

LAW OFFICES OF SCOTT R. AMES
A PROFESSIONAL CORPORATION

Scott R. Ames (SBN 146093)
Erin M. Kelly (SBN 308309)
1880 Century Park East, Suite 614
Los Angeles, CA 90067
Tel: (310) 478-2500
Fax: (310) 478-2501
Email: scott@scottameslaw.com
erin@scottameslaw.com

Attorneys for Plaintiff
YAN SHUE CHEUNG

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

YAN SHUE CHEUNG,

Plaintiff,

v.

ST. JOHN KNITS, INC., a California
corporation; and DOES 1-25, Inclusive,

Defendants.

Case No. 30-2021-01205956-CU-WT-CJC

COMPLAINT FOR: Judge Glenn Salter

- 1. RACE, ANCESTORY, AND
NATIONAL ORIGIN
DISCRIMINATION**
- 2. FAILURE TO TAKE ALL
REASONABLE STEPS TO
PREVENT DISCRIMINATION**
- 3. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICIES**
- 4. PROMISSORY FRAUD**
- 5. VIOLATION OF LABOR CODE
§ 970**
- 6. BREACH OF WRITTEN
CONTRACT**
- 7. VIOLATION OF LABOR CODE §
203**
- 8. PENALTIES UNDER PAGA**

JURY TRIAL DEMANDED

1 Plaintiff YAN SHUE CHEUNG alleges against Defendants ST. JOHN KNITS, INC., a
2 California Corporation, and DOES 1 through 25, inclusive, as follows:

3 **INTRODUCTION**

4 1. Plaintiff Yan Shue Cheung (“Cheung” or “Plaintiff”) was a successful, gainfully
5 employed fashion designer living in New York City when Defendant St. John Knits, Inc. (“SJK”)
6 found and recruited him to join its company in Southern California. SJK needed Cheung’s
7 expertise and creativity to help its struggling brand, and made false promises regarding bonus
8 compensation and job security to lure him away from his New York City home and employer. To
9 make matters worse, ten months after Cheung started his new position with SJK, the company
10 terminated Cheung’s direct supervisor and had him report to its Creative Director Zoe Turner
11 (“Turner”). Turner, who is white, made it clear before knowing anything about Cheung or his
12 work, that she did not like or want to work with him. Over time, the reasons for Turner’s abusive,
13 cold, and dismissive treatment of Cheung became painfully clear: Turner harbored discriminatory
14 animus towards Cheung because he is of Chinese descent. Turner commented on Cheung’s accent,
15 repeatedly ridiculed and expressed disdain for products or materials because they were made in
16 China, made a mocking and racist comment to Cheung asking if he was “moving back to China” in
17 response to his request to leave work for an emergency, and refused to collaborate or work with
18 Cheung. Turner and SJK terminated Cheung on October 23, 2020, a little over two years after he
19 was hired, falsely claiming he was laid off as part of a reduction-in-force. Yet, SJK hired Cheung’s
20 replacement, who is white, one week after Cheung’s departure.

21 2. SJK terminated Cheung during a time of increased violence and discrimination
22 towards Asian Americans. Cheung brings this lawsuit to vindicate his rights, call-out SJK’s
23 discriminatory treatment, and seek redress for the substantial harms to which SJK subjected him.

24 **THE PARTIES**

25 3. Plaintiff YAN SHUE CHEUNG currently resides in the State of New York,
26 although throughout most of the events in question, he resided in the County of Orange, State of
27 California.

1 4. The acts alleged took place in the County of Orange, State of California.

2 5. Defendant ST. JOHN KNITS, INC. is, and at all times herein relevant was, a
3 California corporation with its principal place of business located in the County of Orange, State of
4 California.

5 6. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
6 Does 1 through 25, inclusive, and therefore sues said Defendants by such fictitious names.
7 Plaintiff is informed and believes and thereon alleges that at all times herein relevant each such
8 fictitiously named Defendant was and is responsible in some manner for the occurrences herein
9 alleged, and that Plaintiff's injuries and/or damages were and are directly and/or proximately
10 caused thereby. Plaintiff is informed and believes and thereon alleges that each such fictitiously
11 named Defendant is directly and/or indirectly liable on one or more causes of action set forth
12 herein. SJK and Doe Defendants will sometimes be collectively referred to as "Defendants."

13 7. Plaintiff is informed and believes and thereon alleges that at all times herein
14 relevant, each of the Defendants, including each fictitiously named Defendant, was the agent,
15 servant, joint venture, authorized representative and/or employee of each of the remaining
16 Defendants, and, except as provided herein, in doing the acts and things hereinafter alleged, was
17 acting within the course and scope of said agency, joint venture, representative, servitude and/or
18 employment, consent, approval and subsequent satisfaction of each of the remaining Defendants.
19 Each of the Defendants was authorized and empowered by each of the other Defendants to act and
20 did act as the principal, employee or agent of each of the other Defendants. Plaintiff is further
21 informed and believes and thereon alleges that, except as provided herein, each Defendant was
22 acting within the course and scope of his/her/their/its authority in performing the acts herein
23 alleged, and that the acts of each Defendant as alleged herein were authorized and/or ratified by the
24 other Defendants.

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1 **FACTUAL ALLEGATIONS**

2 **SJK MAKES FALSE PROMISES TO INDUCE CHEUNG TO MOVE TO**
3 **CALIFORNIA AND ACCEPT JOB**

4 8. Cheung is a highly respected and sought after fashion designer of Chinese descent.
5 Born in mainland China and living most of his adolescence in Hong Kong, Cheung moved to
6 London in 2000 to attend Central Saint Martins College of Arts and Design, where he graduated
7 with honors in 2005 with a Bachelor of Arts degree in Fashion Design with Knitwear. Cheung
8 moved to New York City that same year, and spent the next thirteen years living in New York City
9 where he worked for several of the world's top fashion designers and companies including Oscar
10 de la Renta, Donna Karan, Calvin Klein, Jason Wu, and Carolina Herrera.

