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Attorney for Plaintiff and Petitioner,
David Morris

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

[PROPOSED] SAN FRANCISCO DIVISION

DAVID MORRIS, Plaintiff and Petitioner, and CITY AND COUNTY OF SAN FRANCISCO; FIRE COMMISSION FOR THE CITY AND COUNTY OF SAN FRANCISCO; and JEANINE NICHOLSON, in her individual capacity; and DOES 1–10, inclusive, Defendants and Respondents	Case No._____ **COMPLAINT FOR:** 1. Retaliation for Exercise of First Amendment Rights Under 42 U.S.C. § 1983; 2. Municipal Liability Under 42 U.S.C. § 1983; 3. Declaratory and Prospective Equitable Relief for Violation of Article I, Section 2(a) of the California Constitution; 4. Petition for Administrative Writ of Mandate Under California Code of Civil Procedure Section 1094.5; and 5. Petition to Vacate or Correct Arbitration Award Under California Code of Civil Procedure Sections 1285 Through 1288.8. **DEMAND FOR JURY TRIAL**

COMPLAINT

Plaintiff and Petitioner David Morris, complaining of Defendants and Respondents, alleges as follows:

PARTIES

1. Plaintiff and Petitioner DAVID MORRIS ("Morris" or "Plaintiff") was employed by the San Francisco Fire Department ("SFFD") as a Lieutenant until his dismissal. He exercised his First Amendment rights within the City and County of San Francisco, California, and he suffered the present and future damages at issue in this case within the City and County of San Francisco, California.

2. Defendant and Respondent CITY AND COUNTY OF SAN FRANCISCO ("City") is a municipal entity that operates SFFD and employed Plaintiff during the events alleged in this Complaint.

3. Defendant and Respondent FIRE COMMISSION FOR THE CITY AND COUNTY OF SAN FRANCISCO ("Fire Commission" or "Commission") is the City body charged with departmental policy direction, including the formulation, evaluation, and approval of SFFD goals, objectives, plans, programs, departmental policies, and departmental rules and regulations.

4. Defendant and Respondent JEANINE NICHOLSON ("Nicholson") was the Chief of SFFD during the material events. Plaintiff sues Nicholson solely in her individual capacity for her personal participation in, direction of, recommendation of, approval of, and ratification of the conduct alleged in this Complaint.

5. As SFFD Fire Chief, Nicholson was responsible to the Fire Commission for SFFD's proper administration and efficient operation, interpreted Department rules and regulations, prescribed operational policies and procedures, and enforced Department rules, regulations, policies, procedures, and orders.

6. Nicholson's authority as Fire Chief operated under the Fire Commission's policy direction. The Fire Commission, rather than the Fire Chief, possessed final policymaking authority for the Department's general policies and for the final disciplinary determination challenged here.

7. Plaintiff does not know the true names or capacities of DOES 1 through 10. Each Doe Defendant participated in, caused, directed, approved, or ratified conduct that injured Plaintiff. Plaintiff will amend this Complaint when their identities are ascertained.

8. At all relevant times, Defendants acted under color of California law and within the course and scope of their employment, authority, agency, or official functions. Plaintiff is informed and believes and alleges thereon that Defendants, and each of them, at all times mentioned herein, were the agents, employees, servants, and/or co-conspirators of the remaining Defendants. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each of them, were the actual and/or ostensible agents of the remaining Defendants and were acting within the course and scope of said agency. Defendants shall be specified individually herein or referred to collectively as "Defendants."

JURISDICTION AND VENUE

9. This Court has original jurisdiction over Plaintiff's claims arising under the United States Constitution and 42 U.S.C. section 1983 because they arise under federal law. 28 USCS § 1331.

10. This Court has jurisdiction to redress the deprivation, under color of state law, of rights secured by the Constitution and laws of the United States. 28 USCS § 1343.

11. This Court has supplemental jurisdiction over Plaintiff's California claims because they arise from the same disciplinary investigation, dismissal, Fire Commission proceedings, and administrative appeal that form part of the same case or controversy as Plaintiff's federal claims. 28 USCS § 1367.

12. Venue is proper in this District because a substantial part of the events and omissions giving rise to Plaintiff's claims occurred in this District. 28 USCS § 1391.

13. This Court has personal jurisdiction over Defendants because they conduct governmental operations in this District and committed the acts alleged in this Complaint in this District.

DIVISIONAL ASSIGNMENT

14. This action arises from events and omissions occurring in the City and County of San Francisco, California, in connection with Plaintiff's employment as a member of the San Francisco Fire Department. Accordingly, pursuant to Civil Local Rules 3-2(d) and 3-5(b), Plaintiff requests and

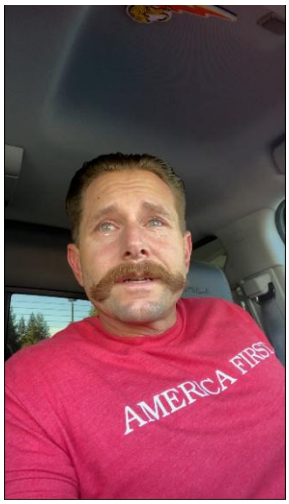
proposes assignment to the San Francisco Division of the United States District Court for the Northern District of California, subject to the Court's applicable assignment rules.

FACTUAL ALLEGATIONS AND PROCEDURAL HISTORY

15. Plaintiff Morris was a devoted career SFFD Lieutenant with no prior discipline before the events at issue. Morris complied with SFFD's vaccine mandate. Yet, Morris was fired for "misconduct" that consists of expressing his opinions, as a private citizen, while off duty, on his personal social media regarding matters of public concern. It's the particular viewpoint of his opinions that Defendants target. While SFFD permits and encourages its members to have social media accounts, Defendants still took the position that Plaintiff's off duty social speech as a private citizen on matters of public concern can subject him to discipline, even termination, just because his viewpoint didn't slant Defendants' way.

16. Lieutenant Morris was not a problem employee and is in fact still a sought-after fire protection professional. Since Defendants' actions removing him from his position with SFFD, Plaintiff Morris has remained active in working in a variety of fire service activities due to his training, experience and reputation, including working for: North Shore Fire Protection District as a Field Battalion Chief with training responsibilities, Santa Rosa Junior College to lead the Junior College's live "fire burn" cadre, Advanced Fire Control (a company that consists of firefighters of all ranks from Firefighter to Chiefs of departments) as Lead Instructor and Lead Administrator, and Cal Fire as a company officer, supervising crews and conducting training sessions.

17. Defendants' conduct is wrong: it violates the Constitution. A public employer may not discipline or retaliate against its employees for the content of their speech as private citizens on matters of public concern. The following details provide additional background:



18. On or about October 13, 2021, Plaintiff posted a personal social-media video concerning SFFD's COVID-19 vaccination mandates after having been threatened by SFFD command staff on this issue. Plaintiff alleges that he created the video while off duty, away from SFFD premises, and without SFFD resources or insignia. Embedded to the right is a representative screenshot from

the video, supporting the "off duty" assertion, and a copy of the video transcript prepared by Defendants from the administrative record is attached hereto as Exhibit-1. Plaintiff Morris removed the video the following day.

19. Plaintiff's speech concerned COVID-19 vaccine mandates and related governmental policy, subjects of public debate and governmental action. However, as noted above, Morris did not violate SFFD's vaccine mandate. Before the video, Plaintiff posted a vaccine-mandate meme that did not identify SFFD, SFFD leadership, or coworkers. SFFD did not discipline Plaintiff for that earlier post.

20. SFFD investigated Plaintiff's social-media activity and allegations concerning purported threatening or harassing conduct by Department employees. The investigation resulted in a report dated December 20, 2021.

21. On January 5, 2022, SFFD issued Plaintiff a Notice of Intent to Terminate identifying alleged misconduct, the rules and policies allegedly violated, and the proposed discipline. Plaintiff attended an administrative meeting on February 11, 2022, at which he was represented and allowed to respond to the proposed termination.

