

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: John Doyle

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JACQUELINE ROEDER

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

JACQUELINE ROEDER, an individual,

Plaintiff,

vs.

PROLACTA BIOSCIENCE, INC., a  
Delaware corporation; SCOTT ELSTER, an  
individual; and DOES 1 through 50,  
inclusive,

Defendants.

Case No.

**19STCV37738**

**COMPLAINT FOR DAMAGES**

- 1. DISCRIMINATION IN VIOLATION OF THE FEHA – GOVT. CODE § 12940 ET SEQ.;**
- 2. RETALIATION IN VIOLATION OF THE FEHA – GOVT. CODE § 12940 ET SEQ.;**
- 3. FAILURE TO PREVENT DISCRIMINATION AND RETALIATION IN VIOLATION OF THE FEHA – GOVT. CODE § 12940 ET SEQ.;**
- 4. VIOLATION OF THE CALIFORNIA FAIR PAY ACT – LABOR CODE § 1197.5;**
- 5. RETALIATION IN VIOLATION OF THE CALIFORNIA FAIR PAY ACT – LABOR CODE § 1197.5;**
- 6. RETALIATION IN VIOLATION OF LABOR CODE § 1102.5;**
- 7. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
- 8. FALSE IMPRISONMENT;**
- 9. FAILURE TO PAY EARNED WAGES IN VIOLATION OF LABOR CODE §§ 201, 202;**
- 10. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS IN VIOLATION OF LABOR CODE § 226**

**[DEMAND FOR JURY TRIAL]**

1 Plaintiff Jacqueline Roeder (“Plaintiff”) alleges as follows on knowledge as to herself and her  
2 respective known acts, and on information and belief as to all other matters:

3 **I.**

4 **PARTIES**

5 1. At the relevant times mentioned herein, Plaintiff was employed by Prolacta Bioscience,  
6 Inc. (the “Company,” “Defendant” or “Prolacta”). Plaintiff performed work for the Company within  
7 Los Angeles County at 1800 Highland Avenue, Duarte, California 91010. The unlawful conduct  
8 alleged herein occurred in Los Angeles County. Plaintiff is, and at the relevant times mentioned herein  
9 was, a resident of Los Angeles County.

10 2. At the relevant times mentioned herein, the Company was a Delaware corporation  
11 conducting its business in Los Angeles County.

12 3. At the relevant times mentioned herein, the Company was the “employer” of Plaintiff,  
13 as such term is defined under the California Fair Employment and Housing Act (the “FEHA”).

14 4. At the relevant times mentioned herein, Scott Elster (“Elster”) was an individual  
15 employed by the Company. Plaintiff is informed and believes that Elster is, and at the relevant times  
16 mentioned herein was, a resident of Los Angeles County.

17 5. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as  
18 DOES 1 through 50, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiff  
19 will amend this Complaint to allege the true names and capacities of said Defendants when the same  
20 has been ascertained. Each of the fictitiously named Defendants is responsible in some manner for the  
21 acts complained of herein. Unless otherwise stated, all references to named Defendants shall include  
22 DOE Defendants as well.

23 **II.**

24 **JURISDICTION AND VENUE**

25 6. Jurisdiction and venue are proper in this Court because all of the claims alleged herein  
26 arose in Los Angeles County and all of the defendants are doing or did business in Los Angeles County,  
27 and/or their principal place of business is in Los Angeles County, in each case, at the times relevant  
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1 herein. *See* Govt. Code § 12965(b) (stating venue is appropriate in, inter alia, any county in the state in  
2 which the unlawful practice is alleged to have been committed).

3 7. The amount in controversy in this matter exceeds the sum of \$25,000.00, exclusive of  
4 interest and costs.

5 **III.**

6 **FACTUAL ALLEGATIONS**

7 8. Prolacta is a privately held, for-profit company that produces standardized human milk-  
8 based nutritional products for premature infants in the neonatal intensive care unit.

9 9. Plaintiff was employed by the Company as its director of human resources from on or  
10 about March 6, 2017 until her wrongful termination on or about January 18, 2019. As the director of  
11 human resources, Plaintiff was responsible for developing and implementing organization and human  
12 resources strategies, supporting and guiding management and employee actions, and ensuring  
13 compliance with federal, state, and local legal requirements. Plaintiff reported to the Company's chief  
14 executive officer, Scott Elster, and later to both Elster and the chief financial officer, David Dreyer. At  
15 the time of her termination, Plaintiff earned \$207,648 per year plus a 25% bonus, benefits including  
16 medical, vision, and dental, a 401k plan with employer contribution, as well as participation in the  
17 Company's stock option plan.

18 10. Over the course of her employment with the Company, Plaintiff witnessed rampant  
19 violations of federal and state law prohibiting discrimination, harassment, and retaliation. By way of  
20 example, the Company's vice president of operations, Mark Hannon, made disparaging remarks  
21 regarding the sexual orientation of employees and candidates. In or about June 2018, Hannon attended  
22 an executive team dinner and made fun of one of the Company's sales employees for being a lesbian. At  
23 that same dinner, Hannon noted that two males employees had called him "handsome"; Hannon stated  
24 that this made him so upset he wanted to "punch" them. Plaintiff spoke with one employee who  
25 witnessed these comments, the vice president of intellectual property, Alyson Fuller, who described  
26 Hannon's comments as "making fun of gays," and asked Plaintiff to report it to Elster. On another  
27 occasion in or about June 2018, Hannon learned that a male candidate for an organizational development  
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1 manager position was gay when the candidate stated he was traveling with his husband to the interview.  
2 Hannon made derogatory comments about the candidate's sexual orientation to the Company's senior  
3 director of quality, Gloria Crockett, and Fuller, who in turn reported this to Plaintiff. And while the  
4 candidate received glowing reviews from each of his interviewers, Elster refused to hire him because he  
5 was "simply a liability to Prolacta" due to his sexual orientation. Plaintiff immediately told Elster that it  
6 is illegal to discriminate against employees on the basis of sexual orientation; Elster simply reiterated  
7 that the candidate would be a liability if he was hired.

8 11. With respect to Hannon, Plaintiff reported his foregoing conduct to Elster in a  
9 memorandum dated June 25, 2018, in which she summarized Hannon's discriminatory conduct,  
10 recommended numerous courses of action with the aim of bringing that conduct to an end, and cited to  
11 supporting laws. When Plaintiff gave Elster the June 25th memorandum in an in-person meeting, Elster  
12 told Plaintiff that he was going to have her report investigated by an outside investigator. At Elster's  
13 direction, Plaintiff ultimately hired Lorraine Sanders of TriNet to conduct the investigation. While Elster  
14 refused to share the conclusion of Sanders' report with Plaintiff, Sanders informed Plaintiff that Hannon  
15 was a "liability to Prolacta," and "it was not a matter of *if* a lawsuit was going to occur, it was a matter  
16 of *when*."

17 12. Other violations of federal and state law related to the Company's pay practices. As a  
18 federal contractor, the Company was required to comply with federal affirmative action laws and  
19 regulations including, but not limited to, Executive Order 11246, the Rehabilitation Act of 1973 (29  
20 U.S.C. § 793), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. § 4212),  
21 as well as numerous regulations including Obligations of Contractors and Subcontractors (41 C.F.R. Part  
22 60-1), Affirmative Action Programs (41 C.F.R. Part 60-2), and Affirmative Action and  
23 Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with  
24 Disabilities (41 C.F.R. Part 60-741).

25 13. In or about mid-2017, the Company utilized a third-party company called Strategic Pay  
26 Resources to conduct a compensation analysis to compare its employees' salaries with comparable  
27 market salaries. Numerous discrepancies between the Company's salaries and market salaries were  
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1 found, including for Plaintiff, who earned 27.2% less than the market minimum for her position. As a  
2 result of Strategic Pay Resources' findings, all of the Company's employees whose salaries were below  
3 the market minimum had their pay increased other than Plaintiff. Plaintiff complained about this disparity  
4 on numerous occasions with Elster, and simultaneously complained that, because she was the head of  
5 human resources, her title should have been "vice president" rather than "director." During these  
6 complaints, Plaintiff told Elster that her under-market wage and disparate title could be found to be  
7 discriminatory and a violation of equal pay laws if the Company was audited by the Office of Federal  
8 Contract Compliance Programs ("OFCCP"). In response, Elster told Plaintiff that her salary and bonus  
9 could only be increased by the Company's board of directors. But when Plaintiff spoke with a member  
10 of the board of directors, Sally Crawford, Plaintiff was told that her pay rate was in fact determined by  
11 Elster. After Plaintiff brought this to Elster's attention, she ultimately received only a small raise that left  
12 her well under the market minimum for her position, and received no change in her title.

