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Superior Court of California  
County of Fresno  
By: I. Herrera, Deputy

Attorneys for: Plaintiff HILDA LOPEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF FRESNO, UNLIMITED CIVIL DIVISION

|                                 |   |                                   |
|---------------------------------|---|-----------------------------------|
| HILDA LOPEZ,                    | ) | Case No. <b>21CECG01746</b>       |
|                                 | ) |                                   |
| Plaintiff,                      | ) | <b>COMPLAINT; AND JURY DEMAND</b> |
|                                 | ) |                                   |
| v.                              | ) |                                   |
|                                 | ) |                                   |
| OLIVE/BROADWAY ENTERPRISES,     | ) |                                   |
| INC., DBA BOBBY SALAZAR'S       | ) |                                   |
| TAQUERIA, ROBERT "BOBBY"        | ) |                                   |
| SALAZAR; and DOES 1 through 20, | ) |                                   |
| inclusive,                      | ) |                                   |
|                                 | ) |                                   |
| Defendants.                     | ) |                                   |
|                                 | ) |                                   |

1. Plaintiff HILDA LOPEZ ("LOPEZ") is an individual residing in Fresno County, California. Plaintiff was employed by OLIVE/BROADWAY ENTERPRISES, INC. DBA BOBBY SALAZAR'S TAQUERIA ("BST") from July 2019 through November 7, 2020

2. Defendant OLIVE/BROADWAY ENTERPRISES, INC. DBA BOBBY SALAZAR'S TAQUERIA ("BST") is a California corporation which has done business and continues to do business in Fresno County, California.

3. Defendant ROBERT "BOBBY" SALAZAR is an individual residing in



1 and continued to work. Plaintiff needed the job. Though being pregnant, Plaintiff had not slowed  
2 down and continued to work in the kitchen preparing meals for customers.

3 8. With her manager, Antonio, Plaintiff made it known that due to her family  
4 commitments, Plaintiff could only work certain days of the week. Prior to her pregnancy,  
5 Antonio had been cooperative and had assisted in scheduling Plaintiff. After the above-described  
6 incident with Bobby Salazar, and when it was open and obvious that Plaintiff was pregnant,  
7 Plaintiff's schedule was shifted. On October 3, 2020, Plaintiff sent Bobby Salazar a text  
8 messages indicating "I told you that I can't work Sundays. I think your discriminating against me  
9 because I'm pregnant but I can do my work better then some people there." Thereafter, the  
10 treatment became worse. Not only were breaks denied, but as a punishment Plaintiff was also  
11 sent next door to Lucy's, another restaurant owned and managed by Defendants, to clean the  
12 bathrooms. Until making it known that she was upset about being discriminated against on  
13 account of pregnancy, Plaintiff had not been sent to clean bathrooms at a different restaurant. The  
14 new bathroom duty at another restaurant was pushed on Plaintiff as castigation for complaining  
15 about being treated badly (which was in writing) on account of pregnancy.

16 9. Plaintiff was ultimately due to give birth in November 2020, and worked  
17 until she could no longer physically work, which ended up being November 7, 2020. Plaintiff  
18 wanted to return to work after giving birth, but was denied the opportunity, in violation of the  
19 law, to come back to work. Plaintiff never received any notice about CFRA/FMLA leave, leave  
20 of any kind, and not told that she could return.

21 10. Plaintiff filed a complaint for harassment, discrimination and termination,  
22 among other things, with the California Department of Fair Employment and Housing. Plaintiff  
23 has received a right to sue letter.

#### 24 **FIRST CAUSE OF ACTION**

25 **(Hostile Work Environment Harassment Based on Medical Condition/ Pregnancy**  
26 **[Violation of Cal. Govt. Code §12940] against All Defendants,**  
**and Does 1 through 20)**

27 11. Plaintiff incorporates each and every allegation contained in Paragraphs 1  
28 through 10 above, as though fully set forth in this cause of action.

