

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

**NOTICE TO DEFENDANT: NATURAL PRODUCTS ASSOCIATION;
(AVISO AL DEMANDADO): DANIEL FABRICANT and DOES 1-25, inclusive**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

12/7/2015

SAN LUIS OBISPO SUPERIOR COURT
BY: Daniel Fabricant
Clerk, Deputy Clerk

**YOU ARE BEING SUED BY PLAINTIFF: BRENT WEICKERT
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

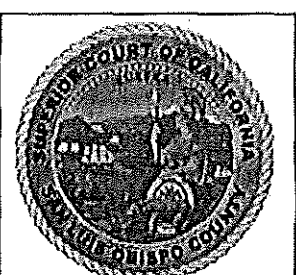
Superior Court of California, County of San Luis Obispo
901 Park Street
Paso Robles, CA 93446
Paso Robles Branch

CASE NUMBER:
(Número del Caso): 15CVP-0355

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Kathleen M. Hartman, Esq. (SBN 219934) 949-261-2872 Fax: 949-261-6060
Callahan Thompson Sherman & Caudill, LLP
2601 Main Street, Suite 800
Irvine, CA 92614

DATE: 12/7/2015
(Fecha) Clerk, by ABonero Deputy
(Secretario) /s/ Susan Matherly (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



- NOTICE TO THE PERSON SERVED:** You are served
- as an individual defendant.
 - as the person sued under the fictitious name of (specify):
 - on behalf of (specify): NATURAL PRODUCTS ASSOCIATION
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
 - by personal delivery on (date):

FILED

12/7/2015

SAN LUIS OBISPO SUPERIOR COURT
BY: Olivia D. Dileo
County Bonds, Deputy Clerk

1 KATHLEEN M. HARTMAN, Esq. (SBN 219934)
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Attorneys for Plaintiff,
6 BRENT WEICKERT

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN LUIS OBISPO

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11 BRENT WEICKERT

Case No.: 15 CVP-0355

COMPLAINT FOR:

13 Plaintiff,

14 vs.

15 NATURAL PRODUCTS ASSOCIATION;
16 DANIEL FABRICANT and DOES 1-25
inclusive

18 Defendants.

1. Wrongful Termination in Violation of Public Policy;
2. Retaliation in Violation of FEHA;
3. Religious and Sexual Harassment- Hostile Work Environment in Violation of FEHA
4. Failure to Prevent Discrimination, Harassment and Retaliation in Violation of FEHA;
5. Negligent Hiring and Retention; and
6. Violation of California Labor Code § 1102.5
7. Intentional Infliction of Emotional Distress
8. Failure to Pay Vested Vacation Time
9. Waiting Time Penalties

25 Jury Trial Demanded

NATURE OF THE ACTION

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2 1. Plaintiff Brent Weickert ("Plaintiff") brings this action against Defendant Natural
3 Products Association ("NPA") and Defendant Daniel Fabricant ("Fabricant") for unlawful acts
4 based on Plaintiff's employment.

THE PARTIES

5
6 2. Plaintiff was employed by NPA from September 2, 1997 until October 15, 2015, as
7 the Senior Vice President/Chief Financial Officer. Plaintiff also had human resources duties. He
8 worked out of an office in Paso Robles, California. At all times relevant he was a citizen of the
9 State of California.

10 3. NPA is an Illinois corporation that is registered to do business in California. NPA's
11 employees have offices throughout the United States. Members of NPA's Board of Directors are
12 located in various states and two such members are located in California. No more than one
13 member is located in any other state. Further, two of the five members of the Executive Committee
14 are located in California.

15 4. Fabricant is the Executive Director and Chief Executive Officer for NPA.

16 5. Plaintiff does not know the true names and capacities, whether individual,
17 corporate, associate, or otherwise of defendant Does 1 through 25, inclusive. Such fictitious
18 defendants are sued pursuant to the provisions of Code of Civil Procedure section 474. Plaintiff is
19 informed and believes, and based upon such information and belief, alleges that each fictitious
20 defendant was in some way responsible for, participated in, or contributed to the matter and things
21 of which Plaintiff complains of herein, and in some form and under some theory, is subject to
22 liability therefore. When the exact nature and identity of such fictitious defendants is determined,
23 Plaintiff will seek leave to amend this Complaint to set forth the same.

24 6. At all times relevant herein, all defendants were the agents, servants, employees
25 and/or employer of each and every other defendant.

26 7. Defendants carried out a joint scheme, business plan or policy in all respects
27 pertinent hereto and all acts and omissions herein complained of were performed within the course
28 and scope of said employment, service, agency, common scheme, and plan.

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1 8. All defendants, defendants' founders, owners and executive officers, board
2 members, and each of them, directed, authorized, were on notice of, ratified and/or participated in
3 the conduct that gives rise to the claims asserted herein and derived personal financial benefit from
4 such conduct.

