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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
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11 MERCY AMBAT, et al.,

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13 Plaintiffs,

14 vs.

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16 CITY AND COUNTY OF SAN FRANCISCO.

17 Defendants.
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Consolidated Case No. CV 07-03622 SI

PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR CONSOLIDATION OF CASES
(FRCP 42)

Date: September 18, 2009

Time: 9:00 a.m.

Ctrm: 10, 19th Floor

Judge: Hon. Susan Illston

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NOTICE OF MOTION FOR CONSOLIDATION OF CASES

To Defendant City and County of San Francisco and their attorneys of record:

PLEASE TAKE NOTICE that on September 18, 2009, at 9:00 a.m., or as soon thereafter as the matter may be called at the U. S, District Courthouse at 450 Golden Gate Avenue, San Francisco, California, in Department 10, on the 19th Floor, before the Honorable Susan Illston, Plaintiffs will and hereby do move for Consolidation of the following cases:

1. *Mercy Ambat et al. v. City and County of San Francisco*, United States District court, Northern district of California, Case No. C 07-03622 SI
2. *Martha Ortega v. City and County of San Francisco*, United States District Court, Northern District of California, Case No. 09-02652 SI

This motion is made pursuant to Federal Rules of Civil Procedure Rule 42(a). The grounds for the motion are that both cases are properly before the court and share common questions of law and fact. Furthermore, by consolidating these cases, Court efficiency will be increased and the duplication of evidence and procedures will be avoided, as will the potential for inconsistent adjudications.

This motion is based on the memorandum of points and authorities, the declaration of Lawrence D. Murray, all previously filed documents and pleadings, and the argument of counsel at the hearing

Date: August 3, 2009

Respectfully submitted,

Murray & Associates

/s/ Lawrence D. Murray
Lawrence D. Murray
Attorney for Plaintiffs

MEMORANDUM OF POINTS AND AUTHORITIES
STATEMENT OF FACTS

The complaint in *Mercy Ambat et al. v. City and County of San Francisco*, was filed in federal court on July 13, 2007. (*Mercy Ambat et al. v. City and County of San Francisco*, U.S.D.C. Case No. C 07-03622 SI) The complaint originally named thirty-five individual plaintiffs, consisting of both male and female deputy sheriffs, whom all alleged discrimination as a result of the San Francisco Sheriff Department's policy of staffing ONLY female sheriffs in the female jail pods. Plaintiffs allege they have suffered discrimination based on their gender in violation of the following statutes and codes: 1) Gender Discrimination, Title VII; 2) Gender Discrimination, Fair Employment and Housing Act ("FEHA"); 3) Gender Employment Restriction Title VII; 4) Gender Employment Restriction, FEHA; 5) Retaliation for Protected Activity, Title VII; 6) Retaliation for Protected Activity, FEHA; 7) Failure To Prevent Violation, FEHA; 8) California Labor Code § 1102.5 et seq; 9) Peace Officer Bill of Rights, Govt Code § 3309.5. (Declaration of Lawrence Murray ("Murray Dec") at ¶ 4).

On May 9, 2008, other deputy sheriffs also sued based on the same facts, occurrences, and questions of law. (*Walker v. City and County of San Francisco*, U.S.D.C. Case No. 08-2406 SI). Similarly, the *Walker* plaintiffs were all San Francisco Sheriff Deputies, the defendant was the City and County of San Francisco, and the allegations of discrimination arose from the same violations of the statutes and code under which the *Ambat* plaintiffs had sued. In fact, the cases were so similar that Plaintiff and Defense counsel entered into a stipulation for Order and Order Permitting Consolidation of Actions and Permitting Filing of Plaintiff's first Amended complaint for Damages and Injunctive Relief on September 29, 2008. (*See* Exhibit 1 attached to Murray Dec at ¶ 6, Exhibit 7 at ¶ 12). The consolidation of these two cases was ordered and approved with 'good cause' by Judge Susan Illston. (*See* Exhibit 1 attached to Murray Dec at ¶ 6).