1                   12. In violation of Cal. Govt. Code §12940(j)(1), Defendants subjected  
2 Plaintiff to harassment based on her medical condition/pregnancy causing a hostile and/or  
3 abusive work environment. The harassing conduct included, but was not limited to, depriving  
4 Plaintiff of breaks, open hostility, re-assignment to tasks intended to demean Plaintiff, a changed  
5 working environment, failure to uniformly apply or adhere to the workplace policy, and failure to  
6 follow and apply the law governing medical leaves. Defendants failed to accommodate Plaintiff  
7 and harmed Plaintiff. The conduct was so severe and pervasive that a reasonable person in  
8 Plaintiff's circumstances would have found the work environment to be hostile or abusive.

9                   13. As a consequence, Plaintiff is entitled to recover compensatory damages  
10 (for lost wages and benefits, past and future, damage to employability, and emotional distress  
11 damages) and attorney's fees and costs, in an amount according to proof.

12                   14. Because the conduct of Defendants was despicable, malicious and  
13 intentional, Plaintiff is entitled to recover punitive damages in an amount according to proof.

14                   **SECOND CAUSE OF ACTION**

15                   **(Disability/Medical Condition/Pregnancy Discrimination in Violation of FEHA Does 1**  
16                   **through 20)**

17                   15. Plaintiff incorporates each and every allegation contained in Paragraphs 1  
18 through 14 above, as though fully set forth in this cause of action.

19                   16. Defendants did not accommodate Plaintiff's condition or pregnancy.  
20 Defendants effectively terminated Plaintiff because of Plaintiff's condition by failing to allow  
21 Plaintiff to return after giving birth and failing to supply Plaintiff with leave. Defendants  
22 violated Plaintiff's rights by failing to reasonably accommodate Plaintiff's disability (pregnancy),  
23 by treating Plaintiff disparately because of her conditions, and by effectively terminating  
24 (wrongfully) Plaintiff from her employment because of her medical condition and/or because of  
25 her pregnancy.

26                   17. In doing the things alleged herein, including harassing and terminating  
27 Plaintiff as a result of Plaintiff's medical condition, Defendants violated the California Fair  
28 Employment and Housing Act ("FEHA") and caused Plaintiff to suffer consequential damages,

1 including lost wages, employment benefits and emotional distress damages (including emotional  
2 pain and suffering and mental anguish), in an amount according to proof, but not less than the  
3 jurisdictional limit of this Court.

4 18. Plaintiff is entitled to recover reasonable attorney's fees and costs incurred  
5 in connection with the prosecution of this action. Plaintiff has employed the Whelan Law Group  
6 to represent her in this case. Pursuant to her rights under FEHA, Plaintiff will seek recovery of  
7 attorney's fees and costs upon the conclusion of this lawsuit.

8 19. In doing the things alleged herein, Defendants acted intentionally,  
9 maliciously, in conscious disregard of Plaintiff's rights, oppressively and despicably; as a  
10 consequence, Plaintiff is entitled to recover punitive damages against Defendants, in an amount  
11 according to proof.

### 12 **THIRD CAUSE OF ACTION**

#### 13 **[ Violation of CALIFORNIA FAMILY RIGHTS ACT]**

14 20. Plaintiff incorporates each and every allegation contained in Paragraphs 1  
15 through 19 above, as though fully set forth in this cause of action.

16 21. The California Family Rights Act applies and applied to Plaintiff and  
17 Defendants. In failing to provide mandated protected leave, both on account of pregnancy and  
18 child birth, and ultimately terminating Plaintiff's employment, Defendants engaged in an  
19 unlawful employment practice, in violation of Government Code §12945.2. Specifically, a  
20 motivating factor in the decision made by Defendants to terminate Plaintiff's employment was  
21 Defendants' displeasure that Plaintiff had attempted to exercise her rights under CFRA to take a  
22 leave of absence to give birth and/or on account of Plaintiff's pregnancy. Upon attempt at return,  
23 Plaintiff was not reinstated to her position.

