



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

LONDON N. BREED
MAYOR

Sent via Electronic Mail and U.S. Mail

ELIZABETH SALVESON
PRESIDENT

KATE FAVETTI
VICE PRESIDENT

DOUGLAS S. CHAN
COMMISSIONER

F. X. CROWLEY
COMMISSIONER

JACQUELINE P. MINOR
COMMISSIONER

SANDRA ENG
ACTING EXECUTIVE OFFICER

January 23, 2020

NOTICE OF CIVIL SERVICE COMMISSION MEETING

Ronnie Jones

SUBJECT: APPEAL BY RONNIE JONES OF THE HUMAN RESOURCES DIRECTOR'S DETERMINATION TO ADMINISTRATIVELY CLOSE HIS COMPLAINT OF HARASSMENT.

Dear Ronnie Jones:

The above matter will be considered by the Civil Service Commission at a meeting to be held on **February 3, 2020 at 2:00 p.m. in Room 400**, Fourth Floor, City Hall, 1 Dr. Carlton B. Goodlett Place.

The agenda will be posted for your review on the Civil Service Commission's website at www.sfgov.org/CivilService under "Meetings" no later than end of day on Wednesday, January 29, 2020. Please refer to the attached Notice for procedural and other information about Commission hearings. A copy of the department's staff report on your appeal is again attached for your review; however, a hard copy is also available for your review at the Civil Service Commission's office located at 25 Van Ness Avenue, Suite 720, San Francisco.

In the event that you wish to submit any additional documents in support of your appeal, the deadline for receipt in the Commission office is **5:00 p.m. on Tuesday, January 28, 2020** (as a reminder, we require an original and nine copies of any supplemental materials you wish to submit—all double-sided, hole-punched, paper-clipped and numbered). Again, please be sure to redact your submission for any confidential or sensitive information that is not relevant to your appeal (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

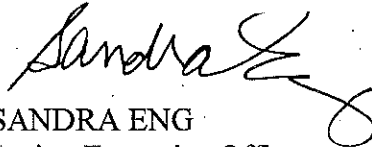
THIS DOCUMENT SUPPORTS
CALENDAR # 14

It is important that you or an authorized representative attend the hearing on your appeal. Should you or a representative not attend, the Commission will rule on the information previously submitted and any testimony provided at its meeting. All calendared items will be heard and resolved at this time unless good reasons are presented for a continuance. As a reminder, you are to be honest and forthright during all testimony and in all documentation that you provide to the Civil Service Commission.

All non-privileged materials being considered by the Civil Service Commission for this item are available for public inspection and copying at the Civil Service Commission office Monday through Friday from 8:00 a.m. to 5:00 p.m.

You may contact me at (415) 252-3247 or at Sandra.Eng@sfgov.org if you have any questions.

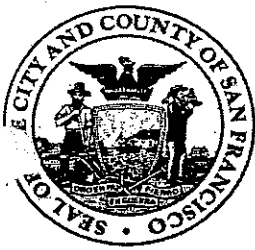
CIVIL SERVICE COMMISSION



SANDRA ENG
Acting Executive Officer

Attachment

Cc: Micki Callahan, Department of Human Resources
Chief Jeanine Nicholson, SF Fire Department
Mawuli Tugbenyoh, Department of Human Resources
Linda Simon, Department of Human Resources
Dorothy Young, Department of Human Resources
Jesusa Bushong, SF Fire Department
Commission File
Commissioners’ Binder
Chron



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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NOTICE OF CIVIL SERVICE COMMISSION MEETING

Jonathan Halverson

Subject: APPEAL BY RONNIE JONES OF THE HUMAN
RESOURCES DIRECTOR'S DETERMINATION TO
ADMINISTRATIVELY CLOSE HIS COMPLAINT OF
HARASSMENT.

Dear Jonathan Halverson:

As you may be aware, Ronnie Jones filed the above-referenced discrimination complaint with the Department of Human Resources ("DHR"). The Department of Human Resources reviewed Ronnie Jones' allegations, and the Human Resources Director determined that there was insufficient evidence to establish his claims of discrimination and harassment. Ronnie Jones has appealed that determination to the Civil Service Commission.

In accordance with the City Charter and Civil Service Rules, the Commission may sustain, modify or reverse the Human Resources Director's determination; and may effectuate an appropriate remedy in the event that it finds discrimination in the work environment. Any such finding is binding on City departments. The Commission may not impose discipline on an employee, but in an appropriate case may recommend that the department consider discipline.

The Equal Employment Opportunity Division of DHR will present and defend the Human Resources Director's determination on Ronnie Jones' complaint at the Civil Service Commission meeting to be held on February 3, 2020 at 2:00 p.m. in Room 400, Fourth Floor, City Hall, 1 Dr. Carlton B. Goodlett Place. The Commission will have received the DHR staff report, which reviews the evidence pertaining to the complaint and supports the Human Resources Director's determination, in advance of the meeting. You will have an opportunity to address Ronnie Jones' allegations at the Commission meeting, if you wish to do so, although you are not required to appear. The Commission will rule on the information previously submitted and any testimony or other evidence provided at its meeting.

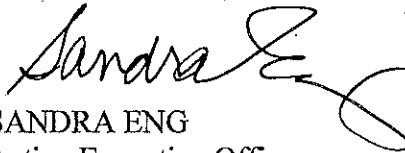
SANDRA ENG
ACTING EXECUTIVE OFFICER

The February 3, 2020 meeting agenda will be posted on the Civil Service Commission’s website at www.sfgov.org/CivilService under “Meetings” no later than end of day on Wednesday, January 29, 2020. Additionally, hard copies of DHR’s staff report regarding Ronnie Jones’ appeal will be available for review at the Commission’s office located at 25 Van Ness Avenue, Suite 720, San Francisco; however, you may also contact the Commission at CivilService@sfgov.org to request that a copy of the report be emailed to you instead.

You may contact me at Sandra.Eng@sfgov.org or (415) 252-3247 should you have any questions.

Sincerely,

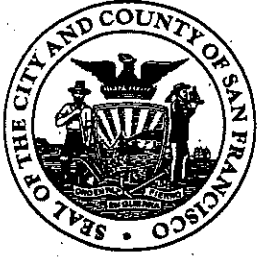
CIVIL SERVICE COMMISSION



SANDRA ENG
Acting Executive Officer

Cc: Micki Callahan, Department of Human Resources
Chief Jeanine Nicholson, SF Fire Department
Mawuli Tugbenyoh, Department of Human Resources
Linda Simon, Department of Human Resources
Dorothy Young, Department of Human Resources
Jesusa Bushong, SF Fire Department
Commission File
Commissioners’ Binder
Chron

APPEAL



CIVIL SERVICE COMMISSION
City and County of San Francisco
 25 Van Ness Avenue, Suite 720
 San Francisco, California 94102-6033
 Executive Officer
 (415) 252-3247

CSC Register No.
0232-19-6
 To: XI M. Callahan
J. Buick
 CC: L. Simons
M. Valdez
J. Bushong

APPEAL TO THE CIVIL SERVICE COMMISSION

<p>INSTRUCTIONS: Submit an original copy of this form to the Executive Officer of the Civil Service Commission at the address above within the designated number of days following the postmarked mailing date or email date (whichever is applicable) of the Department of Human Resources' or Municipal Transportation Agency's notification to the appellant. The appellant's/authorized representative's original signature is required. (E-mail is not accepted.) It is recommended that you include all relevant information and documentation in support of your appeal.</p>	<p>TYPE OF APPEAL: (Check One) <input type="checkbox"/> Examination Matters (by close of business on 5th working day) <input type="checkbox"/> Employee Compensation Matters (by close of business on 7th working day) - Limited application <input type="checkbox"/> Personal Service Contracts (Posting Period) <input type="checkbox"/> Other Matters (i.e., Human Resources Director/Executive Officer Action) (30 Calendar days) <input type="checkbox"/> Future Employability Recommendations (See Notice to Employee)</p>
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JONES, RONNIE 1415 EVANS AVE., S.F. CA 94124 (415) 558-3249
 Full Name of Appellant Work Address Work Telephone

H3LZ PARAMEDIC SAN FRANCISCO FIRE DEPARTMENT
 Job Code Title Department

Residence Address City State Zip Home Telephone

Full Name of Authorized Representative (if any) Telephone Number of Representative (including Area Code)

NOTE: If this is deemed to be a timely and appealable matter, the department will submit a staff report to the Civil Service Commission to request that it be scheduled for hearing. You will be notified approximately one week in advance of the hearing date, at which time you will be able to pick up a copy of the department's staff report at the Commission's offices. If you would instead prefer Commission staff to email you a copy of the meeting notice and staff report, please provide your email address below.

Email: _____

COMPLETE THE BASIS OF THIS APPEAL ON THE REVERSE SIDE. (Use additional page(s) if necessary)

<p>Does the basis of this appeal include new information not previously presented in the appeal to the Human Resources Director? If so, please specify.</p>	<p>Check One: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
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[Signature] 2019 SEP -5 AM 11:52 9/4/19
 Original Signature of Appellant or Authorized Representative Date

CSC-12 (10/14) Date Received by Civil Service Commission: _____

State the basis of this appeal in detail. For more information about appeal rights and deadlines, please review the Civil Service Rules located on the Civil Service Commission's website at www.sfgov.org/CivilService.

Appeal request for EEOC Complaint File No. 3112

I am requesting an appeal is because I disagree with the findings. Attached is my statement regarding the initial incident and new evidence to show some of the continued harassment I am experiencing from the other party involved in the incident. Secondly, along with my disagreement with the findings, on 8/29/19 after^{AS} during my meeting with SFFD HR department, I was made aware of the possibilities of my battery/assault that I experienced on the initial date of incident was left out of the report or never reported which lead me to believe that the DHR investigator may have not reported it as well.

After the findings were determined and DHR forward it back to the HR department at SFFD I don't know if the department is conducting an investigation or if there was any form of discipline. When I spoke to the DHR investigation on 8/5/19 when I was made aware of the decision, she stated to me that all I wanted was more training which it is misunderstood on her part. I reported that I want more training in the dealings in relating to transgenders that work for or in the department, and I also stated that I no longer want to work with individuals like the subject in the complaint because they don't contribute to a safe environment for me. I also stated that I no longer feel safe at work and the subject should not be allowed to work for the department after our incident. Especially, the subject is in violation of the mission statement with the department.

PM Ronnie Jones Statement regarding June 24 to early morning hours on June 25th

On Monday, June 24, 2019, I was working my regular scheduled shift, and my partner went home early. I was stationed at Station 49 as EMS03 to be available if someone goes home sick or if there was a sick call and I can work on a unit that will need staffing. Around 2350 hrs., I advised the on-duty RC who was Megan Byrne that I was going to walk the yard to stretch out my legs and do station duties. While walking out to the yard, I saw PM Nicole Thoms, who was getting off duty, and I began conversing with her. I asked PM Thoms how was her shift? And How was the family? During our conversation, I also spoke to her partner who was PM Dierks who I worked with the previous night, I checked in with him by saying hello, and How was his shift? During Thoms and I conversation, I saw PM Halverson walking towards his ambulance (M59), and I also noticed that PM Halverson had no Paramedic patches on his Class B uniform shirt.

Therefore, I noticed PM Halverson's uniform looked very similar to the Nomex uniforms we used to wear approximately 6 years ago, and now we are unauthorize to wear. So, I thought to do the right thing, and attempt to give some helpful advice to PM Halverson regarding his missing patches on his uniform. PM Halverson has been with the department for approx. 2 ½ years and I was thinking to give him advice to help keep him out of trouble. I decided to go ahead and give Peer to Peer advice regarding his uniform. Recognizing that in the past I was referred to come across abrasive and authoritative sometimes to people in past conversations with various individuals when I speak to them. With that information and constructive criticism, I've changed my ways on how I communicate with individuals over the years.

Recognizing that my approach should come across to him that I am coming from a genuine place, I made sure that my tone, and my body language reflected my position. While Halverson was walking towards his ambulance, I proceed to ask him, "(With a slight grin on my face) Hey Man, Where's your patches?". He responded, "What?" (with a disruptive tone). I repeated, "What happen to your patches", and he continues with a more disruptive deep tone, "What?". It was at that time that I gathered after he responded that the conversation was starting to take a wrong turn. Halverson proceed to respond, "Why?". So, I proceed to respond to his question, I advised him that he was wearing uniforms that was not approved by the department to wear with no patches, and those uniforms he had on we are not authorized to wear. I also advised him that if a Chief or Captain sees you in the field with non-department issue uniforms or out of uniform you are in violation of rules and regulations, and I am just trying to help you. Then he proceeds to ask, "Why?", and I asked him, "was he suppression or 49?". As he reached the driver side of his ambulance, Halverson proceeded to turn facing my direction, grabbed the left side of his shirt collar, with an abrasive gesture, and aggressive tone stating "Well, MISS".

After he made his comment, I immediately was taken back, disturbed, shocked, and surprised after his comment. While I proceeded to turn towards Nicole, Dierks was to the left of me, and I turned to Nicole and I asked her, "Did I just hear that correctly,". Wait a minute, "Did I just hear that correctly". I proceeded to ask Nicole, "Did he just use the wrong gender pronoun in that manner". And Nicole immediately turned facing me reenacting what she heard and saw when Halverson misuse of the gender pronoun towards me. While Nicole was confirming what she heard and saw, Halverson grabbed his helmet, and jacket that was folded together from the compartment from the driver side of the ambulance.

Then Halverson proceeded to walk towards me stating, "Are you Lieutenant or Captain?". And Nicole proceeded to finish grabbing her gear and get on her motorcycle while Dierks proceeded to walk away towards his personal vehicle while Halverson was walking up to me. As Halverson approached me, he continues to state, "Every time you see me Ronnie, it seems like you have something against me or something against me". Then Halverson states, "you are out of uniform too", and I responded with a neutral tone to him stating, "I am in uniform, it's after 9 p.m. and I can wear my job sweater". I continue to state to Halverson, "I am not in the field right now, so I can wear my department issue sweater after 9 pm at the station".

Then Halverson abruptly stepped closer to me in an aggressive manner, violating my personal space, standing toe to toe, with a threatening tone stating, "Are you a Lieutenant or Captain?" as he was attempting to grab my left collar on my sweater with his right hand. In a form of protecting myself, I immediately took a step back to create distance between him, and stating to him with an uncomfortable but neutral tone, "No, I am the senior Mother Fucking Medic here that has been here for 13 years trying to help you, and to help keep you out of trouble". Then Halverson turned to walk away from me while stating, "Ronnie, you always appear to have something against me". I advised Halverson while he continued to walk away from me, "Hey, it is clear that this conversation has gone in the wrong direction, all I was trying to do is help, you have the wrong impression of me, and we need to talk about it. I continue to advise him that the RC is in the office, so let's have a meeting to clear it all up, start over new, and get on the same page. Halverson responded, "Naw, Fuck that" and proceeded to walk upstairs to the second floor of the station.

I opened the door to the RC's office and advised RC Byrne that we need to have a meeting. RC Byrne asked, "What's going on?" I advised RC Byrne that I was attempting to give Peer to Peer guidance/advice, and it took a turn for the worse. I told RC Byrne that I was speaking with Halverson regarding his uniform, and in his response, he used the wrong gender pronoun in a derogatory manner. RC Byrne was shocked when I told her what happened and Halverson response. RC Byrne stated that she was not sure on what the uniform requirements were since there were other individuals having challenges getting the clothing depot to approve patches on uniform shirts. While having the conversation with RC Byrne, Tim Finch one of our union directors that was coming off duty from his shift, and I stated, "A big prime example a senior

medic out of uniform". Tim responded, "You are right, but I have an excuse, I couldn't find my uniform shirt, so I had to grab a shirt from the closet where extra uniforms were stored."

I advised Tim that I will need union representation regarding an incident that just happened." I explained to Tim what had transpired and what was said in response after I had attempted to do the right thing by conducting a Peer to Peer guidance/advice with Halverson. RC Byrne stated that she was going to call a meeting because it was clear that there is an EEOC violation. RC Byrne called Halverson via cellphone to come to the office because we were going to have a meeting, and RC Byrne called dispatch to place M59 out of service at Station 49 administration for a meeting. Upon the start of the meeting, PM Tim Finch advised both Halverson, Byrne, and me of the firefighter bill of rights, he is neutral, and he is in the meeting to make sure no rights are being violated.

RC Byrne advised PM Halverson the reason the meeting was called because upon Peer to Peer guidance his response was disrespectful, and misuse of gender pronoun was used in a derogatory manner. RC Byrne also advised PM Halverson when a Peer member is giving you advice it is coming from a Peer that has been here longer and is very familiar with the rules and regulations with the purpose to help guide you in the right way. RC Byrne also advised Halverson that he must be respectful towards the Peer that is giving you guidance. RC Byrne advised Halverson that the meeting is to not only address the uniform situation but to address the misuse of gender pronoun in a derogatory manner which is an EEOC violation. RC Byrne asked Halverson did he misuse the gender pronoun. PM Halverson responded, "I don't recall if I did, I may have, I may have said it on my way upstairs, and if I did, I apologize (with a nonchalant tone)". After his response, we all looked in a shock at each other Byrne, Finch, and me. Halverson continued, "You all are out of uniform".

RC Byrne responded stating that it is after 9 pm and I can have my sweater on over my uniform, and Tim responded stating that I have a reason, and I am off duty but that is not the issue right now. PM Halverson continues to state, "Well, he/she, she/he, well he/she always have a rude look on he/she face when I come into the office or see he/she in the field, he/she always go delay at hospitals, and avoid running calls. RC Byrne and Tim Finch interrupted Halverson advising him that is not the reason for the meeting. I responded to Halverson stating, "I don't like liars", He responded with "Are you calling me a liar"? And I responded stating, "Yes, I am. You forget that there were two other witnesses outside to witness what you said, how you said it, and the manner you said it. So, yes you are lying" I also responded stating, "You don't know me from a can of paint, just as much as I don't know you from a can of paint, when I am an RC behind that desk, I am neutral and professional. I am not here to be your friend and be your buddy. I am respectful and professional. I can't be born again with a new expression on my face. My duties are to make sure units get into service on time, everyone is safe at the station, and other job responsibilities." Then I asked Halverson, "When you see me behind the RC desk am I in full uniform?" He responded stating, "What?" I repeated the question, "Am I in full uniform when you see me? He responded stating, "Yes". RC Byrne asked Halverson, "Do you

have patches on your uniform?" He responded with, "What?" RC Byrne asked Halverson, "Do you have any department uniform on?" Halverson responded stating, "Um, no. I have my South City uniform on." Halverson continues stating, "I had some dry-cleaning issues."

RC Byrne responded stating, "Wait, you have on another department uniform on?" Halverson responded stating, "Yes." RC Byrne asked Halverson, "Do you have any department uniform on?" then asked Halverson, "Why do you still have EMT patches on your jacket?" Halverson responded stating, "Oh, it was a clothing depot issue." Then I asked Halverson, "Did you work yesterday?" Halverson responded stating, "Yes." I responded stating, "I saw you yesterday with the same uniform on. So, you started your shift before 9 pm with the same uniform on." RC Byrne advised Halverson that the meeting was concluded, and she will have to follow up with the Chief on how to pursue on this issue. Halverson responded with stating, "Okay. He understands." The meeting ended and RC Byrne stated that she will follow up with Chief to see how to go about with this issue.

STATION NOTES

- On July 19, 2019, while in the RC office, PM Angela Castro and I was talking, and PM asked if we would like to go through Intubation refresher. PM Castro replied, "Sure, I have to let my partner know". While standing at the door of Bio-Med, PM states, "Are you ladies ready?". Immediately, PM Castro and I looked at each other in a state of shock. I turned to look at PM and I looked back at PM Castro stating, "Ladies?". PM Castro immediately realized what was said and looked at me with a shock look on her face. I turned facing PM asking him, "Where are the ladies at? Because I only see one lady in this room." PM realized what he had said and had no response to what he said. PM Castro immediately left. PM just looked at me and shrugged his shoulders. PM did not apologize to me or say to me I made a mistake. After that I just left.
- On July 29, 2019, at 0730 hrs. I was in the kitchen with 5 other fellow employees, seated at the table, and waiting for the meeting. While I was seated at the table, Halverson walked into the kitchen, and looked at me with an evil stare down. As Halverson, walked towards me while I was seated at the table to pass, continued walking towards the kitchen sink while saying, "hello everybody". As he (Halverson) reached the kitchen sink he turned to face me and continued with his stare down. I sat at the table for a moment once I realized that Halverson was not leaving after he saw me in the kitchen. I left the kitchen, went down to the RC office, and let the RC Casey know what had happen. RC Casey responses was what can you do, it's the station, and it's hard to avoid a person. I asked the on-duty RC Lynch, was Chief Tong here? He responded with "yes". I asked to see if it was okay for me to go to the Chief's office because someone was here that I needed to avoid contact with. He said yes go ahead. As I entered the Chief's office, I advised her on what had happened, and she asked, "Did he say anything to you?" I told Chief Tong, not directly to me, He said "Hello Everybody" as he walked pass me, and he gave me the evil stare down. I asked if it was okay for me to sit in her office til he leaves. Chief Tong said it was okay...
- On the morning of Monday, August 5 I was walking into the station to start my light duty shift, and while I was walking towards the RC office I was saying good morning to fellow co-workers when Halverson walked right pass me looking at me with a smirk on his face as he starred me down. I did take notice of it, and I just continue to walk into the RC office. After changing into my uniform, I walked up stairs to the kitchen to avoid crossing paths with Halverson again, and after being in the kitchen for about 5 minutes Halverson walked into the kitchen just staring at me with the same smirk on his face like he was ridiculing me, and taunting me. I left the kitchen to return downstairs to RC's office.

- On the morning of Tuesday, August 6 as I was walking to the RC office to check in, Halverson was standing at his ambulance just staring at me while I was walking, when I noticed that he was just starring/glaring at me, I looked back at him, and then he just turned to walk the other direction. After, I went to check into the RC's office, and I didn't see no one in the office. I went to the locker room to get dress and went upstairs to the kitchen.
- On the morning of Wednesday, August 14 I saw Halverson walking around inside of the station. When I walked into the locker room to change into my uniform and within a minute after I got into the locker room Halverson walked into the locker room. While Halverson was walking down the hallway, he was passing the row where I was, Halverson turned looking at me, starring/glaring in a taunting, demeaning manner. Then he continued to walk pass and walked down another row of lockers when he proceeds to walk out of the locker room.
- On the morning of Monday, August 19, Halverson was already at the station walking around when I arrived at work. I checked into the RC office where I saw Captain Gordan, Lieutenant Landivar, and I let them know that I was going to change, and I will be upstairs in the kitchen. As I walked out of the office, Halverson was walking back into the station area when he saw me, and he immediately started glaring at me. I went to the locker room to change, and I went upstairs. As I approached the kitchen, Halverson was leaving the kitchen area and He walked pass me while he continues to glare at me in a taunting manner.
- On the morning of Thursday, August 22, I was in the kitchen, seated at the table conversing with fellow co-workers at 0700 hrs., and Halverson came into the kitchen area. Upon entering into the kitchen area, he looked directly at me with a snarky smirk on his face, walk to the computer area, and sat down. Halverson refused to continue to avoid the area I was in. So, I removed myself from the kitchen area and went to the other kitchen area near the administration offices.

Brown, Michael (CSC)

From: nicol.juratovac <
Sent: Friday, September 06, 2019 6:05 PM
To: Brown, Michael (CSC)
Cc: Ronnie Jones; keith baraka
Subject: SFFD Paramedic Ronnie Jones

CIVIL SERVICE OF
REGISTERED

023319 6
ADDITIONAL
INFORMATION
RE: RONNIE JONES

This message is from outside the City email system. Do not open links or attachments from untrusted sources.



Jeanine Nicholson
Chief of Department
San Francisco Fire Department
698 2nd Street
San Francisco, California 94107

September 6, 2019

2019 SEP -6 PM 6:33

CIVIL SERVICE COMMISSION
SAN FRANCISCO

Chief Nicholson,

We write to you as Executive Board members of SF ResQ to address time sensitive issues that were raised during our August 29, 2019 meeting with Jesusa Bushong, HR Director of the SFFD. As you are aware, we represent PM Ronnie Jones in his complaint against the fire department for harassment and hostile work environment based on his gender identity.

The most startling revelation in the meeting was that Ms. Bushong was completely unaware of the assault and battery committed against PM Jones by one of his co-workers. The co-worker readily admitted that he committed this act. This co-worker has been the main subject of PM Jones' complaints. The assault and battery were not only reported to Ms. Bushong, but Micki Callahan, Director of the City's DHR, as well. As a result of Ms. Bushong's admission of not being aware, despite PM Jones' communication of the incident, this matter has gone unaddressed.

As you are aware, Ms. Callahan decided not to investigate the matter despite the fact that the co-worker grabbed PM Jones' collar, physically touching him, and violating his personal space. Once Ms. Bushong became aware of this during our meeting, she brought up the fact that this may rise to the level of violating the department's Workplace Violence Policy. Based on PM Jones' feeling his safety is compromised, we could not agree more.

We also must respectfully remind you that now that the first incident/investigation is in the hands of you and the SFFD, something must be done to stop the pervasive harassing conduct that PM Jones continues to face today. This was the reason for the meeting on the 29th. It is clear that the harassment and hostile work environment are constant realities that PM Jones must face every time he reports to duty. No one deserves this. PM Jones has provided a document that clearly shows the pattern of his co-worker's behavior that is nothing more than harassment, creating a hostile work environment, and violence. This cannot occur in the SFFD and cannot occur against any member who already is made to feel marginalized.

Jones is an open and out transgender member of our department. He is a dedicated 13 year member and one whose service has been valued by the citizens of San Francisco and fellow co-workers. He has been saving the lives of San Franciscans for over a decade. If the offending co-worker was spoken to and ordered to cease his conduct, it has not been effective as the harassment continues. PM Jones continues to get sneered at, demeaned, and threatened in the most manipulative way by his co-worker so that he is not caught. Lt. Landivar was unable to address the tension at one incident and ensured that the two members were not in the same physical location at Station 49. Lt. Landivar's intention was to prevent any feelings of negativity and ensure that PM Jones was safe to start his day at work.

The co-worker is 5'11". PM Jones is 5'4". The intimidation is not only mental and emotional, but physical, as well. It should be noted that PM Jones is seeking therapy for the stress that he has been placed by this member. We respectfully remind you that there are 114 suicides of Fire Fighters and Paramedics across the country every year. This far exceeds the Line of Duty Deaths that they suffer annually. We recognize that mental wellness is a priority of your administration. We respectfully ask you to take this matter seriously and address the behavior that is causing much strife and decay of what should be a thriving time for LGBTQ members of the SFFD under your leadership.

During the meeting, in her effort to mitigate the situation, Ms. Bushong asked PM Jones whether he would be interested in being reassigned to a modified duty position at HQ. This is not possible nor appropriate given that it is not the aggressor causing havoc in the work environment. It is also not possible due to childcare demands that PM Jones is currently under. We respectfully request that the perpetrator co-worker be reassigned at the very least while the SFFD seriously investigates this matter.

In our understanding that Ms. Bushong will forward her report recapping our meeting to you and Ms. Madigan. We respectfully urge you to take the conditions that PM Jones is facing at work seriously and see the end of these incidents, incidents that are not stopping. At the very least, the matter regarding the violent act must be addressed with strict and swift discipline.

Thank you and we look forward to a good faith final resolution of this matter. Should you have any questions, please do not hesitate to contact us.

With Baraka
President, ResO

Col P. Juratovac, JD, EFO
President, SF ResO

Mayor London Nicole Breed and SF Civil Service Commission


STAFF REPORT



CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

CIVIL SERVICE COMMISSION REPORT TRANSMITTAL (FORM 22)

1. Civil Service Commission Register Number: 0232-19-6
2. For Civil Service Commission Meeting of: December 2, 2019
3. Check One: Ratification Agenda
 Consent Agenda
 Regular Agenda
 Human Resources Director's Report
4. Subject: Appeal by Ronnie Jones of Human Resources Director's determination to administratively close his complaint of harassment.
5. Recommendation: Adopt report; sustain decision of Human Resources Director; deny appeal by Ronnie Jones.
6. Report prepared by; Dorothy Young, DHR EEO Telephone number: (415) 557-4934
7. Notifications: Please see attached.
8. Reviewed and approved for Civil Service Commission Agenda:

Human Resources Director: Micki Callahan 
Date: November 21, 2019
9. Submit the original time-stamped copy of this form and person(s) to be notified (see Item 7 above) along with the required copies of the report to:
Executive Officer, Civil Service Commission
25 Van Ness Avenue, Suite 720, San Francisco, CA 94102
10. Receipt-stamp this form in the "CSC RECEIPT STAMP" box to the right using the time-stamp in the CSC Office.

Attachment

CSC RECEIPT STAMP

2019 NOV 21 AM 11:42
CIVIL SERVICE COMMISSION
SAN FRANCISCO

NOTIFICATIONS

Ronnie Jones (Appellant)
REDACTED

Micki Callahan
Human Resources Director
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Jonathan Halverson (Respondent)
REDACTED

Linda C. Simon
Director, EEO and Leave Programs
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Jeanine Nicholson
Fire Chief
San Francisco Fire Department
698 Second Street, Room 304
San Francisco, CA 94107-2015

Mawuli Tugbenyoh
Chief of Policy
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Jesusa Bushong
Department Personnel Officer
San Francisco Fire Department
698 Second Street, Room 304
San Francisco, CA 94107-2015

Dorothy Young
EEO Programs Specialist
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

CONFIDENTIAL

CIVIL SERVICE COMMISSION REPORT

MEMORANDUM

TO: Civil Service Commission

THROUGH: Micki Callahan, Human Resources Director

THROUGH: Linda C. Simon, Director, EEO and Leave Programs

FROM: Dorothy Young, EEO Programs Specialist

DATE: November 21, 2019

EEO FILE NO: 3112

REGISTER NO: 0232-19-6

APPELLANT: Ronnie Jones

I. AUTHORITY

The San Francisco Charter, Section 10.103, and Civil Service Commission Rules provide that the Human Resources Director shall review and resolve complaints of employment discrimination. Pursuant to Civil Service Commission Rules, Section 303.3, the Civil Service Commission shall review and resolve appeals of the Human Resources Director's determinations.

II. BACKGROUND

Since June 19, 2006, Ronnie Jones has been employed with the San Francisco Fire Department (SFFD) as an H3 Level 2 Paramedic. Jones is a senior paramedic who sometimes goes out as Like-Work, Like-Pay (LWLP) EMS Captain, which is a supervisory position. Jones is a transgender man who uses male gender pronouns and has done so at work, informally, since the end of 2014, and, more formally, since August 2016. **See Exhibits (Ex.) A and B.**

A. Appellant's Complaint, EEO File No. 3112

On June 27, 2019, the Department of Human Resources Equal Employment Opportunity (DHR EEO) Division received a Department Report of Employment Discrimination Complaint from Jesusa Bushong, SFFD Department Personnel Officer (DPO), reporting Jones' allegation that Jonathan Halverson, H3 Level 2 Paramedic, subjected Jones to harassment based on gender identity. On June 24, 2019, Jones and Halverson were both working their respective shifts. Jones was not working as a LWLP Captain at this time. Jones and Halverson are co-workers but, according to Jones, had not worked the same shift before June 24, 2019. Jones said he saw Halverson walk by and noticed that Halverson was not wearing the proper uniform shirt. Jones approached Halverson and told Halverson that Halverson's shirt was missing patches and was not department-approved. Jones alleged Halverson grabbed Halverson's own shirt collar and said, "Well, Miss," to Jones. The incident continued and Halverson said to Jones, "So are you a lieutenant or captain? Because you're not in uniform. Are you lieutenant or captain?" Jones said he responded, "No, I'm the senior motherfucking medic who's been here 13 years and I'm trying to help you." Jones immediately reported to the on-duty captain, Megan Byrne, who met with Halverson and Jones, [REDACTED] Halverson, and told Halverson that the Chief would be informed of Halverson's actions. See Ex. A.

On July 17, 2019, Jones and union representative Tim Finch, Local 798 Director, met with Dorothy Young, EEO Programs Specialist, for an intake interview. See Ex. B.

B. Human Resources Director's Administrative Closure

In a letter dated August 2, 2019, the Human Resources Director informed Jones that SFFD was taking immediate appropriate action to address Halverson's conduct. DHR directed SFFD to take prompt action to correct Halverson's conduct. SFFD took all appropriate action and this matter was deemed resolved.

In addition, Jones' allegations were insufficient to raise an inference of harassment. Therefore, Jones' complaint was not further investigated. See Ex. C.

III. ISSUE ON APPEAL TO THE CIVIL SERVICE COMMISSION

On September 4, 2019, Jones appealed the Human Resources Director's determination. The issue on appeal is whether the Human Resources Director appropriately administratively closed Jones' complaint without further investigation.

IV. INVESTIGATIVE STANDARDS AND ANALYSIS

A. Jones Did Not Sufficiently Allege a Harassment Claim

To warrant further investigation, a harassment complaint must sufficiently allege all of the following: (1) the complainant was subjected to physical, verbal, or visual conduct on account of the complainant's membership in a protected category; (2) the conduct was unwelcome; and

(3) the conduct was sufficiently severe or pervasive as to alter the terms and conditions of the complainant's employment and create an abusive working environment.

Jones alleged that he was subjected to unwelcome verbal conduct when Halverson called him, "Miss." Although a single instance of misgendering does not rise to the level of being sufficiently severe or pervasive, the conduct is offensive and inappropriate, and violates the City's EEO Policy, Gender Inclusion Policy, and Policy Regarding the Treatment of Co-Workers and Members of the Public (Respect Policy).

Immediately following the incident, Captain Byrne met with Jones and Halverson and counseled Halverson that the conduct was inappropriate and would be addressed. To prevent any reoccurrence of the violation, on August 2, 2019, DHR EEO directed SFFD to take appropriate corrective actions to address Halverson's alleged conduct and remind Halverson that retaliation is prohibited. On August 6, 2019, Halverson was issued copies of the City's EEO, Gender Inclusion, and Respect Policies and signed an acknowledgment of receipt. On August 16, 2019, Halverson completed the City's Harassment Prevention Training. DHR EEO directed SFFD to collaborate with the San Francisco Office of Transgender Initiatives (OTI) to schedule training for all Station 49 paramedics. DHR EEO Director Linda Simon also reached out to Clair Farley, Director, OTI, regarding training for Station 49 personnel. **See Exs. D, E, and F.**

On August 16, 2019, SFFD reported that they had taken all of the recommended and required corrective actions to address Halverson's conduct. **See Ex. G.**

B. Issues Not Before the Commission

In this appeal, Jones raises new allegations of harassment. Specifically, Jones alleges that: (1) on June 24, 2019, immediately after using the incorrect pronoun, Halverson attempted to grab the left collar on Jones' sweater with Halverson's right hand; (2) on at least six occasions since, Halverson has stared, smirked, or glared at Jones; and (3) that a different paramedic used the term "ladies" to reference Jones and another paramedic. **See Ex. H.**

Jones did not raise that Halverson attempted to make physical contact in Jones' departmental interview with DPO Bushong or intake interview with Investigator Young. **See Exs. A, B, and I.** Attempted physical contact also was not raised in either of two witness statements provided to the department. **See Ex. J and Ex. K.** This allegation of attempted physical contact was not part of Jones' original complaint, was not addressed in the administrative closure, and is not before the Commission at this time.

Nevertheless, since Jones raised the issue of attempted physical conduct in his appeal, SFFD immediately issued a Cease and Desist to Halverson and conducted a Workplace Violence Investigation. On October 2, 2019, the investigation concluded that the evidence was inconclusive regarding Jones' allegations of workplace violence by Halverson.

In addition, due to Jones' reporting of new allegations against Halverson for alleged glaring and staring and against a different paramedic for alleged misgendering, these allegations are currently under review by DHR.

V. RECOMMENDATION

For the reasons set forth above, the Human Resources Director's decision should be upheld and the appeal should be denied.

VI. APPENDIX/ATTACHMENTS TO REPORT

Attached to this report are the following exhibits:

Exhibit A: June 27, 2019 Department Report of Employment Discrimination Complaint

Exhibit B: July 17, 2019 Ronnie Jones Intake Interview Notes by Dorothy Young

Exhibit C: August 2, 2019 Human Resources Director's Administrative Closure Letter, DHR EEO File No. 3112, to Appellant

Exhibit D: August 6, 2019 Jonathan Halverson Signed Acknowledgment of Receipt of City Policies

Exhibit E: August 16, 2019 Jonathan Halverson Certificate of Completion of City's Harassment Prevention Training

Exhibit F: August 2, 2019 DHR EEO Director's Department Letter, DHR EEO File No. 3112, to SFFD

Exhibit G: August 16, 2019 SFFD Report to DHR EEO Re: Completion of Corrective Actions

Exhibit H: September 4, 2019 Ronnie Jones' Letter of Appeal

Exhibit I: August 29, 2019 Department Report of Employment Discrimination Complaint

Exhibit J: July 2, 2019 Witness Statement by Nicole Thoms

Exhibit K: July 3, 2019 Witness Statement by Ezekeal Dierks

EXHIBIT A

June 27, 2019 Department Report of Employment Discrimination Complaint

DEPARTMENT REPORT OF EMPLOYMENT DISCRIMINATION COMPLAINT

* Report Within Five Working Days of Receipt of Complaint*

Return to: Linda Simon, Deputy Director, EEO and Leave Programs, One South Van Ness, 4th Floor,
San Francisco, CA 94103

1. Department/Worksite: San Francisco Fire Department, Station 49
2. Complainant: Paramedic Ronnie Jones Tel. No. (Work): 415-558-3249
Address: _____ Tel. No. (Home): _____
3. Complaint Filing Date: June 27, 2019
4. Complainant's Current Employment Status (circle one): _____ Classification: H-3 Level 2
PCS TCS LT NCS PV PE TE PROB NOT A CITY EMPLOYEE
5. Basis of Discrimination (specify):
 Race:
 Color:
 Religion:
 Creed:
 Sex:
 National Origin:
 Ethnicity:
 Age:
 Disability/Medical Condition: _____
 Political Affiliation: _____
 Sexual Orientation: _____
 Ancestry:
 Marital or Domestic Partner Status:
 Gender Identity: Transgender
 Parental Status:
 Other Non-Merit Factors: _____
 Retaliation:
6. Issue complained of:
 Denial of Employment
 Denial of Training
 Denial of Promotion
 Denial of Reasonable Accommodation
 Termination
 Lay-off
 Constructive Discharge
 Disciplinary Action
 Harassment
 Work Assignment
 Sexual Harassment
 Compensation
 Other (please specify):
Alleged deliberate, inappropriate use of incorrect pronoun

7. Describe the circumstances of the alleged discrimination and include date(s) of adverse employment action(s): (Attach letter of complaint) On June 27, 2019, at 1300 hours, I met with Paramedic Jones. He brought in L798 Director Tim Finch as his representative. The following is Paramedic Jones' account. On the evening of June 24, near midnight, Jones was talking with a co-worker, Nicole Thoms, in the yard of Station 49. As they were talking, another co-worker, Ezekeal Dierks, was walking out from the stocking area. Simultaneously, Jonathan Halverson, the alleged accused walked by and Jones noticed that he was not in proper uniform. He said the shirt looked like the style/material that the Department discontinued a few years ago and did not have patches either.

8. Has the Complainant filed a grievance or lawsuit regarding this complaint? Yes No

If yes, please specify: _____

9. Is the Complainant represented by a Union or an Attorney? Yes No

Name: _____ Organization/Firm: L798

Address: _____ Phone No.: _____

*10. What steps does the department recommend be taken to address this complaint? (For instance, investigation, alternative dispute resolution, dismissal) The matter will also be referred for possible disciplinary investigation.

*10a. Name and position of staff who will implement recommended steps: Victor Wyrsh, Deputy Chief of Operations; Sandy Tong, EMS Chief (with approval from Fire Chief Jeanine Nicholson)

11. Completed by: Jesusa Bushong

Date: 6-27-19

Address:

Tel. No. 558-3615

*12. Please notify DHR/EEO in written form immediately upon resolution of this complaint.

***Subject to the Human Resources Director's approval**

HUMAN RESOURCES DIRECTOR REVIEW

Complaint is assigned EEO File Number: _____

D Approve department's recommendations for addressing complaint. Proceed and notify HR Director of actions, findings, and recommendations for resolution.

