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10 **GEORGE BAEZ**

11
12 **SUPERIOR COURT OF CALIFORNIA**
13
14 **THE COUNTY OF SANTA CLARA**

15 **GEORGE BAEZ**

16 Plaintiff,

17 vs.

18 **STANFORD HEALTH CARE, BOARD**
19 **OF TRUSTEES OF THE LELAND**
20 **STANFORD Jr UNIVERSITY dba**
21 **STANFORD UNIVERSITY, and DOES 1**
22 **to 100,**

23 Defendants.

Case No.: 16 CV300476

FIRST AMENDED COMPLAINT FOR DAMAGES

1. Whistleblower (Health & Safety Code 1278.5);
2. Whistleblower Retaliation (Labor Code Section 1102.5);
3. Whistleblower Retaliation (Labor Code Section 6310);
4. Discrimination-FEHA;
5. Retaliation -FEHA;
6. Negligent Hiring/Retention/ Supervision
7. Wrongful Termination in Violation of Public Policy (Tameny);
8. Breach of Contract;
9. Breach of Covenant of Good Faith & Fair Dealing;
10. Fraud;
11. Intentional Infliction of Emotional Distress.

JURY TRIAL DEMANDED

THE PARTIES AND JURISDICTION

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2 1. GEORGE BAEZ (“PLAINTIFF” or “BAEZ”) was, at all relevant times herein, a
3 resident of the County of Santa Clara in the State of California, and an employee of
4 DEFENDANT STANFORD HEALTH CARE. PLAINTIFF BAEZ reported to work at the
5 Stanford Health Care Redwood City Outpatient Center (“OSC”) located in the County of San
6 Mateo, California, at 450 Broadway, Redwood City, CA 94063.
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8 2. DEFENDANT STANFORD HEALTH CARE is a corporate entity with its
9 employees, managers, executives and board members, currently headquartered at
10 300 PASTEUR DRIVE Palo Alto, in the County of Santa Clara, California 94305. STANFORD
11 HEALTH CARE owns and operates the Stanford Health Care Redwood City Outpatient Center
12 (“OSC”) located in the County of San Mateo, California, at 450 Broadway, Redwood City, CA
13 94063.
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15 3. DEFENDANT **BOARD OF TRUSTEES OF THE LELAND STANFORD Jr**
16 **UNIVERSITY dba STANFORD UNIVERSITY** (“STANFORD UNIVERSITY”) is a
17 private entity that employs the doctors who work at Stanford Healthcare’s hospital and related
18 offices and clinics. . During relevant portions of PLAINTIFF BAEZ’s employment, employees
19 of DEFENDANT STANFORD UNIVERSITY managed and employed DEFENDANTS
20 Kaufman and Fanton who influenced and directed the retaliation of PLAINTIFF BAEZ, actions
21 that were adopted and ratified by DEFENDANT STANFORD HEALTH CARE. Employees of
22 DEFENDANT STANFORD UNIVERSITY worked out of DEFENDANT STANFORD
23 HEALTH CARE’S Redwood City Outpatient Center (“OSC”) located in the County of San
24 Mateo, and STANFORD HEALTH CARE’s hospital located in Santa Clara County.
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1 4. Gary Fanton, MD ("Fanton") was, at all relevant times herein, an employee of
2 DEFENDANT STANFORD UNIVERSITY, hired by DEFENDANT STANFORD HEALTH
3 CARE as an Orthopedic Surgeon. Upon information and belief, Fanton also operates a practice
4 whereby he services private clients, including the National Football League's San Francisco 49er
5 franchise.

6
7 5. David I. Kaufman, MD ("Kaufman") was, at all relevant times herein, an
8 employee of DEFENDANT STANFORD UNIVERSITY, hired by DEFENDANT STANFORD
9 HEALTH CARE. Kaufman is a Clinical Associate Professor, Anesthesiologist, and a specialist
10 in Perioperative and Pain Medicine for DEFENDANT STANFORD UNIVERSITY. Upon
11 information and belief, Kaufman also operates a practice whereby he services private clients.

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13 6. DEFENDANT STANFORD HEALTH CARE and DEFENDANT STANFORD
14 UNIVERSITY were at all times relevant headquartered in Santa Clara County.

15 7. DEFENDANT STANFORD HEALTH CARE and DEFENDANT STANFORD
16 UNIVERSITY were at all times responsible for the harm caused to PLAINTIFF
17 BAEZ. DEFENDANT STANFORD HEALTH CARE and DEFENDANT STANFORD
18 UNIVERSITY have each, at all times herein relevant, employed more than five employees
19 within the State of California.

20
21 8. PLAINTIFF BAEZ is ignorant of the true names and capacities of the individual
22 Defendants sued herein as DOES 1 through 100, inclusive, and therefore sues these Defendants
23 by such fictitious names. PLAINTIFF BAEZ will amend this complaint to show the true names
24 and capacities of these Defendants when the same have been ascertained. PLAINTIFF BAEZ is
25 informed and believes, and thereon alleges that each of these fictitiously named Defendants are
26 responsible in some manner for the occurrences herein alleged, and that the PLAINTIFF BAEZ's
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1 damages as herein alleged were proximately caused by the acts of the aforementioned
2 Defendants.

3 9. PLAINTIFF BAEZ is informed and believes, and thereon alleges, that each of the
4 Defendants and parties named herein were at all times relevant, the agent, servant, employee and
5 representative of each of the other Defendants, and in performing the acts herein alleged, was
6 acting within the course and scope of such agency and employment, and with the full knowledge,
7 permission, authorization, ratification, active assistance and encouragement, and/or consent,
8 express or implied, of each of the other Defendants. All actions of each Defendant alleged in the
9 causes of action into which this paragraph is incorporated by reference were ratified and
10 approved by the officers or managing agents or members of every other Defendant.
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12 10. The Statement of Facts herein are not required or intended to be a complete
13 account of all the facts in this matter. PLAINTIFF BAEZ reserves the right to supplement the
14 same during discovery or at trial.
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17 EXHAUSTION OF ADMINISTRATIVE REMEDIES

18 11. Plaintiff has exhausted all applicable administrative remedies.
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21 STATEMENT OF FACTS

22 12. Over the past several years, all DEFENDANTS have created an atmosphere of
23 intimidation at the Redwood City Outpatient Center (OSC) through countless acts of harassment,
24 intimidation and retaliation for the legally protected activities of employees. DEFENDANT
25 STANFORD HEALTH CARE and it's managers have acknowledged that this same intimidation
26 was the reason that hospital staff failed to report the sexual assault/ molestation of at least four
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1 patients (including Mark Roe, Plaintiff in San Mateo Superior Court Case No. CIV537723) at the
2 hands of convicted sex offender and longtime protected employee Robert Lastinger.

3 13. DEFENDANT STANFORD HEALTH CARE concluded that six nurses and staff
4 would not face any discipline for failing to report the sexual assault of patients because
5 DEFENDANT STANFORD HEALTH CARE's management, through its own acts, had created
6 this atmosphere of intimidation. Had the DEFENDANT STANFORD HEALTH CARE's staff
7 reported the first identified sexual assault of Victim Mark Roe on March 20th, 2015, all
8 DEFENDANTS could have prevented the molestation of at least three other patients, including
9 one minor.
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11 14. DEFENDANT STANFORD HEALTH CARE, including its executive team and
12 at least one member of the Stanford Health Care Board of Directors, tolerated a known group of
13 self-appointed managers at the Redwood City Outpatient Surgery Center (OSC) which include
14 Kaufman, Fanton, at least four nurses and convicted sex offender and molester, Robert Lastinger.
15 These doctors and their staff have overridden the authority of DEFENDANT STANFORD
16 HEALTH CARE managers and executives and have directed the termination, demotion and
17 other retaliatory acts against more than a dozen employees. As Interim Director of Ambulatory
18 Perioperative, PLAINTIFF BAEZ thoroughly investigated the allegations against convicted
19 molester Lastinger and other members of the protected group, which ultimately resulted in his
20 retaliatory and wrongful termination.
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23 15. Convicted sex offender Lastinger was hired by DEFENDANT STANFORD
24 HEALTH CARE in or about 1996 as an Anesthesia Technician and continued as an employee
25 for nearly four years. He was given the opportunity to resign in September 2000 instead of being
26 terminated. Notwithstanding his forced resignation, DEFENDANT STANFORD HEALTH
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1 CARE rehired Lastinger in 2009 and continued to protect and defend him, even after it was
2 disclosed that he had been sexually molesting sedated patients.

3 16. DEFENDANT STANFORD HEALTH CARE continued to protect and defend
4 Lastinger after his arrest in April of 2015. Lastinger had a reputation for more than three years of
5 sexually molesting sedated patients and was a problem employee who was known to have
6 influenced the termination and transfer of employees, including managers who gave him bad
7 employee evaluations. Certain manager(s) who protected Lastinger, were known to whitewash
8 poor employee evaluations and bad conduct from his file.

9
10 17. In 2013, Lastinger was involved in a lewd conduct incident in the operating room
11 involving a nurse. It was later revealed that other doctors within the protected group had
12 knowledge of and failed to timely report lewd conduct at the workplace, but none were ever
13 disciplined. Certain manager(s) who protected Lastinger, were known to whitewash poor
14 employee evaluations and bad conduct from his file.

15
16 18. PLAINTIFF BAEZ began working for DEFENDANT STANFORD HEALTH
17 CARE in May 2007 as a Business Manager for Interventional Radiology responsible for running
18 day to day operations at Stanford Hospital (main Campus). In February 2014, PLAINTIFF
19 BAEZ was offered a promotion to Director of Business Operations for the Cath Lab. This
20 position was created by PLAINTIFF BAEZ's manager Doug Gunderson (Vice President of
21 Interventional Services). Within one month, the physician leadership exerted its authority over
22 management and denied PLAINTIFF BAEZ the position. This was just one example of how
23 DEFENDANT STANFORD HEALTH CARE would defer its authority to doctors, employees of
24 DEFENDANT STANFORD UNIVERSITY. Vice President Gunderson created a similar role
25 (Director Business Operations- Outpatient Surgery) for PLAINTIFF BAEZ which began on
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1 March 24, 2014. At this time, PLAINTIFF BAEZ's responsibilities included financial reporting
2 and contract management for the OSC branch and the management of the staff of Interventional
3 Radiology at the Stanford Hospital main campus. Despite the promotion in title, PLAINTIFF
4 BAEZ's job reclassification and increased pay was consistently denied. PLAINTIFF BAEZ
5 complained to his manager Amy Semple (Director of Clinical Operations) with no success.
6
7 PLAINTIFF BAEZ has been denied the back pay to date.

