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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CRAIG PATTERSON, et. al,

Plaintiffs,

vs.

CITY OF LONG BEACH, a municipal entity; and DOES 1 through 50, inclusive,

Defendants.

CASE NO. BC 356 034
[Assigned to the Hon. Conrad Aragon, Judge, Dept. "49"]

JOINT OPPOSITION TO MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

Date: April 30, 2008
Time: 8:30 a.m.
Dept. 49

Trial Date: January 22, 2008

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that plaintiffs hereby oppose defendant's Motion for Judgment Notwithstanding the Verdict.

I. STANDARD OF REVIEW

A JNOV motion challenges the legal sufficiency of the opposing party's evidence ("a demurrer to the evidence"), i.e., it challenges whether that evidence was sufficient to prove the claims asserted by the opposing party and now embodied in the jury's verdict. *Clemmer v. Hartford Ins. Co.* (1978) 22 Cal.3d 865, 877; *Moore v. San Francisco* (1970) 5 Cal.App.3d 728, 733-734. Thus, for purposes of a JNOV motion, all evidence supporting the verdict is presumed true. The issue is whether these facts constitute a prima facie case as a matter of law. *Fountain Valley Chateau Blanc Homeowner's Ass'n v. Department of Veterans Affairs* (1998) 67 Cal.App.4th 743, 750.

A JNOV motion thus has the same function as a motion for nonsuit or directed verdict. *Beavers v. Allstate Ins. Co.* (1990) 225 Cal.App.3d 310, 327; *CC-California Plaza Assocs. v. Paller & Goldstein* (1996) 51 Cal.App.4th 1042, 1050. As such, the court cannot weigh the evidence or determine the credibility of witnesses on JNOV motions. *Begnal v. Canfield Assocs., Inc.* (2000) 78 Cal.App.4th 66, 72.

Conflicting evidence must be disregarded. The evidence is viewed in the light most favorable to the party securing the verdict: "If there is any substantial evidence, or reasonable inferences to be drawn therefrom, in support of the verdict, the motion should be denied." *Hauter v. Zogarts* (1975) 14 Cal.3d 104, 110; *Campbell v. Cal-Gard Surety Servs., Inc.* (1998) 62 Cal.App.4th 563, 569.

Even evidence improperly admitted during trial constitutes "substantial evidence" on JNOV motion. *Donahue v. Ziv Television Programs, Inc.* (1966) 245 Cal.App.2d 593, 609. Further, inconsistencies in a witness' testimony do not mean the testimony is insufficient to support the verdict. It is up to the jury to determine the weight to be given to internally inconsistent testimony (*Clemmer v. Hartford Ins. Co., supra,* 22 Cal.3d at 878) including

inconsistencies in the testimony of a single key witness. *Meyser v. American Bldg. Maintenance, Inc.* (1978) 85 Cal.App.3d 933, 940. "Whether the trial judge ... concur[s] with the jury's evaluation of the testimony is not controlling. The controlling factor is that there was evidence from which the jury could have inferred facts supporting the verdict." *Hale v. Farmers Ins. Exch.* (1974) 42 Cal.App.3d 681, 692.

A JNOV motion must be denied if "substantial evidence" supports the verdict. *Arthur v. Avon Inflatables, Ltd.* (1984) 156 Cal.App.3d 401, 406. In a situation such as the case at bench where there has been verdicts in plaintiffs' favor and the JNOV has been brought by a defendant the court's task in ruling on the JNOV is to disregard evidence on defendant's behalf, give plaintiffs' evidence all the value to which it is legally entitled, and indulge in every legitimate inference that may be drawn from that evidence. *Reynolds v. Wilson* (1958) 51 Cal.2d 94, 99.

II. SUBSTANTIAL EVIDENCE WAS ADDUCED AT TRIAL TO ESTABLISH THAT PLAINTIFFS WERE SUBJECTED TO ADVERSE EMPLOYMENT ACTIONS

Here, defendant claims that substantial evidence was allegedly not adduced at trial to support that plaintiffs: a) were subjected to adverse employment actions; and b) that the decisionmakers regarding the adverse employment actions adduced at trial were aware of plaintiffs' whistleblowing activities. However, both of defendant's contentions are unsupported.

First, each of the plaintiff was subjected to one or more discrete adverse employment actions by the defendant. Second, each of the plaintiffs was subjected to a pattern of systematic retaliation, which collectively constituted adverse employment actions as to each plaintiff. Third, the plaintiffs' role as whistleblowers permeated and was well known throughout the Long Beach Police Department (hereafter "LBPD"), and was known by each of the primary decision-makers involved in this matter.

