



**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
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COMPLAINT

KELLY O'HAIRE VS. CITY AND COUNTY OF SAN FRANCISCO et al

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San Francisco County Superior Court

AUG 13 2013

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

10 KELLY O'HAIRE,

11 Plaintiff,

12 vs.

13 CITY AND COUNTY OF SAN

14 FRANCISCO, GREG SUHR and DOES 1-  
15 100,

16 Defendant

Case No.: CGC-13-531419

**FIRST AMENDED COMPLAINT FOR  
DAMAGES & INJUNCTIVE RELIEF**

1. Violation of Labor Code §1102.5
2. Intentional Infliction of Emotional Distress
3. Intentional Interference with Prospective Economic Advantage

Jury Trial Demanded

**NATURE OF THE CASE**

1. This is an individual action brought by Plaintiff Kelly O'Haire ("O'Haire") against her former employer, the City and County of San Francisco ("CCSF") and Chief of Police Greg Suhr for retaliatory termination in violation of California Labor Code §1102.5, Intentional Infliction of Emotional Distress, Intentional Interference with Prospective Economic Advantage
2. Plaintiff, a lawyer, who worked for the Police Department of the City and County of San Francisco, was terminated in retaliation for creating a strategy and putting together a case for terminating then-Deputy Chief Greg Suhr.

1 **PARTIES**

2 3. Plaintiff Kelly O'Haire is, and at all relevant times has been, a lawful resident of the State  
3 of California. Plaintiff was employed by Defendant in its office in the City of San Francisco, in  
4 San Francisco County.

5 4. Defendant City and County of San Francisco ("CCSF") is and at all relevant times was a  
6 municipality organized and existing pursuant to the Charter of the City and County of San  
7 Francisco and under the laws of the State of California.

8 5. Plaintiff does not know the true names and capacities of defendants sued as Docs 1  
9 through 100. Plaintiff will amend the complaint to show the true names of each such defendant  
10 when their identities have been ascertained. Each of the Doc defendants encouraged, participated  
11 in, and/or ratified and approved the conduct complained of herein. Each of the Doc defendants  
12 was at all relevant times the agent, employee, or representative of one or more of the named  
13 defendants and/or the other Doc defendants, and was acting within the course and scope of such  
14 relationship.

15 **FACTS**

16 6. O'Haire worked in government service for twenty-seven years. Her jobs have included  
17 Park Aide, County Lifeguard, Police Service Aide, Police Officer, and Police Detective. After  
18 graduating from law school, she became a prosecutor with the Marin County District Attorney's  
19 Office.

20 7. In or around January 2006, O'Haire began working for the CCSF as an attorney in the  
21 San Francisco Police Department ("SFPD"), and was assigned to the "Risk Management  
22 Division."

23 8. Throughout her entire tenure with SFPD, O'Haire was an "8177 Trial Attorney."

24 9. As an attorney for SFPD, O'Haire was responsible for investigating and prosecuting  
25 disciplinary actions against members of the police department, including sworn officers. As part  
26 of this process, O'Haire presented and tried cases to the San Francisco Police Commission of the  
27 City and County of San Francisco (the "Police Commission").  
28

1 10. At the beginning of her tenure with the SFPD, O'Haire reported directly to Heather Fong  
2 ("Fong"), who was then Chief of Police for the SFPD.

3 11. One of O'Haire's first responsibilities was to resolve a backlog of approximately 400  
4 police misconduct cases that had accumulated over the five years before O'Haire was hired. The  
5 backlog was unknown to Chief Fong before O'Haire and Jerry Tidwell discovered the case files.

6 12. At the time of O'Haire's hire, Jerry Tidwell was also an 8177 Trial Attorney, assigned to  
7 resolve the backlog of disciplinary cases. He was later promoted to Director of Risk  
8 Management.

9 13. O'Haire, working with other attorneys including Tidwell, was highly successful in  
10 resolving the backlog of police misconduct cases, either through the dismissal of actions, or the  
11 imposition of disciplinary sanctions against current members of the SFPD, often in conjunction  
12 with actions before the Commission. At that time, O'Haire was the only attorney with trial  
13 experience, and therefore, handled the Police Commission Trials.

14 14. As a result of O'Haire's efforts to resolve pending cases, dozens of sworn officers in the  
15 SFPD were disciplined for misconduct.

