

1 Keith A. Fink, Bar No. 146841
2 Sarah E. Hernandez, Bar No. 206305
3 Jennifer H. Yeung, Bar No. 280819
4 FINK & STEINBERG
5 Attorneys at Law
6 11500 Olympic Boulevard, Suite 316
7 Los Angeles, California 90064
8 Telephone: (310) 268-0780
9 Facsimile: (310) 268-0790

10 Attorneys for Plaintiff
11 DAVID NISENBAUM

A6037
9002)
DEPT. 45
MOU
RELANA

FILED
Superior Court of California
County Of Los Angeles

APR 20 2015

Sherril K. Young, Executive Officer/Clerk
By: [Signature] Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES - CENTRAL DISTRICT

10 DAVID NISENBAUM, an individual,

11 Plaintiff,

12 v.

13 AMERICAN APPAREL, INC., a Delaware
14 corporation; AMERICAN APPAREL
15 RETAIL, INC., a California corporation;
16 AMERICAN APPAREL (USA), LLC, a
17 California limited liability company;
18 AMERICAN APPAREL
19 MANUFACTURING, INC., a California
20 corporation; AMERICAN APPAREL
21 GROUP, a Delaware corporation;
22 AMERICAN APPAREL CORPORATION,
23 a Delaware corporation; and DOES 1 to 100,
24 inclusive,

25 Defendants.

Case No.

BC 5 7 9 3 4 2

COMPLAINT FOR DAMAGES FOR:

1. VIOLATION OF GOVERNMENT CODE § 12900, et seq. [Discrimination Based On Religion]
2. VIOLATION OF GOVERNMENT CODE § 12940(k) [Failure to Prevent Discrimination]
3. VIOLATION OF GOVERNMENT CODE § 12940(h) [Retaliation]
4. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
5. VIOLATION OF LABOR CODE § 1102.5
6. VIOLATION OF LABOR CODE § 1198.5
7. INTENTIONAL INFLICTION OF EMOTIONAL DIRESS
8. VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, et seq.

[JURY TRIAL DEMANDED]

26 Plaintiff DAVID NISENBAUM hereby alleges as follows:

VENUE AND PARTIES

27 1. Plaintiff DAVID NISENBAUM ("PLAINTIFF" and/or "MR. NISENBAUM") and at
28 all times relevant hereto was, a resident of the County of Los Angeles, State of California.

///

CIT/CASE: BC579342
 LER/DEF#: _____
 RECEIPT #: CCH520872145
 DATE PAID: 04/20/15 04:02 PM
 PAYMENT: \$435.00
 RECEIVED:
 CHECK: \$435.00
 CASH: \$0.00
 CHANGE: \$0.00
 CARD: \$0.00

1 2. PLAINTIFF is informed and believes, and thereon alleges that Defendant AMERICAN
2 APPAREL, INC. ("AMERICAN APPAREL" and/or "DEFENDANTS") is, and at all times relevant
3 hereto was, a Delaware corporation doing substantial business in the County of Los Angeles, State of
4 California.

5 3. PLAINTIFF is informed and believes, and thereon alleges that Defendant AMERICAN
6 APPAREL RETAIL, INC. ("AMERICAN APPAREL" and/or "DEFENDANTS") is, and at all times
7 relevant hereto was, a California corporation, doing substantial business in the County of Los Angeles,
8 State of California.

9 4. PLAINTIFF is informed and believes, and thereon alleges that Defendant AMERICAN
10 APPAREL (USA), LLC ("AMERICAN APPAREL" and/or "DEFENDANTS") is, and at all times
11 relevant hereto was, a California limited liability company, doing substantial business in the County of
12 Los Angeles, State of California.

13 5. PLAINTIFF is informed and believes, and thereon alleges that Defendant AMERICAN
14 APPAREL MANUFACTURING, INC. ("AMERICAN APPAREL" and/or "DEFENDANTS") is, and
15 at all times relevant hereto was, a California corporation, doing substantial business in the County of
16 Los Angeles, State of California.

17 6. PLAINTIFF is informed and believes, and thereon alleges that Defendant AMERICAN
18 APPAREL GROUP ("AMERICAN APPAREL" and/or "DEFENDANTS") is, and at all times relevant
19 hereto was, a Delaware corporation, doing substantial business in the County of Los Angeles, State of
20 California.

21 7. PLAINTIFF is informed and believes, and thereon alleges that Defendant AMERICAN
22 APPAREL CORPORATION ("AMERICAN APPAREL" and/or "DEFENDANTS") is, and at all times
23 relevant hereto was, a Delaware corporation, doing substantial business in the County of Los Angeles,
24 State of California.

25 8. PLAINTIFF is informed and believes, and thereon alleges that AMERICAN APPAREL,
26 INC., AMERICAN APPAREL RETAIL, INC., AMERICAN APPAREL (USA), LLC, AMERICAN
27 APPAREL MANUFACTURING, INC., AMERICAN APPAREL GROUP, and AMERICAN
28 APPAREL CORPORATION were joint employers of PLAINTIFF. AMERICAN APPAREL, INC.,

1 AMERICAN APPAREL RETAIL, INC., AMERICAN APPAREL (USA), LLC, AMERICAN
2 APPAREL MANUFACTURING, INC., AMERICAN APPAREL GROUP, and AMERICAN
3 APPAREL CORPORATION hired employees jointly, including PLAINTIFF, controlled PLAINTIFF'S
4 and other employees work assignments, and paid PLAINTIFF'S and other employees' wages.
5 Therefore, these entities were at all times joint employers of PLAINTIFF.

