

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:**

**(AVISO AL DEMANDADO):** LARRY PITZER, Fire Chief,

City of San Bernardino, in his official and individual capacity; CITY OF SAN BERNARDINO FIRE DEPARTMENT, A Municipal Agency; CITY OF SAN BERNARDINO, A Municipal Corporation, DOES I-X

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

SAN BERNARDINO CITY PROFESSIONAL FIREFIGHTERS UNION, LOCAL 891, and RICHARD LEWIS

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

RECEIVED-CITY CLERK  
05 MAY -4 P 1:48

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una Carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la Corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:  
(El nombre y dirección de la corte es):

San Bernardino County Superior Court  
351 North Arrowhead Ave.  
San Bernardino, CA 92418

CASE NUMBER:  
(Número del Caso) **SCVSS**

125902

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

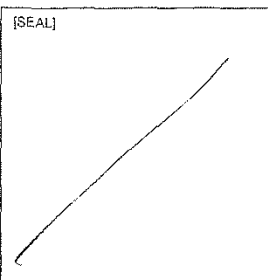
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Corey W. Glave  
Goldwasser & Glave, LLP (323) 964-7100  
5858 Wilshire Blvd., Suite 205, Los Angeles, CA 90036

DATE:  
(Fecha) **MAY 04 2005**

Clerk, by \_\_\_\_\_, Deputy  
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010))  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other (specify):
4.  by personal delivery on (date):

1 COREY W. GLAVE (State Bar No. 164746)  
2 GOLDWASSER & GLAVE, LLP  
3 5858 Wilshire Boulevard, Suite 205  
4 Los Angeles, CA 90036  
5 Phone: (323) 964-7100  
6 Fax: (323) 964-7107

7 Attorneys for Plaintiffs  
8 San Bernardino City Professional Firefighters  
9 Union, Local 891 and Richard Lewis

FILED - San Bernardino District  
SUPERIOR COURT  
SAN BERNARDINO COUNTY  
RECEIVED - CITY CLERK  
MAY 04 2005  
MAY -4 P1:48  
BY *Janice [Signature]*  
DEPUTY

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF SAN BERNARDINO

12 SAN BERNARDINO CITY  
13 PROFESSIONAL FIREFIGHTERS UNION,  
14 LOCAL 891, and RICHARD LEWIS  
15 Plaintiffs,

16 vs.

17 LARRY PITZER, Fire Chief, City of San  
18 Bernardino, in his official and  
19 individual capacity; CITY OF SAN  
20 BERNARDINO FIRE DEPARTMENT, a  
21 Municipal Agency; CITY OF SAN  
22 BERNARDINO, a Municipal  
23 Corporation; DOES I-X, inclusive

24 Defendants.

**SCVSS 125902**

Case No. Assigned for all purposes to:  
Hon. Judge

COMPLAINT FOR MANDAMUS RELIEF  
AND CIVIL DAMAGES

- 1) Mandamus Relief (CCP §3500)
- 2) Mandamus Relief (GC §3300)
- 3) Labor Code §1102.5
- 4) Labor Code §1101, §1102
- 5) Civil Rights (42 U.S.C. §1983)
- 6) Municipal Liability (42 U.S.C. §1983)

25 COMES NOW, PLAINTIFFS SAN BERNARDINO CITY PROFESSIONAL  
26 FIREFIGHTERS AND RICHARD LEWIS, and allege as follows:

**VENUE AND JURISDICTION**

27 1. Venue is proper in the Superior Court of the State of California, for  
28 the County of San Bernardino in that the underlying acts, omissions, injuries and  
related facts and circumstances giving rise to the present action occurred in the

1 County of San Bernardino, California. This Court has jurisdiction over the present  
2 matter because, as delineated within this complaint, the nature of the claims  
3 and amount in controversy meet the requirements of jurisdiction in the Superior  
4 Court. This Court is empowered with initial jurisdiction to entertain suits brought  
5 pursuant to California Government Code §3300, et seq., and concurrent  
6 jurisdiction to entertain suites under the Federal Civil Rights Act, 42 U.S.C. §1983.

7 To the extent required, Plaintiffs notified the City of San Bernardino of these  
8 claims on or about September 30, 2004, and again, through a second notice,  
9 via a Notice of Government Claim with the City of San Bernardino on April 14,  
10 2005. Plaintiffs have exhausted all their administrative remedies.

11  
12 **PARTIES**

13 2. Plaintiff, San Bernardino City Professional Firefighters Union, Local 891  
14 (Union), was and is the recognized employee organization for all sworn  
15 employees, holding the rank of Captain or lower. San Bernardino City Fire  
16 Department Captain Richard Lewis is a sworn employee of the City of San  
17 Bernardino Fire Department and a member of the Union. At all time relevant  
18 herein, Richard Lewis was an active member of the Board of Directors, and at  
19 times President of the San Bernardino City Professional Firefighters Union. UNION  
20 had and has conducts its primary business within the City and County of San  
21 Bernardino.

