

**COPY**

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10 ALICIA OCHOTORENA

**ENDORSED FILED**  
Clerk of the Superior Court  
County of Lassen

**FEB 03 2023**  
By A. KLINETOBE  
DEPUTY CLERK

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF LASSEN**

13 ALICIA OCHOTORENA, individually  
14 Plaintiff,

15 v.

16 CALIFORNIA DEPARTMENT OF  
17 TRANSPORTATION, a government entity;  
18 DAVID PORTER, an individual, and DOES 1  
19 through 50, inclusive.

20 Defendants.

Case No. 2023 CV 0076423

**COMPLAINT FOR DAMAGES**

1. Gender Discrimination, Cal. Gov't Code §12940
2. Retaliation, Cal. Gov't Code §12940(h)
3. Hostile Work Environment Harassment, Cal. Gov. Code § 12940(j)
4. Failure to Prevent Discrimination and Harassment, Cal. Gov. Code § 12940
5. Wrongful Termination in Violation of Public Policy
6. Intentional Infliction of Emotional Distress

**DEMAND FOR JURY TRIAL**

21  
22  
23 1. Plaintiff ALICIA OCHOTORENA ("Ochotorena") individually, brings this action against  
24 Defendants CALIFORNIA DEPARTMENT OF TRANSPORTATION ("Caltrans"), a government  
25 entity, DAVID PORTER ("Porter"), an individual, and DOES 1 through 50, inclusive.

**PARTIES**

26 2. Plaintiff is, and at all times relevant to this action was, a resident of the City of Susanville,  
27 California. The events giving rise to this action arose in Susanville, California.  
28

**BY FAX**



1           12. Ms. Ochotorena began her employment with Caltrans, Susanville location, on March 15,  
2 2021, as an Equipment Material Manager.

3           13. During her employment with Defendants, Ms. Ochotorena performed her job satisfactorily  
4 and received positive performance reviews.

5           14. Throughout Ms. Ochotorena's employment with Defendants Ms. Ochotorena was  
6 discriminated against and harassed by her supervisors based on her gender.

7           15. James Irving was Ms. Ochotorena's supervisor from March to May of 2021. Mr. Irving  
8 stated to Ms. Ochotorena that there has never been a female in her position inferring that being a female  
9 might somehow be unable to perform in this position.

10          16. When Ms. Ochotorena began her employment at Caltrans, Caltrans did not provide her a  
11 proper female uniform. Mr. Irving made condescending comments to Ms. Ochotorena regarding the fact  
12 that she needed a female uniform. Defendants failed to provide a proper female uniform to Ms.  
13 Ochotorena for her entire employment with it.

14          17. Defendant David Porter, Equipment Material Manager II, became Ms. Ochotorena's direct  
15 supervisor in May of 2021. Mr. Porter's assigned office was in Redding, CA.

16          18. From the moment Mr. Porter became Ms. Ochotorena's supervisor he engaged in  
17 harassing, bullying, and scolding behavior toward Ms. Ochotorena. Compared to Ms. Ochotorena's male  
18 counterparts who Ms. Ochotorena observed were addressed with more respect, trust, and intention to  
19 build a personal bond. When addressing Ms. Ochotorena Mr. Porter's tone would always change to  
20 condescending, constantly hostile and nitpicking. Mr. Porter would give Ms. Ochotorena one direction  
21 for her duties and a week later change that direction with no explanation or reference to the previous  
22 direction. This led to the appearance of Ms. Ochotorena not following directions from her supervisor or  
23 being incompetent. Ms. Ochotorena wasn't given the same level of respect and responsibility as her male  
24 peers.

25          19. On July 27, 2021, Ms. Ochotorena had her first performance evaluation with Mr. Porter  
26 via video conference. Mr. Porter rated Ms. Ochotorena's performance in all applicable review categories  
27 as "meets" or "masters expectations".  
28

1           20.     On July 29, 2021, Mr. Porter came to Ms. Ochotorena’s job location and conducted her  
2 first field review which Ms. Ochotorena passed as well.

3           21.     Throughout Ms. Ochotorena’s employment Ms. Ochotorena’s male co-workers were  
4 given training support and opportunities that were denied to Ms. Ochotorena.

5           22.     On August 16, 2021, Ms. Ochotorena drove to Redding with her recently hired male  
6 employee Wesley Wood. Ms. Ochotorena met with Mr. Porter in his office, while Mr. Wood attended a  
7 new employee orientation. Being a newly hired manager, Ms. Ochotorena requested Mr. Porter to allow  
8 the Branch Chief of Internal Controls Amanda Morris to provide both Ms. Ochotorena and Mr. Wood  
9 additional training. Mr. Porter denied Ms. Ochotorena’s request for the additional training but invited Mr.  
10 Wood back to Redding, CA for training.

