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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF SAN FRANCISCO**

13 LABORERS INTERNATIONAL UNION
14 LOCAL 261, on behalf of itself and its
15 members, THERESA FOGLIO-RAMIREZ,
16 JUAN RIVERA,

17 Plaintiffs,

18 vs.

19 CITY & COUNTY OF SAN FRANCISCO,
20 and DOES 1 to 20, inclusive,

21 Defendant.

22 **Case No. CGC-21-596956**

23 **AMENDED COMPLAINT FOR**

- 24 **1. Gender Discrimination in**
Employment– 42 U.S.C. § 1983;
- 25 **2. Retaliation Based on the**
Whistleblowing of Public Corruption –
42 U.S.C. § 1983
- 26 **3. Retaliation Based on Complaints**
Regarding Workplace Safety –
42 U.S.C. § 1983
- 27 **4. Violation of Labor Code § 1102.5**
- 28 **5. Violation of Gov. Code § 3500 et seq.**
(Retaliation for Union Activities)
- 6. Declaratory Judgment**

JURY TRIAL DEMANDED

1 **INTRODUCTION**

2 *“Revenge is a kind of wild justice, which the more man’s nature runs to, the more*
3 *ought law to weed it out.”* – Francis Bacon

4 1. This is a civil rights and state law action arising out of a systematic campaign of
5 revenge taking an insidious form: denial of basic sanitation. The harassment, discrimination,
6 intimidation, and retaliation which has been conducted against Laborers International Union
7 Local 261 (“Local 261” or “Plaintiff”), its members, its Business Agent Theresa Foglio-Ramirez,
8 and its Chief Steward at DPW, Juan Rivera, was carried out by employees and elected officials
9 working for the City and County of San Francisco (the “City” or “Defendant”), and began as a
10 direct result of Local 261’s complaints to the Department of Justice about egregious corruption
11 festering in multiple City agencies. These complaints caused indictments and a massive
12 investigation that is ongoing. Furious with Local 261’s conduct, the City has refused to provide
13 Local 261’s public employee members with access to bathrooms and running water to wash their
14 hands, and this retaliation continues to today.

15 2. Beginning in 2020, a cleansing and powerful light began to shine on the
16 management of the City of San Francisco’s Department of Public Works (“DPW”), its Public
17 Utilities Commission (the “SFPUC”), and its City Administrator’s Office (“CAO”). With the
18 public indictments and arrests of multiple City employees, and a wide-ranging (and ongoing)
19 investigation by the United States Department of Justice, the truth is slowly emerging: members
20 of the SFPUC, DPW, and the CAO have been engaged in a multi-year process to divert public
21 funds and resources to enrich themselves and friends and family, at public expense.

22 3. Local 261 was able to discover that Defendant engaged in: (1) the hiring of
23 individuals in the 9916 and 7501 classifications who were not actually working and training in
24 the workforce development programs at the SFPUC and DPW, but instead, were placed in those
25 classifications due to their connections to Department Heads and their ability to facilitate the
26 flow of public funds to outside nonprofit agencies; and (2) the award of public funds to favored
27 nonprofits to perform the same duties as employees in the 9916 and 7501 classifications. The
28

1 primary architect of this scheme at the SFPUC was Juliet Ellis, while the primary architect at
2 DPW was now-imprisoned former department head, Mohammed Nuru.

3 4. After Local 261's leadership blew the whistle on this wide-ranging public
4 corruption scandal – which is now the subject of a continuing FBI investigation that has resulted
5 in arrests and imprisonment of several involved individuals – the City has targeted not just Local
6 261, but its members, in an effort to silence and destroy them.

7 5. Like a true bully does, management of the City concentrated its efforts on the
8 most vulnerable targets: Local 261's members, the lowest-paid City employees who work at the
9 Department of Public Works and the San Francisco Public Utilities Commission.

10 6. The retaliation has taken an especially egregious form in the middle of the historic
11 pandemic: with full knowledge of the safety violations and the threat to these workers' lives, the
12 City is refusing to provide these employees with safe and sanitary facilities to perform basic
13 hygiene and to take breaks. Further retaliation has occurred when Local 261 complained, on
14 behalf of its members, to Cal-OSHA.

15 7. With nowhere else to turn, in a City that has rejected their pleas to remedy this
16 problem or even to discuss it, Local 261 has no other option but to seek judicial remedy.

17 **PARTIES & JURISDICTION**

18 8. Plaintiff Laborers International Union, Local 261 is the exclusively recognized
19 collective bargaining agent for approximately 1,000 public employees working for the City and
20 County of San Francisco. Plaintiff brings this action as the representative of its members who
21 work at the San Francisco Public Utilities Commission and the Department of Public Works.

22 9. Plaintiff Theresa Foglio-Ramirez has been a Department of Public Works
23 employee since October 1997. Since July 2012, she has been on leave (with City permission
24 through civil service rules) to serve as Local 261's "Business Agent." A Business Agent serves
25 as the representative for Local 261 for union-related matters.

26 10. Plaintiff Juan Rivera is a City employee, who has been employed by the City's
27 Park and Recreation Department, and the Department of Public Works since April 2006. Until
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1 August 12, 2021, when he was subjected to a retaliatory demotion, he was working as a
2 Temporary Exempt (TEX) 7281 Street Environmental Services Operations Supervisor with the
3 DPW Bureau of Street Environmental Services (BSES), in which he was performing street
4 cleaning services, COVID health screenings, clearing homeless encampments, and doing
5 everything he was asked to do by his supervisors. Mr. Rivera is Chief Steward for Local 261.

6 11. Defendant City and County of San Francisco (“CCSF” or “City”) is a charter city
7 organized under California law and subject to jurisdiction within the Superior Courts of the State
8 of California.

9 12. The unlawful practices described herein were committed in the City and County
10 of San Francisco.

11 13. Where applicable, Plaintiffs have fully exhausted their statutory administrative
12 remedies, and/or exhausting administrative remedies is futile based on the City’s failure to
13 participate in the administrative process.

14 **STATEMENT OF FACTS**

15 **A. The SFPUC and the DPW**

16 14. As the third largest municipal utility agency in California, the SFPUC owns and
17 operates wastewater and water systems in the City and County of San Francisco and three Bay
18 Area counties, along the Hetch Hetchy water system. The SFPUC is headed by a five-member
19 Commission and has a total budget of \$1.4 billion as of FY20. As part of its responsibilities, the
20 SFPUC maintains 63,000 acres of land and numerous sites that house wastewater and drinking
21 water infrastructure for the City’s residents and commercial users. As relevant to this action, the
22 SFPUC employs permanent staff in maintenance and gardening classifications to provide
23 services to maintain SFPUC property. Until November 2020, when he was indicted on federal
24 charges, the SFPUC’s General Manager (department head) was Harlan Kelly.

25 15. The San Francisco Department of Public Works (“DPW”) has a 1,600-member
26 workforce and a nearly \$400 million operating budget. Until he was indicted by the Department
27
28

1 of Justice in January 2020, DPW was headed by Mohammed Nuru, who ran the department for
2 years. Alaric Degrafinried, who was appointed by Naomi Kelly, supplanted him as Interim
3 Director. Non-administrative DPW employees, which are the majority, work outside in six zones
4 within the City, and are mostly dispatched from a central yard located at 2323 Cesar Chavez, in
5 the Southeast part of the City. DPW (along with dozens of other City departments who lack a
6 governing Commission) is under the umbrella of the City Administrator’s Office. Until she
7 resigned in early 2021, after the indictment of her husband Harlan Kelly, the General manager of
8 the SFPUC, the City Administrator’s Office was run by City Administrator Naomi Kelly. Due to
9 the size of the department the position oversees, the City Administrator position is considered the
10 most powerful unelected position in the City. Ms. Kelly served in the role for 9 years, having
11 been appointed in 2012.

12
13 **B. Background of Local 261**

14 16. The Laborers International Union of North America, with origins dating back to
15 1836, is based in Washington, D.C. and represents over 500,000 members. It is governed by
16 an international executive board and is comprised of a regional structure overseeing scores of
17 local unions across the country and in Canada, known as “locals.” Local 261 is just one of the
18 larger affiliated unions in the organization; it is owned by its 5,500 members who elected its
19 leadership pursuant to federal rules. Local 261 has been operating in San Francisco for over
20 100 years. In addition to its International affiliation, the union is affiliated with the San
21 Francisco Labor Council & San Francisco Building & Construction Trades Council.