13 14. In or about 2017, the Company utilized another third-party company to conduct an  
14 analysis of employee salaries broken down by gender and race to determine whether it was in compliance  
15 with the foregoing laws and regulations. The analysis found numerous discrepancies between minority  
16 and non-minority salaries, as well as between male and female salaries. After receiving those results,  
17 Plaintiff endeavored to correct the pay disparities with Elster on four or five occasions during their  
18 weekly one-on-one meetings. Plaintiff explained to Elster the potential legal ramifications for the pay  
19 disparities, including the Company's obligation to comply with the foregoing laws and regulations. Elster  
20 repeatedly told Plaintiff that he would "take his chances" and that he "had bigger fish to fry."

21 15. In or about 2018, the Company again utilized Strategic Pay Resources and a third-party  
22 company to conduct an analysis of employee salaries broken down by market and gender and race to  
23 determine whether it was in compliance with the foregoing laws and regulations. Among other things,  
24 Strategic Pay Resources again found that Plaintiff's salary was well under the market minimum. When  
25 Plaintiff brought this to Dreyer's attention, Dreyer told Plaintiff that if he brought this to Elster's  
26 attention, Plaintiff would become Elster's "target" and would eventually no longer work with the  
27 Company. Despite that, Plaintiff did bring her wage disparity to Elster's attention; Elster acted as if  
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1 Plaintiff had not even spoken.

2           16. In or about October 2018, Plaintiff met with Elster regarding her concerns that the  
3 Company was not complying with its affirmative action obligations, as well as the wage disparities  
4 between male and female employees. In addition to setting forth the analysis results, Plaintiff pointed  
5 out that an African American employee should have been promoted to the job title of “vice president”  
6 rather than “senior director,” that a male employee earned more in compensation and stock options than  
7 a female employee for the same position—the list goes on. Elster dismissed Plaintiff’s concerns and,  
8 with respect to Plaintiff’s suggestion that the African American senior director receive a promotion in  
9 title, Elster stated, “We have enough blacks in leadership and don’t need to promote more.” Plaintiff said  
10 she could not believe Elster felt comfortable telling her that, and that the issue was not how many  
11 employees fell into a certain category, but whether the African American senior director was being  
12 treated fairly without regard to her race or gender. Elster simply told Plaintiff, “case closed.”

13           17. The Company also violated state and federal tax laws by providing its employees with  
14 cash gift cards as bonus compensation without deducting state and federal taxes. Plaintiff informed  
15 Dreyer and Elster that this practice was unlawful (e.g., 26 C.F.R. § 1.132-6 (“De minimis fringes”) and  
16 26 U.S.C. § 102 (“Gifts and inheritances”)); Elster stated he “had a feeling there was a problem with  
17 that.”

18           18. Other violations of federal and state law relate to discriminatory and harassing conduct  
19 on the basis of employees’ race, ancestry, and national origin. By way of example, on or about July 11,  
20 2018, Hannon asked an African American employee, Gloria Crockett, “Which one is more appropriate—  
21 nigga or nigger?” Plaintiff learned about this comment through the third-party investigator who had been  
22 hired after Plaintiff submitted the June 25, 2018 memorandum regarding Hannon. Similarly, during a  
23 monthly management meeting in or about November 2018, an anonymous question was submitted about  
24 why Company management lacked females and female minorities in leadership roles. Elster responded  
25 to the question with a joke about an employee of Mexican descent, stating, “By the way, did you know  
26 Joe Fournell is half-Mexican? Joe, why don’t you talk about that?” After numerous employees  
27 complained to Plaintiff about Elster’s comments, Plaintiff brought these to the attention of her supervisor,  
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1 Dreyer, and asked whether he had spoken with Elster about it. Incredibly, Dreyer laughed and stated that  
2 he had, and that Elster's response had been to call it "a horrible mistake."

3 19. Other violations of federal and state law relate to discriminatory and harassing conduct  
4 on the basis of employees' disabilities. By way of example, when the Company's human resources  
5 generalist went on medical leave in or about August 2018, Elster asked what her diagnosis was and  
6 instructed Plaintiff that upon her return, she needed to find a new job internally or with another company.  
7 When Plaintiff asked for a reason, Elster said it was because she continually went out on medical leave.  
8 Plaintiff objected that the Company was not allowed to discriminate against disabled people; Elster  
9 simply responded, "I know that." Around this same time, Dreyer told Plaintiff that Elster had been  
10 making fun of the generalist for taking leave whenever "she wanted an extended vacation"; Plaintiff told  
11 Dreyer that the employee's disability was not a joking matter, and stated she herself suffered from panic  
12 attacks. Similarly, when the former regulatory affairs analyst requested an accommodation of working  
13 from home one day per week as a result of her cancer treatment, Plaintiff conducted an interactive  
14 process and recommended to Elster, Dreyer and others that the Company grant her request. Incredibly,  
15 Elster told Plaintiff that once the regulatory affairs analyst had finished the Human Milk Organization  
16 project she was working on, he wanted her "canned." Plaintiff objected that this was discrimination on  
17 the basis of a disability; Elster responded that "unless you're born with it, you're just making up  
18 excuses." Similarly, when a member of the Company's information technology department suffered from  
19 a disability that caused him to fall asleep at work on occasion, Elster demanded to see his medical  
20 diagnosis, told Plaintiff to "call 911" the next time it happened, and stated that he wanted the employee  
21 fired. Plaintiff objected that this was discrimination; Elster responded that he didn't "fucking care" and  
22 "wanted him gone." Additionally, Joe Fournell went to the employee's desk and took a picture of his  
23 medication. Knowing that this was a violation of the employee's right to privacy, Plaintiff told Fournell  
24 he could not do that. Ultimately, the employee was terminated over Plaintiff's objections. On another  
25 occasion, Hannon instructed Plaintiff to hire an investigator to conduct surveillance on an employee who  
26 had filed a workers' compensation claim; when Plaintiff reported this to Elster and informed him the  
27 Company could not do this, he expressed agreement with Hannon that employees who filed workers'

1 compensation claims were merely “disgruntled” without legitimate claims.

2           20. Other violations of federal and state law relate to discriminatory conduct on the basis of  
3 employees’ age. In or about October 2018, Elster informed Plaintiff that he wanted to “get rid of all the  
4 old people in the marketing department so we can obtain new blood.” Plaintiff told Elster the Company  
5 could not let people go because of their age; Elster responded that she did not need to tell him that  
6 because he already understood.

7           21. Plaintiff was subjected to a pattern of blatant retaliation as a result of her reports and  
8 complaints regarding the foregoing conduct. On or about August 24, 2018, Dreyer told Plaintiff that  
9 Elster was targeting her because every time she “uncovered something, it potentially cost the company  
10 money.” Similarly, on or about September 17, 2018, Hannon told Plaintiff that he did not respect her, her  
11 position, or human resources as a function. When Plaintiff reported this comment to Elster, Elster  
12 responded that he was hiring another c-level employee to act as a “buffer” between Plaintiff and Hannon.  
13 By late-September 2018, Elster had cancelled his weekly one-on-one meetings with Plaintiff. The  
14 Company’s retaliatory conduct escalated on or about October 15, 2018, when Plaintiff was suddenly told  
15 she would not be allowed to present the Talent Acquisition Strategy Plan—which included a snapshot of  
16 the gender and race disparities reported by the third party companies—at the Company’s board of  
17 directors meeting. Seven days later, Plaintiff was told by Dreyer to “start looking for another job”  
18 because Hannon was being promoted to the position of chief operating officer and “refused to work  
19 with” her. That same day, Plaintiff was uninvited from the October 23, 2018 board dinner (designed to  
20 allow senior employees to get to know Company’s board of directors)—notably, Plaintiff was the only  
21 member of the leadership team who was uninvited from this dinner. Similarly, in December 2018  
22 Plaintiff was uninvited from the Company’s executive team holiday dinner the night before the event.

23           22. In or about October 2018, Elster began the process of hiring John Nelson—a male,  
24 Caucasian, and childhood friend of Elster—as the Company’s chief administrative officer. Incredibly,  
25 Nelson was not only given a “chief” title, but was given a substantially greater budgetary allotment than  
26 had been provided to Plaintiff when she headed the human resources department. Plaintiff was surprised  
27 at this because when she had requested that the Company hire additional human resources employees to  
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1 assist with her significant workload in or about August 2018, the Company denied those requests. That  
2 same month, Dryer told Plaintiff that once Nelson was hired, Plaintiff would be terminated and that he  
3 had “told” her “not to report those complaints to Elster.” Plaintiff objected that she was only doing her  
4 job, and asked whether Elster was motivated by her complaints and/or his knowledge that she was  
5 suffering from panic attacks. Dreyer ignored the question and repeatedly stated that he could not make  
6 Elster “do the right thing” because he had “two boys” he was “putting through medical school.” By  
7 November 26, 2018, Elster himself told Plaintiff that she had until the end of February 2019 to find a  
8 new job, giving Hannon’s dislike of Plaintiff, who “refused to work with” her, as his only explanation.

