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ALAMEDA COUNTY

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED JURISDICTION

BERLIN THOMAS
Plaintiff,

v.

KAISER PERMANENTE SANTA CLARA
MEDICAL CENTER AND DOES 1 – 20.
Defendants.

Case No.

HG 14750099

**COMPLAINT FOR DAMAGES; RACE
COLOR, DISABILITY
DISCRIMINATION, FAILURE TO
ACCOMMODATE UNDER FAIR
EMPLOYMENT AND HOUSING ACT,
INFLECTION OF EMOTIONAL
DISTRESS.**

GENERAL ALLEGATIONS

Plaintiff, BERLIN THOMAS, alleges:

1. At all times herein mentioned, Plaintiff was a resident of the State of California, County of Alameda.
2. At all times mentioned herein, Defendant KAISER PERMANENTE SANTA CLARA MEDICAL CENTER ("KAISER") is or was doing business in the County of Santa Clara, State of California.
3. Plaintiff is informed and believes, and thereon alleges, that the true names and capacities, whether individual, associate, corporate, or otherwise of Defendants sued herein as Does 1 to 20, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes, and thereon alleges, that Defendants sued herein as

1 "DOES" are legally and/or equitably culpable and liable for the actions complained of herein.
2 Plaintiff will seek leave of court to amend her complaint to allege the DOES true names and
3 capacities when the names and capacities have been ascertained.

4 4. At all times herein mentioned, Plaintiff is informed and believes, and upon such basis
5 alleges, that DOES 1 to 20 were the agents, servants and/or employees of the other Defendants, and
6 at all times herein mentioned were acting within the course and scope of their agency and
7 employment, and that the acts of each Defendant were ratified by the others.

8 STATEMENT OF FACTS

9 5. Plaintiff is a 46 year-old African-American woman who has worked with the Kaiser
10 Permanente organization since September 29, 1999. She has held several positions in various Kaiser
11 facilities. From 2011 to the 2014, Plaintiff was located at the Kaiser Santa Clara Claims Processing
12 Office as a floating Claims Processor.

13 6. In 2000 Plaintiff filed a workers' compensation claim for a back injury. Before taking
14 the Kaiser Claims Processing floating position on June 27, 2011, she provided documentation that
15 she needed an accommodation due to a disability. In addition, she submitted a health screening
16 questionnaire which clearly identified her work restrictions and limitations to Scott Hedge, the hiring
17 manager at time. She produced documentation from her doctor regarding her back injury and also
18 discussed her irritable bowel syndrome ("IBS") diagnosis with her new manager, April Jordan.
19 Upon receipt of Plaintiff's work restrictions/limitations, Plaintiff was afforded ten minute stretch
20 breaks for every hour of work and ten minute restroom breaks for every two hours of work, or as
21 needed. Upon beginning work in the Kaiser Santa Clara Processing Office, Plaintiff experienced
22 disparate treatment from her co-workers during her training period with Supervisor April Jordan
23 ("Jordan"). Specifically, Plaintiff found great opposition from her trainer Shayne Canto ("Canto"), a
24 Filipino woman, who would continuously engage in tactics to prevent plaintiff from being trained
25 correctly which did not occur to others similarly situated, and disparage Plaintiff's character by
26 consistently providing false information to management regarding the success of her training with
27 Plaintiff, asserting that Plaintiff did not want to learn, or that she was "away from her desk".

28 7. Shortly after training, Plaintiff began to experience intense discriminatory treatment

1 from Canto and Plaintiff's managers who acquiesced to Canto's known discriminatory behavior..

