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CLERK SUPERIOR COURT
SAN DIEGO COUNTY, CA

DONOVAN J. JACOBS
SBN. 159676
2295 NEEDHAM RD. #41
EL CAJON, CA 92020
Telephone (619) 445-8650
Fax (619) 722-6009

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

MARTHA G. SAINZ,

Petitioner,

V.

SAN DIEGO POLICE DEPARTMENT and
CITY OF SAN DIEGO,

Respondent.

) CASE NO: 37-2007-00066995-CU-WM-CTL
)
) VERIFIED PETITION FOR WRIT OF
) MANDATE OR OTHER APPROPRIATE
) RELIEF, REQUEST FOR DECLARATORY
) RELIEF AND INJUNCTIVE RELIEF
)
) (GOV. C § 3309.5(d)(1) 3309.5(e)
) (C.C.P. § 526, 527, 1060, 1085,
) 1094.5)
)
)
)

By this verified petition, Petitioner San Diego Police Sergeant Martha G. Sainz (hereinafter SAINZ) seeks a writ of mandate or other appropriate relief pursuant to Code of Civil Procedure 1094.5 or in the alternate 1085 directed to Respondents the San Diego Police Department (hereinafter SDPD) and the City of San Diego (hereinafter CITY) to dismiss all administrative and discipline charges against her and order her

1 promoted to the rank of lieutenant. Petitioner requests
2 Declaratory Relief establishing her rights under these facts and
3 Injunctive Relief prohibiting Respondent from violating her due
4 process rights under the California and United States
5 Constitutions and her rights under the Public Safety Officers
6 Bill of Rights (Government Code sections 3300-3312).

7 **Petitioner alleges:**

8 1. Petitioner is and at all times relevant to this
9 Petition was a citizen of the United States, State
10 of California, residing in the County of San Diego.
11 At all times relevant to this Petition, Petitioner
12 was and continues to be a classified employee
13 permanently employed with SDPD and CITY as a sworn
14 Police Sergeant. Respondents have issued her a
15 written reprimand for conduct unbecoming without
16 good cause and by violating her due process rights
17 and her rights as afforded under the Public Safety
18 Officers Bill of Rights, Government Code § 3300-
19 3312. Petitioner is therefore beneficially
20 interested herein.

21 2. Respondent CITY is and at all times relevant to
22 this petition was a municipal corporation within
23 the laws of the State of California. CITY is
24 Petitioner's employer during all relevant times and
25 inasmuch Petitioner seeks an order against CITY to

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1 compel it to comply with its' own laws and those of
2 this state and country, the CITY is beneficially
3 interested herein.

4 **3.** Respondent SDPD is and at all times relevant to
5 this petition was CITY'S police department and as
6 such is acting under the color of the State of
7 California's and CITY'S authority pursuant to the
8 color of the statutes, ordinances, regulations,
9 customs and usages. SDPD is Petitioner's employer
10 during all relevant times and inasmuch Petitioner
11 seeks an order against SDPD to compel it to comply
12 with it's own laws and those of this state and
13 country, the SDPD is beneficially interested
14 herein.

15 **FACTS GIVING RISE TO THE PETITION**

16 **4.** On August 10, 2005 Petitioner was assigned to the
17 Juvenile Services Team (JST) of the SDPD as a
18 sergeant. She had been a member of the SDPD for the
19 past 14 years, had no prior discipline, no prior
20 complaints of physical abuse, was rated Exceeds
21 Standards as a sergeant for the past four years,
22 recently scored number one on the lieutenant's oral
23 interview, was placed in category three of the
24 lieutenant's list, and was told by now retired
25

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1 Assistant Chief of Police George Saldamando her
2 promotion to lieutenant was imminent.

3 5. In this position, one of her responsibilities was
4 the supervision of the Palomar Outdoor School
5 Safety Patrol Camps. These camps host 5th and 6th
6 grade students who have acted as School Safety
7 Patrol crossing guards over the past school year
8 for a four day summer camp. In addition to
9 supervising the 150 student campers, she was also
10 responsible for monitoring the activities of
11 approximately twenty teenage counselors and twelve
12 San Diego Police Officers.

13 6. During the evening of August 10, 2005 a talent show
14 with skits was held in front of the students. One
15 skit involved an unsuspecting officer mimicking a
16 second officer in hand gestures and movements. The
17 unsuspecting officer in this case was the
18 Petitioner. The officer to be mimicked was Desiree
19 Spurlock and a third officer, Stacey Botsford,
20 assisted.

