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7 Attorneys for Plaintiff, Robert Hwang, Ph.D.

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 ROBERT HWANG, PH. D, an individual,

11 Plaintiff,

12 v.

13 NATIONAL TECHNOLOGY AND
14 ENGINEERING SOLUTIONS OF
15 SANDIA, LLC, a limited liability company,

16 Defendants.

Case No.

**COMPLAINT FOR VIOLATIONS OF
TITLE VII (42 U.S.C. §2000(E), ET SEQ.)
AND CALIFORNIA FAIR
EMPLOYMENT AND HOUSING ACT
(CAL GOV. CODE§12940)**

DEMAND FOR JURY TRIAL

17
18 Plaintiff, ROBERT HWANG, PH.D., by and through his counsel of record, Stacy Y.
19 North, Berman North, LLP, alleges:

20 **PARTIES**

21 1. Plaintiff, Dr. Hwang, is an East Asian American and was Center Director, from
22 2014 until January 2020, of the Combustion Chemistry and Material Sciences at Sandia
23 National Laboratories (SNL), which center is located in Livermore, California. Dr. Hwang
24 was a resident of California while he served as Center Director.

25 2. Defendant National Technology and Engineering Solutions of Sandia, LLC
26 (NTESS), is a Delaware limited liability company registered as a foreign LLC in the state of
27 California.

28 3. In 2016 NTESS was awarded the United States Department of Energy (DOE)

1 management and operations contract for the operation of SNL, which is principally located in
2 Albuquerque, New Mexico.

3 4. NTESS was the employer of Dr. Hwang from 2017 until the termination of his
4 employment in January 2020, which termination became effective on March 12, 2020.

5 **JURISDICTION AND VENUE**

6 5. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 because the subject
7 matter of some of Plaintiff's claim are premised on Title VII of the Civil Rights Act of 1964,
8 42 U.S.C. §2000e-2(a). Supplemental jurisdiction of Plaintiff's state law claims set forth
9 herein are premised on 28 U.S.C. § 1367.

10 6. Venue is properly before this Court pursuant to 28 U.S.C. §1391(b)(2).

11 **EXHAUSTION OF REMEDIES**

12 7. Dr. Hwang timely filed claims of discrimination and retaliation against
13 Defendant pursuant to 42 U.S.C. §2000(e) *et seq.* with the EEOC as Charge No. 39B-2020-
14 00600 on January 28, 2020, and with the California Department of Fair Employment and
15 Housing (DFEH) on May 29, 2020, as DFEH No. 202005-10284129. Dr. Hwang received
16 Right to Sue letters from DFEH on May 29, 2020 and from the EEOC on October 14, 2020,
17 copies of which are collectively attached to the Complaint as Exhibit 1.

18 **GENERAL ALLEGATIONS**

19 8. Dr. Hwang has a Ph.D. in physics from the University of Maryland and did
20 post-doctoral work at the University of California, Berkeley from January 1989 to May 1990
21 and was an Alexander von Humboldt Fellow at the University of Munich, Germany, from
22 June 1990 through October 1991.

23 9. Dr. Hwang was born in Macao while his family was immigrating to the United
24 States from China. He and his family arrived in the United States in 1964 and Dr. Hwang
25 became a United States' citizen in 1973.

26 10. Dr. Hwang first became employed with SNL in October 1991 and during his
27 career with SNL held various leadership positions, including positions in Sustainable
28 Transportation, Energy, Climate and Infrastructure Security, Nanotechnologies and Electricity

1 and Energy Delivery.

2 11. In December 2013, Dr. Hwang was promoted to the position of Director of
3 Combustion Chemistry and Material Sciences also referred to as Center 8300. SNL's
4 functions and programs are divided into seven (7) centers and each center is led by a Director.
5 Directors are considered part of Senior Management of SNL.

6 12. Center 8300 is comprised of three (3) sections: Material Sciences (8340),
7 Chemical Sciences (8350) and Engineering and Transportation Sciences (8360). There are
8 approximately one hundred twenty (120) employees within Center 8300, and most of those
9 employees are Ph.D.'s.

10 13. SNL is one of the United States government's national laboratories and is
11 under the jurisdiction of United States DOE. DOE operates SNL through contract
12 management agreements with non-governmental organizations.

