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Attorneys for Plaintiff,
**CHRISTINE RICHTERS**



**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF ORANGE** Judge Linda Marks

CHRISTINE RICHTERS, an individual,

Plaintiff,

vs.

COUNTY OF ORANGE, a municipal corporation; TODD SPITZER, an individual; and DOES 1-50 inclusive,

Defendants.

CASE NO.: 30-2017-00910955-CU-WT-CJC

**COMPLAINT FOR DAMAGES:**

1. **DISCRIMINATION ON THE BASIS OF DISABILITY IN VIOLATION OF GOVERNMENT CODE §§ 12940 *ET SEQ.;***
2. **HARASSMENT ON THE BASIS OF DISABILITY IN VIOLATION OF GOVERNMENT CODE §§ 12940 *ET SEQ.;***
3. **RETALIATION IN VIOLATION OF GOVERNMENT CODE §§ 12940 *ET SEQ.;***
4. **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION IN VIOLATION OF GOVERNMENT CODE §§ 12940 *ET SEQ.;***
5. **FAILURE TO ACCOMMODATE IN VIOLATION OF GOVERNMENT CODE §§ 12940 *ET SEQ.;***
6. **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS IN VIOLATION OF GOVERNMENT CODE §§ 12940 *ET SEQ.;***
7. **FAILURE TO PAY FOR ALL HOURS WORKED (FAIR LABOR STANDARDS ACT); and**
8. **FAILURE TO PAY FOR OVERTIME COMPENSATION (FAIR LABOR STANDARDS ACT)**

**REQUEST FOR JURY TRIAL**

## I.

## INTRODUCTION

1. Plaintiff CHRISTINE RICHTERS ("Plaintiff" or "RICHTERS") is, and at all times mentioned herein, was a resident of the County of Orange, and was a citizen of the State of California. At all times mentioned herein, Plaintiff is and was disabled.

2. From February 27, 2013 through October 13, 2016, Plaintiff was employed by Defendant, the COUNTY OF ORANGE ("COUNTY"), and assigned to work as an Executive Aide in the Office of Supervisor, Third District, Todd Spitzer. Throughout her employment, Plaintiff was supervised by the Chief of Staff in that office, the last one being Mr. George Cardenas. While employed at COUNTY, Plaintiff was a loyal and devoted employee whose work performance was at all times above-average. Throughout her employment, Plaintiff fulfilled all of her job duties.

3. Plaintiff is informed and believes and thereon alleges that at all relevant times during her employment, Defendants, and each of them, harassed and discriminated against Plaintiff on the basis of her disability, and retaliated against her for requesting a medical accommodation.

4. Plaintiff is informed, believes, and thereon alleges that Defendant TODD SPITZER ("SPITZER") is, and at all times mentioned herein was, an individual residing in the County of Orange, and is a citizen of the State of California. At all relevant times, Defendant SPITZER was acting within the course and scope of his employment with Defendant COUNTY.

5. Plaintiff is informed and believes, and thereon alleges that Defendant COUNTY is a municipal corporation existing under the laws of the State of California, and is a General Law City as defined by Government Code § 36501.

6. In addition to Plaintiff's claims made under the Fair Employment and Housing Act, Plaintiff seeks recovery of damages for Defendant COUNTY's failure to pay minimum wages pursuant to 29 U.S.C. § 206. Plaintiff complains that Defendant COUNTY employed and continues to employ hourly employees who work for Defendant COUNTY in administrative positions for extended periods of time – up to 24 hours per day for employees – yet failed to pay the minimum wages that they were entitled to under federal law. Specifically, Plaintiff complains that she was

required daily to be available at all hours causing her to work up to 24 hour shifts but, when broken down by hour, was not compensated for each hour of work in the amount required by federal law.

7. Plaintiff also seeks recovery of damages for Defendant COUNTY's failure to pay overtime wages pursuant to 29 U.S.C. § 207. Plaintiff complains that Defendant subjected and continues to subject its hourly employees who work for Defendant COUNTY in administrative positions to its policy and practice of failing to pay overtime at a rate of one and one-half times her regular rate for hours worked in excess of forty (40) hours during a workweek.

