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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

San Jose Division

**EQUAL EMPLOYMENT
OPPORTUNITIES COMMISSION,**

Plaintiff,

**SANDRA VARGAS, ESTHER
HERNANDEZ, and MARIVEL
HERNANDEZ,**

Plaintiffs/Intervenors,

v.

**HARMAN-CHIU, INC., d/b/a/
KFC/TACO BELL, HARMAN
MANAGEMENT CORPORATION,
JORGE GARCIA, and DOES 1-10,
inclusive,**

Defendants.

Case No.: C 05 3615 JF

**COMPLAINT IN INTERVENTION
FOR UNLAWFUL DISCRIMINATION,
HARASSMENT, AND RETALIATION**

DEMAND FOR JURY TRIAL

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NATURE OF THE ACTION

1. Defendant HARMAN MANAGEMENT CORPORATION, (“Harman Management”) is the oldest and one of the largest KFC/Taco Bell franchises in the United States. Within the Northern District of California alone, Harman Management owns and/or operates well over 100 KFC, Taco Bell, A&W, and Pizza Hut franchise restaurants, one of which is Defendant HARMAN-CHIU, INC., d/b/a/ KFC/TACO BELL, Harman Management Corporation store #203 (“Harman-Chiu”), located in Sunnyvale, California.

2. This action is brought by current and former Harman-Chiu/Harman Management employees SANDRA VARGAS, ESTHER HERNANDEZ, and MARIVEL HERNANDEZ (collectively “Plaintiffs/Intervenors”) pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.* (“Title VII”), Title I of the Civil Rights Act of 1991, and the California Fair Employment and Housing Act, California Government Code §§ 12940 *et seq.* (“the FEHA”) against Defendants HARMAN-CHIU, INC., d/b/a/ KFC/TACO BELL, HARMAN MANAGEMENT CORPORATION, JORGE GARCIA, and DOES 1-10, inclusive (collectively “Defendants”). Defendants subjected Plaintiffs/Intervenors to unlawful harassment based on their sex, created a hostile work environment based on their sex, failed to prevent discrimination and harassment against them based on their sex, and subjected them to retaliation for engaging in protected activity under Title VII and for opposing discriminatory practices under the FEHA, which caused the constructive discharge of Plaintiffs/Intervenors. This action seeks to correct Defendants’ unlawful employment practices and to provide appropriate monetary relief, including punitive damages, to Plaintiffs/Intervenors, who have been affected by these practices.

JURISDICTION AND VENUE

3. Plaintiffs/Intervenors’ claims arise under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(e), *et seq.* This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337, and 1343(a)(4). This Court has supplemental jurisdiction over Plaintiffs/Intervenors’ claims brought under the FEHA pursuant to 28 U.S.C. § 1367. Injunctive and declaratory relief, damages and other appropriate legal and equitable relief are sought pursuant to 42 U.S.C. § 2000e(f) and (g), as amended, and applicable provisions of the FEHA.

1 Jurisdiction is proper because the employment practices that Plaintiffs/Intervenors allege to be
 2 unlawful were and now being committed in California, within the jurisdiction of the United States
 3 District Court for the Northern District of California, San Jose Division.

4 4. Venue is proper in this district pursuant to 42 U.S.C. § 2000e-5(f) and 28 U.S.C. §
 5 1391(b) & (c). Plaintiffs/Intervenors' claims all arose in California. Many of the acts alleged in
 6 this Complaint occurred in this District and gave rise to the claims alleged.

7 **INTRADISTRICT ASSIGNMENT**

8 5. This action is appropriate for assignment to San Jose because the unlawful
 9 employment practices alleged herein were and are being committed within Santa Clara County,
 10 the employment records relevant to the unlawful practices alleged herein are located in Santa
 11 Clara County, and because Defendant Harman-Chiu's and Defendant Harman Management's
 12 principal places of business are both located in Santa Clara County.

13 **PARTIES**

14 6. Plaintiff/Intervenor Sandra Vargas ("Plaintiff Vargas") was employed by
 15 Defendants until January 2003. Plaintiff Vargas is and at all times relevant herein has been a
 16 resident of the State of California, County of Santa Clara. Plaintiff Vargas is and at all times
 17 material hereto has been a member of a protected group under California Government Code
 18 section 12940(a) based on her sex (female), and Title VII, as amended, 42 U.S.C. §2000e-5 (f) (1)
 19 and (3), and section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981(a).

20 7. Plaintiff/Intervenor Esther Hernandez ("Plaintiff E. Hernandez") is currently
 21 employed at one of the franchise restaurants owned and/or operated by Defendant Harman
 22 Management in Oakland, California (Harman-Trisler, Harman Management Corporation store
 23 #291.) Since November 1996, Plaintiff E. Hernandez has worked at various Harman
 24 Management-owned and/or -operated franchise restaurants in Northern California, including the
 25 Harman-Chiu franchise, where she worked until approximately May 2003. Plaintiff E.
 26 Hernandez is and at all times relevant herein has been a resident of the State of California, County
 27 of Santa Clara. Plaintiff E. Hernandez is and at all times material hereto has been a member of a
 28 protected group under California Government Code Section 12940(a) based on her sex (female),

1 and Title VII, as amended, 42 U.S.C. §2000e-5 (f) (1) and (3), and section 102 of the Civil Rights
2 Act of 1991, 42 U.S.C. §1981(a).