As stated in *Patten v. Grant Joint Union High School District* (2005) 134 Cal.App.4th 1378, the elements of a *Labor Code* §1102.5(b) prima facie case are that: (1) plaintiff engaged in a protected activity, (2) plaintiff's employer subjected plaintiff to an adverse employment action, and (3) there is a causal link between the two. Here, substantial evidence

was presented that plaintiffs engaged in the protected activity of reporting what they reasonably believed to be violations of state or federal laws to their employer, a government and law enforcement agency. Thereafter, plaintiffs were subjected to numerous adverse employment actions, including but not limited to those set forth below.

1. Failure To Promote To Homicide Detective

Plaintiff Harris presented uncontradicted evidence at trial that he was qualified for the position of homicide detective, timely applied for the position, and was denied the position after Lt. Rocchi told plaintiff: "I hear you are the kind of person who takes your ball and goes home if things don't go your way." Harris also presented uncontradicted testimony that he had more experience as a detective, and more experience handling homicide cases, then virtually all of the other applicants for the position. Harris also presented uncontradicted testimony that he was directly involved in handling the murder of Officer Darryl Black, one of the most high profile homicide cases in the history of the LBPD, and that he received a commendation from the LBPD for his role in the case. Plaintiffs respectfully submit that not only was there substantial evidence to support that Harris was not selected for the position because of retaliatory reasons, the evidence was indeed overwhelming.

Defendant argues that Lt. Rocchi allegedly premised his decision not to select plaintiff Harris for the position because he was "not a team player". However, plaintiff Harris presented substantial evidence that he was a "team player", including favorable evaluations in the areas of working well with supervisors and others in numerous evaluations conducted prior to Harris reporting what he believed to be violations of state and federal laws by other LBPD employees. Defendant further argues that plaintiff Patterson, who also had more experience than numerous other individuals selected for the position, was denied the position because his application was untimely. However, Lt. Rocchi's explanation was demonstrated to be false and pretextual, and his overall credibility as a witness was severely impeached, by the testimony of LBPD Sgt. Rich Conant, who testified that Patterson had timely submitted his application for the homicide detective position, in direct contradiction to Lt. Rocchi's claim that

the application was untimely.

2. Failure To Promote To Homeland Security Detective

While defendant claims that Harris and Patterson did not apply for positions as Homeland Security detectives, defendant ignores the thrust of the trial evidence regarding this position. The uncontradicted evidence adduced at trial established that Harris and Patterson were both qualified for this position. Sgt. Gage also believed that plaintiffs were qualified for the position, and testified that he met with LBPD Chief Batts to request that Chief Batts promote Harris and Patterson to the positions. Gage further testified that in response, Chief Batts stated that Harris and Patterson were "malcontents" who he would not consider placing in the positions. As acknowledged by Batts at trial, Batts was at the time well aware of the whistleblowing activities of Harris and Patterson. Therefore, it was futile for plaintiffs to have applied for these positions.

3. Failure To Promote To ATF Detective

Defendant claims that Harris and Patterson were not selected for the position of ATF detective position because: a) Harris did not fill out a "questionnaire" that Lt. Lopez had allegedly created for the position; and b) that Patterson's undisputed mastery of firearms had "nothing to do with the investigation of weapons". Notably, defendant failed to introduce or admit at trial the alleged questionnaire, and Harris testified that the resume he submitted contained all of the information requested for the position. Defendant's claim that knowledge of firearms was not pertinent to a position that revolved around firearms made and makes little sense unless considered in the context of being made by Lt. Lopez, the wife of former LBPD Deputy Chief Jackman, the author of the derisive term "Lobstergate".

4. Failure To Promote To Office of Counter-Terrorism Detective

Defendant claims that Harris and Patterson were not selected for the Office of Counter-Terrorism positions because: a) they were not females and could not pose as girlfriends; and b) because they were not "gregarious enough" to gain confidences and intelligence. Defendant ignores the unrebutted trial testimony that: 1) Harris and Patterson were the

individuals who had to educate the female selected for the position, who had no knowledge of the activities in the Port of Long Beach, which is indisputably the most likely location for terrorist activity in the City of Long Beach, and is and/or should be a primary center of focus for the Office of Counter-Terrorism personnel; 2) Patterson was one of the only LBPD patrol officers to handle his own confidential informants, and therefore was "gregarious enough" to gain confidences and intelligence; and 3) Harris was a gang detective for years utilizing numerous confidential informants, including confidential sources of information into the Mongols motorcycle gang, a gang involved in smuggling and other illegal activities in the Port of Long Beach, and therefore was also "gregarious enough" to gain confidences and intelligence.

