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NICOLE SHAW

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

06/01/2021
Clerk of the Court
BY: KALENE APOLONIO
Deputy Clerk

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
[UNLIMITED JURISDICTION]

CGC-21-592344

NICOLE SHAW, an individual,	)	Case No.
)	
Plaintiff,	)	COMPLAINT
)	
v.	)	1. Harassment in Violation of the
	)	FEHA;
UNIVERSITY OF THE PACIFIC; a	)	2. Discrimination in Violation of the
California Corporation; and DOES 1 – 50,	)	FEHA;
inclusive,	)	3. Retaliation in Violation of the
	)	FEHA;
Defendants.	)	4. Failure to Prevent Discrimination
	)	Harassment and Retaliation from
	)	Occurring in Violation of the FEHA;
	)	5. Retaliation in Violation of Cal.
	)	Labor Code § 1102.5;
	)	6. Wrongful Termination in Violation
	)	of Public Policy; and,
	)	7. Violation of California Labor Code
	)	§ 226.

Plaintiff alleges:

PARTIES

PLAINTIFF

1. Plaintiff NICOLE JENNIFER SHAW (“Plaintiff” or “SHAW”) is an adult. At all times relevant hereto, SHAW was a citizen of the State of California.
2. At all times relevant hereto SHAW was an “employee” within the meaning of the FEHA, California Labor Code, and common laws.

DEFENDANTS

3. Defendant UNIVERSITY OF THE PACIFIC (the “UNIVERSITY”) is a California Corporation.
4. The true names and capacities of defendants sued in the Complaint under the fictitious name of DOES 1 – 50, inclusive, are unknown to Plaintiff who therefore sues defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and thereon alleges, that each of said fictitiously named defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff’s injuries as herein alleged were proximately caused by such unlawful conduct.
5. Hereinafter, defendant UNIVERSITY and DOES 1 – 50, inclusive, are collectively referred to as “Defendants.”
6. At all times relevant hereto Defendants, and each of them, were an “employer” within the meaning of the Fair Employment and Housing Act (“FEHA”), California Labor Code, and common laws.
7. Upon information and belief, defendant UNIVERSITY is an organization with some relationship to DOES 1 – 25, and each of them, such that DOES 1 – 25, and each of them, directly or indirectly, or through an agent or any other person, employ(s) or exercise(s) control over persons working for defendant UNIVERSITY, including Plaintiff, and therefore making DOES 1 – 25, and each of them, a “joint employer” of Plaintiff.

- 1 8. Upon information and belief, defendant UNIVERSITY and DOES 26 –50, and each of
2 them, are an “integrated enterprise” insofar as they have a centralized control of labor
3 relations, interrelated operations, commons management, and common ownership and/or
4 financial control. *Laird v. Capital Cities/ABC, Inc.* (1998) 68 Cal.App.4th 727, 737.
- 5 9. Whenever reference is made in this complaint to any act of any corporate or other business
6 defendant, such allegations shall mean that such defendant did the acts alleged in the
7 complaint through its officers, directors, employees, agents and/or representatives while
8 they were acting within the actual or ostensible scope of their authority. Additionally,
9 whenever reference is made to any act of any natural person employed by any corporate or
10 other business entity defendant, such allegations shall mean that such person did the acts
11 alleged in the complaint while acting within the scope of their actual or ostensible authority.
- 12 10. Plaintiff is informed and believes and thereon alleges that at all relevant times, each
13 defendant acted as an agent, representative, employer and/or employee of each of the other
14 defendants and acted within the course and scope of said agency or representation or
15 employment with respect to the causes of action in this complaint.

16 **JURISDICTION & VENUE**

- 17 11. Plaintiff brings this action pursuant to and under the California Fair Employment &
18 Housing Act (the “FEHA”), the California Labor Code, and other common and statutory
19 laws.
- 20 12. Venue is proper in this Court because the acts and/or omissions and events set forth in this
21 Complaint occurred in whole or in part in San Francisco County, California. Plaintiff was
22 employed by Defendants in the County of San Francisco. Plaintiff is informed and believes
23 and thereon alleges that Plaintiff’s employment records are maintained in County of San
24 Francisco. Plaintiff is informed and believes, and thereon alleges, that most of the witnesses
25 and evidence relevant to this case are in County of San Francisco, California.
- 26 13. State policy favors jurisdiction and venue in County of San Francisco, California because
27 the State of California has a policy of protecting California residents and ensuring the
28

applicability of California labor laws.

14. Plaintiff is informed and believes, and thereon alleges, that the relative costs and burdens to the parties herein favor the filing of this lawsuit in this Court. Defendants suffer no burden or hardship by having to defend this case in this Court. However, Plaintiff would suffer severe and undue burden and hardship if she were required to file in an alternative forum, if any such forum exists. Such burden and hardship on Plaintiff include but is not limited to prohibitive monetary expenses for travel, obtaining counsel in a different venue and/or jurisdiction, increased expenses to investigate and obtain evidence and depose and interview witnesses.

