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Attorney for *Plaintiff Peter McNeff*

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA-OAKLAND

PETER MCNEFF, an individual,
Plaintiff,

vs.

THE CITY OF PLEASANTON, a City
within the State of California;
THE PLEASANTON POLICE
DEPARTMENT, a Division of
defendant City;
DAVID SWING, an individual;
LARRY COX, an individual;
BRIAN DOLAN, an individual; and
DOES 1-10, individuals;

Defendants.

Case No.:

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF:**

- 1. Violation of Civil Rights –
First Amendment**
- 2. Retaliation for Engaging in Political
Activity (Cal. Lab. Code §§ 1101, 1102;
Cal. Gov. Code § 3201 *et seq.*)**
- 3. Wrongful Discharge For Lawful Off-
Duty Conduct (Cal. Lab. Code § 96(k))**

JURY TRIAL DEMANDED

Plaintiff, PETER MCNEFF, alleges the following on information and
belief:

McNeff v. City of Pleasanton, et al.
COMPLAINT

United States District Court- NDCA

PARTIES

- 1. Plaintiff, PETER MCNEFF (hereinafter “MR. MCNEFF”), is, and at all times mentioned herein was, a competent adult residing in Contra Costa County, California and was, at all relevant times, an employee of defendant Pleasanton Police Department, a division of defendant City of Pleasanton.
- 2. Defendant, CITY OF PLEASANTON (hereinafter “CITY”) is, and at all times mentioned herein was, a government entity, a City within the State of California doing substantial business in Pleasanton, California County of Contra Costa.
- 3. Defendant, PLEASANTON POLICE DEPARTMENT (hereinafter “DEPARTMENT”) is, and at all times mentioned herein was, a Division of Defendant CITY, and a governmental entity, with its principal place of business located in Pleasanton, California, County of Contra Costa.
- 4. Defendant, DAVID SWING (hereinafter “MR. SWING” or “the Chief”) is, and at all times mentioned herein was, an individual and employee of defendant DEPARTMENT.
- 5. Defendant, LARRY COX (hereinafter “MR. COX” or “the Captain”) is, and at all times mentioned herein was, an individual and employee of defendant DEPARTMENT.
- 6. Defendant, BRIAN DOLAN (hereinafter “MR. DOLAN”) is, and at all times mentioned herein was, an individual and employee of defendant CITY.
- 7. Plaintiff is informed and believes and thereon alleges that defendants DOES 1 through 10, inclusive, are fictitious names of defendants

1 whose true names and capacities are at this time unknown to plaintiff.
2 Plaintiff is informed and believes and thereon alleges that each
3 defendant so designated was the officer, director, shareholder,
4 employer, employee, agent and/or other representative of named
5 defendants, and that each defendant so designated is responsible in
6 whole or in part for the damages suffered by plaintiff.

- 7 8. Plaintiff is informed and believes and thereon alleges that defendants
8 and each of them, were acting as the agent, servant, or employee of
9 each other and were acting within the scope of their respective
10 employment, with the full knowledge and consent, either express or
11 implied, of each of the other named defendants

12 **JURISDICTION AND VENUE**

- 13 9. Jurisdiction of matters claimed herein is properly before the United
14 States District Court, Northern District of California, pursuant to 28
15 U.S.C. §§ 1331 and 1343(3). This Court has supplemental jurisdiction
16 over the related state law claims pursuant to 28 U.S.C. § 1367.
17 10. Venue is proper in the Northern District of California pursuant to 28
18 U.S.C. § 1392(b) because a substantial part of the acts, events, or
19 omissions giving rise to the action occurred in this District and
20 Defendant operates a facility within the District where Plaintiff was
21 employed.
22 11. Pursuant to United States District Court, Northern District of
23 California, Civil Local Rule 3-2(c), Plaintiff is commencing this action
24 in Oakland, California because many of the facts and circumstances of
25 this action arose in Contra Costa County, CA.

STATEMENT OF FACTS

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3 12. MR. MCNEFF was a 5+ year veteran of the DEPARTMENT. His
4 position at the time of his termination by the DEPARTMENT was
5 Officer. Until the events described herein, MR. MCNEFF had an
6 exemplary record and had been recognized for numerous outstanding
7 acts, commendations, and superior performance throughout his career.
8 His positive performance evaluations span several years and describe
9 him as an officer who consistently demonstrates good judgment, a
10 prepared leader, and an officer with exceptional motivation and drive.
11 MR. MCNEFF was even described as an officer who consistently
12 behaves in a manner which supports teamwork to accomplish the
department’s goals and objectives.