6 9. PLAINTIFF is unaware of the true names and capacities, whether individual, corporate,
7 associated or otherwise, of Defendants DOES 1 through 50 ("DOES" and/or "DEFENDANT DOE")
8 inclusive, and therefore sues said Does by such fictitious names. PLAINTIFF will seek leave of Court
9 to amend this Complaint to show the true names and capacities of such DOES when the same has been
10 ascertained. PLAINTIFF is informed, believes, and thereon alleges that each of the fictitiously named
11 Defendants are responsible to PLAINTIFF for the injuries suffered and alleged herein, or are subject to
12 the jurisdiction of the Court as a necessary party for the relief herein requested.

13 10. PLAINTIFF is informed and believes and thereon alleges that AMERICAN APPAREL,
14 INC., AMERICAN APPAREL RETAIL, INC., AMERICAN APPAREL (USA), LLC, AMERICAN
15 APPAREL MANUFACTURING, INC., AMERICAN APPAREL GROUP, and AMERICAN
16 APPAREL CORPORATION are alter-egos of one another because there is such a unity of interest and
17 ownership that their separate corporate personalities are merged so that one corporation is a mere adjunct
18 of another and the companies form a single enterprise. PLAINTIFF further alleges that AMERICAN
19 APPAREL, INC., AMERICAN APPAREL RETAIL, INC., AMERICAN APPAREL (USA), LLC,
20 AMERICAN APPAREL MANUFACTURING, INC., AMERICAN APPAREL GROUP, and
21 AMERICAN APPAREL CORPORATION commingled their funds and other assets, failed to segregate
22 the funds of the separate entities, allowed the diversion of corporate funds or assets to non-corporate
23 uses, failed to maintain corporate minutes, failed to maintain adequate corporate records, failed to adhere
24 to corporate formalities, failed to conduct transactions by and between one another at arm's length, used
25 the same offices and/or business locations, employed the same or largely the same employees, and/or
26 failed to adequately capitalize some or all of the corporations.

27 11. PLAINTIFF is informed, believes, and thereon alleges that each DEFENDANT and DOE
28 is now, and was at all times mentioned herein, the agent, principal, partner, officer, joint venturer,

1 employee or alter ego of the remaining DEFENDANTS and DOES, and that all of the acts and conduct
2 alleged herein were performed within the course and scope and in the furtherance of such agency,
3 partnership, joint venture, employment or alter ego relationship.

4 12. Venue is properly laid in this Court in that the claims and injuries occurred in the County
5 of Los Angeles.

6 GENERAL ALLEGATIONS

7 13. MR. NISENBAUM re-alleges and incorporates herein by reference, as though set forth
8 in full, each and every allegation contained in Paragraphs 1 through 12, inclusive.

9 14. On or about November 1, 2012, MR. NISENBAUM was hired by AMERICAN
10 APPAREL as Director of Manufacturing Accounting Analysis and Audit. Having over 20 years of
11 experience working as a CFO and COO and having extensive apparel manufacturing and retail apparel
12 experience specifically in the finance department, MR. NISENBAUM was hired to help upgrade the
13 accounting and finance department. In the first years of his service, there was an awareness within
14 AMERICAN APPAREL that CFO John Luttrell ("Mr. Luttrell") lacked the fortitude, desire, and
15 stamina to bring financial systems to a place where they would be considered at "best practices".
16 Whereas there was a frequent call to remove Mr. Luttrell by CEO Dov Charney ("Mr. Charney"), Mr.
17 Luttrell had support from AMERICAN APPAREL'S Board of Directors ("Board").

18 15. As a result upon his hiring, MR. NISENBAUM became intensely involved in a mission
19 to clean up and tighten up financial controls at AMERICAN APPAREL in an effort to improve the
20 company's profitability and accounting controls for the benefit of all shareholders. MR. NISENBAUM
21 worked tirelessly to bring AMERICAN APPAREL to a higher level from both a cost-saving and process
22 point of view.

23 16. Under the supervision of CEO Mr. Charney, MR. NISENBAUM made major
24 advancements in reducing costs in the following areas, including but not limited to:

- 25 • Freight cost mitigation by controlling freight classifications with vendors, and controlling
26 freight density issues to ensure minimization of freight costs;
- 27 • Negotiation of new or existing contracts with vendors for more favorable terms
28 specifically in the area of freight, packaging, store lighting, fuel and truck leasing;

- 1 • Complete review and contract negotiation of telephone, electricity, gas, garbage
- 2 collection billings at stores and manufacturing facilities;
- 3 • Customer freight billing optimization to avoid the under billing of freight charges
- 4 invoiced to customers;
- 5 • Identification of expense category mis-classifications allowing for better tracking of
- 6 expenses; and
- 7 • Negotiation and implementation of Metro BTAP bus pass program to significantly
- 8 reduce transportation costs for employees and mitigate company-wide parking lot crisis.