3 8. Plaintiff/Intervenor Marivel Hernandez (“Plaintiff M. Hernandez”) was employed
4 by Defendants to work at the Harman-Chiu franchise until September 2003. Ms. Hernandez is
5 and was at all times relevant herein a resident of the State of California, County of Santa Clara.
6 Ms. Hernandez is and at all times material hereto has been a member of a protected group under
7 California Government Code Section 12940(a) based on her sex (female), and Title VII, as
8 amended, 42 U.S.C. §2000e-5 (f) (1) and (3), and Section 102 of the Civil Rights Act of 1991, 42
9 U.S.C. §1981(a).

10 9. Plaintiffs/Intervenors are informed and believe that Defendant Harman-Chiu, Inc.,
11 d/b/a/ KFC-Taco Bell (“Defendant Harman-Chiu”) is and was at all relevant times a corporation
12 organized and existing under the laws of the State of California, with its principal business
13 operation located at 1695 Hollenbeck Avenue, Sunnyvale, California, in the County of Santa
14 Clara. Defendant Harman-Chiu’s registered business address and agent for service of process are
15 located at 199 First Street, Suite 212, Los Altos, California, in the County of Santa Clara.

16 10. Plaintiffs/Intervenors are informed and believe, and thereon allege, that Defendant
17 Harman-Chiu regularly employs five (5) or more persons, and accordingly is an employer within
18 the meaning of Cal. Gov’t. Code §§ 12926(d) and 12940.

19 11. Plaintiffs/Intervenors are informed and believe, and thereon allege that, at all times
20 relevant hereto, Defendant Harman-Chiu regularly has employed fifteen (15) or more persons for
21 each working day in each of twenty (20) or more calendar weeks in the current and preceding
22 calendar years, and accordingly is an employer engaged in an industry affecting commerce,
23 within the meaning of 42 U.S.C. § 2000e(b), (g), and (h).

24 12. Plaintiffs/Intervenors are informed and believe that Defendant Harman
25 Management Corporation (“Defendant Harman Management”) is a Utah corporation that, at all
26 relevant times, has done and continues to do business within the State of California. On
27 information and belief, Plaintiffs/Intervenors allege that Defendant Harman Management owns
28 and/or operates more than 100 KFC/Taco Bell, A&W, and Pizza Hut franchises located

1 throughout Northern and Central California. Defendant Harman Management's principal place of
2 business in California is located at 199 First Street, Suite 212, Los Altos, California, in Santa
3 Clara County.

4 13. Plaintiffs/Intervenors are informed and believe, and thereon allege, that Defendant
5 Harman Management regularly employs five (5) or more persons, and accordingly is an employer
6 within the meaning of Cal. Gov't. Code §§ 12926(d) and 12940.

7 14. Plaintiffs/Intervenors are informed and believe, and thereon allege that, at all times
8 relevant hereto, Defendant Harman Management regularly has employed fifteen (15) or more
9 persons for each working day in each of twenty (20) or more calendar weeks in the current and
10 preceding calendar years, and accordingly is an employer engaged in an industry affecting
11 commerce, within the meaning of 42 U.S.C. § 2000e(b), (g), and (h).

12 15. Plaintiff/Intervenors are informed and believe, and thereon allege that, at all times
13 relevant hereto, Defendant Jorge Garcia is resident of the State of California. From on or about
14 August 2002, he worked for Defendants Harman-Chiu, Inc. and Harman Management
15 Corporation as a manager at the Harman-Chiu Restaurant located at 1695 Hollenbeck Avenue,
16 Sunnyvale, California, in the County of Santa Clara.

17 16. Plaintiffs/Intervenors are ignorant of the true names and capacities of Defendants
18 sued herein as Does 1 through 10, inclusive, and therefore sue these defendants by fictitious
19 names. Plaintiffs will amend this complaint to allege their true names and capacities when
20 ascertained. Plaintiffs are informed and believe and thereon allege that each of the named and
21 fictitiously named Defendants is responsible in some manner for the occurrences herein alleged
22 and that Plaintiffs' damages were proximately caused by said Defendants.

23 17. Plaintiffs/Intervenors are informed and believe that at all times herein mentioned,
24 Defendants, whether or not specifically identified or designated herein as a Doe, and each of
25 them, were the agents, employees, servants, partners, independent contractors, joint venturers,
26 joint employers, alter egos, and/or participants with all other Defendants, and with each other, and
27 in doing the things hereinafter mentioned, were agents, employees, servants, partners, joint
28 venturers, joint employers, and/or alter egos acting with the consent, permission and ratification

1 of the co-Defendants, and each of them. At all relevant times, each of the Defendants was acting
 2 within the course and scope of his or her agency and employment.

