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11 *Attorneys for Plaintiffs and proposed Class Members*

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO/OAKLAND DIVISION**

15 DEVON ANDERSON and BEVERLY L.
16 SWEENEY on behalf of themselves and all
others similarly situated,

17 Plaintiffs,

18 v.

19 THE CITY AND COUNTY OF SAN
20 FRANCISCO, SAN FRANCISCO
DEPARTMENT OF PUBLIC HEALTH, and
21 SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY

22 Defendants.

23 and

24 SAN FRANCISCO EMPLOYEES'
25 RETIREMENT SYSTEM

26 Nominal Defendant.
27

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

**EXEMPT FROM FILING FEES UNDER
38 U.S.C. § 4323(h)(1)**

1 Plaintiffs Devon Anderson and Beverly L. Sweeney, individually and on behalf of all
2 others similarly situated, by and through their attorneys, allege as follows:

3 **NATURE OF THE ACTION**

4 1. This is an action brought pursuant to the Uniformed Services Employment and
5 Reemployment Rights Act (“USERRA”), 38 U.S.C. § 4301 *et seq.*, the California Military and
6 Veterans Code (“MVC”), the City and County of San Francisco Annual Salary Ordinances, the
7 California Labor Code, the California Government Code, and California public policy on behalf of
8 Plaintiffs, a class, and two subclasses of current and former employees of the City and County of
9 San Francisco (“City”) who have taken military leave on or after October 10, 2004.

10 2. Since at least October 10, 2004, the City has had a policy or practice of requiring
11 employees who take military leave to file formal requests for such leave, requiring employees who
12 return to work after military leave to comply with standard return-to-work procedures, and failing
13 to provide employees who return from military leave with adequate reemployment opportunities.

14 3. The City has had a policy or practice of requiring employees to follow burdensome
15 procedures to buy back pension credit, of charging employees interest on their pension buybacks,
16 of failing to provide employees with the accrual of sick leave and vacation time during unpaid
17 military leave, and of failing to provide employees who are eligible for paid military leave with
18 compensation for days spent traveling to or from military leave.

19 4. In addition, the City has had a policy or practice of failing to pay and allocate to the
20 City’s pension plan the full amount of mandatory employee contributions that the City is required
21 to pick up pursuant to provisions of the Memoranda of Understanding that apply to positions held
22 by members of Subclass I (defined below) and are in effect while Subclass I members are on
23 military leave. Due to this policy or practice, Subclass I members’ periods of military service are
24 not properly included for the purpose of determining their years of service credit and, thus, their
25 pension accruals.

26 5. The City also has had a policy or practice of failing to provide to employees who
27 take periods of active-duty military leave of greater than 30 days their full City compensation for
28 the first 30 days of such periods and adequate supplemental pay and benefits afterwards, as

1 required by state and local laws.

2 6. The policies or practices described in the preceding paragraphs violate USERRA,
3 the MVC, the City’s Annual Salary Ordinances, the California Labor Code, the California
4 Government Code, and/or California public policy. Plaintiffs have brought this action to ensure
5 that the City complies with federal, state, and local laws that protect military reservists.

6 7. Due to the City’s violations of USERRA, the MVC, the Annual Salary Ordinances,
7 the California Labor Code, the California Government Code, and/or California public policy
8 Plaintiffs and other City employees who have served in the Armed Forces during their
9 employment with the City have not received proper sick time and vacation leave accruals, have
10 been forced to overpay to buy back pension credit for the time they spent on military leave, have
11 not received the full amount of paid leave to which they are entitled, and have had their ability to
12 take military leave and subsequently return to work adversely impacted, among other harms.

13 8. Upon information and belief, the City has known about these violations of
14 USERRA, the MVC, the Annual Salary Ordinances, the California Labor Code, the California
15 Government Code, and/or California public policy for years and has received complaints from
16 City employees about these violations, but it has not taken sufficient action to rectify these
17 numerous problems. Not only does the City’s indifference underscore the willful nature of the
18 City’s conduct and its reckless disregard for the rights of military reservists who have bravely
19 served our country, but it has forced Plaintiffs to turn to the federal courts to obtain justice for the
20 many City employees who have been harmed by the policies and practices challenged in this
21 action.

22 **JURISDICTION AND VENUE**

23 9. This Court has subject matter jurisdiction over this action pursuant to 38 U.S.C.
24 § 4323(b)(3), which provides that the district courts of the United States have jurisdiction over a
25 USERRA action brought against a private employer. Under USERRA, a “private employer”
26 includes a political subdivision of a State, pursuant to 38 U.S.C. § 4323(i). The Court also has
27 subject matter jurisdiction over this action under 28 U.S.C. § 1331, because this action arises
28 under USERRA, a federal law.

1 10. The Court has supplemental jurisdiction over the state and local law claims,
2 because they arise from a common nucleus of operative fact with the claims arising under
3 USERRA.

4 11. Venue is proper in this District pursuant to 38 U.S.C. § 4323(c)(2) and 28 U.S.C.
5 § 1391(b)(2) and (b)(1). All the Defendants are private employers pursuant to 38 U.S.C. § 4323(i),
6 as they all maintain a place of business in this District. Additionally, a substantial part, if not
7 nearly all, of the events or omissions giving rise to the claims occurred in this District, and all the
8 Defendants reside in this District in the State of California.

9 **INTRA-DISTRICT ASSIGNMENT**

10 12. This action arises in the County of San Francisco because some or all of the events
11 or omissions giving rise to the claims alleged herein took place in the County of San Francisco,
12 California, and most of the Defendants may be found in San Francisco.

13 **THE PARTIES**

14 **Plaintiffs**

15 13. Plaintiff Devon Anderson has been employed as a Transportation Operations
16 Specialist for the San Francisco Municipal Transportation Agency (“MTA”) since approximately
17 August 17, 2015. In addition, Mr. Anderson is and has been a member of the Army Reserves. As
18 such, Mr. Anderson is and has been entitled to the protections of USERRA, the MVC, and other
19 California laws. Mr. Anderson resides in Oakland, California.

20 14. Plaintiff Beverly L. Sweeney is a retired captain of the United States Army and is a
21 former employee of the City and County of San Francisco and the San Francisco Department of
22 Public Health (“DPH”). In various periods during her employment with the City and the DPH, Ms.
23 Sweeney was a member of and performed active-duty military service for the United States Army
24 Reserves, the California Army National Guard, and the United States Army. As such, Ms.
25 Sweeney is and has been entitled to the protections of USERRA, the MVC, and other California
26 laws. Ms. Sweeney resides in Mill Valley, California.

27 **Defendants**

28 15. The City is a consolidated city-county and is both a municipal corporation and a

1 county within the State of California. Pursuant to § 4.100 of the San Francisco Charter (“the
2 Charter”), the executive branch of the City is composed of the office of the Mayor, as well as
3 departments, appointive boards, commissions, and other units of government. The City currently
4 employs more than 30,000 full-time workers across a variety of departments. One of these
5 departments is the MTA, where Plaintiff Devon Anderson performs work. Another department is
6 the DPH, where Plaintiff Beverly Sweeney performed work. The City is an employer within the
7 meaning of USERRA, 38 U.S.C. § 4303(4)(A), because it paid salaries or wages for work
8 performed by Plaintiffs and other employees and had control over the employment opportunities
9 of its employees. Among other things, the City hired Plaintiffs for the respective City departments
10 to which they were assigned, paid Plaintiffs for the work they performed, and has been responsible
11 for making required employer and, where applicable, employee contributions to the San Francisco
12 Employees’ Retirement System Pension Plan (“the Pension Plan”). The City’s Department of
13 Human Resources handled many of the responsibilities related to Plaintiffs’ employment,
14 including administration of the military leave taken by Plaintiffs.

15 16. Defendant San Francisco Municipal Transportation Agency (“MTA”) is a
16 department of the City within its executive branch. MTA is responsible for the management of all
17 ground transportation in the city, including oversight of the Municipal Railway (“Muni”) public
18 transit, bicycling, paratransit, parking, traffic, walking, and taxis.¹ MTA is an employer within the
19 meaning of USERRA, 38 U.S.C. § 4303(4)(A), because it had control over the employment
20 opportunities of employees. Among other things, the MTA, including its human resources
21 personnel, handled with the City many of the responsibilities related to Plaintiff Anderson’s
22 employment. These responsibilities included reviewing Plaintiff Anderson’s job application and
23 administering the military leave Plaintiff Anderson took during his employment.

24 17. Defendant San Francisco Department of Public Health (“the DPH”) is a department
25 of the City within its executive branch. Pursuant to Charter § 4.110, the DPH, together with the
26

27 _____
28 ¹ See About the MTA, available at <https://www.sfmta.com/about-sfmta> (last accessed April 18, 2019).

1 San Francisco Health Commission as appointed by the Mayor of the City, is responsible for
2 managing and controlling the City’s hospitals and emergency medical services. According to its
3 annual report for 2016-2017, the DPH is the largest department of the City, with over 7,500
4 employees. The DPH is an employer within the meaning of USERRA, 38 U.S.C. § 4303(4)(A),
5 because it has control over employment opportunities of employees. Among other things, the
6 DPH, including its human resources personnel, handled with the City many of the responsibilities
7 related to Plaintiff Sweeney’s employment. These responsibilities included reviewing her job
8 application, interviewing her, administering the military leave Plaintiff Sweeney took during her
9 employment, and participating in the decision to terminate her.

10 **Nominal Defendant**

11 18. The San Francisco Employees’ Retirement System (“SFERS”) is a retirement
12 system operated by the City and overseen by a seven-member Retirement Board pursuant to
13 Charter § 12.100. SFERS is responsible for administering employee benefit plans mandated by the
14 Charter and providing promised benefits to active and retired employees of the City. According to
15 SFERS Annual Report for Fiscal Year 2016-17, SFERS served more than 70,900 active and
16 retired City employees and their beneficiaries. One of the employee benefit programs administered
17 by SFERS is the Pension Plan. SFERS is named as a nominal defendant pursuant to Rule 19 to
18 ensure that complete relief can be granted as to claims brought involving the Pension Plan.

19 **CLASS ACTION ALLEGATIONS**

20 19. Plaintiffs Anderson and/or Sweeney bring Counts I through VII as a class action
21 pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following Class (“the
22 Class”):

23 All current and former employees of the City and County of San Francisco who took
24 leave from their employment with the City to engage in qualified military service on
or after October 10, 2004 and through the date of judgment in this action.

25 20. Plaintiff Sweeney brings Count XII as a class action pursuant to Rule 23 of the
26 Federal Rules of Civil Procedure on behalf of the following subclass (“Subclass I”):

27 All current and former City employees who (a) took a period of leave from their
28 employment with the City to engage in qualified military service on or after

1 October 10, 2004 and through the date of judgment in this action while they were
2 members of the San Francisco Employees' Retirement System Pension Plan, (b)
3 requested reemployment by the City after the period of military leave, and (c)
4 were required to receive employee contributions to the Pension Plan from the City
pursuant to the Memorandum of Understanding that applied during the period of
military leave.

5 21. Plaintiffs Anderson and Sweeney bring Counts XIII and XIV as a class action
6 pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following subclass
7 ("Subclass II"):

8 All current and former City employees who took leave for a period greater than
9 30 days from their employment at the City to engage in qualified active-duty
military service on or after October 10, 2004.

10 **Impracticability of Joinder**

11 22. The Class and Subclasses are so numerous that joinder of all members is
12 impracticable. The City currently has more than 30,000 employees, of whom upon information
13 and belief, a significant proportion have served in the Armed Forces during some or all of their
14 employment. In addition, many former employees served in the Armed Forces during some or all
15 of their employment with the City.

16 **Commonality**

17 23. The central questions in this case concern whether the City violated employees'
18 federal statutory rights under USERRA, state statutory rights under the MVC, and the City's
19 Annual Salary Ordinances by: (1) requiring employees to apply and be approved for military leave
20 before taking such leave; (2) failing to provide employees with accrual of paid sick leave and
21 vacation time during unpaid military leave; (3) failing to include necessary travel days in paid
22 military leave; (4) requiring employees who were on military leave to overcome numerous
23 procedural hurdles before allowing them to buy back pension credit; (5) requiring employees to
24 pay interest when they buy back their pension credit; (6) failing to provide for prompt
25 reemployment of employees returning from military leave; (7) failing to reemploy employees
26 returning from military leave in the relevant "escalator position" or the position they would have
27 occupied if they had not been on military leave; (8) for periods of military leave, failing to make
28

1 mandatory employee contributions required under the Memorandum of Understanding covering
2 members of Subclass I and provide them with proper years of service credit for the purpose of
3 determining the accrual of their pension benefits; and (9) failing to adequately provide to
4 employees on active-duty military leave for a period of greater than 30 days their full City
5 compensation for the first 30 days of the period and supplemental pay and other benefits
6 afterwards, as the City’s Annual Salary Ordinances require.

7 24. As the City adopted and applied a uniform policy or practice for providing benefits
8 to its employees who are servicemembers, the answers to these questions will produce common
9 answers for all members of the proposed Class and Subclasses.

10 25. Plaintiffs’ claims raise common questions that will have common answers for each
11 Class or Subclass Member, including, but not limited to, the following:

12 (a) For Class members:

- 13 i. Whether requiring employees to apply and be approved for military leave
14 before taking military leave violates USERRA;
- 15 ii. Whether failing to provide employees with accrual of paid sick leave and
16 vacation during unpaid military leave violates the MVC and USERRA;
- 17 iii. Whether failing to include necessary travel time in paid military leave
18 violates the MVC;
- 19 iv. Whether requiring employees who were on military leave to overcome
20 numerous procedural hurdles before allowing them to buy back pension
21 credit violates USERRA;
- 22 v. Whether requiring employees who were on military leave to pay interest on
23 their pension buybacks violates USERRA;
- 24 vi. Whether failing to provide for prompt reemployment of employees
25 returning from military leave violates USERRA;
- 26 vii. Whether failing to reemploy employees returning from military leave in the
27 relevant “escalator position,” or the position they would have occupied if
28 they had not been on military leave, violates USERRA;

- 1 (b) For members of Subclass I:
- 2 i. Whether failing to make mandatory employee contributions required under
- 3 the Memorandum of Understanding covering members of Subclass I for
- 4 periods of military service and failing to provide them with proper years of
- 5 service credit for the purpose of determining the accrual of pension benefits
- 6 violates USERRA;
- 7 (c) For members of Subclass II:
- 8 i. Whether failing to adequately provide to members of Subclass II their full
- 9 City compensation for the first 30 days of their periods of military service
- 10 and supplemental pay and other benefits afterwards violates USERRA and
- 11 the City's Annual Salary Ordinances;
- 12 (d) For members of the Class and both Subclasses:
- 13 i. Whether the City's violations of USERRA were willful, making it
- 14 appropriate to award liquidated damages under USERRA; and
- 15 ii. What, if any, other relief should be granted?

16 26. Because the violations listed within this Complaint were based on uniform policies

17 or practices and any recovery can be provided through a class-wide injunction or calculated as

18 damages using data common to all Class Members, all issues regarding relief to which the Class

19 Members are entitled are common.

20 27. Even if some individualized issues may exist with respect to the allocation of any

21 recovery, the key issues in this action all concern the failure of the City to conform its policies to

22 comply with USERRA and the MVC. As the City acted in a systematic and uniform manner with

23 respect to the Class and Subclasses, all members of the Class and Subclasses suffered the same

24 type of injuries based on common policies, and resolving the claims of the Class and Subclasses

25 will be based on common legal and factual questions.

26 **Typicality**

27 28. Plaintiffs' claims are typical of the other members of the proposed Class and

28 Subclasses that they seek to represent. Plaintiffs challenge common policies and practices by

1 which they allege that the City violated USERRA, the MVC, and the City’s Annual Salary
2 Ordinances, including but not limited to the City (1) requiring employees to apply and be
3 approved for military leave before taking such leave; (2) failing to provide employees with accrual
4 of paid sick leave and vacation time during unpaid military leave; (3) failing to include necessary
5 travel days in paid military leave; (4) requiring that employees who were on military leave
6 overcome numerous procedural hurdles before allowing them to buy back pension credit; (5)
7 requiring that employees pay interest when they buy back their pension credit; (6) failing to
8 provide for prompt reemployment of employees returning from military leave; (7) failing to
9 reemploy employees returning from military leave in the relevant “escalator position,” or the
10 position they would have occupied if they had not been on military leave; (8) failing to make
11 mandatory employee contributions to the SFERS Pension Plan on behalf of members of Subclass I
12 for periods of military service and credit them with proper years of service credit; and (9) failing
13 to provide members of Subclass II with adequate City compensation, supplemental pay, and other
14 benefits for their periods of military service.

15 29. The relief sought consists primarily of damages and injunctive relief.

16 **Adequacy**

17 30. Plaintiffs will fairly and adequately protect the interests of other members of the
18 Class and Subclasses that they seek to represent. Plaintiffs are aware of no conflict with any other
19 member of the Class and Subclasses. Plaintiffs understand their obligations as class
20 representatives, have already undertaken steps to fulfill them, and are prepared to continue to
21 fulfill their duties as class representatives.

22 31. The City has no unique defenses against the Plaintiffs that would interfere with
23 their representation of the Class and Subclasses.

24 32. Plaintiffs’ counsel are experienced in federal court class action litigation, including
25 civil rights and employee benefits litigation, and have considerable experience and expertise in
26 servicemembers and reservists’ employment rights under USERRA and other statutes.

27 **Rule 23(b)(2) Certification**

28 33. This action is also properly maintainable as a class action under Rule 23(b)(2) of

1 the Federal Rules of Civil Procedure. The City is alleged to have violated USERRA, the MVC,
2 and the City's Annual Salary Ordinances in a common manner as to all members of the Class and
3 Subclasses. As such, the City has acted or refused to act on grounds that apply generally to the
4 Class and Subclasses. As a result, final declaratory relief is appropriate respecting the Class and
5 Subclasses as a whole.

6 34. The monetary relief that Plaintiffs seek either flows from and/or is incidental to the
7 declaratory relief sought, as it flows directly from the ordering of such declaratory relief and can
8 be calculated in a simple, objective, and mechanical manner.

9 **Rule 23(b)(3) Certification**

10 35. This action is also properly maintainable as a class action under Rule 23(b)(3) of
11 the Federal Rules of Civil Procedure.