22 17. Of its members, Local 261 has 1,000 members who serve in approximately 30
23 different job classifications and multiple City departments including but not limited to, as
24 relevant here, the San Francisco Public Utilities Commission, and the Department of Public
25 Works. These government workers are hired through civil service protocols and at the entry
26 level, are placed into semi-skilled core job classifications that require continuous physical
27 labor.
28

1 18. The union boasts a localized membership primarily because of the nature of
2 the “covered” work. Unlike with many other trade unions, Local 261 has many members in
3 that live in the San Francisco Bay Area who are appropriately classified as “working poor,”
4 members who come from underserved and under-represented communities that may not have
5 had opportunity related to higher education but who are ready, willing, and able to perform
6 “laborer” tasks while learning on the job.

7 19. Local 261, like many San Francisco unions, is politically active and as a
8 matter of economic and social justice, consistently advocates for the maintenance and
9 preservation of legally based area standards for wages, hours and working conditions of its
10 members, including the compliance of public and private agencies and contractors with
11 apprenticeship requirements designed to ensure well-trained, qualified workers in the
12 construction industry.

13 20. To that end, and in collaboration with City leaders, Local 261 spends staff
14 time and its resources to promote apprenticeship training programs approved by the California
15 State Office of Apprenticeship Standards, to ensure not only the qualification of workers to
16 meet the challenges of highly complex urban building construction, but workers’ own safety
17 and the safety of the public in the process. At the request of City leadership, Local 261 has
18 contributed significant resources and staff almost every political cycle to accomplish City Hall
19 objectives such as the Treasure Island Development, the CPMC Van Ness Campus,
20 Strengthening Seawalls, Community Choice Aggregation, and many other local construction
21 projects.
22

23 21. Local 261 members in San Francisco are actively engaged in the
24 administration of their union. In addition to Local 261’s regular monthly meeting schedule, the
25 CCSF members of Local 261 formed a committee that includes representatives from each City
26 department, and they have met monthly for well over the past decade and work with one
27 another to find common ground in connection with policies, practices, and proposals that cover
28

1 each City department that they work in. From these committees come democratically selected
2 leadership that eventually forms the “Chief Stewards” and bargaining team to work with the
3 Local 261 representatives to collectively bargain wages, hours, benefits, terms & conditions
4 with City officials that apply to all members.

5 22. Local 261 receives funds from members’ dues and from the national office,
6 which it uses to hire and providing staff and monetary resources for advocacy for its purpose of
7 contributing to worker health, safety, and enhancing working conditions for City employees.
8 Local 261 uses its funds for other purposes to promote the community. For example, it
9 provides annual scholarships for children, and makes routine charitable contributions requested
10 annually by community-based and faith-based organizations. In the past year, it turned its local
11 offices into an emergency COVID-19 vaccination site in collaboration with Defendant and the
12 Latino Task Force.

13 23. Just some of the recent atrocities encountered by Local 261 members in the
14 regular course of performing their duties include: (1) cleaning animal and human feces and
15 biohazards from the streets; (2) clearing a mummified corpse from a residence; (3) freeing a
16 woman who was chained inside a cage in a homeless encampment; and (4) dismantling a
17 makeshift methamphetamine laboratory in a homeless encampment.

18
19 **C. The Origins of Workforce Development Programs at DPW and the SFPUC**

20 24. Local 261, as a principal public sector representative, has historically and
21 consistently taken a strong position in favor of workforce development, with the goal to
22 provide access to well-paying positions in construction with clear, marketable career pathways.
23 This access is through apprenticeship training programs sponsored and regulated by the State
24 of California. Apprenticeship is particularly important in the building and construction trades
25 due to the numerous safety and work site standards applicable to these industries. Local 261
26 has consistently worked to include, in the City’s workforce development programs, appropriate
27 apprenticeship training and even pre-apprenticeship training for workers.
28

1 25. Workforce development of lower-wage employees has infinite benefits for the
2 community, but one of the primary benefits is to educate and train individuals for gainful
3 employment and thereby prevent homelessness.

4 26. On or about 2004, City department heads approached Local 261 with the idea of
5 creating additional workforce development opportunities. Local 261 began to work with the
6 City to create a lower-wage job classification that could serve as workforce development. The
7 idea was to create more of these lower-wage positions to replace certain higher-classification
8 positions, to create more jobs and thus more opportunity to be employed by the City. These
9 efforts were spearheaded by Vince Courtney, Local 261's business representative. A business
10 representative or business agent is an agent that is employed by a union, and represents union
11 members in contract negotiations with the City and administration matters, including grievance
12 procedures. During the relevant periods described herein, Local 261's business agents were
13 Mr. Courtney and Theresa Foglio-Ramirez. Plaintiff Foglio-Ramirez is a City (DPW)
14 employee who has been on approved unpaid administrative leave while performing her duties
15 as Local 261's Business Agent.
16

17 27. Local 261's primary partner in the efforts to create the new classification (class
18 7501) was the Department of Public Works. Unfortunately, once the program was created, the
19 Department of Public Works took over the funds for the program within the City, and used the
20 funds to fill other positions that did not promote workforce development.

21 28. In response, Local 261 coordinated with two other departments – the City
22 College of San Francisco and the Department of Parks and Recreation – and created a
23 horticulture apprenticeship program which was certified by the State of California and jointly
24 administered by the Department of Parks and Recreation and Local 261. A pre-apprenticeship
25 program was also created as a result of these efforts. This program was supposed to serve low-
26 income residents of the City to provide opportunities for advancement, where they otherwise
27 would not have the ability to do so based on their educational level.
28

1 **D. The SPUC’s Community Benefits Program: A Carefully Constructed Slush Fund**

2 29. Former SFPUC employee Juliet Ellis started at the SFPUC as a Commissioner,
3 then became Assistant General Manager for External Affairs. Ms. Ellis first came under
4 scrutiny at the SFPUC in 2012, when she helped steer a \$200,000, no bid contract to “Green
5 for All,” an Oakland nonprofit where she served as a paid board member. The contract was
6 eventually cancelled, and the Ethics Commission called for Ms. Ellis’ termination, but Ms.
7 Ellis was not terminated for this clear conflict of interest.

8 30. Ms. Ellis next came under scrutiny in June 2020, when the United States
9 Department of Justice subpoenaed the SFPUC for records relating to out of state and foreign
10 trips she took with her boss, Harlan Kelly, including multiple trips in which they shared a
11 single room at expensive hotels. Despite these clearly improper activities, and even after the
12 subpoena was issued, she continued to stay in her post.

13 31. During her employment – including during most of the time period relevant to
14 this Complaint – part of Ms. Ellis’ responsibilities was to manage the SFPUC Community
15 Benefits Program. The SFPUC has billions of dollars in public funds to award to private
16 entities to perform work on its systems, such as the \$4.6 billion Water System Improvement
17 Program and the \$6.9 billion Sewer System Improvement Program. Some of these projects take
18 multiple years and involve multiple contractors. Contractors desiring to obtain public funds
19 from the SFPUC for large projects are required to create joint ventures and a “Joint Venture
20 Board” (representatives from different contractors who partner for the projects) in order to
21 secure contract funding. For smaller projects, individual contractors are permitted to bid when
22 the City issues Requests for Proposals (“RFPs”). As part of any funds awarded under
23 contracts, the contractors are required to commit to spending a certain small percentage
24 (typically 1%) of the total contract award on “community benefits.”

25 32. The RFPs contain a multi-part grading system where contractors are given
26 points for experience, price, ability to timely complete work, and for “community benefits”
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1 they will contribute along with their performance of the substantive components of the
2 contract. In many cases, contractors are advised by insiders at the SFPUC to hire an outside
3 “consultant” who will advise them how to draft the community benefits fund portion of the
4 Request for Proposal to ensure the SFPUC staff would accept the bid. This was the functional
5 equivalent of being given the answers the night before a test. These consultants in turn
6 received their direction from SFPUC staff.

7 33. Thus, the “community benefits” funds were pre-designated by the SFPUC in
8 making its funding awards to the contractors, and SFPUC staff then directed the allocation of
9 the funds to specified nonprofits.

10 34. As investigation from Local 261, federal authorities, and even members of the
11 public has now revealed, the SFPUC Community Benefits Program is nothing more than a
12 slush fund. Since 2020, the program has made at least \$34,200,000 in expenditures, with no
13 oversight, no audit, and no accountability.

