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6 CHAD ALLISON and JASON HEWITT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO - CENTRAL DIVISION

10 JOHN GHIOTTO, CHAD ALLISON,
11 JASON HEWITT, and ALEXANDER
12 KANE,

12 Plaintiffs,

13 v.

14 CITY OF SAN DIEGO; CITY OF SAN
15 DIEGO FIRE-RESCUE DEPARTMENT,
16 and DOES 1 to 50, inclusive,

16 Defendants.

CASE NO. 37-2007-00073878-CU-CR-CTL

**THIRD AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF AND DAMAGES**

1. **SEXUAL HARASSMENT**
2. **FAILURE TO PREVENT HARASSMENT**
3. **RETALIATION**
4. **VIOLATION OF FREEDOM OF SPEECH**

21
22 Plaintiffs allege as follows:

23 **PARTIES AND VENUE**

24 1. Plaintiff John L. Ghiotto is an individual over the age of 18 who is, and at all times
25 relevant to this lawsuit was, a resident of the County of San Diego and a captain with the San
26 Diego Fire-Rescue Department. He has served in the San Diego Fire-Rescue Department for 19
27 years. He has received 7 letters of thanks and appreciation, 2 memoranda of commendation, 8
28 certificates of appreciation, an exemplary performance memo, and a life saving citation.

5/1/08
(52)

1 2. Plaintiff Chad S. Allison is an individual over the age of 18 who is, and at all times
2 relevant to this lawsuit was, a resident of the County of San Diego and a firefighter with the San
3 Diego Fire-Rescue Department. He began working as a firefighter in 2000, and has twice been
4 awarded the Steven F. Holladay Memorial Award for “outstanding commitment to the San Diego
5 Fire-Rescue Department and extraordinary dedication to community service” (2003 and 2005).
6 In December 2005, he received a lifesaving medal for “saving a life by direct action performed
7 under conditions requiring bravery or exposure to danger or by performance above and beyond the
8 normal call of duty.” He was named “Employee of the Quarter” for the second quarter of 2007.

9 3. Plaintiff Jason Hewitt is an individual over the age of 18 who is, and at all times
10 relevant to this lawsuit was, a resident of the County of San Diego and an engineer with the San
11 Diego Fire-Rescue Department. He has been a firefighter for 11 years, a paramedic for 10 and an
12 engineer for 4. He was chosen to serve as an instructor/driver/mentor for six Fire Academies and
13 received several letters of recognition from the San Diego Fire-Rescue Department for his
14 participation and contribution. He was recently selected to be an Assistant Fire Academy
15 Coordinator.

16 4. Plaintiff Alexander Kane is an individual over the age of 18 who is, and at all times
17 relevant to this lawsuit was, a resident of the County of San Diego and a firefighter/ paramedic
18 with the San Diego Fire-Rescue Department. He has worked at Fire Station 5 in Hillcrest for over
19 two and one-half years, and has received a life saving citation.

20 5. Defendant City of San Diego (“the City”) is, and at all times, relevant to this lawsuit
21 was, a municipality organized under the laws of the State of California and located in the County
22 of San Diego.

23 6. Defendant San Diego Fire-Rescue Department (“SDFD”) is, and at all times relevant
24 to this lawsuit was, a fire department organized under the laws of the State of California and a
25 department of the City of San Diego, located in the County of San Diego.

26 7. Plaintiffs do not know the names or capacities of those defendants sued herein as
27 Does 1 through 50 and for that reason have sued such defendants by fictitious names. Plaintiffs
28 are informed and believe and thereon allege that each of the Doe defendants is in some manner

1 responsible for the events and happenings set forth herein and proximately caused injury and
2 damages to plaintiffs as alleged herein. Plaintiffs will seek leave of this Court to amend this
3 complaint to reflect the true names and capacities of Does 1 through 50 as soon as they are
4 ascertained.

5 8. Plaintiffs are informed and believe and thereon allege that, at all times mentioned
6 herein, each of the defendants was the agent and employee of the other defendants, acting within
7 the scope of that agency and employment and with the full knowledge, consent, and approval of
8 the other defendants. The conduct of each of the defendants was fully ratified by the other
9 defendants and was performed at the express or implied direction of the other defendants.

10 9. Venue is proper in this judicial district under Code of Civil Procedure section 394
11 because the City and the SDFD are located in this district.

12 **FACTS COMMON TO ALL CAUSES OF ACTION**

13 10. Plaintiffs are informed and believe and thereon allege that the San Diego Gay Pride
14 Parade and Festival is an annual event sponsored by a private community organization known as
15 San Diego Lesbian Gay Bisexual Transgender (“LGBT”) Pride.

16 11. Plaintiffs are informed and believe and thereon allege that the City officially
17 sanctions the annual San Diego Gay Pride Parade and Festival. Plaintiffs are further informed and
18 believe and thereon allege that the Mayor, City Council Members, the City Attorney, the Police
19 Chief, and the Fire Chief regularly ride or march in the Gay Pride Parade.

20 12. Plaintiffs are informed and believe and thereon allege that it is the policy of the
21 SDFD to participate in the Gay Pride Parade by, among other things, having on-duty personnel
22 operate and ride on front-line fire engines in the Parade. Plaintiffs are further informed and believe
23 and thereon allege that the front-line apparatus is taken out of service for the purpose of
24 participating in the Parade.

25 13. Plaintiffs are informed and believe and thereon allege that the Gay Pride Parade is
26 promoted and marketed as a “display of diversity, acceptance and celebration,” with thousands of
27 “enthusiastically cheering spectators.” A memorandum from the Fire Chief to all personnel
28 encouraging them to participate in the 2007 Gay Pride Parade describes it as a “fun event.”

1 14. Plaintiffs are informed and believe and thereon allege that a licentious and prurient
2 atmosphere regularly permeates the Gay Pride Parade. Some participants engage in debauched
3 behavior, including for example a group of radical homosexual men who mock the chastity of
4 Catholic nuns by dressing in religious habits and wearing bizarre make-up. Some spectators also
5 wear sexually suggestive clothing, expose themselves, engage in lewd displays of sexualized
6 conduct and simulated sex acts, use profanity, and yell vulgar and obscene catcalls. In this way,
7 the Gay Pride Parade is unlike any other parade sanctioned by the City or in which City officials
8 and employees participate.

9 15. Plaintiffs are informed and believe and thereon allege that the firefighters assigned
10 to represent the SDFD in the Gay Pride Parade over the years were regularly harassed, subjected
11 to sexually explicit taunts and propositions, and made the targets of lewd and obscene gestures
12 throughout the three-hour duration of each Parade.

13 16. Plaintiffs are informed and believe and thereon allege that because of the sexual
14 harassment regularly directed at firefighters who participated in the Gay Pride Parade, few if any
15 firefighters were willing to take part on a voluntary basis. Each year the SDFD struggled to find
16 a crew to ride in the parade and regularly resorted to ordering a crew to do so.

17 17. Plaintiffs are informed and believe and thereon allege that the firefighters who were
18 ordered to participate in the Gay Pride Parade regularly did so only to avoid disciplinary action.
19 Plaintiffs are further informed and thereon allege that firefighters informally complained to their
20 own captains about the harassment to which they were subjected, but rarely filed formal complaints
21 because they feared a retaliatory effect on their careers.

22 18. Plaintiffs are informed and believe and thereon allege that individual firefighters
23 would often take off the day of the Gay Pride Parade in order to avoid being subjected to the
24 sexual harassment which regularly took place there.

25 19. Plaintiffs are informed and believe and thereon allege that for several years
26 immediately prior to 2007, a crew from Fire Station 8, located in Mission Hills, was required by
27 the SDFD to participate in the Gay Pride Parade.

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1 20. Plaintiffs are informed and believe and thereon allege that for several weeks
2 following the 2005 and 2006 Gay Pride Parades, Fire Station 8 received offensive, sexually explicit
3 brochures of a homoerotic nature.

4 21. In an August 24, 2006 SDFD Inter-Department Communication, Lynda Lynch,
5 captain of the Engine 8 crew, notified her supervisor, Battalion Chief Robert Zepeda, about “cat
6 calls” directed at her crew by Gay Pride Parade spectators and about the “harassing, sexually
7 explicit” materials. She explained that she believed that the materials were being sent to Fire
8 Station 8 because of that crew’s participation in the Gay Pride Parade. Captain Lynch also stated
9 that the crew of Engine 8 had been required to participate in the Parade because the crew of Engine
10 5, located in the Hillcrest neighborhood where the Parade takes place, had successfully refused to
11 participate. Finally, Captain Lynch suggested that the SDFD use off-duty personnel and a vehicle
12 from the Fire House Museum or Training Department in the Parade in order to prevent any one
13 crew from being targeted with unwanted attention or brochures at their workplace.

14 22. Plaintiffs are informed and believe and thereon allege that the members of Captain
15 Lynch’s crew read and approved her August 24, 2006 memo, but did not want to put their names
16 on it because of fear of possible retaliation.

17 23. Plaintiffs are informed and believe and thereon allege that Battalion Chief Zepeda
18 brought Captain Lynch’s memo regarding the Gay Pride Parade to the attention of the other
19 battalion chiefs and Assistant Chief Jeff Carle. Battalion Chief Zepeda subsequently told Captain
20 Lynch just to throw the pornographic material away. Plaintiffs are further informed and believe
21 and thereon allege that Captain Lynch received no other response to her August 24, 2006 memo
22 and that the SDFD took no action to address her concerns or her suggestion regarding volunteer
23 participation in the Gay Pride Parades.

24 24. The most recent Gay Pride Parade took place on July 21, 2007 in the Hillcrest
25 neighborhood of the City of San Diego.

26 25. Plaintiffs are informed and believe and thereon allege that a lesbian captain of
27 Engine 25 wanted to participate in the 2007 Gay Pride Parade and that at her request her crew
28 volunteered to take part in it. The regular engineer of that crew was taking that day off, however,

1 and when the substitute engineer heard several days in advance that the Engine 25 crew was to take
2 part in the Parade, he refused. Plaintiffs are further informed and believe and thereon allege that
3 the battalion chief at that fire station declined to order the substitute engineer or the rest of the crew
4 to participate, so the captain took the day off to walk in the Parade on her own time.

5 26. Plaintiffs are informed and believe and thereon allege that Captain Lynch of Engine
6 8 took the day off rather than be compelled to ride in the Gay Pride Parade again, and that the
7 substitute captain and the rest of the Engine 8 crew refused to participate again.

8 27. Plaintiffs were all scheduled to work at Fire Station 5 in Hillcrest on July 21, 2007.
9 Plaintiff Ghiotto is captain of one of the Engine 5 crews. Plaintiff Kane, a firefighter, is a regular
10 member of Captain Ghiotto's crew. Plaintiffs Ghiotto and Kane were working a regularly
11 scheduled shift. Plaintiff Allison, a firefighter (usually assigned to Engine 17), and Plaintiff
12 Hewitt, an engineer (usually assigned to the Training Facility), were working over-time shifts.

