

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>	
STREET ADDRESS: 330 West Broadway	
MAILING ADDRESS: 330 West Broadway	
CITY AND ZIP CODE: San Diego, CA 92101	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7065	
PLAINTIFF(S) / PETITIONER(S): Deborah W Burger	
DEFENDANT(S) / RESPONDENT(S): City of San Diego et.al.	
BURGER VS. CITY OF SAN DIEGO	
<b>NOTICE OF CASE ASSIGNMENT</b>	CASE NUMBER: 37-2011-00097631-CU-OE-CTL

Judge: Joan M. Lewis

Department: C-65

**COMPLAINT/PETITION FILED:** 09/08/2011

**CASES ASSIGNED TO THE PROBATE DIVISION ARE NOT REQUIRED TO COMPLY WITH THE CIVIL REQUIREMENTS LISTED BELOW**

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, and family law proceedings.

**COMPLAINTS:** Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants, and a Certificate of Service (SDSC form #CIV-345) filed within 60 days of filing.

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

**DEFAULT:** If the defendant has not generally appeared and no extension has been granted, the plaintiff must request default within 45 days of the filing of the Certificate of Service. (SDSC Local Rule 2.1.7)

**CASE MANAGEMENT CONFERENCE:** A Case Management Conference will be set within 150 days of filing the complaint.

**ALTERNATIVE DISPUTE RESOLUTION (ADR):** THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

YOU MAY ALSO BE ORDERED TO PARTICIPATE IN ARBITRATION. IF THE CASE IS ORDERED TO ARBITRATION PURSUANT TO CODE CIV. PROC. 1411.11, THE COSTS OF ARBITRATION WILL BE PAID BY THE COURT PURSUANT TO CODE CIV. PROC. 1141.28.

FOR MORE INFORMATION, SEE THE ATTACHED ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730)

1 Leah M. Peer, Esq. (SBN 172335)  
2 **DONALD R. HOLBEN & ASSOCIATES, APC**  
3 5030 Camino de la Siesta, Suite 350  
4 San Diego, CA 92108  
5 Telephone: (619) 220-5555  
6 Facsimile : (619) 220-0033

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JUDICIAL SUPERIOR COURT  
SAN DIEGO COUNTY, CA

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11 Attorneys for Plaintiff,  
12 **DEBORAH W. BURGER**

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

11 DEBORAH W. BURGER, )  
12 )  
13 Plaintiff, )  
14 vs. )  
15 )  
16 CITY OF SAN DIEGO, SAN DIEGO )  
17 POLICE DEPARTMENT; AND )  
18 INDIVIDUALS, SGT. DAN CERAR; )  
19 DET. CARL HERSHMAN; DET. EDWARD )  
20 FLETES; and LT. RICK O'HANLON, IN )  
21 THEIR OFFICIAL AND PERSONAL )  
22 CAPACITIES; and DOES 1-20, inclusive, )  
23 Defendants. )

**CASE NO 11-2011-00007631-CU-OE-CTL**  
**PLAINTIFF DEBORAH W. BURGER'S**  
**VERIFIED COMPLAINT**  
**FOR DAMAGES:**  
1. SEXUAL HARASSMENT -  
HOSTILE WORK ENVIRONMENT  
2. FAILURE TO PREVENT  
DISCRIMINATION &  
HARASSMENT  
3. GENDER DISCRIMINATION  
4. AGE DISCRIMINATION  
5. RETALIATION  
6. INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS

Assignment for All Purposes:  
Not Yet Assigned

JURY TRIAL DEMANDED

23 **GENERAL ALLEGATIONS**

24 1. Plaintiff Deborah W. Burger ("Burger" or "Plaintiff") is and was a Detective with the  
25 City of San Diego, San Diego Police Department ("Defendants" or "SDPD") Sex Crimes Unit. Det.  
26 Burger has an exemplary 22-year employment history with SDPD and at all times herein mentioned  
27 has worked in the City of San Diego, State of California. This complaint arises out of numerous  
28 egregious instances of unlawful discrimination, harassment and retaliation, beginning in 2009 and

1 continuing to the present, within the SDPD's Sex Crimes Unit, involving Defendant male detectives  
2 and supervisors who created an intimidating and hostile work environment charged with offensive  
3 sexual comments, slurs, innuendos, emails, photos, and other disparate treatment based on Plaintiff's  
4 gender and age (59). After reporting these unlawful issues to her supervisors, Plaintiff was further  
5 harassed, intimidated, shunned, ridiculed, and retaliated against by supervision for reporting this  
6 unlawful conduct. Det. Burger brings this complaint for hostile work environment, failure to  
7 prevent harassment; discrimination, retaliation, and emotional distress, for which Plaintiff seeks  
8 general and compensatory damages.