14
15 **E. Investigation of the SFPUC and DPW Contracting Processes Exposes a Scheme to**
16 **Defraud the Public**

17 35. In 2010, Mr. Courtney was appointed to the San Francisco Public Utilities
18 Commission (“SFPUC”) by then-Mayor Gavin Newsom. Both prior to, and particularly during
19 his tenure as an SFPUC Commissioner, Mr. Courtney was very active and vocal in his support
20 of workforce development programs, including apprenticeship training, and his appointment to
21 the SFPUC was made in recognition of this work. Mr. Courtney twice served as President of
22 the SFPUC, 2010 through his resignation in early 2019. Although Mr. Courtney believed that
23 the SFPUC was in alignment with the goals of establishing and supporting a robust workforce
24 development program, it became apparent over time that this was not the case. SFPUC did not
25 even have a workforce development policy, refused to implement pre-apprenticeship training
26 programs, and never hired a single apprentice.

1 36. Beginning in 2018, Local 261 began to make inquiries to understand SFPUC’s
2 recalcitrance on workforce development. Specifically, the union began to inquire about the
3 relationship of the City with various private nonprofit agencies in San Francisco who were
4 involved in workforce development. It had also become apparent over time that some City
5 departments were misusing the apprenticeship program to hire “consultants” and other
6 employees who either did not actually perform any work, or who did not meet the criteria as
7 individuals who were intended for the apprenticeship program. Therefore, inquiry was also
8 made regarding the number of individuals employed under the apprenticeship classification
9 (e.g., 7510 and 9916) in each of the City departments – including the SFPUC.

10 37. Throughout 2018, Local 261 made numerous inquiries for records; requests
11 were either requested in their entirety, or the City responded by conducting investigations into
12 Local 261. For example, in October 2018, the union requested documents relating to the Pre-
13 Apprenticeship Training Program at Gleneagles Golf Course. On October 25, 2018, Tiffany
14 Wong of the City’s Whistleblower Program responded by demanding records from Local 261.
15 Using the recognized process pursuant to its Memorandum of Understanding (“MOU”) with
16 the City, Local 261 also began to make inquiries and take steps to ensure integrity in the
17 workforce training programs. On or about December 2, 2018, Local 261 filed a Step III
18 grievance and request to meet and confer regarding the Sheriff’s Department Horticultural
19 Training Program.
20 Training Program.

21 38. Eventually, the SFPUC disclosed a four-page roster of employees in the 9916
22 classification, who were actually consultants and others performing non-apprentice-level work.
23 Through its public records requests, Local 261 was able to discover that these employees were
24 acting as conduits to outside nonprofits to facilitate the award of public funds as grants
25 nonprofits with whom management shared an affiliation. These nonprofits performed the same
26 work as the low-income City workers, such as gardening, street cleaning, trash pick-up,
27 homeless camp and graffiti abatement, but without any public accountability and oversight.
28

1 The practice is known as “Granting Out” and represents a massive transfer of public wealth to
2 nonprofits.

3 39. Thus, after investigation and the careful gathering of records, Local 261 was
4 able to discover that there were at least two components to the corruption at the DPW and the
5 SFPUC: (1) the hiring of individuals in the 9916 and 7501 classifications who were not
6 actually working and training in the workforce development programs at the SFPUC and
7 DPW, but instead, were placed in those classifications due to their connections to Department
8 Heads and their ability to facilitate the flow of public funds to outside nonprofit agencies; and
9 (2) the award of public funds to favored nonprofits to perform the same duties as employees in
10 the 9916 and 7501 classifications. The primary architect of this scheme at the SFPUC was
11 Juliet Ellis, while the primary architect at DPW was now-imprisoned former department head,
12 Mohammed Nuru.

13
14 40. Through awarding contracts to nonprofits to perform the same work that low-
15 income City employees would otherwise perform, the SFPUC and DPW were able to
16 accomplish multiple goals: (1) provide funds to nonprofits that were run by favored individuals
17 and other friends of the department heads and their staff, without public oversight or
18 accountability; (2) circumvent the MOU which provided for minimum labor standards; (3)
19 retaliate against, punish, and destroy Local 261 for its attempt to stop the flow of public funds
20 to private recipients, and thus shut down the inquiries into where the money was going. Just
21 some of the nonprofits, individuals, and programs investigated – and reported by Local 261 to
22 City management throughout 2019 – include the Young Community Developers, the San
23 Francisco Sheriff’s Office Horticultural Training Program (a joint program of the SFPUC and
24 the Sheriff’s Office), construction of the Southeast Area Community Facility and a new
25 Education and Skill Building Facility, and Dwayne Jones, who was paid \$7.1 million to work
26 as a “consultant” on five large SFPUC projects, and also received a \$900,000 consulting
27 contract with the SFPUC to “advise” on the Community Benefits Program.
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1 41. Thus, the net result of this corruption has been the destruction of critical
2 workforce development programs that were set up to provide Black residents of San Francisco
3 with quality union jobs that are subject to the Minimum Compensation ordinance, and replace
4 them with nonprofit “friends and family” of those involved in the wide-ranging fraudulent
5 scheme.

6 **F. 2019: Mr. Courtney’s Individual Whistleblowing Complaint and Local 261’s**
7 **Further Investigation and Complaints of Corruption; Theresa Foglio-Ramirez’s**
8 **Complaints and Whistleblowing Activity**

9 42. On or about January 15, 2019, Mr. Courtney, representing Local 261 and the
10 PUC Commission, also filed a formal Whistleblower Complaint against the SFPUC, alleging
11 retaliation and intimidation, and detailing the corruption with the hiring at SFPUC specifically
12 and the “Granting Out” practice. He provided his Complaint to the City Controller’s Office. He
13 resigned as an SFPUC Commissioner on January 17, 2019, and fully left the Commission in
14 February 13, 2019.

15 43. Retaliation started virtually immediately for Plaintiff Juan Rivera, Local 261’s
16 Chief Steward at DPW. His supervisors at DPW frequently made negative comments about
17 Local 261, indicating that the Union would “pay” for what it was doing.

18 44. On or about February 7, 2019, Plaintiff Theresa Foglio-Ramirez wrote to the
19 SFPUC and Sheriff’s Department, copying Mayor Breed and multiple other individuals,
20 reminding them of findings of corruption in connection with SFPUC and DPW grants, and
21 formally requesting that they withdraw consideration of any new grants pending further
22 investigation.

23 45. On February 14, 2019, the San Francisco Labor Council (of which Local 261 is
24 a member) passed a resolution in support of Centralized, Effective & Accountable Workforce
25 Development Approaches, Independent Audit & Reforms, and “Labor Seat” at the SFPUC.
26 This Resolution was provided to the San Francisco Board of Supervisors and others.
27
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1 46. On or about February 28, 2019, Local 261 filed a grievance and request to meet
2 and confer regarding funding that was planned for allocation to the Southeast Area Community
3 Facility and Education and Skill Building Center.

4 47. Mr. Courtney had resigned as an SFPUC Commissioner on January 17, 2019.
5 But it was too late: Mr. Courtney was now to be the subject of retaliation. On March 5, 2019,
6 he received a letter from the Fair Political Practices Commission (“FPPC”) indicating a
7 complaint had been made about an alleged conflict of interest in his votes while serving as an
8 SFPUC Commissioner.

9 48. On March 8, 2019, Plaintiff Theresa Foglio-Ramirez wrote to the SFPUC
10 formally protesting the SFPUC Southeast Training proposal at 1550 Evans Street.

11 49. On April 9, 2019, the FPPC rejected the meritless complaint against Mr.
12 Courtney in its entirety.

13 50. On April 16, 2019, Local 261 and the City held an arbitration to discuss labor
14 contract terms and Local 261’s proposals. An arbitration occurs pursuant to State law when the
15 public employer and the union cannot agree on terms for their negotiated MOU. Typically, the
16 City’s Department of Human Resources represents the City at the arbitrations. Now, however,
17 and for the first time, the City Attorney’s Office took over the negotiations from DHR and
18 represented the City at the arbitration hearing.