9         23. The foregoing pattern of retaliation came to a head on or about January 16, 2019, when  
10 the Company’s former chief medical officer reported to Plaintiff that the Company had been using breast  
11 milk donors’ DNA (which is collected to ensure breast milk donations can be traced to the donor) for  
12 research without a signed authorization in place. When Plaintiff asked why authorizations weren’t  
13 obtained, the former chief medical officer stated that there was an authorization in place, but the  
14 authorization was for the donation of the milk, not for other purposes. Plaintiff was concerned about this  
15 conduct because, if true, it potentially constituted a breach of the Company’s agreements with donors  
16 regarding the use of their breast milk; fraud (e.g., Cal. Civ. Code §§ 1572 (“Actual fraud”), 1709  
17 (“Deceit; damages”), 1710 (“Deceit defined”)); a breach of donors’ right to privacy (e.g., the Health  
18 Insurance Portability and Accountability Act (“HIPAA”)); and a violation of state and federal laws  
19 prohibiting the use of human beings as subjects in research without authorization (e.g., 21 C.F.R. § 50.20,  
20 which provides that “no investigator may involve a human being as a subject in research covered by  
21 these regulations unless the investigator has obtained the legally effective informed consent of the  
22 subject”). Elster became visibly angry and demanded to know who had given Plaintiff that information;  
23 because Plaintiff had been approached in confidence, she declined to immediately identify the source  
24 and asked what the Company would do to rectify the situation. Elster did not respond; instead, within a  
25 few hours of Plaintiff’s report, Elster and Dreyer entered her office and terminated her.

26         24. During the January 16, 2019 termination meeting, Elster gave Plaintiff a severance  
27 agreement template that had none of the blank spaces filled in and demanded that she sign the signature  
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1 page as a showing of “good faith.” Plaintiff refused, stating she would not sign a blank agreement.  
2 Experiencing symptoms of a panic attack, Plaintiff stood up and tried to leave the room; Elster blocked  
3 her exit and shoved her arm away from the door, demanding again that she sign the severance agreement  
4 template. Plaintiff objected that it was a one-sided agreement and that she needed to consult an attorney.  
5 Elster finally said she had two days to sign the agreement; Plaintiff responded that as a person over 40,  
6 she was entitled to 21 days to review the agreement. Elster reiterated that Plaintiff had two days to sign  
7 and left the office to have the severance agreement filled in. As soon as Elster left Plaintiff’s office, she  
8 asked Dreyer to escort her to her car and left the Company’s premises.

9 25. Following her termination meeting, Plaintiff went to urgent care to treat her panic attack  
10 symptoms. Unsure of whether Elster’s termination was effective that day or two days later, in an  
11 abundance of caution Plaintiff submitted her doctor’s note to Kimberly Garcia in the human resources  
12 department.

13 26. On or about January 18, 2019, Plaintiff received a final paycheck that lacked supporting  
14 detail relating to hours worked and deductions. The final paycheck failed to include Plaintiff’s 2018  
15 bonus in the amount of \$50,400, which had already been approved in full as of December 17, 2018.

### 16 **Managing Agents**

17 27. The Company’s conduct, as described in paragraphs 8-26 above, was performed or  
18 ratified by managing agents of the Company, including, but not limited to, Scott Elster, David Dreyer,  
19 and Mark Hannon (collectively, the “Managing Agents”). The Managing Agents were each responsible  
20 for overseeing a substantial portion of the Company’s business operations, and each exercised substantial  
21 discretionary authority over vital aspects of such operations including making significant decisions that  
22 affect the Company’s internal policies. The Managing Agents engaged in malicious, fraudulent, and  
23 oppressive conduct that justifies an award of punitive damages.

24 28. In committing the foregoing acts as set forth above in paragraphs 8-26 above, the  
25 Managing Agents willfully disregarded Plaintiff’s right to be free from unlawful discrimination and  
26 retaliation at the workplace.

27 29. In committing the foregoing acts as set forth in paragraphs 8-26 above, the Managing  
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1 Agents acted despicably and subjected Plaintiff to cruel and unjust hardship in conscious disregard for  
2 her rights under California law. The Managing Agents' conduct demonstrates a callous indifference for  
3 the law and Plaintiff's rights.

4 30. In committing the foregoing acts as set forth in paragraphs 8-26 above, the Managing  
5 Agents intended to cause emotional and financial injury to Plaintiff. Specifically, the Managing Agents  
6 discriminated and retaliated against Plaintiff unlawfully with the intent to cause her severe emotional  
7 distress or at least without regard for the consequences on Plaintiff's career, livelihood, and her emotional  
8 wellbeing.

9 **IV.**

10 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

11 31. Prior to the initiation of this lawsuit, Plaintiff filed a complaint against each named  
12 Defendant with the California Department of Fair Employment and Housing ("DFEH") pursuant to  
13 section 12900 et seq. of the California Government Code, alleging the claims described in this  
14 Complaint. On October 21, 2019, the DFEH issued a "right to sue" letter. True and correct copies of  
15 the administrative complaint and the "right to sue" letter are attached hereto collectively as **Exhibit A**.  
16 All conditions precedent to the institution of this lawsuit have been fulfilled. This action is filed within  
17 one year of the date that the DFEH issued its right to sue letter.

18 **V.**

19 **FIRST CAUSE OF ACTION**

20 **(Discrimination in Violation of the FEHA)**

21 **(On Behalf of Plaintiff Against the Company)**

22 32. Plaintiff realleges and incorporates by reference paragraphs 1-31 inclusive, of this  
23 Complaint as though fully set forth herein.

24 33. As explained above, the Company's supervisory and management employees  
25 discriminated against Plaintiff on the basis of her sex and/or gender in violation of the FEHA through  
26 numerous illegal acts including, without limitation, failing to give Plaintiff a promotion in title  
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1 commensurate with her peers and replacement, and failing to pay Plaintiff a salary and bonus  
2 commensurate with her skill, effort, and responsibility.

3 34. As a proximate result of the Company's conduct, Plaintiff suffered and continues to  
4 suffer damages in terms of lost wages, lost bonuses, lost benefits, and other pecuniary loss according to  
5 proof. Plaintiff has also suffered and will continue to suffer physical and emotional injuries, including  
6 nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue,  
7 and anxiety. The amount of Plaintiff's damages will be ascertained at trial.

8 35. The Company's conduct, as described in paragraphs 8-26 above, was performed or  
9 ratified by managing agents of the Company, including, but not limited to, Scott Elster, David Dreyer,  
10 and Mark Hannon. The Managing Agents were each responsible for overseeing a substantial portion of  
11 the Company's business operations, and each exercised substantial discretionary authority over vital  
12 aspects of such operations including making significant decisions that affect the Company's internal  
13 policies. The Managing Agents engaged in malicious, fraudulent, and oppressive conduct that justifies  
14 an award of punitive damages.

15 36. In committing the foregoing acts as set forth above in paragraphs 8-26 above, the  
16 Managing Agents willfully disregarded Plaintiff's right to be free from unlawful discrimination and  
17 retaliation at the workplace.

18 37. In committing the foregoing acts as set forth in paragraphs 8-26 above, the Managing  
19 Agents acted despicably and subjected Plaintiff to cruel and unjust hardship in conscious disregard for  
20 her rights under California law. The Managing Agents' conduct demonstrates a callous indifference for  
21 the law and Plaintiff's rights.

22 38. In committing the foregoing acts as set forth in paragraphs 8-26 above, the Managing  
23 Agents intended to cause emotional and financial injury to Plaintiff. Specifically, the Managing Agents  
24 discriminated and retaliated against Plaintiff unlawfully with the intent to cause her severe emotional  
25 distress or at least without regard for the consequences on Plaintiff's career, livelihood, and her  
26 emotional wellbeing.



1 nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue,  
2 and anxiety. The amount of Plaintiff's damages will be ascertained at trial.

3 45. The Company's conduct, as described in paragraphs 8-26 above, was performed or  
4 ratified by managing agents of the Company, including, but not limited to, Scott Elster, David Dreyer,  
5 and Mark Hannon. The Managing Agents were each responsible for overseeing a substantial portion of  
6 the Company's business operations, and each exercised substantial discretionary authority over vital  
7 aspects of such operations including making significant decisions that affect the Company's internal  
8 policies. The Managing Agents engaged in malicious, fraudulent, and oppressive conduct that justifies  
9 an award of punitive damages.

10 46. In committing the foregoing acts as set forth above in paragraphs 8-26 above, the  
11 Managing Agents willfully disregarded Plaintiff's right to be free from unlawful discrimination and  
12 retaliation at the workplace.

13 47. In committing the foregoing acts as set forth in paragraphs 8-26 above, the Managing  
14 Agents acted despicably and subjected Plaintiff to cruel and unjust hardship in conscious disregard for  
15 her rights under California law. The Managing Agents' conduct demonstrates a callous indifference for  
16 the law and Plaintiff's rights.