9         2. Defendants City of San Diego and San Diego Police Department (Collectively  
10 "SDPD") are, and at all times herein mentioned were, local public entities, authorized and doing  
11 business in the City of San Diego, State of California.

12         3. Defendant Sgt. Dan Cerar ("Cerar") is, and at all times herein mentioned was, an  
13 individual residing in the County of San Diego, State of California, and is employed by Defendants  
14 City of San Diego, SDPD, as a supervisor within the department.

15         4. Defendant Det. Carl Hershman ("Hershman") is, and at all times herein mentioned  
16 was, an individual residing in the County of San Diego, State of California, and is employed by  
17 Defendants City of San Diego, SDPD, as a detective within the department.

18         5. Defendant Det. Edward Fletes ("Fletes") is, and at all times herein  
19 mentioned was, an individual residing in the County of San Diego, State of California, and is  
20 employed by Defendants City of San Diego, SDPD, as a detective within the department.

21         6. Defendant Lt. Rick O'Hanlon ("O'Hanlon") is, and at all times herein mentioned  
22 was, an individual residing in the County of San Diego, State of California, and is employed by  
23 Defendants City of San Diego, SDPD, as a supervisor within the department.

24         7. Plaintiff is unaware of the true names and capacities of the Defendants designated as  
25 DOES 1 through 20, inclusive, and therefore sues such Defendants by their fictitious names.  
26 Plaintiff will seek leave of this Court, if required, to amend this complaint to allege their true names  
27 and capacities when the same has been ascertained. Plaintiff is informed and believes, and thereon  
28 alleges, that each and every Defendant designated herein as a DOE is in some manner liable or

1 responsible for the acts, occurrences and omissions hereinafter set forth, and the damages  
2 proximately caused thereby.

3 8. In doing the acts and things described in this Complaint, each said Defendant was  
4 acting, in part, within the course and scope of his/ her /their /its respective agency and/or  
5 employment with Defendant(s) City of San Diego, San Diego Police Department and in part, for his  
6 /her /their /its own benefit and personal gain. At all times mentioned herein, City of San Diego, San  
7 Diego Police Department authorized and ratified the conduct complained of herein.

8 9. On September 9, 2010, Plaintiff exhausted her external administrative remedies and  
9 filed discrimination, harassment, and retaliation complaints with the California Department of Fair  
10 Employment and Housing (“DFEH”), case numbers: E201011D5175-00 through E201011D5175-  
11 04, against SDPD and each of the individual Defendants. Plaintiff requested and received Right-to-  
12 Sue Notices dated September 9, 2010, which were all personally served on October 8, 2010. (True  
13 and correct copies of Plaintiff’s 09/09/10 DFEH Complaints against each of the Defendants with  
14 Right-to-Sue Notices are attached hereto as **Exhibit “A.”**)

15 10. On November 4, 2010, Plaintiff complied with the Tort Claims Act by giving notice  
16 to City of San Diego and the San Diego Police Department of Plaintiff’s claims pursuant to  
17 Government Code sections 912.6(a), 912.4(c), including Plaintiff’s DFEH Complaints filed and  
18 served on SDPD as set forth in paragraph 9 above. (True and correct copies of Plaintiff’s 11/04/10  
19 Tort Claim with Exhibits filed with the City of San Diego are attached hereto as **Exhibit “B.”**) The  
20 Board for the City of San Diego did not respond to Plaintiff’s claim and as such, is treated as a  
21 rejection of Plaintiff’s claim.

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

23 11. Det. Burger began working with SDPD as a civilian in February 1989 and soon  
24 earned praise and expertise, that was second to none, demonstrating superior skills by being  
25 meticulous in crime scene protection and collections. Requests were made by specialized units and  
26 other agencies and divisions for Burger to process complex crime scenes due to her excellent  
27 reputation. During this time, Det. Burger worked in the Crime Laboratory processing homicide  
28 scenes and officer involved shootings.

1           12.     In November 1993, Det. Burger attended the Police Academy and became a sworn  
2 officer, I.D. #5024, working patrol in North Eastern Division. In September 1996, Det. Burger was  
3 assigned to Central Division and as a patrol officer steadfastly established an excellent reputation  
4 with her peers and supervisors for having an exemplary work ethic while demonstrating the highest  
5 integrity and modeling excellent interpersonal skills. During Det. Burger's patrol assignments she  
6 was always praised by Detectives and Sergeants for being thorough and flawless with her skills,  
7 especially report writing. In 1997, Det. Burger had the pleasure of having Officer Donna Mauzy as  
8 a partner for two years. Officer Mauzy was killed by a drunk driver. Det. Burger unselfishly  
9 volunteered numerous hours of support to the Mauzy family and friends during a lengthy criminal  
10 trial, and was a spokesperson at Officer Mauzy's honorary freeway dedication.

