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9 IVAN AUGUSTINO, an individual

10 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**  
11 **CENTRAL DIVISION, HALL OF JUSTICE**

13 IVAN AUGUSTINO, an individual,  
14 Plaintiff,

15 vs.

16 SAN DIEGO METROPOLITAN  
17 TRANSIT SYSTEM, a California public  
agency; SANDRA BOBEK aka Sandy  
18 Bobek, an individual; GARY DEXTER, an  
individual; JEFFREY M. STUMBO, an  
19 individual; and, DOES 1 through 100,  
Inclusive,

20 Defendants.  
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CASE NO. : 30-2108-00009620-CU-OE-CTL

UNLIMITED CIVIL CASE

ASSIGNED FOR ALL PURPOSES TO:  
Hon. Joel R. Wohlfeil

Dept. C-73

Complaint filed: 02/26/2018

**FIRST AMENDED COMPLAINT FOR  
DAMAGES AND DEMAND FOR JURY  
TRIAL:**

1. **UNLAWFUL RETALIATION IN  
VIOLATION OF FEHA**  
[Govt. Code § 12940, *et seq.*]
2. **HOSTILE WORK ENVIRONMENT  
IN VIOLATION OF FEHA**  
[Govt. Code § 12940, *et seq.*]
3. **UNLAWFUL HARASSMENT IN  
VIOLATION OF FEHA**  
[Govt. Code § 12940, *et seq.*]
4. **FAILURE TO PREVENT  
UNLAWFUL DISCRIMINATION  
AND HARASSMENT  
IN VIOLATION OF FEHA**  
[Govt. Code § 12940, *et seq.*]

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- 5. **UNLAWFUL DISCRIMINATION  
BASED UPON AGE IN VIOLATION  
OF FEHA**  
[Govt. Code § 12940, *et seq.*]
- 6. **UNLAWFUL DISCRIMINATION  
BASED UPON SEX IN VIOLATION  
OF FEHA**  
[Govt. Code § 12940, *et seq.*]
- 7. **UNLAWFUL DISCRIMINATION  
BASED UPON MARITAL/FAMILY  
STATUS IN VIOLATION OF FEHA**  
[Govt. Code § 12940, *et seq.*]
- 8. **UNLAWFUL DISCRIMINATION  
BASED UPON MILITARY STATUS  
IN VIOLATION OF FEHA**  
[Govt. Code § 12940, *et seq.*]
- 9. **WHISTLEBLOWER  
RETALIATION IN VIOLATION OF  
LABOR CODE § 1102.5**
- 10. **INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS**

Plaintiff IVAN AUGUSTINO (“Plaintiff” or “Mr. Augustino”) alleges, on knowledge as to himself and his own acts, and on information and belief as to all other matters, against Defendants SAN DIEGO METROPOLITAN TRANSIT SYSTEM, a California public agency (“MTS”); SANDRA BOBEK aka Sandy Bobek, an individual (“Ms. Bobek” or “Bobek”); GARY DEXTER, an individual (“Mr. Dexter” or “Dexter”); JEFFREY M. STUMBO, an individual (“Mr. Stumbo” or “Stumbo”); and against DOES 1 to 10, inclusive, (collectively, “Defendants”), as follows:

**NATURE OF THE ACTION**

1. This case is about unlawful discrimination, hostile work environment, and the outrageous conduct deployed by members of MTS management in retaliation for Plaintiff’s complaint about unlawful discrimination against a co-worker. On February 3, 2017, Plaintiff was seemingly transmogrified from a star member of the company to the next victim of Defendants’

1 pattern of severe and pervasive workplace harassment, intimidation, and, ultimately, wrongful  
2 discharge in violation of the Fair Employment and Housing Act (“FEHA”).

3 2. The unlawful conduct complained of derives from discrimination based upon age,  
4 sex, marital status, family status, and military status. The law affords protection to employees to  
5 be free of this kind of unlawful conduct, which protection also extends to persons who are  
6 associated with or who advocate on behalf of individuals that may suffer disparate treatment as  
7 members of a protected class.

8 3. Plaintiff has suffered damages as a result of Defendants’ unlawful conduct.

9 4. Defendants have engaged in, and continue to engage in, a pattern of pervasive  
10 discrimination and creation of a hostile work environment, including, among other things, tactics  
11 of intimidation, harassment, and open hostility in retaliation for employee complaints of unlawful  
12 conduct in the workplace.

13 **PARTIES**

14 5. Plaintiff is an individual who, at all relevant times mentioned herein, was a  
15 resident of San Diego County, California.

16 6. Plaintiff is a Black, Male, Sudanese American. He moved to the United States as a  
17 teenager. He attended high school and college in the United States. He received a bachelor of  
18 science degree from California State University, Los Angeles and a master’s degree in computer  
19 science from National University. He has been a resident of San Diego since 1998. He is also a  
20 co-founder of the Sudanese American Youth Center of San Diego, where he mentors local youths  
21 on the need for peaceful coexistence with other cultures, and on preparing for college, getting and  
22 maintaining employment, and resolving conflicts through mediation rather than violence.

23 7. At all relevant times mentioned herein, MTS was a California public agency  
24 comprised of San Diego Transit Corp., San Diego Trolley, Inc., San Diego and Arizona Eastern  
25 Railway Company (nonprofit public benefit corporations), and San Diego Vintage Trolley, Inc., a  
26 501(c)(3) nonprofit corporation, in cooperation with Chula Vista Transit. MTS is the taxicab  
27 administrator for seven cities MTS member agencies include the cities of Chula Vista, Coronado,  
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1 El Cajon, Imperial Beach, La Mesa, Lemon Grove, National City, Power, San Diego, Santee, and  
2 the County of San Diego.

3 8. At all relevant times mentioned herein, MTS conducted business, and continues to  
4 conduct business, throughout the City and County of San Diego, with its principal place of  
5 business located at 1255 Imperial Avenue, Suite 1000, San Diego, CA 92101.

6 9. At all relevant times mentioned herein, Plaintiff was employed by MTS. Plaintiff  
7 performed work for MTS within San Diego County, and the unlawful conduct alleged herein  
8 occurred in San Diego County.

9 10. At all relevant times mentioned herein, MTS was an “employer” as such term is  
10 defined under Cal. Gov. Code section 12926(d) and regularly employed five (5) or more persons.

11 11. Defendant Bobek is an individual who, at relevant times mentioned herein, was the  
12 Chief Information Officer at MTS. As the Chief Information Officer, several MTS departments  
13 reported to Ms. Bobek, including the Application Development and Support department.  
14 Ms. Bobek was, amongst others, a senior-ranking employee, manager, and supervisor to Plaintiff.