22 3. Plaintiff RICHARD LEWIS at all times mentioned herein was employed  
23 as a sworn member of the City of San Bernardino City Fire Department holding  
24 the rank of Fire Captain. At all time relevant herein, Richard Lewis was a  
25 member of the San Bernardino City Professional Firefighters Union, Local 891, and  
26 an active member of the Board of Directors, at time President, of the San  
27 Bernardino City Professional Firefighters Union. RICHARD LEWIS was and is a  
28 resident in the County of San Bernardino.

1           4.     It is believed that at all times mentioned, defendants, and each of  
2 them, was and now is a resident and/or public entity of the County of San  
3 Bernardino, State of California.

4           5.     Defendant, LARRY PITZER is the Fire Chief for the San Bernardino City  
5 Fire Department, and is charged with the supervision, management of  
6 personnel, including promotions, assignments, personnel investigations and  
7 discipline of employees in the San Bernardino City Fire Department. Plaintiffs  
8 have information and belief that PITZER participated, supervised and/or was  
9 actively involved, both in his official capacity and/or in his individual capacity, in  
10 the incident(s) giving rise to this Complaint.

11          6.     Defendant, CITY OF SAN BERNARDINO, (hereinafter "CITY") is and  
12 was a municipality duly organized and existing under the laws of the State of  
13 California. The SAN BERNARDINO FIRE DEPARTMENT (hereinafter "FIRE  
14 DEPARTMENT") is an official subdivision of defendant CITY, and all officers  
15 employed by said department are employees of defendant CITY. The CITY, via  
16 resolution, policy and past practice, has afforded sworn members of the FIRE  
17 DEPARTMENT with the same rights as afforded to sworn peace officers under  
18 Government Code §3300, et seq.

19          7.     All of the acts complained of herein by plaintiffs against defendants  
20 were done and performed by said defendants by and through their authorized  
21 agents, servants and/or employees, and each of them, all of whom at all  
22 relevant times herein were acting within the course, purpose and scope of said  
23 agency, service and/or employment capacity and/or in their individual  
24 capacity but purportedly within the course, purpose and scope of said agency,  
25 service and/or employment capacity. Moreover, defendants and their agents  
26 ratified all of the acts complained of herein.

27          8.     At all times herein mentioned, DOES I-X, inclusive, were the agents,  
28 servants and employees of Defendants, CITY OF SAN BERNARDINO and/or

1 LARRY PITZER, and in doing the things hereinafter alleged, were acting within the  
2 scope of their authority as such agents, servants and employees with the  
3 permission and consent of Defendants CITY OF SAN BERNARDINO and/or LARRY  
4 PITZER. Plaintiff will amend the Complaint to allege true names and capacities  
5 of DOES I-X, inclusive when ascertained.

6 9. Defendant CITY is sued in its own right under 42 U.S.C. §1983  
7 because its policies, customs, and practices caused the constitutional violations  
8 claimed by plaintiff herein. Defendant CITY is responsible for the actions and  
9 inactions of the named and unnamed defendants, policy makers and  
10 employees involved in this incident.

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12 **FACTUAL ALLEGATIONS FOR ALL CAUSES OF ACTION**

13 10. Richard Lewis has been actively involved on the Board of Directors  
14 of the UNION for approximately ten (10) years. Prior to the passing over for  
15 promotion, discussed below, he was the President of the UNION for two years.

16 11. During a testing process for the position of Battalion Chief, Lewis  
17 successfully completed all phases of the testing process and was ranked #2 on  
18 the Battalion Chief's promotion list. Ahead of Lewis was another Union Board  
19 member (Kulikoff), below Lewis was a Fire Captain (Moon) who had little or no  
20 significant involvement in Union activities. At the time of the relevant testing  
21 process, Lewis had been a fire captain for 12 years and had 23 years of total  
22 time on the FIRE DEPARTMENT. Moon had been a captain for 8 years and 21  
23 years total time on. The rank order of the Chief's promotion list had Kulikoff #1,  
24 Lewis #2 and Moon #3.

