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ORIGINAL FILED
Superior Court of California
County of Los Angeles

FEB 06 2017

Shewri R. Carter, Executive Officer/Clerk
By: Cristina Grifalva, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
CENTRAL DISTRICT

BC 6 4 9 1 9 6

DELILAH RIOS, an individual,
Plaintiff,

v.

BIG 5 CORP., a Delaware corporation;
Big 5 Sporting Goods Corporation, a Delaware
corporation.
Defendants.

Case No.:

Unlimited Civil Case

COMPLAINT

- 1) VIOLATION OF CALIFORNIA
LABOR CODE SECTION 6310;
- 2) VIOLATION OF CALIFORNIA
LABOR CODE SECTION 6311;
- 3) WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;
- 4) INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS.

JURY TRIAL DEMANDED

By FAX

1
2 Plaintiff Delilah Rios alleges as follows:

3 THE PARTIES

4 1. DELILAH RIOS (“Plaintiff”) is and was at all relevant times a citizen of
5 the State of California, residing and working in the County of Los Angeles.

6 2. Plaintiff is informed and believes and thereon alleges that Defendant BIG 5
7 CORP. and BIG 5 SPORTING GOODS (collectively “Defendants” or “Big 5”)
8 were at all times relevant to this Complaint, employers of Plaintiff and were doing
9 business in the County of Los Angeles, State of California, and are entities subject
10 to suit before this Court.

11 JURISDICTION AND VENUE

12 3. Pursuant to article VI, section 10 of the California Constitution, subject matter
13 jurisdiction is proper in the Superior Court of California, County of Los Angeles,
14 State of California.

15 4. Pursuant to California Code of Civil Procedure section 395, venue is proper in
16 the Superior Court of California for the County of Los Angeles, because this is where
17 Plaintiff was employed and this is where the wrongful misconduct alleged herein
18 occurred.

19 5. This action has been filed within all applicable statutory time periods.

20 6. This Court has jurisdiction, and venue is proper.

21 FACTUAL BACKGROUND

22 7. Plaintiff Delilah Rios is a former employee of Big 5, and worked at its Big 5
23 Sporting Goods stores.

24 8. Plaintiff worked for Big 5 over an approximately ten-year span. She first
25 joined Big 5 in 2005 and worked as a part-time sales associate and cashier until
26 approximately 2007. She re-employed by Big 5 in 2009 and worked there until
27 her constructive discharge in February 2015.

28 9. At the time of the relevant incidents described herein, Plaintiff worked as a

1 first manager at Big 5's store located in Downey, California. Her duties as first
2 manager at the Downey store included making the schedule, giving direction,
3 acting as a safety instructor for the store, as well as selling firearms.

4 10. Plaintiff was a licensed firearms instructor. Before she worked for
5 Defendants, Plaintiff had received personal training with firearms experts, and
6 was very knowledgeable about firearms. Born with just one arm, Plaintiff
7 nonetheless learned how to safely operate a firearm and became well versed in
8 training and safety in firearms.

9 11. Effective January 1, 2015, California law required sellers of shotguns and
10 rifles to give customers a written test on gun safety prior to the purchase of a
11 firearm and a hands-on demonstration prior to releasing the firearm. These
12 particular requirements had previously only applied to sellers of handguns (not to
13 sellers of shotguns and rifles). Since Big 5 only sells shotguns and rifles, these
14 regulations were new to Big 5. As a result of the change in law, sales of firearms
15 at Big 5 took nearly double the time than it did previously. While prior to the
16 enactment of this law, it would take approximately 20 to 30 minutes to sell a
17 firearm, and a similar timeframe to release a firearm, it now took twice as long for
18 each process.

19 12. While Plaintiff was employed at Big 5, Defendants did not institute any
20 store policies to inform customers of the longer time periods for the sale and
21 release of firearms, nor any guidelines for employees authorized to sell firearms
22 on how to manage the increased time. Though Plaintiff and other managers asked
23 to have an official company policy around it, the Defendants failed to take any
24 action.