19 51. On April 17, 2019, then-City Administrator Naomi Kelly, then-head of the
20 Department of Public Works Mohammed Nuru, PJ Johnston, Karin Johnston, former San
21 Francisco Superior Jane Kim, and two other unidentified individuals met at Don Ramon’s
22 restaurant in San Francisco. The group was overheard by multiple witnesses loudly discussing
23 Local 261’s role in whistleblowing, the corruption, with job training programs, and confirming
24 that retaliation against Local 261 members was the practice that the City should use to bring
25 Local 261 into line.
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1 52. On May 24, 2019, Plaintiff Theresa Foglio-Ramirez wrote to Supervisor
2 Gordon Mar thanking him for meeting with Local 261’s members, herself, and Mr. Courtney
3 so that they could personally inform Supervisor Mar of concerns about illegal activity and
4 corruption at SFPUC, and requesting him to call for an audit and specifically “all community
5 benefits expenditures from 2012 to May 2019. She copied the other Supervisors, Harlan Kelly,
6 the San Francisco Labor/Building & Construction Trades Councils, as well as the SFPUC
7 Commissioners.

8 53. Mr. Courtney left his employment with Local 261 on June 1, 2019.

9 54. In September 2019, Local 261 made further public records requests related to
10 SFPUC grants to the “Young Community Developers,” as well as documents related to
11 expenditures for SFPUC’s External Affairs and Community Benefits initiatives. These records
12 were never provided.

13 55. On September 9, 2019, DPW Superintendent Peter Lau demanded that Plaintiff
14 Juan Rivera return his “master key” used in performance of Plaintiff Rivera’s job duties. No
15 other supervisor was required to return their “master key” and they were allowed to keep their
16 master keys.

17 56. On October 25, 2019, Plaintiff Foglio-Ramirez sent a copy of the law firm’s
18 information request to SFPUC Secretary Donna Hood asking that she share it with the SFPUC
19 Commissioners. The information request asked for documents on contracting, grants, and the
20 SFPUC’s community benefits and social impact programming, as well as on Young
21 Community Developers specifically.

22
23 **G. 2020: Indictments Lead to Severe Retaliation Against Local 261 and Its**
24 **Membership and An Unsafe Workplace Denying Workers the Most Basic of**
25 **Human Rights**

26 57. In January 2020, Mohammed Nuru, former department head of DPW, was
27 arrested by the United States Department of Justice pursuant to a January 15, 2020 complaint
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1 (USDC N.D. Cal. Case No. 3:20-70028) alleging a bribery and kickback scheme involving
2 City contracts, the San Francisco Airport, a mixed-use development, the Transbay Transit
3 Center, bathroom trailers and homeless container shelters, and even a vacation home.

4 58. In February 2020, Naomi Kelly texted Plaintiff Foglio-Ramirez’s supervisor
5 (Ramon Hernandez) a screenshot of Plaintiff Foglio-Ramirez’s Twitter account. Plaintiff
6 Foglio-Ramirez uses social media, including Twitter, to showcase unsafe and unsanitary
7 conditions and to beg for assistance from the City for Local 261 members. Some of the posts
8 are critical of the egregious conditions that the City is requiring Local 261 members to endure.
9 Ms. Kelly and Ramon Hernandez met on February 13, 2020 at Ms. Kelly’s request so that Ms.
10 Kelly could convey her demand for Plaintiff Foglio-Ramirez to stop using social media and
11 stop criticizing the City. During the meeting, Ms. Kelly told a thinly veiled allegory about how
12 her house had been broken into and she had turned into “mama bear,” in a transparent effort to
13 intimidate Plaintiff Foglio-Ramirez and make her stop using the social media. Ms. Kelly made
14 at least one additional call to Ramon Hernandez in August 2020 for the purpose of having
15 Plaintiff Foglio-Ramirez terminated. Throughout 2020 and continuing into early 2021, Plaintiff
16 Foglio-Ramirez was told by numerous individuals that she was “in the doghouse with Naomi,”
17 and that “Naomi and Alaric were dug in,” meaning that they were going to do whatever it takes
18 to destroy Local 261.
19

20 59. On March 4, 2020, the State of California declared a State of Emergency due to
21 the COVID-19 pandemic. By this point, public health guidance was already circulating about
22 the wearing of masks and frequent handwashing as a method of controlling the spread of the
23 pandemic. There was just one problem: the City had made no plans, and taken no steps, to
24 ensure that its front line DPW employees had adequate facilities to wash their hands or even to
25 use the restroom. It had no plans for PPE (including masks, hand sanitizer, respirators, and
26 protective clothing) for these front line workers. It gave no training or supplies for DPW
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1 workers for wiping down and sanitizing shared work stations such as computers and field
2 equipment.

3 60. Prior to the pandemic, the City had not made bathrooms available to DPW
4 workers. DPW employees working in the field are assigned to and required to stay in one of
5 six “zones” while performing their duties, and may not leave their zones for any reason under
6 threat of discipline or termination. Prior to the pandemic, if an employee had to use the
7 restroom, they either had to do so in public, or they had to form a so-called “partnership” with
8 a sympathetic local business. This system not only subjected the City and private businesses to
9 potential liability due to the necessity that the employees enter on to and use business facilities,
10 but also shifted the burden for the City’s employees on to taxpaying persons.

11 61. The City has numerous (locked) public restrooms available only to SFMTA
12 employees and/or in other City property, which are available to other City employees, but the
13 City disallows use of those restrooms to Local 261 employees.

14 62. In the wake of the pandemic, using small businesses’ bathrooms was no longer
15 an option. The City told Local 261 employees they should just use the restrooms available for
16 individuals experiencing homelessness. However, these facilities are completely unacceptable
17 and unfit for any human being to use. The toilets are covered with the detritus – feces, blood,
18 drug paraphernalia – of the City’s unabated homeless crisis. Biologically, male employees
19 have an easier time avoiding use of these facilities, but they have been forced to make use of
20 them. Female employees, meanwhile, have only used these facilities out of desperation. On
21 multiple occasions, female employees have had male homeless individuals walk in on them,
22 subjecting them to humiliation and causing anxiety and fear.

23 63. Even if these facilities were acceptable to use, other employees of the City
24 regularly relocate the toilets, so if an employee shows up to use one, often the toilet is no
25 longer at that site. The City also provided containers (portable beverage coolers) which it
26 advised workers to just fill with water to use to wash their hands after they clean a site or use
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1 one of the described toilet facilities. Thus, the refusal to provide sanitary restrooms and
2 handwashing facilities for employees does not comply with California law, and it is inhumane.

3 64. To make matters worse, workers were not provided with appropriate PPE. They
4 were assigned only one disposable Tyvek suit and two disposable masks per day, no matter
5 what conditions they encountered. This was insufficient to meet the rigorous demands of their
6 jobs, involving multiple hazardous materials and multiple soilings per day.

7 65. Affected employees include those in job classifications such as Apprentice
8 Arborist Technician I and II, Apprentice Gardener, Gardener, Park Section Supervisor,
9 Integrated Pest Management Specialist, Senior Pest Management Specialist, Arborist
10 Technician, Arborist Technician Supervisor, Urban Forestry Inspectors, General Laborer
11 Supervisor I, Asphalt Finisher Supervisor I, Sewer Repair Supervisor II, Street Environmental
12 Services Operations Supervisor, Asphalt Finisher, Sewer Maintenance Worker, General
13 Laborer, and more. These employees did, and continue to the present time, to work in the field
14 on a daily basis, and they are exposed to biohazardous materials in their daily work, especially
15 those who are responsible for clearing homeless encampments.
16

17 66. Female employees are disproportionately impacted by the City's refusal to
18 provide sanitary restrooms for its employees, due to the need to conduct feminine hygiene on a
19 regular basis. All employees are affected by the delays in urination and defecation, which can
20 lead to serious urinary tract infections for female employees, and renal and digestive tract
21 disease for all employees.

22 67. In addition, current City policy prohibits eating in City vehicles. But the City
23 refuses to provide these employees with a sanitary place to eat their meals and take breaks, and
24 while Defendant has told employees they can just eat in the vehicles if they want (i.e., just to
25 violate City policy), that is not an option because the vehicles are themselves unsanitary.
26 Accordingly, employees have nowhere to take their breaks, nowhere to wash their hands,
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1 nowhere to eat their lunch, and nowhere to use the restroom. Employees are de facto denied
2 their meal breaks because they have nowhere to clean and sanitize themselves before eating.

3 68. Throughout 2020 and 2021, Local 261 has requested that the City remedy this
4 egregious situation. For example, on March 10, 2020, Local 261 asked City officials, including
5 Micki Callahan, Director of Human Resources, Carol Isen, Director of Employee Relations
6 Division, and LaWanna Preston, Deputy Director of Employee Relations, to meet regarding the
7 ongoing safety concerns for Local 261 employees, specifically the inability of those Local 261
8 employees working in the field and exposed to biohazardous materials to wash their hands.
9 The City refused to meet with Local 261 and refused to remedy the severe safety
10 considerations.

