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County of Santa Clara
23CV425697
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
UNLIMITED JURISDICTION

LARA MCCABE, individual,

Plaintiff,

vs.

COUNTY OF SANTA CLARA, and DOES 1-
25, inclusive,

Defendants.

Case No.: 23CV425697

COMPLAINT FOR DAMAGES FOR

- 1. Whistleblower Retaliation**
- 2. Retaliation in Violation of FEHA**
- 3. Failure To Prevent and Investigate Discrimination and Harassment in Violation of FEHA**
- 4. Unruh Act Violations**
- 5. Intentional Infliction of Emotional Distress**
- 6. Negligent Infliction of Emotional Distress**

DEMAND FOR JURY TRIAL

Plaintiff Lara McCabe (“Plaintiff” and/or “Ms. McCabe”) alleges against Defendant COUNTY OF SANTA CLARA (“County”) and DOES 1-25, inclusive, and each of them (collectively “Defendants”), as follows. Plaintiff hereby demands a jury trial on all causes of action. Plaintiff alleges the following:

1 **I. PARTIES**

2 1. At all material times, Plaintiff was and is a competent adult and resident of the County
3 of Santa Clara, State of California. At all times alleged in this complaint, Plaintiff was and is
4 employed by Defendant County as Program Manager II.

5 2. Defendant County is and was at all material times mentioned herein, a city and
6 political subdivision of the State of California, duly organized and existing under the laws of the State
7 of California, to wit: a County as defined by California Government Code § 811.2.

8 3. Defendant County at all materials employed more than five people in California and
9 is and was at all material times an “employer,” as that term is defined in the California Fair
10 Employment and Housing Act, and under the California Labor Code.

11 4. The Defendants identified as Does 1 through 25, inclusive, are sued under fictitious
12 names, and were, at all times herein-mentioned, agents, business affiliates, successors- and/or
13 predecessors-in-interest, officers, directors, partners, and/or managing agents of some or each of the
14 remaining Defendants. Their true names and capacities are unknown to Plaintiff. Plaintiff is informed
15 and believes and, on that basis, alleges that, at all times herein mentioned, each of the defendants
16 identified as Does 1 through 25, inclusive, employed, and/or exercised control over the conditions of
17 Plaintiff which led to the instant lawsuit, and which are described herein. In doing the acts herein
18 alleged, each Defendant is liable and responsible to Plaintiff for the acts of every other Defendant.
19 The true names and capacities of the Doe Defendants, whether individual, corporate, associate, or
20 otherwise, are unknown to Plaintiff who therefore sue such Doe Defendants by fictitious names
21 pursuant to California Code of Civil Procedure § 474. Plaintiff is informed and believes that the Doe
22 Defendants are residents of the State of California. Plaintiff will amend this complaint to show such
23 Doe Defendants’ true names and capacities when they are known.

24 5. Plaintiff is informed and believes and thereon allege that, unless otherwise indicated,
25 each Defendant was the agent and/or employee of every other Defendant within the course and scope
26 of said agency and/or employment, with the knowledge and/or consent of said Defendant. Plaintiff
27 therefore alleges upon information and belief that each of the fictitiously named Defendants is
28

1 responsible in some manner for the occurrences alleged, and that Plaintiff’s damages alleged were
2 proximately caused by each of those Defendants.

3 6. To the extent any allegation contradicts another allegation, they are to be construed as
4 “alternative” theories.

5 **II. JURISDICTION AND VENUE**

6 7. Jurisdiction is proper in this Court because each Defendant transacts business within
7 this County, and Plaintiff performed work for Defendant County and experienced the legal violations
8 that are the subject of this Complaint in Santa Clara County. The monetary value of Plaintiff’ claims
9 exceeds \$25,000, and the amount in controversy exceeds the jurisdictional minimum of this Court.

10 8. Venue is proper in this Court. Plaintiff, at all relevant times, was a resident of
11 California and entered into an employment agreement with Defendants in Santa Clara County. Santa
12 Clara County is also where they performed the work of their employment agreement and relationship.
13 Each Defendant is also an entity which conducts business in Santa Clara County, and Defendants
14 entered into the employment contract with Plaintiff in Santa Clara County, where the contract was to
15 be performed. Plaintiff allege on information and belief that one or more of Does 1–25 were and are
16 at all material times either individuals residing and/or working in Santa Clara County or entities with
17 their principal place of business and doing business in the Santa Clara County. Moreover, the acts
18 and omissions complained of occurred in, and the damages, and injury that forms the basis of this
19 lawsuit were sustained in Santa Clara County.

20 **III. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 9. Defendants regularly and systematically do business in the State of California and are
22 subject to suit under the Fair Employment and Housing Act (“FEHA”) in that Defendants regularly
23 employ five or more persons. Plaintiff timely filed a complaint on her causes of action under FEHA
24 with the California Civil Rights Department and obtaining a Right-to-Sue notice pursuant to
25 California Government Code § 12965(b). Plaintiff files this action within one year of the date of her
26 CRD right-to-sue letter(s). Therefore, administrative remedies have been properly exhausted.

27 10. Plaintiff will satisfy all applicable administrative requirements then amend to add a
28 claim pursuant to the Private Attorney General’s Act, California Labor Code §§ 2698 *et seq.*

1 11. The California Workers' Compensation Act does not preempt this action because
2 Defendants' unlawful practices, as alleged herein, are not risks or conditions of employment. Plaintiff
3 is not required to satisfy any further private, administrative, or judicial prerequisites to the institution
4 of this action, insofar as such prerequisites pertain to any of the remaining causes of action in this
5 complaint.