## II.

## FACTUAL ALLEGATIONS

8. On February 27, 2013, Plaintiff was hired by COUNTY to serve as the Executive Aide in the office of the Third District Supervisor, Todd Spitzer. At the time, Plaintiff was a non-exempt employee supervised by the Chief of Staff at the time, Mr. Mike Johnson, earning $16.50 per hour.

9. RICHTERS daily schedule was Monday through Friday 8:00 a.m. to 5:00 p.m. In addition, RICHTERS was required to attend after hour events which totaled approximately eight (8) to ten (10) hours per week for which she was not compensated.

10. Also, SPITZER required employees (including the hourly non-exempt employees) to be on stand-by 24 hours per day, 7 days per week to respond to any text message sent to them by SPITZER. (A copy of the July 15, 2016 email from SPITZER to employees is attached hereto as Exhibit "A".)

11. The work environment in SPITZER's office was extremely stressful due to the unrealistic demands SPITZER placed upon the employees, as well as SPITZER's raging temper that he often directed towards the employees. Simply put, even though Plaintiff was not directly supervised by SPITZER, it was SPITZER's regular practice to govern his office through means of fear and aggression.

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12. SPITZER's temper caused Plaintiff to suffer from severe health issues including, but not limited to, weight loss, hair loss, sleepless nights, stress, anxiety, and depression. As a result, Plaintiff consulted with a health care professional and was placed on several different medications to try and alleviate her symptoms. She was also placed off work for various periods of time in 2016.

13. On or around July 27, 2016 Plaintiff provided a Doctor's note to her supervisor, the Chief of Staff at the time, Mr. George Cardenas, substantiating time away from work as a result of an "acute medical issue," which was caused by the daily hostility she endured and was exposed to in SPITZER's office.

14. Plaintiff's medical provider also instructed Plaintiff to seek a job transfer out of SPITZER's office to avoid any further medical issues and symptoms.

15. Upon her return to work on or about July 28, 2016, Plaintiff visited COUNTY's Human Resources Office to request an accommodation to transfer out of SPITZER's office. "Sonja" from COUNTY's Human Resources Office responded that COUNTY would assist Plaintiff in such a transfer and would not require a Doctor's note to accommodate this specific request.

16. Thereafter, COUNTY Human Resources Office sent Plaintiff emails with available job openings and Plaintiff regularly applied for such openings.

17. In response to Plaintiff's efforts to transfer, SPITZER instructed Mr. Cardenas not to assist Plaintiff in her transfer efforts and stated that she was "on her own." SPITZER also told Plaintiff "No one leaves Spitzer unless they're fired" and as a result SPITZER became more hostile and aggressive towards Plaintiff. Plaintiff was also retaliated against by immediately being relieved of several of her regular job duties and relegated to only preparing certificates of recognition all day long, an extremely tedious task.

18. Eventually, Plaintiff was advised by her Supervisor, Mr. Cardenas that "Mr. Spitzer wants you out of here."

19. On October 13, 2016, Plaintiff's employment with COUNTY was terminated before she was offered any opportunities to transfer within the COUNTY.

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## GENERAL ALLEGATIONS

20. This is a complaint by an individual for damages arising out of the outrageous, oppressive and intrusive conduct of all Defendants. Plaintiff seeks compensatory damages.

21. The true names and capacities of the Defendants sued herein as DOES 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these Defendants by such fictitious names. Plaintiff will ask leave of the Court to amend this Complaint to show their true names and capacities when same have been ascertained. Plaintiff is informed and believes, and thereon alleges, that each of the Defendants, herein designated as a DOE, proximately caused the injuries and damages to Plaintiff as hereinafter alleged.

22. Plaintiff is informed and believes, and thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the events and happenings herein referred to, proximately caused the injuries and damages thereby to Plaintiff as herein alleged.

