captain Ghiotto responded that he had similar concerns. Both
20 thought that an order to participate would violate the SDFD's equal employment opportunity
21 policy.

22 35. On the morning of July 21, 2007, Firefighter Allison was called in to work an
23 overtime shift at Fire Station 5. He learned for the first time that he was expected to participate
24 in the Parade when he arrived for his shift and members of the departing crew jokingly accused
25 him of "doing anything for money."

26 36. Firefighter Kane also learned for the first time that he was expected to participate
27 in the Parade when he arrived at Fire Station 5 on the morning of July 21, 2007 and was so
28 informed by members of the crew going off duty. Firefighter Kane first did not believe them and

1 then said that he would refuse to participate.

2 37. Captain Ghiotto arrived at Fire Station 5 at about 7:30 a.m. that morning. Members
3 of the departing crew also ribbed him about having to participate in the Gay Pride Parade.

4 38. Firefighters Kane and Allison each approached Captain Ghiotto, informing him that
5 they did not want to take part in the Gay Pride Parade. Given his discussion with Battalion Chief
6 Pollard the evening before, Captain Ghiotto was still hopeful that the SDFD would not order him
7 and his crew to participate. He asked these crew members to wait to hear whether they would be
8 given a direct order compelling them to ride in the Parade.

9 39. At 8:00 a.m., Captain Ghiotto gathered his crew in the "bullpen" of Fire Station 5.
10 All the crew members expressed concerns about harassment that firefighters had been subjected
11 to at previous Gay Pride Parades and stated that they did not want to participate in the Parade.

12 40. As their supervisor, Captain Ghiotto felt obligated to pass on his crew's concerns to
13 Battalion Chief Pollard and told him that he and his crew would not participate unless given a
14 direct order to do so. Captain Ghiotto again suggested that volunteers who wanted to participate
15 could use Engine 5 since it was going to be taken out of service anyway. Battalion Chief Pollard
16 again said that he would let Captain Ghiotto know if a direct order were given for the Engine 5
17 crew to participate in the Parade.

18 41. At 9:00 a.m., Battalion Chief Pollard informed Captain Ghiotto that he and the rest
19 of the on-duty Engine 5 crew were supposed to report to the Gay Pride Parade staging grounds at
20 9:30 a.m.

21 42. Captain Ghiotto asked Battalion Chief Pollard if he was giving a direct order for the
22 crew to participate in the Gay Pride Parade. Battalion Chief Pollard responded "yes," and
23 informed Captain Ghiotto that he had been given a direct order from Assistant Chief Jeff Carle via
24 chain of command (Deputy Chief Ken Marlborough and Shift Commander Enrique Camberos) for
25 the on-duty Engine 5 crew to participate in the Gay Pride Parade.

26 43. Captain Ghiotto reiterated that he and his crew did not want to ride in the Gay Pride
27 Parade, and told Battalion Chief Pollard that he disagreed with, and was disappointed in, the
28 SDFD's decision to order them to do so.

1 44. Given the choice of complying or being subjected to disciplinary action (which could
2 have severe consequences for their careers), plaintiffs -- Captain Ghiotto, Firefighters Kane and
3 Allison, and Engineer Hewitt -- obeyed the direct order to take part in the Gay Pride Parade on
4 July 21, 2007.

5 45. A sexually charged atmosphere permeated the Gay Pride Parade staging area, with
6 men kissing and hugging each other and dancing provocatively, including some wearing nothing
7 more than bikini briefs. Many wore shirts with sexually suggestive slogans, such as "Girth and
8 Mirth" and "Suit Up Before You Dive In."

9 46. The harassment of plaintiffs began at the staging area. For example, a man on a
10 near-by float, wearing nothing but tiny black shorts, gyrated provocatively and fondled his genitals
11 while looking directly at plaintiffs. Another man, wearing the "Girth and Mirth" shirt approached
12 Engineer Hewitt, telling him in a sexually suggestive tone that he looked "hungry" and should "eat
13 a Twinkie."

