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8 Attorneys for Plaintiff,
9 BETH FISCHGRUND

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SACRAMENTO

12 BETH FISCHGRUND,

13 Plaintiff,

14 v.

15 CALIFORNIA DEPARTMENT OF
16 CORRECTIONS AND REHABILITATION;
17 and DOES 1 through 100, inclusive,

18 Defendants.

Case No.:

**PLAINTIFF'S VERIFIED COMPLAINT
FOR DAMAGES:**

1. Violation of Labor Code § 6310;
2. Violation of Labor Code § 1102.5;
3. Bane Act: Civil Code §§ 52.1 & 43;
4. Unruh Civil Rights Act: Civil Code § 51;
5. Violation of Gov. Code § 8547;
6. Sex Discrimination: Gov. Code § 12940, subd. (a);
7. Disability Discrimination: Gov. Code § 12940, subd. (a);
8. Retaliation: Gov. Code § 12940, subd. (h);
9. Failure to Prevent Harassment, Discrimination, and/or Retaliation: Gov. Code § 12940, subd. (k);
10. Failure to Accommodate: Gov. Code § 12940, subd. (m); and
11. Failure to Engage in Interactive Process: Gov. Code §12940(n);

AND DEMAND FOR JURY TRIAL

26 Plaintiff Beth Fischgrund respectfully submits the instant Verified Complaint for
27 Damages and Demand for Jury Trial and alleges as follows:

28 ///

FILED
Superior Court Of California,
Sacramento
07/01/2020
amocanu
By _____, Deputy
Case Number:
34-2020-00281411

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1 **PARTIES AND JURISDICTION**

2 1. Plaintiff Beth Fischgrund (“Plaintiff” or “Dr. Fischgrund”) was, at all times
3 relevant to this action, an employee or wrongfully terminated employee of Defendant. While
4 employed by Defendant, and at all times relevant to this action, Plaintiff was a resident of the
5 State of California.

6 2. Defendant California Department of Corrections and Rehabilitation (“Defendant”
7 or “CDCR”) was, at all times relevant to this action, operating Salinas Valley State Prison
8 (“SVSP”), a maximum-security facility in California. Defendant CDCR was at all times relevant
9 to this action, an “employer,” as defined by Government Code section 12926(d).

10 3. Venue and jurisdiction are proper because the damages sought exceed the
11 jurisdictional minimum of this Court; Defendant’s principal place of business is located in
12 Sacramento County; Defendant engaged in unlawful practice in Sacramento County; and
13 Defendant maintains the relevant records in Sacramento County.

14 4. Plaintiff is ignorant of the true names and capacities of the Defendants sued herein
15 as DOES 1 through 100. Defendants DOES 1 through 100 are sued herein under fictitious names
16 pursuant to Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that
17 basis alleges, that each Defendant sued under fictitious names is in some manner responsible for
18 the wrongs and damages as alleged herein. Plaintiff does not at this time know the true names or
19 capacities of said Defendants but prays that the same may be inserted herein when ascertained.

20 5. At all times relevant to this action, each and every Defendant was an agent and/or
21 employee of each and every other Defendant. In doing the things alleged in the causes of action
22 stated herein, each and every Defendant was acting within the course and scope of this agency or
23 employment, and was acting with the consent, permission, and authorization of each remaining
24 Defendant. All actions of each Defendant as alleged herein were ratified and approved by every
25 other Defendant or their officers or managing agents.

26 **STATEMENT OF FACTS**

27 6. Prior to working at CDCR, Dr. Fischgrund was trained in clinical psychology and
28 public health. Dr. Fischgrund received a Ph.D. in Clinical Psychology from Northwestern

1 University Medical School in 2010, and a Master of Public Health from Harvard University in
2 2014. She previously worked as a Clinical Psychologist and the Women's Program Manager for
3 the Department of Veterans Affairs, as a contract Clinical Psychologist for the United States Air
4 Force, and as a consultant in Healthcare Operations for PricewaterhouseCoopers Strategy&
5 formerly Booz & Company.

6 7. Throughout her employment with CDCR, Dr. Fischgrund worked as an employee
7 under the control and at the direction of her supervisors at CDCR. Dr. Fischgrund reported to her
8 supervisor, Dr. Jeremy Price. All of Dr. Fischgrund's work was within the usual course of the
9 duties of a psychologist employed by CDCR. Dr. Fischgrund maintained a full caseload, led
10 therapy groups, evaluated inmates for suicidal and homicidal ideation, collaborated with SVSP's
11 interdisciplinary treatment teams, and trained and mentored staff. CDCR scheduled Dr.
12 Fischgrund's work hours and duties, and the cases that she maintained throughout her time at
13 SVSP. She received highly favorable reviews for her work at SVSP, and had a reputation as one
14 of the best clinicians on the staff.

15 8. Dr. Fischgrund worked at CDCR under a contract with an employment agency
16 called Novo Talent (formerly known as Best Nest Management), which in turn contracted with
17 Management Solutions, the employment agency retained by CDCR to hire and retain staff.

18 9. On or about September 11, 2017, Dr. Fischgrund started as a Clinical Psychologist
19 at SVSP, an all-male, maximum security prison in Soledad, California. Dr. Fischgrund was hired
20 as a Primary Clinician and assigned to the prison's *A-yard*. *A-yard* was a Protective
21 Custody/Special Needs Yard, which means that the inmates needed extra protection because they
22 were unsafe on regular prison yards. For the majority of the inmates on the yard, this was due to
23 the nature of their offense, which were violent crimes against women and children. Dr. Fischgrund
24 worked in *A-yard*'s Extended Outpatient Program ("EOP"), which was for inmates diagnosed
25 with severe mental illnesses or who were too mentally unstable for regular yards. The EOP was
26 similar to a partial hospitalization program outside of prison.

27 10. In or around 2018, Dr. Ahmad made uncomfortable comments to and in the
28 presence of Dr. Fischgrund, including sexual innuendos and inappropriate jokes. For example,

1 Dr. Ahmad asked Dr. Fischgrund to reach into his pocket to retrieve notes that belonged to her
2 patients. Dr. Ahmad also pressured Dr. Fischgrund for her personal phone number under the guise
3 that he needed it for work. Dr. Fischgrund told Dr. Ahmad that she did not want to interact with
4 him anymore, and she avoided all interactions with him.

5 11. In or around October 2018, a social worker, Melissa Sagami-Peck, reported to Dr.
6 Fischgrund that Dr. Ahmad was making her feel uncomfortable and making advances. Dr.
7 Fischgrund reported to Dr. Darin Stowell, a Chief of Mental Health about Dr. Ahmad's pattern
8 of harassing women. Dr. Stowell told her that she was not the first woman to report sexual
9 harassment by Dr. Ahmad.

10 12. On or about March 13, 2019, Dr. Fischgrund's supervisor, Dr. Price, called her
11 into his office. Dr. Price told Dr. Fischgrund an inmate complained to his Primary Clinician
12 ("PC"), Ms. Peterson, LCSW, and to Dr. Price, that Dr. Fischgrund was sleeping with Sgt. Shaltry,
13 who also worked on A-yard. This was not true. The inmate allegedly wanted to file a complaint
14 that Dr. Fischgrund was improperly influencing the inmate's clinician and staff to transfer him.
15 This was also not true. Dr. Price shared with Dr. Fischgrund that this was not the first time he
16 heard about Dr. Fischgrund's personal life being discussed around the yard, and said there was a
17 rumor going around the prison about Dr. Fischgrund and Sgt. Shaltry. Dr. Price continued that it
18 was not in his position to ask about her personal life, and stated that he did not believe that having
19 romantic or sexual relationship with a coworker would violate any CDCR policy. Dr. Price
20 mentioned the fact that his wife also worked at the prison. He said he told the inmate that he was
21 not allowed to file a staff complaint stating that a staff member is sleeping with someone else.

22 13. On or about April 3, 2019, Dr. Ravi Mehta, a psychiatrist who worked on A-yard,
23 walked into Dr. Fischgrund's office, closed the door, and said that an inmate told him that
24 Fischgrund was sleeping with Sgt. Shaltry. Dr. Mehta said he needed to know if she was sleeping
25 with Sgt. Shaltry. Dr. Fischgrund told Dr. Mehta that discussing her sex life with him or with
26 anyone else at work, including the inmate, would be inappropriate. Dr. Fischgrund complained
27 that the inmate should have been told not to discuss the sex lives of female staff. Dr. Fischgrund
28 added that she and Sgt. Shaltry were just friends. Dr. Mehta asked, "like friends with benefits?"

