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SPENCER BAUMGARTEN
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

12 SPENCER BAUMGARTEN,

13 Plaintiff,

14 vs.

15 EOTFR, LLC d/b/a ICM
16 PARTNERS, CINDY BALLARD, an
17 individual, and DOES 1 to 100,
inclusive.

18 Defendants.
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) Case No.:

) **PLAINTIFF SPENCER**
) **BAUMGARTEN'S COMPLAINT FOR**
) **DAMAGES FOR:**

- (1) **DISCRIMINATION IN VIOLATION OF THE FEHA;**
- (2) **WHISTLEBLOWER RETALIATION (LABOR CODE § 1102.5, et seq.)**
- (3) **VIOLATION OF LABOR CODE § 1102.5;**
- (4) **VIOLATION OF LABOR CODE § 2802;**
- (5) **DEFAMATION;**
- (6) **COMPELLED SELF-DEFAMATION;**
- (7) **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;**
- (8) **INVASION OF PRIVACY;**
- (9) **NEGLIGENT HIRING, SUPERVISION, AND RETENTION;**

) **DEMAND FOR JURY TRIAL**

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Deadline

1 Plaintiff, Spencer Baumgarten, alleges, on the basis of personal knowledge and/or
2 information and belief:

4 SUMMARY

5 This is an action by Plaintiff, Spencer Baumgarten (“Plaintiff” or “Baumgarten”),
6 whose employment with defendant EOTFR, LLC d/b/a ICM Partners (“ICM”) was
7 wrongfully terminated. Plaintiff brings this action against defendants ICM and Cindy
8 Ballard for economic, non-economic, compensatory, and punitive damages, pursuant to
9 Civil Code section 3294, pre-judgment interest pursuant to Code of Civil Procedure
10 section 3291, and costs and reasonable attorneys’ fees pursuant to Government Code
11 section 12965(b), Labor Code, and Code of Civil Procedure section 1021.5.

13 PARTIES

14 1. *Plaintiff:* Plaintiff Baumgarten is, and at all times mentioned in this Complaint
15 was, a resident of the County of Los Angeles, California.

16 2. *Defendants:* Defendant ICM is, and at all times mentioned in this Complaint
17 was, authorized to operate by the State of California and the United States government
18 and authorized and qualified to do business in the County of Los Angeles. Defendants’
19 place of business, where the following causes of action took place, was and is in the
20 County of Los Angeles, at 10250 Constellation Boulevard, Los Angeles, CA 90067.
21 Defendant Cindy Ballard is an individual residing and employed in Los Angeles, CA.

22 3. *Doe defendants:* Defendants Does 1 to 100, inclusive, are sued under fictitious
23 names pursuant to Code of Civil Procedure section 474. Plaintiff is informed and believes,
24 and on that basis alleges, that each of the defendants sued under fictitious names is in some
25 manner responsible for the wrongs and damages alleged below, in so acting was functioning
26 as the agent, servant, partner, and employee of the co-defendants, and in taking the actions
27 mentioned below was acting within the course and scope of his or her authority as such
28 agent, servant, partner, and employee, with the permission and consent of the co-defendants.

1 The named defendants and Doe defendants are sometimes hereafter referred to, collectively
2 and/or individually, as “Defendants.”

3 4. *Relationship of defendants:* All Defendants compelled, coerced, aided, and/or
4 abetted the discrimination, retaliation, and harassment alleged in this Complaint, which
5 conduct is prohibited under California Government Code section 12940(i). All
6 Defendants were responsible for the events and damages alleged herein, including on the
7 following bases: (a) Defendants committed the acts alleged; (b) at all relevant times, one
8 or more of the defendants was the agent or employee, and/or acted under the control or
9 supervision, of one or more of the remaining defendants and, in committing the acts
10 alleged, acted within the course and scope of such agency and employment and/or is or
11 are otherwise liable for Plaintiff’s damages; (c) at all relevant times, there existed a unity
12 of ownership and interest between or among two or more of the defendants such that any
13 individuality and separateness between or among those defendants has ceased, and de-
14 fendants are the alter egos of one another. Defendants exercised domination and control
15 over one another to such an extent that any individuality or separateness of defendants
16 does not, and at all times herein mentioned did not, exist. Adherence to the fiction of the
17 separate existence of defendants would permit abuse of the corporate privilege and would
18 sanction fraud and promote injustice. All actions of all defendants were taken by
19 employees, supervisors, executives, officers, and directors during employment with all
20 defendants, were taken on behalf of all defendants, and were engaged in, authorized, rati-
21 fied, and approved of by all other defendants.

22 5. Defendant ICM both directly and indirectly employed Plaintiff Baumgarten, as
23 defined in the Fair Employment and Housing Act (“FEHA”) at Government Code section
24 12926(d).

25 6. In addition, defendant ICM compelled, coerced, aided, and abetted the
26 discrimination, which is prohibited under California Government Code section 12940(i).

27 7. Finally, at all relevant times mentioned herein, all defendants acted as agents of
28 all other defendants in committing the acts alleged herein.

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VENUE

8. The actions at issue in this case occurred in the State of California, in the County of Los Angeles. Under the California Fair Employment and Housing Act, this case can alternatively, at Plaintiff’s choice, be filed:

[I]n any county in the state in which the unlawful practice is alleged to have been committed, in the county in which the records relevant to the practice are maintained . . . or in the county in which the aggrieved person would have worked or would have had access to the public accommodation but for the alleged unlawful practice, but if the defendant is not found within any of these counties, an action may be brought within the county of the defendant’s residence or principal office . . .

(California Government Code § 12965(b).)

9. Here, the Plaintiff worked primarily in California in the County of Los Angeles. The location where Plaintiff worked was located in Los Angeles, California. Los Angeles is located in Los Angeles County, California. The majority of the unlawful actions on the part of the defendants occurred at said Los Angeles location.