12 36. The questions of law and fact common to the members of the Class and Subclasses
13 predominate over questions affecting only individual members and a class action is superior to
14 other available methods for the fair and efficient resolution of this controversy.

15 37. By resolving the common issues described above in a single class proceeding, each
16 member of the proposed Class and Subclasses will receive a determination of whether Defendants
17 violated USERRA, the MVC, and/or the City's Annual Salary Ordinances, and will receive the
18 remedy that should be provided under USERRA, the MVC, or the City's Annual Salary
19 Ordinances.

20 38. There is no other pending litigation that has raised similar allegations with respect
21 to the City.

22 39. This is an appropriate forum for these claims because the City is located within the
23 District, and as a result of the City's significant operations and tens of thousands of employees in
24 this District, most or all of the Class and Subclasses likely were employed in this District and a
25 significant portion of the Class and Subclasses resides in this District.

26 40. There are no difficulties in managing this case as a class action.
27
28

FACTUAL ALLEGATIONS

A. The Policies and Practices of Defendants

1. The City’s Obligations to Servicemembers Under State and Federal Law

41. Since 2004, the City has had numerous employees who have served their country in the United States Armed Forces during their employment with the City.

42. When these employees take military leave to serve in the Armed Forces, federal law generally requires the City to treat these employees as if they never took leave from their civilian jobs. For example, USERRA requires the City to reemploy City employees who take military leave and restore the rights and benefits related to the employees’ positions. 38 U.S.C. §§ 4312, 4316.

43. Employees who timely notify their employers that they are returning from military leave are entitled to “prompt reemployment,” 38 U.S.C. § 4301(a)(2), which is reemployment as soon as practicable under the circumstances of each case, 20 C.F.R. § 1002.181.

44. In addition, USERRA mandates that, for the purpose of retirement benefits, an employee who returns to his or her civilian job after serving in the military must be treated as if he or she never took a day off from his or her civilian job. 38 U.S.C. § 4318. This means that an employer must “allocate the amount of any employer contribution for the [returning servicemember] in the same manner and to the same extent the allocation occurs for other employees during the period of service.” *Id.* § 4318(b)(1). It also means that servicemembers must not be required to pay interest on makeup contributions. *Id.* § 4318(b)(2); *see also* 20 C.F.R. § 1002.263.

45. USERRA provides that servicemembers are not required to ask for or receive permission from their employers in order to perform service in the uniformed services. Although servicemembers are required to provide notice to their employers of their leave, the notice need not take any particular format. Notice can be *either* oral or written. 20 C.F.R. §§ 1002.85, 1002.87.

46. The MVC provides certain additional protections for servicemembers that are not available under federal law. For example, MVC § 395(d) requires that public employees who have been employed with a public agency for more than one year (counting military service) and who

1 take military leave must continue to receive the same vacation, sick leave, and holiday privileges,
2 and the same rights and privileges to employment, promotion, continued employment or
3 appointment, and reemployment or reappointment, that they would have if they had not taken
4 military leave.

5 **2. The City's Policies and Practices Governing Military Leave of City Employees**

6 **a. San Francisco Civil Service Commission**

7 47. Pursuant to Charter § 10.100, the San Francisco Civil Service Commission (“the
8 Civil Service Commission”) is charged with the duty of providing qualified persons for
9 appointment to the service of the City. Pursuant to Charter § 10.101, the Civil Service
10 Commission adopts rules, policies, and procedures to govern a wide range of topics and issues
11 relating to City employment, including, for example, applications, leaves of absence, promotions,
12 transfers, resignations, and lay-offs. Among the rules, policies, and procedures adopted by the
13 Civil Service Commission are the Civil Service Commission Rules. These Rules are contained in
14 four serialized volumes and are applicable to all classes of City employees, including
15 Miscellaneous Employees (pursuant to Volume I in the 100 Series), the Uniformed Ranks of the
16 San Francisco Police Department (pursuant to Volume II in the 200 Series), the Uniformed Ranks
17 of the San Francisco Fire Department (pursuant to Volume III in the 300 Series), and Service-
18 Critical Classes of the MTA (pursuant to Volume IV in the 400 Series).

19 48. For the purpose of the Civil Service Commission Rules, “Miscellaneous
20 Employees” refers to employees in all classes except those covered in Volumes II, III, and IV of
21 the Rules.

22 49. Pursuant to Charter § 8A.104(e), “service-critical” employees of the MTA include
23 those who operate a transit vehicle, whether or not in revenue service; control dispatch of, or
24 movement of, or access to, a transit vehicle; maintain a transit vehicle or equipment used in transit
25 service, including both preventive maintenance and overhaul of equipment and systems, including
26 system-related infrastructure; regularly providing information services to the public or handling
27 complaints; and supervising or managing employees performing functions enumerated above.

28

1 **b. Requirements for Submitting Written Requests and Obtaining Pre-**
2 **Approvals to Take Military Leave**

3 50. Rule 120 in Volume I of the Civil Service Commission Rules sets forth the City’s
4 rules, policies, and procedures that govern leaves of absence with respect to employment covered
5 in Volume I. Likewise, Rule 220 in Volume II, Rule 320 in Volume III, and Rule 420 in Volume
6 IV of the Civil Service Commission Rules, state the rules, policies, and procedures that govern
7 leaves of absence with respect to employment covered in Volumes II, III, and IV, respectively.

8 51. Pursuant to Civil Service Commission Rule 120.26.6, an employee requesting
9 military leave must file with the City’s Human Resources Director a copy of the order
10 necessitating such service prior to the effective date of the leave of absence and upon return from
11 such leave must submit a copy of the discharge or release, regardless of the length of the period of
12 military service. Pursuant to Civil Service Commission Rules 220.26.6, 320.26.6, and 420.26.6,
13 employees covered in Volumes II, III, and IV of the Rules are subject to the same requirements.

14 52. Pursuant to Civil Service Commission Rule 120.1.4, an employee requesting a
15 leave for more than five (5) working days must submit a written request on the form prescribed by
16 the City’s Human Resources Director to the department head or designee. This requirement
17 applies to all types of leave except for vacation, witness or jury duty leave, compulsory sick leave,
18 disability leave, or unpaid administrative leave. Pursuant to Civil Service Commission Rules
19 220.1.4, 320.1.4, and 420.14, employees covered in Volumes II, III, and IV of the Rules are
20 subject to the same requirement.

21 53. The form prescribed by the City’s Department of Human Resources is entitled
22 “City and County of San Francisco – Request for Leave and Leave Protections.” Pursuant to the
23 Civil Service Commission Rules and the “Leave of Absence – General Provisions” set forth on the
24 form, all City employees who take certain types of leave in excess of five days, including
25 servicemembers who take military leave protected under USERRA, are required to submit a
26 written Request for Leave and Leave Protections, and such request must be approved in advance
27 of the leave of absence. Employees who take military leave are further required to attach their
28 official military orders, if any such orders are issued, to their requests for military leave. A copy of

1 the “City and County of San Francisco – Request for Leave and Leave Protections” form is
2 attached hereto as **Exhibit A**.

3 54. Pursuant to Civil Service Commission Rule 122.10, an employee’s absence from
4 duty without proper authorization by the City for any period of time up to and including five (5) or
5 less working days will be cause for disciplinary action. Pursuant to Civil Service Commission
6 Rules 222.7, 322.9, and 422.10, employees covered in Volumes II, III, and IV of the Rules are
7 subject to the same treatment and consequence. As such, a City employee who fails to submit a
8 written Request for Leave in advance and obtain the City’s approval for a period of military leave
9 up to five working days will be subject to disciplinary action. Likewise, a City employee who does
10 not return to work within five working days of the expiration of his or her City-approved military
11 leave will be subject to disciplinary action, regardless of the length of the period of the employee’s
12 military service.

13 55. Pursuant to Civil Service Commission Rule 122.11.1, an employee’s absence from
14 duty without proper authorization in excess of five (5) continuous working days will constitute
15 abandonment of the employee’s position and will be reported to the Department of Human
16 Resources and recorded as an automatic resignation. Pursuant to Civil Service Commission Rules
17 222.8.1, 322.10.1, and 422.11.1, employees covered in Volumes II, III, and IV of the Rules are
18 subject to the same treatment and consequence. As such, a City employee who fails to submit a
19 written Request for Leave in advance and obtain the City’s approval for a period of military leave
20 in excess of five working days will be treated as having automatically resigned from the
21 employee’s City position. Likewise, a City employee who does not return to work within five
22 working days of the expiration of his or her City-approved military leave will be treated as having
23 automatically resigned from his or her City position, regardless of the length of the period of the
24 employee’s military service.

25 56. The “Leave of Absence – General Provisions” set forth on the “City and County of
26 San Francisco – Request for Leave and Leave Protections” form also provides that employees who
27 do not return to work when they are expected are absent without leave (“AWOL”) and may be
28 subject to disciplinary action or automatic resignation. Thus, if a servicemember does not submit a

1 written request for an extension of his or her military leave and obtain the City’s approval for it,
2 the employee will be subject to disciplinary action and classified as AWOL or having
3 automatically resigned from his or her employment with the City, regardless of the length of the
4 period of the employee’s military service.

5 **c. Return to Work After a Period of Military Leave**

6 57. Because all servicemembers on military leave for more than five days must
7 complete a Request for Leave and Leave Protections form or else risk termination, the City is on
8 notice of the completion of employees’ periods of military service and their intent to return to
9 work following their military leave, including the date at which servicemembers’ orders terminate
10 and the date at which servicemembers intend to return to their civilian jobs.

11 58. Prior to the expected expiration of their leave, the City provides notice to
12 employees that they must begin the return-to-work process at least five days prior to their intended
13 return to work.

14 59. Employees returning from military leave are required to comply with these
15 procedures.

16 60. Compliance with the City’s return-to-work procedures is time-consuming, and the
17 City often requires employees to use some other type of leave, such as vacation, to complete them.
18 This is because employees must appear in person at the relevant Human Resources Department to
19 fill out paperwork prior to being reemployed. Completing the necessary paperwork may also
20 require employees to get several additional signatures to confirm that their licenses and medical
21 examinations are up to date and to get signatures from their managers, all of which involve in-
22 person trips to the locations where the relevant signatories work.

23 61. In addition, certain employees may be required to fulfill additional requirements
24 before returning to work. For example, “safety sensitive employees” who have been on leave for
25 90 days or more may be required to submit to alcohol and drug testing. Employees returning from
26 military leave are not permitted to start work until the drug testing has been completed, even to
27 perform clerical work for which drug testing is not legally required and for which such employees
28 are qualified.

1 62. These requirements may delay servicemembers' reemployment and their return to
2 work for several days or weeks after the completion of their military service and after the time that
3 such servicemembers request reemployment.

4 63. On information and belief, employees who return to work after periods of military
5 leave are reemployed at the same position they held when they left, without consideration of the
6 position in which they would have been employed if their continuous employment had not been
7 interrupted by their military service. Thus, the City does not consider what the appropriate
8 "escalator position" is for a returning servicemember other than the option of returning to the same
9 position the employee had before taking military leave.

10 **3. Paid Military Leave During the First 30 Days and Supplementation of**
11 **Military Pay Afterwards**

12 64. MVC § 395.01(a) provides that any public employee who is on temporary military
13 leave for military duty ordered for purposes of active military training, inactive duty training,
14 encampment, naval cruises, special exercises, or like activity is entitled to receive his or her salary
15 or compensation as a public employee for the first 30 calendar days of any such leave (capped at
16 30 days per fiscal year), provided that the period of military duty does not exceed 180 calendar
17 days and the employee has been employed by the public agency for a period of not less than one
18 year immediately prior to such leave (counting any military service). Pursuant to MVC §
19 395.01(a), time involved in traveling to and returning from military duty is included when
20 counting the length of military leave for which an employee must receive a salary or
21 compensation.

22 65. Likewise, pursuant to MVC § 395.02, any public employee who is on military
23 leave other than temporary military leave is entitled to receive his or her salary or compensation as
24 a public employee for the first 30 calendar days of any such leave.

25 66. For the purposes of calculating paid leave, the City only counts days for which
26 employees have been able to satisfactorily demonstrate that they have received military orders to
27 report for duty. Time spent traveling to and from leave is not compensated by the City, even if
28 travel time is required to perform such military service. Instead, employees are required to use

1 vacation, floating holiday, or compensatory time if they require time to travel to or from their
2 military duty.

3 67. Charter § A8.400(h) provides that the Board of Supervisors has the power to enact,
4 at the Mayor's request, an ordinance entitling City employees called to active duty with a United
5 States military reserve organization to receive from the City the following as part of the
6 individual's compensation, subject to certain limitations: for a period to be specified in the
7 ordinance, the difference between the amount of the individual's military pay and the amount the
8 individual would have received as a City employee had the employee worked his or her normal
9 work schedule, including any merit raises which otherwise would have been granted during the
10 time the individual was on active duty.

11 68. Since at least 2004, the City has enacted and renewed on an annual basis an
12 ordinance that entitles City employees called to certain active duty by the United States military to
13 receive from the City supplemental pay and benefits during their military leave. Pursuant to the
14 "Supplementation of Military Pay" provision adopted and incorporated into the City's Annual
15 Salary Ordinance in effect for each fiscal year of the City from at least 2004 to the present ("the
16 Supplemental Pay Provision"), a City employee who (i) is a member of the reserve corps of the
17 United States Armed Forces, National Guard or other uniformed service organization of the
18 United States and (ii) is called to active military duty (iii) on or after September 11, 2001 (iv) in
19 response to the September 11, 2001 terrorist attacks, international terrorism, conflict in Iraq or
20 related extraordinary circumstances (v) for a period greater than 30 consecutive days is entitled to
21 receive from the City the difference between the amount of the individual's gross military pay and
22 the amount of gross pay the individual would have received as a City employee, had the officer or
23 employee worked his or her normal work schedule ("Supplemental Pay"). As such, in addition to
24 any pay and benefits provided under MVC §§ 395.01 and 395.02 for the first 30 days of active
25 duty, the servicemember is also entitled to receive Supplemental Pay starting from the 31st day of
26 active duty.

27 69. The Supplemental Pay Provision further provides that a City employee entitled to
28 Supplemental Pay is also entitled to all other benefits to which the individual would have been

1 entitled had the individual not been called to active duty, except as limited under state law or the
2 Charter.

3 70. A City employee's entitlement to Supplemental Pay and other compensation and
4 benefits under the Supplemental Pay Provision is subject to the limitation and condition that the
5 individual receiving compensation pursuant to the Provision must execute an agreement providing
6 that if the individual does not return to City service within 60 days of release from active duty, or
7 if the individual is not fit for employment at that time, within 60 days of a determination that the
8 employee is fit for employment, then that compensation provided to the individual under the
9 Supplemental Pay Provision shall be treated as a loan payable to the City with interest at a rate set
10 forth in the Provision, commencing 90 days after the individual's release from active service or
11 return to fitness for employment.

12 **4. San Francisco Employees' Retirement System Pension Plan**

13 71. One of the employee benefit programs administered by SFERS is the Pension Plan.
14 The Pension Plan is a tax-qualified defined benefit plan under the terms of which the City pays
15 retiring employees a monthly service retirement benefit that is determined by a specific formula.
16 Under that formula, the amount of an employee's monthly benefit is calculated based on the
17 employee's years of service credit, age at retirement, and final compensation (*i.e.*, highest average
18 pay).

19 72. The SFERS Pension Plan is funded through employer and employees'
20 contributions. Employee contributions are calculated as a percentage of employees' salaries and
21 deducted from their paychecks each pay period.

22 73. When City employees go on unpaid military leave, they receive no pay or less pay
23 than they would have received if they had not been on leave. For pay periods when City
24 employees are on unpaid military leave for an entire pay period, they receive no salary.
25 Accordingly, no employee contributions are made to their individual retirement accounts during
26 such pay periods, and the City does not make a corresponding contribution to the general
27 retirement fund. For pay periods when City employees are on unpaid military leave for part of a
28 pay period, their individual contributions and the contributions of the City are prorated in

1 accordance with the amounts of their paychecks.

2 74. A City employee who returns from unpaid military leave is eligible to purchase
3 service credit for time lost under certain circumstances. The purchased service is added to the
4 years of service credited to the employee and used to calculate his or her pension on retirement.
5 The amount required to purchase service credit is the amount of the employee's usual contribution
6 to his or her pension, plus interest in the amount that the contributions would have earned if they
7 had been on deposit with SFERS.

8 75. In order to purchase service credit, employees who return from military leave are
9 required to present: (1) induction papers, (2) discharge papers, (3) civil service certification of
10 military leave, (4) an SFERS form entitled "Application for Purchase of Military Service" (which
11 has to be notarized if not completed in the SFERS office), and (5) a record of military pay made
12 during the period of military service, such as by providing paystubs or completing the "US Form
13 180 – Request Pertaining to Military Records" to allow such information to be released to SFERS
14 from the military. The Application for Purchase of Military Service is attached hereto as **Exhibit**
15 **B**.

16 76. The same amount of paperwork that servicemembers are required to complete
17 before they are eligible for a purchase of service credit is not required for employees who buy
18 back service credit after taking other types of leave. For example, employees who take union leave
19 are required only to complete an Application for Purchase of Representative Service, attached
20 hereto as **Exhibit C**, obtain a signature from a union officer, and provide proof that their union
21 leave was authorized.

22 77. Employees who remain continuously employed with the City are not required to
23 file an application to purchase service or any associated paperwork.

24 78. Pursuant to the Supplemental Pay Provision in effect from at least 2007 to the
25 present, for any City employee who (i) is a member of the reserve corps of the United States
26 Armed Forces, National Guard or other uniformed service organization of the United States and
27 (ii) is called to active military duty (iii) on or after September 11, 2001 (iv) in response to the
28 September 11, 2001 terrorist attacks, international terrorism, conflict in Iraq or related

1 extraordinary circumstances (v) for a period greater than 30 consecutive days, the City is also
2 required to pay the full *employee contributions* to the employee's SFERS account to the extent
3 employer-paid employee contributions are required under the memorandum of understanding
4 covering the City position held by employee. As such, pursuant to the Supplemental Pay
5 Provision, the employee is entitled to receive *full service credit* under the SFERS Pension Plan for
6 the entire period of his or her military leave as if he or she had not been absent, and should not be
7 required to purchase service credit for any part of that period in order to receive full credit for the
8 purpose of determining his or her benefits under the Plan.

