



1 Kimberly E. Colwell, (SBN 127604)
kcolwell@meyersnave.com
2 Tricia L. Hynes, (SBN: 212550)
thynes@meyersnave.com
3 Jesse J. Lad (SBN: 229389)
jlad@meyersnave.com
4 MEYERS, NAVE, RIBACK, SILVER & WILSON
5 555 12th Street, Suite 1500
Oakland, California 94607
6 Telephone: (510) 808-2000
Facsimile: (510) 444-1108

7 Attorneys for Defendant
8 CITY OF SAN LEANDRO

Exempt from filing fees per Govt. Code §6103

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF ALAMEDA

11 J. DeWAYNE STANCILL,
12 Plaintiff,

14 v.

15 CITY OF SAN LEANDRO, and DOES 1-20,
16 inclusive,
17 Defendants.

Case No. RG09469513
[Assigned for all purposes to the
Hon. Yvonne Gonzalez Rogers, Dept. 302]

DEFENDANT CITY OF SAN
LEANDRO'S MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, MOTION FOR
SUMMARY ADJUDICATION

Date: January 4, 2011
Time: 3:15 p.m.
Dept.: 302

Reservation #R-1109404

Complaint Filed: August 19, 2009
Trial Date: February 7, 2011

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. FACTS	2
A. Stancill's Promotion to Sergeant.....	2
B. Stancill Was Allegedly Shunned and Degraded by the POA and Other Applicants When the Results of the Sergeant's Test Became Public	2
C. Stancill Has a History of Being Unprofessional	3
D. Stancill Was Disciplined for His Unprofessional Conduct	4
E. Stancill's Unprofessional Conduct Continued After He Was Disciplined	5
F. Stancill Complained of Race Harassment Shortly After He Found About the Results of the Estrin Investigation	5
G. Stancill's Unprofessional Conduct Continued When He Conducted a Background Investigation For an Applicant Who Was His Friend	6
H. Stancill Did Not Fully Disclose His Relationship With His Friend.....	6
I. Stancill Arranged for Someone He Believed to be a Dangerous Crook to Visit an In-Custody Suspect in an Unsecure Location.....	7
J. Stancill Did Not Disclose the Potential Dangerous Circumstances Surrounding This Visit to The Sergeant In Charge of the Investigation.....	7
K. Stancill Did Not Pass Probation Because of His Continued Unprofessional Conduct	8
L. Stancill Was Terminated Because He was Not Forthright.....	8
III. LEGAL ARGUMENT	9
A. Defendant is Entitled to Summary Adjudication of Plaintiff's Second Cause of Action Alleging Failure to Prevent Harassment/Discrimination	9
1. Plaintiff Failed to Timely Exhaust His Administrative Remedies With Respect to His Second Cause of Action.....	9
2. Plaintiff's Second Cause of Action Also Fails Because the City Took Prompt Corrective Action in Response to Plaintiff's Complaint.....	9
3. Plaintiff's Second Cause of Action Should Also Be Dismissed Because He Was Not Subjected to Unlawful Harassment or Discrimination.....	11

1	B.	Defendant is Entitled to Summary Adjudication of Plaintiff's Third Cause of	
2		Action Alleging Intentional Infliction of Emotional Distress	13
3	1.	The Relevant Limitations Starts on February 19, 2009	13
4	2.	The Scope of the Tort Cause of Action is Limited to What is	
5		Included in the Government Claim.	14
6	3.	Stancill's Third Cause of Action is Pre-empted by Workers	
7		Compensation.....	14
8	4.	Stancill Can Not State a Prima Facie Case of Intentional Infliction of	
9		Emotional Distress	15
10	C.	The City is Immune From Tort Liability	15
11	D.	Defendant is Entitled to Summary Adjudication of Plaintiff's First Cause of	
12		Action Alleging FEHA Retaliation	16
13	1.	Summary Judgment Standard for Retaliation Claims	16
14	2.	The City Had a Legitimate Business Reason for Denying Stancill	
15		Permanent Status as a Sergeant.....	17
16	3.	The City Had a Legitimate Non-Retaliatory Reason to Terminate	
17		Stancill.....	18
18	IV.	CONCLUSION	19

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

<i>McDonnell Douglas Corp. v. Green</i> 411 U.S. 792 (1973)	11
<i>Rodriguez v. Airborne Express</i> 265 F.3d 890 (9th Cir. 2001)	9

CALIFORNIA CASES

<i>California Fair Employment and Housing Com'n v. Gemini Aluminum Corp.</i> 122 Cal.App.4th 1004 (2004)	10
<i>Chen v. County of Orange</i> 96 Cal.App.4th 926 (2002)	16
<i>Cole v. Fair Oaks Fire Protection Dist.</i> 43 Cal.3d 148 (1987)	14
<i>Delfino v. Agilent Technologies, Inc.</i> 145 Cal.App.4th 790 (2006)	15
<i>Etter v. Veriflo Corp.</i> 67 Cal.App.4th 457 (1998)	11, 12
<i>Fisher v. San Pedro Peninsula Hosp.</i> 214 Cal.App.3d 590 (1989)	11, 12, 16
<i>Janken v. GM Hughes Electronics</i> 46 Cal.App.4th 55. (1996)	11
<i>Kemmerer v. County of Fresno</i> 200 Cal.App.3d 1426 (1988)	16
<i>Kolender v. San Diego County Civil Service Comm'n.</i> 132 Cal.App.4th 716 (2005)	18
<i>Miklosy v. Regents of the University of California</i> 44 Cal.4th 876 (2008)	15
<i>Morgan v. Regents of The University of California</i> 88 Cal.App.4th 52 (2000)	17
<i>Northrop Grumman Corp. v. Workers' Comp. Appeals Bd.</i> 103 Cal.App.4th 1021 (2002)	10
<i>Okoli v. Lockheed Technical Operations Co.</i> 36 Cal.App.4th 1607 (1995)	9
<i>Paulino v. Civil Service Comm'n.</i> 175 Cal.App.3d 962 (1985)	18