10. “[I]n the absence of an affirmative showing to the contrary, the presumption is that the county in which the title of the actions shows that the case is brought is, prima facie, the proper county for the commencement and trial of the action.” (*Mission Imports, Inc. v. Superior Court* (1982) 31 Cal.3d 921, 928.) The FEHA venue statute – section 12965(b) – thus affords a wide choice of venue to persons who bring actions under FEHA. (*Brown v. Superior Court* (1984) 37 Cal.3d 477, 486.) “[T]he special provisions of the FEHA venue statute control in cases involving FEHA claims joined with non-FEHA claims arising from the same facts.” (*Id.* at 487.)

FACTS COMMON TO ALL CAUSES OF ACTION

11. *Plaintiff’s hiring*: Plaintiff, Spencer Baumgarten, a 58-year-old man, began his employment with Defendants in November 2016. At the time his employment was terminated, Baumgarten served as the co-head of the Motion Picture Department and a Partner at ICM Partners.

1 12. *Plaintiff's job performance:* Baumgarten is highly respected in the talent agency
2 realm and during his tenure at ICM, signed several high-profile clients to the agency.
3 Baumgarten excelled in his position throughout his employment.

4 13. *Plaintiff's protected status and activity:*

5 a. Plaintiff is over 40 years old.

6 b. During his employment with defendants, Plaintiff lodged protected
7 complaints, including complaints about unlawful treatment he experienced from human
8 resources.

9 c. During his employment with Defendants, Plaintiff made protected
10 complaints of illegal activity and/or conduct he reasonably believed to be illegal and/or
11 otherwise opposed illegal conduct.

12 14. *Defendants' adverse employment actions and behavior:*

13 a. In or around December 2016, when Baumgarten joined ICM, he negotiated a
14 four-year contract with the company to become a Partner at ICM, which included a
15 significant pay cut from his previous salary at CAA. Initially, Baumgarten was excited
16 about the prospects of the new opportunity with ICM.

17 However, Baumgarten's experience at ICM drastically changed in or around July
18 2019, when he volunteered to visit the New York office to bridge a gap between the New
19 York office and the Los Angeles office. He informed the management that he would be
20 in New York and stay at an Airbnb during his time visiting the New York Office. On or
21 around July 13, 2019, Baumgarten arrived at the New York office and was scheduled to
22 stay in New York until approximately August 16, 2019. Baumgarten used his personal
23 funds for his trip to the New York office, to which necessary expenses of approximately
24 \$12,000 associated with such a trip have yet to be reimbursed by ICM. Baumgarten
25 informed Levy about the necessary expenses but to date, Baumgarten has not been
26 reimbursed.

27 b. On or around early August 2019, a few agents from the moving touring
28 department were terminated from ICM's New York office. On information and belief,

1 one of the terminated agents was disgruntled.

2 c. Approximately one week after the agents were terminated, on or about
3 August 15, 2019, Cindy Ballard (“defendant Ballard”), Chief of Human Resources in the
4 Los Angeles office, asked to meet with Baumgarten just a few days before he was
5 scheduled to return to Los Angeles, which Defendant Ballard was aware of. . Defendant
6 Ballard instructed Baumgarten to use the office that belongs to Miriam Doe (“Miriam”),
7 a human resources employee on maternity leave..

8 d. When Baumgarten entered Miriam’s office for the video conference with
9 defendant Ballard, Aaron Santos (“Santos”), the assistant to Miriam, was present in the
10 office. As soon as the call began, defendant Ballard asked Baumgarten whether he used
11 the gender-neutral bathroom while in the New York office. Baumgarten indicated that he
12 had used the restroom during his stay. Ballard then asked, “*Are you familiar with the*
13 *bathroom? Do you use the bathroom?*” Defendant Ballard proceeded to interrogate
14 Baumgarten, asking if he noticed whether the bathroom was messy or whether he saw
15 feces on the floor of the bathroom to which Baumgarten responded, “no.” Defendant
16 Ballard persisted, asking Baumgarten questions about the state of the bathroom. Confused
17 and embarrassed by Defendant Ballard’s repeated questions about his use of the bathroom,
18 Baumgarten outright asked Defendant Ballard if something happened in the restroom. It
19 was then that Defendant Ballard informed Baumgarten that feces were found on the
20 bathroom floor, and the bathroom was reported to have been found in that condition after
21 Baumgarten left the bathroom. Baumgarten was shocked and immediately offended by
22 Defendant Ballard’s questioning and insulation and asked Defendant Ballard whether she
23 was insinuating that he was responsible for the defecation in the bathroom, to which she
24 affirmed. Baumgarten sat there humiliated and mortified. Baumgarten explained to
25 Defendant Ballard that he is a germophobe and a clean freak and was more than
26 embarrassed by her questioning. Baumgarten was further embarrassed because Defendant
27 Ballard made the insinuation that he was responsible for the defecation incident in front
28 of Santos, who he had not met until that meeting. He did not understand why she was

1 sitting in on the meeting at all. Humiliated and upset, Baumgarten stated, “this is the most
2 ridiculous thing I have ever heard,” and they concluded the meeting.

3 e. Thereafter, Ian McKnight (“McKnight”), Baumgarten’s assistant, asked Tia
4 Isamoto (“Isamoto”), an assistant from New York, whether she heard about the incident
5 in the bathroom. Isamoto stated that the assistants in the New York office heard about the
6 feces incident a week prior to Defendant Ballard’s interrogation of Baumgarten, during
7 the same week the disgruntled agents were terminated.

