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OF ORIGINAL FILED
Los Angeles Superior Court

DEC 13 2017

Sherri R. Carter, Executive Officer/Clerk

By Shaunya Bolden, Deputy

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

FILED BY FAX

10 PAULA J. RICKEY, an individual,)

11 Plaintiff,)

12 vs.)

13 KERRY KOUROSH ASSIL, an individual;)
14 PRECISION AMBULATORY SURGERY)
CENTER, LLC, a California limited liability)
15 company; 90210 SURGERY CENTER, a)
California limited liability company; ASC)
16 MANAGEMENT GROUP, LLC, a)
California limited liability company; ASC)
17 MANAGEMENT GROUP, INC., a)
California corporation; BH ASC)
18 VENTURE, LLC, a California limited)
liability company; CS-BH ASC)
19 HOLDINGS, LLC, a California limited)
liability company; CEDARS-SINAI)
20 HEALTH SYSTEM, a California nonprofit)
public benefit corporation; CEDARS-SINAI)
21 MEDICAL CENTER, a California nonprofit)
public benefit corporation; and DOES 1- 20,)
22 inclusive,)

23 Defendants.)
24

CASE NO.:

BC 6 8 6 6 2 6

COMPLAINT FOR:

1. BATTERY;
2. ASSAULT;
3. SEXUAL HARASSMENT;
4. SEX DISCRIMINATION;
5. RETALIATION;
6. FAILURE TO PREVENT SEXUAL HARASSMENT AND DISCRIMINATION;
7. FAILURE TO CORRECT AND REMEDY SEXUAL HARASSMENT AND DISCRIMINATION;
8. NEGLIGENT FAILURE TO SUPERVISE;
9. NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS;
10. INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS; AND
11. CONSTRUCTIVE WRONGFUL DISCHARGE

JURY TRIAL DEMANDED

1 Plaintiff Paula J. Rickey, by and through her undersigned counsel of record,
2 complains as follows:

3
4 **INTRODUCTION**

5 1. Defendant Kerry Kourosch Assil is a prominent surgeon affiliated with
6 defendant Cedars-Sinai Medical Center. He is the medical director of outpatient surgery centers
7 owned, directly or indirectly, by Assil, Cedars-Sinai Medical Center, and others. Plaintiff Paula J.
8 Rickey is a registered nurse who has worked for Assil at two such surgery centers.

9 2. On July 17, 2017, at approximately 9:40 a.m., just outside an operating
10 room, unprovoked and without justification, in an abrupt fit of rage, Assil chased and then shoved
11 Rickey, a petite woman, violently in the back of her head. He then chased her further, seized her
12 by the arm, and exclaimed “I know I can do this because I know you like the abuse.” Assil
13 committed these batteries and assault at the parties’ workplace, an outpatient surgical center
14 affiliated with Cedars-Sinai Medical Center. The incident was captured on security video.

15 3. Rickey reported the incident to her direct supervisor and to her supervisor’s
16 supervisor, both of whom saw the video. The video was sent to the board of directors of Cedars-
17 Sinai Medical Center, among many other people in the chain of command. In this day and age,
18 powerful figures in the entertainment industry, the media, and even the United States Congress are
19 being held accountable. The defendants in this case took no meaningful action. They did not
20 follow up on Rickey’s complaints for more than a month. They have taken minimal or at most
21 token disciplinary action against Assil. They punished **Rickey**, by reducing her work hours to
22 accommodate **Assil**, or keeping Rickey away from him when he operates. The defendants have
23 condoned and ratified Assil’s conduct. Assil and the other defendants have willfully disregarded
24 Rickey’s rights to a safe workplace free of discrimination, harassment, and violence. They have
25 done so despite conclusive video evidence that leaves no doubt about Assil’s grave misconduct.

26 4. Accordingly, Rickey sues the defendants, and each of them, for battery,
27 assault, sexual harassment, sex discrimination, retaliation, failure to prevent sex discrimination and
28 sexual harassment, failure to remedy and correct sex discrimination and sexual harassment,

1 intentional and negligent infliction of emotional distress, and constructive wrongful termination.
2 Rickey seeks compensatory and punitive damages against the defendants in an amount sufficient
3 to deter such outrageous conduct in the future, as well as deterring callous corporate indifference
4 to such conduct.

5 **PARTIES AND RELATED PERSONS**

6 5. At all times relevant to this complaint, plaintiff Paula Rickey (“Rickey”), an
7 individual, has been a resident of and domiciled in Los Angeles County, State of California.

8 6. Rickey is informed and believes, and on that basis alleges, that defendant
9 Kerry Kourosh Assil (“Assil”) is an individual who at all times relevant to this complaint has been
10 a resident of and domiciled in Los Angeles County, State of California.

11 7. Rickey is informed and believes, and on that basis alleges, that throughout
12 its existence, defendant Precision Ambulatory Surgery Center, LLC, has been organized and
13 existing under the laws of the State of California and headquartered within Los Angeles County.

14 8. Rickey is informed and believes, and on that basis alleges, that throughout
15 its existence, defendant 90210 Surgery Center has been a limited liability company organized and
16 existing under the laws of the State of California and headquartered within Los Angeles County.

17 9. Rickey is informed and believes, and on that basis alleges, that throughout
18 its existence, defendant ASC Management Group, LLC, has been a limited liability company
19 organized and existing under the laws of the State of California and headquartered within Los
20 Angeles County.

21 10. Rickey is informed and believes, and on that basis alleges, that from July 16,
22 2013, to November 7, 2014, defendant ASC Management Group, Inc., was a corporation
23 organized and existing under the laws of the State of California and headquartered within Los
24 Angeles County. ASC Management Group, Inc., was converted to ASC Management Group,
25 LLC, on or about November 7, 2014. However, defendant Assil has continued to operate and do
26 business through ASC Management Group, Inc., after November 7, 2014, when it no longer
27 existed as an entity.
28

1 11. Rickey is informed and believes, and on that basis alleges, that throughout
2 its existence, defendant BH ASC Venture, LLC, is and has been a limited liability company
3 organized and existing under the laws of the State of California and headquartered within Los
4 Angeles County.