13 14. There are approximately twelve thousand (12,000) employees at SNL, which
14 is now under the management and operation of NTESS.

15 15. When Dr. Hwang was appointed Director of Center 8300, Lockheed Marietta
16 was the contract manager for SNL. In 2016, the DOE awarded the management contract for
17 SNL to NTESS, which is a subsidiary of Honeywell, International, Inc., a Delaware
18 corporation.

19 16. NTESS took over management and operation of SNL in the spring 2017, and
20 at that time, Dr. Hwang's immediate supervisor became Doris E. Ellis (Ellis) who was then an
21 associate lab director.

22 17. Dr. Hwang's annual performance evaluations were always favorable until Ellis
23 and later Andrew McIlroy (McIlroy) became Dr. Hwang's director supervisors.

24 18. Dr. Hwang was the only East Asian American Director.

25 19. In 2017 and 2018, after NTESS became his employer, his performance
26 evaluations were overall favorable; but Ellis began to include vague, ambiguous and critical
27 comments in his evaluations, such as "Bob's focus is more acutely on 8300 (the Center he
28 directs) and his program areas. I expect to see him more engaged in the division in the labs in

1 the future”, “work on engaging people in a way that they want to work with him and feel like
2 their needs are taken into account”, “I expect leaders to grow as a team”, “the feedback this
3 year indicates that there may still be some remaining issues around executing on requirements
4 in areas where he doesn’t agree with laboratory policy”, and “I find I can’t be subtle with
5 him”.

6 20. Ellis treated Dr. Hwang differently than the other six (6) non-East Asian
7 American Directors. She was highly critical of his program interest; until the same program
8 that she criticized Dr. Hwang for being interested in was put forward by others who were non-
9 East Asian, then she would readily accept them in a positive manner.

10 21. In 2017, Ellis asked for capital equipment requests from all the directors,
11 which is an annual process. Dr. Hwang submitted a request for \$1M to procure a laser system
12 for his Center. At a meeting with Ellis and the other Directors, all requests were discussed,
13 and Dr. Hwang followed up to revise his request to \$400K. Ellis criticized Hwang saying that
14 she had clearly denied the system and that revising the request was insubordination. Hwang
15 stated to her that he did not hear the request rejection. Hwang followed up with Jeff Gebel
16 (acting director of operations and was sitting next to Hwang that the meeting) to check if Ellis
17 had rejected the request. Gebel said he had not heard that either. In addition, the staff
18 member who was facilitating the meeting had not heard of the rejection, or she would not
19 have modified it, along with other changes, in the updated request sheet. Hwang stated
20 several times to Ellis that it was a miscommunication and not an act of insubordination. No
21 other director was accused of insubordination for modifying requests for further
22 consideration.

23 22. In September 2018, a meeting of the External Advisory Board for SNL, a very
24 important and influential Board for programs and projects of SNL, was scheduled at SNL in
25 Albuquerque. All Directors were preparing to make presentations to the Advisory Board.
26 When the agendas came out before the scheduled meeting, Dr. Hwang was the only Director
27 omitted as a presenter. Dr. Hwang learned that Ellis had unilaterally cancelled his presentation
28 without notifying him. Ellis gave no explanation for removing Dr. Hwang from the program.

1 On the second day of the External Advisory Board meeting, Dr. Hwang had previously been
2 given a time slot to discuss Center 8300’s transportation program. During his presentation, he
3 was abruptly and rudely interrupted by Ellis and cut off before the end of his presentation. It
4 was very embarrassing to Dr. Hwang and several members of the External Advisory Board
5 commented to Dr. Hwang how sorry they were that they could not hear his complete
6 presentation.

7 23. On several occasions, Ellis pointedly criticized Dr. Hwang for spending too
8 much time “thinking about science” which is an absurd criticism since science is the
9 foundation of the Center 8300 and SNL’s missions include use of science and technology,
10 innovative research and global engagement to counter threats, reduce dangers and respond to
11 disasters.

12 24. From the time Ellis became Dr. Hwang’s supervisor, she displayed micro-
13 aggressive behaviors toward Dr. Hwang, especially when she was criticizing Dr. Hwang for
14 not speaking up more during meetings. Dr. Hwang was very familiar with this biased attitude
15 toward East Asian Americans who are raised in a traditional East Asian culture.

