

2013 WL 765208 (Cal.Super.) (Trial Pleading)  
Superior Court of California.  
Los Angeles County

Armando PEREZ, Plaintiff,

v.

CITY OF LOS ANGELES, a municipal corporation; Los Angeles Police  
Department, a government entity; and Does 1 through 100, inclusive, Defendants.

No. BC501486.  
February 21, 2013.

Demand for Jury Trial

**Complaint for Damages: 1. Retaliation (Labor Code Section 1102.5)**

McNicholas & McNicholas, LLP, [Matthew S. McNicholas](#) (SBN 190249), [Alyssa K. Schabloski](#) (SBN 258876), [David M. Angeloff](#) (SBN 2729290, 10866 Wilshire Blvd., Suite 1400, Los Angeles, California 90024, Tel: (310)474-1582, Fax: (310)475-7871, Attorneys for Plaintiff, [Armando Perez](#).

COMES NOW Plaintiff, ARMANDO PEREZ, and hereby demands a trial by jury, and based on information and belief complains and alleges as follows:

***THE PARTIES***

1. At all times relevant hereto, Plaintiff ARMANDO PEREZ (“Perez” or “Plaintiff”) was a sworn California police officer employed by the Los Angeles Police Department (“the LAPD” or “Department”), and was a competent adult.
2. Plaintiff is informed and believes and thereon alleges that, at all times relevant hereto, Defendant City was a public entity violating laws within the State of California in the County of Los Angeles. At all times pertinent hereto, Defendant City owned, controlled, and operated the law enforcement agency known as the LAPD,
3. Plaintiff is informed and believes and thereupon alleges that Defendants DOES 1 through 100, inclusive, and each of them, at all times relevant hereto, were public, business, and/or other entities whose form is unknown committing torts in and/or engaged in purposeful economic activity within the County of Los Angeles, State of California.
4. The true names and capacities of Defendants DOES 1 through 100, and each of them, whether individual, corporate, associate or otherwise, are unknown to Plaintiff at this time, therefore Plaintiff sues said Defendants by such fictitious names. Plaintiff will file DOE amendments, and/or ask leave of court to amend this complaint to assert the true names and capacities of these Defendants when they have been ascertained. Plaintiff is informed and believes, and upon such information and belief alleges, that each Defendant herein designated as a DOE was and is in some manner, negligently, wrongfully, or otherwise, responsible and liable to Plaintiff for the injuries and damages hereinafter alleged, and that Plaintiff’s damages as herein alleged were proximately caused by their conduct.
5. Plaintiff is informed and believes, and thereon alleges, that at all times material herein the Defendants, and each of them, were the agents, servants, or employees, or ostensible agents, servants, and employees of each other Defendant, and as such, were acting within the course and scope of said agency and employment or ostensible agency and employment, except on those

occasions when Defendants were acting as principals, in which case, said Defendants; and each of them, were negligent in the selection, hiring, and use of the other Defendants.

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

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

#### ***VENUE AND JURISDICTION***

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

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

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

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

12. Plaintiff has complied with and/or exhausted any applicable claims statutes and/or administrative and/or internal remedies and/or grievance procedures, and/or is excused from complying therewith. Plaintiff has complied with the claim presentation requirement of [California Government Code § 945.4](#) and [§ 912.4](#). Plaintiff filed a government claim with the City of Los Angeles and the LAPD on or about November 15, 2012. Plaintiff received a letter from the City of Los Angeles rejecting his government claim on or about December 12, 2012.

#### ***GENERAL ALLEGATIONS***

13. At all relevant times herein, Plaintiff was a sworn police officer for the Los Angeles Police Department. Plaintiff was qualified for the position he held by reason of his education and training. Plaintiff joined the LAPD in 1987.

14. At all times relevant herein, Plaintiff held the title and rank of Lieutenant with at the Los Angeles Police Department, assigned to Metropolitan Division (hereinafter, "Metro") as the Officer in Charge of the Armory. During the course of his employment with the City, Perez has performed his various responsibilities as a Lieutenant in an exemplary fashion and otherwise capably performed each and every condition of his employment agreement. Since he joined the LAPD, Plaintiff has received numerous positive performance evaluations, as well as commendations from both private citizens and the City of Los Angeles for his outstanding contributions and achievements in the LAPD.

