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ATTORNEYS FOR PLAINTIFF

GABRIEL FAJARDO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GABRIEL FAJARDO,

PLAINTIFF,

VS.

CITY OF LOS ANGELES,

ADEL H. HAGEKHALIL,

AND DOES 1-20, INCLUSIVE,

CASE NUMBER: 20STCV27886

**PLAINTIFF GABRIEL FAJARDO'S  
COMPLAINT FOR DAMAGES:**

1. RETALIATION IN VIOLATION OF FEHA AND GOVERNMENT CODE §12940(h), FOR TESTIFYING IN CO-WORKER'S FEHA AND GOVERNMENT CODE §12940(a) RACIAL DISCRIMINATION, HARASSMENT AND RETALIATION JURY TRIAL;
2. RETALIATION IN VIOLATION OF CALIFORNIA PUBLIC POLICY, FEHA AND GOVERNMENT CODE §12940(h), ET SEQ., FOR EXERCISING CALIFORNIA FAMILY RIGHTS ACT RIGHTS AND FOR PROSECUTING FEHA AND GOVERNMENT CODE §12945.2 CALIFORNIA FAMILY RIGHTS ACT DISCRIMINATION, HARASSMENT, RETALIATION LAWSUIT;
3. DISCRIMINATION IN VIOLATION OF FEHA AND GOVERNMENT CODE §12940(h), FOR TESTIFYING IN CO-WORKER'S FEHA AND

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PLAINTIFF GABRIEL FAJARDO'S  
COMPLAINT FOR DAMAGES • DEMAND FOR JURY TRIAL

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- )        GOVERNMENT CODE §12940(a)  
)        RACIAL DISCRIMINATION,  
)        HARASSMENT, RETALIATION  
)        JURY TRIAL;  
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)        4.        HARASSMENT IN VIOLATION OF  
)        FEHA AND GOVERNMENT CODE  
)        §12940(h), FOR TESTIFYING  
)        IN CO-WORKER’S FEHA AND  
)        GOVERNMENT CODE §12940(a)  
)        RACIAL DISCRIMINATION,  
)        HARASSMENT, RETALIATION  
)        JURY TRIAL, HOSTILE WORK  
)        ENVIRONMENT;  
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)        5.        HARASSMENT IN VIOLATION OF  
)        FEHA AND GOVERNMENT CODE  
)        §12940(a), (j), BASED UPON RACE,  
)        HOSTILE WORK ENVIRONMENT;  
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)        6.        HARASSMENT IN VIOLATION OF  
)        FEHA AND GOVERNMENT CODE  
)        §12945.2, FOR EXERCISING  
)        CALIFORNIA FAMILY RIGHTS  
)        ACT RIGHTS, HOSTILE WORK  
)        ENVIRONMENT;  
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)        7.        HARASSMENT IN VIOLATION OF  
)        CALIFORNIA PUBLIC POLICY AND  
)        THE WORKERS’ COMPENSATION  
)        ACT AND LABOR CODE §§3200-6208  
)        FOR PROSECUTING WORKERS’  
)        COMPENSATION CLAIM, HOSTILE  
)        WORK ENVIRONMENT;  
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)        8.        DISCRIMINATION IN VIOLATION  
)        OF FEHA AND GOVERNMENT  
)        CODE §12940(h) FOR OPPOSITION  
)        TO FEHA’S UNLAWFUL  
)        EMPLOYMENT PRACTICES;  
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)        9.        RACIAL DISCRIMINATION IN  
)        VIOLATION OF CALIFORNIA,  
)        PUBLIC POLICY, FEHA AND  
)        GOVERNMENT CODE §§12920,  
)        12921, 12940(a);

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- ) 10. CALIFORNIA FAMILY RIGHTS  
) ACT DISCRIMINATION IN  
) VIOLATION OF CALIFORNIA,  
) PUBLIC POLICY, FEHA AND  
) GOVERNMENT CODE §§12920,  
) 12921, 12940(a), 12945.2;  
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- ) 11. RACIAL AND CALIFORNIA  
) FAMILY RIGHTS ACT  
) COMBINED DISCRIMINATION  
) IN VIOLATION OF CALIFORNIA,  
) PUBLIC POLICY, FEHA AND  
) GOVERNMENT CODE §§12920,  
) 12921, 12940(a), 12945.2;  
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- ) 12. FAILURE TO PREVENT FEHA  
) DISCRIMINATION, HARASSMENT,  
) RETALIATION IN VIOLATION  
) OF FEHA AND GOVERNMENT  
) CODE §12940(k);  
)
- ) 13. RETALIATION IN VIOLATION OF  
) CALIFORNIA PUBLIC POLICY AND  
) THE WORKERS COMPENSATION  
) ACT AND LABOR CODE §§3200-6208  
) FOR PROSECUTING WORKERS'  
) COMPENSATION CLAIM;  
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- ) 14. WHISTLEBLOWER RETALIATION  
) IN VIOLATION OF LABOR  
) CODE §1102.5(a), (b), (d);  
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- ) 15. WHISTLEBLOWER RETALIATION  
) IN VIOLATION OF CALIFORNIA  
) LABOR CODE §1102.5(a), (b), (d),  
) PREEMPTORY WHISTLEBLOWER  
) RETALIATION;  
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- ) 16. WHISTLEBLOWER RETALIATION  
) IN VIOLATION OF LABOR  
) CODE §1102.5(c), (d), WHISTLE-  
) BLOWER RETALIATION; AND  
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- ) 17. WHISTLEBLOWER RETALIATION  
) IN VIOLATION OF LABOR CODE  
) §§6310, 6400-6404, ET SEQ.,  
)

REPORTING WORKPLACE  
HEALTH & SAFETY ISSUES.

**PLAINTIFF GABRIEL FAJARDO'S  
DEMAND FOR A JURY TRIAL**

Plaintiff Gabriel Fajardo alleges:

BRIEF STATEMENT OF THE CASE

1. This is an employment retaliation, harassment and discrimination lawsuit brought by 16-year, seasoned, 44-year old, Chicano, Los Angeles Wastewater Collection Worker II, a single parent of a disabled son, against his employer City of Los Angeles. Fajardo engaged in multiple statutory "protected activities" including: (1) Fajardo filed his DFEH *Complaint of Discrimination*, obtained his "Right-to-Sue" and successfully prosecuted his LASC California Family Rights Act lawsuit, after City managers discriminated, harassed and retaliated against Fajardo because he exercised his statutory rights and took City-approved intermittent leave to attend to his disabled son's healthcare needs; (2) Fajardo provided truthful, adverse testimony in a co-worker James Pearl's FEHA discrimination, harassment and retaliation jury trial, which resulted in a \$17,394,973 verdict in favor of Pearl and against the City of Los Angeles, a jury verdict affirmed on appeal; (3) because of the City management's racial animus towards its City Chicano employees, as Vice President of the Los Angeles City Employees Chicano Association ("LACECA"), Fajardo voiced his opposition to and challenged Bureau of Sanitation, Assistant Director Adel H. Hagekhalil's systematic anti-Chicano racist promotional practices and policies, which violated the City's "zero tolerance" policy against racial discrimination, which included a request City officials to hire a neutral third party to investigate Hagekhalil's racist promotional practices to prevent any cover-up; (4) Fajardo secured department employee signatures to a petition which was sent to City management seeking to promote qualified Chicano City employees based upon merit, in place and instead of Hagekhalil's routine anti-Chicano nepotism practice of promoting unqualified, non-Chicano employees, whom lacked merit; (5) Fajardo "*blew the whistle*" and reported City manager's orders to commit a state and federal crime and illegally dump an estimated 4,000 gallons of hazardous waste into the City's sewers,



1 which subjected him to criminal prosecution, a lengthy prison term, hefty monetary fines, which  
2 supplied the requisite “cause” City managers sought to terminate Fajardo’s City career in response to  
3 his engagement in statutory protected activities; (6) Fajardo “*blew the whistle*” and reported the  
4 City’s repeated, continuous violations of health and safety regulations regarding the City’s obsolete,  
5 defective, malfunctioning 40,000-60,000 pound, 3-axle trucks being used on City streets which  
6 exposed Fajardo, his co-workers and the citizens of the City of Los Angeles who used City streets and  
7 sidewalks to unreasonable and unnecessary risks of serious bodily injury, being maimed or being  
8 killed. On multiple occasions, Fajardo’s truth cost the City of Los Angeles, Department of Public  
9 Works, Bureau of Sanitation money, in the form of the settlement of his CFRA discrimination,  
10 harassment and retaliation lawsuit, as well as his co-worker’s multi-million dollar FEHA  
11 discrimination, harassment and retaliation jury verdict. On multiple occasions, Fajardo repeatedly  
12 exposed City managers’ unlawful misconduct. In response to Fajardo’s participation in statutory  
13 protected activities, City managers engaged in a continuous course of adverse employment actions,  
14 including conduct which discriminated, harassed and retaliated against Fajardo, “blackballed” and  
15 “targeted” Fajardo with unwarranted and baseless discipline to disguise their unlawful motivation.  
16 City managers besmirched Fajardo’s good name and workplace reputation, instructed managers and  
17 supervisors to “get Fajardo,” to fabricate a “paper trail” of discipline to establish “cause” for  
18 termination where cause did not exist, to prevent Fajardo from career advancement and promotion,  
19 management tactics designed to materially impact and alter the terms and conditions of Fajardo’s  
20 employment in an adverse, negative manner. In response to Fajardo’s engagement in statutory  
21 protected activity, City managers engaged in their adverse employment action, their ongoing  
22 campaign of continuous violations of Fajardo’s workplace rights, their discrimination, harassment and  
23 retaliation against Fajardo, where they treated Chicano Fajardo differently than his co-workers in the  
24 terms, conditions and privileges of his City employment, which included: (1) City managers  
25 repeatedly created a severe and pervasive hostile work environment; (2) City manager’s repeatedly  
26 assigned Fajardo to adverse, negative job assignments: (a) City managers demoted Crew Leader  
27 Fajardo’s position, down-classed Fajardo’s position where he reported to a subordinate Laborer  
28 member of his crew; (b) City managers asked Fajardo to engage in workplace criminal misconduct

1 under threat of discipline, suspension and termination for “insubordination” if he failed to comply; (c)  
2 City managers implored Fajardo’s supervisors to compel Fajardo’s engagement in workplace criminal  
3 misconduct, or they would subjected to the same discipline, suspension or termination for  
4 “insubordination” as Fajardo; (d) over Fajardo’s objection, City managers repeatedly assigned  
5 Fajardo their obsolete, defective, malfunctioning 40,000-60,000 pound, 3-axle, Vactor Condor “death  
6 trap” trucks to complete his catch basin cleaning Work Orders, which deliberately exposed Fajardo,  
7 his co-workers and the citizens of the City of Los Angeles using City streets and sidewalks to the  
8 unreasonable and unnecessary risk of being seriously injured, maimed or killed; (e) City managers  
9 assigned Fajardo to a distant yard location as punishment, their retaliation practice of “freeway  
10 therapy” because he engaged in protected activities; (3) City managers refused to afford Fajardo  
11 career advancement or promotion opportunities, implementing management’s pervasive anti-Chicano  
12 promotional practices and policies; (4) on July 24, 2019, which was 13-business days after the City  
13 appropriated \$15,000,000 to resolved the *Pearl* racial discrimination, harassment and retaliation  
14 judgment, City managers willfully and deliberately and in conscious disregard of Fajardo’s health,  
15 safety and life, “set up” Fajardo to become seriously injured, maimed or killed with their assignment  
16 of one of their obsolete, defective, malfunctioning 40,000-60,000 pound, 3-axle, Vactor Condor  
17 “Death Trap” trucks to carry out his catch basin cleaning Work Orders. Fajardo’s brakes “went out,”  
18 malfunctioned, which did not allow Fajardo to bring his 40,000-60,000 pound truck to a stop.  
19 Fajardo collided with a motorist innocently using the City streets, whom Fajardo initially thought he  
20 killed. This motorist, Fajardo and Fajardo’s co-worker passenger landed in the hospital emergency  
21 room because his brakes failed. These adverse employment actions materially and adversely affected  
22 the terms, conditions and privileges of Fajardo’s City employment, a course of continuous conduct  
23 reasonably likely to impair Fajardo’s job performance and Fajardo’s prospects for career  
24 advancement or promotion. The substantial motivating factor for these adverse employment actions  
25 were to discriminate, harass and retaliate against Fajardo in response to his engagement in statutory  
26 protected activities, management actions reasonably designed to create an atmosphere of fear and  
27 intimidation to deter him from engaging in statutory protected activity in the future. Fajardo seeks  
28 economic and non-economic damages, past and future, as well as statutory attorney’s fees.

DEFENDANT CITY OF LOS ANGELES

2. **Defendant City of Los Angeles.** Defendant City of Los Angeles and Does 1 through 10 inclusive (herein “City”), were municipal corporations duly authorized to do and did transact business as a governmental municipality in Los Angeles County, State of California. Defendant City was an “employer” as defined by *Government* Code §12926(d), as defendant regularly employed 5 or more persons and/or was a governmental municipality.

3. **Defendant Adel H. Hagekhalil.** Defendant Adel H. Hagekhalil and Does 11-20, inclusive (“Hagekhalil”) were residents of Los Angeles County, State of California, and were directors, managers, supervisors, agents, employees and/or officers of defendant City, or alternatively, acted separately, individually, apart and outside of the course and scope of that agency and/or employment with the City of Los Angeles.

4. **Fictitious Names.** The true names and capacities, whether individual, corporate, associate or otherwise of defendants sued herein as Does 1-20 are currently unknown to plaintiff who sues these defendants by these fictitious names. Plaintiff is informed, believes and thereupon alleges each defendant designated as a Doe was legally responsible in some manner for the events and happenings identified herein and caused plaintiffs' injuries and damages alleged herein. Plaintiff will seek leave of court to amend this complaint to show the true names and capacities of defendants designated as a Doe when ascertained.

## STATEMENT OF FACTS

APPLICABLE TO ALL CAUSES OF ACTION

5. **Plaintiff Gabriel Fajardo.** From November 2004, plaintiff Gerald Fajardo (“Fajardo”) was a seasoned, 43-year old, Chicano, single father, who was a resident of the County of Los Angeles, State of California. Fajardo was employed by the City of Los Angeles, Department of Public Works, Bureau of Sanitation, for a period of 16-years, most recently as a Wastewater Collection Maintenance Laborer II, after Fajardo held a similar position with the County of Los Angeles for a period of 9-years, or a total of 24-years of civil service.

6. **City of Los Angeles, Department of Public Works, Bureau of Sanitation.** The City of Los Angeles, Department of Public Works, consists of more than 5,500 employees and is

1 responsible for the design, construction, renovation and operation of public projects ranging from  
2 bridges to wastewater treatment plants, curbside collection, maintenance of streets, sidewalks, sewers,  
3 street lights and street trees. The Bureau of Sanitation has nearly 3,000 employees, 20 divisions, and  
4 25 work locations. The Bureau's core public services include (1) Wastewater Collection, Treatment  
5 and Disposal, including the operation and maintenance of four wastewater treatment water  
6 reclamation projects, over 6,400 miles of sewers, various pumping plants and ventilation stations to  
7 collect and treat 421-million gallons of wastewater per day; (2) Solid Waste Collection, Recycling  
8 and Disposal; (3) Watershed Protection of the Santa Monica Bay and the Los Angeles River.

