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ENDORSED
FILED
San Francisco County Superior Court

SEP 25 2014

CLERK OF THE COURT

BY: DAVID YUEN
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10 SANDY HOLDER,
11 Plaintiff,

12 V.

13 BURR PILGER MAYER, INC. and DOES 1-
14 50, inclusive
15 Defendants.

Case No.:

Hon.
Dept.

CGC-14-541841

COMPLAINT FOR DAMAGES:

1. Retaliatory Discharge
[LABOR CODE §1102.5]
2. Wrongful Termination in
Violation of Public Policy
3. Gender Discrimination
[GOVERNMENT CODE §12940(a)]
4. Failure to Prevent Discrimination
and Harassment
[GOVERNMENT CODE §12940(k)]
5. Retaliation (FEHA)
[GOVERNMENT CODE §12940(h)]
6. Intentional Infliction of
Emotional Distress
7. Negligent Infliction of
Emotional Distress
8. Harassment
[GOVERNMENT CODE §12940(j)]
9. Breach of Contract
10. Breach of Covenant of Good
Faith and Fair Dealing

Complaint Filed:
Trial Date:

BY FAX

ADISHIAN LAW GROUP, P.C.

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COMES NOW Plaintiff SANDY HOLDER (“Plaintiff” or “Sandy”) and alleges the following, upon information and belief:

PARTIES

1. Sandy was, at all times relevant to this complaint, an individual, employed by Defendant BURR PILGER MAYER, INC. (“BPM”), while residing in the State of California.

2. Defendant BURR PILGER MAYER, INC. (“BPM”) is, and at all times herein mentioned was, a California corporation licensed to do and doing business in the State of California with its principal place of business located at 600 California Street, Suite 600, San Francisco, California 94108.

3. Defendant BPM employs more than 5 persons and is an employer as defined in the California Fair Employment and Housing Act (“FEHA”).

4. Plaintiff is informed and believes and thereon alleges that, at various times herein mentioned, each of the defendants was the agent, either direct, ostensible or otherwise, servant, representative of employee of each of the remaining defendants and, in engaging in certain acts hereinafter alleged, was acting within the course and scope of said agency, service, representation, or employment and materially assisted the other defendants.

Plaintiff is further informed and believes and thereon alleges that each of the defendants ratified the acts of the remaining defendants.

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate or otherwise, of defendants sued herein as Does 1 through 50, inclusive, and therefore sues said defendants by such fictitious names. Plaintiff is informed and believes and, upon such information and belief, alleges that each of the defendants designated as a Doe is legally responsible in some manner for the events and happenings referred to herein and caused the damages proximately thereby to Plaintiff as hereinafter alleged. Plaintiff will seek leave of court to amend this complaint to show the true names and capacities of said Doe defendants when same have been ascertained.

1 6. Sandy is one of the top professional service business development executives in
2 Northern California.

3 7. Prior to joining BPM, she was a top performer at PricewaterhouseCoopers (PwC)
4 and worked at other professional service firms such as Grant Thornton.

5 8. In the Northern California tax, accounting and consulting marketplace, Sandy is a
6 “known-name” with an established track record of rapidly growing the client base and
7 revenue for her employers.

8 9. BPM was established in 1986. Its website and company brochures trumpet it as **the**
9 **largest California-based accounting and consulting firm, employing approximately**
10 **400 people.**

11 10. As an “up and coming” firm, BPM desperately wanted Sandy to bring her talents to
12 grow their business.

13 **STATEMENT OF FACTS**

14 11. On or about December 19, 2012, BPM, Company Founder & CEO Curtis Burr
15 (“Burr”), presented Sandy with a written offer of employment for the position of Business
16 Development Senior Director. (“**December 19, 2012 Contract**”).

17 12. Sandy accepted the offer on December 19th, 2012.

18 13. That contract provided in relevant part that she would “*receive a bonus on overall*
19 *production of revenue for the San Jose and Palo Alto offices. This bonus will be paid in*
20 *January of each year for the prior year.*”

21 14. Sandy commenced work on January 7, 2013.

22 15. Curtis Burr (“Burr”) is a Shareholder and holds the titles of Founder & CEO.

23 16. Richard Bellucci (“Bellucci”) is a Shareholder, Chairman of the Board and the
24 Leader of the SEC Group.

25 17. Michael S. Spence (“Spence”) is a Shareholder and holds the title of Managing
26 Shareholder of the San Jose office.

27 18. Beth Baldwin (“Baldwin”) is the Director of HR for BPM.

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1 19. On or about May 10, 2013, about five months after she started, Burr presented
2 Sandy with a new document that attempted to: (a) change the due date of her bonus from
3 January to April, (b) change the bonus payment from lump sum to being spread out over 12
4 month and (c) add new conditions to the payment of the bonus.

5 20. Under duress and coercion, Sandy signed the May 10, 2013 document two months
6 later on July 11, 2013.

7 21. Sandy's performance was of such a high caliber during 2013 that, pursuant to the
8 terms of her written employment contract, BPM owed her **\$80,000.00**.

9 22. BPM made no bonus payment to Sandy in January 2014.