11 9. Starting in late 2017, SJK representatives contacted Cheung to solicit him to leave
12 his job as Knitwear Director of the Jason Wu Collection, and move to Southern California for a
13 management level position with SJK. Cheung's initial discussions were with an SJK recruiter, but
14 as the discussions progressed, he was solicited by SJK's then Executive Vice President and Chief
15 Merchant Laura Vasquez ("Vasquez") and its then Chief Executive Officer Eran Cohen ("Cohen")
16 to join the company.

17 10. On May 9, 2018, Cheung spoke with Cohen who said that he was assembling a new
18 team of executives, that he wanted Cheung to be part of his new team, and that Cheung would be a
19 key member of the company's new executive team and turnaround plan. He also asked Cheung for
20 his commitment to stay with the company for at least three to four years, and intimated that he was
21 seeking this commitment from all individuals he was considering for his new management team.

22 11. Cheung inquired about bonuses and performance reviews if he accepted a job with
23 SJK. Vasquez told Cheung that he would be subject to a performance review period based on a
24 calendar year (January through December), that company reviews are given in the beginning of the
25 following calendar year, and that because Cheung would be starting mid-year, he would be eligible
26 for a bonus in 2018 that would be pro-rated based on his review and other metrics.

27 12. On May 15, 2018, SJK sent Cheung an offer letter for the position of Vice-President
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1 (“VP”) of Evening Wear, reporting to Vasquez (the “Employment Letter Agreement”). The
2 Employment Letter Agreement provided the following terms: (1) Cheung’s salary was \$330,000
3 per year; (2) Cheung was eligible for a discretionary bonus for 2018 equal to 25% of his base
4 salary, pro-rated based on his mid-year start date; (3) SJK would set “mutually agreed upon goals
5 developed in [the] first thirty (30) days” of his employment to determine his 2018 bonus; (4) for
6 fiscal year 2019 and beyond, Cheung was “eligible to participate in the Company’s Key
7 Management Bonus Plan or a successor plan,” and (5) his target bonus under the Key Management
8 Bonus Plan was 25% of his annual salary, which amounts to \$82,500. A true and correct copy of
9 the fully executed Employment Letter Agreement is attached hereto as Exhibit “A”.

10 13. Cheung relied on the material representations contained in the Employment Letter
11 Agreement and in Vasquez’s representations, and Cohen’s representations regarding at least three
12 to four years of job security, in deciding to leave his job and his home in New York City to accept
13 the VP role at SJK.

14 14. Cheung signed the Employment Letter Agreement on May 22, 2018, resigned from
15 his position as Knitwear Director at Carolina Herrera, and moved from New York City to Laguna
16 Beach, California to become SJK’s VP of Evening Wear in mid July, 2018.

17 15. Cheung’s first day of work at SJK was July 9, 2018.

18 16. Despite its representations that it would set “mutually agreed upon goals in [the]
19 first thirty (30) days” of Cheung’s employment for his 2018 bonus, SJK never set any goals or
20 bonus metrics and consequently failed to pay him any bonus for his first year.

21 17. Likewise, SJK failed to allow Cheung to participate in the company’s Key
22 Management Bonus Plan or successor plan in the second or third year of his employment, and
23 again failed to pay him any bonuses for these years.

24 18. SJK also failed to provide Cheung with any performance reviews or bonus metrics
25 throughout his more than two years with the company. As a result, SJK denied Cheung the
26 opportunity to earn over \$185,000 in bonuses through its false representations.

**CHEUNG'S SUPERVISOR SUBJECTS HIM TO DISCRIMINATORY, HOSTILE, AND
ABUSIVE CONDUCT BECAUSE OF HIS RACE, ANCESTRY, AND NATIONAL
ORIGIN**

19. At SJK, Cheung initially reported to Vasquez, and they enjoyed a successful working relationship throughout the first ten months of Cheung's employment.

20. In May, 2019, SJK abruptly terminated Vasquez, and required Cheung to report to Zoe Turner who was and is SJK's Creative Director.

21. Turner is white.

22. Shortly before Vasquez's termination, Cheung had a meeting with Turner at SJK's Irvine offices to discuss business matters. At one point during their meeting, and out of the blue, Turner told Cheung, "You have strong Chinese accent." Cheung was shocked, as Turner's comment had nothing to do with their conversation. He did not respond, and despite feeling extremely uncomfortable, he maintained his composure and continued the meeting with Turner.

23. As Creative Director, Turner assembled a design team in Europe that was all white. None were of Chinese or Asian descent.

24. During their time working together, Turner treated and interacted with Cheung much differently than Cheung's colleagues who were not of Chinese or Asian descent. Turner rarely made time for Cheung, dismissed or showed no interest in his ideas, diminished his extensive contacts in the fashion industry, ignored his emails, rarely collaborated with him on projects, and basically acted as if he did not exist or matter.

25. On December 21, 2019, Turner asked Cheung and other members of the Irvine design team to work on a Saturday. Cheung's partner called him at work because he locked himself out of the house and needed Cheung to return home to let him in. When Cheung approached Turner and said he had something urgent to discuss with her, she cut him off and said, "What's the matter, are you moving back to China?" Cheung was extremely offended and hurt by Turner's comment, but he gathered himself and told her he needed to go home because his partner had locked himself out of the house and he would return to work immediately after letting him in.