9 17. As MR. NISENBAUM continued to produce results that were saving AMERICAN
10 APPAREL millions of dollars on an annual basis, tension from CFO Mr. Luttrell to MR. NISENBAUM
11 escalated. This was a result of MR. NISENBAUM continually discovering and unearthing embarrassing
12 deficiencies that put Mr. Luttrell in a bad light. For example, MR. NISENBAUM discovered the
13 following:

- 14 • In or around April 2013, Mr. Luttrell mismanaged the execution of a bond financing and
15 therefore endangered the company's financial position. Whereas Mr. Luttrell had
16 promised the bond financing would be \$220 million, the bond ended up funding at under
17 \$200 million. Additionally, interest rates and other economic terms of the bond were
18 inferior to what Mr. Luttrell had promised. MR. NISENBAUM discovered that Mr.
19 Luttrell failed to disclose the specific terms and conditions of the bond to both CEO Mr.
20 Charney and the Board. Mr. Charney and the Board were not made aware of the bond
21 until after the terms of the bond were entered into. Mr. Luttrell also concealed from CEO
22 Mr. Charney, the Board, and AMERICAN APPAREL'S general counsel that he had
23 secretly agreed to pay one particular investor a \$1.5 million promotion fee after the bond
24 had been funded. Mr. Luttrell eventually admitted that during the course of the bond
25 financing, he did not uphold his duty of loyalty to AMERICAN APPAREL and was
26 instead more loyal to the investment banker arranging the bond, calling his actions the
27 "biggest mistake of his career"; and

28 ///

- 1 • From early 2012 to the end of 2013, Mr. Luttrell embarked on a distribution center project
2 against the recommendation of CEO Mr. Charney. Mr. Charney opposed this project
3 from the outset stating to Mr. Luttrell that the timing to invest in a distribution center
4 during a time when the company's capital structure was so fragile was a poor decision
5 and that the distribution center should have been built in the downtown Los Angeles area
6 rather than in La Mirada, California. MR. NISENBAUM predicted and warned the
7 project could lose substantial millions of dollars beyond those budgeted. MR.
8 NISENBAUM'S warnings and advice were thwarted by Mr. Luttrell. Mr. Luttrell single-
9 handedly managed this distribution center project and refused to listen to the warnings
10 and advice from MR. NISENBAUM or Mr. Charney. MR. NISENBAUM shortly later
11 discovered that the project resulted in \$30-40 million of direct and indirect losses
12 combined, drained cash resources, and exceeded budgeted transition costs. This
13 distribution center project grew out of hand so much so that the Board became concerned
14 the company could become insolvent and would need to file bankruptcy if the distribution
15 center continued to be mismanaged by Mr. Luttrell. As a result, MR. NISENBAUM and
16 Mr. Charney were forced to intervene and expended countless hours over a period of one
17 hundred days to stabilize the distribution center and turn it around.

18 18. As a result of the deficiencies caused by Mr. Luttrell's mismanagement of the bond and
19 distribution center, beginning in or around February 2014, MR. NISENBAUM and CEO Mr. Charney's
20 cost and internal control efforts intensified. MR. NISENBAUM began reviewing and auditing all
21 company-wide disbursements to find additional cost saving opportunities and to implement cost saving
22 strategies. During the audits, MR. NISENBAUM discovered the following:

- 23 • The company's new billing system was failing to capture freight charges, costing the
24 company hundreds of thousands of dollars;
- 25 • Three embezzlement rings involving several hundred thousand dollars of vendor
26 kickbacks; and
- 27 • At least one consultant was receiving payments for no services rendered.

28 ///

1 MR. NISENBAUM was able to:

- 2 • Renegotiate a contract with the conference call provider, saving the company over two
3 hundred thousand dollars per year;
- 4 • LED lighting initiative utilizing a contracted vendor to capture significant available
5 governmental subsidies and rebate incentives reducing the cost from approximately forty
6 dollars (\$40) per bulb to approximately eight dollars (\$8) per bulb on thousands of bulbs
7 still needing retrofitting;
- 8 • Lower the cost of garbage collection services at the store and factory level saving the
9 company hundreds of thousands of dollars per year;
- 10 • Completely re-negotiate and realign the company cell phone and landline telephone bills,
11 saving the company hundreds of thousands of dollars per year;
- 12 • Examine currency exchange programs that could have saved the company millions of
13 dollars as the US dollar was repositioned in the latter half of 2014;
- 14 • Realign distribution strategy and vendors used, resulting in faster deliveries at lower
15 costs, saving the company several million dollars per year;
- 16 • Partner with the textile procurement departments, to help improve the company's ability
17 to buy yarn at the lowest prevailing price, which if continuously implemented, could save
18 the company millions of dollars; and
- 19 • Facilitate the hiring of new management at the textile dying plants, allowing for the
20 reduction of fabric processing, dye and chemical costs and energy use.

21 19. Throughout his tenure with DEFENDANTS, MR. NISENBAUM'S job performance was
22 stellar, such that MR. NISENBAUM saved AMERICAN APPAREL *millions of dollars* – to the benefit
23 of AMERICAN APPAREL and all its shareholders. MR. NISENBAUM'S skillful and exhaustive fiscal
24 management was unprecedented at AMERICAN APPAREL.

