

1 LAW OFFICE OF  
2 Attorneys at Law

6 Attorney for Plaintiff,

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF ORANGE – CENTRAL DISTRICT**

11 , an individual ) Case No.:  
12 Plaintiffs, ) Judge: **Hon. Linda S. Marks**  
13 ) DPT.: **C7**  
14 ) **UNLIMITED JURISDICTION**  
15 ) **PLAINTIFF'S MSC BRIEF**  
16 ) **Date: June 28, 2013**  
17 ) **Time: 9:00 AM**  
18 ) **Dept.: C10**  
19 ) **Complaint Filed: October 10, 2012**  
20 ) **Trial Date: October 7, 2013**

21 Defendant(s).  
22 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

23 Plaintiff hereby submits her MSC Brief as follows:

24 **I. THE PARTIES**

25 **THEIR ATTORNEYS:**

26 Plaintiff,

27 The Law Office of

28 Defendant,

This action arises from a Complaint for Wrongful Termination and Discrimination filed

### III. PROCEDURAL STATUS

#### IV. LEGAL ARGUMENTS

On or about March 2010 Plaintiff began working in the capacity of Deli Manager for Defendant. At the time Plaintiff started her position as Deli Manager, there were at least three (3) other employees working in the Deli section and they divided the workload amongst each employee. However, by mid 2011, the Deli section was understaffed and was reduced to one

1 regular employee (Plaintiff) who was the supervisor for this Deli Department. While Plaintiff  
2 was assigned employees to work under her supervision, the employees provided to her were  
3 either only temporary employees or employees whom due to their poor performance were no  
4 accepted by other Departments. This duplicated Plaintiff's duties as the constant training and  
5 turn over took a substantial time from her. At least two of the employees assigned to Plaintiff  
6 had a negative attitude and were defiant of Plaintiff's authority making it even harder to stay on  
7 track with Plaintiff's duties and Company high demands.

8 It was unclear to Plaintiff how often her department was audited and when; yet, during  
9 her term of employment at the Deli Department, her Department was audited and graded at least  
10 four times. Each time, Plaintiff was told that her audit had obtained a negative grading for  
11 which Plaintiff was reprimanded. The audits commenced soon after Plaintiff was hired to this  
12 store in question to a few months before Plaintiff was terminated. At least two (2) of those  
13 audits occurred while Plaintiff was off work, nonetheless, Defendants still gave Plaintiff a write  
14 up resulting from the audit. Defendants have refused to provide the results of the audit reports  
15 thus, it is unclear what the guidelines were and the grading which was applied to said audits.

16 Plaintiff was not terminated for having failed any of the audits; instead, she was  
17 terminated for reason outside of said audit results.

18 Despite this, the Defendants refused to take reasonable steps to fill the missing  
19 employment positions with qualified individuals, the Defendants provided mixed instructions to  
20 Plaintiff concerning her authority to discipline (or not) her subordinate employees. I.e the store  
21 manager ordered Plaintiff to discipline her employees while Plaintiff's Mentor would tell her  
22 that she didn't have the authority to discipline employees, that it was the store's manager's  
23 responsibility to do so. In her Deposition Plaintiff testifies that, *"I was begging and begging  
24 and begging to have employees. They started writing me up for high distress dollars. They  
25 weren't holding my employees accountable when I wasn't there..."* (Holzinger Dep. 287:11-14,  
26 May 10, 2013)

27 While the department lacked full-time permanent employees, Plaintiff would be  
28 "loaned" workers from other departments. The mindset of these employees was one of

1 indifference, due to the fact that any mistakes made would be blamed on Plaintiff. Plaintiff,  
2 would try to issue write ups, called conference memos, to the employees for failing to perform  
3 their jobs correctly, however she would later be told that that wasn't part of her job ( Dep.  
4 234:23-24, May 10, 2013) and that she wasn't allowed to do such things. As a result she  
5 would fill out the write-up forms for the misbehaving employee and place them on a manager's  
6 desk to be signed. Such documents were never endorsed, the manager continually claiming that  
7 he "never got" the write ups ( Dep. 239:10, 249:18, 251:23, May 10, 2013).  
8 Management thereby left Plaintiff without the means to enforce her training on these employees  
9 causing multiple violations of health and safety codes, which led to the Deli Department failing  
10 audits and eventually Plaintiff's suspension in November 2011.

11 Due to these circumstances, the working conditions at Defendant's facility became a  
12 serious toll on Plaintiff's physical and mental health. Although Plaintiff reported these  
13 burdensome working conditions to her immediate superiors and requested that the missing  
14 positions be filled within reasonable time, Plaintiff's reports were ignored. Any request by  
15 Plaintiff to fill the empty positions in her department were met with vague comments such as  
16 "We're working on it," ( Dep. 351:18, May 10, 2013) meanwhile Plaintiff continued  
17 to fill all positions in her department, the only one that was understaffed in the entire store  
18 working "...seven days a week, for about three, four, maybe five weeks..." ( Dep.  
19 346:22, May 10, 2013).

