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COMPLAINT

JESUS GUERRERO VS. BARCELINO CONTINENTAL CORPORATION et al

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CASE MANAGEMENT CONFERENCE SET

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DEPARTMENT 212

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO - UNLIMITED JURISDICTION

CGC - 03-422470

JESUS GUERRERO,

) Case No.

) **COMPLAINT FOR DAMAGES**

v.

) SEX DISCRIMINATION AND SEXUAL
) HARASSMENT, FAILURE TO MAINTAIN
) ENVIRONMENT FREE FROM HARASSMENT,
) RETALIATION, BATTERY, ASSAULT,
) INTENTIONAL INFLICTION OF EMOTIONAL
) DISTRESS, NEGLIGENT SUPERVISION,
) WRONGFUL TERMINATION OF VIOLATION
) OF PUBLIC POLICY, PROFESSIONAL
) NEGLIGENCE, VIOLATION OF BUSINESS
) AND PROFESSIONS CODE §§ 7523(a) and
) VIOLATION OF LABOR CODE §§ 432.2(a)-(b)

BARCELINO CONTINENTAL
CORPORATION, TRIAD
CONSULTANTS, REGGIE MYRICK,
AL HESSABI, PATRICK COFFEY, the
individuals and DOES 1-25, inclusive,

Defendants.

JESUS GUERRERO complains and alleges as follows:

FACTS APPLICABLE TO ALL CAUSES OF ACTION

1. JESUS GUERRERO, is an adult male resident of the State of California, City and County of San Francisco.
2. Defendant BARCELINO CONTINENTAL CORPORATION, is referred to herein

COMPLAINT FOR DAMAGES

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2 as "BARCELINO CONTINENTAL CORPORATION," is and was at all times relevant to this
3 complaint, a California corporation in the retail business of fashion clothing, doing business
4 throughout the State of California.
5

6 3. Defendant TRIAD CONSULTANTS, is and was at all times relevant to this
7 complaint, a California company in the business of pre-employment background screening and
8 investigative services, doing business in the State of California.
9

10 4. Defendant REGGIE MYRICK is an adult male resident of the State of California,
11 County of San Francisco. At all times relevant to the complaint, Defendant MYRICK held the
12 position of the store manager for BARCELINO CONTINENTAL CORPORATION at 498 Post
13 Street in San Francisco. Defendant MYRICK had a power to hire, fire and set working hours for
14 store employees. Therefore, defendant MYRICK was a supervisory employee of defendant
15 BARCELINO CONTINENTAL CORPORATION at all relevant times.
16

17 5. Defendant AL HESSABI is an adult male resident of the State of California, County of
18 San Francisco. At all times relevant to the complaint, defendant HESSABI held the position of
19 the store manager for BARCELINO CONTINENTAL CORPORATION at CROCKER
20 GALLERIA, 50 Post Street in San Francisco. Defendant HESSABI had a power to hire, fire and
21 set working hours for store employees. Therefore, defendant HESSABI was a supervisory
22 employee of defendant BARCELINO CONTINENTAL CORPORATION at all relevant times.
23

24 6. Defendant PATRICK COFFEY is an adult male resident of the State of California,
25 County of San Francisco. At all times relevant to the complaint, defendant COFFEY held the
26 position of the polygraph examiner for TRIAD CONSULTANTS. Therefore, defendant
27 COFFEY was an agent or an employee of TRIAD CONSULTANTS at all relevant times.
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7. Mr. Guerrero does not know the true names or capacities of defendants DOE 1- 25. Mr.

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3 Guerrero therefore sues defendants DOE 1-25 by such fictitious names and will seek leave to
4 amend the complaint to add their true names and capacities when the same have been
5 ascertained.

6 8. At all times relevant to this complaint, defendants and each of them participated in,
7 authorized, ratified, aided and abetted the doing of the acts alleged herein.

8 9. At all times relevant to this complaint, defendants and each of them were the officers,
9 agents and/or employees of each of the other defendants and were acting within the course and
10 scope of that employment or agency.

11 10. JESUS GUERRERO started working with BARCELINO CONTINENTAL
12 CORPORATION as a tailor in January 2002. He worked at the BARCELINO CONTINENTAL
13 CORPORATION store located at 498 Post Street in San Francisco. GUERRERO's supervisor
14 was the store manager, defendant REGGIE MYRICK. MYRICK managed four (4) employees at
15 the store, including Mr. Guerrero.

