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Vincent Miller (SBN 291973)
Attorney at Law
The Law Offices of Vincent Miller
10342 Lindley Avenue, #328
Porter Ranch, CA 91326
Tel.: 213-948-5702

Attorney for Plaintiff, Timothy Patrick Green

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE LOS ANGELES COUNTY - CENTRAL DISTRICT

TIMOTHY PATRICK GREEN

Plaintiff,

v.

THE CITY OF SOUTH PASADENA, and
DOES 1-10, inclusive

Defendants.

Case Number:

EC 572438

COMPLAINT FOR

- 1) DISABILITY DISCRIMINATION - (Cal. Gov. Code § 12940 et seq.);
- 2) FAILURE TO PROVIDE REASONABLE ACCOMMODATION (Cal. Gov. Code § 12940(m) et seq.);
- 3) FAILURE TO ENGAGE IN GOOD FAITH INTERACTIVE PROCESS (Cal. Gov. Code § 12940(n) et seq.);
- 4) FAILURE TO TAKE ALL REASONABLE STEPS TO PREVENT DISCRIMINATION AND HARASSMENT (Cal Gov. Code § 12940(k) et seq.);
- 5) BREACH OF CONTRACT

JURY TRIAL DEMANDED

FILED
Superior Court of California
County of Los Angeles

FEB 13 2015

Sherri R. Carter, Executive Officer/Clerk
By Shaunya Bolden Deputy

CIT/CASE: EC572438
LEA/DEF#:
RECEIPT #: CCH46266156
DATE PAID: 02/13/15 03:00 PM
PAYMENT: \$435.00 310
RECEIVED:
CHECK: \$0.00
CASH: \$440.00
CHANGE: \$5.00
CARD: \$0.00

1 COMES NOW, Plaintiff TIMOTHY PATRICK GREEN alleges as against Defendant THE CITY
2 OF SOUTH PASADENA, and DOES 1-10, inclusive, as follows:

3 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

4 1. At all times mentioned herein, Plaintiff, Timothy Patrick Green (hereinafter referred to
5 as "Plaintiff" or "Officer Green") was and is a resident of the County of Los Angeles, State of
6 California. Plaintiff was employed for 18 years as a police officer by the City of South Pasadena
7 (hereinafter referred to as City or Defendant), from November, 1995 until August 29, 2014. By
8 all accounts, Plaintiff was a qualified, professional employee who continuously received positive
9 employee evaluations. In fact, over approximately 18 years of service, only on two annual
10 evaluations did Officer Green receive even a single "needs to improve" comment – for correcting
11 grammatical errors in written crime reports. Plaintiff was commended on several occasions for
12 outstanding work in the field, by his superiors and by members of the public.

13 2. Plaintiff during his tenure as a police officer performed patrol duties, K9 duty services,
14 and other duties incident to his assignments. In addition thereto, Plaintiff was an active
15 member of the South Pasadena Peace Officers Association.

16 3. Throughout Plaintiff's tenure as police officer, the Defendant knew that Plaintiff had
17 been diagnosed with disabilities, dyslexia and ADHD. For over a decade, management for the
18 city openly discussed Plaintiff's disabilities with each other. The management for the City
19 provided no accommodation for Plaintiff's disability for 18 years. Plaintiff is seeking damages
20 for disability discrimination and related claims, for failing to take all reasonable steps to
21 prevent discrimination, and failure to provide reasonable (or any) accommodation for
22 disabilities.

23 4. Defendant, at all times relevant hereto, was a Municipal governmental entity, engaged
24 as a matter of commercial actuality in purposeful economic activity within the County of Los
25 Angeles, State of California and operated, managed and controlled the South Pasadena Police
26 Department (hereinafter the "Department") which is and was an administrative agency of the
27 City.
28

1 5. At all times relevant hereto, Plaintiff was employed to provide services under the
2 direction and control of Police Chief Arthur Miller (hereinafter "Chief Miller"), and Police Chief
3 Joseph Payne (hereinafter, "Chief Payne"). The police chiefs were the highest ranking members
4 of the Department to whom Plaintiff was ultimately responsible. Captain Richard Kowaltschuk
5 (hereinafter referred to as "Kowaltschuk") was second in command to the police chiefs.

6 6. At all times mentioned herein Plaintiff was a salaried employee of the City, with various
7 other benefits, including but not limited to the right to overtime pay, the right to special law
8 enforcement details, specialized training and other benefits provided to other active members of
9 the Department. Plaintiff in the year prior to his wrongful termination earned a salary of
10 \$103,302.11 and benefits of \$30,450.74, for a total of \$133,752.82.

11 7. Plaintiff is informed and believes and thereupon alleges that Defendant DOES 1-10, and
12 each of them, whether individual, corporate, associate or otherwise, are unknown to Plaintiff at
13 this time, who therefore sues said Defendants by such fictitious names. Plaintiff will file DOE
14 amendments, and/or ask leave of court to amend this Complaint to assert the true names and
15 capacities of these Defendants when they have been ascertained. Plaintiff is informed and
16 believes, and upon, such information and belief alleges, that each Defendant designated as a
17 DOE was and is in some manner, negligently, wrongfully, or otherwise responsible and liable to
18 Plaintiff for the injuries and damages hereinafter alleged and that Plaintiff's damages as herein
19 alleged were proximately caused by their conduct.