11          23.     On or about August 24, 2021, Ms. Ochotorena discovered that Mr. Porter was interfering  
12 with her abilities to order supplies in a timely manner for her team. On August 25, 2021, Ms. Ochotorena  
13 emailed Loren Swenson, Superintendent for District II, making him aware that Ms. Ochotorena was  
14 unable to order parts for her field locations due to Mr. Porter’s interference. Mr. Swenson dismissed Ms.  
15 Ochotorena’s concerns and stated, “Some things are done differently in D2, but that’s what sets us apart  
16 from other Districts.”

17          24.     Since Ms. Ochotorena’s complaint to Mr. Swenson about Mr. Porter’s interference Mr.  
18 Porter began a campaign of retaliation and harassment against Ms. Ochotorena.

19          25.     On or about October 7, 2021, Mr. Porter arrived at the office in Susanville to conduct an  
20 unannounced inspection of the location. Mr. Porter, without cause, requested that Ms. Ochotorena leave  
21 her office so he could inspect all files and inventory out of her view. When Ms. Ochotorena attempted to  
22 inquire regarding the inspection and its requirements, Ms. Ochotorena was subjected to barrage of  
23 unwarranted criticism and demeaning comments from Mr. Porter. Feeling overwhelmed by this  
24 interaction Ms. Ochotorena had to step out of the office to regain her composure. Mr. Porter then  
25 continued to berate her and make derogatory statements about Ms. Ochotorena overreacting and being  
26 too emotional regarding the inspection stating that men in Ms. Ochotorena’s position are less emotional.

27          26.     On November 8, 2021, Mr. Porter and Mr. Swenson unexpectedly came into Ms.  
28 Ochotorena’s office to conduct a secondary probationary performance evaluation. Even though

1 Defendant's policy recommends that these evaluations be coordinated in advance, Ms. Ochotorena was  
2 denied the opportunity for any preparation per the policy's recommendation. Ms. Ochotorena's  
3 performance evaluation was conducted in such a manner that Ms. Ochotorena felt threatened and  
4 intimidated by her managers' overbearing hostile demeanor and physical actions as they were both males  
5 and Ms. Ochotorena was the only female in the room. Ms. Ochotorena sat in a chair in the office and Mr.  
6 Porter and Mr. Swenson were located on opposite sides of Ms. Ochotorena cornering her by blocking  
7 both entry/exit doors. During the evaluation Mr. Porter told Ms. Ochotorena that she was to disregard any  
8 instructions received from any Caltrans state superiors and only follow his orders even though they were  
9 often contrary to the departmental policies and regulations. Mr. Porter emphasized that there are plenty of  
10 male managers who can perform Ms. Ochotorena's job tasks with no employees and no issues. At the  
11 conclusion of the performance evaluation review, Ms. Ochotorena notified Mr. Porter and Mr. Swenson  
12 that she was no longer comfortable working with Mr. Porter alone after his aggressive and demeaning  
13 behavior during the evaluation. Ms. Ochotorena also requested written documentation of the meeting,  
14 which was denied by both Mr. Swenson and Mr. Porter.

15 27. Without proper notice to Ms. Ochotorena, Mr. Porter offered Ms. Ochotorena's male  
16 employee Mr. Wood an overnight trip to Redding for two full days of training while on the contrary Ms.  
17 Ochotorena's multiple trainings requests were denied by her supervisors. Ms. Ochotorena was not aware  
18 of it until she received an email requesting her attendance in Redding, CA on November 30, 2021.

19 28. On November 30, 2021, during Ms. Ochotorena's visit to the Redding location, Mr. Porter  
20 requested that Ms. Ochotorena work with him on Mr. Wood's evaluation. Mr. Porter stated that the  
21 evaluation that Ms. Ochotorena had written for Mr. Wood in October had too much emotion and was too  
22 generous in its ratings. For the rest of the week, Mr. Porter remained in constant contact with Ms.  
23 Ochotorena to rewrite Mr. Wood's evaluation.

24 29. On December 3, 2021, Ms. Ochotorena informed Mr. Porter and Mr. Swenson that she  
25 was not comfortable with the direction she was being steered in to rewrite Mr. Wood's evaluation. Ms.  
26 Ochotorena was using a positive coaching and improvement methodology while Mr. Porter directed Ms.  
27 Ochotorena to document Mr. Wood's every mistake in a criticizing and negative fashion. Mr. Porter and  
28

1 Mr. Swenson disregarded Ms. Ochotorena's concerns and continued to force Ms. Ochotorena to violate  
2 the department's rules and regulations regarding employee evaluations.

