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8 Attorney for Plaintiff Alison N. Terry

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 ALISON N. TERRY,) CIVIL NO. 06-CV-1459 JAH(CAB)
12))
13 Plaintiff,) Judge: Hon. John A. Houston
14)) Courtroom: 11m 2nd Floor
15 v.)
16))
17 CITY OF SAN DIEGO, and DOES 1-20,) **FIRST AMENDED**
18)) **COMPLAINT FOR VIOLATION OF**
19 Defendants.) **CIVIL RIGHTS, GENDER**
20)) **DISCRIMINATION AND**
21)) **RETALIATION**
22))
23)) [FILED PER COURT ORDER
24)) DATED APRIL 18, 2008]

25 1. Plaintiff Alison N. Terry is a resident of San Diego, California, and an employee
26 of defendant City of San Diego.

27 2. Defendant City of San Diego (“City”) is a municipal entity established by charter
28 pursuant to California Constitution article XI, section 3.

1 The true names or capacities, whether individual, corporate, associate, or
2 otherwise, of defendants DOES 1 to 20, inclusive, are unknown to plaintiff, who therefore sues
3 said defendants by such fictitious names.

4 Plaintiff is informed and believes and thereon alleges that each of the defendants
5 designated herein as a DOE is responsible in some manner for the events and happenings herein
6 referred to, and caused injury and damages proximately thereby to plaintiff as herein alleged.
7 Plaintiff will seek leave of court to amend this complaint to set forth the true names and

1 capacities of such named defendants when their identities become known to her.

2 5. Plaintiff is informed and believes and thereon alleges that each defendant named
3 in this action, including DOE defendants, at all relevant times, was the agent, ostensible agent,
4 servant, employee, representative, assistant, joint venturer, and/or co-conspirator of each of the
5 other defendants, and was at all times acting within the course and scope of his, her, or its
6 authority as agent, ostensible agent, servant, employee, representative, joint venturer, and/or
7 co-conspirator, and with the same authorization, consent, permission or ratification of each of the
8 other defendants.

9 **I.**

10 **FACTUAL ALLEGATIONS**

11 6. In 1918, prompted by the drowning of 13 people on a single day in Ocean Beach,
12 the City of San Diego began employing lifeguards to enhance public safety to users of San
13 Diego's coastline and ocean waterways.

14 7. Women were not hired by the City's Lifeguard Services until the 1970s.

15 8. The San Diego Lifeguard Service administration includes a chief, a captain, five
16 lieutenants, 16 Sergeants, 74 permanent lifeguards (Lifeguards IIs), and approximately 200
17 seasonal temporary lifeguards (Lifeguard Is).

18 9. Employees of the City's Lifeguard Service can earn extra pay if they are assigned
19 to the Cliff, River, or Dive Rescue Teams.

20 10. Currently and for the past several years, the chief, captain, all lieutenants, and all
21 but one sergeant are male.

22 11. All but five permanent lifeguards (Lifeguard IIs) are male.

23 12. Additionally, the Cliff, River, and Dive Rescue Teams have only one female out
24 of the approximately 36 increased-pay positions available.

25 13. The City of San Diego and its lifeguard service have discriminated and continue
26 to discriminate against women by denying them the opportunity for promotion and other
27 employment opportunities.

28 14. The City of San Diego and its lifeguard service have discriminated against

1 Plaintiff by denying her the opportunity for promotion and other employment opportunities.

2 **II.**

3 **COUNT ONE**

4 **VIOLATION OF CIVIL RIGHTS PROTECTED BY 42 U.S.C. §2002e-2**

5 **(Against Defendant City of San Diego and DOES 1-10)**

6 15. Plaintiff incorporates all previous paragraphs of her complaint as if fully set forth
7 here.

8 16. 42 U.S.C. §2000e-2 states, in part, that “[i]t shall be an unlawful employment
9 practice for an employer (1) to . . . discriminate against any individual with respect to his
10 compensation, terms, conditions, or privileges of employment, because of such individual’s . . .
11 sex”

12 17. The employment and promotion practices of the defendants discriminate against
13 women in that they are (1) denied promotions and (2) denied other opportunities for increased
14 pay.

