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Attorneys for Plaintiff
VICTORIA RAMIREZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

VICTORIA RAMIREZ,

Plaintiff,

vs.

BARNES & NOBLE BOOKSELLERS, INC., a
Delaware Corporation; BARNES & NOBLE, INC., a
Delaware Corporation; MELISSA ZAPIAIN, an
individual, and DOES 1-50, inclusive,

Defendants.

Case No.

**COMPLAINT FOR DAMAGES AND
OTHER RELIEF**

- 1) GENDER IDENTITY AND/OR
GENDER EXPRESSION
DISCRIMINATION (Gov. Code
§12940, et seq.)
- 2) GENDER IDENTITY AND/OR
GENDER EXPRESSION
HARASSMENT (Gov. Code §12940,
et seq.)
- 3) DISABILITY DISCRIMINATION
(Gov. Code §12940, et seq.)
- 4) FAILURE TO ACCOMMODATE
DISABILITY (Gov. Code §12940, et
seq.)
- 5) FAILURE TO ENGAGE IN THE
INTERACTIVE PROCESS (Gov.

Code §12940, et seq.)

- 6) RETALIATION (Gov. Code §12940, et seq.)
- 7) FAILURE TO PREVENT DISCRIMINATION, HARASSMENT AND/OR RETALIATION (Gov. Code §12940, et seq.)
- 8) CFRA RIGHTS RETALIATION (Gov. Code § 12945.2)
- 9) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
- 10) CONSTRUCTIVE TERMINATION IN VIOLATION OF PUBLIC POLICY
- 11) FAILURE TO PROVIDE MEAL PERIOD BREAKS AND/OR COMPENSATION (Lab. Code 226.7, 512)
- 12) FAILURE TO COMPENSATE FOR ALL HOURS WORKED AND MINIMUM WAGE VIOLATIONS
- 13) WAITING TIME PENALTIES
- 14) UNFAIR BUSINESS PRACTICES (Bus. & Prof. Code §17200, et seq.)

JURY TRIAL DEMANDED

Plaintiff alleges:

PRELIMINARY STATEMENT

1. Plaintiff VICTORIA RAMIREZ ("PLAINTIFF") was bookseller and then a merchandising manager in Defendants BARNES & NOBLE, INC.'S and BARNES & NOBLE BOOKSELLERS, INC.'S (collectively "BARNES & NOBLE" or "DEFENDANTS") Woodbridge, California store. During her time at the Woodbridge store, PLAINTIFF, a transgender person, began her transition from male to female. Instead of supporting her transition as the law required, the Woodbridge store manager, Defendant MELISSA ZAPIAIN ("ZAPIAIN") began a campaign of harassment and discrimination against PLAINTIFF that caused PLAINTIFF to have debilitating panic attacks. Despite PLAINTIFF'S continued requests that BARNES & NOBLE allow her to present as a woman at work and her reports to ZAPIAIN and BARNES & NOBLE that refusing to allow her transition was illegal, BARNES & NOBLE

1 delayed in allowing PLAINTIFF to present as a woman. When BARNES & NOBLE finally did
2 allow her to transition, it set humiliating conditions, including denying PLAINTIFF the right to
3 use the restroom consistent with her gender identity, forbidding her from speaking to other
4 employees about her transition because they purportedly might feel sexually harassed, and
5 forbidding her to wear skirts. These humiliating conditions caused PLAINTIFF to suffer
6 debilitating panic attacks that made it difficult for her to work. Instead of accommodating
7 PLAINTIFF's panic attacks, BARNES & NOBLE constructively discharged PLAINTIFF.

8 **PARTIES**

9 2. **The Plaintiff.** VICTORIA RAMIREZ is the PLAINTIFF in this action.
10 PLAINTIFF is, and at all relevant times was, an individual residing in the County of Orange.
11 PLAINTIFF is a transgender person who was employed by BARNES & NOBLE
12 BOOKSELLERS, INC. and BARNES & NOBLE, INC.

13 3. **The Defendants.** Defendant BARNES & NOBLE, INC., is a Delaware
14 corporation conducting business at 122 Fifth Ave., New York, New York. At all times BARNES
15 & NOBLE, INC. was an "employer" within the meaning of California Government Code
16 §12926(d). BARNES & NOBLE, INC. operates stores in Huntington Beach and Woodbridge,
17 California, where PLAINTIFF was employed.

18 4. Defendant BARNES & NOBLE BOOKSELLERS, INC., is a Delaware corporation
19 conducting business at 1400 Old Country Road, Westbury, New York. At all times BARNES &
20 NOBLE BOOKSELLERS, INC. was an "employer" within the meaning of California
21 Government Code § 12926(d). BARNES & NOBLE BOOKSELLERS, INC. operates stores in
22 Huntington Beach and Woodbridge, California, where PLAINTIFF was employed.

23 5. Defendant MELISSA ZAPIAIN was at all times mentioned herein employed by
24 BARNES & NOBLE and is an individual residing in the County of Orange.

25 6. **Doe Allegations.** PLAINTIFF is ignorant of the true names and capacities of the
26 defendants sued as "Does 1 through 50 inclusive" and therefore sues these defendants by fictitious
27 names. PLAINTIFF will amend this Complaint to allege their true names and capacities when
28 ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the

1 fictitiously named defendants is responsible in some manner for the occurrences alleged in this
2 Complaint and that PLAINTIFF's damages as alleged were legally caused by such defendants.
3 PLAINTIFF is further informed and believes that at all times mentioned, each of such defendants
4 was the agent, servant, employee or representative of each of the remaining defendants and was at
5 all times acting within the scope of such agency or employment, unless otherwise specified.

6 7. **Agency Allegations.** PLAINTIFF is informed and believes, and on that basis
7 alleges, that each of the named defendants was the agent, servant, employee or representative of
8 his, her, or its co-defendants and each of them, and in doing the things here alleged was acting in
9 the scope of such defendant's authority as such agent, servant, employee or representative and with
10 the permission and consent of said co-defendants. At the same time, each named defendant was
11 acting in that defendant's own individual capacity and for that defendant's own individual benefit.

12 8. **Venue and Jurisdiction.** Acts and omissions which are the subject of this
13 Complaint occurred primarily in the County of Orange, California. The amount demanded by
14 PLAINTIFF exceeds \$25,000.

15 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

16 9. PLAINTIFF has fully exhausted all relevant administrative remedies. PLAINTIFF
17 filed charges with the Department of Fair Employment and Housing ("DFEH") against
18 Defendants on or about May 8, 2014. The DFEH issued PLAINTIFF a right to sue letter on July
19 11, 2014. Thus, PLAINTIFF has exhausted all administrative remedies.

20 **COMMON ALLEGATIONS**

21 10. From July, 2007 to July 15, 2013, BARNES & NOBLE employed PLAINTIFF as a
22 bookseller and then as a merchandise manager at its Bella Terra store located in Huntington
23 Beach, California and its Woodbridge store located in Irvine, California. PLAINTIFF worked her
24 way through college while she was employed at BARNES & NOBLE and graduated in 2009.