13 28. On July 20, 2007, the on-duty captain at Fire Station 5 called Captain Ghiotto at his
14 home to inform him that he and his crew would be required by the SDFD to participate in the Gay
15 Pride Parade the following day.

16 29. Captain Ghiotto then called Battalion Chief Pollard at Fire Station 5 to inquire
17 whether it was true that he and his crew had been assigned to participate in the Gay Pride Parade.
18 Battalion Chief Pollard indicated that participation in the Gay Pride Parade had been discussed at
19 the battalion chiefs' meeting that morning. Captain Ghiotto told Battalion Chief Pollard that he
20 would not participate, and would not make his crew participate, unless given a direct order to do
21 so. Captain Ghiotto suggested that volunteers staff the Parade. Battalion Chief Pollard stated that
22 if a direct order for Captain Ghiotto's crew to participate were given, he would pass it on to
23 Captain Ghiotto.

24 30. Captain Ghiotto then attempted to contact his regular crew members to let them
25 know that they might be expected to participate in the Gay Pride Parade the following day.
26 Captain Ghiotto spoke with one firefighter who said that he did not want to participate and ended
27 up taking the day off. Captain Ghiotto was not able to reach Firefighter Kane, and the regular
28 engineer already had the day off.

1 31. Meanwhile, also on July 20, 2007, Engineer Hewitt encountered Battalion Chief
2 Tony Pollard at the San Diego Fire Training facility and mentioned that he would be working at
3 Fire Station 5 the next day.

4 32. Battalion Chief Pollard told him to be prepared because the crew of Engine 5 was
5 going to ride in the Gay Pride Parade. Battalion Chief Pollard went on to say that every year the
6 department had difficulty finding personnel to drive an apparatus in the Gay Pride Parade and he
7 was sick and tired of being the one who has to make it work. He said that the Parade was in
8 Engine 5's district and so Engine 5 was going to participate. He also said that he had not yet been
9 told to issue a direct order, but if so, he would give it. Battalion Chief Pollard told Engineer
10 Hewitt that if he refused the direct order, he would be sent home for the remainder of the shift.
11 He went on to say that if the entire crew refused, he would shut down Engine 5 and go to Fire
12 Station 8. If everyone at Station 8 refused, he would shut down Engine 8, and go to Fire Station
13 14. If everyone at Station 14 refused, he would shut down Engine 14. He said that he would shut
14 down the whole Battalion if he had to.

15 33. Engineer Hewitt asked Battalion Chief Pollard if Captain Ghiotto was aware that
16 Engine 5 was expected to participate in the Gay Pride Parade, and Battalion Chief Pollard said that
17 he was. Engineer Hewitt asked what Captain Ghiotto was going to do, and Battalion Chief Pollard
18 answered, "I guess we'll find out."

19 34. Engineer Hewitt was very concerned because being sent home would be a suspension
20 that would make him ineligible on the current captain's list, ineligible for the next captain's test,
21 and ineligible for any special assignment for the next two years. Thus, he knew that refusing a
22 direct order, if indeed one were given, would have severe consequences for the promotions process
23 and his career opportunities.

24 35. Engineer Hewitt called Captain Ghiotto at home and explained that he did not want
25 to participate in the Parade. Captain Ghiotto responded that he had similar concerns. Both
26 thought that an order to participate would violate the SDFD's equal employment opportunity
27 policy.

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1 36. On the morning of July 21, 2007, Firefighter Allison was called in to work an
2 overtime shift at Fire Station 5. He learned for the first time that he was expected to participate
3 in the Parade when he arrived for his shift and members of the departing crew jokingly accused
4 him of "doing anything for money."

5 37. Firefighter Kane also learned for the first time that he was expected to participate
6 in the Parade when he arrived at Fire Station 5 on the morning of July 21, 2007 and was so
7 informed by members of the crew going off duty. Firefighter Kane first did not believe them and
8 then said that he would refuse to participate.

9 38. Captain Ghiotto arrived at Fire Station 5 at about 7:30 a.m. that morning. Members
10 of the departing crew also ribbed him about having to participate in the Gay Pride Parade.

11 39. Firefighters Kane and Allison each approached Captain Ghiotto, informing him that
12 they did not want to take part in the Gay Pride Parade. Given his discussion with Battalion Chief
13 Pollard the evening before, Captain Ghiotto was still hopeful that the SDFD would not order him
14 and his crew to participate. He asked these crew members to wait to hear whether they would be
15 given a direct order compelling them to ride in the Parade.

16 40. At 8:00 a.m., Captain Ghiotto gathered his crew in the "bullpen" of Fire Station 5.
17 All the crew members expressed concerns about harassment that firefighters had been subjected
18 to at previous Gay Pride Parades and stated that they did not want to participate in the Parade.

19 41. As their supervisor, Captain Ghiotto felt obligated to pass on his crew's concerns to
20 Battalion Chief Pollard and told him that he and his crew would not participate unless given a
21 direct order to do so. Captain Ghiotto again suggested that volunteers who wanted to participate
22 could use Engine 5 since it was going to be taken out of service anyway. Battalion Chief Pollard
23 again said that he would let Captain Ghiotto know if a direct order were given for the Engine 5
24 crew to participate in the Parade.

25 42. At 9:00 a.m., Battalion Chief Pollard informed Captain Ghiotto that he and the rest
26 of the on-duty Engine 5 crew were supposed to report to the Gay Pride Parade staging grounds at
27 9:30 a.m.

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1 43. Captain Ghiotto asked Battalion Chief Pollard if he was giving a direct order for the
2 crew to participate in the Gay Pride Parade. Battalion Chief Pollard responded “yes,” and
3 informed Captain Ghiotto that he had been given a direct order from Assistant Chief Jeff Carle via
4 chain of command (Deputy Chief Ken Malbrough and Shift Commander Enrique Camberos) for
5 the on-duty Engine 5 crew to participate in the Gay Pride Parade.

6 44. Captain Ghiotto reiterated that he and his crew did not want to ride in the Gay Pride
7 Parade, and told Battalion Chief Pollard that he disagreed with, and was disappointed in, the
8 SDFD’s decision to order them to do so.

9 45. Given the choice of complying or being subjected to disciplinary action (which could
10 have severe consequences for their careers), plaintiffs -- Captain Ghiotto, Firefighters Kane and
11 Allison, and Engineer Hewitt -- obeyed the direct order to take part in the Gay Pride Parade on
12 July 21, 2007.

13 46. A sexually charged atmosphere permeated the Gay Pride Parade staging area, with
14 men kissing and hugging each other and dancing provocatively, including some wearing nothing
15 more than bikini briefs. Many wore shirts with sexually suggestive slogans, such as “Girth and
16 Mirth” and “Suit Up Before You Dive In.”

17 47. The harassment of plaintiffs began at the staging area. For example, a man on a
18 near-by float, wearing nothing but tiny black shorts, gyrated provocatively and fondled his genitals
19 while looking directly at plaintiffs. Another man, wearing the “Girth and Mirth” shirt approached
20 Engineer Hewitt, telling him in a sexually suggestive tone that he looked “hungry” and should “eat
21 a Twinkie.”

22 48. While waiting for the Parade to begin, Firefighter Allison spotted his gay uncle’s life
23 partner in the crowd. Despite the already lewd atmosphere, Firefighter Allison did not want to
24 disrespect his uncle or his uncle’s life partner by failing to say hello. So he left the fire engine and
25 greeted his “uncle” with a hug. One onlooker saw him and said, “Oh, Mr. Fireman is giving out
26 hugs; I hope he’s going to give me one!” Another onlooker caught Firefighter Allison’s eye and
27 pointed to his tee shirt, which said, “Have you ever ridden a fat man?” Because of these comments

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1 and gestures, Firefighter Allison became extremely uncomfortable and quickly retreated to the fire
2 engine.

3 49. While waiting for the Parade to begin, Engineer Hewitt received a call on his cellular
4 telephone from other SDFD employees teasing him about the Engine 5 crew having to participate
5 in the Gay Pride Parade and facetiously telling him to "have fun."

6 50. At about 10:30 a.m., members of the SDFD senior staff, including Fire Chief Jarman,
7 Assistant Fire Chiefs Mainar and Carle, and Deputy Fire Chiefs Fennessy, Orton, Frasier,
8 Malbrough, and Peake arrived at the staging area. A few of them greeted plaintiffs; one teasingly
9 asked if they were "having fun yet?" with a smile on his face. Deputy Chief Malbrough shook
10 hands with Engineer Hewitt and asked, "How are you doing?" As Deputy Chief Malbrough was
11 walking away, Engineer Hewitt called out, "Hey Chief! I'm not doing all right!" Deputy Chief
12 Malbrough turned around and responded, "I know," and then walked away. Plaintiffs'
13 embarrassment and discomfort were exacerbated by not being able to tell the senior staff members
14 about their concerns regarding being forced to participate in the Parade.

15 51. Once the Parade got underway, plaintiffs were the objects of even more explicit and
16 offensive sexual remarks and gestures. (Photographs taken at the 2007 San Diego Gay Pride
17 Parade are attached hereto as Exhibit 1.)

18 52. Throughout the Parade, plaintiffs were subjected to crude and obscene comments by
19 Parade spectators, such as: "Oooh, look at the big firemen!" "You're making me hot!" "You can
20 put out my fire!" "Show me your fire hose!" "I can't breathe, give me mouth to mouth!" "Pull out
21 your hose!" "Blow my hose!"

22 53. In addition to the sexual taunts and catcalls, Parade spectators directed lewd and
23 lascivious gestures at plaintiffs, such as blowing salacious kisses, wagging their tongues, rubbing
24 their nipples, grabbing their crotches, displaying their penises, and groping other men's genitals.

25 54. As representatives of the SDFD, plaintiffs wanted to acknowledge and respond to
26 those friendly and supportive people in the crowd who waved and cheered; however, they could
27 not look into the crowd, even to wave at a child, without having pornographic words and actions
28 like those described above directed at them.

1 55. When plaintiffs attempted to shield themselves from the onslaught of offensively
2 graphic conduct by looking straight ahead rather than into the crowd, some Parade spectators
3 became belligerent, raising their middle fingers at plaintiffs and yelling, "Fuck you, fireman!" and
4 "Fuck the Fire Department!"

5 56. As the Parade passed Fire Station 5, plaintiffs were accosted by a group of self-
6 described "Christians" who were protesting the Gay Pride Parade and Festival. These protestors
7 berated plaintiffs for supporting a gay lifestyle and yelled at them that God would judge them and
8 that they were going to Hell. This dismayed plaintiffs, who are Christians and who were
9 participating in the Parade against their will.

10 57. Throughout the duration of the Parade, plaintiffs felt offended, embarrassed,
11 humiliated, trapped, abandoned, betrayed, and confused as to why the SDFD had ordered them to
12 take part in an event at which they were certain to be sexually harassed. Captain Ghiotto also felt
13 embarrassed and disgusted that he had been compelled to subject his crew to the harassment they
14 experienced.

