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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

OMAR RODRIGUEZ; CINDY GUILLEN-GOMEZ; STEVE KARAGIOSIAN; ELFEGO RODRIGUEZ; AND JAMAL CHILDS,

Plaintiffs,

-vs-

BURBANK POLICE DEPARTMENT; CITY OF BURBANK; TIM STEHR; KERRY SCHILF; JAMIE "J.J." PUGLISI; DAN YADON; KELLY FRANK; PAT LYNCH; MIKE PARRINELLO; AARON KENDRICK; DARIN RYBURN; AND DOES 1 THROUGH 100, INCLUSIVE.

Defendants.

CASE NO: BC 414602
[Hon. Joanne O'Donnell]

DEFENDANT CITY OF BURBANK, INCLUDING THE POLICE DEPARTMENT OF THE CITY OF BURBANK'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT, OR ALTERNATIVELY, SUMMARY ADJUDICATION AGAINST PLAINTIFF JAMAL CHILDS

Date: March 18, 2010
Time: 9:00
Dept.: 37
Trial: Aug. 25, 2010
Action filed: May 28, 2009

Pursuant to Code of Civil Procedure § 437c(b), Defendant **CITY OF BURBANK including THE POLICE DEPARTMENT OF THE CITY OF BURBANK** hereby submits this Separate Statement of Undisputed Material Facts in Support of its Motion for Summary Judgment, or Alternatively, Summary Adjudication against Plaintiff Jamal Childs ("Plaintiff" or "Childs").

ISSUE NO. 1

PLAINTIFF'S FIRST CAUSE OF ACTION FOR DISCRIMINATION IN VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT ("FEHA") IS MERITLESS.

Moving Party's Undisputed Material Facts and Supporting Evidence	Opposing Party's Reply
1. Jamal Childs was hired as a Burbank police recruit on September 22, 2003. On February 12, 2004, Childs became a Burbank police officer. Childs was a probationary police officer from February 12, 2004 to February 12, 2005, at which time he became a permanent Burbank police officer. (Childs depo. p. 12:22-23, First Amended Complaint ("FAC") p. 27:26-p. 28:8, ¶ 68; Stehr decl. p. 1:8-11, ¶¶ 3-5.)	
2. Childs is African-American. (Exh. A, FAC p. 3:3-7, ¶ 5.)	
3. Childs consistently received positive performance evaluations. For the appraisal period of January 14, 2005 to May 4, 2005, Childs received a standard performance evaluation. For the appraisal period of May 5, 2005 to August 24,	

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2005, Childs received a standard performance evaluation. For the appraisal period of August 25, 2005 to January 11, 2006, Childs received an above standard performance evaluation. For the appraisal period of January 12, 2006 to May 3, 2006, Childs received an above standard performance evaluation. For the appraisal period of May 4, 2006 to August 23, 2006, Childs received an above standard performance evaluation. For the appraisal period of August 24, 2006, to January 10, 2007, Childs received an above standard performance evaluation. For the appraisal period of January 11, 2007 to May 2, 2007, Childs received an above standard performance evaluation. For the appraisal period of May 3, 2007 to August 22, 2007, Childs received an above standard performance evaluation. For the appraisal period of August 23, 2007 to January 9, 2008, Childs received an above standard performance evaluation; his evaluation was completed by Sgt. Ed Ruiz and approved by Darin Ryburn. For the appraisal period of January 10, 2008 to April 30, 2008, Childs received an outstanding performance evaluation. For the appraisal period of May 1, 2008 to August 20, 2008, Childs received an above standard evaluation. For the appraisal period of August 10, 2008 to March 1, 2009, Childs received an

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outstanding evaluation. (Stehr decl. p. 1:20 - p. 2:8, ¶ 8.)

4. Childs never applied for a promotion. (Childs depo. p. 127:10-19.)

5. On or about August 6, 2008, Jamal Childs applied for the position of School Resource officer ("SRO"). Two additional Burbank police officers applied for the position of School Resource officer; of these both are Caucasian officers. After consideration of each officer's training, experience, and performance, Jamal Childs was ranked first. (Childs depo. p. 12:24- p. 13:16; p. 58:11-15; p. 127:10-19; p. 130:16-19; Stehr decl. p. 1: 15, ¶ 6.)

6. Jamal Childs was assigned to the Juvenile Detective Bureau as an SRO on August 21, 2008, and has held that position ever since. (Childs depo. p. 12:24- p. 13:16; p. 58:11-15; p. 127:10-19; p. 130:16-19; Stehr decl. p. 1:15-17, ¶ 6.)

