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**BEFORE THE ADMINISTRATIVE LAW JUDGE
FOR A HUMAN RIGHTS COMMISSION HEARING**

WASHINGTON STATE HUMAN
RIGHTS COMMISSION, presenting the
case in support of the complaint filed by
Janelle Harrison

Complainant,

v.

SPIKE’S FOOD-MART, INC.,
Respondent.

WSHRC Case No. 01ED-0256-13-4
OAH Docket No.

AMENDED COMPLAINT

Complainant Washington State Human Rights Commission (“the Commission”) submits
this amended complaint and states as follows:

I. UNFAIR PRACTICES ALLEGED

1. Respondent Spike’s Food-Mart, Inc. (“Spike’s Food-Mart”) unlawfully
discriminated against its former employee, Janelle Harrison (“Harrison”), based on her
disability in violation of the Washington Law Against Discrimination (“WLAD”), RCW
49.60.030(1)(a) and RCW 49.60.180, and related regulations.

II. JURISDICTION

2. The Commission has jurisdiction to prosecute this case. See RCW 49.60.240
and RCW 49.60.250. RCW 49.60.240 authorizes the Commission to investigate complaints of
discrimination and, once it makes a finding of reasonable cause to believe discrimination has

1 | occurred, to seek relief for such discrimination. If an agreement to eliminate the unfair practice
2 | is not reached, RCW 49.60.250 allows the Commission to request appointment of an
3 | administrative law judge to hear the complaint. If the court finds that Spike's Food-Mart has
4 | engaged in any unfair practice, it has jurisdiction to eliminate the unfair practice by ordering
5 | remedies to: (1) restore Ms. Harrison as nearly as possible to the position she would have been
6 | in but for Spike's Food-Mart's discrimination; and (2) prevent the recurrence of the unfair
7 | practice(s). See RCW 49.60.250(5) and WAC 162-08-298(2).

8 | III. FACTUAL BASIS FOR ALLEGATIONS

9 | 3. Spike's Food-Mart is a restaurant and gift shop business located at 1611
10 | Smitty's Blvd., Ritzville, WA 99169. It employs more than eight (8) employees. It is owned by
11 | Scott and Theresa Fitch who are identified as the sole officers of the corporation with the
12 | Washington Secretary of State. Spike's Food-Mart does business as Cow Creek Mercantile and
13 | has also been known as Spike's Deli and Pizza.

14 | 4. Janelle Harrison was an employee of Spike's Food-Mart from February 2006, to
15 | August 26, 2013.

16 | 5. Ms. Harrison was diagnosed with depression, a disability, as a young adult. She
17 | has taken antidepressant medications to manage her disability since the 1990s.

18 | 6. Ms. Fitch has known Ms. Harrison since the early 1980s. Ms. Fitch was aware
19 | of Ms. Harrison's depression prior to hiring her. When Ms. Harrison came to work for Spike's
20 | Food-Mart, Ms. Harrison and Ms. Fitch talked about Ms. Harrison's depression and that Ms.
21 | Harrison took medication for it.

22 | 7. Ms. Harrison was originally hired as a Server/Cook. About three months after
23 | starting to work for Spike's Food-Mart, Ms. Harrison was promoted to Deli Manager. Ms.
24 | Fitch was Ms. Harrison's direct supervisor. Ms. Harrison's job duties as Deli Manager
included food preparation, coordinating the menu, cooking, baking, serving, food costing,

1 ordering food and supplies, handling cash, scheduling and managing (including supervising,
2 hiring, firing and training) employees. Ms. Harrison needed approval from Ms. Fitch to fire
3 employees.

4 8. For approximately seven (7) years, Ms. Harrison was a valued employee and
5 manager of Spike's Food-Mart. She effectively managed her depression with medication.

6 9. In April 2013, Ms. Harrison's depression worsened. She became upset and teary
7 on multiple occasions when dealing with the employees she managed. Ms. Harrison told Ms.
8 Fitch that she felt out of control. Ms. Harrison identified Elizabeth Biermann as an employee
9 with whom she was having particular difficulty. Ms. Fitch told Ms. Harrison to schedule
10 herself two days off per week. Throughout the next few months, Ms. Fitch encouraged Ms.
11 Harrison to see her doctor concerning her depression.

