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CENTRAL DIST. OF CALIF.  
LOS ANGELES

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UNITED STATES OF AMERICA

19  
20 IN THE UNITED STATES DISTRICT COURT  
21 FOR THE CENTRAL DISTRICT OF CALIFORNIA

22 UNITED STATES OF AMERICA,

23 Plaintiff,

24 v.

25 CALIFORNIA DEPARTMENT OF  
26 CORRECTIONS AND REHABILITATION,

27 Defendant.  
28

CV13-04969-JFW(PLA~~x~~)

CIVIL NO.

DEMAND FOR JURY  
TRIAL

COMPLAINT

1 Plaintiff United States of America, by its undersigned attorneys, alleges:

2 1. This action is brought on behalf of the United States of America (“United States”)

3 2. to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended,

4 42 U.S.C. § 2000e, *et seq.* (“Title VII”).

5 **JURISDICTION AND VENUE**

6 3. The Court has jurisdiction over this action under 42 U.S.C. § 2000e-5(f) and 28  
7 U.S.C. § 1345.

8 4. Defendant, California Department of Corrections and Rehabilitation (“CDCR”) is  
9 a governmental agency created pursuant to the laws of the State of California.

10 5. CDCR is a “person” within the meaning of 42 U.S.C. § 2000e(a) and an  
11 “employer” within the meaning of 42 U.S.C. § 2000e(b).

12 6. Joe Cummings (“Cummings”) filed a timely charge with the California  
13 Department of Fair Employment and Housing (“DFEH”) (Charge No. E-200809-R-1431) on or  
14 about March 13, 2009, alleging that he had been discriminated against on the basis of sex, male,  
15 when he was subjected to a hostile work environment sexual harassment by his coworker,  
16 Kimberley Babers (“Babers”), while employed as a Cook Specialist II by CDCR.

17 7. Pursuant to Section 706 of Title VII, 42 U.S.C. § 2000e-5, DFEH investigated the  
18 charge. DFEH closed its investigation on March 10, 2010, and referred the charge to the United  
19 States Equal Employment Opportunity Commission (“EEOC”) (EEOC Charge No. 37A-2009-  
20 12216) for further review because DFEH was not able to make a determination within one year.

21 8. Upon investigating the matter, the EEOC found reasonable cause to believe that  
22 CDCR discriminated against Cummings because of his sex, in violation of Title VII, attempted  
23 unsuccessfully to achieve a voluntary resolution of the charge through conciliation, and  
24 subsequently referred the charge to the Department of Justice.

25 **CAUSE OF ACTION**

26 9. Cummings began his employment with CDCR in or around October 2007.

27 10. Cummings’s first position with CDCR was as a Cook Specialist II at the Herman  
28 Stark Youth Correctional Facility.

1 11. The Herman Stark Youth Correctional Facility was located in Chino, California.

2 12. As a Cook Specialist II, Cummings was responsible for preparing food for the  
3 wards at the Herman Stark Youth Correctional Facility.

4 13. Babers was also a Cook Specialist II who worked at the Herman Stark Youth  
5 Correctional Facility.

6 14. In or about July 2008, Cummings's direct supervisors were Correctional  
7 Supervising Cooks Carmen Marian-Oldham ("Marian-Oldham") and Michael Olson ("Olson").

8 15. In or about July 2008, Marian-Oldham and Olson reported to Joe Gaydos  
9 ("Gaydos"), Correctional Supervising Cook II. Gaydos reported to Food Manager Edward  
10 Quiles ("Quiles"). Quiles reported to Business Manager Miguel Cervantes ("Cervantes").

11 16. Elisabeth Simmons ("Simmons") and Brenda Murillo ("Murillo") both worked as  
12 Cook Specialist II's at Herman Stark Youth Correctional Facility.

13 17. In or about July 2008, Babers began to refer to Cummings using sexual  
14 innuendoes and she began to direct sexually profane, inappropriate and unwelcome comments at  
15 Cummings on a daily to weekly basis. Ms. Babers's comments included numerous sexual  
16 propositions, repeatedly asking Mr. Cummings "what it would take" for him to have sex with  
17 her.

18 18. In or about July 2008, Mr. Cummings was walking up the stairs to give Ms.  
19 Babers some additional food trays for her satellite kitchen and she met him in the stairwell with  
20 her shirt unbuttoned. Mr. Cummings turned to return to his satellite kitchen and Ms. Babers told  
21 him to "relax and come here." Mr. Cummings turned away from Ms. Babers and returned to the  
22 kitchen.

23 19. Cummings repeatedly told Babers that the sexual comments and advances she  
24 directed at him were offensive and he asked Babers to stop.

25 20. On or about August 19, 2008, when Cummings was stirring a pot on the stove,  
26 Babers came up behind him, struck him upside the head and said "I told you not to talk to that  
27 white Bitch [in reference to Ms. Simmons]." Babers then put her hand down Cummings's pants  
28 and said "when you going to let me do something about this" in reference to his genitalia.

1 Simmons and Marian-Oldham were in the kitchen and observed this incident.

2 21. The next day, Cummings complained to Marian-Oldham that he was tired of  
3 Babers's harassing conduct. Marian-Oldham in turn reported the incident to Gaydos.

4 22. The day after she reported this incident to Gaydos, Marian-Oldham heard Gaydos  
5 laughing and heard him say that "Mr. Cummings is a military man, he should not be worried  
6 about a whinny woman...he should be able to take it."