5 12. Rickey is informed and believes, and on that basis alleges, that throughout
6 its existence, defendant CS-BH ASC Holdings, LLC, has been a limited liability company
7 organized and existing under the laws of the State of California and headquartered within Los
8 Angeles County.

9 13. Rickey is informed and believes, and on that basis alleges, that at all times
10 relevant to this complaint, defendant Cedars-Sinai Medical Center has been a nonprofit public
11 benefit corporation organized and existing under the laws of the State of California and
12 headquartered within Los Angeles County.

13 14. Rickey is informed and believes, and on that basis alleges, that throughout
14 its existence, defendant Cedars-Sinai Health System has been a nonprofit public benefit
15 corporation organized and existing under the laws of the State of California headquartered within
16 Los Angeles County.

17 15. Rickey is informed and believes, and on that basis alleges, that until a date
18 in 2016, Assil owned a substantial or majority interest in the Surgery Centers.

19 16. Rickey is informed and believes, and on that basis alleges, that in 2016,
20 Assil and other owners of the Surgery Centers sold a 60% or greater stake in the Surgery Centers
21 to one or more of the other Entity Defendants, directly or indirectly. Assil retained a 5%
22 ownership interest in the Surgery Centers.

23 17. Defendants DOES 1 through 20, inclusive, are sued under fictitious names
24 because their true names and capacities whether individual, associate, corporate, governmental or
25 otherwise are unknown to Rickey. Rickey will ask leave of this Court to amend this Complaint to
26 assert the true names and capacities of these defendants when their names and capacities are
27 ascertained. Rickey is informed and believes, and on that basis alleges, that each of the defendants
28 specifically named or designated as a DOE defendant is, in some manner, responsible for the

1 events and happenings referred to below, whether contractually or tortiously, and whether because
2 of negligence, carelessness, recklessness, intentional misconduct, or otherwise. Rickey is
3 informed and believes, and on that basis alleges, that the acts or omissions of each of the
4 defendants specifically named or designated as a DOE defendant was a substantial factor in
5 causing damages to Rickey as alleged below. All references to any Entity Defendant in the
6 following allegations shall be interpreted to include a reference to each of these DOE defendants.

7 18. Rickey is further informed and believes, and on that basis alleges, that each
8 of the defendants specifically named or designated as a DOE defendant aided and assisted each
9 other defendant in committing the wrongful acts and omissions alleged below. Further, each of
10 these defendants was the agent, servant, or employee of each of the other defendants, and in
11 committing the acts and omissions alleged below acted within the scope of his, her, or its authority
12 and with the permission, consent, or ratification of each other defendant.

13 19. The named defendants other than Assil and the DOE defendants are referred
14 to collectively below as the “Entity Defendants”.

15 20. Rickey is further informed and believes, and on that basis alleges, that at all
16 relevant times, to the extent that the conduct and omissions alleged below were perpetrated by any
17 one defendant, the remaining defendants confirmed and ratified such conduct and omissions. Each
18 of the defendants was a joint employer of Rickey.

19 **GENERAL ALLEGATIONS OF FACT**

20 **Rickey’s Employment at the Surgery Centers**

21 21. Rickey is a registered nurse licensed by the state of California.

22 22. Since 2012, Rickey has worked as a registered nurse at defendant Precision
23 Ambulatory Surgery Center, LLC, and defendant 90210 Surgery Center (the “Surgery Centers”).
24 Rickey is informed and believes, and on that basis alleges, that the Surgery Centers are outpatient
25 surgery centers affiliated, directly or indirectly through interlocking ownership, with defendant
26 Cedars-Sinai Medical Center and the other Entity Defendants.

27

28

1 23. Throughout her employment at the Surgery Centers, Rickey has performed
2 her duties in exemplary fashion. Every year, Rickey received favorable reviews, salary increases,
3 and bonuses. She never received any verbal or written reprimands. She only received accolades.

4 24. In October 2016, the Surgery Centers promoted Rickey to Charge Nurse. In
5 that capacity, she has overseen other nurses; hired new staff; maintained quality assurance; trained
6 staff on the use of new equipment; and supervised the nursing staff for patient pre-operation and
7 recovery.

8 25. Rickey is informed and believes, and on that basis alleges, that one or more
9 of the Entity Defendants other than the Surgery Centers contemplates acquisition of additional
10 medical facilities, and that but for the events described below, Rickey would have been in line for
11 another promotion to nurse manager, at higher compensation and with even greater responsibility,
12 overseeing surgical technicians, operating room nurses, and the reception staff.

13 **Assil's Role at the Surgery Centers Where Rickey Worked**

14 26. Rickey is informed and believes, and on that basis alleges, that throughout
15 the time relevant to this complaint, Assil has been the medical director of the Surgery Centers.
16 Assil has also been a prominent practicing surgeon at the Surgery Centers and a significant source
17 of revenue for the Surgery Centers. Assil has ownership interests and managerial authority in at
18 least some of the Entity Defendants.

19 27. Rickey is informed and believes, and on that basis alleges, that through
20 much of the time that Rickey has worked for the Surgery Centers, as to many of the Entity
21 Defendants, and since at least May 2017 as to all of the Entity Defendants, each of the Entity
22 Defendants managed, supervised, controlled, and directed the business operations of the Surgery
23 Centers, and ratified, condoned, and approved those business operations, in particular with respect
24 to Assil's management and Rickey's employment.

