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

| | | | |
|----|--|---|---|
| 10 | THELMA MENDOZA, |) | CASE NO. <u>37-2019-00014824-CU-W/T-CTL</u> |
| 11 | |) | |
| 12 | Plaintiff, |) | Complaint for Damages and Demand for |
| 13 | |) | Jury Trial |
| 14 | vs. |) | 1. Age Discrimination |
| 15 | |) | 2. Failure to Prevent Age Discrimination |
| 16 | PLANNED PARENTHOOD OF THE |) | 3. Wrongful Constructive Termination in |
| 17 | PACIFIC SOUTHWEST, a California |) | Violation of Public Policy |
| 18 | corporation; and DOES 1-100, inclusive |) | 4. Failure to Pay Overtime Compensation |
| 19 | |) | 5. Failure to Provide Meal and Rest |
| 20 | |) | Periods |
| 21 | Defendants |) | 6. Failure to Maintain Records |
| 22 | |) | Well over \$25,000 |

23 PLAINTIFF complains and alleges as follows:

- 24 1. At all times herein mentioned, plaintiff was a resident of the San Diego, State of
- 25 California.
- 26 2. On information and belief, at all times herein mentioned, PLANNED PARENTHOOD OF
- 27 THE PACIFIC SOUTHWEST is and was a California corporation and was plaintiff's
- 28 employer doing business at 1295 Broadway, #201 Chula Vista, CA 91911.
3. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
- associate, of those defendants fictitiously sued as DOES 1 through 100 inclusive and so
- the plaintiff sues them by these fictitious names. The plaintiff is informed and believes
- that each of the DOE Defendants reside in the State of California and are in some manner
- responsible for the conduct alleged herein. Upon discovering the true names and

1 capacities of these fictitiously named defendants, the plaintiff will amend this complaint to
2 show the true names and capacities of these fictitiously named defendants.

3 4. Plaintiff was hired by Defendants around 1985.

4 5. In late 2017, Plaintiff was told she should retire or Defendants would be forced to issue
5 written discipline Plaintiff. Sure enough, Plaintiff was given unjustified written discipline
6 as a pretext for age discrimination.

7 6. Plaintiff complained about the pretextual written discipline during her employment to
8 Defendants and that she was being given the unfair choice of retirement or facing written
9 discipline, but nothing was done.

10 7. As a result of Defendants attempts to defame Plaintiff's work performance and refusal to
11 remedy the situation, Plaintiff was forced to quit her employment due her age on January
12 19, 2018. Plaintiff was over 40 years old at the time of her constructive termination.

13 8. On information and belief, Plaintiff was replaced by someone significantly younger with
14 much less experience.

15 9. At all times throughout her employment with Defendants, Plaintiff was a non-exempt
16 employee, but was mis-classified as an exempt employee.

17 10. Plaintiff was entitled to overtime compensation, meal periods, and rest periods while she
18 was employed by Defendants. Defendants did not provide Plaintiff with all compensation
19 for overtime due to her and did not provide Plaintiff with meal periods and rest periods as
20 required by law.

21 First Cause of Action

22 **AGE DISCRIMINATION**

23 11. Plaintiff, re-alleges the information set forth in Paragraphs 1-10 as though fully set forth
24 and alleged herein.

25 12. This cause of action is based upon *California Government Code Section 12900, et seq.*
26 which prohibits employers from discriminating against, harassing, and terminating
27 employees on the basis of age.

1 13. Plaintiff exhausted her administrative remedies under the California Fair Employment and
2 Housing Act by filing charges that Defendants discriminated against and terminated
3 Plaintiff based upon her age and the Department of Fair Housing and Employment issued
4 the Notice of Case Closure/Right-to-Sue Letter.

5 14. Defendants violated *California Government Code Section 12940, et seq.* by doing the
6 following acts because of Plaintiff's age including, but not limited to, terminating Plaintiff
7 due to her age as described in the general allegations above.

8 15. Plaintiff's termination was based on discriminatory animus and/or Defendant's
9 termination decision had a discriminatory impact on older workers.

