

GRUENBERG LAW
2155 FIRST AVENUE
SAN DIEGO, CALIFORNIA 92101-2013

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County of San Diego
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By Gen Dieu, Deputy Clerk

Attorneys for Plaintiff,
DRISANA WALLACE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

DRISANA WALLACE, an individual,) Case No. 37-2020-00019040-CU-OE-CTL
)
Plaintiff,) **PLAINTIFF’S COMPLAINT FOR:**
)
v.) 1. GENDER DISCRIMINATION [Cal.
) Gov’t Code § 12940(a)];
) 2. RETALIATION [Cal. Gov’t Code §
) 12940(h)];
) 3. GENDER HARASSMENT [Cal. Gov’t
) Code § 12940(j)];
) 4. FAILURE TO PREVENT GENDER
) DISCRIMINATION AND
) RETALIATION [Cal. Gov’t Code §
) 12940(k)];
) 5. RETALIATION [Cal. Lab. Code §
) 1102.5].
) 6. NEGLIGENT SUPERVISION;
) 7. INTENTIONAL INFLICTION OF
) EMOTIONAL DISTRESS;
) 8. WRONGFUL TERMINATION IN
) VIOLATION OF PUBLIC POLICY
) [Cal. Gov’t Code §12940].
) **[JURY TRIAL DEMANDED]**

HUB INTERNATIONAL INSURANCE
SERVICES, INC. a California Corporation;
DANIEL KABBAN, an individual; and DOES 1
through 25, Inclusive,
Defendants.

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COMES NOW THE PLAINTIFF, alleging against Defendants as follows:

GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. Plaintiff DRISANA WALLACE, (hereinafter “Plaintiff” or “WALLACE”) is a natural person who is, and at all relevant times was, a resident of the United States and a domiciliary of the State of California.
2. Plaintiff is informed and believes and thereon alleges that Defendant, HUB INTERNATIONAL INSURANCE SERVICES, INC. (hereinafter “HUB” or “Defendant”), is a California Corporation doing business in the State of California, and is subject to suit under the California Fair Employment Housing Act (FEHA), California Government Code § 12940 et seq. On information and belief HUB employs in excess of five employees in SAN DIEGO and elsewhere.
3. Plaintiff believes and thereon alleges that at all times herein mentioned, DANIEL KABBAN (hereinafter “KABBAN”), an individual, was employed by HUB INTERNATIONAL INSURANCE SERVICES, INC. in a supervisory capacity and acted as an agent of HUB.
4. Plaintiff is ignorant to the true names and capacities of the Defendants sued herein as DOES 1 through 25 and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities when they are ascertained.
5. Plaintiff is informed and believes and thereon alleges that each fictitiously named Defendant is responsible in some manner for the occurrences herein alleged, and Plaintiff’s injuries and damages as herein alleged are directly, proximately and/or legally caused by Defendants.
6. Plaintiff is informed and believes and thereon alleges that the aforementioned DOES are somehow responsible for the acts alleged herein as the agents, employers, representatives or employees of other named Defendant, and in doing the acts herein alleged were acting within the scope of their agency, employment or representative capacity of said named

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Defendants.

7. The tortious acts and omissions alleged herein were performed by management level employees of Defendant. Defendant allowed and/or condoned a continuing pattern of fraudulent and unfair practices.
8. At all times mentioned herein, Cal. Gov't Code §12940, et seq., was in full force and effect and was binding on Defendants.
9. The actions of Defendants against Plaintiff constitute unlawful employment practices in violation of Cal. Gov't. Code §12940, et seq., as herein alleged, and have caused, and will continue to cause, Plaintiff emotional distress and loss of earnings.
10. At all times mentioned herein, Cal. Lab. Code § 1102.5(a) was in full force and effect and was binding on Defendants.
11. The actions of Defendants against Plaintiff constitute unlawful employment practices in violation of Cal. Lab. Code § 1102.5(a) as herein alleged, and have caused, and will continue to cause, Plaintiff emotional distress and loss of earnings.
12. Defendants had actual and constructive knowledge of the tortious acts and omissions alleged and thereafter ratified said conduct by failing to reprimand or terminate.
13. Defendants, and each of them, committed these acts alleged herein maliciously, fraudulently, and oppressively, and with the wrongful intention of injuring Plaintiff, and acted with an improper and evil motive amounting to malice or despicable conduct. Alternatively, Defendants' wrongful conduct was carried out with a conscious disregard for Plaintiff's rights.
14. Plaintiff filed her charges of discrimination and against Defendant with the California Department of Fair Employment and Housing on June 5, 2020, and thereafter, on that same day, received from the DFEH her "Right to Sue" letters, which are collectively attached hereto as "EXHIBIT A."

