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4 Attorney for Plaintiff
 5 Nathaniel Holmes

6
 7 IN THE UNITED STATES DISTRICT COURT
 8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 9 SAN FRANCISCO DIVISION

10 NATHANIEL HOLMES,
 11
 Plaintiff,

12 vs.

13 TENDERLOIN HOUSING CLINIC,
 14 INC.; RANDALL SHAW, EXECUTIVE
 DIRECTOR, TENDERLOIN HOUSING
 15 CLINIC, INC.; KRISTA GETA,
 HOUSING SERVICES DIRECTOR,
 16 TENDERLOIN HOUSING CLINIC, INC.;
 SERVICE EMPLOYEES
 17 INTERNATIONAL UNION; and
 DOES 1 THROUGH 25,
 18
 Defendants.

) NO. NO. CV-09-5781-PJH
)
) STIPULATION FOR ORDER
) AMENDING FIRST
) AMENDED COMPLAINT

19
 20 WHEREAS, Plaintiff filed his original complaint herein on December 9, 2009, alleging a
 21 First Cause of Action for violations of the Labor Management Relations Act, a Second Cause of
 22 Action for violations of 42 U.S.C. Section 1981, a Third Cause Action for violations of Article 1,
 23 Section 8, of the California Constitution; a Fourth Cause of Action for violations of Title VII of
 24 the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-(5)(3) for race, color and age
 25 discrimination, a Fifth Cause of Action for violations of Title VII of the Civil Rights Act of
 26 1964, 42 U.S.C. Section 2000e-2(a) for retaliation, a Sixth Cause of Action for violations of

1 Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000e-2(a) for harassment; an
2 Eighth (sic) Cause of Action for violations of California Government Code Section 12940a, for
3 race, color and age discrimination, a Ninth (sic) Cause of Action for violations of California
4 Government Code Section 12940h, for retaliation and a Tenth (sic) Cause of Action for
5 violations of California Government Code Section 12940j, for harassment.

6 WHEREAS, Defendants Tenderloin, Randall Shaw and Krista Geta duly answered same.

7 WHEREAS, Defendant Service Employees International Union, Local 1021 moved to
8 dismiss said first cause of action pursuant to the Labor Management Relations Act as to it, and
9 said Third Cause of Action, pursuant to Article 1 Section 8 of the California Constitution; and
10 also moved to strike claims for punitive and compensatory damages pursuant to the provisions of
11 Labor Management Relations Act as it relates to the duty of fair representation.

12 WHEREAS, this Court granted in part and denied in part said motion to dismiss.

13 WHEREAS, this Court granted Plaintiff leave to amend said First Cause of Action by
14 June 11, 2010, and granting said motion to dismiss said cause of action pursuant to Article 1,
15 Section 8 of the California Constitution.

16 THIS COURT FURTHER GRANTED said Defendant's unopposed motion to strike
17 claims for punitive and compensatory damages pursuant to the Labor Management Relations
18 Act,

19 WHEREAS Plaintiff duly filed a First Amended Complaint amending said First Cause of
20 Action pursuant to Labor Management Relations Act, and the Defendants have duly filed their
21 respective answers to same, and

22 WHEREAS, Plaintiff has now received from the United States Equal Employment
23 Opportunity Commission a Notice of Right to Sue dated June 14, 2010, authorizing Plaintiff's
24 Third, Fourth and Fifth Causes of Action alleged against Defendant Tenderloin pursuant to Title
25 VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e, *et seq.*, necessitating
26 Plaintiff's Amendment of said Causes of Action.

1 NOW THEREFORE, in the best interests of justice and judicial economy (avoiding the
2 filing of a Motion relative thereto) the parties hereby agree and stipulate that Plaintiff may file a
3 Second Amended Complaint herein relative hereto, a copy of which is attached hereto as Exhibit
4 1.