24 22. As a direct result of Defendants' engaging in unlawful retaliation by  
25 terminating Plaintiff, in violation of Government Code §12945.2(L)(1) and §12945.2(t), Plaintiff  
26 has suffered lost wages, past and future, lost employee benefits, past and future, emotional  
27 distress damages, job search expenses, diminished employability and other compensatory  
28 damages, in an amount according to proof, and in excess of the jurisdictional limit of this Court.

23. In addition, Plaintiff has been required to employ the services of the Whelan Law Group. Pursuant to Government Code §12965(b), Plaintiff is entitled to recover reasonable attorney's fees, expert witness fees and costs, in an amount according to proof.

24. In doing the things alleged herein, Defendant, by and through their officers, directors, and managing agents, who authorized or ratified the retaliatory termination of Plaintiff, engaged in conduct that was malicious, reprehensible, and in conscious disregard of Plaintiff's rights. Accordingly, Plaintiff is entitled to recover punitive damages, in an amount according to proof.

#### **FOURTH CAUSE OF ACTION**

**[Wrongful Termination in Violation of Public Policy  
Against Employer BST]**

25. Plaintiff incorporates each and every allegation contained in Paragraphs 1 through 24 above, as though fully set forth in this cause of action.

26. Plaintiff was terminated from her employment after being denied lawful leave, after being subjected to unlawful physical discrimination, intimidation and harassment in the workplace about which she complained. Defendants refused to comply with the requirements of FEHA which, among other things, entitles a person to remain free of harassment, and medical condition harassment and discrimination. The termination was in violation of the public policy against discrimination and harassment on the basis of pregnancy and/or a medical condition and in violation of Govt. Code §12945.

27. As a direct consequence of the wrongful termination in violation of public policy, Plaintiff has suffered, and will continue to suffer, compensatory damages, including lost wages (past and future), lost employee benefits (past and future) and emotional distress damages (pain, suffering and mental anguish) in an amount according to proof, but not less than the jurisdictional limit of this Court.

28. In doing the acts alleged herein, Defendants acted intentionally, maliciously, in conscious disregard of Plaintiff's rights, oppressively and despicably; as a consequence, Plaintiff is entitled to recover punitive damages against Defendants.

1 **FIFTH CAUSE OF ACTION**

2 **[Claim for Violation of Labor Code §226.7 (Meal Breaks)]**

3 29. Plaintiff incorporates each and every allegation contained in Paragraphs 1  
4 through 28 above, as though fully set forth in this cause of action.

5 30. During the time that Plaintiff was employed by Defendants she was not  
6 permitted to take 30-minute meal breaks in violation of Labor Code §226.7. Defendants failed to  
7 provide Plaintiff or other similarly situated employees with the opportunity to take meal breaks.  
8 Pursuant to Labor Code §226.7, Plaintiff is entitled to one additional hour of pay at Plaintiff's  
9 regular rate of compensation, for each day of work that Plaintiff worked for which a meal break  
10 was not taken. Defendants' violations as herein stated constitute an Unfair Business Practice in  
11 violation of Bus. and Prof. Code §17200 thus extending the statute of limitations to four years.

12 31. As a result of Defendants' failure to provide meal breaks, as mandated by  
13 the applicable order of the Industrial Wage Commission and pursuant to Labor Code §226.7,  
14 Plaintiff has suffered damages in the form of unpaid wages in an amount according to proof.

15 **SIXTH CAUSE OF ACTION**

16 **[Claim for Violation of Labor Code §226.7 (Rest Period Breaks)]**

17 32. Plaintiff incorporates each and every allegation contained in Paragraphs 1  
18 through 31 above, as though fully set forth in this cause of action.

19 33. During the time that Plaintiff was employed by Defendants she was not  
20 permitted to take rest period breaks in violation of Labor Code §226.7. Pursuant to Labor Code  
21 §226.7, Plaintiff is entitled to one additional hour of pay at Plaintiff's regular rate of  
22 compensation for each day of work that Plaintiff worked for which a rest period break was not  
23 taken. Defendants' violations as herein stated constitute an Unfair Business Practice in violation  
24 of Bus. and Prof. Code §17200 thus extending the statute of limitations to four years.