21 7. During the skit Stacey Botsford placed a wet sponge
22 on the seat of Petitioner's chair while she was
23 standing. Petitioner was then directed by Desiree
24 Spurlock to unsuspectingly sit on the wet sponge.
25 Petitioner sat on the wet sponge, got up and used

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1 the wet sponge to get Stacey Botsford wet. Getting
2 the Petitioner wet and her response of wetting
3 Stacey Botsford was in keeping with the accepted
4 level of horseplay encouraged and permitted at the
5 camp.

6 **8.** Several days later, Stacey Botsford began to show
7 others a bruise to her right side. She told others
8 that Petitioner had caused the bruise when
9 Petitioner got her wet with the sponge.

10 **9.** A week after the incident, Sgt. James Filley filed
11 a complaint with the Internal Affairs Division
12 regarding the sponge incident. Sgt. James Filley
13 was the JST sergeant Petitioner had replaced.
14 Stacey Botsford did not file a complaint.

15 **10.** SDPD's Internal Affairs Division conducted an
16 investigation of the incident. Although Stacey
17 Botsford told Internal Affairs explicitly that she
18 believed Petitioner did not intentionally hurt her,
19 SDPD pursued both an administrative and criminal
20 investigation of Petitioner's actions for battery
21 and threats. Internal Affairs' investigators filed
22 a crime report against Petitioner with the San
23 Diego County Sheriff's Department alleging she
24 committed a criminal battery. Petitioner was then
25

1 denied promotion to lieutenant and her termination
2 proposed.

3 **11.** On January 19, 2006, six months after the incident,
4 Petitioner was served with an "Advanced Notice of
5 Adverse Action, Termination" by Assistant Police
6 Chief Joel H. Bryden, for battery and threats. Per
7 SDDPD policy Petitioner's Captain, Bruce
8 Pfefferkorn, had recommended only a four day
9 suspension. Assistant Chief Bryden, however,
10 unilaterally increased the proposed discipline to
11 termination without any prior hearings or meetings
12 with the Petitioner.

13 **12.** The Internal Affairs' "Investigator's Report" was
14 provided to Petitioner at this time. Included, in
15 part, with the investigation were 30 pages of
16 handwritten notes, a black and white Xerox copy of
17 a photograph of the bruise taken on August 13, 2005
18 and color photographs taken August 19, 2005 of the
19 bruise, cassette tape recordings of 28 witness
20 interviews, a list of students without phone
21 numbers or addresses, a list of officers and
22 counselors with contact information, a DVD and VHS
23 tape of the August 15, 2005 camp but not of the
24 relevant August 8, 2005 camp, a copy of the crime
25 report, a newspaper article from the Union Tribune

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1 regarding the incident and letters to the editor
2 regarding that article.

3 **13.** Petitioner responded by requesting that Assistant
4 Chief of Police Joel Bryden recluse himself from
5 hearing her appeals as he had already displayed a
6 bias against her. Additionally, Petitioner
7 requested all information upon which the action was
8 based including all reports, all drafts of reports,
9 all photographs and video tapes of the camps in
10 2005, all video tapes of the skit in question, and
11 the identity of the individual who filed the
12 criminal complaint.

13 **14.** On April 4, 2006 a pretermination hearing called a
14 Skelly Meeting was held before Assistant Chief of
15 Police Joel Bryden. This was an opportunity for
16 Petitioner to present any evidence favorable to
17 her. Petitioner carefully reviewed the
18 investigation, actually listened to the cassette
19 tapes of the witness interviews and contacted
20 witnesses supposedly not interviewed during the
21 investigation. The results of this review were
22 provided at the hearing and revealed the Internal
23 Affairs investigator had intentionally concealed
24 and misrepresented numerous exculpatory statements
25 of witnesses as well as other evidence.

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1 15. On April 28, 2006 Assistant Chief of Police Joel
2 Bryden issued his findings that overturned the
3 proposed termination. He stated Petitioner's
4 conduct did not rise to the level of criminal
5 conduct nor had the Petitioner battered the other
6 officer. He further found Petitioner had not made
7 any threats but he still found her responsible for
8 unbecoming conduct.

