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9  
10 UNLIMITED JURISDICTION  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF LOS ANGELES

13 VERNON CRESWELL,  
14 Plaintiff,  
15 vs.  
16 CITY OF MONTEBELLO,  
and DOES 1 through 100, inclusive,  
17 Defendants.

CASE NO. BC 522 038  
[Assigned to the Hon. Elizabeth Allen  
White, Judge, Dept. 48]  
FIRST AMENDED COMPLAINT FOR  
DAMAGES FOR:  
1. RACIAL HARASSMENT/HOSTILE  
WORK ENVIRONMENT IN  
VIOLATION OF CALIFORNIA FAIR  
EMPLOYMENT AND HOUSING  
ACT;  
2. DISCRIMINATION IN VIOLATION OF  
CALIFORNIA FAIR EMPLOYMENT  
AND HOUSING ACT;  
3. RETALIATION IN VIOLATION OF  
CALIFORNIA FAIR EMPLOYMENT  
AND HOUSING ACT

Action Filed: September 23, 2013  
FSC: February 25, 2015  
Trial: March 2, 2015

27 ///  
28 ///

**FILED**  
Superior Court of California  
County of Los Angeles

SEP 04 2014

Sherri R. Carter, Executive Officer/Clerk  
By Cristina Grijalva Deputy  
Cristina Grijalva

09/08/2014

1 GENERAL ALLEGATIONS

2 1. At all times relevant hereto, Plaintiff VERNON CRESWELL ("Creswell") is an  
3 African American male, residing in the County of Riverside, State of California, and was a  
4 competent adult.

5  
6 2. At all times relevant hereto, Plaintiff was a firefighter/paramedic employed by  
7 the City of Montebello Fire Department and has been so employed since October 27,  
8 2008.

9 3. Plaintiff is informed and believes and thereon alleges that, at all times  
10 relevant hereto, Defendant City of Montebello ("City"), was an entity engaged as a matter  
11 of commercial actuality in purposeful economic activity within the County of Los Angeles,  
12 State of California and at all times relevant hereto, operated the Montebello Fire  
13 Department, (hereafter "Department") which is an administrative agency of City.

14  
15 4. Plaintiff is informed and believes and thereupon alleges that Defendants  
16 DOES 1 through 100, inclusive, and each of them, were, all times relevant hereto,  
17 residents of the County of Los Angeles, State of California, and were agents, partners,  
18 and/or joint venturers of Defendants and/or each other, acting as supervisors, managers,  
19 administrators, owners, and/or directors or in some other unknown capacity.

20  
21 5. The true names and capacities of Defendants DOES 1 through 100, and  
22 each of them, whether individual, corporate, associate or otherwise, are unknown to  
23 Plaintiffs at this time, who therefore sue said Defendants by such fictitious names.  
24 Plaintiff will file DOE amendments, and/or ask leave of court to amend this complaint to  
25 assert the true names and capacities of these Defendants when they have been  
26 ascertained. Plaintiff is informed and believes, and upon such information and belief  
27 alleges, that each Defendant herein designated as a DOE was and is in some manner,  
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1 negligently, wrongfully, or otherwise, responsible and liable to Plaintiff for the injuries and  
2 damages hereinafter alleged, and that Plaintiff's damages as herein alleged were  
3 proximately caused by their conduct.

4           6. Plaintiff is informed and believes, and thereupon alleges, that at all times  
5 material herein the Defendants, and each of them, were the agents, servants, and  
6 employees, or ostensible agents, servants, or employees of each other Defendant, and as  
7 such, were acting within the course and scope of said agency and employment or  
8 ostensible agency and employment, except on those occasions when Defendants were  
9 acting as principals, in which case, said defendants, and each of them, were negligent in  
10 the selection, hiring, and use of the other Defendants.

