



1 12<sup>th</sup> Floor, Oakland, CA 94612-4305.

2 3. The true names and capacities of defendants named as DOES 1 through 20,  
3 inclusive, are presently unknown to Plaintiff. Therefore, Plaintiff sues said defendants pursuant to  
4 Section 474 of the Code of Civil Procedure. Plaintiff will amend this complaint to set forth the true  
5 names and capacities of said defendants, when ascertained. Plaintiff is informed and believes and  
6 thereon alleges that each of the fictitiously named defendants is responsible in some manner for the  
7 occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately caused  
8 by their conduct.

9 4. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
10 mentioned, each defendant named herein, was the agent and or employee of each of the remaining  
11 defendant, and in doing the things hereinafter alleged, was acting within the course and scope of  
12 such agency and or employment. ACSO and Does 1-20 are hereafter collectively called  
13 "DEFENDANTS."

14 **JURISDICTION AND VENUE**

15 5. Venue is proper pursuant to Cal. Civ. Proc. Code sec. 396(a).

16 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

17 6. On February 25, 2022, Plaintiff filed his government claim against the County of  
18 Alameda pursuant to Government Code §§ 810-996.6. (See Exhibit A.) Plaintiff did not receive a  
19 response to his tort claim. Plaintiff has exhausted his administrative remedies.

20 **FACTUAL ALLEGATIONS**

21 7. Mr. McMann has been employed with the Agency as a Deputy Sheriff since October  
22 2017. Mr. McMann customarily worked mandatory overtime hours as part of his assignment. His  
23 duties at the Santa Rita Jail included oversight of inmates within the jail facility. Mr. McMann was  
24 assigned to Santa Rita Jail until his involuntary transfer to the Coroner's Office in 2021. Mr.  
25 McMann is currently divorced but was previously married to Sgt. Kevin Estep's sister-in-law. Mr.  
26 McMann has four children with his ex-wife and has joint custody of the children.

27 8. In November 2020, Mr. McMann learned that his two oldest daughters were  
28 sexually assaulted and molested by their uncle, Sgt. Kevin Estep, when they were both minors. Mr.

1 McMann was in receipt of several text messages from Sgt. Estep where he texted inappropriate  
2 messages to one of Mr. McMann's minor daughters, including a text message that said, "let me see  
3 your ass."

4 9. Mr. McMann immediately reported this information to the Brentwood Police  
5 Department. The Brentwood Police Department conducted an investigation where Sgt. Estep was  
6 interviewed and admitted during a Brentwood Police Department pre-text phone call with Mr.  
7 McMann that the girls were not liars, several times. He also indicated during the pre-text phone  
8 call, "when I touched your daughter inappropriately..." The Brentwood Police Department  
9 completed its investigation, found there was a potential violation of law, and turned the matter over  
10 to the Contra Costa County District Attorney's office ("DA"). The DA chose to not prosecute this  
11 case because of the potential impact this type of trial would have on the minors.

12 10. At this time, Mr. McMann was assigned to Santa Rita Jail, working in Intake  
13 Transfer and Release, under the supervision of Sgt. Michael Bitle.

14 11. In December 2020, Mr. McMann talked to his supervisor, Sgt. Bitle, about the  
15 matter and was directed to go to ACSO's Internal Affairs. On or about the same date, Mr. McMann  
16 called Lt. Evans in Internal Affairs and lodged an internal complaint indicating that Sgt. Estep had  
17 engaged in misconduct and had sexually molested/assaulted his minor daughters in violation of the  
18 California Penal Code. In reporting the matter to Lt. Evans in Internal Affairs, Mr. McMann  
19 expected that an investigation into his complaint would be conducted by Internal Affairs.

20 12. Plaintiff is informed, believes, and thereupon alleges that Lt. Evans nor anyone in  
21 Internal Affairs or in ACSCO investigated Mr. McMann's claims as required by the ACSO's  
22 General Order No. 3.33.

23 13. ACSO Office General Order No. 3.33 sets forth the procedures for Internal Affairs  
24 complaints and investigations. It provides:

25 The Agency has zero tolerance toward all forms of sexual  
26 harassment, sexual assault, and sexual abuse, for those in the  
27 Agency's employment and in our custody. The Agency [sic]  
28 approach to preventing, detecting, and responding to such conduct

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shall be governed by this *directive*.