7. Jamal Childs has not applied for promotion or advancement since his assignment as a School Resource Officer. (Stehr decl. p. 1:18-19, ¶ 7.)

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8. Childs did not view appointment to the special assignment of SRO as discrimination. (Childs depo. p. 13:7-14:23, 16:1-4.)

9. In February, 2009, the police department sent Childs to DARE officer training for two weeks. (Childs depo. p. 164:9-p. 165:7.)

10. In February, 2009, the police department sent Childs to a 40-hour child abuse investigation school training. (Childs depo. p. 165:8-166:4.)

11. Childs currently reports to Sgt. Claudio Losacco. On March 9, 2009, Sgt. Claudio Losacco evaluated Childs as an SRO and gave him an outstanding evaluation for the period of August 2008 to March 1, 2009. (Childs depo. p. 16:5-20.)

12. Childs did not view Sgt. Losacco's evaluation as discrimination. (Childs depo. p. 16:5-20.)

13. No one has ever attempted to demote Childs, improperly discipline him, place him on administrative leave, remove him from a position of authority, give him a demeaning job, or terminate his employment. (Childs depo. p. 154:

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22- 155:21.)

14. Between August 24, 2004, and July 11, 2008, Childs was the subject of ten citizen complaints and one administrative complaint for failing to report his use of force. During the appraisal period of August 23, 2007 to January 9, 2008, during which time Darin Ryburn was his supervisor, Childs was the subject of three citizen complaints. (Childs depo. p. 19:1-11; Stehr decl. p. 2:9-15, ¶¶ 8-9; Ryburn decl., p. 8:8-13, ¶ 3.)

15. Only one internal investigation ("IA") – initiated in 2005 – was sustained against Childs. He received a written reprimand on March 31, 2006. (Childs depo. p. 20:3-10; Stehr decl. p. 2:10-13, ¶ 9.)

16. Childs accepted the written reprimand and waived his right to appeal because he felt the department was correct in reprimanding him and he did not feel the outcome was discriminatory. (Childs depo. p. 20:3-13.)

17. On May 27, 2009, Childs filed a DFEH complaint for discrimination, harassment, and retaliation against the City of Burbank and DFEH complaints for discrimination, harassment, and

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retaliation against the following nine (9) employees of the City: (A) Captain Pat Lynch, (B) Det. Mike Parrinello, (C) Lt. Jamie "JJ" Puglisi, (D) Sgt. Kerry Schilf, (E) Sgt. Dan Yadon, (F) Sgt. Kelly Frank, (G) Sgt. Darin Ryburn, (H) Officer Aaron Kendrick, and (I) Chief Tim Stehr. (Exh. A, FAC p. 28:21-p. 29:1, ¶ 72, FAC exh. I, Childs depo. p. 106: 23- p. 108:5, p. 125:15- p. 126:24, exh. 114.)

A. Captain Pat Lynch

18. Childs never heard Captain Pat Lynch make any discriminatory or harassing comments, was never told Captain Pat Lynch made any discriminatory, harassing, racial or sexual comments, and does not believe Captain Pat Lynch ever did anything that was discriminatory toward Childs. (Childs depo. p. 26:19-p.27:4; p. 29:21-24; p. 36:20-p. 37:1, p. 93:11-13.)

19. Captain Lynch has never done anything but treat Childs professionally. (Childs depo. p. p. 93:11-13.)

B. Detective Mike Parrinello

20. Childs never heard Detective Mike Parrinello make any discriminatory, racist, or harassing comments, was never told that Detective

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Mike Parrinello made any discriminatory, harassing, racial or sexual comments, and does not believe Detective Mike Parrinello ever did anything that was discriminatory toward Childs. (Childs depo. p. 25:25-p. 26:18, p. 86:7-p. 87:9; p. 29:17-20; p. 36:10-19.)

C. Lieutenant Puglisi

21. Childs never heard Lieutenant Puglisi make any discriminatory or harassing comments, was never told Lieutenant Puglisi made any discriminatory, harassing, racial or sexual comments, and does not believe Lieutenant Puglisi ever did anything that was discriminatory toward Childs. (Childs depo. p. 34:19-p.35:9; p. 35:35:15-20; p. 37:19 - p. 38:1, p. 95:21-23.)