3 30. On December 6, 2021, Mr. Porter and Mr. Swenson delivered Mr. Wood's evaluation  
4 without Ms. Ochotorena's participation.

5 31. On December 6, 2021, Ms. Ochotorena filed a complaint with the Caltrans Equal  
6 Employment Opportunity Program (EEO) regarding job harassment and retaliation.

7 32. On December 13, 2021, Ms. Ochotorena had a video conference with Jason Cook and  
8 David Dodge, Division Branch Chief, regarding the commercial work orders and the internal controls  
9 team. Ms. Ochotorena demonstrated the process she had been utilizing which was according to the policy  
10 and was directed to proceed in this manner and disregard any differing instructions Ms. Ochotorena  
11 received from Mr. Porter who was reporting a more favorable outcome for the group with his deviated  
12 method. Mr. Cook and Mr. Dodge closed the call with comments on Mr. Porter being a new manager and  
13 that discrepancies like this could arise due to that, almost dismissing his inaccurate way of reporting.

14 33. On December 15, 2021, Mr. Swenson contacted Ms. Ochotorena regarding her evaluation.  
15 During the meeting Mr. Swenson instructed Ms. Ochotorena to follow the direction of Mr. Porter and set  
16 up more training with Mr. Porter despite Ms. Ochotorena's previous statements of feeling uncomfortable  
17 working directly with Mr. Porter.

18 34. On December 22, 2021, Ms. Ochotorena contacted Cecilia Arroyo, EEO Discrimination  
19 Complaint Investigator, and Aaron Gabani, EEO Discrimination Complaint Investigation Unit Office  
20 Manager, via email for an update on the complaint Ms. Ochotorena filed with the EEO. Ms. Ochotorena  
21 also provided additional documentation of harassment and retaliation she received from Mr. Porter. Ms.  
22 Ochotorena received an automated out-of-office reply in return.

23 35. The discrimination Ms. Ochotorena experienced in the workplace left Ms.  
24 Ochotorena feeling anxious, worried, and nervous. She never knew when Mr. Porter would perceive a  
25 blunder and use the opportunity to harass and humiliate her, leaving her in perpetual state of stress and  
26 worry.



1 of the . . . sex, gender . . . of any person . . . to discharge the person from  
2 employment . . . or to discrimination against the person in compensation  
3 or in terms, conditions, or privileges of employment.

4 44. Plaintiff was a female.

5 45. Plaintiff was subjected to unwelcome gender discrimination.

6 46. Defendant was Plaintiff's employer, and Plaintiff was Defendants' employee.

7 47. Plaintiff was harassed by her supervisors. This harassment included making  
8 condensing comments about Plaintiff being too emotional compared to males. Plaintiff wasn't given  
9 the same level of respect and responsibility as her male peers. Plaintiff's male co-workers were given  
10 training support and opportunities that were denied to Plaintiff.

11 48. Throughout her employment, Plaintiff made multiple complaints to Defendants about the  
12 harassment and discrimination she received from her supervisors. Despite Plaintiff's complaints of the  
13 harassment, Defendants did not remedy the situation.

14 49. Plaintiff suffered harm when she was constructively terminated by Defendants.

15 50. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

16 51. Under Government Code section 12940, Plaintiff is entitled to recover economic and  
17 noneconomic damages caused by Defendants' discriminatory practices based on Plaintiff's gender and  
18 violation of the Fair Employment and Housing Act. Plaintiff is also entitled to reasonable attorney's fees  
19 and costs pursuant to Government Code section 12965.

20 52. As a result of Defendants' discriminatory treatment Plaintiff suffered extreme emotional  
21 distress, anxiety, extreme stress, worry, apprehension and dismay.

22 53. The conduct of Defendants and each of them as described above was malicious,  
23 fraudulent, or oppressive and done with a willful and conscious disregard for Plaintiff's rights.  
24 Defendants and each of them, and their agents/employees or supervisors, authorized, condoned, and  
25 ratified the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages  
26 against each of said Defendant.

27 ***SECOND CAUSE OF ACTION***

28 *Retaliation*



1 *Cal. Gov't Code §12940(h)*

2 *(Against All Defendants)*

3 54. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set  
4 forth in this Complaint.