1 26. In June, 2020, SJK's then-CEO Cohen told Cheung that he wanted to create a
2 collection of Cashmere sweaters and asked Cheung and Turner to lead the project. Cheung worked
3 tirelessly on the collection to meet a two-week deadline, and although Turner approved all of his
4 designs and colors, she was otherwise dismissive and did not collaborate or help him on the
5 project. Nevertheless, the Cashmere sweater line that Cheung developed was an immediate success
6 and, upon information and belief, remains one of the company's top selling items.

7 27. Cheung also received positive feedback from SJK's sales team, then-Senior VP of
8 Design and Operations, Stephanie Reiner, then-Chief Financial Officer and Business Consultant,
9 Jessie Chan, and then-CEO Cohen regarding the Cashmere sweater line he developed.

10 28. In September, 2020, Cheung met with Turner to discuss the Cashmere sweater line.
11 Cheung was expecting to receive positive feedback from her given the project's success and the
12 positive feedback he had received, but this was not the case. Turner was angry, falsely criticized
13 Cheung for not following directions, although she provided no specifics, and falsely claimed that
14 the quality of the sweaters was poor because "anything made in China looks like shit." She told
15 Cheung that SJK will never work with this Chinese factory again. She ended the meeting by telling
16 Cheung, "this will never happen again," and Cheung left the meeting deflated and emotionally
17 broken. Cheung was hurt and offended by Turner's prejudiced comments about China.

18 **SJK ABRUPTLY TERMINATES CHEUNG IN A PURPORTED RIF-OF-ONE**

19 29. On Friday, October 23, 2020, Cheung received a call from SJK's Senior Director of
20 Human Resources, Amity Yates ("Yates"), who asked him to come to her office. When he arrived,
21 Turner was also present with Yates. Turner told Cheung that his position had been eliminated as
22 part of a reduction in force ("RIF") and that his termination was effective that day.

23 30. Cheung was the only person terminated as part of this alleged RIF.

24 31. On October 30, 2020, SJK announced it had hired Emma Mulligan ("Mulligan") as
25 its new Knitwear Director for Evening Dresses and Special Day Dresses. Upon information and
26 belief, Mulligan is performing at least 70% of the duties and responsibilities that Cheung
27 previously performed. Like Turner, Mulligan is also white.

32. Upon information and belief, SJK currently employs no persons of Asian descent on its design management team from the Director level and above.

CHEUNG EXHAUSTS HIS ADMINISTRATIVE REMEDIES

33. On or about February 23, 2021, Cheung filed a complaint with the Department of Fair Employment & Housing (“DFEH”) against SJK (the “DFEH Charge”) for, *inter alia*, race, ancestry, and national origin discrimination. The same day, the DFEH issued a Notice of Case Closure and Right to Sue (“Right to Sue Letter”) on Cheung’s DFEH Charge.

34. On or about February 24, 2021, Cheung served true and correct copies of his DFEH Charge and Right to Sue Letter on SJK via certified mail pursuant to Government Code § 12962.

35. On March 30, 2021, Cheung filed an administrative notice with the California Labor Workforce Development Agency (“LWDA”) under the Private Attorneys’ General Act, Labor Code §§ 2698, *et seq.* Cheung submitted his administrative notice through the LWDA’s online filing system with a filing fee of seventy-five dollars (\$75) and served the administrative notice on SJK via certified mail, return receipt requested. The administrative complaint notified the LWDA and SJK of the Labor Code violations set forth in this Complaint. To date, more than sixty-five days have passed since Cheung filed his administrative notice, and Cheung has received no response from the LWDA. Based on the LWDA’s non-response, Cheung believes that the LWDA has decided not to prosecute this case for the penalties that Cheung seeks under PAGA.

FIRST CAUSE OF ACTION FOR
VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT –
RACE, ANCESTRY, AND NATIONAL ORIGIN DISCRIMINATION

(As Against All Defendants)

36. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 35, inclusive, as if fully set forth herein.

37. The California Fair Employment and Housing Act (“FEHA”) prohibits discrimination against an employee because of their race, ancestry, and national origin. (Cal. Gov’t Code § 12940(a).)

1 38. SJK is an employer as that term is defined under FEHA.

2 39. SJK discriminated against Cheung because he is Asian, of Chinese descent, and was
3 born in mainland China by, *inter alia*, subjecting him to discriminatory comments about his race,
4 ancestry, and national origin; subjecting him to discriminatory comments about China and
5 Chinese products; treating him differently because he is of Chinese descent; and terminating his
6 employment and replacing him with an employee who is white. SJK did not subject other
7 employees who were not Asian or of Asian or Chinese descent to such conduct.

8 40. The conduct, statements, and acts described herein were an ongoing part of a
9 continuing scheme and course of conduct. SJK knew the substance of the above-described facts
10 and circumstances and ratified the wrongs and injuries mentioned herein when it was in its ability
11 to prevent, remedy, and/or correct these wrongs. SJK continued to ratify and refused to remedy or
12 correct the aforementioned conduct, notwithstanding the fact that its officials, supervisors and/or
13 managing agents knew or reasonably should have known, and know or reasonably should know, of
14 the conduct and its unlawful motivations.

15 41. As a direct and proximate result of SJK's conduct, Cheung has suffered special
16 damages in the form of lost earnings, benefits, and/or out-of-pocket expenses in an amount
17 according to proof at the time of trial. As a further direct and proximate result of SJK's conduct,
18 Cheung will suffer additional special damages in the form of lost future earnings, benefits, and/or
19 other prospective damages in an amount according to proof at the time of trial.

20 42. As a further direct and proximate result of SJK's conduct, Cheung has suffered
21 mental and emotional pain, distress, and discomfort, all to his detriment and damage in amounts
22 not fully ascertained but within the jurisdiction of this Court and subject to proof at the time of
23 trial.