15 12. Defendant Dexter is an individual who, at relevant times mentioned herein, was  
16 the Application Development and Support Manager at MTS. As manager of the Application  
17 Development and Support department, Mr. Dexter was Plaintiff’s direct supervisor.

18 13. Defendant Stumbo is an individual who, at relevant times mentioned herein, was  
19 the Director of Human Resources and Labor Relations (EEO Officer) at MTS. As director of  
20 human resources, Mr. Stumbo had authority to investigate, discover, or correct reported legal  
21 violations and/or noncompliance with state, federal, local, or administrative laws, rules,  
22 regulations, or policies.

23 14. At all relevant times mentioned herein, each of the Defendants was an agent,  
24 employee, and/or partner of the remaining Defendants, including the DOE Defendants, and, in  
25 doing the things alleged herein, each was acting within the course and scope of said agency,  
26 employment and joint venture with the advance knowledge, acquiescence or subsequent  
27 ratification of each and every remaining defendant.

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1 15. At all relevant times mentioned herein, each act of the Defendants and of the  
2 supervisors and the employees of each Defendant were the acts of each other Defendant because  
3 said persons or entities were the parent company, principals, owners, supervisors, and/or  
4 employees of said Defendants, and further, upon discovery of said acts, each Defendant ratified  
5 and adopted such conduct.

6 16. Defendants aided and abetted each other in accomplishing the wrongful acts. In  
7 doing so, Defendants acted with an awareness of their wrongdoing and realized that their conduct  
8 would substantially assist the accomplishment of the wrongful conduct.

9 17. Plaintiff is ignorant of the true names and capacities, whether individual,  
10 corporate, association, or otherwise of Defendants named herein as DOES 1 to 100, and therefore  
11 sues said Defendants by such fictitious names. Plaintiff will seek leave to amend this Complaint  
12 to allege the true names and capacities of the DOE Defendants when the same have been  
13 ascertained. Each of the fictitiously named Defendant and/or their agents and employees is  
14 responsible in some manner for the events and acts alleged herein, and proximately caused  
15 Plaintiff's damages. Unless otherwise stated, all reference to named Defendants shall include  
16 DOE defendants as well.

17 **JURISDICTION AND VENUE**

18 18. Jurisdiction and venue are proper in this Court because all of the acts and claims  
19 alleged herein arose in San Diego County and all of the Defendants resided and/or continue to  
20 reside in San Diego County and did or continue to do business in San Diego County as of the  
21 time of commencement of this action and at all relevant times mentioned herein.

22 19. The amount in controversy in this matter exceeds the sum of \$25,000, exclusive of  
23 interest and costs.

24 **EXHAUSTION OF REMEDIES**

25 20. Prior to filing this action, Plaintiff timely filed a complaint with the California  
26 Department of Fair Employment and Housing ("DFEH") against all Defendants named herein.  
27 On February 15, 2018, DFEH issued a right to sue letter, authorizing Plaintiff to bring this action.  
28 On February 22, 2018, the Plaintiff filed an Amended DFEH Complaint and received a second

1 right to sue letter authorizing the Plaintiff to bring this action. Attached hereto and filed  
2 concurrently herewith as Exhibit "A" is a true and correct copy of the Plaintiff's DFEH Right to  
3 Sue letter and DFEH Complaint.

#### 4 **FACTUAL ALLEGATIONS**

5 21. Plaintiff was hired by MTS on or about August 24, 2015. His most recent position  
6 with MTS was Senior Application Developer. His most recent compensation included an annual  
7 salary of \$93,150, plus the additional benefits of medical insurance, dental insurance, vision  
8 insurance, and a 401k retirement plan.

9 22. Plaintiff's direct supervisor at MTS was the Application Development & Support  
10 Manager, Defendant Gary Dexter ("Mr. Dexter" or "Dexter"). Plaintiff also reported to the  
11 Chief Information Officer, Defendant Sandra Bobek ("Ms. Bobek" or "Bobek") and to the  
12 company's Chief Financial Officer, Larry Marinesi ("Mr. Marinesi").

13 23. During his time at MTS, Plaintiff worked on a project called Webtix, which  
14 required Plaintiff, among other employees, to work significant overtime and weekend hours over  
15 the course of several months.

16 24. To compensate Plaintiff and the other MTS employees for their overtime on the  
17 Webtix project, Ms. Bobek and Mr. Dexter promised Plaintiff and at least one other employee  
18 that, upon completion of the first phase of the Webtix project, all overtime hours accrued during  
19 the project would be redeemable for paid-time-off ("PTO") in the future.

20 25. In early January 2017, the first phase of the Webtix project was completed and was  
21 declared a success by MTS. Plaintiff received particular praise from MTS management because  
22 of his aptitude in nearly single-handedly resolving a security breach that arose during the project,  
23 thereby eliminating the need to hire a third-party consultant that would have cost the company  
24 approximately \$1 million. Plaintiff received a \$5,000 bonus check for his accomplishment, and  
25 the company's CEO, Paul Joblonski, personally thanked him for his superior skills in resolving  
26 the issue.

27 26. On January 17, 2017, Ms. Bobek reiterated and confirmed to Plaintiff her promise  
28 that his overtime hours were redeemable for PTO.

1           27.     On January 19, 2017, Plaintiff submitted to Mr. Dexter a detailed accounting of his  
2 overtime hours over the course of the Webtix Project. According to the data, Plaintiff worked 98  
3 overtime/weekend hours from November 14, 2016 to January 16, 2017. Mr. Dexter responded  
4 approvingly to Plaintiff's email, stating, "Thanks Ivan. Just let me know when you want to cash  
5 some in." At no point did Mr. Dexter object in any way to Ivan's calculation of his  
6 overtime/weekend hours or indicate that the deal had changed regarding those hours for PTO.

7           28.     On January 30, 2017, Plaintiff met privately with Ms. Bobek for a monthly status  
8 update. After discussing the success of the Webtix project and management's satisfaction with  
9 Plaintiff's work, Ms. Bobek agreed to give Plaintiff a promotion. She said that, effective  
10 immediately, his new job title would be Principal Applications Developer and that he would  
11 begin receiving a 5% pay raise in August 2017. Plaintiff gladly accepted the offer. Ms. Bobek  
12 then instructed Plaintiff to prepare a job description to submit to human resources so they could  
13 process the promotion.

14           29.     One of Plaintiff's co-workers, Nadia Lavigne ("Ms. Lavigne"), also worked in the  
15 Application Development department of MTS. Ms. Lavigne was junior to Plaintiff, but she was  
16 the second most qualified application developer at MTS. Ms. Lavigne and Plaintiff worked  
17 closely in the department; they became workplace friends and were generally associated together  
18 as the only practicing application developers in the company.