20 8. Plaintiff is informed and believes, and thereupon alleges, that at all times material
21 herein the Defendants, and each of them, were the agents, servants and employees, or
22 ostensible agents, servants or employees of each other Defendants, and as such were acting
23 within the course and scope of said agency and employment or ostensible agency and
24 employment, except on those occasions when Defendants were acting as Principals, in which
25 case, said Defendants and each of them, were negligent in the selection, hiring and use of the
26 other Defendants.

27 9. Plaintiff is further informed and believes that at all times relevant hereto, Defendants
28 and each of them, acted in concert and in furtherance of the interests of each other Defendant.

10. As a result of this illegal termination, Plaintiff's salary and benefits, more than \$11,146 monthly, ceased and Plaintiff's pension rights terminated.

DEFENDANTS' ILLEGAL MOTIVATION

11. Captain Kowaltschuk openly discussed Officer Green's disabilities with other management for over a decade. Kowaltschuk expressed disdain for Officer Green's disabilities and expressed his desire to terminate the Plaintiff's employment due to his disabilities. Kowaltschuk often made efforts to get Officer Green disciplined based on unsubstantiated allegations. It was well known within the department that Kowaltschuk was on a mission.

THE ROUTINE TRAFFIC STOP

12. On Jan. 31, 2012, at or about 4:45AM, Plaintiff observed a speeding car that went by him, traveling at 43 mph in a 30 mph speed limit zone on Fair Oaks Boulevard in South Pasadena. Plaintiff pulled his vehicle behind the driver's car, and intended to provide a warning to the driver. Providing such warnings for speeding is within an officer's discretion. As Officer Green was pulling the driver's car over, he noticed the movement of suspicious shadows across the street at the South Pasadena Middle School. Officer Green quickly made the decision to pursue what he perceived as the more serious situation. Officer Green did not have a conversation with the driver, obtain his license, or observe any signs the driver had been drinking and was under the influence of alcohol. After exiting his vehicle, Officer Green walked towards the driver's window and yelled for him to slow down. The driver, 19 year old Zaid Soltero (hereinafter "Soltero") turned back and recognized Officer Green from Plaintiff's visits to McDonalds where Soltero worked. Plaintiff got back into his vehicle and drove across Fair Oaks Boulevard to make a visual inspection of the buildings and parking lot at South Pasadena Middle School. Soltero waited nervously for Plaintiff, saw nothing in his rearview mirror, and stepped on the gas, mistakenly thinking he was fleeing from the Plaintiff.

13. It would later be revealed that another officer, Jose Corney (hereinafter, "Corney") had seen Soltero shortly before Plaintiff did, and observed him speeding with a front head light out and other front end damage suggesting a car accident. Corney also later drove by Officer

1 Green and Soltero stopped at the curb. Corney neglected to inform Officer Green of what he had
2 observed and suspected of the driver. Corney did call in from his cell phone to report his
3 observations to dispatch, which also did not inform Officer Green of the suspicious
4 circumstances surrounding Soltero – Soltero had just fled a hit and run accident. If Corney or
5 dispatch had properly informed Officer Green, Plaintiff would have finished his stop with
6 Soltero and detected that he had been drinking and had been in an accident, instead of just
7 giving him a quick warning. Corney received no disciplinary action for neglect of duty in
8 allowing a hit and run driver to flee.

9 14. Approximately 15 minutes later, at or around 5:00 a.m. that same morning, Plaintiff
10 received a dispatch from the Pasadena Police Department to be on the lookout for a hit and run
11 driver in a vehicle that matched the description of the one stopped by Plaintiff.

12 THE DRIVER OF THE VEHICLE SHOWS UP THE SAME DAY AT THE
13 POLICE DEPARTMENT

14 15. After leaving the stop with Officer Green and arriving at his South Pasadena home,
15 Soltero called his girlfriend and told her that he fled from Officer Green at a traffic stop.
16 Soltero's girlfriend tells him that the Officer has his license plate number and that the police
17 will arrest Soltero, and advises Soltero to lessen his level of culpability and turn himself in.

18 16. Later the same day as the traffic stop, Soltero goes to the South Pasadena police
19 station and confesses that he fled from Officer Green, but does not mention the hit and run
20 incident. Soltero indicated that he wanted to turn himself in to the police.

21 THE POLICE DEPARTMENT'S INTERNAL INVESTIGATION

22 17. Kowaltschuk steps into the matter immediately and reports that Officer Green
23 pulled over a driver who admitted that he was a drunk hit and run driver and that Plaintiff
24 allowed him to go free. Kowaltschuk commences an investigation. As Plaintiff's supervisor, Sgt.
25 Craig Cooper (hereinafter "Sgt. Cooper"), must be assigned as the investigator. Kowaltschuk
26 tells Sgt. Cooper about Plaintiff that "we gotta get him out of here." Sgt. Cooper interviews
27 Soltero at his home the same day.

