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10 Tésa Lubans-Dehaven

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT

13 KIMBRA LO, ALYSSA FERGUSON,)
14 MARISSA WILSON, TESA LUBANS-)
DEHAVEN, individuals;)
15 Plaintiffs,)
16)
17)
18 vs.)
19 AMERICAN APPAREL, INC., A California)
corporation; DOV CHARNEY, an individual,)
20 and DOES 1-100, inclusive;)
21 Defendants.)

Case No.
**COMPLAINT FOR COMPENSATORY
AND PUNITIVE DAMAGES AND FOR
DECLARATORY RELIEF:**
1. Sexual Harassment in Violation of the
Fair Employment and Housing Act
(Govt. Code §12940 *et.seq.*)
2. Failure to Prevent Harassment and
Discrimination in Violation of the Fair
Employment and Housing Act (Govt.
Code §12940(k))
3. Intentional Infliction of Emotional
Distress
4. Assault and Battery
5. Declaratory Relief

DEMAND FOR A JURY TRIAL

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1 Plaintiffs KIMBRA LO, ALYSSA FERGUSON, MARISSA WILSON, and TÉSA
2 LUBANS-DEHAVEN, allege:

3 **THE PARTIES**

4 1. This is a Complaint for damages and Declaratory Relief by plaintiffs KIMBRA LO,
5 ALYSSA FERGUSON, MARISSA WILSON, and TÉSA LUBANS-DEHAVEN, (“Plaintiffs”)
6 against AMERICAN APPAREL, INC. and DOV CHARNEY (referred to collectively as
7 “Defendants”).

8 2. KIMBRA LO was sexually assaulted by DOV CHARNEY, President and Chief
9 Executive Officer of AMERICAN APPAREL, INC during what she believed to be a hiring
10 interview. FERGUSON, WILSON, and LUBANS-DEHAVEN were employed by AMERICAN
11 APPAREL and LO was seeking a job opportunity with AMERICAN APPAREL during the relevant
12 periods of this Complaint. They each seek Declaratory Relief on the issue of what they contend to be
13 unconscionable and oppressive alleged arbitration agreements which AMERICAN APPAREL
14 drafted in bad faith. Plaintiffs were each required to sign these alleged agreements as a condition of
15 employment at AMERICAN APPAREL and they were hidden in illegal releases. As to LO, an
16 alleged arbitration agreement was not even applicable or enforceable during the time she was
17 assaulted. Plaintiffs allege that the purported arbitration agreements at issue before this Court, were
18 in bad faith, designed and implemented in an exculpatory effort to keep employees from disclosing
19 unlawful conduct by AMERICAN APPAREL and its executives, and to force Plaintiffs into an
20 unfair forum where they would be unable to utilize the rights afforded to them if they were permitted
21 to file a civil lawsuit.

22 3. At all times relevant to this Complaint, Plaintiff KIMBRA LO (or “Ms. Lo”) was an
23 individual residing in New York County, NY. She sought employment with AMERICAN
24 APPAREL in Los Angeles County, California.

25 4. At all times relevant to this Complaint, Plaintiff ALYSSA FERGUSON (or “Ms.
26 Ferguson”) was an individual residing in Hawaii and was staying in Los Angeles County, California
27 during the relevant time period.

1 5. At all times relevant to this Complaint, Plaintiff MARISSA WILSON (or “Ms.
2 Wilson”) was an individual residing in Los Angeles County, California.

3 6. At all times relevant to this Complaint, Plaintiff TESA LUBANS-DEHAVEN (or
4 “Ms. Lubans-Dehaven”) was an individual residing in Hawaii, and was staying in Los Angeles
5 County, California during the relevant time period.

6 7. Plaintiffs are informed and believe and on that basis allege that defendant
7 AMERICAN APPAREL, INC. (or “AMERICAN APPAREL”) is a publicly traded company and at
8 all times relevant herein was and is a California corporation with corporate offices in the County of
9 Los Angeles and retail stores throughout the County of Los Angeles.

10 8. Plaintiffs are informed and believe and on that basis allege that at all times relevant to
11 this Complaint, defendant DOV CHARNEY (“CHARNEY”) was the President and CEO of
12 AMERICAN APPAREL and therefore was a managing agent of AMERICAN APPAREL.
13 CHARNEY is and has been an individual residing in Los Angeles County, California.

