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7 Joseph Rivera, Jim Azpilicueta,
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9 Nancy Ogle, and Mike Rosario

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

12 JOSEPH RIVERA, JIM AZPILICUETA,
13 ANTHONY GONZALEZ, STEVE JOHNSON,
14 NANCY OGLE, and MIKE ROSARIO.

14 Plaintiffs,

15 vs.

16 CITY OF WHITTIER, a government entity, and
17 DOES 1 through 100, inclusive,

18 Defendants.

CASE NO.

BC 5 7 4 4 3

COMPLAINT FOR DAMAGES

1. Retaliation in Violation of California
Labor Code § 1102.5

DEMAND FOR JURY TRIAL

20
21 COME NOW Plaintiffs, Joseph Rivera, Jim Azpilicueta, Anthony Gonzalez, Steve
22 Johnson, Nancy Ogle, and Mike Rosario, and hereby demand a trial by jury, and based on
23 information and belief complain and allege as follows:

24 **THE PARTIES**

25 1. At all times relevant hereto, Plaintiffs Joseph Rivera, Jim Azpilicueta, Anthony
26 Gonzalez, Steve Johnson, Nancy Ogle, and Mike Rosario (collectively, "Plaintiffs") were
27 employed with the Whittier Police Department ("WPD" or "Department"), and were competent
28 adults.

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAR 03 2015

Sherri R. Carter, Executive Officer/Clerk
By Myrna Beltran, Deputy

1 2. Plaintiffs are informed and believe and thereon allege that, at all times relevant
2 hereto, Defendant CITY OF WHITTIER (“City” or “Defendant”), was a public entity violating
3 laws within the State of California, County of Los Angeles. At all times pertinent hereto,
4 Defendant City owned, controlled, and operated the law enforcement agency known as the WPD.

5 3. Plaintiffs are informed and believe and thereupon allege that Defendants DOES 1
6 through 100, inclusive, and each of them, at all times relevant hereto, were individuals or public,
7 business, and/or other entities whose form is unknown, committing torts in and/or engaged in
8 purposeful economic activity within the County of Los Angeles, State of California.

9 4. The true names and capacities of Defendants DOES 1 through 100, and each of
10 them, whether individual, corporate, associate or otherwise, are unknown to Plaintiffs at this time,
11 therefore Plaintiffs sue said Defendants by such fictitious names. Plaintiffs will file DOE
12 amendments, and/or ask leave of court to amend this complaint to assert the true names and
13 capacities of these Defendants when they have been ascertained. Plaintiffs are informed and
14 believe, and upon such information and belief allege, that each Defendant herein designated as a
15 DOE was and is in some manner, negligently, wrongfully, or otherwise, responsible and liable to
16 Plaintiffs for the injuries and damages hereinafter alleged, and that Plaintiffs’ damages as herein
17 alleged were proximately caused by their conduct.

18 5. Plaintiffs are informed and believe, and thereon allege, that at all times material
19 herein the Defendants, and each of them, were the agents, servants, or employees, or ostensible
20 agents, servants, and employees of each other Defendant, and as such, were acting within the
21 course and scope of said agency and employment or ostensible agency and employment, except
22 on those occasions when Defendants were acting as principals, in which case, said Defendants,
23 and each of them, were negligent in the selection, hiring, and use of the other Defendants.

24 6. At all times mentioned herein, each of the Defendants was the co-tortfeasor of each
25 of the other Defendants in doing the things hereinafter alleged.

26 7. Plaintiffs are further informed and believe that at all times relevant hereto,
27 Defendants, and each of them, acted in concert and in furtherance of the interests of each other
28 Defendant. The conduct of each Defendant combined and cooperated with the conduct of each of

1 the remaining Defendants so as to cause the herein described incidents and the resulting injuries
2 and damages to Plaintiff.

3 VENUE AND JURISDICTION

4 8. At all relevant times hereto, Plaintiffs were residing in the County of Los Angeles,
5 State of California.

6 9. At all relevant times hereto, the Defendants, and each of them, were residents of the
7 County of Los Angeles, State of California.

8 10. The wrongful conduct alleged against the Defendants, and each of them, occurred in
9 the County of Los Angeles, State of California. At all relevant times hereto, the conduct at issue
10 was part of a continuous and ongoing pattern of behavior.