1	<i>Reno v. Baird</i>	
2	18 Cal.4th 640 (1998).....	11
3	<i>Rojo v. Kliger</i>	
4	52 Cal.3d 65 (1990).....	9
5	<i>Shoemaker v. Myers</i>	
6	52 Cal.3d 1 (1990).....	15
7	<i>Stearns v. County of Los Angeles</i>	
8	275 Cal.App.2d 134, 138 f. (1969)	14
9	<i>Stockett v. Assoc. of Cal. Water Agencies Joint Powers Ins. Auth.</i>	
10	34 Cal.4th 441 (2004).....	14
11	<i>Trujillo v. North County Transit District.</i>	
12	63 Cal.App.4th 280 (1993).....	11
13	<i>Yanowitz v. L'Oreal USA, Inc.</i>	
14	36 Cal.4th 1028 (2005).....	17
15	<i>Yurick v. Superior Court</i>	
16	209 Cal.App.3d 1116 (1989).....	9
17	CALIFORNIA STATUTES	
18	Cal. Gov. Code § 815.2(b)	16
19	Cal. Gov. Code § 820.2	15, 16
20	Cal. Gov. Code § 821.6	16
21	Cal. Gov. Code § 910(e).....	14
22	Cal. Gov. Code § 911.2	13
23	Cal. Gov. Code § 945.4	14
24	Cal. Gov. Code § 3502.1	13
25	Cal. Gov. Code § 12940(h)	17
26	Cal. Gov. Code § 12940(k)	9, 10, 13
27	Cal. Gov. Code § 12960	9
28	Cal. Gov. Code § 12965(b)	9
	Cal. Labor Code § 3601(a)	14

1 **I. INTRODUCTION**

2 Plaintiff DeWayne Stancill ("Stancill") is a former Police Officer for the City of San
3 Leandro ("City"). Stancill's lawsuit alleges that he was denied permanent status as a Sergeant and
4 was terminated because he: (1) complained about alleged racial harassment in June 2008; and (2)
5 complained that a subordinate made a threatening comment about him in September 2008. Stancill
6 also alleges that the City intentionally inflicted emotional distress upon him by not making him a
7 permanent sergeant and for terminating him. Finally, Stancill alleges that the City unlawfully
8 failed to prevent harassment and discrimination against him by not appropriately responding to his
9 allegation that the POA and officers that competed against him for promotion shunned and
10 degraded him.

11 Plaintiff's complaints against the City are without merit. As more thoroughly discussed
12 below, Plaintiff has not been subjected to unlawful conduct by the City in retaliation for engaging
13 in protected conduct. Moreover, the City took appropriate steps in response to Stancill's
14 complaint of racial harassment. Notably, the City retained an outside investigator who determined
15 that Stancill was not harassed because of his race. The City also counseled three employees as a
16 result of the findings of that outside investigation.

17 Police Chief Ian Willis made the decision to terminate Plaintiff. Chief Willis terminated
18 Plaintiff because he was untruthful and evasive, withheld information from his superiors and
19 showed far less than the highest degree of integrity and professional conduct. This determination
20 was based on the findings in the Departmental Investigation completed by Lieutenant Tankson,
21 who like Stancill is African-American.

22 Honesty and credibility are crucial to the proper performance of a peace officer's duties.
23 Dishonesty and failing to be forthright, on the other hand, are incompatible with the public trust.
24 Plaintiff's conduct demonstrated a pattern of taking advantage of his superiors and colleagues who
25 did not have complete information. Instead of disclosing or bringing to the attention of his
26 supervisors and co-workers important information in his possession, Plaintiff acted in an
27 untrustworthy, untruthful and evasive manner.

28 As set forth herein, this lawsuit is meritless. The undisputed facts simply do not support

1 any basis for trial. Accordingly, summary judgment should be granted in favor of the City.¹

2 **II. FACTS**

3 **A. Stancill's Promotion to Sergeant**

4 Stancill started his employment as a Police Officer with the SLPD in October 1998.
5 Stancill did not have any prior Police Officer experience when he was first hired by the SLPD.
6 (Undisputed Material Fact ("UMF") No. 1, 72)². Stancill tested for promotion to Sergeant in
7 February 2007. Twelve San Leandro Police Officers applied for the promotion. The testing
8 process involved a written test and an oral interview conducted by a panel of three Lieutenants.
9 (UMF 2, 5, 72, 73).

10 The test panel for the promotion consisted of Lieutenant Robert Dekas, Lieutenant Tom
11 Overton and Lieutenant Mark DeCoulode. The test panel evaluated and scored the applicants for
12 promotion to Sergeant. All three Lieutenants ranked Stancill as number 3 on the list. Stancill was
13 happy when he finished number 3 on the list. (UMF 3).

14 **B. Stancill Was Allegedly Shunned and Degraded by the POA and Other**
15 **Applicants When the Results of the Sergeant's Test Became Public**

16 Most of the candidates that ranked lower than Stancill on the promotion list had more years
17 of experience as Police Officers than Stancill. This includes applicants Tim DeGrano, Mike
18 Fischer, Ann O'Callahan and Walt Aldred. (UMF 4, 74). After the applicants for promotion were
19 ranked, Stancill believed that the POA and some of the people who ranked lower than him started
20 ostracizing and degrading him. In fact, Stancill felt there was an intentional effort by the POA to
21 sabotage him. (UMF 6).

22 Part of the reason Stancill believed that he had been shunned and degraded was because he
23 thought people were jealous of the fact that he had been promoted and that they were not. (Stancill
24

25 ¹ It should be noted that the City has a different story of many of the events that Stancill has alleged in the instant
26 lawsuit. Because the undisputed facts do not support a basis for trial, however, the City has treated Plaintiff's general
27 claims as true for purposes of this motion only. In the unlikely circumstance that this motion is not granted, the City
28 will provide complete evidence refuting the alleged facts Stancill uses in support of his claims against the City.

² See Defendant City of San Leandro's Separate Statement of Undisputed Materials Facts filed concurrently herewith.

1 Depo. at pg. 287:6-17). When Stancill was first promoted to Sergeant in October 2007 the Police
2 Department put him on a shift away from some of the senior officers who were applicants for the
3 Sergeants promotion. (UMF 7). The Command staff also did everything they could to try and
4 calm this matter down. (UMF 30).

5 **C. Stancill Has a History of Being Unprofessional**

6 It is important to maintain professionalism in the Police Department. When Stancill was a
7 Sergeant he expected his officers to maintain professionalism in the workplace. Stancill thought it
8 was important to be professional in the workplace when he was a Sergeant because officers look
9 up to supervisors. (UMF 8, 36, 75).

10 Stancill has used street lingo with employees of the San Leandro Police Department. This
11 includes using the terms "Beh Beh," "Homeboy," "Homegirl," and "Dawg." Stancill used the
12 slang terms "Dawg" and "Beh Beh" frequently at work. In December 2007 when Stancill was a
13 Sergeant he told his shift that he used slang and that it made people uncomfortable. Stancill told
14 the squad that everyone should use the names on the nametags and that he would not call anyone
15 "Homeboy," "Homegirl," "Beh Beh" or "Dawg" anymore. (UMF 9, 10, 37, 76).