23. At all times relevant to this action, each of the fictitiously named Defendants was an employee, agent, servant, partner, member, shareholder, officer, director, co-conspirator, or alter ego of Defendants, and was acting within the course and scope of such agency or employment.

24. Plaintiff is informed, believes, and thereon alleges that at all times mentioned herein, Defendant COUNTY was a Municipal corporation, existing under the laws of the State of California.

25. Plaintiff is informed, believes, and thereon alleges that at all times mentioned herein, Defendant SPITZER was a managerial employee for Defendant CITY, and a citizen of the State of California.

26. At all times herein mentioned, Plaintiff was an individual who resided in the County of Orange, State of California, was an employee of Defendant CITY, and was and is a citizen of the State of California.

27. The acts complained of herein took place in the County of Orange, State of California.

28. At all times during the term of Plaintiff's employment with COUNTY, Plaintiff was COUNTY's employee within the meaning of the Fair Labor Standards Act ("FLSA").

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## EXHAUSTION

29. On or about March 15, 2017, Plaintiff served a public entity claim under California Government Code§ 910 (the "Claim").

30. Plaintiff was required by statute to file a claim with the California Department of Fair Employment and Housing (DFEH), pursuant to California Government Code § 12965(b) and the California Fair Employment and Housing Act (FERA). Plaintiff filed such a claim in a timely manner and a "right-to-sue" letter was issued.

31. Based on all of the foregoing, Plaintiff has exhausted her administrative remedies.

## II.

## CAUSES OF ACTION

### FIRST CAUSE OF ACTION

### DISCRIMINATION BASED UPON DISABILITY

### IN VIOLATION OF GOVERNMENT CODE §§ 12940 ET SEQ.

### AGAINST COUNTY and DOES 1-50

32. Plaintiff incorporates, by reference, all the foregoing paragraphs of this Complaint as though fully set forth herein, except where to do so would be inconsistent with pleading a cause of action for Discrimination Based Upon a Disability.

33. The Fair Employment Housing Act ("FEHA") prohibits employment discrimination based on Disability.

34. Plaintiff is, and at all times mentioned herein was considered disabled under the FEHA. As such, Plaintiff is a member of a class protected from discrimination.

35. Defendants treated Plaintiff adversely because of her disability and engaged in acts of discrimination as alleged in this Complaint, when they, without limitation, subjected Plaintiff to adverse employment actions in the terms, conditions, and/or privileges of her employment by failing to accommodate her and terminating her employment.

36. The above said acts were perpetrated upon Plaintiff by her supervisors, and Defendants knew or should have known of the conduct but failed to take immediate and appropriate corrective action.

37. In doing the acts referenced above, Defendants, and each of them, violated their affirmative duty to Plaintiff.

38. As a direct and proximate result of the aforesaid acts of Defendants, and each of them, Plaintiff has suffered/continues to suffer and incurred/continues to incur, and is therefore entitled to recover:

a. Substantial loss of earnings, employment benefits and reduced future earning capacity in an amount according to proof at the time of trial. Plaintiff claims such amount as damages together with prejudgment interest pursuant to applicable law;

b. Necessary and reasonable attorneys' fees in order to enforce her rights and to obtain benefits due her, all to her further damage in an amount according to proof;

c. Embarrassment, humiliation, emotional distress, mental anguish and severe shock to her nervous system, and thereby sustained serious injuries to her physical and mental health, strength and activity, causing her extreme physical and emotional pain, all to her general damage in such amount as may be proven at time of trial. Said amount is within the jurisdiction of the Superior Court of the State of California;

d. Medical expenses, the exact nature and extent of which are unknown to Plaintiff at this time. Plaintiff will seek leave of court to amend this complaint when the same have been ascertained;

e. Additional future medical expenses all to her further damage in an amount to be proven at trial; and

f. Other incidental and consequential damages in an amount according to proof at the time of trial.

Wherefore, Plaintiff prays for judgment against the Defendants as hereinafter set forth.