14 9. As a result of Defendants’ conduct, LO sustained injuries in Los Angeles County,
15 California, within the jurisdiction of this court. LO, FERGUSON, WILSON, and LUBANS-
16 DEHAVEN were forced to sign alleged arbitration agreements with AMERICAN APPAREL and are
17 within the jurisdiction of this court.

18 10. Plaintiffs do not know the true names and capacities, whether individual, corporate or
19 otherwise, of defendants DOES 1 to 100, and therefore sue them by such fictitious names. Plaintiffs
20 are informed and believe and on that basis allege that each of the DOE defendants is in some manner
21 responsible for the damages alleged by them in this Complaint. Plaintiffs will amend this Complaint
22 to allege their true names and capacities when the same have been ascertained.

23 11. Plaintiffs are informed and believe and on that basis allege that at the various times
24 alleged in this Complaint, each of the named and DOE defendants was the agent or employee of each
25 of the remaining co-defendants and, in doing the actions alleged in this Complaint, was acting within
26 the course and scope of said agency, employment and service with advance knowledge, consent
27 and/or ratification of each of the remaining Defendants. The named and DOE Defendants are
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1 hereinafter referred to collectively in this Complaint as “Defendants.”

2 12. The acts committed by Defendants and as described in this Complaint were duly
3 authorized and directed by its officers, directors and/or managing agents. In addition, Defendants
4 participated in the acts of its employees and agents as described in this Complaint, and ratified or
5 accepted the benefits of such acts.

6 **FACTS PERTAINING TO KIMBRA LO**

7 13. Ms. Lo restates and incorporates by this reference as if fully set forth herein each and
8 every allegation contained in paragraphs 1 through 12 of this Complaint.

9 14. In July 2010 CHARNEY began sending Ms. Lo, a former employee, sexual text
10 messages. CHARNEY also called Ms. Lo and stated he was masturbating on the phone while they
11 spoke. Ms. Lo resisted and ignored his calls and text messages that involved inappropriate sexual
12 comments and advances and eventually they ceased.

13 15. After his sexual advances were refused, CHARNEY contacted Ms. Lo on or after
14 September 2010 regarding modeling for the company without making any sexual comments. In
15 December, 2010, CHARNEY offered Ms. Lo a job as a photographer and model for the company.
16 Ms. Lo had always wanted to pursue photography as a career and Charney was well aware of this
17 fact. CHARNEY informed her that she should meet him at his home, where CHARNEY, as she
18 knew by past experience, often purportedly conducted business meetings and company training with
19 AMERICAN APPAREL employees.

20 16. On December 9, 2010, CHARNEY texted an invitation to Ms. Lo to visit his home to
21 discuss the new position he may offer her. CHARNEY stated that Ms. Lo should come over very
22 quickly and warned that he could only spend ten minutes with her. Ms. Lo went to CHARNEY’s
23 home to discuss the photographer position. When she arrived at CHARNEY’s home, there were
24 several cars in the driveway, so it appeared that several people were at his home, as was often the
25 case. Ms. Lo entered, knowing the door was open. Having seen her arrive, CHARNEY appeared at
26 the stairs wearing only a towel. Ms. Lo stated that she should leave, but CHARNEY grabbed Ms. Lo
27 and violently kissed her.

28 17. Ms. Lo made it very clear to CHARNEY that his behavior was unwanted and

1 offensive and indicated that she intended to leave. He immediately apologized and assured her that
2 they would just talk about business, repeatedly insisting that she must stay. CHARNEY then took her
3 by the arm and to a room, which turned out to be his bedroom.

4 18. CHARNEY ordered Ms. Lo to sit on the bed and he sat down next to her.
5 CHARNEY suddenly grabbed her again and violently kissed her. Ms. Lo pushed him away and
6 warned CHARNEY again that his actions were unwanted and offensive. He responded by asking:
7 “Do you know how long I have been waiting for this?” CHARNEY’s tone made it clear to Ms. Lo
8 that CHARNEY was not prepared to wait any longer regardless of her wishes and would become
9 violent if she resisted in any way. He then forced her to perform various sexual acts. He became
10 more aggressive and violent whenever Ms. Lo made any effort to resist. He repeatedly shouted that
11 no one was in the house but the two of them, clearly indicating no one could help her.