25 11. Due to her outstanding performance, BARNES & NOBLE invited PLAINTIFF to
26 join its management training program, and in August 2010, BARNES & NOBLE promoted
27 PLAINTIFF to the position of merchandise manager. In August 2010, BARNES & NOBLE also
28

1 transferred PLAINTIFF to its Woodbridge location in Irvine, California. During this time
2 PLAINTIFF presented as a man. Her legal name at the time was Tyson Ramirez.

3 12. In fall 2011, the managers at the Woodbridge store underwent anti-harassment
4 training. The training included a portion on transgender people and their right to dress consistent
5 with their gender identity, regardless of whether that corresponded to the employee's birth sex.
6 One of the managers commented, "Could you imagine if Tyson came to work in a skirt?" and they
7 all laughed. No one corrected or reprimanded them. At the time, PLAINTIFF was already
8 considering transitioning to a female identity and the comment was upsetting to her.

9 13. On or about December 2011, ZAPIAIN became the Woodbridge store manager.

10 14. Although PLAINTIFF's birth certificate listed her as male, she knew from a young
11 age that she felt more like a girl. In fact, as a child she fully expected that one day her male body
12 would eventually become a girl's body. These feelings continued through adulthood no matter
13 how much PLAINTIFF struggled to repress them and act the way she believed society expected a
14 male to behave. Eventually, PLAINTIFF realized that she was a transgender person.

15 15. In February 2012, PLAINTIFF decided to transition from male to female. She
16 began revealing her decision to a few close friends. She did not reveal the change to her family
17 because she feared they would not accept her. She did not mention her decision to any co-workers
18 at BARNES & NOBLE at that time.

19 16. In March of 2012, PLAINTIFF learned that her father had terminal cancer. Her
20 father did not have health insurance, and his illness was an extreme financial hardship on his
21 family. PLAINTIFF, while still working at BARNES & NOBLE, became his primary hospice
22 caretaker. PLAINTIFF asked ZAPIAIN for time off to care for her father as was her right under
23 the California Family Rights Act ("CFRA"). ZAPIAIN was demonstrably hostile to
24 PLAINTIFF's request, made it difficult for PLAINTIFF to take time off to care for her father, and
25 delayed granting PLAINTIFF's leave.

26 17. In spring 2012, after PLAINTIFF requested time off to care for her father,
27 ZAPIAIN gave her a negative annual review. Per BARNES & NOBLE's policy, ZAPIAIN
28

1 should have put PLAINTIFF on an Improvement Plan ("IP") to assist in improving PLAINTIFF's
2 performance, but she did not.

3 18. ZAPIAIN made PLAINTIFF wait over a month before allowing her to take CFRA
4 leave to care for her father. As a result, BARNES & NOBLE approved PLAINTIFF's leave only
5 one week before her father passed away in June 2012. After PLAINTIFF returned from leave,
6 ZAPIAIN frequently criticized her performance. At one point, ZAPIAIN called PLAINTIFF at
7 home and began berating her about her performance. ZAPIAIN told PLAINTIFF that she was
8 going to "fucking fire" her.

9 19. PLAINTIFF called District Manager Michelle Makepeace and reported ZAPIAIN's
10 retaliatory conduct. Makepeace told PLAINTIFF that she would speak to ZAPIAIN about her
11 coaching technique but that PLAINTIFF must do as ZAPIAIN said because ZAPIAIN was her
12 manager. When PLAINTIFF expressed her concern that ZAPIAIN was going to fire her,
13 Makepeace told her that if PLAINTIFF were going to lose her job, BARNES & NOBLE would
14 document it first.

15 20. In September 2012, PLAINTIFF began taking female hormones. Her skin began to
16 soften, her physical features began to change, and she began to let her hair grow. Though
17 PLAINTIFF feared rejection and being ostracized, she took solace in BARNES & NOBLE's
18 repeated proclamations that it was a transgender-friendly workplace.

19 21. PLAINTIFF began to dress as a woman and wear makeup and nail polish while at
20 home. She continued to present as a man at work. Since PLAINTIFF was inexperienced with
21 wearing and removing makeup, she would sometimes arrive at work with traces of makeup and
22 eyeliner still on her face. PLAINTIFF's co-workers would ask her if she was wearing makeup.
23 ZAPIAIN was aware that PLAINTIFF was wearing makeup because she overheard some of
24 PLAINTIFF's co-workers' comments and saw the makeup. ZAPIAIN was aware that
25 PLAINTIFF was wearing nail polish because PLAINTIFF wore nail polish at work during the
26 holiday season.

27 22. In December 2012, shortly after PLAINTIFF had begun transitioning, ZAPIAIN
28 met with PLAINTIFF and assistant store manager Lenny Martinez to counsel PLAINTIFF. She

1 put PLAINTIFF on an IP purportedly because of customer and employee complaints. Two other
2 merchandise managers who had also received substandard yearly evaluations were not put on IP's.
3 PLAINTIFF feared that ZAPIAIN was setting her up for termination. The IP required BARNES
4 & NOBLE to follow up with PLAINTIFF within 45 days.

5 23. In late January 2013, under BARNES & NOBLE's policy, ZAPIAIN was supposed
6 to follow up with PLAINTIFF on the IP and remove PLAINTIFF from the IP if PLAINTIFF's
7 performance had improved. ZAPIAIN told PLAINTIFF that she did not have time to meet with
8 PLAINTIFF about the IP. At the same time, ZAPIAIN admonished PLAINTIFF for the traces of
9 makeup still on her face and the nail polish she was wearing. She also scolded PLAINTIFF for
10 the length of her hair. ZAPIAIN told PLAINTIFF that her appearance was upsetting the store
11 customers. She told PLAINTIFF that the Woodbridge store was a "neighborhood store" and that
12 PLAINTIFF should "think of the children." ZAPIAIN'S comments were extremely upsetting and
13 offensive to PLAINTIFF.

14 24. During January and February 2013, ZAPIAIN berated PLAINTIFF several times
15 regarding PLAINTIFF's appearance. ZAPIAIN yelled at PLAINTIFF because PLAINTIFF was
16 wearing a woman's shirt. She accused PLAINTIFF of wearing women's clothes on several
17 occasions. She also raised her voice to PLAINTIFF about the length of PLAINTIFF's hair.

18 25. A manager informed PLAINTIFF that co-workers and ZAPIAIN often joked about
19 PLAINTIFF being gay and wearing makeup.

20 26. PLAINTIFF feared that complaining about ZAPIAIN would only result in further
21 retaliation, as nothing was done when PLAINTIFF previously complained to District Manager
22 Makepeace. In February, PLAINTIFF began suffering panic attacks as a result of ZAPIAIN's
23 conduct.

24 27. In March 2013, ZAPIAIN belatedly followed up with PLAINTIFF regarding the
25 December IP. ZAPIAIN told PLAINTIFF that she was improving but that she was not competent
26 at her job. Most of ZAPIAIN's complaints focused on PLAINTIFF's 2012 performance instead of
27 PLAINTIFF's performance since the beginning of the IP. ZAPIAIN did not take PLAINTIFF off
28 the IP and did not tell PLAINTIFF how to improve her performance.

