

1 McNICHOLAS & McNICHOLAS, LLP
Matthew S. McNicholas, State Bar No. 190249
2 Douglas D. Winter, State Bar No. 150795
10866 Wilshire Blvd., Suite 1400
3 Los Angeles, California 90024
4 Tel: (310) 474-1582
Fax: (310) 475-7871

5 Attorneys for Plaintiff
6 FRANK PRECIADO

7
8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**
10

11 FRANK PRECIADO,
12 Plaintiff,

13 v.

14 CITY OF LOS ANGELES, a government
15 entity; and DOES 1 through 100, inclusive,
16 Defendants.

CASE NO.: 19STCV12061
Hon. Mark V. Mooney

FIRST AMENDED COMPLAINT

- 1. Discrimination in Violation of FEHA (Cal. Gov't Code § 12940 *et seq.*)
- 2. Harassment in Violation of FEHA (Cal. Gov't Code § 12940 *et seq.*)
- 3. Retaliation in Violation of FEHA (Cal. Gov't Code § 12940 *et seq.*)

DEMAND FOR JURY TRIAL

17
18
19
20
21 COMES NOW Plaintiff, FRANK PRECIADO, and hereby demands a trial by jury, and
22 based on information and belief complain and allege as follows:

23 **THE PARTIES**

24 1. At all times relevant hereto, Plaintiff FRANK PRECIADO ("Plaintiff") was
25 employed with the Los Angeles Police Department ("the LAPD" or "Department"), and was a
26 competent adult.

27 2. Plaintiff is informed and believes and thereon allege that, at all times relevant
28 hereto, Defendant CITY OF LOS ANGELES ("City" or "Defendant") was a public entity violating

1 laws within the State of California in the County of Los Angeles. At all times pertinent hereto,
2 Defendant City owned, controlled, and operated the law enforcement agency known as the LAPD.

3 3. Plaintiff is informed and believes and thereupon allege that Defendants DOES 1
4 through 100, inclusive, and each of them, at all times relevant hereto, were individuals or public,
5 business, and/or other entities whose form is unknown committing torts in and/or engaged in
6 purposeful economic activity within the County of Los Angeles, State of California.

7 4. The true names and capacities of Defendants DOES 1 through 100, and each of
8 them, whether individual, corporate, associate or otherwise, are unknown to Plaintiff at this time,
9 therefore Plaintiff sues said Defendants by such fictitious names. Plaintiff will file DOE
10 amendments, and/or ask leave of court to amend this complaint to assert the true names and
11 capacities of these Defendants when they have been ascertained. Plaintiff is informed and
12 believes, and upon such information and belief allege, that each Defendant herein designated as a
13 DOE was and is in some manner, negligently, wrongfully, or otherwise, responsible and liable to
14 Plaintiff for the injuries and damages hereinafter alleged, and that Plaintiff' damages as herein
15 alleged were proximately caused by their conduct.

16 5. Plaintiff is informed and believes, and thereon alleges, that at all times material
17 herein the Defendants, and each of them, were the agents, servants, or employees, or ostensible
18 agents, servants, and employees of each other Defendant, and as such, were acting within the
19 course and scope of said agency and employment or ostensible agency and employment, except on
20 those occasions when Defendants were acting as principals, in which case, said Defendants; and
21 each of them, were negligent in the selection, hiring, and use of the other Defendants.

22 6. At all times mentioned herein, each of the Defendants was the co-tortfeasor of each
23 of the other Defendants in doing the things hereinafter alleged.

24 7. Plaintiff is further informed and believes that at all times relevant hereto,
25 Defendants, and each of them, acted in concert and in furtherance of the interests of each other
26 Defendant. The conduct of each Defendant combined and cooperated with the conduct of each of
27 the remaining Defendants so as to cause the herein described incidents and the resulting injuries
28 and damages to Plaintiff.

1 **VENUE AND JURISDICTION**

2 8. At all relevant times hereto, Plaintiff was residing in Los Angeles County, State of
3 California.

4 9. At all relevant times hereto, the Defendants, and each of them, were residents of the
5 County of Los Angeles, State of California.

