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Clerk of the Superior Court
SEP 28 2012

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Clerk of the Superior Court
SEP 28 2012 4:51

5 Attorneys for Plaintiff Sylvia Barron By: _____ Deputy By: _____ Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN DIEGO

10
11 SYLVIA BARRON

12 Plaintiff,

13 vs.

14
15 PLANNED PARENTHOOD OF THE
16 PACIFIC SOUTHWEST, a California
corporation, and DOES 1 through 20, inclusive

17 Defendants.
18

Case No.: 37-2012-00104726-CU-WT-CTL

COMPLAINT FOR DAMAGES

I/C/J:
Dept.:

19 Plaintiff, Sylvia Barron, alleges as follows:

20 1. Plaintiff Sylvia Barron, is, and at all relevant times was, an adult female currently
21 residing in the City of Santa Ysabel within the County of San Diego, State of California.

22 2. Defendant Planned Parenthood of The Pacific Southwest, is now, and at all
23 relevant times was, a corporation organized and existing under the laws of the State of
24 California and conducting business throughout the City of San Diego, County of San Diego,
25 State of California, with its principal place of business located at 1075 Camino del Rio South,
26 San Diego, California 92108, employing more than five persons and was, and is, an employer as
27 defined in and by the California Fair Employment and Housing Act ("FEHA"),

28 3. Plaintiff was employed by defendants in the City of San Diego, County of San

1 Diego, State of California, as a Senior Director of Community Engagement based out of
2 Coachella, California, in Riverside County, at the time defendant terminated plaintiff's
3 employment on March 28, 2012. At all relevant times, the conduct and/or actions and/or
4 omissions to act by defendants occurred in the City and County of San Diego, State of
5 California.

6 4. The true names and capacities of defendants named as DOES 1-20 inclusive, are
7 presently unknown to plaintiff. Plaintiff will amend this complaint setting forth the true names
8 and capacities of these fictitiously named defendants when their identities are ascertained.
9 Plaintiff is informed and believes, and on that basis alleges, each of the fictitiously named
10 defendants has participated in the acts alleged in this complaint that have been done by the
11 named defendants.

12 5. Plaintiff is informed and believes, and on that basis alleges, at all relevant
13 times, each of the defendants, whether named or fictitious, was the agent or employee of each of
14 the other defendants, and in doing the things alleged to be done in the complaint, acted within
15 the scope of such agency or employment, or ratified the acts of the others.

16 6. Whenever in this complaint reference is made to any act of defendants, such
17 allegations shall be deemed to be all named defendants and Does 1 through 20, or their officers,
18 agents, managers, representatives, employees, heirs, or assignees did or authorized such acts
19 while actively engaged in the operation, management, direction or control, of the affairs of the
20 defendants and while acting in the course and scope of their duties.

21 FACTUAL ALLEGATIONS

22 7. Plaintiff began working for defendants in or about 1987 as an entry level bi-
23 lingual secretary in defendants' Community Services Department. In less than a year after
24 commencing employment with defendant, plaintiff was promoted to the position of Resource
25 Center Coordinator by defendant. Shortly thereafter, plaintiff successfully applied for the bi-
26 lingual educator's position in the Education and Information Department of defendants. In
27 approximately 1988, defendant, through its then CEO/President, Mark Salo, offered, and
28 plaintiff accepted, the job of Binational Affairs Liaison.

1 8. In her position as Binational Affairs Liaison for defendant, plaintiff was
2 responsible for the Binational Program implemented by defendant, a program without precedent
3 in the Planned Parenthood Federation. As the Binational Affairs Liaison, plaintiff established a
4 partnership with Mexfam, Mexico's International Planned Parenthood Federation affiliate, in
5 Mexico City. As a consequence, the partnership resulted in Mexfam opening its first family
6 planning facility in Tijuana with plaintiff entrusted with the day-to-day operations of the staff
7 for the Tijuana based program. Plaintiff was also responsible for developing business
8 partnerships with maquiladoras in Tijuana, Mexico of defendant through the Binational
9 Program. In or about 1992, plaintiff coordinated the first Binational Family Planning
10 Conference. Plaintiff was also responsible for overseeing the first Binational Promotoras
11 conference which brought together Promotoras on both sides of the border to address
12 community health outreach programs.

13 9. In or about 1998, plaintiff expanded the Binational program to Riverside County
14 adding a political affairs component to the department to address the issue of reproductive rights
15 on both sides of the U.S.-Mexico sides of the border. At or about this time, plaintiff was
16 successfully managing a million dollar plus annual budget securing funding to continue
17 expansion of the program and maintain already established services. Plaintiff continued as the
18 Binational Affairs Liaison as the program expanded and grew. In 1994, plaintiff was promoted
19 to the Binational Affairs Program Manager serving in that position until she was, again,
20 promoted in 1999 to the Binational Affairs Director. Ultimately, in 2005, plaintiff was
21 promoted to the Binational Affairs Senior Director.