16 When Stancill was a Police Officer he engaged in unprofessional discussions of a sexual
17 nature with former San Leandro Police Officer Christina Tiletile. Stancill asked Officer Tiletile to
18 have sex with him. Stancill was in uniform and on-duty when he asked Officer Tiletile to have
19 sex with him. Stancill also had playful sex talk with Officer Tiletile when he was a Police Officer.
20 Stancill also told Tiletile that he knew officers who "wanted" her. (UMF 11, 33, 77).

21 When Stancill was a Police Officer he did the background investigation for Christina
22 Tiletile when she was an applicant. Stancill was attracted to Tiletile. Stancill first became
23 attracted to Tiletile after he completed her background investigation. Stancill believed that he had
24 a similar background as Ms. Tiletile in that they both came from the ghetto. (UMF 12). Tiletile
25 was hired by the Police Department in September 2006.

26 In January 2008 Police Officer Deborah Trujillo and former Police Services Aide Amanda
27 Kerr complained that they had been sexually harassed by Stancill. (Estrin Dec. at ¶ 2; Caire Dec.
28 at ¶ 3). The City retained outside investigator Debra Estrin to investigate these complaints. The

1 allegations Ms. Estrin was investigating against Stancill were serious. Stancill was concerned that
2 the work that he had put in to promote was going to be at risk because of the Estrin investigation.
3 (UMF 13, 14, 27, 39, 40, 78, 79).

4 On April 25, 2008, after interviewing ten people, Ms. Estrin reported her findings to the
5 City. Ms. Estrin noted in her findings that it was apparent that a lot of women in the Department
6 seem to have problems with Stancill. She also determined that Stancill referred to numerous
7 women on multiple occasions as "Baby" or "Mama." In addition, Ms. Estrin determined that
8 Stancill requested sex from a female employee. (UMF 15, 41, 80).

9 **D. Stancill Was Disciplined for His Unprofessional Conduct**

10 Human Resources Director Justinian Caire sent Stancill a letter dated May 24, 2008,
11 regarding the results of the Estrin investigation. This letter noted that while Ms. Estrin's "factual
12 findings do not illustrate that your actions violated the Sexual Harassment Policy of the City, they
13 do raise concerns about conduct on your part which was unprofessional in nature and exhibited
14 poor judgment." The letter also noted that it was being forwarded to Chief Attarian for
15 appropriate disciplinary action to be taken. Mr. Caire's memorandum also reiterated the City's
16 prohibition against retaliation. (UMF 16, 42, 81). Stancill agreed with the findings in the Estrin
17 investigation that he was unprofessional. (UMF 17, 43, 82).

18 After considering Estrin's findings, former Chief Dale Attarian issued Stancill a written
19 reprimand and extended his probation as a Sergeant. In the written reprimand Chief Attarian
20 noted that Stancill's admitted use of the term "Beh beh" when addressing employees was
21 unprofessional and that he used poor judgment in engaging in conversations of a sexual nature
22 with former Officer Tiletile. (UMF 18, 44, 83).

23 Stancill learned he was going to receive a written reprimand during a discussion he had
24 with Chief Attarian. On May 28, 2008 Stancill sent an email to the Chief's secretary indicating
25 that he was not going to appeal the written reprimand. (UMF 19, 45, 84). Dale Attarian did not
26 issue Stancill a written reprimand because of Stancill's race or because he filed any complaints
27 with the City. (UMF 20; RFA Response Nos. 19 and 20). The City sealed the written reprimand
28 in Stancill's personnel file to maintain its privacy. (UMF 22).

1 **E. Stancill's Unprofessional Conduct Continued After He Was Disciplined**

2 In June 2008 Stancill wore a t-shirt with the word "Acquitted" written across it to the
3 Police Department. Stancill wore this t-shirt after he received the memorandum from Justinian
4 Caire regarding the results of the Estrin investigation, which included the admonition against
5 retaliation. (UMF 23, 46, 85). Stancill wore the Acquitted t-shirt in front of multiple Police
6 Officers. Stancill laughed about the Acquitted t-shirt the day he wore it to the Police Department.
7 (UMF 24, 47, 86).

8 Stancill engaged in unprofessional conduct when he wore the Acquitted t-shirt while on
9 City property. It wasn't a smart move for Stancill to wear the acquitted t-shirt. Stancill thought
10 that by wearing the acquitted t-shirt he could have affected the Police Department as a whole, and
11 was concerned that it might impact how hard he was allegedly working to do a good job at the
12 police department. (UMF 25, 48, 87).

13 **F. Stancill Complained of Race Harassment Shortly After He Found Out About the**
14 **Results of the Estrin Investigation**

15 The City has a complaint process for bringing forward complaints of discrimination and
16 harassment. Stancill used the City's complaint process when he complained to Justinian Caire in
17 June of 2008 regarding some alleged racial harassment. (UMF 26). After receiving Stancill's
18 complaint, the City determined that a full outside investigation was warranted. The City retained
19 outside investigator Patricia Elliott to conduct the investigation. (UMF 13, 27, 39, 78).

20 Stancill had high regard for the command staff at the Police Department when he signed
21 his witness statement in support of his complaint of race harassment on July 15, 2008. None of
22 the command staff had discriminated against Stancill at the time he signed his witness statement
23 on July 15, 2008. (UMF 28, 49, 88).

24 Ms. Elliott interviewed over twenty individuals as a part of her investigation into Stancill's
25 complaint. Ms. Elliott determined that there was insufficient evidence to conclude that Police
26 Officers made derogatory statements and engaged in conduct against Stancill because of his race.
27 (UMF 29).

28 ///

1 **G. Stancill's Unprofessional Conduct Continued When He Conducted a**
2 **Background Investigation For an Applicant Who Was His Friend**

3 Peace officer candidates for positions at the San Leandro Police Department are subject to
4 a thorough background investigation to verify good moral character and the absence of past
5 behavior of unsuitability to perform the duties of a peace officer. The background investigation is
6 a very important part of the police applicant process. Pre-existing relationships between a
7 background investigator and a Police applicant have the obvious potential to create a conflict of
8 interest. (UMF 51, 52).

9 On August 29, 2008, applicant Mobah Keys took the SLPD oral board exam for a Police
10 Officer position. Mr. Keys scored very well on the oral board. (UMF 53, 92). Stancill knew
11 Mobah Keys from working with him at the Bayfair Mall in 2000-2001. Stancill also served as a
12 reference for Keys in his prior application to become a Police Officer for the City of Oakland.
13 Stancill also had learned about "red flags" in Keys' background with respect to his application to
14 Oakland. Stancill also told the City of Oakland that Keys would be a good candidate. (UMF 54,
15 93).

