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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
04/09/2014 at 02:24:53 PM
Clerk of the Superior Court
By Alicia Fletes, Deputy Clerk

8 Attorneys for Plaintiff Marilyn McGaughy

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11 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**
12 **(Central Division)**

13 MARILYN MCGAUGHY,
14
15 Plaintiff,

16 vs.

17 ROBERT FILNER, in both his official
18 and individual capacities; THE CITY
19 OF SAN DIEGO, a government entity;
20 and DOES 1 to 20,

21 Defendants.

CASE NO. 37-2014-00010580-CU-PO-CTL

COMPLAINT FOR DAMAGES:

1. Sexual Battery;
2. Gender Violence [Civil Code § 52.4]; and
3. Sexual Harassment [Civil Code § 51.9].

22 Plaintiff Marilyn McGaughy alleges:

23 **GENERAL ALLEGATIONS**

24 1. Plaintiff Marilyn McGaughy ("McGaughy") was at all material times an adult
25 resident of the County of San Diego, State of California.

26 2. Defendant Robert Filner ("Filner") was at all material times an adult resident of the
27 County of San Diego, State of California.

28 3. Defendant The City of San Diego (the "City") is a government entity.

1 The true names and capacities, whether individual or otherwise, of defendants Does
2 1 through 20 are unknown to Plaintiff who therefore sues them by such fictitious names pursuant
3 to California Code of Civil Procedure § 474. Plaintiff is informed and believes that each of the Doe
4 defendants is responsible in some manner for the acts of omissions alleged in this complaint or cause

1 Plaintiff's damages.

2 5. At all material times, all of the defendants named in this complaint were agents,
3 employees, partners, joint-venturers, or co-conspirators of the other defendants and when doing the
4 acts alleged in this complaint they acted within the course and scope of such agency.

5 6. On May 17, 2013, Filner and his body guards, who were employed by the City,
6 attended a City event at Johnson Elementary School ("Johnson") in San Diego. Filner was at
7 Johnson for an official City event, where he interacted with the students and teachers, and brought
8 City "swag" to hand out, and to promote City activities.

9 7. While at the event, Filner kissed, massaged, groped, and made repeated sexual
10 advances and sexual comments to McGaughy. Filner's bodyguards, employed by the City, were
11 present and witnessed Filner's wrongful conduct, however the failed to stop Filner or protect
12 McGaughy.

13 8. McGaughy alleges, upon information and belief, that all employees of the City are
14 required and obligated to report any and all violations of the City's "zero tolerance policy," including
15 any sexual harassment. McGaughy further alleges, upon information and belief, that while he was
16 mayor, Filner's bodyguards would look the other way when he would engage in inappropriate and
17 wrongful conduct, in violation of the City's "zero tolerance policy."

18
19 **FIRST CAUSE OF ACTION**
(Sexual Battery Against All Defendants)

20 9. McGaughy realleges paragraphs 1 through 8.

21 10. Filner intended to cause harmful and offensive touchings of McGaughy's breasts and
22 body, and such sexually harmful and offensive contacts directly occurred as alleged above.

23 11. McGaughy did not consent to these touchings.

24 12. As a legal result of Filner's acts and omissions, McGaughy sustained, and will
25 continue to sustain, general and special damages, including, but not limited to, past, present, and
26 future medical expenses, physical and emotional distress, embarrassment, and mental anguish.

27 13. The wrongful acts by the defendants were done with malice and/or oppression as
28 defined in Civil Code § 3294, which entitles McGaughy to recover punitive damages as against

1 Filner only.

2
3 **SECOND CAUSE OF ACTION**
(Gender Violence Against All Defendants)

4 14. McGaughy realleges paragraphs 1 through 8.

5 15. By doing the things alleged above, Filner's acts constituted a violation of California
6 Penal Code sections 242 and 243, subdivision (a), a misdemeanor.

7 16. Upon information and belief, the motivating reason for Filner's conduct, as alleged
8 above, is the fact that McGaughy was a woman.

9 17. As a legal result of Filner's conduct, McGaughy sustained, and will continue to
10 sustain, general and special damages, including, but not limited to, past, present, and future medical
11 expenses, physical and emotional distress, embarrassment, and mental anguish.

12 18. The wrongful acts by the defendants were done with malice and/or oppression, as
13 defined in Civil Code § 3294, which entitles McGaughy to recover punitive damages as against

14 Filner only.

15 **THIRD CAUSE OF ACTION**
16 **(Sexual Harassment Against All Defendants)**

17 19. McGaughy realleges paragraphs 1 through 8.

18 20. McGaughy had a business, service, or professional relationship with Filner, the City,
19 and Filner's bodyguards.

20 21. By Filner's conduct, as alleged above, he made sexual advances, solicitations,
21 requests to McGaughy, and further Filner engaged in verbal, visual, and physical conduct of a sexual
22 nature. Filner's conduct was unwelcome to McGaughy, and was severe and pervasive. Because of
23 Filner's unique status as mayor, McGaughy was unable to easily end the legal relationship with
24 Filner.

25 22. Filner engaged in the conduct alleged above, and as a legal result, McGaughy
26 sustained, and will continue to sustain, general and special damages, including, but not limited to,
27 past, present, and future medical expenses, physical and emotional distress, embarrassment, and
28 mental anguish.