25 12. In the years that LEWIS had been on the Board of Directors for the  
26 UNION, he has been the lead negotiator on virtually all meaningful negotiations

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1 between the FIRE DEPARTMENT and UNION and has actively participated in the  
2 political activities and the UNION's defense of its members' rights. The UNION  
3 had been in continuous battles with PITZER and the Fire Administration for the last  
4 several years, both legally, politically and administratively. Examples of the  
5 actions taken against the administration include, but are not limited to: (A) legal  
6 action to enforce employees' rights under Government Code §3300, et seq.,  
7 and Government Code §3500, et seq; (B) filing of Unfair Employment Relations  
8 Practices with a state agency; (C) Civil Service Commission challenges to  
9 disciplinary actions; (D) UNION challenges to attempts to unilaterally implement  
10 policies adverse to its membership's interests; (E) taking issue with PITZER's "Fire  
11 Academy" and brought forward information to the CITY's upper management  
12 regarding the possible fraud and civil liability the Academy created; (F) the  
13 engaging (in 2004) in a meet and confer process wherein the UNION position  
14 was accepted over PITZER's positions regarding the construction and staffing of  
15 a new fire station and training expenditures; and (G) the conducting of an  
16 "Union Survey of Fire Administrator's Performance" which resulted in findings  
17 adverse to the Fire Administration.

18 13. Just prior to the time when LEWIS would have been promoted to  
19 Battalion Chief, Lewis discovered that a newly promoted Battalion Chief had  
20 been engaged in on duty misconduct which might be considered criminal in  
21 nature. Lewis reported this behavior to the appropriate authorities. In turn, the  
22 Fire Chief placed Lewis under investigation for "conducting an unauthorized  
23 personnel investigation." It is believed that the Fire Chief was criticized by the  
24 City Council for his handling of the matter and directed not to discipline Lewis  
25 for his actions in the case.

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1 14. Shortly after reporting the allegation of misconduct and several of  
2 the Union actions described above, the UNION and LEWIS learned that LEWIS  
3 would be passed over for promotion. Petitioner requested that the San  
4 Bernardino City Council and San Bernardino Civil Service Board immediately  
5 promote LEWIS and/or cause an investigation to be conducted regarding the  
6 decision to pass LEWIS over for promotion. There was no response from either  
7 the CITY or Civil Service.

8 15. After the UNION began looking into the improprieties that appeared  
9 to be involved in the passing over of LEWIS for the position of Battalion Chief, it is  
10 believed that PITZER and/or other Doe defendants began an orchestrated plan  
11 to weaken the UNION and LEWIS. This plan included false allegations that LEWIS  
12 had made a deal with a council person to make LEWIS the next Fire Chief;  
13 allegations that the UNION provided unlawful campaign contributions to a city  
14 council race and city attorney race, and that the UNION doctored its financial  
15 books to cover up these purported campaign contributions.

16 16. In or about October 2004, LEWIS was passed over for promotion to  
17 the position of Battalion Chief. LEWIS remained as the only candidate for the  
18 position of Battalion Chief, with the promotional list for Battalion Chief due to  
19 expire on November 20, 2004.

20 17. Thereafter, the Deputy Fire Chief resigned to assume a position with  
21 another city. Historically, the past practice of the FIRE DEPARTMENT had been to  
22 immediately/quickly promote a Battalion Chief to the position of Deputy Fire  
23 Chief, thus creating a vacancy in the Battalion Chief ranks. Due to the anti-  
24 UNION and/or anti-LEWIS actions, this time there was a break with the  
25 Department's past historical hiring practice and an interim appointment was  
26 made for up to six months to allow time for a search to be conducted.

1 18. Because of the pretextual nature of the appointment of an interim  
2 Deputy Chief, LEWIS requested that the promotion list, which his name was the  
3 only name remaining, and which has an expiration date of November 20, 2004,  
4 be extended for one year, thus resulting in the expiration date November 20,  
5 2005.

6 19. It is believed, and thereon alleged, that the list with LEWIS' name on  
7 it was extended, and then modified to be merged with a new promotional list  
8 comprised of candidates who had participate in a different testing process.

9 20. As of the date of this complaint, Plaintiffs are unaware of any action  
10 being taken to search for a new Deputy Fire Chief and LEWIS has not been  
11 promoted to Battalion Chief.

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**FIRST CAUSE OF ACTION**

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**(MANDAMUS RELIEF AGAINST ALL DEFENDANTS)**

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**(GOVERNMENT CODE §1085 AND GOVERNMENT CODE §3500, ET SEQ.)**

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21. Plaintiffs, SAN BERNARDINO CITY PROFESSIONAL FIREFIGHTERS  
UNION, LOCAL 891 and RICHARD LEWIS, for a First Cause of Action against all  
Defendants for mandamus relief for violation of the Meyer-Millas-Brown Act,  
Government Code, Section 3500 et seq., realleges paragraphs 1 through 20 as  
herein above set forth and further alleges:

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22. At all times mentioned herein, Government Code, Section 3502  
provided in relevant part that:

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"Except as otherwise provided by the Legislature, public employees  
shall have the right to form, join, and participate in the activities of  
employee organizations of their own choosing for the purpose of  
representation on all matters of employer-employee relations.