1 Dr. Fischgrund then told Dr. Mehta that she needed to return to work. Dr. Fischgrund reported
2 the incident to her supervisor, Dr. Price.

3 14. On or about April 24, 2019, Dr. Mehta entered Dr. Fischgrund's therapy room
4 accompanied by an inmate. After introducing the inmate to Dr. Fischgrund, Dr. Mehta instructed
5 the inmate to tell her what he shared with Dr. Mehta. The inmate appeared embarrassed and
6 stuttered something inaudible, and then walked down the hallway towards the exit. After the
7 inmate left, Dr. Mehta said the inmate told Dr. Mehta that he thought Dr. Fischgrund was
8 attractive and wanted to date her after he was released. Following this incident, Dr. Fischgrund
9 complained to Dr. Mehta and Dr. Price that overfamiliarity, or crossing such personal boundaries,
10 could be dangerous.

11 15. On or about April 24, 2019, Dr. Price came to Dr. Fischgrund's office to discuss
12 her complaint regarding Dr. Mehta. Dr. Price told Dr. Fischgrund that he elevated the issue to the
13 Chiefs of Mental Health – Dr. Muriel Yanez and Dr. Stowell.

14 16. On or about April 25, 2019, while Dr. Fischgrund was walking across A-yard, the
15 inmate from previous day approached her and shared that he did not want to ask her out but he
16 felt like Dr. Mehta was forcing him to tell her. The inmate then asked her not to write him up for
17 overfamiliarity, and Dr. Fischgrund agreed but asked him not to make any more inappropriate
18 comments about her.

19 17. On or about May 1, 2019, Dr. Fischgrund walked into Dr. Price and his wife, Dr.
20 Rachael Price, another psychologist at SVSP. Dr. Fischgrund asked Dr. Price about what
21 happened with her complaint regarding Dr. Mehta and him discussing Dr. Fischgrund's sex life
22 with inmates. Dr. Price told Dr. Fischgrund that Dr. Mehta was told he had to apologize to Dr.
23 Fischgrund. Dr. Fischgrund reported to Dr. Price that Dr. Mehta had not apologized.

24 18. On or about May 2, 2019, Dr. Mehta came into Dr. Fischgrund's office, and shut
25 the door, and told her that he had been a medical doctor for 40 years. Dr. Fischgrund told Dr.
26 Mehta that she was not questioning his qualifications, but she felt that Dr. Mehta placed her in an
27 unsafe situation. Dr. Mehta told her that he wanted to show the inmate that if the inmate did not
28 feel comfortable telling her to her face, then he should not have said it. Dr. Fischgrund reminded

1 Dr. Mehta that SVSP was a Maximum-Security prison with violent male offenders who attack
2 women and there are policies regarding what inmates could discuss with clinicians. Dr. Mehta
3 responded that he was told to apologize to her and asked her to let the chiefs know that he
4 apologized. Dr. Fischgrund told Dr. Mehta that this was not an apology, but Dr. Mehta ignored
5 her and left her office.

6 19. On or about May 2, 2019, following her conversation with Dr. Mehta, Dr.
7 Fischgrund immediately walked to Dr. Price's office and reported Dr. Mehta's apology was not
8 sincere.

9 20. On or about July 2, 2019, Dr. Fischgrund saw the same inmate who previously
10 expressed his interest in her, while she was standing in the hallway. The inmate greeted her by
11 saying, "Hi, Ms. Fish." Concerned about the inmate's overfamiliarity caused by Dr. Mehta, and
12 also to reinforce boundaries, Dr. Fischgrund responded, "Hi, but it's Dr. Fish, not Ms. Fish." The
13 inmate scowled at her and continued down the hallway.

14 21. On or about July 2, 2019, Dr. Art Khachikyan, another A-yard EOP clinician,
15 wrote an email to Dr. Fischgrund, urging her to see him "ASAP." Dr. Khachikyan highlighted
16 that was "very important." When Dr. Fischgrund met with Dr. Khachikyan, he told her that he
17 was providing her a "*Tarasoff* warning" – a reference to a California therapist's legal duty to
18 protect potential victims against whom a patient makes a serious threat of harm. During this
19 conversation, Dr. Mehta entered the room stating that he wanted to be part of the conversation.
20 According to Dr. Khachikyan, the same inmate was extremely angry at Dr. Fischgrund, and said
21 that he would like to cut her head off before walking out of his therapy session. Dr. Khachikyan
22 told Dr. Fischgrund that he consulted with Dr. Price, who told him to inform her first as a *Tarasoff*
23 warning; however, Dr. Khachikyan said that he had not contacted custody. Dr. Fischgrund
24 thanked Dr. Khachikyan and returned to her therapy office

25 22. On or about July 2, 2019, after Dr. Fischgrund received the *Tarasoff* warning from
26 Dr. Khachikyan, Dr. Mehta followed Dr. Fischgrund into the therapy office. Dr. Mehta asked Dr.
27 Fischgrund to switch offices because that office was the one that he liked to use. Dr. Fischgrund
28 told Dr. Mehta that she felt uncomfortable because her life was threatened by an inmate. Dr.

1 Fischgrund told him that she would like to keep the therapy office, which was the closest to the
2 Correctional Officers (“CO”). Dr. Mehta told her that he had the same safety concerns as she did,
3 and demanded Dr. Fischgrund to vacate the office.

4 23. On or about July 2, 2019, Dr. Fischgrund emailed Sgt. Shaltry and complained
5 that an inmate threatened her life, but custody was not notified.

6 24. On or about July 2, 2019, Ms. Jackie Godinez, an A-yard clinician, came into Dr.
7 Fischgrund’s office because she overheard Dr. Fischgrund’s conversation with Dr. Mehta. Dr.
8 Fischgrund complained to Ms. Godinez that an inmate threatened Dr. Fischgrund’s life and he
9 was still on the yard. Dr. Fischgrund Ms. Godinez that Dr. Mehta was trying to get her to change
10 office, but she did not feel safe. Ms. Godinez told Dr. Fischgrund that Dr. Fischgrund looked
11 scared and recommended her to go home the rest of the day. Ms. Godinez offered to cover Dr.
12 Fischgrund’s caseload group. Dr. Fischgrund cried because she was scared for her safety.

13 25. On or about July 2, 2019, Dr. Fischgrund emailed the Chiefs of Mental Health, Dr.
14 Yanez, Dr. Stowell, Dr. Crayton and Dr. Price, to complain about how she felt unsafe and
15 overwhelmed by the events of that morning. Dr. Fischgrund asked about “the correct procedures
16 for when an [inmate] makes a threat against staff during a session.” She also asked about if therapy
17 rooms were assigned to specific clinicians to address Dr. Mehta’s behavior.

18 26. On or about July 2, 2019, Dr. Price, replied that there was no official policy for
19 when a patient makes a threatening or inappropriate remark in the EOP building. Dr. Price stated
20 that CDCR did not have specifically assigned offices downstairs of the EOP building. Dr. Price
21 stated that CDCR determined to place a staff separation alert, which means the inmate would not
22 be able to be housed on a yard that Dr. Fischgrund was assigned.

23 27. On or about July 2, 2019, Sgt. Shaltry called Dr. Fischgrund and told her that he
24 was concerned for her safety because the inmate who threatened her life was placed in a holding
25 cell, and the inmate continued to make threatening comments about wanting to harm Dr.
26 Fischgrund. Sgt. Shaltry stated that the correct procedures should have been to alert custody
27 immediately, to not let the inmate leave the EOP building, and to put the inmate in a holding cell
28 to ensure everyone’s safety. Sgt. Shaltry stated that the correct procedures were not followed.

1 28. On or about July 2, 2019, Dr. Fischgrund began to experience high levels of
2 anxiety and fear. Dr. Fischgrund was worried about her safety after receiving the *Tarasoff* warning
3 from Dr. Khachikyan. The inmate had not been placed in a holding cell immediately after the
4 threat, he had been allowed to walk directly past her office while she sat with her back to the open
5 door. Dr. Fischgrund had trouble sleeping due to nightmares and did not feel safe returning to
6 work. Dr. Fischgrund reported her symptoms to Dr. Price and received time off until the following
7 week.

8 29. On or about July 9, 2019, Dr. Fischgrund returned to work. While she believed
9 that the “staff separation” was in place, as Dr. Price indicated, Dr. Fischgrund was still
10 experiencing acute anxiety from the threat.