10 23. BPM made no bonus payment to Sandy in February 2014.

11 24. BPM made no bonus payment to Sandy in March 2014.

12 25. On or around March 15, 2014, Spence called Sandy into his office for a meeting. At
13 that meeting Spence said BPM "wanted to pay her what's fair", clearly indicating that BPM
14 was again not going to honor the contract.

15 26. Sandy was stunned and left the room.

16 27. Shortly after the Spence meeting, Baldwin called to "see how Sandy was doing"
17 after the Spence meeting.

18 28. Within a week of the Spence meeting, Burr called Sandy for a face to face meeting
19 in San Francisco.

20 29. On or around March 20, 2014, Sandy met with Burr in his San Francisco office. To
21 her surprise, Baldwin was there as well. Burr reiterated that BPM was only going to pay
22 her what it "deemed fair" irrespective of any contract.

23 30. At this meeting Burr presented Sandy with yet another revised document, which has
24 a shocking admission on its face: "We have made a change to Sandy's first year payout.
25 We will pay her the total bonus based on the 2013 cash receipts for the wins that she
26 initiated or supported at BPM."

27 31. This change was yet another "moving of the goal line" which had the intended effect
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1 of drastically cutting Sandy's bonus *ex post facto*, all to her detriment and all to BPM's
2 gain.

3 32. Further, BPM continued to refuse to pay Sandy her bonus unless and until she
4 signed this March 2014 document.

5 33. Under duress and coercion, Sandy signed the March 2014 document.

6 34. BPM promptly paid her \$20,000, instead of the \$80,000 that she was rightfully
7 owed, and that should have been paid in January 2014.

8 35. Plaintiff complained through proper channels internally, however, BPM did nothing
9 to investigate or re-assess Sandy's commission structure based on her complaint.

10 36. On or about June 5, 2014, as part of her business development duties, Sandy hosted
11 a "CFO Wine and Dine" event with 16 total attendees, including five BPM partners and
12 shareholders: Chairman of the Board Bellucci and Spence as well as other shareholders Jim
13 Martin, Norm Bustamante, and Barry Wen.

14 37. Expenditures for the "CFO Wine and Dine" event were approved and funded by
15 BPM as the event's objective was to solicit and obtain business for BPM. Due to the high
16 caliber of the guests at the event and the profitability to BPM from the potential business
17 that the event was anticipated to engender, wine was procured at a cost to BPM of
18 \$2,500.00 per case.

19 38. At the end of the successful "CFO Wine and Dine" event, Chairman Bellucci
20 demanded to take home with him a full, unopened case of wine on the ground that he was
21 "entitled" to it. Plaintiff objected as she considered the wine the property of BPM and its
22 multiple shareholders and that Bellucci's "grab" of the case of wine improper. Sandy
23 resolved the stand-off with Bellucci by offering him a bottle of wine which was ear-marked
24 for one of the event's invited guests, but was available due to the attendee's last-minute
25 cancellation.

26 39. One of the invited guests at the "CFO Wine and Dine" event was a close personal
27 friend of Sandy's who, based on her business association with him, had become a client of
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1 BPM and who, to Plaintiff's distress, witnessed the events at the event described herein
2 which humiliated Sandy.

3 40. When Sandy returned to the office on or about June 10th, Claudia Martin, the office
4 Manager for San Jose, approached Sandy and said: **"What happened between you and**
5 **Bellucci? He has been stomping around like a raging bull."**

6 41. On or about June 12th, she personally met with **Bellucci who voiced his continuing**
7 **anger at her "lack of respect for his position"** in denying him the case of wine at the
8 June 6th event. Plaintiff expressed her apologies, and Bellucci stated **"it's about respect."**

9 42. Thereafter, based on Bellucci's intimidating, threatening, condescending and
10 dismissive conduct towards Sandy, she sought out a meeting with Spence, to report the
11 events which occurred since the June 6th "CFO Wine and Dine" event.

12 43. At the meeting with Spence, Sandy explained to Spence about Bellucci's conduct at
13 the CFO Wine and Dine, and Bellucci's intimidating, threatening, condescending and
14 dismissive conduct towards her since that day.

15 44. At the next Board meeting, Bellucci "discussed" Sandy's future with the firm with
16 the BPM Board.

17 45. On or about June 19, 2014, less than two weeks after the CFO Wine and Dine,
18 Sandy was called into Spence's office and fired with Baldwin as a witness.

19 46. At the June 19th termination meeting, Spence informed Sandy that the reason for her
20 termination was that she was allegedly "not a good fit with the SEC team" – the SEC team
21 led by Bellucci.

22 47. Prior to June 5, 2014, Sandy was such a high-producing member of the SEC team
23 that she was charged with revenue across multiple lines of service and had achieved
24 \$800,000 in revenue for BPM as of May 23, 2014, not even six months into the year.