11 11. This Court is the proper court because the wrongful acts that are the subject of this
12 action occurred here, at least one Defendant now resides in its jurisdictional area, and injury to
13 person or damage to personal property occurred in its jurisdictional area.

14 12. Plaintiffs have complied with and/or exhausted any applicable claims statutes and/or
15 administrative and/or internal remedies and/or grievance procedures, and/or are excused from
16 complying therewith.

17 13. Plaintiff Joseph Rivera has complied with the claim presentation requirement of
18 California Government Code § 945.4 and § 912.4. He filed a government claim with the City of
19 Whittier and the WPD on or about October 30, 2014. No action has been taken by the
20 governmental entities and as such, pursuant to Government Code § 912.4, the claim is now deemed
21 to have been rejected by operation of law and the passage of time.

22 14. Plaintiff Jim Azpilicueta has complied with the claim presentation requirement of
23 California Government Code § 945.4 and § 912.4. He filed a government claim with the City of
24 Whittier and the WPD on or about October 30, 2014. No action has been taken by the
25 governmental entities and as such, pursuant to Government Code § 912.4, the claim is now deemed
26 to have been rejected by operation of law and the passage of time.

27 15. Plaintiff Anthony Gonzalez has complied with the claim presentation requirement of
28 California Government Code § 945.4 and § 912.4. He filed a government claim with the City of

1 Whittier and the WPD on or about November 3, 2014. No action has been taken by the
2 governmental entities and as such, pursuant to Government Code § 912.4, the claim is now deemed
3 to have been rejected by operation of law and the passage of time.

4 16. Plaintiff Steve Johnson has complied with the claim presentation requirement of
5 California Government Code § 945.4 and § 912.4. He filed a government claim with the City of
6 Whittier and the WPD on or about October 31, 2014. No action has been taken by the
7 governmental entities and as such, pursuant to Government Code § 912.4, the claim is now deemed
8 to have been rejected by operation of law and the passage of time.

9 17. Plaintiff Nancy Ogle has complied with the claim presentation requirement of
10 California Government Code § 945.4 and § 912.4. She filed a government claim with the City of
11 Whittier and the WPD on or about October 30, 2014. No action has been taken by the
12 governmental entities and as such, pursuant to Government Code § 912.4, the claim is now deemed
13 to have been rejected by operation of law and the passage of time.

14 18. Plaintiff Mike Rosario has complied with the claim presentation requirement of
15 California Government Code § 945.4 and § 912.4. He filed a government claim with the City of
16 Whittier and the WPD on or about October 30, 2014. No action has been taken by the
17 governmental entities and as such, pursuant to Government Code § 912.4, the claim is now deemed
18 to have been rejected by operation of law and the passage of time.

19 GENERAL ALLEGATIONS

20 19. At all relevant times to this claim, Plaintiff Rivera was a sworn peace officer for the
21 Whittier Police Department, assigned to various units within the WPD. Rivera held the rank of
22 Corporal. Rivera was qualified for the positions he held by reason of his education and training.
23 Rivera joined the WPD in 1995. During the course of his employment with the City, Rivera has
24 performed his various responsibilities as a police officer in an exemplary fashion and otherwise
25 capably performed each and every condition of his employment agreement.

26 20. At all relevant times to this claim, Plaintiff Azpilicueta was a sworn peace officer
27 for the Whittier Police Department, assigned to various units within the WPD. Azpilicueta held the
28 rank of Police Officer. Azpilicueta was qualified for the positions he held by reason of his

1 education and training. Azpilicueta joined the WPD in 1999. During the course of his
2 employment with the City, Azpilicueta has performed his various responsibilities as a police officer
3 in an exemplary fashion and otherwise capably performed each and every condition of his
4 employment agreement.

5 21. At all relevant times to this claim, Plaintiff Gonzalez was a sworn peace officer for
6 the Whittier Police Department, assigned to various units within the WPD. Gonzalez held the rank
7 of Police Officer. Gonzalez was qualified for the positions he held by reason of his education and
8 training. Gonzalez joined the WPD in 2008. During the course of his employment with the City,
9 Gonzalez has performed his various responsibilities as a police officer in an exemplary fashion and
10 otherwise capably performed each and every condition of his employment agreement.