25 34. As a result of Defendants' failure to provide rest period breaks, as  
26 mandated by the applicable order of the Industrial Wage Commission and pursuant to Labor  
27 Code §226.7, Plaintiff has suffered damages in the form of unpaid wages in an amount according  
28 to proof.

1 **SEVENTH CAUSE OF ACTION**

2 **[Penalty Assessment Under Labor Code §§ 203, 226.3 and 226**  
3 **Against Defendants]**

4 35. Plaintiff incorporates each and every allegation contained in Paragraphs 1  
5 through 34 above, as though fully set forth in this cause of action.

6 36. In addition to unpaid overtime wages, wages, interest, attorney's fees, and  
7 costs, which Plaintiff seeks to recover under her Causes of Action herein stated, Plaintiff is also  
8 entitled to recover wage penalties under Labor Code §§203, 226.3 and 226(e) in an amount  
9 according to proof.

10 **EIGHTH CAUSE OF ACTION**

11 **(Retaliation in Violation of Labor Code §1102.5 Against Defendants)**

12 37. Plaintiff incorporates each and every allegation contained in Paragraphs 1  
13 through 36 above, as though fully set forth in this cause of action.

14 38. Plaintiff is informed and believes, and thereon alleges that Defendants  
15 retaliated against Plaintiff because of Plaintiff's opposition to practices forbidden under the labor  
16 code act, specifically opposition to denial of meal and rest periods and voicing opposition to  
17 discrimination directly to Robert Salazar, and because of Plaintiff's complaints to a person with  
18 authority over the employee or another employee who has the authority to investigate, discover,  
19 or correct the violation or noncompliance.

20 39. As a direct result of Defendants' retaliation against Plaintiff in violation of  
21 Labor Code §1102.5, Plaintiff has suffered lost wages and benefits, past and future, emotional  
22 distress damages, diminished employability, and other compensatory damages in an amount  
23 according to proof, in excess of the jurisdictional limit of this Court.

24 40. In doing the acts alleged herein, Defendants acted intentionally,  
25 maliciously, despicably, in bad faith, with malice and in conscious disregard for Plaintiff's rights;  
26 as a consequence, Plaintiff is entitled to recover punitive damages against Defendants, in an  
27 amount according to proof, along with attorney's and costs.



1 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of  
2 them, as follows:

3 1. For compensatory damages relating to past and future lost wages, past and  
4 future lost employee benefits, damages relating to unpaid overtime wages, interest on said  
5 amounts, diminished employability, other economic injury, and emotional distress damages, all  
6 in an amount according to proof but not less than \$350,000.00;

7 2. For punitive damages in an amount according to proof;

8 3. Reasonable attorney's fees and costs under any applicable statutory  
9 authority, including, but not limited to, Labor Code §§ 203, 1102.5, Govt. Code §§ 12965 &  
10 12945.2;

11 4. For prejudgment interest under Civil Code §3288, CCP §998, Labor Code  
12 §1194, and any other applicable statutory authority;

13 5. For wage penalties under any and all available code sections including, but  
14 not limited to, Labor Code §§ 203, 226.3, 226, and 226.7 in an amount according to proof;

15 6. For unpaid wages and overtime wages in an amount according to proof;  
16 and

17 7. For all other relief as shall be deemed by the Court to be proper.  
18

19 Dated: June 17, 2021

WHELAN LAW GROUP,  
A Professional Corporation

20  
21   
By Brian D. Whelan,  
Attorneys for Plaintiff HILDA LOPEZ  
22

23 **JURY DEMAND**

24 Plaintiff requests that each and every factual issue raised by each and every cause  
25 of action alleged above be tried by a jury.

26 Dated: June 17, 2021

WHELAN LAW GROUP,  
A Professional Corporation

27  
28   
By Brian D. Whelan,  
Attorneys for Plaintiff HILDA LOPEZ  
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