25 48. Plaintiff was not terminated for the disingenuous reason that she was not a "good
26 fit" for the SEC team, but because they did not want to pay her and she was a female who
27 refused Bellucci's demands that he be able to take corporate property as his own.
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1 49. At the time of her termination, Sandy was owed compensation from BPM which
2 remains due and owing, but unpaid, including but not limited to: 1) employee referral
3 bonus for the recruitment of Kayvon Namvar which was payable on June 30, 2014; 2)
4 additional commission compensation through May 23, 2014, in the sum of \$40,000.00; and
5 revenue generation as a result of Sandy’s efforts as reflected in signed Engagement Letters
6 in a sum not less than \$200,000.00.

7 50. On or about July 14, 2014, Plaintiff filed a complaint with the Department of Fair
8 Employment and Housing against Defendant BPM and Bellucci as co-Respondent.

9 51. On or about July 14, 2014, Plaintiff received a Right to Sue Letter from DFEH as to
10 Defendant BPM, a true and correct copy of which is attached hereto as **Exhibit 1** and
11 incorporated herein by reference.

12 52. On or about July 15, 2014, BPM hired a male, Eric Harrison, to replace Sandy.

13 **FIRST CAUSE OF ACTION**

14 **(For Retaliatory Discharge pursuant to *Labor Code §1102.5***
15 **Against Defendant BPM and Does 1 through 50, inclusive)**

16 53. Plaintiff realleges and incorporates herein by reference all of the allegations set
17 forth in paragraphs 1 through 52 as though fully set forth herein.

18 54. Plaintiff invokes *California Labor Code §1102.5*, an anti-retaliation provision,
19 which provides that no employer shall prevent an employee who reasonably believes that a
20 violation of laws has occurred from reporting on the unlawful business practices. *Labor*
21 *Code §1102.5* specifically protects employees from retaliation who disclose information
22 regarding alleged violations “to a person with authority over the employee or another
23 employee who has authority to investigate, discover or correct the violation or
24 noncompliance.”

25 55. As alleged herein, Defendant BPM is charged with retaliating against Plaintiff
26 because she prevented Bellucci’s attempt to misappropriate company property at a
27 company-sponsored event, and thereafter reported Bellucci’s conduct to her direct
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1 supervisor and BPM shareholder, Spence.

2 56. Instead of investigating Plaintiff's whistleblower complaints and taking action to
3 preserve the rights of BPM shareholders and other officers and directors in light of
4 Bellucci's conduct, BPM instead retaliated against Plaintiff for her whistleblowing
5 activities.

6 57. As a proximate result of Defendant's retaliation, Plaintiff has sustained and
7 continues to sustain substantial loss in past, present and future earnings, career
8 opportunities, bonuses and other employment benefits in amounts to be proven at trial.
9 Plaintiff's damages include all consequential, general and special economic damages in
10 amounts to be proven at trial.

11 58. As a further proximate result of Defendant's retaliatory conduct, Plaintiff has
12 suffered and continues to suffer humiliation, severe emotional distress and mental and
13 physical pain and anguish, all to her damage in a sum according to proof.

14 **SECOND CAUSE OF ACTION**

15 **(For Wrongful Termination in Violation of Public Policy**

16 **Against Defendant BPM and Does 1 through 50, inclusive)**

17 59. Plaintiff realleges and incorporates herein by reference all of the allegations set
18 forth in paragraphs 1 through 59 as though fully set forth herein.

19 60. On June 19, 2014, Plaintiff was a 52-year old female.

20 61. At all times herein mentioned, there existed fundamental and established California
21 public policies, as codified by case law and statute, including but not limited to: (a)
22 *California Government Code* §12940(a); (b) *Labor Code* §1102.5; (c) *California*
23 *Government Code* §12940(h); (d) *California Government Code* §12940(k); (e) *Labor Code*
24 §200 *et. seq.* and (f) prohibitions against an employer terminating an employee to avoid
25 paying wages.

26 62. On or about June 19, 2014, Defendant BPM violated the California public policies
27 by wrongfully terminating Sandy on the basis of her gender; by terminating Sandy in
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1 retaliation for her whistleblower activities; for terminating Sandy in retaliation for her
2 opposition to BPM's discriminating and harassing conduct; by failing to prevent
3 discrimination and harassment toward Sandy and by terminating Sandy in order to avoid
4 paying her commissions owed.

5 63. As a proximate result of Defendant's wrongful termination in violation of public
6 policy of the State of California, Plaintiff has sustained and continues to sustain substantial
7 loss in past, present and future earnings, career opportunities, bonuses and other
8 employment benefits in amounts to be proven at trial. Plaintiff's damages include all
9 consequential, general and special economic damages in amounts to be proven at trial.

10 64. As a further proximate result of Defendant's wrongful conduct, Plaintiff has
11 suffered and continues to suffer humiliation, severe emotional distress and mental and
12 physical pain and anguish, all to her damage in a sum according to proof.

13 65. The foregoing acts of Defendant were oppressive, malicious, and despicable, and
14 Plaintiff is, therefore, entitled to an award of punitive damages against Defendant in an
15 amount to be proven at trial.

16 **THIRD CAUSE OF ACTION**

17 **(For Gender Discrimination Against Defendant BPM** 18 **and Does 1 through 50, inclusive)**

19 66. Plaintiff realleges and incorporates herein by reference all of the allegations set
20 forth in paragraphs 1 through 66 as though fully set forth herein.