D Complaint is assigned by HR Director to: _____
and/or the following actions are to be taken:

for Micki Callahan, Human Resources Director

Date

Continued from Department Report of Complaint Cover Sheet

As a senior Paramedic, who sometimes goes out as like-work, like-pay EMS Captain, Jones felt it was his responsibility to point out the uniform issue. In what he described as a neutral tone of voice, Jones asked Halverson about his uniform shirt and his patches. Halverson allegedly responded with what do you mean? Jones repeated his inquiry about the non-Department issue uniform shirt and the absence of patches. Halverson supposedly continued walking away from Jones toward his ambulance, mumbling and ignoring Jones. Jones addressed him again and asked if he was suppression or 49 (Station 49) because he was not in proper uniform.

At that point, Halverson allegedly grabbed his own shirt collar and faced Jones saying, Well, Miss...." Thoms heard the comment and confronted Halverson asking, "What did you say?" Halverson then supposedly repeated "Miss" and added "Misses," got up to Jones' face in what he described as his personal space and asked Jones, "Are you lieutenant or captain?" Jones took a step back away from Halverson and responded, "A senior mother-fucking medic." Halverson replied that Jones seemed to always have a problem with him.

Jones tried to de-escalate the situation with Halverson by acknowledging that there is an issue and that they need to solve it. Jones then opened the door to the office of the EMS Captain on duty, Megan Byrne, and invited Halverson to talk about their issues. Halverson did not join Jones and, instead, went to the upstairs area of Station 49.

Captain Byrne asked what the problem was. Jones (who was now with L798 Director Tim Finch who also works at Station 49) explained the inappropriate uniform shirt and the absence of patches. Byrne replied that she would need to check with EMS Section Chief Niels Tangherlini about the uniform and patches because she doesn't know what the standard is anymore, like what new people are getting for uniforms. Jones pointed out that Halverson was not a new employee. Byrne replied that she would have to check with Chief Tangherlini nonetheless.

With regard to the alleged inappropriate comments, Byrne allegedly expressed shocked and acknowledged that it was an EEO matter. Byrne called Halverson to her office. Halverson had a uniform jacket over the shirt in question by then, but the jacket had EMT patches when he was a Paramedic. When Byrne brought up the issue of the inappropriate uniform, Halverson allegedly replied: "Is this discipline? Do I need a union rep?" Halverson then looked over at Finch and said, "I want you." Finch replied that he was there to make sure both employees' (Jones and Halverson) rights are protected.

Byrne proceeded to the inappropriate comment. Halverson denied saying "Miss." He said he might have said "she," but couldn't really remember. He then said that if he did say it, he was sorry. Halverson then went on to talk about Jones having issues with him, how Jones would have rude facial expressions and pick on him.

Jones felt that this was a half-hearted apology and an outright lie about not saying the words since he had witnesses. He also took offense to Halverson's statement about him having rude facial expressions. Jones then told Halverson that he didn't like liars. Halverson then reacted, "Are you calling me a liar?"

Byrne brought back the meeting to the issue of the patches and asked Halverson if he had them. Halverson claimed it was a dry-cleaning issue. He then admitted that he was wearing his old South San Francisco uniform. As for the incorrect rank on jacket patches, he said hadn't had a chance to do it.

Byrne counseled Halverson about the uniform but reiterated that she will confirm with Tangherlini on the appropriate standard issue. She also coached him about not using incorrect pronouns in the manner that he did and to be accepting of peer counseling and be respectful of his responses to his peers.

EXHIBIT B

July 17, 2019 Ronnie Jones Intake Interview Notes by Dorothy Young



CONFIDENTIAL

**DHR EEO INVESTIGATION OF EMPLOYMENT DISCRIMINATION COMPLAINT
INTAKE INTERVIEW**

Complainant: Ronnie Jones, H003 EMT/ Paramedic/ Firefighter	EEO File No./Dept.: 3112 / SFFD
EEO Investigator: Dorothy Young	Date & Time: Wednesday, July 17, 2019 at 1:00 pm
Others Present: Union Rep Tim Finch, Director for Local 798	
Location: DHR, 1 South Van Ness, 4 th FL	Pages: 9

I. BACKGROUND INFORMATION

A. Employment History

On June 19, 2006, Ronnie Jones (transgender man) began working with the San Francisco Fire Department (SFFD) as an H3 Level 2 Paramedic (H003 EMT Paramedic/EMT/Firefighter) at Station 49, formerly known as Station 70. Because of his seniority, Jones is also a Like Work Like Pay Rescue Captain (LWLP RC), and sometimes acts as a supervisor. He works the 4:30 pm to 4:30 am shift with a three-on, three-off rotating schedule. On some off days, he works overtime, usually a minimum of one to two shifts per week. His assigned EMT partner is Angelica Tanzillo, H3 Level 2 Paramedic. As a paramedic, he responds to emergency calls and provides patient care in the field. As an LWLP RC, he is responsible for staffing, that ambulances and crews are timely, narcotics, injury reports, and the safety of the staff.

Jones confirmed that he uses he/him/his gender pronouns. He began his transition at work approximately eight years ago, around 2011, by first discussing the process with HR. Even prior to 2011, Jones' close friends referred to him as he/him. Jones said he began coming out at work with regards to his gender transition at the end of 2014 or beginning of 2015 and building a support system of co-workers. In August 2016, he met with supervisors Antenor Molloy, H033 Captain, Emergency Medical Services, and Andy Zanoff, H033 Captain, Emergency Medical Services, to begin the official transition process. He worked with human resources representative Jesusa Bushong, SFFD Departmental Personnel Officer, and the department's stress management representative John Christy, H003 EMT Paramedic/EMT/Firefighter.

Jones' transition was not communicated to the entire department, so he is unsure when would be considered the "official" date of his transition. People had been asking him questions for a while as they noticed changes, such as his voice sounding different and his physical presentation changing somewhat. Jones communicated his preferred gender pronoun individually, through conversations with individuals asking about noticed changes, or correct individuals when they misgendered him and explaining that he was transitioning. In addition to his paramedic co-workers, Jones works with people at the hospital, police department, on fire trucks or from other stations. People would ask him personally and privately if he was transitioning and he would answer yes, which he preferred to people going behind his back. However, the process that solidified his transition at the station when he began using the male locker room towards the end of 2016.

Jones described his work environment as stressful and challenging because morale is low due to staffing issues and it is overwhelming because of increased call volume. Jones said many paramedics feel overworked and have little time to recuperate between calls, which takes a toll on their "emotional and mental capacity." Even so, Jones is very happy to work with SFFD. He takes pride in his job and showing up to work. However, the transition from Station Ambulances assigned to individual fire stations to Dynamically Deployed Ambulances that deploy from one fleet at Station 49 has been exhausting. Jones and his union representative Tim Finch, H003 EMT Paramedic/EMT/Firefighter and Local 798 Director, explained that when the department changed to Dynamic, the new paramedics did not have a pathway for advancement and had to fight to create that path. Paramedics now can do cross-training and become suppression, or learn to become a firefighter and suppress fires. In the meantime, however, the low staffing and stressful work create a challenging work environment.

B. Respondent Jonathan Halverson

In 2016, Jones met respondent Jonathan Halverson, H003 EMT Paramedic/EMT/Firefighter, when Halverson just started to work in the field after graduating from the Academy. Jones could not remember the date, but described their first and only interaction at that time as "awkward." Halverson approached Jones outside the main office and said, "Hey, you're Ronnie." Jones answered, "Yes?" and Halverson said, "Oh you don't know who I am, do you?" Jones had never met Halverson before and asked who Halverson was. Halverson responded, "Oh, if you don't know, never mind."

The interaction took Jones by surprise and bothered him so he asked around and a co-worker said Halverson came from Alameda County American Medical Rescue (AMR), where Jones used to work. Jones contacted friends at AMR who told him, "No, you don't know that guy, but be very careful." Jones did not ask for details but felt bothered because he had never experienced someone walking up to him "like that" at work before.

Jones and Halverson are co-workers at the same station but have not worked the same shift together before. Jones said they might walk past each other at the same scene or hospital but they do not have conversation or say much more than, "Hello" or "How was your shift?" They are not friendly but, when acting as supervisor, Jones maintains a neutral and respectful position towards everyone, including Halverson, because he does not want anyone to think there is favoritism.

Jones insisted that Halverson is fully aware of Jones' correct gender pronoun because Jones is well known around the station and new people, especially, only know his correct gender and see Jones as a male.

II. HARASSMENT

A. June 24, 2019: Halverson Intentionally Misgendered Jones

On June 24, 2019, near midnight, Jones was working his regular shift and was assigned to station duties, such as making sure uniforms are plugged in, cleaning up the yard, or dumping trash. Jones left the captain's office, where he had been discussing Rules and Regulations to review for the upcoming captain's test with Megan Byrne, the Rescue Captain on duty, and saw a co-worker, Nicole Thoms, H003 EMT Paramedic/EMT/Firefighter, pulling her motorcycle out of the yard. Jones and Thoms are friends and they had a conversation, as she got ready to go home.

While Jones and Thoms were talking, he saw Halverson walk by going towards his ambulance wearing a no-max Class B shirt with no patches, which has not been authorized for the field in years. The day before, June 23, 2019, Jones had seen Halverson in the field at the hospital and noticed that Halverson's shirt was not the proper uniform shirt and did not have patches. As a senior paramedic with experience, Jones felt responsible to provide Halverson with some peer-to-peer advice.

Jones, in a neutral tone and with a smile, asked Halverson where his patches were. Halverson said, "What?" and had a "manner and vibe" with his response. Jones told Halverson that his uniform shirt was missing patches and was not department approved, and that if a chief or captain saw his shirt was not uniform, this would violate rules and regulations. Halverson responded, "Well why?" and Jones asked, "Are you suppression or are you 49?" Suppression, or fire-trained paramedics, can wear a Class B shirt with no patches and a nametag or badge, which Station 49 paramedics are not allowed to wear.

By this time, Halverson had reached the driver's side of his ambulance. He grabbed his collar, turned to face Jones, and said, in a tone, "Well, MISS." Jones was shocked and asked Thoms, who had just mounted her motorcycle next to him, "Did he really just call me Miss?" Thoms looked at Jones and re-enacted what she had seen, grabbing her collar and saying, "Miss?" At that moment, Ezekeal Dierks, H003 EMT Paramedic/EMT/Firefighter, happened to be walking by and also witnessed Halverson's comment and action. (See Witness Statements by Nicole Thoms and Ezekeal Dierks in file).

Halverson then said, "So are you a lieutenant or captain? Because you're not in uniform." Jones was wearing his department issue uniform with a quarter-zip sweater issued by the department with the logo and his name embroidered on it. Jones explained to me that because it was after 9:00 pm and he was assigned to station duties, not the field, it was okay for him to wear the quarter-zip. After asking this question, Halverson walks towards Jones and repeated, in an aggressive tone, "Are you lieutenant or captain?"

Jones responded, "No, I'm the senior motherfucking medic who's been here 13 years and I'm trying to help you." Jones said that until then, he had been very neutral, but he responded with profanity because Halverson invaded his personal space and was standing over him in an aggressive manner. This notified Jones that this situation was going in a different direction. Jones said, "Look, this is going in a different direction when my intention was to help and guide you. Not to see you get in trouble. And this is going far left." Halverson responded, "Whenever you see me, you have something against me." Jones stated he does not know Halverson well enough to have something against him. Jones said, "You evidently feel some certain way towards me but I'm just trying to do peer-to-peer guidance. I know how some chiefs are and there are some who would see your uniform and you would get in trouble."

Jones suggested to Halverson that they walk into the office and have a discussion because Jones did not want Halverson walking away believing that Jones had an issue or was trying to get him in trouble. Jones then opened the door and asked Captain Byrne if they could meet because a member was expressing some concerns. Byrne asked what it was about and Jones answered that he had tried to counsel on the uniform, the response had gone left, and he wanted to meet and squash the problem. Jones turned to Halverson and asked him to come back. Halverson said, "Aw no, fuck that," and proceeded to walk upstairs.

Byrne asked Jones, "What's going on?" and Jones responded that he could not believe what just happened. Jones told Byrne exactly what happened and how his gender pronoun was misused in a derogatory manner.

At this time, Tim Finch, the union representative, had walked into the office and was coming off duty. Jones turned to him and said, "Here's an example, a senior paramedic out of uniform." Finch said, "Yes, but I have an excuse and I got a shirt out of lost and found." Jones said this is what paramedics usually do to make sure they have the correct uniform. Finch went to put away the narcotics from his ambulance, and then returned to the office where Jones told him what had happened with Halverson, the misuse of gender pronoun, and the derogatory manner in which it had been used. Both Byrne and Finch said, "That's an EEO violation." Jones was still processing what had happened. When Byrne saw his expression, she said, "We'll do a meeting right now."

Byrne called Halverson on his cell phone to come to the office and called Dispatch to take his ambulance unit out of service. Halverson came into the office wearing his uniform jacket, which is the department provided outerwear. Byrne started the meeting and explained that they were not only going to discuss the uniform issue, but the improper use of Jones' pronoun in a derogatory manner. Finch explained the Firefighter Bill of Rights and stated that his position was to listen and be neutral and would only intervene if someone's rights, whether Halverson's or Jones', were violated. Halverson asked if the meeting was going to be disciplinary and Byrne responded that they did not know anything at this point and this was just a meeting. Halverson

said, "I want union representation" and pointed to Finch. Finch responded that he was not representing any party, and repeated that he was there to be neutral and ensure no rights were violated.

Byrne explained to Halverson that the position of a peer with more experience and who knows the rule and systems is to give advice to newer employees, and newer employees should be receptive and respectful when receiving that advice. She emphasized that everyone should be able to work together in a professional environment, and proceeded to tell Halverson that Jones had tried to give him peer guidance and that his response of misusing Jones' gender pronoun in a derogatory manner was incorrect. Halverson responded, "I don't recall saying Miss or Missus but maybe I did and if I did, I apologize."

Jones began to say something and Halverson cut him off and said, "I'm not finished. Everyone's out of uniform. Ronnie's out of uniform and Tim's out of uniform." Jones responded, "We are not in the field or assigned to the field. We are in the station, it's after 9:00 pm, and we are wearing our department sweaters." Finch said, "That's not the point here; the point is the misuse of the gender pronoun."

Halverson continued to try and change the subject by saying that Jones' phone gets delayed when he is at the hospital and that Jones is rude when he acting as captain. Halverson then said, "When she, or she-he," which took Jones aback because he could not believe how improper Halverson was acting.

Jones said, "When I am a captain behind that desk, am I in full uniform?" Halverson mumbled a yes response. Jones then said, "I don't like liars." Halverson said, "Are you calling me a liar?" Jones answered, "Yes, you are, because you forget there were two witnesses out there who heard your misuse of my pronoun and saw your manner, tone, and demeanor. Halverson said nothing in response.

Byrne then directly asked Halverson if he had patches on his uniform at that moment. Halverson opened his jacket and showed his Class B shirt with no patches. Halverson explained that he had dry cleaning issues so he was wearing his South City uniform. Byrne asked Halverson what he was wearing that was department-issued and Halverson mumbled an answer.

Jones spoke up and said, "You worked yesterday, right?" and Halverson answered yes. Jones said, "So you had the same exact uniform on yesterday before 9:00pm, and I saw you with the same uniform on?" Halverson did not respond. Byrne repeated her speech about peer-to-peer counseling and said that this situation was new for her so she would have to consult with the chief in the morning.

Jones addressed Halverson and said, "From now on, when you see me, don't say nothing to me. Just walk past me. If we are on call together, I will always be professional. But you don't know me and I don't know you. When I sit behind the table as a captain, I will keep it professional and neutral. But you don't know me so don't speak about me. If I hear my name come up and the misuse of my pronoun, we are going to skip the meetings and go straight to HR because that's just wrong." Jones said his leg was shaking the entire time of the meeting because he was so upset. He did not understand how this could be happening at his workplace.

The meeting ended and Halverson left. Jones, Byrne, and Finch debriefed after the meeting and talked about how the process might go after that. By this point, it was past midnight and into the next day, June 25, 2019.

After his shift ended, Jones went home and could not sleep. He kept thinking about how Halverson is treating other LGBTQ community members at work, at the hospitals, or in the ambulance as patients, if he treats Jones, a co-worker, like this.

Jones does not know why Halverson misgendered him. He believe Halverson knew it was wrong but did it anyway because of his aggressive gesture and body language. Jones does not believe that he has done anything to Halverson, even though Halverson said Jones was "always against him," because they do not speak or engage at all due to their strange first interaction.

Jones explained that this was not the first incident he had experienced related to his gender identity but it was the worst one. He said that two incidents had occurred since his transition and stated that this third incident makes him feel unsafe at work because there is "too much stuff happening outside in the streets in society" to other transgender individuals. He feels unsafe because the incidents have increased in severity. Jones said he has taken discriminatory comments and gestures from patients but would never say anything to or harm a patient because he is there to take care of them. However, for these comments to happen at work, his "second home" concerns him. Jones is concerned that if there is another incident, it may be even more severe, because in today's society there are people in the trans community who are murdered by friends, relatives, or co-workers, not by strangers.

After stepping out to confer with Finch, Jones provided the following information about two prior incidents.

B. End of 2016: [REDACTED]

Around the end of 2016, Jones was in the men's locker room getting ready for his shift as LWLP RC when [REDACTED], H003 EMT/ Paramedic/ Firefighter, came into the locker room. Jones finished changing and heard [REDACTED] locker open. He then heard [REDACTED] muttering and talking to himself, saying in a low tone, "Oh, fuck this shit." Jones heard [REDACTED] locker close and looked up. [REDACTED] looked at Jones and then proceeded to leave.

Later that evening during the shift, Jones was seated in the captain's office per his assignment. [REDACTED] walked in to the office and both were seated quietly. [REDACTED] turned to Jones and said, "Hey Ronnie, I realized what I said might have been wrong and my apologies." This confirmed to Jones that [REDACTED] cursing and muttering which Jones could not hear were indeed about Jones. Jones said, "I accept your apology and appreciate that. Just know that this is a new process where I'm transitioning and everyone who's been knowing me is transitioning too. It's new." Jones said he would "give [REDACTED] a pass" but "next time, it can't be like this. Jones said he and [REDACTED] left it at that and it was cool and fine.

Jones ran into Andy Zanoloff, then-H053 Emergency Medical Services Chief, who asked Jones how everything was going. Jones reported the incident and said they had a good conversation

and [REDACTED] apologized. Zanoft asked Jones if there was anything else he needed. Jones responded, "I think we need to be more alert to the situation and aware of what's happening." Zanoft said he would talk to [REDACTED].

Jones said that he and [REDACTED] had a good working relationship in the past even though they worked different shifts. After this incident, they changed from seeing each other and engaging and talking every time to not speaking to each other up until recently. Now, the two will say hey to each other and have worked trade shifts for each other.

Jones said that overall this incident did not affect his work environment because as the time, he was so happy to finally be out and becoming who he really was, a "long overdue process." He was on "Cloud 9" and everyone he knew was happy that Jones was happy and was happy for him. He felt everything was fine after the incident and was ready to move on.

C. November 2017: [REDACTED]

Jones described the second incident as a "moderate verbal altercation" that he had with another individual. About a month or a month and a half after the Las Vegas music festival mass shooting (October 1, 2017), Jones was scheduled to work overtime with [REDACTED] H003 EMT/ Paramedic/ Firefighter, whom he had thought he had a good rapport with.

When Jones arrived at the station, he saw his friend [REDACTED], H003 EMT/Paramedic/ Firefighter. Both Jones and [REDACTED] had been in Las Vegas right before the shooting had happened so they discussed their shock at what had happened. Jones then walked to the captain's office to check in, looked at the schedule, and noticed that his name had been switched around to no longer work with [REDACTED] was now assigned to work with [REDACTED] instead.

Jones explained that the usual practice for changing partners on a schedule is that all members have to agree. If there are two crews of partners who want to switch partners, all four members must be aware and agree to switch teams before the captain is notified and changes the schedule in order to avoid conflict. Jones stepped back out of the office and [REDACTED] said he had noticed [REDACTED] walking into the office earlier for a "closed door" meeting with Mike Mason, H033 Captain, Emergency Medical Services, and five minutes later the schedule had changed. Closed door meetings are usually only for important meetings such as personnel issues.

Jones returned to the captain's office and asked Captain Mason if he had a meeting with [REDACTED] and changed the schedule. He said, "I'm the captain and I can make that change." Jones reminded Captain Mason of the usual practice, and then left the office thinking that something was strange. Jones returned to [REDACTED] ambulance where they continued their conversation about how they just missed the shooting and how sad the situation was. As they were having this talk, [REDACTED] came into the ambulance on the passenger side.

Jones spoke to [REDACTED] when he entered and told him, "Hey, it's okay if you didn't want to work with me. You should just come talk to me. I won't make assumptions." [REDACTED] "flashed," or became aggressive and started yelling, saying "I haven't worked with Joey since AMR days! I just wanted to work with him!" Jones said, "I don't know what the issue is, but if you don't want to work with me, just come and talk to me." [REDACTED] continued to make excuses and Jones

responded, "You're being a coward. You could just talk to me. You don't have to have a closed door meeting about it." Jones then wished [REDACTED] a good shift and left the ambulance. Since that incident, he no longer speaks to either Captain Mason or [REDACTED].

Jones believes [REDACTED] did not want to work with him because of his gender identity as a trans man. Jones and [REDACTED] went from having a good rapport and a friendly working relationship to a sudden change after Jones' transition.

Jones was upset after this incident and talked it out with members of his workplace support system. He decided to forgive the incident and move on, but it stayed on in the back of his mind.

III. REPORTING OF COMPLAINT

On June 25, 2019, when Jones went in to work, he spoke to Niels Tangherlini, H033 Captain, Emergency Medical Services, and explained what had happened. Tangherlini said, "That's EEO; let's go talk to Sandy." Jones and Tangherlini went to report to Sandra Tong, H053 Emergency Medical Services Chief, who called Jesusa Bushong, SFFD Departmental Personnel Officer.

IV. IMPACT

Jones said that he has experienced anxiety, is unable to sleep, and is currently unable to work due to a [REDACTED] injury he attributed to the extreme stress. He said his [REDACTED] and his doctor has placed him on medication. He has also started smoking again because he is so agitated.

Jones has seen health care providers for his [REDACTED] injury and for a [REDACTED] through work, and has an upcoming appointment with a [REDACTED]. He has been off work because of the injury and is waiting to be paid because the worker's compensation claim has been delayed.

V. REMEDIES

Jones wants there to be [REDACTED] for Halverson, and training and awareness for the rest of the department to help not just himself, but others in the department or who want to join and are considering transitioning. Jones said there was a recent gender inclusion training due to the new Gender Inclusion Policy and two or three years ago, there was a harassment training. Jones said he knows Halverson was here for those trainings. Jones does not want to work with people who ignore inclusion and anti-harassment trainings, especially after being in the department for 13 years.

VI. MISCELLANEOUS

Jones said Finch and HR have asked him to write his own version of what has happened but it has been difficult to put it into writing. He has written a bullet point list but cannot pull it up on his cloud to send to me. I asked him to check on the document at home and if he can access it, to send it to me.

Jones has not filed a grievance or lawsuit regarding these issues. He also has not filed an EEOC or DFEH complaint. The only people he has talked to about this situation are the people he named earlier at the department level, the union, the department's HR, and SF Res-Q, which is the departmental LGBTQI organization.

VII. CONCLUSION

Jones had nothing more to add to the investigation besides what had been asked. He provided the following as potential witnesses: Tim Finch, Megan Byrne, Ezekeal Dierks, and Nicole Thoms. He mentioned Halverson's partner, whose name is Whitsitt, was at the station but in the ambulance. However, Jones does not believe Whitsitt knew that anything was happening or heard anything.

Update from July 29, 2019

On July 29, 2019, Paramedic Jones called to report that Halverson had glared at him, which he believed was due to the filing of this complaint. (See Telephone Call Memo in file).

EXHIBIT C

August 2, 2019 Human Resource's Director's Administrative Closure Letter to Appellant (DHR
EEO File No. 3112)

City and County of San Francisco
Micki Callahan
Human Resources Director



Department of Human Resources
Connecting People with Purpose
www.sfdhr.org

CONFIDENTIAL

August 2, 2019

Ronnie Jones
[REDACTED]

Via U.S. Mail

RE: Complaint of Discrimination, EEO File No. 3112

Dear Mr. Jones:

The San Francisco Charter, Section 10.103 and Civil Service Rule 103 provide that the Human Resources Director shall review and resolve all complaints of employment discrimination. The Charter defines discrimination as a violation of civil rights on account of race, religion, disability, sex, age, or other protected category. The City and County of San Francisco (City) considers all allegations of discrimination a serious matter. The purpose of this letter is to inform you of my decision regarding your complaint, EEO File No. 3112.

On June 27, 2019, the Department of Human Resources, Equal Employment Opportunity Division (DHR EEO) received a "Department Report of Employment Discrimination Complaint" from Jesusa Bushong, Department Personnel Officer, San Francisco Fire Department (SFFD). Ms. Bushong reported your allegations that your co-worker Jonathan Halverson, H003 EMT/ Paramedic/ Firefighter, harassed you based on your gender identity (transgender man).

Thank you for bringing your concerns to my attention. I recognize that the conduct alleged was upsetting to you and that it may have been difficult for you to make your complaint. The conduct you reported, if true, violated the City's Equal Employment Opportunity (EEO) Policy, the City's Gender Inclusion Policy, and the City's Policy Regarding the Treatment of Co-Workers and Members of the Public (Respect Policy). Therefore, SFFD will take appropriate action to address Mr. Halverson's alleged conduct, prevent any reoccurrence, and remind him retaliation is prohibited. This matter is deemed resolved, and DHR will administratively close your complaint without further investigation. Nevertheless, should you be subjected to any such inappropriate conduct in the future, please contact Ms. Bushong at (415) 558-3615.

I. BACKGROUND AND ALLEGATIONS

On June 19, 2006, you began working as an H003 EMT/ Paramedic/ Firefighter. On April 25, 2016, Mr. Halverson also began working for SFFD. You and he are co-workers. As a senior paramedic who sometimes goes out as Like-Work, Like-Pay (LWLP) EMS Captain, however, you are sometimes Mr. Halverson's supervisor.

You alleged Mr. Halverson harassed you based on your gender identity when he engaged in the following conduct:

On June 24, 2019, near midnight, you were having a conversation with Nicole Thoms, H003 EMT/ Paramedic/ Firefighter, in the Station 49 Yard. Ezekeal Dierks, H003 EMT/ Paramedic/ Firefighter, was walking by. In the yard, Mr. Halverson walked towards his ambulance and you noticed that he was not in proper uniform but wearing a Class B shirt without any patches. On June 23, 2019, in the field, you had seen Mr. Halverson also wearing an incorrect shirt. You told Mr. Halverson that he was wearing an unapproved uniform and advised him that if a chief or captain saw him, it would be a violation of Rules and Regulations. He asked you, "Why?" and you responded, "Are you suppression or are you 49?" because SFFD suppression members can wear a Class B shirt without patches with their nametag and badge, while Station 49 Paramedics cannot. Mr. Halverson turned toward you, grabbed his collar, and said, "Well, Miss." You are an out transgender man who has used male pronouns since the end of 2016.

To de-escalate the situation, you invited Mr. Halverson to come discuss the situation with you and on-duty EMS Captain Megan Byrne, H003 EMT/ Paramedic/ Firefighter. Tim Finch, H003 EMT/ Paramedic/ Firefighter and San Francisco Fire Fighters Local 798 (L798) Director, was also present. Mr. Halverson had walked away, so you informed Captain Byrne and Mr. Finch of the situation. Captain Byrne called Mr. Halverson to her office and asked him if he misused your pronoun. Mr. Halverson responded, "I don't recall saying Miss or Missus but maybe I did. If I did, I apologize." The meeting ended with Captain Byrne counseling Mr. Halverson on his uniform, advising him to accept counseling from his peers, and informing him that she would be speaking to the Chief about his misuse of your gender pronouns.

You also alleged the following prior harassment based on your gender identity:

At the end of 2016, shortly after you transitioned and began using the men's locker room, you were changing in preparation for your shift as LWLP EMS Captain. [REDACTED], H003 EMT/ Paramedic/ Firefighter, came into the locker room and began muttering and cursing in a low tone before looking at you and then leaving the locker room. Later on during that shift, he approached you in the Captain's office and said, "Hey Ronnie, I realized what I said might have been wrong and my apologies." This confirmed to you that his cursing had been about your presence in the locker room, but you accepted his apology. You reported the incident to Andy Zanoft, H033 Captain, Emergency Medical Services, who said he would speak to [REDACTED].

Around November 2017, you were scheduled to work an overtime shift with [REDACTED], H003 EMT/ Paramedic/ Firefighter, whom you had good rapport with but whom you had not seen since your transition. Shortly before your shift began, you noticed that the schedule had been changed and you were assigned to a different partner. When you saw [REDACTED] you told him, "It's okay if you didn't want to work with me but you should just come talk to me. I won't make assumptions." [REDACTED] became upset and began yelling aggressively. You told him he was being a coward and the conversation ended. You believe [REDACTED] requested a change because of discomfort with your gender identity. You also reported this incident to Captain Zanoft, who told you he would speak to [REDACTED].

Because the incidents have increased in severity over time, you are experiencing anxiety, are unable to sleep, and are unable to work due to a [REDACTED] injury you attribute to your extreme stress.

On July 29, 2019, you contacted Ms. Young to report that earlier that morning, upon your return to work, Mr. Halverson saw you in the communal kitchen, gave you an "evil eye" or mean look, and then walked towards where you were drinking coffee. You left the kitchen and reported the incident to the captain on duty.

II. INVESTIGATIVE STANDARDS AND ANALYSIS

To warrant further investigation, a harassment complaint must sufficiently allege all of the following: (1) you were subjected to physical, verbal, or visual conduct on account of your membership in a protected category; (2) the conduct was unwelcome; and (3) the conduct was sufficiently severe or pervasive as to alter the terms and conditions of your employment and create an abusive working environment.

You alleged that on June 24, 2019, Mr. Halverson harassed you based on your gender identity when he intentionally used the wrong gender pronoun to address you, and on July 29, 2019, he glared at and walked towards you at work. Mr. Halverson's comment and conduct, if true, are a violation of the City's EEO Policy, Gender Inclusion Policy, and Respect Policy. I acknowledge the offensiveness of misgendering and understanding how upsetting it was for you to hear it. Your department will take appropriate action to address this matter with him and thus, your complaint will be closed without further investigation.

While you also alleged instances of inappropriate conduct based on your gender identity by [REDACTED], you acknowledged that you had reported those incidents to Captain Zanoff and were satisfied by his appropriate action addressing the conduct directly with the individuals. Furthermore, approximately one year passed between those incidents, and over 18 months passed before Mr. Halverson's alleged conduct, which does not suggest the inappropriate conduct was ongoing. Nevertheless, this conduct, if true, would violate the City's EEO Policy, Gender Inclusion Policy, and Respect Policy. Your department will take action to address these matters and thus, these matters are deemed resolved.

III. DETERMINATION OF THE HUMAN RESOURCES DIRECTOR

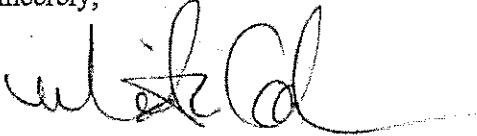
Based on the information provided, it is my determination that your complaint, EEO File No. 3112, will not be investigated further and is administratively closed. The determination of the Human Resources Director is final unless it is appealed to the Civil Service Commission and is reversed or modified. A request for appeal must be received by the Civil Service Commission at 25 Van Ness Avenue, Room 720, San Francisco, CA, 94102, within 30 calendar days from the postmarked mailing date of this letter.

For your information, you may file a complaint of employment discrimination with the California Department of Fair Employment and Housing, or the U.S. Equal Employment Opportunity Commission. Contact those agencies directly for filing requirements and deadlines.

Ronnie Jones
EEO File No. 3112
Page 4 of 4

Please feel free to contact Linda C. Simon, Director, EEO and Leave Programs, Department of Human Resources, at (415) 557-4800, should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Micki Callahan', with a long horizontal flourish extending to the right.

Micki Callahan
Human Resources Director

c: Jeanine Nicholson, Fire Chief, SFFD
Jesusa Bushong, Department Personnel Officer, SFFD
Linda C. Simon, Director, EEO and Leave Programs, DHR

EXHIBIT D

August 6, 2019 Jonathan Halverson Signed Acknowledgment of Receipt of City Policies

City and County of San Francisco
Micki Callahan
Human Resources Director



Department of Human Resources
Connecting People with Purpose
www.sfdhr.org

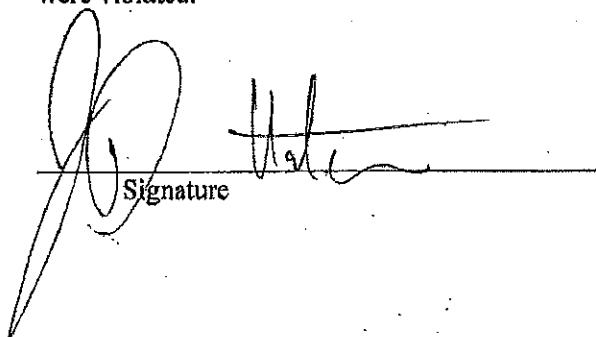
ACKNOWLEDGEMENT OF RECEIPT OF CCSF POLICIES

I, Jonathan David Halverson, acknowledge that I have read and received a copy of:

- City and County of San Francisco's Equal Employment Opportunity (EEO) Policy;
- City and County of San Francisco's Gender Inclusion Policy; and
- Policy Regarding the Treatment of Co-Workers and Members of the Public (Employee Handbook, p.46)

I further acknowledge that a copy of this acknowledgement will be placed in my Official Personnel File.

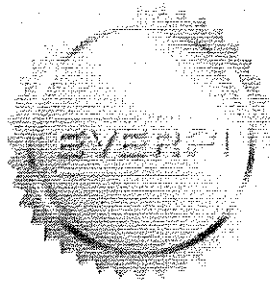
This signed acknowledgement is only to serve as a reminder of the policy. This form is not to be construed as any type of discipline or confirmation that any of these policies were violated.


Signature

08/06/2019
Date

EXHIBIT E

August 16, 2019 Jonathan Halverson Certificate of Completion of City's Harassment Prevention
Training



The City and County of San Francisco (City)

Certificate of Completion

presented to
Jonathan D Halverson

for successfully completing
2017 Preventing Workplace
Harassment - San Francisco
Supervisors

on

August 16, 2019

CONTENTS NOTED

Cy Gordon 8/19/19
Gordon

PARAMEDIC CAPTAIN STATION 49
SAN FRANCISCO FIRE DEPARTMENT

CONTENTS NOTED

H43 *W T M* 8/19/19

EXHIBIT F

August 2, 2019 DHR EEO Director's Department Letter to SFFD

City and County of San Francisco
Micki Callahan
Human Resources Director



Department of Human Resources
Connecting People with Purpose
www.sfdhr.org

CONFIDENTIAL

August 2, 2019

Chief Jeanine Nicholson
San Francisco Fire Department
698 Second Street, Room 304
San Francisco, CA 94107

Via Email
jeanine.nicholson@sfgov.org

RE: Complaint of Discrimination Filed by Ronnie Jones, EEO File No. 3112

Dear Chief Nicholson:

On June 27, 2019, the Department of Human Resources, Equal Employment Opportunity Division (DHR EEO), received a complaint from Ronnie Jones, H003 EMT/ Paramedic/ Firefighter, alleging that he was subjected to harassment based on his gender identity (transgender man). His complaint was assigned to Dorothy Young, EEO Programs Specialist, DHR. On July 17, 2019, Ms. Young conducted an intake interview with Mr. Jones, during which he alleged his co-worker Jonathan Halverson, H003 EMT/ Paramedic/ Firefighter, intentionally misgendered Mr. Jones.

DHR EEO reviewed Mr. Jones' allegations and determined that they were insufficient to raise an inference of harassment. As such, by letter dated August 2, 2019, Mr. Jones was notified that his complaint would be administratively closed without further investigation, a copy of which is enclosed. Nevertheless, the alleged conduct, if true, violates the City's EEO Policy, Gender Inclusion Policy, and Policy on Treatment of Co-workers and Members of the Public (Respect Policy). Accordingly, I wanted to bring it to your attention for review and appropriate action.

Mr. Jones alleged that on June 24, 2019, Mr. Halverson intentionally used the wrong pronoun to address him by saying, "Well, Miss," in a disrespectful tone. Two witness statements were submitted to DHR EEO corroborating Mr. Halverson's incorrect use of gender pronoun. On July 12, 2019, Mr. Halverson was issued a cease and desist and instructed not to communicate with Mr. Jones. Mr. Jones further alleged on July 29, 2019, Mr. Halverson gave him a mean look in the communal kitchen at work. While no determination was made as to whether the allegations are true, I am requiring the Department to take the following actions:

A. Comment by Jonathan Halverson

1. Inform Mr. Halverson that a complaint was made alleging that on June 24, 2019, he used an incorrect pronoun ("Miss") to refer to Mr. Jones and that on July 29, 2019, he glared at Mr. Jones in a communal area. Although DHR EEO is closing the complaint and no determination was made as to whether the allegations are true, his conduct, if true, would

One South Van Ness Avenue, 4th Floor • San Francisco, CA 94103-5413 • (415) 557-4800

violate the City's EEO Policy, Gender Inclusion Policy, and Respect Policy. Direct Mr. Halverson to refrain from using the incorrect pronoun to address or refer to co-workers or members of the public, and to refrain from glaring at Mr. Jones or treating him any differently due to his filing of this complaint.

2. Issue Mr. Halverson copies of the City's EEO Policy, Gender Inclusion Policy, and Respect Policy, with a signed acknowledgment of receipt of the policy to be placed in his personnel file. Inform Mr. Halverson that the policies are being issued only as a reminder of the City's policy and that his signed acknowledgment of receipt shall not be construed as any type of discipline or violation of policy.
3. Remind Mr. Halverson that retaliation against any employee whom he believes made or participated in a complaint of discrimination is prohibited by law and the City's EEO Policy, and will not be tolerated.

B. Online Harassment Prevention Training

1. Mr. Halverson has taken the Online Harassment Prevention Training once, on November 26, 2016. I am requiring that Mr. Halverson retake the Online Harassment Prevention Training within the next 30 days, **by September 3, 2019.**

C. Other Recommendations

1. Mr. Jones also alleged at the end of 2016, after Mr. Jones' transition and use of the men's locker room, co-worker [REDACTED] H003 EMT/ Paramedic/ Firefighter cursed and muttered at him, and around November 2017, co-worker [REDACTED] H003 EMT/ Paramedic/ Firefighter, requested a change of schedule to avoid working with Mr. Jones because of his gender transition. Mr. Jones reported both incidents to Andy Zanooff, H033 Captain, Emergency Medical Services, who told Mr. Jones he would speak to those individuals.
2. While no determination was made as to whether the allegations, as described above, are true, I am recommending the Department take this opportunity to remind Captain Zanooff of his responsibility to immediately report harassment or potential harassment to their departmental HR.
3. I am also recommending that the Department consider contacting Pau Crego, Director of Policy and Programs, Office of Transgender Initiatives (OTI), (415) 671-3072, to schedule transgender inclusion and awareness training for all Paramedic staff.

Please provide a report on completion of these actions, including copies of the signed acknowledgment of receipts and the status of Mr. Halverson's online harassment prevention training, addressed to me, no later than **August 16, 2019.**

Please feel free to contact me at (415) 557-4837 should you have any questions.

Chief Jeanine Nicholson
EEO File No. 3112
Page 3 of 3

Sincerely,



Linda Simon
Director, EEO and Leave Programs, DHR

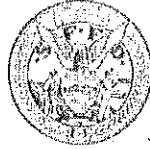
Encl.: August 2, 2019 Letter from Micki Callahan to Ronnie Jones
City's EEO Policy, Gender Inclusion Policy, and Respect Policy
Acknowledgement of Receipt Form

c: Jesusa Bushong, Department Personnel Officer, SFFD

EXHIBIT G

August 16, 2019 SFFD Report to DHR EEO Re: Completion of Corrective Actions

San Francisco Fire Department



Division of Human Resources

August 16, 2019

Linda Simon
Director
EEO and Leave Programs
Department of Human Resources
1 South Van Ness, 4th Floor
San Francisco, CA 94102

Re: EEO File No. 3112

Dear Ms. Simon:

On behalf of the San Francisco Fire Department ("SFFD"), I am providing this report regarding the Department action items mandated by the Department of Human Resources ("DHR") for the EEO case file noted above.

