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SUPERIOR COURT OF CALIFORNIA

THE COUNTY OF ALAMEDA

SOCORRO TONGCO, an individual;

Plaintiff,

v.

DEPARTMENT OF INDUSTRIAL RELATIONS, a state government agency; CHRISTINE BAKER, an individual; ROBERTA REDDEN, an individual; ANDRE SCHROOL, an individual; MI KIM, an individual; DAVID LANIER, an individual; and DOES 1 through 100,

Defendants.

Case No. RG18933075

[UNLIMITED JURISDICTION]

COMPLAINT

CAUSES OF ACTION:

1. **Retaliation in Violation of Cal. Labor Code § 1102.5**
2. **Retaliation in Violation of Cal. Gov. Code § 8547.8(c)**
3. **Unlawful Access To Stored Communications, 18 U.S.C. § 2701, *et seq.***
4. **Wrongful (Retaliatory) Termination in Violation of Public Policy**

DEMAND FOR JURY TRIAL

Plaintiff Socorro Tongco, complains as follows:

PARTIES

1. Plaintiff Socorro Tongco was an employee of Defendant Department Industrial Relations, and is an individual residing in the State of California.

2. Defendant Department of Industrial Relations (hereinafter "DIR") is a California state agency operating in the State of California, and doing business in the County of Alameda, State of California.

3. Defendant Christine Baker was the director and a supervisory employee of the DIR until March 2018.

4. Defendant Andre Schrool is the current undersecretary of Labor and Workforce Development Agency and acting director of the DIR and, at all times mentioned herein, a supervisory employee of the DIR.

5. Defendant Mi Kim was at all times mentioned herein a supervisory employee of the DIR.

6. Defendant David Lanier was at all times mentioned herein a supervisory employee of the DIR.

7. The true names and capacities, whether individual, corporate, associate or otherwise, of the Defendants DOE 1 through DOE 100, inclusive, are unknown to Plaintiff, who therefore sues such defendants by such fictitious names, and Plaintiff will amend this complaint to show the true names and capacities of Defendants DOE 1 through DOE 100 when their names have been ascertained.

8. Plaintiff is informed and believes, and thereon alleges, that each of the defendants designated herein as a DOE is responsible under law in some manner and is liable herein by reason of negligence, wanton and reckless misconduct, breach of warranty, strict liability, and in some other manner, and by such wrongful conduct that was a substantial factor in causing the events and happenings herein referred to, which caused the injuries and damages to Plaintiff as herein alleged.

9. Plaintiff is informed and believes, and thereon alleges, that at all times relevant herein, each defendant, whether designated by name or as a DOE, was the agent, servant and employee of every other defendant, who was a principal, master, and employer of each other defendant, and every defendant was acting within the course and scope of said agency, authority and employment. Furthermore, each of the defendants was a partner and was engaged in a joint venture with every other defendant, and each defendant was acting within the course, scope, and in furtherance of said partnership and joint venture; and each defendant who was a principal, master, or employer authorized, ratified, directed, and approved the acts, omissions, and conduct

of each other defendant.

10. Whenever in this complaint reference is made to any act or omission of any Defendant and/or their employees and/or agents, or of any of them, such allegation shall be deemed to mean the act or omission of each such defendant and/or employee and/or agent, acting individually, jointly, in concert, and severally, and in furtherance of joint activity while actively engaged in the management, direction, control and employ of the affairs of defendants, and each of them, and within the course and scope of their employment, authority, and agency.

11. Whenever in this complaint reference is made to any act or omission of defendants, and each of them, such allegation shall be deemed to mean the act or omission of each defendant, acting individually, jointly, in concert, and severally, and in furtherance of their joint activity.

JURISDICTION AND VENUE

12. Jurisdiction in this matter is proper in the Superior Court in that the amount in controversy exceeds the minimum unlimited jurisdictional threshold of this Court. The subject matter of this case is properly within the jurisdiction of the Superior Court, and the wrong-doing alleged herein is proscribed by the constitutional, statutory and common law of the State of California.

13. As Defendants do business in the County of Alameda, the records relevant to this action are maintained in this County and the material conduct and activities alleged herein took place in the County of Alameda, venue in this Court is proper.

