

1 Josh D. Gruenberg, Esq. SB #163281  
2 Colette N. Mahon, Esq. SB #304745  
3 GRUENBERG LAW  
4 2155 FIRST AVENUE  
5 SAN DIEGO, CALIFORNIA 92101  
6 TELEPHONE: (619) 230-1234  
7 TELECOPIER: (619) 230-1074

8 Attorneys for Plaintiff,  
9 **MARGARITA SMITH**

10  
11 **UNITED STATES DISTRICT COURT**  
12 **SOUTHERN DISTRICT OF CALIFORNIA**

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13 MARGARITA SMITH, an individual,

14 Plaintiff,

15 v.

16 CORECIVIC OF TENNESSEE LLC;  
17 and DOES 1 through 25, Inclusive,

18 Defendants.

Case No. **'20CV0808 L WVG**

**PLAINTIFF'S COMPLAINT FOR:**

1. WRONGFUL CONSTRUCTIVE TERMINATION IN VIOLATION OF PUBLIC POLICY [Cal. Labor Code §§ 6400 *et seq.*, 6401 *et seq.*];
2. WRONGFUL CONSTRUCTIVE TERMINATION IN VIOLATION OF PUBLIC POLICY [Cal. Code Regs. Tit. 8, §§ 5141, 3380];
3. WRONGFUL CONSTRUCTIVE TERMINATION IN VIOLATION OF PUBLIC POLICY [29 USC 654(a)(1)];
4. WRONGFUL CONSTRUCTIVE TERMINATION IN VIOLATION OF PUBLIC POLICY [29 C.F.R. §§ 1910.132];
5. NEGLIGENT SUPERVISION;
6. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

**[JURY TRIAL DEMANDED]**

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COMES NOW THE PLAINTIFF, alleging against Defendants as follows:

**GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

1. Plaintiff, MARGARITA SMITH, (hereinafter “Plaintiff” or “SMITH”), is a natural person who is, and at all relevant times was, a resident of the United States and a domiciliary of the State of California, County of San Diego.
2. Plaintiff is informed and believes and thereon alleges that Defendant, CORECIVIC OF TENNESSEE LLC (hereinafter “CORECIVIC”) is an unknown business entity doing business in the State of California, County of San Diego with its headquarters and principal place of business in Tennessee.
3. Pursuant to 28 U.S.C. Section 1391(b)(2), the proper venue for this action is in the Southern District of California, as a substantial part of the events or omissions giving rise to the claims against each defendant occurred in San Diego, California.
4. The matter in controversy exceeds the sum of \$75,000.00.
5. As a matter in controversy exceeds the sum of \$75,000, and the Plaintiff and the Defendants are diverse as set forth in 28 U.S.C. Section 1332(a)(1), this Honorable Court has diversity jurisdiction with respect to this action.
6. Plaintiff is ignorant to the true names and capacities of the Defendants sued herein as DOES 1 through 25 and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities when they are ascertained.
7. Plaintiff is informed and believes and thereon alleges that each fictitiously named Defendant is responsible in some manner for the occurrences herein alleged, and Plaintiff’s injuries and damages as herein alleged are directly, proximately and/or legally caused by Defendant.
8. Plaintiff is informed and believes and thereon alleges that the

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1           aforementioned DOES are somehow responsible for the acts alleged herein  
2           as the agents, employers, representatives or employees of other named  
3           Defendant, and in doing the acts herein alleged were acting within the scope  
4           of their agency, employment or representative capacity of said named  
5           Defendant.

- 6    9.       As a further proximate result of Defendants’ unlawful and intentional  
7           actions, and each of their agents, against Plaintiff as alleged herein, Plaintiff  
8           has been harmed in that she suffered emotional pain, mental anguish, loss of  
9           enjoyment of life, and emotional distress.
- 10 10.       Defendants committed these acts alleged herein maliciously, fraudulently,  
11           and oppressively, and with the wrongful intention of injuring Plaintiff, and  
12           acted with an improper and evil motive amount to malice or despicable  
13           conduct. Alternatively, Defendants’ wrongful conduct was carried out with  
14           a conscious disregard for Plaintiff’s rights.
- 15 11.       Defendants’ conduct warrants the assessment of punitive damages in an  
16           amount sufficient to punish Defendants and deter others from engaging in  
17           similar conduct.
- 18 12.       Plaintiff seeks compensatory damages, punitive damages, costs of suit  
19           herein, and attorney’s fees.
- 20 13.       Furthermore, Plaintiff alleges that the acts complained of herein took place  
21           within the above captioned judicial district.

22                                       **SPECIFIC FACTUAL ALLEGATIONS**

- 23 14.       Plaintiff re-alleges and incorporates by reference each and every allegation  
24           contained in the preceding paragraphs as though fully set forth herein.
- 25 **I.    The Parties**
- 26 15.       Defendant, CORECIVIC, formerly known as Corrections Corporation of  
27           America, hired Plaintiff in or around April 2009, in the capacity of  
28           Detention Officer at Otay Mesa Detention Center.