The SFFD has addressed Items 1 through 3 with Paramedic Jonathan Halverson. Enclosed is a copy of the Signed Acknowledgment Receipt of CCSF EEO Policies from PM Halverson.

With regard to PM Halverson's completion of the City's Harassment Prevention online training, EMS Chief Sandy Tong has confirmed that he is on track to complete the training and submit the certificate to SFFD Human Resources ("SFFD-HR") on or before September 3, 2019. SFFD-HR will send a copy of Paramedic Halverson's certificate of completion to DHR-EEO on or before September 3, 2019.


Chief Tong has also confirmed that Captain Zanoft has been advised to promptly report to SFFD-HR any harassment or potential harassment in the workplace brought to his attention. Captain Zanoft assured Chief Tong that he would.

Finally, Acting EMS Section Chief of Training Nicholas Payne spoke with Pau Crego of the Office of Transgender Initiatives on Monday, August 12, 2019. Chief Payne confirmed that this Office provides gender inclusion training; however, at this time, they only have live training that lasts approximately 1.5 to 2 hours. Chief Payne explained to Mr. Crego the challenges of live training based on the work schedule for Station 49 Ambulance Personnel. They then discussed the possibility of developing on-line training for the members of Station 49. Mr. Crego's Office will be sending their training materials to Chief Payne, who will then review the content and format to determine how these could be adopted for an online format. Chief Payne and Mr. Crego plan to discuss the training during the week of August 19, 2019.

Except for Paramedic Halverson's completion of the City's Harassment Prevention Training by September 3, 2019, SFFD has complied with DHR's required and recommended actions.

Please call me at (415) 558-3615 if you have any questions or need any further information.

Sincerely,


Jesusa Bushong
Departmental Personnel Officer

Enclosure

cc: Jeanine A. Nicholson, Chief of Department
Linda Simon, Director, DHR EEO and Leave Programs

EXHIBIT H

September 4, 2019 Ronnie Jones' Letter of Appeal



CIVIL SERVICE COMMISSION
City and County of San Francisco
 25 Van Ness Avenue, Suite 720
 San Francisco, California 94102-6033
 Executive Officer
 (415) 252-3247

CSC Register No.
0232-19-6
 To: XI M. Callahan
J. Buick
 CC: L. Simons
M. Valde
J. Bushong

APPEAL TO THE CIVIL SERVICE COMMISSION

INSTRUCTIONS:

Submit an original copy of this form to the Executive Officer of the Civil Service Commission at the address above within the designated number of days following the postmarked mailing date or email date (whichever is applicable) of the Department of Human Resources' or Municipal Transportation Agency's notification to the appellant. The appellant's/authorized representative's original signature is required. (E-mail is not accepted.) It is recommended that you include all relevant information and documentation in support of your appeal.

TYPE OF APPEAL: (Check One)

- Examination Matters (by close of business on 5th working day)
- Employee Compensation Matters (by close of business on 7th working day) - Limited application
- Personal Service Contracts (Posting Period)
- Other Matters (i.e., Human Resources Director/Executive Officer Action) (30 Calendar days)
- Future Employability Recommendations (See Notice to Employee)

JONES, RONNIE
 Full Name of Appellant

1415 EVANS AVE., S.F. CA 94124 (415) 558-324
 Work Address Work Telephone

H3L2
 Job Code

PARAMEDIC
 Title

SAN FRANCISCO FIRE DEPARTMENT
 Department

Residence Address

City State Zip Home Telephone

Full Name of Authorized Representative (if any)

Telephone Number of Representative (including Area Code)

NOTE: If this is deemed to be a timely and appealable matter, the department will submit a staff report to the Civil Service Commission to request that it be scheduled for hearing. You will be notified approximately one week in advance of the hearing date, at which time you will be able to pick up a copy of the department's staff report at the Commission's offices. If you would instead prefer Commission staff to email you a copy of the meeting notice and staff report, please provide your email address below.

Email:

COMPLETE THE BASIS OF THIS APPEAL ON THE REVERSE SIDE. (Use additional page(s) if necessary)

Does the basis of this appeal include new information not previously presented in the appeal to the Human Resources Director? If so, please specify.

Check One: Yes No

Original Signature of Appellant or Authorized Representative

Date

CSC-12 (10/14)

Date Received by Civil Service Commission:

State the basis of this appeal in detail. For more information about appeal rights and deadlines, please review the Civil Service Rules located on the Civil Service Commission's website at www.sfgov.org/CivilService.

Appeal request for EEOC Complaint File NO. 3112

I am requesting an appeal is because I disagree with the findings. Attached is my statement regarding the initial incident and new evidence to show some of the continued harassment I am experiencing from the other party involved in the incident. Secondly, along with my disagreement with the findings, on 8/29/19 after^{AS} during my meeting with SFED HR department, I was made aware of the possibilities of my battery/assault that I experienced on the initial date of incident was left out of the report or never reported which lead me to believe that the DHR investigator may have not reported it as well.

After the findings were determined and DHR forward it back to the HR department at SFED I don't know if the department is conducting an investigation or if their was any form of discipline. When I spoke to the DHR investigation on 8/5/19 when I was made aware of the decision, she stated to me that all I wanted was more training which it is misunderstood on her part. I reported that I want more training in the dealings in relating to transgenders that work for or in the department, and I also stated that I no longer want to work with individuals like the subject in the complaint because they don't contribute to a safe environment for me. I also stated that I no longer feel safe at work and the subject should not be allowed to work for the department after our incident. Especially, the subject is in violation of the mission statement with the department.

PM Ronnie Jones Statement regarding June 24 to early morning hours on June 25th

On Monday, June 24, 2019, I was working my regular scheduled shift, and my partner went home early. I was stationed at Station 49 as EMS03 to be available if someone goes home sick or if there was a sick call and I can work on a unit that will need staffing. Around 2350 hrs., I advised the on-duty RC who was Megan Byrne that I was going to walk the yard to stretch out my legs and do station duties. While walking out to the yard, I saw PM Nicole Thoms, who was getting off duty, and I began conversing with her. I asked PM Thoms how was her shift? And How was the family? During our conversation, I also spoke to her partner who was PM Dierks who I worked with the previous night, I checked in with him by saying hello, and How was his shift? During Thoms and I conversation, I saw PM Halverson walking towards his ambulance (M59), and I also noticed that PM Halverson had no Paramedic patches on his Class B uniform shirt.

Therefore, I noticed PM Halverson's uniform looked very similar to the Nomex uniforms we used to wear approximately 6 years ago, and now we are unauthorize to wear. So, I thought to do the right thing, and attempt to give some helpful advice to PM Halverson regarding his missing patches on his uniform. PM Halverson has been with the department for approx. 2 ½ years and I was thinking to give him advice to help keep him out of trouble. I decided to go ahead and give Peer to Peer advice regarding his uniform. Recognizing that in the past I was referred to come across abrasive and authoritative sometimes to people in past conversations with various individuals when I speak to them. With that information and constructive criticism, I've changed my ways on how I communicate with individuals over the years.

Recognizing that my approach should come across to him that I am coming from a genuine place, I made sure that my tone, and my body language reflected my position. While Halverson was walking towards his ambulance, I proceed to ask him, "(With a slight grin on my face) Hey Man, Where's your patches?". He responded, "What?" (with a disruptive tone). I repeated, "What happen to your patches", and he continues with a more disruptive deep tone, "What?". It was at that time that I gathered after he responded that the conversation was starting to take a wrong turn. Halverson proceed to respond, "Why?". So, I proceed to respond to his question, I advised him that he was wearing uniforms that was not approved by the department to wear with no patches, and those uniforms he had on we are not authorized to wear. I also advised him that if a Chief or Captain sees you in the field with non-department issue uniforms or out of uniform you are in violation of rules and regulations, and I am just trying to help you. Then he proceeds to ask, "Why?", and I asked him, "was he suppression or 49?". As he reached the driver side of his ambulance, Halverson proceeded to turn facing my direction, grabbed the left side of his shirt collar, with an abrasive gesture, and aggressive tone stating "Well, MISS".

After he made his comment, I immediately was taken back, disturbed, shocked, and surprised after his comment. While I proceeded to turn towards Nicole, Dierks was to the left of me, and turned to Nicole and I asked her, "Did I just hear that correctly,". Wait a minute, "Did I just hear that correctly". I proceeded to ask Nicole, "Did he just use the wrong gender pronoun in that manner". And Nicole immediately turned facing me reenacting what she heard and saw when Halverson misuse of the gender pronoun towards me. While Nicole was confirming what she heard and saw, Halverson grabbed his helmet, and jacket that was folded together from the compartment from the driver side of the ambulance.

Then Halverson proceeded to walk towards me stating, "Are you Lieutenant or Captain?". And Nicole proceeded to finish grabbing her gear and get on her motorcycle while Dierks proceeded to walk away towards his personal vehicle while Halverson was walking up to me. As Halverson approached me, he continues to state, "Every time you see me Ronnie, it seems like you have something against me or something against me". Then Halverson states, "you are out of uniform too", and I responded with a neutral tone to him stating, "I am in uniform, it's after 9 p.m. and I can wear my job sweater". I continue to state to Halverson, "I am not in the field right now, so I can wear my department issue sweater after 9 pm at the station".

Then Halverson abruptly stepped closer to me in an aggressive manner, violating my personal space, standing toe to toe, with a threatening tone stating, "Are you a Lieutenant or Captain?" as he was attempting to grab my left collar on my sweater with his right hand. In a form of protecting myself, I immediately took a step back to create distance between him, and stating to him with an uncomfortable but neutral tone, "No, I am the senior Mother Fucking Medic here that has been here for 13 years trying to help you, and to help keep you out of trouble". Then Halverson turned to walk away from me while stating, "Ronnie, you always appear to have something against me". I advised Halverson while he continued to walk away from me, "Hey, it is clear that this conversation has gone in the wrong direction, all I was trying to do is help, you have the wrong impression of me, and we need to talk about it. I continue to advise him that the RC is in the office, so let's have a meeting to clear it all up, start over new, and get on the same page. Halverson responded, "Naw, Fuck that" and proceeded to walk upstairs to the second floor of the station.

I opened the door to the RC's office and advised RC Byrne that we need to have a meeting. RC Byrne asked, "What's going on?" I advised RC Byrne that I was attempting to give Peer to Peer guidance/advice, and it took a turn for the worse. I told RC Byrne that I was speaking with Halverson regarding his uniform, and in his response, he used the wrong gender pronoun in a derogatory manner. RC Byrne was shocked when I told her what happened and Halverson response. RC Byrne stated that she was not sure on what the uniform requirements were since there were other individuals having challenges getting the clothing depot to approve patches on uniform shirts. While having the conversation with RC Byrne, Tim Finch one of our union directors that was coming off duty from his shift, and I stated, "A big prime example a senior

medic out of uniform". Tim responded, "You are right, but I have an excuse, I couldn't find my uniform shirt, so I had to grab a shirt from the closet where extra uniforms were stored."

I advised Tim that I will need union representation regarding an incident that just happened." I explained to Tim what had transpired and what was said in response after I had attempted to do the right thing by conducting a Peer to Peer guidance/advice with Halverson. RC Byrne stated that she was going to call a meeting because it was clear that there is an EEOC violation. RC Byrne called Halverson via cellphone to come to the office because we were going to have a meeting, and RC Byrne called dispatch to place M59 out of service at Station 49 administration for a meeting. Upon the start of the meeting, PM Tim Finch advised both Halverson, Byrne, and me of the firefighter bill of rights, he is neutral, and he is in the meeting to make sure no rights are being violated.

RC Byrne advised PM Halverson the reason the meeting was called because upon Peer to Peer guidance his response was disrespectful, and misuse of gender pronoun was used in a derogatory manner. RC Byrne also advised PM Halverson when a Peer member is giving you advice it is coming from a Peer that has been here longer and is very familiar with the rules and regulations with the purpose to help guide you in the right way. RC Byrne also advised Halverson that he must be respectful towards the Peer that is giving you guidance. RC Byrne advised Halverson that the meeting is to not only address the uniform situation but to address the misuse of gender pronoun in a derogatory manner which is an EEOC violation. RC Byrne asked Halverson did he misuse the gender pronoun. PM Halverson responded, "I don't recall if I did, I may have, I may have said it on my way upstairs, and if I did, I apologize (with a nonchalant tone)". After his response, we all looked in a shock at each other Byrne, Finch, and me. Halverson continued, "You all are out of uniform".

RC Byrne responded stating that it is after 9 pm and I can have my sweater on over my uniform, and Tim responded stating that I have a reason, and I am off duty but that is not the issue right now. PM Halverson continues to state, "Well, he/she, she/he, well he/she always have a rude look on he/she face when I come into the office or see he/she in the field, he/she always go delay at hospitals, and avoid running calls. RC Byrne and Tim Finch interrupted Halverson advising him that is not the reason for the meeting. I responded to Halverson stating, "I don't like liars", He responded with "Are you calling me a liar"? And I responded stating, "Yes, I am. You forget that there were two other witnesses outside to witness what you said, how you said it, and the manner you said it. So, yes you are lying" I also responded stating, "You don't know me from a can of paint, just as much as I don't know you from a can of paint, when I am an RC behind that desk, I am neutral and professional. I am not here to be your friend and be your buddy. I am respectful and professional. I can't be born again with a new expression on my face. My duties are to make sure units get into service on time, everyone is safe at the station, and other job responsibilities." Then I asked Halverson, "When you see me behind the RC desk am I in full uniform?" He responded stating, "What?" I repeated the question, "Am I in full uniform when you see me? He responded stating, "Yes". RC Byrne asked Halverson, "Do you

have patches on your uniform?" He responded with, "What?" RC Byrne asked Halverson, "Do you have any department uniform on?" Halverson responded stating, "Um, no. I have my South City uniform on." Halverson continues stating, "I had some dry-cleaning issues."

RC Byrne responded stating, "Wait, you have on another department uniform on?" Halverson responded stating, "Yes." RC Byrne asked Halverson, "Do you have any department uniform on?" then asked Halverson, "Why do you still have EMT patches on your jacket?" Halverson responded stating, "Oh, it was a clothing depot issue." Then I asked Halverson, "Did you work yesterday?" Halverson responded stating, "Yes." I responded stating, "I saw you yesterday with the same uniform on. So, you started your shift before 9 pm with the same uniform on." RC Byrne advised Halverson that the meeting was concluded, and she will have to follow up with the Chief on how to pursue on this issue. Halverson responded with stating, "Okay. He understands." The meeting ended and RC Byrne stated that she will follow up with Chief to see how to go about with this issue.

STATION NOTES

- On July 19, 2019, while in the RC office, PM Angela Castro and I was talking, and PM [REDACTED] asked if we would like to go through intubation refresher. PM Castro replied, "Sure, I have to let my partner know". While standing at the door of Bio-Med, PM [REDACTED] states, "Are you ladies ready?". Immediately, PM Castro and I looked at each other in a state of shock. I turned to look at PM [REDACTED], and I looked back at PM Castro stating, "Ladies?". PM Castro immediately realized what was said and looked at me with a shock look on her face. I turned facing PM [REDACTED] asking him, "Where are the ladies at? Because I only see one lady in this room." PM [REDACTED] realized what he had said and had no response to what he said. PM Castro immediately left. PM [REDACTED] just looked at me and shrugged his shoulders. PM [REDACTED] did not apologize to me or say to me I made a mistake. After that I just left.
- On July 29, 2019, at 0730 hrs. I was in the kitchen with 5 other fellow employees, seated at the table, and waiting for the meeting. While I was seated at the table, Halverson walked into the kitchen, and looked at me with an evil stare down. As Halverson, walked towards me while I was seated at the table to pass, continued walking towards the kitchen sink while saying, "hello everybody". As he (Halverson) reached the kitchen sink he turned to face me and continued with his stare down. I sat at the table for a moment once I realized that Halverson was not leaving after he saw me in the kitchen. I left the kitchen, went down to the RC office, and let the RC Casey know what had happen. RC Casey responses was what can you do, it's the station, and it's hard to avoid a person. I asked the on-duty RC Lynch, was Chief Tong here? He responded with "yes". I asked to see if it was okay for me to go to the Chief's office because someone was here that I needed to avoid contact with. He said yes go ahead. As I entered the Chief's office, I advised her on what had happened, and she asked, "Did he say anything to you?" I told Chief Tong, not directly to me, He said "Hello Everybody" as he walked pass me, and he gave me the evil stare down. I asked if it was okay for me to sit in her office til he leaves. Chief Tong said it was okay...
- On the morning of Monday, August 5 I was walking into the station to start my light duty shift, and while I was walking towards the RC office I was saying good morning to fellow co-workers when Halverson walked right pass me looking at me with a smirk on his face as he starred me down. I did take notice of it, and I just continue to walk into the RC office. After changing into my uniform, I walked up stairs to the kitchen to avoid crossing paths with Halverson again, and after being in the kitchen for about 5 minutes Halverson walked into the kitchen just staring at me with the same smirk on his face like he was ridiculing me, and taunting me. I left the kitchen to return downstairs to RC's office.

- On the morning of Tuesday, August 6 as I was walking to the RC office to check in, Halverson was standing at his ambulance just staring at me while I was walking, when I noticed that he was just staring/glaring at me, I looked back at him, and then he just turned to walk the other direction. After, I went to check into the RC's office, and I didn't see no one in the office. I went to the locker room to get dress and went upstairs to the kitchen.
- On the morning of Wednesday, August 14 I saw Halverson walking around inside of the station. When I walked into the locker room to change into my uniform and within a minute after I got into the locker room Halverson walked into the locker room. While Halverson was walking down the hallway, he was passing the row where I was, Halverson turned looking at me, starring/glaring in a taunting, demeaning manner. Then he continued to walk pass and walked down another row of lockers when he proceeds to walk out of the locker room.
- On the morning of Monday, August 19, Halverson was already at the station waiking around when I arrived at work. I checked into the RC office where I saw Captain Gordan, Lieutenant Landivar, and I let them know that I was going to change, and I will be upstairs in the kitchen. As I walked out of the office, Halverson was walking back into the station area when he saw me, and he immediately started glaring at me. I went to the locker room to change, and I went upstairs. As I approached the kitchen, Halverson was leaving the kitchen area and He walked pass me while he continues to glare at me in a taunting manner.
- On the morning of Thursday, August 22, I was in the kitchen, seated at the table conversing with fellow co-workers at 0700 hrs., and Halverson came into the kitchen area. Upon entering into the kitchen area, he looked directly at me with a snarky smirk on his face, walk to the computer area, and sat down. Halverson refused to continue to avoid the area I was in. So, I removed myself from the kitchen area and went to the other kitchen area near the administration offices.

EXHIBIT I

August 29, 2019 Department Report of Employment Discrimination Complaint

DEPARTMENT REPORT OF EMPLOYMENT DISCRIMINATION COMPLAINT* Report Within Five Working Days of Receipt of Complaint*

Return to: Linda Simon, Deputy Director, EEO and Leave Programs, One South Van Ness, 4th Floor,
San Francisco, CA 94103

1. Department/Worksite: San Francisco Fire Department, Station 49
2. Complainant: Paramedic Ronnie Jones Tel. No. (Work): 415-558-3249
Address: _____ Tel. No. (Home): _____
3. Complaint Filing Date: August 29, 2019

4. Complainant's Current Employment Status (circle one): _____ Classification: H-3 Level 2
PCS TCS LT NCS PV PE TE PROB NOT A CITY EMPLOYEE

5. Basis of Discrimination (specify):

- Race:
 Color:
 Religion:
 Creed:
 Sex:
 National Origin:
 Ethnicity:
 Age:
 Disability/Medical Condition: _____
 Political Affiliation: _____
 Sexual Orientation: _____
 Ancestry:
 Marital or Domestic
Partner Status:
 Gender Identity: Transgender
 Parental Status:
 Other Non-Merit Factors: _____
 Retaliation:

6. Issue complained of:

- Denial of Employment
 Denial of Training
 Denial of Promotion
 Denial of Reasonable Accommodation
 Termination
 Lay-off
 Constructive Discharge
 Disciplinary Action
 Harassment
 Work Assignment
 Sexual Harassment
 Compensation
 Other (please specify):
Pervasive stare down, visual taunting
intimidation of Complainant

7. Describe the circumstances of the alleged discrimination and include date(s) of adverse employment action(s): (Attach letter of complaint) On August 29, 2019, I met with Paramedic Ronnie Jones to obtain information regarding additional/new incidents with Paramedic Jonathan Halverson. PM Jones recounted the following: August 5 – As PM Jones was greeting co-workers good morning at the start of his shift, PM Halverson walked past him and stared him down. Within five minutes, as PM Jones was walking to the locker room PM Halverson gave him (Jones) another stare down and had a smirk on his face. August 6 – PM Jones parked his car and observed PM Halverson just standing by his ambulance in the Station 49 yard staring PM Jones down. As PM Jones got out of his car, he looked at PM Halverson directly, who then turned around and walked away.

August 14 – PM Halverson was walking around Station 49 when PM Jones walked in; within a minute, PM Halverson was standing the hallway staring at PM Jones. PM Halverson then walked away via other row of lockers behind PM Jones'.

August 19 – PM Halverson had been in the kitchen and saw PM Jones walked into the building. PM Jones saw PM Halverson walking toward him, so PM Jones turned and went toward his locker. Lt. Jason Landivar informed PM Jones that he told PM Halverson to leave because he wanted PM Jones to feel safe and sensed that something was wrong. PM Halverson was already off duty at this time.

August 22 – PM Halverson said hello to everyone in the kitchen except to PM Jones. PM Halverson just stared PM Jones down.

The overall sentiment that PM Jones would like to convey is that PM Halverson's intimidation and visual taunting has become pervasive. PM Jones is now avoiding going to the main kitchen at Station 49, where everyone gathers. To avoid PM Halverson and his stare downs, PM Jones now goes to the kitchen by the administration offices. PM Jones should not have to feel this way about or to make adjustments in the workplace on account of PM Halverson's alleged conduct. PM Jones would like the behavior to stop.

Enclosed are PM Jones' notes regarding the June reporting and these current incidents. Note that on page 2 of the June write-up, which I underscored, PM Jones stated that PM Halverson attempted to grab his left collar with his right hand. I reviewed my notes from June 27 and did not find any reference to PM Halverson grabbing PM Jones' collar. I would have keyed in on that physical contact because that would have been a potential Workplace Violence Incident.

Both PM Jones and his L798 representative, Tim Finch, stated that they notified the DHR EEO Investigator about this as well.

8. Has the Complainant filed a grievance or lawsuit regarding this complaint? Yes No

If yes, please specify: _____

9. Is the Complainant represented by a Union or an Attorney? Yes No

Name: _____ Organization/Firm: L798 / SFResO

Address: _____ Phone No.: _____

*10. What steps does the department recommend be taken to address this complaint? (For instance, investigation, alternative dispute resolution, dismissal) The matter will also be referred for possible disciplinary investigation to the Chief's Office.

*10a. Name and position of staff who will implement recommended steps: Victor Wyrsh, Deputy Chief of Operations; Sandy Tong, EMS Chief (with approval from Fire Chief Jeanine Nicholson)

11. Completed by: JESUSA BUSHONG
Address: LAB 2ND ST., ROOM 20A SF

Date: 8-29-19
Tel. No. (415) 558-3615

*12. Please notify DHR/EEO in written form immediately upon resolution of this complaint.

***Subject to the Human Resources Director's approval**

HUMAN RESOURCES DIRECTOR REVIEW

Complaint is assigned EEO File Number: _____

D Approve department's recommendations for addressing complaint. Proceed and notify HR Director of actions, findings, and recommendations for resolution.

D Complaint is assigned by HR Director to: _____
and/or the following actions are to be taken:

for Micki Callahan, Human Resources Director

Date

EXHIBIT J

July 2, 2019 Witness Statement by Nicole Thoms



San Francisco Fire Department

General Form

Date: 07/02/2019

From: THOMS, Nicole Rank: H3L2 Assignment: ST49 Tour: F02 ID: TH4389
To: BUSHONG, Jesusa HR
Subject: EEO Complaint/Witness Statement
Reference: N/A
Enclosure: N/A

1. I was in the yard at St49 at the end of my shift on 6/24/2019 at approximately 2350 hours.
2. PM Jones walked out into the yard and was standing next to me.
3. PM Halverson walked past the both of us and proceeded to get something out of a nearby ambulance, when PM Jones asked him why he was not wearing his job shirt with patches.
4. I noticed at that time that he was wearing a solid blue job shirt without patches but with his badge.
5. He then said that he does not like, or does not have his department issued job shirt. I can not recall the exact words he used, but I do recall at the end of his statement he said "Miss."
6. PM Jones said, "What did you say?"
7. PM Halverson repeated his statement, this time excluding the "miss." He followed up by asking PM Jones, "Are you acting Capitan or Lieutenant tonight or what are you?"
8. PM Jones replied, "I'm telling you as a senior medic, that you need to wear your department issued uniform. You are not a suppression member, so why are you dressed like one?"
9. At that time I walked inside to finish my end of shift routine.
10. I declare under the penalty of perjury that the foregoing is true and correct.

ADC EMS DIVISION
RECEIVED

JUL 03 2019

87
San Francisco Fire Dept

(Signature)

EXHIBIT K

July 3, 2019 Witness Statement by Ezekeal Dierks

'19 JUL 5 PM 1:39



San Francisco Fire Department

General Form

Date: 07/03/2019

From: **DIERKS, Ezekeal** Rank: H 3 Assignment: 49 Tour: 5 ID: DI1513

To: **Jesusa Burshong**

Subject: **Witness statement to the incident on 6/24/2019 at approximately 2350 hrs.**

Reference: **None**

Enclosure: **None**

1. On 6/24/2019 at approximately 2350 hrs, my partner and I were out side in the ambulance yard at Fire Station 49 having a conversation with Ronnie Jones.

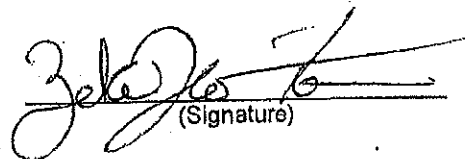
2. Medic Halverson walked in to the yard from the RC office towards his vehicle. Ronnie Jones commented to Halverson that his uniform shirt was not an approved uniform for duty and had no patches.

3. Halverson appeared to ignore the comment and precoded to his car for a few minutes. Halverson then began walking back past us towards the RC office.

4. Jones made several more comments about Halverson's uniform being inappropriate. Halverson appeared to withhold any comment back until Jones requested he not wear that shirt on duty.

5. Following the above comment, Halverson stopped and made a salute type motion to Jones and replied something to the effect of, "Yes ma'am". Halverson then walked back into the RC office.

6. I was not witness to any other interaction between Jones and Halverson after that on 6/24/2019.


(Signature)

**ADDITIONAL INFORMATION
SUBMITTED BY APPELLANT**



A Professional Corporation

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SAN FRANCISCO, CA 94107

January 28, 2020

Elizabeth Slaveson, President
Kate Favetti, Vice President
Civil Service Commission
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102

Sent Personal Delivery

RE: Appeal of [redacted], EEO File No. 3112

Distinguished Commissioners of the Civil Service Commission:

On behalf of SFFD Paramedic I [redacted], I hereby submit this response to the memorandum report submitted to the Commission by [redacted] and I [redacted] ("the Report") (see [redacted] **Exhibit 1**, attached hereto and hereby incorporated by reference) concerning his appeal of the Human Resource Director's determination of his complaint concerning gender discrimination he has faced and continues to face at the San Francisco Fire Department (SFFD).

After consideration of the discussion and exhibits offered below, Paramedic [redacted], asks that you reverse the Director's decision to close the investigation and order that immediate steps be taken to end the ongoing discrimination currently plaguing the SFFD as experienced by Paramedic [redacted].

FACTUAL BACKGROUND

The Equal Employment Opportunity (EEO) Policy promulgated by the Department of Human Resources of the City and County of San Francisco states that harassment of employees on the basis of one's gender identity is prohibited. It also states that retaliation based on a complaint of harassment is strictly prohibited.

On October 25, 2018, San Francisco Mayor I [redacted] issued Executive Directive 18-03. Effective immediately, the Directive mandated that Gender Identity Trainings be included in any required harassment prevention, implicit bias, and cross-cultural communications trainings. Pursuant to the Directive, these trainings shall include education on LGBTQ identities. (see [redacted] **Exhibit 2**, attached hereto and hereby incorporated by reference)

By the end of 2016, Paramedic [REDACTED], as one of the final steps of his transition as a transgender man at SFFD Station [REDACTED], began using the male locker rooms. Earlier that year, Paramedic [REDACTED] began his employment with SFFD out of station

On June 24/25, 2019, Paramedic [REDACTED] and Paramedic [REDACTED] had an altercation that almost escalated to physical violence.

On June 27, 2019, the Department of Human Resources Equal Employment Opportunity (DHR EEO) Division received a Department Report of Employment Discrimination Complaint from [REDACTED], a SFFD Department Personal Officer (DPO) (see **Exhibit A** of the Report, attached hereto and hereby incorporated by reference). That complaint detailed an incident that occurred on June 24/25, 2019 at S [REDACTED] where Paramedic [REDACTED] a transgender man, was the target of gender-based harassment when his co-worker Paramedic [REDACTED] intentionally used incorrect pronouns during a heated exchange. Of note is the fact that DPO Bushong states in the complaint that during the exchange, Paramedic [REDACTED] described that Paramedic [REDACTED] “got up in Jones’ face” during this heated exchange. It should also be noted that there were at least two witnesses to the incident, Paramedic [REDACTED] and Paramedic [REDACTED] (see **Exhibits J and K** of the Report, attached hereto and hereby incorporated by reference) who submitted statements corroborating the complaint.

On July 12, 2019, Paramedic [REDACTED] was issued a cease and desist letter which instructed him not to communicate with Paramedic [REDACTED].

On July 17, 2019, [REDACTED], an EEO Programs Specialist with the DHR interviewed Paramedic [REDACTED]. (see **Exhibit B** of the Report, attached hereto and hereby incorporated by reference)

On July 29, 2019, Paramedic [REDACTED] reported that Paramedic [REDACTED] targeted him with intimidation tactics by staring him down in the communal kitchen in the presence of other employees (see **Exhibits C, F, H** of the Report, attached hereto and hereby incorporated by reference).

On August 2, 2019, the DHR administratively closed the complaint (see **Exhibit C** of the Report). Also on August 2, EEO Director Linda Simon directed the SFFD to do the following:

1. Inform Paramedic [REDACTED] of the complaint and explain that such conduct if true, violates the City’s EEO, Gender Inclusive and Respect Policies, and direct him to refrain from using the incorrect pronouns with his co-workers and to refrain from glaring at Paramedic [REDACTED].
2. Issue Paramedic [REDACTED] copies of the EEO Policy, Gender Inclusive Policy and Respect policies and place a signed acknowledgment of such receipt in his personnel file;
3. Remind Paramedic [REDACTED] that retaliation against anyone who filed a complaint is prohibited will not be tolerated. (see **Exhibit F** of the Report)

On August 6, Paramedic J . acknowledged receiving copies of the policies described above (see **Exhibit D** of the Report, attached hereto and hereby incorporated by reference).

On August 16, Paramedic J . completed a 2017 “Preventing Workplace Harassment” Training (see **Exhibit E** of the Report, attached hereto and hereby incorporated by reference).

On September 4, 2019, this timely appeal to the Director’s decision was filed with the Commission.

HUMAN RESOURCE DIRECTOR’S ADMINISTRATIVE CLOSURE

The Report asserts that SFFD took “immediate appropriate action to address J conduct” by directing SFFD to take prompt action to correct F conduct. Paramedic J was admonished and given an opportunity to do training. However, there are no facts from the Report that the training Paramedic F received was compliant with Mayor Breed’s Executive Directive 1 . That fact that the training was from 2017 would seem to indicate that it was not compliant with the Executive Directive. Meaning: that it did not include information about LGBTQ identities or transgender people. Thus, the training was unlikely to address the underlying conduct at issue and prevent its reoccurrence.

Significantly, it should be noted that Paramedic I was not reassigned to another station pending the outcome of the investigation, a common practice at other employers. As a result, he was given several opportunities to engage in further hostilities directed at Paramedic . Each of these incidents were reported to management and at least one was documented before the administrative closing of the complaint.

The report states that Paramedic s failed to sufficiently allege a harassment claim. It states:

To warrant further investigation, a harassment complaint must sufficiently allege all of the following: (1) the complainant was subjected to physical, verbal, or visual conduct on account of the complainant’s membership in a protected category; (2) the conduct was unwelcome; and, (3) the conduct was sufficiently severe or pervasive as to alter the terms and conditions of the complainant’s employment and create an abusive working environment. (See pages 2-3 of the Report).

The Report states, without a basis for this assertion, that “a single instance of misgendering does not rise to the level of being sufficiently severe or pervasive.” (Page 3). However, the Report does not address the fact that retaliatory conduct was reported before the administrative closure. The Report notes that the other incidents are currently under review by DHR.

By separating the review and investigation of conduct that is borne out to the same incident or event, it creates the effect that there was only one instance of problematic

behavior. Thus, the DHR can assert, as it does in the Report, that there was only one instance of bad behavior so it does not rise to the level of being “severe or pervasive.” This semantic twist should not be allowed to continue because 1) it is not true: there has been a series of behaviors directed at Paramedic that taken together meet the severe and pervasive standard; and 2) it emboldens harassers to continue their harassment since there are no consequences for their behavior.

SEVERE OR PERVASIVE CONDUCT IS VIEWED FROM THE COMPLAINANT’S PERSPECTIVE

The vast majority of jurisprudence on the question of workplace harassment has looked to the context of the offensive behavior from the perspective of the target of the behavior when evaluating what constitutes “severe or pervasive” conduct. It is a reasonable person standard, as seen from the viewpoint of the complainant.

Here, we have a case where a transgender person has been intentionally misgendered by a co-worker in the presence of other co-workers in a very heated exchange that nearly escalated into physical contact. From a reasonable transgender person’s vantage point, such conduct is severe enough to “alter the terms and conditions of the complainant’s employment and create an abusive working environment.” The United States Equal Employment Opportunity Commission’s (US EEOC) decision in Tamara Lusardi, Complainant v. John M. McHugh, Secretary, Department of the Army, Agency, Appeal No. 0120133395 is illustrative (see **Exhibit 3**, attached hereto and hereby incorporated by reference) on the question of context and what constitutes an abusive working environment for trans people.

Ms. Lusardi is a transgender woman who filed a workplace discrimination complaint based on her inability to access bathrooms that corresponded with her gender identity and based on the conduct of a co-worker who misgendered her as a means of intimidating and humiliating her. In particular, the US EEOC noted several ways in which the misgendering of Ms. Lusardi constituted severe and pervasive conduct when taken in the context of other behavior and management decisions. It noted that one employee “engaged in demeaning behavior toward her by refusing to refer to her correct name and gender.” *Id.* at 6. “Complainant testified that [co-worker] called her male names and “sir” in moments of anger or in group settings.” *Id.* “Complainant is not the only witness to testify that [co-worker] intentionally referred to Complainant with male names.” *Id.* “Complainant also testified that [co-worker] seemed to especially call her male names when in the presence of other employees as a way to reveal that Complainant is transgender, as well as to ridicule and embarrass her.” *Id.*

Misgendering a transgender person often results in that transgender person being “outed.” It is extremely dangerous to a transgender person who has been outed in a manner that is not of their choosing because it is still the case that transgender people are murdered everyday in this country. To patently dismiss the impact of “a single instance of misgendering”, as the Report does, as not rising to the level of being sufficiently severe or pervasive only minimizes the violence and struggles that transgender people confront daily as they live their lives. The statement also indicates a lack of education of its

authors about transgender issues. To intentionally misgender a trans person is to humiliate, demean and disempower that person. As is the case for any person who has experienced marginalization, when a member of the dominant group seeks to “put you in your place,” the message is meant to be invisible to other members of the dominant group, but loud and clear to the marginalized person.

It is unclear from the information provided in the Report that Paramedic F understands the significance of his transgression against Paramedic because it is not clear that the training he was assigned to complete addressed any information about transgender people. Without that understanding, Paramedic J may repeat his offense either against Paramedic or another transgender employee. Until Paramedic and the rest of the department receive adequate training, the current culture of hostility remains.

PARAMEDIC RETALIATORY CONDUCT WARRANTS FURTHER INVESTIGATION

Before the administrative closure of Paramedic's complaint, Directors and were on notice of at least one instance when Paramedic engaged in conduct that was retaliatory. Such conduct is prohibited by the EEO policy and should have been investigated as part of the complaint. In fact, Paramedic has documented additional instances of retaliation since the administrative closure of his complaint. The Report states that such instances are not the subject of this appeal. However, they are not the subject of the appeal only because these incidents were not investigated as part of the complaint.

The EEO policy is clear that any retaliation in response to a filed complaint is prohibited. By failing to address this conduct and not conducting a full investigation of the totality of behaviors impacting Paramedic, the DHR is allowing the harassment to continue.

SFFD'S LONG HISTORY OF DISCRIMINATION AND HARASSMENT WITH MINORITY RECRUITS AND FIREFIGHTERS

On August 22, 2019, the ACLU of Northern California has recently sent a letter to Chief outlining its concerns of disparate treatment of black firefighters and fire fighters who identify as LGBTIQ (see **Exhibit 4**, attached hereto and hereby incorporated by reference). That letter describes the long history of discrimination and harassment of firefighters of color, women and LGBTIQ employees and recruits. It also identifies that based on its investigation of complaints and interviews obtained through public records requests, they have identified that there is still a culture of harassment faced by minorities working for SFFD. Of note: the letter highlights its finding that there are deficiencies in training for anti-discrimination, implicit bias and cultural sensitivity.

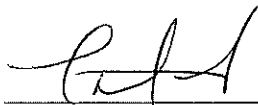
In light of the information contained in the ACLU letter and the facts available about the training assigned to Paramedic (at it was prepared in 2017 before the Executive Directive from the Mayor, there has been an inadequate response to Paramedic complaints and the administrative closure is thus premature.

CONCLUSION

The information offered in the Report and initial stage of investigation indicates that Paramedic [redacted] complaint of harassment has been corroborated and is credible. In this case, the context of Paramedic [redacted] angry and intentional misgendering of Paramedic [redacted] coupled with the physical aggression that accompanied his statements and the subsequent retaliatory behavior rise to the level of being severe and pervasive when viewed from the standpoint of a reasonable transgender person. Such behavior has altered the terms and conditions of the Paramedic [redacted] s employment and create an abusive working environment for him as a transgender person. Paramedic [redacted] does not feel safe at his workplace because he has been forced to remain working in a very intimate setting—where co-workers cope with life and death scenarios daily and need to rely on each other for support—with someone who has made it clear that he does not value Paramedic [redacted] s as a person. Paramedic [redacted] has been forced to remain working alongside someone who intended to humiliate and demean him in front of his other co-workers and has been allowed to remain in a position to continue this behavior because the DHR has chosen not to pursue an investigation. The response to the behavior complained of crafted by the DHR is insufficient because the training is inadequate and has not caused the behavior to stop. The complaint was closed prematurely before a full investigation could take place. An investigation in this case is warranted based on the facts of this case.

Based on the foregoing, Paramedic [redacted] requests that his appeal be granted.

Sincerely,



Attorney for [redacted]

Enclosures (4)

EXHIBIT

1



CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

CIVIL SERVICE COMMISSION REPORT TRANSMITTAL (FORM 22)

- 1. Civil Service Commission Register Number: 0232-19-6
2. For Civil Service Commission Meeting of: December 2, 2019
3. Check One: Ratification Agenda, Consent Agenda, Regular Agenda (checked), Human Resources Director's Report
4. Subject: Appeal by [redacted] nes of Human Resources Director's determination to administratively close his complaint of harassment.
5. Recommendation: Adopt report; sustain decision of Human Resources Director; deny appeal by [redacted] es.
6. Report prepared by: Dorothy Young, DHR EEO Telephone number: (415) [redacted]
7. Notifications: Please see attached.
8. Reviewed and approved for Civil Service Commission Agenda:

Human Resources Director: Micki Callahan [Signature]

Date: November 21, 2019

- 9. Submit the original time-stamped copy of this form and person(s) to be notified (see Item 7 above) along with the required copies of the report to:

Executive Officer, Civil Service Commission
25 Van Ness Avenue, Suite 720, San Francisco, CA 94102

- 10. Receipt-stamp this form in the "CSC RECEIPT STAMP" box to the right using the time-stamp in the CSC Office.