9 16. Chief BRYDEN testified at his deposition that the
10 Internal Affairs' investigator committed
11 **significant errors** during the investigation and
12 these errors were contained within the Internal
13 Affairs' Investigative Report. They included the
14 concealment of witness identities, the
15 misrepresentation of numerous exculpatory
16 statements, the repeated use of inappropriate
17 leading questions, the failure to adequately
18 describe a "choke out" versus a arm on the back of
19 the neck and he failed to view the scene of the
20 incident. Most significantly, Chief Bryden stated
21 he did not think the incident occurred as had been
22 written. Chief Bryden also found that the victim
23 Stacie Botsford would not be a good witness.

24 17. On September 25, 2006 Assistant Chief of Police
25 Joel Bryden issued Petitioner a written reprimand

1 for Unbecoming Conduct. It stated Petitioner's
2 conduct of getting Officer Botsford wet with a
3 sponge and commenting in a joking manner about
4 Officer Botsford's transfer was inappropriate.

5 **18.** Petitioner appealed the issuance of the reprimand
6 to Assistant Chief of Police Louis Scanlon. A
7 hearing on the appeal was held on November 16,
8 2006. The hearing was required by law under
9 Government Code section 3304(b), 3304.5 and the
10 SDPD Discipline Manual, Section 3. The burden of
11 proof was on the Respondent. The level of proof was
12 required to be by a preponderance of evidence. The
13 hearing was required to be an evidentiary hearing
14 requiring witnesses to be sworn, witnesses could be
15 cross examined, witnesses were to be advised of the
16 truth fullness policy, the hearing was to be
17 recorded, and uncorroborated hearsay evidence could
18 not be used to meet its' burden of proof.

19 **19.** During the hearing the Respondents offered the
20 Internal Affairs' Investigative Report into
21 evidence. It contained the summary of unsworn
22 statements of numerous witnesses as well as other
23 hearsay. The same witness statements Chief Bryden
24 acknowledged were inaccurate. Petitioner objected
25 to its' admission based on the grounds of hearsay,

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1 authentication, Evidence Code section 352, the fact
2 no cross examination of the identified witness had
3 occurred, the witnesses were not sworn and
4 relevancy. Chief Scanlon did not rule during the
5 hearing, as required, on whether the Investigative
6 Report was admitted or not admitted into evidence.

7 **20.** After closing argument and at the end of the
8 hearing Chief Scanlon stated; "Okay, we are going
9 to close. The time is twelve thirty." No party
10 asked that the hearing remain open. No party
11 requested a continuance. There is no provision in
12 any law, MOU or policy that provides for the
13 unilateral "reopening" of said hearing.

14 **21.** On December 20, 2006, over Petitioner's objections,
15 the Respondents unilaterally reconvened the closed
16 hearing. They gave no legal basis for the authority
17 to open the closed hearing. Petitioner refused to
18 participate in the reconvened hearing. During it,
19 hearing officer Louis Scanlon questioned Assistant
20 Chief of Police Joel Bryden about the quality of
21 the Internal Affairs' Investigative Report. Chief
22 Bryden stated that even though the quality of the
23 investigation was poor, he still believed based on
24 witness statements contained in it Petitioner had
25 violated department policy.

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- 1 **22.** On January 4, 2007 Chief Scanlon issued his ruling
2 upholding the reprimand. He stated in his ruling it
3 was based on the testimony and documentary evidence
4 presented during the hearing, indicating he relied
5 on the Internal Affairs' Investigator's Report.
- 6 **23.** On December 27, 2006 Petitioner filed a grievance
7 regarding the reconvened hearing. On March 1, 2007
8 the City of San Diego Labor Relation's Office
9 denied the grievance.
- 10 **24.** Chief Scanlon's ruling on the reprimand was
11 appealed to the City of San Diego's Labor Relations
12 office. This appeal consisted only of a review of
13 the hearing tapes and the submitted documentary
14 evidence including the Internal Affairs'
15 Investigative Report. Petitioner objected to the
16 use of the Investigator's Report during the appeal
17 and the reconvening of the hearing.
- 18 **25.** On March 1, 2007 Labor Relations mailed their
19 decision to Petitioner upholding Chief Scanlon's
20 decision. This exhausted Petitioner's
21 administrative remedies.
- 22 **26.** Up to the date of this filing, Petitioner has not
23 been promoted to lieutenant and the Respondents
24 have not stated the reason for refusing to promote
25 her. Under the SDPD Discipline Manual Section 1,

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1 the reprimand may not be used to deny her a
2 promotion.