14 47. While waiting for the Parade to begin, Firefighter Allison spotted his gay uncle's life
15 partner in the crowd. Despite the already lewd atmosphere, Firefighter Allison did not want to
16 disrespect his uncle or his uncle's life partner by failing to say hello. So he left the fire engine and
17 greeted his "uncle" with a hug. One onlooker saw him and said, "Oh, Mr. Fireman is giving out
18 hugs; I hope he's going to give me one!" Another onlooker caught Firefighter Allison's eye and
19 pointed to his tee shirt, which said, "Have you ever ridden a fat man?" Because of these comments
20 and gestures, Firefighter Allison became extremely uncomfortable and quickly retreated to the fire
21 engine.

22 48. While waiting for the Parade to begin, Engineer Hewitt received a call on his cellular
23 telephone from other SDFD employees teasing him about the Engine 5 crew having to participate
24 in the Gay Pride Parade and facetiously telling him to "have fun."

25 49. At about 10:30 a.m., members of the SDFD senior staff, including Fire Chief Jarman,
26 Assistant Fire Chiefs Mainar and Carle, and Deputy Fire Chiefs Fennessy, Orton, Frasier,
27 Marlborough, and Peake arrived at the staging area. A few of them greeted plaintiffs; one
28 teasingly asked if they were "having fun yet?" with a smile on his face. Deputy Chief

1 Marlborough shook hands with Engineer Hewitt and asked, "How are you doing?" As Deputy
2 Chief Marlborough was walking away, Engineer Hewitt called out, "Hey Chief! I'm not doing
3 all right!" Deputy Chief Marlborough turned around and responded, "I know," and then walked
4 away. Plaintiffs' embarrassment and discomfort were exacerbated by not being able to tell the
5 senior staff members about their concerns regarding being forced to participate in the Parade.

6 50. Once the Parade got underway, plaintiffs were the objects of even more explicit and
7 offensive sexual remarks and gestures.

8 51. Throughout the Parade, plaintiffs were subjected to crude and obscene comments by
9 Parade spectators, such as: "Oooh, look at the big firemen!" "You're making me hot!" "You can
10 put out my fire!" "Show me your fire hose!" "I can't breathe, give me mouth to mouth!" "Pull out
11 your hose!" "Blow my hose!"

12 52. In addition to the sexual taunts and catcalls, Parade spectators directed lewd and
13 lascivious gestures at plaintiffs, such as blowing salacious kisses, wagging their tongues, rubbing
14 their nipples, grabbing their crotches, displaying their penises, and groping other men's genitals.

15 53. As representatives of the SDFD, plaintiffs wanted to acknowledge and respond to
16 those friendly and supportive people in the crowd who waved and cheered; however, they could
17 not look into the crowd, even to wave at a child, without having pornographic words and actions
18 like those described above directed at them.

19 54. When plaintiffs attempted to shield themselves from the onslaught of offensively
20 graphic conduct by looking straight ahead rather than into the crowd, some Parade spectators
21 became belligerent, raising their middle fingers at plaintiffs and yelling, "Fuck you, fireman!" and
22 "Fuck the Fire Department!"

23 55. As the Parade passed Fire Station 5, plaintiffs were accosted by a group of self-
24 described "Christians" who were protesting the Gay Pride Parade and Festival. These protestors
25 berated plaintiffs for supporting a gay lifestyle and yelled at them that God would judge them and
26 that they were going to Hell. This dismayed plaintiffs, who are Christians and who were
27 participating in the Parade against their will.

28 56. Throughout the duration of the Parade, plaintiffs felt offended, embarrassed,

1 humiliated, trapped, abandoned, betrayed, and confused as to why the SDFD had ordered them to
2 take part in an event at which they were certain to be sexually harassed. Captain Ghiotto also felt
3 embarrassed and disgusted that he had been compelled to subject his crew to the harassment they
4 experienced.

5 57. At the conclusion of Gay Pride Parade, plaintiffs returned to Fire Station 5. They
6 continued to feel embarrassed and humiliated, as well as disgusted with their superiors at the
7 SDFD for subjecting them to sexual harassment at the Parade. Although their supervisors at the
8 Station knew that plaintiffs were upset about what they had been subjected to that day, none of
9 them offered any sympathy or even inquired as to how plaintiffs were dealing with it.

10 58. As the day wore on, plaintiffs discussed the situation among themselves but did not
11 feel any better. Eventually, the crew asked Captain Ghiotto about talking to a crisis intervention
12 team.