22 10. In or about September 2010, the Binational Affairs Department was split by
23 defendant with Plaintiff acquiring the title of Senior Director of Community Based Health
24 Initiatives. In or about June 2011, defendant implemented a reorganization with plaintiff's
25 position now based out of the City of Coachella in Riverside County. In or about September
26 2011, plaintiff was invited by the director of Latino Initiatives at the Planned Parenthood
27 Federation to serve as a panelist in Houston, Texas, where all Planned Parenthood affiliates with
28 a Promotoras program or in the process of forming one were convened to integrate this program

1 into the Planned Parenthood's affiliates.

2 11. In or about February 2012, plaintiff notified defendants' human resources
3 department that plaintiff's physician, who had been treating plaintiff for a shoulder condition,
4 restricted the distance plaintiff could drive. At the time, plaintiff, while living in the City of
5 Santa Ysabel in San Diego County, was working out of defendant's office in Coachella,
6 California, in Riverside County, which was located a distance from plaintiff's home farther than
7 plaintiff's doctor wanted her to drive due to her shoulder condition. Despite the fact plaintiff
8 had in the past successfully performed her job duties on a remote/telecommuting basis while
9 working in Riverside County, defendant's human resources department informed plaintiff
10 defendant would not be able to accommodate plaintiff's driving restrictions and would not
11 permit her to work remotely or on a telecommuting basis. Defendant told plaintiff the only
12 accommodation it would provide plaintiff was a leave of absence. Accordingly, on or about
13 February 24, 2012, at defendants' request, plaintiff completed and submitted a request for leave
14 of absence for a serious medical condition. Plaintiff requested the leave of absence begin on
15 February 22, 2012, with an expected return date of May 15, 2012. Plaintiff provided the
16 required medical certification from her physician with defendants approving the leave of
17 absence on or about March 19, 2012, and designating the leave of absence as a leave taken
18 under the California Family Rights Act (CFRA) set forth in *Government Code* §12945.2 in
19 addition to the leave of absence serving as a reasonable accommodation.

20 12. In or about June 2011, addressed its immediate and long term goals for the
21 Community Engagement Department which, as defendant announced in an email, resulted in
22 plaintiff becoming Senior Director of Community Engagement in East Riverside overseeing
23 Community Based Health Initiatives and Community Engagement in East Riverside. Defendant
24 thereafter implemented an organization wide reduction in force in November 2011. Plaintiff's
25 position was not effected and she continued working as the Senior Director of Community
26 Based Health Initiatives when she went on her leave of absence on February 22, 2012. At the
27 time plaintiff requested a leave of absence, defendant notified plaintiff she would be reinstated
28 to the same or equivalent position with the same pay, benefits and terms and conditions of

1 employment on her return from her CFRA protected leave of absence.

2 13. Defendants are subject to the provisions of FEHA because they employ more
3 than five people in California, and are also subject to the provisions of the CFRA because they
4 employ more than 50 or more employees. Plaintiff is protected by the CFRA since she worked
5 for defendants for approximately 25 years and worked more than 1,250 hours in the year
6 preceding her leave of absence. On or about March 28, 2012, defendant fired plaintiff while
7 plaintiff was on a leave of absence defendant designated as and which was protected by the
8 CFRA guaranteeing plaintiff reinstatement to her same or equivalent job a the end of the leave
9 of absence which was set for May 15, 2012, and was protected under the FEHA.

10 **FIRST CAUSE OF ACTION**

11 **Violation of FEHA/CFRA**

12 **(Against All Defendants)**

13 14. Plaintiff alleges and reincorporates paragraphs 1- 13 of the Complaint, as though
14 fully set forth herein.

15 15. The defendants are subject to the provisions of CFRA because they employed 50
16 or more employees. Further, plaintiff was entitled to the benefits of CFRA because she worked
17 for defendants for more than one year and had at least 1,250 of service in the year preceding her
18 CFRA leave.

19 16. *Government Code* §12945.2 requires an employer to grant a leave of absence to
20 an employee for their own serious health condition among other recognized reasons. CFRA
21 also requires the employer to reinstate the employee to the same or comparable job upon
22 completion of the leave.

23 17. On or about February 22, 2012, and as a result of her serious health condition,
24 plaintiff took a leave of absence pursuant to CFRA which defendants approved and designated
25 as CFRA leave. This leave qualified as a covered leave under CFRA because it was for
26 plaintiff's serious health condition. Defendants, at all times, were aware plaintiff was on a
27 CFRA leave.