9       7.       **Fajardo's Wastewater Collection Maintenance Laborer II Job Duties.** Fajardo's  
10 Wastewater Collection Maintenance Laborer II job duties included the performance of both semi-  
11 skilled and skilled tasks in the operation, maintenance and repair of 6,400 miles of sanitary sewers  
12 and storm drains, operated highly specialized sewer and storm drain cleaning equipment, utilized  
13 laptop computers to complete work assignments, performed research on wastewater collection assets,  
14 who acted as a working field supervisor over a small group of employees. Fajardo's job duties  
15 included: (a) performed inspections of sanitary sewers and storm drain maintenance holes or other  
16 facilities; (b) performed cleaning of sanitary sewers, sewer siphons, diversion structures, maintenance  
17 holes, catch basins, low flow structures, culverts, debris basins, storm drains and other collection  
18 system facilities; (c) responded to and investigated requests for service or complaints concerning such  
19 matters as sewer odors, blocked sewers, clogged catch basins, street flooding and made the necessary  
20 corrections; (d) operated a wide variety of specialized wastewater collection machinery which  
21 included high-velocity sewer cleaners combination sewer cleaners, continuous rodding machines,  
22 catch basin cleaners, dump trucks, hydraulically driven winch machines, closed-circuit television  
23 trucks and air compressors; (e) operated a wide variety of portable equipment utilized in wastewater  
24 collection systems maintenance, including portable pumps, portable ventilating fans, pneumatic tools  
25 and air quality monitoring instruments; (f) utilized a laptop computer with specialized software to  
26 complete daily work assignments and conduct research on collection system assets; (g) prepared a  
27 variety of reports including daily work reports, sanitary sewer overflow reports, material requests,  
28 Department of Transportation vehicle inspection reports and vehicle accident reports; and (h) may

1 appear as a witness in court cases regarding wastewater collection system activities. Fajardo held a  
2 valid California Class B driver's license with both Air Brakes and Tanker endorsements. Fajardo  
3 performed journey level collection system work which required excellent knowledge of the  
4 wastewater collection system operation and maintenance. Fajardo was charged with the  
5 responsibility of overseeing that adequate safety precautions were taken to protect himself, City  
6 employees, as well as the citizens of the City of Los Angeles from dangerous and unsafe conditions.

7       **8. Fajardo's Chain-of-Command.** In July 2019, Maintenance Laborer II Fajardo's  
8 chain-of-command included: multiple Laborers reported to Crew Leader Fajardo; Fajardo reported to  
9 a Supervisor, who reported to a Manager 1, who reported a Manager 2, who reported to Division  
10 Manager Barry Berggren, who reported to Assistant Director Adel H. Hagekhalil.

11       **9. Vice President Fajardo, Los Angeles City Employees Chicano Association.**  
12 Fajardo was a member of the Los Angeles City Employees Chicano Association ("LACECA"). The  
13 LACECA was an employee association of City of Los Angeles employees of Mexican descent. The  
14 LACECA's mission, goals and objectives were the promotion of equal employment opportunities in  
15 the City workplace, in City government and in the Los Angeles community, including the  
16 advancement, education, economic and social welfare of its Latino membership, the encouragement  
17 of the promotion of Latinos in City civil service, including the expansion and improvement of the  
18 City's Affirmative Action Program to bring about a more diverse representation of the population, to  
19 hear grievances of Latino City employees. At one point in time during Fajardo's membership he was  
20 elected as to the influential position of the LACECA Vice President.

21       **10. Fajardo Applied For and Secured City CFRA/FMLA Approval.** The City of Los  
22 Angeles offered their eligible employees California Family Rights Act (CFRA) and Family Medical  
23 Leave Act (FMLA) benefits. From April 2007, to present, Fajardo, a single father, exercised his  
24 CFRA/FMLA statutory rights when he applied for and the City approved his eligibility for  
25 CFRA/FMLA benefits, which allowed Fajardo intermittent time off to attend to his physically  
26 disabled son, who "coded" at the time of his birth, whom physicians revived, which left his son with  
27 assorted physical disabilities and anomalies. Each year Fajardo secured the City's approval of his  
28 CFRA/FMLA eligibility, which allowed him intermittent time off to attend to his s=disabled son's

1 healthcare and related disability issues.

2           **11. City Discrimination, Harassment, Retaliation Against Fajardo Because He**  
3 **Exercised His Statutory CFRA/FMLA Rights, Fajardo Sustained Heart Attack.** Following  
4 Fajardo's exercise of his statutory CFRA/FMLA rights, in response to Fajardo's taking intermittent  
5 time off to attend to his disabled son's healthcare and treatment, from November 2005 to January  
6 2012 City managers engaged in an ongoing, continuous, persistent series of acts and events which  
7 discriminated, harassed and retaliated against Fajardo directly related to his exercise of his  
8 CFRA/FMLA statutory rights. For example:

- 9           (a) City managers discriminated, harassed and retaliated against Fajardo by  
10                 openly mocking his son's disability;
- 11           (b) City managers discriminated, harassed and retaliated against Fajardo by  
12                 stating his son was "not disabled";
- 13           (c) City managers discriminated, harassed and retaliated against Fajardo by  
14                 falsely accusing him of falsifying his son's physical disability;
- 15           (d) City managers discriminated, harassed and retaliated against Fajardo by  
16                 falsely accusing Fajardo's son of "faking a disability";
- 17           (e) City managers discriminated, harassed and retaliated against Fajardo by  
18                 repeatedly insisting he was required to produce a "doctor's note," a  
19                 completely frivolous, unnecessary request after Fajardo already went  
20                 through the City's arduous, strenuous application process and secured  
21                 the City's CFRA/FMLA prior approval to take intermittent leave to attend  
22                 to his disabled son's healthcare and treatment;
- 23           (f) City managers discriminated, harassed and retaliated against Fajardo  
24                 when they falsely accused him of falsifying his son's physician notes  
25                 which identified his son's disability;
- 26           (g) City managers discriminated, harassed and retaliated against Fajardo  
27                 by repeatedly calling his son's medical providers to secure personal,  
28                 private, confidential HIPAA protected medical information regarding

1 his son in their efforts to undermine his City-approved CFRA/FMLA  
2 eligibility status;

3 (h) City managers discriminated, harassed and retaliated against Fajardo by  
4 telling him “FMLA leave was a bunch of bullshit”;

5 (i) City managers discriminated, harassed and retaliated against Fajardo by  
6 initiating false disciplinary investigations regarding his alleged lack of  
7 job performance, which were falsely exaggerated, when in truth, Fajardo’s  
8 job performance issues did not exist;

9 (j) City managers discriminated, harassed and retaliated against Fajardo by  
10 falsely marking Fajardo “AWOL,” or “AW,” i.e., absent without leave,  
11 when he exercised his statutory rights and took intermittent time off to  
12 attend to his disabled son, management’s deliberate, calculated, design  
13 to terrorize Fajardo, to “build a case of cause” to set up Fajardo for  
14 discharge, including termination of his employment for “failure to show  
15 up for work,” after Fajardo’s leave had been approved by the City;

16 (k) City managers discriminated, harassed and retaliated against Fajardo by  
17 openly criticizing Fajardo in front of co-workers, to deliberately impugn  
18 Fajardo and place him in negative, false light in front of co-workers, with  
19 comments like, “Fajardo is out again, I’m allergic to his fucking bullshit,”  
20 “Fajardo is making up his son’s illness,” “Fajardo’s FMLA leave is a  
21 fucking joke”;

22 (l) City managers discriminated, harassed and retaliated against Fajardo  
23 when his Supervisor advised him Managers initiated a false investigation  
24 into Fajardo’s job performance, which Fajardo intended to grieve. When  
25 Fajardo began to fill out the grievance paperwork, he suddenly developed  
26 rapid heart palpitations, began to sweat profusely, changed skin color and  
27 became cold and clammy, when his Supervisor called “911” because he  
28 thought Fajardo was experiencing an on-the-job heart attack in response

1 to learning about this Manager's false investigation. Fajardo was  
2 transported via ambulance from the workplace to the nearly hospital  
3 emergency room, where he underwent a 2-day hospitalization for treatment  
4 of a suspected heart attack.

5 (m) City managers discriminated, harassed and retaliated against Fajardo when  
6 they threatened to and did transfer Fajardo far away his City Yard, far  
7 away from his home, management's deliberate, designed "freeway therapy"  
8 to prevent ready access to his disabled son.

9 These were a few examples of the City managers' discrimination, harassment and retaliation  
10 against Fajardo in response to his exercise of his statutory CFRA/FMLA intermittent leave to attend  
11 to his disabled son. Each City managerial act of discrimination, harassment and retaliation was  
12 calculated and designed to terrorize Fajardo, to intimidate Fajardo, to instill fear into his mind and  
13 heart that he was subject to immediate discipline, suspension, demotion or termination upon a  
14 moment's notice every day he showed up for work, management conduct designed to force or coerce  
15 Fajardo to quit his job, to end his City career, to walk away from the City. Each City managerial act  
16 of discrimination, harassment and retaliation was calculated and designed to quash Fajardo, to create  
17 an atmosphere of fear and to deter him from engaging in statutory protected activity in the future, the  
18 classic "chilling effect" on Fajardo's right to exercise of his statutory rights.

19 FAJARDO ENGAGED IN PROTECTED ACTIVITY RELATED TO HIS  
20 FEHA DISCRIMINATION, HARASSMENT, RETALIATION ACTION

21 12. **Fajardo's DFEH Complaint of Discrimination, Harassment, Retaliation.** On May  
22 6, 2011, Fajardo engaged in statutory protected activity when he exercised his statutory rights when  
23 he filed his DFEH *Complaint of Discrimination, Harassment and Retaliation* in response to City  
24 managers' discrimination, harassment and retaliation against him after he exercised his CFRA/FMLA  
25 statutory rights and took intermittent time off from work to attend to his disabled son's healthcare.

26 13. **Fajardo's WCAB Application for Adjudication.** On May 26, 2011, Fajardo  
27 engaged in statutorily protected activity when he exercised his statutory rights and filed his Labor  
28 Code Workers' Compensation *Application for Adjudication of Workplace Benefits* for work-related



1 stress, anxiety and depression caused by the City managers' workplace discrimination, harassment  
2 and retaliation against Fajardo in direct response to the exercise of his CFRA/FMLA statutory rights,  
3 in direct response to Fajardo taking City approved intermittent time off work to attend to his disabled  
4 son's healthcare.

5       **14. Fajardo's FEHA Discrimination, Harassment, Retaliation LASC Lawsuit.** On  
6 January 20, 2012, Fajardo engaged in statutory protected activity when he exercised his statutory  
7 FEHA/CFRA/FMLA rights and filed his Los Angeles Superior Court FEHA discrimination,  
8 harassment and retaliation lawsuit based upon management's response to Fajardo's intermittent leave  
9 to attend to his physically disabled son, entitled *Gabriel Fajardo v. City of Los Angeles*, LASC  
10 Case Number BC477398. Fajardo's complaint alleged causes of action: (1) FEHA Harassment;  
11 (2) FEHA Retaliation; (3) CFRA Retaliation; (4) CFRA Discrimination; (5) FEHA Failure to Prevent  
12 Discrimination, Harassment and/or Retaliation.

13       **15. Fajardo's First Amended Complaint.** On March 19, 2012, Fajardo engaged in  
14 statutory protected activity when he filed his First Amended Complaint ("FAC") in *Fajardo v. City*  
15 *of Los Angeles*. Fajardo's FAC alleged the following causes of action: (1) FEHA Harassment;  
16 (2) FEHA Retaliation; (3) CFRA Retaliation; (4) CFRA Discrimination; (5) FEHA Failure to  
17 Prevent Discrimination, Harassment, and/or Retaliation; (6) FEHA Failure to Provide Reasonable  
18 Accommodation; (7) FEHA Failure to Engage in the Interactive Process.

19       **16. Fajardo's Second Amended Complaint.** On April 30, 2012, Fajardo engaged in  
20 statutory protected activity when he filed his Second Amended Complaint ("SAC") in *Gabriel*  
21 *Fajardo v. City of Los Angeles*. Fajardo's SAC alleged the following causes of action: (1) FEHA  
22 Harassment; (2) FEHA Retaliation; (3) CFRA Retaliation; (4) CFRA Discrimination; (5) FEHA  
23 Failure to Prevent Discrimination, Harassment, and/or Retaliation; (6) FEHA Disability  
24 Discrimination; (7) FEHA Failure to Provide Reasonable Accommodation; (8) FEHA Failure to  
25 Engage in the Interactive Process.

26       **17. Fajardo's CFRA/FMLA Sworn Deposition Testimony.** On November 9, 2012,  
27 Fajardo engaged in statutory protected activity when he exercised his statutory FEHA rights and gave  
28 sworn deposition testimony in *Fajardo v. City of Los Angeles*. During Fajardo's deposition he

1 identified the high-ranking City managers and supervisors who violated his CFRA/FMLA rights, who  
2 discriminated, harassed and retaliated against Fajardo in response to his exercise of his statutory  
3 CFRA/FMLA rights, where Fajardo identified his opposition to the City officials' unlawful acts,  
4 errors and omissions.

5       **18. Fajardo's MSJ Opposition Declaration.** On May 20, 2013, Fajardo engaged in  
6 statutory protected activity when he exercised his statutory FEHA rights and provided his sworn  
7 declaration in support of plaintiff Gabriel Fajardo's opposition to the City of Los Angeles' Motion for  
8 Summary Judgment, where the City of Los Angeles sought a judgment in their favor and against  
9 Fajardo without the benefit of a jury trial. Fajardo's declaration identified high-ranking City  
10 managers and supervisors who violated his CFRA/FMLA rights, who discriminated, harassed and  
11 retaliated against Fajardo in response to Fajardo's exercise of his statutory CFRA/FMLA rights,  
12 where Fajardo identified his opposition to the City officials' unlawful acts, errors and omissions.

13       **19. City of Los Angeles' Motion for Summary Judgment Denied.** On June 3, 2013, the  
14 Los Angeles Superior Court denied the City of Los Angeles' Motion for Summary Judgment.  
15 Fajardo's jury trial was scheduled for August 12, 2013.

16       **20. Fajardo's Settlement of His CFRA/FMLA LASC Lawsuit.** On July 25, 2013,  
17 Fajardo engaged in statutory protected activity when he exercised his statutory FEHA rights and  
18 resolved the *Fajardo v. City of Los Angeles* CFRA/FMLA discrimination, harassment and retaliation  
19 lawsuit. High-ranking City of Los Angeles, Department of Public Works, Bureau of Sanitation,  
20 Stormwater Directors, Managers and executives, including the Mayor, had notice of, authorized and  
21 approved Fajardo's settlement, which included Bureau of Sanitation Assistant Director Adel  
22 Hagekhalil. On August 19, 2013, the City filed a motion before the Los Angeles City Council  
23 seeking approval of the City Attorney's recommendation that the *Fajardo v. City of Los Angeles* be  
24 resolved via settlement, with funds from: (1) Stormwater Pollution Abatement Fund Liability Claims;  
25 and (2) Sewer Construction & Maintenance Fund Liability Claims. Fajardo's FEHA discrimination,  
26 harassment and retaliation lawsuit cost the Bureau money, of which Bureau management was acutely  
27 aware. Because Fajardo's engagement in statutory protected activity cost the Bureau money, Bureau  
28

managers and supervisors forever “black balled” Fajardo’s City career in the terms, compensation and conditions of his City employment, who placed a “target” on Fajardo’s back.

