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10 **VIRGINIA BURKE**

11 **JAMS ARBITRATION**

12 **VIRGINIA BURKE,**

13 Claimant,

14 vs.

15 **DISCOVERY SALES, INC.,**

16 Respondent.

17 Case No.: 1110013931

18 **CLAIMANT'S ARBITRATION BRIEF**

19 Arbitrator: Hon. Read Ambler

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21 Case No.: 1110013931

1 Claimant VIRGINIA BURKE ("Claimant") submits the following trial brief in anticipation of  
2 the arbitration set to commence on June 4, 2012.

### 3 INTRODUCTION

4 Claimant worked as a sales agent for respondent DISCOVERY SALES, INC. ("DSI") from  
5 October 2007 through October 2009. During that time, as one of the most successful employees at DSI,  
6 she was regularly recognized for her excellent job performance.

7 On August 24, 2009, Claimant was sexually assaulted at work by a man who exposed his erect  
8 penis to her while she was working alone. Claimant was traumatized by this event, and even more so  
9 when the man later returned and exposed his erect penis to another female employee who was working  
10 alone in the same location.

11 As a result of this trauma, Claimant was temporarily disabled. This disability was later  
12 confirmed by an independent medical examination conducted by Luigi Piciuccio, Ph.D. As described  
13 below, Dr. Piciuccio determined that Claimant was totally temporarily disabled as a result of the sexual  
14 assault.

15 Claimant asked DSI to accommodate her temporary disability by taking reasonable steps to  
16 ensure her safety in the workplace. Specifically, Claimant asked either that she not have to work alone,  
17 or that she be transferred to another location. DSI initially had another person present with Claimant  
18 during normal working hours. However, after a few weeks, DSI abruptly withdrew that  
19 accommodation. DSI then inexplicably refused to transfer Claimant to another location, despite that fact  
20 that it had at least two openings for sales agents in other locations.

21 After DSI told Claimant that it would not accommodate her, Claimant insisted that DSI take  
22 reasonable steps to ensure her safety. DSI refused. Claimant then asked to leave work early one time so  
23 that she could see her doctor for the stress and anxiety related to the assault and her concerns about  
24 personal safety. In response, DSI terminated her employment.

25 Claimant brings this case alleging causes of action for: (1) wrongful termination in violation of

1 public policy; (2) constructive discharge in violation of public policy; (3) disability discrimination under  
2 the California Fair Employment and Housing Act, Government Code section 12900, et seq. ("FEHA");  
3 (4) failure to provide reasonable accommodation; (5) failure to engage in the interactive process; (6)  
4 failure to prevent discrimination; (7) intentional infliction of emotional distress; (8) failure to pay all  
5 wages due upon discharge; and (9) penalties for failure to pay all wages due upon discharge. For ease of  
6 reference, the Complaint is attached at Exhibit A. This brief will focus on Claimant's causes of action  
7 for wrongful termination, as well as her disability-based causes of action.

### 8 STATEMENT OF FACTS

9 DSI is in the business of selling newly built homes that are owned by its parent corporation. It is  
10 part of the Seeno Homes umbrella of businesses. DSI operates a number of developments in Northern  
11 California, primarily in Contra Costa and Solano Counties. In 2009, DSI sold a total of 619 new houses.

12 Claimant began working as a Sales Manager for DSI in October 2007. Her job duties consisted  
13 of selling homes in various new housing developments throughout northern California. Claimant  
14 normally waited in one of the empty houses that had been reconfigured as a sales office for potential  
15 new customers to visit the development. She would then engage with the customers and attempt to sell  
16 them a home. Sometimes Claimant worked alone, and sometimes there were other employees present.

17 Claimant was paid a salary of \$6000 per month for her first three months of employment. After  
18 that, she was paid on a straight commission. In 2007, Claimant earned \$16,500 from DSI for  
19 approximately 3 months of work. In 2008, she earned \$117,296 from DSI. In 2009, she earned  
20 \$181,300 for approximately eight and a half months of work.<sup>1</sup>

21  
22  
23  
24 <sup>1</sup> As set forth below, Claimant was placed on involuntary disability leave for one month in 2009. She  
25 was then terminated on October 19, 2009. Claimant therefore worked a total of eight and a half months  
for DSI in 2009.

1 During her two years with DSI, Claimant worked under the supervision of Regional Manager  
2 Mysti Matthews for approximately one year and forty weeks. The other 13 weeks she worked under the  
3 supervision of Regional Manager Carey Hendrickson.

#### 4 Claimant's Job Performance

5 During her time at DSI, Claimant was regularly ranked as one the top five Sales Managers. For  
6 example, in 2008 she was in the Presidents Club in quarters one and four, and in the Presidents Elite  
7 Club in quarter three. See Exh. B. In 2009, she received an award for "Outstanding Sales Performance"  
8 in quarter one and was in the Presidents Premier Club in quarter two. See Exh. C.

9 Furthermore, according to Ms. Hendrickson, Claimant's job performance was improving in  
10 2009. Deposition of Carey Hendrickson ("Hendrickson Depo."), Exh. D, at 199:18-200:21. This  
11 testimony is corroborated by the fact that Claimant earned significantly more in commissions in 2009  
12 than she earned in 2008.

13 In early 2009, Claimant was transferred to a development that required her to commute two  
14 hours each way. This caused her some anxiety, because she wanted to keep her job but felt that she  
15 could not sustain that amount of travel. Claimant saw her doctor one time for this anxiety, during which  
16 visit she indicated that she "does not want to cause problems [at work] because she wants to keep her  
17 job." See Exh. E. Subsequently, Claimant was transferred to another development and her anxiety  
18 resolved.

#### 19 Claimant's First Request for Accommodation

20 In April 2009, Claimant began to suffer from low back and thigh pain. This condition was  
21 subsequently diagnosed as polymyalgia rheumatica. It significantly limited Claimant's ability to work  
22 because it made it more difficult for Claimant to walk up and down stairs, to get in and out of cars, and,  
23 generally, to move her legs. Claimant took steroids for this condition, which allowed her to continue to  
24 perform her job duties.

1 Claimant's condition worsened in July 2009. Claimant saw her doctors multiple times because of  
2 the increased physical pain that she was experiencing.<sup>2</sup> See Exh. F. On July 22, 2009, Claimant's  
3 doctor limited Claimant to a four day work week for 30 days. See Exh. G.

4 Claimant notified DSI of this limitation and requested accommodation for it. In response,  
5 Ayman Shahid, DSI's President, placed Claimant on a forced, unpaid leave of absence "until future date  
6 declared by [her] physician rendering [her] fully at capacity to come back to work." See Exh. H.

### 7 Claimant's Transfer to Willows

8 Claimant returned from her forced leave of absence on August 21, 2009. At that time, she was  
9 reassigned to a development in West Sacramento called Willows. Willows was among the most difficult  
10 housing developments run by DSI. Among other things, Willows had the lowest price point and the  
11 fewest sales of any development to which Claimant had ever been assigned.<sup>3</sup> Specifically, discovery  
12 responses produced by DSI in this case indicate that prior to Claimant's arrival at Willows in late  
13 August 2009, a total of three houses had been sold at Willows in 2009. Furthermore, DSI's discovery  
14 responses indicate that before Claimant was assigned to work at Willows on August 21, 2009, there had  
15 been no sales at that development since May 2009.

16 Joe Griffin, the Superintendent at the Willows development, testified that before Claimant was  
17 transferred to Willows the sales had been "pretty slow for some time." Deposition of Joe Griffin  
18 ("Griffin Depo."), Exh. J at 23:17-20. Mr. Griffin also confirmed that after Claimant arrived at the  
19 Willows, there was a positive change in the number of houses being sold.

20 Additionally, prior to working at Willows, Claimant had often had an assistant to help her make  
21 sales. At Willows, she did not have an assistant.

22 \_\_\_\_\_  
23 <sup>2</sup> It should be noted that Claimant had no further complaints about work-related stress, anxiety or other  
24 work-related concerns after her one-time complaint during her February 2009 doctor's visit. The issues  
25 from her February 2009 visit had been effectively addressed and resolved. Visits subsequent to the  
February 2009 office visit focused on Claimant's arthritic pains.

<sup>3</sup> Prior to her request for accommodation, Claimant had been assigned to a development called  
Portofino. Portofino was an upscale development with relatively expensive houses.

1 During her first week at Willows, Claimant made two sales in three days. During the two  
2 months that Claimant worked at Willows, she sold more than ten houses. Ms. Hendrickson was pleased  
3 with the number of sales that Claimant made at Willows. See Exh. D, Hendrickson Depo. at 108:9-11.

4 **Claimant is Sexually Assaulted at Work**

5 On August 24, 2009, Claimant's third day working at Willows, Claimant was sexually assaulted  
6 at work. Specifically, a man later identified as Daniel Bargmann arrived at Willows and pretended that  
7 he was interested in purchasing a house. Claimant then invited Bargmann to look at the available homes  
8 that were for sale. Bargmann left for a short period of time, then returned to Claimant's office, a small  
9 room with no windows.

10 Bargmann then stood in the doorway of Claimant's office, effectively trapping her. At that time,  
11 Bargmann's pants were unzipped, and his erect penis was sticking out.<sup>4</sup> Claimant was terrified and  
12 thought she was going to be raped or worse. Bargmann then put his hand on his penis and stared at  
13 Claimant. Claimant stood up from her seat and braced herself, unable to utter a word. After several  
14 moments, another car pulled up outside of the house that they were in. Bargmann then turned and left.

15 Claimant immediately called Mr. Griffin, who was able to record Bargmann's license plate  
16 number. Mr. Griffin then went back check on Claimant. He found Claimant in the sales office visibly  
17 upset. Mr. Griffin testified that Claimant was crying and seemed scared. See Exh. J, Griffin Depo. at  
18 46:5-23. Claimant cried for approximately one hour after Mr. Griffin reached her. See Exh. J, Griffin  
19 Depo. at 52:3-8.<sup>5</sup> Mr. Griffin called the police and Claimant subsequently filed a police report. See  
20 Exh. J, Griffin Depo. at 48:7-18.

21 \_\_\_\_\_  
22 <sup>4</sup> Throughout this case DSI has attempted to trivialize this incident by referring to it as a "flashing."  
23 This mischaracterization of what happened is extremely offensive and misleading. Ultimately, criminal  
charges were brought against Bargmann. He pled to these charges and was sentenced.

24 <sup>5</sup> Claimant cried for an hour after the Bargmann incident, which is consistent with her having been  
25 traumatized. Mr. Griffin testified that on the day of the incident, while Claimant was upset, she made  
two comments about how good looking Bargmann was, and how "in other circumstances [she] would do  
him right here on the desk." Griffin Depo., Exh. J at 49:6-8. Claimant denies making this comment,

1 Claimant then notified Mr. Shahid and Ms. Hendrickson that she was afraid to work alone at  
2 Willows because she could be raped or sexually assaulted again. Ms. Hendrickson testified that she  
3 knew that Claimant was scared to work at the Willows. See Exh. D, Hendrickson Depo. at 141:17-19.  
4 However, she did not speak with Mr. Shahid about what could be done to ensure that Claimant was safe  
5 in the future. See Exh. D, Hendrickson Depo. at 120:2-9. Nor did she speak to anyone in the Security  
6 Department to ensure that Claimant was safe. See Exh. D, Hendrickson Depo. at 121:16-19.

7 Mr. Shahid ignored the situation completely. He did not even inquire as to what kind of security  
8 was provided at Willows after the first Bargmann assault. Deposition of Ayman Shahid ("Shahid  
9 Depo."), Exh. K, at 137:10-15.

10 For approximately ten days after the initial assault, DSI provided a security guard at Willows  
11 during working hours. During those ten days, Claimant was able to sell a number of houses.

12 However, after those ten days DSI abruptly and without explanation stopped providing that  
13 security guard.<sup>6</sup> When Claimant realized that there was no security guard, she called Callie Mosser, the  
14

15 and Rick Cacciola, a witness who was allegedly present when these comments were made, has no  
16 memory of it. Regardless of what Claimant might have said in her shocked state, there is no dispute that  
17 Claimant was terrified by her experience with Bargmann. See, e.g., the testimony of Ms. Hendrickson  
(Claimant's supervisor):

18 **Q:** Did you conclude from these phone calls that Ms Burke was scared to work alone at  
19 The Willows?

20 **A: Yeah.**

21 **Q:** And did you conclude that Ms. Burke was scared to work alone at The Willows  
22 because of the two Bargmann incidents?

23 **A. Yes.**

24 Hendrickson Depo., Exh. D, at 141:17-23; 137:4-23.

25 <sup>6</sup> Claimant expects DSI to contend that it continued to have "roving security," whereby security guards  
rotated through communities and were occasionally physically present at them. In general, roving  
security guards were not permitted to enter the offices of the sales agents. At Willows specifically,  
roving security covered two locations: Fairfield and West Sacramento. One security officer covered the  
two locations and could conceivably be more than one hour away by car. Mosser Depo., Exh. N at  
12:13- 14:25; 71:14- 72:23.

1 Claims, Safety and Security Manager. Ms. Mosser then spoke with Ms. Henderson, who informed her  
2 that security was no longer needed because Claimant would either be relocated or there would be  
3 someone else to work with her. Deposition of Callie Mosser ("Mosser Depo."), Exh. N at 42:4-16;  
4 67:2-68:3.

5 After Claimant called Ms. Mosser, she then contacted Ms. Hendrickson and Mr. Shahid and told  
6 them that she needed security and was terrified to work alone. She also asked that DSI transfer her to  
7 another location.

### 8 The Second Assault

9 After the security guard was canceled, for a brief period of approximately one week in late  
10 September 2009, DSI hired temporary employees to work at Willows. These temporary employees  
11 worked some days that Claimant worked, and also on the two days per week that Claimant was not  
12 working. One of these employees is named Cindy Nelson.

13 Ms. Nelson started working at Willows on September 19, 2009. During Ms. Nelson's first day  
14 working alone, she was assaulted by Bargmann in almost the exact same manner that Claimant had been  
15 assaulted: Bargmann cornered Ms. Nelson in the lobby of one of the houses at Willows and exposed his  
16 erect penis to her. Ms. Nelson testified at deposition that she was very fearful, scared and "afraid for  
17 [her] life."

18 Claimant learned about this second assault directly from Ms. Nelson the following Wednesday.  
19 On that day, she was working alone. When she learned about the second assault, she immediately called  
20 Ms. Hendrickson and Mr. Shahid to tell them what had happened, and that she was even more terrified  
21 to work alone. Claimant was petrified that Bargmann had come back for her. Mr. Shahid did not return  
22 her telephone call.



1 Ms. Matthews, DSI's other Regional Sales Manager, called Claimant at 4:30 p.m. that day and  
2 told her that if she needed to leave, she could leave. Claimant then went home.

3 Despite the fact that she was terrified, Claimant went to work every day that week. Early the  
4 following week, Claimant met with Ms. Hendrickson and told her that the situation was very serious and  
5 that she was terrified to work at Willows. Ms. Hendrickson said she would speak with Mr. Shahid about  
6 moving Claimant to another development. Ms. Hendrickson then suggested that Claimant have family  
7 or friends come and be with her while she was working. Claimant did so, and had Kathy Silkett, her  
8 sister, come with her to work as often as possible.

9 The following week, Ms. Hendrickson drove to Willows to meet with Claimant. During this  
10 meeting, Ms. Hendrickson told Claimant to "hold on" for two weeks, and that DSI would be moving her  
11 to a new, upscale community called Serenade located in Cordelia, California. Ms. Hendrickson  
12 continued to promise Claimant that she would be moved throughout the first two weeks of October  
13 2009. Claimant was extremely frightened to work alone, but chose to stick it out until her transfer.

14 **DSI Refuses to Transfer Claimant to Another Development**

15 On Saturday, October 17, 2009, Ms. Hendrickson called Claimant. During this call, Claimant  
16 asked Ms. Hendrickson what was happening with the plan to move her to a new development. Ms.  
17 Hendrickson responded, "You are not going to Serenade. Ayman has decided not to send you there."  
18 Claimant then requested to speak with Mr. Shahid about this change. Despite this request, Mr. Shahid  
19 did not call her. Claimant worked that entire day alone.

20 Instead of sending Claimant to Serenade, Mr. Shahid chose to send Lizbeth Alarcon, another  
21 sales agent to that development. At the time of that decision, Ms. Alarcon had been working for DSI for  
22 approximately two months. Mr. Shahid testified that he chose Ms. Alarcon for that position because he  
23 "just wanted to give Liz a chance." See Exh. K, Shahid Depo. at 187:25-188:11.

1 When DSI chose to send Ms. Alarcon to Serenade, this created an opening at Paradise Crest, Ms.  
2 Alarcon's former development. DSI could have chosen to transfer Claimant to Paradise Crest, but  
3 declined to do so.

4 Additionally, another sales agent had recently been terminated, creating a second opening at a  
5 different development. Significantly, neither of these transfers would have cost DSI any money. Nor  
6 would the transfers have required DSI to move or displace another employee. However, instead of  
7 transferring Claimant, DSI insisted that Claimant work alone at Willows.<sup>7</sup>

### 8 Claimant's Second Request for Accommodation

9 On Sunday, October 18, 2009, Claimant again worked alone. During that day, she spoke with  
10 Ms. Hendrickson on the telephone. Ms. Hendrickson told her that she had spoken with Mr. Shahid, and  
11 that he did not want to speak with Claimant. Ms. Hendrickson further told Claimant to "make your  
12 decision."

13 Claimant then had a breakdown. Terrified and crying into the phone, she asked Ms. Hendrickson  
14 how she could do this after promising Claimant that she would be moved to a different community. She  
15 also told Ms. Hendrickson that she had put herself at risk for weeks, and that she was frightened.

16 Claimant then told Ms. Hendrickson that she had an appointment that day at 1:00 p.m. to write a  
17 deal for a sale. She further told Ms. Hendrickson that she was going to leave after that appointment to  
18 see her doctor because of her stress and fear that she was experiencing. Claimant met her client at 1:00  
19 p.m., and then left at approximately 3:00 p.m.

20 Ms. Hendrickson confirmed at her deposition that the call on October 18, 2009, had occurred,  
21 that Claimant had been upset, and that Claimant had told Ms. Hendrickson that she was going to see her  
22

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23 <sup>7</sup> To the extent that DSI contends that Mr. Griffin was present while Claimant was working, that  
24 contention is false. Mr. Griffin was present at the Willows development sometimes, but he was rarely in  
25 any proximity to Claimant. Furthermore, Mr. Griffin left work well before Claimant left work. Thus,  
even on days when Mr. Griffin was present at Willows, Claimant was there alone for several hours at the  
end of the day.

1 doctor the following day for stress related to work. See Exh. D, Hendrickson Depo. at 150:14-152:17.  
2 Both Ms. Hendrickson and Mr. Shahid confirmed that this conversation occurred before Mr. Shahid  
3 informed Ms. Hendrickson that Claimant was going to be terminated. See Exh. K, Shahid Depo. at  
4 65:24-67:9.

### 5 DSI Terminates Claimant

6 At approximately 7:00 p.m. on October 18, 2009, Ms. Hendrickson left Claimant a voice mail  
7 telling her that Sunday, October 18, 2009, was going to be her last day working for DSI. Claimant did  
8 not listen to this voice mail until after the events described below that occurred on October 19, 2009.

9 On Monday, October 19, 2009, Claimant arrived at corporate headquarters in Concord at 8:00  
10 a.m. for a scheduled meeting. She had two sales to turn in. Ms. Hendrickson took Claimant into the  
11 office of Gina Villaseñor, DSI's Human Resources Manager.

12 Ms. Hendrickson then told Claimant that DSI was "letting [her] go."

13 Claimant was extremely upset, and told Ms. Hendrickson, "You can't do that!" Ms. Villaseñor  
14 then handed Claimant a letter telling her that she had resigned. Claimant read the letter, then said, "I  
15 didn't resign. I told you I was going to see my doctor." Claimant then left the building.

16 Ms. Hendrickson testified at deposition that after her meeting with Claimant and Ms. Villaseñor  
17 on October 19, 2009, she told Mr. Shahid what had happened. Mr. Shahid then told Ms. Hendrickson  
18 that he needed her to get a signed letter of resignation from Claimant. See Exh. D, Hendrickson Depo.  
19 at 53:15-54:24. Mr. Shahid denies that he gave this instruction. See Exh. K, Shahid Depo. at 81:9-83:7.

20 After speaking with Mr. Shahid, Ms. Hendrickson began incessantly calling Claimant's mobile  
21 phone, leaving messages asking Claimant to return and sign the resignation letter. Claimant ignored  
22 these calls, and drove to Willows to pick up her personal belongings.

23 Later that morning, Ms. Hendrickson met Claimant at Willows. Ms. Hendrickson stood at the  
24 front door of the house in which Claimant's office was located. She refused to give Claimant her

1 belongings until she signed a letter of resignation. In response, Claimant wrote by hand and signed a  
2 letter stating:

3  
4 I am not resigning my position with Discovery Homes. I told Carey [Ms. Hendrickson] over the  
5 weekend that the stress of my job, pay, and unsecurity [sic] I felt at my office I would be  
6 speaking with my Dr. this morning. I was led into Gina's office by Carey at 9 AM today and  
7 told I was being let go! See Exh. L.

8 Claimant gave this letter to Ms. Hendrickson and asked her for a copy. Ms. Hendrickson then  
9 provided Claimant with a copy.

10 Despite this letter, on October 26, 2009, Ms. Villaseñor wrote to Claimant that, "It is with regret  
11 that we accept your resignation effective October 19, 2009." At no time did Claimant resign from her  
12 position with DSI.

13 Approximately one week later, Ms. Matthews called Claimant. As described above, Claimant  
14 had spent the vast majority of her time at DSI working under the supervision of Ms. Matthews, and only  
15 13 weeks working with Ms. Hendrickson.

16 Ms. Matthews told Claimant that she had "loved" working with her, and asked Claimant if she  
17 would come back to work. Claimant responded that she wanted to go back to work at DSI.

18 Approximately one week later, Ms. Matthews called again and said that she had spoken with Mr.  
19 Shahid, and that she could not hire Claimant back. (Mr. Shahid confirms that this conversation took  
20 place. See Exh. K, Shahid Depo. at 183:25-185:5.)

21 Claimant's damages resulting from DSI's actions are set forth in a separate section below.

### 22 LEGAL ANALYSIS

23 Claimant was terminated from her position as a sales agent for doing two things: complaining in  
24 good faith about conditions that she reasonably believed to be unsafe, and requesting time off to see her  
25 doctor. As set forth below, both actions were protected conduct. Furthermore, prior to her termination,  
Claimant requested two separate accommodations. DSI unlawfully denied these requests in violation of

1 the California Fair Employment and Housing Act, Government Code section 12940, et seq. (the  
2 “FEHA”).

3 **I. CLAIMANT WILL PREVAIL ON HER CAUSE OF ACTION FOR WRONGFUL**  
4 **TERMINATION.**

5 Claimant’s cause of action for wrongful termination in violation of public policy alleges that she  
6 was terminated for complaining about her unsafe workplace. In order to prevail on this cause of action,  
7 Claimant must show (1) that she complained in good faith about working conditions that she reasonably  
8 believed to be unsafe, and (2) that her complaints were a motivating reason for her termination. Here, as  
9 set forth below, Claimant will meet each of these burdens.

10 **A. APPLICABLE LAW**

11 Under California law, “an employee is protected against discharge or discrimination for  
12 complaining in good faith about working conditions or practices which he reasonably believes to be  
13 unsafe, whether or not there exists at the time of the complaint an [Occupational Safety and Health Act]  
14 standard or order which is being violated.” *Hentzel v. Singer Co.* (1982) 138 Cal.App.3d 290, 299-300;  
15 see also *Boston v. Penny Lane Centers, Inc.* (2009) 170 Cal.App.4th 936, 947.

16 In *Franklin v. Monadnock* (2007) 151 Cal.App.4th 252, 262-263, the court clarified that to  
17 prevail on a claim for wrongful termination based on complaints of an unsafe workplace, a Claimant  
18 need not show that the workplace was actually unsafe. Rather, as the court held in *Hentzel*, a Claimant  
19 need only make a good faith complaint about working conditions which she reasonably believes to be  
20 unsafe. *Franklin*, 151 Cal.App.4th at 263. See also *Cabesuela v. Browning-Ferris* (1998) 68  
21 Cal.App.4th 101, 109 (rejecting the contention that a Claimant must show that her workplace is actually  
22 unsafe to prevail on a claim for wrongful termination based on complaints of an unsafe workplace).

23 Furthermore, in order to prevail on her cause of action for wrongful termination, Claimant need  
24 only show that the alleged reason for her termination was a motivating factor for her termination (as  
25

1 opposed to the motivating factor). See Judicial Council of California Civil Jury Instruction (CACI)  
2 2430.

3 **B. CLAIMANT WILL PREVAIL ON HER WRONGFUL TERMINATION CAUSE OF**  
4 **ACTION**

5 In this case, it is undisputed that Claimant believed that her workplace was unsafe. Ms.  
6 Hendrickson testified at deposition as follows:

7 **Q:** Did you conclude from these phone calls that Ms. Burke was scared to work alone at  
8 The Willows?

9 **A: Yeah.**

10 **Q:** And did you conclude that Ms. Burke was scared to work alone at The Willows  
11 because of the two Bargmann incidents?

12 **A. Yes.**

13 See Exh. D, Hendrickson Depo. at 141:17-23; see also See Exh. D, Hendrickson Depo. at  
14 137:4-23.

15 It is also undisputed that a reasonable woman would not have wanted to work at Willows after  
16 the sexual assaults. Ms. Hendrickson testified as follows:

17 **Q:** After the second Bargmann incident, given that Willows was a community that you were  
18 responsible for supervising, if that's fair, were you concerned about this person who's going up  
19 there exposing his penis to women?

20 **A. Yes.**

21 **Q:** Did you think this was a serious situation?

22 **A: Yes.**

23 **Q:** Would you have wanted to work in that situation?