5 **JURISDICTION AND VENUE**

6 9. The Superior Court of the State of California, County of San Luis Obispo, has
7 jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which
8 grants the Superior Court "original jurisdiction in all cases except those given by statute to other
9 trial courts." This Court has jurisdiction over this action pursuant to Code of Civil Procedure
10 section 410.10.

11 10. Venue is proper in the County of San Luis Obispo pursuant to Code of Civil
12 Procedure section 395.5 because Plaintiff worked for NPA in Paso Robles and it is where the
13 liability for the claimed of acts took place.

14 **GENERAL ALLEGATIONS**

15 11. While employed, Plaintiff discovered that Fabricant was engaging in internally
16 prohibited, unethical, and often illegal behavior as CEO. At a minimum, the evidenced discovered
17 by Plaintiff provided a good-faith basis for him to believe that Fabricant was engaging in illegal
18 behavior. Consequently, in an effort to ensure that Fabricant's illegal behavior would be addressed
19 by NPA and with the intention of getting NPA to ensure such behavior would cease, Plaintiff
20 wrote a lengthy letter to NPA's president, Roxanne Green ("Green"), in early May 2015.

21 12. The letter from Plaintiff to Green advised NPA of the following issues:

- 22 a. Fabricant was going to strip clubs and charging these expenses on the company
23 credit card. Examples of these expenses included a \$5,060 charge at the Spearmint
24 Rhino and about \$350 at That's Fritz Too strip club. He took pictures at the strip
25 clubs and showed the pictures to a female NPA employee.
- 26 b. Fabricant would take another male employee named Corey Hilmas out drinking and
27 to expensive restaurants and then charge these expenses to the company credit card.
- 28

- 1 c. Fabricant's drinking had become excessive and caused other employees to
- 2 comment on his behavior.
- 3 d. Fabricant regularly used profanity, sexual innuendo, and made sexual jokes at work.
- 4 e. Fabricant mocked an employee who is a devout Catholic for using rosary beads to
- 5 help her with her fear of flying.
- 6 f. That he heard Fabricant's behavior at his prior employer had led to numerous
- 7 lawsuits.
- 8 g. Employees were being terminated when they complained about Fabricant's abusive
- 9 behavior.
- 10 h. Fabricant's abusive behavior had driven away multiple female employees and that a
- 11 female employee had recently called him sobbing to complain about his abusive
- 12 and hostile behavior.
- 13 i. Fabricant insisted that women in the office wear skirts and high heels. If they did
- 14 not comply, he would tell them that they have just quit trying.
- 15 j. Fabricant reprimanded Plaintiff for reminding employees about holidays provided
- 16 by the company.
- 17 k. Fabricant directed several employees not to complete timesheets even though
- 18 recording these employees' work time was required by law.
- 19 l. When Plaintiff complained to Fabricant about his behavior he was retaliated against
- 20 by, among other things, being reprimanded for doing his job, excluded from
- 21 important communications, told not to communicate with officers of the
- 22 corporation, told not to communicate with members of the board of directors, told
- 23 not to communicate with the committee chairs, told not to communicate with the
- 24 accountants even though Plaintiff was the CFO, and was left out of hiring and firing
- 25 decisions even though he had human resources responsibilities.

26 13. In the May 2015 letter, Plaintiff provided Green with the contact information of
27 female witnesses who could discuss the experiences they had with Fabricant.

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1 14. Shortly after sending the letter to Green, Plaintiff learned of a troubling
2 circumstance involving Fabricant and a female employee who was sexually assaulted while out for
3 the night with Fabricant. Plaintiff promptly sent a letter to NPA’s Board of Directors, detailing the
4 event to the best of his understanding. Specifically, Plaintiff advised the Board that on or about
5 May 13, 2015, Fabricant and two other males had taken a female employee out for drinks, that
6 they had subsequently visited a strip club, after which Fabricant had carelessly placed the clearly
7 intoxicated female employee into an Uber ride. Plaintiff advised that the female employee was not
8 taken to her drop off location. Rather, she was taken to another location and only recalls waking
9 up in an unrecognizable condominium. Upon going to the hospital, the employee was advised that
10 Rohypnol, commonly labeled the “date rape drug,” had been found in her system and that she had
11 been sexually assaulted. Plaintiff gained knowledge about this incident through a co-worker
12 named Adam Finney, who the female employee told about the incident when she arrived to work
13 later that morning.

