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11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA
13 (SACRAMENTO)

14 NICOLE ROSENSTIEL,

CIVIL NO.

15 Plaintiff,

COMPLAINT FOR DAMAGES
(EMPLOYMENT CIVIL RIGHTS)

16 vs

17 CITY OF VACAVILLE;
18 RICHARD WORD, as Chief of
19 Police; C. COURTEMONCHE;
20 and DOES 1-25,

JURY TRIAL DEMANDED

21 Defendants.

22
23 JURISDICTION

24 1. This action arises under Title 42 of the United States Code, Sections
25 1983, 2000e et seq., 12111, et seq., 12203 and the First and Fourteenth Amendments to
26 the United States Constitution. Jurisdiction is conferred upon this Court by Title 28 of
27 the United States Code, Section 1331. The Eastern District is the proper venue in that
28 all the acts complained of occurred in the City of Vacaville, California which is within
this judicial district, the defendants are situate within this judicial district and the

COMPLAINT FOR DAMAGES (EMPLOYMENT CIVIL RIGHTS)

1 plaintiff resides in this district. Plaintiff requests the Court exercise jurisdiction over
2 pendent state claims and causes of action under Title 28 of the United States Code,
3 Section 1367. Plaintiff has filed suit within the time periods prescribed within Notice
4 of Right to Sue/Case Closures issued by the U.S. Equal Employment Opportunity
5 Commission (July 28, 2011) and by the State of California Department of Fair
6 Employment and Housing (August 24, 2010 and June 21, 2011). All administrative
7 requirements precedent to bringing suit against these defendants and upon the causes
8 of action set forth herein have been fulfilled.

10 PARTIES

11 2. Plaintiff NICOLE ROSENSTIEL (hereinafter referred to as "Plaintiff" or
12 "ROSENSTIEL") was at all times pertinent to the matters described in this complaint
13 a natural person, a citizen of the United States, and a resident of the State of
14 California.

15 3. Plaintiff is informed and believes and thereon alleges that defendant
16 RICHARD WORD (hereinafter referred to as "WORD") is a natural person, who, at
17 all times mentioned herein, was employed as the Chief of Police for the CITY OF
18 VACAVILLE. In such position and capacity, defendant WORD is a policymaking
19 official with executive and managerial authority for all aspects of the CITY OF
20 VACAVILLE Police Department's operations, including, without limitation, its
21 employment practices and enforcement of the laws, regulations and ordinances.
22 WORD, as Chief of Police, had notice of each and every discriminatory and illegal
23 practice of which ROSENSTIEL complains. Despite having such notice, WORD
24 failed and refused to take any corrective action and instead simply ratified, accepted
25 or ignored such conduct. In engaging in the conduct described in this Complaint,
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1 WORD acted under the color of law and in the course and scope of his employment as
2 Chief of Police for CITY OF VACAVILLE. Plaintiff is informed and believes and
3 alleges that CRAIG COURTEMONCHE (referred to as "COURTEMONCHE") was
4 at all times mentioned herein a lieutenant in the CITY OF VACAVILLE Police
5 Department in the Internal Affairs Division.
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7 4. Plaintiff is informed and believes, and thereon alleges, that defendant
8 CITY OF VACAVILLE is a governmental entity subject to suit pursuant to 42 U.S.C.
9 §1983 and Monell vs Dept. of Social Services, 436 U.S. 658 (1978).