8 f. On or around August 15, 2019, Baumgarten met with Sloan Harris (“Harris”),
9 who serves as a Board Member, Partner, and the co-head of the Book Department at ICM,
10 to see if Harris was aware of the defecation incident. Harris knew about the incident and
11 told Baumgarten, “*Yes, I heard about it. I’m really sorry that it happened. Accidents*
12 *happen. We’ve all had some form of an accident.*” Baumgarten was shocked at Harris’
13 statement as he insinuated that Baumgarten was responsible for defecating on the floor.
14 Thereafter, Baumgarten said, “Sloan, it’s not even in my makeup to ever have anything
15 like that happen. And had it happened, I would have cleaned up after myself. But it didn’t
16 happen. And I am pissed, and I am mortified that it was even suggested that I was even
17 part of this.”

18 g. On or about August 15, 2019, Baumgarten left the New York office to return
19 to Los Angeles. As Baumgarten left the office, he went to say goodbye to Esther Newberg
20 (“Newberg”), who is a Partner and Book Agent in the New York office. However,
21 Newberg was not warm with him, which was in stark contrast to how she interacted with
22 him before Defendant Ballard interrogated Baumgarten. Based on information and belief,
23 Newberg was aware of the feces incident and learned that others in the office were
24 attributing the incident to Baumgarten. Newberg was in no way related to any of the
25 matters regarding to the discussion between Defendant Ballard and Baumgarten regarding
26 the accusations of the bathroom feces and should never have been privy to any of the
27 information. It was clear that Defendants’ had failed to protect Baumgarten’s privacy by
28 disclosing information about the incident to uninvolved personnel. Needless to say,

1 Baumgarten who had already been humiliated was further rattled learning that his privacy
2 had been invaded.

3 h. After Baumgarten left the New York office, Baumgarten texted Harris and
4 reiterated that he was mortified and upset that Defendant Ballard interrogated him and
5 insinuated he was responsible for the feces incident. In response, Harris texted, “I am
6 horrified and sorry about the whole thing. Life goes on and have a safe trip. Feel free to
7 reach out at any point.” Baumgarten responded by thanking Sloan and saying, “But I do
8 think in the future, that Cindy should look deeper into issues. Perhaps with fired and
9 disgruntled agents that are classless and act out in retaliation rather than someone that truly
10 loves this company/colleagues and would never fathom that type of act. I am truly
11 disheartened, and embarrassed that I would have even been thought of. Really makes one
12 think about things. Have a wonderful weekend a vacation. All best, SB.”

13 i. On or about August 16, 2019, Baumgarten texted Defendant Ballard about
14 the interrogation, stating, “*That was incredibly weird and incredibly awkward. Not happy*
15 *to have experienced that.*” Defendant Ballard responded, “these types of situations are
16 always uncomfortable, although necessary in my job.” Baumgarten responded, “Well,
17 *won’t say that wasn’t offensive and offended should anyone think I would ever be*
18 *disgusting like that.* Especially after the numerous positive comments about me being
19 here. *Really not happy.*” Defendant Ballard never responded to Baumgarten’s last text
20 message.

21 j. On or about August 16, 2019, Baumgarten sent an email to Defendant Ballard
22 and Rick Levy (“Levy”), Partner and General Counsel for ICM. Baumgarten’s email
23 documented his meeting with Defendant Ballard and the humiliation and embarrassment
24 he felt during the meeting. Baumgarten intended his email to Defendant Ballard to serve
25 as an official complaint to human resources about how Defendant Ballard handled the
26 feces incident. Baumgarten’s email stated the following:

27 “Cindy, Let this serve as documentation with me going on record with
28 you and HR, my embarrassment, humiliation, lack of any consideration
or respect by you, making me feel defamed amongst my colleagues and

1 the horrible way this has made me feel now. The fact that you
2 conducted this ridiculous witch-hunt interrogation the way you did, in
3 front of an assistant when you knew full well I was returning to LA
4 where you could have asked me whatever you felt the need to ask me
5 in LA, in your office would have been the professional and considerate
6 thing to do. You pride yourself on professionalism yet the assistant
7 pool in the NY office not only heard about this, but thought it was the
8 most ludicrous, ridiculous and insulting thing they've ever heard. The
9 very assistants Cindy that I bought lunches for with my own money in
10 gratitude for the help they provided me. The very ones that would walk
11 in and say hello or sit in with me. I went to NY to make my colleagues
12 and friends feel the presence of LA the best way I could. I take pride
13 in myself, my professional conduct, attitude, my cleanliness, my
14 appearance, the respect I pay toward other and the level of humiliation
15 I now feel is palpable. I work very very hard for ICM, who and what I
16 believe we are and where I believe we all as a company and group can
17 go, you've destroyed that for me, Cindy. You think I'm that disgusting
18 or discourteous to others and even if I had an accident, I wouldn't have
19 cleaned up for myself, I would never do anything like, which you
20 described. Perhaps you should ask the disgruntled agents that were
21 fired, perhaps one of them is the culprit of this event that I learned
22 happened over a week ago. I don't know what you thought you'd gain
23 from this degrading act? I'll speak with Chris and Rick Levy, this is
24 my official HR notice."

25 Neither Defendant Ballard nor Levy responded to Baumgarten's email.

26 k. On or about August 18, 2019, Baumgarten flew to Vancouver. While
27 Baumgarten was in Vancouver, he spoke to Erin Oremland ("Oremland"), Department
28 Head of Accounting, about his meeting with Defendant Ballard about the defecation
incident. In response, Oremland said, "*Oh, she's gunning for you.*"

1. On or around August 19, 2019, Baumgarten spoke to Levy about Defendant
Ballard and reiterated how humiliated and mortified he felt about how she handled the
defecation incident and her accusation that he was responsible. Levy responded, "I can't
apologize for her but I can apologize for the company." Baumgarten responded, "It's
unacceptable. The fact that *people are talking about it is unacceptable*. The fact that it is
a small business is unacceptable. The fact that people are talking about it internally is

1 unacceptable...*She left me vulnerable and exposed.*” In response, Rick said, “I hear you.
2 Again, I apologize on behalf of the company.” Baumgarten said, “Rick, *she knew I’m*
3 *coming back to LA. She could have asked in LA...*” Rick said, “*We did have to ask anyone*
4 *who used the bathroom who were seen on camera.*”

5 m. Plaintiff, a week before his termination, told Levy that the issue wasn’t going
6 to “simply go away” and that he would seek counsel. He was terminated a week later.