8 19. On or about December 7, 2014, Dani Martin was hired as Patient Care Manager in
9 the OSC and was tasked with enforcing Stanford Health Care policies and procedures.

10 20. On or about February 1, 2015, PLAINTIFF BAEZ's manager Amy Semple
11 (Director of Clinical Operations) went on maternity leave. In addition to his duties as Director of
12 Operations, PLAINTIFF BAEZ took on the duties of Interim Director of Ambulatory
13 Perioperative (over business and Clinical Operations). It was at this time that PLAINTIFF
14 BAEZ's temporary responsibilities included the management of personnel at the OSC.
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16 21. In or about January 30, 2015, Martin discovered the theft of two vials of
17 prescription medicine at the OSC.
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19 22. In or about February and March 2015, Dani Martin conducted a narcotic
20 medication audit as part of her investigation. Kaufman and PLAINTIFF BAEZ were aware of
21 the audit and were included in written correspondences regarding the same. PLAINTIFF BAEZ
22 notified Vice President Gunderson and the Director of the Pharmacy that Martin would be
23 conducting an investigation regarding the missing vials.
24

25 23. In this new position, PLAINTIFF BEAZ noticed that Fanton and Kaufman were
26 inappropriately asserting themselves into operational, management and human resource
27 decisions related to the employees at the OSC. Neither were employees of DEFENDANT
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1 STANFORD HEALTH CARE. Both doctors were, however, employees of DEFENDANT
2 STANFORD UNIVERSITY assigned the DEFENDANT STANFORD HEALTH CARE's
3 Redwood City Outpatient Surgery Center (OSC).

4 24. On or about March 12, 2015, PLAINTIFF BEAZ met with Employee Relations
5 Specialist Ko to complain about the level of involvement of these non-employee doctors in
6 human resource decisions at the OSC.
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8 25. In or about March of 2015, Martin concluded that convicted sexual offender
9 Lastinger was directly involved in the theft of the vials. Martin brought her conclusions to the
10 attention of PLAINTIFF BAEZ and Kaufman. Kaufman responded by becoming belligerent,
11 defending convicted sexual offender Lastinger and taking responsibility for the diversion.
12 Kaufman and Fanton complained about the investigation to DEFENDANT STANFORD
13 HEALTH CARE's executive management and insisted that Martin be removed from the unit.
14 Consistent with past practices, DEFENDANT STANFORD HEALTH CARE acquiesced. Vice
15 President Doug Gunderson was instructed to immediately and abruptly remove Ms. Martin from
16 the unit without notice.
17

18 26. Convicted sex offender Lastinger admitted to employees that he played a part in
19 the removal of Martin. He also noted that the office was in a flurry after he had Martin removed
20 and that he believed that the allegations against him were related to the changes in management
21 that he had mandated.
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23 27. On or about March 17, 2015, Employee Relations Specialist Ko confirmed to
24 PLAINTIFF BAEZ that, consistent with past practices, Fanton and Kaufman had been making
25 human resource decisions by demanding the removal of Dani Martin and other employees to
26 hospital executives.
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1 28. Assistant Manager Todd Valentine and PLAINTIFF BAEZ complained to Vice
2 President Gunderson that Martin was being retaliated against for reporting Lastinger's illegal
3 diversion of prescription medicine. Vice President Gunderson also confirmed to PLAINTIFF
4 BAEZ that the protected physicians had complained to DEFENDANT STANFORD HEALTH
5 CARE's Chief Executive Officer Amir Rubin and Chief Operating Officer James Hereford that
6 Dani Martin was disruptive and needed to be removed immediately from the unit. CEO Rubin
7 and COO Hereford instructed Vice President Gunderson to immediately remove Martin from the
8 unit pursuant to the orders of the physicians. Vice President Gunderson complied and had Martin
9 removed.
10

11 29. Approximately a dozen employees (managers and or assistant managers)
12 resigned, were forcefully transferred or terminated in the eight years that the unit has been open
13 because the self-appointed managers would force people out. This atmosphere of fear and
14 retaliation created by the doctors and supported by DEFENDANT STANFORD HEALTH
15 CARE's executives prevented nurses and other staff members from immediately reporting
16 Lastinger's sexual molestation of sedated patients.
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18 30. On or about March 20, 2015, Registered Nurse (RN) Yi, observed Lastinger
19 sexually molest sedated Victim A (identified by his lawsuit as alias "Mark Roe"). As a direct
20 result of the atmosphere of intimidation, RN Yi failed to act to stop or prevent the sexual assault
21 of other sedated patients.
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23 31. On or about March 31, 2015, Registered Nurse Camenga and Registered Nurse
24 Reyes observed Lastinger sexually molest sedated Victim B (as identified by SHC). As a direct
25 result of the atmosphere of intimidation, RN Camenga and Reyes failed to act to stop or prevent
26 the sexual assault of other sedated patients.
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1 32. On or about March 31, 2015, Registered Nurse Reyes and Anesthesia Tech
2 Rodriguez observed Lastinger sexually molest sedated Patient C, a minor, at the OSC. *Stanford*
3 *Health Care had eleven days (March 20 to March 31) to prevent the molestation of a sedated 16*
4 *year old child, but failed to act.*

5 33. Registered Nurse Camenga told Scrub Tech Krumm that a number of nurses (Yi,
6 Fernandez and Scully) had seen Lastinger similarly molest other patients at the OSC. Krumm
7 told Camenga to tell each employee to report the molestations to management, but employees
8 were are not comfortable reporting to management for fear of retaliation. As of March 31, 2014,
9 Krumm was aware that the nurses did not come forward sooner and were apprehensive about
10 reporting the molestation because of the intimation and fear of retaliation by the self-appointed
11 physician management.
12

13 34. Just one day before the next molestation of a sedated patient, DEFENDANT
14 STANFORD HEALTH CARE had the knowledge of an employee who sexually molested two
15 patients, but failed to act. Furthermore, DEFENDANT STANFORD HEALTH CARE was on
16 notice of a cancer of intimidation and retaliation that prevented the reporting of sexual
17 molestations of sedated patients.
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19 35. On or about March 31, 2015, PLAINTIFF BAEZ received a text message from
20 Krumm that two nurses (Cecilia Camenga and Irish Reyes) wanted to talk to him. Krumm did
21 not give specifics about the request for a meeting despite PLAINTIFF BAEZ's follow-up
22 inquiry.
23

24 36. A handful of nurses, including those that witnessed, but failed to report the sexual
25 assault of sedated patients, later complained that they were afraid to report the molestations
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1 because they feared the retaliation they witnessed against Ms. Martin. The staff believed that
2 Martin was moving the OSC in the right direction.

3 37. On or about April 1, 2015, Kaufman sent PLAINTIFF BAEZ an email telling him
4 that he wanted to clear the air about decisions that he (Kaufman) and Fanton had made about the
5 *operation of the OSC*. PLAINTIFF BAEZ thought this to be strange because *officially*, Fanton
6 and Kaufman were not employees of DEFENDANT STANFORD HEALTH CARE and had no
7 operational authority over the OSC. Both Kaufman and Fanton were employees of
8 DEFENDANT STANFORD UNIVERSITY. PLAINTIFF BAEZ complained to Employee
9 Relations Specialist Ko about this email from Kaufman.

10
11 38. On or about April 1, 2015, Registered Nurse Reyes and Registered Nurse Scully
12 observed the sexual molestation of yet another sedated patient at the OSC, Victim D.

13
14 39. On or about April 2, 2015, Registered Nurse Yi told Assistant Manager Todd
15 Valentine that she saw Lastinger molest a sedated patient and that she did not know who to
16 report it to. Valentine told her to report it to Martin, but Martin had been removed by Lastinger
17 and the informal management group just two months prior.

18
19 40. Assistant Manager Valentine immediately contacted PLAINTIFF BAEZ wherein
20 BAEZ learned that two clinical nurses (Cindy Yi and Cecilia Camenga) had each witnessed
21 Anesthesia Tech Lastinger molest a patient while the patient was sedated at the OSC (in apparent
22 reference to Victim Mark Roe and Victim B on March 20 and March 31st, respectively). On the
23 same day, PLAINTIFF BAEZ received an email from Assistant Manager Valentine noting that
24 the employees are fearful of retaliation from Lastinger and his friends in executive management.
25 PLAINTIFF BAEZ immediately contacted Kim Ko (Employee Relations Specialist), Gunderson
26 (Vice President of Interventional Services), Sam Wald (Vice President of Interventional Services)
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1 and Associate Chief Medical Officer), and initiated an investigation pursuant to Stanford policy.
2 Other DEFENDANT STANFORD HEALTH CARE executives up the chain of command and
3 the Redwood City Police Department were also immediately notified.

4 41. Pursuant to PLAINTIFF BAEZ's quick action, Lastinger was immediately
5 removed from the workplace and placed on temporary relief from duty pending the results of the
6 investigation.
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8 42. On or about April 3, 2015, Assistant Manager Valentine told PLAINTIFF BAEZ
9 that Nurse Yi and Irish were not conformable talking at work and that it was not a safe place to
10 express their feelings.
11

12 43. On or about April 3, 2015, Registered Nurse Rojmar Fernandez reported to
13 Employee Relations Specialist Ko that he thought he saw Lastinger inappropriately touch
14 patients in Fernandez's first year of employment 2-3 times. Two years prior in December 2014,
15 he warned Nurse Yi to watch Lastinger and noted that he is gay and he touches patient's genitals.
16 Fernandez also mentioned to Registered Nurse Scully that in 2014, he noticed Lastinger rub
17 patients in the genitals four times. DEFENDANT STANFORD HEALTH CARE failed to
18 further investigate and disclose further victims because the information was not specific. A
19 proper investigation would have potentially revealed three years of sexual assault/ molestation
20 victims, however doing so would have opened a pandora's box of litigation and bad press.
21

22 44. On or about April 8, 2015, Kaufman, approached PLAINTIFF BAEZ to tell him
23 that he was turning over "operational leadership" of the OSC to PLAINTIFF BAEZ. Kaufman
24 noted that he asserted control over the OSC due to a lack of leadership. He noted that, going
25 forward, Kaufman would direct employees to PLAINTIFF BAEZ for operational decisions.
26 PLAINTIFF BAEZ was stunned that Kaufman actually believed he had operational control of
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1 the OSC without any official real authority. PLAINTIFF BAEZ notified Director of Clinical
2 Operations Amy Semple, Vice President Doug Gunderson, and Employee Relations Specialist
3 Kimberly Ko of the conversation. Vice President Gunderson and Director Semple responded by
4 confirming that Kaufman had no operational authority over the OSC.

