



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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COMPLAINT

ELIZABETH SCOTT VS. UPLOAD, INC. ET AL

001C05855088

Instructions:

Please place this sheet on top of the document to be scanned.

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
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NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

UPLOAD, INC., UPLOADVR, INC., UPLOAD PRODUCTIONS INC.,
TAYLOR FREEMAN, WILL MASON, and DOES 1-25, inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

Elizabeth Scott

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Civic Center Courthouse
400 McAllister St.
San Francisco, CA 94105

CASE NUMBER:
(Número de caso): **CGC-17-558730**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Carolyn Hunt Cottrell, 2000 Powell Street, Suite 1400, Emeryville, CA 94608, (415) 421-7100

DATE: **MAY - 8 2017** **DEPUTY CLERK** Clerk, by *[Signature]* Deputy
(Fecha) *(Secretario)* *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

BOWMAN LIU



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of *(specify):*
3. on behalf of *(specify):*
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other *(specify):*
4. by personal delivery on *(date):*

BY FAX
ONE LEGAL LLC

1 CAROLYN HUNT COTTRELL (SBN 166977)
NICOLE N. COON (SBN 286283)
2 DAVID C. LEIMBACH (SBN 265409)
SCHNEIDER WALLACE COTTRELL
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5 Facsimile: (415) 421-7105

6 Attorneys for Plaintiff
ELIZABETH SCOTT

7
8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

FILED
Superior Court of California
County of San Francisco

MAY - 8 2017

CLERK OF THE COURT

BY: *[Signature]*
Deputy Clerk
BOWMAN LIU

10 ELIZABETH SCOTT,

11 Plaintiff,

12 vs.

13 UPLOAD, INC., UPLOADVR, INC.,
14 UPLOAD PRODUCTIONS INC., TAYLOR
FREEMAN, WILL MASON, and DOES 1-25,
15 inclusive,

16 Defendants.

Case No. _____

COMPLAINT FOR:

- (1) EMPLOYMENT DISCRIMINATION:
DISPARATE TREATMENT ON THE
BASIS OF SEX/GENDER (CAL.
GOV.CODE § 12940(a));**
- (2) HOSTILE ENVIRONMENT: SEXUAL
HARASSMENT (CAL. GOV. CODE §
12940(j));**
- (3) FAILURE TO PREVENT
HARASSMENT (CAL. GOV. CODE §
12940(j));**
- (4) RETALIATION (CAL GOV. CODE §
12940(h));**
- (5) NEGLIGENCE HIRING,
SUPERVISION, AND/OR
RETENTION;**
- (6) VIOLATION OF THE CALIFORNIA
EQUAL PAY ACT (CAL. LAB. CODE
§ 1197.5; CAL. GOV. CODE §
12926(d));**
- (7) FAILURE TO REIMBURSE FOR
NECESSARY BUSINESS
EXPENDITURES (CAL. LAB. CODE §
2802);**
- (8) INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS; AND**
- (9) WRONGFUL TERMINATION IN
VIOLATION OF CALIFORNIA
PUBLIC POLICY**

TRIAL BY JURY DEMANDED

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COMPLAINT AND DEMAND FOR JURY TRIAL
Elizabeth Scott v. UploadVR, Inc., et al.

BY FAX
ONE LEGAL LLC

1 COMPLAINT

2 Now comes Plaintiff Elizabeth Scott (hereinafter "Plaintiff") in the above action, and files
3 this Complaint and hereby alleges the following:

4 PARTIES

5 1. Plaintiff, an adult female, is a resident of San Francisco County, California.

6 2. Defendant Upload, Inc., Defendant UploadVR, Inc. and Defendant Upload
7 Productions, Inc. (collectively "UploadVR"), is an online startup company focused on the virtual
8 and augmented reality industry. UploadVR is headquartered in San Francisco, California.
9 UploadVR is an entity with more than five employees. UploadVR does business in California, and
10 at all relevant times, was and is an employer as defined by the California Fair Employment and
11 Housing Act ("FEHA"), California Government Code § 12926(d).

12 3. Plaintiff is informed and believes that Defendant Taylor Freeman (hereinafter
13 "Freeman") is a resident of California. Freeman was at all relevant times UploadVR's Co-Founder
14 and Chief Executive Officer ("CEO"). Freeman oversees UploadVR's operations. Plaintiff is
15 informed, believes, and thereon alleges that Freeman is an officer, director, and/or managing agent
16 of UploadVR who exercises substantial discretion in decision-making, ultimately determining
17 corporate policy. In his role as Co-Founder and CEO, Defendant Freeman is responsible for
18 developing business partnerships between UploadVR and other companies. He is also responsible
19 for corporate finance, including but not limited to meeting with investors to raise money. Freeman
20 is one of two Co-Founders, and substantially controls the day-to-day operations. Freeman is a
21 direct supervisor over the employees in the office, including Plaintiff. He also manages corporate
22 policies and practices. Freeman is also responsible for hiring and terminating employees. Plaintiff
23 is informed, believes, and thereon alleges that Freeman is a "supervisor" as defined by FEHA,
24 Government Code § 12926(t).

