

1 Lawrance A. Bohm (SBN: 208716)  
2 [lbohmlaw@bohmlaw.com](mailto:lbohmlaw@bohmlaw.com)  
3 **BOHM LAW GROUP, INC.**  
4 4600 Northgate Boulevard, Suite 210  
5 Sacramento, California 95834  
6 Telephone: 866.920.1292  
7 Facsimile: 916.927.2046  
8 Email: [blg000707@bohmlaw.com](mailto:blg000707@bohmlaw.com)

9 Robert L. Boucher (SBN: 244760)  
10 **BOUCHER LAW**  
11 2121 Natomas Crossing Drive, Suite 200-389  
12 Sacramento, California 95834  
13 Telephone: 916.974.9756  
14 Email: [robert@boucher-law.com](mailto:robert@boucher-law.com)

15 Attorneys for Plaintiff,  
16 APRIL VAN DYKE

17 SUPERIOR COURT OF CALIFORNIA  
18 COUNTY OF SAN JOAQUIN

19 APRIL VAN DYKE,

20 Plaintiff,

21 v.

22 OFFICE OF THE PUBLIC DEFENDER FOR  
23 SAN JOAQUIN COUNTY; and DOES 1  
24 through 50, inclusive,

25 Defendants.

26 Case No.: STK-CV-UWT-2019-0015620

27 **PLAINTIFF'S VERIFIED FOURTH  
28 AMENDED COMPLAINT FOR  
DAMAGES:**

1. FEHA Discrimination (Sex, Gender, Sexual Orientation, or Disability): Gov. Code, § 12940, subd. (a);
2. FEHA Harassment (Sex, Gender, or Sexual Orientation): Gov. Code, § 12940, subd. (j);
3. FEHA Retaliation: Gov. Code, § 12940, subd. (h);
4. FEHA Failure to Engage in Interactive Process: Gov. Code, §12940, subd. (n);
5. FEHA Failure to Accommodate: Gov. Code, § 12940, subd. (m);
6. FEHA Failure to Prevent Discrimination and Harassment: Gov. Code, §12940, subd. (k); and
7. CFRA Violation of Rights: Gov. Code, §12945.2.

**DEMAND FOR JURY TRIAL**

1 Plaintiff April Van Dyke respectfully submits the instant Verified Second Amended  
2 Complaint for Damages and Demand for Jury Trial, and alleges as follows.

3 **OVERVIEW OF THE CASE**

4 Plaintiff April Van Dyke is an experienced trial attorney who defended needy residents  
5 against criminal charges in San Joaquin County. Plaintiff is a lesbian woman. Plaintiff was out to  
6 her coworkers and Defendant’s management. During her career with Defendant Office of the  
7 Public Defender for San Joaquin County (“SJPD”), Plaintiff’s coworkers began a campaign of  
8 sexual harassment against Plaintiff by repeatedly referring to Plaintiff’s sex life in vulgar and  
9 offensive terms.

10 Plaintiff initially tried to control the situation by correcting the offending employees, but  
11 that tactic failed: the offending employees merely redoubled the harassment. When Plaintiff  
12 reported the harassment, management shunned Plaintiff because of her sexual orientation. As  
13 such, Plaintiff went to work fearful for her safety. This fear led Plaintiff to mental disorders she  
14 did not have before. Plaintiff required protected leave and medical treatment.

15 When Plaintiff returned from leave, the offending employees redoubled their harassment.  
16 This, even after Defendant’s investigation substantiated, at least in part, Plaintiff’s allegations.  
17 After the investigation, Defendant did nothing to separate Plaintiff from the offending employees.  
18 Because of this risk to Plaintiff’s ability to do her job and well-being, Plaintiff left her  
19 employment with Defendant.

20 **PARTIES AND JURISDICTION**

21 1. Plaintiff April Van Dyke was at all times relevant to this action, an employee or  
22 wrongfully terminated employee of Defendants. At all times relevant to this action, Plaintiff was  
23 a citizen of California and resided in the County of Sacramento.

24 2. Defendant SJPD was at all times relevant to this action Plaintiff’s employer and a  
25 provider of legal services for needful residents of the County. Defendant was at all times relevant  
26 to this case an employer as defined by Government Code section 12926, subdivision (d).

27 ///

28 ///

1           3.       Venue and jurisdiction are proper because the many of the employment decisions  
2 giving rise to this action took place in the County of San Joaquin; because Defendants were doing  
3 business in the County of San Joaquin; because Plaintiff's employment was entered into in the  
4 County of San Joaquin; because Plaintiff received her paychecks from Defendants in the County  
5 of San Joaquin; because the damages sought exceed the jurisdictional minimum of this Court; and  
6 because many of the witnesses are located in the County of San Joaquin.

7           4.       Plaintiff is ignorant of the true names and capacities of the Defendants sued herein  
8 as DOES 1 through 50. Defendants DOES 1 through 50 are sued herein under fictitious names  
9 pursuant to Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that  
10 basis alleges, that each Defendant sued under such fictitious names is in some manner responsible  
11 for the wrongs and damages as alleged herein. Plaintiff does not at this time know the true names  
12 or capacities of said Defendants, but prays that the same may be inserted herein when ascertained.

13           5.       At all times relevant, each and every Defendant was an agent and/or employee of  
14 each and every Defendant. In doing the things alleged in the causes of action stated herein, each  
15 and every Defendant was acting within the course and scope of this agency or employment, and  
16 was acting with the consent, permission, and authorization of each remaining Defendant. All  
17 actions of each Defendant are alleged herein were ratified and approved by each other Defendant  
18 or their officers or managing agents.

19           6.       On November 30, 2018, Plaintiff filed a complaint with the Department of Fair  
20 Employment and Housing against Defendants alleging discrimination, harassment, and retaliation  
21 based on sex/gender, sexual orientation, disability (physical or mental), marital status. (DEFH  
22 Matter No. 201812-04374601.) That day, the DFEH issued Plaintiff a right-to-sue letter. As such,  
23 Plaintiff has exhausted her administrative remedies.