5 Dated: July 8, 2010

6 CURTIS G. OLER
Attorney for Plaintiff

7
8 Dated:

9 MARK A. WHITE
Attorney for Defendant

10
11 Dated:

12 VINCENT A. HARRINGTON, JR.
Attorney for Defendant SEIU

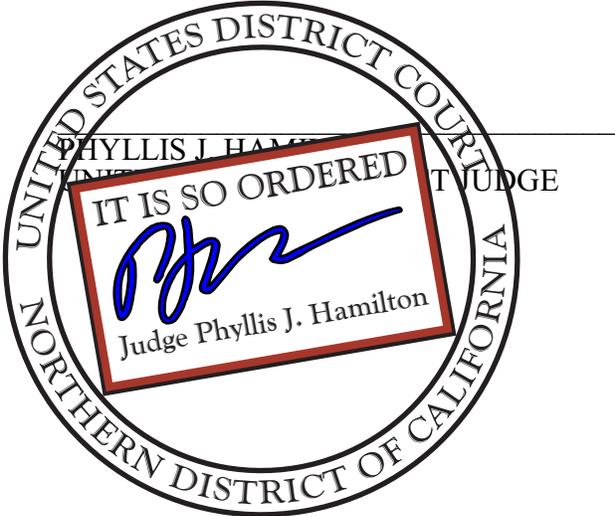
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ORDER

Pursuant to the foregoing stipulation of the parties herein,

IT IS ORDERED that Second Amended Complaint referred to in said stipulation be filed forthwith.

Dated: 8/23/10



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Exhibit 1

Exhibit 1

Stipulation

1 3. Defendant TENDERLOIN HOUSING CLINIC, INC., (hereinafter referred to as
2 “TENDERLOIN”) is a corporation incorporated under the laws of the State of California and is
3 authorized to do business in the State of California, with its principal offices located in the City
4 and County of San Francisco, California. At all times relevant hereto, said Defendant has owned,
5 operated and maintained, rental housing facilities throughout the City and County of San
6 Francisco.

7 4. Defendant RANDALL SHAW at all times relevant hereto, has been Executive
8 Director of Defendant TENDERLOIN. At all times relevant hereto, said Defendant has engaged
9 in the actions and conduct hereinafter alleged within the course and scope of said employment
10 and with the full knowledge and acquiescence of said Defendant TENDERLOIN, which has
11 approved and ratified said actions and conduct.

12 5. Defendant KRISTAL GETA, at all times relevant hereto, was the Housing Services
13 Director of Defendant TENDERLOIN. At all times relevant hereto, said Defendant has
14 engaged in the actions and conduct hereinafter alleged within the course and scope of said
15 employment and with the full knowledge and acquiescence of said Defendant TENDERLOIN,
16 which has approved and ratified said actions and conduct.

17 6. Defendant SERVICE EMPLOYEES INTERNATIONAL UNION (hereinafter referred
18 to as “SEIU”) is a Labor Organization duly organized under the National Labor Relations Act
19 maintaining and operating Local 1021 thereof with a principal place of business therefor located
20 at 447 29th Street, Oakland, California.

21 7. At all times relevant hereto, Defendant SEIU (Local 1021) has been the collective
22 bargaining agent covering Plaintiff’s said employment pursuant to a collective bargaining
23 agreement between Defendant TENDERLOIN and Defendant SEIU. At all times during his said
24 employment, Plaintiff was and remained a member in good standing of Defendant SEIU.

25 8. Plaintiff is ignorant of the true names and capacities of Defendants sued herein
26 as DOES 1 through 25, inclusive, and therefore sues these Defendants by such fictitious names.
27 Plaintiff will amend the complaint to allege their true names and capacities when ascertained.

1 Plaintiff is informed and believes, and therefore alleges that each of the fictitiously named
2 Defendants is lawfully responsible in some manner for the occurrences herein alleged, and that
3 Plaintiff's losses as herein alleged were proximately caused by such individual actions.

4 9. Plaintiff is informed and believes, and thereby alleges that each of the Defendants
5 herein was at all times relevant hereto the agent, employee, or representative of the remaining
6 Defendants and was acting within the scope and course of such relationship.