19           30.     Around early February 2017, MTS published a job opening/internal promotion  
20 opportunity for the position of Fare Systems Administrator. Ms. Lavigne expressed to Plaintiff  
21 her interest in the position, which would be a promotion for her; and Plaintiff encouraged her to  
22 apply.

23           31.     On February 3, 2017, Ms. Lavigne came to Plaintiff's office in tears. She said she  
24 had just left a meeting with Ms. Bobek regarding the open position and the possibility of  
25 Ms. Lavigne pursuing it. During the meeting, Bobek told Ms. Lavigne that she was not qualified  
26 for the job because of her age, her marriage and family planning status, and her relationship to an  
27 active duty military service member.

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1           32.     During the meeting, Bobek asked Ms. Lavigne her age, and whether she was  
2 planning on having any children; she asked whether Ms. Lavigne’s husband was still serving in  
3 the military, whether he intended to re-enlist, and whether Ms. Lavigne had considered that her  
4 husband might have to serve in a different part of the country someday.

5           33.     Ms. Lavigne assured Bobek that none of her concerns would be an issue, but  
6 Bobek insisted that Ms. Lavigne was “not a good fit” for the promotion. Bobek told Ms. Lavigne,  
7 “We hired a female before and it didn’t work out. You are at that age where you will probably be  
8 having kids soon, and we want someone who will stay in the position for at least five years.”

9           34.     Throughout the meeting, Bobek made it clear to Ms. Lavigne that applying for the  
10 promotion would be a waste of time because she would never get the job.

11          35.     Upon hearing the details of the meeting, Plaintiff recognized that Bobek’s  
12 questions to Ms. Lavigne, and the manner in which she discouraged Ms. Lavigne from applying  
13 for the position, probably constituted illegal discrimination as well as a violation of MTS equal  
14 employment policy.

15          36.     As a Sudanese American who had struggled with various forms of oppression and  
16 discrimination throughout much of his life, Plaintiff was shocked and highly offended by the  
17 nature of Ms. Bobek’s discriminatory conduct. As a matter of personal policy in conducting  
18 himself, Plaintiff was stringently against any discrimination in the workplace and was against any  
19 actions, words, opinions, or statements made against women, or any other struggling class, in the  
20 workplace, including his co-worker, Ms. Lavigne; and the denial of an interview and of a  
21 potential promotion to Ms. Lavigne based on her age, sex, gender, or familial military status  
22 offended Plaintiff’s conscience.

23          37.     That same day, on Friday, February 3, 2017, Plaintiff reported the incident to the  
24 company’s internal auditor, Toufic Tabshouri (“Mr. Tabshouri”), who then reported the incident  
25 to human resources.

26          38.     During the following week, beginning on or about Monday, February 6, 2017,  
27 MTS’ human resources department conducted an “investigation” into the incident, led by their  
28



1 department head, Defendant Jeffrey M. Stumbo (“Mr. Stumbo” or “Stumbo”). As part of the  
2 “investigation,” human resources interviewed Ms. Lavigne and spoke privately with Ms. Bobek.

3 39. On at least one occasion, Plaintiff witnessed a “communication coach” meeting  
4 with Ms. Bobek in private. From that point forward, Bobek’s statements regarding the incident  
5 were canned and scripted, as though she had been coached by human resources to neither admit  
6 any wrongdoing nor offer any apologies for her conduct.

7 40. At no point during the “investigation” did anyone from MTS human resources  
8 interview Plaintiff.

9 41. Simultaneous to the launch of the “investigation,” Plaintiff immediately began  
10 experiencing retaliation by MTS management. Plaintiff reported the discrimination on Friday,  
11 February 3, 2017; the retaliation began on the following Monday, February 6, 2017.

12 42. Plaintiff had previously been a highly rated employee, but after his opposition to  
13 Defendants’ unlawful conduct, he was subjected to open and unwarranted criticism, harassment,  
14 implied threats of termination, and unnecessary reporting requirements that undermined his  
15 effectiveness as the senior application developer.

16 43. Plaintiff’s direct supervisor, Mr. Dexter, with whom Plaintiff had otherwise shared  
17 a good working relationship, became openly cold and intimidating towards Plaintiff.

18 44. When Plaintiff would say “hello” in passing in the hallways, Dexter would  
19 intentionally ignore him.

20 45. Dexter also began encouraging Plaintiff, at random, to leave MTS and find a job  
21 elsewhere. Without invitation or frame of context, Dexter contemptuously reminded Plaintiff that  
22 “there are other places to work” and told Plaintiff that he would provide references to get Plaintiff  
23 out of MTS.

24 46. Dexter also began requiring Plaintiff to report his work to another MTS employee,  
25 Jason McNeil, who was a GIS Business Analyst and was therefore junior to Plaintiff. None of  
26 Plaintiff’s colleagues were required to do the same. When Plaintiff questioned Dexter about his  
27 new reporting requirement, Dexter implied that it was because Plaintiff could no longer be  
28 trusted.

1           47.     In addition, Mr. Dexter and Ms. Bobek both began insulting Plaintiff with random  
2 disrespectful questions and comments about Plaintiff leaving MTS. They would sarcastically say  
3 things like, “Are you looking for another job???” and “Whatever you do, don’t leave MTS.” It  
4 was clear that Dexter and Bobek were intentionally intimidating Plaintiff and trying to make his  
5 life miserable at MTS.

6           48.     On February 10, 2017, Plaintiff asked Ms. Bobek whether she would mind if he  
7 used some of his PTO hours from the Webtix project to take off a day of work. Ms. Bobek  
8 responded that Plaintiff’s PTO hours were no longer available – that all 98 hours of Plaintiff’s  
9 PTO had been unilaterally revoked by MTS.

10          49.     Plaintiff later learned that at least one other coworker accrued overtime on the  
11 Webtix project and was promised PTO, just as Plaintiff, but that the coworker’s PTO was  
12 honored by the Defendants and was never revoked.

13          50.     On February 23, 2017, Plaintiff and Ms. Bobek again met privately for a monthly  
14 status update. During the meeting, Ms. Bobek informed Plaintiff that his promotion to Principal  
15 Applications Developer was not going to happen – again revoking a promise that she had made to  
16 Plaintiff. Ms. Bobek then became vocally hostile with Plaintiff. She began prodding him about  
17 whether he had a problem with MTS policies. She threatened Plaintiff, “You and everyone else  
18 on your team are disposable. If you or anyone else doesn’t like it here, you can leave.”

19          51.     From the very beginning of Defendants’ “investigation” into Plaintiff’s complaint  
20 of discrimination, Plaintiff saw nothing remedial come of it. Neither Ms. Bobek nor anyone else  
21 apologized to Plaintiff or to Ms. Lavigne. No announcements were made. Nothing changed;  
22 except Plaintiff began receiving brazen retaliation and harassment from the Defendants, and  
23 Ms. Lavigne had been moved to a lonely, quiet corner of the office.