21 67. This cause of action is brought pursuant to *Government Code* §12940(a) which
22 prohibits discrimination against a person in terms, conditions or privileges of employment
23 on the basis of gender, and the corresponding regulations of the California Fair
24 Employment and Housing Commission, or its successor.

25 68. At all times relevant herein, Defendant BPM regularly employed five or more
26 persons, bringing said Defendant employer within the provision of *California Government*
27 *Code* §12900 et seq., prohibiting employers or their agents from discriminating against
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1 employees on the basis of gender.

2 69. Plaintiff is a member of a protected class within the meaning of the aforementioned
3 *Government Code* sections. At all relevant times herein, Plaintiff satisfactorily performed
4 her duties and responsibilities as expected by Defendant and, in fact, exceeded those
5 expectations by her performance and generation of profitability for employer BPM.

6 70. Plaintiff is informed and believes and, based thereon, alleges that Plaintiff's position
7 was filled within two weeks of her termination by a male whose new title is "Chief Growth
8 Officer", with the same duties as Sandy.

9 71. Plaintiff alleges Defendant BPM wrongfully retaliated against her, discriminated
10 against her and terminated her on the basis of her gender.

11 72. As a proximate result of Defendant's discriminatory conduct, Plaintiff has sustained
12 and continues to sustain substantial loss in past, present and future earnings, career
13 opportunities, bonuses and other employment benefits in amounts to be proven at trial.
14 Plaintiff's damages include all consequential, general and special economic damages in
15 amounts to be proven at trial.

16 73. As a further proximate result of Defendant's discriminatory conduct, Plaintiff has
17 suffered and continues to suffer humiliation, severe emotional distress and mental and
18 physical pain and anguish, all to her damage in a sum according to proof.

19 74. The foregoing acts of Defendant were oppressive, malicious, and despicable, and
20 Plaintiff is, therefore, entitled to an award of punitive damages against Defendant in an
21 amount to be proven at trial.

22 **FOURTH CAUSE OF ACTION**

23 **(For Failure to Prevent Discrimination and Harassment**

24 **Against Defendant BPM and Does 1 through 50, inclusive)**

25 75. Plaintiff realleges and incorporates herein by reference all of the allegations set
26 forth in paragraphs 1 through 75 as though fully set forth herein.

27 76. Defendant BPM had a statutory duty, pursuant to *California Government Code*
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1 §12940(k) to take all reasonable steps necessary to prevent discrimination and harassment
2 from occurring in the workplace.

3 77. Defendant BPM breached its statutory duty of care to Plaintiff by failing to take all
4 reasonable steps necessary to prevent the discrimination experienced by Plaintiff and to
5 prevent the discrimination and harassment she suffered at the hands of Bellucci, ultimately
6 resulting in her wrongful termination.

7 78. As a proximate result of Defendant’s discriminatory and harassing conduct, Plaintiff
8 has sustained and continues to sustain substantial loss in past, present and future earnings,
9 career opportunities, bonuses and other employment benefits in amounts to be proven at
10 trial. Plaintiff’s damages include all consequential, general and special economic damages
11 in amounts to be proven at trial.

12 79. As a further proximate result of Defendant’s discriminatory conduct, Plaintiff has
13 suffered and continues to suffer humiliation, severe emotional distress and mental and
14 physical pain and anguish, all to her damage in a sum according to proof.

15 80. The foregoing acts of Defendant were oppressive, malicious, and despicable, and
16 Plaintiff is, therefore, entitled to an award of punitive damages against Defendant in an
17 amount to be proven at trial.

18 **FIFTH CAUSE OF ACTION**

19 **(For Unlawful Retaliation in Employment Against**
20 **Defendant BPM and Does 1 through 50, inclusive)**

21 81. Plaintiff realleges and incorporates herein by reference all of the allegations set
22 forth in paragraphs 1 through 81 as though fully set forth herein.

23 82. California law prohibits retaliation in the workplace. The Fair Employment and
24 Housing Act (FEHA) protects workers who oppose discriminatory and wrongful
25 employment practices. *Government Code* §12940(h) makes it unlawful for “any person” to
26 retaliate against an employee who opposes discrimination in the workplace.

27 83. As alleged herein, Defendant BPM is charged with retaliating against Plaintiff after
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1 Sandy opposed the wrongful conduct of Chairman Bellucci and challenged his attempt to
2 misappropriate company property. Within days of the “CFO Wine and Dine” event on June
3 6th and Plaintiff’s report of what she reasonably believed to be Bellucci’s wrongful
4 conduct, she was fired.

5 84. Defendant BPM fabricated a reason for Plaintiff’s termination and, in reality, fired
6 Sandy because Bellucci was incensed that a female would “**disrespect**” him by preventing
7 him from taking Company property for himself.

8 85. As a proximate result of Defendant’s retaliatory conduct, Plaintiff has sustained and
9 continues to sustain substantial loss in past, present and future earnings, career
10 opportunities, bonuses and other employment benefits in amounts to be proven at trial.
11 Plaintiff’s damages include all consequential, general and special economic damages in
12 amounts to be proven at trial.