15. In or around May 2010, Plaintiff initiated a detailed audit of Metro's inventory of firearms. While performing the weapons audit, Plaintiff learned that both officers within the unit and civilians were purchasing special LAPD SWAT-stamped Kimber firearms intended for official use. Plaintiff also discovered that the officers within the unit were possibly reselling these Kimber firearms for large profits to people outside of Metro SWAT--to LAPD officers of various ranks, including Captains, Plaintiff's own commanding officer, Captain John Incontro (hereinafter, "Incontro"), and to non-LAPD civilian personnel. Plaintiff also

discovered that the officers, unbeknownst to Kimber (the manufacturer), were allowing Cinema Weaponry to purchase these pistols at the discounted price, and were allowing Lucas Ranch Gun Sales to facilitate the transfer of the pistols from Kimber to the officers. Plaintiff also discovered records indicating that Officer James Quinlan (hereinafter “Quinlan”) and other officers were facilitating the sales of the Kimber firearms to these other non-Metro LAPD officers, non-LAPD civilians, and gun dealers.

16. Plaintiff reported his concerns about these practices and their legal ramifications to Incontro. Plaintiff reasonably believed he was reporting violations of federal and/or state and/or municipal laws, including but not limited to the federal criminal statute related to bribery of public officials, (18 U.S.C. § 210); Title 7 of the California Penal Code, which prohibits crimes against public justice, including bribery and corruption (CAL. PEN. C. §§ 92-186.33); 18 U.S.C.A. § 922, which prohibits unlicensed sale and dealing in firearms; California Penal Code § 26500 *et seq.*, prohibiting the unlicensed sale of firearms; Los Angeles Municipal Code, Chapter V, Article 5, § 55 *et seq.*, regulating the sale of firearms; and the Public Safety Officer's Procedural Bill of Rights Act (CAL. GOVT. C. §§ 3300 *et seq.*). Plaintiff further believed he was reporting illegal kickbacks and fraudulent accounting practices as well as ethics violations, among others, Incontro asked Plaintiff to look into the matter further to see how they could “fix it in-house.” Incontro also asked Plaintiff to take his name off the list of buyers, in light of Plaintiff's discoveries.

17. At or about this same time, Plaintiff advised Incontro of a possible inappropriate relationship between Quinlan and a civilian commanding officer. Once Commander Kroeber suspected that Plaintiff was looking into a possible inappropriate relationship between a subordinate and a commanding officer, Kroeber ordered the entire investigation, including the weapons sales, to be turned over to the Internal Affairs Group (hereinafter, “IAG”). Plaintiff was not informed of whether IAG performed an investigation into misconduct surrounding the weapons sales.

18. IAG initially “determined” that no misconduct occurred. However, the primary IAG investigator did not interview Perez, Quinlan, and/or other key witnesses. IAG's entire initial investigation was a mere thirty-nine (39) pages long, which included multiple pages of purchase orders.

19. On or about July 14, 2010, Quinlan made a retaliatory complaint against Perez. During his initial interview with IAG investigator Sergeant Melody Hainline (hereinafter, “Hainline”), Plaintiff reported the retaliatory acts and hostile work environment he was experiencing. The LAPD took no action in response to Perez's reports of retaliation. In stark contrast to IAG's investigation into the weapons sales, the investigation of Perez resulted in a two hundred fifty-seven (257) page report, which led to one allegation being sustained against him. On or about July 6, 2011, Plaintiff was issued a retaliatory five-day suspension.

20. On or about August 23, 2012, the Office of the Inspector General issued the OIG's Review of the Department's Quarterly Discipline Report for the Fourth Quarter of 2011, criticizing the LAPD's initial investigation into the sales of the SWAT Kimbers as deficient. The next day, the Los Angeles Times ran a story on the SWAT weapons sales and reported the potential violation of federal firearms laws and City ethics regulations. Following the LA Times story, the retaliation against Plaintiff intensified. Perez was ostracized, his reputation damaged, and told to “watch his back,” among other retaliatory acts.

21. Perez also engaged in protected activities including standing up for his rights and the rights of others, and opposing improper conduct by supervisors and command staff. Perez reported what he reasonably believed to be federal and/or state firearms violations, illegal kickbacks, and fraudulent accounting practices as well as ethics violations, among others. Plaintiff also reported the retaliation against him, which is continuing and ongoing, through channels approved and encouraged by LAPD command staff.

22. Since voicing these concerns, Plaintiff was retaliated against. The retaliation is continuing and ongoing through the present and includes, but is not limited to, the retaliatory complaint made against him, a retaliatory IAG investigation and complaint adjudication against him, veiled threats, the systematic removal of his responsibilities in an attempt to force Plaintiff to leave Metro, being ostracized, damage to his reputation, and various other acts intended to retaliate against him.