6 10. The wrongful conduct alleged against the Defendants, and each of them, occurred in
7 the County of Los Angeles, State of California. At all relevant times hereto, the conduct at issue
8 was part of a continuous and ongoing pattern of behavior.

9 11. This Court is the proper court because the wrongful acts that are the subject of this
10 action occurred here, at least one Defendant now resides in its jurisdictional area, and injury to
11 person or damage to personal property occurred in its jurisdictional area.

12 12. Plaintiff has complied with and/or exhausted any applicable claims statutes and/or
13 administrative and/or internal remedies and/or grievance procedures, and/or are excused from
14 complying therewith.

15 13. Plaintiff has complied with the claim presentation requirement of California
16 Government Code § 945.4 and § 912.4. He filed a complaint with the Department of Fair
17 Employment and Housing (“DFEH”) on or about October 9, 2018, and was issued a right-to-sue
18 notice the same day.

19 **GENERAL ALLEGATIONS**

20 14. At all relevant times to this claim, Plaintiff was a sworn police officer for the Los
21 Angeles Police Department. Plaintiff is qualified for the position he held by reason of his
22 education and training. During his career Plaintiff had received numerous awards and
23 commendations having risen through the ranks to eventually become promoted to a Sergeant 2
24 supervisor in the Media Relations Group.

25 15. Plaintiff Preciado is part of a protected class based on his Hispanic
26 ethnicity/race/ancestry/national origin.

27
28

1 16. On a continuing and ongoing basis beginning in or around March 2017, Plaintiff a
2 Sergeant 2 with the LAPD Media Relations, was discriminated/harassed and retaliated against
3 because of his Hispanic ethnicity/race/ancestry/national origin.

4 17. As a Public Information Officer (“PIO”) in its Media Relations Unit, Plaintiff is a
5 spokesperson for the LAPD, and expected to communicate with the public in both English and
6 Spanish. Plaintiff is also in charge of translating all LAPD news releases in Spanish, and
7 responding to newsworthy incidents on behalf of the LAPD. As part of Plaintiff’s job duties,
8 Plaintiff is frequently contacted by Spanish speaking reporters that often want comments from
9 Plaintiff regarding breaking news that at times is only covered on Spanish television.

10 18. On or around March 14, 2017, Plaintiff was present at a supervisors’ meeting when
11 Director of Media Relations Josh Rubenstein, along with Captain Patricia Sandoval, first
12 announced that they decided that all television broadcasts in Spanish needed to be turned off.
13 Plaintiff complained that this action was discriminatory censorship and that by turning the Spanish
14 language televisions off, he could no longer be informed of breaking news that was only covered
15 in Spanish and could not respond properly to inquiries from Spanish speaking reporters. Plaintiff
16 had been successfully performing his duties with the Spanish television turned on for 10 years
17 prior to this order. When Plaintiff challenged both Rubenstein and Sandoval as to the reason for
18 their decision, neither could provide any reason for this sudden change. This order was motivated
19 by discriminatory animus, and adversely effected Plaintiff’s terms and conditions of his
20 employment.

21 19. On or about March 21, 2017, Plaintiff again complained to Director Rubenstein of
22 the discriminatory censorship of Spanish television which was not justified and was causing
23 Plaintiff difficulty in performing his job duties. Rubenstein responded that he wanted the
24 televisions off, but again could not provide any reason. Rubenstein’s continued failure to provide
25 any legitimate business reason for the decision despite Plaintiff’s complaint that this was
26 discriminatory censorship confirmed Rubenstein’s animus because of Plaintiff’s Hispanic
27 ethnicity/race/ancestry/national origin.

28

1 20. On or about March 22, 2017, Spanish television could be turned on for specific time
2 periods only to watch scheduled news programs.

3 21. On or about April 4, 2017, Plaintiff again confronted Director Rubenstein
4 informing him that allowing for news coverage in Spanish at specified times did not allow Plaintiff
5 to be informed of breaking news of critical incidents covered on Spanish television during times
6 when the news was turned off and that this again was discriminatory censorship. Plaintiff reiterated
7 that Plaintiff needed to be aware of ongoing incidents as they happened in order to be able to
8 accurately communicate with Spanish reporters who contacted him for commentary. Again,
9 Rubenstein failed to provide any reason and simply reiterated that the Spanish televisions were to
10 be kept off during non-news hours.