25 28. Rickey is informed and believes, and on that basis alleges, that after the
26 other Entity Defendants acquired their direct or indirect ownership interests and management,
27 supervision, control, and direction of the Surgery Centers, they ratified, condoned, and approved
28 Assil's role as medical director of the Surgery Centers.

1 **Assil's Batteries and Assault of Rickey on July 17, 2017**

2 29. Throughout the time that Rickey has been employed at the Surgery Centers,
3 Assil has exploited his position as medical director of the centers and a major revenue source for
4 the centers to get away with things no other employee or manager would. He has acted as if he is
5 above the rules that apply to everyone else. Assil has disregarded legal requirements and the
6 purported employment standards for the workplace promulgated by the Surgery Centers and the
7 other Entity Defendants. Assil has manifested a classic "God complex" that characterizes some
8 arrogant physicians in positions of authority.

9 30. Rickey is informed and believes, and on that basis alleges, that: Assil has
10 engaged in extra-marital affairs with female employees of the Surgery Centers on a quid pro quo
11 basis, penalizing employees who refuse to yield to his advances, and rewarding those who
12 acquiesce. In so doing, Assil manifested discriminatory intent toward women in the workplace.
13 Assil was an owner, manager, and supervisor on behalf of the Surgery Centers at the time. Assil
14 was also an owner and manager to a lesser extent of some or all of the Entity Defendants.

15 31. Rickey is informed and believes, and on that basis alleges, that while Assil
16 has been condescending and arrogant toward colleagues and staff in the workplace generally, he
17 has been especially so toward colleagues and staff who were female.

18 32. Rickey is informed and believes, and on that basis alleges, that Assil
19 exhibited an interest in sexual exploitation of Rickey, and that Assil's sexual desires toward
20 Rickey were a substantial factor motivating Assil's batteries on Rickey as described below.

21 33. On July 17, 2017, at approximately 9:40 a.m., Assil was performing surgery
22 in an operating room at 90210 Surgery Center. Rickey checked in to see when the operating room
23 would open up because Assil was running late, as he often does. Assil had reserved a block of
24 time for a number of operations but he was near the end of his time. The cleaning crew was ready
25 to prepare the operating room for the next surgeon, but it looked as if that surgeon would not be
26 able to start his case on time. Rickey saw that Assil had just finished his case and was heading out
27 of the operating room. She said "Oh good, you're done." Assil responded by asking who was
28

1 asking, and Rickey replied that it was Dr. Saliman. Assil snarled “you guys can mind your own
2 fucking business.” Rickey reacted by rolling her eyes and turning away.

3 34. As Rickey headed out of the operating room, Assil lunged from behind and
4 shoved her hard from behind at the base of her head. The incident was captured on security video.
5 Rickey was thrown out of the field of view of the video. Assil turned back into the operating room
6 and moments later returned, into the field of view of the security camera, and wagged his left
7 index finger as if ordering Rickey back to him. Rickey refused to comply, whereupon Assil
8 chased her. Off camera, right in front of the women’s restroom, Assil caught up to Rickey,
9 grabbed her arm, and said “I know I can do this because I know you like the abuse.”

10 35. After this exchange, Rickey went into the overnight room. Assil’s personal
11 assistant Carlos Barillas followed her. In the overnight room Rickey broke down and wept.

12 **Rickey Reports the Batteries but No Meaningful Corrective Action Is Taken**

13 36. Rickey had horrible feelings and guilt over the incident. She felt unable to
14 confront Assil. His power and position as medical director and as a vital revenue generator had
15 made him invincible before. Rickey felt ashamed and powerless.

16 37. After an interval, in August 2017, Rickey decided she could not remain
17 silent and reported the incident to her supervisor Anita Bakalian and to Ms. Bakalian’s supervisor
18 Bonita Tapia. In addition, she caused a copy of the video to be sent to the board of directors of
19 defendant Cedars-Sinai Medical Center.

20 38. Rickey is informed and believes, and on that basis alleges, that despite the
21 explicit evidence contained in the video, the Entity Defendants took no meaningful action for more
22 than 30 days. They then purported to commence an investigation but it was a perfunctory exercise
23 of going through the motions.

24 39. The Entity Defendants purport to have taken some kind of disciplinary
25 action against Assil. However, they refused to state what it was. Rickey is informed and believes,
26 and on that basis alleges, that if any disciplinary action was taken, it was a token action, at most a
27 slap on the wrist. Assil continues to operate at the Surgery Centers as if nothing had happened.
28

1 He has the same hours, duties, and privileges as before. Any other employee in any other capacity
2 who did what Assil did to Rickey would have been suspended or fired.

3 **Retaliation Against Rickey**

4 40. Instead of taking any measures to respond to Rickey's complaints, the
5 Entity Defendants punished **Rickey**. To make life easier for Assil, the Entity Defendants restricted
6 Rickey's work hours or shifted her to a different floor or practice group when Assil was
7 performing surgery at the Surgery Centers.

8 41. Ever since the incident of July 17, 2017, as a direct result of the incident,
9 Rickey has experienced severe anxiety. She has lost her appetite and has trouble sleeping.

10 **Exhaustion of Administrative Remedies**

11 42. Rickey filed a complaint with the California Department of Fair
12 Employment & Housing and received a Right to Sue letter on December 12, 2017, both of which
13 are attached hereto as Exhibit 1, and incorporated by reference.

14 **FIRST CAUSE OF ACTION - BATTERY**

15 **(AGAINST ALL DEFENDANTS)**

16 43. Rickey incorporates by reference paragraphs 1 through 42 above, inclusive,
17 as though fully set forth here.

18 44. Assil's conduct on July 17, 2017, in violently shoving the back of Rickey's
19 head and seizing her arm constituted touching with the intent of harming or offending her.