25 20. MR. NISENBAUM is of Jewish faith, and thus falls within the protected category of
26 Government Code § 12940(a).

27 21. On or about June 18, 2014, MR. NISENBAUM was informed by a co-worker that Mr.
28 Luttrell had been making derogatory statements about MR. NISENBAUM'S religious affiliation. It was

1 no secret that MR. NISENBAUM was Jewish because he wore religious clothing and a kippah.

2 22. Throughout MR. NISENBAUM'S employment, Mr. Luttrell continuously directed
3 aggression and hostility toward him, but he had not fully understood why. Until he was informed of the
4 derogatory comments, MR. NISENBAUM only had an intuitive feeling that Mr. Luttrell's visceral
5 hatred of him was motivated by MR. NISENBAUM'S religious affiliation.

6 23. For example, in or around January 2014, Mr. Luttrell stormed into MR. NISENBAUM'S
7 office with a false accusation against MR. NISENBAUM. In this exchange, Mr. Luttrell exclaimed, "All
8 you do is lie. You are a dirty liar and I am going to get you!" Mr. Luttrell even verbally ordered MR.
9 NISENBAUM to stay away from him. Mr. Luttrell would also sneer at MR. NISENBAUM every time
10 he walked in front of him. On multiple occasions, when walking behind MR. NISENBAUM, Mr.
11 Luttrell would make mocking gestures, pretending that MR. NISENBAUM smelled bad.

12 24. In the evening on or about June 18, 2014, MR. NISENBAUM complained to Jacqueline
13 Madrigal ("Ms. Madrigal"), the Director of Human Resources and Benefits. In his correspondence, MR.
14 NISENBAUM complained to AMERICAN APPAREL about the discrimination by Mr. Luttrell and that
15 he feared he was being targeted because of his religion. Nothing happened for the next four days.

16 25. On or about June 23, 2014, MR. NISENBAUM lodged through AMERICAN
17 APPAREL'S system a complaint to the Board regarding accounting and disclosure issues in violation
18 of Sarbanes Oxley. MR. NISENBAUM indicated that it was critical that he speak with members of the
19 Board in connection with certain accounting and finance issues that the company was faced with as a
20 result of the removal of CEO Mr. Charney and elevation of Mr. Luttrell as interim CEO. MR.
21 NISENBAUM had planned to explain to the Board that Mr. Luttrell was not competent as a CFO, was
22 putting the company at risk as interim CEO, and could not simultaneously act in both capacities.
23 Specifically, MR. NISENBAUM complained that in the absence of checks and balances that were
24 implemented by CEO Mr. Charney, there was no accountability for Mr. Luttrell's actions. MR.
25 NISENBAUM complained that this created numerous accounting inconsistencies, and resulted in a rapid
26 deterioration of internal controls as well as untimely reporting of significant events constituting fraud
27 on the investing public. MR. NISENBAUM also complained that Mr. Luttrell failed to timely and
28 accurately disclose his mistakes to shareholders, including but not limited to: misleading shareholders

1 regarding the distribution center project in La Mirada, California, telling shareholders that the project
2 was on track from both a timing and financial point of view but in actuality was exceeding its budget by
3 \$10 million and resulting in losses in excess of \$30 million. MR. NISENBAUM also complained that
4 Mr. Luttrell failed to disclose a \$4.4 million customs overpayment problem in Germany that resulted
5 from his poor management and that Mr. Luttrell issued inaccurate quarterly reports to shareholders
6 regarding his mistake. The \$4.4 million customs mistake would not have occurred if the proper
7 paperwork had been filed.

8 26. The next day on or about June 24, 2014, MR. NISENBAUM was called into a meeting
9 with two attorneys for AMERICAN APPAREL to discuss his discrimination complaint to Ms. Madrigal.
10 The attorneys "claimed" that they were investigating his complaint about the religious discrimination.
11 The attorneys justified Mr. Luttrell's illegal behavior and told MR. NISENBAUM that he was mistaken
12 about Mr. Luttrell's motives. The attorneys told MR. NISENBAUM that his complaint for
13 discrimination on the basis of his religion was baseless. At the conclusion of the meeting, MR.
14 NISENBAUM was given a termination letter and was told it was his last day at AMERICAN APPAREL.
15 A true and correct copy of the termination letter is attached hereto as **Exhibit A**.

16 27. MR. NISENBAUM was terminated in retaliation for complaints of discrimination due to
17 his religious beliefs and/or for his complaints of accounting and cost control issues and his efforts to
18 bring the company to a position of improved compliance with Sarbanes Oxley and improved profitability
19 which shed light on Mr. Luttrell's deficiencies.

20 28. MR. NISENBAUM is also informed and believes that CEO Mr. Charney was similarly
21 fired because Mr. Luttrell wanted to sell AMERICAN APPAREL such that he could retire and cover up
22 his violations of Sarbanes Oxley and fraud in running a publicly traded company. Following Mr.
23 Luttrell's mismanagement of the distribution center project in La Mirada, California, Mr. Charney called
24 for Mr. Luttrell's removal, which the Board ignored. However, as early as February 14, 2014, Mr.
25 Luttrell had schemed to remove Mr. Charney from his position as CEO of AMERICAN APPAREL. On
26 February 14, 2014, Mr. Luttrell wrote in a memorandum prepared for a secret presentation to the audit
27 committee lead that the solution for AMERICAN APPAREL'S financial struggles was to "[r]emove
28 CEO and replace with an interim replacement. Put the Company up for sale. Engage Peter Solomon."

