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 11 MARTIN HERRERA

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF LOS ANGELES**

<p>14 MARTIN HERRERA, an individual, 15 Plaintiff, 16 v. 17 CITY OF BALDWIN PARK, a public entity; 18 ANDREW VELEBIL, an individual; and 19 DOES 1 through 25, inclusive, 20 Defendants. 21</p>	<p>) CASE NO. 20STCV11521)) COMPLAINT FOR DAMAGES FOR:)) 1. GENDER BASED HARASSMENT IN) VIOLATION OF FEHA) 2. RETALIATION IN VIOLATION OF) FEHA) 3. FAILURE TO PREVENT) DISCRIMINATION, HARASSMENT,) AND RETALIATION IN VIOLATION) OF FEHA)) DEMAND FOR JURY TRIAL)) [CIVIL UNLIMITED]) (Amount Demanded Exceeds \$25,000.00)))</p>
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1 COMES NOW, Plaintiff MARTIN HERRERA who brings this Complaint against
2 Defendants and herein alleges the following:

3 I.

4 **PARTIES**

5 1. At all times herein, Plaintiff MARTIN HERRERA (“Plaintiff”) was and is an
6 employee of Defendant, CITY OF BALDWIN PARK at the Baldwin Park Police Department
7 located in Los Angeles County.

8 2. Defendant CITY OF BALDWIN PARK (“Defendant CITY”) is and was at all
9 relevant times a public entity duly organized and existing as such under the laws of the State of
10 California and is thereby subject to the jurisdiction of the State of California and of this Court
11 and its judicial district. Defendant CITY is, and at all relevant times was, an employer pursuant
12 to Government Code §12926(d). The Baldwin Park Police Department (“DEPARTMENT” or
13 “POLICE DEPARTMENT”) is, and at all times herein alleged was, an agency of Defendant
14 CITY.

15 3. Plaintiff is informed and believes and thereon alleges that Defendant ANDREW
16 VELEBIL (“Defendant VELEBIL”) is, and was at all relevant times, a supervisor as a police
17 sergeant, employed by Defendant CITY and in such capacity, was acting under the color of law,
18 i.e., under color of one or more statutes, ordinances, regulations, customs, and policies of
19 Defendant CITY. Defendant VELEBIL is sued in both his official and individual capacities.

20 4. At present, Plaintiff, believing that each of the named DOE Defendants (1 to 25)
21 are in some manner responsible for the acts and/or omissions herein complained of, and as
22 Plaintiff is presently unaware of, and has not yet ascertained, the true identity nor capacity of
23 each of said DOE Defendants named herein, Plaintiff therefore prays for leave of court to amend
24 this Complaint when such identities and capacities become known and ascertained.

25 5. Plaintiff is informed and believes and, on that basis, alleges that Defendants
26 DOES 1 through 25 were, at all relevant times mentioned herein, respectively employed by, or
27 acting as an agent, an independent contractor, an instrumentality or an affiliate of Defendant
28 CITY. Plaintiff further alleges that said DOE Defendants are each a natural person, business

1 and/or unincorporated association residing and/or operating within and subject to the jurisdiction
2 of the State of California and are likewise subject to the jurisdiction of this Court. All respective
3 Defendants complained of herein are in some manner vicariously liable for the acts and/or
4 omissions of the other likewise complained of herein, jointly and severally.

5 6. Plaintiff is further informed and believes, and thereupon alleges, that at all times
6 relevant thereto, Defendants, each of them, acted in concert and in furtherance of the interests of
7 each other Defendant.

8 II.

9 FACTUAL ALLEGATIONS

10 7. All factual allegations are pleaded based on information and belief.

11 8. Plaintiff is a heterosexual male Hispanic police officer employed by the
12 DEPARTMENT. Plaintiff has been subjected to sexual harassment and retaliation by the
13 DEPARTMENT and Defendant VELEBIL as set forth below.

14 9. Plaintiff was hired by Defendant CITY in May 2013 as a police officer.