11 30. On or about July 9, 2019, Dr. Fischgrund tried to meet with the Chiefs of Mental
12 Health to discuss her safety concerns – without success.

13 31. On or about July 11, 2019, Dr. Fischgrund emailed Dr. Yanez and told her that she
14 tried to stop by Dr. Yanez’s office numerous times but Dr. Yanez had been busy. Dr. Yanez
15 responded stating that she had a deadline to meet that day, and asked Dr. Fischgrund to meet the
16 following day. Dr. Fischgrund told Dr. Yanez that she was concerned about staff safety issues but
17 agreed to wait until the following day to discuss.

18 32. On or about July 11, 2019, Dr. Joan Striebel, Senior Psychiatrist, came to Dr.
19 Fischgrund. Dr. Striebel stated that Dr. Price told her Dr. Mehta encouraged an inmate ask Dr.
20 Fischgrund out on a date, and that she was contacting CDCR Headquarters about Dr. Mehta’s
21 behavior.

22 33. On or about July 12, 2019, Dr. Fischgrund emailed Dr. Yanez to ask her when they
23 could meet that day. Dr. Fischgrund mentioned that she would still like to meet with Dr. Yanez
24 to discuss her staff safety concerns.

25 34. On or about July 12, 2019, Dr. Mehta walked into the therapy room that Dr.
26 Fischgrund was using, and he told her that he wanted to use the room. Dr. Mehta looked visibly
27 angry, raised his voice, and told Dr. Fischgrund that the room was for doctors. Dr. Fischgrund
28 replied that she was a doctor too. Dr. Mehta then told her that he was going home if he could not

1 have that office. CO, Rubin Garcia overheard their conversation and told them that the therapy
2 rooms were not assigned.

3 35. On or about July 12, 2019, Dr. Fischgrund emailed Dr. Price to complain that she
4 was unable to meet with the Chiefs, and that her safety concerns have not been addressed by
5 CDCR. Later, Dr. Price came downstairs to Dr. Fischgrund's office and told her that the Chiefs
6 were busy dealing with some other issues. Dr. Price confirmed that there were no assigned offices.
7 Furthermore, Dr. Price told Dr. Fischgrund that the top psychologist at CDCR was leaving the
8 position soon. Dr. Price told Dr. Fischgrund that she was well suited for this role, and that he
9 would write her a recommendation. Subsequently, Dr. Price went back to his office, and replied
10 to Dr. Fischgrund's email summarized their conversation, including the fact that she preferred to
11 use an office close to custody, after having been threatened by a patient.

12 36. On or about July 12, 2019, Dr. Fischgrund complained to Dr. Richard Mahan, a
13 Senior Psychologist Specialist, who oversaw the mental health assessments at SVSP. Dr.
14 Fischgrund told Dr. Mahan that she was concerned for her safety. Dr. Mahan told her that such
15 safety complaint should be escalated to Headquarters. Dr. Mahan recommended her to contact Lt.
16 Roy Cox from CDCR Headquarters.

17 37. On or about July 12, 2019, Dr. Yanez, responded that this was not "a simple one
18 to define and dictate given that individuals have different thresholds for what is considered
19 threatening." Dr. Yanez stated that CDCR was developing "the Duty to Warn LOP."

20 38. On or about July 12, 2019, around 9:30 p.m., Dr. Fischgrund was leaving A-yard
21 EOP building and asked CO Halderman for an escort across the yard. Dr. Fischgrund heard an
22 inmate calling her name from one of the A-yard cells. It was the same inmate who threatened her
23 life. The inmate told her that he was glad to be back on the yard with Dr. Fischgrund. Dr.
24 Fischgrund was speechless. Based on the emails stating that there was a staff separation in place,
25 she did not think she would run into this inmate again. Dr. Fischgrund quickly left the housing
26 building and went to CO Halderman, who was waiting for her on the yard. Dr. Fischgrund started
27 crying and told Halderman what happened. Halderman then took Dr. Fischgrund to Lt. Sandeep
28 Banger. Dr. Fischgrund complained to Lt. Banger that her supervisor told her there was a staff

1. separation in place, but the inmate was still on the yard. Lt. Banger checked his computer, and
2. told her that there was never a staff separation in place. Lt. Banger added that the situation did
3. not look like it was handled correctly and promised that he would investigate over the weekend.
4. Lt. Banger escorted Dr. Fischgrund out.

5. 39. In or around July 2019, Dr. Fischgrund experienced extreme stress and anxiety
6. about returning to work. She experienced sleeplessness, intrusive fearful thoughts, nightmares,
7. persistent negative mood, and hyperarousal symptoms.

8. 40. On or about July 12, 2019, Dr. Fischgrund emailed Dr. Yanez. Dr. Fischgrund
9. complained that the inmate, who was supposed to be separated according to Dr. Price, was still on
10. the yard and that she did not feel safe. Dr. Fischgrund reported that Lt. Banger told her that there
11. was never a staff separation alert implemented, contrary to what Dr. Price previously represented.
12. Dr. Fischgrund copied Sgt. Shaltry on the email and noted that the inmate's threatening behaviors
13. appear to be escalating.

14. 41. On or about July 15, 2019, Dr. Fischgrund escalated her safety concerns by
15. emailing Lt. Cox at CDCR Headquarters, and copied Dr. Mahan, who recommended her to report
16. her safety concerns to Headquarters. Her email recounted the inmate threat as well as the prior
17. incident involving Dr. Mehta. She also cited CDCR Department Operations Manual 31040.3.4.1,
18. on Workplace Violence, which defines "Threat" as "[a]n action (verbal, written, or physical) that
19. is intended to intimidate by expressing the intent to harass, hurt, take the life of another person,
20. damage or destroy property, including threats made in jest but which others could perceive as
21. serious." Dr. Fischgrund wrote that she believed that the inmate's comments about her fell within
22. this definition. She added that, under DOM 12040.3, "Assessment of Threats Against Staff,"
23. proper procedure was to "[e]nsure that all known inmates involved with the threat are immediately
24. secured in a holding cell for placement on administrative segregation (AD-SEG) status, pending
25. investigation into the staff threat." Dr. Fischgrund complained that she did not believe that those
26. procedures had been followed. She cited DOM 12040.6, under which "[a] threat assessment shall
27. be completed before the final determination is made concerning staff inmate program and
28. assignment of the affected staff." She complained that she did not believe that these procedures

1 had been followed, either. She also complained that psychologists have a duty to warn according
2 to California Civil Code. Ultimately, Dr. Fischgrund reported that she was concerned that the
3 inmate was still housed on the A-yard and asked, “are there any policies on what should happen
4 when an [inmate] makes a threat against staff?” She reported that she received “contradictory
5 information” that was “unsettling at best and a breeding ground for a potentially unsafe work
6 environment.” She said that she was “worried that SVSP, as an institution, may fail to provide a
7 safe environment to work.”

8 42. On or about July 15, 2019, Dr. Fischgrund emailed Dr. Yanez, Dr. Price, Dr.
9 Stowell, Dr. Crayton, and Ms. Godinez, and complained about staff safety. Dr. Fischgrund wrote
10 that the inmate’s conduct met the definition for “Threat” provided by CDCR’s DOM, and cited
11 to Assessment of Threats Against Staff. Dr. Fischgrund complained that these procedures were
12 not followed. Further, Dr. Fischgrund complained that psychologists have a duty to warn
13 according to California Civil Code.

14 43. On or about July 15, 2019, the inmate, who previously threatened Dr. Fischgrund,
15 approached her again as she was walking across A-yard to her office, and yelled that he needed
16 to speak with her. Dr. Fischgrund rushed way from the inmate.

17 44. On or about July 15, 2019, Dr. Fischgrund met with Dr. Samuel Smith, Senior
18 Supervising Psychologist, and she complained about safety concerns. Dr. Smith told her that she
19 was one of the best clinicians in the facility and that he did not want to lose her. Dr. Smith called
20 Dr. Stowell, Chief of Mental Health, into Dr. Fischgrund’s office to discuss the situation. Dr.
21 Stowell told them that he had never heard of Dr. Fischgrund’s safety concerns. When Dr.
22 Fischgrund pointed out that she included Dr. Stowell in her emails, Dr. Stowell said that he did
23 not read them because he thought Dr. Yanez was replying to them.

24 45. On or about July 15, 2019, Captain Aguilera called Dr. Fischgrund and asked her
25 to write a staff separation memo for the inmate who made threatening statements. Dr. Fischgrund
26 worked with Dr. Mahan and submitted the memo.