On June 15, 2009, Martha Ortega, another deputy sheriff who suffered the same discrimination as the previous plaintiffs, arising from the same nucleus of facts in violation of the same state and federal statutes, also filed a complaint in Federal Court against the same defendant, the City and County of San Francisco. (*Martha Ortega v. City and County of San Francisco*, U.S.D.C. Case No. 09-02652 MMC, *See* Exhibit 8 attached to Murray Dec at ¶ 13, Murray Dec at ¶ 3,4,5). As plaintiffs in both

1 *Ambat* and *Ortega* are represented by the same counsel, a timely Notice of Related Case was properly
2 filed the following day on June 16, 2009. (See Exhibit 2 attached to Murray Dec at ¶ 7, Murray Dec at ¶
3 2).

4 The *Ortega* case was assigned to the Honorable Maxine M. Chesney, who signed an Order of
5 Referral on July 7, 2009, effectively sending the *Ortega* matter to the Honorable Susan Illston for
6 consideration of whether the *Ortega* case was related to *Ambat*. (See Exhibit 3 attached to Murray Dec
7 at ¶ 8) On July 15, 2009 the Honorable Susan Illston signed an order finding that *Ortega* and *Ambat*
8 were related and that both cases should be assigned to her courtroom. (See Exhibit 4 attached to Murray
9 Dec at ¶ 9). The Judge also notified all parties that the initial case management conference is scheduled
10 for Friday, October 9, 2009, at 2:30 p.m. (See Exhibit 5 attached to Murray Dec at ¶ 10).

11 As all plaintiffs in both the *Ortega* and *Ambat* cases want to consolidate their claims, Plaintiffs’
12 counsel has made several attempts to avoid judicial intervention by requesting Defendant enter a
13 stipulation to consolidate the cases. (See Exhibit 6 attached to Murray Dec at ¶ 11). Despite these
14 attempts, defendant refuses to do so. (Id.) Even though the consolidation of the cases would save
15 judicial time and resources, prevent duplicative evidence and procedures, and would avoid the potential
16 for inconsistent adjudications, Defendant staunchly refuses to stipulate to the consolidation. As such,
17 Plaintiffs are forced to bring the present motion seeking consolidation of the cases.

18 **ARGUMENT**

19 Rule 42(a) of the Federal Rules of Civil Procedure permits a court to consolidate actions pending
20 before it if those actions involve a “common question of law or fact.” The standard is an expansive one,
21 the determination of which rests solely in the sound discretion of the trial court. (*Paxonet Communs.,*
22 *Inc. v. Transwitch Corp.*, 303 F.Supp.2d 1027, 1028-1029, N.D. Cal.2003; *United States E.P.A. v. city*
23 *of Green Forest, Ark.* 8th cir. 1990) 921 F2d 1394, 1402). The only requirement a trial court must find in
24 order to consolidate is whether there are common question of law or fact shared by the cases to be
25 consolidated. (*E.E.O.C. v. HBE Corp.* (8th Cir. 1998) 135 F3d. 543, 551).

26 In reaching its decision to consolidate cases, a trial court must only find a “common question of
27 law or fact,” but it may also consider several factors that would affect the litigation including the burden
28 on parties, witnesses, judicial resources, the risk of inconsistent adjudications, the potential for prejudice,

1 and the risk of delaying trial. (*Johnson v. Celotex Corp.* (2nd Cir. 1990) 899 F2d 1281, 1285, *Cantrell*
2 *v. GAF Corp.* (6th Cir. 1993) 999 F2d 1007, 1011; *Malcolm v. National Gypsum Co.* (2nd Cir. 1993)
3 995 F2d 346, 350; *Mills v. Beech Aircraft Corp.* (5th Cir. 1989) 886 F2d 758, 762). Consolidation has
4 been found to be appropriate in virtually every kind of action that can be brought in federal court, and is
5 unquestionably appropriate in this instance. (*See, e.g., State of Ohio ex rel. Montgomery v. Louis Trauth*
6 *Dairy, Inc.*, 163 F.R.D. 500, 503 (S.D. Ohio 1995).

