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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF SAN DIEGO**

18 VICTORIA MONTROY, an individual,) Case No. 37-2016-00043983-CU-OE-NC
19)
20 Plaintiffs,) **COMPLAINT FOR DAMAGES AND**
21) **INJUNCTIVE RELIEF FOR VIOLATIONS**
22) **OF:**
23 vs.) (1) Wrongful Discharge in Violation of
24) Public Policy;
25 FIRE MOUNTAIN BARBERSHOP, an) (2) Retaliation in Violation of FEHA;
26) (3) Harassment in Violation of FEHA;
27 unknown business entity; RONALD) (4) Failure to Take Steps Reasonably
28 ZURAWSKI, an individual; MIGUEL) Necessary to Prevent Sexual Harassment
1 through 50 inclusive) In Violation of FEHA;
(5) Violation of Labor Code § 6310;
(6) Violation of Labor Code § 1102.5;
(7) Intentional Infliction of Emotional
Distress; and
(8) Unfair Business Practices in Violation of
Cal. Bus. & Prof. Code §§ 17000, *et seq.*
and §§ 17200, *et seq.*

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/15/2016 at 10:24:30 AM
Clerk of the Superior Court
By Veronica Navarro, Deputy Clerk

1 Plaintiff, VICTORIA MONTROY, alleges as follows:

2 **I. NATURE OF THE ACTION**

3 1. This is a wrongful termination civil action.

4 2. By this action, Plaintiff seeks injunctive relief, penalties, damages,
5 restitution, and any other remedies the Court deems just, due to the misconduct
6 committed by the Defendants as alleged in this Complaint.

7 **II. JURISDICTION AND VENUE**

8 3. Pursuant to Article VI, § 10 of the California Constitution, subject matter
9 jurisdiction is proper in the Superior Court of California, County of San Diego, State
10 of California.

11 4. Pursuant to § 395 of the California Code of Civil Procedure, venue is proper
12 in the Superior Court of California for the County of San Diego, State of California,
13 because this is where Plaintiff was employed and is where the wrongful misconduct
14 alleged in this Complaint occurred.

15 **III. THE PARTIES**

16 5. Plaintiff VICTORIA MONTROY (hereinafter "Plaintiff") is an individual,
17 residing in the County of San Diego, California.

18 6. Defendant FIRE MOUNTAIN BARBER SHOP ("FIRE MOUNTAIN") is
19 an unknown business entity unregistered with the California Secretary of State, doing
20 business in the State of California and in the County of San Diego, City of Oceanside,
21 State of California.

22 7. Defendant RONALD ZURAWSKI ("ZURAWSKI") is an individual,
23 believed to be residing in the County of San Diego, State of California.

24 8. Defendants ZURAWSKI and FIRE MOUNTAIN will be collectively
25 referred to as "DEFENDANT EMPLOYERS."

26 9. Defendant MIGUEL MARTINEZ ("MANGER MIGUEL") is an individual,
27 believed to be residing in the County of San Diego, State of California.

28 10. All Defendants are sometimes collectively referred to as "Defendants."

1 11. The true names and capacities, whether individual, corporate, associate, or
2 otherwise of the Defendants named herein as DOES 1 through 50, are unknown to
3 Plaintiff at this time. Plaintiff therefore sues said Defendants by such fictitious names
4 pursuant to § 474 of the California Code of Civil Procedure. Plaintiff will seek leave
5 to amend this Complaint to allege the true names and capacities of DOES 1 through
6 50 when their names are ascertained. Plaintiff is informed and believes, and based
7 thereon alleges, that each of the DOE Defendants is in some manner liable to Plaintiff
8 for the events and actions alleged herein.

9 12. Plaintiff is informed, believes, and based thereon alleges, that at all times
10 relevant, each Defendant was acting as an agent, joint venturer, and/or alter ego for
11 each of the other Defendants, and each were co-conspirators with respect to the acts
12 and the wrongful conduct alleged herein so that each is responsible for the acts of the
13 other in connection with the conspiracy in such wrongful acts with the other
14 Defendants.

15 13. Plaintiff is informed, believes, and based thereon alleges, that each
16 Defendant was acting partly within and partly without the scope and course of their
17 employment, and was acting with the knowledge, permission, consent, and
18 ratification of every other Defendant.

19 14. Plaintiff is informed and believes, and therefore alleges, that each of the
20 Defendants was an agent, managing general partner, managing member, owner, co-
21 owner, partner, employee, and/or representative of each of the Defendants and was at
22 all times material hereto, acting within the purpose and scope of such agency,
23 employment, contract and/or representation, and that each of them is jointly and
24 severally liable to Plaintiff.

25 15. Plaintiff is informed and believes, and therefore alleges, that each of the
26 Defendants is liable to Plaintiff under legal theories and doctrines including but not
27 limited to (1) joint employer; (2) integrated enterprise; (3) agency; and/or (4) alter
28 ego, based in part, on the facts set forth below.

1 16. Plaintiff is informed and believes, and therefore alleges, that each of the
2 named Defendants are part of an integrated enterprise and have acted or currently act
3 as the employer and/or joint employer of Plaintiff making each of them liable for the
4 wage and hour violations alleged herein.

5 **IV. GENERAL ALLEGATIONS**

6 17. Defendant FIRE MOUNTAIN is a barber shop.