25 4. Plaintiff is informed and believes that Defendant Will Mason (hereinafter "Mason")
26 is a resident of California. Mason was at all relevant times UploadVR's Co-Founder, President,
27 and Editor-in-Chief. Plaintiff is informed, believes, and thereon alleges that Mason is an officer,
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1 director, and/or managing agent of UploadVR who exercises substantial discretion in decision-
2 making, ultimately determining corporate policy. Mason oversees UploadVR's operations. In his
3 role as the Editor in Chief, Defendant Mason was heavily involved daily with editorial content,
4 including what was posted on social media. Mason is also responsible for corporate finance,
5 including but not limited to meeting with investors to raise money. Mason is one of two Co-
6 Founders, and substantially controls the day-to-day operations of UploadVR. Mason is a direct
7 supervisor over the employees in the office, including Plaintiff. He also manages corporate
8 policies and practices. Mason is also responsible for hiring and terminating employees. Plaintiff is
9 informed, believes, and thereon alleges that Mason is a "supervisor" as defined by FEHA,
10 Government Code § 12926(t).

11 5. Defendants Does 1-25 are sued herein under fictitious names. Their true names and
12 capacities are unknown to Plaintiff. Plaintiff is informed, believes, and thereon alleges that each of
13 these fictitiously named Defendants are responsible in some way for the occurrences herein
14 alleged, and Plaintiff's damages as herein alleged were caused by Defendants. When the true
15 names of Does 1-25 are ascertained, Plaintiff will amend this complaint by inserting their true
16 names and capacities herein.

17 6. Plaintiff is informed, believes, and alleges that at all times mentioned in this
18 Complaint, Defendants were the agents and employees of their Co-Defendants and in doing the
19 things alleged in this Complaint were acting within the course and scope of such agency and
20 employment. Plaintiff is further informed, believes, and thereon alleges that each of the
21 Defendants gave consent to, ratified, and authorized the acts alleged herein. Defendants are sued
22 both in their own right and on the basis of respondeat superior.

23 7. Plaintiff is informed, believes, and thereon alleges that Defendants are either solely
24 or jointly and severally liable for damages including back pay, job benefits, and other economic
25 and noneconomic damages. These damages are owed to Plaintiff under common law and by
26 statute, and include attorneys' fees and costs.

1 **JURISDICTION AND VENUE**

2 8. Plaintiff incorporates the foregoing paragraphs as if fully stated herein.

3 9. Jurisdiction is proper because Plaintiff resides in California, and Defendants do
4 business and reside in California.

5 10. Venue is proper as actions giving rise to this lawsuit occurred in San Francisco
6 County. (Gov. Code § 12965(b).)

7 11. Plaintiff has exhausted her administrative remedies by filing a charge of harassment,
8 discrimination, hostile work environment, retaliation, and unequal pay with the California
9 Department of Fair Employment and Housing (“DFEH”), alleging conduct supporting each of the
10 causes of action alleged herein, within the timeframe provided by law. The DFEH has issued
11 notice of Plaintiff’s “right to sue” Defendants Upload, Inc., UploadVR, Inc., Upload Productions,
12 Inc., Taylor Freeman, and Will Mason, which Plaintiff served on Defendants.

13 **FACTUAL ALLEGATIONS**

14 12. Plaintiff incorporates the foregoing paragraphs as if fully stated herein.

15 **Plaintiff’s Employment at UploadVR**

16 13. On May 4, 2016, UploadVR hired Plaintiff to work as the Director of Digital and
17 Social Media. Plaintiff was hired to manage, curate, and distribute content for all social
18 platforms. Plaintiff’s duties also included creating, monitoring, and reporting on all paid social
19 media campaigns, ads, and activations.

20 14. Plaintiff worked as the Director of Social Media until her wrongful termination on
21 March 15, 2017. Plaintiff was a salaried employee. When Plaintiff began working at UploadVR,
22 she and Defendants agreed that the company would match the salary she was paid at her previous
23 job when UploadVR raised capital. UploadVR raised capital in August of 2016, but never raised
24 Plaintiff’s salary per their agreement.

25 15. During the entirety of her employment, Defendants subjected Plaintiff to a pattern of
26 gender discrimination, sexual discrimination, harassment, hostile work environment, retaliation,
27 and wrongful termination that was intended to harm Plaintiff.

