[attorney name redacted], Esq. (CSBN //////////#)
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Attorneys for Defendants the DIXON FURNITURE, INC, NANCY DIXON, and MATT DIXON
Note: all names have been changed.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

TOM BROWN, Plaintiff, vs. DIXON FURNITURE, INC, NANCY DIXON; MATT DIXON; and DOES 1 through 100, Inclusive Defendants	Case Number: [redacted] Action Filed: [redacted] Trial Date: _____ **NOTICE OF MOTION AND MOTION BY DEFENDANTS NANCY DIXON AND MATT DIXON FOR SUMMARY JUDGMENT, OR ALTERNATIVELY, FOR SUMMARY ADJUDICATION; MEMORANDUM OF POINTS AND AUTHORITIES** Filed concurrently with Separate Statement of Undisputed Material Facts; and Declarations of NANCY DIXON, MATT DIXON, Linda Mason, and Attorney [redacted]. Hearing date: _____ Hearing time: _____ Hearing Dept: _____

TO THE ABOVE-ENTITLED COURT, ALL PARTIES HEREIN, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on _____ at _____ or as soon thereafter as the matter may be heard, in Department _____ of the above-entitled Court, located at 111 North Hill Street, Los Angeles, California 90012, Defendant NANCY DIXON

(hereinafter "**NANCY**") and Defendant MATT DIXON (hereinafter "**MATT**" and collectively with NANCY "**MOVING DEFENDANTS**"), for themselves and for no other Defendant, will and hereby do move the Court, pursuant to Code of Civil Procedure (hereinafter "**CCP**") § 437c, for summary judgment in favor of MOVING DEFENDANTS and against Plaintiff TOM BROWN (hereinafter "**BROWN**"), and for costs of suit incurred herein and such other relief as may be just. The motion is made on the grounds that, whatever cause(s) of action BROWN might have against his former employer Defendant DIXON FURNITURE, INC. (hereinafter the "**CORPORATION**"), which is a California corporation, the undisputed material facts establish that (a) as to each of the five causes of action in the Complaint, for reasons set forth in detail below (in ISSUE ONE through ISSUE FIVE) the required elements the cause of action do not exist against the MOVING DEFENDANTS, and (b) the MOVING DEFENDANTS' affirmative defense that BROWN was employed by the CORPORATION and that the shareholders, directors and officers of the CORPORATION are not personally liable for the obligations of the CORPORATION (hereinafter the "**CORPORATE VEIL DEFENSE**") defeats all five causes of action in the Complaint.

In the alternative, if for any reason summary judgment is not granted, the MOVING DEFENDANTS will and hereby do move the Court for an order adjudicating each of the following seven issues (hereinafter the "**SEVEN ISSUES**"):

ISSUE ONE: that the MOVING DEFENDANTS are entitled to judgment on the first cause of action for Perceived and/or Physical Disability Harassment and Discrimination in Violation of California Government Code § 12940 et seq (hereinafter the "**FIRST COA**") because

nonemployer individuals cannot be held individually liable for discrimination or retaliation under Government Code (hereinafter "GC") § 12940, nor can they be individually liable for failure to prevent harassment;

ISSUE TWO: that the MOVING DEFENDANTS are entitled to judgment on the second cause of action for Violation of California Family Rights Act (hereinafter "**CFRA**"), California Government Code § 12945.2 et seq. (hereinafter the "**SECOND COA**") because (1) the SECOND COA is not alleged against the MOVING DEFENDANTS, (2) BROWN was not denied leave, and (3) neither NANCY nor MATT was an "employer" under CFRA;

ISSUE THREE: that the MOVING DEFENDANTS are entitled to judgment on the third cause of action for Violation of California Labor Code (hereinafter "**LC**") §§ 232.5 and 6310 et seq. (hereinafter the "**THIRD COA**") because no violation of LC § 232.5 occurred and neither NANCY NOR MATT was an "employer" under LC § 6300;

ISSUE FOUR: that the MOVING DEFENDANTS are entitled to judgment on the fourth cause of action for Violation of California Labor Code § 1102.5 (hereinafter the "**FOURTH COA**") because no violation of LC § 1102.5 occurred;

ISSUE FIVE: that the MOVING DEFENDANTS are entitled to judgment on the fifth cause of action for Retaliation and Wrongful Termination in Violation of Public Policy (hereinafter the "**FIFTH COA**") because

neither NANCY nor MATT violated any public policy in connection with laying BROWN off;

ISSUE SIX: that the MOVING DEFENDANTS are entitled to judgment on all five causes of action because the CORPORATE VEIL DEFENSE defeats the each cause of action as a matter of law;

ISSUE SEVEN: that the MOVING DEFENDANTS are entitled to judgment denying punitive or exemplary damages because (1) the MOVING DEFENDANTS engaged in no wrongful conduct as to BROWN, and (2) the CORPORATE VEIL DEFENSE defeats any punitive or exemplary damage claim as a matter of law;

Therefore, if for any reason summary judgment is not granted, the MOVING DEFENDANTS seek an order that the final judgment in this action shall, in addition to any matters determined at trial, award judgment as established by adjudication of ISSUES ONE through SEVEN.

