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Superior Court of California,
County of San Diego

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SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN DIEGO
HALL OF JUSTICE COURTHOUSE

KIZZIE HOLMES, an individual,

Plaintiff,

vs.

SHARP HEALTHCARE, a California
corporation; EDYTHE HARDING, an
individual; KIM MARTIN, an individual; EVIA
VASQUEZ, an individual; and DOES 1 through
100, inclusive,

Defendants.

Case No. 37-2020-00031170-CU-WT-CTL

**PLAINTIFF'S VERIFIED
COMPLAINT FOR:**

1. Racial discrimination (Gov't Code § 12940(a));
2. Disability discrimination (Gov't Code § 12940(a));
3. Failure to prevent discrimination (Gov't Code § 12940(k));
4. Failure to accommodate a known disability (Gov't Code § 12940(m));
5. Failure to engage in the interactive process (Gov't Code § 12940(n));
6. Harassment (Gov't Code § 12940(j));
7. Failure to prevent harassment (Gov't Code § 12940(k));
8. Wrongful termination (Common Law);
9. Retaliation (Lab. Code § 1102.5);
10. Failure to provide rest periods (Lab. Code § 226.7);
11. Failure to provide meal periods (Lab. Code §§ 226.7 and 512);
12. Failure to provide accurate, itemized wage statements (Lab. Code § 226);
13. Unlawful business practices (Bus. & Prof. Code § 17200 et seq.);
14. Civil penalties pursuant to the Private Attorneys General Act (Lab. Code §§ 2698 – 2699.6)

Amount demanded exceeds \$25,000.

JURY TRIAL DEMANDED

1. Plaintiff KIZZIE HOLMES, an individual, hereby alleges against Defendants SHARP HEALTHCARE, a California corporation; EDYTHE HARDING, an individual; KIM MARTIN, an individual; EVIA VASQUEZ, an individual; and DOES 1 through 100, inclusive (hereafter collectively, “Defendants”), as follows:

JURISDICTION AND VENUE

2. Jurisdiction is conferred on this Court over Defendants named herein as residents of the state of California and/or conductors of business in the state of California. Jurisdiction is conferred on this Court as to all causes of action as they arise under state statute or common law.

3. Venue is proper in this Court because Defendants reside and/or conduct business in this County and a substantial part of the events and omissions giving rise to Plaintiff's causes of action occurred in this County.

THE PARTIES

4. Plaintiff KIZZIE HOLMES (hereafter “Plaintiff”) is an individual residing in El Cajon, California, in the County of San Diego.

5. Defendant SHARP HEALTHCARE (hereafter “Sharp”) is a California corporation. On information and belief, Sharp is a regional healthcare system throughout San Diego County, with more than 2,700 physicians and 18,000 employees across its four acute-care hospitals, three specialty hospitals, and three affiliated medical groups. Plaintiff is informed and believes and thereon alleges that Sharp is, and at all pertinent times alleged herein was, doing business in the County of San Diego, California.

6. Defendant EDYTHE HARDING (hereafter “Defendant Harding”) is an individual who, on information and belief, at all relevant times alleged herein was employed by Defendant Sharp as a Manager for the East County Float Pool and was a resident of the County of San Diego.

7. Defendant KIM MARTIN (hereafter “Defendant Martin”) is an individual who, on information and belief, at all relevant times alleged herein was employed by Defendant Sharp

1 as a Manager of Patient Care.

2 8. Defendant EVIA VASQUEZ (hereafter “Defendant Vasquez”) is an individual
3 who, on information and belief, at all relevant times alleged herein was employed by Defendant
4 Sharp and was a resident of the County of San Diego.

5 9. The true names, identities, or capacities, whether individual, corporate, associate,
6 or otherwise, of DOES 1 through 100, inclusive, are unknown to Plaintiff. When the true names,
7 identities, or capacities of such fictitiously-designated Defendants are ascertained, Plaintiff will
8 ask leave of this Court to amend this Complaint to insert their true names, identities, and
9 capacities, together with the proper charging allegations. Plaintiff is informed and believes and
10 thereon alleges that some or all of the fictitiously-named Defendants are responsible in some
11 manner for the occurrences herein alleged, and that Plaintiff’s damages as herein alleged were
12 proximately caused by those defendants.

13 10. Plaintiff believes and therefore alleges that at all times herein mentioned, each of
14 the Defendants was the agent and employee of each of the other Defendants, and in doing the
15 acts alleged herein, was acting within the scope of such agency and employment. Plaintiff further
16 believes and therefore alleges that the conduct of each of the Defendants as alleged herein was
17 ratified by each of the other Defendants, and the benefits thereof were accepted by each of the
18 other said Defendants.

19
20 **FACTUAL ALLEGATIONS**

21 11. Ever since receiving her Medical Assistant Diploma at the Concorde Career
22 Institute in 2001, Plaintiff Kizzie Holmes has spent nearly two decades building her experience
23 as a medical assistant. Before being offered a position with Defendant Sharp, Plaintiff worked
24 at various prestigious hospitals throughout San Diego County, such as the Moore Cancer Center
25 at UC San Diego, the Veteran Affairs Hospital, and Kaiser Permanente. Plaintiff began her
26 employment with Defendants as a Medical Assistant beginning on or around March 13, 2017.

27 12. Plaintiff’s employment with Defendants began with two months of training in the
28 OBGYN department, after which she was approved to work in one of Defendant’s “float pools.”

