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DENELLE FEDOR

ENDORSED
FILED
Sharon Wesselt
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Superior Court of California
County of Santa Clara
San Jose

8 IN THE SUPERIOR COURT OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION

11 DENELLE FEDOR,

12 Plaintiff,

13 v.

14 CITY OF SAN JOSE, a municipal entity,
15 PIERLUIGI OLIVERIO, an individual and/or
DOES 1-20, inclusive,

16 Defendants.

Case No. 1-14-CV-271291

FIRST AMENDED COMPLAINT

1. Harassment Based on Sex in Violation of the Fair Employment and Housing Act;
2. Discrimination Based on Sex in Violation of the Fair Employment and Housing Act;
3. Retaliation in Violation of the Fair Employment and Housing Act;
4. Failure to Take Steps to Prevent and Correct Harassment, Discrimination, and Retaliation in Violation of the Fair Employment and Housing Act;
5. Intentional Infliction of Emotional Distress;

DEMAND FOR JURY TRIAL

BY FAX

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1 COMPLAINT

2 Now comes DENELLE FEDOR, plaintiff in this action, and files this Complaint, and further
3 alleges as follows:

4 Parties to the Civil Action

5 1. Plaintiff DENELLE FEDOR (hereinafter referred to as "Fedor" or "Plaintiff") is an
6 unmarried female adult natural person who is and was at times mentioned herein a resident of the
7 State of California, County of Santa Clara, and employed by The City of San Jose.

8 2. The CITY OF SAN JOSE (hereinafter referred "the City") is municipal entity located
9 in the County of Santa Clara, created and existing under the laws of the State of California.

10 3. PIERLUIGI OLIVERIO (hereafter "Oliverio") is an adult male natural person. At all
11 times mentioned herein, Oliverio was employed by the City as an elected City Councilman. Oliverio
12 was the direct supervisor of Plaintiff's during Plaintiff's employment with the City.

13 4. The true names and capacities of DOES 1-20 are unknown to Plaintiff and they are
14 sued under fictitious names. The true names and capacities, whether individual, corporate, associat.,
15 or otherwise, of DOES 1-20, inclusive, are unknown to Plaintiff, who therefore sues the DOE
16 Defendants by fictitious names. Plaintiff will amend this complaint to show their true names and
17 capacities when they have been ascertained. For the purposes of this Complaint, each use of the
18 term "Defendant" or "Defendants"), refers not only to each/all named Defendant(s), but also to
19 DOES 1-20.

20 5. The City is an employer subject to suit under California Government Code Section
21 12900, et seq., the California Fair Employment and Housing Act ("FEHA") in that the City is a
22 municipality with more than 5 employees within in the State of California.

23 6. All of the events described and alleged in this complaint occurred in the County of
24 Santa Clara, State of California.

1 Venue and Jurisdiction

2 1. On October 25, 2013, and within the time provided by law, Plaintiff filed
3 administrative charges with the California Department of Fair Employment and Housing ("DFEH")
4 against Defendants and received a "Right to Sue" notice on the same date. Charge No. 179115-
5 75469-R. Plaintiff thus timely exhausted her administrative remedies as required by law.

6 2. Venue is proper because the City is located in the County of Santa Clara, State of
7 California.

8 3. The amount in controversy in this action, exclusive of interest, costs and attorney
9 fees, exceeds \$25,000.

10 Facts Common to All Causes of Action

11 4. In March 2007, Fedor was employed by the City as Director of Oliverio's legislative
12 staff. However, in actuality, Fedor functioned as Oliverio's "Chief of Staff." Fedor formally
13 obtained title of Chief of Staff in or around 2009.

14 5. At all relevant times herein, Fedor reported directly to Oliverio.

15 6. Beginning in 2010, Oliverio made comments to Fedor related to sex and her gender.
16 Oliverio told Fedor that his (Oliverio's) mother "was hoping that all hope was not lost for you and I
17 having a baby together. You are the only woman that I have brought home that she actually likes."

18 7. On another occasion, Oliverio said how wonderful it would be for Oliverio and Fedor
19 to have a baby together, "My mother expects us to have a baby together, and she would be thrilled if
20 that happened." When Oliverio made these comments, Fedor told Oliverio that his comments were
21 not funny, offensive, and wanted him to stop speaking this way to her.