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SPECIFIC FACTUAL ALLEGATIONS

- 15. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
- 16. Defendant HUB INTERNATIONAL is a large service provider of insurance, HR consulting, employee benefits and financial and risk services.
- 17. In late August 2019, HUB hired Plaintiff as an Account Executive. Plaintiff worked full-time.
- 18. Throughout her employment, Plaintiff performed her job in a competent and diligent fashion.
- 19. During the pertinent time, Defendant DANIEL KABBAN (hereinafter “Kabban”) was Plaintiff’s supervisor. Defendant employs Kabban as Executive VP of Commercial Property & Casualty. Kabban is upper management and reports directly to Kirk Christ, HUB California’s President.
- 20. In early March 2020, Plaintiff was sent home in response to the COVID-19 pandemic and the State of California’s lockdown order.
- 21. From March 2020 through the end of her employment, Plaintiff worked from home.
- 22. Plaintiff is a mother of two young children, aged four and one. Like most mothers, Plaintiff was unable to secure any alternative childcare due to the lockdown.
- 23. Even though Plaintiff’s children were home, Plaintiff was able to meet the essential functions of her job. However, this took a huge toll on Plaintiff and her children. Because Plaintiff was attending to her job during the day, Plaintiff’s son, who wanted to nurse, often had to wait and became frustrated. Both children regularly had to wait for snacks. Because Plaintiff was working, the children were put in front of the television, which made Plaintiff feel guilty. Plaintiff stopped working during the lunch hour so she could feed her children and put her youngest down for a nap, and return back to work. Most days, she did not have time to feed herself between the demands of young children and her job and would only drink coffee to get through the day. Repeatedly, Plaintiff worked

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at night when her children were asleep. Plaintiff never worked harder in her life. Plaintiff and her children sacrificed so she could keep her commitments to her job.

24. On March 19, 2020, Plaintiff emailed Lindsay Fullman (hereinafter “Fullman”), Defendant’s Human Resources Representative requesting assistance to be successful while teleworking with children. In response, Fullman stated managers were aware and were expected to be more flexible, and sent Plaintiff tips. Plaintiff believed HUB would be supporting her as a mother.

25. On April 2, 2020, Kirk Christ, HUB California’s President wrote all staff, “I realize that many of you are trying to manage multiple responsibilities right now, whether it be having children at home from school and making sure they are getting their school work done ... these certainly are very stressful times. Which leads me to the purpose of my message today, and that is to personally thank you for the incredible effort you are putting forth through these difficult times. With March now behind us I can confidently say that through the midst of this crisis you are getting all the work done ... Our clients are not only being served, but they are being served at the same high standards you provided before this all began ... Fortunately we all work for a very successful and healthy organization and that is because of each of you as well as the rest of Hubs employees across North America. We are going to make our way through this, and that includes the company we work for, so don’t get discouraged, and keep your spirits up, we all have a lot to be thankful for. Thank you again, you are truly excelling in these trying times. And most importantly, please take care of yourselves, better days are ahead.”

26. Sadly, this company policy and gratitude was merely lipservice. Defendant did not walk the walk. Defendant discriminated against Plaintiff because she is a mother.

27. Kabban engaged in a barrage of sexist statements against Plaintiff, motivated by a clear bias against mothers. These comments were severe and pervasive.

28. At the outset of the pandemic, Kabban instructed Plaintiff that her children are not to be

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heard during phone calls. Plaintiff responded she would be available from 7am through 4pm, and that she would take a lunch break from 11:30am through 12:30pm to feed her children. Plaintiff explained that background noise would likely occur while both children are awake in the morning. She explained her youngest napped in the afternoon, so that would be the best time for calls. In response, Kabban was frustrated with Plaintiff's inability to participate in quiet calls in the morning hours.

29. Throughout the pandemic and telework accommodation, Plaintiff continued to meet all deadlines. Plaintiff did not receive complaints from her clients about her work performance or availability. Plaintiff worked extremely hard to meet the obligations of both her children as well as her employer.

30. Unfortunately, throughout the pandemic and teleworking accommodation, Kabban continued scheduling calls during lunch times, when Plaintiff was feeding her children, nursing, or putting her child down for a nap. Plaintiff reiterated her schedule allowed for calls in the afternoon.

31. Kabban repeatedly gave Plaintiff "rush" tasks and demanded an immediate turnaround, even though these tasks were not urgent and could be performed at a later time.

32. During weekly calls, Kabban questioned Plaintiff's availability. Plaintiff repeated her availability every week. It was clear that Kabban was frustrated with Plaintiff.

33. On May 21, 2020, Kabban again questioned Plaintiff's availability. Plaintiff again reiterated her availability. In response, Kabban coldly rebutted, "We can't keep accommodating your work schedule. We can't have client calls with kids or noise in the background. No other Account Executive on the team has this issue. Your role as an Account Executive is to be present to our clients, so you need to take care of your kid situation." Plaintiff responded, "I don't know what you mean with 'take care of my kid situation.' Do you want me to lock them in a room or something? I can't do that." Kabban responded, "Figure it out."

34. Kabban was now outwardly biased against Plaintiff and harassed her because she has

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children. Plaintiff felt shocked, demeaned, and degraded. Plaintiff felt as if Kabban was shaming her for having children. Kabban was treating her without humanity and regard for the difficulty of teleworking while watching youngchildren.

35. On May 22, 2020 Kabban assigned Plaintiff another rush task. Plaintiff reiterated to Kabban that his expectations were unrealistic considering the circumstances.

36. On May 22, 2020, Plaintiff informed Kabban that she had arranged for a nanny to come watch Plaintiff’s children 3 days per week. Plaintiff’s actions supported her commitment to Defendant, and her loyalty to her job.

37. On May 26, 2020, Plaintiff asked Kabban for more time on the rush tasks. In response, Kabban emailed Plaintiff, admonishing her and accusing her of having “time management issues” and set up a coaching appointment for Plaintiff with Jeff Cruz, Plaintiff’s immediate supervisor, who also reports to Kabban. Kabban told Plaintiff, “no excuses.”