3 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

4 18. On or around September 25, 2003, Plaintiff/Intervenor Vargas filed charges of
 5 discrimination with the Equal Employment Opportunity Commission ("EEOC") against
 6 Defendants Harman-Chiu and Harman Management. On or about March 30, 2004, Ms. Vargas
 7 submitted her second amended EEOC charge, adding class allegations. Plaintiff/Intervenor E.
 8 Hernandez filed her charges of discrimination against Defendants with the California
 9 Department of Fair Employment and Housing ("DFEH") on or about April 12, 2004.
 10 Plaintiff/Intervenor M. Hernandez filed her charges of discrimination with the DFEH on or
 11 about June 17, 2004. All of the charges filed with the DFEH were simultaneously filed with
 12 the EEOC pursuant to the terms of a work sharing agreement between the two agencies. The
 13 statute of limitations on Plaintiffs/Intervenors' claims was tolled during the EEOC's
 14 investigation of these charges. *See Downs v. Department of Water and Power*, 58 Cal.App.4th
 15 1093 (1997). Thus, this complaint is timely filed.

16 19. On or about November 29, 2004, the EEOC issued a Letter of Determination
 17 finding that Defendants had discriminated against Plaintiff Vargas and a class of female
 18 employees by subjecting Plaintiff Vargas and a class of female employees to a hostile work
 19 environment because of their sex and retaliating against Ms. Vargas and a class of female
 20 employees for engaging in protected activities, in violation of Title VII. In February 2005, the
 21 EEOC determined that efforts at reconciliation between the parties had not been successful and
 22 transferred the charges to the Regional Attorney, San Francisco District Office, for review to
 23 determine whether the EEOC would bring a civil action in federal district court based on the
 24 charges. The EEOC filed suit in the instant matter on September 8, 2005.

25 20. Plaintiffs/Intervenors have timely filed this action. They have complied with all
 26 administrative prerequisites and fulfilled all conditions precedent to be able to bring this
 27 lawsuit.

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FACTS**Plaintiff/Intervenor Sandra Vargas**

21. Plaintiff/Intervenor Sandra Vargas (“Plaintiff Vargas”) began working for Defendants at the Harman-Chiu restaurant in approximately November 2002. Plaintiff Vargas worked as a cashier and reported directly to Defendants’ managerial employee, Jorge Garcia (hereinafter “GARCIA”).

22. GARCIA is and has been employed by Defendants since at least August 2002, and, on information and belief, has held and continues to hold the position of Manager of the Harman-Chiu restaurant.

23. Within the first weeks of Plaintiff Vargas’ employment at the Harman-Chiu restaurant, GARCIA commenced a continual course of conduct wherein he sexually harassed Plaintiff Vargas. This harassment was severe and pervasive enough to alter her working conditions and create a hostile work environment. Plaintiff Vargas was repeatedly forced to endure offensive language of a sexual nature, and intimidating and unwelcome sexual overtures. Among other acts, GARCIA grabbed Vargas’ buttocks, blew into her ear, and repeatedly commented about her body shape.

24. GARCIA’s sexual harassment of Plaintiff Vargas was pervasive and was designed to compel Plaintiff Vargas to submit to his sexual advances, rendering Plaintiff Vargas’ submission to his sexual advances a term or condition of her employment at Harman-Chiu. GARCIA’s sexual harassment of Plaintiff Vargas thus substantially affected the terms and conditions of her employment.

25. GARCIA’s sexual harassment of Plaintiff Vargas continued through September 2003, even after Plaintiff Vargas repeatedly made clear that his behavior was unwelcome and made her feel uncomfortable, and that she wanted the harassment to stop.

26. Upon complaining of GARCIA’s sexual harassment to the agents, employees, and/or servants of Defendants, Plaintiff Vargas was subjected to retaliation in the form of reduction in her work hours, denial of promotion opportunities, verbal harassment by co-workers, who accused her of causing problems for GARCIA, and being ostracized by GARCIA and

1 Plaintiff Vargas' co-workers.

2 27. Despite Plaintiff Vargas' complaints about GARCIA's conduct, Defendants
3 Harman-Chiu and Harman Management failed and refused to effectively investigate or terminate
4 the course of repetitively offensive conduct of GARCIA, all of which constituted sexual
5 harassment of Plaintiff Vargas. Defendants' failure to effectively address, correct, or prevent the
6 sexual harassment, discrimination based on sex, and retaliation faced by Plaintiff Vargas thereby
7 condoned such illegal acts and transformed the acceptance of GARCIA's sexual advances into a
8 condition of Plaintiff Vargas' continued employment.