15. The amount in controversy exceeds the minimum jurisdictional threshold of this Court.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. Plaintiff has discharged all necessary administrative remedies and this matter is ripe for adjudication before this Court. Plaintiff filed a charge of discrimination with the Department of Fair Employment & Housing (“DFEH”) against Defendants. Plaintiff received a notice of case closure and received a DFEH right-to-sue notification. A true and correct copy of the charge and right-to-sue notification is attached to this Complaint as **Exhibit A**.

GENERAL FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

17. The UNIVERISTIY is a place of higher learning and disseminates written policies that claim that it is “committed to equal employment opportunity and does not tolerate unlawful discrimination against qualified persons in any protected category.” The categories include race, sex/gender, sexual orientation, national origin, ancestry, color, language use, religion, religious creed, age, marital status, gender, gender identity, gender expression, cancer-related or genetic-related medical condition, disability, pregnancy, perceived pregnancy, citizenship status, military service status, or any other status protected by law.”

18. Further, the UNIVERSITY disseminates written policies that claim that its staff and administrators, among others, believe that “diversity and inclusion are essential to the

1 fulfillment of our institutional mission. We value inclusiveness in learning, curricular and
2 co-curricular programming, campus climate, recruitment, admissions, hiring and retention.
3 We remain deeply committed to promoting and maintaining a civil community that
4 facilitates opportunities for shared understanding and expression of individual and
5 collective truths. Moreover, we resolve to maintain a community that is respectful of all
6 persons despite differences in race, color, religion, national origin, ancestry, age, genetic
7 information, sex/gender, marital status, veteran status, sexual orientation, medical
8 condition, pregnancy, gender identity, gender expression or mental or physical disability.”

9 19. Additionally, the UNIVERSITY disseminates written policies that claim that it “will not
10 tolerate retaliation, including harassment, intimidation, threats, coercion or discrimination,
11 against an individual who engages in any of the following: Filing a complaint; Assisting
12 or participating in an investigation or other activity; Opposing an unlawful act or practice”.

13 20. In practice, the policies referenced above are not adhered to nor followed by the
14 UNIVERSITY—rather, they are lip service to what the law requires of an employer.

15 21. SHAW is a married transgender female.

16 22. SHAW’s employment with Defendants, and each of them, started on October 12, 2020.

17 23. At all times relevant hereto, SHAW worked at the UNIVERSITY’s San Francisco
18 campus—providing campus safety.

19 24. SHAW’s department, although a part of a private university, uses paramilitary job titles for
20 employees to denote supervisory and management authority.

21 25. SHAW’s job title was “Patrol Officer” – and as such, every employee with a higher rank
22 was her “supervisor” within the meaning of the FEHA.

23 26. At the outset of her employment, SHAW introduced herself as a female to her co-workers
24 and supervisors.

25 27. Despite this, Defendants’, and each of their, employees kept misgendering SHAW—
26 referring to her as a “man,” a “dude” and “he/him”. When this happened, SHAW corrected
27
28

1 them and asked to be referred to as a woman, i.e., “she/her”. However, the misgendering
2 persisted.

3 28. On October 21, 2020, SHAW met with Sergeant Emilio Fastidio, a “supervisor” within the
4 meaning of the FEHA, regarding being misgendered.

5 a. SHAW explained to Sergeant Fastidio, a supervisor, that Defendants’ employees
6 were referring to her with an incorrect pronoun, and that she did not want to be
7 called a “man” or a “dude” by Defendants’, and each of their, employees.

8 b. Sergeant Fastidio told SHAW that various employees were saying things about
9 SHAW that are much worse. Sergeant Fastidio told SHAW that employees were
10 discussing SHAW’s “plumbing,” in a reference to SHAW’s genitals. Sergeant
11 Fastidio also told SHAW that coworkers were discussing what to do if SHAW
12 “wanted to suck their dick(s)”. SHAW explained that these comments were
13 unwelcome and unacceptable.

14 c. SHAW also reported/complained to Sergeant Fastidio that an employee made a
15 harassing comment in the workplace to the effect of “gays are the ruin of society.”

16 d. SHAW also reported/complained about having to use the men’s locker room to
17 change into her work-gear (for a large part of her tenure the UNIVERSITY did not
18 provide SHAW with a uniform and therefore she was required to supply her own),
19 because no female locker room was made available to her. The UNIVERSITY
20 encouraged security guards to change on-site and to store their UNIVERSITY-
21 issued handguns on-site in the locker room.

22 29. On October 22, 2020, SHAW met with Sergeant Fastidio and Director John Feeney, a
23 “supervisor” within the meaning of the FEHA.

24 30. Director Feeney told SHAW words to the effect of: “don’t get others involved” in reference
25 to SHAW’s earlier complaints/reports to Sergeant Fastidio about unlawful workplace
26 harassment. In other words, Director Feeney sought to interfere with SHAW’s right to
27 complain/report unlawful conduct.
28

