

1 Marisa Díaz, CSB No. 293072
E-mail: mdiaz@legalaidatwork.org
2 Christopher Ho, CSB No. 129845
E-mail: cho@legalaidatwork.org
3 LEGAL AID AT WORK
4 180 Montgomery Street, Suite 600
San Francisco, California 94104
5 Telephone: 415.864.8848
6 Facsimile: 415.593.0096

7 Beth W. Mora, CSB No. 208859
E-mail: bmora@moraclaw.com
8 MORA EMPLOYMENT LAW, APC
9 18 Crow Canyon Court, Suite 205
San Ramon, California 94583
10 Telephone: 925.820.8949
11 Facsimile: 925.820.0278

12 Attorneys for Plaintiff-Intervenor Ayesha Faiz

13
14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
16

17
18 U.S. EQUAL EMPLOYMENT
19 OPPORTUNITY COMMISSION,

20 Plaintiff,

21 AYESHA FAIZ,

22 Plaintiff-Intervenor,

23 v.

24 FIDELITY HOME ENERGY, INC., a
25 California Corporation; and DOES 1-50,

26 Defendants.
27
28

Case No. 4:19-cv-01231

**[PROPOSED] COMPLAINT IN
INTERVENTION FOR VIOLATIONS
OF:**

- (1) TITLE VII OF THE CIVIL RIGHTS ACT OF 1964;
- (2) 42 U.S.C. § 1981;
- (3) CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT;
- (4) STATE TORT LAW;
- (5) CALIFORNIA LABOR CODE

JURY TRIAL DEMANDED

INTRODUCTION

1
2 1. This is an action for relief from violations by Defendant Fidelity Home Energy,
3 Inc. (“Defendant Fidelity” or “Fidelity”), and Does 1-50 (collectively, “Defendants”), of the right
4 of Plaintiff-Intervenor Ayesha Faiz (“Plaintiff-Intervenor”) to be free from unlawful employment
5 discrimination on the basis of her national origin and race, Middle Eastern.

6 2. Defendants, as Plaintiff-Intervenor’s former employers, subjected Plaintiff-
7 Intervenor to the egregious and unlawful employment practice of forcing her, as a condition of her
8 employment, to participate in and enforce a company policy and/or practice of refusing services
9 to potential customers who were perceived to be of Middle Eastern or Indian national origin or
10 race (“Policy”).

11 3. Defendants’ discriminatory Policy against those customers permeated all of
12 Plaintiff-Intervenor’s work. On a regular basis, she was required to refuse services to potential
13 customers of her own national origin and race, Middle Eastern, or instruct others to do so
14 pursuant to Defendants’ Policy. As a person of Middle Eastern descent, this caused Plaintiff-
15 Intervenor significant distress, anxiety, and shame.

16 4. Plaintiff-Intervenor witnessed Fidelity employees of all ranks, including the CEO
17 and President, openly engage in and/or openly allow this Policy to thrive. The Policy continued
18 even after Plaintiff-Intervenor and at least one other employee expressed their opposition to it.

19 5. The consequent hostile work environment, discriminatory demotion, and
20 retaliation at the hands of Defendants forced Plaintiff-Intervenor to resign from her position.

21
22 **JURISDICTION AND VENUE**

23 6. This Court has jurisdiction over the subject matter and parties pursuant to 28
24 U.S.C. § 1331, as this case involves questions of federal law. This Court also has jurisdiction
25 pursuant to 28 U.S.C. § 1343 because Plaintiff-Intervenor seeks damages for violation of her civil
26 rights.

27 7. This Court has supplemental jurisdiction over the related state law claims pursuant
28 to 28 U.S.C. § 1367(a) because those claims form part of the same case or controversy under

1 Article III of the United States Constitution. Plaintiff-Intervenor’s state law claims share all
2 common operative facts with her federal law claims, and the parties are identical. Resolving
3 Plaintiff-Intervenor’s federal and state claims in a single action serves the interests of judicial
4 economy, convenience, consistency, and fairness to the parties.

5 8. Venue is proper in, and Defendants are subject to the personal jurisdiction of, this
6 Court because Defendants maintain facilities and business operations in this District, and all or
7 most of the events giving rise to this action occurred in this District. 28 U.S.C. § 1391(b); 42
8 U.S.C. § 2000e-5(f)(3).

9 9. Pursuant to Local Rule 3-2(d) of this District, assignment to the Oakland Division
10 of this Court is proper because all or most of the events giving rise to Plaintiff-Intervenor’s claims
11 occurred in Alameda County.

12 NATURE OF THIS ACTION

13
14 10. This is an action brought pursuant to Title VII of the Civil Rights Act of 1964, 42
15 U.S.C. § 2000e et seq., *as amended*, (“Title VII”), 42 U.S.C. § 1981, and California statutory and
16 common law.

17 11. Plaintiff-Intervenor seeks injunctive and declaratory relief, compensatory damages,
18 punitive damages, liquidated damages, unpaid wages and penalties, and her reasonable attorneys’
19 fees and litigation expenses as remedies for Defendants’ violations of her Federal and California
20 statutory as well as common law rights.

21 12. Through this Complaint, Plaintiff-Intervenor intervenes as of right in the action
22 commenced in this Court on March 7, 2019 against Defendant by the U.S. Equal Employment
23 Opportunity Commission (“EEOC”), styled *U.S. Equal Employment Opportunity Commission v.*
24 *Fidelity Home Energy, Inc.*, Case No. 4:19-cv-01231. 42 U.S.C. § 2000e-5(f)(1).

