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 ARMIDA URQUIZO

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

EQUAL EMPLOYMENT OPPORTUNITY
 COMMISSION,

Plaintiff,

ARMIDA URQUIZO,

Plaintiff/Intervenor

v.

FRESH EXPRESS INC.,

Defendant.

CASE NO. C-02-04614 JF (HRL)

COMPLAINT IN INTERVENTION
 FOR DAMAGES AND
 DEMAND FOR JURY TRIAL

1. Unlawful Sex Discrimination (42 U.S.C. § 2000e)
2. Hostile Environment Sexual Harassment (Title VII, 42 U.S.C. §2000e-2(a)(1))
3. Unlawful Retaliation (42 U.S.C. § 2000e-3(a))
4. Unlawful Sex Discrimination (Cal. Gov Code § 12940(a))
5. Retaliation for Opposing Discrimination and Harassment (Cal. Gov. Code § 12940(h))
6. Aiding and Abetting Sexual Harassment, Sex Discrimination, and Retaliation (Cal. Gov. Code § 12940(i))
7. Hostile Environment Sexual Harassment (Cal. Gov. Code § 12940(j)(1))
8. Failure to Prevent Discrimination and Harassment (Cal. Gov. Code § 12940 (k))

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PARTIES

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2 1. Plaintiff ARMIDA URQUIZO (hereinafter URQUIZO), at all times relevant herein,
3 was a resident of the State of California, County of Monterey. Plaintiff URQUIZO was at all
4 times material hereto a member of a protected group under California Government Code Section
5 12940(a) based on her sex (female), and Title VII of the Civil Rights Act of 1964 (Title VII) as
6 amended, 42 U.S.C. §2000e-5 (f) (1) and (3), and Section 102 of the Civil Rights Act of 1991, 42
7 U.S.C. §1981(a).

8 2. Plaintiff URQUIZO is informed and believes that defendant FRESH EXPRESS
9 INC., (hereafter FRESH EXPRESS) is a Delaware corporation, and was at all relevant times, a
10 corporation organized and existing under the laws of the State of California, with its principal
11 business office located in the city of Salinas, California in the County of Monterey.

12 3. Plaintiff is informed and believes, and thereon alleges, that Defendant FRESH
13 EXPRESS INC. regularly employs five or more persons, and accordingly is an employer within
14 the meaning of Cal. Gov. Code §§ 12926(d), 12940.

15 4. Plaintiff is informed and believes, and thereon alleges, at all times relevant hereto
16 that Defendant FRESH EXPRESS, INC. regularly employed fifteen or more persons for each
17 working day in each of twenty or more calendar weeks in the current and preceding calendar
18 years, and accordingly is an employer within the meaning of 42 U.S.C. § 2000e(b).

JURISDICTION AND VENUE

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20 5. The jurisdiction of this Court is based upon section 703(a)(1) Title VII of the Civil
21 Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a)(1). Jurisdiction of this Court is also
22 invoked pursuant to 28 U.S.C. §§ 1331, 1337, 1343 and 1346 and the Court s supplemental
23 jurisdiction over state law claims. Injunctive and declaratory relief, damages and other
24 appropriate legal and equitable relief are sought pursuant to 42 U.S.C. § 2000e (f) and (g) as
25 amended, and state law. The unlawful employment practices of which plaintiffs complain
26 occurred within the Northern District of California and defendant FRESH EXPRESS INC. has
27 business operations where plaintiff worked at all relevant times alleged herein in the Northern
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1 District of California. Venue is therefore proper in this District pursuant to 42 U.S.C. § 2000e-
2 5(f)(3). Venue is also proper in this District pursuant to 18 U.S.C. §§ 1965(a) and 1965(b), and
3 28 U.S.C. § 1391(e).

4 INTRA-DISTRICT ASSIGNMENT

5 6. Since the acts which gave rise to this complaint occurred in Monterey County,
6 assignment to the San Jose Division pursuant to Civil L.R. 3-2(c) would be appropriate.

7 EXHAUSTION OF ADMINISTRATIVE REMEDIES

8 7. On or around July 26, 1999, Plaintiff URQUIZO filed charges of
9 discrimination with the Equal Employment Opportunity Commission (hereafter EEOC). This
10 charge was simultaneously filed with the California Department of Fair Employment and
11 Housing (hereafter DFEH) pursuant to the terms of a work sharing agreement between the two
12 agencies.