17 48. In committing the foregoing acts as set forth in paragraphs 8-26 above, the Managing  
18 Agents intended to cause emotional and financial injury to Plaintiff. Specifically, the Managing Agents  
19 discriminated and retaliated against Plaintiff unlawfully with the intent to cause her severe emotional  
20 distress or at least without regard for the consequences on Plaintiff's career, livelihood, and her emotional  
21 wellbeing.

22 49. The FEHA provides for an award of reasonable attorneys' fees and costs incurred by a  
23 prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will continue to  
24 employ attorneys for the initiation and prosecution of this action. Plaintiff has incurred and will continue  
25 to incur attorneys' fees and costs herein. Plaintiff is entitled to an award of attorneys' fees and costs.

26 50. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this  
27 Court.  
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**VII.**

**THIRD CAUSE OF ACTION**

**(Failure to Prevent Discrimination and/or Retaliation in Violation of the FEHA)**

**(On Behalf of Plaintiff Against the Company)**

51. Plaintiff realleges and incorporates by reference paragraphs 1-50, inclusive, of this Complaint as though fully set forth herein.

52. California Government Code section 12940(k) makes it an unlawful employment practice for an employer to “fail to take all reasonable steps to prevent discrimination and harassment [and retaliation] from occurring.” This provision also makes it unlawful for an employer to fail to prevent retaliation. *See, e.g., Ortiz v. Georgia Pacific* (E.D. Cal. 2013) 973 F.Supp.2d 1162, 1184 (citing *Taylor v. City of Los Angeles Dep’t of Water & Power* (2006) 144 Cal.App.4th 1216, 1240). The Company violated this provision by failing to prevent discrimination and retaliation against Plaintiff, including those acts described in paragraphs 8-26 above. Additionally, the Company knew or should have known of the discrimination and retaliation against Plaintiff, yet failed to prevent such conduct or take any prompt or adequate remedial action.

53. As a proximate result of the Company’s conduct, Plaintiff suffered and continues to suffer damages in terms of lost wages, lost bonuses, lost benefits, and other pecuniary loss according to proof. Plaintiff has also suffered and will continue to suffer physical and emotional injuries, including nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff’s damages will be ascertained at trial.

54. The Company’s conduct, as described in paragraphs 8-26 above, was performed or ratified by managing agents of the Company, including, but not limited to, Scott Elster, David Dreyer, and Mark Hannon. The Managing Agents were each responsible for overseeing a substantial portion of the Company’s business operations, and each exercised substantial discretionary authority over vital aspects of such operations including making significant decisions that affect the Company’s internal policies. The Managing Agents engaged in malicious, fraudulent, and oppressive conduct that justifies an award of punitive damages.





1 similar working conditions, except where the employer demonstrates: (1) The wage differential is  
2 based upon one or more of the following factors: (A) A seniority system. (B) A merit system. (D) A  
3 bona fide factor other than sex, such as education, training, or experience. (D) A bona fide factor other  
4 than sex, such as education, training, or experience. . . .” Cal. Lab. Code § 1197.5(a)(1).

5 62. California Labor Code section 1197.5 further provides, “Any employer who violates  
6 subdivision (a) or (b) is liable to the employee affected in the amount of the wages, and interest  
7 thereon, of which the employee is deprived by reason of the violation, and an additional equal amount  
8 as liquidated damages.” Cal. Lab. Code § 1197.5(c).

9 63. Plaintiff is informed and believes that she was paid at a wage rate less than John  
10 Nelson, an employee of the opposite sex, for substantially similar work, when viewed as a composite  
11 of skill, effort, and responsibility, and performed under similar working conditions. Plaintiff is further  
12 informed and believes that the Company cannot demonstrate that the wage differential was based upon  
13 any statutory factors, that the factors (if they exist) were applied reasonably, or that the facts relied  
14 upon account for the entire wage differential.

15 64. As a proximate result of the Company’s conduct, Plaintiff suffered and continues to suffer  
16 damages in terms of lost wages, lost bonuses, lost benefits, and other pecuniary loss according to proof.  
17 Plaintiff has also suffered and will continue to suffer physical and emotional injuries, including  
18 nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue,  
19 and anxiety. The amount of Plaintiff’s damages will be ascertained at trial.

20 65. The Company’s conduct, as described in paragraphs 8-26 above, was performed or  
21 ratified by managing agents of the Company, including, but not limited to, Scott Elster, David Dreyer,  
22 and Mark Hannon. The Managing Agents were each responsible for overseeing a substantial portion of  
23 the Company’s business operations, and each exercised substantial discretionary authority over vital  
24 aspects of such operations including making significant decisions that affect the Company’s internal  
25 policies. The Managing Agents engaged in malicious, fraudulent, and oppressive conduct that justifies  
26 an award of punitive damages.

27 66. In committing the foregoing acts as set forth above in paragraphs 8-26 above, the  
28

1 Managing Agents willfully disregarded Plaintiff's right to be free from unlawful discrimination and  
2 retaliation at the workplace.

3 67. In committing the foregoing acts as set forth in paragraphs 8-26 above, the Managing  
4 Agents acted despicably and subjected Plaintiff to cruel and unjust hardship in conscious disregard for  
5 her rights under California law. The Managing Agents' conduct demonstrates a callous indifference for  
6 the law and Plaintiff's rights.

7 68. In committing the foregoing acts as set forth in paragraphs 8-26 above, the Managing  
8 Agents intended to cause emotional and financial injury to Plaintiff. Specifically, the Managing Agents  
9 discriminated and retaliated against Plaintiff unlawfully with the intent to cause her severe emotional  
10 distress or at least without regard for the consequences on Plaintiff's career, livelihood, and her  
11 emotional wellbeing.

12 69. The Fair Pay Act provides for an award of reasonable attorneys' fees and costs incurred  
13 by a prevailing Plaintiff in an action brought under its provisions. *See* Cal. Lab. Code § 1197.5(h).  
14 Plaintiff has employed and will continue to employ attorneys for the initiation and prosecution of this  
15 action. Plaintiff has incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is  
16 entitled to an award of attorneys' fees and costs.

17 70. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this  
18 Court.

19 **IX.**

20 **FIFTH CAUSE OF ACTION**

21 **(Retaliation in Violation of the California Fair Pay Act, Labor Code § 1197.5)**

22 **(On Behalf of Plaintiff Against the Company)**

23 71. Plaintiff realleges and incorporates by reference paragraphs 1-70, inclusive, of this  
24 Demand as though fully set forth herein.

25 72. California Labor Code section 1197.5 provides, "An employer shall not pay any of its  
26 employees at wage rates less than the rates paid to employees of the opposite sex for substantially  
27 similar work, when viewed as a composite of skill, effort, and responsibility, and performed under  
28

1 similar working conditions, except where the employer demonstrates: (1) The wage differential is  
2 based upon one or more of the following factors: (A) A seniority system. (B) A merit system. (D) A  
3 bona fide factor other than sex, such as education, training, or experience. (D) A bona fide factor other  
4 than sex, such as education, training, or experience. . . .” Cal. Lab. Code § 1197.5(a)(1).

5 73. California Labor Code section 1197.5 further provides, “An employer shall not  
6 discharge, or in any manner discriminate or retaliate against, any employee by reason of any action  
7 taken by the employee to invoke or assist in any manner the enforcement of this section.” Cal. Lab.  
8 Code § 1197.5(k)(1).

9 74. The Company discharged, discriminated and/or retaliated against Plaintiff for invoking  
10 or assisting in the enforcement of the Fair Pay Act through numerous illegal acts including, without  
11 limitation, creating a hostile work environment that collectively constituted “a series of subtle, yet  
12 damaging, injuries” (*Yanowitz v. L’Oreal USA, Inc.*, 36 Cal. 4th 1028, 1055 (2005)), failing to give  
13 Plaintiff a promotion in title commensurate with her peers and replacement, failing to pay Plaintiff a  
14 salary and bonus commensurate with her skill, effort, and responsibility, and terminating Plaintiff’s  
15 employment.

16 75. As a result of the Company’s violation of Labor Code section 1197.5(k)(1), Plaintiff is  
17 entitled to reinstatement and reimbursement for lost wages and work benefits, including interest  
18 thereon, as well as equitable relief. *See* Cal. Lab. Code § 1197.5(k)(2) (“Any employee who has been  
19 discharged, discriminated or retaliated against, in the terms and conditions of his or her employment  
20 because the employee engaged in any conduct delineated in this section may recover in a civil action  
21 reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer,  
22 including interest thereon, as well as appropriate equitable relief.”).

23 76. As a proximate result of the Company’s conduct, Plaintiff suffered and continues to suffer  
24 damages in terms of lost wages, lost bonuses, lost benefits, and other pecuniary loss according to proof.  
25 Plaintiff has also suffered and will continue to suffer physical and emotional injuries, including  
26 nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue,  
27 and anxiety. The amount of Plaintiff’s damages will be ascertained at trial.