2 Examples of the discriminatory behavior include:

- 3 a) Jordan asked Plaintiff to inform Canto when she was taking her accommodated
4 stretch or restroom break so that Canto could cover the front desk. This arrangement
5 became a problem when Plaintiff had to search the Department for Canto before
6 taking her accommodated stretch or restroom breaks, when Plaintiff had to publically
7 announce she was going to the restroom in front of patients, or when Canto did not
8 want to cover the front desk and thus Plaintiff could not take her accommodated
9 stretch or restroom breaks.
- 10 b) Canto would often disappear and go to the back office area to work with other co-
11 workers, leaving Plaintiff to manage a busy front desk without help, knowing that
12 Canto had not properly trained her to perform the full range of functions at the front
13 desk.
- 14 c) Canto began to resent Plaintiff taking her accommodated breaks and would call
15 Jordan each time Plaintiff took her accommodated restroom break, claiming she did
16 not know where Plaintiff had gone. Indeed, on one occasion, Jordan went into the
17 restroom looking for Plaintiff because Canto claimed she could not find her when in
18 fact Plaintiff had informed Canto of her whereabouts.
- 19 d) On or about May 9, 2011, Plaintiff observed and heard Canto making race based
20 offensive comments to patients. Specifically, Canto looked at a new born baby and
21 then asked a Filipino patient if her baby was black. The patient responded, "yes my
22 baby is half black." Canto then remarked "Oh how cute, you have a mutt". The
23 patient appeared offended and Plaintiff, who was also offended by the comment, later
24 questioned Canto asking if she thought the patient may have been offended by her
25 comment. She also explained to Canto that she was offended by the comment. Canto
26 said no. On the same day, Plaintiff observed Canto harassing an elderly couple that
27 appeared to be of Asian descent. The couple was trying to find money to pay when
28 Canto slapped her hand on the desk and said "Chop chop, hurry up!" Plaintiff

1 reported these offensive comments to her supervisor Jordan, and reported Canto's
2 behavior on the Kaiser Complaint Hotline. Plaintiff's supervisor, Jordan, asked
3 Plaintiff to relay to Canto that she could be terminated for such remarks and
4 discourteous behavior. Plaintiff's supervisor did not take further action despite
5 Plaintiff's complaint.

- 6 e) On or about February 16, 2011, Plaintiff became ill after eating something in the
7 cafeteria and needed to be released from the front desk coverage. Plaintiff obtained
8 coverage for her window and remained in the restroom for an extended period of
9 time. Canto, in a malicious manner, announced that Plaintiff was ill to the
10 Department and insinuated that Plaintiff was avoiding training. Another employee,
11 Danielle Harvell, informed Plaintiff after she came out of the restroom that Canto
12 went around the department "getting people excited because (Plaintiff) was again in
13 the restroom."
- 14 f) In February 2011, Plaintiff was in a vehicle accident in which she was injured and
15 required that she use a cane to walk. Due to her injury, Plaintiff modified her break
16 schedule with the approval of the supervisor, to give herself some time off of her feet
17 in the afternoons. Canto refused to assist Plaintiff with the front desk during her new
18 break hours and objected to Plaintiff's new break schedule claiming it was not
19 allowed per the Union contract, which was not true since it was a temporary
20 accommodation. Despite management's approval of the temporary modifications,
21 Canto was allowed to frustrate the accommodation for Plaintiff by disappearing or
22 refusing to relieve Plaintiff from the front desk.
- 23 g) In or about April 2011, Canto changed her school schedule so that she could start
24 work at any time between 10 a.m. and 12 p.m., and per her admission, Canto was not
25 using her education leave for her modified schedule. Canto's modified school
26 schedule left Plaintiff to cover the front desk alone while Canto was at school and
27 during her lunch hour – which Canto could also take at any time. This lackadaisical
28 scheduling lead to long periods of time when Plaintiff had no assistance and could not

1 take her accommodated breaks.