24           7.       On October 30, 2019, Plaintiff filed a complaint with the Department of Fair  
25 Employment and Housing against Defendants alleging discrimination, harassment, and retaliation  
26 based on sex/gender, sexual orientation, disability (physical or mental), marital status, and use of  
27 protected leaves of absence. (DEFH No. 201910-08106730.) That day, the DFEH issued Plaintiff  
28 a right-to-sue letter.

**STATEMENT OF FACTS**

1  
2 8. Defendant SJPD is a government agency mandated to provide legal representation  
3 to indigent persons and others in criminal matters. Defendant employees 87 persons, including  
4 attorneys such as Plaintiff, tasked with individual representation in California state court.

5 9. In 2015, Defendant hired Plaintiff as a public defender. Plaintiff’s job was to  
6 defend criminal defendants in court. Plaintiff is an attorney licensed to practice law in California  
7 and is in good standing with the bar. Plaintiff’s bar number is 272575. From 2015 to her  
8 constructive termination, Plaintiff was an outstanding employee who performed her tasks well.

9 10. In about 2016, Plaintiff came out as lesbian/bisexual to her coworkers and  
10 employer. From that time until her unlawful termination, Defendant’s employees harassed  
11 Plaintiff about her sexual orientation. Plaintiff endured the following behaviors, among others:

- 12 a) Allison Norbert, another attorney, began ignoring Plaintiff and  
13 encouraging other employees to give Plaintiff the “silent treatment.” Based  
14 on timing, Norbert took these actions because of Plaintiff’s sexual  
15 orientation.
- 16 b) In 2017, attorney Brian Kazmin asked Plaintiff to show him a picture of  
17 her then girlfriend. When Plaintiff complied, Kazmin said, “Do you want  
18 me to show you how to eat pussy? I’ve been told I’m very good at it.”
- 19 c) Later in 2017, when Kazmin learned Plaintiff had a date with her then-  
20 girlfriend, Kazmin said, “Can I come? I want to fuck your girlfriend. I want  
21 to watch you guys together.”
- 22 d) In September 2017, Kazmin walked into Plaintiff’s office, looked over his  
23 sunglasses at her and down Plaintiff’s dress at her breasts, asking if it was  
24 a new dress and raising his eyebrows.
- 25 e) Later in 2017, Kazmin told Plaintiff again that he wanted to “fuck  
26 [Plaintiff’s] girlfriend and watch [them] having sex.”

27 ///

28 ///

1 11. Plaintiff complained to many of her coworkers about Kazmin's behavior, but  
2 nothing was done, and his behavior never changed. However, Plaintiff was fearful of complaining  
3 directly to management or human resources because others who had complained were retaliated  
4 against. As such, Plaintiff tried to resolve these issues informally to avoid making waves or being  
5 fired. Nevertheless, this near-constant harassment caused Plaintiff severe stress and anxiety such  
6 that she filed a workers' compensation claim.

7 12. In September 2017, Plaintiff placed a workers' compensation request form in  
8 Miriam Lyell's inbox. Miriam Lyell was SJPD Department Head and Plaintiff's second level  
9 supervisor. On this form, Plaintiff informed Lyell she was making a claim for a work-related  
10 stress disorder. Lyell returned this form with a handwritten note on it changing the date indicating  
11 she received it in her inbox. As such, Defendant knew or should have known about Plaintiff's  
12 disability.

13 13. On November 30, 2017, Plaintiff tried to address Kazmin personally. Plaintiff told  
14 Kazmin his behavior was inappropriate, was offensive, and was making it difficult for her to  
15 work. Plaintiff asked Kazmin to keep his distance and offered the same. However, the harassing  
16 behavior escalated.

17 14. In January 2018, Nicholas O'Brien, another attorney, asked if, "[Plaintiff] could  
18 go the rest of her life without dick again?" O'Brien followed up, stating that, "you cannot replace  
19 the real thing." Other attorneys witnessed this exchange and were clearly offended.

20 15. Later in 2018, O'Brien stated, when he witnessed Plaintiff and another attorney  
21 chatting amiably, "why don't you guys fuck already."

22 16. In mid-2018, Plaintiff was diagnosed with work-related stress and panic disorder  
23 directly related to the constant sexual harassment she endured from Kazmin and O'Brien.  
24 Plaintiff's doctor told Plaintiff that stress and panic disorders were serious medical conditions  
25 which, if uncared for, would lead to further health problems. Plaintiff's doctor ordered Plaintiff  
26 off work. As such, Defendant knew or should have known that Plaintiff was suffering from a  
27 disability or serious medical condition. As a result, Plaintiff required many days off work to help  
28 heal from her disability. After she began to miss days of work, Plaintiff's coworkers began to

1 ignore and isolate Plaintiff. Because of Plaintiff’s earlier report to Lyell of work-related stress  
2 disorder, these stress-related sick days alerted Defendant that Plaintiff was suffering from a  
3 disability affecting her work such that Defendant knew or should have known of Plaintiff’s  
4 disability.

5 17. On September 19, 2018, when Plaintiff was at work, Kazmin entered an office  
6 Plaintiff was in and stood in the doorway. Plaintiff asked Kazmin to move, but he refused. In  
7 order to get away from him, Plaintiff had to brush past him, touching him even though she did  
8 not want to. Plaintiff did not feel safe and felt like Kazmin was continuing to harass her. Because  
9 she felt unsafe, Plaintiff’s stress and panic disorder worsened, and she suffered from continuing  
10 panic attacks. However, Plaintiff believed that if she addressed these issues with Defendant, she  
11 would be able to cope with her condition.

12 18. Because she believed that management would protect her from further harassment,  
13 Plaintiff emailed a complaint to her direct supervisor, Michael Bullard, and his supervisor, Lyell.  
14 All Bullard offered was that he, “hoped it would get better.” Bullard never offered to address  
15 Kazmin, O’Brien, or Norbert. Bullard never offered an investigation. Defendant immediately  
16 retaliated against Plaintiff by denying her existing flex-hour schedule on September 28, 2018.  
17 Because management refused to help her, Plaintiff’s stress and panic attack disorder worsened  
18 further. For months, Plaintiff felt that she was in a near-constant state of panic, even while off  
19 duty. Plaintiff required further medical care and was later prescribed anti-anxiety medication to  
20 cope with Defendant’s employee’s harassment of her, and Defendant’s management’s utter  
21 failure to protect her. On September 30, 2018, Plaintiff advised Lyell, via text, that Plaintiff was  
22 at “urgent care,” but that Plaintiff needed authorization to file a worker’s compensation claim.  
23 Plaintiff contacted Lyell for this authorization because Plaintiff’s regular insurance would not  
24 cover work-related injuries. Plaintiff overheard Lyell speak with the receptionist at urgent care,  
25 authorizing Plaintiff’s treatment for the work-related injury. This a direct report of her disability.  
26 As such, Defendant knew or should have known that Plaintiff had a disability or medical  
27 condition.