24 **A: No.**

25 See Exh. D, Hendrickson Depo. at 139:8-18.

1 Furthermore, Ms. Hendrickson testified at her deposition that one of the reasons for Claimant's  
2 termination was Claimant's complaints about her unsafe workplace:

3 **Q:** Okay. Great. So when we broke we were talking about the reasons for Ms. Burke's  
4 termination, and you had given me a list. I just wanted to clarify some of those. And  
5 the list that you gave me was her threat to quit, her complaining about location, pay  
6 and being mistreated, her ongoing complaints about income, morale issues, not  
7 following procedures, gossiping and speaking poorly about other agents. Is there  
8 anything that you'd like to add to that list before I go back through and clarify  
9 some of those issues?

10 **A:** No.

11 **Q:** Okay. When you said that Ms. Burke was complaining about location, were those complaints  
12 specific to her working at Willows?

13 **A:** Yes.

14 **Q:** And Ms. Burke feeling unsafe in the workplace?

15 **A:** Yes.

16 See Exh. D, Hendrickson Depo. at 70:21-71:15. (emphasis added)

17 Claimant anticipates that DSI will contend that this testimony should be discounted because Ms.  
18 Hendrickson was not the ultimate decision maker regarding Claimant's termination. This contention  
19 will fail. Ms. Hendrickson testified that the decision to terminate was a "group decision:"

20 **Q:** Okay. Couple of follow-up questions for you. You mentioned before the lunch break that the  
21 decision regarding ending Ms. Burke's employment had been a group decision between you and  
22 Mr. Shahid. Do you remember giving that testimony?

23 **A:** Yes.

24 See Exh. D, Hendrickson Depo. at 92:18-23.

25 Accordingly, Ms. Hendrickson's understanding of the reasons for Claimant's termination will be

1 imputed to DSI. See *Reeves v. Safeway Stores, Inc.* (2004) 121 Cal.App.4th 95; *Clark v. Claremont*  
2 *University Center* (1992) 6 Cal.App.4th 639.

3 Claimant also anticipates that DSI will contend that it terminated Claimant for problems with the  
4 “sales process” and “morale issues.” See Exh. K, Shahid Depo. at 38:8-11. This contention will fail.

5 First, with respect to “morale issues,” Mr. Shahid testified that he got all of his information  
6 regarding Claimant from Ms. Hendrickson. See Exh. K, Shahid Depo. at 43:23-44:2. Ms. Hendrickson  
7 testified that she had one meeting with Claimant about “morale issues” in late September or early  
8 October 2009, and that after that meeting the “morale issues” had been resolved:

9 **Q:** Did you meet with Ms. Burke again after that initial meeting regarding these morale issues?

10 **A:** I don't recall.

11 **Q:** In your – As far as you were concerned, had the issues been resolved?

12 **A:** Yes.

13 **Q:** Did you get any other complaints after your meeting with Ms. Burke about morale issues?

14 **A:** Just feedback based on her threats to quit.<sup>8</sup>

15 **Q:** Other than that, any other issues about morale issues after your face-to-face meeting with Ms.  
16 Burke in late September or early October 2009?

17 **A:** No.

18 See Exh. D, Hendrickson Depo. at 68:12-24.

19 Accordingly, it is extremely unlikely that the “morale issues” played any role in the decision to  
20 terminate Claimant.

21 Second, with respect to problems with the sales process, Mr. Shahid testified that he could not  
22 remember how many times such problems had arisen. See Exh. K, Shahid Depo. at 40:23-41:4; 41:19-

23  
24  
25 <sup>8</sup> Ms. Hendrickson later clarified that she had received these alleged reports about Claimant threatening to quit after Claimant was terminated. Exh. D., Hendrickson Depo. at 174:2-178:10.



1 42:4. His testimony regarding these alleged problems was extremely vague. Perhaps more importantly,  
2 Mr. Shahid could not recall speaking with either Claimant or Ms. Hendrickson about these alleged  
3 problems prior to Claimant's termination. See Exh. K, Shahid Depo. at 153:12-16; 154:3-13.

4 Moreover, according to Ms. Hendrickson, Claimant's job performance was improving  
5 throughout 2009. See Exh. D, Hendrickson Depo. at 199:18-200:21. Specifically, Claimant had more  
6 closings and her cancellation rate (referring to the number of deals that did not close escrow) was down.  
7 See Exh. D, Hendrickson Depo. at 200:3-14.<sup>9</sup>

8 Finally, Ms. Matthews, Claimant's supervisor during all but 13 of Claimant's weeks with DSI,  
9 lobbied DSI to rehire Claimant. See Exh. K, Shahid Depo. at 183:25-185:5. This undercuts any  
10 contention that Claimant was a problem employee.

11 Third, the timing of Claimant's termination indicates that Claimant's complaints were a  
12 motivating factor for the decision to terminate her. Direct evidence of an employer's retaliatory intent is  
13 not required to prove causation. *Flait v. North American Watch Corp.* (1992) 3 Cal.App.4th 467, 478.  
14 Rather, "the causal link may be established by an inference derived from circumstantial evidence, 'such  
15 as the employer's knowledge that the [employee] engaged in protected activities and the proximity in  
16 time between the protected action and allegedly retaliatory employment decision.'" *Fisher v. San Pedro*  
17 *Peninsula Hospital* (1989) 214 Cal.App.3d 590, 615.

18 In *Fisher*,<sup>10</sup> the court noted that retaliatory intent could be proven solely by the proximity in time  
19 between protected activity and adverse employment action:  
20  
21

22 <sup>9</sup> Ms. Hendrickson also testified that Claimant's termination had nothing to do with her cancellation rate.  
23 Exh. D., Hendrickson Depo. at 200:15-18.

24 <sup>10</sup> See also *Passantino v. Johnson & Johnson Consumer Products, Inc.* (9th Cir.2000) 212 F.3d 493,  
25 507; *Yartsoff v. Thomas* (9th Cir.1987) 809 F.2d 1371, 1376 (adverse actions commenced within three  
months of complaint); *Miller v. Fairchild Industries, Inc.* (9th Cir.1989) 885 F.2d 498, cert. den. 494  
U.S. 1056 (noting that the Claimants were laid off 59 and 42 days after engaging in protected activity).

1 The retaliatory motive is proved by showing that Claimant engaged in protected activities, that  
2 his employer was aware of the protected activities, and that the adverse action followed within a  
relatively short time thereafter. *Id.*, at 615

3 Here, the decision to terminate was made on October 18, 2009, the same day that Claimant made  
4 her final complaints about safety. See Exh. D, Hendrickson Depo. at 92:18-93:17. This timing is  
5 enough to prove causation.

6 For these reasons, Claimant will prevail on her cause of action for wrongful termination.

7 **II. CLAIMANT WILL PREVAIL ON HER DISABILITY-BASED CAUSES OF ACTION.**

8 Claimant has brought disability-based claims under the FEHA for failure to engage in an  
9 interactive process, failure to provide reasonable accommodation, and wrongful termination in  
10 retaliation for requesting reasonable accommodation. Claimant will prevail on each of these claims as  
11 set forth below.

12 **A. APPLICABLE LAW**

13 The duty of an employer with respect to disabilities is significantly broader under the FEHA than  
14 it is under federal law. *Bagatti v. Department of Rehabilitation* (2002) 97 Cal.App.4th 344, 362; Cal.  
15 Govt. Code § 12926.1(c) (“[T]he Legislature has determined that the definitions of ‘physical disability’  
16 and ‘mental disability’ under the law of this state require a ‘limitation’ upon a major life activity, but do  
17 not require, as does the Americans with Disabilities Act of 1990, a ‘substantial limitation.’ This  
18 distinction is intended to result in broader coverage under the law of this state than under that federal  
19 act.”) Among other things, individuals with short-term or temporary conditions qualify for protection  
20 under the FEHA. *Diaz v. Federal Express Corp.* (C.D.Cal.2005) 373 F.Supp.2d 1034, 1051-1053.

21 The FEHA applies to “any mental or psychological disorder” that limits a major life activity.  
22 Cal. Govt. Code § 12926(i). The Legislature has indicated that the term “mental disability” shall be  
23 construed so as to protect employees from discrimination due to actual or perceived mental impairment  
24 that is disabling, potentially disabling, or perceived as disabling or potentially disabling. Cal. Govt.  
25 Code § 12926.1(b). “Mental disability” includes such conditions as post-traumatic stress disorder

1 (*Jensen v. Wells Fargo Bank* (2000) 85 Cal.App.4th 245, 256); depression (*Auburn Woods v. FEHC*  
2 (2004) 121 Cal.App.4th 1578, 1592-1593); and adjustment disorder with mixed anxiety and depressed  
3 mood (*Diaz*, 373 F.Supp.2d at 1047-1053).

4 Moreover, “under the law of this state, ‘working’ is a major life activity regardless of whether  
5 the employee cannot perform a particular employment or a class or broad range of employments.” Cal.  
6 Govt. Code § 12926.1.

7 Employers must reasonably accommodate individuals falling within any of FEHA's statutorily  
8 defined “disabilities,” including those “regarded as” disabled, and must engage in an informal,  
9 interactive process to determine any effective accommodations.<sup>11</sup> *Gelfo v. Lockheed Martin Corp.*  
10 (2006) 140 Cal.App.4th 34, 55. The duty to accommodate is an affirmative duty that may arise even  
11 where the employee has not requested any accommodation. *Prilliman v. United Airlines, Inc.* (1997) 53  
12 Cal.App.4th 935, 949-950.

13 Furthermore, a single failure to accommodate may be enough to establish liability under the  
14 FEHA. *A.M. v. Albertsons, LLC* (2009) 178 Cal.App.4th 455, 463 (although employer had successfully  
15 accommodated disability-based need for bathroom breaks for more than a year, its failure to do so on a  
16 single occasion was actionable under the FEHA).

17 Finally, in order to prevail on her cause of action for retaliation for requesting an  
18 accommodation, Claimant need only show that her request was a motivating factor for her termination  
19 (as opposed to the motivating factor). See Judicial Council of California Civil Jury Instruction (CACI)  
20 2505.

21  
22  
23  
24 <sup>11</sup> Whether a Claimant is actually disabled within the meaning of the FEHA is irrelevant. The FEHA  
25 does not distinguish between an employee who is actually disabled and an employee whom the  
employer regards as disabled. *Gelfo*, 140 Cal.App.4th at 60.

1           **B. CLAIMANT WILL PREVAIL ON HER DISABILITY-BASED CAUSES OF ACTION**

2           In this case, Claimant was a “qualified individual” in that she was able to perform her essential  
3 job duties with accommodation. Claimant was also “disabled” during her employment with DSI. DSI  
4 therefore engaged in three separate actions that violated the FEHA.

5           First, in July 2009, Claimant was physically disabled. She requested a modified work schedule.  
6 However, DSI refused to allow Claimant to temporarily work for four days a week. Instead, DSI  
7 insisted that Claimant take an unpaid leave of absence until she was able to work full time.<sup>12</sup> That action  
8 violated DSI’s duty to provide reasonable accommodation to Claimant. As a result, Claimant lost 30  
9 days of employment income during which she could not work and could not earn commissions.

10           Second, Claimant was mentally disabled after the first Bargmann incident. According to  
11 independent medical examiner Dr. Piciuccio, after the first Bargmann incident Claimant was  
12 “psychologically incapable of performing the usual functions of a Sales Associate without the  
13 accommodation of having a security person or another individual with her while performing her  
14 employment duties.” See Exh. M, Qualified Medical Psychological Evaluation of Luigi Piciuccio  
15 (“Piciuccio Evaluation”) at page 65.

16           Claimant requested accommodation for the mental disability that she suffered from after the  
17 Bargmann incident. She initiated the interactive process by requesting that DSI either move her to a  
18 different location or take reasonable steps to ensure that she was not forced to work alone. DSI initially  
19 accommodated Claimant by having a security guard on site at Willows during working hours. However,  
20 after approximately ten days, DSI canceled that security guard without any type of notice or explanation.

21  
22  
23 <sup>12</sup> During the relevant time period Mr. Shahid was the sole individual responsible for making  
24 accommodation decisions at DSI. Mr. Shahid has had no training regarding an employer’s duties with  
25 respect to disability accommodations. Shahid Depo., Exh. K, at 18:1-19:18.

1 For a brief period of time, DSI then had temporary employees (“temps”) work at Willows. Even  
2 then, Claimant worked alone two days per week. Then, in late September 2009 DSI canceled the temps.  
3 At approximately the same time that DSI canceled the temps, the second Bargmann incident occurred.  
4 That incident further terrified and traumatized Claimant, who believed that she was the intended target  
5 of Bargmann’s second assault.

6 From that point on, Claimant was required to work at Willows alone. DSI thus withdrew the  
7 accommodation that it had provided to Claimant. By taking that action, DSI denied Claimant’s request  
8 for accommodation.

9 DSI will not be able to meet its burden of proving that either transferring Claimant to another  
10 location or providing someone to work with Claimant at Willows was an undue hardship.<sup>13</sup> *See, e.g.,*  
11 *Prilliman*, 53 Cal.App.4th at 947; *Barnett v. U.S. Air, Inc.* (2000) 228 F.3d 1105, 1113. Accordingly,  
12 DSI’s action violated the FEHA. *See, e.g., A.M.*, 178 Cal.App.4th at 463.

13 Claimant expects DSI to contend that it reasonably accommodated Claimant by providing her  
14 with a “panic button” after the first Bargmann incident. However, Claimant was in a remote, isolated  
15 area and to her, this button was nothing more than a “loud whistle.” Moreover, the button offered  
16 Claimant no protection as she left her office in the dark, late at night to return to her car, or first thing in  
17 the morning as she entered the grounds of Willows. No one ever told Claimant whether the panic button  
18 in any way provided notification to the police or anyone at DSI. Further, both Dr. Piciucco and  
19 Claimant’s treating psychologist, Penelope McAlmond-Ross, Ph. D., have opined that after the assault  
20  
21

---

22 <sup>13</sup> Cal. Govt. Code section 12940(m) indicates that it is an employer’s burden to demonstrate undue  
23 hardship. Section 12940(m) provides that it is an unlawful employment practice “[f]or an employer or  
24 other entity covered by this part to fail to make reasonable accommodation for the known physical or  
25 mental disability of an applicant or employee. Nothing in this subdivision or in ... subdivision (a) shall  
be construed to require an accommodation that is demonstrated by the employer or other covered entity  
to produce undue hardship to its operation.” See also CACI Jury Instruction 2545.

1 Claimant required someone to be physically present if she was to continue to work. The panic button  
2 did not address Claimant's condition.

3 DSI may also contend that Mr. Griffin was nearby and could offer protection to Claimant.  
4 However, Mr. Griffin was located approximately half a mile away from Plaintiff's office and Claimant  
5 did not feel secure by virtue of the fact that he was on the premises of Willows. He was at Willows  
6 during both of the Bargmann incidents and his presence in no way impeded Bargmann's assaults. Mr.  
7 Griffin also left the development well before Claimant, who then had to walk to her car alone.

8 Third, on October 18, 2009, after Ms. Hendrickson told Claimant that she was not going to be  
9 moved from Willows, and that she needed to "make her decision," Claimant had an attack of panic and  
10 depression. She then requested an accommodation when she told Ms. Hendrickson that she was going  
11 to see her doctor for work-related stress leave on October 19, 2009. This request was eminently  
12 reasonable in that Claimant was only asking for minimal time off to see her doctor.<sup>14</sup>

13 Ms. Hendrickson related this request to Mr. Shahid. See Exh. D, Hendrickson Depo. at 31:24-  
14 32:8. This re-triggered DSI's ongoing duty to engage in an interactive process to determine what  
15 accommodations Claimant required, and, if possible, to accommodate her. DSI failed on both counts.

16 Instead, immediately after Claimant requested her accommodation, DSI terminated her. The  
17 timing of DSI's decision to terminate Claimant, as well as DSI's history of retaliating against her for  
18 requesting accommodation, raise a strong inference of retaliation. *Fisher*, 214 Cal.App.3d at 615; see  
19 also *Hanson v. Lucky Stories* (1999) 74 Cal.App.4th 215, 224 ("[p]retext may be inferred from the  
20 timing of the discharge decision, the identity of the decision maker, or by the discharged employee's job  
21 performance before termination.").<sup>15</sup>

22  
23 <sup>14</sup> Cal. Govt. Code section 12926(o) provides that "reasonable accommodation" may include: "job  
24 restructuring, part-time or modified work schedules, reassignment to a vacant position...and other  
similar accommodations for individuals with disabilities."

25 <sup>15</sup> As with Claimant's cause of action for wrongful termination, under the FEHA, a Claimant need only  
show that discriminatory animus was a motivating reason (as opposed to the sole or dominant reason)

1 Furthermore, the accommodation that Claimant was requesting was extremely reasonable: A  
2 short period of time off to see her doctor. Accordingly, DSI cannot show that providing that  
3 accommodation would have caused any sort of undue hardship.

4 Accordingly, Claimant will prevail on her causes of action for (1) failure to engage in an  
5 interactive process; (2) failure to accommodate; and (3) retaliation for requesting an accommodation.

6 **III. DSI'S CONTENTION THAT CLAIMANT THREATENED TO QUIT IS A RED**  
7 **HERRING.**

8 DSI may contend that Claimant quit or threatened to quit before her termination. This argument  
9 is a red herring for several reasons.

10 First, Ms. Hendrickson testified that she only learned about Claimant threatening to quit after  
11 Claimant was terminated. See Exh. D, Hendrickson Depo. at 178:7-10. Second, Claimant denies  
12 threatening to quit prior to her termination. To the contrary, she liked her job and excelled at it.

13 Finally, Ms. Hendrickson testified that on October 17, 2009, after Ms. Hendrickson told  
14 Claimant that she would not be transferred, Claimant said, "Maybe I should just quit." This was the first  
15 and only time Claimant mentioned quitting. See Exh. D, Hendrickson Depo. at 169:11-170:22. It is  
16 undisputed that Claimant never told Ms. Hendrickson that she was going to quit or that she had quit.

17 Therefore, even if true, Ms. Hendrickson's testimony does not establish that Claimant quit.  
18 Rather, it only establishes that she considered quitting. DSI was forcing Claimant to work alone in the  
19 development where she had been sexually assaulted, and in a situation in which Ms. Hendrickson  
20  
21

22 for the employer's decision. See, e.g., CACI Model Jury Instruction 2500 (requiring that a Claimant  
23 prove by a preponderance of the evidence "That [ name of Claimant ]'s [ protected status--for example,  
24 race, gender, or age ] was a motivating reason for the [discharge/refusal to hire/[ other adverse  
25 employment action ]"; *Mixon v. Fair Employment and Housing Com.* (1987) 192 Cal.App.3d 1306, 1317  
("[A] complainant need not prove that [discriminatory] animus was the sole motivation behind a  
challenged action....")

1 testified that she would not have wanted to work. See Exh. D, Hendrickson Depo. at 139:8-18. Given  
2 that situation, any offhand comments regarding quitting were understandable.

### 3 DAMAGES

4 Claimant has suffered serious economic and noneconomic damages as a result of DSI's illegal  
5 actions.

#### 6 Economic Damages

7  
8 With respect to economic damages, Claimant earned approximately \$185,000 for the eight and a  
9 half months that she worked for DSI in 2009. Her average monthly paycheck was therefore  
10 approximately \$21,750 solely from commissions.

11 Claimant has worked only sporadically since her termination on October 19, 2009. She has been  
12 actively looking for work. However, the depression caused by her termination has made it difficult for  
13 her to return to work in sales. She hopes to actively return to work in the near future.

14 Claimant has retained two experts to analyze her economic damages in this case. With respect to  
15 lost wages from October 19, 2009, to present, economist Nora Ostrofe will testify that depending on  
16 how one evaluates Claimant's annual income at DSI, Claimant has lost between \$444,135 and \$512,089.  
17 With respect to future lost wages, Ms. Ostrofe and vocational consultant Alan Nelson will testify that  
18 Claimant will lose between \$879,420 and \$1,063,295.

19 DSI has also retained a vocational consultant in this case, Lawrence Deneen, Ph.D. Assuming  
20 that Dr. Deneen is correct, Claimant's past lost wages are between \$291,990 and \$359,944. Her future  
21 lost wages are between \$165,477 and \$349,340.

22 In addition, Claimant was placed on involuntarily, unpaid leave in July 2009. As a result, she  
23 lost approximately one month of pay. Finally, as a result of her termination, Claimant's commissions  
24 and bonuses were cut for sales that closed escrow after October 19, 2009. This cost Claimant  
25 approximately \$35,000.



1            **Non-Economic Damages**

2            With respect to noneconomic damages, Claimant saw her doctor on October 21, 2009. At that  
3 time, she was diagnosed with “anxiety disorder related to recent events.” In the weeks following her  
4 termination, her depression and anxiety got worse. She began seeing psychologist Penelope  
5 McAlmond-Ross, Psy.D., shortly thereafter.

6            Claimant has continued to see Dr. McAlmond-Ross since her termination. Dr. McAlmond-Ross  
7 has opined that Claimant suffered PTSD as a result of the Bargmann incidents, and that DSI exacerbated  
8 her trauma by terminating her. Dr. McAlmond-Ross also diagnosed Claimant as being clinically  
9 depressed.

10            Claimant’s depression has been also diagnosed by two psychologists. First, as part of her  
11 Workers Compensation case, Claimant was required to undergo an Independent Medical Examination  
12 (“IME”) regarding her depression. Luigi Piciuccio, Ph.D., an independent qualified medical evaluator,  
13 performed a complete psychological evaluation of Claimant. This evaluation included a detailed  
14 psychodiagnostic interview, a mental status examination, and a battery of psychological tests.

15            Dr. Piciuccio’s independent report, dated September 15, 2010, is 67 pages long. In it, Dr.  
16 Piciuccio concludes that Claimant was suffering from Depressive Disorder NOS, and also probably from  
17 a Stress-Related Physiological Response Affecting Physical Conditions.<sup>16</sup> He further opines “with  
18 reasonable medical probability that actual events of employment are predominant as to all causes  
19 combined of the psychiatric injury as follows:

20            Eighty percent (80%) of [Claimant’s] Depressive Disorder NOS<sup>17</sup> is a direct result of her  
21 termination from employment.

22  
23 <sup>16</sup> Claimant’s physical conditions caused by her termination include nausea, chest tightness, and  
24 hypertension/high blood pressure.

25 <sup>17</sup> Depressive Disorder Not Otherwise Specified (DD-NOS) is designated by the code 311 in the DSM-  
IV for depressive disorders that are impairing but do not fit any the officially specified diagnoses.

1 Fifty percent (50%) of the probable Stress-Related Physiological Response Affecting Physical  
2 Conditions to the 08/24/09 sexual assault and fifty percent (50%) to the 10/19/09 termination  
3 from employment.

Piciucco Report, Exh. M, at 65.

4 Dr. Piciucco's diagnosis of Depressive Disorder NOS has been corroborated by William Hooker,  
5 Ph.D., the psychologist retained by DSI in this case. Dr. Hooker's report indicates that Claimant  
6 continues to suffer from Depressive Disorder NOS. Dr. Hooker has formed no opinion regarding the  
7 causation of Claimant's condition.

8 Claimant continues to suffer from depression related to her termination to date. She also suffers  
9 from anxiety, stress, loss of sleep, nightmares, panic attacks, decreased energy, and loss of interest in her  
10 hobbies and sex all as a result of her termination. Her emotional distress is therefore considerable.

#### 11 **Attorney's Fees and Costs**

12 In a FEHA action, the prevailing party may claim costs (including expert witness fees) as a  
13 matter of right under California law. Cal. Code of Civil Procedure §1032; Cal. Govt. Code §12965(b);  
14 *Anthony v. City of Los Angeles* (2008) 166 CA4th 1011, 1017. Claimant will make a claim for all  
15 attorney's fees and costs.

#### 16 **Punitive Damages**

17 There is no cap on the amount of damages that may be awarded in civil actions for FEHA  
18 violations. *Commodore Home Systems, Inc. v. Sup.Ct. (Brown)* (1982) 32 C3d 211, 221; *Myers v.*  
19 *Trendwest Resorts, Inc.* (2007) 148 CA4th 1403, 1435-1436. Under common law tort actions, such as  
20 termination in violation of public policy, Claimant is also entitled to an award of punitive damages, as  
21 DSI acted with oppression and malice. Cal. Civil Code §3294(a). The reprehensible actions of DSI and  
22 its violation of the FEHA, starting with DSI's failure to accommodate Claimant's disability in July 2009  
23 and subsequent retaliatory acts, and ending with her unlawful termination, warrant an award of punitive  
24 damages in this case. DSI deliberately and intentionally terminated Claimant for expressing concerns

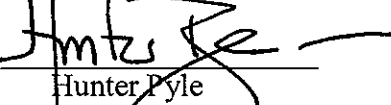
1 over her safety, asking for reasonable accommodations, and asking to leave work a couple of hours early  
2 to see her physician.

3 **CONCLUSION**

4 The evidence in this case shows that DSI violated the FEHA in a number of ways, and that  
5 Claimant's termination was unlawful. Claimant looks forward to presenting this case to you  
6 commencing on June 4, 2012.

7  
8  
9 Dated: May 31, 2012

SUNDEEN SALINAS & PYLE

10 By:   
Hunter Pyle

11 Attorneys for Claimant  
12 VIRGINIA BURKE

# **EXHIBIT A**

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11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **FOR THE COUNTY OF CONTRA COSTA**

13 VIRGINIA BURKE,

14 Plaintiff,

15 vs.