14 15. In this letter to the Board, Plaintiff advised that “[Fabricant] has a long history of
15 taking the young girls out and drinking excessively.” Plaintiff told the Board of Directors that
16 since reporting the incident, Fabricant had completely cut off communications to him and Finney.
17 Plaintiff advised the Board that Fabricant’s behavior towards him constituted retaliation. Plaintiff
18 reported that Fabricant was taking actions that appeared intended to make Plaintiff look like he
19 was not doing his job. For example, Plaintiff advised the Board that Fabricant would write large
20 checks without telling Plaintiff, not forward Plaintiff invoices so they could be paid, entered into
21 agreements without the required review, and required Plaintiff to pay invoices that went against
22 the directions of the executive committee. Further, Plaintiff described how Fabricant threatened to
23 report an attorney to the state bar because the attorney had obtained a declaration containing facts
24 that were not favorable to Fabricant. Plaintiff reported that Fabricant and another employee had
25 frequented Camelot, a DC gentleman’s club, at NPA’s expense.

26 16. Green acknowledged receipt of the first letter and told Plaintiff that based on the
27 letter and the May 13th incident an investigation would take place.

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1 17. Plaintiff learned that Fabricant and another male employee took a new temporary
2 employee out drinking the night after the Rohypnol incident.

3 18. Finney was ultimately terminated by Fabricant in August 2015.

4 19. On October 15, 2015, as a result of his complaints, Plaintiff was terminated. There
5 was no reason provided for his termination.

6 20. Plaintiff exhausted his administrative remedies with the Department of Fair
7 Employment and Housing prior to bringing this Complaint. Specifically, Plaintiff filed a complaint
8 with the DFEH against NPA and Fabricant on or about November 5, 2015 and received a right to
9 sue notice.

10 **FIRST CAUSE OF ACTION**

11 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

12 **(By Plaintiff against NPA and Does 1-25, inclusive)**

13 21. Plaintiff hereby restates, re-alleges, and incorporates by reference herein the
14 paragraphs stated above in this Complaint as though fully set forth herein.

15 22. NPA was required to comply with the provisions of California Government Code
16 12940, et seq. ("Fair Employment and Housing Act," or "FEHA"). Pursuant to Section 12940(h),
17 it is unlawful "[f]or any employer, labor organization, employment agency, or person to discharge,
18 expel, or otherwise discriminate against an person because the person has opposed any practices
19 forbidden under this part or because the person has filed a complaint, testified, or assisted in any
20 proceeding under this part. Cal. Govt. Code §12940(h). Thus, it is the public policy of the state of
21 California that an employer not terminate, discriminate, or otherwise retaliate against an employee
22 who opposes any practices prohibited by FEHA and or files a complaint regarding violations of the
23 same.

24 23. NPA was also required to comply with the all laws and not retaliate against
25 employees who report violations of the law. Labor Code section 1102.5(b). NPA is also not
26 permitted to retaliate against an employee for internal disclosure of "illegal, unethical or unsafe
27 practices" that affect the public at large, not merely the employer. *Green v. Ralee Eng. Co.* (1998)

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1 19 Cal.4th 66, 85; *Collier v. Sup.Ct. (MCA, Inc.)* (1991) 228 Cal.App.3d 1117, 1123.

2 24. Here, Plaintiff complained of numerous violations of FEHA by Fabricant to NPA's
3 Board and its President. Plaintiff complained that Fabricant was engaging in sexual harassment
4 and creating a hostile work environment for employees, by engaging in the following acts: 1)
5 showing picture of strippers and strip clubs, to a female employee; and 2) regularly making sexual
6 jokes and using sexual innuendo, in front of employees.

7 25. Plaintiff also complained that Fabricant had engaged in religious harassment, with
8 one example being Fabricant's mockery of a female employee who prayed with her rosary to get
9 over her fear of flying.

10 26. Plaintiff complained of gender discrimination and harassment by Fabricant.
11 Specifically, he complained that Fabricant would require female employees to wear skirts and high
12 heels and would remark that they have "quit trying," if they did not do so. Requiring women to
13 wear skirt is a violation of FEHA. Plaintiff also advised Fabricant's behavior had driven away
14 multiple female employees and that a female employee had recently called him sobbing to
15 complain about Fabricant's abusive and hostile behavior.

16 27. Plaintiff complained that Fabricant was violating labor laws by telling employees
17 that they do not have record their work hours.

18 28. Plaintiff also complained that Fabricant was creating an unsafe work environment
19 by taking employees out drinking and to strip clubs. In fact, it was this type of behavior that lead
20 to the assault of a female employee.

21 29. By complaining to NPA's Board and President about Fabricant's behavior Plaintiff
22 engaged in an activity protected by FEHA, the California Labor Code, and case law stating public
23 policy. In response to his Complaints, NPA terminated Plaintiff without any explanation.

24 30. NPA's conduct was a substantial factor in causing Plaintiff's harm, which includes
25 a loss of earnings and benefits, reputational harm, and emotional distress. Thus, NPA is liable to
26 Plaintiff for actual and emotional distress damages as well as attorneys' fees and costs.