13 86. As a further proximate result of Defendant’s retaliatory conduct, Plaintiff has
14 suffered and continues to suffer humiliation, severe emotional distress and mental and
15 physical pain and anguish, all to her damage in a sum according to proof.

16 87. The foregoing acts of Defendant were oppressive, malicious, and despicable, and
17 Plaintiff is, therefore, entitled to an award of punitive damages against Defendant in an
18 amount to be proven at trial.

19 **SIXTH CAUSE OF ACTION**

20 **(For Intentional Infliction of Emotional Distress Against** 21 **Defendant BPM and Does 1 through 50, inclusive)**

22 88. Plaintiff realleges and incorporates herein by reference all of the allegations set
23 forth in paragraphs 1 through 88 as though fully set forth herein.

24 89. The actions of Defendant BPM in causing Plaintiff’s employment to be terminated
25 in contravention of public policy as described herein were intentional, extreme, outrageous
26 and were done with the intent to cause emotional distress or with reckless disregard of the
27 probability of causing Plaintiff emotional distress.

1 90. Defendant BPM knew, or should have known, of Plaintiff's susceptibility to
2 emotional distress based on the outrageous conduct as described herein which surrounded
3 and led to the unjustified, abrupt and fabricated termination of Plaintiff's employment
4 which was, in reality, based solely on pique.

5 91. As a proximate result of Defendant's wrongful termination of her, Plaintiff has
6 suffered and will continue to suffer severe and serious emotional and physical distress, all
7 to Plaintiff's damage in an amount to be proven at trial.

8 92. As a further proximate result of Defendant's wrongful termination of her, Plaintiff
9 has sustained and continues to sustain substantial loss in past, present and future earnings,
10 career opportunities, bonuses and other employment benefits, all to Plaintiff's damage in an
11 amount to be proven at trial.

12 93. The conduct of Defendant BPM in terminating Plaintiff's employment without good,
13 just or legitimate cause and in violation of California public policy was done in conscious
14 disregard of the rights of Plaintiff. As a consequent of the aforesaid oppressive, malicious
15 and despicable conduct, Plaintiff is entitled to an award of exemplary and punitive damages
16 in an amount to be proven at trial.

17 **SEVENTH CAUSE OF ACTION**

18 **(For Negligent Infliction of Emotional Distress Against**
19 **Defendant BPM and Does 1 through 50, inclusive)**

20 94. Plaintiff realleges and incorporates herein by reference all of the allegations set
21 forth in paragraphs 1 through 94 as though fully set forth herein.

22 95. Defendant BPM engaged in negligent conduct by terminating Plaintiff in
23 contravention of public policy as described herein with reckless disregard of the probability
24 of causing Plaintiff emotional distress.

25 96. Defendant BPM knew, or should have known, of Plaintiff's susceptibility to
26 emotional distress based on the negligent conduct as described herein which surrounded
27 and led to the unjustified, abrupt and fabricated termination of Plaintiff's employment
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1 which was, in reality, based solely on pique.

2 97. As a proximate result of Defendant’s wrongful termination of her, Plaintiff has
3 suffered and will continue to suffer severe and serious emotional and physical distress, all
4 to Plaintiff’s damage in an amount to be proven at trial.

5 98. As a further proximate result of Defendant’s wrongful termination of her, Plaintiff
6 has sustained and continues to sustain substantial loss in past, present and future earnings,
7 career opportunities, bonuses and other employment benefits, all to Plaintiff’s damage in an
8 amount to be proven at trial.

9 **EIGHTH CAUSE OF ACTION**

10 **(For Harassment Against Defendants BPM and Does 1 through 50, inclusive)**

11 99. Plaintiff realleges and incorporates herein by reference all of the allegations set
12 forth in paragraphs 1 through 99 as though fully set forth herein.

13 100. This cause of action is brought pursuant to *Government Code* §12940(j) which
14 prohibits harassment in the workplace which creates a hostile work environment in terms,
15 conditions or privileges of employment, and the corresponding regulations of the California
16 Fair Employment and Housing Commission, or its successor.

17 101. At all times relevant herein, Defendant BPM regularly employed five or more
18 persons, bringing said Defendant employer within the provision of *California Government*
19 *Code* §12900 et seq., prohibiting employers or their agents from engaging in harassing
20 conduct which creates a hostile work environment.

21 102. As described herein, Plaintiff was subjected to harassing conduct by Bellucci in his
22 supervisory capacity which was pervasive and severe, culminating in Plaintiff’s
23 unjustified, abrupt and fabricated termination which Bellucci, in his capacity as SEC group
24 leader and BPM’s Chairman of the Board, manipulated and caused to occur, all to
25 Plaintiff’s detriment.

26 103. As a proximate result of the harassing conduct of Defendant BPM and Bellucci,
27 Plaintiff has sustained and continues to sustain substantial loss in past, present and future
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1 earnings, career opportunities, bonuses and other employment benefits in amounts to be
2 proven at trial. Plaintiff's damages include all consequential, general and special economic
3 damages in amounts to be proven at trial.

4 104. As a further proximate result of the harassing conduct of Defendant BPM and
5 Bellucci, Plaintiff has suffered and continues to suffer humiliation, severe emotional
6 distress and mental and physical pain and anguish, all to her damage in a sum according to
7 proof.