38. On the same day, Plaintiff emailed back, explaining that the rush projects were hard for her, giving specific examples of rush assignments. Plaintiff wrote, “You know my situation about having two toddlers and how I cannot turn things around as quickly because of my kids and for some reason you don’t understand my situation. It’s so stressful. I manage my time very well. I meet ALL of your deadlines. I work late if I have to, but it’s very common that you want something done right away and don’t understand that it can’t be done.”

39. In the email, Plaintiff also confirmed the May 21 conversation in writing, and reiterated, “You want me to have calls with no noise in the background and I can’t promise you that 100% of the time and for some reason you want me to be able to provide that to you. We agreed that if you wanted no background noise that it would be around 1-330/4pm when my baby is asleep. I’m logged in every day from 7-4pm and available to talk. You keep asking me my availability for calls and you have known that for 3 months, so when you keep asking I feel that you just don’t understand. The comment about me “figuring it out

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with my kids”. I don’t know how to do that? I can’t leave my children alone so I can make a call and I expressed that to you and you said “well, you go to figure it out because this is your job”. I DON’T KNOW WHAT TO DO? I’ve looked for help tirelessly. This whole situation is super stressful and the fact that you don’t understand and are making these unrealistic expectations is causing me so much stress. I’m doing my job well. Meeting deadlines. Answering client calls, etc. I just can’t turn around something within an hour with accuracy as you want because my kids are around. Your biggest issue with me is time management right now and I’m doing a good job given the circumstances, I just can’t meet your 1 hour turn arounds. I don’t know what else to say but I think your expectations given MY circumstances are not realistic.”

- 40. Plaintiff felt frustrated that Kabban was unable to empathize with her.
- 41. Kabban is a father of teenage children, and has a stay-at-home wife.
- 42. On Plaintiff’s information and belief, Kabban did not treat fathers the way he treats Plaintiff. Plaintiff observed how Kabban did not have the same expectations of fathers who were teleworking with children as of Plaintiff.
- 43. On the same day, May 26, 2020 Plaintiff realized she needed help to manage Kabban’s sexist harassment and discrimination, and elevated Kabban’s statements and treatment of her to HR. Plaintiff emailed Fullman (HR), detailing Kabban’s treatment, including all of his sexist statements to her, that she was stressed, that she felt discriminated against as a mother, and that Kabban’s treatment of her was inconsistent with HUB policies. Plaintiff asked for help. Fullman confirmed receipt of the email.
- 44. On June 1, 2020, Plaintiff had her first “coaching” call with Cruz, to address the alleged time management issues. Cruz gave Plaintiff time management tips. Cruz is a father of teenagers and has a stay-at-home wife. Plaintiff explained Kabban’s demands were unreasonable considering she has little children at home. Cruz accused Plaintiff of being “defensive” and told Plaintiff that “he was tired of accommodating [her] situation.” Plaintiff reminded Cruz that there was a pandemic. Plaintiff felt attacked. Plaintiff

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concluded she was no longer comfortable talking to him and ended the conversation by confirming she would address the issue with HR.

45. Plaintiff immediately called Fullman for support and advice. Plaintiff relayed her call with Cruz to Fullman. Fullman responded, “There are both sides to every story,” in a classic attempt to gaslight Plaintiff. Fullman said she had to make the call short. Plaintiff felt dismissed. This was an important issue to Plaintiff. Plaintiff requested for a scheduled call later in the afternoon. Fullman declined and said she would write an email “when she found a moment.” Clearly, Plaintiff’s complaints of discrimination were of no urgency to Fullman.

46. On the same day, June 1, 2020, Plaintiff emailed Fullman, detailing Cruz’s statements to her, including that he was “tired of accommodating” Plaintiff and that she had reminded him there was a pandemic. Plaintiff ended the email with, “Now on top of the below stress, do I have to be concerned about my job? I will wait for you to send me times on when to discuss futher, thank you for your time.”

47. On June 2, 2020, Plaintiff was on a telephone call with Fullman and Jacqueline Fairney, HUB’s Vice President of HR. Plaintiff expected this meeting to address her concerns of discrimination, and HUB’s strategy to eradicate bias and sexism in its workforce. Plaintiff expected to receive an apology and a plan of action to course-correct Kabban’s sexist remarks and unwillingness to accommodate the reality of a teleworking during a pandemic.

48. Instead, Defendant wrongfully terminated Plaintiff in retaliation for her complaints.

49. Fullman and Fairney told Plaintiff, “You are clearly not happy at HUB. The best solution is to part ways.” Plaintiff was shocked. Fairney then told Plaintiff HUB was experiencing a reduced revenue due to COVID-19 and they were laying Plaintiff off as a result of the pandemic, in a clear inconsistent excuse to cover up its illegal motivations.

50. Ironically, HUB was using COVID-19 as a bogus justification to terminate Plaintiff, even though it refused to accommodate Plaintiff who had children at home due to COVID-19.

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Moreover, on May 6, 2020, all staff had received an email by Kirk who promised to avoid layoffs and save jobs.

51. Defendant’s excuse was pretextual on its face. As a final offense, Fullman and Fairney told Plaintiff, “We are doing you a ‘favor’ by laying you off instead of terminating you,” as if Plaintiff should be “grateful” that the termination, the act of being illegally robbed of her income was labeled by Defendant as a “lay off.” That same day, Plaintiff confirmed the meeting in writing. Plaintiff wrote, I was very shocked and felt ambushed on the call. I was under the impression, based on our conversation yesterday, that on this call today we would be addressing the discrimination I have felt from Dan and Jeff since I started working from home with my two young kids. I had just emailed you last week with how I felt Dan was continuing his discrimination towards me as a mom working at home with two young children and no help and the stress and hostility he has created for not meeting his unrealistic timelines. I am completely shocked that today HUB decides to lay me off rather than address the issues at hand.”