12 19. For example, at one point CHARNEY held Ms. Lo violently and began thrusting his
13 penis between her legs, closer and closer to her vagina. Ms. Lo struggled furiously to avoid being
14 penetrated, and CHARNEY menacingly demanded that she stop resisting, clearly indicating that he
15 would use violence against her otherwise. When she stopped resisting in terror, he announced: “I’m
16 not going to put it in, but when I f--- you, I’m going to f— you in the missionary position.” Ms. Lo
17 was certain that any aggressive resistance would result in extreme physical injury to her person.

18 20. CHARNEY grew more forceful as she tried to leave. Ms. Lo was scared, shocked,
19 and was afraid that CHARNEY would try to hit her if she refused to give in to him. CHARNEY
20 groped and fondled Ms. Lo and gave her a vibrator and demanded she use it. He attempted to force
21 her to have oral sex. Ms. Lo left traumatized and terrorized and immediately contacted her mother
22 who called CHARNEY and demanded that he never contact her daughter again, whereupon
23 CHARNEY begged forgiveness and admitted he had “a problem.” Ms. Lo never returned to
24 AMERICAN APPAREL again.

25 21. Ms. Lo alleges that during the relevant time period, key level management, including
26 the Board of Directors of AMERICAN APPAREL were well aware of CHARNEY’s propensities
27 and conduct, but did nothing to protect their employees from CHARNEY’s illegal behavior. In fact,
28 after numerous people complained to management about CHARNEY’s sexually harassing behavior,

1 and even after years of public lawsuits by different individuals, as well as letters and sworn
2 declaration alleging the same pattern of behavior by CHARNEY, defendants have failed to take
3 prompt corrective action against CHARNEY to stop his behavior. CHARNEY continues to hold his
4 high position of power over his employees, using it to intimidate and sexually harass young women,
5 some of them in their teens.

6 22. Not only had Defendants continually condoned CHARNEY's conduct by ignoring the
7 ongoing complaints about him from past and/or current employees, but Defendants then devised a
8 scheme to silence victims of sexual harassment and potential whistle-blowers by requiring
9 employees to sign alleged mandatory arbitration and confidentiality agreements as a term and
10 condition of employment. This action on the company's part encouraged CHARNEY to continue his
11 misconduct. These alleged arbitration agreements are typed in font so small, that the text is difficult
12 to read and the impact of these alleged agreements are not explained. Furthermore, these company
13 policies violate public policy and bars employees and former employees from exercising their free
14 speech rights, as well as their legal right to discuss their working conditions with anyone other than
15 an attorney.

16 **FACTS PERTAINING TO KIMBRA LO, ALYSSA FERGUSON, MARISSA WILSON**
17 **AND TESA LUBANS-DEHAVEN**

18 23. Ms. Lo, Ms. Ferguson, Ms. Wilson, and Ms. Lubans-Dehaven restate and incorporate
19 by this reference as if fully set forth herein each and every allegation contained in paragraphs 1
20 through 12 of this Complaint. There was no alleged arbitration and confidentiality agreement that
21 was in effect or enforceable during the period of time CHARNEY sexually assaulted and harassed
22 Ms. Lo.

23 24. Ms. Ferguson was employed by AMERICAN APPAREL from approximately
24 December, 2009 until about February, 2011.

25 25. Ms. Wilson was employed by AMERICAN APPAREL from approximately April 20,
26 2010 until approximately August 16, 2010.

27 26. Ms. Lubans-Dehaven was employed by AMERICAN APPAREL from approximately
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1 November, 2009 until approximately April 7, 2010.

2 27. As a condition of employment and continued employment, Defendants required its
3 employees, including Plaintiffs Ferguson, Wilson, and Lubans-Dehaven, as well as Lo to sign
4 oppressive and unconscionable alleged mandatory arbitration and confidentiality agreements in
5 which they are prohibited from speaking about their working conditions to any third party (other than
6 their attorney).

7 28. AMERICAN APPAREL'S alleged mandatory arbitration and confidentiality
8 agreements were created and designed in bad faith and in an exculpatory effort to keep matters of
9 public interest such as claims of employment and civil rights violations hidden under arbitration's
10 heavy cloak of secrecy and unfairness.