16 DISCOVERY SALES, INC., and Does 1-20,  
17 inclusive,

18 Defendants

Case No.:

**COMPLAINT FOR DAMAGES**

1. **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
2. **CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY;**
3. **DISABILITY DISCRIMINATION (FEHA);**
4. **FAILURE TO ACCOMMODATE (FEHA);**
5. **FAILURE TO ENGAGE IN INTERACTIVE PROCESS (FEHA);**
6. **FAILURE TO PREVENT DISCRIMINATION (FEHA);**
7. **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;**
8. **FAILURE TO PAY WAGES DUE; AND**
9. **FAILURE TO PAY ALL WAGES UPON DISCHARGE**

**DEMAND FOR JURY TRIAL**

21  
22  
23  
24  
25  
**BURKE v. DISCOVERY SALES, INC.**  
**Complaint for Damages and Jury Demand**

1 Plaintiff VIRGINIA BURKE ("Plaintiff") complains and alleges as follows:

2 **INTRODUCTION**

3 1. Plaintiff worked for defendant DISCOVERY SALES, INC. from October 2007 through  
4 October 2009. After she was sexually assaulted at work, she asked defendant DISCOVERY SALES,  
5 INC. to take reasonable steps to ensure her safety in the workplace. She also asked defendant  
6 DISCOVERY SALES, INC. to accommodate her reasonable request to leave work early one time so  
7 that she could see her doctor for a disability related to the assault. In response, defendant DISCOVERY  
8 SALES, INC. attempted to force Plaintiff to resign. When Plaintiff refused, defendant DISCOVERY  
9 SALES, INC. terminated her employment.

10 2. Plaintiff brings this case alleging causes of action for: (1) wrongful termination in  
11 violation of public policy; (2) constructive discharge in violation of public policy; (3) disability  
12 discrimination under the California Fair Employment and Housing Act, Government Code section  
13 12900, et seq. ("FEHA"); (4) failure to provide reasonable accommodation; (5) failure to engage in the  
14 interactive process; (6) failure to prevent discrimination; (7) intentional infliction of emotional distress;  
15 (8) failure to pay all wages due upon discharge; and (9) penalties for failure to pay all wages due upon  
16 discharge.

17 **PARTIES AND JURISDICTION**

18 3. Plaintiff was employed by defendant DISCOVERY SALES, INC. during the incidents at  
19 issue in this lawsuit.

20 4. Defendant DISCOVERY SALES, INC. is and was at all times mentioned herein a  
21 California business entity, form unknown, with its principal place of business located in the County of  
22 Contra Costa, State of California.

23  
24  
25  

---

**BURKE v. DISCOVERY SALES, INC.**  
**Complaint for Damages and Jury Demand**

1           5.    Venue is proper in the County of Contra Costa for the following reasons: Defendant  
2 DISCOVERY SALES, INC. maintains its principal place of business in the County of Contra Costa and  
3 the unlawful acts complained of herein all occurred in the County of Contra Costa.

4           6.    The true names and capacities of the defendants named herein as Does 1 through 20,  
5 inclusive, whether individual, corporate, associate, or otherwise, are unknown to Plaintiff, who therefore  
6 sues such defendants by fictitious names pursuant to Code of Civil Procedure section 474. Plaintiff is  
7 informed and believes, and thereon alleges, that each of the fictitiously named defendants is responsible  
8 in the manner set forth herein, or some other manner, for the occurrences alleged herein, and that the  
9 damages as alleged herein were proximately caused by their conduct. Plaintiff is informed and believes,  
10 and thereon alleges, that each of the fictitiously named defendants is a California resident. Plaintiff will  
11 amend this complaint to show the true names and capacities of each of the fictitiously named defendants  
12 when such names and capacities have been determined.

13                                   **STATEMENT OF THE CASE**

14           7.    Plaintiff began working as a Sales Manager for defendant DISCOVERY SALES, INC. in  
15 October 2007. Her job duties consisted of selling homes in various new housing developments  
16 throughout northern California.

17           8.    Plaintiff was paid a salary of \$6000 per month for her first three months of employment.  
18 After that she was paid on a straight commission. On Plaintiff's second sale, defendant DISCOVERY  
19 SALES, INC. did not pay Plaintiff her proper commission, which should have been approximately  
20 \$1500. Rather, they paid her a "manager's fee" of \$500.

21           9.    Upon information and belief, throughout Plaintiff's employment with defendant  
22 DISCOVERY SALES, INC., defendant DISCOVERY SALES, INC. unlawfully deducted certain  
23 amounts from Plaintiff's commissions for actions that were outside of her control.  
24  
25

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**BURKE v. DISCOVERY SALES, INC.  
Complaint for Damages and Jury Demand**

1           10.     In early 2009, Plaintiff began to suffer from low back and thigh pain. This condition was  
2 subsequently diagnosed as polymyalgia rheumatica. It significantly limited Plaintiff's ability to work  
3 because it made it more difficult for Plaintiff to walk up and down stairs, to get in and out of cars, and,  
4 generally, to move her legs. Plaintiff took steroids for this condition, which allowed her to continue to  
5 perform her job duties.

6           11.     Plaintiff's condition worsened in July 2009, due in part to stress that Plaintiff was  
7 experiencing at work. Among other things, defendant DISCOVERY SALES, INC. failed to pay her a  
8 commission and double bonus that she had been promised for certain houses that she sold in January  
9 2009.

10          12.     Plaintiff saw her doctor as a result of the stress and increased physical pain that she was  
11 experiencing. On July 22, 2009, Plaintiff's doctor limited Plaintiff to a four day work week for 30 days.  
12 Plaintiff notified defendant DISCOVERY SALES, INC. of this limitation and requested accommodation  
13 for it.

14          13.     In response, defendant DISCOVERY SALES, INC. placed Plaintiff on a forced, unpaid  
15 leave of absence "until future date declared by [her] physician rendering [her] fully at capacity to come  
16 back to work."

17          14.     After Plaintiff was placed on a forced, unpaid leave of absence, she emailed Ayman  
18 Shahid, defendant DISCOVERY SALES, INC.'s President, to ask him whether she would receive  
19 bonuses on nine deals that were scheduled to close during the time of her leave. Defendant  
20 DISCOVERY SALES, INC. responded that Plaintiff could not collect "Base Pay or Bonuses when on a  
21 leave of absence."

22          15.     Plaintiff returned from her forced leave of absence on August 21, 2009. At that time, she  
23 was reassigned to a development in West Sacramento called Willows. Willows was among the most  
24 difficult housing developments run by defendant DISCOVERY SALES, INC. Among other things,  
25

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**BURKE v. DISCOVERY SALES, INC.**  
**Complaint for Damages and Jury Demand**



1 Willows had the lowest price point and the fewest sales of any location to which Plaintiff had ever been  
2 assigned. At the time that Plaintiff was assigned to work at Willows, there had been no sales in the last  
3 30 days. Additionally, prior to working at Willows, Plaintiff had always had an assistant to help her  
4 make sales. At Willows, she did not have an assistant.

5 16. During her first week at Willows, Plaintiff made two sales in three days.

6 17. On August 24, 2009, Plaintiff's third day working at Willows, Plaintiff was sexually  
7 assaulted at work. Specifically, a man later identified as Daniel Bargmann arrived at Willows and  
8 pretended that he was interested in purchasing a house. Plaintiff then invited Mr. Bargmann look at the  
9 available homes that were for sale. Mr. Bargmann left for a short period of time, then returned to  
10 Plaintiff's office, a small room with no windows.

11 18. Mr. Bargmann then trapped Plaintiff in her office by standing in her doorway. At that  
12 time, Mr. Bargmann's fly was unzipped, and his erect penis was sticking out of it. Plaintiff was terrified  
13 and thought she was going to be raped. Mr. Bargmann then put his hand on his penis and stared at  
14 Plaintiff. After several moments, another car pulled up outside of the house that they were in. Mr.  
15 Bargmann then turned and left.

16 19. Plaintiff immediately called the Superintendent of the Willows development, who was  
17 able to get record Mr. Bargmann's license plate number. Plaintiff also called the police and  
18 subsequently filed a police report.

19 20. Plaintiff then notified Mr. Shahid and Carey Hendrickson, one of defendant  
20 DISCOVERY SALES, INC.'s General Sales Managers, that she was afraid to work alone at Willows  
21 because she could be raped or sexually assaulted again. For approximately two weeks after the initial  
22 assault, defendant DISCOVERY SALES, INC. provided security at Willows. However, after those two  
23 weeks defendant DISCOVERY SALES, INC. abruptly and without explanation stopped providing  
24 security.

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**BURKE v. DISCOVERY SALES, INC.**  
**Complaint for Damages and Jury Demand**

1           21.     During the two weeks that defendant DISCOVERY SALES, INC. provided security at  
2 Willows, Plaintiff was able to sell ten houses. After defendant DISCOVERY SALES, INC. abruptly  
3 canceled the security, Plaintiff again told Ms. Hendrickson and Mr. Shahid that she needed security and  
4 was terrified to work alone. She also asked that defendant DISCOVERY SALES, INC. transfer her to  
5 another location.

6           22.     Soon thereafter, defendant DISCOVERY SALES, INC. hired two different sets of  
7 temporary employees to work at Willows. One of these employees is named Cindy.

8           23.     Cindy started working at Willows in late September 2009. She worked with Plaintiff on  
9 her first Saturday and Sunday. That Monday, Plaintiff's day off, Cindy worked alone.

10          24.     During Cindy's first day working alone, she was assaulted by Mr. Bargmann in almost  
11 the exact same manner that Plaintiff had been assaulted: Mr. Bargmann cornered Cindy in the lobby of  
12 one of the houses at Willows and exposed his erect penis to her.

13          25.     Plaintiff learned about this second assault that Wednesday. On that day, she was working  
14 alone. When she learned about the second assault, she immediately called Ms. Hendrickson and Mr.  
15 Shahid to tell them what had happened, and that she was even more terrified to work alone. Mr. Shahid  
16 did not return her telephone call.

17          26.     Mysti Mathews, one of defendant DISCOVERY SALES, INC.'s General Sales  
18 Managers, called Plaintiff at 4:30 p.m. that day and told her that if she needed to leave, she could leave.  
19 Plaintiff then went home.

20          27.     Despite the fact that she was terrified, Plaintiff went to work every day that week. Early  
21 the next week, Plaintiff met with Ms. Hendrickson and told her that the situation was very serious and  
22 that she was terrified to work at Willows. Ms. Hendrickson said she would speak with Mr. Shahid about  
23 moving Plaintiff to another development. Ms. Hendrickson then suggested that Plaintiff have family or  
24 friends come and be with her while she was working.

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**BURKE v. DISCOVERY SALES, INC.**  
**Complaint for Damages and Jury Demand**

1           28.     The following week, Ms. Hendrickson drove to Willows to meet with Plaintiff. During  
2 this meeting, Ms. Hendrickson told Plaintiff to "hold on" for two weeks, and that defendant  
3 DISCOVERY SALES, INC. would be moving her to a new, upscale community called Serenade located  
4 in Cordelia, California.

5           29.     Two weeks later, on Saturday, October 17, 2009, Ms. Hendrickson called Plaintiff.  
6 During this call, Plaintiff asked Ms. Hendrickson what was happening with the plan to move her to a  
7 new community. Ms. Hendrickson responded, "You are not going to Serenade. Ayman has decided not  
8 to send you there." Plaintiff then requested to speak with Mr. Shahid about this change. Despite this  
9 request, Mr. Shahid did not call her. Plaintiff worked that entire day alone.

10          30.     The following day, Sunday, October 18, 2009, Plaintiff again worked alone. During that  
11 day, she spoke with Ms. Hendrickson on the telephone. Ms. Hendrickson told her that she had spoken  
12 with Mr. Shahid, that he said "make your decision," and that he did not want to speak with Plaintiff.

13          31.     Plaintiff then had a breakdown. Terrified and crying into the phone, she asked Ms.  
14 Hendrickson how she could do this after promising Plaintiff that she would be moved to a different  
15 community. She also told Ms. Hendrickson that she had put herself at risk for weeks, and about how  
16 frightened she was.

17          32.     Plaintiff then told Ms. Hendrickson that she had an appointment that day at 1:00 p.m. to  
18 write a deal. She further told Ms. Hendrickson that she was going to leave after that appointment to see  
19 her doctor because of the stress and fear that she was experiencing. Plaintiff stayed at work for that  
20 appointment and left at approximately 3:00 p.m. because of her mental condition.

21          33.     At approximately 7:00 p.m. that night, Ms. Hendrickson left Plaintiff a voice mail telling  
22 her that Sunday, October 18, 2009, was her last day working for defendant DISCOVERY SALES, INC.  
23 Plaintiff did not receive this voice mail until after the events that occurred on October 19, 2009.

1           34.    On Monday, October 19, 2009, Plaintiff arrived at corporate headquarters in Concord at  
2 8:00 a.m. for a scheduled meeting. She had two sales to turn in. Ms. Hendrickson took Plaintiff into the  
3 office of Gina Villasenor, defendant DISCOVERY SALES, INC.'s Human Resources Manager.

4           35.    Ms. Hendrickson then told Plaintiff that defendant DISCOVERY SALES, INC. was  
5 "letting [her] go."

6           36.    Plaintiff was extremely upset, and told Ms. Hendrickson, "You can't do that!" Ms.  
7 Villasenor then handed Plaintiff a letter telling her that she had resigned. Plaintiff read the letter, then  
8 said, "I didn't resign. I told you I was going to see my doctor." Plaintiff then left the building.

9           37.    Five minutes later, Ms. Hendrickson began calling Plaintiff's mobile phone incessantly,  
10 leaving messages asking Plaintiff to return and sign the resignation letter. Plaintiff ignored these calls,  
11 and drove to Willows to pick up her personal belongings.

12           38.    Later that morning, Ms. Hendrickson met Plaintiff at Willows. Ms. Hendrickson stood at  
13 the front door of the house in which Plaintiff's office was located and refused to give Plaintiff her  
14 belongings until she signed a letter of resignation. In response, Plaintiff wrote by hand and signed a  
15 letter that provides as follows:

16           I am not resigning my position with Discovery Homes. I told Carey  
17 over the weekend that the stress of my job, pay, and unsecurity [sic] I felt  
18 at my office I would be speaking with my Dr. this morning. I was led  
19 into Gina's office by Carey at 9 AM today and told I was being let go!

20           39.    Plaintiff gave this letter to Ms. Hendrickson and asked her for a copy. Ms. Hendrickson  
21 then provided Plaintiff with a copy.

22           40.    Despite this letter, on October 26, 2009, Ms. Villasenor wrote to Plaintiff that, "It is with  
23 regret that we accept your resignation effective October 19, 2009." At no time did Plaintiff resign her  
24 position with defendant DISCOVERY SALES, INC.

25           41.    Approximately one week later, Ms. Mathews called Plaintiff. Ms. Mathews told Plaintiff  
that she had "loved" working with her, and asked Plaintiff if she would come back to work. Plaintiff

**BURKE v. DISCOVERY SALES, INC.**  
**Complaint for Damages and Jury Demand**

1 responded that she wanted to come back to work. Approximately one week later, Ms. Mathews called  
2 again and said that she had spoken with Mr. Shahid, and that she could not hire Plaintiff back.

3 42. As a result of Plaintiff's termination, she received only 50% (fifty percent) of the  
4 commissions pending at the time of her termination.

5 **FIRST CAUSE OF ACTION**  
6 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

7 43. The allegations of each of the preceding paragraphs are realleged and incorporated herein  
8 by reference.

9 44. At all times relevant hereto, the State of California has had a fundamental and explicit  
10 public policy requiring employers to take reasonable steps to provide a safe and secure workplace.

11 45. At all times relevant hereto, the State of California has had a fundamental public policy  
12 prohibiting employers from discriminating against employees with disabilities.

13 46. Plaintiff was employed by defendant DISCOVERY SALES, INC.

14 47. Defendant DISCOVERY SALES, INC. discharged Plaintiff.

15 48. Plaintiff's insistence that she be provided with a safe and secure workplace was a  
16 motivating reason for defendant DISCOVERY SALES, INC.'s discharge of Plaintiff.

17 49. In addition, and/or in the alternative, Plaintiff's request for accommodation of her  
18 disability was a motivating reason for defendant DISCOVERY SALES, INC.'s discharge of Plaintiff.

19 50. Defendant DISCOVERY SALES, INC. committed the acts alleged herein oppressively  
20 and maliciously, with the wrongful intention of injuring Plaintiff, from an evil and improper motive  
21 amounting to malice, and in conscious disregard of Plaintiff's rights, in that defendant DISCOVERY  
22 SALES, INC. terminated Plaintiff because of her insistence on a safe workplace, and/or her request for  
23 accommodation for her disability. Thus, Plaintiff is entitled to recover punitive damages from defendant  
24 DISCOVERY SALES, INC.

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**BURKE v. DISCOVERY SALES, INC.**  
**Complaint for Damages and Jury Demand**

1           51. As a direct, foreseeable and proximate result of the acts of defendant DISCOVERY  
2 SALES, INC., Plaintiff has suffered damages in an amount according to proof.

3           WHEREFORE, Plaintiff prays for judgment against defendant DISCOVERY SALES, INC. as  
4 set forth below.

5   **SECOND CAUSE OF ACTION**  
6   **CONSTRUCTIVE TERMINATION IN VIOLATION OF PUBLIC POLICY**

7           52. The allegations of each of the preceding paragraphs are realleged and incorporated herein  
8 by reference.

9           53. Plaintiff was employed by defendant DISCOVERY SALES, INC.

10           54. Plaintiff was subjected to working conditions that violated public policy in that she was  
11 forced to work in a workplace that was neither safe nor secure.

12           55. Defendant DISCOVERY SALES, INC. intentionally or knowingly permitted these  
13 conditions to exist.

14           56. These working conditions were so intolerable that a reasonable person in Plaintiff's  
15 position would have had no alternative but to resign.

16           57. Plaintiff resigned because of these working conditions.

17           58. Defendant DISCOVERY SALES, INC. committed the acts alleged herein oppressively  
18 and maliciously, with the wrongful intention of injuring Plaintiff, from an evil and improper motive  
19 amounting to malice, and in conscious disregard of Plaintiff's rights, in that defendant DISCOVERY  
20 SALES, INC. intentionally or knowingly permitted working conditions that violated public policy to  
21 occur. Thus, Plaintiff is entitled to recover punitive damages from defendant DISCOVERY SALES,  
22 INC.

23           59. As a direct, foreseeable and proximate result of the acts of defendant DISCOVERY  
24 SALES, INC., Plaintiff has suffered damages in an amount according to proof.

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**BURKE v. DISCOVERY SALES, INC.**  
**Complaint for Damages and Jury Demand**

1           WHEREFORE, Plaintiff prays for judgment against defendant DISCOVERY SALES, INC. as  
2 set forth below.

3   **THIRD CAUSE OF ACTION**  
4   **DISABILITY DISCRIMINATION IN VIOLATION OF**  
5   **THE FAIR EMPLOYMENT AND HOUSING ACT**  
6   **California Government Code § 12940(a)**

7           60.    The allegations of each of the preceding paragraphs are realleged and incorporated herein  
8 by reference.

9           61.    California Government Code section 12940(a) provides that it is unlawful for an  
10 employer to refuse to employ or to discriminate against a person in compensation or in terms,  
11 conditions, or privileges of employment because of that person's physical disability or perceived  
12 disability.

13           62.    California Government Code section 12926.1 provides that it is the intent of the  
14 Legislature that the definitions of physical disability and mental disability be construed so that  
15 applicants and employees are protected from discrimination due to an actual or perceived physical or  
16 mental impairment that is disabling, potentially disabling, or perceived as disabling or potentially  
17 disabling.

18           63.    At all times relevant hereto, defendant DISCOVERY SALES, INC. was an employer  
19 subject to the FEHA in that defendant DISCOVERY SALES, INC. regularly employed five or more  
20 persons and Plaintiff was an employee of defendant DISCOVERY SALES, INC.

21           64.    Defendant DISCOVERY SALES, INC. knew that Plaintiff had physical and mental  
22 disabilities which substantially limited the following major life activities: walking and working.

23           65.    In the alternative, defendant DISCOVERY SALES, INC. perceived Plaintiff to have  
24 physical and mental disabilities which substantially limited the following major life activities: walking  
25 and working.

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**BURKE v. DISCOVERY SALES, INC.**  
**Complaint for Damages and Jury Demand**

1           66.     Plaintiff was able to perform the essential job duties of her position as Sales Manager  
2 with reasonable accommodation.

3           67.     On April 8, 2010, defendant DISCOVERY SALES, INC. terminated Plaintiff.

4           68.     Plaintiff's disabilities and/or perceived disabilities were motivating factors in defendant  
5 DISCOVERY SALES, INC.'s decision to terminate her employment.

6           69.     In committing these actions, defendant DISCOVERY SALES, INC. violated the Fair  
7 Employment and Housing Act.

8           70.     Defendant DISCOVERY SALES, INC. committed the acts alleged herein oppressively  
9 and maliciously, with the wrongful intention of injuring Plaintiff, from an evil and improper motive  
10 amounting to malice, and in conscious disregard of Plaintiff's rights under the FEHA, in that defendant  
11 DISCOVERY SALES, INC. terminated Plaintiff because of her disabilities and/or perceived disabilities.  
12 Thus, Plaintiff is entitled to recover punitive damages from defendant DISCOVERY SALES, INC.

13           71.     As a direct, foreseeable and proximate result of the acts of defendant DISCOVERY  
14 SALES, INC., Plaintiff has suffered damages in an amount according to proof.

15           WHEREFORE, Plaintiff prays for judgment against defendant DISCOVERY SALES, INC. as  
16 set forth below.

17                                   **FOURTH CAUSE OF ACTION**  
18                                   **FAILURE TO ACCOMMODATE IN VIOLATION OF**  
19                                   **THE FAIR EMPLOYMENT AND HOUSING ACT**  
20                                   **California Government Code § 12940(m)**

21           72.     The allegations of each of the preceding paragraphs are realleged and incorporated herein  
22 by reference.

23           73.     California Government Code section 12940(m) provides that it is unlawful for any  
24 employer to fail to make reasonable accommodation for the known disability of an employee.

25           74.     Defendant DISCOVERY SALES, INC. knew that Plaintiff had physical and mental  
disabilities which substantially limited the following major life activities: walking and working.

**BURKE v. DISCOVERY SALES, INC.**  
**Complaint for Damages and Jury Demand**





1 83. Plaintiff requested that defendant DISCOVERY SALES, INC. make reasonable  
2 accommodation for her disabilities so that she would be able to perform the essential job requirements.

3 84. Plaintiff was willing to participate in an interactive process to determine whether  
4 reasonable accommodation could be made so that she would be able to perform the essential job  
5 requirements.

6 85. Defendant DISCOVERY SALES, INC. failed to engage in a timely, good faith,  
7 interactive process with Plaintiff to determine effective reasonable accommodations for her known  
8 disabilities, and, instead, terminated Plaintiff's employment.

9 86. In committing these actions, defendant DISCOVERY SALES, INC. violated the FEHA.

10 87. Defendant DISCOVERY SALES, INC. committed the acts alleged herein oppressively  
11 and maliciously, with the wrongful intention of injuring Plaintiff, from an evil and improper motive  
12 amounting to malice, and in conscious disregard of her rights under the FEHA, in that defendant  
13 DISCOVERY SALES, INC. failed to engage in the interactive process. Thus, Plaintiff is entitled to  
14 recover punitive damages from defendant DISCOVERY SALES, INC.

15 88. As a direct, foreseeable and proximate result of the acts of defendant DISCOVERY  
16 SALES, INC., Plaintiff has suffered damages in an amount according to proof.

17 WHEREFORE, Plaintiff prays for judgment against defendant DISCOVERY SALES, INC. as  
18 set forth below.

19 **SIXTH CAUSE OF ACTION**  
20 **FAILURE TO PREVENT DISCRIMINATION IN VIOLATION OF**  
21 **THE FAIR EMPLOYMENT AND HOUSING ACT**  
22 **California Government Code § 12940(k)**

23 89. The allegations of each of the preceding paragraphs are realleged and incorporated herein  
24 by reference.

25 90. California Government Code section 12940(k) provides that it is unlawful for any  
employer or covered entity to fail to take all reasonable steps necessary to prevent discrimination from

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**BURKE v. DISCOVERY SALES, INC.**  
**Complaint for Damages and Jury Demand**

1 occurring.

2 91. Plaintiff was subjected to discrimination because of her physical and mental disabilities.

3 92. Defendant DISCOVERY SALES, INC. failed to take reasonable steps necessary to  
4 prevent such discrimination from occurring. Among other things, defendant DISCOVERY SALES,  
5 INC. failed to train and adequately supervise its employees in order to ensure that these employees were  
6 not violating the FEHA in their treatment of their employees.

7 93. In committing these actions, defendant DISCOVERY SALES, INC. violated the FEHA.

8 94. Defendant DISCOVERY SALES, INC. committed the acts alleged herein oppressively  
9 and maliciously, with the wrongful intention of injuring Plaintiff, from an evil and improper motive  
10 amounting to malice, and in conscious disregard of her rights, in that defendant DISCOVERY SALES,  
11 INC. failed to take reasonable steps to prevent discrimination. Thus, Plaintiff is entitled to recover  
12 punitive damages from defendant DISCOVERY SALES, INC.

13 95. As a direct, foreseeable and proximate result of the acts of defendant DISCOVERY  
14 SALES, INC., Plaintiff has suffered damages in an amount according to proof.

15 96. WHEREFORE, Plaintiff prays for judgment against defendant DISCOVERY SALES,  
16 INC. as set forth below.

17 **SEVENTH CAUSE OF ACTION**  
18 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

19 97. The allegations of each of the paragraphs set forth above are realleged and incorporated  
20 herein by reference.

21 98. Defendant DISCOVERY SALES, INC.'s conduct set forth hereinabove was so extreme  
22 and so outrageous that it exceeded the boundaries of a decent society and lies outside of the  
23 compensation bargain. Said conduct was intended to cause severe emotional distress, or was done in  
24 conscious disregard of the probability of causing such distress.

25 99. Among other things, defendant DISCOVERY SALES, INC. knew or should have known

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**BURKE v. DISCOVERY SALES, INC.**  
**Complaint for Damages and Jury Demand**

1 at the time that it terminated Plaintiff that terminating her would cause her commissions on completed  
2 sales to be significantly reduced.