52. Plaintiff concluded, “All of this does not match the message that the CEO is putting out there about HUB understanding parents’ situations working from home with young children. That is obviously not the case here.” Fullman responded and failed to address the discrimination, and instead reminded Plaintiff that Fairney went “out of her way” to help Plaintiff have a “positive transition” to another company. Again, Fullman put the onus on Plaintiff and accused her of being ungrateful. She then blamed financial constraints for the termination.

53. HUB has hidden behind COVID-19 as a shield to cover up an illegal termination. HUB has sent a clear message to its employees that mothers will be discriminated against, and that reporting discrimination to HR will lead to immediate termination, in violation of California’s retaliation protections for workers.

54. Due to the wrongful termination, illegal harassment, retaliation and discrimination, Plaintiff suffered extreme emotional distress. Plaintiff cannot sleep as she is worried how

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she is going to find a job in the middle of an economic crisis. Plaintiff mourns working tirelessly for an employer that betrayed her and tossed her aside during a pandemic.

55. On June 3, 2020, Defendant posted a job opening for Account Manager, showing that HUB was still hiring, and effectively disproving that Plaintiff’s job was eliminated for financial reasons.

FIRST CAUSE OF ACTION
GENDER DISCRIMINATION
[Cal. Gov’t Code § 12940(a)]
Plaintiff v. HUB

56. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in the proceeding paragraphs as though fully set forth herein.

57. At all times mentioned herein, California Government Code section 12940 *et seq.* was in full force and effect and was binding on Defendant. This section required Defendant, as an employer, to refrain from discrimination against any employee on the basis of their sex or gender. Gender subgroups “sex plus” are a basis for discrimination. Even if an employer does not discriminate against women generally, it may be found to have discriminated against particular subgroups of women (e.g., those with children). *Phillips v. Martin Marietta Corp.* (1971) 400 US 542, 543A.

58. Defendant discriminated against Plaintiff in the terms, conditions and privileges of her employment.

59. Plaintiff believes and thereon alleges that her gender, female, and being a mother, was a motivating reason for Defendant’s discrimination against her.

60. Defendant’s conduct of discriminating against Plaintiff on the basis of her gender violated Cal. Gov’t Code § 12940(a).

61. As a direct, foreseeable, and proximate result of Defendant’s conduct, Plaintiff has sustained and continues to sustain substantial losses in earnings, employment benefits, employment opportunities, and Plaintiff has suffered other economic losses in an amount

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to be determined at time of trial. Plaintiff has sought to mitigate these damages.

62. As a direct, foreseeable, and proximate result of Defendant’s conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and physical pain and anguish, all to her damage in a sum to be established according to proof.

63. As a result of Defendant’s deliberate, outrageous, despicable conduct, Plaintiff is entitled to recover punitive and exemplary damages in an amount commensurate with Defendant’s wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

64. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled to recover prevailing party attorney’s fees.

SECOND CAUSE OF ACTION

RETALIATION

[Cal. Gov’t Code § 12940(h)]

Plaintiff v. HUB

65. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

66. Plaintiff opposed Defendant’s gender discrimination. Defendant engaged in conduct that, taken as a whole, materially and adversely affected the terms and conditions of Plaintiff’s employment.

67. Plaintiff believes and hereon alleges that her opposition to Defendant’s unlawful conduct was a substantial motivating reason for Defendant engaging in conduct that, taken as a whole, materially and adversely affected the terms and conditions of her employment.

68. As a direct, foreseeable, and proximate result of Defendant’s conduct, Plaintiff has sustained and continues to sustain substantial losses in earnings, employment benefits, employment opportunities, and Plaintiff has suffered other economic losses in an amount to be determined at time of trial. Plaintiff has sought to mitigate these damages.

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69. As a direct, foreseeable, and proximate result of Defendant’s conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and physical pain and anguish, all to her damage in a sum to be established according to proof.

70. As a result of Defendant’s deliberate, outrageous, despicable conduct, Plaintiff is entitled to recover punitive and exemplary damages in an amount commensurate with Defendant’s wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

71. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled to recover prevailing party attorneys’ fees pursuant to Government Code section 12965(b).

THIRD CAUSE OF ACTION
GENDER HARASSMENT
[Cal. Gov’t Code §12940(j)]
Plaintiff v. All Defendants

72. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

73. At all times mentioned herein, California Government Code section 12940 et seq. was in full force and effect and was binding on Defendants. This section requires Defendant, as an employer, to refrain from harassing any employee on the basis of gender. Gender subgroups “sex plus” are a basis for discrimination. Even if an employer does not discriminate against women generally, it may be found to have discriminated against particular subgroups of women (e.g., those with children). *Phillips v. Martin Marietta Corp.* (1971) 400 US 542, 543A.

74. Plaintiff believes and thereon alleges that she was severely and pervasively harassed because of her gender by Defendant KABBAN and Defendant HUB. Such actions are unlawful, harassing, and in violation of Cal. Gov’t Code §12940 et seq., and have

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resulted in damage and injury to Plaintiff, as alleged herein.

75. As a proximate result of Defendants' willful, knowing, and intentional harassment against Plaintiff, Plaintiff has sustained and continues to sustain substantial losses in earnings, bonuses, and other employment benefits and opportunities.