24 43. In engaging in the conduct alleged herein, SJK acted oppressively, maliciously,
25 fraudulently, and/or outrageously toward Cheung, with conscious disregard for his known rights
26 and with the intention of causing, and/or willfully disregarding the probability of causing, unjust
27 and cruel hardship to him. In so acting, SJK intended to and did vex, injure, and annoy Cheung.

1 Therefore, an assessment of punitive damages should be made against Cheung in an amount
2 sufficient to punish it and to prevent it from willfully engaging in future discriminatory conduct.

3 44. Finally, Cheung is entitled to costs and reasonable attorneys' fees pursuant to
4 California Government Code § 12965(b).

5 **SECOND CAUSE OF ACTION FOR**
6 **VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT & HOUSING ACT –**
7 **FAILURE TO TAKE ALL REASONABLE STEPS TO PREVENT**
8 **DISCRIMINATION**

9 **(As Against All Defendants)**

10 45. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 44,
11 inclusive, as if fully set forth herein.

12 46. SJK failed to take all reasonable steps necessary to prevent the aforementioned
13 discrimination to which Plaintiff was subjected in violation of California Government Code §
14 12940(k).

15 47. The conduct, statements, and acts described herein were an ongoing part of a
16 continuing scheme and course of conduct. SJK knew the substance of the above-described facts
17 and circumstances and ratified the wrongs and injuries mentioned herein when it was in its ability
18 to prevent, remedy, and/or correct these wrongs. SJK continued to ratify and refused to remedy or
19 correct the aforementioned conduct, notwithstanding the fact that its officials, supervisors and/or
20 managing agents knew or reasonably should have known, and know or reasonably should know, of
21 the conduct and its unlawful motivations.

22 48. As a direct and proximate result of SJK's conduct, Plaintiff has suffered special
23 damages in the form of lost earnings, benefits, and/or out-of-pocket expenses in an amount
24 according to proof at the time of trial. As a further direct and proximate result of SJK's conduct,
25 Plaintiff will suffer additional special damages in the form of lost future earnings, benefits, and/or
26 other prospective damages in an amount according to proof at the time of trial.

1 49. As a further direct and proximate result of SJK's conduct, Plaintiff has suffered
2 mental and emotional pain, distress, and discomfort, all to his detriment and damage in amounts
3 not fully ascertained but within the jurisdiction of this Court and subject to proof at the time of
4 trial.

5 50. In engaging in the conduct alleged herein, SJK acted oppressively, maliciously,
6 fraudulently, and/or outrageously toward Plaintiff, with conscious disregard for his known rights
7 and with the intention of causing, and/or willfully disregarding the probability of causing, unjust
8 and cruel hardship to Plaintiff. In so acting, SJK intended to and did vex, injure, and annoy
9 Plaintiff. Therefore, an assessment of punitive damages should be made against SJK in an amount
10 sufficient to punish it and to prevent it from willfully engaging in future discriminatory and
11 harassing conduct.

12 51. Finally, Plaintiff is entitled to costs and reasonable attorneys' fees pursuant to
13 California Government Code § 12965(b).

14 **THIRD CAUSE OF ACTION FOR**
15 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICIES**

16 **(As Against All Defendants)**

17 52. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 51,
18 inclusive, as if fully set forth herein.

19 53. California law prohibits an employer from terminating an employee in violation of
20 fundamental public policies. California law maintains fundamental public policies prohibiting
21 discrimination on the basis of race, ancestry, and national origin. These fundamental public
22 policies are codified under, *inter alia*, California Government Code §§ 12920, 12926, and 12940
23 and Article I, Section 8 of the California Constitution.

24 54. SJK violated all these fundamental public policies in terminating Plaintiff's
25 employment.

26 55. As a direct and proximate result of SJK's conduct, Plaintiff has suffered special
27 damages in the form of lost earnings, benefits, and/or out of pocket expenses in an amount
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1 according to proof at the time of trial. As a further direct and proximate result of SJK's conduct,
2 Plaintiff will suffer additional special damages in the form of lost future earnings, benefits, and/or
3 other prospective damages in an amount according to proof at the time of trial.

4 56. As a further direct and proximate result of these SJK's conduct, Plaintiff has
5 suffered mental and emotional pain, distress, and discomfort, all to his detriment and damage in
6 amounts not fully ascertained but within the jurisdiction of this Court and subject to proof at the
7 time of trial.

8 57. In engaging in the conduct alleged herein, SJK acted oppressively, maliciously,
9 fraudulently, and/or outrageously towards Plaintiff, with conscious disregard for his known rights
10 and with the intention of causing, and/or willfully disregarding the probability of causing, unjust
11 and cruel hardship to Plaintiff. In so acting, SJK intended to and did vex, injury, and annoy
12 Plaintiff. Therefore, an assessment of punitive damages should be made against SJK in an amount
13 sufficient to punish them and to prevent them from willfully engaging in such future conduct.

14 **FOURTH CAUSE OF ACTION FOR**

15 **PROMISSORY FRAUD**

16 **(As Against All Defendants)**

17 58. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 57,
18 inclusive, as if fully set forth herein.

19 59. SJK used knowingly false representations by statements made by then-CEO Eran
20 Cohen, statements made by then-EVP Laura Vasquez, and statements contained in the
21 Employment Letter Agreement to influence, persuade, or engage Cheung to accept employment
22 with SJK and change his residence from New York to Orange County, California.