3 100. As a proximate result of defendant DISCOVERY SALES, INC.'s unlawful acts against  
4 Plaintiff, Plaintiff has suffered past, present and future losses in income and earnings, medical costs,  
5 incidental expenses, and has suffered and continues to suffer embarrassment, humiliation and mental  
6 anguish all to damage in an amount according to proof.

7 WHEREFORE, Plaintiff prays for judgment against defendant DISCOVERY SALES, INC. as  
8 set forth below.

9 **EIGHTH CAUSE OF ACTION**  
10 **FAILURE TO PAY WAGES DUE**  
11 **California Labor Code §§ 200 and 201**

12 101. The allegations of each of the preceding paragraphs are realleged and incorporated herein  
13 by reference.

14 102. Labor Code section 200 defines "wages" as including "all amounts for labor performed  
15 by employees of every description, whether the amount is fixed or ascertained by the standard of time,  
16 task, piece, commission basis, or other method of calculation."

17 103. Labor Code section 201 requires an employer who discharges an employee to pay all  
18 compensation due and owing to that employee immediately upon discharge.

19 104. Defendant DISCOVERY SALES, INC. discharged Plaintiff.

20 105. Defendant DISCOVERY SALES, INC. failed to timely pay compensation and wages to  
21 Plaintiff at the time of her discharge.

22 WHEREFORE, Plaintiff prays for judgment against defendant DISCOVERY SALES, INC. as  
23 set forth below.  
24  
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**BURKE v. DISCOVERY SALES, INC.**  
**Complaint for Damages and Jury Demand**

1 **NINTH CAUSE OF ACTION**  
2 **FAILURE TO PAY ALL WAGES DUE UPON DISCHARGE-PENALTIES**  
3 **California Labor Code § 203**

4 106. The allegations of each of the preceding paragraphs are realleged and incorporated herein  
5 by reference.

6 107. Labor Code section 203 provides that if an employer willfully fails to pay compensation  
7 promptly upon discharge, as required by section 201, then the employer is liable for waiting time  
8 penalties in the form of continued compensation of up to thirty work days.

9 108. Defendant DISCOVERY SALES, INC. discharged Plaintiff.

10 109. Defendant DISCOVERY SALES, INC. willfully failed and refused to timely pay  
11 compensation and wages to Plaintiff at the time of her discharge. As a result, defendant DISCOVERY  
12 SALES, INC. is liable to Plaintiff for waiting time penalties under Labor Code section 203.

13 WHEREFORE, Plaintiff prays for judgment against defendant DISCOVERY SALES, INC. as  
14 set forth below.

15 **CLAIM REQUIREMENT**

16 110. Plaintiff has complied with all applicable administrative claims requirements under  
17 California and Federal law.

18 **DAMAGES**

19 111. As a proximate result of defendant DISCOVERY SALES, INC.'s conduct, Plaintiff has  
20 suffered economic loss.

21 112. As a further proximate result of defendant DISCOVERY SALES, INC.'s conduct,  
22 Plaintiff has suffered severe emotional and mental distress, fear, anxiety, humiliation and  
23 embarrassment.

24 113. As a further proximate result of Defendant's conduct, Plaintiff has incurred medical  
25 expenses and lost time from her usual occupation.

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**BURKE v. DISCOVERY SALES, INC.**  
**Complaint for Damages and Jury Demand**

1 114. Plaintiff was required to retain private counsel to vindicate her rights under law. Plaintiff  
2 is therefore entitled to an award of all attorneys fees incurred in relation to this action for violation of her  
3 civil rights.

4 WHEREFORE, Plaintiff requests relief from defendant DISCOVERY SALES, INC. as follows:

- 5 1. For compensatory damages for lost wages, earnings, and benefits, according to proof;
- 6 2. For general damages for humiliation, mental anguish and emotional distress, according to  
7 proof;
- 8 3. For consequential damages, according to proof;
- 9 4. For punitive damages, according to proof;
- 10 5. For statutory penalties, according to proof;
- 11 6. For reasonable attorneys' fees, according to proof;
- 12 7. For reasonable costs, according to proof;
- 13 8. Injunctive relief to address the wrongs alleged herein; and
- 14 9. For such other and further relief as the Court may deem just and proper.

15  
16 Dated: October 18, 2010

SUNDEEN SALINAS & PYLE

17 By: 

18 Hunter Pyle

19 Attorneys for Plaintiff  
20 VIRGINIA BURKE

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**BURKE v. DISCOVERY SALES, INC.**  
**Complaint for Damages and Jury Demand**

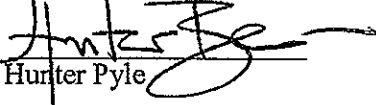
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**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial.

Dated: October 18, 2010

SUNDEEN SALINAS & PYLE

By:   
Hunter Pyle

Attorneys for Plaintiff  
**VIRGINIA BURKE**

# **EXHIBIT B**



- 2000

# PRESIDENTS CLUB *Elite*

★ Jeanie Burke      ★ Kristine Rossovich  
★ Nouvelle Burks

## PRESIDENTS CLUB *Premier*

Josette Meeks      Shari Bohn

TO MAINTAIN YOUR STATUS OR TO BECOME A PART OF THE PRESIDENTS CLUB ELITE,  
EVALUATIONS WILL BE BASED ON THE FOLLOWING CRITERIA:

1. 10 NET SALES FOR THE QUARTER
2. 10 CLOSINGS FOR THE QUARTER
3. CANCELLATION RATE  
*These are considered & will affect your final ranking*
4. TIMELY CLOSING OF ESCROWS
5. OFFICE & FILE MAINTENANCE
6. MAINTAINING INTEGRITY
7. ADHERING TO THE RULES OF ENGAGEMENT

TO MAINTAIN YOUR STATUS OR TO BECOME A PART OF THE PRESIDENTS CLUB PREMIER,  
YOU MUST ACHIEVE:

9 NET SALES FOR THE QUARTER | 7 CLOSINGS FOR THE QUARTER

POSSIBLE BENEFITS OF MEMBERSHIP: BREAKFAST, DINNER, OVERNIGHT TRIPS WITH SIGNIFICANT OTHER, AWARD RECOGNITION

DISCOVERY  
SALES

DSI\_001268

- 2008

# PRESIDENTS CLUB *Elite*

☆ *Shari Bohm*

## PRESIDENTS CLUB *Premier*

*Jeani Burke*

*Tom Hale*

*Kery Carissimi*

TO MAINTAIN YOUR STATUS OR TO BECOME A PART OF THE PRESIDENTS CLUB ELITE,  
EVALUATIONS WILL BE BASED ON THE FOLLOWING CRITERIA:

1. 10 NET SALES FOR THE QUARTER
2. 10 CLOSINGS FOR THE QUARTER
3. CANCELLATION RATE  
*These are considered & will affect your final ranking*
4. TIMELY CLOSING OF ESCROWS
5. OFFICE & FILE MAINTENANCE
6. MAINTAINING INTEGRITY
7. ADHERING TO THE RULES OF ENGAGEMENT

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TO MAINTAIN YOUR STATUS OR TO BECOME A PART OF THE PRESIDENTS CLUB PREMIER,  
YOU MUST ACHIEVE:

9 NET SALES FOR THE QUARTER | 7 CLOSINGS FOR THE QUARTER

DISCOVERY  
SALES

# **EXHIBIT C**

- 2009

# PRESIDENTS CLUB *Elite*



## PRESIDENTS CLUB *Premier*

*Shari Bahm*

*Kristine Rossovich*

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TO MAINTAIN YOUR STATUS OR TO BECOME A PART OF THE PRESIDENTS CLUB PREMIER.  
YOU MUST ACHIEVE:

9 NET SALES FOR THE QUARTER | 7 CLOSINGS FOR THE QUARTER

2009

# PRESIDENTS CLUB *Elite*

☆ Shari Bohm ☆ Kristine Kassavich ☆ Shari Schreiber

# PRESIDENTS CLUB *Premier*

Jeani Burke Brian Cruz

TO MAINTAIN YOUR STATUS OR TO BECOME A PART OF THE PRESIDENTS CLUB ELITE,  
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TO MAINTAIN YOUR STATUS OR TO BECOME A PART OF THE PRESIDENTS CLUB PREMIER,  
YOU MUST ACHIEVE:

9 NET SALES FOR THE QUARTER | 7 CLOSINGS FOR THE QUARTER

- 2009

## PRESIDENTS CLUB Elite

☆ Shari Bohm ☆ Kristine Rossovich

## PRESIDENTS CLUB Premier

Ashley Brennan Barbara Vasquez  
Michelle Stainton Tom Hale

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TO MAINTAIN YOUR STATUS OR TO BECOME A PART OF THE PRESIDENTS CLUB PREMIER,

YOU MUST ACHIEVE:

9 NET SALES FOR THE QUARTER | 7 CLOSINGS FOR THE QUARTER

 DISCOVERY SALES  
A Real Estate Firm for Growing Homes & Smart Living

2009

## PRESIDENTS CLUB *Elite*

★ Liz Alarcon      ★ Kristine Kassavich  
★ Shari Bohm

## PRESIDENTS CLUB *Premier*

Ashley Brennan      Michelle Stainton  
Barbara Vasquez      Tom Hale      Nouvelle Burks

TO MAINTAIN YOUR STATUS OR TO BECOME A PART OF THE PRESIDENTS CLUB ELITE.  
EVALUATIONS WILL BE BASED ON THE FOLLOWING CRITERIA:

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6. MAINTAINING INTEGRITY
7. ADHERING TO THE RULES OF ENGAGEMENT

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TO MAINTAIN YOUR STATUS OR TO BECOME A PART OF THE PRESIDENTS CLUB PREMIER.

YOU MUST ACHIEVE:

9 NET SALES FOR THE QUARTER | 7 CLOSINGS FOR THE QUARTER

 DISCOVERY SALES  
A Sales & Marketing Firm for Property, Home & Service Sales

# **EXHIBIT D**



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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF CONTRA COSTA

---o0o---

VIRGINIA BURKE,  
Plaintiff,

vs. No. C 10-03014

DISCOVERY SALES, INC., et al.,  
Defendants.

/

DEPOSITION OF CAREY HENDRICKSON

Taken before MARK CHILDRESS  
CSR No. 7773  
December 15, 2010

1 Q. And what did you tell Mr. Shahid had been said  
2 during that conversation?

3 A. That she was irate, very upset and threatened  
4 to quit.

5 Q. Did you say anything else to Mr. Shahid about  
6 the conversation that you had had with Ms. Burke a  
7 couple of minutes prior?

8 A. I'm sorry. Can you repeat that?

9 Q. Yeah. You just gave a list of things that you  
10 told to Mr. Shahid. I just want to know, is there  
11 anything else that you told him about your conversation  
12 with Ms. Burke?

13 A. That she was -- she said, "Maybe I should just  
14 quit."

15 Q. Anything else?

16 A. She complained about income, location, upset  
17 that she did not get the grand opening.

18 Q. Which grand opening was that?

19 A. Solage.

20 Q. How do you spell that?

21 A. S-o-l-a-g-e.

22 Q. Who had gotten that grand opening?

23 A. Liz Alarcon.

24 Q. Now, I'm asking now about what you told  
25 Mr. Shahid, just to be clear. So during your call with

1 Mr. Shahid on October 17th you told him these things  
2 that you've just told us, right?

3 A. Yes.

4 Q. Okay. Did you tell Mr. Shahid anything else  
5 about your conversation with Ms. Burke that you can  
6 remember?

7 A. I believe I mentioned that she was going to go  
8 to the doctor on Monday.

9 Q. Okay. What else did you tell Mr. Shahid about  
10 what Ms. Burke had told you, if anything?

11 A. Nothing more that I can recollect.

12 Q. And how did Mr. Shahid respond? What did he  
13 say?

14 A. I don't remember his exact response other than  
15 he told me that he was going to call her.

16 Q. Did he seem upset by what you told him Jeani  
17 Burke had said?

18 A. Yes.

19 Q. Did he seem angry?

20 A. No. Controlled.

21 Q. Did he mention anything about terminating  
22 Ms. Burke?

23 A. No.

24 Q. Okay. Can you remember anything else about  
25 your conversation with Mr. Shahid on October 17, 2009

1 Ms. Burke out?

2 A. I told her that I would not be the person that  
3 would be providing that to her since she had just  
4 threatened me.

5 Q. Was anything else said between you and  
6 Ms. Burke?

7 A. No.

8 Q. Did Ms. Burke appear to be upset?

9 A. No.

10 Q. Did she appear to be in a good mood?

11 A. No.

12 Q. How would you describe her mood as you observed  
13 it?

14 A. Controlled and not aggressive or upset.

15 Q. Okay. After Ms. Burke left, who was the first  
16 person that you talked to?

17 A. Mr. Shahid.

18 Q. And did you go meet with him immediately?

19 A. Yes.

20 Q. What did you tell him?

21 A. I told him what Jeani had just said.

22 Q. And how did he respond?

23 A. He said that he wanted a resignation letter  
24 signed.

25 Q. When you say that you told Mr. Shahid what

1 Jeani had just said, do you mean that she had  
2 threatened to sue the company?

3 A. Yes.

4 Q. And what specifically did you tell Mr. Shahid  
5 in that regard?

6 A. I cannot tell you specifically. I don't  
7 recall.

8 Q. Okay. Tell me generally what you said to  
9 Mr. Shahid, what you told him Jeani had said?

10 A. When I walked her out that she had threatened  
11 to come after the company and that I should know  
12 because I'm the broker.

13 Q. Did you say anything else to Mr. Shahid about  
14 your meeting with Jeani Burke?

15 A. No.

16 Q. Okay.

17 A. I'm sorry. It was mentioned that she was going  
18 to go to the doctor.

19 Q. You told Mr. Shahid that?

20 A. Yes.

21 Q. Did you tell him why she was going to go to the  
22 doctor?

23 A. No.

24 Q. And then Mr. Shahid told you that he wanted a  
25 letter of resignation from Ms. Burke?

1 MR. LOUDERBACK: We've been going about an hour  
2 and a half. Whenever you get to a logical break why  
3 don't we break.

4 MR. PYLE: Yeah. Let me finish up this line of  
5 questions and we can take a break.

6 MR. LOUDERBACK: I wanted to also, when you're  
7 done, just go on the record on one issue you and I  
8 talked about before when you're done with this line of  
9 questioning.

10 MR. PYLE: Okay.

11 BY MR. PYLE:

12 Q. Did you meet with Ms. Burke again after that  
13 initial meeting regarding these morale issues?

14 A. I don't recall.

15 Q. In your -- As far as you were concerned, had  
16 the issues been resolved?

17 A. Yes.

18 Q. Did you get any other complaints after your  
19 meeting with Ms. Burke about morale issues?

20 A. Just feedback based on her threats to quit.

21 Q. Other than that, any other issues about morale  
22 issues after your face-to-face meeting with Ms. Burke  
23 in late September or early October 2009?

24 A. Not that I can recall, no.

25 MR. PYLE: Okay. This is a good place for a

1 THE VIDEOGRAPHER: We're going off the record  
2 at 11:11 a.m.

3 (Recess taken.)

4 THE VIDEOGRAPHER: We're back on the record.  
5 The time is 11:27 a.m.

6 MR. LOUDERBACK: The witness has a  
7 clarification on a name that she got off on your  
8 question regarding the grand opening. She'd like to  
9 clarify that.

10 MR. PYLE: Please do.

11 THE WITNESS: It is not Solage. It is  
12 Serenade.

13 BY MR. PYLE:

14 Q. Serenade?

15 A. M-hm.

16 Q. Is that a yes?

17 A. Yes.

18 Q. Any other clarifications that you'd like to  
19 make at this time?

20 A. No.

21 Q. Okay. Great. So when we broke we were talking  
22 about the reasons for Ms. Burke's termination, and you  
23 had given me a list. I just wanted to clarify some of  
24 those. And the list that you gave me was her threat to  
25 quit, her complaining about location, pay and being

1 mistreated, her ongoing complaints about income, morale  
2 issues, not following procedures, gossiping and  
3 speaking poorly about other agents. Is there anything  
4 that you'd like to add to that list before I go back  
5 through and clarify some of those issues?

6 A. No.

7 Q. Okay. When you said that Ms. Burke was  
8 complaining about location, were those complaints  
9 specific to her working at Willows?

10 A. At that time, yes.

11 Q. And were at least some of those complaints  
12 related to the incident with Mr. Bargmann?

13 A. Yes.

14 Q. And Ms. Burke feeling unsafe in the workplace?

15 A. Yes.

16 Q. You said that Ms. Burke was not following  
17 procedures. What were you referring to there?

18 A. Documentation for contracts.

19 Q. What specifically was she not doing?

20 A. Presenting offers without entire packages,  
21 selling homes without explaining all the options that  
22 were included.

23 Q. Anything else?

24 A. We had processes in how to present a contract,  
25 and on numerous occasions the package would not come



1 Q. Do you think five is about right or do you  
2 think it's less than five?

3 A. Without going through it's hard to say.

4 MR. PYLE: Okay. Let's go off the record.

5 THE VIDEOGRAPHER: This marks the end of media  
6 number 1. We're going off the record at 11:54 a.m.

7 (Recess taken.)

8 THE VIDEOGRAPHER: This is the beginning of  
9 media number 2 of the video recorded deposition of  
10 Carey Hendrickson. The time is approximately 1:08 p.m.  
11 Counsel, you may proceed.

12 MR. PYLE: Thank you.

13 BY MR. PYLE:

14 Q. Ms. Hendrickson, I just want to remind you  
15 you're under oath, the same as you were this morning.  
16 You understand that, right?

17 A. Yes.

18 Q. Okay. Couple of follow-up questions for you.  
19 You mentioned before the lunch break that the decision  
20 regarding ending Ms. Burke's employment had been a  
21 group decision between you and Mr. Shahid. Do you  
22 remember giving that testimony?

23 A. Yes.

24 Q. Okay. Was that decision made after your  
25 telephone call with Ms. Burke on October 18, 2009?

1 A. No.

2 Q. When was it made?

3 A. The next day, after our first conversation.

4 Q. When you say "the next day," which day are you  
5 talking about?

6 A. I'm sorry. The 18th was Sunday, correct?

7 Q. Right.

8 A. Okay. It was made after our telephone  
9 conversation.

10 Q. On Sunday?

11 A. Yes.

12 Q. October 18?

13 A. Yes.

14 Q. And when you say "after our telephone  
15 conversation" do you mean the telephone conversation  
16 between you and Ms. Burke?

17 A. Yes.

18 Q. And when you testified earlier about that  
19 decision, I thought that you testified that Mr. Shahid  
20 told you that you'd be terminating Ms. Burke's  
21 employment or words to that effect.

22 A. Yes. I want to elaborate on group decision a  
23 little bit for you.

24 Q. Please.

25 A. Not necessarily that we all put in a vote. It

1       there?

2                   MR. LOUDERBACK:  Objection as to what you mean  
3       by "pretty good job."  It's ambiguous.

4                   You can answer it.  If you can.

5                   THE WITNESS:  The offers were accepted.  They  
6       were fairly consistent, but again, they were very  
7       aggressive.

8       BY MR. PYLE:

9                   Q.  Were you pleased with the number of sales that  
10       Ms. Burke made while she was working at The Willows?

11                   A.  Yes.

12                   Q.  I'm not going to mark this as an exhibit, just  
13       because it has some people's personal information on  
14       it, but I want to just show you these documents.  At  
15       the top it says Buyer Details.  And then it says  
16       Community:  The Willows.  Do you see that?

17                   A.  M-hm.

18                   Q.  Is that a yes?

19                   A.  Were these the sheets that would be filled out  
20       when Ms. Burke or any other sales agent made a sale at  
21       Willows?

22                   MR. LOUDERBACK:  Let me stop you right there.  
23       Is there some reason we're not marking these as a  
24       collective exhibit or whatever?

25                   MR. PYLE:  I just thought I'm not going to go

1 department had that under control at that point.

2 Q. Okay. We'll get to that in a second, but what  
3 I'd like to know is, did you and Mr. Shahid talk about  
4 doing anything to ensure that Ms. Burke was safe in the  
5 future?

6 A. Not that I can recall.

7 Q. Did you ever talk with anyone in the security  
8 department about what they were doing to ensure that  
9 Ms. Burke was safe in the future?

10 A. I believe I did talk to a few people in  
11 security.

12 Q. Who?

13 A. If I spoke to anyone, it would have been Callie  
14 Mossier.

15 Q. Can you spell that for us?

16 A. Is it Mossier? I don't know how to -- if it's  
17 Mossier or Mosher (phonetic). I don't have the  
18 spelling. M-o-s-s-i-e-r I believe.

19 Q. First name is Callie?

20 A. Yeah.

21 Q. Now, you said if you did. Do you have a  
22 specific recollection of actually speaking with Callie  
23 Mossier about what was being done to ensure that  
24 Ms. Burke was safe?

25 A. It would have been with Callie or -- I don't

1 remember honestly.

2 Q. You said it would have been. What I'm trying  
3 to figure out is, do you have a specific memory of this  
4 conversation or are you saying --

5 A. No.

6 Q. -- that you might have?

7 A. Yes.

8 Q. You're saying that you might have?

9 A. Yes.

10 Q. And sitting here today you don't have a  
11 specific memory of --

12 A. No.

13 MR. LOUDERBACK: Got to wait until he's done  
14 with his question, then answer.

15 BY MR. PYLE:

16 Q. Sitting here today, do you have a specific  
17 memory of speaking with anyone in security at Discovery  
18 Sales to ensure that Ms. Burke was safe?

19 A. No.

20 Q. Other than your conversation with Mr. Shahid on  
21 the day of the incident, did you speak with anyone else  
22 at Discovery Sales about the Bargmann incident at any  
23 time?

24 A. I know that I talked to Ayman again because we  
25 arranged for a few things to occur.

1 Q. Another temp who was working at the development  
2 selling homes, correct?

3 A. Yes.

4 Q. And how did you learn about that second  
5 incident?

6 A. I don't remember who told me. It might have  
7 been Jeani.

8 Q. And you said her concerns about Mr. Bargmann  
9 heightened after that incident?

10 A. Yes.

11 Q. And after that incident did she tell you that  
12 she was scared that he would come back?

13 A. No.

14 Q. What did she tell you?

15 A. She was concerned and wanted to not be alone  
16 and wanted to make sure security was there.

17 Q. And did Ms. -- Was it your understanding that  
18 Ms. Burke was concerned about these things because of  
19 Mr. Bargmann?

20 A. Yes.

21 Q. And because he had been there on two separate  
22 occasions?

23 A. Yes.

24 Q. And had exposed his penis to two separate  
25 women?

1           A. I don't remember them being too far apart, but  
2 I don't have the dates.

3           Q. The improvements in security that you testified  
4 about a few minutes ago, did those happen after the  
5 first Bargmann incident or after the second Bargmann  
6 incident?

7           A. I don't recall. It wasn't my decision.

8           Q. After the second Bargmann incident, given that  
9 Willows was a community that you were responsible for  
10 supervising, if that's fair, were you concerned about  
11 this person who's gone up there exposing his penis to  
12 women?

13          A. Yes.

14          Q. Did you think that it was a serious situation?

15          A. Yes.

16          Q. Would you have wanted to work in that  
17 situation?

18          A. No.

19          Q. Do you think any reasonable woman would have  
20 wanted to work in a situation where a man was coming in  
21 and exposing his penis to her?

22                 MR. LOUDERBACK: Objection. Calls for  
23 hypothetical, incomplete hypothetical. You can answer  
24 the question.

25                 THE WITNESS: I had asked the question if the

1 occasions given her permission to close up.

2 BY MR. PYLE:

3 Q. Did you think that the security was sufficient  
4 after the security guard that was with Ms. Burke for a  
5 period of time was no longer there?

6 A. I was not aware until she let me know on the  
7 certain occasions that she was alone. She also let me  
8 know when the lender was there with her.

9 Q. So was Ms. Burke calling you on a regular basis  
10 to tell you that she was alone?

11 A. Only when she was alone. I wouldn't consider  
12 it a regular basis.

13 Q. And did she tell you that she was scared to  
14 work alone?

15 A. She wanted to know what was going on and if she  
16 could leave at certain times.

17 Q. Did you conclude from these phone calls that  
18 Ms. Burke was scared to work alone at The Willows?

19 A. Yeah.

20 Q. And did you conclude that Ms. Burke was scared  
21 to work alone at The Willows because of the two  
22 Bargmann incidents?

23 A. Yes.

24 Q. Did you ever learn that Ms. Burke was asking  
25 her sister to come to work with her at The Willows



1 Q. So this was a pretty long conversation?

2 A. Yes.

3 Q. In relation to the other ones you've testified  
4 about?

5 A. Yes.

6 MR. LOUDERBACK: I'm sorry, Counsel. The date  
7 you're asking about is October --

8 MR. PYLE: 17, Saturday, October 17.

9 MR. LOUDERBACK: Thank you.

10 BY MR. PYLE:

11 Q. And this was before you spoke with Mr. Shahid  
12 that day?

13 A. Yes.

14 Q. What do you remember talking about with  
15 Ms. Burke during the conversation on October 17, 2009?

16 A. The first thing she asked me the minute I  
17 answered the phone was, "Am I getting the grand  
18 opening?"

19 Q. Was that the Serenade?

20 A. Yes.

21 Q. And what did you say?

22 A. I said, "No, you're not."

23 Q. What's the next thing that you talked about?

24 A. She began to get irate and upset.

25 Q. Okay. What's the next thing that happened?

1           A. She talked about the company and how unfair  
2 they've been to her and about her income and about not  
3 wanting to be there.

4           Q. At Willows?

5           A. Yes. I remember trying to get her to calm down  
6 and that I would talk to Ayman. And that's -- That was  
7 the day she told me that "maybe I should just quit."

8           And I responded, "What do you mean by 'maybe I  
9 should just quit'?"

10           And then she changed the subject. And at the  
11 end of our conversation I remember her saying that she  
12 was going to go see her doctor on Monday.

13           Q. Did she say why?

14           A. I don't remember her exact words.

15           Q. Did you understand that it was because of  
16 stress related to work?

17           A. She was stressed, but the conversation we had  
18 was about money, location and not wanting to be at The  
19 Willows.