9 **5. Vacation and Sick Leave Accrual**

10 79. The City provides vacation accrual for all employees who work a regular schedule
11 and who have completed a year or more of continuous service. According to the Employee
12 Handbook issued by the City's Department of Human Resources in January 2012 and updated in
13 January 2019, although employees are not eligible to use vacation in the first year of continuous
14 service, at the end of one year of continuous service, they will be awarded a vacation allowance at
15 the rate of .0385 of an hour for each hour of paid service in the preceding year and will be eligible
16 to use accrued vacation time. For the purposes of computing vacation accrual, most employees
17 may be credited with no more than 2080 hours of service in a 12-month period. Generally,
18 employees with 1 to 5 years of service are entitled to a maximum of 80 hours of vacation accrual
19 per year. Employees with 5 to 15 years of service are entitled to a maximum of 120 hours of
20 vacation accrual per year. Employees with more than 15 years of service are entitled to a
21 maximum of 160 hours of vacation accrual per year. These maximums assume that employees will
22 work no more than 2080 hours each year.

23 80. Pursuant to Civil Service Commission Rules 120.13, 220.13, and 420.12, hourly
24 City employees covered in Volumes I, II, and IV of the Civil Service Commission Rules accrue
25 sick leave pay credits at a rate of .05 hours for each hour worked (*i.e.*, 1 hour of sick leave for each
26 20 hours worked, or 13 days of sick leave for each 2080 hours worked) of regularly scheduled
27 paid service, excluding overtime hours exceeding 40 hours per week and holiday pay. Likewise,
28 pursuant to Civil Service Commission Rule 320.13, hourly City employees covered in Volume III

1 of the Civil Service Commission Rules accrue sick leave pay credits at a rate of 13 working days
2 of sick leave per completed year of paid service. Pursuant to Civil Service Commission Rules
3 120.13, 220.13, 320.13, and 420.12, all exempt City employees accrue sick leave at a rate of one
4 hour of sick leave per every 30 hours worked, excluding holiday pay.

5 81. Pursuant to Civil Service Commission Rules 120.8.3, 220.8.3, 320.8.3, and 420.8.3,
6 sick leave with pay credits will continue to accrue at the normal rate while an employee is on
7 either furlough or voluntary unpaid time off, for a maximum of up to 10 days per fiscal year for
8 furlough and 20 days per fiscal year for voluntary unpaid time off.

9 82. The City provides for the regular accrual of paid sick leave and vacation for
10 employees who are on most types of paid leave, including union leave and jury duty leave.

11 83. The City provides its employees with accrued vacation and sick leave during the
12 periods in which they engage in paid military leave, but does not provide its employees with any
13 accrued vacation or sick leave during the periods in which they engage in *unpaid* military leave.

14 84. Jury duty, union leave, and furlough are comparable to military leave in terms of
15 the duration of these forms of leave, the purpose of the leave, and the involuntary nature of the
16 leave.

17 85. For employees of the City, the duration of jury duty leave, union leave, and
18 furlough is comparable to the duration of military leave. All these types of leave most commonly
19 last several days and usually not more than a couple of weeks.

20 86. Jury duty leave, furlough, union leave, and military leave are ordinarily
21 involuntary. Jury duty is required by federal, state, or local law. Furlough is required by the City.
22 Union leave is required to perform duties associated with union leadership. And military leave
23 occurs due to an employee's legal obligation to perform military service in the Armed Forces. The
24 purpose of jury duty is the same as military leave: to perform service for our government and to
25 engage in public service for the benefit of our society. Likewise, the purpose of union duty is to
26 engage in service for the good of fellow members of the community.

27 87. Despite the comparability of military leave to other forms of leave during which the
28 City provide its employees with accrued vacation and sick leave, the City has failed to provide

1 employees who take unpaid military leave with accrued vacation and sick leave. In doing so, the
2 City has not provided employees who take military leave the same rights and benefits that other
3 employees receive when they take comparable leaves or furlough.

4 **B. Plaintiff Devon Anderson's Employment and Military Leave and the Effects of**
5 **Defendants' Policies and Practices on Him**

6 **1. Mr. Anderson's Paid and Unpaid Military Leave**

7 88. Plaintiff Devon Anderson has been a member of the Army Reserves for 22 years.
8 Until approximately May 2019, Mr. Anderson's brigade in the Army Reserves was stationed in
9 Fort Gillem, which is located just outside of Atlanta, Georgia. Since May 2019, Mr. Anderson has
10 been stationed at Camp Parks Army Reserve Base in Dublin, CA. As part of his military service,
11 Mr. Anderson reports once a month to his Reserves unit for his regular drill weekend and has
12 additional trainings throughout the year.

13 89. After Mr. Anderson passed the required civil service examination, the Human
14 Resources Department for the MTA ("MTA HR") offered Mr. Anderson the position of 9160
15 Transportation Operations Specialist on April 28, 2015, with a start date of May 11, 2015. Mr.
16 Anderson informed MTA HR that he was scheduled to be on military duty beginning on May 28,
17 2015. That same day, he received a call from an MTA HR representative informing him that he
18 would need to change his appointment date to July 6, 2015. Mr. Anderson subsequently received
19 another set of orders for 43 days of service effective July 2, 2015, and consequently his start date
20 was delayed again to August 17, 2015. As a result, Mr. Anderson lost more than three months, or
21 98 days, of seniority and related benefits while he was performing military service.

22 90. Throughout the course of his employment with the City, Mr. Anderson has taken
23 regular periods of military leave as part of his service in the Army Reserve. Most of these periods
24 have lasted between one and five days. Mr. Anderson took military leaves of more than five days
25 on February 2 through 8, 2016; June 12 through 24, 2016; October 17 through November 13,
26 2016; December 7 through 16, 2016; January 17 through February 3, 2017; March 2 through 10,
27 2017; May 4 through 26, 2017; June 2 through 7, 2017; and June 18 through 29, 2017; and was on
28 military leave for a service-related injury between approximately September 17, 2017 and January

1 1, 2019. During his periods of military leave that were greater than five days, Mr. Anderson has
2 been required to submit an application for military leave to MTA HR attaching his military orders.
3 For military leave that lasted five days or fewer, Mr. Anderson has been required submit a request
4 for military leave to his supervisor, York Kwan, prior to taking military leave, along with either
5 his drill schedule or military orders. Some of these requests for military leave that lasted five days
6 or fewer were sent to MTA HR, even though there was no formal requirement for HR approval.

7 91. When Mr. Anderson has returned from military leave that lasted more than five
8 days, he has been required to follow the normal return-to-work procedures, including an in-person
9 trip to the City's Department of Human Resources. This trip frequently takes all day and requires
10 Mr. Anderson to miss an additional day of work. Mr. Anderson does not receive pay for this day
11 in which he completes the return-to-work procedures unless he uses his accrued vacation time.

12 **2. Mr. Anderson's Efforts to Make Up His Pension Contributions**

13 92. When Mr. Anderson inquired about how to make up his pension contributions for
14 time spent on military leave, a representative of the City's HR Department told him that he would
15 need to present: (1) induction papers, (2) discharge papers, (3) civil service certification of military
16 leave, (4) Application for Purchase of Military Service (which has to be notarized if not completed
17 in the SFERS office), and (5) a record of pay made during military service. He was also told that
18 he would be required to pay interest on any buyback amount.

19 **3. Hostility Towards Military Service from Mr. Anderson's Supervisors**

20 93. In late fall of 2015, while Mr. Anderson was still within his probationary period as
21 a City employee, he was required to attend a drill with his Army unit in Georgia. While in
22 Georgia, Mr. Anderson received a call from a City employee, saying that a test he had taken had
23 been regraded and his grade changed from a pass to a fail. The employee told Mr. Anderson to call
24 his supervisor, Kurtis Smith, who told Mr. Anderson that if he did not return to San Francisco
25 immediately to retake the test, his employment with the City would be terminated. As a result, Mr.
26 Anderson was required to cut his drill time short to avoid termination. Yet, without exception,
27 USERRA prohibits employers from requiring an employee to cease ongoing military duty or else
28 face the threat of termination or discipline.

1 94. In February 2016, Mr. Kwan and another of Mr. Anderson’s supervisors requested
2 that Mr. Anderson not attend military duties other than his normal weekend drills because they
3 needed Mr. Anderson to assist with upcoming special events. As a result of this request, Mr.
4 Anderson delayed necessary military training.

5 95. In February 2017, Mr. Kwan told Mr. Anderson that Mr. Kwan would have
6 blocked Mr. Anderson’s assignment to his division if he had known that he would be out on
7 military leave so often.

8 96. In April 2017, Mr. Kwan denied Mr. Anderson’s request for a one-week vacation
9 because he was “always out on military leave.” This conversation was witnessed by two other City
10 employees. After Mr. Anderson protested, the leave request was subsequently approved.

11 97. In June 2017, Mr. Anderson emailed his managers a work-related suggestion. In
12 response, one of Mr. Anderson’s managers replied, “We have been doing just fine, and this sort of
13 confusion can only happen when you detach yourself from the reality that we live as a group every
14 day.” The manager later clarified that he believed Mr. Anderson was detached from his job due to
15 his military duties.

16 98. In August 2017, Mr. Kwan denied Mr. Anderson’s request for 32 hours of
17 compensatory time, although this decision was reversed when Mr. Anderson asked if the
18 compensatory time policy had changed.

19 99. Prior to February 2018, employees in Mr. Anderson’s division were able to select
20 their floating holidays through an informal process. For the first time in February 2018, Mr.
21 Anderson’s supervisors instituted a signup system for floating holidays. Any managers off of
22 work for more than 30 days, including on short-term disability insurance, workers’ compensation,
23 transitional work, sick, or military leave, were required to choose their floating holidays after they
24 returned from leave from whatever dates remained available. Mr. Anderson was the only
25 servicemember within his division. Upon information and belief, the inclusion of military leave in
26 this signup system for floating holidays targeted him and interfered with his ability to receive the
27 full benefits of employment to which he is entitled under USERRA.

28 100. As a result of the floating holiday policy, Mr. Anderson was unable to take floating

1 holidays on his desired dates, because those dates had already been claimed by colleagues with
2 less seniority.

3 101. After Mr. Anderson complained about this policy and how it adversely affected
4 him due to his military service, the floating holiday policy was abruptly cancelled with no
5 explanation.

6 102. On January 10 and 15, 2019, Mr. Anderson requested military leave to complete
7 required medical testing for the military. The leave was approved, but instead of being classified
8 as military leave, was classified as sick leave and deducted from his sick leave balance.

9 103. On January 16, 2019, Mr. Anderson reported to Virginia Harmon, MTA EEO
10 Officer, that several MTA managers subjected him to unwelcome conduct as a result of his
11 military service.

12 104. On January 25, 2019, Mr. Anderson reported to Rebecca Cox, MTA EEO Officer,
13 that he had not received appropriate accruals of sick leave, vacation, seniority, and pay raises, and
14 that his military leave had been incorrectly processed as sick leave.

15 105. On January 29, 2019, Mr. Anderson submitted a complaint regarding the denial of
16 his military leave to the United States Department of Labor (“DOL”). A DOL representative
17 subsequently contacted the MTA and informed them that required medical examinations were
18 considered service in the uniformed services and protected under USERRA.

19 106. As a result of this call from the DOL, the MTA reclassified Mr. Anderson’s leave
20 as military leave.

21 107. On June 28, 2019, Transportation Director Ed Reiskin sent a letter to Mr. Anderson
22 stating that it appeared that his EEO complaints were untimely, had been previously addressed, or
23 had been resolved, and administratively closed them. Mr. Anderson did not agree that his
24 complaints had been adequately addressed or resolved.

25 **4. Mr. Anderson’s Service-Related Injury, Resulting Leave, and Efforts to**
26 **Return to Work**

27 108. On May 17, 2017, Mr. Anderson sustained an injury while on active duty training.
28 On June 29, 2017, he was approved to receive care at the expense of the Army. When Mr.

1 Anderson was finally able to see an orthopedic specialist, the doctor informed him that due to his
2 injury, he would be required to stay off his knee for 8 weeks and wear a specialized knee brace.

3 109. Between August 27 and September 7, 2017, Mr. Anderson took approved vacation
4 from the MTA. On September 10, 2017, Mr. Anderson took approved paid military leave from
5 the MTA. Between September 11 and 15, 2017, Mr. Anderson took approved compensatory time
6 from the MTA, and on September 17, 2017, Mr. Anderson came to work. On September 18, 2017,
7 Mr. Anderson provided verbal notice that he intended to take military leave without pay. He was
8 unable to provide military orders due to the nature of his leave. However, he completed a formal
9 Request for Leave on September 26, 2017, and he provided MTA HR with a Military Physician's
10 Statement of Soldier's Incapacitation/Fitness for Duty form certifying his inability to work, which
11 was signed by United States Air Force Faculty Physician Dr. Henry K. Lau on September 21,
12 2017. He also provided a memorandum from his commanding officer Captain Erik A. Kucich
13 stating that Mr. Anderson had been ordered to stay home while recuperating from his service-
14 related inquiry, which was signed and dated September 27, 2017. The memorandum from Captain
15 Kucich also stated that Mr. Anderson had been placed on compensable status receiving active duty
16 pay from the military.

17 110. On October 20, 2017, Mr. Anderson received a communication from an MTA HR
18 employee informing him that he could not be approved for military leave if he did not submit
19 formal orders. Mr. Anderson was told at that time that he needed to submit a request for paid sick
20 leave for an industrial injury and that if he did not do so, he would be placed on AWOL status.

21 111. Mr. Anderson did not submit a request for paid sick leave, and due to the nature of
22 his military leave in which he was recuperating from a service-related injury, he was unable to
23 submit formal military orders. As a result, he was placed on AWOL status by the MTA between
24 October 22, 2017, and November 2, 2017. His co-workers were told that he was AWOL, and
25 papers were drawn up for his automatic resignation.

26 112. On November 3, 2017, Mr. Anderson had a panic attack due to stress related to his
27 AWOL status and his mistreatment by MTA HR, and had to go to the emergency room to seek
28 medical care.

1 113. As a result of these events, Mr. Anderson filed a complaint with the DOL on
2 October 25, 2017, and with the MTA Equal Employment Opportunity (“EEO”) office on
3 November 17, 2017. Both complaints alleged that he had been discriminated based on his military
4 status, which is unlawful under the federal USERRA and the California Fair Employment and
5 Housing Act (“FEHA”). Subsequent to these complaints, Mr. Anderson’s status was changed from
6 AWOL to unpaid sick leave. He was not permitted to change his status to unpaid military leave
7 due to the City’s practice of requiring orders to approve any military leave.

8 114. Mr. Anderson remained on unpaid sick leave for several months, based on his
9 doctor’s recommendation that he continue to recuperate from his injury. Although he was on
10 active duty in the Armed Forces during this period, Mr. Anderson did not receive differential pay
11 from the MTA during the entire period of this leave.

12 115. The final Request for Leave form that Mr. Anderson submitted during his
13 recuperation had an end date of January 1, 2019, which placed the City on notice of Mr.
14 Anderson’s intent to return to work on January 2, 2019. On December 27, 2018, Mr. Anderson
15 reported to the MTA HR Return to Work office and submitted a written application to return to
16 work, along with a written note from his commander certifying his absence from civilian
17 employment. In addition, also on December 27, 2018, Mr. Anderson completed a drug test.

18 116. Although the City had substantial advance notice of Mr. Anderson’s intent to return
19 to work due to the expiration date on his Request for Leave form, he was forced to delay his return
20 for several days in order to wait for the results of his drug test. This was true even though Mr.
21 Anderson was capable of (and qualified for) legally performing clerical duties prior to receiving
22 the results of the drug test.

23 117. On January 6, 2019, Mr. Anderson’s drug test came back negative, and he was
24 permitted to return to work on January 8, 2019.

25 118. In January 2019, around the same time Mr. Anderson reported back to work, he
26 received a request from the Department of Defense for more information on his AWOL status,
27 which was needed to determine his eligibility for a security clearance. Mr. Anderson requested
28 that the MTA provide an explanation that he had not actually been AWOL. However, the MTA

1 failed to provide a timely explanation, and in May 2019, Mr. Anderson lost his position with the
2 Reserves at Fort Gillem and was transferred to the Camp Parks Army Reserve Base in Dublin,
3 CA. The MTA did not provide the letter explaining that Mr. Anderson had never been AWOL
4 until two weeks after the transfer, on May 28, 2019.

5 **5. The City's Denial of Benefits Accruing During Military Service**

6 119. Under the City's written policies, Mr. Anderson was not permitted to accrue sick
7 leave or vacation during the parts of his military leave that were unpaid.

8 120. On October 20, 2017, Mr. Anderson raised concerns related to the accrual of sick
9 leave and vacation time during unpaid military leave to his supervisors via e-mail. These
10 supervisors included Mr. Anderson's supervisor, York Kwan, and several representatives of MTA
11 HR.

12 121. On April 23, 2018, Transportation Director Ed Reiskin concluded that MVC
13 § 395(d) entitled Mr. Anderson to accrue sick leave and vacation time during unpaid military
14 leave. Mr. Anderson did not receive his additional adjusted sick leave and vacation time until
15 September 21, 2018. This additional sick leave and vacation time covered all unpaid military leave
16 Mr. Anderson took from August 17, 2015 through September 17, 2017, but did not cover the
17 substantial amount of unpaid leave that Mr. Anderson took to recuperate from his service-related
18 injury.

19 122. After Mr. Anderson returned to work from his service-related injury in January
20 2019, he became aware that he had not received his yearly pay progression on his appointment
21 anniversary date, August 17, 2018. Mr. Anderson alerted MTA HR manager James Cerenio to this
22 discrepancy.

23 123. On January 18, 2019, Mr. Anderson met with a payroll manager, who informed
24 him that he would look into the matter. However, Mr. Anderson's requests for a follow-up went
25 unanswered until he filed a complaint with the DOL.

26 124. On April 12, 2019, Mr. Anderson received a pay progression raise effective on that
27 date.

28 125. On May 17, 2019, the pay progression was made retroactive and Mr. Anderson

1 received backpay for the pay he received since he returned from leave for his service-related
2 injury.

3 C. **Plaintiff Beverly Sweeney’s Employment and Military Leave and the Effects of**
4 **Defendants’ Policies and Practices on Her**

5 126. Plaintiff Beverly Sweeney joined the United States Army Reserves in July 1976
6 and served in the United States Army Reserves, the California Army National Guard, and the
7 United States Army between July 1976 and 2015. Throughout her military service, she was trained
8 and served at different times as, for example, an advanced combat medic, licensed combat
9 practical nurse, flight medic search and rescue, advanced practice registered nurse, surgical nurse,
10 public health and senior public health nurse, nurse supervisor, and board-certified case manager
11 trainer.