ADMINISTRATIVE PROCEEDINGS

14. On or about November 16, 2018, Plaintiff filed an administrative appeal from the dismissal arising from the Notice of Adverse Action, which became effective on November 15, 2018. This matter is still pending before the State of California Personnel Board (SPB Case No. 18-1800).

GENERAL ALLEGATIONS

15. Plaintiff was hired by DIR sometime in December 2006 as a special investigator. Plaintiff's tenure with the DIR was marked with positive feedback from her supervisors and a

transfer to the Office of the Director, Anti-Fraud Unit. Plaintiff remained employed by the DIR as a special investigator in the Office of Director Anti-Fraud Unit (hereinafter "AFU") until November 7, 2018, when she was wrongfully terminated as described herein.

16. Plaintiff worked in several different divisions as a special investigator for DIR. From 2006 until 2014, Plaintiff worked as a special investigator for the Office of the Director Legal Unit. From 2014 until June 2017, Plaintiff worked as a special investigator for Human Resources Performance Management. From June 2017 until her wrongful termination in November 2018, Plaintiff worked as a special investigator for the AFU.

17. During Christine Baker's tenure as the DIR director, she used her position of authority to hire and promote various family members to positions of authority throughout the DIR, such as Jim Culbeaux (Director Baker's brother) who was appointed as the Chief of IT and Julianna Baker (Director Baker's daughter) who was appointed as a special investigator.

18. Plaintiff, alleges upon information and belief, Director Baker came under investigation by the Bureau of State Audit (hereinafter "BSA") sometime in 2014.

19. Plaintiff, alleges upon information and belief, that Director Baker came under investigation by the BSA due to a whistleblower complaint that was filed against Director Baker for her conduct in running the DIR. Plaintiff alleges, upon information and belief, that the subject matter of this whistleblower complaint regarded unlawful conduct by Director Baker including, but not limited to, hiring and promoting her various family members to positions of authority within the DIR, and retaliatory conduct towards various DIR employees.

20. Plaintiff, alleges upon information and belief, that as part of this BSA investigation, she was interviewed by Holly Ramsey and Mark Woo Sam, General Counsel for Labor & Workforce Development Agency. Plaintiff was interviewed by Holly Ramsey and Mark Woo Sam in person on or about June 30, 2015 (hereinafter the "Interview"). During the Interview, Plaintiff was asked questions regarding Director Baker's daughter, Julianna Baker. Specifically, Plaintiff was asked about Julianna Baker's work conduct, performance, physical attendance, *etc.* Plaintiff responded honestly on all accounts. Plaintiff continued to communicate with Holly Ramsey by providing further information, such as emails and texts, which

corroborated her statements made during the Interview, through her DIR email account. The last email to Holly Ramsey occurred on June 7, 2016. Plaintiff alleges that these communications constituted protected conduct pursuant to the laws of the United States, the laws of the State of California including, but not limited to, California Labor Code § 1102.5 and California Government Code § 8547.8(c).

21. Plaintiff alleges, upon information and belief, that Director Baker was unaware of the Interview with Mark Woo Sam and Holly Ramsey until approximately mid-2017. Plaintiff further alleges, upon information and belief, that Director Baker was unaware of the on-going BSA investigation against her until early-2017.

22. Plaintiff alleges, upon information and belief, that after Director Baker became aware of the on-going BSA investigation against her, she conducted an unprecedented, illegal, "email dump" of DIR employees across all divisions within the DIR to try and determine the identity of the whistleblower responsible for filing the complaint which initiated the BSA investigation. Plaintiff further alleges, upon information and belief, that Director Baker undertook this unprecedented, illegal, "email dump" in order retaliate against the whistleblower and stamp out the BSA investigation against her.

23. Plaintiff alleges, upon information and belief, that after Director Baker began conducting her illegal investigation for the whistleblower, she uncovered various emails Plaintiff sent to Holly Ramsey regarding the Investigation into Director Baker's daughter. Plaintiff further alleges, upon information and belief, that upon discovering the emails that Plaintiff sent to Holly Ramsey through her DIR email account, Director Baker began her illegal, retaliatory, harassing campaign against Plaintiff.