16 11. During July and August 2002, MR. MYRICK sexually harassed and retaliated against
17 Mr. Guerrero. The sexual harassment happened regularly and every day. One time, MR.
18 MYRICK asked Mr. Guerrero if he wanted to be Mr. MYRICK's "wife." Mr. GUERRERO was
19 shocked. He said no. Mr. GUERRERO is married. Mr. MYRICK knew that Mr. GUERRERO
20 was married. Another time, MR. MYRICK told Mr. Guerrero, "I want you to be my husband."
21 Next time MR. MYRICK asked Mr. Guerrero, "Do you want to be my husband or wife?" Other
22 sexual comments included but were not limited to "Do you want to go with me outside?" "Do
23 you want to make some more money tonight?" "Did you take Viagra?" "Where will you be
24 tonight?" "Where will you go on Saturday?" "Do you still get aroused?" "Do you live alone?"
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2 Mr. MYRICK told Mr. Guerrero that he lives alone. Each time Mr. Guerrero made clear that Mr.
3 MYRICK's conduct and sexual comments were unwelcome.
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5 12. Despite Mr. Guerrero's objections, Mr. MYRICK openly flirted with Mr. Guerrero by
6 sitting very close to him at work, bowing to him, and calling him "baby," in front of one or more
7 salesmen. MR. MYRICK's outrageous conduct included physical contacts with Mr. Guerrero.
8 Twice MR. MYRICK pulled down Mr. Guerrero's pants down, looked at him and then would
9 say, "I have a big penis." Once MR. MYRICK grabbed Mr. Guerrero's hands, held and kissed
10 them. Mr. Guerrero told him not to do so again. Later Mr. Guerrero refused to shake MR.
11 MYRICK's hands when MR. MYRICK tried to do so again. Later, Mr. Guerrero refused to
12 shake Mr. MYRICK's hands when Mr. MYRICK tried to do so again. MR. MYRICK told Mr.
13 Guerrero that he had the right to shake hands because he (Mr. MYRICK) was the "manager."
14 Mr. Guerrero refused. But later Mr. MYRICK again tried to kiss Mr. Guerrero's hand again. Mr.
15 Guerrero stepped downstairs and told "Sergio," another salesman, to tell Mr. MYRICK "to take
16 it easy." Mr. MYRICK would also approach Mr. Guerrero from behind and breathe on him. It
17 happened five (5) times. He sang to Mr. Guerrero, "I left my heart in San Francisco."
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20 13. At all times relevant to this complaint, Mr. Guerrero made clear to Mr. MYRICK that his
21 advances were unwelcome, by asking Mr. MYRICK to stop harassing him, refusing Mr.
22 MYRICK's advances, ignoring Mr. MYRICK's questions and keeping working, and placing a
23 chair near him to keep a distance between himself and Mr. MYRICK.
24

25 14. Mr. Guerrero was seriously upset by Mr. MYRICK's outrageous behavior. Mr. Guerrero
26 is not gay. He was also concerned for his job too, which he needed. On or about August 21,
27 2002, Mr. Guerrero asked the Corporation's employee, Sergie, to tell Mr. MYRICK not to harass
28 him. Mr. Guerrero then told Sergie that he was going to report to the Vice President, Mr.

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2 BOBBY NAGHDI. Sergie said, "Don't tell Bobby (Mr. NAGHDI)." He told Mr. Guerrero to
3 call Mr. SHARAM SHAREI, Corporation's President. Sergio mentioned to him that he was also
4 having a problem with Mr. MYRICK.
5

6 15. Mr. JUAN SOLIS, a friend of Mr. Guerrero, called Mr. SHAREI on behalf of Mr.
7 Guerrero, left him a message and asked him about confidential meeting. Mr. SHAREI never
8 called back. He came to the store the Saturday after the call, but did not talk with Mr. Guerrero.
9

10 16. On or about August 24, 2002, Mr. Guerrero's wife called Mr. BARRON, a general
11 manager at the Corte Madera office and left him a message regarding sexual harassment her
12 husband was experiencing. On or about August 26, 2002, Mr. BARRON spoke with Mr.
13 Guerrero's wife. The latter said that Mr. MYRICK was harassing her husband at work, and
14 asked to have something done about it. Mr. BARRON said that the company would perform an
15 investigation, and added, "Why would Reggie (Mr. MYRICK) harass the oldest man in the
16 store?"
17

18 17. Two days after the conversation between Mr. BARRON and Mr. Guerrero's wife
19 occurred, Mr. MYRICK expressed anger towards Mr. Guerrero and asked him why he did not
20 talk to Mr. MYRICK if he had a problem with Mr. MYRICK. Mr. Guerrero refused to speak
21 with Mr. MYRICK about the matter.
22

23 18. Thereafter, for the first time, Mr. MYRICK began to criticize Mr. Guerrero's work. Mr.
24 MYRICK began rerouting tailoring work away from Mr. Guerrero's Post Street store to other
25 stores, thereby reducing Mr. Guerrero's income. Also, Mr. MYRICK had tried to offer another
26 man a job as a tailor. He reportedly told this person that he was having trouble with Mr.
27 Guerrero.
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3 19. On August 27, 2002, Mr. Guerrero's attorney, Mr. Donald Carroll, sent a letter addressed
4 to Mr. SHAREI and Mr. NAGHDI, demanding that BARCELINO CONTINENTAL CORP. take
5 aggressive action to put an end to this harassment immediately, and to transfer Mr. MYRICK to
6 another store because Mr. MYRICK was unable to cease the harassment and retaliation he has
7 engaged in against Mr. Guerrero.