- 2 h) On April 21, 2011, a co-worker named Cora Masquiell ("Masquiell") drafted a letter
3 to one of Plaintiff's managers that, among other things, complained about Plaintiff's
4 accommodated stretch breaks. Plaintiff is informed and believes Canto was the
5 impetus for this complaint because Plaintiff's accommodated stretch breaks did not
6 affect Masquiell's position.
- 7 i) In May 2011, Canto and Masquiell carried on an argument from 11:00 a.m. to the end
8 of the day when they finally took the argument to Jordan's office just before 5 p.m.
9 Just before going to Jordan's office, Canto asked a patient to wait at her desk for her
10 return. The argument was so loud it could be heard by patients and Plaintiff had to
11 continuously apologize for their behavior. Plaintiff went to Jordan's office to request
12 assistance with patients and remind Canto that she had a member waiting three times.
13 She also reminded the parties that she had to leave at 5:30 p.m. Canto's patient was
14 very upset that she waited over 20 minutes for Canto who never returned. Plaintiff
15 eventually assisted the patient. The patient expressed that she thought Jordan, who
16 publicly scolded Plaintiff, improperly chastised Plaintiff at the front desk with patients
17 standing by. Accordingly, the patient drafted a complaint and Plaintiff gave it to
18 Jordan. Jordan then came out of her office to reassure the patient. Jordan also
19 guaranteed that the complaint would be sent directly to Member Services. Plaintiff is
20 informed and believes that the complaint did not go to Members Services.
- 21 j) In April 2011, Jordan asked Plaintiff to stop work in the middle of one project and
22 begin on another. Jordan gave the unfinished project to Plaintiff's co-worker. The
23 next day she noticed that all of her work had been clipped together on her desk. Also,
24 copies of forms Plaintiff made had disappeared. Several days later, all of Plaintiff's
25 work appeared in the lobby where patients could access it. Plaintiff spoke with
26 Jordan and assured her that she did not place her work in the lobby. After Jordan
27 spoke with Canto, the issue was dropped and no one was penalized because they
28 could not prove who placed the work in the lobby.

1 k) Plaintiff's manager, Scot Hedge, made some early attempts to disrupt the
2 discriminatory and hostile work environment, as Plaintiff continuously complained
3 about the unfair treatment. However, he did not halt the actions of Canto, and
4 sometimes assisted Canto in engaging in harassing behavior based on Plaintiff's
5 disabilities. In fact, Plaintiff's managers supported Canto's promotion to a
6 management position despite knowledge of her harassing behavior and racially
7 charged comments to patients.

8 8. When Canto was promoted she became one of Plaintiff's managers and the
9 harassment based on disability intensified. Specifically, Canto and her counterpart Claudia Glimski
10 ("Glimski"), a Caucasian woman, engaged in the following discriminatory behavior:

- 11 a) Glimski would generally require Plaintiff to keep her door open, when others
12 similarly situated would be allowed to close their door.
- 13 b) On July 22, 2011, Glimski denied Plaintiff her stretching accommodation, packed her
14 belongings, and yelled at her to leave and not return to work until she went to
15 Occupational Health. Plaintiff reluctantly went to Occupational Health, but was told
16 to return because Plaintiff's intermittent leave was covered under FMLA.
- 17 c) On August 24, 2011, Glimski only permitted Plaintiff 10 minutes for her restroom
18 accommodation. Any additional time would go against her allotted FMLA time.
- 19 d) In early August 2011, Glimski accused Plaintiff of stealing time during her restroom
20 accommodations. As a result, Glimski began following Plaintiff to the restroom and
21 closely tracking Plaintiff's FMLA use, requiring that she dock time from FMLA if she
22 stayed in the bathroom too long.
- 23 e) In May 2012, Plaintiff was written up for allegedly "going missing for hours" on
24 April 23 and May 2, 2011, without informing Canto or Glimski of her whereabouts,
25 when in fact, she was not missing for hours but was at the doctor's office, an
26 appointment which had been previously approved.
- 27 f) In May 2011, Plaintiff received a letter of reprimand for being away from her desk
28 when she stepped away to take a call from her doctor.

- 1 g) Almost daily since August 2011, Canto and Glimski questioned Plaintiff regarding
2 why she is not at her desk, knowing she had ten minute restroom breaks and stretch
3 breaks as her accommodation due to her disability.
- 4 h) On October 19, 2011, Glimski moved Plaintiff's desk to a new location to allegedly
5 observe Plaintiff, which had the effect of hindering her stretching and restroom
6 accommodations. Glimski did not have a legitimate business reason for relocating
7 Plaintiff other than to harass and intimidate Plaintiff due to her disability. Glimski
8 would also ask other employees to watch Plaintiff and report back when Plaintiff took
9 her accommodated breaks.
- 10 i) In July 2011, Glimski told Plaintiff "we're gonna get you out of here" and that she
11 was going to "keep writing Plaintiff up" until she does.
- 12 j) In September 2011, Canto said Plaintiff's voice could be construed as rude and forbid
13 her to speak in the front office. Consequently Plaintiff's headset was taken and she
14 was told she could never make calls to patients although it was part of her normal and
15 customary job duties.
- 16 k) On several occasions, including, but not limited to September 6, 2011, Canto and
17 Glimski excluded Plaintiff from meetings and office potlucks because she had a
18 disability for which she had FMLA – none of the meetings or potlucks were related to
19 her FMLA.
- 20 l) In August 2011, Glimski intentionally moved Plaintiff's lunch period to an earlier
21 time slot making it very difficult for her to attend her doctor appointments for her
22 disability IBS and IC.
- 23 m) Plaintiff was not allowed to be at her desk during lunch, while others similarly
24 situated were allowed to be at their desk during lunch.
- 25 n) In 2012 and 2013, Canto and Glimski submitted negative performance evaluations
26 alleging Plaintiff was unable to perform her job.
- 27 o) On September 17, 2012, Plaintiff was written up for allegedly leaving her workspace
28 without alerting Canto or Glimski that she was using her accommodated restroom