9 28. GARCIA's harassment of Plaintiff Vargas, combined with the failure of
10 Defendants, their agents, servants and/or employees to stop or correct his harassment, rendered
11 her work environment so hostile that any reasonable person would have found it intolerable.
12 Through GARCIA's sexual harassment, Defendants' failure to eradicate or correct it, and the
13 retaliation faced by Plaintiff Vargas for having complained, Defendants, their agents, servants
14 and/or employees recklessly and/or intentionally caused Plaintiff Vargas severe psychological
15 and emotional damage. Through their acts and omissions, which constituted sexual harassment
16 and unlawful discrimination based on sex as well as retaliation against Plaintiff Vargas,
17 Defendants, their agents, servants and/or employees, have caused Plaintiff Vargas to suffer
18 extreme anxiety, severe depression, and other emotional distress. Defendants' conduct adversely
19 affected Plaintiff Vargas' ability to work, as well as her overall sense of well-being.

20 29. Defendants, their agents, servants and/or employees committed the acts against
21 Plaintiff Vargas alleged herein maliciously, fraudulently, and oppressively, with the wrongful
22 intention of injuring Plaintiff Vargas and in conscious disregard of, and with reckless indifference
23 to, her rights as an employee.

24 Plaintiff/Intervenor Esther Hernandez

25 30. Plaintiff/Intervenor Esther Hernandez ("Plaintiff E. Hernandez") has worked for
26 various Harman Management-owned and/or -operated franchises in Northern California since
27 November 1996. She has worked at the Harman-Chiu restaurant during more than one period
28 over the last several years. The most recent period during which she worked at the Harman-Chiu

1 restaurant was from approximately July 2002 until approximately May 2003. During her
2 employment at the Harman-Chiu restaurant during this period of time, Plaintiff E. Hernandez
3 worked as a cashier, doing food prep and as a Shift Supervisor. She currently works at one of the
4 restaurants owned and/or operated by Defendant Harman Management in Oakland, California.

5 31. As with Plaintiff Vargas, within the first weeks that Plaintiff E. Hernandez began
6 working with Defendants' managerial employee Jorge GARCIA, GARCIA commenced a
7 continual course of conduct wherein he sexually harassed Plaintiff E. Hernandez. GARCIA
8 repeatedly forced Plaintiff E. Hernandez to endure offensive language, and intimidating and
9 unwelcome sexual overtures. This harassment was severe and pervasive enough to alter her
10 working conditions and create a hostile work environment. Among other acts that he committed
11 in E. Hernandez's presence, GARCIA grabbed the area around his genitals and sighed in a sexual
12 manner while he looked at women, made comments to Plaintiff E. HERNANDEZ about her
13 breasts, and continuously pressured E. HERNANDEZ to sleep with him in order to advance
14 within the company.

15 32. GARCIA's sexual harassment of Plaintiff E. Hernandez was pervasive and was
16 designed to compel Plaintiff E. Hernandez to submit to his sexual advances, rendering Plaintiff E.
17 Hernandez's submission to his sexual advances a term or condition of her employment at
18 Harman-Chiu. GARCIA's sexual harassment of Plaintiff E. Hernandez thus substantially
19 affected the terms and conditions of her employment.

20 33. GARCIA's sexual harassment of E. Hernandez continued through May 2003, even
21 after Plaintiff E. Hernandez repeatedly made clear that his behavior was unwelcome and made her
22 feel uncomfortable, and that she wanted the harassment to stop.

23 34. Upon complaining of GARCIA's sexual harassment to the agents, employees,
24 and/or servants of Defendants, Plaintiff E. Hernandez was subjected to retaliation in the form of
25 reduction in work hours, denial of promotion opportunities, and criticism of her work as a
26 Supervisor that undermined her authority and ultimately led to her being transferred to a different
27 store, where she was assigned to work fewer hours and received lower pay.

28 35. Despite Plaintiff E. Hernandez's complaints about GARCIA's conduct,

1 Defendants Harman-Chiu and Harman Management failed and refused to effectively investigate
2 or terminate the course of repetitively offensive conduct of GARCIA, all of which constituted
3 sexual harassment of Plaintiff E. Hernandez. Defendants' failure to effectively address, correct, or
4 prevent these the sexual harassment, discrimination based on sex, and retaliation faced by
5 Plaintiff E. Hernandez thereby condoned such illegal acts and transforming the acceptance of
6 GARCIA's sexual advances into a condition of E. Hernandez's continued employment.

7 36. GARCIA's sexual harassment of Plaintiff E. Hernandez, combined with the failure
8 of Defendants, their agents, servants and/or employees to stop or correct his harassment, rendered
9 her work environment so hostile that any reasonable person would have found it intolerable.
10 Through GARCIA's sexual harassment, Defendants' failure to eradicate or correct it, and the
11 retaliation faced by Plaintiff E. Hernandez for having complained, Defendants, their agents,
12 servants and/or employees, recklessly and/or intentionally caused Plaintiff E. Hernandez to suffer
13 extreme anxiety, severe depression, and other emotional distress. Defendants' conduct adversely
14 affected Plaintiff E. Hernandez's ability to work, as well as her overall sense of well-being.

15 37. Defendants, their agents, servants and/or employees committed the acts against
16 Plaintiff E. Hernandez alleged herein maliciously, fraudulently, and oppressively, with the
17 wrongful intention of injuring Plaintiff E. Hernandez, and in conscious disregard of, and with
18 reckless indifference to, her rights as an employee.