11           7. Each Defendant principal and/or employer herein had advance knowledge of  
12 the unfitness of each Defendant agent and/or employee, and employed each such agent  
13 and/or employee with a conscious disregard of the rights or safety of others or otherwise  
14 authorized or ratified the wrongful conduct of each such agent and/or employee. As to  
15 each such corporate or other entity Defendant herein, the advance knowledge and  
16 conscious disregard, authorization, ratification, or act of oppression, fraud, or malice was  
17 on the part of an officer, director, or managing agent of the corporation or other entity.

18           8. Plaintiff is further informed and believes that at all times relevant hereto,  
19 Defendants, and each of them, acted in concert and in furtherance of the interests of each  
20 other Defendant.

21           9. Plaintiff has complied with and/or exhausted any applicable claims statutes  
22 and/or administrative and/or internal remedies and/or grievance procedures, or is excused  
23 from complying therewith.

24           10. Plaintiff is an African-American firefighter/paramedic employed by the City of  
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1 Montebello. Plaintiff has been subjected to racial harassment and discrimination as set  
2 forth below.

3 11. Plaintiff was referred to as a "nigger" by Battalion Chief Mowad and has  
4 been repeatedly informed that his supervisors have openly referred to him as a Compton  
5 "Nigger."  
6

7 12. Plaintiff's supervisors, Lynsky and Mowad, have openly told Plaintiff's fellow  
8 firefighters to take Plaintiff "out back" to teach him a lesson. Plaintiff has been informed  
9 by other supervisors that there are more comments of a racial nature that were made  
10 about him, but these supervisors refused to provide Plaintiff with any details unless they  
11 were forced to testify under oath.

12 13. In or about late 2008 or early 2009, Mowad told Plaintiff "There are good  
13 black people and there are 'niggers' that are bad. Chief Austin is a 'nigger.'" Chief Austin  
14 was the Fire Chief for the Anaheim Fire Department.  
15

16 14. For approximately a year and half, Plaintiff's supervisors have repeatedly  
17 criticized him for minor issue concerning his performance and the way he wears his  
18 uniform.

19 15. Plaintiff has been treated disparately because of his race, African American,  
20 in that: [1] Plaintiff was told by a Battalion Chief that he did not fit in and that the Battalion  
21 Chief attempted to keep the city from hiring him [Plaintiff is the only African-American in  
22 the fire department], [2] Plaintiff was singled out and ordered not to wear his city approved  
23 beanie cap in the station while he exercised, [3] Although Plaintiff is an experienced  
24 firefighter and was a Captain with the Compton Fire Department, he is prohibited from  
25 training new Montebello firefighters, [4] Plaintiff is a certified strike team leader trainee and  
26 he is required to take yearly courses to continue in the ROSS data base, however,  
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1 Plaintiff's supervisors have denied Plaintiff the ability to take the yearly course.

2 16. Recently, Plaintiff was given a test for the position of acting fire captain.

3 Plaintiff's test consisted of three fire captains and one battalion chief who administered the  
4 examination in a group setting and marked the results on a rating sheet. The three  
5 candidates who were not African-American who tested for the same position were tested  
6 by a sole battalion chief in a closed door session without the use of a rating sheet.  
7

8 Although Plaintiff was the most qualified person for the position, he allegedly failed the  
9 test.

10 17. On or about June 15, 2013, while Plaintiff was on a day off, Battalion Chief  
11 Mowad told multiple firefighters: "Speaking of Vernon, I was down in Long Beach near a  
12 restaurant with my son Trevor. Trevor looked into the restaurant and said 'Isn't that the  
13 nigger you work with.'" Mowad went on to say, "Yeah, that's him. I don't think that's his  
14 wife." These remarks made by Mowad were told to Plaintiff by other members of the  
15 Department.  
16

17 18. Plaintiff's supervisors have made it clear by their actions that Plaintiff will  
18 never promote to the rank of Captain in the Montebello Fire Department and that he is not  
19 welcome in the department, all on account of his race.