1 Mr. Luttrell then proceeded to dilute Mr. Charney's ownership in the company rather than engage in
2 more debt and equity financing to resolve the deficiencies he created, and eventually completed his
3 scheme by firing Mr. Charney on June 18, 2014.

4 29. MR. NISENBAUM timely filed administrative complaints with the Department of Fair
5 Employment and Housing ("DFEH") against the named DEFENDANTS and received corresponding
6 right to sue letters. Therefore, MR. NISENBAUM has exhausted his administrative remedies.

7 30. On or about February 19, 2015, MR. NISENBAUM requested his personnel file. Several
8 weeks later, AMERICAN APPAREL produced MR. NISENBAUM'S personnel file, but it was
9 incomplete. Tellingly all documents relative to MR. NISENBAUM'S June 18, 2014, religious
10 discrimination complaint and June 23, 2014, Sarbanes Oxley complaint were removed from his
11 personnel file. Plaintiff is informed and believes that AMERICAN APPAREL now has a practice of
12 sanitizing illegally fired employees by stuffing personnel files with backdated memorandums that the
13 employees were never shown while working at AMERICAN APPAREL and removing select documents
14 from files that demonstrate illegal practices by the company.

15 **FIRST CAUSE OF ACTION**

16 **VIOLATION OF GOVERNMENT CODE § 12900, et seq.**

17 **[Discrimination Based On Religion]**

18 **(Against All DEFENDANTS and DOES 1 to 100)**

19 31. MR. NISENBAUM re-alleges and incorporates herein by reference, as though set forth
20 in full, each and every allegation contained in Paragraphs 1 through 30, inclusive.

21 32. This cause of action is brought pursuant to Government Code § 12900, et seq., which
22 prohibits discrimination in employment on the basis of religion.

23 33. MR. NISENBAUM is of Jewish faith, and thus falls within the protected category of
24 Government Code § 12940(a).

25 34. The decision to terminate MR. NISENBAUM because he is Jewish, and thereby deprive
26 him of substantial employment benefits guaranteed by state law, was motivated by the forbidden criteria
27 of religious discrimination.

28 ///

1 35. There was no professional or business justification for the termination of MR.
2 NISENBAUM and the stated reasons were pretextual for the true reasons and motivations, to wit:
3 religious discrimination.

4 36. MR. NISENBAUM is informed and believes that his position and job duties and
5 responsibilities were offered to and bestowed upon various less qualified non-Jewish individuals
6 subsequent to his employment with DEFENDANTS.

7 37. At all material points described herein, MR. NISENBAUM was treated differently than
8 similarly situated employees and/or otherwise was subjected to unlawful discriminatory and/or
9 retaliatory employment practices as prohibited by the laws of California. DEFENDANTS, in engaging
10 in the aforementioned conduct, intended to discriminate against MR. NISENBAUM on the basis of his
11 religion.

12 38. The conduct, statements, and acts described herein were an ongoing part of a continuing
13 scheme and course of conduct. DEFENDANTS knew the substance of the above-described facts and
14 circumstances and ratified the wrongs and injuries mentioned herein when it was their ability to prevent,
15 remedy and/or correct these wrongs.

16 39. DEFENDANTS have continued to ratify and have refused to remedy or correct the
17 aforementioned conduct during and since MR. NISENBAUM'S employment, notwithstanding the fact
18 that they knew or reasonably should have known of the conduct and its unlawfulness.

19 40. The California legislature has established a policy against employment discrimination
20 based on religion in its adoption of Government Code § 12900, et seq., and in violation of the announced
21 policy of this State against such practices.

22 41. As a direct and proximate result of the aforementioned violations of statute and public
23 policy, MR. NISENBAUM has suffered and will continue to suffer:

- 24 a. A substantial reduction in past and current income, and future income potential
25 in sums as may be shown according to proof;
- 26 b. A substantial injury and damage to his occupation and professional reputation in
27 a sum as may be shown according to proof;
- 28 c. A substantial reduction in loss of work-related benefits; and

1 d. Extreme humiliation, embarrassment, depression, sleeplessness, emotional pain,
2 suffering, mental anguish, emotional distress which culminated in physical injury and bodily injury,
3 inconvenience, loss of enjoyment of life, and other losses from the date of said acts all to MR.
4 NISENBAUM'S damage in a sum as may be shown according to proof.

5 42. The amount of MR. NISENBAUM'S damages is not presently known but he will seek
6 leave of Court to amend this Complaint when the exact amount of such damages has been ascertained
7 or will prove the same at trial.

8 43. The above-recited actions of DEFENDANTS were done with malice, fraud, or
9 oppression, and reckless disregard of MR. NISENBAUM'S rights. DEFENDANTS engaged in
10 offensive conduct despite their awareness of the effect on MR. NISENBAUM. As a result of these and
11 other actions, MR. NISENBAUM is entitled to an award of punitive damages.