UploadVR's Sexually-Focused, Hostile Work Environment

16. The atmosphere and work environment at UploadVR was marked by rampant sexual behavior and focus, creating an unbearable environment for Plaintiff and other female employees.

17. Defendants purposefully and expressly created a "boy's club" environment at work, focused on sex and degrading women, including female employees. Defendants Mason and Freeman expressly referred to the company as a "boy's club." Male employees, including Mason and Freeman, discussed sex at the office on a daily basis. Specifically, the male employees of UploadVR, including Mason and Freeman, would discuss their sexual exploits in graphic detail at the workplace in front of Plaintiff and other female employees. For instance, UploadVR employee Greg Gopman's sex life was a frequent topic of discussion. The other male employees would talk about how he "refuses to wear a condom" and "has had sex with over 1000 people."

18. Male employees, including Mason and Freeman, would even speak sexually about women that worked in the office, right in front of them, including Plaintiff. For example, male employees stated how they were sexually aroused by female employees and how it was hard to concentrate and be productive when all they could think about was having sex with them. In addition, Avi Horowitz, the Expansion Manager of UploadVR, would frequently comment about how attractive one of the female employees was, in Plaintiff's presence. He would talk about how he "had a boner" and had to go to the bathroom to "rub one out" so he could focus, meaning that he was going to the restroom to masturbate.

19. Defendant Freeman would comment about how Plaintiff was not the ideal size he likes in a woman that he is going to have sexual relations with. He also made it known that he did not find Plaintiff attractive and that she could not be used for marketing purposes because she was "too big". Defendant Freeman made the workplace an uncomfortable, hostile environment when he made comments about Plaintiff's body.

20. Sexual comments also permeated work emails. Specifically, Defendants subjected Plaintiff to a hostile workplace when emails surfaced regarding a fundraising trip to Asia. Defendants Freeman and Mason circulated emails to the staff, including Plaintiff, in attempts to

1 secure "Samurai Girls," submissive, Asian women, for their trip. Additionally, a top executive
2 based in Thailand had his sexually transmitted disease ("STD") test results emailed to UploadVR.
3 Plaintiff and other female employees were shown these emails by Defendants.

4 21. The work environment was made further unbearable by Defendants allowing male
5 employees to engage in drug use at the office. Male employees, including Mason and Freeman,
6 would "micro-dose" and use marijuana in the office. The male employees, including Mason and
7 Freeman, attempted to force female employees, including Plaintiff, to partake in drug use. When
8 Plaintiff and other female employees refused, they were further ostracized by the male employees,
9 including Mason and Freeman.

10 22. When the male employees, including Mason and Freeman, would take drugs in the
11 office, they would talk even more openly and explicitly about sex. This further added to the
12 already hostile work environment.

13 23. Additionally, male employees engaged in explicit sexual conduct in the office in the
14 presence of Plaintiff and other female employees. As an example, Greg Gopman brought a female
15 companion into the office and she proceeded to straddle him and kiss him while they were in the
16 shared office space in Plaintiff's and other female employees' presence.

17 24. In the office, Defendants would frequently talk about how much sex they were going
18 to have at each party, and how many girls they were going to have sex with. UploadVR even set
19 up a room to encourage sexual intercourse at the workplace. The room was referred to as the "kink
20 room" and contained a bed. Male employees used that room to have sexual intercourse, which was
21 disruptive and inappropriate. Often, underwear and condom wrappers would be found in the room.

22 25. Plaintiff was also subjected to offensive sexual conduct at mandatory work events.
23 In fact, Defendant Mason openly talked about having sexual relations while at work events in front
24 of Plaintiff. For instance, he would talk about how his girlfriend was going to go to a work event,
25 and how they were going to have a threesome with another woman.

26 26. As another example, during a conference in Los Angeles, UploadVR rented a house
27 to provide lodging for their employees. Plaintiff was required to attend. Defendants threw a party
28

1 at the house, and a male coworker invited prostitutes and strippers. At the same event, Plaintiff
2 witnessed Defendant Mason kick the UploadVR writers out of their bedroom so that he could use
3 it to engage in sexual intercourse.

4 27. During another conference, this time in San Jose, Defendants hosted a party, which
5 was rife with sexual impropriety. Plaintiff was again required to attend the event. While Plaintiff
6 was sleeping, Defendant Freeman came into her room and forced her out of her room so that he
7 could have sexual relations with a woman he brought to the event. Defendants forced Plaintiff to
8 sleep in a bed in another room with her male co-worker.

9 UploadVR Excluded Women in the Workplace

10 28. In addition to the sexually hostile work environment, Defendants actively excluded
11 Plaintiff and other women from workplace and professional opportunities.

12 29. Defendants treated Plaintiff and other women who worked at the company
13 differently than the men who worked there.

14 30. Defendant Mason would make it a point to say, "Hello," or "Good Morning," to all
15 of the men in the office, but would purposefully ignore Plaintiff and other female employees.