16 25. Dr. Hwang was the Director champion of the Asian Public Leadership Council
17 and published a blog on SNL’s intra-communications about the challenges of being raised in a
18 traditional Asian culture and attaining and maintaining leadership roles in the American
19 corporate settings where the corporate leaders, managers and supervisors are unfamiliar with
20 Asian traditions and cultures. In May 2018, Dr. Hwang wrote an article for the internal SNL
21 publication and the title of his article was “*Appreciating the Values of Quieter Voices – An*
22 *Asian American Perspective*”. In the article, Dr. Hwang explained that Asian traditional
23 culture values of waiting to speak until one considers carefully what one is going to say and
24 why; which is often perceived as being uninterested or having nothing to contribute, which is
25 the same discriminatory attitude and prejudice reflected in criticisms made against him by
26 Ellis.

27 26. In early November 2018, Dr. Hwang met with Ellis to express his concern that
28 she was being overly critical of one of Center 8300’s projects – Low Energy Electronic

1 Initiative. Dr. Hwang had sent her four to five peer reviewed articles on the topic. Instead of
2 reading the articles and discussing her opinions about those publications, she accused him of
3 “cherry picking articles” to support the Low Energy Electronic Initiative. Dr. Hwang was
4 concerned because Ellis was treating him in a different manner and displaying a different
5 attitude and conduct toward him compared to the other six non-East Asian American
6 Directors. He asked Ellis how he could improve his relations with her and she suggested more
7 frequent meetings. Dr. Hwang agreed and offered to set up the meetings; but Ellis responded
8 she would set up the meetings. Ellis never set up any other meetings to improve relations with
9 Dr. Hwang.

10 27. Other Senior Managers and Dr. Hwang’s executive coach observed and
11 commented on the animosity both Ellis and McIlroy were showing toward Dr. Hwang as
12 compared to other Directors.

13 28. Ellis and McIlroy did not support the Low Energy Electronic Initiative; but the
14 DOE did support the proposal and in August 2019, McIlroy, then Dr. Hwang’s direct
15 supervisor, asked Dr. Hwang to lead the Initiative for the Low Energy Electronic Initiative.
16 That Initiative under Dr. Hwang’s leadership began in October 2019, just two (2) months
17 before Ellis and McIlroy issued a Performance Improvement Plan (PIP) to Dr. Hwang
18 indicating their intent to terminate his employment.

19 29. On June 25, 2019, Ellis summoned Dr. Hwang to her office where she verbally
20 attacked him and threatened his job because of “concerns that have come to my attention
21 about management and leadership of 8300”. Ellis would not identify the source or the
22 specifics of the concerns, except to make reference to a matter that occurred in 2016, which
23 had been resolved in Dr. Hwang’s favor. Ellis acknowledged that Dr. Hwang had been
24 assigned as the Chief Research Officer for the DOE/BES Triennial Recertification of the
25 Center for Integrated Nanotechnology (CINT) and along with his Director duties for 8300, Dr.
26 Hwang was under a heavy work load of duties and responsibilities. Ellis then stated broad,
27 general and vague accusations that “as a leader and Manager of Managers, your job is to
28 assure Managers and Senior Managers are competent to do their jobs and then you hold them

1 accountable to execute work performance”. There had been no complaints that any of 8300’s
2 Senior Managers were incompetent or were not executing their job duties. Ellis continued her
3 attacks with “I’ve been told that you and your Senior Managers engaged in less than a
4 professional way when a deliverable did not meet your expectations”. Ellis gave no specifics
5 of what she was referring to or what conduct or statements were deemed unprofessional. Then
6 Ellis criticized Dr. Hwang for his active participation in hiring foreign nationals for post-
7 doctoral positions, which Dr. Hwang viewed as a critical part of his Director responsibilities.
8 Ellis had not brought up any of those criticisms of Dr. Hwang before voicing them on June 25,
9 2019, in a hostile and threatening manner.

10 30. Dr. Hwang promptly provided a written response to Ellis’ criticisms on June
11 27, 2019.