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1 each plaintiff has regarding matters within the employer-employee relationship  
2 between the UNION and the City of San Bernardino.

3 33. Plaintiff has no plain, adequate or complete remedy at law to redress  
4 the above stated violations, and this suit for equitable relief is the only means  
5 securing adequate relief. Furthermore, Petitioners/Plaintiffs have exhausted all  
6 administrative remedies with Defendants.

7 34. Where Defendants, and each of them discriminated against  
8 Plaintiffs, and each of them, for exercising their rights under the  
9 Meyers-Millias-Brown Act, it is proper to compel, by means of a writ of mandate,  
10 action to correct the existing unlawful practice and/or actions. Plaintiffs hereby  
11 request that a Writ of Mandate, as deemed proper by the Court, remedying the  
12 unlawful practices herein describe, including, but not limited to, an order  
13 mandating the promotion of LEWIS to the position of Battalion Chief, retroactive  
14 to the date he was passed over for said promotion, together with all back pay,  
15 benefits and/or seniority rights, be issued forthwith.

16 35. Plaintiff requests this court to award damages pursuant to C.C.P.  
17 §1090 and 1095.

18 36. In bringing this action, Petitioners have sought enforcement of an  
19 important right affecting the public interest which will result in the conferring of a  
20 significant benefit upon a large class of persons, to wit, public employees,  
21 thereby entitling Petitioners to an award of attorneys' fees pursuant to Code of  
22 Civil Procedure §1021.5.

23 37. The actions of defendants, and each of them, were arbitrary and  
24 capricious and, therefore, Plaintiff is entitled to recover attorneys' fees pursuant  
25 to Government Code §800.

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**SECOND CAUSE OF ACTION**

**WRIT OF MANDATE PURSUANT TO §1085 FOR VIOLATION**

**GOVERNMENT CODE §3300, ET SEQ.**

38. Plaintiffs, SAN BERNARDINO CITY PROFESSIONAL FIREFIGHTERS UNION, LOCAL 891 and RICHARD LEWIS, for a Second Cause of Action against all Defendants for mandamus relief for violation of the Public Safety Officers' Procedural Bill of Rights Act, Government Code, Section 3300 et seq., realleges paragraphs 1 through 37 as herein above set forth and further alleges:

39. At all times mentioned herein, Government Code, Section 3302 provided relevant portion as follows:

" (a) Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.

40. At all times mentioned herein, Government Code, Section 3304 provided relevant portion as follows:

(a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal.

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41. At all times mentioned herein, Government Code, Section

3309.5 provided relevant portion as follows:

(a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to him or her by this chapter.

(c) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.

(d)(1) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.

(e) In addition to the extraordinary relief afforded by this chapter, upon a finding by a superior court that a public safety department, its employees, agents, or assigns, with respect to acts taken within the scope of employment, maliciously violated any provision of this chapter with the intent to injure the public safety officer, the public safety department shall, for each and every violation, be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) to be awarded to the public safety officer whose right or protection was denied and for reasonable attorney's fees as may be determined by the court. If the court so finds, and there is sufficient

1 evidence to establish actual damages suffered by the officer  
2 whose right or protection was denied, the public safety department  
3 shall also be liable for the amount of the actual damages.

4 42. At all times mentioned herein, Code of Civil Procedure, Section 1085  
5 provided in relevant part that

6 (a) A writ of mandate may be issued by any court to any inferior  
7 tribunal, corporation, board, or person, to compel the performance  
8 of an act which the law specially enjoins, as a duty resulting from an  
9 office, trust, or station, or to compel the admission of a party to the  
10 use and enjoyment of a right or office to which the party is entitled,  
11 and from which the party is unlawfully precluded by such inferior  
12 tribunal, corporation, board, or person.

13 43. In doing the acts herein above alleged, including but not limited to  
14 the passing over of LEWIS for promotion for grounds other than merit, the  
15 retaliating against LEWIS for his political activities and/or for his lawful exercise of  
16 the rights granted under this chapter, or the exercise of any rights under any  
17 existing administrative grievance procedure, Defendants, and each of them  
18 have acted in violation of Government Code §3300, et seq.

19 44. Each and every act listed above, individually or jointly, constitutes a  
20 violation of city rules and regulations, Government Code §3300, et seq., and/or  
21 Government Code §3500, et seq., and therefore this court should render  
22 appropriate extraordinary relief to remedy the violation and to prevent future  
23 violations of a like or similar nature, including, but not limited to, issuing an order  
24 mandating the promotion of LEWIS to the position of Battalion Chief, retroactive  
25 to the date he was passed over for said promotion, together with all back pay,  
26 benefits and/or seniority rights







1 agency, where the employee has reasonable cause to believe that  
2 the information discloses a violation of state or federal statute, or a  
3 violation or noncompliance with a state or federal rule or  
4 regulation.