21. **Fajardo’s Workers’ Compensation Settlement.** On November 16, 2016, Fajardo engaged in statutory protected activity when he agreed to a Stipulation & Award in his Workers’ Compensation case based upon a 29% Permanent Disability, approved by WCAB’s Presiding Judge.

FAJARDO ENGAGED IN STATUTORY PROTECTED ACTIVITY

RELATED TO CO-WORKER JAMES PEARL’S

FEHA DISCRIMINATION, HARASSMENT, RETALIATION ACTION

22. **James Pearl’s DFEH Complaint of Discrimination.** On August 15, 2012, Fajardo’s co-worker James Pearl engaged in FEHA protected activity when he filed his DFEH *Complaint of Discrimination*. Pearl’s DFEH *Complaint of Discrimination* identified respondent City of Los Angeles, as well as individual co-respondents Robert Potter and Barry Berggren. Pearl described derogatory emails, City manager photoshopped pictures of him allegedly engaged in sexual act with a same-sex partner, another Bureau of Sanitation male employee, manager conduct motivated by their misperception of Pearl’s sexual orientation, as Pearl was a heterosexual, straight, married man.

23. **Co-Worker James Pearl’s LASC FEHA Harassment, Discrimination Complaint.** On August 15, 2013, Fajardo’s co-worker James Pearl filed his FEHA Discrimination, Harassment and Retaliation lawsuit entitled *James Pearl v. City of Los Angeles*, Los Angeles Superior Court, Case Number BC518568, which alleged the following causes of action: (1) FEHA Harassment; and (2) FEHA Failure to Prevent Harassment and Discrimination.

24. **Co-Worker James Pearl’s First Amended Complaint.** On November 18, 2013, Pearl filed his First Amended Complaint, which alleged the following causes of action: (1) FEHA Harassment; and (2) FEHA Failure to Prevent Harassment and Discrimination.

25. **Co-Worker James Pearl’s Second Amended Complaint.** On July 2, 2014, Pearl filed his Second Amended Complaint, which alleged the following causes of action: (1) FEHA Retaliation; (2) FEHA Harassment; (3) FEHA Discrimination; (4) FEHA Failure to Prevent Harassment and Discrimination in Violation of FEHA.

26. **Co-Worker James Pearl’s Third Amended Complaint.** On September 10, 2014,

1 Pearl filed his Third Amended Complaint, which alleged the following causes of action: (1) FEHA  
2 Harassment; (2) FEHA Failure to Prevent Harassment and Discrimination.

3       27.     **Fajardo Agreed to Be A Witness in Co-Worker's James Pearl's FEHA**  
4 **Discrimination, Harassment, Retaliation Lawsuit.** In July 2016, Fajardo engaged in protected  
5 activity and exercised his statutory FEHA rights when he agreed to be a witness, who agreed to tell  
6 the truth and testify in co-worker James Pearl's Los Angeles Superior Court FEHA discrimination,  
7 harassment and retaliation lawsuit.

8       28.     **Fajardo Was Identified As A Witness in Co-Worker Pearl's FEHA**  
9 **Discrimination, Harassment, Retaliation Lawsuit.** On August 17, 2016, Fajardo engaged in  
10 statutory protected activity when he was identified as a witness in co-worker James Pearl's Trial  
11 Witness List, where Fajardo was Witness No. 53-of-82 listed trial witnesses.

12       29.     **Fajardo Was Identified As A Witness in Co-Worker Pearl's FEHA**  
13 **Discrimination, Harassment, Retaliation Lawsuit.** On September 29, 2016, Fajardo engaged in  
14 statutory protected activity when he was identified as a witness in co-worker James Pearl's Joint Trial  
15 Witness List, where Fajardo was Witness No. 53-of-82 listed trial witnesses.

16       30.     **Fajardo Was Identified As A Witness in Co-Worker Pearl's FEHA**  
17 **Discrimination, Harassment, Retaliation Lawsuit.** On April 26, 2017, Fajardo engaged in  
18 statutory protected activity when he was identified as a witness in co-worker James Pearl's Third  
19 Amended Joint Trial Witness List, where Fajardo was Witness No. 34-of-74 listed trial witnesses.

20       31.     **Fajardo Was Identified As A Witness in Co-Worker Pearl's FEHA**  
21 **Discrimination, Harassment, Retaliation Lawsuit.** On May 2, 2017, Fajardo engaged in statutory  
22 protected activity when he was identified as witness in co-worker James Pearl's Fifth Amended Joint  
23 Witness List, where Fajardo was witness No. 12-of-71 listed trial witnesses.

24       32.     **Fajardo's Critical Testimony During Co-Worker Pearl's FEHA Discrimination,**  
25 **Harassment, Retaliation Jury Trial Triggered A \$17,394,972 Verdict In Favor of Pearl and**  
26 **Against the City of Los Angeles.** On May 23, 2017, the jury trial in co-worker James Pearl's *Pearl*  
27 *v. City of Los Angeles*. FEHA discrimination, harassment and retaliation action began. On June 12,  
28 2017, Fajardo engaged in statutory protected activity when he exercised his statutory right and

1 testified in co-worker James Pearl's Los Angeles Superior Court FEHA discrimination, harassment  
2 and retaliation *Pearl v. City of Los Angeles* jury trial.

3       33.     **Pearl's \$17,394,972 Verdict, Notice of Entry of Judgment.** On June 14, 2017, the  
4 jury returned a verdict in favor of Pearl and against the City of Los Angeles. On November 21, 2017,  
5 Notice of Entry of Judgment was filed in the *Pearl* action for the sum of \$17,394,972. Moreover, on  
6 November 9, 2017, there was an attorney's fee award: (1) Statutory Attorney Fees: \$ 1,557,821.25;  
7 (2) Statutory Expert Witness Costs: \$ 44,216.00; (3) Statutory Costs: \$ 36,791.40.

8       34.     **Trial Court's Issued A Remittitur for \$12,394,972.** On November 21, 2017, the  
9 trial court issued a remittitur for \$5,000,0000 less than the jury's June 14, 2017 verdict, or the total  
10 amount of \$12,394.972. On December 13, 2017, the City of Los Angeles filed an appeal.

11       35.     **Court of Appeal Affirmed Co-Worker Pearl's Jury Verdict (\$12,394,972**  
12 **Remittitur).** On June 18, 2019 Court of Appeal, Second Appellate District, Division 7, Case  
13 Number B285235, *affirmed* the judgment in Pearl's favor, against the City and Bureau of Sanitation.  
14 The appellate decision specifically identified Fajardo's key testimony, which included:

15               “ ... Gabriel Fajardo, who worked under Pearl's supervision, testified people  
16 asked him after Pearl returned to work, “[H]ow does it feel working for the fag? Are  
17 you going to stay in the office? Don't be in the office alone with the fag.” ... Fajardo  
18 who filed his own complaint against the City for discrimination, harassment and  
19 retaliation, did not report the remarks to management, explaining, ‘it wouldn't do any  
20 good because management started it.’ ... Fajardo also briefly testified the City  
21 retaliated against him when he attempted to exercise his rights under the Family  
22 Medical Leave Act to care for his disabled son.”

23               “In October 2013 Paul Blasman replaced Watson as Pearl's supervisor and  
24 immediately began criticizing his work ... On December 24, 2013, Blasman asked  
25 Pearl to formally reprimand Fajardo. Pearl refused, telling Blasman he would not  
26 be part of a scheme to retaliate against ‘an innocent man.’”

27               “At the hearing on both posttrial motions, the court stated the only issue it  
28 was concerned about was excessive damages ... The first thing is that numerous

1 City employees and, most importantly, *managers perjured themselves repeatedly*  
2 *during trial. Those witnesses were impeached, discredited and their stories*  
3 *were largely nothing but fabrications. They told those stories to protect*  
4 *themselves and their jobs. They had no concern for the sanctity of their oath.*  
5 *The perjury was apparent to me but more importantly to the jury.”*

6 FOLLOWING FAJARDO’S PEARL JURY TRIAL TESTIMONY,  
7 THE CITY ENGAGED IN THEIR CONTINUOUS VIOLATIONS OF  
8 FAJARDO’S STATUTORY RIGHTS BY THEIR REPEATED  
9 DISCRIMINATION, HARASSMENT AND RETALIATION

10 36. **In Retaliation for Fajardo’s Critical Witness Testimony During the Pearl Jury**  
11 **Trial, Assistant Director Adel Hagekhalil Ordered City Manager and Supervisors To**  
12 **Discriminate, Harass and Retaliate Against Fajardo, To “Get Fajardo,” Willful and Deliberate**  
13 **Acts in Conscious Disregard of Fajardo’s Rights.** In direct response to Fajardo’s engagement in  
14 statutory protected activity, including his participation in multiple statutory protected activities, most  
15 recently Fajardo’s June 12, 2017 critical percipient witness testimony offered during the *Pearl v. City*  
16 *of Los Angeles* discrimination, harassment and retaliation jury trial, multiple City Supervisor and  
17 Managers warned Fajardo:

- 18 (a) “ ... the highest-ranking City officials [Bureau of Sanitation, Assistant  
19 Director Adel H. Hagekhalil], were looking for a way to get rid of you  
20 because of what you did [key trial testimony]... ” ;  
21 (b) “ ... you need to watch your back, the highest-ranking City managers  
22 [Bureau of Sanitation, Assistant Director Adel H. Hagekhalil] and  
23 his cronies are coming for you ... ” ;  
24 (c) “ ... the highest-ranking City manager [Bureau of Sanitation, Assistant  
25 Director Adel H. Hagekhalil] is asking his managers ‘to put paper on  
26 Fajardo,’ i.e., to establish a false paper trail against Fajardo to set him  
27 up for ‘discharge for cause,’” where no cause existed;  
28 (d) “ ... the highest-raking City manager [Bureau of Sanitation, Assistant

1 Director Adel H. Hagekhalil] asked his managers ‘to find a way to get  
2 rid of Fajardo.’”

3 (e) “ ... the highest-ranking City manager [Bureau of Sanitation, Assistant  
4 Director Adel H. Hagekhalil] does not like Mexicans, especially those  
5 who have the respect of his Chicano co-workers ... ”

6 **37. Bureau of Sanitation Assistant Division Manager Hagekhalil’s Outward Disdain**  
7 **For the City’s “Mexican Employees.”** Following Fajardo’s jury trial testimony in co-worker James  
8 Pearls’ FEHA discrimination, harassment and retaliation lawsuit, to present and continuing, City  
9 management informed Fajardo that Bureau of Sanitation, Assistant Director Adel H. Hagekhalil  
10 commented that he “did not like Mexicans, especially those who had the respect of his Chicano co-  
11 workers,” a direct reference to Fajardo and his standing in the LACECA Chicano Association as an  
12 elected Vice President. Hagekhalil’s overt racial animus against the City’s Chicano workforce  
13 violated the rights of all City Chicano employees, including Fajardo.

14 **38. City Management’s Continuous Violations of Fajardo’s Statutory Rights.**  
15 Following Fajardo’s June 12, 2017 jury trial testimony in co-worker James Pearls’ FEHA  
16 discrimination, harassment and retaliation lawsuit, to present and continuing, City management  
17 embarked upon their continuous violations of Fajardo’s statutory rights with their repeated acts of  
18 discrimination, harassment and retaliation against testifier Fajardo, who, like Pearl, similarly engaged  
19 in statutory protected activity after he successfully prosecuted his own Workers’ Compensation case  
20 and his own Superior Court FEHA discrimination, harassment and retaliation action.

21 A normal, integral part of promotion within the Bureau of Sanitation’s City Civil Service  
22 system was being afforded an equal opportunity to sit in a vacant Supervisor’s position in an “acting  
23 capacity” during a Supervisor’s absence from work, for medical appointments, vacation, sick leave,  
24 extended disability leave or similar leaves of absence. As an “Acting Supervisor” a promotional  
25 candidate is groomed for the Supervisor’s position, gained invaluable experience regarding the  
26 Supervisor’s actual nuts-and-bolts of the Supervisor’s day-to-day job duties, which undeniably  
27 prepared the Supervisor candidate for promotion to any one of the numerous vacant Supervisor  
28 positions throughout the Bureau. Depending upon the circumstances, it was not unusual for a

1 Supervisor candidate to sit in as an “Acting Supervisor” for days, weeks, months or even years.

2       However, following Fajardo’s July 25, 2013 settlement of his CFRA/FMLA lawsuit,  
3 following Fajardo’s adverse testimony in the *Pearl* FEHA discrimination, harassment and retaliation  
4 jury trial, the Chicano Fajardo requested the opportunity to sit in an “Acting Supervisor” on an  
5 estimated 12-15 different occasions, from a minimum of 3-different Supervisors, a request subject to  
6 City Manager’s approval. On each of the 12-15 occasions, each of the 3-different Supervisors told  
7 Fajardo his request had been denied by City Managers for approval, a denial authorized, ratified or  
8 condoned by Assistant Director Adel H. Hagekhalil. This denial left the acting position vacant, or  
9 alternatively, City managers would pass over Fajardo and appointed another City employee to the  
10 “Acting Supervisor” vacancy, denying Fajardo an equal opportunity to promote. When another City  
11 employee was given the Acting Supervisor position, Fajardo requested the opportunity to rotate with  
12 any other eligible candidates, Fajardo’s request to rotate was similarly rejected. Each Fajardo request  
13 and each City Manager denial was accompanied by the comments, “Fajardo will never be a  
14 Supervisor,” “we don’t want Fajardo to promote to Supervisor,” “Fajardo will never promote,”  
15 adverse, negative management comments in direct response to Fajardo’s previous engagement in  
16 statutory protected activity.

17       **39. Chicano Manager Kent Carlson’s Discrimination Complaint, Request City**  
18 **Personnel Office Investigate Bureau of Sanitation’s Failure to Promote Chicano Employees**  
19 **Beyond the Supervisor Position.** In January 2018, Chicano Bureau of Sanitation, Manager I, Kent  
20 Carlson, compiled information which proved the Bureau of Sanitation disproportionately failed to  
21 promote the City Chicanos employees beyond the Supervisor level. Carlson requested the City  
22 Personnel Department to investigate the Bureau’s disproportionate under-promotion practices and  
23 opportunities of their Chicano employees by Bureau management, including Hagekhalil.