15 18. Plaintiff has exhausted all available administrative remedies before filing this
16 complaint.

17 19. The plaintiff has been damaged by, among other things, failing to receive equal
18 employment opportunities, including promotions and other employment privileges.

19 **III.**

20 **COUNT TWO**

21 **GENDER DISCRIMINATION IN VIOLATION OF CALIFORNIA GOVERNMENT**

22 **CODE §12940(a)**

23 **(Against The CITY OF SAN DIEGO and DOES 11-20)**

24
25 20. Plaintiff incorporates all previous paragraphs of this complaint as if fully set forth
26 here.

27 21. California Government Code §12940(a) states that “[i]t shall be an unlawful
28 employment practice . . . (a) for an employer, because of . . . sex . . . to refuse to hire or employ

1 the person or refuse to select the person for a training program leading to employment
2 . . . or to discriminate against the person in compensation or in its terms, conditions, or privileges
3 of employment.”

4 22. The employment and promotion practices of the defendants discriminate against
5 women in that they are (a) denied access to promotional opportunities, (b) denied promotions
6 and (c) denied other opportunities for increased pay.

7 23. Plaintiff has exhausted all available administrative remedies before filing this
8 complaint.

9 24. The plaintiff has been damaged by, among other things, failing to receive equal
10 employment opportunities, including promotions and other employment privileges.

11 **IV.**

12 **COUNT THREE**

13 **RETALIATION IN VIOLATION OF 42 U.S.C. §2002e-3(a)**

14 **(Against Defendant City of San Diego)**

15 25. Plaintiff incorporates all previous paragraphs of her complaint as if fully set forth
16 here.

17 26. On June 20, 2006, plaintiff filed a complaint against the City alleging gender
18 discrimination.

19 27. On July 18, 2006, the City removed the case pursuant to 28 U.S.C. sections 1331
20 and 1441, subdivisions (b) and (c). *See* Doc. # 1.

21 28. On July 28, 2006, the City filed its Answer, denying several allegations in Terry’s
22 Complaint and raising 12 affirmative defenses. *See* Doc. # 2.

23 29. While this case was pending, plaintiff was still employed by the City as a part-
24 time employee, classified as a Lifeguard I.

25 30. The City employees approximately 200 part-time lifeguards during the summer
26 months, when beaches are more crowded.

27 31. Typically, these part-time Lifeguard Is work a full-time schedule, but only from
28 Memorial Day to Labor Day.

1 32. Before the beginning of each summer season, returning Lifeguard Is must
2 successfully complete “returning lifeguard school” in order be employed that summer.

3 33. Before the summer of 2007, plaintiff successfully completed returning lifeguard
4 school and requested to be assigned work.

5 34. As a Lifeguard I with 15 years of seniority, normally plaintiff would have been
6 one of the first lifeguards hired, and been given her choice assignments.

7 35. However, although plaintiff was a highly accomplished lifeguard and had been
8 rated “highly qualified” for promotion to Lifeguard II in 2006, she was not assigned to work any
9 shifts in 2007, and during the 2007 summer season she was not permitted to work.

10 36. In the summer of 2007, despite the City’s widely-acclaimed financial crisis, the
11 City actually paid several Lifeguard Is overtime rather than calling plaintiff in to work.

12 37. Plaintiff was not permitted to work in 2007 in retaliation for filing her gender
13 discrimination lawsuit against the City the year earlier.

14 38. There is no known or legitimate reason plaintiff was not given any work in the
15 summer of 2007.

16 39. Plaintiff has exhausted all available administrative remedies before filing
17 amended complaint adding retaliation claims.

18 40. As a result of being retaliated against, plaintiff has sustained damages, including
19 emotional distress, in an amount to be proved at trial.

20 **V.**

21 **COUNT FOUR**

22 **RETALIATION IN VIOLATION OF CALIFORNIA GOVERNMENT CODE**

23 **SECTION 12940, SUBDIVISION (H)**

24 **(Against Defendant City of San Diego)**

25 41. Plaintiff incorporates all previous paragraphs of her complaint as if fully set forth
26 here.