1 This involved daily assignments in different departments at any one of Defendant's various
2 locations throughout San Diego County. It was not long into Plaintiff's employment with
3 Defendants that she began to experience harassment, discrimination, and retaliation. Around
4 June 2017, while Plaintiff was working in family and internal medicine, Defendant Vasquez
5 began harassing her. Instead of working with Plaintiff to train her alongside the doctor,
6 Defendant Vasquez repeatedly berated her, talked down to her condescendingly, and gave her
7 orders as though she were Plaintiff's supervisor or boss. This was distressing to Plaintiff, and
8 was detrimental to her work performance.

9 13. In or around August 2017, a few months after this harassment began, Plaintiff's
10 supervisor, Defendant Harding, the manager of the East County float pool, informed Plaintiff
11 that Catherine Goodwater, the lead licensed vocational nurse on the floor where Plaintiff worked,
12 would no longer approve her to work in family and internal medicine on the fourth floor, because
13 she allegedly had been seen in a patient room, all alone, talking to herself. Defendant Harding
14 did not identify the person who claimed to have witnessed this alleged behavior. Although
15 Plaintiff assured Defendant Harding that she was not one to talk to herself out loud and that this
16 accusation could not possibly be true, Defendant Harding gave Plaintiff a formal write-up for
17 the incident and told her that she needed to be re-approved to work family medicine by October
18 1, 2017, or else she would be terminated.

19 14. Plaintiff found it extremely suspicious that this "talking to herself" incident had
20 allegedly occurred in or around June 2017, at the same time that she was being harassed and
21 abused daily by Defendant Vasquez. Upset at being slandered, unjustly disciplined, and
22 threatened with termination, Plaintiff emailed Defendant's chief executive officer Mr. Michael
23 Murphy, informing him of Defendant Harding's threats. Little did Plaintiff know that this simple
24 request for support from management would start a chain reaction that would lead to Defendant's
25 taking the ultimate step of wrongfully terminating her.

26 15. Mr. Murphy put Plaintiff in contact with Karen Alegrado, Defendant's East
27 County human resources (hereafter "HR") supervisor. In or around September 2017 a meeting
28 was held with Plaintiff, Ms. Alegrado, Ms. Goodwater, Defendant Harding, Defendant Martin,

1 and Laura Hansen, the supervisor of patient care for the fourth floor. At this meeting, it was
2 decided that Plaintiff would no longer work on the fourth floor, taking her out of contact with
3 Defendant Vasquez and Ms. Goodwater.

4 16. At that meeting, Defendant Martin also accused Plaintiff of violating the Health
5 Insurance Portability and Accountability Act (hereafter “HIPAA”) by giving a patient the wrong
6 prescription. According to Defendant Martin, this mix-up must have been Plaintiff’s fault
7 because she had been the last medical assistant working with the doctor who had written the
8 prescription. Plaintiff explained that medical assistants often cover each other’s shifts and help
9 each other get work done, so the mix-up might not have been her fault. The prescription might
10 have been handed out by someone else. Plaintiff herself knew of another employee named
11 Vanessa who also had been involved in prescription mix-ups. Plaintiff emailed HR about this
12 false accusation, which angered Defendant Martin.

13 17. After this meeting organized at the behest of Mr. Murphy, the harassment
14 escalated. Plaintiff was frequently disciplined and written up for offenses that she had not
15 committed (such as eating in a patient’s room), or for harmless, everyday mistakes that often
16 were not even her fault. Throughout this time, Plaintiff continually communicated the
17 harassment to Ms. Alegrado, who did nothing to prevent it. Plaintiff twice emailed Mr. Murphy
18 about the harassment. After the first email, Mr. Murphy arranged the above-mentioned meeting,
19 but he did not respond to the second email.

20 18. The most egregious example of Defendant’s harassing and even retaliatory and
21 discriminatory treatment of Plaintiff came in the form of denying her a reasonable
22 accommodation for her medical disability. Defendant’s office chairs are ergonomically designed
23 in such a way that they cause pain and discomfort for Plaintiff, and over time put a great strain
24 on her back, so much so that by December 2018 she could no longer lift the hospital’s linen bags.
25 She then asked Ms. Goodwater for tasks that did not require lifting. Ms. Goodwater verbally
26 assured her that her assignments would be changed, but no change came. Five times Plaintiff
27 reminded Ms. Goodwater of her need for tasks that did not put a strain on her back, and
28 eventually Ms. Goodwater told Plaintiff to bring in a doctor’s note. When Plaintiff provided a

1 doctor's note that restricted her to lifting no more than ten pounds, her supervisors made the
2 decision to take her off the schedule for three days, and informed her that she would not be
3 scheduled to work until she provided a modified doctor's note that allowed her to lift up to fifty
4 pounds.

5 19. The refusal to accommodate Plaintiff's disability was so flagrant that Defendants
6 even admitted the wrongdoing when presented with the evidence. In a meeting with Ms.
7 Alegrado, Defendant Martin, Defendant Harding, and HR in February, Plaintiff provided proof
8 that she was denied working hours until she obtained a modified doctor's note that allowed lifting
9 that was more in line with Defendant's wishes. Faced with this undeniable fact, Defendants not
10 only restored Plaintiff's schedule, but even paid her for the wages she had lost during her three
11 days of flex time.