28 ///

1           19.     On October 18, 2018, Plaintiff complained to Lyell, but refused to help, stating  
2 that, “[Plaintiff is considered] not part of the office,” and was “to be shunned” because of her  
3 relationship with a woman. Plaintiff was told that Norbert was instructing others to single Plaintiff  
4 out. Lyell’s actions amount to discrimination based on sex, sexual orientation, or gender. Lyell’s  
5 actions were also tolerant of illegal sex harassment, and thus amount to a failure to prevent  
6 harassment and the adoption by Defendant of its employee’s harassment and discrimination.  
7 Further, Lyell’s actions amount to discrimination based on disability and retaliation for taking  
8 protected leave by sheer timing alone, but also because Lyell made no inquiry about reasonable  
9 accommodation.

10           20.     In early November 2018, Plaintiff had another panic attack due to Defendant’s  
11 continued adoption of harassment against Plaintiff. On November 26, 2018, Lyell called Plaintiff  
12 into Lyell’s office. Lyell told Plaintiff that Lyell was directing Bullard to tell Nobert that Plaintiff  
13 disclosed a slur that was being used in the office to describe Plaintiff’s transgendered client:  
14 “shim,” a made-up gender pronoun which was not adopted by the client. In this conversation  
15 Lyell told Plaintiff she should “be prepared for blowback.” Plaintiff was visibly shaking and upset  
16 during this conversation. Plaintiff asked Lyell to put herself in Plaintiff’s shoes: Plaintiff as the  
17 only openly lesbian or bisexual woman in the office, was uniquely emotionally upset about the  
18 slur. Because Plaintiff was so upset and because Lyell had previously been informed of Plaintiff’s  
19 disability, Lyell knew or should have known about Plaintiff’s disability.

20           21.     Later on, November 26, 2018, Plaintiff emailed HR outlining her conversation  
21 with Lyell and asked HR to intervene before the disclosure happened. Plaintiff stated in this email,  
22 “I am incredibly worried about disclosure” and “I am so scared.” HR never responded to her  
23 email. The next day Plaintiff sent an email to Bullard urging him to have a conversation with HR  
24 before he made this disclosure to Nobert. Bullard never responded to this email.

25           22.     Later in 2018, at a victory party, O’Brien touched Plaintiff’s elbow and lower back.  
26 Plaintiff texted him, asking that he refrain from touching her. O’Brien texted back, “Whatever  
27 sadness that causes you to see unkindness where there is none, I hope you resolve it.”

28     ///

1           23.     Later, Plaintiff filed a second complaint with Lyell, Bullard, and Rawlin Davis in  
2 Human Resources. Plaintiff’s complaint included the harassing behavior, the homophobic  
3 comments, and other evidence of anti-LGBT sentiment (the attorneys made fun of the  
4 transgendered client). Plaintiff explained that she, as the only LGBT person in the office felt  
5 physically unsafe. Lyell ordered Plaintiff not to talk about it with outside counsel. Instead of  
6 supporting Plaintiff, Lyell emailed Plaintiff telling her that she was contributing to a lack of trust  
7 permeating the office. Lyell’s actions amount to further harassment, the adoption of harassment  
8 by others, discrimination based on sex, gender, or sexual orientation, and retaliation  
9 of/interference with protected leaves of absence.

10           24.     On November 30, 2018, Plaintiff filed a sex harassment and sexual orientation  
11 discrimination claim with the Department of Fair Employment and Housing.

12           25.     On December 27, 2018, Plaintiff emailed Lyell and Bullard complaining that she  
13 was to be working in the same courtroom as Kazmin and other harassers. Plaintiff told them that,  
14 “I am currently experiencing a great deal of anxiety.” Plaintiff took the remainder of the day as a  
15 sick day shortly thereafter. Plaintiff signed out “sick” on the sign-out sheet. Neither Lyell nor  
16 Bullard addressed Plaintiff’s report of anxiety. Because of this report, along with Plaintiff’s  
17 previous reports, Defendant knew or should have known that Plaintiff suffered from a disability.  
18 Although Plaintiff was able to perform the essential functions of her position, the disability she  
19 suffered (caused by the harassment of her coworkers and failure of management to intervene)  
20 prevented her from being present in the office and from focusing on her work assignments. The  
21 constant harassment, led to Plaintiff being unable to perform the functions of her position due to  
22 her serious health condition for which Plaintiff required time away from work As these were  
23 essential functions of her positions, Plaintiff was entitled to leave under the CFRA.

24           26.     In early 2019, Defendant conducted an investigation. But Lyell controlled the  
25 evidence by instructing Plaintiff not to talk to the investigator. The process was treated like  
26 Plaintiff herself was under investigation. This lack of support by management contributed to  
27 further harassment by coworkers. Lyell’s actions amount to further harassment, the adoption of  
28 harassment by others, discrimination based on sex, gender, or sexual orientation, and retaliation



1 of/interference with protected leaves of absence.

2           27.     On February 13, 2019, Plaintiff emailed HR and Lyell requesting to move offices  
3 away from her harassers. Plaintiff told them that she wanted to move to, “provide [her] with piece  
4 of mind” and “a safe place to go.” Plaintiff in that same email said the “hostility is unmanageable”  
5 and “[she did] not feel comfortable leaving [her] office even to use the restroom.” The only  
6 response Plaintiff received was that she could move, but only to an office which itself remained  
7 adjacent to her harassers. Because of Plaintiff’s report of severe fear for her personal safety,  
8 combined with Plaintiff’s prior reports of her condition, Defendant knew or should have known  
9 that Plaintiff suffered from a disability.