12 10. Ms. Harrison's depression continued to worsen and her difficulty managing Ms.
13 Biermann continued. Ms. Harrison approached Ms. Fitch, told her she was having difficulties,
14 and requested her assistance with several employees. Ms. Fitch responded to this request for an
15 accommodation by suggesting a meeting with Ms. Harrison and Ms. Biermann. Between May
16 and August, 2013, Ms. Harrison regularly requested that Ms. Fitch hold the meeting with her
17 and Ms. Biermann. That meeting never occurred.

18 11. Ms. Fitch took trips in May and August, 2013. Ms. Harrison covered Ms.
19 Fitch's duties when Ms. Fitch was away. Those duties included recording payroll, making bank
20 deposits and working the gift shop on what would have been Ms. Harrison's days off. There
21 was a period in May 2013 that Ms. Harrison worked approximately sixteen (16) days straight
22 because she had to cover the restaurant and the gift shop while Ms. Fitch was away.

23 12. On August 11, 2013, while Ms. Fitch was in Alaska, Ms. Harrison fired a
24 server, Darcee Morovic, following an incident that ended with Ms. Morovic challenging Ms.
Harrison to hit her. Ms. Harrison declined. Ms. Morovic accused Ms. Harrison of assault to the
Adams County Sheriff's Office. The Sheriff's Office closed the incident report without charges

1 after interviewing Ms. Harrison and other employees. Both Ms. Harrison and Ms. Morovic
2 contacted Ms. Fitch about the incident.

3 13. On August 15, 2013, upon Ms. Fitch's return from Alaska, Ms. Fitch requested
4 a meeting at her home with Ms. Harrison. At that meeting, Ms. Fitch notified Ms. Harrison that
5 she was being demoted back to Server/Cook and that Ms. Fitch herself would take over as Deli
6 Manager. According to Ms. Fitch, the demotion was due to Ms. Harrison having a really hard
7 time, being unable to stop herself from saying things she did not want to say, and being unable
8 to deal with different situations with her employees.

9 14. Ms. Harrison told Ms. Fitch that she had been to a doctor's appointment earlier
10 that day and that she was starting a new antidepressant medication for her depression because
11 her current one had not been working. Ms. Harrison told Ms. Fitch that it would take between
12 three and four weeks for the new antidepressant medication to take effect. Ms. Fitch instructed
13 Ms. Harrison to take the next week off as a paid vacation but scheduled Ms. Harrison to return
14 to work on August 20, 2013 (five days later), to show Ms. Fitch how to do the food order
15 because Ms. Fitch had never ordered food for the restaurant before.

16 15. On Tuesday, August 20, 2013, Ms. Harrison worked with Ms. Fitch on the food
17 order. While at work, Ms. Harrison received a phone call from the boyfriend of Ms. Morovic.
18 Ms. Morovic's boyfriend was upset with the termination letter that had been drafted by Ms.
19 Harrison and given to Ms. Morovic by Ms. Fitch earlier in the day. According to Ms. Fitch,
20 Ms. Morovic's boyfriend was abusive and out of control during the phone call. Ms. Harrison
21 was upset by the phone call. Ms. Fitch was sympathetic to Ms. Harrison about the phone call
22 and believed it added to the stress of the day.

1 16. On August 21, 2013, Ms. Harrison called Ms. Fitch and said that she could not
2 come to work, that she was not ready and that she was getting too upset. Ms. Fitch said that
3 was fine.

4 17. Ms. Harrison worked in her new position as Server/Cook on Saturday, August
5 24, and Sunday, August 25, 2013, during which Ms. Fitch observed Ms. Harrison's behavior to
6 be negative and rude. According to Ms. Fitch, "everybody was kind of on eggshells because
7 [Ms. Harrison] was just upset all weekend long."

8 18. On Sunday, August 25, 2013, Ms. Harrison notified Ms. Fitch that she was
9 having an issue with Ms. Biermann and reminded Ms. Fitch that she had said she would have a
10 meeting with Ms. Biermann and Ms. Harrison, which never occurred. Ms. Fitch responded that
11 she had been talking with Ms. Biermann and all of the employees on Ms. Harrison's crew. Ms.
12 Harrison was in tears while speaking with Ms. Fitch a few times that day.