12 20. After the incident with the medical note, Defendant Martin looked for an
13 opportunity to catch Plaintiff on some minor violation that could be used to terminate her. That
14 opportunity came in May 2019 after a phone conversation in which a nurse named Sarah
15 (surname unknown, hereafter "Sarah") yelled at Plaintiff and was unnecessarily rude towards
16 her. When documenting the conversation in the patient's chart, Plaintiff made a note about
17 Sarah's mannerism and tone, as she had learned to do after two decades in the medical field, and
18 as she had done many times for previous employers. This note documenting Sarah's behavior
19 proved to be the pretext Defendants needed to terminate Plaintiff. A few days after this
20 conversation, Plaintiff was subjected to a write-up and a meeting with Defendant Martin and Ms.
21 Alegrado, in which Defendant Martin instructed Plaintiff not to document nurses' demeanor in
22 a patient's chart, but rather to be concerned only with herself and her own behavior. It was agreed
23 that in the future, Plaintiff would know and implement the proper protocols in similar situations.
24 Plaintiff took this to be simply a corrective action and an opportunity for constructive criticism
25 and professional growth. However, just two days later Defendant Martin informed Plaintiff that
26 she was being terminated on the grounds that she had challenged Sarah's license by documenting
27 her rudeness.

28 21. As if discrimination, harassment, retaliation, and wrongful termination were not

1 enough, Defendants also subjected Plaintiff to multiple wage and hour violations.

2 22. Defendants required Plaintiff and other aggrieved employees to work through
3 their rest periods, not providing the opportunity for a rest period of at least ten minutes. Further,
4 Defendants prohibited Plaintiff and other aggrieved employees from leaving the workplace
5 during their rest periods, in violation of the requirement that employers relinquish control of
6 employees during rest periods.

7 23. Plaintiff and other aggrieved employees also were denied proper meal periods.
8 Defendants were understaffed, and Plaintiff and other aggrieved employees were overburdened,
9 making it impossible for them to take proper meal periods, for fear of being reprimanded if their
10 work was incomplete.

11 24. Defendants are also in violation of Labor Code § 226 because the itemized
12 statements Plaintiff and other aggrieved employees received did not include all applicable hours
13 worked. The wage statements should have indicated that Plaintiff and other aggrieved employees
14 were working during the times that they were under Defendant's control during their rest and
15 meal periods.

16
17 **FIRST CAUSE OF ACTION FOR RACIAL DISCRIMINATION IN VIOLATION OF**
18 **GOVERNMENT CODE § 12940(a) AGAINST DEFENDANTS SHARP AND DOES 1**
19 **– 100, INCLUSIVE**

20 25. Plaintiff restates and incorporates by reference each and every allegation of the
21 foregoing paragraphs as though fully set forth herein.

22 26. As used in this Cause of Action, "Defendants" means Sharp and DOES 1 through
23 100, inclusive.

24 27. Defendants regularly employ five (5) or more persons. Thus, Defendants are an
25 "employer" as that term is defined in Government Code § 12926(d) and are subject to the Fair
26 Employment and Housing Act (hereafter "FEHA").

27 28. Plaintiff was an "employee" of Defendants as that term is defined in Code Regs.
28 tit. 2, § 11008(c). Thus, Plaintiff is protected by the FEHA.

1 29. At all times relevant to this Complaint, Government Code § 12940(a) was in
2 effect and applied to Defendants. This code makes it unlawful for an employer to discriminate
3 against an employee in compensation or in terms, conditions, or privileges of employment, on
4 the basis of that person's race or ethnicity.

5 30. Plaintiff is African American. Due to Plaintiff's African-American race,
6 Defendants discriminated against her by accusing her of, and writing her up for, wrongdoings of
7 which she was entirely guilty, threatening to terminate her for minor offenses, denying her a
8 raise in response to her emailing the chief executive officer with her complaints, denying her a
9 reasonable accommodation for her disability, and ultimately terminating her on trumped-up
10 accusations.

11 31. On information and belief, none of the individuals who perpetrated the
12 discriminatory activity were African American.

13 32. Plaintiff has incurred and continues to incur costs and attorneys' fees and is
14 entitled to an award of reasonable attorneys' fees and costs pursuant to Government Code §
15 12965(b).

16 33. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
17 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
18 claims such amount as general damages for mental and emotional distress, aggravation, and
19 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
20 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

21
22 **SECOND CAUSE OF ACTION FOR DISABILITY DISCRIMINATION IN**
23 **VIOLATION OF GOVERNMENT CODE § 12940(a) AGAINST DEFENDANTS**
24 **SHARP AND DOES 1 – 100, INCLUSIVE**

25 34. Plaintiff restates and incorporates by reference each and every allegation of the
26 foregoing paragraphs as though fully set forth herein.

27 35. As used in this Cause of Action, "Defendants" means Sharp and DOES 1 through
28 100, inclusive.

1 36. Defendants regularly employ five (5) or more persons. Thus, Defendants are an
2 “employer” as that term is defined in Government Code § 12926(d) and are subject to the FEHA.

3 37. Plaintiff was an “employee” of Defendants as that term is defined in Code Regs.
4 tit. 2, § 11008(c). Thus, Plaintiff is protected by the FEHA.

5 38. At all times relevant to this Complaint, Government Code § 12940(a) was in
6 effect and applied to Defendants. This code makes it unlawful for an employer to discriminate
7 against an employee in compensation or in terms, conditions, or privileges of employment, on
8 the basis of that person’s disability.

9 39. Defendants discriminated against Plaintiff when she asked for tasks that didn’t
10 aggravate her back condition. In support of her request, Plaintiff provided a doctor’s note that
11 restricted her to lifting no more than ten pounds. In response, Defendants took Plaintiff off the
12 work schedule for three days and informed her that she would not be scheduled to work until she
13 provided a modified doctor’s note that allowed her to lift up to fifty pounds. In other words,
14 Defendants made business decisions based on Plaintiff’s disability that adversely affected her.

