Electronically FILED by Superior Court of California, County of Los Angeles on 04/08/2022 09:27 AM Sherri R. Carter, Executive Officer/Clerk of Court, by R. Perez,Deputy Clerk
22STCV11943

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

APRIL BLACKWELL,

Plaintiff,

v.

PENDRY WEST HOLLYWOOD, LLC, a California limited liability company; and DOES 1-5,

Defendants.

CASE NO. 22STCV11943

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF

1. Retaliation in Violation of Labor Code § 1102.5 and §98.6;

2. Retaliation for Opposing Practices Forbidden by FEHA;

3. Requiring Employee to Waive Rights, Forums and Procedures as a Condition of Employment in Violation of Cal. Gov. Code § 12953 and Labor Code § 432.6;

4. Wrongful Termination in Violation of Public Policy;

5. Breach of Contract

JURY TRIAL DEMANDED

Plaintiff April Blackwell hereby brings this action against Defendant PENDRY WEST HOLLYWOOD, LLC ("Defendant" or "the Pendry"), and on information and belief alleges as follows:

JURISDICTION

1. The Superior Court of the State of California has jurisdiction in this matter because Plaintiff is a resident of California and Defendant is a California limited liability company located in California and regularly conducts business in California. No federal question is at issue because Plaintiff's claims are based solely on California law. This case falls within the Court's unlimited jurisdiction because the amount in controversy exceeds $25,000.

VENUE

2. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5 because the Plaintiff was employed by Defendant within Los Angeles County. Further, the acts and omissions complained of herein occurred in Los Angeles, California, within the County of Los Angeles.

PARTIES

3. Plaintiff April Blackwell is an individual over the age of 18 residing in Los Angeles, California, in the County of Los Angeles.

4. Defendant Pendry West Hollywood, LLC is and at all times mentioned herein was a California limited liability company doing business as a hotel in the County of Los Angeles.

FACTUAL ALLEGATIONS

5. The Pendry is a luxury boutique hotel located in West Hollywood, a chic Los Angeles neighborhood. It is owned by Montage International and opened in April 2021. The hotel takes up an entire block of the Sunset Strip. It boasts a rooftop pool and multiple restaurants by Wolfgang Puck.

6. Plaintiff April Blackwell is a 37-year-old Black woman. She has significant experience working in hotels, including as Night Auditor at the Chateau Marmont and Senior Assistant Front Office Manager at the London Hotel in West Hollywood.

7. On October 10, 2019, Governor Gavin Newsom signed California Assembly Bill ("AB") 51, which prohibits employers from requiring any job applicant or employee to waive any right, forum or procedure for a violation of any provision of California law relating to their workplace rights,

including violations of the California Fair Employment and Housing Act ("FEHA") and the Labor Code. FEHA is an anti-discrimination law that prohibits workplace sexual harassment and race discrimination, among other things. AB 51 also prohibits an employer from retaliating against any job applicant or employee for refusing to consent to such a waiver. The provisions of AB 51 are codified at California Labor Code § 432.6.

8. AB 51 went into effect on January 1, 2020.

9. Over the past several years, employers have increasingly required job applicants and employees to waive their rights, forums and procedures in FEHA and Labor Code cases. Under this approach, employers require employees to waive their rights to the judicial forum and require them instead to use arbitration, a private court system. Employers also require employees to waive their discovery rights, appeal rights and jury trial rights. Employers often make such a waiver a condition of employment. Under AB 51, employers may still ask employees for a waiver, but may not require one as a condition of employment.

10. AB 51 has no effect on arbitration agreements that have already been signed, and cannot be used to invalidate signed agreements. Cal Labor Code § 432.6(f). The law simply provides a tool for employees to use *before* being required to sign any contract that contains a waiver of rights to ensure that any such waiver is voluntary, and not coercive.

11. After Governor Newsom signed AB 51 into law, the Chamber of Commerce and other pro-business organizations sued a number of California agencies, seeking to enjoin them from enforcing the law on the basis that it is preempted by the Federal Arbitration Act ("FAA").

12. On February 6, 2020, a district court in the Eastern District of California entered a preliminary injunction against Xavier Becerra, in his official capacity as California's Attorney General; Lilia Garcia, in her official capacity as California's Labor Commissioner; Julie Su, in her official capacity as Secretary of the California Labor and Workforce Development Agency; and Kevin Kish, in his official capacity as Director of the DFEH. The injunction prohibited these public officials and the state agencies they represent from enforcing AB 51. The district court found that the Chamber and other plaintiffs had proved a likelihood of success on the merits of their argument that AB 51 was

preempted by the FAA. The district court's decision did not invalidate AB 51 or otherwise prevent the law from going into effect. It also did not prohibit private enforcement.

13. On September 15, 2021, the Ninth Circuit reversed the district court. The decision states: "As we read California Labor Code § 432.6 [i.e., AB 51], the state of California has chosen to assure that entry into an arbitration agreement by an employer and employee is mutually consensual and to declare that compelling an unwilling party to arbitrate is an unfair labor practice. We are asked by [the Chamber of Commerce and other plaintiffs] to hold that the FAA requires parties to arbitrate when but one party desires to do so. Our research leads to nothing in the statutory text of the FAA or Supreme Court precedent that authorizes or justifies such a departure from established jurisprudence, and we decline to so rule. Thus, we must reverse the judgment of the district court." *Chamber of Com. of United States v. Bonta*, 13 F.4th 766, 771 (9th Cir. 2021) ("*Bonta*").

14. Shortly after the Ninth Circuit issued *Bonta*, in late September 2021, April Blackwell applied for a Night Manager position at the Pendry. She had friends in management who worked there, and they encouraged her to apply.