8 20. On or about August 30, 2002, the Corporation sent Mr. Guerrero to another
9 BARCELINO CONTINENTAL CORPORATION store, located in the CROCKER GALLERIA
10 at 50 Post Street, in San Francisco, California. Because the store at the CROCKER GALLERIA
11 had no equipment set up for tailoring work, Mr. Guerrero asked for, and got approval from Mr.
12 BOBBY NAGHDI, to do tailoring work at his own shop located at 210 Post Street in San
13 Francisco.
14

15 21. In or about September 2002, the Corporation began its investigation. Shortly thereafter,
16 the Corporation requested that Mr. Guerrero meet with Mr. BOBBY NAGHDI at the 498 Post
17 Street store. When Mr. Guerrero arrived at the 498 Post street store, he was surprised to learn
18 that the person that was waiting for him was a private investigator, defendant PATRICK
19 COFFEY of TRIAD CONSULTANTS, who immediately conducted an investigation on behalf
20 of the Corporation.
21

22 22. Mr. COFFEY asked Mr. Guerrero's questions. Mr. Guerrero responded to Mr.
23 COFFEY's questions, explaining harassment and retaliation he had endured at the hands of Mr.
24 MYRICK. Mr. Guerrero again requested that that Corporation transfer Mr. MYRICK to a
25 different location. During the meeting with Mr. COFFEY, Mr. COFFEY told Mr. Guerrero that
26 he was submitting him to a lie detector (i.e., voice stress analyzer) test, which testing was
27 performed without Mr. Guerrero's written permission.
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3 23. Mr. COFFEY also gave Mr. Guerrero a business card, which indicated that TRIAD
4 CONSULTANTS were licensed to perform private investigation work. However, TRIAD
5 CONSULTANTS license to perform private investigation work had been cancelled on January
6 31, 2002. Therefore, at the time of this meeting between Mr. COFFEY and Mr. Guerrero,
7 defendant COFFEY was not licensed to act as a private investigator.

8 24. Mr. Donald Carroll, Mr. Guerrero's attorney at that time, requested a copy of Mr.
9 Guerrero's written consent to a lie detector test, which BARCELINO CONTINENTAL
10 CORPORATION never produced. The Corporation has never provided Mr. Guerrero or his
11 attorney with the results of the sexual harassment investigation they had instituted as a result of
12 Mr. Guerrero's complaints. In addition, the Corporation has never taken any disciplinary action
13 against Mr. Myrick for the sexually harassing and retaliatory behavior he has displayed towards
14 Mr. Guerrero.
15

16 25. On November 9, 2002, Mr. Guerrero, for the first time, filed Charges with the
17 Department of Fair Employment and Housing and Equal Employment Opportunity Commission
18 against the BARCELINO CONTINENTAL CORPORATION for sexual harassment and
19 retaliation.
20

21 26. Until December 4, 2002, Mr. Guerrero continued to do tailoring work for the
22 Corporation to his own shop, and did not receive any complaints about his work.

23 27. On December 4, 2002, defendant AL HESSABI, a store manager at the Corporation's
24 CROCKER GALLERIA store, called Mr. Guerrero to come to work at the CROCKER
25 GALLERIA store. When Mr. Guerrero reported to work, he overheard a conversation between
26 AL HESSABI and BOBBY NAGHDI, in which he heard, "Jesus (Mr. Guerrero) seems happy,
27 but once he comes to Galleria, there is no job for him." Mr. HESSABI thereafter told Mr.
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2 Guerrero that the Corporation decided that he should work at the CROCKER GALLERIA store.
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4 Mr. Guerrero told Mr. HESSABI that it would be difficult to perform his work as a tailor at the
5 CROCKER GALLERIA store because the working station at the store was improperly equipped.
6 Mr. Guerrero then gave Mr. HESSABI the DFEH card, which Mr. HESSABI refused to take.
7 After that, Mr. HESSABI told Mr. Guerrero to leave the premises.

8 28. On December 5, 2002, Mr. Guerrero went back to work, but was told to not punch in and
9 to return to the store later that day to pick up his final paycheck. On that morning of December
10 5, 2002, Mr. Guerrero faxed a copy of the DFEH letter to RICHARD SWIDERSKI, stating that
11 the MANAGER of the Corporation's CROCKER GALLERIA's store required Mr. Guerrero to
12 work at the CROCKER GALLERIA store, starting December 5, 2002. However, due to the lack
13 of space and not enough equipment at the CROCKER GALLERIA store, he felt that his work
14 would not progress well at the CROCKER GALLERIA store. Mr. Guerrero then asked Mr.
15 SWIDERSKI for his advice concerning this work-related dilemma.

16
17 29. On December 5, 2002, the Corporation wrongfully terminated Mr. Guerrero.
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19 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

20 30. Mr. Guerrero timely filed a Complaint of Discrimination against Defendants
21 BARCELINO CONTINENTAL CORPORATION, MR. MYRICK and Mr. HESSABI with the
22 California Department of Fair Employment and Housing ("DFEH"), on June 6, 2003,
23 complaining that defendants fired, harassed and retaliated against him because of his sex. The
24 DFEH issued a right to sue notice to Mr. Guerrero as to all defendants on June 9, 2003.
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3 **FIRST CAUSE OF ACTION**

4 **(SEX DISCRIMINATION AND SEXUAL HARASSMENT**
5 **AGAINST DEFENDANTS BARCELINO CONTINENTAL**
6 **CORPORATION AND MR. MYRICK-GOVERNMENT**
7 **CODE §§ 12940, et seq., CALIFORNIA CONSTITUTION, Art. I, § 8)**

8 31. Mr. Guerrero realleges and incorporates by reference, each and every allegation in
9 paragraphs 1 – 30.

