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MARVIN CHURCH, COUNTY CLERK
BY *[Signature]*
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1 ALAN C. DAVIS
DUANE W. RENO
2 VINCENT J. COURTNEY JR.
DAVIS & RENO
3 182 Second Street, Fourth Floor
San Francisco, California 94105
4 Telephone: (415) 543-1900
5 Attorneys for Plaintiffs and Petitioners

Summons Issued
MARVIN CHURCH

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN MATEO

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Wyt
11-17-82

11 SAN MATEO COUNTY FIRE FIGHTERS)
LOCAL 2400, INTERNATIONAL)
12 ASSOCIATION OF FIRE FIGHTERS,)
AFL-CIO, MARK GREENE, KEVIN RUANE,)
13 ROBERT DAVIS, EARL CHINN, CORY)
FRAMMEL, RANDY HIMES, KURT)
14 HALLIDAY, JOHN ROEMER, AARON SAY,)
JOHN S. MOLINELLI, JR., DOES ONE)
15 THROUGH ONE HUNDRED,)
16 *(30)* Plaintiffs and Petitioners,)
17 vs.)
18 CITY OF SAN MATEO, RICHARD B.)
DELONG, as City Manager of the)
19 City of San Mateo, ARTHUR N. KORON)
as the Fire Chief of the City of)
20 San Mateo, ROES ONE THROUGH TEN,)
21 Defendants and Respondents.)

Case No. 268290

COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF
PETITION FOR WRIT OF MANDATE

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1 AFL-CIO ("Local 2400") is a labor organization within the meaning
2 of Section 1117 of the Labor Code of the State of California and
3 is the recognized employee organization within the meaning of
4 Section 3501 of the Government Code of the State of California
5 on behalf of all non-management positions of the Fire Department
6 of the City of San Mateo. Local 2400 brings this action on behalf
7 of all persons who will be benefitted by the proper performance of
8 the duties described herein.

9 2. Plaintiffs Mark Greene, Kevin Ruane, Robert Davis,
10 Earl Chinn, Cory Trammel, Kurt Halliday, John Roemer, Randy Himes
11 and Aaron Say are all members of the Fire Department of the City
12 of San Mateo. Said plaintiffs bring this action in their
13 own behalf and on behalf of all other similarly situated
14 employees and successful job applicants of the City of San
15 Mateo Fire Department who have been or will be required to
16 sign "Employment Agreements" in order to obtain employment
17 with the City of San Mateo Fire Department.

18 3. Petitioner John S. Molinelli, Jr. is a successful
19 job applicant for the position of Firefighter/Engineer in the
20 City of San Mateo Fire Department. As hereinafter set forth,
21 Petitioner Molinelli has been disqualified from employment by
22 Defendant and Respondent Richard DeLong, acting as City Manager
23 of the City of San Mateo, on the grounds that Petitioner
24 Molinelli's father is presently an employee of the City of
25 San Mateo Fire Department. Petitioner Molinelli brings this
26 action on behalf of himself and all other job applicants who

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1 are threatened with disqualification from the City of San Mateo
2 Fire Department for reasons of nepotism.

3 4. The true names and capacities of Plaintiffs
4 and Petitioners DOES ONE THROUGH ONE HUNDRED are unknown to
5 Plaintiffs and Petitioners. Plaintiffs and Petitioners will
6 amend this complaint and petition to show the true names and
7 capacities when the same have been ascertained.

8 5. Defendant and Respondent City of San Mateo is
9 a municipal corporation duly organized and existing under
10 the Constitution and laws of the State of California. Defendant
11 and Respondent City of San Mateo is situated in the County
12 of San Mateo, State of California and is a public agency
13 within the meaning of Government Code Section 3501.

14 6. Defendant and Respondent Richard B. DeLong is
15 the duly appointed City Manager of the City of San Mateo and
16 has as his duties the management, supervision, the hiring
17 and termination of employees of the departments of said
18 City, including the Fire Department.

19 7. Defendant and Respondent Arthur N. Koron is
20 the duly appointed Fire Chief of the City of San Mateo, and
21 has as his duties the management, direction and supervision
22 of the employees of the Fire Department, and the examination
23 and recommendation of job applicants for employment in said
24 Fire Department.