22. Lt. Puglisi has never done anything but treat Childs professionally. (Childs depo. p. 95:21-23.)

D. Sgt. Kerry Schilf

23. Childs never heard Officer Kerry Schilf make any discriminatory or harassing comments and was never told that Officer Schilf made any discriminatory, harassing, racial or sexual comments. (Childs depo. p. 35:21-p.36:5; p. 35:21-p.36:8; p. 96:10-12.)

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24. Officer Schilf has never done anything but treat Childs professionally. (Childs depo. p. 96:10-12.)

E. Sgt. Dan Yadon

25. Childs never heard Sgt. Dan Yadon make any discriminatory, harassing, or racially biased comments, and does not believe Sgt. Yadon ever did anything that was discriminatory toward Childs. (Childs depo. p. 23:14-17, 24:21-24; p. 37:11-18, p. 94:23- p. 95:10.)

26. Sgt. Yadon has never done anything but treat Childs professionally. (Childs depo. p. 95:8-9.)

F. Sgt. Kelly Frank

27. Childs never heard Sgt. Kelly Frank make any discriminatory, harassing, racial or sexual comments, was never told Sgt. Kelly Frank made any discriminatory, harassing, racial or sexual comments, and does not believe Sgt. Kelly Frank ever did anything that was discriminatory toward him. (Childs depo. p. 32:5-11; p. 34:12-18; p. 37:2-10, p. 94:20-22.)

28. Sgt. Kelly Frank has never done anything but treat Childs professionally. (Childs depo. p. p.

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94:20-22.)

29. Officer Karagiosian told Childs he heard different statements about Armenians, including Sgt. Frank asking Karagiosian about putting a kid in Sean Johns, and Karagiosian seeing writings about Armenians on a dry erase board on the upper level, but Childs did not see the comments on the board, and was not told they were part of a murder investigation in which the victim was Armenian, the murderer was Armenian, and the witnesses were Armenian. (Childs depo. p. 32:12-23, 152:6-p. 153:19.)

G. <u>Sgt. Darin Ryburn</u>

30. Childs never heard Sgt. Darin Ryburn make any discriminatory, harassing, racial or sexual comments and has no recollection of Darin Ryburn writing him up, giving him a negative review, or imposing any discipline on him. (Childs depo. p. 42:11- p. 43:3; p. 49:9-17, p. 55:14-20.)

31. Childs testified as to Darin Ryburn that

a. Childs was bothered during his first year on the police force in 2004-2005 when Sgt. Ryburn asked Childs if his wife was Caucasian and when Childs said yes, Ryburn purportedly rolled his eyes and made a face as if he were

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disgusted; Childs did not see him make a face before that. (Childs depo. p. 38:22- p. 40:13; p. 133:23- p. 134:18; Exh. A, FAC p. 27:27-p. 28:7, ¶ 70.)

b. Childs has not had conversations with Sgt. Ryburn since that time; Childs does not talk to Ryburn. (Childs depo. p. 134:19- p. 135:17.)

c. Before August of 2008, Childs was told by Officer Jason Embleton that Darin Ryburn purportedly said "I guess it's true, once you go black, you never go back" or something to that effect. (Childs depo. p. 50:2-9.)

d. Sgt. Ryburn (Childs' supervisor) followed Childs when he was on patrol and instead of rolling by as a safety check when Childs made a traffic stop, Sgt. Ryburn would park a half block away and just watch. (Childs depo. p. 42:4- p. 44:4.)

e. Childs speculates that Sgt. Ryburn followed him when he was on patrol because Childs is African-American and that Ryburn had an issue with Childs having a White wife. (Childs depo. p. 44:21-23, p. 46:8- p. 47:13; p. 42:4- p. 44:19; Exh. A, FAC p. 27:27-p. 28:7, ¶ 70.)

f. Childs admits other officers, including several Caucasian officers, had the same complaint about Darin Ryburn; Ryburn was

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responsible for monitoring all officers he supervised and he did not single out Childs based on race. (Childs depo. p. 44:21-23, p. 46:8- p. 47:13; p. 42:4- p. 44:19; Exh. A, FAC p. 27:27-p. 28:7, ¶ 70; Ryburn decl. p. 8:8-13, ¶ 3.)

g. Sgt. Ryburn is someone who "likes to pick certain officers to kind of nitpick about certain things", "officers who went out and made a lot of arrests and got complaints... if you make a lot of arrests, you're going to get complaints. And he seemed to have an issue with getting citizen complaints." (Childs depo. p. 51:22- p. 52:16.)

h. Sgt. Ryburn also focused this same type of attention on Officers Jason Embleton, John Embleton (both Caucasians), and Neil Gunn (half Caucasian), and did not single out Childs. (Childs depo. p. 44:8-12, p. 52:2-8; Ryburn decl. p. 8:8-13, ¶ 3.)

i. Aside from Sgt. Ryburn following him and other officers, Childs does not believe anyone else scrutinized his work more closely than Caucasian officers and was not aware of anything else Sgt. Ryburn did that was discriminatory or harassing. (Childs depo. p. 155:22- 156:16; p. 47:23-p. 48:3.)