10 16. As a direct, foreseeable, and proximate result of the conduct complained of in this cause
11 of action, Plaintiff has suffered severe emotional distress, medical expenses, substantial
12 losses in salary and benefits which Plaintiff would have received from Defendants, all to
13 Plaintiff's damage in a sum within the jurisdiction of this court, according to proof.

14 17. As a further direct and proximate result of the Defendants' unlawful termination, Plaintiff
15 has suffered emotional distress in a sum within the jurisdiction of this court, to be
16 ascertained according to proof.

17 18. The grossly reckless, careless, negligent, and/or intentional, malicious, and bad faith
18 manner in which Defendants engaged in those acts described in this cause of action by
19 willfully violating those statutes enumerated in this cause of action and terminating and
20 harassing Plaintiff based on her age and her complaints of age discrimination and
21 harassment entitle Plaintiff to punitive damages against Defendants in an amount within
22 the jurisdiction of this court, to be ascertained by the fact finder, that is sufficiently high to
23 punish the Defendants, deter them from engaging in such conduct again, and to make an
24 example of them to others.

25 19. Plaintiff is informed, believes, and based thereon, alleges that the outrageous conduct of
26 Defendants, described above, was done with the oppression and malice by the Plaintiff's
27 supervisors and managers and were ratified by those other individuals who were managing
28 agents of Defendants. These unlawful acts were further ratified by the defendant

1 employers and done with a conscious disregard for the Plaintiff's right and with the intent,
2 design and purpose of injuring the Plaintiff. By reason thereof, Plaintiff is entitled to
3 punitive or exemplary damages against the Defendants for their acts as described in this
4 cause of action in a sum to be determined at the time of trial.

5 20. Plaintiff also prays for reasonable costs and attorney fees against the Defendants for the
6 Plaintiff's prosecution of this action in reference to the time the Plaintiff's attorney spends
7 pursuing this cause of action.

8
9 Second Cause of Action

10 **FAILURE TO PREVENT AGE DISCRIMINATION**

11 21. Plaintiff re-alleges the information set forth in paragraphs 1-20 as though fully set forth
12 and alleged herein.

13 22. This cause of action is based upon Government Code section 12900 et seq., which
14 prohibits employers from discriminating against, harassing, and terminating employees on
15 the basis of age and for failing to prevent or subjecting employees to age discrimination.

16 23. Plaintiff has exhausted her administrative remedies under the California Fair Employment
17 and Housing Act by filing charges that defendants violated the California Fair
18 Employment and Housing Act and Plaintiff was issued the Notice of Case
19 Closure/Right-to-Sue Letter granting Plaintiff the right to bring suit against Defendants.

20 24. Defendants violated California Government Code Section 12940, et seq. by discriminating
21 against Plaintiff due to her age, constructively terminating plaintiff's employment because
22 of her age and due to their failure to prevent age discrimination.

23 25. As a direct, foreseeable, and proximate result of the conduct of Defendants, Plaintiff has
24 suffered, and continues to suffer emotional distress, losses in salary, bonuses, job benefits,
25 and other employment benefits which she would have received from Defendants, plus
26 expenses incurred in obtaining substitute employment and not being regularly employed
27 all to her damage in a sum within the jurisdiction of this court, to be ascertained according
28 to proof.

1 26. The grossly reckless, careless, negligent, oppressive and/or intentional, malicious, and bad
2 faith manner in which said defendants engaged in those acts as described in this cause of
3 action entitle plaintiff to punitive damages against said defendants in an amount within the
4 jurisdiction of this court, to be ascertained by the fact finder, that is sufficiently high to
5 punish said defendants, deter them from engaging in such conduct again, and to make an
6 example of them to others.

7 27. Plaintiff is informed and believes and based thereon alleges that the punitive conduct of
8 said defendants was ratified by those other individuals who were managing agents of said
9 Defendants. These unlawful acts were further ratified by defendants and done with a
10 conscious disregard for plaintiff's rights and with the intent, design and purpose of
11 injuring plaintiff. By reason thereof, plaintiff is entitled to punitive or exemplary damages
12 in this cause of action in a sum to be determined at the time of trial.