10           28.     On February 15, 2019, coworkers had been apparently discussing Plaintiff when  
11 Plaintiff walked by. O’Brien grunted as Plaintiff passed. O’Brien said to two other attorneys (Nick  
12 Evans and Lisa Smith), “Let’s go you sexy beast.” Evans replied, “watch out or I’ll make a  
13 harassment complaint against you.” The three of them laughed, intending to poke fun at Plaintiff  
14 and her complaint. Later, O’Brien told Plaintiff that making a complaint against him was,  
15 “fighting words.” Plaintiff was so upset at this that she visited the workers’ compensation doctor  
16 and obtained a doctor’s note, dated February 15, 2019, stating that Plaintiff could work with  
17 restrictions, to, namely, “Avoid undue emotional stress.”

18           29.     On about February 20, 2019, Plaintiff made at least three requests of Defendant to  
19 “protect [her] from the increasingly hostile work environment,” stating that continuing to work  
20 under the circumstances was “untenable.” Plaintiff told Defendant in these communications that  
21 she was fearful for her personal safety. Plaintiff told Defendant that she needed to take leave to  
22 protect herself from harm. Specifically, Plaintiff requested administrative leave. Plaintiff gave an  
23 example, stating that “last Friday I was threatened by a colleague at the printer.” Plaintiff advised  
24 that, “[m]y department is doing nothing to address the situation. From this email, Defendant  
25 should have understood that Plaintiff was extremely fearful for her personal safety, and that fear  
26 could manifest as stress and anxiety, leading Plaintiff to require not merely the “administrative  
27 leave” she requested, but medical leave protected under the CFRA. No one told Plaintiff that she  
28 might be eligible for job protection under the CFRA if she took a medical leave of absence, even

1 if the administrative leave she requested was unavailable. As early as September 2018, Defendant  
2 knew or should have known about Plaintiff’s disability. Defendant was obligated to inquire with  
3 Plaintiff whether CFRA-qualifying leave was required for Plaintiff’s condition. Failing to so  
4 inquire is a violation of the CFRA either as interference or as retaliation.

5 30. On about February 24, 2019, Chief Deputy Public Defender, Michael Bullard  
6 denied Plaintiff’s requested leave. Bullard’s reasoning was that the workplace violence Plaintiff  
7 reported did not “necessitate placing [Plaintiff] on paid administrative leave.” However,  
8 Plaintiff’s mental health was clearly on Bullard’s mind at the time because he reminded Plaintiff  
9 that she had used Defendant’s “Employee Assistance Program” (“EAP,” a program designed for  
10 employees in emotional or mental need about work-related issues to obtain advise about their  
11 condition) in the past (even though she had not used EAP), and that she should consider using  
12 those services again. Bullard’s apprehension of Plaintiff’s need for counseling alone, but  
13 moreover combined with her request for leave, should have triggered Bullard to begin an  
14 interactive process with Plaintiff. Failing to ask Plaintiff what Defendant could do to  
15 accommodate her evident mental distress amounts to a failure to engage in the interactive process,  
16 a failure to accommodate, and a failure to provide CFRA leave. Based on Plaintiff’s prior reports,  
17 combined with Bullard’s suggestion about EAP, Defendant knew or should have known about  
18 Plaintiff’s disability. Defendant was obligated to inquire whether CFRA-qualifying leave was  
19 required for Plaintiff’s condition, and to ascertain whether the leave was an undue hardship.  
20 Plaintiff is not required to know that her leave is qualifying for either CFRA or the FEHA failure  
21 to accommodate or engage in the interactive process. Bullard’s summary denial of leave was  
22 further retaliation for reporting harassment and requesting leave, further interference with  
23 Plaintiff’s rights under the CFRA, and further retaliation, harassment, or discrimination for  
24 reporting an unsafe workplace and the sexual harassment she was experiencing, and  
25 discrimination for her disability.

26 ///

27 ///

28 ///



1 34. On April 11, 2019 Plaintiff went to Bullard’s office to discuss another employee.  
 2 Plaintiff was in tears, expressing how hard it was for her to work in an office so permeated by  
 3 homophobic hostility. Plaintiff told Bullard that Plaintiff was having difficulty coming to work  
 4 because of the stress and anxiety flowing from both the harassment and management’s utter  
 5 failure to protect her. Bullard responded only that he knew it was hard for Plaintiff. Despite this  
 6 seeming sympathy, Bullard blamed Plaintiff because Plaintiff was supporting a transgendered  
 7 client over staff (by reporting the “shim” comment). Bullard’s callous and unsympathetic  
 8 comment demonstrates that Plaintiff’s sexual orientation was on Bullard’s mind when he refused  
 9 to help her. Plaintiff’s report that the harassment was causing her stress so severe that she could  
 10 not come to work each day put Defendant on further notice that Plaintiff suffered from a disability.  
 11 Because of this continued harassment from Defendant, Plaintiff was unable to perform the  
 12 essential functions of her position, at least without the accommodation of freedom from  
 13 harassment by Defendant. Plaintiff’s inability to perform the essential functions of her position  
 14 entitled her to protected leave under the CFRA.

15 35. Nevertheless, the April 2019 investigation report substantiated part of Plaintiff’s  
 16 claims but doing nothing to protect Plaintiff. On or around April 19, 2019, Plaintiff requested a  
 17 “mental health day” from Bullard and Lyell via text. As such, on April 30, 2019, Defendant  
 18 constructively terminated Plaintiff by failing to provide her with a safe workplace.

19 **FIRST CAUSE OF ACTION**

20 **FEHA Discrimination: Gov. Code, § 12940, subd. (a)**

21 36. The allegations set forth in this complaint are hereby re-alleged and incorporated  
 22 by reference.

23 37. At all relevant times, Plaintiff was an employee of Defendants.

24 38. At all times relevant to this matter, the Fair Employment and Housing Act and  
 25 Government Code section 12940 were in full force and effect and binding on Defendant.  
 26 Government Code section 12940, subdivision (a), reads: “It is an unlawful employment practice...  
 27 [f]or an employer, because of the... physical disability, mental disability, ... marital status, sex,  
 28 gender, ... sexual orientation ... of any person ... or to discriminate against the person in

1 compensation or in terms, conditions, or privileges of employment.”