H. <u>Aaron Kendrick</u>

32. Childs did not hear Officer Aaron Kendrick

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make any racial remarks about African Americans. (Childs depo. p. 62:15-17, p. 97:19-22.)

33. Officer Kendrick has never done anything but treat Childs professionally. (Childs depo. p. 97:19-21.)

34. Aaron Kendrick became a field training officer ("FTO") in February of 2007. (Stehr decl. p. 4:6-7, ¶ 33.)

35. Childs asserted as to Officer Kendrick that

a. Before Aaron Kendrick became an FTO in February of 2007 Childs heard Aaron Kendrick refer to Officer Karagiosian as a "towel" about five times; Childs did not hear this comment from Aaron Kendrick at work, but on the basketball team after basketball games. (Childs depo. p. 61:21- p. 62:11; p. 62:18- p. 63:16, p. 64:1-19; Stehr decl. p. 4:6-7, ¶ 33.)

b. Childs stopped playing basketball. (Childs depo. p. 184:4-8.)

c. Childs did not report Kendrick's comments about Karagiosian to anyone. (Childs depo. p. 63:20-25.)

d. Around 2005 or 2006, before Childs met with investigator Irma Rodriguez Moisa to report about events he believed were discriminatory, Childs was

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told by Officer Elfego Rodriguez that when he was in the lower report writing room on the computer that Officer Kendrick made a comment that Mexicans only came to Burbank to ruin the city. (Childs depo. p. 73:23- p. 75:11; p. 183:11-19.)

e. In about February, 2007, when Officer Karagiosian and Officer Kendrick became field training officers, Officer Karagiosian told Childs that he had an argument with Officer Kendrick and said to Kendrick "I'm going to kill you" or words to that effect. Childs did not report Karagiosian's comment to anyone. (Childs depo. p. 76:7 - p. 78:5.)

f. Childs did not hear Officer Karagiosian make any comments he considered to be racial or harassing, but Childs could not think of any circumstance in which an officer threatened to kill a fellow officer that would not be harassing. (Childs depo. p. 160:9-13, p. 161:6-16; p. 183:20- p. 184:3.)

g. Childs was told around March, 2008, by Officers Macias and Brimway, that <u>about a year earlier</u>, Officer Kendrick purportedly made a comment during an arrest of a famous rapper, Snoop Dogg, of "Why is Jamal here? ... Do we need him for translation?"; Childs does not know who the supervisors were who he believes heard this. The Snoop Dogg arrest was November 29, 2006. (Childs depo. p. 67:25- p. 69:21, p. 72:3-21; p. 104:7-23; p. 135: 18- p. 136:4; p. 138:7-18; Stehr decl. p. 4:10-11, ¶ 35.)

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h. Before this lawsuit was filed in May, 2008, Officer Kendrick said to Childs "If I've ever done anything to offend you, I apologize." Childs viewed Kendrick's statement as sincere and admitted at deposition as to Kendrick that "we get along fine now." (Childs depo. p. 73:4-14.)

I. Chief Tim Stehr

36. Childs never heard Chief Stehr make any racial, sexist, discriminatory, or harassing comments, and was never told Chief Stehr made any racial, sexist, discriminatory, or harassing comments. (Childs depo. p. 66:25- p. 67:8, p. 96:23 - p. 97:1; p. 67:11-17.)

37. Chief Stehr has never done anything but treat Childs professionally. (Childs depo. p. 96:23- p. 97:1.)

38. Childs was told around May of 2009 by Lt. Rodriguez that Chief Stehr previously made a comment in a November 6, 2008 management meeting that "There used to be a time here when it was okay to call someone a nigger, but times have changed"; Childs does not attend management meetings and was not present for this alleged statement. (Childs depo. p. 108:3- p. 109:19; p. 158:8-21; Exh. A, FAC p. 10:19-22, ¶ 19 (e).)