12 44. In addition, as a proximate result of the wrongful conduct of DEFENDANTS, MR.
13 NISENBAUM is entitled to attorneys' fees and prejudgment interest.

14 45. Pursuant to California Government Code § 12965(b), MR. NISENBAUM requests the
15 award of attorneys' fees against DEFENDANTS under this cause of action.

16 **SECOND CAUSE OF ACTION**

17 **VIOLATION OF GOVERNMENT CODE § 12940(k)**

18 **[Failure to Prevent Discrimination]**

19 **(Against All DEFENDANTS and DOES 1 to 100)**

20 46. MR. NISENBAUM re-alleges and incorporates herein by reference, as though set forth
21 in full, each and every allegation contained in Paragraphs 1 through 45, inclusive.

22 47. At all times herein mentioned, Government Code § 12940(k) was in full force and effect
23 and binding on DEFENDANTS. Government Code § 12940(k) requires DEFENDANTS to take all
24 reasonable steps necessary to prevent discrimination. As alleged above, DEFENDANTS violated this
25 statutory provision.

26 48. DEFENDANTS knew or should have known of the unlawful conduct undertaken by it
27 against MR. NISENBAUM, and failed to take reasonable steps to remedy such conduct or provide MR.
28 NISENBAUM with a workplace free from discrimination and retaliation.

1 49. As a direct and proximate result of the aforementioned violations of statute and public
2 policy, MR. NISENBAUM has suffered and will continue to suffer:

3 a. A substantial reduction in future income potential in sums as may be shown
4 according to proof;

5 b. A substantial injury and damage to his occupation and professional reputation in
6 a sum as may be shown according to proof;

7 c. A substantial reduction in loss of work-related benefits; and

8 d. Extreme humiliation, embarrassment, depression, sleeplessness, emotional pain,
9 emotional distress which culminated in physical injury and bodily injury, suffering, mental anguish,
10 inconvenience, loss of enjoyment of life, and other losses from the date of said acts all to MR.
11 NISENBAUM'S damage in a sum as may be shown according to proof.

12 50. The amount of MR. NISENBAUM'S damages is not presently known but he will seek
13 leave of Court to amend this Complaint when the exact amount of such damages has been ascertained
14 or will prove the same at trial.

15 51. The above-recited actions of DEFENDANTS were done with malice, fraud, or
16 oppression, and reckless disregard of MR. NISENBAUM'S rights. DEFENDANTS engaged in their
17 offensive conduct despite their awareness of the effect on MR. NISENBAUM. As a result of these and
18 other actions, MR. NISENBAUM is entitled to an award of punitive damages.

19 52. In addition, as a proximate result of the wrongful conduct of DEFENDANTS, MR.
20 NISENBAUM is entitled to attorneys' fees and prejudgment interest.

21 53. Pursuant to California Government Code § 12965(b), MR. NISENBAUM requests the
22 award of attorneys' fees against DEFENDANTS under this cause of action.

23 **THIRD CAUSE OF ACTION**
24 **VIOLATION OF GOVERNMENT CODE § 12940(h)**
25 **[Retaliation]**
26 **(Against All DEFENDANTS and DOES 1 to 100)**

27 54. MR. NISENBAUM re-alleges and incorporates herein by reference, as though set forth
28 in full, each and every allegation contained in Paragraphs 1 through 53, inclusive.

1 55. There was no professional or business justification for terminating MR. NISENBAUM'S
2 employment with AMERICAN APPAREL. Any stated reasons for DEFENDANTS' actions were pre-
3 textual to cover up the true reasons and illegal motivations, to wit, retaliation for MR. NISENBAUM'S
4 opposition to and complaints of DEFENDANTS' discrimination on the basis of religion.

5 56. DEFENDANTS' continued conduct towards MR. NISENBAUM and, ultimately, their
6 termination of MR. NISENBAUM, was in violation of public policy embodied in Government Code §
7 12940(h), which prohibits an employer from discriminating against an employee because that employee
8 opposes any act prohibited by FEHA.

9 57. The actions of the DEFENDANTS and each of them, in terminating MR.
10 NISENBAUM'S employment by retaliating against him constitutes unlawful discrimination in violation
11 of settled law including but not limited to California Government Code § 12900, et seq., the California
12 Constitution, Article I, § 8, and Civil Code § 1770, et seq.

13 58. The conduct, statements, and acts described herein were an ongoing part of a continuing
14 scheme and course of conduct. DEFENDANTS knew the substance of the above-described facts and
15 circumstances and ratified the wrongs and injuries mentioned herein when it was their ability to prevent,
16 remedy and/or correct these wrongs. DEFENDANTS further intentionally and willfully failed to ensure
17 that their employees were informed of the law relevant to their duties or to ensure that employees would
18 not be required to participate in illegal conduct.

19 59. DEFENDANTS have continued to ratify and have refused to remedy or correct the
20 aforementioned conduct during and since MR. NISENBAUM'S employment, notwithstanding the fact
21 that company officials knew or reasonably should have known of the conduct and its unlawfulness.