7 18. Defendant ZURAWSKI is the owner of Defendant FIRE MOUNTAIN.

8 19. Collectively, Defendants FIRE MOUNTAIN and ZURAWSKI are
9 DEFENDANT EMPLOYERS.

10 20. From sometime in March 2016, until on or about December 6, 2016,
11 Plaintiff MONTROY worked for DEFENDANT EMPLOYERS as a barber.

12 21. DEFENDANT EMPLOYERS exercised the right to control the manner and
13 method of performance of all barbers' haircuts, including those performed by
14 Plaintiff, in order to obtain the desired result, as well as exercised control over pricing
15 charged for haircuts and also the barbers' schedules.

16 22. DEFENDANT EMPLOYERS employed an on-site manager, MANAGER
17 MIGUEL, to act on behalf of DEFENDANT EMPLOYERS and run the shop to
18 ensure it operates according to DEFENDANT EMPLOYERS' level of satisfaction.

19 23. Upon information and belief, DEFENDANT ZURAWSKI told other
20 barbers that he supports MANAGER MIGUEL's decisions 100% and he will always
21 back MANAGER MIGUEL.

22 24. Upon information and belief, whenever a barber would attempt to complain
23 to DEFENDANT ZURAWSKI about any issue within the shop, DEFENDANT
24 ZURAWSKI would respond by instructing the barber to not bring any problems to
25 him and that all problems had to be addressed to MANAGER MIGUEL 100% of the
26 time.

27 25. Therefore, all actions taken by MANAGER MIGUEL were undertaken as
28 an agent of DEFENDANT EMPLOYERS, as all actions undertaken by MANAGER

1 MIGUEL were taken at the direction of, at the behest of, and in association with
2 DEFENDANT ZURAWSKI and DEFENDANT FIRE MOUNTAIN.

3 26. Upon information and belief, DEFENDANT EMPLOYERS instructed
4 MANAGER MIGUEL to watch the haircuts being performed by each barber and to
5 critique the haircuts being performed so that the outcome would be a haircut
6 performed to the satisfaction of DEFENDANT EMPLOYERS' level.

7 27. DEFENDANT EMPLOYERS also instructed MANAGER MIGUEL to
8 train new barbers on how to properly perform haircuts up to DEFENDANT
9 EMPLOYERS' level of satisfaction whenever MANAGER MIGUEL were to see that
10 a new barber was not cutting hair to their level of satisfaction.

11 28. In particular, DEFENDANT EMPLOYERS instructed MANAGER
12 MIGUEL to have all new barbers start their employment by having their station next
13 to MIGUEL's station so that the new barber would have to watch MIGUEL perform
14 his haircuts as a learning tool on how DEFENDANT EMPLOYERS wanted the
15 service to be performed, and so that MANAGER MIGUEL would be within close
16 proximity to the new barber in order to observe their performance of haircuts. On one
17 occasion, for example, one former barber Nicci was not paying full attention to
18 MIGUEL while he performed a haircut next to her, which resulted in MIGUEL
19 yelling at her for not paying attention during her training time.

20 29. MANAGER MIGUEL has often critiqued a barbers' job performance
21 during the haircut, in front of the customer, and also often takes over and finishes the
22 haircut so that the outcome would be to the satisfaction of DEFENDANT
23 EMPLOYERS.

24 30. MANAGER MIGUEL would often instruct barbers on how to perform the
25 haircuts and instruct them to do the haircut over again if it was not performed to the
26 satisfaction of DEFENDANT EMPLOYERS.

27 31. MANAGER MIGUEL would also often take over the haircut and finish the
28 service if he saw a barber not performing the haircut to the satisfaction of

1 DEFENDANT EMPLOYERS.

2 32.MANAGER MIGUEL would often critique how long Plaintiff took to
3 perform her haircuts, and often instructed her to utilize less “steps” in completing a
4 haircut so that the performance would be more efficient so that her chair could be
5 opened to more customers during her scheduled work times.

6 33. DEFENDANT EMPLOYERS also exercised control over the schedules of
7 the barbers, by instructing MANAGER MIGUEL to control the number of barbers
8 working during each day, which resulted in MANAGER MIGUEL often dictating the
9 hours that the barbers would work during the day, the days of the week, and the days
10 that the barbers could take off.

11 34. On any particular day that one of the barbers is scheduled to work, if that
12 barber needed to take the day off, then MANAGER MIGUEL would require that the
13 barber find someone else to cover that barber’s shift before he would agree that the
14 barber could have the day off. All of this was subject to MANAGER MIGUEL’s
15 approval.

16 35. DEFENDANT EMPLOYERS and MANAGER MIGUEL also dictated
17 how much each barber could charge for their haircuts, specifically directing that all
18 haircuts had to be charged consistently by every barber for each specific type of
19 haircut.

20 36. On one particular incident, Plaintiff observed MANAGER MIGUEL yell at
21 another barber for charging extra for using shampoo upon a customer and told her to
22 stop charging beyond the amount dictated by the shop.

23 37. Furthermore, each barber was expected by MANAGER MIGUEL to
24 perform janitorial duties to clean the areas where they each worked, and MANAGER
25 MIGUEL would often critique the performance of cleaning done by particular barbers
26 and would instruct them to perform the cleaning over again if it was not done to the
27 level of satisfaction of DEFENDANT EMPLOYERS.