2 39. At all times relevant to this matter, Plaintiff suffered from a “mental disability” as  
3 defined by Government Code section 12926, subdivision (j), and California Code of Regulations,  
4 title 2, section 11065, subdivision (d)(1), and/or a “perceived disability” as defined by  
5 Government Code section 12926, subdivision (j), and California Code of Regulations, title 2,  
6 section 11065, subdivision (d)(5), and/or a “perceived potential disability” as defined by  
7 Government Code section 12926, subdivision (j), and California Code of Regulations, title 2,  
8 section 11065, subdivision (d)(6), and/or a “physical disability” as defined by Government Code  
9 section 12926, subdivision (m), and California Code of Regulations, title 2, section 11065,  
10 subdivision (d)(2). In spite of her disability, Plaintiff was able to perform the essential functions  
11 of her position as defined by Government Code section 12926, subdivision (f), and California  
12 Code of Regulations, title 2, section 11065, subdivision (e), and was otherwise able to perform  
13 her job had Defendant provided the reasonable accommodation required by Government Code  
14 section 12926, subdivision (p), and California Code of Regulations, title 2, section 11068,  
15 subdivision (a).

16 40. Defendant violated Government Code section 12940, subdivision (a), by tolerating  
17 an atmosphere of sex or sexual orientation harassment, by failing to competently investigate  
18 Plaintiff’s claims of harassment, discrimination, and retaliation, by directly engaging in  
19 discrimination based on Plaintiff’s sexual orientation, by failing to provide Plaintiff with a safe  
20 work environment, by failing to engage Plaintiff in the interactive process, by failing to  
21 accommodate Plaintiff’s disability, among other things.

22 41. Additionally, Defendant violated Government Code section 12940, subdivision  
23 (a), consistent with California Code of Regulations, title 2, section 11066. Specifically, Defendant  
24 knew of Plaintiff’s physical or mental disabilities that limited major life activities. In spite of her  
25 disabilities, Plaintiff was able to perform the essential functions of his position with reasonable  
26 accommodation. Defendant failed to engage Plaintiff, failed to accommodate Plaintiff, and failed  
27 to provide Plaintiff with an explanation why the accommodations she requested were undue  
28 hardships.

1 42. Plaintiff’s protected categories (sex, gender, sexual orientation, disability) were a  
2 substantial motivating reason for Defendant’s decisions to deny Plaintiff reasonable  
3 accommodations, make unfavorable changes to Plaintiff’s work schedule, constructively  
4 terminate Plaintiff’s employment, and create overall hostile terms and conditions of employment.

5 43. Defendant’s conduct was a substantial factor in causing Plaintiff harm.

6 44. As an actual and proximate result of the aforementioned violations, Plaintiff has  
7 been damaged in an amount according to proof, but in an amount in excess of the jurisdiction of  
8 this Court. Plaintiff also seeks “affirmative relief” or “prospective relief” as defined by  
9 Government Code section 12926, subdivision (a), including back pay, reimbursement of out of  
10 pocket expenses, the correction of any negative notations on Plaintiff’s employment record, and  
11 any such other relief that this Court deems proper.

12 45. As an actual and proximate result of Defendant’s willful and intentional  
13 discrimination, Plaintiff has lost wages, benefits, and other out-of-pocket expenses.

14 46. As an actual and proximate result of Defendants’ aforementioned acts, Plaintiff  
15 suffered physical injury. Plaintiff experienced weight loss, nausea, depression, anxiety,  
16 sleeplessness, headaches, neck aches, fatigue, dizziness and nervousness. Plaintiff claims general  
17 damages for physical injury in an amount according to proof at time of trial.

18 47. As an actual and proximate result of Defendants’ aforementioned acts, Plaintiff  
19 also suffered mental upset and other emotional distress. Plaintiff claims general damages for  
20 mental distress in an amount according to proof at time of trial.

21 **SECOND CAUSE OF ACTION**

22 **FEHA Harassment: Gov. Code, § 12940, subd. (j)**

23 48. The allegations set forth in this complaint are hereby re-alleged and incorporated  
24 by reference.

25 49. At all relevant times, Plaintiff was an employee of Defendants.

26 ///

27 ///

28 ///

1 50. At all times relevant to this matter, the Fair Employment and Housing Act and  
2 Government Code section 12940 was in full force and effect and binding on Defendant.  
3 Government Code section 12940, subdivision (j), reads, “It is an unlawful employment practice .  
4 . . [f]or an employer ... or any other person, because of ... physical disability, mental disability,  
5 ... marital status, sex, gender, ... or sexual orientation, to harass an employee, an applicant, or a  
6 person providing services pursuant to a contract.”

7 51. Plaintiff was subjected to unwanted harassing conduct because of her sex and  
8 gender, including suggestive comments, false imprisonment, and unwanted touching. These  
9 deplorable acts were persistent throughout Plaintiff’s employment with Defendant. This harassing  
10 conduct was conducted by Defendant and its managing agents and employees, who created an  
11 environment that, among other things, tolerated and encouraged harassment against Plaintiff that  
12 impacted the terms and conditions of Plaintiff’s employment. The statements and conduct on the  
13 part of Defendant and its managing agents and employees complained of herein represent a  
14 violation of Government Code section 12940, subsection (j), and the California Code of  
15 Regulations, title 2, sections 11019 and 11020.

16 52. A reasonable person in Plaintiff’s circumstances would have considered the work  
17 environment to be hostile or abusive. The environment of harassment was both severe and  
18 pervasive, even though at trial Plaintiff need prove only that it was severe or pervasive.

19 53. Defendant’s conduct was a substantial factor in causing Plaintiff harm.

20 54. As an actual and proximate result of Defendant’s willful and intentional  
21 retaliation, Plaintiff has lost wages, benefits, and other out-of-pocket expenses.

22 55. As an actual and proximate result of Defendant’s aforementioned violations,  
23 Plaintiff has been damaged in an amount according to proof, but in an amount in excess of the  
24 jurisdiction of this Court. Plaintiff also seeks “affirmative relief” or “prospective relief” as defined  
25 by Government Code section 12926, subdivision (a), including back pay, reimbursement of out-  
26 of-pocket expenses, the correction of any negative notations on Plaintiff’s employment record,  
27 and any such other relief that this Court deems proper.