11 22. On or about June 13, 2017, Plaintiff complained to Captain Patricia Sandoval about
12 the discriminatory Spanish television censorship to which she replied that nothing was going to
13 change regarding the decision to keep the Spanish televisions off during non-news hours.

14 23. On or about October 4, 2017, both Captain Patricia Sandoval and Director Josh
15 Rubenstein continued their discriminatory animus towards Plaintiff and others of Hispanic origin
16 by announcing that from now on, Spanish could not be spoken at Media Relations, because “This
17 is the United States.” Both Captain Sandoval and Director Josh Rubenstein made this order with
18 discriminatory animus because of Plaintiff’s Hispanic ethnicity/race/ancestry/national origin. This
19 instruction interfered with the ability of Plaintiff to fulfill the terms and conditions of his
20 employment as Plaintiff’s job duties involved reporting or translating Spanish content. This order
21 was essentially an unlawful “English Only” language restriction for which the LAPD did not have
22 a legitimate business necessity and was not narrowly tailored, which adversely effected Plaintiff
23 and others and which was motivated by animus towards those of Hispanic
24 ethnicity/race/ancestry/national origin. This language restriction was in violation of FEHA and
25 violative of California Code of Regulations § 11028. Plaintiff asked to speak with Captain Patricia
26 Sandoval in her office and complained that her order was continued discriminatory censorship of
27 Spanish and illegal and that he could see no justification for this decision. Sandoval had no
28

1 explanation for this new order except that it was what both she and the Director wanted,
2 confirming that the decision was motivated by discriminatory animus.

3 24. As a result of the new directive, Plaintiff would have trouble responding to inquiries
4 from Spanish speaking reporters. At times, Plaintiff would manage to walk outside in the hallway
5 to make calls from his cell phone in order to speak to Spanish network reporters and provide
6 details of critical incidents and officer involved shootings so that command staff would not hear
7 him speak Spanish. Plaintiff would also walk around his cubicle to talk very softly to Pedro Muniz
8 (even though Muniz sat directly across from him) for a second opinion on a Spanish words or
9 phrases for translations on critical incidents and officer involved shooting news releases so as not
10 to be heard by either the captain or her lieutenants.

11 25. Following Plaintiff's protected activity, Plaintiff was subjected to repeated acts of
12 retaliation.

13 26. Beginning in or around January 2018, officers under Plaintiff's purview were
14 rotated out from under Plaintiff causing his unit to be understaffed, adversely impacting Plaintiff's
15 ability to perform his duties. As a result, public inquiries were going unanswered.

16 27. In or about February 2018, both civilian Kevin Maiberger from the Entertainment
17 and Trademark Unit and Pedro Muniz from the Public Communications Section were removed
18 from Plaintiff's supervision without any notice. Plaintiff complained to Lieutenant Ramirez that
19 this was retaliation for Plaintiff complaining that Captain Sandoval's no Spanish directive was a
20 form of discriminatory censorship. Plaintiff also complained that he was being targeted with
21 harassment and a hostile work environment. Lt. Ramirez failed to take appropriate action.

22 28. In ongoing discrimination and harassment, on or about March 1, 2018, and March
23 5, 2018, Captain Sandoval reannounced her directive that she did not want anyone speaking
24 Spanish at Media Relations. Plaintiff again objected to this directive as a form of discriminatory
25 censorship.

26 29. On or about April 25, 2018, in further retaliation, Captain Patricia Sandoval advised
27 all supervisors that she was taking Plaintiff out of the PIO on-call rotation and putting in Sgt.
28

1 Hector Guzman and Sgt. Brian Churchill in the rotation. Plaintiff's on calls would now only be one
2 week every three months.