5 (e) A report made by an employee of a government agency to his  
6 or her employer is a disclosure of information to a government or  
7 law enforcement agency pursuant to subdivisions (a) and (b).

8 53. At all times mentioned herein, Labor Code, Section 1104 provided  
9 relevant portion as follows:

10 In all prosecutions under this chapter, the employer is responsible for  
11 the acts of his managers, officers, agents, and employees.

12 54. Plaintiffs allege that LEWIS is an employee covered by the provisions  
13 of Labor Code §1102.5, and that he engaged in activities, as described above,  
14 that are protected by this section.

15 55. At all times mentioned herein, Code of Civil Procedure, Section 1085  
16 provided in relevant part that

17 (a) A writ of mandate may be issued by any court to any board, or  
18 person, to compel the performance of an act which the law  
19 specially enjoins, as a duty resulting from an office, trust, or station,  
20 or to compel the admission of a party to the use and enjoyment of  
21 a right or office to which the party is entitled, and from which the  
22 party is unlawfully precluded by such board, or person.

23 56. Plaintiffs allege that there exist, at least, a causal link between an  
24 LEWIS' protected activities and defendants' retaliation, through an adverse  
25 employment action. It is further alleged that there exists direct and/or  
26 circumstantial evidence, such as the employer's knowledge that the employee

1 engaged in protected activities and the proximity in time between the  
2 protected action and the allegedly retaliatory employment decision, necessary  
3 to prove this cause of action.

4 57. Plaintiff has no plain, speedy or adequate remedy under the law and  
5 has exhausted his administrative remedies. Furthermore, Plaintiff has exhausted  
6 all administrative remedies with the Defendants.

7 58. Plaintiff seeks monetary damages and equitable relief, according to  
8 the proof at trial for all injuries, including financial, employment status, emotional  
9 distress, and/or otherwise.

10 59. The aforementioned conduct of PITZER was willful and malicious  
11 and was intended to oppress, and cause injury to LEWIS. LEWIS is therefore  
12 entitled to an award of punitive damages.

13 60. Plaintiff requests this court to award damages and attorney fees  
14 pursuant to C.C.P. §1090 and 1095.

15 61. In bringing this action, Petitioners have sought enforcement of an  
16 important right affecting the public interest which will result in the conferring of a  
17 significant benefit upon a large class of persons, to wit, public employees,  
18 thereby entitling Petitioners to attorneys' fees pursuant to C.C.P. §1021.5.

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23 **FOURTH CAUSE OF ACTION**

24 **(Violations of Labor Code §§1101 and 1102 Against All Defendants)**

25 62. Plaintiff, RICHARD LEWIS, for a Fourth Cause of Action against  
26 Defendants CITY OF SAN BERNARDINO, a Municipal Corporation; and LARRY

1 PITZER, Fire Chief, City of San Bernardino, and DOES I-X, inclusive for  
2 compensatory and equitable damages pursuant to Labor Code §§1101 and  
3 1102, realleges paragraphs 1 through 61 as herein above set forth and further  
4 alleges:

5 63. At all times mentioned herein, Labor Code, Section 1101 provided  
6 relevant portion as follows:

7 No employer shall make, adopt, or enforce any rule, regulation, or  
8 policy:

9 (a) Forbidding or preventing employees from engaging or  
10 participating in politics or from becoming candidates for  
11 public office.

12 (b) Controlling or directing, or tending to control or direct the  
13 political activities or affiliations of employees.

14 64. At all times mentioned herein, Labor Code, Section 1102 provided  
15 relevant portion as follows:

16 No employer shall coerce or influence or attempt to coerce or  
17 influence his employees through or by means of threat of discharge  
18 or loss of employment to adopt or follow or refrain from adopting or  
19 following any particular course or line of political action or political  
20 activity.

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23 65. At all times mentioned herein, Labor Code, Section 1104 provided  
24 relevant portion as follows:

25 In all prosecutions under this chapter, the employer is responsible for  
26 the acts of his managers, officers, agents, and employees.

1 66. Plaintiffs allege that LEWIS is an employee covered by the provisions  
2 of Labor Code §1101 and §1102, and that he engaged in activities, as  
3 described above, that are protected by this section.

4 67. Plaintiffs allege that there exist, at least, a causal link between an  
5 LEWIS' protected activities and defendants' retaliation, through an adverse  
6 employment action. It is further alleged that there exists direct and/or  
7 circumstantial evidence, such as the employer's knowledge that the employee  
8 engaged in protected activities and the proximity in time between the  
9 protected action and the allegedly retaliatory employment decision, necessary  
10 to prove this cause of action. Plaintiff has exhausted all administrative remedies  
11 with Defendants.