7 10. Plaintiff was initially employed on or about May 14, 1999 by Defendant
8 TENDERLOIN, as a Program Aide. In October, 1999, Plaintiff was placed into the position of
9 Desk Clerk at the Jefferson Hotel.

10 11. Thereafter, in or about September, 2003, Plaintiff was promoted to the position of
11 Program Receptionist.

12 12. At all times during Plaintiff's tenure of employment with said Defendant, Plaintiff
13 performed all of his assigned and related duties in an excellent manner and has complied with all
14 work rules in that connection during the entire course of his employment with said Defendant.

15 13. Notwithstanding, Defendants and each of them, without cause or justification,
16 beginning in or about September, 2007, initiated and maintained a continuous egregious pattern
17 of unlawful, discriminatory, unfair employment and labor practices against Defendant
18 TENDERLOIN'S ethnic minority employees, and Defendant SEIU'S ethnic minority employees,
19 including Plaintiff, culminating in the termination of Plaintiff's employment effective November
20 6, 2008, as more particularly hereinafter described.

21 14. Plaintiff was elected shop steward of said Housing Services Department in
22 December, 2006, after a considerable union organizing (card check campaign) activity
23 establishing Defendant SEIU (Local 1021) as collective bargaining agent of TENDERLOIN
24 employees.

25 15. In September, 2007, Defendant KRISTAL GETA subsequently promoted to the
26 position of Deputy Director of Defendant TENDERLOIN was appointed to the position of
27 Director, Housing Services Department although ethnic minority employees, better qualified

1 than she, were denied appointment to said position.

2 16. Plaintiff as shop steward complained to Defendant SHAW, Melissa Blizzard,
3 Support Services Director and Cathy Clogged, Human Resources concerning said discriminatory
4 refusal of appointment of a better qualified ethnic minority person to said position, all of whom
5 ignored Plaintiff's said complaint.

6 17. Plaintiff then initiated a grievance pursuant to said collective bargaining agreement in
7 connection with said complaint.

8 18. In September, 2007, on the first day of Defendant GETA's assumption of her duties
9 as Housing Services Director, she approached Plaintiff at his desk, addressing him in a hostile
10 manner, concerning his said complaint, at which time Plaintiff informed GETA that such was not
11 the proper venue for this discussion, and that if GETA wanted to speak to Plaintiff relative
12 thereto, it should be in her office and not in front of clients and staff.

13 19. Shortly thereafter, GETA issued Plaintiff an unwarranted disciplinary "write up"
14 which later proved to be the beginning of continuous harassment activity directed against him by
15 GETA.

16 20. Within two weeks after said unwarranted write up while Plaintiff was busy at his
17 desk, sorting client mail, one of the duties of his position, GETA abruptly approached him and
18 directed him to go break down some boxes in the back area, which was obviously the duties of
19 the janitor and clearly outside the duties of Plaintiff's position as Program Receptionist.
20 Nevertheless, Plaintiff followed GETA's instructions, while informing her that such duties were
21 clearly outside of his job description, as she was fully aware.

22 21. GETA continued to initiate and implement a multitude of job changes in violation of
23 said collective bargaining agreement.

24 22. On or about December 18, 2007, without notice, cause or justification, GETA falsely
25 accused Plaintiff of "creating a hostile working environment" and immediately placed Plaintiff
26 on administrative leave.

27 23. The following week, after said false accusation and placement of Plaintiff on

1 administrative leave, Plaintiff's own union representative informed him that Defendant SHAW
2 would not permit Plaintiff to go back to the Housing Services Department, and that SHAW
3 approved GETA'S unwarranted disciplinary action.

4 24. Plaintiff was allowed to return to work in early January even though not permitted to
5 return to his position in the Housing Services Department. Plaintiff's understanding was that he
6 would be permitted to return to his position in the Housing Services Department if the
7 'investigation' of GETA'S charges against him were not substantiated.