15. Ms. Blackwell quickly received an interview, and was invited back for a second interview with the General Manager and Human Resources.

16. On September 30, 2021, after Ms. Blackwell's second interview, a Pendry "People Coordinator" named Alejandra Chanquin sent Ms. Blackwell an email congratulating her and informing her that the Pendry was making her an offer to be the Night Manager with a start date of October 5. Ms. Chanquin's email contained an attachment inviting Ms. Blackwell to attend a new employee orientation on October 5. Ms. Chanquin instructed Ms. Blackwell to sign into an online portal called "Workday" to fill out paperwork for the job. Ms. Blackwell responded by email that she would "love to move forward" and that she planned to attend the orientation on October 5.

17. On October 1, 2021, Ms. Blackwell received a written offer letter in Workday, which stated that her starting salary was $63,752 plus benefits. As she was filling out the paperwork, she noticed that the Pendry was asking her to sign an arbitration agreement. The arbitration agreement required her to waive her right to a judicial forum to pursue any claims against the Pendry, including claims for retaliation and discrimination under FEHA. The arbitration agreement also required her to

waive her right to a jury trial, her right to conduct discovery to assist her in prosecuting claims, and her right to file an appeal of an adverse decision against her.

18. The arbitration agreement has a "Frequently Asked Questions" section at the end. FAQ 19 says, "Is this Agreement mandatory?" The answer says: "No. If you do not wish to be bound by this Agreement, simply do not sign the Agreement." The arbitration agreement, along with the FAQ, is attached hereto as Exhibit A. Based on the Pendry's representations in this FAQ response, Ms. Blackwell reasonably believed that signing the arbitration agreement was optional.

19. On October 4, 2021, Ms. Blackwell sent an email to Paula Zelaya, the Pendry's "Director of People," or Human Resources Director. She told Ms. Zelaya that she accepted the job offer, but that she did not want to sign the arbitration agreement. She asked Ms. Zelaya: "Am I able to decline that that one and sign the other documents?" Ms. Blackwell did not receive a response that day from Ms. Zelaya.

20. The next day, October 5, 2021, Ms. Blackwell started work at the Pendry, attending an orientation from approximately 9:00 a.m. to 5:00 p.m., along with about eight other new employees. They were introduced to various managers and hotel employees, trained on various hotel policies and procedures, and given a tour of the hotel.

21. Late in the afternoon of October 5, Ms. Zelaya sent an email to Ms. Blackwell responding to her question about whether she was required to sign the arbitration agreement. Ms. Zelaya stated: "Accepting the terms of the agreement is a condition of employment."

22. Ms. Blackwell responded on October 6, pointing out that FAQ 19, which was attached to the arbitration agreement, said "that the agreement is not mandatory and that I don't have to sign." Ms. Blackwell also noted "that California law just changed a couple weeks ago, and making mandatory arbitration a condition of employment is now an unlawful employment practice." She referred Ms. Zelaya to an article about the Ninth Circuit's recent *Bonta* decision. Ms. Blackwell stated: "I am sincerely looking forward to working with you all and I hope to be able to do so without being made to sign an arbitration agreement, which is well within my legal rights."

23. On October 6, 2021, Ms. Zelaya sent a response stating: "We believe that arbitration agreements serve both the associate and the company and it remains a condition of employment. The

new CA arbitration law is not in effect yet. It's important to also note that exceptions apply to the new law. Ultimately, we would hate for this to be a deal breaker on your end but if it is, we respect your stance." Ms. Zelaya also told Ms. Blackwell that she was unable to locate FAQ 19 and asked Ms. Blackwell to point her to where it was in the paperwork. Ms. Blackwell sent a response attaching FAQ 19, and reiterated that it said, "This agreement is not mandatory and if you don't wish to sign, simply don't sign." She said, "So why say you don't have to sign, but then say you have to sign? That's why I'm so confused."

24. On October 7, 2021, Ms. Zelaya called Ms. Blackwell. Their call lasted about 20 minutes. During the call, Ms. Zelaya reiterated that signing the arbitration agreement was a condition of employment. She said that it sounded like Ms. Blackwell felt strongly that she shouldn't sign the arbitration agreement, but that Montage felt strongly that Ms. Blackwell should sign. Ms. Zelaya said that it sounded like the Montage and Ms. Blackwell did not share the same values, and that Ms. Blackwell was not a "good fit" for the Montage because she had expressed such strong opposition to signing the arbitration agreement.

25. Ms. Blackwell told Ms. Zelaya that she would love to work at the Pendry, and that she did not want the job taken away from her because of how she felt about signing the arbitration agreement. Ms. Blackwell also said she hoped that the Pendry would give her the opportunity to make the decision about whether she wanted to work there or not, rather than being told that she could not work there anymore. But Ms. Zelaya then told Ms. Blackwell that the Pendry had decided to rescind her offer because she had expressed her belief that requiring her to sign the agreement would be unlawful, and that was not a good way to start a working relationship.

26. Ms. Blackwell later asked to be reinstated, with or without an arbitration agreement, but was told on October 15, 2021 that the position had already been filled. She again requested reinstatement on October 21, 2021, writing to Ms. Zelaya: "I would again ask to be reinstated to the Night Manager position, or a similar position, although I still do not believe that the Pendry can require me to sign the arbitration agreement as a condition of employment. Please let me know if reinstatement is a possibility. If I don't hear back from you by 10/25/21, I will assume that the Pendry is not going to reinstate my job." Ms. Blackwell did not receive a response to her email and has not been reinstated.

