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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

ERIC FIGUEROA, an individual; MICHAEL
FOLEY, an individual; CHRISTOPHER
MOORE, an individual; ROBERT PARHAM,
an individual; and JULIE TANNOCK, an
individual,

Plaintiffs,

v.

CITY OF PALO ALTO, a government entity;
PALO ALTO POLICE DEPARTMENT, a
government entity; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 21CV383740

COMPLAINT FOR DAMAGES

- 1. DISCRIMINATION IN VIOLATION
OF FEHA (CAL. Gov'T C. §§ 12940, *et*
seq.);**
- 2. HARASSMENT IN VIOLATION OF
FEHA (CAL. Gov'T C. §§ 12940, *et seq.*);
and**
- 3. RETALIATION IN VIOLATION OF
FEHA (CAL. Gov'T C. §§ 12940, *et seq.*)**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiffs ERIC FIGUEROA, MICHAEL FOLEY, CHIRSTOPHER MOORE, ROBERT PARHAM, and JULIE TANNOCK (collectively, "Plaintiffs") and hereby demand a trial by jury, and based on information and belief complain and allege as follows:

THE PARTIES

1. At all times relevant hereto, Plaintiff ERIC FIGUEROA ("Figueroa") was a sworn California police officer employed by the Palo Alto Police Department ("the PAPD" or "Department") and was a competent adult.

2. At all times relevant hereto, Plaintiff MICHAEL FOLEY ("Foley") was a sworn California police officer employed by the PAPD and was a competent adult.

3. At all times relevant hereto, Plaintiff CHRIS MOORE ("Moore") was a sworn California police officer employed by the PAPD and was a competent adult.

4. At all times relevant hereto, Plaintiff ROBERT PARHAM ("Parham") was a sworn California police officer employed by the PAPD and was a competent adult.

5. At all times relevant hereto, Plaintiff JULIE TANNOCK ("Tannock") was a sworn California police officer employed by the PAPD and was a competent adult.

6. Plaintiffs are informed and believe, and based thereon allege, that at all times relevant hereto, Defendant City of Palo Alto was a public entity violating laws within the State of California in the County of Santa Clara. At all times pertinent hereto, Defendant City owned, controlled, and operated the law enforcement agency known as the Palo Alto Police Department.

7. Plaintiffs are informed and believe, and based thereon allege, that Defendants DOES 1 through 100, inclusive, and each of them, at all times relevant hereto, were individuals or public, business, and/or other entities whose form is unknown committing torts in and/or engaged in purposeful economic activity within the County of Santa Clara, State of California.

8. The true names and capacities of Defendants DOES 1 through 100, and each of them, whether individual, corporate, associate or otherwise, are unknown to Plaintiffs at this time, therefore Plaintiffs sue said Defendants by such fictitious names. Plaintiffs will file DOE amendments, and/or ask leave of court to amend this complaint to assert the true names and capacities of these Defendants when they have been ascertained. Plaintiffs are informed and believe,

1 and upon such information and belief allege, that each Defendants herein designated as a DOE was,
2 and are in some manner, negligently, wrongfully, or otherwise responsible and liable to Plaintiffs for
3 the injuries and damages hereinafter alleged, and that Plaintiffs' damages as herein alleged were
4 proximately caused by their conduct.

5 9. Plaintiffs are informed and believe, and based thereon allege, that at all times material
6 herein, the Defendants, and each of them, were the agents, servants, or employees, or ostensible
7 agents, servants, and employees of each other Defendant, and as such, were acting within the course
8 and scope of said agency and employment or ostensible agency and employment, except on those
9 occasions when Defendants were acting as principals, in which case, said Defendants, and each of
10 them, were negligent in the selection, hiring, and use of the other Defendants.

11 10. At all times mentioned herein, each of the Defendants was the co-tortfeasor of each of
12 the other Defendants in doing the things hereinafter alleged.

13 11. Plaintiffs are further informed and believe that at all times relevant hereto,
14 Defendants, and each of them, acted in concert and in furtherance of the interests of each other
15 Defendant. The conduct of each Defendant combined and cooperated with the conduct of each of the
16 remaining Defendants so as to cause the herein described incidents and the resulting injuries and
17 damages to Plaintiffs.

18 **VENUE AND JURISDICTION**

19 12. At all relevant times hereto, Plaintiffs were residing in the County of Santa Clara,
20 State of California.

21 13. At all relevant times hereto, the Defendants, and each of them, were residents of the
22 County of Santa Clara, State of California.