20 45. Rickey did not consent to Assil's shoving her head violently or seizing her
21 arm.

22 46. Rickey was harmed by Assil's conduct.

23 47. A reasonable person in Rickey's situation would have been offended by the
24 physical touching Assil committed.

25 48. The actions and omissions of the Defendants have been a substantial factor
26 in causing Rickey to suffer humiliation, serious mental anguish, emotional and physical distress,
27 and loss of past earnings and employment benefits. By the time of trial, the Defendants' actions
28

1 and omissions are anticipated to have caused the loss of future employment opportunities. Rickey
2 is entitled to compensatory damages in an amount to be proven at trial.

3 49. The batteries Assil committed against Rickey were committed intentionally,
4 maliciously, wantonly, oppressively, and fraudulently with a conscious disregard of Rickey's
5 rights and with the intent to vex, injure, punish, and annoy Rickey so as to cause the injuries
6 sustained by Rickey, which acts amounted to oppression, fraud, and malice, as described in
7 California Civil Code §3294. The conduct of Assil was despicable. Rickey is therefore entitled to
8 punitive or exemplary damages in an amount sufficient to punish and make an example of Assil.

9 50. The Entity Defendants, and each of them, became aware of Assil's batteries
10 against Rickey and yet took no meaningful corrective action. They therefore approved, condoned,
11 and ratified Assil's conduct and omissions, in violation of their duties to Rickey. The Entity
12 Defendants' actions and omissions toward Rickey were committed intentionally, maliciously,
13 wantonly, oppressively, and fraudulently with a conscious disregard of Rickey's rights and with
14 the intent to vex, injure, punish, and annoy Rickey so as to cause the injuries sustained by Rickey,
15 which acts amounted to oppression, fraud, and malice, as described in California Civil Code
16 §3294. The conduct of the Entity Defendants was despicable. Rickey is therefore entitled to
17 punitive or exemplary damages in an amount sufficient to punish and make an example of each of
18 the Entity Defendants.

19 **SECOND CAUSE OF ACTION - ASSAULT**

20 **(AGAINST ASSIL)**

21 51. Rickey incorporates by reference paragraphs 1 through 42 above, inclusive,
22 as though fully set forth here.

23 52. Assil's conduct on July 17, 2017, in violently shoving Rickey's head and in
24 seizing her arm were intended to cause harmful or offensive contact.

25 53. As Assil approached Rickey after shoving her head violently, and before
26 Assil seized her arm, Rickey reasonably believed that she was about to be touched in a harmful or
27 offensive manner. The contact Rickey reasonably feared from Assil would have offended a
28 reasonable sense of personal dignity.

1 54. Rickey did not consent to Assil's conduct.

2 55. Rickey was harmed by Assil's conduct.

3 56. Assil's conduct was a substantial factor in causing Rickey's harm.

4 57. The actions and omissions of the Defendants have been a substantial factor
5 in causing Rickey to suffer humiliation, serious mental anguish, emotional and physical distress,
6 and loss of past earnings and employment benefits. By the time of trial, the Defendants' actions
7 and omissions are anticipated to have caused the loss of future employment opportunities. Rickey
8 is entitled to compensatory damages in an amount to be proven at trial.

9 58. As alleged above, Assil's conduct and omissions toward Rickey were
10 committed intentionally, maliciously, wantonly, oppressively, and fraudulently with a conscious
11 disregard of Rickey's rights and with the intent to vex, injure, punish, and annoy Rickey so as to
12 cause the injuries sustained by Rickey, which acts amounted to oppression, fraud, and malice, as
13 described in California Civil Code §3294. The conduct of Assil was despicable. Rickey is
14 therefore entitled to punitive or exemplary damages in an amount sufficient to punish and make an
15 example of Assil.

16 59. The Entity Defendants, and each of them, became aware of Assil's conduct
17 and omissions toward Rickey and yet took no meaningful corrective action. They therefore
18 approved, condoned, and ratified Assil's conduct and omissions, in violation of their duties to
19 Rickey. The Entity Defendants' actions and omissions toward Rickey were committed
20 intentionally, maliciously, wantonly, oppressively, and fraudulently with a conscious disregard of
21 Rickey's rights and with the intent to vex, injure, punish, and annoy Rickey so as to cause the
22 injuries sustained by Rickey, which acts amounted to oppression, fraud, and malice, as described
23 in California Civil Code §3294. The conduct of the Entity Defendants was despicable. Rickey is
24 therefore entitled to punitive or exemplary damages in an amount sufficient to punish and make an
25 example of each of the Entity Defendants.

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THIRD CAUSE OF ACTION
(SEXUAL HARASSMENT
AGAINST ALL DEFENDANTS)

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3
4 60. Rickey incorporates by reference paragraphs 1 through 42 above, inclusive,
5 as though fully set forth here.

6 61. At all times relevant to this complaint, Rickey was an “employee” within
7 the meaning of California Government Code §12926(c) and California Code §12940(a) and (c),
8 which prohibit sexual harassment in employment.

9 62. At all times relevant to this complaint, the Entity Defendants were an
10 “employer” within the meaning of California Government Code §12926(d) and California
11 Government Code §12940(a) and (c) and, as such, were barred from sexually harassing employees,
12 as set forth in California Government Code §12940.

13 63. Assil was an “employer” of Rickey, or an agent and supervisor on behalf of
14 the Entity Defendants. Assil had a duty to Rickey to refrain from engaging in sexual harassment in
15 the workplace.

16 64. Assil would not have engaged in the conduct he did toward Rickey if she
17 had been male. By engaging in the conduct and omissions alleged above, Assil and the Entity
18 Defendants, and each of them, have harassed Rickey on the basis of sex, in violation of California
19 Government Code §12940(a) and (c), Article I of the California Constitution, and related statutes.
20 Defendants’ actions and omissions constitute “hostile work environment” sexual harassment.