20 19. In an effort to deny Plaintiff the opportunity to promote to the position of  
21 captain, Plaintiff was treated differently in the promotional process. Unlike any other  
22 candidate for the required examination for the position of acting captain, Plaintiff was  
23 tested in a private room, with written materials, and evaluated by a panel consisting of  
24 three captains and a battalion chief. Other candidates for the acting Captains position  
25 were interviewed informally without written materials with only a Battalion Chief present.  
26

27 20. Plaintiff was denied the position of acting captain after taking the  
28

1 examination and passing it. Plaintiff alleges and asserts that he was denied the acting  
2 captains position on account of his race and because he complained of, filed a complaint  
3 and filed a lawsuit alleging racial discrimination and harassment.

4 21. Claimant has been and will continue be denied the position of captain on  
5 account of his race and because he complained of, filed a complaint and filed a lawsuit  
6 alleging racial discrimination and harassment.  
7

8  
9 **FIRST CAUSE OF ACTION**  
10 **FOR RACIAL HARASSMENT (HOSTILE WORK ENVIRONMENT) IN VIOLATION OF**  
11 **THE CALIFORNIA FAIR EMPLOYMENT**  
12 **AND HOUSING ACT AGAINST DEFENDANTS, AND EACH OF THEM**

13 22. Plaintiff repeats and re-alleges paragraphs 1 through 21 set forth above, and  
14 incorporate same by reference as though set forth fully herein.  
15

16 23. During the term of Plaintiff's employment, Plaintiff was subjected to  
17 discrimination, including but not limited to, racial harassment, including, *inter alia*, a hostile  
18 work environment. The hostile work environment consisted of harassment directed at  
19 Plaintiff. The harassing conduct was unwelcome and sufficiently severe or pervasive that  
20 it had the purpose or effect of altering the conditions of Plaintiff's employment and creating  
21 an intimidating, hostile, abusive, or offensive working environment. The environment  
22 created by the conduct would have been perceived as intimidating, hostile, abusive, or  
23 offensive by a reasonable man in the same position as the Plaintiff, and the environment  
24 created was perceived by the Plaintiff as intimidating, hostile, abusive, or offensive. The  
25 hostile work environment caused Plaintiff injury, damage, loss, or harm.  
26

27 24. The harassment included, but was not limited to, the above verbal  
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1 harassment, epithets, derogatory comments, and/or slurs, as well as other harassment.

2 25. Said actions and conduct of Defendants, and each of them, consisting of the  
3 aforementioned unwelcome racial conduct and racial discrimination based on Plaintiff's  
4 race, resulted in a hostile work environment and unlawful employment practices pursuant  
5 to *California Government Code* Sections 12940, et seq.  
6

7 26. The aforesaid acts and conduct of Defendants, and each of them,  
8 constituted unlawful employment practices. Such violations were a substantial factor in  
9 causing damages and injuries to Plaintiff's as set forth below.

10 27. Plaintiff filed an administrative charge with the California Department of Fair  
11 Employment and Housing substantially alleging the acts and conduct of Defendants as  
12 described above, and has received the appropriate right to sue notice(s) within one year  
13 of the filing of this complaint.  
14

15 28. As a legal result of the conduct of Defendants, and each of them, Plaintiff  
16 has suffered and will continue to suffer physical, mental, and emotional injuries, pain,  
17 distress, suffering, anguish, fright, nervousness, grief, anxiety, worry, shame, mortification,  
18 injured feelings, shock, humiliation and indignity, as well as other unpleasant physical,  
19 mental, and emotional reactions, damages to reputation, and other non-economic  
20 damages, in a sum to be ascertained according to proof.  
21

22 29. As a further legal result of the conduct of Defendants, and each of them,  
23 Plaintiff was required, and/or in the future may be required, to engage the services of  
24 health care providers, and incurred expenses for health care, services, supplies,  
25 medicines, health care appliances, modalities, and/or other related expenses in a sum to  
26 be ascertained according to proof.