5. Failure To Promote To Field Training Officer

Defendant also claims that Harris did not "follow the process" for becoming a field training officer. However, Harris did apply for the position, the receipt of which was acknowledged by the commanding officer of the LBPD field training officers. The defendant's alleged "list" that Harris purportedly was not on was conspicuously absent from the evidence at trial. Defendant also again ignores the thrust of the trial evidence regarding this issue, including that: a) Harris was admitted to be qualified for the position, and had served as a LBPD field training officer on multiple occasions in the past; b) Sgt. Hill, Corporal Frazier, and Officer Dial were given positions, respectively, as one of the sergeants in charge of field training officers, and as field training officers, after their illegal activities in the port were exposed by plaintiffs; and c) the members assigned to the field training officer units collectively decide who should be field training officers, placing Hill, Frazier, and Dial squarely within the decision making process of whether Harris became a field training officer. Obviously, these individuals were well aware of Harris' whistleblowing activities.

In summary, Harris and Patterson each presented substantial evidence that subsequent to their whistleblowing activities they were on multiple occasions denied promotions and transfers to positions for which they were more qualified than other individuals

who received the promotions and transfers. Harris and Patterson also presented substantial evidence that prior to their whisIteblower activities, they had routinely been granted promotions and transfers to coveted positions in the LBPD, and that after their whistleblowing activities they were repeatedly denied such promotions and transfers. Plaintiffs also presented substantial evidence that the decision makers, including the ultimate decision maker Chief Batts, were well aware of their whistleblowing activities before making the adverse employment decisions, and that knowledge of the "Lobstergate" scandal and plaintiffs' role as whistleblowers therein in fact permeated the LBPD at all times pertinent hereto.

6. Failure To Promote To Sergeant

Defendant also argues that Harris and Patterson did not apply for promotion to sergeant. Defendant ignores the evidence that such applications would have been futile since Chief Batts has the ultimate authority as to who to promote, and Chief Batts had already labeled Harris and Patterson as "malcontents" following their whistleblowing activities. Defendant also ignores the uncontradicted evidence that Harris had served on numerous occasions as the acting sergeant in multiple assignments, including in gang detectives and the Port Security Unit.

7. Termination of Gage

Defendant attempts to minimize the testimony of Gage's primary treating health care provider, a board certified physician who testified (without receiving or requesting compensation of any kind) that he was "mystified" why Gage was allegedly disabled from performing his duties with the LBPD, and aptly described Gage's robust physical condition by describing Gage as "someone who would not want to meet in a dark alley." The defendant ignores the uncontradicted evidence that Gage had the same exact alleged limitations on his work performance that he had at the time of his termination for well over a decade (i.e., that he could not run more than five miles.) Respectfully, if an essential part of a sergeant's duties was to be required to routinely run more than five miles in the line of duty then there would be a severe shortage of individuals qualified to be sergeant in the LBPD.

Further, the defendant utterly failed to present any competent testimony from a qualified health care provider or anyone else that Gage was disabled from performing the essential duties of his position as sergeant in any manner. Additionally, although defendant claimed that it had unwritten policy of not accommodating disabled employees, the undisputed evidence at trial confirmed that at least a dozen employees with far more serious disabilities had been accommodated by defendant, including Sgt. Mike White who worked directly under Chief Batts even though he had previously undergone a complete knee replacement.

8. Loss of Overtime

Defendant argues that plaintiffs' claims of loss of overtime were not confirmed. On the contrary, the defendant's own Port Security Unit overtime survey confirmed that both Harris and Patterson had lost overtime, both in terms of total number of hours and in terms of their respective percentages of overtime as compared to other members of the unit. Defendant also ignores the evidence that after Harris reported the misconduct, and after Harris became the most senior member of the unit, the unit's alleged policy on overtime was changed from a system of seniority preference to a different system, that Harris in fact repeatedly attempted to obtain overtime, and that his name was erased by Sgt. Burgess from the overtime sign up board.

