LAWRENCE A. MICHAELS (SBN 107260)
MITCHELL SILBERBERG & KNUPP LLP
11377 West Olympic Boulevard
Los Angeles, California 90064-1683
Telephone: (310) 312-2000
Facsimile: (310) 312-3100

LINDA MILLER SAVITT (SBN 094164)
BALLARD, ROSENBERG, GOLPER & SAVITT LLP
500 North Brand Boulevard, Twentieth Floor
Glendale, California 91203-9946
Telephone: (818) 508-3700
Facsimile: (818) 506-4827

CAROL A. HUMISTON (SBN 115592)
SENIOR ASSISTANT CITY ATTORNEY – CITY OF BURBANK
275 East Olive Avenue
Burbank, California 91510
Telephone: (818) 238-5707
Facsimile: (818) 238-5724

Attorneys for Defendant and Cross-Complainant CITY OF BURBANK, including the POLICE DEPARTMENT OF THE CITY OF BURBANK (erroneously sued as an independent entity named "BURBANK POLICE DEPARTMENT")

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles
APR 16 2010
John A. Clarke, Executive Officer/Clerk
By RUGENA LOPEZ, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

OMAR RODRIGUEZ; CINDY GUILLEN-GOMEZ; STEVE KARAGIOSIAN; ELFEGO RODRIGUEZ; AND JAMAL CHILDS, Plaintiffs, v. BURBANK POLICE DEPARTMENT; CITY OF BURBANK; AND DOES 1 THROUGH 100, INCLUSIVE, Defendants.	CASE NO. BC 414602 Date: June 30, 2010 Time: 9:00 a.m. Judge: Honorable Joanne O'Donnell Dept.: 37 **DEFENDANT CITY OF BURBANK'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF ISSUES AGAINST PLAINTIFF CINDY GUILLEN-GOMEZ** **[MEMORANDUM OF POINTS AND AUTHORITIES, SEPARATE STATEMENT OF UNDISPUTED FACTS, EVIDENCE IN SUPPORT, AND APPENDIX OF NON-CALIFORNIA AUTHORITIES FILED CONCURRENTLY HEREWITH]**
BURBANK POLICE DEPARTMENT; CITY OF BURBANK, Cross-Complainants, v. OMAR RODRIGUEZ, an Individual; Cross-Defendant.	File Date: May 28, 2009 Trial Date: August 25, 2010 Discovery Referee: Hon. Diane Wayne, Ret.

TO PLAINTIFFS OMAR RODRIGUEZ, CINDY GUILLEN-GOMEZ, ELFEGO RODRIGUEZ, JAMAL CHILDS, AND STEVE KARAGIOSIAN AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on June 30, 2010, at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 37 of this Court, located at 111 North Hill Street, Los Angeles, California, the Honorable Joanne O'Donnell presiding, Defendant and Cross-Complainant City of Burbank, including the Police Department of the City of Burbank (erroneously sued as an independent entity named "Burbank Police Department") ("Burbank"), will and hereby does move this Court, pursuant to Code of Civil Procedure Section 437c, as follows:

(1) For summary judgment in favor of Burbank and against Plaintiff Cindy Guillen-Gomez ("Guillen") on the ground that there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law, and for costs of suit incurred herein and such other relief as may be just;

SUMMARY JUDGMENT AS TO ENTIRE COMPLAINT

Burbank is entitled to summary judgment on the ground that there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1 through 727.)

(2) Or, alternatively, if for any reason summary judgment cannot be granted, for an order adjudicating that Burbank is entitled to judgment as to the following causes of action contained in the First Amended Complaint ("FAC") filed herein by Guillen based on the grounds

set forth below, and that the final judgment in this action shall, in addition to any matters determined at trial, award judgment as established by such adjudication[1]:

SUMMARY ADJUDICATION AS TO CLAIMS FOR ALLEGED DISCRIMINATORY ADVERSE EMPLOYMENT ACTIONS BASED ON PREGNANCY UNDER THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT ("FEHA"), CONTAINED AND SUBSUMED IN THE SECTION OF PLAINTIFF'S COMPLAINT DENOMINATED "FIRST CAUSE OF ACTION"

Request For Unpaid Leave

Issue No. 1: The First Cause of Action for discrimination under the California Fair Employment and Housing Act ("FEHA"), as set forth in the First Amended Complaint ("FAC"), includes and subsumes what is actually a separate cause of action for pregnancy discrimination based on Burbank's alleged refusal to provide Guillen with unpaid leave time during her pregnancy leave. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's conduct on this issue, as established by the undisputed facts, was not an actionable

[1] Guillen's First Amended Complaint ("FAC") simply jumbles together all of her discrimination claims (First Cause of Action), retaliation claims (Third Cause of Action), harassment claims (Second Cause of Action), failure to accommodate and engage in the interactive process claims (Fourth Cause of Action), and wrongful failure to prevent harassment, discrimination, and/or retaliation claims (Fifth Cause of Action). The fact that Guillen has not pled these claims separately, however, does not mean that they are not separate causes of action for purposes of summary judgment. *Lilienthal & Fowler v. Superior Court,* 12 Cal.App.4th 1848, 1854-1855 (1993) ("a party may present a motion for summary adjudication challenging a separate and distinct wrongful act even though combined with other wrongful acts alleged in the same cause of action"). If for any reason the Court does not grant summary judgment as to all of Guillen's claims, Burbank is still entitled to summary adjudication as to those individual claims which the Court determines to lack merit.

"adverse employment action," which is a necessary element of the prima facie case for this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10.[2])

Issue No. 2: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for pregnancy discrimination based on Burbank's alleged refusal to provide Guillen with unpaid leave time during her pregnancy leave. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10, 21-23.)

Imposition Of A "Reprimand"

Issue No. 3: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for pregnancy discrimination based on Burbank's alleged imposition of a reprimand on Guillen because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's conduct on this issue, as established by the undisputed facts, was not an actionable "adverse employment action," which is a necessary element of the prima facie case for this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 24-26.)

[2] Some undisputed facts are repeated more than once in the Separate Statement. Those undisputed facts are referred to in this Motion by the number assigned to them the first time they appear in the Separate Statement.