8 25. However, in February, 2008, on the purported conclusion of said 'investigation'
9 Cathy Clogged informed Plaintiff that the 'findings' relative to said investigation had been
10 forwarded to SEI Supervisor Yvette Albert-Jordan. However, when Plaintiff requested Jordan to
11 provide him with a copy of said 'findings', she instructed Plaintiff to obtain such from
12 TENDERLOIN.

13 26. Plaintiff has yet to receive a copy of said 'findings'.

14 30. Plaintiff attended a mediation on proceeding concerning actions which had been
15 taken against him, at which time his own union representative, Daz Lamparas failed to bring a
16 copy of said findings to said meeting or inform Plaintiff of the contents of said findings.

17 31. Defendant SEIU and Defendant TENDERLOIN agreed not to proceed to arbitration.

18 32. Plaintiff was then transferred to the SRO Collaborative unit and Vaniesha Rodgers
19 was placed into said onsite shop steward in Housing Services.

20 33. In July, 2008, the Housing Services Staff signed a petition selecting Plaintiff as the
21 shop steward until the month of January when there would be an election.

22 34. Persons notified about the Housing Department and the Shop Stewards Council
23 decisions were Randy Shaw, Daz Lamparas, KRISTAL GETA and agents from the NLRB.

24 35. Thereafter, Defendant TENDERLOIN and SEI refused to acknowledge Plaintiff's
25 selection as shop steward and refused to accept his grievance relative to same and SHAW's and
26 GETA'S continuing obstruction of Plaintiff's exercise of his rights under the Labor Relations
27 Management Act.

1 for a cause of action, alleges:

2 40. The allegations of paragraphs 1 through 39 above, are re-alleged and incorporated
3 herein by reference.

4 41. Jurisdiction is invoked herein pursuant to the provisions of the Labor Management
5 Relations Act, 29 U.S.C. Section 185 to enforce the provisions of 29 U.S.C. Sections 157 and
6 158 prohibiting unfair labor practices, protecting the rights of employees under the collective
7 bargaining agreements and forbidding unfair labor practices by employers and labor
8 organizations.

9 42. Venue is in the Northern District of California.

10 43. 29 U.S.C. Section 157 provides:

11 “Employees shall have the right to self-organization, to
12 form, join, or assist labor organizations, to bargain
13 collectively through representatives of their own choosing,
14 and to engage in other concerted activities for the purpose
15 of collective bargaining or other mutual aid or protection,
16 and shall also have the right to refrain from any or all of
17 such activities except to the extent that such right may be
18 affected by an agreement requiring membership in a
19 labor organization as a condition of employment as
20 authorized in section 8(a)(3) [29 U.S.C. Section 158 (a)(3)].

21 44. 29 U.S.C. Section 158 (a) provides:

22 “Section 158. Unfair labor practices
23 (a) Unfair labor practices by employer. It shall be an unfair
24 labor practices for an employer –
25 (1) to interfere with, restrain, or coerce employees in the
26 Exercise of the rights guaranteed in section 7 [29 U.S.C. Sec. 157]
27 (2) to dominate or interfere with the formation or administration
28 of any labor organization or contribute financial or other support
to it: Provided, That subject to rules and regulations made and
published by the Board pursuant to Section 6 (29 U.S.C. Sec. 156),
an employer shall not be prohibited from permitting employees to
confer with him during working hours without loss of time or pay;
(3) by discrimination in regard to hire or tenure of employment or
any term or condition of employment . . .
(4) to discharge or otherwise discriminate against an employee
because he has filed charges or given testimony under this Act;
(5) to refuse to bargain collectively with the representatives of

1 his employees, subject to the provisions of section 9(a) [29 U.S.C.
2 Section 159(a)]

3 (b) Unfair labor practices by labor organization. It shall be an unfair
4 labor practice for a labor organization or its agents –

5 (1) to restrain or coerce (A) employees in the exercise of the rights
6 guaranteed in section 7 [29 U.S.C. 157]: . . .