1 18. Sgt. Cooper informed Soltero that the police were aware that he was involved in
2 a hit and run accident prior to the traffic stop. Soltero then admitted that he was in the hit and
3 run, and told Sgt. Cooper that after hitting the victim's car, he got out and walked up to his
4 window and asked if he was okay, and told him he would get his insurance information from his
5 car. Soltero indicated that when he got back to his car, he was very nervous and fled from the
6 scene. Soltero reported that his mental state and degree of inebriation at that time was such
7 that he could not identify the victim even though he saw him up close at his car window. Soltero
8 also could not describe the vehicle he struck.

9 **SERGEANT COOPER'S INVESTIGATION REPORT**

10 19. On August 12, 2012, Sgt. Cooper wrote an Inter-Office Memorandum to Captain
11 Richard Kowaltschuk (hereinafter referred to as "Kowaltschuk"), the adjudicating officer in the
12 chain of command. Sgt. Cooper did not find evidence to sustain any allegations against Officer
13 Green. As the adjudicator, Kowaltschuk was supposed to remain impartial. However,
14 Kowaltschuk asked Sgt. Cooper to fraudulently alter the report and change his findings, so
15 there would be grounds to terminate Officer Green. Sgt. Cooper refused. Kowaltschuk then, in
16 violation of the rules as stated in the police and procedures manual, appointed himself to be the
17 investigator.

18 **KOWALTSCHUK FRAMES OFFICER GREEN**

19
20 20. Kowaltschuk then claimed he conducted two "Mock re-creations" of Officer Green's
21 traffic stop of Soltero. Kowaltschuk pretended to have the magical ability (an ability no scientist
22 would claim to have) of being able to exactly match the lighting conditions on the night the
23 traffic stop took place. Kowaltschuk's "scientific" findings were that Officer Green must have
24 lied about not walking up to the driver's window, because (supposedly) if he had stopped
25 walking before getting to up to the driver's window, Officer Green's face would have been
26 silhouetted by his own headlights behind him and the street light from Fair Oaks Boulevard,
27 and Soltero wouldn't have been able to identify him. Kowaltschuk's "theory" was that Officer
28

1 Green noticed at the window that Soltero was drunk, and therefore knowingly let a drunk hit
2 and run driver go free.

3 CAPTAIN KOWALTSCHUK'S REPORT

4 21. On August 29, 2012, Kowaltschuk wrote an Inter-Office Memo to Chief Payne,
5 then the Chief of Police. Kowaltschuk recommended that Allegations for Neglect of Duty and
6 Dishonesty be sustained. Kowaltschuk offered the rationale that because Soltero recognized
7 Officer Green at the police station as the person who stopped him, Plaintiff must have lied when
8 he indicated that he did not reach Soltero's window at the traffic stop. In his haste to "get"
9 Officer Green and sustain the allegations of dishonesty, Captain Kowaltschuk lied in his report
10 as he indicated that Soltero had no previous contact with Plaintiff – even though Soltero knew
11 Officer Green from McDonalds, which is why he was able to identify Officer Green so easily.
12 Kowaltschuk also disingenuously found that because Soltero voluntarily turned himself in he
13 had no motive to misstate any facts. Soltero acknowledged that he turned himself in because his
14 girlfriend told him it would lessen his liability. In fact, Soltero was not prosecuted for the hit
15 and run or for the traffic stop. In any case, this wasn't a matter of Soltero's credibility versus
16 Officer Green's credibility. The person with the motive to lie was Kowaltschuk. Kowaltschuk
17 misstated in his report that Plaintiff reached Soltero's window and that he heard Soltero tell
18 him that he had "a couple six beers," suggesting that Soltero confessed he had just consumed
19 two six packs of beer. Kowaltschuk spun the ridiculous story that after Soltero told Plaintiff he
20 was drunk, the Officer just simply walked away. In Kowaltschuk's quest to "...get [Officer
21 Green] out of here" for his disability, logic, facts, and due process became irrelevant.

22 THE NOTICE OF INTENT TO DISCIPLINE LETTER

23 22. Chief Payne reviewed Sgt. Cooper's investigation and the "investigation" and
24 adjudication of the allegations by Captain Kowaltschuk. Chief Payne did not take
25 Kowaltschuk's rantings seriously and found no merit in Kowaltschuk's "findings" on Allegations
26 for Dishonesty, and did not sustain them. On November 19, 2012, Chief Payne wrote to Plaintiff
27 with his findings. Chief Payne found Officer Green should have called in to the dispatcher when
28 he went to survey the middle school for suspicious movement, and Chief Payne saw an

1 opportunity for the City to finally start addressing Plaintiff's disabilities. Chief Payne stated his
2 intent to impose discipline for neglect of duty by suspending Plaintiff for six working days, to be
3 reduced to 3 days provided Plaintiff got Learning Disability training to address dyslexia and
4 ADHD.