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1 16. Defendant is a private operator of correctional facilities with contracts for  
2 services with U.S. Immigration and Customs Enforcement (“ICE”) and U.S.  
3 Marshals Service (“USMS”).

4 17. Otay Mesa Detention Center is a contract detention facility (CDF). It is a  
5 privately owned immigration detention center, owned and operated by  
6 Defendant and located in San Diego, California.

7 18. Otay Mesa Detention Center houses approximately between 1200 to 1300  
8 detainees and inmates.

9 **II. Plaintiff’s Career with Defendant**

10 19. Throughout her employment with Defendant, Plaintiff had a successful and  
11 accomplished career.

12 20. Throughout Plaintiff’s career, she had a variety of roles and responsibilities.  
13 Her duties included but were not limited to: working in various housing  
14 units, conducting safety and security checks, feeding inmates/detainees,  
15 working in the control room, conducting investigations and serving  
16 disciplinary reports to detainees/inmates, which required Plaintiff to enter  
17 inmates’ units, working as a kitchen officer, and intake processing of new  
18 detainees/inmates. Plaintiff’s main objective was the safety and welfare of  
19 the detainees/inmates being detained at the facility.

20 21. In or around 2013, she became a Transportation Detention Officer in  
21 Defendant’s Transportation Department. Her duties included, but were not  
22 limited to: transporting inmates or detainees to off site medical  
23 appointments, off site courts, airlift operations, and special off site  
24 appointments.

25 22. In or around April 2016, Defendant promoted Plaintiff to Senior Detention  
26 Officer (Sargent/Transportation Supervisor) in the Transportation  
27 Department. As Senior Detention Officer, Plaintiff’s duties and  
28 responsibilities included, but were not limited to: supervising all staff in the

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1 Transportation Department, which included responsibility for their sick time,  
2 personal time off, scheduling and assigning transportation officers for  
3 inmates/detainees off site appointments, which included, medical  
4 appointments, morning off site court visits, and all other off site  
5 assignments. Plaintiff was also responsible for responding to Defendant’s  
6 customers’ (ICE and USMS) requests. Plaintiff’s responsibilities also  
7 included keeping Defendant’s Transportation Department in compliance by  
8 consistently being ready for audits related to licensing and record keeping of  
9 all business pertaining to the Transportation Department.

10 23. In or around August 2018, Plaintiff also began managing Defendant’s  
11 contract with ICE for security for inmates/detainees who required  
12 hospitalization. Her duties consisted of scheduling Detention Officers  
13 assigned to the hospitals and, conducting compliance rounds at the various  
14 hospitals.

15 24. In or around October 2019, Defendant secured a contract with USMS to  
16 provide security for inmates who required hospitalization, which Plaintiff  
17 also began managing.

18 25. Plaintiff built rapport with staff, hospital providers, detainees, inmates, ICE  
19 and USMS.

20 26. On or about July 31, 2019, Defendant recognized Plaintiff as the “Supervisor  
21 of the 3rd Quarter.”

22 27. Defendant also awarded Plaintiff the “Employee of the Year” for 2019.

23 28. In or around January 2020, Defendant nominated Plaintiff as President of  
24 Defendant’s Morale Committee.

25 **III. COVID-19 Is A Communicable Disease That Can Cause Serious Illness**  
26 **or Death**

27 29. On March 11, 2020, the World Health Organization declared the global  
28 outbreak of COVID-19, the disease caused by the novel coronavirus, a

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pandemic.

30. It is well established that COVID-19 is easily transmitted, especially in group settings, and that the disease can be extremely serious, causing serious illness and death.

31. There is no effective treatment or cure yet for the disease and everyone is at risk of infection.

32. The CDD explained that COVID-19 appears to spread easily and sustainably within communities and is thought to transfer primarily by person-to-person contact through respiratory droplets produced when an infected person coughs or sneezes and may transfer through contact with surfaces or objects contaminated with these droplets. There is also evidence of asymptomatic transmission, in which an individual infected with COVID-19 is capable of spreading the virus to others before exhibiting symptoms.

33. According to the CDC, older adults and people who are immunocompromised, have severe chronic medical conditions like heart, lung or kidney disease, moderate to severe asthma, severe obesity, diabetes, or other serious underlying medical conditions are also at higher risk for more serious COVID-19 illness. Early data suggested older people are twice as likely to have serious COVID-19 illness.

34. The CDC has also identified people with moderate to severe asthma may be at a higher risk for severe illness from COVID-19, including pneumonia and acute respiratory disease.

35. Individuals who survive may experience permanent loss of respiratory capacity, heart conditions, kidney damage, and other complications.

**III. Defendant Is At Higher Risk For Transmission Of COVID-19**

36. California/OSHA identified facilities that house inmates or detainees as being at increased risk for transmission of aerosol transmissible diseases. (CCR, title 8, section 5199). COVID-19, a novel pathogen, is such a disease.

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1 37. At Otay Detention Center, the risk of spread was apparent and has already  
2 occurred.

3 38. Employees of Otay Detention Center worked in close proximity to one  
4 another and inmates and detainees who were maintained in very close  
5 quarters.