27 31. NPA's conduct in retaliating against and terminating Plaintiff was oppressive and
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1 malicious. Specifically, by terminating Plaintiff for exposing Fabricant's conduct and to avoid
2 having to confront Fabricant about the same, NPA acted despicably, subjecting Plaintiff to the
3 cruel and unusual hardship of a sudden unwarranted termination, thereby showing a conscious
4 disregard for Plaintiff's rights. Thus, NPA is liable to Plaintiff for punitive damages.

5 **SECOND CAUSE OF ACTION**

6 **RETALIATION IN VIOLATION OF FEHA**

7 **(By Plaintiff against NPA and Does 1-25, inclusive)**

8 32. Plaintiff hereby restates, re-alleges, and incorporates by reference herein the
9 paragraphs stated above in this Complaint as though fully set forth herein.

10 33. Plaintiff engaged in a protected activity, as described above. NPA's response to
11 Plaintiff's protective activity was to terminate Plaintiff rather than to investigate the conduct of the
12 perpetrator, Fabricant.

13 34. Further, prior to Plaintiff's termination, Fabricant himself engaged in numerous
14 retaliatory and harassing acts towards Plaintiff such as excluding him from critical meetings that
15 required his attendance, excluding him from hiring and termination decisions and accusing
16 Plaintiff of acting outside the scope of his job in questioning Fabricant's expenditures (paid for by
17 NPA) that were clearly non-work related, despite Plaintiff's position as CFO.

18 35. NPA's conduct was a substantial factor in causing Plaintiff's harm, which includes
19 a loss of earnings and benefits, reputational harm, and emotional distress. Thus, NPA is liable to
20 Plaintiff for actual and emotional distress damages as well as attorneys' fees and costs.

21 36. NPA's conduct in retaliating against and terminating Plaintiff was oppressive and
22 malicious. Specifically, by terminating Plaintiff for exposing Fabricant's conduct and to avoid
23 having to confront Fabricant about the same, NPA acted despicably, subjecting Plaintiff to the
24 cruel and unusual hardship of a sudden unwarranted termination, thereby showing a conscious
25 disregard for Plaintiff's rights. Thus, NPA is liable to Plaintiff for punitive damages.

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THIRD CAUSE OF ACTION
RELIGIOUS AND SEXUAL HARASSMENT- HOSTILE WORK ENVIRONMENT IN
VIOLATION OF FEHA

(By Plaintiff against NPA, Fabricant and Does 1-25, inclusive)

37. Plaintiff hereby restates, re-alleges, and incorporates by reference herein the paragraphs stated above in this Complaint as though fully set forth herein.

38. FEHA prohibits an employer from harassing an employee based on his or her religion and gender. Cal. Govt. Code §12940(h).

39. Plaintiff was subjected to a workplace and environment where co-workers were subjected to discriminatory and harassing remarks on account of their protected characteristics. One co-worker was subjected to religious harassment while numerous employees were subjected to gender discrimination and sexual harassment. Plaintiff would hear these comments and have co-workers complain to him about these comments. Going to strip clubs was a regular part of the business environment under Fabricant’s leadership and attending these clubs became a way to stay in his good graces.

40. Fabricant’s harassing conduct was so severe and widespread that a reasonable employee in Plaintiff’s circumstances would have considered the work environment to be hostile and abusive.

41. Plaintiff considered the work environment to be hostile.

42. A person with authority over Plaintiff, Fabricant, engaged in the harassment.

43. Plaintiff was harmed as a result of Fabricant’s conduct in that he was constantly required to hear complaints of this conduct, retaliated against, and ultimately terminated.

44. Fabricant’s conduct was a substantial factor in causing the harm to Plaintiff, which includes a loss of earnings and benefits, reputational harm, and emotional distress. Plaintiff is also entitled to recover attorneys’ fees and costs.

45. Fabricant’s conduct in subjecting Plaintiff and co-workers to a hostile work environment and was oppressive and malicious. Fabricant harassed employees in front of Plaintiff

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1 and began retaliating against him in response to him advising NPA of said harassment, thereby
2 showing a conscious disregard for Plaintiff's rights. Thus, Fabricant is liable to Plaintiff for
3 punitive damages.

4 46. NPA's conduct in allowing Plaintiff to be subjected to a hostile work environment
5 and terminating Plaintiff for complaining about said environment was oppressive and malicious.
6 Specifically, by terminating Plaintiff for exposing Fabricant's conduct and to avoid having to
7 confront Fabricant about the same, NPA acted despicably, subjecting Plaintiff to the cruel and
8 unusual hardship of a sudden unwarranted termination, thereby showing a conscious disregard for
9 Plaintiff's rights. Thus, NPA is liable to Plaintiff for punitive damages.