27 46. On or about July 15, 2019, Dr. Yanez emailed Dr. Fischgrund stating that her
28 safety concerns would be escalated to the Warden Tammy Foss.

1 47. On or about July 16, 2019, Dr. Fischgrund noticed that the inmate, who previously
2 threatened her, was still on the yard according to the custody database system. Dr. Fischgrund
3 emailed Dr. Yanez about the inmate still not being separated and Dr. Yanez stated that she was
4 addressing it.

5 48. On or about July 16, 2019, Sgt. Fernandez approached Dr. Fischgrund and asked
6 her to sign an acknowledgement form that stated that Dr. Fischgrund felt safe having the inmate
7 on the same yard as her. Dr. Fischgrund refused to sign it.

8 49. On or about July 16, 2019, Dr. Fischgrund experienced extreme stress, anxiety,
9 heart palpitations, she could not stop ruminating about the inmate and his threats to attack her,
10 and hyperarousal symptoms including hypervigilance and exaggerated startle response.

11 50. On or about July 16, 2019, Dr. Fischgrund met with Dr. Yanez and Dr. Price. Dr.
12 Yanez told her that CDCR determined that the inmate's threat was "not credible," and thus, the
13 inmate would not be removed from A-yard. Dr. Yanez acknowledged that custody failed to have
14 her sign a staff separation chrono, failed to have the complete information regarding the inmate,
15 and failed to inform Dr. Fischgrund when he was returned to the yard. Dr. Yanez added that,
16 because Dr. Fischgrund refused to sign the Acknowledgement of Threat Form – which would
17 have required her to attest that she felt safe being on the same yard with the inmate – she would
18 be removed from A-yard until the inmate left the yard. CDCR offered Dr. Fischgrund to choose
19 which yard she wanted to work at SVSP. Dr. Fischgrund requested two weeks of leave to decide,
20 and Dr. Yanez and Dr. Price approved. Dr. Yanez added that they would like to have her back on
21 A-yard after the inmate leaves prison.

22 51. On or about July 17, 2019, Dr. Yanez emailed Dr. Fischgrund: "I wanted to inform
23 you that based upon additional information you provided in our discussion yesterday and in your
24 memo dated 7/15/19, SVSP Warden and Custody leadership is conducting a Threat Assessment
25 in regard to [the inmate]. I know you are on approved time off for two weeks but if you would
26 like to be contacted to respond to questions as part of this assessment, that can be arranged if you
27 agree." Dr. Fischgrund responded: "Thank you for reaching out to me. Yes, of course, I am happy
28 to help in any way possible and am available for contact."

1 52. On or about July 17, 2019, Warden Foss emailed Dr. Fischgrund and told her that
2 Warden Foss would like to arrange a meeting with Dr. Fischgrund and Dr. Yanez. Dr. Fischgrund
3 replied that she was available to meet anytime that week.

4 53. On or about July 17, 2019, Dr. Fischgrund emailed to her fellow clinicians,
5 informing them about her safety complaints and that she would be transferring out of A-yard. She
6 included a copy of the email that she sent to CDCR Headquarters.

7 54. On or about July 17, 2019, Dr. Fischgrund received a call from the owner of Novo
8 Talent, Amir Khedmatian, who told her that she had been fired for “misconduct.” He said that
9 Management Solutions would not provide any more information or identify the misconduct. He
10 said that she should return her identification badge to SVSP.

11 55. On or about July 17, 2019, Dr. Fischgrund drove to SVSP to return her ID to SVSP
12 as instructed by Khedmatian, Officer Rubin Garcia came up to her and said he saw Dr.
13 Fischgrund’s picture on the banned from prison grounds list. Dr. Fischgrund told him that this
14 must be a misunderstanding. Dr. Fischgrund was confused, embarrassed and humiliated.

15 56. On or about July 17, 2019, on her way to return her ID to SVSP, Dr. Fischgrund
16 stopped by the Warden’s office to see if Foss was still available to meet. The Warden’s secretary
17 told Dr. Fischgrund that the Warden was occupied but that Dr. Fischgrund could sit and wait.
18 Unexpectedly, two officers approached Dr. Fischgrund as she was waiting, and asked her to step
19 outside. The officers confiscated her badge. They ordered her to leave the prison grounds and
20 threatened her that she would be arrested for trespassing if she returned. The officers followed
21 her outside and watched her get into her car.

22 57. On or about July 17, 2019, Dr. Price emailed mental health clinicians stating that
23 Dr. Fischgrund would not be returning, and her caseload would be permanently re-assigned. Dr.
24 Price instructed other clinicians to tell others that they do not know the reason why Dr. Fischgrund
25 was not returning to protect the inmate who made threatening statements about Dr. Fischgrund.
26 Dr. Price expressed concerns about the inmate’s safety.

27 58. On or about July 17, 2019, Dr. Fischgrund returned home and checked her email.
28 She saw that the Warden emailed her earlier in the afternoon: “My schedule change[d] and will

1 not be able to meet.” Dr. Fischgrund responded by requesting a meeting, to which the Warden
2 replied: “It is my understanding that your contract at SVSP was ended. I had planned to meet
3 prior to knowing this so you were aware of how to handle the issue you elevated to headquarters
4 in the future. Since you are no longer a contract employee at SVSP, I will not need to meet with
5 you.”

6 59. On or about July 17, 2019, Dr. Fischgrund talk to Sgt. Shaltry about her
7 termination. Sgt. Shaltry shared with Dr. Fischgrund that he heard she was terminated because
8 her safety complaints to Headquarters. Sgt. Shaltry added that Dr. Fischgrund’s complaints made
9 the Warden look like she did not protect her staff.

10 60. On or about July 17, 2019, CDCR placed postings across its campus featuring Dr.
11 Fischgrund’s headshot, height, weight, and birthdate along with the message, “The above-named
12 employee is restricted from Institutional Grounds.”

13 61. On or about July 17, 2019, Dr. Melissa Stolsig, another A-yard EOP clinician
14 called her in disbelief. Dr. Stolsig told Dr. Fischgrund that Dr. Price was making Dr. Fischgrund
15 seem “irrational and erratic.” According to Dr. Stolsig, Dr. Price told people that Dr. Fischgrund
16 was yelling in the Warden’s office.

17 62. On or about July 17, 2019, Dr. Stolsig called Dr. Fischgrund and told her that Dr.
18 Price told people that Dr. Fischgrund engaged in inappropriate behavior like sleep around with
19 custody, including the yard sergeant.

20 63. On or about July 17, 2019, Dr. Fischgrund received multiple calls and messages
21 from former colleagues who heard defamatory statements about her.

22 64. On or about July 17, 2019, Dr. Yanez reported to Dr. Elaine Force, Chief
23 Psychologist and the Regional Administer of CDCR Headquarters, about Dr. Fischgrund. Dr.
24 Yanez reported that the decision to terminate Dr. Fischgrund was because she emailed her fellow
25 clinicians about her safety complaints. Dr. Yanez told Dr. Force that Dr. Fischgrund was unstable,
26 and had mental health issues.

27 65. On or about July 18, 2019, Raffee Cordero, an A-yard RT, told Dr. Fischgrund
28 that Dr. Price announced she resigned from SVSP – which was not true.

1 66. On or about July 18, 2019, Dr. Michiko Akahori, another A-yard EOP clinicia,
2 called Dr. Fischgrund. Dr. Akahori said that Dr. Price told her that Dr. Fischgrund was fired for
3 2 reasons – 1) because Dr. Fischgrund sent an email that was “not right” to clinicians, and 2)
4 because Dr. Fischgrund yelled and screamed in the Warden’s office.

5 67. On or about July 19, 2019, Officer Paul Diaz, one of the EOP officers, told Dr.
6 Fischgrund that he heard Dr. Fischgrund wrote a “crazy letter” at 12 a.m., throwing everyone
7 under the bus.

8 68. On or about July 19, 2019, Dr. Fischgrund and her roommate, Priscilla Rodriguez,
9 went to Taste of the Pinnacles, which was owned by Fred Ledesma, the mayor of Soledad.
10 Ledesma greeted Dr. Fischgrund and Rodriguez as they walked in. To their surprise, there was
11 table of approximately ten people behind them that were all whispering and staring at them. Dr.
12 Fischgrund saw Warden Foss, and Assistant Warden Parin, sitting with other CDCR employees.

13 69. On or about July 22, 2019, Lt. Cox shared with Dr. Fischgrund that he heard she
14 drove through the front gate after the gate officer denied her access to prison grounds.