27 30. As a further legal result of the conduct of Defendants, and each of them,  
28



1 Plaintiff has suffered other incidental and consequential damages, in an amount according  
2 to proof.

3 31. As a further legal result of the conduct of Defendants, and each of them,  
4 Plaintiff is entitled to attorneys' fees and costs in an amount according to proof.

5 32. As a further legal result of the conduct of Defendants, and each of them,  
6 Plaintiff is entitled to prejudgment interest pursuant to *California Civil Code* Section 3287  
7 and/or any other provision of law providing for prejudgment interest.  
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**SECOND CAUSE OF ACTION**  
**FOR DISCRIMINATION IN VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT**  
**AND HOUSING ACT AGAINST DEFENDANTS, AND EACH OF THEM**

33. Plaintiff repeats and re-alleges paragraphs 1 through 21 set forth above each and every allegation set forth above, and incorporates same by reference as though set forth fully herein.

34. During the term of Plaintiff's employment, Plaintiff was subjected to discrimination.

35. Defendants, and each of them, made decisions adverse to Plaintiff in regards to compensation, terms, conditions, and/or privileges of employment.

36. Plaintiff's race, was a motivating factor in said decisions of said Defendants, and each of them.

37. Said decisions of Defendants, and each of them caused Plaintiff injury, damage, loss, or harm.

38. The actions and continuing course of the discriminatory conduct as set forth above was a systematic policy of discrimination thereby constituting a continuing violation

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1 actionable under, among other things, Article I, Section 8 of the California Constitution  
2 which reflects a fundamental public policy against discrimination in employment on  
3 account of sex, race, ethnicity, and/or national origin/ancestry.

4         39. Said actions and conduct of Defendants, and each of them, consisting of the  
5 aforementioned discrimination, constitute unlawful employment practices pursuant to  
6 *California Government Code* Sections 12940, et seq. Such violations were a substantial  
7 factor in causing damages and injuries to Plaintiff as set forth below.

8  
9         40. Plaintiff filed an administrative charge with the California Department of Fair  
10 Employment and Housing substantially alleging the acts and conduct of Defendants as  
11 described above, and has received the appropriate right to sue notice(s) within one year  
12 of the filing of this complaint.

13  
14         41. As a legal result of the conduct of Defendants, and each of them, Plaintiff  
15 suffered and will suffer physical, mental, and emotional injuries, pain, distress, suffering,  
16 anguish, fright, nervousness, grief, anxiety, worry, shame, mortification, injured feelings,  
17 shock, humiliation and indignity, as well as other unpleasant physical, mental, and  
18 emotional reactions, damages to reputation, and other non-economic damages, in a sum  
19 to be ascertained according to proof.

20  
21         42. As a further legal result of the conduct of Defendants, and each of them,  
22 Plaintiff was required, and/or in the future may be required, to engage the services of  
23 health care providers, and incurred expenses for health care, services, supplies,  
24 medicines, health care appliances, modalities, and/or other related expenses in a sum to  
25 be ascertained according to proof.

26  
27         43. As a further legal result of the conduct of Defendants, and each of them,  
28 Plaintiff suffered other incidental and consequential damages, in an amount according to

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1 proof.

2 44. As a further legal result of the conduct of Defendants, and each of them,  
3 Plaintiff is entitled to attorneys' fees and costs in an amount according to proof.

4 45. As a further legal result of the conduct of Defendants, and each of them,  
5 Plaintiffs are entitled to prejudgment interest pursuant to *California Civil Code* Section  
6 3287 and/or any other provision of law providing for prejudgment interest.  
7

8  
9 **THIRD CAUSE OF ACTION**

10 **FOR RETALIATION IN VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT**  
11 **AND HOUSING ACT AGAINST DEFENDANTS, AND EACH OF THEM**

12 46. Plaintiff incorporates the allegations set forth in paragraphs 1 through 21 as  
13 if set forth in full herein.