11           13.     Between 1999 and 2003, Det. Burger received numerous commendations, citations  
12 and awards for her dedication to duty and service to the citizens of San Diego. In 2002 and 2003,  
13 Det. Burger was given the Blue Knight and Spirit of Courage Awards for exceptional valor and  
14 courage when she and another officer observed and reported a fully engulfed burning building in the  
15 early morning hours of May 31, 2002. After being told that there were still people inside the  
16 burning building, Det. Burger ran into the house and first carried a 5-year old child to safety and  
17 then re-entered the house pulling another disoriented female to safety.

18           14.     In 2002, Det. Burger was promoted to Detective in the Domestic Violence Unit.  
19 Because of Det. Burger's calm, caring, sensitive and effective communication and interpersonal  
20 skills, she was assigned by her Sergeant to the highly sensitive sexual assault crimes of women and  
21 children. Det. Burger was also selected to the department's team of trainers for the Advanced  
22 Communication and Tactics training program because of the effectiveness in communicating with  
23 the mentally challenged population.

24           15.     In March 2005, Det. Burger advanced to the SDPD's Sex Crimes Unit which has  
25 been nationally recognized for their contributions in the field of sexual assault. In May 2006, Det.  
26 Burger received an Honors Award For Outstanding Work in the Fight Against Crime. At this time,  
27 Det. Burger was reporting to Sergeants Judy Woods, Chuck Kaye, Mark Sullivan and Lt. Carolyn  
28 Kendrick.

1           16.     In late 2008, Sgt. Dan Cerar came into the Sex Crimes Unit, followed by Lt. Rick  
2 O'Hanlon in January 2009, who replaced Lt. Carolyn Kendrick. Det. Burger was reporting directly  
3 to Sgt. Cerar and Sgt. Sullivan for the most part. Prior to Sgt. Cerar and Lt. O'Hanlon coming into  
4 the Sex Crimes Unit, the Unit closely adhered to SDPD policy and procedure and cases were  
5 assigned by supervision fairly with some consideration for department seniority, knowledge and  
6 experience.

7           17.     Beginning in or about March 2009, the Sex Crimes Unit began to markedly change  
8 under the supervision of Lt. O'Hanlon and Sgt. Cerar. Sgt. Cerar treated the female detectives in the  
9 Unit less favorably than the male detectives. Sgt. Cerar also began to form a "click" of certain  
10 favorite male detectives who would take long breaks with Sgt. Cerar and were allowed to dress  
11 down on certain work days while female detectives were told they could not. Det. Burger and others  
12 in the Unit also noticed an increase in lewd comments, jokes, emails, and photos of a sexual nature  
13 in the Unit. Additionally, inappropriate photos began to appear in Det. Fletes' and Det. Hershman's  
14 cubicles, at first there were only one or two photos and then the photographs began to take up a wall  
15 of Det. Fletes' and Det. Hershman's cubicles depicting photos of women and men in suggestive and  
16 sexual poses and/or performing mock sexual acts.

17           18.     In 2009, Det. Burger was one of the older females in the Unit at age 57 and prior had  
18 received many high profile and special assignments from previous supervisors. After Sgt. Cerar  
19 arrived, he began to assign Det. Burger to desk jobs doing paperwork. By September 2009, when  
20 Det. Burger was held back by Sgt. Cerar on a Narcotics Unit special assignment, Det. Burger began  
21 to inquire about Sgt. Cerar's favoritism toward other less senior male detectives. One male detective  
22 advised Det. Burger, that Sgt. Cerar played favorites with males and that he knew it sounded bad,  
23 "but I'm glad I am one of them." On another occasion, when Sgt. Cerar allowed Det. Burger's male  
24 partner to go out on a raid and made her stay behind, she commented to Det. Hershman about the  
25 fairness of Sgt. Cerar's decisions and he replied, "What do you expect? He hates women."

26           19.     In late 2009 / early 2010, Lt. O'Hanlon asked Sgt. Cerar to gather the detectives for a  
27 lunch. Det. Burger then observed Sgt. Cerar go to all the male detectives in the office and invite  
28 them to lunch leaving the female detectives behind. During this same period, Sgt. Cerar also took

1 the male detectives out of the Unit for shooting practice and allowed them to dress down, while not  
2 allowing the female detectives to do the same.

3 20. In late 2009 / early 2010, comments were being made about the inappropriate photos  
4 in Det. Fletes' and Det. Hershman's cubicles by individuals from the Center for Community  
5 Solutions ("CCS") Advocates who appeared offended by the photos. Representatives with the  
6 Center for Community Solutions Advocates work closely with Sex Crimes Unit detectives on behalf  
7 of victims. These photos were also in plain sight of other officers who came in from the field to  
8 assist the Sex Crimes Unit with cases, as well as, other outside agencies such as the FBI and NCIS.  
9 Notwithstanding comments regarding the inappropriateness of these photos by CCS, they remained.