13 13. On January 6, 2021, MR. MCNEFF attended a political rally,
14 specifically a “Stop the Steal” rally, in Sacramento, California. He did
15 so as a private citizen and during his personal time. He did not
16 identify himself as a police officer at this political rally. He wore
17 civilian clothing to the political rally. MR. MCNEFF posted pictures
18 of himself with his wife, dressed in civilian clothing, at this political
19 rally, on his personal Facebook page. This Facebook page was used
20 under a pseudonym, “Jonathan P.” There is no evidence that MR.
21 MCNEFF did anything other than attend and observe the political
rally.

22 14. Another Pleasanton Police Officer saw this picture of MR. MCNEFF
23 and his wife on social media and complained to a superior. This
24 started widespread discussion within the DEPARTMENT, with fellow
officers as well as senior ranking, supervisory officers, regarding MR.

1 MCNEFF's political views. MR. MCNEFF was referred to as a
2 "moron" and his actions were widely criticized and ridiculed.

3 15. On January 7, 2021, a Police Sergeant sent a memorandum to MR.
4 SWING documenting internal complaints regarding MR. MCNEFF's
5 political action. In this memorandum, authored and sent one day
6 following the January 6, 2021 political rally, this Sergeant "concluded"
7 that MR. MCNEFF attended an event organized by a group known for
8 their propensity to discuss extreme violence, incitement of violence,
9 and threats. MR. MCNEFF was at a protected political rally in
10 Sacramento, California, however in this memorandum, the Sergeant
11 nonetheless concluded that the group that organized the event attended
12 by MR. MCNEFF was the same group responsible for the
13 unprecedented events at the Capitol in Washington, D.C. This
14 Sergeant went so far as to conclude that MR. MCNEFF directly
15 associated himself with the unlawful activities at the U.S. Capitol.
16 This Sergeant further concluded that MR. MCNEFF associated with
17 known extremist groups such as the "Proud Boys" and "The Three
18 Percenters" who promote racist and violent political ideologies and
19 carry out violence. These conclusions were a direct attack on MR.
20 MCNEFF's character and reputation and were unsupported by any real
21 evidence. Nevertheless, this memorandum was drafted and sent on
22 January 7, 2021, absent any conversation with MR. MCNEFF or any
23 true diligent investigation into MR. MCNEFF's actions simply
24 because MR. MCNEFF exercised his protected right to political
25 speech and expression.

16. To exacerbate the attack on MR. MCNEFF's character and reputation,
this January 7, 2021 memorandum contained descriptions of the hate

1 groups with which the Sergeant wrongfully concluded MR. MCNEFF
2 associated. The memorandum described the “Proud Boys” as a far
3 right white nationalist organization that promotes and engages in
4 political violence and is described as a general hate group that is
5 overtly Islamophobic and misogynistic. The memorandum further
6 described “The Three Percenters” as a far right paramilitary group that
7 promotes resistance to the federal government that is identified as an
8 “anti-government extremist group” and associated with political
9 violence linked to political violence in other areas of the country, the
10 bombing of an Islamic Center in Bloomington, Indiana, and the recent
11 plot to kidnap the Governor of the State of Michigan. Finally, the
12 memorandum described “Stop the Steal” as a campaign organized
13 nationally by StopTheSteal.us promoting conspiracy theories regarding
14 election fraud which have been repeatedly discredited. The Sergeant
15 even claimed that Stop the Steal groups were removed from social
16 media due to their members’ propensity to discuss extreme violence,
17 incitement to violence, and threats. He ended by claiming these Stop
18 the Steal events were frequented by members of the Proud Boys, The
19 Three Percenters, and other radicalized groups.

20 17. Mr. MCNEFF continued to work at the DEPARTMENT despite the
21 attack on his character and reputation. He continued to work absent
22 any evidence to corroborate the Sergeant’s defamatory and damaging
23 conclusions. Instead, if asked, MR. MCNEFF would and could explain
24 his protected political views that he believed there were errors in the
25 2020 election that needed a thorough investigation. MR. MCNEFF
never indicated and never would indicate he had any support for or
association with any radical or extremist group.