22. On April 8, 2022, Nicholson filed a Verified Complaint against Plaintiff arising from the video Plaintiff posted off duty concerning the COVID-19 vaccination mandate applicable to Department employees.

23. Nicholson's Verified Complaint charged Plaintiff with violations of SFFD Rules and Regulations sections 2805, 2814, 3923, 3925, and 4002, together with an alleged violation of SFFD's Social Media Policy.

24. On June 24, 2022, the Fire Commission conducted an evidentiary hearing. The parties presented testimony and documentary evidence, cross-examined witnesses, and presented argument.

25. The Fire Commission found the charged violations proved by a preponderance of the evidence and upheld Nicholson's recommendation of termination.

26. The Fire Commission's written notice described its determination as final, subject to Plaintiff's right to an administrative appeal.

27. Plaintiff appealed his dismissal through SFFD Fire Commission's administrative-appeal process. The applicable Administrative Appeal Rules, which is attached hereto as Exhibit-2, required binding arbitration before a neutral Hearing Officer authorized to make findings and conclusions concerning the accusation and determine whether the penalty was just and proper. Plaintiff and Defendant SFFD Fire Commission selected Hearing Officer Robert Steinberg from the panel of arbitrators in the Administrative Appeal Rules.

28. During the administrative appeal, the City maintained that the arbitrator's authority was limited to determining whether the City had just cause under applicable City rules and did not extend to adjudicating an independent federal First Amendment claim.

29. The administrative appeal proceeded through evidentiary hearings held on May 20 and 21, 2025, and October 20 and 21, 2025. Post-hearing briefing was completed on January 23, 2026. The Hearing Officer issued a written award on July 29, 2026, denying Plaintiff's appeal and sustaining his dismissal, which the Commission served via email on August 4, 2026, on Plaintiff and counsel.

30. The Hearing Officer expressly declined to decide Plaintiff's First Amendment claim, stating that the issue of Plaintiff's free-speech protection was for the courts to decide in the first instance rather than the arbitrator. The Hearing Officer's award dated July 29, 2026, a copy of which is attached hereto as Exhibit-3, was served via email, a copy of which is attached hereto as Exhibit-4, by the Secretary for the SFFD Fire Commission on Plaintiff and counsel on August 4, 2026. The Hearing Officer's award identifies the parties to the arbitration as "DAVID MORRIS, Appellant" and "FIRE COMMISSION, CITY AND COUNTY OF SAN FRANCISCO, Respondent." Since the determination to terminate Plaintiff's employment was subject to this agreed-upon arbitration process, the SFFD Fire Commission's service date of August 4, 2026, is when any statute of limitations would begin to run.

31. The SFFD Rules and Regulations provided that a member could be subject to discipline for off-duty conduct that violates Department rules and required the Department to evaluate whether a nexus exists between that conduct and the workplace. SFFD's Social Media Policy stated that it was not intended to impede activity protected by the First Amendment.

GOVERNING ADMINISTRATIVE-APPEAL AND DISCIPLINARY RULES

32. The Firefighters Procedural Bill of Rights Act prohibits an employing department from undertaking punitive action on nonmerit grounds against a firefighter who has completed probation without providing an opportunity for administrative appeal. Cal. Gov. Code § 3254.

33. When an employing department is subject to a memorandum of understanding providing for binding arbitration of administrative appeals, the arbitrator serves as the hearing officer and the hearing officer's decision is binding. Cal. Gov. Code § 3254.5.

34. The Administrative Appeal Rules governing Plaintiff's appeal applied to administrative appeals from final Fire Commission disciplinary determinations on verified complaints filed by the SFFD Chief. The Rules designated the Fire Commission's adopted findings of fact as the accusation and provided that filing a notice of appeal would not stay or delay implementation of the Commission's final decision.

35. The Fire Commission-approved Administrative Appeal Rules required binding arbitration before a single neutral Hearing Officer; authorized the Hearing Officer to make independent findings of fact and conclusions of law concerning the accusation, determine whether the admitted evidence supported the charged misconduct, and determine whether the penalty was just and proper; and required a written decision finally determining the appealed issues, followed by service with notice that the decision was final and binding upon the parties.

36. The Fire Commission's disciplinary procedures placed on SFFD the burden of proving by a preponderance of the evidence that Plaintiff committed a breach of duty or engaged in misconduct. Those procedures did not make judicial rules of evidence binding on the Commission or its assigned Hearing Officer.

37. The Administrative Appeal Rules further provided that the Hearing Officer would decide the appeal from the Record on Appeal, the parties' arguments and admitted evidence, and any briefs requested by the Hearing Officer. They required a written decision finally determining the issues identified in the Notice of Appeal and required the Commission Secretary to serve that decision with written notice that it was final and binding upon the parties.

38. The Hearing Officer exercised the authority conferred by those Rules, while expressly declining to rule on Plaintiff's First Amendment defense, and concluded that SFFD had just cause to terminate Plaintiff for his October 13, 2021, conduct. The award dated July 29, 2026, denied Plaintiff's appeal.

FINALITY AND TIMELINESS

39. On July 29, 2026, the Hearing Officer issued a written arbitration award denying Plaintiff's administrative appeal and sustaining the dismissal, as discussed above.

40. On August 4, 2026, the Fire Commission Secretary served the signed award on Plaintiff, Plaintiff's counsel, and City counsel by electronic mail. The accompanying communication stated that the decision was final and binding upon the parties pursuant to California Government Code section 3254.5(b). Therefore, as discussed above, the service date of August 4, 2026, is when any applicable statute of limitations would begin to run.

41. The City has not filed a petition to confirm the arbitration award.

42. Plaintiff filed this action on October 30, 2026.

43. A petition to vacate or correct an arbitration award must be served and filed no later than 100 days after service of a signed copy of the award on the petitioner. Cal. Code Civ. Proc. § 1288.

44. Because Plaintiff was served with the signed award on August 4, 2026, the 100-day filing-and-service deadline for his petition to vacate or correct the award is November 12, 2026. Plaintiff alleges that this action and service of the petition were completed on or before November 12, 2026. The City's failure to seek confirmation does not suspend, toll, or extend Plaintiff's independent 100-day deadline. Cal. Code Civ. Proc. § 1288.

45. Plaintiff alleges that the award did not adjudicate Plaintiff's independent federal civil-rights claim under 42 U.S.C. § 1983, because the City maintained during the administrative appeal that the Hearing Officer lacked authority to adjudicate that claim, and because, as to Plaintiff's free-speech protection, the Hearing Officer stated in his written award that the issue was for the courts to decide in the first instance rather than the arbitrator.

46. Plaintiff alleges that the limitations period for his federal civil-rights claims is governed by the California personal-injury limitations period and applicable California tolling rules to the extent consistent with federal law. Plaintiff further alleges, in the alternative, equitable tolling from June 24, 2022, the date the Fire Commission deliberated and reached its decision on the Fire Chief's Verified Complaint as confirmed in its Notice of Fire Commission Decision on the Verified Complaint dated June 27, 2022, a copy of which from the administrative record is attached hereto as Exhibit - 5, which informed Plaintiff that its decision was final subject to Plaintiff of his right to an administrative appeal, through August 4, 2026. Plaintiff timely and in good faith acted on the Fire Commission's Notice and pursued the administrative appeal concerning the same disciplinary decision and injuries, and because Defendants received notice of the administrative appeal and participated in that proceeding suffering no prejudice.

47. Defendants have continued to maintain and enforce the challenged disciplinary findings and adverse personnel records, causing ongoing employment-related benefits losses, professional injury, and a continuing chill on Plaintiff's speech. Plaintiff pleads those post-dismissal acts and injuries as a basis for prospective and equitable relief and not solely as continuing consequences of the initial dismissal.

COUNT I:

RETALIATION FOR EXERCISE OF FIRST AMENDMENT RIGHTS UNDER 42 U.S.C. § 1983

48. Plaintiff incorporates by reference paragraphs 1 through 47 as though fully set forth in this Count.

49. Plaintiff spoke as a private citizen when he made the off-duty personal social-media video described above.

50. Plaintiff's speech addressed COVID-19 vaccine mandates and related governmental policy, matters of public concern.

51. Defendants subjected Plaintiff to adverse employment action by investigating, charging, recommending termination of, terminating, and continuing to maintain the dismissal of Plaintiff.