The Agency shall ensure an administrative or criminal investigation is completed for all allegations of sexual harassment and sexual abuse (emphasis added).

14. The General Order also provides that each investigation should be concluded within 90 days. ACSO did not follow its regulation.

15. General Order 3.33, provides in pertinent part that the “Agency shall ensure that an administrative or criminal investigation is completed for all allegations of sexual harassment and sexual abuse.” An investigation would have revealed the text messages, the Brentwood Police Report, and the content of the pretext phone call with Sgt Estep where incriminating statements were made. On or about August 26, 2021.

16. Mr. McMann received a letter indicating that his complaint had been “withdrawn” and no further action would be taken by the department.”<sup>1</sup> Mr. McMann expressed concerns that his complaint was receiving inadequate attention and appeared to be disregarded by ACSO.

17. After the filing of his complaint with Internal Affairs and the Brentwood Police Department, Mr. McMann began to experience several retaliatory, adverse employment actions and was the victim of harassing acts that impacted the terms, conditions and privileges of his employment. For instance, while on a mandatory overtime shift, Mr. McMann ran into Sgt. Estep who aggressively blurted demeaning and threatening remarks such as “Fuck you!” Sgt. Estep’s hostile and aggressive conduct towards Mr. McMann appears to be a direct reaction to his filing of a sexual misconduct complaint with both the Brentwood Police Department and ACSO's Internal Affairs.

18. The encounter was emotionally charged and created a hostile and dangerous work

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<sup>1</sup> On August 26, 2021, Mr. McMann received a letter from Capt. Dan Brodie of the Agency which addresses his complaint against Sgt. Estep. Said letter indicates that the Agency's disposition to Mr. McMann's allegation that “a member of the Agency behaved inappropriately towards your family members, leading to your professional relationship tainted” is withdrawn. However, Mr. McMann had not withdrawn his complaint and wanted an investigation conducted into the matter.

1 environment for Mr. McMann. Mr. McMann immediately reported Sgt. Estep's harassing and  
2 retaliatory conduct to Sgt. Charles Joe. Plaintiff is informed, believes, and thereupon alleges that  
3 Sgt. Joe wrote a memo to Lt. Evans in Internal Affairs regarding McMann's complaint against Sgt.  
4 Estep's on duty misconduct and discourteous treatment. However, the matter does not appear to  
5 have been investigated, and ACSO's solution to Mr. McMann's complaint of harassment by Sgt.  
6 Estep was to relieve McMann from mandatory overtime for 60 days to prevent their paths from  
7 crossing. Instead of addressing the misconduct of Sgt. Estep, ACSO forced Mr. McMann to suffer  
8 a loss of overtime pay.

9         19. In the Fall of 2020, prior to the filing of his complaint, Mr. McMann applied for a  
10 Range Instructor position. In December 2020, after he had filed his complaint against Sgt. Estep,  
11 Mr. McMann was denied the position despite being overqualified and receiving a very high score  
12 on the exam/interview. He was informed by several ACSO staff members that Captain Barker did  
13 not want him in the position because of some "personal issues." Mr. McMann is informed, believes,  
14 and thereupon alleges that he did not get the position because of the complaint he lodged with  
15 ACSO Internal Affairs against Sgt. Estep.

16         20. Shortly thereafter, Mr. McMann was summoned to a meeting with Commander  
17 Tucker to discuss several "unnecessary use of force" memos against him. Mr. McMann was  
18 unaware of several of the memos and was told that he could face disciplinary action because of the  
19 incidents identified in the memos. The incidents in the memos were reviewed by the Agency's use  
20 of force experts and were not determined to be incidents which Mr. McMann used unnecessary  
21 force or warranted any discipline. When he did see the memos, he was informed, believes, and  
22 thereupon alleges that some of the memos were false and had been fabricated, particularly the  
23 memo signed by Lt. Leca.

24         21. Thereafter, Mr. McMann continued to experience more retaliation and disparate  
25 treatment. For example, in the Spring of 2021, he was assigned to work in Housing Unit 25, a unit  
26 that is filled with sex offenders. Contrary to department regulations and protocol, Mr. McMann  
27 was required to work alone, without another Deputy for 99% of the time that he was on the unit 25  
28 assignment.