25 8. The true names and capacities of Defendants
26 and Respondents Roes One through Ten, inclusive, are unknown

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1 to Plaintiffs and Petitioners, who therefore sue said Defendants
2 and Respondents by such fictitious names. Plaintiffs and
3 Petitioners will amend this complaint and petition to show
4 the true names and capacities of said Defendants and Respondents
5 when the same are ascertained.

6 9. At an unknown date in 1981 Defendants and
7 Respondents unilaterally promulgated rules requiring job
8 applicants in the Fire Department of the City of San Mateo
9 to agree, as a condition of employment and continued employment,
10 to maintain certain physical standards throughout the course of
11 employment, to be retested annually, and to bear the expense
12 of medical "correction" or "physical conditioning" to maintain
13 said physical standards. Said rules provided that non-
14 compliance with the physical standards would automatically
15 subject job applicants to disciplinary action. Said rules further
16 provided that job applicants, upon employment, would be required
17 to agree to refrain from smoking tobacco both on and off
18 duty during their tenure of employment. Job applicants were
19 also required to agree that a discharge for smoking tobacco
20 on or off duty would be a discharge for "good cause".

21 Plaintiffs and Petitioners are informed and believe that the
22 aforesaid rules were unilaterally imposed on job applicants
23 without the approval of the City Council of the City of San
24 Mateo.

25 10. In November, 1981, the City of San Mateo Fire
26 Department advertised for job applicants for the position

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1 of Firefighter-Engineer. All the plaintiffs and Petitioners
2 named herein successfully completed the examination process.
3 Plaintiffs Mark Greene, Kevin Ruane, Robert Davis, Earl
4 Chinn, Cory Trammel, Kurt Halliday, John Roemer, Randy Himes and
5 Aaron Say were offered employment with the City of San Mateo
6 Fire Department on the condition that said Plaintiffs would
7 sign an "Employment Agreement" containing the physical
8 standards, the annual retesting requirements, the no smoking
9 prohibitions and the automatic termination provisions referred
10 to in paragraph 9, above. A true and correct copy of said
11 "Employment Agreement" signed by said Plaintiffs, is attached
12 hereto and identified as Exhibit A, and incorporated herein
13 by reference.

14 11. Aforesaid Plaintiffs Mark Greene, Kevin
15 Ruane, Robert Davis, Earl Chinn, Cory Trammel, Randy
16 Himes, Kurt Halliday, John Roemer and Aaron Say were required to
17 sign aforesaid "Employment Agreement" in order to obtain
18 employment with the Fire Department in the City of San
19 Mateo.

20 12. Aforesaid "Employment Agreement" is an unlawful
21 and unenforceable contract of adhesion in that said "Employment
22 Agreement" was imposed by a party of superior bargaining
23 strength and because the terms of said "Employment Agreement"
24 are unduly oppressive and unconscionable. Said "Employment
25 Agreement" is also unenforceable in that said agreement
26 violates the provisions of California Civil Code Section 1670.5.

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1 13. Unless restrained and enjoined from doing so
2 by order of this Court, the enforcement of the aforesaid
3 "Employment Agreement" will cause great and irreparable
4 injury to plaintiffs and to employees represented by the
5 plaintiff and petitioner Local 2400.

6 14. Plaintiffs have no adequate remedy at law for
7 such injury in that monetary damages would not provide an
8 adequate remedy.

9 15. Plaintiffs' action herein seeks to vindicate
10 important constitutional rights. Plaintiffs are therefore
11 entitled to recover reasonable attorney's fees pursuant to
12 42 U.S.C. Section 1988 and California Code of Civil Procedure
13 Section 1021.5. Plaintiffs are also entitled to attorney's
14 fees for respondents' arbitrary and capricious actions
15 pursuant to Government Code Section 800.

