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CIVIL BUSINESS OFFICE 10
CENTRAL DIVISION

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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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9 SEAN RYAN

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN DIEGO, CENTRAL DIVISION

12 SEAN RYAN, an individual,
13 Plaintiff,

14 v.

15 CITY OF CORONADO, a public entity, and
16 DOES 1 through 25, Inclusive,
17 Defendants.

) Case No. **37-2018-00007733-CU-WT-CTL**

) **PLAINTIFF'S COMPLAINT FOR:**

-) 1. SEXUAL HARASSMENT [Cal. Gov't Code § 12940(j)];
-) 2. HARASSMENT ON BASIS OF SEXUAL ORIENTATION [Cal. Gov't Code § 12940(j)(1)];
-) 3. DISCRIMINATION ON BASIS OF SEXUAL ORIENTATION [Cal. Gov't Code § 12940(a)];
-) 4. RETALIATION/WRONGFUL TERMINATION [Cal. Gov't Code § 12940(h)];
-) 5. FAILURE TO PREVENT HARASSMENT, DISCRIMINATION AND RETALIATION [Cal. Gov't Code § 12940(k)];
-) 6. DISCRIMINATION ON BASIS OF MEDICAL CONDITION [Cal. Gov't Code § 12940(a)];
-) 7. FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS [Cal. Gov't Code § 12940(n)];
-) 8. FAILURE TO ACCOMMODATE [Cal. Gov't Code § 12940(m)]

) **[JURY TRIAL DEMANDED]**

18 COMES NOW THE PLAINTIFF, alleging against Defendants as follows:

19 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

20 1. Plaintiff SEAN RYAN (hereinafter "Plaintiff" or "RYAN") is a natural person who is,

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- 1 and at all relevant times was, a resident of the United States and a domiciliary of the State
2 of California.
- 3 2. Plaintiff is informed and believes, and thereon alleges that Defendant, CITY OF
4 CORONADO (hereinafter "CITY" or "Defendant"), is, and at all relevant times herein
5 mentioned was, a public entity subject to the laws of the State of California and
6 conducting substantial business in the County of San Diego.
- 7 3. Plaintiff is informed and believes and thereon alleges that the CITY is subject to suit
8 under the California Fair Employment Housing Act (FEHA), California Government
9 Code § 12940 *et seq.*, as it employs in excess of five (5) employees in San Diego and
10 elsewhere.
- 11 4. Plaintiff is ignorant of the true names and capacities of the Defendants sued herein as
12 DOES 1 to 25, and therefore sues these defendants by such fictitious names. Plaintiff will
13 amend this Complaint to allege the true names and capacities when they are ascertained.
- 14 5. Plaintiff is informed and believes, and thereon alleges, that each fictitiously named
15 Defendant is responsible in some manner for the occurrences herein alleged, and
16 Plaintiff's injuries and damages as herein alleged are directly, proximately and/or legally
17 caused by Defendants.
- 18 6. Plaintiff is informed and believes, and thereon alleges that the aforementioned DOES are
19 somehow responsible for the acts alleged herein as the agents, employers, representatives
20 or employees of other named Defendants, and in doing the acts herein alleged were
21 acting within the scope of their agency, employment or representative capacity of said
22 named Defendant.
- 23 7. The tortious acts and omissions alleged to have occurred herein were performed by
24 Defendants' management level employees. Defendants allowed and/or condoned a
25 continuing pattern of unlawful practices, and have caused, and will continue to cause,
26 Plaintiff economic damage in an amount to be proven at trial.
- 27 8. Defendants had constructive knowledge of the tortious acts and/or omissions alleged
28 herein as the result of participating in the wrongful acts or ratifying or affirming the acts

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- once heard or known of.
9. Defendants committed the acts alleged herein maliciously, fraudulently, oppressively, and with the wrongful intention of injuring Plaintiff, and acted with an improper and evil motive amounting to malice or despicable conduct. Alternatively, Defendants' wrongful conduct was carried out with a conscious disregard for Plaintiff's rights.
10. Such tortious acts were authorized or ratified by upper-level managerial employees of Defendants. The actions of Defendants, and each of them, against the Plaintiff constitute unlawful practices in violation of California law, and have caused, and will continue to cause Plaintiff loss of earnings, loss of employment benefits, and other losses in amounts to be proven at trial.
11. As a further proximate result of the unlawful actions of Defendants, and each of their agents, against Plaintiff as alleged herein, Plaintiff has been harmed in that he has suffered emotional pain, humiliation, mental anguish, loss of enjoyment of life, and emotional distress.
12. Defendants' conduct warrants the assessment of punitive damages in an amount sufficient to punish Defendants and deter others from engaging in similar conduct.
13. On or about February 7, 2018, Plaintiff filed his charge against the CITY with the Department of Fair Employment & Housing ("DFEH"), thereafter on that same day Plaintiff received his right-to-sue letter against the CITY from the DFEH. These documents are collectively attached hereto as "EXHIBIT A."