16 Sergeant Torres also worked with Keys at the Bayfair Mall. Sergeant Torres recused
17 himself from doing the Mobah Keys background investigation because he knew Keys. Stancill
18 knew that Sergeant Torres recused himself from doing Keys' background because Sergeant Torres
19 told him about it. (UMF 55, 57, 96, 97).

20 **H. Stancill Did Not Fully Disclose His Relationship With His Friend**

21 On October 1, 2008, Administrative Sergeant Joey Delgado assigned Keys' background
22 investigation to Stancill. When Stancill accepted this assignment he did not disclose to Delgado
23 that he had recommended to the City of Oakland that they consider hiring Keys, had served as a
24 reference for Keyes in his application to Oakland and knew about certain red flags in Keys'
25 background. (UMF 56, 95). Rather, Stancill told Delgado that he knew Keys through church and
26 the mall.

27 Sergeant Torres told Stancill that he had declined to do the background investigation
28 before Stancill was assigned to do the Mobah Keys background. Torres' decision to recuse

1 himself from doing the Mobah Keys background was a better decision than Stancill's decision to
2 accept the background investigation. (UMF 57, 96).

3 **I. Stancill Arranged for Someone He Believed to be a Dangerous Crook to Visit**
4 **an In-Custody Suspect in an Unsecure Location**

5 On October 16, 2008, an armed robbery occurred at a Pep Boys store in San Leandro. One
6 of the suspects, Shomenic Pierce Zaid, was shot by the SLPD during the robbery. Multiple other
7 suspects remained at large. (UMF 58, 97).

8 Pierce-Zaid was taken to Eden Hospital in Castro Valley and was placed under guard.
9 Sergeant Bobby McManus was the lead investigator on the Pep Boys Robbery. (UMF 59, 98).

10 On October 17, 2008, Stancill called McManus on his cell phone. McManus was at home
11 sleeping when Stancill called him. Stancill told McManus that the father of the suspect Pierce-
12 Zaid had called asking to speak to the lead investigator. Stancill told McManus that he knew the
13 family of Pierce-Zaid. (UMF 60, 99).

14 McManus told Stancill to call Shakir Zaid back and see what he wanted. (UMF 61, 100).
15 Stancill called McManus back later and indicated that Shakir Zaid could arrange for the self-
16 surrender of the outstanding suspects. McManus asked Stancill to proceed. (UMF 60, 99).

17 That evening at the station Stancill told his supervisor Lieutenant Ballew that Shakir Zaid
18 was very powerful when discussing the potential for Shakir to arrange a self-surrender of the
19 outstanding suspects. Ballew asked Stancill how Shakir could accomplish a self-surrender, and
20 asked whether Shakir could have someone killed who refused his request for a self-surrender.
21 Stancill responded by indicating that Shakir was pretty high up, and could probably have someone
22 killed. (UMF 62, 101).

23 On October 18, 2008, suspect Jerel Stewart self-surrendered to the Alameda Police
24 Department. Stancill asked Ballew if he could go "lay eyes" on Shakir Zaid's son for Shakir.
25 Ballew told Stancill to contact McManus and make sure the suspect had been admonished, so that
26 Stancill would not later be accused of trying to soften up the suspect. Ballew said he was ok with
27 Stancill laying eyes on the son if McManus approved. (UMF 62, 63, 64, 101, 102, 103).

28 **J. Stancill Did Not Disclose the Potential Dangerous Circumstances Surrounding**
This Visit to The Sergeant In Charge of the Investigation

Stancill called McManus who was off-duty and asked for permission to personally lay eyes

1 on the son. McManus told Stancill that if escorted and if Stancill felt comfortable doing so, it
2 would be all right for the Shakir to visit his son at the Hospital. At the time McManus made this
3 offer, he did not believe that Shakir was potentially dangerous. In fact, Stancill had not disclosed
4 to McManus that he believed him to be a high-level crook that potentially could have someone
5 killed. (UMF 62, 63, 64, 101, 102, 103). Stancill had also not told McManus that he thought
6 Shakir Zaid was not law-abiding or that Stancill had warned other officers not to go to Zaid's
7 home alone because of his criminal connections.

8 Stancill took Shakir Zaid to the hospital to see his son. Stancill excused the guard when he
9 took Shakir to the hospital and left them in the room alone with the curtain closed around them.
10 Stancill could have handled the hospital visit better. The hospital visit also could have been
11 handled by Stancill in a safer manner. (UMF 65, 66, 104, 105). Former Police Chief Dale
12 Attarian made the decision that the City should investigate Stancill's actions with respect to the
13 Hospital visit and the Mobah Keys background. Chief Willis assigned the investigation to
14 Lieutenant Tankson. (UMF 67, 106). Chief Attarian did not retaliate against Stancill. (UMF
15 110).

16 **K. Stancill Did Not Pass Probation Because of His Continued Unprofessional**
17 **Conduct**

18 Stancill did not pass probation as a Sergeant. Stancill was returned to his former Police
19 Officer position on April 15, 2009. The City determined that Stancill did not pass probation
20 because he exercised poor judgment in wearing the Acquitted t-shirt, accepting the background
21 investigation of his friend Mobah Keys and arranging and facilitating two meetings between
22 Shakir Zaid and his son – who Stancill believed was a crook that had the potential to have people
23 killed – in a non-secure location. (UMF 68, 108; Attarian Dec. at ¶¶ 7-9). Stancill was not denied
24 permanent status as a Sergeant by Chief Willis because of his race. (UMF 31).

25 **L. Stancill Was Terminated Because He was Not Forthright**

26 Stancill failed to disclose important information about his relationship with Mobah Keys
27 and the potential criminal activity of Shakir Zaid to City employees. Stancill was terminated on
28 January 25, 2010 for being untruthful and evasive. (UMF 69, 109; Attarian Dec. at ¶¶ 3-5; Exhibit
A and B to Attarian Dec.). Chief Willis did not terminate Stancill because of his race. (UMF 32).

