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===== Start of Answer #1 (916 words) =====

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Remedies: where a court addresses wrongs committed under the substantive law through equitable or legal remedies depending on the wrong plaintiff seeks redressed and the cause of action.

1. Paul Profiler's (P) Personal Injury Compensatory Damages

Compensatory Damages: Involve the award of money damages to compensate plaintiff's loss, attempting to put them back to where they were before they were injured by the defendant. (*Hatahley*)

P has filed a suit as an individual and he can seek compensatory damages for the intentional torts such as assault and battery. And negligence for CA's negligent hiring/retention if P is able to prove the CA had a duty which they breached, which proximately caused P's injuries.

Some of the damages he is eligible are for:

General Damages: which directly flow from the injury and include pain and suffering (emotional distress/mental anguish caused by the injury), maybe loss of household chores (his arm is injured so it is likely he cannot help around the house doing chores that required both arms).

Special Damages: which are other damages that result from injury and include past medical bills (the \$3,500.00 for treatment of his injuries), future medical bills, loss of wages (P's three weeks of not being able to work at the Harley Davidson totaling \$3,000.00 in lost wages)

Here, P is likely entitled to general damages for being afraid for his children and for his life and not being able to perform household chores. He will also be able to recover special damages for his past medical bills (depending on the discussion below), but defiantly for his loss wages.

Collateral Source Rule: is a common law rule that states that a payments made by a third party for P's expenses from his injury cannot be offset against plaintiff's recovery.

Subrogation: Where a third party assumes the legal rights of another party, usually involves an insurance company who steps in the place of their insured to sue the person responsible for their insured's injuries so they can recoup the money they paid on their insured's claim.

Here, it is likely that P's insurance company will seek to recoup their payment of his medical bills by suing CHP/CA/D using subrogation if possible.

CHP/CA/D will likely ask the judge to offset the insurance payment against P's past medical bills so that they are not on the hook, arguing that P should not be entitled to double recovery. P will argue the collateral source rule, which may or may not be successful depending on the jurisdiction. Modernly, there is a trend for courts to offset third party payments, reducing the liability of CHP/CA/D in this case.

Contribution/ Joint and Several Liability--

CHP/CA/D are joint and severally liable for P's injuries, which means if CA/CHP end up paying for any damages to P at a 100% they may seek contribution (when one from defendant pays a bigger portion then his percentage of liability under joint and several liability they may be able to seek repayment from another defendant for their percentage of liability) to help reimburse for his percentage of liability.

2. P's Attorney's Fees

P has a claim for attorney's fees under statute, which is the exception to the **American Rule**- which treats attorneys fees as an ancillary remedy which a plaintiff is not ordinarily entitled to unless there is an exception.

There are a few ways a court can determine attorneys fees such as:

Lodestar: reasonable hourly rate times hours spent on a case. The reasonable hourly rate can be determined market rate of an attorney with similar skills and years of experience. The hourly rate should be kept track of by the attorney using contemporary records and attorneys should take it upon themselves to deduct unproductive hours.

Percentage of common fund: is based on the percentage of a fee that a class action receives, which can be determined by what a firm would bid for a class action case before it goes to trial.

Settlement waiving attorney's fees (*Riverside*): Attorney's fees can be waived in settlement agreements.

In this case, P's counsel claims 2k hours of attorney time and \$1250/hour. Using the Lodestar it would have to be determined if 1250/hour is a reasonable fee, which defendant's will claim it is not and will demand to see proof of the 2k hours that P's counsel has claimed. The court will likely reduce the fee in light of the huge hourly rate and probably lesson the amount of hours depending on the discretion of the judge.

3. P's Civil Rights Violations

P has a potential private cause of action for a violation of his constitutional rights under the Unknown FBI Agent case where the plaintiff's fourth amendment rights protecting him against unlawful searches and seizures was violated. The ruling of this case only seems to apply to the fourth amendment, which although there was no search in this

case, there appears to be an unlawful seizure because D detained P outside of his house with his gun with no probable cause or reasonable suspicion. Thus, P will likely be able to recover for a violation of his civil rights.

4. P's Punitive Damages

Punitive damages are to punish and deter future bad behavior of a defendant who commits malice, fraud or oppression. Whether punitive damages are too high falls under *BMW v. Gore/State Farm* to determine violations of due process.

P will claim that D's conduct was done with malice, that he profiled him and assaulted him due to his hatred of motorcycle people.