6 **IV. GOVERNMENT TORT CLAIM PRESENTATION**

7 12. This lawsuit is timely filed within all applicable statutes of limitation and Plaintiff has
8 complied with the requirements for claims presentation under the Government Claims Act, California
9 Government Code § 810 et seq.

10 13. As to any claims for which Plaintiff is required to comply with the California
11 Government Code claims presentation procedure, Plaintiff timely filed with the County her tort claim
12 under the Government Claims Act, California Government Code § 810 et seq. on April 12, 2023,
13 reflecting the date of harm as April 12, 2023 and ongoing.

14 14. On May 19, 2023 Defendant mailed its Notice of Return Without Action.

15 15. Plaintiff's counsel filed with the County an amended the government tort claim to
16 reflect the additional wrongful conduct, as part of the continuing course and pattern and practice of
17 wrongful conduct, that occurred after the April 12 presentation, in late April 2023 and on July 11,
18 2023, as well as a newly discovered further wrongful conduct in March 2023 that was also part of the
19 continuing course and pattern and practice of wrongful conduct.

20 16. On September 22, 2023 Defendant mailed its Notice of Rejection of claim as to the
21 amended government tort claim.

22 **IV. GENERAL ALLEGATIONS**

23 **A. Ms. McCabe has been a long-time loyal and faithful employee.**

24 17. Ms. McCabe began her career with the County as a Board Aide in December 2008.
25 She excelled in that role and eventually earned the promotion to Chief of Staff.

26 18. In May 2018, Ms. McCabe transitioned to the Sheriff's Office as a Management
27 Analyst. After just a few months in that position, Ms. McCabe was promoted to Senior Management
28 Analyst on December 17, 2018.

1 19. A few months prior to her promotion to Senior Management Analyst, Ms. McCabe
2 had started providing Consent Decree work. She applied for a position in the Sheriff’s Office related
3 to the Consent Decree shortly thereafter and was promoted to Program Manager II on January 28,
4 2019.

5 20. For nearly 15 years, Ms. McCabe has built a successful and fulfilling career with the
6 County while also forging solid working relationships with her supervisors and colleagues. Despite
7 the challenges she has faced in the Sheriff’s Office, she continues to proficiently execute her
8 responsibilities and contribute to the success of the Sheriff’s Office.

9 **B. Sheriff Smith Created a Hostile Working Environment of Open Retaliation and**
10 **Harassment of Whistleblowers such as Ms. McCabe.**

11 **1. Ms. McCabe and Other Sheriff’s Department Employee Witnesses**
12 **Cooperated in the District Attorney Investigation into Legal Violations by**
13 **Sheriff Smith and her Department, and Sheriff Smith Believed this**
14 **Whistleblowing Would Continue.**

15 21. In January 2020, Ms. McCabe was interviewed by the District Attorney regarding an
16 investigation into misconduct within the Sheriff’s Department, including legal violations by Sheriff
17 Smith, who was Ms. McCabe's supervisor at all materials times. Ms. McCabe cooperated in the
18 investigation and provided information to the inquiry and investigation by the District Attorney’s
19 Office, including e-mails and texts in her possession, as she was asked to do.

20 22. Sheriff Smith also believed that Ms. McCabe had disclosed or might disclose to the
21 District Attorney’s office further information regarding legal violations within the Sheriff’s
22 Department, including violations by Sheriff Smith.

23 **2. In Retaliation, Smith Intimidated, Harassed, and Threatened Ms.**
24 **McCabe and Other Employee Whistleblowers.**

25 23. After Ms. McCabe relayed the information to the District Attorney’s office, Sheriff
26 Smith became desperate to find out any information regarding the investigation. On several
27 occasions, she badgered Ms. McCabe as to information Ms. McCabe had provided. On another
28 occasion, Sheriff Smith followed Ms. McCabe into another employee’s office and demanded that
Ms. McCabe tell her the reason for the investigation.

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24. As the investigation continued, Sheriff Smith became antagonistic towards the employees in the Department whom Sheriff Smith felt might testify, provide information, or otherwise participate or cooperate, including continuing the antagonism towards Ms. McCabe. As an example, in early March of 2020, Smith made a shocking and inappropriate comment during an Executive Team meeting consisting of Ms. McCabe, Sheriff Smith, Rick Sung, Ken Binder, Juan Gallardo, and Mike Doty: when one of the attendees suggested a topic for the meeting, Smith responded by saying, “What we need to discuss is messaging.” Sheriff Smith then pointed to Rick Sung and stated, “The message is he will be going to jail, not me.” Sheriff Smith’s comment was extremely unprofessional and not only humiliated a member of her staff, but made the rest of the attendees, including Ms. McCabe fearful and obviously uncomfortable, as Smith intended.

25. In an effort to intimidate the employees such as Ms. McCabe who would be testifying in the investigation, Sheriff Smith regularly notified members of her department that she read the investigation transcripts and knew what was documented. On one such occasion, Ms. McCabe stopped by Sheriff Smith’s office to advise her of a work-related issue. Sheriff Smith very clearly stated that she reads transcripts, so she knows who is involved in the investigation and what they have said. At the time when Sheriff Smith made this comment, there was also a criminal grand jury investigating concealed weapons permit (CCW) information.