6 39. Taking steps to prevent the COVID-19 from entering and spreading  
7 throughout the facility was of the utmost importance in this type of working  
8 environment.

9 40. As of April 27, 2020, approximately 142 inmates/detainees and numerous  
10 employees and their families have contracted COVID-19.

11 **III. Plaintiff Is At Higher Risk For More Serious Illness From COVID-19**

12 41. Plaintiff suffers from an underlying medical condition, asthma, for which  
13 she takes daily medication, and for which she is at a higher risk of illness  
14 from COVID-19.

15 42. Throughout 2019, Plaintiff was in and out the hospital suffering from  
16 pneumonia, respiratory issues, and related medical illnesses, which also  
17 placed her at higher risk of illness from COVID-19.

18 43. During the first week of March 2020, Plaintiff was out of work due to  
19 pneumonia.

20 **III. Defendant Failed To Take Proper Precautions To Prevent The Spread**  
21 **of COVID-19**

22 44. On or about Monday, March 9, 2020, Plaintiff returned to work.

23 45. Upon Plaintiff's return to work and through the remainder of her  
24 employment with Defendant, COVID-19 cases across the United States and  
25 in San Diego County rapidly increased. On March 12, 2020, the CDC  
26 reported 1,215 cases with 36 deaths. By March 17, 2020, the CDC reported  
27 1,626 cases with 75 deaths. By March 30, the CDC reported 140,940 cases  
28 with 2,405 deaths. Approximately one month later, on April 28, 2020, the

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1 CDC reported 981,246 cases with 55,258 deaths. On March 13, 2020, San  
2 Diego County reported 5 cases, and by March 23, there were 213 cases and  
3 no reported deaths. Approximately one month later, on April 27, 2020, San  
4 Diego reported 3,141 cases and 113 deaths.

5 46. Even the threat of spread of COVID-19 outside of the detention center was  
6 so apparent that many government officials issued “shelter in place” orders  
7 and social distancing mandates, which requires persons to stay at least six  
8 feet distance apart from each other.

9 47. By March 17, 2020, the City and County of San Francisco, along with a  
10 group of five other Bay Area counties and the City of Berkeley, issued  
11 shelter in place limitations across the Bay Area, requiring everyone to stay  
12 safe at home except for certain essential needs.

13 48. Two days later, on March 19, 2020, the State of California issued a state-  
14 wide “shelter in place” order requiring people to stay at home except for  
15 essential activities and to maintain social distancing to the maximum extent  
16 possible.

17 49. During the weeks leading up to Plaintiff’s constructive termination,  
18 Defendant was aware of the grave nature of COVID-19 and its rapid  
19 transmission.

20 50. During the weeks leading up to Plaintiff’s constructive termination,  
21 Defendant was repeatedly advised by numerous sources to take measures to  
22 prevent the spread of COVID-19 in its facility.

23 51. During the weeks leading up to Plaintiff’s constructive termination,  
24 Defendant failed to adequately respond to the COVID-19 pandemic.

25 52. On March 12, 2020, Defendant posted on its website, “Consistent with CDC  
26 recommendations, personal protective equipment (PPE) such as face masks  
27 are allowed to be worn by staff and those in our care within the facility.  
28 Disposable gloves are readily available for staff conducting searches and



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1 handling property. Staff working at the front lobby screening site wear  
2 PPE.” This was false.

3 53. Not only did Defendant not provide gloves or masks to its entire staff,  
4 Defendant expressly prohibited Plaintiff and its other employees of  
5 Defendant from wearing masks in the housing units and other areas of the  
6 facility. Defendant informed its staff of this prohibition in multiple morning  
7 briefings sessions.

8 54. On information and belief, Defendant informed its staff that if they provided  
9 masks to the Detention Officers, then it would scare the inmates/detainees  
10 and they would have to provide them to them as well, which would cause  
11 them to go over budget. Defendant repeatedly put profits over people.

12 55. Even Detention Officers who were responsible for patting down detainees  
13 when necessary were also not provided with gloves or masks.

14 56. Defendant did not provide sanitizer to staff. There were sanitizer dispensers  
15 in only certain areas of the facility, but throughout Plaintiff’s career with  
16 Defendant, every time she attempted to use a sanitizer dispenser, it was  
17 empty.

18 57. The restrooms used by detainees/inmates and staff, were periodically  
19 cleaned by detainees/inmates, as well as the dining hall tables and kitchen.  
20 On information and belief, the detainees/inmates did not have proper  
21 instruction how to use the cleaner so that it was effective. On information  
22 and belief, the efficacy of the cleaner is dependent on leaving the cleaner on  
23 a surface for ten minutes.

24 58. Additionally, the inmates/detainees used the same rags to clean throughout  
25 the day, including in the medical unit. Even in the midst of the COVID-19  
26 pandemic, Defendant did not provide paper towels instead of dirty rags.

27 59. Defendant also did not provide any cleaning sanitizer or disinfectant wipes  
28 to staff, so staff could keep their things and work areas clean.