52. Plaintiff's protected speech was a substantial or motivating factor in Defendants' adverse actions.

APPLICATION OF THE PICKERING FACTORS

53. The Pickering balance weighs Plaintiff's interest, as a citizen, in commenting on governmental vaccine mandates and related public policy against SFFD's interests, as a public employer, in discipline, harmonious and confidential working relationships, effective performance of duties, regular operations, public safety, and public confidence. The balance is particularized and considers the content, form, context, time, place, and manner of the speech; the audience; Plaintiff's role; and whether the speech was false or recklessly made.

54. As to content, form, context, time, place, and manner, Plaintiff addressed a governmental vaccination mandate during widespread public debate over that policy. He recorded the brief video while off duty, alone in his private vehicle, away from Department premises, dressed in civilian clothes, and without displaying SFFD resources or insignia; he removed it the next day after learning that it had become publicly accessible.

55. As to discipline and control by superiors, Plaintiff alleges that the video did not cause any refusal to obey an order, answer a radio call, report for duty, or perform an emergency assignment. Although the video criticized command staff using internal terminology unlikely to identify particular officials to the general public, Plaintiff alleges that criticism of supervisory officials in off-duty citizen speech did not itself establish an operational failure or inability to follow lawful orders while on duty.

56. As to harmony among coworkers, Plaintiff alleges that no employee quit or requested a transfer because of the video. A supervisor who evaluated the Rule 4002 nexus factors testified that no one refused to work with Plaintiff, that the assigned apparatus continued to respond each day, and that the video itself did not create disruption, friction, or morale problems in the workplace.

57. As to close working relationships requiring loyalty, trust, and confidence, SFFD relied on reported concerns from employees who had viewed the video. Plaintiff alleges, however, that witnesses later disputed or gave testimony different from statements attributed to them in the investigative report, weakening the factual basis for concluding that essential working relationships had actually broken down or were reasonably likely to do so.

58. As to Plaintiff's performance of his duties, Plaintiff alleges that the video did not impede his work or prevent him from functioning as an effective Lieutenant. The testimony addressing the Department's own off-duty nexus factors was that Plaintiff could still perform his job effectively and remained an effective leader.

59. As to SFFD's regular operations, Plaintiff alleges that there was no change in staffing, no missed emergency response, no refusal to work with him, and no impairment of SFFD's ability to fulfill its mission. The Battalion Chief and Captain who directly oversaw Station 7 testified that there were no operational changes or staff concerns resulting from the video.

60. As to audience, Plaintiff used a personal social-media account rather than an official Department channel. The video itself did not identify SFFD by name, display SFFD insignia, or identify Plaintiff as a firefighter; references to "CD1," "CD2," and "CD3" were internal terminology unlikely to identify particular officials to the general public, as discussed above.

61. As to Plaintiff's role, Plaintiff acknowledges that his rank as Lieutenant carried supervisory responsibility and made SFFD's legitimate concerns about leadership and command structure relevant. His rank, however, did not convert all off-duty commentary about public policy into official speech or eliminate the need for a fact-based showing that the expression threatened SFFD's actual operations.

62. As to falsity or reckless disregard for truth, Defendants charged Plaintiff based on the video's content and manner of expression, including alleged profanity, insubordination, and off-duty nexus, rather than identifying a materially false factual statement about vaccination policy that caused operational harm.

63. As to the weight of Plaintiff's speech interest, vaccine mandates were matters of political, social, and governmental concern directly affecting public employees. SFFD did not discipline Plaintiff for an earlier post criticizing vaccine mandates that did not identify SFFD, its leadership, or coworkers and generated no complaints, demonstrating that mandate criticism could occur without workplace disruption.

64. The constitutional balance applicable here distinguishes off-duty citizen speech communicated through personal social media from speech made pursuant to official duties or embedded

in on-duty operations. Plaintiff made the video while off duty, away from SFFD premises, without Department resources or insignia, and not through an official Department channel; he was not then issuing operational directions, performing an emergency assignment, or purporting to speak for SFFD. Those circumstances presented a materially lower direct risk to SFFD's operations than speech delivered in the course of an emergency response or the execution of chain-of-command duties, and Defendants were required to justify discipline by evidence of actual disruption or a reasonable prediction tied to SFFD's operations rather than by the speech's critical or profane content alone. The Arbitrator's Decision dated July 29, 2026, resolved whether SFFD had just cause under Department rules but expressly declined to decide whether Defendants violated the First Amendment or to conduct the Pickering analysis, stating that those constitutional questions were reserved for the Court.

65. Considering the factors together, the manner and location of the speech, the absence of demonstrated interference with duties or emergency service, the absence of refusals to work or follow orders, and the disputed foundation for SFFD's predicted disruption materially reduced the operational risk attributable to Plaintiff's speech.

REBUTTAL TO ASSERTED COMPELLING

VACCINE-MANDATE AND WORKPLACE-SAFETY INTERESTS

66. Plaintiff acknowledges that the City had substantial interests in responding to the COVID-19 emergency, protecting employees and the public, and requiring vaccination for personnel entering high-risk settings. The governing health order required covered personnel entering high-risk settings to be vaccinated and prescribed safety measures for exempt personnel who were not fully vaccinated.

67. Those public-health interests concern compliance with a vaccination requirement. Plaintiff's claim concerns punishment for speech criticizing that requirement. The April 8, 2022, charging letter from the administrative record, which is attached hereto as Exhibit-6, based the charges against Plaintiff on social-media posts, including the vaccine-mandate video, and alleged profane or abusive behavior; it did not charge Plaintiff with failure to obtain the vaccine.

68. Plaintiff alleges that the City therefore may not establish adequate justification merely by invoking the importance or asserted compelling character of the underlying mandate. The Pickering

inquiry remains directed to whether this off-duty speech caused actual, material, and substantial workplace disruption or supported a reasonable, evidence-based prediction of such disruption, not whether the City had authority to adopt or enforce the vaccination requirement.

69. Plaintiff's off-duty status further distinguishes criticism of the mandate from refusal to follow it at work. He made the video away from Department premises, in civilian clothing, using no Department resources or insignia, and removed it the following day.

70. Plaintiff alleges that no actual workplace disruption followed: no firefighter refused to work with him, no apparatus failed to respond, no emergency assignment was missed, and no evidence showed that Plaintiff could not continue to perform effectively as a Lieutenant.

71. Nor was the asserted prediction of disruption supported by an undisputed evidentiary foundation. Defendant SFFD Fire Chief Nicholson did not personally confer with the Battalion Chief or Captain who directly supervised Station 7 about morale or operational changes, and several witnesses gave sworn testimony differing from statements attributed to them in the investigative report.

72. The City's interests in public confidence and workplace safety likewise do not establish that criticism of vaccination policy itself endangered coworkers or the public. Plaintiff alleges that Defendants conflated the policy's public-health rationale with the separate question whether his off-duty expression impaired discipline, close working relationships, staffing, emergency response, or service delivery.

73. Plaintiff alleges that deference to public-health judgments concerning whether and how to require vaccination does not extend categorically to speech-based discipline. The challenged action was termination for the content and manner of an off-duty video, and the City must justify that employment action by reference to the speech's effect or reasonably predicted effect on SFFD's operations.

74. Defendants' response was disproportionate to any demonstrated or reasonably predicted disruption. Plaintiff was a career Lieutenant with no prior discipline, removed the video the next day, and was terminated without first receiving lesser corrective or progressive discipline.

75. Balancing the content, form, context, time, place, manner, audience, Plaintiff's role, and the record of actual and predicted disruption, Plaintiff's interest in speaking as a citizen on vaccine

mandates and governmental policy outweighed Defendants' interest in restricting that speech. Plaintiff alleges that Defendants' asserted concerns regarding discipline, command authority, workplace relationships, safety, operational effectiveness, and public trust were overstated, insufficiently supported, or pretextual.