5
6 45. On or about April 16, 2015, PLAINTIFF BAEZ noticed that one of the employees
7 wrote on the white board in the employee common area, "What we do... back stabbing each
8 other and not helping each other." Prior to being wiped clean, PLAINTIFF BAEZ took a picture
9 of it and emailed it to Employee Relations Specialist Ko, Director of Clinical Operations Semple
10 and Patient Care Manager Renico. PLAINTIFF BAEZ suspected that the culprit was one of the
11 members of the "informal management team" sending a message to co-workers and
12 management. The graffiti confirmed and contributed to the atmosphere of intimidation that
13 existed at the OSC.
14

15 46. On or about April 17, 2015, PLAINTIFF BAEZ was asked by managers to
16 compile a list of all the patients that may have been treated in the operating room while the
17 sexual predator Lastinger was working. PLAINTIFF asked Patient Care Manager Renico to pull
18 the report. It was determined that only two years of records were available. The information was
19 given to management, but no further investigation was conducted to determine who the potential
20 other victims and patients were, because the list would have been too great.
21

22 47. Employee Relations Specialist Kimberly Ko and PLAINTIFF BAEZ determined
23 that the self-appointed physician managers at DEFENDANT STANFORD HEALTH CARE
24 have been deeply involved and perpetuated an ongoing toxic environment among the staff
25 whereby employees were retaliated against for doing anything against this core group. It was
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1 determined that the witnesses to the molestations were reluctant to report the allegations against
2 Lastinger for fear of retaliation.

3 48. The executive management of DEFENDANT STANFORD HEALTH CARE
4 decided that none of the registered nurses would be disciplined despite their prior knowledge,
5 their failure at all levels to protect the patients they were tasked to serve, and their failure to
6 immediately report the sexual assault to law enforcement. Because DEFENDANT STANFORD
7 HEALTH CARE executive management had perpetuated an ongoing toxic and retaliatory
8 environment among the staff, no disciplinary action was taken against these nurses.
9

10 49. On or about May 4, 2015, RN Kristy Thompson came into PLAINTIFF BAEZ'
11 office and told him that Assistant Patient Care Manager Luckhurst had been aware of sex
12 offender Lastinger's propensity to molest patients prior to her promotion over a year prior, that
13 she was later promoted, and that Manager Luckhurst decided to disregard this damaging
14 information. Furthermore, Thompson noted that an assistant patient care manager (APCM) was
15 terminated for allegations of sexual harassment against sex offender Lastinger, despite the fact
16 that it was alleged that the two had a relationship which ended in hostilities by Mr. Lastinger. If
17 these statements were true, Manager Luckhurst's 2014-2015 glowing review of Lastinger the
18 year prior is further evidence of a cover-up and knowledge and ratification of prior inappropriate
19 conduct.
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22 50. On or about May 5, 2015, PLAINTIFF BAEZ received a telephone call from
23 Registered Nurse Julissa Soto who told him that Deputy employee Nick Cardenas (an SHC
24 vendor) had been receiving pictures of "dicks" and "fat women" taken by Lastinger of patients in
25 the operating room at OSC. PLAINTIFF BAEZ was told that Cardenas was sharing these
26 pictures of naked and sedated patients with other Deputy employees. The Deputy reps were
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1 inquiring as to why Cardenas was no longer receiving these lewd pictures. Lastinger had been
2 terminated and arrested eight days prior.

3 51. PLAINTIFF BAEZ immediately reported this to his managers who conducted no
4 investigation and failed in their duty to identify victims. It was determined by DEFENDANT
5 STANFORD HEALTH CARE executives that since convicted molester Lastinger had been
6 terminated on April 27th, no further action would be taken. A proper investigation would have
7 disclosed the participation and/or notice and ratification of others in the operating room as well
8 as well as the identity of a number of victims.
9

10 52. On or about May 18, 2015, Director of Clinical Operations Amy Semple returned
11 from maternity leave and PLAINTIFF BAEZ returned to the duties as Director of Business
12 Operations. PLAINTIFF BAEZ continued to co-lead the investigation of Lastinger and the
13 related investigation of the atmosphere of intimidation. PLAINTIFF BAEZ continued to be paid
14 at the same pay grade as his prior job classification from March 2014. By this date, Vice
15 President Gunderson had transferred out of Stanford Health Care. PLAINTIFF BAEZ and
16 Director Semple reported to Vice President of Interventional Services and Associate Chief
17 Medical Officer, Dr. Sam Wald.
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20 53. On or about May 20, 2015, Kaufman sent PLAINTIFF BAEZ an email requesting
21 to meet with Director Semple and Baez and telling PLAINTIFF BAEZ that Kaufman and Fanton
22 share in all major decisions affecting the OSC. Fanton and Semple were also copied on the
23 email. Director of Clinical Operations Semple was upset that the email was not directed to her
24 since she was in charge and that Kaufman and Fanton were making their unofficial role as
25 managers, official. Without Vice President Gunderson in charge, Semple complained to Vice
26 President Dr. Sam Wald, who refused to act
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1 54. PLAINTIFF BAEZ concluded that Assistant Patient Care Manager Luckhurst and
2 Kaufman were significantly contributing to the culture of retaliation that led to the delays in
3 reporting the molestations. PLAINTIFF BAEZ complained to DEFENDANT STANFORD
4 HEALTH CARE executives that Manager Luckhurst be terminated and that Kaufman be
5 removed from the oversight position of Medical Director. PLAINTIFF BAEZ complained to
6 human resource manager(s) Kety Duron (Vice President of Human Resources), Amy Semple
7 (Director of Clinical Operations), Mary Gaines, and Kim Ko (Employee Relations Specialist).
8 DEFENDANT STANFORD HEALTH CARE executives determined that Assistant Patient Care
9 Manager Luckhurst would be terminated citing her contributions to the toxic and hostile
10 environment, but Kaufman and Fanton escaped all discipline.

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13 55. On or about May 28, 2015, PLAINTIFF BAEZ and Director of Clinical
14 Operations Amy Semple met with Kaufman and Fanton (the two of the doctors named as
15 creating an atmosphere of fear and retaliation). The purpose of the meeting was to give them an
16 update on the Lastinger investigation. Initially both doctors were upset and defensive of
17 Lastinger and believed that he was being retaliated against. This was the exact same reaction
18 that Kaufman had when he was notified of Lastinger's theft of prescription medications earlier
19 that year. Both doctors became defensive and acted as though sex offender Lastinger was the
20 victim. They insisted that each staff member who reported the molestation be questioned and
21 fired if it was determined that they lied about the molestations. This suggestion was consistent
22 with the toxic and retaliatory atmosphere at the OSC.
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25 56. During this meeting, PLAINTIFF BAEZ highlighted Lastinger's history in 2013
26 of lewd sexual misconduct in the operating room (previously unknown to PLAINTIFF BAEZ).
27 Kaufman told PLAINTIFF BAEZ, Fanton, and Director Semple that the prior assistant patient
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1 care manager was "sex craved" and that she regularly flashed her breasts at him (Kaufman) in
2 the operating room. Recognizing that he had publicly acknowledged his failure to report the prior
3 lewd conduct in his operating room, Kaufman immediately retracted the statement. PLAINTIFF
4 BAEZ reported this conversation to Vice President of Human Resource Kety Duron, Director of
5 Clinical Operations Amy Semple, and Employee Relations Specialist Kimberly Ko.
6

7 57. DEFENDANT STANFORD HEALTH CARE was on notice that Kaufman had
8 violated hospital policy by failing to report the lewd conduct. To this day, no investigation has
9 been conducted and no discipline has been levied on Kaufman. This lack of action is yet another
10 example of DEFENDANT STANFORD HEALTH CARE and DEFENDANT STANFORD
11 UNIVERSITY'S protection of Kaufman and his unofficial power and control over
12 DEFENDANT STANFORD HEALTH CARE executive management.
13

14 58. On or about May 28, 2015, PLAINTIFF BAEZ notified management in an email
15 about the conversation he and Director Semple had with DEFENDANTS Kaufman and Fanton.
16

17 59. Both PLAINTIFF BAEZ and Employee Relations Specialist Ko became
18 concerned that DEFENDANTS Kaufman and Fanton would further retaliate against the
19 witnesses. PLAINTIFF BAEZ became concerned that the doctors would look for a way to
20 retaliate against him.
21

22 60. The very next day, on or about May 29, 2015, DEFENDANT Kaufman retaliated
23 against PLAINTIFF BAEZ. Kaufman complained to Director of Clinical Operations Semple
24 that PLAINTIFF BAEZ was harassing and retaliating against Kristi Thompson. In fact,
25 PLAINTIFF was merely investigating Thompson's complaint to him that Assistant Patient Care
26 Manager Luckhurst had known about Robert Lastinger's propensity to sexual molest patients
27 before she was promoted over a year before the molestations in March 2015. (See May 4, 2015
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1 paragraph). Kaufman was attempting to (1) interfere with and stop the investigation, and (2)
2 retaliate against PLAINTIFF BAEZ. PLAINTIFF BAEZ reported this retaliation to his
3 managers on May 29 and again on June 1, when he complained that Kaufman was “gunning for
4 [him] now too...”

5
6 61. On or about June 16, 2015, PLAINTIFF BAEZ requested and was denied the
7 back pay and 21% bonus he was entitled for doing the job of Business Operations Director for
8 the Ambulatory Perioperative Services from March of 2014 to approximately June 7, 2015.

9 62. On or about July 7, 2015, Assistant Patient Care Manager Jill Luckhurst was
10 terminated for contributing to the atmosphere of intimidation relating to the informal
11 management group.
12

13 63. Throughout the next few months (summer of 2015), PLAINTIFF BAEZ insisted
14 on a meeting with Chief Operating Officer James Hereford to demand the removal of
15 DEFENDANTS Kaufman and Fanton as co-directors, including several complaints to Vice
16 President and Chief Medical Officer Dr. Sam Wald. PLAINTIFF BAEZ had determined that
17 DEFENDANTN KAUFAN and Fanton had been contributing to a hostile environment that lead
18 to nurses failing to report the molestation of patients. Chief Operating Officer Hereford refused
19 to meet on the topic and deferred the meeting to Catherine Krna (Vice President of Ambulatory
20 Specialty Care). (Krna was hired to replace Doug Gunderson in or about July 2015.)
21
22

23 64. In September of 2015, the Joint Commission Agency (a regulatory agency tasked
24 with setting standards for hospital care in the United States), completed its narrow investigation
25 into the DEFENDANT STANFORD HEALTH CARE policy. It was the stated policy of
26 DEFENDANT STANFORD HEALTH CARE executives to give investigators as little
27 information as possible and never offer additional information so as limit the scope of the
28

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27 information as possible and never offer additional information so as limit the scope of the
28

1 regulatory agency's investigation. Vice President of Human Resources Kety Duron verbally
2 counseled employees to withhold unsolicited information from the regulatory agency.