10 21. Following comments from CCS, Sgt. Cerar stopped allowing CCS Advocates from  
11 coming into the Unit's office. Sgt. Cerar also advised the CCS manager that she was no longer  
12 welcome to attend meetings which had been custom and practice for years. Prior to Sgt. Cerar's  
13 arrival to the Sex Crimes Unit, the detectives and the advocates of CCS shared a relationship of  
14 respect and confidence in the services they proved to sexual assault victims. The Advocates  
15 regularly attended the Unit's Tuesday Meeting once a month to share information and answer any  
16 questions. Sgt. Cerar also advised the CCS supervisor that the Unit meetings were not only closed  
17 to CCS, but that they would need to schedule appointments as needed in advance to meet with  
18 detectives and that they were limited to staying in the waiting area for victims and no longer free to  
19 come into the Unit offices.

20 22. In February 2010, Det. Fletes generated a highly offensive email to detectives in the  
21 Sex Crimes Unit, sergeants and Lt. O'Hanlon entitled, "The Man Test." The email was also sent to  
22 detectives outside of the Sex Crimes Unit. Several female detectives, including but not limited to  
23 Det. Burger, were highly offended by the email. The email specifically targeted gays and used  
24 epithets such as "fag," "FLAMING homo," "queer," "Gaylord," "ass-pirate," "dying to tune a meat  
25 whistle," "pole smoker," and "keep that gay shit to yourself!"

26 23. During early 2010, Det. Burger noticed an increase in inappropriate comments by  
27 male detectives, sergeants and even the lieutenant in Sex Crimes. Specifically, Det. Burger heard  
28 Sgt. Cerar refer to female victims of sexual assault cases as, "whores, sluts and liars," which other

1 male detectives began to repeat. Detectives Hershman and Fletes also became more emboldened  
2 with similar comments by referring to female detectives as “sugar tits” and/or commenting on the  
3 “racks” of female victims, co-workers, and advocates. Even Lt. O’Hanlon seemed to share the anti-  
4 female sentiment in the Unit by openly stating that the Sex Crimes Unit had a “chromosome”  
5 problem which Det. Burger and other female detectives understood was in reference to the number  
6 of female detectives then in the Unit.

7       24. By May 2010, the work environment had become so hostile that Det. Burger  
8 requested to meet with Capt. Guy Swanger to report numerous instances of gender bias, disparate  
9 treatment, and sexual harassment by male detectives and supervisors within SDPD’s Sex Crimes  
10 Unit. Det. Burger specifically reported: the sexually offensive photos posted in Det. Fletes’ and  
11 Det. Hershman’s cubicles; Sgt. Dan Cerar’s frequent reference to victims of crimes as “whores, sluts  
12 and liars;” exclusion of female detectives from the male “dress down” Thursday shooting practice;  
13 preferential assignments to male detectives; the pattern and practice by male detectives (Fletes and  
14 Hershman) of referring to female detectives as “sugar tits” and/or commenting on the “racks” of  
15 female victims, co-workers, and advocates; reference by Lt. Rick O’Hanlon that the Sex Crimes unit  
16 has a “chromosome problem”, and the inappropriate emails being generated and especially Det.  
17 Fletes’ “Man Test,” which was intended to be offensive toward gays.

18       25. Det. Burger subsequently filed a formal internal EEO complaint after reporting  
19 further specific issues to Lt. Brian Ahearn of the Internal Affairs / EEO Unit on May 5, 2010. Det.  
20 Burger specifically reported that a few of the offensive photos in Det. Fletes’ and Det. Hershman’s  
21 cubicles appeared to be of underage girls which were disturbing. One particular photo showed  
22 young girls on what appears to be a school bus wearing short shorts and tank tops. One of the young  
23 girls who appears to be 14 or 15 years old, is depicted with her legs spread open and pointing to her  
24 genital area with a caption that reads: “EXHIBIT A” - “The proof that she was asking for it your  
25 Honour.” Det. Burger was advised that the matter would be investigated and the photos would be  
26 removed.

27       26. On May 6, 2010, Det. Burger noticed that Det. Fletes’ photos were removed during  
28 the morning from his cubicle, but Det. Hershman’s were not removed until the afternoon. Det.



1 Flete's was angry that "his property" was removed and wanted them back. Det. Hershman only  
2 commented that his photos were not as bad as Flete's.

3 27. Directly following the filing of her EEO report, the work environment became more  
4 hostile and divisive. The male detectives gathered together and treated Det. Burger with open  
5 hostility and resentment. In particular, Sgt. Cerar, Det. Hershman, and Det. Fletes discussed Det.  
6 Burger's complaint openly in the Unit and attempted to turn others in the Unit against her. Det.  
7 Hershman would aggressively stare at Det. Burger as if trying to intimidate her and then boast  
8 openly to others in the department that nothing could be done to him, because his wife worked in the  
9 City Attorneys office and that Chief Lansdowne was in his "pocket." Later in May 2009, Sgt. Cerar  
10 transferred out of the Sex Crimes Unit and the male detectives blamed Det. Burger and treated her  
11 with open hostility. Many of the female detectives alienated themselves from Det. Burger fearful  
12 that they too would become a target for retaliation like Det. Burger had become.