15 58. At the conclusion of Gay Pride Parade, plaintiffs returned to Fire Station 5. They
16 continued to feel embarrassed and humiliated, as well as disgusted with their superiors at the
17 SDFD for subjecting them to sexual harassment at the Parade. Although their supervisors at the
18 Station knew that plaintiffs were upset about what they had been subjected to that day, none of
19 them offered any sympathy or even inquired as to how plaintiffs were dealing with it.

20 59. As the day wore on, plaintiffs discussed the situation among themselves but did not
21 feel any better. Eventually, the crew asked Captain Ghiotto about talking to a crisis intervention
22 team.

23 60. Captain Ghiotto then went to Battalion Chief Pollard to request a crisis intervention
24 team. Battalion Chief Pollard first accused plaintiffs of blowing the situation out of proportion.
25 He then stated that he would make some phone calls to find someone to talk to plaintiffs, and they
26 were placed on administrative out of service pending arrival of a crisis intervention counselor.
27 Plaintiffs are informed and believe and thereon allege that Linda Erwin Gallagher of the Employee
28 Assistance Program ("EAP") was contacted, but elected not to go to Fire Station 5 that evening.

1 61. Shift Commander Camberos then asked plaintiffs if they were fit for duty and could
2 serve the community without complaints. Because they had already been serving the community
3 without complaints all day, they said yes. Commander Camberos suggested plaintiffs contact the
4 EAP directly, and urged them to keep the matter confidential.

5 62. Plaintiffs finally met with Linda Erwin Gallagher of the EAP on July 26, 2007. Ms.
6 Gallagher indicated to plaintiffs that she had not gone to Fire Station 5 when called on July 21,
7 2007 because she assumed that the complaining firefighters were simply homophobes. Upon
8 hearing plaintiffs' description of what they went through at the Gay Pride Parade, however, Ms.
9 Gallagher encouraged plaintiffs to bring their complaints to the attention of Fire Chief Jarman
10 because Ms. Gallagher believed that the SDFD senior staff still shared her initial belief that the real
11 problem was the firefighters' supposed homophobia.

12 63. On August 1, 2007, plaintiffs met with Fire Chief Jarman and Assistant Chiefs
13 Mainar and Carle. Chiefs Jarman, Mainar and Carle refused to acknowledge that the Gay Pride
14 Parade is qualitatively different from other parades because of its sexualized nature or that
15 plaintiffs had been sexually harassed by Gay Pride Parade spectators. They insisted that it was
16 merely a community event in which the SDFD must participate. Although Fire Chief Jarman
17 apologized for the direct order given to plaintiffs, she would not guarantee that only firefighters
18 who volunteered would be required to participate in future Gay Pride Parades.

19 64. The City has promulgated an Employee Code of Conduct Handbook which includes
20 an Equal Employment Opportunity Policy that, among other things, prohibits sexual harassment.
21 The Policy specifies that sexually harassing conduct can be physical, verbal, visual, or written, and
22 can occur between persons of the same sex and between members of the public and employees.
23 The Handbook provides that "[a]ny Supervisor or manager who knew about harassment and took
24 no action to stop it or failed to report the harassment may be subject to discipline up to and
25 including discharge."

26 65. The SDFD's Administration Manual provides that "[a]ll employees shall work in an
27 atmosphere free from discrimination, harassment, and sexual harassment. . . . It is the
28 responsibility of all supervisors to assure that a harassment-free and non-discriminatory work

1 environment exists.” The Manual goes on to state that “sexual harassment is an offensive working
2 condition that shall not be tolerated.” It adopts the definition of sexual harassment promulgated
3 by the Equal Employment Opportunity Commission, including, among other things, unwelcome
4 sexual advances and other verbal or physical conduct which has the purpose or effect of
5 unreasonably interfering with an individual’s work performance or creating an intimidating, hostile
6 or offensive work environment. It identifies non-exclusive examples of sexually harassing conduct
7 including derogatory comments and jokes, leering, and sexually-oriented gestures. The
8 Administration Manual further provides that “[a]ppropriate actions shall be initiated against
9 anyone who violates this equal opportunity policy [including sexual harassment].”

10 66. Plaintiffs are informed and believe and thereon allege that the SDFD violated the
11 City’s and its own sexual harassment policies by: ordering plaintiffs to participate in an event, the
12 Gay Pride Parade, at which it knew plaintiffs would be sexually harassed; failing to take any
13 measures to prevent the harassment; and failing to take any action against any of the SDFD
14 personnel who facilitated the harassment by compelling plaintiffs to participate in the Gay Pride
15 Parade against their express wishes.

16 67. Section 56.27 of Chapter 5 of the San Diego Municipal Code, among other things,
17 makes it unlawful for any person to use boisterous, vulgar or indecent language on any streets,
18 sidewalks or other public places in the City. Section 56.53 prohibits public nudity (including
19 exposure of the genitals, pubic hair, buttocks, anal region, or any portion of a female breast at or
20 below the areola).

21 68. Plaintiffs are informed and believe and thereon allege that the City routinely permits
22 Gay Pride Parade participants and spectators to violate Municipal Code sections 56.27 and 56.53
23 with impunity.

24 69. In order to comply with SDFD and City policies for reporting sexual harassment,
25 plaintiffs each filed City Administration Regulation 96.50 forms with the City’s Equal
26 Employment Investigations Office. Plaintiffs withdrew those reports upon being advised by the
27 EEIO that it does not investigate complaints that are the subject of civil lawsuits.

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1 70. Additionally, plaintiffs each filed a "Complaint of Discrimination" with the
2 California Department of Fair Employment and Housing ("DFEH") and requested immediate right-
3 to-sue notices in compliance with Government Code section 12965. The DFEH issued Right-To-
4 Sue Notices to each of the plaintiffs pursuant to Notice of Case Closures dated August 6, 2007.
5 Plaintiffs thus exhausted their administrative remedies.

6 71. After their complaints about being subjected to sexual harassment as a result of the
7 SDFD's order that they participate in the Gay Pride Parade became public, two plaintiffs received
8 anonymous, threatening telephone calls at their homes. In order to ensure their safety, plaintiffs
9 Ghiotto and Kane have had to transfer out of Fire Station 5 in Hillcrest.

10 72. Upon transferring Captain Ghiotto to a fire station outside of Battalion 2, the SDFD
11 stripped him of his position as medical officer for that battalion even though there is no
12 requirement that a battalion medical officer must be assigned to a fire station located in that
13 battalion. Accordingly, the SDFD also took away the 5% premium over his regular salary that
14 Captain Ghiotto had received for serving as a battalion medical officer.

15 73. As a consequence of being forced to participate in the 2007 San Diego Gay Pride
16 Parade, Engineer Hewitt found it necessary to resign his new position as Assistant Fire Academy
17 Coordinator, which resulted the loss of 10% salary increase and other economic benefits.

18 74. Plaintiffs are informed and believe and thereon allege that, in a meeting with
19 representatives of Local 145 of the firefighters' union, Assistant Chief Carle claimed that he had
20 not seen anything offensive at the Gay Pride Parade and wrongly accused plaintiffs of complaining
21 about it because they have issues with homosexuality. Since then, false rumors have been
22 emanating from Local 145 that plaintiffs' motivation in bringing their complaint is hostility toward
23 homosexuals.

24 75. Plaintiffs' complaint is that the SDFD knowingly ordered them against their will into
25 a non-emergency situation -- specifically, a parade at which the offensive sexualized conduct of
26 some participants and spectators makes it qualitatively different from other parades -- where they
27 were subjected to sexual harassment which left them humiliated and demoralized. The SDFD's
28 order had the effect of making it appear that plaintiffs would perform homosexual acts or that they

1 enthusiastically support a gay rights political agenda and/or the sexually licentious message of, and
2 activities at, the Gay Pride Parade, thus placing them in a false light. Further, the SDFD's order
3 also had the effect of compelling plaintiffs to endorse debauched and unlawful conduct in public
4 which they would not have otherwise endorsed, thus violating their rights to liberty of speech.

5 76. Pursuant to Evidence Code section 1119, plaintiffs' initial settlement demand was
6 confidential and defendants could not lawfully reveal it to a third party .

7 77. Nevertheless, plaintiffs are informed and believe and thereon allege that defendants
8 disclosed plaintiffs' confidential settlement demand to third parties, including to the press. The
9 exact amount of plaintiffs' opening demand was published in the online newspaper, *Voice of San*
10 *Diego*, on September 22, 2007, attributed to "two sources close to the proceedings" and "two other
11 people close to the negotiations."

12 78. Plaintiffs are informed and believe and thereon allege that defendants illegally
13 violated the confidentiality of plaintiffs' settlement demand in a deliberate attempt to embarrass
14 them publicly and especially to stigmatize them among their co-workers as "cash-grabbing."

15 79. Since their initial settlement demand was publicly disclosed, plaintiffs' working
16 conditions have been adversely affected because they have been subjected to condemnation and
17 ridicule by certain of their fellow firefighters for seeking substantial monetary compensation for
18 their damages.

19 80. In or about September 2007, Engineer Hewitt was directed to the Human Resources
20 Department to verify his structured resume because he was close to being promoted to the rank of
21 captain. All such promotions require the approval of a engineer's "captain's structured resume"
22 by the Human Resources Department. The withholding of that approval can result in a delay of
23 the actual promotion.

24 81. In or about October 2007, Battalion Chief Grace Yamane, then assigned to Human
25 Resources, refused to approve Engineer Hewitt's captain's structured resume on the purported
26 ground that she could not verify one item for which back up documentation was not attached (Fire
27 Academy Driver for the 61st Fire Academy). Engineer Hewitt pointed out that the item had already
28 been officially approved by another H.R. representative as evidenced in his March 2004 Employee

1 Achievement Record (EAR). Battalion Chief Yamane still refused to approve Engineer Hewitt's
2 resume.

3 82. On or about December 20, 2007, Curt Glaser of the Human Resources Department
4 approved Engineer Hewitt's captain's structured resume over the telephone without requiring any
5 further documentation. Mr. Glaser indicated that the March 2004 EAR constituted adequate
6 documentation permitting him to verify the Fire Academy Driver item. Mr. Glaser indicated that
7 he did not know why Battalion Chief Yamane would refuse to approve Engineer Hewitt's resume
8 on the basis of lack of documentation.

9 83. On or about February 19 or 20, 2008, Captain Hewitt was on duty on Fire Station 16.
10 He and his crew responded to an emergency call involving a stuck elevator with two people
11 trapped inside. Following standard procedure, Captain Hewitt reported back to San Diego
12 Dispatch via radio when the elevator company's repairman arrived on the scene, referring to the
13 repairman as "the elevator guy." He subsequently determined that the people who had been stuck
14 in the elevator did not require medical attention.