25 PARTIES

26
27 13. Plaintiff-Intervenor Ayesha Faiz is a woman of Afghan descent. She worked as a
28 Representative Services Supervisor for Defendant Fidelity from approximately November 12,

1 2015 until on or around December 3, 2015. Thereafter, Plaintiff-Intervenor worked for Defendant
2 Fidelity as a “Confirmer” until her resignation on December 7, 2015.

3 14. Upon information and belief, Defendant Fidelity is a California corporation with
4 its principal place of business in San Leandro, California.

5 15. Plaintiff-Intervenor is informed and believes, and thereon alleges, that Defendant
6 Fidelity at all times relevant herein was engaged in the business of selling energy efficiency
7 products, such as solar panels, and installing these products in homes.

8 16. At all times relevant herein, Defendant Fidelity had at least fifteen employees. It is
9 therefore an “employer” within the meaning of Title VII.

10 17. Defendant Fidelity is also an “employer” within the meaning of the California Fair
11 Employment and Housing Act (“FEHA”).

12 18. Plaintiff-Intervenor is informed and believes, and thereon alleges, that at all times
13 relevant herein each of the Defendant Does 1-50 were responsible in some manner for the
14 occurrences and injuries alleged in this complaint. Their names and capacities are currently
15 unknown to Plaintiff-Intervenor. Plaintiff-Intervenor will amend this Complaint to show such true
16 names and capacities when the same have been ascertained.

17
18 **STATEMENT OF FACTS**

19 19. At all times material to this action, Plaintiff-Intervenor was employed by
20 Defendant Fidelity at its San Leandro, California office.

21 20. Defendant Fidelity hired Plaintiff-Intervenor as a Representative Services
22 Supervisor on or around November 12, 2015.

23 21. As a Representative Services Supervisor, Plaintiff-Intervenor worked in Fidelity’s
24 Representative Services Department, also known as the “Confirmer Room.” Plaintiff-Intervenor’s
25 job responsibilities included overseeing the work of Fidelity employees who worked in the “Hot
26 Data” room and took inbound calls from potential customers, and the work of “Confirmers,”
27 whose job was to confirm appointments for Fidelity employees to visit potential customers’
28

1 homes to sell and/or install Fidelity's products. Plaintiff-Intervenor, along with the other
2 supervisors in her department, also confirmed appointments.

3 22. Calls with potential customers would be made by Telemarketer Services
4 Representatives (outgoing calls) or received by employees in the "Hot Data Room" (incoming
5 calls). These employees would then create customer appointments, or "leads," based on those
6 calls. Plaintiff-Intervenor and her supervisor peers in the Confirmer Room would, in turn, follow
7 up on these leads and confirm appointments with eligible customers.

8 23. Plaintiff-Intervenor's supervisory duties also included occasionally filling in for a
9 supervisor, Daryl Smith, to oversee Telemarketer Services Representatives as they called
10 potential customers.

11 24. Leata Tufono, another Representative Services Supervisor, trained Plaintiff-
12 Intervenor during her first week of employment. During this training period, Ms. Tufono
13 informed Plaintiff-Intervenor that Fidelity had a policy and/or practice of not providing services
14 to potential customers of perceived Middle Eastern or Indian descent (the "Policy"). Ms. Tufono
15 instructed Plaintiff-Intervenor to avoid confirming appointments with these customers by telling
16 them there were no available appointments or that Fidelity would mail them an informational
17 packet. Neither explanation was true.

18 25. During this training, Ms. Tufono also demonstrated one way she carried out
19 Fidelity's Policy. As Ms. Tufono and Plaintiff-Intervenor sat side by side reviewing Fidelity's
20 database of customer appointments to be confirmed, Ms. Tufono pointed out a name she believed
21 indicated that the customer was of Middle Eastern descent. Ms. Tufono proceeded to type that
22 name into a Google search browser and search for images. Based on the images of individuals she
23 saw in the search results, Ms. Tufono concluded that the name was a "Middle Eastern" name and
24 that, therefore, she would not "run it" (i.e., confirm the appointment).

25 26. During her training period, Plaintiff-Intervenor asked Ms. Tufono why Fidelity had
26 the Policy. Ms. Tufono casually answered that she did not know.

27 27. Ms. Tufono also informed Plaintiff-Intervenor during her training that Defendant
28 Fidelity's CEO, Bradley Smith ("CEO Smith"), had a short temper and did not like to be

1 disturbed by employees.

2 28. Throughout her employment, Plaintiff-Intervenor observed employees abide by
3 Fidelity's Policy while speaking with potential customers. For example, on a regular basis,
4 Plaintiff-Intervenor overheard employees telling potential customers who were believed to be of
5 Middle Eastern or Indian descent that Fidelity had no available appointments and/or that Fidelity
6 would send the customer information via mail, neither of which was true. On several occasions,
7 Plaintiff-Intervenor observed Fidelity employees cancel already-confirmed appointments with
8 customers of perceived Middle Eastern or Indian descent based on a non-existent scheduling
9 conflict.

10 29. Plaintiff-Intervenor also saw database and handwritten notes that further
11 demonstrated open and widespread compliance with the Policy. For example, on a regular basis,
12 Plaintiff-Intervenor saw a post-it note on an employee's computer in the Hot Data room that read
13 "NO INDIANS", or words to that effect, in all capital letters.

14 30. On an ongoing basis, Plaintiff-Intervenor observed notes left by Fidelity
15 employees in database entries for customers believed to be of Middle Eastern or Indian descent
16 that read "Not Qualified", "We Won't Run This", "Indian Name! NQ", and the like.