28 38. At numerous times, both MANAGER MIGUEL and DEFENDANT

1 ZURAWSKI claimed that all customers were the “shop’s” customers.

2 39. Moreover, DEFENDANT EMPLOYERS dictated and controlled the
3 products that the barbers could use in the performance of their haircuts, by requiring
4 that the barbers only use products that were also for sale by the shop.

5 40. On at least one occasion, another barber attempted to use a product that was
6 a competitor to a product sold by the shop, and DEFENDANTS specifically
7 instructed the barber to never bring such a product into the shop and that all barbers
8 must always use a product that was also for sale in the shop.

9 41. DEFENDANT EMPLOYERS also maintained the right to terminate the
10 employment of each barber at will.

11 42. In particular, on December 5, 2016, when Plaintiff attempted to complain to
12 DEFENDANT ZURAWSKI about MANAGER MIGUEL and request his assistance,
13 ZURAWSKI screamed at Plaintiff and told her to “SHUT THE F**K UP ABOUT
14 MIGUEL! I’M SICK OF F**KING HEARING ABOUT MIGUEL!”, YOU’RE A
15 F**KING CRYBABY!”, and “IF YOU SAY ANYTHING ELSE ABOUT MIGUEL
16 THEN DON’T COME BACK!”, which thereby shows that DEFENDANT
17 EMPLOYERS treated Plaintiff as an at-will employee over whom he had control to
18 terminate her employment for complaining about MANAGER MIGUEL.

19 43. As a result, on December 6, 2016, as a result of Plaintiff’s complaints about
20 MANAGER MIGUEL leading to ZURAWSKI screaming at her “IF YOU SAY
21 ANYTHING ELSE ABOUT MIGUEL THEN DON’T COME BACK!”,
22 DEFENDANT EMPLOYERS constructively discharged/terminated Plaintiff’s
23 employment.

24 **V. ALLEGATIONS REGARDING SEXUAL HARASSMENT AND**
25 **RETALIATION BY ALL DEFENDANTS**

26 44. All Defendants are the subject of an on-going lawsuit for sexual harassment,
27 wrongful termination, and intentional infliction of emotional distress in the case of
28 *Anna Fuentes v. Ronald Zurawski, Miguel Martinez, Fire Mountain Barbershop, San*

1 Diego Superior Court Case Number 37-2016-00024848-CU-WT-NC.

2 45. Defendants were provided a copy of a summary of Plaintiff's Complaint on
3 or about July 15, 2016 in that matter by the Department of Fair Housing and
4 Employment via a "right to sue" being issued to Plaintiff.

5 46. DEFENDANT ZURAWSKI was served with the Summons and Complaint
6 in that matter on July 28, 2016.

7 47. MANAGER MIGUEL was served with the Summons and Complaint in that
8 matter on August 4, 2016.

9 48. Furthermore, upon information and belief, Plaintiff Fuentes had repeatedly,
10 on numerous occasions, specifically advised DEFENDANT ZURAWSKI in April
11 and May of 2016 about MANAGER MIGUEL's on-going sexual harassment and
12 attempts to physically grope and ogle Fuentes, and Plaintiff Fuentes repeatedly asked
13 DEFENDANT ZURAWSKI as the shop owner to take some corrective action against
14 MANAGER MIGUEL yet DEFENDANT ZURAWSKI specifically refused to do so
15 and began accusing Plaintiff Fuentes of lying to extort money out of him and the
16 shop.

17 49. In May of 2016, DEFENDANTS MIGUEL and ZURAWSKI conspired to
18 constructively terminate Plaintiff Fuentes, and they solicited the assistance of all
19 barbers, including Plaintiff Montroy, to all sign a purported "independent contractor
20 agreement" or else be forced out of the shop.

21 50. DEFENDANTS MIGUEL and ZURAWSKI both admitted to Plaintiff
22 Montroy in May of 2016 that this "independent contractor agreement" was a sham
23 contract, that they had informed all barbers that this was not a real contract, and it was
24 simply a ploy to run Plaintiff Fuentes out of the shop because they knew she would
25 refuse to sign it.

26 51. Moreover, after Plaintiff Fuentes was constructively terminated in May
27 2016, DEFENDANTS MIGUEL and ZURAWSKI conspired to gather falsified
28 statements from other barbers and customers to assist in their defense against Plaintiff

1 Fuentes' legal action against them.

2 52. In particular, Plaintiff Montroy was specifically asked by both MANAGER
3 MIGUEL and ZURAWSKI to draft a statement that would go against Plaintiff
4 Fuentes' interests, and they specifically instructed Plaintiff Montroy on what to write
5 in her statement and they specifically instructed her on what terms to use and what
6 terms to change, to where she eventually wrote four different drafts of the statement
7 at the direction and control by all DEFENDANTS.

8 53. Plaintiff Montroy also overheard MANAGER MIGUEL specifically ask
9 customers and barbers if they were willing to write a statement that would require
10 them to make some false claims against Plaintiff Fuentes in order to help their defense
11 against Fuentes' legal actions against them.

12 54. As a result, DEFENDANT EMPLOYERS had direct knowledge of
13 MANAGER MIGUEL'S unlawful sexual behavior within the shop at least as of April
14 and May 2016, and DEFENDANT EMPLOYERS specifically conspired to engage in
15 a wide-scale cover up of MANAGER MIGUEL'S sexual improprieties.