12 68. Plaintiff has no plain, speedy or adequate remedy under the law and  
13 has exhausted his administrative remedies.

14 69. Plaintiff seeks monetary damages and equitable relief, according to  
15 the proof at trial for all injuries, including financial, employment status, emotional  
16 distress, and/or otherwise.

17 70. The aforementioned conduct of PITZER was willful and malicious  
18 and was intended to oppress, and cause injury to LEWIS. LEWIS is therefore  
19 entitled to an award of punitive damages.

20 71. Plaintiff requests this court to award damages and attorney fees  
21 pursuant to C.C.P. §1090 and 1095.

22  
23 72. In bringing this action, Petitioners have sought enforcement of an  
24 important right affecting the public interest which will result in the conferring of a  
25 significant benefit upon a large class of persons, to wit, public employees,  
26 thereby entitling Petitioners to attorneys' fees pursuant to C.C.P. §1021.5.

**FIFTH CAUSE OF ACTION**

**(Violation of Civil Rights , 42 U.S.C. §1983)**

**(Against PITZER, in his official and individual capacity)**

73. Plaintiff, RICHARD LEWIS, for a Fifth Cause of Action against Defendant LARRY PITZER, Fire Chief, and DOES I-X, inclusive for violations of his civil rights, realleges paragraphs 1 through 71 as herein above set forth and further alleges:

74. 42 U.S.C. §1983 provides, in part, "Every person who, under color of any statute, ordinance, regulations custom, or usage, of any State...subjects, or causes to be subjected, any citizen of the United States, or other person within with the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law.

75. This cause of action is brought pursuant to Article I, Section 10 of the United States Constitution, and the Fourteenth Amendment to the United States Constitution and other state and federal laws. Defendants have refused to promote LEWIS to the position of Battalion Chief due to 1) union association and activities; 2) his exercise of speech regarding matters of public concern; 3) his political activities on behalf of the UNION; and/or 4) his support and/or involvement in petitions to the government for redress of grievances.

76. Plaintiff LEWIS alleges that PITZER, in his official capacity and/or individual capacity, in doing the acts herein above described, was either acting under the color of state law or purported/pretended to do so.

77. Plaintiff LEWIS further alleges that the defendants' conduct, as describe herein above violated LEWIS' right to freedom of speech, association,

1 and to assemble peacefully and to seek redress of grievances as guaranteed  
2 by the First and Fourteenth Amendments to the United States Constitution. The  
3 above described actions, violations and/or reason for passing over LEWIS for  
4 promotion in this case are believed to have occurred because of LEWIS' 1)  
5 active participation in the activities of the UNION, 2) strong support and direction  
6 to the UNION's to a) file suit in the San Bernardino County Superior Court  
7 challenging the manner in which Defendants conducted its administrative  
8 investigation; b) file administrative complaints with local and state entities  
9 challenging unlawful disciplinary and employment practice of Defendants; c)  
10 file and pursued grievance/appeal challenging the disciplinary and  
11 promotional actions taken against member of the UNION; d) raising issues or  
12 concerns regarding Fire Department staffing, safety/health, response times,  
13 training, and/or expenditure of public money; e) file grievance regarding  
14 believed violations of the Memorandum of Understanding between the CITY  
15 and the UNION; and/or f) filing complaints of unethical and/or unlawful activities  
16 of member(s) of the Fire Department administration; and/or 3) reporting of  
17 misconduct on the part of Fire Department Officials.

18 78. The constitutional violations, as described above, are further  
19 believed to resulted from a conspiracy by one or more of the defendants and  
20 unnamed DOE defendants to violate plaintiff's rights as alleged herein. Plaintiff  
21 is informed and believes that said defendants engaged in such conspiracy with  
22 the intention to deprive plaintiff of his rights. During all times mentioned herein,  
23 the individual defendants, and each of them, separately and in concert, acted  
24 under color and pretense of law, under color of the statutes, ordinances,  
25 regulations, policies, processes, customs and usages of the defendants. Each of  
26 the individual defendants here, separately and in concert, deprived plaintiff of

1 his rights, privileges and immunities under Article I, Section 10 of the United States  
2 Constitution, and the Fourteenth Amendments to the United States Constitution  
3 and other federal laws. Said breaches of plaintiff's rights have caused him  
4 injuries and damages.