10 5. Plaintiff is ignorant of the names and capacities, whether individual,
11 corporate, associate, or otherwise, of defendants named as DOES 1 through 25,
12 inclusive and therefore sues these defendants by such fictitious names. Plaintiff will
13 amend this complaint to allege their true names and capacities when ascertained.
14 Plaintiff is informed and believes and thereon alleges that each of the fictitiously
15 named defendants is responsible in some manner for the occurrences herein alleged,
16 and that plaintiff's damages herein alleged were proximately caused by such
17 defendants.
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19 6. Plaintiff is informed and believes and hereon alleges, at all times
20 mentioned, that defendants, including those defendants sued as "DOE", and each of
21 them, were the agents and employees of each of the other defendants, and in doing the
22 things hereinafter alleged were acting within the scope of their authority as such agents
23 and employees, and with the permission and consent of each other. The relationships
24 between defendants were and are created by agreement, by ratification, by ostensible
25 authority or otherwise, and this Paragraph is not a limitation on the manner in which
26 said relationships were created as a matter of fact or a matter of law. At all times
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1 mentioned herein, defendants DOE 1 - 25 and Plaintiff's managers, supervisors and
2 coworkers were subject to the right of direction and control of WORD with respect to
3 the acts and/or conduct alleged in this Complaint. At all times mentioned herein, the
4 acts and/or conduct of defendants, including Plaintiff's managerial supervisors were
5 foreseeable and incident to their duties as employees and agents of defendant CITY.
6

7 STATEMENT OF FACTS

8 7. Plaintiff incorporates paragraphs 1 through 6 by reference, as though the
9 allegations therein were here realleged at length and in full.

10 8. Plaintiff began her employment with the CITY OF VACAVILLE police
11 department in April 2004 and completed her field training on January 12, 2005. From
12 February 2005 through approximately September 2006 Plaintiff, a former cheerleader
13 for the Oakland Raiders, a professional (NFL) football team, was subjected to gender-
14 based harassment and ostracism. The conduct, which Plaintiff reported to supervisorial
15 officials, was offensive and created a workplace environment hostile to Plaintiff and
16 culminated in Plaintiff's physical injury by her supervisor, Sergeant Humbert, during a
17 defensive tactics class. The injury caused Plaintiff to seek treatment and to seek
18 modified duty status in 2007, a status she maintained from March 14, 2007 through
19 July 6, 2008. Upon her return to full duty, Plaintiff immediately experienced
20 resumption of the disabling conditions but was denied restoration of light duty or a
21 medical retirement. Physical disability and stress from the refusal of the department to
22 resolve her status, continued harassment and the hostile environment ultimately caused
23 Plaintiff to request a leave of absence due to her post-traumatic stress disorder. She
24 simultaneously filed a complaint with the City Manager for CITY OF VACAVILLE
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1 on November 23, 2009. Plaintiff took this step when the CITY OF VACAVILLE
2 Director of Human Resources refused to investigate Plaintiff's complaints.

3 9. Craig COURTEMONCHE, a lieutenant in the CITY OF VACAVILLE
4 Police Department Internal Affairs division, along with an attorney hired by the CITY
5 OF VACAVILLE, investigated Plaintiff's complaints, some of which were sustained
6 and some of which were not. Lieutenant COURTEMONCHE had previously
7 disparaged Plaintiff's complaints. In the course of the investigation, Plaintiff was
8 threatened and ostracized. Lieutenant COURTEMONCHE forwarded allegations to
9 the District Attorney's office that the injuries for which Plaintiff filed workers
10 compensation claims in 2006 were not work-related and were false. On the basis of
11 the allegations made and vouched for by COURTEMONCHE, Plaintiff was charged
12 with ten (10) felony fraud counts. Plaintiff was told that if she resigned the charges
13 would be dropped. On March 9, 2011, all charges were dismissed at the preliminary
14 hearing, the court having found them to be baseless.

15 10. Plaintiff believes the motivation for the conduct of COURTEMONCHE
16 and defendants sued as "DOE" include retaliation for Plaintiff's for filing a complaint,
17 to force her retirement without the medical benefits she is entitled to as a matter of law
18 and policy and gender-based prejudice.

19 DAMAGES

20 11. As a proximate result of defendants' conduct, and each of them, Plaintiff
21 suffered severe physical, emotional and mental distress, anxiety, humiliation,
22 embarrassment, and loss of her sense of security, dignity, and pride as an American
23 citizen and as a female.