2)

===== Start of Answer #2 (1759 words) =====

Irene Inferno v. Gotham City:

Standing

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As a foundational injury, Irene must have standing, which requires an injury in fact or likely injury to result.

Under *Bivens*, parties have standing to sue municipalities for statutory and constitutional violations. Thus, Irene has standing.

TRO

The facts set forth that Irene seeks a TRO to reinstate Irene. A TRO seeks immediate equitable relief and may be granted upon a showing an irreparable harm/injury will likely result within the time given D to respond if relief is not granted. Notwithstanding the present motion to disqualify the judge, and as to the merits of the TRO, it is rather difficult to see how the irreparable harm would be immediate should D be given an opportunity to respond. P's attorney's would also have to certify whether notice has been attempted and why notice should be forgone. Because the harm does not seem immediate, the TRO should likely be denied and a preliminary injunction entertained instead (in which notice must be given--see below). Regardless, even if granted, TROs may not exceed 10 days.

Preliminary Injunction

Regardless of the disposition of her TRO (and regardless of whether the judge is disqualified), in seeking equitable relief, Irene would like also request a preliminary injunction. A preliminary injunction seeks to require a party to do something while the action is pending. It also requires (1) showing that an irreparable injury is likely to result should the injunction not be granted; (2) that the merits/position of the parties weighs in the moving party's favor; (3) that P is likely to succeed on the merits; and (4) the injunction would be in the public's interest.

In determining whether an injury is irreparable, court's look at whether the injury can be quantified monetarily. Here, because the alleged injury relates to a violation of civil rights pursuant to Title VII, she has a greater likelihood of showing an irreparable injury. Irene would argue that if she were not immediately permitted to continue in the program she would fall behind and others would continue to be discriminated against if a temporary injunction wasn't placed against Gotham City barring application of that particular physical aptitude test. Because of the nature of the harm, it seems likely she meets that prong. Depending on whether the BFOQ is a justifiable basis for determining physical aptitude that may have the *effect* of discriminating, the second and third prong may not, however, be met. Thus, it's open as to whether those prongs are met. As to the fourth prong, it could be easily argued that eliminating the discrimination now is to the public's benefit as a whole. Ultimately, it seems slightly more likely than not that the preliminary injunction would be entered, with the 2nd and 3rd prongs being the most up for argument between the parties.

Structural Injunction/Permanent Injunction

As to a complete and final remedy, Irene will essentially seek a structural injunction against the city. A structural injunction is an injunction against a public agency or municipality to eliminate a statutory or constitutional violation of citizens' rights. Structural injunctions require (1) that an irreparable harm is likely to result should the injunction not be granted; that the relative merits of the parties weights in favor of the moving party; (3) that the injunction is in the public's interest, and (4) that there is no other adequate legal remedy at law. Further, the scope of an injunction (if granted) should be to place the injured party in their rightful position, or where they would be had their been no statutory/constitutional violation. The scope should focus most specifically on the violation alleged.

Here, the irreparable harm is likely to occur (see supra). Further, outside of damages for non-hiring, there is no adequate legal remedy to cure the City's wrongful practices (assuming they are wrongful). Also, supra, the injunction could likely serve the public interest in preserving all women's rights under Title VII. Thus, the issue ultimately turns on the merits of the position and whether Gotham City may implement a program that has the effect of discriminating on the basis of BFOQ. Should the Court determine the effect of discrimination in the program is in violation of Title VII (a substantive legal question), then the injunction would likely be issued. On the other hand, if it is a permissible system, then the injunction denied.

Regardless, if the injunction is entered, the Court must not exceed the scope of a permissible structural injunction. The injunction must be narrowly tailored for the purpose of eliminating the harm/wrong, without substantially effecting third parties. Likely, the Court would review the physical criteria and potentially require the parties managing the criteria to review a more appropriate system that had the effect of including more women so that it wasn't intentionally or unlawfully unintentionally excluding them.

Money/legal Damages

Assuming the Court determined that Gotham discriminated in not hiring Irene, but (1) did not find her injuries irreparable, and/or (2) did not necessarily find them unlawful under Title VII but unlawful on the basis of some other discrimination, only then could she get compensatory damages (as a plaintiff may not get both in this case, particularly where the injunction seeks to fully remedy the wrong in getting her 'hired'). Thus, she may not 'have her cake and eat it too.' She has a choice of remedies, but may not seek both where one returns her to her rightful position.