SPECIFIC FACTUAL ALLEGATIONS

14. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
15. On or about July 14, 2013, Plaintiff began his employment with the CITY, as a Maintenance Worker I. During Plaintiff's employment, he began to experience harassment and discrimination on the basis of his sexual orientation.
16. At all relevant times herein mentioned, Plaintiff performed his job in a competent and diligent manner.

- 1 17. Almost immediately after Plaintiff's employment began, Dora (LNU), a co-worker who
2 worked in the maintenance shop [The maintenance shop was the place where course
3 employees performed maintenance on golf carts and where they collected the tools to
4 perform their job duties] began making sexual comments and gestures towards Plaintiff
5 designed to harass and intimidate him. Even after Plaintiff made it clear to Dora (LNU)
6 that he was not comfortable with her sexual gestures and references, Dora (LNU)
7 continued to harass, mock and discriminate against him on numerous occasions.
- 8 18. For example, Dora (LNU) made such comments as, "I thought you liked me?" or "you're
9 not a real man," or words to that effect.
- 10 19. Additionally, Dora (LNU) used non-verbal harassment. On one occasion, Dora (LNU)
11 suggestively sucked on a lollipop, and followed up by telling Plaintiff "he shouldn't be
12 afraid of liking her," or words to that effect. Plaintiff protested Dora's (LNU) conduct by
13 immediately walking away and not participating as the advances were unwelcome.
- 14 20. At all material times, Erick Scribner ("Scribner") and Phil Fitzgerald ("Fitzgerald") were
15 Plaintiffs supervisors.
- 16 21. On or about September 1, 2014, Plaintiff reported Dora (LNU)'s sexual harassment to
17 Scribner. However, Scribner did not follow up with Plaintiff about his complaints.
- 18 22. On or about September 2, 2014, Dora (LNU) approached Plaintiff and apologized.
19 Plaintiff believed this apology would mark the end of the harassment. However, Plaintiff
20 was mistaken. On Plaintiff's information and belief, Scribner told Dora (LNU) about
21 Plaintiff's complaints against her but did not discipline her. Consequently, what followed
22 was an increase in homophobic slurs and harassment by Dora (LNU). Her blatant
23 increase in the use homophobic jokes and language included but was not limited to such
24 words as "joto," or words to that effect. "Joto" is a Spanish derogatory term for gay men.
25 On Plaintiff's information and belief, Dora (LNU) stopped working at the CITY in 2016.
- 26 23. On or about January 2015, CITY Director Roger Miller ("Miller") instituted a mandatory
27 helmet requirement, which excluded employees working at the maintenance shop. In
28 retaliation for Plaintiff's complaints, Scribner chose to selectively enforce the helmet

1 requirement on Plaintiff while Plaintiff was stationed at the maintenance shop. Plaintiff
2 felt Scribner's conduct was designed to harass and intimidate him in retaliation for his
3 complaint because he did not implement this requirement with any of Plaintiff's
4 coworkers.

5 24. Specifically, on one occasion, Scribner approached Plaintiff while he was working at the
6 maintenance shop and asked, "what are you doing?" or words to that effect. Plaintiff told
7 Scribner he did not understand what Scribner was talking about. Scribner responded,
8 "You're playing games" and "I told you to wear a helmet while in here," or words to that
9 effect. Plaintiff felt targeted by Scribner. Plaintiff protested that his understanding was
10 that the helmet requirement only applied while working out on the course grounds, not
11 while at the maintenance shop. He further told Scribner he felt harassed by his conduct.
12 Scribner dismissed Plaintiff's complaints.

13 25. Plaintiff had a meeting with Scribner and superintendent Fitzgerald to discuss the scope
14 of the helmet requirement and Scribner's harassing conduct towards him. At the meeting,
15 both men dismissed Plaintiff's complaints.

16 26. Plaintiff continued to suffer harassment. Plaintiff began to suffer from mental anguish
17 and sleeplessness.

18 27. On or about July 30, 2015, Plaintiff filed a report with Human Resources ("HR")
19 Manager Amy Reeve ("Reeve"), regarding inappropriate conduct, language and jokes
20 with a homophobic context involving Scribner and other CITY employees.

21 28. For example, CITY employees made liberal use of the homophobic term "faggot." On
22 other occasions, CITY employees would defile the word "gay" and purposefully use it in
23 a negative context, stating "that's gay" or words to that effect. Reeve told Plaintiff the
24 CITY would investigate his complaints.

25 29. On or about August 20, 2015, the CITY completed its investigation into Plaintiff's
26 complaints. Reeve and Fitzgerald interviewed Scribner. The CITY concluded that the
27 use of insensitive language by Golf Services employees and general "shop talk" was
28 confirmed by Scribner and sustained, although specific allegations or people using this

1 language were not identified. It further concluded that, as a result of its findings, the
2 CITY would take appropriate remedial action, including a mandatory training on
3 harassment prevention for all Golf Services employees.

4 30. On September 30, 2015, all employees attended discrimination and harassment training.

