

1 **MAYALL HURLEY**
2 **A Professional Corporation**
3 **2453 Grand Canal Boulevard**
4 **Stockton, California 95207**
5 **Telephone (209) 477-3833**
6 **Facsimile (209) 473-4818**
7 **NICHOLAS F. SCARDIGLI**
8 **CA State Bar No. 249947**

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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Joshua Teixeira, Deputy

9 **Attorneys for Plaintiff AMBER TANORI**

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF STANISLAUS**

12 **AMBER TANORI,**

13 **Plaintiff,**

14 **vs.**

15 **TAI BOGAN; THE BOGAN LAW FIRM, A**
16 **PROFESSIONAL CORPORATION; and**
17 **DOES 1-10, inclusive,**

18 **Defendants.**

Case No.: CV-21-000464

FIRST AMENDED COMPLAINT FOR
DAMAGES AND PENALTIES FOR

1. SEX HARASSMENT
2. RETALIATION
3. FAILURE TO PREVENT
HARASSMENT AND RETALIATION
4. VIOLATIONS OF LABOR CODE
§ 2698 *ET SEQ.* (PAGA)

JURY TRIAL DEMANDED

19 Plaintiff Amber Tanori (“Tanori”) brings this action against defendants Tai Bogan
20 (“Bogan”); The Bogan Law Firm, A Professional Corporation (“Bogan Law”); and Does 1-10,
21 inclusive as referred to herein, for general, compensatory, and punitive damages, penalties,
22 injunctive and declaratory relief, costs and attorneys’ fees, and interest, resulting from the
23 defendants’ unlawful conduct, and as grounds therefore alleges:

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1 **PARTIES**

2 1. Tanori is and/or was at all times relevant herein an individual; a resident of
3 Stanislaus County, California; and employed in Stanislaus County, California.

4 2. Bogan is and/or was at all times relevant herein an individual; a licensed
5 California attorney; the sole shareholder of Bogan Law; a resident of California; and a
6 “supervisor” as defined by Gov. Code § 12926(t).

7 3. Bogan Law is and/or was at all times relevant herein a California professional
8 corporation and an “employer” as defined by Gov. Code §§ 12926(d) and 12940(j)(4)(A).

9 4. Tanori is not aware of the true names and capacities of the defendants sued herein
10 as Does 1-100, whether individual, corporate, associate, or otherwise, and therefore sues such
11 defendants by these fictitious names. Tanori will amend this complaint to allege their true names
12 and capacities when ascertained. Tanori is informed and believes, and on that basis alleges, that
13 each of the fictitiously named defendants is responsible in some manner for the occurrences
14 herein alleged and that Tanori’s injuries herein alleged were legally caused by such defendants.
15 Unless otherwise indicated, each defendant was acting within the course and scope of said
16 agency and/or employment, with the knowledge and/or consent of said co-defendant.

17 **VENUE AND JURY TRIAL DEMAND**

18 5. Venue is proper in this Court because unlawful acts alleged herein as to Tanori
19 took place in Stanislaus County and Tanori was employed by Bogan Law in Stanislaus County.

20 6. Tanori hereby demands a jury trial.

21 **GENERAL ALLEGATIONS**

22 7. Tanori was employed as a paralegal by Bogan Law in Modesto, California, from
23 January 2018 until her unlawful termination on October 20, 2020.

24 8. In early 2020, Bogan, a practicing attorney and the namesake and sole shareholder
25 of Bogan Law, began sexually harassing Tanori at work.

26 9. The sex harassment, which continued persistently until Tanori’s unlawful
27 termination, was physical, verbal, and written.

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1 10. The harassment took the form of both hostile work-environment harassment and
2 quid-pro-quo harassment.

3 11. For instance, Bogan’s physical harassment included forcibly massaging Tanori’s
4 neck and shoulders without her consent.

5 12. On these occasions, Tanori would tell Bogan to stop, but he would become more
6 aggressive while continuing with his unwelcomed physical harassment.

7 13. Bogan’s verbal harassment was also severe and pervasive and included, for
8 example, asking Tanori to perform oral sex on him (e.g., to give him a “blowjob” or “head”) and
9 to sit on his lap.

10 14. Bogan also harassed Tanori in writing, such as when he texted her asking whether
11 a female client would “sit on [his] face” and telling Tanori to “rub [her] clit.”