27. On October 19, 2021, Ms. Zelaya sent Ms. Blackwell an email stating that she was processing pay for the day that Ms. Blackwell had worked at the Pendry attending the orientation. Ms. Zelaya told Ms. Blackwell that she had "hired" Ms. Blackwell in Workday, and that she needed Ms. Blackwell to provide some additional information in order to get paid. Ms. Blackwell provided the information and opted for direct deposit. That same day, there was a paystub for Ms. Blackwell from the Pendry in the Workday app that she was able to download indicating a check date of October 18, 2021 with net pay of $2,576.36.

28. The Pendry later revised Ms. Blackwell's pay for the day she worked to be $245.20. The amount was deposited in her bank account on October 27, 2021 and she was issued an itemized wage statement.

29. On or about October 23, 2021, the Pendry posted a job opening for an "Overnight Manager," the same position for which Ms. Blackwell was hired. The job opening remained posted throughout early November 2021, indicating that the Pendry had not, in fact, filled Ms. Blackwell's position.

30. On March 21, 2022, Ms. Blackwell filed an administrative charge with the Department of Fair Employment and Housing alleging that the Pendry had retaliated against her for opposing practices made unlawful by FEHA, and had violated her rights under Cal. Gov. Code § 12953, a section of FEHA that makes it unlawful for employers to violate the provisions of the Labor Code § 432.6. She received a right-to-sue letter that same day. Accordingly, Ms. Blackwell has exhausted her administrative remedies.

FIRST CAUSE OF ACTION

RETALIATION IN VIOLATION OF CAL. LABOR CODE § 98.6 AND § 1102.5

[Against all Defendants]

31. Plaintiff restates and incorporates by reference each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

32. The purpose of Labor Code § 1102.5 is to encourage employees to speak up when they reasonably believe they are being required to engage in unlawful acts "without fearing retaliation." *Andrews v. Pride Indus.*, 213 F. Supp. 3d 1288, 1308 (E.D. Cal. 2016).

33. Labor Code § 1102.5(b) prohibits an employer from retaliating against an employee for disclosing information about legal violations "to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation." This protection applies "if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute." Labor Code § 1102.5(b).

34. Labor Code § 1102.5(c) prohibits an employer from retaliating against an employee "for refusing to participate in an activity that would result in a violation of state or federal statute." This protection applies so long as the employee has reasonable cause to believe that the employer is asking her to engage in unlawful conduct.

35. The "reasonable cause" standard generally means there must be some legal foundation for the employee's belief in the unlawful activity, and the employee must actually believe that the employer's actions were unlawful. The employee need not be correct in her belief about legal violations occurring, but she must have reasonable cause to believe that such violations occurred. *E.g., Devlyn v. Lassen Mun. Utility Dist.*, 737 F.Supp.2d 1116, 1124 (E.D. Cal. 2010) (employee's mistaken but reasonable belief that he was reporting toxic levels of substances at the work site constituted protected activity under Labor Code § 1102.5).

36. At all times relevant to this claim, Ms. Blackwell was an employee of the Pendry. She was hired into the Pendry's employee system, paid wages by the Pendry for a day of work, and received an itemized wage statement consistent with Labor Code § 226 reflecting her work.

37. The Pendry violated Labor Code § 1102.5(b) because it retaliated against Ms. Blackwell for telling Paula Zelaya, the Human Resources Director, that the Pendry was not complying with AB 51 by requiring her to waive her rights, forums and procedures for FEHA and Labor Code violations as a condition of employment. After Ms. Blackwell told Ms. Zelaya that she believed the Pendry was violating the law, the Pendry retaliated against Ms. Blackwell by terminating her employment.

38. Ms. Zelaya is a person with authority over Ms. Blackwell, and she has authority to investigate and correct the violation.

39. The Pendry also violated Labor Code. § 1102.5(c) because it retaliated against Ms. Blackwell for refusing to participate in the unlawful act of being required to waive her rights, forums

and procedures for FEHA and Labor Code violations as a condition of employment in violation of AB 51.

40. Ms. Blackwell reasonably believed that the information she conveyed to Ms. Zelaya disclosed a violation of California law, and that the Pendry was asking her to participate in unlawful conduct, because: (a) AB 51 prohibits employers from requiring employees to waive their rights, forums and procedures for FEHA and Labor Code violations as a condition of employment; (b) AB 51 became effective on January 1, 2020 and remains in effect to the present day; (c) the lower court's injunction prohibits only public officials from enforcing AB 51 and does prohibit private enforcement by individuals like Ms. Blackwell; and (d) in any case, on September 15, 2021, just before Ms. Blackwell became an employee of the Pendry, the Ninth Circuit ruled that AB 51 is not preempted by the FAA and vacated the lower court's injunction.

41. Even if AB 51 is ultimately invalidated by the courts, the Pendry is still liable under Labor Code § 1102.5 because Ms. Blackwell sincerely and reasonably believed that she was reporting unlawful conduct to Human Resources and being asked to participate in unlawful conduct by being required to waive her rights to the judicial forum as a condition of employment. She also reasonably believed that she was not required to waive her rights because the Pendry's own paperwork stated that signing the arbitration agreement was not mandatory. The Pendry terminated Ms. Blackwell's employment based on her expressed opposition to waiving her rights with respect to her FEHA and Labor Code claims, and her expressed opposition to being required to waive such rights.

42. As a direct and proximate result of Defendant's unlawful conduct, Ms. Blackwell has suffered and will continue to suffer emotional injuries. Ms. Blackwell has suffered and continues to suffer loss of earnings and other employment benefits. Ms. Blackwell is thereby entitled to general and compensatory damages in amounts to be proven at trial. Ms. Blackwell is also entitled to the remedies afforded by Labor Code § 98.6(b), including reinstatement.

