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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JUL 30 2010

John A. Clarke, Executive Officer/Clerk
BY Nancy Alvarez, Deputy

7 Attorneys for Plaintiff
8 Magdalena Gorka

DLG
MARK MOONEY

9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

BC441003

12 MAGDALENA GORKA, an individual;
13 Plaintiff,
14 v.
15 CASEY AFFLECK, an individual; FLEMMY
16 PRODUCTIONS, LLC, a California limited
17 liability company; and DOES 1 through 10,
18 inclusive,
19 Defendants.

CASE NO. _____
COMPLAINT FOR:
(1) INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS
(2) CONSTRUCTIVE DISCHARGE IN
VIOLATION OF PUBLIC POLICY
(3) BREACH OF ORAL CONTRACT
(4) NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS
(5) UNJUST ENRICHMENT
(6) NEGLIGENCE

DEMAND FOR JURY TRIAL

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CIT/CASE: BC441003 LEA/DEF#: _____
RECEIPT #: C3H451233055
DATE PAID: 07/30/10 01:35:07 PM
PAYMENT: \$355.00 0310
RECEIVED:
CHECK: 355.00
CASH:
CHANGE:
CARD:

07/28/10

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Plaintiff Magdalena Gorka ("Plaintiff") alleges claims against Defendants Flemmy Productions, LLC ("Flemmy") and Casey Affleck ("Affleck" and collectively with Flemmy, "Defendants") and DOES 1 through 10 as follows:

INTRODUCTION

1. Magdalena Gorka has more than 16 years of experience behind the camera in projects ranging from feature films and documentaries to television, music video and commercial productions. She has a master's degree in cinematography and has worked with numerous Academy award-winning cinematographers and directors. She is a seasoned professional who has excelled on challenging projects both in this country and abroad.

2. The treatment Plaintiff received while working with Casey Affleck—including routine instances of sexual harassment—was by far the most traumatizing of her career.

3. In December 2008, Plaintiff entered into an agreement with Affleck to serve as the Director of Photography for the then-untitled documentary about the efforts of actor Joaquin Phoenix ("Phoenix") to restyle his career as an entertainer and give up acting to become established as a performer of rap music. Under the terms of her agreement with Defendants, Plaintiff was to receive a per-day fee for shooting and a deferred fee that would be paid upon execution of a distribution agreement for the film. Affleck agreed that Plaintiff was to receive the "Director of Photography" credit in connection with the release and promotion of the film.

4. Plaintiff's work on the Project began shortly after the agreement was reached. Almost immediately, Affleck and other members of the production team made lewd comments; they discussed engaging in sexual activity with Plaintiff; and they suggested that she have sex with the Camera Assistant.

5. Although Plaintiff was uncomfortable with her work environment, she was hopeful that Affleck and the crew would be more professional when production began. Unfortunately, things only got worse for Plaintiff.

6. In mid-December 2008, Plaintiff traveled with other crew members to New York to shoot scenes involving Phoenix. Affleck and Phoenix decided not to put the crew up in a hotel, and the crew instead stayed overnight at Phoenix and Affleck's apartment.

1 7. At the time, Plaintiff was the only woman on the Project. After a long night of
2 shooting, Phoenix told Plaintiff to sleep in his bed and he would sleep in the living room. Because
3 she believed she was in a private bedroom, Plaintiff went to sleep in a camisole and pajama pants.

4 8. During the middle of the night, Plaintiff awoke to find Affleck lying in the bed next
5 to her. Unbeknownst to Plaintiff, Affleck had entered the bedroom while she was asleep and
6 crawled into the bed. When she woke up, Affleck was curled up next to her in the bed wearing only
7 his underwear and a t-shirt. He had his arm around her, was caressing her back, his face was within
8 inches of hers and his breath reeked of alcohol.

9 9. Plaintiff was shocked and repulsed because she did not know where he had touched
10 her while she was sleeping or how long he had been there before she woke up.