12 15. Bogan also made job benefits and favorable working conditions (for example, pay
13 raises and monetary bonuses) contingent upon Bogan Law’s female staff’s acceptance of his
14 sexual advances and conduct, including oral sex.

15 16. Bogan denied benefits and conditions to Tanori because she refused to accept his
16 sexual advances and conduct.

17 17. In October 2020 Tanori complained to Bogan Law’s office manager and to
18 Bogan’s legal assistant, one of whom reported Tanori’s complaint to Bogan.

19 18. In retaliation for Tanori’s complaint, Bogan Law, directly through Bogan,
20 terminated Tanori’s employment on October 20, 2020.

21 19. Aware of the sex harassment, Bogan Law failed to take all reasonable steps to
22 prevent harassment from occurring.

23 20. On November 17, 2020, Tanori filed a complaint with the Department of Fair
24 Employment & Housing (“DFEH”) against Bogan and Bogan Law based on the unlawful
25 conduct described above. That same day, the DFEH issued Tanori a right-to-sue notice, which
26 was served on Bogan and Bogan Law by certified mail.

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FIRST CAUSE OF ACTION
VIOLATION OF GOV. CODE § 12940(j)
(Sex Harassment)
Against Bogan, Bogan Law, and Does 1-10

21. Tanori hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

22. The Fair Employment and Housing Act (“FEHA”) prohibits an employer or any other person from harassing an employee on the basis of actual or perceived race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Gov. Code § 12940(j). Sexually harassing conduct need not be motivated by sexual desire. Gov. Code § 12940(j)(4)(C). FEHA also provides that harassment by an employee, other than an agent or supervisor, shall be unlawful if the entity, or its agents or supervisors knows or should have known of the conduct and fails to take immediate and appropriate corrective action. Gov. Code § 12940(j). In addition, an employee is personally liable for any harassment prohibited under Gov. Code § 12940 that is perpetrated by the employee. Gov. Code § 12940(j)(3).

23. As set forth above, Bogan, Bogan Law, and Does 1-10 unlawfully harassed Tanori in violation of FEHA.

24. As a result of the conduct, Tanori has been injured.

25. Bogan’s, Bogan Law’s, and Does 1-10’s actions towards Tanori were committed by them, their officers, directors, and/or managing agents, and/or employees in an oppressive, fraudulent, and malicious manner, and ratified by them, in order to injure or damage Tanori, thereby justifying an award of punitive damages.

26. Wherefore, Tanori seeks relief as set forth below.

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SECOND CAUSE OF ACTION
VIOLATION OF GOV. CODE § 12940(h)
(Retaliation)
Against Bogan Law and Does 1-10

27. Tanori hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

28. FEHA explicitly prohibits an employer from retaliating or otherwise discriminating against an employee for opposing any practices forbidden under FEHA or for filing a complaint, testifying, or assisting in any proceeding under FEHA. Gov. Code § 12940(h).

29. As set forth above, Bogan Law and Does 1-10 unlawfully retaliated against Tanori for opposing practices forbidden under FEHA and for filing a complaint with the DFEH.

30. As a result of the conduct, Tanori has been injured.

31. Bogan Law's and Does 1-10's actions towards Tanori were committed by them, their officers, directors, and/or managing agents, and/or employees in an oppressive, fraudulent, and malicious manner, and ratified by them, in order to injure or damage Tanori, thereby justifying an award of punitive damages.

32. Wherefore, Tanori seeks relief as set forth below.

THIRD CAUSE OF ACTION
VIOLATION OF GOVERNMENT CODE § 12940(k)
(Failure to Prevent Harassment and Retaliation)
Against Bogan Law and Does 1-10

33. Tanori hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

34. FEHA requires an employer to take all reasonable steps necessary to prevent harassment and retaliation from occurring. Gov. Code § 12940(k).

35. Nevertheless, as set forth above, Bogan Law and Does 1-10 failed to prevent the sex harassment, in violation of FEHA.

1 36. As a result of the conduct, Tanori has been injured.

2 37. Bogan Law's and Does 1-10's actions towards Tanori were committed by them,
3 their officers, directors, and/or managing agents, and/or employees in an oppressive, fraudulent,
4 and malicious manner, and ratified by them, in order to injure or damage Tanori, thereby
5 justifying an award of punitive damages.