5 55. At all relevant times, the California Fair Employment & Housing Act, sections 12940, et  
6 seq., was in full force and effect, and binding on Defendants.

7 56. FEHA makes it an unlawful employment practice for an employer to retaliate against an  
8 employee who has opposed a forbidden practice or filed a complaint against an employer or supervisor.  
9 CGC §12940(h).

10 57. Defendants retaliated against Plaintiff by constructively terminating Plaintiff's  
11 employment.

12 58. Plaintiff made complaints to Defendants about perceived legal violations, as alleged  
13 above, namely complaints of discrimination and retaliation by Mr. Porter.

14 59. Plaintiff was harmed.

15 60. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

16 61. As a result of Defendants' discriminatory and retaliatory treatment Plaintiff suffered  
17 emotional distress and felt humiliated, embarrassed, anxious, and depressed.

18 62. The conduct of Defendants and each of them as described above was malicious,  
19 fraudulent, or oppressive and done with a willful and conscious disregard for Plaintiff's rights.  
20 Defendants and each of them, and their agents/employees or supervisors, authorized, condoned, and  
21 ratified the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages  
22 against each of said Defendants.

23 ***THIRD CAUSE OF ACTION***

24 *Hostile Work Environment Harassment*

25 *Cal. Gov. Code § 12940(j)*

26 *(Against All Defendants)*

27 63. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set  
28 forth in this Complaint.



1 *Cal. Lab. Code § 12940*

2 *(Against All Defendants)*

3 73. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set  
4 forth in this Complaint.

5 74. Government Code section 12940(m)(2) provides in relevant part:

6 i. It is an unlawful employment practice . . . (k) For an employer . . . to  
7 fail to take all reasonable steps necessary to prevent discrimination  
8 and harassment from occurring.

8 75. Defendants wrongfully failed to take all reasonable steps necessary to prevent harassment  
9 and discrimination of Plaintiff based on her gender.

10 76. Plaintiff suffered and continues to suffer harm as a result of Plaintiff's constructive  
11 termination by Defendants.

12 77. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

13 78. Under Government Code section 12940, Plaintiff is entitled to recover Plaintiff's  
14 economic and noneconomic damages caused by Defendants' unlawful practices. Plaintiff is also entitled  
15 to reasonable attorney's fees and costs pursuant to Government Code section 12965.

16 79. As a result of Defendants' discriminatory treatment Plaintiff suffered emotional distress  
17 and felt humiliated, embarrassed, anxious, and depressed.

18 80. The conduct of Defendants and each of them as described above was malicious,  
19 fraudulent, or oppressive and done with a willful and conscious disregard for Plaintiff's rights.  
20 Defendants and each of them, and their agents/employees or supervisors, authorized, condoned, and  
21 ratified the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages  
22 against each of said Defendants.

23 ***FIFTH CAUSE OF ACTION***

24 *Wrongful Termination in Violation of Public Policy*

25 *(Against All Defendants)*

26 81. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set  
27 forth in this Complaint.

28

1           82.     Art. I, § 8, of the California Constitution provides that a person may not be disqualified  
2 from pursuing a profession or employment because of their gender or age.

3           83.     At all times herein mentioned in this complaint, California Government Code Section  
4 12940 (a), was in full force and effect and were binding on the Defendants and the Defendants were  
5 subject to their terms, and therefore Defendant was required to refrain from violations of public policy,  
6 including discrimination based on age, gender, and disability in violation of FEHA and in retaliation for  
7 complaining of said discrimination.

8           84.     Defendants were Plaintiff's employer, and Plaintiff was Defendants' employee.

9           85.     Defendants constructively terminated Plaintiff's employment in violation of Plaintiff's  
10 rights and public policy.

11          86.     Plaintiff is informed and believes and thereon alleges that her protected status (gender)  
12 and/or her protestation against being discriminated against based on said protected status as alleged  
13 above, were, in part, factors in Defendants' discriminatory treatment of Plaintiff.

14          87.     Plaintiff was harmed.

15          88.     Defendants' conduct was a substantial factor in causing Plaintiff's harm.

16          89.     As a proximate result of Defendants' conduct, Plaintiff has suffered special damages in the  
17 form of lost earnings, benefits and/or out of pocket expenses in an amount according to proof at the time  
18 of trial. As a further direct and proximate result of Defendants' conduct, Plaintiff will suffer additional  
19 special damages in the form of lost future earnings, benefits and/or other prospective damages in an  
20 amount according to proof at the time of trial.