25 13. On or about the evening of January 21, 2015, as part of her regular duties,
26 Plaintiff assisted a middle-aged Caucasian male, interested in the purchase of a
27 shotgun. Plaintiff informed the customer that due to the late hour, she would only
28 be able to administer the written firearm safety test, but would not be able to

1 complete the sale as the process would not be completed before the store closed.

2 14. Plaintiff administered the written firearm safety test to the customer, which
3 he passed. However, before Plaintiff could complete processing the \$15
4 Department of Justice (“DOJ”) fee for the test, which was payable only through
5 credit card, and which had to be done in the back office on the DOJ website, the
6 customer stormed past a store employee and into the restricted office area where
7 Plaintiff was located, ignoring requests to wait outside. He grabbed his license
8 and his credit card from Plaintiff, stating that he was in a hurry and walked out of
9 the store. Plaintiff found his behavior odd, and let the other managers know.

10 15. Two days later the customer returned and was again assisted by Plaintiff.
11 At this time, she completed processing the DOJ fee that he had previously
12 interrupted. At the gun counter, he told Plaintiff that he wanted “any crappy old
13 gun.” Plaintiff offered to show him what they had on sale, and the customer
14 chose to buy a specific 12-gauge shotgun.

15 16. As Plaintiff was processing the paperwork, the customer continuously asked
16 his friend who had accompanied him to read to him the questions on Form 4473, a
17 required federal form that records the gun transaction. Plaintiff politely informed
18 the customer that it was the law that he read and fill out the form on his own and
19 without any assistance. The customer ignored her request, grew agitated, and
20 continued to ask his friend for help. Plaintiff insisted that he comply with the
21 laws and regulations for completing the form.

22 17. After Plaintiff was done processing the paperwork for the sale of the
23 shotgun, which included getting his thumbprint and signature, the customer
24 accused Plaintiff of selling him the wrong firearm. Plaintiff told the customer that
25 she had sold him the shotgun that he had chosen, but that she could do an
26 exchange and re-process the paperwork if he so chose, informing him that it
27 would be an approximately forty-minute process. The customer now became irate
28 and stormed out.

1 18. After this second interaction with the customer, Plaintiff grew very
2 concerned about the customer's erratic and aggressive behavior. She updated the
3 other managers at her store about what had occurred, expressing her concern
4 about the customer's behavior, and alerting them that he might return.

5 19. The next day, on Plaintiff's day off, the customer came in and did an
6 exchange of the firearm with another manager.

7 20. California law required a 10-day waiting period for a buyer of a firearm to
8 take possession of the firearm. On or about February 4, 2015, the customer came
9 in to pick up the firearm. It was late at night and nearing closing time when the
10 customer came in. Plaintiff was the only manager on duty with one cashier and
11 two sales associate at the store. It was a busy night and Plaintiff was at the cash
12 register while the cashier was on her break.

13 21. The customer asked for his firearm to be released to him. Plaintiff
14 apologized for the inconvenience and informed him that it was a long process to
15 release the firearm because she needed to provide a hands-on demonstration of the
16 shotgun. She informed him that because of the late hour, she would not be able to
17 complete the process before closing time. She asked if he would return the next
18 morning.

19 22. At this point, the customer got very upset and began cursing and yelling at
20 Plaintiff. He yelled, "This is bullshit. It's my property. I paid for it, and you
21 need to give me my fucking gun." Plaintiff was taken aback by this sudden
22 outburst, afraid, and very concerned about the other customers at the store. She
23 tried to calm him down, but he only grew more aggressive, stood in line, not to
24 purchase anything, but so he could yell at her more. Others in the store asked the
25 man to calm down. The customer then began talking loudly on his phone while
26 still lingering in the store, and shouted, "The bitch manager at Big 5 doesn't want
27 to give me my fucking property that I already paid for. She needs to give me my
28 fucking gun." Plaintiff indicated to the customer that she would call the police if

1 the customer did not leave. The customer finally left the store.