16 55. As a result, DEFENDANT EMPLOYERS' refusal to take any corrective
17 action against MANAGER MIGUEL and permitting him to remain in his managerial
18 position at the shop resulted in MANAGER MIGUEL being free to victimize Plaintiff
19 Montroy.

20 56. For the entire time that Plaintiff Montroy was employed by
21 DEFENDANTS, she observed during advertised open hours MANAGER MIGUEL
22 initiate lewd conversations with other male barbers whenever a female would walk
23 past the shop on the sidewalk outside, and MANAGER MIGUEL devised a scheme to
24 notify all male barbers to stop what they were doing upon hearing MIGUEL call out a
25 particular phrase so that all male barbers, including MIGUEL, would walk outside
26 and ogle the female walking by and then joke about it and make lewd comments.

27 57. MANAGER MIGUEL on numerous occasions walked up behind Plaintiff
28 Montroy while she was sitting in a chair and began playing with her hair and braid her

1 hair and tell her that she looks good with her hair braided. Each time this was done
2 without her consent.

3 58. In June and July of 2016, MANAGER MIGUEL began attempting to solicit
4 Plaintiff Montroy in an explicitly sexual manner.

5 59. On numerous occasions in June and July of 2016, MANAGER MIGUEL
6 asked Plaintiff Montroy to provide him a haircut free of charge and to massage his
7 shoulders and neck afterwards.

8 60. On at least two occasions, MANAGER MIGUEL watched sexually explicit
9 hardcore pornography on his cellular phone while Plaintiff Montroy was standing
10 directly behind him and giving him the haircut and massage that he requested.

11 61. These incidents all occurred during normal shop hours, as the time periods
12 were during times that were posted on the front door as open hours for the shop, and
13 they all occurred during Plaintiff Montroy's scheduled work times.

14 62. During these times, MANAGER MIGUEL would initiate sexual
15 conversations with Plaintiff Montroy, asking her if "all girls are closet freaks" and
16 bragging about how he has a pregnant girlfriend at home yet he repeatedly purchased
17 prostitutes via the internet and also purchased sexual intercourse from a masseuse at a
18 nearby massage parlor.

19 63. MANAGER MIGUEL described the prostitute at the massage parlor as "the
20 read headed one", and he bragged that his pregnant girlfriend did not know anything
21 about any of his engaging in prostitution.

22 64. Additionally, MANAGER MIGUEL bragged to Plaintiff Montroy during
23 these conversations that he also has been having sexual relations with one of the
24 female employees of "Rookie's Sports Bar near the barbershop.

25 65. MANAGER MIGUEL bragged to Plaintiff Montroy that the female
26 employee of Rookie's would send him random text messages when she wanted to
27 have sex and he had no choice but to comply because she was "a dime piece".

28 66. On one particular occasion, MANAGER MIGUEL sent a picture to Plaintiff

1 Montroy of the female employee of Rookie's and asked Plaintiff Montroy if she
2 would like to engage in a threesome with them.

3 67. MANAGER MIGUEL also began attempting to solicit Plaintiff Montroy
4 herself to engage in sexual relations with him by suggesting that they could go into
5 the office of the Barbershop because it was in the back and was discreet enough to
6 where no-one could see or hear them.

7 68. MANAGER MIGUEL also knew that Plaintiff Montroy was having
8 financial difficulties, so he attempted to seize upon that by offering her \$250.00 to
9 provide him with a massage and sexual favors, and by doing that four times for him
10 she could ultimately make up the \$1,000.00 that he knew she needed.

11 69. Plaintiff Montroy initially did not complain to DEFENDANT
12 EMPLOYERS and did not specifically instruct MANAGER MIGUEL to stop,
13 because she personally observed DEFENDANTS conspire to retaliate against
14 Plaintiff Fuentes and constructively terminate her, and she also witnessed how
15 DEFEDNANTS obtained other barbers and customers to despise Plaintiff Fuentes and
16 repeatedly refer to her as "the b*tch" and "the c*nt", which caused Plaintiff Montroy
17 to fear that she would receive the same retaliatory actions if she were to stand up for
18 herself.

19 70. Nevertheless, at one point in July or August of 2016, Plaintiff Montroy did
20 complain to DEFENDANT ZURAWSKI about MANAGER MIGUEL'S improper
21 sexual behavior and asked ZURAWSKI if he could talk to MIGUEL and ask
22 MIGUEL to stop, but ZURAWSKI specifically told Plaintiff Montroy that he would
23 not take any corrective action against MIGUEL because any such action would give
24 credibility and corroboration to Plaintiff Fuentes' claims.

25 71. In early August 2016, Plaintiff began dating another barber, which caused
26 MANAGER MIGUEL to change his attitude and treatment of Plaintiff drastically
27 because it became obvious to him that she was not taking him up on his sexual
28 solicitations of her.

1 72. In particular, MANAGER MIGUEL began exercising more restrictive
2 control over Plaintiff Montroy by restricting her ability to take breaks, criticizing her
3 for being late even though he had never derided her for being late prior to her dating
4 the other barber, chastised her for coming in earlier than when she was scheduled, and
5 began whispering to other barbers and customers while casting dirty looks at her
6 directly to make it apparent then he was talking badly about her.