19 Plaintiff/Intervenor Marivel Hernandez

20 38. Plaintiff/Intevener Marivel Hernandez ("Plaintiff M. Hernandez") worked for
21 Defendants at the Harman-Chiu restaurant from 1998 until April 2003 and then again from
22 August 2003 to September 2003. From 1998 to approximately 1999, Plaintiff M. Hernandez
23 worked as a cashier and reported directly to Defendants' manager. In 1999, Plaintiff M.
24 Hernandez was promoted to a Shift Supervisor position, which she held until April 2003, and
25 again from August 2003 to September 2003. In or about August 2002 GARCIA began working
26 at the Harman-Chiu restaurant and became Plaintiff M. Hernandez's direct supervisor.

27 39. As with Plaintiffs Vargas and E. Hernandez, within the first weeks that Plaintiff
28 M. Hernandez began working with GARCIA, GARCIA commenced a continual course of

1 conduct wherein he sexually harassed Plaintiff M. Hernandez. This harassment was severe and
2 pervasive enough to alter her working conditions and create a hostile work environment.
3 GARCIA repeatedly forced Plaintiff M. Hernandez to endure offensive language and intimidating
4 and unwelcome sexual overtures. Among other acts, GARCIA performed a mock strip tease and
5 rubbed his body in a sexual manner, made graphic comments to Plaintiff M. Hernandez about the
6 size of her breasts, and continuously pressured Plaintiff M. Hernandez to go to a motel with him
7 to have sexual intercourse.

8 40. GARCIA's sexual harassment was pervasive and was designed to compel M.
9 HERNANDEZ to submit to his sexual advances, rendering Plaintiff M. Hernandez's submission
10 to his sexual advances a term or condition of her employment at Harman-Chiu. GARCIA's
11 sexual harassment of Plaintiff M. Hernandez thus substantially affected the terms and conditions
12 of her employment.

13 41. GARCIA's sexual harassment of Plaintiff M. Hernandez continued through
14 September 2003, even after Plaintiff M. Hernandez repeatedly made clear that his behavior was
15 unwelcome and that she wanted the harassment to stop.

16 42. Upon complaining of GARCIA's sexual harassment to the agents, employees,
17 and/or servants of Defendants, Plaintiff M. Hernandez was subjected to retaliation in the form of
18 reduction in work hours, denial of promotion opportunities, and ultimately, termination of her
19 employment.

20 43. Despite Plaintiff M. Hernandez's complaint about GARCIA's conduct, Defendants
21 Harman-Chiu and Harman Management failed and refused to effectively investigate and
22 terminate the course of repetitively offensive conduct of GARCIA, all of which constituted sexual
23 harassment of Plaintiff M. Hernandez. Defendants' failure to effectively address, correct, or
24 prevent these adverse the sexual harassment, discrimination based on sex, and retaliation faced by
25 Plaintiff M. Hernandez thereby condoned such illegal acts and transformed the acceptance of
26 GARCIA's sexual advances into a condition of Plaintiff M. Hernandez's continued employment.

27 44. GARCIA's sexual harassment of Plaintiff M. Hernandez, combined with the
28 failure of Defendants, their agents, servants and/or employees to stop or correct his harassment

1 rendered her work environment so hostile that any reasonable person would have found it
2 intolerable. Through GARCIA's sexual harassment, Defendants' failure to eradicate or correct it,
3 and the retaliation faced by Plaintiff M. Hernandez for having complained, Defendants, their
4 agents, servants and/or employees, have recklessly and/or intentionally caused Plaintiff M.
5 Hernandez severe psychological and emotional damage. Through their acts and omissions, which
6 constituted sexual harassment, unlawful discrimination based on sex, and retaliation against
7 Plaintiff M. Hernandez, Defendants, their agents, servants, and/or employees have caused
8 Plaintiff M. Hernandez to suffer extreme anxiety, severe depression, and other emotional distress.
9 Defendants' conduct adversely affected Plaintiff M. Hernandez's ability to work, as well as
10 overall her sense of well-being.

11 45. Defendants, their agents, servants and/or employees committed the acts against
12 Plaintiff M. Hernandez alleged herein maliciously, fraudulently, and oppressively, with the
13 wrongful intention of injuring Plaintiff M. Hernandez, and in conscious disregard of, and with
14 reckless indifference to, her rights as an employee.

15 **FIRST CLAIM FOR RELIEF**
16 **HOSTILE ENVIRONMENT SEXUAL HARASSMENT**
17 **(TITLE VII, 42 U.S.C. § 2000e-2(a)(1))**

18 46. Plaintiffs/Intervenors hereby incorporate by reference each and every allegation
19 contained in paragraphs 1 through 45 of this complaint as though fully set forth herein.