7 (2) to cause or attempt to cause an employer to discriminate against
8 an employee in violation of subsection (a)(3) or to discriminate
9 against an employee with respect to whom membership in such
10 organization has been denied or terminated” . . .”

11 45. Notwithstanding, Defendants SEIU and TENDERLOIN failed to carry out its
12 responsibilities under the terms of said collective bargaining agreement.

13 46. Such actions and conduct by Defendants SEIU denied Plaintiff fair representation
14 and was an unfair labor practice prohibited by 29 U.S.C. Section 158(b) as set out above.

15 47. Such actions and conduct by Defendant TENDERLOIN denied Plaintiff fair
16 representation and was an unfair labor practice prohibited by 29 U.S.C. Section 158(b) as set out
17 above.

18 48. Such actions by Defendant TENDERLOIN denied Plaintiff of his rights as an
19 employee as guaranteed by 29 U.S.C. Section 158(a), as set out above, and therefore was an
20 unfair labor practice as prohibited by that section.

21 49. As a direct result of said breaches of said collective bargaining agreement, violations
22 of the Labor Management Relations Act and the National Labor Relations Act, Plaintiff has
23 suffered and continues to suffer substantial losses in earnings and related employment benefits
24 which he would have received had Defendants not breached said collective bargaining
25 agreement and violated the above referred to provisions of the Labor Management Relations Act.

26 50. Said actions and conduct have resulted in substantial pecuniary harm to Plaintiff as
27 alleged herein.

28 51. As a direct result of the acts and conduct of Defendant as alleged herein, Plaintiff has
suffered loss of and continues to suffer substantial loss of earnings and related employment
benefits in an amount to be proven at trial herein.

1 The rights protected by this section are protected against
2 impairment by nongovernmental discrimination and
impairment under color of State law.”

3 56. Venue is proper in the Northern District of California.

4 57. Defendant has maintained a pattern and practice of unlawful discriminatory
5 employment practices against Plaintiff on account of his race and color by engaging in the
6 actions and conduct, among other things, as alleged in paragraphs 13 through 39 above.

7 58. Plaintiff was subjected to the actions and conduct described in Paragraphs 13 through
8 39 herein on account of his race and color and in retaliation against him for his continuing
9 complaints and protests of said unlawful discriminatory employment practices in violation of the
10 provisions of 42 U.S.C. Section 1981.

11 59. As a direct result of said acts and conduct of Defendants, as alleged herein, Plaintiff
12 has suffered loss of and continues to suffer substantial loss of earnings and related employment
13 benefits in an amount to be proven at trial herein.

14 60. In doing the acts and in engaging in the conduct herein alleged, Defendants intended
15 to and did vex, harass, annoy and cause Plaintiff to suffer and continue to suffer severe emotional
16 distress for which she has sought medical care.

17 61. Defendants committed the abusive actions alleged herein maliciously, fraudulently,
18 and oppressively, with the wrongful intention of injuring Plaintiff and from an improper and evil
19 motive amounting to malice, and in conscious and reckless disregard of his rights as an
20 employee. Plaintiff is thus entitled to recover punitive damages from Defendants, and each of
21 them, commensurate with its conduct as alleged.

22 IV

23
24 THIRD CAUSE OF ACTION

25 42 U.S.C. SECTION 2000e-2

26 RACE, COLOR AND AGE

AS TO DEFENDANT TENDERLOIN

As a Third, separate and distinct Cause of Action, Plaintiff complains of Defendants, and for a cause of action, alleges:

62. The allegations of paragraphs 1 through 61 above, are re-alleged and incorporated herein by reference.

63. Jurisdiction is invoked herein pursuant to the provisions Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e(5)(3) to enforce the provisions of 42 U.S.C. Section 2000e-2(a), which provides that:

(a) It shall be an unlawful employment practice for an employer –

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, . . . or national origin, or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, . . . or national origin.”