11 69. On March 13, 2020, Local 261 caused another letter to be sent detailing the
12 safety concerns for members to Mayor London Breed. Local 261 detailed how Local 261
13 members are responsible for the clean-up work in the homeless encampments but were not
14 provided access to sanitary restrooms and handwashing stations and asked the Mayor for
15 assistance in ensuring the safety and health of Local 261 members. Mayor Breed's office
16 made no response to the request for remediation of safety issues.

17 70. On March 19, 2020, the State of California issued a stay at home order for all
18 residents except for Essential Critical Infrastructure Workers. These Essential Critical
19 Infrastructure Workers included many Local 261 members – DPW employees who continued
20 to clean the City's streets, sewers, parks, and homeless encampments.

21 71. On May 14, 2020, Cal/OSHA issued Interim General Guidelines on Protecting
22 Workers from COVID-19, requiring all employers (including Defendant) to provide washing
23 facilities that have an adequate supply of suitable cleaning agents, water and single-use towels
24 or blowers. In support of the Guideline, Cal/OSHA cited to California Code of Regulations,
25 title 8, section 3366, which requires that washing facilities, in good working order and in a
26 sanitary condition, be made reasonably accessible to all employees.
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1 72. On May 28, 2020, Plaintiff Theresa Foglio issues a press release on behalf of
2 Local 261 in connection with the union’s support of the anti-corruption ballot measures
3 proposed by Supervisors Mar and Haney (set for November 2020). In the release, Plaintiff
4 Foglio referenced “pay to play” and even the City’s attempt to pay third-party organizations
5 during collective bargaining of the Citywide project labor agreement.

6 73. On June 17, 2020, Plaintiff Foglio-Ramirez wrote to San Francisco Budget and
7 Legislative Analyst Harvey Rose and copied his staff, as well as Supervisor Mar and the San
8 Francisco Labor Council. She asked for an update on the audit that Supervisor Mar had called
9 for a year before, and also informed them that the SFPUC was claiming that they had no access
10 to Joint Venture Boards.

11 74. On June 28, 2020, a local newspaper, the *Marina Times* newspaper published an
12 article detailing corruption in the SFPUC’s Community Benefits Program.

13 75. On June 29, 2020, Local 261 complained to the FBI regarding the ongoing
14 corruption at the DPW and the SFPUC, and requested an investigation.

15 76. On July 10, 2020, the US DOJ served a subpoena to the SFPUC.

16 77. On July 28, 2020, with nowhere left to turn, Local 261 filed an Imminent
17 Hazard Complaint with Cal/OSHA on behalf of its members, based on the City’s continuing
18 failure to address the lack of clean restrooms and hand-washing stations during the COVID-19
19 pandemic. The City received a copy of this complaint the day that it was made.

20 78. On August 7, 2020, Local 261 again demanded (of DHR head Micki Callahan)
21 that the City engage in the recognized union bargaining process over the safety concerns
22 members were experiencing while performing their duties. On August 10, 2020, Carol Isen of
23 DHR responded in writing and indicated, in essence, that there was nothing to discuss and no
24 process by which Local 261 could do so. Ms. Isen confirmed the City’s position in a telephone
25 call the same day to Plaintiff Theresa Foglio-Ramirez and issued a veiled threat that if Local
26 261 did not drop its health and safety complaints, Local 261 would have to accept lower wages
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1 as part of the parties' upcoming contractual negotiations. Based on Ms. Isen's statements
2 during the call, Plaintiff Foglio-Ramirez understood Ms. Isen to be threatening, on behalf of
3 the City, that the City (1) did not agree that workers were entitled to request compliance with
4 State law through the union/City negotiation process; (2) that workers' safety concerns were
5 not covered by the MOU; (3) that the City was refusing to discuss compliance with State-
6 required health and safety regulations, and that (4) unless Local 261 stopped its complaints to
7 state regulators and dropped its request to discuss safety concerns, Local 261 workers would be
8 facing reduced wages.

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10 79. On August 12, 2020, Theresa Foglio-Ramirez sent correspondence to the U.S.
11 Attorneys' Office and the FBI, indicating that she had learned that City officials met in public
12 to discuss how to make "Local 261 pay" for what Local 261 had indicated during the March
13 2019 bargaining process (i.e., that Local 261 had named Mohammed Nuru and Harlan Kelly as
14 "corrupt").

15 80. Also on August 12, 2020, Local 261 sent a letter to Dr. Grant Colfax, Director
16 of the San Francisco Department of Public Health, detailing the health and safety issues
17 confronted by the Local 261 members at issue and the lack of response by the City, and
18 begging for assistance for Local 261 members. Dr. Colfax eventually responded to this letter
19 on August 25, 2020, agreeing that it was essential for Local 261 workers to have access to a
20 safe workplace.

21 81. On August 11, 2020, Radha Kumar, Employee Relations Representative for the
22 City, had finally reached out to Local 261 to discuss the ongoing health and safety issues. Ms.
23 Kumar suggested that the union and the City meet on August 21, 2020. However, at the last
24 minute, on August 21, 2020, Ms. Kumar cancelled the meeting by email, without proposing a
25 rescheduled date.

26 82. On September 23, 2020, Local 261 made a public records request regarding the
27 status of complaints of racial discrimination made by Local 261 members to the City's Equal
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1 Employment Opportunity office. These complaints have been left to languish without
2 investigation or response from the City. Though the City replied on October 5, 2020 with a
3 cursory letter indicating it would review records, no further response or production was ever
4 made. Local 261's members complaints of racial discrimination continue to languish unabated
5 at the City.

6 83. On September 28, 2020, Local 261 asked SFPUC Commissioner Tim Paulson
7 (former labor leader appointed to replace Vince Courtney), asking him to officially call for an
8 accounting of "all community benefits expenditures." She included a number of attachments
9 and copied the San Francisco Labor/Building Trades Councils, Commission Secretary Donna
10 Hood, Harlan Kelly, and the San Francisco Board of Supervisors.

11 84. On November 30, 2020, the United States Department of Justice announced that
12 Harlan Kelly, General Manager of the SFPUC, was being indicted for honest services wire
13 fraud for his dealings with the same individual (permit expeditor Walter Wong) at the heart of
14 Mr. Nuru's indictment.

15 85. On December 14, 2020, Plaintiff Foglio-Ramirez had a telephone conversation
16 with Svetlana Vaksberg, Employee and Labor Relations Division Director at the General
17 Services Agency, regarding the high rates of discipline being assessed against Black employees
18 of DPW compared to employees of other races. Ms. Vaksberg worked for Naomi Kelly, whose
19 husband, Harlan Kelly, had just been indicted. Ms. Vaksberg told Plaintiff Foglio-Ramirez that
20 it wasn't DPW management's fault that DPW employees needed so much discipline and that
21 they were constantly breaking the rules. Plaintiff Foglio-Ramirez protested that it was not
22 possible for Black employees to be breaking the rules so much more consistently than
23 employees of other races. Ms. Vaksberg reported "I have to look out for taxpayer money – but
24 don't worry Theresa, the FBI is investigating that and everything else thanks to you!" Plaintiff
25 Foglio-Ramirez interpreted this comment from Ms. Vaksberg to mean that the City's
26 management was angry about Local 261's complaints to the FBI about the SFPUC and DPW,
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1 knew that Local 261 had participated in such complaints, and intended to continue to retaliate
2 against Local 261 members as a result of such complaints.

3 86. As further retaliation, though a form which is subject to a different procedural
4 process and remedy, the City opened the contracts of most, if not all other bargaining units
5 during the pandemic and negotiated enhancements to their contracts – but not to Local 261’s
6 contract.

7 **H. 2021-2022: The City’s Retaliation Continues Unabated**

8 87. On January 29, 2021, Local 261 filed a second Imminent Hazard Complaint
9 with Cal-OSHA against the City, complaining that DPW still had not remedied the very serious
10 problems at the workplace. There have been two serious COVID-19 outbreaks among DPW
11 due to the City management’s refusal to provide appropriate PPE, workplace training, and safe
12 and sanitary workplace restroom and breakroom facilities for DPW employees.

13 88. On February 3, 2021, KRON-4 News did a story about the unsanitary
14 conditions for DPW workers.

15 89. On February 8, 2021, Mr. Alaric Degrafinried, department head at DPW,
16 cancelled a planned meeting with Local 261 “due to the OSHA complaint.” On February 11,
17 2021, Cal-OSHA acknowledged the complaint.