1 18.Shortly after January 6, 2021, other officers searched through MR.
2 MCNEFF's social media profiles to find anything that supported
3 radical and extremist political views. The DEPARTMENT was aware
4 of these searches and did not stop the rhetoric despite the fact that it
5 was false and uncorroborated.

6 19.It was not until March 8, 2021, that MR. COX contacted MR.
7 MCNEFF and advised MR. MCNEFF that MR. SWING directed him
8 to conduct a formal internal investigation. This formal investigation
9 commenced two months after the Sergeant drafted and sent his
10 memorandum with uncorroborated and incorrect conclusions. This
11 formal investigation, sparked entirely by MR. MCNEFF's protected
12 political speech, expression, and beliefs, began two months after
13 superiors in the DEPARTMENT expressed their displeasure with MR.
14 MCNEFF's exercise of his protected political expression on his own
15 time, as a private citizen, and did nothing to stop the discussion
16 surrounding the incorrect and uncorroborated conclusion that MR.
17 MCNEFF associated with hate groups or the negative comments made
18 about MR. MCNEFF's character.

19 20.The DEPARTMENT chose to hire an outside law firm to investigate
20 MR. MCNEFF for joining that political rally where they believe he
21 associated with known hate groups. In total, as a result of their
22 displeasure with MR. MCNEFF's exercise of his protected political
23 speech and expression, the search of MR. MCNEFF's social media
24 profiles by other members of the DEPARTMENT, and the
25 DEPARTMENT's belief that MR. MCNEFF's political views were
too far to the right, the DEPARTMENT made five separate allegations
against MR. MCNEFF all relating to his current and past political

1 views. These allegations were all made as a result of the
2 DEPARTMENT's response to MR. MCNEFF attending that peaceful,
3 lawful political rally on January 6, 2021 and the subsequent search of
4 the entire history of MR. MCNEFF's social media profiles.

5 21. The Department chose to commence such investigation into MR.
6 MCNEFF's suspected radicalized and/or extremist associations, absent
7 any information that MR. MCNEFF actually associated with or
8 supported any such hate or extremist groups, resulting in lasting and
9 irreversible damage to MR. MCNEFF's character and reputation. The
10 DEPARTMENT did so after at least one senior officer urged them not
11 to touch this issue with a ten-foot pole.

12 22. Allegation 1.1 was the MR. MCNEFF associated with racist and anti-
13 religious extremist groups when he attended the Stop the Steal rally in
14 Sacramento, California on January 6, 2021 in violation of
15 DEPARTMENT and CITY policies.

16 23. This outside law firm interviewed a minimum of seven different
17 Pleasanton Police Officers as a result of the DEPARTMENT's
18 allegations. Each of these officers was presented with information
19 regarding MR. MCNEFF's attendance at the January 6, 2021 rally and
20 then questioned in detail about whether they had any knowledge of
21 any racist or extremist views held by MR. MCNEFF. The questioning
22 was clearly skewed to elicit negative information about MR.
23 MCNEFF. Thus, in engaging in this type of questioning, the
24 interviewer further exacerbated the damage to MR. MCNEFF's
25 character and reputation as a result of MR. MCNEFF's exercise of his
protected political views. These officers were further questioned as to
whether this political view was immature or wrong. The officers

1 freely spoke of their opinions, mostly negative, of individuals who
2 would attend such a rally. Nevertheless, MR. MCNEFF's actions
3 were always associated with a constitutionally protected political
4 expression.

5 24.MR. MCNEFF was questioned regarding his attendance at this January
6 6, 2021 rally. He indicated he went to observe the rally, that the rally
7 was peaceful, that he did not see anyone break the law nor did he see
8 any arrests. He made clear he does not support any radical or
9 extremist group. He simply believed there was an issue with the 2020
10 election that needed to be addressed.