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J. **Officer Jared Cutler**

39. As to Officer Cutler,

a. In 2007, the year before Childs spoke to Irma Rodriguez Moisa, Childs heard Officer Cutler say "I remember when we didn't hire people like him." Childs did not ask officer Cutler who he was talking about and did not know if he was referring to someone else. (Childs depo. p. 111:19- p. 113:10.)

b. Childs was told by Officer Brimway in 2008 that on one occasion when Childs walked by the lower report room Officer Cutler looked up and said "Who let the black guy in?" and those present thought it was funny. (Childs depo. p. 114:9- p. 115:13.)

c. Childs heard Officer Cutler refer to Armenians as "towels" at unspecified times, maybe 10 or 15 times, including once after a basketball game. (Childs depo. p. 117:18- p. 119:1.)

K. Sgt. Llewellyn

40. Childs did not think Sgt. Llewellyn did anything to discriminate against or harass him. (Childs depo. p. 164:1-8.)

L. **Sgt. Calicchio**

41. Childs testified as to Sgt. Calicchio:

a. About two and a half to three years ago (2005-2006), Childs turned in a report concerning a black suspect accused of swindling a Hispanic man out of approximately $30,000, and Sgt. Calicchio said

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"who in their right mind would give a fucking black guy thirty grand?" (Childs depo. p. 119:12 - p. 121:24; Exh. A, FAC p. 27:15-26, ¶ 69.)

b. The same week, Childs turned in a report to Sgt. Calicchio who was critical of the report being left in "review phase"; that was the last comment made by Sgt. Calicchio that Childs viewed as negative; nor did he remember any negative comments from anyone else made in front of his peers that were negative. (Childs depo. p. 123:10 - p.125:14; p. 132:25-p. 133:22.)

42. Sgt. Calicchio retired from the Burbank Police Department on June 11, 2008, and currently works as a investigator with the Los Angeles County District Attorney's Office. Between 2005 and the retirement of Sgt. Calichio, Childs has been rated no less than standard, and in most cases above standard. (Stehr decl. p. 4:8-9, ¶ 34 .)

The lawsuit

43. At the end of 2007, Childs spoke to Officer Karagiosian and Officer Rodriguez about filing a lawsuit; this was before he spoke to Irma Rodriguez Moisa, but Childs is not sure when he first had the conversation. (Childs depo. p. 140:9-22; 142:19- p. 145:8.)

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44. On March 22, 2008, Childs spoke to investigator Irma Rodriguez Moisa as part of a Burbank Police Department inquiry into an anonymous complaint received by the police chief alleging discrimination and told her everything he knew about racial issues in the department, including comments detailed above. (Childs depo. p. 57:2-16, p. 112:25- p. 113:1, p. 114:14- p. 115:4; p. 121:24 - p. 122:3; Moisa decl., p. 5:5-6, ¶ 2.)

45. After Childs spoke to Irma Rodriguez Moisa he did not hear any more comments. (Childs depo. p. 114:3-8.)

46. On May 28, 2009, Childs filed this civil action for violation of FEHA and POBRA. (Exh. A, Complaint)

47. Childs has not received treatment from any type of healthcare provider for any type of emotional distress or trauma related to the allegations of this suit; nor has he taken any medication for distress, anxiety, depression, or sleeplessness. (Childs depo. p. 166:13-20.)

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ISSUE NO. 2

PLAINTIFF'S SECOND CAUSE OF ACTION FOR HARASSMENT IN VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT IS MERITLESS.

48. Defendant City of Burbank incorporates by reference Undisputed Facts Nos. 1-47.

49. After Childs spoke to Irma Rodriguez Moisa about what he knew about racial issues in the department, he also had an internal affairs interview with Sergio Bent and Sgt. Misquez on July 18, 2008 and October 30, 2008 and told them of all of the allegations of which he was aware of harassment. (Childs depo. p.127:20-p. 128:18; Misquez decl., p. 6:5-6, ¶ 2.)

50. Before Childs spoke to Irma Rodriguez Moisa in March of 2008 and to Sergio Bent and Sgt. Misquez in July and October 2008, he had never previously reported any incident about racial comments to anyone – his interviews with Moisa, Bent, and Misquez, were the only times Childs reported any incidents of harassment or discrimination to anyone in the police department. (Childs depo. p. 141:21-p. 142:1; p. 130:20-p. 131:1.)

51. Childs filed a DFEH complaint on May 27, 2009. The applicable one year statutory limitations period thus allows claims based on events occurring on

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or after May 27, 2008. (Exh. A, FAC p. 28:21-p. 29:1, ¶ 72, Exh. "I"; Gov. Code, §§ 12960(d).)