15 84. Upon returning to the station, Captain Hewitt spoke on the telephone with Battalion
16 Chief Charles Mullen. Chief Mullen informed Captain Hewitt that he had received a call from
17 another battalion chief objecting to Captain Hewitt's use of the term "elevator guy" on the grounds
18 that it could be offensive to people of another gender. Captain Hewitt responded that the
19 repairman was, in fact, a guy. Chief Mullen also stated that the other battalion chief had raised
20 concerns about potential patient abandonment. Captain Hewitt responded that, as a paramedic, he
21 knows when there is and is not a patient at an incident. Chief Mullen agreed. He also indicated
22 that he does not appreciate criticism of his crews' incidents by persons who were not present at the
23 incident. Although Chief Mullen declined to identify the complaining battalion chief to Captain
24 Hewitt, plaintiffs are informed and believe and thereon allege that it was Battalion Chief Grace
25 Yamane.

26 85. On or about February 25, 2008, Captain Hewitt was assigned to Truck 10 at Fire
27 Station 10, one of the stations for which Chief Yamane is now serving as battalion chief. Chief
28 Yamane expressed concern to Captain Hewitt about the fact that both engineers and both captains

1 for Truck 10 and Engine 10 that day were new. Captain Hewitt agreed, and informed Chief
2 Yamane that he intended to run an aerial operations drill with his engineer later in the day. During
3 the course of a busy morning, Captain Hewitt observed his engineer do a thorough check of Truck
4 10 and put it into aerial operations with ease. That afternoon, Captain Hewitt had to leave the
5 station to attend in-service training, so he asked the other captain on duty on Station 10 to give the
6 engineer the drill, and he agreed to do so. That captain completed and documented the engineer's
7 training. Although she saw him at both Fire Station 10 and at the in service training that afternoon,
8 Chief Yamane did not say anything to Captain Hewitt about the fact that he did not run the
9 engineer's training drill himself.

10 86. On or about March 5, 2008, Captain Hewitt was assigned to work at Fire Station 17,
11 again under Battalion Chief Grace Yamane's command. That day, Captain Hewitt and his crew
12 attended a three-hour apparatus training class conducted by Engineer Mark Jones.

13 87. The evening of March 5, 2008, Chief Yamane arrived at Fire Station 17 and asked
14 to speak with Captain Hewitt in his office. She asked him how the class went. He responded that
15 Engineer Jones had given a great introduction to the new rig and the whole crew agreed it was a
16 good class. Chief Yamane then stated that this was not what she had heard. She said that she had
17 received a report that the crew's behavior and conversation at the training were unacceptable,
18 unprofessional, and rude and that an EEO complaint might result. She indicated that the incident
19 had already been up the chain of command to senior staff and back down to her.

20 88. Captain Hewitt expressed surprise, explaining to Chief Yamane that Engineer Jones
21 had conducted a comfortable class, expressing some of his frustrations with the manufacturer of
22 the rig, which created an open dialogue between him and the crew. Chief Yamane indicated that
23 such behavior was unprofessional and that the crew should know how much work Engineer Jones
24 had put into these rigs. Further, Chief Yamane told Captain Hewitt that, as a licensed contractor,
25 he especially should value hard work and professionalism. She then laid a "PRIDE" card,
26 symbolizing the departmental values of Professionalism, Respect, Integrity, Dedication, and
27 Excellence, on the desk.

28 89. Finally, Chief Yamane told Captain Hewitt that she wanted him to acknowledge the

1 seriousness of the complaint and to make sure that he addressed it with his crew. Captain Hewitt
2 assured Chief Yamane that he would discuss the complaint with his crew in order to ascertain their
3 side of the story. She then indicated that "they" wanted to discipline Captain Hewitt, but did not
4 specify who "they" were.

5 90. Immediately following his meeting with Chief Yamane, Captain Hewitt called
6 Engineer Jones and inquired if he was bothered by anything that was said or done at the training.
7 Engineer Jones indicated that the class was fine, but that things had "gone south" when he showed
8 the crew the actual rig. He also indicated that the crew members had each expressed some critical
9 opinions about the rig or its equipment, but that the engineer had made comments that Engineer
10 Jones found inappropriate and this had offended him and his hard work. Engineer Jones also
11 indicated that he felt Captain Hewitt had allowed this to happen and had failed to stop it.

12 91. Captain Hewitt then apologized to Engineer Jones for any remarks by the crew that
13 had offended him. Captain Hewitt also reminded Engineer Jones that he had been on a rest room
14 break at that point and therefore was not present during these remarks. Engineer Jones then stated
15 that he owed Captain Hewitt an apology because he had not been present to hear or stop them.
16 Captain Hewitt assured Engineer Jones that as captain he needed to be made aware of any situation
17 involving his crew.

18 92. Finally, Engineer Jones informed Captain Hewitt that he had been asked by Battalion
19 Chief Kevin Ester how the class had gone and that Engineer Jones had told Chief Ester about the
20 remarks that had offended him.

21 93. Immediately following his telephone conversation with Engineer Jones, Captain
22 Hewitt spoke to his crew about the situation. They were unaware that they had offended Engineer
23 Jones, given that he had also expressed certain criticisms of the apparatus. Nevertheless, they
24 agreed that it is important to respect the hard work and effort of others. The crew asked whether
25 they were going to be disciplined, but Captain Hewitt did not have the answer to that question.

26 94. The following day, March 6, 2008, Captain Hewitt telephoned Battalion Chief
27 Yamane at 7:00 a.m. to apprise her of the prior evening's conversations with Engineer Jones and
28 with his crew. He explained that given the similar opinions of Engineer Jones and the engineer

1 regarding the rig, he suspected that the Engineer Jones's reaction to the engineer might reflect
2 some prior history between them as former Academy mates. Captain Hewitt also informed Chief
3 Yamane that once Engineer Jones recalled that Captain Hewitt had not been present to hear the
4 remarks that Engineer Jones had found offensive, he had apologized for criticizing Captain Hewitt
5 for failing to stop them. Finally, Captain Hewitt noted that Engineer Jones had gone outside the
6 chain of command with his complaint of offensive remarks. If he had complained to Captain
7 Hewitt, the whole incident could have been handled at the lowest level, instead of going all the
8 way up to senior staff and then back down to Captain Hewitt.

9 95. Battalion Chief Yamane responded by thanking Captain Hewitt for calling her back
10 so quickly. She stated that she was happy with how he had handled the situation and said that she
11 would leave it as a talk.

12 96. Following his conversation with Chief Yamane on the morning of March 6, 2008,
13 Captain Hewitt again spoke with his crew, informing them that Battalion Chief Yamane was going
14 to consider the incident a talk and no more. He also told the engineer to apologize to Engineer
15 Jones.

16 97. The following day, March 7, 2008, Captain Hewitt called the engineer, who reported
17 that Engineer Jones had accepted his apology and that was all Engineer Jones wanted. Captain
18 Hewitt then telephoned Battalion Chief Yamane to so inform her. She thanked Captain Hewitt for
19 how he handled the situation and told him that they had done a good job as a crew.

20 98. Having just been promoted, Captain Hewitt is on probationary status. He is not yet
21 permanently assigned to a fire station, but instead rotates throughout the Department. The
22 battalion chief in command of the fire station where he is assigned evaluates his performance each
23 day via probationary reports. The results of these evaluations determine whether he successfully
24 completes the probationary period.

25 99. On March 9, 2008, Battalion Chief Yamane called Captain Hewitt to go over his
26 probationary report for the two days he worked in her battalion: February 25, 2008 at Fire Station
27 10 and March 5 at Fire Station 17. Chief Yamane evaluated Captain Hewitt's performance as
28 "below standard" in different areas of the report:

1 a. The first was “below standard” rating was based on the fact that Captain
2 Hewitt had not done any training with his engineer on February 25, 2008. Captain Hewitt
3 explained he had been pleased with the engineer’s initiative and skill putting the Truck 10 aerial
4 into operation, and that the other captain on duty that day had run and documented the drill at his
5 request while Captain Hewitt was attending in-service training. Nevertheless, Chief Yamane
6 declined to change the evaluation

7 b. The second “below standard” rating was based on the complaint regarding
8 his crew’s conduct at the apparatus training at Fire Station 17 on March 5, 2008. Captain Hewitt
9 reminded Chief Yamane that she had indicated that she had been pleased with how he handled the
10 situation, and that she agreed that it could have been avoided if the complaint had been handled
11 initially at the appropriate level, i.e., with Captain Hewitt. Chief Yamane agreed, but again
12 declined to change the evaluation.

13 c. Given that he had never before received a “below standard” rating and the
14 potential impact of poor evaluations on his promotion, Chief Hewitt was very concerned about
15 these ratings, as well as Chief Yamane’s refusal to reconsider them in light of all the circumstances
16 of which she was made aware. Chief Yamane told Captain Hewitt that her “below standard”
17 ratings would not affect his probation because all the evaluations are averaged together.

18 100. On or about March 29, 2008, Captain Hewitt met with Battalion Chief Yamane at
19 her office to discuss her evaluations. Captain Hewitt reiterated the good result of the incident
20 involving Engineer Jones. Chief Yamane stated that Battalion Chief Ester was still “hot on the
21 subject” and that Deputy Chief Malbrough wanted her to discipline Captain Hewitt. Chief
22 Yamane again refused to change the below standard ratings.

23 101. Prior to July 2007, plaintiff Jason Hewitt had a good working relationship with
24 Battalion Chief Grace Yamane. In or about 2003 and 2004, Engineer Hewitt volunteered to assist
25 her in the administration and maintenance of Fire Academy apparatus, for which he received Fire
26 Department recognition. Further, Battalion Chief Yamane selected Engineer Hewitt to represent
27 the Department in a demonstration for a DMV evaluation of the Department’s DMV certification
28 process.

1 102. Plaintiffs are informed and believe and thereon allege that shortly after the 2007 Gay
2 Pride Parade, Battalion Chief Grace Yamane visited Fire Station Five in Hillcrest at which time
3 she told Battalion Chief Jimmy Fiero that she was disappointed and upset about plaintiffs' sexual
4 harassment complaint, and that she believed that it was motivated by plaintiffs' "homophobia."

5 103. Plaintiffs are informed and believe and thereon allege that plaintiff Jason Hewitt's
6 working conditions have been adversely affected by the above-described actions of Battalion Chief
7 Grace Yamane, and that said actions by Chief Yamane were carried out in retaliation for plaintiffs'
8 complaint about sexual harassment at the 2007 San Diego Gay Pride Parade.

9 **FIRST CAUSE OF ACTION**
10 **(Against All Defendants)**

11 **Sexual Harassment -**
12 **Government Code § 12940(j)**

13 104. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
14 103 above as though fully set forth herein.

15 105. At all times relevant to this lawsuit, plaintiffs were employees covered by
16 Government Code section 12940 which, among other things, makes both sexual harassment and
17 the failure to take all reasonable steps to prevent harassment from occurring unlawful employment
18 practices.

19 106. At all times relevant to this lawsuit, defendants and their agents and employees were
20 employers within the meaning of Government Code section 12940(j)(4)(A).