10 32 At all times relevant to this complaint, Defendant MYRICK, the Store Manager for
11 BARCELINO CONTINENTAL CORPORATION, and a supervisory employee of
12 BARCELINO CONTINENTAL CORPORATION, subjected Mr. Guerrero to pervasive
13 workplace harassment on sexual grounds that resulted in a hostile and intimidating workplace
14 environment, in violation of the California Fair Employment and Housing Act ("FEHA").

15 33 BARCELINO CONTINENTAL CORPORATION knew, or should have known, of
16 defendant MYRICK's actions, yet failed to take immediate and appropriate corrective action,
17 despite their ability and authority to do so.

18 34. Mr. Guerrero has exhausted his administrative remedies as required by FEHA, as to
19 defendants BARCELINO CONTINENTAL CORPORATION and MYRICK.

20 35. As a direct, proximate and foreseeable result of defendants' acts and failures to act as
21 alleged herein, Mr. Guerrero was injured in his strength, health and activity, sustaining shock and
22 injury to his nervous system, all of which have caused and continues to cause Mr. Guerrero
23 extreme emotional distress including but not limited to humiliation, embarrassment, fear, anxiety
24 and discomfort, all to his damage in an amount to be determined according to proof.

25 36. As a further direct, proximate and foreseeable result of defendants' acts and failures to
26 act, as alleged herein, Mr. Guerrero has suffered and continues to suffer substantial losses in
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2 earnings and employment benefits, and injury to his career and reputation, in an amount to be
3 determined according to proof.
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5 37 As a further direct, proximate and foreseeable result of defendants' acts and failures to
6 act, as alleged herein, Mr. Guerrero has incurred, and continues to incur, expenses in an amount
7 to be determined according to proof.

8 38 Defendants committed the acts herein alleged despicably, maliciously, fraudulently, and
9 oppressively, with the wrongful intention of injuring Mr. Guerrero, and acted with an improper
10 and evil motive amounting to malice and in conscious disregard of Mr. Guerrero's rights.
11 Because the acts taken toward Mr. Guerrero were carried out by managerial employees acting in
12 a deliberate, cold, callous, despicable, and intentional manner in order to injure and damage Mr.
13 Guerrero, he is entitled to punitive damages from defendants in an amount according to proof.
14

15 **SECOND CAUSE OF ACTION**

16 **(FAILURE TO MAINTAIN ENVIRONMENT FREE FROM**
17 **HARASSMENT AGAINST DEFENDANT BARCELINO**
18 **CONTINENTAL CORPORATION-GOVERNMENT CODE §§ 12940(k)**

19 39. The allegations of paragraphs 1 through 30 are realleged and incorporated herein by
20 reference.

21 40. Defendant BARCELINO CONTINENTAL CORPORATION failed to take all
22 reasonable steps to prevent discrimination and harassment against Mr. Guerrero from occurring,
23 and to take immediate and appropriate corrective action to remedy the harassment, in violation of
24 California Fair Employment & Housing Act by engaging in conduct as set forth herein in
25 violation of Government Code §12940(k).
26

27 41. Specifically, defendant BARCELINO CONTINENTAL CORPORATION has failed to
28 take any disciplinary measures to prevent sexual harassment against Mr. Guerrero from

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3 occurring in the workplace, and has failed to the present time to take any action against
4 MYRICK, such as issuing a formal warning, providing counseling, or imposing probation,
5 suspension, or termination.

6 42 Mr. Guerrero is informed and believes that defendant BARCELINO CONTINENTAL
7 CORPORATION has never conducted, at its San Francisco store where Mr. Guerrero worked,
8 any sexual harassment training, and has never posted any sexual harassment policies for its
9 supervisors or employees

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11 43. As a direct, proximate and foreseeable result of defendants' acts and failures to act as
12 alleged herein, Mr. Guerrero was injured in his strength, health and activity, sustaining shock and
13 injury to his nervous system, all of which have caused and continues to cause Mr. Guerrero
14 extreme emotional distress including, but not limited to humiliation, embarrassment, fear,
15 anxiety and discomfort, all to his damage in an amount to be determined according to proof.

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17 44. As a further direct, proximate and foreseeable result of defendants' acts and failures to
18 act, as alleged herein, Mr. Guerrero has suffered and continues to suffer substantial losses in
19 earnings and employment benefits and injury to his career and reputation, in an amount to be
20 determined according to proof.

21 45 As a further direct, proximate and foreseeable result of defendants' acts and failures to
22 act, as alleged herein, Mr. Guerrero has incurred and continues to incur expenses in an amount to
23 be determined according to proof.

24 46. Defendants committed the acts herein alleged in a despicable, malicious, fraudulent, and
25 oppressive manner, with the wrongful intention of injuring Mr. Guerrero, and defendants acted
26 with an improper and evil motive amounting to malice and in conscious disregard of Mr.
27 Guerrero's rights. Because the acts taken toward Mr. Guerrero were carried out by managerial
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2 employees acting in a deliberate, cold, callous, despicable, and intentional manner in order to
3 injure and damage Mr. Guerrero, he is entitled to punitive damages from defendants in an
4 amount according to proof.
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6 **THIRD CAUSE OF ACTION**

7 **(UNLAWFUL RETALIATION -GOVERNMENT CODE §12940(h))**
8 **AGAINST DEFENDANTS BARCELINO CONTINENTAL**
9 **CORPORATION, MYRICK AND HESSABI**

10 47. The allegations of paragraphs 1 through 30 are realleged and incorporated herein by
11 reference.