7 n. In or around August or September 2019, word about the defecation incident
8 spread throughout ICM, with the insinuation that Baumgarten was responsible. In or
9 around August or September 2019, Steve Levine (“Levine”), a Partner at ICM who co-
10 runs the music department for the Los Angeles office told Baumgarten, “*I just want you*
11 *to know quite a few people are talking about it.*” Based on information and belief, Levine
12 heard about the defecation incident from Mark Siegel.

13 o. In or around August or September 2019, Baumgarten spoke to Jessica
14 Frohman (“Frohman”), who stated that she learned about the feces incident from other
15 employees.

16 p. In or around August or September 2019, following the defecation incident,
17 an assistant went up to Baumgarten and said, “*We’re mortified for you.*”

18 q. Based on information and belief, Plaintiff alleges that Jeff Berry knows about
19 the feces incident. In or around August or September 2019, Joanne Wiles, an agent at
20 ICM, told me that she learned from the feces incident from Berry.

21 r. On or about September 3, 2019, Baumgarten brought up the incident with
22 Ballard during a conversation he had with Ted Chervin (“Chervin”), a Managing Partner.
23 Chervin attempted to downplay the incident and stated, “*I’m sorry it happened. It will*
24 *blow over.*” Baumgarten reiterated to Chervin that Defendant Ballard’s handling of the
25 incident was unacceptable and said, “there is a bigger issue with Cindy. There are agents
26 who are fearful of retaliation. We came up with a mantra, 2020, a safe secure work
27 environment.” Chervin simply said, “thank you for bringing this to my attention.”

28 s. Based on information and belief, Plaintiff alleges that most of the employees

1 in the New York and Los Angeles heard about the defecation incident and that it was being
2 attributed to Baumgarten.

3 t. Since the repeated publication of the false statements regarding Baumgarten,
4 the publication of said statements have been repeated and made to those outside of ICM.

5 15. *Defendants' termination of Plaintiff's employment:*

6 a. Just a few days after the defecation incident and Baumgarten's complaint of
7 Defendant Ballard's handling of the incident and shortly after Baumgarten's complaint of
8 illegal conduct, on or about August 20, 2019, Baumgarten met with Chris Silbermann
9 ("Silbermann"), a managing Partner at ICM. During the meeting, Silbermann said, "I've
10 been wanting to have this conversation. We're 16 months out on your contact. It is just
11 not really working. I wouldn't want to be offensive to you in trying to make a deal with a
12 lot less money. I think you're a phenomenal agent and phenomenal guy. I want to give
13 you enough time to help you transition." During this conversation, Silbermann suddenly
14 announced Baumgarten's termination of employment without reason by stating he would
15 transition out of his role at ICM.

16 b. Baumgarten was subsequently informed that his termination was "without
17 cause."

18 c. After this meeting with Silbermann, Baumgarten was still required to go to
19 the office. Every day that Baumgarten walked down the halls of the office, he no longer
20 felt as comfortable as he once did in the office.

21 d. On or about August 21, 2019, Levy said to Baumgarten, "We need to figure
22 out what your timeframe is. Chris is a very meticulous guy who is obsessive about
23 checking off boxes. *He wants to check off the box where we are figuring out when your*
24 *exit will be.*" Baumgarten said, "I don't know what I'm going to do yet. My daughter is
25 sick...*I'm not just a check off the box. I'm a human being who has been a good person to*
26 *the company.*" Levy said, "Look, let me talk to Chris. We're not putting you out the door.
27 *We want to know when there is an end date.*"

28 e. On or around September 8, 2019, Baumgarten started getting calls from

1 colleagues who said that they are getting calls asking if Baumgarten left the agency.

2 f. On or around September 9, 2019, Baumgarten had a meeting with Levy and
3 Chervin to strategize a narrative for Baumgarten's termination from ICM. Chervin
4 suggested the following for Baumgarten, "I've been thinking about a change. I was in
5 management at one point in my career. Given what has happened in the agency, I've been
6 thinking about management and production." Baumgarten did not agree to a potential
7 management role.

8 g. On or about September 12, 2019, Levy said, "*A lot of people are talking on*
9 *the outside that you are leaving the company. I think it's good you have a conversation*
10 *with people you're close with to start the conversation.*"

11 h. Plaintiff's termination occurred approximately 16 months prior to the end of
12 his contract with ICM.

13 16. *Economic damages:* As a consequence of Defendants' conduct, Plaintiff has
14 suffered and will suffer harm, including lost past and future income and employment
15 benefits, damage to his career, and lost wages, overtime, unpaid expenses, and penalties,
16 as well as interest on unpaid wages at the legal rate from and after each payday on which
17 those wages should have been paid, in a sum to be proven at trial.

18 17. *Non-economic damages:* As a consequence of Defendants' conduct, Plaintiff has
19 suffered and will suffer psychological and emotional distress, humiliation, and mental and
20 physical pain and anguish, in a sum to be proven at trial. Plaintiff has suffered irreparable
21 harm, including but not limited to, his reputation, his profession, and his occupation.

22 18. *Punitive damages:* Defendants' conduct constitutes oppression, fraud, and/or
23 malice under California Civil Code section 3294 and, thus, entitles Plaintiff to an award
24 of exemplary and/or punitive damages.