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- 1 60. Each morning, Plaintiff, along with her coworkers, was required to clock in  
2 and out through the same device, by placing a finger on the device or  
3 punching in times multiple times throughout the day. At the end of the day,  
4 Plaintiff and her coworkers were required to answer a series of questions on  
5 the device by punching the buttons. The device was never regularly cleaned.  
6 Even in the midst of the COVID-19 pandemic, Plaintiff did not observe the  
7 device ever being cleaned.
- 8 61. On information and belief, the kiosk machine that Plaintiff and her  
9 coworkers were also required to touch in order to obtain and return keys for  
10 the different departments they were working in at the start and end of their  
11 shifts was also never regularly cleaned. Neither were the keys that were used  
12 by different Detention Officers each day.
- 13 62. Additionally, upon their arrival to work, Plaintiff, along with many of her  
14 coworkers, were required to obtain their equipment, such as a handheld radio  
15 and handcuffs, from Central Control. Prior to and during the weeks leading  
16 up to Plaintiff's constructive termination, these items were not regularly  
17 cleaned. During Plaintiff's employment, she never observed the employee(s)  
18 in charge of handing out equipment to other officers wear a glove or mask  
19 while carrying out these duties, even in the midst of the COVID-19  
20 pandemic.
- 21 63. In addition, on information and belief, the grey bins that staff and visitors  
22 place items in, such as shoes, lunch, jackets, purses, and backpacks, and  
23 which are placed through a metal detector by either staff or visitors in the  
24 main lobby entrance, were not disinfected.
- 25 64. On Plaintiff's information and belief, there were never any deep cleanses of  
26 the facility, even in the midst of the COVID-19 pandemic.
- 27 65. Prior to and during the weeks leading up to Plaintiff's constructive  
28 termination, Defendant continued to feed inmates/detainees in the dining

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1 hall, which contained approximately two housing units at once, typically  
2 approximately 240 persons at once.

3 66. Prior to and during the weeks leading up to Plaintiff’s constructive  
4 termination, Defendant also continued to hold and require employees to  
5 attend morning briefing sessions. These briefing session were held in a break  
6 room with approximately thirty to forty people at once.

7 67. When Defendant did begin to take steps to prevent transmission, it was not  
8 adequate.

9 68. When Plaintiff logged into her computer, she was presented with basic  
10 information, such as washing her hands for twenty seconds, covering her  
11 mouth if she coughed, practicing social distancing and staying home if she  
12 was sick. Defendant did not provide any protocols or directions related to  
13 decreasing the risk of transmission in its facility, directions on how to  
14 practice social distancing in the facility, or implement any steps to properly  
15 disinfect and clean or provide protective gear in response to the COVID-19  
16 pandemic.

17 69. In or around March 2020, Defendant, through Assistant Warden (“AW”),  
18 Joe Roemmich (“Roemmich”), directed all detention officers that were  
19 assigned to the Transport Department and Intake/Discharge Officers, to take  
20 temperatures of inmates/detainees leaving the facility. Defendant directed  
21 that any inmate/detainee with a temperature over 100.4 was required to  
22 return to their unit. The Medical Unit was between the inmates/detainees  
23 housing units and the Intake/Discharge unit, so any potential case of  
24 COVID-19 was required to pass the Medical Unit, exposing the entire area  
25 between their housing unit and the Intake/Discharge Unit. Defendant did not  
26 take reasonable steps to prevent the spread of COVID-19 by reducing  
27 potentially exposed areas within the facility. Furthermore, returning an  
28 inmate/detainee with a temperature over 100.4 would potentially expose

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1 their housing unit to an increased risk of contracting COVID-19. In addition,  
2 Defendant required its non-medical personnel employees to obtain  
3 inmate/detainee temperatures while medical personnel with proper training  
4 and equipment were readily available.

5 70. On the morning of March 17, 2020, Plaintiff arrived to work and attended  
6 the morning briefing session with her coworkers. Warden Christopher  
7 LaRose and Assistant Warden (“AW”) Robert Garcia (“Garcia”) were  
8 present. Detention Officer Trick asked the wardens if they were going to  
9 provide them with sanitizer or disinfectant wipes to keep their things and  
10 working areas clean. Warden LaRose replied they had a budget for that and  
11 would be getting it soon. On information and belief, these were not provided  
12 as promised.

13 71. In the briefing meeting, Detention Officer Castrejom asked the wardens if  
14 they were going to get clean rags for her “porters” (cleaning crew) because  
15 they were having a hard time getting clean rags and were re-using the same  
16 rags throughout the day. Warden LaRose replied, “that chemical [in the  
17 cleaner] will kill anything, any virus,” or words to that effect. Officer  
18 Castrejom tried to push back and replied, “Fine, but we are using dirty rags,”  
19 or words to that effect. Warden LaRose replied they would get them clean  
20 rags. Clean rags were never supplied and the porters continued to use dirty  
21 rags to clean the facility.

22 72. Before Plaintiff left the briefing meeting, Warden LaRose’s parting words  
23 were, “look guys, when or if we get it, we’re all going to eventually get it,”  
24 or words to that effect.

25 73. On or about March 17, 2020, Plaintiff went out on medical leave.

