

1 Daniel M. Gilleon (SBN 195200)
James C. Mitchell (SBN 87151)
2 The Gilleon Law Firm
1320 Columbia Street, Suite 200
3 San Diego, CA 92101
Tel: 619.702.8623
4 Fax:619.702.6337

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5 Attorneys for Plaintiff Arthur Scott

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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
(Central Courthouse)**

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11 ARTHUR SCOTT,

12 Plaintiff,

13 vs.

14 THE CITY OF SAN DIEGO; and
15 DOES 1 through 20,

16 Defendants.

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CASE NO.: 37-2015-00001940-CU-OE-CTL

COMPLAINT FOR:

1. **Race Discrimination/Harassment (Hostile Work Environment);**
2. **Failure To Prevent Race Discrimination/Harassment;**
3. **Adverse Employment Action (Retaliation); and**
4. **Failure To Prevent Retaliation.**

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Plaintiff Arthur Scott ("Scott") alleges:

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GENERAL ALLEGATIONS

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1. Plaintiff Arthur Scott ("Scott") at all material times, resided in San Diego County, California.
2. Defendant The City of San Diego (the "City") is a government entity.
3. The true names and capacities, whether individual or otherwise, of defendants Does 1 through 20 are unknown to Scott who, therefore, sues them by such fictitious names pursuant to CCP § 474. Scott is informed and believes that each of the Doe defendants is responsible in some manner for the acts of omissions alleged in this complaint or caused Scott's damages.

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1 4. At all material times, all of the defendants were agents and employees of the other
2 defendants and when doing the acts alleged in this complaint they acted within the course and scope
3 of such agency and employment.

4 5. Scott has been employed by the City as a sworn law enforcement officer with the San
5 Diego Police Department ("SDPD") since October 22, 2004. He has the rank of Sergeant, a
6 supervisory position to which he was promoted in 2013. During Sgt. Scott's employment with
7 SDPD, he has been committed to serving not only the people of San Diego, but also various police
8 officer associations, including the San Diego Police Officers Association, the National Latino Police
9 Officers Association, the San Diego Pan Pacific Law Enforcement Association, and the San Diego
10 Black Police Officers Association ("SDBPOA"). Sgt. Scott has dedicated himself to supporting
11 diversity, training, and professionalism at SDPD, and has been active in furthering the mission of
12 the police associations by speaking out against discrimination and other improprieties in the
13 workplace. Sgt. Scott is currently the Vice President of SDBPOA. He is a decorated officer and,
14 until he spoke out about racism and discrimination at SDPD, Sgt. Scott boasted an exemplary work
15 record and high performance evaluations.

16 6. On or about August 27, 2014, Sgt. Scott attended mandatory training called "Sergeant
17 Lieutenant Update Training," which was a forty hour (one week) course. Part of the training
18 included a class taught by retired SDPD Lieutenant, Tom Giaquinto, with the San Diego Police
19 Historical Association. During the class, which took place at the San Diego Police Museum, Lt.
20 Giaquinto passed around a racist cartoon from the early 1900's, of "Patrolman Frank McCarter," who
21 Lt. Giaquinto said was the first black SDPD officer. Officer McCarter is honored on the SDPD
22 museum's webpage, entitled "Firsts" and "Recognizing Pioneering Officers." However, the cartoon
23 that Lt. Giaquinto passed out caricatured Officer McCarter as ape-like, carrying a large pistol and
24 brandishing an oversized police baton. Lt. Giaquinto's use of the cartoon had nothing to do with race
25 relations, nor was it used as an example of racism or discriminatory treatment. The sole stated
26 purpose of the cartoon was to discuss Officer McCarter himself and his history of having served as
27 an SDPD officer and being allowed to police non-black communities, something that was
28 extraordinary for the period. The racist cartoon also disparaged the Asian culture with comments

1 such as, "Even The Chink's Dog Beats It, To Safety," and, "He No Likee John China Man." A true
2 and correct copy of cartoon, which offended Scott and, he believes, numerous other police officers
3 in attendance, is attached as Exhibit 1. A true and correct copy of a photograph of "Patrolman
4 McCarter 1909" from the police museum website is attached as Exhibit 2. This photograph of the
5 late officer, who the SDPD recognizes as one of its pioneering officers, was not used in the training
6 session.