31. On October 26, 2020, SHAW complained/reported to Sergeant Fastidio that the rotation of her posts was being disregarded, wherein SHAW was required to be posted in a high-traffic area (during the COVID-19 pandemic) for up to 4 hours instead of rotating to a new post every 45-minutes.
32. On October 27, 2020, SHAW spoke with Sergeant Fastidio and Director Feeney; and once again, complained/reported that she was being intentionally misgendered as an act of harassment. During that meeting, Director Feeney once told SHAW “My job is to keep things from my bosses’ desk. In this department, we don’t like to get others involved in our problems.”
33. On or about October 29, 2020, SHAW met with Human Resources (“HR”) about the unlawful harassing conduct towards her. Among other things, SHAW complained/reported to HR about Corporal [First Name Unknown] Quan, a “supervisor” within the meaning of the FEHA. Among other things, SHAW reported an interaction wherein Corporal Quan asked how to refer to SHAW, to which SHAW replied, “you can call me either ‘Nicole’ or ‘Officer Shaw’”. To which Corporal Quan replied: “I’ll just call you Nick”. Corporal Quan also refused to refer to SHAW by female pronouns.
34. After SHAW’s meeting with HR, Corporal Quan approached SHAW and said words to the effect of, “you didn’t have to tell HR about me calling you ‘Nick’; you didn’t have to snitch”.
35. Thereafter, Corporal Quan referred to SHAW on several occasion as a “little snitch who likes to run to the fourth floor [the location of Human Resources]”.
36. Further, employees engaged in workplace harassment and/or created a hostile work environment, by actions and statement including but not limited to:
- a. Referring to SHAW as “dude” and “man” throughout her tenure;
 - b. Using the UNIVERSITY’s surveillance system to pan/zoom on female visitors/students and making sexual comments about the women, and despite SHAW’s objections to such conversations in the workplace;

- c. Discussing SHAW’s marriage to a woman, and in the presence of a supervisor, and questioning who was the “top” and who was the “bottom” in reference to their sex life;
- d. Discussing female students’/visitors’/employees’ physical attributes and whether they were suitable for sex in the presence of SHAW, and despite SHAW’s objections to such conversations in the workplace;
- e. Telling SHAW that she is “not really feminine” when SHAW asked to be referred to as “she/her”;
- f. Commenting on the physical appearance of transgender visitors to the UNIVERSITY’s campus with words to the effect of, “that’s a man in a dress” and “when she sits down [in the waiting room], she should be careful that her balls don’t fall out” in reference to a transgender patient of the University of the Pacific School of Dentistry. Towards other transgender patients, comments such as “crossdresser” and “tranny” were used. Corporal Quan made several such comments around subordinate employees.
37. After SHAW’s meeting with HR, Corporal Quan ordered SHAW to perform less desirable work including but not limited to posting SHAW to a position in a poorly ventilated high traffic area (during the COVID-19 pandemic) for several hours at a time instead of rotating every 45-minutes (Post 2); and, ordering SHAW to stand outside for several hours at a time in inclement weather (not a recognized post).
38. On November 16, 2020, SHAW met with Director Feeney who expressed her disappointment with SHAW about having to go talk with Human Resources about SHAW’s complaint several weeks earlier—telling SHAW that “because of you I had to apologize to Kara Bell [HR]; we try to keep things inside our department and not involve outsiders.”

39. On November 18, 2020, SHAW once again reported/complained about unlawful harassment. In response, Sergeant Fastidio told SHAW that he will ask HR to prepare resignation paperwork for SHAW to sign.
40. On November 19, 2020, SHAW was tasked with defusing a tense situation at the UNIVERSITY's San Francisco campus. A patient was reported to have come to campus who had previously been deemed too aggressive to be provided dental services by the UNIVERSITY. SHAW approached the patient, who was yelling at the receptionist at the time and not wearing her mask. The patient continued to yell at SHAW without a mask and was in close proximity to SHAW. The patient had a cane and a golf club. The patient used racial slurs toward SHAW and front desk staff, and threatened violence toward SHAW. During this, Corporal Quan had direct line of sight of SHAW, but did not assist SHAW.
41. On November 22, 2020, SHAW submitted an incident report to HR, Sergeant Fastidio and Director Feeney, wherein, among other things, she wrote: "It is possible that the refusal to respond and assist me was done as retaliation to the complaint I filed with Human Resources several weeks prior to this incident. If this incident proves one thing, it is that the lack of response from my coworkers puts me at greater risk of injury. (emphasis added)"
42. Due to the incident, SHAW was concerned about being exposed to COVID-19 and quarantined to mitigate the risk of spreading the COVID-19 virus while she was waiting for her test results, consistent with Centers for Disease Control and Prevention guidelines and UNIVERSITY Health and Safety Plan for COVID-19 Fall 2020 semester.
43. During the quarantine, SHAW investigated a comment Corporal Quan made to her in passing about the handgun SHAW, and others, were given by the UNIVERSITY. Corporal Quan commented that the handgun issued to SHAW, and others at the UNIVERSITY, is not on the California roster of approved firearms (the "Roster").
44. The Roster refers to California law, which provides that "[a]s of January 1, 2001, no handgun may be manufactured within California, imported into California for sale, lent, given, kept for sale, or offered/exposed for sale unless that handgun model has passed

firing, safety, and drop tests and is certified for sale in California by the Department of Justice.” <https://www.oag.ca.gov/firearms/certified-handguns/search?make=150979>

45. SHAW cross-referenced the model of the handgun given to her by the UNIVERSITY against the Roster and learned that it was in fact *not* on the Roster.