5 31. In or about October 2015, in further retaliation for Plaintiff's complaint, Fitzgerald
6 informed Plaintiff that the CITY no longer needed his services for the winter season and
7 that Plaintiff would not be reinstated until April of 2016. Plaintiff had worked the
8 previous two winters. On information and belief, no other employee was taken off of the
9 winter season schedule completely. In an effort to get rid of Plaintiff, Fitzgerald advised
10 Plaintiff to seek employment in alternate departments that were allegedly hiring full time.

11 32. After being told that he would be off for the entire winter season, Plaintiff broke down on
12 several occasions while driving his machine around the course. On Plaintiff's
13 information and belief, Plaintiff's coworkers and supervisors witnessed Plaintiff's
14 distress.

15 33. In or about December 2015, Fitzgerald called Plaintiff requesting that Plaintiff return to
16 part-time employment at the CITY. Plaintiff had no other choice but to accept in order to
17 maintain his benefits, which require an eight (8) hour workweek minimum.

18 34. However, in continued retaliation to Plaintiff's complaint, Plaintiff was perpetually set to
19 work weekends only. The CITY denied any and all of Plaintiff's requests for a rotation
20 change even though all other CITY employees were rotated through different time slots.

21 35. In or about April 2016, Plaintiff returned to full-time employment at the CITY. However,
22 in continued retaliation for Plaintiff's complaint, he was forced to remain on the weekend
23 rotation. Plaintiff had been rotated similar to all other employees prior to filing his
24 complaint against Scribner.

25 36. In further retaliation, Fitzgerald took Plaintiff off all holidays. This translated to a
26 decrease in pay since the CITY pays higher for holidays.

27 37. Throughout his employment, Plaintiff felt extremely isolated from his friends and family
28 due to his weekend work schedule. He spent many sleepless nights crying himself to

1 — sleep. While being forced to work weekend shifts only, Plaintiff began to feel hopeless
2 and started cutting himself (face and arms).

3 38. On or around April 20, 2016, Plaintiff received his annual performance review from
4 Fitzgerald. Fitzgerald told Plaintiff, "I don't give positive reviews," or words to that
5 effect. This was the first time Fitzgerald had reviewed Plaintiff's performance. In
6 response to the low review, Plaintiff asked Fitzgerald about further training. Plaintiff felt
7 Fitzgerald gave him a low performance review in retaliation for his complaints. In his
8 only other performance review, Plaintiff had scored "meets standards" on all categories.

9 39. From April to June 2016, Plaintiff called HR several times to inform Reeve that the
10 situation with Fitzgerald and Scribner was deteriorating. Plaintiff asked Reeve to file a
11 formal complaint against Fitzgerald. In response, Reeve recommended that Plaintiff
12 inform Fitzgerald that he was a gay man. Plaintiff felt uncomfortable because of this
13 suggestion. During this meeting, Plaintiff cried. He felt frustrated at the CITY's inaction
14 in regards to his complaints.

15 40. Reeve further informed Plaintiff that he would be able to obtain eight (8) free counseling
16 sessions in order to cope with this ongoing harassment and retaliation. Though Plaintiff
17 requested that Reeve arrange these counseling sessions, Reeve never attempted any
18 follow-up.

19 41. In or about July 2016, Fitzgerald saw Plaintiff contacting HR via telephone. Fitzgerald
20 informed Plaintiff that he was no longer allowed to contact HR during regular work
21 hours. If Plaintiff wished to contact HR, he would have to do it on his own time.

22 42. Harassment and discrimination based on Plaintiff's sexual orientation did not cease. In
23 fact, it got worse.

24 43. In or about August 2016, a piece of plywood measuring four (4) ft. by eight (8) ft.
25 containing the words "Sean [Plaintiff] sucks dick" and "Sean [Plaintiff] is a fag," or
26 words to that effect, was placed next to the CITY dumpster. Even after Plaintiff informed
27 Reeve, the sign remained visible for approximately two (2) to three (3) weeks. All
28 employees and customers viewed this sign. Plaintiff became subject to questions by other

1 CITY employees. For example, when Plaintiff asked, "Why is that plywood still up?"
2 employees would question, "But that's not you [Plaintiff], is it?" or words to that effect.
3 Plaintiff felt humiliated and personally targeted.

4 44. In or about September 2016, Plaintiff met with a union representative at City Hall.
5 Plaintiff was told that the union president would be in contact with the CITY regarding
6 homophobic slurs and the toxic behavior. Soon thereafter, the union president sent an
7 anti-harassment and discrimination speech, which was read aloud to all CITY employees.
8 On information and belief, the union president had been scheduled to personally deliver
9 the speech, but he did not attend. Neither Fitzgerald nor Miller attended this event. It
10 seemed no one took the harassment and discrimination complaints seriously.

11 45. While the speech was read, other CITY employees openly glared at Plaintiff. Scribner
12 minimized and disparaged the relevance of the speech by making such comments as,
13 "whatever that means" and that the speech "was less than a minute long," or words to that
14 effect. Only hours after the speech, Scribner and other CITY made homophobic and
15 reproachful remarks about the previous superintendent, Dave Jones, stating "we only got
16 our jobs from our boss because we bent over and took it up the ass," or words to that
17 effect.