18 90. Throughout 2021, Local 261 and Plaintiff Foglio-Ramirez have continued to
19 demand access to sanitary restroom facilities and handwashing stations for all DPW and
20 SFPUC employees (and not just Local 261 members), but the City refuses to honor Local
21 261’s demands.

22 91. On August 3, 2021, Local 261 filed a grievance against the Mayor, the Office of
23 Economic and Workforce Development, the Department of Human Resources, and DPW for
24 violation of Proposition J and the MOU for contracting out Local 261 members’ work to non-
25 profits ShineOnSF and Midtown (Urban Alchemy).
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1 92. On August 12, 2021, Plaintiff Juan Rivera (Local 261’s Chief Steward at DPW)
2 was demoted from 7281 Supervisor 2 (an apprenticeship coordinator for Local 261 programs)
3 to Laborer, a demotion of two levels, and his pay was cut from approximately \$121,654 to
4 approximately \$79,976. He was served with demotion papers by DPW Superintendent Peter
5 Lau, who complimented his performance as he handed Plaintiff Rivera the papers, saying “I
6 don’t know why I am doing this. You have stepped it up a lot as Supervisor 2. You have helped
7 out a lot.” Mystified as to why he would be demoted, when he still had approximately one year
8 left in the appointment, Plaintiff Rivera immediately went to DPW Deputy Director of
9 Operations DiJaida Durden, and Ms. Durden told Plaintiff Rivera that he was being demoted
10 because “your union and the Department are not seeing eye to eye,” clearly demonstrating the
11 retaliatory nature of his demotion. Ms. Durden also stated “once we fix things with Local 261
12 you can have the position back. We don't have funding. Don't worry, your position will be here
13 once we get apprenticeship back.” He was also told the same reason by Larry Stringer, former
14 DPW Deputy Director of Operations. However, there is an entire division for apprenticeship
15 with DPW, which includes a manager, two analysts, and another 7281 Supervisor II, but only
16 Plaintiff Rivera was demoted.
17

18 93. Plaintiff Rivera asked to fill another position within the department coordinating
19 pre-apprenticeship employees, but was told “no” even though he is highly qualified for that
20 role, having previously served as a supervisor of the Mayor’s Pre-Apprenticeship Program at
21 Gleneagles.

22 94. Also after receiving the demotion letter, Plaintiff Rivera confronted Jason
23 Jimenez (human resources at the DPW yard that Plaintiff Rivera is based at) because he was on
24 the demotion letter. Plaintiff Rivera asked Mr. Jimenez why he was being demoted, i.e., was it
25 disciplinary or performance-related. Mr. Jimenez told him that in the weekly manager’s
26 meeting of August 5, 2021, Ms. Durden instructed HR to draft the demotion letter and it was
27 not disciplinary at all.
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1 95. On August 18, 2021, Plaintiff Rivera was told again several times by Darlene
2 Frohm, assistant to the Deputy Director at DPW, that the demotion was “because of your
3 union.”

4 96. On August 23, 2021, Plaintiff Foglio-Ramirez received a text from an unknown
5 number informing her that Svetlana Vaksberg, Employee and Labor Relations Division
6 Director at the General Services Agency, was asking DPW equipment personnel to run GPS
7 reports for the past six months to show DPW vehicles parked or stopping near SFMTA
8 restrooms. Ms. Vaksberg is the same employee who had scolded Plaintiff Foglio-Ramirez
9 about the FBI investigation.

10 97. On January 20, 2022, after Plaintiff Rivera filed his supposedly confidential
11 Tort Claim with the City, and while he was awaiting action from the City (it predictably denied
12 the claim), he received a text message from an unknown number stating “Snitchin won’t get
13 you anywhere you only made a fool of yourself.” When he asked for the sender’s identity there
14 was no response.

15
16 **I. Organizational Standing for Local 261**

17 98. Local 261 has standing to pursue these claims as an organization on behalf of its
18 members. The City’s retaliatory actions as described herein caused the diversion of Local
19 261’s resources and the frustration of Local 261’s mission.

20 99. Local 261’s regular activities and mission include supporting its membership
21 and the community through advocacy, providing scholarships and education, and charitable
22 contributions. It performs these activities through staff, which it pays for, and with cash. Where
23 Local 261 used to have two paid staff Business Agents working with the City (which included
24 Plaintiff Foglio-Ramirez and Mr. Courtney), it now has just one, Plaintiff Foglio-Ramirez, due
25 to the expenses Local 261 has been forced to incur. Those expenses include but are not limited
26 to: (1) attorneys’ fees to handle complaints to the City and Cal-OSHA about workplace safety
27 conditions; (2) attorneys’ fees to defend Mr. Courtney against the ultimately rejected FPPC
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1 charges; (3) attorneys' fees to investigate and prosecute this action; (4) money spent on
2 obtaining and distributing to members much-needed PPE and other supplies to attempt to
3 provide workers with at least some protection against the pandemic; (5) time that Local 261's
4 staff has spent investigating the public corruption that has now been the subject of federal
5 indictments; and (6) time that Local 261's staff has spent trying to get bathrooms for workers,
6 which is time Local 261 could otherwise have spent fulfilling Local 261's mission of advocacy
7 and support of its members.

8 100. Between 2018-April 2020, Mr. Courtney, and since 2018, Plaintiff Foglio-
9 Ramirez, in their capacity as Business Agents, spent at least 20-30 hours per week
10 investigating and uncovering corruption within DPW and SFPUC with regards to the
11 Community Benefits Program and the "Granting Out" of union jobs to nonprofits. Local 261
12 also hired a private investigator to assist with the investigations when the amount of time the
13 Business Agents were forced to invest became too great. This was time that could have been
14 spent fulfilling Local 261's mission and purpose, rather than forcing its personnel to become
15 criminal investigators. Local 261 was forced to divert resources as a result of the City's
16 actions.
17

18 101. In addition, since March 2020, Plaintiff Foglio-Ramirez has spent 20-30 hours
19 per week trying to obtain bathrooms and handwashing facilities for Local 261's members,
20 working seven days per week on the issue – including but not limited to drafting letters and
21 complaints to the City and Cal-OSHA, working with attorneys, purchasing and distributing
22 PPE, and meeting with the City about the problems. Plaintiff Foglio-Ramirez' normal duties
23 for Local 261 do not include begging for workers' access to regularly available and sanitary
24 bathrooms, with running water, which should be provided by their employer, the City.

25 **J. Associational Standing**

26 102. Local 261 also has associational standing because its members have standing to
27 sue in their own right. Any of the affected workers could sue and request an injunction to force
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1 the City to comply with California and federal law to provide safe, sanitary restrooms and
2 handwashing facilities for workers. Any of these affected workers could sue and request an
3 injunction to stop the City from retaliating against them because their union blew the whistle
4 about public corruption and put a stop to a nefarious slush fund and the misuse of City
5 classifications to facilitate the continuance of that slush fund.

6 **CLAIMS FOR RELIEF**

7 **FIRST CLAIM FOR RELIEF**

8 **Gender Discrimination - Retaliation in Violation of 42 U.S.C. § 1983**

9 **[By Plaintiff Local 261 Against the City and County of San Francisco]**

10 103. Plaintiff Local 261 incorporates by reference the paragraphs above with the
11 same force and effect as if fully pleaded at length herein.

12 104. This is a claim to remedy egregious discrimination in violation of the First and
13 Fourteenth Amendment to the United States Constitution.

14 105. At all times herein relevant, Defendant City has maintained and fostered a
15 custom and practice within the Department of Human Resources, the City Administrator's
16 Office, and the Department of Public Works that permits managers to deny Local 261's female
17 members (employees of DPW) the access that they need to clean, safe, sanitary public restrooms
18 and handwashing facilities. The policy of denying restrooms and handwashing facilities is
19 facially neutral and applicable to all employees, but disproportionately affects female employees
20 due to the fact that female employees menstruate and need to perform feminine hygiene.

21 106. As alleged above, the Plaintiff herein has complained of unlawful employment
22 discrimination against its members on numerous occasions by way of different means and in
23 different forums. In response Defendant City has engaged in repeated and blatant acts of
24 reprisal.