46. SHAW conducted further research and evaluation and formed the opinion that she, as well as the other security personnel at UNIVERSITY’s San Francisco Campus, could not lawfully possess the firearms because they were not “law enforcement” within the meaning of California law.

47. Despite being required to wear a badge of an “officer” on her uniform, she was not a “public safety officer” within the meaning of California law. This is because her employer, a *private* university, was not one of the entities identified in Penal Code section 830, *et seq.* Meaning, by requiring their employees to wear such designations exposes the individuals to criminal penalties under California Panel Code section 583d—impersonating a police officer—among others.

48. SHAW contacted the California Bureau of Firearms, a subdivision of the California Department of Justice, inquiring whether it was lawful for SHAW to possess the firearm in her capacity as an employee of Defendants, and each of them, because she did not believe that it was.

49. SHAW also contacted the California Department of Consumer Affairs with a complaint regarding Defendants, and each of their, practice of requiring her and other employees to wear patches indicating they are “officers” but without the appropriate license or qualification to be considered “officers”.

50. Following completion of the 14-day quarantine, in December 2020, SHAW informed Director Feeney that the handgun model provided to her (and others) by the UNIVERSITY was done in violation of California law. This is because the UNIVERSITY did not have a Private Patrol Officer license, and SHAW, and others, were not “peace officers” within the meaning of California law.

51. SHAW cited the California Penal Code section to Director Feeney to substantiate her belief that the UNIVERSITY was breaking California law by giving and requiring employees, like SHAW, the handgun model in question, even though they were not “peace officers” within the meaning of California law. Director Feeney stated he would review the California Penal Code section on his own.

52. Director Feeney stated to SHAW that while he did not see the UNIVERSITY listed as an entity/agency that was exempt from certain regulations concerning distribution of firearms not on the Roster, the UNIVERSITY would nevertheless continue giving out the handgun model in question because they were acting within the “sprit” of the law.

53. SHAW also told Director Feeney that she was not comfortable carrying the handgun in question because it would be a violation of California law. Director Feeney told SHAW that if she refused to carry the handgun, she would be subject to disciplinary action.

54. SHAW also told Director Feeney that she contacted the California Department of Justice about the gun. Director Feeney questioned SHAW’s reasoning for reporting to the State, that this could result in SHAW’s co-workers not being able to carry firearms (which they could not carry as a matter of law), and that SHAW was “creating problems”.

55. Shortly thereafter, SHAW’s employment with Defendants, and each of them, ended on or about February 8, 2021.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Harassment in Violation of the FEHA
[Against All Defendants]

56. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in this complaint as though fully set forth herein, or in alternative, Plaintiff realleges and incorporated herein Paragraphs 1 through 55 as thought set forth fully herein.

57. Plaintiff was subjected to unlawful harassment and/or hostile work environment because of her gender, sex, actual or perceived sexual orientation, gender identity and/or gender expression.

58. This harassment was severe or pervasive and it created a hostile working environment within the meaning of the FEHA.

59. Plaintiff did, and a reasonable person in Plaintiff's circumstances would have, considered the work environment to be hostile and/or abusive.

60. Moreover, Defendants knew, or should have known, of the harassing conduct and failed to take immediate and appropriate corrective action.

61. Defendants', and each of their, harassment of Plaintiff caused economic and noneconomic harm in an amount to be proven at trial, but which are in excess of the minimum jurisdiction of this court. Plaintiff's damages include, but are not limited to, loss of earnings and benefits, humiliation, embarrassment, mental and emotional distress and discomfort.

62. Defendants, and each of them, committed and/or ratified the acts herein alleged maliciously, fraudulently, and oppressively with the wrongful intention of injuring Plaintiff, and acted with an improper and evil motive amounting to malice, in conscious disregard for Plaintiff's rights and thus an award of exemplary and punitive damages is justified. Plaintiff is therefore entitled to recover and herein prays for punitive damages.

WHEREFORE, Plaintiff prays for judgment, including punitive damages, as more fully set forth below.

SECOND CAUSE OF ACTION
Discrimination in Violation of the FEHA
[Against All Defendants]

63. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in this Complaint as though fully set forth herein, or in alternative, Plaintiff realleges and incorporated herein Paragraphs 1 through 62 as thought set forth fully herein.

64. The FEHA makes it unlawful for an employer to discriminate against an employee on the basis of gender, sex, actual or perceived sexual orientation, gender identity, marital status, and gender expression.

65. Defendants, and each of them, discriminated against Plaintiff on the basis of her gender, sex, actual or perceived sexual orientation, marital status, gender identity and/or gender

1 expression including without limitation, by materially altering the terms and conditions of
2 her employment and/or by constructively terminating her employment.

3 66. Defendants', and each of their, discrimination caused Plaintiff economic and noneconomic
4 harm in an amount to be proven at the trial. Plaintiff's damages include, but are not limited
5 to, loss of earnings and benefits, humiliation, embarrassment, mental and emotional
6 distress and discomfort.

7 67. Defendant s, and each of them, committed the acts herein alleged maliciously, fraudulently,
8 and oppressively with the wrongful intention of injuring Plaintiff, and acted with an
9 improper and evil motive amounting to malice, in conscious disregard for Plaintiff's rights
10 and thus an award of exemplary and punitive damages is justified. Plaintiff is therefore
11 entitled to recover and herein prays for punitive damages.