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## SECOND CAUSE OF ACTION

## HARASSMENT BASED UPON DISABILITY

## IN VIOLATION OF GOVERNMENT CODE §§ 12940 ET SEQ.

## AGAINST ALL DEFENDANTS AND DOES 1-50

39. Plaintiff incorporates, by reference, all the foregoing paragraphs of this Complaint as though fully set forth herein, except where to do so would be inconsistent with pleading a cause of action for Harassment Based Upon a Disability.

40. The FEHA prohibits employment harassment based on disability.

41. Plaintiff is, and at all times mentioned herein was, disabled under the FEHA. As such, Plaintiff is a member of a class protected from harassment.

42. After Plaintiff requested an accommodation to transfer out of SPITZER's office, Defendant COUNTY engaged in repeated harassment including, but not limited to, intentionally sabotaging Plaintiff's attempts to transfer to a new position within the COUNTY, relegating her to limited job duties, and commenting negatively concerning her accommodation requests as alleged above.

43. Plaintiff is informed, believes, and thereon alleges that COUNTY and its management employees, including but not limited to SPITZER, engaged upon a campaign to find a pretext by means of which to terminate Plaintiff's employment.

44. Defendant COUNTY is vicariously liable for SPITZER's harassing conduct under the *Doctrine of Respondeat Superior*, because COUNTY failed to take reasonable corrective measures when it had knowledge of SPITZER's unlawful conduct and where SPITZER was a managing agent of COUNTY.

45. Defendants, and each of them, violated the FEHA by creating a hostile work environment, harassing Plaintiff because of her disability.

46. The above said acts were perpetrated upon Plaintiff by COUNTY's supervisory and management personnel, including but not limited to Defendant SPITZER. Defendant COUNTY knew, or should have known of the conduct, but failed to take immediate and appropriate corrective action.

47. In doing the acts referenced above, Defendants, and each of them, violated their affirmative duty to Plaintiff.

48. As a direct and proximate result of the aforesaid acts of Defendants, and each of them, Plaintiff has suffered/continues to suffer and incurred/continues to incur, and is therefore entitled to recover:

a. Substantial loss of earnings, employment benefits and reduced future earning capacity in an amount according to proof at the time of trial. Plaintiff claims such amount as damages together with prejudgment interest pursuant to applicable law;

b. Necessary and reasonable attorneys' fees in order to enforce her rights and to obtain benefits due her, all to her further damage in an amount according to proof;

c. Embarrassment, humiliation, emotional distress, mental anguish and severe shock to her nervous system, and thereby sustained serious injuries to her physical and mental health, strength and activity, causing her extreme physical and emotional pain, all to her general damage in such amount as may be proven at time of trial. Said amount is within the jurisdiction of the Superior Court of the State of California;

d. Medical expenses, the exact nature and extent of which are unknown to Plaintiff at this time. Plaintiff will seek leave of court to amend this complaint when the same have been ascertained;

e. Additional future medical expenses all to her further damage in an amount to be proven at trial; and

f. Other incidental and consequential damages in an amount according to proof at the time of trial.

Wherefore, Plaintiff prays for judgment against the Defendants as hereinafter set forth.

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**THIRD CAUSE OF ACTION**

**RETALIATION**

**IN VIOLATION OF GOVERNMENT CODE §§ 12940 ET SEQ.**

**AGAINST COUNTY and DOES 1-50**

49. Plaintiff incorporates, by reference, all the foregoing paragraphs of this Complaint as though fully set forth herein, except where to do so would be inconsistent with pleading a cause of action for Retaliation.

50. At all times relevant herein, Defendant COUNTY and DOES 1 through 50, and each of them, were employers as that term is defined in Government Code§ 12926, et seq., and as such, were barred from retaliating in employment decisions.

51. During her employment, Plaintiff complained that she was being harassed and discriminated against because of her disability. When she did so, she was a protected person, engaged in a protected activity.

52. When she was a protected person, engaged in a protected activity, Defendants, and each of them, engaged in acts of retaliation as set forth above, including without limitation when they subjected Plaintiff to adverse employment actions for seeking reasonable accommodations in the form of a job transfer due to her disability.