1           77.    The Company's conduct, as described in paragraphs 8-26 above, was performed or  
2 ratified by managing agents of the Company, including, but not limited to, Scott Elster, David Dreyer,  
3 and Mark Hannon. The Managing Agents were each responsible for overseeing a substantial portion of  
4 the Company's business operations, and each exercised substantial discretionary authority over vital  
5 aspects of such operations including making significant decisions that affect the Company's internal  
6 policies. The Managing Agents engaged in malicious, fraudulent, and oppressive conduct that justifies  
7 an award of punitive damages.

8           78.    In committing the foregoing acts as set forth above in paragraphs 8-26 above, the  
9 Managing Agents willfully disregarded Plaintiff's right to be free from unlawful discrimination and  
10 retaliation at the workplace.

11           79.    In committing the foregoing acts as set forth in paragraphs 8-26 above, the Managing  
12 Agents acted despicably and subjected Plaintiff to cruel and unjust hardship in conscious disregard for  
13 her rights under California law. The Managing Agents' conduct demonstrates a callous indifference for  
14 the law and Plaintiff's rights.

15           80.    In committing the foregoing acts as set forth in paragraphs 8-26 above, the Managing  
16 Agents intended to cause emotional and financial injury to Plaintiff. Specifically, the Managing Agents  
17 discriminated and retaliated against Plaintiff unlawfully with the intent to cause her severe emotional  
18 distress or at least without regard for the consequences on Plaintiff's career, livelihood, and her emotional  
19 wellbeing.

20           81.    The Fair Pay Act provides for an award of reasonable attorneys' fees and costs incurred  
21 by a prevailing Plaintiff in an action brought under its provisions. *See* Cal. Lab. Code § 1197.5(h).  
22 Plaintiff has employed and will continue to employ attorneys for the initiation and prosecution of this  
23 action. Plaintiff has incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is  
24 entitled to an award of attorneys' fees and costs.

25           82.    Plaintiff has been generally damaged in an amount within the jurisdictional limits of this  
26 Court.

1 X.

2 **SIXTH CAUSE OF ACTION**

3 **(Retaliation in Violation of Labor Code § 1102.5)**

4 **(On Behalf of Plaintiff Against the Company)**

5 83. Plaintiff realleges and incorporates by reference paragraphs 1-82, inclusive, of this  
6 Complaint as though fully set forth herein.

7 84. California Labor Code section 1105 provides a private right of action against employers  
8 for claims under California Labor Code section 1102.5.

9 85. Employers are required by California Labor Code section 1102.5, subdivision (b) not to  
10 retaliate against an employee for disclosing information to a person with authority over the employee  
11 or to another employee who has the authority to investigate, discovery, or correct the violation of  
12 noncompliance, where the employee has reasonable cause to believe that the information discloses a  
13 violation of state or federal statute, or a violation or noncompliance with a state or federal rule or  
14 regulation. *See* Cal. Labor Code § 1102.5(b).

15 86. California Labor Code section 1102.5, subdivision (c) prohibits employers from  
16 retaliating against an employee for refusing to participate in an activity that would result in a violation  
17 of a state or federal statute, or noncompliance with a local, state, or federal rule or regulation. *See* Cal.  
18 Labor Code § 1102.5(c).

19 87. The Company retaliated against Plaintiff in violation of California Labor Code section  
20 1102.5(b) and (c) by, among other things, creating a hostile work environment that collectively  
21 constituted “a series of subtle, yet damaging, injuries” (*Yanowitz v. L’Oreal USA, Inc.*, 36 Cal. 4th  
22 1028, 1055 (2005)), failing to give Plaintiff a promotion in title commensurate with her peers and  
23 replacement, failing to pay Plaintiff a salary and bonus commensurate with her skill, effort, and  
24 responsibility, and terminating Plaintiff’s employment, because she refused to engage in illegal  
25 conduct and/or because she disclosed information that she had reasonable cause to believe constituted  
26 a violation of state and federal law including, without limitation, Executive Order 11246; the  
27 Rehabilitation Act of 1973 (29 U.S.C. § 793); the Vietnam Era Veterans’ Readjustment Assistance Act  
28

1 of 1974 (38 U.S.C. § 4212); Obligations of Contractors and Subcontractors (41 C.F.R. Part 60-1);  
2 Affirmative Action Programs (41 C.F.R. Part 60-2); Affirmative Action and Nondiscrimination;  
3 Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities (41 C.F.R. Part  
4 60-741); 26 C.F.R. § 1.132-6 (“De minimis fringes”); 26 U.S.C. § 102 (“Gifts and inheritances”); Cal.  
5 Civ. Code §§ 1572 (“Actual fraud”), 1709 (“Deceit; damages”), 1710 (“Deceit defined”); the HIPAA;  
6 and 21 C.F.R. § 50.20. The Company’s conduct therefore constituted unlawful retaliation on account of  
7 Plaintiffs protected activity in violation of California Labor Code section 1102.5(b) and (c).

8           88. As a proximate result of the Company’s conduct, Plaintiff suffered and continues to  
9 suffer damages in terms of lost wages, lost bonuses, lost benefits, and other pecuniary loss according to  
10 proof. Plaintiff has also suffered and will continue to suffer physical and emotional injuries, including  
11 nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain, discomfort, fatigue,  
12 and anxiety. The amount of Plaintiff’s damages will be ascertained at trial.

13           89. The Company’s conduct, as described in paragraphs 8-26 above, was performed or  
14 ratified by managing agents of the Company, including, but not limited to, Scott Elster, David Dreyer,  
15 and Mark Hannon. The Managing Agents were each responsible for overseeing a substantial portion of  
16 the Company’s business operations, and each exercised substantial discretionary authority over vital  
17 aspects of such operations including making significant decisions that affect the Company’s internal  
18 policies. The Managing Agents engaged in malicious, fraudulent, and oppressive conduct that justifies  
19 an award of punitive damages.

20           90. In committing the foregoing acts as set forth above in paragraphs 8-26 above, the  
21 Managing Agents willfully disregarded Plaintiff’s right to be free from unlawful discrimination and  
22 retaliation at the workplace.

23           91. In committing the foregoing acts as set forth in paragraphs 8-26 above, the Managing  
24 Agents acted despicably and subjected Plaintiff to cruel and unjust hardship in conscious disregard for  
25 her rights under California law. The Managing Agents’ conduct demonstrates a callous indifference for  
26 the law and Plaintiff’s rights.



1 and Mark Hannon. The Managing Agents were each responsible for overseeing a substantial portion of  
2 the Company's business operations, and each exercised substantial discretionary authority over vital  
3 aspects of such operations including making significant decisions that affect the Company's internal  
4 policies. The Managing Agents engaged in malicious, fraudulent, and oppressive conduct that justifies  
5 an award of punitive damages.

6 99. In committing the foregoing acts as set forth above in paragraphs 8-26 above, the  
7 Managing Agents willfully disregarded Plaintiff's right to be free from unlawful discrimination and  
8 retaliation at the workplace.

9 100. In committing the foregoing acts as set forth in paragraphs 8-26 above, the Managing  
10 Agents acted despicably and subjected Plaintiff to cruel and unjust hardship in conscious disregard for  
11 her rights under California law. The Managing Agents' conduct demonstrates a callous indifference for  
12 the law and Plaintiff's rights.

13 101. In committing the foregoing acts as set forth in paragraphs 8-26 above, the Managing  
14 Agents intended to cause emotional and financial injury to Plaintiff. Specifically, the Managing Agents  
15 discriminated and retaliated against Plaintiff unlawfully with the intent to cause her severe emotional  
16 distress or at least without regard for the consequences on Plaintiff's career, livelihood, and her  
17 emotional wellbeing.

18 102. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this  
19 Court.

20 **XII.**

21 **EIGHTH CAUSE OF ACTION**

22 **(False Imprisonment)**

23 **(On Behalf of Plaintiff Against All Defendants)**

24 103. Plaintiff realleges and incorporates by reference paragraphs 1-102, inclusive, of this  
25 Complaint as though fully set forth herein.

26 104. Elster intentionally deprived Plaintiff of her freedom of movement by use of physical  
27 barrier, force and/or threat of force.



1           105.    The restraint, confinement and/or detention compelled Plaintiff to stay in her office  
2 some appreciable amount of time, however short.

3           106.    Plaintiff did not knowingly or voluntarily consent to the restraint, confinement and/or  
4 detention.

5           107.    Plaintiff was actually harmed. Specifically, as a proximate result of the Company's  
6 conduct, Plaintiff has suffered and will continue to suffer damages in terms of lost wages, lost bonuses,  
7 lost benefits, and other pecuniary loss according to proof. Plaintiff has also suffered and will continue  
8 to suffer physical and emotional injuries, including nightmares, nervousness, humiliation, depression,  
9 anguish, embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff's  
10 damages will be ascertained at trial.

11          108.    Elster's conduct was a substantial factor in causing Plaintiff's harm.