8 105. The foregoing acts of Defendants were oppressive, malicious, and despicable, and
9 Plaintiff is, therefore, entitled to an award of punitive damages against Defendants in an
10 amount to be proven at trial.

11 **NINTH CAUSE OF ACTION**

12 **(For Breach of Contract Against BPM and Does 1 through 50, inclusive)**

13 106. Plaintiff realleges and incorporates herein by reference all of the allegations set
14 forth in paragraphs 1 through 106 as though fully set forth herein.

15 107. On or about December 19, 2012, Plaintiff and Defendant BPM entered into a written
16 contract relating to the terms of Plaintiff's compensation, both the basis therefor and the
17 time frame in which commission would be calculated and paid. A true and correct copy of
18 Defendant's written contract of employment with Plaintiff is attached hereto as **Exhibit 2**
19 and incorporated herein by reference.

20 108. The terms of said contract relating to Plaintiff's compensation were as follows: 1)
21 Base yearly salary of \$175,000; 2) Bonus based on *overall production of revenue* for the
22 San Jose and Palo Alto offices; 3) Payment of bonus in January of each year for the prior
23 year; and 4) Benefit package.

24 109. On or about May 10, 2013, Defendant attempted to modify the compensation terms
25 of its contract with Plaintiff by changing the bonus pay-out date to April of each year over
26 a nine-month span. The calculation for Plaintiff's bonus remained the same and was based
27 on her *overall production of revenue* for the San Jose and Palo Alto offices. Under duress,
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1 Plaintiff signed the alleged modification on July 11, 2013.

2 110. On or about March 20, 2014, BPM attempted to renegotiate Plaintiff's bonus
3 structure, this time changing the basis on which Plaintiff's bonus would be calculated and
4 forcing her, based on the new calculation, to accept a reduced bonus of \$20,000, rather than
5 \$80,000 that should have been paid to her pursuant to the terms of the December 19, 2012,
6 contract.

7 111. The purported modification Plaintiff signed under duress in July 2013 contained the
8 same calculation model, i.e. *overall production of revenue*, as was contemplated by the
9 parties in the original December 2012 contract and mandated that Plaintiff receive the same
10 monetary bonus, albeit on a delayed basis.

11 112. Defendant BPM has materially breached the contract entered into between the
12 parties on December 19, 2012, by 1) Failing to compensate Plaintiff based on the overall
13 production of revenue for the San Jose and Palo Alto offices for the year 2013; and 2)
14 Failing to pay Plaintiff's bonus for the year 2013 in January 2014.

15 113. Plaintiff has duly performed all covenants and conditions on her part to be
16 performed under said contract, excepting for those conditions and/or covenants from which
17 she is excused from performance as a result of the acts and/or omissions of Defendant
18 BPM.

19 114. As a direct and proximate result of the foregoing breaches of Defendant BPM,
20 Plaintiff has suffered damages in a sum which is presently unascertainable. Plaintiff will
21 seek leave of Court to amend this Complaint to set forth the full amount of said damages
22 when ascertained.

23 **TENTH CAUSE OF ACTION**

24 **(For Breach of Implied Covenant of Good Faith and Fair Dealing**
25 **Against Defendant BPM and Does 1 through 50, inclusive)**

26 115. Plaintiff realleges and incorporates herein by reference all of the allegations set
27 forth in paragraphs 1 through 115 as though fully set forth herein.

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1 116. Implicit in the written agreement of December 19, 2012, between Plaintiff and
2 Defendant BPM, relating to the basis for the calculation of Plaintiff's bonus and the time
3 frame in which Plaintiff's bonus would be paid is the covenant of good faith and fair
4 dealing.

5 117. Defendant BPM has materially breached the covenant of good faith and fair dealing
6 by its deliberate and intentional conduct as described herein, thereby depriving Plaintiff of
7 the benefit of the agreement between the parties pertaining to the structure and pay-out of
8 Plaintiff's bonus, including but not limited to:

- 9 • Failing to compensate Plaintiff based on the overall production of revenue
10 for the San Jose and Palo Alto offices for the year 2013;
- 11 • Shifting the promised time for payment from January to April;
- 12 • Shifting the promised form of payment from lump sum to spreading it out
13 over 9 months after it was earned;
- 14 • Unilaterally changing Plaintiff's bonus when it was due because BPM felt
15 that paying her according to the contract, "would not be fair".
- 16 • Failing to accurately and fully pay Plaintiff's bonus for the year 2013 in
17 January 2014, or April 2014, or at any time since;
- 18 • Failing to pay Plaintiff's bonus for the year 2014, upon her termination, or at
19 any time since her termination.

20 118. As a direct and proximate result of the foregoing breaches by Defendant BPM,
21 Plaintiff has suffered damages in a sum which is presently unascertainable. Plaintiff will
22 seek leave of Court to amend this Complaint to set forth the full amount of said damages
23 when ascertained.