11 29. Lo, Ferguson, Wilson, and Lubans-Dehaven are women and former employees of
12 AMERICAN APPAREL, protected under the California Fair Employment and Housing Act (FEHA;
13 Govt. Code § 12940 et.seq.). They have each timely filed charges with the Department of Fair
14 Employment and Housing against AMERICAN APPAREL and DOV CHARNEY for violations of
15 FEHA. They have received or will shortly receive their right-to-sue letters for claims they will
16 pursue, and have a right to pursue in this judicial forum upon the court's finding that AMERICAN
17 APPAREL's alleged mandatory arbitration and confidentiality agreements are unenforceable.
18 Plaintiffs reserve their rights to proceed with arbitration in the event that this court deems the
19 arbitration provisions enforceable.

20 30. Plaintiffs Lo, Ferguson, Wilson, and Lubans-Dehaven seek declaratory relief on the
21 issue of enforcement of the alleged arbitration and confidentiality agreements with Defendants, and
22 they each seek a stay of the arbitration proceedings which Defendants initiated before JAMS.

23 31. Upon a finding that AMERICAN APPAREL'S arbitration and confidentiality
24 agreements are unenforceable, Plaintiffs Ferguson, Wilson, and Lubans-Dehaven shall seek leave of
25 court to amend this Complaint and assert additional causes of actions, facts, and damages, including
26 claims as alleged in the charges they filed with the Department of Fair Employment and Housing.
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1 **FIRST CAUSE OF ACTION**

2 **SEXUAL HARASSMENT IN VIOLATION**
3 **OF THE FAIR EMPLOYMENT AND HOUSING ACT**
4 **GOVT. CODE § 12940 et. seq.**

5 **(By Plaintiff Lo Against All Defendants)**

6 32. Ms. Lo restates and incorporates by this reference as if fully set forth herein each and
7 every allegation contained in paragraphs 1 to 31 of this Complaint.

8 33. Defendants' conduct towards Ms. Lo as described in this Complaint constitutes
9 unlawful harassment and discrimination on the basis of sex. Defendants violated the Fair
10 Employment and Housing Act as promulgated in Government Code Section 12940 et. seq. and other
11 state and federal statutes which prohibit sex-based harassment and discrimination in employment,
12 including during the hiring process.

13 34. The sexual harassment and assault created a hostile, intimidating, and oppressive
14 work environment for Lo when she thought she was meeting with CHARNEY to discuss a job
15 opportunity. Further, Ms. Lo were subjected to *quid pro quo* sexual harassment in which
16 CHARNEY demanded sex and sexual contact from Lo in exchange for employment.

17 35. Ms. Lo exhausted her administrative remedies by timely filing charges of harassment
18 and discrimination with the Department of Fair Employment and Housing which has issued to Lo her
19 right to sue letters permitting her to file this lawsuit.

20 36. As a direct and proximate result of Defendants' harassment and discrimination, Ms.
21 Lo has sustained and will continue to suffer damages in an amount within the jurisdiction of this
22 Court, the exact amount to be proven at trial. Such damages include:

- 23 a. loss of salary and other valuable employment benefits;
24 b. prejudgment interest and interest on the sum of damages at the legal rate; and
25 c. other consequential damages, including damages for shame, humiliation,
26 mental anguish and emotional distress caused by Defendants' conduct.

27 37. In addition, Ms. Lo is entitled to her attorneys' fees in prosecuting this lawsuit,
28 pursuant to Government Code Section 12965 (b).

1 pursuant to Government Code Section 12965 (b).

2 45. Further, because the wrongful acts against Ms. Lo was carried out or ratified by
3 directors, officers and/or managing agents for Defendants, acting with malice, oppression or fraud, or
4 were deliberate, wilful and in conscious disregard of the probability of causing injury to Ms. Lo, as
5 demonstrated by their actions and as described earlier in this Complaint, she seeks punitive damages
6 against Defendants, in order to deter them from such and similar conduct in the future.

7 **THIRD CAUSE OF ACTION**

8 **INTENTIONAL INFLICTION OF
9 EMOTIONAL DISTRESS**

10 **(By Ms. Lo Against All Defendants)**

11 46. Ms. Lo restates and incorporates by this reference as if fully set forth herein each and
12 every allegation contained in paragraphs 1 to 31 of this Complaint.

13 47. The actions of Defendants as described throughout this Complaint, in particular their
14 sexually harassing and discriminatory conduct, sexual assault and advances, failure to prevent and
15 abate sexual harassment, and enforcing a policy that requires waiver of any right to file a lawsuit or
16 discuss the terms and conditions of their employment, were extreme and outrageous and beyond the
17 bounds of common decency. Such actions were intended to cause, or were engaged in with a
18 conscious disregard of the probability of causing severe emotional distress to Ms. Lo.