15 40. Plaintiff has incurred and continues to incur costs and attorneys’ fees and is
16 entitled to an award of reasonable attorneys’ fees and costs pursuant to Government Code §
17 12965(b).

18 41. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
19 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
20 claims such amount as general damages for mental and emotional distress, aggravation, and
21 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
22 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

23
24 **THIRD CAUSE OF ACTION FOR FAILURE TO PREVENT DISCRIMINATION IN**
25 **VIOLATION OF GOVERNMENT CODE § 12940 (k) AGAINST DEFENDANTS**
26 **SHARP AND DOES 1 – 100, INCLUSIVE**

27 42. Plaintiff restates and incorporates by reference each and every allegation of the
28 foregoing paragraphs as though fully set forth herein.

1 43. As used in this Cause of Action, “Defendants” means Sharp and DOES 1 through
2 100, inclusive.

3 44. Defendants regularly employ five (5) or more persons. Thus, Defendants are an
4 “employer” as that term is defined in Government Code § 12926(d) and are subject to the FEHA.

5 45. Plaintiff was an “employee” of Defendants as that term is defined in Code Regs.
6 tit. 2, § 11008(c). Thus, Plaintiff is protected by the FEHA.

7 46. At all times relevant to this Complaint, Government Code § 12940(k) was in
8 effect and applied to Defendants. This code makes it unlawful for an employer to fail to take all
9 reasonable steps necessary to prevent discrimination from occurring.

10 47. Plaintiff continually reported discriminatory treatment to Ms. Alegrado, who did
11 nothing to prevent it. Plaintiff twice emailed Mr. Murphy about the discrimination. Mr. Murphy
12 arranged the above-mentioned meeting after the first email, but he did not respond to the second
13 email.

14 48. Because of Defendants’ failures as described herein, the discrimination against
15 Plaintiff was allowed to continue, to worsen, and to culminate in her termination.

16 49. Plaintiff has incurred and continues to incur costs and attorneys’ fees and is
17 entitled to an award of reasonable attorneys’ fees and costs pursuant to Government Code §
18 12965(b).

19 50. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
20 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
21 claims such amount as general damages for mental and emotional distress, aggravation, and
22 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
23 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

24
25 **FOURTH CAUSE OF ACTION FOR FAILURE TO ACCOMMODATE A KNOWN**
26 **DISABILITY IN VIOLATION OF GOVERNMENT CODE § 12940(m) AGAINST**
27 **DEFENDANTS SHARP AND DOES 1 – 100, INCLUSIVE**

28 51. Plaintiff restates and incorporates by reference each and every allegation of the

1 foregoing paragraphs as though fully set forth herein.

2 52. As used in this Cause of Action, “Defendants” means Sharp and DOES 1 through
3 100, inclusive.

4 53. Defendants regularly employ five (5) or more persons. Thus, Defendants are an
5 “employer” as that term is defined in Government Code § 12926(d) and are subject to the FEHA.

6 54. Plaintiff was an “employee” of Defendants as that term is defined in Code Regs.
7 tit. 2, § 11008(c). Thus, Plaintiff is protected by the FEHA.

8 55. At all times relevant to this Complaint, Government Code § 12940(m) was in
9 effect and applied to Defendants. This code makes it unlawful for an employer to fail to
10 accommodate a known disability.

11 56. After injuring her back, Plaintiff asked to be given tasks that didn’t aggravate her
12 back condition. In support of her request, Plaintiff provided a doctor’s note that restricted her to
13 lifting no more than ten pounds. In response, Defendants took Plaintiff off the work schedule for
14 three days and informed her that she would not be scheduled to work until she provided a
15 modified doctor’s note that allowed her to lift up to fifty pounds. In other words, Defendants did
16 not accommodate Plaintiff’s disability, but rather insisted that she do tasks that she was unable
17 to do, and took her off the schedule.

18 57. Plaintiff has incurred and continues to incur costs and attorneys’ fees and is
19 entitled to an award of reasonable attorneys’ fees and costs pursuant to Government Code §
20 12965(b).

21 58. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
22 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
23 claims such amount as general damages for mental and emotional distress, aggravation, and
24 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
25 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

26
27 **FIFTH CAUSE OF ACTION FOR FAILURE TO ENGAGE IN THE INTERACTIVE**
28 **PROCESS IN VIOLATION OF GOVERNMENT CODE § 12940(n) AGAINST**

DEFENDANTS SHARP AND DOES 1 – 100, INCLUSIVE

59. Plaintiff restates and incorporates by reference each and every allegation of the foregoing paragraphs as though fully set forth herein.

60. As used in this Cause of Action, “Defendants” means Sharp and DOES 1 through 100, inclusive.

61. Defendants regularly employ five (5) or more persons. Thus, Defendants are an employer as that term is defined in in Gov’t Code § 12926(d) and are subject to the FEHA.

62. Plaintiff was an employee of Defendants as that term is defined in Code Regs. tit. 2, § 11008(b). Thus, Plaintiff is protected by the FEHA.

63. At all times relevant to this Complaint, Gov’t Code § 12940(n) was in effect and applicable to Defendants. This section prohibits employers from failing to engage in the interactive process with employees, in a good faith attempt to come up with reasonable accommodations for a known disability.

64. Plaintiff suffered from a back disability and asked Defendants for tasks that didn’t aggravate her condition. In support of her request, Plaintiff provided a doctor’s note that restricted her to lifting no more than ten pounds. This request was an opportunity for Defendants to engage in the interactive process to come up with a reasonable accommodation for Plaintiff’s disability. Defendants took no such action. On the contrary, Defendants took Plaintiff off the work schedule for three days and informed her that she would not be scheduled to work until she provided a modified doctor’s note that allowed her to lift up to fifty pounds.