76. Plaintiff alleges that Defendants would not have investigated, charged, recommended termination of, terminated, or continued to maintain the dismissal of Plaintiff absent his protected speech. Defendant Fire Chief Nicholson personally participated in, directed, approved, recommended, and ratified those adverse actions. By that conduct, Nicholson and the Doe Defendants, acting under color of state law, deprived Plaintiff of rights secured by the First Amendment and are liable under 42 U.S.C. § 1983.

COUNT II:

MUNICIPAL LIABILITY UNDER 42 U.S.C. § 1983

77. Plaintiff incorporates by reference paragraphs 1 through 76 as though fully set forth in this Count.

78. A municipality may be held liable under 42 U.S.C. § 1983 where a deliberate choice to follow a course of action is made from among various alternatives by the official or officials responsible for establishing final policy with respect to the subject matter in question, and a single decision by such a final policymaker may suffice. *Pembaur v. City of Cincinnati*, 475 U.S. 469 (1986). The identification of officials with final policymaking authority is a question of state and local law. *City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988).

79. Under the Charter of the City and County of San Francisco, the Fire Department is under the management of the Fire Commission, which is empowered to prescribe rules and regulations for the conduct of its affairs and the government of its officers and employees. *San Francisco Fire Fighters v. City and County of San Francisco*, 68 CAL. APP. 3D 896 (1977).

80. For discipline of a uniformed member exceeding a ten-day suspension, including termination, the Fire Commission, not the Fire Chief, is the final decision maker; the Fire Chief makes a recommendation, and the Commission holds a hearing to decide whether to impose the discipline.

Anderson v. City & Cnty. of San Francisco, 169 F. SUPP. 3D 995 (2016) The Fire Commission retains the discretion whether to accept or reject the Chief's recommendation to terminate, and the Chief's recommendation is not a mandate that the Commission must follow. *Lukin v. City*, 187 CAL. APP. 3D 807 (1986).

81. Consistent with these authorities, the Fire Commission, rather than the Fire Chief, possessed final policymaking authority over the challenged disciplinary decision. On a verified complaint filed by the Chief, the Commission was authorized to impose dismissal and exercised that authority by conducting the evidentiary hearing, finding the charges proved, and upholding the recommendation to terminate Plaintiff Morris.

82. The Fire Commission's final decision approving and imposing Plaintiff's dismissal constituted an official decision of the City with respect to the disciplinary action challenged in this Complaint.

83. The Fire Commission's final decision was the moving force behind the violation of Plaintiff's First Amendment rights.

COUNT III:

DECLARATORY AND PROSPECTIVE EQUITABLE RELIEF FOR VIOLATION OF ARTICLE I, SECTION 2(a) OF THE CALIFORNIA CONSTITUTION

84. Plaintiff incorporates by reference paragraphs 1 through 83 as though fully set forth in this Count.

85. Defendants disciplined Plaintiff because of the content and viewpoint of his off-duty speech concerning vaccine mandates and public policy.

86. An actual controversy exists concerning whether Defendants may continue to maintain and enforce adverse disciplinary findings and personnel records arising from Plaintiff's speech.

87. Plaintiff seeks only declaratory and prospective equitable relief under this Count, including reinstatement if appropriate, restoration of employment-related benefits, and removal or correction of adverse personnel records. Plaintiff does not seek damages under this Count.

COUNT IV:

PETITION FOR ADMINISTRATIVE WRIT OF MANDATE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1094.5

88. Plaintiff incorporates by reference paragraphs 1 through 87 as though fully set forth in this Count.

89. Plaintiff seeks review of the final administrative determination sustaining his dismissal, including the Fire Commission's determination on Nicholson's Verified Complaint and the Hearing Officer's July 29, 2026, award denying Plaintiff's administrative appeal.

90. Plaintiff alleges that Defendants failed to afford him a fair hearing and prejudicially abused their discretion by failing to proceed as required by law and by refusing to consider material evidence bearing on whether termination was just and proper.

91. Plaintiff alleges that the Hearing Officer refused to consider Plaintiff's proffered Department Procedures Guide concerning progressive discipline. Plaintiff's counsel identified the Procedures Guide as containing progressive-discipline provisions relevant to the penalty imposed, and the Hearing Officer directed the parties to disregard the document.

92. Plaintiff alleges that the administrative determinations sustaining his dismissal were unsupported by the weight of the evidence, including the evidence concerning the relationship between Plaintiff's off-duty speech and the San Francisco Fire Department's operations. Because the termination of a nonprobationary public employee substantially affects a fundamental vested right in employment, this Court examines the administrative record and exercises its independent judgment to determine whether the weight of the evidence supports the findings on which the discipline is based. *Bautista v. County of Los Angeles*, 190 CAL. APP. 4TH 869 (2010); *Lozano v. City of Los Angeles*, 73 CAL. APP. 5TH 711 (2022); Cal. Code Civ. Proc. § 1094.5. In exercising that independent judgment, this Court affords a strong presumption of correctness to the administrative findings, and Plaintiff bears the burden of demonstrating that those findings are contrary to the weight of the evidence. *Fukuda v. City of Angels*, 20 CAL. 4TH 805 (1999). The Hearing Officer, however, expressly declined to decide Plaintiff's First Amendment defense, stating that whether Plaintiff's off-duty speech is constitutionally protected is an

issue for the courts to decide in the first instance rather than for the arbitrator. The ultimate question whether Plaintiff's speech is protected by the First Amendment, and the balancing of Plaintiff's interest as a citizen against the Department's interest as an employer, is a question of law subject to this Court's independent review. *Gray v. County of Tulare*, 32 CAL. APP. 4TH 1079 (1995); *Campbell v. State Personnel Bd.*, 57 CAL. APP. 4TH 281 (1997). This Court also reviews the constitutionality of the challenged administrative action de novo. *Bautista v. County of Los Angeles*, 190 CAL. APP. 4TH 869 (2010). Because the Hearing Officer did not adjudicate that constitutional question and no deference is owed to the administrative proceedings on an issue they did not decide, Plaintiff alleges that this Court should independently determine the First Amendment defense and should set aside the determination to the extent it rests on findings unsupported by the weight of the evidence or on legal error.

93. Plaintiff seeks a writ directing Defendants to set aside the challenged administrative determination and provide such further proceedings as the law requires.

COUNT V:

PETITION TO VACATE OR CORRECT ARBITRATION AWARD UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 1285 THROUGH 1288.8

94. Plaintiff incorporates by reference paragraphs 1 through 93 as though fully set forth in this Count.

95. Plaintiff independently petitions to vacate or correct the arbitration award dated July 29, 2026.

96. The Fire Commission Secretary served the signed award on Plaintiff, Plaintiff's counsel, and City counsel on August 4, 2026, with notice that the decision was final and binding.

97. The City has not petitioned to confirm the award. This Count is an independent petition to vacate or correct the award and not a response to a petition to confirm. Plaintiff requests an order denying confirmation of the award, if confirmation is requested.

98. Plaintiff brings this petition within 100 days after service of the signed award. Cal. Code Civ. Proc. § 1288.

99. Plaintiff seeks vacatur under California Code of Civil Procedure section 1286.2, subdivision (a)(5), because the Hearing Officer refused to hear evidence material to the controversy and Plaintiff's rights were substantially prejudiced thereby.

100. The Procedures Guide was material because its progressive-discipline provisions bore directly on whether dismissal, rather than lesser discipline, was just and proper.