11 10. Plaintiff immediately jumped up and told Affleck to get out of her bed. Affleck
12 responded by asking "why?" Plaintiff said "because you are married and because you are my boss."
13 Affleck, undeterred, asked if Plaintiff "was sure." Plaintiff said she was sure and insisted that he
14 leave the room. Affleck left and slammed the door in anger.

15 11. The next morning, Plaintiff confronted Affleck about the incident. Plaintiff told
16 Affleck that something like that could never happen again and that his advances were unwelcome.

17 12. Plaintiff got on a plane back to Los Angeles and immediately told her agent about
18 Affleck's sexual advances. Plaintiff left the Project as a direct result of the harassment she
19 encountered in New York.

20 13. For several weeks, Plaintiff tried to obtain work on a new project with no success. In
21 January 2009, Plaintiff was contacted by a producer for the Project, Amanda White ("White").
22 White told Plaintiff that Affleck had requested she return to the Project. Plaintiff was wary about
23 working with Affleck after his behavior in New York, but Plaintiff believed that another woman on
24 the Project would create a safer working environment and deter Affleck and the others from
25 harassing her further.

26 14. After receiving assurances that White would be present during all filming, Plaintiff
27 agreed to return to the production. Over the next few months, Plaintiff was subjected to numerous
28 incidents of outrageous and offensive conduct. She was subjected to a near daily barrage of sexual

1 comments, innuendo and unwelcome advances by crew members, within the presence and with the
2 active encouragement of Affleck. Plaintiff was berated and verbally attacked by Affleck after she
3 refused his sexual advances in New York, and was criticized constantly for refusing to be submissive
4 in response to his rants and derisive comments.

5 15. Plaintiff objected to Defendants' harassing conduct and could not continue to work in
6 such a hostile and offensive work environment. Plaintiff was ultimately forced to resign from the
7 Project—for the second time—after months of work as Director of Photography because of the
8 harassment and abuse.

9 16. In retaliation, Defendants refused to honor the terms of the agreement, including her
10 right to deferred payment upon execution of a distribution agreement, as well as a "Director of
11 Photography" credit on the film.

12 17. During her 16 years working in the entertainment industry, Plaintiff has never
13 accused anyone of sexual harassment. She has never filed a lawsuit against anyone for any reason.
14 And she struggled with the decision to file this lawsuit—she is justifiably concerned about the effect
15 this lawsuit will have on her career.

16 18. Plaintiff is aware that Affleck will use his celebrity and wealth to intimidate her, just
17 as he has done in response to the Complaint filed by Ms. White. However, Plaintiff decided that her
18 story needs to be told, and that she is strong enough to withstand the attacks mounted by Affleck's
19 high-paid publicists in New York and his "bulldog" attorneys. Plaintiff decided to speak out in order
20 to prevent this from happening to other young women who are simply trying to make a living in the
21 entertainment industry and expect and deserve a non-hostile working environment.

22 19. With this action, Plaintiff seeks to recover compensatory and punitive damages
23 relating to Affleck's assault and infliction of emotional distress, as well as constructive discharge in
24 violation of public policy, breach of oral contract, unjust enrichment, negligent infliction of
25 emotional distress and negligence.

26 **PARTIES**

27 20. Plaintiff Magdalena Gorka is an individual who resides in Los Angeles, California.
28

1 21. On information and belief, Defendant Casey Affleck is an individual who resides in
2 the County of Los Angeles in the State of California.

3 22. On information and belief, Defendant Flemmy Productions, LLC is a California
4 limited liability company with its principal place of business in Los Angeles, California.

5 23. Plaintiff is ignorant of the true names and capacities of defendants sued in this
6 Complaint as DOES 1 through 10, inclusive, and therefore sues these defendants by those fictitious
7 names. Plaintiff will amend this Complaint to allege their true names and capacities when
8 ascertained. Plaintiff is informed and believes and on that basis alleges that each of the fictitiously
9 named defendants is responsible in some manner for the occurrences alleged in this Complaint, and
10 alleges that Plaintiff's injuries, as alleged in this Complaint, were caused by defendants' conduct.