16 15. In the spring of 2009, O'Haire filed a disciplinary action against Gregory Suhr ("Suhr")  
17 with Police Commission. The case number includes O'Haire's initials, as was the Department's  
18 practice. The complaint alleged that Suhr had failed to report an incident of domestic violence,  
19 in violation of Penal Code 13701 and Penal Code 13730 and the associated legally required  
20 internal police department policies. Specifically, Suhr responded to a domestic violence call  
21 from a friend of his, and although the woman suffered bruising, strangulation and a broken collar  
22 bone, Suhr did not file a police report and did not arrest the perpetrator. Department regulations  
23 that were mandated by Penal Code 13701 and Penal Code 13730 required that Suhr do so. The  
24 perpetrator was later charged with attempted murder. The case and Suhr's involvement was  
25 widely reported in the press after Ms. O'Haire began the discipline process against Suhr.

26 16. Defendant Suhr had a history of not following Police Department Policies. O'Haire had  
27 been assigned to handle another one of these cases. Moreover, Suhr was a Defendant in what  
28 was known in the news media as "Fajitagate" where two off duty police officers beat up two men

1 for their Mexican takeout food. Suhr was accused of obstructing justice and engaging in a cover  
2 up of the incident to protect his fellow officers, including then-Assistant Police Chief Alex  
3 Fagan's son. Although criminal conspiracy charges were dismissed by Judge Ksemia Tsenin  
4 because of the absence of any evidence of an agreement between the officers, in issuing her  
5 ruling, Judge Tsenin referred to "numerous improper acts and events that transpired" and  
6 described the officer's conduct as "inappropriate," "uncooperative," and of "serious concern."

7 17. Shortly after the "fajitagate" indictments were dismissed the Office of Citizens  
8 Complaints (OCC) issued a report charging that the San Francisco Police Department "routinely  
9 obstructed and delayed" its investigations. According to the OCC report, the Department is lax  
10 in handing out discipline and the obstruction and delays cited in the report send a signal to rank  
11 and file officers that misconduct will not be taken seriously. In an article by Mark Schlossberg  
12 of the ACLU of Northern California citing the OCC report, Mr. Schlossberg commented that the  
13 "the Police Commission, which oversees the Police Department, has done nothing to address  
14 these issues and, in fact, has at times been complicitous in undermining the OCC. In one glaring  
15 example, the Commission ignored both the City Charter and the advice of the City Attorney in  
16 refusing to require the Department to turn over basic documents in the investigation of the  
17 "fajitagate" incident." In this article, Mr. Schlossberg recommended stronger protections for  
18 whistleblowers like Plaintiff.

19 18. Based upon the number of incidents in which Suhr had been involved as well as the  
20 severity of the 2009 incident, O'Haire determined that her department had enough information to  
21 present a case to the Commission for the termination of Suhr if, and only if, the pattern of  
22 misconduct was brought to the attention of the Commission, in order to show lack of mistake and  
23 an intentional act on the part of Suhr at the same time that it was considering discipline in  
24 conjunction with the 2009 incident. Furthermore, it was O'Haire who brought forth the issue  
25 that the failure to make a police report and make an arrest in a domestic violence situation is a  
26 violation of the aforementioned California Penal Code Sections. The Department was not aware  
27 that Suhr's conduct violated the Penal Code, nor was the Chief of Police or the Police  
28 Commission aware of the extent and severity of Suhr's prior misconduct.

1 19. Thereafter, O'Haire decided to prepare and file a Motion in Limine with the Commission,  
2 seeking to have evidence regarding Suhr's prior acts of misconduct admitted into evidence to  
3 establish that Suhr had a practice of disregarding, or working around, departmental policy.

4 20. During the pendency of the Suhr Action, O'Haire received a phone call from Jim Collins  
5 ("Collins"), the POA attorney representing Suhr. During the phone call, Collins repeatedly made  
6 statements to the effect that she was "going to be sorry" that she had decided to file and pursue  
7 the case against Suhr. Collins also said that O'Haire did not "know how this City worked," but  
8 Collins did and that this was going to be a future employment problem for then-Chief Fong,  
9 O'Haire, and others involved.

10 21. O'Haire refused to drop the complaint against Suhr because she reasonably believed  
11 doing so would be a violation of the Penal Code.

12 22. On July 8, 2009, O'Haire filed a Motion in Limine in the Suhr Action, in which she  
13 sought, *inter alia*, to introduce evidence of Suhr's alleged acts of misconduct prior to the 2009  
14 incident, most of which have been reported in the press and those of which Suhr has discussed in  
15 public.

16 23. On August 7, 2009, Chief Fong retired and George Gascon was appointed Chief of Police  
17 for SFPD.