24 **DEMAND FOR TRIAL BY JURY**

25 Plaintiff hereby demands a trial by jury.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff SANDY HOLDER prays for judgment as follows:

FOR THE FIRST CAUSE OF ACTION:

1. Compensatory damages, including loss of wages (front and back pay), career opportunities, benefits and other opportunities of employment;
2. Special damages in a sum to be proven at trial;
3. Punitive damages in a sum to be proven at trial;
4. Attorney’s fees according to proof;
5. Interest, including pre-judgment interest, thereon at the legal rate, including but not limited to *Civil Code* §3291;
6. Civil penalties for each violation pursuant to *Labor Code* §1102.5(f);
7. Costs of suit incurred herein; and
8. Such other and further relief as to the Court may seem just and proper.

FOR THE SECOND THROUGH FIFTH AND EIGHTH CAUSES OF ACTION:

1. Compensatory damages, including loss of wages (front and back pay), career opportunities, benefits and other opportunities of employment;
2. Special damages in a sum to be proven at trial;
3. Punitive damages in a sum to be proven at trial;
4. Interest, including pre-judgment interest, thereon at the legal rate, including but not limited to *Civil Code* §3291;
5. Attorney’s fees according to proof, pursuant to *Government Code* §12965, or other applicable statutes or contracts;
6. Costs of suit incurred herein; and
7. Such other and further relief as to the Court may seem just and proper.

FOR THE SIXTH CAUSE OF ACTION:

1. General damages in a sum to be proven at trial;
2. Special damages including loss of income and benefits and medical expenses;

- 3. Interest, including pre-judgment interest, thereon at the legal rate, including but not limited to *Civil Code* §3291;
- 4. Punitive damages in a sum to be proven at trial;
- 5. Costs of suit incurred herein; and
- 6. Such other and further relief as to the Court may seem just and proper.

FOR THE SEVENTH CAUSE OF ACTION:

- 1. General damages in a sum to be proven at trial;
- 2. Special damages including loss of income and benefits and medical expenses;
- 3. Interest, including pre-judgment interest, thereon at the legal rate, including but not limited to *Civil Code* §3291;
- 4. Costs of suit incurred herein; and
- 5. Such other and further relief as to the Court may seem just and proper.

FOR THE NINTH CAUSE OF ACTION:

- 1. Compensatory damages according to proof;
- 2. Interest thereon at the legal rate;
- 3. Attorney's Fees pursuant to *Labor Code* §218.5
- 4. Costs of suit incurred herein; and
- 5. Such other and further relief as to the Court may seem just and proper.

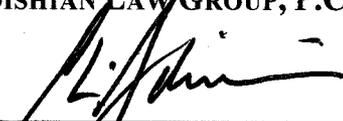
FOR THE TENTH CAUSE OF ACTION:

- 1. Compensatory damages according to proof;
- 2. Interest thereon at the legal rate;
- 3. Costs of suit incurred herein; and
- 4. Such other and further relief as to the Court may seem just and proper.

Dated: 9/25/14

ADISHIAN LAW GROUP, P.C.

By:



 Christopher M. Adishian
 Attorneys for Plaintiff Sandy Holder

EXHIBIT 1

EXHIBIT 1



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR PHYLLIS W. CHENG

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TTY 800-700-2320
www.dfeh.ca.gov

Jul 14, 2014

RE: Notice of Filing of Discrimination Complaint

DFEH Matter Number: 296828-115245

Right to Sue: Holder / Burr Pilger Mayer, Inc.

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

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Co-Respondents:

Richard Bellucci
60 South Market Street, Suite 800
San Jose California CA

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Additional Complaint Details:

The following is based on information and belief, and Complainant reserves the right to amend as new facts come to light during discovery. I believe I was fired due to my gender because I complained to my male bosses about their failure to pay wages in the amount promised. I believe I was fired due to my gender because I complained to my male bosses about their failure to pay wages on the date promised. I believe I was fired on the basis of my gender because I complained to my male bosses about being coerced to accept a lower amount of compensation and coerced into signing a less favorable contract after my wages became due. I believe I was retaliated against on the basis of my gender because I complained to my male bosses about inappropriate conduct with respect to company property by the Chairman of the firm, Rich Bellucci. I believe that I was harassed on the basis of my gender by the firm Chairman Rich Bellucci because I followed Company policy and properly opposed his taking certain company property, in front of a firm client, whereas a male partner who did not adhere to Company policy and did not oppose his taking of certain company property was not terminated. I believe that BPM also failed to prevent the discrimination, harassment and/or retaliation after I complained to several partners in the firm before my termination.

1 VERIFICATION

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

5 On Jul 14, 2014, I declare under penalty of perjury under the laws of the State of California that the foregoing is
6 true and correct.

7 **Gilroy, CA**
8 **Sandy Holder**
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DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR PHYLLIS W. CHENG

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TTY 800-700-2320
www.dfeh.ca.gov

Jul 14, 2014

Sandy Holder
2471 Bridle Path Drive
Gilroy California 95020

RE: Notice of Case Closure and Right to Sue

DFEH Matter Number: 296828-115245

Right to Sue: Holder / Burr Pilger Mayer, Inc.