15 70. On or about July 22, 2019, Dr. Force held a meeting at CDCR Headquarters. Dr.
16 Force told the regional team that Dr. Fischgrund was terminated because Dr. Fischgrund was
17 unstable, not fit to work, and referred to Dr. Fischgrund as “Cluster B.”

18 71. In or around July 2019, Novo Talent informed Dr. Fischgrund that she could not
19 be placed at any CDCR facility because she was on CDCR’s “Do Not Hire” list.

20 72. On or about July 31, 2019, Dr. Fischgrund emailed Dr. Price ask about job
21 opportunities at California Health Care Facility, another state agency. Dr. Price responded that,
22 because Dr. Fischgrund was on the do not hire list statewide, she should reconsider applying
23 elsewhere.

24 73. On or about August 5, 2019, Dr. Yanez held a meeting with SVSP’s clinical staff,
25 at which she said that Dr. Fischgrund was “fired for a reason” and for a “very serious” offense.
26 Dr. Yanez suggested that staff should not contact Headquarters with concerns regarding
27 workplace, as Dr. Fischgrund did.

28 74. On or about August 30, 2019, Dr. Fischgrund went to Taste of the Pinnacles.

1 Ledesma, the mayor of Soledad and the owner of the bar, told Dr. Fischgrund that, after Dr.
2 Fischgrund left the bar on July 19, 2019 with roommate, Warden Foss immediately approached
3 him at the bar and questioned him about what Dr. Fischgrund told him. Ledesma said he told her
4 that Dr. Fischgrund did not say anything about her. He said that Warden Foss then told him that
5 Dr. Fischgrund caused a lot of drama at the prison, and that Dr. Fischgrund did not do her job
6 well.

7 75. As a result of her termination, Dr. Fischgrund suffered from severe, ongoing
8 mental health problems. She consulted a psychiatrist, who diagnosed her with, and is treating her
9 for, PTSD and Major Depressive Disorder. She also began therapy to address her symptoms. She
10 continues to experience intrusive thoughts, fear and avoidance, and hyperarousal symptoms
11 stemming from the traumatic events at SVSP. She also experienced reduced functioning,
12 depressed mood, and anhedonia. She unintentionally lost 20 pounds, and her sleep problems
13 worsened. Her personal and professional relationships have suffered.

14 76. On or about July 1, 2020, Dr. Fischgrund filed a complaint with the DFEH and
15 received a Right to Sue Notice.

16 77. On or about July 1, 2020, Dr. Fischgrund filed a complaint with the State Personnel
17 Board.

18 **FIRST CAUSE OF ACTION**

19 **Violation of Labor Code § 6310**

20 78. The allegations set forth in this complaint are hereby re-alleged and incorporated
21 by reference.

22 79. This cause of action is asserted against Defendant.

23 80. At all relevant times, Plaintiff was an employee of Defendant California
24 Department of Corrections and Rehabilitation.

25 81. Labor Code section 6310 states, "Any employee who is discharged, threatened
26 with discharge, demoted, suspended, or in any other manner discriminated against in the terms
27 and conditions of employment by his or her employer because the employee has made a bona fide
28 oral or written complaint to the division, other governmental agencies having statutory

1 responsibility for or assisting the division with reference to employee safety or health, his or her
2 employer, or his or her representative, of unsafe working conditions, or work practices, in his or
3 her employment or place of employment, or has participated in an employer-employee
4 occupational health and safety committee, shall be entitled to reinstatement and reimbursement
5 for lost wages and work benefits caused by the acts of the employer.”

6 82. Defendant violated Labor Code sections 6310 by retaliating against Plaintiff for
7 her protected complaints regarding the unsafe workplace, unsafe work practices, and her working
8 conditions

9 83. As an actual and proximate result of the aforementioned violations, Plaintiff has
10 been damaged in an amount according to proof, but in an amount in excess of the jurisdiction of
11 this Court.

12 84. As an actual and proximate result of Defendant’s willful and intentional
13 discrimination and retaliation, Plaintiff has lost wages, benefits, and other out of pocket expenses.

14 85. As an actual and proximate result of Defendant’s aforementioned acts, Plaintiff
15 suffered physical injury. Plaintiff experienced depression, anxiety, Post-Traumatic Stress
16 Disorder symptoms, brain injuries, avoidance behaviors, hyperarousal, exaggerated startle
17 response, concentration difficulties, panic attacks, weight loss, shortness of breath, increased heart
18 rate, muscle tightness, constant shaking hands, sleep problems, nightmares, stomach pain, nausea,
19 and loss of appetite. Plaintiff claims general damages for physical injury in an amount according
20 to proof at time of trial.

21 86. As an actual and proximate result of Defendant’s aforementioned acts, Plaintiff
22 also suffered mental upset and other emotional distress. Plaintiff claims general damages for
23 mental distress in an amount according to proof at time of trial.

24 **SECOND CAUSE OF ACTION**

25 **Violation of Labor Code § 1102.5**

26 88. The allegations set forth in this complaint are hereby re-alleged and incorporated
27 by reference.

28 89. At all relevant times, Plaintiff was an employee of Defendant.

1 90. Labor Code section 1102.5, subdivision (b), states that “[a]n employer, or any
2 person acting on behalf of the employer, shall not retaliate against an employee for disclosing
3 information, or because the employer believes that the employee disclosed or may disclose
4 information, to a government or law enforcement agency, to a person with authority over the
5 employee or another employee who has the authority to investigate, discover, or correct the
6 violation or noncompliance, or for providing information to, or testifying before, any public body
7 conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe
8 that the information discloses a violation of state or federal statute, or a violation of or
9 noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing
10 the information is part of the employee's job duties.” Labor Code section 1102.5, subdivision (c),
11 states that an “employer may not retaliate against an employee for refusing to participate in an
12 activity that would result in a violation of state or federal statute, or a violation or noncompliance
13 with a state or federal rule or regulation.”

14 91. Defendant’s conduct violated statutes such as: Labor Code sections 232.5, 6310,
15 6311, 6400, 6401, 6402, 6403, 6404, and Government Code section 12940. Plaintiff made
16 numerous protected complaints regarding violations of state or federal statutes, and
17 noncompliance with rules and regulations to persons with authority over her at CDCR.

18 92. Defendant violated Labor Code section 1102.5 when it unlawfully retaliated
19 against Plaintiff by taking adverse employment actions against Plaintiff, including but not limited
20 to wrongfully terminating her employment, and publishing defamatory statements about Plaintiff.

21 93. Defendant’s termination, and creation of the overall hostile terms and conditions
22 of employment, were substantial factors in causing her harm.

23 94. The conduct of Defendant and its managing agents and employees were a
24 substantial factor in causing Plaintiff’s harm.

25 95. As an actual and proximate result of the aforementioned violations, Plaintiff has
26 been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of
27 this Court.

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1 103. California Constitution, Article 1, Section 1 guarantees to each citizen of the State
2 of California their constitutional right to privacy and their constitutional right of “acquiring,
3 possessing and protecting property.”

4 104. Government Code section 12940 provides for protection in the workplace against
5 harassment, discrimination and retaliation because of race, religious creed, color, national origin,
6 ancestry, physical disability, mental disability, medical condition, genetic information, marital
7 status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and
8 veteran status of any person.

9 105. Labor Code sections 6310 and 6311 provide for a retaliation free work
10 environment for employees who complain about employee safety or health, unsafe working
11 conditions and/or unsafe work practices.

12 106. Labor Code section 232.5 provides for a discrimination and retaliation free work
13 environment for employees who complain about the employer’s working conditions.

14 107. Defendant violated Plaintiff’s civil rights, guaranteed by the Bane Civil Rights
15 Act, the California Constitution and the laws of the State of California thereby violating California
16 Civil Code section 52.1.

17 108. Defendant CDCR learned of a credible threat of violence against Plaintiff by an
18 inmate on or about July 2, 2019. This threat was immediately reported to Defendant, who failed
19 to take any action to protect Plaintiff. Defendant fraudulently represented that the inmate, who
20 made threatening statements to Dr. Fischgrund, was separated. Defendant forced Plaintiff
21 continued to work on the same yard as the inmate who made threatening statements. Defendant
22 threatened to arrest Plaintiff and terminated Plaintiff. Defendant also published defamatory
23 statements about Plaintiff.

24 109. The conduct of Defendant and its managing agents and employees were a
25 substantial factor in causing Plaintiff’s harm.