26 74. Defendant did not take temperatures of persons before they entered the  
27 facility or otherwise triage them to determine if they were experiencing any  
28 COVID-19 related symptoms until approximately on or about the last week

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- 1 of March 2020.
- 2 75. When Defendant did begin taking temperatures, it did so in the enclosed  
3 small lobby of the facility. Defendant was readily able to take temperatures  
4 outside of the facility to ensure persons with a temperature did not actually  
5 enter into the building, increasing the risk of transmission.
- 6 76. It was all too little too late.
- 7 77. Since Plaintiff's departure, numerous coworkers and their family members  
8 have contracted COVID-19. Some have passed away and others became and  
9 continue to become seriously ill.
- 10 78. On March 30, 2020, ICE Health Service Corps (IHSC) sent a letter to  
11 Defendant's staff, including Plaintiff, and ICE leadership. It notified them  
12 that on March 29, 2020, three detainees presented to medical with  
13 complaints of unspecified lower respiratory illness symptoms. It notified  
14 them that IHSC leadership and Core Civic staff made the following  
15 recommendations: To implement cohorting (housing together as a group) the  
16 unit that housed the three symptomatic detainees and restrict movement for  
17 14 days. There was no way to ensure social distancing. There was only one  
18 door in and out of the unit and each room within the units had the capacity to  
19 hold eight detainees with bunk beds. The recommendations also permitted  
20 exposed detainees to participate in recreational activities and did not require  
21 detainees to wear a surgical mask while doing so.
- 22 79. The letter provided few additional recommendations. Each falls short of  
23 providing Plaintiff, her coworkers with a safe working environment.
- 24 80. By creating an unsafe work environment, Defendant essentially terminated  
25 Plaintiff's employment.
- 26 81. On or about March 31, 2020, Plaintiff notified Defendant in writing that she  
27 was resigning. Later that day, AW Roemmich called Plaintiff and told her,  
28 "why don't you give it a month? This thing will blow over," or words to that

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- 1 effect.
- 2 82. Defendant intentionally created or knowingly permitted working conditions
- 3 that were so intolerable or aggravated at the time of the Plaintiff’s
- 4 resignation that a reasonable employer would realize that a reasonable
- 5 person in the employee’s position would be compelled to resign.
- 6 83. As of April 23, 2020, there were approximately 142 inmates/detainees and
- 7 numerous of Defendant’s staff who tested positive for COVID-19. This is
- 8 not to account for the number of family members of Defendant’s employees
- 9 who have also tested positive.
- 10 84. Because of the uncontrolled outbreak and transmission of COVID-19 at
- 11 Defendant’s facility, a County of San Diego COVID-19 task force is
- 12 investigating and trying to help address the situation.

**FIRST CAUSE OF ACTION**  
**WRONGFUL CONSTRUCTIVE TERMINATION**  
**IN VIOLATION OF PUBLIC POLICY**  
**[Cal. Labor Code §§ 6400 *et seq.*, 6401 *et seq.*]**

- 17 85. Plaintiff re-alleges and incorporates by reference each and every allegation
- 18 contained in the preceding paragraphs as though fully set forth herein.
- 19 86. At all times relevant, Plaintiff was Defendant’s employee.
- 20 87. California Labor Code §§ 6400 *et seq.* and 6401 *et seq.* were in full force
- 21 and effect and were binding on Defendant.
- 22 88. California Labor Code § 6407 requires that “[e]very employer and every
- 23 employee shall comply with occupational safety and health standards, with
- 24 Section 25910 of the Health and Safety Code, and with all rules, regulations,
- 25 and orders pursuant to this division which are applicable to his own actions
- 26 and conduct.”
- 27 89. California Labor Code § 6400(a) requires an employer to provide a safe
- 28 work environment for their employees.

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- 1 90. California Labor Code § 6401 requires employers to “furnish and use safety  
2 devices and safeguards, and shall adopt and use practices, means, methods,  
3 operations, and processes which are reasonably adequate to render such  
4 employment and place of employment safe and healthful. Every employer  
5 shall do every other thing reasonably necessary to protect the life, safety,  
6 and health of the employees.”
- 7 91. California Labor Code § 6306 provides that “safety device” and “safeguard”  
8 “shall be given a broad interpretation so as to include any practicable  
9 method of mitigating or preventing a specific danger.”
- 10 92. California Labor Code § 6403 provides that “[n]o employer shall fail or  
11 neglect to do any of the following: (a) To provide and use safety devices and  
12 safeguards reasonably adequate to render the employment and place of  
13 employment safe. (b) To adopt and use methods and processes reasonably  
14 adequate to render the employment and place of employment safe. (c) To do  
15 every other thing reasonably necessary to protect the life, safety, and health  
16 of employees.”
- 17 93. California Labor Code § 6404 provides that “[n]o employer shall occupy or  
18 maintain any place of employment that is not safe and healthful.”
- 19 94. California Labor Code § 6406 provides that “[n]o person shall”  
20 a) Remove, displace, damage, destroy or carry off any safety device,  
21 safeguard, notice, or warning, furnished for use in any employment or  
22 place of employment.  
23 b) Interfere in any way with the use thereof by any other person.  
24 c) Interfere with the use of any method or process adopted for the protection  
25 of any employee, including himself, in such employment, or place of  
26 employment.  
27 d) Fail or neglect to do every other thing reasonably necessary to protect the  
28 life, safety, and health of employees.
95. Defendant’s conduct, as alleged herein, created an unsafe work environment.