12. As a further proximate result of defendants' conduct, Plaintiff claims general damages, including but not limited to substantial losses of earnings and other employment benefits which she would have received had defendants not engaged in discriminatory and retaliatory misconduct, medical expenses and lost time from her usual occupation, including training and development opportunities in her career.

13. The conduct of defendants was oppressive, and carried out with reckless disregard and indifference to Plaintiff's rights. Plaintiff is therefore entitled to an award of punitive damages against the defendants.

14. Plaintiff found it necessary to engage the services of private counsel to vindicate her rights under the law. Plaintiff is therefore entitled to an award of all attorneys' fees reasonably incurred in relation to this action for violation of her civil rights.

FIRST CAUSE OF ACTION
Violation of 42 U.S.C. § 1983—Due Process
(WORD, CITY OF VACAVILLE)

15. Plaintiff hereby incorporates paragraphs 1 through 14 by reference, as though fully set forth herein.

16. In doing the acts complained of herein, defendants acted as a public agency and under color of law as public employees to deprive the Plaintiff of certain constitutionally protected rights, including, but not limited to, the right not to have her property taken without due process of law. WORD, as a policymaker and as the chief executive of the responsible subordinate agency of the CITY OF VACAVILLE, ratified the unlawful conduct of the individual defendants making the CITY OF VACAVILLE directly liable for the employment practices that were the proximate cause of harm to Plaintiff.

1 17. As a proximate result of defendants' wrongful conduct, Plaintiff
2 suffered injuries and damages as set forth herein. Plaintiff has been required to retain
3 counsel to redress the wrongful conduct by defendants alleged herein and is
4 consequently entitled to an award of reasonable attorney's fees therefore.
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6 WHEREFORE, Plaintiff prays for relief as set forth herein.

7 SECOND CAUSE OF ACTION
8 Discrimination -- 42 U.S.C. §2000e et seq.
9 (WORD, CITY OF VACAVILLE)

10 18. Plaintiff hereby incorporates paragraphs 1 through 17 by reference, as
11 though fully set forth herein.

12 19. Plaintiff filed a charge concerning the sexual harassment and retaliatory
13 conduct of defendants alleged herein with the Equal Employment Opportunity
14 Commission and with the California Department of Fair Employment and Housing and
15 received a right-to-sue letter from each said agency with respect to the charges herein.

16 20. WORD and the CITY OF VACAVILLE failed and refused to accord
17 plaintiff equal conditions of employment. Discriminatory actions include, but are not
18 limited to, denial of training opportunities during Plaintiff's pregnancy that were
19 required for advancement, failure to provide light duty on terms granted to similarly
20 situated male employees, denial of medical retirement on terms granted to male
21 employees. With regard to the latter, two administrators of the department, one of
22 whom, COURTEMONCHE, was in charge of the Internal Affairs investigation into
23 Plaintiff's complaints, stated: "There is no way we will let Nicole medically retire out.
24 She just wants to sit home and be a mommy." Plaintiff is informed and believes that
25 the CITY OF VACAVILLE has never granted medical retirement to a female police
26 officer for a work-related injury.
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1 21. Plaintiff has been damaged by the defendants' conduct and is entitled to
2 recover as set forth below.

3 22. Plaintiff has been required to retain counsel to redress the wrongful
4 conduct by defendants alleged herein and is consequently entitled to an award of
5 reasonable attorney's fees therefore.
6

7 23. Defendants conduct described herein was done with a conscious
8 disregard of Plaintiff's rights and with the intent to vex, injure or annoy plaintiff such
9 as to constitute oppression, fraud or malice, entitling Plaintiff to exemplary damages.