12 48. Defendants, and each of them, have retaliated against Mr. Guerrero in violation of
13 Governmental Code §12940(h), by engaging in a course of retaliatory conduct including, among
14 other things:

15 (a) by rerouting tailoring work away from Mr. Guerrero's 498 Post Street store to other
16 stores, thereby reducing Mr. Guerrero's income, by demanding in August 2002 that he work at
17 the CROCKER GALLERIA store where there was no proper tailoring equipment.
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19 (b) by requiring Mr. Guerrero to work at the CROCKER GALLERIA store in December
20 2002 where it would be difficult to perform his duties as a tailor because of an improperly
21 equipped working station, and

22 (c) by wrongfully terminating Mr. Guerrero.

23 This retaliation was carried out by MYRICK and HESSABI acting within the course and scope
24 of their employment.
25

26 49. As a direct, proximate and foreseeable result of defendants' acts and failures to act as
27 alleged herein, Mr. Guerrero was injured in his strength, health and activity, sustaining shock and
28 injury to his nervous system, all of which have caused and continues to cause Mr. Guerrero

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3 extreme emotional distress including but not limited to humiliation, embarrassment, fear, anxiety
4 and discomfort, all to his damage in an amount to be determined according to proof.

5 50. As a further direct, proximate and foreseeable result of defendants' acts and failures to
6 act, as alleged herein, Mr. Guerrero has suffered and continues to suffer substantial losses in
7 earnings and employment benefits and injury to his career and reputation, in an amount to be
8 determined according to proof.

9 51 As a further direct, proximate and foreseeable result of defendants' acts and failures to
10 act, as alleged herein, Mr. Guerrero has incurred and continues to incur expenses in an amount to
11 be determined according to proof.

12 52. Defendants committed the acts herein alleged despicably, maliciously, fraudulently, and
13 oppressively, with the wrongful intention of injuring Mr. Guerrero, and acted with an improper
14 and evil motive amounting to malice and in conscious disregard of Mr. Guerrero's rights.
15 Because the acts taken toward Mr. Guerrero were carried out by managerial employees acting in
16 a deliberate, cold, callous, despicable, and intentional manner in order to injure and damage Mr.
17 Guerrero, he is entitled to punitive damages from defendants in an amount according to proof.

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20 **FOURTH CAUSE OF ACTION**

21 **(BATTERY – AGAINST DEFENDANTS BARCELINO**
22 **CONTINENTAL CORPORATION AND MR. MYRICK)**

23 53. Mr. Guerrero realleges and incorporates by reference, each and every allegation in
24 paragraphs 1 - 30.

25 54. Defendant MYRICK'S conduct as alleged herein, was intended to and did make
26 offensive contact with Mr. Guerrero, without Mr. Guerrero's consent, constituting multiple
27 batteries upon Mr. Guerrero.

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2 55. Because defendant MYRICK was acting within the course and scope of his employment
3 with or in agency for BARCELINO CONTINENTAL CORPORATION at the time of his acts
4 and omissions, defendant BARCELINO CONTINENTAL CORPORATION is liable for his
5 conduct under the doctrine of respondeat superior.
6

7 56 As a direct, proximate and foreseeable result of defendants' acts and failures to act, as
8 alleged herein, Mr. Guerrero was injured in his strength, health and activity, sustaining shock and
9 injury to his nervous system, all of which have caused and continues to cause Mr. Guerrero
10 extreme emotional distress including but not limited to humiliation, embarrassment, fear, anxiety
11 and discomfort, all to his damage in an amount to be determined according to proof.
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13 57 As a further direct, proximate and foreseeable result of defendants' acts and failures to
14 act, as alleged herein, Mr. Guerrero has suffered and continues to suffer substantial losses in
15 earnings and employment benefits and injury to his career and reputation, in an amount to be
16 determined according to proof.
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18 58. As a further direct, proximate and foreseeable result of defendants' acts and failures to
19 act, as alleged herein, Mr. Guerrero has incurred and continues to incur expenses in an amount to
20 be determined according to proof.

21 59. Defendants committed the acts herein alleged despicably, maliciously, fraudulently, and
22 oppressively, with the wrongful intention of injuring Mr. Guerrero, and acted with an improper
23 and evil motive amounting to malice in conscious disregard to Mr. Guerrero. Because the acts
24 taken towards Mr. Guerrero were carried out by managerial employees acting in a deliberate,
25 cold, callous, despicable and intentional manner, in order to injure and damage Mr. Guerrero, he
26 is entitled to recover punitive damages from defendants, and each of them, in an amount
27 according to proof.
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3 **FIFTH CAUSE OF ACTION**

4 **(ASSAULT – AGAINST DEFENDANTS BARCELINO**
5 **CONTINENTAL CORPORATION AND MR. MYRICK)**

6 60. Mr. Guerrero realleges and incorporates by reference, each and every allegation in
7 paragraphs 1 – 30.