25 107. Said acts of reprisal include, but are not limited to, the following:
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- 1 a. Continued refusal to provide safe and sanitary conditions in the
2 workplace for female employees who need access to clean and safe
3 restrooms and handwashing facilities;
- 4 b. Continued refusal to provide personal protective equipment for female
5 employees who need access to PPE to protect themselves and their
6 families from the ongoing COVID-19 pandemic;
- 7 c. Harassing female employees of Local 261 when Local 261 made
8 complaints about the discriminatory and retaliatory working conditions its
9 members were experiencing.

10 108. The actions described in the preceding paragraph are reasonably likely to deter
11 Local 261 and its female employees from engaging in protected activity.

12 109. As a result of the aforesaid acts of reprisal, Local 261's members have suffered
13 and are continuing to suffer a loss of wages/salary, benefits and other employee compensation in
14 an amount which is currently un-ascertained. Local 261's members face substantial diminution
15 of their future earning capacities in an amount which is currently unascertained. Plaintiffs will
16 request leave of the court to amend this Complaint to state the amount of all such damages when
17 they have been ascertained or upon proof at the time of trial.

18 110. As a result of the aforesaid reprisal, Local 261's members have been held up to
19 great derision and embarrassment with fellow workers, friends, members of the community and
20 families, and continue to suffer emotional distress because the Defendant demonstrated to Local
21 261's members that their protected activity would be punished severely. Defendant City acted
22 unreasonably because it knew and/or should have known that its conduct was likely to result in
23 additional, severe mental distress.

24 111. In bringing this action, Local 261 has been required to retain the services of
25 counsel and it is, therefore, entitled to an award of attorney fees.
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1 **SECOND CLAIM FOR RELIEF**

2 **Retaliation Based on the Whistleblowing of Public Corruption**
3 **in Violation of 42 U.S.C. § 1983**

4 **[By Local 261 Against the City and County of San Francisco]**

5 112. Plaintiff Local 261 incorporates by reference the paragraphs above with the
6 same force and effect as if fully pleaded at length herein.

7 113. This is a claim to remedy egregious retaliation for whistleblowing public
8 corruption, in violation of the First and Fourteenth Amendments to the United States
9 Constitution.

10 114. At all times herein relevant, Defendant City has maintained and fostered a
11 custom and practice that permits managers to discipline, harass and take other actions to punish
12 employees from opposing unlawful corruption and misuse of public funds and to deter their
13 coworkers from taking similar action.

14 115. As alleged above, the Plaintiff herein, on behalf of its members, has complained
15 of public corruption and misuse of public funds on numerous occasions by way of different
16 means and in different forums, and including to the Department of Justice. In response
17 Defendant City has engaged in repeated and blatant acts of reprisal.

18 116. Said acts of reprisal include, but are not limited to, the following:

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- 20 a. Continued refusal to provide safe and sanitary conditions in the
21 workplace for employees who need access to clean and safe restrooms and
22 handwashing facilities;
 - 23 b. Continued refusal to provide personal protective equipment for
24 employees who need access to PPE to protect themselves and their
25 families from the ongoing COVID-19 pandemic;
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1 c. Harassing employees of Local 261 when Local 261 made complaints
2 about the discriminatory and retaliatory working conditions its members
3 were experiencing.

4 d. Failing to honor public records requests made by employees to
5 investigate retaliation and harassment against Local 261 members.

6 117. The actions described in the preceding paragraph are reasonably likely to deter
7 employees from engaging in protected activity. These acts of reprisal were not performed against
8 other representational organizations or other City employees.

9 118. As a result of the aforesaid acts of reprisal, Plaintiff and its members have
10 incurred expenses, and suffered and are continuing to suffer a loss of funds, benefits and other
11 employee compensation in an amount which is currently un-ascertained. Plaintiff will request
12 leave of the court to amend this Complaint to state the amount of all such damages when they
13 have been ascertained or upon proof at the time of trial.

14 119. In bringing this action, Plaintiff has been required to retain the services of
15 counsel and it is, therefore, entitled to an award of attorney fees.

16 **THIRD CAUSE OF ACTION**

17 **Retaliation Based on Complaints Regarding Workplace Safety**

18 **in Violation of 42 U.S.C. § 1983**

19 **[By Plaintiffs Against the City and County of San Francisco]**

20 120. Plaintiffs incorporate by reference Paragraphs 1-102 above with the same force
21 and effect as if fully pleaded at length herein.

22 121. This is a claim to remedy egregious retaliation for complaining about dire
23 workplace safety violations, in violation of the First and Fourteenth Amendments to the United
24 States Constitution.

25 122. At all times herein relevant, Defendant City has maintained and fostered a
26 custom and practice that permits managers to discipline, harass and take other actions to punish
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1 employees from complaining about workplace safety violations and to deter their coworkers
2 from taking similar action.

3 123. As alleged above, the Plaintiff Local 261 herein, on behalf of its members,
4 Plaintiff Theresa-Foglio, and Plaintiff Juan Rivera have complained regarding workplace safety
5 issues, specifically, the failure to provide safe and sanitary restroom facilities, the failure to
6 provide training and PPE to employees to deter the spread of the pandemic, and the failure to
7 provide safe and sanitary handwashing facilities or even access to running water, on numerous
8 occasions by way of different means and in different forums, and including to the Department of
9 Justice. In response Defendant City has engaged in repeated and blatant acts of reprisal.

10 124. Said acts of reprisal include, but are not limited to, the following:

- 11 a. Continued refusal to provide safe and sanitary conditions in the
12 workplace for employees who need access to clean and safe restrooms and
13 handwashing facilities;
- 14 b. Continued refusal to provide personal protective equipment for
15 employees who need access to PPE to protect themselves and their
16 families from the ongoing COVID-19 pandemic;
- 17 c. Harassing employees of Local 261, including but not limited to Plaintiff
18 Foglio Ramirez, when Local 261 made complaints about the
19 discriminatory and retaliatory working conditions its members were
20 experiencing.
- 21 d. Harassing members of Local 261, including but not limited to Plaintiff
22 Juan Rivera, when Local 261 made complaints about the discriminatory
23 and retaliatory working conditions its members were experiencing.
- 24 e. Demoting Plaintiff Juan Rivera.
- 25 f. Failing to honor public records requests made by employees to
26 investigate retaliation and harassment against Local 261 members.
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1 125. The actions described in the preceding paragraph are reasonably likely to deter
2 employees from engaging in protected activity. These acts of reprisal were not performed against
3 other representational organizations or other City employees.

4 126. As a result of the aforesaid acts of reprisal, Plaintiff Local 261 and its members
5 have incurred expenses, and suffered and are continuing to suffer a loss of funds, benefits and
6 other employee compensation in an amount which is currently un-ascertained. Plaintiff Theresa
7 Foglio-Ramirez and Plaintiff Juan Rivera have also incurred expenses, and suffered and are
8 continuing to suffer a loss of funds, benefits and other employee compensation in an amount
9 which is currently un-ascertained. Plaintiffs will request leave of the court to amend this
10 Complaint to state the amount of all such damages when they have been ascertained or upon
11 proof at the time of trial.

12 127. In bringing this action, Plaintiffs have been required to retain the services of
13 counsel and they are, therefore, entitled to an award of attorney fees.

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15 **FOURTH CLAIM FOR RELIEF**

16 **Violation of Labor Code § 1102.5**

17 **[By Plaintiffs Against the City and County of San Francisco]**

18 128. Plaintiffs incorporate by reference Paragraphs 1-102 above with the same force
19 and effect as if fully pleaded at length herein.

20 129. At all relevant times, Labor Code § 1102.5 was in effect and was binding on
21 Defendant. This statute prohibits Defendant from retaliating against any employee, including
22 Plaintiff Local 261's members, and Plaintiffs Theresa Foglio-Ramirez and Juan Rivera, for
23 raising complaints of illegality and corruption in government contracting.

24 130. Plaintiff Local 261, its Business Agent (and Defendant's employee) Theresa
25 Foglio-Ramirez, and Local 261 Chief Steward (and Defendant's employee) Juan Rivera, raised
26 complaints of illegality and corruption while representing Local 261 members who work for
27 Defendant, and Defendant retaliated against Local 261's members by discriminating against
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1 Local 261's members, harassing Local 261's members, and taking adverse actions, including
2 depriving Local 261's members of safe and sanitary workplace conditions and denying them the
3 use of safe and sanitary restroom facilities and breakrooms, and the denying them access to
4 running water. Defendant also retaliated against Theresa Foglio-Ramirez by threatening and
5 seeking her termination, and against Juan Rivera by demoting him.