18 24. San Francisco Police Officers Association ("SFPOA") union representatives (non-  
19 attorneys and not Suhr's legal counsel), met with Chief Gascon on multiple occasions and  
20 negotiated for reduced discipline on Suhr's behalf. Gascon eventually agreed to allow Suhr to  
21 serve a suspension (a low level disciplinary sanction), which is visible to any SFPD employee in  
22 the City's HRMS records system. In late October 2009, Chief Gascon agreed to offer Suhr  
23 suspension in lieu of termination. On information and belief, Suhr agreed to accept the  
24 suspension.

25 25. On or about January 9, 2011, Chief George Gascon was sworn in as District Attorney for  
26 the City of San Francisco, and Assistant Chief Jeffrey Godown was named Interim Chief of  
27 Police.  
28

1 26. During the new Chief's selection process, POA Labor Representative Stephen Johnson  
2 told SFPD Internal Affairs Attorney John Alden that Suhr was "going to rid the Department of  
3 O'Haire and Tidwell when he is named Chief." Alden repeated this to O'Haire the next day.  
4 O'Haire reported it to her superiors in an email.

5 27. On or about April 27, 2011, Gregory Suhr was appointed Chief of Police for SFPD.

6 28. At the time that Suhr was appointed Chief of Police, SFPD had five (5) individuals  
7 working at 8177 Trial Attorneys in the Risk Management Division, and one individual working  
8 as a contract attorney in the division.

9 29. On information and belief, as of May 1, 2011, all of the individuals working as 8177  
10 Trial Attorneys in the Risk Management Division were paid approximately the same amount in  
11 salary and had similar benefits. The extra hire contract attorney was paid more.

12 30. As of May 1, 2011, O'Haire was the senior-most attorney in the Risk Management  
13 Division and personally handled the most difficult and complex cases. O'Haire was also  
14 responsible for supervising the other 8177 attorneys in the Risk Management Division, as well as  
15 the contract attorney.

16 31. On or about May 16, 2011, O'Haire was terminated by the SFPD, allegedly due to  
17 budgetary shortfalls. She was told she was being laid off. However, "lay off" was classified in  
18 the City's database as a termination. This was simply pretext for the unlawful retaliatory  
19 discharge.

20 32. Jerry Tidwell was terminated the same day because of his involvement in the Suhr  
21 discipline.

22 33. Plaintiff and Tidwell's computers were shut down and they were escorted out of the  
23 building. They were not given any notice of their terminations. SFPD had never before treated  
24 any employee who was being terminated this way unless the employee had committed a crime.

25 34. At the time that O'Haire was terminated, at least one of the attorneys in Risk  
26 Management Division who was retained had been previously counseled for poor performance on  
27 several occasions and written up for a proposed termination. This attorney was paid the same  
28 amount as O'Haire.

1 35. Subsequent to O'Haire's termination, she called the Department of Health Services and  
2 made an inquiry about her benefits. The technician stated to O'Haire, "You weren't laid off, you  
3 were terminated."

4 36. O'Haire had an appointment with the City's retirement system. The analyst told O'Haire,  
5 "I see here that you were terminated, not laid off."

6 37. As such, when O'Haire applied for a City job, she did not receive credits for being a City  
7 employee.

8 38. Defendant Suhr knew classifying O'Haire as terminated rather than laid off would  
9 prevent her from obtaining future employment with the City of San Francisco.

10 39. O'Haire called the analyst who informed her that she (the analyst) had called the  
11 Department of Human Resources and due to O'Haire's status of being terminated, she was not  
12 entitled to city employment credits. The analyst said she would look into O'Haire's claim of  
13 being "laid off" and see if she would be eligible, however, she told O'Haire that she would have  
14 to provide evidence that she was "laid off" and not "terminated."

15 40. O'Haire has applied for employment and the focus of the reference checks with former  
16 supervisors has been her "termination."

17 41. O'Haire was not laid off for "budgetary shortfalls". In fact she was terminated in  
18 retaliation for her work on the Suhr action that sought to discipline Chief Suhr for serious  
19 violations of state domestic violence laws. Subsequent to O'Haire's termination, the POA held a  
20 large open meeting at the Hall of Justice to introduce Chief Suhr. It was reported by officers of  
21 the Internal Affairs Unit and others, that POA President Gary Delagnes announced, "We got rid  
22 of the ones we didn't like (referring to O'Haire and Tidwell and Richard Nichelman another  
23 civilian manager who did not fit the SFPD culture because of his high ethical standards - the only  
24 people fired in the alleged budgetary reductions)," prior to introducing Chief Suhr and crediting  
25 him for their removal.