16 31. Additionally, Defendants and other male employees separated and excluded
17 themselves from Plaintiff and other women. Defendants Mason and Freeman and the other male
18 employees started sitting in a separate room, away from Plaintiff. Defendants left Plaintiff alone
19 and isolated her from the male employees in the office. When Plaintiff complained and requested
20 to be included, the male employees refused.

21 32. Additionally, the male employees, including Mason and Freeman, would often go to
22 lunch together, where they would frequently discuss important work topics, and would not invite
23 Plaintiff. Plaintiff again complained and would ask if she could join them for lunch to which they
24 would respond negatively or simply ignore her.

25 33. Male employees would often also not include Plaintiff and other female employees
26 on important emails or in meetings. This isolation and exclusion meant that Plaintiff did not know
27 what was going on in the office and missed out on opportunities.

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1 34. When Plaintiff was able to attend meetings, her ideas would be disregarded. Female
2 employees were not respected professionally. When they were involved in the corporate
3 conversation, they were treated as second rate citizens.

4 **UploadVR Forced Women to do Menial, Administrative Tasks**

5 35. UploadVR also treated women, including Plaintiff, differently by having them
6 perform menial, administrative tasks, while not requiring men to perform such tasks.

7 36. While at UploadVR, Defendants required Plaintiff and the other female employees
8 to do what they believed were “womanly tasks.” These tasks included cleaning the kitchen,
9 organizing the refrigerator, and tidying up the work space.

10 37. The female employees were also required to clean up after parties. This included
11 whatever condoms or underwear might be left behind. Female employees were called in on their
12 days off to clean up following parties to which they had not even been invited.

13 38. Plaintiff’s position with Defendant did not include any such job requirements.
14 Regardless, she was expected to perform those tasks.

15 39. Defendants, including Mason and Freeman, would not ask male co-workers to
16 perform these tasks. Instead they emphasized that the women of the office should be like
17 “mommies” to the men and help them with whatever they needed.

18 **UploadVR Paid Women Less than Men and Did Not Reimburse Them for Necessary
19 Business Expenses**

20 40. Defendants’ unequal treatment of female employees, including Plaintiff, extends to
21 their pay and necessary business expenses.

22 41. Despite praising Plaintiff’s work, UploadVR and Defendants Freeman and Mason
23 refused to compensate Plaintiff on par with her male counterparts. Even though she was
24 performing at a similar level as her male co-workers, Defendants refused to raise Plaintiff’s salary
25 to the promised rate, commensurate with her male co-workers.

26 42. Furthermore, UploadVR refused to compensate Plaintiff for her necessary business
27 expenditures.

1 43. While working at UploadVR, Plaintiff was required to use her personal cell phone
2 for her work duties, including posting on social media sites through the Internet. Because of this,
3 she used a large amount of data, which she had to pay for out-of-pocket. Plaintiff requested to be
4 reimbursed for these expenses but Defendant refused. Additionally, Plaintiff's personal laptop did
5 not have all of the programs she needed to successfully perform her job, so she requested a work
6 laptop, but Defendant also denied this request

7 44. In contrast, Plaintiff is informed that her male co-workers were reimbursed for their
8 business expenses. In addition UploadVR provided male employees equipment, including iPhone
9 7s, new Apple laptops, and expensive cameras and accessories.

10 **Plaintiff Complained to Management about the Gender Discrimination, Sexual Harassment,
11 Hostile Work Environment, and Unequal Treatment**

12 45. Plaintiff constantly voiced her discomfort with UploadVR's sexually pervasive
13 environment and discrimination against women.

14 46. Plaintiff complained to Defendant Will Mason, Defendant Taylor Freeman, and
15 Expansion Manager Avi Horowitz about the working conditions.

16 47. Her complaints only came with further retaliation. For example, Plaintiff
17 complained about being isolated in the communal work space, and nothing was done to remedy it.
18 In fact, Defendants responded by further excluding Plaintiff.

19 48. In January of 2017, Tal Blevins joined the UploadVR team as the new Editor-in-
20 Chief and Head of Media, becoming Plaintiff's direct supervisor. Plaintiff disclosed to Blevins the
21 harassment that she endured at UploadVR, and that she was being discriminated against because
22 she was a woman. She complained regarding the hostile work environment. Blevins admitted that
23 there were things that he saw that he "didn't like." Plaintiff and Blevins last met and discussed her
24 complaints on March 10, 2017.

25 **Defendants Retaliated Against Plaintiff Following Her Complaint to Blevins**

26 49. Immediately after Plaintiff complained to Blevins, Defendants terminated Plaintiff's
27 employment. Her last day of work was March 15, 2017.