CSC RECEIPT STAMP box

2019 NOV 21 AM 11:42

CIVIL SERVICE COMMISSION
SAN FRANCISCO

Attachment

NOTIFICATIONS

(Appellant)
REDACTED

Micki Callahan
Human Resources Director
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

(Respondent)
REDACTED

Linda C. Simon
Director, EEO and Leave Programs
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Jeanine Nicholson
Fire Chief
San Francisco Fire Department
698 Second Street, Room 304
San Francisco, CA 94107-2015

Mawuli Tugbenyoh
Chief of Policy
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Jesusa Bushong
Department Personnel Officer
San Francisco Fire Department
698 Second Street, Room 304
San Francisco, CA 94107-2015

Dorothy Young
EEO Programs Specialist
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

CONFIDENTIAL

CIVIL SERVICE COMMISSION REPORT

MEMORANDUM

TO: Civil Service Commission

THROUGH: Micki Callahan, Human Resources Director

THROUGH: Linda C. Simon, Director, EEO and Leave Programs

FROM: Dorothy Young, EEO Programs Specialist

DATE: November 21, 2019

EEO FILE NO: 3112

REGISTER NO: 0232-19-6

APPELLANT: J _____s

I. AUTHORITY

The San Francisco Charter, Section 10.103, and Civil Service Commission Rules provide that the Human Resources Director shall review and resolve complaints of employment discrimination. Pursuant to Civil Service Commission Rules, Section 303.3, the Civil Service Commission shall review and resolve appeals of the Human Resources Director's determinations.

II. BACKGROUND

Since June 19, 2006, Ronnie Jones has been employed with the San Francisco Fire Department (SFFD) as an H3 Level 2 Paramedic. Jones is a senior paramedic who sometimes goes out as Like-Work, Like-Pay (LWLP) EMS Captain, which is a supervisory position. Jones is a transgender man who uses male gender pronouns and has done so at work, informally, since the end of 2014, and, more formally, since August 2016. **See Exhibits (Ex.) A and B.**

A. Appellant's Complaint, EEO File No. 3112

On June 27, 2019, the Department of Human Resources Equal Employment Opportunity (DHR EEO) Division received a Department Report of Employment Discrimination Complaint from [redacted], SFFD Department Personnel Officer (DPO), reporting [redacted] allegation that [redacted] on, H3 Level 2 Paramedic, subjected [redacted] to harassment based on gender identity. On June 24, 2019, [redacted] were both working their respective shifts. [redacted] was not working as a LWLP Captain at this time. Jones and Halverson are co-workers but, according to [redacted], had not worked the same shift before June 24, 2019. [redacted] said he saw [redacted] walk by and noticed that [redacted] was not wearing the proper uniform shirt. [redacted] approached [redacted] and told [redacted] on that [redacted] 's shirt was missing patches and was not department-approved. [redacted] s alleged [redacted] i grabbed [redacted] 's own shirt collar and said, "Well, Miss," to [redacted] s. The incident continued and [redacted] said to [redacted] "So are you a lieutenant or captain? Because you're not in uniform. Are you lieutenant or captain?" [redacted] i said he responded, "No, I'm the senior motherfucking medic who's been here 13 years and I'm trying to help you." [redacted] s immediately reported to the on-duty captain, [redacted] rne, who met with [redacted] s, counseled [redacted] on, and told [redacted] on that the Chief would be informed of [redacted] 's actions. See Ex. A.

On July 17, 2019, [redacted] and union representative [redacted] h, Local 798 Director, met with [redacted] ng, EEO Programs Specialist, for an intake interview. See Ex. B.

B. Human Resources Director's Administrative Closure

In a letter dated August 2, 2019, the Human Resources Director informed Jones that SFFD was taking immediate appropriate action to address [redacted] 's conduct. DHR directed SFFD to take prompt action to correct [redacted] 's conduct. SFFD took all appropriate action and this matter was deemed resolved.

In addition, [redacted] allegations were insufficient to raise an inference of harassment. Therefore, [redacted] ' complaint was not further investigated. See Ex. C.

III. ISSUE ON APPEAL TO THE CIVIL SERVICE COMMISSION

On September 4, 2019, [redacted] appealed the Human Resources Director's determination. The issue on appeal is whether the Human Resources Director appropriately administratively closed complaint without further investigation.

IV. INVESTIGATIVE STANDARDS AND ANALYSIS

A. Did Not Sufficiently Allege a Harassment Claim

To warrant further investigation, a harassment complaint must sufficiently allege all of the following: (1) the complainant was subjected to physical, verbal, or visual conduct on account of the complainant's membership in a protected category; (2) the conduct was unwelcome; and

(3) the conduct was sufficiently severe or pervasive as to alter the terms and conditions of the complainant's employment and create an abusive working environment.

_____ alleged that he was subjected to unwelcome verbal conduct when _____ called him, "Miss." Although a single instance of misgendering does not rise to the level of being sufficiently severe or pervasive, the conduct is offensive and inappropriate, and violates the City's EEO Policy, Gender Inclusion Policy, and Policy Regarding the Treatment of Co-Workers and Members of the Public (Respect Policy).

Immediately following the incident, Captain _____ met with _____ and _____ and counseled _____ that the conduct was inappropriate and would be addressed. To prevent any reoccurrence of the violation, on August 2, 2019, DHR EEO directed SFFD to take appropriate corrective actions to address _____'s alleged conduct and remind _____ that retaliation is prohibited. On August 6, 2019, _____ was issued copies of the City's EEO, Gender Inclusion, and Respect Policies and signed an acknowledgment of receipt. On August 16, 2019, _____ completed the City's Harassment Prevention Training. DHR EEO directed SFFD to collaborate with the San Francisco Office of Transgender Initiatives (OTI) to schedule training for all Station _____ paramedics. DHR EEO Director _____ also reached out to Clair Farley, Director, OTI, regarding training for Station _____ personnel. **See Exs. D, E, and F.**

On August 16, 2019, SFFD reported that they had taken all of the recommended and required corrective actions to address _____'s conduct. **See Ex. G.**

B. Issues Not Before the Commission

In this appeal, _____ raises new allegations of harassment. Specifically, _____ alleges that: (1) on June 24, 2019, immediately after using the incorrect pronoun, _____ attempted to grab the left collar on _____ sweater with _____'s right hand; (2) on at least six occasions since, _____ has stared, smirked, or glared at _____; and (3) that a different paramedic used the term "ladies" to reference _____ and another paramedic. **See Ex. H.**

_____ did not raise that _____ attempted to make physical contact in _____ departmental interview with DPO Bushong or intake interview with Investigator _____. **See Exs. A, B, and I.** Attempted physical contact also was not raised in either of two witness statements provided to the department. **See Ex. J and Ex. K.** This allegation of attempted physical contact was not part of _____ original complaint, was not addressed in the administrative closure, and is not before the Commission at this time.

Nevertheless, since _____ raised the issue of attempted physical conduct in his appeal, SFFD immediately issued a Cease and Desist to _____ and conducted a Workplace Violence Investigation. On October 2, 2019, the investigation concluded that the evidence was inconclusive regarding _____ allegations of workplace violence by _____.

In addition, due to _____ reporting of new allegations against _____ for alleged glaring and staring and against a different paramedic for alleged misgendering, these allegations are currently under review by DHR.

V. RECOMMENDATION

For the reasons set forth above, the Human Resources Director's decision should be upheld and the appeal should be denied.

VI. APPENDIX/ATTACHMENTS TO REPORT

Attached to this report are the following exhibits:

Exhibit A: June 27, 2019 Department Report of Employment Discrimination Complaint

Exhibit B: July 17, 2019 [redacted] as Intake Interview Notes by [redacted]

Exhibit C: August 2, 2019 Human Resources Director's Administrative Closure Letter, DHR EEO File No. 3112, to Appellant

Exhibit D: August 6, 2019 [redacted] signed Acknowledgment of Receipt of City Policies

Exhibit E: August 16, 2019 [redacted] Certificate of Completion of City's Harassment Prevention Training

Exhibit F: August 2, 2019 DHR EEO Director's Department Letter, DHR EEO File No. 3112, to SFFD

Exhibit G: August 16, 2019 SFFD Report to DHR EEO Re: Completion of Corrective Actions

Exhibit H: September 4, 2019 [redacted] Letter of Appeal

Exhibit I: August 29, 2019 Department Report of Employment Discrimination Complaint

Exhibit J: July 2, 2019 Witness Statement by [redacted]

Exhibit K: July 3, 2019 Witness Statement by [redacted]

EXHIBIT A

June 27, 2019 Department Report of Employment Discrimination Complaint

000005

APPEAL; EEO File No. 3112

014

DEPARTMENT REPORT OF EMPLOYMENT DISCRIMINATION COMPLAINT

* Report Within Five Working Days of Receipt of Complaint*

Return to: _____ n, Deputy Director, EEO and Leave Programs, One South Van Ness, 4th Floor,
San Francisco, CA 94103

1. Department/Worksite: San Francisco Fire Department, Station _____

2. Complainant: Paramedic _____ Tel. No. (Work): _____

Address: _____ Tel. No. (Home): _____

3. Complaint Filing Date: June 27, 2019 _____

4. Complainant's Current Employment Status (circle one): _____ Classification: _____

PCS TCS LT NCS PV PE TE PROB NOT A CITY EMPLOYEE

5. Basis of Discrimination (specify):

- Race:
- Color:
- Religion:
- Creed:
- Sex:
- National Origin:
- Ethnicity:
- Age:
- Disability/Medical Condition: _____
- Political Affiliation: _____
- Sexual Orientation: _____
- Ancestry:
- Marital or Domestic Partner Status:
- Gender Identity: Transgender
- Parental Status:
- Other Non-Merit Factors: _____
- Retaliation:

6. Issue complained of:

- Denial of Employment
- Denial of Training
- Denial of Promotion
- Denial of Reasonable Accommodation
- Termination
- Lay-off
- Constructive Discharge
- Disciplinary Action
- Harassment
- Work Assignment
- Sexual Harassment
- Compensation
- Other (please specify):
Alleged deliberate, inappropriate use of incorrect pronoun

7. Describe the circumstances of the alleged discrimination and include date(s) of adverse employment action(s): (Attach letter of complaint) On June 27, 2019, at 1300 hours, I met with Paramedic

He brought in L798 Director _____ h as his representative. The following is Paramedic

account. On the evening of June 24, near midnight, _____ was talking with a co-worker, _____

_____ in the yard of Station _____. As they were talking, another co-worker, _____ ks, was

walking out from the stocking area. Simultaneously, _____, the alleged accused walked

by and _____ s noticed that he was not in proper uniform. He said the shirt looked like the

style/material that the Department discontinued a few years ago and did not have patches either.

000006

8. Has the Complainant filed a grievance or lawsuit regarding this complaint? Yes No

If yes, please specify: _____

9. Is the Complainant represented by a Union or an Attorney? Yes No

Name: _____ Organization/Firm: _____

Address: _____ Phone No.: _____

*10. What steps does the department recommend be taken to address this complaint? (For instance, investigation, alternative dispute resolution, dismissal) The matter will also be referred for possible disciplinary investigation.

*10a. Name and position of staff who will implement recommended steps: Victor Wyrsh, Deputy Chief of Operations; _____ eg, EMS Chief (with approval from Fire Chief, _____ a) _____

11. Completed by: *Jesusa Bushong*
Address: _____

Date: *6-27-19*
Tel. No. _____

*12. Please notify DHR/EEO in written form immediately upon resolution of this complaint.

***Subject to the Human Resources Director's approval**

HUMAN RESOURCES DIRECTOR REVIEW

Complaint is assigned EEO File Number: _____

D Approve department's recommendations for addressing complaint. Proceed and notify HR Director of actions, findings, and recommendations for resolution.

D Complaint is assigned by HR Director to: _____
and/or the following actions are to be taken:

for _____ n, Human Resources Director

Date _____

Continued from Department Report of Complaint Cover Sheet

As a senior Paramedic, who sometimes goes out as like-work, like-pay EMS Captain, [redacted] felt it was his responsibility to point out the uniform issue. In what he described as a neutral tone of voice, [redacted] about his uniform shirt and his patches. [redacted] allegedly responded with what do you mean? [redacted] repeated his inquiry about the non-Department issue uniform shirt and the absence of patches. [redacted] supposedly continued walking away from [redacted] toward his ambulance, mumbling and ignoring [redacted] [redacted] addressed him again and asked if he was suppression or [redacted] because he was not in proper uniform.

At that point, [redacted] on allegedly grabbed his own shirt collar and faced [redacted] saying, Well, Miss...." [redacted] heard the comment and confronted [redacted] asking, "What did you say?" Halverson then supposedly repeated "Miss" and added "Misses," got up to [redacted] face in what he described as his personal space and asked [redacted], "Are you lieutenant or captain?" [redacted] took a step back away from [redacted] and responded, "A senior mother-fucking medic." [redacted] replied that [redacted] seemed to always have a problem with him.

[redacted] tried to de-escalate the situation with [redacted] n by acknowledging that there is an issue and that they need to solve it. [redacted] then opened the door to the office of the EMS Captain on duty, Megan Byrne, and invited [redacted] son to talk about their issues. [redacted] did not join and, instead, went to the upstairs area of Station [redacted]

Captain Byrne asked what the problem was. [redacted] (who was now with [redacted] Director [redacted] who also works at Station [redacted] explained the inappropriate uniform shirt and the absence of patches. Byrne replied that she would need to check with EMS Section Chief Niels Tangherlini about the uniform and patches because she doesn't know what the standard is anymore, like what new people are getting for uniforms. [redacted] pointed out that [redacted] m was not a new employee. Byrne replied that she would have to check with Chief Tangherlini nonetheless.

With regard to the alleged inappropriate comments, [redacted] allegedly expressed shocked and acknowledged that it was an EEO matter. [redacted] called [redacted] to her office. [redacted] had a uniform jacket over the shirt in question by then, but the jacket had EMT patches when he was a Paramedic. When [redacted] brought up the issue of the inappropriate uniform, [redacted] allegedly replied: "Is this discipline? Do I need a union rep?" [redacted] then looked over at Finch and said, "I want you." Finch replied that he was there to make sure both employees' [redacted] and [redacted] rights are protected.

Byrne proceeded to the inappropriate comment. [redacted] n denied saying "Miss." He said he might have said "she," but couldn't really remember. He then said that if he did say it, he was sorry. [redacted] then went on to talk about [redacted] having issues with him, how [redacted] would have rude facial expressions and pick on him.

[redacted] felt that this was a half-hearted apology and an outright lie about not saying the words since he had witnesses. He also took offense to [redacted] statement about him having rude facial expressions. [redacted] then told [redacted] that he didn't like liars. [redacted] then reacted, "Are you calling me a liar?"

Byrne brought back the meeting to the issue of the patches and asked [redacted] if he had them. Halverson claimed it was a dry-cleaning issue. He then admitted that he was wearing his old South San Francisco uniform. As for the incorrect rank on jacket patches, he said hadn't had a chance to do it.

Byrne counseled [redacted] about the uniform but reiterated that she will confirm with Tangherlini on the appropriate standard issue. She also coached him about not using incorrect pronouns in the manner that he did and to be accepting of peer counseling and be respectful of his responses to his peers.

000009

EXHIBIT B

July 17, 2019 ,

Intake Interview Notes by

000010

----- APPEAL; EEO File No. 3112

019



CONFIDENTIAL

**DHR EEO INVESTIGATION OF EMPLOYMENT DISCRIMINATION COMPLAINT
 INTAKE INTERVIEW**

Complainant: [REDACTED] es, [REDACTED] al Paramedic/ Firefighter	EEO File No./Dept.: 3112 / SFFD
EEO Investigator: [REDACTED] g	Date & Time: Wednesday, July 17, 2019 at 1:00 pm
Others Present: Union Rep [REDACTED]	
Location: DHR, 1 South Van Ness, 4 th Fl.	Pages: 9

I. BACKGROUND INFORMATION

A. Employment History

On June 19, 2006, [REDACTED] s (transgender man) began working with the San Francisco Fire Department (SFFD) as an H3 Level 2 Paramedic (H003 EMT Paramedic/EMT/Firefighter) at Station [REDACTED] formerly known as Station [REDACTED]. Because of his seniority, [REDACTED] s also a Like Work Like Pay Rescue Captain (LWLP RC), and sometimes acts as a supervisor. He works the 4:30 pm to 4:30 am shift with a three-on, three-off rotating schedule. On some off days, he works overtime, usually a minimum of one to two shifts per week. His assigned EMT partner is [REDACTED] llo, H3 Level 2 Paramedic. As a paramedic, he responds to emergency calls and provides patient care in the field. As an LWLP RC, he is responsible for staffing, that ambulances and crews are timely, narcotics, injury reports, and the safety of the staff.

[REDACTED] confirmed that he uses he/him/his gender pronouns. He began his transition at work approximately eight years ago, around 2011, by first discussing the process with HR. Even prior to 2011, [REDACTED] close friends referred to him as he/him. [REDACTED] said he began coming out at work with regards to his gender transition at the end of 2014 or beginning of 2015 and building a support system of co-workers. In August 2016, he met with supervisors [REDACTED] y, H033 Captain, Emergency Medical Services, and Andy Zanooff, H033 Captain, Emergency Medical Services, to begin the official transition process. He worked with human resources representative [REDACTED], SFFD Departmental Personnel Officer, and the department's stress management representative John Christy, H003 EMT Paramedic/EMT/Firefighter.

transition was not communicated to the entire department, so he is unsure when would be considered the "official" date of his transition. People had been asking him questions for a while as they noticed changes, such as his voice sounding different and his physical presentation changing somewhat. communicated his preferred gender pronoun individually, through conversations with individuals asking about noticed changes, or correct individuals when they misgendered him and explaining that he was transitioning. In addition to his paramedic co-workers, works with people at the hospital, police department, on fire trucks or from other stations. People would ask him personally and privately if he was transitioning and he would answer yes, which he preferred to people going behind his back. However, the process that solidified his transition at the station when he began using the male locker room towards the end of 2016.

described his work environment as stressful and challenging because morale is low due to staffing issues and it is overwhelming because of increased call volume. said many paramedics feel overworked and have little time to recuperate between calls, which takes a toll on their "emotional and mental capacity." Even so, is very happy to work with SFFD. He takes pride in his job and showing up to work. However, the transition from Station Ambulances assigned to individual fire stations to Dynamically Deployed Ambulances that deploy from one fleet at Station has been exhausting. and his union representative EMT Paramedic/EMT/Firefighter and Local Director, explained that when the department changed to Dynamic, the new paramedics did not have a pathway for advancement and had to fight to create that path. Paramedics now can do cross-training and become suppression, or learn to become a firefighter and suppress fires. In the meantime, however, the low staffing and stressful work create a challenging work environment.

B. Respondent, _____

In 2016, s met respondent rson, H003 EMT Paramedic/EMT/Firefighter, when just started to work in the field after graduating from the Academy. s could not remember the date, but described their first and only interaction at that time as "awkward." approached s outside the main office and said; "Hey, you're answered, "Yes?" and n said, "Oh you don't know who I am, do you?" had never met I before and asked who n was. responded, "Oh, if you don't know, never mind."

The interaction took y surprise and bothered him so he asked around and a co-worker said came from Alameda County American Medical Rescue (AMR), where used to work. contacted friends at AMR who told him, "No, you don't know that guy, but be very careful." did not ask for details but felt bothered because he had never experienced someone walking up to him "like that" at work before.

and [redacted] are co-workers at the same station but have not worked the same shift together before. [redacted] said they might walk past each other at the same scene or hospital but they do not have conversation or say much more than, "Hello" or "How was your shift?" They are not friendly but, when acting as supervisor, [redacted] maintains a neutral and respectful position towards everyone, including [redacted], because he does not want anyone to think there is favoritism.

[redacted] insisted that [redacted] is fully aware of Jones' correct gender pronoun because [redacted] is well known around the station and new people, especially, only know his correct gender and see [redacted] as a male.

II. HARASSMENT

A. June 24, 2019: 1 Intentionally Misgendered

On June 24, 2019, near midnight, [redacted] was working his regular shift and was assigned to station duties, such as making sure uniforms are plugged in, cleaning up the yard, or dumping trash.

[redacted] left the captain's office, where he had been discussing Rules and Regulations to review for the upcoming captain's test with [redacted] [redacted], the Rescue Captain on duty, and saw a co-worker, [redacted], H003 EMT Paramedic/EMT/Firefighter, pulling her motorcycle out of the yard. [redacted] and [redacted] are friends and they had a conversation, as she got ready to go home.

While [redacted] and [redacted] were talking, he saw [redacted] walk by going towards his ambulance wearing a no-max Class B shirt with no patches, which has not been authorized for the field in years. The day before, June 23, 2019, [redacted] had seen [redacted] in the field at the hospital and noticed that [redacted] shirt was not the proper uniform shirt and did not have patches. As a senior paramedic with experience, [redacted] felt responsible to provide [redacted] with some peer-to-peer advice.

[redacted], in a neutral tone and with a smile, asked [redacted] where his patches were. [redacted] said, "What?" and had a "manner and vibe" with his response. [redacted] told [redacted] that his uniform shirt was missing patches and was not department approved, and that if a chief or captain saw his shirt was not uniform, this would violate rules and regulations. [redacted] responded, "Well why?" and [redacted] asked, "Are you suppression or are you 4 suppression, or fire-trained paramedics, can wear a Class B shirt with no patches and a nametag or badge, which Station [redacted] paramedics are not allowed to wear.

By this time, [redacted] had reached the driver's side of his ambulance. He grabbed his collar, turned to face [redacted] and said, in a tone, "Well, MISS." [redacted] was shocked and asked who had just mounted her motorcycle next to him, "Did he really just call me Miss?" [redacted] looked at [redacted] and re-enacted what she had seen, grabbing her collar and saying, [redacted] At that moment, [redacted], EMT Paramedic/EMT/Firefighter, happened to be walking by and also witnessed [redacted] comment and action. (See Witness Statements by [redacted])

1 then said, "So are you a lieutenant or captain? Because you're not in uniform." 1 was wearing his department issue uniform with a quarter-zip sweater issued by the department with the logo and his name embroidered on it. 1 explained to me that because it was after 9:00 pm and he was assigned to station duties, not the field, it was okay for him to wear the quarter-zip. After asking this question, 1 walks towards 1 and repeated, in an aggressive tone, "Are you lieutenant or captain?"

1 s responded, "No, I'm the senior motherfucking medic who's been here 13 years and I'm trying to help you." 1 s said that until then, he had been very neutral, but he responded with profanity because 1 invaded his personal space and was standing over him in an aggressive manner. This notified 1 s that this situation was going in a different direction. 1 said, "Look, this is going in a different direction when my intention was to help and guide you. Not to see you get in trouble. And this is going far left." 1 sponded, "Whenever you see me, you have something against me." 1 stated he does not know 1 n well enough to have something against him. 1 s said, "You evidently feel some certain way towards me but I'm just trying to do peer-to-peer guidance. I know how some chiefs are and there are some who would see your uniform and you would get in trouble."

1 suggested to 1 that they walk into the office and have a discussion because 1 did not want 1 walking away believing that 1 s had an issue or was trying to get him in trouble. 1 s then opened the door and asked Captain 1 if they could meet because a member was expressing some concerns. 1 asked what it was about and 1 answered that he had tried to counsel on the uniform, the response had gone left, and he wanted to meet and squash the problem. 1 s turned to 1 and asked him to come back. 1 n said, "Aw no, fuck that," and proceeded to walk upstairs.

1 e asked 1, "What's going on?" and 1 responded that he could not believe what just happened. 1 s told 1 e exactly what happened and how his gender pronoun was misused in a derogatory manner.

At this time, 1 ch, the union representative, had walked into the office and was coming off duty. 1 s turned to him and said, "Here's an example, a senior paramedic out of uniform." 1 ch said, "Yes, but I have an excuse and I got a shirt out of lost and found." 1 said this is what paramedics usually do to make sure they have the correct uniform. 1 h went to put away the narcotics from his ambulance, and then returned to the office where 1 told him what had happened with 1, the misuse of gender pronoun, and the derogatory manner in which it had been used. Both 1 and 1 said, "That's an EEO violation." 1 was still processing what had happened. When 1 e saw his expression, she said, "We'll do a meeting right now."

1 e called 1 on his cell phone to come to the office and called Dispatch to take his ambulance unit out of service. 1 n came into the office wearing his uniform jacket, which is the department provided outerwear. 1 started the meeting and explained that they were not only going to discuss the uniform issue, but the improper use of 1 pronoun in a derogatory manner. 1 explained the Firefighter Bill of Rights and stated that his position was to listen and be neutral and would only intervene if someone's rights, whether 1 s or 1 were violated. 1 asked if the meeting was going to be disciplinary and 1, 1 sponded that they did not know anything at this point and this was just a meeting. 1

said, "I want union representation" and pointed to [redacted]. [redacted] responded that he was not representing any party, and repeated that he was there to be neutral and ensure no rights were violated.

[redacted] explained to [redacted] that the position of a peer with more experience and who knows the rule and systems is to give advice to newer employees, and newer employees should be receptive and respectful when receiving that advice. She emphasized that everyone should be able to work together in a professional environment, and proceeded to tell [redacted] that [redacted] had tried to give him peer guidance and that his response of misusing [redacted] gender pronoun in a derogatory manner was incorrect. [redacted] responded, "I don't recall saying [redacted] or [redacted] but maybe I did and if I did, I apologize."

[redacted] began to say something and [redacted] cut him off and said, "I'm not finished. Everyone's out of uniform. [redacted]'s out of uniform and [redacted] out of uniform." [redacted] responded, "We are not in the field or assigned to the field. We are in the station, it's after 9:00 pm, and we are wearing our department sweaters." [redacted] said, "That's not the point here; the point is the misuse of the gender pronoun."

[redacted] continued to try and change the subject by saying that [redacted] phone gets delayed when he is at the hospital and that [redacted] is rude when he acting as captain. [redacted] then said, "When she, or she-he," which took [redacted]s aback because he could not believe how improper [redacted]n was acting.

[redacted] said, "When I am a captain behind that desk, am I in full uniform?" [redacted] mumbled a yes response. [redacted] then said, "I don't like liars." [redacted]n said, "Are you calling me a liar?" [redacted] answered, "Yes, you are, because you forget there were two witnesses out there who heard your misuse of my pronoun and saw your manner, tone, and demeanor." [redacted] said nothing in response.

[redacted] then directly asked [redacted]n if he had patches on his uniform at that moment. [redacted] opened his jacket and showed his Class B shirt with no patches. [redacted] explained that he had dry cleaning issues so he was wearing his South City uniform. [redacted] asked [redacted] what he was wearing that was department-issued and [redacted] mumbled an answer.

[redacted] spoke up and said, "You worked yesterday, right?" and [redacted]n answered yes. [redacted] said, "So you had the same exact uniform on yesterday before 9:00pm, and I saw you with the same uniform on?" [redacted] did not respond. [redacted] repeated her speech about peer-to-peer counseling and said that this situation was new for her so she would have to consult with the chief in the morning.

[redacted] addressed [redacted] and said, "From now on, when you see me, don't say nothing to me. Just walk past me. If we are on call together, I will always be professional. But you don't know me and I don't know you. When I sit behind the table as a captain, I will keep it professional and neutral. But you don't know me so don't speak about me. If I hear my name come up and the misuse of my pronoun, we are going to skip the meetings and go straight to HR because that's just wrong." [redacted] said his leg was shaking the entire time of the meeting because he was so upset. He did not understand how this could be happening at his workplace.

The meeting ended and [redacted] on left. [redacted], [redacted], and [redacted] debriefed after the meeting and talked about how the process might go after that. By this point, it was past midnight and into the next day, June 25, 2019.

After his shift ended, [redacted] went home and could not sleep. He kept thinking about how [redacted] is treating other LGBTQ community members at work, at the hospitals, or in the ambulance as patients, if he treats [redacted], a co-worker, like this.

[redacted] does not know why [redacted] misgendered him. He believe [redacted] knew it was wrong but did it anyway because of his aggressive gesture and body language. [redacted] does not believe that he has done anything to [redacted], even though [redacted] said [redacted] was "always against him," because they do not speak or engage at all due to their strange first interaction.

[redacted] explained that this was not the first incident he had experienced related to his gender identity but it was the worst one. He said that two incidents had occurred since his transition and stated that this third incident makes him feel unsafe at work because there is "too much stuff happening outside in the streets in society" to other transgender individuals. He feels unsafe because the incidents have increased in severity. [redacted] said he has taken discriminatory comments and gestures from patients but would never say anything to or harm a patient because he is there to take care of them. However, for these comments to happen at work, his "second home" concerns him. [redacted] is concerned that if there is another incident, it may be even more severe, because in today's society there are people in the trans community who are murdered by friends, relatives, or co-workers, not by strangers.

After stepping out to confer with [redacted] [redacted] provided the following information about two prior incidents.

B. End of 2016: [redacted]

Around the end of 2016, [redacted] was in the men's locker room getting ready for his shift as LWLP RC when [redacted] person, H003 EMT/ Paramedic/ Firefighter, came into the locker room. [redacted] finished changing and heard [redacted] n's locker open. He then heard [redacted] muttering and talking to himself, saying in a low tone, "Oh, fuck this shit." [redacted] heard [redacted] s locker close and looked up. [redacted] looked at [redacted] and then proceeded to leave.

Later that evening during the shift, [redacted] was seated in the captain's office per his assignment. [redacted] walked in to the office and both were seated quietly. [redacted] on turned to [redacted] and said, "[redacted] ie, I realized what I said might have been wrong and my apologies." This confirmed to [redacted] that [redacted] s cursing and muttering which [redacted] could not hear were indeed about [redacted]. [redacted] said, "I accept your apology and appreciate that. Just know that this is a new process where I'm transitioning and everyone who's been knowing me is transitioning too. It's new." [redacted] s said he would "give [redacted] a pass" but "next time, it can't be like this." [redacted] s said he and [redacted] left it at that and it was cool and fine.

[redacted] ran into [redacted] ff, then-H053 Emergency Medical Services Chief, who asked how everything was going. [redacted] reported the incident and said they had a good conversation

and C [redacted] her apologized. [redacted] asked [redacted] if there was anything else he needed. Jones responded, "I think we need to be more alert to the situation and aware of what's happening." [redacted] said he would talk to [redacted].

[redacted] said that he and [redacted] had a good working relationship in the past even though they worked different shifts. After this incident, they changed from seeing each other and engaging and talking every time to not speaking to each other up until recently. Now, the two will say hey to each other and have worked trade shifts for each other.

[redacted] said that overall this incident did not affect his work environment because as the time, he was so happy to finally be out and becoming who he really was, a "long overdue process." He was on "Cloud 9" and everyone he knew was happy that Jones was happy and was happy for him. He felt everything was fine after the incident and was ready to move on.

C. November 2017: (

[redacted] described the second incident as a "moderate verbal altercation" that he had with another individuals. About a month or a month and a half after the Las Vegas music festival mass shooting (October 1, 2017), [redacted] was scheduled to work overtime with H003 EMT/ Paramedic/ Firefighter, whom he had thought he had a good rapport with.

When [redacted] arrived at the station, he saw his friend [redacted] les, H003 EMT/Paramedic/ Firefighter. Both [redacted] es and [redacted] es had been in Las Vegas right before the shooting had happened so they discussed their shock at what had happened. [redacted] s then walked to the captain's office to check in, looked at the schedule, and noticed that his name had been switched around to no longer work with [redacted] . [redacted] was now assigned to work with [redacted] s instead.

[redacted] explained that the usual practice for changing partners on a schedule is that all members have to agree. If there are two crews of partners who want to switch partners, all four members must be aware and agree to switch teams before the captain is notified and changes the schedule in order to avoid conflict. [redacted] stepped back out of the office and [redacted] said he had noticed F [redacted] walking into the office earlier for a "closed door" meeting with [redacted] on, H033 Captain, Emergency Medical Services, and five minutes later the schedule had changed. Closed door meetings are usually only for important meetings such as personnel issues.

[redacted] s returned to the captain's office and asked Captain Mason if he had a meeting with [redacted] and changed the schedule. He said, "I'm the captain and I can make that change." [redacted] reminded Captain Mason of the usual practice, and then left the office thinking that something was strange. [redacted] s returned to [redacted] ambulance where they continued their conversation about how they just missed the shooting and how sad the situation was. As they were having this talk, [redacted] came into the ambulance on the passenger side.

[redacted] s spoke to [redacted] 1 when he entered and told him, "Hey, it's okay if you didn't want to work with me. You should just come talk to me. I won't make assumptions." [redacted] "flashed," or became aggressive and started yelling, saying "I haven't worked with [redacted] since AMR days! I just wanted to work with him!" [redacted] said, "I don't know what the issue is, but if you don't want to work with me, just come and talk to me." [redacted] continued to make excuses and [redacted]

Page 8 of 9

responded, "You're being a coward. You could just talk to me. You don't have to have a closed door meeting about it." [redacted] then wished [redacted] a good shift and left the ambulance. Since that incident, he no longer speaks to either Captain [redacted] or [redacted].

[redacted] believes [redacted] did not want to work with him because of his gender identity as a trans man. [redacted] and [redacted] went from having a good rapport and a friendly working relationship to a sudden change after [redacted] transition.

[redacted] was upset after this incident and talked it out with members of his workplace support system. He decided to forgive the incident and move on, but it stayed on in the back of his mind.

III. REPORTING OF COMPLAINT

On June 25, 2019, when [redacted] went in to work, he spoke to Niels Tangherlini, H033 Captain, Emergency Medical Services, and explained what had happened. Tangherlini said, "That's EEO; let's go talk to Sandy." [redacted] and Tangherlini went to report to Sandra Tong, H053 Emergency Medical Services Chief, who called Jesusa Bushong, SFFD Departmental Personnel Officer.

IV. IMPACT

[redacted] said that he has experienced anxiety, is unable to sleep, and is currently unable to work due to a hamstring injury he attributed to the extreme stress. He said his blood pressure is up and his doctor has placed him on medication. He has also started smoking again because he is so agitated.

[redacted] has seen health care providers for his hamstring injury and for a stress assessment through work, and has an upcoming appointment with a psychiatrist. He has been off work because of the injury and is waiting to be paid because the worker's compensation claim has been delayed.

V. REMEDIES

[redacted] wants there to be disciplinary action for [redacted] on, and training and awareness for the rest of the department to help not just himself, but others in the department or who want to join and are considering transitioning. [redacted] said there was a recent gender inclusion training due to the new Gender Inclusion Policy and two or three years ago, there was a harassment training. [redacted] said he knows [redacted] was here for those trainings. [redacted] does not want to work with people who ignore inclusion and anti-harassment trainings, especially after being in the department for 13 years.

VI. MISCELLANEOUS

[redacted] said [redacted] and HR have asked him to write his own version of what has happened but it has been difficult to put it into writing. He has written a bullet point list but cannot pull it up on his cloud to send to me. I asked him to check on the document at home and if he can access it, to send it to me.

has not filed a grievance or lawsuit regarding these issues. He also has not filed an EEOC or DFEH complaint. The only people he has talked to about this situation are the people he named earlier at the department level, the union, the department's HR, and SF Res-Q, which is the departmental LGBTQI organization.

VII. CONCLUSION

has had nothing more to add to the investigation besides what had been asked. He provided the following as potential witnesses: [redacted] ch, M [redacted] re, [redacted] Γ [redacted] .s, and [redacted] . He mentioned [redacted]'s partner, whose name is [redacted] t, was at the station but in the ambulance. However, [redacted] does not believe [redacted] t knew that anything was happening or heard anything.

Update from July 29, 2019

On July 29, 2019, Paramedic [redacted] called to report that [redacted] had glared at him, which he believed was due to the filing of this complaint. (See Telephone Call Memo in file).

EXHIBIT C

August 2, 2019 Human Resource's Director's Administrative Closure Letter to Appellant (DHR
EEO File No. 3112)

000020

3 APPEAL; EEO File No. 3112

029

City and County of San Francisco
Micki Callahan
Human Resources Director



Department of Human Resources
Connecting People with Purpose
www.sfdhr.org

CONFIDENTIAL

August 2, 2019

Via U.S. Mail

RE: Complaint of Discrimination, EEO File No. 3112

Dear Mr.

The San Francisco Charter, Section 10.103 and Civil Service Rule 103 provide that the Human Resources Director shall review and resolve all complaints of employment discrimination. The Charter defines discrimination as a violation of civil rights on account of race, religion, disability, sex, age, or other protected category. The City and County of San Francisco (City) considers all allegations of discrimination a serious matter. The purpose of this letter is to inform you of my decision regarding your complaint, EEO File No. 3112.

On June 27, 2019, the Department of Human Resources, Equal Employment Opportunity Division (DHR EEO) received a "Department Report of Employment Discrimination Complaint" from [redacted], Department Personnel Officer, San Francisco Fire Department (SFFD). Ms. Bushong reported your allegations that your co-worker [redacted], H003 EMT/ Paramedic/ Firefighter, harassed you based on your gender identity (transgender man).

Thank you for bringing your concerns to my attention. I recognize that the conduct alleged was upsetting to you and that it may have been difficult for you to make your complaint. The conduct you reported, if true, violated the City's Equal Employment Opportunity (EEO) Policy, the City's Gender Inclusion Policy, and the City's Policy Regarding the Treatment of Co-Workers and Members of the Public (Respect Policy). Therefore, SFFD will take appropriate action to address Mr. [redacted] alleged conduct, prevent any reoccurrence, and remind him retaliation is prohibited. This matter is deemed resolved, and DHR will administratively close your complaint without further investigation. Nevertheless, should you be subjected to any such inappropriate conduct in the future, please contact Ms. Bushong at (415) 558-3615.

I. BACKGROUND AND ALLEGATIONS

On June 19, 2006, you began working as an H003 EMT/ Paramedic/ Firefighter. On April 25, 2016, Mr. [redacted] also began working for SFFD. You and he are co-workers. As a senior paramedic who sometimes goes out as Like-Work, Like-Pay (LWLP) EMS Captain, however, you are sometimes Mr. [redacted]'s supervisor.

One South Van Ness Avenue, 4th Floor • San Francisco, CA 94103-5413 • (415) 557-4800

000021

PEAL; EEO File No. 3112

030

You alleged Mr. [redacted] son harassed you based on your gender identity when he engaged in the following conduct:

On June 24, 2019, near midnight, you were having a conversation with [redacted] ns, H003 EMT/ Paramedic/ Firefighter, in the Station [redacted] Yard. [redacted] ks, H003 EMT/ Paramedic/ Firefighter, was walking by. In the yard, Mr. [redacted] n walked towards his ambulance and you noticed that he was not in proper uniform but wearing a Class B shirt without any patches. On June 23, 2019, in the field, you had seen Mr. [redacted] n also wearing an incorrect shirt. You told Mr. [redacted] a that he was wearing an unapproved uniform and advised him that if a chief or captain saw him, it would be a violation of Rules and Regulations. He asked you, "Why?" and you responded, "Are you suppression or are you [redacted] because SFFD suppression members can wear a Class B shirt without patches with their nametag and hadge, while Station [redacted] Paramedics cannot. Mr. [redacted] a turned toward you, grabbed his collar, and said, "Well, Miss." You are an out transgender man who has used male pronouns since the end of 2016.

To de-escalate the situation, you invited Mr. [redacted] n to come discuss the situation with you and on-duty EMS Captain [redacted] ie, H003 EMT/ Paramedic/ Firefighter. [redacted], H003 EMT/ Paramedic/ Firefighter and San Francisco Fire Fighters Local 798 (L798) Director, was also present. Mr. [redacted] n had walked away, so you informed Captain E. [redacted] and Mr. F. [redacted] of the situation. Captain Byrne called Mr. [redacted] n to her office and asked him if he misused your pronoun. Mr. [redacted] son responded, "I don't recall saying Miss or Missus but maybe I did. If I did, I apologize." The meeting ended with Captain [redacted] counseling Mr. [redacted] n on his uniform, advising him to accept counseling from his peers, and informing him that she would be speaking to the Chief about his misuse of your gender pronouns.

You also alleged the following prior harassment based on your gender identity:

At the end of 2016, shortly after you transitioned and began using the men's locker room, you were changing in preparation for your shift as LWLP EMS Captain. [redacted], H003 EMT/ Paramedic/ Firefighter, came into the locker room and began muttering and cursing in a low tone before looking at you and then leaving the locker room. Later on during that shift, he approached you in the Captain's office and said, "[redacted] ie, I realized what I said might have been wrong and my apologies." This confirmed to you that his cursing had been about your presence in the locker room, but you accepted his apology. You reported the incident to [redacted] H033 Captain, Emergency Medical Services, who said he would speak to Mr. [redacted] Ch.