21 65. The actions and omissions of the Defendants have been a substantial factor
22 in causing Rickey to suffer humiliation, serious mental anguish, emotional and physical distress,
23 and loss of past earnings and employment benefits. By the time of trial, the Defendants’ actions
24 and omissions are anticipated to have caused the loss of future employment opportunities. Rickey
25 is entitled to compensatory damages in an amount to be proven at trial, but in excess of
26 \$3,000,000.00.

27 66. As alleged above, Assil’s conduct and omissions toward Rickey were
28 committed intentionally, maliciously, wantonly, oppressively, and fraudulently with a conscious

1 disregard of Rickey's rights and with the intent to vex, injure, punish, and annoy Rickey so as to
2 cause the injuries sustained by Rickey, which acts amounted to oppression, fraud, and malice, as
3 described in California Civil Code §3294. The conduct of Assil was despicable. Rickey is
4 therefore entitled to punitive or exemplary damages in an amount sufficient to punish and make an
5 example of Assil.

6 67. The Entity Defendants, and each of them, became aware of Assil's conduct
7 and omissions toward Rickey and yet took no meaningful corrective action. They therefore
8 approved, condoned, and ratified Assil's conduct and omissions, in violation of their duties to
9 Rickey. The Entity Defendants' actions and omissions toward Rickey were committed
10 intentionally, maliciously, wantonly, oppressively, and fraudulently with a conscious disregard of
11 Rickey's rights and with the intent to vex, injure, punish, and annoy Rickey so as to cause the
12 injuries sustained by Rickey, which acts amounted to oppression, fraud, and malice, as described
13 in California Civil Code §3294. The conduct of the Entity Defendants was despicable. Rickey is
14 therefore entitled to punitive or exemplary damages in an amount sufficient to punish and make an
15 example of each of the Entity Defendants.

16 **FOURTH CAUSE OF ACTION - SEX DISCRIMINATION**

17 **(AGAINST ALL DEFENDANTS)**

18 68. Rickey incorporates by reference paragraphs 1 through 42 above, inclusive,
19 as though fully set forth here.

20 69. At all times relevant to this complaint, the Entity Defendants were
21 "employers" of Rickey within the meaning of California Government Code §12926(d) and
22 California Government Code §12940(a) and (c). As such, they were barred from discriminating in
23 employment decisions on the basis of sex, as set forth in California Government Code §12940.

24 70. At all times relevant to this complaint, Assil was an "employer" of Rickey,
25 or an agent and supervisor on behalf of the Entity Defendants. Assil had a duty to Rickey to
26 refrain from engaging in sex discrimination in the workplace.

27 71. Assil would never have engaged in the wrongful physical contact to
28 which she subjected Rickey if she had been male. By engaging in the conduct and omissions

1 alleged above, Assil discriminated against Rickey on the basis of sex, in violation of California
2 Government Code §12940(a) and (j)(1), Article I of the California Constitution and related
3 statutes.

4 72. The Entity Defendants, and each of them, became aware of Assil's conduct
5 and omissions toward Rickey and yet took no meaningful corrective action. They therefore
6 approved, condoned, and ratified Assil's conduct and omissions, in violation of their duties to
7 Rickey.

8 73. The actions and omissions of the Defendants have been a substantial factor
9 in causing Rickey to suffer humiliation, serious mental anguish, emotional and physical distress,
10 and loss of past earnings and employment benefits. By the time of trial, the Defendants' actions
11 and omissions are anticipated to have caused the loss of future employment opportunities. Rickey
12 is entitled to compensatory damages in an amount to be proven at trial, but in excess of
13 \$3,000,000.00.

14 74. As alleged above, Assil's conduct and omissions toward Rickey were
15 committed intentionally, maliciously, wantonly, oppressively, and fraudulently with a conscious
16 disregard of Rickey's rights and with the intent to vex, injure, punish, and annoy Rickey so as to
17 cause the injuries sustained by Rickey, which acts amounted to oppression, fraud, and malice, as
18 described in California Civil Code §3294. The conduct of Assil was despicable. Rickey is
19 therefore entitled to punitive or exemplary damages in an amount sufficient to punish and make an
20 example of Assil.

21 75. By ratifying, condoning, and approving Assil's conduct and omissions
22 toward Rickey, the Entity Defendants' actions and omissions likewise were committed
23 intentionally, maliciously, wantonly, oppressively, and fraudulently with a conscious disregard of
24 Rickey's rights and with the intent to vex, injure, punish, and annoy Rickey so as to cause the
25 injuries sustained by Rickey, which acts amounted to oppression, fraud, and malice, as described
26 in California Civil Code §3294. The conduct of the Entity Defendants was despicable. Rickey is
27 therefore entitled to punitive or exemplary damages in an amount sufficient to punish and make an
28 example of each of the Entity Defendants.

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2 **FIFTH CAUSE OF ACTION - RETALIATION**

3 **(AGAINST ALL DEFENDANTS)**

4 76. Rickey incorporates by reference paragraphs 1-42 above, inclusive, as
5 though fully set forth here.

6 77. In violation of California Government Code §12940(h), Assil and the Entity
7 Defendants, and each of them, retaliated against Rickey by taking adverse employment actions
8 against her for complaining about Assil's conduct and omissions toward Rickey.

9 78. The actions and omissions of the Defendants have been a substantial factor
10 in causing Rickey to suffer humiliation, serious mental anguish, emotional and physical distress,
11 and loss of past earnings and employment benefits. By the time of trial, the Defendants' actions
12 and omissions are anticipated to have caused the loss of future employment opportunities. Rickey
13 is entitled to compensatory damages in an amount to be proven at trial, but in excess of
14 \$3,000,000.00.