1 28. Following the March meeting, PLAINTIFF began to have daily panic attacks. She
2 was afraid to come to work, which was now the only place that she was still presenting as a male.
3 PLAINTIFF told some co-workers, including Assistant Manager Martinez, that she was
4 transitioning and that ZAPIAIN's conduct was giving her panic attacks. Her co-workers
5 encouraged her to seek medical help for her panic attacks. PLAINTIFF's therapist advised her
6 that the panic attacks had worsened because she had to deny who she was and act like a man at
7 work.

8 29. On May 3, 2013, ZAPIAIN met again with PLAINTIFF and Martinez. ZAPIAIN
9 told PLAINTIFF that she had improved in the areas covered by the December 2012 IP but that
10 ZAPIAIN was immediately putting PLAINTIFF on another IP for competency. Most of the
11 examples mentioned on the new IP occurred in 2012 before the first IP. None of the specific
12 incidents listed on the IP occurred after March 16, 2013, indicating that PLAINTIFF's
13 performance was not worsening and that the true purpose of the IP was to create a false record to
14 justify PLAINTIFF's termination.

15 30. Following the May 3rd IP, PLAINTIFF's panic attacks intensified. The panic
16 attacks became so debilitating that PLAINTIFF was forced to seek medical care. PLAINTIFF'S
17 doctors removed her from work for two weeks. When PLAINTIFF informed ZAPIAIN she
18 needed to take medical leave, ZAPIAIN asked her if the leave was mandatory.

19 31. After two weeks, PLAINTIFF felt she was not ready to return to work. When she
20 informed ZAPIAIN that she had made an appointment with her doctor to see if she needed to
21 extend her leave, ZAPIAIN told PLAINTIFF that she must report to work because the store was
22 short-staffed on managers.

23 32. PLAINTIFF obeyed ZAPIAIN's order but her panic attacks continued.
24 PLAINTIFF could no longer tolerate presenting as a man at work. PLAINTIFF told ZAPIAIN
25 that she identified as a female and that she wanted to work as a female. She told ZAPIAIN that
26 splitting her identity to work as a man at BARNES & NOBLE was giving her panic attacks.
27 ZAPIAIN said she did not know BARNES & NOBLE's protocol for handling the transition. She
28 forbade PLAINTIFF from telling and co-workers about her transition or wearing woman's clothes

1 and makeup at work until ZAPIAIN could consult with BARNES & NOBLE Human Resources.
2 PLAINTIFF told ZAPIAIN that she had the legal right to transition and offered to provide
3 ZAPIAIN pamphlets on how to handle the transition. PLAINTIFF also offered to have her
4 therapist talk to the store managers about PLAINTIFF's rights as a transgender person and how to
5 handle PLAINTIFF's transition. ZAPIAIN told PLAINTIFF that handling the transition that way
6 was not approved by BARNES & NOBLE and that the company had its own legal and Human
7 Resources team to handle those kinds of issues.

8 33. The next day ZAPIAIN told PLAINTIFF that wearing makeup and appearing as a
9 woman at work would make the BARNES & NOBLE employees lose respect for her position as a
10 manager and lose respect for her as a leader. ZAPIAIN also criticized PLAINTIFF for wearing
11 acrylic nails even though ZAPIAIN wore acrylic nails to work as well.

12 34. PLAINTIFF continued to suffer debilitating panic attacks that caused her doctor to
13 take her off work for two additional weeks. When PLAINTIFF requested additional time off,
14 ZAPIAIN demanded that PLAINTIFF provide a doctor's note to support her leave request. When
15 PLAINTIFF brought the note to ZAPIAIN, ZAPIAIN told her that her leave was negatively
16 impacting the store and that PLAINTIFF needed to consider her responsibility to the store and her
17 professionalism.

18 35. At ZAPIAIN's instruction, PLAINTIFF waited to hear when BARNES & NOBLE
19 would allow her to work as a woman. When she had heard nothing regarding the transition after
20 several weeks, she called BARNES & NOBLE's regional Human Resources representative Ron
21 Mahoney. Mahoney informed PLAINTIFF that he was not familiar with PLAINTIFF's rights and
22 how to handle the transition. He said he would partner with his supervisor, find out BARNES &
23 NOBLE's procedures, and get back to PLAINTIFF as soon as possible.

24 36. After hearing nothing for two more weeks, PLAINTIFF called Mahoney again to
25 follow up. Mahoney told her that he had not heard back from his supervisor. He said he would
26 work with his supervisor to find a solution. When PLAINTIFF followed up with Mahoney a third
27 time, he told her that he was going to work with District Manager Makepeace to come up with a
28 procedure and would let PLAINTIFF know what they decided.

1 37. During this time, PLAINTIFF also contacted Makepeace several times asking when
2 she would be allowed to transition. Makepeace repeatedly told her that BARNES & NOBLE was
3 working on it and the company would let her and Mahoney know what to do.

4 38. PLAINTIFF also repeatedly followed up with ZAPIAIN. ZAPIAIN forbade
5 PLAINTIFF from asking her co-workers to call her by her female name, Victoria. ZAPIAIN said
6 that Mahoney was on vacation and that they would get back to her when Mahoney returned.
7 When PLAINTIFF asked if there was another Human Resources manager who could assist,
8 ZAPIAIN told her that Mahoney was their representative and they had to use him.

9 39. On or about July 6, 2013, two months after she had asked to transition, ZAPIAIN
10 presented PLAINTIFF with the restrictions that BARNES & NOBLE intended to place on her
11 ability to express her gender identity. ZAPIAIN told PLAINTIFF that she: (1) could not use the
12 store's women's restroom because it might make other employees or customers uncomfortable; (2)
13 could only wear eye makeup so long as no one could tell she was wearing it; (3) could not wear
14 skirts because it might make co-workers and employees uncomfortable; and (4) could not discuss
15 the transition with any co-workers unless ZAPIAIN was present to ensure that the co-workers did
16 not feel sexually harassed. These unlawful conditions were intensely humiliating to PLAINTIFF.

17 40. ZAPIAIN told PLAINTIFF that the terms of the transition had been agreed upon by
18 Makepeace and Mahoney. PLAINTIFF said that she did not feel comfortable or safe using the
19 men's restroom while presenting as a woman, particularly since her appearance had become
20 markedly feminine due to the effects of the hormone treatment. The store was located in a
21 shopping center that had several locked private bathrooms. PLAINTIFF offered that perhaps she
22 could use one of those if ZAPIAIN could get her a key. ZAPIAIN replied, "Yeah, maybe," and
23 never provided a key.

24 41. PLAINTIFF further protested that the transition plan violated her legal rights, but
25 ZAPIAIN ignored her. ZAPIAIN encouraged PLAINTIFF to quit, stating that BARNES &
26 NOBLE would not oppose PLAINTIFF's request for unemployment insurance and that
27 PLAINTIFF would be eligible for rehire. PLAINTIFF understood that ZAPIAIN wanted
28 PLAINTIFF to leave her employment at BARNES & NOBLE.