5 79. The acts of defendants, and each of them, have seriously  
6 damaged Plaintiffs' standing and association in his community and/or imposed  
7 on him a stigma that has and/or will foreclose his freedom to take advantage of  
8 other employment opportunities. As a result, defendants, and each of them  
9 have violated Plaintiff's liberty interest, as provided for under the 14<sup>th</sup>  
10 Amendment to the United States Constitution.

11 80. Each of the individual defendants, separately and in concert,  
12 acted wilfully, knowingly and with reckless disregard and deliberate indifference  
13 to the known consequences of their acts and omissions and purposefully with  
14 the intent to deprive plaintiff of his federally protected rights and privileges and  
15 did, in fact, violate those rights and privileges, entitling plaintiff to punitive and  
16 exemplary damages in an amount to be proven at the time of trial o f this  
17 matter.

18 81. As a direct and proximate result of the aforesaid acts, omissions,  
19 customs, practices, policies and decisions of the defendants, and each of them,  
20 plaintiff has suffered mental pain, suffering, anguish, anxiety, grief, shock,  
21 humiliation, indignity, embarrassment and apprehension, all to his damage in a  
22 sum to be determined at trial. Additionally, plaintiff has been forced to incur  
23 substantial amounts of attorney' fees, investigations, expenses and other cost in  
24 the prosecution of the above articulated constitutional violations.

25 82. As a direct result of these acts, plaintiff has lost wages, future wages  
26 and/or earning capacities resulting from the incident(s) as described herein, in  
27

1 an amount to be determined according to the proof at time of trial.

2 83. Plaintiff is entitled to and hereby demands, costs, attorney fees, and  
3 expenses pursuant to 42 U.S.C. §1988.

4 84. Plaintiff hereby demands that a jury be impaneled for the trial of this  
5 matter.

6  
7 **FIFTH CAUSE OF ACTION**

8 **(Violation of Civil Rights , 42 U.S.C. §1983)**

9 **(Against CITY OF SAN BERNARDINO, for Municipal Liability)**

10 85. Plaintiff, RICHARD LEWIS, for a Fifth Cause of Action against  
11 Defendant LARRY PITZER, Fire Chief, and DOES I-X, inclusive for violations of his  
12 civil rights, realleges paragraphs 1 through 71 as herein above set forth and  
13 further alleges:

14 86. At all times relevant herein defendants named and unnamed  
15 individual defendants were agents and employees of defendant CITY and in  
16 carrying out the acts alleged herein were acting under color of their authority as  
17 such and under color of the statutes, regulations, customs, and usages of city  
18 and fire department and pursuant to a set pattern, practice and official policy  
19 of each respective governmental entity.

20 87. Defendant CITY's policies, procedures, customs, and practices, and  
21 described above, specifically, the permitting of PITZER to refused to promote  
22 LEWIS to the position of Battalion Chief due to 1) union association and activities;  
23 2) his exercise of speech regarding matters of public concern; 3) his political  
24 activities on behalf of the UNION; and/or 4) his support and/or involvement in  
25 petitions to the government for redress of grievances, Defendant CITY  
26 encouraged its officers, employees and agents, to believe that the above



1 described actions were permissible and that they can undertake the above  
2 described actions, currently and in the future, with impunity. To the extent the  
3 CITY accepted, condoned, and failed to correct PITZER's actions, the CITY has  
4 ratified his behavior and has accepted it as a CITY policy and/or custom.

5 88. Despite the fact that the defendants knew or should have known of  
6 the facts that these acts, omissions, decisions, practices, customs and policies  
7 both formal and informal, were being carried out by its agents and employees,  
8 defendants have taken not steps or efforts to order a halt to this course of  
9 conduct, nor make redress to this plaintiff or other employees injured thereby  
10 and has failed to take any investigative and/or disciplinary actions whatsoever  
11 against its employees or agents.

12 89. As a direct and proximate result of the aforementioned policies,  
13 procedures, customs, and practices of defendant CITY, plaintiff LEWIS has  
14 suffered injuries and damages in an amount to be proven at the time of trial.

15 90. The above articulated constitutional violations were proximately  
16 caused by the City's and other defendants' deliberate indifference to the  
17 maintenance, training and control of its officers, and the constitutional violations  
18 set forth above were proximity caused by the customs, practices, policies and  
19 decisions of defendant City.

20 91. As a direct and proximate result of the aforesaid acts, omissions,  
21 customs, practices, policies and decisions of the defendants, and each of them,  
22 plaintiff has suffered mental pain, suffering, anguish, anxiety, grief, shock,  
23 humiliation, indignity, embarrassment and apprehension, all to his damage in a  
24 sum to be determined at trial. Additionally, plaintiff has been forced to incur  
25 substantial amounts of attorney' fees, investigations, expenses and other cost in  
26 the prosecution of the above articulated constitutional violations.