1           22. Mr. McMann is informed, believes, and thereupon alleges that he was the only  
2 person who was not given a partner which was unusual considering that every house on base has  
3 and is required to have a partner, especially special-handling housing units. The reassignment to  
4 Housing Unit 25, primarily comprising sex offenders, had a profound negative impact on Mr.  
5 McMann's psychological well-being. It forced him to confront his distressing memories daily,  
6 reliving the traumatic events involving his daughters and the perceived inaction against Sgt. Estep.  
7 Furthermore, the isolation experienced in the unit added to his stress and emotional burden.

8           23. In May 2021, Mr. McMann was transferred to the coroner's office, a new duty  
9 station. He was informed of his transfer with the explanation that it was intended to prevent any  
10 potential loss of earnings, specifically to avoid disciplinary measures like a step reduction in pay  
11 by Sheriff Ahern. After contemplating leaving the department due to the disparate treatment he  
12 was receiving, Mr. McMann was told that Undersheriff Lucia indicated that he was glad Mr.  
13 McMann was leaving the department because his "career is shot," implying that his career within  
14 the Agency was over because of his complaint of sexual misconduct that he filed against Sgt. Estep.

15           24. ACSO failed to address Plaintiff's complaint against Sgt. Estep, leading Plaintiff to  
16 reiterate the details of his complaint in a memo to ACSO on July 14, 2021.

17           25. On August 14, 2021, Mr. McMann submitted another exemption request for  
18 mandatory overtime, albeit reluctantly, due to his financial reliance on the extra earnings from  
19 overtime work for his livelihood. The basis for this request was his concern for personal safety, as  
20 he feared a potential confrontation if he were to encounter Sgt. Estep during the overtime shift.  
21 Later, Mr. McMann had a meeting with Lt. Evans who stated that: "Sheriff Ahern has denied your  
22 request for mandatory overtime and expects you to act professional when you are around Sgt.  
23 Estep." Lt. Evans also indicated that because the Contra Costa DA had not charged Estep with any  
24 crime, the ASCO was not going to investigate.

25           26. On or about August 26, 2021, Mr. McMann received a letter indicating that his  
26 complaint had been "withdrawn" and no further action would be taken by the department.<sup>2</sup> Instead

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28 <sup>2</sup> On August 26, 2021, Mr. McMann received a letter from Capt. Dan Brodie of the Agency which addresses his  
complaint against Sgt. Estep. Said letter indicates that the Agency's disposition to Mr. McMann's allegation that "a

1 of following the guidelines outlined in General Order 3.33 for handling personnel complaints,  
2 ACSO unilaterally withdrew Plaintiff's allegation.

3 27. ACSO's usual disposition options are limited to "sustained," "not sustained,"  
4 "exonerated," or "unfounded," but in Plaintiff's case, his allegation was designated as  
5 "withdrawn."

6 28. Mr. McMann's complaint remained active, and he believed that ACSO was  
7 neglecting and summarily dismissing his grievance. The decision by the DA to not pursue criminal  
8 charges did not absolve ACSO of its obligation to thoroughly probe the alleged misconduct of a  
9 law enforcement officer. Plaintiff is informed, believes, and thereupon alleges that a  
10 comprehensive investigation would have unveiled crucial evidence, including text messages, the  
11 Brentwood Police Report, and the content of the pre-text phone call with Sgt. Estep, wherein  
12 incriminating statements were said.

13 29. Furthermore, ACSO failed to adhere to its own regulations by seemingly neglecting  
14 to conduct an investigation into the complaint of retaliation and discourteous treatment filed by  
15 Mr. McMann, stemming from his interactions with Sgt. Estep in the workplace.

16 30. Mr. McMann engaged in a protected activity by twice reporting Sgt. Estep's  
17 criminal activity and misconduct to ACSO. Within a few weeks of making these reports, he  
18 experienced multiple adverse employment actions and instances of harassment. As a result of the  
19 retaliatory actions and the harassment, Mr. McMann has suffered extreme mental and physical  
20 distress. He has experienced anxiety, depression, heart palpitations and insomnia for which he  
21 received medical treatment.