23 14. The wrongful conduct alleged against the Defendants, and each of them, occurred in
24 the County of Santa Clara, State of California. At all relevant times hereto, the conduct at issue was
25 part of a continuous and ongoing pattern of behavior.

26 15. This Court is the proper court because the wrongful acts that are the subject of this
27 action occurred here, at least one Defendant now resides in its jurisdictional area, and injury to
28 person or damage to personal property occurred in its jurisdictional area.

16. Plaintiffs have complied with and/or exhausted any applicable claims statutes and/or administrative and/or internal remedies and/or grievance procedures, and/or are excused from complying therewith. Plaintiffs have complied with the claim presentation requirement of California Government Code § 945.4 and § 912.4. Plaintiff Moore filed a complaint with the Department of Fair Employment and Housing on or about September 15, 2020 and was issued a right-to-sue notice on or about September 15, 2020. Plaintiffs Figueroa, Foley, Parham, and Tannock filed their individual complaints with the Department of Fair Employment and Housing on or about March 3, 2021 and were issued their individual right-to-sue notice on or about March 3, 2021.

GENERAL ALLEGATIONS

17. At all times relevant hereto, Plaintiffs were sworn police officers for the Palo Alto Police Department, assigned to various Divisions within the PAPD. Plaintiffs were qualified for the position they held by reason of their education, experience, and training. During the course of their employment with the City, Plaintiffs have performed their various responsibilities in an exemplary fashion and otherwise capably performed each and every condition of their respective employment agreement.

18. Beginning in or around June 2020, Defendants City and PAPD encouraged, endorsed, and otherwise permitted local efforts to engage in and showcase public art installations, including murals, throughout the City. Specifically, City officials permitted and encouraged artists to create sixteen individual murals on City property that, side-by-side, spelled out “Black Lives Matter” (hereinafter, the “Mural”).

19. Plaintiffs are informed and believe, and based thereon allege, that the Mural was approximately 245-feet long and seventeen-feet tall and was located on Hamilton Avenue in downtown Palo Alto, which is in front of Palo Alto City Hall and immediately adjacent to the Palo Alto Police Department. The Mural featured several images inside each letter of the phrase, including the portrait of and a quote by Joanne Chesimard within the letter “E” of the word “Matter.”

20. The iconography at issue in the letter “E” of the mural is an image of Joanne Chesimard, better known as Assata Shakur, who was convicted in 1977 for the murder of New Jersey State Trooper Wermer Foerster, a white police officer. In 1979, while serving a life sentence for the murder, Shakur

1 escaped from prison and ended up in Cuba where she now has refuge and where the Cuban government
2 refuses to extradite her to the United States. As a result of her conviction and subsequent prison escape,
3 Shakur was placed on the FBI's Top Ten List of Most Wanted Domestic Terrorists.

4 21. Further, the Mural included a portion of the logo attributed to the New Black Panthers,
5 which is identified by the Southern Poverty Law Center ("SPLC") as a hate group. Specifically, the
6 SPLC defines the New Black Panthers as a "virulently racist and antisemitic organization whose
7 leaders have encouraged violence against the whites, Jews, and law enforcement officers." Also from
8 the SPLC webpage are the following quotes attributed to a member of the New Black Panther Party:
9 "I hate white people. All of them. Every last iota of a cracker, I hate it. We didn't come out here to
10 play today... You want freedom? You going to have to kill some crackers! You going to have to kill
11 some of their babies!" (Attributed to King Smir Shabazz, former head of the party's Philadelphia
12 chapter, in a 2009 National Geographic documentary.)

13 22. Law enforcement officers, including Plaintiffs, were forced to physically pass and
14 confront the Mural and its offensive, discriminatory, and harassing iconography every time they
15 entered the Palo Alto Police Department.

16 23. Plaintiffs reported to Defendants City of Palo Alto, PAPD, and supervisors that the
17 Mural and its accompanying iconography are discriminatory and harassing. Additionally, Plaintiffs'
18 complaints were brought to the attention of Defendants City of Palo Alto and PAPD by Plaintiffs'
19 Police Officer's Association in two separate writings.