Should Irene forgo the structural injunction route, she could then potentially seek general and special damages for Gotham's alleged violations of Title VII. This would entitled her to seek economic (i.e. lost

wages) and non-economic damages (pain and suffering; severe emotional distress) and potentially punitive damages.

Because the facts set forth that Irene had depression from being discharged, and sought psychiatric help, she could clearly have substantial general damages.

As to future lost wages, they would be required to be discounted to present value and must be proven to be greater than 50% to occur. Of note here is the fact that Irene would have a duty to mitigate and seek separate employment elsewhere. Thus, even if she proves such damages, they could be substantially reduced by other employment she could seek.

Thus, ultimately, Irene could forgo some of her equitable remedies for legal damages, based on Gotham's alleged violation of Title VII.

Punitive Damages

Generally, punitive damages may be awarded to both punish a defendant and deter such wrongful behavior (i.e. intentional torts and/or civil rights violations). Under BMW, Court's use a three prong test for justification of punitives: (1) degree of reprehensibility of conduct of defendant;; (2) look at the ratio of compensatory damages to the award for punitive damages; (3) look at the difference in the award of punitive damages to that of the damages for a like criminal action. Further, punitive damages should not be excessive: Punish, but not annihilate the defendant (*Ace Hardware*).

Here, however, because there seems to be no intentional or reprehensible acts, punitives are likely not warranted.

Attorney's Fees

Irene also seeks ancillary remedies, including attorney's fees and experts fees reimbursement (if any). Generally speaking, 42 US Code Section 1988 permits an award of attorney's fees to the prevailing party in a civil rights action at the Court's discretion. Thus, should Irene succeed in the cause of action alleging the Title VII violation, she could file a motion for attorney's fees as the prevailing party. Note, the Court's have discretion even if Irene succeeds.

Generally, Federal court's employ the Lodestar test for determining whether an award of attorney's fees is reasonable. The Lodestar test looks at the fee request as a whole compared to the award/outcome

obtained to determine whether such a request is reasonable. Further, the hourly rate itself must also be reasonable. Thus, Irene would bring a motion for attorney's fees after prevailing, and would need direct testimony declarations by experts as to (1) reasonableness of the hourly fee; and (2) reasonableness of the hours claimed as compared to the outcome/award. Depending on the jurisdiction, Courts look at multiple prongs (12, in some jurisdictions) for determining such reasonableness.

Here, her attorney's are estimating 3,000 hours at \$500/hour. Thus, Irene would bear the burden of proving reasonableness as to these factors. Further, the facts also state that the sister-attorney's have entered into a contingency fee contract with Irene. They probably cannot seek attorney's fees on an hourly basis and a 40% portion of Irene's monetary award (if any). This appears duplicitous, even considering that Irene will likely be going the structural injunction route in which no monetary damages would be awarded for a cut of their fees. Simply put, because the attorney's are not billing Irene hourly, they would probably be in the wrong to request an award of attorney's fees that she's not actually going to otherwise pay. Assuming there is no actual award of monetary damages, it's slightly more possible that an award would be justifiable, but, again, because they are not billing her hourly, and the award under Section 1988 is not for the Court's contempt powers to punish the defendant for bad litigation, the award would likely be wrongful.

Regardless, because the Court has discretion even if Irene wins, it would ultimately come down to whether they would be in abuse of their discretion to award such fees under the circumstances, as well as their reasonableness.

Disqualification of Judge

Based on the Judge's convictions for sexual assaults in his Chambers, Gotham City seeks to have him disqualified. While it's possible the Judge could be removed from his position by the Supreme Court, generally a judicial officer will only be disqualified from presiding over an action for some sort of bias, conflict of interest, or prejudice with/towards a party. Thus, even if the Judge *should* be removed based on his convictions, Gotham City probably doesn't have a legitimate legal basis to have him disqualified in this particular action.

Assuming arguendo there were a legitimate basis to have him disqualified, the Judge claims judicial immunity. Generally speaking, judicial immunity would not protect a federal judge from presiding over the action should there be a legitimate basis for disqualification under Federal law. Here, the acts in question are not even remotely judicial in nature and are outright illegal actions while he was on the bench; thus, his judicial immunity would not protect him from disqualification (although, arguably from other causes of

action or matters). Thus, the immunity is not what protects the Judge from disqualification, but rather the basis for disqualification that would protect him.

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===== End of Answer #2 =====

END OF EXAM