16 WHEREFORE, Plaintiffs pray for judgment as hereinafter
17 set forth.

18 SECOND CAUSE OF ACTION

19 (Right of Privacy)

20 16. Plaintiffs Local 2400, Mark Greene, Kevin
21 Ruane, Robert Davis, Earl Chinn, Cory Trammel, Randy Himes,
22 Kurt Halliday, John Roemer and Aaron Say reallege and restate
23 paragraphs 1 through 15 of their FIRST CAUSE OF ACTION and
24 incorporate said paragraphs and said allegations as if fully
25 set forth in this SECOND CAUSE OF ACTION.

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1 17. Defendants and Respondents' requirement of an
2 employment agreement to refrain from smoking tobacco on or off
3 duty and Defendants and Respondents' threats to discharge any
4 applicant or employee represented by plaintiff union for smoking
5 tobacco while off duty violates the right of the individual
6 plaintiffs herein and the rights of persons represented by plaintiff
7 Local 2400 to privacy as guaranteed by Article I, Section 1
8 of the California Constitution, the United States Constitution
9 and 42 U.S.C. Section 1983.

10 WHEREFORE, plaintiffs pray for judgment as hereinafter
11 set forth.

12 THIRD CAUSE OF ACTION

13 (Equal Protection)

14 18. Plaintiffs Local 2400, Mark Greene, Kevin
15 Ruane, Robert Davis, Earl Chinn, Cory Trammel, Randy Himes, Kurt
16 Halliday, John Roemer, and Aaron Say reallege and restate
17 Paragraphs 1 through 11 and Paragraphs 13 through 15 of their
18 FIRST CAUSE OF ACTION and incorporate said paragraphs and
19 said allegations as though fully set forth in this THIRD
20 CAUSE OF ACTION.

21 19. Defendants and Respondents' actions of requiring
22 job applicants and other employees represented by plaintiff Local
23 2400 to refrain from smoking tobacco while on or off duty
24 and to maintain a physical conditioning and retesting 03738827
25 program as a condition of employment deprives said job applicants
26 and said employees represented by plaintiff Local 2400 of equal

1 protection of the laws in violation of the Fourteenth Amendment of
2 the United States Constitution, 42 U.S.C. Section 1983, and Article
3 I, Section 7 of the California Constitution in that a non-smoking
4 agreement, the physical conditioning and retesting program are not
5 required of other firefighters and other public safety employees
6 employed by Defendant and Respondent City, and also not required of
7 other non-public safety employees of Defendant and Respondent City.
8 There is no compelling state interest or rational basis for
9 imposing said requirements on firefighter job applicants who
10 have become employees of the City of San Mateo Fire Department.

11 WHEREFORE, Plaintiffs pray for judgment as hereinafter
12 set forth.

13 FOURTH CAUSE OF ACTION

14 (Privileges and Immunities)

15 20. Plaintiffs Local 2400, Mark Greene, Kevin
16 Ruane, Robert Davis, Earl Chinn, Cory Trammel, Randy Himes, Kurt
17 Halliday, John Roemer, and Aaron Say reallege and restate
18 Paragraphs 1 through 11 and Paragraphs 13 through 15 of
19 their FIRST CAUSE OF ACTION and incorporate said paragraphs
20 and said allegations as though fully set forth in this
21 FOURTH CAUSE OF ACTION.

22 21. Defendants and Respondents' actions of requiring
23 firefighter job applicants to refrain from smoking tobacco
24 off duty and to maintain a physical conditioning and retesting
25 program as a condition of continued employment while not 03738828
26 requiring other employees and other employees represented by

1 plaintiffs to refrain from smoking tobacco off duty as a condition
2 of employment is a violation of the privileges or immunities clause
3 of the Fourteenth Amendment of the United States Consitution,
4 42. U.S.C. Section 1983, and further violative of the
5 privileges or immunities clause of Article I, Section 7 of
6 the California Constitution in that there is no necessity
7 for requiring one group of persons to refrain from or promise
8 to refrain from smoking tobacco on or off duty and to maintain
9 a physical conditioning and annual retesting program as
10 conditions of employment in that all other firefighters
11 employed by the City of San Mateo are not subject to said
12 employment conditions. The distinction between the two
13 firefighter groups is arbitrary and capricious in that it
14 bears no relationship to the applicants or employees' ability
15 to perform the responsibilities of their position.