3 65. During the week September 29, 2015, PLAINTIFF BAEZ and Director of
4 Clinical Operations Semple continued to press for a meeting to discuss the "informal leadership"
5 and the atmosphere of intimidation they created at STANFORD HEALTH CARE.
6

7 66. On or about October 1, 2015, in anticipation of the meeting, Employee Relations
8 Specialist Ko asked PLAINTIFF BAEZ to come up with the names of the non-physician
9 employees that were a part of the core group. PLAINTIFF BAEZ identified nine employees.
10 PLAINTIFF insisted to his managers that until Kaufman was removed from Medical Direction,
11 the problems of the hostile work environment would not be solved. The meeting took place, but
12 no further action was taken.
13

14 67. On or about January 29, 2016, PLAINTIFF BAEZ took three co-workers (two
15 female and one male) to a local restaurant at approximately 3:30pm after work to thank them for
16 their hard work. PLAINTIFF BAEZ and other managers at Stanford Health Care would
17 commonly thank employees and co-workers in this way. Approximately two weeks later,
18 PLAINTIFF BAEZ was called in to a meeting with Vice President Katherine Krna. Krna noted
19 that she came to work and somebody (anonymously) had left a note on her desk that stated that
20 they saw PLAINTIFF BAEZ out with a male employee (implying inappropriate sexual
21 behavior). Vice President Krna told PLAINTIFF that she was "disappointed" and that being seen
22 out with this young man from work was not comporting to the standards of the organization as a
23 Director. She noted that he should not be seen in a situation that may be perceived as
24 inappropriate or unethical.
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1 68. PLAINTIFF BAEZ, responded that (1) he had done nothing wrong, (2) that he had
2 taken three staff members out to thank them, (3) that it was quite common, and (4) that focusing
3 on "another gay male" was an insulting persecution of Plaintiff's gender/sexual orientation. Vice
4 President Krna insisted that the conduct was inappropriate. Later that day, Plaintiff complained
5 to his manager Director of Clinical Operations Amy Semple that he was inappropriately being
6 singled-out as a gay male in an attempt to defame his reputation.
7

8 69. On or about March 10, 2016, Victim A (Mark Roe) filed a lawsuit in San Mateo
9 Superior Court alleging, inter alia, negligent hiring and supervision, failure to warn, premises
10 liability, sexual battery and IIED as a result of the sexual battery that occurred on him by
11 Lastinger on March 20, 2015.
12

13 70. On March 16, 2016, DEFENDANT STANFORD HEALTH CARE was served
14 the complaint for damages in the Mark Roe matter.
15

16 71. Two days after being served the Mark Roe lawsuit, on March 18, 2016,
17 PLAINTIFF BAEZ received an email from the Vice President of Ambulatory Clinics Catherine
18 Krna asking to meet. During the meeting on March 23, 2016, Vice President Krna informed
19 PLAINTIFF BAEZ that his employment was terminated effective June 1, 2016.
20

21 72. On or about April 15, 2016, in a meeting with Vice President Krna and
22 Employment Labor Specialist Denise Bailey, PLAINTIFF BAEZ was given an official
23 termination/ severance letter. PLAINTIFF BAEZ was told that "due to budgetary and operational
24 needs, Stanford Health Care has decided that [his] position as a Director of Finance, and
25 Business Operations, Perioperative Outpatient Services [was being] eliminated[.]"
26

27 73. In the same meeting, both Vice President Krna and Bailey fraudulently
28 misrepresented (verbally and in writing) to PLAINTIFF BAEZ that he had preferential treatment

1 for re-employment and that they would help him get re-employed with SHC. However, beginning
2 on the Monday following this meeting, PLAINTIFF BAEZ found and applied for jobs, including
3 one similar to his own posted on the DEFENDANT STANFORD HEALTH CARE website.

4 74. Between March 30, 2016 and April 18, 2016, PLAINTIFF BAEZ applied for
5 seventeen (17) positions at Stanford Health Care for which he was qualified. He was
6 immediately denied each position or denied an interview or follow-up.
7

8 75. Around the time of the termination letter, PLAINTIFF BAEZ was approached by
9 a prominent doctor at DEFENDANT STANFORD HEALTH CARE who told him that certain
10 doctors had "blacklisted" him due to reports to management and his investigation that resulted in
11 the termination of sex offender Lastinger and his manager Jill Luckhurst. Both were members of
12 the protected group.
13

14 76. On or about May 24, 2016, PLAINTIFF BAEZ sent an email to Administrative
15 Director of Employee Labor Relations, Mary Gaines with a copy to Amy Semple
16 (Administrative Director of Ambulatory Perioperative Services), Catherine Krna (Vice President
17 of Ambulatory Specialty Care), Mariann Byerwalter (Member of the SHC Board of Directors
18 and Interim Chief Executive Officer) and James Hereford (Chief Operations Officer). In that
19 correspondence, PLAINTIFF BAEZ complained that SHC had tolerated an atmosphere of
20 intimidation and retaliation against employees that report members of the self-appointed
21 informal leadership team at OSC, and that his termination on June 1st was yet another example of
22 the same. PLAINTIFF BAEZ also requested a complete investigation into the sexual
23 molestations prior to March 20, 2015 and the photographing of patients in the operating room.
24
25

26 77. On or about May 27, 2016, Ms. Gaines responded by claiming no knowledge "of
27 the self-appointed informal leadership." Ms. Gaines also stated that "ELR [had] not been made
28

1 aware of reports of photographing of patients.” PLAINTIFF BAEZ was removed as Interim
2 Director of Ambulatory Perioperative over business and clinical operations twelve days after
3 making this report.

4
5 78. On June 1, 2016, PLAINTIFF BAEZ was wrongfully terminated in retaliation for
6 his complaints and investigation of a convicted sex offender and the self-appointed informal
7 leadership team of doctors and nurses at DEFENDANT STANFORD HEALTH CARE.
8 Consistent with a pattern and practice of retaliation against employees, PLAINTIFF BAEZ was
9 retaliated against for (1) reporting and investigating the molestation allegations against Lastinger
10 and (2) alerting management that Lastinger had taken naked pictures of patients without their
11 consent and sent them to an individual associated with PLAINTIFF BAEZ, (3) insisting on
12 disciplinary action against Dr. Kaufman, Dr. Fanton, Assistant Patient Care Manager Luckhurst,
13 and (4) other complaints as detailed herein. DEFENDANT STANFORD HEALTH CARE has
14 acknowledged responsibility for creating this atmosphere of intimidation in writing, yet it
15 continuously supports the bad actors and perpetuates this toxic and retaliatory work environment.
16
17

18 79. Robert Lastinger was arrested by the Redwood City Police Department on or
19 about April 27, 2015. He was arraigned on or about April 29, 2015 on four counts of California
20 Penal Code Section 243.4b (Sexual Assault). On May 16, 2016, Lastinger and the San Mateo
21 District Attorney entered into a plea deal whereby Lastinger plead “nolo contendere” to the first
22 two counts in exchange for a dismissal of counts 3 and 4, a maximum of one year in county jail,
23 three years of probation, and 290 sex offender registration. On June 29, 2016, Lastinger was
24 sentenced to one year in county jail for count 1 and 2 (served concurrently), three years of
25 probation, and 290 sex offender registration for life. Absent the plea deal, the maximum penalty
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1 pursuant to the California Penal Code the court could have awarded was sixteen years in state
2 prison.

3
4 **FIRST CAUSE OF ACTION**
5 **Whistleblower (Health & Safety Code 1278.5)**
6 **(As to All Defendants)**

7 80. PLAINTIFF BAEZ incorporates by reference all of the facts set forth in
8 paragraphs 1 through 79 with the same force and effect as though fully pleaded at length herein.

9 81. PLAINTIFF BAEZ brings this claim under California Health & Safety Code
10 1278.5. California Health & Safety Code 1278.5(b) (1) prohibits the retaliation, in any manner,
11 against employee, member of the medical staff, or any other health care worker for (A)
12 presenting a grievance, complaint, or report to the facility, to an entity or agency responsible for
13 accrediting or evaluating the facility, or the medical staff of the facility, or to any other
14 governmental entity, or for (B) initiating, participating, or cooperating in an investigation related
15 to the quality of care, services, or conditions at Stanford Health Care.

16 82. Defendants have retaliated against PLAINTIFF BAEZ for reporting the diversion
17 of controlled substances, the sexual assault of at least four patients (including one minor), lewd
18 and lascivious conduct in the operating room and other conduct affecting the care of patients,
19 and lascivious conduct in the operating room and other conduct affecting the care of patients,
20 services and conditions at Stanford Health Care.

21 83. Defendants adopted and enforced a policy of preventing employees from
22 disclosing information to hospital management, government officials and law enforcement
23 agencies, where the employee has reasonable cause to believe that the information discloses a
24 violation of state or federal statute, or violation or noncompliance with a state or federal
25 regulation or affecting the care of patients, services and conditions at Stanford Health Care.
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1 84. Defendants retaliated against, harassed and intentionally inflicted emotional
2 distress on PLAINTIFF BAEZ. DEFENDANT STANFORD HEALTH CARE ratified, adopted
3 and took direction from DEFENDANTS Fanton and Kaufman (employees of DEFENDANT
4 STANFORD UNIVERSITY). All retaliatory acts by each Defendant was in violation California
5 Health & Safety Code 1278.5.
6

7 85. As a proximate result of such retaliation and harassment, PLAINTIFF BAEZ has
8 suffered extreme emotional distress, anxiety, fear and humiliation.