5 THE SKELLY HEARING AND FITNESS FOR DUTY EXAMINATION

6 23. As required by the Police and Procedures manual, and under §3300-3313, the
7 Public Safety Officers Procedural Bill of Rights Act, any discipline imposed upon Plaintiff had to
8 have been completed within one year. In this case, since the incident occurred January 31, 2012,
9 any discipline would be need to be imposed by January 31, 2013. On Jan. 7, 2013, Chief Payne
10 held the Skelly hearing, the pre-determination hearing that is required if there might be an
11 imposition of discipline. The hearing was followed by a letter from Chief Payne to Officer Green
12 dated January 25, 2013. The letter references Plaintiff's disabilities, Dyslexia and ADHD, and
13 suggests that Plaintiff undergo Learning Disability Training. The agreement letter was signed
14 by Chief Payne and accepted in writing by Plaintiff. Exhibit A, "Chief Payne Letter." Chief
15 Payne requested for Defendant's Human Resources Department to make reasonable
16 accommodations for Plaintiff's disabilities and the Human Resources Department scheduled a
17 Fitness for Duty Examination for the Plaintiff. The Human Resources Department requested
18 that Plaintiff propose workplace accommodations the City could make for Plaintiff's disabilities.
19 Plaintiff was ready to propose such accommodations and attend the Fitness for Duty
20 Examination.

21 CHIEF PAYNE AND GOOD FAITH RETIRE

22 24. Shortly after the Skelly Hearing, Police Chief Payne retired in February 2012
23 and he was replaced by Police Chief Arthur Miller in early March, 2013. Chief Miller had
24 worked as a manager for the South Pasadena Police Department for many years and while
25 cognizant of Plaintiff's disabilities never made any effort to make any accommodations for those
26 disabilities. The good faith interactive process regarding Plaintiff retired along with Chief
27 Payne.

1
2 THE NOTICE OF INTENT TO TERMINATE

3 25. In March, 2013, Miller proceeded to trample over California state statute §3300-
4 3313. Miller violated the one year disciplinary rule and reopened the disciplinary process
5 against the Plaintiff. Plaintiff's Fitness for Duty Examination was abruptly cancelled without
6 explanation and on March 14, 2013, Plaintiff, without warning, was placed on Administrative
7 leave by Chief Miller. On March 28, 2013, Plaintiff received a Memorandum from Chief Miller,
8 entitled "NOTICE OF INTENT TO TERMINATE EMPLOYMENT." The Memo ignored Sgt.
9 Cooper's investigation, and Chief Payne's review, and embraced Kowaltschuk's framing of
10 Officer Green. Chief Miller falsely claimed that it was within his power to reverse the earlier
11 penalty imposed by Chief Payne past the one year deadline. Kowaltschuk, Chief Miller, and the
12 City made a mockery out of due process, including the interactive process.

13 SHAM EARINGS SUBSEQUENT TO THE NOTICE TO TERMINATE

14 EMPLOYMENT

15 26. The City demanded that Plaintiff participate in what the City referred to as
16 second Skelly hearing. The Defendants did not present new evidence, as the hearing was just a
17 sham in bad faith. Defendant then held a second meeting of some kind on June 5, 2013 at the
18 City offices, without notifying Morse Taylor, who was Plaintiff's private attorney at that time.
19 At this meeting, the City committed fraud as it recommended that Plaintiff file a Workers'
20 Compensation action, and set a deadline for Plaintiff to do so, even though the Defendant was
21 fully aware that the Plaintiff did not have a work-related injury. Plaintiff declined the offer
22 from the City to commit fraud, because he knew it would be dishonest. Plaintiff was also aware
23 that the offer of Workers' Compensation was not made as a good faith effort to help Plaintiff
24 keep his job. Plaintiff knew that the City's purpose in making this offer was for Plaintiff to
25 obtain a job rating to prepare for a settlement and dismissal of his workers' compensation claim,
26 as his employment was terminated. Perhaps at the peak of its bad faith, the City later
27 scheduled what it labelled as a "good faith interactive process meeting." By this point, Plaintiff
28 understood all too well that any effort to participate in these meetings was futile, as the City

1 made it clear that due process would not be an impediment to railroading Officer Green out of
2 the department. Plaintiff's counsel demanded that City withdraw the Notice to Terminate and
3 begin a good faith interactive process. The Defendant refused and continues to refuse to do so.

4 27. The Defendant violated its own procedures manual in several instances, in that the
5 pre-determination Skelly hearing was held after the Notice to Terminate, the whole purpose of
6 the Skelly hearing was ignored, and the City reneged on the good faith process that had been
7 initiated by Chief Payne and the Human Resources Department. The disciplinary action taken
8 was far out of proportion and not commensurate with the "offense," as other disciplinary options
9 were ignored. A review of the City's history of disciplining officers clearly demonstrates that
10 officers receive far less extreme disciplinary action for far more serious "offenses" (including a
11 department Manager being caught having sex in her patrol car and receiving no discipline). In
12 fact, specifically regarding the incident here, Officer Corney, who does not suffer from any
13 disabilities, received no discipline for his neglect in allowing what he suspected was a hit and
14 run driver to go free. Officer Green's only "offense" was not calling in his review of suspicious
15 shadows at a middle school – even though it turned out to be a false alarm, as he discovered no
16 individuals on campus. But to the Defendant, Officer Green's true "offense" was having
17 disabilities.

