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21 Attorneys for Plaintiff

22 UNITED STATES DISTRICT COURT
23 DISTRICT OF IDAHO

24 ROBERT WEBBER,

25 Plaintiff,

26 vs.

27 SAGLE FIRE DISTRICT, a political
28 Subdivision of the State of Idaho,

Defendant.

Case No. 2:15-CV-00397-EJL

**AMENDED COMPLAINT OF
UNLAWFUL RETALIATION**

JURY TRIAL DEMANDED

I. INTRODUCTION

1
2 1. Plaintiff Robert Webber files this Complaint against Defendant Sagle Fire District (SFD)
3 under Title VII of the Civil Rights Act of 1964 for unlawful retaliation for engaging in protected
4 activity.

5
6 2. SFD disciplined and discharged Plaintiff from his position of Fire Chief in retaliation for
7 Plaintiff's efforts to stop sexual harrassment in the Sagle Fire Department.

8
9 3. Accordingly, SFD is liable to Plaintiff for the harm caused by its unlawful conduct.

10 **II. JURISDICTION AND VENUE**

11
12 4. This Court has federal-question subject matter jurisdiction pursuant to 28 U.S.C. § 1331
13 because the suit arises under federal law, and supplemental jurisdiction over Plaintiff's Idaho state
14 law claim under 28 U.S.C. § 1367(a).

15
16 5. Plaintiff has exhausted administrative remedies. Plaintiff filed a Notice of Tort Claim
17 against SFD, and filed a charge of discrimination with the Equal Employment Opportunity
18 Commission and Idaho Human Rights Commission, and brings this action within 90 days from
19 receiving its EEOC/Idaho Human Rights Commission "Right to Sue" letter.

20
21 6. Venue is proper under 28 U.S.C. § 1391(b) & (c) in the Coeur d'Alene division of the
22 United States District Court, District of Idaho, because the alleged unlawful employment
23 practices occurred in this district, and it is where all parties reside.

24 **III. PARTIES**

25
26 7. Plaintiff Robert Webber (hereinafter "Chief Webber" or "Plaintiff") is a resident of
27 Sandpoint, Bonner County, Idaho. Chief Webber was employed as Fire Chief of the Sagle Fire
28 District beginning in or about August, 2010, until his termination on February 3, 2014.

1 8. Defendant SFD is a fire protection district organized under the laws of the State of Idaho,
2 and serves portions of Bonner County, Idaho. Defendant's main station is located in Sagle, Idaho.
3 Defendant is a political subdivision and body politic of the State of Idaho. At all relevant times
4 SFD employed more than sixteen employees.
5

6 **IV. FACTS**

7 9. SFD hired Chief Webber in August 2010 as its Fire Chief. Throughout his employment,
8 Chief Webber performed his job duties in a satisfactory or exemplary manner.
9

10 10. At all times material hereto, SFD employed Chief Webber pursuant to its personnel
11 policies and procedures and a union contract. These policies and procedures constitute an
12 employment contract and property interest that is protected by federal and state law.
13

14 11. Shortly after Chief Webber began his employment, he became concerned about one of his
15 employees, Katie Loper. Ms. Loper was not participating in activities at work, such as attending
16 additional trainings or meetings, and she usually isolated herself while at work.
17

18 12. On March 21, 2011, Chief Webber spoke with Ms. Loper about his concerns. During this
19 conversation, Ms. Loper explained to Chief Webber her avoidance and isolation was because her
20 supervisor, Fire Captain Jason Cordle, was sexually harassing her. Ms. Loper stated she
21 attempted to report Mr. Cordle's harassment of her to the previous chief, Robert Goodyear, in
22 February of 2010, but Goodyear did not conduct an investigation or attempt to stop the
23 harassment. Ms. Loper stated Goodyear simply told her to see a doctor, get therapy, and take
24 medication.
25

26 13. Chief Webber informed Ms. Loper he would address the issue with Mr. Cordle and
27 conduct sexual harassment training. On April 28, 2011, SFD conducted department-wide sexual
28

1 harassment prevention training and used Jim McNall, a trainer with SFD's insurer, Idaho Counties
2 Risk Management Program (ICRMP) to conduct the training.

3 14. On April 29, 2011, Mr. Cordle delivered a letter to Chief Webber requesting Chief Webber
4 stop the "slanderous statements" made by Ms. Loper about Mr. Cordle.