9. Vandalized Property

Defendant argues that the evidence regarding Harris and Patterson's property being vandalized is somehow suspect because it is based on Harris and Patterson's testimony at trial. However, the LBPD has relied for years upon the sworn testimony of these officers in establishing probable cause for arrests and searched and in apprehending, assisting, and testifying in the prosecution of criminal defendants. Certainly, the LBPD itself must believe these officers to be honest and credible, or it would not allow them the rights and privileges inherent in granting them peace officer powers.

In *Patten v. Grant Joint Union High School District, supra*, 134 Cal.App.4th at 1387, the court adopted for use in *Labor Code* § 1102.5 cases the California Supreme Court's definition

of adverse employment action in FEHA cases as enunciated by the Court in *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028. The *Yanowitz* court defined an adverse employment action for FEHA retaliation purposes as requiring that the adverse action "materially affect the terms and conditions of employment." *Yanowitz, supra*, 36 Cal.4th at pp. 1036, 1050-1061. The *Yanowitz* court emphasized that the "materiality" test is not to be read miserly. (*Id.* at pp. 1036, 1050-1051, 1053-1054.) As held in *Yanowitz*, the "materiality" test encompasses not only ultimate employment decisions, "but also the entire spectrum of employment actions that are reasonably likely to adversely and materially affect an employee's job performance or opportunity for advancement in his or her career."

In *Patten, supra*, at 1389 - 1390, the court held that a lateral transfer of the plaintiff to a different school with the plaintiff's wages, benefits and duties (as set forth by job descriptions) remaining the same, which accommodated plaintiff's health issues arising from mononucleosis, and which would allow her to shine in her strength of curriculum development nevertheless constituted an "adverse employment action" for purposes of *Labor Code* § 1102.5. The court, citing *Yanowitz*, stated that the test for what constitutes an adverse employment action "must be interpreted liberally ... with a reasonable appreciation of the realities of the workplace ... ." (*Yanowitz, supra*, 36 Cal.4th at p. 1054) and also cited *Thomas v. Department of Corrections* (2000) 77 Cal.App.4th 507 at 511 quoting the federal Seventh Circuit's decision in *Crady v. Liberty Nat. Bank and Trust Co.* (7th Cir. 1993) 993 F.2d 132, 136 [" '[a] materially adverse [employment] change might be indicated by ... significantly diminished material responsibilities' ". *Patten, supra*, at 1389 - 1390.

The *Patten* court also noted that other evidence supported that the defendant employer had taken other actions "reasonably likely to impair ... [plaintiff's] job performance" after plaintiff made her disclosures regarding unauthorized use of public assets, including inadequate administrative support, budgetary, computer, and student schedule matters, conflicts with plaintiff's family schedule, and interference with plaintiff's educational plans. *Patten, supra*, at 1390 The *Patten* court found that while many of these actions and

problems, aside from the principal transfer itself, did not rise to material adverse actions on their own, as explained in *Yanowitz* "there is no requirement that an employer's retaliatory acts constitute one swift blow, rather than a series of subtle, yet damaging, injuries ..." (*Yanowitz, supra*, 36 Cal.4th at p. 1055). The *Patten* court, following the model of *Yanowitz,* held that enforcing a requirement that each act separately constitute an adverse employment action would subvert the purpose and intent of *Labor Code* §1102.5(b), and that it was therefore appropriate to consider plaintiff's allegations collectively. *Patten, supra*, at 1390.

Here, considering the evidence presented at trial collectively, plaintiffs were subjected to a series of adverse employment actions that have and are reasonably likely to adversely and materially affect their job performance or opportunity for advancement in their careers, including but not limited to the denials of transfers and promotions for Harris and Patterson and the termination of Gage.

III. SUBSTANTIAL EVIDENCE WAS ADDUCED AT TRIAL FROM WHICH A REASONABLE JURY COULD CONCLUDE THAT PLAINTIFFS' WHISTLEBLOWING ACTIVITIES WERE A MOTIVATING REASON FOR THE ADVERSE EMPLOYMENT ACTIONS TAKEN AGAINST THEM, INCLUDING PRESENTING EVIDENCE THAT THE ALLEGED LEGITIMATE REASONS PROFFERED BY THE DEFENDANT WERE FALSE AND PRETEXTUAL