13 8. On or around July 29, 1999 notice of Plaintiff URQUIZO S right to file a
14 private civil suit was issued by the EEOC. The EEOC issued the right to sue letters after DFEH
15 deferred its investigations of plaintiffs discrimination charges to the EEOC pursuant to the terms
16 of a work sharing agreement between the two agencies. The one-year period following the
17 issuance of these notices within which to file an action for violation of the FEHA was equitably
18 tolled during the pendency of the EEOC investigation.

19 9. On or about September 24, 2002 the EEOC concluded investigation of the case
20 and thereafter filed suit in the instant matter.

21 10. Plaintiff URQUIZO has timely filed this action. Therefore, she has complied with
22 all administrative prerequisites to be able to bring this lawsuit.

23 FACTS

24 11. URQUIZO began working at FRESH EXPRESS INC. in approximately 1992.
25 URQUIZO worked in inventory in the plant supply room, among other positions with Defendant.

26 12. Nazario Ramirez (hereafter Ramirez) was employed by Fresh Express from at
27 least 1994, and, on information and belief, he held the position of manager/supervisor of the
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1 warehouse for Fresh Express Inc. from at least 1997 until he ended employment with Fresh
2 Express Inc. in approximately August 1999.

3 13. In 1994, Ramirez commenced a continual course of conduct, wherein he sexually
4 harassed URQUIZO. This harassment was severe and pervasive enough to alter her working
5 conditions and create a hostile work environment. URQUIZO was repeatedly forced to endure
6 offensive language, and intimidating and unwelcome romantic and/or sexual overtures. Among
7 other acts, RAMIREZ exposed himself to URQUIZO at the workplace and continuously
8 pressured URQUIZO to invite him to her house or go to a motel with RAMIREZ to have sexual
9 intercourse.

10 14. RAMIREZ s sexual harassment was repeated and was designed to compel
11 URQUIZO to submit to his sexual advances, thereby rendering URQUIZO S submission to his
12 sexual advances a term or condition of her employment.

13 15. Defendant s sexual harassment of URQUIZO continued throughout 1999, even
14 after URQUIZO repeatedly made clear that she wanted the harassment to stop.

15 16. Defendant s sexual harassment of URQUIZO substantially affected her
16 employment. Defendant, their agents, servants and/or employees, through their sexual
17 harassment and their failure to eradicate it, intended to, and did, cause URQUIZO severe
18 psychological and emotional damage. Through their acts and omissions which constituted sexual
19 harassment, abuse, discrimination, and retaliation toward Plaintiff, Defendant, its agents, servants
20 and/or employees, have caused URQUIZO to suffer extreme anxiety, severe depression, and
21 other emotional distress. Defendant s conduct has adversely affected URQUIZO S ability to
22 work, and her sense of well-being. The abuse of URQUIZO by Defendant, its agents, servants
23 and/or employees, and Defendant s failure to stop such abuse, rendered her work environment so
24 intolerable that any reasonable person would find such treatment offensive.

25 17. Following Defendant s commencement of these acts of sexual harassment,
26 URQUIZO made complaints to Defendant. For making these complaints, Defendants subjected
27 her to retaliation in the form of further unwanted sexual advances and assigning her to less
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1 favorable work assignments.

2 18. Despite URQUIZO s complaints to the Defendant, FRESH EXPRESS INC.
3 effectively failed and refused to terminate the course of repetitively offensive conduct of Ramirez
4 and others, all of which constituted sexual harassment of URQUIZO. Defendant took no action
5 to address, correct, or prevent these adverse working conditions of sexual harassment, retaliation,
6 and discrimination, thereby condoning such illegal acts and transforming the acceptance of
7 Ramirez s sexual advances into a condition of Plaintiff s continued employment.

8 19. Defendant, its agents, servants and/or employees committed the acts against
9 URQUIZO alleged herein maliciously, fraudulently, and oppressively, with the wrongful
10 intention of injuring URQUIZO and in conscious disregard of, and with reckless indifference to,
11 her rights.