20 24. Defendants created and allowed to exist the aforementioned discriminatory and
21 harassing work environment. Not only did Defendants allow the harassing and discriminatory
22 iconography to exist in the workplace, but they also sanctioned, approved, encouraged, and paid for
23 it. In further discrimination and harassment based on race, national origin, or color, Defendants failed
24 to disapprove of and enjoin the underlying harassing and discriminatory conduct. Failure to abate the
25 harassing and discriminatory conduct in and of itself is a form of retaliation for raising such issues
26 (*i.e.*, Plaintiffs raised issues that violate the FEHA and, instead of acting, Defendants ratified the
27 conduct and insisted that it remain and persist).

1 25. Plaintiffs' careers have been materially and adversely affected, and irreparably
2 harmed and damaged by the conduct of the Defendants. Defendants, and each of them, created and
3 allowed to exist a harassing, discriminatory, and retaliatory work environment and failed to
4 eliminate the illegal conduct complained of by Plaintiffs. Plaintiffs were discriminated against and
5 harassed on the basis of their race, national origin, and/or color and retaliated against for exercising
6 their rights to be free from harassing and discriminatory conduct in the workplace. Moreover,
7 Plaintiffs spoke out about and reported misconduct, retaliation, discrimination, and harassment in
8 violation of state and federal law and reported such conduct to people above them in the chain of
9 command. As a direct and proximate consequence of reporting such misconduct—which constitutes
10 protected activity under state and federal law—Defendants, and each of them, retaliated against,
11 discriminated against, and harassed Plaintiffs and subjected them to adverse employment actions.
12 Those adverse employment actions include, but are not limited to, refusing to eliminate the harassing
13 and discriminatory conduct, and failing or refusing to investigate Plaintiffs' complaints.

14 26. Defendants have created, ratified, condoned, and failed to remedy the unlawful
15 conduct. Such retaliation, discrimination, and harassment are known by all Defendants and
16 throughout the chain of command and the Department, and has been carried out and/or ratified by
17 Defendants, or Defendants have otherwise failed to take steps to prevent or undo the retaliation, or
18 both. This is a continuing and ongoing violation and therefore subject to the continuing violation
19 doctrine.

20 27. Plaintiffs have suffered both general and special damages in the past and present and
21 will continue to suffer such damages in the future for an unknown period of time. Plaintiffs have also
22 suffered and continue to suffer losses in earnings and other employment benefits, as well as past and
23 future non-economic injury. This has caused damage to their professional reputation, their ability to
24 promote, their ability to be selected for other units, and their ability to work. Moreover, it has
25 adversely affected their personal health and well-being, including medical expenses, that are
26 anticipated into the future and may force an early retirement. Plaintiffs have also suffered extensive
27 general damages in the form of anxiety, anguish, and mental suffering. Plaintiffs' damages are
28 continuing and in an amount not yet determined, but in excess of \$25,000.

1 28. The Department's conduct was a violation of Plaintiffs' rights under both state and
2 federal law. Therefore, Defendants, and each of them, are liable under the FEHA. The wrongful
3 conduct of Defendants, and each of them, is continuing and ongoing as of the present date.

4 **FIRST CAUSE OF ACTION**

5 **BY PLAINTIFFS AGAINST ALL DEFENDANTS**

6 DISCRIMINATION IN VIOLATION OF FEHA, CAL. GOV'T C. §§ 12940, *ET SEQ.*

7 29. Plaintiffs re-allege and incorporate by reference each and every allegation contained
8 in paragraphs 1–28 of this complaint as though fully set forth herein again.

9 30. At all times herein mentioned, Government Code §§ 12940, *et seq.* was in full force
10 and effect and was binding upon Defendants, and each of them.

11 31. At all times herein mentioned, Plaintiffs were in a protected class of persons, *i.e.*,
12 race, national origin, color, and/or association with a member of a protected class, and engaged in
13 protected activities contemplated by Government Code §§ 12940, *et seq.* Plaintiffs are informed and
14 believe that Defendants, and each of them, discriminated against them based on their race, national
15 original, color, and/or association with a member of a protected class, and for reporting and speaking
16 out against wrongful and discriminatory treatment based on their protected status, speaking out
17 against improper conduct, and for generally attempting to protect and secure their rights and the
18 rights of other under the FEHA.

19 32. Commencing in and during 2020, and continuing to the present, Defendants created
20 and allowed to exist a hostile environment and discriminated against Plaintiffs on the basis of their
21 race, national origin, color, and/or association with a member of a protected class. Such
22 discrimination was in violation of Government Code §§ 12940, *et seq.* and the public policy
23 embodied therein.