11 22. At all relevant times to this claim, Plaintiff Johnson was a sworn peace officer for
12 the Whittier Police Department, assigned to various units within the WPD. Johnson held the rank
13 of Police Officer. Johnson was qualified for the positions he held by reason of his education and
14 training. Johnson joined the WPD in 2006. During the course of his employment with the City,
15 Johnson has performed his various responsibilities as a police officer in an exemplary fashion and
16 otherwise capably performed each and every condition of his employment agreement.

17 23. At all relevant times to this claim, Plaintiff Ogle was a sworn peace officer for the
18 Whittier Police Department, assigned to various units within the WPD. Ogle held the rank of
19 Police Officer. Ogle was qualified for the positions she held by reason of her education and
20 training. Ogle joined the WPD in 1991. During the course of her employment with the City, Ogle
21 has performed her various responsibilities as a police officer in an exemplary fashion and otherwise
22 capably performed each and every condition of her employment agreement.

23 24. At all relevant times to this claim, Plaintiff Rosario was a sworn peace officer for
24 the Whittier Police Department, assigned to various units within the WPD. Rosario held the rank
25 of Police Officer. Rosario was qualified for the positions he held by reason of his education and
26 training. Rosario joined the WPD in 2003. During the course of his employment with the City,
27 Rosario has performed his various responsibilities in an exemplary fashion and otherwise capably
28 performed each and every condition of his employment agreement.

1 25. From in or around 2008 through present, WPD imposed an unlawful citation and
2 arrest quota in violation of California Vehicle Code sections 41600 *et seq.* on its officers, and
3 illegally compared officers using shift averaging as a means of determining a benchmark for
4 performance. WPD thereafter retaliated against those refused to participate in and/or reported the
5 unlawful citation and arrest quota.

6 26. Plaintiffs repeatedly complained about the quota in person, verbally, and/or in
7 writing up the chain of command to their immediate supervisors, their division supervisors, and/or
8 to the Internal Affairs Division of the Whittier Police Department, and/or other superiors in the
9 Whittier Police Department. Plaintiffs reasonably believed the quota constituted a violation of
10 state or federal statutes, or a violation or noncompliance with state or federal rules or regulations,
11 including but not limited to California Vehicle Code sections 41600 *et seq.*

12 27. For refusing to meet the unlawful quota, and for speaking out against it, Plaintiffs
13 were retaliated against, and subjected to adverse employment actions. On a continuing and
14 ongoing basis beginning in or around 2008, Defendants took various disciplinary actions against
15 Plaintiffs, including but not limited to: negative language and/or documentation being placed in
16 their personnel packages about their refusal to comply with the unlawful quota, unwarranted
17 counseling sessions, unwarranted increased scrutiny, unwarranted transfers, disparaging comments
18 made about them, and damage to their reputation. In further retaliation for their protected activity,
19 Plaintiffs Azpilicueta and Johnson were unjustly placed on Supervisory Review and a Performance
20 Improvement Plan (“PIP”), while Johnson was also subjected to an unwarranted Internal Affairs
21 investigation and suspension, among other negative actions.

22 28. Plaintiffs spoke out not only for the rights of themselves and their fellow officers,
23 but also for the rights of the public, by speaking out against what they believed to be an unlawful
24 citation and arrest quota as well as retaliation, harassment and/or intimidation for refusing to
25 comply with and/or reporting such an illegal quota. Plaintiffs reported this to those above them in
26 the chain of command.

27 29. Plaintiffs’ careers have been materially and adversely affected, and irreparably
28 harmed and damaged by the conduct of the Defendants. As a direct and proximate consequence of

1 reporting and failing to comply with an illegal citation and arrest quota—which constitutes
2 protected activity under state and federal law—Defendants, and each of them, retaliated against
3 Plaintiffs and subjected Plaintiffs to adverse employment actions. Those adverse employment
4 actions include but are not limited to: negative language and/or documentation being placed in their
5 personnel packages about their refusal to comply with the unlawful quota, unwarranted counseling
6 sessions, unwarranted increased scrutiny, unwarranted transfers, disparaging comments made about
7 them, unwarranted Internal Affairs investigation and suspension, placed on Supervisory Review
8 and a Performance Improvement Plan (“PIP”), and damage to their reputation.