1 **III. LEGAL ARGUMENT**

2 **A. Defendant is Entitled to Summary Adjudication of Plaintiff's Second Cause of**
3 **Action Alleging Failure to Prevent Harassment/Discrimination**

4 **1. Plaintiff Failed to Timely Exhaust His Administrative Remedies With**
5 **Respect to His Second Cause of Action**

6 Prior to bringing a lawsuit under the California Fair Employment & Housing Act
7 ("FEHA"), an employee must first exhaust his or her administrative remedies by filing a complaint
8 with the Department of Fair Employment & Housing within one year of the alleged unlawful
9 employment practice. Cal. Gov. Code §§ 12960, 12965 (b); *Rojo v. Kliger*, 52 Cal.3d 65, 88
10 (1990). If a plaintiff brings a FEHA suit without having timely filed a complaint with DFEH, the
11 civil action is subject to summary judgment, demurrer or reversal of a favorable judgment on
12 appeal. *Okoli v. Lockheed Technical Operations Co.*, 36 Cal.App.4th 1607, 1609 (1995).

13 The scope of the administrative complaint defines the permissible scope of the subsequent
14 civil action. *Yurick v. Superior Court*, 209 Cal.App.3d 1116, 1121-1123 (1989). Allegations that
15 fall outside of the scope of the administrative charge are barred for failure to exhaust
16 administrative remedies. *Rodriguez v. Airborne Express*, 265 F.3d 890, 897 (9th Cir. 2001).

17 In this case, Stancill did not file a DFEH complaint alleging a failure to prevent
18 discrimination/harassment within one year of the City's alleged failure to prevent
19 discrimination/harassment. Rather, he submitted this allegation to the DFEH for the first time
20 when he amended his DFEH complaint on September 9, 2010. (UMF 33). This purported
21 amendment was over two years after he complained to the City about alleged harassment.
22 Moreover, the only alleged wrongful conduct by the City within the one-year period prior to
23 September 9, 2010, is Stancill's termination. This allegation can not support a case of failure to
24 prevent harassment/discrimination because Stancill has admitted that the City did not terminate
25 him because of his race. Because Stancill failed to timely exhaust his administrative remedies, his
26 second cause of action must be dismissed.

27 **2. Plaintiff's Second Cause of Action Also Fails Because the City Took**
28 **Prompt Corrective Action in Response to Plaintiff's Complaint**

It is unlawful under the FEHA "for an employer...to fail to take all reasonable steps
necessary to prevent discrimination and harassment from occurring." Cal. Gov. Code § 12940(k),
One such reasonable step is a prompt investigation of a discrimination or harassment complaint.

1 *Northrop Grumman Corp. v. Workers' Comp. Appeals Bd.*, 103 Cal.App.4th 1021, 1035 (2002).
2 "Other reasonable steps an employer might take include the establishment and promulgation of
3 antidiscrimination policies and the implementation of effective procedures to handle complaints
4 and grievances regarding discrimination." *California Fair Employment and Housing Com'n v.*
5 *Gemini Aluminum Corp.*, 122 Cal.App.4th 1004, 1025 (2004).

6 In this case, the City retained outside investigator Patricia Elliott immediately after Stancill
7 complained to human resources about alleged racial harassment, Ms. Elliott investigated
8 Stancill's complaints and determined that Plaintiff was not shunned or degraded because of his
9 race. (UMF 26, 27, 28). By retaining an outside investigator to investigate Stancill's complaint,
10 the City satisfied its obligation to prevent harassment/discrimination pursuant to Section 12940(k).
11 The City also counseled Officers O'Callahan and Pickard about their need to treat all employees in
12 a courteous and professional manner after Ms. Elliott completed her investigation. (Attarian Dec.
13 at ¶ 11).

14 Stancill admitted during the City's investigation into his complaint of harassment that he
15 had high regard for the Command Staff at the Police Department and that none of the Command
16 Staff had discriminated against him. Moreover, Stancill admitted during a different investigation
17 that the Command Staff did its best to simmer down the alleged inappropriate conduct he received
18 as a result of his promotion. (UMF 30). If Stancill truly felt that the City had unlawfully failed to
19 prevent harassment or discrimination, Stancill would not have made these statements.

20 Stancill also testified during that investigation that it was a comfort of his that no matter
21 what went down on the street, he knew that the command staff would look at things with
22 unprejudiced eyes. When Stancill first became a Sergeant the Command Staff also protected him
23 by moving him to a shift that did not include a number of more experienced officers that had
24 applied for promotion.

25 The undisputed facts in this case illustrate that the City took reasonable steps to prevent
26 harassment and discrimination from occurring. Accordingly, Stancill's argument that the City
27 failed to prevent harassment/discrimination is without merit.

28 ///

1 3. **Plaintiff's Second Cause of Action Should Also Be Dismissed Because**
2 **He Was Not Subjected to Unlawful Harassment or Discrimination**

3 No action lies for failure to take prevent discrimination or harassment if in fact no
4 actionable discrimination or harassment occurred. *Trujillo v. North County Transit District*, 63
5 Cal.App.4th 280, 284 (1993). In this case, Plaintiff has admitted that the City did not terminate
6 him or fail to make him a permanent Sergeant because of his race.³ Moreover, the shunning and
7 degrading Stancill allegedly received from the POA – which is a separate legal entity that can not
8 act on behalf of the City -- does not constitute hostile work environment harassment by the City as
9 a matter of law. Because Stancill can not prove that any actionable harassment or discrimination
10 occurred within the limitations period, his second cause of action fails as a matter of law.

11 To prove racial harassment, a plaintiff must establish that he or she was subjected to
12 offensive comments or other abusive conduct that were clearly based on plaintiffs' race that were
13 sufficiently "severe" or "pervasive" to alter the conditions of his or her employment and create an
14 abusive working environment. *Etter v. Veriflo Corp.*, 67 Cal.App.4th 457, 465 (1998). Job-
15 related conduct, even if perceived as unfair or unwarranted, is not considered "harassment." *Reno*
16 *v. Baird*, 18 Cal.4th 640 (1998) ; *Janken v. GM Hughes Electronics*, 46 Cal.App.4th 55, 65. (1996)
17 If an individual is not personally subjected to allegedly harassing conduct, they must establish that
18 they personally witnessed the conduct and that it was in their immediate work environment in
19 order to state a claim of hostile work environment harassment based on the conduct. *Fisher v. San*
20 *Pedro Peninsula Hosp.*, 214 Cal.App.3d 590, 608 (1989).

21 In order to find in favor of a plaintiff on a claim of race harassment, it must be found by a
22 preponderance of the evidence that the racial conduct was sufficiently severe or pervasive to alter
23 the conditions of employment. *Etter v. Veriflo Corp.*, 67 Cal.App.4th at 465-466. In order to find

24 ³ To establish a *prima facie* case of discrimination, a plaintiff must offer proof (1) that the plaintiff belongs to a class
25 of persons protected under the law; (2) that the plaintiff performed his or her job satisfactorily; (3) that the plaintiff
26 suffered an adverse employment action; and (4) that the plaintiff suffered the adverse employment action because of
27 their membership in a protected category. *See Generally McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802
28 (1973). Stancill has admitted that the alleged adverse employment actions (denial of permanent status as a Sergeant
 and termination) were not made based on his race. (UMF 31 and 32). In addition, when Stancill complained to the
 City of alleged racial harassment, the City had recently promoted him instead of a number of candidates with
 significantly more peace officer experience.