2. Smith’s Retaliation Included False Accusations that Ms. McCabe Provided False Information to the Grand Jury.

26. On multiple occasions, Sheriff Smith accused Ms. McCabe of providing false statements throughout the investigation. During a group meeting, Sheriff Smith assured the department that she would not be found guilty of any of the allegations because “[they] are all liars, even Lara [McCabe].” Sheriff Smith continued to make accusatory and threatening statements throughout the remainder of her tenure with the Sheriff’s Department.

27. On October 5, 2020, Ms. McCabe was informed that there would be a criminal grand jury convened to investigate the CCW claims as they related to Sheriff Smith. Ms. McCabe and other employees of the Sheriff’s Department were subpoenaed to testify.

1 28. In the months leading up to Ms. McCabe’s testimony, Sheriff Smith openly continued
2 to harass and retaliate and others in the Agency who were scheduled to testify, including Juan
3 Gallardo and Tim Davis. This was, by Sheriff Smith’s design, also intended to retaliate against Ms.
4 McCabe, who witnessed, and was meant by Sheriff Smith to witness, this treatment of other
5 witnesses. In several incidents, Sheriff Smith would give both Mr. Gallardo and Mr. Davis work
6 directives, but, after both employees followed her directions, Sheriff Smith would become upset and
7 question why they had performed the tasks. Further, Ms. McCabe personally witnessed Sheriff Smith
8 being openly and unreasonably critical of Mr. Gallardo. Sheriff Smith would continuously complain
9 about his work performance and attempt to get other department employees to agree that his
10 performance was not satisfactory. Ms. McCabe was threatened and intimidated, as Sheriff Smith
11 intended, because she knew that she, Ms. McCabe, would suffer the same retaliation and harassment
12 as Smith directed at the other witnesses.

13 **3. Sheriff Smith Called Ms. McCabe the Night Before Her Scheduled**
14 **Testimony and Continued to Threaten Grand Jury Witnesses.**

15 29. Smith did not stop there. Ms. McCabe was initially scheduled to testify before the
16 Grand Jury on November 14, 2020. The night before the court proceedings, Ms. McCabe received a
17 call from her supervisor, Sheriff Smith, who was upset and crying. Sheriff Smith told Ms. McCabe
18 that [the investigation] was unfair and that she felt alone in the Agency in the 37-minute, nighttime
19 phone call.

20 30. Shortly after Ms. McCabe testified on November 16, 2020, she received news that
21 Sheriff Smith was once again making threatening remarks about her and the other witnesses. Ms.
22 McCabe’s boss, Tim Davis, was aware of the threatening remarks before Ms. McCabe testified, but
23 chose to wait until after the testimony to relay the information to Ms. McCabe. Mr. Davis informed
24 Ms. McCabe that she could provide him with a letter outlining her concerns and he would give it
25 directly to County Counsel. He mentioned that other employees were providing letters as well.

26 31. On December 3, 2020, Ms. McCabe heeded his advice and drafted a letter that was
27 forwarded to County Counsel by Mr. Davis, reporting the further legal violations by Sheriff Smith
28 including whistleblower retaliation and witness intimidation and tampering.

1 **C. The Grand Jury Transcripts Are Released.**

2 32. On January 12, 2021, the transcripts from the grand jury proceedings were released
3 and Ms. McCabe’s testimony was reported in the subsequent news articles covering the investigation.
4 After the articles were published, it became significantly more difficult for Ms. McCabe to perform
5 her duties and maneuver through the Agency because of the way others treated her, making clear
6 their allegiance to Sheriff Smith. Ms. McCabe suffered so much retaliation and intimidation from
7 other employees who believed that Ms. McCabe was heavily involved in the investigation and
8 subjected to harassment and scrutiny, to the point where, Jeff Smith, County CEO, felt compelled to
9 ask Ms. McCabe if she was safe.

10 **D. Smith is Permitted to Continue to Harass and Retaliate Against McCabe in Light
11 of Investigative Findings and Recommendations for Criminal Charges**

12 33. On May 19, 2021, Ms. McCabe met with Ms. Kennedy, the representative hired by
13 County Counsel to perform a purportedly outside, independent investigation of Ms. McCabe’s
14 complaint. Ms. McCabe cooperated and provided statements and information in the investigation.

15 34. Yet, Ms. McCabe was not safe or protected even then. At one point, the investigator
16 surprised her with a question about another female employee, with whom Ms. McCabe did not work
17 directly and who, to Ms. McCabe’s knowledge, was not involved with the grand jury investigation.
18 Afterwards, On May 28, 2021, Ms. McCabe was walking to the kitchen in the Agency and crossed
19 paths with Sheriff Smith, who was leaving her office talking with one of the captains. When Sheriff
20 Smith saw Ms. McCabe, Sheriff Smith very loudly asked the captain how that female employee was
21 doing, mentioning her by name. Sheriff Smith followed up her question by telling him how much she
22 loved that female employee. Sheriff Smith pointedly followed Ms. McCabe into the kitchen,
23 continuing to exclaim how much she loved that female employee and how much she missed having
24 her working in the office. In this way, Sheriff Smith conveyed to Ms. McCabe that she, Sheriff Smith,
25 was receiving information about the investigation—information that was supposed to be confidential.
26 Ms. McCabe was upset, intimidated, and frightened, as Sheriff Smith intended. Ms. McCabe knew
27 Sheriff Smith had personal connections with employees in both the County Counsel office and the
28 District Attorney’s office, and Sheriff Smith demonstrated the ongoing power she had over Ms.