9 86. As a further proximate result of such wrongful and retaliatory conduct,
10 PLAINTIFF BAEZ has suffered loss of income, loss of benefits, loss of career opportunity and
11 loss of other job benefits, all in amounts to be proven at trial.
12

13 87. Defendants acted, as alleged, with the malicious intention of depriving the
14 PLAINTIFF BAEZ of employment opportunities and benefits that must be accorded to all
15 employees. Such wrongful and retaliatory conduct was malicious, oppressive, fraudulent and in
16 conscious disregard of plaintiffs' rights, such that punitive damages are warranted to punish all
17 Defendants, to deter such conduct by Defendants in the future and to make an example of
18 Defendants, all in amounts to be proven at trial.
19

20 88. An employee who has been discriminated against in employment pursuant to
21 California Health & Safety Code 1278.5 shall be entitled to reinstatement, reimbursement for
22 lost wages and work benefits caused by the acts of the employer, and the legal costs associated
23 with pursuing the case, or to any remedy deemed warranted by the court or any other applicable
24 provision of statutory or common law. A member of the medical staff who has been
25 discriminated against pursuant to this section shall be entitled to reinstatement, reimbursement
26 for lost income resulting from any change in the terms or conditions of his or her privileges
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1 caused by the acts of the Stanford Health Care and the legal costs associated with pursuing the
2 case, or to any remedy deemed warranted by the court pursuant to this chapter or any other
3 applicable provision of statutory or common law.

4 89. Pursuant to *California Code Civ. Proc. § 1021.5*, a court may award attorneys'
5 fees to a successful party against one or more opposing parties in any action which: (1) has
6 resulted in the enforcement of an important right affecting the public interest; (2) a significant
7 benefit has been conferred on the general public or a large class of persons; and (3) the necessity
8 and financial burden of private enforcement renders the award appropriate. Under *Jaramillo*
9 *v. County of Orange* (2011) 200 Cal.App.4th 811, 829, protecting whistleblowers from retaliation
10 is a strong public interest that confers a significant benefit on the general public - namely,
11 empowering people to step forward to expose fraud, corruption, and other wrongdoing.
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15 **SECOND CAUSE OF ACTION**
16 **Whistleblower Retaliation (Labor Code Section 1102.5)**
17 **(As to DEFENDANT STANFORD HEALTH CARE)**

18 90. PLAINTIFF BAEZ incorporates by reference all of the facts set forth in
19 paragraphs 1 through 79 with the same force and effect as though fully pleaded at length herein.

20 91. PLAINTIFF BAEZ brings this claim under *California Labor Code Section*
21 *1102.5, 1104, and 1105*. *California Labor Code Section 1102.5(a)* prohibits an employer from
22 making, adopting, or enforcing any rule, regulation, or policy preventing an employee from
23 disclosing information to government or law enforcement agencies, where the employee has
24 reasonable cause to believe that the information discloses a violation of state or federal statute, or
25 violation or noncompliance with a state or federal regulation.
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1 92. *California Labor Code Section 1102.5(b)* prohibits retaliation against an
2 employee for disclosing information to government or law enforcement agencies, where the
3 employee has reasonable cause to believe that the information discloses a violation of state or
4 federal statute, or violation or noncompliance with a state or federal regulation.

5 93. *California Labor Code § 1102.5(c)* prohibits retaliation by an employer against an
6 employee who refuses to participate in an activity that would result in violation of a state or
7 federal statute, or a violation or noncompliance with a state or federal rule or regulation. The
8 California Legislature enacted *Labor Code § 1102.5(c)* with the express intent, "to protect
9 employees who refuse to act at the direction of their employer or refuse to participate in activities
10 of an employer that would result in a violation of law."
11

12 94. DEFENDANT STANFORD HEALTH CARE has adopted and enforced a policy
13 of preventing employees from disclosing information to a government or law enforcement
14 agency, where the employee has reasonable cause to believe that the information discloses a
15 violation of state or federal statute, or violation or noncompliance with a state or federal
16 regulation.
17

18 95. Such policy was enforced against PLAINTIFF BAEZ when he made the
19 complaints noted herein and when he was instructed by DEFENDANT STANFORD HEALTH
20 CARE not to provide additional information to outside government agencies regarding violations
21 of State laws and regulations.
22

23 96. DEFENDANT STANFORD HEALTH CARE retaliated against, harassed and
24 intentionally inflicted emotional distress on PLAINTIFF BAEZ due to his complaints and
25 disclosure of illegal activities of DEFENDANT STANFORD HEALTH CARE's employees.
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1 97. PLAINTIFF BAEZ had a reasonable belief that the information disclosed was a
2 violation of State statute and/or a violation of State regulation. Such conduct by DEFENDANT
3 STANFORD HEALTH CARE violated *California Labor Code Section 1102.5*.

4 98. As a proximate result of such retaliation and harassment, PLAINTIFF BAEZ
5 suffered extreme emotional distress, anxiety, fear and humiliation. PLAINTIFF BAEZ is entitled
6 to receive damages for these losses and hereby demands an award of damages against
7 DEFENDANT STANFORD HEALTH CARE in an amount according to proof at trial.

8 99. As a further proximate result of such wrongful and retaliatory conduct,
9 PLAINTIFF BAEZ suffered loss of income, loss of benefits, loss of career opportunity and loss
10 of other job benefits, all in amounts to be proven at trial.

11 100. DEFENDANT STANFORD HEALTH CARE's acted, as alleged, with the
12 malicious intention of depriving the PLAINTIFF BAEZ of employment opportunities and
13 benefits that must be accorded to all employees. Such wrongful and retaliatory conduct was
14 malicious, oppressive, fraudulent and in conscious disregard of plaintiffs' rights, such that
15 punitive damages are warranted to punish DEFENDANT STANFORD HEALTH CARE, to
16 deter such conduct by DEFENDANT STANFORD HEALTH CARE in the future and to make
17 an example of DEFENDANT STANFORD HEALTH CARE, all in amounts to be proven at
18 trial.

19 101. Pursuant to *Labor Code §1102.5(f)*, DEFENDANT STANFORD HEALTH
20 CARE is liable for a civil penalty for each violation *Labor Code § 1102.5(c)*. As more fully set
21 forth above, PLAINTIFF BAEZ provided notice of his intention to seek recovery of civil
22 penalties for DEFENDANT STANFORD HEALTH CARE's violations of *Labor Code*
23 *§1102.5(c)*. Upon the expiration of thirty-three (33) days from the date of PLAINTIFF BAEZ's
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1 notice, PLAINTIFF BAEZ will seek to amend this Complaint to assert a claim for civil penalties
2 against DEFENDANT STANFORD HEALTH CARE.

3 102. Pursuant to *California Code Civ. Proc. § 1021.5*, a court may award attorneys'
4 fees to a successful party against one or more opposing parties in any action which: (1) has
5 resulted in the enforcement of an important right affecting the public interest; (2) a significant
6 benefit has been conferred on the general public or a large class of persons; and (3) the necessity
7 and financial burden of private enforcement renders the award appropriate. Under *Jaramillo*
8 *v. County of Orange (2011) 200 Cal.App.4th 811, 829*, protecting whistleblowers from retaliation
9 is a strong public interest that confers a significant benefit on the general public - namely,
10 empowering people to step forward to expose fraud, corruption, and other wrongdoing.
11
12

13 **THIRD CAUSE OF ACTION**

14 **Whistleblower Retaliation (Labor Code Section 6310)**

15 **(As to DEFENDANT STANFORD HEALTH CARE)**

16 103. PLAINTIFF BAEZ incorporates by reference all of the facts set forth in
17 paragraphs 1 through 79 with the same force and effect as though fully pleaded at length herein.

18 104. PLAINTIFF BAEZ brings this claim under *California Labor Code Section 6310*.
19 *California Labor Code Section 6310* prohibits and employer from discharging or in any manner
20 discriminating against any employee because the employee has made any oral or written
21 complaint to the division, other governmental agencies having statutory responsibility for or
22 assisting the division with reference to employee safety or health, his or her employer, or his or
23 her representative.

24 105. PLAINTIFF BAEZ made the complaints of unsafe working conditions or work
25 practices to his employer when he notified his employer that Lastinger had been sexually
26 assaulting patients, involved in other lewd behavior noted herein at his place of employments,
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1 and intimidating employees to the extent that those employees failed to immediately notify
2 management and law enforcement of the sexual assault of sedated patients.

3 106. DEFENDANT STANFORD HEALTH CARE retaliated against, harassed and
4 intentionally inflicted emotional distress on PLAINTIFF BAEZ due to his complaints noted
5 herein.

6
7 107. PLAINTIFF BAEZ had a reasonable belief that Lastinger's acts had created an
8 unsafe working environment. Such retaliatory conduct by DEFENDANT STANFORD
9 HEALTH CARE violated *California Labor Code Section 6310*.

10 108. As a proximate result of such retaliation and harassment, PLAINTIFF BAEZ
11 suffered extreme emotional distress, anxiety, fear and humiliation. PLAINTIFF BAEZ is entitled
12 to receive damages for these losses and hereby demands an award of damages against
13 DEFENDANT STANFORD HEALTH CARE in an amount according to proof at trial.

14
15 109. As a further proximate result of such wrongful and retaliatory conduct,
16 PLAINTIFF BAEZ suffered loss of income, loss of benefits, loss of career opportunity and loss
17 of other job benefits, all in amounts to be proven at trial.

18
19 110. DEFENDANT STANFORD HEALTH CARE's acted, as alleged, with the
20 malicious intention of depriving the PLAINTIFF BAEZ of employment opportunities and
21 benefits that must be accorded to all employees. Such wrongful and retaliatory conduct was
22 malicious, oppressive, fraudulent and in conscious disregard of plaintiffs' rights, such that
23 punitive damages are warranted to punish DEFENDANT STANFORD HEALTH CARE, to
24 deter such conduct by DEFENDANT STANFORD HEALTH CARE in the future and to make
25 an example of DEFENDANT STANFORD HEALTH CARE, all in amounts to be proven at
26 trial.
27
28

1 111. Pursuant to *California Code Civ. Proc. § 1021.5*, a court may award attorneys'
2 fees to a successful party against one or more opposing parties in any action which: (1) has
3 resulted in the enforcement of an important right affecting the public interest; (2) a significant
4 benefit has been conferred on the general public or a large class of persons; and (3) the necessity
5 and financial burden of private enforcement renders the award appropriate. Under *Jaramillo*
6 *v. County of Orange* (2011) 200 Cal.App.4th 811, 829, protecting whistleblowers from retaliation
7 is a strong public interest that confers a significant benefit on the general public - namely,
8 empowering people to step forward to expose fraud, corruption, and other wrongdoing.
9

10
11 **FOURTH CAUSE OF ACTION**
12 **DISCRIMINATION – FEHA**
13 **Cal. Gov. Code § 12940**
 (As to DEFENDANT STANFORD HEALTH CARE)

14 112. PLAINTIFF BAEZ incorporates by reference all of the facts set forth in
15 paragraphs 1 through 79 with the same force and effect as though fully pleaded at length herein.