52. The few isolated incidents Childs identified are for events that occurred before March 22, 2008, and are barred by the statute of limitation. (Gov. Code, §§ 12960(d); Exh. A, FAC p. 28:21-p. 29:1, ¶ 72, FAC Exh. "I".) They are also based on gossip and were not witnessed by Childs, as detailed above. (See UF 29-39, above.)

ISSUE NO. 3

PLAINTIFF'S THIRD CAUSE OF ACTION FOR RETALIATION IN VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT IS MERITLESS.

53. Defendant City of Burbank incorporates by reference Undisputed Facts Nos. 1-52.

54. Childs does not believe he suffered any retaliation after speaking to Irma Rodriguez Moisa on March 22, 2008. (Childs depo. p. 58:5-10; Moisa decl., p. 5:5-6, ¶ 2.)

55. Childs knows of no retaliation he suffered after speaking to Sgt. Bent and Sgt. Misquez in July and October of 2008. (Childs depo. p. 128:19- p.130:15; p. 194:5-24; Misquez decl., p. 6:5-6, ¶ 2.)

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56. On August 21, 2008, after speaking to Irma Rodriguez Moisa and after speaking to Sgt. Bent and Sgt. Misquez, Childs received the special assignment SRO position, which was a position he wanted. (Childs depo. p. 12:24- p. 13:16; p. 58:11-15; p. 130:16-19; Stehr decl. p. 1:12-17, ¶ 6.)

57. On or about May 10, 2009, Childs received a copy of a Burbank Police Department memo regarding an internal investigation of allegations of officer misconduct, assuring there would be no retaliation for reports of misconduct during official proceedings or as authorized by law, and prohibiting informal discussions and gossip about pending internal investigations. (Childs dep. p. 171:20-p. 173:24, exh. 117.)

ISSUE NO. 4

PLAINTIFF'S FIFTH CAUSE OF ACTION FOR FAILURE TO PREVENT DISCRIMINATION, HARASSMENT AND RETALIATION IN VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT IS MERITLESS.

58. Defendant City of Burbank incorporates by reference Undisputed Facts Nos. 1-57.

59. The City of Burbank has a written policy against discrimination, harassment, and retaliation, of which Childs received a copy. (Childs depo. p. 170:12- p. 171:12, exh 116.)

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60. The City of Burbank also has a written policy to prevent discrimination, harassment, and retaliation, which includes reporting information, of which Childs received a copy. (Childs depo. p. 175:21-25, p. 177:18 - 178:13, exh 118.)

61. The Burbank Police Department has a zero tolerance policy for racial profiling. (Childs depo. p. 20:15-21:3.)

62. The Burbank Police Department also has a zero tolerance policy for harassment and discrimination towards employees within the department. (Childs depo. p. 167:5- p. 168:8, exh 115.)

63. On or about March 11, 2008, Childs received a copy of the Burbank Police Department's written reminder of the Department's Zero Tolerance Policy for harassment and discrimination towards employees within the department. (Childs depo. p. 167:5- p. 168:8, exh 115.)

64. Childs estimates that in 2008, the police department gave harassment and discrimination training from three to six times. (Childs depo. p. 131:2-14.)

65. In 2005, the City of Burbank reissued its

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Prevention against Discrimination and Harassment Policy. (Stehr decl., p. 2:17-21, ¶ 11; exh. 200.)

66. In 2005, the City of Burbank gave training to its employees to prevent harassment. (Stehr decl., p. 2:21, ¶ 12 .)

67. On September 25, 2005, Childs received training on sexual harassment and hostile work environment. (Stehr decl., p. 2:22-23, ¶ 13 .)

68. In 2006, the City of Burbank gave training to its employees to prevent harassment. (Stehr decl., p. 2:24, ¶ 14 .)

69. In 2007, the City of Burbank gave training to its employees to prevent harassment. The issue was documented at roll call. (Stehr decl., p. 2:25-26, ¶ 15.)

70. In 2008, the City of Burbank gave training to its employees to prevent harassment. (Stehr decl., p. 2:27, ¶ 16 .)

71. Childs estimates that in 2008, the police department gave trainings to prevent harassment and discrimination from three to six times. (Childs depo. p. 131:2-14.)

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72. On January 31, 2008, Childs received a two hour training in harassment prevention. (Stehr decl., p. 2:28, ¶ 17.)