15 10. From July 2016 to September 2016, while assigned to a weekend graveyard shift,
16 on multiple occasions, during working hours, Plaintiff began to experience sexually harassing
17 and intimidating behavior from his direct supervisor, Defendant VELEBIL. Namely, when
18 Plaintiff was in the DEPARTMENT's locker room changing, Defendant VELEBIL, an openly
19 homosexual supervisor, would approach Plaintiff and engage in unsolicited conversations while
20 Plaintiff was naked. During said conversations, Defendant VELEBIL would intensely look at
21 Plaintiff's naked body, focusing on Plaintiff's penis. Defendant VELEBIL's actions were
22 unwelcomed and made Plaintiff feel extremely uncomfortable and very unpleasant. Given
23 Defendant VELEBIL was Plaintiff's direct supervisor, Plaintiff believed he was obligated to
24 speak to Defendant VELEBIL during these awkward chats.

25 11. During the same period of time, in an attempt to further sexually harass and stalk
26 Plaintiff, Defendant VELEBIL would intentionally park his privately owned vehicle next to
27 Plaintiff's vehicle, even though there were plenty of other spaces in nearby parking stalls in the
28 employees' parking lot. The reason for Defendant VELEBIL to park next to Plaintiff was

1 because Defendant VELEBIL would stalk Plaintiff at the end of the shift and follow Plaintiff to
2 his vehicle.

3 12. Plaintiff was profoundly disturbed by Defendant VELEBIL's actions, which
4 caused Plaintiff to avoid Defendant VELEBIL by changing at home and getting to work early.
5 However, Plaintiff continued to notice that Defendant VELEBIL's privately owned vehicle
6 continually parked next to his vehicle, where Defendant VELEBIL would follow Plaintiff to his
7 car after shifts.

8 13. Plaintiff had no interest in dating Defendant VELEBIL, and Plaintiff made it
9 known to Defendant VELEBIL that he was not homosexual and was not interested.

10 14. In September 2016, Plaintiff was promoted to K9 Officer and left the
11 DEPARTMENT for approximately two months to attend the training academy for police canine,
12 where he was not sexually harassed by Defendant VELEBIL.

13 15. In November 2016, Plaintiff returned to weekend graveyard shifts at the
14 DEPARTMENT, assigned to patrol with the newly trained police canine. In the newly promoted
15 position, Plaintiff drove a take home police car and no longer drove his privately owned vehicle
16 to work.

17 16. Between November to May 2017, Defendant VELEBIL was unable to stalk
18 Plaintiff after work, or intensely look at Plaintiff's naked body while changing in the locker room
19 because Plaintiff now changed at home and drove a take home police car to work, thus avoiding
20 all non-essential contacts with Defendant VELEBIL as much as he could.

21 17. On May 12, 2017, while on-duty, Plaintiff drove his patrol vehicle to the city yard
22 to get gasoline. When Plaintiff arrived at the fuel bumps, he saw Defendant VELEBIL, who was
23 already fueling another patrol vehicle. After Defendant VELEBIL finished getting gas, he
24 approached Plaintiff and begin asking Plaintiff personal questions that were unrelated to work.
25 At one point, Defendant VELEBIL asked Plaintiff, "What do you do on your days off?"
26 Plaintiff, believing that Defendant VELEBIL's questions were motivated by Defendant
27 VELEBIL's homosexual desires, was in fear that Defendant VELEBIL would be upset if
28 Plaintiff did not reply with an answer. Plaintiff then provided a generic answer, hoping that

1 Defendant VELEBIL would be satisfied and leave Plaintiff alone. However, Defendant
2 VELEBIL continued to harass Plaintiff and asked, “Do you want to have a drink with me?”
3 Plaintiff perceived the question by Defendant VELEBIL as asking Plaintiff out on a date. Not
4 knowing what to say, Plaintiff gave an excuse to Defendant VELEBIL and quickly walked away
5 from the conversation. This interaction made Plaintiff feel exceptionally uncomfortable and the
6 remarks made by Defendant VELEBIL were unwelcome, pervasive and severe.