10 WHEREFORE, Plaintiff prays for judgment against defendants, and each of
11 them hereinafter set forth.
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13 THIRD CAUSE OF ACTION
14 Retaliation—42 U.S.C. §2000e, et seq.
 (WORD, CITY OF VACAVILLE)

15 24. Plaintiff hereby incorporates paragraphs 1 through 23 by reference, as
16 though fully set forth herein.

17 25. The conduct of COURTEMONCHE, and others whose identities are not
18 yet known, was in retaliation for Plaintiff's complaints of discrimination, hostile work
19 environment and harassment perpetrated against her by supervisors and officers of the
20 CITY OF VACAVILLE Police Department, including taking her complaints to the
21 City Manager after Plaintiff received no assistance from the Departments Human
22 Resources Director.
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24 26. Defendants violated plaintiff's rights by denying Plaintiff medical
25 retirement, not investigating threats of physical harm to Plaintiff, and by initiating
26 criminal prosecution of Plaintiff, alleging that she had submitted fraudulent workers
27 compensation claims. Those allegations were untrue and any reasonably inquiry made
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1 prior to forwarding those allegations to the prosecuting agency would have promptly
2 revealed that they were baseless.

3 27. As a proximate result of defendants' actions, Plaintiff was denied a fair
4 opportunity to be complete her duties as police officer for the CITY OF VACAVILLE,
5 incurred expenses and was otherwise damaged as set forth herein.
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7 28. Plaintiff has been required to retain counsel to redress the wrongful
8 conduct by defendants alleged herein and is consequently entitled to an award of
9 reasonable attorney's fees therefore.

10 29. Defendants' conduct described herein was done with a conscious
11 disregard of Plaintiff's rights and with the intent to vex, injure or annoy plaintiff such
12 as to constitute oppression, fraud or malice, entitling Plaintiff to exemplary damages.
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14 WHEREFORE, Plaintiff prays for judgment against defendants, and each of
15 them hereinafter set forth.

16 FOURTH CAUSE OF ACTION

17 Violation of Disability Rights—42 U.S.C. §21111, et seq.
18 (CITY OF VACAVILLE)

19 30. Plaintiff hereby incorporates paragraphs 1 through 29 by reference, as
20 though fully set forth herein.

21 31. Defendant CITY OF VACAVILLE denied, and continues to deny
22 Plaintiff medical retirement although she is entitled to it due to her injuries received in
23 the workplace. Plaintiff's requests to return to work on modified duty status were
24 denied until during the time a return to work on light duty status

25 WHEREFORE, Plaintiff prays for judgment against defendants, and each of
26 them, as hereinafter set forth.
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FOURTH CAUSE OF ACTION
Defamation
(COURTEMONCHE and DOES 1-25)

32. Plaintiff hereby incorporates paragraphs 1 through 31 by reference, as though fully set forth herein.

33. By the above described acts incorporated herein, defendants, and each of them, individually and in concert with others acting within the scope of their employment, caused to be published false and unprivileged communications tending directly to injure Plaintiff in her professional reputation. Specifically, defendants created employment records made available to others which informed others, including potential employers of plaintiff, that Plaintiff was placed on unpaid administrative leave for investigation of fraudulent workers compensation claims and that her claims of harassment and discrimination were "bogus" and a ploy to gain unwarranted medical benefits. In actuality, the records available to Plaintiff's supervisors and other administrators, including COURTEMONCHE and the Director of Human Resources unequivocally supported Plaintiff's claims, as did an investigation of her claims.

34. The statements set forth above were published with express and implied malice on the part of all defendants, and each of them, and with design and intent to injure Plaintiff in her good name, reputation and employment.

35. As a proximate result of the defamatory and factually incorrect statements made by COURTEMONCHE and others whose identities are not yet known, Plaintiff has suffered injury to her personal, business and professional reputation, and further has suffered and continues to suffer embarrassment, humiliation and anguish all to her damage in an amount according to proof.