1 that racial harassment is sufficiently severe or pervasive, the acts of racial harassment can not be
2 occasional, isolated, sporadic or trivial. *Id.* Instead, the plaintiff must show a concerted pattern of
3 harassment of a repeated routine or a generalized nature based on one's membership in a protected
4 category. *See Fisher v. San Pedro Peninsula Hospital*, 214 Cal.App.3d 590, 608 (1989). The
5 circumstances that should be considered are the (1) the frequency of the racial conduct; (2) the
6 severity of the racial conduct; (3) whether the racial conduct was physically threatening or
7 humiliating, or a mere offensive utterance; and (4) whether the racial conduct unreasonably
8 interfered with Plaintiff's work performance. *Etter v. Veriflo Corp.*, 67 Cal.App.4th at 466.

9 While Stancill does not have a race harassment cause of action and testified in a different
10 lawsuit that he does not remember ever observing any harassment during his tenure at the City, he
11 nonetheless asserts he was subjected to racial harassment because: (1) his competitor for
12 promotion to Sergeant and her close friend allegedly called him stupid and an idiot; (2) he was
13 called ghetto by two employees; and (3) a group of employees that were primarily POA board
14 members stopped talking to him after the results of the Sergeants exam were posted.⁴

15 These allegations are not sufficiently severe or pervasive to create a racial hostile work
16 environment for Stancill. The only comment that arguably has any connection to his race – being
17 referred to as ghetto – only allegedly occurred twice. Moreover, Stancill testified that he grew up
18 in the ghetto, and that he had a lot in common with a fellow officer (who he in fact asked to sleep
19 with him) because they were both from the ghetto. In addition, Stancill testified in a different
20 lawsuit on February 19, 2010 that he does not remember observing any harassment during his
21 tenure at the SLPD. (Stancill Federal Depo. at pg. 300:1-3, attached as Ex. I to Declaration of
22 Lad).⁵

23 Stancill engaged in conduct that could legitimately cause his co-workers or the POA to
24

25 ⁴ Under California law an employer is only liable for harassment by a non-supervisor if the employer knows and fails
26 to take immediate and appropriate corrective action. In this case, as further described above, the City took appropriate
corrective action. Accordingly, Stancill can not prove the City unlawfully harassed him based on his race.

27 ⁵ Stancill also testified that he did not know if there was any ongoing racial discrimination at the SLPD. (Stancill
28 Federal Depo. at pg. 412:1-4, attached as Ex. I to Declaration of Jess J. Lad).

1 believe he was not fit to be promoted to become Sergeant.⁶ This includes engaging in sexual
2 discussions with Officer Tilete and frequently using slang terminology. (UMF 9, 10, 11).
3 Stancill also did not have as much peace officer experience as a number of the candidates that
4 were not promoted. (UMF 4, 74). In fact, a number of the people that Stancill believes ostracized
5 him after the list came out were applicants that had more than seventeen years of peace officer
6 experience when they were denied the promotion. (UMF 4, 74). Accordingly, there were a
7 number of non race-based reasons for people to take issue with Stancill's fitness to become a
8 Sergeant. The concerns about Stancill's fitness to be a Sergeant were later validated when he
9 engaged in numerous unprofessional acts while he was a Sergeant.

10 It is disingenuous for Stancill to allege that the City failed to prevent discrimination and
11 harassment when the instant lawsuit does not even contain a cause of action for racial harassment
12 or discrimination. Moreover, Stancill admitted during his deposition that most of his problems
13 stemmed from the POA -- which is a separate entity from the City -- and that the City did all it
14 could to simmer down the POA's actions.⁷ (UMF 30). Stancill took comfort in the fact that the
15 Command Staff looked at things with an unprejudiced eye, and the City acted appropriately when
16 it investigated his complaint of alleged race harassment. (UMF 30). Stancill cannot prove that the
17 City subjected him to actionable race harassment or discrimination in violation of the FEHA.
18 Accordingly, the second cause of action fails as a matter of law.

19 **B. Defendant is Entitled to Summary Adjudication of Plaintiff's Third Cause of**
20 **Action Alleging Intentional Infliction of Emotional Distress**

21 **1. The Relevant Limitations Starts on February 19, 2009**

22 A litigant must file a tort claim within six months of alleged unlawful action by a public
23 agency in order to bring a tort cause of action against the public agency. (Cal. Gov. Code §

24 ⁶ Some of this conduct could have legitimately caused Stancill's co-workers to think that he acted in a stupid or idiotic
25 manner.

26 ⁷ Stancill was apparently dissatisfied that the POA was looking into his alleged sexual harassment of various Police
27 Department employees. Under the FEHA, labor representatives like the POA have an obligation to take all reasonable
28 steps necessary to prevent harassment from occurring. Gov. Code Section 12940(k). The City is statutorily precluded
from disciplining a union official for exercising his/her obligations as a recognized representative. Gov. Code Section
3502.1.

1 911.2). Because Stancill filed his claim for money damages with the City on August 19, 2009, his
2 third cause of action can not rely on alleged misconduct that occurred prior to February 19, 2009.
3 The only alleged wrongful conduct in Plaintiff's civil complaint that occurred after February 2009
4 was his denial of permanent status as a Sergeant and termination. Accordingly, these are the only
5 two acts that Stancill can use in support of his intentional infliction of emotional distress claim.

6 **2. The Scope of the Tort Cause of Action is Limited to What is Included
in the Government Claim.**

7 No suit for money damages may be brought against a public entity until a written claim has
8 been timely presented to the public entity. Cal. Gov. Code § 945.4. A tort claim must be drafted
9 with sufficient factual breadth and character to support the legal theory upon which the claimant
10 subsequently plans to sue if the claim is rejected. *Stearns v. County of Los Angeles*, 275
11 Cal.App.2d 134, 138 f.n. 3 (1969). The name of the public employee or employees who caused
12 the injury or damage should be included in the claim. Cal. Gov. Code § 910(e). If the complaint
13 alleges a factual basis for recovery that is not fairly reflected in the tort claim, even if it was timely
14 filed, the complaint is subject to demurrer or a motion for judgment on the pleadings. *Stockett v.*
15 *Assoc. of Cal. Water Agencies Joint Powers Ins. Auth.*, 34 Cal.4th 441 (2004).