1 42. PLAINTIFF was devastated that she had waited months to transition only to be told
2 BARNES & NOBLE would not allow her to fully transition at work. PLAINTIFF attempted to
3 comply with the transition plan, but her panic attacks were nearly crippling. PLAINTIFF needed
4 to take powerful anti-anxiety medication before work, then again 20 minutes into her shift, and
5 then again during her lunch break just to make it through a workday.

6 43. In addition, ZAPIAIN'S frequent absences from work meant that there were
7 usually only two managers on duty during the entire time the Woodbridge store was open from
8 seven in the morning to eleven o'clock at night. The managers' shifts only overlapped for an hour
9 at either the beginning or the end of PLAINTIFF's shift. BARNES & NOBLE's policy was that a
10 manager had to be on duty at the store at all times, which meant that the only time PLAINTIFF
11 could leave the store to use the woman's restroom at a different store in the shopping center was
12 either at the beginning or the end of her shift. PLAINTIFF felt humiliated and embarrassed that
13 she had to worry about making it through her shift without having to use the bathroom.

14 44. As a result of ZAPIAIN'S frequent absences and BARNES & NOBLE's policy
15 that a manager remain on duty at all times at its stores, PLAINTIFF was unable to take her meal
16 period breaks.

17 45. On July 15, 2013, PLAINTIFF had a severe panic attack that lasted several hours.
18 She was shaking and hyperventilating. Her girlfriend tried to convince her not to go to work
19 because she thought it would be too dangerous for PLAINTIFF to drive. Two hours before her
20 shift, per BARNES & NOBLE policy, PLAINTIFF called ZAPIAIN and told her that she could
21 not report to work because she was having a stress-induced panic attack because she did not feel
22 comfortable or safe at work. ZAPIAIN asked if there was a specific person who made her feel
23 that way and PLAINTIFF said "Yes." ZAPIAIN asked PLAINTIFF who that person was, and
24 PLAINTIFF replied that she did not feel comfortable sharing that with ZAPIAIN, because the
25 person who made PLAINTIFF feel unsafe was ZAPIAIN herself.

26 46. ZAPIAIN then asked PLAINTIFF if PLAINTIFF felt she could work at the store.
27 PLAINTIFF replied that she could if the policies were changed. PLAINTIFF told ZAPIAIN that
28 if she could not be herself, i.e. dress as a woman, use restrooms consistent with her gender identity

1 as a woman, and be allowed to inform her co-workers that she identified as a woman and ask them
2 to respect her gender identity, then the panic attacks would continue. ZAPIAIN then asked
3 Plaintiff to turn in her keys. PLAINTIFF was shocked that ZAPIAIN was terminating her.
4 ZAPIAIN did not inquire about PLAINTIFF's panic attacks or seek to accommodate her request
5 for additional time off in any way. Instead, ZAPIAIN told PLAINTIFF that she accepted
6 PLAINTIFF's inability to report to work as her resignation.

7 47. PLAINTIFF dropped off her store keys as instructed on July 16, 2013. ZAPIAIN
8 mocked PLAINTIFF and pointedly called PLAINTIFF "he" and "Tyson".

9 48. On July 18, 2013, PLAINTIFF separately contacted both Mahoney and Makepeace.
10 PLAINTIFF told them about her panic attacks and having to wait nearly two months to begin her
11 gender transition from male to female, only to learn that she could not fully make the transition.
12 Both Makepeace and Mahoney admitted that they had worked on and agreed with the transition
13 plan, but they both claimed that ZAPIAIN had handled the explanation to PLAINTIFF in the
14 wrong way. Makepeace scolded PLAINTIFF and told her that she should have contacted
15 Makepeace or Mahoney sooner to let them know about her issues with the transition plan. Neither
16 Mahoney nor Makepeace offered to help PLAINTIFF get her job back.

17 49. BARNES & NOBLE fought PLAINTIFF's claim for unemployment benefits,
18 falsely stating that PLAINTIFF had walked out in the middle of her shift. When the representative
19 from the California Employment Development Department ("EDD") interviewed PLAINTIFF,
20 PLAINTIFF told the EDD representative that BARNES & NOBLE's statement was untrue and
21 that she had identified as transgender and BARNES & NOBLE had refused to allow her to present
22 as a woman at work and had refused to allow her to use the women's restroom.

23 50. Shortly after speaking with the EDD representative, PLAINTIFF received a call
24 from Kevin Vilke who identified himself as BARNES & NOBLE's Director of Human Resources.
25 Vilke told PLAINTIFF that BARNES & NOBLE's transition plan had been wrong. Vilke asked
26 PLAINTIFF if she were still interested in working for BARNES & NOBLE. PLAINTIFF said
27 that she was. Vilke told PLAINTIFF that he would report that she was willing to return to work
28 but that the ultimate decision on whether she could return was up to District Manager Makepeace.

1 51. Several days later PLAINTIFF received a call from Makepeace who said that she
2 had heard that PLAINTIFF had asked for her job back. PLAINTIFF said that she would be
3 willing to return to work at BARNES & NOBLE. She offered to work at another store location or
4 in another position if BARNES & NOBLE wanted her to. Makepeace told her that based on
5 ZAPIAIN'S assessment, PLAINTIFF was an unfit employee and incapable of performing her job
6 duties, and BARNES & NOBLE would not take her back.

7 52. PLAINTIFF's loss of her job at BARNES & NOBLE was devastating. She could
8 no longer pay rent and lost her apartment. PLAINTIFF, who took pride in her ability to care for
9 herself and had worked her way through college, was now forced to apply for food stamps and
10 rely on the kindness of her friends for a couch to sleep on at night. PLAINTIFF became depressed
11 and considered suicide. She was prescribed multiple powerful medications to control her mood.

12
13 **FIRST CAUSE OF ACTION**

14 **Gender Identity and/or Expression Discrimination**

15 **[Government Code §12940, et seq]**

16 **(Against Defendants Barnes & Noble Booksellers, Inc., Barnes & Noble, Inc.**

17 **and DOES 1-20)**

18 53. PLAINTIFF hereby repeats, realleges, and reincorporates herein by reference, as
19 though fully set forth at length in this cause of action, each, every, and all allegations contained
20 within the previous paragraphs of this Complaint.

21 54. At all relevant times, DEFENDANTS were employers subject to the Fair
22 Employment and Housing Act, Government Code section 12940, et seq. PLAINTIFF was
23 employed by DEFENDANTS until her termination.