17 31. While conducting follow-up calls with customer leads, Plaintiff-Intervenor came
18 across a field in a Fidelity database that allowed Fidelity employees to "flag" a database entry
19 based on "ethnicity." A "flag" in a database entry signaled that employees were not to follow up
20 or otherwise provide services to the customer. Plaintiff-Intervenor clicked on this "ethnicity" field
21 and discovered a large number of database entries that had been flagged. All of the entries
22 Plaintiff-Intervenor reviewed corresponded to customers with names that could have been
23 perceived to be Middle Eastern or Indian.

24 32. As part of her duties as a Representative Services Supervisor, Plaintiff-Intervenor
25 was required to enforce Fidelity's Policy. For example, on multiple occasions, Plaintiff-Intervenor
26 had to instruct other Fidelity employees to not schedule appointments for customers of perceived
27 Middle Eastern or Indian descent or to cancel an already scheduled appointment for these
28 customers. Per the Policy, Plaintiff-Intervenor was required to tell employees in the latter scenario

1 that they should falsely tell the customer that there were no available appointments and/or that
2 Defendant Fidelity would send information via mail.

3 33. On at least two occasions, pursuant to the Policy, Plaintiff-Intervenor herself had
4 to cancel customers' appointments because of their perceived Indian or Middle Eastern descent.
5 On one occasion, a customer called into the Representative Services Department to confirm his
6 appointment for that same day. When Plaintiff-Intervenor consulted Ms. Tufono about this
7 customer's appointment, Ms. Tufono reiterated that Fidelity did not "do appointments" with
8 Middle Eastern and Indian customers. Based on this, Plaintiff-Intervenor was forced to cancel the
9 customer's appointment. On another occasion, Ms. Tufono asked Plaintiff-Intervenor to call a
10 customer to cancel his appointment because Fidelity believed the individual to be of Middle
11 Eastern descent. On both occasions, Plaintiff-Intervenor was forced to falsely tell the customers
12 that Fidelity either had no available appointments or that there had been a scheduling conflict, and
13 that Fidelity would send additional information through the mail.

14 34. Throughout her employment at Fidelity, Plaintiff-Intervenor witnessed the Policy
15 being applied to potential customers who had similar or the same names as Plaintiff-Intervenor's
16 Middle Eastern family and Middle Eastern community members.

17 35. Plaintiff-Intervenor expressed her opposition to the Policy to various Fidelity
18 supervisors throughout her employment, including to her direct supervisor, Darlene Mills, who
19 was Fidelity's Call Center Supervisor. Despite Plaintiff-Intervenor's repeated expressions of
20 disapproval and opposition to Defendant's Policy, no action was taken to remedy the matter or
21 explain the Policy. To the contrary, Plaintiff-Intervenor was advised by these individuals that it
22 was a long-standing company policy and/or practice.

23 36. Plaintiff-Intervenor also expressed her concerns about the Policy to Telemarketer
24 Services Representatives. Some of these employees complained to Plaintiff-Intervenor that the
25 Policy undermined their ability to meet their customer lead quotas.

26 37. Plaintiff-Intervenor is informed and believes that in or around the latter half of
27 November 2015, Fidelity fired Bruchell Fox, a Telemarketer Services Representative, for failing
28 to meet her quotas. Upon Ms. Fox's firing, she complained to CEO Smith and others about the

1 Policy, stating that it was discriminatory and that it caused her to fail to meet her quotas since it
2 prohibited her from creating leads for interested customers of perceived Middle Eastern or Indian
3 descent.

4 38. Sometime during the second week of Plaintiff-Intervenor's employment, Daryl
5 Smith approached Plaintiff-Intervenor while she sat in the Representative Services Department
6 alongside Ms. Tufono and Mr. Keyes. Mr. Smith asked Plaintiff-Intervenor to assist him in
7 confirming an appointment for a Spanish-speaking customer. Plaintiff-Intervenor responded that
8 she did not speak Spanish.

9 39. Plaintiff-Intervenor then informed Ms. Tufono and Mr. Keyes that she was of
10 Middle Eastern descent. Both employees responded they had thought she was "Mexican."

11 40. Thereafter, Plaintiff-Intervenor began to openly share her ethnicity with other
12 Fidelity supervisors and staff.

13 41. Plaintiff-Intervenor is informed and believes that in or around November 28, 2015,
14 CEO Smith informed Fidelity staff that they could now schedule appointments with customers of
15 Middle Eastern and Indian descent.

16 42. Despite CEO Smith's announcement, however, the Policy remained in effect.
17 Plaintiff-Intervenor continued to observe other Fidelity supervisors and employees openly
18 implement the Policy. She also continued to observe employee database and handwritten notes
19 indicating Fidelity employees still abided by the Policy.

20 43. Plaintiff-Intervenor complained to other Fidelity supervisors about the continued
21 existence of the Policy. As before, these complaints were ignored.

22 44. On or around December 3, 2015, CEO Smith publicly demoted Plaintiff-Intervenor
23 during a meeting with other supervisors. CEO Smith informed Plaintiff-Intervenor that she was
24 no longer a Representative Services Supervisor and, instead, held the position of "Confirmer." He
25 also stated to Plaintiff-Intervenor that Fidelity's Hiring Manager, Scott Johnson-Temores, had
26 told Plaintiff-Intervenor that she had been hired as a supervisor by mistake.

27 45. This public demotion humiliated and confused Plaintiff-Intervenor.

28 46. Plaintiff-Intervenor never received the bonus she was owed pursuant to the "Hot

1 Data/Rep Services Supervisor Pay Plan.”

2 47. On or around December 5, 2015, Plaintiff-Intervenor was in the Hot Data room
3 while CEO Smith conducted a role-playing exercise with a Hot Data employee while she sat at
4 her computer. The post-it note that read “NO INDIANS” was prominently displayed on that
5 employee’s computer during this exercise. Despite this post-it note being in plain view of Mr.
6 Smith, Plaintiff-Intervenor, and the other employees who were present, Mr. Smith did not take it
7 down or mention anything about it.