21          90.     As a further direct and proximate result of Defendants' conduct, Plaintiff has suffered loss  
22 of financial stability, peace of mind and future security, and has suffered embarrassment, humiliation,  
23 mental and emotional pain and distress and discomfort, all to his detriment and damage in amounts not  
24 fully ascertained but within the jurisdiction of this court and subject to proof at the time of trial.

25          91.     In violation of public policy, Defendants constructively terminated Plaintiff's employment  
26 because she is a female.

27          92.     The conduct of Defendants as described above was malicious, fraudulent, or oppressive  
28 and done with a willful and conscious disregard for Plaintiff's rights. Defendant and each of them, and

1 their agents/employees or supervisors, authorized, condoned and ratified the unlawful conduct of each  
2 other. Consequently, Plaintiff is entitled to punitive damages against each of said Defendants.

3 ***SIXTH CAUSE OF ACTION***

4 *Intentional Infliction of Emotional Distress*

5 *(Against Defendant Porter)*

6 93. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set  
7 forth in this Complaint.

8 94. Defendant's treatment of Plaintiff as discussed supra, exceeds the bounds of decency, is  
9 intolerable within our civilized community, and is therefore outrageous.

10 95. Defendant's actions, as discussed supra, were intended to cause Plaintiff to suffer the  
11 resulting emotional distress.

12 96. Defendant succeeded in his attempt to cause Plaintiff to suffer extreme emotional distress  
13 as indicated by the lingering anxiety and shame, and that are the direct and proximate results of  
14 Defendant's conduct.

15 97. Plaintiff was harmed.

16 98. Defendant's conduct was a substantial factor in causing Plaintiff's harm.

17 99. The conduct of Defendant as described above was malicious, fraudulent, or oppressive  
18 and done with a willful and conscious disregard for Plaintiff's rights. Defendants and each of them, and  
19 their agents/employees or supervisors, authorized, condoned and ratified the unlawful conduct of each  
20 other. Consequently, Plaintiff is entitled to punitive damages against Defendant David Porter.

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff prays for judgment against the Defendants, and each of them, as  
23 follows:

- 24 1. Compensatory damages including emotional distress damages and lost wages, benefits  
25 and interest in a sum according to proof;
- 26 2. Interest on judgment, including prejudgment interest, at the legal rate;
- 27 3. Punitive damages in a sum according to proof;
- 28 4. Attorney's fees and costs; and

1           5.       For any further legal and equitable relief, the Court deems proper.  
2

3 Dated: February 2, 2023.

**RATNER MOLINEAUX, LLP**



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5 David S. Ratner  
6 Shelley A. Molineaux  
7 Attorneys for Plaintiff ALICIA OCHOTORENA

8  
9                                   **DEMAND FOR JURY TRIAL**

10           Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

11 Respectfully submitted,

12  
13 Dated: February 2, 2023.

**RATNER MOLINEAUX, LLP**



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15 David S. Ratner  
16 Shelley A. Molineaux  
17 Attorneys for Plaintiff ALICIA OCHOTORENA  
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# **EXHIBIT A**

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

DIRECTOR KEVIN KISH

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EEOC Number: 550-2022-00532  
Case Name: Alicia M Ochotorena vs. Headquarters Caltrans.  
Filing Date: 4/13/2022

**NOTICE TO COMPLAINANT AND RESPONDENT**

This is to advise you that the above-referenced complaint is being dual filed with the California Department of Fair Employment and Housing (DFEH), a state agency, and the United States Equal Employment Opportunity Commission (EEOC), a federal agency. The complaint will be filed in accordance with California Government Code section 12960. The notice constitutes service pursuant to Government Code section 12962.

The EEOC is responsible for the processing of this complaint and the DFEH will not be conducting an investigation into this matter. Please contact EEOC directly for any discussion of the complaint or the investigation.

**NOTICE TO COMPLAINANT OF RIGHT TO SUE**

This letter is also your state Right to Sue notice. This state Right to Sue Notice allows you to file a private lawsuit. According to Government Code section 12965, subdivision (b), you may bring a civil action under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above- referenced complaint. The lawsuit may be filed in a State of California Superior Court.

Government Code section 12965, subdivision (b), provides that such a civil action must be brought within one year from the date of this notice or, pursuant to Government Code section 12965, subdivision (d)(2), 90 days from receipt of the federal right-to-sue letter from the EEOC, whichever is later. You should consult an attorney to determine with accuracy the date by which a civil action must be filed. This right to file a civil action may be waived in the event a settlement agreement is signed.

Be advised, the DFEH does not retain case records beyond three years after a complaint is filed.