18 46. On or about September 14, 2016, Plaintiff submitted a second complaint regarding
19 inappropriate work behavior at the CITY. Specifically, Plaintiff complained of coworkers
20 making homophobic remarks and comments including but not limited to the liberal use of
21 the word "faggot." Plaintiff also informed HR that he was the subject of retaliation for
22 filing a prior complaint in July of 2015.

23 47. In or about October 2016, The CITY retained an independent outside investigator, Debra
24 Reilly of Reilly Workplace Investigations ("Reilly") to conduct an investigation. Reilly
25 questioned each CITY employee for approximately thirty (30) minutes. When Reilly
26 inquired as to what Plaintiff desired out of the investigation, Plaintiff retorted that he only
27 wanted his hours back, and the ability to complete the work he was hired to do in an
28 environment free of discrimination and retaliation.

- 1 48. Shortly after the investigation began, Plaintiff was admitted into emergency room at
2 Sharp Healthcare Medical Center in Coronado. There, the emergency doctor placed
3 Plaintiff on suicide watch. Plaintiff felt he had nowhere else to turn. Plaintiff stayed at the
4 medical center for hours. He spoke to the mental health professional about the
5 continuous harassment and discrimination he was facing at the CITY and the effect it all
6 was having on him.
- 7 49. In or about October 2016, following the Reilly's investigation, Plaintiff became subject to
8 further retaliation in the form of increased harassment and discrimination based on his
9 sexual orientation. Specifically, co-workers either chose to ignore and exclude Plaintiff or
10 make such derogatory comments as "fucking faggot" or words to that effect directly to
11 Plaintiff.
- 12 50. In or about October 2016, Miller approached Plaintiff. Miller ordered Plaintiff to stop
13 making complaints since employees were losing hours due to being questioned. Miller
14 proposed a meeting between Plaintiff, Scribner, and Fitzgerald so that all the parties
15 could "hash things out," or words to that effect. Plaintiff agreed, under the belief that this
16 was an amicable way of resolving all issues. Ultimately, no such meeting ever took place,
17 and Miller did not follow up.
- 18 51. Soon thereafter, Plaintiff had a meeting with Scribner and Fitzgerald where they
19 informed him that they would once again decrease his hours for the winter season to a
20 total of eight (8) hours per week, making it impossible for him to maintain his benefits.
21 Plaintiff would still be required to remain on a weekend rotation. On information and
22 belief, the CITY did not take any other employee off of the winter season schedule to this
23 degree.
- 24 52. When Plaintiff complained to Scribner and Fitzgerald that he was unhappy working a
25 weekend schedule, they responded, "well if you're unhappy, you should quit," or words
26 to that effect. Plaintiff was coerced into signing a document stating the he would be off
27 for the winter with no return date presented.
- 28 53. During this same meeting, when Plaintiff became visibly upset, Fitzgerald laughed at

- 1 Plaintiff.
- 2 54. In retaliation for Plaintiff's complaints, the CITY placed employee Mike McGee
3 ("McGee") in Plaintiff's limited eight (8) hour rotation. Scribner and Fitzgerald were
4 both aware that Plaintiff and McGee had had a workplace complication and that this
5 would significantly degrade Plaintiff's working conditions. When Plaintiff requested that
6 he or McGee be reassigned, Scribner replied that Plaintiff had no choice in the matter,
7 and would be required to work with McGee for the remainder of his employment.
8 Scribner retorted, "if you [Plaintiff; do not like this arrangement, other departments are
9 hiring," or other words to that effect.
- 10 55. On or about January 31, 2017, Reeve informed Plaintiff about the results of the
11 investigation into his second complaint. Reeve told Plaintiff that the CITY found his
12 claims to be unsubstantiated. When Plaintiff asked Reeve if the results were going to
13 affect his ability to return to full-time employment, she assured him he would be reinstated
14 to full-time in the summer.
- 15 56. In or about March 2017, the CITY had not yet notified Plaintiff whether he would be
16 returning to full time employment. In an effort to obtain a stable income and full work
17 schedule, Plaintiff attempted to contact Miller and Fitzgerald. Plaintiff called Fitzgerald
18 and emailed director Miller. In response, Fitzgerald called Plaintiff and left him a
19 message stating, "the CITY had no plans to increase Plaintiff's hours and that he hoped
20 he was doing well," or words to that effect. As for Miller, he emailed Plaintiff back
21 stating, "talk to Phil," or words to that effect.
- 22 57. Soon thereafter, in or about March 2017, on information and belief, Plaintiff became
23 aware that the CITY was holding interviews to bring on new people rather than
24 reinstating him to full time employment status.
- 25 58. In or about May 2017, Plaintiff had yet to be reinstated to full-time employment, as
26 Reeve assured him on January 31, 2017, and remained on an eight-hour workweek
27 schedule. CITY employees significantly increased their verbal harassment and
28 discrimination against Plaintiff. Specifically, being called a "fucking faggot," on an

1 almost daily basis.