11 24. Plaintiff is informed and believes that at all times relevant to this action, each of the
12 defendants, including DOES 1 through 10, were acting as the agent, servant, employee, partner,
13 shareholder, officer, director or joint venturer of each of the other defendants, and in doing the acts
14 herein alleged, was acting within the course and scope of such agency, permission, corporate status
15 or employment

16 **JURISDICTION AND VENUE**

17 25. The Superior Court for the State of California in the County of Los Angeles is the
18 proper jurisdiction and venue for this action because a substantial portion of the acts giving rise to
19 Defendants' liability occurred in the County of Los Angeles.

20 **FACTUAL BACKGROUND**

21 **Plaintiff's Agreement with Affleck and Flemmy.**

22 26. In December 2008, Defendants hired Plaintiff to work as a Director of Photography
23 on the Project. The Project is a documentary following actor Joaquin Phoenix over the course of a
24 year and focusing on Phoenix's stated ambition to give up acting and establish a new career as a
25 performer of rap music.

26 27. Under the terms of her agreement with Defendants, Plaintiff was to receive a per-day
27 fee, as well as a deferred fee to be paid to Plaintiff upon execution of a distribution agreement for the
28 film. Plaintiff was also to be recognized as the "Director of Photography" of the film.

1 28. Plaintiff's work on the Project began shortly after the agreement was reached.
2 Almost immediately, Plaintiff was subjected to sexual advances from members of the crew, and in
3 particular the Camera Assistant, Anthony Langdon, who repeatedly propositioned her and talked
4 about the size of his penis. Affleck, who was often present during these exchanges, did nothing to
5 prevent the recurrence of the harassment. Instead, Affleck participated in it—he suggested that
6 Plaintiff have sex with Langdon.

7 29. Plaintiff was disturbed by Affleck's comments and those of the crew, but she needed
8 the work and was optimistic that the harassment would ultimately taper off.

9 **Affleck's Sexual Advances.**

10 30. In mid-December 2008, Plaintiff traveled with other crew members to New York to
11 shoot scenes involving Phoenix. Plaintiff stayed at Phoenix and Affleck's apartment with other
12 members of the crew.

13 31. After a long night of shooting, Plaintiff went to sleep in Phoenix's bedroom and
14 Phoenix slept in the living room to ensure Plaintiff had privacy.

15 32. During the middle of the night, Affleck crawled into bed with Plaintiff and laid next
16 to her. Affleck was in his underwear. When Plaintiff awoke, she saw Affleck lying in the bed next
17 to her. Plaintiff had no idea how long Affleck was there. Affleck had his arm around her and was
18 caressing her back and his face was right next to hers. His breath reeked of alcohol.

19 33. Plaintiff screamed at Affleck and ordered him out of the room.

20 34. The next morning, Plaintiff confronted Affleck about the incident and told him that
21 his advances were entirely improper because he is married and he was her boss.

22 35. Two days later, when Plaintiff arrived in Los Angeles, she immediately contacted her
23 agent regarding Affleck's advances. Plaintiff subsequently refused to return to work on the Project.

24 **The Las Vegas Shoot.**

25 36. Shortly thereafter, Plaintiff was contacted by White, who stated that she would look
26 after Plaintiff if she returned to the Project. Plaintiff believed that Affleck and the other members of
27 the crew would discontinue their abusive conduct because there would be two women on the Project.

28 37. The production was scheduled to resume with several scenes in Las Vegas, Nevada.

1 38. One afternoon, Plaintiff shot a scene at the Palazzo Hotel where Phoenix performed a
2 set as a rap artist. Following the set, Plaintiff learned that Affleck and Phoenix wanted to shoot
3 another sequence in their hotel suite that evening. Several prostitutes, including male transvestites,
4 were present for the evening shoot. Plaintiff was not aware of what Affleck planned for that shoot.