7 73. Also, after Plaintiff Montroy began dating the other barber, MANAGER
8 MIGUEL began to repeatedly call her "Tea Bag" (which is a reference to a sexual
9 act) in front of everyone else in the shop and in front of her. Upon information and
10 belief, MIGUEL did this in order to degrade her and make her feel shame.

11 74. In August 2016, Plaintiff suffered a hand injury outside of the employment
12 setting that eventually required her to stop working for a period of time, which saved
13 her from having to suffer any further mistreatment by DEFENDANTS during that
14 time.

15 75. However, at the end of November 2016, Plaintiff returned to work at Fire
16 Mountain Barbershop, which resulted in DEFENDANT MIGUEL continuing to make
17 the situation awkward for Plaintiff by continuing to whisper to his customers and
18 other barbers while casting dirty looks her way.

19 76. On December 5, 2016, Plaintiff reached out to DEFENDANT ZURAWSKI
20 for assistance as the shop owner, and also for emotional support, which simply
21 resulted in ZURAWSKI screaming at her the following: "SHUT THE F**K UP
22 ABOUT MIGUEL! I'M SICK OF F**KING HEARING ABOUT MIGUEL!",
23 YOU'RE A F**KING CRYBABY!", and "IF YOU SAY ANYTHING ELSE
24 ABOUT MIGUEL THEN DON'T COME BACK!".

25 77. As a direct result of all of the above conduct, Plaintiff has suffered
26 emotional distress and mental anguish by way of crying fits, loss of sleep,
27 nervousness, feelings of loss of self-worth and despair, feelings of hopelessness, and
28 sadness, and even received professional psychological counseling as a result of these

1 matters.

2 78. Moreover, as a direct result of Plaintiff being constructively terminated, she
3 has been without employment and any source of income since December 6, 2016.

4 **FIRST CAUSE OF ACTION**
5 **Wrongful Discharge in Violation of Public Policy**
6 **(Against DEFENDANT EMPLOYERS)**

7 79. Plaintiff re-alleges and incorporates by reference the foregoing
8 allegations as though set forth fully herein.

9 80. It is against public policy of the state of California for an employer to
10 terminate its employee's employment because she has made a workplace safety
11 complaint. (*Labor Code* § 6310, *et seq.*)

12 81. Sections 6310(b) and 6400 of the California Labor Code express
13 California's fundamental public policy of ensuring that employees are not required to
14 work in unsafe or unhealthy work environments.

15 82. During the time that Plaintiff worked for DEFENDANT EMPLOYERS,
16 Plaintiff suffered egregious discrimination, sexual harassment, and retaliation.

17 83. Ultimately, Plaintiff could not tolerate the discrimination, sexual
18 harassment, wrongful conduct and unfair conditions she experienced in the
19 workplace, which caused her injuries and damages, so she complained about this
20 wrongful conduct to DEFENDANT EMPLOYERS.

21 84. On or about December 6, 2016, as a result of Plaintiff's complaints,
22 DEFENDANT EMPLOYERS discharged/terminated Plaintiff's employment by
23 screaming at her "IF YOU SAY ANYTHING ELSE ABOUT MIGUEL THEN
24 DON'T COME BACK!".

25 85. Plaintiff believes and alleges that Plaintiff was discharged/terminated
26 because she made complaints about the discrimination and sexual harassment to
27 DEFENDANT EMPLOYERS and because of her gender.

28 86. Section 1102.5 of the California Labor Code has been interpreted to

1 recognize a fundamental public policy prohibiting an employer from discharging an
2 employee for internal or external reports of a violation of any statutes, regulations or
3 guidelines of public importance, such as those set forth above.

4 87. Plaintiff alleges she was terminated in retaliation for protests and
5 complaints regarding her reasonable belief that Defendants were violating several
6 statutes, as discussed below.

7 88. Defendants' discharge of Plaintiff violated the public policy of the State of
8 California, as expressed in provisions of the California Fair Employment and Housing
9 Act (*Gov. Code* § 12940, *et seq.*), the Constitution of the State of California,
10 including Article I § 8; the California Civil Code, including but not limited to sections
11 51.7 and 52, *et seq.*; California Government Code sections 12900, *et seq.*, including,
12 but not limited to sections 12920, 12921, 12926.1, 12940, etc., which prohibit
13 discrimination and the termination of an employee's employment because of, among
14 other things, their sex and gender, and Title VII of the 1964 Civil Rights Act, 42
15 United States Code sections 2000e-2(a), *et seq.*

16 89. Based on the misconduct alleged in this Complaint, Plaintiff believes and
17 alleges that Plaintiff's termination was wrongful because it was in violation of the
18 public policy of the State of California in that Plaintiff's termination was because of
19 the workplace complaints she made.

20 90. Defendants' actions were willful, malicious, fraudulent and oppressive, and
21 were committed with the wrongful intent to injure Plaintiff and in conscious disregard
22 of Plaintiff's rights, which entitles Plaintiff to exemplary and/or punitive damages in
23 an amount to be proven at trial.

24 **SECOND CAUSE OF ACTION**

25 **Retaliation in Violation of the Fair Employment and Housing Act, California**
26 **Government Code Sections 12940(h), *et seq.***
(Against DEFENDANT EMPLOYERS)

27 91. Plaintiff re-alleges and incorporates by reference the foregoing allegations,
28 as though set forth fully herein.