15 79. As alleged above, Assil's conduct and omissions toward Rickey were
16 committed intentionally, maliciously, wantonly, oppressively, and fraudulently with a conscious
17 disregard of Rickey's rights and with the intent to vex, injure, punish, and annoy Rickey so as to
18 cause the injuries sustained by Rickey, which acts amounted to oppression, fraud, and malice, as
19 described in California Civil Code §3294. The conduct of Assil was despicable. Rickey is
20 therefore entitled to punitive or exemplary damages in an amount sufficient to punish and make an
21 example of Assil.

22 80. By ratifying, condoning, and approving Assil's conduct and omissions
23 toward Rickey, the Entity Defendants' actions and omissions likewise were committed
24 intentionally, maliciously, wantonly, oppressively, and fraudulently with a conscious disregard of
25 Rickey's rights and with the intent to vex, injure, punish, and annoy Rickey so as to cause the
26 injuries sustained by Rickey, which acts amounted to oppression, fraud, and malice, as described
27 in California Civil Code §3294. The conduct of the Entity Defendants was despicable. Rickey is
28

1 therefore entitled to punitive or exemplary damages in an amount sufficient to punish and make an
2 example of each of the Entity Defendants.

3 **SIXTH CAUSE OF ACTION - FAILURE TO PREVENT SEXUAL HARASSMENT**

4 **(AGAINST THE ENTITY DEFENDANTS)**

5 81. Rickey incorporates by reference paragraphs 1 through 42 above, inclusive,
6 as though fully set forth here.

7 82. The Entity Defendants failed to take all reasonable steps to prevent
8 discrimination against Rickey and the harassment of Rickey from occurring, in violation of
9 California Government Code §12940(k), by engaging in the course of conduct as set forth above.
10 They failed to take any meaningful preventative action against Assil, who harassed Rickey. The
11 Entity Defendants have not complied with their own written policies addressing the issue of sex
12 discrimination and sexual harassment. Their policies were not enforced and were instead
13 disregarded.

14 83. The actions and omissions of the Entity Defendants have been a substantial
15 factor in causing Rickey to suffer humiliation, serious mental anguish, emotional and physical
16 distress, and loss of past earnings and employment benefits. By the time of trial, the Entity
17 Defendants' actions and omissions are anticipated to have caused the loss of future employment
18 opportunities. Rickey is entitled to compensatory damages in an amount to be proven at trial, but
19 in excess of \$3,000,000.00.

20 84. By ratifying, condoning, and approving Assil's conduct and omissions
21 toward Rickey, the Entity Defendants' actions and omissions likewise were committed
22 intentionally, maliciously, wantonly, oppressively, and fraudulently with a conscious disregard of
23 Rickey's rights and with the intent to vex, injure, punish, and annoy Rickey so as to cause the
24 injuries sustained by Rickey, which acts amounted to oppression, fraud, and malice, as described
25 in California Civil Code §3294. The conduct of the Entity Defendants was despicable. Rickey is
26 therefore entitled to punitive or exemplary damages in an amount sufficient to punish and make an
27 example of each of the Entity Defendants.

28 **SEVENTH CAUSE OF ACTION -**

1 **FAILURE TO CORRECT AND REMEDY SEXUAL HARASSMENT**
2 **(AGAINST THE ENTITY DEFENDANTS)**

3 85. Rickey incorporates by reference paragraphs 1 through 42 above, inclusive,
4 as though fully set forth here.

5 86. The Entity Defendants failed to take all reasonable steps to correct and
6 remedy the harassment of Rickey, in violation of California Government Code §12940(j), by
7 engaging in the course of conduct set forth above. Rickey asked the Entity Defendants, through
8 their supervisors and managers, to intervene on her behalf, but they failed to take immediate and
9 appropriate corrective action to remedy the harassment of Rickey by Assil.

10 87. The actions and omissions of the Entity Defendants have been a substantial
11 factor in causing Rickey to suffer humiliation, serious mental anguish, emotional and physical
12 distress, and loss of past earnings and employment benefits. By the time of trial, the Entity
13 Defendants' actions and omissions are anticipated to have caused the loss of future employment
14 opportunities. Rickey is entitled to compensatory damages in an amount to be proven at trial, but
15 in excess of \$3,000,000.00.

16 88. By ratifying, condoning, and approving Assil's conduct and omissions
17 toward Rickey, the Entity Defendants' actions and omissions likewise were committed
18 intentionally, maliciously, wantonly, oppressively, and fraudulently with a conscious disregard of
19 Rickey's rights and with the intent to vex, injure, punish, and annoy Rickey so as to cause the
20 injuries sustained by Rickey, which acts amounted to oppression, fraud, and malice, as described
21 in California Civil Code §3294. The conduct of the Entity Defendants was despicable. Rickey is
22 therefore entitled to punitive or exemplary damages in an amount sufficient to punish and make an
23 example of each of the Entity Defendants.

24 **EIGHTH CAUSE OF ACTION - NEGLIGENT SUPERVISION**

25 **(AGAINST THE ENTITY DEFENDANTS AND DOES 1-10)**

26 89. Rickey incorporates by reference paragraphs 1 through 42 above, inclusive,
27 as though fully set forth here.

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TENTH CAUSE OF ACTION -

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INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

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(AGAINST ALL DEFENDANTS)

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97. Rickey incorporates by reference paragraphs 1 through 42 above, inclusive,

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as though fully set forth here.

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98. Assil's conduct in battering Rickey was outrageous.

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99. The Entity Defendants, and each of them, failed to take immediate and

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appropriate remedial action to respond to Rickey's complaints about Assil. Instead, they took

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adverse employment actions against Rickey.