24          52.     On February 28, 2017, feeling beaten down, degraded, intimidated, and hopelessly  
25 doomed to suffer further retaliation, Plaintiff submitted a letter of resignation with an effective  
26 last day of March 14, 2017.

27          53.     In a March 5, 2017 email to Mr. Marinesi, Chief Executive Officer of MTS,  
28 Plaintiff expressly stated, “In a nutshell, I’ve decided to resign from my position at MTS as a

1 result of retaliation by the CIO Sandy/Sandra Bobek that was partially enforced by my Manager  
2 Mr. Gary Dexter.” Mr. Marinesi replied to the email the following day, stating, “I have  
3 forwarded this to our Director of HR so that he may investigate.”

4 54. On March 7, 2017, in a follow-up email to Mr. Marinesi, Plaintiff reiterated, “my  
5 heart is still at MTS and [I] would consider withdrawing my resignation if you and the leaders of  
6 MTS can reassure me that I would be treated equal to all my coworkers and all the retaliatory acts  
7 against me would stop.”

8 55. Two days later, on March 9, 2017, Plaintiff was terminated and escorted out of the  
9 building by MTS security.

10 **FIRST CAUSE OF ACTION:**

11 **Unlawful Retaliation for Participating in A Protected Activity**

12 **in Violation of FEHA [Govt. Code § 12940, *et seq.*] Against Defendant MTS**

13 56. Plaintiff repeats and re-alleges and incorporates by reference paragraphs 1 through  
14 55 above.

15 57. Pursuant to Government Code section 12940(h), it is unlawful for any employer or  
16 person to discharge, expel, or otherwise discriminate against any person because the person has  
17 opposed any practices forbidden under this part or because the person has filed a complaint,  
18 testified, or assisted in any proceeding under this part.

19 58. Pursuant to Government Code section 12940(i), it is unlawful for any person to  
20 aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to  
21 attempt to do so.

22 59. Pursuant to Government Code section 12940(a), it is unlawful for an employer,  
23 because of age, sex, gender, marital status, or military status of any person, to refuse to hire or  
24 employ the person or to refuse to select the person for a training program leading to employment,  
25 or to bar or discharge the person from employment or from a training program leading to  
26 employment, or to discriminate against the person in compensation or in terms, conditions, or  
27 privileges of employment.

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1           60.     On February 3, 2017, Plaintiff participated in an activity protected under FEHA by  
2 complaining to Defendants' internal auditor, Mr. Tabshouri, about what Plaintiff reasonably and  
3 in good faith believed to be unlawful discrimination that occurred between Plaintiff's coworker,  
4 Ms. Lavigne, and the Defendants.

5           61.     Ms. Bobek was Plaintiff's and Ms. Lavigne's superior, and Ms. Bobek had  
6 authority over each of them.

7           62.     Mr. Tabshouri had authority to investigate incidents of discrimination and/or other  
8 unlawful activities at MTS, including those of the type that Plaintiff complained of on  
9 February 3, 2017.

10          63.     In response to Plaintiff's participation in a protected activity, Defendants subjected  
11 Plaintiff to a series of retaliatory and hostile acts, culminating in Plaintiff's termination on  
12 March 9, 2017.

13          64.     Even before Plaintiff was terminated, Defendants intentionally and knowingly  
14 subjected Plaintiff to workplace hostilities so harsh and intolerable that a reasonable person in  
15 Plaintiff's position would have had no reasonable alternative except to resign.

16          65.     Plaintiff's opposition to unlawful workplace discrimination, an activity protected  
17 under FEHA, was a substantial motivating reason for Defendants' conduct, as evidenced by the  
18 timing between Plaintiff's complaint to Mr. Tabshouri and Defendants' resultant retaliation  
19 beginning the very next workday thereafter.

20          66.     As a result of Defendants' retaliatory acts, Plaintiff suffered adverse employment  
21 actions, including, but not limited to, revocation of his promotion; revocation of his pay increase;  
22 revocation of his earned PTO; illegal workplace harassment and intimidation; constructive  
23 termination; and actual termination. In addition, Plaintiff suffered and continues to suffer  
24 damages in the form of lost wages, employment benefits, and severe emotional and physical  
25 distress, in an amount to be proven at trial.

26          67.     Plaintiff was harmed as a result of Defendants' conduct.

27          68.     Defendants' decision to subject Plaintiff to the above described adverse  
28 employment actions was a substantial factor in causing Plaintiff's harm.

**SECOND CAUSE OF ACTION:**

**Hostile Work Environment by Conduct Directed at Coworkers**

**in Violation of FEHA [Govt. Code § 12940, et seq.]**

**Against All Defendants**

69. Plaintiff repeats and re-alleges and incorporates by reference paragraphs 1 through 68 above.

70. Pursuant to Government Code section 12940(j), it is unlawful for an employer, because of age, to harass an employee. Harassment shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action. An entity shall take all reasonable steps to prevent harassment from occurring.

71. At all times relevant hereto, Plaintiff was an employee of Defendant MTS and was a subordinate to the remaining Defendants.

72. At all times relevant hereto, Ms. Lavigne was an employee of Defendant MTS and was a subordinate to the remaining Defendants.

73. Plaintiff, as an employee of Defendant MTS, was under the supervision and/or hiring and firing authority of Defendants Bobek, Dexter, and Stumbo.

74. Plaintiff personally witnessed harassing conduct by the Defendants as against his co-worker, Ms. Lavigne, which took place in his immediate work environment.

75. Given the nature and circumstances of the harassment, and considering that the conduct was humiliating and threatening to all MTS employees, Plaintiff reasonably perceived the conduct to be so severe and pervasive as to alter the conditions of employment and create a hostile and abusive work environment at MTS.

76. A reasonable person in Plaintiff's circumstances would have considered the work environment to be hostile or abusive.

77. Plaintiff considered the work environment to be hostile and abusive towards all members of a protected class, including, but not limited to, women of childbearing age, women

1 generally, married individuals, and members of the United States Armed Services, amongst  
2 others.

3 78. Defendants engaged in the conduct by and through the supervisors and agents of  
4 Defendant MTS and/or Defendants knew or should have known of the conduct but failed to take  
5 immediate and appropriate corrective action.

6 79. Plaintiff was harmed as a result of Defendants' conduct. Plaintiff suffered and  
7 continues to suffer damages in the form of severe emotional and physical distress, in an amount to  
8 be proven at trial. In addition, Plaintiff suffered a tangible job detriment in the form of workplace  
9 retaliation, harassment, intimidation, failure to promote, and ultimately termination, lost wages,  
10 and lost employee benefits, in an amount to be proven at trial.