12          109.    The Company is liable for Elster's false imprisonment of Plaintiff. Pursuant to  
13 California Civil Code section 2338; "Unless required by or under the authority of law to employ that  
14 particular agent, a principal is responsible to third persons for the negligence of his agent in the  
15 transaction of the business of the agency, including wrongful acts committed by such agent in and as a  
16 part of the transaction of such business, and for his willful omission to fulfill the obligations of the  
17 principal." Cal. Civ. Code § 2338; *see also Carr v. Wm. C. Crowell Co.*, 28 Cal. 2d 652, 654 (1946)  
18 ("It is settled that an employer is liable for willful and malicious torts of his employee committed in the  
19 scope of the employment.").

20          110.    Plaintiff has been generally damaged in an amount within the jurisdictional limits of this  
21 Court.

1 **XIII.**

2 **NINTH CAUSE OF ACTION**

3 **(Failure to Pay Earned Wages in Violation of Labor Code §§ 201, 202)**

4 **(On Behalf of Plaintiff Against the Company)**

5 111. Plaintiff realleges and incorporates by reference paragraphs 1-110, inclusive, of this  
6 Complaint as though fully set forth herein.

7 112. Pursuant to California Labor Code section 201, “If an employer discharges an  
8 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”  
9 Cal. Lab. Code § 201(a).

10 113. Pursuant to California Labor Code section 202, “If an employee not having a written  
11 contract for a definite period quits his or her employment, his or her wages shall become due and  
12 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of  
13 his or her intention to quit, in which case the employee is entitled to his or her wages at the time of  
14 quitting.” Cal. Lab. Code § 202(a).

15 114. Pursuant to California Labor Code section 218, “Nothing in this article shall limit the  
16 right of any wage claimant to sue directly or through an assignee for any wages or penalty due him  
17 under this article.” Cal. Lab. Code § 218.

18 115. Pursuant to California Labor Code section 203, “If an employer willfully fails to pay,  
19 without abatement or reduction, in accordance with Sections 201 [and] 202 . . . any wages of an  
20 employee who is discharged or who quits, the wages of the employee shall continue as a penalty from  
21 the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages  
22 shall not continue for more than 30 days.” Cal. Lab. Code § 203(a).

23 116. The Company failed to pay Plaintiff her 2018 bonus at the time of her termination. The  
24 willful failure of the Company to timely pay Plaintiff such amounts entitles her to (a) the wages earned  
25 and unpaid at the time of discharge or quitting pursuant to California Labor Code sections 201 and/or  
26 202, and (b) waiting time penalties pursuant to California Labor Code section 203 in the amount of her  
27 daily wages for each day unpaid, up to 30 days.

1 117. Plaintiff is entitled to reasonable attorneys' fees and costs. *See* Cal. Lab. Code §  
2 218.5(a).

3 118. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this  
4 Court.

5 **XIV.**

6 **TENTH CAUSE OF ACTION**

7 **(Failure to Provide Accurate Itemized Wage Statements in Violation of Labor Code § 226)**

8 **(On Behalf of Plaintiff Against the Company)**

9 119. Plaintiff realleges and incorporates by reference paragraphs 1-118, inclusive, of this  
10 Class Action Complaint as though fully set forth herein.

11 120. Employers are required by California Labor Code section 226(a) to furnish accurate  
12 itemized wage statements semimonthly, or at the time of each payment of wages, which show  
13 “(1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j),  
14 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a  
15 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the  
16 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of  
17 the period for which the employee is paid, (7) the name of the employee and only the last four digits of  
18 his or her social security number or an employee identification number other than a social security  
19 number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm  
20 labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity  
21 that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay  
22 period and the corresponding number of hours worked at each hourly rate by the employee.”

23 121. Pursuant to California Labor Code section 226(e), “[a]n employee suffering injury as a  
24 result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to  
25 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a  
26 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay  
27  
28

1 period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an  
2 award of costs and reasonable attorney's fees." Cal. Lab. Code § 226(e)(1).

3 122. The Company knowingly and intentionally failed to furnish accurate itemized wage  
4 statements to Plaintiff in accordance with Labor Code section 226(a). Accordingly, Plaintiff is entitled  
5 to the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation  
6 occurred and one hundred dollars (\$100) for each violation in a subsequent pay period, not to exceed  
7 an aggregate penalty of four thousand dollars (\$4,000). *See* Cal. Lab. Code § 226(e)(1).

8 123. Plaintiff is entitled to reasonable attorneys' fees and costs. *See* Cal. Lab. Code §  
9 226(e)(1).

10 124. Plaintiff has been generally damaged in an amount within the jurisdictional limits of this  
11 Court.

12 **XV.**

13 **PRAYER FOR RELIEF**

14 1. For general, special, and compensatory damages, including emotional distress damages,  
15 according to proof on each cause of action for which such damages are available.

16 2. As to Plaintiff's fourth cause of action, for the amount of the wages, and interest thereon,  
17 of which Plaintiff was deprived by reason of the violation of the Fair Pay Act, and an additional equal  
18 amount as liquidated damages. *See* Cal. Lab. Code § 1197.5(c).

19 3. As to Plaintiff's fifth cause of action, for reinstatement and reimbursement for lost wages  
20 and work benefits, including interest thereon, as well as equitable relief. *See* Cal. Lab. Code §  
21 1197.5(k)(2).

22 4. As to Plaintiff's ninth cause of action, for the wages earned and unpaid at the time of  
23 discharge or quitting pursuant to California Labor Code sections 201 and/or 202, and (b) waiting time  
24 penalties pursuant to California Labor Code section 203 in the amount of her daily wages for each day  
25 unpaid, up to 30 days. *See* Cal. Lab. Code §§ 201(a), 202(a), and 203(a).

26 5. As to Plaintiff's tenth cause of action, for the greater of all actual damages or fifty dollars  
27 (\$50) for the initial pay period in which a violation occurred and one hundred dollars (\$100) for each  
28

1 violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars  
2 (\$4,000). *See* Cal. Lab. Code § 226(e)(1).

3 6. For punitive damages, according to proof on each cause of action for which such damages  
4 are available.

5 7. For declaratory and injunctive relief, as appropriate.

6 8. For prejudgment interest and post-judgment interest according to law.

7 9. For reasonable attorneys' fees incurred in this action pursuant to the FEHA (Cal. Govt.  
8 Code § 12965(b)), the Fair Pay Act (Cal. Lab. Code § 1197.5(h)), and the Labor Code (Lab. Code §§  
9 218.5(a), 226(e)(1)).

10 10. For costs of suit incurred in this action.

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

12 Dated: October 21, 2019

MOSER LEGAL, PC

13  
14 By: 

JANA M. MOSER


15 Attorneys for Plaintiff  
16 JACQUELINE ROEDER

**DEMAND FOR JURY TRIAL**

Plaintiff Jacqueline Roeder hereby demands a trial by jury on all causes of action alleged herein in the Complaint for Damages.

Dated: October 21, 2019

MOSER LEGAL, PC

By:  \_\_\_\_\_  
JANA M. MOSER

Attorneys for Plaintiff  
JACQUELINE ROEDER

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# EXHIBIT A



## DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711  
<http://www.dfeh.ca.gov> | Email: [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov)

October 21, 2019

Jana Moser  
1055 West Seventh Street, Suite 1920  
Los Angeles, California 90017

RE: **Notice to Complainant's Attorney**  
DFEH Matter Number: 201910-07983421  
Right to Sue: Roeder / Prolacta Bioscience, Inc.

Dear Jana Moser:

Attached is a copy of your **amended** complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You or your client must serve the complaint.

The amended complaint is deemed to have the same filing date of the original complaint. This is not a new Right to Sue letter. The original Notice of Case Closure and Right to Sue issued in this case remains the only such notice provided by the DFEH. (Cal. Code Regs., tit. 2, § 10022.)

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



1                                   **COMPLAINT OF EMPLOYMENT DISCRIMINATION**  
2                                   **BEFORE THE STATE OF CALIFORNIA**  
3                                   **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**  
4                                   **Under the California Fair Employment and Housing Act**  
   **(Gov. Code, § 12900 et seq.)**

5 **In the Matter of the Complaint of**

6 Jacqueline Roeder

DFEH No. 201910-07983421

7                                   Complainant,

8 vs.

9 Prolacta Bioscience, Inc.  
10 1800 Highland Avenue  
11 Duarte, California 91010

12 Scott Elster

13 ,

14                                   Respondents

---

15 1. Respondent **Prolacta Bioscience, Inc.** is an **employer** subject to suit under the  
16 California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

17 2. Complainant **Jacqueline Roeder**, resides in the City of State of **California**.

18 3. Complainant alleges that on or about **January 18, 2019**, respondent took the  
19 following adverse actions:

20 **Complainant was discriminated against** because of complainant's sex/gender,  
21 other and as a result of the discrimination was terminated, denied hire or promotion,  
22 reprimanded, denied equal pay, denied any employment benefit or privilege, other,  
23 denied work opportunities or assignments.