73. On March 11, 2008, the Burbank Police Department issued a written reminder of the Department's Zero Tolerance Policy. (Stehr decl., p. 3:6-7, ¶ 19, exh. 115.)

74. On March 13, 2008, Sgt. Ryburn read the Zero Tolerance Policy at roll call, which Officer Childs attended. (Stehr decl., p. 3:8-9, ¶ 20 .)

75. On March 14, 2008, the Zero Tolerance Policy was again read at roll call. (Stehr decl., p. 3:21, ¶ 21.)

76. On March 22, 2008, Childs met with City of Burbank investigator Irma Moisa pursuant to an investigation conducted into an anonymous claim of discrimination. (Moisa decl., p. 5:5-7, ¶ 2; Stehr decl., p. 3:1-5, ¶ 18.)

77. On May 9, 2008, the City of Burbank reminded all officers at roll call to not violate the City's anti-harassment policy. (Stehr decl., p. 3:11-12, ¶ 22.)

78. In September, 2008, the revised City of Burbank Prevention of Discrimination and Harassment

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Policy issued. (Stehr decl., p. 3:13-14, ¶ 23, exh. 118.)

79. In November 2008, Chief Stehr ordered mandatory four hour diversity training program and mandated that officers visit the Museum of Tolerance. (Stehr decl., p. 3:15-17, ¶ 24.)

80. In 2009, the City of Burbank gave training to its employees to prevent harassment. (Stehr decl., p. 3:21, ¶ 27.)

81. On January 15, 2009, the City of Burbank's Prevention of Discrimination and Harassment Policy was read at roll call. (Stehr decl., p. 3:23-24, ¶ 27.)

82. In 2009, Childs received a copy of the police department's zero tolerance policy from Sgt. Losacco. (Childs depo. p. 131:23-p. 132:13.)

83. On March 6, 2009, Childs attended the City of Burbank's Diversity Training. (Stehr decl., p. 3:24, ¶ 29.)

84. In June and July of 2009, the City of Burbank conducted Museum of Tolerance training. Childs attended. (Stehr decl., p. 4:3-4; ¶ 32; Childs depo. p. 131:2-4.)

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ISSUE NO. 5

PLAINTIFF'S SIXTH CAUSE OF ACTION FOR VIOLATION OF THE PUBLIC SAFETY OFFICERS PROCEDURAL BILL OF RIGHTS ("POBRA"), IS MERITLESS.

85. Defendant City of Burbank incorporates by reference Undisputed Facts Nos. 1-86.

86. Plaintiffs' POBRA claim alleges they were retaliated against for filing complaints and grievances for harassment, discrimination, retaliation, and failure to discipline offending officers. (Exh. A, Complaint, p. 42:24- p. 46:21, specifically, p. 43:4- p. 44:2, ¶ 124.)

87. Before Childs spoke to Irma Rodriguez Moisa in March of 2008 and to Sergio Bent and Sgt. Misquez in July and October 2008, he had never previously reported any incident about racial comments to anyone – his interviews with Moisa, Bent, and Misquez, were the only times Childs reported any incidents of harassment or discrimination to anyone in the police department. (Childs depo. p. 141:21-p. 142:1; p. 130:20-p. 131:1.)

88. Childs knows of no retaliation he suffered after speaking to Moisa, Sgt. Bent, and Sgt. Misquez. (Childs depo. p. 58:5-10; p. 128:19- p.130:15; p. 194:5-24.)

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89. On August 21, 2008, after speaking to Irma Rodriguez Moisa and after speaking to Sgt. Bent and Sgt. Misquez, Childs received the special assignment SRO position, which was a position he wanted. (Childs depo. p. 12:24- p. 13:16; p. 58:11-15; p. 130:16-19; Stehr decl. p. 1:12-17, ¶ 6.)

90. Only one internal affairs investigations – initiated in 2005 before Childs complained of any activities in the Burbank police department – was sustained against him, from which he received a written reprimand on March 31, 2006. (Childs depo. p. 20:3-10; Stehr decl., p. 2:9-13, ¶ 9.)

91. No one has ever attempted to demote Childs, improperly discipline him, place him on administrative leave, remove him from a position of authority, give him a demeaning job, or terminate his employment. (Childs depo. p. 154: 22- 155:21.)

ISSUE NO. 6

PLAINTIFF'S SEVENTH CAUSE OF ACTION FOR INJUNCTIVE RELIEF IS MERITLESS.