23. Defendants, and each of them, have created, ratified, condoned, and failed to remedy the unlawful conduct. Such retaliation is known by all Defendants, and each of them, throughout the chain of command and the Department, and has been carried out and/or ratified by Defendants, and each of them, or Defendants, and each of them, have otherwise failed to take steps to prevent or undo the retaliation, or both. This is a continuing and ongoing violation and therefore subject to the continuing violations doctrine.

24. The retaliation has caused damage to Plaintiff's professional reputation, his ability to promote, his ability to be selected for other units, his ability to work, has caused negative documentation in his personnel package, will cause him to have to take a different retirement path, has caused him to lose overtime opportunities and pay, and will adversely affect his income and pension and other benefits. Moreover, it has adversely affected his personal health and well being, including medical expenses, that are anticipated into the future and may force an early retirement. Plaintiff has also suffered extensive general damages in the form of anxiety, anguish, and mental suffering. Plaintiff's damages are continuing and in an amount not yet determined, but in excess of \$25,000.

25. Plaintiff's career has been materially and adversely affected, and irreparably harmed and damaged by the conduct of the Defendants. Plaintiff spoke out about what he believed to be illegal kickbacks in relation to illegal firearms sales to his superiors, reported such conduct to people above him in the chain of command, and gave honest testimony in interviews with the IAG and to individual members of LAPD command staff As a direct and proximate consequence of reporting such misconduct and testifying honestly about such misconduct--which constitutes protected activity under state and federal law-- Defendants, and each of them, retaliated against, discriminated against, and harassed Plaintiff and subjected Plaintiff to adverse employment actions. Those adverse employment actions include but are not limited to a retaliatory complaint made against him, a retaliatory Internal Affairs Group (hereinafter, "IAG") investigation and complaint adjudication against him, veiled threats, the systematic removal of his responsibilities in an attempt to force Plaintiff to leave Metropolitan Division, being ostracized, damage to his reputation, and various other acts intended to retaliate against him.

26. Plaintiff has suffered both general and special damages in the past and present and will continue to suffer such damages in the future for an unknown period of time. Plaintiff has also suffered and continues to suffer losses in earnings and other employment benefits, as well as past and future non-economic injury. This has caused damage to his professional reputation, his ability to promote, his ability to be selected for other units, his ability to work, has caused negative ratings, will cause him to have to take a different retirement path, has caused him to lose overtime opportunities and pay, and will adversely affect his income and his pension and other benefits. Moreover, it has adversely affected his personal health and well being, including medical expenses, that are anticipated into the future and may force an early retirement. Plaintiff has also suffered extensive general damages in the form of anxiety, anguish, and mental suffering. Plaintiff's damages are continuing and in an amount not yet determined, but in excess of \$25,000.

27. The Department's conduct was a violation of Plaintiff's rights under both state and federal law, including but not limited to the Public Safety Officer's Procedural Bill of Rights Act ([CAL. GOV'T C. §§ 3300 et seq.](#)), and [California Labor Code § 1102.5](#). Therefore, Defendants, and each of them, are liable under FEHA and [Labor Code § 1102.5](#), are liable for retaliation in violation of public policy as identified in [Tameny v. Atlantic Richfield Co.](#), (1980) 27 Cal.3d 167 and its progeny, and may be liable for constructive discharge. The wrongful conduct of Defendants, and each of them, is continuing and ongoing as of the present date.

***FIRST CAUSE OF ACTION***

***BY PLAINTIFF AGAINST ALL DEFENDANTS RETALIATION  
IN VIOLATION OF LABOR CODE SECTION 1102.5***

28. Plaintiff re-alleges and incorporates by reference each and every allegation contained in paragraphs 1-27 of this complaint as though fully set forth herein again.

29. At all times herein mentioned, [California Labor Code section 1102.5](#) was in full force and effect and was binding on the Defendants, and each of them.

30. Defendants, and each of them, made, adopted, and/or enforced rules, regulations, and/or policies designed to prevent employees from disclosing information to a government or law enforcement agency, which Plaintiff had reasonable cause to believe disclosed violations of state or federal statutes, or state or federal rules and regulations, as identified herein.

31. All of the complaints mentioned above were made by Plaintiff to a law enforcement agency within the meaning of [California Labor Code section 1102.5](#), and Plaintiff had reasonable cause to believe that the allegations disclosed violations of state or federal statutes, or state or federal rules and regulations, as identified herein.