28 ///

1           56. As an actual and proximate result of Defendant’s aforementioned acts, Plaintiff  
2 suffered physical injury. Plaintiff experienced weight loss, nausea, depression, anxiety,  
3 sleeplessness, headaches, neck aches, fatigue, dizziness and nervousness. Plaintiff claims general  
4 damages for physical injury in an amount according to proof at time of trial.

5           57. As an actual and proximate result of Defendant’s aforementioned acts, Plaintiff  
6 also suffered mental upset and other emotional distress. Plaintiff claims general damages for  
7 mental distress in an amount according to proof at time of trial.

8   **THIRD CAUSE OF ACTION**

9   **FEHA Retaliation: Gov. Code, § 12940, subd. (h)**

10          58. The allegations set forth in this complaint are hereby re-alleged and incorporated  
11 by reference.

12          59. At all relevant times, Plaintiff was an employee of Defendants.

13          60. At all times relevant to this action, it was unlawful under Government Code section  
14 12940, subdivision (h), and California Code of Regulations, title 2, section 11021 for Defendant  
15 to retaliate against Plaintiff for complaining about illegal practices. Defendant violated  
16 Government Code section 12940, subdivision (h), and California Code of Regulations, title 2,  
17 section 11021 by retaliating against Plaintiff(s) for complaints of sex harassment, sexual  
18 orientation discrimination, and disability by, among other things, making unfavorable changes to  
19 Plaintiff’s schedule, failing to investigate, manipulating the investigation, failing to protect  
20 Plaintiff, failing to engage in the interactive process, denying reasonable accommodations,  
21 creating an unsafe and hostile work environment, and constructively terminating Plaintiff’s  
22 employment.

23          61. Plaintiff’s complaints regarding illegal conduct were a substantial motivating  
24 reasons for Defendant’s making unfavorable changes to Plaintiff’s schedule, failing to investigate,  
25 manipulating the investigation, failing to protect Plaintiff, failing to engage in the interactive  
26 process, denying reasonable accommodations, creating an unsafe and hostile work environment,  
27 and constructively terminating Plaintiff’s employment.

28 ///





1           70.     At all times relevant to this matter, Plaintiff suffered from a “mental disability” as  
2 defined by Government Code section 12926, subdivision (j), and the California Code of  
3 Regulations, title 2, section 11065, subdivision (d)(1), and/or a “perceived disability” as defined  
4 by Government Code section 12926, subdivision (j), and the California Code of Regulations, title  
5 2, section 11065, subdivision (d)(5), and/or a “perceived potential disability” as defined by  
6 Government Code section 12926, subdivision (j), and the California Code of Regulations, title 2,  
7 section 11065, subdivision (d)(6), and/or a “physical disability” as defined by Government Code  
8 section 12926, subdivision (m), and the California Code of Regulations, title 2, section 11065,  
9 subdivision (d)(2). In spite of her disability, Plaintiff was able to perform the essential functions  
10 of her position as defined by Government Code section 12926, subdivision (f), and the California  
11 Code of Regulations, title 2, section 11065, subdivision (e), and was otherwise able to perform  
12 her job had Defendant provided the reasonable accommodation required by Government Code  
13 section 12926, subdivision (p), and the California Code of Regulations, title 2, section 11068,  
14 subdivision (a).

15           71.     Although Plaintiff provided notice to Defendants regarding her disability,  
16 Defendant failed to accommodate Plaintiff’s disabilities as set forth above. Plaintiff was willing  
17 to participate in an interactive process to determine whether reasonable accommodation could be  
18 made so that Plaintiff would be able to perform the essential job requirements. Defendants failed  
19 to approach Plaintiff to discuss the possible accommodation of her disabilities and with Plaintiff’s  
20 health care providers. Defendant did not discuss the nature and extent of Plaintiff’s mental health  
21 condition or disabilities with anyone, including Plaintiff, specifically, the advice and  
22 recommendation of Plaintiff’s health care providers, the extent of the necessary accommodation,  
23 and the need for future accommodation as well as other important areas of inquiry recognized in  
24 the Unites States Equal Employment Opportunity Commission’s “Enforcement Guidance:  
25 Reasonable Accommodation and Undue Hardship Under the Americans With Disabilities Act”  
26 noted by the California Legislature in Government Code section 12926.1, subdivision (e).  
27 Defendant’s obligation to engage in the interactive process of accommodation was not excused  
28 or waived by Plaintiff. Because Defendant failed to engage in the important interactive process

1 between employee and employer in determining reasonable accommodation, Defendants’  
2 conduct violated Government Code section 12940, subdivision (n).

3 72. Defendant’s failure to engage in a good-faith interactive process was a substantial  
4 factor in causing Plaintiff’s harm.

5 73. As an actual and proximate result of the aforementioned violations, Plaintiff has  
6 been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of  
7 this Court. Plaintiff also seeks “affirmative relief” or “prospective relief” as defined by  
8 Government Code section 12926, subdivision (a), including back pay, reimbursement of out-of-  
9 pocket expenses, the correction of any negative notations on Plaintiff’s employment record, and  
10 any such other relief that this Court deems proper.

11 74. As an actual and proximate result of Defendants’ willful and intentional failure to  
12 engage in the interactive process, Plaintiff has lost wages, benefits, and other out-of-pocket  
13 expenses.

14 75. As an actual and proximate result of Defendants’ aforementioned acts, Plaintiff  
15 suffered physical injury. Plaintiff experienced weight loss, nausea, depression, anxiety,  
16 sleeplessness, headaches, neck aches, fatigue, dizziness and nervousness. Plaintiff claims general  
17 damages for physical injury in an amount according to proof at time of trial.

18 76. As an actual and proximate result of Defendants’ aforementioned acts, Plaintiff  
19 also suffered mental upset and other emotional distress. Plaintiff claims general damages for  
20 mental distress in an amount according to proof at time of trial.