6 38. Wherefore, Tanori seeks relief as set forth below.

7 **FOURTH CAUSE OF ACTION**
8 **VIOLATIONS OF LABOR CODE § 2698 ET SEQ.**
9 **(Private Attorneys General Act)**
 Against Bogan Law and Does 1-10

10 39. Tanori hereby realleges and incorporates by reference each and every allegation
11 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with
12 the allegations of this cause of action.

13 40. Pursuant to the provisions of Labor Code § 2699.3, an aggrieved employee may
14 pursue a civil action arising under the California Private Attorneys General Act of 2004
15 ("PAGA") after the following requirements have been met:

- 16 a. The aggrieved employee shall give written notice by certified mail to the
17 LWDA and the employer (hereinafter "Employee's Notice") of the
18 specific provisions of the Labor Code alleged to have been violated,
19 including the facts and theories to support the alleged violations;
- 20 b. The LWDA shall provide notice (hereinafter "LWDA's Notice") to the
21 employer and the aggrieved employee by certified mail that it does not
22 intend to investigate the alleged violation within 60 calendar days of the
23 postmark date of the Employee's Notice. Upon receipt of the LWDA's
24 Notice, or if the LWDA does not provide notice within 65 calendar days
25 of the postmark date of the Employee's Notice, the aggrieved employee
26 may commence a civil action pursuant to Labor § 2699 to recover civil
27 penalties in addition to any other penalties to which the employee may be
28 entitled.

1 41. On December 1, 2020, Tanori provided written notice by online submission to the
2 LWDA, and by certified mail to Bogan Law of Bogan Law’s violations of the Labor Code set
3 forth below, including the facts and theories to support the alleged violations. As of today’s
4 date, more than 65 days have passed without the LWDA providing written notice that it intends
5 to investigate the allegations in the December 1, 2020 notice. Accordingly, Tanori has satisfied
6 the administrative prerequisites under Labor Code § 2699.3 to bring a civil action to recover
7 penalties against Bogan Law under PAGA.

8 42. Within the relevant time period, including within the past year, and in accordance
9 with a uniform policy applied to all of its current and former non-exempt California employees,
10 Bogan Law failed to pay overtime wages at the correct rate to its non-exempt California
11 employees, current and former, including Tanori, in violation of Labor Code § 510, 558, 1194,
12 and 1198. Specifically, Bogan Law has failed to include non-discretionary bonuses when
13 calculating these individuals’ “regular rate of pay” for purposes of lawfully compensating them
14 for overtime earned in the same period as the bonuses, again, in violation of Labor Code § 510,
15 558, 1194, and 1198.

16 43. Also within the relevant time period, including within the past year, and in
17 accordance with a uniform policy applied to all of its current and former non-exempt California
18 employees, Bogan Law has failed to pay sick time at the correct rate to its non-exempt California
19 employees, current and former, in violation of Labor Code § 246, for the same reasons that it
20 failed to pay overtime at the correct rate, namely, Bogan Law has failed to include non-
21 discretionary bonuses when calculating these individuals’ “regular rate of pay” for purposes of
22 paid sick time.

23 44. Also within the relevant time period, including within the past year, and in
24 accordance with a uniform policy applied to all of its current and former non-exempt California
25 employees, and as a result of the overtime-rate and sick-rate violations set forth above, Bogan
26 Law has failed to pay wages in a timely manner, in violation of Labor Code § 204, because it has
27 yet to compensate the non-exempt individuals in California to whom it underpaid overtime and
28 paid sick time – because, i.e., of Bogan Law’s failure to properly calculate the “regular rate of

1 pay” in regards to overtime and paid sick time – well beyond the deadline (i.e., several pay
2 periods have passed since these wages were payable in most instances) to pay such wages under
3 Labor Code § 204.

4 45. Also within the relevant time period, including within the past year, and in
5 accordance with a uniform policy applied to all of its former non-exempt California employees,
6 and as a result of the overtime-rate and sick-rate violations set forth above, Bogan Law has failed
7 to pay wages immediately upon termination, or within 72 hours of resignation, in violation of
8 Labor Code §§ 201 and 202, respectively, because it did not compensate these former non-
9 exempt California employees for all overtime and paid sick time – because, i.e., of Bogan Law’s
10 failure to properly calculate the “regular rate of pay” in regards to overtime and paid sick time –
11 either immediately at the time of termination, in violation of Labor Code § 201 (as with Tanori),
12 or within 72 hours of resignation, in violation of Labor Code § 202. In fact, Bogan Law has
13 failed, to date, to compensate these individuals for the underpayments as to overtime and paid
14 sick time.