16 In this case, Stancill's sole basis for alleged recovery in tort based on the tort claim is the
17 City's alleged retaliatory act of not passing Plaintiff during his probation as a Sergeant on April
18 13, 2010. Moreover, the only alleged wrongdoer was Captain Overton. (UMF 35).
19 Consequently, Plaintiff is precluded from arguing that his intentional infliction of emotional
20 distress claim is based on anything other than his denial of probation by Captain Overton.

21 **3. Stancill's Third Cause of Action is Pre-empted by Workers
22 Compensation**

23 Stancill's intentional infliction of emotional distress claim is preempted by California's
24 Workers Compensation Act. See Labor Code § 3601(a); *Cole v. Fair Oaks Fire Protection Dist.*,
25 43 Cal.3d 148, 160 (1987). Specifically, when the misconduct attributed to a defendant consists of
26 actions which are a normal part of the employment relationship, such as demotions, promotions
27 and criticisms of work practices, an employee suffering resulting emotional distress may not avoid
28 the exclusivity provisions of Workers' Compensation. *Cole, supra.* at 160. Moreover, even

1 conduct that can be characterized as intentional, unfair or outrageous is nevertheless covered by
2 the exclusivity-of-remedy provisions of workers compensation law. *Shoemaker v. Myers*, 52
3 Cal.3d 1, 25 (1990).

4 The Supreme Court recently reaffirmed this principle in its ruling in *Miklosy v. Regents of*
5 *the University of California*, 44 Cal.4th 876 (2008). Notably, the Supreme Court held that an
6 alleged retaliatory termination was purported wrongful conduct that was pre-empted by the
7 Workers' Compensation Act. *Id.* at 902-903. In this case, Stancill alleges that he was denied
8 permanent status as a Sergeant and was terminated from his employment in retaliation for
9 engaging in protected conduct. Because any distress he allegedly suffered as a result of these acts
10 is subject to the exclusivity provisions of workers' compensation law, Stancill's third cause of
11 action must be dismissed as a matter of law.

12 **4. Stancill Can Not State a Prima Facie Case of Intentional Infliction of Emotional Distress**

13 Plaintiff's third cause of action also fails because he can not demonstrate any conduct by
14 the City that was sufficiently outrageous to be actionable. To state a claim for intentional
15 infliction of emotional distress, Stancill must show "extreme outrageous conduct by the defendant
16 with the intention of causing, or reckless disregard of the probability of causing, emotional
17 distress." *Delfino v. Agilent Technologies, Inc.*, 145 Cal.App.4th 790, 808-809 (2006). In order to
18 be outrageous conduct must be so extreme as to exceed all bounds that is usually tolerated in a
19 civilized society. *Id.*

20 It was not outrageous for the City to release Stancill from probation as a Sergeant because
21 of his unprofessional conduct. Moreover, it was not outrageous for the City to terminate Stancill
22 after it was determined that he was deceptive. Accordingly, Plaintiff's third cause of action fails.

23 **C. The City is Immune From Tort Liability**

24 The City is immune from liability resulting from the discretionary acts of its employees.

25 California Government Code section 820.2 provides:

26 Except as otherwise provided by statute, a public employee is not liable for an
27 injury resulting from his act or omission where the act or omission was the result of
28 the exercise of the discretion vested in him, whether or not such discretion be abused.

1 California Government Code section 821.6 provides:

2 A public employee is not liable for injury caused by his instituting or prosecuting
3 any judicial or administrative proceeding within the scope of his employment, even
if he acts maliciously and without probable cause.

4 Government Code section 815.2(b) extends the immunities of Sections 820.2 and 821.6 to
5 public entities. In *Kemmerer v. County of Fresno*, 200 Cal.App.3d 1426, 1430-1432 (1988), a
6 county employee sued his employer who had initiated formal disciplinary proceedings against him
7 and a county employee who had conducted the disciplinary investigation and filed a memo
8 detailing the investigation and recommending dismissal of the plaintiff. (*Id.* at 1436.) The court
9 ruled that the county and its employees were shielded from liability based upon the governmental
10 immunities of Government Code sections 820.2 and 821.6. (*Id.* at 1435-1437.) The court also
11 recognized strong policy considerations in favor of upholding immunity in the disciplinary
12 context:

13 If every public entity employee who was found to have committed an act
14 of misconduct and later disciplined were allowed to bring a tort action
against his coworkers and superiors, this would certainly bode ill for the
15 continuing efficiency and morale of the civil service system.
Supervisors within the civil service system would not be able to fulfill
16 their function without the overhanging threat of legal action from
employees who become subject to discipline. (*Id.* at 1438-1439.)

17 Here, as in *Kemmerer*, the City is immune from tort liability. By investigating misconduct,
18 instituting disciplinary action against Plaintiff and ultimately terminating him, the City and its
19 employees were acting within their discretion, and are accordingly immune under *Kemmerer* from
20 tort liability.

21 **D. Defendant is Entitled to Summary Adjudication of Plaintiff's First Cause of**
22 **Action Alleging FEHA Retaliation**

23 **1. Summary Judgment Standard for Retaliation Claims**

24 A prima facie case of FEHA retaliation may be established by showing that (1) plaintiff
25 engaged in protected activity; (2) plaintiff was thereafter subjected to adverse employment actions,
26 and (3) there was a causal link between the two. *Fisher v. San Pedro Hosp.*, 214 Cal.App.3d 590,
614 (1989). Temporal proximity may be insufficient to support an inference of causation if
27 uncontested facts negate the inference. *Chen v. County of Orange*, 96 Cal.App.4th 926, 949-951
28 (2002). Once a plaintiff makes out a prima facie case of retaliation, the burden shifts to the

1 employer to articulate some legitimate, non-retaliatory reason for its adverse actions. *Morgan v.*
2 *Regents of The University of California*, 88 Cal.App.4th 52 (2000). The complainant must then
3 show that the reason was a pretext to mask an illegal motive. *Id.*

4 “Protected activity” under the FEHA means either opposing any unlawful employment
5 practice under the FEHA or filing a complaint, testifying, assisting in proceeding under the FEHA.
6 (See Cal. Govt. Code §12940(h).) The test used by California courts is “whether the employee’s
7 communications to the employer sufficiently conveys the employee’s reasonable concerns that the
8 employer” has acted unlawfully under the FEHA. (*Yanowitz v. L’Oreal USA, Inc.*, 36 Cal.4th
9 1028, 1046-47 (2005).)