25 a. *Malice:* Defendants' conduct was committed with malice within the meaning
26 of California Civil Code section 3294, including that (a) Defendants acted with intent to
27 cause injury to Plaintiff and/or acted with reckless disregard for Plaintiff's injury, in-
28 cluding by terminating Plaintiff's employment and/or taking other adverse job actions

1 against Plaintiff because of his age, disability, medical leave, race, national origin,
2 ancestry, pregnancy, gender, sexual orientation, and/or good faith complaints, and/or
3 (b) defendants' conduct was despicable and committed in willful and conscious disregard
4 of Plaintiff's rights, health, and safety, including Plaintiff's right to be free of
5 discrimination, harassment, retaliation, abuse of the requirements of accommodation and
6 engaging in the interactive process, and wrongful employment termination.

7 b. *Oppression*: In addition, and/or alternatively, defendants' conduct was
8 committed with oppression within the meaning of California Civil Code section 3294,
9 including that defendants' actions against Plaintiff because of his age, disability, medical
10 leave, race, national origin, ancestry, pregnancy, gender, sexual orientation, and/or good
11 faith complaints were "despicable" and subjected Plaintiff to cruel and unjust hardship, in
12 knowing disregard of Plaintiff's rights to a work place free of discrimination, harassment,
13 retaliation, abuse of the requirements of accommodation and engaging in the interactive
14 process, and wrongful employment termination.

15 c. *Fraud*: In addition, and/or alternatively, defendants' conduct, as alleged, was
16 fraudulent within the meaning of California Civil Code section 3294, including that
17 Defendants asserted false (pretextual) grounds for terminating Plaintiff's employment
18 and/or other adverse job actions, thereby to cause Plaintiff hardship and deprive him of
19 legal rights.

20 19. *Attorneys' fees*: Plaintiff has incurred and continues to incur legal expenses and
21 attorneys' fees.

22 20. *Exhaustion of administrative remedies*: Prior to filing this action, Plaintiff ex-
23 hausted his administrative remedies by filing a timely administrative complaint with the
24 Department of Fair Employment and Housing ("DFEH") and receiving a DFEH right-to-
25 sue letter.

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1 **FIRST CAUSE OF ACTION**

2 **Discrimination on the Bases of Age, Disability, and**

3 **Associational Disability**

4 **(Government Code § 12900, et seq.)**

5 **Against Defendant ICM; and Does 1 to 100, Inclusive**

6 21. The allegations set forth in preceding paragraphs are re-alleged and incorporated
7 herein by reference.

8 22. At all times herein mentioned, FEHA, Government Code section 12940, *et seq.*,
9 was in full force and effect and was binding on defendants. This statute requires defen-
10 dants to refrain from discriminating against any employee because but not limited to he or
11 she is more than 40 years old or because of the employee is disabled.

12 23. Plaintiff's age and disability are protected by FEHA, Government Code section
13 12900, *et seq.*, were substantial motivating reasons in defendants' decision to terminate
14 plaintiff's employment, not to retain, hire, or otherwise employ plaintiff in any position,
15 and/or to take other adverse employment actions against plaintiff.

16 24. In 2016, Plaintiff had hernia surgery. In September 2018 Plaintiff had back
17 surgery on his L5 and S1 fusion. On April 24, 2019, Plaintiff had hip replacement and
18 was out of the office for a few weeks. Plaintiff also had a full arm cast and metal brace for
19 several weeks due to an injury that resulted in a disability.

20 25. Comments were made regarding his disabilities including "man, you're like a
21 bionic man" and generally commented that he was getting too many surgeries or that "he
22 is in Asia again" when he was on his leaves from the surgeries.

23 26. In 2019 and prior to Plaintiff's termination, plaintiff's daughter became ill and
24 had to undergo a litany of medical tests. Rick Levy was notified of Plaintiff's daughter's
25 condition.

26 27. As a proximate result of defendants' willful, knowing, and intentional discrimi-
27 nation against plaintiff, plaintiff has sustained and continues to sustain substantial losses
28 of earnings and other employment benefits.

1 28. As a proximate result of defendants' willful, knowing, and intentional discrimi-
2 nation against plaintiff, plaintiff has suffered and continues to suffer humiliation, emo-
3 tional distress, and mental and physical pain and anguish, all to his damage in a sum
4 according to proof.

5 29. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
6 Pursuant to Government Code section 12965(b), plaintiff is entitled to recover reasonable
7 attorneys' fees and costs (including expert costs) in an amount according to proof.

8 30. Defendants' discrimination was committed intentionally, in a malicious, fraudu-
9 lent, and/or oppressive manner, and this entitles plaintiff to punitive damages against
10 defendants.

11
12 **SECOND CAUSE OF ACTION**

13 **Whistleblower Retaliation**

14 **(Labor Code § 1102.5, et seq.)**

15 **Against Defendant ICM; and Does 1 to 100, Inclusive**

16 31. The allegations set forth in preceding paragraphs are re-alleged and incorporated
17 herein by reference.

18 32. At all relevant times, Labor Code section 1102.5 was in effect and was binding
19 on defendants. This statute prohibits Defendants from retaliating against any employee,
20 including Plaintiff, for actually raising complaints of potential illegality, for providing
21 information of such potential illegality, because the employee is believed to have engaged
22 in such conduct, or because the employee may engage in such conduct. The statute also
23 further prohibits Defendants from retaliating against any employee, including Plaintiff,
24 where the employee refused to participate in activity that would result in a violation of the
25 law.

26 33. Plaintiff raised complaints of actual, perceived, and/or potential illegality while
27 he worked for Defendants, and Defendants retaliated against him by taking adverse
28 employment actions, including employment termination, against him.

1 34. As a proximate result of defendants' willful, knowing, and intentional violations
2 of Labor Code section 1102.5, Plaintiff has suffered and continues to suffer humiliation,
3 emotional distress, and mental and physical pain and anguish, all to his damage in a sum
4 according to proof.

5 35. As a result of defendants' adverse employment actions against Plaintiff, Plaintiff
6 has suffered general and special damages in sums according to proof.