24       **40. Management Discriminated, Harassed, Retaliated Against Fajardo After He**  
25 **Joined Carlson’s Request to Investigate the Bureau’s Under-Promotion of Their Chicano**  
26 **Employees.** In January-February 2018, Fajardo demonstrated his outward support for Chicano  
27 Manager I Kent Carlson’s request City official investigate Bureau management, including Hagekhalil,  
28 and the disproportionate under-promotion practices and opportunities of Chicano employees, the



1 under-promotion opportunities of Chicanos above the Supervisor level position, which directly  
2 impacted Fajardo because of his Chicano race and his willingness to speak out against the City's anti-  
3 Chicano promotional practices and policies. In response, City managers continued their campaign to  
4 "blackball" and "target" Fajardo with their ongoing discrimination, harassment and retaliation in form  
5 of failed promotional opportunities, adverse and negative job assignments, previously described.

6       **41. Fajardo's Circulated A Petition to Promote the Advancement of A Chicano**  
7 **Manager to A Manager II Vacancy Under Hagekhalil.** In and about January-February 2018,  
8 Fajardo, on behalf of himself, the Bureau of Sanitation's Chicano workforce and all of the members  
9 of the Los Angeles City Employees Chicano Association, initiated, formulated, then circulated a  
10 Petition amongst the Bureau of Sanitation's entire workforce for signature, promulgating the  
11 advancement of the seasoned, experienced, qualified, competent Chicano Manager Kent Carlson for  
12 promotion to a Manager II vacancy which reported to Assistant Direct Adel H. Hagekhalil, which was  
13 contrary to Hagekhalil's expressed nepotism and intention to promote his inexperienced, unqualified,  
14 incompetent Manager II candidate with whom he had been friends, a workplace petition forwarded to  
15 the City's Personnel Department to investigate Hagekhalil's promotional practices which were not  
16 based upon merit.

17       **42. Following Fajardo's Testimony in the Pearl Jury Trial, Fajardo "Blew-the-**  
18 **Whistle" and Reported Upper Management's Unlawful Discrimination, Harassment and**  
19 **Retaliation in Violation of FEHA.** On or about March 7, 2018, Fajardo filed his formal complaint  
20 to Kent Carlson, Manager, and Nick Farino, Supervisor, which was sent to the City of Los Angeles,  
21 Department of Public Works, Bureau of Sanitation, Wastewater Collection Systems Division, which  
22 raised the following issues:

- 23               (a) Fajardo requested an immediate stop to the ongoing discrimination,  
24 harassment and retaliation directed, conducted, authorized, condoned  
25 ratified by Bureau of Sanitation, Assistant Director, Adel Hagekhalil;  
26               (b) Fajardo reported he was being harassed and retaliated against because  
27 of his prior successful CFRA lawsuit, where he had identified high-ranking  
28 City Managers and Supervisors who discriminated, harassed and retaliated

- 1 against him in response to the exercise of his statutory CFRA/FMLA  
2 rights, which cost the Bureau of Sanitation money drawn from their  
3 budget, which had to be approved by the Mayor of the City of Los Angeles;  
4 (c) Fajardo reported he was being discriminated against, harassed and retaliated  
5 against because of his key witness testimony in co-worker James Pearl's  
6 racial discrimination, harassment and retaliation jury trial on June 12, 2017,  
7 when on June 14, 2017, the jury trial ruled in favor of Pearl and against the  
8 City of Los Angeles, Bureau of Sanitation, in the amount of \$17,394,972;  
9 when on June 18, 2019, after the trial court's remittitur in the amount  
10 of \$12,394,972, the California Court of Appeal, Second Appellate District,  
11 Division 7, *affirmed* on appeal, in favor of Pearl and against the City of  
12 Los Angeles, which cost the Bureau of Sanitation money drawn from their  
13 budget, which was known to Assistant Director Adel H. Hagekhalil, which  
14 had to be approved by the Mayor of the City of Los Angeles;  
15 (d) Fajardo underwent discrimination, harassment and retaliation by upper  
16 management because of his Chicano race;  
17 (e) City upper management expressed their racial animus towards the City's  
18 Chicano employees, that he did not like Mexicans, especially those who  
19 have the respect of his Chicano co-workers;  
20 (f) City management discriminated, harassed and retaliated against Fajardo  
21 because of his January-February 2018 support of Chicano Manager I  
22 Kent Carlson's investigation and request to the City Personnel Department  
23 to investigate the disproportionate under-promotion practices and  
24 opportunities of Chicano employees above the Supervisor level position,  
25 which targeted Fajardo because of his Chicano race and his willingness to  
26 speak out against the City's anti-Chicano promotional practices and policies;  
27 (g) City management discriminated, harassed and retaliated against Fajardo  
28 because he generated, then passed around for Bureau of Sanitation

employees' signature, a workplace petition in support of Chicano Manager Kent Carlson's promotion to the Manager II's vacancy, which was contrary to Assistant Director Adel H. Hagekhalil's expressed intention to promote an incompetent, unqualified Manager III candidate, with whom his had been friends, for whom Hagekhalil afforded special accommodations to ensure his friend's promotion, special accommodations not similarly provided to the competent, qualified Chicano Manager II candidate Carlson, a petition which indicted Hagekhalil's anti-Chicano promotional practices, a petition forwarded to the City's Personnel Department for investigation;

- (h) Bureau of Sanitation, Assistant Director Adel H. Hagekhalil's threatening and bullying tactics against those Supervisors and Managers who opposed and refused to participate in and carry out his unlawful discrimination, harassment and retaliation directives, who themselves were then threatened with being disciplined for "insubordination" for their failure to carry out Hagekhalil's unlawful discrimination, harassment and retaliation directives;
- (i) City managers' discrimination, harassment and retaliation against the Chicano was an ongoing, continuous City manager pattern and practice;
- (j) Adel Hagekhalil's discrimination, harassment and retaliation against Fajardo created a hostile work environment for Fajardo, his co-workers, supervisors and managers.

43. **Los Angeles City Employee Chicano Association Vice President Fajardo's Complaint of Racial Discrimination, Harassment and Retaliation.** On or about May 8, 2018, at Fajardo's request and direction, the Los Angeles City Employee Chicano Association ("LACECA") sent their formal racial discrimination, harassment and retaliation complaint letter to City managers, which included complaints of the City's upper management unlawful misconduct:

- (a) Wastewater Collection's discrimination, harassment and retaliation against their LACECA Chicano workforce by upper management,

- 1 including Bureau of Sanitation Assistant Direct Adel H. Hagekhalil;
- 2 (b) LACECA made a formal request the City of Los Angeles conduct
- 3 an investigation of Bureau of Sanitation upper management,
- 4 including Hagekhalil, to address remedy upper management's
- 5 discrimination, harassment, retaliation against their Chicano workforce;
- 6 (c) investigate and remedy Adel Hagekhalil's direction and instruction
- 7 to his subordinate Managers and Supervisors, whom he forced and
- 8 threatened to intentionally discriminate, harass and retaliate against
- 9 their LACECA Chicano members, including Fajardo;
- 10 (d) investigate and remedy Bureau of Sanitation, Assistant Director Adel
- 11 H. Hagekhalil's disproportionate failure to promote LACECA Chicano
- 12 members to Supervisor and Manager 1, Manager 2, vacancies because
- 13 of their Chicano race;
- 14 (e) upper management's discrimination, harassment and retaliation against
- 15 City employees who associated with the LACECA Chicano employees
- 16 in the Bureau of Sanitation workplace;
- 17 (f) upper management's discrimination, harassment and retaliation against
- 18 LACECA Chicano members who had the courage to "speak up" and
- 19 Oppose the discrimination, harassment and retaliation of LACECA
- 20 Chicano employees, who grew tired of upper management's threatening
- 21 and bullying antics;
- 22 (g) investigate and remedy Bureau of Sanitation, Assistant Director Adel
- 23 H. Hagekhalil's threatening and bullying tactics against those
- 24 Supervisors and Managers who opposed and refused to participate in
- 25 and carry out his unlawful discrimination, harassment and retaliation
- 26 directives, who themselves were then threatened with being disciplined
- 27 for "insubordination" for their failure to carry out Hagekhalil's unlawful
- 28 discrimination, harassment and retaliation directives;

- 1 (h) request for the appointment of an independent investigator unrelated  
2 to City management to investigate these very serious allegations of  
3 upper management and Adel H. Hagekhalil's discrimination,  
4 harassment and retaliation (to prevent a cover-up);
- 5 (i) Fajardo continues to be intentionally harassed and retaliated against  
6 by upper management, including Hagekhalil, or at his direction, after  
7 his successful prosecution of his CFRA lawsuit; after Fajardo's adverse,  
8 material testimony in his co-worker James Pearl's discrimination,  
9 harassment and retaliation jury trial, where the jury returned a substantial  
10 8-figure, multi-million dollar verdict [\$17,394,972] in Pearl's favor;
- 11 (k) Adel H. Hagekhalil's treatment of LACECA Chicano employees  
12 differently than other employees when he instructed City managers  
13 to mandate their subordinate Chicano employees "not to speak Spanish"  
14 while on-duty, under threat of formal discipline, while allowing  
15 non-Chicano ethnicities to speak their native, non-English language.

16 **44. Fajardo's ODCR Discrimination, Harassment, Retaliation Complaint.** On or  
17 about March 7, 2018, Fajardo engaged in statutory protected activity when he filed a similar  
18 complaint with the City of Los Angeles, Personnel Department, Office of Discrimination Complaint  
19 Resolution ("ODCR"), Complaint of Discrimination, ODCR Complaint No. 2018-12-PW SAN.  
20 Fajardo similarly identified Assistant Director Hagekhalil and his efforts to discriminate, harass and  
21 retaliate against Fajardo following his engagement in statutory protected activity.

22 **45. Following Fajardo's Testimony in the Pearl Jury Trial, Fajardo "Blew-the-**  
23 **Whistle" and Reported Assistant Director Hagekhalil's Orders to City Managers to Assign**  
24 **Fajardo to A "Special Project" to Commit State and Federal Crimes By Illegally Dumping**  
25 **Hazardous Waste Into City Sewers.** Following Fajardo's jury trial testimony in co-worker James  
26 Pearls' FEHA discrimination, harassment and retaliation lawsuit, to present and continuing, in  
27 January-February 2018, City managers, at Bureau of Sanitation Assistant Director Adel H.  
28 Hagekhalil's direction, discriminated, harassed and retaliated against Fajardo when they attempted to

1 “set up” Fajardo for the termination of his City employment for “cause,” when they assigned Fajardo  
2 to a “Special Project” outside the course and scope of his routine Wastewater Collection Worker II  
3 job duties. This Special Project required Fajardo to use management’s assigned City Vactor Condor  
4 truck, which had an estimated 4,000-gallon liquid capacity, to vacuum oil from their Pendleton Trash  
5 Yard, an estimated 4,000-gallons of hazardous waste, then dump the estimated 4,000-gallons of  
6 hazardous waste into the City sewer. Fajardo was aghast. Fajardo knew oil was a hazardous waste.  
7 Fajardo knew oil had to be properly disposed of in the appropriate containers and taken to their  
8 designated hazardous waste disposal sites. Fajardo knew that deliberately dumping an estimated  
9 4,000-gallons of hazardous waste into the City sewer was illegal. Fajardo knew that deliberately  
10 dumping an estimated 4,000-pounds of hazardous waste into the City sewer was a state and federal  
11 crime [Federal Water Pollution Control Act of 1948; rewritten in 1972 as the Federal Water Pollution  
12 Control Act Amendments of 1972, 33 U.S.C. §1251, *et seq.*, with major changes subsequently  
13 introduced via amendatory legislation which included the Clean Water Act of 1977, and the Water  
14 Quality Act of 1987; California *Health & Safety Code* §25189.5; California *Penal Code* §1170(h)],  
15 which subjected an unlawful dumper of hazardous waste to imprisonment, to heavy monetary fines up  
16 to \$100,000 per day, per violation, for each gallon illegally dumped, plus clean-up costs, which  
17 provided City managers the “cause” they were trying to falsely fabricate to terminate Fajardo, i.e.,  
18 “illegal dumping.” Fajardo also knew City managers, including Hagekhalil, knew that when they  
19 requested him to illegally dump oil into the City sewers that this was asking Fajardo to commit a  
20 crime. Fajardo refused. Fajardo refused to participate in City management’s criminal activity.  
21 Fajardo asked City managers to “put this request in writing.” Fajardo stated, “I want Adel [Bureau  
22 Assistant Director Hagekhalil] to put this request in writing.” Management refused. Yet,  
23 management threatened Fajardo with discipline for “insubordination” if he did not “follow orders.”  
24 Fajardo responded, “go ahead, write me up, suspend me, fire me, I’m not pouring oil into a City  
25 sewer and violate the law.” Fajardo knew that if he committed the crime of illegal dumping of  
26 hazardous waste into the City sewer that upper management would consider this the requisite “cause”  
27 for the termination of his City employment. City managers threatened Fajardo’s immediate  
28 Supervisor to “make him do it,” or the managers threatened to “write up” Fajardo’s Supervisor, as

1 well as Fajardo, for “insubordination for failing to follow orders.” Fajardo’s Supervisor’s told  
2 Fajardo, “don’t do it,” that management is “setting you up,” that management “wants to fire you for  
3 cause, that cause exists if you dump the oil into the sewer.” Fajardo agreed. Fajardo refused.  
4 Fajardo refused to participate in City manager’s wrongdoing. Fajardo refused to commit a crime,  
5 even if that meant getting “fired for insubordination.” Fajardo did nothing wrong.

6           46.     **Following Fajardo’s Testimony in the Pearl Jury Trial, Fajardo “Blew-the-**  
7 **Whistle” and Reported the City’s Workplace Health & Safety Issues.** Following Fajardo’s June  
8 12, 2017 engagement in protected activity and his truthful testimony in co-worker James Pearl’s  
9 FEHA discrimination, harassment and retaliation action, through the present time, Fajardo “blew-the-  
10 whistle” and reported 12-15 times the City’s health and safety violations when City Managers  
11 repeatedly assigned their obsolete, defective, malfunctioning 40,000-60,000 pound, 3-axle, Vactor  
12 Condor “death trap” trucks to clean catch basins, over his objection, while updated, newer trucks  
13 were available for assignment. Fajardo reported these heavy-duty commercial motor vehicles were  
14 dangerous, defective and unfit to be operated in the City Yards and on the City streets, which exposed  
15 Fajardo, Fajardo’s co-worker passenger, all employees at the City yard, as well as all the citizens of  
16 the City of Los Angeles on City streets and sidewalks to an unreasonable, unwarranted and  
17 unnecessary risk and threat of serious bodily injury, being maimed or killed. With these obsolete,  
18 defective, malfunctioning 40,000-60,000 pound, 3-axle, Vactor Condor “death trap” trucks the City  
19 did not furnish Fajardo or his co-workers a place of employment that was safe and healthful, the City  
20 did not do everything reasonably necessary to protect the life, safety and health of Fajardo and his co-  
21 workers, did not correct unsafe and unhealthy work conditions, required Fajardo and his co-workers  
22 to work when it was not safe and healthful to do so, where the City managers willfully, deliberately  
23 and in conscious disregard of the health and safety of Fajardo and his co-workers did not take all  
24 appropriate action to protect the life, safety and health of Fajardo and his co-workers. To the  
25 contrary, City managers threatened Fajardo with discipline, that he would be written up, that he  
26 would be subject to suspension, demotion and/or termination for “insubordination” if he did not begin  
27 his Work Orders with the Vactor Condor truck he was assigned which subjected Fajardo, his co-  
28 workers and the citizens of the City of Los Angeles who use the City streets to an unreasonable risk

1 of serious bodily injury, being maimed or being killed. For those Supervisors who agree with Fajardo  
2 these Vactor Condor trucks were unsafe for operation of City streets, those Supervisors where  
3 threatened with being “written up,” disciplined, suspended or terminated for “insubordination” for not  
4 insisting Fajardo carry out his work orders with these known obsolete, defective, malfunctioning  
5 40,000-60,000 pound, 3-axle, Vactor Condor “death trap” trucks.