23 60. Specifically, SJK represented to Cheung that (a) Cheung would have a job with the
24 company for at least three to four years if he accepted the position; (b) Cheung would be subject to
25 a performance review period based on a calendar year, one purpose of which was to determine his
26 annual bonus; (c) SJK performance reviews are given in the beginning of each calendar year to
27 evaluate the employee's performance in the prior year; (d) because Cheung would be starting mid-
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1 year, his 2018 bonus would be prorated based on his review and other metrics; (e) Cheung was
2 eligible for a discretionary bonus for 2018 equal to 25% of his base salary, pro-rated based on his
3 mid-year start date; (f) SJK would set “mutually agreed upon goals developed in [the] first thirty
4 (30) days” of his employment to determine his 2018 bonus; (g) for fiscal year 2019 and beyond,
5 Cheung was “eligible to participate in the Company’s Key Management Bonus Plan or a successor
6 plan;” and (h) his target bonus under the Key Management Bonus Plan was 25% of his annual
7 salary, which amounts to \$82,500.

8 61. These representations were material to Cheung.

9 62. Unbeknownst to Cheung, SJK never intended to perform these promises.

10 63. SJK intended that Cheung rely on these promises in deciding to accept SJK’s
11 employment offer, leave his prior job, and move from New York to Orange County, California.

12 64. Cheung reasonably relied upon SJK’s promises by accepting employment with SJK
13 and moving his residence from New York to Orange County, California.

14 65. SJK failed and refused to honor these promises, and, instead, SJK never set
15 mutually agreeable goals regarding his first year bonus, consequently failed to pay him any bonus
16 for his first year, failed to allow Cheung to participate in the company’s Key Management Bonus
17 Plan or successor plan in the second or third year of his employment, failed to pay him any bonuses
18 for these years, and failed to provide Cheung with any performance reviews throughout his more
19 than two years with the company.

20 66. As a direct and proximate result of SJK’s wrongful conduct, Plaintiff has suffered
21 special damages in the form of past and future lost earnings, benefits and/or out-of-pocket
22 expenses, the loss of security and income associated with his former employment in New York, the
23 costs associated with uprooting himself and moving from New York to Southern California, all of
24 which are in amounts according to proof at the time of trial.

25 67. As a further direct and proximate result of SJK’s wrongful conduct, Plaintiff has and
26 will continue to suffer loss of financial stability, peace of mind and future security, and has and
27 will continue to suffer embarrassment, humiliation, mental and emotional pain and distress and
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1 discomfort, all to his detriment and damage in amounts not fully ascertained but within the
2 jurisdiction of this Court and subject to proof at the time of trial.

3 68. In engaging in the conduct alleged herein, SJK acted oppressively, maliciously,
4 fraudulently, and/or outrageously towards Plaintiff, with conscious disregard for his known rights
5 and with the intention of causing, and/or willfully disregarding the probability of causing, unjust
6 and cruel hardship to Plaintiff. In so acting, SJK intended to and did vex, injury, and annoy
7 Plaintiff. Therefore, an assessment of punitive damages should be made against SJK in an amount
8 sufficient to punish them and to prevent them from willfully engaging in such future wrongful
9 conduct.

10 **FIFTH CAUSE OF ACTION FOR**
11 **VIOLATION OF LABOR CODE § 970**

12 **(As Against All Defendants)**

13 69. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 68,
14 inclusive, as if fully set forth herein.

15 70. California Labor Code § 970 provides, in pertinent part, “No person, or agent or
16 officer thereof, directly or indirectly, shall influence, persuade, or engage any person to change
17 from one place to another in this State or from any place outside to any place within the State, or
18 from any place within the State to any place outside, for the purpose of working in any branch of
19 labor, through or by means of knowingly false representations, whether spoken, written, or
20 advertised in printed form, concerning . . . (b) The length of time such work will last, or the
21 compensation therefore.”

22 71. SJK used knowingly false representations by statements made by then-CEO Eran
23 Cohen, statements made by then-EVP Laura Vasquez, and statements contained in the
24 Employment Letter Agreement to influence, persuade, or engage Cheung to leave his prior job,
25 accept employment with SJK, and thereby change his residence from New York to Orange County,
26 California.

1 72. Specifically, SJK represented to Cheung that (a) Cheung would have a job with the
2 company for at least three to four years if he accepted the position; (b) Cheung would be subject to
3 a performance review period based on a calendar year, one purpose of which was to determine his
4 annual bonus; (c) SJK performance reviews are given in the beginning of each calendar year; (d)
5 because Cheung would be starting mid-year, his 2018 bonus would be prorated based on his review
6 and other metrics; (e) Cheung was eligible for a discretionary bonus for 2018 equal to 25% of his
7 base salary, pro-rated based on his mid-year start date; (f) SJK would set “mutually agreed upon
8 goals developed in [the] first thirty (30) days” of his employment; (g) for fiscal year 2019 and
9 beyond, Cheung was “eligible to participate in the Company’s Key Management Bonus Plan or a
10 successor plan;” and (h) Cheung’s target bonus was 25% of his annual salary, which amounts to
11 \$82,500 (based on his annual salary of \$330,000).

12 73. SJK made these representations to Cheung without intent to perform them.

13 74. Cheung justifiably relied upon these representations by leaving his prior job and
14 relocating his residence from New York to Orange County to accept employment with SJK.

15 75. As a direct and proximate result of SJK’s wrongful conduct, Plaintiff has suffered
16 special damages in the form of past and future lost earnings, benefits and/or out-of-pocket
17 expenses, the loss of security and income associated with his former employment in New York,
18 and the costs associated with uprooting himself and moving from New York to Southern
19 California, all of which are in amounts according to proof at the time of trial.

20 76. As a further direct and proximate result of SJK’s wrongful conduct, Plaintiff has and
21 will continue to suffer loss of financial stability, peace of mind and future security, and has and
22 will continue to suffer embarrassment, humiliation, mental and emotional pain and distress and
23 discomfort, all to his detriment and damage in amounts not fully ascertained but within the
24 jurisdiction of this Court and subject to proof at the time of trial.