13 19. Later that day, Ms. Harrison asked Ms. Biermann for assistance in the kitchen.
14 There were a number of items that still needed to be done and Ms. Biermann and other
15 employees appeared to be available to help, but Ms. Biermann refused. Ms. Harrison returned
16 to the kitchen to try and finish what she was doing, but she started shaking uncontrollably and
17 hyperventilating. After she started experiencing this anxiety attack, Ms. Harrison told Ms.
18 Fitch there were several tasks that still needed to be done but that she needed to go home. Ms.
19 Harrison expressed frustration about Ms. Biermann, saying she felt it was getting to the point
20 where it was either Ms. Biermann or Ms. Harrison. Ms. Fitch acknowledged that they needed
21 to get together and talk. Ms. Harrison said she had heard Ms. Fitch say that before and went
22 home. Neither Ms. Fitch nor Ms. Harrison considered Ms. Harrison to have quit her job by this
exchange.

23 20. That evening, Ms. Fitch emailed Ms. Harrison, as follows:

24 Janelle,

1 I appreciate all you've done for Cow Creek in the last 7 ½ years but I think it is
2 best that we part ways. I don't appreciate being bullied and given an ultimatum.
3 You don't demand respect from people, you earn it. The lack of respect you get
4 from your employees tells me that you haven't earned it. You are a hard worker
5 and I have always appreciated your attention to detail and your desire to
6 produce quality food. I believe the stresses of this job have taken a toll on you
7 physically and mentally. I didn't want to do this by email but I will be working
8 thru this evening and I feel it is best to just get this settled now. I will pay you
9 for your two weeks of vacation and the hours you have worked this month
10 tomorrow when I get the dollar amount from the accountant. I hope you can
11 find happiness and enjoyment in your life and in your work in the future.

12 Sincerely,
13 Theresa

14 21. On August 26, 2013, Ms. Harrison went to work, not having seen Ms. Fitch's
15 email. After about three hours, Ms. Fitch arrived and asked Ms. Harrison to her office. Ms.
16 Fitch notified Ms. Harrison of the August 25, 2013, termination email and that she was letting
17 Ms. Harrison go. According to Ms. Fitch, the meeting was fairly brief. Ms. Harrison gathered
18 her things and left the premises.

19 22. Ms. Fitch's decision to terminate Ms. Harrison on August 25, 2013 was based
20 on Ms. Harrison's behavior caused by her depression.

21 23. On November 19, 2013, Ms. Fitch and Ms. Harrison both appeared and testified
22 before an administrative law judge regarding Ms. Harrison's unemployment benefits. The
23 court concluded that Ms. Harrison's actions were not statutory misconduct under RCW
24 50.20.294.

25 24. Ms. Harrison was unemployed from August 26, 2013, to May 12, 2014. On
26 May 12, 2014, Ms. Harrison began working for G6 Hospitality as a relief manager.

27 25. On September 10, 2014, when asked by a Commission investigator whether Ms.
28 Harrison's actions could have been because of her disabilities, Ms. Fitch responded "It could
29 have possibly been due to a disability." Ms. Fitch made no claim that giving Ms. Harrison a

1 longer time off, such as three to four weeks, would have been an undue burden to Spike's
2 Food-Mart.

3 26. On October 22, 2014, Ms. Harrison's mental health counselor, Ken Cochran,
4 stated to the Commission that Ms. Harrison's "depression and anxiety was a result of not
5 getting the support she needed from owner and her boss, Theresa." Ms. Harrison had 24
6 counseling sessions with Mr. Cochran from September 26, 2013, to May 1, 2014.

7 **IV. FIRST CAUSE OF ACTION**
8 **(Violations of the Washington Law Against Discrimination –**
9 **Discrimination Based on Disability)**

10 27. The Commission realleges and incorporates by reference the allegations set
11 forth in each of the preceding paragraphs of this Amended Complaint.

12 28. Spike's Food-Mart's decisions to demote and fire Ms. Harrison based on
13 conduct resulting from her disability violated the WLAD. *See* RCW 49.60.180(2) ("It is an
14 unfair practice for any employer "[t]o discharge or bar any person from employment because
15 of . . . the presence of any sensory, mental, or physical disability . . ."); RCW 49.60.180(3) ("It
16 is an unfair practice for any employer "[t]o discriminate against any person in compensation or
17 in other terms or conditions of employment because of . . . the presence of any sensory, mental,
18 or physical disability . . ."); WAC 162-22-025(1) ("It is an unfair practice for any employer ...
19 to ... [r]efuse to hire, discharge, bar from employment, or otherwise discriminate against an
20 able worker with a disability ...").

21 29. Spike's Food-Mart is liable for the discriminatory conduct of Ms. Fitch because
22 Spike's Food-Mart knew that Ms. Harrison's behavior was a symptom of her disability and
23 demoted and then fired her for it.