5 39. Plaintiff, White and the rest of the nearly all-male crew went to Affleck's and
6 Phoenix's hotel suite. Aside from the crew, there were approximately 35 people at the hotel suite
7 including the prostitutes.

8 40. Later in the evening, other members of the production team began making offensive
9 comments to Plaintiff and suggesting that she engage in some of the behavior exhibited by the
10 prostitutes. Specifically, Langdon made the crude comment that Plaintiff should have "been a body
11 double for the tranny so we can all go home." Instead of intervening to protect Plaintiff, Affleck
12 stood by and let Plaintiff be subjected to offensive comments and innuendo.

13 41. Plaintiff is informed and believes that none of the conduct that occurred in the hotel
14 suite is in the version of the film that will be released to the public. Plaintiff believes that Affleck
15 orchestrated the shoot in the hotel suite for his own twisted personal gratification and unfairly
16 subjected Plaintiff to the conduct involving the prostitutes for reasons having nothing to do with the
17 purpose of the Project.

18 42. After the shoot in Las Vegas, because Affleck had done nothing to protect Plaintiff
19 from his own outrageous and offensive conduct (and the conduct of others), Plaintiff requested that
20 White be physically present for every remaining shoot on the film.

21 **The Costa Rica Shoot.**

22 43. In Costa Rica, Affleck continued his abusive tactics towards Plaintiff. As the only
23 women on the shoot in Costa Rica, Plaintiff and White shared a bedroom at the production team's
24 living quarters. One evening, Affleck, Phoenix, Plaintiff and White went to dinner with other crew
25 members and Phoenix's father at a restaurant several miles from the house where the crew was
26 staying.

27 44. After dinner, Plaintiff and White returned home to learn that Phoenix and Affleck had
28 locked themselves in Plaintiff's bedroom with two women. They were told by a third individual as

1 well as one of the crew members that Affleck and Phoenix were engaging in sexual activity in their
2 bedroom. Although Affleck had his own room, he chose to invade Plaintiff's privacy and violate her
3 personal space. This was all a part of Affleck's campaign of abuse and harassment.

4 45. In another incident, Gorka was exposed to so much degradation and exhaustion that
5 she vomited while shooting.

6 **Plaintiff Leaves The Project For The Second Time.**

7 46. After the Costa Rica trip, Affleck called Plaintiff and White to a meeting at his house
8 in Los Angeles. During the meeting, Affleck berated Plaintiff for her performance in Costa Rica.

9 47. Plaintiff tried to respond professionally to Affleck's criticism but was not willing to
10 succumb to his vicious personal attacks. Plaintiff had endured enough abuse and harassment on the
11 Project and was not willing to subject herself to any further disparagement by Affleck. Affleck
12 stopped at nothing in his attempt to belittle and intimidate Plaintiff into accepting his misplaced
13 criticism and profanity-laced tirade. On April 3, 2009, Plaintiff's agent sent a resignation letter to
14 Affleck on her behalf.

15 48. Plaintiff is informed and believes that Affleck refused to compensate Plaintiff as
16 agreed because she objected to his harassing and abusive conduct, including his sexual advances in
17 New York. Affleck encouraged and participated in the harassment of Plaintiff for his own sick
18 desire to dominate and control Plaintiff.

19 49. Plaintiff only endured the harassment as long as she did because she was proud of her
20 work on the Project and wanted to receive fair credit for her work. Plaintiff has not received all the
21 compensation due to her from Defendants. Plaintiff has suffered and continues to suffer from
22 humiliation, embarrassment and emotional distress as a direct result of the harassment and abuse she
23 endured during production. Plaintiff has experienced severe anxiety and a loss of sleep as a result of
24 Defendants' offensive and humiliating treatment, including their retaliation against her when she
25 objected to the hostile work environment.