11 25. Ultimately, the outside law firm EXONERATED MR. MCNEFF of
12 this allegation finding that MR. MCNEFF's attendance at this political
13 rally did not violate any DEPARTMENT or CITY policies. Contrary
14 to the Sergeant's memorandum dated January 7, 2021, this law firm
15 found the evidence did NOT SUPPORT any conclusion that MR.
16 MCNEFF attended this political rally in support of any racist or anti-
17 religious group. Moreover, contrary to the Sergeant's memorandum of
18 January 7, 2012, the evidence failed to support that this political rally
19 was predominantly attended by any racist and/or anti-religious group.
20 The law firm found that MR. MCNEFF did not engage in any
21 inappropriate behavior when he attended this protected political rally.

22 26.Allegation 1.2 was MR. MCNEFF posted racist comments on social
23 media in violation of DEPARTMENT and CITY policies. This was in
24 response to a Facebook post of a Thin Blue Line Flag, a picture or
25 depiction generally associated with those who support law
enforcement or "Blue Lives Matter." At least one member of the
DEPARTMENT alleged that, after the George Floyd incident, this

1 depiction had been cooped by far-right extremist groups and was
2 offensive to people of color. This individual claimed the picture was
3 posted in opposition to the “Black Lives Matter” movement that
4 strengthened after the George Floyd incident.

5 27.The law firm noted that MR. MCNEFF’s Facebook page was
6 accessible to the public as it was seen by people outside of the
7 DEPARTMENT.

8 28.After interviewing the minimum of seven members of the
9 DEPARTMENT, this allegation was NOT SUSTAINED by the law
10 firm. Namely, the law firm noted that MR. MCNEFF made this
11 Facebook post prior to the George Floyd incident and the post did not
12 relate in opposition to Black Lives Matter or any of the civil unrest
related to the George Floyd incident.

13 29.Allegation 1.3 was MR. MCNEFF posted anti-Muslin comments on
14 social media in violation of DEPARTMENT and CITY policy. This
15 allegation was in response to two separate Facebook posts on MR.
16 MCNEFF’s profile from 2014, prior to his employment with the
17 DEPARTMENT. The first post was the reposting of a video from
18 IsraelVideoNetwork.com that spoke of the establishment of Israel as a
19 sovereign state in opposition to Palestine. MR. MCNEFF posted
20 “Can’t deny the truth?” as a comment to this video. The second was
21 the reposting of an article allegedly authored by Bill Cosby that states,
22 among other things, the author is “tired of being told that Islam is a
23 ‘Religion of Peace’ when every day I read dozens of stories of Muslim
24 men killing their sisters, wives, and daughters for their family honor.”
25 In 2014, MR. MCNEFF posted this article with a comment “What
would the world be like with more Bill Cosby’s.”

1 30.The law firm was unable to locate and/or view the video regarding
2 Israel posted by MR. MCNEFF on July 13, 2014 as it was no longer
3 accessible on IsraelVideoNetwork.com.

4 31.The law firm could not conclude whether the article regarding Islam
5 was in fact authored by Bill Cosby.

6 32.The law firm interviewed the minimum of seven members of the
7 DEPARTMENT regarding these 2014 Facebook posts. These seven
8 individuals were questioned at length about whether they had any
9 knowledge of MR. MCNEFF behaving inappropriately,
10 discriminatingly, or in a racist fashion toward any people of color,
11 especially Muslims.

12 33. The investigation revealed that no officer had ever observed nor heard
13 of MR. MCNEFF acting inappropriately toward any person based on
14 ethnicity, religion, race, etc.

15 34.The law firm found that the Israel video “could be” offensive to
16 Palestinian people and that the Bill Cosby article overgeneralized and
17 stereotyped Muslim men and was thus offensive.

18 35.During the investigation into this allegation, MR. MCNEFF asserted it
19 was religious and political belief that Israel was a sovereign nation. As
20 to the article regarding Islamic extremism, MR. MCNEFF asserted he
21 was opposed to violent Muslim extremism. He did not believe the
22 article stereotyped Muslim men as he believed it only referred to the
23 extremist acts.

24 36. The law firm SUSTAINED this allegation and noted that these
25 sentiments could be viewed by the public.

37.Allegation 1.4 was that MR. MCNEFF posted derogatory statements
on social media about people with mental disabilities in violation of

1 DEPARTMENT and CITY policies. This was in response to a
2 comment MR. MCNEFF posted on another Facebook page regarding
3 gun rights. MR. MCNEFF commented on an article that in essence
4 stated that guns are not the problem, it is people with mental illnesses
5 who use the guns that are the problem. As a comment to the article,
6 MR. MCNEFF asked “Why doesn’t the media catch onto this?”