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1 her the inmate who made threatening statements. Defendant denied Plaintiff accommodations for
2 her disability. Defendant denied Plaintiff privileges to access her work place. Defendant was
3 substantially motivated by Plaintiff's sex and/or disability in its decision to deny full and equal
4 accommodations and privileges to Plaintiff.

5 117. The conduct of Defendant and its managing agents and employees were a
6 substantial factor in causing Plaintiff's harm.

7 118. As an actual and proximate result of the aforementioned violations, Plaintiff has
8 been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of
9 this Court.

10 119. As an actual and proximate result of Defendant's conduct, Plaintiff has lost wages,
11 benefits, and other out-of-pocket expenses.

12 120. As an actual and proximate result of Defendant's aforementioned acts, Plaintiff
13 suffered physical injury. Plaintiff experienced depression, anxiety, Post-Traumatic Stress
14 Disorder symptoms, brain injuries, avoidance behaviors, hyperarousal, exaggerated startle
15 response, concentration difficulties, panic attacks, weight loss, shortness of breath, increased
16 heart rate, muscle tightness, constant shaking hands, sleep problems, nightmares, stomach pain,
17 nausea, and loss of appetite. Plaintiff claims general damages for physical injury in an amount
18 according to proof at time of trial.

19 121. As an actual and proximate result of Defendant's aforementioned acts, Plaintiff
20 also suffered mental upset and other emotional distress. Plaintiff claims general damages for
21 mental distress in an amount according to proof at time of trial.

22 **FIFTH CAUSE OF ACTION**

23 **Violation of Gov. Code § 8547**

24 122. The allegations set forth in this complaint are hereby re-alleged and incorporated
25 by reference.

26 123. This cause of action is asserted against Defendant.

27 124. Pursuant to the California Whistleblower Protection Act (Gov. Code, § 8547,
28 et seq.), the Legislature "finds and declares that state employees should be free to report waste,

1 fraud, abuse of authority, violation of law, or threat to public health without fear of retribution.
2 The Legislature further finds and declares that public servants best serve the citizenry when they
3 can be candid and honest without reservation in conducting the people's business." The Act
4 prohibits retaliation against state employees who "report waste, fraud, abuse of authority,
5 violation of law, or threat to public health" (Gov. Code, § 8547.1.) The Act authorizes "an action
6 for damages" to redress acts of retaliation. (Gov. Code, § 8547.8, subd. (c).)

7 125. During Plaintiff's employment with Defendant, Plaintiff complained that
8 Defendant fraudulently represented that there was a staff separation in place. Plaintiff complained
9 that Defendant abused its authority in failing to protect staff safety. Plaintiff complained that
10 Defendant violated laws and regulations regarding safety. Plaintiff made these reports in good
11 faith.

12 126. After Plaintiff engaged in the aforementioned protected activity, Defendant
13 retaliated or otherwise discriminated against her in several respects. Defendant retaliated against
14 Plaintiff by terminating her employment, creating hostile terms and conditions of employment,
15 ignoring her complaints, publishing defamatory statements, denying her reasonable
16 accommodation, and failing to engage in good faith interactive process.

17 127. Plaintiff has exhausted her administrative remedies, and timely filed her
18 whistleblower complaint with the State Personnel Board.

19 128. The conduct of Defendant and/or its managing agents and employees was a
20 substantial factor in causing Plaintiff's harm.

21 129. Defendant's unlawful conduct was a substantial factor in causing Plaintiff to suffer
22 general and special damages including economic damages and non-economic damages in excess
23 of this Court's jurisdiction according to proof at trial.

24 130. As an actual and proximate result of Defendant's retaliation, Plaintiff has lost
25 wages, benefits, and other out-of-pocket expenses.

26 131. As an actual and proximate result of Defendant's aforementioned acts, Plaintiff
27 suffered physical injury. Plaintiff experienced depression, anxiety, Post-Traumatic Stress
28 Disorder symptoms, brain injuries, avoidance behaviors, hyperarousal, exaggerated startle

1 response, concentration difficulties, panic attacks, weight loss, shortness of breath, increased
2 heart rate, muscle tightness, constant shaking hands, sleep problems, nightmares, stomach pain,
3 nausea, and loss of appetite. Plaintiff claims general damages for physical injury in an amount
4 according to proof at time of trial.

5 132. As an actual and proximate result of Defendant's aforementioned acts, Plaintiff
6 also suffered mental upset and other emotional distress. Plaintiff claims general damages for
7 mental distress in an amount according to proof at time of trial.

8 **SIXTH CAUSE OF ACTION**

9 **Sex Discrimination: Gov. Code § 12940, subd. (a)**

10 133. The allegations set forth in this complaint are hereby re-alleged and incorporated
11 by reference.

12 134. This cause of action is asserted against Defendant.

13 135. At all relevant times, Plaintiff was an employee of Defendant.

14 136. At all times relevant to this matter, the Fair Employment and Housing Act and
15 Government Code section 12940 were in full force and effect and binding on Defendant.
16 Government Code section 12940, subdivision (a), reads: "It is an unlawful employment practice...
17 [f]or an employer, because of the race, religious creed, color, national origin, ancestry, physical
18 disability, mental disability, medical condition, genetic information, marital status, sex, gender,
19 gender identity, gender expression, age, or sexual orientation of any person, to refuse to hire or
20 employ the person or to refuse to select the person for a training program leading to employment,
21 or to bar or to discharge the person from employment or from a training program leading to
22 employment, or to discriminate against the person in compensation or in terms, conditions, or
23 privileges of employment."

24 137. As set forth above, Defendant unlawfully discriminated against Plaintiff because
25 of her sex and/or gender by subjecting her to demeaning treatment, unwelcome and inappropriate
26 comments, obscene and illicit remarks, threats, in addition to subjecting Plaintiff to a harassment-
27 drenched environment. Defendant condoned an environment that, among other things, tolerated
28 and encouraged discrimination based on sex and/or gender and materially and negatively

1 impacted the terms and conditions of Plaintiff employment. Defendant's statements and conduct
2 complained of herein violated Government Code section 12940, subdivision (a), and the
3 California Code of Regulations, title 2, sections 11019 and 11020.

4 138. Plaintiff's sex was a substantial motivating reason for Defendant to condone and
5 encourage discriminatory conduct and comments about Plaintiff's sex, ignore her protected
6 complaints, create the overall hostile terms and conditions of employment, and terminate
7 Plaintiff's employment.

8 139. As an actual and proximate result of the aforementioned violations, Plaintiff has
9 been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of
10 this Court. Plaintiff also seeks "affirmative relief" or "prospective relief" as defined by
11 Government Code section 12926, subdivision (a).

12 140. As an actual and proximate result of Defendant's retaliation, Plaintiff has lost
13 wages, benefits, and other out-of-pocket expenses.

14 141. As an actual and proximate result of Defendant's aforementioned acts, Plaintiff
15 suffered physical injury. Plaintiff experienced depression, anxiety, Post-Traumatic Stress
16 Disorder symptoms, brain injuries, avoidance behaviors, hyperarousal, exaggerated startle
17 response; concentration difficulties, panic attacks, weight loss, shortness of breath, increased
18 heart rate, muscle-tightness, constant shaking hands, sleep problems, nightmares, stomach pain,
19 nausea, and loss of appetite. Plaintiff claims general damages for physical injury in an amount
20 according to proof at time of trial.

21 142. As an actual and proximate result of Defendant's aforementioned acts, Plaintiff
22 also suffered mental upset and other emotional distress. Plaintiff claims general damages for
23 mental distress in an amount according to proof at time of trial.

24 **SEVENTH CAUSE OF ACTION**

25 **Disability Discrimination: Gov. Code, § 12940, subd. (a)**

26 143. The allegations set forth in this complaint are hereby re-alleged and incorporated
27 by reference.

28 144. This cause of action is asserted against Defendant.

1 145. At all relevant times, Plaintiff was an employee of Defendant.

2 146. At all times relevant to this matter, the Fair Employment and Housing Act and
3 Government Code section 12940 were in full force and effect and binding on Defendant.
4 Government Code section 12940, subdivision (a), reads: "It is an unlawful employment practice...
5 [f]or an employer, because of the race, religious creed, color, national origin, ancestry, physical
6 disability, mental disability, medical condition, genetic information, marital status, sex, gender,
7 gender identity, gender expression, age, or sexual orientation of any person, to refuse to hire or
8 employ the person or to refuse to select the person for a training program leading to employment,
9 or to bar or to discharge the person from employment or from a training program leading to
10 employment, or to discriminate against the person in compensation or in terms, conditions, or
11 privileges of employment."