65. Because of Defendants’ actions as described herein, Plaintiff was subjected to discrimination, including termination, on account of her disability.

66. As a direct and proximate result of Defendants’ unlawful conduct, Plaintiff has suffered and will continue to suffer pain and suffering, mental anguish, emotional distress, and a loss of earnings and other employment benefits. Plaintiff is thereby entitled to general and compensatory damages in amounts to be proven at trial. Furthermore, Plaintiff has incurred and continues to incur costs and attorneys’ fees and is entitled to an award of her reasonable attorneys’ fees and costs pursuant to Gov’t Code § 12965(b).

1
2 **SIXTH CAUSE OF ACTION FOR HARASSMENT IN VIOLATION OF**
3 **GOVERNMENT CODE § 12940(j) AGAINST ALL DEFENDANTS**

4 67. Plaintiff restates and incorporates by reference each and every allegation of the
5 foregoing paragraphs as though fully set forth herein.

6 68. At all times relevant to this Complaint, Government Code § 12940(j) was in effect
7 and applied to Defendants. This code makes it unlawful for an employer or any other person to
8 harass an employee.

9 69. Defendants harassed Plaintiff by accusing her and writing her up for things she
10 had not done, threatening her with termination for a minor offense, denying her a raise in
11 response to her emailing the chief executive officer with her complaints, denying her a
12 reasonable accommodation for her disability, and ultimately terminating her on trumped-up
13 accusations.

14 70. The conduct of Defendants as described herein was severe and pervasive.
15 Defendants' work environment was hostile and abusive and would be considered offensive and
16 intolerable by any reasonable person under similar circumstances.

17 71. Plaintiff has incurred and continues to incur costs and attorneys' fees and is
18 entitled to an award of reasonable attorneys' fees and costs pursuant to Government Code §
19 12965(b).

20 72. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
21 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
22 claims such amount as general damages for mental and emotional distress, aggravation, and
23 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
24 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

25
26 **SEVENTH CAUSE OF ACTION FOR FAILURE TO PREVENT HARASSMENT, IN**
27 **VIOLATION OF GOVERNMENT CODE § 12940(k) AGAINST DEFENDANTS**
28 **SHARP AND DOES 1 – 100, INCLUSIVE**

1 73. Plaintiff restates and incorporates by reference each and every allegation of the
2 foregoing paragraphs as though fully set forth herein.

3 74. As used in this Cause of Action, “Defendants” means Sharp and DOES 1 through
4 100, inclusive.

5 75. Defendants regularly employ five (5) or more persons. Thus, Defendants are an
6 “employer” as that term is defined in Government Code § 12926(d) and are subject to the FEHA.

7 76. Plaintiff was an “employee” of Defendants as that term is defined in Code Regs.
8 tit. 2, § 11008(c). Thus, Plaintiff is protected by the FEHA.

9 77. At all times relevant to this Complaint, Government Code § 12940(k) was in
10 effect and applied to Defendants. This code makes it unlawful for an employer to fail to take all
11 reasonable steps necessary to prevent discrimination and harassment from occurring.

12 78. Plaintiff emailed Defendant’s CEO Mr. Murphy to report the harassing behavior
13 she was forced to endure. At the resulting meeting, Ms. Alegrado did not put a stop to the
14 harassing behavior, but rather used the meeting as an opportunity to lodge new false accusations
15 against Plaintiff. When Plaintiff later emailed Mr. Murphy a second time to report continued
16 harassment, he did not respond to her email.

17 79. Plaintiff has incurred and continues to incur costs and attorneys’ fees and is
18 entitled to an award of reasonable attorneys’ fees and costs pursuant to Government Code §
19 12965(b).

20 80. As a direct and proximate result of Defendants’ unlawful conduct, Plaintiff has
21 experienced and will continue to experience pain and suffering, mental anguish, emotional
22 distress, and loss of earnings and other employment benefits. Plaintiff is thereby entitled to
23 general and compensatory damages in amounts to be proven at the time of trial, together with
24 pre-judgment interest pursuant to Civil Code § 3287 and any other provision of law providing
25 for pre-judgment interest.

26
27 **EIGHTH CAUSE OF ACTION FOR WRONGFUL TERMINATION IN VIOLATION**
28 **OF GOVERNMENT CODE § 12940(h), LABOR CODE § 1102.5 AND CALIFORNIA**

COMMON LAW, AGAINST DEFENDANTS SHARP AND DOES 1 – 100,
INCLUSIVE

81. Plaintiff restates and incorporates by reference each and every allegation of the foregoing paragraphs as though fully set forth herein.

82. As used in this Cause of Action, “Defendants” means Sharp and Does 1 through 100, inclusive.

83. In Tameny v. Atlantic Richfield Co., (1980) 27 Cal.3d 167, the Court laid out the general principle that while employers may end an employee’s at-will employment for no reason, they may not do so when motivated by reasons that run counter to public policy.

84. Government Code § 12940(h), which is part of the Fair Employment and Housing Act referred to in the above citation, makes it unlawful, “[f]or any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.”

85. Furthermore, Labor Code § 1102.5(b) states:

An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

86. At all times relevant to this complaint, Government Code § 12940(h) and Labor Code § 1102.5 were in effect and applicable to Defendants.