53. Defendants retaliated against Plaintiff because she had a disability, and because Plaintiff repeatedly complained to COUNTY about the contentious and stressful work environment caused by SPITZER, which caused Plaintiff's medical condition. Therefore, a causal link exists between the protected nature and activities Plaintiff was engaged in and Defendants' actions.

54. As a direct and proximate result of the aforesaid acts of Defendants, and each of them, Plaintiff has suffered/continues to suffer and incurred/continues to incur, and is therefore entitled to recover:

a. Substantial loss of earnings, employment benefits and reduced future earning capacity in an amount according to proof at the time of trial. Plaintiff claims such amount as damages together with prejudgment interest pursuant to applicable law;

b. Necessary and reasonable attorneys' fees in order to enforce her rights and to obtain benefits due her, all to her further damage in an amount according to proof;

c. Embarrassment, humiliation, emotional distress, mental anguish and severe shock to her nervous system, and thereby sustained serious injuries to her physical and mental health, strength and activity, causing her extreme physical and emotional pain, all to her general damage in such amount as may be proven at time of trial. Said amount is within the jurisdiction of the Superior Court of the State of California;

d. Medical expenses, the exact nature and extent of which are unknown to Plaintiff at this time. Plaintiff will seek leave of court to amend this complaint when the same have been ascertained;

e. Additional future medical expenses all to her further damage in an amount to be proven at trial; and

f. Other incidental and consequential damages in an amount according to proof at the time of trial.

Wherefore, Plaintiff prays for judgment against the Defendants as hereinafter set forth.

**FOURTH CAUSE OF ACTION**

**FAILURE TO TAKE ALL REASONABLE STEPS TO PREVENT DISCRIMINATION AND RETALIATION IN VIOLATION OF GOVERNMENT CODE §§ 12940 ET SEQ. AGAINST COUNTY and DOES 1-50**

55. Plaintiff incorporates, by reference, all the foregoing paragraphs of this Complaint as though fully set forth herein, except where to do so would be inconsistent with pleading a cause of action for Failure to Take All Reasonable Steps to Prevent Discrimination and Retaliation.

56. Government Code § 12940 provides that it is an unlawful employment practice for an employer, because of the person's age or complaints of unlawful conduct, to discriminate and

retaliate against the employee. An entity shall take all reasonable steps to prevent the discrimination and retaliation from occurring.

57. Plaintiff was terminated from her position with COUNTY after the onset of Plaintiff's disability and seeking reasonable accommodations due to her disability.

58. The facts alleged herein constitute violations of FEHA in that Defendants, and each of them, discriminated and retaliated against Plaintiff, and subjected her to adverse employment practices with respect to the terms, conditions, and/or privileges of her employment when COUNTY denied providing Plaintiff with a reasonable accommodation, and instead terminated her employment. Plaintiff alleges that Defendants' discrimination and retaliation against Plaintiff was an unlawful employment practice in that Defendants, and each of them, failed to take all reasonable steps necessary to prevent harassment, discrimination, and retaliation from occurring in violation of *Government Code* § 12940 of the Fair Employment and Housing Act.

59. As a direct and proximate result of the aforesaid acts of Defendants, and each of them, Plaintiff has suffered/continues to suffer and incurred/continues to incur, and is therefore entitled to recover:

a. Substantial loss of earnings, employment benefits and reduced future earning capacity in an amount according to proof at the time of trial. Plaintiff claims such amount as damages together with prejudgment interest pursuant to applicable law;

b. Necessary and reasonable attorneys' fees in order to enforce her rights and to obtain benefits due her, all to her further damage in an amount according to proof;

c. Embarrassment, humiliation, emotional distress, mental anguish and severe shock to her nervous system, and thereby sustained serious injuries to her physical and mental health, strength and activity, causing her extreme physical and emotional pain, all to her general damage in such amount as may be proven at time of trial. Said amount is within the jurisdiction of the Superior Court of the State of California;

d. Medical expenses, the exact nature and extent of which are unknown to Plaintiff at this time. Plaintiff will seek leave of court to amend this complaint when the same have been ascertained;

e. Additional future medical expenses all to her further damage in an amount to be proven at trial; and

f. Other incidental and consequential damages in an amount according to proof at the time of trial.