7 23. Cummings also reported this incident and Babers's other harassing conduct to  
8 Quiles. Specifically, Cummings had a discussion with Quiles in the parking lot in which he  
9 explained that Babers was harassing him and told Quiles that he did not want to work with her.  
10 Quiles responded by telling Cummings that all of the employees needed to learn to work with  
11 each other.

12 24. In addition to these reports, both Cummings and Marian-Oldham repeatedly  
13 provided notice to upper management over a period of several months that Babers was harassing  
14 Cummings. They provided notice pursuant to CDCR policy that all complaints should be  
15 handled at the lowest supervisory level possible. Despite these reports, Babers's harassment of  
16 Cummings continued through on a daily to weekly basis through October 2009.

17 25. Marian-Oldham spoke to Gaydos at least twice a week between August 2008 and  
18 January 2009 to discuss Babers's harassment of Cummings, but Gaydos did not do anything to  
19 stop the harassment. Marian-Oldham attempted to discuss the harassment with Quiles, but  
20 Quiles always directed her back to Gaydos and said that, in accordance with CDCR policy, all  
21 complaints should be addressed at the lowest level possible.

22 26. Cummings also repeatedly reported Babers's harassment to Marian-Oldham,  
23 Olson and Gaydos. However, no action was taken to investigate Cummings's reports or  
24 otherwise stop Babers's harassing conducting.

25 27. Cervantes was also aware prior to March 2009 that Cummings had raised internal  
26 complaints of harassment.

27 28. After months of inaction by CDCR, in March 2009, Cummings filed a complaint  
28 with DFEH alleging that he was being sexually harassed by Babers.

1 29. CDCR was served with Cummings's DFEH complaint in May 2009.

2 30. In or about May 2009, CDCR opened an internal investigation into Cummings  
3 complaint against Babers after CDCR received Cummings's complaint from DFEH.

4 31. During the course of the DFEH investigation, the DFEH uncovered several  
5 allegations about Babers engaging in inappropriate conduct in the workplace that was sexually  
6 harassing and racially harassing. These included three separate internal complaints filed against  
7 Babers by Murillo, Simmons, and Marian-Oldham.

8 32. In August 2009, CDCR concluded its investigation into Cummings's sexual  
9 harassment complaint against Babers and prepared an Investigation Report.

10 33. The Investigation Report indicated that "witness testimony provided evidence  
11 Babers has used inappropriate language and conducted herself contrary to CDCR Policy on  
12 multiple occasions... After a review of the testimonial and documentary evidence, it appears that  
13 there has been a violation of CDCR Equal Employment Opportunity/Sexual Harassment Policy."

14 34. Upon information and belief, Babers was not disciplined for harassing Cummings.

15 35. CDCR, through its senior management, was on notice that Babers had previously  
16 engaged in harassment. However, CDCR took no meaningful steps to correct or discipline  
17 Babers, allowing her harassment of Cummings to continue.

18 36. CDCR did not take any action to separate Cummings and Babers in the workplace  
19 during the pendency of its internal investigation. Rather, Cummings and Babers continued to  
20 work together for five months after CDCR was notified that Cummings had filed a sexual  
21 harassment complaint against Babers, including two months after the CDCR investigator issued  
22 a finding that Babers's conduct was in violation of CDCR's Equal Employment  
23 Opportunity/Sexual Harassment Policy.

24 37. Cummings and Babers were still assigned to work together until October 2009,  
25 when Babers was placed on paid administrative leave pending an investigation into allegations  
26 that she was bringing contraband into the facility.

27 38. As a direct and proximate cause of the harassment that CDCR failed to remedy,  
28 Cummings has suffered damages, including but not limited to emotional distress and loss of

1 enjoyment of life.

2 39. Babers was terminated, effective January 12, 2010, following the internal  
3 investigation regarding her bringing contraband into the facility.

4 40. CDCR has discriminated against Cummings on the basis of his sex, in violation of  
5 Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a), among other ways, by:

- 6 a. subjecting Cummings to sexual harassment during his employment with  
7 CDCR that adversely affected the terms, conditions and privileges of his  
8 employment; and  
9 b. failing or refusing to take appropriate action to prevent and promptly  
10 correct the effects of the discriminatory treatment.

11 41. All conditions precedent to the institution of this lawsuit have been performed or  
12 have occurred.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff United States prays that this Court grant the following relief:

- 15 a. Enjoin CDCR, its officers, agents, employees, and all persons in active  
16 concert or participation with them, from engaging in sexual harassment;  
17 b. Order CDCR to adopt or modify and implement an appropriate policy  
18 designed to address and prevent sexual harassment;  
19 c. Award damages to Cummings to fully compensate him for pain and  
20 suffering caused by CDCR's discriminatory conduct alleged in this  
21 Complaint, pursuant to and within the statutory limitations of Section 102  
22 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a; and  
23 d. Award such additional relief as justice may require, together with the  
24 United States' costs and disbursements in this action.

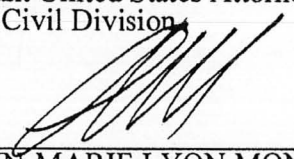
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26 **JURY DEMAND**

27  
28 Plaintiff United States hereby demands a trial by jury of all issues so triable pursuant to

1 Rule 38 of the Federal Rules of Civil Procedure and Section 102 of the Civil Rights Act of 1991,  
2 42 U.S.C. § 1981a.

3  
4 Date: July 11, 2013

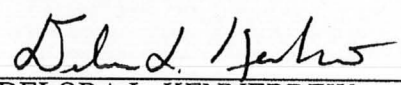
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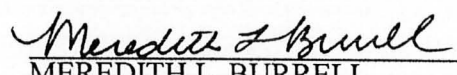
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