7 18. Due to the culture in the DEPARTMENT, Plaintiff did not report Defendant
8 VELEBIL’s actions immediately because he was in fear of his safety and fearful of retaliation by
9 Defendant VELEBIL and the DEPARTMENT.

10 19. Defendant CITY and the DEPARTMENT have a longstanding practice for
11 covering up misconduct and retaliate against whistle blowers and those who make reports against
12 supervisors, managers, and the executive staff of the DEPARTMENT. Plaintiff was afraid that
13 he would be subjected to ostracism and taunting by the members of the DEPARTMENT.

14 20. As a result of the continued unwelcomed sexual advances made by Defendant
15 VELEBIL, Plaintiff intentionally avoided any-and-all one-on-one contacts with Defendant
16 VELEBIL after being asked out on a date on May 12, 2017.

17 21. From May 2017 to November 2017, Plaintiff continued to avoid any one-on-one
18 contacts with Defendant VELEBIL in fear of any additional sexual advances.

19 22. On November 25, 2017 at or about 9:00 p.m., Plaintiff responded to Defendant
20 VELEBIL’s back-up request on a traffic stop, even though it was extremely uncommon for a
21 sergeant to initiate a traffic stop alone. When Plaintiff arrived, he saw Defendant VELEBIL’s
22 patrol vehicle, but no other vehicle that was allegedly being pulled over. When Plaintiff exited
23 his patrol vehicle, Defendant VELEBIL became enraged and began to physically advance
24 towards Plaintiff in a manner that was intimidating and that frightened Plaintiff. As Defendant
25 VELEBIL approached Plaintiff, he began to curse and berate Plaintiff, such that Defendant
26 VELEBIL’s entire body pinned Plaintiff against Plaintiff’s own patrol vehicle. At that point in
27 time, Defendant VELEBIL continued to lean over Plaintiff and began to scream and bully
28 Plaintiff for purportedly being derelict of his duties. As Defendant VELEBIL was screaming at

1 Plaintiff, he threatened to discipline Plaintiff for unrelated calls-for-service that Plaintiff
2 purportedly failed to handle properly.

3 23. Plaintiff is informed and believes that Defendant VELEBIL had fabricated the
4 above-mentioned traffic stop for Plaintiff to respond and meet with Defendant VELEBIL alone.
5 Plaintiff is further informed and believes that Defendant VELEBIL was angry and outraged
6 because Plaintiff had rejected Defendant VELEBIL's sexual advances and additionally, Plaintiff
7 had been avoiding any one-on-one contacts with Defendant VELEBIL
8 while they were on-duty.

9 24. On November 26, 2017, Plaintiff finally reported the actions of Defendant
10 VELEBIL to the then-police chief, Michael Taylor by submitting an inter-Department
11 memorandum, detailing the events of November 25, 2017. In direct contravention to the "City of
12 Baldwin Park Discriminatory Harassment in the Workplace" policy and procedure, Plaintiff's
13 complaint was not timely investigated and was not handled in a "prompt and impartial" manner.

14 25. On or about January 8, 2018 Plaintiff made another complaint to Sergeant Joseph
15 Meister and Captain Doug Parnell regarding Defendant VELEBIL's continuing sexual
16 harassment and specifically, the May 12, 2017 incident. During Plaintiff's reporting of
17 Defendant VELEBIL's sexual harassment, Sergeant Joseph Meister informed Plaintiff that
18 Defendant VELEBIL was telling all the supervisors that it was Defendant VELEBIL's intent to
19 "clip his (Plaintiff's) wings and teach him a lesson." Plaintiff is informed and believes that
20 Defendant VELEBIL's remarks of "clipping" Plaintiff's "wings" was to retaliate against Plaintiff
21 for not going on a date with Defendant VELEBIL. Further, Defendant VELEBIL's intention of
22 "teaching him a lesson" meant to humiliate and embarrass Plaintiff for rejecting Defendant
23 VELEBIL's sexual advances on Plaintiff.