21 107. As employers under Section 12940(j)(4)(1), defendants and their agents and
22 employees were prohibited from subjecting employees such as plaintiffs to harassment because of
23 sex or sexual orientation as set forth in Government Code section 12940(j)(1).

24 108. Defendants knew or should have known that plaintiffs would be subjected to sexual
25 harassment by non-employees at the Gay Pride Parade but failed to take immediate and appropriate
26 corrective action as required by section 12940(j)(1). Said harassment was sufficiently severe or
27 pervasive so as to create a hostile work environment for plaintiffs.

28 109. As a proximate result of defendants' conduct described above, plaintiffs have
suffered and continue to suffer mental anguish, embarrassment, humiliation, anxiety, and

1 emotional distress, all to their damage in amounts to be proved at trial.

2 **SECOND CAUSE OF ACTION**
3 **(Against All Defendants)**

4 **Failure To Maintain Environment Free from Sexual Harassment -**
5 **Government Code § 12940(k)**

6 110. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
7 109 above as though fully set forth herein.

8 111. At all times relevant to this lawsuit, defendants and their agents and employees were
9 employers within the meaning of Government Code section 12926(d).

10 112. As employers under Section 12926(d), defendants and their agents and employees
11 were required to take all reasonable steps necessary to prevent harassment from occurring as set
12 forth in Government Code section 12940(k).

13 113. Defendants and their agents and employees failed to take any steps to prevent
14 plaintiffs from being sexually harassed at the Gay Pride Parade. Said harassment was sufficiently
15 severe or pervasive as to create a hostile work environment.

16 114. As a proximate result of defendants' conduct described herein, plaintiffs have
17 suffered and continue to suffer mental anguish, embarrassment, humiliation, anxiety, and
18 emotional distress, all to their damage in amounts to be proved at trial.

19 **THIRD CAUSE OF ACTION**
20 **(Against All Defendants)**

21 **Retaliation -**
22 **Government Code § 12940(h)**

23 115. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
24 114 above as though fully set forth herein.

25 116. As employers under Section 12926(d), defendants and their agents and employees
26 were prohibited from retaliating against plaintiffs for objecting to being ordered into a situation
27 where they would be subjected to sexual harassment or for filing any complaint of sexual
28 harassment as set forth in Government Code section 12940(h).

117. Since plaintiffs publicly complained of being subjected to sexual harassment as a
result of defendant's direct order that they participate in the 2007 San Diego Gay Pride Parade,

1 defendants and their agents and employees have engaged in a course of retaliatory conduct against
2 plaintiffs, including among other things the conduct set forth in paragraphs 76 - 103 above.

3 118. As a proximate result of defendants' retaliatory conduct described herein, plaintiffs
4 have suffered and continue to suffer damages, including lost wages and employment benefits and
5 emotional distress, in amounts to be proved at trial.

6 **FOURTH CAUSE OF ACTION**
7 **(Against All Defendants)**

8 **Violation of Liberty of Speech -**
9 **California Constitution Art. I, § 2**

10 119. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
11 118 above as though fully set forth herein.

12 120. The California Constitution's liberty of speech clause explicitly specifies a "right"
13 to freedom of speech.

14 121. The California Constitution's right to freedom of speech is unbounded in range,
15 running against the world, including private parties as well as governmental actors.

16 122. The California Constitution's right to freedom of speech is unlimited in scope,
17 embracing all subjects.

18 123. Within its unlimited scope, the California Constitution's right to freedom of speech
19 protects political speech and ideological speech.

20 124. Because speech results from what a speaker chooses to say and what he chooses not
21 to say, the California Constitution's right to freedom of speech comprises both a right to speak
22 freely and also a right to refrain from doing so at all, and is therefore put at risk both by prohibiting
23 a speaker from saying what he otherwise would say and also by compelling him to say what he
24 otherwise would not say.

25 125. By ordering plaintiffs to participate in the Gay Pride Parade, defendants compelled
26 plaintiffs to express political and ideological viewpoints that they otherwise would not have
27 expressed, including endorsing the public display of lewd and lascivious conduct, at least some of
28 which was prohibited by City law, as well as endorsing the condemnation and ridicule of certain
religious beliefs and practices. By compelling plaintiffs to speak, defendants violated plaintiffs'

1 right to freedom of speech under the California Constitution.

2 126. Plaintiffs have no plain, speedy and adequate remedy in the ordinary course of law
3 for the defendants' violation of their free speech rights under the California Constitution, and they
4 are entitled to injunctive relief.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, plaintiffs pray for judgment against defendants, and each of them, request
7 relief as follows:

8 1. A permanent injunction prohibiting defendants from ordering or otherwise
9 compelling any SDFD personnel to participate in any way in future Gay Pride Parades and from
10 giving any adverse evaluation or making any other report or taking any other action against any
11 employee for declining to participate in a Gay Pride Parade;

12 2. On all causes of action, an award of general and special compensatory damages
13 according to proof at trial, and interest thereon as provided by law;

14 3. An award of attorney's fees pursuant to Government Code section 12965(b) and
15 Code of Civil Procedure section 1021.5;

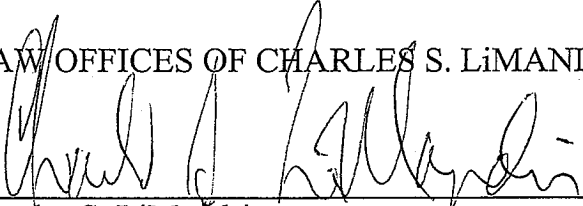
16 4. Costs of suit; and

17 5. Such other and further relief as the Court deems just and proper.

18
19 LAW OFFICES OF CHARLES S. LIMANDRI, APC

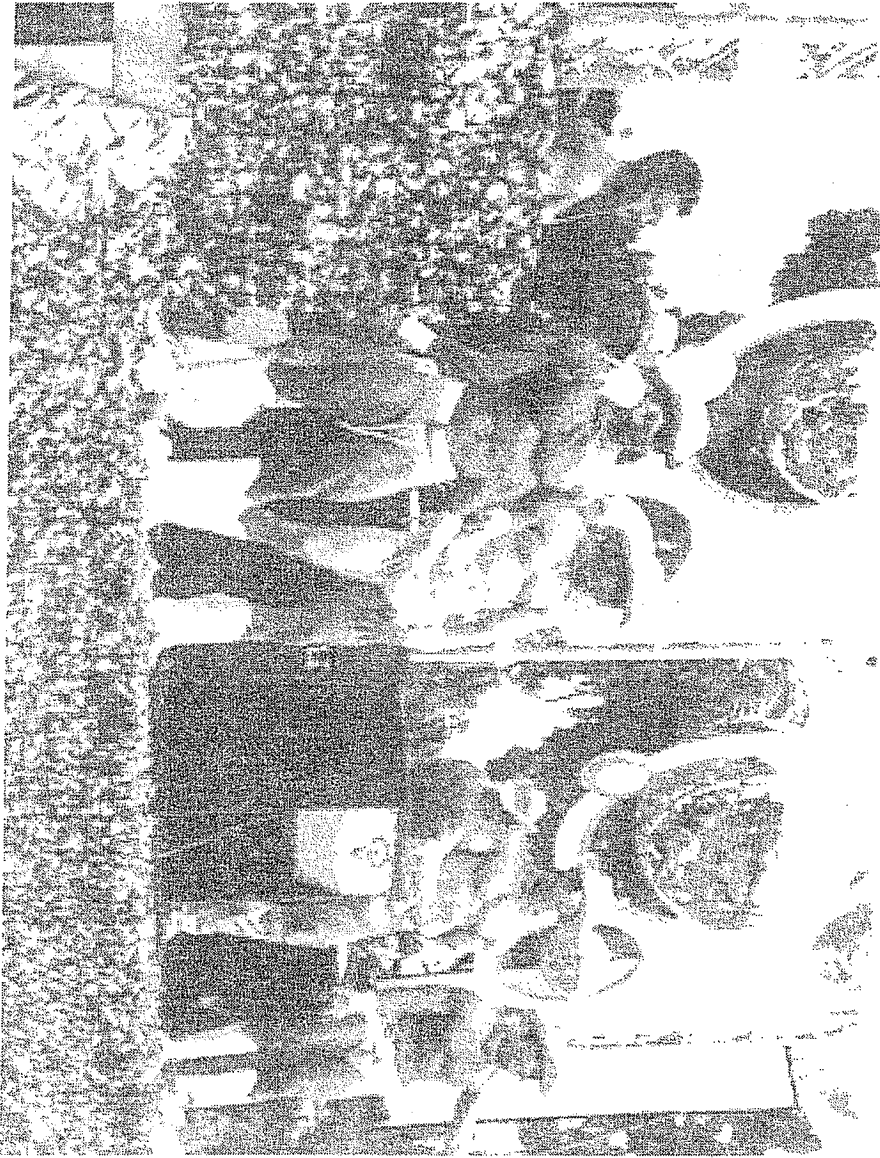
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21 DATED: April 24, 2007

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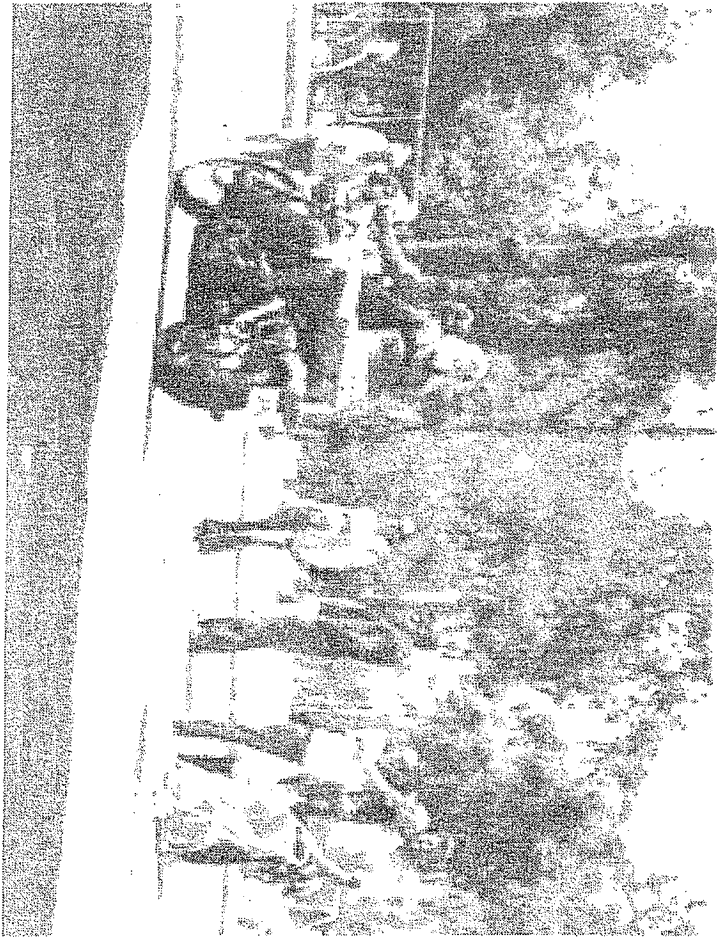