11 80. Defendants' creation of a hostile and abusive work environment was a substantial  
12 factor in causing Plaintiff's harm.

13 **THIRD CAUSE OF ACTION:**

14 **Unlawful Harassment in Violation of FEHA [Govt. Code § 12940, *et seq.*]**

15 **Against All Defendants**

16 81. Plaintiff repeats and re-alleges and incorporates by reference paragraphs 1 through  
17 80 above.

18 82. Pursuant to Government Code section 12940(j), it is unlawful for an employer,  
19 because of age, sex, gender, marital status, or military status, to harass an employee.

20 83. Also pursuant to section 12940(j), harassment shall be unlawful if the entity, or its  
21 agents or supervisors, knows or should have known of this conduct and fails to take immediate  
22 and appropriate corrective action.

23 84. Defendants, as employers and/or supervisors acting on behalf of an employer,  
24 because of complaints Plaintiff made about discrimination against Ms. Lavigne on the basis of her  
25 age, sex, gender, marital/family planning status, and/or military status, began a campaign of  
26 intentionally harassment and retaliation against Plaintiff.

27 85. Defendants knew or should have known about the harassment because the  
28 unlawful conduct was being performed by members of Defendants' management, including, but

1 not limited to, Defendant Bobek and Defendant Dexter. In addition, Defendants'  
2 Chief Financial Officer, Mr. Marinesi, knew of the harassment because Plaintiff reported it to him  
3 multiple times; and Defendants' director of human resources, Defendant Stumbo, knew or should  
4 have known about the harassment because he assisted in orchestrating the sham "investigation"  
5 into Plaintiff's complaints of discrimination.

6 86. Defendants failed to take immediate and appropriate corrective action.

7 87. Defendants failed to take all reasonable steps to prevent the harassment from  
8 occurring, because Defendants knew or should have known that the harassment was occurring but  
9 did nothing to stop it.

10 **FOURTH CAUSE OF ACTION:**

11 **Failure to Prevent Unlawful Discrimination and Harassment**

12 **in Violation of FEHA [Govt. Code § 12940, et seq.]**

13 **Against Defendant MTS**

14 88. Plaintiff repeats and re-alleges and incorporates by reference paragraphs 1 through  
15 87 above.

16 89. Pursuant to Government Code section 12940(a), it is unlawful for an employer,  
17 because of age, sex, gender, marital status, or military status of any person, to refuse to hire or  
18 employ the person or to refuse to select the person for a training program leading to employment,  
19 or to bar or discharge the person from employment or from a training program leading to  
20 employment, or to discriminate against the person in compensation or in terms, conditions, or  
21 privileges of employment.

22 90. Pursuant to Government Code section 12926(o), marital status, sex, age, sexual  
23 orientation, or military status, among other things, in connection with unlawful practices, includes  
24 a perception that the employee has any of those characteristics or is associated with a person who  
25 has, or is perceived to have, any of those characteristics.

26 91. Pursuant to Government Code section 12940(j), an entity shall take all reasonable  
27 steps necessary to prevent harassment from occurring, and pursuant to Government Code section  
28

1 12940(k), it is unlawful for an employer to fail to take all reasonable steps necessary to prevent  
2 discrimination and harassment from occurring.

3 92. At all times relevant hereto, Plaintiff was an employee of Defendant MTS and was  
4 a subordinate to the remaining Defendants.

5 93. At all times relevant hereto, Ms. Lavigne was an employee of Defendant MTS and  
6 was a subordinate to the remaining Defendants.

7 94. Defendants Bobek, Dexter, and Stumbo had authority to take all reasonable steps  
8 necessary to prevent discrimination and harassment from occurring in Plaintiff's and  
9 Ms. Lavigne's department and/or at MTS as a whole.

10 95. As set forth more fully hereinabove, on or about February 3, 2017, Ms. Lavigne  
11 was subjected to unlawful discrimination in the course of her employment, based upon her age,  
12 sex, marital/family status, and military status.

13 96. Defendants' actions against Ms. Lavigne were so demeaning to women as to  
14 constitute an actionable hostile work environment under FEHA. Plaintiff, as a coworker, friend,  
15 and associate of Ms. Lavigne's, was exposed to and offended by Defendants' unlawful  
16 discrimination and harassment in the workplace.

17 97. In addition, Plaintiff was subjected to harassment in the form of demeaning  
18 comments, threats, and psychological abuse, as set forth more fully hereinabove.

19 98. Plaintiff had previously been a highly rated employee, but after his opposition to  
20 Defendants' unlawful conduct, he was subjected to open and unwarranted criticism, implied  
21 threats of termination, and unnecessary reporting requirements that undermined his effectiveness  
22 as the senior application developer.

23 99. Defendants' conduct was so severe and pervasive as to alter the conditions of  
24 Plaintiff's employment and create an abusive working environment.

25 100. Plaintiff reported the misconduct to Defendants' internal auditor, Mr. Tabshouri,  
26 who then reported the incident to Defendants' human resources department, managed and  
27 directed by Defendant Stumbo.

28



1 101. Rather than properly investigate the reported discrimination and/or take  
2 affirmative steps to prevent further harassment from occurring, Defendants conducted a sham  
3 “investigation,” which did not include so much as an interview with Plaintiff – the  
4 whistleblowing employee who reported the misconduct. Defendants’ “investigation” was a  
5 travesty, which led not to remedial action or prevention of further harassment but only to prepare  
6 Defendants for covering up future acts of harassment and discrimination against Plaintiff and  
7 other whistleblowing employees. Defendants failed to take all reasonable steps necessary to  
8 prevent workplace discrimination and harassment.

9 102. Plaintiff was harmed as a result of Defendants’ failure to prevent workplace  
10 discrimination and harassment. Plaintiff suffered adverse employment actions, including, but not  
11 limited to, retaliation; revocation of his promotion; revocation of his pay increase; revocation of  
12 his earned PTO; illegal workplace harassment and intimidation; constructive termination; and  
13 actual termination. In addition, Plaintiff suffered and continues to suffer damages in the form of  
14 lost wages, employment benefits, and severe emotional and physical distress, in an amount to be  
15 proven at trial.

16 103. Defendants’ failure to take all reasonable steps necessary to prevent workplace  
17 discrimination and harassment was a substantial factor in causing Plaintiff’s harm.