7 38. Again, the law firm interviewed a minimum of seven members of the
8 DEPARTMENT regarding this Facebook comment.

9 39. In response to this allegation. MR. MCNEFF stated that he posted the
10 comments in 2014 based on his personal belief that mass shooters are
11 people that suffer with mental illnesses.

12 40. The law firm again interviewed the minimum of seven members of the
13 DEPARTMENT about this Facebook post.

14 41. The law firm DID NOT SUSTAIN this allegation, finding that the
15 evidence was insufficient to prove that MR. MCNEFF’S posted
16 Facebook comment was disparaging people with mental illnesses.
17 Notably, none of those interviewed, except for one, had ever seen this
18 post. The person that did see the post indicated they never made any
19 connection that the post was referring to people with mental illnesses.

20 42. Allegation 1.5 was that MR. MCNEFF posted comments on social
21 media that threatened violence in violation of DEPARTMENT and
22 CITY policies. This allegation stems from two separate Facebook
23 posts. The first was regarding the COVID-19 mandates in effect at the
24 time of the post. MR. MCNEFF in essence commented that people
25 will eventually revolt against these mandates and the response will be
violent if necessary. The second was a comment posted under a

1 photo of protesters in the street with officers. Under the photo, MR.
2 MCNEFF commented “Isn’t this why cars have bumpers? J/K.”

3 43. Once again, the law firm interviewed a minimum of seven members of
4 the DEPARTMENT about these Facebook posts.

5 44. The law firm found that the COVID-19 post was likely made in
6 December of 2020, while MR. MCNEFF was employed by the
7 DEPARTMENT and CITY. The law firm found that the posts were
8 somewhat linked to MR. MCNEFF’s employment because his
9 Facebook page indicated he worked at the City of Pleasanton
10 Community Services and also contained a picture of the Pleasanton
11 police badge. The law firm found that, taken collectively, this implied
12 he was linked to the DEPARTMENT at the time the post was made.

13 45. As for the photo of the protesters, the law firm found that it was more
14 likely than not that MR. MCNEFF made that post prior to his
15 employment by the DEPARTMENT but that he did not remove it upon
16 commencing his employment with the DEPARTMENT.

17 46. The law firm SUSTAINED this fifth and final allegation against MR.
18 MCNEFF.

19 47. The impetus of and major focus of this investigation was MR.
20 MCNEFF’s attendance at the “Stop the Steal” rally and an unfounded
21 belief that, because he attended such a rally, MR. MCNEFF associated
22 with racist and/or extremist groups. For all intents and purposes, the
23 “Stop The Steal” rally was the result of protected political beliefs
24 surrounding the 2020 presidential election.

25 48. Throughout the investigation, a minimum of seven different members
of the DEPARTMENT were repeatedly questioned about MR.
MCNEFF’s alleged racist and extremist associations and tendencies.

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The investigation made it clear that the DEPARTMENT labeled MR. MCNEFF as such simply as a result of his attendance at a political rally.

49.MR. MCNEFF was engaged in protected political speech and expression when he attended the January 6, 2021 political rally. Nevertheless, the DEPARTMENT chose to alienate him, question his character, damage his reputation, and commence a lengthy and detailed investigation into MR. MCNEFF’s character and ability to perform as an officer.

50.MR. MCNEFF further engaged in protected speech when he made all of the relevant Facebook posts and comments. Namely, MR. MCNEFF engaged in protected political speech when he posted his concerns regarding Muslim extremism, the State of Israel, and the State of California’s rigorous COVID-19 guidelines. Nevertheless, the DEPARTMENT and CITY, via MR. NOLAN, served MR. MCNEFF with a notice of termination following a Skelly hearing, terminating his employment effective February 4, 2022.

51. The DEPARTMENT and CITY’s stated reasons for termination are pretext. MR. MCNEFF was, in fact, fired because he expressed protected political opinions and ideologies deemed “unpopular” and even stupid by the DEPARTMENT, MR. SWING, and MR. COX.