The motion is based upon this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Separate Statement of Undisputed Material Facts filed concurrently herewith (hereinafter "**SS**"), the Declarations of NANCY DIXON, MATT DIXON, Linda Mason, and Attorney [redacted], each of which is filed concurrently herewith, the proposed order lodged herewith, all pleadings and papers on file in the above-captioned action, and other evidence that may be presented by the MOVING DEFENDANTS prior to or at the hearing on this motion.

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WHEREFORE, the MOVING DEFENDANTS pray as follows:

1. That this Motion for Summary Judgement be granted in favor of the MOVING DEFENDANTS and against BROWN.

2. That BROWN'S Complaint against the MOVING DEFENDANTS be dismissed with prejudice and that BROWN be ordered to take nothing from the MOVING DEFENDANTS by way of the Complaint.

3. That the MOVING DEFENDANTS be awarded their costs of suit.

4. For such other relief that this Court deems just and proper.

Respectfully submitted,

Dated: _____

[attorney name redacted]

_____

[attorney name redacted], Attorneys for Defendants DIXON FURNITURE, INC, NANCY DIXON, and MATT DIXON.

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Definitions set forth in the Notice of Motion and Motion are incorporated herein.

1. Introduction

This is an employment law action in which BROWN is suing his former employer—the CORPORATION—for what he alleges are various work-related injuries. His claims are grossly exaggerated—*to the point of absurdity*. BROWN, quite literally, is attempting to make a mountain out of a pile of chicken feces.

The CORPORATION formerly owned a furniture manufacturing business (**SS 8**), which operated a wood shop which generated a large amount of dust, most of which was automatically collected by a dust collection system (**SS 37**). The CORPORATION also employed a full-time worker whose sole responsibility was to clean up the dust (**SS 38**). Dust is a fact of life in <u>any</u> wood shop (**SS 36**).

BROWN claims the wood shop was an "unsafe" workplace because of the dust. He claims that, after working for several years as a warehouse manager in the wood shop, he developed asthma. He also claims his asthma was aggravated by "cat hair" and "chicken feces" in the workplace. He further claims that his asthma then led to various other work-related grievances. Finally, he claims he was wrongfully terminated in retaliation for his complaints about those grievances.

Five causes of action are pleaded in the Complaint. The first four set forth claims based on statutes the Legislature enacted to protect the rights of workers. The fifth states a claim based on public policy regarding the rights of workers.

If BROWN was injured on the job, then he might have one or more causes action <u>against the CORPORATION</u>. But he has <u>no</u> cause of action against either of the MOVING

DEFENDANTS, who are the officers and directors of the CORPORATION and trustees for the CORPORATION'S only shareholder. On the contrary, the undisputed facts support the Court determining as a matter of law that BROWN cannot pierce the corporate veil.

The CORPORATION was incorporated in 1976 and has observed all the required corporate formalities over the past three decades. The CORPORATION was adequately capitalized (otherwise it could not have stayed business for thirty years, employing many people). Personal and corporate funds were never co-mingled (**SS 78**).

BROWN got sick with asthma in the summer of 2006. At that time, the CORPORATION had about 50 regular employees (**SS 16**). Beginning in the fall of 2006, business declined sharply (hereinafter the "**DOWNTURN**")—evidently due to increasing competition from China—and over the ensuing 15 months the CORPORATION lost 46% regular employees (**SS 18**). One of them was BROWN, who was laid of on November 21, 2006 (**SS 57**). By December 2007, the CORPORATION was down to 27 employees (**SS 17**).

BROWN blames NANCY and MATT for his asthma. He also blames them for treating him badly, *when just the opposite is true*. The undisputed facts reveal that NANCY and MATT treated BROWN with compassion. They authorized him to receive six weeks of paid leave to heal from his asthma (hereinafter the "**PAID LEAVE**"), they held his position open for him while he was gone, and they authorized payment of a portion of his medical bills—even though BROWN was not entitled to any of these benefits under his employment (**SS 33, 34, 35**). BROWN was good worker whom NANCY and MATT cared about. They took compassionate action when he fell ill.

NANCY and MATT were also compassionate towards some animals that got dumped on the property—a starving cat and some chickens (**SS 39, 41**). These animals were kept far

away from the area where BROWN worked, and their feces were cleaned up on a daily basis (**SS 40, 42, 43**). But BROWN claims "cat hair" and "animal feces" contributed to his asthma.