Dear Sandy Holder,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective Jul 14, 2014 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 visit 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



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

DIRECTOR PHYLLIS W. CHENG

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TTY 800-700-2320
www.dfeh.ca.gov

Enclosures

cc: Richard Bellucci

EXHIBIT 2

EXHIBIT 2



BURR PILGER MAYER

600 California Street, Suite 1300, San Francisco, CA 94108

Phone 415.421.5757 Fax 415.288.6288 Email bpm@bpmcpa.com Web bpmcpa.com

December 19, 2012

Sandy Holder
2471 Bridle Path Drive
Gilroy, CA 95020

Dear Sandy:

On behalf of Burr Pilger Mayer, Inc., I am pleased to offer you the position of Business Development Senior Director in the BPM San Jose office, reporting to Mike Spence, Assurance Partner and San Jose office Partner-in-Charge. Your start date will be on January 7, 2013.

Specific terms of this offer are as follows:

- Your gross monthly salary will be \$14,583.33 which is \$175,000.00 on an annualized basis, minus applicable taxes.
- You will receive a bonus based on overall production of revenue for the San Jose and Palo Alto offices. This bonus will be paid in January of each year for the prior year. You must be an active employee in good standing at the time of pay-out.
- You are an exempt employee with regard to Federal/State Wage and Hour law.
- You are entitled to a Paid Time Off (PTO) annual allowance of 200 hours which accrues to you at 16.67 hours per month, in accordance with BPM policies.

Upon joining BPM, you will be eligible to participate in a comprehensive benefits package, which includes medical, dental, life, long-term disability insurance, and 401(K), profit sharing and ESOP programs. These benefits and others are described in the attached Summary of Benefits.

On your first day we ask that you arrive in the San Francisco office at 9:00 am. Please ask for Dani Bocchi. Dani will guide you through BPM's new employee orientation program. During your first day we will introduce you to your new colleagues, explain BPM's policies and benefits as well as provide training on our computer and phone systems. You will be provided with a packet of materials and forms regarding payroll, benefits and other new employee documents.

In order to maintain our high standard of integrity, all employees are required to follow the AICPA independence guidelines and when applicable, the SEC and other regulatory rules on independence.

As discussed during the recruiting process, you will work from clients' sites often and you are expected to provide your own transportation. Per the company's expense

ACCOUNTANTS & CONSULTANTS

reimbursement policy, if you use your personal auto, you will be reimbursed for mileage at the current IRS Mileage Reimbursement rate. Out of pocket expenses such as parking and bridge tolls will also be reimbursed. Parking tickets, traffic violations and car repairs are not reimbursable. You are required to carry personal auto insurance on your vehicle if it will be used for business and you may be asked to provide proof of insurance coverage. Additionally, you may be required to allow the firm's insurance carrier to obtain a copy of your current driving record to assess your insurability.

As an employee of BPM, you understand that you may obtain information of a proprietary or confidential nature relating to the present or future business of BPM, its affiliate entities or its customers (all of such information is hereinafter referred to as "Confidential Information"). You acknowledge such Confidential Information is the sole and exclusive property of BPM. You agree that at all times during and after your employment with BPM, you will hold in the strictest confidence, and, except as necessary in the ordinary course of performing your duties as an employee of BPM, you will not use, publish, or disclose, or permit others to use, publish or disclose any Confidential Information. More specifically, you will not impart any Confidential Information to any subsequent employer. Upon the termination of your employment with BPM for any reason, and at any earlier time that BPM so requests, you will return all Confidential Information (and any copies thereof) and company property to BPM.

During the period of your employment with BPM and for two (2) years after the date of the termination of your employment with BPM, for any reason, you agree that you will not solicit the business of any client or customer of BPM (other than on behalf of BPM). The sole exception would be clients or customers on your list of "prior contacts" provided by you and approved by BPM in December 2012. In addition, during the period of your employment with BPM and for two (2) years after the date of the termination of your employment with BPM, for any reason, you agree that you will not induce, in any manner, any employee of BPM to leave the employ of BPM.

We sincerely hope that you accept this offer of employment and are looking forward to your joining BPM. While we anticipate a long and mutually beneficial relationship, your employment with BPM will be "at-will" and we recognize your right to terminate your employment at any time, and similarly, we reserve the same right to alter, modify, or terminate this employment relationship "at-will" at any time with or without cause. This employment "at-will" relationship may not be changed except by a written agreement approved by the Executive Board of BPM.

This offer letter and BPM's policies constitute the entire agreement regarding your employment with BPM. No guarantees or promises of any kind, other than those contained herein and BPM's policies, have been made concerning the terms of your employment.

If you agree with the terms set forth in this letter please sign and return the enclosed copy, retaining a copy for your records. This offer is valid until December 19, 2012 and

Sandy Holder
December 19, 2012
Page 3

is contingent upon the completion of satisfactory reference and background checks as well as verification of your legal right to work in the United States.

We look forward to providing you with the opportunity for a rewarding professional career. We hope that your decision will be to join us. If you have any questions regarding the terms of this offer, please contact Brendan Casey at (650) 855-6892.

Very truly yours,



Beth Baldwin
Director, Human Resources

ACCEPTANCE:

Signature: Sandy Holder
Sandy Holder

Date: 12/19/12