2 59. On or around May 30, 2017, Plaintiff contacted HR to lodge another complaint. Interim
3 HR representative Irene Mosley (“Mosley”) informed Plaintiff that the CITY considered
4 his case closed and would not be accepting any additional complaints from him.

5 60. On or about July 8, 2017, Plaintiff’s knee and back gave out while conducting routine
6 work at the CITY. Plaintiff informed co-employee Steve (LNU) that he was injured, and
7 relied on him to report this to the CITY. Fitzgerald had previously met with all of the
8 maintenance workers and represented that Steve (LNU) was in charge whenever Scribner
9 and him were not around.

10 61. Soon thereafter, on the same day, Plaintiff went to the hospital to ascertain the extent of
11 his injuries and was instructed by Dr. Power to take immediate medical leave.

12 62. On or about September 14, 2017, Dr. Power cleared Plaintiff to return to work.

13 63. Soon thereafter, Plaintiff went to the CITY’s workers compensation office and spoke to
14 Michelle Ledesma (“Ledesma”), the CITY’s worker’s compensation representative. He
15 gave her the doctor’s note allowing him to return to work. Ledesma told Plaintiff he
16 would be hearing from Fitzgerald in the near future to discuss his return date. However,
17 neither Fitzgerald nor any other CITY employee made any attempt to contact Plaintiff.
18 Over the next two weeks, Plaintiff made numerous attempts to contact Ledesma, to no
19 avail.

20 64. To date, the CITY has not contacted Plaintiff to address his return to work.

21 65. Plaintiff currently receives period checks in the amount of \$0.85 from the CITY and is no
22 longer being charged union dues. This minuscule income in combination with the on-
23 going disparate treatment Plaintiff received based on his sexual orientation, the instances
24 of humiliation, and lack of support from his superiors make it impossible for Plaintiff
25 to survive in his position. Defendant wrongfully terminated Plaintiff’s employment.

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FIRST CAUSE OF ACTION

SEXUAL HARASSMENT

[Cal. Gov't Code § 12940(j)(1)]

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66. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

67. Plaintiff was subject to unwanted harassing conduct on the basis of his sex, as set forth herein.

68. The harassing conduct was severe and pervasive.

69. A reasonable man in Plaintiff's circumstances would have considered the work environment to be hostile or abusive, and Plaintiff did in fact consider the work environment to be hostile or abusive.

70. Plaintiff's supervisor knew or should have known of this conduct and failed to take immediate and appropriate corrective action, as stated herein.

71. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has sustained and continues to sustain substantial losses in earnings, employment benefits, employment opportunities, and Plaintiff has suffered other economic losses in an amount to be determined at time of trial. Plaintiff has sought to mitigate these damages.

72. As a further direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and physical pain and anguish, all to his damage in a sum to be established according to proof.

73. As a result of Defendants' deliberate, outrageous, despicable conduct, Plaintiff is entitled to recover punitive and exemplary damages in an amount commensurate with Defendants' wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

74. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled to recover prevailing party attorney

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1 **SECOND CAUSE OF ACTION**

2 **HARASSMENT ON BASIS OF SEXUAL ORIENTATION**

3 **[Cal. Gov't Code § 12940(j)(1)]**

4 75. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
5 the preceding paragraphs as though fully set forth herein.

6 76. Plaintiff was subject to unwanted harassing conduct on the basis of his sexual orientation,
7 as set forth herein.

8 77. The harassing conduct was severe and pervasive.

9 78. A reasonable person in Plaintiff's circumstances would have considered the work
10 environment to be hostile or abusive, and Plaintiff did in fact consider the work
11 environment to be hostile or abusive.

12 79. The individual engaging the conduct was a supervisor, and Defendants had knowledge of
13 the conduct and failed to take immediate and appropriate corrective action.

14 80. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
15 sustained and continues to sustain substantial losses in earnings, employment benefits,
16 employment opportunities, and Plaintiff has suffered other economic losses in an amount
17 to be determined at time of trial. Plaintiff has sought to mitigate these damages.

18 81. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
19 suffered and continues to suffer humiliation, emotional distress, loss of reputation, and
20 mental and physical pain and anguish, all to his damage in a sum to be established
21 according to proof.

22 82. As a result of Defendant's deliberate, outrageous, despicable conduct, Plaintiff is entitled
23 to recover punitive and exemplary damages in an amount commensurate with
24 Defendant's wrongful acts and sufficient to punish and deter future similar reprehensible
25 conduct.

26 83. In addition to such other damages as may properly be recovered herein, Plaintiff is
27 entitled to recover prevailing party attorney's fees pursuant to Government Code section
28 12965(b).