24 55. DEFENDANTS engaged in multiple adverse actions against PLAINTIFF due to
25 PLAINTIFF's gender identity and/or gender expression, including but not limited to: subjecting
26 PLAINTIFF to a series of Improvement Plans, disciplining and shaming PLAINTIFF for wearing
27 makeup, nail polish, and women's clothing at work, refusing to accommodate PLAINTIFF'S
28 panic attacks by allowing her to present as a woman at work, refusing to allow PLAINTIFF to use

1 the women's restroom, forbidding PLAINTIFF from discussing her gender identity with other co-
2 workers, constructively discharging or terminating PLAINTIFF, and refusing to reinstate
3 PLAINTIFF. PLAINTIFF is informed and believes, and based thereon alleges, that in addition to
4 the practices enumerated above, defendants, and each of them, have engaged in other
5 discriminatory practices against her which are not yet fully known.

6 56. As a direct and proximate result of the conduct of DEFENDANTS as set forth
7 above, PLAINTIFF suffered and will continue to suffer economic and non-economic damages and
8 general and special damages in a sum according to proof, in an amount exceeding the
9 jurisdictional limits of this Court. In addition, DEFENDANTS, and each of them, are responsible
10 for interest, penalties, costs, and attorney fees related to this cause of action.

11 57. Because these wrongful acts were carried out, authorized, or ratified by
12 DEFENDANTS' directors, officers and/or managing agents, acting with malice, oppression or
13 fraud, or were deliberate, willful, and in conscious disregard of the probability of causing injury to
14 Plaintiff, as reflected by the actions as described earlier in this Complaint, Plaintiff seeks punitive
15 damages against DEFENDANTS, and each of them, in order to deter them from similar conduct in
16 the future.

17 **SECOND CAUSE OF ACTION**

18 **Gender Identity and/or Expression Harassment**

19 **[Government Code §12940, et seq]**

20 **(Against Defendants Barnes & Noble Booksellers, Inc., Barnes & Noble, Inc., Melissa Zapian**
21 **and DOES 1-30)**

22 58. PLAINTIFF hereby repeats, realleges, and reincorporates herein by reference, as
23 though fully set forth at length in this cause of action, each, every, and all allegations contained
24 within the previous paragraphs of this Complaint.

25 59. PLAINTIFF was subjected to unwanted harassing conduct because of her gender
26 identity and/or gender expression. The harassment was both severe and pervasive, and included
27 ZAPIAIN regularly ridiculing and mocking PLAINTIFF for wearing makeup and nail polish at
28 work and for having long hair, telling PLAINTIFF that her appearance was not appropriate for a

1 “family store” and “to think of the children,” and calling PLAINTIFF “he” and “Tyson.” In
2 addition, ZAPIAIN berated PLAINTIFF when ZAPIAIN believed PLAINTIFF was wearing
3 women’s clothing at work and joked with her subordinates about PLAINTIFF’S appearance and
4 sexuality. In addition, PLAINTIFF’S fellow managers openly mocked transgender people during
5 their anti-harassment training. A reasonable person in PLAINTIFF’S circumstances would have
6 considered the work environment to be hostile or abusive, and PLAINTIFF considered the work
7 environment to be both hostile and abusive.

8 60. A supervisor, ZAPIAIN, and other managers engaged in the harassing conduct.
9 DEFENDANTS knew or should have known of the harassing conduct due to the reports and
10 complaints of PLAINTIFF and the observations of other managers at the Woodbridge store.
11 DEFENDANTS failed to take immediate and appropriate corrective action.

12 61. As a direct and proximate result of the conduct of DEFENDANTS as set forth
13 above, PLAINTIFF suffered and will continue to suffer economic and non-economic damages and
14 general and special damages in a sum according to proof, in an amount exceeding the
15 jurisdictional limits of this Court. In addition, DEFENDANTS, and each of them, are responsible
16 for interest, penalties, costs, and attorney fees related to this cause of action.

17 62. Because these wrongful acts were carried out, authorized, or ratified by
18 DEFENDANTS’ directors, officers and/or managing agents, acting with malice, oppression or
19 fraud, or were deliberate, willful, and in conscious disregard of the probability of causing injury to
20 Plaintiff, as reflected by the actions as described earlier in this Complaint, Plaintiff seeks punitive
21 damages against DEFENDANTS, and each of them, in order to deter them from similar conduct in
22 the future.

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1 jurisdictional limits of this Court. In addition, DEFENDANTS, and each of them, are responsible
2 for interest, penalties, costs, and attorney fees related to this cause of action.

3 68. Because these wrongful acts were carried out, authorized, or ratified by
4 DEFENDANTS' directors, officers and/or managing agents, acting with malice, oppression or
5 fraud, or were deliberate, willful, and in conscious disregard of the probability of causing injury to
6 Plaintiff, as reflected by the actions as described earlier in this Complaint, Plaintiff seeks punitive
7 damages against DEFENDANTS, and each of them, in order to deter them from similar conduct in
8 the future.

9 **FOURTH CAUSE OF ACTION**

10 **Failure to Accommodate Disability**

11 **[Government Code §12940, et seq]**

12 **(Against Defendants Barnes & Noble Booksellers, Inc., Barnes & Noble, Inc.,**
13 **and DOES 1-20)**

14 69. PLAINTIFF hereby repeats, realleges, and reincorporates herein by reference, as
15 though fully set forth at length in this cause of action, each, every, and all allegations contained
16 within the previous paragraphs of this Complaint.

17 70. PLAINTIFF's panic attacks and severe anxiety constituted a disability under
18 Government Code §§ 12926 and 12926.1 and limited PLAINTIFF's ability to engage in several
19 major life activities, including but not limited to breathing and working. DEFENDANTS knew
20 that PLAINTIFF had a disability and had a history of anxiety and/or panic attacks and treated
21 PLAINTIFF as though she had a disability.

22 71. PLAINTIFF was and is able to perform the essential duties of her position with a
23 reasonable accommodation for her disability.

24 72. DEFENDANTS failed to provide reasonable accommodation for PLAINTIFF's
25 disability. DEFENDANTS refused to allow PLAINTIFF to take sick time or intermittent leave for
26 her anxiety and panic attacks and instead terminated or constructively discharged PLAINTIFF.
27 DEFENDANTS knew that PLAINTIFF's panic attacks occurred because DEFENDANTS would
28 not allow PLAINTIFF to present as a woman at work. Instead of complying with the law

1 regarding gender identify and gender expression, DEFENDANTS delayed allowing PLAINTIFF
2 to work in accordance with her female identity and then set humiliating and illegal conditions on
3 PLAINTIFF's transition, which exacerbated her disability.

4 73. As a direct and proximate result of the conduct of DEFENDANTS as set forth
5 above, PLAINTIFF suffered and will continue to suffer economic and non-economic damages and
6 general and special damages in a sum according to proof, in an amount exceeding the
7 jurisdictional limits of this Court. In addition, DEFENDANTS, and each of them, are responsible
8 for interest, penalties, costs, and attorney fees related to this cause of action.

9 74. Because these wrongful acts were carried out, authorized, or ratified by
10 DEFENDANTS' directors, officers and/or managing agents, acting with malice, oppression or
11 fraud, or were deliberate, willful, and in conscious disregard of the probability of causing injury to
12 Plaintiff, as reflected by the actions as described earlier in this Complaint, Plaintiff seeks punitive
13 damages against DEFENDANTS, and each of them, in order to deter them from similar conduct in
14 the future.