16 113. At the time of his termination from employment, Plaintiff was a member of a
17 class protected by FEHA, he is a gay male.

18 114. At all times herein relevant, Plaintiff's job performance was always satisfactory
19 and was usually excellent.

20 115. Defendant, as alleged herein, discriminated against PLAINTIFF BAEZ based on
21 his gender and sexual orientation by, among other things: verbal reprimand for alleged
22 "inappropriate" socializing with another gay male co-worker and retaliation for his complaints of
23 gender/sexual orientation discrimination.
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26 116. Defendant, as alleged herein, discriminated against PLAINTIFF BAEZ based on
27 his gender/ sexual orientation by, among other things: making offensive comments and
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1 subjecting Plaintiff to harassing discipline based on his gender, sexual orientation and
2 stereotypes about his gender and sexual orientation; giving preferential treatment to employees
3 outside of Plaintiff's protected class; refusing to addressing Plaintiff's complaints; and unduly
4 criticizing Plaintiff's job performance; oral reprimand; and termination.

5
6 117. PLAINTIFF BAEZ is informed and believes, and thereon alleges, that this cause
7 of action is not preempted by the California Workers' Compensation Act on the grounds that
8 employment discrimination on the basis of gender/ sexual orientation is not a risk or condition of
9 his employment.

10
11 118. As a result of the aforesaid failure acts of discrimination in employment,
12 PLAINTIFF BAEZ has suffered and is continuing to suffer losses of wages/salary, benefits and
13 other employee compensation in an amount which is currently unascertained. The Plaintiff's job
14 history is now blemished because of the discriminatory actions by Defendant. Thus, as a result of
15 the discriminatory acts of Defendants PLAINTIFF BAEZ herein faces a substantial diminution
16 of his future earning capacity in an amount which is currently unascertained. Plaintiff will
17 request leave of the court to amend his Complaint to state the amount of all such damages when
18 they have been ascertained or upon proof at the time of trial.

19
20 119. As a result of the aforesaid acts of discrimination in employment, PLAINTIFF
21 BAEZ was held up to great derision and embarrassment and has suffered emotional distress
22 because Defendants demonstrated to the Plaintiff that it would not recognize nor accept him as
23 an employee solely because of his sexual orientation/gender. Defendants by and through their
24 officers and managing agents, further acted intentionally and unreasonably because it knew
25 and/or should have known that its discriminatory conduct was likely to result in severe mental
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1 distress. Plaintiff therefore seeks damages for such emotional distress in an amount to be proven
2 at time of trial.

3 120. Because of the wrongful acts of Defendants as herein above alleged, Plaintiff has
4 been and will in the future be required to employ physicians and surgeons to examine, treat and
5 care for him and will incur additional medical expenses in an amount to be proven at the time of
6 trial.
7

8 121. In doing the acts set forth above, Defendants acted as herein alleged with a
9 conscious disregard of PLAINTIFF BAEZ' rights to employment notwithstanding his
10 gender/sexual orientation. Defendants, in utter disregard of their obligation under the law, acted
11 with the malicious. In addition, Defendants, their officers and managing agents have knowingly
12 retained, coddled and protected vicious employees known to be hostile toward older employees.
13 The officers and managing agents of Defendants made a conscious decision that they would not
14 comply with the law of this state and would not tolerate people with Plaintiff's sexual orientation
15 in the work place. This conduct by Defendants was, and is, despicable, cruel and oppressive. The
16 Plaintiff is therefore entitled to an award of punitive damages in an amount to be proven at trial.
17
18

19 122. In bringing this action, Plaintiff has been required to retain the services of
20 counsel. Pursuant to Government Code § 12965(b), he is entitled to an award of attorney fees
21 and expert witness fees.
22

23 **FIFTH CAUSE OF ACTION**
24 **RETALIATION - FEHA Cal. Gov. Code § 12940**
25 **(As to DEFENDANT STANFORD HEALTH CARE)**

26 123. PLAINTIFF BAEZ incorporates by reference all of the facts set forth in
27 paragraphs 1 through 79 with the same force and effect as though fully pleaded at length
28 herein.

1 124. This is an action for damages arising from retaliation against Plaintiff for having
2 opposed discrimination based upon his sexual orientation. This action is brought pursuant to the
3 California FAIR EMPLOYMENT AND HOUSING ACT [“FEHA “], i.e., *Cal. Gov. Code*
4 *§12900, 12921, 12926, 129240 and 12965.*

5
6 125. PLAINTIFF BAEZ engaged in activity protected by the FEHA in opposing
7 unlawful discrimination and harassment due to his gender/ sexual orientation.

8 126. As a result of PLAINTIFF BAEZ’s protected activity, he suffered the following
9 adverse employment actions: verbal reprimand and termination of his employment.

10 127. At all times herein relevant, Plaintiff’s job performance was always satisfactory
11 and was usually excellent.

12 128. Plaintiff is informed and believes, and thereon alleges, that this cause of action is
13 not preempted by the California Workers' Compensation Act on the grounds that retaliation for
14 having opposed discrimination made unlawful by the FEHA is not a risk of employment.

15 129. As a result of the aforesaid acts of discrimination in employment, PLAINTIFF
16 BAEZ has suffered and is continuing to suffer losses of wages/salary, benefits and other
17 employee compensation in an amount which is currently unascertained. The Plaintiff’s job
18 history is now blemished because of the discriminatory actions by Defendant. Thus, as a result
19 of the discriminatory acts of Defendant the Plaintiff herein faces a substantial diminution of his
20 future earning capacity in an amount which is currently unascertained. Plaintiff will request
21 leave of the court to amend his Complaint to state the amount of all such damages when they
22 have been ascertained, or upon proof at the time of trial.

23 130. As a result of the aforesaid acts of retaliation in employment, PLAINTIFF BAEZ
24 was held up to great derision and embarrassment with the public, members of the media,
25 professional athletes, coaches and owners, friends, and his family, and has suffered emotional
26 distress because Defendant demonstrated to the Plaintiff that it would not recognize nor accept
27 him as an employee because he opposed unlawful discriminatory practices. Defendant by and
28 through its agents and employees, further acted intentionally and unreasonably because it knew

1 and/or should have known that its retaliatory conduct was likely to result in severe mental
2 distress. Plaintiff therefore seeks damages for such emotional distress in an amount to be proven
3 at time of trial.

4 131. Because of the wrongful acts of Defendants as herein above alleged, Plaintiff has
5 been and will in the future be required to employ physicians and surgeons to examine, treat and
6 care for him and will incur additional medical expenses in an amount to be proven at the time of
7 trial.

8 132. In doing the acts set forth above, Defendants acted as herein alleged with a
9 conscious disregard of PLAINTIFF BAEZ's rights to oppose unlawful discriminatory practices.
10 Defendants, in utter disregard of their obligation under the law, acted with the malicious
11 intention of removing Plaintiff from the workplace solely because he opposed unlawful
12 discrimination. In addition, said Corporate Defendants, their officers and managing agents have
13 knowingly retained, coddled and protected vicious employees. The officers and managing
14 agents of Corporate Defendants made a conscious decision that it would not comply with the
15 law of this state and would not tolerate such individuals in the work specifically PLAINTIFF
16 BAEZ. This conduct by Defendants was, and is, despicable, cruel and oppressive. The Plaintiff
17 is therefore entitled to an award of punitive damages in an amount to be proven at trial.

18 133. In bringing this action, Plaintiff has been required to retain the services of
19 counsel. Pursuant to Government Code § 12965(b), he is entitled to an award of attorney fees
20 and expert witness fees.

21
22 **SIXTH CAUSE OF ACTION**
23 **Negligent Hiring/Retention/ Supervision**
(As to Defendants STANFORD HEALTH CARE and STANFORD UNIVERSITY)

24 134. PLAINTIFF BAEZ incorporates by reference all of the facts set forth in
25 paragraphs 1 through 79 with the same force and effect as though fully pleaded at length herein.

26 135. DEFENDANT STANFORD HEALTH CARE and DEFENDANT STANFORD
27 UNIVERSITY and each of them, had a duty not to retain LASTINGER, Fanton, Kaufman and
28

1 Krna given their propensity to (1) retaliate against employees who reported illegal conduct, or
2 (2) create an atmosphere of intimidation that prevented employees from reporting violations of
3 the law, including but not limited to: the sexual assault of sedated patients, the diversion of
4 prescription medicine, the taking of photographs of patients while under sedation and the
5 circulation of those photographs to individuals with no right to see them and unlawful
6 discrimination. Additionally, as a result of said atmosphere of intimidation, DEFENDANT
7 STANFORD HEALTH CARE and DEFENDANT STANFORD UNIVERSITY, and each of
8 them, retained LASTINGER in employment, notwithstanding the unfitness evidenced in his
9 demonstrated propensity to engage in inappropriate lewd and sexual conduct with individuals
10 prior to, during, and/ or after surgical procedures at Stanford Medical facilities.
11
12

13 136. DEFENDANT STANFORD HEALTH CARE and DEFENDANT STANFORD
14 UNIVERSITY, and each of them, knew or should have known of LASTINGER, Fanton and
15 Kaufman had propensity to engage in the conduct described herein and/ or that they were unfit
16 agents.
17

18 137. As a further direct, legal, and proximate result of the negligence, willfulness,
19 intent, carelessness, and recklessness of DEFENDANT STANFORD HEALTH CARE and
20 DEFENDANT STANFORD UNIVERSITY, and each of them, PLAINTIFF BAEZ suffered
21 extreme emotional distress, anxiety, fear and humiliation, loss of income, loss of benefits, loss of
22 career opportunity and loss of other job benefits, all in amounts to be proven at trial.
23

24 138. As a further direct, legal, and proximate result of the negligence, willfulness,
25 intent, carelessness, and recklessness of DEFENDANT STANFORD HEALTH CARE and
26 DEFENDANT STANFORD UNIVERSITY, and each of them, PLAINTIFF BAEZ has been,
27 and in the future will be, required to obtain the services of physicians and psychologists, obtain
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1 treatment and care, and incur medical and incidental expenses in an amount to be proven at the
2 time of trial of this action.