18 THE FINAL NOTICE OF TERMINATION OF EMPLOYMENT

19 28. On August 29, 2013 Plaintiff received a Memorandum from Hilary Straus, the
20 Assistant City Manager, terminating his employment.

21 DEFENDANT'S REFUSAL OF ADMINISTRATIVE APPEAL HEARING

22 29. Plaintiff has the legal right to an administrative hearing within one year of
23 termination. It has been more than a year and a half since termination. Plaintiff consistently
24 and repeatedly over the course of the year and a half requested and demanded such a hearing.
25 The Defendant refused and failed to grant one.
26
27
28

**RIGHT TO SUE LETTER FROM DEPARTMENT OF FAIR EMPLOYMENT &
HOUSING**

30. On August 18, 2014, Plaintiff obtained a right to sue letter from the California Department of Fair Employment & Housing for discrimination based on his disabilities. Exhibit B, "Right to Sue Letter."

FIRST CAUSE OF ACTION FOR
VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT -
DISABILITY DISCRIMINATION

(As Against All Defendants)

31. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 30, inclusive, as if fully set forth herein.

32. The Fair Employment and Housing Act ("FEHA") prohibits discrimination against an employee because of his or her actual and/or perceived disability.

33. At all relevant times, Plaintiff was a person with an actual and/or perceived physical disability within the meaning of the FEHA in that Plaintiff has disabilities, including dyslexia and ADHD. Plaintiff was also limited in his major life activities, had a record of such limitations, and was regarded by Defendants as having such limitations.

32. Defendants discriminated against Plaintiff because of his actual and/or perceived disability by, among other things,

a. Failing to engage in a good faith interactive process with Plaintiff to determine effective reasonable accommodations for his actual and/or perceived disabilities;

b. Discriminating against and harassing Plaintiff because of his actual and/or perceived disabilities;

c. Refusing to make reasonable accommodations for Plaintiff's actual and/or perceived disabilities; and

d. Terminating Plaintiff's employment because of his actual and/or perceived disabilities.

1 34. Kowaltschuk and Chief Miller and their Defendant employer failed over many years to
2 provide reasonable accommodations for Plaintiff's disabilities. Defendant specifically targeted
3 Plaintiff for termination based on his disabilities. Officer Green was a dedicated police officer
4 who fulfilled his duties to serve and protect the community. As Chief Payne stated after
5 Plaintiff's wrongful termination, "Pat did not fail the City; the City failed Pat."

6 35. The conduct, statements and acts of the Defendants described herein were an ongoing
7 part of a continuing scheme and course of conduct. Defendants knew the substance of the
8 above-described facts and circumstances and ratified the wrongs and injuries mentioned herein
9 when it was in their ability to prevent, remedy and/or correct these wrongs. Defendants
10 continued to ratify and refused to remedy or correct the aforementioned conduct,
11 notwithstanding the fact that its officials, supervisors and/or managing agents knew or
12 reasonably should have known, and know or reasonably should know, of the conduct and its
13 unlawful motivations.

14 36. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered special
15 damages in the form of lost earnings, benefits and/or out-of-pocket expenses in an amount
16 according to proof at the time of trial. As a further direct and proximate result of Defendants'
17 conduct, Plaintiff will suffer additional special damages in the form of lost future earnings,
18 benefits and/or other prospective damages in an amount according to proof at the time of trial.

19 37. As a further direct and proximate result of Defendants' conduct, Plaintiff has suffered
20 mental and emotional pain, distress and discomfort, and defamatory damages to his
21 occupational reputation, all to his detriment and damage in amounts not fully ascertained but
22 within the jurisdiction of this court and subject to proof at the time of trial.

23 38. In engaging in the conduct alleged herein, Defendants acted oppressively, maliciously,
24 fraudulently, and/or outrageously toward Plaintiff, with conscious disregard for his known
25 rights and with the intention of causing, and/or willfully disregarding the probability of causing,
26 unjust and cruel hardship to Plaintiff.

27 39. Plaintiff is entitled to costs and reasonable attorneys' fees pursuant to California
28 Government Code section 12965(b).

SECOND CAUSE OF ACTION FOR
VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT - FAILURE
TO PROVIDE REASONABLE ACCOMMODATION

(As Against All Defendants)

40. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 39, inclusive, as if fully set forth herein.

41. California Government Code §12940(m) provides that it is unlawful for an employer to fail to make reasonable accommodation for the actual and/or perceived disabilities of an employee.

42. Defendants failed to offer or make reasonable accommodation for Plaintiff's actual and/or perceived disabilities by failing and refusing to provide him with a fitness for duty examination, assistance with his learning disabilities and by terminating his employment due to his disabilities. Chief Payne requested that the City begin efforts to make reasonable accommodations and a good faith interactive process, and the Human Resources Department began to make an effort to comply with the law; however, Chief Miller reversed Chief Payne's actions, thus rendering a constructive complete lack of interactive process and any efforts (let alone reasonable efforts) to accommodate by the City.