Wherefore, Plaintiff prays for judgment against the Defendants as hereinafter set forth.

**FIFTH CAUSE OF ACTION**

**FAILURE TO REASONABLY ACCOMMODATE DISABILITY**

**IN VIOLATION OF GOVERNMENT CODE §§ 12940 ET SEQ.**

**AGAINST COUNTY and DOES 1-50**

60. Plaintiff incorporates, by reference, all the foregoing paragraphs of this Complaint as though fully set forth herein, except where to do so would be inconsistent with pleading a cause of action for Failure to Reasonably Accommodate Disability.

61. FEHA requires these Defendants to reasonable accommodate employees with disabilities.

62. Plaintiff is, and at all times mentioned herein was, employed by COUNTY and a disabled person. As such, Defendant owed Plaintiff a duty to reasonably accommodate her disability.

63. In engaging in the conduct referenced herein, Defendants violated its affirmative duty to Plaintiff.

64. As a direct and proximate result of the aforesaid acts of Defendants, Plaintiff has suffered/continues to suffer and incurred/continues to incur, and is therefore entitled to recover:

a. Substantial loss of earnings, employment benefits and reduced future earning capacity in an amount according to proof at the time of trial. Plaintiff claims such amount as damages together with prejudgment interest pursuant to applicable law;

b. Necessary and reasonable attorneys' fees in order to enforce her rights and to obtain benefits due her, all to her further damage in an amount according to proof;

c. Embarrassment, humiliation, emotional distress, mental anguish and severe shock to her nervous system, and thereby sustained serious injuries to her physical and mental health, strength and activity, causing her extreme physical and emotional pain, all to her general damage in such amount as may be proven at time of trial. Said amount is within the jurisdiction of the Superior Court of the State of California;

d. Medical expenses, the exact nature and extent of which are unknown to Plaintiff at this time. Plaintiff will seek leave of court to amend this complaint when the same have been ascertained;

e. Additional future medical expenses all to her further damage in an amount to be proven at trial; and

f. Other incidental and consequential damages in an amount according to proof at the time of trial.

Wherefore, Plaintiff prays for judgment against the Defendants as hereinafter set forth.

**SIXTH CAUSE OF ACTION**

**FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**

**IN VIOLATION OF GOVERNMENT CODE §§ 12940 ET SEQ.**

**AGAINST COUNTY and DOES 1-50**

65. Plaintiff incorporates, by reference, all the foregoing paragraphs of this Complaint as though fully set forth herein, except where to do so would be inconsistent with pleading a cause of action for Failure to Engage in the Interactive Process.

66. Plaintiff communicated her disability and request for a reasonable accommodation to COUNTY prior to her termination. Yet, in response to Plaintiff's efforts for a reasonable accommodation, SPITZER advised Plaintiff that Mr. Cardenas was not to assist Plaintiff in her transfer efforts and that she was "on her own." SPITZER also told Plaintiff "No one leaves Spitzer

unless they're fired" and became more hostile and aggressive towards Plaintiff. Eventually, Plaintiff was advised by her Supervisor, Mr. Cardenas that "Mr. Spitzer wants you out of here." COUNTY terminated Plaintiff from employment shortly thereafter.

67. The facts alleged herein constitute violations of FEHA in that COUNTY, discriminated and retaliated against Plaintiff, and subjected her to adverse employment practices when they terminated her for seeking reasonable accommodations for her disability. Plaintiff alleges that COUNTY's discrimination and retaliation against Plaintiff was an unlawful employment practice in that COUNTY failed to take all reasonable steps necessary to prevent harassment, discrimination, and retaliation from occurring in violation of *Government Code* § 12940 of the Fair Employment and Housing Act.