1 break.

2 p) Canto and Glimski allowed other employees to engage in inappropriate behavior
3 towards Plaintiff. For example, on November 14, 2012, Daniella Castillo ("Castillo")
4 was rude, cursed at Plaintiff, and engaged Plaintiff in "heated" discussions.

5 9. While in this work hostile, harassing work environment, Plaintiff was highly stressed,
6 always crying, and constantly in fear of being attacked. Plaintiff did not want to use the restroom at
7 work for fear of retaliation – to the degree of wearing disposable undergarments in case she could
8 not leave her desk to attend to her personal affairs triggered by her disability. Plaintiff was afraid to
9 eat in fear that it may require her to use the restroom. Plaintiff's productivity was impacted as she
10 was always looking over her shoulder for the next false criticism that would be lodged against her,
11 and was always double checking work which slowed her down for fear of making a mistake. Plaintiff
12 suffered weight loss and mental anguish as a result of this harassing, discriminatory treatment.

13 10. After months of enduring the harassing and hostile behavior of Canto and Glimski
14 and complaining to management to no avail, Plaintiff was placed on medical leave for stress by her
15 doctor until April 30, 2012, and again until September 2012.

16 17 **ADMINISTRATIVE REQUIREMENTS**

18 11. Plaintiff filed charges of discrimination with the Equal Employment Opportunity
19 Commission ("EEOC") on November 29, 2012 – EEOC Charge No. 555-2013-00149N and the
20 Department of Fair Employment and Housing ("DFEH") - DFEH No. 71266-33374.

21 12. Plaintiff received a right to sue letter from DFEH regarding charge no. 71266-33374
22 and Charge No 555-2013-000149N on December 4, 2013. Since Plaintiff has exhausted all of her
23 administrative remedies, civil remedies are now proper.

24 **FIRST CAUSE OF ACTION**

25 **(Race and Color Discrimination in violation of California Government Code § 12940)**

26 13. Plaintiff incorporates by reference all the allegations contained in Paragraphs 1- 11,
27 supra, as if fully set forth herein.

28 14. At all times mentioned herein California Government Code § 12940(a) was in effect

1 and binding on Defendant. Government Code Section 12940(a) provides that an employer may not
2 discharge an employee from employment or discriminate against the employee in compensation or in
3 terms, conditions, or privileges of employment because of race, religious creed, color, national
4 origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital
5 status, sex, gender, gender identity, gender expression, age, or sexual orientation.

6 15. Plaintiff is a member of a protected class based on her African American race and her
7 color, as she is a darker skinned African American.

8 16. Plaintiff was intentionally treated differently, in terms and conditions of her
9 employment, than non-African American employees and lighter skinned African American
10 employees. Specifically, Danielle Harvell.

11 17. Plaintiff believes and thereon alleges that her discipline and harassment was
12 unwarranted and due to intentional discrimination based on her race and color. Such actions are
13 unlawful in violation of §12940(a), and have resulted in damage and injury to Plaintiff, as alleged
14 herein.

15 18. As a direct, foreseeable, and proximate result of the actions taken by Defendant Kaiser
16 and its employees, officials, agents, and assigns, as described above, Plaintiff suffered substantial
17 losses in employment opportunities, health, and quality of life.

18 19. As a proximate result of Defendant Kaiser's willful, knowing and intentional disparate
19 discrimination against Plaintiff, she has suffered irreparable damage to her reputation, humiliation,
20 and embarrassment as Plaintiff's long history was blemished by discipline based on discriminatory
21 animus, and she was unfairly targeted with discriminatory behavior based on her race and color.