52. As a direct and proximate result of Defendants’ conduct, Plaintiff has incurred both economic and non-economic damages in an amount to be determined at trial, according to proof.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

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2 53. On April 12, 2022, MR. MCNEFF submitted a complaint to the
3 Department of Fair Employment and Housing (“DFEH”) pursuant to
4 Cal. Government Code section 12900, *et seq.* indicating he was
5 discriminated against by his employer, THE CITY, as a result of the
6 expression of his personal political and religious beliefs.

7 54. A true and correct copy of this complaint is attached hereto as **Exhibit**
8 **A** and is incorporated by reference.

9 55. On April 12, 2022, DFEH acknowledged the complaint had been
10 served, closed the case and issued a Right to Sue Notice. This Right
11 To Sue Notice is attached as part of **Exhibit A**.

12 **FIRST CAUSE OF ACTION**
13 **VIOLATION OF CIVIL RIGHTS - FIRST AMENDMENT**
14 **(42 U.S.C. § 1983)**
15 **[Against all Defendants]**

16 56. MR. MCNEFF re-alleges and incorporates by reference all of the
17 paragraphs set forth above.

18 57. The individually named defendants all acted under the color of law.

19 58. The acts of the individually named Defendants deprived MR.
20 MCNEFF of his particular rights under the First Amendment of the
21 United States Constitution.

22 59. MR. SWING and MR. DOLAN had final policymaking authority from
23 the City of Pleasanton concerning these acts.

24 60. When MR. SWING and MR. DOLAN engaged in the above-described
25 acts, they were acting as final policymakers for Defendant CITY OF
PLEASANTON.

1 61.MR. MCNEFF spoke and acted as a citizen on matters of public
2 concern. Indeed, these matters are under investigation at the highest
3 levels of government today.

4 62.MR. MCNEFF suffered numerous adverse employment actions,
5 including, but not limited to, administrative leave and revocation of
6 police officer status, public shaming, disgrace and humiliation, being
7 subjected to investigation, termination of employment, and ineligibility
8 for rehire.

9 63.MR. MCNEFF’s protected speech was a substantial motivating factor
10 in the adverse employment actions, including his termination.

11 64.MR. MCNEFF was harmed.

12 65.Defendants’ conduct was a substantial factor in causing MR.
13 MCNEFF’s harm.

14 66.By engaging in the above-described acts, the individually named
15 Defendants acted with malice and deliberate indifference to MR.
16 MCNEFF’s constitutionally protected rights. Specifically, they knew
17 that firing MR. MCNEFF for engaging in off-duty political speech
18 protected by the First Amendment was illegal, immoral, and wrong. In
19 addition, they knew or should have known, and acted with reckless
20 disregard of the fact that engaging in the above-described adverse
21 employment actions would result in substantial harm to MR.
22 MCNEFF, his reputation, his career, his employment, and his
23 employability. Nevertheless, they acted with cruel and retaliatory
24 motives and deliberate indifference to MR. MCNEFF’s rights under
25 the law. Therefore, MR. MCNEFF seeks exemplary and punitive
damages in an amount sufficient to punish them for their conduct, and
to set an example for others, in an amount according to proof at trial.

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SECOND CAUSE OF ACTION
RETALIATION FOR POLITICAL SPEECH AND ACTIVITY
(Cal. Lab. Code §§ 1101, 1102, Cal. Gov. Code § 3201 *et seq.*)
[Against all Defendants]

67.MR. MCNEFF re-alleges and incorporates by reference all of the paragraphs set forth above.

68. MR. MCNEFF engaged in protected political activity under California Labor Code sections 1101 and 1102 and California Government Code sections 3201 *et seq.* by attending a political rally and expressing his personal political opinions on other issues of public concern.

69.MR. MCNEFF suffered numerous adverse employment actions, including, but not limited to, administrative leave and revocation of police officer status, public shaming, disgrace and humiliation, being subjected to investigation, termination of employment, and ineligibility for rehire.

70.MR. MCNEFF’s protected political activity and speech was a substantial motivating factor in the adverse employment actions, including his termination.

71.By subjecting MR. MCNEFF to adverse employment actions because he engaged in protected political activities and speech, Defendants violated California Labor Code sections 1101 and 1102 and California Government Code sections 3201 *et seq.*

72.MR. MCNEFF was harmed.

73.Defendants’ conduct was a substantial factor in causing MR. MCNEFF’s harm.