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FIRST CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

(Against all Defendants)

50. Plaintiff hereby repeats, alleges, and incorporates by reference all of the foregoing and subsequent paragraphs of this Complaint as though these paragraphs were set forth in full herein.

51. The conduct of Defendants was outrageous, intentional, malicious, and done with reckless disregard for the fact that such unlawful, abusive conduct would certainly cause Plaintiff to suffer severe emotional distress.

52. The unlawful and abusive comments and the intentional and cruel acts of sexual harassment were so extreme and outrageous as to exceed all bounds usually tolerated in a civilized society.

53. In engaging in the conduct alleged above, Defendants, and each of them, intended to cause or possessed a reckless disregard for the probability of causing, severe emotional distress to Plaintiff.

54. As a direct and proximate result of the wrongful conduct of Defendants, their agents and/or employees, Plaintiff was harmed. Defendants' conduct was extreme and outrageous and has caused Plaintiff injury, damage, loss and harm including loss of income, medical expenses, humiliation, embarrassment, severe mental and emotional distress and discomfort based on the sexual harassment experienced, the precise amount to be determined at trial.

55. The conduct described herein was malicious, fraudulent, and/or oppressive, and done with a willful and conscious disregard for Plaintiff's rights. Consequently, Plaintiff is entitled to punitive damages under California Civil Code § 3294 in an amount to be determined at trial.

SECOND CAUSE OF ACTION

(Constructive Discharge in Violation of Public Policy)

(Against all Defendants)

56. Plaintiff hereby repeats, alleges, and incorporates by reference all of the foregoing and subsequent paragraphs of this Complaint as though these paragraphs were set forth in full herein.

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1 57. Defendants intentionally created and encouraged sexual harassment in violation of the
2 Fair Employment and Housing Act (FEHA), resulting in an intimidating, hostile, offensive and
3 abusive workplace environment.

4 58. Plaintiff's working conditions were so intolerable and aggravated at the time of the
5 resignation of Plaintiff that a reasonable employer would have realized that a reasonable person in
6 the position of Plaintiff would be compelled to resign.

7 59. Plaintiff was, in fact, compelled to resign her employment because Defendants' acts
8 of sexual harassment and failure to prevent sexual harassment, as well as retaliation in the form of
9 refusal to pay any agreed-to compensation, created an intolerable working environment.

10 60. A reasonable person under the same circumstances, faced with the same or similar
11 conduct, would have felt compelled to resign.

12 61. The fundamental rights embodied by FEHA inure to the benefit of the public, not just
13 the private interests of the employer and employee, because all individuals within the State of
14 California are afforded these rights.

15 62. Consequently, Defendants' constructive discharge of Plaintiff as a result of their
16 violations of FEHA is a violation of California public policy.

17 63. As a direct and proximate result of Defendants' constructive discharge, Plaintiff has
18 suffered damages, the precise amount to be proven at trial.

19 **THIRD CAUSE OF ACTION**
20 **(Breach of Oral Contract)**
21 **(Against all Defendants)**

22 64. Plaintiff hereby repeats, alleges, and incorporates by reference all of the foregoing
23 and subsequent paragraphs of this Complaint as though these paragraphs were set forth in full herein.

24 65. On or about December 1, 2008, Affleck orally agreed to pay Plaintiff a fee of \$300.00
25 per day of shooting, and a deferred fee of \$700.00 for each work day due and payable upon
26 execution of a distribution agreement. He also agreed to give her a Director of Photography credit
27 on the film.

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66. Affleck again confirmed the substance of that agreement on January 15, 2009, but modified the agreement to provide for deferred compensation in the amount of \$700 for seven days of production, and \$550 for the remaining days.

67. Subsequent to the making of these oral agreements, Plaintiff performed all obligations, conditions and covenants required of her by the agreements.