101. The Hearing Officer's refusal to consider the Procedures Guide substantially prejudiced Plaintiff by preventing him from presenting material evidence relevant to the penalty determination, including whether the Department's own progressive-discipline provisions supported a lesser penalty than dismissal.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

A. For a declaration that Defendants violated Plaintiff's rights under the First Amendment to the United States Constitution and Article 1, section 2(a) of the California Constitution;

B. For declaratory and prospective equitable relief, including reinstatement to Plaintiff's former rank or a comparable position, and restoration of seniority, retirement and pension credits, benefits, leave accrual, and other employment rights;

C. For an order removing, expunging, correcting, or otherwise providing appropriate relief concerning adverse records resulting from the challenged discipline;

D. For a writ of administrative mandate under California Code of Civil Procedure section 1094.5;

E. For an order vacating or correcting the arbitration award dated July 29, 2026, under California Code of Civil Procedure sections 1285 through1288.6, and directing further proceedings as permitted by law;

F. For back pay, lost overtime, lost employment benefits, and other economic damages according to proof on Plaintiff's federal claim;

G. For compensatory and nominal damages in excess of $1,000,000, in an amount according to proof on Plaintiff's federal claim;

H. For punitive damages against Defendant Nicholson and any Doe Defendant sued in an individual capacity, to the extent permitted by law;

I. For reasonable attorney fees and costs as authorized by law;

J. For prejudgment and postjudgment interest as permitted by law; and

K. For such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

LAW OFFICES OF GREGORY G. YACOUBIAN

Date: October 30, 2026,

By: /s/ *Gregory G. Yacoubian*
GREGORY G. YACOUBIAN,
Attorney for Plaintiff and Petitioner,
DAVID MORRIS

Exhibit - 1

City Attorney Investigation
City Attorney Case/File No.: 2200154

Re: Video Taken of Instagram Video
Date of recording: Date Not Indicated

LT. DAVID B. MORRIS: Dude, I fucking hate that I'm even fucking recording this because it's fucking bullshit, and anybody that fucking knows me knows how I am and knows how I believe, and what I do, and knows the conviction that I have, and knows how hard I work, and what I want. [:23] And how most people in this fucking country are just, or this world, are just complete shadows, they're complete fucking pieces of shit. Dude, I'm, uh, and I hate being emotional like this because it's fucking ridiculous, but I can't even stop it. And filming this, filming this too. This is like so modern society nonsense, filming, but a lot of shit just doesn't…I don't know, nothing works. I don't even know what the fuck.

[:56] My last ditch effort to hope that this vaccine mandate was going to stop, was, uh, today. It didn't happen. I talked to one of my chiefs last night. Called me up, CD 3, fuck you [flips the bird]. Oh and CD 1 [flips the bird] and 2, all you fucking coward, fucking punk-ass bitches, unhealthy pieces of shit, don't hold a fucking candle to the fucking fireman that I am.

Uh, I got to go get this fucking vaccine because -- that doesn't, that doesn't stop me from getting it. It doesn't stop me from spreading it. For the public's safety. For the safety of the public. The public's safety is safer with me being as the fucking job that I'm fucking good at that comes to me naturally, that I will fucking save more lives doing the job than I won't, because of this fucking bullshit-ass vaccine. I cannot believe that I am fucking allowing this to happen.

[1:58] I'd rather take somebody's fucking soul right now than to allow this to fucking happen. I can't believe I'm fucking doing this. I can't fucking believe it. Anyways, whatever. This is maybe some bullshit-ass video that nobody ever sees but, and I don't even want anybody to see it because I'm fucking embarrassed because it's not the kind of guy I am.

It's 12:35. My appointment's at 12:35, I've already missed it, but I'm going to go in anyways. Fuck! Why the fuck am I doing this? I can still get it, I can still spread it, why the fuck am I putting this shit in myself? I'm the healthiest I've ever fucking been. [2:48 – flexes right arm] Fuck you all you fat fucks, you fucking worthless pieces of shit. All you fucking losers that are going to fucking get this shit because you don't even fucking give a fuck what you put in your body. I do! Why the fuck do I have to subject myself to this shit? [3:05] I would rather fucking take my hands [gestures grabbing motion with left hand]…never mind. Fuck, dude.

Fuck.

Hey, big up to everybody. A lot of fucking respect and love to those of you that fucking hold the line and fucking actually don't do this shit. I guess I'm just not. I've got to fucking, I've got to do the job I love, and I got to support my family. Dude, I fucking hate that I'm even fucking recording this because, uh, it's fucking bullshit. And….[3:43]

END OF DOCUMENT

Exhibit - 2

BINDING ARBITRATION OF ADMINISTRATIVE APPEALS

The parties agree that the following Administrative Appeal Rules ("Appeal Rules") shall apply for final disciplinary determinations by the Fire Commission on verified complaints filed by the Chief of the San Francisco Fire Department ("SFFD"). These Administrative Appeal Rules shall apply to any administrative appeal from any final Fire Commission decision issued after February 1, 2022, through one calendar year from the date the Fire Commission approves the Appeal Rules, unless the parties agree otherwise in writing. The Appeals Rules shall expire on the one year anniversary of the date the Fire Commission approves the Appeal Rules. The parties also agree that these Administrative Appeal Rules comply with the Firefighters Procedural Bill of Rights Act, Cal. Gov't Code § 3250, *et seq*.

1. **Accusation:** The Finding of Fact adopted by the Fire Commission shall serve as the Accusation as described in Government Code § 11500, *et seq*. The Fire Commission's transmittal letter notifying the member of the Commission's Findings of Fact shall include language specifying that a member has the right to an administrative appeal hearing by filing a Notice of Appeal. The letter shall also include a copy of the Findings of Fact and Government Code §§ 11507.5-11507.7.

2. **Notice of Appeal.** The Notice of Appeal serves as the Notice of Defense under Government Code § 11506. The Notice of Appeal must: (a) be in writing; (b) contain a statement specifying each basis for the appeal; (c) be signed by or on behalf of the member; and (d) provide the member's current mailing address. The member must file and serve the Notice of Appeal with the Commission Secretary and counsel for the SFFD no later than 30 calendar days after the Commission's service of the Findings of Fact on the member, or within 90 calendar days after these Administrative Appeal Rules are fully-executed, whichever date is later. The date of service of the Findings of Fact shall be the date appearing on the proof of service accompanying the Findings of Fact. If the 30th calendar day following the date of service falls on a Saturday, Sunday, or legal holiday, the deadline to file the Notice of Appeal shall be the next business day. Filing and service of the Notice of Appeal must be by personal delivery, electronic delivery, or by other means calculated to effect delivery on or before the 30th day. Failure to file a timely Notice of Appeal shall constitute a waiver of the member's right to an administrative appeal under the Firefighters Procedural Bill of Rights Act. This applies only to those persons who have received a Final Commission ruling after February 1, 2022 but prior to the approval date of these rules.

3. **No Stay of Fire Commission Determination**. The filing of a Notice of Appeal shall not stay or delay implementation of the Fire Commission's final decision.

4. **Binding Arbitration.** The parties agree to submit all administrative appeals to binding arbitration. The arbitrator shall act as the Hearing Officer and shall be selected from the following panel of arbitrators: Najeeb Khoury, Ronald Hoh, Robert Steinberg, Andrea Dooley, and Robert Hirsch. The parties shall select an arbitrator by alternately deleting names from the above list of arbitrators until only one (1) name remains. If that person cannot serve, or parties agree not to use that person's services, the parties shall start the selection over. The first party to delete a name shall be determined by lot.

5. Hearing Officer Authority: Pursuant to California Code of Civil Procedure, sections 1282-1284.3, the hearing shall be presided over by a single neutral arbitrator ("Hearing Officer"). The Hearing Officer shall have the authority to make independent findings of

fact and draw conclusions of law with respect to the Accusation, determine whether or not the admitted evidence supports the stated misconduct of the employee, and if the penalty imposed is just and proper.

6. **Communications; Service on Other Party and Commission**.

   a. Unless otherwise specified in these Administrative Appeal Rules, once the parties have agreed on a Hearing Officer, the parties shall submit all written communications, briefs, and other filings to the Hearing Officer directly and concurrently serve the opposing party and Commission Secretary a copy of any and all communications, briefs, or other filings. Service shall be made by U.S. Mail, personal delivery, or other means agreed to by the parties. The parties shall provide a courtesy hard copy of all briefs and other filings to the Commission Secretary for the Commission file.

   b. The parties and their representatives shall not have any *ex parte* communications with the Hearing Officer. The Hearing Officer shall not have any *ex parte* communications with members of the Commission or SFFD regarding the matter or issues on appeal.