Around November 2017, you were scheduled to work an overtime shift with [redacted] H003 EMT/ Paramedic/ Firefighter, whom you had good rapport with but whom you had not seen since your transition. Shortly before your shift began, you noticed that the schedule had been changed and you were assigned to a different partner. When you saw Mr. [redacted], you told him, "It's okay if you didn't want to work with me but you should just come talk to me. I won't make assumptions." Mr. [redacted] became upset and began yelling aggressively. You told him he was being a coward and the conversation ended. You believe Mr. [redacted] a requested a change because of discomfort with your gender identity. You also reported this incident to Captain [redacted], who told you he would speak to Mr. [redacted].

Because the incidents have increased in severity over time, you are experiencing anxiety, are unable to sleep, and are unable to work due to a hamstring injury you attribute to your extreme stress.

On July 29, 2019, you contacted [redacted] to report that earlier that morning, upon your return to work, Mr. [redacted] saw you in the communal kitchen, gave you an "evil eye" or mean look, and then walked towards where you were drinking coffee. You left the kitchen and reported the incident to the captain on duty.

II. INVESTIGATIVE STANDARDS AND ANALYSIS

To warrant further investigation, a harassment complaint must sufficiently allege all of the following: (1) you were subjected to physical, verbal, or visual conduct on account of your membership in a protected category; (2) the conduct was unwelcome; and (3) the conduct was sufficiently severe or pervasive as to alter the terms and conditions of your employment and create an abusive working environment.

You alleged that on June 24, 2019, Mr. [redacted] harassed you based on your gender identity when he intentionally used the wrong gender pronoun to address you, and on July 29, 2019, he glared at and walked towards you at work. Mr. [redacted] comment and conduct, if true, are a violation of the City's EEO Policy, Gender Inclusion Policy, and Respect Policy. I acknowledge the offensiveness of misgendering and understanding how upsetting it was for you to hear it. Your department will take appropriate action to address this matter with him and thus, your complaint will be closed without further investigation.

While you also alleged instances of inappropriate conduct based on your gender identity by Mr. [redacted] and Mr. [redacted], you acknowledged that you had reported those incidents to [redacted] and were satisfied by his appropriate action addressing the conduct directly with the individuals. Furthermore, approximately one year passed between those incidents, and over 18 months passed before Mr. [redacted]'s alleged conduct, which does not suggest the inappropriate conduct was ongoing. Nevertheless, this conduct, if true, would violate the City's EEO Policy, Gender Inclusion Policy, and Respect Policy. Your department will take action to address these matters and thus, these matters are deemed resolved.

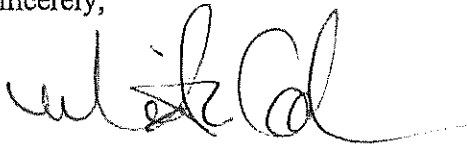
III. DETERMINATION OF THE HUMAN RESOURCES DIRECTOR

Based on the information provided, it is my determination that your complaint, EEO File No. 3112, will not be investigated further and is administratively closed. The determination of the Human Resources Director is final unless it is appealed to the Civil Service Commission and is reversed or modified. A request for appeal must be received by the Civil Service Commission at 25 Van Ness Avenue, Room 720, San Francisco, CA, 94102, within 30 calendar days from the postmarked mailing date of this letter.

For your information, you may file a complaint of employment discrimination with the California Department of Fair Employment and Housing, or the U.S. Equal Employment Opportunity Commission. Contact those agencies directly for filing requirements and deadlines.

Please feel free to contact Linda C. Simon, Director, EEO and Leave Programs, Department of Human Resources, at (415) _____ should you have any questions.

Sincerely,



Micki Callahan
Human Resources Director

- c: Jeanine Nicholson, Fire Chief, SFFD
Jesusa Bushong, Department Personnel Officer, SFFD
Linda C. Simon, Director, EEO and Leave Programs, DHR

EXHIBIT D

August 6, 2019
on Signed Acknowledgment of Receipt of City Policies

000025

APPEAL; EEO File No. 3112
034

City and County of San Francisco
Micki Callahan
Human Resources Director



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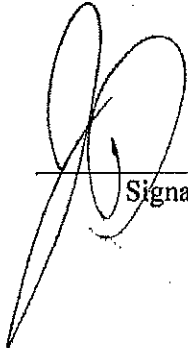
ACKNOWLEDGEMENT OF RECEIPT OF CCSF POLICIES

_____ acknowledge that I have read and received a copy of:

- City and County of San Francisco's Equal Employment Opportunity (EEO) Policy;
- City and County of San Francisco's Gender Inclusion Policy; and
- Policy Regarding the Treatment of Co-Workers and Members of the Public (Employee Handbook, p.46)

I further acknowledge that a copy of this acknowledgement will be placed in my Official Personnel File.

This signed acknowledgement is only to serve as a reminder of the policy. This form is not to be construed as any type of discipline or confirmation that any of these policies were violated.



Signature

08/06/2019
Date

One South Van Ness Avenue, 4th Floor • San Francisco, CA 94103-5413 • (415) 557-4800

000026

APPEAL; EEO File No. 3112

035

EXHIBIT E

August 16, 2019

Person Certificate of Completion of City's Harassment Prevention
Training

000027



The City and County of San Francisco (City)

Certificate of Completion

presented to

for successfully completing
2017 Preventing Workplace
Harassment - San Francisco
Supervisors

on

August 16, 2019

CONTENTS NOTED

Cy. Gordon 8/19/19
Gordon

PARAMEDIC CAPTAIN STATION 49
SAN FRANCISCO FIRE DEPARTMENT

CONTENTS NOTED

H43 *W. T. M.* 8/19/19

000028

EVERFI

EVERFI

EXHIBIT F

August 2, 2019 DHR EEO Director's Department Letter to SFFD

000029

APPEAL; EEO File No. 3112
038

City and County of San Francisco
Micki Callahan
Human Resources Director



Department of Human Resources
Connecting People with Purpose
www.sfdhr.org

CONFIDENTIAL

August 2, 2019

Chief
San Francisco Fire Department
[Redacted], CA 94107

Via Email

RE: Complaint of Discrimination Filed by [Redacted], EEO File No. 3112

Dear [Redacted]:

On June 27, 2019, the Department of Human Resources, Equal Employment Opportunity Division (DHR EEO), received a complaint from [Redacted], H003 EMT/ Paramedic/ Firefighter, alleging that he was subjected to harassment based on his gender identity (transgender man). His complaint was assigned to [Redacted], EEO Programs Specialist, DHR. On July 17, 2019, Mr. [Redacted] conducted an intake interview with [Redacted], during which he alleged his co-worker J. [Redacted], H003 EMT/ Paramedic/ Firefighter, intentionally misgendered [Redacted].

DHR EEO reviewed Mr. [Redacted] allegations and determined that they were insufficient to raise an inference of harassment. As such, by letter dated August 2, 2019, Mr. [Redacted] was notified that his complaint would be administratively closed without further investigation, a copy of which is enclosed. Nevertheless, the alleged conduct, if true, violates the City's EEO Policy, Gender Inclusion Policy, and Policy on Treatment of Co-workers and Members of the Public (Respect Policy). Accordingly, I wanted to bring it to your attention for review and appropriate action.

Mr. [Redacted] alleged that on June 24, 2019, Mr. [Redacted] intentionally used the wrong pronoun to address him by saying, "Well, Miss," in a disrespectful tone. Two witness statements were submitted to DHR EEO corroborating Mr. [Redacted]'s incorrect use of gender pronoun. On July 12, 2019, Mr. [Redacted] was issued a cease and desist and instructed not to communicate with Mr. [Redacted]. Mr. [Redacted] further alleged on July 29, 2019, Mr. [Redacted] gave him a mean look in the communal kitchen at work. While no determination was made as to whether the allegations are true, I am requiring the Department to take the following actions:

A. Comment by: _____

1. Inform Mr. [Redacted] that a complaint was made alleging that on June 24, 2019, he used an incorrect pronoun ("Miss") to refer to Mr. [Redacted] and that on July 29, 2019, he glared at Mr. [Redacted] in a communal area. Although DHR EEO is closing the complaint and no determination was made as to whether the allegations are true, his conduct, if true, would

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000030

ES APPEAL; EEO File No. 3112

039

violate the City's EEO Policy, Gender Inclusion Policy, and Respect Policy. Direct Mr. _____ to refrain from using the incorrect pronoun to address or refer to co-workers or members of the public, and to refrain from glaring at Mr. _____ or treating him any differently due to his filing of this complaint.

2. Issue Mr. _____ n copies of the City's EEO Policy, Gender Inclusion Policy, and Respect Policy, with a signed acknowledgment of receipt of the policy to be placed in his personnel file. Inform Mr. _____ that the policies are being issued only as a reminder of the City's policy and that his signed acknowledgment of receipt shall not be construed as any type of discipline or violation of policy.
3. Remind Mr. _____ that retaliation against any employee whom he believes made or participated in a complaint of discrimination is prohibited by law and the City's EEO Policy, and will not be tolerated.

B. Online Harassment Prevention Training

1. Mr. _____ has taken the Online Harassment Prevention Training once, on November 26, 2016. I am requiring that Mr. H. _____ n retake the Online Harassment Prevention Training within the next 30 days, **by September 3, 2019.**

C. Other Recommendations

1. _____ also alleged at the end of 2016, after _____s' transition and use of the men's locker room, co-worker _____ son, H003 EMT/ Paramedic/ Firefighter cursed and muttered at him, and around November 2017, co-worker _____ H003 EMT/ Paramedic/ Firefighter, requested a change of schedule to avoid working with _____ es because of his gender transition. _____ reported both incidents to _____ H033 Captain, Emergency Medical Services, who told _____ s he would speak to those individuals.
2. While no determination was made as to whether the allegations, as described above, are true, I am recommending the Department take this opportunity to remind _____ of his responsibility to immediately report harassment or potential harassment to their departmental HR.
3. I am also recommending that the Department consider contacting Pau Crego, Director of Policy and Programs, Office of Transgender Initiatives (OTI), (415) 671-3072, to schedule transgender inclusion and awareness training for all Paramedic staff.

Please provide a report on completion of these actions, including copies of the signed acknowledgment of receipts and the status of _____'s online harassment prevention training, addressed to me, no later than **August 16, 2019.**

Please feel free to contact me at (415) _____ hould you have any questions.

000031

Sincerely,

A handwritten signature in black ink, appearing to be "Micki Callahan".

Director, EEO and Leave Programs, DHR

Encl.: August 2, 2019 Letter from Micki Callahan to
City's EEO Policy, Gender Inclusion Policy, and Respect Policy
Acknowledgement of Receipt Form

c: Jesusa Bushong, Department Personnel Officer, SFFD

EXHIBIT G

August 16, 2019 SFFD Report to DHR EEO Re: Completion of Corrective Actions

000033

F

73 APPEAL; EEO File No. 3112

042



August 16, 2019

Director
EEO and Leave Programs
Department of Human Resources
1 South Van Ness, 4th Floor
San Francisco, CA 94102

Re: EEO File No. 3112

Dear Ms. [REDACTED]:

On behalf of the San Francisco Fire Department ("SFFD"), I am providing this report regarding the Department action items mandated by the Department of Human Resources ("DHR") for the EEO case file noted above.

The SFFD has addressed items 1 through 3 with Paramedic J [REDACTED] [REDACTED]. Enclosed is a copy of the Signed Acknowledgment Receipt of CCSF EEO Policies from PM [REDACTED].

With regard to PM [REDACTED] completion of the City's Harassment Prevention online training, EMS Chief Sandy Tong has confirmed that he is on track to complete the training and submit the certificate to SFFD Human Resources ("SFFD-HR") on or before September 3, 2019. SFFD-HR will send a copy of Paramedic Halverson's certificate of completion to DHR-EEO on or before September 3, 2019.

Chief [REDACTED] as also confirmed that Captain [REDACTED] has been advised to promptly report to SFFD-HR any harassment or potential harassment in the workplace brought to his attention. Captain [REDACTED] assured Chief Tong that he would.

Finally, Acting EMS Section Chief of Training Nicholas Payne spoke with Pau Crego of the Office of Transgender Initiatives on Monday, August 12, 2019. Chief Payne confirmed that this Office provides gender inclusion training; however, at this time, they only have live training that lasts approximately 1.5 to 2 hours. Chief Payne explained to Mr. Crego the challenges of live training based on the work schedule for Station 4 Ambulance Personnel. They then discussed the possibility of developing on-line training for the members of Station [REDACTED]. Mr. Crego's Office will be sending their training materials to Chief Payne, who will then review the content and format to determine how these could be adopted for an online format. Chief Payne and Mr. Crego plan to discuss the training during the week of August 19, 2019.

Except for Paramedic [redacted] completion of the City's Harassment Prevention Training by September 3, 2019, SFFD has complied with DHR's required and recommended actions.

Please call me at (415) [redacted] you have any questions or need any further information.

Sincerely,



Jesusa Bushong
Departmental Personnel Officer

Enclosure

cc: Jeanine A. Nicholson, Chief of Department
Linda Simon, Director, DHR EEO and Leave Programs

EXHIBIT H

September 4, 2019 | es' Letter of Appeal

000036



CIVIL SERVICE COMMISSION
City and County of San Francisco
 25 Van Ness Avenue, Suite 720
 San Francisco, California 94102-6033
 Executive Officer
 (415) 252-3247

CSC Register No.
 0232-19-6
 To: XI M. Callahan
 J. Buick
 CC: L. Simons
 M. Valdey
 J. Bushong

APPEAL TO THE CIVIL SERVICE COMMISSION

<p>INSTRUCTIONS: Submit an original copy of this form to the Executive Officer of the Civil Service Commission at the address above within the designated number of days following the postmarked mailing date or email date (whichever is applicable) of the Department of Human Resources' or Municipal Transportation Agency's notification to the appellant. The appellant's/authorized representative's original signature is required. (E-mail is not accepted.) It is recommended that you include all relevant information and documentation in support of your appeal.</p>	<p>TYPE OF APPEAL: (Check One) <input type="checkbox"/> Examination Matters (by close of business on 5th working day) <input type="checkbox"/> Employee Compensation Matters (by close of business on 7th working day) - Limited application <input type="checkbox"/> Personal Service Contracts (Posting Period) <input type="checkbox"/> Other Matters (i.e., Human Resources Director/Executive Officer Action) (30 Calendar days) <input type="checkbox"/> Future Employability Recommendations (See Notice to Employee)</p>
---	--


Full Name of Appellant		Work Address		Work Telephone	
PARAMEDIC		SAN FRANCISCO FIRE DEPARTMENT			
Job Code	Title	Department			
	0				
Residence Address		City	State	Zip	Home Telephone
Full Name of Authorized Representative (if any)			Telephone Number of Representative (including Area Code)		

NOTE: If this is deemed to be a timely and appealable matter, the department will submit a staff report to the Civil Service Commission to request that it be scheduled for hearing. You will be notified approximately one week in advance of the hearing date, at which time you will be able to pick up a copy of the department's staff report at the Commission's offices. If you would instead prefer Commission staff to email you a copy of the meeting notice and staff report, please provide your email address below.

Email: _____

COMPLETE THE BASIS OF THIS APPEAL ON THE REVERSE SIDE. (Use additional page(s) if necessary)

<p>Does the basis of this appeal include new information not previously presented in the appeal to the Human Resources Director? If so, please specify.</p>	<p>Check One: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
---	---

Original Signature of Appellant or Authorized Representative  2019 SEP -5 AM 11:52 9/4/19 Date

CSC-12 (10/14) Date Received by Civil Service Commission: _____

000037

APPEAL; EEO File No. 3112

Appeal request for EEOC Complaint File No. 3112

I am requesting an appeal is because I disagree with the findings. Attached is my statement regarding the initial incident and new evidence to show some of the continued harassment I am experiencing from the other party involved in the incident. Secondly, along with my disagreement with the findings, on 8/29/19 after²³ during my meeting with SFFD HR department, I was made aware of the possibilities of my battery/assault that I experienced on the initial date of incident was left out of the report or never reported which lead me to believe that the DHR investigator may have not reported it as well.

After the findings were determined and DHR forward it back to the HR department at SFFD I don't know if the department is conducting an investigation or if there was any form of discipline. When I spoke to the DHR investigation on 8/5/19 when I was made aware of the decision, she stated to me that all I wanted was more training which it is misunderstood on her part. I reported that I want more training in the dealings in relating to transgenders that work for or in the department, and I also stated that I no longer want to work with individuals like the subject in the complaint because they don't contribute to a safe environment for me. I also stated that I no longer feel safe at work and the subject should not be allowed to work for the department after our incident. Especially, the subject is in violation of the Mission Statement with the department.

On Monday, June 24, 2019, I was working my regular scheduled shift, and my partner went home early. I was stationed at Station EMS03 to be available if someone goes home sick or if there was a sick call and I can work on a unit that will need staffing. Around 2350 hrs., I advised the on-duty RC who was I [redacted] that I was going to walk the yard to stretch out my legs and do station duties. While walking out to the yard, I saw PM N [redacted], who was getting off duty, and I began conversing with her. I asked PM T [redacted] how was her shift? And How was the family? During our conversation, I also spoke to her partner who was PM I [redacted] who I worked with the previous night, I checked in with him by saying hello, and How was his shift? During [redacted] and I conversation, I saw PM I [redacted] walking towards his ambulance ([redacted] and I also noticed that PM H [redacted] had no Paramedic patches on his Class B uniform shirt.

Therefore, I noticed PM I [redacted]'s uniform looked very similar to the Nomex uniforms we used to wear approximately 6 years ago, and now we are unauthorize to wear. So, I thought to do the right thing, and attempt to give some helpful advice to PM I [redacted] regarding his missing patches on his uniform. PM I [redacted] has been with the department for approx. 2 ½ years and I was thinking to give him advice to help keep him out of trouble. I decided to go ahead and give Peer to Peer advice regarding his uniform. Recognizing that in the past I was referred to come across abrasive and authoritative sometimes to people in past conversations with various individuals when I speak to them. With that information and constructive criticism, I've changed my ways on how I communicate with individuals over the years.

Recognizing that my approach should come across to him that I am coming from a genuine place, I made sure that my tone, and my body language reflected my position. While I [redacted] was walking towards his ambulance, I proceed to ask him, "(With a slight grin on my face) Hey Man, Where's your patches?". He responded, "What?" (with a disruptive tone). I repeated, "What happen to your patches", and he continues with a more disruptive deep tone, "What?". It was at that time that I gathered after he responded that the conversation was starting to take a wrong turn. I [redacted] proceed to respond, "Why?". So, I proceed to respond to his question, I advised him that he was wearing uniforms that was not approved by the department to wear with no patches, and those uniforms he had on we are not authorized to wear. I also advised him that if a Chief or Captain sees you in the field with non-department issue uniforms or out of uniform you are in violation of rules and regulations, and I am just trying to help you. Then he proceeds to ask, "Why?", and I asked him, "was he suppression or [redacted]". As he reached the driver side of his ambulance, I [redacted] proceeded to turn facing my direction, grabbed the left side of his shirt collar, with an abrasive gesture, and aggressive tone stating "Well,

After he made his comment, I immediately was taken back, disturbed, shocked, and surprised after his comment. While I proceeded to turn towards N [redacted] s was to the left of me, and I turned to I [redacted] e and I asked her, "Did I just hear that correctly,". Wait a minute, "Did I just hear that correctly". I proceeded to ask N [redacted] , "Did he just used the wrong gender pronoun in that manner". And I [redacted] immediately turned facing me reenacting what she heard and saw when [redacted] n misuse of the gender pronoun towards me. While N [redacted] _ was confirming what she heard and saw, [redacted] on grabbed his helmet, and jacket that was folded together from the compartment from the driver side of the ambulance.

Then I [redacted] n proceeded to walk towards me stating, "Are you Lieutenant or Captain?". And [redacted] proceeded to finish grabbing her gear and get on her motorcycle while I [redacted] proceeded to walk away towards his personal vehicle while I [redacted] was walking up to me. As I [redacted] approached me, he continues to state, "Every time you see me [redacted] , it seems like you have something against me or something against me". Then I [redacted] n states, "you are out of uniform too", and I responded with a neutral tone to him stating, "I am in uniform, it's after 9 p.m. and I can wear my job sweater". I continue to state to I [redacted] son, "I am not in the field right now, so I can wear my department issue sweater after 9 pm at the station".

Then I [redacted] abruptly stepped closer to me in an aggressive manner, violating my personal space, standing toe to toe, with a threatening tone stating, "Are you a Lieutenant or Captain?" as he was attempting to grab my left collar on my sweater with his right hand. In a form of protecting myself, I immediately took a step back to create distance between him, and stating to him with an uncomfortable but neutral tone, " No, I am the senior Mother Fucking Medic here that has been here for 13 years trying to help you, and to help keep you out of trouble". Then I [redacted] i turned to walk away from me while stating, "I [redacted] e, you always appear to have something against me". I advised I [redacted] on while he continued to walk away from me, "Hey, it is clear that this conversation has gone in the wrong direction, all I was trying to do is help, you have the wrong impression of me, and we need to talk about it. I continue to advise him that the RC is in the office, so let's have a meeting to clear it all up, start over new, and get on the same page. I [redacted] n responded, "Naw, Fuck that" and proceeded to walk upstairs to the second floor of the station.

I opened the door to the RC's office and advised RC [redacted] that we need to have a meeting. RC [redacted] asked, "What's going on?" I advised RC [redacted] that I was attempting to give Peer to Peer guidance/advice, and it took a turn for the worse. I told RC B [redacted] that I was speaking with [redacted] regarding his uniform, and in his response, he used the wrong gender pronoun in a derogatory manner. RC B [redacted] was shocked when I told her what happened and Halverson response. RC B [redacted] stated that she was not sure on what the uniform requirements were since there were other individuals having challenges getting the clothing depot to approve patches on uniform shirts. While having the conversation with RC Byrne, Tim Finch one of our union directors that was coming off duty from his shift, and I stated, "A big prime example a senior

medic out of uniform". Tim responded, "You are right, but I have an excuse, I couldn't find my uniform shirt, so I had to grab a shirt from the closet where extra uniforms were stored."

I advised Tim that I will need union representation regarding an incident that just happened." I explained to Tim what had transpired and what was said in response after I had attempted to do the right thing by conducting a Peer to Peer guidance/advice with [redacted] son. RC B stated that she was going to call a meeting because it was clear that there is an EEOC violation. RC [redacted] ne called [redacted] n via cellphone to come to the office because we were going to have a meeting, and RC [redacted] e called dispatch to place M59 out of service at Station [redacted] dministration for a meeting. Upon the start of the meeting, PM [redacted] h advised both [redacted] e, and me of the firefighter bill of rights, he is neutral, and he is in the meeting to make sure no rights are being violated.

RC [redacted] ne advised PM [redacted] a the reason the meeting was called because upon Peer to Peer guidance his response was disrespectful, and misuse of gender pronoun was used in a derogatory manner. RC [redacted] also advised PM [redacted] n when a Peer member is giving you advice it is coming from a Peer that has been here longer and is very familiar with the rules and regulations with the purpose to help guide you in the right way. RC [redacted] also advised [redacted] on that he must be respectful towards the Peer that is giving you guidance. RC [redacted] advised [redacted] son that the meeting is to not only address the uniform situation but to address the misuse of gender pronoun in a derogatory manner which is an EEOC violation. RC [redacted] asked [redacted] n did he misuse the gender pronoun. PM [redacted] n responded, "I don't recall if I did, I may have, I may have said it on my way upstairs, and if I did, I apologize (with a nonchalant tone)". After his response, we all looked in a shock at each other [redacted] h, and me. [redacted] n continued, "You all are out of uniform".

RC [redacted] responded stating that it is after 9 pm and I can have my sweater on over my uniform, and [redacted] responded stating that I have a reason, and I am off duty but that is not the issue right now. PM [redacted] n continues to state, "Well, he/she, she/he, well he/she always have a rude look on he/she face when I come into the office or see he/she in the field, he/she always go delay at hospitals, and avoid running calls. RC [redacted] e and [redacted] h interrupted [redacted] advising him that is not the reason for the meeting. I responded to [redacted] stating, "I don't like liars", He responded with "Are you calling me a liar"? And I responded stating, "Yes, I am. You forget that there were two other witnesses outside to witness what you said, how you said it, and the manner you said it. So, yes you are lying" I also responded stating, "You don't know me from a can of paint, just as much as I don't know you from a can of paint, when I am an RC behind that desk, I am neutral and professional. I am not here to be your friend and be your buddy. I am respectful and professional. I can't be born again with a new expression on my face. My duties are to make sure units get into service on time, everyone is safe at the station, and other job responsibilities." Then I asked [redacted] "When you see me behind the RC desk am I in full uniform?" He responded stating, "What?" I repeated the question, "Am I in full uniform when you see me? He responded stating, "Yes". RC [redacted] asked [redacted] Do you

have patches on your uniform?" He responded with, "What?" RC asked H, "Do you have any department uniform on?" H responded stating, "Um, no. I have my South City uniform on." H continues stating, "I had some dry-cleaning issues."

RC responded stating, "Wait, you have on another department uniform on?" H responded stating, "Yes." RC asked H, "Do you have any department uniform on?" then asked H, "Why do you still have EMT patches on your jacket?" H responded stating, "Oh, it was a clothing depot issue." Then I asked H, "Did you work yesterday?" H responded stating, "Yes." I responded stating, "I saw you yesterday with the same uniform on. So, you started your shift before 9 pm with the same uniform on." RC advised H that the meeting was concluded, and she will have to follow up with the Chief on how to pursue on this issue. H responded with stating, "Okay. He understands." The meeting ended and RC stated that she will follow up with Chief to see how to go about with this issue.

STATION NOTES

- On July 19, 2019, while in the RC office, PM Angela [redacted] and I was talking, and PM Jim [redacted] asked if we would like to go through Intubation refresher. PM C [redacted] replied, "Sure, I have to let my partner know". While standing at the door of Bio-Med, PM C [redacted] states, "Are you ladies ready?". Immediately, PM [redacted] and I looked at each other in a state of shock. I turned to look at PM C [redacted], and I looked back at PM Castro stating, " [redacted] ". PM [redacted] immediately realized what was said and looked at me with a shock look on her face. I turned facing PM [redacted] asking him, "Where are the ladies at? Because I only see one lady in this room." PM [redacted] realized what he had said and had no response to what he said. PM [redacted] immediately left. PM [redacted] just looked at me and shrugged his shoulders. PM [redacted] did not apologize to me or say to me I made a mistake. After that I just left.
- On July 29, 2019, at 0730 hrs. I was in the kitchen with 5 other fellow employees, seated at the table, and waiting for the meeting. While I was seated at the table, [redacted] walked into the kitchen, and looked at me with an evil stare down. As [redacted] n, walked towards me while I was seated at the table to pass, continued walking towards the kitchen sink while saying, "hello everybody". As he ([redacted] n) reached the kitchen sink he turned to face me and continued with his stare down. I sat at the table for a moment once I realized that [redacted] was not leaving after he saw me in the kitchen. I left the kitchen, went down to the RC office, and let the RC [redacted] y know what had happen. RC [redacted] responses was what can you do, it's the station, and it's hard to avoid a person. I asked the on-duty RC [redacted] ch, was Chief [redacted] g here? He responded with "yes". I asked to see if it was okay for me to go to the Chief's office because someone was here that I needed to avoid contact with. He said yes go ahead. As I entered the Chief's office, I advised her on what had happened, and she asked, "Did he say anything to you?" I told Chief [redacted] g, not directly to me, He said "Hello Everybody" as he walked pass me, and he gave me the evil stare down. I asked if it was okay for me to sit in her office til he leaves. Chief [redacted] g said it was okay...
- On the morning of Monday, August 5 I was walking into the station to start my light duty shift, and while I was walking towards the RC office I was saying good morning to fellow co-workers when [redacted] on walked right pass me looking at me with a smirk on his face as he starred me down. I did take notice of it, and I just continue to walk into the RC office. After changing into my uniform, I walked up stairs to the kitchen to avoid crossing paths with [redacted] again, and after being in the kitchen for about 5 minutes [redacted] n walked into the kitchen just staring at me with the same smirk on his face like he was ridiculing me, and taunting me. I left the kitchen to return downstairs to RC's office.

EXHIBIT I

August 29, 2019 Department Report of Employment Discrimination Complaint

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PPEAL; EEO File No. 3112
054

- On the morning of Tuesday, August 6 as I was walking to the RC office to check in, [redacted] was standing at his ambulance just staring at me while I was walking, when I noticed that he was just starring/glaring at me, I looked back at him, and then he just turned to walk the other direction. After, I went to check into the RC's office, and I didn't see no one in the office. I went to the locker room to get dress and went upstairs to the kitchen.
- On the morning of Wednesday, August 14 I saw [redacted] walking around inside of the station. When I walked into the locker room to change into my uniform and within a minute after I got into the locker room [redacted] walked into the locker room. While [redacted] was walking down the hallway, he was passing the row where I was, [redacted] turned looking at me, starring/glaring in a taunting, demeaning manner. Then he continued to walk pass and walked down another row of lockers when he proceeds to walk out of the locker room.
- On the morning of Monday, August 19, [redacted] was already at the station walking around when I arrived at work. I checked into the RC office where I saw Captain [redacted], Lieutenant Landivar, and I let them know that I was going to change, and I will be upstairs in the kitchen. As I walked out of the office, [redacted] was walking back into the station area when he saw me, and he immediately started glaring at me. I went to the locker room to change, and I went upstairs. As I approached the kitchen, [redacted] was leaving the kitchen area and He walked pass me while he continues to glare at me in a taunting manner.
- On the morning of Thursday, August 22, I was in the kitchen, seated at the table conversing with fellow co-workers at 0700 hrs., and [redacted] came into the kitchen area. Upon entering into the kitchen area, he looked directly at me with a snarky smirk on his face, walk to the computer area, and sat down. [redacted] refused to continue to avoid the area I was in. So, I removed myself from the kitchen area and went to the other kitchen area near the administration offices.

000044

DEPARTMENT REPORT OF EMPLOYMENT DISCRIMINATION COMPLAINT

* Report Within Five Working Days of Receipt of Complaint*

Return to: Linda Simon, Deputy Director, EEO and Leave Programs, One South Van Ness, 4th Floor,
San Francisco, CA 94103

1. Department/Worksite: San Francisco Fire Department, Station 49
2. Complainant: Paramedic ies Tel. No. (Work): _____
Address: _____ Tel. No. (Home): _____
3. Complaint Filing Date: August 29, 2019
4. Complainant's Current Employment Status (circle one): _____ Classification: H-3 Level 2
PCS TCS LT NCS PV PE TE PROB NOT A CITY EMPLOYEE
5. Basis of Discrimination (specify):
 Race:
 Color:
 Religion:
 Creed:
 Sex:
 National Origin:
 Ethnicity:
 Age:
 Disability/Medical Condition: _____
 Political Affiliation: _____
 Sexual Orientation: _____
 Ancestry:
 Marital or Domestic Partner Status:
 Gender Identity: Transgender
 Parental Status:
 Other Non-Merit Factors: _____
 Retaliation:
6. Issue complained of:
 Denial of Employment
 Denial of Training
 Denial of Promotion
 Denial of Reasonable Accommodation
 Termination
 Lay-off
 Constructive Discharge
 Disciplinary Action
 Harassment
 Work Assignment
 Sexual Harassment
 Compensation
 Other (please specify):
Pervasive stare down, visual taunting
intimidation of Complainant

7. Describe the circumstances of the alleged discrimination and include date(s) of adverse employment action(s): (Attach letter of complaint) On August 29, 2019, I met with Paramedic ies to obtain information regarding additional/new incidents with Paramedic son. PM ies recounted the following: August 5 – As PM ies was greeting co-workers good morning at the start of his shift, PM son walked past him and stared him down. Within five minutes, as PM ies was walking to the locker room PM son gave him ies another stare down and had a smirk on his face. August 6 – PM ies parked his car and observed PM son just standing by his ambulance in the Station ies yard staring PM ies down. As PM son got out of his car, he looked at PM ies directly, who then turned around and walked away.

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August 14 – PM [redacted] was walking around Station [redacted] when PM [redacted] walked in; within a minute, PM [redacted] was standing the hallway staring at PM [redacted]. PM [redacted] then walked away via other row of lockers behind PM [redacted].

August 19 – PM [redacted] had been in the kitchen and saw PM [redacted] walked into the building. PM [redacted] saw PM [redacted] walking toward him, so PM [redacted] turned and went toward his locker. Lt. Jason Landivar informed PM [redacted] that he told PM [redacted] to leave because he wanted PM [redacted] to feel safe and sensed that something was wrong. PM [redacted] was already off duty at this time.

August 22 – PM [redacted] said hello to everyone in the kitchen except to PM [redacted]. PM [redacted] just stared PM [redacted] down.

The overall sentiment that PM [redacted] would like to convey is that PM [redacted] intimidation and visual taunting has become pervasive. PM [redacted] is now avoiding going to the main kitchen at Station [redacted] where everyone gathers. To avoid PM [redacted] and his stare downs, PM [redacted] now goes to the kitchen by the administration offices. PM [redacted] should not have to feel this way about or to make adjustments in the workplace on account of PM [redacted] alleged conduct. PM [redacted] would like the behavior to stop.

Enclosed are PM [redacted] notes regarding the June reporting and these current incidents. Note that on page 2 of the June write-up, which I underscored, PM [redacted] stated that PM [redacted] attempted to grab his left collar with his right hand. I reviewed my notes from June 27 and did not find any reference to PM [redacted] grabbing PM [redacted]. I would have keyed in on that physical contact because that would have been a potential Workplace Violence incident.

Both PM [redacted] and his L798 representative, Tim [redacted], stated that they notified the DHR EEO Investigator about this as well.

8. Has the Complainant filed a grievance or lawsuit regarding this complaint? Yes No

If yes, please specify: _____

9. Is the Complainant represented by a Union or an Attorney? Yes No

Name: _____ Organization/Firm: _____

Address: _____ Phone No.: _____

*10. What steps does the department recommend be taken to address this complaint? (For instance, investigation, alternative dispute resolution, dismissal) The matter will also be referred for possible disciplinary investigation to the Chief's Office.

*10a. Name and position of staff who will implement recommended steps: Victor Wyrsh, Deputy Chief of Operations; Sandy Tong, EMS Chief (with approval from Fire Chief Jeanine Nicholson) _____

11. Completed by: J _____

Date: 8-29-19

Address: _____ F

Tel. No. (_____) _____

*12. Please notify DHR/EEO in written form immediately upon resolution of this complaint.

***Subject to the Human Resources Director's approval**

HUMAN RESOURCES DIRECTOR REVIEW

Complaint is assigned EEO File Number: _____

D Approve department's recommendations for addressing complaint. Proceed and notify HR Director of actions, findings, and recommendations for resolution.

D Complaint is assigned by HR Director to: _____
and/or the following actions are to be taken:

for Micki Callahan, Human Resources Director

Date

EXHIBIT J

July 2, 2019 Witness Statement by _____s

000049



San Francisco Fire Department

General Form

Date: 07/02/2019

From: Rank: H3L2 Assignment: ST49 Tour: F02 ID: TH4389
To:
Subject: EEO Complaint/Witness Statement
Reference: N/A
Enclosure: N/A

1. I was in the yard at S at the end of my shift on 6/24/2019 at approximately 2350 hours.
2. PM walked out into the yard and was standing next to me.
3. PM walked past the both of us and proceeded to get something out of a nearby ambulance, when PM asked him why he was not wearing his job shirt with patches.
4. I noticed at that time that he was wearing a solid blue job shirt without patches but with his badge.
5. He then said that he does not like, or does not have his department issued job shirt. I can not recall the exact words he used, but I do recall at the end of his statement he said
6. PM said, "What did you say?"
7. PM repeated his statement, this time excluding the " He followed up by asking "Are you acting Capitan or Lieutenant tonight or what are you?"
8. PM replied, "I'm telling you as a senior medic, that you need to wear your department issued uniform. You are not a suppression member, so why are you dressed like one?"
9. At that time I walked inside to finish my end of shift routine.
10. I declare under the penalty of perjury that the foregoing is true and correct.

ADC RMS DIVISION
RECEIVED

JUL 03 2019

San Francisco Fire Dept

(Signature)

EXHIBIT K

July 3, 2019 Witness Statement by J

3

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PEAL; EEO File No. 3112
060



San Francisco Fire Department

General Form

07/03/2019

Date: 07/03/2019

From: [redacted] Rank: H 3 Assignment: 49 Tour: 5 ID: DI1513

To:

Subject: Witness statement to the incident on 6/24/2019 at approximately 2350 hrs.

Reference: None

Enclosure: None

1. On 6/24/2019 at approximately 2350 hrs, my partner and I were out side in the ambulance yard at Fire Station [redacted] having a conversation with [redacted]
2. Medic [redacted] walked in to the yard from the RC office towards his vehicle. [redacted] commented to [redacted] that his uniform shirt was not an approved uniform for duty and had no patches.
3. [redacted] appeared to ignore the comment and precoded to his car for a few minutes. then began walking back past us towards the RC office.
4. [redacted] made several more comments about [redacted]'s uniform being inappropriate. I appeared to withhold any comment back until [redacted] requested he not wear that shirt on duty.
5. Following the above comment, [redacted] stopped and made a salute type motion to [redacted] and replied something to the effect of, "Yes [redacted]". [redacted] then walked back into the RC office.
6. I was not witness to any other interaction between [redacted] s and [redacted] after that on 6/24/2019.


(Signature)

EXHIBIT

2



Executive Directive 18-03

Recognition, Expansion, and Reaffirmation of Inclusive Gender Identities

October 25, 2018

Identity is complex and personal. Too often, transgender and gender nonconforming communities are forced to make choices on City and County of San Francisco (City) forms and applications that do not accurately reflect their identity or gender expression. We know that narrow gender definitions of either male or female are not sufficient to recognize the diverse experiences of our communities. Therefore, the City must continue to move towards inclusive administrative forms and applications that lift up all identities, allowing people to more broadly choose how they self-identify when demographic information is collected. We must acknowledge, expand, and reaffirm all identities so that every resident is fully recognized throughout all of our City Departments and Offices.

The City is committed to inclusionary practices, and does not discriminate on the basis of any protected category under the law, including sexual orientation, gender, gender identity, or gender expression. The City has made several investments to provide staff with anti-bias and harassment training, and is committed to Equal Employment Opportunity hiring practices, which have allowed City staff to better serve and engage the diverse communities in which we operate.

However, to be truly effective, we must strive to practice inclusivity at all times to ensure that everyone can live as their authentic self. Something that may appear to be a simple City application or form, but does not account for the full range of self-identifiers, can trigger an emotionally stressful experience for individuals who do not fall into narrow, pre-set identity categories.

Since 2017, the City has collected expanded data on sexual and gender identity across six City Departments that provide direct services to the community (Department of Public Health, Mayor's Office of Housing, Department of Human Services, the Department of Aging and Adult Services, the Department of Children Youth and their Families, and the Department of Homelessness and Supportive Housing). The Sheriff's Department has also taken important steps of allowing individuals to self-identify, and has instituted gender awareness training as an integral part of its practices.

This Directive will extend this practice to all Departments that collect demographic information during the course of licensing, permitting, or other administrative, business or service functions, thereby officially recognizing the breadth of the identity spectrum within our City.

San Francisco is a home for all. At the core of our foundation is a commitment to inclusivity. Our City practices should acknowledge and welcome the diverse makeup of our communities, regardless of gender expression or identity.

Directives:

Through this directive, I hereby direct that action be taken in the following ways:

1. **Expand gender and self-identifiers:** All city forms and applications, paper or electronic, shall include nonbinary option(s) when asking for demographic information and provide:
 - a. Additional identity and title options, where appropriate, beyond “Male/Female” and “Mr. and Ms.”
 - b. Additional identifiers, where appropriate, beyond identifiers such as “She/Her/Hers” and “He/Him/His.”
 - c. Designation of a chosen name.
 - d. Gender-neutral labels such as “Parent/Guardian” to be used with or in lieu of terms such as “Mother” and “Father.”

2. **Gender Identity Trainings:** DHR, in conjunction with the Office of Transgender Initiatives, shall include education on LGBTQ identities for City employees as part of any required harassment prevention, implicit bias, and cross-cultural communications trainings.

Any forms already in print that do not confirm with the requirements of this Directive shall be allowed to be exhausted, but any new printing shall comply with the above requirements. In addition, this Directive shall not be construed to conflict with any State or Federal law or regulation.