6 131. As a result of the Defendant's willful, knowing, and intentional violations of
7 Labor Code § 1102.5, Local 261's members have been denied safe and sanitary workplace
8 conditions, restroom facilities, and break area facilities. They, and Plaintiffs Theresa Foglio-
9 Ramirez and Juan Rivera, have suffered expenses and are continuing to suffer a loss of
10 compensation in an amount which is currently unascertained. Plaintiffs will therefore request
11 leave of the court to amend this Complaint to state the amount of all such damages when they
12 have been ascertained or upon proof at the time of trial.

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14 132. In bringing this action, Plaintiffs have been required to retain the services of
15 counsel and they are, therefore, entitled to an award of attorney fees.

16 **FIFTH CLAIM FOR RELIEF**

17 **Violation of Gov. Code § 3500 et seq. (Retaliation for Union Activities)**

18 **[By Plaintiffs Against the City and County of San Francisco]**

19 133. Plaintiffs incorporate by reference Paragraphs 1-102 above with the same force
20 and effect as if fully pleaded at length herein.

21 134. The Meyer-Milias-Brown Act, in Government Code § 3502.1, provides "No
22 public employee shall be subject to punitive action or denied promotion, or threatened with any
23 such treatment, for the exercise of lawful action as an elected, appointed, or recognized
24 representative of any employee bargaining unit."

25 135. The Meyers-Milias-Brown Act, in Government Code § 3506, provides: "Public
26 agencies ... shall not interfere with, intimidate, restrain, coerce or discriminate against public
27 employees because of their exercise of their rights under Section 3502." Section 3502 includes
28

1 the right “to form, join, and participate in the activities of employee organizations of their own
2 choosing for the purpose of representation on all matters of employer-employee relations.”

3 136. The Meyers-Milias-Brown Act, in Government Code § 3506.5, provides, inter
4 alia, “A public agency shall not do any of the following: (a) Impose or threaten to impose
5 reprisals on employees, to discriminate or threaten to discriminate against employees, or
6 otherwise to interfere with, restrain, or coerce employees because of their exercise of rights
7 guaranteed by this chapter. (b) Deny to employee organizations the rights guaranteed to them by
8 this chapter. . . .”

9 137. Defendant interfered with, intimidated, and discriminated against Local 261
10 members, and Theresa Foglio-Ramirez and Juan Rivera, because of their status as Local 261
11 members and their exercise of their rights as Local 261 members, engaging in blatant acts of
12 reprisal.

13 138. Said acts of reprisal include, but are not limited to, the following:

- 14 a. Continued refusal to provide safe and sanitary conditions in the
15 workplace for employees who need access to clean and safe restrooms and
16 handwashing facilities;
- 17 b. Continued refusal to provide personal protective equipment for
18 employees who need access to PPE to protect themselves and their
19 families from the ongoing COVID-19 pandemic;
- 20 c. Harassing employees of Local 261, including but not limited to Plaintiff
21 Foglio Ramirez, when Local 261 made complaints about the
22 discriminatory and retaliatory working conditions its members were
23 experiencing.
- 24 d. Harassing members of Local 261, including but not limited to Plaintiff
25 Juan Rivera, when Local 261 made complaints about the discriminatory
26 and retaliatory working conditions its members were experiencing.
- 27 e. Demoting Plaintiff Juan Rivera.
- 28

1 f. Failing to honor public records requests made by employees to
2 investigate retaliation and harassment against Local 261 members.

3 139. The actions described in the preceding paragraph are reasonably likely to deter
4 employees from engaging in protected activity, including participating in a union and being a
5 member of a union. The actions described in the preceding paragraph are reasonably likely to
6 deter employees from engaging in protected activity. These acts of reprisal were not performed
7 against other representational organizations or other City employees.

8 140. As a result of the aforesaid acts of reprisal, Plaintiff Local 261 and its members,
9 and Plaintiffs Foglio-Ramirez and Juan Rivera, have incurred expenses, and suffered and are
10 continuing to suffer a loss of funds, benefits and other employee compensation in an amount
11 which is currently un-ascertained. Plaintiffs will request leave of the court to amend this
12 Complaint to state the amount of all such damages when they have been ascertained or upon
13 proof at the time of trial.

14 141. In bringing this action, Plaintiffs have been required to retain the services of
15 counsel and they are, therefore, entitled to an award of reasonable attorney fees pursuant to Code
16 Civ. Proc. § 1021.5.

17
18 **SIXTH CLAIM FOR RELIEF**

19 **Declaratory Judgment**

20 **[By Local 261 Against the City and County of San Francisco]**

21 142. Plaintiff incorporates by reference the paragraphs above with the same force and
22 effect as if fully pleaded at length herein.

23 143. Local 261 and its Business Agents made complaints to the City and to the
24 Department of Justice regarding corruption in the classification of low-wage employees. Local
25 261 and its Business Agents made complaints to the Department of Justice regarding corruption
26 in the City's contracting and grant process. Defendant retaliated against Local 261 public
27 employee members by refusing to provide sanitary bathrooms and handwashing facilities, in the
28

1 middle of the COVID-19 pandemic and despite the rapid growth rate of infections and death.
2 The City has taken the position that it is not required to provide sanitary bathroom and hand
3 washing facilities for its employees. Local 261 contends that in fact, this is the City's
4 responsibility and that Local 261's public employees should have at least the same rights as other
5 municipal employees enjoy to use clean and sanitary City-owned restroom facilities.

6 144. An actual, present controversy has thus arisen between the City and Local 261's
7 public employee members. Local 261 requests a declaration that the City is required to provide
8 sanitary bathrooms and handwashing facilities for all City employees.

9 145. Local 261's public employee members will suffer irreparable harm if they
10 cannot immediately obtain a declaration of their rights, and an injunction mandating access to
11 sanitary bathrooms and handwashing facilities.

12 146. Local 261 requests that the Court declare that the City has violated Local 261's
13 public employees' rights, and order an appropriate remedy.

14
15 **PRAYER**

16 WHEREFORE, Plaintiff prays for relief and judgment as against Defendants, and each of
17 them, as follows:

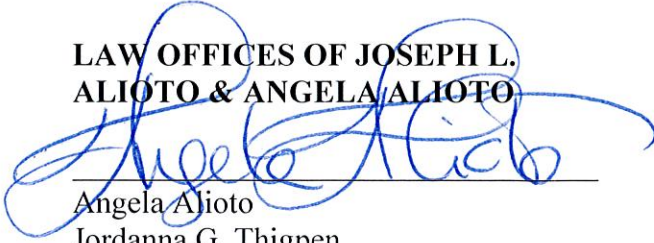
- 18 1. Injunctive relief mandating that the City provide all DPW and SFPUC workers,
19 including Local 261's members, with continuous access to sanitary and safe
20 restroom facilities and handwashing facilities while performing their duties;
- 21 2. Injunctive relief mandating that the City respond to all of Local 261's public
22 records requests;
- 23 3. That the Court retain jurisdiction to ensure compliance with the Court's Orders;
- 24 4. Reasonable attorneys' fees, 42 U.S.C. § 1988, Labor Code § 1102.5, Code Civ.
25 Proc. § 1021.5;
- 26 5. Expert witness fees pursuant to 42 U.S.C. § 1988;
- 27 6. Actual damages subject to proof at trial;
- 28

1 7. Costs of Suit; and

2 8. Such other and further relief as the Court may deem just and proper.

3
4
5 Date: February 8, 2022

**LAW OFFICES OF JOSEPH L.
ALIOTO & ANGELA ALIOTO**



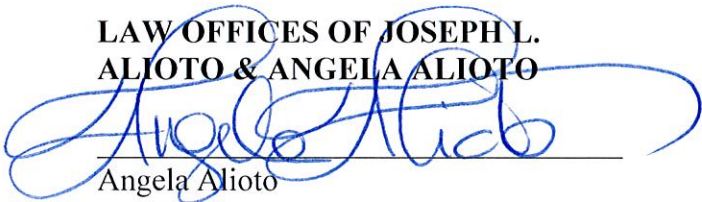
Angela Alioto
Jordanna G. Thigpen
Attorneys for Plaintiff

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9
10 **DEMAND FOR JURY TRIAL**

11 Plaintiffs hereby demand a trial by jury of all issues triable as a right by jury.

12
13 Date: February 8, 2022

**LAW OFFICES OF JOSEPH L.
ALIOTO & ANGELA ALIOTO**



Angela Alioto
Jordanna G. Thigpen
Attorneys for Plaintiff