2 23. Plaintiff was very disturbed, shaken-up, and scared. As she was doing her
3 walk-through of the store after closing, she found unused ammunition on the floor
4 in the aisle where she had seen the customer lingering that evening. She was
5 alarmed. That particular ammunition was not sold by Big 5 and she was
6 concerned that the customer had brought in live ammunition for the exact firearm
7 he was about to pick up.

8 24. The next morning, on or about February 5, 2015, Plaintiff called Big 5's
9 corporate firearms department. She spoke with a firearms manager and explained
10 that she was concerned about the customer's aggressive, unstable behavior, as
11 well as disturbed at finding the live ammunition at the store. In response to her
12 concerns, the firearms manager said simply that he would call the customer and
13 ask him whether he had brought in the ammunition. Perplexed by the response,
14 Plaintiff further explained to the firearms manager that she was not comfortable
15 releasing the firearm to a volatile customer, as she was afraid he would do harm to
16 himself, to her, or to others. She relayed to him that she had a bad feeling about
17 this customer having a firearm, and felt he was dangerous based on his behavior
18 over the course of her interactions with him. She was particularly displeased that
19 the firearms manager would be calling the customer about her concerns, as she
20 felt this would further any grudge the customer held against her or other
21 employees at the store.

22 25. Despite Plaintiff's concerns, the firearms manager informed Plaintiff that he
23 would arrange for another manager, other than Plaintiff, to release the firearm to
24 the customer. Plaintiff spent the day feeling very nervous and shocked that the
25 company was willing to put a shotgun in the hands of this customer.

26 26. The following day, on or about February 6, 2015, the customer walked in
27 the store early in the morning. When the customer informed the cashier he was
28 there to pick up his firearm, the cashier called for Plaintiff over the intercom. As

1 soon as the customer heard Plaintiff's name, he immediately became belligerent,
2 and yelled, "I fucking hate that bitch." The cashier told him those were harsh
3 words, and he responded, "Yes, and I mean them. I fucking hate her, and you
4 want to know why? Because she's a fucking bitch." As Plaintiff approached the
5 front of the store, he looked at her and said, "You again. I fucking hate people
6 like you. People like you should not exist. I hope you get fired." He continued
7 with his tirade and demanded that she release the 12-gauge shotgun and told her
8 he would not leave until he got it.

9 27. At this point, due to her fears that he may harm himself, others, or her,
10 Plaintiff firmly and politely told him that she would not release the firearm to him,
11 and that she had talked to the corporate department about it. She offered to
12 process an immediate, full refund. This only incensed the customer further, and
13 he yelled, "Here we go again. You stupid fucking bitch. Give me my fucking
14 gun. It's my property. I paid for it, and I'm not leaving until I get it. I talked to
15 corporate and they told me you are a fucking liar."

16 28. At this point, frightened customers began to abandon their shopping and
17 fled the store. The cashier began to cry, and Plaintiff was alarmed and feared for
18 her safety, as the customer continued to yell and curse at her. Plaintiff called the
19 police, and the customer began to do the same. Once she knew the police was on
20 its way, she informed the customer that she was calling the company's corporate
21 department. As she began to walk away, the customer yelled, "You stupid bitch.
22 You better get your ass over here." The cashier was scared and begged Plaintiff
23 not to leave her alone. Plaintiff was panicked, but did not want to leave the
24 cashier alone as she feared for the cashier's safety as well. However, when she
25 called the corporate department from the store, instead of assisting her, they
26 reprimanded her for calling them in front of the customer, and instructed her to go
27 to the back office and resume the call.

28 29. Plaintiff went to the back office to continue the conversation and was

1 connected to another manager from the corporate firearms department, Julio
2 Juarez. Plaintiff had to now recount to this manager everything she had told the
3 firearms manager she had spoken with previously.