16 WHEREFORE, Plaintiffs pray for judgment as hereinafter
17 set forth.

18 FIFTH CAUSE OF ACTION

19 (Unlawful Oath or Declaration)

20 22. Plaintiffs Local 2400, Mark Greene, Kevin
21 Ruane, Robert Davis, Earl Chinn, Cory Trammel, Randy Himes,
22 Kurt Halliday, John Roemer and Aaron Say reallege and
23 restate Paragraphs 1 through 11 and Paragraphs 13 through
24 15, inclusive, of their FIRST CAUSE OF ACTION and incorporate
25 the same therein as though fully set forth.

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1 23. The aforesaid "Employment Agreement" constitutes
2 an oath or declaration required by respondents as a qualification
3 for public employment in violation of Article II, Section 3 of
4 the California Constitution and Section 1364 of the California
5 Government Code.

6 WHEREFORE, Plaintiffs pray for judgment as hereinafter
7 set forth.

8 SIXTH CAUSE OF ACTION

9 (Labor Code Violations)

10 24. Plaintiffs Local 2400, Mark Greene, Kevin
11 Ruane, Robert Davis, Earl Chinn, Cory Trammel, Randy Himes,
12 Kurt Halliday, John Roemer and Aaron Say reallege and restate
13 Paragraphs 1 through 11 and Paragraphs 13 through 15 of
14 their FIRST CAUSE OF ACTION and incorporate the same herein
15 as though fully set forth.

16 25. Defendants and Respondents requirement of an
17 "Employment Agreement" containing a provision that firefighter
18 engineers bear the expense of medical correction or physical
19 conditioning is contrary to public policy in that it conflicts
20 with the policy of the state to provide for medical care and
21 rehabilitation services for employees injured or incapacitated
22 due to their employment. Labor Code Sections 4600, 139.5,
23 sub. (c), 3207.

24 WHEREFORE, Plaintiffs pray for judgment as hereinafter
25 set forth.

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1 SEVENTH CAUSE OF ACTION

2 (Meyers-Milias-Brown Act)

3 26. Plaintiff and petitioner San Mateo County
4 Fire Fighters Local 2400 restates and realleges Paragraphs
5 1 through 11 and 13 through 15, inclusive, of the FIRST
6 CAUSE OF ACTION and incorporates said allegations by reference
7 into this SEVENTH CAUSE OF ACTION.

8 27. Individual employment agreements, physical standards
9 for firefighters, annual retesting requirements, no smoking
10 prohibitions, automatic termination, and the establishment
11 of "good cause" for termination are conditions of employment
12 concerning which Defendant and Respondent City of San Mateo
13 and its representatives must meet, confer and endeavor to
14 reach agreement with Plaintiff and Petitioner Local 2400 pursuant
15 to the requirement of the Meyers-Milias-Brown Act, Government
16 Code Sec. 3505.

17 28. Beginning in December, 1981, and on numerous
18 occasions thereafter Plaintiff and Petitioner Local 2400, through
19 its representatives, demanded and have continued to demand
20 that Defendant and Respondent City of San Mateo and its
21 representatives proceed to meet, confer and endeavor to reach
22 agreement concerning the employment conditions included in afore-
23 said "Employment Agreement." Defendant and Respondent City and
24 its representatives refused in December, 1981, and have continued
25 to refuse thereafter to meet, confer and endeavor to reach

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1 agreement with plaintiff and petitioner union, claiming
2 that matters covered by aforesaid "Employment Agreement"
3 were "management rights."

4 29. Said refusal of Defendant and Respondent
5 City and its representatives to meet, confer and endeavor to
6 reach agreement with plaintiff and petitioner union violates
7 Government Code Secs. 3500 et. seq. and specifically, Government
8 Code Section 3505.

9 EIGHTH CAUSE OF ACTION

10 (Nepotism)

11 (No Properly Adopted Rule)

12 30. Plaintiff and Petitioner Local 2400, petitioner
13 John S. Molinelli, Jr., and petitioners Does One through One
14 Hundred, Jr., restate and reallege paragraphs 1 through 8
15 and 14 through 15, inclusive, of the FIRST CAUSE OF ACTION
16 and incorporate said allegations by reference into this
17 EIGHTH CAUSE OF ACTION.