12 31. Ellis wrote a rebuttal to Dr. Hwang’s responses, but she failed to schedule any
13 follow-up meetings with Dr. Hwang about the accusations and criticisms she made to him on
14 June 25, 2019. Not long after that June 25, 2019 meeting, McIlroy became Dr. Hwang’s direct
15 supervisor. McIlroy scheduled no meetings, nor discussions with Dr. Hwang regarding the
16 criticisms that Ellis had made against him. Ellis had been promoted to a Deputy Lab Director
17 position; but she was still in Dr. Hwang’s chain of supervision.

18 32. Dr. Hwang’s 2018 Performance Evaluation given to him in January 2019
19 indicated that he performed at expectations as Director of 8300 and that the Center was
20 running effectively and that all deliverables were on schedule and deadlines were met and
21 the Center was maintained in a safe and secure operation within budget and program
22 planning.

23 33. Only after supervising Dr. Hwang for a few months, McIlroy completed Dr.
24 Hwang’s annual Performance Evaluation for 2019 and for the first time in Dr. Hwang’s
25 career, the overall/summary evaluation indicated he did not meet expectations. In the
26 evaluation, McIlroy admits he has a limited experience supervising Dr. Hwang, yet McIlroy
27 writes a subjective conclusion that Dr. Hwang’s inability to accept and apply feedback is
28 negatively impacting his ability to lead and manage. McIlroy provided no specific examples

1 and his negative conclusion is contradicted by admissions in the same Performance
2 Evaluation that points out Center 8300 is operating safely, securely, leading the D8K Science
3 Plan in place, and that Dr. Hwang has stepped up his engagement in 8300. The evaluation
4 continues that he frequently overcomes challenges, is accountable for getting results, focuses
5 on making things better, understands what SNL's sponsors and customers really need and
6 delivers on those needs, promotes confidence and trust, innovates, tests, tries and takes
7 thoughtful risk, that he translates the best ideas into realistic, pragmatic and executable plans,
8 and he is comfortable challenging the status quo and takes seemingly impossible goals and is
9 willing to work out of his comfort zone.

10 34. In 2019 Center 8300, under Dr. Hwang's Director leadership, met all of its
11 performance and operational goals, expectations and operated within budget. There is no
12 mention in either Ellis' June 25, 2019 performance discussion; or the 2019 evaluation that
13 Center 8300's mission, work, or operations were not meeting Sandia and DOE's mission
14 goals and objectives. The personal attacks on Dr. Hwang by Ellis and McIlroy were based on
15 subjective, biased (explicit and implicit), prejudiced and were motivated by discriminatory
16 attitudes, conduct and demeanor.

17 35. A few weeks after issuing Dr. Hwang's first and only "fails to meet"
18 performance evaluation, McIlroy issued, on December 16, 2019, a Performance
19 Improvement Plan (PIP) giving Dr. Hwang 24 hours to develop a sixty day performance
20 plan, or either resign or appeal to an executive review committee. The performance
21 improvement document included new allegations against Dr. Hwang that had never been
22 discussed with him and were not included in the 2019 Performance Evaluation.

23 36. Dr. Hwang knew and understood from his years of experience as a Supervisor,
24 Manager and Director that issuing him a PIP meant Defendant intended to fire him. Ellis and
25 McIlroy had told him that they intended to remove him from the Director position prior to
26 issuing the PIP, and they tried to pressure him into taking a demotion.

27 37. Fearing an involuntary termination would jeopardize his retirement eligibility,
28 Dr. Hwang announced his intent to retire on December 17, 2019, the day after he received

1 the PIP.

2 38. A few weeks later, Dr. Hwang was informed by the SNL HR Benefits
3 representative that he would be eligible for his retirement whether he was involuntarily
4 terminated or not. Dr. Hwang then decided to rescind his retirement announcement, present
5 his action plan and resume his duties. On January 29, 2020, Dr. Hwang notified Ellis and
6 McIlroy of his intent to return to his Director position immediately. Dr. Hwang knew that his
7 position had not been filled as one of the Senior Managers he supervised was serving as the
8 Interim Director, until a full time Director could be found.

9 39. On January 25, 2020, Dr. Hwang filed a Charge of Discrimination based on
10 race and national origin with the EEOC as Charge No. 39B-2020-00600 and a copy of that
11 EEOC Charge was emailed and received by Ellis, McIlroy and Defendant on January 29,
12 2020.