12 127. On November 6, 2006, Ms. Sweeney was hired by the City as a full-time
13 provisional Field Public Health Nurse at the Health at Home division or unit of the DPH under the
14 City’s job classification 2380 Public Health Nurse. Before she received the City’s employment
15 offer, Ms. Sweeney interviewed with the medical personnel of the DPH.

16 128. Effective April 23, 2007, Ms. Sweeney was promoted by the City and the DPH to
17 the full-time Permanent Civil Service status as a Field Public Health Nurse at the DPH under the
18 City’s job classification 2380 Public Health Nurse. With the Permanent Civil Service
19 appointment, Ms. Sweeney became eligible to participate in the Pension Plan.

20 129. In 2007, Ms. Sweeney was certified as an advanced practice registered nurse.

21 1. **Ms. Sweeney’s Periods of Military Service, Military Leave, and Applications**
22 **for Reemployment**

23 130. Throughout her employment with the City, Ms. Sweeney was required to take
24 military leave to complete trainings and military drills in the United States Army Reserves and
25 perform active-duty service in the United States Army and the California Army National Guard on
26 several occasions.

27 a. **Pre-2008 Periods of Military Leave**

28 131. Between 2006 and 2007, about once a month, Ms. Sweeney had to take military

1 leave from work, usually from a Friday through the following Monday, to drive or fly to training
2 sites in Sacramento, San Luis Obispo, and San Diego, California, to participate in military drills
3 and trainings.

4 132. From January 28, 2007 to February 10, 2007, Ms. Sweeney took military leave to
5 participate in her annual training as required by the United State Army Reserves. Ms. Sweeney
6 submitted to the City a Request for Leave form for this leave period. The City approved Ms.
7 Sweeney's requested leave on February 27, 2007.

8 133. In or about July 2007, DPH Nurse Manager Carlos Salazar told Ms. Sweeney in a
9 meeting that Ms. Sweeney had not seen enough patients because she had been gone a lot. Ms.
10 Sweeney explained to Mr. Salazar that she had military obligations to complete drills and
11 trainings, of which he was aware.

12 134. Between August and October 2007, Ms. Sweeney took unpaid military leave to
13 serve in the California Army National Guard Reserves pursuant to its orders to Ms. Sweeney to
14 active duty for special work in the following periods: from August 13 through August 20, 2007,
15 from September 3 through October 7, 2007, and from October 16 through October 24, 2007. For
16 each of these periods, Ms. Sweeney submitted a copy of the City's Request for Leave form and
17 received approval of the leave from the City.

18 135. In or about January 2008, Ms. Sweeney was called to active duty in support of
19 Operation Iraqi Freedom from January 15, 2008 through January 20, 2008. Ms. Sweeney was not
20 issued official military orders before this active-duty period but did provide the City with both oral
21 and written advance notice of her active duty. Although the City approved her military leave
22 request, the City via the DPH continued to require her to provide a copy of her military orders
23 before her leave.

24 136. In accordance with the City's written policies, Ms. Sweeney did not accrue
25 vacation or sick leave for each period of her unpaid military leave between January 2007 and
26 January 2008.

27 **b. Military Leave from February 26, 2008 to November 19, 2010**

28 137. On February 14, 2008, Ms. Sweeney was issued a deployment order to active-duty

1 military service pursuant to Presidential Executive Order 13223 of September 14, 2001 in
2 response to the September 11, 2001 terrorist attacks, relieving her from her reserve status and
3 commanding her to report for active service on February 26, 2008 for a period not to exceed 365
4 days.

5 138. Before engaging in her active-duty military service starting February 26, 2008, Ms.
6 Sweeney provided proper verbal or written notice to the City of her upcoming military service.
7 Although she provided such notice, which complied with her obligation under USERRA to
8 provide advance oral or written notice of military leave, Ms. Sweeney was still required by the
9 City to submit a Request for Leave form along with a copy of her military orders. After Ms.
10 Sweeney submitted the Request for Leave form, by letter dated February 27, 2008, the City
11 informed Ms. Sweeney that she was approved for a period of military leave from February 26,
12 2008 through February 25, 2009. The February 27, 2008 letter stated that should Ms. Sweeney
13 need to extend her leave beyond that date, she must complete another Request for Leave form and
14 that employees who are absent without approved leave for more than five consecutive workdays
15 may be processed as an automatic resignation.

16 139. While Ms. Sweeney was on military leave, by letter dated April 2, 2008, the City
17 informed Ms. Sweeney that effective April 15, 2008, she would be reassigned from the Health at
18 Home unit to the Maternal Child and Adolescent Health Field Nursing (“MCAH”) unit under the
19 same job classification 2380 Public Health Nurse.

20 140. On January 23, 2009, while still on active duty with the military and on military
21 leave from her employment with the City, Ms. Sweeney was issued an order by the United States
22 Army commanding her to report for active-duty service from February 25, 2009 to February 24,
23 2010. The January 23, 2009 military orders specifically provided that Ms. Sweeney was ordered to
24 active duty in support of the national emergency declared under Presidential Proclamation 7463
25 dated September 14, 2001 (“Presidential Proclamation 7463”) in response to the September 11,
26 2001 terrorist attacks, and, as such, Ms. Sweeney’s active-duty period was exempt from the 5-year
27 cumulative service limit on reemployment rights under USERRA § 4312(c)(4)(B). On January 29,
28 2009, Ms. Sweeney e-mailed DPH personnel Lannie Adelman and David Palma to inform them

1 that that her active duty had been extended for a year and attached to the e-mail were copies of
2 Ms. Sweeney’s military orders for the extended period.

3 141. On December 15, 2009, Ms. Sweeney was issued an order by the United States
4 Army commanding her to report for active-duty service under Presidential Proclamation 7463
5 from February 25, 2010 to February 24, 2011. The December 15, 2009 military orders specifically
6 provided that the active-duty period is exempt from the 5-year cumulative service limit on
7 reemployment rights under USERRA § 4312(c)(4)(B).

8 142. In or about February 2009, Ms. Sweeney informed the City that her active duty had
9 been extended. On February 12, 2010, while Ms. Sweeney was on active duty, the City via DPH
10 Personnel Analyst Gina Garcia issued a “Memorandum” to Ms. Sweeney stating that her approved
11 leave of absence would end on February 24, 2010. Although Ms. Sweeney’s period of active-duty
12 military service beginning on February 26, 2008 had exceeded 180 days, the February 12, 2010
13 Memorandum stated that Ms. Sweeney was “scheduled to return to duty on 02/25/2010” and must
14 contact her supervisor before February 24, 2010 to request an extension if she could not return to
15 work on February 25, 2010. Citing the San Francisco Civil Service Rule 122.11.1, the
16 Memorandum further stated, with a Request for Leave form attached for Ms. Sweeney, that if her
17 extension request was not granted, she must return to work or resign from her position to avoid
18 being marked Absent Without Leave (AWOL).

19 143. On February 26, 2010, Ms. Sweeney was issued an order by the United States
20 Army modifying her active-duty period to February 25, 2010 through April 25, 2010. The
21 February 26, 2010 military orders specifically provided that the active-duty period is exempt from
22 the 5-year cumulative service limit on reemployment rights under USERRA § 4312(c)(4)(B). Ms.
23 Sweeney forwarded a copy of the order to the City.

24 144. On March 5, 2010, while still on active duty, Ms. Sweeney was issued a letter from
25 the City informing her that due to lack of funds or lack of work, she would be laid off from her
26 Public Health Nurse position effective May 8, 2010.

27 145. On or about March 13, 2010, Ms. Sweeney’s union SEIU-Local 1021
28 representative Tonette Garcia wrote to DPH Human Resources (“DPH HR”) Director: “you have

1 issued a layoff notice to Beverly Sweeney, a PHN on active duty military service. SEIU will take
2 all steps necessary to protect her rights, as provided by law.”

3 146. After receiving the City’s February 12, 2010 Memorandum and while still on active
4 duty with the United States Army, on March 18, 2010, Ms. Sweeney submitted at the City and the
5 DPH’s request a new Request for Leave form along with her February 26, 2010 military orders to
6 ensure that she would not be marked AWOL by the City.

7 147. On March 24, 2010, Ms. Sweeney was issued an order by the United States Army
8 retaining her on active duty until February 17, 2011. The March 24, 2010 military orders
9 specifically provided that the active-duty period is exempt from the 5-year cumulative service
10 limit on reemployment rights under USERRA § 4312(c)(4)(B).

11 148. On April 13, 2010, while Ms. Sweeney was on active duty, the City via Ms. Garcia
12 issued another “Memorandum” to Ms. Sweeney stating that her approved leave of absence would
13 end on April 26, 2010. Although Ms. Sweeney’s period of active-duty military service beginning
14 on February 26, 2008 had exceeded 180 days, the April 13, 2010 Memorandum stated that Ms.
15 Sweeney was “scheduled to return to duty on 04/26/2010” and must contact her supervisor before
16 February 25, 2010 to request an extension if she could not return to work on April 26, 2010. Citing
17 the San Francisco Civil Service Rule 122.11.1, the Memorandum further stated, with a Request for
18 Leave form attached for Ms. Sweeney, that if her extension request was not granted, she must
19 return to work or resign from her position to avoid being marked AWOL.

20 149. After receiving the City’s April 13, 2010 Memorandum and while still on active
21 duty with the United States Army, by no later than April 23, 2010, Ms. Sweeney provided the City
22 with a copy of her March 24, 2010 military order from the United States Army.

23 150. In a June 7, 2010 letter, DPH HR Director Micki Callahan informed Ms. Sweeney
24 that the City rescinded her layoff from her Field Public Health Nurse position.

25 151. In anticipation of her return to her City employment after her active-duty service,
26 beginning about June 2010, Ms. Sweeney applied for four nurse manager positions (Job
27 Classification 2322) with the City and the DPH. She included her resume and claimed veterans
28 preference on each application.

1 152. In July 2010, Ms. Sweeney obtained an interview for a Nurse Manager position in
2 the MCAH unit under the administration of the San Francisco General Hospital (“SFGH”). On or
3 about July 27 and 28, 2010, she took time off from her active duty and traveled back to San
4 Francisco to interview for the position. After the interview, Nurse Recruiter Gillian Otway left Ms.
5 Sweeney a voicemail that “everyone on the interview was very impressed with you,” that Ms.
6 Sweeney was “the best candidate,” but SFGH “hired within.”

7 153. On August 25, 2010, the City’s MCAH Senior Clerk Silvia Woo contacted Ms.
8 Sweeney to schedule an interview for an MCAH Nurse Manager position. Ms. Sweeney explained
9 that she was on active duty and requested a phone interview. Although Ms. Woo promised to
10 forward Ms. Sweeney the interview questions before the interview, she never received those
11 questions. Ms. Sweeney interviewed for the position by phone on August 30, 2010 and did not get
12 the job.

13 154. Although Ms. Sweeney met the minimum requirements of the four Nurse Manager
14 positions and was selected for an interview for at least two of the positions she applied for, she
15 was not placed on an eligible list for future related City job opportunities as other candidates
16 selected for an interview usually would be. Further, starting at least as early as June 2010, Ms.
17 Sweeney could not apply for any City position as a current employee as other City employees
18 could but was required by the City to apply as a new employee.

19 155. On October 12, 2010, Ms. Sweeney was issued an order by the United States
20 Army. Pursuant to that order, she was released from active duty effective November 19, 2010.

21 c. **Reemployment on December 3, 2010 and Military Leave from April 20,**
22 **2011 to April 22, 2012**

23 156. Ms. Sweeney notified Diane Beetham, her supervisor at the DPH, by phone on
24 November 19, 2010 and Ms. Garcia by e-mail on November 29, 2010 (along with a copy of her
25 military orders) of Ms. Sweeney’s intent to apply for reemployment at the City effective
26 December 13, 2010. By letter dated December 4, 2010, pursuant to USERRA, Ms. Sweeney
27 submitted a timely application for reemployment at the City effective December 13, 2010. On
28 December 13, 2010, Ms. Sweeney was reemployed by the City as a Field Public Health Nurse in

1 the MCAH unit of the DPH.

2 157. Shortly after her return to work at her City employment in December 2010, Ms.
3 Sweeney was assigned a preceptor named Helen Chin, a DPH Field Public Health Nurse. Ms.
4 Chin was annoyed from the beginning by Ms. Sweeney's return to work during the holiday
5 season, told Ms. Sweeney that she had an "accountability issue" and was "on probation" and
6 "people were watching [her]," and mockingly suggested that Ms. Sweeney should have taken
7 more time off for her military service.

8 158. In a late December 2010 meeting with Ms. Beetham, Ms. Sweeney was questioned
9 by her supervisor why she had been absent from work for over two years and whether there was
10 not a limit on the duration of her military duties. Ms. Sweeney responded that servicemembers can
11 be called to active duty for an extended period. At the end of the meeting, Ms. Beetham gave Ms.
12 Sweeney a military salute, stating "Aye, aye, Captain," which Ms. Sweeney in response told her
13 was inappropriate.

14 159. On March 3, 2011, Ms. Sweeney was issued an order by the United States Army
15 commanding her to report for active-duty service in support of the national emergency declared
16 under Presidential Proclamation 7463 from April 20, 2011 to April 18, 2012. The March 3, 2011
17 military orders specifically provided that the active-duty period was exempt from the 5-year
18 cumulative service limit on reemployment rights under USERRA § 4312(c)(4)(B).

19 160. Before engaging in her active-duty military service starting April 20, 2011, Ms.
20 Sweeney provided proper oral or written notice to the City of her upcoming military service.
21 Although having provided notice that complied with her obligation under USERRA to inform her
22 employer of her military leave, Ms. Sweeney was required by the City to submit, and did submit, a
23 Request for Leave form along with a copy of her military order.

24 161. While on active duty, in or about February 2012, Ms. Sweeney applied for a Public
25 Health Nurse position for the Community Oriented Primary Care Program of the DPH ("the
26 COPC"). On April 13, 2012, Ms. Sweeney interviewed with the COPC nurse supervisor Judith
27 Sansone and two other City employees for the Public Health Nurse position.

28 162. On March 9, 2012, Ms. Sweeney was issued an order by the United States Army.

1 Pursuant to the order, she was released from active duty on April 18, 2012.

2 d. **Ms. Sweeney’s Convalescence, the City’s Attempt to Terminate Her**
3 **Employment, Her 2014 Reemployment Application, and Military Leave**
4 **from July 7, 2014 to May 30, 2015**

5 163. Ms. Sweeney incurred an injury in the performance of her active-duty military
6 service between April 20, 2011 and April 18, 2012. Immediately after that period of military
7 service, Ms. Sweeney required time to convalesce from the injury before she could return to her
8 civilian employment with the City. On April 26, 2012, Ms. Sweeney informed her City supervisor
9 Ms. Beetham, including providing a doctor’s note, that both her military medical doctor and
10 civilian medical provider would like Ms. Sweeney to remain off work until at least her next
11 reevaluation on July 19, 2012 and that “the medical time off request is military related.”
12 Afterwards, Ms. Sweeney continued to submit updates by her doctors.

13 164. Beginning in or about May 2012, while she was awaiting issuance by the military
14 of official orders retaining her on active duty during her period of convalescence, Ms. Sweeney
15 submitted claims for incapacitation pay provided by the military (“INCAP”) to servicemembers
16 injured in the line of duty. As INCAP claims need to be verified by the servicemember’s civilian
17 employer for the amount of lost earnings that the servicemembers would have earned had they
18 been able to work, Ms. Sweeney periodically submitted her INCAP claims to City and DPH
19 personnel, including Regina Pera and David Palma, for such verification.

20 165. During Ms. Sweeney’s period of convalescence from her military service-related
21 injury, in or about April 2012, the City via DPH HR staff Ms. Pera and Ruth Barretto in the DPH
22 required Ms. Sweeney to use her paid sick leave. In or about May 2012, the City began issuing
23 sick leave payments from Ms. Sweeney’s paid sick leave accrual at the City. Despite Ms.
24 Sweeney’s multiple requests to stop such payments, the City continued to issue them. This not
25 only led to the eventual total payout of her paid sick leave accrual in contravention of her requests,
26 but also resulted in the military denying at least some of Ms. Sweeney’s INCAP claims for lost
27 earnings.

28 166. On June 5, 2012, Ms. Sansone of the COPC in the DPH notified Ms. Sweeney by

1 phone that she had been selected for the COPC Public Health Nurse position that she had
2 interviewed for on April 13, 2012. Ms. Sansone instructed Ms. Sweeney to communicate to her
3 then-supervisor Ms. Beetham regarding transfer to the COPC position. On June 15, 2012, after
4 being notified by Ms. Sweeney of the transfer by e-mail, Ms. Beetham responded, “Gee, thanks
5 for the notification. I will follow up with HR and get back to you.” On June 20, 2012, Ms.
6 Sansone rescinded her June 5, 2012 offer to Ms. Sweeney of the COPC position, provided no
7 explanation, and referred Ms. Sweeney to Ms. Pera.

8 167. In or about September 2012, while Ms. Sweeney was still convalescing from her
9 military service-related injury, the City required Ms. Sweeney to submit a Request for Leave form
10 requesting sick leave without pay for the period of July 18, 2012 through November 11, 2012. On
11 or about September 4, 2012, Ms. Sweeney submitted a Request for Leave form, on which she
12 informed the City that, under USERRA, for servicemembers convalescing from a service-related
13 injury, the time for them apply for reemployment are extended up to two years.

14 168. After receiving Ms. Sweeney’s Request for Leave form, by letter dated September
15 21, 2012, the City via Ms. Pera informed Ms. Sweeney that as a courtesy, the City agreed to
16 approve her request for sick leave from July 18, 2012 to November 11, 2012 (even though such
17 request was not required under USERRA) and that any further request must be denied. In the
18 September 21, 2012 letter, the City asked Ms. Sweeney to consider options such as the American
19 with Disabilities Act and disability retirement. The City further warned that Ms. Sweeney must
20 inform the City of her decision before October 26, 2012, return to work on November 13, 2012, or
21 resign from her Public Health Nurse position in order to avoid being marked AWOL.