Defendant argues that plaintiffs failed to present substantial evidence that a motivating reason for the adverse employment actions taken against them were plaintiffs' whistleblowing activities. Defendant ignores the following non-exclusive evidence: a) prior to their whistleblowing activities plaintiffs routinely received promotions and transfers to coveted positions, while after their whistleblowing activities they were repeatedly and universally denied such promotions and transfers; b) prior to their whistleblowing activities plaintiffs were described as "outstanding and highly respected officers" with "high integrity", while after their whistleblowing activities they were describe as merely "ordinary officers" and "malcontents" by defendant's own Chief of Police; c) prior to their whistleblowing activities plaintiffs received either meets standard or exceeds standards evaluation, while after their whistleblowing activities they received less favorable evaluations, including criticisms of their relationships with other officers and their alleged "polarization" of the Port Security Unit; d) prior to their

whistleblowing activities plaintiffs' possessions were not vandalized, plaintiffs' radio calls were not stepped on, and plaintiffs were not ostracized by their fellow officers, while after their whistleblowing activities plaintiffs were the repeated targets of vandalism, obstructed radio calls and delayed back-up support, and were shunned and avoided by their fellow officers; e) prior to their whistleblowing activities plaintiffs were not referred to as "snitches", or as being "untrustworthy", or "malcontents" by their follow officers, while after their whistleblowing activities plaintiffs were the repeatedly called "snitches" and referred to by the LBPD Chief as "malcontents"; f) prior to their whistleblowing activities plaintiffs Harris and Patterson were consistently among the leaders of the Port Security Unit in overtime hours worked and in their respective percentages of overtime as compared to the other members of the unit, while after their whistleblowing activities their overtime fell both in total number of hours and percentage of overtime worked; g) prior to their whistleblowing activities plaintiff Gage was allowed to work without limitation by defendant with restrictions based upon his knee injuries, while after his whistleblowing activities plaintiff Gage was terminated for allegedly being disabled with the same injuries. Further, after their whistleblowing activities, Harris and Patterson had posters of lobsters and a lobster toy placed in their work environment by their direct supervisors as additional retaliation. All of the above evidenced the retaliatory motives, bias, and intent of the agents and employees of the LBPD against plaintiffs after they engaged in their whistleblowing activities.

Therefore, the evidence adduced by plaintiffs at trial demonstrated that:

1. Plaintiffs engaged in the protected activity of disclosing information to a government or law enforcement agency with reasonable cause to believe that the information disclosed a violation of state or federal statutes, or a violation or noncompliance with a state or federal rules or regulations;

2. Plaintiff were subjected to adverse employment actions, including the denials of promotions and/or transfers of Harris and Patterson, the termination of Sgt. Gage, unfavorable employment evaluations, were labeled "snitches" and "malcontents" by their fellow officers,

had lobsters posters and toys placed in their work environment to harass and make it clear to them that their fellow officers had not forgotten their breaking the code of silence, were ostracized by command staff, including Chief Batts, and their fellow officers, and were the targets of multiple express and implied threats by members of the LBPD, including the statements and conduct of other members of the Port Security Unit at the alleged "training day" at Bogey's golf course.

3. A causal relationship between plaintiffs engaging in the protected activity and the adverse employment activity. Such causal relationship is demonstrated by the facts that: a) defendant presented no clear and convincing evidence that it had legitimate reasons for any of the adverse employment actions; and b) the temporal and linear relationship between the reports of misconduct, the subsequent internal affairs investigations by the LBPD, and the adverse employment actions.

The temporal relationship between engaging in the protected activity and a subsequent adverse employment action is circumstantial evidence of retaliation. *Flait v. North American Watch Company* (1992) 3 Cal.App.4th 467, 478 -479. A series of acts on the part of a defendant employer which proceed in linear fashion from whistleblower disclosures and culminating in adverse employment actions present a triable issue of material fact as to a "causal link" between the protected activity and the adverse employment action. *Patten v. Grant Joint Union High School District*, *supra*, 134 Cal.App.4th at 1390. Here, the temporal and linear connection is both direct and obvious. Moreover, the relationship between plaintiffs' whistleblowing activities and the adverse employment actions is sufficient by itself to provide circumstantial evidence of retaliation sufficient to establish a prima facie case. In *Colarossi v. Coty US Inc.* (2002) 97 Cal. App. 4th 1142, the court noted that "suspicious" timing of the employer's actions may provide the circumstantial link needed to infer that an improper purpose accounted for the adverse action. (*Id.* at 1154.) "The timing of the decision may have been coincidental, but when viewed as part of the mosaic of evidence" plaintiff presented, it will support the causal element of an employment claim. As stated in *Passantino v. Johnson*

& *Johnson Consumer Prods., Inc.* (9th Cir 2000) 212 F.3d 493, 507: "[T]his close timing provides circumstantial evidence of retaliation that is sufficient to create a prima facie case of retaliation." (noting that causation can be inferred from timing alone.); See also, e.g. *Miller v.Fairchild Indus.* (9th Cir. 1989) 885 F. 2d 498, 505.