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THIRD CAUSE OF ACTION

DISCRIMINATION ON BASIS OF SEXUAL ORIENTATION

[Cal. Gov't Code § 12940(a)]

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- 4 84. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
- 5 the preceding paragraphs as though fully set forth herein.
- 6 85. Defendant believed that Plaintiff was a gay male.
- 7 86. Defendant, by and through its employees and agents, engaged in conduct that, taken as a
- 8 whole, materially and adversely affected the terms and conditions of Plaintiff's
- 9 employment, as stated herein, including termination.
- 10 87. Plaintiff believes and thereon alleges that his sexual orientation was a substantial
- 11 motivating reason for Defendant engaging in conduct that, when taken as a whole,
- 12 materially and adversely affected the terms, conditions and privileged of Plaintiff's
- 13 employment, including termination.
- 14 88. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
- 15 sustained and continues to sustain substantial losses in earnings, employment benefits,
- 16 employment opportunities, and Plaintiff has suffered other economic losses in an amount
- 17 to be determined at time of trial. Plaintiff has sought to mitigate these damages.
- 18 89. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
- 19 suffered and continues to suffer humiliation, emotional distress, loss of reputation, and
- 20 mental and physical pain and anguish, all to his damage in a sum to be established
- 21 according to proof.
- 22 90. As a result of Defendant's deliberate, outrageous, despicable conduct, Plaintiff is entitled
- 23 to recover punitive and exemplary damages in an amount commensurate with
- 24 Defendant's wrongful acts and sufficient to punish and deter future similar reprehensible
- 25 conduct.
- 26 91. In addition to such other damages as may properly be recovered herein, Plaintiff is
- 27 entitled to recover prevailing party attorney's fees pursuant to Government Code section
- 28 12965(b).

1 **FOURTH CAUSE OF ACTION**

2 **RETALIATION/WRONGFUL TERMINATION**

3 **[Cal. Gov't Code § 12940(h)]**

4 92. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
5 the preceding paragraphs as though fully set forth herein.

6 93. Plaintiff opposed unlawful sexual orientation harassment and discrimination, as stated
7 herein.

8 94. Defendant, by and through its employees and agents, engaged in conduct that, taken as a
9 whole, materially and adversely affected the terms and conditions of Plaintiff's
10 employment, as stated herein, including termination.

11 95. Plaintiff believes and thereon alleges that his complaint regarding sexual orientation
12 harassment and discrimination, as well as sexual harassment of other employees, were a
13 substantial motivating reason for Defendant engaging in conduct that, taken as a whole,
14 materially and adversely affected the terms and conditions of Plaintiff's employment,
15 including termination.

16 96. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
17 sustained and continues to sustain substantial losses in earnings, employment benefits,
18 employment opportunities, and Plaintiff has suffered other economic losses in an amount
19 to be determined at time of trial. Plaintiff has sought to mitigate these damages.

20 97. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
21 suffered and continues to suffer humiliation, emotional distress, loss of reputation, and
22 mental and physical pain and anguish, all to his damage in a sum to be established
23 according to proof.

24 98. As a result of Defendant's deliberate, outrageous, despicable conduct, Plaintiff is entitled
25 to recover punitive and exemplary damages in an amount commensurate with
26 Defendant's wrongful acts and sufficient to punish and deter future similar reprehensible
27 conduct.

28 99. In addition to such other damages as may properly be recovered herein, Plaintiff is

1 entitled to recover prevailing party attorney's fees pursuant to Government Code section
2 12965(b).

3 **FIFTH CAUSE OF ACTION**

4 **FAILURE TO PREVENT HARASSMENT, DISCRIMINATION AND RETALIATION**

5 **[Cal. Gov't Code § 12940(k)]**

6 100. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
7 the preceding paragraphs as though fully set forth herein.

8 101. Plaintiff was subject to unwanted harassing and discriminatory conduct on the basis of
9 his sexual orientation, as set forth herein. Plaintiff was also subject to retaliation because
10 he opposed Defendant's unlawful retaliation.

11 102. Defendant failed to take reasonable steps to prevent the harassment, discrimination and
12 retaliation as described herein.

13 103. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
14 sustained and continues to sustain substantial losses in earnings, employment benefits,
15 employment opportunities, and Plaintiff has suffered other economic losses in an amount
16 to be determined at time of trial. Plaintiff has sought to mitigate these damages.

17 104. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
18 suffered and continues to suffer humiliation, emotional distress, loss of reputation, and
19 mental and physical pain and anguish, all to his damage in a sum to be established
20 according to proof.

21 105. As a result of Defendant's deliberate, outrageous, despicable conduct, Plaintiff is entitled
22 to recover punitive and exemplary damages in an amount commensurate with
23 Defendant's wrongful acts and sufficient to punish and deter future similar reprehensible
24 conduct.

25 106. In addition to such other damages as may properly be recovered herein, Plaintiff is
26 entitled to recover prevailing party attorney's fees pursuant to Government Code section
27 12965(b).

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SIXTH CAUSE OF ACTION
DISCRIMINATION ON BASIS OF MEDICAL CONDITION
[Cal. Gov't § 12940(a)]

107. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

108. Plaintiff suffered from a medical condition, as set forth herein.

109. Plaintiff believes and hereon alleges that his medical condition was a substantial motivating reason for Defendant engaging in conduct that, taken as a whole, materially and adversely affected the terms and conditions of his employment, up to and including terminating his employment.

110. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has sustained and continues to sustain substantial losses in earnings, employment benefits, employment opportunities, and Plaintiff has suffered other economic losses in an amount to be determined at time of trial. Plaintiff has sought to mitigate these damages.

111. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and physical pain and anguish, all to his damage in a sum to be established according to proof.

112. As a result of Defendant's deliberate, outrageous, despicable conduct, Plaintiff is entitled to recover punitive and exemplary damages in an amount commensurate with Defendant's wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

113. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled to recover prevailing party attorney's fees pursuant to Government Code section 12965(b).

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1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**

3 **[Cal. Gov't Code § 12940(n)]**

4 114. Plaintiff re-alleges and incorporates by reference each and every allegation contained in
5 the preceding paragraphs as though fully set forth herein.

6 115. Plaintiff had a medical condition that allowed him to work with accommodation. Plaintiff
7 requested accommodation, as alleged herein.

8 116. Defendant did not engage in a timely, good faith, interactive process with Plaintiff to
9 determine effective reasonable accommodations.

10 117. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
11 sustained and continues to sustain substantial losses in earnings, employment benefits,
12 employment opportunities, and Plaintiff has suffered other economic losses in an amount
13 to be determined at time of trial. Plaintiff has sought to mitigate these damages.

14 118. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
15 suffered and continues to suffer humiliation, emotional distress, loss of reputation, and
16 mental and physical pain and anguish, all to his damage in a sum to be established
17 according to proof.

18 119. As a result of Defendant's deliberate, outrageous, despicable conduct, Plaintiff is entitled
19 to recover punitive and exemplary damages in an amount commensurate with
20 Defendant's wrongful acts and sufficient to punish and deter future similar reprehensible
21 conduct.

22 120. In addition to such other damages as may properly be recovered herein, Plaintiff is
23 entitled to recover prevailing party attorney's fees pursuant to Government Code section
24 12965(b).

25 **EIGHTH CAUSE OF ACTION**

26 **FAILURE TO ACCOMMODATE**

27 **[Cal. Gov't Code § 12940(m)]**

28 121. Plaintiff re-alleges and incorporates by reference each and every allegation contained in

1 the preceding paragraphs as though fully set forth herein.

2 122. Plaintiff had a medical condition that allowed him to work with accommodation.

3 Plaintiff requested accommodation, as alleged herein.

4 123. Defendants did not reasonably accommodate Plaintiff's physical disability; instead, they
5 did not contact him to return and, ultimately, terminated his employment.

6 124. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has
7 sustained and continues to sustain substantial losses in earnings, employment benefits,
8 employment opportunities, and Plaintiff has suffered other economic losses in an amount
9 to be determined at time of trial. Plaintiff has sought to mitigate these damages.

10 125. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff suffered
11 emotional distress, to his damage in a sum to be established according to proof.

12 126. As a result of Defendants' deliberate, outrageous, despicable conduct, Plaintiff is entitled
13 to recover punitive and exemplary damages in an amount commensurate with
14 Defendants' wrongful acts and sufficient to punish and deter future similar reprehensible
15 conduct.

16 127. In addition to such other damages as may properly be recovered herein, Plaintiff is
17 entitled to recover prevailing party attorneys' fees pursuant to Government Code section
18 12965(b).

19 **WHEREFORE**, Plaintiff prays for the following relief:

- 20 1. For compensatory damages, including back pay, front pay, and other monetary
21 relief, in an amount according to proof;
- 22 2. For special damages in an amount according to proof;
- 23 3. For punitive damages in an amount necessary to make an example of and to
24 punish Defendants, and to deter future similar misconduct;
- 25 4. For mental and emotional distress damages;
- 26 5. For costs of suit, including attorneys' fees as permitted by law, including those
27 permitted by Government Code section 12965(b);
- 28 6. For an award of interest, including prejudgment interest, at the legal rate as

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permitted by law, including those permitted by Government Code section 12965(b);

- 7. For injunctive relief;
- 8. For such other and further relief as the Court deems proper and just under all the circumstances.

PLAINTIFF SEAN RYAN demands a jury trial on all issues in this case.

DATED: February 6, 2018

GRUENBERG LAW



JOSHUA D. GRUENBERG
PAMELA VALLERO
Attorneys for Plaintiff,
SEAN RYAN

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EXHIBIT A

- (1) PLAINTIFF'S CHARGE FILED WITH THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING (DFEH);
- (2) PLAINTIFF'S RIGHT TO SUE LETTERS FROM THE DFEH.



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 | TDD (800) 700-2320
<http://www.dfeh.ca.gov> | email: contact.center@dfeh.ca.gov

February 7, 2018

Pamela Rivera, Esq
2155 First Avenue
San Diego, California 92101

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 201802-01109307
Right to Sue: Ryan / City of Coronado

Dear Pamela Rivera, Esq:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA 95758
(800) 884-1684 | TDD (800) 700-2320
<http://www.dfeh.ca.gov> | email: contact.center@dfeh.ca.gov

February 7, 2018

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 201802-01109307
Right to Sue: Ryan / City of Coronado

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



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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(800) 884-1684 | TDD (800) 700-2320
<http://www.dfeh.ca.gov> | email: contact.center@dfeh.ca.gov

February 7, 2018

Sean Ryan
2155 First Avenue
San Diego, California 92101

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 201802-01109307
Right to Sue: Ryan / City of Coronado

Dear Sean Ryan,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective February 7, 2018 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 contact 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

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**
 (Gov. Code, § 12900 et seq.)