3 **ADMINISTRATIVE MANDAMUS IS APPROPRIATE IN THIS CASE**

4 **27.** Code of Civil Procedure 1094.5 authorizes review by
5 the Superior Court to determine the validity of any
6 final administrative order or decision made as the
7 result of a proceeding in which by law a hearing is
8 required to be given, evidence is required to be
9 taken and discretion in the determination of facts
10 is vested in the inferior tribunal, corporation,
11 board or officer. The inquiry shall extend to the
12 questions whether the respondent had proceeded
13 without, or in excess of jurisdiction; whether
14 there was a fair trial; and whether there was any
15 prejudicial abuse of discretion. Abuse of
16 discretion is established if the respondent has not
17 proceeded in the manner required by law, the order
18 or decision is not supported by the findings, or
19 the findings are not supported by the evidence.

20 **ALLEGATIONS OF INVALIDITY OF ADMINISTRATIVE DECISION**

21 **28.** The decision of SDPD, the hearing officer and the
22 CITY'S Labor Relations is not supported by findings
23 of fact which are supported by the weight of the
24 evidence, they proceeded in excess of jurisdiction,
25 the hearing was unfair as Respondents unlawfully

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1 reconvened the hearing and accepted unlawful
2 evidence, there was prejudicial abuse of discretion
3 of accepting unlawful evidence and reconvening a
4 closed hearing, and Respondents failed to proceed
5 in the manner required by the San Diego Police
6 Department's Discipline Manual and the Public
7 Safety Officers Bill of Rights. In that they
8 violated their own rules governing discipline
9 appeal procedures including using uncorroborated
10 hearsay evidence, failed to authenticate the
11 Internal Affairs' Investigative Report, failed to
12 have the statements in the report made under oath,
13 failed to allow for the cross examination of the
14 witnesses in the report, reconvened a closed
15 hearing, and accepted additional evidence at this
16 reconvened hearing over the objections of
17 Petitioner.

18 **ALLEGATIONS REGARDING STANDARD OF REVIEW**

19 **29.** Petitioner had a fundamental vested right in her
20 employment. That is, she has permanent civil
21 service status as a sworn peace officer for the
22 State of California, which she cannot be deprived
23 of absent good and adequate cause. Including, the
24 right not to be denied a promotion on grounds other
25 than merit or issued a reprimand without a proper

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1 appeal hearing as proscribed by Government Code
2 section 3304(b). As such the court is authorized to
3 examine the administrative record for errors of
4 law, and exercise its independent judgment upon the
5 evidence.

6 **TRADITIONAL MANDAMUS IS**
7 **APPROPRIATE TO CORRECT OR COMPEL A DUTY**

8 **30.** Under section 1085 of the Code of Civil Procedure
9 a writ of mandate may be issued by any court to any
10 inferior tribunal, corporation, board, or person,
11 to compel the performance of an act which the law
12 specially enjoins, as a duty resulting from an
13 office, trust, or station, or to compel the
14 admission of a party to the use and enjoyment of a
15 right or office to which the party is entitled, and
16 from which the party is unlawfully precluded by
17 such inferior tribunal, corporation, board, or
18 person.

19 **31.** Petitioner asserts she has the right to the office
20 of lieutenant which she has been unlawfully
21 precluded from.

22 **32.** Additionally, Respondent's act of reconvening a
23 closed hearing under the objection of the
24 petitioner and without their participation is an
25 act depriving Petitioner of due process, her rights

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1 to a fair hearing under Government Code section
2 3304(b) and the Respondents own discipline manual.

3 **REQUEST FOR DECLARATORY RELIEF**

4 **33.** Petitioner realleges the allegations as set forth
5 in paragraphs 1 through 32 and incorporates these
6 allegations as set forth in full.

7 **34.** An actual controversy now exists between Petitioner
8 and Respondents concerning their respective rights
9 and obligations. Respondents contend the reconvened
10 hearing was lawful, Petitioner's due process rights
11 have not been violated and the reprimand is
12 supported by the evidence. Petitioner contends the
13 actions of Respondent in reconvening the hearing,
14 admitting the Internal Affairs' Investigative
15 Report, upholding the reprimand with adequate
16 factual support, and refusing to promote Petitioner
17 is unlawful, that Petitioner's due process rights
18 have been violated and will continue to be
19 violated.