26 42. On or around October, 2011, an 8177 Attorney resigned. Plaintiff at that time petitioned  
27 to be re-hired. Defendants declined to re-hire Ms. O'Haire and instead hired a much less  
28 qualified attorney.



1 43. O'Haire has exhausted all administrative prerequisites to suit. O'Haire filed a  
2 government claim with the City of San Francisco within six months of her termination on  
3 November 15, 2011. The supervisor of the Legal Division (Sergeant Richard Goss) and the  
4 Attorney for the Legal Division (Ronnie Wagner) accepted service of Plaintiff's claim.  
5 Department General Order (DGO) 3.14 states, in part, "The Legal Division is designated to  
6 accept Summons and Complaints and Subpoenas on behalf of the Department.

7 44. The practice of the SFPD Legal Division is that they hand out government claim forms  
8 and accept service of claim forms. When the Legal Division accepts service of the claims form it  
9 is the practice of that office to send a copy of the claim to the City Attorney, the Controller and  
10 the head of Risk Management.

11 45. Richard Goss faxed Ms. O'Haire's claim to the City Attorney's Office and to Captain  
12 McEhearn of Risk Management as was the practice of the Legal Division.

13 46. Plaintiff then mailed a copy of her claim to the Controller.

14 47. Plaintiff is informed and believes that after Plaintiff's claim was filed, the City Attorney  
15 could not locate it and contacted the officers who accepted service. Over the course of Plaintiff's  
16 career it was a common occurrence that the City Attorney's Office misplaced documents.  
17 However, Ms. O'Haire's claim was eventually located by the City Attorney.

18 48. Captain McEhearn, the Risk Manager of the Legal Division, informed Mr. Goss that he  
19 had received the claim and a copy was with the City Attorneys' Office and the Controller's  
20 Office.

21 49. Plaintiffs' claim was actually received by the City Attorney and the Controller's Office  
22 within the limitations period.

23 50. The City did not respond to O'Haire's claim within the required 45 days, and did not give  
24 written notice per the requirements of Government Code §913. As such, Plaintiff has two years  
25 from the date of her termination to file suit.

26 **FIRST CAUSE OF ACTION**

27 (Violation of California Labor Code Section 1102.5)

1 51. Plaintiff realleges and incorporates by reference, the allegations contained in paragraphs  
2 1 through 40.

3 52. Defendant's actions, as described above, violate California Labor Code section 1102.5(b)  
4 which prohibits an employer from retaliating against an employee for disclosing information to a  
5 government agency or threatening to disclose to a government agency, where the employee has  
6 reasonable cause to believe that the information discloses a violation of state or federal statute, or  
7 a violation or noncompliance with a state or federal rule or regulation.

8 53. Defendant's actions, as described above, violate California Labor Code section 1102.5(c).  
9 "[a]n employer may not retaliate against an employee for refusing to participate in an activity  
10 that would result in a violation of state or federal statute, or a violation or noncompliance with a  
11 state or federal rule or regulation."

12 54. As a proximate result of Defendant's actions, Plaintiff has suffered and continues to  
13 suffer substantial loss of earnings and other employment benefits, and has suffered and continues  
14 to suffer pain, embarrassment, humiliation and mental anguish, all to her damage in an amount  
15 according to proof.

16 55. Defendant Greg Suhr's actions were willful, malicious, fraudulent, and oppressive, and  
17 were committed with the wrongful intent to injure Plaintiff and in conscious disregard of  
18 Plaintiff's rights.

19 **SECOND CAUSE OF ACTION**  
**Intentional Infliction of Emotional Distress**

20 56. Plaintiff re-incorporates and repeats the allegations in paragraphs 1 through 44 as though  
21 fully set forth herein.

22 57. Defendant Greg Suhr, in the conduct set forth above, engaged in outrageous behaviors.  
23 By such conduct, defendants intended to cause Plaintiff emotional distress, or engaged in  
24 conduct with reckless disregard of the probability of causing Plaintiff emotional distress or both.  
25 Defendant CCSF is vicariously liable for intentional torts committed by Greg Suhr in the course  
26 and scope of his employment.

27 58. As a proximate result of defendants' conduct, Plaintiff has suffered severe emotional  
28 distress.

1 59. The outrageous conduct of defendants was a substantial factor in the severe emotional  
2 distress suffered by Plaintiff.