7. **Discovery.** The provisions of Government Code section 11507.6 shall provide the exclusive right to discovery.

8. **Transmission of Record on Appeal**. Within sixty (60) calendar days of the selection of a Hearing Officer, the Commission Secretary shall submit the Notice of Appeal and the following materials to the Hearing Officer by personal delivery or other means calculated to effect delivery within the sixty (60) day period, with copies to the parties by the same means:

   i. Decision letter from the Commission;

   ii. The Commission's Findings of Fact; and

   iii. Record of the Fire Commission proceedings, including the charging documents, the reporter's transcript, and all exhibits.

9. **Notice of Hearing.** The Commission Secretary shall confer with the parties and the Hearing Officer to determine available hearing dates. The Commission Secretary shall email a notice of hearing to all parties at least 10 days prior to the hearing date provided by the Hearing Officer. A party may seek to continue the hearing date for good cause. A party seeking such a continuance must submit a written request to the Hearing Officer as soon as reasonably possible after learning of the circumstances warranting a continuance. A written request to continue the hearing must set forth: (a) the circumstances demonstrating good cause with specificity; (b) the party's efforts to consult with all other parties on alternative dates for the hearing; and (c) propose three dates when all parties will be available, with the objective of setting the hearing for a date as soon as reasonably possible. Any party opposing a continuance may file a written response by the close of business three calendar days after the service of the request for a continuance, stating any objection to the request. The Hearing Officer shall decide whether the matter should be continued, and if so, set a new date for the hearing when the parties and representatives are available.

10. **Conduct of Appeal.** The Hearing Officer shall conduct the administrative appeal in accordance with the provisions of Government Code §§ 11500, *et seq*. All hearings shall

be conducted in-person. Should a party to the hearing object to an in-person hearing, the objecting party shall file and serve a motion, no later than thirty (30) calendar days prior to commencement of the hearing, demonstrating good cause, as to the reasons supporting why the hearing should be conducted remotely.

a. "Good cause" means a substantial and compelling reason demonstrating a need for the hearing to be conducted remotely. Good cause shall be evaluated using the following factors and relevant issues and events beyond the party's control, considering the length of delay, the diligence of the party making the request, and any potential prejudice to the other party. Such factors include: The in-person unavailability of a party, a party's attorney, a party's representative, or essential witness because of illness, medical condition (i.e., disability), or other excusable circumstances such as an essential witness having moved out of the area in which unreasonable cost may be incurred by such witness for hearing participation. The granting or denial of such excusable circumstances are solely in the discretion of the Hearing Officer.

11. **Closed/Open Hearing.** The administrative appeal hearing shall be conducted in closed (non-public) session unless the member requests open (public) session, in which case the administrative appeal hearing shall be open. If the member requests open session, the Hearing Officer shall close portions of the hearing to the extent necessary to protect the privacy interests of third parties, e.g., medical information, or to comply with other laws making some of the material in the record confidential.

12. **Representatives.** Each party may have a representative of the party's choice at the administrative appeal hearing.

13. **Court Reporter**. The Commission shall provide a court reporter to record and prepare a stenographic transcript of the administrative appeal hearing. The Commission shall order the transcripts and provide a complete copy to both parties and to the Hearing Officer if requested.

14. **Decision by the Hearing Officer.** The Hearing Officer shall decide the administrative appeal on the Record on Appeal, arguments and evidence of the parties introduced into evidence at the administrative appeal hearing, and any briefs requested by the Hearing Officer. Not later than sixty (60) calendar days after the administrative appeal hearing, the Hearing Officer shall prepare and issue a written decision that finally determines the issues identified in the Notice of Appeal. The Hearing Officer shall submit the decision to the Commission Secretary, who shall serve the decision on the parties along with written notification that the decision is final, and binding upon the parties. (California Gov. Code § 3254.5(b).)

15. **Public Meeting Laws.** The administrative appeal hearing is not subject to public meeting requirements under the Ralph M. Brown Act, Government Code section 54950 *et seq*., or the San Francisco Sunshine Ordinance, Administrative Code Chapter 67.

Exhibit - 3

In the Matter of Appeal from Termination by DAVID MORRIS, Appellant,	)	
And :	)	Case No. 2022-03
FIRE COMMISSION, CITY AND COUNTY OF SAN FRANCISCO, Respondent	)	

INTRODUCTION

From a panel of neutral arbitrators, negotiated between San Francisco (City, County and Department) and IAFF Local 780, the undersigned was selected to identify the issues presented for arbitral resolution and render a final and binding award with respect thereto.[1] While the issues were not stipulated to, there is no doubt that the arbitrator's charged with determining whether there was just cause for Appellant's termination, and if not, what discipline, if any, is appropriate.

Evidentiary hearings were conducted on May 20 and 21, and October 20 and 21, 2025. Appellant was represented throughout by Gregory Yacoubian, Esq., while Respondent was represented by Deputy City Attorney Carlos Almendarez. Both parties had full opportunity to examine and cross-examine witnesses, introduce documentary evidence, and to argue their respective positions. The

[1] See Government Code 11500, et Seq.

evidence record was perfected with the timely filing of post-hearing briefs on or before January 23, 2026.[2]

SUMMARY OF FACTS

Termination, effective August 29, 2022, arose from Appellant's behavior on October 13, 2021, first outside the COVID-19 testing site while Appellant was sitting in the cab of his truck, and then approximately four hours later when he repeated his verbal attack of the Department on his social media platform, and was ultimately heard by non-Department entities such as TikTok, and was critiqued by public citizens and a Washington State newspaper. One other fire department's chief, recognized it was the Department being singled out, and three of Respondent's firefighters to Station 7 came forward and voiced their lack of trust in Appellant.

This led to the filing of an "unusual occurrence" report which in turn prompted a Department investigation conducted by Deputy City Attorney Manitisouian, whose report was relied upon by Chief Jeanine Nicholson in concluding Appellant had caused irreparable damage to the Department by the nature of his remarks, bordering on insubordinate, and that he could no longer be trusted to lead fire fighters.[3]

---

[2] While it was anticipated that an award in arbitration would issue sixty days from the filing of post-hearing brief, that period was graciously extended by the parties due to the arbitrator's incapacity.

[3] I do not read Appellant's remarks' to be threatening as well.

What Appellant stated on October 13, 2021, is not in dispute. While Appellant did not recite the names of the three Department ranking officers, his referring to them as "CD 1, CD 2, and CD 3", was understood by those who heard it and referring to the three highest chiefs in the Department. Appellant's verbal statement included profane and abusive language particularly: "CD 3, fuck you, and CD 1 and CD 2, all you fucking cowards, fucking punk ass worthless pieces of shit. None of you can hold a fucking candle to the fucking fireman that I am." "I'd rather take somebody's fucking soul right now than to allow this to happen . . . ." "A lot of fucking respect and love to those of you that fucking hold the line and fucking actually don't do this shit." In determining discharge to be warranted, the Department relied on the following rules and regulations:

> MOU Article 35: The Union agrees that its members shall be subject to all Civil Service and Fire Department Rules and Regulations, and for all general orders of the Fire Department, including those relating to conduct and work performance.
>
> SFFD R&R, Section 2805: "(Officers)" shall develop those qualifies of leadership which command the respect and confidence of subordinates and shall be exemplary in conduct, personnel appearance and manner of speech.
>
> SFFD R&R, Section 2814: "(Officers)" Shall refrain from using profane or abusive language nor shall they allow subordinates to indulge in this practice.
>
> SFFD R&R, Section 3924: "Members shall not whether on or off duty, commit an act or omission that tends to impede, injure, hinder or subvert the progress, welfare, order, efficiency, or good name of the Department, or otherwise tends to bring reproach or discredit on the Department or any member."