87. When Plaintiff emailed Mr. Murphy to report the harassing behavior Defendants were subjecting her to, she was disclosing to a person who had authority over her and who had the authority to investigate, discover, or correct violations or noncompliance, because she had reasonable cause to believe that the information disclosed a violation of the law, namely, harassment of an employee.

1 88. Plaintiff is informed and believes, and thereon alleges, that her complaining to
2 Mr. Murphy motivated the termination she suffered.

3 89. As a direct and foreseeable result of the aforesaid acts of said Defendants,
4 Plaintiff has lost and will continue to lose income and benefits in an amount to be proven at trial.
5 Plaintiff claims such amount as general damages for mental and emotional distress and
6 aggravation in an amount to be proven at the time of trial, together with pre-judgment interest
7 pursuant to Civil Code § 3287 and/or any other provision of law providing for pre-judgment
8 interest.

9
10 **NINTH CAUSE OF ACTION FOR RETALIATION IN VIOLATION OF**
11 **GOVERNMENT CODE § 12940(h); LABOR CODE § 232.5(c), 1102.5, 6310, and**
12 **6399.7, AND CALIFORNIA COMMON LAW, AGAINST DEFENDANTS SHARP**
13 **AND DOES 1 – 100, INCLUSIVE**

14 90. Plaintiff restates and incorporates each and every allegation of the foregoing
15 paragraphs as though fully set forth herein.

16 91. As used in this Cause of Action, “Defendants” means Sharp and Does 1 through
17 100, inclusive.

18 92. At all times relevant to this complaint, Government Code § 12940(h) and Labor
19 Code § 232.5(c), 1102.5, 6310, and 6399.7 were in effect and applicable to Defendants.

20 93. Government Code § 12940(h) makes it unlawful, “[f]or any employer, labor
21 organization, employment agency, or person to discharge, expel, or otherwise discriminate
22 against any person because the person has opposed any practices forbidden under this part or
23 because the person has filed a complaint, testified, or assisted in any proceeding under this part.”

24 94. Labor Code § 232.5(c) prohibits employers from discharging, formally
25 disciplining, or otherwise discriminating against employees who disclose information about the
26 employer's working conditions. Defendant’s *modus operandi* was to retaliate against Plaintiff
27 and other similarly situated employees for reporting harassing work conditions. This is
28 evidenced by Defendant’s retaliating against Plaintiff after she continuously reported the

1 harassment she was facing by her managers. This discrimination took the form of suspending,
2 investigating, and terminating her.

3 95. Labor Code § 1102.5 prohibits employers from retaliating against employees for
4 disclosing information about an employer's violation of state or federal statute, or local, state, or
5 federal regulations. Defendants had an unwritten policy of retaliating against Plaintiff and
6 similarly situated employees because Employer believed they disclosed Defendant's harassing
7 and discriminatory actions against its employees. This is evidenced by Defendant's suspending,
8 investigating, and terminating those employees.

9 96. Labor Code §§ 6310 and 6399.7 prohibit employers from retaliating against
10 employees for making oral or written complaints to any governmental agencies having statutory
11 responsibility for employee safety or health, or to the employer for raising concerns about the
12 harassment that occurred in Defendant's workplace, or for filing any complaints with any
13 concerned government agency. Plaintiff believes that the complaints of employees contributed
14 to Defendant's decision to terminate her and other similarly situated employees.

15 97. When Plaintiff emailed Mr. Murphy to report the harassing behavior Defendants
16 were subjecting her to, she was disclosing to a person who had authority over her and who had
17 the authority to investigate, discover, or correct violations or noncompliance, because she had
18 reasonable cause to believe that the information disclosed a violation of the law, namely,
19 harassment of an employee.

20 98. Plaintiff is informed and believes, and thereon alleges, that her complaining to
21 Mr. Murphy motivated the termination she suffered.

22 99. As a direct and foreseeable result of the aforesaid acts of said Defendants,
23 Plaintiff has lost and will continue to lose income and benefits in an amount to be proven at trial.
24 Plaintiff claims such amount as general damages for mental and emotional distress and
25 aggravation in an amount to be proven at the time of trial, together with pre-judgment interest
26 pursuant to Civil Code § 3287 and/or any other provision of law providing for pre-judgment
27 interest.

**TENTH CAUSE OF ACTION FOR FAILURE TO PROVIDE REST PERIODS, IN
VIOLATION OF LABOR CODE § 226.7 AND WAGE ORDER NO. 4-2001,
AGAINST DEFENDANTS SHARP AND DOES 1 – 100, INCLUSIVE**

100. Plaintiff restates and incorporates each and every allegation of the foregoing paragraphs as though fully set forth herein.

101. As used in this Cause of Action, “Defendants” means Sharp and Does 1 through 100, inclusive.

102. At all times relevant to this Complaint, the Industrial Wage Commission’s Wage Order No. 4-2001 (hereafter “Wage Order”) and Labor Code §§ 226.7 and 512(a) were in effect and applicable to Defendants.

103. Wage Order § 12 states that an employer shall authorize and permit all employees to take rest periods, which, insofar as is practicable, shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten minutes net rest time per four hours or major fraction thereof.

104. Labor Code § 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable Wage Order. The Court has explained this to mean that, “[d]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time.” Augustus v. ABM Security Services, Inc., (2016) 2 Cal.5th 257, 260.

105. Defendants required Plaintiff and other aggrieved employees to work through their rest periods, not providing the opportunity for a rest period of at least ten minutes. Further, Defendants prohibited Plaintiff and other aggrieved employees from leaving the workplace during their rest periods, in violation of the requirement that employers relinquish control of employees during rest periods.