24. On or about January 30, 2017, Defendant Roberta Redden was hired as the Human Resources Performance Management Department supervisor.

25. Plaintiff alleges, upon information and belief, that before Defendant Redden's appointment as the Human Resources Performance Management Department supervisor, that Defendant Redden had no prior civil experience. Plaintiff further alleges, upon information and belief, that Director Baker used her position of authority to pressure defendant Redden into

retaliating against Plaintiff for her participation in the Interview.

26. Plaintiff alleges, on information and belief, that on or about May 5, 2017, defendant Redden issued Plaintiff a counseling, non-disciplinary memo wherein she fabricated allegations including, but not limited to, tardiness, discourtesy, and inefficient work conduct. In over 14 years with the DIR, Plaintiff had (before this memo) never received any negative memo regarding her work conduct. Defendant Redden continued to conduct series of threatening, harassing, and/or retaliatory actions, and each threatening, harassing, and/or retaliatory action, constituted an adverse and/or tangible employment action, materially affected the terms and conditions of Plaintiff's employment, unreasonably interfered with Plaintiff's work performance, was severe and pervasive, and/or created a hostile and offensive working environment.

27. In late May or early June, Plaintiff transferred out the Performance Management Unit run by defendant Redden and into the AFU. Plaintiff requested this transfer to get away from defendant Redden's threatening, harassing, and/or retaliatory conduct.

28. In late October or early November 2017, during an AFU meeting, Director Baker explicitly instructed all of the AFU staff that if they are contacted by any BSA investigators, they are to immediately report this inquiry to Director Baker before responding.

29. Plaintiff first became aware of the "bullying" complaint made against her by her former supervisor defendant Redden in late February 2018. Plaintiff alleges, upon information and belief, that defendant Redden's "bullying" complaint was made to allow Director Baker to further retaliate against Plaintiff for her statements made during the Investigation. Plaintiff further alleges, upon information and belief, that the internal investigation into this matter was conducted by Director Baker's office. The given reasons for this investigation were wholly pretextual. The actual reason that the investigation was undertaken was solely based on retaliation because of Plaintiff's protected conduct wherein she participated in the Investigation with the BSA.

30. After defendant Redden's "bullying" complaint was filed, Plaintiff began to be mistreated by the AFU supervisor, defendant Mi Kim, began a series of threatening, harassing, and/or retaliatory actions against Plaintiff. Specifically, on or about December 16, 2017, Mi Kim emailed Plaintiff directing her to move out of her private office and into a non-private cubicle.

Every special investigator is provided with a private office. No other AFU special investigator was asked to vacate their private office between December 2017 and November 2018. From December 2017 until November 2018, Mi Kim systematically excluded Plaintiff from AFU department meetings and events. Plaintiff alleges, upon information and belief, that Mi Kim began this retaliatory conduct upon the direction and control of Director Baker. Plaintiff further alleges that Mi Kim's conduct was done in retaliation for Plaintiff's participation in the Interview.

31. On or about February 25, 2018, Plaintiff received a letter from the attorney general, dated January 29, 2018, regarding an investigation into Plaintiff's workplace conduct. Plaintiff did not receive the letter until late February 2018. Plaintiff alleges, upon information and belief, that Director Baker built an erroneous case against her, including defendant Redden's "bullying" complaint, beginning as early as 2017 as retaliation for her participation in the Interview and gave this information to the Attorney General's office as part of this ongoing retaliation.

32. On or about March 14, 2018, Plaintiff participated in an interview with Peter Halloran, the supervising deputy attorney general. Mr. Halloran investigated both defendant Redden's complaint and Plaintiff's DFEH complaint. By November, 2018, Mr. Halloran concluded his investigation finding no evidence of bullying as alleged in defendant Redden's complaint against Plaintiff.

33. Plaintiff alleges, upon information and belief, that on or about March 30, 2018, the BSA announced its intention to release its final investigation report into Director Baker's conduct on April 10, 2018. Plaintiff further alleges, upon information and belief, that on or about March 30, 2018, Director Baker suddenly retired from the DIR and David Lanier, Secretary of Labor and Workforce Development Agency, and longtime friend and confidant to Christine Baker, issued a memorandum appointing defendant Andre Schrool, Undersecretary of Agency, as the acting director of DIR.