SFFD R&R, Section 3926: "Members shall respect the authority of their superior officers. Any member who resists a superior officer's authority and whose conduct is unruly or rebellious is insubordinate."

SFFD R&R, Section 4002: "Certain rules apply to members' conduct while off-duty. A member may be subject to discipline for off-duty conduct that violates the Rules . . . (the) department will carefully evaluate the off-duty conduct to determine whether a nexus between that conduct and the workplace. A nexus may exist where the off-duty conduct tends to (1) Harm their reputation, prestige or integrity of the department, or damage the public confidence and trust in the department, (2) Adversely affect the department's ability to fulfill its mission, (3) Adversely impact the member's ability to perform his or her job, including damaging the member's credibility, (4) Lead other employes to refuse to work with the member or, (5) Create disruption, friction or moral problems in the workplace."

General Order 19 A-88, Issue November 27, 2019: "All members should have familiarized themselves with the contents of this Policy. Chief and Company officer shall ensure that all members under their supervision review and comply with the provisions of the policy.

"The mission of the SFFD is to protect the lives and property of the people of San Francisco from fires (ITC). These duties are best accomplished when all members conduct themselves in a professional, law-abiding respectful and courteous manner . . . the department is committed to maintaining legitimacy within the community and safeguarding the public's trust . . . (members) must be mindful of that activities or statements made on social media sites are done so in an unlined domain where confidentiality cannot be assured . . . Any statement, photographs, video clips or information sent over the Internet may still be viewed and disseminated by third parties, even after the content has been edited or deleted by the user. (Members) will maintain personal social media accounts must understand their social media posits have the potential to discredit the department, negatively impact the department's operations, and hinder the efficiency of public service. When assessing what activities may violate this . . . Policy, the department will continue to hold members accountable to the conduct standards described in the department's rules, regulations in general, orders and the city's personnel policies prohibiting harassment, discrimination and

retaliation. This policy is not intended to impede activity by members that are protected by the First Amendment."

SUMMARY OF PARTY POSITIONS

The Department argued that given the fact the Department Chiefs 1, 2 and 3 were the known leaders of SFFD, whose judgment was questioned in public and subordinates urged to rebel against their authority, with the content expressed in a very profane manner, the outburst caused the Department to lose the support and confidence of the community. In addition, where firefighters lost faith in his leadership,there was no way in which Appellant could continue with the Department.

Appellant argues that he is protected under the First Amendment, that the Department was not injured by Appellant's one-day emotional outburst, and that in any event there could be no justification for terminating a 17-year employee of the Department with a pristine work record, and whose employment was protected by the Firefighters Procedural Bill or Rights (Government Code 3250 et. seq.) guaranteeing progressive discipline.

The parties disagree as to whether free-speech protection sanitizes the contents of Appellant's speech with Appellant arguing it was protected off-duty commentary of an issue that was of public concern. The Department argues that it is solely for the courts to determine whether or not Appellant's speech is entitled to

First Amendment protection, and that the issue before the arbitrator is limited to whether or not there is just or sufficient cause to discipline Appellant as it did. The Department argued that in any event his misconduct was so severe it was irrelevant that it occurred "off-duty." It emphasized there was sufficient nexus to the workplace which allowed the Department to curtail and remediate.

DISCUSSION

Notwithstanding the fact that there was ample argument as to whether or not Appellant's behavior was entitled to free-speech protection, that is an issue for the courts to decide in the first instance, rather than the arbitrator, whose opinion would be gratuitous and would not necessarily be binding on the courts. The rules governing appeals are clear that the issues being presented to the arbitrator address the appropriateness of the disciplinary decision of the Department, and whether such determination is just and proper.

In reviewing the investigative file herein, Chief Nicholson's analysis of the damage found is sound, it survived the "*Skelly*" due process "hearing" and Fire Commission review, and where none of the five independent fire commissioners believed the degree of discipline to be inappropriate. Appellant acted with malice and vulgarity and rather than just commenting upon the validity of COVID-19 vaccinations, within or without the Department, Appellant went out of the way to reference Chiefs 1, 2 and 3, the three highest Department officials, where Appellant

argued his superiority as a firefighter while demeaning the wisdom and experience of the Department Chiefs.

Not only was Appellant guilty of airing out his personal grievance in public, he doubled down on his rebuke of the Department leadership when allowing his remarks to be promulgated on social media without any attempt at concealing the Department, or mitigating the circumstances of his personal grievance therewith.[4]

Even if the Department relied on its belief that there was an underlying threat of violence throughout the thread of Appellant's rant, and that the Department had theretofore been errant as to fighting or threats thereof, where firefighters were suspended not discharged, there is nothing to compare this case to any prior case cited by either party. This is a case of sui generous, and speaks for itself. This is not just two firefighters involved, but an officer of the Department who was charged with the duty of engendering respect for the Department and its command staff, while protecting the welfare of the Department within the community it serves. Appellant's outburst was widely understood to pertain to the SFFD. It bordered on insubordination and cost Appellant the respect of at least three members of his crew at Station 7.[5]

---

[4] Appellant failed to use the period between the time of the making of the video and the time he was put on notice he was under investigation to cool down. In fact, Appellant never apologized for his behavior.

[5] That one of the witnesses at hearing claimed not to have told Investigator Manitisouian of his concern about Appellant's emotional stability, does not impress as being credible. There is no allegation, express or tacit, that Manitisouian was biased in compiling his investigatory record.

There is no question that Appellant was responsible for the ultimate use or misuse of his social media account. He and all Department staff were appropriately warned about there being unintended consequences as to the use of social media at least to the extent that its contents included a disclaimer.[6] Given the nature of the attack upon the Chiefs, wherein their leadership of the Department was disparaged, it is for the purpose of this discussion irrelevant that the speech occurred during off-duty hours. Clearly a nexus is drawn between Appellant's work and the speech which Appellant claimed should be protected, but which the Department argues it is not..

In weighing the severity of discipline herein, termination, it need be remembered Appellant was in a leadership capacity, and was a lieutenant responsible for enforcing the several rules he was found to have violated. Minimal discipline alone, as argued by the Department, is understandably insufficient as it is the continuing inter-relationship which has suffered inseparable harm, where Appellant lost the respect of both superiors and subordinates, and was, at minimum, questioned by another nearby suppression service as well as the public. Appellant's misconduct did not contain merely a spur-of-the-moment venting, but rather a deliberate, mean-spirited attack on the Department and its command staff.

[6] I do not find credible Appellant's after-the fact representation that he attempted to shut down his social media account within 24 hours of June 13, 2021.

As such, the breach was properly considered irrevocable.[7] Contrary to Appellant's assertion, damage did not have to be immediate, just likely to erode the work of the Department and the public's faith in it.

AWARD

Having fully reviewed the evidence record, upon due deliberation and for the reasons set forth above, the undersigned arbitrator finds and concludes the Department had just cause to terminate Appellant for his misbehavior of October 13, 2021. The damage he caused was palpable, severe and not otherwise curable. Accordingly, the instant appeal is denied.

Dated this 29th day of July, 2026.

Respectfully,

R. D. Steinberg

Robert D. Steinberg
Arbitrator

[7] Perhaps if Appellant came forward in timely fashion, his insubordinate behavior may have been excused, but Appellant, throughout, did nothing but offer an excuse for his failure to come forward after the day of the event where Appellant failed to take responsibility for his transgression, rather relying upon his belief in a constitutional victory.

Exhibit - 4

Outlook

RE: Morris Admin Appeal Decision

From Aguas-Aclan, Kathy (FIR) <kathy.aguas-aclan@sfgov.org>
Date Tue 8/4/2026 12:29 PM
To greg gregyacoubianlaw.com <greg@gregyacoubianlaw.com>; ALMENDAREZ, CARLOS (CAT) <Carlos.Almendarez@sfcityatty.org>
Cc krystle gregyacoubianlaw.com <krystle@gregyacoubianlaw.com>; David Morris <dmojmodmo@yahoo.com>

1 attachment (8 MB)
SFFD-Morris_Arbitrator Report.pdf;

To all parties:

Attached is the final decision of Arbitrator Robert D. Steinberg in the case of David Morris v. Fire Commission, City and County of San Francisco, Case No. 2022-03. The decision is final and binding upon the parties pursuant to California Gov. Code § 3254.5(b).