1 McCabe, that there was nothing Ms. McCabe could do to make herself safe. Ms. McCabe
2 immediately contacted Ms. Kennedy to report this retaliation and intimidation, as Ms. Kennedy had
3 the power to investigate, discover, or correct this further wrongdoing by Sheriff Smith and her
4 cronies. Ms. Kennedy was extremely upset by the situation and that Sheriff Smith was aware of the
5 outside investigation prior to its conclusion.

6 35. On June 16, 2021, Ms. Kennedy contacted Ms. McCabe and informed her that the
7 investigation was complete and she was going to recommend that County Counsel forward the
8 investigation to the District Attorney for possible criminal charges related to witness intimidation and
9 retaliation. Shortly after, County Counsel contacted Ms. McCabe and confirmed that they were
10 forwarding the file to the District Attorney.

11 36. Yet, Sheriff Smith's pattern and practice of retaliation continued. On June 25, 2021,
12 an opening for a PM III position in the Administrative Booking Unit was posted. Sheriff Smith
13 repeatedly asked Ms. McCabe if she was planning to apply for the position, even though Sheriff
14 Smith was well aware that Ms. McCabe was not qualified for the position. Sheriff Smith continued
15 to discuss the position and how it would be a promotion for Ms. McCabe that "[she] could never get
16 in the Sheriff's Office." Sheriff Smith conveyed to Ms. McCabe in this way that Sheriff Smith wanted
17 Ms. McCabe to leave and join another department, and that Ms. McCabe would be denied
18 opportunities and advancement in the Sheriff's Department. Ms. McCabe felt vulnerable, threatened,
19 and alone, because the County was failing to take any action to protect her (or others) as a witness in
20 an investigation, because Sheriff Smith was continuing to harass, retaliate against, and threaten her,
21 and knew there was no one whom she could trust in the Agency and who would offer support.

22 37. On June 29, 2021, Ms. McCabe met with County CEO Jeff Smith to report this further
23 retaliation to him that Sheriff Smith wanted Ms. McCabe to leave and that Ms. McCabe no longer
24 felt safe. Mr. Smith responded by telling Ms. McCabe that it is not standard protocol to move people
25 to other departments, but instead indicated he would assist her in applying to other open positions.

26 38. However, Mr. Smith did not assist Ms. McCabe in finding a new position. Ms.
27 McCabe filled out multiple applications and interviewed for 8 positions on her own. Ms. McCabe
28 reached out to Mr. Smith, as requested, inquiring about a position that she had applied for. Mr. Smith

1 responded that he would check on the status of the application but never followed through or
2 contacted Ms. McCabe to provide an update.

3 **E. The County Continues to Force Ms. McCabe to Work with Sheriff Smith.**

4
5 39. The two interviews that Ms. McCabe was afforded were atypical of how interviews
6 normally were held in the Agency. Before the interview for a position with the Custody Health
7 Services department, the interviewer contacted Ms. McCabe directly and questioned whether she had
8 the credentials that allow her to oversee credentialed behavioral health staff. This action was
9 inappropriate and particularly troubling as the information requested was not listed as a requirement
10 in the scope of work presented.

11 40. This pattern of inappropriate, unprofessional behavior by the Agency toward Ms.
12 McCabe continued during another interview Ms. McCabe attended. During that encounter, two of
13 the interviewers were continuously laughing during the interview. It was obvious to Ms. McCabe that
14 they were texting each other and joking at her expense. Due to the terrible experiences in both
15 interviews, it was clear that Ms. McCabe was not being seriously considered for any of the positions
16 to which she applied.

17 41. On August 26, 2021, Ms. McCabe contacted Aryn Harris via text to inquire about a
18 position in Ms. Harris's office. During their conversation, Ms. McCabe specifically asked Ms. Harris
19 not to mention to any other employees that Ms. McCabe was looking elsewhere. Ms. McCabe also
20 told her that the Sheriff enthusiastically encouraged Ms. McCabe to apply to another department.
21 Mr. Harris indicated to Ms. McCabe that the Sheriff's actions constituted harassment and suggested
22 that Ms. McCabe make a formal report.

23 42. On August 31, 2021, The Board of Supervisors issued a vote of "no confidence"
24 regarding Sheriff Smith. Ms. McCabe's previous statements to the Grand Jury, which were reported
25 by the Mercury News, were included in the Resolution of the vote of "no confidence." The Resolution
26 was read aloud during the meeting and all the attendees were made aware of Ms. McCabe's
27 statements. As an attendee, Ms. McCabe was forced to sit in a conference room with Sheriff Smith
28 and others while her statements were read aloud. This was inappropriate on a number of levels and

1 the County should have intervened to avoid putting Ms. McCabe in this extremely uncomfortable
2 and inappropriate position. Further, the Board relayed the information related to the investigation to
3 the Attorney General and the Civil Grand Jury.

4 43. On September 10, 2021, Ms. McCabe met with Rob Coelho from County Counsel to
5 request that the County move her to another position as a direct result of the retaliatory harassment
6 she experienced from Sheriff Smith. Mr. Coelho inquired as to whether Ms. McCabe was a member
7 of a protected class. He then mentioned that if she was not a member of a protected class, there was
8 nothing that he could do to assist her in her claims.

9 **F. Ms. McCabe Testifies Again and is Again Retaliated Against.**

10 44. On November 2, 2021, Ms. McCabe testified again before the Civil Grand Jury.
11 Immediately following her testimony, Ms. McCabe felt extreme tension and stress in the Sheriff's
12 Office. Ms. McCabe did not receive any support from her peers and was essentially ostracized and
13 ignored by the entire office. No one from County EOD or HR intervened to help and as stated
14 previously, she was prevented from transferring to another department.