3 139. The conduct of DEFENDANT STANFORD HEALTH CARE and DEFENDANT
4 STANFORD UNIVERSITY was malicious, oppressive, fraudulent and in conscious disregard of
5 plaintiffs' rights, such that punitive damages are warranted to punish DEFENDANT
6 STANFORD HEALTH CARE and DEFENDANT STANFORD UNIVERSITY, to deter such
7 conduct in the future and to make an example of DEFENDANT STANFORD HEALTH CARE
8 and DEFENDANT STANFORD UNIVERSITY, all in amounts to be proven at trial.
9

10
11 **SEVENTH CAUSE OF ACTION**
12 **Wrongful Termination & Retaliation in Violation of Public Policy (Tameny),**
13 **(As to DEFENDANT STANFORD HEALTH CARE)**

14 140. PLAINTIFF BAEZ incorporates by reference all of the facts set forth in
15 paragraphs 1 through 79 with the same force and effect as though fully pleaded at length herein.

16 141. This is a common law cause of action pursuant to the law of the State of
17 California. Jurisdiction is invoked pursuant to *Tameny v. Atlantic Richfield Company*, 27 Cal. 3d
18 167 (1980).

19 142. There is a fundamental public policy in this state and in this country in favor of
20 preventing discrimination and retaliation in employment. Said public policy is embodied, *inter*
21 *alia*, in the following statutes: *California Health & Safety Code 1278.5, California Labor Code*
22 *1102.5, et seq. and California Labor Code 6310, and Cal. Gov. Code §12900.*
23

24 143. Specifically, the California Legislature declared that it is the public policy of the
25 State of California to encourage patients, nurses, members of the medical staff, and other health
26 care workers to notify government entities of suspected unsafe patient care and conditions. The
27 Legislature encourages this reporting in order to protect patients and in order to assist those
28

1 accreditation and government entities charged with ensuring that health care is safe. *California*
2 *Health & Safety Code 1278.5.*

3 144. It is the fundamental public policy of this State that no employer retaliate against
4 an employee who refuses to engage in an activity that would result in a violation of law, as
5 provided by California's Whistleblower statute, *Labor Code §1102.5(c)*. As more fully set forth
6 herein, PLAINTIFF BAEZ engaged in protected activity and is therefore protected by the
7 mandates of *Labor Code §1102.5(c) and California Health & Safety Code 1278.5*.

9 145. As more fully set forth in the preceding paragraphs, PLAINTIFF BAEZ engaged
10 in protected activity by reporting violations of laws and regulations designed to ensure public
11 safety and the safety of individuals seeking care in a healthcare facility. PLAINTIFF BAEZ was
12 at all relevant times an employee and health care worker within a class protected by the public
13 policy of the State of California.

15 146. At all times herein relevant, PLAINTIFF BAEZ was qualified for and able to
16 satisfactorily perform the jobs for which he had been hired. At all times herein relevant,
17 PLAINTIFF BAEZ's job performance was always, at a minimum, satisfactory, and was usually
18 excellent.

20 147. DEFENDANT STANFORD HEALTH CARE discharged PLAINTIFF BAEZ on
21 June 1, 2015 and retaliated against him as noted above, because of his protected status as a
22 whistleblower.

24 148. This cause of action is not preempted by the California Workers' Compensation
25 Act on the grounds that employment discrimination or retaliation is not a risk or condition of
26 employment.

1 149. Because of DEFENDANT STANFORD HEALTH CARE's unlawful acts,
2 PLAINTIFF BAEZ suffered, and will continue to suffer, a loss of wages/salary, benefits, and
3 other forms of compensation in an amount which is currently unascertained. As a result of
4 Defendants' discriminatory acts, PLAINTIFF BAEZ faces substantial diminution of future
5 earning capacities in an amount which is currently unascertained. Plaintiffs therefore request
6 leave of the Court to amend this complaint to state the amount of all such damages when they
7 have been ascertained, or upon proof at the time of trial.
8

9 150. Because of DEFENDANT STANFORD HEALTH CARE's unlawful acts,
10 PLAINTIFF BAEZ has been held up to great derision and embarrassment with fellow workers,
11 friends, members of the community, and family, and has suffered emotional distress because
12 Defendants actions. PLAINTIFF BAEZ is informed and believes that DEFENDANT
13 STANFORD HEALTH CARE and their management acted deliberately for the purposes of
14 injuring them. DEFENDANT STANFORD HEALTH CARE, by and through their managing
15 agents and employees, further acted intentionally and unreasonably because they knew or should
16 have known that their conduct was likely to result in severe mental distress. PLAINTIFF BAEZ
17 therefore seeks damages for such emotional distress in an amount to be proven at time of trial.
18
19

20 151. In doing the acts set forth above, DEFENDANT STANFORD HEALTH CARE
21 acted intentionally and with a conscious disregard of PLAINTIFF BAEZ's rights to equal
22 employment opportunities and to be free from discrimination and retaliation on account of his
23 protected status. DEFENDANT STANFORD HEALTH CARE's' managing agents have acted,
24 and continue to act, in utter disregard of their obligations under the law. DEFENDANT
25 STANFORD HEALTH CARE's managing agents have made conscious decisions to
26 discriminate and retaliate against their employees who report violations of the law and other
27
28

1 policy and regulations meant to protect the public from harm by treating them adversely in the
2 manner described above. This conduct by DEFENDANT STANFORD HEALTH CARE was,
3 and is, despicable, cruel, and oppressive. PLAINTIFF BAEZ is therefore entitled to an award of
4 punitive damages in an amount to be proven at trial.

5
6 152. Pursuant to Labor Code § 1102.5(f), DEFENDANT STANFORD HEALTH
7 CARE is liable for a civil penalty for each violation of Labor Code § 1102.5(c). As more fully
8 set forth above, PLAINTIFF BAEZ provided notice of her intention to seek recovery of civil
9 penalties for Defendant's violations of Labor Code § 1102.5(c). Upon the expiration of thirty-
10 three (33) days from the date of PLAINTIFF BAEZ's notice, Plaintiff will seek to amend this
11 Complaint to assert a claim for civil penalties against DEFENDANT STANFORD HEALTH
12 CARE.
13

14 153. Pursuant to California Code Civ. Proc. § 1021.5, a court may award attorneys'
15 fees to a successful party against one or more opposing parties in any action which: (1) has
16 resulted in the enforcement of an important right affecting the public interest; (2) a significant
17 benefit has been conferred on the general public or a large class of persons; and (3) the necessity
18 and financial burden of private enforcement renders the award appropriate. Under *Jaramillo*
19 *v. County of Orange* (2011) 200 Cal.App.4th 811,829, protecting whistleblowers from retaliation
20 is a strong public interest that confers a significant benefit on the general public - namely,
21 empowering people to step forward to expose fraud, corruption, and other wrongdoing.
22 PLAINTIFF BAEZ is entitled to receive an award of statutory attorneys' fees and costs of suit,
23 and hereby requests recovery of her attorney's fees and costs of suit in an amount according to
24 proof.
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EIGHTH CAUSE OF ACTION

Breach of Contract
(As to DEFENDANT STANFORD HEALTH CARE)

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3 154. PLAINTIFF BAEZ incorporates by reference all of the facts set forth in
4 paragraphs 1 through 79 with the same force and effect as though fully pleaded at length herein.

5 155. PLAINTIFF BAEZ entered into an agreement with DEFENDANT STANFORD
6 HEALTH CARE whereby he would receive "preference for employment at DEFENDANT
7 STANFORD HEALTH CARE for twelve (12) months from the date of layoff to an available
8 vacant regular position at the same or lesser percentage of time and in a class with the same or
9 lower salary range of [his] current position." Between March 30, 2016 and April 18, 2016,
10 PLAINTIFF BAEZ applied for seventeen (17) positions at DEFENDANT STANFORD
11 HEALTH CARE for which he was qualified. Plaintiff performed, substantially performed, or
12 was excused from performing on the contract. PLAINTIFF BAEZ was immediately denied each
13 position or denied an interview or follow-up. Furthermore, Plaintiff was promised and denied
14 his promotion, and his back pay.

15 156. The actions of DEFENDANT STANFORD HEALTH CARE as set forth herein,
16 constituted a breach of contract.

17 157. At the time of the contract, it was foreseeable that any breach thereof on the part
18 of the DEFENDANT STANFORD HEALTH CARE would result in PLAINTIFF BAEZ
19 suffering damages as described herein.

20 158. As a direct and proximate result of the conduct of DEFENDANT STANFORD
21 HEALTH CARE, PLAINTIFF BAEZ has been damaged. PLAINTIFF BAEZ's damaged
22 include, but are not limited to the following: extreme emotional distress, anxiety, fear and
23 humiliation, loss of income, loss of benefits, loss of career opportunity, loss of other job
24 benefits and other damages not yet ascertained, all in amounts to be proven at trial. Plaintiff will
25 demonstrate the true amount of such damages and others yet to be ascertained at the time of
26 trial.
27
28

NINTH CAUSE OF ACTION
Breach of Covenant of Good Faith & Fair Dealing
(As to DEFENDANT STANFORD HEALTH CARE)

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4 159. PLAINTIFF BAEZ incorporates by reference all of the facts set forth in paragraphs 1 through 79 with the same force and effect as though fully pleaded at length herein.

5 160. In the employment agreement between PLAINTIFF BAEZ and DEFENDANT
6 STANFORD HEALTH CARE, there was an implied promise of good faith and fair dealing. This
7 implied promise meant that each party would not do anything to unfairly interfere with the right
8 of the other party to receive the benefits of the contract or that the employment of PLAINTIFF
9 BAEZ would not be terminated for illegal reasons.
10

11 161. PLAINTIFF BAEZ did all, or substantially all, of the significant things that the
12 employment contract required them to do. Specifically, at all times herein relevant, PLAINTIFF
13 BAEZ's job performance was always, at a minimum, satisfactory, and was usually excellent.
14

15 162. Prior to the termination of PLAINTIFF BAEZ's employment was terminated,
16 DEFENDANT STANFORD HEALTH CARE notified PLAINTIFF BAEZ that "due to
17 budgetary and operational needs, Stanford Health Care has decided that [his] position as a
18 Director of Finance, and Business Operations, Perioperative Outpatient Services [was being]
19 eliminated[.]" Notwithstanding the stated "elimination" of the position, DEFENDANT
20 STANFORD HEALTH CARE created a new position for the same job function and posted this
21 new position for the In-Patient Perioperative Region on the internal and public job posting
22 website. PLAINTIFF BAEZ applied for this job and has been functionally denied. Furthermore,
23 PLAINTIFF BAEZ was told that he had "preference for employment at [DEFENDANT
24 STANFORD HEALTH CARE] for twelve (12) months from the date of layoff to an available
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1 vacant regular position at the same or lesser percentage of time and in a class with the same or
2 lower salary range of your current position.”