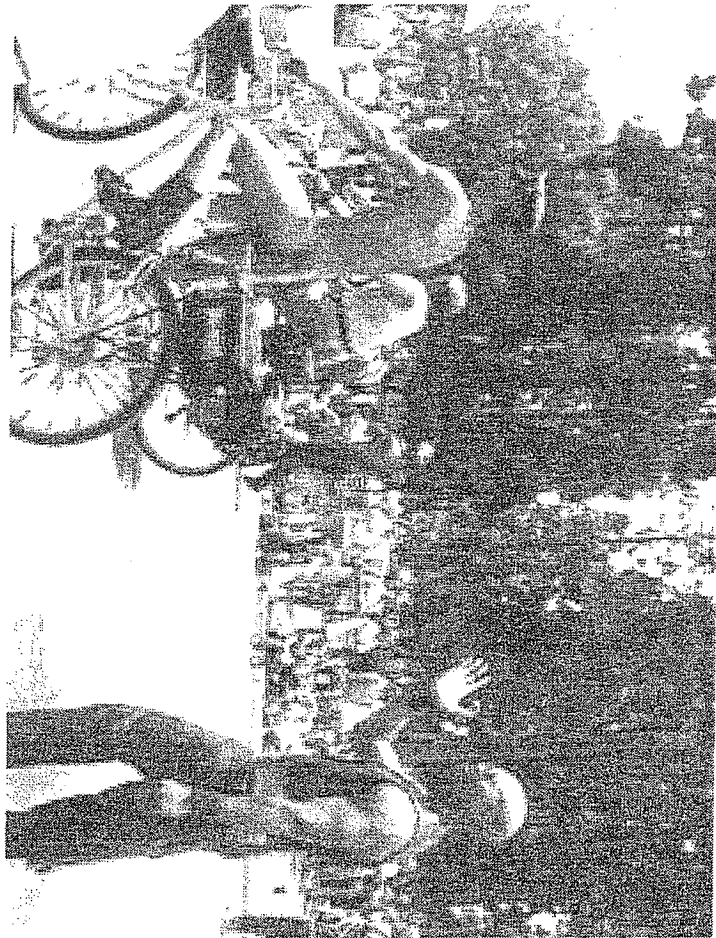
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JASON HEWITT, ALEXANDER KANE

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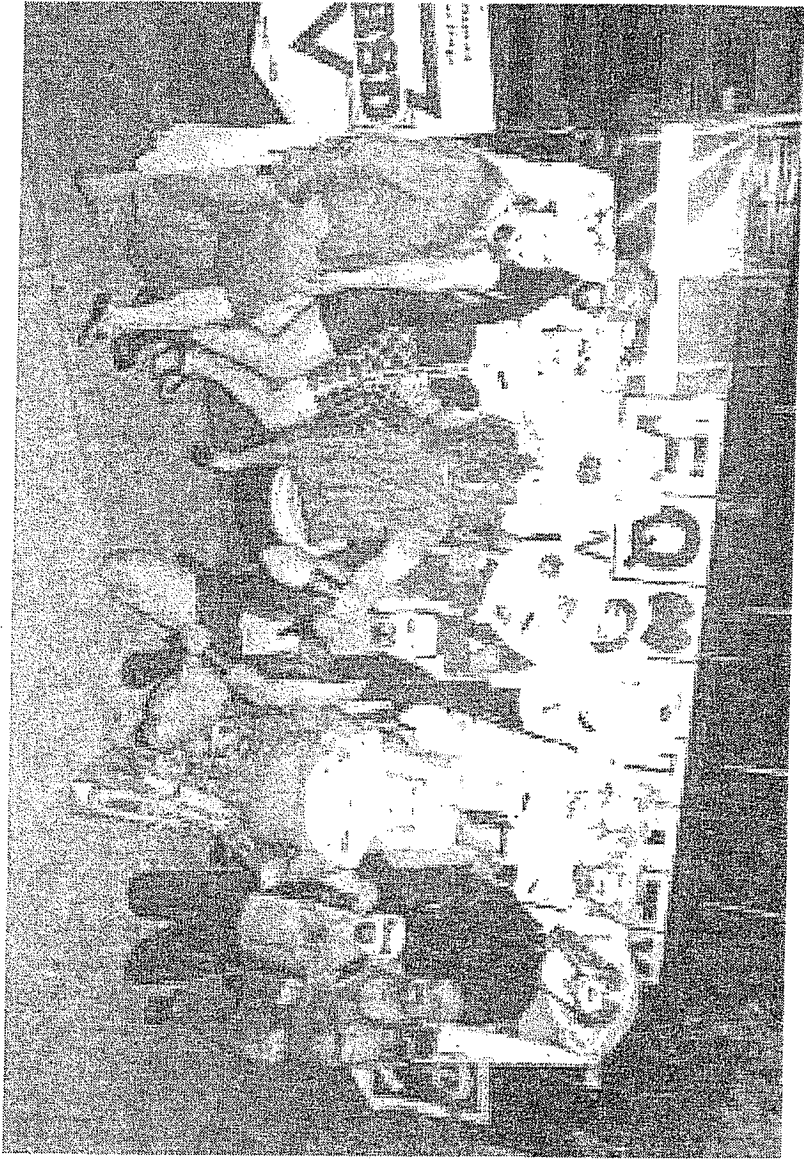