13 59. Captain Ghiotto then went to Battalion Chief Pollard to request a crisis intervention
14 team. Battalion Chief Pollard first accused plaintiffs of blowing the situation out of proportion.
15 He then stated that he would make some phone calls to find someone to talk to plaintiffs, and they
16 were placed on administrative out of service pending arrival of a crisis intervention counselor.
17 Plaintiffs are informed and believe and thereon allege that Linda Erwin Gallagher of the Employee
18 Assistance Program (“EAP”) was contacted, but elected not to go to Fire Station 5 that evening.

19 60. Shift Commander Camberos then asked plaintiffs if they were fit for duty and could
20 serve the community without complaints. Because they had already been serving the community
21 without complaints all day, they said yes. Commander Camberos suggested plaintiffs contact the
22 EAP directly, and urged them to keep the matter confidential.

23 61. Plaintiffs finally met with Linda Erwin Gallagher of the EAP on July 26, 2007.

24 62. The City of San Diego has promulgated an Employee Code of Conduct Handbook
25 which includes an Equal Employment Opportunity Policy that, among other things, prohibits
26 sexual harassment. The Policy specifies that sexually harassing conduct can be physical, verbal,
27 visual, or written, and can occur between persons of the same sex and between members of the
28 public and employees. The Handbook provides that “[a]ny Supervisor or manager who knew

1 about harassment and took no action to stop it or failed to report the harassment may be subject to
2 discipline up to and including discharge.”

3 63. The SDFD’s Administration Manual provides that “[a]ll employees shall work in an
4 atmosphere free from discrimination, harassment, and sexual harassment. . . . It is the
5 responsibility of all supervisors to assure that a harassment-free and non-discriminatory work
6 environment exists.” The Manual goes on to state that “sexual harassment is an offensive working
7 condition that shall not be tolerated.” It adopts the definition of sexual harassment promulgated
8 by the Equal Employment Opportunity Commission, including, among other things, unwelcome
9 sexual advances and other verbal or physical conduct which has the purpose or effect of
10 unreasonably interfering with an individual’s work performance or creating an intimidating, hostile
11 or offensive work environment. It identifies non-exclusive examples of sexually harassing conduct
12 including derogatory comments and jokes, leering, and sexually-oriented gestures. The
13 Administration Manual further provides that “[a]ppropriate actions shall be initiated against
14 anyone who violates this equal opportunity policy [including sexual harassment].”

15 64. Plaintiffs are informed and believe and thereon allege that the SDFD violated the
16 City’s and its own sexual harassment policies by: ordering plaintiffs to participate in an event, the
17 Gay Pride Parade, at which it knew plaintiffs would be sexually harassed; failing to take any
18 measures to prevent the harassment; and failing to take any action against any of the SDFD
19 personnel who facilitated the harassment by compelling plaintiffs to participate in the Gay Pride
20 Parade against their express wishes.

21 65. Section 56.27 of Chapter 5 of the San Diego Municipal Code, among other things,
22 makes it unlawful for any person to use boisterous, vulgar or indecent language on any streets,
23 sidewalks or other public places in the City. Section 56.53 prohibits public nudity (including
24 exposure of the genitals, pubic hair, buttocks, anal region, or any portion of a female breast at or
25 below the areola).

26 66. Plaintiffs are informed and believe and thereon allege that the City of San Diego
27 routinely permits Gay Pride Parade participants and spectators to violate Municipal Code sections
28 56.27 and 56.53 with impunity.

1 67. In order to comply with SDFD and City of San Diego policies for reporting sexual
2 harassment, plaintiffs each filed City Administration Regulation 96.50 forms with the City of San
3 Diego's Equal Employment Investigations Office.

4 68. Additionally, plaintiffs each filed a "Complaint of Discrimination" with the
5 California Department of Fair Employment and Housing ("DFEH") and requested immediate right-
6 to-sue notices in compliance with Government Code section 12965. The DFEH issued Right-To-
7 Sue Notices to each of the plaintiffs pursuant to Notice of Case Closures dated August 6, 2007.
8 Plaintiffs thus exhausted their administrative remedies.