1 Defendants retaliated against Plaintiff by firing her when she complained about the harassment,
2 unequal treatment, and the hostility she faced at work.

3 55. Defendants' aforementioned conduct constitutes a continuing violation of Plaintiff's
4 rights from the first act to the last act.

5 56. Defendants are strictly liable for the conduct of their owners, managers, and
6 supervisors.

7 57. As a direct, foreseeable, and proximate result of Defendants' discriminatory acts,
8 Plaintiff suffered and continues to suffer losses and medical expenses, and has suffered and
9 continues to suffer humiliation, embarrassment, mental and emotional distress, and discomfort.
10 The precise amount of Plaintiff's damages will be proven at trial.

11 58. Defendants committed the acts herein alleged maliciously, fraudulently, and
12 oppressively, with the wrongful intention of injuring Plaintiff. Defendants acted with an improper
13 and evil motive, amounting to malice, in conscious disregard of Plaintiff's rights. Because the acts
14 taken toward Plaintiff were carried out by managerial and non-managerial employees acting in a
15 despicable, deliberate, cold, callous, and intentional manner in order to injure and damage Plaintiff,
16 Plaintiff is entitled to recover punitive damages in an amount according to proof.

17 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

18 **SECOND CAUSE OF ACTION**

19 **Hostile Work Environment: Sexual Harassment
(Cal. Gov. Code § 12940(j))**

20 **Against Defendants Upload, Inc., UploadVR, Inc., Upload Productions, Inc., Will Mason,
21 Taylor Freeman, and Does 1-25**

22 59. Plaintiff incorporates the foregoing paragraphs as if fully stated herein.

23 60. At all times herein mentioned, California Government Code § 12940(j) was in full
24 force and effect and was binding upon Defendants. Section 12940(j) requires Defendants to
25 refrain from harassing an employee on the basis of her "sex," "gender," "gender identity," or
26 "gender expression," among other things.

27 61. Defendants violated the law, subjecting Plaintiff to sexual harassment amounting to
28 a hostile environment. Throughout her employment at UploadVR, Plaintiff was subjected to a

1 hostile work environment focused on sex and gender that was so severe and pervasive that it
2 altered the conditions of Plaintiff's employment and created an abusive and hostile working
3 environment.

4 62. Throughout her employment with Defendants, Plaintiff was subjected to continuous,
5 offensive, and harassing remarks regarding sex and gender. Specifically, Plaintiff's work
6 environment was inundated with explicit, inappropriate, and offensive sexual materials and
7 situations. Plaintiff was exposed to graphic sexual conduct in the workplace, including women
8 straddling male employees and making out with them in public areas. She also witnessed
9 individuals entering and exiting the "kink room" to engage in sexual activity.

10 63. Defendants Freeman and Mason are personally liable for the sexually harassing
11 hostile work environment.

12 64. In addition, Defendants UploadVR, Inc. and Upload Productions, Inc. are strictly
13 liable for the conduct of their managerial and other employees because they knew or should have
14 known about the unlawful conduct but did nothing to remedy it.

15 65. The severity and pervasiveness of the harassment caused Plaintiff to suffer extreme
16 anxiety.

17 66. The aforementioned harassment was and remained continuous, systematic, and
18 sufficiently severe and/or pervasive to alter the terms and conditions of Plaintiff's employment.
19 Additionally, it created a hostile work environment that Defendants failed to remedy.

20 67. Plaintiff's employment and/or terms of her employment and/or the avoidance of
21 negative consequences in her employment were conditioned upon submission to the
22 abovementioned unwelcome statements and conduct.

23 68. Defendants Upload, Inc. UploadVR, Inc. and Upload Productions, Inc. knew or
24 should have known of the harassment but failed to take corrective action in violation of
25 Government Code § 12940.

26 69. Defendants' aforementioned conduct constitutes a continuing violation of Plaintiff's
27 rights from the first act to the last act.

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1 77. In doing the acts and omissions set forth above, Defendants failed to take immediate
2 and appropriate corrective action to stop the harassment reported by Plaintiff, and failed to prevent
3 the harassment from occurring, thereby violating Government Code § 12940(j)(1).

4 78. Plaintiff is informed, believes, and thereon alleges that Defendants (a) had an
5 ineffective policy regarding workplace harassment; (b) had no effective procedure for addressing
6 or investigating complaints of harassment; (c) failed to effectively implement any procedure it may
7 have had for investigating complaints of harassment; (d) did not adequately investigate Plaintiff's
8 complaints; (e) failed to appropriately train its employees; and (f) contributed to the prevailing
9 hostile work environment. Defendants, by and through its agents, knew or should have known
10 about the harassing conduct toward Plaintiff, and were remiss in failing to take immediate and
11 appropriate corrective action. Defendants are also strictly liable for the conduct of its supervisors.