43. The conduct of Defendant as described herein was malicious, fraudulent, and oppressive and/or done with a willful and conscious disregard for Plaintiff's rights and for the deleterious consequences of their actions. Consequently, Plaintiff is entitled to punitive damages against Defendant.

SECOND CAUSE OF ACTION

RETALIATION IN VIOLATION OF GOV. CODE § 12940(h)

[Against All Defendants]

44. Plaintiff restates and incorporates by reference each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

45. Cal. Gov. Code § 12940(h) makes it unlawful for any employer or person to discharge or otherwise retaliate against "any person" because she has opposed practices made unlawful under the Fair Employment and Housing Act (FEHA).

46. At all times relevant to this claim, the Pendry was an "employer" or "person" covered by Gov. Code § 12940(h). Ms. Blackwell was also a "person" covered by Gov. Code § 12940(h).

47. The Pendry retaliated against Ms. Blackwell because she opposed being required to waive her rights to the judicial forum and a jury trial (among other things) through signing an arbitration agreement as a condition of her employment, a practice made unlawful under FEHA at Gov. Code. § 12953.

48. Even if Gov. Code § 12953 is later invalidated, Ms. Blackwell has nonetheless stated a claim for FEHA retaliation because she had a reasonable and good faith belief at the time that she expressed opposition to signing a contract waiving her rights that she was opposing a practice made unlawful under FEHA. *Miller v. Dep't of Corr.*, 36 Cal. 4th 446, 474 (2005) ("An employee is protected against retaliation if the employee reasonably and in good faith believed that what he or she was opposing constituted unlawful employer conduct such as sexual harassment or sexual discrimination."); *Rope v. Auto-Chlor Sys. of Washington, Inc.*, 220 Cal. App. 4th 635, 652 (2013) ("The protected activity element may be established by . . . a showing that the plaintiff mistakenly, but reasonably and sincerely believed he was opposing discrimination.").

49. As a direct and proximate result of Defendant's unlawful conduct, Ms. Blackwell has suffered and will continue to suffer emotional injuries. Ms. Blackwell has suffered and continues to suffer loss of earnings and other employment benefits. Ms. Blackwell is thereby entitled to general and compensatory damages in amounts to be proven at trial.

50. The conduct of Defendant as described herein was malicious, fraudulent, and oppressive and/or done with a willful and conscious disregard for Plaintiff's rights and for the deleterious consequences of their actions. Consequently, Plaintiff is entitled to punitive damages against Defendant.

THIRD CAUSE OF ACTION

REQUIRING EMPLOYEE TO WAIVE RIGHTS, FORUMS AND PROCEDURES AS A CONDITION OF EMPLOYMENT IN VIOLATION OF GOV. CODE § 12953 AND LABOR CODE § 432.6

[Against all Defendants]

51. Plaintiff restates and incorporates by reference each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

52. Government Code § 12953 provides: "It is an unlawful employment practice for an employer to violate Section 432.6 of the Labor Code."

53. Labor Code § 432.6(a) provides: "A person shall not, as a condition of employment . . . require any applicant for employment or any employee to waive any right, forum, or procedure for a violation of any provision of the California Fair Employment and Housing Act . . . or [the Labor Code], including the right to file and pursue a civil action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation."

54. Labor Code § 432(b) provides: "An employer shall not threaten, retaliate or discriminate against, or terminate any applicant for employment or any employee because of the refusal to consent to the waiver of any right, forum, or procedure for a violation of the California Fair Employment and Housing Act or this code, including the right to file and pursue a civil action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation."

55. At all times relevant to this claim, Ms. Blackwell was an "applicant for employment" of the Pendry, as well as an "employee" of the Pendry.

56. The Pendry violated Labor Code § 432(a) by requiring Ms. Blackwell, as a condition of employment:

a. to waive her right to file FEHA or Labor Code civil claims in state or federal court, instead requiring her to file all such claims in the arbitration forum;

b. to waive her right to a trial by jury in FEHA and Labor Code actions despite the civil jury trial protections afforded by the Seventh Amendment to the United States Constitution, Rule 38 of the Federal Rule of Civil Procedure, California Code of Civil Procedure § 631(a), and Section 16 of Article I of the California Constitution;

c. to waive her right to file wage claims under the Labor Code with the California Labor Commissioner, instead requiring her to bring all such claims in arbitration;

d. to waive class action procedures for FEHA and Labor Code violations otherwise available to her under California Code of Civil Procedure § 382 and Federal Rule of Civil Procedure 23;

e. to waive the discovery rights and procedures available to her under the California Discovery Act and the Federal Rules of Civil Procedure in FEHA and Labor Code cases, instead requiring her to use the severely limited discovery procedures available under the JAMS Employment Arbitration Rules; and

f. to waive her right to file an appeal of an adverse decision in a FEHA or Labor Code action as provided for in the Federal Rules of Appellate Procedure and the California Code of Civil Procedure.

57. The Pendry also violated Labor Code § 432(b) by terminating Ms. Blackwell for refusing to consent to the waiver of her rights, forums and procedures for FEHA and Labor Code violations.

58. Labor Code § 432.6(d) authorizes injunctions where an employer has required job applicants and employees, as a condition of employment, to waive the enumerated rights, forums and procedures. Plaintiff is entitled to injunctive relief under the governing legal standards, and is entitled to an order prohibiting the Pendry and its agents from requiring job applicants and employees, as a condition of employment, to waive their rights, forums and procedures for FEHA and Labor Code violations.

59. As a direct and proximate result of Defendant's unlawful conduct, Ms. Blackwell has suffered and will continue to suffer emotional injuries. Ms. Blackwell has suffered and continues to suffer loss of earnings and other employment benefits. Ms. Blackwell is thereby entitled to general and compensatory damages in amounts to be proven at trial.