20           Q. Did you understand that she was going to go see  
21 her doctor about something related to work on Monday?

22           MR. LOUDERBACK: Objection. Asked and  
23 answered. You can answer it again.

24           THE WITNESS: It was my understanding that she  
25 was going to see her doctor about the stress. I don't

1 know what kind of doctor she was going to go see or  
2 anything.

3 BY MR. PYLE:

4 Q. But did you understand that it was stress that  
5 was related to work?

6 A. It came across that way. I mean, she was  
7 yelling at me over the phone. I don't know that she  
8 was yelling personally at me. I think she was yelling  
9 just -- Primarily what set her off was not getting the  
10 grand opening.

11 Q. Okay. And did you ask any questions of  
12 Ms. Burke in terms of what she was going to see her  
13 doctor about?

14 A. No.

15 Q. Did you have any problems with Ms. Burke seeing  
16 her doctor on Monday?

17 A. No.

18 Q. Did -- During the call on October 17, 2009 did  
19 you talk about whether or not Ms. Burke would get to  
20 work at Serenade at any time?

21 A. At any time since she had been back?

22 Q. No. Let me be more specific. I understand  
23 there's a grand opening.

24 A. Yeah.

25 Q. Correct? And most agents would want to work at

1 Q. Sure. You're not really supposed to, but go  
2 ahead.

3 A. That's okay. There's certain situations where  
4 she went in to create the results for the grand opening  
5 and then went back to her regular community.

6 Q. Okay. And I don't mean to cut you off, but  
7 generally if there's no question pending your attorney  
8 doesn't want you to talk. If you want to clarify an  
9 answer, please feel free.

10 A. Okay.

11 Q. Okay? Okay. Now, when Ms. Burke told you,  
12 "Maybe I should quit," or words to that effect, was  
13 that the first time that she had mentioned quitting to  
14 you?

15 A. Yes.

16 Q. And then you said before that you asked her,  
17 you know, "What do you mean?" or words to that effect  
18 and she then changed the topic, correct?

19 A. Yes.

20 Q. And you testified that you didn't have any  
21 other conversations with Ms. Burke on the 17th of  
22 October, correct?

23 A. Not that I can recall.

24 Q. And you had one conversation with her on the  
25 18th of October, correct?

1 A. Yes.

2 Q. And during that conversation on the 18th of  
3 October Ms. Burke did not refer to quitting, correct?

4 A. Correct.

5 Q. And so the only time Ms. Burke referred to  
6 quitting before the decision was made to terminate her  
7 was during that conversation on October 17, 2009, when  
8 she said, "Maybe I should quit"; is that correct?

9 MR. LOUDERBACK: To her? The question is  
10 ambiguous. The question is directly to her or to other  
11 people?

12 BY MR. PYLE:

13 Q. To you.

14 A. Can you repeat that?

15 MR. PYLE: Yeah.

16 Would you mind reading the question back.

17 (Record read.)

18 MR. LOUDERBACK: Okay. So the question is  
19 ambiguous. It's been clarified by counsel to only  
20 limit yourself to the time she threatened to quit to  
21 you, not to other people, is what he's asking you.

22 THE WITNESS: So to me, yes.

23 BY MR. PYLE:

24 Q. Were you involved in terminating any other  
25 employees at Discovery Sales over the weekend of

1 A. Yes.

2 Q. Okay. Now, prior to October 19, 2009, had you  
3 heard from anyone else that Ms. Burke was considering  
4 quitting?

5 A. Yes.

6 Q. Who?

7 A. Rick Cacchiola.

8 Q. Who else?

9 A. Liz Alarcon.

10 Q. Who else?

11 A. And some information was circulating through  
12 various other agents, such as Shari Bohm and Denise  
13 Barba.

14 Q. Anyone else?

15 A. Fatima Sharif.

16 Q. Is that Mr. Shahid's wife?

17 A. Yes.

18 Q. Anyone else?

19 A. Not that I can think of.

20 Q. Had anyone given you anything in writing about  
21 Ms. Burke quitting?

22 A. No.

23 Q. So this was all word of mouth?

24 A. Yes.

25 Q. And these are all people who spoke directly to

1       you about this?

2             A. Not everybody, no.

3             Q. Who spoke directly to you about the possibility  
4 of Ms. Burke quitting?

5             A. If I can recall, it would have been Rick and  
6 Liz and actually Shari as well.

7             Q. So how did you learn about Denise Barba?

8             A. I believe it was through Liz.

9             Q. And how did you learn about Fatima Sharif?

10            A. From Fatima. I forgot that that was direct.

11            Q. Okay. So what did -- Let's start with Rick  
12 Cacchiola. When did he tell you what he told you?

13            A. I don't recall, but I went to him directly  
14 after I had heard from Liz.

15            Q. Why don't we start with Liz then. What did Liz  
16 tell you?

17            A. That she heard that Jeani was going to quit.

18            Q. Is that it?

19            A. I can recall.

20            Q. When did Liz tell you that she had heard that  
21 Jeani was going to quit?

22            A. I don't remember. It might have been after she  
23 had already been terminated.

24            Q. Okay.

25            A. Most of this surfaced after she was terminated.

1 Q. So do you think that after Ms. Burke was  
2 terminated Liz told you that she'd heard that Jeani was  
3 going to quit?

4 A. Yes.

5 Q. All right. And did Liz tell you how she'd  
6 heard that?

7 A. To my recollection, it was through Rick.

8 Q. Did Liz tell you that she'd heard it from any  
9 source other than Rick?

10 A. No.

11 Q. And so you then went to Rick?

12 A. Yes.

13 Q. And this is after Ms. Burke was terminated?

14 A. Yes.

15 Q. And you said what? What did you ask him?

16 A. I don't remember exactly.

17 Q. What did he say to you?

18 A. I remember him saying that she was going to  
19 quit.

20 Q. Did he say anything more than that to you?

21 A. Not that I remember.

22 Q. Okay. And then did you ask Rick Cacchiola why  
23 he thought that Jeani was going to quit?

24 A. He said he heard it directly, from what I can  
25 recall.



1 Q. Okay. Do you remember that or are you just  
2 speculating about that?

3 A. No. I can -- From what I recall, he heard it  
4 directly from her that she was going to quit. And I  
5 don't have any recollection to the reasoning that he  
6 was given or even discussing it.

7 Q. Do you remember when -- Did Mr. Cacchiola tell  
8 you when Ms. Burke was going to quit? Was there any  
9 time frame given?

10 A. No.

11 Q. Okay. Shari Bohm, what did she say to you  
12 about Ms. Burke quitting?

13 A. That Rick told her.

14 Q. Okay. Anything else?

15 A. No.

16 Q. How about Fatima Sharif? What did she say to  
17 you about Ms. Burke quitting?

18 A. That she told her directly.

19 Q. Okay. When did Ms. Sharif tell you that  
20 Ms. Burke had said --

21 A. Sorry. I'm getting a couple situations  
22 confused. So I want to retract that.

23 Q. Okay. What --

24 A. Because I don't remember exactly what Fatima  
25 said, but I know that there was some conversations

1 between her and Jeani, but I don't -- I can't specify  
2 the conversation.

3 Q. Okay. Did -- Whatever Fatima told you, or  
4 whatever you learned about Fatima, did you learn that  
5 after Ms. Burke was terminated?

6 A. Yes.

7 Q. So prior to Ms. Burke being terminated, had you  
8 heard from anyone that Ms. Burke might be quitting  
9 other than Ms. Burke herself?

10 A. Prior, no.

11 Q. And are there any other people that told you  
12 that they had some knowledge about Ms. Burke quitting?

13 A. Directly, no.

14 Q. Indirectly?

15 A. At one point I was told by someone that Joe  
16 Griffin knew that she was quitting.

17 Q. Do you remember who told you that?

18 A. No, I do not.

19 Q. And did you speak with Mr. Griffin about that?

20 A. No.

21 Q. Does Mr. Griffin still work for Discovery  
22 Sales?

23 A. Yes.

24 Q. What's his position?

25 A. Superintendent.

1 Q. Okay. Then let's go to 2009 Q1 awards on page  
2 2 of 3. Do you see that?

3 A. Yes.

4 Q. It says Outstanding Sales Performance: Jeanie  
5 (sic) Burke. What does Outstanding Sales Performance  
6 mean in this context?

7 A. It doesn't look like a Presidents Club award  
8 was given, but another award was supplemented.

9 Q. Do you know what that's referring to?

10 A. No.

11 Q. And then 2009 Q3 awards. Have you seen a final  
12 report for the third quarter of 2009?

13 A. Probably not since then.

14 Q. Not since 2009?

15 A. Yes.

16 Q. Okay. Thanks. I don't have any further  
17 questions about that document.

18 Can you do me a favor actually? Can we go back  
19 to Exhibit 9? And look at the last two pages and look  
20 at Jeani Burke's job performance for the first quarter  
21 of 2009 and then the second quarter of 2009. Have you  
22 had a chance to look at those?

23 A. Yes.

24 Q. Do you agree with me that Jeani Burke's  
25 performance in the second quarter of 2009 was better

1 than her performance in the first quarter of 2009?

2 A. Yes.

3 Q. She got more sales in the second quarter of  
4 2009 than she had gotten in the first quarter of 2009;  
5 is that right?

6 A. Yes.

7 Q. And she had fewer cancellations?

8 A. Yes.

9 Q. Is that right? And she had more closings,  
10 correct?

11 A. Yes.

12 Q. And her cancellation ratio was down in the  
13 second quarter of 2009, correct?

14 A. Yes.

15 Q. Did Ms. Burke's separation from Discovery  
16 Sales, meaning her termination, did that have anything  
17 to do with her cancellation rate?

18 A. No.

19 Q. Did Ms. Burke's termination have anything to do  
20 with her job performance in terms of selling houses?

21 A. No.

22 Can I go back to the can issue?

23 Q. Yeah.

24 A. It wasn't the focal area of the termination,  
25 but it was an area that was discussed.

1 STATE OF CALIFORNIA )  
2 )  
3 COUNTY OF ALAMEDA )

AUTHENTIC COPY  
The original certified E-Transcript  
file was electronically signed  
using RealLegal technology

4  
5 I, MARK CHILDRESS, do hereby certify:  
6 That CAREY HENDRICKSON, in the foregoing  
7 deposition named, was present and by me sworn as a  
8 witness in the above-entitled action at the time and  
9 place therein specified;

10 That said deposition was taken before me at said  
11 time and place, and was taken down in shorthand by me,  
12 a Certified Shorthand Reporter of the State of  
13 California, and was thereafter transcribed into  
14 typewriting, and that the foregoing transcript  
15 constitutes a full, true and correct report of said  
16 deposition and of the proceedings that took place;

17 IN WITNESS WHEREOF, I have hereunder subscribed my  
18 hand this 28th day of December 2010.

19  
20  
21  
22  
23  
24  
25

MARK CHILDRESS, CSR No. 7773  
State of California

# **EXHIBIT E**



**Sutter Regional  
Medical Foundation**

A Sutter Health Affiliate

Julianna Cline P.A.-C.  
Sutter Regional Medical Foundation - Vacaville  
770 Mason Street  
Vacaville, Ca. 95888  
Telephone 707-454-5800  
Fax 707-454-6952

S

**PROGRESS NOTE**

Name.	Burke, Virginia	MR #:	2193132
Attending Dr.	Julianna Cline P.A.-C.	Date:	February 18, 2009
DOB	January 8, 1980	TID #:	31018849

**CHIEF COMPLAINT.** Anxiety and stress.

**ALLERGIES:** No known drug allergies, although Benadryl makes her heart race.

**CURRENT MEDICATIONS:** Motrin over-the-counter p.r.n.

**PAST MEDICAL HISTORY.** Obesity, hyperlipidemia, menopause, appendectomy, and left ovarian mass with LSO removal, it was benign

**SOCIAL HISTORY** This woman is divorced, with two children. She is a realtor. She quit tobacco in 1984. She has a history of alcohol abuse, but currently uses very moderately and denies other substances.

**SUBJECTIVE:** This patient is under tremendous stress. She works as a realtor. Things have been very difficult with the economic turns and she feels like her job is always in jeopardy. Her job requires her to travel long distances with commutes of two hours one way and she has been doing this for several months. She has been with this company for 15 months and she feels like her life has been significantly much more stressful than it ever has been before. She was not having any interpersonal relationship problems at work or with friends until the last couple of months since she has had some run-ins with people recently. She finally talked to her employer and stated that she cannot keep up the amount of travel they are expecting of her, but she does not want to cause problems because she wants to keep her job. She is not sleeping well. She is only getting three or four of sleep total a night and that has been going on for many months. She is not exercising like she usually would. She has been irritable. She has been enjoying life a little bit less and she has been anxious usually when she lies down in bed. She starts thinking about the things and her heart starts racing. There has been no skipped beats or irregular rhythm. There has been no chest pain or lightheadedness. There has been no nausea or vomiting with this, but she feels like she is having anxiety. This is something she has not really ever had to deal with it. She usually is very well, very positive, and has never turned to medication to help her. Even with the sleep, she not wanted to try anything. Benadryl, she does not try because of the heart racing history. She has had some weight gain. She is not sure whether it is related to less activity. She tries to eat healthy. She does walk regularly, but not enough because of her schedule. She thinks some of these changes could be perimenopausal. She still has a period. She is not in a sexual relationship. She is wondering how to manage all of this. She wants to make sure there is nothing seriously well. Apparently, she has a friend who died of cardiovascular disease recently and it made her concerned. Her mother had a CVA in the past as well.

**REVIEW OF SYSTEMS:** Otherwise unremarkable

**OBJECTIVE** Temperature 98.3, blood pressure 130/82, pulse 85, and weight 198 pounds. General: This is an alert and well-developed female, in no acute distress. She is overweight. She does appear to be under some stress. Neck: Supple with no adenopathy or thyromegaly. Cardiovascular: Regular rate and rhythm without murmur. Lungs: CTA without wheeze or rales. Skin: Without rash, pallor, or jaundice.

We spent 20 minutes of the 25-minute visit talking about her current situation at work, her emotional concerns, and her symptoms.

**ASSESSMENT.**

Virginia Burke

- 1 Palpitations, probably heart racing rather than arrhythmia.
- 2 Situational stress causing insomnia at the very least, but I actually think this patient has some anxiety and depression as well.

PLAN.

- 1 The patient is counseled regarding stress reduction, exercise, and dealing with stress and anxiety. She does not want to be on an anti-anxiety or depression medication unless she has to, but she is willing to try Ambien 10 mg p.o. q h s p.r.n. #30 with two refills. Side effects, risks, and benefits were discussed with the patient.
- 2 Comprehensive metabolic panel, CBC, fasting lipids, TSH, and T4 to be drawn. We will notify the patient regarding results. Otherwise, recheck in one month and consider further treatment should symptoms not abate.



Julianna Cline P.A.-C

Id  
D 2/20/2009 2:48:34 PM  
T 2/21/2009 6:53 AM  
# 31018849



DATE FEB 18 2009 10:30 AM T 983 P 85 R / WT 198 HT /

Chief Complaint  
Anxiety / stress

Problems of Previous Visit  
 N/A  
 Resolved  
Tobacco User  YES  NO  
If Yes, Referral Given  YES  NO

Current Meds  
Motrin

Signature: [Signature]  
29407

**Allergies/Adverse Reactions ROS**

Review of Systems unchanged since  
NKDA

WNL

- Gen
- Eyes
- Card
- Ent
- Resp
- Psych
- Hemo/Lymp
- GI
- GU
- MS
- Skin
- Neuro
- Endo
- Allimm
- Gyn

**Patient Education**

- |                          |                          |                  |
|--------------------------|--------------------------|------------------|
| VERBAL DISCUSS           | EDUC MATL                |                  |
| <input type="checkbox"/> | <input type="checkbox"/> | Diabetes         |
| <input type="checkbox"/> | <input type="checkbox"/> | Tobacco Use      |
| <input type="checkbox"/> | <input type="checkbox"/> | Prev Guidelines  |
| <input type="checkbox"/> | <input type="checkbox"/> |                  |
| <input type="checkbox"/> | <input type="checkbox"/> | Ref to Health Ed |

05153314

See Flow Sheet  Note dictated  
 Continued on back

Follow Up

Signature [Signature]

BURKE, VIRGINIA 2193132  
DOB: 01/08/1960 SEX: F  
BLUE CROSS  
APT: CLINE-HENNIGAN PA, JULIANNA E  
HB: 02/18/2009/08:44A  
PCP: AUYEUNG MD, TERESA  
REF: AUYEUNG MD, TERESA  
08:30A 02/18/2009 V# 32372876 E30  
118 PEPPERELL CT

Sutter Regional Medical Foundation  
A Sutter Health Affiliate

**Progress Note - Adult 2**

FILE WITH PROGRESS NOTES IN DATE ORDER  
NUR-652 (Rev. 09/04)

# **EXHIBIT F**



**Sutter Regional  
Medical Foundation**

A Sutter Health Affiliate

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Fairfield, Ca. 94534  
Telephone (707)427-4900  
Fax (707)436-2509

**CONSULTATION**

Name: Burt, Virginia MR #: 2193132  
Date: June 18, 2009  
Consulting Dr.: George Stock M.D. TID #: 34160641  
Referring Dr.: Teresa Auyeung, M.D.

REASON FOR CONSULTATION: Evaluation for myalgias.

**HISTORY AND PHYSICAL:** I was asked to consult on this 49-year-old female. The patient was in her usual state of health until approximately late April 2009 when she developed pain in the anterolateral aspect of both thighs. Symptoms initially began on the right leg but subsequently progressed to the left. She feels that symptoms are generally worsened with the rising from a chair or climbing stairs. She denies radiation below the knee and gives no history of focal motor weakness, lower extremity numbness, color change; there is no history of bladder or bowel problems. She was tried on Naproxen and ibuprofen with moderate relief of symptoms. In late May, she was attempted on tapering doses of corticosteroids, which she stated relieved her symptoms completely. She has noted recurring symptoms after stopping this medication. She has denied fever, vision, changes, dysphagia, dysphonia, skin rashes, and gives no history suggestive of peripheral joint swelling or stiffness. Approximately six months ago, the patient had an episode of laryngitis, which lasted approximately three months. She described this as loss of voice without associated dysphagia, fever or cough. There is no history of recurring sinusitis.

**PAST MEDICAL HISTORY:** Generally unremarkable. There is no history of known back or neck trauma. The patient denies history of thyroid disease.

**ALLERGIES:** None documented to medication.

**FAMILY AND SOCIAL HISTORY:** The patient's daughter had a possible inflammatory event with significant arthralgias preceded by an episode of chest pain, which resolved spontaneously. No acute history suggestive of SLE, rheumatoid arthritis, or known thyroid disease. The patient is a non-smoker; consumes alcohol moderately.

**REVIEW OF SYSTEMS: GENERAL:** No history of fever. The patient's weight has increased slightly. **NEUROLOGIC:** The patient has denied headache, focal motor weakness, or syncopal episodes. **EYE, EAR, NOSE AND THROAT:** No conjunctivitis, or oral ulcerations. **CARDIOPULMONARY:** No cough, wheezing or chest pain. **GI:** No change in bowel habits. **GU:** Unremarkable. **HEMATOLOGIC:** Negative bleeding or thrombotic diaphysis. **SKIN:** No rashes, nodules or photosensitivity.

**PHYSICAL EXAMINATION: GENERAL:** Alert mildly anxious female. **VITAL SIGNS:** Blood pressure is 106/69 mmHg, heart rate is 80 and regular, and weight is 198 pounds. **SKIN:** Shows no telangiectasis, sclerodactyly, or subcutaneous nodules. No nail fold capillary changes. **NECK:** Shows normal range of motion. No thyromegaly or lymphadenopathy noted. **MUSCULOSKELETAL:** The patient has normal station and gait. Cervical spine shows normal range of motion. Shoulders, elbows, wrist and hand show normal range of motion. The patient has mild trigger points on palpation of suboccipital area, trapezii, lateral shoulders and left medial scapular border. Shoulders, elbows, and wrist and hands show otherwise normal range of motion without synovitis. Lumbar flexion and extension are grossly within normal limits. The patient has slight tenderness on palpation of the rectus femoris at the anterior superior iliac spine. Both hips and knees show normal range of motion. Straight leg raising test is negative bilaterally. Knees show normal flexion and extension without synovial thickening, instability, effusion or heat. **NEUROLOGIC:** The patient is alert, mildly agitated. Face is symmetric. Tongue protrudes midline. There is no proximal nor focal motor weakness noted. The patient is able to serial deep knee bends and toe raises with mild pain in the anterior thigh region. Deep tendon reflex is slightly depressed in patellar and Achilles reflexes but elicitable with reinforcement.

Negative ankle clonus.

LABORATORY DATA: Laboratory studies obtained May 2000 show trivial elevation in ESR at 34 mm/hr which is however increased from previous value of 25 mm/hr on May 20th. LDH is slightly elevated. CPK is within normal limits. C-reactive protein is very slightly elevated at 9.9 mg/liter. Myoglobin is normal. Uric acid is unremarkable. Hemogram is within normal limits. ANA is negative. Rheumatoid factor is negative. Thyroid functions studies from February 2009 showed normal free T4 and TSH.

IMPRESSION: Nonspecific proximal myalgias affecting predominantly the proximal quadriceps area. The patient's description of symptoms, particularly with morning accentuation, are highly suggestive of polymyalgia rheumatica. In addition, she reportedly responded to corticosteroids with almost complete resolution of symptoms. The patient is slightly young for this condition, but it is still a possibility. Additional considerations would include possibility of a focal lumbar spinal stenosis problem or central disc herniation, which may cause similar type presentation. The patient does not have evidence to suggest polymyositis at current level of evaluation.

At present, I will repeat CPK, aldolase, as well as ANCA, quantitative C-reactive protein, and anti-CCP. The patient will be reattempted on prednisone 10 mg q.a.m. She will have a followup appointment in approximately one week. Inflammatory indices are unremarkable. I will recommend MRI of the lumbar spine.



George Stock M.D.  
Signed: 6/22/2009  
as  
D: 6/18/2009 5:36:42 PM  
T: 6/18/2009 11:55 PM  
# 34160641

As the referring physician, I have reviewed this report.

\_\_\_\_\_  
Teresa Auyeung, M.D.

\_\_\_\_\_  
Date



appt 1<sup>st</sup> 19-09 to RHEUM  
**RHEUM**

SRMF PROVIDER TO SRM

**REFERRAL TYPE:**

Emergent Phy to Phy Call

Consult (Opinion/Treat)

Referral (Assume Care)

BURKE, VIRGINIA 2193132  
 DOB: 01/08/1960 SEX: F  
 BLUE CROSS  
 Patient: APT: AUYEUNG MD, TERESA  
 MR: HB: SRM 06/15/2009/04:41P  
 PCP: AUYEUNG MD, TERESA  
 Insu: REF: AUYEUNG MD, TERESA  
 09:15A 05/27/2009 V# 33597428 BR#  
 118 PEPPERELL CT  
 VACAVILLE, CA 95688  
 H: 707-301-1047 W: 707-301-1047  
 FOLLOW UP FROM HOLCOMB

Or P

**PERTINENT CLINICAL INFORMATION**  EMDAT  See Chart Note

Additional Notes: \_\_\_\_\_

Medications Tried and Failed: \_\_\_\_\_

Current Drug Therapy: \_\_\_\_\_ *Dr. Stock*

Radiology/Lab Test Ordered by Surgeon  CT Scan  CXR  None Ordered

Location of Studies:  SRMF  NBMC  VWH  SSMC  Other: \_\_\_\_\_ *Appt 6/18/09*

**PLEASE CHECK THE REASON FOR THIS REFERRAL**

<b>20 Minute Consult</b>	<b>40 Minute Consult</b>	
<input type="checkbox"/> Elbow Tendonitis (726.32)	<input type="checkbox"/> Fibromyalgia (729.1)	<input type="checkbox"/> Unspecified Connective Tissue Dis.(710.9)
<input type="checkbox"/> Hip Tendonitis (726.5)	<input type="checkbox"/> RA (714.0)	
<input type="checkbox"/> Knee Pain (719.46)	<input type="checkbox"/> SLE (710.0)	
<input type="checkbox"/> DJD (715.96)	<input type="checkbox"/> LBP (724.2)	
<input type="checkbox"/> Shoulder Tendonitis (726.10)	<input type="checkbox"/> Joint Pain (719.49)	
	<input type="checkbox"/> Neck DJD/Pain (723.1)	
	<input type="checkbox"/> Polymyalgia Rheumatica (725)	

Other Indication: *Please see re muscle pain*

Note: *CPK @ 7ESK Thanks*

Requesting Provider: *Hgj*

Priority Assigned:  Within 1 week  Within 2 week  Next available

Date of Appt: / / Attempts to Contact Patient 1. 2. 3.