15 45. On December 14, 2021, the Civil Grand Jury returned seven counts of willful
16 misconduct against Sheriff Smith. Ms. McCabe's testimony was used in a number of the points of
17 accusation and she was, once again, mentioned by name and quoted by the Mercury News.

18 **G. Ms. McCabe Has to Tak Medical Leave Due to Stress and Anxiety.**

19 46. In January 2022, Ms. McCabe worked from home for a week as a COVID-19
20 precaution. During that time, she spoke with County Attorney Aryn Harris and expressed the
21 immense stress and anxiety she was suffering from as a result of the multiple investigations and
22 having to continue to work with Sheriff Smith and the subsequent treatment she received from Sheriff
23 Smith. After that conversation, Ms. McCabe's doctor put her on a two-week medical leave due to her
24 anxiety. During her leave, the Attorney General announced that he would be opening a civil rights
25 investigation into the Sheriff's Office.

26 **H. Sheriff Smith Asks Ms. McCabe to Locate Documents for Sheriff Smith's**
27 **Defense.**

1 47. On July 25, 2022, Sheriff Smith—still working for the County despite all the findings,
2 asked Ms. McCabe to find a document that she believed Ms. McCabe had created that outlined the
3 Information Sharing Agreement (ISA). Since Ms. McCabe had not drafted that document, she was
4 not able to find it in the database. Instead, Ms. McCabe brought Sheriff Smith a document that was
5 created by County Counsel that she believed was what Ms. McCabe was looking for. After Ms.
6 McCabe forwarded the document, Sheriff Smith proceeded to inform Ms. McCabe that the
7 information was needed for her defense. Shortly after, Sheriff Smith went to Ms. McCabe’s office
8 and blocked the doorway. While preventing Ms. McCabe from leaving, Sheriff Smith insisted on
9 describing her own defense strategy to Ms. McCabe, even though Ms. McCabe did not solicit that
10 information from her. Sheriff Smith concluded the conversation by urging Ms. McCabe to read the
11 transcripts of the investigation. Ms. McCabe should never have had to work with Smith and face her
12 daily, to be exposed to this pressure and attempts to threaten, intimidate and influence her testimony
13 by Ms. McCabe’s supervisor, in Ms. McCabe’s place of work.

14 48. On October 14, 2022, Ms. McCabe testified once again before the grand jury. Ms.
15 McCabe realized that the documents that Sheriff Smith had previously instructed Ms. McCabe to
16 search for were in preparation for Ms. McCabe’s own testimony. This became apparent when Alan
17 Ruby, Sheriff Smith’s attorney, asked Ms. McCabe about the documents during her cross
18 examination. Sheriff Smith had not only misused her office and position of authority over Ms.
19 McCabe to pressure and attempts to threaten, intimidate and influence her testimony, but as Ms.
20 McCabe’s supervisor, in Ms. McCabe’s place of work, to force Ms. McCabe to assist Sheriff Smith’s
21 own interests.

22 49. On October 31, 2022, Sheriff Smith announced her immediate retirement. To avoid
23 any uncomfortable interactions, Ms. McCabe felt she had no choice but to work from home that day.
24 This was reinforced when Ken Binder called Ms. McCabe and instructed her to continue to work
25 from home for the rest of the week. This had not happened before; Ms. McCabe had, to this point,
26 only worked from home when there were members of the Executive Team with confirmed cases of
27 COVID. Ms. McCabe had to work from home for this period because of the discord and unrest from
28 Sheriff Smith and her exit.

1 50. Following Sheriff Smith’s departure, the pattern of ongoing hostile environment and
2 retaliation continued. For instance, Ms. McCabe has had duties and responsibilities stripped from her.
3 Ms. McCabe has attended the Executive Team meetings from start to finish for the more than four
4 years while Smith was the Sheriff. Under the new Sheriff, however, Ms. McCabe and another
5 colleague, Michelle Covarrubias, attended the first part of the meeting, presented their items, and
6 were excluded from the rest of the meeting. On one occasion, in late March, Ms. McCabe was
7 dismissed from the meeting entirely, while her colleague, Ms. Covarrubias was allowed to remain in
8 the meeting. As Ms. McCabe was leaving, Undersheriff Ken Binder very pointedly made a statement
9 about how Ms. McCabe did not have the job title to remain the room.

10 51. In late April, Ms. McCabe was attending a large meeting regarding Skelly hearings
11 that included all of the captains, lieutenants, Ms. Covarrubias, and other civilian managers. During
12 the meeting, Undersheriff Ken Binder stated that, as managers, everyone in the room would need to
13 be prepared to conduct Skelly Hearings. He stated that professional staff, as well as sworn staff,
14 should also be prepared. He then went on to specifically name all of the civilians in the room except
15 for Ms. McCabe. This public, intentional act to pointedly exclude and shun Ms. McCabe caused, and
16 was intended to cause, her to feel embarrassed and isolated and shunned by her superiors and the rest
17 of the Department.

18 52. On July 12, 2023, Ms. McCabe reached out to Greta Hansen, County COO, reporting
19 such ongoing complaints against members of the Sheriff’s office. Ms. Hansen had the position and
20 authority to investigate, discover, and correct these ongoing violations, but failed and refused. He did
21 not offer any solutions during the meeting, but simply stated that Ms. McCabe could apply for other
22 jobs, conveying to Ms. McCabe that she was not welcome and has no future at her current job or at
23 any position with the County, and that she would not be supported or assisted by her County superiors
24 to stop the continuing course of retaliation and harassment that started with Sheriff Smith and
25 continues to this day.