25 77. In engaging in the conduct alleged herein, SJK acted oppressively, maliciously,
26 fraudulently, and/or outrageously towards Plaintiff, with conscious disregard for his known rights
27 and with the intention of causing, and/or willfully disregarding the probability of causing, unjust
28

1 and cruel hardship to Plaintiff. In so acting, SJK intended to and did vex, injury, and annoy
2 Plaintiff. Therefore, an assessment of punitive damages should be made against SJK in an amount
3 sufficient to punish them and to prevent them from willfully engaging in such future wrongful
4 conduct.

5 78. California Labor Code § 972 provides that, “any person, or agent or officer thereof
6 who violates any provision of section 970 is liable to the party aggrieved, in a civil action, for
7 double damages resulting from such misrepresentations.” Cheung is therefore entitled to double
8 damages resulting from such misrepresentations.

9 **SIXTH CAUSE OF ACTION FOR**
10 **BREACH OF WRITTEN CONTRACT**
11 **(As Against All Defendants)**

12 79. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 78,
13 inclusive, as if fully set forth herein.

14 80. Cheung and SJK entered an agreement regarding the terms of his employment
15 contained in the Employment Letter Agreement attached hereto as Exhibit “A”.

16 81. Among other terms, the Employment Letter Agreement provided: (1) Cheung’s
17 salary was \$330,000 per year; (2) Cheung was eligible for a discretionary bonus for 2018 equal to
18 25% of his base salary, pro-rated based on his mid-year start date; (3) SJK would set “mutually
19 agreed upon goals developed in [the] first thirty (30) days” of his employment to determine his
20 2018 bonus; (4) for fiscal year 2019 and beyond, Cheung was “eligible to participate in the
21 Company's Key Management Bonus Plan or a successor plan;” and (5) his target bonus under the
22 Key Management Bonus Plan was 25% of his annual salary, which amounts to \$82,500.

23 82. SJK breached the Employment Letter Agreement by, *inter alia*: (1) failing to pay
24 him a pro-rated bonus for 2018; (2) failing to set “mutually agreed upon goals” in the “first thirty
25 (30) days” of, or at any point during, his employment to determine his 2018 bonus; (3) failing to
26 allow Cheung to participate in SJK’s Key Management Bonus Plan or successor plan in the second
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1 or third year of his employment; and (4) failing to pay Cheung bonuses for his second and third
2 years of employment.

3 83. Plaintiff complied with all of the material terms of the Employment Letter
4 Agreement except for those terms excused by SJK's breach and/or those terms that are
5 unconscionable, void, and/or unenforceable.

6 84. As a direct and proximate result of SJK's breach of the Employment Letter
7 Agreement, Plaintiff has suffered special damages in the form of lost wages, including bonuses,
8 and/or benefits in an amount of at least \$185,000 and according to proof at trial.

9 85. The bonus payments that SJK failed to pay Plaintiff are unpaid wages and/or fringe
10 benefits as defined under Labor Code §§ 200, *et seq.* Accordingly, Plaintiff is entitled to recover
11 his attorneys' fees under Labor Code § 218.5, and prejudgment interest under Labor Code § 218.6.

12 **SEVENTH CAUSE OF ACTION FOR**

13 **VIOLATION OF LABOR CODE § 203**

14 **(As Against All Defendants)**

15 86. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 85,
16 inclusive, as if fully set forth herein.

17 87. Labor Code § 201 provides that, if an employer discharges an employee, all wages
18 earned and unpaid at the time of discharge are due and payable immediately. Labor Code § 203
19 provides that, if an employee is not paid all wages due at the time of discharge required by Labor
20 Code § 201, then "the wages of the employee shall continue as a penalty from the due date thereof
21 at the same rate until paid or until an action therefor is commenced; but the wages shall not
22 continue for more than 30 days" (hereafter "waiting time penalties").

23 88. Defendants discharged Plaintiff on October 23, 2020. Defendants owed his unpaid
24 bonus payments no later than October 23, 2020.

25 89. Defendants willfully failed, refused, and continue to refuse to pay Plaintiff the
26 bonus wages he was due at the time of his termination. Accordingly, Plaintiff is entitled to waiting
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time penalties under Labor Code § 203 in the amount equal to thirty days' pay, which amount will be subject to proof at the time of trial.

EIGHTH CAUSE OF ACTION FOR
CLAIM FOR PENALTIES UNDER PAGA
(As Against All Defendants)

90. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 89, inclusive, as if fully set forth herein.

91. On a representative action basis, Plaintiff seeks recovery of penalties under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698, *et seq.*

92. PAGA permits an "aggrieved employee" to recover penalties on behalf of themselves and other current or former employees as a result of an employer's violations of the Labor Code, including but not limited to violation of Labor Code §§ 201, 203, and 970 alleged herein.

93. SJK violated Labor Code § 970 by, *inter alia*, knowingly making false representations to Cheung about the length of time his employment would last and the compensation he would receive for his work, including bonuses, with the intention that Cheung would rely on the representations.

94. SJK violated Labor Code § 201 by, *inter alia*, failing, refusing, and continuing to refuse to pay Cheung the wages, including unpaid bonuses, he was due at the time of his termination.

95. Because SJK willfully failed, refused, and continue to refuse to pay Plaintiff the bonus wages he was due at the time of his termination, SJK is liable under for waiting time penalties under Labor Code § 203.

96. Plaintiff is an aggrieved employee because he was employed by the alleged violator and the alleged violations were committed against him.

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1 97. Plaintiff seeks civil penalties against SJK for its violations of the Labor Code, as
2 provided under Labor Code §§ 203 and 2699(f), plus attorneys' fees and costs, as provided under
3 Labor Code § 2699(g), in amounts to be proven a trial.