64. Said defendant has engaged in an egregious pattern of harassment against Plaintiff in the terms and conditions of his employment throughout the entire tenure of his said employment, on account of his race, color and age in violation of the provisions of 42 U.S.C. Section 2000e-2(a)(1).

65. As a direct result of said acts and conduct of Defendants, as alleged herein, Plaintiff has suffered loss of and continues to suffer substantial loss of earnings and related employment benefits in an amount to be proven at trial herein.

66. In doing the acts and in engaging in the conduct herein alleged, Defendants intended to and did vex, harass, annoy and cause Plaintiff to suffer and continue to suffer severe emotional distress.

67. On December 8, 2008, Plaintiff duly filed an administrative charge of discrimination and retaliation herein with the United States Equal Employment Opportunity Commission

1 (EEOC). On June 14, 2010, the United States Equal Employment Opportunity Commission duly
2 issued a notice of right to sue thereon and this action has been timely brought.

3 VI

4 FOURTH CAUSE OF ACTION

5 RETALIATION

6 42 U.S.C. SECTION 2000e-2(a)

7 AS TO DEFENDANT TENDERLOIN

8 As a Fourth, separate and distinct Cause of Action, Plaintiff complains of Defendant , and
9 for a cause of action, alleges:

10 68. The allegations of paragraphs 1 through 67 above, are re-alleged and incorporated
11 herein by reference.

12 69. Jurisdiction is invoked herein pursuant to the provisions of the Civil Rights Act of
13 1964, as amended, 42 U.S.C. Section 2000e-5(3) to enforce the provisions of 42 U.S.C. Section
14 2000e-3, which provides that:

15 “It shall be an unlawful employment practice for an employer
16 to discriminate against any of his employees or applicants for
17 employment,. . . because he has opposed any practice
18 made an unlawful employment practice by this subchapter,
or because he has made a charge, testified, assisted, or
participated in any manner in an investigation, proceeding, or
hearing under this subchapter.”

19 70. Plaintiff was an employee who opposed practices made an unlawful employment
20 practice by this subchapter, and made a charge, under said Act and is therefore a person protected
21 by the provisions of said Act.

22 71. Said Defendant has engaged in the actions and conduct, among others, described in
23 paragraphs 13 through 39 hereof against Plaintiff because he has opposed actions made unlawful
24 by and filed charges pursuant to the provisions of said Act.

25 72. As a direct result of said acts and conduct of Defendants, as alleged herein, Plaintiff
26 has suffered loss of and continues to suffer substantial loss of earnings and related employment
27 benefits in an amount to be proven at trial herein.

1 on account of her race, color and national origin in violation of the provisions of 42 U.S.C.
2 Section 2000e-2(a)(1).

3 78. As a direct result of said acts and conduct of Defendants, as alleged herein, Plaintiff
4 has suffered loss of and continues to suffer substantial loss of earnings and related employment
5 benefits in an amount to be proven at trial herein.

6 79. In doing the acts and in engaging in the conduct herein alleged, Defendants intended
7 to and did vex, harass, annoy and cause Plaintiff to suffer and continue to suffer severe emotional
8 distress for which she has sought medical care.

9 80. On December 8, 2008, Plaintiff duly filed an administrative charge of discrimination
10 and retaliation herein with the United States Equal Employment Opportunity Commission
11 (EEOC). On June 14, 2010, the United States Equal Employment Opportunity Commission
12 duly issued a notice of right to sue thereon and this action has been timely brought.

13 VIII

14 SIXTH CAUSE OF ACTION

15 AS TO DEFENDANT TENDERLOIN

16 RACE, COLOR AND AGE

17 (GOVERNMENT CODE SECTION 12940a)

18 As an Sixth, separate and distinct Cause of Action, Plaintiff complains of Defendants,
19 and for a cause of action, alleges:

20 81. The allegations of paragraphs 1 through 80 above, are re-alleged and incorporated
21 herein by reference.