68. As a direct and proximate result of the aforesaid acts of Defendants, Plaintiff has suffered/continues to suffer and incurred/continues to incur, and is therefore entitled to recover:

a. Substantial loss of earnings, employment benefits and reduced future earning capacity in an amount according to proof at the time of trial. Plaintiff claims such amount as damages together with prejudgment interest pursuant to applicable law;

b. Necessary and reasonable attorneys' fees in order to enforce her rights and to obtain benefits due her, all to her further damage in an amount according to proof;

c. Embarrassment, humiliation, emotional distress, mental anguish and severe shock to her nervous system, and thereby sustained serious injuries to her physical and mental health, strength and activity, causing her extreme physical and emotional pain, all to her general damage in such amount as may be proven at time of trial. Said amount is within the jurisdiction of the Superior Court of the State of California;

d. Medical expenses, the exact nature and extent of which are unknown to Plaintiff at this time. Plaintiff will seek leave of court to amend this complaint when the same have been ascertained;

e. Additional future medical expenses all to her further damage in an amount to be proven at trial; and

f. Other incidental and consequential damages in an amount according to proof at the time of trial.

Wherefore, Plaintiff prays for judgment against the Defendants as hereinafter set forth.

**SEVENTH CAUSE OF ACTION**

**FAILURE TO PAY FOR ALL HOURS WORKED**

**IN VIOLATION OF THE FAIR LABOR STANDARDS ACT, 29 U.S.C. § 201 ET SEQ.**

**AGAINST COUNTY and DOES 1-50**

69. Plaintiff incorporates, by reference, all the foregoing paragraphs of this Complaint as though fully set forth herein, except where to do so would be inconsistent with pleading a cause of action for Failure to Pay for All Hours Worked under the Fair Labor Standards Act ("FLSA").

70. At all relevant times set forth, the FLSA applied to Plaintiff. No exceptions to the application of the FLSA apply to Plaintiff. Specifically, Plaintiff's employer was COUNTY, not SPITZER, and Plaintiff was not directly supervised by SPITZER. Thus, Plaintiff in her capacity as an employee of COUNTY is not exempt from the provisions of the FLSA.

71. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew or should have known that Plaintiff was an employee and as such was entitled to receive at least minimum wages and that she was not receiving at least minimum wages for compensation for all hours worked.

72. At all relevant times as set forth herein, Plaintiff was entitled to receive minimum wages for all hours worked. 29 U.S.C. § 206(a) provides in pertinent part:

> Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:
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> (1) except as otherwise provided in this section, not less than--
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> (A) $5.85 an hour, beginning on the 60th day after May 25, 2007;
> (B) $6.55 an hour, beginning 12 months after that 60th day; and
> (C) $7.25 an hour, beginning 24 months after that 60th day;

73. Plaintiff is informed and believes, and based thereon alleges, that Defendant instituted a policy and practice against its employees wherein the minimum wage was not paid in compliance with federal law. Plaintiff was informed that she would not be entitled to the minimum wage compensation. As a result, Plaintiff was harmed by the failure to pay the minimum wage by Defendant.

74. Due to Defendant's unlawful conduct, Plaintiff has suffered damages in an amount, subject to proof, to the extent she was not paid minimum wages for all hours actually worked.

75. Plaintiff is informed and believes, and based thereon alleges that Defendant's actions as described throughout this Complaint were willful and intentional.

76. Plaintiff is informed and believes, and based thereon alleges that the failure to pay required minimum wages was unlawful.

77. Pursuant to the FLSA, 29 U.S.C. § 216(b), Plaintiff is entitled to recover the full amount of unpaid minimum wages as well as liquidated damages equal to the amount of unpaid compensation, interest, costs, and attorneys' fees.