24 30. As a proximate cause of Spike's Food-Mart's discrimination, Ms. Harrison has
suffered damages including lost wages and benefits, expenses incurred due to Spike's Food-

1 Mart's discrimination, inconvenience caused by participating in the investigation and
2 prosecution of her discrimination complaint, pain and suffering, financial hardship,
3 embarrassment, humiliation, emotional distress, and other damages to be proved at the hearing.

4 **V. SECOND CAUSE OF ACTION**
5 **(Violation of the Washington Law Against Discrimination –**
6 **Failure to Reasonably Accommodate)**

7 31. The Commission realleges and incorporates by reference the allegations set
8 forth in each of the preceding paragraphs of this Amended Complaint.

9 32. Spike's Food-Mart failed to provide Ms. Harrison with a reasonable and
10 effective accommodation. *See* WAC 162-22-025(2) ("It is an unfair practice for any employer
11 ... to ... [f]ail or refuse to make reasonable accommodation for an able worker with a
12 disability..."); WAC 162-22-065 ("Reasonable accommodation means measures that ...
13 [e]nable the proper performance of the particular job held... [and] [e]nable the enjoyment of
14 equal benefits, privileges, or terms and conditions of employment"). Ms. Harrison requested
15 that Ms. Fitch hold a meeting with her and Ms. Biermann. Spike's Food-Mart's failure to hold
16 the meeting constitutes a denial of reasonable accommodation. In addition, on August 15,
17 2013, Spike's Food-Mart received notice that Ms. Harrison's antidepressant medication was
18 being changed and that it would take between three and four weeks for the new medication to
19 take effect. Spike's Food-Mart failed to offer Ms. Harrison an effective accommodation such
20 as a longer period of leave during the antidepressant medication change.

21 33. Spike's Food-Mart also failed to engage in the interactive process with Ms.
22 Harrison in order to determine a reasonable accommodation for her. *See* WAC 162-22-025(2)
23 ("It is an unfair practice for any employer ... to ... [f]ail or refuse to make reasonable
24 accommodation for an able worker with a disability..."); RCW 49.60.040(7)(d); *Frisino v.*
Seattle Sch. Dist. No. 1, 160 Wn. App. 765, 779, 249 P.3d 1044 (2011) (the best way for the

1 employer and employee to determine a reasonable accommodation is through a flexible,
2 interactive process). On August 20, 2013, when Ms. Harrison returned to work after taking
3 four days of leave, she continued to have similar issues as before and notified Ms. Fitch.
4 Spike's Food-Mart's failure to engage Ms. Harrison in an interactive process to identify an
5 effective accommodation.

6 34. As a proximate cause of Spike's Food-Mart's failure to provide Ms. Harrison
7 with a reasonable and effective accommodation, and to engage in the interactive process, Ms.
8 Harrison has suffered damages including lost wages and benefits, expenses incurred due to
9 Spike's Food-Mart's discrimination, inconvenience caused by participating in the investigation
10 and prosecution of her discrimination complaint, pain and suffering, financial hardship,
11 embarrassment, humiliation, emotional distress, and other damages to be proved at the hearing.

12 VI. REQUEST FOR RELIEF

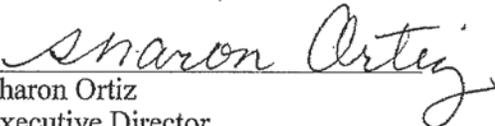
13 35. Spike's Food-Mart should be ordered to pay Ms. Harrison back pay,
14 reinstatement or front pay, including all fringe benefits; expenses incurred due to Spike's
15 Food-Mart's discrimination; inconvenience caused by participating in the investigation and
16 prosecution of her discrimination complaint; pain and suffering; financial hardship;
17 embarrassment; humiliation; emotional distress; and other damages to be proved at hearing.

18 36. Spike's Food-Mart employees who participate in management activities should
19 be ordered to attend a complete session of equal employment opportunity training approved by
20 the Commission and/or the Attorney General's Civil Rights Unit.

21 37. Spike's Food-Mart should be enjoined from discriminating against persons
22 based on disability, and should be required to change its policies and procedures to comply
23 with this injunction.
24

1 I, Sharon Ortiz, Executive Director of the Commission, verify that I have reviewed the
2 above amended complaint and that the unfair practices charged, the factual allegations set
3 forth, and the relief requested are true, correct and appropriate to the best of my knowledge and
4 belief.

5 Signed this 16th day of November, 2016

6 
7 Sharon Ortiz
8 Executive Director
9 Washington State Human Rights Commission
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