1 92. At all times herein mentioned, California Government Code sections
2 12940, *et seq.* of the Fair Employment and Housing Act (and Title VII of the 1964
3 Civil Rights Act) and the corresponding regulations of the California Department of
4 Fair Employment and Housing Act were in full force and effect and were binding on
5 Defendants.

6 93. These sections, *inter alia*, prohibit Defendants, as employers, from
7 committing illegal acts of retaliation and gender discrimination in the workplace.

8 94. As alleged above, Plaintiff was subjected to a pattern of harassment by
9 her MANAGER MIGUEL, who, among other things, sexually harassed Plaintiff in
10 the workplace for the purpose of humiliating and harassing the Plaintiff on a repeated
11 basis when she was working.

12 95. Plaintiff complained about such conduct to DEFENDANT
13 EMPLOYERS, who retaliated against her by, among other things, terminating her
14 employment for engaging in a protected activity.

15 96. Such conduct violates Government Code section 12940(h) and other
16 provisions of FEHA.

17 97. Within the time provided by law, Plaintiff filed a complaint with the
18 California Department of Fair Employment and Housing, in full compliance with the
19 law, and has received a right to sue letter, thereby exhausting any applicable
20 administrative remedy requisite to the commencement of this lawsuit.

21 98. As a proximate and legal result of the above-alleged misconduct,
22 Plaintiff suffered damages in an amount to be proven at trial.

23 99. As a further proximate result of the above-alleged misconduct, Plaintiff
24 lost employment benefits, including wages and fringe benefits, in an amount to be
25 proven at trial.

26 100. By reason of the foregoing, Plaintiff has been left without an adequate
27 remedy at law, and should be entitled to appropriate injunctive relief from this Court
28 to be proven at trial.

1 EMPLOYERS and MANAGER MIGUEL.

2 106. Plaintiff is informed and believes, and based thereupon alleges, that her
3 termination was motivated by Plaintiff's unwillingness to drop her complaints
4 concerning the sexual harassment and intimidation she had been experiencing from
5 MANAGER MIGUEL.

6 107. As alleged above, Plaintiff believes and alleges that DEFENDANT
7 EMPLOYERS subjected her to an intense pattern and practice of harassment based on
8 her gender, as alleged in this Complaint.

9 108. The foregoing conduct was retaliatory and harassing and not consented to,
10 and was based on Plaintiff's gender, and such misconduct created an intimidating and
11 hostile work environment.

12 109. Such conduct constitutes illegal harassment in violation of Government
13 Code section 12940(j) and other provisions of FEHA.

14 110. DEFENDANT EMPLOYERS are strictly liable for said harassment by
15 MANAGER MIGUEL, because at all times relevant, the misconduct alleged in this
16 Complaint was committed by MANAGER MIGUEL.

17 111. DEFENDANT EMPLOYERS are also liable because they knew or
18 should have known of the illegal harassment of its employees and failed to take
19 immediate and appropriate corrective action, which misconduct violates Government
20 Code sections 12940(j) and (k).

21 112. Within the time provided by law, Plaintiff filed a complaint with the
22 California Department of Fair Employment and Housing, in full compliance with the
23 law, and has received a right to sue letter, thereby exhausting any applicable
24 administrative remedy requisite to the commencement of this lawsuit.

25 113. As a proximate and legal result of the above-alleged misconduct,
26 Plaintiff suffered damages in an amount according to proof.

27 114. As a further proximate result of the above-alleged misconduct, Plaintiff
28 lost employment benefits, including wages and fringe benefits, in an amount

1 according to proof.

2 115. By reason of the foregoing, Plaintiff has been left without an adequate
3 remedy at law, and should be entitled to appropriate injunctive relief from this Court
4 to be proven at trial.

5 116. As a further proximate result of the above-alleged misconduct, Plaintiff
6 was required to and did retain attorneys and is therefore entitled to an award of
7 attorneys' fees according to proof.

8 117. In doing the things herein alleged, DEFENDANT EMPLOYERS were
9 guilty of oppression, fraud and malice, and, insofar as the things alleged were
10 attributable to employees of DEFENDANT EMPLOYERS, said employees were
11 employed by DEFENDANT EMPLOYERS with advance knowledge of the unfitness
12 of the employees and they were employed with a conscious disregard for the rights of
13 others; or Defendants authorized or ratified the wrongful conduct; or there was
14 advance knowledge, conscious disregard, authorization, ratification or act of
15 oppression, fraud or malice on the part of an officer, director or managing agent of
16 defendants all entitling plaintiff to the recovery of exemplary and punitive damages.

17 **FOURTH CAUSE OF ACTION**

18 **Failure to Take Steps Reasonably Necessary to Prevent Discrimination in**
19 **Violation of Fair Employment and Housing Act, California Government Code**
20 **Section 12940(k)**
(Against DEFENDANT EMPLOYERS)

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

23 119. At all times herein mentioned, California Government Code section
24 12940, *et seq.* of the Fair Employment and Housing Act (and Title VII of the 1964
25 Civil Rights Act) and the corresponding regulations of the California Department of
26 Fair Employment and Housing Act were in full force and effect and were binding on
27 Defendants.

28 120. These sections, *inter alia*, require DEFENDANT EMPLOYERS, as

1 employers, to take reasonable steps to avoid the discrimination of any of its
2 employees.