5
6 15. In order to resolve the conflicting versions of events presented by Cordle and Loper, on
7 May 9, 2011, Chief Webber retained an outside investigator, Lee Stevens of the Lake Pend Oreille
8 School District, to review the situation in its entirety.

9
10 16. The outside investigation determined Mr. Cordle sexually harassed Ms. Loper and failed
11 to tell the truth during the investigation.

12 **(Chief Webber's Protected Activity)**

13 17. Upon completion of the investigation, Chief Webber terminated Mr. Cordle's
14 employment on July 6, 2011. Investigator Stevens verbally stated the termination of Mr. Cordle
15 was appropriate.

16
17 18. After the completion of the investigation, Chief Webber wrote a letter of apology to Ms.
18 Loper that stated, in part: "[o]n behalf of the Sagle Fire District I wish to extend a heartfelt apology
19 to you for not doing a better job protecting your rights, and insuring that you were able to work
20 in a hostile free work environment. I am committed to providing you, and everybody else, a work
21 environment that is free of ridicule, harassment and intimidation you have experienced."
22

23 **(The SFD's Retaliation)**

24
25 19. Mr. Goodyear was (and still is) a good friend of Mr. Cordle. Upon learning that Chief
26 Webber fired Mr. Cordle, Mr. Goodyear took steps to retaliate against Chief Webber.
27
28

1 20. First, Mr. Goodyear took over SFD Board of Commissioner Jay Dudley's position
2 following Mr. Dudley's resignation. By assuming a commissioner position, Mr. Goodyear was
3 in a place to exercise control over Chief Webber's employment opportunities, which he ultimately
4 did, in retaliation for Chief Webber's protected activity.
5

6 21. Second, Mr. Goodyear materially assisted Mr. Cordle with contesting Chief Webber's
7 termination decision by supporting Mr. Cordle during his union arbitration employment
8 termination process.
9

10 22. Neither Ms. Stevens, nor Ms. Loper, were called to testify at the union arbitration
11 regarding Mr. Cordle's grievance. The only person who testified on behalf of the District was
12 Chief Webber. Mr. Goodyear, in his capacity as a SFD Fire Commissioner, testified *against*
13 Chief Webber and criticized his decision to terminate Mr. Cordle. The arbitration board, having
14 heard primarily Mr. Cordle's side of the story, reinstated Mr. Cordle.
15

16 23. Mr. Goodyear's support of Mr. Cordle during the arbitration hearing (as well as the acts
17 described further below) undermined Chief Webber's command authority. The fire service
18 operates much like the military in that a fire chief's lawful orders, such as firing an employee for
19 sexual harassment, must receive backing by the chief's superiors. A failure to do so undermines
20 the chief's command authority. Mr. Goodyear's undermining of Chief Webber's command
21 authority (as well as the below-described acts) has dissuaded other SFD workers from supporting
22 Mr. Webber's charge of retaliation.
23

24 24. Third, Mr. Goodyear's retaliation continued after Mr. Cordle's reinstatement (which
25 occurred in early-2013) when Mr. Goodyear levied excessive and unsupported discipline against
26 Chief Webber.
27
28

1 25. On or about May 21, 2013, Katie Loper, by and through her attorney Larry Beck, filed
2 and served SFD with a Notice of Tort claim alleging that SFD unlawfully harassed and
3 discriminated against her and seeking \$1,000,000 in damages.

4 26. Ms. Loper based her Notice of Tort Claim and \$1,000,000 demand, in part, on the SFD's
5 admission of liability insofar as "Chief Webber also apologized to [Loper as part of the above-
6 referenced apology letter] for all of the harassment and distress she had suffered."

7 27. On notice that Ms. Loper's claim was based, in part, on Mr. Webber's letter
8 acknowledging and apologizing for the SFD's misconduct, the SFD, led by Mr. Goodyear,
9 escalated its retaliatory pattern.
10

11 28. On or about June 11, 2013, Ms. Goodyear's wife (Laura) appeared before the SFD Board
12 of Commissioners and, in a written communication to the board, claimed Chief Webber was
13 "complicit in the resulting Tort Claim."
14

15 29. On July 11, 2013, Chief Webber was written up by Goodyear and the Board of Fire
16 Commissioners for not completing the budget for SFD, despite the fact that Chief Webber had
17 been awaiting information from the County to complete the budget, and could not do so until that
18 information was received.
19