34. Plaintiff alleges, upon information and belief, that the current acting DIR director, used his position of power and influence to carry out the retaliatory conduct started by former Director Baker against Plaintiff.

35. Plaintiff alleges, upon information and belief, that acting Director Schrool used his position of power and authority to prevent disclosure of this report in order to continue carrying out the retaliatory conduct against Plaintiff and to protect Christine Baker from the consequences of her unlawful conduct while she was the director of the DIR.

36. As a direct result of Defendants retaliatory conduct, Plaintiff was terminated from the DIR on November 7, 2018 with an effective last day on November 15, 2018.

FIRST CAUSE OF ACTION

(Retaliation in Violation of California Labor Code § 1102.5 against all Defendants)

37. Plaintiff hereby incorporates each of the foregoing paragraphs as though fully set forth herein.

38. Plaintiff was employed by Defendants.

39. Plaintiff (1) disclosed information to a government agency or to a person with authority over Plaintiff, concerning a violation or act of non-compliance with local, and/or state rules and/or regulations; and (2) provided information to, and testified before, a public body, for purposes of investigation, hearing, or inquiry, where the information provided or testified to reasonably disclosed a violation of local, and/or state rules and/or regulations.

40. Plaintiff's protected disclosures were the motivating reasons for the threats, acts of retaliation, and acts of harassment that were visited upon her by Defendants.

41. Defendants did, in fact, retaliate, harass, and threaten Plaintiff because she engaged in protected conduct as described herein.

42. As a substantial result of Defendants' wrongful conduct as alleged herein, Plaintiff was harmed, and lost and continues to lose wages, income, employment, career opportunities, employment benefits, and other economic loss and consequential damages, the precise amount of which will be proven at trial.

43. As a substantial result of Defendants' wrongful conduct as alleged herein, Plaintiff endured and continues to endure pain and suffering, including without limitation embarrassment, humiliation and mental anguish, all to his damage in an amount according to proof.

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44. As a substantial result of Defendants' wrongful conduct as alleged herein, Plaintiff incurred and continues to incur special and general damages, the precise amount of which will be proven at trial. As a substantial result of Defendants' wrongful conduct as alleged herein, Plaintiff has incurred and continues to incur attorney's fees and costs of suit, the precise amount of which will be proven at trial.

45. Defendants committed the acts alleged herein maliciously, fraudulently, and oppressively, and with the wrongful intention of injuring Plaintiff, and acted with an improper and evil motive amounting to malice. Alternatively, Defendants' despicable conduct was carried out in conscious disregard of Plaintiff's rights.

SECOND CAUSE OF ACTION

(Retaliation in violation of California Government Code section 8547 *et seq.* Against all Defendants)

46. Plaintiff hereby incorporates each of the foregoing paragraphs as though fully set forth herein.

47. Plaintiff was employed by Defendants.

48. Plaintiff made good faith protected disclosures of information concerning action by the State of California or its employees concerning violations of state or federal law or regulation and/or violations of state policy or procedure and/or conduct.

49. Plaintiff's protected disclosures were the motivating reasons for the threats, acts of retaliation, and acts of harassment that were visited upon her by Defendants.

50. Defendants did, in fact, retaliate, harass, and threaten Plaintiff because she engaged in protected conduct as described herein.

51. As a substantial result of Defendants' wrongful conduct as alleged herein, Plaintiff was harmed, and lost and continues to lose wages, income, employment, career opportunities, employment benefits, and other economic loss and consequential damages, the precise amount of which will be proven at trial.

52. As a substantial result of Defendants' wrongful conduct as alleged herein, Plaintiff endured and continues to endure pain and suffering, including without limitation embarrassment, humiliation and mental anguish, all to his damage in an amount according to proof.