22 60. As a direct and proximate result of the aforementioned violations of statute and public
23 policy, MR. NISENBAUM has suffered and will continue to suffer:

24 a. A substantial reduction in future income potential in sums as may be shown
25 according to proof;

26 b. A substantial injury and damage to his occupation and professional reputation in
27 a sum as may be shown according to proof;

28 c. A substantial reduction in loss of work-related benefits; and

1 d. Extreme humiliation, embarrassment, depression, sleeplessness, emotional pain,
2 emotional distress which culminated in physical injury and bodily injury, suffering, mental anguish,
3 inconvenience, loss of enjoyment of life, and other losses from the date of said acts all to MR.
4 NISENBAUM'S damage in a sum as may be shown according to proof.

5 61. The amount of MR. NISENBAUM'S damages is not presently known but he will seek
6 leave of Court to amend this Complaint when the exact amount of such damages has been ascertained
7 or will prove the same at trial.

8 62. The above-recited actions of DEFENDANTS were done with malice, fraud, or
9 oppression, and reckless disregard of MR. NISENBAUM'S rights. DEFENDANTS engaged in their
10 offensive conduct despite their awareness of the effect on MR. NISENBAUM. As a result of these and
11 other actions, MR. NISENBAUM is entitled to an award of punitive damages.

12 63. In addition, as a proximate result of the wrongful conduct of DEFENDANTS, MR.
13 NISENBAUM is entitled to attorneys' fees and prejudgment interest.

14 64. Pursuant to California Government Code § 12965(b), MR. NISENBAUM requests the
15 award of attorneys' fees against DEFENDANTS under this cause of action.

16 **FOURTH CAUSE OF ACTION**

17 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

18 **(Against All DEFENDANTS and DOES 1 to 100)**

19 65. MR. NISENBAUM re-alleges and incorporates herein by reference, as though set forth
20 in full, each and every allegation contained in Paragraphs 1 through 64, inclusive.

21 66. It is the well-established policy of the State of California by and through its statutory and
22 common laws, including but not limited to: the California Constitution, Article I, § 8, Government Code
23 § 12900, et seq., Business and Professions Code § 17200, et seq., and Civil Code §§ 1770, et seq., 15
24 U.S.C.A. § 78m (issuer of a security to knowingly circumvent or knowingly fail to implement a system
25 of internal accounting controls or knowingly falsify any book, record, or account...); 17 C.F.R. 110.4-
26 01 (SEC financials must follow the Generally Accepted Accounting Principles); and Sarbanes-Oxley
27 Act of 2002, as codified in 18 U.S.C.A. § 1514A; Civil Code §§ 1572, 1709, 1710, and 1572 (fraud in
28 commercial activities), that it is intolerable and unlawful for an employer to bar or to discharge a person

1 from employment or to discriminate against the person in compensation or in terms, conditions, or
2 privileges of employment in retaliation for opposing an unlawful and/or discriminatory practice or
3 participating in a protected activity. California also has a fundamental, substantial, and well-established
4 public policy against retaliating against an employee for opposing and refusing to participate in
5 corporate fraud, internally raising concerns related to unlawful activities, and/or by refusing to
6 participate in activities that would result in a violation or noncompliance of state law. (See, e.g., Labor
7 Code § 1102.5).

8 67. In contravention of these policies, MR. NISENBAUM is informed, believes and thereon
9 alleges that DEFENDANTS discriminated, retaliated against him, and terminated him because of his
10 religion and/or his complaints of discrimination based on religion. MR. NISENBAUM is further
11 informed, believes and thereon alleges that DEFENDANTS retaliated against him, and terminated him
12 because of his complaints of DEFENDANTS' Sarbanes-Oxley violations and actions taken by
13 DEFENDANTS to defraud the investing public and because of his refusal to follow DEFENDANTS'
14 practice of defrauding those investors.

15 68. DEFENDANTS' actions described herein above were in violation of established public
16 policy against termination for participating in a protected activity and/or discrimination based on
17 religion and/or for complaints of fraud.

18 69. The conduct, statements and acts described herein were an ongoing part of a continuing
19 scheme and course of conduct. DEFENDANTS were aware of the substance of the above-described
20 facts and circumstances and ratified the wrongs and injuries mentioned herein when it was their ability
21 to prevent, remedy and/or correct these wrongs.

22 70. DEFENDANTS have continued to ratify and have refused to remedy or correct the
23 aforementioned conduct during and since MR. NISENBAUM'S employment, notwithstanding the fact
24 that they knew or reasonably should have known of the conduct and its unlawfulness.

25 71. As a direct and proximate result of the aforementioned violations of statute and public
26 policy, MR. NISENBAUM has suffered and will continue to suffer:

27 a. A substantial reduction in past and current income, and future income potential
28 in sums as may be shown according to proof;

1 78. The above-recited actions of DEFENDANTS were done with malice, fraud, or
2 oppression, and reckless disregard of MR. NISENBAUM'S rights. DEFENDANTS engaged in their
3 offensive conduct despite their awareness of the effect on MR. NISENBAUM. As a result of these and
4 other actions, MR. NISENBAUM is entitled to an award of punitive damages.