The compassionate acts of the MOVING DEFENDANTS—both toward BROWN and toward the abandoned animals—do not even remotely comprise the kind of "wrongful" conduct that could give rise to piercing the corporate veil. Therefore, the CORPORATE VEIL DEFENSE defeats all five of BROWN'S causes of action against them. In addition, as detailed below, BROWN cannot establish the elements required in any of his five causes of action the MOVING DEFENDANTS.

2. Summary of the Facts

NANCY and MATT are married and have been married for more than 32 years (**SS 1**). Together, they launched a furniture manufacturing business that lasted more than three decades. It prospered for the first two decades. In the third decade, it continued operations but without making any profit. At the end of the third decade the DOWNTURN happened. NANCY and MATT then sold the business and retired. The events alleged in the Complaint took place near the end of this thirty-year history.

2.1. The CORPORATION and the Furniture Manufacturing Business

The CORPORATION is a California Corporation, incorporated in 1976 (**SS 2**). It has exactly one shareholder, which is the Dixon Family Trust of 1985 (hereinafter the "**TRUST**") (**SS 3**). It has exactly two directors—NANCY and MATT (**SS 4**). It has exactly two officers—NANCY, who is both President and Chief Financial Officer, and MATT, who is both Vice-President and Secretary (**SS 5**). The CORPORATION has had an "active" status with the California Secretary of State in each year since its incorporation (**SS 6**). The

CORPORATION has held shareholder meetings and board of directors meetings each year since 1976 in accordance with both its Bylaws and California law (**SS 7**).

The CORPORATION operated a furniture manufacturing business (hereinafter the "**FURNITURE BUSINESS**") in Pasadena, California, and, over the past thirty years, manufactured thousands of items of furniture and shipped them to customers all over the United States (**SS 8**). The real property on which the CORPORATION operated its FURNITURE BUSINESS (hereinafter the "**PROPERTY**") is in Pasadena and is owned by the TRUST (**SS 9, 10**). "[redacted]" is a brand name used by the FURNITURE BUSINESS (**SS 11**).

Due to the seasonal nature of the FURNITURE BUSINESS, each summer the CORPORATION augmented its regular year-round staff with temporary workers who were subsequently let go in the fall (**SS 12**). From approximately 1998 until the present, the CORPORATION failed to make any profits (**SS 13**).

2.2. Downturn in and Sale of the FURNITURE BUSINESS

Beginning in the last quarter of 2006, the CORPORATION experienced a major downturn in its business (hereinafter the "**DOWNTURN**") that greatly exceeded the usual seasonal decline in the fall (**SS 14**). Before the DOWNTURN, the CORPORATION had approximately 50 regular employees (**SS 16**). By December 2007, the CORPORATION was down to 27 employees (**SS 17**). Because of the DOWNTURN, **the CORPORATION ultimately lost more than 46% of its regular employee staff**—most were laid off, but some quit (**SS 18**). Because of the DOWNTURN, the CORPORATION had to close its showrooms (**SS 19**).

On December 14, 2007, the CORPORATION sold all its FURNITURE BUSINESS assets to XYZ Manufacturing, Inc. (hereinafter "**XYZ**") (**SS 15**), because (a) the CORPORATION had not made a profit for nine years, (b) the DOWNTURN had forced it to lay off approximately 46% of its regular employees, and (c) the CORPORATION could no longer afford to operate the business (**SS 20**). Neither NANCY nor MATT nor the CORPORATION sought a buyer for the FURNITURE BUSINESS—instead, they were approached in April 2007 by two individuals, who initiated discussions for XYZ purchasing the FURNITURE BUSINESS (**SS 21**). The filing of the Complaint by BROWN was unrelated to the two buyers initiating those discussions and was also unrelated to the sale (**SS 22**).

2.3. BROWN'S Employment by the CORPORATION

BROWN was employed by the CORPORATION from 1994 to 1999 (hereinafter the "**FIRST STINT**") (**SS 23**). He was again employed by the CORPORATION from 2003 to 2006 (hereinafter the "**SECOND STINT**")—his Federal W-2 statements for 2004, 2005 and 2006 list his employer as "DIXON FURNITURE, INC." (**SS 24**). He was an "at will" employee (**SS 25**). And he was a good employee (**SS 26**). The FIRST STINT ended when BROWN voluntarily quit his employment at the CORPORATION (**SS 27**). The SECOND STINT ended when BROWN was laid off by the CORPORATION on November 21, 2006 (**SS 28**). During most of the SECOND STINT—up until he took his PAID LEAVE—BROWN was the Warehouse/Shipping Manager at the CORPORATION (**SS 61**).