6 47. **Fajardo’s May 15, 2019 Harassment Grievance.** On May 19, 2019, Fajardo filed a  
7 grievance against his City managers because of their ongoing, continuous discrimination, harassment  
8 and retaliation following his June 12, 2017 trial testimony in the *Pearl* action which resulted in a  
9 \$17,394,972 verdict in Peral’s favor and against the City. Fajardo sought a Cease-and-Desist order to  
10 stop management’s ongoing, continuous discrimination, harassment and retaliation.

11 IN RESPONSE TO FAJARDO’S ENGAGEMENT IN STATUTORY PROTECTED ACTIVITY,  
12 CITY MANAGERS’ WILLFULLY, DELIBERATELY AND IN CONSCIOUS DISREGARD OF  
13 FAJARDO’S RIGHTS TRIED TO SERIOUSLY INJURE, MAIM OR KILL FAJARDO

14 48. **City Attorney Recommends Satisfaction of the \$14,033,800 Pearl Judgment.** On  
15 June 27, 2019, the Los Angeles City Attorney made their recommendation to the Los Angeles City  
16 Council to satisfy the Judgment in the *James Peral v. City of Los Angeles*, following the decision of  
17 the California Court of Appeal to *affirm*.

18 49. **City Council Authorize the City Controller to Appropriate \$15,000,000 From the**  
19 **Sewer Operations Maintenance Fund, the Public Works Sanitation Fund.** On July 3, 2019, the  
20 Los Angeles City Council made their Motion to Adopt the Recommendations to Pay the Judgment in  
21 *Pearl v. City of Los Angeles*, for the amount of \$14,033,800, plus applicable interest. The City  
22 Council authorized the Controller to appropriate \$15,000,000, within Sewer Operations Maintenance  
23 Fund No. 760/50, from available cash balance, with further transfer to the Liability Claims Fund No.  
24 100/59, Account No. 009794, Public Works, Sanitation Liability Payouts.

25 50. **On July 24, 2019, 13-Business Days Later, City Managers “Set Up” Fajardo To**  
26 **Become Seriously Injured, Maimed or Killed with Another Assignment of Their Obsolete,**  
27 **Defective, Malfunctioning 40,000-60,000 pound, 3-axle, Vactor Condor “Death Trap” Truck.**  
28 On July 24, 2019, which was 13-business days after the City Council approved the City Controller to



1 appropriate \$15,000,000 from the Sewer Operations Maintenance Fund and the Public Works  
2 Sanitations fund, consistent with Assistant Director Hagekhalil's ongoing directive to "get Fajardo"  
3 because of his history of engagement in protected activity, at Hagekhalil's direction City managers  
4 willfully and deliberately and in conscious disregard of the health and safety of Fajardo, his co-  
5 workers and the citizens of the City of Los Angeles who used City streets and sidewalks, assigned  
6 Fajardo another one of their obsolete, defective, malfunctioning 40,000-60,000 pound, 3-axle, Vactor  
7 Condor "death trap" trucks, this time Truck Number 39135, to perform his catch basin cleaning Work  
8 Orders. This Condor Vactor was a tandem rear axle vehicle which was an estimated 10-feet wide by  
9 23-foot long truck, which was capable of weighing an estimated 40,000-to-60,000 pounds. Fajardo  
10 was an experienced Vactor Condor truck operator. This vehicle had a long, prior history of defects  
11 and malfunctions, a long history of having been "red tagged," i.e., identified by City employees as a  
12 vehicle which was unsafe to operate on City streets, a danger to the health and safety of City workers  
13 and the City general public at-large. This Vactor Condor Truck Number 39135 was an outdated,  
14 discontinued model, where new, replacement parts were no longer available to the City. In City  
15 vernacular, this truck had or should have been designated for "the City bone yard" to be used as a  
16 source of replacement parts, not to be used by City employees in the performance of City job duties.  
17 This Vactor Condor truck was not supposed to be operated by City employees, not supposed to be  
18 operated on City streets. This Vactor Condor truck was a serious health and safety risk to Fajardo,  
19 Fajardo's passenger, all City employees, as well as the citizens of the City of Los Angeles who used  
20 the City streets and sidewalks where the Vactor Condor truck would be operated. Management's  
21 assignment of this vehicle to "get Fajardo" subjected Fajardo to the risk of being seriously injured,  
22 maimed or killed while on duty should this vehicle decide to malfunction while operated on the City  
23 streets as Fajardo completed his catch basin cleaning Work Orders.

24       **51. Fajardo's Report of the City's Health & Safety Violations.** Initially, Fajardo  
25 objected about management's truck assignment of their obsolete, defective, malfunctioning 40,000-  
26 60,000 pound, 3-axle, Vactor Condor "death trap" trucks. Fajardo stated he was the most senior crew  
27 leader, questioned why he was assigned the oldest, most unreliable vehicle to perform his work  
28 orders, when there were other new vehicles in the yard which were available. Fajardo told his

1 Supervisor this vehicle was an obsolete, defective, malfunctioning 40,000-60,000 pound, 3-axle,  
2 Vactor Condor “death trap” which unreasonably and unnecessarily exposed Fajardo, his co-workers  
3 and the citizens of the City of Los Angeles who used City streets and sidewalks which should not be  
4 operated on the City streets because it was dangerous and unsafe for himself, his co-worker passenger  
5 and to the citizens of the City of Los Angeles who used the City streets. When Fajardo asked why he,  
6 one of the longest Crew Leaders, was being assigned an obsolete, defective, malfunctioning 40,000-  
7 60,000 pound, 3-axle, Vactor Condor “death trap” truck to do his Work Orders, the Supervisor  
8 responded, “ ... you know why ...,” a direct reference to management’s retaliation against Fajardo  
9 because of his material trial testimony in the *Pearl* jury trial. When Fajardo asked who assigned him  
10 the obsolete, defective, malfunctioning 40,000-60,000 pound, 3-axle, Vactor Condor “death trap”  
11 truck the Supervisor responded, “ ... you know who assigned you this truck ...,” a direct reference to  
12 Bureau of Sanitation Assistant Director Adel H. Hagekhalil. The Supervisor told Fajardo, “ ... you  
13 know upper management [Hagekhalil] did not like what you did ...”

14       **52. Fajardo’s Discovery of Health & Safety Issue Which He Reported.** Before leaving  
15 the Bureau Yard, Fajardo conducted his routine vehicle “walk around inspection.” Fajardo observed  
16 and reported a faulty water regulator, as well as an air leak located below the passenger’s seat.  
17 Fajardo’s observation was significant. The Vactor Condor truck had air brakes. Air pressure is what  
18 allows the truck operator to apply the brakes and bring the vehicles to a stop. If the air pressure is  
19 weak, the air brakes do not properly engage and the truck operator will not be able to stop the vehicle.  
20 An air leak was indicative of a potentially faulty air brake system, which meant this 40,000-to-60,000  
21 pound vehicle was operated on the City streets without any brakes at worst, or with malfunctioning  
22 brakes at best. Fajardo promptly “red tagged” the vehicle, which meant it should not be operated  
23 unless the City repaired the vehicle. Fajardo turned in the “red tag” to his Supervisor. Fajardo asked  
24 for a replacement vehicle so he could go to work and begin completion of his Work Orders.  
25 Fajardo’s request was denied. Fajardo was instructed to perform menial clean-up tasks around the  
26 Yard until Truck Number 39135 was “repaired.” Approximately 1-hour later, Fajardo was told Truck  
27 Number 39135 had been “repaired.” Fajardo was instructed to return to work. Fajardo left the  
28 Bureau Yard at 0745 a.m. to complete his catch basin cleaning Work Orders.

1           53.     **Fajardo’s Frightening “Near Death” Experience.** At 0915 a.m., Fajardo and his  
2 City co-worker passenger operated the Condor Vactor Truck Number 39135 westbound on Sunset  
3 Boulevard, at its intersection with Mohawk Street, in the Number 2 lane, closest to the curb. Fajardo  
4 stopped for a red light. At the change of the tri-colored traffic signal from red-to-green, Fajardo  
5 continued westbound on Sunset Boulevard. The next intersection was Sunset Boulevard at Rosemont  
6 Avenue. Between Mohawk Street and Rosemont Avenue, on Sunset Boulevard, a motorcycle  
7 operated by a female driver proceeding in the same westbound direction, in the Number 1 lane, on  
8 Sunset Boulevard, passed Fajardo on his left, in the Number 1 lane, then changed from the Number 1  
9 lane into the Number 2 lane, ahead of Fajardo. The motorcycle operator stopped for a red light at  
10 Sunset Boulevard’s intersection with Rosemont Avenue. As Fajardo approached the intersection of  
11 Sunset Boulevard and Rosemont Avenue, Fajardo’s placed his right foot on the brakes. Initially, the  
12 vehicle’s brakes momentarily “grabbed,” then without explanation, unexpectedly released. The  
13 truck’s brakes suddenly did not work. The truck’s brakes suddenly malfunctioned. Truck Number  
14 39135 continued to move forward, without stopping, despite Fajardo’s application of the brakes. The  
15 front end of the Condor Vactor Truck Number 39135 struck the rear of the woman’s stopped  
16 motorcycle. The female motorcycle operator was launched high into the air and onto the windshield  
17 of Fajardo’s truck, her body then toppled onto the asphalt street. The female motorcycle operator laid  
18 lifeless in the street. Fajardo swerved his truck to the right into the curb to try to stop a truck, with no  
19 brakes. Fajardo thought he just killed the female motorcycle operator with a City vehicle that should  
20 not have been on City streets. Truck Number 39135 eventually came to a stop. Stunned, shaken,  
21 Fajardo exited the truck and approached the female motorcycle driver to render aid. Fajardo  
22 promptly called “911,” reported the incident, requested an ambulance. Fajardo promptly called his  
23 City supervisor/manager, reported the incident, reported his objection to the truck, reported that he  
24 was told the truck was repaired and was safe to drive. Fajardo’s supervisor/manager reported to the  
25 scene of the incident. Due to the truck’s brake malfunction, the City arranged to have the Condor  
26 Vactor Truck Number 39135 towed from the scene of the collision to the Bureau Yard for inspection.  
27 Fajardo and his passenger were taken from the scene of the incident to the City’s designated Urgent  
28 Care facility, where both Fajardo and his passenger were treated for injuries they sustained in the

1 collision and evasive maneuvers to bring their truck to a stop without any brakes.

2       **54. Fajardo Brake Malfunction Was Consistent with City Managers' Directives to**  
3 **Retaliate and "Get Fajardo."** The City managers, instructed by Assistant Director to "get Fajardo,"  
4 in willful and conscious disregard of Fajardo's rights, deliberately placed Fajardo, his passenger and  
5 the citizens of the City of Los Angeles in harm's way. The City managers went to extraordinary  
6 lengths to deliberately injure Fajardo, his passenger or a citizen of the City of Los Angeles, to  
7 retaliate, harass and discriminate against Fajardo 13-business days after the City's July 3, 2019  
8 approval of the appropriation of \$15,000,000 to resolve the *Pearl* judgment which the California  
9 Court of Appeal *affirmed* on June 18, 2019, monies paid from the Bureau of Sanitation's budget.

10       **55. Harassment, Hostile Work Environment.** Following the conclusion of Fajardo's  
11 CFRA discrimination, harassment and retaliation lawsuit, following the conclusion of Fajardo's  
12 pursuit of his Workers' Compensation claim, following Fajardo's June 12, 2017 adverse testimony in  
13 the *Pearl* racial discrimination, harassment and retaliation lawsuit, City managers engaged in  
14 continuous efforts to subject Fajardo to unlawful discrimination, harassment and retaliation, which  
15 created a severe and pervasive hostile work environment.

16       **56. Fajardo Reported Continuous Workplace Harassment, Hostile Work**  
17 **Environment.** The City had a practice and policy to provide a work environment that was free from  
18 intimidation and other offenses that interfered with an employee's work performance. All City  
19 employees, especially managers, had a legal responsibility to keep the work environment free of any  
20 harassment they knew or should have known existed in the workplace. Simply, it was the City's  
21 policy that harassment of any sort, verbal, physical or visual, would not to be tolerated ("zero  
22 tolerance"). It was a violation of the City's practice and policy to threaten, intimidate and coerce an  
23 employee at any time for any purpose, to engage employees in behavior designed to create discord  
24 and lack of harmony, to interfere with another employee on the job. Any employee who becomes  
25 aware of an incident of harassment, whether by witnessing the incident or being told of it, was to  
26 report it to their immediate manager or any management representative with whom they feel  
27 comfortable. Once aware, management was obligated to take prompt and appropriate remedial  
28 action, including the investigation of any report of harassment, including the interview of the

1 employee or employees involved, with the City's determination and action communicated directly to  
2 the affected employee(s). It was the City's practice and policy that no adverse employment action  
3 would be taken against any employee who made a good faith report of alleged harassment or for  
4 filing any sort of complaint, or against any employee who participated in the investigation, processing  
5 or hearing regarding the complaint of harassment. Following Fajardo's June 12, 2017 testimony in  
6 the *Pearl* jury trial, he reported and voiced his opposition to the continuous violation of his statutory  
7 rights, the continuous workplace discrimination, harassment and retaliation by City management,  
8 including Hagekhalil, in response to his engagement in those statutory protected activities previously  
9 identified.

10         **57. Fajardo "Blew the Whistle" and Reported Workplace Discrimination,**  
11 **Harassment and Retaliation.** Prior to July 2019, Fajardo engaged in statutory protected activity  
12 when he "*blew the whistle*" and on multiple occasions reported workplace acts of discrimination,  
13 including CFRA/FMLA discrimination, testifying in the *Pearl* jury trial, management's racial  
14 discrimination against Chicanos, to City officials, as well as City's managers.

15         **58. Fajardo "Blew-the-Whistle" and Reported Workplace Health and Safety**  
16 **Violations.** Prior to July 2019, Fajardo engaged in statutory protected activity when he "blew-the-  
17 whistle" and on multiple occasions reported multiple workplace health and safety issues to his  
18 Supervisor/Manager, which threatened the health and safety of Fajardo, his co-workers as well as the  
19 citizens of the City of Los Angeles who operated motor vehicles on City streets.