18 31. In November, 1981, petitioner John S. Molinelli,
19 Jr., was notified by representatives of Defendant and Respondent
20 City that he had successfully passed the firefighter/engineer
21 examination and placed No. 4 on the eligibility list for immediate
22 hiring. On December 2, 1981, petitioner Molinelli was advised
23 by Defendant and Respondent Arthur N. Koron, acting as Fire Chief
24 for Defendant and Respondent City, that petitioner Molinelli could
25 not be considered for employment because of Defendant and Respondent
26 City's "nepotism rule". Defendant and Respondent Koron advised

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1 petitioner Molinelli, that "special consideration" under the
2 "nepotism rule" had been denied by Defendant and Respondent
3 Richard DeLong, acting as City Manager to Defendant and Respondent
4 City.

5 32. Since December, 1981, despite repeated requests
6 by petitioner Molinelli through his representatives, Respondent
7 and Defendant DeLong has repeatedly refused to hire Petitioner
8 as a firefighter/engineer in the City of San Mateo Fire
9 Department on the grounds of "nepotism".

10 33. The refusal of Respondents and Defendant
11 DeLong to hire petitioner Molinelli is unlawful in that said
12 Respondent and Defendant has exceeded his authority as City Manager
13 in imposing a condition for employment with the Respondent
14 and Defendant City that has never been approved by the City
15 Council, Civil Service Commission, or the voters of said City.

16 WHEREFORE, Plaintiffs and Petitioners pray for
17 judgment as hereinafter set forth.

18 NINTH CAUSE OF ACTION

19 (Nepotism)

20 (Equal Protection/Unlawful Discrimination)

21 34. Plaintiff and Petitioner Firefighters Local 2400,
22 Petitioner Molinelli and Petitioners One through One Hundred restate
23 and reallege paragraphs 1 through 8 and 14 through 15 of the FIRST
24 CAUSE OF ACTION and Paragraphs 30 through 33 of the EIGHTH CAUSE OF
25 ACTION, and incorporate said paragraphs in this NINTH CAUSE OF ACTION
26 by reference. 03738833

1 35. Defendants and Respondents actions in denying
2 Petitioner Molinelli employment on the grounds of nepotism
3 deprives said Petitioner and other persons similarly situated
4 of equal protection of the laws in violation of the Fourteenth
5 Amendment of the United States Constitution, 42 U.S.C.
6 Section 1983, and Article I, Section 7 of the California
7 Constitution in that Respondent and Defendant DeLong's "rule" on
8 nepotism constitutes arbitrary employment discrimination and
9 there is no compelling state interest or rational basis for
10 imposing nepotism requirements on firefighter job applicants.
11 Said nepotism "rule" is further unlawful because said rule
12 is violative of California Government Code Section 12940(a)
13 as a rule precluding the hiring of any person on grounds of
14 ancestry.

15 WHEREFORE, Plaintiffs and Petitioners pray for
16 judgment as hereinafter set forth.

17 TENTH CAUSE OF ACTION
18 (Declaratory Relief)

19 36. Plaintiffs and Petitioners restate and reallege
20 Paragraphs 1 through 35, inclusive, of all preceding Nine Causes
21 of Action and incorporate said allegations as if fully set forth
22 in this TENTH CAUSE OF ACTION. 03738834

23 37. Actual controversies have arisen and now exist
24 between Plaintiffs and Petitioners and Defendants and Respondents
25 concerning the propriety and validity of aforesaid "Employment
26 Agreement" in that Plaintiffs and Petitioners contend that said

1 agreement violates public policy as a contract of adhesion,
2 violates provisions of the state and federal constitutions
3 and state and federal law, and has been imposed by Defendants
4 and Respondents without complying with the requirements of
5 the Meyers-Miliias-Brown Act. Actual controversies have also
6 arisen concerning the imposition and enforcement of rules
7 prohibiting employment in the City of San Mateo Fire Department
8 for reasons of nepotism. Defendants and Respondents deny
9 these contentions and maintain said "Employment Agreements"
10 and nepotism "rules" are proper.