12 147. At all times relevant to this matter, Plaintiff suffered from a "mental disability" as
13 defined by Government Code section 12926, subdivision (j), and California Code of Regulations,
14 title 2, section 11065, subdivision (d)(1), and/or a "perceived disability" as defined by
15 Government Code section 12926, subdivision (j), and California Code of Regulations, title 2,
16 section 11065, subdivision (d)(5), and/or a "perceived potential disability" as defined by
17 Government Code section 12926, subdivision (j), and California Code of Regulations, title 2,
18 section 11065, subdivision (d)(6), and/or a "physical disability" as defined by Government Code
19 section 12926, subdivision (m), and California Code of Regulations, title 2, section 11065,
20 subdivision (d)(2). In spite of her disability, Plaintiff was able to perform the essential functions
21 of her position as defined by Government Code section 12926, subdivision (f), and California
22 Code of Regulations, title 2, section 11065, subdivision (e), and was otherwise able to perform
23 her job had Defendant provided the reasonable accommodation required by Government Code
24 section 12926, subdivision (p), and California Code of Regulations, title 2, section 11068,
25 subdivision (a).

26 148. Defendant's conduct violated Government Code section 12940, subdivision (a),
27 consistent with California Code of Regulations, title 2, section 11066. Specifically, Defendant
28 knew of Plaintiff's physical and/or mental disabilities that limited major life activities. In spite of

1 her disabilities, Plaintiff's was able to perform the essential functions of her position with
2 reasonable accommodation.

3 149. As set forth above, Defendant unlawfully discriminated against Plaintiff because
4 of her disability by denying her reasonable accommodation by terminating her employment and
5 creating the overall hostile terms and conditions of employment. Defendant condoned an
6 environment that, among other things, tolerated and encouraged discrimination based on
7 disability that materially and negatively impacted the terms and conditions of Plaintiff's
8 employment. Defendant's statements and conduct complained of herein violated Government
9 Code section 12940, subdivision (a), and the California Code of Regulations, title 2, sections
10 11019 and 11020.

11 150. Plaintiff's disability was a substantial motivating reason for Defendant's to deny
12 Plaintiff's reasonable accommodations, ignore her protected complaints, terminate Plaintiff's
13 employment, and create the overall hostile terms and conditions of employment.

14 151. Defendant's conduct was a substantial factor in causing Plaintiff's harm.

15 152. As an actual and proximate result of the aforementioned violations, Plaintiff's has
16 damaged in an amount according to proof, but in an amount in excess of the jurisdiction of this
17 Court. Plaintiff also seeks "affirmative relief" or "prospective relief" as defined by Government
18 Code section 12926, subdivision (a), including back pay, reimbursement of out of pocket
19 expenses and any such other relief that this Court deems proper.

20 153. As an actual and proximate result of Defendant's willful and intentional
21 discrimination, Plaintiff's has lost wages, benefits, and other out-of-pocket expenses.

22 154. As an actual and proximate result of Defendant's aforementioned acts, Plaintiff
23 suffered physical injury. Plaintiff experienced depression, anxiety, Post-Traumatic Stress
24 Disorder symptoms, brain injuries, avoidance behaviors, hyperarousal, exaggerated startle
25 response, concentration difficulties, panic attacks, weight loss, shortness of breath, increased
26 heart rate, muscle tightness, constant shaking hands, sleep problems, nightmares, stomach pain,
27 nausea, and loss of appetite. Plaintiff claims general damages for physical injury in an amount
28 according to proof at time of trial.

1 165. As an actual and proximate result of Defendant's aforementioned acts, Plaintiff
2 suffered physical injury. Plaintiff experienced depression, anxiety, Post-Traumatic Stress
3 Disorder symptoms, brain injuries, avoidance behaviors, hyperarousal, exaggerated startle
4 response, concentration difficulties, panic attacks, weight loss, shortness of breath, increased
5 heart rate, muscle tightness, constant shaking hands, sleep problems, nightmares, stomach pain,
6 nausea, and loss of appetite. Plaintiff claims general damages for physical injury in an amount
7 according to proof at time of trial

8 166. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff
9 also suffered mental upset and other emotional distress. Plaintiff claims general damages for
10 mental distress in an amount according to proof at time of trial.

11 **NINTH CAUSE OF ACTION**

12 **Failure to Prevent Harassment, Discrimination, and/or Retaliation:**

13 **Gov. Code § 12940, subd. (k)**

14 168. The allegations set forth in this complaint are hereby re-alleged and incorporated
15 by reference.

16 169. This cause of action is asserted against Defendant.

17 170. At all relevant times, Plaintiff was an employee of Defendant.

18 171. As an employer, pursuant to Government Code section 12926, subdivision (d),
19 Defendant has a duty to prevent unlawful harassment and discrimination, including retaliation.
20 Defendant knew about the harassment, discrimination, and retaliation based on sex and/or
21 disability of Plaintiff as set forth above. Defendant failed to implement adequate training, policies,
22 or instructions that would have prevented the aforementioned harassment, discrimination and
23 retaliation of Plaintiff. Defendant breached its duty to prevent the harassment, discrimination and
24 retaliation of Plaintiff. Accordingly, Defendant violated Government Code section 12940,
25 subdivision (k), and The California Code of Regulations, title 2, section 11019, subdivision (b)(3).

26 172. Plaintiff was subjected to harassment, discrimination, and/or retaliation in the
27 course of her employment with Defendant as described above.

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1 173. Defendant failed to take all reasonable steps to prevent the harassment,
2 discrimination, and/or retaliation.

3 174. Defendant conduct was a substantial factor in causing Plaintiff's harm.

4 175. As an actual and proximate result of the aforementioned violations, Plaintiff has
5 been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of
6 this Court. Plaintiff also seeks "affirmative relief" or "prospective relief" as defined by
7 Government Code section 12926, subdivision (a), including back pay, reimbursement of out-of-
8 pocket expenses and any such other relief that this Court deems proper.

9 176. As an actual and proximate result of Defendant's willful and intentional
10 discrimination, harassment and/or retaliation, Plaintiff has lost wages, benefits, and other out-of-
11 pocket expenses.

12 177. As an actual and proximate result of Defendant's aforementioned acts, Plaintiff
13 suffered physical injury. Plaintiff experienced depression, anxiety, Post-Traumatic Stress
14 Disorder symptoms, brain injuries, avoidance behaviors, hyperarousal, exaggerated startle
15 response, concentration difficulties, panic attacks, weight loss, shortness of breath, increased
16 heart rate, muscle tightness, constant shaking hands, sleep problems, nightmares, stomach pain,
17 nausea, and loss of appetite. Plaintiff claims general damages for physical injury in an amount
18 according to proof at time of trial.

19 178. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff
20 also suffered mental upset and other emotional distress. Plaintiff claims general damages for
21 mental distress in an amount according to proof at time of trial.

22 **TENTH CAUSE OF ACTION**

23 **Failure to Accommodate: Gov. Code § 12940, subd. (m)**

24 179. The allegations set forth in this complaint are hereby re-alleged and incorporated
25 by reference.

26 180. This cause of action is asserted against Defendant.

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1 181. At all relevant times, Plaintiff was an employee of Defendant.

2 182. At all times relevant to this matter, the Fair Employment and Housing Act,
3 Government Code section 12940, was in full force and effect and binding on Defendant. Section
4 12940, subdivision (m), reads: "It is an unlawful employment practice . . . [f]or an employer or
5 other entity covered by this part to fail to make reasonable accommodation for the known physical
6 or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1)
7 or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by
8 the employer or other covered entity to produce undue hardship, as defined in Section 12926(t),
9 to its operation."

10 183. At all times relevant to this matter, Plaintiff suffered from a "mental disability" as
11 defined by Government Code section 12926, subdivision (j), and the California Code of
12 Regulations, title 2, section 11065, subdivision (d)(1), and/or a "perceived disability" as defined
13 by Government Code section 12926, subdivision (j), and the California Code of Regulations, title
14 2, section 11065, subdivision (d)(5), and/or a "perceived potential disability" as defined by
15 Government Code section 12926, subdivision (j), and the California Code of Regulations, title 2,
16 section 11065, subdivision (d)(6), and/or a "physical disability" as defined by Government Code
17 section 12926, subdivision (m), and the California Code of Regulations, title 2, section 11065,
18 subdivision (d)(2). In spite of her disability, Plaintiff was able to perform the essential functions
19 of her position as defined by Government Code section 12926, subdivision (f), and the California
20 Code of Regulations, title 2, section 11065, subdivision (e), and was otherwise able to perform
21 her job had Defendant provided the reasonable accommodation required by Government Code
22 section 12926, subdivision (p), and the California Code of Regulations, title 2, section 11068,
23 subdivision (a).