8 48. On or around that same day, Plaintiff-Intervenor again complained about the
9 Policy to Hot Data Supervisor Thomas Keyes. Mr. Keyes made no indication that he would take
10 any action to try to end the Policy.

11 49. As someone of Middle Eastern descent herself, Plaintiff-Intervenor was deeply
12 offended by Defendant’s Policy. Its existence, the office’s open acceptance of it, and Plaintiff-
13 Intervenor’s forced participation in it as a condition of her employment caused her significant
14 distress and anxiety. Plaintiff-Intervenor felt ashamed and degraded that she had to enforce and
15 participate in a policy and/or practice that overtly discriminated against customers of her own
16 national origin and race.

17 50. On or around December 7, 2015, Plaintiff-Intervenor resigned from her position by
18 sending a text message to Ms. Tufono. In this message, Plaintiff-Intervenor again expressed her
19 opposition to the Policy and stated that she felt forced to resign because of it. Plaintiff-Intervenor
20 stated that she had “been really uncomfortable working there since knowing the company refuses
21 to service middle easterners [sic] or Indians . . . Just imagine being black for example and going
22 to work somewhere but they say, ‘no blacks.’ It makes me sick to know we refuse to service a
23 particular ethnicity of people. We literally go out of our way to single them out.”

24
25 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

26 51. Plaintiff-Intervenor timely filed charges with the United States Equal Employment
27 Opportunity Commission, which were cross-filed with the California Department of Fair
28 Employment and Housing.

1 database and hand-written notes indicating that Fidelity would not provide services to Middle
2 Eastern and Indian individuals; and herself had to participate in and enforce the Policy.

3 58. Plaintiff-Intervenor's multiple complaints to Defendants' supervisory employees
4 did not cause Defendants to rescind the Policy.

5 59. The Policy and Defendants' actions in relation thereto created a hostile work
6 environment for Plaintiff-Intervenor because of her national origin, Middle Eastern.

7 60. Plaintiff-Intervenor found her work environment to be hostile and heavily charged
8 with national origin discrimination.

9 61. A reasonable person of Middle Eastern national origin in Plaintiff-Intervenor's
10 position would have found the work environment to be hostile and polluted by national origin
11 discrimination.

12 62. Management level employees knew, or should have known, of the Policy and
13 Fidelity employees' conduct in relation thereto.

14 63. Defendants did not exercise reasonable care to prevent the creation of a hostile
15 work environment charged with national origin discrimination, and did not exercise reasonable
16 care to rescind the Policy, even after Plaintiff-Intervenor's repeated opposition to it.

17 64. As a direct, legal and proximate result of this discrimination, Plaintiff-Intervenor
18 has sustained economic and emotional injuries, resulting in damages in an amount to be proven at
19 trial.

20 65. Defendants' unlawful actions were intentional, willful, malicious, and/or done with
21 reckless disregard to Plaintiff-Intervenor's right to be free from discrimination based on national
22 origin.

23 66. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.
24

25 **SECOND CLAIM FOR RELIEF**

26 **[National Origin Discrimination (Disparate Treatment) in Violation of Title VII of the Civil
27 Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a)]**

28 67. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
allegations contained in paragraphs 1 – 66, above.

1 68. Defendants discriminated against Plaintiff-Intervenor by demoting her on the basis
2 of her national origin, Middle Eastern.

3 69. Plaintiff-Intervenor's national origin was the determining factor and/or a
4 motivating factor in Defendants' adverse employment action.

5 70. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor
6 has sustained economic and emotional injuries, resulting in damages in an amount to be proven at
7 trial.

8 71. Defendants' unlawful actions were intentional, willful, malicious, and/or done
9 with reckless disregard to Plaintiff-Intervenor's right to be free from discrimination based on
10 national origin.

11 72. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

12
13 **THIRD CLAIM FOR RELIEF**

14 **[Retaliation in Violation of Title VII of the Civil Rights Act of 1964, as amended,
15 42 U.S.C. § 2000e-3(a)]**

16 73. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
17 allegations contained in paragraphs 1 – 72, above.

18 74. Section 704(a) of Title VII of the Civil Rights Act of 1964, as amended, prohibits
19 employers from discriminating against an employee "because [she] has opposed any practice
20 made an unlawful employment practice by this subchapter." 42 U.S.C. § 2000e-3(a).

21 75. Plaintiff-Intervenor engaged in protected activity by making numerous complaints
22 to Defendants' agents and employees about Defendants' employment practice that required
23 Plaintiff-Intervenor, as a term and condition of her employment, to enforce and engage in the
24 Policy of refusing services to customers based on their perceived national origin, Middle Eastern
25 or Indian.

26 76. Plaintiff-Intervenor reasonably believed that this term and condition of her
27 employment was unlawful.

28 77. As a result of Plaintiff-Intervenor's complaints, Defendants, their agents and/or
employees took materially adverse actions against Plaintiff-Intervenor, including, but not limited

1 to, demoting her in front of her supervisor peers and constructively discharging her from her
2 employment.

3 78. Defendants', their agents' and/or employees' retaliatory actions would deter a
4 reasonable employee from engaging in protected activity under Title VII.

5 79. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor
6 has sustained economic and emotional injuries, resulting in damages in an amount to be proven at
7 trial.

8 80. Defendants' unlawful actions were intentional, willful, malicious, and/or done
9 with reckless disregard to Plaintiff-Intervenor's right to be free from retaliation.