3 30. On or about April 26, 2018, Plaintiff asked Captain Sandoval why he was the only
4 PIO who was being treated adversely to which Sandoval replied that he had too much overtime. In
5 continued discrimination and harassment Sandoval again emphasized during this conversation that
6 she did not want Plaintiff speaking Spanish, despite Plaintiff's protest that he had a right to speak
7 it. The same directive was announced again to Plaintiff on May 3, 2018. Sandoval's persistence in
8 announcing to Plaintiff and others that Spanish could not be spoken in the workplace was
9 motivated her discriminatory animus towards Spanish speaking persons of Hispanic
10 ethnicity/race/ancestry/national origin and was pervasive and abusive such that she created a
11 hostile working environment.

12 31. On or about May 8, 2018, in continued retaliation, Plaintiff was informed that
13 Director Josh Rubenstein called the office looking for a Spanish speaking supervisor, but that he
14 didn't want to speak with Plaintiff. Later that day a reporter asked for a Spanish speaker and
15 Director Josh Rubenstein walked right by Plaintiff and asked Lt. Ramirez to do the Spanish
16 interview.

17 32. On or about June 6, 2018, in continued retaliation, Sandoval called Plaintiff to her
18 office and informed him that she was reassigning his desk for someone else.

19 33. On or about September 11, 2018, Plaintiff was told that he could no longer have a
20 take home vehicle, and as such was the only PIO supervisor without a City take home car.

21 34. In further retaliation, supervisors of the LAPD failed to report the discrimination,
22 harassment and retaliation and failed to properly investigate Plaintiff's complaints.

23 35. Plaintiff's career has been materially and adversely affected, and irreparably harmed
24 and damaged by the conduct of the Defendants. Plaintiff was retaliated against for reporting what
25 he reasonably believed to be harassment, discrimination, and inappropriate race/ancestry/national
26 origin-based practices, for engaging in protected activity, including standing up for his rights and
27 the rights of others, and opposing the improper conduct by supervisors and command staff. As a
28 direct and proximate consequence of reporting such misconduct and reporting honestly about such

1 misconduct—which constitutes protected activity under state and federal law—Defendants, and
2 each of them, retaliated against, discriminated against, and harassed Plaintiff and subjected
3 Plaintiff to adverse employment actions. Those adverse employment actions include but are not
4 limited to: being denied a work environment free of discrimination and/or retaliation, being denied
5 privileges and benefits associated with his position, losing access to a City vehicle, being
6 ostracized within the unit, damage to his reputation, and interference with Plaintiff’s ability to do
7 his job.

8 36. Plaintiff has suffered both general and special damages in the past and present and
9 will continue to suffer such damages in the future for an unknown period of time. Plaintiff has
10 also suffered and continues to suffer losses in earnings and other employment benefits, as well as
11 past and future non-economic injury. This has caused damage to his professional reputation, his
12 ability to promote, his ability to be selected for other units, his ability to work, has caused negative
13 ratings, will cause him to have to take a different retirement path, has caused him to lose overtime
14 opportunities and pay, and will adversely affect his income, pension, and other benefits.
15 Moreover, it has adversely affected Plaintiff’s personal health and well being, including medical
16 expenses that are anticipated into the future and may force an early retirement.

17 37. Plaintiff has also suffered extensive general damages in the form of anxiety,
18 anguish, and mental suffering. Plaintiff’s damages are continuing and in an amount not yet
19 determined, but in excess of \$25,000.

20 38. The conduct of Defendants, and each of them, was a violation of Plaintiff’s rights, as
21 described above, as well as his rights under both state and federal law, including but not limited to
22 the Fair Employment and Housing Act (CAL. GOV’T C. §§ 12940, *et seq.* Therefore, Defendants,
23 and each of them, are liable under FEHA for retaliation in violation of public policy as identified
24 in *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167 and its progeny, and may be liable for
25 constructive discharge. The wrongful conduct of Defendants, and each of them, is continuing and
26 ongoing as of the present date.

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 **BY PLAINTIFF AGAINST ALL DEFENDANTS**

3 DISCRIMINATION IN VIOLATION OF FEHA, CAL. GOV'T C. §§ 12940, *ET SEQ.*

4 39. Plaintiff re-alleges and incorporates by reference each and every allegation
5 contained in paragraphs 1–38 of this complaint as though fully set forth herein again.