22 **FIRST CAUSE OF ACTION**

23 **Retaliation – Lab. Code § 1102.5**

24 **Against All Defendants**

25 31. Plaintiff hereby incorporates by reference all allegations set forth above as though  
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27 \_\_\_\_\_  
28 member of the Agency behaved inappropriately towards your family members, leading to your professional  
relationship tainted" is withdrawn. However, Mr. McMann had not withdrawn his complaint and wanted an  
investigation conducted into the matter.

1 fully set forth in this cause of action.

2 32. Per the Labor Code “[a]n employer, or any person acting on behalf of the employer,  
3 shall not retaliate against an employee for disclosing information, or because the employer believes  
4 that the employee disclosed or may disclose information, to a government or law enforcement  
5 agency, to a person with authority over the employee or another employee who has the authority to  
6 investigate, discover, or correct the violation or noncompliance, or for providing information to, or  
7 testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee  
8 has reasonable cause to believe that the information discloses a violation of state or federal statute,  
9 or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of  
10 whether disclosing the information is part of the employee's job duties.” (Lab. Code § 1102.5(b)).

11 33. DEFENDANT ACSO was Plaintiff’s employer for all relevant times herein.

12 34. In December 2020, Plaintiff disclosed to called Lt. Evans, an employee of  
13 DEFENDANT ACSO, and lodged an internal complaint indicating that Sgt. Estep had engaged in  
14 misconduct and had sexually molested/assaulted his minor daughters in violation of the California  
15 Penal Code. In reporting the matter to Lt. Evans in Internal Affairs, Mr. McMann expected that an  
16 investigation into his complaint would be conducted by Internal Affairs.

17 35. At the time Plaintiff filed his complaint, Plaintiff reasonably believed that the  
18 information disclosed was a violation of California state law.

19 36. Plaintiff engaged in protected activity when he reported Sgt. Estep’s harassing  
20 conduct and criminal activity to ACSO in 2020. Plaintiff’s disclosure triggered ACSO’s mandatory  
21 duty to investigate Plaintiff’s allegation. Rather than investigating the allegation, ACSO committed  
22 a retaliatory act when it rejected Plaintiff’s job application for Range Instructor and issued memos  
23 for alleged unnecessary use of force. Plaintiff was also subjected to adverse employment action  
24 when ACSO reassigned him to a housing unit without any partner which exposed him to  
25 unnecessary peril.

26 37. DEFENDANT ACSO’s retaliatory and adverse employment actions included  
27 rejecting Plaintiff's job application for the position of Range Instructor, issuing memos alleging  
28 unnecessary use of force, and subjecting him to adverse employment measures by reassigning him

1 to a housing unit without a partner, thereby exposing him to undue risk. These actions collectively  
2 constitute adverse employment actions as defined by the California Labor Code.

3 38. Plaintiff's report of Sgt. Estep's sexual misconduct was a significant contributing  
4 factor in DEFENDANT ACSO's choice to reject Plaintiff's job application for the Range Instructor  
5 position, issue memos alleging unnecessary use of force, and implement adverse employment  
6 measures such as reassignment to a housing unit without a partner, thereby exposing him to undue  
7 risk.

8 39. Plaintiff was harmed as a direct result of DEFENDANT ACSO's actions and  
9 inactions, as set forth above. Specifically, Plaintiff suffered and continues to suffer from extreme  
10 mental and physical distress. He has experienced anxiety, depression, heart palpitations, and  
11 insomnia for which he received medical treatment.

12 40. DEFENDANT ACSO's conduct was a substantial factor in causing Plaintiff's harm.

13 **SECOND CAUSE OF ACTION**

14 **Failure to Perform a Mandatory Duty - Gov. Code § 815.6**

15 **Against All Defendants**

16 41. Plaintiff hereby incorporates by reference all allegations set forth above as though  
17 fully set forth in this cause of action.

18 42. DEFENDANT ACSO was Plaintiff's employer for all relevant times herein.