8 61. Defendant MYRICK's conduct as alleged herein, was intended to and did place Mr.
9 Guerrero in apprehension of offensive physical contact.

10 62. Because defendant MYRICK was acting within the course and scope of his employment
11 with or agency for BARCELINO CONTINENTAL CORPORATION at the time of his acts and
12 omissions, defendant BARCELINO CONTINENTAL CORPORATION is liable for his conduct
13 under the doctrine of respondeat superior.

14 63. As a direct, proximate and foreseeable result of defendants' acts and failures to act, as
15 alleged herein, Mr. Guerrero was injured in his strength, health and activity, sustaining shock and
16 injury to his nervous system, all of which have caused and continues to cause Mr. Guerrero
17 extreme emotional distress including but not limited to humiliation, embarrassment, fear, anxiety
18 and discomfort, all to his damage in an amount to be determined according to proof.

19 64. As a further direct, proximate and foreseeable result of defendants' acts and failures to
20 act, as alleged herein, Mr. Guerrero has suffered and continues to suffer substantial losses in
21 earnings and employment benefits and injury to his career and reputation, in an amount to be
22 determined according to proof.

23 65. As a further direct, proximate and foreseeable result of defendants' acts and failures to
24 act, as alleged herein, Mr. Guerrero has incurred and continues to incur expenses in an amount to
25 be determined according to proof.

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3 66. Defendants committed the acts herein alleged despicably, maliciously, fraudulently, and
4 oppressively, with the wrongful intention of injuring Mr. Guerrero, and acted with an improper
5 and evil motive amounting to malice in conscious disregard to Mr. Guerrero. Because the acts
6 taken toward Mr. Guerrero were carried out by managerial employees acting in a deliberate,
7 cold, callous, despicable and intentional manner, in order to injure and damage Mr. Guerrero, he
8 is entitled to recover punitive damages from defendants, and each of them, in an amount
9 according to proof.

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11 **SIXTH CAUSE OF ACTION**

12 **(WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY –**
13 **AGAINST DEFENDANT BARCELINO CONTINENTAL CORPORATION)**

14 67. Mr. Guerrero realleges and incorporates by reference against each defendant, each and
15 every allegation in paragraphs 1-30.

16 68. At all times relevant to this complaint, FEHA was in full force and effect and binding
17 upon defendants. FEHA prohibits employers from harassing employees because of sex and
18 discriminating against the person in terms, conditions, or privileges of employment because of
19 the person's sex or because the person has opposed any practices forbidden under FEHA.

20 69. Defendant BARCELINO CONTINENTAL CORPORATION violated the public policy
21 of California by terminating Mr. Guerrero because of his sex and/or in retaliation for his
22 complaints about harassment because of his sex, in violation of the Fair Employment and
23 Housing Act.

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25 70. As a direct, proximate and foreseeable result of defendants' acts and failures to act, as
26 alleged herein, Mr. Guerrero was injured in his strength, health and activity, sustaining shock and
27 injury to his nervous system, all of which have caused and continues to cause Mr. Guerrero
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3 extreme emotional distress including but not limited to humiliation, embarrassment, fear, anxiety
4 and discomfort, all to his damage in an amount to be determined according to proof.

5 71. As a further direct, proximate and foreseeable result of defendants' acts and failures to
6 act, as alleged herein, Mr. Guerrero has suffered and continues to suffer substantial losses in
7 earnings and employment benefits and injury to his career and reputation, in an amount to be
8 determined according to proof.

9 72. As a further direct, proximate and foreseeable result of defendants' acts and failures to
10 act, as alleged herein, Mr. Guerrero has incurred and continues to incur expenses in an amount to
11 be determined according to proof.

12 73. Defendant committed the acts herein alleged despicably, maliciously, fraudulently, and
13 oppressively, with the wrongful intention of injuring Mr. Guerrero, and acted with an improper
14 and evil motive amounting to malice and in conscious disregard of Mr. Guerrero's rights.
15 Because the acts taken toward Mr. Guerrero were carried out by managerial employees acting in
16 a deliberate, cold, callous, despicable, and intentional manner in order to injure and damage Mr.
17 Guerrero, he is entitled to punitive damages from defendants in an amount according to proof.

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20 **SEVENTH CAUSE OF ACTION**

21 **(NEGLIGENT SUPERVISION OF EMPLOYEES - AGAINST**
22 **DEFENDANT BARCELINO CONTINENTAL CORPORATION)**

23 74. Mr. Guerrero realleges and incorporates by reference, each and every allegation in
24 paragraphs 1 - 30.

25 75. BARCELINO CONTINENTAL CORPORATION had the duty to use due care in the
26 employment and supervision of its employees and/or agents at all times relevant to this
27 complaint.

28 76. BARCELINO CONTINENTAL CORPORATION knew or should have known that
COMPLAINT FOR DAMAGES

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3 defendant Mr. MYRICK harassed Mr. Guerrero during times relevant to this complaint, but
4 failed to take effective preventive or remedial steps to stop the abuse thereby breaching their
5 duty of due care to Mr. Guerrero.