26 **V. CAUSES OF ACTION**

27 **FIRST CAUSE OF ACTION**

28 **Whistleblower Retaliation in violation of California Labor Code §§ 1102.5–1102.6**

Against All Defendants

1 53. Plaintiff incorporates in this cause of action each and every allegation of the preceding
2 paragraphs, with the same force and effect as though fully set forth herein.

3 54. County was and is Plaintiff's employer at all relevant times.

4 55. Plaintiff disclosed to the District Attorney, who has authorization to investigate,
5 discover, and correct and/or prosecute unlawful actions, legal violations or noncompliance including
6 that Defendants asked for and received bribes in violation of Penal Code Section 68(a). She fully
7 cooperated with the District Attorney's investigation by providing emails and text messages in her
8 possession.

9 56. Defendants also believed she had disclosed or would disclose information about legal
10 violations or noncompliance to a government or law enforcement agency and/or to a public body
11 conducting an investigation, inquiry, or hearing.

12 57. Plaintiff did provide information to and testified before a public body that was
13 conducting an investigation, hearing or inquiry in that she was called as a witness and provided
14 testimony in the resulting grand jury proceedings regarding the misconduct within the Santa Clara
15 Sheriff's Department. Plaintiff fully complied with her obligations as a witness and disclosed to the
16 Court information regarding Defendants' unlawful actions.

17 58. Additionally, multiple times, Plaintiff disclosed information about unlawful
18 whistleblower retaliation against her to her immediate supervisor, County's counsel, and
19 investigative agents of the County who were investigating whistleblower retaliation against Plaintiff
20 and had the authority to investigate, discovery , or correct the legal violations or noncompliance.

21 59. Plaintiff had reasonable cause to believe that the information disclosed a violation of
22 state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or
23 regulation.

24 60. Defendants and each of them wrongfully retaliated against Plaintiff because of her
25 whistleblowing and/or because Defendants and each of them believed that she disclosed information
26 regarding legal violation or noncompliance to a government or law enforcement agency, or further
27 to a person with authority over her or to another employee with authority to investigate, discovery,
28 or correct the violation or noncompliance, and/or believed that she provided or might provide

1 information to, or testified or might testify before, any public body conducting the investigation,
2 hearing, or inquiry.

3 61. Plaintiff's disclosures to her supervisor, to the District Attorney, to the Grand Jury,
4 and/or to the County's investigating agents was a contributing factor in Defendants' and each of their
5 decision to take adverse employment actions against her in retaliation.

6 62. Defendants' and each of their belief that Plaintiff had disclosed or might further
7 disclose information was a contributing factor in Defendant's decision to take adverse employment
8 actions against her in retaliation.

9 63. Plaintiff was harmed and Defendants' and each of their conduct was a substantial
10 factor in causing Plaintiff's harm.

11 64. Defendants, and each of them, including through one or more County officers,
12 directors, or managing agents, engaged in wrongful conduct with malice, oppression, and fraud. Her
13 supervisors engaged in despicable conduct that subjected Plaintiff to cruel and unjust hardship in her
14 employment in knowing disregard for her rights to a workplace free of retaliation against
15 whistleblowers. Defendants and each of them acted with intent to injure Plaintiff or acted despicably
16 with a knowing and willful disregard of Plaintiff's rights or safety. For example: Defendants and each
17 of them refused to protect Plaintiff from retaliation after Plaintiff was interviewed by the District
18 Attorney and constantly questioned by Sheriff Smith regarding the content of the interview. Further,
19 Defendants and each of them refused to protect Plaintiff from retaliation when Plaintiff was named
20 as a witness in the grand jury proceedings and excerpts from her testimony were reported on and
21 published by the local news. Thereafter, Plaintiff was also subjected to a pattern and practice of
22 retaliation by Sheriff Smith and other agents of the County with authority and power over her, who
23 deliberately, persistently, and openly interfered with Plaintiff's ability to perform her job duties.
24 Plaintiff's honesty, ethics, and competence were called into question when she was constantly
25 accused by Sheriff Smith of falsifying testimony to the grand jury. For further examples, Sheriff
26 Smith made multiple threatening remarks to Plaintiff in an effort to prevent her acting as a witness in
27 the grand jury proceedings. These actions were done with the intention to harm Plaintiff. Plaintiff
28 was routinely excluded from office meetings and significant projects were taken from her and

1 delegated to other employees. Defendants' and each of their conduct is so vile, base, and/or
2 contemptible that it would be looked down on and despised by reasonable people.

3 65. Plaintiff is also entitled as well as attorneys' fees and costs, as allowed by law.

4 **SECOND CAUSE OF ACTION**
5 **Discrimination, Harassment, and Retaliation in Violation of FEHA**
6 *Against All Defendants*

7 66. Plaintiff incorporates in this cause of action each and every allegation of the preceding
8 paragraphs, with the same force and effect as though fully set forth herein.

9 67. At all relevant times, Plaintiff was an employee of Defendant County subject to
10 protection under FEHA.

11 68. Plaintiff is a member is a member of a protected classes under FEHA as a woman and
12 an a person over the age of 40.