19 43. Government Code § 815.6 provides for liability to a public entity for failing to  
20 adhere to a mandatory duty. It provides, "[w]here a public entity is under a mandatory duty imposed  
21 by an enactment that is designed to protect against the risk of a particular kind of injury, the public  
22 entity is liable for an injury of that kind proximately caused by its failure to discharge the duty  
23 unless the public entity establishes that it exercised reasonable diligence to discharge the duty."  
24 (Gov. Code, § 815.6.) "Thus, the government may be liable when (1) a mandatory duty is imposed  
25 by enactment, (2) the duty was designed to protect against the kind of injury allegedly suffered, and  
26 (3) breach of the duty proximately caused injury." (*State Dept. of State Hospitals v. Superior Court*  
27 (2015) 61 Cal.4th 339, 348.)

28 44. For purposes of Government Code § 815.6, "'Enactment' means a constitutional

1 provision, statute, charter provision, ordinance or regulation.” (Gov. Code, § 810.6.) A regulation  
2 “means a rule, regulation, order or standard, having the force of law, adopted by an employee or  
3 agency of the United States pursuant to the federal Administrative Procedure Act (Chapter 5  
4 (commencing with Section 500) of Title 5 of the United States Code) or as a regulation by an agency  
5 of the state pursuant to the Administrative Procedure Act.”  
6 (Gov. Code, § 811.6.)

7 45. ACSO’s General Order 3.33 is within the meaning of the word “regulation” and  
8 therefore falls within the definition of “enactment” pursuant to Government Code § 815.6. General  
9 Order 3.33 imposes an unequivocal duty to “ensure an administrative or criminal investigation is  
10 completed for all allegations of sexual harassment and sexual abuse.” It does not contain any  
11 express language limiting the application to those wrongdoings committed by an employee to  
12 another employee. The purpose of the General Order was to effectuate the ACSO’s “zero tolerance  
13 toward all forms of sexual harassment, sexual assault, and sexual abuse, for those in the Agency’s  
14 employment and in our custody.”

15 46. Being part of the ACSO’s set of public policies, General Order 3.33 is intended to  
16 protect its members and the public in all its dealings with the members of ACSO.

17 47. Plaintiff reported Sgt. Estep’s misconduct to ACSO in December 2020. Plaintiff’s  
18 complaint fell well within the category of a personnel complaint, especially considering that the  
19 victims of Sgt. Estep’s criminal activity were minors. Despite the prescribed 90-day period stated  
20 in General Order 3.33, Plaintiff was not made aware of any investigation conducted by ACSO  
21 during that time.

22 48. ACSO’s inadequate response to Plaintiff’s complaint against Sgt. Estep compelled  
23 Plaintiff to reiterate the complaint’s details in a memo to ACSO dated July 14, 2021. ACSO chose  
24 to withdraw Plaintiff’s allegation, in direct opposition to the prescribed procedures defined in  
25 General Order 3.33 for addressing personnel complaints. ACSO typically classifies dispositions as  
26 “sustained,” “not sustained,” “exonerated,” or “unfounded.” But, in Plaintiff’s case, his allegation  
27 was categorized as “withdrawn.”

28 49. Plaintiff was harmed as a direct result of DEFENDANT ACSO’s actions and

1 inactions, as set forth above. Specifically, Plaintiff suffered and continues to suffer from extreme  
2 mental and physical distress. He has experienced anxiety, depression, heart palpitations, and  
3 insomnia for which he received medical treatment.

4 50. DEFENDANT ACSO's failure to perform its duty, i.e., conduct a mandatory  
5 investigation, was a substantial factor in causing Plaintiff's harm.

6 WHEREFORE, Plaintiff prays judgment against DEFENDANTS, and each of them, as  
7 follows:

- 8 1. For general and special damages in an amount to be proven at trial;
- 9 2. For pre-judgment interest on any unpaid compensation from the date such amounts  
10 were due;
- 11 3. For reasonable attorney's fees and for costs of suit incurred;
- 12 4. For such other and further relief as the Court may deem appropriate;

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14 Dated: August 10, 2023

LAW OFFICE OF DENISE EATON-MAY, P.C.

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Denise Eaton-May, Esq.  
18 Attorney for Plaintiff  
Christopher McMann

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**JURY DEMAND**

Plaintiff Chris McMann hereby demands trial by jury on all issues triable to a jury.

Dated: August 10, 2023

LAW OFFICE OF DENISE EATON-MAY, P.C.



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Denise Eaton-May, Esq.  
Attorney for Plaintiff  
Christopher McMann