11 WHEREFORE, Plaintiffs and Petitioners pray for
12 judgment as follows:

13 1. That a Preliminary and Permanent Injunction
14 issue enjoining Defendant and Respondents, and each of them,
15 and their officers, agents, and employees from enforcing or
16 threatening to enforce aforesaid "Employment Agreements"
17 signed by plaintiffs and petitioners; from requiring other
18 job applicants for positions in the Fire Department in the
19 City of San Mateo to sign said "Employment Agreements"; from
20 requiring job applicants to sign any agreement without first meeting,
21 conferring, and endeavoring to reach agreement with Plaintiff and
22 Petitioner Local 2400 concerning said agreements; and from refusing
23 to offer employment to successful firefighter job applicants on
24 grounds of nepotism; 03738835

25 2. That an Alternative and Peremptory Writ of Mandate
26 issue under seal of this court ordering Defendants and Respondent

1 to proceed to offer employment to Petitioner John S. Molinelli, Jr.,
2 as a firefighter/engineer with the Fire Department of the City of
3 San Mateo, with salary and benefits payable from December 2, 1981;

4 3. For a Declaratory Judgment from this Court declaring
5 that aforesaid "Employment Agreements" are null and void and that
6 job applicants may not be denied employment in the Fire Department
7 of the City of San Mateo on grounds of nepotism;

8 4. For attorneys' fees pursuant to 42 U.S.C. Section 1988,
9 C.C.P. Section 1021.5 and Government Code Section 800;

10 5. For costs of suit;

11 6. For such other and further relief as the court deems
12 proper.

13 DATED: October 29, 1982.

14 DAVIS & RENO
15 ALAN C. DAVIS
16 DUANE W. RENO
17 VINCENT J. COURTNEY JR.

18 By 
Alan C. Davis

19 Attorneys for Plaintiffs and
20 Petitioners

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VERIFICATION

I, ALAN C. DAVIS, declare:

I am an attorney at law duly admitted and licensed to practice before all courts of the state and am the attorney for record for Plaintiffs and Petitioners in the above-entitled matter.

Said Plaintiffs and Petitioners are absent from the county in which I have my office and for that reason I am making this verification on their behalf.

I have read the foregoing COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND PETITION FOR WRIT OF MANDATE and know the contents thereof.

I am informed and believe that the matters stated therein are true and, on that ground, I allege that the matters stated therein are true.

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

Executed on October 29, 1982, at San Francisco, California.


ALAN C. DAVIS

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OFFICE OF FIRE CHIEF
FIRE DEPARTMENT



120 SOUTH ELLSWORTH AVENUE,
SAN MATEO, CALIFORNIA 94401
TELEPHONE: 415 574-0910

EMPLOYMENT AGREEMENT

I, Robert Elliott Davis, acknowledge that by accepting employment with the City of San Mateo Fire Department as a Firefighter-Engineer, it is understood that I agree to maintain physical standards acceptable to the California State Department of Forestry for structural firefighters and to be retested annually from this date regarding such physical ability to perform the job of Firefighter-Engineer with the City of San Mateo.

Further, it is understood that I will be measured against the acceptable standard prescribed for structural firefighters by the California Department of Forestry at the time of retesting.

Additionally, it is understood that the expense of the testing will be borne by the City of San Mateo and the expense of medical correction or physical conditioning shall be borne by myself.

Additionally, I agree to be subject to disciplinary action for non-compliance, willful or not, with any action taken or direction given by the City of San Mateo to correct any condition of mine determined deficient by such testing of my physical ability.

Finally, I agree that upon completion of the Recruit Training Program that I will not smoke tobacco on or off duty during my tenure of employment as a safety member of the San Mateo City Fire Department. If I do smoke, I will be dismissed for good cause.

I agree to these conditions and accept such as a condition of employment and continued employment with the City of San Mateo.

Robert E. Davis
Signature

12/18/81
Date

Carol A. Todd
Witness

RECEIVED
DEC 18 1981
CITY OF SAN MATEO FIRE DEPT.
CHIEF'S OFFICE

EXHIBIT "A"

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DEC 13 1982
A. J. STEVENS