13 28. In the next several months following Det. Burger's report, she heard nothing from Lt.  
14 Ahearn or the Internal Affairs / EEO Unit regarding the status of her EEO report. While Det.  
15 Burger's report was allegedly being investigated, the same male individuals who's inappropriate  
16 conduct she had reported became emboldened. For example, Det. Fletes and Det. Hershman would  
17 openly discuss how they would pull sexual assault victim's CDL photos so that they could bid on  
18 who would get the more attractive victim. Det. Fletes would also state loud enough for others in the  
19 Unit to hear that if a sex crime victim is a "stripper" that she would get his "special attention." On  
20 another occasion Det. Burger heard several sergeants in the Unit discussing that they intended to use  
21 their retiree medical benefits to get their wives "boob jobs."

22 29. On August 19, 2010, Det. Hershman approached Det. Burger at work and described  
23 how he had told another female detective in the Unit, Det. Botsford, that he had a sex dream about  
24 her because he wanted to see her reaction. Det. Burger told Det. Hershman that his doing that was  
25 wrong and she walked away offended. Later that same day, Det. Burger watched Det. Hershman  
26 approach Det. Botsford's cubicle and heard him describe in graphic detail to all in the Unit, how he  
27 and Det. Botsford had a sexual encounter in his dream and were, "exchanging" and "mixing body  
28 fluids" in his "dream." Det. Botsford appeared upset and told Det. Hershman to stop, but Det.

1 Hershman continued as if enjoying Det. Botsford's discomfort. Det. Burger was also offended.  
2 Later, Det. Botsford told Det. Burger that she too was very offended with Det. Hershman's sex  
3 dream remarks and that Det. Hershman made her feel uncomfortable.

4 30. According to SDPD's Equal Employment Opportunity Unit's procedures, "a priority  
5 objective of the EEO Unit is to complete formal investigations within 90 days from the receipt of the  
6 complaint by the EEO Unit." Although another sergeant, Sgt. Goldberg, advised Det. Burger her  
7 reports about the conduct in the Sex Crimes Unit was, "one of the most egregious cases I have ever  
8 heard of" at SDPD, by August 2010 nothing was done to remedy the gender bias and openly hostile  
9 work environment.

10 31. On August 23, 2010, Det. Burger contacted Lt. Ahearn again at SDPD's EEO Unit  
11 via email and expressed her concern about the latest incidents in the Sex Crimes Unit and the delay  
12 in their investigation of her reported concerns over 90 days ago. A meeting was scheduled the  
13 following day to interview Det. Burger as it was her request to file another EEO report on the  
14 Hershman incident.

15 32. On August 24, 2010, Det. Burger met with Lt. Ahearn in his office. Det. Burger  
16 reported the latest incident involving Det. Hershman and his relaying in detail a sex dream with Det.  
17 Botsford. Det. Burger also reported her concern that she was being retaliated against by male  
18 supervisors and detectives in the Unit. Lt. Ahearn advised Det. Burger that they were still  
19 investigating and that he would take her recent report to the "chiefs" and get back to her.  
20 Subsequently, Det. Burger was advised by Det. Botsford that she wanted to file a formal complaint  
21 but was fearful of being retaliated against like Det. Burger.

22 33. On August 26, 2010, following Det. Burger's second report to Lt. Ahearn, Det.  
23 Burger observed Capt. Swanger take Det. Botsford into the Sex Crimes Unit's Interview and  
24 Interrogation Room. Det. Burger thought this was unusual and became concerned for Det. Botsford.  
25 The interview and interrogation room is equipped with video and audio equipment and any meeting  
26 could have easily been seen and heard by Unit detectives who have easy access to the control room.  
27 Det. Botsford later shared with Det. Burger that she felt intimidated during this meeting and felt that  
28 Capt. Swanger was attempting to make her drop the latest incident involving Det. Hershman.

1           34.     On September 2, 2010, Lt. Rick O’Hanlon called Det. Burger into his office. Lt.  
2 O’Hanlon advised Det. Burger that since she was a reporting party in the latest incident involving  
3 Det. Botsford and Det. Hershman, that he wanted her to know that, “Hershman is sorry for the  
4 remarks he made to Botsford.” Lt. O’Hanlon also stated that Det. Hershman would be apologizing  
5 to them as well. Det. Burger did not feel that Lt. O’Hanlon took the matter seriously and expressed  
6 her concern to Lt. O’Hanlon that EEO policy was seemingly being violated on a daily basis.