12 WHEREFORE, Plaintiff prays for judgment, including punitive damages, as more fully set forth
13 below.

14 **THIRD CAUSE OF ACTION**
15 *Retaliation in Violation of the FEHA*
[Against All Defendants]

16 68. Plaintiff re-alleges and incorporates herein by reference each and every allegation
17 contained in this Complaint as though fully set forth herein, or in alternative, Plaintiff
18 realleges and incorporated herein Paragraphs 1 through 67 as thought set forth fully herein.

19 69. The FEHA makes it unlawful for an employer to retaliate against an employee for engaging
20 in any activity protected under that chapter.

21 70. Plaintiff engaged in protected activities, including, but not limited to reporting/complaining
22 and opposing unlawful harassment, discrimination and retaliation.

23 71. Defendants, and each of them, retaliated against Plaintiff by, among other things,
24 materially and adversely altering the terms and conditions of her employment and/or
25 constructively terminating Plaintiff's employment. Plaintiff is informed and believes and
26 thereon alleges that a substantial motivating reason for Defendants' retaliatory behavior
27 was because she engaged in the aforementioned conduct which is protected by the FEHA.
28

72. Defendants', and each of their, unlawful and retaliatory conduct caused Plaintiff economic and noneconomic harm in an amount to be proven at the trial. Plaintiff's damages include, but are not limited to, loss of earnings and benefits, humiliation, embarrassment, mental and emotional distress and discomfort.

73. Defendants, and each of them, committed the acts herein alleged maliciously, fraudulently, and oppressively with the wrongful intention of injuring Plaintiff, and acted with an improper and evil motive amounting to malice, in conscious disregard for Plaintiff's rights and thus an award of exemplary and punitive damages is justified. Plaintiff is therefore entitled to recover and herein prays for punitive damages.

WHEREFORE, Plaintiff prays for judgment, including punitive damages, as more fully set forth below.

FOURTH CAUSE OF ACTION

*Failure to Prevent Discrimination, Harassment and Retaliation from Occurring
in Violation of the FEHA
[Against All Defendants]*

74. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in this complaint as though fully set forth herein, or in alternative, Plaintiff realleges and incorporated herein Paragraphs 1 through 73 as thought set forth fully herein.

75. Plaintiff was subjected to discrimination, and harassment on the basis of her gender, sex, actual or perceived sexual orientation, gender identity and/or gender expression, and retaliation for objecting/reporting/complaining about conduct prohibited by the FEHA.

76. Defendants, and each of them, failed to take reasonable steps to prevent the discrimination, harassment and retaliation from occurring.

77. Defendants', and each of their, failure to prevent discrimination, harassment and retaliation from occurring caused Plaintiff economic and noneconomic harm in an amount to be proven at trial, but which are in excess of the minimum jurisdiction of this court. Plaintiff's damages include, but are not limited to, loss of earnings and benefits, humiliation, embarrassment, mental and emotional distress and discomfort.

78. Defendants, and each of them, committed the acts herein alleged maliciously, fraudulently, and oppressively with the wrongful intention of injuring Plaintiff, and acted with an improper and evil motive amounting to malice, in conscious disregard for Plaintiff's rights and thus an award of exemplary and punitive damages is justified. Plaintiff is therefore entitled to recover and herein prays for punitive damages.

WHEREFORE, Plaintiff prays for judgment, including punitive damages, as more fully set forth below.

FIFTH CAUSE OF ACTION

Retaliation in Violation of Cal. Labor Code § 1102.5
[Against All Defendants]

79. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in this complaint as though fully set forth herein, or in alternative, Plaintiff realleges and incorporated herein Paragraphs 1 through 78 as thought set forth fully herein.

80. Labor Code § 1102.5, subsection (a) makes it unlawful for "[a]n employer, or any person acting on behalf of the employer, ... [to] adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties."

81. Labor Code § 1102.5, subsection (b) makes it unlawful for "[a]n employer, or any person acting on behalf of the employer, ... [to] retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct

the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties."

82. Labor Code § 1102.5, subsection (c) makes it unlawful for "[a]n employer, or any person acting on behalf of the employer, ... [to] retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation."

83. As alleged *supra*, Plaintiff engaged in activities specified in subsections (a), (b) and/or (c) as detailed in the Complaint above.

84. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, willfully retaliated against Plaintiff by materially and adversely affecting the terms and conditions of Plaintiff's employment and/or by constructively terminating her employment.

85. Defendants', and each of their, termination of Plaintiff caused her economic and noneconomic harm in an amount to be proven at trial, but which are in excess of the minimum jurisdiction of this court. Plaintiff's damages include, but are not limited to, loss of earnings and benefits, humiliation, embarrassment, mental and emotional distress and discomfort.

86. Defendants, and each of them, committed the acts herein alleged maliciously, fraudulently, and oppressively with the wrongful intention of injuring Plaintiff, and acted with an improper and evil motive amounting to malice, in conscious disregard for Plaintiff's rights and thus an award of exemplary and punitive damages is justified. Plaintiff is therefore entitled to recover and herein prays for punitive damages.