20 **35.** Petitioner desires a judicial determination of
21 Petitioner's and Respondent's respective rights and
22 obligations under these facts. Such a declaration
23 is necessary and appropriate at this time so that
24 Petitioner may ascertain her rights concerning the
25 appropriateness of the order and evidence provided.

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REQUEST FOR INJUNCTIVE RELIEF

1
2 **36.** Petitioner realleges the allegations as set forth
3 in paragraphs 1 through 35 and incorporates these
4 allegations as set forth in full.

5 **37.** Respondents reconvened the hearing over
6 Petitioner's objections and without Petitioner's
7 participation. Respondents accepted into evidence,
8 at this reconvened hearing, evidence that was
9 neither provided under oath, subject to cross
10 examination, witnesses reminded of the truthfulness
11 policy, and was uncooperated hearsay evidence. All
12 of which was in violation of the Police
13 Department's Discipline Manual and the requirements
14 of due process under the State and Federal
15 Constitutions, and California Government Code
16 section 3304(b), the right to a fair administrative
17 appeal.

18 **38.** Petitioner requests an injunction against
19 Respondents regarding any further violations of her
20 rights including the use of this investigation and
21 reprimand against her any manner including denying
22 her a promotion, transfer, specialized assignment
23 or other benefit or entitlement due her.

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PUBLIC SAFETY OFFICER'S RIGHTS VIOLATIONS

1
2 **39.** Petitioner realleges the allegations as set forth
3 in paragraphs 1 through 38 and incorporates these
4 allegations as set forth in full.

5 **40.** Petitioner is requesting damages for each and every
6 violation of Government Code sections 3300-3312 as
7 allowed under Government Code section 3309.5(e). A
8 Claim for Damages has been filed with the
9 Respondents and denied.

10 **41.** Petitioner does not have a plain, speedy and
11 adequate remedy at law. All of the acts alleged in
12 this petition occurred within the venue of this
13 Court. Petitioner has performed all conditions
14 precedent to the filing of this petition.
15 Jurisdiction over this matter, by this Court, is
16 provided for under Government Code section 3309.5,
17 Code of Civil Procedure section 1085 and 1094.5.

18 **WHEREFORE:** Petitioner prays:

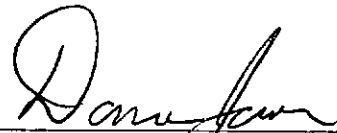
- 19 1. For issuance of a Writ of Mandate under the seal of this
20 Court commanding Respondents to dismiss all
21 administrative and disciplinary charges against
22 Petitioner, that it direct Respondents to promote
23 Petitioner to the position of lieutenant-a promotion
24 that would of occurred but for their illegal action, for
25 full back pay and benefits and that all reference to

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1 this investigation be removed from all of her personnel
2 files.

- 3 2. A declaration that Respondents violated their own
4 policies, the laws of the State of California, the laws
5 of the United States, and the Public Safety's Officers
6 Bill of Rights. An injunction prohibiting Respondents
7 from violating her rights again and using this
8 investigation and reprimand against her in any manner.
9
- 10 3. Petitioner recover her costs in this action including
11 attorney fees pursuant to Government code sections 800,
12 Code of Civil Procedure section 1021.5 and Government
13 Code section 3309.5(e), actual damages under 3309.5(e),
14 civil penalties under 3309.5(e), general damages under
15 Code of Civil Procedure 1095 and any and all other
16 damages.
17
- 18 4. That this Court grant other relief as may be just and
19 proper.

20 Dated: May 21, 2007



21 Donovan J. Jacobs
22 Attorney for Petitioner
23 Martha G. Sainz
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VERIFICATION

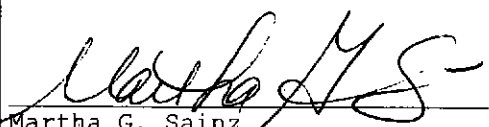
I, the undersigned, say:

I, have read the foregoing Verified Petition for Writ of Mandamus, and know its contents.

I am a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

Executed on May 11, 2005 at Alpine, California

I declare under the penalty of perjury the foregoing is true and correct.


Martha G. Sainz