22 **SECOND CAUSE OF ACTION**
23 **(Disability & Medical Condition Discrimination in violation Calif. Government Code §**
24 **12940(a))**

25 20. Plaintiff incorporates by reference all the allegations contained in Paragraphs 1-18,
26 supra, as if fully set forth herein.
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1 21. At all times mentioned herein California Government Code § 12940(a) was in effect
2 and binding on Defendant. Government Code Section 12940(a) provides that an employer may not
3 discharge an employee from employment or discriminate against the employee in compensation or in
4 terms, conditions, or privileges of employment because of race, religious creed, color, national
5 origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital
6 status, sex, gender, gender identity, gender expression, age, or sexual orientation.

7 22. Defendant violated Government Code § 12940(a) by discriminating against Plaintiff
8 because of her physical disability (back injury and IBS). Specifically, (1) Jordan, Glimski, refused to
9 give her accommodated breaks and would force other employees to follow Plaintiff into the restroom
10 on her accommodated breaks; (2) Canto continuously complained about Plaintiff's accommodations,
11 and did things to inhibit Plaintiff's ability to take her accommodated breaks knowing that said
12 accommodations had been approved by management upon Plaintiff's hire; (3) Canto and Glimski
13 routinely denied Plaintiff the ability to take her accommodated stretch and restroom breaks; (4)
14 Glimski falsely accused Plaintiff of stealing time and incorrectly attributed her restroom breaks to
15 FMLA use, by deducting any additional time she spent in the bathroom from her FMLA hours/bank;
16 (5) Glimski intentionally moved Plaintiff's desk to a new location to hinder her stretching and
17 restroom accommodations, and intimidate Plaintiff; (6) Canto and Glimski intentionally excluded
18 Plaintiff from meetings and office potlucks due to her disability; (7) Glimski moved Plaintiff's lunch
19 period to an earlier time slot making it very difficult for her to attend her doctor appointments for her
20 disability, namely IBS and IC; (8) Plaintiff was written up for allegedly leaving her workspace
21 without alerting Canto or Glimski that she was using her accommodated restroom break, when they
22 knew such was not true; (9) Canto's adjusted school and work schedule lead to long periods of time
23 when Plaintiff had no assistance at the front desk and could not take her accommodated breaks; and
24 (10) Canto and Glimski submitted false negative evaluation reports suggesting Plaintiff could not
25 perform her job tasks. Such conduct was done because of Plaintiff's disability and medical condition
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1 and has resulted in damage and injury to Plaintiff as alleged herein.

2 23. As a direct, foreseeable, and proximate result of the actions taken by Defendant Kaiser
3 and its employees, officials, agents, and assigns, as described above, Plaintiff suffered substantial
4 losses in employment opportunities, health, and quality of life.

5 24. As a proximate result of Defendant Kaiser's willful, knowing and intentional
6 discrimination, Plaintiff has suffered irreparable damage to her reputation, humiliation, and
7 embarrassment, and she was unfairly targeted with discriminatory behavior based on her medical
8 condition.
9

10 **THIRD CAUSE OF ACTION**

11 **(Failure to Provide Reas. Accommodation in violation of Calif. Government Code § 12940)**

12 25. Plaintiff incorporates by reference all the allegations contained in Paragraphs 1-23,
13 supra, as if fully set forth herein.

14 26. At all times mentioned herein California Government Code § 12940(m) was in effect
15 and binding on Defendant. Government Code Section 12940(m) provides that an employer is
16 prohibited from failing to accommodate an employee, like Plaintiff, who has a medical condition
17 (back injury and IBS) as that term is defined in Government Code § 12926(h) or a physical disability
18 as that term is defined in Government Code § 12926(k).
19

20 27. Defendant Kaiser, and specifically Canto and Glimski, violated Government Code §
21 12940(m), by intentionally failing to make reasonable accommodation for Plaintiff's physical
22 disability (back injury and IBS), and continuously engaging in conduct that frustrated Plaintiff's
23 ability to take her approved accommodated breaks. Such conduct has resulted in damage and injury
24 to Plaintiff as alleged herein.