106. Pursuant to Wage Order § 12 and Labor Code § 226.7, Plaintiff is entitled to recover from Defendants one additional hour of pay at her regular hourly rate of compensation for each workday that the rest period was not provided, in an amount to be proven at trial.

107. Additionally, Wage Order § 20 provides for civil penalties.

1 In addition to any other civil penalties provided by law, any employer . . . who
2 violates, or causes to be violated, the provisions of this order, shall be subject to the
3 civil penalty of: (1) Initial Violation – \$50.00 for each underpaid employee for each
4 pay period during which the employee was underpaid in addition to the amount
5 which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00
6 for each underpaid employee for each pay period during which the employee was
7 underpaid in addition to an amount which is sufficient to recover unpaid wages.

8 Plaintiff is entitled to these civil penalties in an amount to be proven at trial.

9 108. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
10 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
11 claims such amount as general damages for mental and emotional distress, aggravation, and
12 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
13 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

14 **ELEVENTH CAUSE OF ACTION FOR FAILURE TO PROVIDE MEAL PERIODS,**
15 **IN VIOLATION OF LABOR CODE §§ 226.7 AND 512, AND WAGE ORDER NO. 4-**
16 **2001, AGAINST DEFENDANTS SHARP AND DOES 1 – 100, INCLUSIVE**

17 109. Plaintiff restates and incorporates by reference each and every allegation of the
18 foregoing paragraphs as though fully set forth herein.

19 110. As used in this Cause of Action, “Defendants” means Sharp and Does 1 through
20 100, inclusive.

21 111. At all times relevant to this Complaint, the Wage Order and Labor Code §§ 226.7
22 and 512(a) were in effect and applicable to Defendants.

23 112. Both Wage Order § 11 and Labor Code § 512(a) state that an employer shall not
24 employ an employee for a work period of more than five hours without a meal period of no less
25 than thirty minutes, except that if a work period of not more than six hours will complete the
26 day’s work, the meal period may be waived by mutual consent of the employer and employee.

27 113. Labor Code § 226.7 provides that no employer shall require an employee to work
28 during any meal period mandated by an applicable IWC Wage Order.

1 114. Plaintiff and other aggrieved employees were denied proper meal breaks by
2 Defendant, due to Defendant's understaffing. Plaintiff and other aggrieved employees were
3 overburdened, making it impossible for Plaintiff and other aggrieved employees to take proper
4 meal periods, for fear of being reprimanded if their work was incomplete.

5 115. Pursuant to Wage Order § 11 and Labor Code § 226.7(c), Plaintiff is entitled to
6 recover from Defendants one additional hour of pay at Plaintiff's regular rate of compensation
7 for each workday that a meal period was not provided.

8 116. Additionally, Wage Order § 20 provides for civil penalties:

9
10 In addition to any other civil penalties provided by law, any employer . . . who
11 violates, or causes to be violated, the provisions of this order, shall be subject to the
12 civil penalty of: (1) Initial Violation – \$50.00 for each underpaid employee for each
13 pay period during which the employee was underpaid in addition to the amount
14 which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00
15 for each underpaid employee for each pay period during which the employee was
16 underpaid in addition to an amount which is sufficient to recover unpaid wages.

17 Plaintiff is entitled to these civil penalties in an amount to be proven at trial.

18 117. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
19 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
20 claims such amount as general damages for mental and emotional distress, aggravation, and
21 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
22 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

23 **TWELFTH CAUSE OF ACTION FOR FAILURE TO PROVIDE ACCURATE,**
24 **ITEMIZED WAGE STATEMENTS, IN VIOLATION OF LABOR CODE § 226**
25 **AGAINST DEFENDANTS SHARP AND DOES 1 – 100, INCLUSIVE**

26 118. Plaintiff restates and incorporates by reference each and every allegation of the
27 foregoing paragraphs as though fully set forth herein.

28 119. As used in this Cause of Action, "Defendants" means Sharp and Does 1 through
100, inclusive.

1 120. Labor Code § 226(a) requires an employer to furnish its employees with an
2 accurate itemized statement in writing showing, among other things, gross wages earned, net
3 wages earned, all applicable hourly rates in effect during the pay period, and the corresponding
4 number of hours worked at each hourly rate by the employee.

5 121. Under Labor Code § 226(e), an employee suffering injury as a result of a knowing
6 and intentional failure by an employer to comply with § 226(a) is entitled to recover the greater
7 of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 for
8 each violation in a subsequent pay period, up to a maximum amount of \$4,000.

9 122. The itemized statements Plaintiff and other aggrieved employees received were
10 inaccurate. Because they should have indicated that Plaintiff and other aggrieved employees
11 were working during the time they were taking their fraudulent rest and meal periods, they did
12 not include all applicable hours worked. Furthermore, Subdivision (c) of Labor Code § 226
13 requires employers who receive a written or oral request to inspect or receive a copy of records
14 pursuant to subdivision (b) pertaining to a current or former employee to comply with the request
15 as soon as practicable, but no later than 21 calendar days from the date of the request. On
16 December 12, 2019, Plaintiff's counsel sent an employee and personnel records request to
17 Defendant. Defendant's document production failed to include an employee handbook and an
18 arbitration agreement if such existed. In good faith, Plaintiff's counsel sent a follow-up letter to
19 mitigate the incomplete document production but this correspondence was ignored.

20 123. As a direct and proximate result of Defendants' conduct, Plaintiff has been
21 injured by, among other things, not being paid all wages due, not knowing how many hours she
22 worked and at what rates, and being required to file this action to recover her wages and
23 determine the number of hours worked and wages due.