Issue No. 4: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for pregnancy discrimination based on Burbank's alleged imposition of a reprimand on Guillen because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos.23-26.)

Access To And Training On The Computer System

Issue No. 5: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for pregnancy discrimination based on Burbank's alleged failure to provide Guillen with access to and training on the City's MDT computer system because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's conduct on this issue, as established by the undisputed facts, was not an actionable "adverse employment action," which is a necessary element of the prima facie case for this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 31-33.)

Issue No. 6: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for pregnancy discrimination based on Burbank's alleged failure to provide Guillen with access to and training on the City's MDT computer system because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory

reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 23, 31-33.)

Summary Adjudication As To Claims For Alleged Discriminatory Adverse Employment Actions Based On Pregnancy, Contained And Subsumed In The Section Of Plaintiff's Complaint Denominated "First Cause Of Action"

Issue No. 7: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for pregnancy discrimination based on conduct alleged in the FAC including Burbank's alleged refusal to provide Guillen with unpaid leave time during her pregnancy leave, alleged imposition of a reprimand on Guillen, and alleged failure to provide Guillen with access to and training on the City's MDT computer system because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's conduct on this issue, as established by the undisputed facts, was not an actionable "adverse employment action," which is a necessary element of the prima facie case for this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10, 21, 24-26, 31-33, 55.)

Issue No. 8: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for pregnancy discrimination based on conduct alleged in the FAC including Burbank's alleged refusal to provide Guillen with unpaid leave time during her pregnancy leave, alleged imposition of a reprimand on Guillen, and alleged failure to provide Guillen with access to and training on the City's MDT computer system because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory

reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10, 21, 22-26, 31-33, 55, 76.)

SUMMARY ADJUDICATION AS TO CLAIMS FOR ALLEGED RETALIATORY ADVERSE EMPLOYMENT ACTION BASED ON PREGNANCY UNDER FEHA, CONTAINED AND SUBSUMED IN THE SECTION OF PLAINTIFF'S COMPLAINT DENOMINATED "THIRD CAUSE OF ACTION"

Request For Unpaid Leave

Issue No. 9: The Third Cause of Action for retaliation under the FEHA, as set forth in the First Amended Complaint ("FAC"), includes and subsumes what is actually a separate cause of action for retaliation based on pregnancy based on Burbank's alleged refusal to provide Guillen with unpaid leave time during her pregnancy leave. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's conduct on this issue, as established by the undisputed facts, was not an actionable "adverse employment action," which is a necessary element of the prima facie case for this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10, 21.)

Issue No. 10: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for retaliation based on pregnancy based on Burbank's alleged refusal to provide Guillen with unpaid leave time during her pregnancy leave. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10, 21, 23.)

Imposition Of A "Reprimand"

Issue No. 11: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for retaliation based on pregnancy based on Burbank's alleged imposition of a reprimand on Guillen because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's conduct on this issue, as established by the undisputed facts, was not an actionable "adverse employment action," which is a necessary element of the prima facie case for this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 24-26.)

Issue No. 12: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for retaliation based on pregnancy based on Burbank's alleged imposition of a reprimand on Guillen because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 23-26.)

Access To And Training On The Computer System

Issue No. 13: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for retaliation based on pregnancy based on Burbank's alleged failure to provide Guillen with access to and training on the City's MDT computer system because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's conduct on this issue, as established by the

undisputed facts, was not an actionable "adverse employment action," which is a necessary element of the prima facie case for this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 31-33.)

Issue No. 14: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for retaliation based on pregnancy based on Burbank's alleged failure to provide Guillen with access to and training on the City's MDT computer system because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 23, 31-33.)

Summary Adjudication As To All Claims For Alleged Retaliatory Adverse Employment Action Based On Pregnancy Under FEHA, Contained And Subsumed In The Section Of Plaintiff's Complaint Denominated "Third Cause Of Action"

Issue No. 15: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for retaliation based on pregnancy based on conduct alleged in the FAC including Burbank's alleged refusal to provide Guillen with unpaid leave time during her pregnancy leave, alleged imposition of a reprimand on Guillen, and alleged failure to provide Guillen with access to and training on the City's MDT computer system because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's conduct on this issue, as established by the undisputed facts, was not an actionable "adverse employment action," which is a necessary element of the prima facie case for this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10, 21, 24-26, 31-33, 55.)

Issue No. 16: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for retaliation based on pregnancy based on conduct alleged in the FAC including Burbank's alleged refusal to provide Guillen with unpaid leave time during her pregnancy leave, alleged imposition of a reprimand on Guillen, and alleged failure to provide Guillen with access to and training on the City's MDT computer system because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10, 21, 23-26, 31-33, 55, 76.)

SUMMARY ADJUDICATION AS TO CLAIMS FOR ALLEGED FAILURE TO ACCOMMODATE AND ENGAGE IN INTERACTIVE PROCESS UNDER FEHA, CONTAINED AND SUBSUMED IN THE SECTION OF PLAINTIFF'S COMPLAINT DENOMINATED "FOURTH CAUSE OF ACTION"

Request For Unpaid Leave

Issue No. 17: The Fourth Cause of Action for failure to accommodate and failure to engage in interactive process under the FEHA, as set forth in the First Amended Complaint ("FAC"), includes and subsumes what is actually a separate cause of action for failure to accommodate and failure to engage in interactive process in connection with Guillen's pregnancy based on Burbank's alleged refusal to provide Guillen with unpaid leave time during her pregnancy leave. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's conduct on this issue, as established by the undisputed facts, was not an actionable "adverse employment action," which is a necessary element of the prima facie case for this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10, 21.)

Issue No. 18: The Fourth Cause of Action for failure to accommodate and failure to engage in interactive process under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for failure to accommodate and failure to engage in interactive process in connection with Guillen's pregnancy based on Burbank's alleged refusal to provide Guillen with unpaid leave time during her pregnancy leave. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual; and because Guillen admits that she performed all of her duties in a professional and competent manner "at all times" during her employment, and therefore never needed any accommodation to perform her job. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10, 21, 23, 175.)