12 **FIRST CLAIM FOR RELIEF**
13 **(UNLAWFUL EMPLOYMENT DISCRIMINATION BASED ON SEX)**
14 **(TITLE VII, 42 U.S.C. § 2000e)**

15 20. Plaintiff hereby incorporates by reference paragraphs 1 through 19 of this
16 complaint as if fully set forth herein.

17 21. At all times relevant hereto, Plaintiff was an employee of Defendant.

18 22. Defendant unlawfully discriminated against Plaintiff URQUIZO based on her
19 sex, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-16.

20 23. Defendant treated Plaintiff URQUIZO less favorably than similarly situated
21 male employees, subjecting her to discrimination in work assignments and in other terms and
22 conditions of her employment in violation of Title VII.

23 24. As a direct and proximate result of the aforesaid discrimination based on
24 plaintiff s sex, Plaintiff URQUIZO has sustained a loss of earnings and other benefits.
25 URQUIZO has also suffered severe emotional distress manifested by feelings of humiliation,
26 embarrassment, anxiety, nervousness and other symptoms of stress.

27 25. Defendant s acts of discrimination against Plaintiff on the basis of sex were
28 wanton, willful and intentional with malicious and reckless disregard of the rights and

1 sensibilities of the Plaintiff.

2 WHEREFORE, Plaintiff URQUIZO requests relief as hereinafter provided.

3 **SECOND CLAIM FOR RELIEF**
 4 **(SEXUAL HARASSMENT)**
(TITLE VII, 42 U.S.C. § 2000e-2(a)(1))

5 26. Plaintiff hereby incorporates by reference paragraphs 1 through 25 of this
 6 complaint as if fully set forth herein.

7 27. Defendant violated Plaintiff s rights under Title VII by subjecting Plaintiff to
 8 unwelcome sexual comments and acts and permitting and encouraging a work environment in
 9 which plaintiff URQUIZO was subjected to ridicule, harassment, discrimination and intimidation
 10 because of her sex.

11 28. In addition, Defendant subjected Plaintiff to quid pro quo sexual harassment by
 12 threatening Plaintiff s job and or conditioning plaintiff s employment on the requirement that she
 13 remain under RAMIREZ s supervision.

14 29. Defendant FRESH EXPRESS INC. participated in creating and maintaining a
 15 hostile work environment and failed to investigate, stop or prevent the incidents of sexual
 16 harassment even after Plaintiff URQUIZO gave notice of such incidents. The sexual harassment
 17 was severe and pervasive such that it altered the terms and conditions of Plaintiff s employment.

18 30. As a direct and proximate result of the aforesaid harassment based on sex,
 19 Plaintiff URQUIZO has sustained injury in the form of severe emotional distress, humiliation,
 20 embarrassment, and mental anguish, all to her damage in amounts to be established at trial.

21 31. As described above, Defendant s aforesaid acts of harassment were wanton,
 22 willful and intentional with malicious and reckless disregard for the rights and sensibilities of
 23 Plaintiff URQUIZO.

24 WHEREFORE, Plaintiff URQUIZO requests relief as hereinafter provided.

25 **THIRD CLAIM FOR RELIEF**
 26 **UNLAWFUL RETALIATION**
(42 U.S.C. § 2000e-3(a))

27 32. Plaintiff hereby incorporates by reference paragraphs 1 through 31 of this
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1 complaint as if fully set forth herein.

2 33. In perpetrating the above described actions and omissions, Defendant FRESH
3 EXPRESS INC., as employer, its agents, servants and/or employees, engaged in unlawful
4 retaliation in violation of Title VII.

5 34. Plaintiff engaged in protected activity when she complained to her direct
6 supervisors, including RAMIREZ and others, about sexual harassment, retaliation and
7 discrimination.

8 35. Defendant, its agents, servants and/or employees retaliated against Plaintiff on the
9 basis of Plaintiff's complaints by taking adverse actions against her, including by creating a
10 hostile work environment, by imposing different terms, conditions, or privileges of employment
11 on Plaintiff, and by other retaliatory treatment and actions.

12 36. As a direct and proximate result of the aforesaid retaliation, Plaintiff URQUIZO
13 has sustained injury in the form of severe emotional distress, humiliation, embarrassment, and
14 mental anguish, all to the damage in amount to be established at trial.

15 37. As described above, Defendant's aforesaid acts of harassment were wanton,
16 willful and intentional with malicious and reckless disregard for the rights and sensibilities of
17 Plaintiff URQUIZO.