7 7. The following day, on or about August 28, 2014, Sgt. Scott complained to his
8 supervisor, Lt. Mark Hanten, who was also the SDPD Lieutenant in charge of the training. Sgt. Scott
9 informed Lt. Hanten about the cartoon, describing it as offensive racist words and imagery that, he
10 reasonably believed, should have no place in SDPD training. On August 29, 2014, after having
11 shared the cartoon with his wife, Lt. Hanten acknowledged the cartoon was, in fact, offensive. This
12 was not the first time Sgt. Scott had complained to Lt. Hanten about inappropriate racist imagery
13 being displayed at SDPD. In 2011, when President Barack Obama was campaigning for re-election,
14 racist images of the President were posted on some SDPD officers' lockers. When Sgt. Scott
15 complained about this, Lt. Hanten told him he was being "hyper-sensitive," but the posters were then
16 removed. Likewise, due to Sgt. Scott's complaint about the Officer McCarter caricature, the racist
17 ape-like cartoon was removed from SDPD training materials. However, Lt. Hanten made sure to
18 spread the word to other police officers, including SDPD's top level command staff, that Sgt. Scott
19 had again complained about racism and discrimination at SDPD.

20 8. Two weeks later, on September 11, 2014, Sgt. Scott was at SDPD headquarters for
21 a meeting when he stopped by Assistant Chief Todd Jarvis' office to thank him for his support in
22 obtaining pay raises for officers. When Chief Jarvis saw Sgt. Scott, he said, "Come in and sit down.
23 I've been meaning to call you," or words to that effect. Chief Jarvis was a Director of and the
24 "Museum Liaison" for the San Diego Police Museum, and it was Chief Jarvis who required SDPD
25 officers to attend Lt. Giaquinto's class at the museum. Chief Jarvis is close friends with Lt.
26 Giaquinto. When Sgt. Scott sat down, Chief Jarvis said he had heard of the complaints about the
27 cartoon, and acknowledged that, as a result of the complaint, Lt. Giaquinto was ordered to stop using
28 it. Nonetheless, at first, Chief Jarvis actually attempted to defend using racist cartoon by suggesting

1 it showed how Officer McCarter had gained the respect of his peers at the time. Sgt. Scott responded
2 that the cartoon did not depict the real Officer McCarter, but instead caricatured him as an ape in a
3 police uniform, adding that he was certain the late Officer McCarter would agree it was. When
4 Chief Jarvis realized Sgt. Scott was not buying his defense of using the cartoon, he leaned back in
5 his chair, stared at Sgt. Scott for several seconds, and ended the meeting. Sgt. Scott sensed he would
6 be paying a price for speaking out against Lt. Giaquinto's and the SDPD's using racist imagery and
7 words during formal, mandated SDPD officer training. Sgt. Scott's fear was well-founded.

8 9. Thereafter, in retaliation for complaining about the racist cartoon, specifically, and
9 for being an outspoken member of the SDBPOA, not only was Sgt. Scott passed over for a
10 promotion to an investigating sergeant's position, but worse, on January 7, 2015, the SDPD forced
11 him--through duress--to accept a lateral transfer to Central Division. Sgt. Scott did not want to go
12 to Central, and knew that a forced transfer like this would harm his career and prospects for future
13 promotions and/or his being selected for special assignments, like the investigating sergeant position
14 he was not selected for shortly after complaining about the racist cartoon. However, Sgt. Scott
15 believed he had no other reasonable choice. He was threatened with a pretextual disciplinary action,
16 based upon frivolous allegations of misconduct, if he did not go along with the transfer. He was told
17 that unless he agreed to the transfer, he would face allegations and an investigation for "conduct
18 unbecoming of an officer," based upon frivolous, pretextual, and post-complaint (after the meeting
19 with Chief Jarvis on September 11, 2014) allegations he had done something wrong by reprimanding
20 two officers who refused to follow Sgt. Scott's commands during a dangerous hostage situation, and
21 for speaking up for a young black officer who had received improper instructions from a Field
22 Training Officer. Based upon this threat of a frivolous disciplinary action, Sgt. Scott conceded to
23 the involuntary transfer.

24 10. Scott has exhausted his external administrative remedies by filing a complaint with
25 the California Department of Fair Employment and Housing and receiving a right-to-sue letter dated
26 January 19, 2015.

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1 **FIRST CAUSE OF ACTION**
2 **(Race Discrimination/Harassment — Hostile Work Environment,**
3 **Government Code § 12940 Against All Defendants)**

4 11. Scott realleges paragraphs 1 through 10.

