

1 Etan Z. Lorant, Esq., SBN: 108820  
2 Yael Trock, Esq., SBN 185423  
3 **LAW OFFICES OF ETAN Z. LORANT**  
4 5850 Canoga Avenue, Ste. 400  
5 Woodland Hills, California 91367  
6 Telephone [REDACTED]  
7 Facsimile [REDACTED]

8 Attorneys for Plaintiff,  
9 JAMES MEE

**FILED**  
LOS ANGELES SUPERIOR COURT

DEC 20 2010

**REC'D**

DEC 20 2010

JOHN A. CLARKE, CLERK  
BY *Paul Sanchez*  
PAUL SANCHEZ, DEPUTY

**FILING WINDOW**

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **FOR THE COUNTY OF LOS ANGELES**  
9 **CENTRAL DISTRICT**

10 **JAMES MEE,**

11 Plaintiff,

12 vs.

13 **COUNTY OF LOS ANGELES;**  
14 **and DOES 1 through 50, inclusive,**

15 Defendants.

CASE NO.: BC 444914

**PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S DEMURRER;  
MEMORANDUM OF POINTS  
AND AUTHORITIES**

Date: February 22, 2011  
Time: 8:30 a.m.  
Dept: "30"

16  
17  
18  
19  
20  
21  
22 Plaintiff JAMES MEE hereby submits his Opposition to Defendant's Demurrer.

23  
24 Dated: December 17, 2010

**LAW OFFICES OF ETAN Z. LORANT**

25  
26 By: *Etan Z. Lorant*

27 **ETAN Z. LORANT**  
28 **Attorneys for Plaintiff**  
**JAMES MEE**

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4  
5 Plaintiff JAMES MEE began working for Defendant COUNTY OF LOS ANGELES  
6 as a Sheriff Deputy in 1989. On July 28, 2006, in the course and scope of his  
7 employment as a Sheriff Deputy, JAMES MEE arrested the celebrity, Mel Gibson, for  
8 Driving Under the Influence of Alcohol ("DUI").

9  
10 At or around the time of his arrest, Mr. Gibson was a spokesperson for the Los  
11 Angeles Sheriff's Star Organization, which is an organization run by, supported, and  
12 administered, by the Los Angeles Sheriff's Department and Defendant COUNTY OF  
13 LOS ANGELES. Mr. Gibson had previously filmed a Public Service Announcement for  
14 Sheriff Baca's Relief Committee dressed in a Sheriff uniform, and standing by a sheriff's  
15 patrol vehicle. Additionally, Mr. Gibson was, a close friend of Sheriff Baca, and had  
16 close associations with the top administration personnel of the Los Angeles Sheriff's  
17 Department. Mr. Gibson and Plaintiff's supervisor Sergeant Finch were also members of  
18 the same church.  
19

20  
21 During his arrest for "DUI" on July 28, 2006, Mr. Gibson spouted numerous Anti-  
22 Semitic remarks, asked Plaintiff if he was "a fucking Jew," shouted that "the Jews are  
23 responsible for all the wars in the world!", and threatened to cause Plaintiff trouble at his  
24 work with the Los Angeles Sheriff Department. Plaintiff was and is of the Jewish faith.

25  
26 In the early morning hours of July 29, 2006, Plaintiff submitted his report of the  
27 arrest of Mr. Gibson, which described the specific anti-Semitic slurs made of Mel  
28 Gibson. But shortly after submitting the initial report, JAMES MEE was ordered by his  
Watch Commander Crystal Miranda and his Watch Sergeant Kevin Finch to delete the

BY: JSEY

1 anti-Semitic slurs that were made by Mr. Gibson, and in addition, to write a  
2 Supplemental Report that would describe the anti-Semitic slurs and which would then  
3 be marked 'confidential' and sealed in a safe. Believing that the anti-Semitic slurs  
4 clearly revealed religious discrimination by a known Spokesperson for the Los Angeles  
5 Sheriff's Department, as well as the level of alcohol toxicity of Mr. Gibson, Plaintiff  
6 protested to erasing the anti-Semitic slurs from his report. Regardless, he received a  
7 direct Order by his superiors to delete the anti-Semitic slurs from the arrest report, at  
8 which time he complied with the direct order.  
9

10  
11 Since the date of the arrest and on Plaintiff JAMES MEE encountered a series of  
12 ongoing discriminatory and retaliatory acts, based upon his Jewish religion and the fact  
13 that he reported anti-Semitic remarks by Mr. Gibson, a spokesman for Defendant.