92. Defendant City of Burbank incorporates by reference Undisputed Facts Nos. 1-93.

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AFFIRMATIVE DEFENSES

ISSUE NO. 7

PLAINTIFF'S FEHA CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.

93. Defendant City of Burbank incorporates by reference Undisputed Facts Nos. 1-93.

94. FEHA claims have a one year statute of limitations for filing the prerequisite DFEH complaint. (Gov. Code, §§ 12960(d).)

95. Childs filed a DFEH complaint on May 27, 2009, which limits his FEHA claims to events occurring on or after May 27, 2008. (Exh. A, FAC p. 28:21-p. 29:1, ¶ 72, FAC Exh. "I".)

96. Childs identified no wrongful conduct occurring on or after May 27, 2008.

ISSUE NO. 8

PLAINTIFF'S POBRA CLAIM IS BARRED BY THE GOVERNMENT TORT CLAIM LIMITATIONS PERIOD.

97. Defendant City of Burbank incorporates by reference Undisputed Facts Nos. 1-93.

98. No action for money damages may be brought against a public entity unless a written claim has been timely presented to the entity and acted upon, or relief is granted from the claims requirements. (Gov. Code,

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§§ 905, 911.2, 945.4, 946.6, 954.5.)

99. A government claim asserting a POBRA violation must be filed within six months of the wrongful action/injury. (Gov. Code, § 911.2; *Lozada v. City and County of San Francisco* (2006) 145 Cal.App.4th 1139, 1153 [Government Claims Act requirements apply to POBRA claims]; *Voth v. Wasco Public Utility Dist.* (1976) 56 Cal.App.3d 353, 356 [the six month limitations period applies to all actions sounding in tort].)

100. On May 12, 2009, Childs filed a Government Claim. (Exh. A, FAC p. 28:21-p. 29:1, ¶ 72, FAC exh. J.)

101. On July 10, 2009, the City of Burbank denied Childs' Government Claim, returning it. (Exh. A, FAC p. 28:21-p. 29:1, ¶ 72, FAC exh. J.)

102. Childs has not alleged that he filed an application to present a late claim. (FAC.)

103. Childs' government claim does not identify POBRA as a complained of wrong. (Exh. A, FAC p. 28:21-p. 29:1, ¶ 72, FAC exh. J.)

104. Because Childs filed his government claim on

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May 12, 2009, the six month limitations period restricts his POBRA claim to events occurring from November 12, 2008 to May 12, 2009. (Gov. Code, § 911.2)

105. Only one internal affairs investigations – initiated in 2005 – was sustained against him, from which he received a written reprimand on March 31, 2006 (Childs depo. p. 20:3-10; Stehr decl. p. 2:10-13, ¶ 9.)

106. He accepted the written reprimand without challenge because he felt the department was correct in reprimanding him and he did not feel the outcome was discriminatory. (Childs depo. p. 20:3-13.)

107. This event is outside of the six month limitations period for which Childs can assert POBRA violations. (Gov. Code, ¶ 911.2.)

108. No one has ever attempted to demote Childs, improperly discipline him, place him on administrative leave, remove him from a position of authority, give him a demeaning job, or terminate his employment. (Childs depo. p. 154: 22- 155:21.)

109. Childs does not believe he suffered any retaliation after speaking to Irma Rodriguez Moisa,

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Sgt. Bent, or Sgt. Misquez in March, July, or October of 2008, as part of the internal investigation. (Childs depo. p. 58:5-10; p. 128:19- p.130:15; p. 194:5-24.)

DATED: December 23, 2009

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By: _____
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 500 North Brand Boulevard, Twentieth Floor, Glendale, California 91203-9946.

On December 23, 2009, I served the foregoing document described as: **DEFENDANT CITY OF BURBANK, INCLUDING THE POLICE DEPARTMENT OF THE CITY OF BURBANK'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT, OR ALTERNATIVELY, SUMMARY ADJUDICATION AGAINST PLAINTIFF JAMAL CHILDS** on the interested parties in this action, by placing a true copy thereof in a sealed envelope addressed as follows:

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X **(BY MAIL)** and personally placing such envelope with postage fully prepaid for collection and mailing on the above-referenced date following the ordinary business practices of this office. I am readily familiar with our office's practice for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence, including said envelope, will be deposited with the United States Postal Service at Glendale on the above-referenced date.

____ **(BY PERSONAL SERVICE)** I delivered such envelope(s) by hand to the above-addressee(s).

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California. Executed on December 23 2009, at Glendale, California.

Karen J. Thomson
Karen J. Thomson

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