10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION IN**
12 **VIOLATION OF FEHA**

13 **(By Plaintiff against NPA and Does 1-25, inclusive)**

14 47. Plaintiff hereby restates, re-alleges, and incorporates by reference herein the
15 paragraphs stated above in this Complaint as though fully set forth herein.

16 48. NPA has an obligation to prevent discrimination, harassment, and retaliation. NPA
17 failed its obligation when it took no action against Fabricant and instead terminated Plaintiff for
18 reporting the violations of FEHA.

19 49. NPA's conduct and omissions were a substantial factor in causing Plaintiff's harm,
20 which includes a loss of earnings and benefits, reputational harm, and emotional distress. Plaintiff
21 also is entitled to recovery of attorneys' fees and costs.

22 50. NPA's conduct in failing to prevent retaliation against and the harassment of
23 Plaintiff was oppressive and malicious. Specifically, NPA acted despicably, subjecting Plaintiff to
24 the cruel and unusual hardship of harassment and retaliation at the hands of Fabricant, instead of
25 taking Plaintiff's complaints seriously and taking action against Fabricant; thereby showing a
26 conscious disregard for Plaintiff's rights. Thus, NPA is liable to Plaintiff for punitive damages.

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FIFTH CAUSE OF ACTION

NEGLIGENT HIRING AND RETENTION

(By Plaintiff against NPA and Does 1-25, inclusive)

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4 51. Plaintiff hereby restates, re-alleges, and incorporates by reference herein the
5 paragraphs stated above in this Complaint as though fully set forth herein.

6 52. Fabricant had previously worked for NPA, left to work for the FDA as the Director
7 of the Division of Dietary Supplement Programs at the U.S. Food and Drug Administration (FDA),
8 and then in or about April 2014 was hired back by NPA as its CEO. During Fabricant's first round
9 of employment with NPA, there were complaints that he created a harassing environment by
10 making inappropriate comments to women and become extremely obnoxious towards others when
11 he drank. Fabricant was also reported to be vindictive when anyone questioned his behavior.

12 53. When NPA considered Fabricant for re-employment, his prior behavior was
13 discussed but the general hope was that his time with the FDA had "mellowed him out."

14 54. Shortly after becoming the CEO of NPA it became clear that Fabricant had not
15 changed. Starting in at least November 2014, charges for strip clubs, expensive dinners, and large
16 amounts of alcohol appeared on Fabricant's company charge card. Employees began complaining
17 about Fabricant's behavior stating that he would yell at them, call them names, use profanity, make
18 statements that included sexual innuendo, and make fun of them for their religious practices.
19 These were the same types of behaviors he previously engaged in.

20 55. NPA owed a duty to its employees, to ensure that any employee hired would not
21 harm the interests of NPA as a whole, or the rights of individual employees. NPA breached this
22 duty by failing to exercise due care in re-hiring Fabricant after he ended his tenure with the FDA,
23 as NPA had plenty of notice of Fabricant's prior illegal and unethical behavior. Notably, NPA was
24 advised of Fabricant engaging in such conduct while employed for NPA during his second tenure
25 therewith, yet NPA retained him and took no corrective action.

26 56. NPA's breach of duty was a substantial factor in causing Plaintiff's harm, which
27 includes a loss of earnings and benefits, reputational harm, and emotional distress.
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SIXTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE § 1102.5

(By Plaintiff against NPA and Does 1-25, inclusive)

57. Plaintiff hereby restates, re-alleges, and incorporates by reference herein the paragraphs stated above in this Complaint as though fully set forth herein.

58. Pursuant to California Labor Code section 1102.5(b), “[a]n employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job duties.”

59 Plaintiff complained of illegal activity by Fabricant, a person with decision making authority, to the Board and the president, all whom have authority to investigate, discover and correct Fabricant’s illegal activities. Specifically, Plaintiff complained that Fabricant was sexually harassing employees, engaging in religious harassment, gender discrimination, and that he directed an employee not record his time as required by law. In response to Plaintiff’s complaints, NPA terminated Plaintiff’s employment, thereby violating the Whistleblower statute’s anti-retaliation policy.

60. NPA’s conduct was a substantial factor in causing Plaintiff’s harm, which includes a loss of earnings and benefits, reputational harm, and emotional distress. Plaintiff is also entitled to recovery of attorneys’ fees and costs.

61. NPA’s conduct in retaliating against and terminating Plaintiff was oppressive and malicious. Specifically, by terminating Plaintiff for exposing Fabricant’s illegal conduct and to

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1 avoid having to confront Fabricant about the same, NPA acted despicably, subjecting Plaintiff to
2 the cruel and unusual hardship of a sudden unwarranted termination, thereby showing a conscious
3 disregard for Plaintiff's rights as an employee. Thus, NPA is liable to Plaintiff for punitive
4 damages.