21 **FIFTH CAUSE OF ACTION**

22 **FEHA Failure to Accommodate: Gov. Code, § 12940, subd. (m)**

23 77. The allegations set forth in this complaint are hereby re-alleged and incorporated  
24 by reference.

25 78. At all relevant times, Plaintiff was an employee of Defendants.

26 ///

27 ///

28 ///

1           79. At all times relevant to this matter, the Fair Employment and Housing Act,  
2 Government Code section 12940, was in full force and effect and binding on Defendants. Section  
3 12940, subdivision (m), reads: “It is an unlawful employment practice ... [f]or an employer or  
4 other entity covered by this part to fail to make reasonable accommodation for the known physical  
5 or mental disability of an applicant or employee. Nothing in this subdivision or in paragraph (1)  
6 or (2) of subdivision (a) shall be construed to require an accommodation that is demonstrated by  
7 the employer or other covered entity to produce undue hardship, as defined in Section 12926(t),  
8 to its operation.”

9           80. At all times relevant to this matter, Plaintiff suffered from a “mental disability” as  
10 defined by Government Code section 12926, subdivision (j), and the California Code of  
11 Regulations, title 2, section 11065, subdivision (d)(1), and/or a “perceived disability” as defined  
12 by Government Code section 12926, subdivision (j), and the California Code of Regulations, title  
13 2, section 11065, subdivision (d)(5), and/or a “perceived potential disability” as defined by  
14 Government Code section 12926, subdivision (j), and the California Code of Regulations, title 2,  
15 section 11065, subdivision (d)(6), and/or a “physical disability” as defined by Government Code  
16 section 12926, subdivision (m), and the California Code of Regulations, title 2, section 11065,  
17 subdivision (d)(2). In spite of her disability, Plaintiff was able to perform the essential functions  
18 of her position as defined by Government Code section 12926, subdivision (f), and the California  
19 Code of Regulations, title 2, section 11065, subdivision (e), and was otherwise able to perform  
20 her job had Defendant provided the reasonable accommodation required by Government Code  
21 section 12926, subdivision (p), and the California Code of Regulations, title 2, section 11068,  
22 subdivision (a).

23           81. Plaintiff provided notice relating to her disabilities and requested potential  
24 accommodations. Despite Plaintiff’s disabilities, she was able to perform the essential duties of  
25 her position with reasonable accommodations. However, Defendant refused to accommodate  
26 Plaintiff. Shortly after requesting accommodations, Defendant made unfavorable changes to her  
27 work schedule, denied her reasonable accommodation, and wrongfully constructively terminated  
28 her employment. Defendant did not tell Plaintiff at the time and cannot now establish that

1 allowing Plaintiff’s reasonable accommodation was an “undue hardship” as defined by  
2 Government Code section 12926, subdivision (t), and the California Code of Regulations, title 2,  
3 section 11068. Accordingly, Defendant’s conduct violated Government Code section 12940,  
4 subdivision (m).

5 82. Defendants’ failure to provide reasonable accommodation was a substantial factor  
6 in causing Plaintiff’s harm.

7 83. As an actual and proximate result of the aforementioned violations, Plaintiff has  
8 been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of  
9 this Court. Plaintiff also seeks “affirmative relief” or “prospective relief” as defined by  
10 Government Code section 12926, subdivision (a), including back pay, reimbursement of out of  
11 pocket expenses, the correction of any negative notations on Plaintiff’s employment record, and  
12 any such other relief that this Court deems proper.

13 84. As an actual and proximate result of Defendant’s willful and intentional failure to  
14 reasonably accommodate, Plaintiff has lost wages, benefits, and other out-of-pocket expenses.

15 85. As an actual and proximate result of Defendant’s aforementioned acts, Plaintiff  
16 suffered physical injury. Plaintiff experienced weight loss, nausea, depression, anxiety,  
17 sleeplessness, headaches, neck aches, fatigue, dizziness and nervousness. Plaintiff claims general  
18 damages for physical injury in an amount according to proof at time of trial.

19 86. As an actual and proximate result of Defendant’s aforementioned acts, Plaintiff  
20 also suffered mental upset and other emotional distress. Plaintiff claims general damages for  
21 mental distress in an amount according to proof at time of trial.

22 **SIXTH CAUSE OF ACTION**

23 **FEHA Failure to Prevent Harassment and Discrimination: Gov. Code, § 12940, subd. (k)**

24 87. The allegations set forth in this complaint are hereby re-alleged and incorporated  
25 by reference.

26 88. At all relevant times, Plaintiff was an employee of Defendants.

27 ///

28 ///

1           89. As an employer, pursuant to Government Code section 12926, subdivision (d),  
2 Defendant has a duty to prevent unlawful harassment and discrimination, including retaliation.  
3 Defendant knew or should have known about the harassment and discrimination based on sex,  
4 gender, sexual orientation, and disability against Plaintiff as set forth above. Defendant failed to  
5 implement adequate training, policies, or instructions that would have prevented the  
6 aforementioned harassment, discrimination and retaliation of Plaintiff. Defendant breached its  
7 duty to prevent the harassment, discrimination and retaliation of Plaintiff. Accordingly,  
8 Defendant violated Government Code section 12940, subdivision (k), and The California Code  
9 of Regulations, title 2, section 11019, subdivision (b)(3).

10           90. Plaintiff was subjected to harassment, discrimination, and retaliation in the course  
11 of her employment with Defendant as described above.

12           91. Defendant failed to take all reasonable steps to prevent the harassment,  
13 discrimination, and retaliation.

14           92. Defendant’s conduct was a substantial factor in causing Plaintiff’s harm.

15           93. As an actual and proximate result of the aforementioned violations, Plaintiff has  
16 been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of  
17 this Court. Plaintiff also seeks “affirmative relief” or “prospective relief” as defined by  
18 Government Code section 12926, subdivision (a), including back pay, reimbursement of out of  
19 pocket expenses, the correction of any negative notations on Plaintiff’s employment record, and  
20 any such other relief that this Court deems proper.

21           94. As an actual and proximate result of Defendant’s willful and intentional failure to  
22 reasonably accommodate, Plaintiff has lost wages, benefits, and other out-of-pocket expenses.