28 18. On or about March 20, 2012, while plaintiff was still on her CFRA leave,

1 which was set to expire on May 15, 2012, defendants terminated plaintiff thus refusing to
2 reinstate her to her previous or comparable position upon expiration of her leave of absence
3 under CFRA.

4 19. Such conduct violates various provisions of FEHA including *Government Code*
5 §12945.2 because the defendants, and each of them, refused to allow plaintiff to take the leave
6 of absence she was eligible and entitled to take under CFRA and refused to reinstate her to her
7 previous position when it terminated her employment on March 28, 2012, when she was set to
8 return to work upon expiration of her CFRA protected leave on May 15, 2012.

9 20. As a proximate result of defendants' wrongful conduct as alleged herein, plaintiff
10 has lost employment benefits, past and future, according to proof, including, but not limited to,
11 lost earnings and other benefits.

12 21. As a further proximate result of the defendants' wrongful conduct as alleged
13 herein, plaintiff has suffered emotional distress damages in a sum according to proof.

14 22. As a further proximate result of the defendants' wrongful conduct as set forth
15 herein, plaintiff was required to and did retain legal counsel and is, accordingly, entitled to an
16 award of attorneys' fees in an amount according to proof.

17 23. The conduct set forth herein constitutes oppression, fraud or malice thereby
18 entitling plaintiff to an award of punitive damages. Defendants' acting through an officer,
19 director or managing agent, authorized or ratified the conduct alleged herein giving rise to
20 punitive damages.

21 **SECOND CAUSE OF ACTION**

22 **Violation of CFRA for Retaliation for the Exercise of**
23 **CFRA Rights, *Government Code* §12945.2(l)**
(Against All Defendants)

24 24. Plaintiff hereby incorporates paragraphs 1-13, and 15-23, as though fully
25 set forth herein.

26 25. At all times herein mentioned, *Government Code* §12945.2 was in full force and
27 effect, and was binding upon defendants. Said *Government Code* section prohibited
28 defendants from retaliating against plaintiff for requesting or taking a leave of absence protected

1 32. Defendants engaged in unlawful employment practices in violation of FEHA by
2 terminating plaintiff from her job with defendants on the basis of her physical disability, by
3 failing to provide plaintiff with a reasonable accommodation - a leave of absence that would
4 enable her to continue working for defendants.

5 33. Plaintiff was a qualified individual with a disability who could perform the
6 essential functions of her job with defendants with a reasonable accommodation with a leave of
7 absence from February 22, 2012, through May 15, 2012, the reasonable accommodation that
8 would enable plaintiff to perform the essential functions of her job.

9 34. Plaintiff's physical disability made achievement of a major life activity - working
10 - difficult.

11 35. Plaintiff is informed and believes, and based thereon alleges, her physical
12 disability was a motivating factor in defendants' decision to terminate her employment in
13 violation of *Government Code* §12940, on March 28, 2012, and not reasonably accommodate
14 her by permitting her to return to work following the end of the leave of absence she was on
15 when defendants fired her.

16 36. Plaintiff is informed and believes, and based thereon alleges, defendants regarded
17 her as disabled as defined by *Government Code* §12926 insofar as defendants regarded plaintiff
18 as having a physical disability that made achievement of a major life activity, working, difficult
19 and was a substantial factor in defendants' decision to not reasonably accommodate plaintiff by
20 allowing her to not take a leave of absence and allowing her to return to work at the conclusion
21 thereof.

22 37. As a proximate result of the wrongful conduct of defendants, and each of them,
23 plaintiff has suffered, and continues to suffer, substantial losses of earnings and other benefits in
24 an amount according to proof at trial.

25 38. As a proximate result of the wrongful conduct of defendants and each of them,
26 plaintiff has suffered emotional distress in an amount according to proof at the time of trial.

27 39. The conduct alleged herein constitutes oppression, fraud or malice thereby
28 entitling plaintiff to an award of punitive damages. The defendants acting through an officer,

1 director or managing agent, authorized or ratified the conduct alleged herein giving rise to
2 punitive damages.

3 40. Plaintiff has incurred and continues to incur attorneys' fees and legal expenses in
4 an amount according to proof at trial.

5 **FOURTH CAUSE OF ACTION**

6 **Failure to Accommodate Disability *Government Code §12940(m)***

7 **(Against All Defendants)**

8 41. Plaintiff hereby incorporates paragraphs 1-13, 15-23, 25-29, and 31-40, as though
9 fully set forth herein.