In July 2006 an incident occurred on the PROPERTY wherein BROWN claimed he was having difficulty breathing (hereinafter the "**BREATHING INCIDENT**"). The CORPORATION sent him to its clinic and the doctor diagnosed that symptoms of a

longstanding asthma condition had just surfaced (**SS 31**). When the BREATHING INCIDENT occurred, BROWN was standing in the production office nowhere near the cat or the chickens (**SS 44**). Immediately after the BREATHING INCIDENT, BROWN went on a leave of absence from work for about six weeks because he was suffering from asthma (**SS 32**). While BROWN was absent from work during the PAID LEAVE, the CORPORATION kept his job position open for him (**SS 33**). BROWN had no medical insurance, no money beyond his paycheck, and no relatives in the United States, and, although the CORPORATION had no obligation to do so, out of compassion for BROWN and because he was a long-term employee, the CORPORATION paid a portion, but not all, of his medical expenses in connection with the asthma (**SS 34**). Additionally, and without any obligation to do so, the CORPORATION continued to pay BROWN his full pay while he was absent from work during the PAID LEAVE (**SS 35**).

When BROWN was absent from work on PAID LEAVE during the summer of 2006, the CORPORATION really needed him, and made weekly calls to him to see if he was ready to come back to work (**SS 62**). During BROWN'S absence, the CORPORATION hired a temporary worker to replace him as Warehouse Manager (**SS 63**). As Warehouse Manager, heavy lifting was a part of ADAM'S job. When he returned from his PAID LEAVE, he was offered the help of an assistant to do the heavy lifting in his capacity as Warehouse Manager, but he refused to resume the duties of Warehouse Manager because he did not want to lift furniture anymore (**SS 64**). Since BROWN refused, the temporary worker hired to replace BROWN as Warehouse Manager was made into a regular employee (**SS 65**).

BROWN was among the approximate 23 of the CORPORATION'S regular employees (46%) who got laid off because of the DOWNTURN (**SS 18**). The layoffs began

in September 2006, and it is estimated that BROWN'S November 2006 layoff was anywhere from the 7th to the 11th layoff (**SS 53, 54, 55, 56**). BROWN was laid off because of the DOWNTURN and the consequent lack of work for him to do—at the time, he was the "logical next person" to be let go (**SS 58**). BROWN was not laid off because of his being negative, sarcastic, complaining about his asthma, and/or complaining that NANCY and MATT were responsible for his illness (**SS 59**). Shortly after BROWN was laid off, additional employees were laid off in December 2006 (**SS 60**).

At the time he was laid off, BROWN was working as a Production Assistant in the Production Department, which had two other employees, and there were no other job opportunities for BROWN within the CORPORATION (**SS 66, 67**). That department's work had dwindled to the point that each of its three employees was carrying less than a two-thirds workload with nothing to do in the remaining one-third of their time—after BROWN was laid off the other two employees had full workloads (**SS 70, 71**). The CORPORATION did not consider putting BROWN back into his former warehouse position because BROWN refused to take back his former job in the warehouse (**SS 72**).

Nobody was hired to replace BROWN—indeed, the CORPORATION hired no one from the time BROWN was laid off through the sale of the business to XYZ. (**SS 68, 69**).

2.4. BROWN'S Complaints

In his Complaint, BROWN alleges that he was "harassed, discriminated against and retaliated against by Defendants routine and systematic ostracizing by management and other employees" (Complaint ¶ 16), that the Defendants "discriminated against [him] on the basis of his perceived and/or physical disability(s)" (Complaint ¶ 17), that the so-called discrimination "created an abusive work environment [where he] was harassed, discriminated

against and retaliated against [based on his] perceived and/or physical disability(s) and/or complaints about unlawful conduct" (Complaint ¶ 20, lines 16-18—see also ¶ 75, line 11 "discriminating, harassing and retaliating" and identically ¶ 76 line 22).

If BROWN felt he had been harassed or discriminated against or retaliated against at work, he was required to report it to the CORPORATION, as set forth in the Employee Handbook, and he was also supposed to report any other complaints to the CORPORATION (**SS 45**). He did not (**SS 46**). Nor did he report any unlawful conduct (**SS 48**).

The Complaint alleges that BROWN made "numerous complaints to Defendants' supervisors and managers of the large quantity of dust and cat hair..." (Complaint ¶ 45), that he "made numerous complaints" about unsafe working conditions due to dust, cat hair and bird feces "including. but not limited to NANCY and to MATT" (Complaint ¶¶ 47 and 61). He did not. In fact, he made just one such complaint, it was only about the bird feces, and it was to Linda Mason, the bookkeeper—*he never complained to NANCY or to MATT* (**SS 47**).

Instead, after that single complaint to the bookkeeper that was limited to the matter of bird feces, BROWN complained to the to the Los Angeles County Department of Health Services (hereinafter "**DHS**") concerning dust, cat hair and bird fecal matter on the property (**SS 49**). On November 21, 2006, DHS sent a letter to MATT (hereinafter the "**DHS LETTER**") alleging (a) accumulation of animal excrement, and (b) animals (excluding cats) being within 35 feet of a food establishment—*but the DHS LETTER did not allege any violation concerning dust or cat hair* (**SS 50**). On or about November 20, 2006, and two days before receiving the DHS LETTER, MATT built a cage for the chickens and confined them in it—and when he received the DHS LETTER, MATT informed DHS that the

chickens had been confined to a cage, which resulted in DHS dropping BROWN'S complaint (**SS 51**).