7 36. Defendants' misconduct was committed intentionally, in a malicious, fraudulent,
8 oppressive manner, and this entitles Plaintiff to punitive damages against Defendants.

9
10 **THIRD CAUSE OF ACTION**

11 **Wrongful Termination of Employment in Violation**
12 **of Public Policy (*Tameny v. Atlantic Richfield Co. (1980) 27***

13 **Cal.3d 167)**

14 **Against Defendant ICM; and Does 1 to 100, Inclusive**

15 37. The allegations set forth in preceding paragraphs are re-alleged and incorporated
16 herein by reference.

17 38. Defendants terminated Plaintiff's employment in violation of various funda-
18 mental public policies underlying both state and federal laws. Specifically, Plaintiff's
19 employment was terminated in part because of his protected status (*i.e.*, age, race, color,
20 national origin, ancestry, and/or protected activity). These actions were in violation of,
21 but not limited to, the FEHA, the California Constitution, California Labor Code section
22 1102.5, and California Civil Code sections 44, 45, 46.

23 39. As a proximate result of defendants' wrongful termination of Plaintiff's em-
24 ployment in violation of fundamental public policies, Plaintiff has suffered and continues
25 to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to
26 his damage in a sum according to proof.

27 40. As a result of defendants' wrongful termination of his employment, Plaintiff has
28 suffered general and special damages in sums according to proof.

1 41. Defendants' wrongful termination of Plaintiff's employment was done inten-
2 tionally, in a malicious, fraudulent, and/or oppressive manner, and this entitles Plaintiff to
3 punitive damages.

4 42. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
5 Pursuant to Code of Civil Procedure sections 1021.5 and 1032, *et seq.*, Plaintiff is entitled
6 to recover reasonable attorneys' fees and costs in an amount according to proof.
7

8 **FOURTH CAUSE OF ACTION**

9 **Violation Of Labor Code § 2802**

10 **Against Defendant ICM; and Does 1 to 100, Inclusive**

11 43. The allegations set forth in preceding paragraphs are re-alleged and incorporated
12 herein by reference.

13 44. Labor Code § 2802(a) provides that "[a]n employer shall indemnify his or her
14 employee for all necessary expenditures or losses incurred by the employee in direct
15 consequence of the discharge of his or her duties, or of his or her obedience to the
16 directions of the employer, even though unlawful, unless the employee, at the time of
17 obeying the directions, believed them to be unlawful."

18 45. Pursuant to Labor Code § 2804 any contract or agreement, express or implied,
19 made by any employee to waive the benefits of Section 2802 or any part thereof, is null
20 and void.

21 46. California Labor Code § 2802(c) provides that the term "necessary expenditures
22 or losses" includes all reasonable costs, including, but not limited to attorney's fees
23 incurred by the employee enforcing the rights granted by California Labor Code § 2802.

24 47. California Labor Code § 2802 and Industrial Welfare Commission Order No. 5,
25 Section 9, Defendant was required to reimburse and indemnify Plaintiff for all necessary
26 expenditures or losses incurred by Plaintiff in direct consequence of the discharge of
27 Plaintiff's duties.

28 48. At all times relevant hereto, and during the period of Plaintiff's employment with

1 Defendant, Plaintiff was required by the Defendant to wear and launder specific items of
2 apparel of specific fabric, color and design (i.e. specific shirt, pants), as well as safety and
3 protective devices and use his personal cell phone for Defendant's business purposes, use
4 supplies and materials for Defendant's business, among other things in the discharge of his
5 duties for Defendant.

6 49. Plaintiff is informed and believes and thereupon alleges that at all times relevant
7 hereto, the Defendant violated Labor Code § 2802 and Industrial Welfare Commission
8 Order No. 5, Section 9, by failing to reimburse Plaintiff for the cost associated with all
9 purchasing/maintaining/laundrying the required uniforms, purchasing tools and using his
10 personal cell phone, as alleged hereinabove. These costs are incurred directly as a
11 consequence of the Plaintiff's duties to Defendant.

12 50. Pursuant to Labor Code § 2802(c), Plaintiff requests that the court award Plaintiff
13 reasonable attorney's fees and the costs incurred in this action.

14 51. Plaintiff is owed for necessary expenses of close to \$12,000 for the cost of his
15 trip to the New York Office that were never reimbursed to him. In addition, interest shall
16 accrue from the date on which Plaintiff incurred the necessary expenditure.

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FIFTH CAUSE OF ACTION

Defamation (Civil Code §§ 45, 46; *Kelly v. General Tel. Co.* (1982) 136 Cal.App.3d 278; *Mercado v. Hoefler* (1961) 190 Cal.App.2d 12; *Frances T. v. Village Green Owners Ass'n* (1986) 42 Cal.3d 490; *Asahi Kasei Pharma Corp. v. Actelion Ltd.* (2013) 222 Cal.App.4th 945; *Wyatt v. Union Mortgage Co.* (1979) 24 Cal.3d 773; *Seagate Tech. v. A.J. Kogyo Co.* (1990) 219 Cal.App.3d 696; *Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc.* (1986) 42 Cal.3d 1157)

Against All Defendants and Does 1 to 100, Inclusive

12 52. The allegations set forth in preceding paragraphs are re-alleged and incorporated
13 herein by reference.

14 53. On or around August 15, 2019, defendant Ballard insinuated that Baumgarten
15 had defecated on the bathroom floor of the New York office and interrogated Baumgarten
16 about the defecation incident in the restroom in front of Santos. Defendant Ballard
17 insinuated Baumgarten was responsible for the defecation because the defecation was
18 reported after Baumgarten used the restroom. Later, word spread throughout the ICM
19 offices that attributed Baumgarten to the defecation incident, and then subsequently,
20 outside of ICM, including to other agencies and major studios.

21 54. Defendant Ballard wrongfully accused Baumgarten of these outrageous
22 allegations knowing that once she leaked the mere subject matter that Baumgarten would
23 be terminated and his reputation would be eviscerated.