## EIGHTH CAUSE OF ACTION

## FAILURE TO PAY FOR OVERTIME COMPENSATION

## IN VIOLATION OF THE FAIR LABOR STANDARDS ACT, 29 U.S.C. § 201 ET SEQ.

## AGAINST COUNTY and DOES 1-50

78. Plaintiff incorporates, by reference, all the foregoing paragraphs of this Complaint as though fully set forth herein, except where to do so would be inconsistent with pleading a cause of action for Failure to Pay for Overtime Compensation under the Fair Labor Standards Act ("FLSA").

79. At all relevant times as set forth herein, Plaintiff was entitled to receive overtime compensation as provided for in 29 U.S.C. § 207. Specifically, FLSA requires an employer to pay employees the federally mandated overtime premium rate of one and a half times their regular rate of pay for every hour worked in excess of forty (40) hours per workweek. 29 U.S.C. § 207.

80. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew or should have known that Plaintiff was entitled to receive overtime compensation and that she was not receiving overtime compensation for all hours worked.

81. Plaintiff was regularly required and/or permitted to work 24-hour shifts while working at COUNTY.

82. Contrary to the provisions of 29 U.S.C. § 207, Defendant failed to pay Plaintiff overtime pay at a rate of one and one-half times their regular rate for hours worked in excess of forty (40) hours during a workweek.

83. At all relevant times set forth, the FLSA applied to Plaintiff. No exceptions to the application of the FLSA apply to Plaintiff. Specifically, Plaintiff's employer was COUNTY, not SPITZER, *Doctrine of Respondeat Superior* and Plaintiff was not directly supervised by SPITZER. Thus, Plaintiff in her capacity as an employee of COUNTY is not exempt from the provisions of the FLSA.

84. Upon information and belief, Defendant has evaded overtime pay. Plaintiff is informed and believes, and based thereon alleges, that Defendant instituted a policy and practice against its employees wherein the overtime compensation was not paid in compliance with federal law. Plaintiff was informed that she would not be entitled to the overtime compensation. As a result, Plaintiff was harmed by Defendant's failure to pay the overtime compensation.

85. Plaintiff was subject to the illegal practices of Defendant of which Plaintiff was required or suffered or permitted to work and did work and was not paid overtime at one and one-half times their regular rate for all hours worked in excess of forty (40) hours in a workweek in violation of 29 U.S.C. § 207.

86. Plaintiff is informed and believes, and based thereon alleges that the failure to pay required overtime wages was unlawful.

87. At all relevant times as set forth herein, Defendant's failure to pay Plaintiff overtime wages was the result of Defendant's willful, knowing, and intentional violation of the provisions of the FLSA, or alternatively, Defendant's reckless disregard for the requirements of those provisions.

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## PRAYER FOR RELIEF

Wherefore, Plaintiff prays for relief and judgment against Defendants, and each of them, as follows:

1. For compensatory damages including losses arising from mental and emotional distress and other special and general damages according to proof at trial;
2. For medical and related expenses according to proof;
3. For lost earnings and related benefits and expenses according to proof;
4. For attorneys' fees and costs, as allowed by law, including, but not limited to, those allowed under 29 U.S.C. § 216(b) and/or other applicable provisions of law;
5. For damages, penalties and liquidated damages permitted by the Labor Code;
6. For prejudgment interest on all amounts claimed, as allowed by law; and
7. For such other and further relief as the Court deems just and proper.

## DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on issues so triable.

Dated: March 24, 2017

By: LYON LEGAL

DEVON M. LYON, ESQ.
JENNIFER F. HOOSHMAND, ESQ.

Attorneys for Plaintiff,
**CHRISTINE RICHTERS**

# EXHIBIT "A"

# MEMORANDUM

Work Product – Deliberative

**To:** 3rd District Staff

**From:** Todd Spitzer

**Date:** Friday, July 15, 2016

**RE: OFFICE POLICIES**

**Office Hours-**

Effective immediately, office hours are 8:30am – 5:30pm with a one hour lunch unless otherwise approved by TAS.

**Communications via text-**

Text messages from TAS to staff will are to be responded to within 15 minutes of receipt unless there is an overriding excuse.

If either of these policies are violated, an hour of your pay will be docked.

Thank you,