WHEREFORE, Plaintiff prays for judgment, including punitive damages, as more fully set forth below.

SIXTH CAUSE OF ACTION
Wrongful Termination in Violation of Public Policy
[Against All Defendants]

87. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in this complaint as though fully set forth herein, or in alternative, Plaintiff realleges and incorporated herein Paragraphs 1 through 86 as thought set forth fully herein.
88. California has fundamental, substantial, and well-established public policies against unlawful discrimination, harassment and retaliation in the workplace. California also has a fundamental, substantial, and well-established public policies against discrimination against persons on the basis of their gender, sex, actual or perceived sexual orientation, gender identity and/or gender expression, and marital status; and, retaliation against persons who engage in protected activities as Plaintiff engaged in, as described *supra*. These policies are embodied in the FEHA. Moreover, California also has a fundamental, substantial, and well-established public policy prohibiting retaliation against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation. This policy is embodied in Cal. Labor Code § 1102.5.
89. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, intentionally created working conditions so intolerable, based on an animus towards Plaintiff's gender / sex / gender expression / gender identity / actual or perceived sexual orientation; retaliatory animus towards Plaintiff's objections / complaints / reports of gender / sex / gender expression / gender identity / actual or perceived sexual orientation / marital status / harassment and/or discrimination; and/or retaliatory animus towards Plaintiff's reporting / objecting / refusing to participate in unlawful activities, that no reasonable employee would continue working for Defendants, and each of them. Plaintiff resigned based on the conditions created by Defendants, and each of them, which were a substantial factor in causing her economic and noneconomic harm in an amount to be proven at trial.
90. Defendants', and each of their, unlawful discharge of Plaintiff has caused her economic and noneconomic harm in an amount to be proven at trial, but which are in excess of the

1 minimum jurisdiction of this court. Plaintiff's damages include, but are not limited to, loss
2 of earnings and benefits, humiliation, embarrassment, mental and emotional distress and
3 discomfort.

4 91. Defendants, and each of them, committed the acts herein alleged maliciously, fraudulently,
5 and oppressively with the wrongful intention of injuring Plaintiff, and acted with an
6 improper and evil motive amounting to malice, in conscious disregard for Plaintiff's rights
7 and thus an award of exemplary and punitive damages is justified. Plaintiff is therefore
8 entitled to recover and herein prays for punitive damages.

9 WHEREFORE, Plaintiff prays for judgment, including punitive damages, as more fully set forth
10 below.

11 **SEVENTH CAUSE OF ACTION**
12 **(Violation of California Labor Code § 226)**
13 **[Plaintiff Against Defendants]**

14 92. Plaintiff re-alleges and incorporates herein by reference each and every allegation
15 contained in this complaint as though fully set forth herein, or in alternative, Plaintiff
16 realleges and incorporated herein Paragraphs 1 through 91 as thought set forth fully herein.

17 93. At all material times set forth herein, California Labor Code section 226(a) provides that
18 every employer shall furnish each of his or her employees an accurate itemized statement
19 in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3)
20 the number of piece-rate units earned and any applicable piece rate if the employee is
21 paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written
22 orders of the employee may be aggregated and shown as one item, (5) net wages earned,
23 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
24 employee and his or her social security number, (8) the name and address of the legal
25 entity that is the employer, and (9) all applicable hourly rates in effect during the pay
26 period and the corresponding number of hours worked at each hourly rate by the
27 employee. ... The deductions made from payment of wages shall be recorded in ink or
28 other indelible form, properly dated, showing the month, day, and year, and a copy of the
statement and the record of the deductions shall be kept on file by the employer for at

1 least three years at the place of employment or at a central location within the State of
2 California. For purposes of this subdivision, “copy” includes a duplicate of the itemized
3 statement provided to an employee or a computer-generated record that accurately shows
4 all of the information required by this subdivision.

5 94. California Labor Code section 226(c) provides in pertinent part that “[a]n employer who
6 receives a written or oral request to inspect or receive a copy of records pursuant to
7 subdivision (b) pertaining to a current or former employee shall comply with the request
8 as soon as practicable, but no later than 21 calendar days from the date of the request.”

9 95. California Labor Code section 226(f) provides in pertinent part that “[a] failure by an
10 employer to permit a current or former employee to inspect or receive a copy of records
11 within the time set forth in subdivision (c) entitles the current or former employee or the
12 Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the
13 employer.”

14 96. California Labor Code section 226(h) provides in pertinent part that “[a]n employee may
15 also bring an action for injunctive relief to ensure compliance with this section, and is
16 entitled to an award of costs and reasonable attorney’s fees.”

17 97. In a letter dated February 23, 2021, Plaintiff made a request for inter alia a copy of records
18 Defendants were required to keep pursuant to Labor Code section 226.

19 98. On March 25, 2021, Defendants provided various documents to Plaintiff, including
20 deficient records despite the requirements found in Labor Code section 226. Specifically,
21 the records Defendants provided did not list “(4) all deductions, provided that all
22 deductions made on written orders of the employee may be aggregated and shown as one
23 item,” “(6) the inclusive dates of the period for which the employee is paid,” nor “(8) the
24 name and address of the legal entity that is the employer,” as required to be maintained
25 by Labor Code section 226(a).