20         **59. City Managers Deliberately Tried to Seriously Injure, Maim or Kill Fajardo in**  
21 **Brazen Retaliation for His Engagement in Protected Activities.** In response to Fajardo's  
22 engagement in statutory protected activities, his opposition to unlawful conduct, his refusal to  
23 participate in criminal misconduct of illegally dumping hazardous waste into City sewers, his  
24 "*blowing the whistle*" and reporting workplace health and safety issues of City manager's instructing  
25 employees to use obsolete, defective, malfunctioning equipment that would seriously injure, maim or  
26 kill City employees or citizens of the City of Los Angeles using City streets and sidewalks, on July  
27 24, 2019 City managers retaliated against Fajardo when they assigned him the Vactor Condor "death  
28 trap" Truck Number 39135 to perform his catch basin cleaning Work Orders, with full knowledge

1 this truck would malfunction, where its air brake system would not allow Fajardo to bring this  
2 40,000-60,000 vehicle to a stop. These acts, errors and omissions were authorized, condoned and  
3 ratified by the City's upper managers efforts to retaliate against Fajardo for his engagement in  
4 protected activity.

5         **60. City Management's Adverse Employment Actions.** Fajardo's "*Brief Statement of*  
6 *the Case*" outlined the host of adverse employment actions to which City managers subjected  
7 Fajardo. Those adverse employment actions included: (1) City managers openly "blackballed" and  
8 "targeted" Fajardo with unwarranted and baseless discipline; (2) City managers besmirched Fajardo's  
9 good name and workplace reputation; (3) management instructed managers and supervisors to "get  
10 Fajardo," to fabricate a "paper trail" of discipline to establish "cause" for termination where cause did  
11 not exist; (4) City managers took action to prevent Fajardo from career advancement and promotion;  
12 (5) City managers engaged in campaign of continuous violations of Fajardo's workplace rights, their  
13 discrimination, harassment and retaliation against Fajardo; (6) City managers treated Chicano Fajardo  
14 differently than his co-workers in the terms, conditions and privileges of his City employment, which  
15 included: (a) City managers repeatedly created a severe and pervasive hostile work environment; (b)  
16 City manager's repeatedly assigned Fajardo to adverse, negative job assignments: (i) City managers  
17 demoted Crew Leader Fajardo's position, down-classed Fajardo's position where he reported to a  
18 subordinate Laborer member of his crew; (ii) City managers asked Fajardo to engage in workplace  
19 criminal misconduct under threat of discipline, suspension and termination for "insubordination" if he  
20 failed to comply; (iii) City managers implored Fajardo's supervisors to compel Fajardo's engagement  
21 in workplace criminal misconduct, or they would subjected to the same discipline, suspension or  
22 termination for "insubordination" as Fajardo; (iv) over Fajardo's objection, City managers repeatedly  
23 assigned Fajardo their obsolete, defective, malfunctioning 40,000-60,000 pound, 3-axle, Vactor  
24 Condor "death trap" trucks to complete his catch basin cleaning Work Orders, which deliberately  
25 exposed Fajardo, his co-workers and the citizens of the City of Los Angeles using City streets and  
26 sidewalks to the unreasonable and unnecessary risk of being seriously injured, maimed or killed; (v)  
27 City managers assigned Fajardo to a distant yard location as punishment, their retaliation practice of  
28 "freeway therapy" because he engaged in protected activities; (c) City managers refused to afford

Fajardo career advancement or promotion opportunities, implementing management's pervasive anti-Chicano promotional practices and policies; (7) on July 24, 2019, which was 13-business days after the City appropriated \$15,000,000 to resolved the *Pearl* racial discrimination, harassment and retaliation judgment, City managers willfully and deliberately and in conscious disregard of Fajardo's health, safety and life, "set up" Fajardo to become seriously injured, maimed or killed with their assignment of one of their obsolete, defective, malfunctioning 40,000-60,000 pound, 3-axle, Vactor Condor "Death Trap" trucks to carry out his catch basin cleaning Work Orders. The substantial motivating factor for these City managers' adverse employment actions were to discriminate, harass and retaliate against Fajardo in response to his engagement in statutory protected activities, management actions reasonably designed to create an atmosphere of fear and intimidation to deter him from engaging in statutory protected activity in the future.

**61. City's History, Pattern, Practice of Discrimination, Harassment, Retaliation.**

Fajardo is informed and believes he was not the first Bureau of Sanitation employee “blackballed” and “targeted” by City managers for discrimination, harassment and retaliation because of their engagement in statutory protected activity, who had been subjected to management’s unlawful adverse employment actions, including demotion, lack of promotion, fabricated discipline, suspension, termination and other adverse employment actions.

FAJARDO EXHAUSTED HIS  
STATUTORY ADMINISTRATIVE PREREQUISITES

62. **Fajardo’s DFEH “Right-to-Sue.”** To the extent the instant action was brought pursuant to California Fair Employment & Housing Act and *Government Code* §12920-12940, *et seq.*, on July 22, 2019, Fajardo filed his DFEH *Complaint of Discrimination*. On July 22, 2019, Fajardo received his statutory DFEH “*Right to Sue.*” Fajardo complied with his statutorily imposed FEHA administrative prerequisites prior to the commencement of this action.

## INCORPORATION OF ALLEGATIONS

63. Each allegation in the above-foregoing paragraphs are incorporated herein by this reference as though fully set forth in each cause of action.

1 FIRST CAUSE OF ACTION

2 RETALIATION IN VIOLATION OF FEHA AND GOVERNMENT CODE §12940(h),  
3 FOR TESTIFYING IN CO-WORKER'S FEHA AND GOVERNMENT CODE §12940(a)  
4 RACIAL DISCRIMINATION, HARASSMENT AND RETALIATION JURY TRIAL

5 (As Against Defendant City of Los Angeles)

6 64. It was a violation FEHA and *Government Code* §12940(h), California public policy  
7 and the City's "zero tolerance" practice and policy, for City managers to discriminate, harass or  
8 retaliate against an employee who filed a complaint, testified or assisted in any FEHA proceeding.

9 65. Fajardo engaged in statutory protected activity when he participated in co-worker  
10 James Pearl's FEHA discrimination, harassment and retaliation lawsuit, LASC Case Number  
11 BC518568, including his material, adverse June 12, 2017 jury trial testimony which resulted in a jury  
12 verdict in favor of Pearl and against the City in the amount of \$17,394,972.

13 66. Following Fajardo's June 12, 2017 jury trial testimony in the *Pearl* FEHA  
14 discrimination, harassment and retaliation lawsuit, City managers engaged in a campaign of  
15 continuous violations of Fajardo's employment rights which included those adverse employment  
16 action previously identified herein, which discriminated, harassed and retaliated against Fajardo  
17 because he engaged in statutory protected activity.

18 67. A substantial motivating factor in the City managers' decision to engage in their  
19 campaign of continuous violations of Fajardo's employment rights was their unlawful retaliatory  
20 animus in response to Fajardo's engagement in statutorily protected activities, including his material,  
21 adverse June 12, 2017 *Pearl* jury trial testimony identified herein.

22 SECOND CAUSE OF ACTION

23 RETALIATION IN VIOLATION OF CALIFORNIA PUBLIC POLICY, FEHA AND  
24 GOVERNMENT CODE §12940(h), ET SEQ., FOR EXERCISING  
25 CALIFORNIA FAMILY RIGHTS ACT RIGHTS AND FOR PROSECUTING  
26 FEHA AND GOVERNMENT CODE §12945.2

27 CALIFORNIA FAMILY RIGHTS ACT DISCRIMINATION LAWSUIT

28 68. It was a violation of California public policy, as well as FEHA and *Government Code*



1 §12940(h), as well as the City’s “zero tolerance” practice and policy, for City managers to  
2 discriminate, harass or retaliate against any employee who filed a complaint, testified or assisted in  
3 any manner in any FEHA proceeding.

4 69. Fajardo engaged in statutory protected activity when he filed his DFEH *Complaint of*  
5 *Discrimination*, received his statutory “Right to Sue” and prosecuted his LASC CFRA discrimination,  
6 harassment and retaliation action entitled *Fajardo v. City of Los Angeles*, LASC Case Number  
7 BC477398 from January 2012 through October 2013.

8 70. Following Fajardo’s October 2013 resolution of his CFRA discrimination, harassment  
9 and retaliation lawsuit, City managers engaged in a campaign of continuous violations of Fajardo’s  
10 employment rights which included those adverse employment actions previously identified herein,  
11 which discriminated, harassed and retaliated against Fajardo because he engaged in statutory  
12 protected activity.

13 71. A substantial motivating factor in the City managers’ decision to engage in their  
14 campaign of continuous violations of Fajardo’s employment rights by their discrimination,  
15 harassment and retaliation against Fajardo was their unlawful retaliatory animus in response to  
16 Fajardo’s engagement in statutorily protected activities, including his prosecution of his CFRA  
17 discrimination, harassment and retaliation lawsuit identified herein.

18 THIRD CAUSE OF ACTION

19 DISCRIMINATION IN VIOLATION OF FEHA AND GOVERNMENT CODE §12940(h),  
20 FOR TESTIFYING IN CO-WORKER’S FEHA AND GOVERNMENT CODE §12940(a)  
21 RACIAL DISCRIMINATION, RETALIATION, HARASSMENT JURY TRIAL

22 (As Against Defendants City of Los Angeles)

23 72. It was a violation FEHA and *Government Code* §12940(h), California public policy, as  
24 well as the City’s “zero tolerance” practice and policy, for the City to discriminate, harass or retaliate  
25 against an employee who filed a complaint, testified or assisted in any FEHA proceeding.

26 73. Fajardo engaged in statutory protected activity when he participated in co-worker  
27 James Pearl’s FEHA discrimination, harassment and retaliation lawsuit, including his adverse,  
28 material June 12, 2017 jury trial testimony which resulted in a jury verdict in favor of Pearl and

1 against the City in the amount of \$17, 394,972.

2 74. Following Fajardo's June 12, 2017 jury trial testimony in the Pearl FEHA  
3 discrimination, harassment and retaliation lawsuit, City managers discriminated, harassed and  
4 retaliated against Fajardo including those adverse employment action previously identified herein. .

5 75. A substantial motivating factor in the City's decision to discriminate, harass and  
6 retaliate against Fajardo was their unlawful retaliatory animus in response to Fajardo's engagement in  
7 statutorily protected activities, including his June 12, 2017 *Pearl* jury trial testimony.

8 FOURTH CAUSE OF ACTION

9 HARASSMENT IN VIOLATION OF FEHA AND GOVERNMENT CODE §12940(h),  
10 FOR TESTIFYING IN CO-WORKER'S FEHA AND GOVERNMENT CODE §12940(a)  
11 RACIAL DISCRIMINATION, HARASSMENT AND RETALIATION JURY TRIAL,  
12 HOSTILE WORK ENVIRONMENT

13 (As Against Defendant City of Los Angeles, Adel H. Hagekhalil)

14 76. On multiple occasions prior to July 24, 2019, City managers, including Assistant  
15 Direct Hagekhalil engaged in and/or allowed a concerted pattern of workplace discrimination,  
16 harassment and retaliation based upon whether an employee testified at deposition or trial for a  
17 co-worker's FEHA discrimination, harassment or retaliation lawsuit, which was sufficiently severe  
18 and pervasive to have altered the condition of Fajardo's City employment.

19 77. City managers' concerted pattern of discrimination, harassment and retaliation created  
20 a hostile work environment which was sufficiently severe, pervasive, widespread and unwelcomed  
21 which had the purpose and effect of and did create an intimidating, abuse, offensive and hostile work  
22 environment, whether or not the City managers' conduct was actually directed at Fajardo. This City  
23 managers' conduct communicated the demeaning message against all employees, including Fajardo,  
24 that City's management judged an employee based upon whether that employee testified in deposition  
25 or trial in a co-worker's FEHA discrimination, harassment and retaliation lawsuit, not merit, which  
26 cast the message the only way an employee could get ahead and remain in City management's good  
27 graces for employment privileges was not to testify in a co-worker's FEHA discrimination,  
28 harassment or retaliation lawsuit. This City management's conduct, including Hagekhalil, was

sufficiently pervasive to have altered the conditions of Fajardo's employment based upon whether the employee testified or did not testify, which created a discriminatory and hostile work environment for Fajardo, as well as the City's entire workforce, an adverse employment action which adversely and negatively affected Fajardo's job performance, his prospects for career advancement and promotion, his favorable job assignments, his job security, his ranking during a layoff or position elimination analysis, which allowed an unwarranted negative job performance evaluations, as well as solicitation of negative comments from co-workers, actions designed to disempower those employees like Fajardo who testified in his co-worker's FEHA discrimination, harassment and retaliation lawsuit, adverse employment actions which discriminated and harassed Fajardo in terms, compensation, conditions and privileges of his City employment which were afforded other City employees.

78 The harassing and hostile work environment created by the City managers, including Hagekhalil, would have been perceived as intimidating, hostile, abusive or offensive by a reasonable employee in the same position as Fajardo.

79. The hostile work environment created by City managers, including Hagekhalil, was perceived by Fajardo as intimidating, hostile, abusive and offensive, harassing conduct which City managers and Hagekhalil knew or should have known, yet failed to take immediate and appropriate action to correct, remedy and eliminate this ongoing discrimination and harassment misconduct, inaction which tolerated, condoned and ratified an ongoing past and future hostile work environment.

## FIFTH CAUSE OF ACTION

**HARASSMENT IN VIOLATION OF FEHA AND GOVERNMENT CODE §12940(a), (j)**

BASED UPON RACE,

## HOSTILE WORK ENVIRONMENT

(As Against Defendant City of Los Angeles, Adel H. Hagekhalil)

80. On multiple occasions prior to July 24, 2019, City managers, including Bureau of Sanitation, Assistant Director Adel H. Hagekhalil, engaged in and/or allowed a concerted pattern of workplace discrimination, harassment and retaliation based upon Fajardo's Chicano race, which was sufficiently severe and pervasive to have altered the condition of Fajardo's City employment.

1           81.     The City managers' concerted pattern of discrimination, harassment and retaliation  
2 based upon an employee's Chicano race created a hostile work environment which was sufficiently  
3 severe, pervasive, widespread and unwelcomed which had the purpose and effect of and did create an  
4 intimidating, abuse, offensive and hostile work environment, whether or not the City managers'  
5 conduct was actually directed at Fajardo. This City managers' conduct communicated the demeaning  
6 message against all employees, including Fajardo, that City's managers judged an employee based  
7 upon their race, not merit, which cast the message the only way an employee could get ahead and  
8 remain in City management's good graces for employment privileges was to be a member of the City  
9 managers' preferred racial status. This City managers' conduct, including Hagekhalil, was  
10 sufficiently pervasive to have altered the conditions of Fajardo's employment based upon his racial  
11 characteristics, which created a discriminatory and hostile work environment for Fajardo, as well as  
12 the City's entire workforce, an adverse employment action which adversely and negatively affected  
13 Fajardo's job performance, his prospects for career advancement and promotion, his favorable job  
14 assignments, his job security, his ranking during a layoff or position elimination analysis, which  
15 allowed an unwarranted negative job performance evaluations, as well as solicitation of negative  
16 comments from co-workers, actions designed to disempower those employees like Fajardo who were  
17 not a member of the preferred race or national origin, adverse employment actions which  
18 discriminated and harassed against Fajardo in terms, compensation, conditions and privileges of his  
19 City employment which were afforded other City employees.