9 69. After their complaints about being subjected to sexual harassment as a result of the
10 SDFD's order that they participate in the Gay Pride Parade became public, two plaintiffs received
11 anonymous, threatening telephone calls at their homes. In order to ensure their safety, certain
12 plaintiffs have had to transfer to other fire stations. In transferring, Captain Ghiotto had to give
13 up his position as medical officer for Battalion 2 for which he had received a 5% premium over
14 his regular salary. Engineer Hewitt has resigned his position as Assistant Fire Academy
15 Coordinator, which has resulted in losing a 10% salary increase and other economic benefits.

16 70. Plaintiffs are informed and believe and thereon allege that, in a meeting with
17 representatives of Local 145 of the firefighters' union, Assistant Chief Carle claimed that he had
18 not seen anything offensive at the Gay Pride Parade and wrongly accused plaintiffs of complaining
19 about it because they have issues with homosexuality. Since then, false rumors have been
20 emanating from Local 145 that plaintiffs' motivation in bringing their complaint is hostility toward
21 homosexuals.

22 71. Plaintiffs' complaint that is the SDFD knowingly ordered them against their will into
23 a non-emergency situation -- specifically, a parade at which the offensive sexualized conduct of
24 some participants and spectators makes it qualitatively different from other parades -- where they
25 were subjected to sexual harassment which left them humiliated and demoralized. Further, the
26 SDFD's order had the effect of compelling plaintiffs to endorse debauched and unlawful conduct
27 in public which they would not have otherwise endorsed, thus violating their rights to liberty of
28 speech.

1 **FIRST CAUSE OF ACTION**
2 **(Against All Defendants)**

3 **Sexual Harassment -**
4 **Government Code § 12940(j)**

5 72. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
6 71 above as though fully set forth herein.

7 73. At all times relevant to this lawsuit, plaintiffs were employees covered by
8 Government Code section 12940 which, among other things, makes both sexual harassment and
9 the failure to take all reasonable steps to prevent harassment from occurring unlawful employment
10 practices.

11 74. At all times relevant to this lawsuit, defendants and their agents and employees were
12 employers within the meaning of Government Code section 12940(j)(4)(A).

13 75. As employers under Section 12940(j)(4)(1), defendants and their agents and
14 employees were barred from subjecting employees such as plaintiffs to harassment because of sex
15 or sexual orientation as set forth in Government Code section 12940(j)(1).

16 76. Defendants knew or should have known that plaintiffs would be subjected to sexual
17 harassment by non-employees at the Gay Pride Parade but failed to take immediate and appropriate
18 corrective action as required by section 12940(j)(1). Said harassment was sufficiently severe or
19 pervasive so as to create a hostile work environment for plaintiffs.

20 77. As a proximate result of defendants' conduct described above, plaintiffs have
21 suffered and continue to suffer mental anguish, embarrassment, humiliation, anxiety, and
22 emotional distress, all to their damage in amounts to be proved at trial.

23 78. Defendants and their agents and employees committed the acts alleged herein
24 maliciously, fraudulently, and oppressively, in conscious disregard of plaintiffs' rights. Defendants
25 and their managing agents authorized, condoned and ratified said acts. Consequently, plaintiffs
26 are entitled to recover punitive damages in an amount sufficient to punish and to set an example.

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1 **SECOND CAUSE OF ACTION**
2 **(Against All Defendants)**

3 **Failure To Maintain Environment Free from Sexual Harassment -**
4 **Government Code § 12940(k)**

5 79. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 though
6 78 above as though fully set forth herein.

7 80. At all times relevant to this lawsuit, defendants and their agents and employees were
8 employers within the meaning of Government Code section 12926(d).

9 81. As employers under Section 12926(d), defendants and their agents and employees
10 were required to take all reasonable steps necessary to prevent harassment from occurring as set
11 forth in Government Code section 12940(k).

12 82. Defendants and their agents and employees failed to take any steps to prevent
13 plaintiffs from being sexually harassed at the Gay Pride Parade. Said harassment was sufficiently
14 severe or pervasive as to create a hostile work environment.

15 83. As a proximate result of defendants' conduct described herein, plaintiffs have
16 suffered and continue to suffer mental anguish, embarrassment, humiliation, anxiety, and
17 emotional distress, all to their damage in amounts to be proved at trial.