Date letter sent to patient after 3 attempts to contact: / / Notice to Referring Physician of No Contact: / /

**FAXED**  
 JUN 18 2009  
 By: \_\_\_\_\_

*436-2509*

**FAXED JUN 15 2009**

**FAXED JUN 16 2009**

CALL CENTER  
MEDICAL CARE FORM

Open Date/Time: 06/15/2009  
Edit Date/Time:

09:05AM By: ROANA Message #: 851184  
By: Status: OPEN

Patient: BURKE, VIRGINIA

MRN: 2193132 DOB: 01/08/1960

Prov: AUYEUNG MD, TERESA  
Insurance: BLUE CROSS

Dept: FPD Loc: SRM  
PCP:

Home Phone: 707-301-1047

Alt. Phone:

Last Dept Visit: 05/27/2009 AUYEUNG  
Last PCP Visit:

Next Dept Visit:  
Next PCP Visit:

Caller (if not Patient):  
Synopsis: MEDICAL ADVICE

Phone: 707-301-1047  
Level: P

Chart Requested?:

Message:

ROANA on 06/15/2009 at 09:10AM  
FYI: PT IS NO BETTER AFTER STEROIDS FOR 1 WEEK... HAS BEEN OFF THEM FOR ANOTHER  
WEEK W/NO IMPROVEMENT... PAIN IN BACK & LEGS IS AN 8 OR 9... CAN HARDLY  
MOVE... JUST TAKING 800MG MOTRIN DAILY... WANTS TO KNOW CAN BE DONE NEXT TO HELP  
HER & WANTS DR TO CALL HER TODAY ASAP TO LET HER KNOW WHAT TO DO//NR

Assessment:

called 0953 - voicemail states in full  
& leave a msg - J. Hays, R 6/15/09

1051 - pt. co pain x 3 mos.  
has seen Dr. Auyeung RE: co. pain

Plan:

taking Naprosyn + steroids & working  
co. pain in back of legs (upper), back + shoulder  
pt. states is frustrated  
taking 800mg Motrin in AM + wears away 3/4 out of 10  
of Motrin

Printed Name/Signature: \_\_\_\_\_

J. Hays, R

Date/Time: 10/15/09

Called 2:30 pm 6-15-09 Consult Dr. G. Stock 10550

Plan for pt. Elvira VICODIN 5/501 #30, 560 pm  
451-02885 ) Done  
6/15/09 14:50 AM



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Medical Foundation**

A Sutter Health Affiliate

Teresa Auyeung M.D.  
Sutter Regional Medical Foundation - Vacaville  
770 Mason St  
Vacaville, CA 95688  
Telephone (707) 454-5950  
Fax (707) 454-5952

### PROGRESS NOTE

Name: Burke, Virginia MR #: 2193132  
Attending Dr. Teresa Auyeung M.D. Date: May 27, 2009  
DOB: January 8, 1960 TID #: 33562219

CHIEF COMPLAINT: Muscle pain for two months, followup.

HISTORY OF PRESENT ILLNESS: This 48-year-old lady complained of leg pain for the past two months. The pain initially started at the left leg and then moved to the right leg. Since then, the pain has spread to her upper thigh and shoulder and neck area. In the past, she has seen Dr. Nguyen and Dr. Holcomb. She also has blood work done last week. She would like to know the results. She was initially given Naprosyn without much relief. At present, she is taking ibuprofen with partial relief. The pain in the morning without ibuprofen was 10/10. She was unable to get out of bed in the morning. The pain would go down to a 7 or 8 /10 after she took the ibuprofen or bare aspirin. There was no pain when she is resting or sitting still. However, she developed severe pain when she moved or when getting up from a sitting position. The pain is definitely aggravated by any movement, bending, sitting, or walking.

PAST MEDICAL HISTORY: Obesity, hyperlipidemia, and menopausal state.

PAST SURGICAL HISTORY: She has appendectomy. She also has a left ovarian mass removal in 2005.

SOCIAL HISTORY: This lady is single. She has two children. She works as a realtor. She quit smoking in 1984. She has a history of alcohol abuse.

FAMILY HISTORY: Mother had a stroke. One brother died of car accident.

PHYSICAL EXAMINATION: On examination, her blood pressure 115/80, temperature 98.4, pulse 77, respiratory rate 14, weight 190 pounds, and height 5 feet 8 inches. She looks well dressed and well nourished. She looks anxious. There were no trigger points palpated at the wrists, elbows, and subnuchal area. No costovertebral junction tenderness. Strength in the lower extremity was equal bilaterally at 4/5. Lungs were clear. Heart sounds normal. There was no tenderness palpated at the muscle group, especially the deltoid, triceps, and biceps. There was no tenderness at the thigh muscle on palpation. Nontender to C-spine, dorsal spine, and LS spine. There was mild tenderness palpated at the left rhomboideus muscle medial to the scapular border.

On reviewing her blood test, which was done last week, she did have an elevated sedimentation rate to 22, elevated CRP to 9.9 with 9.0 being normal. The rest of her lab tests were within normal limits. She has negative ANA and rheumatoid factor.

DIAGNOSIS: Muscle aches and pains, most likely secondary to either myositis or polymyalgia.

TREATMENT: We will do a CPK and myoglobin and repeat her sedimentation rate. If these are elevated, we will consider starting the patient on prednisone. The patient is to contact me regards to results tomorrow and we will make a decision whether to start her on prednisone or not. At present, she is to continue her ibuprofen for her pain.

CALL CENTER  
MEDICAL CARE FORM

*Done*

Open Date/Time: 06/17/2009  
Edit Date/Time:

08:53AM By: EDWBA Message #: 852030  
By: Status: OPEN

Patient: BURKE, VIRGINIA

MRN: 2193132

DOB: 01/08/1960

Prov: AUYEUNG MD, TERESA  
Insurance: BLUE CROSS

Dept: FPD  
PCP:

Loc: SRM

Home Phone: 707-301-1047

Alt. Phone:

Last Dept Visit: 05/27/2009 AUYEUNG  
Last PCP Visit:

Next Dept Visit:  
Next PCP Visit:

Caller (if not Patient):  
Synopsis: ~~MEDICAL ADVICE~~

*Referral Request*

Phone:  
Level: R

Chart Requested?:

Message:

EDWBA on 06/17/2009 at 08:55AM

06/17/2009 08:54AM PER PT WANTS TO KNOW IF YOU CAN REFER HER TO AN OUTSIDE RHEUMATOLOGIST FOR A SOONER APPT THIS WEEK. DR. STOCK DOESN'T HAVE APPT UNTIL NEXT WEEK AND HER LEGS ARE HURTING.

*Monday 22 June 09*

Assessment:

*pt's symptoms not improved wants to make appt w specialist sooner. Ok*

Plan:

*Called 10:48 AM 6-17-09 left message*

Printed Name/Signature: \_\_\_\_\_

*m*

Date/Time: \_\_\_\_\_

*6-17-09*





**Sutter Regional  
Medical Foundation**

A Sutter Health Affiliate

Teresa Auyeung M.D.  
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770 Mason St  
Vacaville, CA 95688  
Telephone (707) 454-5950  
Fax (707) 454-5952

**PROGRESS NOTE**

Name: Burke, Virginia MR #: 2193132  
Attending Dr. Teresa Auyeung M.D. Date: May 27, 2009  
DOB: January 8, 1960 TID #: 33562219

**CHIEF COMPLAINT:** Muscle pain for two months, followup.

**HISTORY OF PRESENT ILLNESS:** This 48-year-old lady complained of leg pain for the past two months. The pain initially started at the left leg and then moved to the right leg. Since then, the pain has spread to her upper thigh and shoulder and neck area. In the past, she has seen Dr. Nguyen and Dr. Holcomb. She also has blood work done last week. She would like to know the results. She was initially given Naprosyn without much relief. At present, she is taking ibuprofen with partial relief. The pain in the morning without ibuprofen was 10/10. She was unable to get out of bed in the morning. The pain would go down to a 7 or 8 /10 after she took the ibuprofen or bare aspirin. There was no pain when she is resting or sitting still. However, she developed severe pain when she moved or when getting up from a sitting position. The pain is definitely aggravated by any movement, bending, sitting, or walking.

**PAST MEDICAL HISTORY:** Obesity, hyperlipidemia, and menopausal state.

**PAST SURGICAL HISTORY:** She has appendectomy. She also has a left ovarian mass removal in 2005.

**SOCIAL HISTORY:** This lady is single. She has two children. She works as a realtor. She quit smoking in 1984. She has a history of alcohol abuse.

**FAMILY HISTORY:** Mother had a stroke. One brother died of car accident.

**PHYSICAL EXAMINATION:** On examination, her blood pressure 115/80, temperature 98.4, pulse 77, respiratory rate 14, weight 190 pounds, and height 5 feet 8 inches. She looks well dressed and well nourished. She looks anxious. There were no trigger points palpated at the wrists, elbows, and subnuchal area. No costovertebral junction tenderness. Strength in the lower extremity was equal bilaterally at 4/5. Lungs were clear. Heart sounds normal. There was no tenderness palpated at the muscle group, especially the deltoid, triceps, and biceps. There was no tenderness at the thigh muscle on palpation. Nontender to C-spine, dorsal spine, and LS spine. There was mild tenderness palpated at the left rhomboideus muscle medial to the scapular border.

On reviewing her blood test, which was done last week, she did have an elevated sedimentation rate to 22, elevated CRP to 9.9 with 9.0 being normal. The rest of her lab tests were within normal limits. She has negative ANA and rheumatoid factor.

**DIAGNOSIS:** Muscle aches and pains, most likely secondary to either myositis or polymyalgia.

**TREATMENT:** We will do a CPK and myoglobin and repeat her sedimentation rate. If these are elevated, we will consider starting the patient on prednisone. The patient is to contact me regards to results tomorrow and we will make a decision whether to start her on prednisone or not. At present, she is to continue her ibuprofen for her pain.

*Teresa Auyeung*

Teresa Auyeung M.D.  
Signed: 6/11/2009

jd  
D: 5/27/2009 12:55:25 PM  
T: 5/28/2009 4:29 AM  
# 33582219

CONFIDENTIAL

JUN-15-2009 MON 04:42 PM SRMF FAMILY PRACTICE FAX NO. 4545952 P. 02/04

CALL CENTER  
MEDICAL CARE FORM

Open Date/Time: 06/15/2009 09:05AM By: ROANA Message #: 851184  
Edit Date/Time: By: Status: OPEN  
Patient: BURKE, VIRGINIA MRN: 2193132 DOB: 01/08/1960  
Prov: AUYEUNG MD, TERESA Dept: FPD Loc: SRM  
Insurance: BLUE CROSS PCP:  
Home Phone: 707-301-1047 Alt. Phone:  
Last Dept Visit: 05/27/2009 AUYEUNG Next Dept Visit:  
Last PCP Visit: Next PCP Visit:  
Caller (if not Patient): Phone: 707-301-1047  
Synopsis: MEDICAL ADVICE Level: P  
Chart Requested?:

Message:  
ROANA on 06/15/2009 at 09:10AM  
FYI: PT IS NO BETTER AFTER STEROIDS FOR 1WEEK...HAS BEEN OFF THEM FOR ANOTHER  
WEEK W/NO IMPROVEMENT...PAIN IN BACK & LEGS IS AN 8 OR 9...CAN HARDLY  
MOVE...JUST TAKING 800MG MOTRIN DAILY...WANTS TO KNOW CAN BE DONE NEXT TO HELP  
HER & WANTS DR TO CALL HER TODAY ASAP TO LET HER KNOW WHAT TO DO//NR

Assessment:

called 0953 - voicemail states in full  
of leave a message - message re 6/15/09

Plan:

1051 - pt. co pain x 3 mo.  
has seen Dr. Auyeung RE: co. pain  
taking Naproxen + steroids & working  
co. pain in back of legs (upper), back + shoulders  
pt. states is frustrated  
taking 800mg Motrin in AM + wears away 3/4 out of 10  
Motrin

Printed Name/Signature:

*Stacy M*

Date/Time: 6/15/09

Called 2:30 pm 6-15-09 Contact Dr. G Stack  
Please forward Elvira VICODIN 57571 #30, 56° pm  
451-0285 ) Done  
6/16/09 14:50 am

and benefits were explained to the patient. Also lorazepam 1 mg every 8 hours p.r.n. breakthrough anxiety, warned a possible habit forming nature of this medication. Return in one month.



David Woodhouse, M.D.

Signed: 10/28/2009

D: 10/21/2009 1:44:18 PM

T: 10/22/2009 2:18 AM

# 37385123



**Sutter Regional  
Medical Foundation**

A Sutter Health Affiliate

George Stock M.D.  
Sutter Regional Medical Foundation - Fairfield  
2720 Low Court  
Fairfield, Ca. 94534  
Telephone (707)427-4900  
Fax (707)436-2509

### PROGRESS NOTE

Name: Burke, Virginia  
Attending Dr. George Stock M.D.

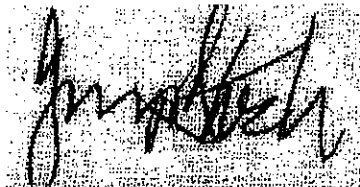
MR #: 2193132  
Date: July 22, 2009  
TID #: 34988570

**HISTORY OF PRESENT ILLNESS:** The patient comes in for followup of low back and thigh pain. Over the past several weeks, she has additionally noted pain affecting the cervicodorsal region and posterior shoulders. It is not clear whether symptoms are worse in the morning or evening. The patient does notice moderate fatigue, but has denied fever, rashes, or focal joint swelling. She felt that prednisone improved her symptoms approximately 50%, but has stated that she gets a similar amount of relief taking low-dose aspirin. She denies lower extremity swelling, numbness or weakness, and gives no history of bladder or bowel problems. She further discusses significant stress issues at work.

**PHYSICAL EXAMINATION: GENERAL:** An alert female. **VITAL SIGNS:** Blood pressure 119/74, heart rate is 78, and weight is 197 pounds. **MUSCULOSKELETAL:** Musculoskeletal examination shows the patient to have normal station and gait. Cervical spine shows normal range of motion. Shoulders, elbows, wrists and hands show normal range of motion. Mild trigger points on palpation of right lateral shoulder, right levator scapulae insertion. No active synovitis is described. Lumbar flexion is within normal range. Straight leg raising test is negative bilaterally. Mild tenderness on palpation of bilateral lateral trochanters. **NEUROLOGIC:** Neurologic examination shows the patient to have normal station and gait. Motor strength is equal in upper and lower extremities. Deep tendon reflexes are slightly depressed, but symmetric in patellar and Achilles reflexes.

**IMPRESSION:** Nonspecific myalgias. The patient does have significant stress issues at work. Laboratory studies to date have showed minimal elevations in C-reactive protein, anti-CCP with unremarkable hemogram, CPK, thyroid function studies, and myoglobin. ESR upper limits of normal for patient's age of 34 mm/hr.

**PLAN:** I spent approximately 55-60 minutes, essentially all of the appointment, discussing diffuse myofascial pain, stress-related issues, and necessity of establishing whether there is objective pathology. The patient is requesting a four-day workweek, stating that she feels much improved with long weekends. She is given a 30-day note to this effect. I will taper her prednisone off over the next two weeks. I have briefly discussed antidepressant agents, and I have stressed the importance of appropriate stress management program. Followup appointment in four weeks.



George Stock M.D.  
Signed: 7/29/2009

asa  
D: 7/22/2009 12:11:48 PM  
T: 7/23/2009 1:34 AM  
# 34988570



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Fax (707)436-2509

**PROGRESS NOTE**

Name: Burke, Virginia  
Attending Dr. George Stock M.D.

MR #: 2193132  
Date: June 30, 2009  
TID #: 34457215

**HISTORY AND PHYSICAL:** The patient comes in for proximal thigh myalgias. She has noted slight relief of symptoms taking prednisone 10 mg q.a.m., but continues to note moderate morning stiffness in the above named areas. She denies focal motor weakness and gives no history of peripheral joint swelling, morning stiffness or heat. She has denied conjunctivitis, vision changes, headaches, rashes, and cervical dorsal symptoms. She additionally has obtained moderate relief with use of aspirin.

**PHYSICAL EXAMINATION: GENERAL:** Shows an alert female. **VITAL SIGNS:** Blood pressure is 131/72 mmHg, heart rate is 93, weight 192 pounds. **MUSCULOSKELETAL:** The patient has normal station and gait. There is normal lumbar flexion. Trace tenderness on palpation of bilateral piriformis muscles. Straight leg raising test is negative bilaterally. Deep tendon reflex is symmetric in patellar and Achilles reflexes.

**LABORATORY DATA:** Laboratory studies from June 18, are reviewed and show slightly elevated anti-CCP, increased C-reactive protein, and unremarkable CPK. Hemogram totally within normal limits.

**IMPRESSION AND PLAN:** Nonspecific proximal thigh and hip myalgias of uncertain etiology. The patient possibly has a forme fruste of polymyalgia rheumatica versus rheumatoid arthritis. I spent approximately 25-30 minutes with the patient discussing the need for further observation. I discussed possible MRI of the spine for a localized problem such as discitis contributing to her symptoms. The patient wishes to defer at present. She will have a followup appointment in approximately two weeks and I have advised her to contact us immediately for findings of fever, lower extremity numbness or weakness.

George Stock M.D.  
Signed: 7/8/2009

as  
D: 6/30/2009 7:30:40 PM  
T: 7/1/2009 1:03 AM  
# 34457215

RX Date/Time: 06/18/2009 09:33 4545952  
JUN-18-2009 THU 09:32 AM SRMF FAMILY PRACTICE FAX NO. 4545952

P.004  
P. 04

CALL CENTER  
MEDICAL CARE FORM

*Done*

Open Date/Time: 06/17/2009  
Edit Date/Time:

08:53AM By: EDWBA Message #: 852030  
By: Status: OPEN

Patient: BURKE, VIRGINIA

MRN: 2193132 DOB: 01/08/1960

Prov: AUYEUNG MD, TERESA  
Insurance: BLUE CROSS

Dept: FPD Loc: SRM  
PCP:

Home Phone: 707-301-1047

Alt. Phone:

Last Dept Visit: 05/27/2009 AUYEUNG  
Last PCP Visit:

Next Dept Visit:  
Next PCP Visit:

Caller (if not Patient):  
Synopsis: ~~MEDICAL ADVICE~~

*Referral Request*

Phone:  
Level: R

Chart Requested?:

Message:

EDWBA on 06/17/2009 at 08:55AM  
06/17/2009 08:54AM PER PT WANTS TO KNOW IF YOU CAN REFER HER TO AN OUTSIDE RHEUMATOLOGIST FOR A SOONER APPT THIS WEEK. DR. STOCK DOESN'T HAVE APPT UNTIL NEXT WEEK AND HER LEGS ARE HURTING.

*Monday 22 June 09*

Assessment:

*pt's symptoms not improved wants to  
make appt c specialist sooner. *Johnson**

Plan:

*Called 10:48 AM 6-17-09 left message*

Printed Name/Signature: \_\_\_\_\_

*[Signature]*

Date/Time: \_\_\_\_\_

*6-17-09*



CAMP CARE FORM  
MEDICAL CARE FORM

Date/Time: 06/16/2009  
Date/Time: 06/16/2009

09:46AM BY: MCCSH Message #: 851664  
11:08AM BY: NOTTE Status: CLOSED  
MRN: 2193132  
DOB: 01/08/1960  
Loc: SMO

Ident: BURKE, VIRGINIA  
SV: STOCK MD, GEORGE  
Surname: BLDE CROSS  
Home Phone: 707-301-1047

Alt. phone:  
Next Dept Visit:  
Next PCP Visit:

phone: P  
Level: P

ast Dept Visit:  
ast PCP Visit:  
allerg (if not Patient):  
Diagnosis: UNDETERMINED

Chart Requested?:

Msg: P: on 06/16/2009 at 09:47AM FOR INITIAL VISIT - CONSULT REGARDING PER PT LEVEL  
MCCS: ON 06/16/2009 AT 09:47AM FOR INITIAL VISIT - CONSULT REGARDING PER PT LEVEL  
PT WANTING TO BOOK APPT W/DR OFFERED NEXT AVAILABLE OF 06/22/09 PT REFUSED  
8&9 PAIN IN LEGS AND BACK OR THURSDAY OF THIS WEEK AS SHE WILL BE LEAVING TOWN ON  
FRIDAY/PLEASE CALL PT AT 301.1047

Assessment:

Plan:

Printed Name/Signature:

*M. Hedges MD*

Date/Time:

*6/16/09*

*- left msg on VM  
- no consult + appt  
- avail until 6/22/09  
- explained she  
can call me  
back to any  
questions*

CALL CENTER  
MEDICAL CARE FORM

Open Date/Time: 06/16/2009  
Edit Date/Time:

05:04PM BY: LORAL Message #: 851974  
By: Status: OPEN

Patient: BURKE, VIRGINIA

MRN: 2193132

DOB: 01/08/1960

Prov: STOCK MD, GEORGE  
Insurance: BLUE CROSS

Dept: INM  
PCP:

Loc: SMO

Home phone: 707-301-1047

Alt. phone:

Last Dept Visit:  
Last PCP Visit:

Next Dept Visit:  
Next PCP Visit:

Caller (if not Patient):  
Synopsis: UNDETERMINED

Phone:  
Level: R

Chart Requested?:

Msg 3: on 06/16/2009 at 05:08PM  
LOR PT IS REQUESTING A N URGENT APPT WITH DR STOCK/NO AVAILABLE APPTS UNTIL 6-22-09/PT IS ASKING IF SHE CAN COME IN ON WEDNESDAY OR THURSDAY OF THIS WEEK/PT IS HAVING PAIN AND TROUBLE WALKING/ASKING IF DR STOCK CAN'T RTI HER IN CAN SHE BE REFERRED TO SOMEONE ELSE THIS WEEK TO BE SEEN/PLEASE CALL PT AT 704-301-1047/PT WANTS TO SPEAK WITH NICOLETTE SPECIFICALLY.

Assessment:

Plan:

Printed Name/Signature: \_\_\_\_\_

Date/Time: \_\_\_\_\_

1:33 LINDA need to return call

6-18-09 Spoke w/ PT, st sched. today @ 2:00 p

Dr. Au yeng  
\* OK to double book  
per Dr. Stock

- Pt. in self-ref.  
ppo

- nothing avail in  
schedule until  
the 16/23 @ 8:40am

- Pt. hasn't seen you  
in the past this  
would be 1st time  
appt.



**Sutter Regional  
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Sutter Regional Medical Foundation - Vacaville  
770 Mason St  
Vacaville, CA 95688  
Telephone (707) 454-5950  
Fax (707) 454-5952

### PROGRESS NOTE

Name:	Burke, Virginia	MR #:	2193132
Attending Dr.	Teresa Auyeung M.D.	Date:	May 27, 2009
DOB:	January 8, 1960	TID #:	33562219

**CHIEF COMPLAINT:** Muscle pain for two months, followup.

**HISTORY OF PRESENT ILLNESS:** This 48-year-old lady complained of leg pain for the past two months. The pain initially started at the left leg and then moved to the right leg. Since then, the pain has spread to her upper thigh and shoulder and neck area. In the past, she has seen Dr. Nguyen and Dr. Holcomb. She also has blood work done last week. She would like to know the results. She was initially given Naprosyn without much relief. At present, she is taking ibuprofen with partial relief. The pain in the morning without ibuprofen was 10/10. She was unable to get out of bed in the morning. The pain would go down to a 7 or 8 /10 after she took the ibuprofen or bare aspirin. There was no pain when she is resting or sitting still. However, she developed severe pain when she moved or when getting up from a sitting position. The pain is definitely aggravated by any movement, bending, sitting, or walking.

**PAST MEDICAL HISTORY:** Obesity, hyperlipidemia, and menopausal state.

**PAST SURGICAL HISTORY:** She has appendectomy. She also has a left ovarian mass removal in 2005.

**SOCIAL HISTORY:** This lady is single. She has two children. She works as a realtor. She quit smoking in 1984. She has a history of alcohol abuse.

**FAMILY HISTORY:** Mother had a stroke. One brother died of car accident.

**PHYSICAL EXAMINATION:** On examination, her blood pressure 116/80, temperature 98.4, pulse 77, respiratory rate 14, weight 190 pounds, and height 5 feet 8 inches. She looks well dressed and well nourished. She looks anxious. There were no trigger points palpated at the wrists, elbows, and subnuchal area. No costovertebral junction tenderness. Strength in the lower extremity was equal bilaterally at 4/5. Lungs were clear. Heart sounds normal. There was no tenderness palpated at the muscle group, especially the deltoid, triceps, and biceps. There was no tenderness at the thigh muscle on palpation. Nontender to C-spine, dorsal spine, and LS spine. There was mild tenderness palpated at the left rhomboideus muscle medial to the scapular border.

On reviewing her blood test, which was done last week, she did have an elevated sedimentation rate to 22, elevated CRP to 9.9 with 9.0 being normal. The rest of her lab tests were within normal limits. She has negative ANA and rheumatoid factor.

**DIAGNOSIS:** Muscle aches and pains, most likely secondary to either myositis or polymyalgia.

**TREATMENT:** We will do a CPK and myoglobin and repeat her sedimentation rate. If these are elevated, we will consider starting the patient on prednisone. The patient is to contact me regards to results tomorrow and we will make a decision whether to start her on prednisone or not. At present, she is to continue her ibuprofen for her pain.



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Vacaville, CA 95688  
Telephone (707) 454-5950  
Fax (707) 464-5952

### PROGRESS NOTE

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Attending Dr.	Teresa Auyeung M.D.	Date:	May 27, 2009
DOB:	January 8, 1960	TID #:	33562219

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CALL CENTER  
MEDICAL CARE FORM

Open Date/Time: 05/07/2009  
Edit Date/Time:

10:46AM By: HENCH Message #: 839805  
By: Status: OPEN

Patient: BURKE, VIRGINIA

MRN: 2193132

DOB: 01/08/1960

Prov: AUYEUNG MD, TERESA  
Insurance: BLUE CROSS

Dept: FPD  
PCP:

Loc: SRM

Home Phone: 707-301-1047

Alt. Phone:

Last Dept Visit: 02/18/2009 CLINE-HE  
Last PCP Visit:

Next Dept Visit: 05/13/2009 AUYEUNG  
Next PCP Visit:

Caller (if not Patient):  
Synopsis: MEDICAL ADVICE

Phone: 707-301-1047  
Level: R

Chart Requested?:

Message:

HENCH2 on 05/07/2009 at 10:50AM

THE PATIENT IS HAVING LEG PAIN FOR ABOUT A WEEK AND IT GETS WORSE WHEN SHE SITS, WALKS OR MOVES. THE PATIENT STATES THAT SHE LEFT A MESSAGE ON 05.06.09 AND AGAIN THIS MORNING. SHE WOULD LIKE TO BE SEEN TODAY BY DR. AUYEUNG. PLEASE CALL THE PATIENT AT 707.301.1047.

Assessment:

<sup>1127</sup>  
Both leg pains; mostly front of legs + thigh  
x 1 wk.