18 **FIFTH CAUSE OF ACTION:**

19 **Unlawful Discrimination Based Upon Age**

20 **in Violation of FEHA [Govt. Code § 12940, et seq.]**

21 **Against Defendant MTS**

22 104. Plaintiff repeats and re-alleges and incorporates by reference paragraphs 1 through  
23 103 above

24 105. Pursuant to Government Code section 12940(a), it is unlawful for an employer,  
25 because of age, sex, gender, marital status, or military status of any person, to refuse to hire or  
26 employ the person or to refuse to select the person for a training program leading to employment,  
27 or to bar or discharge the person from employment or from a training program leading to  
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1 employment, or to discriminate against the person in compensation or in terms, conditions, or  
2 privileges of employment.

3 106. Pursuant to Government Code section 12940(j), it is unlawful for an employer,  
4 because of age, to harass an employee. Harassment shall be unlawful if the entity, or its agents or  
5 supervisors, knows or should have known of this conduct and fails to take immediate and  
6 appropriate corrective action. An entity shall take all reasonable steps to prevent harassment from  
7 occurring.

8 107. Pursuant to Government Code section 12926(o), marital status, sex, age, sexual  
9 orientation, or military status, among other things, in connection with unlawful practices, includes  
10 a perception that the employee has any of those characteristics or is associated with a person who  
11 has, or is perceived to have, any of those characteristics.

12 108. Defendant MTS and/or its agents and supervisors, was an employer covered under  
13 FEHA.

14 109. At all times relevant hereto, Plaintiff was an employee of Defendant MTS and was  
15 a subordinate to the remaining Defendants.

16 110. At all times relevant hereto, Ms. Lavigne was an employee of Defendant MTS and  
17 was a subordinate to the remaining Defendants.

18 111. As set forth more fully hereinabove, Defendants refused to promote or even  
19 consider for promotion Ms. Lavigne, who was a coworker, friend, and associate of Plaintiff.

20 112. As set forth more fully hereinabove, Plaintiff was subjected to harassment in the  
21 form of demeaning comments, threats, and psychological abuse, and was ultimately terminated,  
22 both constructively and actually, from his position with MTS.

23 113. Ms. Lavigne's status as a woman of child bearing age was a substantial motivating  
24 reason for Defendants' refusal to promote Ms. Lavigne.

25 114. Plaintiff's status as a friend, co-worker, and associate of Ms. Lavigne, who  
26 opposed Defendants' discriminatory and harassing conduct on behalf of Ms. Lavigne and other  
27 similarly situated individuals, was a substantial motivating reason for Defendants' conduct in  
28 harassing, intimidating, and ultimately terminating Plaintiff.

1 115. Plaintiff was harmed as a result of Defendants' conduct. Plaintiff suffered and  
2 continues to suffer damages in the form of severe emotional and physical distress, in an amount to  
3 be proven at trial. In addition, Plaintiff suffered a tangible job detriment in the form of workplace  
4 retaliation, harassment, intimidation, failure to promote, and ultimately termination, lost wages,  
5 and lost employee benefits, in an amount to be proven at trial.

6 116. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

7 **SIXTH CAUSE OF ACTION:**

8 **Unlawful Discrimination Based Upon Sex**

9 **in Violation of FEHA [Govt. Code § 12940, et seq.]**

10 **Against Defendant MTS**

11 117. Plaintiff repeats and re-alleges and incorporates by reference paragraphs 1 through  
12 116 above.

13 118. Pursuant to Government Code section 12940(a), it is unlawful for an employer,  
14 because of age, sex, gender, marital status, or military status of any person, to refuse to hire or  
15 employ the person or to refuse to select the person for a training program leading to employment,  
16 or to bar or discharge the person from employment or from a training program leading to  
17 employment, or to discriminate against the person in compensation or in terms, conditions, or  
18 privileges of employment.

19 119. Pursuant to Government Code section 12940(j), it is unlawful for an employer,  
20 because of age, to harass an employee. Harassment shall be unlawful if the entity, or its agents or  
21 supervisors, knows or should have known of this conduct and fails to take immediate and  
22 appropriate corrective action. An entity shall take all reasonable steps to prevent harassment from  
23 occurring.

24 120. Pursuant to Government Code section 12926(o), marital status, sex, age, sexual  
25 orientation, or military status, among other things, in connection with unlawful practices, includes  
26 a perception that the employee has any of those characteristics or is associated with a person who  
27 has, or is perceived to have, any of those characteristics.

28

1 121. Defendant MTS and/or its agents and supervisors, was an employer covered under  
2 FEHA.

3 122. At all times relevant hereto, Plaintiff was an employee of Defendant MTS and was  
4 a subordinate to the remaining Defendants.

5 123. At all times relevant hereto, Ms. Lavigne was an employee of Defendant MTS and  
6 was a subordinate to the remaining Defendants.

7 124. As set forth more fully hereinabove, Defendants refused to promote or even  
8 consider for promotion Ms. Lavigne, who was a coworker, friend, and associate of Plaintiff.

9 125. As set forth more fully hereinabove, Plaintiff was subjected to harassment in the  
10 form of demeaning comments, threats, and psychological abuse, and was ultimately terminated,  
11 both constructively and actually, from his position with MTS.

12 126. Ms. Lavigne's status as a female employee was a substantial motivating reason for  
13 Defendants' refusal to promote Ms. Lavigne.

14 127. Plaintiff's status as a friend, co-worker, and associate of Ms. Lavigne, who  
15 opposed Defendants' discriminatory and harassing conduct on behalf of Ms. Lavigne and other  
16 similarly situated individuals, was a substantial motivating reason for Defendants' conduct in  
17 harassing, intimidating, and ultimately terminating Plaintiff.

18 128. Plaintiff was harmed as a result of Defendants' conduct. Plaintiff suffered and  
19 continues to suffer damages in the form of severe emotional and physical distress, in an amount to  
20 be proven at trial. In addition, Plaintiff suffered a tangible job detriment in the form of workplace  
21 retaliation, harassment, intimidation, failure to promote, and ultimately termination, lost wages,  
22 and lost employee benefits, in an amount to be proven at trial.

23 129. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

24 **SEVENTH CAUSE OF ACTION:**

25 **Unlawful Discrimination Based Upon Marital/Family Status**

26 **in Violation of FEHA [Govt. Code § 12940, et seq.]**

27 **Against Defendant MTS**

28

1           130. Plaintiff repeats and re-alleges and incorporates by reference paragraphs 1 through  
2 129 above.

3           131. Pursuant to Government Code section 12940(a), it is unlawful for an employer,  
4 because of age, sex, gender, marital status, or military status of any person, to refuse to hire or  
5 employ the person or to refuse to select the person for a training program leading to employment,  
6 or to bar or discharge the person from employment or from a training program leading to  
7 employment, or to discriminate against the person in compensation or in terms, conditions, or  
8 privileges of employment.

9           132. Pursuant to Government Code section 12940(j), it is unlawful for an employer,  
10 because of age, to harass an employee. Harassment shall be unlawful if the entity, or its agents or  
11 supervisors, knows or should have known of this conduct and fails to take immediate and  
12 appropriate corrective action. An entity shall take all reasonable steps to prevent harassment from  
13 occurring.