13 28. The Plaintiff also prays for reasonable costs and attorney fees, as allowed by FEHA and
14 any other applicable law, for the Plaintiff's prosecution of this action.

15
16 Third Cause of Action

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

18 29. Plaintiff re-alleges the information set forth in Paragraphs 1-28 as though fully set forth at
19 length.

20 30. Under California law, no employee, whether an at-will employee or an employee under a
21 written or other employment contract, can be terminated for a reason that is in violation of
22 a fundamental public policy. Public policy forbids any discriminatory action taken by an
23 employer against an employee due to an employees age. See California Government
24 Code §12940 et. seq.

25 31. California Bus. & Profs. Code §17200 prevents unlawful competition.

26 32. The aforementioned statutes were enacted to protect consumers and therefore implicate a
27 fundamental public policy.

1 33. Plaintiff is informed, believes, and based thereon, alleges that Defendants constructively
2 terminated Plaintiff in violation of California public policy by forcing Plaintiff to quit due
3 to her age and their desire to get rid of older workers.

4 34. Plaintiff is informed, believes, and based thereon, alleges that Defendants' constructive
5 termination of Plaintiff due to her age was in violation of all other state and federal
6 statutes, regulations, administrative orders, and ordinances which effect society at large
7 and which discovery will reveal were violated by Defendants. Moreover, Defendants
8 violated the law by constructively terminating Plaintiff for opposing Defendants' age
9 discrimination in violation of those statutes and laws.

10 35. As a direct, foreseeable, and proximate result of the actions of Defendants, Plaintiff has
11 suffered, and continues to suffer, severe emotional distress, medical expenses, loss of
12 earnings and benefits, plus expenses incurred in obtaining substitute employment and not
13 being regularly employed, all to Plaintiff's damage, in a sum within the jurisdiction of this
14 court, to be ascertained according to proof.

15 36. As a result of the grossly reckless and/or intentional, malicious, and bad faith manner in
16 which Defendants conducted themselves as described in this cause of action by willfully
17 violating those statutes enumerated herein, Plaintiff is entitled to punitive damages against
18 defendants in an amount within the jurisdiction of this court, to be ascertained by the fact
19 finder, that is sufficiently large to punish Defendants, to deter them from engaging in such
20 conduct again, and to make an example of them to others.

21 37. Plaintiff is informed, believes, and based thereon, alleges that outrageous conduct of
22 Defendants described above, in this cause of action, was done with oppression, and
23 malice, by Plaintiff's supervisors and managers and was ratified by those other individuals
24 who were managing agents of Defendants. Furthermore, these unlawful acts were ratified
25 by the defendants and done with a conscious disregard for Plaintiff's rights and with the
26 intent, design and purpose of injuring plaintiff. Therefore, Plaintiff is entitled to punitive
27 or exemplary damages from defendants for their acts as described in this cause of action in
28 a sum to be determined at the time of trial.

1 37. This action seeks to result in the enforcement of important rights affecting the public
2 interest, including, but not limited to protecting employees and competitors from illegal,
3 fraudulent and unfair business practices. Cal. Business and Professions Code §17001
4 states that the purpose of the Unfair Practices Act is to “safeguard the public against the
5 creation or perpetuation of monopolies and to foster and encourage competition, by
6 prohibiting unfair, dishonest, deceptive, destructive, fraudulent and discriminatory
7 practices by which fair and honest competition is destroyed or prevented.”

8 38. Under Cal. Code of Civil Procedure §1021.5, Plaintiff is entitled to attorney’s fees under
9 California’s private attorney general statute since: (1) this action seeks to result in the
10 enforcement of an important right affecting the public interest; (2) a significant benefit
11 will be conferred on the general public or a large class of persons; and (3) the necessity
12 and financial burden of enforcement of this right will be such as to make an award of
13 attorney’s fees appropriate.