7 A Hx of trauma

7 Pt. was given an appt today @ 4pm  
c D. Nguyen

Plan:

7 Pt. agreed.

Printed Name/Signature:

Chen, R

Date/Time:

5/7/09



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Sutter Regional Medical Foundation - Vacaville  
770 Mason St  
Vacaville, CA 95688  
Telephone (707) 454-5890  
Fax (707) 454-5832

**PROGRESS NOTE**

Name	Burke, Virginia	MR #	2193132
Attending Dr	Bryan Holcomb M.D.	Date	May 20, 2009
		TID #	33437923

The patient is a 49-year-old female who comes in with bilateral lower extremity pain for 2 months. It is painful with even minimal activity getting up from sitting and from lying. When sitting, she denies any pain. No history of trauma. It is an achy-type pain and worsens mildly with activity. She says it comes from her buttock area around the anterior legs, down the legs to the feet. No history of previous joint or muscular problems. No history of autoimmune or connective tissue disorders. No history of fever or chills. No history of weight loss. She states she has been sleeping well and tries to eat fairly healthy diet.

**PHYSICAL EXAMINATION** Vital Signs: Temperature is 97.9, pulse is 74, respiration rate 12, and BP 109/66. Now, she has no allergies to medications. She rates the pain is 8 to 9 out of 10 with activity. She appears to be in no acute distress, sitting on the exam table. Spine is nontender to palpation. No obvious deviation. She has full strength in the lower extremities, the muscles of the thigh, hamstring, and calves are nontender to palpation. She also has no lymphadenopathy of the neck or the supraclavicular area.

**ASSESSMENT AND PLAN** On discussion with Dr. Auyeung, her primary care doctor, since started with some screening labs, CBC, sed rate, C-reactive protein, uric acid, ANA, and RA. Discussed with the patient. She has tried naproxen, does not seem to help, but she states that Bayer Aspirin seems to help as well as anything and she would like to proceed with that and she will follow up with her primary care doctor.

*Bryan Holcomb*

Bryan Holcomb M.D.  
Signed 6/2/2009

Id  
D 5/20/2009 1 22 03 PM  
T 5/22/2009 2 34 AM  
# 33437923

132 BIP 109/66 T P 74 R 12 WT 196 IT  
 0 2009 97.9

Complaint  
 4 weeks x 2 months  
 8/1/10

age 49  
 CMP - 3 yrs ago

Problems of Previous Visit

- N/A
- Resolved
- Tobacco User  YES  NO
- If Yes, Referral Given  YES  NO

Location: C. Wambatan MA

Current Meds  
~~Naproxen~~  
 Naproxen

Allergies/Adverse Reactions ROS

N/A  
 Patient stated that in recent weeks, they have felt downhearted, sad, or blue?  
 Yes  No

Patient stated that over the past few weeks, they have felt little interest or pleasure in doing any of their favorite things?  
 Yes  No

Review of Systems unchanged since

WNL

- Gen
- Eye
- Card
- Ent
- Resp
- Psych
- Hemo/Lymp
- GI
- GU
- MS
- Skin
- Neuro
- Endo
- AllImm
- Gyn

Muscle Pain  
 CBC  
 Sed / C-Reactive  
 Uric Acid / ANA / R.D  
 FLU PCP

*Bryan J. Holcomb*  
 Bryan Jeff Holcomb, M.D.

Follow Up

- See Flow Sheet  Note dictated
- Continued on back

Signature \_\_\_\_\_

Patient Education

- |             |                          |                    |
|-------------|--------------------------|--------------------|
| Diabetes    | <input type="checkbox"/> | Diabetes           |
| Tobacco Use | <input type="checkbox"/> | Tobacco Use        |
| Prev        | <input type="checkbox"/> | Prev               |
| Guidelines  | <input type="checkbox"/> |                    |
|             | <input type="checkbox"/> |                    |
|             | <input type="checkbox"/> |                    |
|             | <input type="checkbox"/> | Refer to Health Ed |

BURKE, VIRGINIA 2193132  
 DOB 01/08/1960 SEX:F  
 BLUE CROSS  
 APT. HOLCOMB MD, BRYAN  
 HB 05/20/2009/09:29A  
 PCP: AUYEUNG MD, TERESA  
 REF: AUYEUNG MD, TERESA  
 09:30A 05/20/2009 V# 33582496 BRP  
 118 PEPPERELL CT  
 VACAVILLE, CA 95688  
 707 301-1017



Progress Note - Adult2

FILE WITH PROGRESS NOTES IN DATE ORDER  
 NUR-852 (Rev. 04/08)

DATE MAY 13 2009 B/P \_\_\_\_\_ T \_\_\_\_\_ P \_\_\_\_\_ R \_\_\_\_\_ WT \_\_\_\_\_ HT \_\_\_\_\_

Chief Complaint \_\_\_\_\_  
Signature: \_\_\_\_\_

Problems of Previous Visit  
 N/A  
 Resolved  
Tobacco User  YES  NO  
If Yes, Referral Given  YES  NO

Current Meds \_\_\_\_\_  
**Allergies/Adverse Reactions ROS**

Patient stated that in recent weeks, they have felt downhearted, sad, or blue?  
 Yes  No

Patient stated that over the past few weeks, they have felt little interest or pleasure in doing any of their favorite things?  
 Yes  No

Review of Systems unchanged since \_\_\_\_\_

Appointment No Show  Same Day Cancel  
 Reschedule patient  Send letter  
 No ACTION  Other ACTION  
MD Signature \_\_\_\_\_  
 Patient rescheduled  
 Letter sent \_\_\_\_\_  
 Other Action \_\_\_\_\_  
Clinical staff signature HEURMA

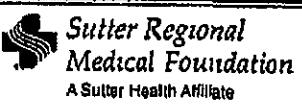
**TERESA AUYEUNG, M.D.**  
**LEG PAIN**

- WNL**
- Gen
  - Eye
  - Card
  - Ent
  - Resp
  - Psych
  - Hemo/Lymp
  - GI
  - GU
  - MS
  - Skin
  - Neuro
  - Endo
  - All/Imm
  - Gyn

**Patient Education**  
VERBAL DISCUSS  EDUC MATERIAL   
 Diabetes Prev   
 Tobacco Use Prev   
 Guidelines   
 Refer to Health Ed

See Flow Sheet  Note dictated  Follow Up \_\_\_\_\_  
 Continued on back Signature \_\_\_\_\_

Last Name, First BUKKE, VIRGINIA  
DOB: 1/8/60 Age \_\_\_\_\_  
Medical Record #: 2193132



**Progress Note - Adult2**





**Sutter Regional  
Medical Foundation**

A Sutter Health Affiliate

Dina Nguyen M.D.  
Sutter Regional Medical Foundation - Vacaville  
2480 Martin Road  
Fairfield, Ca. 94533  
Telephone (707)427-4800  
Fax (707)427-4885

**PROGRESS NOTE**

Name.	Burke, Virginia	MR #:	2193132
Attending Dr.	Dina Nguyen M.D.	Date:	May 7, 2009
DOB	January 8, 1960	TID #:	33082802

**CHIEF COMPLAINT:** Bilateral leg pain for one month

**HISTORY OF PRESENT ILLNESS:** The patient is a 49 years old female who does not have any significant past medical history, came in today due to her leg pain for one month. She used to start walking a lot but not in the last one month. The patient feels very weak. The pain is at her anterior thigh area.

**ALLERGIES:** No known drug allergies

**CURRENT MEDICATIONS:** None.

**PHYSICAL EXAMINATION.** Her weight is 194 pounds, blood pressure is 116/76, temperature 98.7, pulse 79.  
General: The patient is in no acute distress. Alert and oriented x3. Well-developed and well-nourished. Extremities: Full range of motion. She has tenderness on her hamstring muscle. There is no swelling, not erythematous.

**ASSESSMENT.** Hamstring muscle weakness and pain

**PLAN**

- 1 I will refer her to physical therapy
- 2 Put her on naproxen 500 mg b.i.d. p r n., Tylenol No. 3 q.h s. p.r n. #30.
- 3 Recommend her to followup p r.n.

Dina Nguyen M D  
Signed 5/13/2009

dv  
D 5/7/2009 7 29 32 PM  
T 5/8/2009 4 23 AM  
# 33082802

DATE MAY 07 2009 B/P 116/76 T 98.7 P 79 R      WT 194 HT     

Current Meds

no meds

Chief Complaint  
(B) leg pain x 1 month  
Signature: [Signature]

Problems of Previous Visit  
 N/A  
 Resolved  
Tobacco User  YES  NO  
If Yes, Referral Given  YES  NO

Allergies/Adverse Reactions ROS

Patient stated that in recent weeks, they have felt downhearted, sad, or blue?  
 Yes  No

Patient stated that over the past few weeks, they have felt little interest or pleasure in doing any of their favorite things?  
 Yes  No

Review of Systems unchanged since OKDA

WNL

- Gen
- Eyes
- Card
- Ent
- Resp
- Psych
- Hemo/Lymp
- GI
- GU
- MS
- Skin
- Neuro
- Endo
- AllImm
- Gyn

Patient Education

- VERBAL DISCUSS
- SPDC MATL
- Diabetes
- Tobacco Use Prev
- Guidelines
- Refer to Health Ed

Lyndee as  
WEP

BURKE, VIRGINIA 2193132  
DOB: 01/08/1960 SEX: F  
BLUE CROSS  
APT: NGUYEN MD, DINA T  
HB: 05/07/2009/04.05P  
PCP: AUYEUNG MD, TERESA  
REF: AUYEUNG MD, TERESA  
04:00P 05/07/2009 V# 33439510 SDA  
118 PEPPERELL CT  
VACAVILLE, CA 95688  
H: 707-301-1047 W: 707-301-1047  
BOTH LEG PAIN

 **Sutter Regional Medical Foundation**  
A Sutter Health Affiliate

**Progress Note - Adult2**

CALL CENTER  
MEDICAL CARE FORM

Open Date/Time: 05/07/2009  
Edit Date/Time:

10:46AM By: HENCH Message #: 839805  
By: Status: OPEN

Patient: BURKE, VIRGINIA

MRN: 2193132

DOB: 01/08/1960

Prov: AUYEUNG MD, TERESA  
Insurance: BLUE CROSS

Dept: FPD  
PCP:

Loc: SRM

Home Phone: 707-301-1047

Alt. Phone:

Last Dept Visit: 02/18/2009 CLINE-HE  
Last PCP Visit:

Next Dept Visit: 05/13/2009 AUYEUNG  
Next PCP Visit:

Caller (if not Patient):  
Synopsis: MEDICAL ADVICE

Phone: 707-301-1047  
Level: R

Chart Requested?:

Message:

HENCH2 on 05/07/2009 at 10:50AM

THE PATIENT IS HAVING LEG PAIN FOR ABOUT A WEEK AND IT GETS WORSE WHEN SHE SITS, WALKS OR MOVES. THE PATIENT STATES THAT SHE LEFT A MESSAGE ON 05.06.09 AND AGAIN THIS MORNING. SHE WOULD LIKE TO BE SEEN TODAY BY DR. AUYEUNG. PLEASE CALL THE PATIENT AT 707.301.1047.

Assessment:

<sup>1127</sup>  
7 Both leg pains; mostly front of legs & thigh  
x 1 wk.

7 Hx of trauma

7 Pt. was given an appt today c D. Nguyen  
@ 4pm

Plan:

7 Pt. agreed.

Printed Name/Signature:

Chen, H

Date/Time:

5/7/09

# **EXHIBIT G**



**Sutter Regional  
Medical Foundation**

A Sutter Health Affiliate

- 2720 Low Court, Fairfield, CA 94534
- 2700 Low Court, Fairfield Ca 94534
- 770 Mason Street, Vacaville, CA 95688
- 690 Main Street, Rio Vista, CA 94571
- 100 Hospital Drive, Vallejo, CA 94589

**CERTIFICATE OF PHYSICIAN OR PRACTITIONER**

I certify that Virginia Burke was examined at Sutter Regional Medical Foundation / Physicians' Office on 7/22/09. The employee / student is able to return to work / school on 7/23/09.

*PT. should be on a 4 day work week until 8/31/09*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Provider

FILE UNDER MISC. TAB  
NUR-515 (3/08)

# **EXHIBIT H**



July 22, 2009



Virginia Burke  
118 Pepperell Ct.  
Vacaville, CA 95688

Dear Virginia,

Per your conversation with Ayman this weekend, Management has decided the best course of action is to place you on unpaid administration leave. You will be placed on leave until future date declared by your physician rendering you fully at capacity to come back to work.

We decided to place you on leave so you can take some time off and get well.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Gina Villaseñor".

Gina Villaseñor  
Discovery Builders, Inc.

4061 Port Chicago Highway  
Suite H  
Concord, CA 94520  
tel. (925) 682-6419 • fax (925) 689-2017

DSI\_000071

# **EXHIBIT J**



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JAMS ARBITRATION

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VIRGINIA BURKE,

Plaintiff,

vs.

No. 1110013931

DISCOVERY SALES, INC.; and  
DOES 1-20, inclusive,

Defendants.

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DEPOSITION OF JOE GRIFFIN

Taken before CATHLEEN M. MEUTER

CSR No. 12950

April 10, 2012



Aiken Welch Court Reporters  
One Kaiser Plaza, Suite 505  
Oakland, California 94612  
(510) 451-1580 / (877) 451-1580  
Fax: (510) 451-3797  
[www.aikenwelch.com](http://www.aikenwelch.com)

1 BY MR. PYLE:

2 Q. Did you ask her why she gave her notice?

3 A. I did.

4 Q. And what did she say?

5 A. I believe she said -- hold on a second. I  
6 don't recall exactly what she said.

7 Q. You don't recall what she said in terms of why  
8 she had given her notice?

9 A. I don't.

10 Q. Now, were you aware of the number of sales at  
11 the Willows?

12 MS. PRATT: Objection as to time.

13 BY MR. PYLE:

14 Q. At that time in October of '09, were you  
15 generally aware of how many houses were being sold?

16 A. Yes.

17 Q. Okay. And is it true that before Jeani Burke  
18 arrived at the Willows, the sales had been pretty slow  
19 for some time?

20 A. I believe so, yes.

21 Q. And is it true that in her first two months at  
22 the Willows, Jeani Burke managed to sell approximately  
23 ten houses?

24 A. I don't recall the number.

25 Q. But a fair number of houses.

1 Washington. I got close enough to get his license  
2 plate number and then realized that wasn't the safest,  
3 smartest thing to do. So I turned around at Silverado  
4 and went back to make sure that Jeani was okay.

5 Q. So you got this individual's license plate  
6 number?

7 A. I did.

8 Q. I'm going to call that individual Mr. Bargmann  
9 because as it turned out, that was his name.

10 So if I refer to the Bargmann incident, I'm  
11 referring to that incident. Okay?

12 A. Okay.

13 Q. Did you go back to the sales office to see if  
14 Jeani was okay?

15 A. I did.

16 Q. Did you talk to her?

17 A. I did.

18 Q. And how did she seem to you then?

19 A. Visibly upset.

20 Q. Was she crying?

21 A. Yes.

22 Q. Did she seem scared?

23 A. Yes.

24 Q. Did she tell you anything about how she was  
25 feeling? Like did she say I felt like he was going to

1 Q. Okay. Did Jeani say anything else to you that  
2 you can remember when you went to see how she was  
3 doing?

4 A. It was a busy day to say the least. Yeah. She  
5 said -- I mean we had conversation for the rest of that  
6 day.

7 Q. And what did she say if you can remember?

8 A. There were generalities about the event going  
9 over being repeated. Initially I had asked her if she  
10 had called the police. And she had mentioned that she  
11 hadn't. So I called the police to report since I had  
12 the guy's license plate number.

13 Q. Okay.

14 A. I got ahold of them. When they started asking  
15 particulars, Jeani took the phone. We had another  
16 gentleman show up to the sales office that day. He  
17 worked with the loan department or loan company. I  
18 don't recall his name.

19 Q. Is that Rick Cacciola by any chance?

20 A. I believe that was his name.

21 Q. And so did he join in the conversation?

22 A. Well, he certainly -- yeah. He was told what  
23 had happened.

24 Q. Do you remember anything else that was said  
25 that day about the Bargmann incident?

1           A. One thing that kind of struck me as odd is that  
2 after the initial -- everything calmed down to some  
3 degree, not that it went away entirely, Jeani had made  
4 a comment about the way the guy looked. And that's  
5 something that just struck me as odd.

6           Q. What did she say?

7           A. He was good enough looking that in other  
8 circumstances I would do him right here on the desk.

9           Q. Is that the only time that she said anything  
10 like that to you about Bargmann?

11          A. I had heard it a couple different times,  
12 telling the story to different people -- when she was  
13 telling the story to different people.

14          Q. Okay. That you heard her say or that you heard  
15 other people say?

16          A. I believe I only heard her say it twice.

17          Q. The time that you just mentioned to me on the  
18 day of the incident and then another time?

19          A. Same day.

20          Q. The same day?

21          A. Yeah.

22          Q. So the same day on two different times she said  
23 that -- something about under different circumstances,  
24 she would have done him right here on the desk?

25          A. That's correct.

1 mean. I would say probably three to four hours I was  
2 with her.

3 Q. And during how much of those three to four  
4 hours would you say Jeani was upset and crying?

5 A. Exactly, I can't recall.

6 Q. How about an estimate?

7 A. An estimation, I would say she was visibly  
8 crying for approximately an hour.

9 Q. After that first Bargmann incident, did  
10 anything change at the Willows that you were aware of  
11 in terms of security?

12 A. Yes.

13 Q. What changed?

14 A. We had a security officer there from the time  
15 she would open to the time she would leave. I remember  
16 her hours were modified so that she could leave  
17 earlier.

18 And if for some reason -- on a couple  
19 occasions, security, whether it be due to traffic or  
20 whatever, couldn't be there on time, I was got ahold  
21 of. And I would go sit there until he showed up.

22 Q. Was that Patrick Granfors?

23 A. I believe so.

24 Q. So how long did Mr. Granfors work at the  
25 Willows?

1 STATE OF CALIFORNIA )  
2 )  
3 COUNTY OF ALAMEDA )  
4

5 I, CATHLEEN M. MEUTER, do hereby certify:

6 That JOE GRIFFIN, in the foregoing deposition  
7 named, was present and by me sworn as a witness in the  
8 above-entitled action at the time and place therein  
9 specified;

10 That said deposition was taken before me at said  
11 time and place, and was taken down in shorthand by me,  
12 a Certified Shorthand Reporter of the State of  
13 California, and was thereafter transcribed into  
14 typewriting, and that the foregoing transcript  
15 constitutes a full, true and correct report of said  
16 deposition and of the proceedings that took place;

17 IN WITNESS WHEREOF, I have hereunder subscribed my  
18 hand this 20th day of April 2012.

19  
20  
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\_\_\_\_\_  
CATHLEEN M. MEUTER, CSR No. 12950  
State of California

# **EXHIBIT K**



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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF CONTRA COSTA

---000---

VIRGINIA BURKE,  
Plaintiff,

vs. No. C10-03014

DISCOVERY SALES, INC.; and  
DOES 1-20, inclusive,  
Defendants.

\_\_\_\_\_ /

VIDEOTAPED DEPOSITION OF AYMAN SHAHID

Taken before CATHLEEN M. MEUTER

CSR No. 12950

January 14, 2011

1 Q. Okay. Let's focus on trainings.

2 Have you ever had any formal trainings  
3 regarding what an employer's duties are if an  
4 employee requests accommodation for a disability?

5 A. No.

6 Q. You have had some discussions though?

7 A. In past.

8 Q. At Discovery Sales?

9 A. Discovery the building, the corporation  
10 itself.

11 Q. Okay. You lost me there.

12 Since you've been working for Discovery  
13 Sales, Inc., have you had conversations with  
14 someone or someone else about requests for  
15 accommodation in the workplace?

16 A. Not within Discovery Sales.

17 Q. Okay. With someone outside of Discovery  
18 Sales?

19 A. Within the Seeno umbrella of entities,  
20 yes.

21 Q. Who have you had those discussions with?

22 A. Other managers.

23 Q. Can you give me some names?

24 A. It's going back quite a bit. A gentleman  
25 by the name of Brian Helberg.

1 Q. Can you spell that for me?

2 A. B-r-i-a-n; Helberg, H-e-l-b-e-r-g.

3 Q. Can you think of anyone else within the  
4 Seeno umbrella that you've had conversations with  
5 about what an employer's duties are when an  
6 employee requests accommodations for disability?

7 A. No.

8 Q. I just want to make sure I'm clear about  
9 this.

10 At no time since you've been at Discovery  
11 Sales have you gotten any training regarding what  
12 an employer's duties are when an employee requests  
13 an accommodation for disability; is that correct?

14 A. Yes.

15 MR. LOUDERBACK: Objection. Asked and  
16 answered.

17 You can answer it again. Okay.

18 THE WITNESS: No training.

19 BY MR. PYLE:

20 Q. As the president of Discovery Sales, whom  
21 do you report to if anyone?

22 A. The owner.

23 Q. Is that Albert Seeno, III?

24 A. That's correct.

25 Q. Do you have a dotted line reporting

1 decided to fire Jeani Burke?

2 A. Several reasons.

3 Q. What were they?

4 A. One because of sales process, morale  
5 issues within the company.

6 Q. What else?

7 A. Those are enough.

8 Q. Were there any other reasons that you  
9 decided to fire Jeani Burke other than sales  
10 process and morale issues within the company?

11 A. No.

12 Q. And when you say sales process, what do  
13 you mean?

14 A. The other reports that we already  
15 discussed.

16 Q. Problems with her report writing?

17 A. Report writing and misrepresentation.

18 Q. Okay. When you say problems with her  
19 report writing, what do you mean?

20 A. Her sales -- her contract documents would  
21 tell one story. Then later on, I'd find out that  
22 the buyer has a different story.

23 Q. Different story meaning what?

24 A. Promised things that we couldn't do.

25 Q. Can you think of anything specific?

1 following through is a misrepresentation.

2 Q. Okay. Were there any other  
3 misrepresentations that you were considering at the  
4 time that you decided to terminate Ms. Burke?

5 A. It would be misrepresentation to me as the  
6 manager.

7 Q. About what?

8 A. About the documents. So the buyer would  
9 be lied to and so would the management.

10 Q. Okay. So the buyer would be lied to in  
11 the sense that they would be promised something  
12 that could not be delivered on like a free room  
13 option?

14 A. Yes.

15 Q. And how would management be lied to?

16 A. Telling me that we would receive income  
17 for it.

18 Q. Telling you that a contract had been  
19 reached?

20 A. Sharing -- stating that there was a fee  
21 that the buyer would pay, but the buyer had no  
22 intention of paying the fee.

23 Q. Okay. How many times did Ms. Burke  
24 misrepresent to you in that fashion?

25 A. Several.

1 Q. Can you give me an estimate?

2 A. No.

3 Q. Was Ms. Burke ever written up for that?

4 A. Conversations.

5 Q. Was she ever given any written  
6 documentation about this misrepresentation?

7 MR. LOUDERBACK: Object. It calls for  
8 speculation as to what documents someone else may  
9 have generated.

10 You can only testify as to what you know,  
11 you may generated.

12 MR. PYLE: That you're aware of.

13 THE WITNESS: Yes.

14 BY MR. PYLE:

15 Q. Okay. Who wrote her up?

16 A. It wasn't a write-up. It's called a red  
17 tag process. It was created for individuals such  
18 as Jeani Burke.

19 Q. And how many times did Ms. Burke get a red  
20 tag?

21 A. I'm sure plenty.

22 Q. Do you know?

23 MR. LOUDERBACK: Do you want an estimate  
24 as to the actual number?

25 MR. PYLE: Yeah.

1 MR. LOUDERBACK: Without looking at  
2 documents, can you testify as to --

3 THE WITNESS: I can't share the number.  
4 Several.

5 BY MR. PYLE:

6 Q. Okay. Then you mentioned morale issues.  
7 What were the morale issues?

8 A. Conversations with other employees that  
9 were not related to the business needs that would  
10 be during work time.

11 Q. And what specifically are you talking  
12 about when you say that?

13 A. Talking about where she's going on  
14 vacation during work hours or talking about other  
15 employees in an improper fashion during work hours.

16 Q. Anything else you can think of?

17 A. No.

18 Q. What other employees did Ms. Burke talk  
19 about during work hours that led to morale issues?

20 A. What other employees did she discuss?

21 Q. Yeah.

22 A. There was a competitor.

23 Q. Who was that?

24 A. Liz.

25 Q. Liz Alarcon?

1 A. Yes.

2 Q. Were there any other employees that you  
3 were aware of Ms. Burke talking about in the  
4 workplace that led to morale issues?

5 A. I'm sure there was plenty. I'm not  
6 familiar with who it would be.

7 Q. Can you think of anyone else besides  
8 Liz Alarcon that Ms. Burke talked about in the  
9 workplace that led to morale issues.

10 A. I believe through Carey that she even  
11 discussed dislike to the management including  
12 myself.

13 Q. So you believe that Carey told you that  
14 Ms. Burke had said that she disliked the  
15 management?

16 A. Yes.

17 Q. Okay. Were there any other employees that  
18 you were aware of Ms. Burke talking about during  
19 work hours that you felt led to morale issues?

20 A. Carey Hendrickson.

21 Q. Anyone else?

22 A. No.

23 Q. And was your information about these  
24 conversations about Ms. Burke talking about other  
25 employees -- did your information about that come



1 through Carey Hendrickson?

2 A. Yes.

3 Q. How about your information about Ms. Burke  
4 talking about vacation during work hours, did that  
5 also come through Ms. Hendrickson?

6 A. Yes.

7 Q. And what was it about Ms. Burke talking  
8 about her vacation during work hours that you felt  
9 led to morale issues?

10 A. Going out and drinking or things that  
11 weren't really relevant to the business needs.

12 Q. And how did that lead to morale issues?

13 A. If you're calling in sick the day before  
14 and then going out and having drinks that same  
15 night, that could be an issue for the company.