22 169. Throughout 2012, Ms. Sweeney continued to submit her INCAP claims to the City
23 and the DPH for verification. As such, the City and the DPH had been put on notice continually
24 that she had incurred and was still recovering from a service-related injury under active-duty care,
25 even though the military had not issued an official order to cover her period of convalescence yet.

26 170. While Ms. Sweeney was still convalescing from her military-service-related injury,
27 by letter dated December 7, 2012, the City through Ms. Pera informed Ms. Sweeney that the DPH
28 would refer Ms. Sweeney to the Labor Relations Division of the DPH with a recommendation for

1 a medical separation.

2 171. After receiving the City's December 7, 2012 letter, Ms. Sweeney filed a complaint
3 with the DOL to request assistance in connection with her rights and benefits under USERRA. On
4 January 4, 2013, the DOL wrote to Ms. Pera of the DPH that, because Ms. Sweeney was
5 convalescing for injuries received while on her last period of active duty, she had up to two years
6 (instead of 90 days based on the duration of her service) to apply for reemployment and was not
7 required to request any leave of absence during that recovery period. The DOL further stated that,
8 upon her request for reemployment, she must be reemployed into a proper position and provided
9 with proper pension benefits for the periods of her prior military service, pursuant to USERRA.

10 172. On March 25, 2013, the DOL wrote to Michael Brown, then-DPH HR Manager
11 and current Executive Officer of the Civil Service Commission, stating that under USERRA, Ms.
12 Sweeney was not required to file the City's leave forms while she was convalescing from her
13 service-related injury, and that she retained her reemployment rights during her convalescence. In
14 or about March 2013, the City temporarily ceased its attempts to terminate Ms. Sweeney's
15 employment with the City.

16 173. On October 4, 2013, Mr. Brown of the DPH, e-mailed to Susan Gard, Chief of
17 Policy of the City's Human Resources Department regarding Ms. Sweeney's military leave. Mr.
18 Brown stated to Ms. Gard that the DOL had informed the City that USERRA does not allow the
19 City to require Ms. Sweeney to submit "City paperwork (such as leave forms)" and asked whether
20 Ms. Gard was the person who could provide "guidance on how to separate this employee without
21 getting in trouble with the US Department of Labor."

22 174. In March and April 2014 and by no later than April 16, 2014, Ms. Sweeney,
23 through her prior legal counsel, contacted the City, including the City Attorney of San Francisco,
24 Ms. Beetham, Ms. Pera, to request Ms. Sweeney's reemployment pursuant to USERRA, including
25 a determination of the "escalator position" in which Ms. Sweeney would have been employed if
26 her employment at the City had not been interrupted by her military service.

27 175. After Ms. Sweeney requested reemployment, the City through its ADA
28 Coordinator Martin Lum sent Ms. Sweeney letters dated April 22, 2014, May 23, 2014, June 12,

1 2014, and July 3, 2014 requesting that she engage in an interactive process with the City pursuant
2 to the Americans with Disabilities Act (“ADA”) and the FEHA. Enclosed with the letters were a
3 “Request for Reasonable Accommodation” form and a “Medical Authorization and Release” form,
4 which required Ms. Sweeney to authorize release of medical information to the City. In none of
5 these letters did the City specify a date for Ms. Sweeney’s reemployment, address her rights to
6 prompt reemployment under USERRA, or inform Ms. Sweeney of whether the City had made a
7 determination of her “escalator position” under USERRA and, if it did, what it was. Nor did the
8 City identify any specific position that Ms. Sweeney could return to at the City. Ms. Sweeney did
9 not submit the forms to the City to request accommodation or initiate an interactive process. As of
10 June 2014, the City still had not reemployed Ms. Sweeney.

11 176. When the City still had not reemployed her, on June 30, 2014, Ms. Sweeney was
12 issued an order by the United States Army ordering her to and retaining her on active duty from
13 July 7, 2014 to January 1, 2015 to complete medical care and treatment. The June 30, 2014
14 military order specifically provided that Ms. Sweeney was ordered to and retained on active duty
15 in support of the national emergency declared under Presidential Proclamation 7463, and that the
16 active-duty period was exempt from the 5-year cumulative service limit on reemployment rights
17 under USERRA § 4312(c)(4)(B). The order further provided that “[t]his is a consecutive ASG
18 with no break in service. Soldier retains entitlements from previous orders.” In other words, Ms.
19 Sweeney had been retained on active duty for her period of convalescence from April 19, 2012
20 through July 6, 2014.

21 177. On November 3, 2014, Ms. Sweeney’s period of active military duty was extended
22 to February 3, 2015. The November 3, 2014 military orders provided that “[t]his is a consecutive
23 ASG with no break in service. Soldier retains entitlements from previous orders.” On December 9,
24 2014, her period of active duty was extended to August 1, 2015.

25 178. On May 15, 2015, Ms. Sweeney was issued an order by the United States Army.
26 Pursuant to that order, she was released from active duty effective May 30, 2015.

27
28

1 e. **Ms. Sweeney’s Convalescence and May 2017 Reemployment**
2 **Application, the City’s Refusal to Reemploy Her, and Termination of**
3 **Her Employment Effective May 9, 2018**

4 179. Ms. Sweeney incurred an injury in the performance of her active-duty military
5 service between July 7, 2014 and May 30, 2015. Immediately after that period of military service,
6 Ms. Sweeney required time to convalesce from the injury before she could return to her civilian
7 employment at the City.

8 180. By letters dated May 20, 2017, Ms. Sweeney submitted to the City an application
9 for reemployment pursuant to USERRA. As she had not heard back from the City, she re-sent her
10 application on May 24, 2017.

11 181. USERRA § 4313(a) requires that a person entitled to reemployment under the
12 statute be promptly reemployed. Pursuant to the DOL regulations interpreting and implementing
13 USERRA, 20 C.F.R. § 1002.181, an employer must reemploy a person as soon as practicable,
14 which absent unusual circumstances means within two weeks of the employee’s application for
15 reemployment.

16 182. USERRA § 4313(a) also requires that a person entitled to reemployment under the
17 statute must be reemployed in accordance with a specified order of priority. In the case of a period
18 of military service of more than 90 days, the person is entitled to reemployment in the escalator
19 position, or the position in which the person would have been employed if his or her continuous
20 employment had not been interrupted due to uniformed service. Thus, pursuant to USERRA
21 § 4313(a) and 20 C.F.R. § 1002.192, the starting point for determining the proper reemployment
22 position is the escalator position.

23 183. The City did not respond to Ms. Sweeney’s May 20, 2017, reemployment
24 application until more than two weeks later. By letter dated June 6, 2017, the City, through
25 Kimberly Woo in the DPH, acknowledged receipt of Ms. Sweeney’s May 20, 2017 reemployment
26 application and requested that Ms. Sweeney submit her military orders, DD Form 214 (*i.e.*, the
27 Certificate of Release or Discharge from Active Duty), or other military documentation “necessary
28 under USERRA” to establish the length and character of Ms. Sweeney’s military service and the

1 date of separation. The letter informed Ms. Sweeney that her pre-service Field Public Health
2 Nurse position was ready to be activated and stated that Ms. Sweeney would first be scheduled for
3 “medical clearance” purportedly required by her pre-service position. The letter did not state
4 whether the City determined her pre-service position to be the escalator position under USERRA
5 in which Ms. Sweeney would have been employed if her employment at the City had not been
6 interrupted by her military service since April 20, 2011, or if the City had made such
7 determination, explain why her pre-service position was the escalator position or otherwise the
8 proper reemployment position to which she was entitled under USERRA. Nor did the letter
9 specify a reemployment date.

10 184. By letter dated June 13, 2017, Ms. Sweeney provided the City with a copy of her
11 DD 214 issued by the United States Army and a Report of Separation and Record of Service
12 issued by the Departments of the Army and the Air Force (“the NGB Form 22E”), which stated
13 that the character of her service was honorable. Ms. Sweeney’s June 13, 2017 letter also provided
14 the City with notice that, due to the injuries incurred in the performance of her military duties, she
15 would need accommodations if she were reinstated into her prior Public Health Nurse position.
16 Ms. Sweeney’s letter did not state that she did not intend to be reemployed promptly by the City
17 pursuant to USERRA or that her reemployment should be delayed until after an interactive
18 process for reasonable accommodation had been initiated or completed with the City.

19 185. By letter dated June 20, 2017, Ms. Woo informed Ms. Sweeney that she had been
20 scheduled for a medical clearance appointment for July 3, 2017, a date more than six weeks after
21 Ms. Sweeney submitted her May 20, 2017 reemployment application. The City enclosed with its
22 June 20, 2017 letter a “Medical History Form” that the City instructed Ms. Sweeney to fill out to
23 provide information about any health conditions, symptoms, or medications that could affect or
24 interfere with her ability to perform her job duties and bring the completed form with her to the
25 appointment. The letter also directed Ms. Sweeney to contact a Reasonable Accommodation
26 Coordinator. The letter did not specify a reemployment date. Nor did it state whether the City
27 determined Ms. Sweeney’s pre-service Public Health Nurse position to be the escalator position
28 under USERRA, or, if the City had made such determination, explain why her pre-service position

1 was the escalator position or otherwise the proper reemployment position to which she was
2 entitled under USERRA.

3 186. By letter dated July 3, 2017, Ms. Sweeney provided the City with a June 27, 2017
4 letter by her primary care physician, Dr. H. David Watts. Dr. Watts' letter stated that while Ms.
5 Sweeney had suffered from "service connected disabilities," she has the education, licenses,
6 training, and employment experience to fill positions in nursing in addition to the Field Public
7 Health Nurse position. Specifically, Dr. Watts informed the City that Ms. Sweeney is a current
8 Advanced Practice Registered Nurse ("APRN"), is licensed as a Clinical Nurse Specialist
9 ("CNS"), has current National Board Certifications as a Registered Nurse ("BC-RN") and Case
10 Manager ("BC-CM"), and has experience as a Nursing Supervisor and Nurse Manager.

11 187. Also enclosed with Sweeney's July 3, 2017 letter was a letter dated June 27, 2017
12 by her prior counsel. The letter informed the City that "[n]othing in USERRA authorizes [a]
13 service member's employer to require 'medical clearance' in order to return to work," and quoted
14 USERRA § 4302(b), which provides that USERRA "supersedes any . . . contract, agreement,
15 policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or
16 benefit . . . including the establishment of additional prerequisites to the exercise of any such right
17 or the receipt of such benefit." The June 27, 2017 letter further stated that the City's "apparent
18 requirement of medical clearance as a pre-condition of Ms. Sweeney's reemployment is a clear
19 violation" of USERRA § 4302(b), and that Ms. Sweeney would not appear for the scheduled
20 medical clearance appointment.

21 188. Notwithstanding the clear notice provided by the June 27, 2017 letter that
22 USERRA supersedes any additional prerequisites to the exercise of reemployment rights, by letter
23 dated July 10, 2017, the City through Ms. Woo insisted that Ms. Sweeney attend a to-be-scheduled
24 medical clearance appointment because such a requirement is "a standard and routine practice."
25 The letter did not specify a reemployment date. Nor did it state whether the City determined Ms.
26 Sweeney's pre-service Public Health Nurse position to be the escalator position under USERRA,
27 or if the City had made such determination, explain why her pre-service position was the escalator
28 position or otherwise the proper reemployment position to which she was entitled under

1 USERRA.

2 189. As of November 2017, the City still had not reemployed Ms. Sweeney. Instead, by
3 letter dated November 17, 2017, Ms. Woo on behalf of the City insisted that Ms. Sweeney engage
4 in “the Reasonable Accommodation process.” The letter did not specify a reemployment date. Nor
5 did it state whether the City determined Ms. Sweeney’s pre-service Public Health Nurse position
6 to be the escalator position under USERRA, or if the City had made such determination, explain
7 why her pre-service position was the escalator position or otherwise the proper reemployment
8 position to which she was entitled under USERRA.

9 190. As of the end of November 2017, more than six months after Ms. Sweeney’s May
10 20, 2017 reemployment application, the City still had not reemployed her. On December 11, 2017,
11 Ms. Sweeney wrote to the Office of the Mayor, the Department of Human Resources, and the
12 DPH stating that she had submitted her reemployment application back on May 20, 2017,
13 requesting the City to provide a date and place for her to report to work at the City, and quoting
14 USERRA § 4302(b).

15 191. By letter dated December 14, 2017, Ms. Woo on behalf of the City reiterated the
16 requirement for medical clearance, stating that “USERRA does not exempt employees seeking re-
17 employment from compliance with employment requirements, such as training and medical
18 evaluations, that are mandatory for similarly-situated employees.” The December 14, 2017, letter
19 informed Ms. Sweeney that she had been scheduled for a new medical clearance appointment for
20 January 17, 2018, and threatened to initiate termination of her City employment if she failed to
21 attend the appointment or request a rescheduled appointment for good cause. The City enclosed
22 with the December 14, 2017, letter a copy of the “Medical History Form.” The letter did not
23 specify a reemployment date. Nor did it state whether the City determined Ms. Sweeney’s pre-
24 service Public Health Nurse position to be the escalator position under USERRA, or if the City
25 had made such determination, explain why her pre-service position was the escalator position or
26 otherwise the proper reemployment position to which she was entitled under USERRA.

27 192. By another letter dated December 14, 2017, the City requested Ms. Sweeney to fill
28 out a “Request for Reasonable Accommodation” and a “Medical Authorization and Release,”

1 which required Ms. Sweeney to authorize release of medical information to the City. The letter did
2 not specify a reemployment date. Nor did it state whether the City determined Ms. Sweeney's pre-
3 service Public Health Nurse position to be the escalator position under USERRA, or if the City
4 had made such determination, explain why her pre-service position was the escalator position or
5 otherwise the proper reemployment position to which she was entitled under USERRA.

6 193. By letter dated January 12, 2018, Ms. Sweeney again requested to the City "prompt
7 reemployment to a position, pay, benefits, rights and seniority, that I would have had, had I never
8 left for military service," referenced USERRA § 4302(b) and USERRA's reemployment
9 provisions, and stated that USERRA requires prompt reemployment within 14 days and that the
10 City's failure to promptly reemploy her was willful.

11 194. In response, by letter dated February 13, 2018, Ms. Woo informed Ms. Sweeney
12 that the City had reviewed her DD 214 and contacted Employer Support of the Guard and Reserve
13 for assistance with confirming the length of her military service and related periods of
14 convalescence, and clarified that she was not required to provide further documentation regarding
15 the dates and characterization of her military service as a condition for reemployment at the City.
16 However, Ms. Woo stated that Ms. Sweeney had not cooperated with the City to "confirm your
17 qualifications or need for reasonable accommodation" in order to reinstate her in the Public Health
18 Nurse position and had not attended scheduled appointments for medical clearance. The City's
19 letter stated that the DPH would proceed with recommending Ms. Sweeney's medical separation.
20 The letter did not state whether the City determined Ms. Sweeney's pre-service Field Public
21 Health Nurse position to be the escalator position under USERRA, or if the City had made such
22 determination, explain why her pre-service position was the escalator position or otherwise the
23 proper reemployment position to which she was entitled under USERRA.

24 195. By letter dated March 26, 2018, DPH Labor Relations Manager Louise Brooks
25 Houston, on behalf of the City and the DPH, informed Ms. Sweeney that the DPH was
26 recommending that she be medically separated from her employment at the City and that the City
27 had scheduled a medical separation meeting for April 10, 2018, to discuss this recommendation
28 with Ms. Sweeney in person.

1 196. On or about March 29, 2018, the City researched and obtained from the California
2 Board of Registered Nursing information about any disciplinary action, administrative disciplinary
3 action, and court order against Ms. Sweeney. The research and information obtained showed to the
4 City that there was no record of any such action or court order.

5 197. On April 10, 2018, Ms. Sweeney, along with her husband John Sweeney and her
6 current counsel Vincent Cheng of Block & Leviton LLP, attended the medical separation meeting
7 held by Ms. Brooks and Ms. Woo on behalf of the City and DPH. At the meeting, Ms. Houston
8 stated that to be reemployed, Ms. Sweeney was required to obtain medical clearance and engage in
9 an interactive process under the ADA with the City.

10 198. In response, Ms. Sweeney's counsel informed Ms. Houston and Ms. Woo that
11 USERRA supersedes the employer's policies and requires prompt reemployment of a
12 servicemember entitled to reemployment under the statute. He quoted the DOL regulations, 20
13 C.F.R. § 1002.181, which state that "'prompt reemployment' means as soon as practicable under
14 the circumstances of each case. Absent unusual circumstances, reemployment must occur within
15 two weeks of the employee's application for reemployment." He also stated that the City had
16 failed to promptly reemploy Ms. Sweeney and had not reemployed her for 10 months.

17 199. Ms. Houston and Ms. Woo represented that medical clearance was a standard
18 procedure required for all employees in the DPH who have been on leave for more than six
19 months. Although Ms. Brooks represented that the procedure was not for ADA purposes, Ms.
20 Woo, who issued the City's June 6, 2017, letter in acknowledgement of Ms. Sweeney's May 20,
21 2017, reemployment application and informed Ms. Sweeney of the requirement for medical
22 clearance, asserted that it was part of the interactive process under the ADA. However, Ms.
23 Sweeney's counsel pointed out that Ms. Sweeney's May 20, 2017, reemployment application
24 made no reference to any request for accommodation, and asked Ms. Houston and Ms. Woo why,
25 after receipt of Ms. Sweeney's May 20, 2017, reemployment application, the City did not
26 promptly reemploy Ms. Sweeney within two weeks. Neither Ms. Houston and Ms. Woo provided
27 an answer. Instead, Ms. Woo stated that the July 3, 2017 medical clearance appointment scheduled
28 for Ms. Sweeney was the earliest available appointment.

1 200. At the April 10, 2018 medical separation meeting, Ms. Sweeney's counsel further
2 explained that under USERRA, Ms. Sweeney was entitled to reemployment in the escalator
3 position. Ms. Sweeney's counsel stated that the City must first make a determination about what
4 Ms. Sweeney's escalator position was, that engagement in the interactive process for ADA
5 purposes was premature, and that instead of delaying her reemployment for 10 months, the City
6 should have placed Ms. Sweeney in a temporary position, for which she might not need any
7 accommodation, while the City determined Ms. Sweeney's escalator position.