4 30. Mr. Juarez, impatient with Plaintiff, said, “Can’t you just release [the
5 shotgun] to him?” He continued that he had spoken to the customer, and “if you
6 hadn’t sold him the wrong gun in the first place, he wouldn’t be angry.” Mr.
7 Juarez went on to tell her to just release the firearm to him and get the customer
8 out of the store.

9 31. Plaintiff was distraught and sought to explain that she could not, in good
10 conscience release the firearm given the danger she felt the customer posed, and
11 her fear that releasing the firearm to him would involve unreasonable risk of
12 physical injury to others. Her pleas were met by rebuke from corporate. Mr.
13 Juarez then accused Plaintiff of selling the customer a display shotgun and not a
14 new one in the box. Plaintiff told him that that was not true and that she follows
15 all the policies and procedures by the book. She told him that another manager
16 had been at the store when the customer selected the gun and would vouch for
17 what happened. She invited Mr. Juarez to check the store cameras for himself.
18 Mr. Juarez became annoyed with her, and said he was not going to continue
19 arguing with her, and demanded again to know whether or not she was going to
20 release the shotgun to the customer. Once again, Plaintiff stated that she would
21 not do so, that this customer’s behavior indicated that he should not be in
22 possession of a lethal weapon. Mr. Juarez, irritated, told her he would call back
23 and hung up.

24 32. As the police arrived, Plaintiff breathed a sigh of relief. The police agreed
25 with Plaintiff that she did not have to release the firearm to the customer. They
26 took the customer outside the store and tried to get him to calm down. The police
27 officers informed Plaintiff that the customer was outside the store talking to Big
28 5’s corporate office, and they were puzzled that the corporate office was trying to

1 figure out how to get the firearm to him.

2 33. As this incident was unfolding, the district supervisor, Armando Bermudez
3 called Plaintiff very upset and said, “Delilah, what are you doing? What is going
4 on here? Why can’t you just release the gun?” Plaintiff explained for the
5 umpteenth time that she felt the customer posed a danger to society, including to
6 herself and her fellow employees, and that it was her legal duty to independently
7 judge the situation as a certified seller of firearms to not let a firearm get into the
8 wrong hands. She offered again that she would do a refund for the customer. Mr.
9 Bermudez did not back down and told her to just release the firearm since the
10 police were there. Plaintiff still refused, and said, “Please don’t ask me again”.
11 Mr. Bermudez then accused Ms. Rios of exaggerating and being “emotional”. He
12 went on to reprimand Plaintiff, saying, “Well then I’m going to call Roland to the
13 store to release it for you because you don’t want to do your job.”

14 34. Plaintiff felt betrayed by the company she had been loyal to for many years.
15 She was frightened at the situation, and felt that Big 5 was willing to endanger her
16 safety and the safety of others just to make a gun sale.

17 35. A few minutes later, the district supervisor, still angry, called Plaintiff
18 again. At this point, Plaintiff was upset and crying and answered the phone in the
19 office. He told Plaintiff to get out of the office and do her job as a manager and
20 told her if she couldn’t do it, he would “come down there, and do it for her.”

21 36. Shortly thereafter, a store manager came in to the store on his day off with
22 his young child. While the cashier looked after the store manager’s child, he
23 released the gun to the customer with the police present. On behalf of Big 5, he
24 was instructed to give the customer a \$25 gift card to compensate him for the
25 “trouble.”

26 37. Horrified at the situation and the Defendants’ response, Plaintiff contacted
27 Big 5’s human resources department. She spoke with Dave Richards and
28 explained that she was concerned that multiple higher-ups had tried to force her to

1 release the firearm to a potentially dangerous individual, against her right to
2 exercise her independent judgment, and that she was concerned about the safety
3 risk this customer now posed, armed with a shotgun. Believing he would
4 document this conversation, Plaintiff asked Dave Richards for a copy of her
5 complaint. Mr. Richards replied, "I'm just here to counsel you; there is no
6 report." He told her she would have to fill out an incident report and she could
7 send it to him. Immediately, Plaintiff and the cashier filled out an incident report.