16 Q. And is that what happened?

17 A. My understanding.

18 Q. How many times?

19 A. I'm not aware.

20 Q. And, again, you're information about that  
21 is coming through Carey Hendrickson?

22 A. Yes.

23 Q. Okay. So you told me about talking about  
24 vacation in the workplace, and then you told me  
25 about talking about other employees.

1 Q. Had you ever called her on her cell phone  
2 number?

3 A. I have no idea.

4 Q. If you had wanted to call her on her cell  
5 phone number, could you have done so?

6 MR. LOUDERBACK: Objection. Given his --  
7 it makes no sense. The question is unintelligible  
8 given his previous testimony.

9 Can I have that question read back?

10 (Record read.)

11 MR. LOUDERBACK: I don't get that. He  
12 just testified he doesn't recall having her cell  
13 phone. Hypothetically, it is -- presumably if  
14 someone had a cell phone number, that person could  
15 call on the cell. But he's already testified he  
16 doesn't remember having it. I don't get the  
17 question.

18 BY MR. PYLE:

19 Q. If you had wanted to call Jeani Burke,  
20 could you have gotten her cell phone number?

21 A. I could have gotten her cell phone number.

22 MR. LOUDERBACK: Okay. Thank you.

23 BY MR. PYLE:

24 Q. Did you ever tell Carey Hendrickson that  
25 DSI -- Discovery Sales was going to be letting

1           Jeani Burke go?

2           A. Are you talking about a time period?

3           Q. In October 2009.

4           A. Yes.

5           Q. When did you tell her that?

6           A. I don't know.

7           Q. Was it sometime during the weekend before  
8 Ms. Burke was terminated?

9           A. It was probably late in the evening at  
10 some point prior to her termination date.

11          Q. Do you remember whether it was the weekend  
12 before Ms. Burke was terminated?

13                 MR. LOUDERBACK: Objection. The question  
14 pretty much ignores his answer. He just said the  
15 evening before she was terminated is what he  
16 testified to.

17 BY MR. PYLE:

18          Q. Is that what you meant? Sorry. I didn't  
19 understand that.

20                 Are you saying that it was probably late  
21 in the evening prior to the day that Ms. Burke was  
22 terminated?

23          A. Assuming all your dates are correct, it  
24 would have to be prior to the 19th.

25          Q. Right. So my question to you was was it

1 on the weekend before October 19th?

2 A. Yes.

3 Q. Did you tell Ms. Burke to call -- sorry.

4 Did you tell Ms. Hendrickson to call

5 Ms. Burke and tell her that Monday, October 19

6 would be Ms. Burke's last day of work for Discovery

7 Sales?

8 A. I told Carey we were terminating

9 Ms. Burke.

10 Q. Did you tell Carey to call Ms. Burke and

11 tell her that?

12 A. No.

13 Q. Ms. Hendrickson testified as follows at

14 her deposition, page 36, line 24 to page 34, line

15 3:

16 "Question: Right. Did you call Ms. Burke

17 to tell her that Monday, October 19th would be her

18 last day of work?

19 "Answer: Yes.

20 "Question: And had Mr. Shahid instructed

21 you to do that?

22 "Answer: Yes."

23 So did you tell Ms. Hendrickson to call

24 Ms. Burke and tell her that Monday, October 19

25 would be her last day of work?

1 19, 2009?

2 A. No.

3 Q. Are you aware that Ms. Hendrickson met  
4 with Ms. Burke on Monday, October 19, 2009?

5 A. Yes.

6 Q. How did you learn about that meeting?

7 A. The meeting was told to me after by Gina  
8 and Carey.

9 Q. Before that meeting on October 19, 2009,  
10 did you talk with Gina Villasenor about the  
11 meeting?

12 A. No.

13 Q. Before the meeting on October 19, 2009,  
14 did you talk to Carey Hendrickson about the  
15 meeting?

16 A. No.

17 Q. Do you know where the meeting took place?

18 A. No.

19 Q. Did Carey Hendrickson talk to you after  
20 the meeting about what had happened during that  
21 meeting?

22 A. No.

23 Q. Did Carey Hendrickson ever tell you what  
24 had happened during that meeting?

25 A. She was terminated.

1 Q. Did Carey Hendrickson ever tell you about  
2 what was said during the meeting on Monday, October  
3 19, 2009?

4 A. No.

5 Q. Did Carey Hendrickson tell you that  
6 Ms. Burke had said that she was going to see her  
7 doctor during the meeting on October 19, 2009?

8 A. No.

9 Q. After the meeting on October 19, 2009, did  
10 you tell Carey Hendrickson that you wanted to get a  
11 resignation letter from Ms. Burke?

12 A. Not that I recall.

13 Q. Let me read to you some testimony from  
14 Ms. Hendrickson's deposition to find out if this  
15 refreshes your recollection at all. This is from  
16 page 53, line 15 to line 24.

17 "Question: Okay. After Ms. Burke left,  
18 who was the first person that you talked to?

19 "Answer: Mr. Shahid.

20 "Question: And did you go meet with him  
21 immediately?

22 "Answer: Yes.

23 "Question: What did you tell him?

24 "Answer: I told him what Jeani had just  
25 said.

1 "Question: And how did he respond?

2 "Answer: He said that he wanted a  
3 resignation letter signed."

4 So the first question is did you ever tell  
5 Carey Hendrickson that you wanted a resignation  
6 letter signed by Ms. Burke?

7 A. No.

8 Q. And did you ever want a resignation letter  
9 signed by Ms. Burke?

10 A. Just a letter of termination  
11 acknowledgement would be normal procedure.

12 Q. Let me ask you to focus on this question  
13 though.

14 Did you ever want a resignation letter  
15 signed by Ms. Burke?

16 A. No.

17 Q. Would a resignation letter have served any  
18 purpose in your mind?

19 A. In her benefit.

20 Q. How so? Wait. And when you say in her  
21 benefit, you mean Ms. Burke, right?

22 A. Yes.

23 Q. How would a resignation have served  
24 Ms. Burke's benefit?

25 A. Documentation maybe for purposes of

1 Q. When you say full time, do you mean 24  
2 hours, 7 days a week? Or what are you talking  
3 about?

4 A. Whatever they consider full time to be,  
5 security.

6 Q. So you received a bill from security, and  
7 from that, you concluded that security had been  
8 provided at the Willows?

9 A. That's one aspect.

10 Q. Okay. Do you know what level of security  
11 was provided at the Willows?

12 A. No.

13 Q. Did you ever ask to find out what level of  
14 security was provided at the Willows?

15 A. No.

16 Q. Okay. You said that that was one aspect.  
17 I assume that means there was another aspect.

18 A. Yes.

19 Q. What was the other or other aspects?

20 A. Billing from a temp company.

21 Q. And just so I'm clear, I just want to make  
22 sure.

23 Has anything that we've talked about  
24 jogged your memory in terms of how much Discovery  
25 Sales was billed for the security that was



1 A. Or an associate to fill, yes.

2 Q. Someone would have to fill that opening,  
3 correct?

4 A. Correct. Yes.

5 Q. And you would make the decision about who  
6 would fill that opening?

7 A. Yes.

8 Q. Did you personally speak with Ms. Burke  
9 while she was working at the Willows development?

10 A. I could possibly have called her at the  
11 subdivision, yes.

12 Q. Let me ask you a more specific question.  
13 Do you have any memory of specific  
14 conversations that you had with Ms. Burke while she  
15 was working at the Willows development?

16 A. No.

17 Q. And you mentioned earlier a meeting that  
18 you had with Ms. Burke where you signed a document  
19 regarding her bonus structure at the Willows,  
20 correct?

21 A. For a small time period, yes.

22 Q. Right. And that was a face-to-face  
23 meeting, correct?

24 A. Yes.

25 Q. Was that your last face-to-face meeting

1 with Ms. Burke that you can recall?

2 A. That I recall.

3 Q. During the time that Ms. Burke was working  
4 at the Willows but before the weekend just before  
5 her termination, did you speak with Ms. Hendrickson  
6 about Ms. Burke other than the conversation you  
7 told me about before in terms of Ms. Burke being  
8 one of the employees who wanted a grand opening?

9 A. Just about work behavior?

10 Q. About anything with Ms. Burke.

11 A. I'd be speculating.

12 Q. Does that mean that you cannot remember?

13 A. I cannot remember.

14 Q. So other than the conversations -- other  
15 than the conversation that you had with  
16 Ms. Hendrickson where Ms. Hendrickson told you that  
17 Ms. Burke was one of the employees who wanted a  
18 grand opening, when was the last time that you  
19 talked to Ms. Hendrickson about Ms. Burke?

20 A. Well, Ms. Hendrickson called during the  
21 week before the termination and discussed how Jeani  
22 was being rude to her, gossiping, being loud to  
23 her, and disrespectful.

24 Q. Okay. Are these different than the  
25 conversations that you told me about that happened

1           A. Carey had maybe one or two more. And,  
2 also, Carey had -- Carey was in four counties,  
3 where Mysti was in one.

4           Q. What county was Mysti in?

5           A. Mysti was in Contra Costa County.

6           Q. What counties was Carey in?

7           A. Alameda, Solano, Yolo, and Butte. Carey's  
8 job is a little bit more -- it's a larger job.

9           Q. Larger territory?

10          A. Yes.

11          Q. Did you trust Mysti Matthews' judgment as  
12 a manager in October of 2009?

13                 MR. LOUDERBACK: Objection. Overbroad.  
14 Vague. Ambiguous.

15                 You can answer the question if you can.

16                 THE WITNESS: Depends on the scenario.

17          BY MR. PYLE:

18                 Q. Did you have any reason -- any specific  
19 reason not to trust Mysti Matthews' judgment as a  
20 manager in October 2009?

21                 MR. LOUDERBACK: Same objections.  
22 Overbroad. Vague. Ambiguous.

23                 THE WITNESS: Depends on the situation.

24          BY MR. PYLE:

25                 Q. Okay. Did Mysti Matthews come and talk to

1           you at some point about Jeani Burke after Jeani's  
2           termination?

3           A.    Yes.

4           Q.    Was it in person, or was it by telephone?

5           A.    In person.

6           Q.    How many meetings did you have with  
7           Ms. Matthews about Ms. Burke after Ms. Burke's  
8           termination?

9           A.    One.

10          Q.    Was it in your office?

11          A.    I can't recall.

12          Q.    Was anyone else present?

13          A.    Not that I recall.

14          Q.    How long did it last?

15          A.    I don't recall.

16          Q.    What did Ms. Matthews say to you during  
17          this meeting?

18          A.    That she would have liked to give Jeani a  
19          chance.

20          Q.    Is that all?

21          A.    That's all.

22          Q.    Did Ms. Matthews ask you if she could  
23          bring Jeani back to work on her -- one of her  
24          properties?

25          A.    Yeah.  The conversation came up because we

1 wanted to make sure we were thorough on the  
2 termination. And Mysti wanted to give Jeani a try  
3 in her territory.

4 Q. And Mysti conveyed that to you?

5 A. Yes.

6 Q. And how did you respond?

7 A. At first, I thought it was an okay idea  
8 just to be fair to Jeani Burke.

9 Q. Okay. But at some point, did you change  
10 your mind about that?

11 A. Yes.

12 Q. When was that?

13 A. Based on the conversation with Carey and  
14 the undermining and the inappropriate behaviors  
15 that were conducted by Jeani Burke, I decided to  
16 stand and support my staff and keep her terminated.

17 Q. When you say based on the conversation  
18 with Carey Hendrickson, what conversation were you  
19 referring to?

20 A. Carey was upset that we were going to be  
21 undermining her management authority.

22 Q. Okay. So after Mysti Matthews came to  
23 meet with you in person, did you contact Carey  
24 Hendrickson about this?

25 A. Carey was in the office somewhere. I

1 A. Yes.

2 Q. Was this sometime in October of 2009?

3 A. Do you know the date of grand opening?

4 Q. I don't.

5 A. Then, I can't answer that.

6 Q. I think that it happened the weekend after  
7 Jeani Burke was terminated.

8 A. Do you know the date of the grand opening?

9 Q. Well, let's assume that it was the weekend  
10 of October 24, 25.

11 A. I can't do that. I can't make that  
12 assumption.

13 Q. Okay. Assume for the purposes of this  
14 question that the grand opening at Serenade was the  
15 weekend of October 24 and 25.

16 A. I make my decisions of the individual one  
17 week prior to the grand opening.

18 Q. Okay.

19 A. And I keep it close to my chest.

20 Q. And so did you make the decision about  
21 which sales agent was going to get the grand  
22 opening at Serenade one week prior to the grand  
23 opening at Serenade?

24 A. Yes.

25 Q. When had Liz Alarcon started working for

1 Discovery Sales?

2 A. I don't recall the date.

3 Q. Had she been there for approximately two  
4 months as of October 24, 2009?

5 A. I don't recall.

6 Q. Why did you select Ms. Alarcon to do the  
7 grand opening at Serenade?

8 A. There was several people to chose from. I  
9 just wanted to give Liz a chance.

10 Q. Any other reasons?

11 A. No. My choice.

12 Q. Did you know at the time that you made the  
13 decision to give Liz Alarcon the grand opening at  
14 Serenade that Jeani Burke wanted to be reassigned  
15 from the Willows?

16 A. Reassignment could be to anywhere in the  
17 global company?

18 Q. Yeah.

19 A. No.

20 Q. Before being assigned to the Serenade  
21 grand opening, was Liz Alarcon working at Paradise?

22 A. I can't recall.

23 Q. Was she working at some other development?

24 A. She was working at one of our  
25 developments, yes.

1 STATE OF CALIFORNIA )  
2 )  
3 COUNTY OF ALAMEDA )

**AUTHENTIC COPY**  
**The original certified E-Transcript**  
**file was electronically signed**  
**using RealLegal technology**

4  
5 I, CATHLEEN M. MEUTER, do hereby certify:  
6 that AIMAN SHAHID, in the foregoing deposition  
7 named, was present and by me sworn as a witness in the  
8 above entitled action at the time and place therein  
9 specified.

10 That said deposition was taken before me at said  
11 time and place, and was taken down in shorthand by me, a  
12 Certified Shorthand Reporter of the State of California,  
13 and was thereafter transcribed into typewriting, and that  
14 the foregoing transcript constitutes a full, true and  
15 correct report of said deposition and of the proceedings  
16 that took place;

17 IN WITNESS WHEREOF, I have hereunder subscribed my  
18 hand this 28th day of January 2011.

19  
20  
21  
22  
23  
24  
25

\_\_\_\_\_  
CATHLEEN M. MEUTER, CSR No. 12950  
State of California



# **EXHIBIT L**

Albert  
Alyman

10/19/09

I am not resigning  
my position with

Discovering Homes. I ~~to~~ told  
Carey over the weekend  
that the stress of my  
job, pay and unsecurity  
I felt at my office

I would be speaking with  
my Dr. this morning I was  
led into Joan's office by  
Carey at 9 am today & told  
I was being let go. Joan  
Barker

# **EXHIBIT M**

- Step 1: Identify and address specific concerns about pain and enhance interventions that emphasize self-management;
- Step 2: Identify patients who continue to experience pain and disability after the usual time of recovery. At this point, a consultation with a psychologist allows for screening, assessment of goals and further treatment options, including brief individual group therapy;
- Step 3: If pain is sustained in spite of continued therapy, then intensive care may be required from mental health professionals allowing for a multi-disciplinary treatment approach.

**In terms of causation**, it is my opinion with reasonable medical probability that actual events of employment are predominant as to all causes combined of the psychiatric injury as follows:

One hundred percent (100%) of the applicant's current Posttraumatic Stress Disorder is a direct result of the August 24, 2009 sexual assault.

Eighty percent (80%) of the applicant's Depressive Disorder NOS is a direct result of her termination from employment. Twenty percent (20%) of her Depressive Disorder NOS is a direct result of her chronic pain in both thighs.

Fifty percent (50%) of the probable Stress-Related Physiological Response Affecting Physical Conditions to the 08/24/09 sexual assault and fifty percent (50%) to the 10/19/09 termination from employment.

**The applicant has been totally temporarily disabled from her usual occupation at Discovery Sales since the date of termination.** She has been psychologically incapable of performing the usual functions of a Sales Associate without the accommodation of having a security person or another individual with her while performing her employment duties. The applicant was psychologically incapable of performing her usual occupational functions **alone** as of the 08/24/09 incident; therefore, her total temporary disability is attributable to the 08/24/09 incident.

**The applicant's psychiatric condition is not permanent and stationary.** She has not attained Maximum Medical Improvement from available treatment. She has only minimally improved by approximately twenty percent, per self report, without the benefit of psychotropic therapy. The applicant is willing, at this time, to undergo psychotropic therapy. She should continue her individual psychotherapy and this, in conjunction with psychotropic therapy will, with reasonable medical probability, improve her psychiatric status significantly. I am recommending a re-evaluation of her psychiatric status within three to five months post initiation of psychotropic therapy.

# **EXHIBIT N**

**Burke**  
**vs.**  
**Discovery Sales, Inc., et al.**

Deposition of  
**Callie Mosser**

Volume 1

May 7, 2012

Reported By: Shaaron M. Shigio, CSR No. 12286  
Job: 12837

1 that occurred?

2 A. Not exactly. I can estimate for you.

3 Q. Can you provide an estimate of that?

4 A. From, approximately, 1990 until around 2008,  
5 2007-2008.

6 Q. And you indicated that there was security that  
7 would go throughout the communities.

8 How many people were doing roving security in  
9 2009?

10 A. Approximately --

11 MS. TAMBLING: Lacks foundation.

12 THE WITNESS: -- 19.

13 MS. PRATT: Q. And were there any security  
14 guards that were assigned to a particular community  
15 during that time frame of 2009?

16 THE WITNESS: All of them would rotate, so....

17 Q. So they -- but they would drive around?

18 A. Some were assigned specifically to communities  
19 or areas.

20 Q. And do you recall which communities had an  
21 assigned security guard during that time frame of 2009?

22 A. No, not specifically.

23 Q. And those security guards that were roving  
24 throughout the communities, how often would a security  
25 guard come through a particular community if that

1 security guard was assigned to a roving security  
2 detail?

3 A. It would all depend on what they ran into at  
4 the prior sites.

5 Q. And in terms of -- when you say "ran into,"  
6 whatever kind of security issue might arise?

7 A. Correct. If they were pulled from that  
8 location, pulled off of roving duties to respond to  
9 something else.

10 Q. And were the security guards that were roving  
11 always on call to respond to things that might occur at  
12 a different community?

13 A. Yes, they were.

14 Q. So how would that work in terms of responding?  
15 Whoever was closest to the incident, would  
16 respond to that particular incident?

17 A. That's how we tried to make it.

18 Q. And what was a typical routine for a security  
19 guard in terms of driving throughout the communities?

20 Would they stay for particular periods of time  
21 at a community that they were assigned to roving  
22 through?

23 A. Depending on the size, yes. They would leave  
24 the yard and they'd go to their assigned areas,  
25 geographical areas. They would start with checking all



1 of the homes. It depended on what time their shift  
2 started.

3 The earlier shifts -- the earlier shifts would  
4 begin with checking all the subcontractors, making sure  
5 everything was secure, and then checking all the homes  
6 that were under construction. And after sales would  
7 leave, they would check the models. And cleaning up  
8 anything that was left at the job site that needed  
9 cleaning up and securing, and then they would go to  
10 their next site.

11 Q. Would they come into the sales offices in  
12 these particular communities during the period of time  
13 that they were roving through them?

14 A. Sometimes they would. Sometimes they would  
15 not.

16 Q. And how would they make that determination,  
17 whether they would go into the sales office?

18 A. At one time we were checking in with all the  
19 sales agents, and then we were told not to -- not to do  
20 that any longer.

21 Q. And do you know what time frame that was?

22 A. It went back and forth. We went back and  
23 forth on that issue.

24 Q. And who was it that you reported to in 2009?

25 A. I believe that it was Ed Miller.

1 Q. Did you ever inquire of any other measures  
2 that were taken by the company?

3 A. No, I did not.

4 Q. And you've never heard from anyone else about  
5 anything that was done at Willows with regard to  
6 Ms. Burke and the security there?

7 A. I was told that they were going to get  
8 somebody to either be with her or they were going to  
9 relocate her to another site.

10 Q. And who did you hear that from?

11 A. From Carey and Ayman.

12 Q. And what specifically did they tell you about  
13 that?

14 A. That's what they had told me. That they no  
15 longer needed security because they were going to have  
16 somebody sit with her or relocate her to another site.

17 Q. And do you recall who they were going to have  
18 sit with her?

19 A. No.

20 Q. And do you recall them telling you that she  
21 was going to be moved to a specific site?

22 A. Not a specific site.

23 Q. And do you recall when that conversation  
24 occurred?

25 A. Not exactly.

1 necessary for Jeani Burke at Willows?

2 A. I don't recall which she said, but after that  
3 I got a call from Carey saying that it wouldn't be  
4 necessary. She was also returning a call of mine  
5 because I had left messages for all of them.

6 Q. So let me just clarify in terms of you don't  
7 know which one -- you weren't sure whether it was Ayman  
8 or Carey who had given Renee this message, correct?

9 A. Correct.

10 Q. And then later that evening, that same Friday,  
11 you actually spoke with Carey in person?

12 A. Yes.

13 Q. Okay. And what exactly did you say to Carey  
14 or ask her about the security situation at Willows?

15 A. She confirmed that they would not be needing  
16 security.

17 Q. Did she give you any reasons why?

18 A. I believe she -- I'm not sure if she or it  
19 was -- I'm not sure which one of them had told me that  
20 they were putting somebody else out there or relocating  
21 her.

22 Q. So it was your understanding, based on what  
23 Carey told you, that Patrick wouldn't need to be out  
24 there anymore either because they were going to put  
25 somebody else out there or Jeani would be relocated,

1 right?

2 A. Right.

3 Q. How did you feel about that? Were you  
4 comfortable with that situation?

5 A. Was I -- I wanted them to relocate her to  
6 somewhere else.

7 Q. Did you know that Jeani was never relocated?

8 A. I heard that sometime after.

9 Q. Did you know that nobody else was put in there  
10 to be with Jeani after Patrick left?

11 MS. PRATT: Objection; lack of foundation.

12 MS. TAMBLING: You can go ahead.

13 THE WITNESS: I did not -- I only knew when  
14 Jeani had called me and told me that she was there.

15 Q. So let me understand this scenario a little  
16 bit better.

17 When Carey called you and said that one option  
18 might be -- they might put somebody else out there.  
19 She didn't say that, but the one possibility was that  
20 they would put somebody else out there.

21 Did she have the authority to get somebody in  
22 security to put out there?

23 MS. PRATT: Objection; calls for speculation.

24 MS. TAMBLING: Q. To your knowledge, since  
25 you were the security manager?

1 responsible for?

2 A. Job sites? 26 job sites.

3 Q. Okay. And when you say "job sites," Willows  
4 was one job site, correct?

5 A. Yes.

6 Q. Was Willows, in your mind, more dangerous than  
7 some of the other job sites?

8 MS. PRATT: Objection as to "dangerous."

9 THE WITNESS: No.

10 MS. TAMBLING: Q. Okay. You mentioned that  
11 there was a routine for roving security; is that  
12 correct?

13 THE WITNESS: Yes.

14 Q. So how was that routine for roving security  
15 applied in the Willows' context?

16 So what did -- did you have one roving  
17 security for the Willows' job site, specifically?

18 A. No. They would cover Vacaville and West  
19 Sacramento. Then we had where they would cover  
20 Cordelia, Fairfield, Vacaville and Sacramento, and  
21 there were two shifts. One that came on at 3 o'clock,  
22 which generally headed directly out to Sacramento  
23 because of the distance, and then guys that came on at  
24 5 o'clock, 6 o'clock, and 8 o'clock at night.

25 Q. So how many people would be on at one time for

1 roving security as it pertained to Willows?

2 A. Generally, two.

3 Q. Two?

4 A. One at a time though. Not at the location at  
5 the same time.

6 Q. So one would be at the Vacaville site and one  
7 would be at the Willows site?

8 A. Yes, or Fairfield.

9 Q. Okay. So there was always one roving security  
10 person at Willows at any one time?

11 A. There was also a roving security person on  
12 that side of the bridge always.

13 Q. Side of what bridge?

14 A. On the side of the Benicia Bridge. On that  
15 side of the Benicia Bridge. And I want to correct  
16 myself. I say "always." I can't say "always," because  
17 it was depended upon if they were pulled off on another  
18 project.

19 Q. But, theoretically, you could have roving  
20 security right around the Benicia Bridge, and an issue  
21 might come up at Willows and roving security wouldn't  
22 be there, correct?

23 A. Right.

24 Q. Okay. Correct me if I misspeak, but were you  
25 told at one time not to go to the sales agents'

1 May 14, 2012  
2 CALLIE MOSSER  
3 1670 Garnet Lane  
4 Concord, California 94519  
5 RE: Burke vs. Discovery Sales, Inc.  
6 Case No. 1110013931

7 Dear CALLIE MOSSER:

8 Please be advised that the original  
9 transcript of your deposition taken on May 7, 2012 in  
10 the above-entitled matter is available for reading and  
11 signing. The original transcript will be held at the  
12 offices of Combs Reporting, Inc., 595 Market Street,  
13 Suite 620, San Francisco, CA 94105 (415) 227-4060, for  
14 thirty (30) days in accordance with California Code of  
15 Civil Procedure Section 2025.520:

16 "For 30 days following each notice under  
17 subdivision (a), unless the attending parties and the  
18 deponent agree on the record or otherwise in writing to  
19 a longer or shorter time period, the deponent may  
20 change the form or substance of the answer to a  
21 question and may either approve the transcript of the  
22 deposition by signing it, or refuse to approve the  
23 transcript by not signing it."

24 If you are represented by counsel in this  
25 matter, you may wish to ask your attorney how to  
26 proceed. If you are not represented by counsel and  
27 wish to review your transcript, please contact our  
28 office of a mutually convenient appointment to review  
29 your deposition.

30 Very Truly Yours,

31 Shaaron M. Shigio, CSR NO. 12286

32 cc: TANYA P. TAMBLING  
33 STACEY L. PRATT  
34  
35