10 81. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

11
12 **FOURTH CLAIM FOR RELIEF**

13 **[Constructive Discharge in Violation of Title VII of the Civil Rights Act of 1964,**
14 **as amended, 42 U.S.C. § 2000e-2(a)]**

15 82. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
16 allegations contained in paragraphs 1 through 81, above.

17 83. Defendants, and their agents and employees, created discriminatory and
18 intolerable working conditions for Plaintiff-Intervenor.

19 84. A reasonable person in Plaintiff-Intervenor's position would have felt compelled to
20 resign under these conditions.

21 85. Plaintiff-Intervenor did in fact resign from her position because of these
22 conditions.

23 86. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor
24 has sustained economic and emotional injuries, resulting in damages in an amount to be proven at
25 trial.

26 87. Defendants' unlawful actions were intentional, willful, malicious, and/or done
27 with reckless disregard to Plaintiff-Intervenor's right to be free from discrimination based on
28 national origin.

88. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

FIFTH CLAIM FOR RELIEF

[Hostile Work Environment Based on Race in Violation of 42 U.S.C. § 1981]

89. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 88, above.

90. 42 U.S.C. § 1981(a) provides that “[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.”

91. “‘Make and enforce contracts’ includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.” 42 U.S.C. § 1981(b).

92. Plaintiff-Intervenor is a “person within the jurisdiction of the United States.”

93. Defendants subjected Plaintiff-Intervenor to unwelcome conduct by forcing her, as a term and condition of her employment, to participate in and enforce their Policy of refusing services to potential customers based on their actual or perceived Middle Eastern or Indian race.

94. This conduct was severe and pervasive. On a regular, and sometimes daily, basis, Plaintiff-Intervenor witnessed her coworkers openly abide by the Policy; observed coworkers’ database and hand-written notes indicating that Fidelity would not provide services to Middle Eastern and Indian individuals; and herself had to participate in and enforce the Policy.

95. Plaintiff-Intervenor’s multiple complaints to Defendants’ supervisory employees did not cause Defendants to rescind the Policy.

96. The Policy and Defendants’ actions in relation thereto created a hostile work environment for Plaintiff-Intervenor because of her race, Middle Eastern.

97. Plaintiff-Intervenor found her work environment to be hostile and heavily charged with race discrimination.

98. A reasonable person of Middle Eastern race in Plaintiff-Intervenor’s position would have found the work environment to be hostile and polluted by race discrimination.

1 99. Management level employees knew, or should have known, of the Policy and
2 Fidelity employees' conduct in relation thereto.

3 100. Defendants did not exercise reasonable care to prevent the creation of a hostile
4 work environment charged with race discrimination, and did not exercise reasonable care to
5 rescind the Policy, even after Plaintiff-Intervenor's repeated opposition to it.

6 101. As a direct, legal and proximate result of this discrimination, Plaintiff-Intervenor
7 has sustained economic and emotional injuries, resulting in damages in an amount to be proven at
8 trial.

9 102. Defendants' unlawful actions were intentional, willful, malicious, and/or done with
10 reckless disregard to Plaintiff-Intervenor's right to be free from discrimination based on race.

11 103. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

12

13 **SIXTH CLAIM FOR RELIEF**

14 **[Race Discrimination (Disparate Treatment) in Violation of 42 U.S.C. § 1981]**

15 104. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
16 allegations contained in paragraphs 1 – 103, above.

17 105. Defendants discriminated against Plaintiff-Intervenor by demoting her on the basis
18 of her race, Middle Eastern.

19 106. Plaintiff-Intervenor's race was the determining factor and/or a motivating factor in
20 Defendants' adverse employment action.

21 107. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor
22 has sustained economic and emotional injuries, resulting in damages in an amount to be proven at
23 trial.

24 108. Defendants' unlawful actions were intentional, willful, malicious, and/or done with
25 reckless disregard to Plaintiff-Intervenor's right to be free from discrimination based on race.

26 109. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

27 ///

28 ///

SEVENTH CLAIM FOR RELIEF

[Retaliation in Violation of 42 U.S.C. § 1981]

1
2
3 110. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
4 allegations contained in paragraphs 1 – 109, above.

5 111. Plaintiff-Intervenor made numerous complaints to Defendants’ agents and
6 employees about the employment practice that required Plaintiff-Intervenor, as a term and
7 condition of her employment, to enforce and engage in the Policy of refusing services to
8 customers based on their race, Middle Eastern or Indian.

9 112. Plaintiff-Intervenor reasonably believed this term and condition of her employment
10 to be unlawful.

11 113. As a result of Plaintiff-Intervenor’s complaints, Defendants’ agents and employees
12 took materially adverse actions against Plaintiff-Intervenor, including, but not limited to,
13 demoting her in front of her supervisor peers and constructively discharging her from her
14 employment.

15 114. Defendants’ retaliatory actions would deter a reasonable employee from
16 engaging in protected activity under § 1981.

17 115. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor
18 has sustained economic and emotional injuries, resulting in damages in an amount to be proven at
19 trial.

20 116. Defendants’ unlawful actions were intentional, willful, malicious, and/or
21 Done with reckless disregard to Plaintiff-Intervenor’s right to be free from retaliation.

22 117. Plaintiff-Intervenor is entitled to her reasonable attorneys’ fees and costs of suit.
23

EIGHTH CLAIM FOR RELIEF

[Constructive Discharge in Violation of 42 U.S.C. § 1981]

24
25
26 118. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
27 allegations contained in paragraphs 1 – 117, above.

28 119. Defendants, and their agents and employees, created discriminatory and

1 intolerable working conditions.