Regards,

Kathy Aguas-Aclan (she/her/hers)
Executive Assistant to the Fire Commission
San Francisco Fire Department
698 Second Street
San Francisco, CA 94107
Phone: 415-558-3451
Cell: 628-336-0426

From: greg gregyacoubianlaw.com <greg@gregyacoubianlaw.com>
Sent: Monday, August 3, 2026 2:03 PM
To: Aguas-Aclan, Kathy (FIR) <kathy.aguas-aclan@sfgov.org>; ALMENDAREZ, CARLOS (CAT) <Carlos.Almendarez@sfcityatty.org>
Cc: krystle gregyacoubianlaw.com <krystle@gregyacoubianlaw.com>; David Morris <dmojmodmo@yahoo.com>
Subject: Re: Morris Admin Appeal Decision

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Good Afternoon, Ms. Aguas-Aclan,

I trust all is well!

Is there any word on the status of Mr. Steinberg's Decision?

Respectfully,

Gregory G. Yacoubian, Esq.
Law Offices of Gregory G. Yacoubian
2625 Townsgate Road, Suite 330
Westlake Village, California 91361
805-267-1260

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From: greg gregyacoubianlaw.com <greg@gregyacoubianlaw.com>
Sent: Wednesday, July 29, 2026 1:15 PM
To: Aguas-Aclan, Kathy (FIR) <kathy.aguas-aclan@sfgov.org>; carlos.almendarez@sfcityatty.org <carlos.almendarez@sfcityatty.org>
Cc: krystle gregyacoubianlaw.com <krystle@gregyacoubianlaw.com>; David Morris <dmojmodmo@yahoo.com>
Subject: Morris Admin Appeal Decision

Dear Ms. Aguas-Aclan,

I trust all is well!

Is there any word on the status of the Decision?

Respectfully,
Gregory G. Yacoubian, Esq.
Law Offices of Gregory G. Yacoubian
2625 Townsgate Road, Suite 330
Westlake Village, California 91361
805-267-1260

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Exhibit - 5

FIRE COMMISSION

City and County of San Francisco

London N. Breed, Mayor

Katherine Feinstein, *President*
Stephen A. Nakajo, *Vice President*
Armie Morgan, *Commissioner*
Marcy Fraser, *Commissioner*



698 Second Street
San Francisco, CA 94107
Telephone 415.558.3451

Maureen Conefrey, *Secretary*

CONFIDENTIAL PERSONNEL DOCUMENT

June 27, 2022

VIA EMAIL AND U.S. MAIL (*jennifer.stoughton@sfcityatty.org; David@grtlaw.com; dmojmodmo@yahoo.com)*

David J. Garcia, Esq.
Labor & Employment Division
Goyette, Ruano & Thompson
1016 13th Street
Modesto, CA 95354

David Morris
215 Maili Court
Windsor, CA 95492

Jennifer Stoughton, Deputy City Attorney
Office of the City Attorney, Labor Team
Counsel to the Fire Department
Fox Plaza, 7th Floor
1390 Market Street
San Francisco, CA 94102

Re: Fire Commission Case No. 2022-03
Notice of Fire Commission Decision on Verified Complaint
Recommending Termination

Dear Parties:

This letter confirms that at a special meeting of the Fire Commission on June 24, 2022, the Commission deliberated and reached a decision on the Verified Complaint filed by the Chief of Department recommending termination of Lt. David Morris.

By a unanimous vote, the Commission found that the Chief of the Department proved by a preponderance of the evidence that Lt. Morris violated the rules charged in the verified complaint: Section 2805 – Leadership; Section 2814 – Profane and Abusive Language; Section 3923 – Acts Detrimental to the Welfare of the Department; Section 3925 – Insubordination; Section 4002 – Off Duty Conduct; General Order 19 A-88 – Social Media Policy. The Commission upheld

the Chief's recommendation of termination for these rule violations. (Ayes: Feinstein, Nakajo, Morgan, Fraser.)

This is the Commission's final determination in this matter, subject to Lt. Morris's right to an administrative appeal under Section 3254(b) of the California Government Code. The Commission will issue findings of fact consistent with this determination. The termination will be effective at 5:00 p.m. on June 27, 2022. The Commission will provide further information concerning the administrative appeal in future correspondence.

Very truly yours,
FIRE COMMISSION

Maureen Conefrey
Commission Secretary

cc: Jeanine Nicholson, Chief of Department, San Francisco Fire Department
Brad Russi, Deputy City Attorney – Government Team, Counsel to the Fire Commission
Fire Commissioners

Exhibit - 6

JEANINE R. NICHOLSON
CHIEF OF DEPARTMENT

LONDON N. BREED
MAYOR

SAN FRANCISCO FIRE DEPARTMENT
CITY AND COUNTY OF SAN FRANCISCO

April 8, 2022

SENT VIA EMAIL AND HAND DELIVERY

Honorable President and Members of the Fire Commission
698 Second Street
San Francisco, CA 94107

Dear Commissioners,

The Office of the City Attorney completed an investigation on behalf of the Department and submitted the Report of Investigation on December 20, 2021. The investigation was regarding Lieutenant David Morris' acts related to multiple social media posts, including a video he posted on social media about the COVID-19 vaccination mandate, as well as complaints by other Department employees of his threatening or harassing behavior.

After reviewing the findings and exhibits in the investigative report, I determined that Lieutenant Morris violated the Department's Social Media Policy, among other Rules and Regulations, and committed threats of violence and harassment against Department employees. I sent Lieutenant Morris the Department's Charging Letter dated January 5, 2022 identifying the rule violations, recommending termination and offering him an Administrative Meeting.

I conducted the Administrative Meeting on February 11, 2022. After listening to Lieutenant Morris' responses to the charges, I am upholding my termination recommendation based on the confirmed rule violations below.

Section 2805 – Leadership: They shall develop those qualities of leadership which command the respect and confidence of subordinates and shall be exemplary in conduct, personal appearance, and manner of speech.

Section 2814 – Profane and Abusive Language: They shall refrain from using profane or abusive language nor shall they allow subordinates to indulge in this practice.

Section 3923 – Acts Detrimental to the Welfare of the Department: Members shall not at any time commit an act or omission that tends to impede, injure, hinder or subvert the progress, welfare, order, efficiency, or good name of the Department, or otherwise tends to bring reproach or discredit on the Department or any member. The commission of any act involving moral turpitude, dishonesty, corruption or criminal conduct by a member of the Department, whether on or off duty, shall constitute a violation of Department Rules. The Chief of Department and Fire Commission may take action on a member's conduct that violates these Rules, even if criminal proceedings are not pursued or are pending.

Section 3925 – Insubordination: Members shall respect the authority of their superior officers. Any member who resists a superior officer's authority or whose conduct is unruly or rebellious is insubordinate.

Section 4002 – Off Duty Conduct: Certain Rules apply to a member's conduct while off-duty. A member may be subject to discipline for off-duty conduct that violates the Rules. In assessing off-duty conduct to determine whether discipline is warranted, the Department will carefully evaluate the off-duty conduct to determine whether a nexus exists between that conduct and the workplace. A nexus may exist where the off-duty conduct tends to (1) harm the reputation, prestige or integrity of the Department, or damage the public confidence and trust in the Department, (2) adversely affect the Department's ability to fulfill its mission, (3) adversely impact the member's ability to perform his or her job, including damaging the member's credibility, (4) lead other employees to refuse to work with the member, or (5) create disruption, friction or morale problems in the workplace.

General Order 19 A-88 – Social Media Policy

In compliance with Section 4006 of the Rules and Regulations and San Francisco Charter Appendix A8-343, I herewith file this formal charge against Lieutenant David Morris.

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

Sincerely,

Jeanine R. Nicholson
Chief of Department

cc: Lieutenant David Morris (via USPS)