6 40. At all times herein mentioned, Government Code §§ 12940, *et seq.* was in full force
7 and effect and was binding upon Defendants, and each of them.

8 41. At all times herein mentioned, Plaintiff was in the protected class of persons, *i.e.*,
9 Spanish speaking persons of Hispanic ethnicity/race/ancestry/national origin, and engaged in
10 protected activities contemplated by Government Code §§ 12940, *et seq.* Plaintiff is informed and
11 believes that Defendants, and each of them, discriminated against him and others because of his
12 Hispanic ethnicity/race/ancestry/national origin, and for reporting and speaking out against
13 wrongful and discriminatory treatment based on his protected status, speaking out against improper
14 conduct, and for generally attempting to protect and secure his rights and the rights of others under
15 the FEHA.

16 42. Commencing on and after March 2017, and continuing to the present, Defendants
17 created and allowed to exist a racially hostile environment and discriminated against Plaintiff and
18 others based on their Hispanic ethnicity/race/ancestry/national origin race/national origin and
19 ancestry. Such discrimination was in violation of Government Code §§ 12940, *et seq.* and the
20 public policy embodied therein.

21 43. At all times herein mentioned, Defendants, and each of them, had actual and/or
22 constructive knowledge of the discriminatory conduct levied against Plaintiff by Defendants,
23 fellow employees and superiors. Moreover, such retaliation, harassment, and discriminatory
24 conduct was also conducted and/or condoned by Defendants, and each of them.

25 44. As a direct, foreseeable and proximate result of Defendants' discriminatory conduct
26 and failure to act, Plaintiff suffered and continues to suffer humiliation, embarrassment, anxiety,
27 mental anguish and emotional distress. Plaintiff was required to and did employ, and will in the
28 future employ, physicians and health care providers to examine, treat and care for Plaintiff, and

1 did, and will in the future, incur medical and incidental expenses. The exact amount of such
2 expenses is unknown to Plaintiff at this time.

3 45. As a direct, foreseeable and proximate result of the Defendants' discriminatory
4 conduct, Plaintiff suffered and continues to suffer losses in earnings and other employment
5 benefits in an amount in excess of the minimum jurisdictional limits of this court, the precise
6 amount of which will be proven at trial.

7 46. As a further legal result of the above-described conduct of Defendants, and each of
8 them, Plaintiff has and will continue to incur attorneys' fees and costs in an amount according to
9 proof.

10 **SECOND CAUSE OF ACTION**

11 **BY PLAINTIFF AGAINST ALL DEFENDANTS**

12 HARASSMENT IN VIOLATION OF FEHA, CAL. GOV'T C. §§ 12940, *ET SEQ.*

13 47. Plaintiff re-alleges and incorporates by reference each and every allegation
14 contained in paragraphs 1–38 of this complaint as though fully set forth herein again.

15 48. At all times herein mentioned, Government Code §§ 12940, *et seq.* was in full force
16 and effect and was binding upon Defendants, and each of them. Said law required Defendants, and
17 each of them, to refrain from harassing any employee based upon race, ancestry, national origin
18 and to provide each employee with a working environment free from harassment based on these
19 protected classes.

20 49. At all times herein mentioned, Plaintiff was in the protected class of persons, *i.e.*,
21 Spanish speaking persons of Hispanic ethnicity/race/ancestry/national origin, and engaged in
22 protected activities contemplated by Government Code §§ 12940, *et seq.* Plaintiff is informed and
23 believes that Defendants, and each of them, harassed Plaintiff based on his Hispanic
24 ethnicity/race/ancestry/national origin, and for reporting and speaking out against wrongful and
25 discriminatory treatment based on his protected class, speaking out against improper conduct, and
26 for generally attempting to protect and secure his rights and the rights of others under the FEHA.

27 50. Commencing on and after March 2017, and continuing to the present, Defendants
28 created and allowed to exist a racially hostile environment and harassed Plaintiff on the basis of his

1 protected class. Such harassment was in violation of Government Code §§ 12940, *et seq.* and the
2 public policy embodied therein.