Imposition Of A "Reprimand" On Guillen

Issue No. 19: The Fourth Cause of Action for failure to accommodate and failure to engage in interactive process under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for failure to accommodate and failure to engage in interactive process in connection with Guillen's pregnancy based on Burbank's alleged imposition of a reprimand on Guillen because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's conduct on this issue, as established by the undisputed facts, was not an actionable "adverse employment action," which is a necessary element of the prima facie case for this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 24-26.)

Issue No. 20: The Fourth Cause of Action for failure to accommodate and failure to engage in interactive process under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for failure to accommodate and failure to engage in interactive

process in connection with Guillen's pregnancy based on Burbank's alleged imposition of a reprimand on Guillen because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual.; and because Guillen admits that she performed all of her duties in a professional and competent manner "at all times" during her employment, and therefore never needed any accommodation to perform her job.(Burbank's Separate Statement of Undisputed Material Facts, Nos. 24-26, 175.)

Access To And Training On The City's MDT Computer System

Issue No. 21: The Fourth Cause of Action for failure to accommodate and failure to engage in interactive process under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for failure to accommodate and failure to engage in interactive process in connection with Guillen's pregnancy based on Burbank's alleged failure to provide Guillen with access to and training on the City's MDT computer system because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's conduct on this issue, as established by the undisputed facts, was not an actionable "adverse employment action," which is a necessary element of the prima facie case for this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 31-33.)

Issue No. 22: The Fourth Cause of Action for failure to accommodate and failure to engage in interactive process under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for failure to accommodate and failure to engage in interactive process in connection with Guillen's pregnancy based on Burbank's alleged failure to provide Guillen with access to and training on the City's MDT computer system because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-

discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual; and because Guillen admits that she performed all of her duties in a professional and competent manner "at all times" during her employment, and therefore never needed any accommodation to perform her job. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 31-33, 175.)

Summary Adjudication As To All Claims For Alleged Failure To Accommodate And Engage In Interactive Process Under FEHA Contained And Subsumed In The Section Of Plaintiff's Complaint Denominated "Fourth Cause Of Action"

Issue No. 23: The Fourth Cause of Action for failure to accommodate and failure to engage in interactive process under the FEHA, as set forth in the FAC, based on conduct alleged in the FAC including Burbank's alleged refusal to provide Guillen with unpaid leave time during her pregnancy leave, alleged imposition of a reprimand on Guillen, and alleged failure to provide Guillen with access to and training on the City's MDT computer system because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's conduct on this issue, as established by the undisputed facts, was not an actionable "adverse employment action," which is a necessary element of the prima facie case for this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10, 21, 24-26, 31-33.)

Issue No. 24: The Fourth Cause of Action for failure to accommodate and failure to engage in interactive process under the FEHA, as set forth in the FAC, based on conduct alleged in the FAC including Burbank's alleged refusal to provide Guillen with unpaid leave time during her pregnancy leave, alleged imposition of a reprimand on Guillen, and alleged failure to provide Guillen with access to and training on the City's MDT computer system because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-

discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual; and because Guillen admits that she performed all of her duties in a professional and competent manner "at all times" during her employment, and therefore never needed any accommodation to perform her job. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10, 21, 23-26, 31-33, 55, 76, 175.)

SUMMARY ADJUDICATION AS TO CLAIMS FOR ALLEGED FAILURE TO PREVENT DISCRIMINATION, RETALIATION, AND HARASSMENT BASED ON PREGNANCY UNDER FEHA, CONTAINED AND SUBSUMED UNDER THE SECTION OF PLAINTIFF'S COMPLAINT DENOMINATED "FIFTH CAUSE OF ACTION"

Request For Unpaid Leave

Issue No. 25: The Fifth Cause of Action for failure to prevent discrimination, retaliation and harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for discrimination, retaliation and/or harassment based on pregnancy, based on Burbank's alleged refusal to provide Guillen with unpaid leave time during her pregnancy leave. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's conduct on this issue, as established by the undisputed facts, was not an actionable "adverse employment action," which is a necessary element of the prima facie case for this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10, 21.)

Issue No. 26: The Fifth Cause of Action for failure to prevent discrimination, retaliation and harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for discrimination, retaliation and/or harassment based on pregnancy, based on Burbank's alleged refusal to provide Guillen with unpaid leave time during her pregnancy leave. On said cause of action, there is no triable issue as to any material fact and

Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10, 21, 23.)

Imposition Of A "Reprimand" On Guillen

Issue No. 27: The Fifth Cause of Action for failure to prevent discrimination, retaliation and harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for discrimination, retaliation and/or harassment based on pregnancy, based on Burbank's alleged imposition of a reprimand on Guillen because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's conduct on this issue, as established by the undisputed facts, was not an actionable "adverse employment action," which is a necessary element of the prima facie case for this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 24-26.)

Issue No. 28: The Fifth Cause of Action for failure to prevent discrimination, retaliation and harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for discrimination, retaliation and/or harassment based on pregnancy, based on Burbank's alleged imposition of a reprimand on Guillen because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 23-26.)

Access To And Training On Computer System

Issue No. 29: The Fifth Cause of Action for failure to prevent discrimination, retaliation and harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for discrimination, retaliation and/or harassment based on pregnancy, based on Burbank's alleged failure to provide Guillen with access to and training on the City's MDT computer system because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's conduct on this issue, as established by the undisputed facts, was not an actionable "adverse employment action," which is a necessary element of the prima facie case for this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 31-33.)

Issue No. 30: The Fifth Cause of Action for failure to prevent discrimination, retaliation and harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for discrimination, retaliation and/or harassment based on pregnancy, based on Burbank's alleged failure to provide Guillen with access to and training on the City's MDT computer system because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 23, 31-33.)

Summary Adjudication As To All Claims For Alleged Failure To Prevent Discrimination, Retaliation, And Harassment Based On Pregnancy Under FEHA, Contained And Subsumed Under The Section Of Plaintiff's Complaint Denominated "Fifth Cause Of Action"

Issue No. 31: The Fifth Cause of Action for failure to prevent discrimination, retaliation and harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for discrimination, retaliation and/or harassment based on pregnancy, based on conduct alleged in the FAC including Burbank's alleged refusal to provide Guillen with unpaid leave time during her pregnancy leave, alleged imposition of a reprimand on Guillen, and alleged failure to provide Guillen with access to and training on the City's MDT computer system because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, Burbank's conduct on this issue, as established by the undisputed facts, was not an actionable "adverse employment action," which is a necessary element of the prima facie case for this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10, 21, 24-26, 31-33.)