SEVENTH CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(By Plaintiff against NPA, Fabricant and Does 1-25, inclusive)

8 62. Plaintiff hereby restates, re-alleges, and incorporates by reference herein the
9 paragraphs stated above in this Complaint as though fully set forth herein.

10 63. Fabricant's conduct towards Plaintiff was outrageous, as it involved the violation of
11 numerous California employment laws and a complete disregard for Plaintiff's rights.

12 64. Fabricant's conduct was intended to cause Plaintiff emotional distress. At a
13 minimum, Fabricant acted with a reckless disregard for the probability that his conduct would
14 cause Plaintiff to suffer from emotional distress, knowing that Plaintiff was present when he
15 engaged in the outrageous conduct.

16 65. Plaintiff suffered severe emotional distress as a result of Fabricant's conduct.

17 66. Fabricant's conduct was a substantial factor in causing Plaintiff's severe emotional
18 distress.

19 67. Fabricant's conduct was outside the scope and course of employment, as his
20 conduct involved the harassment of Plaintiff and numerous other employees as well as the
21 violation of numerous employment laws.

22 68. At all times relevant, NPA was aware of and ratified Fabricant's conduct.

23 69. Fabricant's conduct in subjecting Plaintiff and co-workers to a hostile work
24 environment was oppressive and malicious. Fabricant harassed employees in front of Plaintiff and
25 began retaliating against him in response to him advising NPA of said harassment, thereby
26 showing a conscious disregard for Plaintiff's rights. Thus, Fabricant is liable to Plaintiff for
27 punitive damages.

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77. Pursuant to Labor Code section 203, an employee who does not timely receive all wages due and owing at the end of his employment is entitled to recovery of at least 30 days of wages and recovery of attorneys' fees and costs.

Prayer for Relief

Plaintiff hereby prays for:

- 1. Actual damages;
- 2. Emotional distress damages;
- 3. Unpaid wages;
- 4. Punitive damages;
- 5. Attorney's fees and costs; and
- 5. Any other equitable relief the Court may deem appropriate.

PLAINTIFF HEREBY DEMANDS A JURY TRIAL

DATED: December 4, 2015

**CALLAHAN, THOMPSON, SHERMAN &
CAUDILL LLP**

By



**KATHLEEN M. HARTMAN
SUREN N. WEERASURIYA
Attorneys for Plaintiff
BRENT WEICKERT**

CTSC law
CALLAHAN THOMPSON SHERMAN & CAUDILL LLP

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kathleen M. Hartman, Esq. (SBN 219934) Callahan Thompson Sherman & Caudill, LLP 2601 Main Street, Suite 800 Irvine, CA 92614 TELEPHONE NO.: 949-261-2872 FAX NO.: 949-261-6060		FOR COURT USE ONLY FILED 12/7/2015 SAN LUIS OBISPO SUPERIOR COURT BY: <u>Adriana Bonito</u> Deputy Clerk		
ATTORNEY FOR (Name): Plaintiff BRENT WEICKERT SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO STREET ADDRESS: 1035 Palm Street, #385 MAILING ADDRESS: CITY AND ZIP CODE: San Luis Obispo, CA 93408 BRANCH NAME: Courthouse Annex		CASE NUMBER: 15CVP-0355 JUDGE: DEPT:		
CASE NAME: WEICKERT V. NATURAL PRODUCTS ASSOCIATION	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;"> CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) </td> <td style="padding: 5px;"> Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) </td> </tr> </table>		CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
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Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PII/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PII/PD/WD (23) Non-PII/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PII/PD/WD tort (35) Employment <input checked="" type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 9

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM 015.)

Date: December 4, 2015

Kathleen M. Hartman, Esq. (SBN 219934) _____

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

SUPERIOR COURT OF SAN LUIS OBISPO COUNTY San Luis Obispo Branch, 1035 Palm Street, Rm 385, San Luis Obispo, CA 93408 Paso Robles Branch 901 Park Street, Paso Robles, CA 93446		
Brent Weickertvs.Natural Products Association	CASE NUMBER 15CVP-0355	
	Case Management Conference	

NOTICE OF ASSIGNMENT AND CASE MANAGEMENT CONFERENCE

This case is assigned to **Judge Garrett, Ginger E.** for all purposes.

Plaintiff must serve the Summons and Complaint, a copy of this Notice; the Standing Case Management Order (located at http://slocourts.net/forms_filing) of the Judge assigned for all purposes and must file proofs of service within 60 days after the Complaint is filed.

Defendants shall file responsive pleadings with 30 days of service unless the parties stipulate to an extension of not more than 15 days.