76. As a proximate result of Defendants' willful, knowing, and intentional harassment of Plaintiff, Plaintiff has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and physical pain and anguish, all to her damage in a sum to be established according to proof.

77. As a result of Defendants' deliberate, outrageous, and despicable conduct, Plaintiff is entitled to recover punitive and exemplary damages from Defendants in an amount commensurate with Defendants' wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

78. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled to recover prevailing party attorney fees and costs pursuant to Cal. Gov't Code §12965.

FOURTH CAUSE OF ACTION
FAILURE TO PREVENT GENDER DISCRIMINATION, HARASSMENT AND
RETALIATION
[Cal. Gov't Code §12940(k)]
Plaintiff v. HUB

79. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

80. At all times mentioned herein, California Government Code section 12940 et seq. was in full force and effect and was binding on Defendant. This section provide that it is unlawful for Defendant, as an employer, to fail to take all reasonable steps necessary to prevent discrimination, harassment and retaliation from occurring.

81. Plaintiff was subjected to discrimination and harassment on the basis of her gender, as set

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forth herein.

82. Defendant failed to take reasonable steps to prevent the discrimination, harassment and retaliation as described herein.

83. As a direct, foreseeable, and proximate result of Defendant’s conduct, Plaintiff has sustained and continues to sustain substantial losses in earnings, employment benefits, employment opportunities, and Plaintiff has suffered other economic losses in an amount to be determined at time of trial. Plaintiff has sought to mitigate these damages.

84. As a further direct, foreseeable, and proximate result of Defendant’s conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and physical pain and anguish, all to her damage in a sum to be established according to proof.

85. As a result of Defendant’s deliberate, outrageous, despicable conduct, Plaintiff is entitled to recover punitive and exemplary damages in an amount commensurate with Defendant’s wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

86. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled to recover prevailing party attorney fees and costs pursuant to Government Code section 12965.

FIFTH CAUSE OF ACTION

RETALIATION

[Cal. Lab. Code § 1102.5]

Plaintiff v. HUB

87. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

88. Plaintiff performed work for Defendant, as an employee of Defendant, as stated herein.

89. Defendant engaged in adverse employment actions against Plaintiff in retaliation for her complaints of Defendant’s unlawful activities.

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90. Defendant discriminated against Plaintiff on the basis of gender.
91. Plaintiff had reasonable cause to believe that Defendant's acts were discriminatory.
92. Plaintiff's opposition to Defendant's illegal actions was a motivating reason for Defendant's adverse employment actions.
93. Defendant's conduct was a substantial factor in causing Plaintiff's harm.
94. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has sustained and continues to sustain substantial losses in earnings, employment benefits, employment opportunities, and Plaintiff has suffered other economic losses in an amount to be determined at time of trial. Plaintiff has sought to mitigate these damages.
95. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and physical pain and anguish, all to her damage in a sum to be established according to proof.
96. As a result of Defendant's deliberate, outrageous, despicable conduct, Plaintiff is entitled to recover punitive and exemplary damages in an amount commensurate with Defendant's wrongful acts and sufficient to punish and deter future similar reprehensible conduct.
97. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled to recover prevailing attorney's fees pursuant to Code of Civil Procedure section 1021.5.

SIXTH CAUSE OF ACTION

NEGLIGENT SUPERVISION

Plaintiff v. HUB

98. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.
99. Plaintiff performed work for Defendant, as an employee, as stated herein.
100. Defendant retaliated against Plaintiff's opposition to discrimination.

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- 101. Defendant was aware of the illegal conduct.
- 102. Defendant failed to correct the unlawful and unethical conduct of its supervisory employee.
- 103. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has sustained and continues to sustain substantial losses in earnings and other employment benefits and opportunities. Plaintiff has sought to mitigate these damages.
- 104. As a further direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, loss of reputation, mental and physical pain, and anguish, all to her damage in a sum to be established according to proof.
- 105. As a result of Defendant's deliberate, outrageous, despicable conduct, Plaintiff is entitled to recover punitive and exemplary damages in an amount commensurate with Defendant's wrongful acts and sufficient to punish and deter future similar reprehensible conduct.
- 106. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled to recover prevailing party attorney fees.

SEVENTH CAUSE OF ACTION
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
Plaintiff v. All Defendants

- 107. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.
- 108. Defendant's intentional conduct, as set forth herein, was extreme and outrageous.
- 109. Defendant intended to cause Plaintiff to suffer extreme emotional distress. Plaintiff did suffer extreme emotional distress as a result of Defendant's actions.
- 110. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has sustained and continues to sustain substantial losses in earnings and other employment benefits and opportunities. Plaintiff has sought to mitigate these damages.

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111. As a further direct, foreseeable, and proximate result of Defendant’s conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, loss of reputation, mental and physical pain, and anguish, all to her damage in a sum to be established according to proof.

EIGHTH CAUSE OF ACTION
WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
[Cal. Gov’t Code § 12940]
Plaintiff v. HUB

112. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

113. Plaintiff performed work for Defendant, as an employee, as stated herein.

114. Defendant also discriminated against Plaintiff in violation of Cal. Gov’t Code §12940.

115. Plaintiff was subjected to working conditions that violated public policy, in that Plaintiff was treated intolerably in retaliation for complaining to Defendant.

116. Defendant intentionally created or knowingly permitted these working conditions.

117. The working conditions were a substantial factor in causing Plaintiff’s harm.

118. Such actions are unlawful, in violation of public policy of the State of California, and have resulted in damage and injury to Plaintiff, as alleged herein.