3 163. DEFENDANT STANFORD HEALTH CARE knew that the reason for the
4 termination was false and that it would not afford PLAINTIFF BAEZ the preferential treatment
5 in re-employment. Accordingly, the DEFENDANT STANFORD HEALTH CARE’s
6 termination of the employment agreement and fraudulent representation regarding re-
7 employment amounted to an unfair interference with the right of PLAINTIFF BAEZ to receive
8 the benefit of the contract; a breach of the implied covenant of good faith and fair dealing.
9

10 164. As a result of the wrongful termination of PLAINTIFF BAEZ’s employment and
11 DEFENDANT STANFORD HEALTH CARE’s failure to rehire and give PLAINTIFF BAEZ
12 preferential treatment in rehiring, PLAINTIFF BAEZ has suffered and is continuing to suffer a
13 loss of wages/salary, benefits and other employee compensation in an amount which is currently
14 unascertained. PLAINTIFF BAEZ’s job history is now blemished as a result of the wrongful
15 action of DEFENDANT STANFORD HEALTH CARE. The ability of PLAINTIFF BAEZ to
16 obtain employment at a salary comparable to their positions with the DEFENDANT
17 STANFORD HEALTH CARE is thus doubtful. He therefore faces a substantial diminution of
18 his future earning capacity in an amount which is currently unascertained. PLAINTIFF BAEZ
19 will request leave of the court to amend this Complaint to state the amount of all such damages.
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26 **TENTH CAUSE OF ACTION**
27 **FRAUD**
28 **(As to DEFENDANT STANFORD HEALTH CARE)**

1 165. PLAINTIFF BAEZ incorporates by reference all of the facts set forth in
2 paragraphs 1 through 79 with the same force and effect as though fully pleaded at length herein.

3 166. The jurisdiction of this court is invoked pursuant to the holding of *Rojo v. Kliger*
4 (1990) 52 Cal. 3d 65.

5 167. Defendants promised PLAINTIFF BAEZ he would receive “preference for
6 employment at DEFENDANT STANFORD HEALTH CARE for twelve (12) months from the
7 date of layoff to an available vacant regular position at the same or lesser percentage of time and
8 in a class with the same or lower salary range of [his] current position.” Between March 30,
9 2016 and April 18, 2016, PLAINTIFF BAEZ applied for seventeen (17) positions at
10 DEFENDANT STANFORD HEALTH CARE for which he was qualified. Plaintiff performed,
11 substantially performed, or was excused from performing on the contract. PLAINTIFF BAEZ
12 was immediately denied each position or denied an interview or follow-up.
13

14 168. Notwithstanding the stated “elimination” of the position, DEFENDANT
15 STANFORD HEALTH CARE created a new position for the same job function and posted this
16 new position for the In-Patient Perioperative Region on the internal and public job posting
17 website. PLAINTIFF BAEZ applied for this job and sixteen others and was functionally denied.
18

19 169. DEFENDANT STANFORD HEALTH CARE knew the promise was false at the
20 time they made it.
21

22 170. PLAINTIFF BAEZ relied upon DEFENDANT STANFORD HEALTH CARE’s
23 promise. Between March 30, 2016 and April 18, 2016, PLAINTIFF BAEZ applied for seventeen
24 (17) positions at DEFENDANT STANFORD HEALTH CARE for which he was qualified.
25

26 171. PLAINTIFF BAEZ was immediately denied each position without an interview or
27 follow-up in breach of DEFENDANT STANFORD HEALTH CARE’s promises.
28

1 172. As a result of the aforesaid Fraud of DEFENDANT STANFORD HEALTH
2 CARE, PLAINTIFF BAEZ has suffered and continues to suffer a loss of wages/salary, benefits,
3 and other forms of compensation in an amount which is currently unascertained. As a result of
4 the fraud by DEFENDANT STANFORD HEALTH CARE, PLAINTIFF BAEZ faces a
5 substantial diminution of his future earning capacity in an amount which is currently
6 unascertained. PLAINTIFF BAEZ will therefore request leave of the court to amend this
7 Complaint to state the amount of all such damages when they have been ascertained or upon
8 proof at the time of trial.
9

10 173. As a result of the aforesaid fraud, PLAINTIFF BAEZ has suffered severe mental
11 anguish given their sudden loss of employment. Because of the wrongful acts of DEFENDANT
12 STANFORD HEALTH CARE as herein above alleged, PLAINTIFF BAEZ may be required to
13 employ physicians to examine, treat and care for him and will incur additional medical expenses
14 in an amount to be proven at the time of trial.
15

16 174. In doing the acts set forth above, DEFENDANT STANFORD HEALTH CARE,
17 in utter disregard of their promise, acted with the malicious intention of effectuating their fraud
18 at the expense of PLAINTIFF BAEZ. This conduct by DEFENDANT STANFORD HEALTH
19 CARE was, and is, despicable, cruel and oppressive. PLAINTIFF BAEZ is therefore entitled to
20 an award of punitive damages in an amount to be proven at trial.
21
22

23 **ELEVENTH CAUSE OF ACTION**
24 **Intentional Infliction of Emotional Distress**
25 **(As to All DEFENDANTS)**

26 175. PLAINTIFF BAEZ incorporates by reference all of the facts set forth in
27 paragraphs 1 through 79 with the same force and effect as though fully pleaded at length herein.
28

1 176. The jurisdiction of this court is invoked pursuant to the holdings of the following
2 cases: *Rojo v. Kliger* (1990) 52 Cal. 3d 65 and *Phillips v. Gemini Moving Specialists* (1998) 63
3 Cal.App.4th 563.

4 177. This action is not preempted by the California Workers' Compensation Act
5 because discrimination and retaliation in employment for protected activities are not risks or
6 conditions of employment.
7

8 178. The acts of Defendants, by and through its managing agents and employees, were
9 extreme and outrageous. This includes those listed in this complaint, but not limited to:
10 Defendants and its managing agents discriminated and retaliated against PLAINTIFF BAEZ in
11 termination and rehiring; and punishment in retaliation his protected status as a
12 whistleblower. When PLAINTIFF BAEZ objected to the practice, he was terminated in
13 retaliation for his complaints and protected status.
14

15 179. Such extreme and outrageous acts did in fact cause PLAINTIFF BAEZ severe
16 emotional distress.
17

18 180. As a proximate result of such extreme and outrageous acts, PLAINTIFF BAEZ
19 has suffered emotional distress, humiliation and embarrassment. PLAINTIFF BAEZ is informed
20 and believes that the Defendants acted deliberately for the purpose of causing his to suffer
21 emotional distress. Defendants by and through its agents and employees, acted intentionally and
22 unreasonably because it knew and/or should have known that its conduct was likely to result in
23 damages due to mental distress. PLAINTIFF BAEZ therefore seeks damages for such emotional
24 distress in an amount to be proven at time of trial.
25

26 181. In doing the acts set forth above, Defendants acted intentionally and/or with a
27 conscious disregard to PLAINTIFF BAEZ's right as an employee and a human being.
28

1 Defendants acted and refused to act, as alleged, with the malicious intention or with the
2 knowledge that its acts or failure to act would cause the PLAINTIFF BAEZ severe emotional
3 distress. Defendants have retained and promoted vicious employees and managers. This conduct
4 was despicable, cruel and oppressive. PLAINTIFF BAEZ is therefore entitled to an award of
5 punitive damages in an amount to be proven at trial.
6

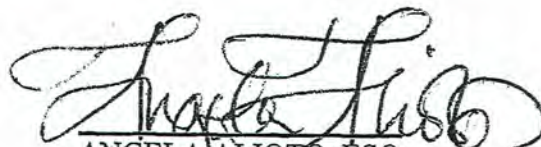
7 **DEMAND FOR JURY TRIAL**

8 PLAINTIFF BAEZ hereby demands trial of this matter by jury. **PRAYER FOR RELIEF**

9 Wherefore, PLAINTIFF BAEZ prays for judgment as follows:

- 10 1. For compensatory damages according to proof;
11 2. For monetary damages to compensate for the emotional distress suffered by BAEZ;
12 3. For punitive damages in an amount appropriate to punish Defendants for their wrongful and
13 malicious conduct and to set an example for others;
14 4. For interest on the sum of damages awarded;
15 5. For reasonable attorneys' fees;
16 6. Expert fees;
17 7. For costs of suit herein incurred;
18 8. For reinstatement, reimbursement for lost wages and work benefits pursuant to California
19 Health & Safety Code 1278.5;
20 9. For such other and further relief as the Court deems proper.
21
22
23

24 Date: December 20, 2016


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6 Attorneys for Plaintiff **GEORGE BAEZ**

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**

10 **GEORGE BAEZ**

11)
12) **Plaintiff,**)

13 vs.)

14 **STANFORD HEALTH CARE,**)
15 **STANFORD SCHOOL OF MEDICINE,**)
16 **and DOES 1 to 100,**)
17 **DEFENDANTS.**)

Case No. 16 CV 300476

PROOF OF SERVICE

18 I, Joe Veronese, declare that I am a citizen of the United States and am employed in the
19 City and County of San Francisco; I am over the age of 18 years and not a party to the within
20 action. My business address is 700 Montgomery Street, San Francisco, CA 94111.

21 On December 20, 2016, I caused to be served the following document(s):

- 22 • **First Amended Complaint For Damages**

23 in the following manner:

24 **PERSONAL SERVICE**

25 **Attorney for Defendants:**

26 **GORDON & REES**
27 c/o Mike Lucey
28 275 Battery Street, Suite 2000
San Francisco, CA 94111

1 EMAIL: by sending true copy(ies) thereof via email to the address listed below per the
2 agreement of the parties that such service was deemed accepted when sent to this address:
3 MLucey@gordonrees.com

4 MAIL: by depositing true copy(ies) thereof via US mail to the address listed below:

5 VIA FACSIMILE:
6 F: 415-986-8054

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct. Executed December 19, 2016, San Francisco, California.

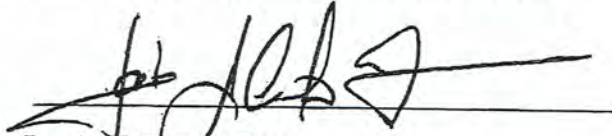
9 
10 Joe A. Veronese, Esq.

EXHIBIT "G"