68. Upon information and belief, the Project was sold to a distributor, Magnolia Pictures, in July 2010.

69. Defendants failed to comply with their obligations under the oral agreement and breached the agreement by failing to pay Plaintiff the agreed-upon fee and failing to confirm that she will receive a "Director of Photography" credit on the film.

70. As a direct and proximate result of Defendants' breach, Plaintiff has suffered damages of at least \$15,000, the precise amount to be proven at trial.

FOURTH CAUSE OF ACTION
(Negligent Infliction of Emotional Distress)
(Against all Defendants)

71. Plaintiff hereby repeats, alleges, and incorporates by reference all of the foregoing and subsequent paragraphs of this Complaint as though these paragraphs were set forth in full herein.

72. Defendants, and each of them, owed Plaintiff a duty of due care to provide a workplace free from harassment.

73. Defendants, and each of them, breached their duty of care to Plaintiff, by permitting a prolonged and severe pattern and practice of sexual harassment to develop in the workplace of Plaintiff.

74. Defendants knew, or should have known, that their failure to exercise due care would cause Plaintiff severe emotional distress.

75. As a direct and proximate result of the above-mentioned negligent and careless acts, Plaintiff has suffered humiliation, mental anguish, emotional and physical distress, and a loss of sleep, resulting in damages to be proven at trial.

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FIFTH CAUSE OF ACTION

(Unjust Enrichment)

(Against all Defendants)

76. Plaintiff hereby repeats, alleges, and incorporates by reference all of the foregoing and subsequent paragraphs of this Complaint as though these paragraphs were set forth in full herein.

77. As an alternative theory of recovery, Plaintiff seeks damages on an equitable claim of quasi-contact and unjust enrichment.

78. Defendants have benefitted substantially from Plaintiff's services as a Director of Photography on the Project and unjustly enriched themselves at the expense of Plaintiff.

79. Plaintiff is entitled to receive the fair value of the services she provided to Defendants in an amount not less than \$15,000, the precise amount to be proven at trial.

SIXTH CAUSE OF ACTION

(Negligence)

(Against All Defendants)

80. Plaintiff hereby repeats, alleges, and incorporates by reference all of the foregoing and subsequent paragraphs of this Complaint as though these paragraphs were set forth in full herein.

81. Defendants had a legal duty to exercise due care and conform to a reasonable standard of conduct to protect Plaintiff from injury or harm.

82. Defendants failed to exercise due care and thereby breached their legal duty by engaging in or failing to prevent sexual harassment and other offensive and unlawful conduct that was inflicted on Plaintiff.

83. In addition, Plaintiff is entitled to a presumption of negligence as Defendants' conduct constitutes a violation of FEHA, Plaintiff's injury resulted from occurrences of a nature which FEHA was designed to prevent, and Plaintiff was one of the class of persons for whose protection FEHA was adopted.

84. As a direct and proximate result of Defendants' negligence, Plaintiff has suffered damages including humiliation, mental anguish, emotional and physical distress, including anxiety, stress, and a loss of sleep, resulting in damages to be proven at trial.

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PRAYER

WHEREFORE, Plaintiff prays for the following relief:

1. Compensatory damages in an amount to be proven at trial, but believed to be in excess of \$2.25 million;
2. Punitive or exemplary damages in an amount to be proven at trial;
3. Expenses and costs of suit as permitted by law;
4. Prejudgment interest as allowed by law; and
5. Such other and further relief as the court may deem proper.

DATED: July 30, 2010

MILLER BARONDESS, LLP

By: 

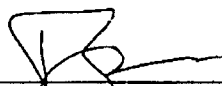
Brian Procel
Attorneys for Plaintiff
Magdalena Gorka

DEMAND FOR JURY

Plaintiff Magdalena Gorka hereby demands a jury trial.

DATED: July 30, 2010

MILLER BARONDESS, LLP

By: 

Brian Procel
Attorneys for Plaintiff
Magdalena Gorka