119. As a direct, foreseeable, and proximate result of Defendant’s conduct, Plaintiff has sustained and continues to sustain substantial losses in earnings, employment benefits, employment opportunities, and Plaintiff has suffered other economic losses in an amount to be determined at time of trial. Plaintiff has sought to mitigate these damages.

120. As a direct, foreseeable, and proximate result of Defendant’s conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and physical pain and anguish, all to her damage in a sum to be established according to proof.

121. In addition to such other damages as may properly be recovered herein, Plaintiff is

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entitled to recover prevailing party attorney's fees.

WHEREFORE, Plaintiff prays for the following relief:

1. For general and compensatory damages in an amount according to proof;
2. For mental and emotional distress damages;
3. For back pay, front pay and other monetary relief;
4. For injunctive relief, including reinstatement, promotion, and retroactive seniority;
5. For costs of litigation, expert costs, and attorneys' fees as permitted by law;
6. For an award of interest at the prevailing legal rate, as permitted by law;
7. For such other and further relief as the Court deems proper and just under all the circumstances.

PLAINTIFF DRISANA WALLACE demands a jury trial on all issues in this case.

DATED: June 4, 2020

GRUENBERG LAW



JOSH D. GRUENBERG
DAPHNE A.M. DELVAUX
Attorneys for Plaintiff,
DRISANA WALLACE

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EXHIBIT A

- (1) **PLAINTIFF DRISANA WALLACE RIGHT TO SUE LETTER FROM DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING (“DFEH”)**

- (2) **PLAINTIFF DRISANA WALLACE COMPLAINT OF DISCRIMINATION FILED WITH DFEH**



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

June 5, 2020

Drisana Wallace
2155 First Ave
San Diego, California 92101

RE: Notice of Case Closure and Right to Sue
DFEH Matter Number: 202006-10343705
Right to Sue: Wallace / Hub International Insurance Services, Inc. et al.

Dear Drisana Wallace,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective June 5, 2020 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

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

To obtain a federal Right to Sue notice, you must 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 and Housing

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

5 **In the Matter of the Complaint of**

6 Drisana Wallace

DFEH No. 202006-10343705

7 Complainant,

8 vs.

9 Hub International Insurance Services, Inc.
10 9855 Scranton Rd #100
11 San Diego, California 92121

12 Daniel Kabban
13 9855 Scranton Rd #100
14 San Diego, California 92121

15 Respondents

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17
18 1. Respondent **Hub International Insurance Services, Inc.** is an **employer**
19 subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov.
20 Code, § 12900 et seq.).

21 2. Complainant **Drisana Wallace**, resides in the City of **San Diego** State of
22 **California**.

23 3. Complainant alleges that on or about **June 3, 2020**, respondent took the following
24 adverse actions:

25 **Complainant was harassed** because of complainant's sex/gender.

26 **Complainant was discriminated against** because of complainant's sex/gender and
27 as a result of the discrimination was terminated, asked impermissible non-job-related
28 questions, denied any employment benefit or privilege.

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, asked

1 impermissible non-job-related questions, denied any employment benefit or
2 privilege.

3 **Additional Complaint Details:** Respondent HUB INTERNATIONAL is a large
4 service provider of insurance, HR consulting, employee benefits and financial and
5 risk services.

6 In late August 2019, HUB hired Claimant as an Account Executive. Claimant worked
7 full-time.

8 Throughout her employment, Claimant performed her job in a competent and diligent
9 fashion.

10 During the pertinent time, Respondent DANIEL KABBAN (hereinafter "Kabban") was
11 Claimant's supervisor. Respondent employs Kabban as Executive VP of
12 Commercial Property & Casualty. Kabban is upper management and reports directly
13 to Kirk Christ, HUB California's President.

14 In early March 2020, Claimant was sent home in response to the COVID-19
15 pandemic and the State of California's lockdown order.

16 From March 2020 through the end of her employment, Claimant worked from home.
17 Claimant is a mother of two young children, aged four and one. Like most mothers,
18 Claimant was unable to secure any alternative childcare due to the lockdown.

19 Even though Claimant's children were home, Claimant was able to meet the
20 essential functions of her job. However, this took a huge toll on Claimant and her
21 children. Because Claimant was attending to her job during the day, Claimant's son,
22 who wanted to nurse, often had to wait and became frustrated. Both children
23 regularly had to wait for snacks. Because Claimant was working, the children were
24 put in front of the television, which made Claimant feel guilty. Claimant stopped
25 working during the lunch hour so she could feed her children and put her youngest
26 down for a nap, and return back to work. Most days, she did not have time to feed
27 herself between the demands of young children and her job and would only drink
28 coffee to get through the day. Repeatedly, Claimant worked at night when her
children were asleep. Claimant never worked harder in her life. Claimant and her
children sacrificed so she could keep her commitments to her job.

On March 19, 2020, Claimant emailed Lindsay Fullman (hereinafter "Fullman"),
Respondent's Human Resources Representative requesting assistance to be
successful while teleworking with children. In response, Fullman stated managers
were aware and were expected to be more flexible, and sent Claimant tips. Claimant
believed HUB would be supporting her as a mother.