14 There are clear examples of adverse employment actions described in Plaintiff's  
15 complaint, but the more glaring ones include the following: Plaintiff was *singled out* for  
16 an internal affairs investigation of leakage of the initial police report to 'TMZ,' *despite the*  
17 *fact that other deputies also had access to the report and to a copy machine nearby*  
18 *(see Complaint ¶ 12); his due process rights were violated (see Complaint ¶ 12); he was*  
19 *removed from his long-time prestigious patrol area and involuntarily transferred to*  
20 *another patrol area where he was forced to a reduced productivity and to re-establish*  
21 *his seniority and contacts with the public (see Complaint ¶ 13); he was unjustly served*  
22 *with a negative Performance Log (see Complaint ¶ 14); he was repeatedly denied*  
23 *numerous requests for promotions that he was well qualified for (see Complaint ¶ 15,*  
24 *23, 26, 27, 28, 30); he was singled out and unjustly served by Defendant COUNTY OF*  
25 *LOS ANGELES with a Search Warrant for his bank accounts and home, and his*  
26 *personal computers were removed and taken (see Complaint ¶ 16); Defendant actively*  
27  
28

1 and affirmatively solicited a citizen complaint against him (see Complaint ¶ 18); he was  
2 wrongfully investigated by Internal Affairs when there were no incriminating evidence  
3 whatsoever against him (see Complaint ¶ 19); was unjustly suspended for 3 days (see  
4 Complaint ¶ 22); was singled out for a Unit Level Performance Review/Performance  
5 Monitoring (see Complaint ¶ 24); and was subjected to a Command Review Hearing  
6 (see Complaint ¶ 25), inter alia.

8 In the Complaint, Plaintiff stated in essence that, after he arrested a spokesman  
9 for Defendant who had/has dislike toward Jews. Defendant discriminated against him  
10 based upon his Jewish religion when Defendant ordered him to remove the anti-Semitic  
11 remarks and only suspected him (being a Jew) of the leakage of the arrest report with  
12 Mel Gibson's anti-Semitic remarks, when in fact, there were other non-Jewish deputies  
13 with access to the arrest report. Defendant also retaliated against him because he  
14 arrested Mr. Gibson, reported the anti-Semitic remarks of Mr. Gibson, and refused to  
15 participate in the cover up of Mr. Gibson's anti-Semitic attitude.

18 **II.**

19 **STANDARD OF REVIEW FOR A DEMURRER**

20 In order to prevail on a Demurrer defendant must show that the complaint *on its*  
21 *face* falls into the categories of the Code of Civil Procedure 430.30. In considering a  
22 demurrer, a court must assume that the complaint's material allegations are true and  
23 give it a reasonable interpretation. *Moore v. Regents of University of California* (1990)  
24 51 Cal.3d 120, 125.

26 "A general demurrer admits the truth of all material factual allegations of the  
27 complaint; plaintiff's ability to prove the allegations, or the possible difficulty in making  
28 such proof, does not concern the reviewing court." *Nagy v. Nagy* (1989) 210 Cal.App.3d

1 1262, 1267. A complaint survives a demurrer if it states facts disclosing some right to  
2 relief." *Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 22.