13 40. On January 29, 2020, Dr. Hwang submitted his written notice of his rescission
14 of his retirement and his intent to immediately resume his Director duties. On the same date,
15 Dr. Hwang also submitted the sixty day action plan to Ellis and McIlroy. In the action plan,
16 Dr. Hwang pointed out his concerns of discriminatory treatment by McIlroy and Ellis who
17 were treating him differently than other non-East Asian American Directors, and in his
18 action plan, he proposed positive and constructive resolutions that conformed to SNL's
19 missions regarding diversity in the workplace.

20 41. In the action plan, Dr. Hwang expressed concerns that both Ellis and McIlroy,
21 both Anglos, were treating Dr. Hwang differently as the only East Asian Director, compared
22 to the other Directors, and they were applying different standards to his conduct and behavior
23 than other Directors. He explained how Ellis and McIlroy were demonstrating personal
24 animosity toward him and publicly embarrassing and humiliating him. Dr. Hwang explained
25 that Ellis' critiques of him for not speaking up in meetings betrayed her bias and prejudice
26 against East Asian Americans, whose culture teaches them to be quiet and only speak up in
27 meetings after having thoroughly thought through the topics and having something
28 constructive to say. Dr. Hwang pointed out in the action plan the examples of Ellis and

1 McIlroy's frequent micro-aggressions with their body language, insulting and demeaning
2 statements that went as far as to compare Dr. Hwang to the head of a fish. Dr. Hwang
3 pointed out in the action plan, SNL's values and behaviors that require they embrace
4 diversity and inclusion and that as Senior Managers, SNL requires that they foster multiple
5 perspectives and promote acceptance of different learning and working styles. Dr. Hwang
6 requested that SNL review the actions and conduct of the Defendant toward him and their
7 impact on achieving a diverse workforce. He further requested an independent review of
8 Ellis and McIlroy's actions and conduct against him. Dr. Hwang proposed that all Senior
9 Managers participate in diversity and sensitivity training, especially regarding East Asian
10 Americans and other foreign born East Asians.

11 42. Defendant NTESS took no action regarding Dr. Hwang's action plan by
12 calling for review, investigation and corrective action; but instead terminated his
13 employment.

14 43. A few hours after receiving Dr. Hwang's action plan and notice of intent to
15 resume his Director duties, on January 29, 2020, at 6:14 pm, McIlroy sent Dr. Hwang an
16 email informing that his action plan was rejected because it was late, and he was terminated
17 from his employment as Director.

18 44. Dr. Hwang was replaced as Director of Center 8300 with a female (Anglo)
19 who had been a Senior Manager in Center 8300 while Dr. Hwang was Director.

20 45. Sara Allendorf, who was appointed as Interim Director and later given the full
21 time Director position of 8300, had been criticized by Ellis and McIlroy for her conduct
22 toward support staff. Both Ellis and McIlroy had used Sara Allendorf's behavior as an
23 example of unprofessional conduct and a pattern of behavior that Ellis and McIlroy alleged
24 was re-emerging to criticize Dr. Hwang – yet Ellis and McIlroy turned around and appointed
25 the person they claim was engaging in such unprofessional behavior to be the Director and
26 fired Dr. Hwang.

27 46. On February 4, 2020, Dr. Hwang filed an Amendment to the EEOC Charge to
28 include a charge of retaliation based on the Defendant's adverse action of refusing to allow

1 him to resume his duties as Director within hours of receiving a copy of Dr. Hwang's charge
2 of discrimination and his action plan, which included his complaints and proposed corrective
3 action plans for the Defendant's discriminatory conduct toward him.

4 47. Dr. Hwang has satisfied all administrative prerequisites for bringing claims of
5 discrimination and retaliation against the Defendant, and this Complaint is timely filed
6 pursuant to 42 U.S.C. §2000(e), *et. seq.* and the California Fair Employment and Housing
7 Act.

8 **COUNT I**

9 **VIOLATIONS OF TITLE VII (42 U.S.C. §2000(e), *et. seq.*) - DISCRIMINATION**

10 48. Dr. Hwang realleges the allegations contained in paragraphs 1 through 47 of
11 this Complaint as if fully set forth herein.