7           35.     On September 2, 2010, Sgt. Bill Albrektsen advised Det. Burger, that Det. Botsford  
8 and another female detective were going to be moved to the far East side of the office to windowless  
9 cubicles, but that Det. Hershman would be staying in his window cubicle. Det. Burger protested that  
10 she felt the move was retaliatory and asked why they were being moved. Det. Albrektsen advised  
11 that the decision came from the “7<sup>th</sup> floor” which indicated that it was a decision from the chiefs’  
12 office.

13           36.     On September 9, 2010, Det. Burger filed an external discrimination, harassment and  
14 retaliation complaint with the California Department of Fair Employment & Housing because the  
15 SDPD’s EEO Unit appeared to be doing nothing. Det. Burger only received vague responses to her  
16 emails requesting the status of its investigation from Lt. Ahearn who would only confirm that the  
17 investigation was still pending. Lt. Ahearn did inquire, however, when Det. Burger intended to  
18 “retire.” Concurrently, Lt. O’Hanlon was communicating to the Sex Crimes Unit that the  
19 investigation was “long over,” while Det. Hershman continued to brag that nothing was going to be  
20 done as he continued to “dog stare” Det. Burger in an attempt to intimidate her.

21           37.     The atmosphere in the Sex Crimes Unit became so intolerable that several female  
22 detectives, including Det. Burger, felt ill, reported trouble sleeping, and stomach problems. Det.  
23 Burger suffered increased high blood pressure, anxiety, and other stress related symptoms. Det.  
24 Burger continued to be shunned by most of the male detectives and a few of the female detectives in  
25 the department who appeared upset with Det. Burger for bringing the issues in the Sex Crimes Unit  
26 to EEO which seemed to worsen the situation. Most of the male detectives in the department, with a  
27 few exceptions, refused to speak to Det. Burger. It seemed that Det. Burger received the brunt of all  
28 complaints in the Sex Crimes Unit and received the worst cases and frequent administrative tasks

1 that less senior and inexperienced detectives were generally assigned. Det. Burger was frequently  
2 asked by supervision when she intended to retire and felt pressured every day that she was being  
3 forced out for her compliance with SDPD's express policies and procedures.

4 38. By late 2010, Det. Burger continued to observe Det. Fletes being placed in interim  
5 supervisory roles and Det. Hershman was allowed to train new officers at the police academy and  
6 speak at functions as an apparent model of the Unit. Det. Hershman also continued to boast that he  
7 "has [Chief] Lansdowne in my pocket because my wife is a City Attorney and she'll sue the  
8 department." Det. Burger was also told that Sgt. Cerar was being considered for an "elite" position,  
9 while Capt. Swanger and Lt. O'Hanlon continued to advise the Unit that Det. Burger's EEO report  
10 has, "all been taken care of." Finally, Sgt. Albrektsen moved to a larger office area in the Unit so  
11 that he could keep an eye on the female detectives - specifically, Det. Burger.

12 39. In October 2010, Det. Burger, through counsel, wrote a letter to Chief Lansdowne at  
13 SDPD requesting that these issues be looked into, which was ignored.

14 40. On November 4, 2010, Det. Burger then filed a Tort Claim with the City of  
15 San Diego which included her EEO reported issues as well. The City of San Diego also ignored  
16 Det. Burger's claims.

17 41. Det. Burger has an impeccable 22 year employment history with the San Diego  
18 Police Department and is the proud recipient of numerous awards, citations and commendations  
19 during the course of her career, including but not limited to: an Outstanding Job Performance,  
20 Dedication to Duty and Service to the Citizens of San Diego (1999-2000); Commanding Officer's  
21 Citations (2000, 2001, 2002, 2003); the Blue Knight Award for saving several lives (2002); the  
22 Spirit of Courage Award (2003); and Honors for Outstanding Work in the Fight Against Crime, a  
23 San Diego County Crime Stoppers Award (2006). Notwithstanding her service and dedication to  
24 SDPD, she has been treated as an outcast by her male peers and supervisors for protesting the  
25 aforementioned conduct and exercising her protected rights and for having the courage to stand up  
26 for the rights of other female detectives, the City's victims and their advocates. Det. Burger's entire  
27 career and professional accomplishments have been summarily diminished and she has been reduced  
28 and treated as a whistleblowing "whiner" by her male peers and SDPD's supervision.

1           42.     In December 2010, Det. Burger met with Lt. Ahearn of the Internal Affairs / EEO  
2 Unit and was advised that her complaints had been “sustained” and that “department policies and  
3 procedures had been violated.” Lt. Ahearn would not look at Det. Burger during this meeting. Det.  
4 Burger requested copies of the reports of SDPD’s investigation and was told by Lt. Ahearn that she  
5 could not have copies of anything.