12 79. Defendants' aforementioned conduct constitutes a continuing violation of Plaintiff's
13 rights from the first act to the last act.

14 80. As a direct, foreseeable, and proximate result of Defendants' actions, Plaintiff has
15 suffered and continues to suffer losses, has incurred medical expenses, and has suffered and
16 continues to suffer humiliation, embarrassment, mental and emotional distress, and discomfort, all
17 to Plaintiff's damage in an amount in excess of the minimum jurisdiction of this court, the precise
18 amount to be proven at trial.

19 81. Defendants committed the acts herein alleged maliciously, fraudulently, and
20 oppressively, with the wrongful intention of injuring Plaintiff, and acted with an improper and evil
21 motive, amounting to malice, in conscious disregard of Plaintiff's rights. Because the acts taken
22 toward Plaintiff were carried out by managerial and non-managerial employees acting in a
23 despicable, deliberate, cold, callous, and intentional manner in order to injure and damage Plaintiff,
24 Plaintiff is entitled to recover punitive damages from Defendants in an amount according to proof.

25 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.
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1 **FOURTH CAUSE OF ACTION**

2 **Retaliation**

3 **(Cal. Gov. Code § 12940(h))**

4 **Against Defendants Upload, Inc., UploadVR, Inc., Upload Productions, Inc., and Does 1-25**

5 82. Plaintiff incorporates the foregoing paragraphs as if fully stated herein.

6 83. At all times herein mentioned, California Government Code § 12940(h) was in full
7 force and effect and was binding upon Defendants. Section 12940(h) requires Defendants to
8 refrain from retaliating against an employee for engaging in protected activity such as complaining
9 about unlawful discrimination and a hostile work environment, among other things.

10 84. Plaintiff engaged in protected activity when she complained to Defendants regarding
11 the discriminatory and harassing conduct as well as the hostile work environment to which she was
12 subjected. After complaining, Defendants invalidly criticized Plaintiff's workplace performance.
13 Plaintiff was also subjected to adverse action and retaliatory conduct, including, but not limited to,
14 ostracism in the workplace and unlawful termination.

15 85. Defendants' aforementioned conduct constitutes a continuing violation of Plaintiff's
16 rights from the first act to the last act.

17 86. As a direct, foreseeable, and proximate result of Defendants' retaliatory acts,
18 Plaintiff has suffered and continues to suffer losses, and has suffered and continues to suffer
19 humiliation, embarrassment, mental and emotional distress, and discomfort. The precise amount
20 of Plaintiff's damages will be proven at trial.

21 87. Defendants committed the acts herein alleged maliciously, fraudulently, and
22 oppressively with the wrongful intention of injuring Plaintiff. Defendants acted with an improper
23 and evil motive, amounting to malice, in conscious disregard of Plaintiff's rights. Because the acts
24 taken toward Plaintiff were carried out by managerial and non-managerial employees acting in a
25 despicable, deliberate, cold, callous, and intentional manner in order to injure and damage Plaintiff,
26 Plaintiff is entitled to recover punitive damages in an amount according to proof.

27 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

1 **FIFTH CAUSE OF ACTION**

2 **Negligent Hiring, Supervision, and/or Retention**
3 **(Cal. Common Law Tort)**

4 **Against Defendants Upload, Inc., UploadVR, Inc., Upload Productions, Inc., and Does 1-25**

5 88. Plaintiff incorporates the foregoing paragraphs as if fully stated herein.

6 89. Plaintiff alleges that Defendants had a duty to exercise reasonable care in the hiring
7 and supervision of its employees.

8 90. Defendants negligently hired, supervised, and/or retained its employees, including,
9 but not limited to, Defendants Mason and Freeman. Plaintiff is informed, believes, and thereon
10 alleges that Defendants knew or should have known of Defendants Mason's and Freeman's
11 behavior and failed to take the necessary steps to remedy said behavior and conduct.

12 91. Plaintiff is further informed, believes, and thereon alleges that UploadVR breached
13 its duty of care by failing to properly supervise its employees, including the failure to adequately
14 train or monitor them, which created a hostile work environment for Plaintiff.

15 92. The harm caused by Defendants was directly related to the unlawful conduct, which
16 Defendant failed to adequately remedy.

17 93. As a direct, foreseeable, and proximate result of Defendants' actions, Plaintiff has
18 suffered and continues to suffer losses, incurred medical expenses, and has suffered and continues
19 to suffer humiliation, embarrassment, mental and emotional distress, and discomfort, all to
20 Plaintiff's damage in an amount in excess of the minimum jurisdiction of this court, the precise
21 amount to be proven at trial.