19 48. As a direct and proximate result of the acts of Defendants, Ms. Lo has sustained and
20 continues to suffer severe emotional distress. She seeks general damages for her severe emotional
21 distress and other consequential damages in an amount within the jurisdiction of this Court, the exact
22 amount to be proven at trial.

23 49. Further, because the wrongful acts against Ms. Lo were carried out or ratified by
24 directors, officers and/or managing agents for Defendants, acting with malice, oppression or fraud, or
25 were deliberate, wilful and in conscious disregard of the probability of causing injury to Ms. Lo, as
26 demonstrated by their actions and as described earlier in this Complaint, she seeks punitive damages
27 against Defendants, in order to deter them from such and similar conduct in the future.
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1 **FOURTH CAUSE OF ACTION**

2 **ASSAULT & BATTERY**

3 **(By Ms. Lo Against all Defendants)**

4 50. Ms. Lo restates and incorporates by this reference as if fully set forth herein each
5 and every allegation contained in paragraphs 1 to 31 of this Complaint.

6 51. During relevant times as described in this Complaint, defendant CHARNEY, acting
7 in the course and scope of his agency and employment with defendant AMERICAN APPAREL
8 and/or DOES 1-100, committed battery upon Plaintiff Lo by touching her in a harmful and/or
9 offensive manner without her consent. All such acts occurred at the workplace or in connection with
10 her potential hire.

11 52. Plaintiff Lo never consented to such touching and found them harmful and offensive.

12 53. The acts, conduct and proclivities of CHARNEY occurred at the workplace and/or in
13 connection with Ms. Lo's potential hire and was in furtherance of the practices and policies of
14 defendant AMERICAN APPAREL and DOES 1-100, and each of them, and were known to said
15 defendants, and each of them, were performed within the course and scope of Defendants' authority,
16 and within the knowledge, permission, consent, authorization and ratification of said Defendants,
17 and each of them, acting by and through their managing agents and employees.

18 54. By reason of the acts of Defendants, and each of them as described in this Complaint,
19 Ms. Lo was placed in great fear for her physical well being and suffered physical and bodily injury as
20 well as psychological trauma and emotional distress.

21 55. As a direct and proximate cause of Defendants' assault and battery, Ms. Lo has
22 sustained and will suffer damages, the exact amount to be proven at trial, including:

- 23 a. loss of salary and other valuable employment benefits;
24 b. interest at the legal rate; and
25 c. other consequential damages, including damages for shame, embarrassment,
26 humiliation, psychological counseling and emotional distress caused by the conduct of Defendants.

27 56. Further, because the wrongful acts against Ms. Lo were carried out or ratified by
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1 directors, officers and/or managing agents for Defendants, acting with malice, oppression or fraud, or
2 were deliberate, wilful and in conscious disregard of the probability of causing injury to Ms. Lo, as
3 demonstrated by their actions and as described earlier in this Complaint, she seeks punitive damages
4 against Defendants, in order to deter them from such and similar conduct in the future.

5 **FIFTH CAUSE OF ACTION**

6 **DECLARATORY RELIEF**

7 **(By Plaintiffs Lo, Ferguson, Wilson, and Lubans-Dehaven Against All Defendants)**

8 57. Plaintiffs Lo, Ferguson, Wilson, and Lubans-Dehaven restate and incorporate by this
9 reference as if fully set forth herein each and every allegation contained in paragraphs 1 to 12 and 23-
10 31 of this Complaint.

11 58. On October 23, 2009, Ms. Lo allegedly signed a “Mandatory Arbitration and
12 Mediation Agreement.” (Exhibit A). On May 4, 2010, Ms. Lo allegedly signed an arbitration
13 provision contained in an illegal document which was allegedly a “Severance Agreement and
14 Release.” (Exhibit B).

15 59. On December 10, 2009, Ms. Ferguson allegedly signed a “Mandatory Arbitration
16 and Mediation Agreement.” (Exhibit C). On January 13, 2011, Ms. Ferguson allegedly signed an
17 arbitration provision contained in an illegal document which was allegedly a “Bonus Release
18 Agreement.” (Exhibit D).