12 49. Dr. Hwang is an employee as defined by 42 U.S.C. §2000(e)(5)-(f)(1).

13 50. NTESS is an employer as defined by 42 U.S.C. §2000(e)(B).

14 51. Dr. Hwang, is an East Asian American and he belongs to a protected group
15 based upon his race and nationality.

16 52. Dr. Hwang was qualified for the position of Director of Center 8300.

17 53. Dr. Hwang's race and/or nationality were a motivating factor in NTESS'
18 decision to terminate his employment.

19 54. Dr. Hwang was the only East Asian American Director, and upon his removal,
20 he was replaced by a person outside of his protected group.

21 55. The other Directors were of a different race and nationality and were treated
22 more favorably than Dr. Hwang.

23 56. Dr. Hwang has lost income and benefits (back pay/front pay) and suffered
24 emotional distress, humiliation and other compensable damages by Defendant's violation of
25 his protected civil rights.

26 57. NTESS engaged in intentional discrimination against Dr. Hwang through its
27 Senior Managers and NTESS ratified and condoned its Senior Managers reckless indifference
28 to violations of Dr. Hwang's federally protected civil rights.

1 Discrimination with the EEOC on January 25, 2020, and on January 29, 2020, when he
2 submitted his action plan to Ellis and McIlroy expressing concerns about discrimination
3 against him because of his race and nationality.

4 65. Defendant knew of Dr. Hwang's protected activity on January 29, 2020, when
5 it received a copy of his EEOC Charge and his action plan.

6 66. Within hours of receiving a copy of Dr. Hwang's EEOC Charge of
7 Discrimination and his action plan, which included his concerns and objections regarding
8 discrimination, Defendant refused to allow Dr. Hwang to return to his position and terminated
9 his employment as Director after he rescinded his retirement.

10 67. The close proximity between Dr. Hwang's protected activity and the adverse
11 action of terminating his employment establishes a causal connection between Dr. Hwang's
12 protected activities and the adverse employment action of terminating his employment.

13 68. By its acts and omissions alleged above, Defendant retaliated against Plaintiff
14 for, inter alia, opposing Defendant's harassment, discrimination, and retaliation and
15 complaining about Defendant's discriminatory conduct, in violation of Title VII, 42 U.S.C.
16 §2000e-3(a).

17 69. As a direct and foreseeable result of Defendant's unlawful retaliation, Plaintiff
18 has suffered, and will continue to suffer, mental and psychological damages in the form of
19 extreme and enduring worry, humiliation, embarrassment, mental anguish and emotional
20 distress, all to his damage in amounts within the jurisdictional limits of this Court, to be
21 proved at trial.

22 70. As a direct, foreseeable, and proximate result of Defendant's unlawful conduct,
23 Plaintiff has been injured in that he has suffered, and will continue to suffer, a loss of wages
24 and salary, bonuses, compensation, employment benefits, career path opportunities, and
25 expenses in amounts to be proved at trial.

26 71. As a result of Defendant's acts of retaliation as alleged herein, Plaintiff is
27 entitled to reasonable attorney's fees and costs of suit as provided for by 42 U.S.C. §2000e-
28 5(k).

1 psychological damages in the form of extreme and enduring worry, suffering, pain,
2 humiliation, embarrassment, mental anguish and emotional distress, all to his damage in
3 amounts within the jurisdictional limits of this Court, to be proved at trial.

4 83. As a direct, foreseeable, and proximate result of Defendant's violation of
5 FEHA, Plaintiff has been injured in that he has suffered, and will continue to suffer, a loss of
6 wages and salary, compensation, employment benefits, career path opportunities, and
7 expenses in amounts to be proved at trial.

8 84. The conduct of Defendant as alleged above, was malicious, fraudulent,
9 despicable, and oppressive and was done with the wrongful intent of injuring Plaintiff, and the
10 persons who committed the unlawful acts described herein were officers, directors and/or
11 managing agents of Defendant and were acting within the scope of their employment, thereby
12 entitling Plaintiff to an award of punitive damages in amounts to be proved at trial.

13 85. As a result of Defendant's discriminatory conduct, as alleged herein, Plaintiff
14 is entitled to reasonable attorney's fees and costs of suit as provided for by California
15 Government Code §12965(b).