1 36. As an Internal Affairs investigator, COURTEMONCHE was supposed
2 to safeguard Plaintiff's rights and investigate her complaints without bias. Instead, he
3 contributed to the violation of Plaintiff's rights by failing to adequately investigate
4 Plaintiff's claims due to his gender-based bias against her and by concocting a basis for
5 having her prosecuted.
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7 37. Defendants, and each of them, committed the acts alleged herein
8 maliciously, fraudulently and oppressively, with the wrongful intention of injuring
9 Plaintiff, from an improper and evil motive amounting to malice, and in conscious
10 disregard of Plaintiff's rights. Plaintiff thus is entitled to recover punitive damages
11 from defendants, and each of them, in an amount according to proof.
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13 WHEREFORE, Plaintiff prays for judgment against defendants, and each of
14 them, as hereinafter set forth.

15 FIFTH CAUSE OF ACTION
16 Intentional Infliction of Emotional Distress
 (COURTEMONCHE and DOES 1-25)

17 38. Plaintiff hereby incorporates paragraphs 1 through 37 by reference as
18 though fully set forth.

19 39. Defendant COURTEMONCHE knew, or had reason to know that his
20 conduct would cause Plaintiff severe emotional distress and it did in fact cause Plaintiff
21 extreme emotional distress, mental anguish, humiliation, and emotional and financial
22 distress.
23

24 40. The aforementioned acts of COURTEMONCHE were willful, wanton,
25 malicious and oppressive and justify the awarding of exemplary and punitive damages.
26

27 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.
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1 47. Plaintiff hereby incorporates paragraphs 1 through 46 by reference, as
2 though fully set forth.

3 48. Plaintiff opposed unlawful practices by verbally complaining of sexual
4 harassment, a hostile environment and discriminatory treatment.

5 49. After Plaintiff opposed and protested unlawful practices, including
6 taking her ignored complaints to the CITY OF VACAVILLE City Manager, finally
7 filing complaints with the EEOC and the DFEH, Defendants took retaliatory action
8 against Plaintiff by having her prosecuted on false charges.

9 50. There is a causal link between Plaintiff's complaints and protests, and
10 the adverse employment action she was subjected to, because Defendant, its managers
11 and supervisors were aware of, or reasonably should have been aware of Plaintiff's
12 complaint. Defendants' treatment of Plaintiff differed from its official policies and
13 practices. Plaintiff has been damaged by the defendant's conduct.

14 51. Plaintiff has been required to retain counsel to redress the wrongful
15 conduct by defendants alleged herein and is consequently entitled to an award of
16 reasonable attorney's fees.

17 WHEREFORE, Plaintiff prays for judgment against defendants, and each of
18 them as hereinafter set forth.

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22 EIGHTH CAUSE OF ACTION

23 Creating/Maintaining Hostile Environment
24 (COURTEMONCHE, CITY OF VACAVILLE and DOES 1-25)

25 52. Plaintiff hereby incorporates paragraphs 1 through 51 by reference, as
26 though fully set forth.

27 53. Defendant COURTEMONCHE put Plaintiff's reputation and freedom
28 at risk by colluding with a friend of his at the District Attorney's office to file ten