20 47. Defendants violated Plaintiffs' rights under Title VII by subjecting Plaintiffs to
21 unwelcome sexual comments and acts and permitting and encouraging a work environment in
22 which Plaintiffs were subjected to ridicule, harassment, discrimination and intimidation because
23 of their sex.

24 48. As described above, Defendants' aforesaid acts of harassment were wanton,
25 willful and intentional, and were committed with malicious and reckless disregard for the rights
26 and sensibilities of Plaintiffs.

27 49. Defendants participated in creating and maintaining a hostile work environment
28 and failed to investigate, stop, or prevent the incidents of sexual harassment even after Plaintiffs
gave notice of such incidents.

THIRD CLAIM FOR RELIEF
UNLAWFUL RETALIATION
(TITLE VII, 42 U.S.C. § 2000e-3(a))

56. Plaintiffs/Intervenors hereby incorporate by reference each and every allegation contained in paragraphs 1 through 55 of this complaint as though fully set forth herein.

57. At all times material hereto, Defendants owed Plaintiffs/Intervenors a duty not to discriminate against them in the terms and conditions of their employment on the basis of their opposition to practices prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-3(a).

58. In violation of the aforesaid duty, Defendants took adverse actions against Plaintiffs/Intervenors because of their protected activity of complaining about the harassment and discrimination against them, as described herein.

59. Defendants' decisions to take the adverse actions against Plaintiffs described herein were wanton, willful and intentional, and were committed with malicious and reckless disregard for the rights and sensibilities of Plaintiffs.

60. As a direct and proximate result of the aforesaid discrimination based on protected activity, Plaintiffs sustained harm including severe emotional stress and the loss of compensation, including but not limited to wages and other benefits that they otherwise would have received.

61. Defendants, acting individually and/or by and through their managing agents, officers or directors, committed the acts herein alleged maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiffs, and acted with an improper and evil motive amounting to malice, and in conscious disregard of Plaintiffs' rights. Accordingly, Plaintiffs/Intervenors are entitled to recover punitive damages from Defendants in an amount according to proof.

62. Plaintiffs/Intervenors have been forced to seek the assistance of counsel to vindicate their legal rights and are entitled to recover attorney's fees under 42 U.S.C. § 2000(e), *et seq.*, Title VII of the Civil Rights Act of 1964 or any other law providing for recovery of attorneys' fees.

1 WHEREFORE, Plaintiffs/Intervenors request relief as hereinafter provided.

2 **FOURTH CLAIM FOR RELIEF**
3 **UNLAWFUL EMPLOYMENT DISCRIMINATION BASED ON SEX**
4 **(CALIFORNIA GOVERNMENT CODE § 12940(a))**

5 63. Plaintiffs/Intervenors hereby incorporate by reference each and every allegation
6 contained in paragraphs 1 through 62 of this complaint as though fully set forth herein.

7 64. At all times material hereto, Defendants owed Plaintiff/Intervenors a duty not to
8 discriminate against them in the terms and conditions of their employment on the basis of their
9 sex as mandated by the Fair Employment and Housing Act, Government Code Section 12940(a).

10 65. In violation of the aforesaid duty, Defendants treated Plaintiffs less favorably than
11 similarly situated male employees, subjecting them to discrimination in working conditions,
12 benefits, and in other terms and conditions of their employment including, but not limited to:
13 degrading comments, reduction in working hours, denial of promotion opportunities, and
14 criticism of their work. Additionally, Defendants subjected Plaintiffs to unwelcome sexual
15 advances, comments, insults and degrading and humiliating conduct and/or failed to take steps
16 reasonably calculated to end the sexual harassment of and discrimination against Plaintiffs as
17 described above.

18 66. Defendants' decisions to take the adverse actions against Plaintiffs including, but
19 not limited to those described in the previous paragraph, were wanton, willful and intentional, and
20 were committed with malicious and reckless disregard for the rights and sensibilities of Plaintiffs.

21 67. As a direct and proximate result of the aforesaid discrimination based on sex,
22 Plaintiffs have sustained harm including severe emotional stress and the loss of compensation,
23 including but not limited to, wages and other benefits that they otherwise would have received.

24 68. Defendants, acting individually and/or by and through their managing agents,
25 officers or directors, committed the acts herein alleged maliciously, fraudulently, and
26 oppressively, with the wrongful intention of injuring Plaintiffs, and acted with an improper and
27 evil motive amounting to malice, and in conscious disregard of Plaintiffs' rights. Accordingly,
28 Plaintiffs/Intervenors are entitled to recover punitive damages from Defendants in an amount

1 according to proof.

2 69. Plaintiffs/Intervenors have been forced to seek the assistance of counsel to
3 vindicate their legal rights and are entitled to recover attorneys' fees under Government Code
4 section 12940, *et seq.* or any other law providing for recovery of attorneys' fees.

5 WHEREFORE, Plaintiffs/Intervenors request relief as hereinafter provided.

6
7 **FIFTH CLAIM FOR RELIEF**
8 **UNLAWFUL RETALIATION BASED ON PROTECTED ACTIVITY**
9 **(CALIFORNIA GOVERNMENT CODE § 12940(h))**

10 70. Plaintiffs hereby incorporate by reference each and every allegation contained in
11 paragraphs 1 through 69 of this complaint as though fully set forth herein.