24 33. At all times herein mentioned, Defendants, and each of them, had actual and/or
25 constructive knowledge of the discriminatory conduct levied against Plaintiffs by Defendants, fellow
26 employees, and superiors. Moreover, such retaliation, harassment, and discriminatory conduct was
27 also conducted and/or condoned by Defendants, and each of them.

1 34. As a direct, foreseeable, and proximate result of Defendants' discriminatory conduct
2 and failure to act, Plaintiffs suffered and continues to suffer humiliation, embarrassment, anxiety,
3 mental anguish, and emotional distress. Plaintiffs were required to and did employ, and will in the
4 future employ, physicians and health care providers to examine, treat, and care for Plaintiffs, and
5 did, and will in the future, incur medical and incidental expenses. The exact amount of such
6 expenses is unknown to Plaintiffs at this time.

7 35. As a direct, foreseeable, and proximate result of Defendants' discriminatory conduct,
8 Plaintiffs suffered and continue to suffer losses in earnings and/or other employment benefits all to
9 their damage in an amount in excess of the minimum jurisdictional limits of this court, the precise
10 amount of which will be proven at trial.

11 36. As a further legal result of the above-described conduct of Defendants, and each of
12 them, Plaintiffs have and will continue to incur attorneys' fees and costs in an amount according to
13 proof.

14 **SECOND CAUSE OF ACTION**

15 **BY PLAINTIFFS AGAINST ALL DEFENDANTS**

16 HARASSMENT IN VIOLATION OF FEHA, CAL. GOV'T C. §§ 12940, *ET SEQ.*

17 37. Plaintiffs re-allege and incorporate by reference each and every allegation contained
18 in paragraphs 1–36 of this complaint as though fully set forth herein again.

19 38. At all times mentioned herein, Government Code §§ 12940, *et seq.* was in full force
20 and effect and was binding upon Defendants, and each of them. Said law required Defendants, and
21 each of them, to refrain from harassing any employee based upon race, national origin, color, and/or
22 association with a protected class of persons, and to provide each employee with a working
23 environment free from harassment based on race, national origin, color, and/or association with a
24 protected class of persons.

25 39. At all times herein mentioned, Plaintiffs were in a protected class of persons, *i.e.*,
26 race, national origin, color, and/or association with a protected class of persons, and engaged in
27 protected activities contemplated by Government Code §§ 12940, *et seq.* Plaintiffs are informed and
28 believe that Defendants, and each of them, harassed Plaintiffs based on their race, national origin,

1 color, and/or association with a protected class of persons, and for reporting and speaking out against
2 wrongful and harassing treatment based on their race, national origin, color, and/or association with
3 a protected class of persons, speaking out against improper conduct, and for generally attempting to
4 protect and secure their rights and the rights of others under the FEHA.

5 40. Commencing in and during 2020, and continuing on an ongoing basis to the present,
6 Defendants created and allowed to exist a hostile work environment and harassed Plaintiffs on the
7 basis of their race, national origin, color, and/or association with a protected class of persons. Such
8 harassment was in violation of Government Code §§ 12940, *et seq.* and the public policy embodied
9 therein.

10 41. At all times herein mentioned, Defendants, and each of them, had actual and/or
11 constructive knowledge of the harassing conduct levied against Plaintiffs by Defendants, fellow
12 employees, and superiors. Moreover, such harassment was also conducted and/or condoned by
13 Defendants, and each of them.

14 42. As a direct, foreseeable, and proximate result of Defendants' harassing conduct and
15 failure to act, Plaintiffs suffered and continue to suffer humiliation, embarrassment, anxiety, mental
16 anguish, and emotional distress. Plaintiffs were required to and did employ, and will in the future
17 employ, physicians and health care providers to examine, treat, and care for Plaintiffs, and did, and
18 will in the future, incur medical and incidental expenses. The exact amount of such expenses is
19 unknown to Plaintiffs at this time.

20 43. As a direct, foreseeable, and proximate result of the Defendants' harassing conduct,
21 Plaintiffs suffered and continue to suffer losses in earnings and/or other employment benefits all to
22 their damage in an amount in excess of the minimum jurisdictional limits of this court, the precise
23 amount of which will be proven at trial.

24 44. As a further legal result of the above-described conduct of Defendants, and each of
25 them, Plaintiffs have and will continue to incur attorneys' fees and costs in an amount according to
26 proof.