32. Defendants, and each of them, retaliated against Plaintiff for disclosing information, and/or refusing to engage in the illegal activity, to the Los Angeles Police Department, which the Plaintiff had reasonable cause to believe disclosed violations of state or federal statutes, or violations or noncompliance with state or federal rules or regulations, as identified herein.

33. As a result, Plaintiff was subject to adverse employment actions including but not limited to: a retaliatory complaint made against him, an IAG investigation and complaint adjudication against him, veiled threats, the systematic removal of his responsibilities in an attempt to force Plaintiff to leave Metropolitan Division, being ostracized, damage to his reputation, and various other acts intended to retaliate against him.

34. A motivating factor for the Defendants to engage in the foregoing adverse employment actions against Plaintiff was to retaliate for the Plaintiff's refusal to engage in illegal activity and his engaging in the protected activities of disclosing information to the City of Los Angeles and the Los Angeles Police Department, which the Plaintiff had reasonable cause to believe disclosed violations of state or federal statutes, or violations or noncompliance with state or federal rules or regulations, as identified herein.

35. Defendants, and each of them, allowed, permitted, condoned, ratified, and/or enabled the retaliation and/or other wrongful conduct as described herein.

36. As a legal result of the above-described conduct of Defendants, and each of them, Plaintiff has sustained and will continue to sustain physical, mental, and emotional injuries, pain, distress, suffering, anguish, fright, nervousness, grief, anxiety, worry, shame, mortification, injured feelings, mental suffering, shock, humiliation, and indignity, as well as other unpleasant physical, mental, and emotional reactions, damages to good name, reputation, standing in the community, and other non-economic damages.

37. As a further legal result of the above-described conduct of Defendants, and each of them, Plaintiff was required, and/or in the future may be required, to engage the services of health care providers, and incurred expenses for medicines, health care appliances, modalities, and/or other related expenses in a sum to be ascertained according to proof.

38. As a further legal result of the above-described conduct of Defendants, and each of them, Plaintiff was and/or will be hindered, prevented, and/or precluded from performing Plaintiff's usual activities, namely the position of a full-time Permanent Detective employed by the Los Angeles Police Department, causing the Plaintiff to sustain damages for loss of income, wages, earnings, and earning capacity, and other economic damages, in an amount to be ascertained according to proof. Plaintiff claims such amount as damages together with prejudgment interest pursuant to [California Civil Code section 3287](#) and/or any other provision of law providing for prejudgment interest.

39. As a further legal result of the above-described conduct of Defendants, and each of them, Plaintiff suffered incidental, consequential, and/or special damages, in an amount according to proof.

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

41. Finally, as a direct and proximate result of the aforesaid unlawful acts of Defendants, and each of them, Plaintiff suffered stress-related health consequences. Plaintiff claims general damages for such health problems in an amount to be proven at time of trial.

***PRAYER***

WHEREFORE, Plaintiff seeks judgment against all Defendants, and each of them, on all Causes of Action for:

1. Physical, mental, and emotional injuries, pain, distress, suffering, anguish, fright, nervousness, grief, anxiety, worry, shame, mortification, injured feelings, shock, humiliation and indignity, as well as other unpleasant physical, mental, and emotional reactions, damages to reputation, and other non-economic damages, in a sum to be ascertained according to proof;
2. Health care, services, supplies, medicines, health care appliances, modalities, and other related expenses in a sum to be ascertained according to proof;
3. Loss of wages, income, earnings, earning capacity, support, domestic services, benefits, and other economic damages in a sum to be ascertained according to proof;
4. Other actual, consequential, and/or incidental damages in a sum to be ascertained according to proof;
5. Attorney fees and costs of suit pursuant to statute;
6. Costs of suit herein incurred;
7. Pre-judgment interest;
8. Such other and further relief as the Court may deem just and proper.

Dated: February 20, 2013

McNICHOLAS & McNICHOLAS, LLP

By: <<signature>>

Matthew S. McNicholas

Alyssa K. Schabloski

David M. Angeloff

Attorneys for Plaintiff Armando Perez

***DEMAND FOR JURY TRIAL***

Plaintiff hereby demands a jury trial.

Dated: February 20, 2013

McNICHOLAS & McNICHOLAS, LLP

By: <<signature>>

Matthew S. McNicholas

Alyssa K. Schabloski

David M. Angeloff

Attorneys for Plaintiff Armando Perez

---

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.