4
5 In WHEREFORE, Plaintiff prays for judgment on all causes of action against Defendants
6 as follows:

7 1. For special damages, including, but not limited to, lost earnings, benefits, and/or out
8 of pocket expenses in an amount according to proof at the time of trial, all in an amount set forth
9 above and/or according to proof at the time of trial;

10 2. For further special damages, including but not limited to, lost future earnings,
11 benefits and other prospective damages in an amount set forth above and/or according to proof at
12 the time of trial;

13 3. For general damages in an amount set forth above and/or according to proof at the
14 time of trial;

15 4. For punitive and exemplary damages in an amount according to proof at the time of
16 trial;

17 5. For liquidated damages;

18 6. For civil penalties under PAGA;

19 7. For interest;

20 8. For injunctive and/or equitable relief;

21 9. For reasonable attorneys' fees; and

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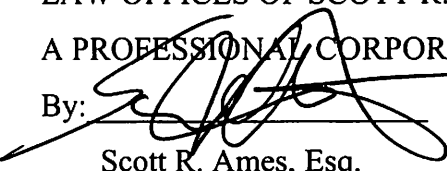
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1 10. For costs of suit.

2
3 DATED: 6/15/, 2021

LAW OFFICES OF SCOTT R. AMES
A PROFESSIONAL CORPORATION

4 By: 

5 Scott R. Ames, Esq.

6 Erin M. Kelly, Esq.

7 Attorneys for Plaintiff Yan Shue Cheung

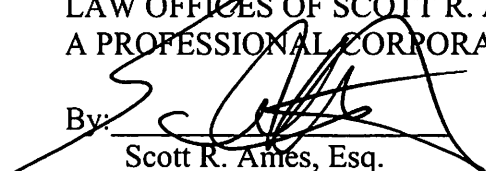
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JURY TRIAL DEMAND

Plaintiff demands a jury trial on all issues so triable.

DATED: 6/15, 2021

LAW OFFICES OF SCOTT R. AMES
A PROFESSIONAL CORPORATION

By: 

Scott R. Ames, Esq.

Erin M. Kelly, Esq.

Attorneys for Plaintiff Yan Shue Cheung

Exhibit *A*

ST. JOHN

Chief Executive Officer
ERAN COHEN

May 15, 2018

CONFIDENTIAL

Yan Cheung

Dear Yan,

It is my pleasure to present you with this offer of employment to join St. John Knits, Inc. (the "Company") in the role of Vice President of Evening Wear. You will report to the Company's Executive Vice President and Chief Merchant. Your target start date is July 9, 2018.

The specifics of St. John's offer of employment are as follows:

Your bi-weekly salary will be \$12,692.31 (\$330,000, if annualized), less legally required withholdings and deductions, payable on a bi-weekly payroll schedule. Your position is exempt and will be paid in accordance with all state and federal laws. Your salary and performance may be reviewed annually, subject to the then-current company practices.

You are eligible to receive a discretionary pro-rated bonus for the Company's fiscal year 2018. The target amount of the bonus opportunity is up to 25% of your annualized base salary, although whether to award a bonus and the amount of any such bonus is based in the Company's sole discretion. This bonus will be pro-rated for your partial year of employment in fiscal year 2018, which ends on October 28, 2018. In evaluating whether to award a bonus for 2018, the Company will primarily focus on your performance and the achievement of mutually agreed upon goals to be developed during your first thirty (30) days.

For fiscal year 2019 and beyond, you will not be eligible for a discretionary bonus, but you will be eligible to participate in the Company's Key Management Bonus Plan or a successor plan. The target bonus opportunity under the Key Management Bonus Plan will be up to 25% of your annualized base salary, absent future adjustments by the Company. In order to be eligible for a discretionary bonus for 2018 or a bonus thereafter under the Key Management Bonus Plan, you must be employed with the Company at the time bonuses are paid, unless the Key Management Bonus Plan provides otherwise. Factors affecting your target bonus include all parameters within the Key Management Bonus Plan, St. John's achievement of its financial goals, as well as your accomplishment of your personal yearly objectives. Bonus payments are not guaranteed.

Your position will be based in Irvine, California. The Company will provide relocation benefits to assist you in your move to California, provided they are within the Company's standard relocation practices. This benefit is provided with the understanding that, if you voluntarily terminate your employment with the Company within one year of your start date, you will be required to reimburse the Company the full amount of relocation benefits paid prior to your last day of employment with the Company. Your relocation package is as follows:

- The Company will pay for relocation costs for the physical move of you and your possessions, as well as incidental expenses associated with your move, up to a total amount not to exceed ten thousand dollars (\$10,000).

- Airfare for two (2) people from New York to Irvine for arrival prior to your intended start date. In addition, one (1) round-trip airfare each for two (2) people for travel between New York and Irvine for relocation purposes.
- In addition, the Company will provide you with temporary housing for sixty (60) days beginning on your start date.
- The company will provide you with reimbursement for a vehicle for sixty (60) days beginning on your start date.
- Relocation benefits may be considered taxable income; in which case it will be included as taxable income in your W2 for the taxable year in which you received the benefit and the Company will not gross up your taxes proportionately. You are advised to confer with your personal tax counsel if there are any questions regarding the taxability of this allowance or any other payment made on behalf of you by the Company.

For each fiscal year while in this position, you will receive a clothing allotment benefit of \$5,000 of Company merchandise at US wholesale value. For the Company's fiscal year 2018, your clothing allotment benefit will be pro-rated. Your paycheck will be taxed on the value of the items at cost on a quarterly basis. The Company reserves the right to change or amend the terms and conditions of this policy/procedure at any time with or without notice.