23           95. As an actual and proximate result of Defendant’s aforementioned acts, Plaintiff  
24 suffered physical injury. Plaintiff experienced weight loss, nausea, depression, anxiety,  
25 sleeplessness, headaches, neck aches, fatigue, dizziness and nervousness. Plaintiff claims general  
26 damages for physical injury in an amount according to proof at time of trial.

27 ///

28 ///



1 101. Plaintiff’s requests for leave and use of protected leave were a substantial  
2 motivating factor in Defendant’s decisions to deny Plaintiff flex time, deny Plaintiff the  
3 interactive process or accommodation, fail to investigate Plaintiff’s complaints, fail to provide  
4 Plaintiff with a safe workplace, fail to provide Plaintiff a workplace free from hostility, and  
5 wrongfully constructively terminate Plaintiff.

6 102. Defendant’s conduct was a substantial factor in causing Plaintiff’s harm.

7 103. As an actual and proximate result of the aforementioned violations, Plaintiff has  
8 been harmed in an amount according to proof, but in an amount in excess of the jurisdiction of  
9 this Court. Plaintiff also seeks “affirmative relief” or “prospective relief” as defined by  
10 Government Code section 12926, subdivision (a), including back pay, reimbursement of out of  
11 pocket expenses, the correction of any negative notations on Plaintiff’s employment record, and  
12 any such other relief that this Court deems proper.

13 104. As an actual and proximate result of Defendant’s willful and intentional failure to  
14 reasonably accommodate, Plaintiff has lost wages, benefits, and other out-of-pocket expenses.

15 105. As an actual and proximate result of Defendant’s aforementioned acts, Plaintiff  
16 suffered physical injury. Plaintiff experienced weight loss, nausea, depression, anxiety,  
17 sleeplessness, headaches, neck aches, fatigue, dizziness and nervousness. Plaintiff claims general  
18 damages for physical injury in an amount according to proof at time of trial.

19 106. As an actual and proximate result of Defendant’s aforementioned acts, Plaintiff  
20 also suffered mental upset and other emotional distress. Plaintiff claims general damages for  
21 mental distress in an amount according to proof at time of trial.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff demands judgment against Defendants, and each of them, as  
24 follows:

- 25 1. For compensatory damages, including, but not limited to lost wages and non-  
26 economic damages in the amount according to proof;
- 27 2. For attorneys’ fees and costs pursuant to all applicable statutes or legal principles;
- 28 3. For cost of suit incurred;



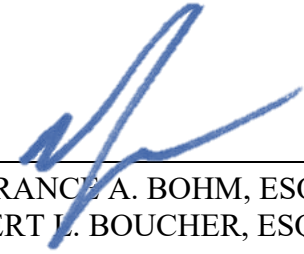
BOHM LAW GROUP, INC.  
4600 NORTHGATE BOULEVARD, SUITE 210  
SACRAMENTO, CALIFORNIA 95834

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

4. For prejudgment interest on all amounts claimed pursuant to Civil Code sections 3287 and/or 3288; and

5. For such other and further relief as the court may deem proper.


Date: November 8, 2021

By:   
LAWRANCE A. BOHM, ESQ.  
ROBERT L. BOUCHER, ESQ.  
  
Attorneys for Plaintiff,  
APRIL VAN DYKE

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury for this matter.

Date: November 8, 2021

By:   
LAWRANCE A. BOHM, ESQ.  
ROBERT L. BOUCHER, ESQ.  
  
Attorneys for Plaintiff,  
APRIL VAN DYKE

1 VERIFICATION OF FOURTH AMENDED COMPLAINT FOR DAMAGES

2  
3 I, APRIL VAN DYKE, have read the attached Fourth Amended Complaint for  
4 Damages and hereby attest that the same is true of my own knowledge, except as to those matters,  
5 which are therein stated on my information or belief, and as to those matter that I believe it to be  
6 true.

7 I declare under penalty of perjury under to the laws of the State of California that the  
8 foregoing is true and correct.

9 This Verification was executed on September 13, 2021, in Arcada, California.

10  
11   
12 \_\_\_\_\_  
13 APRIL VAN DYKE  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 *Van Dyke v. Office of the Public Defender for San Joaquin County, et al.*  
2 Superior Court of California, County of San Joaquin  
3 Case No.: STK-CV-UWT-2019- 15620

4 **PROOF OF SERVICE BY ELECTRONIC SERVICE**

5 I, the undersigned declare that I am employed in the County of Sacramento, State of  
6 California. I am over the age of eighteen (18) years and not a party to the within action; my  
7 business address is: 4600 Northgate Boulevard, Suite 210, Sacramento, California 95834.

8 On November 8, 2021, I served the within:

9 **PLAINTIFF'S VERIFIED FOURTH AMENDED COMPLAINT FOR DAMAGES AND  
10 DEMAND FOR JURY TRIAL**

11 XX By sending a true copy thereof electronically to the individual(s) and electronic service  
12 address(s) as set forth below at from the electronic service address:

13 [asweet@bohmlaw.com](mailto:asweet@bohmlaw.com).


14 **Mr. Joshua A. Stevens, Esq.**  
15 [JStevens@herumcrabtree.com](mailto:JStevens@herumcrabtree.com)  
16 **Mr. Dana A. Suntag, Esq.**  
17 [DSuntag@herumcrabtree.com](mailto:DSuntag@herumcrabtree.com)  
18 **HERUM CRABTREE SUNTAG**  
19 **A CA PROFESSIONAL**  
20 **CORPORATION**  
21 **5757 Pacific Avenue, Suite 222**  
22 **Stockton, California 95207**

**Attorneys for Defendant,**  
**OFFICE OF THE PUBLIC DEFENDER**  
**FOR SAN JOAQUIN**

23 **Mr. Robert L. Boucher, Esq.**  
24 [robert@boucher-law.com](mailto:robert@boucher-law.com)  
25 **BOUCHER LAW**  
26 **2121 Natomas Crossing Drive**  
27 **Suite 200-389**  
28 **Sacramento, California 95834**

**Attorney for Plaintiff (Co-Counsel)**  
**APRIL VAN DYKE**

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 8, 2021. in Sacramento, California.

  
\_\_\_\_\_  
Ashley Sweet  
Case Manager