18 84. Defendants and their agents and employees committed the acts alleged herein
19 maliciously, fraudulently, and oppressively, in conscious disregard of plaintiffs' rights. Defendants
20 and their managing agents authorized, condoned and ratified said acts. Consequently, plaintiffs
21 are entitled to recover punitive damages in an amount sufficient to punish and to set an example.

22 **THIRD CAUSE OF ACTION**
23 **(Against All Defendants)**

24 **Negligent Infliction of Emotional Distress**

25 85. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 though
26 84 above as though fully set forth herein.

27 86. Defendants owed a duty to plaintiffs to provide a workplace free from harassment.
28 Defendants and their agents and employees breached that duty to plaintiffs by engaging in the
conduct described herein.

1 87. Defendants and their agents and employees knew or should have known that their
2 conduct described herein would cause emotional distress to plaintiffs.

3 88. The conduct of defendants and their agents and employees described above was a
4 substantial factor in causing plaintiffs' emotional distress, mental anguish, embarrassment,
5 humiliation, and anxiety, all to their damage in amounts to be proved at trial.

6 **FOURTH CAUSE OF ACTION**
7 **(Against All Defendants)**

8 **Violation of Liberty of Speech -**
9 **California Constitution Art. I, § 2**

10 89. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
11 88 above as though fully set forth herein.

12 90. The California Constitution's liberty of speech clause explicitly specifies a "right"
13 to freedom of speech.

14 91. The California Constitution's right to freedom of speech is unbounded in range,
15 running against the world, including private parties as well as governmental actors.

16 92. The California Constitution's right to freedom of speech is unlimited in scope,
17 embracing all subjects.

18 93. Within its unlimited scope, the California Constitution's right to freedom of speech
19 protects political speech and ideological speech.

20 94. Because speech results from what a speaker chooses to say and what he chooses not
21 to say, the California Constitution's right to freedom of speech comprises both a right to speak
22 freely and also a right to refrain from doing so at all, and is therefore put at risk both by prohibiting
23 a speaker from saying what he otherwise would say and also by compelling him to say what he
24 otherwise would not say.

25 95. By ordering plaintiffs to participate in the Gay Pride Parade, defendants compelled
26 plaintiffs to express political and ideological viewpoints that they otherwise would not have
27 expressed, including endorsing the public display of lewd and lascivious conduct, at least some of
28 which was prohibited by City law, as well as endorsing the condemnation and ridicule of certain
religious beliefs and practices. By compelling plaintiffs to speak, defendants violated plaintiffs'

1 speech under the California Constitution.

2 96. Plaintiffs have no plain, speedy and adequate remedy in the ordinary course of law
3 for the defendants' violation of their free speech rights under the California Constitution, and they
4 are entitled to injunctive relief.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, plaintiffs pray for judgment against defendants, and each of them, request
7 relief as follows:

8 1. A permanent injunction prohibiting defendants from ordering or otherwise
9 compelling any SDFD personnel to participate in any way in future Gay Pride Parades and from
10 giving any adverse evaluation or making any other report or taking any other action against any
11 employee for declining to participate in a Gay Pride Parade;

12 2. On all causes of action, an award of general and special compensatory damages
13 according to proof at trial, and interest thereon as provided by law;

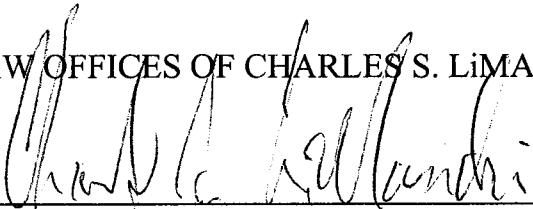
14 3. On the first and second causes of action, an award of punitive damages pursuant to
15 Civil Code section 3294;

16 4. An award of attorney's fees pursuant to Government Code section 12965(b) and
17 Code of Civil Procedure section 1021.5;

18 5. Costs of suit; and

19 6. Such other and further relief as the Court deems just and proper.

20
21 LAW OFFICES OF CHARLES S. LIMANDRI, APC



22
23 DATED: August 27, 2007

By:

24 Charles S. LiMandri
25 Teresa Mendoza
26 Attorneys for Plaintiffs
27 JOHN GHIOTTO, CHAD ALLISON,
28 JASON HEWITT, ALEXANDER KANE