This executive directive shall be effective immediately, and will remain in place until rescinded by future written communication or supplanted by ordinance.

For questions or additional support please contact the Office of Transgender Initiatives at transcitysf@sfgov.org or 415-671-3071.

EXHIBIT

3

Tamara Lusardi,
Complainant,

v.

John M. McHugh,
Secretary,
Department of the Army,
Agency.

Appeal No. 0120133395
Agency No. ARREDSTON11SEP05574

DECISION

On September 23, 2013, Complainant filed an appeal from the Agency's September 5, 2013, final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. The Commission accepts the appeal pursuant to 29 C.F.R. § 1614.405(a). For the following reasons, the Commission REVERSES the Agency's final decision.

ISSUE PRESENTED

The issue presented is whether Complainant proved that she was subjected to disparate treatment and harassment based on sex when the Agency restricted her from using the common female restroom, and a team leader (S3) intentionally and repeatedly referred to her by male pronouns and made hostile remarks.

BACKGROUND1

This case concerns allegations of disparate treatment on the basis of sex in the terms and conditions of Complainant's employment and allegations that harassment based on sex subjected Complainant to a hostile work environment. Although Complainant was hired as a civilian employee with the U.S. Army Aviation and Missile Research Development and Engineering Center ("AMRDEC") at Redstone Arsenal in Huntsville, Alabama in 2004, the allegations in this complaint relate only to the period from October 2010 to August 2011 (the "relevant time period"). Complainant was employed at the AMRDEC Software Engineering Directorate ("SED") under the supervision of S1, the Quality Division Chief. During the relevant time period, however, Complainant was co-located in a separate unit - the Project Management Office, Aircraft Survivability Equipment ("ASE") where she worked as a Software Quality Assurance Lead under the direction of S3, the Software Engineering Lead, who was in turn supervised by S2, the Technical Chief. In August 2011, Complainant returned to her primary job at SED.

Complainant's Transition and Bathroom Access

Complainant is a transgender woman. Although Complainant had discussed her gender identity with S1 as early as 2007, she began the process of transitioning her gender presentation/expression in 2010. In April 2010, Complainant obtained a decree from an Alabama court changing her name from one commonly associated with men to one commonly associated with women. At that time, she also requested that the government change her name and sex on all personnel records. The Office of Personnel Management ("OPM") effected those changes on October 13, 2010. This caused Complainant's work e-mail address to reflect her new name.

On October 26, 2010, at the request of S2, Complainant met with S2 and S1 to discuss the process of transitioning from presenting herself as a man to living and working, in conformance with her gender identity, as a woman. At that meeting, Complainant and her supervisors discussed how Complainant would explain her transition to colleagues and the estimated timeline for any medical procedures.

As part of that meeting, they also discussed which bathrooms Complainant would use when she began presenting as a woman. The plan, written in the form of a memorandum from Complainant to management, indicated that Complainant would use a single-user restroom referred to as the "executive restroom" or the "single shot rest room" rather than the multi-user "common women's restroom" until Complainant had undergone an undefined surgery.

S2 testified that in his recollection no one "insisted" that Complainant utilize only the executive restroom but that the plan was mutually crafted by himself, S1, and Complainant. Report of Investigation (ROI), Volume (Vol.) 1, 2323; Transcript of Fact-Finding Conference (TR) 123. According to Complainant, "We agreed up front in order to allow people to become accustomed to me and not feel uncomfortable that I would use the front bathroom for a period of time." ROI Vol. 1, 2223; TR 23. She testified that she agreed to use the executive bathroom for the initial period "[b]ecause I have a good heart and I did believe there were people who might have issues with it and the ability for them to grow comfortable with who I was . . . would have provided it." ROI Vol.1, 2223-2224; TR 23-24. S1 expressed at the time that it was her belief, after consulting with Human Resources, that because Complainant was a woman, she was free to use whichever women's restroom she wanted. ROI Vol. 1, 2224, 2389; TR24, 189.

Regardless of the motivations behind the creation of the transition plan, it apparently had to be "approved" by higher level management. The Deputy Program Manager of the Program Executive Office testified that he made the final decision as to which bathroom Complainant would use. ROI Vol. 1, 2451; TR 251. He stated:

I made the decision based on the fact that I have a significant number of women in my building who would probably be extremely uncomfortable having an individual, despite the fact that she is conducting herself as female, is still basically a male, physically.

And that would cause as many problems if more problems [sic] than having the individuals use a private bathroom. I also thought that under the circumstances, a male restroom would be inappropriate. So, that was left [sic] to use the single use bathrooms.

ROI Vol. 1, 2452; TR 252. Additionally, a Lieutenant who supervised S2 testified that Complainant's bathroom access was conditioned on a medical procedure:

[W]e all agreed back then that there was a procedure, operation that was to take place that would essentially signify a complete transformation to a female. . . And that procedure would be the point of where all the bathrooms would be on limits for or within limits for [the Complainant] to use for that point.

ROI Vol. 1, 2491; TR 291.

The transition plan was given final approval by the Deputy Program Manager in early November 2010. Complainant e-mailed the entire staff on November 22, 2010, explaining her situation and indicating that for an initial period, she would use the executive restroom. She began presenting as a woman at work following the Thanksgiving holiday. Complainant regularly used the executive restroom except on three occasions in early 2011. On one occasion, the executive restroom was out of order for several days. On another occasion, the executive restroom was being cleaned. In these incidents, Complainant felt that her only options were to leave the facility to locate a restroom off-site, use the common women's restroom, or use the common men's restroom. She chose to use the restroom associated with her gender. After each incident, Complainant was confronted by S2 who told her she'd been observed using the common women's restroom, that she was making people uncomfortable, and that she had to use the executive restroom until she could show proof of having undergone the "final surgery." ROI Vol. 1, 2245; TR 45.

Complainant testified that in January 2011 when S2 confronted her about using the common women's restroom, she responded, "I am legally female. I used it." ROI Vol. 1, 2229; TR 29.

Harassment

During the relevant time period, S3 repeatedly referred to Complainant by her former male name, by male pronouns, and as "sir." Complainant testified that S3 referred to her using these male signifiers on at least seven occasions when he did not correct himself, on four additional occasions when he did correct himself, and, specifically, in a July 2011 e-mail exchange. Complainant stated that S3 referred to her using male signifiers during heated discussions and meetings. S3 made these comments in front of coworkers and contractors and sometimes in front of people who had no prior knowledge of her transition. Complainant did not correct S3 because she did not want to question her supervisor in front of other people. Additionally, Complainant did not correct S3 in private because she felt she "was in enough hot water" and "anything else . . . would have gotten [her] kicked out of there." ROI Vol. 1, 2264; TR 64.

S3 admitted to using male signifiers in reference to Complainant even after he was aware of her gender transition, but attempted to excuse his behavior by saying it was not meant in a malicious way and was merely a "slip of the tongue." ROI Vol. 1, 2299-2300; TR 99-100. Complainant acknowledged that there were occasions when S3's usage of male signifiers was merely a "slip of the tongue," but Complainant also believes there were occasions when S3 intentionally used male pronouns to refer to Complainant in order to elicit a response from her. ROI Vol.1, 2299, 285; TR 85. Complainant testified that she could tell S3 used male signifiers during heated discussions or moments of anger because "[h]is veins were popping out of his forehead, his face was red, and he was quite agitated." ROI Vol.1, 2286; TR 86. Complainant also stated that during these exchanges S3's demeanor and body language were "representative of a negative connotation." ROI Vol. 1, 2275; TR 75.

In July 2011 Complainant and S3 exchanged a series of e-mails regarding Complainant's belief that her team members did not treat her as an equal. In a July 26, 2011 e-mail, in response to Complainant's statement that S3 was on the side of other employees who do not treat her as an equal, S3 responded to Complainant, "Sir, not on anyone's side." ROI Vol. 1, 488. Complainant testified that S3 wrote "sir" in this e-mail out of anger because during their "verbal conversation that ensued after that e-mail . . . he was fairly agitated." ROI Vol. 1, 2268; TR 68.

Witness testimony corroborates that during the relevant time period S3 intentionally referred to Complainant by her former male name and as "sir" well after Complainant's November 2010 letter notifying her colleagues of her transition. ROI Vol. 1, 2531; TR 331. Specifically, a witness stated that S3 smirked and giggled in front of others while joking, "What is this, [Complainant's former male name] or [Complainant's name]?" Vol. 1, 2534; TR 334. This witness also testified that Complainant stated she was working in a hostile or uncomfortable environment.

After Complainant's e-mail address changed to reflect her name, but before she began presenting as female, curious coworkers questioned Complainant about the situation. As a result of the questions S2 asked Complainant to "hold down the chatter with people that were inquiring" about her transition. ROI Vol.1, 2222; TR 22.

Complainant testified that, although she did not inform management that she felt she was being subjected to a hostile work environment, she did tell Colonel 2 that there were "some issues." ROI Vol. 1, 2269, TR 69.

EEO Investigation and Final Agency Decision

Complainant initiated EEO counselor contact on September 6, 2011, and filed a formal complaint on March 14, 2012, alleging that the Agency subjected her to disparate treatment and a hostile work environment based on sex when the Agency restricted her from using the common female restroom and a team leader (S3) repeatedly referred to her by her former male name and called her "sir." The Agency accepted the complaint and conducted an investigation, including a fact-finding conference. The Agency issued Complainant a copy of the investigative file and a notice of right to request a hearing before an EEOC Administrative Judge (AJ) or an immediate final agency decision (FAD). Complainant elected an immediate FAD, which the Agency issued on September 5, 2013.

In its final decision, the Agency concluded that Complainant failed to prove that the Agency subjected her to discrimination or harassment as alleged. Specifically, the Agency concluded that it had provided legitimate, non-discriminatory reasons for its requirement that she use the executive restroom, and that Complainant failed to show that the explanations were pretext for unlawful discrimination. The Agency determined that, during a meeting with management, Complainant agreed to use the "single shot" executive restroom until she "had surgery," and that testimony and e-mails between Complainant and management reflected that management was supportive of Complainant and "committed to ensuring [Complainant] would be treated with dignity and respect." Additionally, the Agency concluded that Complainant had not shown that she was subjected to disparate treatment based on sex because Complainant did not tell management that the amenities in the executive restroom were inadequate compared to the common female restroom facility and, therefore, management did not deny her access to equal facilities.

The Agency further determined that, although S2 reminded Complainant about the bathroom access plan she had with management, the comments were not sufficiently severe or pervasive to constitute harassment.

With respect to Complainant's claim that S3 referred to her by male pronouns, names, and titles, the Agency concluded that these were isolated incidents that were not sufficiently severe or pervasive to constitute a hostile work environment.

On September 23, 2013, Complainant filed this appeal of the agency's final decision.

CONTENTIONS ON APPEAL

Complainant contends that the Agency erred when it found that she failed to show that she was subjected to sex discrimination and harassment. Complainant contends that, by restricting her to the single stall restroom because she is transgender, the Agency changed the terms and conditions of her employment solely based on her sex, in violation of Title VII. Complainant also reiterates her claim that the Agency subjected her to a hostile work environment by allowing S3 to refer to her by a male name and pronouns. Complainant contends that, although S3 claimed that his use of incorrect gender pronouns and names was a "slip of the tongue," S3 only did this in heated exchanges or group settings and in a manner that communicated a derogatory connotation. Complainant maintains that "these daily humiliations and reminders that the Agency did not accept her gender identity created a hostile work environment." Complainant's Brief, p. 10.

In its reply, the Agency requests that we affirm its final decision. The Agency maintains that, taking into account the concerns of Complainant's female co-workers who had known her as male for years, management asked Complainant to use the single-stall restroom in the executive suite, and she agreed to do so until her surgery was "complete." The Agency maintains that there is no law that mandates that agencies allow transgender individuals to use restrooms that are consistent with their gender identity. The Agency further maintains that, if it had been aware of Complainant's concerns about the restroom facilities, arrangements could have been made to accommodate her needs, but it is unclear whether her inability to use a restroom with equivalent amenities constitutes an adverse action. The Agency contends that the record reflects that it was "very supportive of the complainant's transition from male to female," and that Complainant was grateful for her managers' and co-workers' support. Agency Brief, p. 7. The Agency concludes that, in the absence of legal precedent, management worked out a "fair solution" that took into account the concerns of all employees. Id.

STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.A. (Nov. 9, 1999) (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law").

ANALYSIS AND FINDINGS

Disparate Treatment: Restroom Facilities

Title VII states that "[a]ll personnel actions affecting [federal] employees or applicants for employment . . . shall be made free from any discrimination on the basis of race, color, sex, religion, national origin, or age." 29 U.S.C. § 717(a). This provision is

analogous to the section of Title VII governing employment discrimination in the private sector at 42 U.S.C. § 2000e-2(a)(1), (2) (making it unlawful for a covered employer to "fail or refuse to hire or to discharge any individual, or otherwise to discriminate with respect to his compensation, terms, conditions, or privileges of employment," or to "limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee" because of sex).

To establish a claim of disparate treatment on the basis of sex, a complainant must show the agency took an adverse employment action against the complainant because of the complainant's sex. This can be shown through either direct or indirect evidence.

"Direct evidence" is either written or verbal evidence that, on its face, demonstrates bias and is linked to an adverse action. *Pomerantz v. Dep't of Veterans Affairs*, EEOC Appeal No. 01990534 (Sept. 13, 2002). Where there is direct evidence of discrimination, there is no need to prove a prima facie case or facts from which an inference of discrimination can be drawn. *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1985). Moreover, where the trier of fact finds that there is direct evidence of discrimination, liability is established. Guidance on Recent Developments in Disparate Treatment Theory, No. 915.002, July 14, 1992, Section III; EEOC Compliance Manual § 604.3, "Proof of Disparate Treatment," at 6-7 (June 1, 2006).

Complainant is a transgender individual. "Transgender" is an umbrella term for persons whose gender identity, gender expression, or behavior does not conform to that typically associated with the sex to which they were assigned at birth. American Psychological Association, *Answers to Your Questions about Transgender People, Gender Identity, and Gender Expression*, p. 1 (2011) 2; see also Glenn v. Brumby, 663 F.3d 1312, 1316 (11th Cir. 2011) ("A person is defined as transgender precisely because of the perception that his or her behavior transgresses gender stereotypes"). "Gender identity" refers to a person's internal sense of being male or female (or, in some instances, both or neither); "gender expression" refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice, or body characteristics. *Id.* In this case, Complainant identified as female and has consistently presented herself as female since at least November 2010.

Complainant alleges that the Agency subjected her to sex discrimination when it treated her differently than other employees because she is transgender. In *Macy v. Department of Justice*, EEOC Appeal No. 0120120821 (April 20, 2012), the Commission held that discrimination against a transgender individual because that person is transgender is, by definition, discrimination "based on . . . sex," and such discrimination violates Title VII, absent a valid defense. We stated :

When an employer discriminates against someone because the person is transgender, the employer has engaged in disparate treatment "related to the sex of the victim." See *Schwenk*, 204 F.3d [1187] at 1202. This is true regardless of whether an employer discriminates against an employee because the individual has expressed his or her gender in a non-stereotypical fashion, because the employer is uncomfortable with the fact that the person has transitioned or is in the process of transitioning from one gender to another, or because the employer simply does not like that the person is identifying as a transgender person. In each of these circumstances, the employer is making a gender-based evaluation, thus violating the Supreme Court's admonition that "an employer may not take gender into account in making an employment decision." *Price Waterhouse*, 490 U.S. at 244.

Macy, EEOC Appeal No. 0120120821.

Here, the Agency acknowledges that Complainant's transgender status was the motivation for its decision to prevent Complainant from using the common women's restroom. The Deputy Program Manager testified that the restriction was imposed due to the Agency's belief that a significant number of women in the building would be "extremely uncomfortable having an individual [use the common female restroom because], despite the fact that she is conducting herself as a female, [the individual] is still basically a male, physically." Likewise, the Agency acknowledges that it restricted Complainant from the common women's restroom because of concerns about employee reaction to Complainant as a transgender individual. S1, for example, testified that management limited Complainant to the front executive restroom because it otherwise would have been a "real shocker for everyone in the workplace." This constitutes direct evidence of discrimination on the basis of sex.

The Agency defends its actions in part by pointing out that the Complainant agreed to use the "single shot" restroom while other employees adjusted to her transition. In this case, the "agreement" in question was a one-page memorandum from the Complainant to the management team. It outlined the reasons for Complainant's transition and a tentative list of next steps under the heading "Path Forward." The first step, starting in mid-November, was for Complainant to start dressing consistent with her gender identity. During this time, her plan said she would "use [the] single shot restroom." The next step, set to occur about a month later, was for Complainant to undergo an undefined "Surgical Procedure" and then put in a request to use the common facility. In accordance with her plan, Complainant used the single-shot restroom in the period following her change in dress. She apparently did not undergo a surgical procedure in December and did not submit a formal request to use the common facility exclusively. On two occasions, however, she found that the single-shot restroom was out-of-order or closed and decided to use the common facility. She was confronted by S2 after each time she used the common facility. He told her that she could not use those facilities until she had undergone "final surgery." Complainant asserted in response that she was "legally female" and entitled to use the women's restroom if needed.

This case represents well the peril of conditioning access to facilities on any medical procedure. Nothing in Title VII makes any medical procedure a prerequisite for equal opportunity (for transgender individuals, or anyone else). An agency may not

privileges of employment - on the completion of certain medical steps that the agency itself has unilaterally determined will somehow prove the bona fides of the individual's gender identity.³

On this record, there is no cause to question that Complainant - who was assigned the sex of male at birth but identifies as female - is female. And certainly where, as here, a transgender female has notified her employer that she has begun living and working full-time as a woman, the agency must allow her access to the women's restrooms. This "real life experience" often is crucial to a transgender employee's transition. As OPM points out:

[C]ommencement of the real life experience [i]s often the most important stage of transition, and, for a significant number of people, the last step necessary for them to complete a healthy gender transition. As the name suggests, the real life experience is designed to allow the transgender individual to experience living full-time in the gender role to which he or she is transitioning. . . . [O]nce [a transitioning employee] has begun living and working full-time in the gender that reflects his or her gender identity, agencies should allow access to restrooms and (if provided to other employees) locker room facilities consistent with his or her gender identity. . . . [T]ransitioning employees should not be required to have undergone or to provide proof of any particular medical procedure (including gender reassignment surgery) in order to have access to facilities designated for use by a particular gender.

OPM Transgender Guidance.

Agencies are certainly encouraged to work with transgender employees to develop plans for individual workplace transitions. For a variety of reasons, including the personal comfort of the transitioning employee, a transition plan might include a limited period of time where the employee opts to use a private facility instead of a common one. See id.

Circumstances can change, however and an employee is never in a position to prospectively waive Title VII rights. See *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 51 (1974) ("[W]e think it clear that there can be no prospective waiver of an employee's rights under Title VII."); see also *Vigil v. Dep't of the Army*, EEOC Request No. 05960521 (June 22, 1998) (" . . . [an] agreement that waives prospective Title VII rights is invalid as violative of public policy.") Agencies should, as the OPM Guidance suggests, view any plan with a transitioning employee related to facility access as a "temporary compromise" and understand that the employee retains the right under Title VII to use the facility consistent with his or her gender. OPM Transgender Guidance.4

The Agency states that it would not allow Complainant to use the common female restroom because co-workers would feel uncomfortable with this approach. We recognize that certain employees may object - some vigorously - to allowing a transgender individual to use the restroom consistent with his or her gender identity. Some, like the Agency decision makers in this case, may not believe a transgender woman is truly female, and thus entitled or eligible to use a female bathroom, unless she has had gender reassignment surgery. Some co-workers may be confused or uncertain about what it means to be transgender, and/or embarrassed or even afraid to share a restroom with a transgender co-worker.

But supervisory or co-worker confusion or anxiety cannot justify discriminatory terms and conditions of employment. Title VII prohibits discrimination based on sex whether motivated by hostility, by a desire to protect people of a certain gender, by gender stereotypes, or by the desire to accommodate other people's prejudices or discomfort. See *Macy*, EEOC Appeal No. 0120120821; see also *Fernandez v. Wynn Oil Co.*, 653 F.2d 1273, 1276-77 (9th Cir. 1981) (female employee could not lawfully be fired because employer's foreign clients would only work with males); *Diaz v. Pan American World Airways, Inc.*, 442 F.2d 385, 389 (5th Cir. 1971) (rejecting customer preference for female flight attendants as justification for discrimination against male applicants). Allowing the preferences of co-workers to determine whether sex discrimination is valid reinforces the very stereotypes and prejudices that Title VII is intended to overcome.⁵ See *Diaz*, 442 F.2d at 389 ("While we recognize that the public's expectation of finding one sex in a particular role may cause some initial difficulty, it would be totally anomalous if we were to allow the preferences and prejudices of the customers to determine whether the sex discrimination was valid. Indeed, it was, to a large extent, these very prejudices the Act was meant to overcome."); *Olsen v. Marriott Int'l, Inc.*, 75 F. Supp. 2d 1052 (D. Ariz. 1999); cf. *Cruzan v. Special Sch. Dist., No.1*, 294 F.3d 981 (8th Cir. 2002) (school's policy of allowing transgender women to use women's faculty restroom did not create a hostile work environment for other employees).⁶

Finally, the Agency maintains that it is unclear whether restricting Complainant from using the common restrooms is even an adverse employment action. The Commission has long held that an employee is aggrieved for purposes of Title VII if she has suffered a harm or loss with respect to a term, condition, or privilege of employment. *Diaz v. Dep't of Air Force*, EEOC Request No. 05931049 (Apr. 21, 1994). Equal access to restrooms is a significant, basic condition of employment. See e.g., OSHA, Interpretation of 20 C.F.R. 1910.141 (c)(1)(i): Toilet Facilities (Apr. 4, 1998) (requiring that employers provide access to toilet facilities so that all employees can use them when they need to do so). Here the Agency refused to allow the Complainant to use a restroom that other persons of her gender were freely permitted to use. That constitutes a harm or loss with respect to the terms and conditions of Complainant's employment.⁷

But the harm to the Complainant goes beyond simply denying her access to a resource open to others. The decision to restrict Complainant to a "single shot" restroom isolated and segregated her from other persons of her gender. It perpetuated the sense that she was not worthy of equal treatment and respect Cf. 42 U.S.C. § 2000e-2(a)(2) (making it unlawful to "segregate" employees in any way that deprives or tends to deprive them of equal employment opportunities); Religious Garb and Grooming in the Workplace: Rights and Responsibilities, Q. 8 and Ex. 8 (limiting employees who wear religious attire that might make customers uncomfortable to "back room" pos: . . . religious segregation, and violates Title VII). The

Agency's actions deprived Complainant of equal status, respect, and dignity in the workplace, and, as a result, deprived her of equal employment opportunities. In restricting her access to the restroom consistent with her gender identity, the Agency refused to recognize Complainant's very identity. Treatment of this kind by one's employer is most certainly adverse.⁸

In sum, we find that the Agency's decision to restrict Complainant's access to the common women's restroom on account of her gender identity violated Title VII. We further find that the record contains direct evidence that the decision was based on the gender identity of the Complainant. The Agency, therefore, erred when it found that Complainant was not subjected to sex-based disparate treatment.

Harassment: Gender Pronouns, Titles, and Access to Facilities

To establish a claim of hostile work environment harassment, Complainant must show (1) that she was subjected to harassment in the form of unwelcome verbal or physical conduct because of a statutorily protected basis and (2) that the harassment had the purpose or effect of unreasonably interfering with the work environment and/or created an intimidating, hostile, or offensive work environment. See *Harris v. Forklift Systems*, 510 U.S. 17, 21 (1993).

In this case, Complainant contends that she was subjected to a hostile work environment because management restricted her from using the common women's restroom even after Complainant made clear that she no longer agreed with the initial plan restricting her to the executive bathroom facility, and S3 engaged in demeaning behavior toward her by refusing to refer to her correct name and gender.⁹

Complainant testified that S3 called her male names and "sir" in moments of anger or in group settings, and that his body language reflected a negative connotation and intentional conduct when he did so. Complainant testified that S3 called her "sir" on approximately seven occasions, including in an e-mail in which he engaged Complainant in a heated discussion about work matters. Complainant is not the only witness to testify that S3 intentionally referred to Complainant with male names. We note that one witness testified that he thought that S3 intentionally referred to Complainant as "sir" and by her former male name well after Complainant announced her transition to co-workers in November 2010. The witness further testified that S3 also smirked and giggled and said to her, "Oh well, do we call her [by her male or female name]?" Further, the record contains a copy of e-mail correspondence between Complainant and S3 on July 26, 2011. The e-mails reveal that, after Complainant wrote that S3 was on the side of other employees who do not treat her as an equal, S3 responded, "No Sir, not on anyone's side." The e-mails also reflect that this exchange occurred in the context of heated exchanges about work activities between Complainant and S3. S3 maintains that calling Complainant "sir" or referring to her with a male name was "just a slip of the tongue and only occurred twice.

After reviewing witness testimony and the e-mail exchanges between Complainant and S3, we are persuaded that S3's use of "sir" in this and several other situations was intentional. The e-mail exchanges reflect that S3 sometimes used male names and pronouns to insult Complainant or to convey sarcasm. Additionally, witness testimony indicates that S3 sometimes laughed and smiled when mentioning Complainant in groups and would say her feminine name with a smirk. Further, Complainant testified in detail about S3's agitated demeanor when referring to her with male pronouns and names and another witness spoke of S3's "general feeling of hostility" toward Complainant and the snide comments S3 made that pertained to Complainant's transition and clothing. Complainant also testified that S3 seemed to especially call her male names when in the presence of other employees as a way to reveal that Complainant is transgender, as well as to ridicule and embarrass her.

The Commission has held that supervisors and coworkers should use the name and gender pronoun that corresponds to the gender identity with which the employee identifies in employee records and in communications with and about the employee. See *Jameson v. U.S. Postal Serv.*, EEOC Appeal No. 0120130992 (May 21, 2013). Persistent failure to use the employee's correct name and pronoun may constitute unlawful, sex-based harassment if such conduct is either severe or pervasive enough to create a hostile work environment when "judged from the perspective of a reasonable person in the employee's position. See *Oncale v. Sundowner Offshore Services*, 523 U.S. 75, 81 (1998); see also *Jameson*, EEOC Appeal No. 0120130992; OPM Transgender Guidance ("Continued intentional misuse of the employee's new name and pronouns, and reference to the employee's former gender by managers, supervisors, or coworkers may undermine the employee's therapeutic treatment, and is contrary to the goal of treating transitioning employees with dignity and respect. Such misuse may also breach the employee's privacy, and may create a risk of harm to the employee.").

In this case, Complainant had clearly communicated to management and employees that her gender identity is female and her personnel records reflected the same. Yet S3 continued to frequently and repeatedly refer to Complainant by a male name and male pronouns. While inadvertent and isolated slips of the tongue likely would not constitute harassment, under the facts of this case, S3's actions and demeanor made clear that S3's use of a male name and male pronouns in referring to Complainant was not accidental, but instead was intended to humiliate and ridicule Complainant. As such, S3's repeated and intentional conduct was offensive and meaning to Complainant and would have been so to a reasonable person in Complainant's position.

Moreover, in determining whether actionable harassment occurred, S3's actions must be considered in the context of the Agency's actions related to Complainant's restroom access. As we note above, even after Complainant indicated that she no longer wished to abide by her initial plan regarding bathroom use, the Agency refused to allow Complainant to use the restroom consistent with her gender identity. It publicly segregated and isolated Complainant¹⁰ from employees of her gender, and communicated that she was not

equal to those other employees because she is transgender. S3's comments compounded that discrimination and sent the message that Complainant was unworthy of basic respect and dignity because she is a transgender individual. Additionally, S3 was a team leader and his actions sometimes occurred in the presence of other employees and during meetings, signaling that such conduct was endorsed by Agency leadership.

Considering all these circumstances as we must, we find that these actions were sufficiently severe or pervasive to subject Complainant to a hostile work environment based on her sex. Because Complainant established that she was subjected to a level of severe or pervasive sex-based harassment that meets the Title VII standard for liability, the final element of our analysis is whether the Agency itself is liable for that harassment.

An agency may be vicariously liable for unlawful harassment by an employee when the agency has empowered that employee to take tangible employment actions against the victim - i.e., the harassing employee is a supervisor of the victim. *Vance v. Ball State University*, 570 U.S. ___, 133 S.Ct. 2434 (2013). In cases where the harassing employee (or employees) is a co-worker of the victim, an agency is responsible for acts of harassment in the workplace when the agency was "negligent in permitting the harassment to occur." *Id.* at 2451. Negligence in permitting harassment to occur can take many forms. An assessment of whether an Agency is liable under this standard depends on the facts and circumstances of each case and the unique context of each workplace. See *id.* at 2451 (discussing "variety of situations" that a negligence standard can address).

In her appeal, the Complainant alleged that the Agency was liable under the negligence theory. We therefore analyze her claim under that standard.¹⁰

In this case, Complainant did not report S3's harassment to management. However, we note that S3's conduct sometimes occurred in groups or in the presence of other employees. For example, a witness testified that she witnessed S3 among a group of employees in which he would laugh and smile when Complainant's name was mentioned, and the group would laugh. Another witness testified that S3 would openly refer to Complainant by her former masculine name in the presence of other employees and smirk and giggle about it, well after he was aware of Complainant's gender identity as female. This witness testimony reflects that S3's conduct was pervasive, well-known, and openly practiced in the workplace. Consequently, we find that the Agency knew or should have known about S3's harassment. See *Mayer v. Dep't of Homeland Security*, EEOC Appeal No. 0120071846 (May 15, 2009) (Agency had constructive knowledge of sexual harassment because employees were aware that harasser was harassing Complainant); *Taylor v. Dep't of the Air Force*, EEOC Request No. 05920194 (July 8, 1992) (employers will generally be deemed to have constructive knowledge of harassment that is openly practiced in the workplace or is well-known among employees). There is no evidence that the Agency took prompt and effective corrective action to address the harassment. In fact, the only Agency actions we find in the record are when Complainant's supervisors chastised her for using a facility consistent with her gender and for discussing her transition with other employees. Consequently, we find that the Agency was negligent in permitting the harassment to occur and is therefore liable.

In summary, we find that Complainant proved that she was subjected to disparate treatment on the basis of sex when she was denied equal access to the common female restroom facilities. We further find that the Agency is liable for subjecting Complainant to a hostile work environment based on sex by preventing her from using the common female restroom facilities and allowing a team leader intentionally and repeatedly to refer to her by male names and pronouns and make hostile remarks well after he was aware that Complainant's gender identity was female.

Decision of the Office of Special Counsel

Complainant filed a prohibited personnel practice complaint against the Agency with the U.S. Office of Special Counsel (OSC) based on the events described above. On August 29, 2014, OSC issued a report finding that the Agency had discriminated against Complainant based on conduct not adverse to work performance, in violation of 5 U.S.C. §2302(b)(10). U.S. Office of Special Counsel, Report of Prohibited Personnel Practice, OSC File No. MA-11-3846 (Jane Doe) (August 28, 2014) (the "OSC Report"). The report's findings were based, in part, on OSC's interpretation of Title VII requirements. OSC explained that, while it was not making any explicit findings related to sex discrimination, "EEO law and federal policies relating to discrimination based on sex, including gender identity and expression, . . . circumscribes the permissible considerations that an agency may make when determining whether conduct adversely affects work performance for purposes of section 2302(b)(10)." OSC Report at 1. Specifically, OSC found that "the Agency unlawfully discriminated against [Complainant] on the basis of gender identity, including her gender transition from man to a woman-conduct which did not adversely affect her performance or the performance of others." *Id.* at 5.

OSC recommended that the Agency provide appropriate lesbian, gay, bisexual, and transgender (LGBT) diversity and sensitivity training to AMRDEC employees at Redstone Arsenal. OSC further recommended that appropriate remedial training regarding prohibited personnel practices, especially as they relate to transgender employees, be given to AMRDEC supervisors at Redstone Arsenal. OSC also found that Complainant did not suffer any economic harm that would require back pay, and that Complainant was ineligible to collect compensatory damages because the facts of this case arose before Congress created a compensatory damages remedy under section 107(b) of the Whistleblower Protection Enhancement Act of 2012; that provision is not retroactive.¹¹ OSC noted that it made no finding regarding Complainant's ability to recover damages under Title VII.¹²

The OSC report does not moot the claim before the Commission. OSC addressed whether the Agency's actions violated U.S. government personnel practices. The answer to that question was affected, but not settled, by Title VII principles. Our decision today addresses the Agency's actions in light of the sex discrimination provisions in Title VII. However, in the Order below, we take notice of the remedies already prescribed by OSC in order to avoid duplicative actions.

U.S. OFFICE OF SPECIAL COUNSEL
EEO APPEAL; EEO File No. 3112

CONCLUSION

Consequently, based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, the Commission REVERSES the Agency's final decision. We REMAND this matter to the Agency to take remedial actions in accordance with this decision and the ORDER below.

ORDER (E0610)

The Agency is ORDERED to undertake the following actions:

1. The Agency shall immediately grant Complainant equal and full access to the common female facilities.
2. The Agency shall immediately take meaningful and effective measures to ensure that coworkers and supervisors cease and desist from all discriminatory and harassing conduct directed at Complainant, and ensure that Complainant is not subjected to retaliation because of her EEO activity.
3. Within one hundred and twenty (120) calendar days from the date this decision becomes final, the Agency will conduct and complete a supplemental investigation on the issue of Complainant's entitlement to compensatory damages, and will afford her an opportunity to establish a causal relationship between the hostile work environment to which she was subjected and her pecuniary or non-pecuniary losses, if any. Complainant will cooperate in the Agency's efforts to compute the amount of compensatory damages, and will provide all relevant information requested by the Agency. The Agency will issue a final decision on the issue of compensatory damages. 29 C.F.R. § 1614.110. A copy of the final decision must be submitted to the Compliance Officer, as referenced below.
4. Within one hundred and twenty (120) calendar days from the date this decision becomes final, the Agency shall provide at least eight hours of EEO training to all civilian personnel and contractors working at its Aviation Missile Research Development Engineering Center at Redstone Arsenal, and the Huntsville Project Management Office. The training shall place special emphasis on sex discrimination, including issues of gender identity, harassment, and preventing and eliminating retaliation. Additionally, the training shall inform employees about the EEO process and how to report harassment in their workplace organization. The Agency may count the diversity and sensitivity training ordered by OSC towards the eight hours required by this Order.
5. Within one hundred and twenty (120) calendar days from the date this decision becomes final, the Agency shall provide at least 16 hours of in-person EEO training to all management officials at its Aviation Missile Research Development Engineering Center at Redstone Arsenal, and the Huntsville Project Management Office, regarding their responsibilities to ensure equal employment opportunities and the elimination of discrimination in the federal workplace. The training shall place special emphasis on sex discrimination, including issues of gender identity, harassment, and preventing and eliminating retaliation. The Commission does not consider training to be disciplinary action. The Agency may count in-person diversity and sensitivity training ordered by OSC towards the sixteen hours required by this Order.
6. The Agency shall consider taking appropriate disciplinary action against S2 and S3 and report its decision. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If S2 or S3 have left the Agency's employ, the Agency shall furnish documentation of the departure date.
7. The Agency shall post the notice referenced in the paragraph below entitled, "Posting Order."
8. The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation and evidence that the corrective action has been implemented.

POSTING ORDER (G0610)

The Agency is ordered to post at its Redstone Arsenal, Alabama, and the Huntsville, Alabama, Project Management Office copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted by the Agency within thirty (30) calendar days of the date this decision becomes final, and shall remain posted for sixty (60) consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer at the address cited in the paragraph entitled "Implementation of the Commission's Decision," within ten (10) calendar days of the expiration of the posting period.

ATTORNEY'S FEES (H0610)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency --

Operations -- within thirty (30) calendar days of this decision becoming final. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0610)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report within thirty (30) calendar days of the completion of all ordered corrective action. The report shall be submitted to the Compliance Officer, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, DC 20013. The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated. See 29 C.F.R. § 1614.409.

STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0610)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the Agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) within thirty (30) calendar days of receipt of this decision or within twenty (20) calendar days of receipt of another party's timely request for reconsideration. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at 9-18 (November 9, 1999). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, DC 20013. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court within ninety (90) calendar days from the date that you receive this decision. In the alternative, you may file a civil action after one hundred and eighty (180) calendar days of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. Filing a civil action will terminate the administrative processing of your complaint.

RIGHT TO REQUEST COUNSEL (Z0610)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request from the Court that the Court appoint an attorney to represent you and that the Court also permit you to file the action without payment of fees, costs, or other security. See Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794(c). The grant or denial of the request is within the sole discretion of the Court. Filing a request for an attorney with the Court does not extend your time in which to file a civil action. Both the request and the civil action must be filed within the time limits as stated in the paragraph above ("Right to File a Civil Action").

FOR THE COMMISSION:

Bernadette B. Wilson

<https://www.eeoc.gov/decisions/0120133395.txt>

APPEAL; EEO File No. 3112

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9/11

March 27, 2015

Date

1 The factual background as laid out here is not exhaustive. Two comprehensive reports of the facts relevant to this case have already been compiled: the EEO Report of Investigation and the Agency's Final Agency Decision (FAD). We have considered those documents as well as the Complainant's Brief in Support of Appeal and the extensive transcript from the Fact-Finding Conference conducted on October 17-18, 2012. The facts pertinent to the legal analysis necessary are largely not in dispute.

2 Available online at <http://www.apa.org/topics/sexuality/transgender.pdf>.

3 Gender reassignment surgery is in no way a fundamental element of a transition. Transitions vary according to individual needs and many do not involve surgery at all. As the Office of Personnel Management has explained:

Some individuals will find it necessary to transition from living and working as one gender to another. These individuals often seek some form of medical treatment such as counseling, hormone therapy, electrolysis, and reassignment surgery. Some individuals, however, will not pursue some (or any) forms of medical treatment because of their age, medical condition, lack of funds, or other personal circumstances. Managers and supervisors should be aware that not all transgender individuals will follow the same pattern, but they all are entitled to the same consideration as they undertake the transition steps deemed appropriate for them, and should all be treated with dignity and respect.

Office of Personnel Management (OPM), Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace, (OPM Transgender Guidance), available online at <http://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/gender-identity-guidance/>.

4 This is not to say that plans have no place in the transition process. Properly developed, transition plans ensure that a transitioning employee is treated with dignity and respect. The process of developing a plan also opens important channels of communication between the transitioning employee and management. The plans should not, however, be used as a means for restricting a transitioning employee. Rather, they should serve as tools for enabling the employee to complete his or her transition in an open and welcoming way.

Thus, for instance, employers may not prohibit a transgender female worker from using the female bathroom based on speculation or stereotypes that such workers are somehow inherently dangerous or prone to violence, any more than a sheriff's office can exclude men from supervisory positions in female inmate housing based on unsubstantiated concerns that substantially all male deputies are likely to engage in sexual misconduct. See *Ambat v. City & County of San Francisco*, 757 F.3d 1017, 1029 (9th Cir. July 14, 2014) (concluding the assumption that "'all or substantially all' male deputies are likely to perpetrate sexual misconduct [against female inmates]" without evidence to support it "amount[s] to 'the kind of unproven and invidious stereotype that Congress sought to eliminate from employment decisions when it enacted Title VII'"). Of course, if a transgender woman using a common female restroom were to assault a co-worker using the same restroom, then the matter could and should be dealt with like any other workplace conduct violation - just as it would be if any other woman using a common female restroom assaulted a co-worker.