3 121. Plaintiff is informed, believes, and thereon alleges that DEFENDANT
4 EMPLOYERS failed to take all steps reasonably necessary to prevent the harassment
5 and discrimination from occurring in violation of the applicable provisions of
6 Government Code sections 12940, *et seq.*

7 122. DEFENDANT EMPLOYERS are liable because they knew or should
8 have known, through Plaintiff's complaints to management and through the
9 complaints of Plaintiff Fuentes, and Defendants failed to take immediate and
10 appropriate corrective action.

11 123. Such failure to act and violation of FEHA caused Plaintiff to be sexual
12 harassed and discriminated against, as alleged above.

13 124. Such conduct violates Government Code section 12940(k) and other
14 provisions of FEHA.

15 125. Within the time provided by law, Plaintiff filed a complaint with the
16 California Department of Fair Employment and Housing, in full compliance with the
17 law, thereby exhausting any applicable administrative remedy requisite to the
18 commencement of this lawsuit.

19 126. DEFENDANT EMPLOYERS' conduct legally and directly caused
20 Plaintiff to suffer damages subject to proof at the time of trial.

21 127. The above-alleged conduct caused Plaintiff to lose wages and fringe
22 benefits in an amount to be proven at trial.

23 128. Plaintiff is entitled to recover attorneys' fees pursuant to the provisions of
24 Government Code sections 12940, *et seq.*

25 129. In doing the things herein alleged, DEFENDANT EMPLOYERS are
26 guilty of oppression, fraud and malice, and, insofar as the things alleged were
27 attributable to employees of DEFENDANT EMPLOYERS, said employees were
28 employed by DEFENDANT EMPLOYERS with advance knowledge of the unfitness

1 of the employees and they were employed with a conscious disregard for the rights of
2 others; or Defendants authorized or ratified the wrongful conduct; or there was
3 advance knowledge, conscious disregard, authorization, ratification or act of
4 oppression, fraud or malice on the part of an officer, director or managing agent of
5 defendants all entitling Plaintiff to the recovery of exemplary and punitive damages.

6 **FIFTH CAUSE OF ACTION**

7 **Wrongful Termination and/or Retaliation in Violation of California Labor Code
Section 6310**

8 **(Against DEFENDANT EMPLOYERS)**

9
10 130. Plaintiff re-alleges and incorporates herein by this reference the
11 allegations in the foregoing paragraphs, as though set forth herein.

12 131. Labor Code § 6310, subdivision (a), prohibits employers from retaliating
13 or terminating an employee that has made oral or written “complaint to the division,
14 other governmental agencies having statutory responsibility for or assisting the
15 division with reference to employee safety or health, his or her employer, or his or her
16 representative.”

17 132. As alleged above, Defendants violated Labor Code § 6310 because
18 DEFENDANT EMPLOYERS constructively terminated Plaintiff’s employment after
19 she complained to DEFENDANT EMPLOYERS about the sexual harassment that she
20 reasonably believed to be unlawful and unsafe conduct and practices committed by
21 her manager, MANAGER MIGUEL.

22 133. As a proximate result of DEFENDANTS’ actions, Plaintiff has suffered
23 and continues to suffer damages in an amount according to proof at trial.

24 134. As a proximate result of DEFENDANTS’ actions, Plaintiff is entitled to
25 costs, penalties, and attorneys’ fees.

26 135. DEFENDANTS’ actions were willful, malicious, fraudulent and
27 oppressive, and were committed with the wrongful intent to injure Plaintiff and in
28 conscious disregard of Plaintiff’s rights, which entitles Plaintiff to exemplary and/or

1 punitive damages in an amount to be proven at trial.

2 **SIXTH CAUSE OF ACTION**

3 **Wrongful Termination and Violations of California Labor Code § 1102.5, et seq.**
4 **(Against DEFENDANT EMPLOYERS)**

5 136. Plaintiff re-alleges and incorporates herein by this reference the
6 allegations in the foregoing paragraphs, as though set forth herein.

7 137. Labor Code § 1102.5, subdivision (a), prohibits employers from making,
8 adopting, or enforcing any rule, regulation or policy that prevents employees from
9 disclosing information to an employer where the employee has reasonable cause to
10 believe that the information discloses a violation of state or federal law, or a violation
11 or noncompliance with a state or federal rule or regulation.

12 138. Labor Code § 1102.5, subdivision (b), prohibits employers from
13 terminating employees that disclose information to an employer where the employee
14 has reasonable cause to believe that the information discloses a violation of state or
15 federal law, or a violation or noncompliance with a state or federal rule or regulation.

16 139. Labor Code § 1102.5, subdivision (c), prohibits employers from
17 retaliating against an employee for refusing to participate in an activity that would
18 result in a violation of state or federal statute, or a violation or noncompliance with a
19 state or federal rule or regulation.

20 140. Labor Code § 1102.5, subdivision (d), prohibits employers from
21 retaliating against an employee exercising any of their rights under subdivisions (a),
22 (b), and (c).

23 141. As alleged in this Complaint, DEFENDANT EMPLOYERS violated the
24 foregoing provisions of the Labor Code § 1102.5, because Defendants retaliated
25 against Plaintiff after she complained to DEFENDANT EMPLOYERS about being
26 sexually harassed by MANAGER MIGUEL, a conduct that she reasonably believed
27 to be an unlawful conduct.