24 184. Plaintiff provided notice relating to her disabilities and requested potential
25 accommodations. Despite Plaintiff's disabilities, she was able to perform the essential duties of
26 her position with reasonable accommodations. However, Defendant refused to accommodate
27 Plaintiff. Shortly after requesting accommodations, Defendant made terminated Plaintiff's
28 employment. Defendant cannot establish that allowing Plaintiff's reasonable accommodation was

1 an “undue hardship” as defined by Government Code section 12926, subdivision (t), and the
2 California Code of Regulations, title 2, section 11068. Accordingly, Defendant’s conduct violated
3 Government Code section 12940, subdivision (m).

4 185. Defendant’s failure to provide reasonable accommodation was a substantial factor
5 in causing Plaintiff’s harm.

6 186. As an actual and proximate result of the aforementioned violations, Plaintiff has
7 been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of
8 this Court. Plaintiff also seeks “affirmative relief” or “prospective relief” as defined by
9 Government Code section 12926, subdivision (a), including back pay, reimbursement of out of
10 pocket expenses and any such other relief that this Court deems proper.

11 187. As an actual and proximate result of Defendant’s willful and intentional failure to
12 reasonably accommodate, Plaintiff has lost wages, benefits, and other out-of-pocket expenses.

13 188. As an actual and proximate result of Defendant’s aforementioned acts, Plaintiff
14 suffered physical injury. Plaintiff experienced depression, anxiety, Post-Traumatic Stress
15 Disorder symptoms, brain injuries, avoidance behaviors, hyperarousal, exaggerated startle
16 response, concentration difficulties, panic attacks, weight loss, shortness of breath, increased
17 heart rate, muscle tightness, constant shaking hands, sleep problems, nightmares, stomach pain,
18 nausea, and loss of appetite. Plaintiff claims general damages for physical injury in an amount
19 according to proof at time of trial.

20 189. As an actual and proximate result of Defendants’ aforementioned acts, Plaintiff
21 also suffered mental upset and other emotional distress. Plaintiff claims general damages for
22 mental distress in an amount according to proof at time of trial.

23 **ELEVENTH CAUSE OF ACTION**

24 **Failure to Engage in Interactive Process: Gov. Code §12940(n))**

25 190. The allegations set forth in this complaint are hereby re-alleged and incorporated
26 by reference.

27 191. This cause of action is asserted against Defendant.

28 192. At all relevant times, Plaintiff was an employee of Defendant.

1 193. At all times relevant to this matter, the Fair Employment and Housing Act,
2 Government Code section 12940, was in full force and effect and binding on Defendant.
3 Government Code section 12940, subdivision (n), reads: “It is an unlawful employment practice
4 . . . [f]or an employer or other entity covered by this part to fail to engage in a timely, good faith,
5 interactive process with the employee or applicant to determine effective reasonable
6 accommodations, if any, in response to a request for reasonable accommodation by an employee
7 or applicant with a known physical or mental disability or known medical condition.”

8 194. At all times relevant to this matter, Plaintiff(s) suffered from a “mental disability”
9 as defined by Government Code section 12926, subdivision (j), and the California Code of
10 Regulations, title 2, section 11065, subdivision (d)(1), and/or a “perceived disability” as defined
11 by Government Code section 12926, subdivision (j), and the California Code of Regulations, title
12 2, section 11065, subdivision (d)(5), and/or a “perceived potential disability” as defined by
13 Government Code section 12926, subdivision (j), and the California Code of Regulations, title 2,
14 section 11065, subdivision (d)(6), and/or a “physical disability” as defined by Government Code
15 section 12926, subdivision (m), and the California Code of Regulations, title 2, section 11065,
16 subdivision (d)(2). In spite of her disability, Plaintiff was able to perform the essential functions
17 of her position as defined by Government Code section 12926, subdivision (f), and the California
18 Code of Regulations, title 2, section 11065, subdivision (e), and was otherwise able to perform
19 her job had Defendant provided the reasonable accommodation required by Government Code
20 section 12926, subdivision (p), and the California Code of Regulations, title 2, section 11068,
21 subdivision (a).

22 195. Although Plaintiff provided notice to Defendant regarding her mental disability
23 and/or physical disability, Defendant failed to accommodate Plaintiff’s disabilities as set forth
24 above. Plaintiff was willing to participate in an interactive process to determine whether
25 reasonable accommodation could be made so that she would be able to perform the essential job
26 requirements. Defendant failed to approach Plaintiff to discuss the possible accommodation of
27 her mental disabilities and/or physical disabilities with her health care providers in good faith.
28 Defendant did not discuss the nature and extent of Plaintiff’s mental health condition or mental

1 disabilities and/or physical disabilities, the advice and recommendation of her health care
2 providers, the extent of the necessary accommodation, and the need for future accommodation as
3 well as other important areas of inquiry recognized in the United States Equal Employment
4 Opportunity Commission's "Enforcement Guidance: Reasonable Accommodation and Undue
5 Hardship Under the Americans With Disabilities Act" noted by the California Legislature in
6 Government Code section 12926.1, subdivision (e). Defendant's obligation to engage in the
7 interactive process of accommodation was not excused or waived by Plaintiff. Because Defendant
8 failed to engage in the important interactive process between employee and employer in
9 determining reasonable accommodation, Defendant's conduct violated Government Code section
10 12940, subdivision (n).

11 196. Defendant's failure to engage in a good-faith interactive process was a substantial
12 factor in causing Plaintiff's harm.

13 197. As an actual and proximate result of the aforementioned violations, Plaintiff has
14 been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of
15 this Court. Plaintiff also seeks "affirmative relief" or "prospective relief" as defined by
16 Government Code section 12926, subdivision (a), including back pay, reimbursement of out-of-
17 pocket expenses and any such other relief that this Court deems proper.

18 198. As an actual and proximate result of Defendant's willful and intentional failure to
19 engage in the interactive process, Plaintiff has lost wages, benefits, and other out-of-pocket
20 expenses.

21 199. As an actual and proximate result of Defendant's aforementioned acts, Plaintiff
22 suffered physical injury. Plaintiff experienced depression, anxiety, Post-Traumatic Stress
23 Disorder symptoms, brain injuries, avoidance behaviors, hyperarousal, exaggerated startle
24 response, concentration difficulties, panic attacks, weight loss, shortness of breath, increased
25 heart rate, muscle tightness, constant shaking hands, sleep problems, nightmares, stomach pain,
26 nausea, and loss of appetite. Plaintiff claims general damages for physical injury in an amount
27 according to proof at time of trial.

28 200. As an actual and proximate result of Defendants' aforementioned acts, Plaintiff


1 also suffered mental upset and other emotional distress. Plaintiff claims general damages for
2 mental distress in an amount according to proof at time of trial.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff demands judgment against Defendant and any other Defendant
5 who may be later added to this action as follows:

- 6 1. For compensatory damages, including, but not limited to, lost wages and non-
7 economic damages in the amount according to proof;
- 8 2. For attorneys' fees and costs pursuant to all applicable statutes or legal principles;
- 9 3. For cost of suit incurred;
- 10 4. For prejudgment interest on all amounts claimed pursuant to Civil Code sections
11 3287 and/or 3288; and
- 12 5. For such other and further relief as the court may deem proper.

13
14
15 Date: July 2, 2020


By: 
LAWRANCE A. BOHM, ESQ.
ANDREW C. KIM, ESQ.

Attorneys for Plaintiff,
BETH FISCHGRUND

16
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19
20 **DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands trial by jury for this matter.

22
23
24 Date: July 2, 2020

By: 
LAWRANCE A. BOHM, ESQ.
ANDREW C. KIM, ESQ.

Attorneys for Plaintiff,
BETH FISCHGRUND


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VERIFICATION OF COMPLAINT FOR DAMAGES

I, Beth Fischgrund, have read the attached Complaint for Damages and hereby attest that the same is true of my own knowledge, except as to those matters, which are therein stated on my information or belief, and as to those matter that I believe it to be true.

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

This Verification was executed on July 2, 2020, in San Francisco, California.


Beth Fischgrund

RECEIVED
CIVIL DKOP BOX

2008 JUL -2 PM 2:54

GD830 COUNTY CLERK
SUPERIOR COURT
OF CALIFORNIA
SACRAMENTO COUNTY