15 **FIFTH CAUSE OF ACTION**

16 **Failure to Engage in the Interactive Process**

17 **[Government Code §12940, et seq]**

18 **(Against Defendants Barnes & Noble Booksellers, Inc., Barnes & Noble, Inc.,**
19 **and DOES 1-20)**

20 75. PLAINTIFF hereby repeats, realleges, and reincorporates herein by reference, as
21 though fully set forth at length in this cause of action, each, every, and all allegations contained
22 within the previous paragraphs of this Complaint.

23 76. PLAINTIFF had a disability that was known to DEFENDANTS, and
24 DEFENDANTS knew that PLAINTIFF suffered from panic attacks and severe anxiety.

25 77. PLAINTIFF requested reasonable accommodation for her disability so that she
26 would be able to perform the essential requirements of her job. PLAINTIFFS requested
27 accommodations included, but were not limited to, allowing PLAINTIFF to present as female in
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1 the workplace and allowing PLAINTIFF to use sick time, disability leave, and/or intermittent
2 leave.

3 78. PLAINTIFF was willing to participate in an interactive process to determine
4 whether reasonable accommodation could be made so that she would be able to perform her
5 essential job requirements. DEFENDANTS failed to participate in a timely, good-faith interactive
6 process with PLAINTIFF to determine whether reasonable accommodation could be made.

7 79. As a direct and proximate result of the conduct of DEFENDANTS as set forth
8 above, PLAINTIFF suffered and will continue to suffer economic and non-economic damages and
9 general and special damages in a sum according to proof, in an amount exceeding the
10 jurisdictional limits of this Court. In addition, DEFENDANTS, and each of them, are responsible
11 for interest, penalties, costs, and attorney fees related to this cause of action.

12 80. Because these wrongful acts were carried out, authorized, or ratified by
13 DEFENDANTS' directors, officers and/or managing agents, acting with malice, oppression or
14 fraud, or were deliberate, willful, and in conscious disregard of the probability of causing injury to
15 Plaintiff, as reflected by the actions as described earlier in this Complaint, Plaintiff seeks punitive
16 damages against DEFENDANTS, and each of them, in order to deter them from similar conduct in
17 the future.

18 **SIXTH CAUSE OF ACTION**

19 **Retaliation**

20 **[Government Code §12940, et seq]**

21 **(Against Defendants Barnes & Noble Booksellers, Inc., Barnes & Noble, Inc.,**
22 **and DOES 1-20)**

23 81. PLAINTIFF hereby repeats, realleges, and reincorporates herein by reference, as
24 though fully set forth at length in this cause of action, each, every, and all allegations contained
25 within the previous paragraphs of this Complaint.

26 82. PLAINTIFF engaged in multiple instances of protected activity, including but not
27 limited to reporting to her store manager, ZAPIAIN, her district manager Makepeace, Human
28 Resources representative Mahoney, and Human Resources Director Vilke that BARNES &

1 NOBLE was violating or had violated the law by refusing to allow her to work in accordance with
2 her female identity and/or setting humiliating and unlawful conditions on her transition.
3 PLAINTIFF further engaged in protected activity when she requested accommodation due to her
4 panic attacks and when she took time off due to her disability.

5 83. DEFENDANTS engaged in multiple adverse actions against PLAINTIFF due to
6 PLAINTIFF's protective activity, including but not limited to: refusing to accommodate
7 PLAINTIFF's disability or engage in the interactive process with her, creating intolerable working
8 conditions for PLAINTIFF, disciplining PLAINTIFF, placing PLAINTIFF on unwarranted
9 improvement plans, and terminating and/or constructively discharging PLAINTIFF and refusing
10 to rehire/reinstate her. PLAINTIFF is informed and believes, and based thereon alleges, that in
11 addition to the practices enumerated above, DEFENDANTS, and each of them, have engaged in
12 other retaliatory practices against her which are not yet fully known.

13 84. As a direct and proximate result of the conduct of DEFENDANTS as set forth
14 above, PLAINTIFF suffered and will continue to suffer economic and non-economic damages and
15 general and special damages in a sum according to proof, in an amount exceeding the
16 jurisdictional limits of this Court. In addition, DEFENDANTS, and each of them, are responsible
17 for interest, penalties, costs, and attorney fees related to this cause of action.

18 85. Because these wrongful acts were carried out, authorized, or ratified by
19 DEFENDANTS' directors, officers and/or managing agents, acting with malice, oppression or
20 fraud, or were deliberate, willful, and in conscious disregard of the probability of causing injury to
21 Plaintiff, as reflected by the actions as described earlier in this Complaint, Plaintiff seeks punitive
22 damages against DEFENDANTS, and each of them, in order to deter them from similar conduct in
23 the future.

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1 SEVENTH CAUSE OF ACTION

2 **Failure to Prevent Discrimination, Harassment, and/or Retaliation**

3 **[Government Code §12940, et seq]**

4 **(Against Defendants Barnes & Noble Booksellers, Inc., Barnes & Noble, Inc.,**
5 **and DOES 1-20)**

6 86. PLAINTIFF hereby repeats, realleges, and reincorporates herein by reference, as
7 though fully set forth at length in this cause of action, each, every, and all allegations contained
8 within the previous paragraphs of this Complaint.

9 87. PLAINTIFF was subjected to discrimination, harassment, and/or retaliation in the
10 course of her employment with DEFENDANTS, as described above. DEFENDANTS failed to
11 take all reasonable steps to prevent the discrimination, harassment, and/or retaliation.

12 88. As a direct and proximate result of the conduct of DEFENDANTS as set forth
13 above, PLAINTIFF suffered and will continue to suffer economic and non-economic damages and
14 general and special damages in a sum according to proof, in an amount exceeding the
15 jurisdictional limits of this Court. In addition, DEFENDANTS, and each of them, are responsible
16 for interest, penalties, costs, and attorney fees related to this cause of action.

17 89. Because these wrongful acts were carried out, authorized, or ratified by
18 DEFENDANTS' directors, officers and/or managing agents, acting with malice, oppression or
19 fraud, or were deliberate, willful, and in conscious disregard of the probability of causing injury to
20 Plaintiff, as reflected by the actions as described earlier in this Complaint, Plaintiff seeks punitive
21 damages against DEFENDANTS, and each of them, in order to deter them from similar conduct in
22 the future.

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1 **EIGHTH CAUSE OF ACTION**

2 **CFRA Rights Retaliation**

3 **[Government Code § 12945.2]**

4 **(Against Defendants Barnes & Noble Booksellers, Inc., Barnes & Noble, Inc.,**
5 **and DOES 1-20)**

6 90. PLAINTIFF hereby repeats, realleges, and reincorporates herein by reference, as
7 though fully set forth at length in this cause of action, each, every, and all allegations contained
8 within the previous paragraphs of this Complaint.