22 8. In 2010, when Oliverio's attention turned away from Fedor and toward another
23 woman, Oliverio's comments became critical and aggressive toward Fedor. Oliverio frequently used
24 profanity and cursed at Fedor, referring to her as a "bitch," "stupid" and told her to "shut the fuck
25 up" on many occasions.

1 9. When Fedor told Oliverio she might speak to an attorney about his degrading
2 comments, Oliverio responded with: "You are nothing but a fucking at-will employee. You act like
3 you are part of some fucked up union, Miss Whole and Mighty."

4 10. In 2010, Fedor asked Oliverio to stop speaking to her in a humiliating and degrading
5 manner, Oliverio replied, "Go home with pay and learn how to stop acting like such a fucked-up
6 bitch, and then you can come back."

7 11. In 2011, Oliverio told Fedor, "You think Rick Doyle gives a shit about you? With all
8 your Mounted Unit shit? Think again. He's on my side when it comes to you. Think about it again
9 Miss Priss."

10 12. In mid-2011, Oliverio telephoned Fedor to accuse her of an error. During this
11 telephone call, Oliverio berated Fedor for her alleged mistake. When Fedor tried to defend herself,
12 Oliverio responded, "You're so fucking moody – just like a woman – a moody unpredictable bitch.
13 To think my mom likes you. I should just fire you and get it over with!"

14 13. In 2011, Oliverio stated he only wanted attractive females on his staff. Speaking with
15 Fedor, Oliverio referred to an ex-female staff member as, "fat and smelly; she will never get another
16 job."

17 14. On or about September 2011, Oliverio made various remarks about Fedor's weight
18 loss including, "Schumb is funny. He said you were disappearing. Well, you still have boobs!"
19 When Fedor informed Oliverio his comment was offensive and unwelcome, Oliverio stated, "Don't
20 be so high and mighty. Don't you know that is what guys talk about? Give me a break!"

21 15. On June 7, 2013, as the direct, proximate and consequential result of the foregoing
22 abuse, hostility, harassment and treatment by Oliverio, Fedor sought professional therapy for her
23 anxiety, stress, panic attacks, headaches, lightheadedness, insomnia and nightmares.

24 16. On June 19, 2013, Fedor went on approved medical leave due to intense anxiety and
25 stress from working with Councilmember Oliverio. Fedor was scheduled to stay on medical leave
26 through August 19, 2013.

1 17. While on extended approved medical Fedor concluded the working conditions in her
2 job as a subordinate of Oliverio were intolerable.

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4 **FIRST CAUSE OF ACTION**
5 **Harassment Based on Sex in Violation of the FEHA**
6 **(Against All Defendants)**

7 18. By this reference, Fedor hereby incorporates each and every paragraph set forth
8 above as though fully set forth at this place.

9 19. Fedor was an employee of City of San Jose.

10 20. Oliverio engaged in unwanted conduct of a sexual nature.

11 21. Fedor's job was conditioned, by words and/or conduct, of Fedor's acceptance of
12 Oliverio's conduct.

13 22. Fedor was subjected to unwanted harassing conduct because she was a woman.

14 23. The harassing conduct was severe and/or pervasive and wholly unwelcome.

15 24. A reasonable woman in Fedor's circumstances would have considered her work
16 environment to be hostile and/or abusive.

17 25. Fedor, in fact, considered the work environment to be hostile or abusive.

18 26. At all relevant times herein, Oliverio was a supervisor and agent of the City Jose.

19 27. Oliverio engaged in the harassing conduct alleged herein. The City is therefore liable
20 for the conduct of Oliverio under the Doctrine of Strict Liability.

21 28. Fedor was harmed.

22 29. Oliverio's conduct was a substantial factor in causing Fedor's harm.

23 30. Oliverio willfully and/or with reckless indifference, violated the FEHA and harassed
24 Fedor as outlined above.

25 31. Such harassment resulted in damage and injury to Fedor as alleged herein.

26 32. As a direct and proximate result of the unlawful conduct of Oliverio, Fedor has
27 suffered special damages in excess of \$25,000, including but not limited to past and future loss of

1 income, benefits, medical expenses, and other damages to be proven at time of trial.

2 33. As a direct and proximate result of the unlawful conduct of Oliverio, Fedor suffered
3 general damages including but not limited to shock, embarrassment, humiliation, emotional distress,
4 stress multiple physical symptoms and such other damages as may be proved at trial.