24 124. Defendants are in violation of Labor Code § 226(a) and are liable to Plaintiff for
25 damages. Plaintiff is entitled to recover the damages or penalties provided by Labor Code §
26 226(e), including interest thereon, and reasonable attorneys' fees and costs.

27 125. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
28 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff

1 claims such amount as general damages for mental and emotional distress, aggravation, and
2 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
3 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

4
5 **THIRTEENTH CAUSE OF ACTION FOR UNLAWFUL BUSINESS PRACTICES IN**
6 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ. AGAINST**
7 **DEFENDANTS SHARP AND DOES 1 – 100, INCLUSIVE**

8 126. Plaintiff restates and incorporates by reference each and every allegation of the
9 foregoing paragraphs as though fully set forth herein.

10 127. As used in this Cause of Action, “Defendants” means Sharp and Does 1 through
11 100, inclusive.

12 128. Defendants’ actions and conduct, as alleged herein, constitute unlawful, unfair,
13 deceptive, and misleading business practices, prohibited by Business and Professions Code §
14 17200 *et seq.*

15 129. Plaintiff is informed and believes and thereon alleges that Defendants utilized
16 improper, unlawful, and tortious means to unjustly enrich themselves, and to cause deliberate
17 injury to Plaintiff.

18 130. Plaintiff seeks restitution and a return of all moneys obtained by Defendants
19 through their wrongful conduct.

20
21 **FOURTEENTH CAUSE OF ACTION FOR CIVIL PENALTIES PURSUANT TO**
22 **THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE §§ 2698 – 2699.6)**
23 **AGAINST DEFENDANTS SHARP AND DOES 1 – 100, INCLUSIVE**

24 131. Plaintiff restates and incorporates by reference each and every allegation of the
25 foregoing paragraphs as though fully set forth herein.

26 132. As used in this Cause of Action, “Defendants” means Sharp and Does 1 through
27 100, inclusive.

28 133. Pursuant to Labor Code § 2699.3, Plaintiff provided notice to the Labor and

1 Workforce Development Agency (“LWDA”) and written notice by U.S. certified mail to
2 Defendants of the specific provisions of the Labor Code alleged to have been violated and the
3 facts and theories to support the alleged violations. These notices were sent on February 24,
4 2020. The LWDA did not respond to the notice within sixty-five calendar days. Thus, under
5 Labor Code § 2699.3(a)(2)(A), Plaintiff is permitted to commence a civil action pursuant to
6 Labor Code § 2699.

7 134. Defendants’ conduct as set forth herein has caused injury to Plaintiff and all those
8 employees similarly aggrieved and has violated various provisions of the Labor Code. As such,
9 Plaintiff brings this claim as a representative action on behalf of herself and those similarly
10 aggrieved.

11 135. Under Labor Code § 2699(f), “[f]or all provisions of this code except those for
12 which a civil penalty is specifically provided, there is established a civil penalty for a violation
13 of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs
14 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
15 employee per pay period for the initial violation and two hundred dollars (\$200) for each
16 aggrieved employee per pay period for each subsequent violation.”

17 136. As alleged herein, Plaintiff and all those similarly situated seek, and Defendants
18 are liable for, penalties for the violations of Labor Code, including the following:

- 19 a) Violation of Labor Code § 226.7 for failure to provide Plaintiff and all
20 similarly aggrieved employees with rest periods;
- 21 b) Violation of Labor Code §§ 226.7 and 512 for failure to provide Plaintiff
22 and all similarly aggrieved employees with meal periods;
- 23 c) Violation of Labor Code § 226 for failure to provide Plaintiff and all
24 similarly aggrieved employees with accurate, itemized wage statements;
- 25 d) Violation of Labor Code §§ 232.5(c), 1102.5, 6310, and 6399.7 for
26 retaliating against Plaintiff and all similarly aggrieved employees in response
27 to the reporting of Defendant’s unlawful activities;

28 137. Plaintiff is also entitled to seek, on behalf of herself and all others similarly

1 situated, all reasonable attorneys' fees and costs of suit pursuant to Labor Code § 2699(g).

2 138. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
3 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
4 claims such amount as general damages for mental and emotional distress, aggravation, and
5 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
6 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

7
8 **WHEREFORE**, Plaintiff prays for judgment against the Defendants, and each of them,
9 as follows:

- 10 1. For general damages in an amount no less than \$900,000;
11 2. For special damages in an amount no less than \$100,000;
12 3. For punitive damages;
13 4. For pre-judgment interest to the extent allowed by law;
14 5. For costs of suit incurred herein;
15 6. For attorneys' fees; and
16 7. For such other and further relief as the Court deems just and proper.

17
18 Dated: September 4, 2020

JAFARI LAW GROUP, INC.

19 

20 David V. Jafari
21 Saul Acherman
22 Attorneys for Plaintiff
23 Kizzie Holmes
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues so triable in the Complaint.

Dated: September 4, 2020

JAFARI LAW GROUP, INC.



David V. Jafari
Saul Acherman
Attorneys for Plaintiff
Kizzie Holmes

VERIFICATION

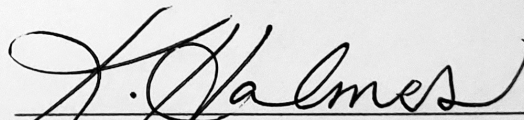
I am a party to this action. I am authorized to make this verification for and on behalf of myself and make this verification for this reason.

I have examined the foregoing Complaint and know its contents.

The matters stated in the foregoing Complaint are true to my own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at 4pm San Diego, California on 9/3/2020.


Kizzie Holmes