9 91. DEFENDANTS were subject to the California Family Rights Act, ("CFRA"),
10 Government Code § 12945.2, which is part of the FEHA. These CFRA statutes required
11 DEFENDANTS to allow PLAINTIFF up to 12 workweeks of leave for a qualifying leave, the
12 right to preservation of benefits during the leave period, the right to reinstatement upon
13 completion of the protected leave, and the prohibition against retaliation for exercising
14 PLAINTIFF's rights.

15 92. At all relevant times, PLAINTIFF was eligible to take CFRA leave as she was
16 employed by DEFENDANTS more than one year, worked at least 1,250 hours per year, and had
17 not exhausted the 12 workweeks of leave guaranteed by the CFRA. DEFENDANTS employed 50
18 or more employees within 75 miles of PLAINTIFF's workplace.

19 93. Due to PLAINTIFF's serious health condition of anxiety and stress, she was
20 subjected to and receiving continued treatment and/or supervision by her treating physicians
21 and/or psychologists.

22 94. PLAINTIFF took CFRA leave pursuant to her treating physicians' orders and
23 requested additional CFRA leave. DEFENDANT terminated and/or constructively discharged
24 PLAINTIFF due to PLAINTIFF's use of CFRA leave and/or request for CFRA leave.

25 95. As a direct and proximate result of the conduct of DEFENDANTS as set forth
26 above, PLAINTIFF suffered and will continue to suffer economic and non-economic damages and
27 general and special damages in a sum according to proof, in an amount exceeding the
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1 jurisdictional limits of this Court. In addition, DEFENDANTS, and each of them, are responsible
2 for interest, penalties, costs, and attorney fees related to this cause of action.

3 96. Because these wrongful acts were carried out, authorized, or ratified by
4 DEFENDANTS' directors, officers and/or managing agents, acting with malice, oppression or
5 fraud, or were deliberate, willful, and in conscious disregard of the probability of causing injury to
6 Plaintiff, as reflected by the actions as described earlier in this Complaint, Plaintiff seeks punitive
7 damages against DEFENDANTS, and each of them, in order to deter them from similar conduct in
8 the future.

9 NINTH CAUSE OF ACTION

10 **Wrongful Termination in Violation of Public Policy**

11 **(Against Defendants Barnes & Noble Booksellers, Inc., Barnes & Noble, Inc.,**
12 **and DOES 1-20)**

13 97. PLAINTIFF hereby repeats, realleges, and reincorporates herein by reference, as
14 though fully set forth at length in this cause of action, each, every, and all allegations contained
15 within the previous paragraphs of this Complaint.

16 98. By their conduct as set forth above, DEFENDANTS wrongfully terminated
17 PLAINTIFF's employment in violation of fundamental public policies prohibiting gender
18 identity/expression and disability discrimination in employment, gender identity/expression
19 harassment, and retaliation for taking CFRA leave and for reporting and/or opposing illegal
20 conduct. Those public policies are embodied in Government Code Section 12900 et seq and the
21 California Constitution, among others.

22 99. As a direct and proximate result of the conduct of DEFENDANTS as set forth
23 above, PLAINTIFF suffered and will continue to suffer economic and non-economic damages and
24 general and special damages in a sum according to proof, in an amount exceeding the
25 jurisdictional limits of this Court. In addition, DEFENDANTS, and each of them, are responsible
26 for interest, penalties, costs, and attorney fees related to this cause of action.

27 100. Because these wrongful acts were carried out, authorized, or ratified by
28 DEFENDANTS' directors, officers and/or managing agents, acting with malice, oppression or

1 fraud, or were deliberate, willful, and in conscious disregard of the probability of causing injury to
2 Plaintiff, as reflected by the actions as described earlier in this Complaint, Plaintiff seeks punitive
3 damages against DEFENDANTS, and each of them, in order to deter them from similar conduct in
4 the future.

5 **TENTH CAUSE OF ACTION**

6 **Constructive Discharge in Violation of Public Policy**

7 **(Against Defendants Barnes & Noble Booksellers, Inc., Barnes & Noble, Inc.,**

8 **and DOES 1-20)**

9 101. PLAINTIFF hereby repeats, realleges, and reincorporates herein by reference, as
10 though fully set forth at length in this cause of action, each, every, and all allegations contained
11 within the previous paragraphs of this Complaint.

12 102. As described above, PLAINTIFF was subjected to working conditions that violated
13 public policy, in that PLAINTIFF was treated intolerably for attempting to and requesting to
14 identify as female, for complaining to supervisors and Human Resources regarding unlawful
15 conduct, and for exercising numerous rights pursuant to the FEHA and CFRA. DEFENDANTS
16 intentionally created and/or knowingly permitted these working conditions. These working
17 conditions were so intolerable that a reasonable person in PLAINTIFF's position would have had
18 no reasonable alternative except to resign. PLAINTIFF resigned due to these working conditions.

19 103. As a direct and proximate result of the conduct of DEFENDANTS as set forth
20 above, PLAINTIFF suffered and will continue to suffer economic and non-economic damages and
21 general and special damages in a sum according to proof, in an amount exceeding the
22 jurisdictional limits of this Court. In addition, DEFENDANTS, and each of them, are responsible
23 for interest, penalties, costs, and attorney fees related to this cause of action.

24 104. Because these wrongful acts were carried out, authorized, or ratified by
25 DEFENDANTS' directors, officers and/or managing agents, acting with malice, oppression or
26 fraud, or were deliberate, willful, and in conscious disregard of the probability of causing injury to
27 Plaintiff, as reflected by the actions as described earlier in this Complaint, Plaintiff seeks punitive
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1 damages against DEFENDANTS, and each of them, in order to deter them from similar conduct in
2 the future.

3 **ELEVENTH CAUSE OF ACTION**

4 **Failure to Pay Meal Period Compensation**

5 **(Labor Code §§ 226.7, 512, IWC Wage Order 4-2001)**

6 **(Against Defendants Barnes & Noble Booksellers, Inc., Barnes & Noble, Inc.,**
7 **and Does 1-20)**

8 105. PLAINTIFF hereby repeats, realleges, and reincorporates herein by reference, as
9 though fully set forth at length in this cause of action, each, every, and all allegations contained
10 within the previous paragraphs of this Complaint.

11 106. The California Labor Code and Wage Order provide that an employee is entitled to
12 an uninterrupted, off-the-clock meal period of not less than 30 minutes for every five hours
13 worked. The Code and the Wage Order also require the employer to pay the employee one hour at
14 the employee's regular rate of compensation for each day that the employer does not provide at
15 least one required meal period. PLAINTIFF was not an exempt employee.

16 107. DEFENDANTS employed PLAINTIFF for work periods of more than five hours
17 without a meal period of not less than 30 minutes and failed to compensate PLAINTIFF for such
18 meal periods, as required by Code §§ 226.7, 512 and the Wage Order.

19 108. PLAINTIFF is informed and believes, and thereon alleges that the failure of
20 Defendants to make available meal period breaks and to compensate Plaintiffs for those missed
21 meal periods was willful, purposeful, and unlawful and done in accordance with the policies and
22 practices of Defendants' operations.