53. As a direct and proximate result of Defendants wrongful discrimination and treatment, Plaintiff suffered actual damages, including but not limited to lost wages, benefits, promotion and career opportunities, past and future medical expenses, and other economic losses in an amount to be determined at the time of trial. Further, Plaintiff suffered great anxiety, embarrassment, anger, loss of enjoyment of life, injury to reputation, and severe emotional and physical distress in an amount to be determined at trial. Plaintiff is entitled to recover all damages resulting from Defendants wrongful conduct, including compensatory damages, general damages, personal injury damages, past and future medical expenses, attorneys' fees, costs and any other damages the Court deems appropriate.

54. Defendants committed the acts alleged herein maliciously, fraudulently, and oppressively, and with the wrongful intention of injuring Plaintiff, and acted with an improper and evil motive amounting to malice. Alternatively, Defendants' despicable conduct was carried out in conscious disregard of Plaintiff's rights.

THIRD CAUSE OF ACTION

(Violation of 18 U.S.C. section 2701, *et seq.* Against all Defendants)

55. Plaintiff hereby incorporates each of the foregoing paragraphs as though fully set forth herein.

56. Defendants intentionally accessed Plaintiff's emails and/or email accounts, and therefore the facility through which the email account service was provided, using information stored in her work email issued from Defendants to Plaintiff.

57. Neither Plaintiff, nor any other person or entity, ever gave Defendants authorization or consent to access her emails or email accounts.

58. Plaintiff was aggrieved by Defendants access of her email accounts, including by incurring and continuing to incur special and general damages, the precise amount of which will be proven at trial. As a substantial result of Defendants' wrongful conduct as alleged herein, Plaintiff has incurred and continues to incur attorney's fees and costs of suit, the precise amount of which will be proven at trial.

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FOURTH CAUSE OF ACTION

(Wrongful (Retaliatory) Termination in Violation of Public Policy Against DIR only)

59. Plaintiff was employed by Defendant DIR; and

60. Plaintiff engaged in protected conduct which included, but is not limited to, (1) disclosing information to a government agency or to a person with authority over Plaintiff, concerning a violation or act of non-compliance with local, and/or state rules and/or regulations; and (2) providing information to, and testified before, a public body, for purposes of investigation, hearing, or inquiry, where the information provided or testified to reasonably disclosed a violation of local, and/or state rules and/or regulations.

61. Defendant DIR subsequently fired Plaintiff on November 7, 2018, with an effective date of November 15, 2018; and

62. Plaintiff's protected conduct described above was a substantial or motivating factor in Defendant DIR's decision to fire Plaintiff.

PRAYER FOR RELIEF:

WHEREFORE, Plaintiff prays for judgment as follows:

1. For special and economic damages according to proof;
2. For double back pay;
3. For general damages and non-economic damages according to proof;
4. For punitive damages in an appropriate amount according to proof;
5. For prejudgment interest at the prevailing legal rate;
6. For reasonable attorneys' fees, costs, and expert witness fees;
7. For equitable relief according to proof;
8. For an order of reinstatement;

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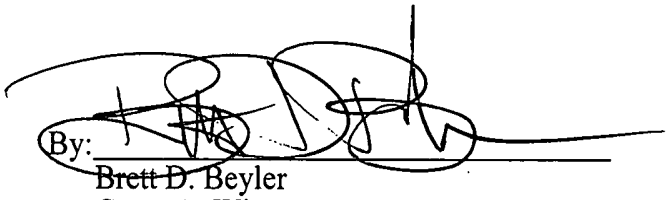
9. For statutory damages as provided by law; and,

10. For such other and further relief as the court deems just and proper.

DATED: December 19, 2018

MASTAGNI HOLSTEDT, APC



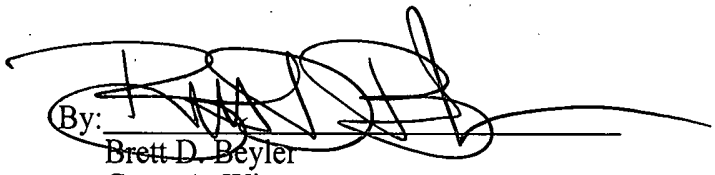
By: _____
Brett D. Beyler
Grant A. Winter
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff Socorro Tongco hereby demands a trial by jury.

DATED: December 19, 2018

MASTAGNI HOLSTEDT, APC



By: _____
Brett D. Beyler
Grant A. Winter
Attorneys for Plaintiff