IT IS HEREBY ORDERED:

1. The parties must appear for a first Case Management Conference **on April 04, 2016, 9:00 AM, Paso Robles Department 2** THE PARTIES OR THEIR ATTORNEYS MUST APPEAR AT THE CASE MANAGEMENT CONFERENCE. For information about telephone appearances call **COURTCALL** at (888)882-6878.
2. Parties are responsible for reviewing and following the Case Management Order of the assigned judge. The orders are located at http://slocourts.net/forms_filing.
3. Each party must file and serve a Case Management Statement at least 15 days before the conference.
4. The person appearing at the first Case Management Conference must be familiar with the case and prepared to discuss suitability of the case for mediation, binding arbitration, judicial arbitration or some form of alternative dispute resolution.
5. Trial will be set within the 11th or 12th month after the filing of the Complaint. Counsel must arrange their schedules, reserve dates with witnesses and schedule trial preparation with this in mind. Continuances will be granted only on a clear showing of good cause.
6. All law and motion matters will be calendared in the department of the assigned judge and filed with the Clerk's office.
7. Each party should be prepared to show cause why sanctions should not be imposed for a failure to comply with these rules. **LIMITED JURISDICTION ONLY;** unless the parties have entered into arbitration as required by Local Rules 9.00 and 26.00.

**SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SAN LUIS OBISPO, PASO
ROBLES BRANCH**

Department 2

**STANDING CASE MANAGEMENT ORDER
FOR CASES ASSIGNED TO THE HON. GINGER E. GARRETT**

INSTRUCTIONS TO PLAINTIFF(S)/CROSS-COMPLAINANT(S):

YOU shall serve a copy of this Standing Case Management Order on all Defendants/Cross-Defendants at the same time the complaint/cross-complaint is served.

I. GENERAL MATTERS

A. It is the Court's policy to provide a dignified forum in which to resolve disputes in a peaceful, professional, legally correct and expeditious manner. All of the following rules are designed to achieve these goals. It is not the Court's intention to prohibit a party from raising any issue by any means allowed by Rule of Court, Code or statute. If any of the rules or procedures discussed herein creates a problem, counsel should raise the matter with the Court at the earliest opportunity.

B. Electronic communication with the courtroom clerk is permissible for routine communications having to do with scheduling, stipulated continuances, and/or joint requests. Substantive arguments are not permitted unless approved by the Court. In any correspondence with the clerk, opposing counsel should be copied in order to avoid ex-parte communications. The clerk's email address is Julie.Vierra@slo.courts.ca.gov.

II. CASE MANAGEMENT CONFERENCES ("CMC")

A. Unless otherwise specifically ordered, CMC Statements are required. The Court expects that counsel will be prepared to discuss the current status of the case, discovery, amenability to mediation, and any unusual factual, legal or evidentiary issues that may need resolution. Counsel who fail to appear will typically be set for an OSC hearing why sanctions should not be issued. The initial amount is ordinarily \$250.00.

B. Early mediation is strongly encouraged. Good faith participation in mediation will ordinarily excuse participation in a Mandatory Settlement Conference. The Court will typically sign an order to mediate at the first CMC.

III. MEDIATION

The parties are strongly encouraged to engage in early, meaningful mediation. Mediation will ordinarily take place within 90-120 days of all parties' first appearance, but a longer time may be allowed.

B. Parties who agree to private mediation should comply with the mediator's instructions regarding briefing and payment of fees, which ordinarily should be divided equally.

C. A worthwhile mediation process means that parties, attorneys and any other person whose consent or authority is required to achieve a final disposition of the dispute shall be present, as well as a representative of any insurer who has authority to settle the case for any amount up to the limits of the policy.

IV. LAW AND MOTION MATTERS

A. To the extent practicable, the Court will post tentative rulings on law and motion matters on the Court's website no later than the evening before the hearing. The Court's website is located at www.slocourts.net.

B. When parties agree to submit the matter based on a tentative ruling, or to have a matter taken off calendar, counsel should promptly notify both the courtroom clerk and the research attorneys via e-mail or by phone. This is important in order to avoid unnecessary commitment of judicial resources to moot matters. The contact information for the research attorneys is SloCourtAttorneys@slo.courts.ca.gov.