7 The instant actions of *Ortega* and *Ambat* have both been filed in United States District Court,
8 Northern District of California pursuant to 28 USC 1331, and are therefore properly “before the court.”
9 The two case also involve multiple “common questions of law and fact”, and as such, satisfy the only
10 requirement for consolidation under Rule 42(a).

11 The common questions of law and fact include the following:

- 12
- 13 (i) All the named female deputy plaintiffs, including Martha Ortega, allege they were treated less
14 favorably because of their gender, female.
- 15
- 16 (ii) The allegations of discrimination all arise from the same facts: On or about October 4, 2006,
17 all females inmates were collected from the sections of the San Francisco County Jail system
18 and then moved and reassigned to all inclusive sections unattainable by other sections,
19 (known as “pods”) in the San Francisco County Jail, specifically County Jail # 8, (“CJ #8”).
- 20
- 21 (iii) By written directive of October 18, 2006, from Chief Arata to all of the jails, those female
22 deputies previously assigned to other jails, specifically County Jail 1 and 2, were reassigned
23 to CJ#8 and **only women** were then allowed to work in the woman pods of CJ #8.
- 24
- 25 (iv) On multiple occasions, various Sheriff Deputies sent letters and grievances directed to the
26 supervisors in charge, notifying them of the discriminatory assignment of only female
27 deputies to the female pods of CJ#8.
- 28

- 1 (v) In particular, the discrimination experienced by all female deputies as a result of the October
2 18, 2007 directive includes: increased occurrences of violence, higher levels of stress, heavier
3 workloads due to overcrowding and increased administrative demands; greater danger of
4 physical harm from 'unclassified' violent female inmates kept in the general population,
5 insufficient lighting in the female pod areas, and; the inability to obtain training and
6 experience in other departments and positions within the jail system thereby decreasing their
7 chances of promotion. This discrimination is suffered by all the named female deputy
8 plaintiffs, including Martha Ortega, over and above the harm encountered by the male
9 Sheriff's Deputies.
- 10
- 11 (vi) Furthermore, the violated statutes and codes giving rise to the claims of gender
12 discrimination and restrictions in both *Ortega* and *Ambat* include: 1) Gender Discrimination,
13 Title VII; 2) Gender Discrimination, Fair Employment and Housing Act ("FEHA"); 3)
14 Gender Employment Restriction Title VII; 4) Gender Employment Restriction, FEHA; 5)
15 Retaliation for Protected Activity, Title VII; 6) Retaliation for Protected Activity, FEHA; 7)
16 Failure To Prevent Violation of FEHA; 8) California Labor Code § 1102.5 et seq; 9) Peace
17 Officer Bill of Rights (Govt Code § 3309.5).
- 18
- 19 (vii) The Plaintiffs in both *Ortega* and *Ambat* are represented by the same legal counsel.
- 20
- 21 (viii) Lastly, the named defendant in both *Ortega* and *Ambat* is the City and County of San
22 Francisco.
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24 Indeed, the *Ambat* and *Ortega* actions are so nearly identical that on July 15, 2009, the Honorable
25 Judge Susan Illston ruled that the cases were related, and had both cases assigned to her Courtroom.
26 (*See* Exhibit 4 attached to Murray Dec at ¶ 9). In fact, the near identity of the complaints in these two
27 actions provides ample basis for consolidation. The benefits of consolidating these two cases would
28 clearly serve the interests of justice: increases judicial efficiency, avoids duplicative evidence,

1 procedures, and inconsistent adjudications, precludes waste, and alleviates potential burdens to the court
2 and all parties involved.

3 **CONCLUSION**

4 For the foregoing reasons, Plaintiffs in both the *Ortega* and *Ambat* cases respectfully request that this
5 court consolidate the actions.

6
7 DATED: August 3, 2009

/s/Lawrence C. Murray

8 LAWRENCE D. MURRAY

9 Attorney for Plaintiffs
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