3 60. Defendants' wrongful conduct have caused Plaintiff to suffer and continue to suffer  
4 injury, including, but not limited to, loss of income and benefits, severe emotional distress, and  
5 other damages.

6 61. In doing the things alleged herein, Defendant Suhr's conduct was despicable. Defendant  
7 Suhr acted towards Plaintiff with malice, oppression and fraud and willful and conscious  
8 disregard to Plaintiff's rights entitling her to an award of punitive damages against Defendant  
9 Suhr as an individual.

10 **THIRD CAUSE OF ACTION**  
**Interference with Prospective Economic Advantage**

11 62. Plaintiff re-incorporates and repeats the allegations in paragraphs 1 through 50 as though  
12 fully set forth herein.

13 63. At all times, Plaintiff had prospective economic relationship with other public entities,  
14 including but not limited to, the City and County of San Francisco for Institutional Police  
15 Sergeant. Defendant has intentionally classified Plaintiff's release as a termination rather than a  
16 layoff to interfere with her prospective employment.

17 64. As a proximate result of Defendant's actions, Plaintiff has suffered and continues to  
18 suffer substantial loss of earnings and other employment benefits, and has suffered and continues  
19 to suffer pain, embarrassment, humiliation and mental anguish, all to her damage in an amount  
20 according to proof.

21 65. In doing the things alleged herein, Defendant Suhr's conduct was despicable. Defendant  
22 Suhr acted towards Plaintiff with malice, oppression and fraud and willful and conscious  
23 disregard to Plaintiff's rights entitling her to an award of punitive damages against Defendant  
24 Suhr as an individual.

25 WHEREFORE, Plaintiff seeks relief as set forth below.

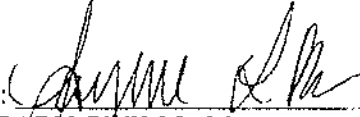
26 **REQUEST FOR RELIEF**

27 Plaintiff seeks judgment against Defendant as follows:  
28

1. Compensatory damages, including lost past and future wages and benefits, and emotional distress damages, in a sum according to proof;
2. Reinstatement or front pay in lieu of reinstatement, in a sum according to proof;
3. Injunctive relief;
4. Punitive damages, in a sum according to proof;
5. Interest on judgment, including prejudgment interest, at the legal rate;
6. Attorneys' fees and costs including but not limited under CCP 1021.5 ; and
7. Such other and further relief as the Court may deem proper.

GWILLIAM IVARY CHIOSSO CAVALLI & BREWER

Dated: August 13, 2013


By:   
J. GARY GWILLIAM  
RANDALL E. STRAUSS  
JAYME L. BURNS  
Attorneys for Plaintiff Kelly O'Haire

**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial on all claims.

GWILLIAM IVARY CHIOSSO CAVALLI & BREWER

Dated: August 13, 2013

By:   
J. GARY GWILLIAM  
RANDALL E. STRAUSS  
JAYME L. BURNS  
Attorneys for Plaintiff Kelly O'Haire

**PROOF OF SERVICE (CCP §§ 1013, 1013a)**

I, MARIE BROWN, declare:

I am over the age of eighteen (18) years and not a party to the within action. I am an employee of Gwilliam, Ivary, Chiosso, Cavalli & Brewer, and my business address is 1999 Harrison Street, Suite 1600, Oakland, California 94612.

On August 13, 2013, I caused to be served the following document(s):

**FIRST AMENDED COMPLAINT FOR DAMAGES & INJUNCTIVE RELIEF**

on the parties involved addressed as follows:

***For Defendant***

***City and County of San Francisco***

Jonathan C. Rolnick  
Office of the City Attorney  
1390 Market Street, Fifth Floor  
San Francisco, CA 94102  
415-554-3815 Telephone  
415-554-4248 Fax

( ) **BY MAIL:** I caused each envelope, with postage thereon fully prepaid, to be placed in the United States mail at Oakland, California. I am readily familiar with the business practice for collection and processing of mail in this office; and that in the ordinary course of business said document would be deposited with the US Postal Service in Oakland on that same day. I understand that service shall be presumed valid upon motion of a party served if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this declaration.

( ) **BY FACSIMILE:** By use of a facsimile machine telephone number (510) 832-1918, I served a copy of the within document(s) on the above-interested parties at the facsimile numbers listed above. The transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine.

(XX) **BY PERSONAL SERVICE:** I caused the foregoing document(s) to be delivered by hand this date to the office(s) of the addressee(s).

( ) **BY E-MAIL or ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed in item 4. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Oakland, California on August 13, 2013.

  
MARIE BROWN

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