5 34. Oliverio committed the acts herein alleged maliciously, fraudulently and oppressively
6 in conscious disregard for Fedor's rights. Fedor is, therefore, entitled to recover punitive damages
7 from Oliverio in an amount according to proof at trial.

8 35. As a result of the conduct of Defendants, Fedor was forced to retain attorneys in order
9 to protect her rights. Accordingly, Fedor seeks the reasonable attorneys' fees and costs incurred in
10 this litigation in an amount according to proof at trial.

11 WHEREFORE, PLAINTIFF prays for judgment as set forth below.

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13 **SECOND CAUSE OF ACTION**
14 **Discrimination Based on Sex in Violation of the FEHA**
15 **(Against The City)**

16 36. By this reference, Fedor hereby incorporates each and every paragraph set forth
17 above as though fully set forth at this place.

18 37. Fedor was an employee of City of San Jose.

19 38. Fedor's sex and gender (female) was a substantial factor in the ongoing harassment,
20 unwanted sexual advances, verbal abuse of sexual nature, sexually degrading words and verbal
21 sexual advancements.

22 39. Fedor was harmed.

23 40. Oliverio's conduct was a substantial factor in causing Fedor's harm.

24 41. Fedor is informed and believes and thereon alleges that Oliverio willfully and/or with
25 reckless indifference, violated the FEHA and discriminated against Fedor as outlined herein.

26 42. As a direct and proximate result of the unlawful conduct of The City, Fedor has
27 suffered special damages including but not limited to past and future loss of income, benefits,
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1 medical expenses, and other damages to be proven at time of trial.

2 43. As a direct and proximate result of the unlawful conduct of Oliverio, Fedor has
3 suffered general damages including but not limited to shock, embarrassment, humiliation, emotional
4 distress, stress, multiple physical symptoms and other damages to be proven at the time of trial.

5 44. As a result of the conduct of the City, Fedor was forced to retain attorneys in order to
6 protect her rights. Accordingly, Fedor seeks the reasonable attorneys' fees and costs incurred in this
7 litigation in an amount according to proof at trial.

8 WHEREFORE, PLAINTIFF prays for judgment as set forth below.

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THIRD CAUSE OF ACTION
Retaliation in Violation of the FEHA
(Against All Defendants)

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45. By this reference, Fedor hereby incorporates each and every paragraph set forth
above as though fully set forth at this place.

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46. Fedor complained to Defendants about the sexual harassment she was experiencing
and informed Oliverio and the City it was offensive and unwelcome

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47. Fedor was harmed.

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48. Defendants conduct was a substantial factor in causing Fedor's harm.

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49. Fedor is informed and believes and thereon alleges that Defendants willfully and/or
with reckless indifference, violated the FEHA and retaliated against Fedor as outlined above. Such
retaliation has resulted in damage and injury to Fedor as alleged herein.

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50. As a direct and proximate result of the unlawful conduct of Defendant, Fedor has
suffered special damages including but not limited to past and future loss of income, benefits,
medical expenses, and other damages to be proven at time of trial.

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51. As a direct and proximate result of the unlawful conduct of Defendant, Fedor has
suffered general damages including but not limited to shock, embarrassment, humiliation, emotional
distress, stress, multiple physical symptoms and other damages to be proven at the time of trial.

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1 52. The unlawful conduct alleged above was engaged in and/or ratified by the City.
2 53. Oliverio committed the acts herein alleged maliciously, fraudulently and oppressively
3 in conscious disregard for Fedor's rights. Fedor is, therefore, entitled to recover punitive damages
4 from Oliverio in an amount according to proof at trial.
5 54. As a result of the conduct of Defendants, Fedor was forced to retain attorneys in order
6 to protect her rights. Accordingly, Fedor seeks the reasonable attorneys' fees and costs incurred in
7 this litigation in an amount according to proof at trial.

8 WHEREFORE, PLAINTIFF prays for judgment as set forth below.
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10 **FOURTH CAUSE OF ACTION**
11 **Failure to Take Steps to Prevent and Correct Harassment**
12 **in Violation of the FEHA**
13 **(Against The City Only)**

14 55. By this reference, Fedor hereby incorporates each and every paragraph set forth
15 above as though fully set forth at this place.