13 69. At all relevant times, Defendant was fully aware that Plaintiff belonged to these
14 protected classes and yet subjected Plaintiff to harassing conduct and adverse employment actions as
15 including deliberately, persistently, and openly interfering with Plaintiff's ability to perform her job
16 duties, routinely excluding Plaintiff from office meetings relevant to her position, outright refusing
17 to transfer Plaintiff to another department as requested by Plaintiff, drastically limiting the duties
18 associated with the position for which she was hired, and purposefully embarrassing and humiliating
19 Plaintiff in front of her colleagues in an effort to reduce Plaintiff's credibility and ostracize her.

20 70. This harassing conduct was severe or pervasive.

21 71. A woman, and a reasonable person over 40, in Plaintiff's circumstances would have
22 considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive and
23 Plaintiff did in fact consider the work environment to be hostile, intimidating, offensive, oppressive,
24 or abusive.

25 72. A supervisor, Sheriff Smith, engaged in the conduct. Moreover, Defendant County or
26 its supervisors or agents knew or should have known of the conduct and failed to take immediate and
27 appropriate corrective action.
28

1 73. Upon information and belief, Plaintiff's gender and/or age were a substantial
2 motivating reason for Defendant's decisions to take in adverse employment actions against her
3 including but not limited to routinely excluding Plaintiff from office meetings relevant to her position,
4 outright refusing to transfer Plaintiff to another department as requested by Plaintiff, drastically
5 limiting the duties associated with the position for which she was hired, and purposefully
6 embarrassing and humiliating Plaintiff in front of her colleagues in an effort to reduce Plaintiff's
7 credibility and ostracize her.

8 74. As a direct result of Defendant's conduct, Plaintiff has suffered and continues to suffer
9 harm including but not limited to loss of past and future wages, benefits, and earning capacity; and
10 emotional distress.

11 75. The conduct of Defendants described herein above was outrageous and was executed
12 with malice, fraud and oppression, and with conscious disregard for Plaintiff's rights, and further,
13 with the intent, design and purpose of injuring Plaintiff and Defendants, through their officers,
14 managing agents, and/or their supervisors, authorized, condoned and/or ratified the unlawful conduct
15 described herein above, entitling her to punitive damages as permitted by law.

16 76. Plaintiff is also entitled as well as attorneys' fees and costs, as allowed by law.

17 **THIRD CAUSE OF ACTION**

18 **Failure To Prevent and Investigate Discrimination and Harassment**
19 **in Violation of FEHA**
20 *Against All Defendants*

21 77. Plaintiff incorporates in this cause of action each and every allegation of the preceding
22 paragraphs, with the same force and effect as though fully set forth herein.

23 78. At all relevant times, Plaintiff was an employee of Defendant subject to protection
24 under FEHA.

25 79. Plaintiff was subjected to harassment, discrimination, and retaliation in the course of
26 her employment on the basis of her age and/or gender, and/or and reporting and resisting harassment,
27 discrimination, and/or retaliation. As described above, Plaintiff was repeatedly threatened by Sheriff
28 Smith and Defendant routinely interfered with Plaintiff's ability to perform her job duties by
excluding her from relevant meetings and reassigning Plaintiff's projects to other employees.

1 80. Plaintiff complained about the harassment and discrimination to one of Plaintiff's
2 managers, as well as Defendant's counsel. Nonetheless, Defendants did not investigate Plaintiff's
3 complaints or take action to stop the harassment and discrimination.

4 81. Despite Defendants' knowledge of Plaintiff's complaints, Defendants failed to take
5 immediate and appropriate corrective action to prevent discrimination, retaliation, and harassment.
6 Defendants similarly failed to take all reasonable steps to prevent discrimination from occurring.

7 82. Defendants knew or should have known about the discrimination and harassment
8 against Plaintiff. Defendants failed to take immediate and appropriate corrective action to prevent
9 discrimination, retaliation, and harassment. Defendants similarly failed to take all reasonable steps to
10 prevent discrimination from occurring.

11 83. Defendant's failure to take all reasonable steps to prevent harassment, discrimination,
12 and retaliation of Plaintiff was a substantial factor in causing Plaintiff's harm.

13 84. Plaintiff is informed and believes and thereon alleges that, as a direct and proximate
14 result of Defendants' willful, knowing, and intentional wrongful conduct, Plaintiff has suffered and
15 continues to suffer damages in an amount subject to proof, but which are in excess of the jurisdictional
16 minimum of this Court. Plaintiff is thereby entitled to general and compensatory damages in an
17 amount to be proven at trial.

18 85. Plaintiff seeks attorneys' fees and costs as permitted by law.

19 86. Defendants' acts alleged herein are outrageous, despicable, and in conscious disregard
20 of Plaintiff's rights as alleged more fully above. They acted with malice, fraud and oppression, and
21 further, with the intent, design and purpose of injuring Plaintiff and Defendants, through their
22 officers, managing agents, and/or their supervisors, authorized, condoned and/or ratified the unlawful
23 conduct described herein above, entitling her to punitive damages as permitted by law.

24 **FOURTH CAUSE OF ACTION**
25 **Unruh Act Violations**
26 *Against All Defendants*

27 87. Plaintiff incorporates in this cause of action each and every allegation of the preceding
28 paragraphs, with the same force and effect as though fully set forth herein.

1 88. Defendants and each of them denied Plaintiff full and equal accommodations,
2 privileges, advantages, facilities and services to Plaintiff including denial of access to relevant
3 meetings and office projects, as well as opportunities for department transfers and promotions.

4 89. A substantial motivating reason for Defendant's unlawful conduct was its perception
5 of Plaintiff's gender and/or age as Plaintiff is a woman over the age of 40.