5 **In the Matter of the Complaint of**
6 **Sean Ryan**

DFEH No. 201802-01109307

7 Complainant,

8 vs.

9 **City of Coronado**
10 **1825 Strand Way**
11 **Coronado, California 92118**

Respondent.

12 1. Respondent **City of Coronado** is an **employer** subject to suit under the
13 California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

14 2. Complainant **Sean Ryan**, resides in the City of **San Diego** State of **California**.

15 3. Complainant alleges that on or about **September 14, 2017**, respondent took the
16 following adverse actions:

17 **Complainant was harassed** because of complainant's sexual orientation.

18 **Complainant was discriminated against** because of complainant's sexual
19 orientation, medical condition (cancer or genetic characteristic) and as a result of the
20 discrimination was terminated, denied a work environment free of discrimination
21 and/or retaliation.

22 **Complainant experienced retaliation** because complainant reported or resisted
23 any form of discrimination or harassment and as a result was terminated, denied a
24 work environment free of discrimination and/or retaliation.

25 **Additional Complaint Details:** On or around July 14, 2013, Respondent hired
26 Complainant as a Maintenance Worker I. Soon thereafter, Complainant was
27 subjected to sexually harassing conduct by one of his coworkers. Complainant
28 complained to his supervisors, but no action was taken to prevent further sexual
harassment. Instead, the harassing behavior only worsened. Complainant's

1 supervisor began harassing Complainant in retaliation for his complaints about the
2 sexual harassment and supervisors and coworkers began to harass Complainant on
3 the basis of his sexual orientation. On or about July 30, 2015, Complainant
4 contacted Human Resources and lodged a formal complaint. On or around August
5 20, 2015, Respondent completed its investigation. Respondent admitted insensitive
6 language had been used by Complainant's supervisor but no specific references
7 were identified. On or around September 30, 2015, Respondent provided a city-
8 wide training about sexual harassment and discrimination. In or about October
9 2015, in further retaliation, Respondent took Complainant entirely off the schedule
10 for the winter. Complainant suffered extreme emotional distress--he cried constantly
11 and was frustrated with Respondent's retaliatory actions. In or around December
12 2015, Complainant was allowed to return for the minimum 8-hr workweek and was
13 indefinitely placed on the weekend rotation. After being forced to work every
14 weekend, Complainant became disconnected from his family and friends and
15 became increasingly depressed. In or around April 2016, Complainant contacted
16 HR again and complained that the relationship with his supervisors was
17 deteriorating. In or July 2016, Complainant's supervisor told him that he was not
18 allowed to contact HR while on the clock and would have to lodge any complaint on
19 his off days.

20 In or around August 2016, a piece of plywood was placed by the dumpster at
21 Complainant's work. The plywood was soon covered with homophobic slurs against
22 Complainant. Respondent did not remove the plywood for approximately 3 weeks.
23 On or around September 14, 2016, Complainant lodged a second complaint against
24 discrimination and harassment based on his sexual orientation. Respondent began
25 an investigation. Shortly after the investigation began, Respondent's employees
26 referred to Complainant by using the derogatory term, "faggot." Shortly thereafter,
27 Complainant was admitted into the emergency room for depression and was placed
28 on suicide watch. After the investigation, the harassing, discriminatory and
retaliatory behavior only worsened. In or around October 2016, Respondent again
took Complainant entirely off of the winter schedule. When he complained about
being taken off the rotation, Complainant's supervisor told him he should quit. In or
around January 2017, Respondent informed Complainant of the results of the
investigation and told him he would be notified when he was returning to full-time.
By March 2017, Complainant had not been fully reinstated. When Complainant
complained, his supervisors told him they had no intention of reinstating him to full
time. In or around May 2017, Complainant discovered Respondent was interviewing
new candidates for his position. On or around May 30, 2017, Complainant
attempted to lodge another complaint, but the interim HR director told him
Respondent would no longer accept any complaint from him because it considered
his case "closed".

On or around July 8, 2017, Complainant injured his knee while performing work for
Respondent. He was placed on immediate medical leave. On or around September
14, 2017, Complainant was cleared to return to work. He provided the note to

1 Respondent and was told he would be contacted by Respondent in the near future
2 to address his return. To date, Complainant has not returned to work. He has made
3 numerous attempts to contact Respondent and his supervisors to no avail.
4 Complainant currently receives period checks in the amount of \$0.85 from
5 Respondent and is no longer being charged union dues. This minuscule income in
6 combination with the on-going disparate treatment Complainant received based on
7 his sexual orientation, the instances of humiliation, and lack of support from his
8 superiors make it impossible for Complainant to survive in his position. Respondent
9 wrongfully terminated Complainant's employment.
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1 VERIFICATION

2 I, **Pamela Vallero**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On February 7, 2018, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

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San Diego, California