24 **Complainant experienced retaliation** because complainant reported or resisted  
25 any form of discrimination or harassment, participated as a witness in a  
26 discrimination or harassment complaint and as a result was terminated, denied hire  
27 or promotion, reprimanded, denied equal pay, denied any employment benefit or  
28 privilege, other.

1 **Additional Complaint Details:** Prolacta is a privately held, for-profit company that  
2 produces standardized human milk-based nutritional products for premature infants  
in the neonatal intensive care unit.

3 Plaintiff was employed by the Company as its director of human resources from on  
or about March 6, 2017 until her wrongful termination on or about January 18, 2019.

4 As the director of human resources, Plaintiff was responsible for developing and  
5 implementing organization and human resources strategies, supporting and guiding  
6 management and employee actions, and ensuring compliance with federal, state,  
and local legal requirements. Plaintiff reported to the Company's chief executive  
7 officer, Scott Elster, and later to both Elster and the chief financial officer, David  
8 Dreyer. At the time of her termination, Plaintiff earned \$207,648 per year plus a 25%  
bonus, benefits including medical, vision, and dental, a 401k plan with employer  
contribution, as well as participation in the Company's stock option plan.

9 Over the course of her employment with the Company, Plaintiff witnessed rampant  
10 violations of federal and state law prohibiting discrimination, harassment, and  
retaliation. By way of example, the Company's vice president of operations, Mark  
11 Hannon, made disparaging remarks regarding the sexual orientation of employees  
and candidates. In or about June 2018, Hannon attended an executive team dinner  
12 and made fun of one of the Company's sales employees for being a lesbian. At that  
same dinner, Hannon noted that two males employees had called him "handsome";  
13 Hannon stated that this made him so upset he wanted to "punch" them. Plaintiff  
spoke with one employee who witnessed these comments, the vice president of  
14 intellectual property, Alyson Fuller, who described Hannon's comments as "making  
fun of gays," and asked Plaintiff to report it to Elster. On another occasion in or about  
15 June 2018, Hannon learned that a male candidate for an organizational  
development manager position was gay when the candidate stated he was traveling  
16 with his husband to the interview. Hannon made derogatory comments about the  
candidate's sexual orientation to the Company's senior director of quality, Gloria  
17 Crockett, and Fuller, who in turn reported this to Plaintiff. And while the candidate  
18 received glowing reviews from each of his interviewers, Elster refused to hire him  
because he was "simply a liability to Prolacta" due to his sexual orientation. Plaintiff  
19 immediately told Elster that it is illegal to discriminate against employees on the  
basis of sexual orientation; Elster simply reiterated that the candidate would be a  
20 liability if he was hired.

21 With respect to Hannon, Plaintiff reported his foregoing conduct to Elster in a  
memorandum dated June 25, 2018, in which she summarized Hannon's  
22 discriminatory conduct, recommended numerous courses of action with the aim of  
bringing that conduct to an end, and cited to supporting laws. When Plaintiff gave  
23 Elster the June 25th memorandum in an in-person meeting, Elster told Plaintiff that  
he was going to have her report investigated by an outside investigator. At Elster's  
24 direction, Plaintiff ultimately hired Lorraine Sanders of TriNet to conduct the  
investigation. While Elster refused to share the conclusion of Sanders' report with  
25

1 Plaintiff, Sanders informed Plaintiff that Hannon was a “liability to Prolacta,” and “it  
2 was not a matter of if a lawsuit was going to occur, it was a matter of when.”  
3 Other violations of federal and state law related to the Company’s pay practices. As  
4 a federal contractor, the Company was required to comply with federal affirmative  
5 action laws and regulations including, but not limited to, Executive Order 11246, the  
6 Rehabilitation Act of 1973 (29 U.S.C. § 793), and the Vietnam Era Veterans’  
7 Readjustment Assistance Act of 1974 (38 U.S.C. § 4212), as well as numerous  
8 regulations including Obligations of Contractors and Subcontractors (41 C.F.R. Part  
9 60-1), Affirmative Action Programs (41 C.F.R. Part 60-2), and Affirmative Action and  
10 Nondiscrimination Obligations of Contractors and Subcontractors Regarding  
11 Individuals with Disabilities (41 C.F.R. Part 60-741).

12 In or about mid-2017, the Company utilized a third-party company called Strategic  
13 Pay Resources to conduct a compensation analysis to compare its employees’  
14 salaries with comparable market salaries. Numerous discrepancies between the  
15 Company’s salaries and market salaries were found, including for Plaintiff, who  
16 earned 27.2% less than the market minimum for her position. As a result of Strategic  
17 Pay Resources’ findings, all of the Company’s employees whose salaries were  
18 below the market minimum had their pay increased other than Plaintiff. Plaintiff  
19 complained about this disparity on numerous occasions with Elster, and  
20 simultaneously complained that, because she was the head of human resources,  
21 her title should have been “vice president” rather than “director.” During these  
22 complaints, Plaintiff told Elster that her under-market wage and disparate title could  
23 be found to be discriminatory and a violation of equal pay laws if the Company was  
24 audited by the Office of Federal Contract Compliance Programs (“OFCCP”). In  
25 response, Elster told Plaintiff that her salary and bonus could only be increased by  
26 the Company’s board of directors. But when Plaintiff spoke with a member of the  
27 board of directors, Sally Crawford, Plaintiff was told that her pay rate was in fact  
28 determined by Elster. After Plaintiff brought this to Elster’s attention, she ultimately  
received only a small raise that left her well under the market minimum for her  
position, and received no change in her title.

In or about 2017, the Company utilized another third-party company to conduct an  
analysis of employee salaries broken down by gender and race to determine  
whether it was in compliance with the foregoing laws and regulations. The analysis  
found numerous discrepancies between minority and non-minority salaries, as well  
as between male and female salaries. After receiving those results, Plaintiff  
endeavored to correct the pay disparities with Elster on four or five occasions during  
their weekly one-on-one meetings. Plaintiff explained to Elster the potential legal  
ramifications for the pay disparities, including the Company’s obligation to comply  
with the foregoing laws and regulations. Elster repeatedly told Plaintiff that he would  
“take his chances” and that he “had bigger fish to fry.”

In or about 2018, the Company again utilized Strategic Pay Resources and a third-  
party company to conduct an analysis of employee salaries broken down by market  
and gender and race to determine whether it was in compliance with the foregoing

1 laws and regulations. Among other things, Strategic Pay Resources again found that  
2 Plaintiff's salary was well under the market minimum. When Plaintiff brought this to  
3 Dreyer's attention, Dreyer told Plaintiff that if he brought this to Elster's attention,  
4 Plaintiff would become Elster's "target" and would eventually no longer work with the  
5 Company. Despite that, Plaintiff did bring her wage disparity to Elster's attention;  
6 Elster acted as if Plaintiff had not even spoken.

7 In or about October 2018, Plaintiff met with Elster regarding her concerns that the  
8 Company was not complying with its affirmative action obligations, as well as the  
9 wage disparities between male and female employees. In addition to setting forth the  
10 analysis results, Plaintiff pointed out that an African American employee should have  
11 been promoted to the job title of "vice president" rather than "senior director," that a  
12 male employee earned more in compensation and stock options than a female  
13 employee for the same position—the list goes on. Elster dismissed Plaintiff's  
14 concerns and, with respect to Plaintiff's suggestion that the African American senior  
15 director receive a promotion in title, Elster stated, "We have enough blacks in  
16 leadership and don't need to promote more." Plaintiff said she could not believe  
17 Elster felt comfortable telling her that, and that the issue was not how many  
18 employees fell into a certain category, but whether the African American senior  
19 director was being treated fairly without regard to her race or gender. Elster simply  
20 told Plaintiff, "case closed."

21 The Company also violated state and federal tax laws by providing its employees  
22 with cash gift cards as bonus compensation without deducting state and federal  
23 taxes. Plaintiff informed Dreyer and Elster that this practice was unlawful (e.g., 26  
24 C.F.R. § 1.132-6 ("De minimis fringes") and 26 U.S.C. § 102 ("Gifts and  
25 inheritances")); Elster stated he "had a feeling there was a problem with that."

26 Other violations of federal and state law relate to discriminatory and harassing  
27 conduct on the basis of employees' race, ancestry, and national origin. By way of  
28 example, on or about July 11, 2018, Hannon asked an African American employee,  
Gloria Crockett, "Which one is more appropriate—nigga or nigger?" Plaintiff learned  
about this comment through the third-party investigator who had been hired after  
Plaintiff submitted the June 25, 2018 memorandum regarding Hannon. Similarly,  
during a monthly management meeting in or about November 2018, an anonymous  
question was submitted about why Company management lacked females and  
female minorities in leadership roles. Elster responded to the question with a joke  
about an employee of Mexican descent, stating, "By the way, did you know Joe  
Fournell is half-Mexican? Joe, why don't you talk about that?" After numerous  
employees complained to Plaintiff about Elster's comments, Plaintiff brought these to  
the attention of her supervisor, Dreyer, and asked whether he had spoken with  
Elster about it. Incredibly, Dreyer laughed and stated that he had, and that Elster's  
response had been to call it "a horrible mistake."