24 55. Defendant ICM has a pattern and practice of defaming employees that they target
25 and want to separate from the company, in order to ensure that the employee's reputation
26 in the industry is tarnished so that they will be unable to compete with Defendant ICM.
27 Defendant ICM defames such employees in front of other company employees, the press,
28 competitors and others in the entertainment community. There have been dozens of

1 employees who have been subjected to this treatment. Despite the manipulative and
2 malicious actions, these practices are condoned by Silberman and Levy.

3 56. On the basis of information and belief, the statement at issue that Baumgarten
4 was responsible for the defecation incident in the restroom would not have been generated
5 without the authorization, direction and/or meaningful participation of ICM, and other
6 directors, managers, and/or supervisors.

7 57. It is well established that an employer may be vicariously liable for defamatory
8 statements regarding employees made by their supervisors or co-workers in the course and
9 scope of their employment, under the principles of *respondeat superior*, and a principal
10 can be liable for an employee's malicious torts committed in the course and scope of
11 employment, despite the contention that the employee may not have had the authority to
12 engage in tortious conduct.

13 58. Individual officers and directors, including ICM, are not immune to liability if
14 they authorize, direct, or in some meaningful sense actively participate in the wrongful
15 conduct.

16 59. Case law has established that directors are liable to third persons injured by their
17 own tortious conduct, regardless of whether they acted on behalf of the corporation and
18 regardless of whether the corporation is also liable. A corporate director's or officer's
19 participation in tortious conduct may be shown not solely by direct action, but by knowing
20 consent to or approval of unlawful acts.

21 60. Plaintiff is informed and believes, and on that basis alleges, Defendants and other
22 directors, managers, and/or supervisors of defendants, while acting in the course and scope
23 of their employment with Defendants and/or on defendants' behalf, in furtherance of
24 defendants' business interests, and with defendants' knowledge, consent, authority, and/or
25 ratification, intentionally, willfully, purposely, and maliciously published and republished
26 certain defamatory statements and insinuations of fact about Plaintiff that were untrue.

27 61. Plaintiff is informed and believes, and on that basis alleges, that defendants,
28 knew, had reason to know, must have known, or should have known that the above

1 statements and insinuations of fact that were published were untrue each time that they
2 published and republished them, but authorized, directed, or in some meaningful sense
3 actively participated in the wrongful conduct.

4 62. Plaintiff is informed and believes, and on that basis alleges that defendants, had
5 no reasonable basis for believing that the subject statements and/or insinuations of fact
6 herein alleged and described were true.

7 63. The defamatory and untruthful statements were made to persons who did not have
8 a common interest in the issues related to the incident of the feces in the bathroom or the
9 later interrogations or accusations of Baumgarten and the communication was not
10 designed to further a common interest.

11 64. Defendants who published the defamatory statements acted with hatred or ill will
12 toward Baumgarten, showing Defendants' willingness to vex, annoy, or injure and had no
13 reasonable grounds for believing in the truth of the statements. As a result, Plaintiff has
14 been injured in his profession and continues to be injured in his profession. Plaintiff has
15 sustained and continues to sustain losses of earnings and other employment benefits.

16 65. As a proximate result of defendants' willful, knowing, and intentional false
17 representations about Plaintiff, Plaintiff has suffered and continues to suffer humiliation,
18 mental pain and anguish, and other non-economic damages, all to his damage in a sum
19 according to proof.

20 66. Defendants' misconduct was committed intentionally, in a malicious, fraudulent,
21 and/or oppressive manner, and this entitles Plaintiff to punitive damages against
22 defendants.

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1 **SIXTH CAUSE OF ACTION**

2 **Compelled Self-Defamation (Civil Code §§ 45, 46)**

3 **Against All Defendants, and Does 1 to 100, Inclusive)**

4 67. The allegations set forth in preceding paragraphs are re-alleged and incorporated
5 herein by reference.

6 68. On the basis of information and belief, defendants, among other directors,
7 managers, and/or supervisors of defendants, falsely informed individuals other than
8 Plaintiff that there was a defecation incident in the restroom that Baumgarten was
9 responsible for is an insinuation that constitutes defamation *per se*, broadly defined as
10 imputing to Plaintiff unfitness to practice his trade, business, or profession, despite his
11 having no documented performance-related issues. This statement was published in
12 publications that are widely circulated to the public, including members of the advertising
13 and marketing community.

14 69. When Defendants terminated Plaintiff's employment, they knew that Plaintiff
15 would be under a strong compulsion to repeat these comments to prospective employers,
16 and others in his industry. As such, Plaintiff has been under a compulsion to repeat
17 defendants' defamatory statements, as many have asked Baumgarten about his separation
18 from defendants' employment, including prospective employers, recruiters, former
19 colleagues, acquaintances in the industry, and clients.

20 70. As a result, Plaintiff has been injured in his profession and continues to be injured
21 in his profession. Plaintiff has sustained and continues to sustain losses of earnings and
22 other employment benefits.

23 71. As a proximate result of defendants' willful, knowing, and intentional false
24 representations about Plaintiff, Plaintiff has suffered and continues to suffer humiliation
25 and mental pain and anguish and other non-economic damages, all to his damage in a sum
26 according to proof.

27 72. Defendants' misconduct was committed intentionally, in a malicious, fraudulent,
28 and/or oppressive manner, and this entitles Plaintiff to punitive damages against

1 defendants.
2

3 **SEVENTH CAUSE OF ACTION**

4 **Intentional Infliction of Emotional Distress**

5 **(Hughes v. Pair (2009) 46 Cal.4th 1035)**

6 **Against All Defendants; and Does 1 to 100, Inclusive**

7 73. The allegations set forth in preceding paragraphs are re-alleged and incorporated
8 herein by reference.