10 **2. The City Had a Legitimate Business Reason for Denying Stancill**
11 **Permanent Status as a Sergeant**

12 Prior to his termination Plaintiff received a written reprimand for exercising poor judgment
13 and engaging in unprofessional conduct. Stancill has admitted that the written reprimand was not
14 discriminatory or retaliatory. The written reprimand was issued by former Police Dale Chief
15 Attarian, who Stancill testified did not retaliate against him. (UMF 19, 20, 44, 45, 83, 84). The
16 written reprimand was issued based on the findings of an investigation conducted by a neutral
17 third-party investigator, Debra Estrin, which include a finding that Plaintiff asked a co-worker to
18 have sex with him and referred to females in the department as “Beh Beh.” (UMF 15, 41, 80).

19 Chief Attarian also extended Plaintiff’s probation as a Sergeant because of his
20 unprofessional conduct and exercise of poor judgment. Plaintiff’s misconduct continued during
21 his extended probation. Shortly after Plaintiff became aware of the results of Ms. Estrin’s
22 investigation, Plaintiff wore a t-shirt to the Police Department that said “Acquitted” across the
23 front. (UMF 23, 46, 85). In doing so Plaintiff exercised extremely poor judgment and a lack of
24 professionalism, especially given the nature of the complaints that were brought forward about his
25 alleged sexual harassment. Supervisors serve as role models for subordinate employees, and in
26 this instance Plaintiff served as an example of how not to respond to complaints of harassment.
27 (Attarian Dec. at ¶ 7). Moreover, while the investigation did not uncover that Plaintiff engaged in
28 harassment, it clearly illustrated that Plaintiff engaged in unprofessional conduct.

Plaintiff also displayed poor judgment by agreeing to and conducting a background

1 investigation for a police department applicant with whom he had a prior relationship in or around
2 October 2008. Plaintiff's colleague Sergeant Torres – who was promoted to Sergeant around the
3 same time as Plaintiff – was asked to conduct a background investigation regarding the same
4 individual but declined to take the assignment because he knew the applicant. Sergeant Torres
5 exercised this sound decision even though his relationship with the applicant was not as strong as
6 the relationship between Plaintiff and the applicant. (UMF 55, 57, 94, 96). This background
7 investigation could and should have been done by someone without the prior connections that
8 Plaintiff had with the applicant. This avoids any appearance of either favoritism or heavy-
9 handedness.

10 Plaintiff also exercised extremely poor judgment by escorting an individual that Plaintiff
11 believed had a criminal background, Shakir Zaid, to the hospital for a visit with his son who was
12 an in-custody suspect for a violent crime. Plaintiff believed Mr. Zaid to be a crook, an individual
13 that was not “law abiding” and a person capable of having someone killed. Even with this
14 knowledge Plaintiff arranged for two visits between Mr. Zaid and his son without anyone present.
15 In doing so Plaintiff provided Mr. Zaid with the location, floor, room number and layout of the
16 hospital room where his son was being held for armed robbery. (UMF 60-66, 99-105)

17 The undisputed facts illustrate that the City had numerous legitimate business reasons to
18 deny Stancill permanent status as a Sergeant. In fact, Stancill's own attorney acknowledged this
19 when she indicated that the release from probation was an appropriate and proper response to the
20 City's investigation into his misconduct. (Exhibit B to Willis Dec. at Bates 413:7-10; 428:20-21).

21 **3. The City Had a Legitimate Non-Retaliatory Reason to Terminate**
22 **Stancill**

23 The public has the right to expect the highest level of behavior from law enforcement
24 officers because they hold positions of trust. *Kolender v. San Diego County Civil Service*
25 *Comm'n.*, 132 Cal.App.4th 716, 721 (2005). Misrepresentations and omissions of material fact
26 can result in harm to the public and support a basis for termination. *Paulino v. Civil Service*
27 *Comm'n.*, 175 Cal.App.3d 962, 972 (1985).

28 Stancill withheld material facts from Sergeant Delgado before he assigned Stancill to
conduct the background investigation into his friend. Notably, Stancill did not inform Sergeant

1 Delgado that he served as reference for his friend in his application for another agency, was asked
2 by Keys to be a reference for him in his application to become a San Leandro Police Officer,
3 recommended that the City of Oakland consider hiring his friends, had been told by his friend
4 about potential red flags in his friend's background and had helped his friend prepare for the oral
5 boards for the City of Oakland. Stancill neglected to provide this information even though he was
6 aware that his colleague Sergeant Torres had recused himself from doing the background because
7 they had worked together at the mall. (UMF 56, 57, 95, 96)

8 Stancill also created a potential safety issue when he failed to disclose important
9 information to his colleague Sergeant McManus before the decision was made to arrange for an
10 in-custody meeting between someone Stancill believed to be a crook capable of having someone
11 killed and his son who was in the Hospital. Notably, Stancill failed to tell Sergeant McManus that
12 he believed this individual to be a fairly high-up crook and capable of potentially having someone
13 killed. Stancill allowed Sergeant McManus to authorize the visit without the benefit of this crucial
14 information.⁸ (UMF 64, 103).

15 Honesty and credibility are crucial to the proper performance of a peace officer's duties.
16 Dishonesty and failing to be forthright, on the other hand, are incompatible with the public trust.
17 Plaintiff's conduct demonstrated a pattern of taking advantage of his superiors and colleagues not
18 having complete information. Instead of disclosing or bringing to the attention of his supervisors
19 and co-workers important information in his possession, Stancill acted in an untrustworthy,
20 untruthful and evasive manner. (Attarian Dec. at ¶¶ 3-5). Stancill's failure to be forthright could
21 have had serious consequences.

22 **IV. CONCLUSION**

23 As set forth herein, this lawsuit is meritless. The undisputed facts simply do not support
24 any basis for trial. Accordingly, summary judgment should be granted in favor of the City. In the
25

26 ⁸ The City has further evidence of Stancill's misconduct. Because Stancill's omission of critical information coupled
27 with his history of unprofessional conduct constitutes sufficient business justification for terminating him from his
28 employment, this additional evidence is not necessary for this motion. In the unlikely circumstance that this motion is
not granted in its entirety, the City will present all evidence of his misconduct at Trial.

1 unlikely circumstance that this Court should determine that summary judgment should not be
2 granted, summary adjudication should be granted.

3
4 DATED: October 21, 2010

MEYERS, NAVE, RIBACK, SILVER & WILSON

5
6 By: 

Jesse J. Lad

Attorneys for Defendant

CITY OF SAN LEANDRO

7
8
9 1528555.1
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28