60. The conduct of Defendant as described herein was malicious, fraudulent, and oppressive and/or done with a willful and conscious disregard for Plaintiff's rights and for the deleterious consequences of their actions. Consequently, Plaintiff is entitled to punitive damages against Defendant.

FOURTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

[Against all Defendants]

61. Plaintiff restates and incorporates by reference each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

62. In California, an employer has no right to terminate employment – even at-will employment – for a reason that contravenes a fundamental public policy expressed in a constitutional or statutory provision. *Turner v. Anheuser-Busch, Inc.*, 7 Cal.4th 1238, 1252 (1994). "An actual or constructive discharge in violation of fundamental public policy gives rise to a tort action in favor of the terminated employee." *Id.*

63. The Pendry terminated Ms. Blackwell's employment in violation of the public policies set forth in Government Code § 12953 and Labor Code § 432.6, as well as the public policies set forth in:

a. the constitutional and statutory provisions affording claimants the right to a trial by jury (including the Seventh Amendment to the United States Constitution, Rule 38 of the Federal Rule of Civil Procedure, California Code of Civil Procedure § 631(a), and Section 16 of Article I of the California Constitution);

b. the statutory provisions affording claimants the right to file Labor Code claims with the California Labor Commissioner;

c. the statutory provisions affording claimants the right to use class action procedures for FEHA and Labor Code violations (including California Code of Civil Procedure § 382 and Federal Rule of Civil Procedure 23);

d. the statutory provisions affording claimants the right to conduct discovery under the California Discovery Act and the Federal Rules of Civil Procedure in FEHA and Labor Code cases; and

e. the statutory provisions affording claimants the right to file an appeal of an adverse decision in a FEHA or Labor Code action (including in the Federal Rules of Appellate Procedure and the California Code of Civil Procedure).

64. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff has suffered and will continue to suffer emotional injuries. Plaintiff has suffered and continues to suffer loss of earnings and other employment benefits. Plaintiff is thereby entitled to general and compensatory damages in amounts to be proven at trial.

65. The conduct of Defendant as described herein was malicious, fraudulent, and oppressive and/or done with a willful and conscious disregard for Plaintiff's rights and for the deleterious consequences of their actions. Consequently, Plaintiff is entitled to punitive damages against Defendant.

FIFTH CAUSE OF ACTION

BREACH OF CONTRACT

[Against all Defendants]

66. Plaintiff restates and incorporates by reference each and every allegation contained in the foregoing paragraphs as though fully set forth herein.

67. In California, there is a statutory presumption that employment is at will. Labor Code § 2922. However, the employment relationship is "fundamentally contractual," and the parties are free to depart from at-will status if they agree to limitations on the employer's termination rights. *Guz v. Bechtel Nat. Inc.*, 24 Cal. 4th 317, 336 (2000). "The contractual understanding need not be express, but may be implied in fact." *Id*. An employer's own "written personnel documents" may set forth implied contractual limits on the circumstances under which employees may be terminated. *Id*. at 338.

68. Here, the Pendry offered Ms. Blackwell a job, which she accepted. The Pendry's written personnel documents presented for Ms. Blackwell to sign after she accepted the job stated that signing the arbitration agreement was not mandatory. Specifically, the FAQs attached to the arbitration agreement itself said: "Is this Agreement mandatory? No. If you do not wish to be bound by this Agreement, simply do not sign the Agreement." *See* Exhibit A, attached hereto, at page 9.

69. The Pendry's own written personnel documents thus set forth implied contractual limits on the circumstances under which an employee may be terminated – to wit, that signing the arbitration agreement was not "mandatory," and an employee therefore could not be terminated for refusing to sign it.

70. The Pendry breached this implied contract when it terminated Ms. Blackwell's employment based on her expressed belief that she was not required to sign the arbitration agreement.

71. As a direct and proximate result of Defendant's unlawful conduct, Plaintiff has suffered and continues to suffer loss of earnings and other employment benefits. Plaintiff is thereby entitled to general and compensatory damages in amounts to be proven at trial.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

Plaintiff prays for relief as follows:

1. For economic and special damages according to proof at trial;
2. For a preliminary injunction, and a permanent injunction, prohibiting the Pendry and its agents from requiring job applicants and employees, as a condition of employment, to waive their rights, forums and procedures for a violation of the California Fair Employment and Housing Act or the Labor Code;
3. For reinstatement;
4. For declaratory relief;
5. For punitive damages and exemplary damages according to proof at trial;
6. For payment of all statutory obligations and penalties as required by law;
7. For prejudgment and post-judgment interest at the legal rate;

8. For attorneys' fees and costs pursuant to Government Code § 12965(b), Labor Code § 1102.5, Labor Code § 432.6, Code of Civil Procedure § 1021.5, and any other applicable statute;
9. For restitution and disgorgement of ill-gotten profits; and
10. For such further relief as the Court may deem just and proper.

DATED: April 8, 2022

Respectfully submitted,
TEUKOLSKY LAW, APC

By: ______________________________
Lauren Teukolsky
Attorneys for Plaintiff APRIL BLACKWELL

EXHIBIT A

MONTAGE
INTERNATIONAL

MUTUAL AGREEMENT TO ARBITRATE CLAIMS

I recognize that disputes may arise between Montage International ("the Company") and me during or following my employment with the Company, and that those differences may or may not be related to my employment. I understand and agree that by entering into this Mutual Agreement to Arbitrate Claims ("Agreement"), I anticipate gaining the benefits of a speedy, less-formal, impartial, final and binding dispute-resolution procedure. This Agreement is binding on the Company without need for a signature on its part.