20 30. The SFD had never disciplined Chief Webber prior to July 11, 2013.
21

22 31. Chief Webber replied to this reprimand in writing on July 13, 2013, citing Mr. Cordle's
23 termination as the true reason for the retaliatory action.
24

25 32. On or around July 17, 2013, a meeting between Chief Webber and the Board of Fire
26 Commissioners occurred at Northern Lights, Inc., at 421 Chevy Street in Sagle, Idaho. The
27
28

1 Commissioners told Chief Webber the write up of July 11, 2013 was to stand and further criticized
2 and questioned Chief Webber's ability to effectively manage the firefighters.

3 33. During the same year. SFD employees Reny Hanson and Jeff Calhoon told Chief Webber
4 that Mr. Goodyear intended to fire him or to punish him for his investigation of sexual harassment.
5

6 34. On or about November 8, 2013, Mr. Goodyear and Fire Commissioner Dennis Englehart
7 presented Chief Webber a second disciplinary write-up, alleging, among other things, that Chief
8 Webber had not submitted payment requests and insurance paperwork on time and disabled the
9 GPS on his mobile data computer. No evidence had been previously presented to Chief Webber
10 regarding these allegations, nor was he given an opportunity to respond.
11

12 **(Chief Webber Continues His Protected Activity)**

13 35. Chief Webber vehemently disagreed with the allegations contained in SFD's November
14 8, 2013, letter and, on or about November 12, 2013, sent the SFD a letter in which Chief Webber
15 rebutted each allegation point-by-point. Chief Webber concluded this by letter stating, in part:
16

17 In closing, I believe that the ongoing trend of events not being investigated when they
18 should will only continue. I feel that I had no choice but to file a claim with the Idaho
19 Human Rights Commission. This will allow for an independent investigation to be
20 conducted, and the continued violation of my rights to stop. I am prepared to hand over
21 statements and other evidence to the HRC, along with other items covered in my two
22 attempts to clear my file of the documents being used in this retaliation against me. I
23 respectfully ask again that I be protected from this harassment, and that I be allowed to
24 work in a work environment that is not hostile. There is no doubt in my mind that this
25 harassment will only escalate until I am finally terminated if nothing is done to stop it.

26 **(The SFD Continues its Retaliation)**

27 36. On or around mid-January, 2014, Chief Webber was again made to meet with Fire
28 Commissioners Goodyear and Englehart, in relation to the November write up. Rather than

1 conduct a fulsome inquiry into the evidence related to the November write-up, the Commissioners
2 simply interrogated Chief Webber.

3 37. On February 3, 2014, SFD fired Chief Webber. SFD's stated reason for Chief Webber's
4 termination was the impending expiration of a SAFER grant provided to the SFD by the Federal
5 Emergency Management Agency (FEMA), and the need to save money in order to preserve
6 firefighter positions. Yet Chief Webber's job was not contingent on SAFER Grant funding.
7 Indeed, former SFD Commissioners Jay Dudley and Roland Rose will testify that it was never
8 the SFD's plan to terminate Chief Webber's employment when the SAFER Grant ceased.
9

10 38. Since February 2014, the SFD's explanations for Chief Webber's termination have
11 changed. To wit: initially the reason given was that Chief Webber was laid off for budgetary
12 reasons due to the expiration of the SAFER grant. This justification made no sense, as Chief
13 Webber was not hired (or paid) with SAFER grant money. Instead, the grant was used to hire
14 temporary junior firefighters, who were aware that their positions would end with the expiration
15 of the grant. At no point prior to Defendant's retaliatory conduct had the Board of Commissioners
16 considered laying off the full-time fire chief rather than the temporary junior firefighters.
17

18 39. Defendant later claimed Chief Webber was terminated for performance reasons. Such a
19 "substantial change over time in the employer's proffered reason for its employment decision
20 support[s] a finding of pretext," i.e. that SFD's stated reasons for Chief Webber's termination are
21 fake reasons designed to hide the SFD's retaliatory animus. *Day v. Sears Holdings Corp.*, 930 F.
22 Supp. 2d 1146, 1173 (C.D. Cal. 2013); *Washington v. Garrett*, 10 F.3d 1421, 1434 (9th Cir.1993)
23 ("[I]n the ordinary case, *such fundamentally different justifications* for an employer's action would
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1 give rise to a genuine issue of fact with respect to pretext since they suggest the possibility that
2 neither of the official reasons was the true reason.” (emphasis added)).