8 201. Throughout the meeting, Ms. Houston and Ms. Woo showed lack of familiarity
9 with USERRA and its requirements, including prompt reemployment and Ms. Sweeney's
10 entitlement to the escalator position. Both Ms. Houston and Ms. Woo stated at the April 10, 2018,
11 medical separation meeting that the City was not questioning Ms. Sweeney's qualifications for the
12 Public Health Nurse position. Ms. Houston stated that the City was following the direction of the
13 City Attorney's Office, including Rafal Ofierski, which had reviewed Ms. Sweeney's matter.

14 202. On March 23, 2018, Ms. Sweeney was issued an order by the United States Army
15 amending the order issued to Ms. Sweeney on May 15, 2015, and providing that the entire period
16 of her service with the Army was in support of the national emergency declared under Presidential
17 Proclamation 7463 and was exempt from the 5-year cumulative service limit on reemployment
18 rights under USERRA § 4312(c)(4)(B).

19 203. On May 9, 2018, the City issued to Ms. Sweeney a Notice of Non-Punitive Medical
20 Separation, informing her that her employment at the City and the DPH was terminated effective
21 May 9, 2018. The Notice referenced USERRA and the interactive process required under the ADA
22 and FEHA, but the Notice did not explain why the City did not promptly reemploy Ms. Sweeney
23 within two weeks of her May 20, 2017, reemployment application, whether the City had made a
24 determination of the escalator position for Ms. Sweeney under USERRA, or if the City had made
25 such determination, why her pre-service position was the escalator position or otherwise the
26 proper reemployment position to which she was entitled under USERRA. In none of the
27 communications by the City or the DPH to Ms. Sweeney between June 2017 and May 2018 did
28 the City or the DPH identify or mention any non-field Public Health Nurse position under the

1 City's job classification 2380 Public Health Nurse or any other position with the City in which
2 Ms. Sweeney could be reemployed at least temporarily.

3 204. On December 13, 2018, the United States Army issued to Ms. Sweeney official
4 orders providing that she was retained on active duty for the period from April 19, 2012 through
5 July 7, 2014 to complete medical care and treatment. Pursuant to these military orders as well as
6 the other military orders issued to Ms. Sweeney between March 3, 2011 and May 15, 2015, Ms.
7 Sweeney was on active duty with the Army during the entire period from April 20, 2011 to May
8 30, 2015.

9 **D. Defendants' Failure to Properly Credit Ms. Sweeney With Proper Years of Service**
10 **Credit Under the SFERS Pension Plan**

11 205. Pursuant to provisions of Memoranda of Understanding covering Ms. Sweeney's
12 position as a Public Health Nurse, the City is and has been required pay a portion or the full
13 amount of the mandatory employee contributions to the SFERS Pension Plan. These contributions
14 are considered contributions by the employees and are treated as if they are paid by them.

15 206. Before July 2012, pursuant to the Memoranda of Understanding Between Staff and
16 Per Diem Nurses, SEIU Local 1021 and City and County of San Francisco ("the MOUs") in effect
17 between July 2007 and June 2012, the City paid and was required to pay the full amount of the
18 mandatory employee contributions to the SFERS Pension Plan on behalf of the City employees
19 covered by the MOUs. Thus, employees covered by the MOUs were not required to make
20 employee contributions to receive full service credit under the terms of the SFERS Pension Plan.
21 Among the positions covered by the MOUs were various registered nurse positions, including the
22 Public Health Nurse position held by Ms. Sweeney.

23 207. Ms. Sweeney became a participant in the SFERS Pension Plan on April 23, 2007.

24 208. Ms. Sweeney worked for the City in active employment from November 6, 2006
25 through February 22, 2008. She was ordered to and served in active duty from February 25, 2008
26 through November 18, 2010. Ms. Sweeney was reemployed in and returned to her Public Health
27 Position at the City on December 13, 2010 until she was ordered to active duty military service
28 starting April 20, 2011.

1 209. According to the Annual Member Statement issued by the City to Ms. Sweeney for
2 the Plan Year July 1, 2013 through June 30, 2014, and information made available online by
3 SFERS to members of the SFERS Pension Plan, the City has credited Ms. Sweeney with only
4 3.518 years of credited years under the Plan. As Ms. Sweeney was not required to make employee
5 contributions before July 2012 to receive full service credit under the terms of the Plan, if the City
6 had properly included Ms. Sweeney's periods of military service between 2008 and 2010, she
7 would have been credited with at least 4 years of service credit.

8 210. On information and belief, the City has applied the same policy or practice of
9 failing to credit reemployed servicemembers with full years of service credit under the SFERS
10 Pension Plan for periods in which they are on military leave and are not required to make
11 employee contributions to the Plan pursuant to terms of Memoranda of Understanding that require
12 the City to pick up the full amount of such employee contributions.

13 **E. Defendants Fail to Provide Required Pay for the First 30 Days of Military Service**
14 **and Supplemental Pay Thereafter**

15 211. MVC §§ 395.01(a) and 395.02 require and have required the City to provide public
16 employees on military leave their salary for the first 30 calendar days of any such leave. The
17 Supplemental Pay Provision of the City's Annual Salary Ordinances effective 2004 and after
18 requires and has required the City to provide, after the first 30 days, Supplemental Pay to
19 employees who are members of the uniformed services and called to active duty in response to the
20 September 11, 2001 terrorist attacks for a period greater than 30 consecutive days.

21 212. For the periods from February 26, 2008 to November 19, 2010, from April 20,
22 2011 to April 18, 2012, and from July 7, 2014 to May 30, 2015 (each of which exceeded 30
23 consecutive days), Ms. Sweeney was called to active-duty military service pursuant to Presidential
24 Executive Order 13223 of September 14, 2001 and Presidential Proclamation 7463 in response to
25 the September 11, 2001 terrorist attacks. Thus, the City was required to provide Ms. Sweeney with
26 her salary for the first 30 calendar days of each of these periods and Supplemental Pay for the
27 remainder of each of these periods.

28 213. Before her active duty, on February 22, 2008, Ms. Sweeney signed an

1 “Acknowledgment” form provided by the City agreeing that she was responsible for repaying with
2 interest all Supplemental Pay received under the Supplemental Pay Provision during a period of
3 active duty if she did not return to City employment within 60 days of her release from active duty
4 or within 60 days of a determination that she was fit to return to City employment.

5 214. Throughout her periods of military leave between February 2008 and May 2015,
6 Ms. Sweeney provided the City and the DPH with documentation and information about her
7 military pay.

8 215. After Ms. Sweeney started serving her period of active duty beginning February 26,
9 2008, the City provided her with her salary for the first 15 days (not 30 as required by the MVC)
10 and began issuing Supplemental Pay afterwards. The Supplemental Pay Provision required the
11 City to determine the amount of Supplemental Pay on the basis of the City pay that the
12 servicemember would have received as a City employee had she worked her normal work
13 schedule. However, for the period of military service beginning February 26, 2008, the City used
14 an hourly base pay rate lower than the rate at which Ms. Sweeney should have been compensated
15 had she worked her normal schedule as a Public Health Nurse. This resulted in her receiving a
16 lower amount of Supplemental Pay than she was entitled to under the Supplemental Pay Provision.

17 216. In or about February 2009, while Ms. Sweeney was still on active duty, the City
18 abruptly ended her Supplemental Pay. When Ms. Sweeney inquired as to why her Supplemental
19 Pay was ended, Payroll Supervisor of the DPH David Palma responded on March 24, 2009 that
20 Supplemental Pay had been limited to one year by San Francisco voters’ approval since 2004.
21 However, the Supplemental Pay Provision that was adopted and incorporated into each of the
22 City’s Annual Salary Ordinances for at least 2004 and after imposed no such limitation. It was
23 only after Ms. Sweeney raised the issue to the City’s Department of Human Resources that the
24 City resumed Supplemental Pay for the remainder of Ms. Sweeney’s period of military service.

25 217. For Ms. Sweeney’s period of active-duty military service from April 20, 2011 to
26 April 18, 2012, the City did not provide her with her salary for the first 30 days as required by
27 MVC § 395.01(a) or § 395.02.

28 218. Pursuant to the Supplemental Pay Provision, the amount of Supplemental Pay is

1 calculated based on the difference between the servicemember's gross pay at the City and gross
2 military pay. For Ms. Sweeney's period of active-duty military service from April 20, 2011 to
3 April 18, 2012, the City began calculating Ms. Sweeney's Supplemental Pay by including in her
4 gross military pay non-taxable allowances excluded from her gross military income and provided
5 by the military, such as Basic Allowance for Housing ("BAH"), but without also including
6 benefits or allowances provided by the City in her gross City pay. As a result of this practice, for
7 that period of military service, Ms. Sweeney received from the City Supplemental Pay in a
8 significantly reduced amount.

9 219. After she filed a complaint with the DOL in December 2012, in or about March
10 2013, Ms. Sweeney inquired to the DPH's Payroll Manager David Palma about her rights and
11 benefits under USERRA in connection with the correct years of service credit, accrued leave, and
12 Supplemental Pay that she should have received while on military leave. On March 21, 2013, Mr.
13 Palma reminded Ms. Sweeney in writing that she had signed the "Acknowledgment" form, thus
14 suggesting that she was not entitled to any outstanding Supplemental Pay until she returned to City
15 service after she completed her military service.

16 220. For Ms. Sweeney's periods of active-duty military service from April 19, 2012
17 through July 7, 2014 and from July 7, 2014 to May 30, 2015, the City did not provide her with any
18 salary for the first 30 days or any Supplemental Pay thereafter. The City also did not provide her
19 with any salary for her active-duty military service from January 15, 2008 through January 20,
20 2008.

21 **F. Defendants' Violations Were Willful**

22 221. As described above, both Mr. Anderson and Ms. Sweeney brought the City's
23 numerous USERRA violations to the attention of various managers employed by the City and
24 their respective departments, including by filing complaints with both City EEO officers and DOL
25 representatives.

26 222. Accordingly, the City was on notice of these violations.

27 223. Despite Plaintiffs' repeated and sustained efforts to alert the City to its violations of
28 USERRA and to seek redress for themselves and the fellow servicemembers who work for the

1 City, the City has continued its systemic violations and has failed to bring its policies into
2 compliance with USERRA.

3 **COUNT I**

4 **Claim for Unlawful Notice Requirement**

5 **By Plaintiffs Anderson and Sweeney on Behalf of the Class Against the City**
6 **(38 U.S.C. § 4312; 20 C.F.R. §§ 1002.85, 1002.87)**

7 224. Plaintiffs incorporate the allegations contained in the foregoing paragraphs as if
8 fully set forth herein.

9 225. USERRA, 38 U.S.C. § 4312(a), provides that servicemembers who take leave to
10 perform military service are entitled to USERRA's reemployment rights and benefits if, among
11 other requirements, they provide advance written or verbal notice of their service to their
12 employers.

13 226. Under 20 C.F.R. § 1002.85(c), such notice may be either written or verbal, and
14 does not need to follow any particular format.

15 227. In addition, 20 C.F.R. § 1002.87 provides that employees are not required to ask for
16 or receive an employer's permission to perform military service. Mere notice is sufficient.

17 228. The City maintains a written policy, as set forth in the Civil Service Commission
18 Rules, that employees must submit written notice of requests for military leave of greater than five
19 days to the City for approval, and that they may be terminated for non-compliance with this
20 requirement.

21 229. The City's written policy violates USERRA § 4312 and the DOL regulations
22 implementing USERRA, 20 C.F.R. §§ 1002.85 and 1002.87.

23 230. Due to the City's failure to comply with USERRA § 4312 and its implementing
24 regulations, Plaintiffs and other members of the Class faced unlawful discrimination in their
25 attempts to exercise their rights.

26 231. Upon information and belief, the above violations of USERRA § 4312 and its
27 implementing regulations were willful. Accordingly, the City should be required to pay liquidated
28 damages pursuant to 38 U.S.C. § 4323(d)(1)(C).

COUNT II

**Claim for Failure to Provide Accrued Sick Leave and Paid Time Off
By Plaintiff Sweeney on Behalf of the Class Against the City
(38 U.S.C. § 4316)**

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4 232. Plaintiff Sweeney incorporates the allegations contained in the foregoing
5 paragraphs as if fully set forth herein.

6 233. USERRA § 4316(b) provides in relevant part that a person who is absent from a
7 position of employment by reason of service in the uniformed services shall be:

8 (A) deemed to be on furlough or leave of absence while performing
9 such service; and

10 (B) entitled to such other rights and benefits not determined by
11 seniority as are generally provided by the employer of the person to
12 employees having similar seniority, status, and pay who are on furlough or
13 leave of absence under a contract, agreement, policy, practice, or plan in
effect at the commencement of such service or established while such
person performs such service

14 234. Accordingly, if an employer provides non-seniority rights and benefits to similarly
15 situated employees when they take comparable types of leave, USERRA § 4316 requires the
16 employer to provide the same rights and benefits to employees when they take military leave. *Id.*;
17 20 C.F.R. § 1002.150(a). As the USERRA regulations state, the “most significant factor to
18 compare” two types of leave to determine if they are a “comparable form of leave” is “the duration
19 of the leave.” 20 C.F.R. § 1002.150(a). In addition, “other factors such as the purpose of the leave
20 and the ability of the employee to choose when to take the leave should also be considered.” *Id.*

21 235. The City maintains a written policy, as set forth in the Civil Service Commission
22 Rules, that employees who are on furlough shall continue to accrue vacation and sick leave with
23 pay credits at the normal rate, for a maximum of up to ten days per fiscal year.

24 236. The City maintains a policy or practice of providing employees who are on jury
25 duty or union leave with the continued accrual of vacation and sick leave with pay credits at the
26 normal rate.

27 237. The City maintains a policy or practice of denying employees on unpaid military
28 leave with the continued accrual of vacation and sick leave with pay credits at the normal rate,

1 even though such vacation and sick leave is provided to employees who are on comparable forms
2 of leave, including furlough, jury duty, or union leave.

3 238. For employees of the City, jury duty, union duty, furlough, and military leave are
4 comparable in terms of the duration, purpose, and the ability of the employee to determine
5 whether to take the leave.

6 239. The City's policy of refusing to provide for accrual of vacation and paid sick leave
7 to employees who engage in unpaid military leave violates USERRA § 4316(b), because the City
8 denies employees rights and benefits that the City provides to similarly situated employees who
9 are on similar types of leave. Vacation and paid sick leave are "rights and benefits" under
10 USERRA § 4303(2).

11 240. Due to the City's failure to comply with USERRA § 4316(b), Plaintiff Sweeney
12 and other members of the Class received lower wages, salaries, and compensation than they would
13 have received had the City complied with USERRA.

14 241. Upon information and belief, the above violations of USERRA § 4316(b) and its
15 implementing regulations were willful. Accordingly, the City should be required to pay liquidated
16 damages pursuant to 38 U.S.C. § 4323(d)(1)(C).

17 **COUNT III**

18 **Claim for Failure to Provide Compensation for Travel Time To and From Military Leave**
19 **By Plaintiffs Anderson and Sweeney on Behalf of the Class Against the City**
20 **(Cal. Mil. & Vet. Code §§ 395(a) & 395.01(a))**

21 242. Plaintiffs incorporate the allegations contained in the foregoing paragraphs as if
22 fully set forth herein.

23 243. Under Cal. Mil. & Vet. Code § 395.01(a):

24 Any public employee who is on temporary military leave of absence for military
25 duty ordered for purposes of active military training, inactive duty training,
26 encampment, naval cruises, special exercises, or like activity as such member,
27 provided that the period of ordered duty does not exceed 180 calendar days
28 including time involved in going to and returning from the duty, and who has
been in the service of the public agency from which the leave is taken for a period
of not less than one year immediately prior to the day on which the absence
begins, is entitled to receive his or her salary or compensation as a public
employee for the first 30 calendar days of any such absence.

1 pension benefit plans covered by USERRA § 4318 include those sponsored by a State or
2 government entity for governmental employees.

3 252. Pursuant to a written policy, the City requires employees who seek to buy back
4 pension credit for time spent on military leave to submit: (1) induction papers, (2) discharge
5 papers, (3) civil service certification of military leave, (4) Application for Purchase of Military
6 Service (which must be notarized if not completed in the SFERS office), and (5) a record of pay
7 made during military service. As described above, these procedures prescribe a different manner
8 of receiving employer contributions to returning servicemembers than to other employees who
9 seek to make employee contributions to receive pension credit (either during work periods or non-
10 military leave periods). In addition, some of these requirements—such as providing a record of
11 military pay during the leave—are not necessary for the City to determine what the employee and
12 employer should contribute for the employee to receive pension credit for the period of military
13 leave.

14 253. By imposing these procedures on employees who take military leave but not on
15 employees who routinely make employee contributions for pension credit when they are working,
16 the City has not “allocate[d] the amount of the employer contribution for the person in the same
17 manner and to the same extent the allocation occurs for other employees during the period of
18 service.” 38 U.S.C. § 4318(b).

19 254. These unique and unnecessary procedures imposed on employees who take military
20 leave, which are not required of other City employees making pension buybacks, are additional
21 prerequisites to the exercise of rights or benefits that employees have under USERRA § 4318, in
22 violation of USERRA § 4302(b).

23 255. Upon information and belief, the above violations of USERRA §§ 4302 and 4318
24 and their implementing regulations were willful. Accordingly, the City should be required to pay
25 liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(C).

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COUNT V

**Claim for Unlawful Interest on Pension Buybacks
By Plaintiffs Anderson and Sweeney on Behalf of the Class Against the City
(38 U.S.C. § 4318(b)(2), 20 C.F.R. § 1002.263)**

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4 256. Plaintiffs incorporate the allegations contained in the foregoing paragraphs as if
5 fully set forth herein.

6 257. As set forth in 38 U.S.C. § 4318 and its implementing regulations, including 20
7 C.F.R. § 1002.263, it is unlawful to require or permit an employee returning from military leave to
8 make up a missed retirement contribution in an amount that exceeds the amount he or she would
9 have been permitted or required to contribute if he or she had not taken military leave.

10 258. Pursuant to a written policy, the City requires all employees, including employees
11 returning from military leave, to pay interest on any pension buybacks they make in order to
12 receive pension credit for a period of military leave.

13 259. This policy violates USERRA § 4318 and its implementing regulations.

14 260. Due to the City's failure to comply with USERRA and its implementing
15 regulations, Plaintiffs and other members of the Class received lower wages, salaries, and
16 compensation than they would have received had the City complied with USERRA.