3  
4 **III.**

5 **UNDER THE 'CONTINUING VIOLATIONS' DOCTRINE PLAINTIFF'S CLAIMS**

6 **ARE TIMELY, AND ARE NOT BARED BY THE STATUTE OF**

7 **LIMITATIONS AS DEFENDANT CLAIMS**

8 The 'Continuing Violations' Doctrine is directly relevant in the case at bar, and  
9 comes into play when an employee raises a claim on conduct that is partly outside the  
10 Statute of Limitations. Provided that at least one act occurred within the Statute of  
11 Limitations, the employer can be liable for the entire course of conduct, including acts  
12 outside the Statute of Limitations.  
13

14 In *Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4<sup>th</sup> 798, 811-824, a case involving  
15 an employee who resigned from her job after 5 years of many incidents of disability  
16 discrimination occurring outside the one-year limitations period, the Court examined in  
17 details the well established "Continuing Violation Doctrine" within the context of the  
18 Statute of Limitations. The Court explained that if the employer's discriminatory acts  
19 predating in the statutory period are sufficiently similar in kind to those within the  
20 statutory period, then the employer will be held liable for all of the acts *regardless of the*  
21 *dates involved.*  
22

23  
24 The *Richards* Court stated that: "Essentially, the continuing violation doctrine  
25 comes into play when an employer raises a claim based on conduct that occurred in  
26 part outside the limitations period." *Id* at 811. The Court also stated that: "In short,  
27 courts applying the continuing violation doctrine have tended toward a *broader view of*  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

12/23/19

Plaintiff filed his Department of Fair Employment and Housing claim on June 1, 2010. All that would be required is one act occurred within the Statute of Limitations, to wit, one act at any time from June 1, 2009 through June 1, 2010. Plaintiff alleged such a wrongful act in paragraph 30 of his Complaint where he stated that, on August 28, 2009, he *once again* applied for the position of a Motorcycle Deputy with the Lost Hills Station, and was overlooked despite the fact that Plaintiff was placed on a list of qualified candidates, and the position remained vacant. He then also stated the latest act of discrimination, harassment and/or retaliation occurred on May 27, 2010, when Defendant *re-initiated* the additional Internal Affairs investigation again against him in connection with the July 28, 2006 Mel Gibson arrest. These wrongful acts come within the one year Statute of Limitations and sufficient to trigger the "Continuing Violations" doctrine, which requires a broader-view evaluation under the *Richards* case.

Furthermore, in *Richards*, supra, the Court explained that the discriminatory acts must have not 'acquired a degree of permanence'. Permanence' is acquired when the employer makes it clear that the continued adverse treatment is to be expected:

"Permanence in the context of an ongoing process of harassment ... means "that an employer's statement and actions make clear to a reasonable employee that any further efforts at informal conciliation to obtain reasonable accommodation or end harassment will be futile." *Id.* at 823.

Additionally, discriminatory acts do not acquire 'permanence' so as to commence the running of the statute of limitations where the claim is an ongoing, systematic discrimination against a protected class. *Alch v. Sup.Ct.* (2004) 19 Cal.Rptr.3d 29, 49. In the case at bar, the acts against Plaintiff acquired permanence only when Defendant re-initiated the internal affairs investigation against him on May 27, 2010 despite the fact

1 that there was no just cause for it whatsoever, other than continuing discrimination,  
2 harassment and/or retaliation.

3 The case at bar also involve similarity of conduct by Defendant in that Plaintiff  
4 has applied to several positions since Mr. Gibson's arrest and was intentionally rejected  
5 for each of them, as well as continually disciplined in various ways by Defendant. These  
6 acts were occurring with reasonable frequency, and recurring to the point where Plaintiff  
7 no longer had any hope of ending the ongoing discrimination, retaliation and  
8 harassment against him (i.e.: internal affairs investigations, negative Performance Log,  
9 Unit Level Performance Review/Performance Monitoring, Command Review Hearing,  
10 Suspension, re-initiation of the old internal affairs investigation, etc.)

11  
12  
13 Finally, in *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4<sup>th</sup> 1028, the Court clearly  
14 stated that, in addition to the application of the 'continuing violation doctrine' to  
15 harassment claims, it also applied to a retaliation cause of action:

16  
17 " L'Oreal urges us to adopt *Morgan*'s reasoning and limit the continuing violation  
18 doctrine to only harassment claims, thus excluding discrimination and retaliation  
19 claims. A rule categorically barring application of the continuing violation doctrine  
20 in retaliation cases, however, would mark a significant departure from the  
21 reasoning and underlying policy rationale of our previous cases interpreting the  
22 FEHA statute of limitations. In *Richards*, we recognized that such a strict  
23 approach to the statute of limitations could encourage early litigation, and that in  
24 order to minimize the filing of unripe lawsuits and to promote the conciliatory  
25 resolution of claims, the FEHA statute of limitations should be interpreted liberally  
26 to allow employers and employees an opportunity to resolve disputes informally.  
(See *Richards, supra*, 26 Cal.4th at p.819, citing *Romano v. Rockwell Internat.  
Inc.* (1996) 14 Cal.4th 479 , 493-494 ( *Romano* )). In our earlier decision in  
*Romano, supra*, these same policy concerns critically informed our decision that  
a FEHA action for discriminatory discharge does not commence until the actual  
discharge, not the time the employee was notified that he or she would be  
discharged. (*Romano, supra*, 14 Cal.4th at pp.494-495.) . . .

27 Indeed, an examination of the facts of the instant case illustrates why a  
28 categorical bar on the application of the continuing violations doctrine in the  
retaliation context is incompatible with our previous pronouncements in this area.  
Here, the plaintiff alleges a retaliatory course of conduct rather than a discrete

1 act of retaliation, and as we concluded above, a series of separate retaliatory  
2 acts collectively may constitute an "adverse employment action" even if some or  
3 all of the component acts might not be individually actionable. If, however, we  
4 were to foreclose application of the continuing violations doctrine as a matter of  
5 law in retaliation cases, the statute of limitations would start running upon the  
6 happening of the first act of retaliation, even if that act would not be actionable  
7 standing alone. A rule that would force employees to bring actions for "discrete  
8 acts" of retaliation that have not yet become ripe for adjudication, and that the  
9 employee may not yet recognize as part of a pattern of retaliation, is  
10 fundamentally incompatible with the twin policy goals of encouraging informal  
11 resolution of disputes and avoiding premature lawsuits that critically informed our  
12 analysis in *Richards* and *Romano*. Accordingly, foreclosing the application of the  
13 continuing violation doctrine in a case such as this one, where the plaintiff alleges  
14 a retaliatory *course of conduct* rather than a discrete act of retaliation, would  
15 undermine [36 Cal.4th 1059] the fundamental purpose of the FEHA by  
16 encouraging early litigation and the adjudication of unripe claims. We believe the  
17 better rule is to allow application of the continuing violations doctrine in retaliation  
18 cases if the requisite showing of a continuing course of conduct has been made.  
19 Thus, we reiterate that in a retaliation case, as in a disability accommodation or  
20 harassment case, the FEHA statute of limitations begins to run when an alleged  
21 adverse employment action acquires some degree of permanence or finality.  
22 (*Richards, supra*, 26 Cal.4th at p. 823.)" Id. at 1057-1059

15 **IV.**

16 **PLAINTIFF HAS ALLEGED SPECIFIC AND SUFFICIENT FACTS TO**  
17 **SUPPORT HIS CAUSES OF ACTION**

18 Defendant argues that Plaintiff did not provide sufficient facts to support his  
19 cause of action under Government Code § 12940 et seq. However, Defendant is  
20 clearly mistaken here. Defendant knew Plaintiff is Jewish, knew he was reporting anti-  
21 Semitic remarks by Defendant's spokesperson, and yet ordered Plaintiff to delete the  
22 remarks despite the fact that he had objected. That is discriminatory conduct creating a  
23 disparate impact on Jews, and on Plaintiff in particular.  
24

25 Plaintiff specifically alleged these facts in the Complaint's paragraph 10 that:

26 "In the Early morning hours of July 29, 2006, Plaintiff submitted his report of the  
27 arrest of Mr. Gibson. The report described the specific inflammatory and  
28 discriminatory religious slurs made by Mel Gibson against Jews and against