Issue No. 32: The Fifth Cause of Action for failure to prevent discrimination, retaliation and harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for discrimination, retaliation and/or harassment based on pregnancy, based on conduct alleged in the FAC including Burbank's alleged refusal to provide Guillen with unpaid leave time during her pregnancy leave, alleged imposition of a reprimand on Guillen, and alleged failure to provide Guillen with access to and training on the City's MDT computer system because of her pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10, 21, 23-26, 31-33, 55, 76.)

SUMMARY ADJUDICATION AS TO CLAIMS FOR ALLEGED HARASSMENT BASED ON PREGNANCY UNDER FEHA, CONTAINED AND SUBSUMED IN THE SECTIONS OF PLAINTIFF'S COMPLAINT DENOMINATED "SECOND CAUSE OF ACTION" AND "FIFTH CAUSE OF ACTION"

Issue No. 33: The Second Cause of Action for harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for harassment based on pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: The conduct which Guillen alleges constituted harassment was not, as a matter of law, sufficiently severe and pervasive to support a claim and did not create a hostile work environment. To the extent that any conduct may have occurred to create a hostile work environment outside the one year statute of limitations period contained in Cal. Gov. Code, § 12960(d), Guillen cannot rely on such conduct to support this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 302-310.)

Issue No. 34: The Fifth Cause of Action for failure to prevent harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for failure to prevent harassment based on pregnancy. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: The conduct which Guillen alleges constituted harassment was not, as a matter of law, sufficiently severe and pervasive to support a claim and did not create a hostile work environment. To the extent that any conduct may have occurred to create a hostile work environment outside the one year statute of limitations period contained in Cal. Gov. Code, § 12960(d), Guillen cannot rely on such conduct to support this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 302-310.)

SUMMARY ADJUDICATION AS TO CLAIMS FOR ALLEGED DISCRIMINATORY ADVERSE EMPLOYMENT ACTIONS BASED ON "RACE, ANCESTRY, NATIONAL ORIGIN, SEX/GENDER AND MARITAL STATUS" UNDER FEHA, CONTAINED AND SUBSUMED IN THE SECTION OF PLAINTIFF'S COMPLAINT DENOMINATED "FIRST CAUSE OF ACTION"

Employment Reference Regarding Guillen

Issue No. 35: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for discrimination based on "race, ancestry, national origin, sex/gender and marital status" (collectively referred to herein as "ethnicity and gender"), based on Burbank's allegedly giving a negative employment reference regarding Guillen during a background investigation being conducted by the Newport Beach Police Department by telling the investigator that Guillen was a 'cancer' in the BPD, that Guillen was 'bitter' and had 'anger management' issues, and that Guillen was happiest when she became angry." On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, any statements made by any person during the course of such a background investigation were covered by the absolute privilege of Civil Code Section 47(2), and cannot form the basis for any legal claim. (Burbank's position on this issue is based on the FAC, and not on extrinsic facts.)

Issue No. 36: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for ethnicity and gender discrimination, based on Burbank's allegedly giving a negative employment reference regarding Guillen during a background investigation being conducted by the Newport Beach Police Department by telling the investigator that Guillen was a 'cancer' in the BPD, that Guillen was 'bitter' and had 'anger management' issues, and that Guillen was happiest when she became angry." On said cause of action, there is no triable issue as to any material fact and Burbank is

entitled to judgment as a matter of law for the following reason: Guillen can present no admissible evidence that the alleged statements were made by any representative of Burbank, nor that the alleged statements, if made, were based in any way on Guillen's ethnicity or gender. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 321-322.)

Issue No. 37: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for ethnicity and gender discrimination, based on Burbank's allegedly giving a negative employment reference regarding Guillen during a background investigation being conducted by the Newport Beach Police Department by telling the investigator that Guillen was a 'cancer' in the BPD, that Guillen was 'bitter' and had 'anger management' issues, and that Guillen was happiest when she became angry." On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: The alleged statements, even if made, were statements of opinion, and therefore protected by the First Amendment, and cannot form the basis for any legal claim. (Burbank's position on this issue is based on the FAC, and not on extrinsic facts.)

Decision Not To Select Guillen For Detective In 2006

Issue No. 38: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for discrimination based on Burbank's failure to promote Guillen to the position of detective based on ethnicity and/or gender. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: This claim is barred by the one year statute of limitations contained in Cal. Gov. Code, § 12960(d). (Burbank's Separate Statement of Undisputed Material Facts, Nos. 324-326.)

Issue No. 39: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for discrimination based on Burbank's failure to promote Guillen to the position of detective based on ethnicity and/or gender. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 23, 324-326, 331-332.)

Reprimand For Carelessness In 2004

Issue No. 40: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank giving Guillen a written reprimand for carelessness in the performance of her duties based on ethnicity and/or gender. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: This claim is barred by the one year statute of limitations contained in Cal. Gov. Code, § 12960(d). (Burbank's Separate Statement of Undisputed Material Facts, Nos. 325, 334-335.)

Issue No. 41: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action based on Burbank giving Guillen a written reprimand for carelessness in the performance of her duties based on ethnicity and/or gender. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 23, 334-335, 339-341.)

Decision Not To Select Guillen for SED Assignment

Issue No. 42: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for discrimination based on Burbank's failure to assign Guillen to the SED unit based on ethnicity and/or gender. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: This claim is barred by the one year statute of limitations contained in Cal. Gov. Code, § 12960(d). (Burbank's Separate Statement of Undisputed Material Facts, Nos. 325, 343.)

Issue No. 43: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for discrimination based on Burbank's failure to assign Guillen to the SED unit based on ethnicity and/or gender. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 23, 343, 346-349.)