1 felony charges against Plaintiff that were without factual basis. That action was the
2 most recent in a long line of hostile actions against Plaintiff due to her gender and her
3 expression of disapproval of her treatment by police department personnel, including
4 her supervisor, Sergeant Kim Humbert. Plaintiff came to the CITY OF VACAVILLE
5 Police Department having been a cheerleader for the Oakland Raiders, a professional
6 football team in the National Football League. Her supervisor told her that she should
7 not work out in the Department's gym because she would draw attention to herself
8 because of her appearance. Altered photographs of her and Oakland Raiders
9 "Raiderettes" were posted with a caption "Stay away from my daddy, Bitch!" At one
10 change of shift, a sergeant asked for a show of hands by those officers who wanted to
11 see Plaintiff naked. When Plaintiff was pregnant, she was given an assignment in
12 dispatch, rather than the investigations unit, unlike male officers on light duty and was
13 told she was lucky to get that since the Department could just send her home and not
14 accommodate her pregnancy restrictions. She was also denied training essential to her
15 advancement as an officer because she was pregnant. When another officer said to
16 Plaintiff, in front of others "Nice Rack", Plaintiff, not the officer, was called on the
17 carpet by Humbert and told to "stop causing drama". Humbert, in a training exercise,
18 deliberately injured Plaintiff and told others, when Plaintiff had to take time off due to
19 the injury that "Nicole won't be in today because I kicked her ass and threw her around
20 like a rag doll". Humbert continuously called attention to Plaintiff's looks and referred
21 to her as "missy". Plaintiff was excluded from meetings of officers in her unit and
22 otherwise ostracized, explicitly because of her gender. She was threatened on
23 Facebook. This treatment of Plaintiff was permitted and ratified by police
24 administration and the CITY OF VACAVILLE personnel administrators. Plaintiff's
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1 efforts to have the conduct creating a hostile environment interdicted, without success
2 and her attempts met with retaliation, and her separation from her employment. As a
3 proximate result of defendants' wrongful conduct, plaintiff suffered damages as set
4 forth herein.

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6 54. Plaintiff has been required to retain counsel to redress the wrongful
7 conduct by defendants alleged herein and is consequently entitled to an award of
8 reasonable attorney's fees.

9 WHEREFORE, Plaintiff prays for judgment against defendants, and each of
10 them as hereinafter set forth.

11 NINTH CAUSE OF ACTION
12 Negligent Employment
13 (CITY OF VACAVILLE)

14 55. Plaintiff hereby incorporates paragraphs 1 through 54 by reference, as
15 though fully set forth.

16 56. Defendant CITY OF VACAVILLE had a mandatory duty to exercise
17 managerial supervision and control over its employees, supervisors and managers and
18 to ascertain that they conducted themselves lawfully in carrying out their public duties
19 and with respect to federal and state employment laws. The conduct of the individual
20 defendants amounted to harassment, intimidation, threats and ostracism, in addition to
21 unwarranted and retaliatory criminal prosecution by which defendant interfered with
22 plaintiff's enjoyment of her constitutional rights. By failing to take prompt action upon
23 Plaintiff's claims or to effectively train or discipline the personnel creating a hostile
24 environment for Plaintiff, Defendant CITY OF VACAVILLE breached its mandatory
25 duty of supervision.
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1 57. As a proximate result of defendants' wrongful conduct, plaintiff suffered
2 damages as set forth herein.

3 WHEREFORE, Plaintiff prays for judgment against Defendant as hereinafter
4 set forth.

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6 TENTH CAUSE OF ACTION
7 Respondeat Superior
 (CITY OF VACAVILLE)

8 58. Plaintiff hereby incorporates paragraphs 1 through 57 by reference, as
9 though fully set forth.

10 59. Defendant CITY OF VACAVILLE is liable under all causes of action
11 under California law for the injuries and damages suffered by plaintiff as result of
12 actions taken by employees in the course and scope of their employment.

13 WHEREFORE, Plaintiff prays for judgment against Defendant as hereinafter
14 set forth.

15
16 JURY DEMAND

17 60. Plaintiff demands that a jury try this matter.

18 PRAYER

19 WHEREFORE, plaintiff prays for relief as follows.

- 20
21 1. For special damages in an amount to be proven;
22 2. For general damages in the sum of \$1,500,000.00;
23 3. For punitive damages against individually named;
24 5. For reasonable attorney's fees;
25 6. For costs of suit incurred herein; and
26 7. For such other and further relief as the Court may deem just.
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Dated: August 12, 2011

LAW OFFICES OF JOHN L. BURRIS

By: 

John L. Burris, Esq.

Attorneys for NICOLE ROSENSTIEL