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- 1 96. Plaintiff complained about her safety concerns to Defendant.
- 2 97. Defendant intentionally created or knowingly permitted these working  
3 conditions.
- 4 98. Plaintiff feared for her health and safety.
- 5 99. Defendant constructively terminated Plaintiff's employment.
- 6 100. Such actions are unlawful, in violation of public policy of the State of  
7 California, and have resulted in damage and injury to Plaintiff, as alleged  
8 herein.
- 9 101. Plaintiff believes and thereon alleges that Defendant's failure to provide a  
10 safe work environment was a substantial motivating reason for Defendant's  
11 constructive termination of her employment with Defendant.
- 12 102. Defendants' constructive termination of Plaintiff's employment on the basis  
13 of its failure to provide a safe work environment violated the public policy  
14 of the State of California embodied in California Labor Code §§ 6400 *et seq.*  
15 and 6401 *et seq.*, in violation of California law pursuant to City of Moorpark  
16 v. Sup. Ct. (1998) 18 Cal.4th 1143.
- 17 103. As a direct, foreseeable, and proximate result of Defendants' conduct,  
18 Plaintiff has sustained and continues to sustain substantial losses in earnings,  
19 employment benefits, employment opportunities, and Plaintiff has suffered  
20 other economic losses in an amount to be determined at time of trial.  
21 Plaintiff has sought to mitigate these damages.
- 22 104. As a direct, foreseeable, and proximate result of Defendants' conduct,  
23 Plaintiff has suffered and continues to suffer humiliation, emotional distress,  
24 loss of reputation, and mental and physical pain and anguish, all to her  
25 damage in a sum to be established according to proof.
- 26 105. As a result of Defendants' deliberate, outrageous, despicable conduct,  
27 Plaintiff is entitled to recover punitive and exemplary damages in an amount  
28 commensurate with Defendants' wrongful acts and sufficient to punish and



deter future similar reprehensible conduct.

**SECOND CAUSE OF ACTION**

**WRONGFUL CONSTRUCTIVE TERMINATION**

**IN VIOLATION OF PUBLIC POLICY**

**[Cal. Code Regs. Tit. 8, §§ 5141, 3380]**

106. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

107. At all times relevant, Plaintiff was Defendant’s employee.

108. The California Code of Regulations Title 8 of the California Occupational Safety and Health Regulations (Cal/OSHA) was in full force and effect and was binding on Defendant.

109. Title 8 section 3380 requires employers to conduct a hazard assessment to determine if hazards are present or are likely to be present in the workplace that necessitate the use of Personal Protective Equipment (PPE). If such hazards are present, or likely to be present, the employer is required to select and provide affected employees with properly fitting PPE that would effectively protect employees.

110. COVID-19 was a hazard that was present, or likely to be present, in Defendant’s workplace that necessitated the use of PPE.

111. Title 8 section 5141 requires employers to protect employees from harmful exposures (as defined by section 5140, which includes an exposure to fumes, mists, vapors or gases by inhalation that results in or has the probability to result in injury, illness, disease, impairment or loss of function). This provision requires employers to implement engineering controls where feasible and administrative controls where practicable, or provide respiratory protection where engineering and administrative controls cannot protect employees and during emergencies.

112. COVID-19 was a harmful exposure at Defendant’s workplace.

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- 1 113. Defendant's conduct, as alleged herein, created an unsafe work environment.
- 2 114. Plaintiff complained about her safety concerns to Defendant.
- 3 115. Defendant intentionally created or knowingly permitted these working  
4 conditions.
- 5 116. Plaintiff feared for her health and safety.
- 6 117. Defendant constructively terminated Plaintiff's employment.
- 7 118. Such actions are unlawful, in violation of public policy of the State of  
8 California, and have resulted in damage and injury to Plaintiff, as alleged  
9 herein.
- 10 119. Plaintiff believes and thereon alleges that Defendant's failure to provide a  
11 safe work environment was a substantial motivating reason for Defendant's  
12 constructive termination of her employment with Defendant.
- 13 120. Defendants' constructive termination of Plaintiff's employment on the basis  
14 of its failure to provide a safe work environment violated the public policy  
15 of the State of California embodied in the California Code of Regulations  
16 Title 8 of the California Occupational Safety and Health Regulations  
17 (Cal/OSHA), in violation of California law pursuant to Green v. Ralee  
18 Engineering Co. (1998) 19 Cal.4th 66.
- 19 121. As a direct, foreseeable, and proximate result of Defendants' conduct,  
20 Plaintiff has sustained and continues to sustain substantial losses in earnings,  
21 employment benefits, employment opportunities, and Plaintiff has suffered  
22 other economic losses in an amount to be determined at time of trial.  
23 Plaintiff has sought to mitigate these damages.
- 24 122. As a direct, foreseeable, and proximate result of Defendants' conduct,  
25 Plaintiff has suffered and continues to suffer humiliation, emotional distress,  
26 loss of reputation, and mental and physical pain and anguish, all to her  
27 damage in a sum to be established according to proof.
- 28 123. As a result of Defendants' deliberate, outrageous, despicable conduct,

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1 Plaintiff is entitled to recover punitive and exemplary damages in an amount  
2 commensurate with Defendants’ wrongful acts and sufficient to punish and  
3 deter future similar reprehensible conduct.