BROWN blamed NANCY and MATT for his sickness because, according to BROWN, there was too much dust in the factory and he was forced to work near the cat hair and bird feces (**SS 74**). And yet, BROWN admits that he was exposed to animal feces in the yard around his own home (**SS 75**). He also admits that he never used any "outside eating area" mentioned in COMPLAINT ¶ 10 (**SS 42**). In the Complaint he alleges he suffered from "severe fright," "severe shock," and "severe pain" (Complaint ¶ 23 line 9, ¶ 37 line 9, ¶ 52 line 26, ¶ 66 line12, and ¶ 80 line 22), but he admits that these were nothing more than his emotional reaction to the BREATHING INCIDENT and to his own symptoms of asthma, as well as chest pains from the asthma (**SS 76, 77**).

BROWN alleges in the Complaint that he was laid off in retaliation for reporting to the DHS (Complaint ¶¶ 49, 62). That is impossible. Neither MATT, NANCY, the CORPORATION nor the TRUST knew about BROWN'S complaint to DHS until MATT received the DHS LETTER—which is dated November 21, 2006, the same date on which BROWN was laid off by the CORPORATION—and MATT received the DHS LETTER via mail after November 21, 2006 (**SS 52**). *BROWN cannot have been laid off in retaliation for the DHS LETTER because the layoff occurred before MATT received the DHS LETTER***.**

BROWN and his attorney are struggling to create some "reason" for his layoff other than the plain reality that the DOWNTURN necessitated a massive layoff. Yet, in response to a special interrogatory asking "Please describe all facts supporting YOUR allegations in COMPLAINT ¶¶ 17, 18h and 62 that YOUR termination by DIXON FURNITURE was not

due to lack of business," BROWN offered no fact to refute that the DOWNTURN occurred or that many other layoffs that were happening at the time (**SS 73**).

3. The Court Has Authority to Grant Summary Judgment, or, in the Alternative to Grant Summary Adjudication on the SEVEN ISSUES.

CCP § 437c(c) provides, "The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

CCP § 437c(f) provides, "A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages,...." Here, ISSUES ONE through FIVE are for the adjudication of causes of action, ISSUE SIX is for the adjudication of an affirmative defense, and ISSUE SEVEN is for the adjudication of a claim for damages.

Therefore, the Court has authority to grant summary judgment, or, in the alternative to grant summary adjudication on the SEVEN ISSUES.

4. Summary Judgment Must Be GRANTED Because BROWN Cannot Establish Any Cause of Action Against NANCY or MATT.

4.1. BROWN Was Never Employed by NANCY or by MATT.

BROWN was employed by the CORPORATION. His Federal W-2 statements for 2004, 2005 and 2006 list the CORPORATION as his employer and do not list NANCY or MATT as his employer (**SS 24, 29**). BROWN has no facts to support his allegations that he was employed by NANCY or MATT (**SS 29**). BROWN was never employed by NANCY or by MATT. NANCY and MATT were BROWN'S supervisors, but not his employer.

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4.2. The FIRST COA Must Fail Because Nonemployer Individuals Cannot Be Held Individually Liable for Discrimination or Retaliation Under GC § 12940, Nor Can They Be Individually Liable for Failure to Prevent Harassment.

The FIRST COA is for "Sexual Harassment, Discrimination and Retaliation in Employment [California Government Code § 12940 et seq.]" (Complaint p. 2, lines 6-7). GC § 12940 et seq. is commonly called the California Fair Employment and Housing Act or "**FEHA**".

In Reno v. Baird (1998) 18 Cal.4th 640, the Supreme Court held that under FEHA nonemployer individuals they cannot be held individually liable for discrimination. "The California Fair Employment and Housing Act (FEHA) (Gov.Code, § 12900 et seq.) generally prohibits employers from practicing some kinds of discrimination.... We conclude that the FEHA.... allows persons to sue and hold liable their employers, but not individuals. Our conclusion also applies to common law actions for wrongful discharge." Id. @ 643.

In the very recently decided Jones v. Lodge at Torrey Pines Partnership (2008) 42 Cal.4th 1158, the Supreme Court likewise held that the same rule applies for retaliation. "In Reno v. Baird...., we held that, although an employer may be held liable for discrimination under the California Fair Employment and Housing Act (FEHA) (Gov.Code, § 12900 et seq.), nonemployer individuals are not personally liable for that discrimination. In this case, we must decide whether the FEHA makes individuals personally liable for retaliation. We conclude that the same rule applies to actions for retaliation that applies to actions for discrimination: The employer, but not nonemployer individuals, may be held liable." Id. @ 1160.