Further, defendant presented no evidence, let alone clear and convincing evidence, that it would have taken any of the adverse employment actions even if plaintiffs had not engaged in the protected activities. Defendant has failed to establish legitimate reasons for the adverse employment actions taken against plaintiffs. Plaintiffs presented sufficient evidence at trial for a reasonable person to conclude that each of the reasons proffered by defendant was a sham and pretextual. Evidence of dishonest reasons for adverse employment actions proferred by the employer permits a finding of prohibited motive, bias, or intent. *Reeves v. Sanderson Plumbing Products, Inc.* (2000) 530 U.S. 133, 148- 149, 120 S. Ct. 2097, 2109; *St. Mary's Honor Center v. Hicks* (1993) 509 U.S. 502, 511, 518, 113 S. Ct. at pp. 2749-2750, 2753.

In the employment law context, the plaintiff's burden of establishing pretext is not onerous. "[B]ecause of the inherently factual nature of the inquiry, [the plaintiff] need produce very little evidence of discriminatory motive to raise a genuine issue of fact." *Lindahl v. Air France,* 930 F.2d 1434, 1438 (9th Cir. 1991) (citation omitted). "When [the] evidence, direct or circumstantial, consists of more than the *McDonnell Douglas* presumption, a factual question will almost always exist with respect to any claim of a nondiscriminatory reason." *McGinest v. GTE Services Corp., supra,* 360 F.3d at 1124; *Sischo-Nownejad v. Merced Community College Dist.*, 934 F.2d 1104, 1111 (9th Cir. 1991). While the above cases deal with the issue of pretext in the context of an employment discrimination action, the same analysis applies with equal force to employment retaliation cases.

Pretext, like a prima facie showing of causation, may be inferred from the timing of the employer's adverse employment decision, by the identity of the person making the decision, and by the employee's job performance before the adverse decision. *Sada v. Robert F.*

Kennedy Medical Center (1997) 56 Cal.App.4th 138, 156 - 157; *Flait v. North American Watch Co., supra,* 3 Cal.App.4th at 478 - 479; see also, *Miller v. Fairchild Industries, Inc.*, 885 F.2d 498, 505-06 (9th Cir. 1989). These factors support an inference that defendant's stated reason for taking adverse employment actions against plaintiffs were merely a subterfuge for its retaliatory conduct. See, *Sada v. Robert F. Kennedy Medical Center, supra,* 56 Cal.App.4th at 156; *Flait v. North American Watch Co., supra,* 3 Cal.App.4th at 480 ("Viewing the evidence in the light most favorable to . [the plaintiff], a reasonable trier of fact could conclude that [the defendant's] articulated reasons for terminating [the plaintiff's] employment are not worthy of credence").

In sum, plaintiffs submitted more than substantial evidence to support that the adverse employment actions taken against them were taken in retaliation for their whistleblowing activities. In contrast, once it is established "by a preponderance of evidence that an activity proscribed by *Labor Code* § 1102.5 was a contributing factor in the alleged prohibited action against the employee, under Labor Code § 1102.6 **"the employer shall have the burden of proof to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons** even if the employee had not engaged in activities protected by § 1102.5." (Emphasis added). Defendant did not even come close to carrying this heavy burden as to any of the adverse employment actions regarding plaintiffs.

V. CONCLUSION

The instant motion should be denied in its entirety.

Dated: April 17, 2008

Respectfully Submitted

By _____
Richard L. Garrigues
Attorneys for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years of age, and am not a party to the within action; my business address is 3655 Torrance Boulevard, 3rd Floor, Torrance, Ca. 90504.

On the date herein below specified, I served the foregoing document, described as set forth below on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, at Torrance, California, addressed as follows:

DATE OF SERVICE : April 17, 2008

DOCUMENT SERVED: JOINT **OPPOSITION TO MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT**

PARTIES SERVED :

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XXX (BY REGULAR MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Torrance, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

XXX (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. EXECUTED at Torrance, California on April 17, 2008.

Betty Chung