Summary Adjudication As To All Claims For Alleged Discriminatory Adverse Employment Actions Based On "Race, Ancestry, National Origin, Sex/Gender And Marital Status" Under FEHA, Contained And Subsumed In The Section Of Plaintiff's Complaint Denominated "First Cause Of Action"

Issue No. 44: The First Cause of Action for discrimination under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for discrimination based on ethnicity and/or gender, based on the conduct alleged in the FAC including failure to promote Guillen to detective, giving Guillen a written reprimand for carelessness in the

performance of her duties, failing to assign Guillen to the SED unit, and giving a negative employment reference regarding Guillen during a background investigation being conducted by the Newport Beach Police Department. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reasons: Each aspect of this claim is barred by the one year statute of limitations contained in Cal. Gov. Code, § 12960(d), and/or because Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual, and/or because the claim is barred by the absolute privilege of Civil Code Section 47(2), and/or the claim is barred because the basis of the claim is the making of a statement of opinion which is protected by the First Amendment and cannot form the basis of any claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 23, 324-326, 331-332, 334-335, 339-341, 343, 346-349.)

SUMMARY ADJUDICATION AS TO CLAIMS FOR ALLEGED RETALIATORY ADVERSE EMPLOYMENT ACTION BASED ON "RACE, ANCESTRY, NATIONAL ORIGIN, SEX/GENDER AND MARITAL STATUS" UNDER FEHA, CONTAINED AND SUBSUMED IN THE SECTION OF PLAINTIFF'S COMPLAINT DENOMINATED "THIRD CAUSE OF ACTION"

Employment Reference Regarding Guillen

Issue No. 45: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for retaliation based on ethnicity and gender, based on Burbank's allegedly giving a negative employment reference regarding Guillen during a background investigation being conducted by the Newport Beach Police Department by telling the investigator that Guillen was a 'cancer' in the BPD, that Guillen was 'bitter' and had 'anger management' issues, and that Guillen was happiest when she became angry." On said cause of action, there is no triable issue as to any material fact and Burbank is

entitled to judgment as a matter of law for the following reason: As a matter of law, any statements made by any person during the course of such a background investigation were covered by the absolute privilege of Civil Code Section 47(2), and cannot form the basis for any legal claim. (Burbank's position on this issue is based on the FAC, and not on extrinsic facts.)

Issue No. 46: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for retaliation based on ethnicity and gender, based on Burbank's allegedly giving a negative employment reference regarding Guillen during a background investigation being conducted by the Newport Beach Police Department by telling the investigator that Guillen was a 'cancer' in the BPD, that Guillen was 'bitter' and had 'anger management' issues, and that Guillen was happiest when she became angry." On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Guillen can present no admissible evidence that the alleged statements were made by any representative of Burbank, nor that the alleged statements, if made, were based in any way on Guillen's ethnicity or gender. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 321-322, 324.)

Issue No. 47: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for retaliation based on ethnicity and gender, based on Burbank's allegedly giving a negative employment reference regarding Guillen during a background investigation being conducted by the Newport Beach Police Department by telling the investigator that Guillen was a 'cancer' in the BPD, that Guillen was 'bitter' and had 'anger management' issues, and that Guillen was happiest when she became angry." On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: The alleged statements, even if made, were statements of opinion, and therefore protected by the First Amendment, and cannot form the basis for any legal claim. (Burbank's position on this issue is based on the FAC, and not on extrinsic facts.)

Decision Not To Select Guillen For Detective In 2006

Issue No. 48: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for retaliation based on Burbank's failure to promote Guillen to the position of detective. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: This claim is barred by the one year statute of limitations contained in Cal. Gov. Code, § 12960(d). (Burbank's Separate Statement of Undisputed Material Facts, Nos. 324-326.)

Issue No. 49: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for retaliation based on Burbank's failure to promote Guillen to the position of detective. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 23, 324-326, 331-332.)

Reprimand For Carelessness In 2004

Issue No. 50: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for retaliation based on Burbank giving Guillen a written reprimand for carelessness in the performance of her duties. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: This claim is barred by the one year statute of limitations contained in Cal. Gov. Code, § 12960(d). (Burbank's Separate Statement of Undisputed Material Facts, Nos. 325, 334-335.)

Issue No. 51: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for retaliation based on Burbank giving Guillen a written reprimand for carelessness in the performance of her duties. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 23, 334-335, 339-341.)

Issue No. 52: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for discrimination based on Burbank's failure to assign Guillen to the SED. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: This claim is barred by the one year statute of limitations contained in Cal. Gov. Code, § 12960(d). (Burbank's Separate Statement of Undisputed Material Facts, Nos. 325, 343.)

Decision Not To Select Guillen for SED Assignment

Issue No. 53: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for discrimination based on Burbank's failure to assign Guillen to the SED. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 23, 343, 346-349.)

SUMMARY ADJUDICATION AS TO CLAIMS FOR ALLEGED RETALIATION BASED ON "RACE, ANCESTRY, NATIONAL ORIGIN, SEX/GENDER AND MARITAL STATUS" UNDER FEHA, CONTAINED AND SUBSUMED IN THE SECTION OF PLAINTIFF'S COMPLAINT DENOMINATED "THIRD CAUSE OF ACTION"

Issue No. 54: The Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for retaliation, based on the conduct alleged in the FAC including failure to promote Guillen to detective, giving Guillen a written reprimand for carelessness in the performance of her duties, failing to assign Guillen to the SED unit, and giving a negative employment reference regarding Guillen during a background investigation being conducted by the Newport Beach Police Department. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reasons: Each aspect of this claim is barred by the one year statute of limitations contained in Cal. Gov. Code, § 12960(d), and/or because Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual, and/or because the claim is barred by the absolute privilege of Civil Code Section 47(2), and/or the claim is barred because the basis of the claim is the making of a statement of opinion which is protected by the First Amendment and cannot form the basis of any claim. (Burbank's Separate Statement Of Undisputed Material Facts, Nos. 23, 321-322, 324-326, 331-332, 334-335, 339-341, 343, 346-349.)