3 40. Defendant “laid-off” Mr. Webber on February 3, 2014.

4 41. On February 7, 2014, Mr. Goodyear wrote a memorandum stating that Mr. Webber was
5 “laid-off” due to financial reasons.
6

7 42. Shortly after being “laid off” Mr. Webber applied for unemployment benefits.

8 43. On February 22, 2014, Defendant receives notice that Mr. Webber filed a charge with the
9 EEOC.

10 44. On March 7, 2014, the Idaho Department of Labor approved Mr. Webber’s application
11 for unemployment benefits because Mr. Webber was “laid-off.”
12

13 45. On March 17, 2014, the Sagle Fire Commissioners met to discuss Mr. Webber’s
14 application for unemployment benefits and considered two options: (1) not contest the
15 unemployment determination or (2) contest the unemployment decision.
16

17 46. The Sagle Fire Commissioners, including Mr. Goodyear, voted to contest Mr. Webber’s
18 unemployment.
19

20 47. Defendant, in deciding to contest Mr. Webber’s unemployment, changed its reason for
21 ending Mr. Webber’s employment from “laid-off” to fired-for-cause because of “misconduct,
22 which included but was not limited to, the areas of misfeasance, malfeasance.”

23 48. On March 17, 2014, Defendant contested Mr. Webber’s unemployment with the Idaho
24 Department of Labor for the reasons stated in the above paragraph.

25 49. On April 18, 2014, Defendant submitted a 25 page letter, with exhibits, to the Idaho
26 Department of Labor, setting out Mr. Webber’s alleged misconduct, misfeasance, and/or
27 malfeasance.
28

1 50. Defendant's 25 page letter consists of after-the-fact, false, and pre-textual statements that
2 were retaliatory in nature.

3 **V. CLAIMS FOR RELIEF**

4
5 **COUNT ONE: RETALIATION**

6 51. Plaintiff realleges and incorporate in this Count all of the preceding paragraphs.

7
8 52. Retaliation against employees who oppose unlawful employment practices is forbidden
9 under Title VII of the Civil Rights Act. Title VII prohibits retaliation against an employee
10 "because he has opposed any practice made an unlawful employment practice by this subchapter,
11 or because he has made a charge, testified, assisted, or participated in any manner in an
12 investigation, proceeding or hearing under this subchapter." 42 U.S.C. 2000e-3(a).
13

14 53. Chief Webber was an employee, and Defendant SFD is an employer, within the meaning
15 of Title VII.

16
17 54. In violation of Title VII and Idaho Law, Defendant retaliated against and terminated Chief
18 Webber because he engaged in a protected activity, namely that he opposed unlawful sexual
19 harassment and testified, assisted, and participated in the investigation of sexual harassment
20 claims made by his employee, Ms. Loper.
21

22 55. Without limitation, SFD's retaliation includes usurping and undermining Chief Webber's
23 command authority, disciplining and writing up Chief Webber, and terminating Chief Webber's
24 employment using false (and ever evolving) reasons to justify the termination.
25

26 **COUNT TWO: POST-EMPLOYMENT RETALIATION**

27
28 56. Defendant "laid-off" Mr. Webber on February 3, 2014.

1 57. On February 7, 2014, Mr. Goodyear wrote a memorandum stating that Mr. Webber was
2 “laid-off” due to financial reasons.

3 58. Shortly after being “laid off” Mr. Webber applied for unemployment benefits.

4 59. On February 22, 2014, Defendant received notice that Mr. Webber filed a charge with the
5 EEOC.

6 60. On March 7, 2014, the Idaho Department of Labor approved Mr. Webber’s application
7 for unemployment benefits because Mr. Webber was “laid-off.”

8 61. On March 17, 2014, the Sagle Fire Commissioners met to discuss Mr. Webber’s
9 application for unemployment benefits and considered two options: (1) not contest the
10 unemployment determination or (2) contest the unemployment decision.

11 62. The Sagle Fire Commissioners, including Mr. Goodyear, voted to contest Mr. Webber’s
12 unemployment.

13 63. Defendant, in deciding to contest Mr. Webber’s unemployment, changed its reason for
14 ending Mr. Webber’s employment from “laid-off” to fired-for-cause because of “misconduct,
15 which included but was not limited to, the areas of misfeasance, malfeasance.”