C. Resolution of Discovery Disputes

1. The parties may stipulate to proceeding with an informal Pretrial Discovery Conference in lieu of filing and serving discovery motions under Sections 2016.010 through 2036.050. In that event, the parties shall proceed as follows:
 - a. All parties to the discovery dispute shall sign a written stipulation electing to resolve the specified discovery dispute(s) between them according to the procedure outlined in this section IV.C. In such event, the parties stipulate to waive their right to proceed with regularly noticed motions and stipulate that the Court can issue binding discovery orders as a full and final resolution of such dispute(s).
 - b. Any request for a Pretrial Discovery Conference must be filed with the clerk's office on the approved form (which is available online or can be requested from the clerk), must include a brief summary of the dispute, and must be served on opposing counsel in the same manner as the request is filed with the clerk. Any opposition to a request for a Pretrial Discovery Conference must also be filed on an approved form (provided by the clerk), must include a brief summary of why the requested discovery should be denied, must be filed within two (2) business days of receipt of the request, and must be served on opposing counsel in the same manner as the opposition is filed with the clerk.
 - c. No other pleadings, including but not limited to exhibits, declarations, or attachments, will be accepted.
 - d. The parties will be notified by minute order whether the request has been granted or denied and, if granted, the date and time of the Pretrial Discovery Conference.
 - e. The Court will issue a binding order at the conclusion of the Pretrial Discovery Conference.

D. Default Prove-ups

1. The Court strongly encourages parties to submit evidence of damages in support of a judgment after default in the form of written declarations. Accordingly, hearings to receive live testimony and other evidence reflecting damage claims will not be scheduled until after the party seeking a default judgment has first attempted to prove the nature and extent of monetary damages by written declarations. If live testimony is required after review of written declarations, the Court will contact the party to schedule a hearing.

V. READINESS CONFERENCE

- A. These conferences are typically scheduled during the week before trial. At these conferences, trial counsel should, unless excused in advance, be *personally present*, and prepared to discuss at least the following topics:
 1. Estimated trial length. A jury trial will ordinarily be in session from Monday through Friday from 10:30 to 4:40 p.m.
 2. Number, timing and availability of witnesses, as well as any special witness needs, or the need to call witnesses out of order.
 - a. Counsel have responsibility for arranging the appearance of all witnesses during their presentation of the case so as to eliminate delays. Counsel should confer among themselves as to when witnesses will be needed *at least 24-48 hours in advance of a witness' testimony*.

- b. Counsel are to inquire of their clients and witnesses to determine whether they are in need of any type of accommodation, whether with an interpreter, under the Americans with Disabilities Act, or any other type of assistance.
3. Numbering and exchange of exhibits. The parties are encouraged to agree upon an exhibit numbering system. Exhibits in the case-in-chief shall be pre-marked and exchanged *no later than the morning of trial and earlier if feasible*. The use of exhibit books or binders is strongly encouraged
4. Voir dire procedures, mini-opening statements, and jury questionnaires. Counsel should attempt to agree upon a brief neutral statement of the case to be read to the prospective jury panel.
5. Jury instructions and verdict forms.
 - a. Counsel are to deliver all proposed instructions, verdict forms and requests for special findings to the Court and to opposing counsel *no later than the morning of trial*. Proposed instructions shall be complete in all respects without unfilled "blanks" or "bracketed" portions.
 - b. Either before or shortly after trial starts, counsel are to meet and confer with the goal of reducing the amount of contested jury instructions and/or verdict forms. Within two (2) court days after beginning trial, all counsel should notify the Court in writing as to which of the proposed instructions and verdict forms, are acceptable to all parties, and which are disputed.
6. Stipulations to reduce the length of trial. Counsel should consult with each other regarding all possible stipulations and reduce them to writing. In particular, counsel should consider waiving the necessity for authentication/foundational evidence for all trial exhibits, unless authentication is an important issue.
7. Motions in limine. Prior to hearings on motions in limine, counsel should review *Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659, 669-677, and its progeny. Counsel shall advise their clients and witnesses about rulings on motions in limine that pertain to evidentiary issues. Counsel will be held responsible for any violations of rulings on motions in limine.

VI. TRIAL

- A. The Court will typically hear organizational and scheduling matters, procedural issues and in limine motions at the beginning of trial, including any matters left over or continued from the Readiness Conference.
 1. Originals of all depositions to be used in the trial are to be lodged with the clerk at the beginning of trial. At the end of the trial, these depositions can be picked up from the clerk, or they can be returned by mail at the party's expense.
- B. Jury Selection Procedures
 1. Jury selection ordinarily begins at 1:30 p.m. the first day of trial.
 2. Mini opening statements of no more than 3 minutes per side are encouraged prior to jury selection.
 3. After the entire panel is screened for hardship, eighteen names are drawn at random, and voir dire is conducted. Unless otherwise ordered, a time limit of twenty minutes per side for 18 prospective jurors will apply.
 4. Challenges for cause are exercised and ruled upon at sidebar. Upon request, counsel will be given the opportunity to make a record of any unreported sidebar conference once the jury is not present.
 5. Two alternate jurors are typically selected. If it becomes necessary to substitute an alternate juror, the first alternate chosen will be the first substitute, unless otherwise ordered in advance of selection of alternates.