22 94. Defendants committed the acts herein alleged maliciously, fraudulently, and
23 oppressively, with the wrongful intention of injuring Plaintiff, and acted with an improper and evil
24 motive, amounting to malice, in a conscious disregard for Plaintiff's rights. Because the acts taken
25 towards Plaintiff were carried out by managerial and non-managerial employees acting in a
26 despicable, deliberate, cold, callous, and intentional manner in order to injure and damage Plaintiff,
27 Plaintiff is entitled to recover punitive damages in an amount according to proof.

28 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

1 **SIXTH CAUSE OF ACTION**

2 **Violation of the California Equal Pay Act**
3 **(Cal. Lab. Code § 1197.5; Cal. Gov. Code § 12926(d))**

4 **Against Defendants Upload, Inc., UploadVR, Inc., Upload Productions, Inc., and Does 1-25**

5 95. Plaintiff incorporates the foregoing paragraphs as if fully stated herein.

6 96. California Labor Code § 1197.5 and California Government Code § 12926(d)
7 provide that employers in California shall not pay any of its employees at wage rates less than the
8 rates paid to employees of the opposite sex for substantially similar work, when viewed as a
9 composite of skill, effort, and responsibility, and performed under similar working conditions.

10 97. Throughout her employment, Plaintiff was paid less than her male counterparts,
11 while performing substantially similar work duties. For example, Plaintiff and her male
12 counterparts worked in tandem with respect to contracts regarding UploadVR's social media.
13 Although sharing the same roles and responsibilities, male employees were paid more by
14 UploadVR.

15 98. As a direct and proximate result off the unlawful acts of Defendants, Plaintiff has
16 been deprived of pay equal to that of her male counterparts.

17 99. Plaintiff is entitled to recover the difference in wages between her and her male
18 equals, interest, and an equal amount as liquidated damages pursuant to Labor Code § 1197.5.
19 Plaintiff is also entitled to attorney's fees and costs pursuant to Labor Code § 1197.5.

20 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

21 **SEVENTH CAUSE OF ACTION**

22 **Failure to Reimburse for Necessary Business Expenses**
23 **(Cal. Lab. Code § 2802)**

24 **Against Defendants Upload, Inc., UploadVR, Inc., Upload Productions, Inc., and Does 1-25**

25 100. Plaintiff incorporates the foregoing paragraphs as if fully stated herein.

26 101. UploadVR did not reimburse Plaintiff for necessary business expenditures.

27 102. Labor Code § 2802 provides, in relevant part:

28 An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though

1 unlawful, unless the employee, at the time of obeying the directions, believed them
2 to be unlawful. ... For the purposes of this section, the term "necessary expenditures
3 or losses" shall include all reasonable costs, including, but not limited to, attorney's
4 fees incurred by the employee enforcing the rights granted by this section.

5 103. UploadVR required Plaintiff to use her personal cell phone for work related
6 business. This use resulted in high cell phone bills due to the amount of data she used while
7 accessing the Internet.

8 104. UploadVR also required Plaintiff to use her personal laptop for work related
9 purposes. This resulted in expenses she otherwise would not have incurred.

10 105. Plaintiff requests a recovery of the necessary business expenses she lost for the
11 benefit of Defendants.

12 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

13 **EIGHTH CAUSE OF ACTION**

14 **Intentional Infliction of Emotional Distress
15 (Cal. Common Law Tort)
16 Against All Defendants**

17 106. Defendants' conduct, as described above, constitutes outrageous conduct in that it
18 exceeded all bounds of common decency usually tolerated by a civilized society.

19 107. Defendants, acting on their own and through agents and employees, engaged in the
20 acts heretofore described deliberately and intentionally in order to cause Plaintiff severe emotional
21 distress. Alternatively, Plaintiff alleges that such conduct was done recklessly causing severe
22 emotional distress.

23 108. As a direct, foreseeable, and proximate result of Defendants' discriminatory,
24 harassing, hostile, and retaliatory acts, Plaintiff has suffered and continues to suffer losses, and has
25 suffered and continues to suffer humiliation, embarrassment, mental and emotional distress, and
26 discomfort. The precise amount of Plaintiff's damages will be proven at trial.

27 109. Defendants committed the acts herein alleged maliciously, fraudulently, and
28 oppressively with the wrongful intention of injuring Plaintiff. Defendants acted with an improper
and evil motive, amounting to malice, in a conscious disregard for Plaintiff's rights. Because the

1 acts taken towards Plaintiff were carried out by managerial and non-managerial employees acting
2 in a despicable, deliberate, cold, callous, and intentional manner in order to injure and damage
3 Plaintiff, Plaintiff is entitled to recover punitive damages in an amount according to proof.

4 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

5 **NINTH CAUSE OF ACTION**

6 **Wrongful Termination in Violation of Public Policy**
7 **Against Defendants Upload, Inc., UploadVR, Inc., Upload Productions, Inc., and Does 1-25**

8 110. Plaintiff incorporates the foregoing paragraphs as if fully stated herein.