The Federal Arbitration Act shall govern the interpretation, enforcement and all proceedings pursuant to this Agreement. To the extent that the Federal Arbitration Act is inapplicable, the arbitration law of the state in which I work or last worked for the Company shall apply.

Claims Covered by the Agreement

The Company and I mutually consent to the resolution by arbitration of all claims or controversies ("claims"), past, present or future, whether or not arising out of my employment (or its termination), that the Company may have against me or that I (and no other party) may have against any of the following: (1) the Company, (2) its officers, directors, employees or agents in their capacity as such or otherwise, (3) the Company's parent, subsidiary and affiliated entities, (4) the Company's benefit plans or the plans' sponsors, fiduciaries, administrators, affiliates and agents, and/or (5) all successors and assigns of any of them.

The only claims that are arbitrable are those that are justiciable under applicable federal, state or local law. Arbitrable claims include, but are not limited to: claims for wages or other compensation due; claims for breach of any contract or covenant (express or implied); tort claims; claims for retaliation or discrimination (including, but not limited to, race, sex, sexual orientation, religion, national origin, age, marital status, physical or mental disability or handicap, or medical condition); claims for benefits (except as provided below); and claims for violation of any federal, state, or other governmental law, statute, regulation, or ordinance (except as provided below).

Claims Not Covered by the Agreement

The Company and I agree that neither of us shall initiate or prosecute any lawsuit or administrative action in any way related to any claim covered by this Agreement, except that this Agreement does not prohibit the filing of or pursuit of relief through the following: (1) a court action for temporary equitable relief in aid of arbitration, where such an action is otherwise available by law, (2) an administrative charge to any federal, state or local equal employment opportunity or fair employment practices agency, (3) an administrative charge to the National Labor Relations Board, or (4) any other charge filed with or communication to a federal, state or local government office, official or agency (for numbers (2) through (4) collectively, "a government complaint").

The following claims are not covered by this Agreement: claims for workers' compensation or unemployment compensation benefits; claims that as a matter of law cannot be subject to arbitration (after application of Federal Arbitration Act preemption principles); and claims under an employee benefit or pension plan that specifies a different arbitration procedure.

To the maximum extent permitted by law, I hereby waive any right to bring on behalf of persons other than myself, or to otherwise participate with other persons in, any class or collective action.

Time Limits for Commencing Arbitration and Required Notice of All Claims

The Company and I agree that the aggrieved party must give written notice of any claim to the other party no later than the expiration of the statute of limitations (deadline for filing) that the law prescribes for the claim. Otherwise, the claim shall be deemed waived. The filing of a government complaint shall not extend the statute of limitations for presenting any claim to arbitration. I understand that the aggrieved party is encouraged to give written notice of any claim as soon as possible after the event or events in dispute so that arbitration of any differences may take place promptly.

Written notice to the Company, or its officers, directors, employees or agents, shall be sent to the Vice President of People, Ethics and Compliance at the Company's then-current headquarters address, which currently is 3 Ada Parkway, Suite 100, Irvine, California, 92618. I will be given written notice at the last address recorded in my personnel file.

The written notice shall identify and describe the nature of all claims asserted, the facts upon which such claims are based, and the relief or remedy sought. The notice shall be sent to the other party by certified or registered mail, return receipt requested.

Representation

Any party may be represented by an attorney or other representative selected by the party.

Discovery

Each party shall have the right to take depositions of three fact witnesses and any expert witness designated by another party. Each party also shall have the right to make requests for production of documents to any party and to subpoena documents from third parties to the extent allowed by law. Requests for additional depositions or discovery may be made to the Arbitrator selected pursuant to this Agreement. The Arbitrator may grant such additional discovery if the Arbitrator finds that the party has demonstrated that it needs that discovery to adequately arbitrate the claim, taking into account the parties' mutual desire to have a speedy, less-formal, cost-effective dispute-resolution mechanism.

Designation of Witnesses

At least 30 days before the arbitration, the parties must exchange lists of witnesses, including any experts, and copies of all exhibits intended to be used at the arbitration.

Subpoenas

Each party shall have the right to subpoena witnesses and documents to the extent allowed by law, subject to any limitations the Arbitrator shall impose for good cause shown.

Place of Arbitration

The arbitration shall take place in the county (or comparable governmental unit) in which I am or was last employed by the Company, and no dispute affecting my rights or responsibilities shall be adjudicated in any other venue or forum.

Arbitration Procedures

The arbitration will be held under the auspices of JAMS (or any successor) ("administrator"). The arbitration shall be held in accordance with the JAMS Employment Arbitration Rules & Procedures (and no other rules), which are currently available at http://www.jamsadr.com/rules-employment-arbitration. I understand that the Company will supply me with a printed copy of those rules upon my request. Notwithstanding any provision of the JAMS Rules, any dispute over the formation, enforceability, validity, or severability of any provision of this Agreement shall be resolved by a court of competent jurisdiction. The Arbitrator shall be either a retired judge, or an attorney who is experienced in employment law and licensed to practice law in the state in which the arbitration is convened (the "Arbitrator"), selected pursuant to JAMS rules or by mutual agreement of the parties.

The Arbitrator shall apply the substantive law (and the law of remedies, if applicable) of the state in which the claim arose, or federal law, or both, as applicable to the claim(s) asserted. The Arbitrator is without jurisdiction to apply any different substantive law or law of remedies. The Federal Rules of Evidence shall apply. The arbitration shall be final and binding upon the parties, except as provided in this Agreement.

The Arbitrator shall have jurisdiction to hear and rule on pre-hearing disputes and is authorized to hold pre-hearing conferences by telephone or in person, as the Arbitrator deems advisable. The Arbitrator shall have the authority to entertain a motion to dismiss and/or a motion for summary judgment by any party and shall apply the standards governing such motions under the Federal Rules of Civil Procedure.