9 74. Defendants' discriminatory, harassing, and retaliatory actions against plaintiff
10 constituted extreme and outrageous misconduct and caused plaintiff severe emotional
11 distress. Defendants were aware that treating plaintiff in the manner alleged above,
12 including depriving plaintiff of his livelihood, would devastate plaintiff and cause him
13 extreme hardship.

14 75. As a proximate result of defendants' extreme and outrageous conduct, plaintiff
15 has suffered and continues to suffer severe emotional distress. Plaintiff has sustained and
16 continues to sustain substantial losses of earnings and other employment benefits as a
17 result of being emotionally distressed.

18 76. As a proximate result of defendants' extreme and outrageous conduct, plaintiff
19 has suffered and continues to suffer humiliation, emotional distress, and mental and
20 physical pain and anguish, all to his damage in a sum according to proof.

21 77. Defendants' misconduct was committed intentionally, in a malicious, fraudulent,
22 oppressive manner, and this entitles plaintiff to punitive damages.
23

24 **EIGHTH CAUSE OF ACTION**

25 **Invasion of Privacy Rights**

26 **Against All Defendants; and Does 1 to 100, Inclusive**

27 1. The allegations set forth in preceding paragraphs are re-alleged and incorporated
28 herein by reference.

1 2. On or about August 15, 2019, Cindy Ballard (“defendant Ballard”), Chief of
2 Human Resources in the Los Angeles office, asked to meet with Baumgarten. During the
3 meeting Baumgarten invited Santos, an assistant in the New York Office who had nothing
4 to do with human resources. Defendant Ballard then outrageously and in front of Santos
5 interrogated Baumgarten regarding defecation on the bathroom floor and insinuated that
6 Baumgarten was the person who defecated on the floor. Defendants and its managers then
7 spread information about the accusation and insinuation of this incident to other
8 individuals, including employees, who were not in any way involved in the incident or the
9 interrogation.

10 3. Baumgarten knows of specific individuals who were information about the
11 incident who should not have been privy to any of the facts. The information was given to
12 those unrelated persons by Defendants.

13 4. Baumgarten had reasonable expectation of privacy in such matters and Defendant
14 intentionally intruded in the privacy in a manner which is highly offensive to a reasonable
15 person. Consequently, Baumgarten was harmed and Defendants’ conduct was a
16 substantial factor in causing Baumgarten’s harm.

17 5. Defendant ICM has a pattern and practice of defaming employees that they target
18 and want to separate from the company, in order to ensure that the employee’s reputation
19 in the industry is tarnished so that they will be unable to compete with Defendant ICM.
20 Defendant ICM defames such employees in front of other company employees, the press,
21 competitors and others in the entertainment community. There have been dozens of
22 employees who have been subjected to this treatment. Despite the manipulative and
23 malicious actions, these practices are condoned by Silberman and Levy.

24 6. Plaintiff did not know, nor could he have known, all of the following material
25 facts showing the elements of this cause of action until after his employment was
26 terminated.

27 7. The disclosure of plaintiff’s disability was unauthorized and without plaintiff
28 Baumgarten’s consent.

1 8. Defendants' conduct involved disclosing private facts about plaintiff, namely, the
2 existence and nature of her medical condition and treatment.

3 9. Defendant Ballard is known for strategically leaking private employee
4 information to the Los Angeles Times. Silberman and Levy look the other way and
5 pretend they are unaware of these unlawful actions that are an invasion of privacy of the
6 employees.

7 10. As a proximate result of the above disclosure, plaintiff suffered losses, all to his
8 damage in an amount according to proof.

9 11. In making the disclosures described above, defendants were guilty of oppression
10 and fraud in that they made the disclosures with the intent to vex, injure, or annoy plaintiff
11 and with a willful and conscious disregard of plaintiff's rights, entitling plaintiff to an
12 award of punitive damages.

13
14 **NINTH CAUSE OF ACTION**

15 **Negligent Hiring, Supervision, and Retention**

16 **(Doe v. Capital Cities (1996) 50 Cal.App.4th 1038)**

17 **Against Defendant ICM; and Does 1 to 100, Inclusive**

18 12. The allegations set forth in preceding paragraphs are re-alleged and incorporated
19 herein by reference.

20 13. Defendants owed a duty of care to plaintiff to appoint, hire, retain, and supervise
21 persons who would not engage in retaliatory, harassing, or discriminatory conduct.
22 Defendants owed a duty of care to plaintiff not to retain managers or employees who
23 would discriminate against, harass, or retaliate against employees for engaging in pro-
24 tected activities. Defendants owed a duty of care to plaintiff to supervise their managers
25 and employees closely to ensure that they would refrain from harassing and retaliating
26 against plaintiff.

27 14. Defendants breached these duties. As a result, defendants caused damages to
28 plaintiff. As a proximate result of defendants' negligent hiring, retention, and supervision

1 of their managers and employees, plaintiff has suffered and continues to suffer damages,
2 including losses of earnings and benefits, according to proof.

3
4 **PRAYER**

5 WHEREFORE, Plaintiff, Spencer Baumgarten, prays for judgment against
6 Defendants as follows:

- 7 1. For general and special damages according to proof;
8 2. For exemplary damages, according to proof;
9 3. For pre-judgment and post-judgment interest on all damages awarded;
10 4. For reasonable attorneys' fees;
11 5. For costs of suit incurred;
12 6. For such other and further relief as the Court may deem just and proper;
13 7. For declaratory relief.

14
15 ADDITIONALLY, Plaintiff, Spencer Baumgarten, demands trial of this matter by
16 jury. The amount demanded exceeds \$25,000.00 (Government Code § 72055).

17
18 Dated: October 4, 2019

SHEGERIAN & ASSOCIATES, INC.

19
20 By: Carney R. Shegerian
Carney R. Shegerian, Esq.

21
22 Attorneys for Plaintiff,
SPENCER BAUMGARTEN