20           82.     The harassing and hostile work environment created by the City managers, including  
21 Hagekhalil, would have been perceived as intimidating, hostile, abusive or offensive by a reasonable  
22 employee in the same position as Fajardo.

23           83.     The hostile work environment created by City managers, including Hagekhalil, was  
24 perceived by Fajardo as intimidating, hostile, abusive and offensive, harassing conduct which City  
25 managers and Hagekhalil knew or should have known, yet failed to take immediate and appropriate  
26 action to correct, remedy and eliminate this ongoing discrimination and harassment misconduct,  
27 inaction which tolerated, condoned and ratified an ongoing past and future hostile work environment.

SIXTH CAUSE OF ACTION  
HARASSMENT IN VIOLATION OF FEHA AND GOVERNMENT CODE §12940(h),  
FOR EXERCISING CALIFORNIA FAMILY RIGHTS ACT RIGHTS,  
HOSTILE WORK ENVIRONMENT

(As Against Defendant City of Los Angeles, Adel H. Hagekhalil)

84. On multiple occasions prior to July 24, 2019, City managers, including Bureau of Sanitation, Assistant Director, Adel H. Hagekhalil, engaged in and/or allowed a concerted pattern of workplace discrimination, harassment and retaliation to occur against Fajardo which was sufficiently severe and pervasive to have altered the condition of Fajardo's City employment.

85. The City managers' concerted pattern of discrimination, harassment and retaliation created a hostile work environment which was sufficiently severe, pervasive, widespread and unwelcomed which had the purpose and effect of and did create an intimidating, abuse, offensive and hostile work environment, whether or not the City managers' conduct was actually directed at Fajardo. This City managers' conduct communicated the demeaning message against all employees, including Fajardo, that City's management judged an employee based upon whether they exercised their statutory CFRA/FMLA rights, not upon merit, which cast the message the only way an employee could get ahead and remain in City management's good graces for employment privileges was not to exercise your statutory CFRA/FMLA rights. This City managers' conduct, including Hagekhalil, was sufficiently pervasive to have altered the conditions of Fajardo's employment based upon whether he took intermittent time off to attend to his disabled son's healthcare needs, which created a discriminatory and hostile work environment for Fajardo, as well as the entire workforce, an adverse employment action which adversely and negatively affected Fajardo's job performance, his prospects for career advancement and promotion, his favorable job assignments, his job security, his ranking during a position elimination analysis, which allowed unwarranted negative job performance evaluations, as well as solicitation of negative comments from co-workers, actions designed to disempower employees like Fajardo who chose to exercise their statutory CFRA/FMLA rights, adverse employment actions which discriminated, harassed and retaliated against Fajardo in terms, compensation, conditions and privileges of his City employment afforded other City employees.

1           86.     The harassing and hostile work environment created by the City managers, including  
2 Hagekhalil, would have been perceived as intimidating, hostile, abusive or offensive by a reasonable  
3 employee in the same position as Fajardo.

4           87.     The hostile work environment created by City managers, including Hagekhalil, was  
5 perceived by Fajardo as intimidating, hostile, abusive and offensive, harassing conduct which City  
6 managers and Hagekhalil knew or should have known, yet failed to take immediate and appropriate  
7 action to correct, remedy and eliminate this ongoing discrimination and harassment misconduct,  
8 inaction which tolerated, condoned and ratified an ongoing past and future hostile work environment.

9                                 SEVENTH CAUSE OF ACTION

10                    HARASSMENT IN VIOLATION CALIFORNIA PUBLIC POLICY AND THE WORKERS'

11                                 COMPENSATION ACT AND LABOR CODE §§3200-6208

12                                 FOR PROSECUTING WORKERS' COMPENSATION CLAIM,

13                                 HOSTILE WORK ENVIRONMENT

14                                 (As Against Defendants City of Los Angeles, Adel H. Hagekhalil)

15           88.     On multiple occasions prior to July 24, 2019, City manager, including Assistant Direct  
16 Hagekhalil engaged in and/or allowed a concerted pattern of workplace discrimination, harassment  
17 and retaliation which was sufficiently severe and pervasive to have altered the condition of Fajardo's  
18 City employment.

19           89.     Defendants' concerted pattern of discrimination, harassment and retaliation created a  
20 hostile work environment which was sufficiently severe, pervasive, widespread and unwelcomed  
21 which had the purpose and effect of and did create an intimidating, abuse, offensive and hostile work  
22 environment, whether or not defendants' conduct was actually directed at Fajardo. This City  
23 managers' conduct communicated the demeaning message against all employees, including Fajardo,  
24 that City's management judged an employee based upon whether they filed a workers' compensation  
25 case for an on-the-job injury, not merit, which cast the message the only way an employee could get  
26 ahead and remain in City management's good graces for employment privileges was not to file a  
27 workers' compensation claim for an on-the-job injury. This City management's conduct, including  
28 Hagekhalil, was sufficiently pervasive to have altered the conditions of Fajardo's employment based

1 upon racial characteristics, which created a discriminatory and hostile work environment for Fajardo,  
2 as well as the City's entire workforce, an adverse employment action which adversely and negatively  
3 affected Fajardo's job performance, his prospects for career advancement and promotion, his  
4 favorable job assignments, his job security, his ranking during a layoff or position elimination  
5 analysis, which allowed an unwarranted negative job performance evaluations, as well as solicitation  
6 of negative comments from co-workers, actions designed to disempower those employees like  
7 Fajardo who chose to exercise his statutory rights, adverse employment actions which discriminated  
8 against Fajardo in terms, compensation, conditions and privileges of his City employment which were  
9 afforded other City employees.

10 90. The harassing and hostile work environment created by the City managers, including  
11 Hagekhalil, would have been perceived as intimidating, hostile, abusive or offensive by a reasonable  
12 employee in the same position as Fajardo.

13 91. The hostile work environment created by City managers, including Hagekhalil, was  
14 perceived by Fajardo as intimidating, hostile, abusive and offensive, harassing conduct which City  
15 managers and Hagekhalil knew or should have known, yet failed to take immediate and appropriate  
16 action to correct, remedy and eliminate this ongoing discrimination and harassment misconduct,  
17 inaction which tolerated, condoned and ratified an ongoing past and future hostile work environment.

18 EIGHTH CAUSE OF ACTION

19 DISCRIMINATION IN VIOLATION OF FEHA AND GOVERNMENT CODE §12940(h)

20 FOR OPPOSITION FEHA'S UNLAWFUL EMPLOYMENT PRACTICES

21 (As Against Defendants City of Los Angeles)

22 92. When Fajardo repeatedly voiced his opposition to the City's CFRA/FMLA  
23 discrimination, harassment and retaliation, when Fajardo voiced his opposition to the City's race-  
24 based, anti-Chicano promotional practices and policies, when Fajardo truthfully testified against the  
25 City's pecuniary interests in a co-worker's prior racial discrimination, harassment and retaliation  
26 lawsuit, Fajardo engaged in a state and federal recognized protected activities.

27 93. City managers discriminated, harassed and retaliated against Fajardo based upon his  
28 voiced opposition to the City's unlawful employment actions.

1           94.     City managers discrimination, harassment and retaliation against Fajardo was  
2 substantially motivated by Fajardo's voiced opposition to the City's unlawful employment practices.

3                                 NINTH CAUSE OF ACTION

4                                 RACIAL DISCRIMINATION

5                                 IN VIOLATION OF CALIFORNIA, PUBLIC POLICY, FEHA AND

6                                 GOVERNMENT CODE §§12920, 12921, 12940(a)

7                                 (As Against Defendant City of Los Angeles)

8           95.     California Fair Employment & Housing Act and *Government Code* §§12920-12921  
9 stated it was the public policy of the State of California that employers, like the City of Los Angeles,  
10 shall not treat their employees differently in terms, compensation and conditions of employment  
11 based upon an employee's race, an employee's recognized Civil Right as a citizen of the State of  
12 California and the United States of America.

13           96.     City managers violated California public policy and Fajardo's Civil Rights when they  
14 intentionally discriminated, harassed and retaliated against Fajardo in the terms, conditions and  
15 privileges of his City employment, including those adverse employment actions previously identified  
16 herein, which prevented his career advancement or promotion, action taken against Fajardo because  
17 of his Chicano race, as well as Fajardo's expressed opposition to the City's race-based, anti-Chicano  
18 employment practices.

19           97.     As a direct and proximate result of the City's race-based promotional practice and  
20 policies Fajardo was harmed by those adverse employment action previously identified herein.

21           98.     A substantial motivating factor for the City's discrimination, harassment and  
22 retaliation against Fajardo was his Chicano race pursuant to the custom, practice and policy of the  
23 Bureau of Sanitation to exclude qualified Chicano employees from career advancement and  
24 promotion to supervisory, leadership and management positions in violation of Fajardo's Civil  
25 Rights, California public policy and *Government Code* §§12920, 12921 and 12940.

26  
27     ///



1 TENTH CAUSE OF ACTION

2 CALIFORNIA FAMILY RIGHTS ACT DISCRIMINATION;  
3 VIOLATION OF CALIFORNIA, PUBLIC POLICY, FEHA AND  
4 GOVERNMENT CODE §§12920, 12921, 12940(a)

5 (As Against Defendant City of Los Angeles)

6 99. At all times mentioned herein, Fajardo applied for, then received his City-approved  
7 CFRA/FMLA eligibility which allowed Fajardo to take off intermittent periods of time from work to  
8 attend his disabled son's healthcare needs.

9 100. City managers unlawfully discriminated, harassed and retaliated against Fajardo  
10 because he took City-approved intermittent time off to attend to his disabled son's healthcare needs.

11 101. The City of Los Angeles' unlawful discriminatory animus was a substantial motivating  
12 factor in their decision to discriminate, harass and retaliate against Fajardo.

13 ELEVENTH CAUSE OF ACTION

14 RACIAL AND CALIFORNIA FAMILY RIGHTS ACT COMBINED DISCRIMINATION  
15 IN VIOLATION OF CALIFORNIA, PUBLIC POLICY, FEHA AND  
16 GOVERNMENT CODE §§12920, 12921, 12940(a), 12945.2

17 (As Against Defendant City of Los Angeles)

18 102. Prior to July 19, 2019, the City treated Fajardo differently in terms compensation,  
19 conditions and privileges of his City employment than the other City employees based upon a  
20 combination of his Chicano race and his exercise of his statutory CFRA rights.

21 103. City managers illegally and unlawfully discriminated against Fajardo because of the  
22 combination of his Chicano race and his exercise of his statutory CFRA rights.

23 104. City managers' unlawful combined racial discrimination and discrimination based  
24 upon the exercise of his statutory CFRA rights was a substantial motivating factor in the City's  
25 decision to discriminate against Fajardo.

26  
27 ///

1 TWELFTH CAUSE OF ACTION

2 FAILURE TO PREVENT FEHA DISCRIMINATION, HARASSMENT, RETALIATION;  
3 IN VIOLATION OF FEHA AND GOVERNMENT CODE §12940(k)

4 (As Against City of Los Angeles)

5 105. Defendant City of Los Angeles violated *Government Code* §§12940(j) and (k), when  
6 they failed to take all reasonable steps necessary to prevent workplace discrimination, harassment and  
7 retaliation from occurring, by failing to remedy workplace discrimination, harassment and retaliation.  
8 The City knew upper management discriminated, harassed and retaliated against Fajardo because he  
9 engaged in statutory protected activity previously identified herein, but failed to take any appropriate  
10 remedial nor corrective action.

11 106. Defendant City's conduct was a substantial factor in causing harm to Fajardo.

12 THIRTEENTH CAUSE OF ACTION

13 RETALIATION IN VIOLATION OF CALIFORNIA PUBLIC POLICY AND THE  
14 WORKERS COMPENSATION ACT AND LABOR CODE §§3200-6208;  
15 FOR PROSECUTING WORKERS' COMPENSATION CLAIM

16 (As Against Defendant City of Los Angeles)

17 107. It was a violation of California public policy, as well as *Labor Code* §§3200-6209, *et*  
18 *seq.*, as well as the City's "zero tolerance" practice and policy, for the City to discriminate, harass or  
19 retaliate against any employee who filed a Workers' Compensation *Application for Adjudication of*  
20 *Benefits* seeking compensation for a work-related injury.

21 108. Prior to July 2019, Fajardo engaged in statutory protected activity when he exercised  
22 his statutory rights and prosecuted his Workers' Compensation *Application for Adjudication of*  
23 *Benefits* seeking compensation for a work-related injury.

24 109. In response to Fajardo's engagement in statutory protected activity and pursued his  
25 statutory claim for workers' compensation benefits, City manager's engaged in a campaign of  
26 continuous violations of Fajardo's employment rights which included those adverse employment  
27 actions previously identified herein, which discriminated, harassed and retaliated against Fajardo  
28 because he engaged in statutory protected activity.

110. A substantial motivating factor in the City managers' decision to engage in their campaign of continuous violations of Fajardo's employment rights by their discrimination, harassment and retaliation against Fajardo was their unlawful retaliatory animus in response to Fajardo's engagement in statutorily protected activities, including his prosecution of his Workers' Compensation *Application for Adjudication of Benefits* seeking compensation for his work-related injury identified herein.

FOURTEENTH CAUSE OF ACTION

## WHISTLEBLOWER RETALIATION

IN VIOLATION OF LABOR CODE §1102.5(a), (b), (d)

(As Against Defendant City of Los Angeles)

111. Pursuant to California *Labor Code* §1102.5(a)-(g), *et seq.*, known as the California “Whistleblower Statute,” an employer was strictly prohibited from retaliating against any employee whom the employer believed *disclosed* or *may disclose* opposition to actual and/or perceived unlawful conduct to a government or law enforcement agency; to a person with authority over the employee; or to a person with authority to investigate, discover, or correct the violation or noncompliance; if the employee had reasonable cause to believe the information disclosed a violation of state or federal statute, or a violation of or noncompliance with a local, state or federal rule or regulation regardless of whether disclosing the information was part of the employee’s job duties. Further, pursuant to *Labor Code* §1102.5(c), an employer shall not retaliate against an employee who refused to participate in an activity that would result in a violation of state or federal statute, or violation of or noncompliance with a local, state or federal rule or regulation. Further, pursuant to Section 1102.5(d), an employer shall not retaliate against an employee for having exercised his/her rights under §1102.5(a)-(c).

112. Pursuant to Section 1102.5(b), it was unlawful for an employer to retaliate against any employee engaged in the protected activity of opposing, reporting and/or complaining of unlawful employer conduct or work conditions reasonably believed to be a violation of or noncompliance with a state or federal law or regulation, or retaliate against an employee who refused to participate in an work activity that would result in a violation of or noncompliance with a state or federal law.