2 120. A reasonable person in Plaintiff-Intervenor’s position would have felt compelled to
3 resign under these conditions.

4 121. Plaintiff-Intervenor did in fact resign from her position because of these
5 conditions.

6 122. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor
7 has sustained economic and emotional injuries, resulting in damages in an amount to be proven at
8 trial.

9 123. Defendants’ unlawful actions were intentional, willful, malicious, and/or
10 done with reckless disregard to Plaintiff-Intervenor’s right to be free from discrimination based on
11 race.

12 124. Plaintiff-Intervenor is entitled to her reasonable attorneys’ fees and costs of suit.

13
14 **NINTH CLAIM FOR RELIEF**

15 **[Hostile Work Environment Based on National Origin in Violation of the FEHA,**
16 **Cal. Gov’t Code § 12940]**

17 125. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
18 allegations contained in paragraphs 1 – 124, above.

19 126. The FEHA makes it unlawful “[f]or an employer, because of the . . . national
20 origin . . . of any person, to refuse to hire or employ the person or to refuse to select the person for
21 a training program leading to employment, or to bar or to discharge the person from employment
22 or from a training program leading to employment, or to discriminate against the person in
23 compensation or in terms, conditions, or privileges of employment.” Cal. Gov’t Code § 12940(a).

24 127. The FEHA also makes it unlawful for an employer, “because of . . . national
25 origin, . . . to harass an employee[.]” Cal. Gov’t Code § 12940(j).

26 128. Defendants subjected Plaintiff-Intervenor to unwelcome conduct by forcing her, as
27 a term and condition of her employment, to participate in and enforce their Policy of refusing
28 services to potential customers based on their actual or perceived Middle Eastern or Indian
national origin.

1 139. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
2 allegations contained in paragraphs 1 – 138, above.

3 140. The FEHA makes it unlawful “[f]or an employer, because of the . . .
4 national origin . . . of any person, to refuse to hire or employ the person or to refuse to select the
5 person for a training program leading to employment, or to bar or to discharge the person from
6 employment or from a training program leading to employment, or to discriminate against the
7 person in compensation or in terms, conditions, or privileges of employment.” Cal. Gov’t Code §
8 12940(a).

9 141. Defendants discriminated against Plaintiff-Intervenor by demoting her on the basis
10 of her national origin, Middle Eastern.

11 142. Plaintiff-Intervenor’s national origin was the determining factor and/or a
12 motivating factor in Defendants’ adverse employment action.

13 143. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor
14 has sustained economic and emotional injuries, resulting in damages in an amount to be proven at
15 trial.

16 144. Defendants’ unlawful actions were intentional, willful, malicious, and/or
17 done with reckless disregard to Plaintiff-Intervenor’s right to be free from discrimination based on
18 national origin.

19 145. Plaintiff-Intervenor is entitled to reasonable attorneys’ fees and costs of suit.
20

21 **ELEVENTH CLAIM FOR RELIEF**

22 **[Retaliation in Violation of the FEHA, Cal. Gov’t Code § 12940(h)]**

23 146. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
24 allegations contained in paragraphs 1 – 145, above.

25 147. It is unlawful under the FEHA “[f]or any employer . . . or person to
26 discharge, expel, or otherwise discriminate against any person because the person has opposed
27 any practices forbidden under this part or because the person has filed a complaint, testified, or
28 assisted in any proceeding under this part.” Cal. Gov’t Code § 12940(h).

1 148. Plaintiff-Intervenor engaged in protected activity by making numerous complaints
2 to Defendants' agents and employees about the employment practice that required Plaintiff-
3 Intervenor, as a term and condition of her employment, to enforce and engage in the Policy of
4 refusing services to customers based on their perceived national origin, Middle Eastern or Indian.

5 149. Plaintiff-Intervenor reasonably believed this term and condition of her employment
6 to be unlawful.

7 150. As a result of Plaintiff-Intervenor's complaints, Defendants, their agents, and/or
8 employees took materially adverse actions against Plaintiff-Intervenor, including, but not limited
9 to, demoting her in front of her supervisor peers and constructively discharging her from her
10 employment.

11 151. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor
12 has sustained economic and emotional injuries, resulting in damages in an amount to be proven at
13 trial.

14 152. Defendants' unlawful actions were intentional, willful, malicious, and/or done with
15 reckless disregard to Plaintiff-Intervenor's right to be free from retaliation.

16 153. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

17
18 **TWELFTH CLAIM FOR RELIEF**

19 **[Failure to Prevent Discrimination and Harassment in Violation of the FEHA,**
20 **Cal. Gov't Code § 12940(k)]**

21 154. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
22 allegations contained in paragraphs 1 – 153, above.

23 155. Under the FEHA, it is unlawful “[f]or an employer . . . to fail to take all
24 reasonable steps necessary to prevent discrimination and harassment from occurring.” Cal. Gov't
25 Code § 12940(k).

26 156. Defendants, their agents, and/or employees failed to take all reasonable steps
27 necessary to prevent discrimination and a hostile work environment based on national origin,
28 including, but not limited to, failure to investigate Plaintiff-Intervenor's complaints regarding the
Policy, failure to rescind the Policy, and failure to remedy Plaintiff-Intervenor's unlawful

1 demotion.

2 157. Instead, Defendants created the Policy and participated in maintaining a
3 discriminatory and hostile work environment. Defendants failed to effectively investigate, stop,
4 correct, or prevent the unlawful Policy and related conditions, even after Plaintiff-Intervenor and
5 at least one other Fidelity employee complained of such matters.