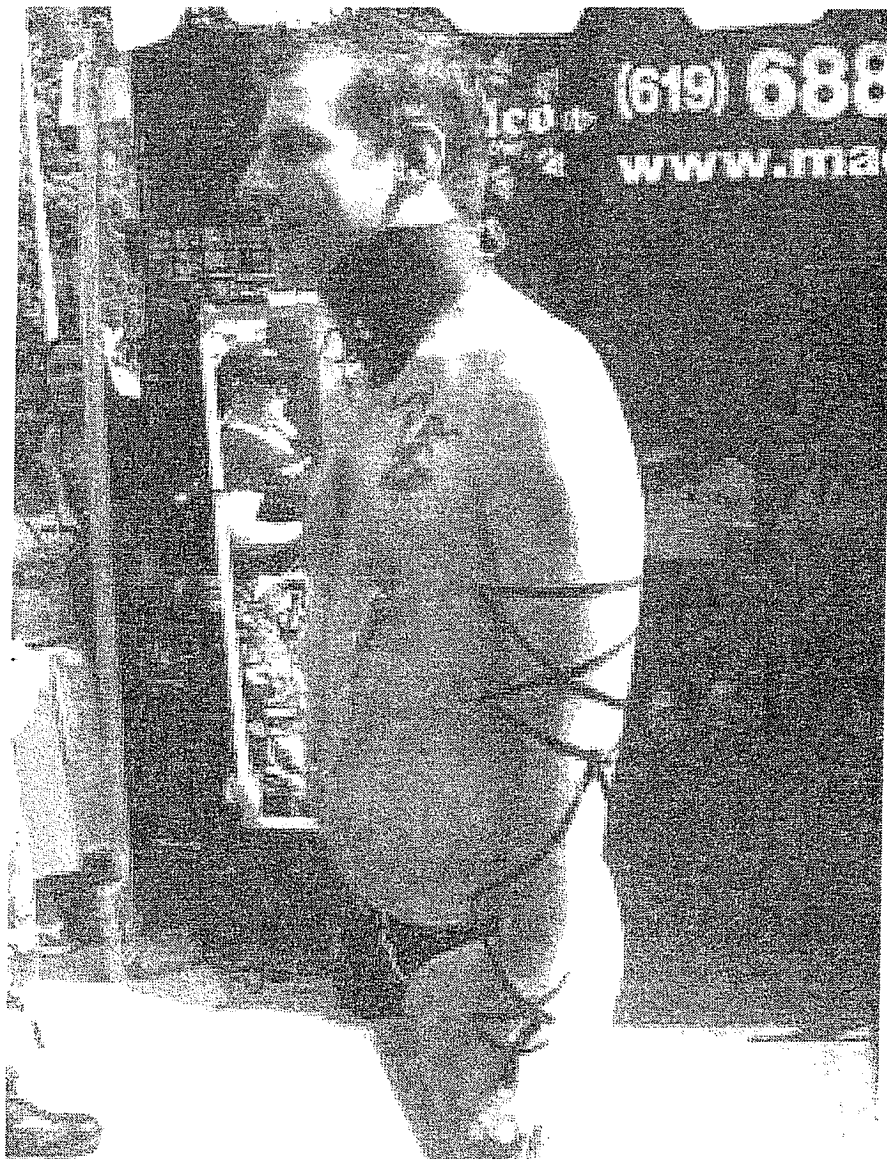


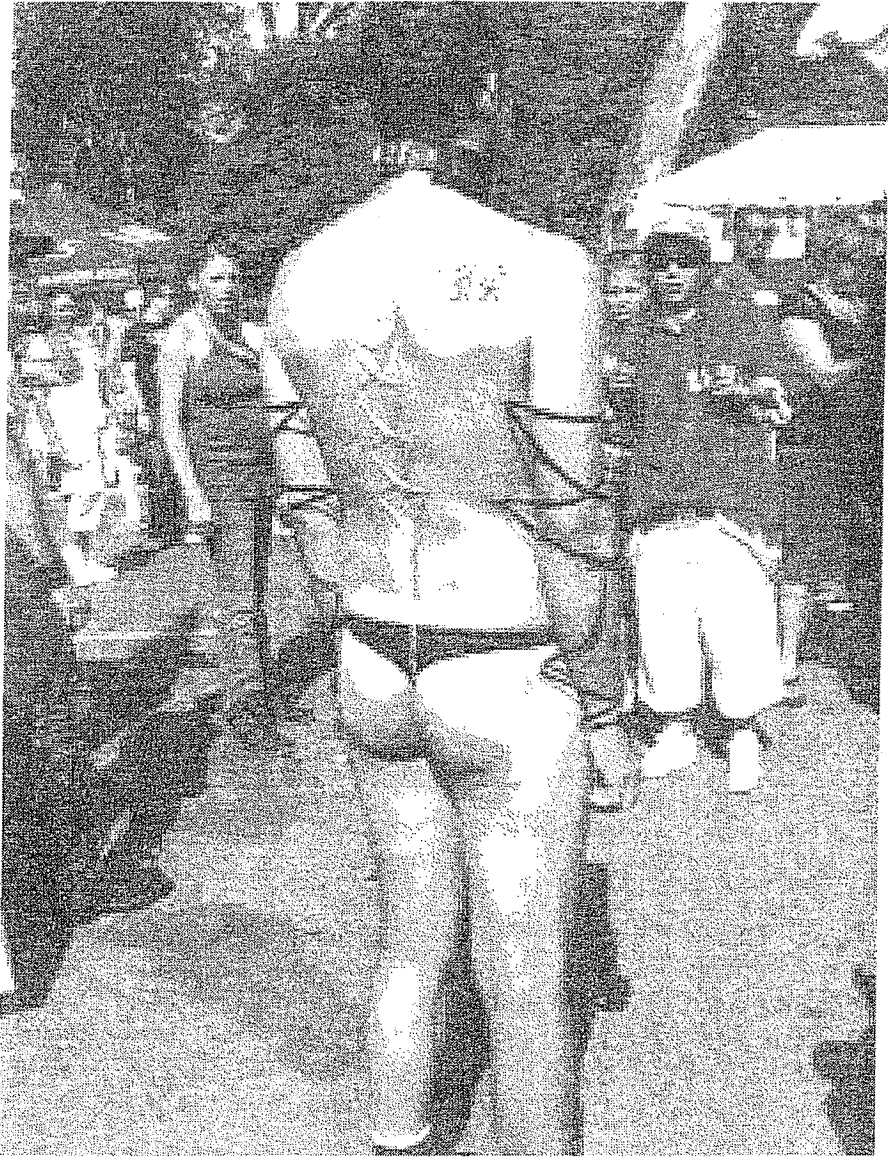


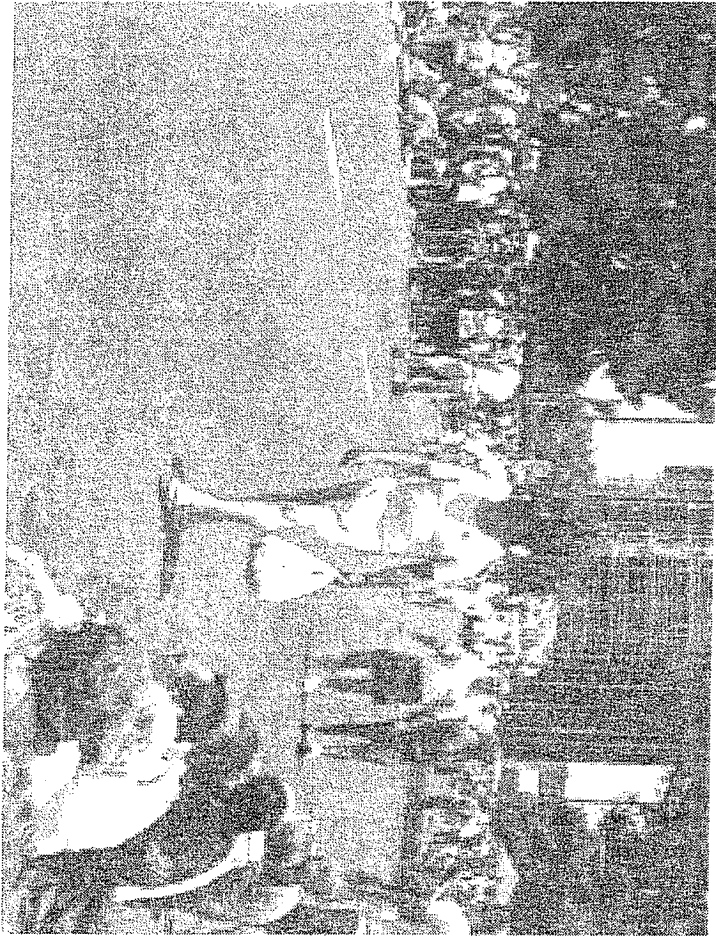


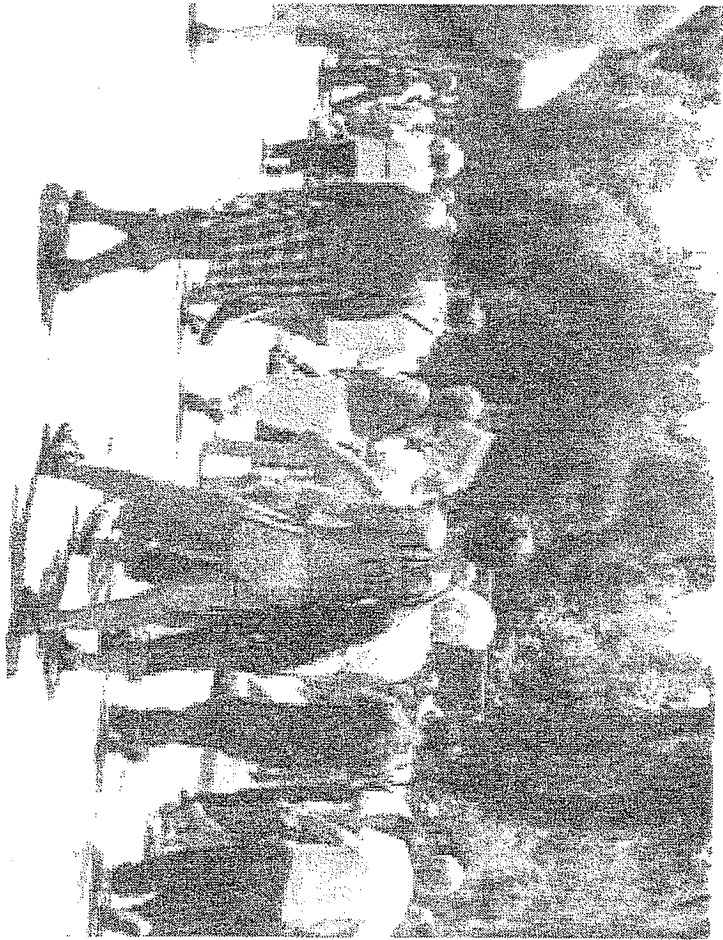


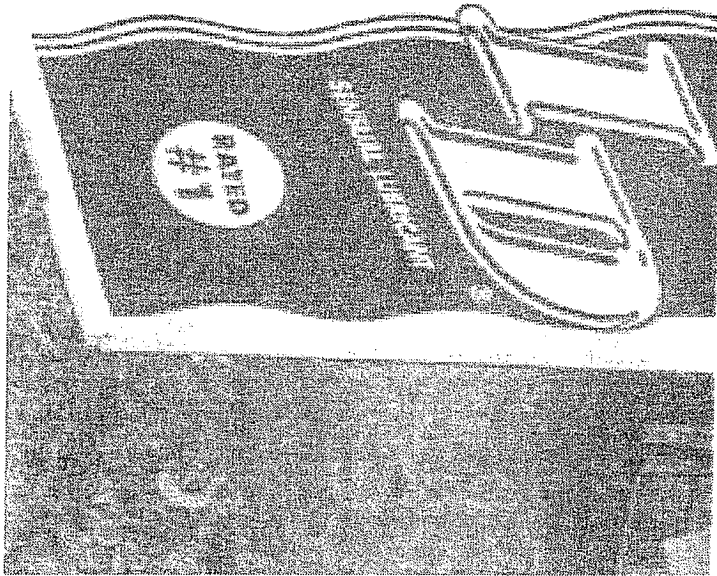
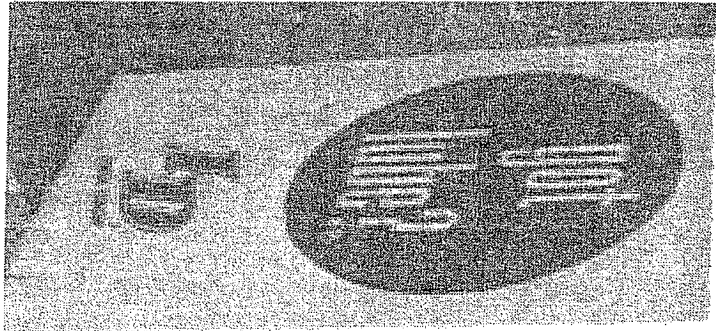