25 28. Under Government Code § 12940(m) Defendant Kaiser, and specifically Canto and
26 Glimski, had an obligation to provide reasonable accommodations by allowing Plaintiff to take her
27 accommodated stretch and restroom breaks in a timely fashion and without harassment or discipline.
28

Moreover, minor accommodations to Plaintiff's work schedule to allow her to attend her doctor appointments would not have caused an undue hardship to Defendant Kaiser, who owed Plaintiff such reasonable accommodation. Furthermore, Plaintiff was able to perform the essential functions of her job as a floating Claims Processor if reasonable accommodation had been properly made available.

29. As a direct, foreseeable, and proximate result of the actions taken by Defendant Kaiser and its employees, officials, agents, and assigns, as described above, Plaintiff suffered substantial losses in employment opportunities, health, and quality of life.

30. As a proximate result of Defendant Kaiser's willful, knowing and intentional discrimination, Plaintiff has suffered irreparable damage to her reputation, humiliation, and embarrassment, and she was unfairly targeted with discriminatory behavior based on her medical condition.

FOURTH CAUSE OF ACTION
(Intentional Infliction of Emotional Distress)

31. Plaintiff incorporates by reference all the allegations contained in Paragraphs 1-29, supra, as if fully set forth herein.

32. Plaintiff believes and thereon alleges that her harassment and discipline due to discrimination based on color and physical disability was extreme and outrageous.

33. Through Defendant Kaiser's extreme and outrageous conduct as described herein and above, Defendant Kaiser acted with a discriminatory intent to cause, or with reckless disregard for the probability of causing, Plaintiff humiliation, mental anguish, and substantial and enduring emotional distress due to the extent that said outrageous conduct was perpetrated by certain agents of Defendant Kaiser, Defendant Kaiser authorized and ratified the conduct.

34. As a direct, foreseeable, and proximate result of Defendant Kaiser's conduct, Plaintiff has sustained and continues to sustain substantial losses in employment opportunities, health, and

1 quality of life.

2 35. As a direct, foreseeable, and proximate result of Defendant Kaiser's conduct, Plaintiff
3 has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental
4 pain and anguish, all to her damage in a sum to be established according to proof but exceeding the
5 threshold for filing herein.

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7 **FIFTH CAUSE OF ACTION**
(Negligent Infliction of Emotional Distress)

8 36. Plaintiff incorporates by reference all the allegations contained in Paragraphs 1-35,
9 supra, as if fully set forth herein.

10 37. Defendant Kaiser and their agents engaged in the acts as alleged herein and above,
11 which proximately resulted in injury and emotional distress to Plaintiff.

12 38. As an employer, Defendant Kaiser had a special duty of care on the behalf of the
13 Plaintiff.

14 39. At all times materially herein, Defendant Kaiser knew or in the exercise of ordinary
15 care should have known, that unless Defendant Kaiser and its agents ceased to engage in the
16 aforementioned acts, or intervened to protect Plaintiff, and to prohibit, control, regulate and/or
17 penalize the conduct of Defendant Kaiser and its agents, as alleged herein, that the conduct would
18 continue, thereby subjecting Plaintiff to personal injury and emotional distress.

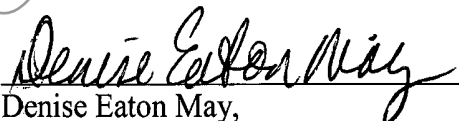
19 40. As a direct and proximate result of Defendant Kaiser's aforementioned conduct,
20 Plaintiff suffered general damages for pain, suffering, and severe mental and emotional distress, as
21 Plaintiff suffers from severe anxiety, severe depression, loss of sleep, and loss of appetite, in an
22 amount according to proof, but exceeding the threshold for filing herein.
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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff respectfully prays that this court grant the following relief against
3 defendants:

- 4 1. Compensatory damages;
5 2. For economic damages including in an amount to be awarded by the Court;
6 3. For interest on the amount of losses incurred at the prevailing legal rate;
7 4. For reasonable attorney fees;
8 5. For punitive damages;
9 6. For such other and further relief as the court deems just and proper.

10
11 Dated: December 3, 2014


Denise Eaton May,
Attorney for Plaintiff
Berlin Thomas