6 For this reason, the Commission disagrees with the holdings of cases like *Kastl v. Maricopa County Cmty. College Dist.*, 325 Fed. Appx. 492 (9th Cir. 2009), and *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215 (10th Cir. 2007). In *Kastl*, the employer contended "that it banned Kastl from using the women's restroom for safety reasons." *Id.* at 494. In *Etsitty*, the employer claimed that it did so out of fear of being sued for allowing one of its employees to use the "wrong" restroom. In both cases, the courts found that these respective explanations were legitimate, non-discriminatory reasons under the circumstantial evidentiary framework from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and that the transgender employee had not proven that the proffered reason was pretextual. *Kastl*, at 493-94; *Etsitty*, 502 F.3d at 1224. The Commission finds the rationale of these cases unpersuasive. First, an employee need not use the *McDonnell Douglas* framework when there is direct evidence that an adverse employment action has been taken on the basis of a sex-based consideration such as an employee's transgender status. Second, where an employer proffers an explanation inextricably linked to the protected trait - such as admitting that it refused to allow a transgender worker to use a restroom consistent with the worker's gender identity because of a belief that the worker's transgender status might raise safety or liability issues - that rationale is not non-discriminatory. Instead, that proffered justification is indistinguishable from the protected trait at issue and thus cannot serve as a "legitimate" explanation. Cf. *Johnson v. State of NY*, 49 F.3d 75, 80 (2nd Cir. 1995) (holding that a policy requiring active membership in an organization where membership was automatically rescinded at age 60 was not neutral; it was, instead, "inextricably linked" with age). Indeed, the *Etsitty* Court itself acknowledged that: "It may be that use of the women's restroom is an inherent part of one's identity as a male-to-female transsexual and that a prohibition on such use discriminates on the basis of one's status as a transsexual." However, as the *Etsitty* court went on to explain, it had already concluded that "Etsitty may not claim protection under Title VII based upon her transexuality per se" and thus *Etsitty's* claim had to "rest entirely on the Price Waterhouse theory of protection as a man who fails to conform to sex stereotypes." *Etsitty* at 1224. In light of that fact, the *Etsitty* court concluded that "[h]owever far Price Waterhouse reaches, this court cannot conclude it requires employers to allow biological males to use women's restrooms." *Id.* Of course, as noted previously, the Commission in *Macy* has held that discrimination on the basis of transsexual status is sex discrimination, finding that a plaintiff need

not have specific evidence of gender stereotyping by the employer because "consideration of gender stereotypes will inherently be part of what drives discrimination against a transgendered individual." Id., 2012 WL 1435995, at *8 (EEOC Apr. 20, 2012).

7 In this case, the Agency's restroom policy also deprived Complainant of the use of common locker and shower facilities that non-transgender employees could use, which also constituted a material employment disadvantage for Complainant.

8 Cf. John Doe, et al. v. Regional School Unit, 86 A.3d 600 (2014) (where it has been clearly established that a student's psychological well-being and educational success depend upon being permitted to use the communal bathroom consistent with her gender identity, denying access to the appropriate bathroom constitutes sexual orientation discrimination in violation of the Maine Human Rights Act); Mathis v. Fountain-Fort Carson School District 8, Colo. Dep't of Regulatory Agencies, Div. of Civil Rights, Charge No. P20130034X, Determination available at http://www.transgenderlegal.org/media/uploads/doc_529.pdf (June 18, 2013) (restroom restriction placed on female transgender student created "an exclusionary environment which tended to ostracize the [student]."); Statement of Interest of the United States in Tooley v. Van Buren Public Schools, No. 2:14-cv-13466 (E.D. Mich. Feb. 20, 2015)(citing Doe and Mathis).

9 Complainant did not avail herself of a hearing. Therefore, we must assess the credibility of witnesses on the record, without the assistance of a neutral EEOC AJ's personal observations of witness demeanor and tone. Wagner v. Dep't of Transp., EEOC Request No. 0120101568 (Aug. 23, 2010). We note, however, that the Agency conducted a fact-finding conference at which witnesses other than the Complainant gave testimony.

10 Given that the decision to restrict Complainant from the common restrooms consistent with her gender was instituted by management, there is an argument to be made that the supervisor liability standard is appropriate. We do not need to reach this issue, however, because Complainant has invoked the negligence liability standard and we find that she has met her burden under that analysis. See Wilson v. Tulsa Junior College, 164 F. 3d 534, 540 n. 4 (10th Cir. 1998) ("The Supreme Court recognized in [Faragher] and Ellerth the continuing validity of negligence as a separate basis for employer liability").

11 See King v. Dep't of the Air Force, 119 M.S.P.R. 663, 668 (2013).

12 We address the matter of compensatory damages under Title VII in our Order, below.

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U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, DC 20507

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EXHIBIT

4



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Northern
California

August 22, 2019

Via First-Class Mail

Chief J
San Francisco Fire Department
Department Headquarters
San Francisco, CA 94107

Dear Chief:

We submit this letter on behalf of the San Francisco Black Firefighters Association (SFBFA) and SF ResQ. SFBFA and SF ResQ have retained the ACLU Foundation of Northern California (ACLU) to investigate concerns about discrimination in the San Francisco Fire Department (Fire Department or Department) in areas ranging from recruitment, hiring, and retention to promotions and discipline.¹ While the Fire Department has increased the diversity and inclusiveness of its force, there are areas for growth in order for the Fire Department to demonstrate leadership in its commitment to representing the community it is sworn to serve.

As you are no doubt aware, the Fire Department has a long history of disparities in the hiring and promotion of people of color, including Black people and Latinx people,² and women, which led to litigation and the entry of a consent decree in the 1970s. A second round of litigation in the 1980s led to a new consent decree in 1987. Since that time, the Fire Department has implemented measures to achieve a more diverse Department, and its workforce is now more reflective of the Bay Area labor market. At the same time, however, firefighters of color continue to face barriers in recruitment, promotion, and discipline.

We write to bring these concerns to your attention and call upon your leadership to institute lasting change within the Fire Department. We offer recommended best practices to address some of the concerns we have identified. We also encourage the Fire Department to meaningfully engage with its employees and the community for the critical perspectives and ideas of these stakeholders.

Ongoing incidents suggest that barriers based on race, sex, sexual orientation, and gender identity continue within the Fire Department. We urge the Fire Department to consider changes to its employment practices that will ensure the Fire Department is an open and welcoming workplace for all, without regard for race, national origin, sex, sexual orientation, gender identity, or any other protected classification.

¹ Legal Aid at Work, which represented firefighters of color in the historic employment discrimination litigation discussed below in Part I, contributed to the drafting of this letter.

² This letter uses the gender-neutral term “Latinx” in lieu of Latina or Latino.

American Civil Liberties Union Foundation of Northern California

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DISAPPEARED FROM THE PUBLIC RECORDS APPEAL; EEO File No. 3112

I. History of Racial and Gender Disparities in the Fire Department

There is a long history of struggle for integration and inclusion in the Fire Department. This history has resulted in repeated, prolonged, and contentious litigation, together with court-ordered improvements and consent decrees to execute non-discriminatory practices. We detail this history of litigation here to make clear that Fire Department's history of racial, national origin, and sex discrimination is not fleeting. Rather, racism and sexism have been embedded into the structures of the Fire Department, and flow from a history of segregation and the explicit and purposeful exclusion of women and people of color from its ranks. As such, ensuring that the Fire Department provides equal opportunity to all employees and applicants going forward will be an ongoing struggle that requires its leadership to commit themselves fully to ending discrimination and harassment.

The Fire Department hired no Black firefighters before 1955, did not allow women to apply before 1976, and hired no women until August 1987. From 1955 to 1967, one Black man, Earl Gage, worked for Fire Department. By 1970, four Black men (out of approximately 1,800 total) worked as uniformed fire personnel.³

That same year, the first known lawsuit against the Fire Department to challenge the discriminatory impact of written, entry-level examinations on Black and Mexican-American applicants was filed.⁴ Between 1970 and 1973, the court ruled that three successive versions of the Fire Department's entrance examination had an adverse impact on minority⁵ applicants and had not been professionally validated as an accurate measure of the knowledge, skills, and ability needed for the job. The court ordered affirmative action, requiring the Fire Department to hire one minority applicant for each nonminority applicant hired from an eligibility list, until all minority applicants on the list had been hired. Later, the parties entered into a five-year consent decree that stated a long-term goal of 40% minority representation. Despite this, as late as 1985, three years after the consent decree terminated, the Fire Department remained 85.2% White. In 1987, the first woman joined the force.⁶

Not only were Fire Department's entry-level practices challenged, but its promotional practices were also identified as racially discriminatory. In 1980, the California Department of Fair Employment and Housing (DFEH) received ten complaints from Black firefighters alleging

³ For comparison, Oakland had fire stations with entirely Black firefighters as early as the 1920s.

⁴ At the time, San Francisco's population was 14% Black. The National Association for the Advancement of Colored People, the Mexican-American Legal Defense and Educational Fund (MALDEF), and the San Francisco Neighborhood Legal Assistance Foundation represented the plaintiffs.

⁵ We use the term "minority" as it was used in the cited court opinions, that is, in comparison to the national population of the United States, which is majority White or Caucasian.

⁶ No women were even allowed to take the entrance exam until 1976. The Fire Department was one of the last major urban fire departments to exclude women.

discriminatory impacts of a fire lieutenant promotional examination. The DFEH issued a formal complaint, and an administrative hearing resulted in the Fair Employment and Housing Commission's (FEHC) determination that the examination adversely impacted minorities and was not sufficiently-job related to be deemed valid. This decision was appealed, and eventually, a California Court of Appeal upheld the FEHC's findings.

Despite these lawsuits, racism and sexism persisted at the Fire Department. In the 1980s, the United States and a group of Black and female applicants and employees brought separate suits against the City of San Francisco (City) for its failure to correct the effects of past discrimination and for its continued use of invalid hiring procedures that had an adverse impact on women and minorities in both hiring and promotions.⁷ The applicants and employees also alleged racial harassment, presenting evidence that two firefighters (one Asian and one Black) returned to their firehouse desks to find a swastika hanging from a nearby wall and of the Fire Department's failure to timely investigate or respond to harassment complaints.

After the City decided not to defend the validity of certain tests, the court issued a permanent injunction, prohibiting violation of anti-discrimination laws and requiring the institution of recruitment and training programs and new test development. With respect to the treatment of minority members, the court found that the Fire Department was "out of control." It found that Fire Department was lacking either willingness or ability to carry out the court's injunction and the Fire Department's internal order prohibiting racial harassment. The court went so far as to take the extraordinary step of holding all officers of rank lieutenant and above personally responsible for the implementation of the Fire Department's anti-harassment policy.

The City entered into an agreement with the applicants and employees to resolve the litigation in 1987, without the support of the Department of Justice or Local 798, the firefighters' union. The agreement set a long-term goal for the representation of minorities (40% total; 19% Asian, 10% Black, 11% Latinx,⁸ as reflected in the 1980 and 1990 census) and women (10% total). All hiring goals were targets, but failure to meet a goal was to be justified to the court. The agreement also allowed the hiring of 500 firefighters over the life of the agreement: 10% of the hires were to be women (50% of which should be women of color), and 55% of hires were to be minorities. With respect to promotions, the agreement set a goal that promotions reflect the applicant pool, and it put forth a schedule for the administration of promotional exams. It also provided for the promotion of 6 Black provisional lieutenants to permanent lieutenants, and 11 Black firefighters, 8 Hispanic firefighters and 8 Asian or Filipino firefighters to fire lieutenant positions. In 1988, the district court approved of the agreement, despite the government and union's opposition.

The consent decree was terminated in December 1997, when the Fire Department's hiring rate was about 61% minority and 20% female and after the first Black chief of the Fire Department was appointed. The stipulated order terminating the decree reaffirmed the hiring and promotional

⁷ The Lawyers' Committee for Civil Rights of the San Francisco Bay Area, Equal Rights Advocates, Legal Aid at Work (then known as the Legal Aid Society – Employment Law Center), MALDEF and Asian Americans Advancing Justice – Asian Law Caucus (then Asian Law Caucus, Inc.) represented the applicants and employees who were plaintiff-intervenors.

⁸ The cited court opinions use the term "Hispanic."

goals in the consent decree and required the City to use its best efforts within the law to attain a workforce that reflected the percentages of minorities in the city population. The City agreed to develop and implement a Cadet Program to replace the entry-level selection process and an Officer Candidate Program to replace the promotional process.

After the stipulated order expired in 1998, the parties entered into a one-year memorandum of understanding, which reaffirmed the goal of attaining a workforce that reflected the diversity of the City and required the City to develop an outreach program, a bilingual proficiency test, and the Officer Candidate Program. The Fire Department did not implement an Officer Candidate Program and it did not hold promotional examinations for many years following the termination of the consent decree in 1997.

II. Present-Day Concerns

Our investigation of the current racial climate within the Fire Department has included interviews, review of complaints, California Public Records Act requests, and media research. In this section, we describe the results of our investigation in general terms, so as to not disclose specific circumstances that might reveal the identities of individual complainants. The Fire Department is more diverse today than it was in the 1970s and 1980s, prior to the litigation and consent decrees summarized above. However, our investigation has shown that individual members of the Fire Department continue to face harassment and hostility in the workplace. That the Fire Department can boast a comparatively “diverse” workforce compared to others across the country does not absolve it of the imperative to address serious and ongoing instances of bias and discrimination within its ranks.

Recruitment and Training

The Fire Department’s recruitment efforts have not resulted in trainee classes that are reflective of the diversity of the Bay Area.⁹ It appears that the Fire Department has not adequately supported or prioritized recruitment techniques that would ensure greater diversity of the Training Academy, the pipeline to firefighter positions in the Fire Department.

As the Fire Department knows, in November 2017 a group of firefighting trainees of color enrolled in the Training Academy sent a letter to then-Chief White.¹⁰ In that letter, they detailed disturbing ways in which trainees of color were being subjected to harsher discipline, unfair training and testing conditions, and degrading language. They listed a number of examples of bias by instructors, including the Battalion Chief’s use of the n-word while teaching the Cultural Competency class. They felt “threatened, humiliated, [and] targeted” by training staff and feared retaliation if they spoke out against the racially hostile environment. By the end of 2017, the Training Academy dismissed five recruits – three were Black men and two were women.

⁹ The relevant labor pool for the Fire Department extends beyond the city limits of San Francisco. Despite demographic changes within the City of San Francisco itself, the Bay Area remains highly diverse, and it would not be acceptable for the Fire Department to backtrack on its historic commitment to achieving a diverse workforce.

¹⁰ See Attachment 1 (hereinafter Brave Men of Color letter).

Although the Brave Men of Color letter prompted an investigation by the Fire Department, at the end of 2017, which as far as we are aware did not result in any remedial action.

Throughout our investigation, multiple sources underscored the seemingly arbitrary nature in which discipline and testing results are meted out at the Training Academy, furthering concerns of bias and discrimination. For example, former recruits reported that benchmarks and metrics for assessment, as well as the justifications for deficiencies and demerits, seemed to differ among staff within the Training Division, making it difficult for recruits to know what is expected of them or to have assurance that they will be evaluated fairly and objectively. In a number of reported cases, recruits were told they would be assessed based on a specific benchmark during training, to later be assessed based on a different metric during examination. Although the Training Division video records manipulations, interviewees reported that recruits are unable to review their own recordings, even when it comes to challenging demerits or deficiencies.

In other interviews, we have heard that trainees fear raising even the most serious concerns within the Training Division, fearing termination. Instructors in the Training Department have intimidated trainees who would otherwise speak with outside investigators or advocates into silence. The culture of retaliation against those who come forward with complaints – regardless of whether this fear is founded or not – gives cause to believe that the public reports of discrimination and disparate treatment, as well as those presented to a well-known organization such as the ACLU, are only a small representation of the broader existence of these such incidents.

The Fire Department has also failed to demonstrate a commitment to supporting recruitment in under-represented communities. For example, one Black recruiter who was effectively engaging communities of color, yielding trainees who were successful in the Training Academy, was told by the Fire Department to stop talking with potential recruits, undermining his ability to attract and encourage candidates of color or LGBTQ candidates.

These recent events appear to be the unsettling continuation of a pattern of deeply rooted biases in the culture of the Training Division. The Fire Department has been on notice of earlier allegations of hazing and racist abuse by instructors in the Training Academy going back to at least 2005.¹¹

Retention and Promotions

Firefighters of color have furthermore, upon successful completion of the Training Academy, reported a lack of support in seeking to climb the ranks within the Fire Department. Many feel that the Fire Department fails to provide professional development or leadership training and therefore fails to retain the very people that help provide the diversity the City needs for an

¹¹ See Attachment 2 (December 7, 2005 letter from the San Francisco Black Firefighters Association); Jaxon Van Derbeken, “San Francisco Fire Shells out \$100,000 a Day on Overtime Staffing Shortage,” NBC Bay Area (July 15, 2016), <https://www.nbcbayarea.com/news/local/San-Francisco-Fire-Shells-Out-100000-a-Day-on-Overtime-Amid-Staffing-Shortage-387047391.html>.

effective and inclusive firefighting force. Assistant chiefs have been known to provide selective mentoring. One firefighter reported that when she asked an assistant chief for guidance in strategy and tactics while preparing for her lieutenant's examination, the assistant chief responded, "I already have my people," indicating apparent pre-selection and disregard for even the appearance of transparency and fairness. Firefighters have also reported disparate treatment based on race in the handling of discipline.

The testing and promotion process suffers from a lack of transparency, and there do not appear to be objective standards for determining who is eligible to take a promotion examination. Arbitrary, non-transparent score cutoffs and limits on the number of people who will be eligible to take a promotional exam or apply for a promotion add to this appearance. This is especially the case when such decisions are announced without justification or explanation and in a way that appears to specifically and intentionally exclude firefighters and officers of color from promotions. Recently, for example, the Department decided that only the top nine people on the roster of captains could sit for the Battalion Chief examination. The tenth person on the roster, who was not allowed to sit for the Battalion Chief examination, was the highest-ranking Black person on the list and the only Black candidate in the top twenty. The highest ranking Asian-American candidate was ranked number twelve and was also not allowed to take the examination. The Department did not explain how it made the decision to take only nine test takers, excluding Black and Asian-American candidates in the top twenty.

Since at least 2005, firefighters have raised allegations of cheating and favoritism relating to the administration of Training Academy tests and promotion examinations¹²—for example, post-hoc score adjustment, the leaking of test questions and even answer keys with white firefighters prior to promotion exams, and the existence of a "bank" of standard questions and answers that is shared among a select group of Fire Department personnel, specifically excluding women and firefighters of color. These "irregularities" are reported to be a common and widely recognized practice, and not the conduct of a few rogue officers.

The Fire Department's practice of extending old promotion lists only adds to the injuries that result from unfair testing practices, because it results in re-appointing employees whose positions at or near the top of the lists might have been the result of cheating and prevents other potentially qualified officers from advancing.

The Department has simultaneously reduced the opportunities for promotion by halving the number of chiefs, from sixteen to eight. The current command staff, who are appointed by the Chief, also suffer from a lack of diversity.

Interviewees confirm that the resulting lack of opportunity for promotion, professional growth, and development dissuades diverse candidates from making career-long commitments to the Fire Department. Given the current rankings on promotion lists (which many report are the product of

¹² See Matt Smith, "Black Firefighters Say SFFD Officer Helped White Colleagues Cheat on Exam," SF Weekly (Feb. 16, 2011), <http://www.sfweekly.com/news/black-firefighters-say-sffd-officer-helped-white-colleagues-cheat-on-exam/>.

favoritism and cheating), in the next few years, the Fire Department will likely have only one Black chief.

Culture of Harassment and Hostility

“[S]tereotyped assumptions of inferior competence” based on race and gender¹³ are manifest in the many allegations of harassment based on race, gender, and sexual orientation that we learned of in the course of our investigation.

The Fire Department has been faced with a number of recent lawsuits claiming racial discrimination in the promotion process, racially disparate discipline, and sexual harassment. Last year, the Fire Department settled a lawsuit for sexual harassment, costing the City \$575,000.¹⁴ In 2013, the Fire Department settled a racial discrimination lawsuit by a Black firefighter who was forced to endure racially motivated insults such as being called “house boy” and being made to scrub toilets and floors with a toothbrush.¹⁵

A gay firefighter who contracted HIV, upon his return to work following a medical leave, faced abuse and harassment because his HIV status and sexual orientation. A 2015 article recounted that there had not been any substantive training on HIV in almost two decades and that people who identified as LGBTQ were ostracized.¹⁶

In recent years, the Fire Department has faced several lawsuits in which plaintiffs alleged racial and sexual harassment.¹⁷

In addition, we are aware of numerous internal complaints to the Fire Department for harassment based on sexual orientation (for example a male recruit who was dismissed, after being called a “princess” and a “Fag” by training lieutenants); race, sex, and retaliation against whistleblowers

¹³ See Corinne Bendersky, “Making U.S. Fire Departments More Diverse and Inclusive,” Harvard Business Review (Dec. 7, 2018), <https://hbr.org/2018/12/making-u-s-fire-departments-more-diverse-and-inclusive>.

¹⁴ See Joshua Sabatini, “Board Settles Firefighter Lawsuit Alleging Repeated Sexual Harassment,” SF Examiner (Oct. 24, 2018), <https://www.sfexaminer.com/breaking-news/board-settles-firefighter-lawsuit-alleging-repeated-sexual-harassment/>.

¹⁵ See Jaxon Van Derbeken, “Tentative Settlement in Black SF Firefighter’s Suit,” SF Gate (Sept. 7, 2013), <https://www.sfgate.com/bayarea/article/Tentative-settlement-in-black-SF-firefighter-s-4795725.php>.

¹⁶ See “HIV-Positive Firefighter Alleges Widespread Harassment, Discrimination,” SF Examiner (Mar. 9, 2015), <https://www.sfexaminer.com/news/hiv-positive-firefighter-alleges-widespread-harassment-discrimination/>.

¹⁷ See Jaxon Van Derbeken, “SF Fire Dept. Moving to Oust Capt. For Alleged Sexist, Racist Remarks: Sources,” NBC Bay Area (Nov. 11, 2016), <https://www.nbcbayarea.com/investigations/SF-Fire-Dept-Moving-to-Oust-Capt-For-Alleged-Sexist-Racist-Remarks-400860131.html>; Curt Varone, “San Francisco EMT Sues FD and Her Colleagues for Discrimination,” Fire Law Blog (Sept. 17, 2018), <http://www.firelawblog.com/2018/09/17/san-francisco-emt-sues-fd-and-her-colleagues-for-discrimination/>.

(for example, a female recruit was terminated from the Training Academy for calling out unfair treatment); and apparent cheating by an instructor who, despite a complaint, was promoted to Recruit Training Captain and then Assistant Deputy Chief of Training.

These public and internal complaints are indicative of a general culture that has been described to us as one that devalues and marginalizes those who do not fit the “profile” of what a firefighter “should” look like – including people of color, women, people who identify as LGBTQ, and others.

The Fire Department’s troubling history of failing to hold accountable those in leadership who engage in or permit discrimination and harassment based on race, sex, sexual orientation and gender identity contributes to an overall culture permissive of hostility and harassment and communicates to those experiencing bias that coming forward will not result in change.

Deficiencies in Training for Anti-Discrimination, Implicit Bias, Cultural Sensitivity

In mid-2018, the ACLU of Northern California submitted several requests for documents from the Fire Department pursuant to the California Public Records Act. Among other things, we sought information on the Fire Department’s policies and procedures relating to diversity and inclusion, recruitment, training programs relating to anti-discrimination and anti-bias, complaints of discrimination, and the resolution of such complaints. The materials produced by the Fire Department in response were devoid of any anti-discrimination training materials, materials focused on preventing harassment, or anti-bias training. The Fire Department further wrote that it could not locate any documents responsive to our requests for documents showing training for assessing recruits’ performance in the Training Academy or policies for adjudicating recruit complaints. We understand that the Training Academy has recently incorporated limited training into the curriculum, addressing bias and discrimination in an approximately 90-minute period during the 20-week training program. There is no ongoing bias training for firefighters after the Training Academy.

The absence of robust anti-discrimination and anti-bias training modules, ongoing training for all employees, or well-developed policies and practices for addressing complaints of discrimination, harassment, or bias is both surprising and disturbing considering the Fire Department’s not-so-distant history of being subjected to a consent decree with enforceable targets for achieving a more diverse and inclusive workforce.

III. Recommendations

We offer the following recommendations with the goal of facilitating the Fire Department’s ongoing work toward achieving a more diverse, inclusive workforce. There is unanimity in the academic research that in order to achieve a fair and equitable workplace that values and embraces diversity, leadership from the very highest levels is critical. Anti-discrimination and anti-harassment policies and practices must not only be robust, clear, and widely disseminated, but enforced uniformly at all levels of the organization. Ongoing training at all levels is critical to addressing a climate that has permitted harassment and discrimination in the past and towards

creating a positive workplace culture. There must be consequences for engaging in or failing to appropriately address harassment and discrimination.

Below, in addition to broad recommendations directed at organizational culture, we provide recommendations in the areas of recruitment, training, discipline, retention, and promotions. These recommendations are based on our research and findings as well as literature on best practices for fire departments and first responders generally. The citations provided are by no means exhaustive. There is a wealth of literature from which the Fire Department can draw to make informed decisions to address concerns including those we summarize above in Part II.

A. Organizational Culture

A recent study prepared for the U.S. Department of Labor called *Promising Practices for Increasing Diversity Among First Responders* identifies organizational leadership and support as a key component of a workplace that supports diversity.¹⁸ It is imperative that an organization's leadership explicitly communicate and demonstrate its commitment to diversity, equity, and inclusion.¹⁹

Demonstrating leadership includes embracing transparency and accountability, which are critical to fostering an overall culture within the Fire Department that truly reflects the Fire Department's mission and represents the diverse community the Fire Department serves.

Transparency is critical to retention and employee perceptions of fairness. In addition to clear policies and procedures and ongoing training regarding these policies, recommended practices to increase transparency include regularly publishing demographic data, including charts broken down by rank that show the racial and gender composition of employees at each rank level.

Accountability is critical to ensuring a more inclusive workplace. The Fire Department must hold those in positions of leadership and power accountable for implementing and respecting policies and protocols. In a Department with an established history of discrimination, it is imperative that Department leadership hold itself to the highest of standards. This requires taking steps to correct failures to respect and implement Department policies. Ranking officers, supervisors, and other Department leaders must not only be expected to fully and faithfully implement anti-harassment and anti-discrimination policies, but clear steps must be taken, including disciplinary measures, when leaders fail to enforce policies or prevent harassment.

In order to overcome and correct a decades-long institutional culture that has been permissive of harassment and discrimination, we strongly encourage the Fire Department to require implicit bias and diversity training, conducted by an external trainer, during the Training Academy for all recruits and on a yearly basis for all employees of the Fire Department. It is also important that

¹⁸ U.S. Department of Labor, *Promising Practices for Increasing Diversity Among First Responders* at 2 (2016), https://www.air.org/sites/default/files/downloads/report/FirstResponders_Full_Report.pdf.

¹⁹ *Id.* at 10.

the organization have clear, written protocols for reporting and responding to harassment that are disseminated to all employees. Additionally, given the history within the Fire Department of supervisory personnel engaging in potentially discriminatory or harassing conduct, we encourage the Fire Department to create multiple avenues for reporting harassment, so that recruits and rank-and-file members of the Fire Department are not forced to report harassment to those with a perceived or actual history of engaging in such behavior.

B. Recruitment

While the Fire Department engages in several community outreach and recruitment efforts, we recommend that the Fire Department devote increased time and effort to recruiting in communities of color. Community engagement to create a pipeline of future applicants is a “critical component” of achieving a fire department that is diverse and equitable.²⁰

Successful first responders’ practices for increasing the diversity of incoming recruits include hiring liaisons who work with particular community groups, forming partnerships with area high schools and colleges, providing sign-on bonuses for people with language skills, providing free or subsidized training and test preparation, and offering housing and education benefits to new recruits.²¹ Recruitment efforts should focus on the entire region and not just San Francisco city limits.

The Fire Department should also create a paid internship program. Mayor Breed’s Opportunities for All Initiative Program is a useful model. The Fire Department could moreover offer test preparation classes targeted to underrepresented communities in San Francisco. Inclusive test preparation classes and programs have also been shown to be especially effective at enhancing recruitment rates for women of color.²²

Importantly, the Fire Department should take steps to ensure that costs associated with applying to join the Fire Department do not disproportionately exclude people from particular backgrounds. As one example, we have received reports that requiring EMS/EMT certification as a prerequisite to enrollment in the Training Academy is a significant financial burden that falls heavily on potential recruits of color and precludes lower-income prospective firefighters from joining the Fire Department. The Fire Department could provide EMS/EMT certification as part of the Training Academy or offer a stipend for recruits to attend outside EMS/EMT training.

²⁰ Samuel Johnson Jr., “How Fire Departments Could Look Like the Communities They Serve,” *Governing* (Nov. 30, 2016), <https://www.governing.com/gov-institute/voices/col-steps-improve-fire-department-diversity.html>.

²¹ *Promising Practices*, *supra* note 18, at 2. This report indicates that the Fire Department may already providing housing assistance and incentives for language ability (*id.* at 58), which we applaud.

²² *Id.* at 53.

C. Training

To combat the sense that assessment of recruits in the Training Academy is arbitrary and biased, the Fire Department can take a number of steps to improve transparency and consistency. First, the Fire Department can implement a standardized, objective system for issuance of demerits and deficiencies and share these guidelines with recruits so they know the specific benchmarks by which they will be assessed. These clear measures for assessment should be accompanied by more rigorous training and accountability mechanisms for Department of Training staff to ensure consistent recruit assessment and fair issuance of demerits and deficiencies throughout the Training Academy.

As a means for reducing perceptions of favoritism or complacency, instructors should be frequently rotated. Consistent with a recommendation of California State Fire Training, the Department should implement a policy of standardized videoing of examinations and manipulations and review of these recordings before a recruit receives a deficiency. Recruits should be allowed to review video recordings of their performance for purposes of assessment and demerits or deficiencies.

Within the Training Academy curriculum, anti-bias training and reality-based role playing can help trainees learn how to approach interactions with co-workers and community members of diverse backgrounds. One practice for increasing inclusion is to involve local community members – representatives of the very neighborhoods and communities that firefighters will serve – in such trainings.

D. Discipline

Inconsistent or opaque discipline practices can contribute to a perception of a racially hostile environment. The Fire Department could increase perceptions of fairness by assembling a diverse discipline review board comprised of employees of different ranks, races, genders, and sexual orientations and by instituting a clear appeal process for people who feel they have been disciplined unfairly. Supervisors should receive training in how to discipline in a consistent and equal manner. To increase transparency regarding the administration of discipline, the Fire Department could track and publish discipline actions and invest in training managers and supervisors in how to impose fair, impartial discipline. Ultimately, management must hold itself accountable for any reported disparities in disciplinary action.

E. Retention

While the Fire Department has achieved a comparatively high rate of retention, this is a critical area for increased and ongoing attention. In addition to fostering a Fire Department that welcomes and respects diverse firefighters, there are a number of practices the Fire Department could put in place to increase retention rates of firefighters of color. In addition to the existing “population-specific employee groups,” the Fire Department could support the creation of intra-organizational mentorship programs, which have proven to be a successful strategy for increasing retention rates for employees of color. The Fire Department could also offer

leadership training to all new and entry-level firefighters and allow officers to work towards earning college credits. Research shows that a commitment to ongoing training in diversity, equity, inclusion, and anti-harassment for all Fire Department employees would also have a positive impact on the retention of employees of color.

F. Promotions

One of the most important things that the Fire Department can do in this regard is explicitly to commit itself to transparency and objectivity in all aspects of the promotion process. Employees in the Fire Department have a perception that the process for awarding promotions is neither fair nor equitable. We understand that the Department's Career Track Manual has not been updated since 1995. This suggests a lack of commitment to the career development of firefighters.

With regard to test administration, the Fire Department should consider hiring an outside agency to administer the written tests in order to reduce the risks of cheating or favoritism in the administration and scoring of the examinations. Preserving the confidentiality of promotional examinations and answer keys is critical to making all employees feel confident that the promotion process is fair and equitable. As noted above, this has been a historical problem in the Fire Department.

Promotion exams could furthermore include assessments of a broader range of skills, including interviews to assess social skills that are important to interactions with the community. As with other forms of assessment, were the Fire Department to incorporate this recommendation, the Fire Department should ensure that clear scoring criteria are created prior to the assessment process, that evaluators are trained in the scoring criteria and implicit bias, and that there is transparency in the use and application of these assessment techniques.

The promotion process should be 100% transparent. The examination scoring process should also be transparent, including publication of the scoring key, so that employees can review their exam after it is graded and compare it to the scoring key. In this way, promotional exams can become an opportunity for learning, allowing Fire Department personnel to identify strengths and weaknesses and seek appropriate professional development opportunities. There should also be an opportunity for employees to petition to have an exam rescored. Such steps would assure future test-takers and employees seeking to grow in their professional careers that the Fire Department has nothing to hide in the promotional process and values all employees' professional development.

Finally, a number of people we spoke with expressed concern over the long duration of the promotion lists and the elongation of examination schedules. To encourage employees to develop skills and re-take promotion exams they might not have excelled at on an initial pass, and to ensure that any vestiges of favoritism, cheating, or other discrepancies in past exam administration are not reflected in future promotions and leadership within the Fire Department, the Fire Department should consider more frequent and regularly scheduled exam administration and a more flexible ranking system that rewards improvement over time. The Fire Department can also increase transparency and combat a perception of favoritism by allowing all employees who meet the minimum requirements to apply for leadership positions.

* * * * *

A diverse Fire Department that represents the community it serves is important, and we recognize the Fire Department's progress to make this a reality. Simultaneously, mere representation in numbers does not make a workplace truly diverse, or welcoming to people of color, women, or LGBTQ people. It is the responsibility of the Fire Department's leadership to take these concerns seriously and to take steps to improve a workplace that, to date, has been unable to fully respect and support all its members.

We truly appreciate the sacrifice that individual firefighters and the Fire Department as a whole make in order to serve our community in ever-changing and challenging times. These personal risks and sacrifices make it even more necessary that each individual firefighter is able to thrive and feel supported in a respectful, welcoming work environment. As the new Chief of this Department, we are hopeful that you will lead efforts to ensure that the Fire Department is equipped to serve the diverse, welcoming city of San Francisco.

We appreciate your consideration of the historical and ongoing challenges facing the Fire Department and the recommendations we have set forth in this letter. We welcome an opportunity to talk with you if you would find it valuable.

Sincerely,



Jamie L. Crook, Senior Staff Attorney
Theodora Simon, Investigator

ACLU Foundation of Northern California

Cc: Mayor London Breed and Fire Commissioners Cleaveland, Covington, Hardeman, Nakajo, and Veronese

Attachment 1

November 8, 2017

Chief [REDACTED]
San Francisco Fire Department
San Francisco, CA
94107

Dear Chief [REDACTED]:

The unprofessional and dishonorable behavior of some of the Training Staff assigned to train us at the San Francisco Fire Department's Recruit Training Academy has led to our writing this letter. We are the men of color of this 123rd Probie class and all we want is to work hard and graduate earning the Firefighter badge for the City of San Francisco. We want to earn that right to become San Francisco Firefighters, working for the greatest City in the world. But we are unlikely to achieve this given how we have been treated.

As we are in the middle of week 7 of the 20 week Training Academy, we have seen and experienced retaliatory, demeaning, punishing, and racist/sexist behavior by some of the Training Staff. The last straw was when a Battalion Chief taught the Cultural Competency class last week and used the "N" word. All of us eight African American Probies in this class were offended. Even the Firefighter who was co-teaching with this Chief, Firefighter [REDACTED] aka, an African American himself, said he was offended when the Battalion Chief used the word when conducting her exercise. When we were asked whether we were offended, we were too afraid to say that we were. Let us tell you why.

The isolated climate that some of the Training Staff have created (we are threatened constantly to not talk to anyone outside of the Training Staff, even after demerits and or deficiencies are unjustly issued) forces us to seek help with this letter. It is our hope that you will not allow these incidents to go unnoticed or unaddressed. We have not listed our names because we have seen first hand the Training Staff retaliate when the slightest word gets out about the unfair and unethical treatment we have received. There have been too many incidents in the past 7 weeks that will speak for themselves.

Just in the past 7 weeks, some of the Training Staff have demonstrated behavior that would result in discipline or immediate removal should any other employee or any other department decide to conduct themselves in a similar manner. Many of us Probies spent years competing to get here and have gone through a highly selective vetting process. You chose us to become San Francisco Firefighters out of over 10,000 candidates. We cannot allow these unprofessional and dishonorable Training Staff members rob us of a 30 year career. Some of us have mortgages to be paid, wives who are pregnant, or young children to feed. We are men of color who want an equal opportunity at a career that we have been working tirelessly for years to achieve. All we ask is a fair shot at earning the

badge and not some unethical/unprofessional Training Staff member to pull the rug from underneath us because of their own agenda of retaliation or bias, or their own shortcomings of expected instructional standards.

Patience has been lost. There are still 13 more weeks to go of intense testing. All we want is to be able to come to work on a daily basis without wondering whether the Training Staff will create a situation in which we feel threatened, humiliated, targeted, or the victim of inconsistent instruction where one instructor tells us to do this while another tells us to do something else...sometimes one day before testing. This is all happening while the Director of Training, Chief Jeff [redacted] has been made fully aware of the problems by Battalion Chief [redacted], President of the San Francisco Black Firefighters Association. We have turned to this Employee Association because they represent us men of color and we believed that the message will get across and training will be fair and consistent. Instead, we have seen retaliation directed against us and conditions getting worse. Chief Smith has been an advocate for us, but we have seen no changes.

Chief [redacted] has done nothing about these reported conditions. Most of us are growing more and more worried when we should be spending our time and energy toward training and preparing ourselves for testing. Some of us have begun to look for employment in other cities. This will result in the loss of several highly qualified personnel.

We have decided that if the fire department does not enact the appropriate action required to give us every opportunity to succeed instead of seeing us fail, we have no choice but to go forward with various media outlets and legal outlets. Probies from previous Recruit Academies have made us aware of past issues that the Training Staff of the SFFD have had. These Probies have filed lawsuits.

We earned our right to be given a fair chance at becoming Firefighters for the City of San Francisco. Many of us grew up in this City and look forward to serving this great city. We did not expect that some of the Training Staff would be setting us up to fail, either intentionally or unintentionally. This is not training, but a "gate keeper" climate of who "fits in" to what some of the Training Staff believes to be a part of their "social club."

We even learned from these previous Probies that there is an internal SFFD "fact finding" being conducted now about the things that happened in the 122nd class. Many Probies avoided being forthcoming because they feared being labeled a "rat." We are here to tell you that these same issues continue in our current 123rd class. Listed below is a summary of issues that we are still seeing in our current 123rd class that mirror what the 122nd class went through. Listed after this letter are over 20 incidents specifically documented to show person, place, and time of incidents that have occurred just in the 7 weeks of our 123rd class. Something must be done.

SUMMARY OF INCIDENTS THAT HAPPENED IN THE 122ND PROBIE CLASS THAT ARE STILL HAPPENING IN OUR 123RD PROBIE CLASS

- Probies urinating in their water bottles during Friday test manipulatives due to no bathroom breaks during the 122nd class. We purchased extra water bottles when our 123rd Probie class started because we were suggested to do so by Probies from the 122nd class. The Training Staff's solution to this for our class has been to limit our water intake by eliminating our bringing in our water bottles in the classroom. This is right after we participated in PT where even the Training Staff that conducted PT is drinking water.

- Subjectivity in grading where one Probie gets a deficiency while another does not despite committing the same error. This continues to occur in this 123rd class. If you are a Training Staff member's "Golden Boy," you can do no wrong, but if you are not, you are screamed and yelled at, given deficiencies and demerits even though you did the same thing as their Golden Boy. Golden Boys are either white males or connected through some SFFD family/good friend. Lt. [redacted] and Lt. [redacted] are well known for playing favorites.

- Probies are not told what testing shortcomings are considered critical fails. This continues to occur in this 123rd class. [redacted] and Lt. Brown constantly give mis-information and information that directly contradicts what we have been told by other instructors. This sets us up to fail on test day. [redacted] two days before the Forcible Entry test, said that we had to verbalize two more things to pass ("check for victims and wear goggles"). These two things were never in the original instruction of what we needed to say and do to pass. He and [redacted] are the same instructors who gave us wrong information on how to tie the fire escape tie on that manipulative. We were not told the correct way until one day before the test when [redacted] anon "straightened out" the confusion. This was after we were berated by the Training Staff for trying to pit one Training Staff member against another. All we wanted was the correct information so that we could practice the right way and get it right on test day. The way she tied it the day before the test was still different than the way [redacted] [redacted] and Lt. [redacted] showed us. Her's was correct, theirs was not.

- Probies not being allowed to view their own image on videos that are taken during their testing, testing that they learned that they received deficiencies. This continues to occur in this 123rd class. We are made to fear the Training Staff's wrath if we dare ask to view the video of our performance even if we believe that the deficiency is not deserved. Rescue Captain [redacted] retaliated against us when he issued the most deficiencies in one day by one instructor after he learned that we complained about his constant use of the F word during training. This was retaliatory against us and it was meant to shut us up.

- Cheating - Lt. [redacted] was witnessed to have fed test information to two

Probies in the 122nd class. This is the same offense that Capt. [redacted] committed a few years ago for which he was formally disciplined. And now Capt. [redacted] is our Training Captain. This continues to occur in this 123rd class where Lt. [redacted], coddles certain white male Probies while shunning women and African American Probies. It is well known that he is called the "Russian Judge" who targets women and African American Probies, grading them much more harshly and unfairly than white male Probies, his favorites.