SUMMARY ADJUDICATION AS TO CLAIMS FOR ALLEGED FAILURE TO PREVENT DISCRIMINATION, RETALIATION, AND HARASSMENT BASED ON "RACE, ANCESTRY, NATIONAL ORIGIN, SEX/GENDER AND MARITAL STATUS" UNDER FEHA, CONTAINED AND SUBSUMED IN THE SECTION OF PLAINTIFF'S COMPLAINT DENOMINATED "FIFTH CAUSE OF ACTION"

Employment Reference Regarding Guillen

Issue No. 55: The Fifth Cause of Action for failure to prevent discrimination, retaliation and harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for discrimination, retaliation and/or harassment based on ethnicity and gender, based on Burbank's allegedly giving a negative employment reference regarding Guillen during a background investigation being conducted by the Newport Beach Police Department by telling the investigator that Guillen was a 'cancer' in the BPD, that Guillen was 'bitter' and had 'anger management' issues, and that Guillen was happiest when she became angry." On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: As a matter of law, any statements made by any person during the course of such a background investigation were covered by the absolute privilege of Civil Code Section 47(2), and cannot form the basis for any legal claim. (Burbank's position on this issue is based on the FAC, and not on extrinsic facts.)

Issue No. 56: The Fifth Cause of Action for failure to prevent discrimination, retaliation and harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for discrimination, retaliation and/or harassment based on ethnicity and gender, based on Burbank's allegedly giving a negative employment reference regarding Guillen during a background investigation being conducted by the Newport Beach Police Department by telling the investigator that Guillen was a 'cancer' in the BPD, that Guillen was 'bitter' and had 'anger management' issues, and that Guillen was happiest when she became angry." On said

cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Guillen can present no admissible evidence that the alleged statements were made by any representative of Burbank, nor that the alleged statements, if made, were based in any way on Guillen's ethnicity or gender. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 321-322, 324.)

Issue No. 57: The Fifth Cause of Action for failure to prevent discrimination, retaliation and harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for discrimination, retaliation and/or harassment based on ethnicity and gender, based on Burbank's allegedly giving a negative employment reference regarding Guillen during a background investigation being conducted by the Newport Beach Police Department by telling the investigator that Guillen was a 'cancer' in the BPD, that Guillen was 'bitter' and had 'anger management' issues, and that Guillen was happiest when she became angry." On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: The alleged statements, even if made, were statements of opinion, and therefore protected by the First Amendment, and cannot form the basis for any legal claim. (Burbank's position on this issue is based on the FAC, and not on extrinsic facts.)

Decision Not to Select Guillen for Detective In 2006

Issue No. 58: The Fifth Cause of Action for failure to prevent discrimination, retaliation and/or harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for failure to prevent discrimination, retaliation and/or harassment, based on Burbank's failure to promote Guillen to the position of detective. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: This claim is barred by the one year statute of limitations contained in Cal. Gov. Code, § 12960(d). (Burbank's Separate Statement of Undisputed Material Facts, Nos. 324-326.)

Issue No. 59: The Fifth Cause of Action for failure to prevent discrimination, retaliation and/or harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for failure to prevent discrimination, retaliation and/or harassment, based on Burbank's failure to promote Guillen to the position of detective. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 23, 324-326, 331-332.)

Reprimand for Carelessness in 2004

Issue No. 60: The Fifth Cause of Action for failure to prevent discrimination, retaliation and/or harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for failure to prevent discrimination, retaliation and/or harassment, based on Burbank giving Guillen a written reprimand for carelessness in the performance of her duties. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: This claim is barred by the one year statute of limitations contained in Cal. Gov. Code, § 12960(d). (Burbank's Separate Statement of Undisputed Material Facts, Nos. 325, 334-335.)

Issue No. 61: The Fifth Cause of Action for failure to prevent discrimination, retaliation and/or harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for failure to prevent discrimination, retaliation and/or harassment, based on Burbank giving Guillen a written reprimand for carelessness in the performance of her duties. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen

cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 23, 334-335, 339-341.)

Decision Not To Select Guillen for SED Assignment

Issue No. 62: The Fifth Cause of Action for failure to prevent discrimination, retaliation and/or harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for failure to prevent discrimination, retaliation and/or harassment, based on Burbank's failure to assign Guillen to the SED. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: This claim is barred by the one year statute of limitations contained in Cal. Gov. Code, § 12960(d). (Burbank's Separate Statement of Undisputed Material Facts, Nos. 325, 343.)

Issue No. 63: The Fifth Cause of Action for failure to prevent discrimination, retaliation and/or harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for failure to prevent discrimination, retaliation and/or harassment, based on Burbank's failure to assign Guillen to the SED. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 23, 343, 346-349.)

Summary Adjudication As To All Claims For Alleged Failure To Prevent Discrimination, Retaliation, And Harassment Based On "Race, Ancestry, National Origin, Sex/Gender And Marital Status" Under FEHA, Contained And Subsumed In The Section Of Plaintiff's Complaint Denominated "Fifth Cause Of Action"

Issue No. 64: The Fifth Cause of Action for failure to prevent discrimination, retaliation and/or harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for failure to prevent discrimination, retaliation and/or harassment, based on the conduct alleged in the FAC including failure to promote Guillen to detective, giving Guillen a written reprimand for carelessness in the performance of her duties, failing to assign Guillen to the SED unit, and giving a negative employment reference regarding Guillen during a background investigation being conducted by the Newport Beach Police Department. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reasons: Each aspect of this claim is barred by the one year statute of limitations contained in Cal. Gov. Code, § 12960(d), and/or because Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual, and/or because the claim is barred by the absolute privilege of Civil Code Section 47(2), and/or the claim is barred because the basis of the claim is the making of a statement of opinion which is protected by the First Amendment and cannot form the basis of any claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 23, 321-322, 324-326, 331-332, 334-335, 339-341, 343, 346-349.)

SUMMARY ADJUDICATION AS TO CLAIMS FOR ALLEGED HARASSMENT UNDER FEHA, CONTAINED AND SUBSUMED IN THE SECTIONS OF PLAINTIFF'S COMPLAINT DENOMINATED "SECOND CAUSE OF ACTION" AND "FIFTH CAUSE OF ACTION"

Issue No. 65: The Second Cause of Action for harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for harassment based on ethnicity and/or gender. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: The conduct which Guillen alleges constituted harassment was not, as a matter of law, sufficiently severe and

pervasive to support a claim and did not create a hostile work environment. To the extent that any conduct may have occurred to create a hostile work environment outside the one year statute of limitations period contained in Cal. Gov. Code, § 12960(d), Guillen cannot rely on such conduct to support this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 325, 463-468.)