17 261. Upon information and belief, the above violations of USERRA § 4318 and its
18 implementing violations were willful. Accordingly, the City should be required to pay liquidated
19 damages pursuant to 38 U.S.C. § 4323(d)(1)(C).

20 **COUNT VI**

**Claim for Unlawful Reemployment Procedure
By Plaintiffs Anderson and Sweeney on Behalf of the Class Against the City
(38 U.S.C. §§ 4312, 4313; 20 C.F.R. § 1002.181)**

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23 262. Plaintiffs Anderson and Sweeney incorporate the allegations contained in the
24 foregoing paragraphs as if fully set forth herein.

25 263. USERRA guarantees "prompt" reemployment for servicemembers returning to
26 their civilian jobs. 38 U.S.C. § 4313(a); 20 C.F.R. § 1002.181; *see also* 38 U.S.C. § 4312(a)
27 (guaranteeing reemployment for employees who meet certain requirements); *id.* § 4301(a)(2)
28 (stating that the purpose of USERRA is "providing for the prompt reemployment of" employees

1 who perform military service).

2 264. USERRA’s implementing regulations define “prompt reemployment” as
3 reemployment as soon as practicable under the circumstances of each case. 20 C.F.R. § 1002.181.

4 265. Because all City employees on military leave for more than five days must
5 complete a Request for Leave and Leave Protections form or risk termination, the City ordinarily
6 is on notice of the date that employees intend to return to work following any military leave of
7 more than five days from the very beginning of their military service.

8 266. The City provides notice to employees that they must begin the return-to-work
9 process at least five days prior to their intended return to work. This procedure requires employees
10 to report to the applicable human resources return to work unit in person.

11 267. Employees returning from military leave of more than five days are required to
12 comply with these procedures.

13 268. Compliance with the City’s return-to-work procedures routinely requires
14 employees who are returning from military leave of more than five days to take an additional day
15 off from work and to use some other type of leave, such as vacation, to receive pay for that
16 additional day. This is because employees must appear in person at the relevant human resources
17 department to fill out paperwork prior to being reemployed. Completing the necessary paperwork
18 may also require employees to get several additional signatures, all of which involve in-person
19 trips to the locations where the relevant signatories work.

20 269. Compliance with these return-to-work procedures frequently requires employees to
21 submit to medical examinations or other testing. Employees returning from military leave are not
22 permitted to start work until such testing has been completed, even to perform clerical work.

23 270. These policies violate USERRA §§ 4312 and 4313, because they routinely deny
24 employees prompt reemployment by delaying the reemployment of employees who are willing,
25 able, and qualified to work.

26 271. Due to the City’s failure to comply with USERRA and its implementing
27 regulations, Plaintiffs and other members of the Class received lower wages, salaries, and
28 compensation than they would have received had the City complied with USERRA.

1 272. Upon information and belief, the above violations of USERRA § 4312 and its
2 implementing violations were willful. Accordingly, the City and MTA should be required to pay
3 liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(C).

4 **COUNT VII**

5 **Claim for Denial of a Proper Reemployment Position**
6 **By Plaintiff Sweeney on Behalf of the Class Against the City**
7 **(38 U.S.C. §§ 4312, 4313; 20 C.F.R. §§ 1002.191-192)**

8 273. Plaintiff Sweeney incorporates the allegations contained in the foregoing
9 paragraphs as if fully set forth herein.

10 274. USERRA § 4313(a) requires that a person entitled to reemployment under
11 USERRA § 4312 must be promptly reemployed in “the position of employment in which the
12 person would have been employed if the continuous employment of such person with the
13 employer had not been interrupted by such service,” or, in cases of leave that lasts more than 90
14 days, “a position of like seniority, status and pay, the duties of which the person is qualified to
15 perform.” This is known as the “escalator position.” 20 C.F.R. § 1002.191. An employee may be
16 reemployed at the position he or she was employed in on the date of the commencement of
17 military service only if the employee is not qualified for the escalator position after reasonable
18 efforts by the employer to qualify the employee. 38 U.S.C. § 4313(a)(1)-(2).

19 275. Upon information and belief, the City has a policy or practice of reemploying
20 returning servicemembers at the position of employment they held on the date of the
21 commencement of military service, without considering whether they are eligible and qualified for
22 their escalator positions and without taking any reasonable efforts to qualify them for their
23 escalator position.

24 276. This policy or practice violates USERRA §§ 4312 and 4313, because it fails to
25 consider whether employees can be reemployed in escalator positions and/or fails to reemploy
26 employees in their escalator positions, including when employees would be qualified to perform
27 an escalator position with or without reasonable efforts made by the City to qualify such
28 employees.

29 277. Due to the City’s failure to comply with USERRA and its implementing

1 regulations, Plaintiff Sweeney and other members of the Class received lower wages, salaries, and
2 compensation than they would have received had the City complied with USERRA.

3 278. Upon information and belief, the above violations of USERRA §§ 4312 and 4313
4 and their implementing violations were willful. Accordingly, the City and MTA should be
5 required to pay liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(C).

6 **COUNT VIII**
7 **Claim for Discrimination, Retaliation, and Hostile Work Environment**
8 **By Plaintiff Anderson Individually Against the City and the MTA**
9 **(38 U.S.C. § 4311)**

10 279. Plaintiff Anderson incorporates the allegations contained in the foregoing
11 paragraphs as if fully set forth herein.

12 280. USERRA § 4311(a) prohibits an employer from discriminating against any person
13 who is a member of, applies to be a member of, performs, has performed, applies to perform, or
14 has an obligation to perform uniformed service with respect to, among other things, employment,
15 reemployment, retention in employment, promotion, or any benefit of employment by an
16 employer on the basis of that membership, application for membership, performance of service,
17 application for service, or obligation.

18 281. USERRA § 4311(b) prohibits an employer from discriminating in employment
19 against or taking any adverse employment action against any person because such person has
20 taken an action to exercise a right provided by USERRA or enforce a protection afforded any
21 person under USERRA.

22 282. The City and the MTA discriminated against Mr. Anderson on the basis of his
23 military service by, *inter alia*, maintaining policies and practices that deprived him of his rights
24 under USERRA; forcing him to delay his start date with the City and lose seniority as a result of
25 his military service; requiring him to miss or delay military service to avoid termination;
26 subjecting him to a hostile work environment where his commitment and performance to the City
27 were questioned due to his military obligations and service; classifying him as AWOL while he
28 was on protected military leave; and denying him the rights and privileges of employment
afforded to his civilian colleagues, including rights related to his seniority and the ability to take

1 vacation when he wanted. Mr. Anderson's military service and obligations were a motivating
2 factor behind the City's decisions to take these adverse actions against Mr. Anderson.

3 283. The City and the MTA retaliated against Mr. Anderson for exercising and
4 attempting to enforce his rights under USERRA by, *inter alia*, maintaining policies and practices
5 that deprived him of his rights under USERRA; forcing him to delay his start date and lose
6 seniority as a result of his military service; requiring him to miss or delay military service to avoid
7 termination; subjecting him to a hostile work environment where his commitment and
8 performance to the City were questioned due to his military obligations and service; classifying
9 him as AWOL while he was on protected military leave; and denying Mr. Anderson the rights and
10 privileges of employment afforded to his civilian colleagues, including rights related to his
11 seniority. Mr. Anderson's exercising and attempting to enforce his rights under USERRA were a
12 motivating factor behind the City's decisions to take these adverse actions against Mr. Anderson.

13 284. Due to the City and the MTA's failure to comply with USERRA, Mr. Anderson
14 received lower wages, salary, and compensation than he would have received had the City
15 complied with USERRA, and was terminated from his position in the Reserves and forced to
16 transfer to a new unit.

17 285. Due to the City and the MTA's failure to comply with USERRA, Mr. Anderson
18 suffered from emotional distress.

19 286. Upon information and belief, the above violations of USERRA § 4311 and its
20 implementing regulations were willful. Accordingly, the City and MTA should be required to pay
21 liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(C).

22 **COUNT IX**
23 **Claim for Discrimination and Hostile Work Environment**
24 **By Plaintiff Anderson Individually Against the City and the MTA**
25 **(California Military and Veterans Code § 394)**

26 287. Plaintiff Anderson incorporates the allegations contained in the foregoing
27 paragraphs as if fully set forth herein.

28 288. Section 394 of the MVC proscribes discrimination against members of the military
or Navy forces of the state or of the United States because of that membership or military service.

1 MVC § 394(b).

2 289. The City and the MTA discriminated against Mr. Anderson on the basis of his
3 military service by, *inter alia*: forcing him to delay his start date with the City and lose seniority as
4 a result of his military service; requiring him to miss or delay military service to avoid
5 termination; subjecting him to a hostile work environment where his commitment and
6 performance to the City were questioned due to his military obligations and service; classifying
7 him as AWOL while he was on protected military leave; and denying him the rights and privileges
8 of employment afforded to his civilian colleagues, including rights related to his seniority and the
9 ability to take vacation when he wanted. Mr. Anderson’s military service and obligations were a
10 motivating factor behind the City’s decisions to take these adverse actions against Mr. Anderson.

11 290. By discriminating against Plaintiff Anderson because of his membership and
12 service in the military, the City and the MTA violated the California Military and Veterans Code
13 § 394.

14 **COUNT X**

15 **Claim for Discrimination and Hostile Work Environment**
16 **By Plaintiff Anderson Individually Against the City and the MTA**
(Cal. Gov’t Code § 12940(a))

17 291. Plaintiff Anderson incorporates the allegations contained in the foregoing
18 paragraphs as if fully set forth herein.

19 292. Section 12940 of the California Government Code makes it unlawful for any
20 employer “to discriminate against the person in compensation or in terms, conditions, or privileges
21 of employment” as a result of, among other characteristics, military and veteran status.

22 293. The City and the MTA discriminated against Mr. Anderson on the basis of his
23 military service by, *inter alia*: forcing him to delay his start date with the City and lose seniority as
24 a result of his military service; requiring him to miss or delay military service to avoid
25 termination; subjecting him to a hostile work environment where his commitment and
26 performance to the City were questioned due to his military obligations and service; classifying
27 him as AWOL while he was on protected military leave; and denying him the rights and privileges
28 of employment afforded to his civilian colleagues, including rights related to his seniority and the

1 ability to take vacation when he wanted. Mr. Anderson's military service and obligations were a
2 motivating factor behind the City's decisions to take these adverse actions against Mr. Anderson.

3 294. Plaintiff Anderson received a Right to Sue notice from the California Department
4 of Fair Employment and Housing on November 26, 2019.

5 295. By discriminating against Plaintiff Anderson because of his membership and
6 service in the military, the City and the MTA violated the California Government Code
7 § 12940(a).

8 **COUNT XI**

9 **Claim for Unlawful Reemployment Procedure and Failure to Reemploy**
10 **By Plaintiff Sweeney Individually Against the City and the DPH**
11 **(38 U.S.C. §§ 4302(b), 4312; 20 C.F.R. §§ 1002.180 & 1002.181)**

12 296. Plaintiff Sweeney incorporates the allegations contained in the foregoing
13 paragraphs as if fully set forth herein.

14 297. USERRA § 4302(b) provides that USERRA supersedes any state law (including
15 any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that
16 reduces, limits, or eliminates in any manner any right or benefit provided by USERRA, including
17 the establishment of additional prerequisites to the exercise of any such right or the receipt of any
18 such benefit.

19 298. Pursuant to USERRA § 4312(a), any person whose absence from a position of
20 employment is necessitated by reason of service in the uniformed services shall be entitled to
21 reemployment rights and benefits and other employment benefits under USERRA so long as: (1)
22 the person (or an appropriate officer of the uniformed service in which such service is performed)
23 has given advance written or verbal notice of such service to such person's employer; (2) the
24 cumulative length of the absence and of all previous absences from a position of employment with
25 that employer by reason of service in the uniformed services does not exceed five years; (3) the
26 person serves honorably; and (4) the person reports to, or submits an application for reemployment
27 to, such employer in accordance with the provisions of USERRA § 4312(e).

28 299. Pursuant to USERRA § 4312(e)(2)(A) and (f)(1) and 20 C.F.R. § 1002.123, a
servicemember who is hospitalized for or convalescing from an illness or injury incurred in or

1 aggravated during the performance of service in uniformed services must request reemployment
2 within a period of up to two years and provide documentation, such as a DD 214 Certificate of
3 Release or Discharge from Active Duty.

4 300. Pursuant to the DOL regulations, 20 C.F.R. §§ 1002.180 and 1002.181, the
5 employer must promptly reemploy the employee when he or she returns from a period of service,
6 where “prompt reemployment” means as soon as practicable under the circumstances of each case.
7 Absent unusual circumstances, reemployment must occur within two weeks of the employee’s
8 application for reemployment.

9 301. Ms. Sweeney met all the applicable preconditions for reemployment rights and
10 benefits and other employment benefits provided by USERRA, because (1) Ms. Sweeney
11 provided advance notice of her military service beginning July 7, 2014; (2) the cumulative length
12 of her military leave with the City is less than five years, as her periods of military service from
13 February 26, 2008 to November 19, 2010, from April 20, 2011 to April 18, 2012, and from July 7,
14 2014 to May 30, 2015 were exempt from the 5-year cumulative service limit on reemployment
15 rights under USERRA; (3) Ms. Sweeney performed her military service honorably; (4) as she was
16 convalescing for a service-connected injury after her release from active duty on May 30, 2015,
17 she submitted her timely May 20, 2017 reemployment application within two years; and (5) she
18 provided the City and DPH with documentation including her DD 214.

19 302. Although Ms. Sweeney met all the applicable preconditions for reemployment
20 rights and benefits and other employment benefits provided by USERRA, the City and the DPH
21 established and imposed on Ms. Sweeney the additional prerequisites of completing medical
22 clearance and engaging in an interactive process with the City and the DPH for a reasonable
23 accommodation, even though Ms. Sweeney was qualified to perform one or more positions
24 (including non-field Public Health Nurse positions) without a reasonable accommodation. Ms.
25 Sweeney declined to agree to comply with such additional prerequisites prohibited by USERRA
26 before her reemployment.

27 303. The City and the DPH did not reemploy Ms. Sweeney within two weeks of her
28 reemployment application. Instead of promptly reemploying her, the City and the DPH terminated

1 Ms. Sweeney's employment and denied her reemployment.

2 304. By establishing additional prerequisites to the exercise of Ms. Sweeney's USERRA
3 rights, denying her reemployment, and/or terminating her, the City and the DPH violated
4 USERRA §§ 4302(b) and 4312 and 20 C.F.R. §§ 1002.180 and 1002.181.

5 305. Upon information and belief, the above violations of USERRA §§ 4302(b) and
6 4312 and their implementing regulations were willful. Accordingly, the City and DPH should be
7 required to pay liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(C).

8 **COUNT XII**

9 **Claim for Failure to Provide Proper Pension Credits**
10 **By Plaintiff Sweeney on Behalf of Subclass I Against the City**
11 **(38 U.S.C. §§ 4318(a) & (b))**

12 306. Plaintiffs incorporate the allegations contained in the foregoing paragraphs as if
13 fully set forth herein.

14 307. USERRA § 4318(a)(2)(B) provides that each period served by a person in the
15 uniformed services must, upon reemployment, be deemed to constitute service with the employer
16 or employers maintaining an employee pension benefit plan for the purposes of determining the
17 nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of
18 benefits under the plan.

19 308. USERRA § 4318(b)(1) provides that an employer reemploying a person is, with
20 respect to a period of service described in USERRA § 4318(a)(2)(B), liable to an employee
21 pension benefit plan for funding any obligation of the plan to provide the benefits described in
22 § 4318(a)(2), and must allocate the amount of any employer contribution for the person in the
23 same manner and to the same extent the allocation occurs for other employees during the period of
24 service.

25 309. 20 C.F.R. § 1002.260 provides that the employee pension benefit plans covered by
26 USERRA include those sponsored by a State or government entity for governmental employees.

27 310. Pursuant to provisions of the Memoranda of Understanding that covered positions
28 held by the Subclass and were in effect during their periods of qualified military service, the City
was required to pick up and pay the full amount of mandatory employee contributions to the

1 SFERS Pension Plan.

2 311. On information and belief, the City has applied a policy or practice of failing to pay
3 and allocate to the SFERS Pension Plan the full amount of mandatory employee contributions on
4 behalf of the Subclass for periods of qualified military leave and thus failing to credit them with
5 proper years of service credit under the SFERS Pension Plan.

6 312. By failing to make full required pension allocations on behalf of the Subclass for
7 periods of military service in the same manner and to the same extent that the same allocations
8 were required for other employees, and failing to provide the Subclass with proper years of service
9 credit for the purpose of determining their benefit accruals under the Plan, the City violated and
10 continues to violate USERRA §§ 4318(a) and (b).

11 313. Upon information and belief, the above violations of USERRA § 4313(a) and its
12 implementing regulations were willful. Accordingly, the City and DPH should be required to pay
13 liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(C).

14 **COUNT XIII**

15 **Claim for Discrimination in Denial of Benefits of Employment**
16 **By Plaintiffs Anderson and Sweeney on Behalf of Subclass II Against the City**
17 **(38 U.S.C. § 4311)**

18 314. Plaintiffs incorporate the allegations contained in the foregoing paragraphs as if
19 fully set forth herein.

20 315. USERRA § 4311(a) prohibits an employer from discriminating against any person
21 who is a member of, applies to be a member of, performs, has performed, applies to perform, or
22 has an obligation to perform uniformed service with respect to, among other things, employment,
23 reemployment, retention in employment, promotion, or any benefit of employment by an
24 employer on the basis of that membership, application for membership, performance of service,
25 application for service, or obligation.

26 316. Pursuant to MVC § 395.01(a), the City is required to pay City employees who are
27 on military leave other than temporary military leave his or her salary or compensation as a City
28 employee for the first 30 calendar days of any such leave.

317. Pursuant to MVC § 395.02, the City is required to pay City employees who are on

1 military leave other than temporary military leave his or her salary or compensation as a City
2 employee for the first 30 calendar days of any such leave.

3 318. Pursuant to the Supplemental Pay Provision of the City's Annual Salary Ordinance,
4 the City must provide Supplemental Pay to a City employee who (i) is a member of the reserve
5 corps of the United States Armed Forces, National Guard or other uniformed service organization
6 of the United States and (ii) is called to active military duty (iii) on or after September 11, 2001
7 (iv) in response to the September 11, 2001 terrorist attacks, international terrorism, conflict in Iraq
8 or related extraordinary circumstances (v) for a period greater than 30 consecutive days.