6 77. As a direct, proximate and foreseeable result of defendants' acts and failures to act, as
7 alleged herein, Mr. Guerrero was injured in his strength, health and activity, sustaining shock and
8 injury to his nervous system, all of which have caused and continues to cause Mr. Guerrero
9 extreme emotional distress including but not limited to humiliation, embarrassment, fear, anxiety
10 and discomfort, all to his damage in an amount to be determined according to proof.

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12 78. As a further direct, proximate and foreseeable result of defendants' acts and failures to
13 act, as alleged herein, Mr. Guerrero has suffered and continues to suffer substantial losses in
14 earnings and employment benefits and injury to his career and reputation, in an amount to be
15 determined according to proof.

16 79. As a further direct, proximate and foreseeable result of defendants' acts and failures to
17 act, as alleged herein, Mr. Guerrero has incurred and continues to incur expenses in an amount to
18 be determined according to proof.

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20 80. Defendant committed the acts herein alleged despicably, maliciously, fraudulently, and
21 oppressively, with the wrongful intention of injuring Mr. Guerrero, and acted with an improper
22 and evil motive amounting to malice and in conscious disregard of Mr. Guerrero's rights.
23 Because the acts taken toward Mr. Guerrero were carried out by managerial employees acting in
24 a deliberate, cold, callous, despicable, and intentional manner in order to injure and damage Mr.
25 Guerrero, he is entitled to punitive damages from defendants in an amount according to proof.
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3 **EIGHTH CAUSE OF ACTION**

4 **(INTENTIONAL INFLICTION OF EMOTIONAL**
5 **DISTRESS -AGAINST ALL DEFENDANTS)**

6 81. Mr. Guerrero realleges and incorporates by reference, each and every allegation in
7 paragraphs 1-30.

8 82. Defendants' conduct as alleged herein was intentional, outrageous and malicious,
9 exceeding all bounds usually tolerated by a decent society, and was especially calculated to
10 cause, and did cause Mr. Guerrero to suffer severe and enduring emotional distress.

11 83. Because defendants MYRICK and HESSABI were acting within the course and scope
12 of their employment with or agency for BARCELINO CONTINENTAL CORPORATION at the
13 time of their acts and omissions, BARCELINO CONTINENTAL CORPORATION is liable for
14 their conduct under the doctrine of respondeat superior.

15 84. Because defendant COFFEY was acting within the course and scope of his employment
16 with or agency for TRIAD CONSULTANTS and BARCELINO CONTINENTAL
17 CORPORATION at the time of his acts and omissions, TRIAD CONSULTANTS and
18 BARCELINO CONTINENTAL CORPORATION are liable for his conduct respectively under
19 the doctrine of respondeat superior and the doctrine of agency.

20 85. As a direct, proximate and foreseeable result of defendants' acts and failures to act, as
21 alleged herein, Mr. Guerrero was injured in his strength, health and activities, sustaining shock
22 and injury to his nervous system, all of which have caused and continue to cause Mr. Guerrero
23 extreme emotional distress including but not limited to humiliation, embarrassment, fear, anxiety
24 and discomfort, all to his damage in an amount to be determined according to proof.

25 86. As a further direct, proximate and foreseeable result of defendants' acts and failures to
26 act, as alleged herein, Mr. Guerrero has suffered and continues to suffer substantial losses in
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2 earnings and employment benefits and injury to his career and reputations, in an amount to be
3 determined according to proof.
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5 87. As a further direct, proximate and foreseeable result of defendants' acts and failures to
6 act, as alleged herein, Mr. Guerrero has incurred and continues to incur expenses in an amount to
7 be determined according to proof.

8 88. Defendants committed the acts herein alleged despicably, maliciously, fraudulently, and
9 oppressively, with the wrongful intention of injuring Mr. Guerrero, and acted with an improper
10 and evil motive amounting to malice in conscious disregard to Mr. Guerrero. Because the acts
11 taken toward Mr. Guerrero were carried out by managerial employees acting in a deliberate,
12 cold, callous, despicable and intentional manner, in order to injure and damage Mr. Guerrero, he
13 is entitled to recover punitive damages from defendants, and each of them, in an amount
14 according to proof.
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16 **NINTH CAUSE OF ACTION**

17 **(PROFESSIONAL NEGLIGENCE – AGAINST**
18 **DEFENDANTS TRIAD CONSULTANTS AND COFFEY)**

19 89. Mr. Guerrero realleges and incorporates by reference, each and every allegation in
20 paragraphs 1-30.

21 90. Defendants TRIAD CONSULTANTS and COFFEY had the duty to conform to a
22 professional standard of conduct of a private investigator at all times relevant to this complaint
23 and were required to use skill or knowledge possessed by other private investigators in good
24 standing.
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26 91. TRIAD CONSULTANTS and COFFEY engaged in the business of a private
27 investigator without a valid license and used a voice stress pattern of Mr. Guerrero without his
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3 express written consent given in advance of the examination thereby breached their duty to
4 conform to professional standard of conduct of a private investigator.