43. The conduct, statements and acts described herein were an ongoing part of a continuing scheme and course of conduct. Defendants knew the substance of the above-described facts and circumstances and ratified the wrongs and injuries mentioned herein when it was in their ability to prevent, remedy and/or correct these wrongs. Defendants continued to ratify and refused to remedy or correct the aforementioned conduct, notwithstanding the fact that its officials, supervisors and/or managing agents knew or reasonably should have known, and know or reasonably should know, of the conduct and its unlawful motivations.

44. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered special damages in the form of lost earnings, benefits and/or out-of-pocket expenses in an amount according to proof at the time of trial. As a further direct and proximate result of Defendants'

conduct, Plaintiff will suffer additional special damages in the form of lost future earnings, benefits and/or other prospective damages in an amount according to proof at the time of trial.

45. As a further direct and proximate result of Defendants' conduct, Plaintiff has suffered mental and emotional pain, distress and discomfort, and defamatory damages to his occupational reputation, all to his detriment and damage in amounts not fully ascertained but within the jurisdiction of this court and subject to proof at the time of trial.

46. In engaging in the conduct alleged herein, Defendants acted oppressively, maliciously, fraudulently, and/or outrageously toward Plaintiff, with conscious disregard for his known rights and with the intention of causing, and/or willfully disregarding the probability of causing, unjust and cruel hardship to Plaintiff.

47. Plaintiff is entitled to costs and reasonable attorneys' fees pursuant to California Government Code section 12965(b).

THIRD CAUSE OF ACTION FOR
VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT - FAILURE
TO ENGAGE IN THE GOOD FAITH INTERACTIVE PROCESS

(As Against All Defendants)

48. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 47, inclusive, as if fully set forth herein.

49. California Government Code §12940(n) provides that it is unlawful for an employer to fail to engage in a timely, good faith, interactive process with the employee to determine effective reasonable accommodations.

50. Defendants failed to engage in a timely, good faith, interactive process with Plaintiff to determine effective reasonable accommodations for his actual and/or perceived disabilities.

Despite Chief Payne's efforts and requests for the City to provide reasonable accommodations for the Plaintiff's Disabilities and to engage in an interactive process, Defendants failed and refused to provide him with a fitness for duty examination and counseling for his learning disabilities, and failed and refused to propose any other accommodations. Instead, Defendants in bad faith gave notice to the Plaintiff that he would be terminated, then scheduled sham

1 meetings, including one labelled "interactive process," before terminating Plaintiff's
2 employment based on his disabilities.

3 51. The conduct, statements and acts described herein were an ongoing part of a continuing
4 scheme and course of conduct. Defendants knew the substance of the above-described facts and
5 circumstances and ratified the wrongs and injuries mentioned herein when it was in their
6 ability to prevent, remedy and/or correct these wrongs. Defendants continued to ratify and
7 refused to remedy or correct the aforementioned conduct, notwithstanding the fact that its
8 officials, supervisors and/or managing agents knew or reasonably should have known, and know
9 or reasonably should know, of the conduct and its unlawful motivations.

10 52. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered special
11 damages in the form of lost earnings, benefits and/or out-of-pocket expenses in an amount
12 according to proof at the time of trial. As a further direct and proximate result of Defendants'
13 conduct, Plaintiff will suffer additional special damages in the form of lost future earnings,
14 benefits and/or other prospective damages in an amount according to proof at the time of trial.

15 53. As a further direct and proximate result of Defendants' conduct, Plaintiff has suffered
16 mental and emotional pain, distress and discomfort, and defamatory damages to his
17 professional reputation, all to his detriment and damage in amounts not fully ascertained but
18 within the jurisdiction of this court and subject to proof at the time of trial.

19 54. In engaging in the conduct alleged herein, Defendants acted oppressively, maliciously,
20 fraudulently, and/or outrageously toward Plaintiff, with conscious disregard for his known
21 rights and with the intention of causing, and/or willfully disregarding the probability of causing,
22 unjust and cruel hardship to Plaintiff.

23 55. Plaintiff is entitled to costs and reasonable attorneys' fees pursuant to California
24 Government Code section 12965(b).

25
26 FOURTH CAUSE OF ACTION FOR
27 VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT & HOUSING ACT - FAILURE TO
28 TAKE ALL REASONABLE STEPS TO PREVENT DISCRIMINATION

(As Against all Defendants)

56. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 55, inclusive, as if fully set forth herein.

57. Defendants failed to take all reasonable steps necessary to prevent the aforementioned discrimination to which Plaintiff was subjected in violation of California Government Code Section 12940(k).

58. The conduct, statements and acts described herein were an ongoing part of a continuing scheme and course of conduct. Defendants knew the substance of the above-described facts and circumstances and ratified the wrongs and injuries mentioned herein when it was in their ability to prevent, remedy and/or correct these wrongs. Defendants continued to ratify and refused to remedy or correct the aforementioned conduct, notwithstanding the fact that its officials, supervisors and/or managing agents knew or reasonably should have known, and know or reasonably should know, of the conduct and its unlawful motivations.

59. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered special damages in the form of lost earnings, benefits and/or out-of-pocket expenses in an amount according to proof at the time of trial. As a further direct and proximate result of Defendants' conduct, Plaintiff will suffer additional special damages in the form of lost future earnings, benefits and/or other prospective damages in an amount according to proof at the time of trial.

60. As a further direct and proximate result of Defendants' conduct, Plaintiff has suffered mental and emotional pain, distress and discomfort, and damages to his occupational reputation, all to his detriment and damage in amounts not fully ascertained but within the jurisdiction of this court and subject to proof at the time of trial.

61. In engaging in the conduct alleged herein, Defendants acted oppressively, maliciously, fraudulently, and/or outrageously toward Plaintiff, with conscious disregard for his known rights and with the intention of causing, and/or willfully disregarding the probability of causing, unjust and cruel hardship to Plaintiff.

62. Plaintiff is entitled to costs and reasonable attorneys' fees pursuant to California Government Code section 12965(b).

1 FIFTH CAUSE OF ACTION FOR

2 BREACH OF CONTRACT

3 (As Against all Defendants)

4 63. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 62,
5 inclusive, as though fully set forth therein.

6 64. Perforce of Defendant's established practices, Plaintiff was promised that Defendant
7 City would provide progressive discipline, an opportunity to correct perceived performance
8 deficiencies, make reasonable accommodations for disabilities, an appropriate investigation of
9 alleged performance deficiencies and employee protests and complaints prior to taking any
10 adverse action against him. The Defendants breached these promises by firing Plaintiff without
11 cause, and without providing any of the above protections, as well as without providing the
12 legally required good faith interactive process and administrative appeal hearing. Moreover,
13 there is an unambiguous absence of any good cause for his termination, a discipline that was
14 imposed past the one year deadline to do so after the incident in question occurred on January
15 31, 2012.

16 65. The City's procedures manual formed a key part of its employment agreement with the
17 Plaintiff. The Defendant violated its own procedures manual in several instances, including
18 when it held the Skelly Hearing after, rather than before, the Notice to Terminate was given as
19 is required. The City failed to engage in the interactive process, and the disciplinary action
20 taken towards Plaintiff was not commensurate with the "offense," as other disciplinary options
21 were not considered.

22 66. To the contrary to Defendant's employment agreement and contract with Plaintiff, as
23 even the most superficial investigation would have disclosed (1) Plaintiff's performance was at
24 all times exemplary and (2) Defendants fired Plaintiff as a consequence of its intent to retaliate
25 and discriminate. *See, e.g., Guz v. Bechtel National, Inc.* (2000) 24 Cal. 4th 317, 353 (implied
26 covenant breached when termination of at will employee was a mere pretext to cheat the worker
27 out of another benefit to which he or she was clearly entitled).

1 WHEREFORE, Plaintiff prays for judgment on all causes of action against all Defendants as
2 follows:

3
4 1. For special damages, including but not limited to, lost earnings, benefits and/or out-of-
5 pocket expenses in an amount according to proof at the time of trial, all in an amount set forth
6 above and/or according to proof at the time of trial;

7 2. For further special damages, including but not limited to, lost future earnings, benefits
8 and other prospective damages in an amount set forth above and/or according to proof at the
9 time of trial;

10 3. For general damages in an amount set forth above and/or according to proof at the
11 time of trial;

12 4. For interest: Pre-Judgment and Post-Judgment at the maximum legal rate.

13 5. For reasonable attorneys' fees; and

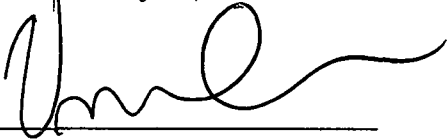
14 6. For costs of suit

15
16 JURY TRIAL DEMAND

17
18 Plaintiff demands a jury trial on all issues so triable.

19
20 DATED: February 12, 2015

THE LAW OFFICES OF VINCENT MILLER

21 
22

23 By VINCENT MILLER

24 Attorney for Plaintiff
25
26
27
28

EXHIBIT A

"CHIEF PAYNE LETTER"

012 / 1:3 / 2412



CITY OF SOUTH PASADENA

OFFICE OF THE CHIEF OF POLICE

1422 MISSION STREET, SOUTH PASADENA, CA 91030

TEL: 626-403-7272 • FAX: 626-403-7271

WWW.CI.SOUTH-PASADENA.CA.US

January 25, 2013

Officer Pat Green
South Pasadena Police Department
1422 Mission St.
South Pasadena, CA 91030

Re: IA 2012-02

Officer Green,

Regarding follow up to our Skelly Hearing on January 7, 2013, this shall serve to establish the goals for our informal agreement for resolving the six day suspension that was issued by me in the referenced investigation. It is agreed that the six day suspension will be stayed pending your successful completion of learning disability training and a performance improvement plan to bring you within the average of your fellow officers on any given shift that you are assigned to. It is my desire that this "education-based discipline" plan will make you a more productive officer and give you greater confidence in your abilities to perform the basic duties of a South Pasadena police officer.