28 142. As a proximate result of DEFENDANTS' actions, Plaintiff has suffered

1 and continues to suffer damages in an amount according to proof at trial.

2 143. As a proximate result of DEFENDANTS' actions, Plaintiff is entitled to
3 costs, penalties, and attorneys' fees.

4 144. As a proximate, direct, and foreseeable result of the foregoing, Plaintiff
5 seeks penalties in the sum of \$10,000.00 pursuant to subdivision (f) of Labor Code
6 1102.5.

7 145. DEFENDANTS' actions were willful, malicious, fraudulent and
8 oppressive, and were committed with the wrongful intent to injure Plaintiff and in
9 conscious disregard of Plaintiff's rights, which entitles Plaintiff to exemplary and/or
10 punitive damages in an amount to be proven at trial.

11 **SEVENTH CAUSE OF ACTION**
12 **Intentional Infliction of Emotional Distress**
13 **(Against all Defendants)**

14 146. Plaintiff re-alleges and incorporates herein by this reference the
15 allegations in the foregoing paragraphs, as though set forth herein.

16 147. Based on the above-alleged acts, including but not limited to
17 MARTINEZ's conduct at repeatedly soliciting Plaintiff Montroy in June and July of
18 2016 to engage in prostitution during a time that he knew she was suffering financial
19 difficulties and knew that her vulnerability could be preyed upon, and also including
20 but not limited to DEFENDANT ZURAWSKI screaming at Plaintiff on December 5,
21 2016, Defendants' misconduct was extreme, outrageous, and done with reckless
22 disregard of the probability of causing Plaintiff emotional distress.

23 148. Plaintiff is informed and believes, and based thereon alleges, that during
24 the course of her employment with DEFENDANTS, Plaintiff was subjected to acts
25 that were intentional, extreme, outrageous, and done with reckless disregard of the
26 probability of causing Plaintiff emotional distress.

27 149. As a direct and proximate result of the DEFENDANTS' conduct,
28 Plaintiff is informed and believes, and based thereon alleges, that Plaintiff has been

1 subjected to severe emotional distress and will continue to suffer severe and
2 permanent humiliation, mental pain and anguish, and will continue to live in a
3 constant state of emotional tension and distress.

4 150. As a direct and proximate result of the DEFENDANTS, and each of their
5 actions, Plaintiff is informed and believes, and based thereon alleges, that Plaintiff has
6 suffered severe and serious damages, in an amount to be proven at trial.

7 151. DEFENDANTS' actions were willful, malicious, fraudulent and
8 oppressive, and were committed with the wrongful intent to injure Plaintiff and in
9 conscious disregard of Plaintiff's rights, which entitles Plaintiff to exemplary and/or
10 punitive damages in an amount to be proven at trial.

11 **EIGHTH CAUSE OF ACTION**

12 **Violations of the California Unfair Business Practices Code §§ 17200, *et seq.***
13 **(Against DEFENDANT EMPLOYERS)**

14 152. Plaintiff re-alleges and incorporates by reference the foregoing
15 allegations as though set forth herein.

16 153. DEFENDANTS, and each of them, are "persons" as defined under
17 Business and Professions Code section 17021.

18 154. Plaintiff is informed and believes and based thereon alleges that
19 DEFENDANTS committed the unfair business practices, as defined by Cal. Bus. &
20 Prof. Code sections 17200, *et seq.*, by violating the laws alleged to have been violated
21 in this Complaint and which allegations are incorporated herein by reference.

22 155. DEFENDANTS' conduct, as alleged above, constitutes unlawful, unfair
23 and fraudulent activity prohibited by Business and Professions Code sections 17200,
24 *et seq.*

25 156. Plaintiff has suffered injury in fact and lost money or property as a result
26 of the aforementioned unfair competition.

27 157. As a result of their improper acts, DEFENDANTS, and each of them,
28 have reaped and continue to reap unfair benefits and illegal profits at the expense of

1 Plaintiff.

2 158. Plaintiff seeks injunctive relief in the type and manner deemed
3 appropriate by the Court.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment against DEFENDANTS as
6 follows:

- 7 1. That the Court find that DEFENDANTS' violations as described above are
8 found to have been willful;
- 9 2. For penalties, special damages, and general damages in an amount to be
10 proven at trial;
- 11 3. For punitive damages as allowed by law;
- 12 4. Loss of income incurred and to be incurred according to proof;
- 13 5. That DEFENDANTS, and each of them, be ordered to pay restitution to
14 Plaintiff due to DEFENDANTS' unlawful, unfair, and fraudulent activities,
15 pursuant to Business and Professions Code §§ 17200 et seq.;
- 16 6. For disgorgement of all ill-gotten profits, including unpaid wages resulting
17 from DEFENDANTS' unfair business practices pursuant to Business and
18 Professions Code §§ 17200-05;
- 19 7. Injunctive in the type and manner deemed appropriate by the Court, such as
20 mandatory training for supervisors;
- 21 8. For statutory damages;
- 22 9. For prejudgment interest at the legal rate;
- 23 10. That Plaintiff be awarded costs and reasonable attorneys' fees; and
24 11. Such other and further relief as the Court may deem proper and just.

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TRIAL BY JURY

Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: December 13, 2016

SEMNR & HARTMAN, LLP

By: Jared M. Hartman,
Jared M. Hartman, Esq.
Attorneys for Plaintiff,
VICTORIA MONTROY