9 319. Pursuant to the Supplemental Pay Provision, the City must provide employees on
10 qualified military leave Supplemental Pay in the amount of the difference between the amount of
11 the individual's gross military pay and the amount of gross pay the individual would have received
12 as a City employee, had the officer or employee worked his or her normal work schedule.

13 320. On information and belief, the City has engaged in a policy or practice of failing to
14 provide members of Subclass II: (a) their full City salary or compensation for the first 30 days of
15 their periods of qualified military leave; (b) Supplemental Pay after those 30 days; (c)
16 Supplemental Pay calculated at the correct hourly rate that members of the Subclass would have
17 received had they worked their normal work schedule at the City; and/or (d) Supplemental Pay
18 calculated without including non-taxable allowances provided by the military or, to the extent that
19 such allowances are included, by also including benefits or allowances provided by the City.

20 321. On information and belief, as a result of the City's refusal to adequately provide all
21 benefits mandated by California Military and Veterans Code §§ 395.01(a) and 395.02 and the
22 Supplemental Pay Provision, members of Subclass II were also denied these and other benefits of
23 employment, including adequate accrual of vacation and sick leave, which they would have been
24 entitled to if they had not been called to active duty.

25 322. Based on the legislative and City mandates to provide the benefits at issue and the
26 City and the DPH's obligations, statements, and actions, the military status and service and
27 obligation to perform such service of Subclass II, including the extended length of their leaves,
28 which were non-temporary and often exceeded 30 days, was a motivating factor in the City's

1 actions.

2 323. By denying Subclass II benefits of employment because of their military status or
3 service, the City violated USERRA, 38 U.S.C. § 4311.

4 324. Upon information and belief, the above violations of USERRA § 4311 and its
5 implementing regulations were willful. Accordingly, the City should be required to pay liquidated
6 damages pursuant to 38 U.S.C. § 4323(d)(1)(C).

7 **COUNT XIV**

8 **Claim for Violation of the Supplementation of Military Pay Provision**
9 **By Plaintiffs Anderson and Sweeney on Behalf of Subclass II Against the City**
10 **(City and County of San Francisco Annual Salary Ordinances)**

11 325. Plaintiffs incorporate the allegations contained in the foregoing paragraphs as if
12 fully set forth herein.

13 326. Pursuant to the Supplemental Pay Provision, the City must provide employees on
14 qualified military leave Supplemental Pay in the amount of the difference between the amount of
15 the individual's gross military pay and the amount of gross pay the individual would have received
16 as a City employee, had the officer or employee worked his or her normal work schedule.

17 327. On information and belief, the City has engaged in a policy or practice of failing to
18 provide members of Subclass II (a) Supplemental Pay; (b) Supplemental Pay calculated at the
19 correct hourly rate that members of the Subclass would have received had they worked their
20 normal work schedule at the City; and/or (c) Supplemental Pay calculated without including non-
21 taxable allowances provided by the military or, to the extent that such allowances are included, by
22 also including benefits or allowances provided by the City.

23 328. On information and belief, as a result of Defendants' refusal to adequately provide
24 all benefits mandated by the Supplemental Pay Provision, members of Subclass II were also
25 denied other benefits of employment, including adequate accrual of vacation and sick leave, which
26 they would have been entitled to if they had not been called to active duty.

27 329. This policy or practice violates the Supplemental Pay Provision of the City's
28 Annual Salary Ordinances.

300. Due to the City's failure to comply with the Supplemental Pay Provision, Plaintiffs

1 and other members of Subclass II received lower wages, salaries, and compensation than they
2 would have received had the City complied with the Supplemental Pay Provision.

3 **COUNT XV**
4 **Claim for Failure to Pay Wages When Due**
5 **By Plaintiff Sweeney Individually Against the City**
6 **(Cal. Labor Code §§ 201(a) & 203(a))**

7 331. Plaintiff incorporates the allegations contained in the foregoing paragraphs as if
8 fully set forth herein.

9 332. California Labor Code § 201(a) provides that if an employer discharges an
10 employee, the wages earned and unpaid at the time of discharge are due and payable
11 immediately.

12 333. California Labor Code § 203(a) provides that if an employer willfully fails to pay
13 any wages of an employee who is discharged in accordance with California Labor Code § 201(a),
14 the wages of the employee will continue as a penalty from the due date thereof at the same rate
15 until paid or an action therefor is commenced, but the wages will not continue for more than 30
16 days.

17 334. Pursuant to the Supplemental Pay Provision, the City must provide employees on
18 qualified military leave Supplemental Pay in the amount of the difference between the individual's
19 gross military pay and the gross pay the individual would have received as a City employee, had
20 the individual worked his or her normal work schedule.

21 335. Pursuant to the Supplemental Pay Provision, a City employee's entitlement to any
22 Supplemental Pay or other compensation or benefits provided under the Provision is conditioned
23 upon the employee (a) returning to City service within 60 days of release from active duty or (b) if
24 the individual is not fit for employment at that time, returning to City service within 60 days of a
25 determination that the individual is fit for employment. Otherwise, the individual must repay any
26 Supplemental Pay received, as a loan payable to the City with interest at a rate commencing 90
27 days after the individual's release from active service or return to fitness for employment.

28 336. Ms. Sweeney returned to fitness for employment with the City on May 20, 2017,
the date she submitted her application for reemployment. On that date, she became entitled to the

1 outstanding Supplemental Pay and other compensation and benefits that the City failed to provide
2 her with under the Supplemental Pay Provision for any of her periods of military leave between
3 February 2008 and May 2015, subject to the repayment limitations or conditions of the Provision.

4 337. The City terminated Ms. Sweeney's employment on May 9, 2018. By failing to pay
5 Ms. Sweeney on May 9, 2018 or after the outstanding Supplemental Pay and other compensation
6 and benefits for any of her periods of military leave between February 2008 and May 2015, the
7 City violated and continues to violate California Labor Code § 201(a).

8 338. Upon information and belief, the above violation of California Labor Code
9 § 201(a) was willful. Accordingly, the City should be required to pay waiting time penalties
10 pursuant to California Labor Code § 203(a).

11 **COUNT XVI**

12 **Claim for Discrimination and Retaliation**
13 **By Plaintiff Sweeney Individually Against the City and DPH**
14 **(38 U.S.C. § 4311)**

15 339. Plaintiff Sweeney incorporates the allegations contained in the foregoing
16 paragraphs as if fully set forth herein.

17 340. USERRA § 4311(a) prohibits an employer from discriminating against any person
18 who is a member of, applies to be a member of, performs, has performed, applies to perform, or
19 has an obligation to perform uniformed service with respect to, among other things, employment,
20 reemployment, retention in employment, promotion, or any benefit of employment by an
21 employer on the basis of that membership, application for membership, performance of service,
22 application for service, or obligation.

23 341. USERRA § 4311(b) prohibits an employer from discriminating in employment
24 against or taking any adverse employment action against any person because such person has
25 taken an action to exercise a right provided by USERRA or enforce a protection afforded any
26 person under USERRA.

27 342. The City and the DPH discriminated against Ms. Sweeney on the basis of her
28 military service by, *inter alia*, maintaining policies and practices that deprived her of her rights
under USERRA and the MVC; forcing her to submit written military orders and written leave

1 requests to avoid being placed on AWOL status or terminated while she was on extended active-
2 duty military service; subjecting her to a hostile work environment where her commitment and
3 performance to the City were questioned due to her military obligations and service and her
4 military leave was judged negatively in her performance evaluation and considered as a nuisance
5 to her colleagues and as a subject of ridicule; repeatedly threatening employment termination or
6 separation while she was on active duty or convalescing from service-related injuries; and denying
7 her the rights and privileges of employment afforded to her civilian colleagues, including rights
8 related to seniority, future job opportunities, promotions, and advancement. Ms. Sweeney's
9 military service and obligations were a motivating factor behind the City and the DPH's decisions
10 to take these adverse actions against Ms. Sweeney.

11 343. The City and the DPH retaliated against Ms. Sweeney for exercising and
12 attempting to enforce her rights under USERRA by, *inter alia*, maintaining policies and practices
13 that deprived her of her rights under USERRA and the MVC; forcing her to submit written
14 military orders and written leave requests to avoid being placed on AWOL status or terminated
15 while she was on extended active-duty military service; subjecting her to a hostile work
16 environment where her commitment and performance to the City were questioned due to her
17 military obligations and service and her military leave was judged negatively in her performance
18 evaluation and considered as a nuisance to her colleagues and as a subject of ridicule; repeatedly
19 threatening employment termination or separation while she was on active duty or convalescing
20 from service-related injuries; and denying her the rights and privileges of employment afforded to
21 her civilian colleagues, including rights related to seniority, future job opportunities, promotions,
22 and advancement. Ms. Sweeney's exercising and attempting to enforce her rights under USERRA
23 were a motivating factor behind the City and the DPH's decisions to take these adverse actions
24 against Ms. Sweeney.

25 344. Due to the City and the DPH's failure to comply with USERRA, Ms. Sweeney
26 received lower wages, salary, and compensation than she would have received had the City and
27 the DPH complied with USERRA.

28 345. Due to the City and the DPH's failure to comply with USERRA, Ms. Sweeney

1 suffered from emotional distress.

2 346. Upon information and belief, the above violations of USERRA § 4311 and its
3 implementing regulations were willful. Accordingly, the City and DPH should be required to pay
4 liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(C).

5 **COUNT XVII**

6 **Claim for Discriminatory and Retaliatory Termination**
7 **of Employment and Denial of Reemployment**
8 **By Plaintiff Sweeney Individually Against the City and DPH**
9 **(38 U.S.C. § 4311)**

10 347. Plaintiffs incorporate the allegations contained in the foregoing paragraphs as if
11 fully set forth herein.

12 348. USERRA § 4311(a) prohibits an employer from discriminating against any person
13 who is a member of, applies to be a member of, performs, has performed, applies to perform, or
14 has an obligation to perform uniformed service with respect to, among other things, employment,
15 reemployment, retention in employment, promotion, or any benefit of employment by an
16 employer on the basis of that membership, application for membership, performance of service,
17 application for service, or obligation.

18 349. USERRA § 4311(b) prohibits an employer from discriminating in employment
19 against or taking any adverse employment action against any person because such person has
20 exercised a right under USERRA or has taken an action to enforce a protection afforded any
21 person under USERRA.

22 350. Plaintiff Sweeney filed her complaint with the DOL in December 2012 to enforce
23 her USERRA rights and benefits and made numerous statements to the DOL, the City, and the
24 DPH opposing the many actions that the City and the DPH took in violation of USERRA and the
25 hostility that the City and the DPH had for Ms. Sweeney's military status and service and her
26 obligation to perform such service, including the extended length of her leave (ranging between 11
27 months and 32 months for each period of service). Ms. Sweeney's exercising her rights to take
28 military leave, seek reemployment rights and benefits, and receive pension credit under USERRA
was a motivating factor in the City and DPH's decision and adverse employment action to

1 terminate Ms. Sweeney. In addition, Ms. Sweeney's complaint and statements opposing the City
2 and the DPH's USERRA violations were a motivating factor in the City and DPH's decision and
3 adverse employment action to terminate Ms. Sweeney.

4 351. By terminating Ms. Sweeney because of her military status or service and because
5 she exercised and attempted to enforce her USERRA rights, the City and the DPH violated
6 USERRA § 4311(a)-(b).

7 352. Upon information and belief, the above violations of USERRA § 4311 and its
8 implementing regulations were willful. Accordingly, the City and DPH should be required to pay
9 liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(C).

10 **COUNT XVIII**

11 **Claim for Discriminatory Termination of Employment and Denial of Reemployment**
12 **By Plaintiff Sweeney Individually Against the City and the DPH**
13 **(California Military and Veterans Code § 394)**

14 353. Plaintiffs incorporate the allegations contained in the foregoing paragraphs as if
15 fully set forth herein.

16 354. Section 394 of the MVC proscribes discrimination against members of the military
17 or Navy forces of the state or of the United States because of that membership or military service,
18 including discharging a person because of his or her membership or service in the military. MVC
19 § 394(b), (d).

20 355. The City and the DPH terminated Plaintiff Sweeney's employment at the City
21 because of her repeated and extended periods of service in the military and her ongoing
22 membership in the military. In addition, the City and the DPH terminated her because she filed a
23 complaint with the DOL against the City in December 2012 to enforce her USERRA rights and
24 benefits and because she submitted an application for reemployment in May 2017 to exercise her
25 rights to reemployment under USERRA. The City and the DPH's actions were motivated by and
26 in retaliation for Ms. Sweeney's actions.

27 356. By terminating Plaintiff Sweeney and failing to reemploy her because of her
28 membership and service in the military, the City and the DPH violated the MVC § 394.

COUNT XIX

**Claim for Wrongful Termination in Violation of Public Policy
By Plaintiff Sweeney Individually Against the City and the DPH**

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3 357. Plaintiffs incorporate the allegations contained in the foregoing paragraphs as if
4 fully set forth herein.

5 358. California law allows for a “tort cause of action for wrongful termination that
6 violates public policy.” *Freund v. Nycomed Amersham*, 347 F.3d 752, 758 (9th Cir. 2003).

7 359. The elements of this tort are a public policy that is: (1) delineated in either
8 constitutional or statutory provisions; (2) “public” in the sense that it inures to the benefit of the
9 public rather than serving merely the interests of the individual; (3) well established at the time of
10 discharge; and (4) substantial and fundamental.

11 360. Both USERRA and the MVC were enacted to encourage service in the armed
12 forces of the United States and in the National Guard of California by providing broad protections
13 for servicemembers’ civilian employment. These statutes inure to the benefit of the public, are
14 well-established, and constitute fundamental, longstanding policies. They are codified in statute
15 and promote the nation’s military preparedness. Hundreds of thousands of military reservists rely
16 on such laws to perform service in national guard and reserve units.

17 361. On May 9, 2018, the City and the DPH illegally terminated Plaintiff Sweeney from
18 her employment after she had submitted an application for reemployment to exercise her rights
19 under USERRA in violation of public policy expressed in the 38 U.S.C. § 4301, *et seq.* and the
20 MVC § 394.

REQUEST FOR RELIEF

22 WHEREFORE, Plaintiffs pray that judgment be entered against Defendants on all claims
23 and respectfully request that this Court award the following relief:

24 A. Declare that Defendants’ policies and practices described herein violated the rights
25 of Plaintiffs, the Class, and the Subclasses under USERRA, the MVC, the Supplementation of
26 Military Pay Provision of the City’s Annual Salary Ordinances, the California Labor Code, the
27 California Government Code, and California public policy;

28

1 B. Declare that Plaintiffs, the Class, and the Subclasses were and are entitled under
2 USERRA, the MVC, the Supplementation of Military Pay Provision of the City’s Annual Salary
3 Ordinances, the California Labor Code, the California Government Code, and California public
4 policy to the rights and benefits of employment protected therein;

5 C. Require Defendants to fully compensate Plaintiffs, the Class, and the Subclasses for
6 the loss of wages, compensation, and benefits suffered by reason of Defendants’ failure to comply
7 with the provisions of USERRA, the MVC, the City’s Annual Salary Ordinances, the California
8 Labor Code, the California Government Code, and California public policy by awarding an
9 amount that fully compensates Plaintiffs, the Class, and the Subclasses for their losses, including
10 any lost earnings, wages, or benefits, and/or by awarding Plaintiffs and the Class pre-judgment
11 and post-judgment interest and statutory penalties on the amount of any earnings and benefits that
12 were required to be provided under USERRA, the MVC, the City’s Annual Salary Ordinances, the
13 California Labor Code, the California Government Code, and California public policy but which
14 Defendants failed to provide (whichever amount is greater);

15 D. Order that Plaintiffs and the Class be retroactively reinstated to the “escalator
16 positions” to which they were entitled under USERRA, and that they receive commensurate
17 backpay for any period of time during which the City failed to cause them to return to work in
18 such escalator positions;

19 E. Order Defendants to comply with USERRA and its implementing regulations, the
20 MVC, the Supplementation of Military Pay Provision of the City’s Annual Salary Ordinances, the
21 California Labor Code, the California Government Code, and California public policy;

22 F. Require that Defendants City and DPH offer reemployment to Plaintiff Sweeney;

23 G. Require that Defendants City and DPH compensate Plaintiff Sweeney for any
24 losses of wages or benefits in the amount to be proven at trial, including back pay, front pay, pre-
25 and post-judgment interest, lost benefits of employment, negative tax consequences of any award,
26 and for Defendants’ failure to comply with USERRA, the MVC, the California Labor Code and/or
27 California public policy and pay statutory penalties;

28 H. Require that Defendants City and MTA compensate Plaintiff Anderson for any

1 losses of wages or benefits in the amount to be proven at trial, including back pay, pre- and post-
2 judgment interest, lost benefits of employment, negative tax consequences of any award, and for
3 Defendants' failure to comply with USERRA, the MVC, and/or the California Government Code
4 and pay statutory penalties;

5 I. Enjoin Defendants from taking any future retaliatory actions against Plaintiffs or
6 other servicemembers who attempt to exercise or enforce their rights under USERRA, the MVC,
7 the City's Annual Salary Ordinances, the California Labor Code, the California Government
8 Code, and/or California public policy;

9 J. Order the Defendants to pay Plaintiffs and all members of the Class and the
10 Subclasses liquidated damages in an amount to be determined at trial, 38 U.S.C. § 4323(d)(1)(C);

11 K. Require the Defendants to pay attorneys' fees and costs pursuant to 38 U.S.C.
12 § 4323(h), MVC § 394(g), California Labor Code § 218.5, and other law, and/or this Court's
13 inherent equitable authority and powers, and order the payment of reasonable attorneys' fees and
14 expenses of this action to Plaintiffs' Counsel on the basis of the common benefit and/or common
15 fund doctrine (or other applicable law) out of any money or benefit recovered for the Class or
16 Subclasses in this Action; and

17 L. Pursuant to Rule 54(c) of the Federal Rules of Civil Procedure, grant all relief to
18 which Plaintiffs, the Class or Subclasses are entitled including, without limitation, allowing for
19 any adverse tax consequence multiplier to be applied to any jury award.

20 **JURY DEMAND**

21 Plaintiffs hereby demand a trial by jury.
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Respectfully submitted,

Dated: February 13, 2020

By:  _____

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