14
15 Fourth Cause of Action

16 **FAILURE TO PAY OVERTIME COMPENSATION**

17 39. Plaintiff realleges the information set forth in Paragraphs 1-38 as though fully set forth
18 and alleged herein.

19 40. Pursuant to California law, for the four years preceding this action Defendants were
20 required to compensate Plaintiff for all overtime which is calculated at: (a) One and one-
21 half (1½) times the hourly rate of pay for all hours worked in excess of eight (8) hours per
22 day and/or forty (40) hours per week, and for the first eight (8) hours worked on the
23 seventh (7th) consecutive day of work in a workweek, and (b) Two (2) times the rate of
24 pay for all hours worked in excess of twelve (12) hours per day, and for all hours worked
25 in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

26 41. Plaintiff was a nonexempt employee entitled to the protections of the Industrial Welfare
27 Commission Orders mentioned herein, California Code of Regulations, Title 8, §11010 *et*
28 *seq.* During the course of Plaintiff’s employment, Defendants failed to compensate

1 Plaintiff for overtime hours worked in excess of eight (8) hours per day and forty (40)
2 hours per week and for the first eight (8) hours worked on the seventh (7th) consecutive
3 day of work in a workweek. Moreover, Defendants failed to compensate Plaintiff for
4 double-time hours for hours worked in excess of twelve (12) hours per day, and for all
5 hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in
6 a workweek as required under the aforementioned statutes and regulations.

7 42. Defendants willfully refused and continue to refuse to pay Plaintiff overtime in a timely
8 manner, as required by the aforementioned statutes. Plaintiff therefore requests restitution
9 and penalties as provided by California Labor Code §203.

10 43. Defendants' conduct described herein violates California Labor Code §§512, 515.5, 558,
11 1194 and 1198. Therefore, pursuant to Labor Code §§218.5, 512, 515.5, 558 and 1194,
12 Plaintiff is entitled to recover damages for the nonpayment of wages for all hours worked,
13 penalties plus reasonable attorneys' fees.

14 44. As a direct and proximate result of the aforementioned violations, Plaintiff has been
15 damaged in an amount according to proof at trial, but in an amount in excess of the
16 jurisdiction of this court.

17
18 Fifth Cause of Action

19 **FAILURE TO PROVIDE MEAL AND REST PERIODS**

20 45. Plaintiff realleges the information set forth in Paragraphs 1-44 as though fully set forth
21 and alleged herein.

22 46. Under Section 11 of Industrial Welfare Commission, California Code of Regulations, Title
23 8, Section 11040, Defendants were required to provide Plaintiff a 30 minute minimum
24 meal period in any work period of more than five hours, and a second 30 minute minimum
25 meal period in any work period of more than 10 hours.

26 47. Under Section 12 of Industrial Welfare Commission, California Code of Regulations, Title
27 8, Section 11040, Defendants were required to provide Plaintiff a 10 minute minimum rest
28

1 period per four hours worked, or major fraction thereof, to be taken, as far as practicable,
2 in the middle of the work period.

3 48. Under Labor Code section 512, Defendants were prohibited from employing Plaintiff for a
4 work period of more than five hours without providing Plaintiff a meal period of not less
5 than 30 minutes, and from employing Plaintiff for a work period of more than 10 hours
6 without providing Plaintiff a second meal period of not less than 30 minutes.

7 49. Labor Code section 226.7, subdivision (a), provides: “No employer shall require any
8 employee to work during any meal or rest periods mandated by applicable order of the
9 Industrial Welfare Commission.”

10 50. Pursuant to Labor Code section 515.5, Plaintiff was a nonexempt employee entitled to the
11 protections of the Industrial Welfare Commission Orders mentioned herein, California
12 Code of Regulations, Title 8, Section 11040.

13 51. Pursuant to Section 11 (B) of Industrial Welfare Commission, California Code of
14 Regulations, Title 8, Section 11040, Defendants were required to pay Plaintiff one
15 additional hour of pay at Plaintiff’s regular rate of compensation for each work day that
16 the meal period was not provided to Plaintiff, in addition to paying Plaintiff compensation
17 for the time worked including the missed meal period.