22 82. Jurisdiction herein is invoked pursuant to the provisions of Government Code
23 Section 12965, seeking a declaratory judgment, injunctive relief and damages for violations of
24 the Plaintiff's employment rights as protected by the Fair Employment and Housing Act (FHA),
25 Government Code Section 12940a, which provides that it shall be unlawful for an employer to
26 discriminate against an employee, among other things, on account of race color and age.

27 83. Plaintiff is an employee of African ancestry (Black) over the age of 40 and is

1 therefore a person protected by said provisions of said Act.

2 84. Defendant has maintained a pattern and practice of unlawful discriminatory
3 employment practices against Plaintiff on account of her race and color by engaging in the
4 actions and conduct, among other things, as alleged in Paragraphs 13 through 39 hereof in
5 violation of the Fair Employment and Housing Act, Government Code Section 12940a.

6 85. As a direct result of said actions and conduct of Defendant as alleged herein, Plaintiff
7 has suffered loss of and continues to suffer substantial loss of earnings and related employment
8 benefits in an amount to be proven at trial herein.

9 86. In doing the acts and in engaging in the conduct herein alleged, Defendants intended
10 to and did vex, harass, annoy and cause Plaintiff to suffer and continue to suffer severe emotional
11 distress for which he has been required to seek and maintain medical care.

12 87. On December 2, 2008, Plaintiff duly filed an administrative charge of discrimination
13 and retaliation herein with the California Department of Fair Employment and Housing
14 (DFEH), which thereafter duly issued a right to sue thereon on December 9, 2008, authorizing
15 Plaintiff to initiate a civil action in the California Superior Court within one year of the filing of
16 this action. Thusly, said action has been timely filed.

17 IX

18 SEVENTH CAUSE OF ACTION

19 AS TO DEFENDANT TENDERLOIN

20 CALIFORNIA GOVERNMENT CODE SECTION 12940h

21 (RETALIATION)

22 As a Seventh, separate and distinct cause of action, Plaintiff complains of Defendants,
23 and each of them, and for a cause of action, alleges:

24 88. The allegations of paragraphs 1 through 87 above, are re-alleged and incorporated
25 herein by reference.

26 89. Jurisdiction herein is invoked pursuant to the provisions of Government Code
27 Section 12965, seeking a declaratory judgment, injunctive relief and damages for violations of

1 the Plaintiff's employment rights as protected by the Fair Employment and Housing Act (FHA),
2 Government Code Section 12940h, which provides that it shall be unlawful for an employer to
3 retaliate against an employee, because of said employee's protests of unlawful discriminatory
4 employment practices, or association with a person protesting alleged discriminatory
5 employment practices.

6 90. Plaintiff was an employee of Defendant who protested violations of Government
7 Code Section 12940, *et seq.*, as alleged in paragraphs 13 through 39 hereof, and is therefore a
8 person protected by the provisions of said Act.

9 91. Defendant has subjected Plaintiff to a pattern and practice of egregious retaliatory
10 actions and conduct. because of her continuing complaints of said unlawful discriminatory
11 employment practices, which have included, but have not been limited to, the actions and
12 conduct alleged, among other things, in paragraphs 13 through 39 hereof.

13 92. As a direct result of the acts and conduct of Defendant, as alleged herein, Plaintiff
14 has suffered loss of and continues to suffer substantial loss of earnings and related employment
15 benefits in an amount to be proven at trial herein.

16 93. In doing the acts and in engaging in the conduct herein alleged, Defendant intended
17 to and did vex, harass, annoy and cause Plaintiff to suffer and continue to suffer severe emotional
18 distress.

19 94. On December 2, 2008, Plaintiff duly filed an administrative charge of discrimination
20 and retaliation herein with the California Department of Fair Employment and Housing
21 (DFEH), which thereafter duly issued a right to sue thereon on December 9, 2008, authorizing
22 Plaintiff to initiate a civil action in the California Superior Court within one year of the filing of
23 this action. Thusly, said action has been timely filed.