10 42. *Government Code §12940(m)* provides it is unlawful for an employer to fail to
11 make reasonable accommodations for the known physical disability of an employee or for an
12 employee an employer regards as disabled.

13 43. Defendants failed to make reasonable accommodation for plaintiff's physical
14 disability by holding her job open while she was on leave of absence instead terminating her
15 during her leave.

16 44. As a proximate result of the wrongful conduct of the defendants, and each of
17 them, plaintiff has suffered, and continues to suffer, substantial losses of earnings and other
18 employment benefits in an amount according to proof at the time of trial.

19 45. As a proximate result of the wrongful conduct of defendants, and each of them,
20 plaintiff has suffered emotional distress all to her damage in an amount according to proof at the
21 time of trial.

22 46. The defendants' conduct alleged herein constitutes oppression, fraud or malice
23 thereby entitling plaintiff to an award of punitive damages. The defendants acting through an
24 officer, director or managing agent, authorized or ratified the conduct alleged herein giving rise
25 to punitive damages.

26 47. Plaintiff has incurred, and continues to incur, attorneys' fees and legal expenses
27 in an amount according to proof at the time of trial.

28 **FIFTH CAUSE OF ACTION**

1 **Failure to Engage in Interactive Process (Government Code §12940(n))**

2 **(Against All Defendants)**

3 48. Plaintiff hereby incorporates paragraphs 1-13, 15-23, 25-29, 31-40, and 42-47, as
4 though fully set forth herein.

5 49. *Government Code* §12940(n) provides it is unlawful for an employer to fail to
6 engage in a timely, good faith interactive process with the employee to determine an effective
7 reasonable accommodations, if any.

8 50. Defendant, and each of them, failed to engage in a good faith interactive process
9 with plaintiff to determine effective reasonable accommodations for the medical restrictions
10 imposed on her for which defendant regarded plaintiff as disabled and unable to perform the
11 essential functions of her job. When plaintiff notified defendant her doctor imposed driving
12 restrictions on her such that she would be unable to commute from her home to the Coachella
13 office where defendant assigned plaintiff, plaintiff offered to work on a remote basis which
14 defendant refused to consider and placed plaintiff on a leave of absence, during which defendant
15 terminated plaintiff's employment.

16 51. As a proximate result of the wrongful conduct of defendants, and each of them,
17 plaintiff suffers, and continues to suffer, substantial losses of earnings and other employment
18 benefits in an amount according to proof at the time of trial.

19 52. As a proximate result of the conduct of defendants, and each of them, plaintiff
20 has suffered emotional distress damages in an amount according to proof at the time of trial.

21 53. As a proximate result of the wrongful conduct of defendants, plaintiff was
22 required and did retain legal counsel and is accordingly, entitled to an award of attorneys' fees
23 in an amount according to proof at the time of trial.

24 54. The wrongful conduct of defendants' as alleged herein constitutes oppression,
25 fraud or malice thereby entitling plaintiff to an award of punitive damages. The defendants
26 acting through an officer, director or managing agent, authorized or ratified the wrongful
27 conduct alleged herein giving rise to punitive damages.

28 **SIXTH CAUSE OF ACTION**

1 **Wrongful Termination in Violation of Public Policy**

2 **(Against All Defendants)**

3 55. Plaintiff hereby incorporates paragraphs 1-13, 15-23, 25-29, 31-40, 42-47, 49-
4 54, as though fully set forth herein.

5 56. Defendants, and each of them, were motivated to terminate plaintiff's
6 employment on grounds that violate the public policy of the State of California against
7 terminating employees in violation of and as established by FEHA as set forth in California
8 *Government Code* §12900 et seq. insofar as plaintiff's physical disability which required a
9 defendants to reasonably accommodate her, providing a protected leave of absence guaranteeing
10 reinstatement under the CFRA, and in retaliation for plaintiff exercising her right to take a leave
11 of absence under CFRA were substantial factors in defendants' decision to terminate plaintiff's
12 employment.

13 57. As a proximate result of the wrongful conduct of defendants' employment, and
14 each of them, plaintiff has suffered and continues to suffer, substantial losses in earnings and
15 other employment benefits in an amount according to proof at the time of trial.

16 58. As a proximate result of the wrongful conduct of defendants, and each of them,
17 plaintiff has suffered emotional distress all to her damage in an amount according to proof at the
18 time of trial.

19 59. The wrongful conduct of defendants as pled herein constitutes oppression, fraud
20 or malice thereby entitling plaintiff to an award of punitive damages. The defendants acting
21 through an officer, director or managing agent, authorized or ratified the wrongful conduct
22 alleged herein giving rise to punitive damages.

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