14           133. Pursuant to Government Code section 12926(o), marital status, sex, age, sexual  
15 orientation, or military status, among other things, in connection with unlawful practices, includes  
16 a perception that the employee has any of those characteristics or is associated with a person who  
17 has, or is perceived to have, any of those characteristics.

18           134. Defendant MTS and/or its agents and supervisors, was an employer covered under  
19 FEHA.

20           135. At all times relevant hereto, Plaintiff was an employee of Defendant MTS and was  
21 a subordinate to the remaining Defendants.

22           136. At all times relevant hereto, Ms. Lavigne was an employee of Defendant MTS and  
23 was a subordinate to the remaining Defendants.

24           137. As set forth more fully hereinabove, Defendants refused to promote or even  
25 consider for promotion Ms. Lavigne, who was a coworker, friend, and associate of Plaintiff.

26           138. As set forth more fully hereinabove, Plaintiff was subjected to harassment in the  
27 form of demeaning comments, threats, and psychological abuse, and was ultimately terminated,  
28 both constructively and actually, from his position with MTS.

1 139. Ms. Lavigne's status as a married person and as a person who might someday  
2 decide to have children was a substantial motivating reason for Defendants' refusal to promote  
3 Ms. Lavigne.

4 140. Plaintiff's status as a friend, co-worker, and associate of Ms. Lavigne, who  
5 opposed Defendants' discriminatory and harassing conduct on behalf of Ms. Lavigne and other  
6 similarly situated individuals, was a substantial motivating reason for Defendants' conduct in  
7 harassing, intimidating, and ultimately terminating Plaintiff.

8 141. Plaintiff was harmed as a result of Defendants' conduct. Plaintiff suffered and  
9 continues to suffer damages in the form of severe emotional and physical distress, in an amount to  
10 be proven at trial. In addition, Plaintiff suffered a tangible job detriment in the form of workplace  
11 retaliation, harassment, intimidation, failure to promote, and ultimately termination, lost wages,  
12 and lost employee benefits, in an amount to be proven at trial.

13 142. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

14 **EIGHTH CAUSE OF ACTION:**

15 **Unlawful Discrimination Based Upon Military Status**

16 **in Violation of FEHA [Govt. Code § 12940, et seq.]**

17 **Against Defendant MTS**

18 143. Plaintiff repeats and re-alleges and incorporates by reference paragraphs 1 through  
19 142 above.

20 144. Pursuant to Government Code section 12940(a), it is unlawful for an employer,  
21 because of age, sex, gender, marital status, or military status of any person, to refuse to hire or  
22 employ the person or to refuse to select the person for a training program leading to employment,  
23 or to bar or discharge the person from employment or from a training program leading to  
24 employment, or to discriminate against the person in compensation or in terms, conditions, or  
25 privileges of employment.

26 145. Pursuant to Government Code section 12940(j), it is unlawful for an employer,  
27 because of age, to harass an employee. Harassment shall be unlawful if the entity, or its agents or  
28 supervisors, knows or should have known of this conduct and fails to take immediate and

1 appropriate corrective action. An entity shall take all reasonable steps to prevent harassment from  
2 occurring.

3 146. Pursuant to Government Code section 12926(o), marital status, sex, age, sexual  
4 orientation, or military status, among other things, in connection with unlawful practices, includes  
5 a perception that the employee has any of those characteristics or is associated with a person who  
6 has, or is perceived to have, any of those characteristics.

7 147. Defendant MTS and/or its agents and supervisors, was an employer covered under  
8 FEHA.

9 148. At all times relevant hereto, Plaintiff was an employee of Defendant MTS and was  
10 a subordinate to the remaining Defendants.

11 149. At all times relevant hereto, Ms. Lavigne was an employee of Defendant MTS and  
12 was a subordinate to the remaining Defendants.

13 150. As set forth more fully hereinabove, Defendants refused to promote or even  
14 consider for promotion Ms. Lavigne, who was a coworker, friend, and associate of Plaintiff.

15 151. As set forth more fully hereinabove, Plaintiff was subjected to harassment in the  
16 form of demeaning comments, threats, and psychological abuse, and was ultimately terminated,  
17 both constructively and actually, from his position with MTS.

18 152. Ms. Lavigne's status as a person married to an active duty service member in the  
19 United States military was a substantial motivating reason for Defendants' refusal to promote Ms.  
20 Lavigne.

21 153. Plaintiff's status as a friend, co-worker, and associate of Ms. Lavigne, who  
22 opposed Defendants' discriminatory and harassing conduct on behalf of Ms. Lavigne and other  
23 similarly situated individuals, was a substantial motivating reason for Defendants' conduct in  
24 harassing, intimidating, and ultimately terminating Plaintiff.

25 154. Plaintiff was harmed as a result of Defendants' conduct. Plaintiff suffered and  
26 continues to suffer damages in the form of severe emotional and physical distress, in an amount to  
27 be proven at trial. In addition, Plaintiff suffered a tangible job detriment in the form of workplace  
28

1 retaliation, harassment, intimidation, failure to promote, and ultimately termination, lost wages,  
2 and lost employee benefits, in an amount to be proven at trial.

3 155. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

4 **NINTH CAUSE OF ACTION:**

5 **Whistleblower Retaliation in Violation of Labor Code § 1102.5(b)**

6 **Against All Defendants**

7 156. Plaintiff repeats and re-alleges and incorporates by reference paragraphs 1 through  
8 155 above.

9 157. Pursuant to Labor Code section 1102.5, subsection (b), an employer, or any person  
10 acting on behalf of the employer, shall not retaliate against an employee for disclosing  
11 information to a person with authority over the employee or another employee who has the  
12 authority to investigate, discover, or correct the violation or noncompliance, if the employee has  
13 reasonable cause to believe that the information discloses a violation of state or federal statute, or  
14 a violation of or noncompliance with a local, state, or federal rule or regulation.

15 158. Defendants were, at all times relevant hereto, Plaintiff's employer, supervisors,  
16 managers, and/or agents thereof.

17 159. Plaintiff disclosed to Defendants' internal auditor, Mr. Tabshouri, a person with  
18 authority over Plaintiff and with authority to investigate, discover, and/or correct legal violations  
19 within MTS, that Plaintiff's coworker, Ms. Lavigne, had been subjected to unlawful  
20 discrimination by Defendant Bobek on February 3, 2017.

21 160. Plaintiff had reasonable cause and a good faith belief that the information he  
22 disclosed to Mr. Tabshouri would substantiate violation of a state, federal, and/or local statute.