6           43.     Following this meeting, Sgt. Cerar and Det. Hershman continued to advise other  
7 members of the Sex Crimes Unit and SDPD that Det. Burger’s complaints were unfounded which  
8 further created a conflicting, confusing, intimidating, hostile and offensive work environment which  
9 interfered with the overall performance of the Sex Crimes Unit and created further hostility and  
10 resentment toward Det. Burger by her peers and supervision. Det. Burger continues to be treated  
11 differently than others similarly situated and is only assigned menial cases and duties that are usually  
12 assigned to less senior members of the department. Det. Burger feels as if she has been effectively  
13 demoted to a lesser position within her department as the direct result of her reporting the unlawful  
14 conduct of others in her department.

15           44.     Det. Burger has suffered damage to her personal and professional reputation,  
16 economic and emotional damages which continue to accrue to this date. Det. Burger is outraged by  
17 the lack of accountability, support and oversight by supervision in this matter and is grossly  
18 offended by the lack of respect for the City of San Diego’s victims who have become the brunt of  
19 offensive sexual banter by male detectives and supervisors of the Sex Crimes unit.

20   **FIRST CAUSE OF ACTION**

21   **Sexual Harassment - Hostile Work Environment**

22   **California Govt. Code §§ 12940, et seq.**

23   **(Against All Defendants)**

24           45.     Plaintiff incorporates by reference paragraphs 1 through 44 of this Complaint as  
25 though fully set forth herein.

26           46.     Defendants, and each of them, discriminated against Plaintiff, and harassed her as  
27 alleged herein above, on the basis of gender and sex, and then further harassed and retaliated against  
28 Det. Burger for protesting same to her supervisors, the San Diego Police Department, and the

1 California Department of Fair Employment and Housing in violation of California Government  
2 Code sections 12940 (a) and 12940(j), et seq.

3 47. The harassment by Defendants adversely affected Plaintiff's employment and created  
4 an offensive, hostile and intimidating work environment.

5 48. As a direct and proximate result of Defendants' discriminatory and harassing actions  
6 toward Plaintiff as alleged herein above, Plaintiff has been harmed in that Plaintiff has suffered the  
7 loss of the reputation, promotional opportunities, earnings, income, benefits, and additional amounts  
8 of money Plaintiff would have received if Plaintiff had not been harassed, discriminated and  
9 retaliated against.

10 49. As a further direct and proximate result of Defendants' unlawful conduct, Plaintiff has  
11 suffered extreme and severe anguish, humiliation, emotional distress, nervousness, high blood  
12 pressure, anxiety and depression, the extent of which is not fully known at this time, and the amount  
13 of damages caused thereby is not yet fully ascertained, but is in an amount in excess of \$25,000.00,  
14 the precise amount to be proven at trial. Plaintiff claims the amount, together with prejudgment  
15 interest pursuant to Civil Code section 3287, or any other provision of law providing for  
16 prejudgment interest.

17 50. Defendants acted in a despicable manner and subjected Plaintiff to cruel and unjust  
18 hardship. Such despicable actions by Defendants have caused irreparable damage to Plaintiff's  
19 career and professional reputation. Such actions by Defendants and each of them, were in flagrant  
20 and conscious disregard of Plaintiff's rights under state law. This oppressive conduct was committed  
21 by Defendants and each of them. As a result, Plaintiff has been required to retain legal counsel and  
22 therefore requests that the Defendants be required to pay the Plaintiff's attorney fees and costs  
23 necessary to pursue his legal and just claims.

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1 **SECOND CAUSE OF ACTION**

2 **Failure to Investigate and Prevent Discrimination and Harassment in**  
3 **Violation of Govt. Code § 12940(k)**  
4 **(Against Defendants City of San Diego, San Diego Police Department)**

5 51. Plaintiff re-alleges and incorporates by reference the allegations in paragraphs 1  
6 through 50, as if set forth fully herein.

7 52. The actions of Defendants, through its officers, agents and employees, in encouraging  
8 and/or condoning a hostile workplace, failing to investigate Plaintiff's claims, and failing to act to  
9 prevent such acts, as alleged herein, created a situation so intolerable that Plaintiff suffered severe  
10 emotional injuries. Defendants had a duty to investigate and prevent discrimination, harassment and  
11 retaliation of Plaintiff after she reported the male Defendant Supervisors' and detectives' unlawful  
12 conduct and Defendants failed to investigate and prevent further harm to Plaintiff.

13 53. Plaintiff is informed and believes and thereon alleges that the actions of Defendants  
14 following Plaintiff's complaints regarding violations of policies, procedures, and the law, failing to  
15 investigate, and failing to remedy the situation, were done in retaliation for having brought her  
16 complaints to the attention of the Internal Affairs / EEO Unit and outside agencies and demonstrates  
17 the condonation and/or ratification of the acts of Defendants, and each of them.