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- 1095.
4. An award of monetary damages and equitable relief, according to the proof at trial for all injuries, including financial, employment status, emotional distress, and/or otherwise.
  5. An award of punitive damages against the individually named defendants and Doe defendants;
  6. An award of damages, pursuant to 42 U.S.C. §1983 and §1985, for mental pain, suffering, anguish, anxiety, grief, shock, humiliation, indignity, embarrassment and apprehension, and/or attorney' fees, investigations, expenses and other cost in the prosecution of the above articulated constitutional violations.
  7. An award of damages for plaintiff's lost wages, future wages and/or earning capacities resulting from the incident(s) as described herein, in an amount to be determined according to the proof at time of trial.
  8. An award of costs, attorney fees, and expenses pursuant to 42 U.S.C. §1988.
  9. Prejudgment interest on any and all awards described above.

ALL CAUSES OF ACTION

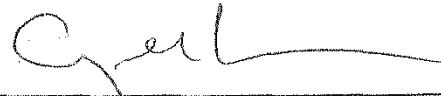
1. Attorney fees in accordance with Government Code §800;
2. Reasonable attorney fees in accordance with California Code of Civil Procedure §1021.5 and/or 42 U.S.C. §1988;
3. For costs of suit incurred herein; and

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4. Such other and further relief as the court deems proper under the circumstances.

Dated: May 3, 2005

GOLDWASSER & GLAVE, LLP

By   
Corey W. Glave,  
Attorney for San Bernardino City Professional  
Firefighters Union, Local 891 and Richard Lewis

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**VERIFICATION**

The undersigned declares as follows:

I am a member of the Board of Directors for the San Bernardino City Professional Firefighters Union, Local 891, a Plaintiff in this action, and am duly authorized to make this verification on behalf thereof.

I have read the foregoing COMPLAINT know the contents thereof. Said document was prepared with the assistance and advice of counsel, and/or other agents and employees of the Union, upon which the Union has relied. The matters stated in the foregoing document, as they related to the Union are true except as to those matters which are stated on information and belief, and as to those matters the Union believes them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
\_\_\_\_\_  
Ken Moseley,  
President, SBCPF, Local 891


**VERIFICATION**

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The undersigned declares as follows:

I am a named plaintiff to this action. I have read the foregoing COMPLAINT, and know the contents thereof. Said document was prepared with the assistance and advice of counsel, upon which I have relied. The matters stated in the foregoing document, as they related to me are true except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
\_\_\_\_\_  
RICHARD LEWIS

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

San Bernardino Superior Court  
351 N Arrowhead Ave  
San Bernardino, CA 92415

FILED - San Bernardino District  
SUPERIOR COURT  
SAN BERNARDINO COUNTY  
MAY 11 2005  
BY: Sandra Ortega DEPUTY

CASE NO: SCVSS125902

GOLDWASSER & GLAVE  
5858 WILSHIRE BLVD  
SUITE 205  
LOS ANGELES CA 90036

Notice of Status Hearing on Petition and  
Notice of Case Assignment for All Purposes

IN RE: SAN BERNARDINO -v- LARRY PITZER, ETAL

Please take notice that the above-entitled case has been set for a  
Status Hearing on Petition at the above entitled court on

06/22/05 at 8:30 in Dept. S16

This hearing is set for the Court's monitoring purposes only and not  
for the determination of your petition. If a Notice of Hearing is  
filed, this status hearing date will be vacated. If no Notice of Hear-  
ing is filed and there is no appearance at the status hearing, your  
case may be set for an Order to Show Cause re:Dismissal.

THIS CASE HAS BEEN ASSIGNED TO \* DEPARTMENT NOT FOUND FOR JUDGE \* IN DEPAR  
FOR ALL PURPOSES.

DATE: 05/04/05

Tressa Kentner, Clerk of the Court  
By: SANDRA ORTEGA

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San  
Bernardino at the above listed address. I am not a party to this action  
and on the date and place shown below, I served a copy of the above  
listed notice by:

( ) Enclosed in an envelope mailed to the interested party addressed  
above, for the collection and mailing this date, following ordinary  
business practice.

( ) Enclosed in a sealed envelope, first class postage prepaid in the  
U.S. mail at the location shown above, mailed to the interested party  
and addressed as shown above, or as shown on the attached listing.

( ) A copy of this notice was given to the filing party at the counter  
( ) A copy of this notice was placed in the bin located at this office  
and identified as the location for the above law firm's collection of  
file stamped documents.

DATE OF MAILING: 05/04/05

I declare under penalty of perjury that the foregoing is true and cor-  
rect.

Executed on 05/04/05 at San Bernardino, CA

BY: SANDRA ORTEGA

RECEIVED - CITY CLERK  
MAY -4 P1:47

C