9 30. Plaintiffs have suffered both general and special damages in the past and present
10 and will continue to suffer such damages in the future for an unknown period of time. Plaintiffs
11 have also suffered and continue to suffer losses in earnings and other employment benefits, as well
12 as past and future non-economic injury. This has caused damage to their professional reputations,
13 their ability to promote, their ability to be selected for other units, their ability to work, has caused
14 negative ratings, will cause them to have to take a different retirement path, has caused them to
15 lose overtime opportunities and pay, and will adversely affect their income and pension and other
16 benefits. Moreover, it has adversely affected Plaintiffs’ personal health and well being, including
17 medical expenses, that are anticipated into the future and may force an early retirement. Plaintiffs
18 have also suffered extensive general damages in the form of anxiety, anguish, and mental suffering.
19 Plaintiffs’ damages are continuing and in an amount not yet determined, but in excess of \$25,000.

20 31. The conduct of Defendants, and each of them, was a violation of Plaintiffs’ rights
21 under both state and federal law, including but not limited to the Public Safety Officers Procedural
22 Bill of Rights Act (CAL. GOV’T C. §§ 3300, *et seq.*) and California Labor Code § 1102.5.
23 Therefore, Defendants, and each of them, are liable under Labor Code § 1102.5, and are liable for
24 retaliation in violation of public policy as identified in *Tameny v. Atlantic Richfield Co.* (1980) 27
25 Cal.3d 167 and its progeny. The wrongful conduct of Defendants, and each of them, is continuing
26 and ongoing as of the present date.

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1 FIRST CAUSE OF ACTION

2 BY PLAINTIFFS AGAINST ALL DEFENDANTS

3 VIOLATION OF CALIFORNIA LABOR CODE SECTION 1102.5

4 32. Plaintiffs re-allege and incorporate by reference each and every allegation contained
5 in paragraphs 1-31 of this complaint as though fully set forth herein again.

6 33. At all times herein mentioned, California Labor Code section 1102.5 was in full
7 force and effect and was binding on Defendants, and each of them.

8 34. Defendants, and each of them, made, adopted, and/or enforced rules, regulations,
9 and/or policies designed to prevent employees from disclosing information to a government or law
10 enforcement agency, which Plaintiffs had reasonable cause to believe disclosed violations of state
11 or federal statutes, or state or federal rules and regulations, including but not limited to California
12 Vehicle Code sections 41600 *et seq.*

13 35. All of the complaints mentioned above were made by Plaintiffs to the Whittier
14 Police Department, a law enforcement agency within the meaning of California Labor Code section
15 1102.5, and Plaintiffs had reasonable cause to believe that the allegations disclosed violations of
16 state or federal statutes, or state or federal rules and regulations, as identified herein.

17 36. Defendants, and each of them, retaliated against Plaintiff for disclosing information
18 to the City of Whittier and the Whittier Police Department and/or refusing to engage in the illegal
19 activity, which the Plaintiffs had reasonable cause to believe disclosed violations of state or federal
20 statutes, or violations or noncompliance with state or federal rules or regulations, as identified
21 herein. Plaintiffs disclosed that they were required to illegally fulfill a traffic citation quota and
22 were illegally compared to other officers using shift averaging as a means of determining a
23 benchmark for performance, and that said quotas and comparisons with other officers violated
24 California Vehicle Code sections 41600 *et seq.* Alternatively or during the same time, Plaintiffs
25 refused to participate in fulfilling traffic citation quotas in violation of the same California Vehicle
26 Code sections.

27 37. As a direct, foreseeable and proximate result of reporting such misconduct and
28 testifying honestly about such misconduct, Plaintiff was subject to adverse employment actions

1 including but not limited to: negative language and/or documentation being placed in their
2 personnel packages about their refusal to comply with the unlawful quota, unwarranted counseling
3 sessions, unwarranted increased scrutiny, unwarranted transfers, disparaging comments made about
4 them, unwarranted Internal Affairs investigation and suspension, placed on Supervisory Review
5 and a Performance Improvement Plan (“PIP”), and/or damage to their reputation.