12 71. At all times material hereto, Defendants owed Plaintiffs a duty not to discriminate
13 against them in the terms and conditions of their employment on the basis of their opposition to
14 practices prohibited by the Fair Employment and Housing Act, Government Code Section 12900
15 *et seq.*

16 72. In violation of the aforesaid duty, Defendants took adverse actions against
17 Plaintiffs because of their protected activity of complaining about the harassment and
18 discrimination against them, as described herein.

19 73. Defendants' decisions to take the adverse actions against Plaintiffs described
20 herein were wanton, willful and intentional, and committed with malicious and reckless disregard
21 for the rights and sensibilities of Plaintiffs.

22 74. As a direct and proximate result of the aforesaid discrimination based on protected
23 activity, Plaintiffs sustained harm including severe emotional stress and the loss of compensation,
24 including but not limited to wages and other benefits that they otherwise would have received.

25 75. Defendants, acting individually and/or by and through their managing agents,
26 officers or directors, committed the acts herein alleged maliciously, fraudulently, and
27 oppressively, with the wrongful intention of injuring Plaintiffs, and acted with an improper and
28 evil motive amounting to malice, and in conscious disregard of Plaintiffs' rights. Accordingly,
Plaintiffs/Intervenors are entitled to recover punitive damages from Defendants in an amount

1 according to proof.

2 76. Plaintiffs/Intervenors have been forced to seek the assistance of counsel to
3 vindicate their legal rights and are entitled to recover attorneys' fees under Government Code
4 section 12940, *et seq.*, or any other law providing for recovery of attorneys' fees.

5 WHEREFORE, Plaintiffs/Intervenors request relief as hereinafter provided.

6 **SIXTH CLAIM FOR RELIEF**
7 **ADING AND ABETTING SEXUAL HARASSMENT,**
8 **SEX DISCRIMINATION, AND RETALIATION**
9 **(CALIFORNIA GOVERNMENT CODE § 12940(i))**

10 77. Plaintiffs hereby incorporate by reference each and every allegation contained
11 in paragraphs 1 through 76 of this complaint as though fully set forth herein.

12 78. In perpetrating the above-described actions and omissions, Defendants
13 Harman-Chiu and Harman Management, as employers, their agents, servants and/or
14 employees, engaged in a pattern and practice of unlawful aiding and abetting of harassment,
15 discrimination, and retaliation, in violation of the California Fair Employment and Housing
16 Act, California Government Code § 12940(i).

17 79. Defendants, their agents, servants and/or employees, attempted to and did in
18 fact, aid, abet, incite, compel and/or coerce their agents, servants and/or employees to
19 engage in unlawful sexual harassment, sex and/or gender discrimination, and retaliation
20 against the Plaintiffs, as alleged above.

21 80. As a direct and proximate result of the aforesaid harassment based on sex,
22 Plaintiffs/Intervenors Vargas, M. Hernandez and E. Hernandez have sustained injury in the
23 form of severe emotional distress, humiliation, embarrassment, and mental anguish, all to
24 their damage in amounts to be established at trial.

25 81. Defendants' acts were wanton, willful and intentional, and were committed
26 with malicious and reckless disregard for the rights and sensibilities of Plaintiffs.

27 WHEREFORE, Plaintiffs/Intervenors request relief as hereinafter provided.

28 ///

SEVENTH CLAIM FOR RELIEF
HOSTILE WORK ENVIRONMENT SEXUAL HARASSMENT
(CALIFORNIA GOVERNMENT CODE § 12940(j))

82. Plaintiffs hereby incorporate by reference each and every allegation contained in paragraphs 1 through 81 of this complaint as though fully set forth herein.

83. Plaintiffs/Intervenors are women. Defendants subjected them to unwelcome sexual advances, comments, insults and degrading and humiliating conduct as described above and/or failed to take steps reasonably calculated to end the sexual harassment of Plaintiffs.

84. Defendants' aforesaid unwelcome sexual comments and acts were so severe or pervasive that they created a hostile work environment and adversely affected the terms and conditions of Plaintiffs' employment based on their sex, in violation of the Fair Employment and Housing Act, Government Code § 12940(j).

85. Defendants' aforesaid acts of harassment were wanton, willful and intentional, and were committed with malicious and reckless disregard for the rights and sensibilities of Plaintiffs.

86. As a direct and proximate result of the aforesaid harassment based on sex, Plaintiffs have sustained injuries in the form of severe emotional stress and the loss of compensation, including but not limited to wages and other benefits that they otherwise would have received.

87. Defendants, acting individually and/or by and through their managing agents, officers or directors, committed the acts herein alleged maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiffs, and acted with an improper and evil motive amounting to malice, and in conscious disregard of Plaintiffs' rights. Accordingly, Plaintiffs are entitled to recover punitive damages from Defendants in an amount according to proof.