23 161. Plaintiff suffered adverse employment actions and ultimately was discharged after  
24 disclosing the above-mentioned information.

25 162. Plaintiff's disclosure of information was a contributing factor in Defendants'  
26 decision to subject Plaintiff to adverse employment actions and ultimate discharge.

27 163. Plaintiff was harmed by Defendants' actions.

28 164. Defendants' conduct was a substantial factor in causing Plaintiff's harm.





1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby formally demands a trial by jury. WHEREOF, the plaintiff prays for the  
3 following relief:

- 4 1. For declaratory judgment that Defendants violated Fair Employment and Housing Act  
5 (“FEHA”), beginning with Government Code § 12940 et seq., by committing the unlawful  
6 employment practices, as described hereinabove;
- 7 2. For declaratory judgment that Defendants violated Labor Code section 1102.5(b), by  
8 committing unlawful retaliation against a whistleblower, as described hereinabove;
- 9 3. A declaratory judgment that Defendants terminated the Plaintiff in violation of public  
10 policy, as described hereinabove;
- 11 4. For general damages, including, among other things, damages for emotional distress, in an  
12 amount according to proof.
- 13 5. For special damages, including, among other things, loss of earnings, past and future loss  
14 wages, front pay, back pay, employment benefits, and potential benefits and costs of  
15 finding new employment, in an amount according to proof;
- 16 6. For punitive damages against Defendant Bobek, Defendant Dexter, Defendant Stumbo,  
17 and any applicable DOE defendants, in an amount according to proof;
- 18 7. For attorney fees and costs pursuant to FEHA, Labor Code Section 1102.5 et seq., and all  
19 related statutes;
- 20 8. For all fees and costs;
- 21 9. For all pre-judgment and post-judgment interest;
- 22 10. For such other and further relief as the Court deems just and proper;

23 DATED: April 23, 2018

GOULARTE LAW FIRM

24  
25 By



26 Daniel J. Goularte, Attorney for Plaintiff  
27  
28

# EXHIBIT “A”



## DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
(800) 884-1684 | TDD (800) 700-2320  
<http://www.dfeh.ca.gov> | email: [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov)

February 22, 2018

Daniel Goularte  
7853 El Cajon Boulevard, Suite G  
La Mesa, 91945

RE: **Notice to Complainant's Attorney**  
DFEH Matter Number: 201802-01228315  
Right to Sue: AUGUSTINO / SANDRA BOBEK et al.

Dear Daniel Goularte:

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 **IVAN AUGUSTINO**

DFEH No. 201802-01228315

7                                   Complainant,

8 vs.

9 **SANDRA BOBEK**

10 ,

11 **GARY DEXTER**

12 ,

13 **JEFFREY M STUMBO**

14 ,

15 **SAN DIEGO METROPOLITAN TRANSIT**  
16 **SYSTEM**

17 1255 Imperial Avenue 1000  
18 San Diego, California 92101

19 **SAN DIEGO TRANSIT CORPORATION**

20 1255 Imperial Avenue, Suite 1000  
21 San Diego, California 92101

22                                   Respondents.

23 1. Respondent **SANDRA BOBEK** is an **employer** subject to suit under the  
24 California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

25 2. Complainant **IVAN AUGUSTINO**, resides in the City of **El Cajon** State of  
26 **California**.

27 3. Complainant alleges that on or about **March 9, 2017**, respondent took the  
28 following adverse actions:

**Complainant was harassed** because of complainant's race, national origin  
(includes language restrictions), color, sex/gender, family care or medical leave

1 (cfra), military and veteran status, marital status, association with someone of a  
2 protected class, sexual harassment- hostile environment.

3 **Complainant was discriminated against** because of complainant's race, national  
4 origin (includes language restrictions), color, sex/gender, family care or medical  
5 leave (cfra), military and veteran status, marital status, other and as a result of the  
6 discrimination was terminated, forced to quit, denied hire or promotion, reprimanded,  
7 denied equal pay, demoted, asked impermissible non-job-related questions, denied  
8 a work environment free of discrimination and/or retaliation, denied any employment  
benefit or privilege, failed to give equal considerations in making employment  
decisions, denied family care or medical leave (cfra), partial recommendation for  
subsequent employment in retaliation for filing discrimination or harassment  
complaints.

9 **Complainant experienced retaliation** because complainant reported or resisted  
10 any form of discrimination or harassment, participated as a witness in a  
11 discrimination or harassment claim, requested or used california family rights act or  
12 fmla and as a result was terminated, forced to quit, denied hire or promotion,  
13 reprimanded, denied equal pay, demoted, asked impermissible non-job-related  
14 questions, denied a work environment free of discrimination and/or retaliation,  
denied any employment benefit or privilege, failed to give equal considerations in  
making employment decisions, denied family care or medical leave (cfra).

15 **Additional Complaint Details:** In and around February 3, 2017, my female co-  
16 worker applied for an open position for a promotion within the company. After my  
17 co-worker went through he interview for the job opening, she came to my office in  
18 tears. She told me that our superior Ms. Sandy Bobek discouraged my co-worker  
19 from applying for the position and that she asked her personal questions about her  
20 life, her marriage, her family planning, her gender, and her age. Specifically, my co-  
worker told me that Ms. Bobek discouraged her because she was young, she was of  
child bearing years, she was married, and that her husband was a military man that  
could be deployed. Ms. Bobek told my co-worker that the company had problems  
when they hired females.

21 I immediately recognized that this questioning and treatment of my co-worker was  
22 inappropriate and a violation of the company hiring policies and discrimination  
23 policies. On February 3, 2017 I reported the incident to my company's internal  
24 auditor, Mr. Toufic Tabshouri. Immediately an investigation was started, although I  
25 was NEVER interviewed as part of that investigation. The week after my complaint, I  
26 started receiving retaliatory treatment, I was told that I could not be trusted, and that  
I should seek other employment outside of the company. Additionally, because I

1 completed a large project the month before, I was promised additional Paid Time Off  
2 hours as compensation. The company decided to revoke those PTO hours.

3 I complained about the retaliation to the company on February 28, 2017 and March  
4 5, 2017. Unfortunately, and on March 9, 2017, without warning I was told my  
5 services were no longer needed and I was escorted out of the building.

6 I believe that I was terminated and retaliated against for my bona fide complaint  
7 regarding work place discrimination, gender discrimination, work place harassment,  
8 failure to prevent discrimination, failure to prevent work place harassment, unfair  
9 treatment, and subsequent retaliation that I experienced thereafter. I was forced to  
10 resign my position and ultimately terminated without cause for my complaints.

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1 VERIFICATION

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

5 On February 22, 2018, I declare under penalty of perjury under the laws of the State  
6 of California that the foregoing is true and correct.

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**San Diego, California**