Either party, at its expense in the first instance, may arrange and pay for a court reporter to provide a stenographic record of proceedings.

Should any party refuse or neglect to appear for, or participate in, the arbitration hearing, the Arbitrator shall have the authority to decide the dispute based upon whatever evidence is presented.

Either party upon its request shall be given leave to file a post-hearing brief. The time for filing such a brief shall be set by the Arbitrator.

The Arbitrator shall render an award and written opinion in the form typically rendered in labor arbitrations, normally no later than thirty (30) days from the date the arbitration hearing concludes or the post-hearing briefs (if requested) are received, whichever is later. The opinion shall include the factual and legal basis for the award.

Arbitration Fees and Costs

The Company will be responsible for paying any filing fee and the fees and costs of the Arbitrator; provided, however, that if I am the party initiating the claim, I will contribute an amount equal to the filing fee to initiate a claim in the court of general jurisdiction in the state in which I am (or was last) employed by the Company. Each party shall pay in the first instance its own

litigation costs and attorneys' fees, if any. However, if any party prevails on a statutory claim that affords the prevailing party attorneys' fees and litigation costs, or if there is a written agreement providing for attorneys' fees and/or litigation costs, the Arbitrator shall rule upon a motion for attorneys' fees and/or litigation costs under the same standards a court would apply under the law applicable to the claim(s) at issue.

Reconsideration and Review

Either party shall have the right, within twenty (20) days of issuance of the Arbitrator's decision, to file with the Arbitrator (and the Arbitrator shall have jurisdiction to consider and rule upon) a motion to reconsider (accompanied by a supporting brief), and the other party shall have twenty (20) days from the date of the motion to respond. The Arbitrator thereupon shall reconsider the issues raised by the motion and, promptly, either confirm or change the decision, which (except as provided by law) shall then be final and conclusive upon the parties.

Either party may bring an action in any court of competent jurisdiction to compel arbitration under this Agreement and to enforce an arbitration award.

Interstate Commerce

I understand and agree that the Company is engaged in transactions involving interstate commerce and that my employment is related to that interstate commerce.

Survival of Agreement

This Agreement to arbitrate shall survive the termination of my employment and the expiration of any benefit plan.

Sole and Entire Agreement

This is the complete agreement between the parties on the subject hereof; provided, however, that if this Agreement for any reason is held to be unenforceable, then any prior arbitration agreement between the Company and me shall survive. No party is relying on any representations, oral or written, on the subject of the effect, enforceability or meaning of this Agreement, except as specifically set forth in this Agreement.

Construction and Severability

If any provision of this Agreement is adjudged to be void or otherwise unenforceable, in whole or in part, such adjudication shall not affect the validity of the remainder of the Agreement. All other provisions shall remain in full force and effect based on the parties' mutual intent to create a binding agreement to arbitrate their disputes.

Consideration

The promises by the Company and by me to arbitrate differences, rather than litigate them before courts or other bodies, provide consideration for each other.

Bellwether Arbitration Procedures

Bellwether procedures shall be used when more than 10 cases pending at the same

time present substantially similar or overlapping allegations of fact or law. A court of competent jurisdiction, and not JAMS or an arbitrator, shall resolve any dispute over whether these bellwether procedures apply to any group of claims.

Purpose and Rationale

A large number of arbitration cases with similar allegations will impose excessive transaction costs regardless of the cases' merit or lack of merit. It also is logistically difficult or impossible to arbitrate simultaneously large numbers of substantially similar cases. The parties therefore agree to use bellwether litigation procedures similar to those that courts use in mass-tort cases, based on the judiciary's experience that, after one or a few cases are tried to verdict, most or all of the other cases settle or otherwise resolve themselves.

Procedures

To the maximum extent permitted by law, no more than 10 cases will be active at any one time. All remaining cases will be stayed, with the statute of limitations tolled. As soon as one of the original active cases is resolved (by decision, settlement, or otherwise), a stayed arbitration shall replace it on the list of 10 active cases. Except as provided below, cases shall be placed on or moved to the active list in the order demands for arbitration are first received. Until a case is on or is moved to the list of 10 active cases, the sum the Employee paid to initiate a case shall be refunded, and the Company shall have no obligation to pay any JAMS or arbitrator fees.

Hardship

If Employee claims exceptional hardship from any delay pursuant to the bellwether procedure, Employee may petition the Company to waive the 10-case limit for that case. If the Company does not agree, Employee may petition JAMS to place Employee's case on the list of 10 active cases, on the ground that delay will impose exceptional hardship. If JAMS finds exceptional hardship and grants Employee's petition, JAMS shall (based on its determination of relative hardship) remove one other case from the list of 10 active cases and place it at the head of the list of stayed cases. Under no circumstances shall JAMS place more than 10 cases into active status. If more than 10 hardship applications are granted, JAMS shall determine which 10 cases shall proceed first, based on its determination of relative hardship.

Voluntary Agreement

I ACKNOWLEDGE THAT I HAVE CAREFULLY READ THIS AGREEMENT, THAT I UNDERSTAND ITS TERMS, THAT ALL UNDERSTANDINGS AND AGREEMENTS BETWEEN THE COMPANY AND ME RELATING TO THE SUBJECTS COVERED IN THE AGREEMENT ARE CONTAINED IN IT, AND THAT I HAVE ENTERED INTO THE AGREEMENT VOLUNTARILY AND NOT IN RELIANCE ON ANY PROMISES OR REPRESENTATIONS BY THE COMPANY OTHER THAN THOSE CONTAINED IN THIS AGREEMENT ITSELF.