On April 2, 2020, Kirk Christ, HUB California's President wrote all staff,
"I realize that many of you are trying to manage multiple responsibilities right now,
whether it be having children at home from school and making sure they are getting
their school work done ... these certainly are very stressful times. Which leads me to
the purpose of my message today, and that is to personally thank you for the
incredible effort you are putting forth through these difficult times. With March now

1 behind us I can confidently say that through the midst of this crisis you are getting all
2 the work done ... Our clients are not only being served, but they are being served at
3 the same high standards you provided before this all began ... Fortunately we all
4 work for a very successful and healthy organization and that is because of each of
5 you as well as the rest of Hubs employees across North America. We are going to
6 make our way through this, and that includes the company we work for, so don't get
7 discouraged, and keep your spirits up, we all have a lot to be thankful for. Thank you
8 again, you are truly excelling in these trying times. And most importantly, please take
9 care of yourselves, better days are ahead."

10 Sadly, this company policy and gratitude was merely lipservice. Respondent did not
11 walk the walk. Respondent discriminated against Claimant because she is a mother.
12 Kabban engaged in a barrage of sexist statements against Claimant, motivated by a
13 clear bias against mothers. These comments were severe and pervasive.

14 At the outset of the pandemic, Kabban instructed Claimant that her children are not
15 to be heard during phone calls. Claimant responded she would be available from
16 7am through 4pm, and that she would take a lunch break from 11:30am through
17 12:30pm to feed her children. Claimant explained that background noise would likely
18 occur while both children are awake in the morning. She explained her youngest
19 napped in the afternoon, so that would be the best time for calls. In response,
20 Kabban was frustrated with Claimant's inability to participate in quiet calls in the
21 morning hours.

22 Throughout the pandemic and telework accommodation, Claimant continued to meet
23 all deadlines. Claimant did not receive complaints from her clients about her work
24 performance or availability. Claimant worked extremely hard to meet the obligations
25 of both her children as well as her employer.

26 Unfortunately, throughout the pandemic and teleworking accommodation, Kabban
27 continued scheduling calls during lunch times, when Claimant was feeding her
28 children, nursing, or putting her child down for a nap. Claimant reiterated her
29 schedule allowed for calls in the afternoon.

30 Kabban repeatedly gave Claimant "rush" tasks and demanded an immediate
31 turnaround, even though these tasks were not urgent and could be performed at a
32 later time.

33 During weekly calls, Kabban questioned Claimant's availability. Claimant repeated
34 her availability every week. It was clear that Kabban was frustrated with Claimant.
35 On May 21, 2020, Kabban again questioned Claimant's availability. Claimant again
36 reiterated her availability. In response, Kabban coldly rebutted, "We can't keep
37 accommodating your work schedule. We can't have client calls with kids or noise in
38 the background. No other Account Executive on the team has this issue. Your role
39 as an Account Executive is to be present to our clients, so you need to take care of
40 your kid situation." Claimant responded, "I don't know what you mean with 'take care
41 of my kid situation.' Do you want me to lock them in a room or something? I can't do
42 that." Kabban responded, "Figure it out."

1 Kabban was now outwardly biased against Claimant and harassed her because she
2 has children. Claimant felt shocked, demeaned, and degraded. Claimant felt as if
3 Kabban was shaming her for having children. Kabban was treating her without
4 humanity and regard for the difficulty of teleworking while watching youngchildren.
5 On May 22, 2020 Kabban assigned Claimant another rush task. Claimant reiterated
6 to Kabban that his expectations were unrealistic considering the circumstances.
7 On May 22, 2020, Claimant informed Kabban that she had arranged for a nanny to
8 come watch Claimant's children 3 days per week. Claimant's actions supported her
9 commitment to Respondent, and her loyalty to her job.
10 On May 26, 2020, Claimant asked Kabban for more time on the rush tasks. In
11 response, Kabban emailed Claimant, admonishing her and accusing her of having
12 "time management issues" and set up a coaching appointment for Claimant with Jeff
13 Cruz, Claimant's immediate supervisor, who also reports to Kabban. Kabban told
14 Claimant, "no excuses."
15 On the same day, Claimant emailed back, explaining that the rush projects were
16 hard for her, giving specific examples of rush assignments. Claimant wrote, "You
17 know my situation about having two toddlers and how I cannot turn things around as
18 quickly because of my kids and for some reason you don't understand my situation.
19 It's so stressful. I manage my time very well. I meet ALL of your deadlines. I work
20 late if I have to, but it's very common that you want something done right away and
21 don't understand that it can't be done."
22 In the email, Claimant also confirmed the May 21 conversation in writing, and
23 reiterated, "You want me to have calls with no noise in the background and I can't
24 promise you that 100% of the time and for some reason you want me to be able to
25 provide that to you. We agreed that if you wanted no background noise that it would
26 be around 1-330/4pm when my baby is asleep. I'm logged in every day from 7-4pm
27 and available to talk. You keep asking me my availability for calls and you have
28 known that for 3 months, so when you keep asking I feel that you just don't
understand. The comment about me "figuring it out with my kids". I don't know how
to do that? I can't leave my children alone so I can make a call and I expressed that
to you and you said "well, you go to figure it out because this is your job". I DON'T
KNOW WHAT TO DO? I've looked for help tirelessly. This whole situation is super
stressful and the fact that you don't understand and are making these unrealistic
expectations is causing me so much stress. I'm doing my job well. Meeting
deadlines. Answering client calls, etc. I just can't turn around something within an
hour with accuracy as you want because my kids are around. Your biggest issue
with me is time management right now and I'm doing a good job given the
circumstances, I just can't meet your 1 hour turn arounds. I don't know what else to
say but I think your expectations given MY circumstances are not realistic."
Claimant felt frustrated that Kabban was unable to empathize with her.
Kabban is a father of teenage children, and has a stay-at-home wife.