If you are fired without cause, or your position is eliminated within six months from your start date, the Company shall pay to you severance equal to three (3) months of your then-current base salary, payable in accordance with the Company's then-current payroll practices and less deductions and withholdings. None of the foregoing amounts will be paid to you unless you execute an enforceable release of the Company and its affiliates, owners, Board and employees from any legal liability whatsoever, such release to contain non-disparagement and confidentiality clauses, in a form acceptable to the Company. Such release will be required to be executed and returned within a date not to exceed forty-five (45) days following your date of termination.

In addition, you will be eligible to participate in the Company's benefit program. Please find below a brief synopsis outlining eligibility dates:

- Health Insurance: Eligibility commences the first of the month following one month of continuous employment.
- 401(k): New employees are automatically enrolled in the 401(k) plan (at an employee contribution rate equal to 3% of salary) after thirty (30) days of employment; your contribution will be deducted from your paycheck. You may "opt out" of the Company's 401(k) program (see the plan documents/forms for details).
- Vacation benefit: You will accrue three (3) weeks of vacation per year which, during your first year of employment, may be taken in advance of it being accrued.
- Holiday pay: Eligible upon date of hire.
- Paid Sick Leave: You will be eligible for up to forty-eight (48) hours of Paid Sick Leave in accordance with state law, accrued at a rate of .0333 hours for every Regular Hour paid, in addition to Supplemental Medical Leave Pay which will begin accruing after the first pay period.

Your offer of employment is contingent upon satisfactory reference and background check. Your target start date is July 9, 2018. Please complete, sign and submit to the Company the new hire documents, which will be sent to you by Human Resources via Docusign, prior to your start date. Please report to Human Resources in the Design Building located on the Company's campus at 17522 Armstrong Avenue, Irvine, California 92614.

In compliance with the Immigration Reform and Control Act of 1986, it will be necessary for you to produce documentation indicating your legal right to work in the United States on your first day. This may be in the form of a U.S. Passport, Certificate of U.S. Citizenship, Certificate of Naturalization, unexpired foreign passport with appropriate unexpired work visa, or a Resident Alien Card (Green Card). Alternatively, you can provide a document to establish employment eligibility and proof of identity. A list of acceptable documents may be found at <http://www.uscis.gov/i-9-central/acceptable-documents>.

Your employment shall also be governed by the terms and conditions set forth in the Company's Employee Handbook, as amended from time to time, and any and all provisions established by the Company from time to time with respect to your position or level of employment. For the avoidance of doubt, this includes, without limitation, the fact that your employment is governed by the binding arbitration provisions of the Employee Handbook in the event of any dispute arising out of your employment or the terms of this offer. The parties agree to binding arbitration administered by JAMS pursuant to its Employment Arbitration Rules & Procedures and subject to JAMS Policy on Employment Arbitration Minimum Standards of Procedural Fairness. Judgment on the Award may be entered in any court having jurisdiction. Arbitration shall occur in Orange County, California.

Furthermore, your employment is at will. This means that your employment with the Company is for an unspecified term and is to continue only at the mutual consent of both the Company and yourself. Consequently, either the Company or you may terminate the employment relationship at will, at any time, with or without cause, and with or without advanced notice. This at will aspect of your employment may not be modified, amended or rescinded except by an individual written agreement signed by both you and the General Counsel or the Chief Executive Officer. This constitutes an integrated agreement with respect to the at-will nature of the employment relationship, and there may be no implied or oral agreements that in any way modify this at-will employment policy.

This letter may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument and shall be deemed to have been duly given when either (i) personally delivered (ii) delivered via e-mail with confirmed receipt or (iii) three (3) days after being mailed by United States first-class mail, postage prepaid.

If you have any questions, please call me. Otherwise, please signify your acceptance of this offer by signing this letter and returning it by May 18, 2018.

Sincerely,



Eran Cohen
Chief Executive Officer

cc: Jennifer Bolinger, Vice President of Human Resources, Personnel File

The Company reserves the right at any time, with or without notice, to alter or change job responsibilities, compensation, bonus structure, reassign or transfer job position or assign additional job responsibilities within your general skill set or capabilities.

I HEREBY ACCEPT THE COMPANY'S OFFER OF EMPLOYMENT UPON THE TERMS AND CONDITIONS SET FORTH ABOVE.

Dated _____ Signature _____

Yan Cheung
Page 3
May 15, 2018

In compliance with the Immigration Reform and Control Act of 1986, it will be necessary for you to produce documentation indicating your legal right to work in the United States on your first day. This may be in the form of a U.S. Passport, Certificate of U.S. Citizenship, Certificate of Naturalization, unexpired foreign passport with appropriate unexpired work visa, or a Resident Alien Card (Green Card). Alternatively, you can provide a document to establish employment eligibility and proof of identity. A list of acceptable documents may be found at <http://www.dhs.gov/e-verify>.
(ATTACH ACCEPTABLE DOCUMENTS)

Your employment shall also be governed by the terms and conditions set forth in the Company's Employee Handbook, as amended from time to time, and any and all provisions established by the Company from time to time with respect to your position or level of employment. For the avoidance of doubt, this includes, without limitation, the fact that your employment is governed by the binding arbitration provisions of the Employee Handbook in the event of any dispute arising out of your employment or the terms of this offer. The parties agree to binding arbitration administered by JAMS pursuant to its Employment Arbitration Rules & Procedures and subject to JAMS Policy on Employment Arbitration Minimum Standards of Procedural Fairness. Judgment on the Award may be entered in any court having jurisdiction. Arbitration shall occur in Orange County, California.

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Eran Cohen
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I HEREBY ACCEPT THE COMPANY'S OFFER OF EMPLOYMENT UPON THE TERMS AND CONDITIONS SET FORTH ABOVE.

Dated 5/22/2018 Signature