Other violations of federal and state law relate to discriminatory and harassing  
conduct on the basis of employees' disabilities. By way of example, when the  
Company's human resources generalist went on medical leave in or about August

1 2018, Elster asked what her diagnosis was and instructed Plaintiff that upon her  
2 return, she needed to find a new job internally or with another company. When  
3 Plaintiff asked for a reason, Elster said it was because she continually went out on  
4 medical leave. Plaintiff objected that the Company was not allowed to discriminate  
5 against disabled people; Elster simply responded, "I know that." Around this same  
6 time, Dreyer told Plaintiff that Elster had been making fun of the generalist for taking  
7 leave whenever "she wanted an extended vacation"; Plaintiff told Dreyer that the  
8 employee's disability was not a joking matter, and stated she herself suffered from  
9 panic attacks. Similarly, when the former regulatory affairs analyst requested an  
10 accommodation of working from home one day per week as a result of her cancer  
11 treatment, Plaintiff conducted an interactive process and recommended to Elster,  
12 Dreyer and others that the Company grant her request. Incredibly, Elster told Plaintiff  
13 that once the regulatory affairs analyst had finished the Human Milk Organization  
14 project she was working on, he wanted her "canned." Plaintiff objected that this was  
15 discrimination on the basis of a disability; Elster responded that "unless you're born  
16 with it, you're just making up excuses." Similarly, when a member of the Company's  
17 information technology department suffered from a disability that caused him to fall  
18 asleep at work on occasion, Elster demanded to see his medical diagnosis, told  
19 Plaintiff to "call 911" the next time it happened, and stated that he wanted the  
20 employee fired. Plaintiff objected that this was discrimination; Elster responded that  
21 he didn't "fucking care" and "wanted him gone." Additionally, Joe Fournell went to  
22 the employee's desk and took a picture of his medication. Knowing that this was a  
23 violation of the employee's right to privacy, Plaintiff told Fournell he could not do  
24 that. Ultimately, the employee was terminated over Plaintiff's objections. On another  
25 occasion, Hannon instructed Plaintiff to hire an investigator to conduct surveillance  
26 on an employee who had filed a workers' compensation claim; when Plaintiff  
27 reported this to Elster and informed him the Company could not do this, he  
28 expressed agreement with Hannon that employees who filed workers' compensation  
claims were merely "disgruntled" without legitimate claims.

Other violations of federal and state law relate to discriminatory conduct on the basis  
of employees' age. In or about October 2018, Elster informed Plaintiff that he wanted  
to "get rid of all the old people in the marketing department so we can obtain new  
blood." Plaintiff told Elster the Company could not let people go because of their  
age; Elster responded that she did not need to tell him that because he already  
understood.

Plaintiff was subjected to a pattern of blatant retaliation as a result of her reports and  
complaints regarding the foregoing conduct. On or about August 24, 2018, Dreyer  
told Plaintiff that Elster was targeting her because every time she "uncovered  
something, it potentially cost the company money." Similarly, on or about September  
17, 2018, Hannon told Plaintiff that he did not respect her, her position, or human  
resources as a function. When Plaintiff reported this comment to Elster, Elster  
responded that he was hiring another c-level employee to act as a "buffer" between  
Plaintiff and Hannon. By late-September 2018, Elster had cancelled his weekly one-

1 on-one meetings with Plaintiff. The Company's retaliatory conduct escalated on or  
2 about October 15, 2018, when Plaintiff was suddenly told she would not be allowed  
3 to present the Talent Acquisition Strategy Plan—which included a snapshot of the  
4 gender and race disparities reported by the third party companies—at the  
5 Company's board of directors meeting. Seven days later, Plaintiff was told by Dreyer  
6 to "start looking for another job" because Hannon was being promoted to the  
7 position of chief operating officer and "refused to work with" her. That same day,  
8 Plaintiff was uninvited from the October 23, 2018 board dinner (designed to allow  
9 senior employees to get to know Company's board of directors)—notably, Plaintiff  
10 was the only member of the leadership team who was uninvited from this dinner.  
11 Similarly, in December 2018 Plaintiff was uninvited from the Company's executive  
12 team holiday dinner the night before the event.

13 In or about October 2018, Elster began the process of hiring John Nelson—a male,  
14 Caucasian, and childhood friend of Elster—as the Company's chief administrative  
15 officer. Incredibly, Nelson was not only given a "chief" title, but was given a  
16 substantially greater budgetary allotment than had been provided to Plaintiff when  
17 she headed the human resources department. Plaintiff was surprised at this  
18 because when she had requested that the Company hire additional human  
19 resources employees to assist with her significant workload in or about August 2018,  
20 the Company denied those requests. That same month, Dreyer told Plaintiff that once  
21 Nelson was hired, Plaintiff would be terminated and that he had "told" her "not to  
22 report those complaints to Elster." Plaintiff objected that she was only doing her job,  
23 and asked whether Elster was motivated by her complaints and/or his knowledge  
24 that she was suffering from panic attacks. Dreyer ignored the question and  
25 repeatedly stated that he could not make Elster "do the right thing" because he had  
26 "two boys" he was "putting through medical school." By November 26, 2018, Elster  
27 himself told Plaintiff that she had until the end of February 2019 to find a new job,  
28 giving Hannon's dislike of Plaintiff, who "refused to work with" her, as his only  
explanation.

18 The foregoing pattern of retaliation came to a head on or about January 16, 2019,  
19 when the Company's former chief medical officer reported to Plaintiff that the  
20 Company had been using breast milk donors' DNA (which is collected to ensure  
21 breast milk donations can be traced to the donor) for research without a signed  
22 authorization in place. When Plaintiff asked why authorizations weren't obtained, the  
23 former chief medical officer stated that there was an authorization in place, but the  
24 authorization was for the donation of the milk, not for other purposes. Plaintiff was  
25 concerned about this conduct because, if true, it potentially constituted a breach of  
26 the Company's agreements with donors regarding the use of their breast milk; fraud  
27 (e.g., Cal. Civ. Code §§ 1572 ("Actual fraud"), 1709 ("Deceit; damages"), 1710  
28 ("Deceit defined")); a breach of donors' right to privacy (e.g., the Health Insurance  
Portability and Accountability Act ("HIPAA")); and a violation of state and federal  
laws prohibiting the use of human beings as subjects in research without  
authorization (e.g., 21 C.F.R. § 50.20, which provides that "no investigator may

1 involve a human being as a subject in research covered by these regulations unless  
2 the investigator has obtained the legally effective informed consent of the subject”).  
3 Elster became visibly angry and demanded to know who had given Plaintiff that  
4 information; because Plaintiff had been approached in confidence, she declined to  
5 immediately identify the source and asked what the Company would do to rectify the  
6 situation. Elster did not respond; instead, within a few hours of Plaintiff’s report,  
7 Elster and Dreyer entered her office and terminated her.  
8 During the January 16, 2019 termination meeting, Elster gave Plaintiff a severance  
9 agreement template that had none of the blank spaces filled in and demanded that  
10 she sign the signature page as a showing of “good faith.” Plaintiff refused, stating  
11 she would not sign a blank agreement. Experiencing symptoms of a panic attack,  
12 Plaintiff stood up and tried to leave the room; Elster blocked her exit and shoved her  
13 arm away from the door, demanding again that she sign the severance agreement  
14 template. Plaintiff objected that it was a one-sided agreement and that she needed  
15 to consult an attorney. Elster finally said she had two days to sign the agreement;  
16 Plaintiff responded that as a person over 40, she was entitled to 21 days to review  
17 the agreement. Elster reiterated that Plaintiff had two days to sign and left the office  
18 to have the severance agreement filled in. As soon as Elster left Plaintiff’s office, she  
19 asked Dreyer to escort her to her car and left the Company’s premises.  
20 Following her termination meeting, Plaintiff went to urgent care to treat her panic  
21 attack symptoms. Unsure of whether Elster’s termination was effective that day or  
22 two days later, in an abundance of caution Plaintiff submitted her doctor’s note to  
23 Kimberly Garcia in the human resources department.  
24 On or about January 18, 2019, Plaintiff received a final paycheck that lacked  
25 supporting detail relating to hours worked and deductions. The final paycheck failed  
26 to include Plaintiff’s 2018 bonus in the amount of \$50,400, which had already been  
27 approved in full as of December 17, 2018.

1 VERIFICATION

2 I, **Jana M Moser**, am the **Attorney** in the above-entitled complaint. I have read the  
3 foregoing complaint and know the contents thereof. The matters alleged are based  
4 on information and belief, which I believe to be true.

5 On October 21, 2019, I declare under penalty of perjury under the laws of the State of  
6 California that the foregoing is true and correct.

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**Los Angeles, California**