19 60. On April 20, 2010, Ms. Wilson allegedly signed a “Mandatory Arbitration
20 and Mediation Agreement.” (Exhibit E). On August 18, 2010, Ms. Wilson allegedly signed an
21 arbitration provision contained in an illegal document which was allegedly a “Severance Agreement
22 and Release.” (Exhibit F).

23 61. On December 17, 2009, Ms. Lubans-Dehaven allegedly signed a “Mandatory
24 Arbitration and Mediation Agreement.” (Exhibit G) On February 13, 2010, March 14, 2010, March
25 30, 2010, April 1, 2010, April 5, 2010, and one undated document, Ms. Lubans-Dehaven allegedly
26 signed arbitration provisions contained in illegal documents which were allegedly “Model Release
27 and Arbitration Agreement(s).” (Respectively, Exhibit H, I, J, K, L, and M).

1 62. Through their respective counsels, Plaintiffs informed Defendants AMERICAN
2 APPAREL and CHARNEY that they dispute the validity and enforceability of the arbitration
3 agreements as found in the respective “Mandatory Arbitration and Mediation Agreement” and other
4 documents allegedly signed by each Plaintiff.

5 63. In spite of knowledge of Plaintiffs’ position on the purported arbitration
6 agreements, Defendants AMERICAN APPAREL and CHARNEY initiated the arbitration process
7 for each on February 22, 2011 by filing a Demand For Arbitration Before JAMS.

8 64. On March 2, 2011, JAMS confirmed receipt of Defendants demand for arbitration
9 against each Plaintiff and on March 10, 2011, JAMS commenced arbitration with respect to each
10 Plaintiff.

11 65. An actual controversy has arisen and now exists between Plaintiffs and Defendants
12 concerning their respective rights and duties in that Plaintiffs contend that (1) the arbitration
13 agreements are substantively unconscionable; (2) the arbitration agreements are procedurally
14 unconscionable; (3) the arbitration agreements fail to comply with the requirements of *Armendariz v.*
15 *Foundation Health Psychcare Services*, 24 Cal. 4th 103 (2000) and Defendants created and
16 implemented them in bad faith and in an exculpatory effort; (4) the arbitration agreements are invalid
17 because sexual assault is not within their scope [see *Abou-Khalil v. Miles*, No. G037752, 2007 WL
18 1589456 (Cal. Dist. Ct. App. 4 June 2007)]. See also *Smith ex rel. Smith v. Captain D’s LLC*, 963
19 So.2d 1116 (Miss. 2007); *Tolliver v. Kroger Co.*, 201 W. Va. 509, 498 S.E. 2d 702, 713 (1997); *Hill*
20 *v. Hilliard*, 945 S.W. 2d 948 (Ky. Ct. App. 1996); *Jones v. Halliburton Co.*, 583 F.3d 228 (5th Cir.
21 2009)]; (5) Plaintiffs were not properly advised of the significance of the documents and the
22 significance of the documents presented by Defendants for Plaintiffs’ signatures were concealed; (6)
23 Further with respect to Plaintiff Lo, the arbitration agreements are unenforceable and irrelevant
24 because they allegedly cover a period of time prior to when her position was severed and when she
25 left the company around May 9, 2010. On the other hand Defendants AMERICAN APPAREL and
26 CHARNEY assert that the agreements to arbitrate for each Plaintiff are valid and enforceable. As
27 such, Defendants initiated arbitration proceedings before JAMS.

1 66. Plaintiffs each desire a judicial determination of their respective rights and duties as
2 follows:

- 3 (a) That the alleged agreements to arbitrate, if they exist, are void or voidable
4 because they are unconscionable, whether substantively, procedurally, or both.
- 5 (b) That the alleged agreements to arbitrate, if they exist, are void or voidable
6 because they fail to comply with *Armendariz* and they were devised and
7 implemented in bad faith.
- 8 (c) That the alleged agreements to arbitrate, if they exist, are void or voidable
9 because Plaintiffs were not properly advised of the significance of the
10 documents and/or the significance of the documents presented by Defendants
11 for Plaintiffs' signatures were concealed.
- 12 (d) That, as to Plaintiff Lo, the purported agreements to arbitrate, if they exist, are
13 unenforceable and irrelevant because they allegedly cover a period of time
14 prior to when her position was severed and when she left the company around
15 May 4, 2010.
- 16 (e) That the arbitration agreements violate public policy and were designed to
17 silence employees, particularly victims of illegal conduct by officers of
18 AMERICAN APPAREL, from exercising their free speech rights and their
19 rights to discuss the terms and conditions of employment.
- 20 (f) Plaintiffs reserve the right to assert additional arguments in support of their
21 claim for declaratory relief during full briefing of the issues.
- 22 (g) That the Court orders a stay on arbitration proceeding for each Plaintiff
23 pending judicial determination as to the validity and/or enforceability of the
24 relevant arbitration agreements.