- "Targeting" of certain Probies because they do not "fit" the image of a SFFD Firefighter. They are told by the 6' 4" Lt. [redacted] that they are "too short," "small," "weak," etc. Lt. [redacted] did that a lot in the 122nd class against a smaller statured Asian woman, White woman, and a shorter male Probie. All of them were terminated because they received the maximum allowed 18 deficiencies, many of them undeserved. The same is occurring to us in the 123rd class.

- Unreasonable exhaustive PT where Probies are injured for Friday testing. The Probies from the 122nd class were running 8 minute miles, 8 miles from Treasure Island to Oakland and the "Amazing Race" is not endorsed by NFPA. This continues to occur in this 123rd class. There were three Amazing Races scheduled in one week. But for Chief [redacted] being made aware that this was punitive and not job related, the third one was canceled. The additional Amazing Races were issued as punishment to Probies not finishing the prior one on time when the prior Amazing Race had additional evolutions to where it would have been impossible to complete on time. This is setting us up to fail and causing injuries.

- Alcohol possession by [redacted] and Lt. [redacted] on the Training grounds during the 122nd class. [redacted] has already been identified by Probies from the 119th Class to have been drinking alcohol together on several evenings after a training day at the Fire Academy at the 7 Mile House Bar and Restaurant. Alcoholic beverages were purchased by Probies for [redacted]. [redacted] was witnessed to have asked them, "I just want to know who's f - - - ing who in this academy." Probies knew that what they were doing was not appropriate purchasing beers for [redacted] as [redacted] told them specifically that he was not allowed to socialize with Probies outside of the Fire Academy. These Probies have said that there has been no accountability for Lt. [redacted]'s actions. Lt. Caba has also given inconsistent information on manipulative where Probies ended up with deficiencies on test day.

- Training Staff's cell phone ringing during testing and manipulative practice sessions during the 122nd class. Probies from the 122nd class have said that Lt. [redacted], and I [redacted] have all used their cell phones on a constant basis during training and testing. Whether it is [redacted]'s contractor calling or booking vacations, they are on their cell phones when they should be training or testing us. This continues in our 123rd class. [redacted], Lt. [redacted], and Lt. [redacted] cell phones are constantly ringing during training. They are answering text

messages and phone calls. _____'s cell phone has rung during testing. Instructors are actually answering their text messages and phone calls during testing, regular instruction, and before/after hours hands on practice sessions. This breaks our concentration and takes away from valuable training. _____ takes photos of the Treasure Island skyline when he is supposed to be training us. Granted, the Training Staff texts one another to communicate on the training facility about when to rotate, but the majority use of their phone time is for leisure and personal. This makes the Training Staff miss things we may do during practice and mistakenly tell us that we are doing great, but come test day, we fail because _____ Brown never corrected us and showed us the right way to do it for test day.

• Instructors lightened up on PT during the last month of the 122nd class so that Probies could physically perform the big show on graduation day. Many of the Probies from the 122nd class told us that this was a "smoke screen dog and pony show" to make the Training Staff look "good and innocent." In reality, most of them were injured and would not have been able to perform if the Training Staff not let up on PT just prior to graduation. We are already told by Probies from previous classes to not reveal our many injuries until after SFFD Testing is complete (December 22, 2017); otherwise we will be targeted for being too weak to fit the image of a SFFD Firefighter in the eyes of the Training Staff. They told us that many injuries began to get reported once SFFD Testing was complete when it was safe to do so.

We hope that you will look into the many issues we have observed throughout our training while it is still early enough to stop some of the behaviors we have experienced. Many of us are professional Firefighters from elsewhere and never have we been a witness to some of the behaviors we have seen in this Training Academy. We deserve a fair shot at earning the badge of a SFFD Firefighter. Thank you for your time in looking into this. We guarantee that given a fair opportunity to test our abilities, we will be valued employees of the SFFD, as men of color who reflect the community we wish to serve, the community of the great City of San Francisco.

Respectfully,

Brave Men of Color of the 123rd Class

cc. NAACP
Mayor Edwin Lee, Office of the Mayor
SFFD Fire Commission
Fire Marshal, California State Fire Training
Chancellor, City College of San Francisco
Director, San Francisco Department of Human Resources

INCIDENTS COMMITTED BY SOME OF THE TRAINING STAFF AT OUR 123RD PROBIE CLASS

SEPTEMBER 20, 2017

Captain [redacted] tells us at Orientation, "You don't tell other people what goes on here. We expect to handle it here. Chain of command. No fraternizing with other Firefighters. You're not supposed to talk to other people on the outside." We were always told at the many SFFD Recruitment Workshops that the Buddy System is part of recruitment and retention efforts of the SFFD as long as no testing is talked about. We were always encouraged positive support and mentoring from incumbent Firefighters from the "outside" of Division of Training Staff. This is what Employee Associations were created for, we were told. This is the same Captain, who as a Training Lieutenant, we learned later, was suspended and disciplined for having given test answers to a Probie just a few years ago.

[redacted] also said, "When you hit a wall, we are watching and taking notes." Notes are being taken by every Training Officer on everything we do from PT to practice on manipulatives. We are being graded from 1 to 5, 1 being the worst and 5 being the best. This sets up a system for targeting certain Probies that the Training Officers do not feel "fit" into the social club of the SFFD.

SEPTEMBER 28, 2017

[redacted] is seen smirking as he walks around watching us perform PT appearing as if he enjoys watching us suffer unreasonably. PT should be challenging for us, but not in a sadistic way. He has been heard to talk to Capt. [redacted] about how they "don't want to be around to see" the Amazing Race, held every Wednesday. This is a well known joke among the Training Staff due to Chief Columbini and [redacted] not wanting to witness us be brutalized in PT. The Amazing Race is a 1.5 hour grueling PT led by Lt. [redacted] where Probies have been known to be transported to the hospital. In fact, every time that the Amazing Race has been held in our class, one of us has been transported to the hospital. This is supposedly to simulate the rigors of the job. However, NFPA states that the physical output is typically 20 minutes of anaerobic performance of a Firefighter at a working fire. Not 1.5 hours. In full turnouts. The Amazing Race has been the subject of an investigation by the SFFD in the past, questioned by multiple uniformed members in the SFFD, none of the current Training Staff ever had to perform such PT, and it is something that was created by Lt. Yee and never vetted by the NFPA.

Through some research on our own, we learned that the manufacturers of our PPE do not recommend that this type of rigorous PT for this long is performed wearing their PPE. 20 minutes is what they recommend. We are in them constantly sweating and building up heat and rashes for over an hour. This is in addition to having them on the rest of the day while performing evolutions.

The Amazing Race involves carrying a High Rise Pack up and down the four story building on TI. Dragging three lengths of 3" hose back and forth multiple times. Carrying a victim in a stokes basket. Axe swings. Picking up a donut roll of 3" hose and placing it on the table that is waste high 25 times. Push ups once you reach the roof of the building. These are just some of the evolutions.

In fact, the first Amazing Race for the 123rd Probie class was held Wednesday, October 11, 2017, and an African American male was transported in the morning that PT was held. He did not return until 6:30 PM later that evening having missed out on all manipulative training for that day and therefor, access to equipment, to ensure success for testing this Friday, October 20, 2017. This Amazing Race is punitive, and not job related. Chief Columbini and Capt. [redacted] were visibly not present that day.

OCTOBER 2, 2017 (2ND WEEK OF EMS TRAINING)

One of the Probies is limping due to an ankle injury during PT and none of the Training Staff says anything to him. And yet, other Probies are berated for not performing PT as fast with no injuries displayed. The former Probie is the son of a good friend Lt. [redacted], while the Probie being berated is not protected under "legacy" status. This is evidence of more of the systemic favoritism displayed by the training staff that have been the subject of multiple complaints by Probies from previous classes.

OCTOBER 4, 2017

Rescue Captain F [redacted] is dropping "F" bombs every other word when speaking to us. He threatened us today, "I'll do my best to be the gate keeper of EMS!" This is after the Training Staff on the fire suppression side acting as gate keepers of who gets through the Academy and who doesn't based on what they feel is worthy of being in the SFFD. He said this in front of the whole class today. This is proof of more of the systemic gate keeper mentality displayed by the Training Staff that have been the subject of multiple complaints by Probies from previous classes. Lt. [redacted] has ben known to threaten Probies, "You may have fooled CD1 for the five minutes she interviewed you, but you won't fool us for the five months we have you!"

Rescue Captain [redacted] yelled at us at inspection about not having the rubber toe of our boots shiny. Rubber parts cannot be shined unless they're burned. So we are melting the rubber to achieve the shiny look. He praised this practice and yet, he yelled at us for the scuff marks that the burning left. This leaves a damned if you do burn and shine the boots, and damned if you don't burn and shine the boots environment; not to mention that burning your boots is what he wants.

He also yelled at his co-worker, Rescue Captain F [redacted] Smith, that she should be "issuing them demerits" for us wearing sweatshirts and ball caps. Half the us have not been issued jackets or hats. While he is inspecting and yelling at us, Rescue Captain F [redacted] is clicking his pen in a menacing way writing down

every "mistake" we are making. This is part of the intimidating and bullying culture that the Training Staff is promoting. Rescue captain Ben Sosin is doing the same.

One of the us led the class in stretches, as is done before and after PT, and Lt. Brown saw us and mocked, "What is this class doing?! Yoga?!" This is despite stretching and yoga being promoted within the Fire Service and the SFFD. We are constantly getting mixed messages and mocked.

OCTOBER 6, 2017

Last day of EMS training, and testing day for us on all EMS skills. Chie. is made aware about the swearing the day before on Thursday, October 5, 2017, one day before testing. Chief [redacted] told him about it and how it interferes with our learning. In retaliation for us reporting his use of profanity, Rescue Captain [redacted] issues deficiencies to 8 of us for our having said "CSM" versus stating Circulatory Sensory Motor. He never asked us to spell it out and instead just gave us deficiencies for it. This is despite us being assured all two weeks of EMS by instructors that we can say "CSM" as long as we are able to state what CSM is when asked. Rescue Captain [redacted] never asked us.

One of the us who received a deficiency, said that if she received a deficiency for not stating what CSM is versus just saying CSM, then all Probies should have failed that day for all manipulatives as we all said "BSI" versus Body Substance Isolation. This is an excellent point and shows Rescue Captain [redacted] retaliatory reasons. Rescue Captain [redacted]; typically does not test Probies and he insisted on testing us that day. The problem is that he felt it was ok to retaliate. After all, nothing will happen to the us once we re-test on Tuesday, October 10, 2017 because we will have a different tester per State Fire Training policy. And the deficiencies do not carry over to suppression. But this does not give Rescue Captain [redacted] a pass. The issue is that Rescue Captain Pendergast knew nothing would happen to him. No accountability would come down on him.

When we questioned the deficiencies, Rescue Captain [redacted] said, "You think this is bad, wait until you get to suppression. He was threatening us. We had no idea that this would be true. He also told the entire class of the Probies who received deficiencies, "They deserved every one of them and they ought to be ashamed of themselves."

Rescue Captain [redacted] said, "You are to expected to get deficiencies. It's part of the program. If you get a deficiency, just say, 'thank you.' It's not up for discussion." Rescue Captain [redacted] said, "Basically, expect to eat shit for five months. We have been informed by Chief [redacted] that Deputy Chief [redacted] as, who supervises Chief [redacted] i, encourages Probies to question their deficiencies immediately if in fact they feel that a mistake was made. Chief [redacted] (has made it clear that there is little she can do when a Probie comes to her office with 17

deficiencies and delay voicing their concerns when it is too late. This is understandable, but we are doing that and all we get is retaliation and the Training Staff's wrath.

OCTOBER 10, 2017 (WEEK OF; FIRST WEEK OF SUPPRESSION)

_____n caught herself saying "shitty" and corrected herself. But then Lt. Bob Arzave cornered a group of us and strong armed us by asking, "Which one of you reported me for swearing?!" All of us denied saying anything. We were scared that this meant Lt. Arzave was going to single us out and retaliate against us. He was already doing that. Why else would he ask that? This is proof of the "let's get the rat" culture that has been a part of the Training Staff. Instead of righting the wrong, the Training Staff wants to seek out the rat and target us. Some of us even believe that they know who we are even the unfair treatment we have been getting compared to the "Golden Boys," namely the white males in the class.

NO WATER UNTIL 1040 HOURS DURING WEEK OF OCTOBER 10, 2017 (FIRST WEEK OF SUPPRESSION)

We performed 1.5 hours of PT from 8:00 to 9:30 AM in the worst air quality in the history of San Francisco due to the North Bay Fires. PT consisted of running w/ 3" hose, high knees, bear crawls, sprints, hopping over two PXs, push ups, burpees, etc. None of us were allowed to drink water until 10:40 AM. And it was only until one of us asked Lt. Caba during classroom lecture whether we could finally get a drink of water. We were feeling faint and seeing spots. We had trouble concentrating. We had ash particulates fall on our yellow color shirts. It looked like "black snow." We also coughed up black phlegm.

_____a looked surprised that we had not had any water. Lt. Leo Tingin was overheard telling _____ that the no water rule was "straight from the top." Even they were surprised. _____n was overheard saying the same thing. Something to the effect of it came from Chief Hayes White and Jesusa Bushong. We later learned that _____ng was upset that we were getting up to use the bathroom during her presentation. This is because we never got a break after grueling PT. We just went right into the classroom. We did not mean to cause any problems with her. We were just trying to relieve ourselves after a long PT session and drinking as much water as we could in less than 5 minutes that we were given to also change and run back down to class.

Both Chief C _____bini and Capt. _____ were watching PT on Thursday so they had knowledge and did nothing. The only time PT was changed to performing job related circuit training was after this was brought this up to Chief Colmbini by Chief Smith. After that, PT was held inside the Tower by Lt. Yee.

We have just 5 minutes after PT to run up to the 4th floor of the Tower and quickly change into our jumpsuits and run to the classroom. This is not enough time to do all this and sufficiently hydrate.

Chief ~~James~~ White supposedly said that she did not have a water bottle while she was a Probie in class. With all due respect, this was 28 years ago when the PT was nowhere near what it is now. And, Capt. Julie Mau just gave a lecture this week to us about the importance of hydrating. So we are confused and it is frustrating. Mostly, we are dehydrated.

This seems to be Chief ~~C. . . .~~'s way of dealing with the lack of bathroom breaks experienced in the last Probie class where PXs were urinating in their water bottles. Probies did this because Training Staff "forgot" about them during long wait times during Friday test days. And the Training Staff stated that Probies were not given bathroom breaks due to protecting test security.

The insufficient water break and no water bottle rule is a flawed attempt at dealing with the symptom and not the solution. The solution is to allow water bottles in the classroom and sufficient bathroom breaks. This is a health and safety issue. We are at the Academy 13 hours a day from 6:00 AM to 7:00 PM. This is a long and physical day. We start off the morning with practice sessions performing physical tasks, then we do 1.5 hours of grueling PT, then we do all day of physical manipulatives, and end with more practice on physical tasks. We need to hydrate throughout this long and physical day.

We are are expected to run 6 minute miles. These runs are led by Lt. Tingin. We are running "slower" than that are marked on the 1 to 5 grading sheets that Training Staff carry with them making notes on each Probie. This is an unreasonable pace for the physical output expectations of a Firefighter. Nowhere in the NFPA does it require a 6 minute pace.

We are already being given conflicting information regarding manipulatives of what are the benchmarks expected of us. While one Training Staff member tells us to do/say X, another Training Staff member tells us to not do/say X, but do/say Y. This leaves for a confusing situation for the upcoming Friday test day. This is evidence of more of the systemic subjective testing environment displayed by the training staff that have been the subject of many complaints by Probies from previous classes. This also gives the Training Staff much control over whom they want to pass and fail depending on a Probie's "like-ability." The only solution to such subjectivity is to give clear benchmarks to Probies on what are expected on each manipulative, including what are "auto fails." This is already required by State Fire Training for State manipulatives, as well as EMS, why is it not available for SFFD manipulatives? Lt. Yonts mocks at this and tells us that when he was a Probie, "there was nothing written down" and he "had to remember everything" in his head. This is probably because the Training Staff was never as inconsistent or unreasonable.

This is all setting us up to fail, especially on very subjective manipulatives such as the 50' ladder where it is clear from past complaints that even if a Probie auto

failed and it is captured on video, other Probies making the same mistake receive no deficiency. We perform the 50' ladder starting next week and we are all very concerned that we will not be given a fair shot at this manipulative.

OCTOBER 11, 2017

He screams and yells at us after two Probies volunteered to carry the ladder from the ladder bin. One of them declares, "Ladder coming through," and Lt. Arzave berates them by saying, "Ladder coming through?! What is that a City College thing? We don't do things the City College way. We do it the SFFD way!" The Ladder Coming Through command is a Fire Service command. Not just a City College command. It is said whenever the area needs to be cleared of people. It is a safety command.

This is one of many berating comments made by Lt. Arzave against City College, where many of the Probies were trained. These comments are humiliating and contributes nothing toward training us. We are told by Probies from the previous class that some of the Training Staff are now targeting City College students. They told us that there were 11 City College students who did not graduate from the 122nd class. They said this is the most ever to get dismissed from one Probie class. This is worrisome because there were one or two City College students who did not graduate in the last 10 years total. There are approximately 20 City College students in our class. We are worried that City College students are being unfairly targeted. Lt. Arzave is already doing this. Some of us men of color are from City College. Is this a coincidence? We do not think so.

Lt. Arzave has also made fun of the "City College acronym used for extinguishers" and yet passes out a handout to all Probies telling them to use it as a training tool as it helps us memorize the benchmarks.

Lt. Brown threatens us by asking us, "Did you hear any curse words?" This was his attempt to see who was the rat who complained about the use of expletives by the Training Staff. He said if we "heard any curse words, they were coming from Station 7." Lt. Brown is the only African American Training Staff member at the Recruit Academy, and yet, he is not someone we have been able to turn to. So we have turned to Lt. Arzave.

Lt. Arzave walks away from some of us when we seek his input. If he likes a Probie, typically this Probie is a white male, he will train them. If he does not like you, typically this is a woman or African American Probie, he will literally walk away from us and take photos of the Treasure Island skyline. We are then left to practice on their own. This occurs during either before or after hours training where we are allowed to practice with Training Staff offering invaluable feedback.

Lt. Arzave is also known to give conflicting training information to Probies that confuses them for test day. This happened during the ladders evolution. His information given to us was in direct contradiction to what the Training Staff said.

OCTOBER 23, 2017

The Training Officers wanted our class leader to send this message out to all of us Probies. This message says that we are not to question our deficiencies and that subjective testing is to be expected. Here is that message that our class leader sent out to us directly from things he was told by the Training Staff:

“As mentioned earlier, a cadre mentioned several things that I should address the class. In the best interest of the class, I've decided to forward this info via email so everyone can have more time practicing tomorrow. Consider this a courtesy, not a privilege.

It was unbelievable to see over 20 recruits lined up for deficiencies. Even the cadres themselves were surprised. When you get a deficiency, please shut your mouth and take it. Do not ask any if, and, or buts. They've recorded your performance for THEIR protection and have been reviewed by the Captain and Chief prior to issuing the deficiency. Questing them devalues their integrity. If they said the sky is green, so be it. Let them have their laughs.

Changes to instructions can come at any time. It can be frustrating but take it with a grain of salt. You're going to see a lot of that, especially in stations and on fire ground. Our job as a recruit and one day, a probie, is only to do what we are told without complaints. We must have confidence that our leaders knows what's best and would not jeopardize our lives.

We are ONE class, functioning individually as a group (if that makes any sense). You are to be with a buddy at all times. As inconvenient as it may be, this will be enforced during off duty hours. This is for our protection, so no one gets demerits for such actions.”

It is our position that changes in instruction should not come at any time. This sets up a confusing situation and sets all of us up to fail. An ex-Training Staff member recently was heard saying that if there was a conflict in instruction, all deficiencies received from that conflict must be removed. That was when he was a Training Staff member not too long ago.

OCTOBER 18, 2017

An African American Probie had to go through three IV bags when he was transported to the hospital after the Amazing Race. That is a lot and of loss fluids and indicative of severe dehydration. A Probie is getting transported after each Amazing Race. Most of these guys are African American.

OCTOBER 24, 2017

Another African American Probie was transported today after performing the Amazing Race. This is the second Probie in two weeks since the Amazing Race took place that an African American Probie was taken to the hospital. It was 90

degrees on Treasure Island today. Although we were allowed to perform this rigorous and unvetted PT in our jumpsuits, the entire evolution leaves us injured, dehydrated, and ill-prepared for the job. Chief Columbini says the Amazing Race is team building. It causes a break down of the us to where we are tortured. It is sadistic. there are plenty of other team building exercises we could be doing.

We have noticed that Lt. Saitz is checked out. He is less than helpful and not approachable at all. He yells and screams at us. He is not encouraging, but demeans. He does nothing to motivate us. He often shakes his head in disgust and rolls his eyes, in a scoffing manner. Chief Columbini is watching the entire time. He does nothing. All of us are feeling scared and nervous when a Probie of color gets yelled at unjustifiably, and somewhat relieved at the same time that it was not us, although it easily could have been.

Lt. I [redacted] is also unapproachable. You cannot ask him any questions. He will not have it. This is not a fair learning environment. When we ask him why do we perform steps 1, 2, and 3 on a manipulative he, barks at us, "Just do it!" So we perform these steps without knowing why. He also likes to say that the SFFD "has been doing it this way for years. Why are you trying to change it?" This is after we ask a simple question of why. We are not trying to change anything. We are Probies. He tells us to ask questions amongst ourselves and not him. But some of us never had a Fire Academy before coming here. It is not a requirement to getting hired. We have never seen hoses or connected them before and the SFFD has a unique way of doing everything when compared to other fire departments. We want to learn the whys and the history and tradition of the SFFD. We do not even see the other Probies to even get a chance to ask them anything. Plus, questions do not come up until we are shown the manipulative and what is to be expected on test day.

Rescue Captain I [redacted] e also has a short fuse. He seems very bitter. He has to be having a good day for us to ask him questions. We are scared to ask him anything. [redacted] is also someone we are scared to ask questions because he will just yell at us. We all hope that he is not our proctor on test day no matter how prepared we may be feeling. he humiliates and embarrasses us. Unless you are a white male, Lt. Saitz is not someone who will help us. He will coddle the white male, but shun the rest of us.

[redacted] has had a reputation for being hostile toward women, too. Two women Probies from the 122nd Class told us that had it not been for I [redacted], they would have graduated. They said she received most of her undeserved deficiencies from him on the 50' ladder, the most subjective manipulative where Training Staff are known to eliminate Probies they do not like. One of the women Probies knows a couple of veteran women Firefighters and these veterans warned the women Probies in our class that he is a "woman hater."

WEEK OF OCTOBER 24, 2017

tz is known by us Probies as someone who does not want to see us succeed. Lt. [redacted] acts like he does not want to be there. Both are known to shun us when we seek their help. They pick and choose who they like and dislike, who they feel should get this job and who they feel do not. Even before/after hours of the training hours, they are not training us until 7:00 AM (we are there at 6:30 AM like we were instructed to) and rushing us to put the equipment away so they could go home. So on the one hand, the Training Staff tells us that before and after hours practice sessions are available. But on the other hand, they frown upon us (and target us) if we want to take advantage of these hours. These hours are important to succeed in the Academy because we get one on one time with Training Staff to practice and prepare.

OCTOBER 26, 2017

Lt. [redacted] is upset with us because we bring to his attention that [redacted] tz and Lt. [redacted] showed us a different way to tie the fire escape ladder. He and [redacted] showed us the right way for the test, which is the next day, and it was still not the same as we were taught by [redacted] tz and Lt. [redacted]. I [redacted] yells at us and tells us "We are all a very close cadre. I personally take offense. If you keep challenging us, you will lose!"

OCTOBER 27, 2017

Multiple choice written exam is inconsistent and poorly written. While some questions have options of A through D, others have A through E. Some options will say, "all of the above" while another option in the same question will say, "all of the answers are correct." This is confusing and sets us up to fail. We have received deficiencies for not passing the written exam.

And there was a question about webbing from our IFSTA Textbook Chapter 8 that was not part of the assigned reading for that week; something having to do with webbing tubular and the number of inches it is. This is in next week's reading assignment. The question was also not found in the SFFD Rope Manual, which was assigned reading for Week 4. So the question in the exam is from reading that is in the future.

Some of us who are on the Engine side had questions that were Truck related questions and were not part of our reading.

WEEK OF OCTOBER 31, 2017

Battalion Chief [redacted] ey gives a Cultural Competency class and conducts an exercise of "Match the Quote" where we have to match the quote spoken by one of the great leaders on the world. She includes a quote by Tupac Shakur using the "N" word. This is offensive to us as african american Probies. Even Firefighter Keith Baraka, co-teaching with Chief [redacted], looks shocked and says that he is offended. We are then asked whether we are offended, and even though we were, we are now scared out of our minds of being retaliated against and losing a 30 year career. This is shocking to us and makes us more fearful to say anything.

NOVEMBER 1, 2017

The Training Staff reduced the Amazing Race time from 1.5 hours to 1 hour today, but we can't complete all PT evolutions in one hour; so as punishment for not completing it, we have to do it again tomorrow. This is setting us up to fail and it is punitive. It also causes injuries.

NOVEMBER 2, 2017

After word got to Chief Williams by Chief Smith, that a third The Amazing Race was going to happen today, the Amazing Race was canceled. This would have been three Amazing Races in one week. This is supposed to be held once a week. Capt. Sato told us, "You have been given a gift today" and that instead of the Amazing Race, we are going to be able to practice on manipulatives.

Chief Williams and Chief Hayes White visited the academy this week. Chief Hayes White was here yesterday and Chief Williams earlier this week. But they are not here when we are doing crab crawls up and down the stairs in full turnouts or the Amazing Race. They are not here during the Amazing Race. They are not here when Lt. Saitz is screaming at us at the top of his lungs. They are not here when Lt. Arzave is telling one of his many "firehouse stories" instead of telling us about training. They only see what the Training Staff wants them to see.

NOVEMBER 3, 2017

Test day and the 35' ladder is being raised on a different building than the one we had been practicing on all week. This creates a confusing situation. The fly of the ladder is also raised to a different length of the building because this building is a different height. This makes for a different tie of the halyard on different rungs than what we practiced all week. We understand that no buildings are the same, but many of us never had the chance to practice on this building. Both Lt. Saitz and Lt. Brown, who tested us on this manipulative, would also stop us in the middle of throwing the 35' ladder and order us to go to the wall and look away while they stop to evaluate. We are then told to return to the ladder breaking our concentration of which step of the ladder raise we left on. Deficiencies were issued despite this confusing situation. We do not feel that we are being tested to our full preparedness, but tested to a guessing game of surprises. We are all plenty capable of performing these tasks. Many of us are former athletes. Many of us have completed Fire Academies. But no one can perform under these guessing game conditions.

Lt. Brown is making noises of disapproval grunts whenever we are raising the ladder while Lt. Saitz is shaking his head whenever we actually do perform well, as if he is disappointed that we did not make a mistake. Lt. Saitz actually sighed when he shook the ladder to see if the halyard would move and it did not. This was done to the women and African American Probies when they tied the halyard, but never to the white male Probies. This shatters our confidence and ability to perform. This is not a fair playing field for us.

cell phone was constantly going off during this testing of the 35' ladder and he would answer every call. He even told us to tie the halyard a certain way all week only to have Lt. Yee correct the tie after the test was over. Lt. Brown told us that we could have the excess rope hanging and said we could not. This was the same incorrect information I gave us regarding the fire escape tie when he said we could wrap it as many times as we wanted. Lt. Tingin corrected this one day before our test after getting mad at us for pitting one instructor against the other.

Two African American Probies are on the brink of getting terminated because they are not able to pass the High Rise Pack, the easiest manipulative of all. They have failed twice now, including two re-tests. They're getting their final crack at it in two weeks. They fail it again, they're out. How could two Probies not pass the easiest evolutions? These two guys are sharp, too. Why is it that all Probies are able to pass but these two? is known to be unreasonable in his expectations of how to pack a High Rise Pack.

NOVEMBER 6, 2017

An African American Probie received 8 deficiencies. He received 6 on the 35' ladder and 2 on Tool Ties. Almost all Probies received deficiencies. This seems to be a training issue and not a competency issue since many of our deficiencies were from not being provided correct information or from being given conflicting information. 90% of us Probies received deficiencies on the 35' ladder, the manipulative that Lt. Saitz and Lt. Brown were testing on.

The problem with the African American Probie is that gave him 6 deficiencies on the 35' ladder for having his fingertips "curled" inside the ladder where a sliding fly section of the ladder could have injured him. This Probie passed every position of the 35' ladder earning over 90% on each position, but auto-failed on every position because his finger tips were allegedly curled in.

The Probie said that his gloves are extra large so the tips are not filled with his fingers tips. He had to get extra large gloves so they could fit over the wristlet on the new PPE coats. Many of us have extra large gloves because we are timed on donning PPE and getting gloves on over the wristlets of our PPE coats take an extra 20 seconds. This PPE issue forces us to wear larger gloves in order to compensate for this clothing glitch as on a PPE donning test where we get a minute to don all gear, 20 seconds is critical.

Other Probies received deficiencies on the halyard tie when Lt. Saitz taught the halyard tie differently than Lee's is the correct way, but only a few Probies got to see that correct tie during early morning practice and that was only if the Probies happened to be at his station and not at another station practicing other manipulatives. But when I was teaching the halyard as part of actual Probe rotations during the training day, he was teaching it

incorrectly. No wonder why most of us failed the halyard tie. The only Probies who passed were the ones lucky enough to have been at practice session that one morning before training started. We are not stupid. We just want to be taught the correct way so that we can duplicate that task on test day.

This Probie received 2 deficiencies on Tool Ties by Lt. Yee, ties he, nor any of us, were taught until that Wednesday. That is just two days of practicing before test day. Training Staff told us that if we are shown an evolution twice, it is testable. If every evolution we were tested on was shown to us for a week, how could we be expected to master 10 new tool ties by Friday after just two days? This is unreasonable and sets us up for failure.

These unjustified deficiencies must be removed for every one of us who received conflicting information or lack of information. We are just entering Week 7 out of 20 weeks of testing. We only get 18 deficiencies and we have not even thrown the 50' ladder yet.

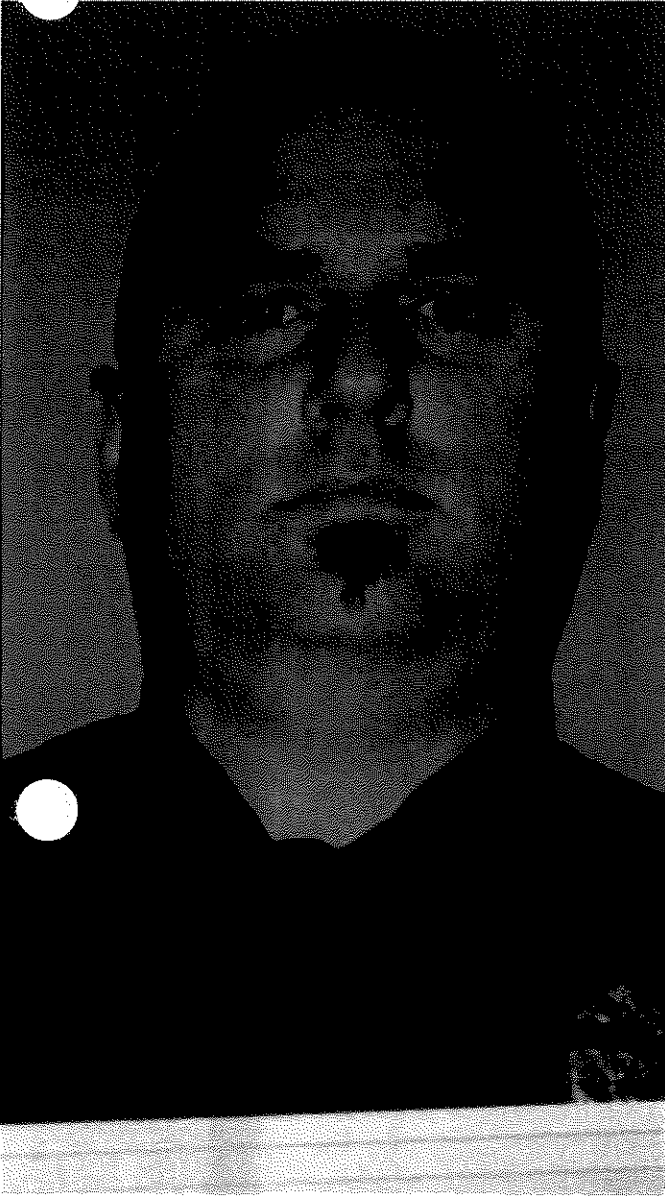
got a ruler out and was measuring our half hitches during the Tool Ties manipulative to see if they were more than one foot from the top of the tool. Where is there a ruler on the fireground? We received deficiencies for this and yet, we were never told that our half hitches had to be no more than a foot.

One of the African American Probies who received a high number of deficiencies was approached by Chief Columbini and was told by him, "I know you deserve to be here. You can do it!" The Probie said he just responded, "Yes, sir." Later, he told the rest of us that he felt like a slave being talked to by the Master where the slave cannot speak out and can only keep taking the unjust treatment.

NOVEMBER 7, 2017

All day spent on re-tests because most of us Probies failed, many of us due to Lt. Saitz's mis-information and setting us up to fail on the 35' ladder. failed a bunch of us on Tool Ties even though it was never told to us that the half hitches had to be less than 1' or that the clove hitch had to be pushed down. We spent all day on re-tests where PT was canceled. PT never gets canceled. There were so many re-tests that we were re-testing unit close to 5:00 PM.

On top of that, we have to learn three new sets of manipulatives by tomorrow because Thursday is test day due to Veteran's Day Holiday on Friday (no training on Friday). This short week again sets us up to fail because now we basically have one day (tomorrow) to learn three new manipulatives, including the 50' ladder, the 350 pound wooden ladder where most Probies fail out on. We have to know the 50' ladder, 35' ladder raise on a hill, and a new set of 10 knots, again all before Thursday test day (tomorrow). This is an impossible situation and one where we are sure to get more deficiencies again due to inadequate training.



Quotes For Diversity

1. "Take as my guide the hope of a mind in crucial things, unity, in important things.
Generosity is all things, generosity."
George Bush Jr.
American 41st US President (1989-1993)
2. "An eye for an eye leaves everybody blind."
Mahatma Gandhi
Prominent Political and Ideological Leader of India (1915-1948)
3. "Whoever can see through all (war) will always be safe."
Tao Te Ching (Lao Tzu)
Old Master (6th Century B.C.)
4. "What you think you become."
Mahatma Gandhi
Prominent Political and Ideological Leader of India (1915-1948)
5. "A sign of appreciation is when you oppress each other."
Capt. Anita D. Parvley
Member of the SPYD (1999-Present)
6. "Personally, I hold that a man who deliberately and intelligently takes a pledge and then breaks it, forfeits his manhood."
Mahatma Gandhi
Prominent Political and Ideological Leader of India (1915-1948)
7. "All of us do not have equal talent, but all of us should have an equal opportunity to develop our talents."
John Fitzgerald Kennedy
American 35th US President (1961-1963)
8. "Great minds discuss ideas, average minds discuss events, small minds discuss people."
Eleanor Roosevelt
First Lady of the United States and Diplomat (1933-1962)
9. "There are times we stand with conviction that you can't face reality. Wrong is wrong, the better, who dare then says it."
Mahatma A.
Active American Worker, Human Rights Activist (1952-1965)
10. "No one can make one feel inferior without your consent."
Eleanor Roosevelt
First Lady of the United States and Diplomat (1933-1962)
11. "Never
oppress
poor
rich
American
Tiger Mother
Rapper, Actor, Poet and Activist (1968-1995)

Right: The N Word Handout

Attachment 2



San Francisco Black Firefighters Association
4936 3rd Street
San Francisco, CA 94124

December 7, 2005

Chief]
ite

San Francisco, CA 94107

Dear Chief]

On Monday December 5, 2005, the training officer in charge of the probationary class, Captain [redacted], told a female probationary firefighter that if they received one more deficiency that he would recommend termination from the class! The probationary firefighter who currently has 19 deficiencies is two weeks away from graduating from the Fire College. As you are aware, a probationary firefighter is allowed a maximum of 20 deficiencies before termination is considered. The alleged comment made by Captain [redacted] is serious and exemplifies the hostility directed towards our members by instructors at the Division of Training. This is just another example of our previously voiced concerns regarding the "hostile environment" that exists at the Division of Training. During the meeting on November 16, 2005, you and Deputy Chief [redacted] assured us that the training staff would be addressed on this subject and they would conduct themselves in a professional manner. Captain [redacted] comments were perceived to be intimidating and threatening that resulted in creating a lot of undue stress and additional pressure on the female probationary firefighter. His conduct and actions are completely unprofessional and unwarranted. Captain [redacted], as the Captain of Probationary Training, has an obligation to be supportive and resolve problems, not create them. It is important to remember, whether Captain [redacted]'s intent was conscious or benign, his actions are in violation of Department Rules and EEO Policy.

In addition to Captain [redacted], Firefighter [redacted] (Public Information Officer) also acted unprofessionally to the female probationary firefighter. Firefighter Smith approached three probationary firefighters while off duty at a restaurant and introduced himself as a member of the San Francisco Fire Department. He advised the recruits on how to conduct themselves in the department. He made a special reference to the female probationary firefighter. Firefighter [redacted] told the female probationary firefighter that she already had a "reputation" and should heed his warnings. He further stated that not all people of your decent are your friends and said that the San Francisco Black Firefighters Association had used her to call Assistant Deputy Chief [redacted] a racist and implied that some action should be taken against our organization. I realize there is nothing you can do regarding Firefighter Smith's problem with self-image because that relates to attitude, but you can address his

behavior. The glaring issue is that Firefighter Smith is an official spokesperson for this Department; moreover, as a spokesperson, he has a greater responsibility to conduct himself in a professional manner because his on or off duty behavior directly reflects on your administration. I am a proponent of free speech and recognize the right to express one's views; however, your administration needs to take a hard look at the personnel who represent all of us and determine if they are effectively representing you.

Unfortunately, It has become increasingly common that San Francisco Fire Department personnel are behaving in unprofessionally while on or off duty. Although the vast majority of members conduct themselves in a professional manner, it is the few that have been allowed to go unchecked that continue to damage the San Francisco Fire Department. Why are members in the Department conducting themselves in this manner? Are they are insensitive due to a lack of training; or, are they simply violating member's civil rights because there is no real consequence to their actions?

In our last correspondence I used the term "racist." I realize this is a very inflammatory word, but we are dealing with individual's livelihoods and careers, which are important and serious and needs to be addressed in the strongest terms: We believe the culture of the Division of Training demonstrates a new agenda that sadly we perceive as racist.

Sincerely,

Kevin Smith
President
SFBFA

Ks
cc: Honorable Mayor Gavin Newsome
Fire Commission
William McNeill III Esq.
Diana Tate Esq.
Dan Siegel Esq.
Eva Patterson, EJS

NAACP Lifetime Member

(15) Public comment on all matters pertaining to Items #16 and #19.

**(16) Vote on whether to hold Item #19 in closed session.
(Action Item)**

Basis for closed session: Peace Officer Confidentiality Statutes (Penal Code §§ 832.5, 832.7, 832.8)); Personnel Exception (Gov. Code §54957(b)(1), Admin Code §67.10(b)); California Constitution Art. I, sec. 1.

(17) Public comment on all matters pertaining to Items #18 and #20

**(18) Vote on whether to hold Item #20 in closed session.
(Action Item)**

**(19) Closed Session – Request for Hearing by Alison Berry Wilkinson on Behalf of a former employee on the employee’s Future Employment Restrictions.
(File No. 0296-19-7) – Action Item**

Recommendation: Adopt the report and deny the appeal.

**(20) Closed Session – PUBLIC EMPLOYEE APPOINTMENT.
(File No. 0029-20-1) – Possible Action Item
Title: Executive Officer**

(21) Reconvene in Open Session. Vote to elect whether to disclose any or all discussions on Items #19 and #20 in closed session (S.F. Admin. Code §67.12 (a)) – Action Item

**COMMISSIONERS'
ANNOUNCEMENTS/
REQUEST**

ADJOURNMENT