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THIRD CAUSE OF ACTION
TERMINATION FOR LAWFUL, OFF-DUTY CONDUCT
(Cal. Lab. Code § 96(k))
[Against all Defendants]

74.MR. MCNEFF re-alleges and incorporates by reference all of the paragraphs set forth above.

75. MR. MCNEFF engaged in lawful, off-duty conduct protected by protected political activity under California Labor Code section 96(k) by attending a political rally and expressing his personal political opinions on other issues of public concern.

76.MR. MCNEFF suffered numerous adverse employment actions, including, but not limited to, administrative leave and revocation of police officer status, public shaming, disgrace and humiliation, being subjected to investigation, termination of employment, and ineligibility for rehire.

77.MR. MCNEFF’s lawful off-duty conduct protected was a substantial motivating factor in the adverse employment actions, including his termination.

78.By subjecting MR. MCNEFF to adverse employment actions because he engaged in lawful, off-duty conduct, Defendants violated California Labor Code section 96(k).

79.MR. MCNEFF was harmed.

80.Defendants’ conduct was a substantial factor in causing MR. MCNEFF’s harm.

PRAYER

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Wherefore, Plaintiff prays for judgment against Defendants as follows:

- 1. Upon the First Cause of Action, for compensatory, economic, non-economic, consequential, general, special, exemplary and punitive damages according to proof;
- 2. Upon the Second Cause of Action, for compensatory, economic, non-economic, consequential, general and special damages according to proof;
- 3. Upon the Third Cause of Action, for compensatory, economic, non-economic, consequential, general and special damages according to proof;
- 4. On all causes of action, attorneys' fees and costs as provided by 42 U.S.C. § 1988, Labor Code § 2698 *et seq.*, and Code of Civil Procedure § 1021.5;
- 5. On all causes of action, for declaratory and injunctive relief as may be deemed appropriate; and
- 6. For such other and further relief, as the Court may deem just and proper.

Respectfully submitted,

DATED: January 10, 2023

 /s/Karren Kenney
 KARREN KENNEY
Attorney for Plaintiff
 PETER MCNEFF

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

Respectfully submitted,

DATED: January 10, 2023

 /s/ Karren Kenney
KARREN KENNEY
Attorney for Plaintiff
PETER MCNEFF

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EXHIBIT A



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

April 12, 2022

Pete McNeff

[REDACTED]
Brentwood, California 94513

RE: **Notice to Complainant**
DFEH Matter Number: 202204-16656008
Right to Sue: McNeff / City of Pleasanton

Dear Pete McNeff:

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

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

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

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

April 12, 2022

RE: Notice of Filing of Discrimination Complaint
DFEH Matter Number: 202204-16656008
Right to Sue: McNeff / City of Pleasanton

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for DFEH's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. You may contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

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

No response to DFEH is requested or required.

Sincerely,



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GAVIN NEWSOM, GOVERNOR

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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Department of Fair Employment and Housing



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April 12, 2022

Pete McNeff
[REDACTED]

Brentwood, California 94513

RE: Notice of Case Closure and Right to Sue
DFEH Matter Number: 202204-16656008
Right to Sue: McNeff / City of Pleasanton

Dear Pete McNeff:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective April 12, 2022 because an immediate Right to Sue notice was requested.

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

This matter may qualify for DFEH's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. Contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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

Sincerely,

Department of Fair Employment and Housing

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

In the Matter of the Complaint of

Pete McNeff

DFEH No. 202204-16656008

Complainant,

vs.

City of Pleasanton
4833 Bernal Ave.
Pleasanton, CA 94513

Respondents

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

2. Complainant **Pete McNeff**, resides in the City of **Brentwood**, State of **California**.

3. Complainant alleges that on or about **February 4, 2022**, respondent took the following adverse actions:

Complainant was harassed because of complainant's religious creed - includes dress and grooming practices, medical condition (cancer or genetic characteristic).

Complainant was discriminated against because of complainant's religious creed - includes dress and grooming practices and as a result of the discrimination was terminated.

Additional Complaint Details: I was terminated from my job on 02/04/2022 after my employer determined my expression of my personal religious and political sentiments were a violation of policy. The personal statements included elements of my faith that I believe were used as the basis for the termination of my employment.

1 VERIFICATION

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

5 On April 12, 2022, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Brentwood, California**

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Date Filed: April 12, 2022

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