12/21/19



1 Deputy JAMES MEE for being Jewish. Shortly after submitting the initial report  
2 which included a description of the anti-Semitic slurs of Mel Gibson, Plaintiff was  
3 ordered by his Watch Commander Crystal Miranda and his Watch Sergeant  
4 Kevin Finch to delete the anti-Semitic slurs that were made by Mr. Gibson, and in  
5 addition, to write a Supplemental Report that would describe the anti-Semitic  
6 slurs and which would then be marked 'confidential' and sealed in a safe.  
7 Believing that the anti-Semitic slurs clearly revealed religious discrimination by a  
8 known Spokesperson for the Los Angeles Sheriff's Department, as well as the  
9 level of toxicity of Mr. Gibson, Plaintiff protested to erasing the anti-Semitic slurs  
10 from his report. Regardless, Plaintiff received a direct Order by Commander  
11 Miranda and Sergeant Finch to delete the anti-Semitic slurs from the arrest report  
12 (effectively participating in covering-up the anti-Semitic posture of Mr. Gibson by  
13 sealing the description of the discriminatory remarks secretly in a safe.) *The  
14 Order to delete the anti-Semitic slurs was discriminatory toward Plaintiff who is  
15 Jewish.*"

16 But to make matters worse, Defendant also singled Plaintiff out as described in  
17 the Complaint paragraph 12:

18 "On August 1, 2006, Plaintiff was unjustly accused of, investigated for, and  
19 interrogated by Internal Affairs Bureau regarding the leakage of the Mel Gibson  
20 arrest report which contained the anti-Semitic remarks. *Despite the fact that a  
21 number of deputies had access to the report and to the copy machines nearby,  
22 Defendants only accused Plaintiff of leaking the report to "TMZ," and initiated an  
23 Internal Affairs investigation only against him.* Defendants only accused Plaintiff  
24 and initiated an internal affairs investigation against him because he is Jewish,  
25 and because he described anti-Semitic remarks in the arrest report by a  
26 Defendants' Spokesperson - Mel Gibson."

27 Defendants further discriminated against Plaintiff when they only suspected him,  
28 and solely investigated him, for the leakage of the arrest report of Mr. Gibson.  
29 Defendants only suspected Plaintiff *because* he is Jewish reporting anti-Semitic  
30 remarks. There were other non-Jewish deputies with access to the report and to a copy  
31 machine. Yet, Defendants only investigated Plaintiff, and searched his home,  
32 computers, and bank records. *Defendants did not search any other deputy's home and  
33 bank accounts. Defendant did not initiate an internal affairs against any other deputy for*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*the leakage or investigated any of them. Defendant only singled Plaintiff out, and that's because he is Jewish and he arrested and reported anti-Semitic remarks by Mel Gibson.*

Additionally, Plaintiff sufficiently alleged facts in this case to support his retaliation cause of action: once Plaintiff arrest Mel Gibson, and reported to his supervisors the anti-Semitic remarks of Defendant's Spokesman, and objected to deleting them, Defendant clearly retaliated by failing to promote him, involuntarily transferring him, conducting baseless internal affairs investigations against him, unfairly scrutinizing him in a number of ways including a Unit Level Performance Review/Performance Monitoring and a negative log, suspending him, etc. These retaliatory acts all stem from the fact that Plaintiff, a Jew, reported anti-Semitic remarks by someone who is the spokesperson for Defendant. Defendant's employees did not like that and initiated a series of retaliatory acts against Plaintiff to punish him for reporting the anti-Semitic remarks. These facts are more than sufficient to constitute a retaliation cause of action.

Plaintiff has also stated sufficient facts to support a cause of action for harassment/hostile work environment. The nature and severity of the unjust acts against Plaintiff *on a continual basis* were severe and pervasive enough to alter the terms and conditions of employment. These acts were not isolated in any way, but rather on-going, persistent, recurring, and frequent, *from the moment Plaintiff reported the anti-Semitic remarks.* Furthermore, "Loss of tangible job benefits shall not be necessary in order to establish harassment." *California Government Code* § 12940(j)(1).


12/21/18

V.

CONCLUSION

Based upon the foregoing, the standard that the allegations must be construed as true for purposes of a Demurrer, the broader-view standard of the "Continuing Violations" doctrine, and the facts alleged in the Complaint, Plaintiff respectfully requests that Defendant's Demurrer be denied in its entirety, or that in the alternative, Plaintiff be allowed to amend his Complaint.

Dated: December 17, 2010      LAW OFFICES OF ETAN Z. LORANT

By: Etan Z. Lorant  
ETAN Z. LORANT  
Attorneys for Plaintiff  
JAMES MEE

13/21/10