18 54. Plaintiff is further informed and believes and thereon alleges that her discrimination  
19 and harassment complaints both internally and externally were a substantial and determining factor  
20 in Defendants' decision to further harass and retaliate against Plaintiff and take adverse action  
21 against her in the form of changing the terms and conditions of her employment and the essential  
22 functions of her job after she reported unlawful conduct in the Sex Crimes Unit.

23 55. As a direct and proximate result of Defendant's unlawful conduct as alleged in the  
24 Complaint, Plaintiff has lost substantial employment benefits with Defendant, including lost wages  
25 and other losses, in an amount to be established at trial.

26 56. As a further direct and proximate result of the conduct of Defendants, and each of  
27 them, Plaintiff suffered feelings of anger, embarrassment, violation, sickness, betrayal and  
28 humiliation, leading to physical symptoms, loss of sleep, anxiety, headaches, nervousness and

1 increase / decrease of appetite, and stress, all to her general damage, in an amount to be proven at  
2 trial. Plaintiff claims this amount, together with prejudgment interest, pursuant to Civil Code  
3 Section 3287.

4 57. Plaintiff has also been required to retain legal counsel and therefore requests that  
5 Defendant be required to pay the Plaintiff's attorneys' fees and costs necessary to pursue her legal  
6 and just claims, pursuant to Government Code Section 12965.

7 **THIRD CAUSE OF ACTION**

8 **Discrimination Based on Gender / Sex**

9 **Violation of Govt. Code § 12940(k)**

10 **(Against Defendants City of San Diego, San Diego Police Department)**

11 58. Plaintiff incorporates by reference paragraphs 1 through 57 of this Complaint as  
12 though fully set forth herein.

13 59. Defendants discriminated against Plaintiff, and then harassed her as alleged herein  
14 above, on the basis of gender and sex, and then further harassed and retaliated against Det. Burger  
15 for protesting same to her supervisors, the San Diego Police Department, and the California  
16 Department of Fair Employment and Housing in violation of California Government Code sections  
17 12940, et seq.

18 60. The discrimination and harassment by Defendants adversely affected Plaintiff's  
19 employment and created an offensive, hostile and intimidating work environment.

20 61. As a direct and proximate result of Defendants' discriminatory and harassing actions  
21 toward Plaintiff as alleged herein above, Plaintiff has been harmed in that Plaintiff has suffered the  
22 loss of the reputation, promotional opportunities, earnings, income, benefits, and additional amounts  
23 of money Plaintiff would have received if Plaintiff had not been harassed, discriminated and  
24 retaliated against.

25 62. As a further direct and proximate result of Defendants' unlawful conduct, Plaintiff has  
26 suffered extreme and severe anguish, humiliation, emotional distress, nervousness, high blood  
27 pressure, anxiety and depression, the extent of which is not fully known at this time, and the amount  
28 of damages caused thereby is not yet fully ascertained, but is in an amount in excess of \$25,000.00,



1 the precise amount to be proven at trial. Plaintiff claims the amount together with prejudgment  
2 interest pursuant to Civil Code section 3287 or any other provision of law providing for prejudgment  
3 interest.

4 63. Defendants acted in a despicable manner and subjected Plaintiff to cruel and unjust  
5 hardship. Such despicable actions by Defendants have caused irreparable damage to Plaintiff's  
6 career and professional reputation. Such actions by Defendants and each of them, were in flagrant  
7 and conscious disregard of Plaintiff's rights under state law. This oppressive conduct was committed  
8 by Defendants and each of them. As a result, Plaintiff has been required to retain legal counsel and  
9 therefore requests that the Defendants be required to pay the Plaintiff's attorney fees and costs  
10 necessary to pursue his legal and just claims.

11 **FOURTH CAUSE OF ACTION**

12 **Discrimination Based on Age**

13 **Violation of Govt. Code § 12940, et seq.**

14 **(Against Defendants City of San Diego, San Diego Police Department)**

15 64. Plaintiff incorporates by reference paragraphs 1 through 63 of this Complaint as  
16 though fully set forth herein.

17 65. Defendants discriminated against Plaintiff, and then harassed her as alleged herein  
18 above, on the basis of Det. Burger's age (59), and then further harassed and retaliated against Det.  
19 Burger for protesting same to her supervisors, the San Diego Police Department, and the California  
20 Department of Fair Employment and Housing in violation of California Government Code sections  
21 12940, et seq.

22 66. The discrimination and harassment by Defendants adversely affected Plaintiff's  
23 employment and created an offensive, hostile and intimidating work environment and instead of  
24 providing a remedy for Det. Burger after she protested Defendants' unlawful conduct, Defendants  
25 attempted to force Plaintiff out of her position and into retirement because of her age and seniority in  
26 the department. Plaintiff is given menial cases and tasks akin to administrative work and Defendants  
27 have treated Plaintiff as if she is already retired. Plaintiff is in the DROP program and has at least  
28 three (3) more years of work at SDPD in this program.