25 67. A judicial declaration is necessary and appropriate at this time under the
26 circumstances in order that Plaintiffs may ascertain their rights and duties.

27 68. Plaintiffs are not seeking to avoid the purported agreement to arbitrate if its is
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1 determined that the agreements complied with *Armendariz*, are not unconscionable, and are
2 enforceable and valid to demand arbitration under it. If the Court finds the arbitration agreements to
3 be valid, Plaintiffs seek an order lifting the hold on arbitration, compelling arbitration and the
4 appointment of an arbitrator, and a declaration that all costs of arbitration must be paid by
5 Defendants. If, however, this Court finds no agreement to arbitrate to exists as to any and all
6 Plaintiffs, or that the arbitration agreement, if it applies to Plaintiffs, are unenforceable, Plaintiffs
7 seek a declaration that they are entitled to proceed in the superior court against Defendants.

8 69. Plaintiffs, Ferguson, Wilson, and Lubans-Dehaven will seek leave to amend to add
9 claims, facts, and damages related to their Fair Employment and Housing Act claims, upon the
10 court's favorable determination on the fifth cause of action for declaratory relief.

11 **WHEREFORE, PLAINTIFFS LO, FERGUSON, WILSON, AND LUBANS-**
12 **DEHAVEN PRAY FOR JUDGMENT AGAINST DEFENDANTS, AND EACH OF THEM,**
13 **AS FOLLOWS:**

14 **AS TO PLAINTIFF LO FOR CAUSES OF ACTION 1-4:**

15 A. For economic damages according to proof;

16 B. For general, special and incidental damages and amounts for emotional distress
17 according to proof;

18 C. For punitive damages in an amount appropriate to punish Defendants for their
19 wrongful conduct and set an example for others;

20 D. For prejudgment interest and interest on the sum of damages awarded to the
21 maximum extent permitted by law;

22 E. For an injunction against sexual harassment, discrimination and retaliation in the
23 future;

24 F. Creation of a Court supervised policy against sexual harassment, discrimination and
25 retaliation;

26 G. Imposition of periodic reporting requirements on the Company;

27 H. For reasonable attorneys' fees pursuant to Government Code Section 12965 (b);
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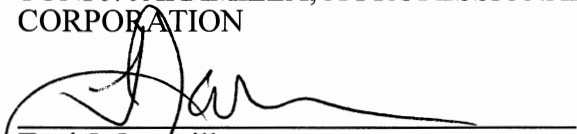
- I. For costs of suit herein incurred;
- J. For such other and further relief as the Court deems proper.

AS TO ALL PLAINTIFFS FOR CAUSE OF ACTION 5:

- A. For grant of Declaratory Relief in which any alleged arbitration agreement or provision are inapplicable, unenforceable, null, and void.
- B. For such other and further relief as the Court deems proper.

Dated: March 23, 2011

TONI J. JARAMILLA, A PROFESSIONAL LAW CORPORATION



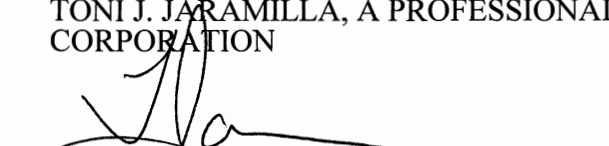
Toni J. Jaramilla
Attorneys for Plaintiffs,

KIMBRA LO, ALYSSA FERGUSON, MARISSA WILSON,
AND TESA LUBANS-DEHAVEN

PLAINTIFFS LO, FERGUSON, WILSON, and LUBANS-DEHAVEN DEMAND A JURY TRIAL.

Dated: March 23, 2011

TONI J. JARAMILLA, A PROFESSIONAL LAW CORPORATION



Toni J. Jaramilla
Attorneys for Plaintiffs,

KIMBRA LO, ALYSSA FERGUSON, MARISSA WILSON,
AND TESA LUBANS-DEHAVEN