6 158. As a direct, legal and proximate result of Defendants' failure to take all
7 reasonable steps necessary to prevent discrimination and harassment from occurring, Plaintiff-
8 Intervenor has sustained economic and emotional injuries, resulting in damages in an amount to
9 be proven at trial.

10 159. Defendants' unlawful actions were intentional, willful, malicious, and/or done with
11 reckless disregard to Plaintiff-Intervenor's right to be free from discrimination based on national
12 origin.

13 160. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.
14

15 **THIRTEENTH CLAIM FOR RELIEF**

16 **[Constructive Discharge in Violation of the FEHA, Cal. Gov't Code § 12940(a)]**

17 161. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
18 allegations contained in paragraphs 1 through 160, above.

19 162. An employee's resignation becomes a constructive discharge under the FEHA
20 when the employer either intentionally created or knowingly permitted working conditions that
21 were so intolerable or aggravated at the time of the employee's resignation that a reasonable
22 person in the employee's position would be compelled to resign.

23 163. Defendants, and their agents and supervisory employees, intentionally created
24 and/or knowingly permitted intolerable working conditions.

25 164. A reasonable person in Plaintiff-Intervenor's position would have felt compelled to
26 resign under these conditions.

27 165. Plaintiff-Intervenor did in fact resign from her position because of these
28 conditions.

1 practice that discriminates against individuals on the basis of their actual or perceived national
2 origin.

3 174. Defendants, and their agents and supervisory employees, intentionally created
4 and/or knowingly permitted intolerable working conditions.

5 175. Defendants, and their agents and employees, required Plaintiff-Intervenor to
6 participate in and enforce the Policy by directly or indirectly refusing services to potential Fidelity
7 customers on the basis of their actual or perceived national origin, Middle Eastern or Indian, in
8 violation of California fundamental public policy, Cal. Civ. Code § 51.

9 176. Defendants, and their agents and employees, subjected Plaintiff-Intervenor to
10 intolerable employment conditions that violated fundamental public policy under Cal. Gov't Code
11 § 12940(a). Namely, Defendants forced Plaintiff-Intervenor to participate in and enforce, as a
12 term and condition of her employment, the Policy. This Policy discriminated against customers on
13 the basis of their national origin, Middle Eastern or Indian. As a person of Middle Eastern
14 descent, Plaintiff-Intervenor shared the national origin of many of these customers.

15 177. A reasonable person in Plaintiff-Intervenor's position would have felt compelled to
16 resign under these conditions.

17 178. Plaintiff-Intervenor did in fact resign from her position because of these
18 conditions.

19 179. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor
20 has sustained economic and emotional injuries, resulting in damages in an amount to be proven at
21 trial.

22 180. Defendants' unlawful actions were intentional, willful, malicious, and/or done with
23 reckless disregard to Plaintiff-Intervenor's right to be free from discrimination based on national
24 origin.

25 181. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.
26

27 **FIFTEENTH CLAIM FOR RELIEF**

28 **[Wrongful Demotion in Violation of California Public Policy]**

1 182. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
2 allegations contained in paragraphs 1 through 181, above.

3 183. It is a violation of the California public policy embodied in Cal. Civ. Code § 51
4 and Cal. Gov't Code § 12940 for an employer to take an adverse employment action, including
5 demotion, against an employee based on that employee's national origin or because that employee
6 has complained of and opposed being required to participate in and enforce a policy and/or
7 practice of refusing to provide services to customers based on their actual or perceived national
8 origin.

9 184. Defendant demoted Plaintiff-Intervenor on the basis of her national origin, Middle
10 Eastern.

11 185. Plaintiff-Intervenor's national origin was the determining factor and/or a
12 motivating factor in Defendant's adverse employment action.

13 186. Plaintiff-Intervenor made numerous complaints to Defendants' agents and
14 employees about the employment practice that required Plaintiff-Intervenor, as a term and
15 condition of her employment, to enforce and engage in the Policy of refusing services to
16 customers based on their perceived national origin, Middle Eastern or Indian.

17 187. As a result of Plaintiff-Intervenor's complaints, Defendants, their agents, and/or
18 employees took materially adverse actions against Plaintiff-Intervenor, including, but not limited
19 to, demoting her in front of her supervisor peers.

20 188. As a direct, legal and proximate result of the discrimination, Plaintiff-Intervenor
21 has sustained economic and emotional injuries, resulting in damages in an amount to be proven at
22 trial.

23 189. Defendants' unlawful actions were intentional, willful, malicious, and/or done with
24 reckless disregard to Plaintiff-Intervenor's right to be free from retaliation.

25 190. Plaintiff-Intervenor is entitled to her reasonable attorneys' fees and costs of suit.

26
27 **SIXTEENTH CLAIM FOR RELIEF**

28 **[Immediate Payment of Wages and Waiting Time Penalties
Pursuant to California Labor Code §§ 201-203]**

1 191. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
2 allegations contained in paragraphs 1 – 190, above.

3 192. California Labor Code §§ 201 and 202 mandate that an employer pay its
4 employees all earned wages immediately upon discharge or within seventy-two (72) hours of the
5 employee’s resignation.

6 193. California Labor Code § 203 authorizes an employee to recover waiting time
7 penalties in an amount equal to the employee’s daily wages for up to thirty (30) days if an
8 employer willfully fails to pay any wages earned and due to the employee within the timeframes
9 required by California Labor Code §§ 201 and 202.

10 194. Plaintiff-Intervenor was entitled to wages in the form of a bonus pursuant to
11 Defendants’ bonus policy.

12 195. Plaintiff-Intervenor was constructively discharged from her employment at
13 Fidelity on or around December 7, 2015.