Learning Disability Training-Three Day Stayed Suspension: On your own admission, you acknowledged that you battle with Attention Deficit Disorder and Dyslexia. Not being a professional diagnosis and my own lack of professional knowledge, it is imperative that, through the assistance of the Human Resources department, you undergo, at the city's expense, a professional diagnosis of any conditions that may be identified that limit your ability to investigate and properly document the typical investigation that a South Pasadena police officer may be called on to complete. I know that this may be considered vague, however it is my belief that your experience as a police officer gives you the basic tools to accomplish this. My desire is for you to use those tools to their greatest advantage. This effort will be between you and Human Resources and I am confident we can accomplish these goals. It is critical that you embark on this with all seriousness. This

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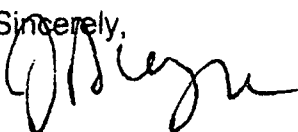
is our best effort to correct your learning deficiencies and make you a better officer. It is the police department's responsibility to offer you this opportunity, but is your responsibility to successfully complete it. It will be the ultimate responsibility of the HR director to determine if you have made an honest effort to accomplish this goal. It is my intention that you can accomplish this within one year of this agreement.

Performance Improvement Plan-Three Day Stayed Suspension: I propose that you enter into an agreement with your respective watch commander and the Operations Division captain toward a goal that will bring your productivity within an acceptable range as determined by an average established on your assigned patrol shift. I suggest we use a 10% variable and I do not intend to hold you to a specific number in a typical patrol shift. I understand there are various factors that may affect you overall productivity and that some areas may show greater results than others. Primarily, I am interested in seeing improvement in areas where you show significantly below average statistics. These include, but are not limited to, arrests, citations, and reports. These are the areas where we were able to agree need improvement. Simple, subjective areas such as self-initiated extra patrols or calls-for service minutes that can be easily inflated do not demonstrate adequate productivity. The areas where I expect to see improvement are the age-old productivity measures that police officers are typically judged by. To accomplish this goal, I recommend, as a senior officer, that you work shift and beat assignments that provide you the greatest opportunity to show productivity. It will ultimately be the responsibility of your watch commander to determine if you have met this goal.

If you agree to this proposal of learning-deficiency training and performance improvement plan, please indicate by your signature below. Please consult with your labor representative before agreeing to this proposal. I reserve the right to re-impose any portion of the stayed suspension if you fail to make an honest effort to accomplish this goal. Because it is my belief that your learning deficiencies contribute to your lack of productivity, so I propose that your performance goals be tied to your progress in overcoming these deficiencies. I feel I have gone the extra mile to propose this solution and would expect nothing less than your full effort to show improvement.

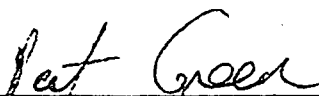
I am sure that, together, we can accomplish these goals.

Sincerely,



Joseph Payne
Chief of Police

Officer Patrick Green:



Dated:

1-28-13

2013 JAN 28 PM 4:13

EXHIBIT B

"RIGHT TO SUE LETTER"



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR PHYLLIS W. CHENG

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TTY 800-700-2320
www.dfeh.ca.gov

Aug 18, 2014

Timothy Patrick Green
8424 Fordham Road
Los Angeles California 90045

RE: Notice of Case Closure and Right to Sue
DFEH Matter Number: 346798-122280
Right to Sue: Green / City Of South Pasadena

Dear Timothy Patrick Green,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective Aug 18, 2014 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

0124134262



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GOVERNOR EDMUND G. BROWN JR.

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TTY 800-700-2320
www.dfeh.ca.gov

DIRECTOR PHYLLIS W. CHENG

Aug 18, 2014

RE: Notice of Filing of Discrimination Complaint

DFEH Matter Number: 346798-122280

Right to Sue: Green / City Of South Pasadena

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing

8/18/2014 1:11 PM

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
4 **Under the California Fair Employment and Housing Act**
5 **(Gov. Code, § 12900 et seq.)**

6 In the Matter of the Complaint of
7 Timothy Patrick Green, Complainant.

DFEH No. 346798-122280

8 vs.

9 City Of South Pasadena Respondent.
10 1414 Mission Street
11 South Pasadena, California 91030

12
13 Complainant alleges:

14 1. Respondent **City Of South Pasadena** is a **State/Local Govt** subject to suit under the California Fair
15 Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.). Complainant believes respondent is
subject to the FEHA.

16 2. On or around **Aug 29, 2013**, complainant alleges that respondent took the following adverse actions against
17 complainant: **Discrimination, Harassment, Retaliation Denied a good faith interactive process, Denied a**
18 **work environment free of discrimination and/or retaliation, Denied employment, Denied reasonable**
accommodation, Denied reinstatement, Terminated, . Complainant believes respondent committed these
actions because of their: **Disability .**

19 3. Complainant **Timothy Patrick Green** resides in the City of **Los Angeles, State of California**. If complaint
20 includes co-respondents please see below.

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VERIFICATION

I, **Vincent Miller**, am the Attorney for Complainant in the above-entitled complaint. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

On Aug 18, 2014, I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Porter Ranch, CA
Vincent Miller