5 12. The conduct by the City and Does 1 through 20 and the conduct by City, SDPD and
6 the SDPD supervisory personnel and senior command staff, as described in paragraphs 6 through
7 9, amounted to race discrimination/harassment of Scott and created a hostile work environment for
8 him, which violated the Fair Employment and Housing Act, Government Code § 12940 ("FEHA").
9 This conduct adversely affected Scott's employment conditions, reputation as a police officer, and
10 future opportunities for promotion and special assignments within SDPD.

11 13. The defendants' wrongful conduct was a substantial factor that has caused Scott
12 damages as follows:

- 13 a. The loss of future earning capacity, promotions and special assignments; and
14 b. General damages consisting of mental distress.

15 **SECOND CAUSE OF ACTION**
16 **(Failure To Prevent Harassment,**
17 **Government Code § 12940(k) Against Defendant City)**

18 14. Scott realleges paragraphs 1 through 10.

19 15. The City and SDPD, as Scott's employers, had the duty, under Government Code §
20 12940(k) to take all reasonable steps necessary to prevent the racial discrimination/harassment and
21 hostile work environment described in paragraphs 6 through 9.

22 16. The City and SDPD failed to take reasonable measures to prevent such conduct from
23 continuing. Instead, they permitted, condoned and acquiesced in the wrongful conduct, all in
24 violation of Government Code § 12940(k).

25 17. Scott realleges paragraph 13.

26 **THIRD CAUSE OF ACTION**
27 **(Adverse Employment Action — Retaliation,**
28 **Government Code § 12940(h) Against Defendant City)**

18. Scott realleges paragraphs 1 through 10.

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1 19. Scott opposed the City's and Does 1 through 20's acts of racial
2 discrimination/harassment by reporting what he reasonably believed was discriminatory conduct
3 prohibited by FEHA to his supervisors.

4 20. The City and SDPD, in particular, SDPD's top-level command staff, retaliated against
5 Scott by the actions alleged in paragraph 9.

6 21. Scott realleges paragraph 13.

7 **FOURTH CAUSE OF ACTION**
8 **(Failure To Prevent Retaliation,**
9 **Government Code § 12940(k) Against Defendant City)**

10 22. Scott realleges paragraphs 1 through 10, 16, 19 and 20.

11 23. The City and SDPD failed to take reasonable steps to prevent the retaliation against
12 Scott, as alleged in paragraph 9, a violation of Government Code § 12940(k).

13 24. Scott realleges paragraph 13.

14 **REQUEST FOR RELIEF**

15 THEREFORE, plaintiff Arthur Scott requests a judgment against defendant City of San
16 Diego and Does 1 to 20 for:

- 17 a. Past and future economic and non-economic damages;
- 18 b. Attorneys' fees and expert fees under Government Code § 12965;
- 19 c. Costs of suit; and
- 20 e. Any other proper relief.

21 Date: January 20, 2015

The Gilleon Law Firm



Daniel M. Gilleon, Attorneys for
Plaintiff Arthur Scott

WE TAKE NO CHANCES

POLICE!

2 LAMPS IN TEN MCCARTER SHOWS UP

HE NO LIKES JOHN CHINA MAN

COP MCCARTER

KIM WING TO TRY TO RUN FAST

KIM MUCH BAD

EVEN THE CHINK'S DOG BEATS IT TO SAFETY.



McCarters'... among the...
 ...at the head of...
 ...of the...
 ...with a...
 ...of bread...
 ...around...
 ...the...
 ...and...
 ...to be...
 ...

...with helmet, blue coat, brass...
 ...and a regulation club, are...
 ...for confirmation within the...
 ...next few days. So The Sun's...
 ...artist that his eyes and could...
 ...see McCarter fully uniformed...
 ...his first appearance in China...
 ...town. As depicted by the artist...
 ...the effect is obvious.
 ...Policeman McCarter, you know...
 ...which he took the oath, was...
 ...

...structured to confine his official...
 ...efforts to windows of his own race...
 ...Two weeks later he raided a...
 ...Chinese lottery joint, holding that...
 ...the Chinese were near enough his own...
 ...color.
 ...Since that day Chinatown, like...
 ...the bad part of Darktown, has...
 ...wished that Supt. Nelson hadn't...
 ...decorated this energetic colored...
 ...gentleman.

SDPD's First Black Officer



**Patrolman Frank McCarter
1909**