24 26. After filing the memorandum on November 26, 2017 and the second complaint on
25 January 8, 2018, instead of taking immediate corrective actions, the DEPARTMENT disregarded
26 Plaintiff's complaints and subjected Plaintiff to multiple acts of retaliation, in that:

- 27 (1) On or about February 11, 2018, Defendant VELEBIL denied Plaintiff
28 the use of a shotgun while on patrol for approximately 2-weeks, which was a

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serious breach to Plaintiff's safety because a shotgun is an essential and necessary tool for a patrol officer.

(2) On or about July 18, 2018, at the first available opportunity to change Plaintiff's shift, he was transferred from weekend graveyard shift to weekday cover shift, where Plaintiff worked alone and was overwhelmed with petty theft arrests and other non-emergency calls to such an extent that the nature of these service calls did not necessitate Plaintiff to employ the police canine. The retaliatory transfer substantially altered the terms, conditions, or privileges of a police canine officer and set Plaintiff up for failure because it denied Plaintiff the opportunity and exposure to critical incidents that occurred mostly on weekend graveyard shift. Plaintiff was not transferred back to weekend graveyard shift until January 13, 2019.

(3) Defendant VELEBIL did not allow Plaintiff to respond to call-out requests made on behalf of the officers assigned to the weekend graveyard shift, which detrimentally and substantially affected Plaintiff's job duties as a police canine officer.

(4) On or about December 2018, Defendant CITY pretextually denied Plaintiff to serve on the Special Weapons and Tactics Team (SWAT), even though Plaintiff was in better physical shape and overall, more qualified than the other candidates.

III.

EXHAUSTION OF INTERNAL AND ADMINISTRATIVE REMEDIES

27. After Plaintiff reported and filed the November 26, 2017 and the January 8, 2018 complaints, Plaintiff reasonably and in good faith, voluntarily pursued the internal administrative remedy from Defendant CITY to resolve Plaintiff's grievance. However, Defendant CITY, in bad faith, intentionally and/or recklessly disregarded Plaintiff's grievance for almost 2 years in an effort to delay the investigation to such an extent that the percipient and material witnesses' memories would be jeopardized.

1 discriminatory practices become known to him, Plaintiff may seek the leave of Court to amend
2 this Complaint.

3 46. As a direct and proximate result of the conduct of Defendant CITY, Plaintiff has
4 suffered and will continue to suffer economic and non-economic damages, including general and
5 special damages in a sum according to proof, in an amount exceeding the jurisdictional limits of
6 this Court. In addition, Defendant CITY and Does 1-25 are responsible for interest, penalties,
7 costs, and attorney's fees related to this cause of action.

8 **VII.**

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for judgment as to all causes of action as follows:

- 11 1. For economic and non-economic general, special and compensatory damages
12 according to proof;
- 13 2. For exemplary and punitive damages against Defendant VELEBIL;
- 14 3. For prejudgment and post-judgment interest on any lost or unpaid wages
15 according to law;
- 16 4. For reasonable attorney's fees and costs of suit incurred herein pursuant to
17 California Code of Civil Procedure section 1021.5 and any other relevant provision under
18 California law that provides for attorneys' fees;
- 19 5. For statutory penalties to the extent available under the law; and
- 20 6. For such other and further relief as the court may deem just and proper.

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22 Dated: March 23, 2020

LAW OFFICES OF PELAYES & YU, APC

23
24 *TOM YU*

Tom Yu, Esq.

Tristan G. Pelayes, Esq.

Attorneys for Plaintiff MARTIN HERRERA

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DEMAND FOR JURY TRIAL

Plaintiff MARTIN HERRERA hereby demands a trial by jury.

Dated: March 23, 2020

LAW OFFICES OF PELAYES & YU, APC

TOM YU

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Attorneys for Plaintiff MARTIN HERRERA