1 On Claimant's information and belief, Kabban did not treat fathers the way he treats
2 Claimant. Claimant observed how Kabban did not have the same expectations of
3 fathers who were teleworking with children as of Claimant.

4 On the same day, May 26, 2020 Claimant realized she needed help to manage
5 Kabban's sexist harassment and discrimination, and elevated Kabban's statements
6 and treatment of her to HR. Claimant emailed Fullman (HR), detailing Kabban's
7 treatment, including all of his sexist statements to her, that she was stressed, that
8 she felt discriminated against as a mother, and that Kabban's treatment of her was
9 inconsistent with HUB policies. Claimant asked for help. Fullman confirmed receipt
10 of the email.

11 On June 1, 2020, Claimant had her first "coaching" call with Cruz, to address the
12 alleged time management issues. Cruz gave Claimant time management tips. Cruz
13 is a father of teenagers and has a stay-at-home wife. Claimant explained Kabban's
14 demands were unreasonable considering she has little children at home. Cruz
15 accused Claimant of being "defensive" and told Claimant that "he was tired of
16 accommodating [her] situation." Claimant reminded Cruz that there was a pandemic.
17 Claimant felt attacked. Claimant concluded she was no longer comfortable talking to
18 him and ended the conversation by confirming she would address the issue with HR.
19 Claimant immediately called Fullman for support and advice. Claimant relayed her
20 call with Cruz to Fullman. Fullman responded, "There are both sides to every story,"
21 in a classic attempt to gaslight Claimant. Fullman said she had to make the call
22 short. Claimant felt dismissed. This was an important issue to Claimant. Claimant
23 requested for a scheduled call later in the afternoon. Fullman declined and said she
24 would write an email "when she found a moment." Clearly, Claimant's complaints of
25 discrimination were of no urgency to Fullman.

26 On the same day, June 1, 2020, Claimant emailed Fullman, detailing Cruz's
27 statements to her, including that he was "tired of accommodating" Claimant and that
28 she had reminded him there was a pandemic. Claimant ended the email with, "Now
on top of the below stress, do I have to be concerned about my job? I will wait for
you to send me times on when to discuss further, thank you for your time."

On June 2, 2020, Claimant was on a telephone call with Fullman and Jacqueline
Fairney, HUB's Vice President of HR. Claimant expected this meeting to address her
concerns of discrimination, and HUB's strategy to eradicate bias and sexism in its
workforce. Claimant expected to receive an apology and a plan of action to course-
correct Kabban's sexist remarks and unwillingness to accommodate the reality of a
teleworking during a pandemic.

Instead, Respondent wrongfully terminated Claimant in retaliation for her complaints.
Fullman and Fairney told Claimant, "You are clearly not happy at HUB. The best
solution is to part ways." Claimant was shocked. Fairney then told Claimant HUB
was experiencing a reduced revenue due to COVID-19 and they were laying
Claimant off as a result of the pandemic, in a clear inconsistent excuse to cover up
its illegal motivations.

1 Ironically, HUB was using COVID-19 as a bogus justification to terminate Claimant,
2 even though it refused to accommodate Claimant who had children at home due to
3 COVID-19. Moreover, on May 6, 2020, all staff had received an email by Kirk who
4 promised to avoid layoffs and save jobs.

5 Respondent's excuse was pretextual on its face. As a final offense, Fullman and
6 Fairney told Claimant, "We are doing you a 'favor' by laying you off instead of
7 terminating you," as if Claimant should be "grateful" that the termination, the act of
8 being illegally robbed of her income was labeled by Respondent as a "lay off." That
9 same day, Claimant confirmed the meeting in writing. Claimant wrote, I was very
10 shocked and felt ambushed on the call. I was under the impression, based on our
11 conversation yesterday, that on this call today we would be addressing the
12 discrimination I have felt from Dan and Jeff since I started working from home with
13 my two young kids. I had just emailed you last week with how I felt Dan was
14 continuing his discrimination towards me as a mom working at home with two young
15 children and no help and the stress and hostility he has created for not meeting his
16 unrealistic timelines. I am completely shocked that today HUB decides to lay me off
17 rather than address the issues at hand."

18 Claimant concluded, "All of this does not match the message that the CEO is putting
19 out there about HUB understanding parents' situations working from home with
20 young children. That is obviously not the case here." Fullman responded and failed
21 to address the discrimination, and instead reminded Claimant that Fairney went "out
22 of her way" to help Claimant have a "positive transition" to another company. Again,
23 Fullman put the onus on Claimant and accused her of being ungrateful. She then
24 blamed financial constraints for the termination.

25 HUB has hidden behind COVID-19 as a shield to cover up an illegal termination.
26 HUB has sent a clear message to its employees that mothers will be discriminated
27 against, and that reporting discrimination to HR will lead to immediate termination, in
28 violation of California's retaliation protections for workers.

Due to the wrongful termination, illegal harassment, retaliation and discrimination,
Claimant suffered extreme emotional distress. Claimant cannot sleep as she is
worried how she is going to find a job in the middle of an economic crisis. Claimant
mourns working tirelessly for an employer that betrayed her and tossed her aside
during a pandemic.

On June 3, 2020, Respondent posted a job opening for Account Manager, showing
that HUB was still hiring, and effectively disproving that Claimant's job was
eliminated for financial reasons.

1 VERIFICATION

2 I, **Daphne Delvaux**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On June 5, 2020, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

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San Diego, California