18 WHEREFORE, Plaintiff URQUIZO requests relief as hereinafter provided.

19 **FOURTH CLAIM FOR RELIEF**
20 **(UNLAWFUL EMPLOYMENT DISCRIMINATION BASED ON SEX)**
21 **(CALIFORNIA GOVERNMENT CODE § 12940(a))**

22 38. Plaintiff hereby incorporates by reference paragraphs 1 through 37 of this
23 complaint as if fully set forth herein.

24 39. At all times material hereto, Defendant owed Plaintiff URQUIZO the duty not
25 to discriminate against her in the terms and conditions of her employment on the basis of her
26 gender as mandated by the Fair Employment and Housing Act provided in California
27 Government Code section 12940(a).

28 40. In violation of the aforesaid duty, Defendant treated Plaintiff URQUIZO

adversely and differently from her male counterparts.

41. Defendant's decision to treat Plaintiff URQUIZO in the foregoing adverse and disparate manner was based upon Plaintiff's sex and was wanton, willful and intentional with malicious and reckless disregard of the rights and sensibilities of the Plaintiff.

42. As a direct and proximate result of the aforesaid discrimination based on sex, Plaintiff URQUIZO has sustained a loss of earnings and fringe benefits. She has also suffered emotional distress manifested by feelings of humiliation, embarrassment, anxiety, nervousness and other symptoms of stress.

43. In doing the acts herein alleged, defendant acted maliciously, and oppressively, with the wrongful intent of injuring Plaintiff URQUIZO, and acted with an improper and evil motive amounting to malice, in conscious disregard of plaintiff's rights. Because the acts taken towards her were carried out by defendant acting in a despicable, deliberate, and intentional manner in order to injure and damage her, plaintiff is entitled to recover punitive damages in an amount according to proof.

WHEREFORE, Plaintiff URQUIZO requests relief as hereinafter provided.

FIFTH CLAIM FOR RELIEF
RETALIATION FOR OPPOSING DISCRIMINATION
AND HARASSMENT (CAL. GOV. CODE §12940(h))

44. Plaintiff hereby incorporates by reference paragraphs 1 through 43 of this complaint as if fully set forth herein.

45. In perpetrating the above described actions and omissions, Defendant FRESH EXPRESS INC, as employer, its agents, servants and/or employees, engaged in unlawful retaliation in violation of the California Fair Employment and Housing Act (FEHA), Cal. Gov. Code § 12940(h).

46. Plaintiff engaged in protected activity by complaining to a supervisor, including Ramirez and others, regarding sexual harassment, retaliation, and/or discrimination.

47. Defendant, their agents, servants and/or employees retaliated against Plaintiff on the basis of her protected activity and took adverse actions against her including creating a

1 hostile work environment, by imposing different terms, conditions, or privileges of employment
2 on Plaintiff, and by other retaliatory treatment and actions.

3 48. Defendant FRESH EXPRESS INC. participated in creating and maintaining the
4 hostile work environment and failed to investigate, stop or prevent the incidents of sexual
5 harassment even after Plaintiff gave notice of such incidents.

6 49. As a direct and proximate result of the aforesaid retaliation Plaintiff URQUIZO
7 has sustained emotional distress, humiliation, embarrassment, and mental anguish, all to her
8 damage in amounts to be established at trial.

9 50. Defendant s aforesaid acts of retaliation were wanton, willful and intentional with
10 malicious and reckless disregard for the rights and sensibilities of Plaintiff.

11 WHEREFORE, Plaintiff requests relief as hereinafter provided.

12 **SIXTH CLAIM FOR RELIEF**
13 **AIDING AND ABETTING SEXUAL HARASSMENT**
14 **SEX DISCRIMINATION, AND RETALIATION**
15 **(CAL. GOV. CODE § 12940(i))**

16 51. Plaintiffs hereby incorporate by reference paragraphs 1 through 50 of this
17 complaint as if fully set forth herein.

18 52. In perpetrating the above described actions and omissions, Defendant FRESH
19 EXPRESS INC., as employer, its agents, servants and/or employees, engaged in a pattern and
20 practice of unlawful aiding and abetting of harassment, discrimination, and retaliation, in
21 violation of the California Fair Employment and Housing Act (FEHA), Cal. Gov. Code §
22 12940(i).