9 111. It is the public policy of the State of California that an employer shall not harass or
10 discriminate against an employee on the basis of that person's gender and/or sex. It is also the
11 public policy of the State of California that an employer shall not create a hostile work
12 environment due to overtly sexual conduct and conversations. Finally, it is the public policy of the
13 State of California that an employer shall not retaliate against an employee for complaining about
14 unlawful discrimination. These public policies are fundamental, substantial, and well-grounded in
15 state statutes, including, *inter alia*, California Government Code §§ 12940, 12945.

16 112. Defendants terminated Plaintiff's employment because of her gender and in
17 retaliation for her earlier complaints regarding discrimination and the hostile work environment at
18 UploadVR.

19 113. In discharging Plaintiff, Defendants violated the fundamental, substantial, and well-
20 established public policies embodied in the above statutes.

21 114. As a direct, foreseeable, and proximate result of Defendants' unlawful conduct,
22 Plaintiff has suffered and continues to suffer substantial losses, including lost earnings, job
23 benefits, and medical expenses. In addition, Plaintiff has suffered and continues to suffer
24 humiliation, embarrassment, mental and emotional distress, and discomfort. The precise amount
25 of Plaintiff's damages will be proven at trial.

26 115. Defendants committed the acts herein alleged maliciously, fraudulently, and
27 oppressively, with the wrongful intention of injuring Plaintiff. Defendants acted with an improper
28 and evil motive, amounting to malice, in conscious disregard of Plaintiff's rights. Because the acts

1 taken toward Plaintiff were carried out by managerial and non-managerial employees acting in a
2 despicable, deliberate, cold, callous, and intentional manner in order to injure and damage Plaintiff,

3 Plaintiff is entitled to recover punitive damages from Defendants in an amount according to proof.

4 WHEREFORE, Plaintiff prays for judgment against Defendants as set forth below.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff makes the following demand:

- 7 a. That process be issued and served as provided by law, requiring Defendants to
8 appear and answer or face judgment;
- 9 b. That Plaintiff have and recover a judgment against Defendants in an amount to be
10 determined at trial as general, special, actual, compensatory, and/or nominal
11 damages;
- 12 c. That Plaintiff have and recover a judgment against Defendants in an amount equal to
13 the difference in wages between her and her male equals, interest, an equal amount
14 as liquidated damages, and attorney's fees and costs pursuant to California Labor
15 Code § 1197.5;
- 16 d. That Plaintiff have and recover a judgment against Defendants in an amount equal to
17 the necessary businesses expenses she incurred while employed with Defendants;
- 18 e. That Plaintiff have and recover a judgment against Defendants for punitive damages
19 in an amount to be determined at trial sufficient to punish, penalize, and/or deter
20 Defendants;
- 21 f. That Plaintiff have and recover a judgment against Defendants in an amount to be
22 determined at trial for expenses of this litigation, including, but not limited to,
23 reasonable attorneys' fees and costs;
- 24 g. That Plaintiff recover pre-judgment and post-judgment interest; and

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h. That Plaintiff receives such other relief as this Court deems just and appropriate.

Dated: May 8, 2017

Respectfully submitted,

SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNYS LLP

 

CAROLYN HUNT COTTRELL
NICOLE N. COON
DAVID C. LEIMBACH
Attorneys for Plaintiff

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims and issues raised in the Complaint for which Plaintiff is entitled to a jury.

Dated: May 8, 2017

Respectfully submitted,
SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNS LLP



CAROLYN HUNT COTTRELL
NICOLE N. COON
DAVID C. LEIMBACH

Attorneys for Plaintiff

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
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2000 Powell Street, Suite 1400, Emeryville, CA 94608
TELEPHONE NO.: 415-421-7100 FAX NO.: 415-421-7105
ATTORNEY FOR (Name): Plaintiff Elizabeth Scott

FOR COURT USE ONLY
FILED
Superior Court of California
County of San Francisco
MAY - 8 2017
CLERK OF THE COURT
BY: *[Signature]*
CASE NUMBER: **CGC-17-558730**
JUDGE:
DEPT:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister St.
MAILING ADDRESS: 400 McAllister St.
CITY AND ZIP CODE: San Francisco 94105
BRANCH NAME: Civic Center Courthouse

CASE NAME:
Elizabeth Scott v. UploadVR, Inc., et al.

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)
Complex Case Designation
 Counter Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37) | Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) |
| Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23) | Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26) | Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20) |
| Non-PI/PD/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35) | Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38) | Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42) |
| Employment
<input checked="" type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 9
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 5/8/2017
Carolyn Hunt Cottrell
(TYPE OR PRINT NAME)

[Signature]
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

BY FAX
ONE LEGAL LLC

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.