5 **SIXTH CAUSE OF ACTION**

6 **VIOLATION OF LABOR CODE § 1198.5**

7 **(AGAINST ALL DEFENDANTS AND DOES 1 TO 100)**

8 79. MR. NISENBAUM re-alleges and incorporates herein by reference, as though set forth
9 in full, each and every allegation contained in Paragraphs 1 through 78, inclusive.

10 80. Pursuant to Labor Code § 1198.5, an employer who receives an employee's request to
11 inspect or copy records of that employee's file pursuant to subdivision (b) pertaining to a current or
12 former employee shall comply with the request as soon as practicable, but no later than 21 calendar days
13 from the date of the request. Additionally, pursuant to Labor Code § 1198.5, former employees are
14 allowed access to their personnel files and records that relate to their performance or to any grievance
15 concerning them.

16 81. DEFENDANTS failed to comply with MR. NISENBAUM'S written request for his
17 employment file, in violation of Labor Code § 1198.5. Tellingly all documents relative to MR.
18 NISENBAUM'S June 18, 2014, religious discrimination complaint and June 23, 2014, Sarbanes Oxley
19 complaint were removed from his personnel file in contravention of Labor Code § 1198.5. Plaintiff is
20 informed and believes that AMERICAN APPAREL now has a practice of sanitizing illegally fired
21 employees by stuffing personnel files with backdated memorandums that the employees were never
22 shown while working at AMERICAN APPAREL and removing select documents from files that
23 demonstrate illegal practices by the company.

24 82. The amount of MR. NISENBAUM'S damages is not presently known, but he will seek
25 leave of Court to amend this Complaint when the exact amount of such damages has been ascertained
26 or will prove the same at trial.

27 ///

28 ///

1 **EIGHTH CAUSE OF ACTION**

2 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, et seq.**

3 **(Against All DEFENDANTS and DOES 1 to 100)**

4 88. MR. NISENBAUM re-alleges and incorporates herein by reference, as though set forth
5 in full, each and every allegation contained in Paragraphs 1 through 87, inclusive.

6 89. California Business and Professions Code §17200, et seq. provides that unfair
7 competition shall mean and include “all unlawful, unfair or fraudulent business acts or practices and
8 unfair, deceptive, untrue or misleading advertising.”

9 90. MR. NISENBAUM is informed and believes and thereon alleges that DEFENDANTS
10 have engaged in unfair competition in violation of California Business and Professions Code §17200, et
11 seq. by maintaining a workplace rife with discrimination and retaliation on the basis of religion.

12 91. Such business practices are also a violation of California public policy, including but not
13 limited to the following: Government Code §12900, et seq., California Constitution, Article I, §8, and
14 Civil Code 1770, et seq. The continuation of such unfair business practices allows DEFENDANTS to
15 maintain an unfair advantage over other companies which comply with Government Code §12900, et
16 seq. and the public policy of the state of California.

17 92. DEFENDANTS fall within the definition of “person” as set forth at Business and
18 Professions Code §§17203 and 17506.

19 93. The unlawful, unfair, and fraudulent business practices of DEFENDANTS described
20 above present a continuing threat to members of the public in that DEFENDANTS have or will soon
21 engage in the conduct described above, and members of the public are likely to be deceived when they
22 pursue or gain employment with DEFENDANTS. Pursuant to California Business and Professions Code
23 §17203, MR. NISENBAUM seeks an order from this Court that:

24 a. Provides injunctive and declaratory relief finding that DEFENDANTS have
25 violated the provisions of California Business and Professions Code §17200, et seq.; and

26 b. For an order enjoining DEFENDANTS and their respective successors, agents,
27 servants, officers, directors, employees, and all other persons acting in concert with them, directly or
28 indirectly, from engaging in conduct which violates California Business and Professions Code §17200,

1 et seq.

2 WHEREFORE, MR. NISENBAUM prays for judgment against DEFENDANTS, and each of
3 them, as follows:

- 4 1. For general, special, actual, compensatory, and/or nominal damages, including
5 prejudgment interest, in an amount to be determined at trial;
- 6 2. For lost salary, both front and back pay, bonuses, and any other benefits to which
7 MR. NISENBAUM would have been entitled to and/or afforded but-for
8 DEFENDANTS', and each of their, unlawful conduct, according to proof;
- 9 3. For punitive damages in an amount to be determined at trial sufficient to
10 punish penalize and/or deter DEFENDANTS, and each of them, from
11 further engaging in the conduct described herein, and to deter others from
12 engaging in the same or similar acts;
- 13 4. For appropriate civil and statutory penalties;
- 14 5. For restitution and/or disgorgement of all ill-gotten gains (on the 8th Cause
15 of Action only)
- 16 6. For preliminary and permanent injunction against DEFENDANTS from the acts
17 of unfair competition as described in the 8th Cause of Action;
- 18 7. For reasonable costs and attorneys' fees where appropriate;
- 19 8. For pre- and post-judgment interest on all damages and other relief awarded
20 herein from all entities against whom such relief may be properly awarded; and,
- 21 9. For all such other relief as this Court deems just and appropriate.

22
23 Dated: April 20, 2015

FINK & STEINBERG

24
25 By: 

26 Keith A. Fink
27 Sarah E. Hernandez
28 Jennifer H. Yeung
Attorneys for Plaintiff
DAVID NISENBAUM