26 99. Plaintiff is entitled to recover from Defendants “seven-hundred-fifty-dollar (\$750)
27 penalty” in accordance with Section 226(f).
28

100. Plaintiff is also entitled to injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(h).

WHEREFORE, Plaintiff prays for further relief as set forth below.

PRAYER FOR RELIEF


WHEREFORE, Plaintiff makes the following demand:

- a) That process be issued and served as provided by law, requiring defendants, and each of them, to appear and answer or face judgment;
- b) For general, special, actual, compensatory and/or nominal damages, as against Defendants, and each of them, in an amount to be determined at trial;
- c) For front and back pay and other benefits Plaintiff would have been afforded but-for Defendants', and each of their, unlawful conduct;
- d) For punitive damages in an amount to be determined at trial sufficient to punish, penalize and/or deter defendants, and each of them, from further engaging in the conduct described herein, and to deter others from engaging in the same or similar acts;
- e) For a declaration that Defendant UNIVERSITY, and/or DOES 1-50, and each of them, (1) discriminated against Plaintiff in violation of the FEHA; (2) harassed Plaintiff in violation of the FEHA; (3) retaliated against Plaintiff in violation of the FEHA; (4) failed to prevent discrimination, harassment, and retaliation from occurring in violation of the FEHA; and/or, (5) retaliated against in violation of the Cal. Labor Code § 1102.5(a), (b) and/or (c);
- f) For an injunction requiring Defendant UNIVERSITY, and/or DOES 1-50, and each of them, to develop and implement policies related to discrimination, harassment and retaliation, and appointing Plaintiff and her counsel to oversee the proper implementation of said policies for a period of not less than five years;
- g) For pre and post-judgment interest on all damages and other relief awarded herein from all entities against whom such relief may be properly awarded;
- h) For reasonable attorneys' fees and costs of suit incurred herein pursuant to Cal. Code of Civil Procedure § 1021.5, et seq.;

- i) For reasonable attorneys' fees incurred herein pursuant to Cal. Labor Code § 1102.5, et seq.;
- j) For reasonable attorneys' fees incurred herein pursuant to Cal. Labor Code § 226(f);
- k) For injunctive relief to ensure compliance with Labor Code section 226, pursuant to California Labor Code section 226(h);
- l) For reasonable attorneys' fees incurred herein pursuant to the FEHA, Government Code section 12965, et seq.;
- m) For costs and expenses of this litigation; and,
- n) For all such other relief as this Court deems just and appropriate.

Dated: June 1, 2021

LE CLERC & LE CLERC LLP

By: 
Oleg I. Albert, Esq.
Attorneys for Plaintiff
NICOLE SHAW

JURY TRIAL DEMANDED.

Dated: June 1, 2021

LE CLERC & LE CLERC LLP


By: 
Oleg I. Albert, Esq.
Attorneys for Plaintiff
NICOLE SHAW

EXHIBIT A



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

May 26, 2021

Nicole Shaw
155 Montgomery St., Suite 1004
San Francisco, California 94104

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202105-13678326
Right to Sue: Shaw / University of the Pacific

Dear Nicole Shaw:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective May 26, 2021 because an immediate Right to Sue notice was requested.

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

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be submitted to the DFEH within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

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

Sincerely,



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758

(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711

<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

Department of Fair Employment and Housing

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Nicole Shaw

DFEH No. 202105-13678326

Complainant,

vs.

University of the Pacific
155 5th St #2919
San Francisco, California 94103

Respondents

1. Respondent **University of the Pacific** is an employer **University of the Pacific** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant **Nicole Shaw**, resides in the City of **San Francisco**, State of **California**.

3. Complainant alleges that on or about **February 8, 2021**, respondent took the following adverse actions:

Complainant was harassed because of complainant's sex/gender, sexual orientation, marital status, other, sexual harassment- hostile environment.

Complainant was discriminated against because of complainant's sex/gender, sexual orientation, marital status, other, sexual harassment- hostile environment, association with a member of a protected class and as a result of the discrimination was terminated, forced to quit, reprimanded, suspended, asked impermissible non-job-related questions, other, denied work opportunities or assignments.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment, participated as a witness in a discrimination or harassment complaint and as a result was terminated, forced to quit, reprimanded, suspended, asked impermissible non-job-related questions, denied any employment benefit or privilege, other, denied work opportunities or assignments.

Additional Complaint Details: At all times relevant hereto Nicole Shaw ("Shaw") was an employee of University of Pacific, a California corporation, and/or DOES 1 – 50 (jointly "University"). At all times relevant hereto, University of Pacific and/or DOES 1 – 50, were Shaw's employers.

Shaw is a married transgender female. Shaw's employment started with the University in October 2020.

At the outset of her employment, Shaw introduced herself as a female to her co-workers and supervisors. Despite this, University employees kept intentionally misgendering Shaw—referring to her as a "man," a "dude" and "he/him". When this happened, Shaw corrected them and asked to be referred to as a woman, i.e., "she/her". However, the intentional misgendering persisted.

Subsequently, Shaw met with Sergeant Emilio Fastidio, a supervisor, regarding being intentionally misgendered. Shaw explained to Fastidio that University employees were referring to her with an incorrect pronoun, and that she did not want to be called a "man" or a "dude".