23 109. As a proximate cause of the aforementioned violations, PLAINTIFF has been
24 damaged in an amount according to proof at time of trial. PLAINTIFF is entitled to recover the
25 unpaid balance of wages owed, penalties, including penalties available pursuant to Labor Code §§
26 226, 226.7, 558, plus interest, reasonable attorney fees and costs of suit according to Labor Code
27 §§ 218.5 and 1194 et seq.

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1 **TWELFTH CAUSE OF ACTION**

2 **Failure to Pay Compensation for All Hours Worked and Minimum Wage Violations**

3 **(California Labor Code §§ 216, 1194, 1194.2 and 1197)**

4 **(Against Defendants Barnes & Noble Booksellers, Inc., Barnes & Noble, Inc.,**

5 **and Does 1-20)**

6 110. PLAINTIFF hereby repeats, realleges, and reincorporates herein by reference, as
7 though fully set forth at length in this cause of action, each, every, and all allegations contained
8 within the previous paragraphs of this Complaint.

9 111. PLAINTIFF brings this action to recover unpaid compensation for all hours worked
10 as defined by the applicable Industrial Welfare Commission ("IWC") wage order as the time
11 during which an employee is subject to the control of an employer, and includes all the time the
12 employee is suffered or permitted to work, whether or not required to do so.

13 112. Under section 1197 of the California Labor Code and the relevant IWC Wage
14 order, employers must pay their non-exempt employees an hourly rate equal to or greater than the
15 state's minimum wage. Moreover, the California Labor Code requires payment of the legal
16 minimum wage for each hour worked by an employee and does not allow employers to "average"
17 the wages paid to employees when it comes to determining compliance with state minimum wage
18 laws. As such, a failure to pay for any hours worked by an employee necessarily results in a
19 minimum wage violation under California law.

20 113. PLAINTIFF was a non-exempt employee and thus subject to minimum wage laws.
21 Therefore, DEFENDANTS were obligated to pay PLAINTIFF the statutory or agreed upon rate
22 for each hour worked. DEFENDANTS' failure to allow PLAINTIFF to take meal breaks and
23 failure to compensate PLAINTIFF for these missed breaks violated this obligation.
24 DEFENDANTS' conduct described in this Complaint violates, among other things, Labor Code
25 sections 216, 1194, 1194.2 and 1197.

26 114. PLAINTIFF is entitled to recover the unpaid balance of compensation
27 DEFENDANTS owe PLAINTIFF, plus interest on that amount, liquidated damages pursuant to
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1 Labor Code section 1194.2, and reasonable attorney fees and costs of this suit pursuant to Labor
2 Code section 1194.

3 **THIRTEENTH CAUSE OF ACTION**

4 **Waiting Time Penalties**

5 **(California Labor Code § 203)**

6 **(Against Defendants Barnes & Noble Booksellers, Inc., Barnes & Noble, Inc.,**
7 **and Does 1-20)**

8 115. PLAINTIFF hereby repeats, realleges, and reincorporates herein by reference, as
9 though fully set forth at length in this cause of action, each, every, and all allegations contained
10 within the previous paragraphs of this Complaint.

11 116. Pursuant to California Labor Code § 201, if an employer discharges an employee,
12 the wages earned and unpaid at the time of the discharge are due and payable immediately.
13 Pursuant to California Labor Code § 202, wages are due within 72 hours to an employee who
14 resigns. PLAINTIFF was terminated by DEFENDANTS. To this day, PLAINTIFF has not
15 received the wages and other compensation she rightfully earned.

16 117. DEFENDANTS willfully refused and continue to refuse to pay PLAINTIFF all
17 wages earned in a timely manner, as required by California Labor Code § 203. Plaintiff therefore
18 requests restitution and penalties as provided by California Labor Code § 203.

19 **FOURTEENTH CAUSE OF ACTION**

20 **Waiting Time Penalties**

21 **Unfair Business Practices**

22 **(Violation of California Business and Professions Code §17200, et seq)**

23 **(Against Defendants Barnes & Noble Booksellers, Inc., Barnes & Noble, Inc.,**
24 **and Does 1-20)**

25 118. PLAINTIFF hereby repeats, realleges, and reincorporates herein by reference, as
26 though fully set forth at length in this cause of action, each, every, and all allegations contained
27 within the previous paragraphs of this Complaint.

119. DEFENDANTS' violations of the Employment Laws and Regulations, as alleged in the Complaint, include, among other things, DEFENDANTS': (1) failure and refusal to pay all wages earned by PLAINTIFF pursuant to the illegal pay practices described above; and (2) failure to provide compensation for missed meal periods. The aforementioned violations constitute unfair business practices in violation of the Unfair Competition Law, California Business & Professions Code Section 17200, et seq.

120. As a result of DEFENDANTS' unfair business practices, DEFENDANTS have reaped unfair benefits and illegal profits at the expense of PLAINTIFF and members of the public. DEFENDANTS should be compelled to restore such monies to PLAINTIFF.

121. In the absence of injunctive and equitable relief, PLAINTIFF will suffer irreparable injury, which cannot readily be remedied by damage remedies. PLAINTIFF requires and is entitled to preliminary and permanent injunctive relief against DEFENDANTS, including but not limited to, orders that DEFENDANTS account for and restore to PLAINTIFF the compensation unlawfully withheld from her.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For special, general, and compensatory damages according to proof;
2. For injunctive relief, reinstatement and back pay;
3. For restitution of all monies due to Plaintiff from the unlawful business practices;
4. For waiting time penalties pursuant to California Labor Code §203;
5. For penalties pursuant to California Labor Code §§ 226, 558 and all other applicable Labor Code and/or Employment Laws and Regulations;
6. For all other applicable penalties provided by law;
7. For interest accrued to date;
8. For costs, including expert witness fees, and reasonable attorney fees, as provided by law;
9. For punitive and exemplary damages, where applicable and according to proof;

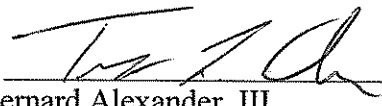
1 10. For such other relief as the Court may deem just and proper.
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4 Dated: May 6, 2015

ALEXANDER KRAKOW + GLICK LLP

5 TRANSGENDER LAW CENTER

6 LAW OFFICES OF G. SAMUEL CLEAVER
7

8 By: 
9 J. Bernard Alexander, III
10 Tracy L. Fehr
11 Attorneys for Plaintiff
12 Victoria Ramirez
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DEMAND FOR JURY TRIAL

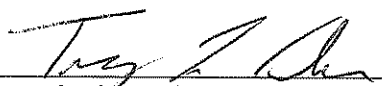
Plaintiff Victoria Ramirez hereby demands a jury trial on all causes of action.

Dated: May 6, 2015

ALEXANDER KRAKOW + GLICK LLP

TRANSGENDER LAW CENTER

LAW OFFICES OF G. SAMUEL CLEAVER

By: 
J. Bernard Alexander, III
Tracy L. Fehr
Attorneys for Plaintiff
Victoria Ramirez