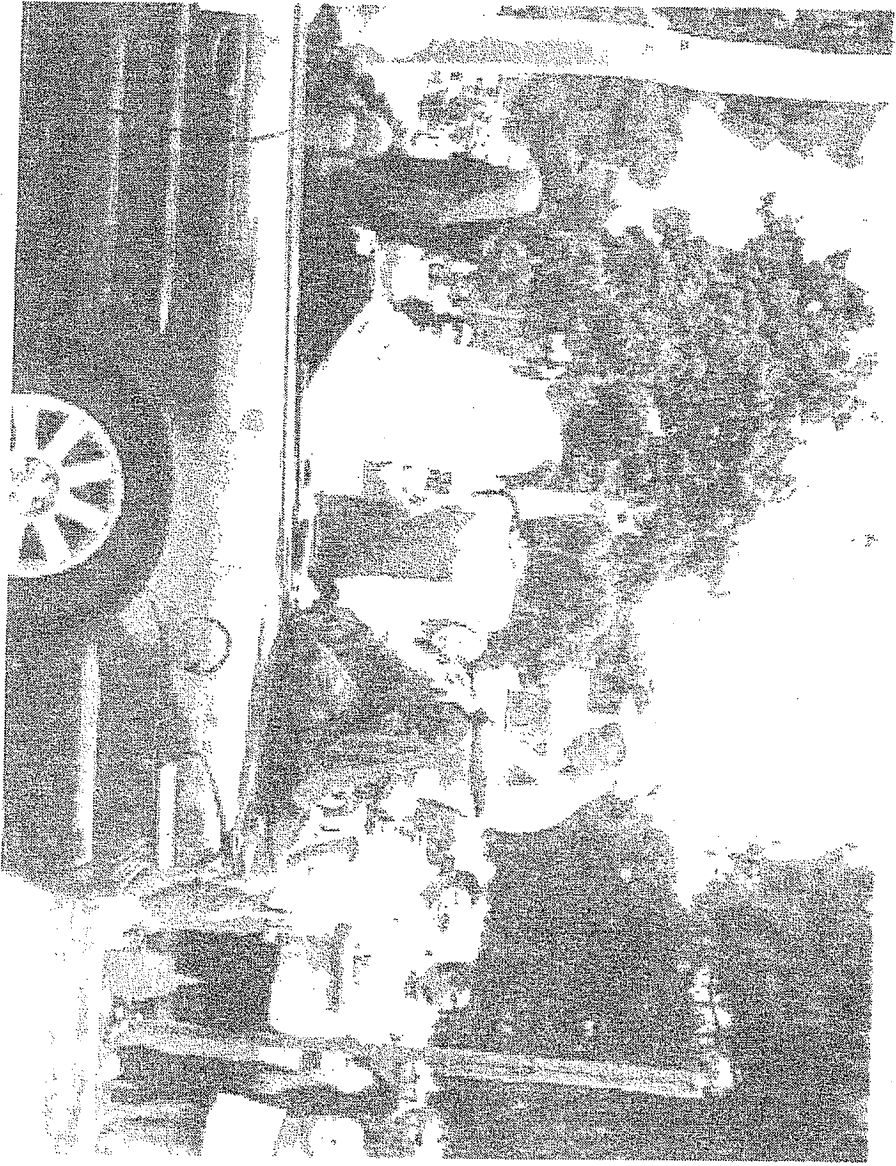




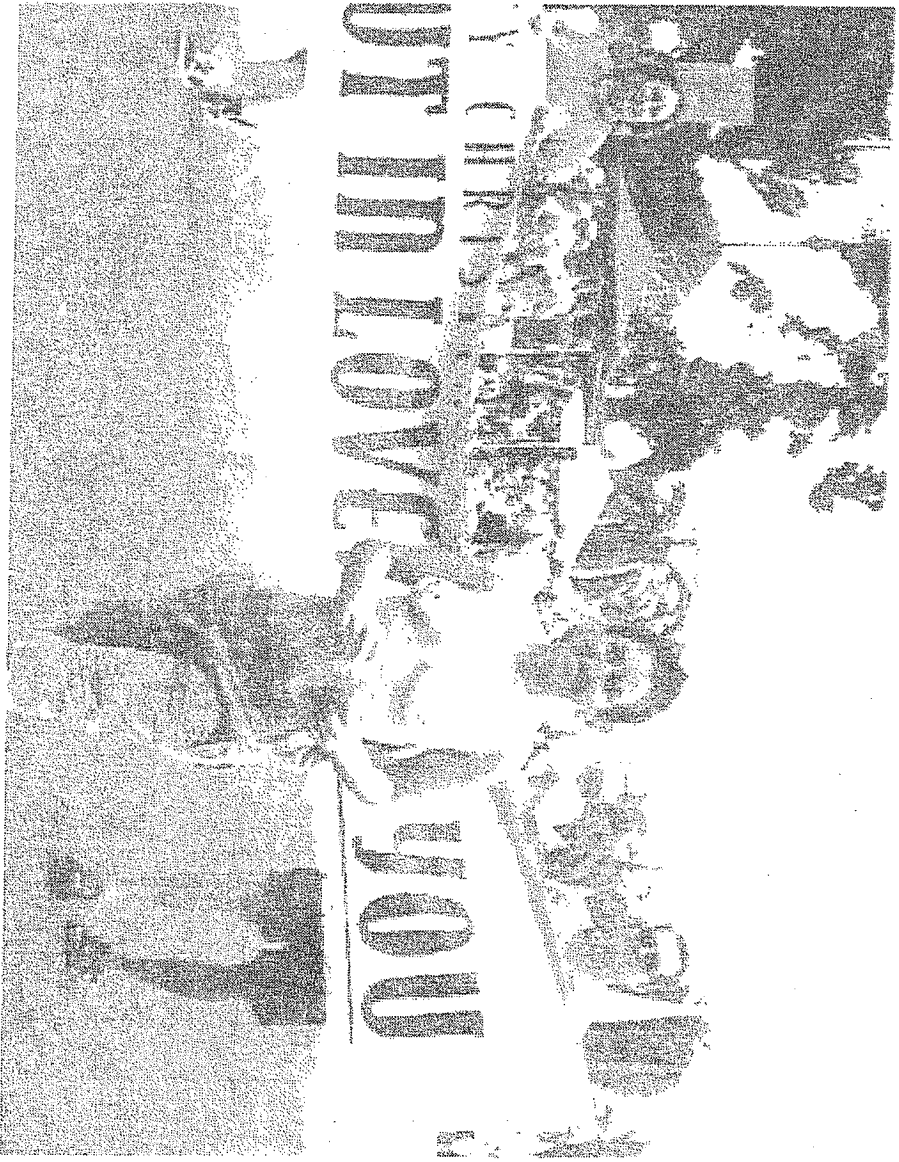






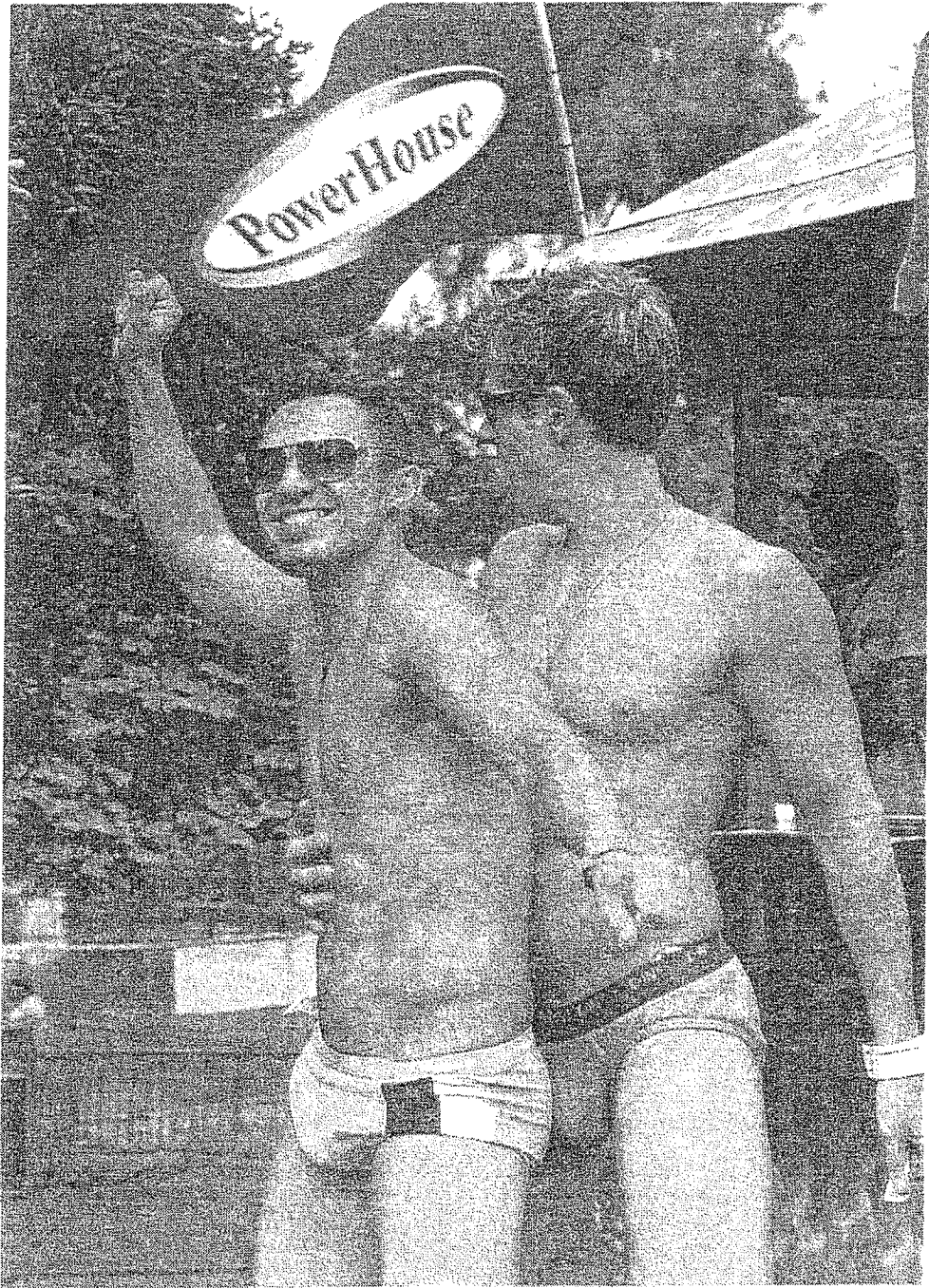


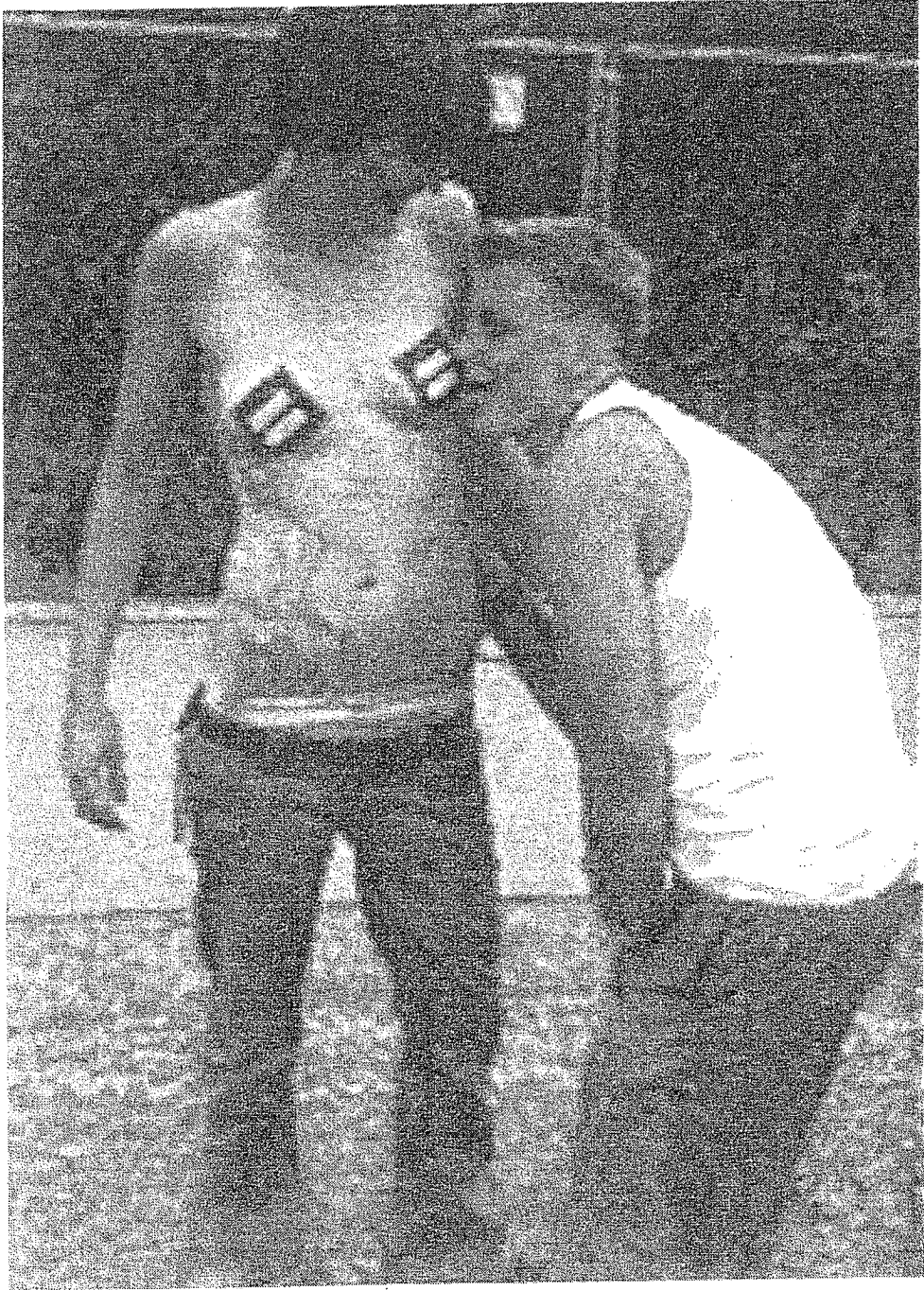












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