Issue No. 66: The Fifth Cause of Action for failure to prevent harassment under the FEHA, as set forth in the FAC, includes and subsumes what is actually a separate cause of action for failure to prevent harassment based on ethnicity and/or gender. On said cause of action, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: The conduct which Guillen alleges constituted harassment was not, as a matter of law, sufficiently severe and pervasive to support a claim and did not create a hostile work environment. To the extent that any conduct may have occurred to create a hostile work environment outside the one year statute of limitations period contained in Cal. Gov. Code, § 12960(d), Guillen cannot rely on such conduct to support this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 325, 463-468.)

SUMMARY ADJUDICATION AS TO CLAIMS FOR ALLEGED DISCRIMINATORY ADVERSE EMPLOYMENT ACTIONS UNDER FEHA, CONTAINED AND SUBSUMED IN THE SECTION OF PLAINTIFF'S COMPLAINT DENOMINATED "FIRST CAUSE OF ACTION"

Issue No. 67: As to the entire First Cause of Action for discrimination under the FEHA, as set forth in the FAC, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: The conduct which Guillen alleges constituted discrimination was not, as a matter of law, an actionable "adverse employment action," which is a necessary element of the prima facie case for this claim, and/or Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show

that the reason was pretextual, and /or because the allegedly actionable conduct occurred outside the one year statute of limitations period contained in Cal. Gov. Code, § 12960(d), and/or because Burbank's conduct was protected by the absolute privilege of Civil Code Section 47(2) and cannot form the basis of any claim, and/or because the basis of the claim is the making of a statement of opinion which is protected by the First Amendment and cannot form the basis of any claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10, 21, 23-26, 31-33, 55, 76, 321-322, 324-326, 331-332, 334-335, 339-341, 343, 346-349.)

SUMMARY ADJUDICATION AS TO CLAIMS FOR ALLEGED HARASSMENT UNDER FEHA, CONTAINED AND SUBSUMED IN THE SECTION OF PLAINTIFF'S COMPLAINT DENOMINATED "SECOND CAUSE OF ACTION"

Issue No. 68: As to the entire Second Cause of Action for harassment under the FEHA, as set forth in the FAC, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: The conduct which Guillen alleges constituted harassment was not, as a matter of law, sufficiently severe and pervasive to support a claim and did not create a hostile work environment. To the extent that any conduct may have occurred to create a hostile work environment outside the one year statute of limitations period contained in Cal. Gov. Code, § 12960(d), Guillen cannot rely on such conduct to support this claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 302-310, 325, 463-468.)

SUMMARY ADJUDICATION AS TO CLAIMS FOR ALLEGED RETALIATORY ADVERSE EMPLOYMENT ACTIONS UNDER FEHA, CONTAINED AND SUBSUMED IN THE SECTION OF PLAINTIFF'S COMPLAINT DENOMINATED "THIRD CAUSE OF ACTION"

Issue No. 69: As to the entire Third Cause of Action for retaliation under the FEHA, as set forth in the FAC, there is no triable issue as to any material fact and Burbank is entitled to

judgment as a matter of law for the following reason: The conduct which Guillen alleges constituted retaliation was not, as a matter of law, an actionable "adverse employment action," which is a necessary element of the prima facie case for this claim, and/or Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual, and /or because the allegedly actionable conduct occurred outside the one year statute of limitations period contained in Cal. Gov. Code, § 12960(d), and/or because Burbank's conduct was protected by the absolute privilege of Civil Code Section 47(2) and cannot form the basis of any claim, and/or because the basis of the claim is the making of a statement of opinion which is protected by the First Amendment and cannot form the basis of any claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10, 21, 23-26, 31-33, 55, 76, 321-322, 324-326, 331-332, 334-335, 339-341, 343, 346-349.)

SUMMARY ADJUDICATION AS TO CLAIMS FOR ALLEGED FAILURE TO ACCOMMODATE AND ENGAGE IN INTERACTIVE PROCESS UNDER FEHA, CONTAINED AND SUBSUMED IN THE SECTION OF PLAINTIFF'S COMPLAINT DENOMINATED "FOURTH CAUSE OF ACTION"

Issue No. 70: As to the entire Fourth Cause of Action for failure to accommodate and failure to engage in interactive process under the FEHA, as set forth in the FAC, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: Guillen admits that she performed all of her duties in a professional and competent manner "at all times" during her employment, and therefore never needed any accommodation to perform her job as a matter of law. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 175.)

SUMMARY ADJUDICATION AS TO CLAIMS FOR ALLEGED FAILURE TO PREVENT DISCRIMINATION, RETALIATION, AND HARASSMENT UNDER FEHA, CONTAINED AND SUBSUMED IN THE SECTION OF PLAINTIFF'S COMPLAINT DENOMINATED "FIFTH CAUSE OF ACTION"

Issue No. 71: As to the entire Fifth Cause of Action for failure to prevent discrimination, retaliation and/or harassment under the FEHA, as set forth in the FAC, there is no triable issue as to any material fact and Burbank is entitled to judgment as a matter of law for the following reason: The conduct which Guillen alleges constituted discrimination was not, as a matter of law, an actionable "adverse employment action," which is a necessary element of the prima facie case for this claim, and/or Burbank has proffered a legitimate, non-discriminatory and non-retaliatory reason for its conduct, and Guillen cannot show that the reason was pretextual, and /or because the allegedly actionable conduct occurred outside the one year statute of limitations period contained in Cal. Gov. Code, § 12960(d), and/or because Burbank's conduct was protected by the absolute privilege of Civil Code Section 47(2) and cannot form the basis of any claim, and/or because the basis of the claim is the making of a statement of opinion which is protected by the First Amendment and cannot form the basis of any claim. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10, 21, 23-26, 31-33, 55, 76, 302-310, 321-322, 324-326, 331-332, 334-335, 339-341, 343, 346-349, 463-468.)