14 196. Defendants willfully failed to pay Plaintiff-Intervenor for the bonus owed her upon
15 or within 72 hours of her constructive discharge.

16 197. Plaintiff-Intervenor is entitled to recover from Defendants waiting time penalties
17 pursuant to California Labor Code § 203, plus interest, in an amount to be proven at trial.

18 198. Plaintiff-Intervenor is entitled to her reasonable attorneys’ fees and costs of suit.

19
20 **SEVENTEENTH CLAIM FOR RELIEF**

21 **[Retaliation in Violation of Labor Code § 1102.5]**

22 199. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
23 allegations contained in paragraphs 1 through 198, above.

24 200. California Labor Code § 1102.5 prohibits employers, *inter alia*, from retaliating
25 against an employee because the employer believes that the employee may disclose information
26 to a government agency with authority to investigate where the employee has a reasonable belief
27 that the information discloses a violation of a state or federal statute. Cal. Lab. Code § 1102.5(b).

28 201. Plaintiff-Intervenor is informed and believes and thereon alleges that because of
Plaintiff-Intervenor’s internal complaints about the Policy, Defendants retaliatorily demoted

1 and/or constructively discharged Plaintiff-Intervenor in the belief that she would disclose
2 information concerning the Policy to a government agency with authority to investigate.

3 202. As a direct, legal and proximate result of the retaliation, Plaintiff-Intervenor has
4 sustained economic and emotional injuries, resulting in damages in an amount to be proven at
5 trial.

6 203. Defendants’ unlawful actions were intentional, willful, malicious, and/or done with
7 reckless disregard to Plaintiff-Intervenor’s right to be free from retaliation.

8 204. Plaintiff-Intervenor is entitled to her reasonable attorneys’ fees and costs of suit.
9

10 **EIGHTEENTH CLAIM FOR RELIEF**

11 **[Negligent Supervision]**

12 205. Plaintiff-Intervenor incorporates by reference as if fully set forth herein the
13 allegations contained in paragraphs 1 through 204, above.

14 206. Defendants had authority to supervise their employees.

15 207. Plaintiff-Intervenor is informed and believes and thereon alleges that Defendants
16 knew or reasonably should have known that their failure adequately to supervise their employees
17 created the risk of the commission, by those employees, of the wrongful conduct alleged herein,
18 but that Defendants failed to take appropriate corrective action.

19 208. Plaintiff-Intervenor is informed and believes and thereon alleges that Defendants’
20 failure to take appropriate corrective action resulted in the commission of the wrongful conduct
21 alleged herein, and caused Plaintiff-Intervenor to suffer injury, damage, loss or harm.

22 209. As a direct, legal and proximate result of Defendants’ negligence, Plaintiff-
23 Intervenor has sustained economic and emotional injuries, resulting in damages in an amount to
24 be proven at trial.

25 210. Plaintiff-Intervenor is entitled to her reasonable attorneys’ fees and costs of suit.

26 ///
27 ///
28 ///

DECLARATORY RELIEF ALLEGATIONS

211. A present and actual controversy exists between Plaintiff-Intervenor and Defendants concerning their rights and respective duties. Plaintiff-Intervenor contends that Defendants violated her rights under Title VII, 42 U.S.C. § 1981, the FEHA, the California Labor Code and California common law. Plaintiff-Intervenor is informed and believes and thereon alleges that the Defendants deny these allegations. Declaratory relief is therefore necessary and appropriate.

212. Plaintiff-Intervenor seeks a judicial declaration of the respective rights and duties of the parties.

INJUNCTIVE RELIEF ALLEGATIONS

213. No plain, adequate, or complete remedy at law is available to Plaintiff-Intervenor to redress the wrongs alleged herein.

214. If this Court does not grant the injunctive relief sought herein, Plaintiff-Intervenor will be irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Intervenor prays for relief as follows:

1. For a declaration that Defendants’ actions, policies, and practices as alleged herein are unlawful;
2. For reinstatement;
3. For lost wages, penalties and all other compensation denied or lost to Plaintiff-Intervenor by reason of Defendants’ unlawful actions, in an amount to be proven at trial;
4. For compensatory damages for Plaintiff-Intervenor’s emotional pain and suffering, in an amount to be proven at trial;
5. For punitive damages in an amount to be determined at trial;
6. For liquidated damages;
7. For interest on lost wages, compensation, and damages, including pre- and post-judgment interest and an upward adjustment for inflation;

1 8. For an order enjoining Defendants from engaging in the unlawful acts complained
2 of herein;

3 9. For her reasonable attorneys’ fees and costs of suit pursuant to 42 U.S.C. § 2000e-
4 5(k), 42 U.S.C. § 1988, Cal. Gov’t Code § 12965(b), Cal. Code Civ. Pro. § 1021.5, and other
5 laws; and

6 10. For such other and further relief as this Court deems just and proper.

7

8 Dated: March 7, 2019

Respectfully submitted,

9

Marisa Díaz
Christopher Ho
LEGAL AID AT WORK

10

11

Beth W. Mora
MORA EMPLOYMENT LAW, APC

12

13

14



15

16 By: _____

MARISA DÍAZ

Attorneys for Plaintiff-Intervenor Ayesha Faiz

17

18

19

20

21

22

23

24

25

26

27

28

JURY DEMAND

Plaintiff-Intervenor hereby demands a jury trial in the within-entitled action.

Dated: March 7, 2019

Respectfully submitted,

Marisa Díaz
Christopher Ho
LEGAL AID AT WORK

Beth W. Mora
MORA EMPLOYMENT LAW, APC

By:



MARISA DÍAZ
Attorneys for Plaintiff-Intervenor Ayesha Faiz

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28