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100. The acts of Assil and the Entity Defendants as alleged above were extreme

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and outrageous and an abuse of authority. Assil's conduct, as ratified, condoned, and approved by

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the Entity Defendants, was intended to cause severe emotional distress, or was done with

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conscious disregard for the probability of causing such distress. This conduct exceeded the

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inherent risks of employment and was not the sort of conduct normally expected to occur in the

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workplace. Assil and the Entity Defendants and their agents abused positions of authority toward

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Rickey, and engaged in conduct intended to humiliate Rickey and to convey a message that she

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was powerless to defend her rights.

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101. The actions and omissions of the Entity Defendants have been a substantial

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factor in causing Rickey to suffer humiliation, serious mental anguish, emotional and physical

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distress, and loss of past earnings and employment benefits. By the time of trial, the Entity

23

Defendants' actions and omissions are anticipated to have caused the loss of future employment

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opportunities. Rickey is entitled to compensatory damages in an amount to be proven at trial.

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102. As alleged above, Assil's conduct and omissions toward Rickey were

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committed intentionally, maliciously, wantonly, oppressively, and fraudulently with a conscious

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disregard of Rickey's rights and with the intent to vex, injure, punish, and annoy Rickey so as to

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cause the injuries sustained by Rickey, which acts amounted to oppression, fraud, and malice, as

1 described in California Civil Code §3294. The conduct of Assil was despicable. Rickey is
2 therefore entitled to punitive or exemplary damages in an amount sufficient to punish and make an
3 example of Assil.

4 103. By ratifying, condoning, and approving Assil's conduct and omissions
5 toward Rickey, the Entity Defendants' actions and omissions likewise were committed
6 intentionally, maliciously, wantonly, oppressively, and fraudulently with a conscious disregard of
7 Rickey's rights and with the intent to vex, injure, punish, and annoy Rickey so as to cause the
8 injuries sustained by Rickey, which acts amounted to oppression, fraud, and malice, as described
9 in California Civil Code §3294. The conduct of the Entity Defendants was despicable. Rickey is
10 therefore entitled to punitive or exemplary damages in an amount sufficient to punish and make an
11 example of each of the Entity Defendants.

12 **ELEVENTH CAUSE OF ACTION -**
13 **CONSTRUCTIVE WRONGFUL DISCHARGE**
14 **(AGAINST ALL DEFENDANTS)**

15 104. Rickey incorporates by reference paragraphs 1 through 42 above, inclusive,
16 as though fully set forth here.

17 105. Assil's conduct in battering Rickey was outrageous.

18 106. The Entity Defendants, and each of them, failed to take immediate and
19 appropriate remedial action to respond to Rickey's complaints about Assil. Instead, they took
20 adverse employment actions against Rickey. After going through the motions of investigating
21 Rickey's complaint against Assil, the Entity Defendants failed and refused to impose meaningful
22 disciplinary action against Assil, making Rickey fear that Assil would be emboldened. Rickey
23 became concerned that if another incident with Assil occurred, it might not fortuitously be
24 captured by a security camera. As a result, the working conditions for Rickey in her employment
25 by Assil and the Entity Defendants were intolerable. They were unreasonably offensive to a
26 reasonable person in Rickey's position.

27 107. Assil and the Entity Defendants intentionally created or knowingly
28 permitted these working conditions.

1 108. The working conditions to which Rickey was subjected were so intolerable
2 that a reasonable person in Rickey’s position would have had no reasonable alternative except to
3 resign.

4 109. Rickey resigned from her employment because of these working conditions.

5 110. These working conditions were a substantial factor in causing Rickey harm.

6 111. The actions and omissions of the Entity Defendants have been a substantial
7 factor in causing Rickey to suffer humiliation, serious mental anguish, emotional and physical
8 distress, and loss of past earnings and employment benefits. By the time of trial, the Entity
9 Defendants’ actions and omissions are anticipated to have caused the loss of future employment
10 opportunities. Rickey is entitled to compensatory damages in an amount to be proven at trial.

11 112. As alleged above, Assil’s conduct and omissions toward Rickey were
12 committed intentionally, maliciously, wantonly, oppressively, and fraudulently with a conscious
13 disregard of Rickey’s rights and with the intent to vex, injure, punish, and annoy Rickey so as to
14 cause the injuries sustained by Rickey, which acts amounted to oppression, fraud, and malice, as
15 described in California Civil Code §3294. The conduct of Assil was despicable. Rickey is
16 therefore entitled to punitive or exemplary damages in an amount sufficient to punish and make an
17 example of Assil.

18 113. By ratifying, condoning, and approving Assil’s conduct and omissions
19 toward Rickey, the Entity Defendants’ actions and omissions likewise were committed
20 intentionally, maliciously, wantonly, oppressively, and fraudulently with a conscious disregard of
21 Rickey’s rights and with the intent to vex, injure, punish, and annoy Rickey so as to cause the
22 injuries sustained by Rickey, which acts amounted to oppression, fraud, and malice, as described
23 in California Civil Code §3294. The conduct of the Entity Defendants was despicable. Rickey is
24 therefore entitled to punitive or exemplary damages in an amount sufficient to punish and make an
25 example of each of the Entity Defendants.

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PRAYER FOR RELIEF

WHEREFORE, Rickey prays for relief and judgment against the defendants, and each of them, as follows:

On all causes of action:

1. For compensatory and actual damages in an amount to be proven at the time of trial.

On the third through seventh causes of action:

2. For reasonable attorneys' fees pursuant to California Government Code §12965(b).

On the first through seventh, tenth, and eleventh causes of action:

3. For punitive and exemplary damages in an amount to be proven at the time of trial.

On all causes of action:

- 4. For costs of the suit incurred herein; and
- 5. For such other and further relief as the Court may deem proper.

DATED: December 13, 2017

AFFELD GRIVAKES LLP

By David W. Affeld

David W. Affeld
Attorneys for Plaintiff Paula J. Rickey

JURY TRIAL DEMANDED

Rickey demands trial by jury of all issues so triable.