8 38. Plaintiff also spoke with Armando Bermudez, her district supervisor about
9 returning to work at a store other than the Downey store where the incident took
10 place, because she feared violence from the customer, who now had a shotgun and
11 a grudge against her, and knew her place of work. Plaintiff's request was denied.

12 39. At this point, on or about February 7, 2015, Plaintiff felt that she had no
13 choice but to give her resignation. She feared for her safety, and felt that money
14 meant more to Big 5 Corporation than public safety or employee safety. Plaintiff
15 did not feel that her safety concerns were being taken seriously, and she felt she
16 had no option but to resign after realizing that the company had put her and others
17 in an unsafe situation, had tried to coerce her to release a firearm against her legal
18 obligations, and was unwilling to take any corrective action after having had
19 several opportunities to do so. In addition, she felt she could not work at a
20 company where she would be forced to release firearms to people who should not
21 have guns.

22 **First Cause of Action**

23 **(Violation of California Labor Code Section 6310)**

24 40. Plaintiff re-alleges and incorporates by reference the foregoing allegations
25 as though set forth fully herein.

26 41. California Labor Code section 6310(a) expressly prohibits employers from
27 terminating or retaliating against employees for making complaints to an
28 employer about worker health and safety. California Labor Code Section 6310(b)

1 provides that “[a]n employee who is discharged, threatened with discharge,
2 demoted, suspended, or in any manner discriminated against in the terms and
3 conditions of employment by his or her employer because the employee has made
4 a bona fide oral or written complaint to . . . his or her employer, or his or her
5 representative, of unsafe working conditions, or work practices, in his or her
6 employment or place of employment . . . shall be entitled to reinstatement and
7 reimbursement for lost wages and work benefits caused by the acts of the
8 employer.”

9 42. Plaintiff is informed and believes and thereon alleges that Defendants
10 willfully and/or with reckless indifference violated California Labor Code Section
11 6310 by retaliating against and constructively terminating Plaintiff because she
12 raised concerns relating to unsafe work practices and reported those to her
13 superiors.

14 43. As a proximate result of the wrongful conduct of Defendants, Plaintiff has
15 suffered financial and emotional harm.

16 44. In doing the acts herein alleged, Defendants acted with oppression, fraud,
17 malice, and in conscious disregard of Plaintiff’s rights, and Plaintiff is therefore
18 entitled to punitive damages in an amount according to proof at the time of trial.

19 45. As a result of the conduct of Defendants, Plaintiff was forced to retain an
20 attorney in order to protect her rights. Accordingly, Plaintiff seeks the reasonable
21 attorneys’ fees and costs incurred in this litigation in an amount according to
22 proof at trial.

23 **Second Cause of Action**

24 **(Violation of California Labor Code Section 6311)**

25 46. Plaintiff re-alleges and incorporates by reference the foregoing allegations
26 as though set forth fully herein.

27 47. California Labor Code Section 6311 provides that “No employee shall be
28 laid off or discharged for refusing to perform work in the performance of which

1 this code, including Section 6400, any occupational safety or health standard or
2 any safety order of the division or standards board will be violated, where the
3 violation would create a real and apparent hazard to the employee or his or her
4 fellow employees.”

5 48. Plaintiff is informed and believes and thereon alleges that Defendant
6 willfully and/or with reckless indifference violated California Labor Code Section
7 6311 by constructively discharging her from her employment based on her refusal
8 to perform work when she believed doing so would create a real and apparent
9 hazard to others and herself.

10 49. As a proximate result of the wrongful conduct of Defendants, Plaintiff has
11 suffered financial and emotional harm.

12 50. In doing the acts herein alleged, Defendants acted with oppression, fraud,
13 malice, and in conscious disregard of Plaintiff’s rights, and Plaintiff is therefore
14 entitled to punitive damages in an amount according to proof at the time of trial.