16 64. On March 17, 2014, Defendant contested Mr. Webber’s unemployment with the Idaho
17 Department of Labor for the reasons stated in the above paragraph.

18 65. On April 18, 2014, Defendant submitted a 25 page letter, with exhibits, to the Idaho
19 Department of Labor, setting out Mr. Webber’s alleged misconduct, misfeasance, and/or
20 malfeasance.

21 66. Defendant’s 25 page letter consists of after-the-fact, false, and pre-textual statements that
22 were retaliatory in nature.
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1 67. Defendant's contesting of Mr. Webber's claim for unemployment would dissuade similar
2 situated workers for enforcing civil rights laws in the workplace.

3 68. By the actions outlined above Sagle Fire District engaged in unlawful post-termination
4 retaliation.

5 69. The action taken by the Defendant was intentionally, and after deliberations, was taken to
6 dissuade Mr. Webber from supporting his EEOC charge.

7 70. Mr. Webber seeks all damages compensable under Title VII, including attorney fees and
8 punitive damages.
9

10 **COUNT THREE: VIOLATION OF THE SUBSTANTIVE DUE PROCESS CLAUSE OF**
11 **THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, BY**
12 **AND THROUGH 42 U.S.C. § 1983**

13 71. Plaintiff realleges and incorporates in this Count all of the preceding paragraphs.

14 72. The Fourteenth Amendment to the United States Constitution guarantees that no "State
15 [shall] deprive any person of life, liberty, or property, without due process of law; nor deny to any
16 person within its jurisdiction the equal protection of the laws." U.S. Const, amend. XIV, § 1, cl.
17

18 3.

19 73. Defendant is a state actor and as such is required to provide due process of law when
20 depriving citizens of their property right to employment.

21 74. The rights granted to Chief Webber by Defendant's personnel policies, procedures and
22 contracts and by federal and state laws and policies, provided Chief Webber with a property
23 interest in his employment with Defendant. Said property interest is protected by the Fourteenth
24 Amendment to the United States Constitution.
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1 75. Chief Webber was terminated without just cause, and without due process, in violation of
2 federal and state laws and public policies. Defendant violated Plaintiff's procedural and
3 substantive due process rights to be free from arbitrary and capricious government action
4 affecting his employment status.

5
6 76. Additionally, the actions and omissions of Defendant violated Chief Webber's rights
7 pursuant to Title VII of the 1964 Civil Rights Act.

8
9 **COUNT FOUR: BREACH OF IMPLIED CONTRACT AND COVENANTS OF GOOD
10 FAITH AND FAIR DEALING**

11 77. Plaintiff realleges and incorporates in this Count all of the preceding paragraphs.

12 78. A contract implied in fact exists where there is no express agreement but the parties'
13 conduct evidences an agreement.

14
15 79. A covenant of good faith and fair dealing is implied in all employment agreements,
16 including at-will employment relationships.

17
18 80. The covenant requires the parties to perform, in good faith, the obligations contained in
19 their agreement, and a violation occurs when either party violates, qualifies, or significantly
20 impairs any benefit or right of the other party under the contract, whether express or implied.

21
22 81. Defendant breached the implied covenant of good faith and fair dealing by wrongfully
23 terminating Chief Webber, without just cause and without due process.

24
25 **IV. PRAYER FOR RELIEF**

26 Plaintiff respectfully prays that that this Honorable Court enter an Order granting Plaintiff
27 all remedies available by law, including but not limited to an award of:
28

1 (a) pecuniary losses suffered a result of the wrongful termination of Plaintiff's
2 employment, to include but not limited to back pay, front pay, and all attendant benefits, with
3 interest;

4 (b) compensatory damages suffered by Plaintiff as a result of retaliation as well as
5 punitive damages to the extent allowed under the law;

6 (c) costs and reasonable attorneys' fees incurred with this lawsuit with interest
7 thereon;

8 (d) all other damages allowed in law or in equity; and

9 (e) such other and further relief as the Court deems just or equitable.

10 DATED this 12 day of April, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will notify

Thomas W. McLane, ISB# 6535
Randall Danskin P.S.
601 W. Riverside, Suite 1500
Spokane, WA 99201

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 12 day of April 2016, at Spokane, Washington.

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