3 51. At all times herein mentioned, Defendants, and each of them, had actual and/or
4 constructive knowledge of the harassing conduct levied against Plaintiff by Defendants, fellow
5 employees and superiors. Moreover, such retaliation, harassment, and discriminatory conduct was
6 also conducted and/or condoned by Defendants, and each of them.

7 52. As a direct, foreseeable and proximate result of Defendants' harassing conduct and
8 failure to act, Plaintiff suffered and continues to suffer humiliation, embarrassment, anxiety,
9 mental anguish and emotional distress. Plaintiff was required to and did employ, and will in the
10 future employ, physicians and health care providers to examine, treat and care for Plaintiff, and
11 did, and will in the future, incur medical and incidental expenses. The exact amount of such
12 expenses is unknown to Plaintiff at this time.

13 53. As a direct, foreseeable and proximate result of the Defendants' harassing conduct,
14 Plaintiff suffered and continues to suffer losses in earnings and other employment benefits in an
15 amount in excess of the minimum jurisdictional limits of this court, the precise amount of which
16 will be proven at trial.

17 54. As a further legal result of the above-described conduct of Defendants, and each of
18 them, Plaintiff has and will continue to incur attorneys' fees and costs in an amount according to
19 proof.

20 **THIRD CAUSE OF ACTION**

21 **BY PLAINTIFF AGAINST ALL DEFENDANTS**

22 RETALIATION IN VIOLATION OF FEHA, CAL. GOV'T C. §§ 12940, *ET SEQ.*

23 55. Plaintiff re-alleges and incorporates by reference each and every allegation
24 contained in paragraphs 1–38 of this complaint as though fully set forth herein again.

25 56. At all times herein mentioned, Government Code §§ 12940, *et seq.*, was in full
26 force and effect and were binding upon Defendants, and each of them. Said sections required
27 Defendants, and each of them, to refrain from retaliating against employees for their opposition to
28 employment practices prohibited under FEHA.

1 57. At all times herein mentioned, Plaintiff was in the protected class of persons, *i.e.*,
2 Hispanic ethnicity/race/ancestry/national origin and engaged in protected activities contemplated
3 by Government Code §§ 12940, *et seq.* Plaintiff is informed and believes that Defendants, and
4 each of them, retaliated against him for speaking out against inappropriate workplace behavior,
5 reporting and speaking out against wrongful and discriminatory, harassing, and retaliatory
6 treatment based on his Hispanic ethnicity/race/ancestry/national origin, speaking out against
7 improper conduct, and for generally attempting to protect and secure his rights and the rights of
8 others under the FEHA.

9 58. Commencing on and after March 2017, and continuing to the present, Defendants
10 created and allowed to exist a racially hostile environment and discriminated against Plaintiff on
11 the basis of his Latino race/ancestry/national origin. Such retaliation was in violation of
12 Government Code §§ 12940, *et seq.* and the public policy embodied therein.

13 59. At all times herein mentioned, Defendants, and each of them, had actual and/or
14 constructive knowledge of the retaliatory conduct levied against Plaintiff by Defendants, fellow
15 employees and superiors. Moreover, such retaliation, harassment and discriminatory conduct was
16 also conducted and/or condoned by Defendants, and each of them.

17 60. As a direct, foreseeable and proximate result of Defendants' retaliatory conduct,
18 Plaintiff suffered and continues to suffer humiliation, embarrassment, anxiety, mental anguish and
19 emotional distress. Plaintiff was required to and did employ, and will in the future employ,
20 physicians and health care providers to examine, treat and care for Plaintiff, and did, and will in
21 the future, incur medical and incidental expenses. The exact amount of such expenses is unknown
22 to Plaintiff at this time.

23 61. As a direct, foreseeable and proximate result of the Defendants' retaliatory conduct,
24 Plaintiff suffered and continue to suffer losses in earnings and other employment benefits all to his
25 damage in an amount in excess of the minimum jurisdictional limits of this court, the precise
26 amount of which will be proven at trial.

27
28