14 47. Plaintiff suffered retaliation after complaining, filing a DFEH charge, and  
15 filing a law suit against the City of Montebello for harassment and discrimination based on  
16 his race and has been subjected to a series of retaliatory adverse employment actions as  
17 set forth above. Said retaliatory actions will deprive Plaintiff from ever promoting to the  
18 rank of captain.

19 48. Battalion Chief Lyrisky made continuous efforts to disrupt both plaintiff's  
20 work and private schedules by encouraging other firemen within the Department not to  
21 "Swap" days off with plaintiff. Lyrisky also make overt efforts to disrupt Plaintiff's working  
22 relationship with other firemen by encouraging those firemen not to be friends with or  
23 associate with Plaintiff.

24 49. Furthermore, while Plaintiff was passing through the hallway to his captain's  
25 office, Lyrisky, in an effort to intimidate Plaintiff, followed Plaintiff down the hallway and in  
26 a menacing and threatening manner placed his finger in Plaintiff's chest and said to  
27 Plaintiff, "You better lighten up dude!"

28 50. Said actions and conduct of the Department, consisting of the

1 aforementioned retaliation against Plaintiff, constituted unlawful employment practices  
2 under California *Government Code* section 12940(h).

3 51. The aforementioned unlawful employment practices on the part of the  
4 Department were a substantial factor in causing damages and injuries to Plaintiff.

5 52. As a result of the aforesaid unlawful acts of the Department, Plaintiff has lost  
6 and will continue to lose income, in an amount to be proven at time of trial. Plaintiff claims  
7 such amount as damages together with prejudgment interest pursuant to California *Civil*  
8 *Code* section 3287 and/or any other provision of law providing for prejudgment interest.

9 53. As a result of the aforesaid unlawful acts of the Department, Plaintiff was  
10 personally humiliated and had become mentally upset, distressed and aggravated.  
11 Plaintiff claims general damages for such mental distress and aggravation in an amount of  
12 be proven at time of trial.

13 54. As a result of the unlawful conduct of the Department, Plaintiff was required  
14 to retain attorneys and is entitled to attorneys' fees pursuant to *Government Code* section  
15 12965.

16 55. Plaintiff filed an administrative charge with the California Department of Fair  
17 Employment and Housing substantially alleging the acts and conduct of Defendants as  
18 described above, and has received the appropriate right to sue notice(s) within one year  
19 of the filing of this complaint.

20

21

**PRAYER**

22

23

**WHEREFORE**, Plaintiff seeks judgment against Defendants, and each of them, as  
follows:

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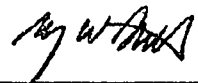
1. On each cause of action, for physical, mental, and emotional injuries, pain,  
distress, suffering, anguish, fright, nervousness, grief, anxiety, worry, shame, mortification,  
injured feelings, shock, humiliation and indignity, as well as other unpleasant physical,  
mental, and emotional reactions, damages to reputation, and other non-economic

- 1 damages, in a sum to be ascertained according to proof;
- 2       2.     On each cause of action, for health care, services, supplies, medicines,  
3 health care appliances, modalities, and other related expenses in a sum to be ascertained  
4 according to proof;
- 5       3.     On each cause of action, for loss of wages, income, earnings, earning  
6 capacity, benefits, pension loss and other economic damages in a sum to be ascertained  
7 according to proof;
- 8       4.     Other actual, consequential, and/or incidental damages in a sum to be  
9 ascertained according to proof;
- 10       5.     Attorney fees and costs of suit pursuant to *California Government Code*  
11 *Section 12965(b)*;
- 12       6.     Costs of suit herein incurred;
- 13       7.     Pre-judgment interest;
- 14       8.     Such other and further relief as the Court may deem just and proper.
- 15
- 16
- 17

18 Dated: August 6, 2014

LAW OFFICES OF GREGORY W. SMITH

19  
20 By:



\_\_\_\_\_  
GREGORY W. SMITH  
DIANA WANG WELLS  
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