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1 **THIRD CAUSE OF ACTION**

2 **BY PLAINTIFFS AGAINST ALL DEFENDANTS**

3 RETALIATION IN VIOLATION OF FEHA, CAL. GOV'T C. §§ 12940, *ET SEQ.*

4 45. Plaintiffs re-allege and incorporate by reference each and every allegation contained
5 in paragraphs 1–44 of this complaint as though fully set forth herein again.

6 46. At all times herein mentioned, Government Code §§ 12940, *et seq.*, was in full force
7 and effect and were binding upon Defendants, and each of them. Said sections required Defendants,
8 and each of them, to refrain from retaliating against an employee for their opposition to employment
9 practices prohibited under the FEHA.

10 47. At all times mentioned herein, Plaintiffs were in a protected class of persons, *i.e.*,
11 race, national origin, color, and/or association with a member of a protected class, and engaged in
12 protected activities contemplated by Government Code §§ 12940, *et seq.* Plaintiffs are informed and
13 believe that Defendants, and each of them, retaliated against them for speaking out against
14 inappropriate workplace behavior, reporting and speaking out against wrongful, discriminatory,
15 harassing, and retaliatory treatment based on their race, national origin, color, and/or association
16 with a member of a protected class, and for generally attempting to protect and secure their rights
17 and the rights of others under the FEHA.

18 48. Commencing in and during 2020 and continuing to the present, Defendants created
19 and allowed to exist a hostile environment and retaliated against Plaintiffs on the basis of their
20 protected activity. Such retaliation was in violation of Government Code §§ 12940, *et seq.* and the
21 public policy embodied therein.

22 49. At all times mentioned herein, Defendants, and each of them, had actual and/or
23 constructive knowledge of the retaliatory conduct levied against Plaintiffs by Defendants, fellow
24 employees, and superiors. Moreover, such retaliation, harassment, and discriminatory conduct was
25 also conducted and/or condoned by Defendants, and each of them.

26 50. As a direct, foreseeable, and proximate result of Defendants' retaliatory conduct,
27 Plaintiffs suffered and continue to suffer humiliation, embarrassment, anxiety, mental anguish, and
28 emotional distress. Plaintiffs were required to and did employ, and will in the future employ,

1 physicians and health care providers to examine, treat, and care for Plaintiffs, and did, and will in the
2 future, incur medical and incidental expenses. The exact amount of such expenses is unknown to
3 Plaintiffs at this time.

4 51. As a direct, foreseeable, and proximate result of the Defendants' retaliatory conduct,
5 Plaintiffs suffered and continue to suffer losses in earnings and other employment benefits all to
6 their damage in an amount in excess of the minimum jurisdictional limits of this court, the precise
7 amount of which will be proven at trial. As a further legal result of the above-described conduct of
8 Defendants, and each of them, Plaintiffs have and will continue to incur attorneys' fees and costs in
9 an amount according to proof.

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11 Dated: June 4, 2021

McNICHOLAS & McNICHOLAS, LLP

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14 By: _____



Matthew S. McNicholas
Douglas D. Winter
Emily R. Pincin
Attorneys for Plaintiffs

1 **PRAYER FOR DAMAGES**

2 WHEREFORE, Plaintiffs ERIC FIGUEROA, MICHAEL FOLEY, CHIRSTOPHER
3 MOORE, ROBERT PARHAM, and JULIE TANNOCK seek judgment against all Defendants, and
4 each of them, on all Causes of Action for:

5 1. Physical, mental, and emotional injuries, pain, distress, suffering, anguish, fright,
6 nervousness, grief, anxiety, worry, shame, mortification, injured feelings, shock, humiliation, and
7 indignity, as well as other unpleasant physical, mental, and emotional reactions, damages to
8 reputation, and other non-economic damages, in a sum to be ascertained according to proof;

9 2. Health care, services, supplies, medicines, health care appliances, modalities, and
10 other related expenses in a sum to be ascertained according to proof;

11 3. Loss of wages, income, earnings, earning capacity, support, domestic services,
12 benefits, and other economic damages in a sum to be ascertained according to proof;

13 4. Other actual, consequential, and/or incidental damages in a sum to be ascertained
14 according to proof;

15 5. Attorney fees and costs of suit pursuant to statute;

16 6. Costs of suit herein incurred;

17 7. Pre-judgment interest; and

18 8. Such other and further relief as the Court may deem just and proper.
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20 Dated: June 4, 2021

McNICHOLAS & McNICHOLAS, LLP

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23 By: 

Matthew S. McNicholas
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Attorneys for Plaintiffs
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