4 **THIRD CAUSE OF ACTION**  
5 **WRONGFUL CONSTRUCTIVE TERMINATION**  
6 **IN VIOLATION OF PUBLIC POLICY**

7 **[29 USC 654(a)(1)]**

8 124. Plaintiff re-alleges and incorporates by reference each and every allegation  
9 contained in the preceding paragraphs as though fully set forth herein.

10 125. At all times relevant, Plaintiff was Defendant’s employee.

11 126. The Federal Occupational Safety and Health Act (OSHA) of 1970 was in  
12 full force and effect and was binding on Defendant.

13 127. The General Duty Clause, Section 5(a)(1) of the Occupational Safety and  
14 Health Act (OSHA) of 1970, 29 USC 654(a)(1), which requires employers  
15 to furnish to each worker “employment and a place of employment, which  
16 are free from recognized hazards that are causing or are likely to cause death  
17 or serious physical harm.”

18 128. Defendant failed to thoroughly explore all options to comply with OSHA  
19 standards.

20 129. COVID-19 was a hazard that caused or was likely to cause death or serious  
21 physical harm in Defendant’s workplace.

22 130. Defendant’s conduct, as alleged herein, created an unsafe work environment.

23 131. Plaintiff complained about her safety concerns to Defendant.

24 132. Defendant intentionally created or knowingly permitted these working  
25 conditions.

26 133. Plaintiff feared for her health and safety.

27 134. Defendant constructively terminated Plaintiff’s employment.

28 135. Such actions are unlawful, in violation of public policy of the State of

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1 California, and have resulted in damage and injury to Plaintiff, as alleged  
2 herein.

3 136. Plaintiff believes and thereon alleges that Defendant’s failure to provide a  
4 safe work environment was a substantial motivating reason for Defendant’s  
5 constructive termination of her employment with Defendant.

6 137. Defendants’ constructive termination of Plaintiff’s employment on the basis  
7 of its failure to provide a safe work environment violated the public policy  
8 of the United States embodied in the General Duty Clause, Section 5(a)(1) of  
9 the Occupational Safety and Health Act (OSHA) of 1970 in violation of  
10 California law pursuant to Green v. Ralee Engineering Co. (1998) 19 Cal.4th  
11 66.3.

12 138. As a direct, foreseeable, and proximate result of Defendants’ conduct,  
13 Plaintiff has sustained and continues to sustain substantial losses in earnings,  
14 employment benefits, employment opportunities, and Plaintiff has suffered  
15 other economic losses in an amount to be determined at time of trial.  
16 Plaintiff has sought to mitigate these damages.

17 139. As a direct, foreseeable, and proximate result of Defendants’ conduct,  
18 Plaintiff has suffered and continues to suffer humiliation, emotional distress,  
19 loss of reputation, and mental and physical pain and anguish, all to her  
20 damage in a sum to be established according to proof.

21 140. As a result of Defendants’ deliberate, outrageous, despicable conduct,  
22 Plaintiff is entitled to recover punitive and exemplary damages in an amount  
23 commensurate with Defendants’ wrongful acts and sufficient to punish and  
24 deter future similar reprehensible conduct.

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**FOURTH CAUSE OF ACTION**  
**WRONGFUL CONSTRUCTIVE TERMINATION**  
**IN VIOLATION OF PUBLIC POLICY**  
**[29 C.F.R. § 1910.132]**

- 141. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
- 142. At all times relevant, Plaintiff was Defendant’s employee.
- 143. The Code of Federal Regulations Title 29 of the Occupational Safety and Health Standards (OSHA) was in full force and effect and was binding on Defendant.
- 144. Title 29 section 1910.132 requires employers to conduct a hazard assessment to determine if hazards are present or are likely to be present in the workplace that necessitate the use of Personal Protective Equipment (PPE). If such hazards are present, or likely to be present, the employer is required to select and have each affected employee use PPE that will protect the employee from such hazards, communicate selection decisions and select the PPE that properly fits each affected employee.
- 145. Title 29 section 1910.132 further requires employers to provide protective equipment, “including personal protective equipment for eyes, face, head and extremities, protective clothing, respiratory devices, and protective shields and barriers”, “wherever it is necessary by reason of hazards of processes or environment” “encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.”
- 146. COVID-19 was a hazard that was present, or likely to be present, in Defendant’s workplace that necessitated the use of PPE.
- 147. Defendant’s conduct, as alleged herein, created an unsafe work environment.
- 148. Plaintiff complained about her safety concerns to Defendant.