15 46. Also within the relevant time period, including within the past year, and in
16 accordance with a uniform policy applied to all of its current and former non-exempt California
17 employees, and as a result of the overtime-rate and sick-rate violations set forth above, Bogan
18 Law has failed to furnish complete and accurate wage statements to the non-exempt individuals
19 in California to whom it underpaid overtime and paid sick time – because, i.e., of Bogan Law’s
20 failure to properly calculate the “regular rate of pay” in regards to overtime and paid sick time –
21 because the wage statements Bogan Law furnished as to pay periods in which overtime and/or
22 sick time was paid at the incorrect rate fail to **accurately** show the following information:

- 23 a. **Actual** gross wages earned, in violation of Labor Code § 226(a)(1);
- 24 b. **Actual** total hours worked, in violation of Labor Code § 226(a)(2)
- 25 c. **Actual** net wages earned, in violation of Labor Code § 226(a)(5); and
- 26 d. **Actual** applicable hourly rates in effect during the pay period and the **actual**
27 corresponding number of hours worked at each hourly rate in violation of Labor
28 Code § 226(a)(9).

1 47. Also within the relevant time period, including within the past year, and in
2 accordance with a uniform policy applied to all of its current and former non-exempt California
3 employees, including Tanori, Bogan Law, having actual and constructive knowledge, knowing
4 that their work schedules and duties would do not allow for such breaks, intentionally and
5 regularly failed to provide all 10-minute rest breaks to its current and former non-exempt
6 California employees, including Tanori, for every 4 hours they worked, in violation of Labor
7 Code §§ 226.7 and 512. In fact, Bogan directly and expressly acted to deprive these individuals
8 of such breaks, making it known to Bogan Law's non-exempt staff that they were not permitted
9 to take all such rest breaks.

10 48. Also within the relevant time period, including within the past year, and in
11 accordance with a uniform policy applied to all of its current and former California employees,
12 Bogan Law failed to indemnify its California employees, including Tanori, for all necessary
13 expenditures or losses incurred in direct consequence of the discharge of their duties, including,
14 for instance, cell phones, cell phone service, internet service, and computer equipment, in
15 violation of Labor Code § 2802. These individuals were forced to incur expenditures and losses
16 in relation to these items and services in direct consequence of the discharge of their job duties.
17 Nevertheless, to date, Bogan Law, aware of the need and use of such items and services, has
18 failed to indemnify these employees, current and former, including Tanori, for the necessary
19 expenditures and losses, in violation of Labor Code § 2802.

20 49. Wherefore, Tanori requests relief as set forth below.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Tanori prays judgment as follows.

23 **As to the First through Third Causes of Action:**

- 24 1. For actual, compensatory, special, and general damages;
- 25 2. For injunctive and declaratory relief pursuant to Gov. Code § 12965, including,
26 but not limited to, a cease-and-desist order requiring Bogan Law to halt its
27 harassing and retaliatory practices; an order requiring Bogan Law to conduct
28 training for all its employees, supervisors, and management on the requirements

of FEHA; and an order requiring Bogan to develop and promulgate an effective policy for preventing harassment and retaliation;

3. For punitive and/or exemplary damages;
4. For statutory attorneys' fees and costs, including but not limited to those available under Gov. Code § 12965(b);
5. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to that available under Civil Code §§ 3287(a) and 3289(b); and
6. For all other and further relief as the Court deems just and proper.

As to the Fourth Cause of Action:

1. For civil penalties recoverable under PAGA, including but not limited to those available under Labor Code §§ 226.3 and 2699(f); and
2. For statutory attorneys' fees and costs, including but not limited to those available under Code of Civil Procedure § 1021.5 and Labor Code § 2699(g);
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code §§ 3287(a) and 3289(b); and
4. For such other and further relief as the court deems just and proper.

DATED: February 9, 2021

MAYALL HURLEY, P.C.

By _____



NICHOLAS F. SCARDIGLI
Attorneys for Plaintiff
AMBER TANORI