Sergeant Fastidio told Shaw that various employees were saying things about Shaw that are much worse. Shaw is informed and believes that University employees were discussing Shaw's "plumbing," in a reference to Shaw's genitals, and what they would do if Shaw "wanted to suck their dick(s)". Shaw objected and reported these comments as unwelcome and amounting to a hostile work environment.

Shaw also reported/objected that an employee made a harassing comment in the workplace to the effect of "gays are the ruin of society." Shaw also reported/objected about having to use the men's locker room to change into her work-gear. The University encouraged security guards, like Shaw, to change on-site and to store their University-issued handguns on-site in the locker room.

Subsequently, University met with Sergeant Fastidio, and Director John Feeney—a "supervisor".

Director Feeney told Shaw words to the effect of: "don't get others involved" in reference to Shaw's earlier complaints/reports to Sergeant Fastidio about unlawful workplace harassment.

Thereafter, Shaw complained / reported to Sergeant Fastidio that the rotation of her posts was being disregarded, wherein Shaw was required to be posted in a high-traffic area (during the COVID-19 pandemic) for up to 4 hours instead of rotating to a new post every 45-minutes.

Then, Shaw spoke with Sergeant Fastidio and Director Feeney; and once again, complained / reported that she was being intentionally misgendered as an act of harassment and/or hostile work environment.

Director Feeney told Shaw "My job is to keep things from my bosses' desk. In this department, we don't like to get others involved in our problems."

Subsequently, Shaw met with Human Resources ("HR") about the unlawful harassing conduct towards her and/or hostile work environment. Among other things, Shaw complained/reported to HR about Corporal [First Name Unknown] Quan, a "supervisor". Among other things, Shaw reported an interaction wherein Corporal Quan asked how to refer to Shaw, to which Shaw replied, "you can call me either 'Nicole' or 'Officer Shaw'". To which Corporal Quan replied: "I'll just call you Nick".

1 After Shaw's meeting with HR, Corporal Quan approached Shaw and said words to the
2 effect of, "you didn't have to tell HR about me calling you 'Nick'; you didn't have to snitch".
3 Thereafter, Corporal Quan referred to Shaw as a "little snitch who likes to live on the fourth
4 floor [the location of Human Resources]". Another employee made the same comment to
5 Shaw.

6 Further, employees engaged in workplace harassment and/or created a hostile work
7 environment, by actions and statement including but not limited to: (a) referring to Shaw as
8 "dude" and "man" throughout her tenure; (2) using the University's surveillance system to
9 pan/zoom on women's bodies and made sexual comments about the women, despite
10 Shaw's objections to such conversations in the workplace; (3) discussing women's physical
11 attributes and whether they were suitable for sex in the presence of Shaw, and despite
12 Shaw's objections to such conversations in the workplace; (4) telling Shaw that she is "not
13 really feminine" when Shaw asked to be referred to as "she/her"; (5) commenting on the
14 physical appearance of transgender visitors to the University's campus with words to the
15 effect of, "that's a man in a dress" and "when she sits down [in the waiting room], she should
16 be careful that her balls don't fall out" in reference to a transgender visitor to the campus.
17 Towards other transgender patients, comments such as "crossdresser" and "tranny" were
18 used. Corporal Quan, a supervisor, made several such comments around subordinate
19 employees.

20 After Shaw's meeting with HR, Corporal Quan ordered Shaw to perform less desirable work
21 including but not limited to posting Shaw to a position in a poorly ventilated high traffic area
22 (during the COVID-19 pandemic) for several hours at a time instead of rotating every 45-
23 minutes (Post 2); and, ordering Shaw to stand outside for several hours at a time in
24 inclement weather (not a recognized post).

25 Thereafter, Shaw met with Director Feeney who expressed his disappointment with Shaw
26 about having to go talk with Human Resources about Shaw's complaint several weeks
27 earlier—telling Shaw that "because of you I had to apologize to Kara Bell [HR]; we try to
28 keep things inside our department and not involve outsiders."

29 Thereafter, Shaw was tasked with defusing a tense situation. A patient was reported to have
30 come to the University campus who had previously been deemed too aggressive to be
31 permitted on campus. Shaw approached the patient, who was yelling at the receptionist at
32 the time and not wearing a mask. The patient continued to yell at Shaw without a mask and
33 was in close proximity to Shaw. The patient had a cane and a golf club. The patient used
34 racial slurs toward Shaw and front desk staff, and threatened violence toward Shaw. During
35 this, Corporal Quan had direct line of sight of Shaw, but did not assist Shaw.

36 Later on, Shaw submitted an incident report to HR, Sergeant Fastidio and Director Feeney,
37 wherein, among other things, she wrote: "It is possible that the refusal to respond and assist
38 me was done as retaliation to the complaint I filed with Human Resources several weeks
39 prior to this incident. If this incident proves one thing, it is that the lack of response from my
40 coworkers puts me at greater risk of injury. (emphasis added)"

41 Shaw's employment ended, for unlawful reasons, on or about February 8, 2021.

1 VERIFICATION

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

5 On May 26, 2021, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Greenbrae, CA**