18 52. During the course of Plaintiff’s employment, Defendants failed to provide Plaintiff with
19 mandated meal or rest periods and required Plaintiff to work during mandated meal and
20 rest periods, in violation of the Industrial Welfare Commission Orders, Labor Code
21 Section 226.7, subdivision (a), and Labor Code section 512.

22 53. Pursuant to Section 12 (B) of Industrial Welfare Commission, California Code of
23 Regulations, Title 8, Section 11040, Defendants were required to pay Plaintiff one
24 additional hour of pay at Plaintiff’s regular rate of compensation for each work day that
25 the rest period was not provided to Plaintiff, in addition to paying Plaintiff compensation
26 for the time worked including the missed rest period.

27 54. Under Labor Code section 226.7, subdivision (b), defendants were required to pay
28 Plaintiff one additional hour of pay at Plaintiff’s regular rate of compensation for each

1 work day that the meal period was not provided, and one additional hour of pay at
2 Plaintiff's regular rate of compensation for each work day that the rest period was not
3 provided. Plaintiff therefore requests restitution and that she be paid this compensation
4 under section 226.7.

5 55. Defendants wilfully refused and continue to refuse to compensate Plaintiff for missed
6 meal and rest periods as required by the aforementioned statutes and regulations. Plaintiff
7 therefore requests restitution and penalties as provided by Labor Code section 203.

8 56. Under Labor Code section 558, an employer who violates a section of Chapter 1 of Part 2
9 of Division 2 of the Labor Code, which includes Section 512, or any provision of the
10 Industrial Welfare Commission regulating hours of work, is subject to a civil penalty as
11 follows: (1) For any initial violation, fifty dollars (\$50.00) for each underpaid employee
12 for each pay period for which the employee was underpaid, in addition to an amount
13 sufficient to recover underpaid wages; and (2) For each subsequent violation, one hundred
14 dollars (\$100.00) for each underpaid employee for each pay period for which the
15 employee was underpaid, in addition to an amount sufficient to recover underpaid wages.

16
17 Sixth Cause of Action

18 **FAILURE TO MAINTAIN RECORDS**

19 57. Plaintiff re-alleges the allegations set forth in Paragraphs 1-56 as though fully set forth
20 and alleged herein.

21 58. Within three (3) years last past, Defendants failed to comply with section 7 of IWC Order
22 4-2001, and with Labor Code § 1174 by failing to maintain certain records which
23 employers are required to maintain, including records of overtime worked and
24 compensated, meal periods provided to each employee and hours worked; and failed to
25 provide their employees, including Plaintiff, with the information required by Labor Code
26 §226.

27 59. As a result of Defendants' failure to keep these required records and disclose payroll
28 information to their employees, including Plaintiff, Defendants are subject to civil

1 penalties pursuant to Labor Code §§226, 226.3 and/or 1174.5. In addition, Plaintiff seeks
2 an award of reasonable attorney's fees and costs under all applicable laws and/or statutes.

3 60. The damages herein exceed \$25,000.00, and Plaintiff requests a jury trial.
4

5 WHEREFORE, the Plaintiff prays for the following relief:

- 6 1. For general, compensatory, and special damages according to proof for Plaintiff's loss of
7 past and future earnings, benefits, bonuses, costs in securing new employment and
8 damages flowing therefrom, for past and future emotional and mental distress, and for any
9 past and future medical expenses and suffering and related damages;
10 2. For punitive damages that will sufficiently punish, make an example of, and deter future
11 conduct by Defendants;
12 3. For applicable Labor Code wages and/or penalties;
13 4. For all interest as allowed by law;
14 5. For all costs and attorney's fees; and
15 6. For such other and further relief as the Court deems just and proper.

16 DATED: March 19, 2019

EISENBERG & ASSOCIATES

17
18 By: Michael Eisenberg
19 Michael Eisenberg
20 Attorneys for Plaintiff
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