23 53. Defendant, its agents, servants and/or employees, attempted to and
24 did in fact, aid, abet, incite, compel and/or coerce their agents, servants and/or employees to
25 engage in unlawful sexual harassment, sex and/or gender discrimination, and retaliation against
26 the Plaintiff, as alleged above.

27 54. As a direct and proximate result of the aforesaid harassment based on sex,
28 plaintiff URQUIZO sustained injury in the form of severe emotional distress, humiliation,
embarrassment, and mental anguish, all to her damage in amounts to be established at trial.

55. Defendant's acts were wanton, willful and intentional with malicious and reckless disregard for the rights and sensibilities of Plaintiff.

WHEREFORE, Plaintiff URQUIZO requests relief as hereinafter provided.

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

56. Plaintiff hereby incorporates by reference paragraphs 1 through 55 of this complaint as if fully set forth herein.

57. Defendant subjected Plaintiff to unwelcome sexual advances, comments, and degrading and humiliating conduct as described above. Defendant's aforesaid unwelcome sexual comments and acts were so severe or pervasive that they created a continuing hostile work environment.

58. Defendant FRESH EXPRESS INC. failed to prevent sexual harassment by failing to investigate, stop or prevent the incidents of sexual harassment even after Plaintiff gave notice of such incidents.

59. As a direct and proximate result of the aforesaid harassment based on sex, plaintiff URQUIZO has sustained injury in the form of severe emotional distress, humiliation, embarrassment, and mental anguish, all to their damage in amounts to be established at trial.

WHEREFORE, Plaintiff URQUIZO requests relief as hereinafter provided.

EIGHTH CLAIM FOR RELIEF
FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT
(CAL. GOV. CODE § 12940(k))

60. Plaintiff hereby incorporates by reference paragraphs 1 through 59 of this complaint as if fully set forth herein.

61. In perpetrating the above described actions and omissions, Defendant FRESH EXPRESS INC., as employer, its agents, servants and/or employees, engaged in a pattern and practice of failing to prevent discrimination and harassment, in violation of the California Fair Employment and Housing Act (FEHA), Cal. Gov. Code § 12940(k).

62. In violation of Cal. Gov. Code § 12940(i), Defendant, their agents, servants

1 and/or employees, failed to take all reasonable steps necessary to prevent sex and/or gender
2 discrimination and sexual harassment from occurring, including, among other things, failure to
3 implement an effective policy against sexual harassment and/or an effective means of remedying
4 such harassment.

5 63. Defendant, its agents, servants and/or employees, knew or should have known
6 of Defendant s failure to take all reasonable steps necessary to prevent sex and/or gender
7 discrimination and sexual harassment from occurring. Defendant, its agents, servants and/or
8 employees did not take all reasonable steps to prevent retaliation from occurring, and failed to
9 take immediate and appropriate corrective action.

10 64. Defendant FRESH EXPRESS INC. participated in creating and maintaining the
11 hostile work environment and failed to investigate, stop or prevent the incidents of sexual
12 harassment even after Plaintiff gave notice of such incidents.

13 65. As a direct and proximate result of the aforesaid harassment based on sex,
14 Plaintiff URQUIZO has sustained injury in the form of severe emotional distress, humiliation,
15 embarrassment, and mental anguish, all to her damage in amounts to be established at trial.

16 66. Defendant s aforesaid acts of harassment were wanton, willful and intentional
17 with malicious and reckless disregard for the rights and sensibilities of Plaintiff.

18 WHEREFORE, Plaintiff requests relief as hereinafter provided.

19 **WHEREFORE, Plaintiff prays for judgment against Defendant as follows:**

20 A. For compensatory damages according to proof, including but not limited to lost
21 wages, damages for emotional distress, including but not limited to humiliation, grief, and
22 anguish;

23 B. For punitive damages;

24 C. For injunctive relief to enjoin Defendant from engaging in unlawful activity
25 alleged herein;

26 D. For declaratory relief;

27 E. For costs of suit;

1 F. For such other relief as the Court deems proper.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of
4 Civil Procedure.

5 DATED: October 15, 2002

CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

7 By: _____
8 MICHAEL MEUTER
9 Attorneys for Plaintiff