1           113. Prior to July 24, 2019, Fajardo engaged in statutorily protected activity when he  
2 opposed, reported, complained of the City managers' acts and events which Fajardo reasonably and in  
3 good faith believed was a violation of or noncompliance with state or federal law:

- 4           (a) City management's workplace discrimination, harassment and retaliation  
5 in violation of FEHA and *Government Code* §§12920, 12921, 12940(a);
- 6           (b) City management's request that Fajardo commit a state and federal crime  
7 and illegally dump an estimated 4,000 gallons of hazardous waste (oil) into  
8 the City sewers, i.e., Federal Water Pollution Control Act of 1948; rewritten  
9 in 1972 as the Federal Water Pollution Control Act Amendments of 1972,  
10 33 U.S.C. §1251, *et seq.*, with major changes subsequently introduced via  
11 amendatory legislation which included the Clean Water Act of 1977, and  
12 the Water Quality Act of 1987; California *Health & Safety Code* §25189.5;  
13 California *Penal Code* §1170(h), which subjected an unlawful dumper of  
14 hazardous waste to imprisonment, to heavy monetary fines up to \$100,000  
15 per day, per violation, for each gallon illegally dumped, plus clean-up costs,  
16 which provided City managers the "cause" they were trying to falsely  
17 fabricate to terminate Fajardo, i.e., "illegal dumping."
- 18           (c) City management's health and safety violations of *Labor Code* §§6310,  
19 6400-6404, for failure to provide Fajardo, his co-workers and the citizens  
20 of the City of Los Angeles who used City streets and sidewalks with a safe  
21 place to work and operate the City's heavy-duty trucks. On multiple prior  
22 occasions prior to July 24, 2019, Fajardo objected to the City manager's  
23 assignment of the City's obsolete, defective, malfunctioning 40,000-60,000  
24 pound, 3-axle, Vactor Condor "death trap" truck to clean City catch basins  
25 because they were not safe to be on the City streets. Fajardo reasonably and  
26 in good faith believed the operation of these trucks on City street violated  
27 state and federal law, i.e., California *Vehicle Code* §§34500, 34505.5; the  
28 federal Commercial Motor Vehicle Safety Act, the Motor Carrier Safety

Improvement Act, Federal Motor Carrier Safety Regulations, 49 CFR 350-359 (motor carrier safety regulations); 49 CFR 360-379 (commercial regulations); 49 CFR 171-180 (Hazardous Material Regulations).

114. Over Fajardo's objections, on July 24, 2019, City managers deliberately discriminated, harassed and retaliated against Fajardo when they assigned him one of their obsolete, defective, malfunctioning 40,000-60,000 pound, 3-axle, Vactor Condor "death trap" Truck Number 39135, which City manager knew exposed Fajardo, his co-worker passenger and all citizens of the City of Los Angeles using City streets and sidewalks to an unreasonable and unnecessary risk of serious bodily injury, being maimed or being killed. The City managers' act of retaliation exposed Fajardo, his co-workers and the citizens of the City of Los Angeles who used City streets and sidewalks to an unreasonable and unnecessary risk of serious bodily injury, being maimed, being killed, a truck assignment which violated state and federal law regarding the maintenance and operation of their large City vehicles before being allowed on City streets. To the surprise of no one, Fajardo collided with a City motorist when his brakes suddenly "went out" and malfunctioned on a busy City street being used by motorist, where pedestrians used the adjacent sidewalk. Fajardo's truck struck a City motorist whom he initially thought he had killed. Fajardo and his co-worker passenger sustained injuries as a result of the collision.

115. The City managers' brazen efforts to discriminate, harass and retaliate against Fajardo was substantially motivated by Fajardo's multiple prior reports of health and safety violations to City managers, Fajardo's multiple prior oppositions and multiple refusals to participate in an activity which Fajardo reasonably believed violated state and federal law.

FIFTEENTH CAUSE OF ACTION  
WHISTLEBLOWER RETALIATION  
IN VIOLATION OF CALIFORNIA LABOR CODE §1102.5(a), (b), (d)  
PREEMPTORY WHISTLEBLOWER RETALIATION  
(As Against Defendant City of Los Angeles)

116. Pursuant to California *Labor Code* §1102.5(b), *et seq.*, an employer was strictly prohibited from discriminating, harassing or retaliating against any employee whom the employer

1 believed *may disclose* opposition to actual and/or perceived unlawful conduct to a government or law  
2 enforcement agency, to a person with authority over the employee, or to a person with authority to  
3 investigate, discover, or correct the violation or noncompliance, if the employee had reasonable cause  
4 to believe the information disclosed a violation of state or federal statute, or a violation of or  
5 noncompliance with a local, state or federal rule or regulation regardless of whether disclosing the  
6 information was part of the employee's job duties. Further, pursuant to *Labor Code* §1102.5(d),  
7 an employer shall not retaliate against an employee for having exercised his/her rights under  
8 §1102.5(a)-(c).

9 117. The City violated California public policy and *Labor Code* §1102.5, when on July 24,  
10 2019, they discriminated, harassed and retaliated against Fajardo, which was a preemptive retaliation  
11 because the City believed Fajardo *may voice* his opposition and/or *may report* and/or *may disclose* the  
12 City manager's unlawful misconduct to a state or federal government or law enforcement agency, to a  
13 person over with authority over him at some time in the future, i.e., §1102.5(b) preemptive retaliation.

14 118. The City illegally and unlawfully retaliated against Fajardo to preempt his reporting of  
15 the City's unlawful misconduct to state or federal officials

16 119. The City's unlawful preemptive retaliatory animus was a substantial motivating factor  
17 in their decision to discriminate, harass and retaliate against Fajardo.

18 SIXTEENTH CAUSE OF ACTION

19 WHISTLEBLOWER RETALIATION

20 IN VIOLATION OF *LABOR CODE* §1102.5(c), (d)

21 (As Against Defendant City of Los Angeles)

22 120. Pursuant to California *Labor Code* §1102.5(c), *et seq.*, an employer shall not retaliate  
23 against an employee who refused to participate in an activity that would result in a violation of state  
24 or federal statute, or violation of or noncompliance with a local, state or federal rule or regulation.  
25 Further, pursuant to *Labor Code* §1102.5(d), an employer shall not retaliate against an employee for  
26 having exercised his/her rights under §1102.5(a)-(c).

27 121. After Fajardo's engaged in protected activity by reporting workplace discrimination,  
28 harassment and retaliation, by reporting City managers' request to commit a crime by illegal dumping

1 of hazardous waste into City sewers, by reporting City managers' use of large 3-axle Vactor Condor  
2 trucks that did not belong on City streets because of their dangerous and unsafe condition, City  
3 managers' misconduct which Fajardo reasonably and good faith believed was unlawful conduct, in  
4 violation of and/or non-compliance with state and/or federal rules and regulation, on July 24, 2019  
5 retaliated against Fajardo when they assigned him their Vactor Condor Truck 39135, which they  
6 understood exposed Fajardo, his co-worker and the citizens of the City of Los Angeles who used City  
7 streets and sidewalks to an unreasonable and unnecessary risk of serious bodily injury, being maimed  
8 or being killed.

9 122. The City violated California public policy and *Labor Code* §1102.5(c) and (d), as well  
10 as violated their own practices and policies against management's retaliation against an employee  
11 when on July 24, 2019 they retaliated against Fajardo by their assignment of this "death tap" Truck  
12 Number 39135 designed to serious injure, maim or kill Fajardo, Fajardo's co-worker, or citizens of  
13 the City of Los Angeles who used City streets and sidewalks, because he opposed unlawful conduct,  
14 refused to participate and/or reported or was believed about to report what he reasonably and in good  
15 faith believed was a violation of and/or noncompliance with state, federal statute, rule or regulation.

16 123. The City managers' unlawful retaliatory animus was a substantial motivating factor in  
17 their decision to put Fajardo into what they knew was an obsolete, defective, malfunctioning Truck  
18 Number 39135 which exposed him, his co-worker and the citizens of the City of Los Angeles who  
19 used the streets and sidewalk to serious bodily injury, being maimed or being killed.

20 SEVENTEENTH CAUSE OF ACTION

21 WHISTLEBLOWER RETALIATION

22 IN VIOLATION OF CALIFORNIA PUBLIC POLICY AND

23 LABOR CODE §§6310, 6400-6404, ET SEQ.,

24 FOR REPORTING WORKPLACE HEALTH & SAFETY ISSUES

25 (As Against Defendant City of Los Angeles)

26 124. Pursuant to *Labor Code* §§6400-6404, *et seq.*, every employer shall furnish a place of  
27 employment that is safe and healthful for their employees therein [Section 6400(a)]; every employer  
28 shall do everything reasonably necessary to protect the life, safety and health of their employees

1 [Section 6401]; every employer shall correct unsafe and unhealthy conditions in a timely manner  
2 [Section 6401.7]; no employer shall require any employee to be in any place of employment which is  
3 not safe and healthful [Section 6402]; an employer shall not neglect doing everything reasonable to  
4 protect the life, safety and health of its employees [Section 6402]; no employer shall occupy or  
5 maintain a place of employment that is not safe and healthful [Section 6404]. Pursuant to Section  
6 6310, *et seq.*, no employer shall threaten discharge, demote, suspend or in *any* manner discriminate  
7 against *any* worker who made a complaint regarding employee health and safety to her employer.  
8 Sections 6310 and 6400-6404 were statutory provisions designed to inure to the benefit of the  
9 California public as a whole, that ensured employers had adequate notice of conduct subjecting them  
10 to tort liability to employees they discriminate or retaliate against.

11 125. On multiples occasions following Fajardo's June 12, 2017 truthful, adverse testimony  
12 in the *Pearl* FEHA discrimination, harassment and retaliation case, to present, Fajardo reported what  
13 he reasonably and in good faith believed to be health and safety issues after the City assigned Fajardo  
14 their obsolete, defective, malfunctioning 40,000-60,000 pound, 3-axle, Vactor Condor "death trap"  
15 trucks, including Truck Number 39135, on July 24, 2019, for Fajardo to use to complete his catch  
16 basin cleaning Work orders. This Vactor Condor Truck Number 39135 was an outdated,  
17 discontinued model, where new, replacement parts were no longer available to the City. In City  
18 vernacular, this truck had or should have been designated for "the City bone yard" to be used as a  
19 source of replacement parts, not to be used by City employees in the performance of City job duties.  
20 This Vactor Condor truck was not supposed to be operated by City employees, not supposed to be  
21 operated on City streets. This Vactor Condor truck was a serious health and safety risk to Fajardo,  
22 Fajardo's passenger, all City employees, as well as the citizens of the City of Los Angeles who used  
23 the City streets and sidewalks where the Vactor Condor truck would be operated. However, City  
24 managers assigned Fajardo this vehicle in retaliation to "get Fajardo," which subjected Fajardo, his  
25 co-worker passenger and all the citizens of the City of Los Angeles who used City streets and  
26 sidewalks to the unreasonable and unnecessary risk of being seriously injured, maimed or killed while  
27 on duty should this vehicle decide to malfunction while operated on the City streets as Fajardo  
28 completed his catch basin cleaning Work Orders.



1           126. The City of Los Angeles violated California public policy and Sections 6310 and  
2 6400-6404, *et seq.*, as well as violated their own practices and policies when they unlawfully  
3 discriminated, harassed and retaliated against Fajardo by their assignment of the obsolete, defective,  
4 malfunctioning Vactor Condor Truck Number 39135, where then brakes “gave out” and  
5 malfunctioned, where Fajardo was unable to bring this 40,000-60,000 pound vehicle to a stop on a  
6 busy Coty street, which caused a collision with a City motorist which seriously injured a motorist,  
7 Fajardo and his co-worker passenger. The City manager’s assignment of Truck 39135 to Fajardo was  
8 substantially motivated by Fajardo’s prior engagement in statutory protected activity when he  
9 opposed and reported his opposition to, complaint of and/or refusal to participate in the use of these  
10 vehicles which exposed him, his City co-workers and the citizens of the City of Los Angeles who  
11 used the streets and sidewalks to an unreasonable and unnecessary risk of serious bodily injury, being  
12 maimed or being killed.

13                           DAMAGES COMMON TO ALL CAUSES OF ACTION

14                           (As Against Defendants City of Los Angeles, Adel H. Hagekhalil)

15           127. As a direct and proximate cause of the City’s unlawful, intentional discrimination,  
16 harassment and retaliation, plaintiff suffered and continues to suffer severe and extreme emotional  
17 distress, worry, humiliation, mental anguish, anxiety, loss of enjoyment of life and related non-  
18 economic general damages, past and future, medical and out-of-pocket economic and incidental  
19 expenses, past and future, lost earnings and loss of career opportunities and related economic  
20 damages, past and future, irreparable damage to his reputation within the City which substantially  
21 jeopardized the likelihood of his ability to secure career advancement and promotion, statutory  
22 attorney’s fees and costs, with interest thereon, in an amount according to proof.

23                           PUNITIVE DAMAGES

24                           (As Against Defendant Adel H. Hagekhalil, Only)

25           128. Hagekhalil’s intentional, deliberate harassing conduct previously identified herein  
26 was in conscious disregard of Fajardo’s statutory rights. As a direct and proximate cause of  
27 defendant Hagekhalil’s wrongful, intentional and deliberate conduct done in conscious and in  
28 reckless disregard of Fajardo’s rights as a California employee, the imposition of punitive damages

1 is warranted pursuant to *Civil Code* § 3294 in an amount sufficient to punish and set an example of  
2 Hagekhalil and to deter him and those similarly situated from their commission of similar acts in the  
3 future.

4 Wherefore, plaintiff Gabriel Fajardo prays for the following damages:

5 FOR THE FIRST - SEVENTEENTH CAUSES OF ACTION:

6 129. For economic damages, past and future, according to proof;

7 130. For non-economic damages, past and future, according to proof;

8 FOR THE FIRST - TWELFTH CAUSES OF ACTION:

9 131. For statutory attorney's fees and costs pursuant to *Government Code* §12965(b);

10 132. For statutory attorney's fees and costs pursuant to *Code of Civil Procedure*

11 §1021.5 (enforcement of an important affecting public interest);

12 FOR THE THIRTEENTH CAUSES OF ACTION:

13 133. For statutory attorney's fees and costs pursuant to *Code of Civil Procedure*

14 §1021.5 (enforcement of an important affecting public interest);

15 FOR THE FOURTEENTH - SEVENTEENTH CAUSES OF ACTION:

16 134. For statutory attorney's fees and costs pursuant to *Labor Code* 1102.5 and

17 *Code of Civil Procedure* §1021.5 (enforcement of an important affecting

18 public interest);

19 FOR THE FOURTH - SEVENTH CAUSES OF ACTION, HAGEKHALIL, ONLY:

20 135. For punitive damages pursuant to *Civil Code* §3294 (Hagekhalil, Only);

21 FOR ALL CAUSES OF ACTION:

22 136. For prejudgment interest to the extent permitted by law; and

23 137. For such other and further relief as this Court may deem just and proper.

24  
25 Dated: July 23, 2020

CWIKLO LAW FIRM

26  
27 /s/ David Peter Cwiklo

DAVID PETER CWIKLO

Attorneys for Plaintiff

28 GABRIEL FAJARDO

1 DEMAND FOR JURY TRIAL

2 Plaintiff Gabriel Fajardo hereby demands that her case be tried to a jury.

3  
4 Dated: July 23, 2020

CWIKLO LAW FIRM

5 /s/ David Peter Cwiklo

6 DAVID PETER CWIKLO

7 Attorneys for Plaintiff

8 GABRIEL FAJARDO