16 WHEREFORE, Plaintiff respectfully prays for relief as set forth below.

17 **COUNT IV**

18 **VIOLATIONS OF CAL GOV. CODE §12940 – RETALIATION**

19 86. Dr. Hwang realleges the allegations contained in paragraphs 73 through 85 of
20 this Complaint as if fully set forth herein.

21 87. Dr. Hwang engaged in protected activity when he filed a Charge of
22 Discrimination with the EEOC on January 25, 2020, and on January 29, 2020, when he
23 submitted his action plan to Defendant expressing concerns about discrimination against him
24 because of his race and nationality.

25 88. Defendant knew of Dr. Hwang's protected activity on January 29, 2020, when
26 it received a copy of his EEOC Charge and his action plan.

27 89. Within hours of receiving a copy of Dr. Hwang's EEOC Charge of
28 Discrimination and his action plan, which included his concerns and objections regarding

1 discrimination, Defendant refused to allow Dr. Hwang to return to his Director position and
2 terminated his employment as Director after he rescinded his retirement.

3 90. The close proximity between Dr. Hwang's protected activity and the adverse
4 action of terminating his employment establishes a causal connection between Dr. Hwang's
5 protected activity and the adverse employment action.

6 91. The Defendant engaged in intentional retaliation against Dr. Hwang through its
7 Senior Managers and NTESS ratified and condoned its Senior Managers' reckless
8 indifference to violations of Dr. Hwang's federally protected civil rights.

9 92. By its acts and omissions alleged herein, Defendant intentionally deprived
10 Plaintiff of equal employment opportunities, and otherwise adversely affected his status as an
11 employee in violation of FEHA.

12 93. As a direct, foreseeable, and proximate result of Defendant's violation of
13 FEHA, Plaintiff has suffered, and will continue to suffer, general physical, mental and
14 psychological damages in the form of extreme and enduring worry, suffering, pain,
15 humiliation, embarrassment, mental anguish and emotional distress, all to his damage in
16 amounts within the jurisdictional limits of this Court, to be proved at trial.

17 94. As a direct, foreseeable, and proximate result of Defendant's violation of
18 FEHA, Plaintiff has been injured in that he has suffered, and will continue to suffer, a loss of
19 wages and salary, compensation, employment benefits, career path opportunities, and
20 expenses in amounts to be proved at trial.

21 95. The conduct of Defendant as alleged above, was malicious, fraudulent,
22 despicable, and oppressive and was done with the wrongful intent of injuring Plaintiff, and the
23 persons who committed the unlawful acts described herein were officers, directors and/or
24 managing agents of Defendant and were acting within the scope of their employment, thereby
25 entitling Plaintiff to an award of punitive damages in amounts to be proved at trial.

26 96. As a result of Defendant's retaliatory conduct, as alleged herein, Plaintiff is
27 entitled to reasonable attorney's fees and costs of suit as provided for by California
28 Government Code §12965(b).

1 WHEREFORE, Plaintiff respectfully prays for judgment against Defendant
2 NTESS as set forth below:

3 1. For compensatory and special damages, including without limitation, a loss of
4 wages and salary, bonuses, compensation, front pay, back pay, employment benefits, career
5 path opportunities, according to proof;

6 2. For general damages, including without limitation, for mental and emotional
7 distress according to proof;

8 3. For an award of punitive damages;

9 4. For reasonable attorneys' fees, costs and expert fees pursuant to, without
10 limitation, those provided by Title VII, 42 U.S.C. §2000e-5(k) and FEHA;

11 5. For an award of interest, including prejudgment interest, at the legal rate;

12 6. For costs of suit incurred; and

13 7. For such other and further relief as the Court deems proper.

14 Dated: December 1, 2020

BERMAN NORTH LLP

15
16 By: 

17 Stacy North
18 Attorneys for Plaintiff
19 ROBERT HWANG, PH. D

20
21 **JURY DEMAND**

22 Plaintiff ROBERT HWANG, PH. D. hereby demands a trial by jury of all issues so
23 triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

24 Dated: December 1, 2020

BERMAN NORTH LLP

25
26 By: 

27 Stacy North
28 Attorneys for Plaintiff
ROBERT HWANG, PH. D