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- 1 149. Defendant intentionally created or knowingly permitted these working  
2 conditions.
- 3 150. Plaintiff feared for her health and safety.
- 4 151. Defendant constructively terminated Plaintiff's employment.
- 5 152. Such actions are unlawful, in violation of public policy of the State of  
6 California, and have resulted in damage and injury to Plaintiff, as alleged  
7 herein.
- 8 153. Plaintiff believes and thereon alleges that Defendant's failure to provide a  
9 safe work environment was a substantial motivating reason for Defendant's  
10 constructive termination of her employment with Defendant.
- 11 154. Defendants' constructive termination of Plaintiff's employment on the basis  
12 of its failure to provide a safe work environment violated the public policy  
13 of the United States embodied in the Code of Federal Regulations Title 29 of  
14 the Occupational Safety and Health Standards (OSHA), in violation of  
15 California law pursuant to Green v. Ralee Engineering Co. (1998) 19 Cal.4th  
16 66.
- 17 155. As a direct, foreseeable, and proximate result of Defendants' conduct,  
18 Plaintiff has sustained and continues to sustain substantial losses in earnings,  
19 employment benefits, employment opportunities, and Plaintiff has suffered  
20 other economic losses in an amount to be determined at time of trial.  
21 Plaintiff has sought to mitigate these damages.
- 22 156. As a direct, foreseeable, and proximate result of Defendants' conduct,  
23 Plaintiff has suffered and continues to suffer humiliation, emotional distress,  
24 loss of reputation, and mental and physical pain and anguish, all to her  
25 damage in a sum to be established according to proof.
- 26 157. As a result of Defendants' deliberate, outrageous, despicable conduct,  
27 Plaintiff is entitled to recover punitive and exemplary damages in an amount  
28 commensurate with Defendants' wrongful acts and sufficient to punish and

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1 deter future similar reprehensible conduct.

2 **FIFTH CAUSE OF ACTION**  
3 **NEGLIGENT SUPERVISION**

4 158. Plaintiff re-alleges and incorporates by reference each and every allegation  
5 contained in the preceding and subsequent paragraphs as though fully set  
6 forth herein.

7 159. Defendants' supervisory employees failed to provide a safe work  
8 environment in violation of California and federal law.

9 160. Defendants knew or should have known that this conduct was unlawful and  
10 in violation of California law.

11 161. Defendant constructively terminated Plaintiff's employment.

12 162. Such actions are unlawful, in violation of public policy of the State of  
13 California, and have resulted in damage and injury to Plaintiff, as alleged  
14 herein.

15 163. Plaintiff believes and thereon alleges that Defendant's failure to provide a  
16 safe work environment was a substantial motivating reason for Defendant's  
17 constructive termination of her employment with Defendant.

18 164. Defendants failed to take steps necessary to prevent the unlawful conduct  
19 described herein.

20 165. As a direct, foreseeable, and proximate result of Defendants' conduct,  
21 Plaintiff has sustained and continues to sustain substantial losses in earnings,  
22 employment benefits, employment opportunities, and Plaintiff has suffered  
23 other economic losses in an amount to be determined at time of trial.  
24 Plaintiff has sought to mitigate these damages.

25 166. As a direct, foreseeable, and proximate result of Defendants' conduct,  
26 Plaintiff has suffered and continues to suffer humiliation, emotional distress,  
27 loss of reputation, and mental and physical pain and anguish, all to her  
28 damage in a sum to be established according to proof.

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**SIXTH CAUSE OF ACTION**

**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

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3 167. Plaintiff re-alleges and incorporates by reference each and every allegation  
4 contained in the preceding paragraphs as though fully set forth herein.

5 168. Defendants' intentional conduct, as set forth herein, was extreme and  
6 outrageous.

7 169. Defendants intended to cause Plaintiff to suffer extreme emotional distress.  
8 Plaintiff suffered extreme emotional distress.

9 170. As a further direct, foreseeable, and proximate result of Defendants'  
10 conduct, Plaintiff has sustained and continues to suffer humiliation,  
11 emotional distress, loss of reputation, and mental and physical pain and  
12 anguish, all to Plaintiff's damage in an amount according to proof at trial.

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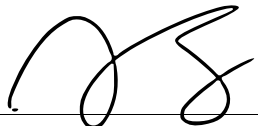
**WHEREFORE**, Plaintiff prays for the following relief:

1. For compensatory damages, including back pay, front pay, and other monetary relief, in an amount according to proof;
2. For special damages in an amount according to proof;
3. For mental and emotional distress damages;
4. For punitive damages in an amount necessary to make an example of and to punish defendants, and to deter future similar misconduct;
5. For costs of suit, including attorneys’ fees as permitted by law, including those permitted by California Code of Civil Procedure section 1021.5;
6. For an award of interest, including prejudgment interest, at the legal rate as permitted by law;
7. For injunctive relief;
8. For such other and further relief as the Court deems proper and just under all the circumstances.

**PLAINTIFF MARGARITA SMITH** demands a jury trial on all issues in this case.

DATED: April 29, 2020

**GRUENBERG LAW**



JOSH D. GRUENBERG, ESQ.  
COLETTE N. MAHON, ESQ.  
Attorneys for Plaintiff,  
**MARGARITA SMITH**