I UNDERSTAND THAT I AM GIVING UP MY RIGHT TO A JURY TRIAL.

I FURTHER ACKNOWLEDGE THAT I HAVE BEEN GIVEN THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH MY PRIVATE LEGAL COUNSEL AND HAVE AVAILED MYSELF OF THAT OPPORTUNITY TO THE EXTENT I WISH TO DO SO.

______________________________ ______________________________
Associate Signature **Associate Name**

____
Date

MONTAGE
INTERNATIONAL

Arbitration Agreement – Frequently Asked Questions

This FAQ has been prepared in connection with the introduction of the new Montage International Arbitration Agreement.

1. What is arbitration?

Arbitration is a method of resolving a dispute between two or more parties. A trained neutral third-party decision maker – the arbitrator – reviews the evidence and legal arguments presented by each party and issues a binding decision. The arbitrator applies the same substantive laws that would apply in a court proceeding.

2. How is arbitration different from mediation?

Mediation is a voluntary dispute resolution process, during which parties work toward a mutually agreeable resolution. A mediator does not decide in favor of one party or another and instead simply facilitates the negotiation process. During arbitration, on the other hand, an arbitrator (a neutral party) hears a dispute between the parties and, after weighing all relevant evidence, renders a final and binding decision in favor of one of the parties. Binding arbitration decisions are enforceable in court, and once enforced carry the same significance as a court judgment.

3. Will arbitration be the only way for me to resolve disputes I may have?

No. Associates are always encouraged to bring their concerns to the attention of their supervisor or manager. Associates also have available to them managers in the Human Resources department on property, Montage International corporate Human Resources, and the EthicsPoint associate helpline (which is available 24/7 by phone or Internet and provides the option of anonymity). Arbitration is simply an additional available process for resolving disputes.

4. What kinds of claims are subject to arbitration?

All legal claims of any kind are subject to arbitration, except for the very limited instances when the law does not allow for the arbitration of certain claims. The Montage International Arbitration Agreement provides more detail as to those claims not covered by the agreement.

5. Is there any difference between the types of disputes I can bring under the Montage International Arbitration Agreement compared to the types of claims I can bring in court?

Any individual legal claim that a litigant could pursue in court can be pursued in arbitration under the Montage International Arbitration Agreement. Likewise, any defenses that a litigant could raise in court in an individual case can be raised in arbitration under the Montage International Arbitration Agreement. Class and collective actions are not permitted under the Montage International Arbitration Agreement, except to the extent applicable law does not permit waiver of such an action.

6. What is a class action?

A class action is a type of legal action that allows a large number of people with the same or very similar claims to band together to pursue their claims in one case.

7. Why is there a class action waiver in the Montage International Arbitration Agreement?

In a class action, only one person or a few individuals represent the interests of the rest of the class. In our opinion, disputes are better and more fairly resolved when each individual's dispute is resolved on its own merits, taking into account the unique facts and circumstances of that specific dispute and allowing an arbitrator to tailor a resolution that best fits that particular situation.

8. Who are the arbitrators who could hear cases?

The arbitrators are professionals with experience in employment cases. Typically, they are former judges.

9. What is JAMS?

Formerly known as Judicial Arbitration and Mediation Services, Inc., JAMS is a nationwide dispute resolution firm.

10. How is the arbitrator selected?

The process for selecting the arbitrator is spelled out in the JAMS rules that can be found at http://www.jamsadr.com/rules-employment-arbitration/. Under these rules, the company and the associate can jointly participate in the process of selecting the arbitrator who will decide the dispute.

11. What happens at the end of the arbitration hearing?

Following the hearing, the arbitrator will issue a written binding decision that will include the reason(s) for his/her ruling on each claim in the dispute.

12. Can the arbitrator give me the same award as I could receive for my dispute in court?

The Arbitrator is empowered to award any relief in an individual dispute that a judge or jury could award.

13. Can the decision be appealed?

There are extremely limited grounds on which to appeal the decision of the arbitrator, such as when there are procedural errors or when the arbitrator exceeds his or her authority. For more information, please contact your personal legal counsel.

14. Is the company bound by the same rules?

Yes. If the company has a claim against you, it would arbitrate that dispute rather than go to court.

15. How is this Agreement different from a prior arbitration agreement that I have?

This Agreement contains a bellwether-claims provision, which was not in your prior arbitration agreement. The new provision explains how arbitrations will proceed if multiple, substantially similar claims, are presented.

16. What is the purpose of the bellwether provision?

The bellwether provision provides a means for the parties to avoid excessive costs in the event that more than 10 arbitration cases are pending with substantially similar or overlapping allegations of fact or law. It is our belief that the bellwether provision will foster efficient resolution of cases because, after one or a few cases are tried to verdict, most or all of the other cases settle or otherwise resolve themselves.

17. How does the bellwether provision work?

The bellwether provision will limit to 10 the number of active cases with substantially similar or overlapping allegations. All other cases will be stayed. Once an active case is resolved, a stayed case will replace it. Cases shall be placed on or moved to the active list in the order demands for arbitration are first received; in other words, an earlier filed demand will be moved to the active list before later filed demands, unless otherwise required by law.

18. What if my claim is urgent?

The Agreement creates a hardship provision in which an employee can ask for his or her arbitration to proceed ahead of others.

19. Is this Agreement mandatory?

No. If you do not wish to be bound by this Agreement, simply do not sign the Agreement.

20. If I decide not to sign this new Agreement, what effect does that have on any prior arbitration agreement I may have?

None. Any prior arbitration agreement remains in effect.

If you have any other questions, please contact Mike Harper, Vice President of People, Ethics and Compliance, via email at Mike.Harper@Montage.com.