DATED: December 13, 2017

AFFELD GRIVAKES LLP

By David W. Affeld

David W. Affeld
Attorneys for Plaintiff Paula J. Rickey

Exhibit 1



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

December 12, 2017

Damion Robinson
Affeld Grivakes LLP 2049 Century Park East, Suite 2460
Los Angeles, California 90067

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 201712-00276406
Right to Sue: No Primary Complainant / No Primary Respondent

Dear Damion Robinson:

Attached is a copy of your 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. Also attached is a copy of your Notice of Case Closure and Right to Sue. **Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer.** You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

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



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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(800) 884-1684 | TDD (800) 700-2320
<http://www.dfeh.ca.gov> | email: contact.center@dfeh.ca.gov

December 12, 2017

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 201712-00276406
Right to Sue: No Primary Complainant / No Primary Respondent

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



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

December 12, 2017

RE: Notice of Case Closure and Right to Sue
DFEH Matter Number: 201712-00276406
Right to Sue: No Primary Complainant / No Primary Respondent

Dear ,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective December 12, 2017 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

1 Reprimanded, Denied equal pay, Denied or forced transfer, Demoted, Denied a
2 work environment free of discrimination and/or retaliation, Denied any employment
3 benefit or privilege, Failed to give equal considerations in making employment
4 decisions, Other

5 **Complainant experienced retaliation** because complainant Reported or resisted
6 any form of discrimination or harassment, Participated as a witness in a
7 discrimination or harassment claim and as a result was Terminated, Forced to quit,
8 Denied hire or promotion, Denied equal pay, Denied or forced transfer, Demoted,
9 Denied a work environment free of discrimination and/or retaliation, Denied any
10 employment benefit or privilege, Failed to give equal considerations in making
11 employment decisions.

12 3.

1 **Additional Complaint Details:** This complaint is made on information and belief per Blum v. Superior Court, 141 Cal. App. 4th 418 (2006).

2 While Complainant Paula Rickey (“Rickey”) was employed by Respondents, she was
3 discriminated against and subjected to harassment on the basis of her sex, gender, and
4 relationship status, by Respondent Kerry Kourosch Assil (“Assil”), who was her superior,
and a manager, owner, and controlling person of the other named Respondents (the
“Business Entity Respondents”).

5 The Business Entity Respondents and their management failed to prevent and protect
6 Rickey from harassment and discrimination by Assil, failed to properly investigate or
7 respond to harassment and discrimination against Rickey by Assil, and constructively
8 terminated Rickey in retaliation for her reporting harassment and discrimination by Assil.
9 On information and belief, Respondents have engaged in a systematic failure to
10 properly investigate complaints about discrimination and harassment, including sex,
11 gender, and marital status discrimination and harassment, or to take reasonable steps
12 to remedy such conduct. Respondents have ratified such conduct by, among other
13 things, constructively terminating Rickey in retaliation for her complaints about the
14 discrimination and harassment that she suffered, and ignoring Assil’s conduct. On
information and belief, Respondents also have a pattern and practice of ignoring and
ratifying such conduct by retaliating against employees who complain. Rickey is
informed and believes that these policies and practices have been implemented and
ratified by senior management. The pattern and practice of discrimination, harassment,
and retaliation affects all female employees, particularly unmarried female employees
and those who have complained to the company about discrimination, harassment,
threats and retaliation.

15 Assil has a pattern of sexual misconduct in the workplace, which, on information and
16 belief, has been known to all Respondents. Soon after Rickey, who is an unmarried
17 woman, began work as a registered nurse for Respondents, Assil told another
18 supervisory employee of sex acts that he wished to perform on Rickey. Assil also had
19 one or more sexual affairs with female subordinates, including, on information and
belief, relationships involving quid-pro-quo arrangements. Respondents’ management
was aware of this misconduct, but did not take meaningful steps to remedy or prevent
the conduct.

20 On July 17, 2017, Assil approached Rickey in the workplace outside of an operating
21 room, and unprovoked, shoved Rickey, a petite woman, violently in the back of her
22 head. On information and belief, he would not have done this had Rickey been a man
or a married woman. As Rickey walked away from Assil, Assil chased her down, seized
her by the arm, and exclaimed “I know I can do this because I know you like the abuse.”

1 Rickey promptly reported this to management of the Business Entity Respondents in
2 August 2017, including providing a video recording of the incident. On information and
3 belief, Respondents did nothing for more than 30 days, when Respondents undertook a
4 perfunctory "investigation," which was not designed to remedy Assil's conduct or protect
5 Rickey and other employees from similar conduct, but to give the appearance that
6 something was being done. This "investigation" did not result in any meaningful action
7 to either punish Assil or prevent future harassment and discrimination. The Business
8 Entity Respondents refused to tell Rickey about what, if any, steps they took as a result
9 of this "investigation," and Rickey is informed and believes that Respondents took no
10 meaningful steps to punish Assil or to prevent similar conduct.

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Following the incident and Rickey reporting it, however, Respondents changed Rickey's
work hours, and moved her to a different floor and practice group when Assil was
present, while Assil continues to operate surgery centers affiliated with Respondents,
and has the same hours, duties, and privileges as before. These punitive measures
against Rickey amount to constructive termination, and a ratification and approval of
Assil's conduct. On information and belief, Respondents took these steps against
Rickey in retaliation for her reporting discrimination and harassment by Assil.

1 VERIFICATION

2 I, **Damion Robinson**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The same is true of my own
4 knowledge, except as to those matters which are therein alleged on information and
belief, and as to those matters, I believe it to be true.

5 On December 12, 2017, I declare under penalty of perjury under the laws of the State
6 of California that the foregoing is true and correct.

7 **Los Angeles, California**

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