5 92. As a direct, proximate and foreseeable result of defendants' acts and failures to act, as
6 alleged herein, Mr. Guerrero was injured in his strength, health and activity, sustaining shock and
7 injury to his nervous system, all of which have caused and continues to cause Mr. Guerrero
8 extreme emotional distress including but not limited to humiliation, embarrassment, fear, anxiety
9 and discomfort, all to his damage in an amount to be determined according to proof.
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11 93 As a further direct, proximate and foreseeable result of defendants' acts and failures to
12 act, as alleged herein, Mr. Guerrero has suffered and continues to suffer substantial losses in
13 earnings and employment benefits and injury to his career and reputation, in an amount to be
14 determined according to proof.

15 94. As a further direct, proximate and foreseeable result of defendants' acts and failures to
16 act, as alleged herein, Mr. Guerrero has incurred and continues to incur expenses in an amount to
17 be determined according to proof.
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19 95. Defendants committed the acts herein alleged despicably, maliciously, fraudulently, and
20 oppressively, with the wrongful intention of injuring Mr. Guerrero, and acted with an improper
21 and evil motive amounting to malice and in conscious disregard of Mr. Guerrero's rights.
22 Because the acts taken toward Mr. Guerrero were carried out by managerial employees acting in
23 a deliberate, cold, callous, despicable, and intentional manner in order to injure and damage Mr.
24 Guerrero, he is entitled to punitive damages from defendants in an amount according to proof.
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3 **TENTH CAUSE OF ACTION**
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5 **(VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 7523(a) –**
6 **AGAINST DEFENDANTS TRIAD CONSULTANTS AND COFFEY)**

7 96. Mr. Guerrero realleges and incorporates by reference, each and every allegation in
8 paragraphs 1-30.

9 97. Defendants TRIAD CONSULTANTS and COFFEY engaged in the business of a private
10 investigator without a valid license at the times relevant to this complaint, in violation of
11 Business and Professions Code §§ 7523(a).

12 98. As a direct, proximate and foreseeable result of defendants' acts and failures to act as
13 alleged herein, Mr. Guerrero has suffered and continues to suffer substantial losses in earnings
14 and employment benefits, injury to his career and reputation and extreme and enduring
15 emotional distress including but not limited to humiliation, shock, embarrassment, fear, anxiety
16 and discomfort, all to her damage in an amount to be determined according to proof.

17 99. As a further direct, proximate and foreseeable result of defendants' acts and failures to
18 act, as alleged herein, Mr. Guerrero has suffered and continues to suffer substantial losses in
19 earnings and employment benefits and injury to his career and reputation, in an amount to be
20 determined according to proof.

21 100. As a further direct, proximate and foreseeable result of defendants' acts and failures to
22 act, as alleged herein, Mr. Guerrero has incurred and continues to incur expenses in an amount to
23 be determined according to proof.

24 101. Defendants committed the acts herein alleged despicably, maliciously, fraudulently, and
25 oppressively, with the wrongful intention of injuring Mr. Guerrero, and acted with an improper
26 and evil motive amounting to malice and in conscious disregard of Mr. Guerrero's rights.

27 Because the acts taken toward Mr. Guerrero were carried out by managerial employees acting in
28 COMPLAINT FOR DAMAGES

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3 a deliberate, cold, callous, despicable, and intentional manner in order to injure and damage Mr.
4 Guerrero, he is entitled to punitive damages from defendants in an amount according to proof.

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6 **ELEVENTH CAUSE OF ACTION**

7 **(VIOLATION OF LABOR CODE §§ 432.2(a)-(b) - AGAINST**
8 **DEFENDANT BARCELINO CONTINENTAL CORPORATION)**

9 102. Mr. Guerrero realleges and incorporates by reference, each and every allegation in
10 paragraphs 1-30.

11 103. Defendant BARCELINO CONTINENTAL CORPORATION submitted Mr. Guerrero, a
12 BARCELINO CONTINENTAL CORPORATION's employee, to lie detector test as a condition
13 of continued employment, in response to Mr. Guerrero's complaints about sexual harassment by
14 defendant Mr. MYRICK, in violation of Labor Code §§ 432.2 (a).

15 104. Defendant BARCELINO CONTINENTAL CORPORATION requested Mr. Guerrero to
16 talk to defendant COFFEY who submitted Mr. Guerrero to lie detector test, without advising Mr.
17 Guerrero in writing of his rights guaranteed by this section, in violation of Labor
18 Code §§ 432.2 (b).

19 20 105. Because defendant COFFEY was acting within the course and scope of his agency for
21 BARCELINO CONTINENTAL CORPORATION at the time of his acts and omissions,
22 BARCELINO CONTINENTAL CORPORATION is liable for his conduct under the doctrine of
23 agency.

24 25 106. As a direct, proximate and foreseeable result of defendants' acts and failures to act as
26 alleged herein, Mr. Guerrero has suffered and continues to suffer substantial losses in earnings
27 and employment benefits, injury to his career and reputation and extreme and enduring
28 emotional distress including but not limited to humiliation, shock, embarrassment, fear, anxiety
and discomfort, all to his damage in an amount to be determined according to proof.

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JURY TRIAL DEMANDED

Mr. Guerrero hereby demands a jury trial.

Dated: 7/14/03

LAW OFFICES OF DANIEL FEDER

By: Daniel L. Feder
Daniel L. Feder
Attorneys for Jesus Guerrero