15 51. As a result of the conduct of Defendants, Plaintiff was forced to retain an
16 attorney in order to protect her rights. Accordingly, Plaintiff seeks the reasonable
17 attorneys’ fees and costs incurred in this litigation in an amount according to
18 proof at trial.

19 **Third Cause of Action**

20 **(Wrongful Termination in Violation of Public Policy)**

21 52. Plaintiff re-alleges and incorporates by reference the foregoing allegations
22 as though set forth fully herein.

23 53. At all times mentioned herein, California Labor Code Section 6400 et seq.
24 was in full force and effect, and establishes that the public policy of the State of
25 California is, in part, to require an employer to “furnish employment and a place
26 of employment that is safe and healthful for the employees therein” and states that
27 “every employer shall do every other thing reasonably necessary to protect the
28 life, safety, and health of employees.”

1 54. At all times mentioned herein, California Labor Code Sections 6310 and
2 6311 were in full force and effect, and establish that the public policy of the State
3 of California is, in part, to prohibit retaliation and discrimination against
4 employees who oppose, complain of, and/or refuse to work in unsafe conditions.

5 55. Labor Code sections 6310 and 6311 embody fundamental, substantial, and
6 well-established public policies of the State of California. In discharging
7 Plaintiff, Defendants violated the fundamental, substantial, and well-established
8 public policies of the state of California.

9 56. Defendants retaliated against and constructively terminated Plaintiff's
10 employment after Plaintiff complained of an unsafe workplace and after Plaintiff
11 refused to work in unsafe conditions.

12 57. Plaintiff is therefore informed and believes and thereon alleges that
13 Plaintiff's constructive discharge was in violation of public policy, and has
14 resulted in damages and injury to plaintiff as alleged herein.

15 58. As a proximate result of the Defendants' willful, knowing, and intentional
16 conduct in violation of public policy, Plaintiff has suffered financial and emotional
17 harm.

18 59. In doing the acts herein alleged, Defendants acted with oppression, fraud,
19 malice, and in conscious disregard of Plaintiff's rights, and Plaintiff therefore seeks an
20 award of punitive and exemplary damages in an amount according to proof.

21 60. Plaintiff has incurred and continues to incur legal expenses and attorney
22 fees. Accordingly, Plaintiff seeks the reasonable attorneys' fees and costs
23 incurred.

24 **Fourth Cause of Action**

25 **(Intentional Infliction of Emotional Distress)**

26 61. Plaintiff re-alleges and incorporates by reference the foregoing allegations
27 as though set forth fully herein.

28 62. Defendants' conduct goes beyond all possible bounds of decency, and

1 would be regarded by a reasonable person as intolerable in a civilized society.
2 Defendants knew that Plaintiff was susceptible to emotional distress caused by the
3 abuse of the supervisory and master-servant relationship. Defendants' conduct
4 would be condemned by reasonable people and therefore is outrageous.

5 63. Defendants, through their managers, intended to cause emotional distress, or
6 acted with reckless disregard of the probability that Plaintiff would suffer
7 emotional distress.

8 64. Plaintiff suffered severe and lasting emotional distress as a result of
9 Defendants' conduct.

10 65. Defendants' conduct toward Plaintiff was malicious, oppressive, and
11 fraudulent, as set forth above.

12
13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff Delilah Rios prays for judgment against
15 Defendants as follows:

- 16 1. For compensatory damages, including lost wages and employment
17 benefits according to proof;
 - 18 2. For mental and emotional distress damages;
 - 19 3. For punitive damages in an amount necessary to punish and make an
20 example of Defendants;
 - 21 4. For an award of interest, including prejudgment interest, at the legal rate;
 - 22 5. For an award of attorney fees;
 - 23 6. For costs of suit incurred herein;
 - 24 7. For applicable civil penalties, pursuant to applicable statutes;
 - 25 8. For such other and further relief as the court may deem just and proper.
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