SUMMARY ADJUDICATION AS TO CLAIMS FOR ALLEGED VIOLATION OF THE PUBLIC SAFETY OFFICERS PROCEDURAL BILL OF RIGHTS ("POBRA"), CONTAINED AND SUBSUMED IN THE SECTION OF PLAINTIFF'S COMPLAINT DENOMINATED "SIXTH CAUSE OF ACTION"

Issue No. 72: The Sixth Cause Of Action in the FAC for violation of the Public Safety Officers Procedural Bill of Rights ("POBRA") Gov't Code §§ 3304, 3309 fails to state a claim for relief, and Burbank is entitled to judgment on said claim as a matter of law, because claim does

nothing more than recast Guillen's discrimination, retaliation and harassment claims under FEHA as being violations of POBRA as well, and POBRA does not create an alternate remedy for FEHA claims. (Burbank's position on this issue is based on the FAC, and not on extrinsic facts.)

Issue No. 73: The Sixth Cause Of Action in the FAC for violation of the Public Safety Officers Procedural Bill of Rights ("POBRA") Gov't Code §§ 3304, 3309 does nothing more than recast Guillen's discrimination, retaliation and harassment claims under FEHA as being violations of POBRA as well, and Burbank is therefore entitled to judgment on this cause of action for the same reasons that Burbank is entitled to judgment on Guillen's FEHA claims. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 1-10, 21-26, 31-33, 55, 76, 175, 302-310, 321-322, 324-326, 331-332, 334-335, 339-341, 343, 346-349, 463-468.)

Issue No. 74: The Sixth Cause Of Action in the FAC for violation of the Public Safety Officers Procedural Bill of Rights ("POBRA") Gov't Code §§ 3304, 3309 is barred, and Burbank is entitled to judgment on that cause of action, because Guillen failed to file a claim alleging any POBRA violation under the Government Claims Act. (Burbank's Separate Statement of Undisputed Material Facts, Nos. 674.)

SUMMARY ADJUDICATION AS TO CLAIMS FOR INJUNCTIVE RELIEF, CONTAINED AND SUBSUMED IN THE SECTION OF PLAINTIFF'S COMPLAINT DENOMINATED "SEVENTH CAUSE OF ACTION"

Issue No. 75: The Seventh Cause Of Action in the FAC is not a cause of action at all, but a request that the court grant injunctive relief as a remedy for other causes of action. Accordingly, this purported cause of action must fail along with Guillen's other claims. (Burbank's Separate Statement of Undisputed Material Facts, Nos. Burbank's position on this issue is based on the FAC, and not on extrinsic facts or, in the alternative, if extrinsic facts are necessary to support

Burbank's position, on 1-10, 21-26, 31-33, 55, 76, 175, 302-310, 321-322, 324-326, 331-332, 334-335, 339-341, 343, 346-349, 463-468, 674.)

Dated: April 16, 2010

MITCHELL SILBERBERG & KNUPP LLP
Lawrence A. Michaels

By:
Lawrence A. Michaels
Attorneys for Defendants and Cross-Complainant CITY OF BURBANK, including the POLICE DEPARTMENT OF THE CITY OF BURBANK (erroneously sued as an independent entity named "BURBANK POLICE DEPARTMENT")

PROOF OF SERVICE

42729-00001

Rodriguez, et al. vs. Burbank Police Department, et al. — LASC Case No. BC414602

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 18 and not a party to the within action. My business address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, California 90064-1683.

On April 16, 2010, I served a copy of the foregoing document(s) described as: **DEFENDANT CITY OF BURBANK'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF ISSUES AGAINST PLAINTIFF CINDY GUILLEN-GOMEZ; [MEMORANDUM OF POINTS AND AUTHORITIES, SEPARATE STATEMENT OF UNDISPUTED FACTS, EVIDENCE IN SUPPORT, AND APPENDIX OF NON-CALIFORNIA AUTHORITIES FILED CONCURRENTLY HEREWITH]** on the interested parties in this action at their last known address as set forth below by taking the action described below:

Solomon E. Gresen, Esq.
Steven V. Rheuban, Esq.
Law Offices of Rheuban & Gresen
15910 Ventura Boulevard, Suite 1610
Encino, CA 91436
T: (818) 815-2727 — F: (818) 815-2737

Attorneys for Plaintiffs Omar Rodriguez, Cindy Guillen-Gomez, Steve Karagiosian, Elfego Rodriguez, and Jamal Childs

☒ **BY PERSONAL DELIVERY:** I placed the above-mentioned document(s) in sealed envelope(s), and caused personal delivery by **FIRST LEGAL SUPPORT SERVICES** of the document(s) listed above to the person(s) at the address(es) set forth above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 16, 2010, at Los Angeles, California.

Isabel G. Moreno

PROOF OF SERVICE

42729-00001

Rodriguez, et al. vs. Burbank Police Department, et al. — LASC Case No. BC414602

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 18, and not a party to the within action; my business address is **FIRST LEGAL SUPPORT SERVICES**, 1511 West Beverly Boulevard, Los Angeles, California 90026.

On April 16, 2010, I served the foregoing document(s) described as **DEFENDANT CITY OF BURBANK'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT, OR IN THE ALTERNATIVE, SUMMARY ADJUDICATION OF ISSUES AGAINST PLAINTIFF CINDY GUILLEN-GOMEZ; [MEMORANDUM OF POINTS AND AUTHORITIES, SEPARATE STATEMENT OF UNDISPUTED FACTS, EVIDENCE IN SUPPORT, AND APPENDIX OF NON-CALIFORNIA AUTHORITIES FILED CONCURRENTLY HEREWITH]** which was enclosed in sealed envelopes addressed as follows, and taking the action described below:

Solomon E. Gresen, Esq.
Steven V. Rheuban, Esq.
Law Offices of Rheuban & Gresen
15910 Ventura Boulevard, Suite 1610
Encino, CA 91436
T: (818) 815-2727 — F: (818) 815-2737

Attorneys for Plaintiffs Omar Rodriguez, Cindy Guillen-Gomez, Steve Karagiosian, Elfego Rodriguez, and Jamal Childs

☒ **BY PERSONAL SERVICE:** I hand delivered such envelope(s):

☐ to the addressee(s);

☒ to the receptionist/clerk/secretary in the office(s) of the addressee(s).

☐ by leaving the envelope in a conspicuous place at the office of the addressee(s) between the hours of 9:00 a.m. and 5:00 p.m.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 16, 2010, at Los Angeles, California.

David Yu
Printed Name

Signature