As for "sexual harassment," other than the label in the FIRST COA heading, the Complaint is completely devoid of any allegation of a sexual in nature. The Complaint makes several generalized, one-word allegations of harassment—"harassed" (Complaint ¶ 16 line 9), "harassed" (Complaint ¶ 20 line 17), "harassing" (Complaint ¶ 75 line 11), and "harassing" (Complaint ¶ 76 line 22). But these one-word harassment allegations are, in each instance, lumped together with allegations of discrimination, retaliation, and wrongful termination. While the allegations of discrimination and retaliation are explained in some detail (*see, e.g.*, the lists in Complaint ¶¶ 18 and 33), and wrongful termination is discussed throughout the Complaint, *absolutely no detail whatsoever is alleged as to what actually constituted the so-called harassment*. And the undisputed facts are that BROWN was required to report any harassment (**SS 45**) but never did so (**SS 46**).

Even if harassment did occur and NANCY or MATT failed to prevent it, they cannot be held individually liable for it. "[A] supervisory employee is not personally liable under the FEHA, as an aider and abettor of the harasser, for failing to take action to prevent the sexual harassment of a subordinate employee." Fiol v. Doellstedt (2 Dist.,1996) 50 Cal.App.4th 1318 @ 1326.

4.3. The SECOND COA Must Fail Because It Is Not Alleged Against the MOVING DEFENDANTS, BROWN Was Not Denied Leave, and Neither NANCY Nor MATT Was an "Employer" Under CFRA.

The SECOND COA is for "Violation of the Family Rights Act [California Government Code § 12945.2 et seq.] Against Ella Smith Cosmetics, Inc. and DOES 1 through 100, inclusive" (Complaint p. 7 line 16, emphasis added).

Ella Smith Cosmetics is not named as a party to this action. The SECOND COA is not alleged against the MOVING DEFENDANTS, who have no knowledge of or connection with Ella Smith Cosmetics. But even if the SECOND COA is alleged against the MOVING DEFENDANTS, it must still fail.

GC § 12945.2 is commonly called the California Family Rights Act or "**CFRA**". BROWN alleges that the Defendants "denied and retaliated against Plaintiff for being entitled to Plaintiff's Family Rights and Family Care and Medical Leave..." (Complaint ¶ 33). BROWN was not denied leave. Not only did BROWN take a medical leave of absence (Complaint ¶ 13), but during his absence he was paid his full pay, a portion of his medical expenses were paid, his position was held open for him, and upon return to work he was accommodated into a different position with the same pay (**SS 32, 33, 34, 35, 64**).

"[T]he elements of a cause of action for retaliation in violation of CFRA under the circumstances of this case are as follows: (1) the defendant was an employer covered by CFRA; (2) the plaintiff was an employee eligible to take CFRA leave; (3) the plaintiff exercised her right to take leave for a qualifying CFRA purpose; and (4) the plaintiff suffered an adverse employment action, such as termination, fine, or suspension, because of her exercise of her right to CFRA leave." Dudley v. Department of Transp. (3 Dist.,2001) 90 Cal.App.4th 255 @ 261.

BROWN cannot establish the first element that NANCY or MATT was an "employer" for purposes of CFRA. GC § 12945.2(c)(2) provides that for purposes of CFRA, "'Employer' means either of the following: (A) Any person who directly employs 50 or more persons to perform services for a wage or salary. (B) The state, and any political or

civil subdivision of the state and cities." (Emphasis added.) Neither NANCY nor MATT meets this definition (**SS 79**).

4.4. The THIRD COA and FOURTH COA Must Fail Because No Violation of LC § 232.5 or LC § 1102.5 Occurred, and Neither NANCY Nor MATT Was an "Employer" Under LC § 6300.

The THIRD COA is for "Violation of Labor Code §§232.5 and 6310 et seq. [Unsafe Workplace],." where BROWN alleges that the Defendants "retaliated against Plaintiff for complaining about the unsafe workplace and/or conditions, and retaliated and wrongfully terminated Plaintiff..." (Complaint ¶ 49, emphasis added). The FOURTH COA is for "Violation of Labor Code § 1102.5 [Whistle-blower Statute]," where BROWN alleges that the same very thing in slightly different words that refer back to the allegations in the THIRD COA (see Complaint ¶¶ 60-62). Discrimination is not alleged in connection with workplace safety.

LC §§ 232.5 and 1102.5 each prohibit employers from retaliation and/or wrongful termination arising from an employee disclosing information about the employer's working conditions. BROWN complained once about the bird feces to the bookkeeper (**SS 47**). He then complained to DHS (**SS 49**), but DHS subsequently dropped the matter (**SS 51**). BROWN cannot have been laid off in retaliation for the DHS LETTER because the layoff occurred before MATT received the DHS LETTER (**SS 52**). Nor was he laid off in connection with is one complaint to the bookkeeper—*he was laid of because of the DOWNTURN* (**SS 18, 53, 54, 55, 56, 58, 59, 60**). Therefore, no violation of LC §§ 232.5 or 1102.5 occurred, and the MOVING DEFENDANTS cannot be held liable.