6 38. A motivating factor for the Defendants to engage in the foregoing adverse
7 employment actions against Plaintiffs was to retaliate for the Plaintiffs’ refusal to engage in illegal
8 activity and their engaging in the protected activities of disclosing information to the City of
9 Whittier and the Whittier Police Department, which the Plaintiffs had reasonable cause to believe
10 disclosed violations of state or federal statutes, or violations or noncompliance with state or federal
11 rules or regulations, including but not limited to California Vehicle Code sections 41600 *et seq.*

12 39. Defendants, and each of them, allowed, permitted, condoned, ratified, and/or
13 enabled the retaliation and/or other wrongful conduct as described herein.

14 40. As a legal result of the above-described conduct of Defendants, and each of them,
15 Plaintiffs have sustained and will continue to sustain physical, mental, and emotional injuries, pain,
16 distress, suffering, anguish, fright, nervousness, grief, anxiety, worry, shame, mortification, injured
17 feelings, mental suffering, shock, humiliation, and indignity, as well as other unpleasant physical,
18 mental, and emotional reactions, damages to good name, reputation, standing in the community,
19 and other non-economic damages.

20 41. As a further legal result of the above-described conduct of Defendants, and each of
21 them, Plaintiffs were required, and/or in the future may be required, to engage the services of
22 health care providers, and incurred expenses for medicines, health care appliances, modalities,
23 and/or other related expenses in a sum to be ascertained according to proof.

24 42. As a further legal result of the above-described conduct of Defendants, and each of
25 them, Plaintiffs were and/or will be hindered, prevented, and/or precluded from performing
26 Plaintiffs’ usual activities, namely the position of full-time sworn officers employed by the
27 Whittier Police Department, causing the Plaintiffs to sustain damages for loss of income, wages,
28 earning, and earning capacity, and other economic damages, in an amount to be ascertained

1 according to proof. Plaintiffs claim such amount as damages together with prejudgment interest
2 pursuant to California Civil Code section 3287 and/or any other provision of law providing for
3 prejudgment interest.

4 43. As a further legal result of the above-described conduct of Defendants, and each of
5 them, Plaintiffs suffered incidental, consequential, and/or special damages, in an amount according
6 to proof.

7 44. As a further legal result of the above-described conduct of Defendants, and each of
8 them, Plaintiffs have and will continue to incur attorneys' fees and costs in an amount according to
9 proof.

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1 PRAYER

2 WHEREFORE, Plaintiffs seek judgment against Defendants, and each of them, as follows:

- 3 1. Physical, mental, and emotional injuries, pain, distress, suffering, anguish, fright,
4 nervousness, grief, anxiety, worry, shame, mortification, injured feelings, shock, humiliation and
5 indignity, as well as other unpleasant physical, mental, and emotional reactions, damages to
6 reputation, and other non-economic damages, in a sum to be ascertained according to proof;
- 7 2. Health care, services, supplies, medicines, health care appliances, modalities, and
8 other related expenses in a sum to be ascertained according to proof;
- 9 3. Loss of wages, income, earnings, earning capacity, support, domestic services,
10 benefits, and other economic damages in a sum to be ascertained according to proof;
- 11 4. Other actual, consequential, and/or incidental damages in a sum to be ascertained
12 according to proof;
- 13 5. Attorney fees and costs of suit pursuant to statute;
- 14 6. Costs of suit herein incurred;
- 15 7. Pre-judgment interest; and
- 16 8. Such other and further relief as the Court may deem just and proper.

17
18 Dated: March 3, 2015

McNICHOLAS & McNICHOLAS, LLP

19
20 By:



Matthew McNicholas
Alyssa Kim Schabloski
Justin D. Nussen

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23 Attorneys for Plaintiffs
24 Jim Azpilicueta, Anthony Gonzalez,
25 Steve Johnson, Nancy Ogle,
26 Joseph Rivera, and Mike Rosario
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1 DEMAND FOR JURY TRIAL

2 Plaintiffs hereby demand a trial by jury.

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4 Dated: March 3, 2015

McNICHOLAS & McNICHOLAS, LLP

5
6 By:



Matthew McNicholas

Alyssa Kim Schabloski

Justin D. Nussen

8 Attorneys for Plaintiffs

9 Jim Azpilicueta, Anthony Gonzalez,

10 Steve Johnson, Nancy Ogle,

11 Joseph Rivera, and Mike Rosario