88. Plaintiffs/Intervenors have been forced to seek the assistance of counsel to vindicate their legal rights and are entitled to recover attorneys' fees under Government Code section 12940, *et seq.* or any other law providing for recovery of attorneys' fees.

WHEREFORE, Plaintiffs/Intervenors request relief as hereinafter provided.

EIGHTH CLAIM FOR RELIEF
FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT,
(CALIFORNIA GOVERNMENT CODE § 12940(k))

89. Plaintiffs hereby incorporate by reference each and every allegation contained in paragraphs 1 through 88 of this complaint as though fully set forth herein.

90. Defendants Harman-Chiu, Harman Management, and Does 1 through 10, and/or their agents/employees, failed to take all reasonable steps necessary to prevent the harassment and discrimination in employment described herein from occurring. Defendants knew or should have known of the discrimination against Plaintiffs described above, yet failed to conduct an adequate investigation into the nature and substance of the discrimination and failed to take immediate and appropriate corrective action so as to discipline any of the offenders.

91. The response of Defendants, and/or that of their agents and employees, to the discrimination and harassment described herein was so inadequate as to establish a deliberate indifference to, or tacit authorization of, the alleged offensive practices, and an affirmative causal link existed between Defendants' inaction and the injuries suffered by Plaintiffs.

92. By failing to take all reasonable steps necessary to prevent discrimination, and by failing to properly investigate and remedy the discrimination that occurred, Defendants Harman-Chiu, Harman Management, and Does 1 through 10, committed unlawful employment practices as described in and prohibited by California Government Code § 12940(k).

93. In engaging in the aforementioned conduct, Defendants, and each of them, aided, abetted, incited, compelled, and/or coerced unlawful employment practices in violation of the announced policy of this State against such practices.

94. As a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiffs have lost and will continue to lose income and benefits in an amount to be proven at the time of trial. Plaintiffs claim such amount as damages together with pre-judgment interest pursuant to Civil Code section 3287 and/or any other provision of law providing for pre-judgment interest.

95. As a result of the aforesaid acts of Defendants, Plaintiffs claim general damages

1 for mental and severe emotional distress and aggravation in an amount to be proven at the time of
2 trial.

3 96. Defendants, acting individually and/or by and through their managing agents,
4 officers or directors, committed the acts herein alleged maliciously, fraudulently, and
5 oppressively, with the wrongful intention of injuring Plaintiffs, and acted with an improper and
6 evil motive amounting to malice, and in conscious disregard of Plaintiffs' rights. Accordingly,
7 Plaintiffs/Intervenors are entitled to recover punitive damages from Defendants in an amount
8 according to proof.

9 97. Plaintiffs/Intervenors have been forced to seek the assistance of counsel to
10 vindicate their legal rights and are entitled to recover attorneys' fees under California
11 Government Code § 12940, *et seq.*, or any other law providing for recovery of attorneys' fees.

12 WHEREFORE, Plaintiffs/Intervenors request relief as hereinafter provided.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs/Intervenors respectfully pray that this Court grant the following
15 relief:

16 1) All damages which individual Plaintiffs/Intervenors have sustained as a result of
17 Defendants' conduct, including: back pay, front pay, general and special damages for lost
18 compensation and job benefits that they would have received but for the discriminatory practices
19 of Defendants, damages for emotional distress, and punitive damages, in amounts according to
20 proof;

21 2) Exemplary and punitive damages in an amount commensurate with Defendants'
22 ability to pay and to deter future conduct;

23 3) A preliminary and permanent injunction against Defendants and their directors,
24 officers, owners, agents, successors, employees and representatives, and any and all persons
25 acting in concert with them, requiring them to

26 (a) Desist from engaging in each of the unlawful practices, policies, customs and
27 usages set forth herein;

28 (b) Adopt a lawful policy for preventing and remedying unlawful harassment

and discrimination that creates an effective process for the investigation and resolution of harassment and discrimination complaints and forbids unlawful retaliation against complainants; and

(c) Create a monitoring and reporting system to ensure that injunctive relief is fully implemented;

4) A declaratory judgment that the practices complained of in this complaint are unlawful and violate Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000(e), *et seq.*;

5) An assignment of Plaintiffs/Intervenors to those jobs they would now be occupying but for Defendants' discriminatory practices;

6) An adjustment of the wage rates and benefits for Plaintiffs/Intervenors to that level which Plaintiffs/Intervenors would be enjoying but for Defendants' discriminatory practices;

7) Costs of litigation incurred by Plaintiffs/Intervenors, including reasonable attorneys' fees, to the extent allowable by law;

8) Pre- and post-judgment interest, as provided by law, in amounts according to proof; and

9) Such other and further legal and equitable relief as this Court deems necessary, just and proper.

Respectfully submitted,

Dated: February 17, 2006

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By: _____
Virginia Villegas

JURY DEMAND

Plaintiffs/Intervenors hereby demand a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure on all claims where such trial is authorized by law.

Respectfully submitted,

Dated: February 17, 2006

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