For the purposes of LC § 6300, the definition of "employer" is given at LC § 6304, which provides, "'Employer' shall have the same meaning as in Section 3300." In turn, LC § 3300 defines "employer" (in pertinent part) as "Every person including any public service corporation, which has any natural person in service." LC § 6303 excludes household domestic services. Neither NANCY nor MATT meets this definition of "employer" (**SS 80**). Therefore, the MOVING DEFENDANTS cannot be held individually liable under LC § 6300.

4.5. The FIFTH COA Must Fail Because Neither NANCY Nor MATT Violated Any Public Policy in Connection with Laying off BROWN.

The FIFTH COA is for "Retaliation and Wrongful Termination in Violation of Public Policy". BROWN attempts in the FIFTH COA to spin the various statutes under which he pleaded the first four causes of action as defining "public policy," and on that basis he re-alleges the very same claims pleaded in the first four causes of action under the new rubric of "wrongful termination in violation of public policy". This he cannot do.

In Reno v. Baird, supra, the Supreme Court held, "It would be absurd to forbid a plaintiff to sue a supervisor under the FEHA, then allow essentially the same action under a different rubric. Because plaintiff may not sue Baird as an individual supervisor under the FEHA, she may not sue her individually for wrongful discharge in violation of public policy." Id. @ 664. This reasoning of the Reno applies directly to the decision in Reno that nonemployer individuals cannot be held individually liable for discrimination under FEHA. It also applies to the Supreme Court's recent decision in Jones v. Lodge at Torrey Pines Partnership, supra as to retaliation. Therefore, as to both discrimination and retaliation in

purported violation of public policy as codified in FEHA, BROWN cannot sue the nonemployer individual MOVING DEFENDANTS for wrongful discharge.

More broadly, the reasoning of the Reno can be applied to the SECOND COA, THIRD COA and FOURTH COA and the various statutes under which are pleaded, thereby denying BROWN from suing the nonemployer individual MOVING DEFENDANTS for wrongful discharge.

Besides, as set forth above, the undisputed facts indicate that neither NANCY nor MATT violated any public policy in connection with laying off BROWN. He was laid of because of the DOWNTURN (**SS 18, 53, 54, 55, 56, 58, 59, 60**).

Therefore, summary judgment must be GRANTED because BROWN cannot establish any cause of action against NANCY or MATT.

5. Summary Judgment Must Be GRANTED Because the CORPORATE VEIL DEFENSE Defeats Every Cause of Action.

In 1957 the California Supreme Court stated two general requirements for piercing the corporate veil (also known as invoking the alter ego doctrine):

> "It is the general rule that the conditions under which a corporate entity may be disregarded vary according to the circumstances in each case. [citations] It has been stated that the two requirements for application of this doctrine are (1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow."

Automotriz del Golfo de California S.A. De C.V. v. Resnick (1957) 47 C2d 792 @ 796. *See also* Las Palmas Associates v. Las Palmas Center Associates (2nd Dist., 1991) 235 CA3d 1220 @ 1249, citing this same passage. How are these two general requirements satisfied? Sonora Diamond Corp. v. Superior Court (Sonora Union High School Dist. (5th Dist., 2000)

83 Cal.App.4th 523 is instructive. (Sonora involved one corporation that was owned by another corporation. Some of the circumstances discussed, such as "lack of segregation of corporate records, and identical directors and officers," refer to the two corporations and do not apply here.)

> Ordinarily, a corporation is regarded as a legal entity, separate and distinct from its stockholders, officers and directors, with separate and distinct liabilities and obligations. [citations] A corporate identity may be disregarded—the 'corporate veil' pierced—where an abuse of the corporate privilege justifies holding the equitable ownership of a corporation liable for the actions of the corporation. [citations] Under the alter ego doctrine, then, when the corporate form is used **to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose**, the courts will ignore the corporate entity and deem the corporation's acts to be those of the persons or organizations actually controlling the corporation, in most instances the equitable owners. [citations] The alter ego doctrine prevents individuals or other corporations from misusing the corporate laws by the device of a **sham corporate entity** formed for the purpose of committing fraud or other misdeeds. [citations]
>
> In California, two conditions must be met before the alter ego doctrine will be invoked. First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone. [citations] "Among the factors to be considered in applying the doctrine are **commingling of funds** and other assets of the two entities, the holding out by one entity that it is liable for the debts of the other, identical equitable ownership in the two entities, use of the same offices and employees, and use of one as a mere shell or conduit for the affairs of the other."[citations] Other factors which have been described in the case law include **inadequate capitalization**, **disregard of corporate formalities**, lack of segregation of corporate records, and identical directors and officers. [citations] No one characteristic governs, but the courts must look at all the circumstances to determine whether the doctrine should be applied. [citations]
>
> Here, at least one of the two essential elements of the alter ego doctrine was not established; there was no evidence of any wrongdoing by either Diamond or Sonora Mining or any evidence of injustice flowing from the recognition of Sonora Mining's separate