16 56. Fedor is informed and believes and thereon alleges that the City failed to take
17 reasonable steps to prevent and/or stop harassment, discrimination, and/or retaliation from occurring
18 in the workplace, in violation of the FEHA

19 57. Fedor is informed and believes and thereon alleges that harassment, discrimination,
20 and/or retaliation against her resulted from the City's failure to have in place a prophylactic policy
21 and/or reporting mechanism and/or their failure to take all reasonable steps to prevent or correct
22 harassment from occurring in the workplace.

23 58. As a direct and proximate result of the unlawful conduct of Defendant, Fedor has
24 suffered special damages, including but not limited to past and future loss of income, benefits,
25 medical expenses, and other damages to be proven at time of trial.

26 59. As a direct and proximate result of the unlawful conduct of Defendant, Fedor has
27 suffered general damages including but not limited to shock, embarrassment, humiliation, emotional

1 distress, stress, multiple physical symptoms and other damages to be proven at the time of trial.

2 60. The unlawful conduct alleged above was engaged in and/or ratified by the City. The
3 City is, therefore, liable for the conduct of said agents and employees under the Doctrine of Strict
4 Liability.

5 61. As a result of the conduct of Defendant, Fedor was forced to retain an attorney in
6 order to protect her rights. Accordingly, Fedor seeks the reasonable attorneys' fees and costs
7 incurred in this litigation in an amount according to proof at trial.

8 WHEREFORE, PLAINTIFF prays for judgment as set forth below.

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10 **FIFTH CAUSE OF ACTION**
11 **Intentional Infliction of Emotional Distress**
(Against The City Only)

12 62. By this reference, Fedor hereby incorporates each and every paragraph set forth
13 above as though fully set forth at this place.

14 63. Oliverio's conduct towards Fedor was outrageous and shocks the conscience.

15 64. Oliverio intended to cause Fedor emotional distress and/or acted with reckless
16 disregard of the probability that Fedor would suffer emotional distress.

17 65. Fedor suffered severe emotional distress.

18 66. Oliverio's conduct was a substantial factor in causing Fedor's severe emotional
19 distress.

20 67. As a direct and proximate result of the unlawful conduct of Oliverio, Fedor has
21 suffered special damages including but not limited to past and future loss of income, benefits,
22 medical expenses, and other damages to be proven at time of trial

23 68. As a direct and proximate result of the unlawful conduct of Oliverio, Fedor has
24 suffered general damages including but not limited to shock, embarrassment, humiliation, emotional
25 distress, stress, multiple physical symptoms and other damages to be proven at the time of trial.

26 69. Oliverio committed the acts herein alleged maliciously, fraudulently and oppressively
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1 in conscious disregard for Fedor's rights. Fedor is, therefore, entitled to recover punitive damages
2 from Oliverio in an amount according to proof at trial.

3 WHEREFORE, PLAINTIFF prays for judgment as set forth below.

4 PRAAYER FOR RELIEF

5 WHEREFORE, PLAINTIFF makes the following demand:

6 a) That process be issued and served as provided by law, requiring Defendants to appear
7 and answer or face judgment;

8 b) That Plaintiff have and recover judgment against Defendants in an amount to be
9 determined at trial as general, special, actual, compensatory and/or nominal damages for its wrongful
10 conduct;

11 c) That Plaintiff have and recover a judgment against Oliverio for punitive damages in
12 an amount to be determined at trial sufficient to punish, penalize and/or deter Oliverio;

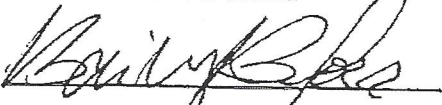
13 d) That Plaintiff have and recover a judgment against Defendants in an amount to be
14 determined at trial for expenses of this litigation, including, but not limited to, reasonable attorneys'
15 fees and costs (fees as permitted by statute); and

16 e) That Plaintiff have and recover a judgment against Defendants for all pre-judgment
17 and post-judgment interest; and

18 f) For such other relief as this Court deems just and proper.

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20 Dated: ~~October~~ ^{Nov.} 25, 2014

THE JAFFE LAW FIRM



Stephen R. Jaffe (SBN 49539)
Bailey K. Bifoss (SBN 278392)
Attorneys for Plaintiff DENELLE FEDOR

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DEMAND FOR JURY TRIAL

PLAINTIFF DENELLE FEDOR hereby demands trial by jury.

Dated: November 25, 2014

THE JAFFE LAW FIRM



Stephen R. Jaffe (SBN 49539)
Bailey K. Bifoss (SBN 278392)
Attorneys for Plaintiff DENELLE FEDOR