20 Defendants claim that Plaintiff was terminated after she reduced the price on products,  
21 "contrary to company policy". However, Plaintiff was set up to fail no matter what she did at  
22 her employment. At Plaintiff's Deposition, Plaintiff testified that she asked for help from  
23 management regarding the pricing of the dinners, as she had already been written up for having  
24 high distress dollars (value of expired food) when she didn't receive instructions concerning  
25 produce price reduction. This time, (Thanksgiving Dinners), would be the first time in which  
26 Plaintiff had to deal with the left over product after the Holiday. Plaintiff testified that she  
27 asked her supervisors and her Mentor as it was something which she had not handled before.  
28 Plaintiff specifically sought guidance from the assistant store manager, ; who used to



1 be the manager of the Deli Department, on how to handle the matter (to reduce the price on left  
2 over dinners). She testified that he told her to put the leftover dinners in the pizza case, at which  
3 point the manager for the Meat Department, Shenandoah, suggested that she price the leftover  
4 dinners at the same price as his leftover turkeys. At this suggestion, the store manager,  
5 who was still standing with Plaintiff during this exchange, told Plaintiff *"Okay. You do what*  
6 *you gotta do to get them sold."* Plaintiff not only followed her superior advice and instruction  
7 but she also did what a reasonable person would, she simply agreed with the price that one  
8 manager had suggested and the other had approved. (Dep. 271:24-273:9, May 10,  
9 2013). Plaintiff labeled the food at 0.49 cents per pound. In the end, despite of this price-  
10 reduction, there were dinners left on distress (unsold), which only proves that the price set by  
11 Plaintiff – all advise considered – was reasonable under the circumstances.

12 Despite Defendant's claims that Plaintiff acted contrary to company policy, two  
13 managers were standing right next to Plaintiff when she marked down the product in questions,  
14 and it was these managers that suggested and approved the pricing. There was no valid reason  
15 behind Plaintiff's termination.

16 Defendant's management did everything they could to hinder Plaintiff in the  
17 performance of her work. Once it became clear that Plaintiff had developed stress related health  
18 issues from work (tremendous weight loss of 40 pounds in a couple of months), instead of  
19 finding ways to help and accommodate Plaintiff in performing her job, they increased her work  
20 load and denied her the tools needed to help reduce said stress and unmanageable work-load.  
21 She was unable to reprimand her employees, yet she was written up for their mistakes.

22 She didn't take it upon herself to markdown leftover dinners but instead, she sought  
23 advice from her superiors including her store manager, yet, regardless, she was fired for taking  
24 that advice.

## 25 **V. DAMAGES**

26 During Plaintiff's employment, she was earning \$15.07 an hour at 40 hours a week, for  
27 an average monthly salary of \$2,612.13 for at least \$32,000.00 per year for a total of \$47,081.34  
28 for the last one year and half. Due to her wrongful termination, Plaintiff has been denied these  
wages for the last year and a half and seeks to recover said wages. Plaintiff has also lost all her

benefits including bonuses (which averaged around \$2,000 a year), medical benefits and her 401K for an estimated value of \$5,000.00 per year. Plaintiff has been unable to find a comparable job at this time.

In engaging in the federal and state law violations discussed herein, Defendant was the proximate cause of Plaintiff's damages. Plaintiff has suffered, and continues to suffer, pain, embarrassment, humiliation, emotional distress, and mental anguish resulting from her treatment as an inferior human being and as "pest" within Defendant's company. Defendant engaged in this conduct maliciously, willfully, and oppressively, and with the intent to harm Plaintiff, and despite having been allowed opportunities to correct their behavior, recklessly continued their behavior. Defendant engaged in illegal conduct and acted with a conscious disregard of Plaintiff's rights and with intent to vex, injure, or annoy Plaintiff such as to constitute oppression, fraud, or malice under Civil Code Section 3294. Plaintiff is therefore entitled to punitive damages in the amount of \$75,000.00.

Plaintiff has made a demand for settlement recently in the amount of \$30,000.00 which would not cover even Plaintiff's lost wages; however, in good faith she is willing to sacrifice her damages so long as the case ends at the MSC. Defendants last counter offer is in the amount of \$10,000.

## **VI. CONCLUSION**

Plaintiff has made great reductions to her initial offer of \$650,000 to recently \$30,000.00 demand. She believes in her case and her good faith offer will expire at the time of the MSC to the original amount if she is forced to take her matter to trial. Nonetheless, she is open to the MSC Judge's recommendations.

Dated: June 19, 2013

Respectfully Requested,

By:   
\_\_\_\_\_, Esq.  
Attorney for Plaintiff,