24 X

25 EIGHTH CAUSE OF ACTION

26 AS TO DEFENDANTS TENDERLOIN, SHAW AND GETA

27 HARASSMENT

1 As an Eighth, separate and distinct cause of action, Plaintiff complains of Defendants,
2 and each of them, and for a cause of action, alleges:

3 95. The allegations of paragraphs 1 through 94 above, are re-alleged and incorporated
4 herein by reference.

5 96. Jurisdiction herein is invoked pursuant to the provisions of Government Code
6 Section 12965, seeking a declaratory judgment, injunctive relief and damages for violations of
7 the Plaintiff's employment rights as protected by the Fair Employment and Housing Act (FEHA),
8 Government Code Section 12940j, which provides that it shall be unlawful for an employer to
9 harass an employee, because of said employee's race and color.

10 97. Plaintiff was an employee of African American (Black) ancestry, and thusly was a
11 person protected by said provisions of said Act.

12 98. Defendant has subjected Plaintiff to a continuous pattern of egregious harassment
13 throughout the entire tenure of her employment on account of her race and color in violation of
14 the Fair Employment and Housing Act, Government Code Section 12940j.

15 99. As a direct result of the acts and conduct of Defendant, as alleged herein, Plaintiff
16 has suffered loss of and continues to suffer substantial loss of earnings and related employment
17 benefits in an amount to be proven at trial herein.

18 100. In doing the acts and in engaging in the conduct herein alleged, Defendants intended
19 and did vex, harass, annoy and cause Plaintiff to suffer and continue to suffer severe emotional
20 distress.

21 101. On December 2, 2008, Plaintiff duly filed an administrative charge of
22 discrimination and retaliation herein with the California Department of Fair Employment and
23 Housing (DFEH), which thereafter duly issued a right to sue thereon on December 9, 2008,
24 authorizing Plaintiff to initiate a civil action in the California Superior Court within one year of
25 the filing of this action. Thusly, said action has been timely filed.

26 XI

27 PRAYER FOR RELIEF

1 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them as
2 follows:

3 (A) Grant Plaintiff a declaratory judgment that Defendants have violated Plaintiff's rights
4 as an employee and a union member;

5 (B) Permanently enjoin Defendants, their agents, successors, and employees and those
6 acting in concert with them from engaging in the actions and conduct alleged herein;

7 (C) Award Plaintiff damages for all earnings lost, including future earnings lost and for
8 loss of related employment benefits;

9 (D) Return Plaintiff to his position of employment without loss of pay, seniority or rank
10 (as to Defendant Tenderloin);

11 (E) Award Plaintiff damages for lost career and employment opportunities;

12 (F) Order that all negative material be removed from Plaintiff's personnel file or any
13 other files or records maintained in connection with Plaintiff's employment (as to Defendant
14 Tenderloin);

15 (G) Award Plaintiff damages for severe psychological harm in an amount to be proven at
16 trial; (as to the Second, Third, Fourth, Fifth Sixth, Seventh and Eighth Causes of Action)

17 (H) Award Plaintiff punitive damages in an amount commensurate with harm caused to
18 Plaintiff and Defendants' financial ability, (as to the Second, Third, Fourth, Fifth Sixth, Seventh
19 and Eighth Causes of Action);

20 (I) Award Plaintiff costs of suit;

21 (J) Grant Plaintiff reasonable attorney's fees; and

22 (K) Grant Plaintiff such other and further relief as the Court may deem proper and just.

23 Dated: July 7, 2010

Respectfully submitted.

24
25 /s/ Curtis G. Oler
26 CURTIS G. OLER
27 Attorney for Plaintiff

1 VERIFICATION

2 I, NATHANIEL HOLMES, declare:

3 I have read the foregoing Plaintiff's Complaint and know the contents thereof. The same
4 is true of my own knowledge, except for those matters stated therein on information and belief,
5 and as to those, I believe them to be true.

6 I declare under penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct and that this Verification was executed on July 7, 2010, at San
8 Francisco, California.

9
10 _____ /s/ Nathaniel Holmes

11 NATHANIEL HOLMES
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