> corporate identity. **Without such evidence [of wrongdoing], the alter ego doctrine cannot be invoked**. [citations]
>
> Misconduct or injustice was not proved by Sonora Mining's apparent inability to meet the balance of its endowment obligation to the District. The alter ego doctrine does not guard every unsatisfied creditor of a corporation but instead affords protection where some conduct amounting to bad faith makes it inequitable for the corporate owner to hide behind the corporate form. Difficulty in enforcing a judgment or collecting a debt does not satisfy this standard. [citations]
>
> Similarly, misconduct or injustice was not proved by the many advances made by Diamond for the benefit of Sonora Mining because none were shown to have been made with a fraudulent or deceptive intent. [citations] The parent is not "exposed to liability for the obligations of [the subsidiary] when [the parent] contributes funds to [the subsidiary] for the purpose of assisting [the subsidiary] in meeting its financial obligations and not for the purpose of perpetrating a fraud."

Id. @ 538-539, emphasis added.

Here, the only factors the Court must be consider in determining whether to pierce the corporate veil are the following five, taken in the order mentioned (and bolded) above in Sonora:

> Factor One: Was there any conduct by the MOVING DEFENDANTS to perpetrate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose?
>
> Factor Two: Was the CORPORATION a sham corporate entity?
>
> Factor Three: Were funds comingled between the MOVING DEFENDANTS and the CORPORATION?
>
> Factor Four: Was the CORPORATION inadequately capitalized?
>
> Factor Five: Were corporate formalities disregarded?

The undisputed material facts show that the answer to each of these questions is **no**.

Factor One. BROWN is struggling to blame the MOVING DEFENDANTS for his asthma. But, as discussed in detail above, the undisputed facts establish that the MOVING DEFENDANTS committed no "wrong" against BROWN, *much less anything that would rise to the perpetration of a fraud or the violation of a statute*. Factor One does not exist.

Factor Two. The CORPORATION operated the FURNITURE BUSINESS for more than thirty years—employing as many as 50 people at a time, operating showrooms, manufacturing thousands of items of furniture, and shipping them all over the United States (**SS 8, 16**). That does not comprise a sham corporate entity. Nor has BROWN alleged the CORPORATION to be a sham—indeed he was employed by the CORPORATION in two stints totaling some eight years. Factor Two does not exist.

Factor Three. Funds were not comingled (**SS 78**). Nor has BROWN alleged any comingling of funds. Factor Three does not exist.

Factor Four. Inadequate capitalization means that there was simply not enough capital for the business to operate. For example:

> In the instant case the evidence is undisputed that there was no attempt to provide adequate capitalization. Seminole never had any substantial assets. It leased the pool that it operated, and the lease was forfeited for failure to pay the rent. Its capital was 'trifling compared with the business to be done and the risks of loss' [citations].

Minton v. Cavaney (1961) 56 Cal.2d 576 @ 580. Here, in striking contrast, the CORPORATION was sufficiently capitalized *to sustain a substantial business for thirty years*. Nor has BROWN alleged any inadequate capitalization. Factor Four does not exist.

Factor Five. The CORPORATION has had an "active" status with the California Secretary of State in each year since its incorporation (**SS 6**) and held shareholder meetings and board of directors meetings each year since 1976 in accordance with both its Bylaws and

California law (**SS 7**). All the necessary corporate formalities were observed for more than thirty years. Factor Five does not exist.

Furthermore, BROWN admits he has no facts to support his allegations that NANCY or MATT is personally liable for any obligation of the CORPORATION alleged in the Complaint (**SS 30**).

The corporate veil cannot be pierced. Therefore, summary judgment must be GRANTED because the CORPORATE VEIL DEFENSE defeats every cause of action.

6. In the Alternative, the Court Must GRANT the Motion For Summary Adjudication on Each of the SEVEN ISSUES.

In the alternative, if for any reason summary judgment is not granted, court must GRANT the motion for summary adjudication on each of the SEVEN ISSUE because each is supported by the undisputed material facts as set forth above.

7. Conclusion

For the foregoing reasons, the Court should GRANT the motion for summary judgement. In the alternative, the Court should GRANT the motion for summary adjudication on the SEVEN ISSUES.

Respectfully submitted,

Dated: _____

[attorney name redacted]

_____

[attorney name redacted], Attorneys for Defendants DIXON FURNITURE, INC, NANCY DIXON, and MATT DIXON.