27 42. On June 20, 2006, plaintiff filed a complaint against the City alleging gender
28 discrimination.

1 43. On July 18, 2006, the City removed the case pursuant to 28 U.S.C. sections 1331
2 and 1441, subdivisions (b) and (c). *See* Doc. # 1.

3 44. On July 28, 2006, the City filed its Answer, denying several allegations in Terry's
4 Complaint and raising 12 affirmative defenses. *See* Doc. # 2.

5 45. While this case was pending, plaintiff was still employed by the City as a part-
6 time employee, classified as a Lifeguard I.

7 46. The City employs approximately 200 part-time lifeguards during the summer
8 months, when beaches are more crowded.

9 47. Typically, these part-time Lifeguard Is work a full-time schedule, but only from
10 Memorial Day to Labor Day.

11 48. Before the beginning of each summer season, returning Lifeguard Is must
12 successfully complete "returning lifeguard school" in order to be employed that summer.

13 49. Before the summer of 2007, plaintiff successfully completed returning lifeguard
14 school and requested to be assigned work.

15 50. As a Lifeguard I with 15 years of seniority, normally plaintiff would have been
16 one of the first lifeguards hired, and been given her choice assignments.

17 51. However, although plaintiff was a highly accomplished lifeguard and had been
18 rated "highly qualified" for promotion to Lifeguard II in 2006, she was not assigned to work any
19 shifts in 2007, and during the 2007 summer season she was not permitted to work.

20 52. In the summer of 2007, despite the City's widely-acclaimed financial crisis, the
21 City actually paid several Lifeguard Is overtime rather than calling plaintiff in to work.

22 53. Plaintiff was not permitted to work in 2007 in retaliation for filing her gender
23 discrimination lawsuit against the City the year earlier.

24 54. Plaintiff has exhausted all available administrative remedies before filing
25 amended complaint adding retaliation claims.

26 55. There is no known or legitimate reason plaintiff was not given any work in the
27 summer of 2007.

28 56. As a result of being retaliated against, plaintiff has sustained damages, including

1 emotional distress, in an amount to be proved at trial.

2 WHEREFORE, plaintiff prays for the following:

- 3 1. For general damages according to proof;
- 4 2. For special damages according to proof;
- 5 3. For pre-judgment interest;
- 6 4. For costs of the suit incurred by the plaintiff;
- 7 5. For reasonable attorney fees incurred by the plaintiff;
- 8 6. For declaratory relief and injunctive relief; and
- 9 7. For such additional and further relief as this Court may deem just.

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11 Dated: April 24, 2008

LAW OFFICE OF MICHAEL A. CONGER

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By: s/Michael A. Conger
Attorney for Plaintiff

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15 Jury trial demanded

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PROOF OF SERVICE

TERRY v. CITY OF SAN DIEGO

United States District Court Case No. 06-CV-1459 JAH(CAB)

I declare as follows:

I am over the age of eighteen years and not a party to the case. I am employed in the County of San Diego, California, where the mailing occurs; and my business address is 16236 San Dieguito Road, Suite 4-14, P.O. Box 9374, Rancho Santa Fe, California 92067.

On April 24, 2008, I served the foregoing document(s) described as:

- 1. COMPLAINT FOR VIOLATION OF CIVIL RIGHTS, GENDER DISCRIMINATION AND RETALIATION;

on the interested parties in this action addressed as follows:

| | |
|--|--|
| Joe B. Cordileone, Deputy City Attorney Office of the City Attorney Civil Division 1200 Third Avenue, Suite 1100 San Diego, CA 92101 Telephone: (619) 533-5800 Facsimile: (619) 533-5856 jcordileone@sandiego.gov | Attorneys for Defendant City of San Diego |
|--|--|

- (X) BY ELECTRONIC MAIL - I caused said document(s) to be served electronically by CM/ECF to the addressee.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 24, 2008, at Rancho Santa Fe, California.

/s/ Patricia B. Messer