6 90. Plaintiff was harmed and Defendants' and each of their conduct was a substantial
7 factor in causing Plaintiff's harm.

8 91. Plaintiff is informed and believes and thereon alleges that, as a direct and proximate
9 result of Defendants' willful, knowing, and intentional wrongful conduct, Plaintiff has suffered and
10 continues to suffer damages in an amount subject to proof, but which are in excess of the jurisdictional
11 minimum of this Court. Further, Defendant's conduct was a substantial factor in causing Plaintiff's
12 harm. Plaintiff is thereby entitled to general and compensatory damages in an amount to be proven
13 at trial and as permitted by law as well as cease and desist orders.

14 92. Defendants' acts alleged herein are outrageous, despicable, and in conscious disregard
15 of Plaintiff's rights as alleged more fully above. They acted with malice, fraud and oppression, and
16 further, with the intent, design and purpose of injuring Plaintiff and Defendants, through their
17 officers, managing agents, and/or their supervisors, authorized, condoned and/or ratified the unlawful
18 conduct described herein above, entitling her to punitive damages as permitted by law

19 93. Plaintiff seeks attorneys' fees and costs as permitted by law.

20 **FIFTH CAUSE OF ACTION**

21 **Intentional Infliction of Emotional Distress**

22 *Against All Defendants*

23 94. Plaintiff incorporates in this cause of action each and every allegation of the preceding
24 paragraphs, with the same force and effect as though fully set forth herein.

25 95. The conduct complained of hereinabove was outside the conduct expected to exist in
26 the workplace, was intentional and done for the purpose of causing Plaintiffs to suffer humiliation,
27 mental anguish, and emotional and physical distress. Defendants' conduct was done with the
28

1 knowledge that Plaintiff's emotional and physical distress would thereby increase, and was done with
2 a wanton and reckless disregard of the consequences to Plaintiff.

3 96. As a proximate result of Defendants' intentional infliction of emotional distress as
4 hereinabove alleged, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental
5 anguish, and emotional and physical distress, and has been injured in mind and health. As a result of
6 said distress and consequent harm, Plaintiff has suffered such damages in an amount in accordance
7 with proof at time of trial.

8 97. Defendants, and each of them, authorized, ratified, knew of the wrongful conduct
9 complained of herein, but failed to take immediate and appropriate corrective action to remedy the
10 situation and thereby acted oppressively and with reckless disregard of Plaintiff's rights and safety.

11 98. Plaintiff is informed and believes and, based thereon, alleges that the fictitious
12 Defendants named as DOES 1 through 25, inclusive, aided, abetted, incited, compelled, coerced, or
13 conspired to commit one or more of the acts alleged in this Cause of Action.

14 99. As a direct and proximate result of Defendants' conduct, Plaintiff sustained damages,
15 including but not limited to, loss of earnings and earning potential, opportunities and other benefits
16 of employment and employment opportunities and harm to his/her/their reputation, mental anguish,
17 embarrassment, humiliation, and other emotional distress and/or medical and related expenses in an
18 amount to be established at trial. As a result of this wrongful conduct, Plaintiff is entitled to attorneys'
19 fees, costs, and injunctive relief.

20 **SIXTH CAUSE OF ACTION**

21 **Negligent Infliction of Emotional Distress**

22 *Against all Defendants*

23 100. Plaintiff incorporates in this cause of action each and every allegation of the preceding
24 paragraphs, with the same force and effect as though fully set forth herein.

25 101. At all times material herein, Defendants knew, or in the exercise of ordinary care
26 should have known, that unless Defendants and their agents ceased to engage in the aforementioned
27 acts, or intervened to protect Plaintiff, and to prohibit, control, regulate and/or penalize the conduct
28

1 of Defendants' agents, as alleged herein, that the conduct would continue, thereby subjecting Plaintiff
2 to personal injury and emotional distress.

3 102. As a direct and proximate result of Defendants' actions against Plaintiff, as alleged
4 above, Plaintiff has suffered and continues to suffer general damages including but not limited to
5 significant and enduring emotional distress including humiliation, mental anguish and physical
6 distress, injury to mind and body, in a sum to be proven at time of trial, in excess of the minimum
7 jurisdictional requirements of this Court.

8 103. Plaintiff is further entitled to prejudgment interest in an amount to be shown at trial.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiff pray for relief against Defendants, and each of them, as follows:

- 11 A. For general damages, according to proof, on each cause of action for which such
12 damages are available;
- 13 B. For special damages, according to proof, on each cause of action for which such
14 damages are available;
- 15 C. For declaratory relief to declare Defendants' conduct to be in violation of Plaintiff'
16 rights;
- 17 D. For cease-and-desist orders and injunctive relief to enjoin Defendants from engaging
18 in such conduct;
- 19 E. For pre-judgment and post-judgment interests according to law;
- 20 F. For reasonable attorney's fees incurred in this action on those causes of action for
21 which such fees are recoverable under applicable law;
- 22 G. For costs of suit incurred in this action; and
- 23 H. For such other and further relief as the court deems just and proper.

24 **DEMAND FOR JURY TRIAL**

25 Plaintiff hereby demand a trial by jury on all issues and causes of action so triable.
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**COSTANZO LAW FIRM
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Dated: November 3, 2023

Respectfully submitted,

/s/ Lucy Goodnough

Lori J. Costanzo
Lucy Goodnough
Frank Zeccola
Attorneys for Plaintiff